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federal register

Friday
September 13, 1985

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Federal Register

Friday
September 13, 1985

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Administrative Practice and Procedure
Land Management Bureau
Air Pollution Control
Environmental Protection Agency
Aviation Safety
Federal Aviation Administration
Bridges
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Cotton
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Hazardous Waste
Environmental Protection Agency
Income Taxes
Internal Revenue Service
Marketing Agreements
Agricultural Marketing Service
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 919, 931, 981, 982, and 993

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Orders 919 (Peaches, Colo.), 931 (Pears, Ore. and Wash.), 981 (Almonds, Cal.), 982 (Filberts/Hazelnuts, Ore. and Wash.), and 993 (Prunes, Cal.) for the 1985–86 fiscal year. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: July 1, 1985–June 30, 1986 (§§ 919.224; 931.220; 981.335 and 982.330); August 1, 1985–July 31, 1986 (§ 993.336).

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that these actions will not have a significant economic impact on a substantial number of small entities.

These marketing orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). These actions are based upon the recommendations and information submitted by each committee, established under the respective marketing orders, and upon other information.

Accordingly, the Secretary finds that upon good cause shown it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in other public procedures, and postpone the effective dates until 30 days after publication in the Federal Register (5 U.S.C. 553). Each order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. To enable the committees to meet current fiscal obligations, approval of the expenses is necessary without delay. Handlers have been apprised of the provisions and effective dates specified in this final rule. It is found that the specified expenses and assessment rates will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Parts 919, 931, 981, 982, and 993

Marketing Agreements and Orders, Peaches (Colorado), Pears (Oregon-Washington), Almonds (California), Filberts/Hazeluts (Oregon-Washington), Dried Prunes (California).

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Therefore, new §§ 919.224, 931.220, 981.335, 982.330 and 993.336 are added to read as follows (the following sections prescribe the annual expenses and assessment rates and will not be published in the Code of Federal Regulations).

PART 919—PEACHES GROWN IN MESA COUNTY, COLORADO

§ 919.224 Expenses and assessment rate.

Expenses of $1,000 by the Administrative Committee are authorized, and an assessment rate of $0.01 per bushel of peaches is established for the fiscal year ending June 30, 1986.

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

§ 931.220 Expenses and assessment rate.

Expenses of $49,780 by the Northwest Fresh Bartlett Pear Marketing Committee are authorized and assessment rate of $0.02 per Western Standard pear box of pears is established for the fiscal year ending June 30, 1986. Unexpended funds may be carried over as a reserve.

PART 981—ALMONDS GROWN IN CALIFORNIA

§ 981.335 Expenses and assessment rate.

Expenses of $13,485,918 by the Almond Board of California are authorized for the crop year ending June 30, 1986. An assessment rate for that crop year payable by each handler in accordance with § 981.81 is fixed at 2.7 cents per pound of almonds (kernelweight basis) less any amount credited pursuant to § 981.41 but not to exceed 2.5 cents per pound of almonds (kernelweight basis).

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

§ 982.330 Expenses, assessment rate, and operating reserve.

Expenses of $73,999 by the Filbert/Hazelnut Marketing Board are authorized, and an assessment rate payable by each handler in accordance with § 982.61 is fixed at 0.2 cent per pound of assessable filberts for the 1985–86 marketing year ending June 30, 1986. Unexpended funds are carried over as a reserve, or made available to handlers.

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

§ 993.336 Expenses and assessment rate.

Expenses of $245,526 by the Prune Marketing Committee are authorized, and an assessment rate payable by each handler in accordance with § 993.81 is fixed at $2.26 per ton for salable dried prunes for the 1985–86 crop year ending July 31, 1986.

Dated: September 9, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85–21969 Filed 9–12–85; 8:45 am]
BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 4

[Docket No. 85-16]

Description of Office, Procedures, Public Information; Staff No-Objection Position

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency ("Office") is amending its rules concerning Office procedures and public information to add staff no-objection positions to the list of publicly available documents in 12 CFR 4.15.

EFFECTIVE DATE: October 15, 1985.

ADDRESS: Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219.

FOR FURTHER INFORMATION CONTACT: Ford Barrett, Assistant Director, Legislative and Regulatory Analysis Division, Telephone (202) 447-1177.

SUPPLEMENTARY INFORMATION: The Office has adopted guidelines for providing informal legal advice on the application of banking law provisions administered by the Office to certain contemplated activities and transactions. The guidelines are designed to permit any party, but especially bank attorneys, to request informal advisory positions from the Office staff on transactions and activities for which approval is not required by law. The typical request will ask whether the staff will object if the contemplated activity or transaction is carried out in the described manner. Staff responses to these requests are referred to as staff no-objection positions.

This final rule provides for public access to letters requesting a staff no-objection position and to the resulting staff no-objection position.

Under § 4.15(c), the Office may delete identifying details from no-objection requests or staff no-objection positions to the extent necessary to prevent an invasion of personal privacy. Unless redacted by the Office, the names of persons and banks identified in written requests for staff no-objection positions or staff no-objection positions become public.

Reason for Not Allowing Notice and Comment Procedures

Since this final rule merely adds another category of information to the list of material available to the public, solicitation of public comment is not necessary.

Regulatory Flexibilty Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this final rule will not have a significant economic impact on a substantial number of small entities.

Regulatory Impact Analysis

The Office has determined that this final rule does not constitute a "major rule" and, therefore, does not require a regulatory impact analysis.

List of Subjects in 12 CFR Part 4

National banks, Staff no-objection position.

Authority and issuance

PART 4—DESCRIPTION OF OFFICE, PROCEDURES, PUBLIC INFORMATION

For the reasons set out in the preamble, Part 4 of Chapter I of Title 12 of the Code of Federal Regulations is amended to read as follows:

1. The authority cite for Part 4 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 5 U.S.C. 552, unless otherwise noted.

2. In § 4.15, a new paragraph (a)(10) is added to read as follows:

§ 4.15 Orders, opinions, etc., available to the public.

(a) * * *

(10) Requests for staff no-objection positions and staff responses.

* * * * *

Dated: July 23, 1985.

H. Joe Selby,

Acting Comptroller of the Currency.

[FR Doc. 85-21826 Filed 9-12-85; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-ASO-12]

Alteration of Control Zone, Roosevelt Roads, PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects FR Doc. 85-18330 published in the **Federal Register** on August 2, 1985 (50 FR 31344), which altered the Roosevelt Roads, Puerto Rico, control zone.

EFFECTIVE DATE: 0901 G.m.t., September 26, 1985.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 85-18330 published on August 2, 1985, altered the Roosevelt Roads, Puerto Rico, control zone. Subsequent to publication of the Final Rule, flight inspection information was received which disclosed that the bearing from the Roosevelt Roads ultra high frequency radio beacon (UHF/RBN) specified in the rule was incorrect. The correct bearing upon which the control zone arrival extension is predicated is 037°. The correction to the Final Rule will incorporate this newly received flight inspection data. To avoid confusion the complete control zone description, as corrected, is presented in the text of this document. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6A, dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Roosevelt Roads, Puerto Rico, control zone to accommodate Instrument Flight Rule operations at Naval Station Roosevelt Roads.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. I find that good cause exists to make this amendment effective on the original effective date of September 26, 1985.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Control zone.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.171 as follows:

Roosevelt Roads, PR—[Revised]

Within a 5-mile radius of NS Roosevelt Roads (lat. 18°15'05" N., long. 65°38'35" W.); within 3 miles each side of the 037° bearing from Roosevelt Roads UHF/RBN, extending from the 5-mile radius zone to 8.5 miles northeast of the RBN.

Issued in East Point, Georgia, on September 26, 1985.

Thomas H. Protiva,

Acting Director, Southern Region.

[FR Doc. 85–21879 Filed 9–12–85; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 85–AWP–21]

Proposed Redefinition of the Phoenix Sky Harbor Airport, Phoenix, AZ, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The definition to the existing Phoenix Sky Harbor Airport, Phoenix, Arizona, Control Zone is being changed to reflect geographical coordinates in lieu of the Phoenix Very High Frequency Omni-directional Radio Range and Tactical Air Navigational Aid (VORTAC) to describe the airspace. This action does not change the actual airspace, only editorial changes to the description of the existing Phoenix, Arizona, Control Zone.

DATES: Effective date—0901 G.m.t., November 21, 1985.

FOR FURTHER INFORMATION CONTACT: Curtis Alms, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration; 15000 Aviation Boulevard, Hawthorne, California 90261; telephone (213) 536–6649.

SUPPLEMENTARY INFORMATION:

History

These actions are in the form of a final rule, which involves the redefinition of the Phoenix, Arizona, Control Zone resulting from the renaming of the Phoenix VORTAC to the Salt River VORTAC. As a result of this name change, an editorial change to the description of the control zone becomes necessary. To preclude numerous editorial changes to control zones, it has been determined that the use of geographical coordinates as reference points describing control zones are more permanent and are not as subject to change as names or locations of VORTAC facilities.

The Rule

The purpose of this amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to change the description of the Phoenix, Arizona, Control Zone by using geographical coordinates and delete the Phoenix VORTAC reference used in the definition. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA considers that there is an immediate need for a regulation to reflect the correct description of the Phoenix, Arizona, Control Zone. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is contrary to the public interest and that good cause exists for making this amendment effective coincident with the charting date of November 21, 1985. Description of the amended control zone is set forth below and depicted on the chart at the end of this document.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12201; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of, regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Control zones, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the FAR as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.171 is amended as follows:

Phoenix, AZ—[Revised]

"Beginning at lat. 33°27'30" N., long. 112°05'45" W.; thence clockwise via the 5-mile radius of the Phoenix Sky Harbor Airport (lat. 33°26'10" N., long. 112°00'32" W.); to lat. 33°27'30" N., long. 111°56'00" W.; to lat. 33°27'30" N., long. 111°51'25" W.; to lat. 33°24'20" N., long. 111°51'25" W.; to lat. 33°24'20" N., long. 111°56'25" W.; thence clockwise via the 5-mile radius of Phoenix Sky Harbor Airport (lat. 33°26'10" N., long. 112°00'32" W.); to lat. 33°24'20" N., long. 112°05'30" W.; to lat. 33°24'20" N., long. 112°07'00" W.; to lat. 33°27'30" N., long. 112°07'00" W.; to the point of beginning."

Issued in Los Angeles, California on August 28, 1985.

H. C. McClure,

Director, Western-Pacific Region.

[FR Doc. 85–21880 Filed 9–12–85; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 455

Trade Regulation Rule; Sale of Used Motor Vehicles; Temporary Stay of Effective Date as Rule Applies in the State of Wisconsin

AGENCY: Federal Trade Commission.

ACTION: Extension of temporary stay of effective date as Rule applies within Wisconsin.

SUMMARY: The Federal Trade Commission has received a petition from the Wisconsin Department of Transportation requesting a statewide exemption from the Commission's Trade Regulation Rule Concerning the Sale of Used Motor Vehicles (the "Rule" or the "Used Car Rule"), 16 CFR Part 455. The Commission is extending the stay of the effective date of the Used Car Rule in Wisconsin for 90 days, while the Petition is being considered.

DATE: The 90 day extension of the stay of the Used Car Rule within Wisconsin is effective September 6, 1985, and expires on December 5, 1985.

FOR FURTHER INFORMATION CONTACT: Lee J. Plave (202/376–2805), Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: On May 8, 1985, the Commission decided to stay the effective date of the Used Car Rule as it applied within the State of

Wisconsin for a temporary period of 120 days, from May 9, 1985, to September 6, 1985. 50 FR 20094 (1985). On May 23, 1985, the Commission published a notice in the **Federal Register** soliciting public comment on the Wisconsin Petition. 50 FR 21269 (1985). The period for public comments expired on June 24, 1985. *Id.* For good cause, the Commission has now decided to extend the stay of the effective date of the Used Car Rule as it applies within the State of Wisconsin for a period of 90 days, from September 6, 1985, to December 5, 1985.

The Commission has decided that an extension of the stay of the effective date of the Used Car Rule should be granted pending the Commission's further consideration of the Petition. Wisconsin has had its regulation in effect for several years and dealers are already using the disclosure forms required by the regulation that is the basis for the Petition. Wisconsin dealers are thus providing some information to consumers. Therefore, a brief extension of the stay of the effective date of the Used Car Rule, as it applies within the State of Wisconsin, is unlikely to cause significant consumer injury if the Petition is denied, and may avoid unnecessary expense to Wisconsin dealers if an exemption is granted.

In addition, the Commission has, for good cause, determined that public notice and comment on this 90 day extension of the stay of the effective date is unnecessary. Public comment would appear to be unnecessary because the stay is merely designed to maintain the status quo and to avoid placing a potentially unnecessary burden on dealers in the State of Wisconsin during the limited period of time during which the Petition is being considered. Thus, in accordance with §§ 1.26(b) and 1.26(e) of the Commission's Rules of Practice, 16 CFR 1.26(b) and 1.26(e), and sections 553(b) and 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(b) and 553(d), the Commission, for the reasons stated above, determined that there is good cause for deciding that prior public notice and comment is not necessary before granting an extension of the stay of the effective date of the Used Car Rule as it applies within the State of Wisconsin. For the same reasons, the extension of the temporary stay will become effective immediately on September 6, 1985.

Given the unique circumstances of this Petition, the Commission has determined that a extension of the temporary stay of the effective date is appropriate. Accordingly, the Commission temporarily extends the stay of the effective date of the Used Car Rule, as it applies within the State of Wisconsin, for an additional 90 days, from September 6, 1985, to December 5, 1985, pending final consideration of the Petition.

List of Subjects in 16 CFR Part 455

Used cars, Trade practices.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-21919 Filed 9-12-85; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB-59]

Staff Accounting Bulletin No. 59

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin expresses the staff's views regarding accounting for noncurrent marketable equity securities.

DATE: September 5, 1985.

FOR FURTHER INFORMATION CONTACT: Leland E. Graul, Office of the Chief Accountant (202-272-2130), or Howard P. Hodges, Jr., Division of Corporation Finance (202-272-2553), Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The statements in Staff Accounting Bulletins are not rules or interpretations of the Commission nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Dated: September 5, 1985.

John Wheeler,

Secretary.

PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 59 to the table found in Subpart B.

Staff Accounting Bulletin No. 59

The staff hereby adds Section M to Topic 5 of the staff accounting bulletin series. Section M discusses the staff's views regarding accounting for noncurrent marketable equity securities.

Topic 5: Miscellaneous Accounting

. . . . .

M. Noncurrent Marketable Equity Securities

Facts: Paragraph 21 of Financial Accounting Standards Board ("FASB") Statement No. 12, "Accounting for Certain Marketable Securities," specifies that "a determination must be made as to whether a decline in market value below cost as of the balance sheet date of an individual security is other than temporary. [footnote reference deleted] If the decline is judged to be other than temporary, the cost basis of the individual security shall be written down to a new cost basis and the amount of the write-down shall be accounted for as a realized loss." Statement No. 12 does not define the phrase "other than temporary." In applying this guidance to its own situation, Company A has interpreted "other than temporary" to mean permanent impairment. Therefore, because Company A's management has not been able to determine that its investment in Company B is permanently impaired, no realized loss has been recognized even though the market price of B's shares is currently less than one-third of A's average acquisition price.

Question 1: Does the staff believe that the phrase "other than temporary" should be interpreted to mean "permanent?"

Interpretive Response: No. The staff believes that the FASB consciously chose the phrase "other than temporary" because it did not intend that the test be "permanent impairment," as has been used elsewhere in accounting practice.[1]

The value of investments in marketable securities classified as noncurrent assets may decline for various reasons. The market price may be affected by general market conditions which reflect prospects for the economy as a whole or by specific information pertaining to an industry or an individual company. Such declines require further investigation by management. Acting upon the premise that a write-down may be required,

[1] Footnote 8 to Statement No. 12 refers to an Auditing Interpretation published by the staff of the Auditing Standards Division, AICPA, "Evidential Matter for the Carrying Amount of Marketable Securities," in *The Journal of Accountancy*, April 1975, for a discussion of considerations applicable to a determination as to whether a decline in market value below cost, at a particular point in time, is other than temporary.

management should consider all available evidence to evaluate the realizable value of its investment.

There are numerous factors to be considered in such an evaluation and their relative significance will vary from case to case. The staff believes that the following are only a few examples of the factors which, individually or in combination, indicate that a decline is other than temporary and that a write-down of the carrying value is required:

a. The length of the time and the extent to which the market value has been less than cost;

b. The financial condition and near-term prospects of the issuer, including any specific events which may influence the operations of the issuer such as changes in technology that may impair the earnings potential of the investment or the discontinuance of a segment of the business that may affect the future earnings potential; or

c. The intent and ability of the holder to retain its investment in the issuer for a period of time sufficient to allow for any anticipated recovery in market value.

Unless evidence exists to support a realizable value equal to or greater than the carrying value of the investment, a write-down accounted for as a realized loss should be recorded. In accordance with the guidance of paragraph 11 of Statement No. 12, such loss should be recognized in the determination of net income of the period in which it occurs. The written down value of the investment in the company becomes the new cost basis of the investment.

Question 2: When management determines that a write-down accounted for as a realized loss, is necessary, how should the amount of the write-down be determined?

Interpretive Response: The carrying value of the investment should be written down to reflect realizable value. The particular facts and circumstances dictate the amount of realized loss to be recognized on a case by case basis.

* * * * *

[FR Doc. 85-21918 Filed 9-12-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Tylosin

Correction

In FR Doc. 85-18558 beginning on page 31708 in the issue of Tuesday, August 6, 1985, make the following correction:

On page 31708, third column, under "FOR FURTHER INFORMATION CONTACT", second line, "(HFV-35)" should read "(HFV-135)".

BILLING CODE 1505-01-M

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21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Iron Hydrogenated Dextran Injection.

Correction

In FR Doc. 85-18559 appearing on page 31709 in the issue of Tuesday, August 6, 1985, make the following correction:

In the third column, fourth line, insert the word "Injectable." after "Animal drugs,".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 5f and 602

[T.D. 8052]

Reporting of State and Local Income Tax Refunds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the reporting of State and local income tax refunds. Changes to the applicable law were made by the Tax Equity and Fiscal Responsibility Act of 1982 and the Tax Reform Act of 1984. The regulations affect all persons who, with respect to individuals, make payments of refunds of State and local income taxes, or allow credits or offsets with respect to such taxes, and provide them with the guidance to comply with the law.

DATES: The regulations are effective for refunds made, and credits and offsets allowed, after December 31, 1982.

FOR FURTHER INFORMATION CONTACT: Alice M. Bennett of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3238 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On September 15, 1983, the Federal Register published temporary regulations (48 FR 41385) and proposed amendments (48 FR 41436) to the Income Tax Regulations (26 CFR Part 1) under section 6050E of the Internal Revenue Code of 1954. These amendments were proposed to provide rules relating to the information reporting of State and local income tax refunds, credits, and offsets under section 6050E of the Code. Section 6050E was added to the Code by section 313 of the Tax Equity and Fiscal Responsibility Act of 1982. (96 Stat. 603). Section 6050E subsequently was amended by section 151 of the Tax Reform Act of 1984 (98 Stat. 690).

Five written comments were received with respect to the proposed amendments to the regulations. A public hearing was not held. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision. The Treasury decision also reflects the changes made to section 6050E by the Tax Reform Act of 1984.

Tax Reform Act of 1984

Section 6050E as originally enacted did not provide any exception to the reporting requirement or the requirement to furnish statements to taxpayers with respect to a refund, credit or offset made or allowed to a taxpayer who did not claim itemized deductions for Federal income tax purposes for the taxable year giving rise to the refund, credit, or offset. The temporary and proposed regulations, however, provide that a refund officer need not make an information return or send a statement to the applicable taxpayer if the refund officer can verify that the taxpayer did not claim itemized deductions for Federal income tax purposes for the taxable year giving rise to the refund, credit, or offset.

The Tax Reform Act of 1984 amended section 6050E to provide an exception only to the requirement to furnish statements to taxpayers if it can be determined, in the manner provided by regulations, that the applicable taxpayer did not claim itemized deductions for Federal Income tax purposes for the taxable year giving rise to the refund, credit, or offset. The amendment is effective for refunds, credits, and offsets made or allowed after December 31, 1982. Congress intended that a refund officer be required to make an information return with respect to itemizers and non-itemizers who receive a refund, credit, or offset of State or local income taxes. Therefore, the Treasury decision provides that a refund officer need not send a statement to a taxpayer with respect to a refund, credit, or offset of personal income taxes if the refund officer can verify, in the manner

provided by the regulations, that the taxpayer did not claim itemized deductions for Federal income tax purposes for the taxable year giving rise to the refund, credit, or offset. The refund officer, however, must make an information return with the Internal Revenue Service with respect to those refunds, credits, and offsets.

Public Comments

The temporary and proposed regulations provide that a refund officer can verify that a taxpayer did not claim itemized deductions for Federal income tax purposes for the taxable year giving rise to the refund, credit or offset only from the three sources listed in the regulations. The first listed source of verification is a copy of Schedule A of the individual's Federal income tax return if the copy is required to be attached to the State or local income tax return. The second listed source is the State or local income tax return if transcription of information from schedule A of the Federal return on the State or local income tax return is required for the purpose of computing liability for the State or local income tax. The third listed source is information obtained through a voluntary information exchange agreement with the United States for the applicable taxable year.

One comment suggested that the list of sources for verification of non-itemization be expanded to include information transcribed on the State or local income tax return from the Federal return (other than schedule A), where the information can be used by the refund officer to determine independently whether the taxpayer itemized deductions for Federal income tax purposes. The Service believes, however, that for verification purposes the transcription of such information on the State or local income tax return must be required by the State or local taxing authority for the purpose of computing the taxpayer's liability for the State or local income tax. The Service believes that this additional requirement is necessary in order to ensure that the transcribed information will be subject to the same checks for accuracy as other information on the State or local income tax return. Consequently, the Treasury decision provides that, in addition to the sources of verification set forth in the temporary and proposed regulations, information transcribed from the Federal return (other than Schedule A) on the State or local income tax return may be used to verify non-itemization if two conditions are met. First, the transcription of the information must be required for the purpose of computing liability for the State or local income tax. Second, the information must be such that the refund officer can determine conclusively from that information whether the taxpayer itemized deductions for Federal income tax purposes.

The Treasury decision also clarifies that the State or local income tax return is the source of verification in cases where a copy of Schedule A of the Federal return is required to be attached to the State or local income tax return, or where transcription of information from Schedule A of the Federal return is required for the purpose of computing liability for the State or local income tax. In this connection, the Treasury decision provides that the omission of a copy of the Schedule A, or of information required to be transcribed from the Schedule A, must be consistent with the taxpayer's computation of tax on the State or local income tax return. In addition, the information contained on the Schedule A must be required for the purpose of computing liability for the State or local income tax.

The remaining comments suggested revisions to the regulations that either would have conflicted with the express statutory language of section 6050E, or would have placed an unreasonable burden on refund officers by requiring them to determine whether taxpayers who itemized deductions for Federal tax purposes received a tax benefit from the payment to which the State or local income tax refund, credit or offset is attributable. These suggestions were not adopted.

In particular, several comments suggested that the regulations be revised to allow a refund officer to furnish the required statement to the applicable taxpayers at any time before the end of January of the calendar year following the calendar year in which the refund is paid or the credit or offset is allowed. Section 6050E(b), however, provides that the statement must be furnished to the taxpayer during January of the calendar year following the calendar year in which the refund is paid or the credit or offset is allowed. This requirement was not changed by the Tax Reform Act of 1984. Therefore, in accordance with section 6050E(b), the Treasury decision retains the rule contained in the temporary and proposed regulations that the statement must be furnished to the taxpayer during January of the calendar year following the calendar year in which the refund is paid or the credit or offset is allowed.

Special Analyses

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although a notice of proposed rulemaking soliciting public comments was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 533 do not apply. Accordingly, these regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of these regulations is Alice M. Bennett of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects

26 CFR 1.6001–1—1.6109–2

Income taxes, Administration and procedure, Filing requirements.

26 CFR Part 5f

Income taxes, Filing requirements, Tax Equity and Fiscal Responsibility Act of 1982.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 1, 5f, and 602 are amended as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * *

Section 1.6050E–1 also issued under 26 U.S.C. 6050E.

Par. 2. Section 1.6050E–1 is added to Part 1 at the appropriate place:

§ 1.6050E-1 Reporting of State and local income tax refunds.

(a) *Applicability.* Section 6050E and this section apply to any refund officer who, with respect to an individual, makes payments of refunds of State or local income taxes or allows credits or offsets with respect to such taxes aggregating $10 or more for such individual in any calendar year.

(b) *Definitions.* For purposes of this section.—

(1) The term "refund officer" means the officer or employee of a State or local taxing jurisdiction having control of payments of refunds or the allowance of credits or offsets, or the person approporiately designated for purposes of this section.

(2) The term "State" shall include the District of Columbia but shall not include the Commonwealth of Puerto Rico or any possession of the United States.

(3) The terms "individual" shall not include an estate or trust.

(4) The term "credit or offset" means an overpayment of tax which, in lieu of being refunded to the taxpayer, is:

(i) Applied against an existing liability of the taxpayer,

(ii) Available for application against a future liability of the taxpayer, or

(iii) Otherwise used or available for use for the taxpayer's benefit.

(c) *Requirement of reporting.* Every refund officer described in paragraph (a) of this section shall make an information return in accordance with this section for each calendar year. An information return must be made even if the refund officer is not required to furnish a statement to the applicable taxpayer under paragraph (k)(2) of this section.

(d) *Prescribed Form.* Except as otherwise provided in paragraph (i) of this section, the information return required by paragraph (c) of this section shall be made on Forms 1096 and 1099.

(e) *Refunds involving different taxable years.* In the case of refunds paid or credits or offsets allowed during a calendar year with respect to two or more taxable years of an individual, a separate Form 1099 shall be filed with respect to each taxable year of the individual. Thus, if during calendar year 1983 a refund officer pays to an individual a refund of $15 with respect to that individual's taxable year ending in 1982 and $20 with respect to that individual's taxable year ending in 1981, a separate Form 1099 shall be filed for each of the two payments. If, instead, the refund with respect to the individual's taxable year ending in 1982 were $5 instead of $15, no return would be required for the payment of $5.

(f) *Information required.* The information required to be reported on Forms 1096 and 1099 includes the aggregate amount of refunds, credits, and offsets made or allowed during the calendar year with respect to the taxable year of the individual covered by the return; the name, address and taxpayer identification number of the individual with respect to whom such payment, credit, or offset was made or allowed; the taxable year covered by the return; and such other information as may be required by the forms. In addition, the nature of the tax is required to be indicated on the Form 1099 in any case where the refund, credit or offset is made or allowed with respect to a payment attributable to an income tax that applies exclusively to income from a trade or business and is not a tax of general application.

(g) *When credit or offset deemed allowed.* For purposes of a return of information under this section, a credit or offset is deemed to be allowed when the liability to pay or credit such amount is admitted by the State or local taxing jurisdiction. Thus, if an amount with respect to a taxpayer's 1982 taxable year is credited in 1983 to reduce the liability of the taxpayer to make estimated tax payments in 1983, it is reportable as a credit allowed in 1983. It is not reportable in the taxable year that gives rise to the refund, credit or offset.

(h) *Time and place for filing.* The returns required under this section for any calendar year shall be filed after September 30 of that calendar year, but not before the refund officer's final payment (or allowance of credit or offset) for the year, and on or before February 28 of the following year. Returns shall be filed with the appropriate Internal Revenue Service Center, the addresses of which are listed in the instructions for Forms 1099. For extensions of time for filing returns under this section, see § 1.6081–1.

(i) *Use of magnetic media and substitute forms*—(1) *Magnetic media.* A refund officer may be required to file the Forms 1099 required by this section on magnetic media or machine-readable paper forms. See section 6011(e) and applicable regulations and revenue procedures thereunder. If a refund officer is not required to file the Forms 1099 required by this section on magnetic media, the refund officer may request permission under applicable regulations and revenue procedures to submit the information required by this section on magnetic media.

(2) *Substitute forms.* A refund officer may prepare and use a form which contains provisions identical with those of Form 1096 if the refund officer complies with all revenue procedures relating to substitute Form 1096 in effect at that time. In addition, if a refund officer is not required to file the Forms 1099 required by this section on magnetic media or machine-readable paper forms, the refund officer may prepare and use a form which contains provisions identical with those of Form 1099 if the refund officer complies with all revenue procedures relating to substitute Form 1099 in effect at that time.

(j) *Voluntary information exchange agreements.* The requirements of reporting information to the Internal Revenue Service under this section may be satisfied for any calendar year by submission of the information required under paragraph (f) of this section in accordance with the terms of a voluntary information exchange agreement between the State and the United States in effect during such year.

(k) *Requirement of furnishing statements to recipients*—(1) *In general.* Except as provided in paragraph (k)(2) of this section, every refund officer required to make a return of information under this section shall furnish to the individual whose identifying number is required to be shown on the return a written statement showing the aggregate amount shown on the information return of refunds, credits and offsets made or allowed to such individual with respect to each taxable year of the individual, the name of the State or local taxing jurisdiction paying such refund or allowing such credits or offsets, the taxable year giving rise to the refund, credit or offset and a legend stating that such amount is being reported to the Internal Revenue Service. The requirement of this paragraph may be met by furnishing to the individual a copy of the Form 1099 filed with respect to that individual provided that the form bears a legend stating that such amount is being reported to the Internal Revenue Service. For purposes of this paragraph, a statement shall be considered to be furnished to an individual if it is mailed to the individual at the individual's last known address.

(2) *Exception for nonitemizers.* A refund officer need not furnish a statement to an individual under paragraph (k)(1) of this section if the refund officer verifies that the individual did not claim itemized deductions for Federal income tax purposes for the taxable year giving rise to the refund, credit, or offset. This exception shall not apply, however, if the refund, credit, or offset is made or allowed with respect to a payment attributable to an income tax that applies exclusively to income from

a trade or business and is not a tax of general application. For purposes of this paragraph (k)(2), verification shall be made solely from—

(i) The State or local income tax return, or

(ii) Information obtained through a voluntary information exchange agreement with the United States for the applicable taxable year.

(3) *Verification from the State or local income tax return.* A refund officer shall verify from the State or local income tax return that an individual did not claim itemized deductions for Federal income tax purposes for the applicable taxable year only if—

(i)(A) An individual who itemized deductions for Federal income tax purposes either must attach a copy of Schedule A of the individual's Federal income tax return to the State or local income tax return or must transcribe information from Schedule A of the individual's Federal income tax return on the State or local income tax return;

(B) The information contained on or transcribed from the Schedule A is required for the purpose of computing liability for the State or local income tax; and

(C) The omission of a copy of the Schedule A, or of the information required to be transcribed from the Schedule A, is consistent with the taxpayer's computation of tax on the State or local income tax return; or

(ii) Individuals are required to transcribe information from their Federal income tax return (other than from Schedule A) on the State or local income tax return for the purpose of computing liability for the State or local income tax and the information can be used to determine conclusively whether the taxpayer itemized deductions for Federal income tax purposes.

(4) *Example.* The provisions of paragraph (k)(3)(ii) of this section may be illustrated by the following example:

Example. State X asks for transcription of the following information on its 1983 income tax return from the taxpayer's 1983 Federal income tax return: Adjusted gross income; taxable income; and number of exemptions claimed. The amount of adjusted gross income and the number of exemptions claimed on the Federal income tax return are taken into account in computing the liability for income tax under the laws of State X. The amount of taxable income transcribed from the Federal return, however, does not enter into the computation of liability for income tax under the laws of State X. Thus, this amount may not be taken into account by the refund officer of State X for purposes of verifying whether a taxpayer itemized deductions for Federal income tax purposes. Since the refund officer of State X will not be able to determine conclusively from the amount of adjusted gross income and the number of exemptions transcribed from the Federal return whether a taxpayer itemized deductions for Federal income tax purposes, the transcribed information does not meet the requirements of paragraph (k)(3)(ii) of this section.

(l) *Time for furnishing statements*—(1) *General rule.* The statement required under paragraph (k) of this section shall be furnished after December 31 of the year in which the refund is paid or credit or offset is allowed, and on or before January 31 of the following year.

(2) *Extensions of time.* For good cause shown upon written application of the refund officer, the service center director may grant an extension of time not exceeding 30 days in which to furnish statements under this paragraph. The application shall be addressed to the Service Center with which the Forms 1099 required under this section are required to be filed and shall contain a concise statement of the reasons for requesting the extension to aid the service center director in determining the period of the extension, if any, which will be granted. The application shall state at the top of the first page that it is made under this section and shall be signed by the refund officer. In general, the application shall be filed after September 30 of the year in which the refund is paid or credit or offset is allowed, and before January 15 of the following year.

(m) *Effective date.* This section applies to payments of refunds and credits and offsets allowed after December 31, 1982.

Temporary Income Tax Regulations Under the Tax Equity and Fiscal Responsibility Act of 1982

PART 5f—[AMENDED]

Par. 3. The authority for Part 5f is revised to read as set forth below and the authority citations following all sections in Part 5f are removed:

Authority: 26 U.S.C. 7805. Sections 5f.103–1 and 5f.163–1 also issued under 26 U.S.C. 103(j). 26 U.S.C. 163(f), and 96 stat. 595. Section 5f.6045–1 also issued under 26 U.S.C. 6045.

§ 5f.605E–1 [Removed]

Par. 4. Part 5f of 26 CFR is amended by removing § 5f.6050E–1.

OMB Control Numbers Under the Paperwork Reduction Act

PART 602—[AMENDED]

Par. 5. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 6. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.6050E–1 . . . 1545–0120".

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: August 12, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85–21983 Filed 9–12–85; 8:45 am]

BILLING CODE 4830–10–M

26 CFR Parts 145 and 602

[T.D. 8050]

Excise Tax on Heavy Trucks, Truck Trailers and Semitrailers, and Tractors; Reporting and Recordkeeping Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to the excise tax imposed on the retail sale of heavy trucks, truck trailers and semitrailers, and tractors. Changes in the applicable tax law were made by the Highway Revenue Act of 1982 (Title V of the Surface Transportation Assistance Act of 1982). These regulations affect manufacturers, producers, importers, dealers, and retailers of these vehicles and will provide them with the guidance needed to comply with the law.

DATES: These regulations are effective for heavy trucks, truck trailers and semitrailers, and tractors sold on or after April 1, 1983.

FOR FURTHER INFORMATION CONTACT: John Broadbent of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T (202–566–3287, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Temporary Excise Tax Regulations (26 CFR Part 145) under section 4052 of the Internal Revenue Code of 1954 (Code) relating to the excise tax on the sale of heavy trucks, truck trailers and semitrailers, and tractors. These amendments conform the regulations to section 512 of the Highway Revenue Act of 1982 (Title V of the Surface Transportation Assistance Act of 1982) (Pub. L. 97–424). The temporary regulations provided by this document will remain in effect until

superseded by final regulations on this subject.

Temporary regulation § 145.4052–1, relating to the excise tax on heavy trucks, truck trailers and semitrailers, and tractors, was published in the **Federal Register** on April 4, 1983 (T.D. 7882) (48 FR 14361). These regulations generally provided that the sale of a heavy vehicle to a purchaser who intends to lease the vehicle long term is not a first retail sale.

Summary of Changes in Temporary Regulation

This document amends § 45.4052–1 (a), (b), and (f) by revising the rules relating to the definition of the first retail sale of a vehicle. Under the new rules, the distinction between long-term and short-term leasing has been eliminated.

If a lease is entered into by the manufacturer, producer, or importer of the vehicle, both the prior rules and the revised rules provide that the first retail sale occurs when the vehicle is leased. Under the revised rules, if a vehicle is sold by the manufacturer, producer, or importer, the sale is treated as the first retail sale unless either (a) the purchaser is not in the business of leasing and intends to resell the vehicle, or (b) the seller and the purchaser register under section 4222, and the purchaser certifies that it intends to resell the vehicle. If a vehicle is sold tax-free but is later leased by the purchaser, the leasing of the vehicle will be deemed to be the first retail sale.

No change has been made to the existing temporary regulations with respect to the event triggering liability for the tax. Under all circumstances, the entire tax is due at the time the first retail sale occurs.

These revised temporary rules apply to sales made on or after April 1, 1983, the effective date of section 4051, with specified transitional rules. In no case, under these transitional rules, will tax be imposed on a vehicle under both the existing temporary regulations and the revised temporary regulations.

In determining the tax base of a vehicle, the retail value of the tires on the vehicle is excluded under section 4052(b)(1)(B)(iii). Under both the existing and the revised regulations, this value is the lowest established price at which the retailer would sell the tires. The existing temporary regulations provide as a safe-harbor rule that if a vehicle retailer has no lowest established price for tires, a price is not unreasonable if it is no more than 50 percent of the tire manufacturer's suggested retail price. This rule permits the tax base to be affected by a price that has no bearing on the actual sales price of the tires and is subject to considerable variation among tire manufacturers. Accordingly, this safe-harbor rule is deleted in these revised temporary regulations, effective prospectively.

Need for Temporary Regulations

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Special Analyses

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act (5 U.S.C Chapter 6) does not apply, and no regulatory flexibility analysis is required for this rule. The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis is therefore not required.

Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of these regulations is John Broadbent of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR Part 145

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

26 CFR Part 145 and Part 602 are amended as follows:

PART 145—TEMPORARY EXCISE TAX REGULATIONS UNDER THE HIGHWAY REVENUE ACT OF 1982 (PUB. L. 97–424)

Paragraph 1. The authority citation for Part 145 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Section 145.4052–1 also issued under 26 U.S.C. 4052(d).

Par. 2. Section 145.4052–1 is amended as follows:

(a) Paragraph (a) is revised to read as set forth below.

(b) Paragraph (b) is revised to read as set forth below.

(c) The last sentence of paragraph (d)(2)(iii) is amended by adding at the beginning thereof, "For vehicles sold on or after April 1, 1983, and before [the date 30 days after publication of this document in the **Federal Register**],".

(d) Paragraph (f) is revised to read as set forth below.

§ 145.4052–1 Special rules and definitions.

(a) *First retail sale*—(1) *In general.* For purposes of § 145.4051–1, the term "first retail sale" means the first sale of an article after manufacture, production or importation. The sale of an article to a purchaser who is not engaged in the business of leasing and who intends to resell the article, is not a first retail sale. In addition, the sale of an article to a purchaser who is engaged in the business of leasing to any extent will not be considered a first retail sale if the purchaser and the seller are registered under § 48.4222(a)–1, and the seller in good faith accepts a proper certification, as provided in paragraph (a)(3) of this section, from the purchaser that the purchaser intends to resell the article. The first sale of an article following a tax-free sale of the article shall be considered the first retail sale of the article, unless the subsequent sale qualifies as a tax-free sale under either of the two preceding sentences or under section 4221. An intent to lease an article is not considered an intent to resell the article for purposes of this section. The fact that articles are sold in wholesale lots, or at wholesale prices, will not change the character of such sales as first retail sales if the purchaser is not engaged in the business of reselling such articles and acquires them for the purpose of using them rather than reselling them.

(2) *No installment payments of tax.* If the first retail sale is a lease, an installment sale, or another form of sale under which the sales price is paid in installments, then the liability for the entire tax arises at the time of the lease or installment sale. No portion of the tax

is deferred by reason of the fact that the sales price is paid in installments.

(3) *Certificate.* A certificate signed by the purchaser, or an officer or employee authorized by the purchaser to sign the certificate, may be accepted by a seller in support of a tax-free sale to the purchaser. The certificates and proper records of invoices, orders, etc., relating to tax-free sales must be retained by the seller as provided in section 6001 and the regulations thereunder. The certificates shall be substantially in the following form:

Exemption Certificate

I hereby certify that I am (Title) of (Name of purchaser), that I am authorized to execute this certificate, and that the vehicles specified in the accompanying order, or on the reverse side hereof, (or all orders placed by the purchaser for the two year period commencing ————) are purchased for resale and not for the purpose of leasing. I have filed Form 637 and have received registration number ——

I understand that the fraudulent use of this certificate to secure exemption will subject me and all parties making such fraudulent use to a fine of not more than $10,000, or to imprisonment for not more than 5 years, or both, together with costs of prosecution.

(Signature) ————————————

(Address) ————————————

(4) *Registration.* Section 4222 and the regulations thereunder shall apply to tax-free sales made under this section.

(b) *Lease treated as first retail sale*—(1) *In general.* For purposes of this section and § 145.4051–1, the leasing of an article before the first retail sale (within the meaning of paragraph (a) of this section) of the article shall be considered the first retail sale of the article. This rule applies without regard to the term of the lease. Thus, if a manufacturer leases an article prior to sale, or if a purchaser purchases an article tax free under paragraph (a) (1) of this section or section 4221 and then leases it, the leasing of the article will be deemed to be the first retail sale.

(2) *Computation of tax.* When a lease is treated as the first retail sale under paragraph (b) (1) of this section, the tax shall be computed on a constructive sales price established by the Commissioner as if such article were sold at retail on the date the lease is made.

. . . . .

(f) *Effective date*—(1) *In general.* The provisions of this section shall be effective for articles sold or leased on or after April 1, 1983. However, if a sale to a lessor before November 12, 1985, would have been tax free under § 145.4052–1 of the temporary regulations contained in 26 CFR part 145 revised as of April 1, 1984, (the "prior regulations") and it was so treated by the parties, a subsequent sale or lease that was or would have been treated as the first retail sale of the vehicle under the prior regulations will be treated as the first retail sale for purposes of this section. For example, if a vehicle was sold to a purchaser who intended to lease it long term, the sale would have been tax free under the prior regulations. If such a sale was treated as tax free by the parties, and the purchaser later sells the vehicle or leases it long term, the sale or lease will be treated as the first retail sale of the vehicle.

(2) *Vehicle subject to tax only once.* In no case will tax be imposed on the first retail sale of a vehicle under both the prior regulations and this section. If, under the prior regulations, tax was properly paid on the first retail sale of a vehicle, and if the amount of the tax determined under the prior regulations is greater than the amount of tax that would be imposed upon the first retail sale of the vehicle as determined under this section, then the taxpayer shall be entitled to a refund of the difference. For example, if under the prior regulations a lessor treated a long-term lease of a vehicle as a first retail sale, and paid tax upon making the lease, the taxpayer may claim a refund of any excess of the tax paid under the prior regulations (based on a constructive sales price) over the tax that would be imposed under this section (based on the sales price charged the lessor by the manufacturer or other seller). No additional tax would be payable under this section by a manufacturer that treated the sale of the vehicle to a lessor as a tax-free sale under the prior regulations.

PART 602—REPORTING AND RECORDKEEPING REQUIREMENTS

Par. 3. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table:

"§ 145.4052–1 ..... 1545–0745"

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: August 30, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85–21984 Filed 9–12–85; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

Correction

In FR Doc. 85–21325, beginning on page 36420 in the issue of Friday, September 6, 1985, make the following correction: On page 36421, in the middle column, between the seventh and eighth lines insert ", where feasible, as part of the prisoner's parole release plan,".

BILLING CODE 1505–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Coke Oven Emissions Standard; Conforming Deletions

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule; Deletion of portions of standard to conform with court decision.

SUMMARY: OSHA is deleting certain terms from the permanent standard governing employee exposure to coke oven emissions [29 CFR 1910.1029] to conform the standard to the decision of the United States Court of Appeals for the Third Circuit in the case of *American Iron and Steel Institute et al.* v. *Occupational Safety and Health Administration*, 577 F.2d 825 (3d Cir. 1978), *cert. dismissed*, 448 U.S. 917, 101 S. Ct. 38, 65 L. Ed. 2d 1180 (1980). The deletions implement the Court's interpretation of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) that the Secretary of Labor lacks statutory authority to place an affirmative duty on each employer to research and develop new technology to reduce exposures to coke oven emissions. The deletions also respond to

the Court's vacating the requirement for quantitative fit testing of certain respirators based on the lack of record support for the requirement in the coke oven emissions proceeding.

EFFECTIVE DATE: The deletions are effective on September 13, 1985.

SUPPLEMENTARY INFORMATION: On October 22, 1976, the Occupational Safety and Health Administration published a final standard governing Exposure to Coke Oven Emissions (41 FR 46742), pursuant to section 6(b) of the Occupational Safety and Health Act of 1970. Within the 60-day period provided by section 6(f) of the Act, petitions for review were filed in the United States Court of Appeals for the Third Circuit challenging the validity of the standard. On March 28, 1978, that Court issued its decision in the case of *American Iron and Steel Institute et al.* v. *Occupational Safety and Health Administration.*

In its decision, the Third Circuit denied the petitions for review and affirmed the Secretary's standard except: (1) insofar as the Secretary required the petitioners to research and develop (as defined in the Court's opinion) any other engineering and work practice controls necessary to reduce exposure to or below the permissible exposure limit, 29 CFR 1910.1029(f)(1)(i)(*b*), (f)(1) (ii)(*b*), (f)(1)(iii)(*b*), and (f)(6)(iii); (2) the provision relating to the requirement of a quantitative fit test for respirators, 29 CFR 1910.1029 (g)(4)(i); and (3) application of the standard to non-coke-oven employers. As to the first two mentioned requirements, the applicable provisions of the coke oven emissions standard were vacated and, as to the last requirement, the cause was remanded for further proceedings consistent with the Court's opinion.

In vacating the "research and develop" provisions, the Court reaffirmed the Secretary's authority to require an employer to implement technology "looming on today's horizon", noting that the Secretary is not limited to issuing a standard solely based upon technology that is fully developed today. Nevertheless, the Court concluded, the Occupational Safety and Health Act does not permit the Secretary to place an affirmative duty on each employer to research and develop new technology.

In vacating the provision concerning quantitative fit testing of certain respirators, the Court acted in light of the Secretary's concession during the litigation that the provision was unsupported by the record before the court and would not be enforced.

OSHA subsequently issued revised inspection and compliance procedures for the Coke Oven Emissions standard which reflected the Court's action (OSHA Instruction CPL 2–2.28, September 16, 1980). These were most recently updated in 1982 (OSHA Instruction CPL 2–2.28A, August 2, 1982). However, the regulatory text in the Code of Federal Regulations remained unchanged and in need of clarification. Therefore, in order to conform the Coke Oven Emissions standard to the Court's decision and to eliminate possible confusion, it is necessary to delete certain language from the cited provisions of the standard as follows:

A. The words "research, develop and" are deleted from paragraphs (f)(1)(i)(*b*), (f)(1)(ii)(*b*) and (f)(1)(iii)(*b*).

B. the words "development and" are deleted from paragraph (f)(6)(iii).

C. The sentence "The employer shall perform quantitative fit tests annually for each employee who uses a nonpowered, particulate filter respirator" is deleted from paragraph (g)(4)(i).

I find that since this action merely removes regulatory language already vacated by the Court, good cause exists for making the change without the notice and public comment procedure which is otherwise required. 5 U.S.C. 553. The same reasons constitute good cause for making this change effective immediately. Accordingly, this amendment is effective September 13, 1985.

Authority

This document was prepared under the direction of Patrick R. Tyson, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

This action is taken pursuant to sections 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657), section 4 of the Administrative Procedure Act (5 U.S.C. 553), Secretary of Labor's Order No. 9–83 [48 FR 35736], and 29 CFR 1911.5.

List of Subjects in 29 CFR Part 1910

Hazardous substances, Gases, Occupational safety and health.

Signed at Washington, D.C., this 4th day of September, 1985.

Patrick R. Tyson,

Acting Assistant Secretary of Labor.

Subpart Z, Part 1910 of Title 29, Code of Federal Regulations, is amended as follows:

PART 1910—[AMENDED]

1. The authority citation for Subpart Z of Part 1910 is revised to read as set forth below, and the authority citations following all sections in Subpart Z of Part 1910 are removed.

Authority: Secs. 6 and 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable; and 29 CFR Part 1911.

Section 1910.1000 Tables Z–1, Z–2, Z–3 also issued under 5 U.S.C. 553.

Section 1910.1000 not issued under 29 CFR Part 1911, except for "Arsenic" and "Cotton Dust" listings in Table Z–1.

Section 1910.1001 also issued under Sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR Part 1911; also issued under 5 U.S.C. 553.

Sections 1910.1003 through 1910.1018 also issued under 29 U.S.C. 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1043 also issued under 5 U.S.C. 551 et seq.

Sections 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Sections 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

2. In § 1910.1029, paragraphs (f)(1)(i)(*b*), (f)(1)(ii)(*b*) and (f)(1)(iii)(*b*) are amended to read as follows:

§ 1910.1029 Coke oven emissions.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(*b*) The engineering and work practice controls required under paragraphs (f)(2), (f)(3) and (f)(4) of this section are minimum requirements generally applicable to all existing coke oven batteries. If, after implementing all controls required by paragraphs (f)(2), (f)(3) and (f)(4) of this section, or after January 20, 1980, whichever is sooner, employee exposures still exceed the permissible exposure limit, employers shall implement any other engineering and work practice controls necessary to reduce exposure to or below the permissible exposure limit except to the extent that the employer can establish that such controls are not feasible. Whenever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposures to or below the permissible exposure limit, the employer shall nonetheless use them to reduce exposures to the lowest level achievable by these controls and shall supplement them by the use of respiratory protection which complies with the requirements of paragraph (g) of this section.

(ii) * * *

(*b*) If, after implementing all the engineering and work practice controls required by paragraph (f)(1)(ii)(*a*) of this section, employee exposures still exceed the permissible exposure limit, the employer shall implement any other engineering and work practice controls necessary to reduce exposure to or below the permissible exposure limit except to the extent that the employer can establish that such controls are not feasible. Wherever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposures to or below the permissible exposure limit, the employer shall nonetheless use them to reduce exposures to the lowest level achievable by these controls and shall supplement them by the use of respiratory protection which complies with the requirements of paragraph (g) of this section.

(iii) * * *

(*b*) If, after implementing all engineering and work practice controls required by paragraph (f)(1)(iii)(*a*) of this section, employee exposures still exceed the permissible exposure limit, the employer shall implement any other engineering and work practice controls necessary to reduce exposures to or below the permissible exposure limit except to the extent that the employer can establish that such controls are not feasible. Whenever the engineering and work practice controls which can be instituted are not sufficient to reduce employee exposures to or below the permissible exposure limit, the employer shall nonetheless use them to reduce exposures to the lowest level achievable by these controls and shall supplement them by the use of respiratory protection which complies with the requirements of paragraph (g) of this section.

* * * * *

3. In § 1910.1029, paragraph (f)(6)(iii) is amended to read as follows:

§ 1910.1029 Coke oven emissions.

* * * * *

(f) * * *

(6) * * *

(iii) If, after implementing all controls required by paragraph (f)(2)–(f)(4) of this section, or after January 20, 1980, whichever is sooner, or after completion of a new or rehabilitated battery the permissible exposure limit is still exceeded, the employer shall develop a detailed written program and schedule for the implementation of any additional engineering controls and work practices necessary to reduce exposure to or below the permissible exposure limit.

* * * * *

4. In § 1910.1029, paragraph (g)(4)(i) is amended to read as follows:

§ 1910.1029 Coke oven emissions.

* * * * *

(g) * * *

(4) *Respirator usage.* (i) The employer shall assure that the respirator issued to the employee exhibits minimum facepiece leakage and that the respirator is fitted properly.

* * * * *

[FR Doc. 85–21517 Filed 9–12–85; 8:45 am]
BILLING CODE 4510–26–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Non-Multiemployer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Non-Multiemployer Plans contains the interest rates and factors for the period beginning October 1, 1985. The interest rates and factors are to be used to value benefits provided under terminating non-multiemployer pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974.

The valuation of plan benefits is necessary because, under section 4041 of the Act, the Pension Benefit Guaranty Corporation ("PBGC") and the plan administrator must determine whether a terminating pension plan has sufficient assets to pay all benefits under the plan that are guaranteed by the PBGC under the Title IV plan termination insurance program.

The interest rates and factors set forth in Appendix B to Part 2619 are adjusted periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after October 1, 1985, and will enable the PBGC and plan administrators to value the benefits provided under those plans. These rates and factors will remain in effect until Appendix B of the regulation is again amended.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 611, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, D.C. 20006, 202–254–4856 (202–254–8010 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On January 28, 1981, the PBGC published a final regulation on Valuation of Plan Benefits in Non-multiemployer Plans (46 FR 9492). That regulation, codified at 29 CFR Part 2619 (1984), sets forth the methods for valuing plan benefits of terminating non-multiemployer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 *et seq.* (1976), *as amended.* The regulation contains formulas for valuing different types of benefits. Appendix B to the regulation sets forth the interest rates and factors that are to be used in the formulas. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

As published in the 1984 edition of 29 CFR, Appendix B of Part 2619 contains interest rates and factors for valuing benefits in plans that terminated during various periods from September 2, 1974 through July 1, 1984. In the ensuing months, the PBGC has published new rates and factors for plans terminating during the months of August, 1984 through September, 1985 (49 FR 28551, 49 FR 32573, 49 FR 40161, 49 FR 45129, 49 FR 48691, 50 FR 6342, 50 FR 10498, 50 FR 14700, 50 FR 20205, and 50 FR 24914).

At this time, changes in the financial and annuity markets require a decrease in the rates used for valuing benefits. Accordingly, this amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after October 1, 1985, which set reflects a decrease of ¼ percent in the interest rate to 9 percent.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as PBGC publishes another amendment concerning them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This determination is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market

conditions. The PBGC has found that the public interest is best served by issuing the rates and factors on a prospective basis so that plans may be able to calculate the value of plan benefits before submitting a notice of intent to terminate. Also, plans will be able to predict employer liability more accurately prior to plan termination.

Because of the need to provide immediate guidance for the valuation of benefits of plans that will terminate on or after October 1, 1985, and because no adjustment by ongoing plans is required by this amendent, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, February 17, 1981, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

PART 2619—[AMENDED]

In consideration of the foregoing, Part 2619 of Chapter XXVI, Title 29, Code of Federal Regulations, is hereby amended as follows:

1. The authority citation for Part 2619 continues to read as follows:

Authority: Secs. 4002(b)(3), 4041(b), 4044, 4062(b)(1)(A), Pub. L. 93–406, 88 Stat. 1004, 1020, 1025, 1029, as amended by secs. 403(1), 403(d), 402(a)(7), Pub. L. 96–364, 94 Stat. 1302, 1301, 1299 (29 U.S.C. 1302, 1341, 1344, 1362).

2. Rate Set 58 of Appendix B is revised and Rate Set 59 of Appendix B is added to read as follows. The introductory text is shown for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used To Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "G_y" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities				
	On or after	And before		k_1	k_2	k_3	n_1	n_2
58	7-1-85	10-1-85	9.25	1.0850	1.0725	1.0400	7	8
59	10-1-85		9.00	1.0825	1.0700	1.0400	7	8

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85–21791 Filed 9–12–85; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-85-09]

Drawbridge Operation Regulation; Tensaw River, AL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Seaboard System Railroad, the Coast Guard is changing the regulation governing the operation of the swing span railroad bridge over the Tensaw River, mile 15.0, near Hurricane, Baldwin County, Alabama, by requiring that at least eight hours advance notice be given for an opening of the draw from 5 p.m. to 9 a.m. The bridge will open on signal outside these hours. The bridge presently is required to open on signal from 8 a.m. to midnight. The draw is not required to open from midnight to 8 a.m., except that, during periods of severe storms or hurricanes the draw is required to open on signal. This change is being made because of infrequent requests to open the draw during the advanced notice period. This action will relieve the bridge owner of the burden of having a person available at the bridge between 5 p.m. and 9 a.m., and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on October 15, 1985.

FOR FURTHER INFORMATION CONTACT: Perry F. Haynes, Chief, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: On 21 June 1985, the Coast Guard published a proposed rule (50 FR 25721) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a public notice dated 1 July 1985. In each notice interested persons were given until 5 August 1985 to submit comments.

Drafting Information

The drafters of this regulation are Perry Haynes, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Comments

Two letters were received in response to the notices, offering no objections to the proposed rule.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the number of vessels passing this bridge during the advance notice period, 5 p.m. to 9 a.m., is one vessel every seven days. These few vessels can reasonably give eight hours notice for a bridge opening between 5 p.m. and 9 a.m. by placing a collect call at any time to the railroad office in Mobile, (205) 432–0725. Scheduling their arrival at the bridge at the appointed time would involve little or no additional expense to the mariners. To provide for leeway in the appointed arrival time, the railroad will have a tender at the bridge at least one-half hour before the appointed time who will remain at least one-half hour after that time for a late arriving vessel. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, the Coast Guard is changing Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46(c)(5) and 33 CFR 1.05–1(g).

2. Section 117.113 is revised to read as follows:

§ 117.113 Tensaw River.

The draw of the Seaboard System Railroad bridge, mile 15.0 at Hurricane, shall open on signal; except that, from 5 p.m. to 9 a.m., the draw shall open on signal if at least eight hours notice is given. During periods of severe storms or hurricanes, from the time the National Weather Service sounds an "alert" for the area until the "all clear" is sounded, the draw shall open on signal.

Dated: September 3, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 85–21835 Filed 9–12–85; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

34 CFR Part 74

Audit Requirements for State and Local Governments

AGENCY: Department of Education.

ACTION: Final regulations with invitation to comment.

SUMMARY: The Secretary of Education issues final regulations to implement the Single Audit Act of 1984 (Pub. L. 98–502) and the Office of Management and Budget (OMB) Circular No. A–128. The Secretary also invities comments, which will be shared across all Federal agencies, on these final regulations.

DATES: *Effective Date:* These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

Comment Date: Comments must be received on or before November 12, 1985.

ADDRESS: Comments should be addressed to John Prignano, Grants and Contracts Service, Department of Education, 400 Maryland Avenue, SW., Room 5082, ROB–3, Washington, DC 20202, telephone number, (202) 755–1217.

FOR FURTHER INFORMATION CONTACT: Guido Piacesi, Office of Inspector General, National Single Audit Coordinator, Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202, telephone number, (202) 245–0271.

SUPPLEMENTARY INFORMATION: The Single Audit Act of 1984 (the Act) requires State and local governments to conduct or have conducted periodic audits of Federal assistance funds that they have expended. The total amount of Federal funds received in a fiscal year determines whether a single audit shall be conducted. The amount of funds expended in a single program determines how intensively that program is audited. Programs are larger than grants, e.g., several grants may be awarded under a single program. Generally each program is identified by a CFDA number in a publication entitled "*Catalog of Federal Domestic Assistance.*"

The Act directs OMB to prescribe policies, procedures, and guidelines to implement the Act. The Act also requires each Federal agency to amend its regulations as necessary to conform to the Act and the OMB requirements. Accordingly, the Secretary is adding a new Appendix G to Part 74 of the Education Department General Administrative Regulations in order to conform to the requirements of the Act and OMB Circular A–128. Several common understandings in relation to the Act and the regulations required by the Circular are described below.

Effect of the Regulations on Public Colleges and Universities.

Under 31 U.S.C. 7502(d)(1) and paragraph 4(c) of Appendix G, public colleges and universities may be excluded from the single audit at the option of the State or local government responsible for the audit. Excluded institutions shall be audited in accordance with statutory requirements and the provisions of 34 CFR Part 74.

Applicability

Under 31 U.S.C. 7502(a)(1)(B) and paragraph 2(b) of Appendix G, a government receiving Federal financial assistance of between $25,00 and $100,000 must have an audit performed in accordance with Appendix G, or in accordance with audit requirements in Federal statutes and regulations applicable to the particular program. Part 74, Subpart H contains the general regulatory requirements for audits under Education Department programs and is amended by this notice to incorporate the requirements of the Single Audit Act and OMB Circular A–128. Program statutes and regulations may specify other audit requirements. If the statutes and regulations applicable to a particular program do not contain requirements concerning financial or financial and compliance audits, the single audit requirement in Appendix G applies.

Exemption

The law provides (31 U.S.C. 7502(a)(1)(C)) an exemption from the Act, the Circular, and program statutes and regulations on audit requirements for State and local governments receiving less than $25,000 in Federal financial assistance in a given year.

Federal-SEA-LEA Relationships

As of the date of this publication, cognizance for school districts has been assigned to the Department of Education, except for those in Arkansas, Georgia, Maryland, Minnesota, Oregon, Utah, and the Commonwealth of Puerto Rico. School districts in those States and the Commonwealth of Puerto Rico have been assigned to the Department of Agriculture. The special relationship between State departments of education and local educational agencies will result in Federal agencies generally working through State departments of education in fulfilling their cognizant audit responsibilities for LEA's.

Audit Resolution

The cognizant agency has a responsibility to oversee the resolution of audit findings that affect more than one agency (paragraph 9b(7)). If the cognizant agency determines the finding cannot be resolved through its independent actions, acting on behalf of the affected Federal agencies, it should identify the findings and propose a coordinating arrangement with the affected agencies to jointly resolve the findings.

Identify Questioned Costs.

The audit-report section of the Appendix (paragraph 11a (3) and c) requires the identification of questioned costs as a result of noncompliance, fraud, abuse, or illegal acts or irregularities. Identification of those costs shall be by Catolog of Federal Domestic Assistance number (CFDA #) and fiscal year together with a citation of the statutes or regulations transgressed and recommended corrective actions.

State Initiative

The Act requires testing for compliance with laws and regulations that may have a material effect upon each major Federal assistance program. Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for

compliance with Federal laws and regulations that apply to such transactions. Any of these tests may be charged to the Federal financial assistance programs. (Such charges shall be made in accordance with paragraph 14b of the Appendix.)

Records Retention.

Paragraph 13 of the new appendix requires that audit workpapers and reports be retained for a minimum of three years. This requirement does not diminish or alter any other recordkeeping obligation, such as section 437(a) of the General Education Provisions Act, imposed upon financial assistance recipients. Where other financial or audit related records retention requirements imposed by law or regulations exceed three years, persons affected by paragraph 13 are to retain audit workpapers and reports for the length of time set forth in such laws or regulations.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

The Act and paragraph 14 of the Appendix specify that audit costs may be charged to Federal assistance programs. Generally, the percentage of costs charged to Federal assistance programs shall not exceed the percentage of Federal funds expended to total funds expended by the recipient in a fiscal year, unless higher actual costs can be documented. Further, under the prior regulations, Attachment P to OMB Circular A–102, all Federal financial assistance was subject to audit. Under the Single Audit Act and these regulations, assistance under $25,000 is exempt. Finally, the broader and more selective audit coverage of the Act and the regulations is likely to cost the same or less than the more intensive and more narrowly focused audits currently performed.

Waiver of Proposed Rulemaking Procedures

It is the practice of the Department to publish proposed regulations for comment in accordance with the General Education Provisions Act (GEPA) section 431(b)(2)(A) and 5 U.S.C. 553. However, the Department may waive proposed rulemaking, if appropriate under 5 U.S.C. 553, which permits waiver when an agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

The Single Audit Act of 1984 (Pub. L. 98–502) was enacted on October 19, 1984 for the purpose of establishing uniform requirements for audits of Federal financial assistance provided to State and local governments (31 U.S.C. 7501 note). The Act establishes specific mandatory procedures and requirements for such audits. The Act further directs the Office of Management and Budget (OMB) to prescribe policies, procedures, and guidelines to implement the Act (31 U.S.C. 7505(a)). In order to achieve the Act's purpose of establishing uniform audit requirements, the Act mandates each Federal agency, including the Department, to amend its regulations in order to conform to the requirements of the Act and the OMB directive.

On December 20, 1984, OMB issued a draft Circular implementing the requirements of the Act. The draft Circular was published in the **Federal Register** on December 26, 1984, 49 FR 50134, at which time OMB solicited public comment on the draft. OMB received comments from State and local government officials, auditors, and other interested parties. OMB considered these comments and, on April 12, 1985, issued Circular No. A–128 to implement the Act. Paragraph 21 of the Circular directs each Federal agency to include the provisions of the Circular in its regulation implementing the Single Audit Act. By a memorandum dated April 24, 1985, OMB indicated to Federal agencies that Circular A–128 should be added verbatim to their regulations by using an "interim final rule" with a 60 day comment period.

Considerable comment from the general public on the Circular has already been sought and received by OMB. On its face, the draft Circular informed the public that the Circular, which is being adopted by the Department in this rulemaking, was intended to operate as a government-wide regulation. Thus, persons affected by this rulemaking have had a full opportunity to comment on the substance of the Circular. As noted above, the Department is obliged to adopt the provisions of Circular A–128 and, by this rulemaking, does so without substantive change. For these reasons, the Secretary has decided for good cause to waive proposed rulemaking on this adoption of the Circular by the Department of Education as unnecessary and contrary to the public interest.

Nevertheless, in order to obtain further public comments, which will be shared among all agencies affected by the Circular, the Secretary invites interested parties to comment on this regulation.

Comments may be sent to the address given at the beginning of this document. All comments submitted in response to these regulations will be available for public inspection during and after the comment period in Room 3614, ROB–3, Seventh & D Streets, SW, Washington, DC 20202, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

Paperwork Reduction Act of 1980

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), approval for the collection of information requirements in this regulation will be obtained by the Office of Management and Budget.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 74

Administrative practice and procedures, Grant programs-education, Grants administration.

(Catalog of Federal Domestic Assistance number does not apply)

Dated: September 10, 1985.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 74 of Title 34 of the Code of Federal Regulations as follows:

PART 74—ADMINISTRATION OF GRANTS

1. The authority citation for Part 74 continues to read as follows:

Authority: 5 U.S.C. 301.

2. In § 74.61, paragraph (h)(1) is revised to read as follows:

§ 74.61 Financial management standards.

* * * * *

(h) *Audit—(1) General.* (i) This paragraph applies to each recipient that is not subject to the audit requirements in Appendix G to this part.

(ii) Public hospitals and public colleges and universities are subject to this paragraph if excluded under paragraph 4 of Appendix G to this part.

(iii) A financial and compliance audit shall be made in accordance with generally accepted auditing standards, including the standards of the U.S. General Accounting Office's publication "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions." [1] The auditors engaged by a recipient shall meet the criteria for qualifications and independence in that publication.

* * * * *

3. Section 74.62 is revised and a cross-reference is added after § 74.62 to read as follows:

§ 74.62 Audit requirements for State and local governments.

The audit requirements for State and local governments that receive Federal financial assistance are described in Appendix G to this part.

(20 U.S.C. 3474)

Cross Reference: Audit Requirements for State and Local Governments—See Appendix G

4. A new Appendix G is added to read as follows:

Appendix G—Audit Requirements for State and Local Governments

1. *Purpose.* This appendix is issued pursuant to the Single Audit Act of 1984, Pub. L. 98–502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this appendix.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this appendix, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law, including 34 CFR Part 74.

3. *Definitions.* For the purposes of this appendix the following definitions from the Single Audit Act apply:

a. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 9 of this appendix.

b. "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.

d. "Generally accepted accounting principles" has the meaning specified in the genereally accepted government auditing standards.

e. "Generally accepted government auditing standards" means the *Standards For Audits of Government Organizations, Programs, Activities, and Functions*, developed by the Comptroller General, dated February 27, 1981.

f. "Independent auditor" means"

(1) a State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) a public accountant who meets such independence standards.

g. "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) resources use is consistent with laws, regulations, and policies;

(2) resources are safeguarded against waste, loss, and misuse; and

(3) reliable data are obtained, maintained, fairly disclosed in reports.

h. "Indian tribe" means any Indian tribe, band , nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. "Major Federal Assistance Program," as defined by Pub. L. 98–502, is described in the Attachment to this appendix.

k. "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has government functions and any Indian tribe.

m. "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

4. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this appendix. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of 34 CFR Part 74.

[1] Available from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

d. The auditor shall determine whether.

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

5. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

6. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) the review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expeditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

—The amounts reported as expenditures were for allowable services, and

—The records show that those who received services services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

—Amounts claimed or used for matching were determined in accordance with 34 CFR Part 74, Appendix C "Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments," and 34 CFR Part 74, Subpart G, "Cost Sharing or Matching."

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments*, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statues, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

7. *Subrecipients.* State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. determine whether State or local subrecipients have met the audit requirements of this appendix and whether subrecipients covered by 34 CFR Part 74 have met the requirements of that part.

b. determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this appendix, 34 CFR Part 74, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this appendix.

8. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this appendix shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this appendix do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency

Inspector General or other Federal audit official.

b. The provisions of this appendix do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this appendix shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

9. *Cognizant agency responsibilities.* The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this appendix.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizant responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this appendix.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, or any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this appendix. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this appendix, so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

10. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 11(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

11. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this appendix. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance.* Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

—Negative assurance on those items not tested;

—A summary of all instances of noncompliance; and

—An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 11f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

12. *Audit Resolution.* As provided in paragraph 9, the cognizant agency shall be responsible for monitoring the

resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

13. *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extent the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

14. *Audit Costs.* The cost of audits made in accordance with the provisions of this appendix are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provisions of 34 CFR Part 74, Appendix C, "Principles for Determining Costs Applicable to Grants and Contracts with State and Local Governments."

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

15. *Sanctions.* The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this appendix. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

—Withholding a percentage of assistance payments until the audit is completed satisfactorily,
—Withholding or disallowing overhead costs, and
—Suspending the Federal assistance agreement until the audit is made.

16. *Auditor Selection.* In arranging for audit services State and local governments shall follow the procurement standards prescribed by 34 CFR Part 74, Subpart P, "Procurement Standards." The standards provide that while recipients are encouraged to enter into intergovermental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

17. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this appendix. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration, in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

Attachment to Appendix G

Definition of Major Program as Provided in Pub. L. 98–502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that
More than	But less than	
$100 million	$1 billion	$3 million
$1 billion	$2 billion	$4 million
$2 billion	$3 billion	$7 million
$3 billion	$4 billion	$10 million
$4 billion	$5 billion	$13 million
$5 billion	$6 billion	$16 million
$6 billion	$7 billion	$19 million
Over $7 billion		$20 million

[FR Doc. 85–21922 Filed 9–12–85; 8:45 am]
BILLING CODE 4310–01–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Statue of Liberty National Monument

AGENCY: National Park Service, Interior.

ACTION: Interim rule with request for comments.

SUMMARY: The National Park Service is closing the Statue of Liberty National Monument to all public use through July 4, 1986. This action is necessary because of serious health and safety hazards present during the repair and restoration of the Statue of Liberty and adjacent facilities. Visitation to the Statue of Liberty has declined by seventy percent over the past year because of increased construction activity. There will be some minor effect on a few small businesses but there is no way to avoid this effect. The closure of Liberty Island cannot be avoided without compromising the quality and cost of renovation of the Statue and supporting facilities. The closure of Liberty Island has been phased in with closure of the Statue of Liberty itself occurring over a year ago. This phasing has resulted in minimal economic impact.

DATES: This interim rule shall become effective September 13, 1985 and will expire on July 5, 1986. However, written comments regarding the closure will be accepted until October 15, 1985.

ADDRESS: Comments should be addressed to: David Moffitt, Superintendent, Statue of Liberty National Monument, Liberty Island, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: David Moffitt, Superintendent, Statue of

Liberty National Monument, Liberty Island, New York, New York 10004, (212) 732-1236.

SUPPLEMENTARY INFORMATION:

Background

The Statue of Liberty will be 100 years old in 1986. In preparation for its centennial the Secretary of the Interior established the Statue of Liberty-Ellis Island Centennial Commission. The establishment of this Commission was announced by the President of the United States, at the White House, on May 18, 1983. The Commission was charged with the responsibility of planning for Centennial Celebrations and to advise the Secretary on the restoration and preservation of the Statue of Liberty and Ellis Island.

In addition to the Statue of Liberty-Ellis Island Centennial Commission, the Statue of Liberty-Ellis Island Foundation was established. The role of the Foundation is to raise funds, through public subscription, to finance the restoration and preservation of both Ellis Island and the Statue of Liberty. A memorandum of understanding was accomplished between the National Park Service and the Statue of Liberty-Ellis Island Foundation. The role of the "Foundation", in addition to raising the necessary funds for the restoration and preservation of the Statue of Liberty and Ellis Island, is to contract for all planning and construction work on Ellis Island. Work commenced on Liberty Island in November 1983.

The stated goal of the National Park Service and the Statue of Liberty-Ellis Island Foundation is to completely restore and rehabilitate the Statue of Liberty and Liberty Island prior to July 4, 1986, the date of the first major Centennial celebration. Aside from the repair and restoration of the Statue, major improvements to visitor facilities on Liberty Island have also been planned. This work includes major re-landscaping, enlargement of the present concession building and total rehabilitation of the museum within the base of the Statue of Liberty.

Work on the Statue of Liberty has progressed in an orderly and timely manner. Construction work on the remainder of the island includes landscaping, enlargement of concession facilities, museum rehabilitation, and the use of heavy equipment in order to facilitate the accelerated work program and avoid delays in completing the project. Lehrer/McGovern, the construction Manager for the Statue of Liberty-Ellis Island Foundation has informed the National Park Service, through the Foundation, that Liberty Island must be closed to all public visitation as quickly as possible. We concur with this recommendation of Lehrer/McGovern based on a concern for the health and safety of the visiting public. Construction activities must be initiated in all public use areas not later than June 24, 1985 in order to insure completion by July 4, 1986.

The only alternative to closure is not to complete the project as scheduled, which is considered unacceptable by the Department of the Interior and the National Park Service.

A notice was published in the **Federal Register** (50 FR 26415) on June 26, 1985 that temporarily closed the Statue of Liberty National Monument.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this rulemaking to the address noted at the beginning of this rulemaking.

Drafting Information

The following persons participated in the writing of this regulation: Kevin Buckley, Statue of Liberty National Monument; Leonard A. Frank, North Atlantic Regional Office, Boston, Massachusetts.

Paperwork Reduction Act

This rule contains no information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291. The Department has also determined that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This finding is based on the fact that the total economic effect of this rulemaking will impose no significant costs on any class or group of small entities. Visitation to Liberty Island has dropped by seventy percent during the past year and this additional closure will have minimal additional impact.

The National Park Service has determined that this rulemaking will not have effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants.

Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental policy in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 7

National Parks.

In consideration of the foregoing, 36 CFR Part 7 is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SERVICE

1. The authority citation for 36 CFR Part 7 continues to read as follows:

Authority: 16 U.S.C. 1,3, 9a, 462(k).

2. By adding a new § 7.44 to read as follows:

§ 7.44 Statue of Liberty National Monument.

Closure. The Statue of Liberty National Monument is closed to all public use and access through July 4, 1986.

Dated: August 9, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-21942 Filed 9-12-85; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[TN-018; A-4-FRL-2895-5]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Tennessee: Approval of TCM Portion of CO SIP for Nashville-Davidson County; Redesignation of a TSP Nonattainment Area

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves two State Implementation Plan (SIP) revisions submitted by Tennessee which were proposed for approval on March 20, 1985 (50 FR 11183). One involves a revision to the transportation control measure (TCM) portion of the 1982 carbon monoxide (CO) SIP for Nashville and Davidson County and the other involves the redesignation of the La Follette particulate (TSP) nonattainment area to attainment.

On February 3, 1983, EPA proposed to disapprove Tennessee's 1982 CO SIP for the metropolitan Nashville-Davidson County area. The disapproval was partially based upon Nashville's failure to implement the transportation control plan (TCP) portion of their SIP. Since that time, Nashville has reconsidered and submitted the revised TCP portion and has satisfied EPA's transportation control measure (TCM) requirements by substituting measures from the contingency plan for those measures not implemented.

The redesignation of the La Follette TSP nonattainment area is based on eight quarters of ambient monitoring data showing attainment and an EPA-approved control strategy.

DATE: These actions are effective October 15, 1985.

ADDRESSES: Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365

Division of Air Pollution Control, Tennessee Department of Health and Environment, 150 9th Avenue North, Nashville, Tennessee 37203

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460

FOR FURTHER INFORMATION CONTACT: Mr. Archie Lee, Air Management Branch, EPA Region IV at the above address at telephone number 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: On July 18, 1984, Tennessee submitted two SIP revisions for EPA approval. Supplemental information was submitted on July 27, 1984. These revisions went to public hearing in Nashville on May 4, 1984, and were approved by the Tennessee Air Pollution Control Board on June 4, 1984. EPA proposed approval on March 20, 1985 (50 FR 11183). No comments were received in response to that proposal, so EPA today approves these revisions as discussed below.

Transportation Control Plan for Nashville-Davidson County

The 1977 Amendments to the Clean Air Act added a new Part D to Title I of the Act. Under this Part, the states were required to revise their SIP's for all nonattainment areas and submit the revisions to EPA by January 1, 1979 (Sections 171-178 of the Act; Section 129(c) (uncodified) of Pub. L. 95-95).

The revised plans were to provide for attainment by December 31, 1982, unless the state demonstrated that they could not attain either the ozone or carbon monoxide (CO) standard by that date despite the implementation of all reasonably available control measures (Section 172(a)(2)), and formally requested an extension. If EPA approved this demonstration, the attainment date for ozone or CO could be extended up to December 31, 1987. States receiving such extensions were to submit a second SIP revision that provided for attainment by the approved attainment date and complied with all of the Part D requirements (Section 172(c)). This second SIP revision had to be submitted by July 1, 1982 (Section 123(c) (uncodified) Pub. L. 95-95).

As detailed in the **Federal Register** of February 3, 1983 (48 FR 5058), the State of Tennessee submitted its initial SIP revision for the Metropolitan Nashville-Davidson County CO nonattainment area on February 13, 1979. The State requested that EPA extend the attainment date for the CO standard in this area to December 31, 1987. EPA granted this request and conditionally approved the initial plan revision on August 13, 1980 (45 FR 53809). Tennessee submitted its 1982 CO SIP revision on June 30, 1982, and EPA proposed to disapprove it on February 3, 1983. The Metropolitan Government of Nashville and Davidson County Health Department submitted comments in which they addressed our proposed disapproval. For a full discussion of this SIP revision and EPA's evaluation of it the reader may consult the February 3, 1983 (48 FR 5058), proposal notice.

Since the date of publication of the proposal notice, the TCM's have been revised to satisfy EPA requirements. The implementation of the signal optimization program is underway. Also, the return to the 1980 level of service for transit TCM has been replaced with a two-cent gas tax equivalent TCM and the ridesharing program measures from the contingency package. EPA has concurred with these revisions and is today fully approving the 1982 Transportation Control Plan for the Nashville-Davidson County CO nonattainment area.

Redesignation of La Follette TSP Nonattainment Area

Tennessee has requested that EPA change the attainment status of a portion of the City of La Follette in Campbell County from primary and secondary nonattainment for TSP to attainment. Tennessee has submitted ambient air quality data collected at a monitoring site in La Follette as the basis for the redesignation request. Specifically, the most recent complete eight quarters of air quality data (1982 and 1983) show no violations of the TSP NAAQS as summarized below.

La Follette	MAX 24-hr, µg/m³		AGM	NAAQS		
	1st	2nd		Primary*	Secondary*	AGM**
1982	188	129	58	260	150	75
1983	156	121	56			

* Not to be exceeded more than once per year
** This is one yearly number, not to be exceeded

Therefore, on the basis of eight quarters of air quality data showing attainment and evidence of an EPA-approved control strategy, EPA proposes to approve the redesignation of the La Follette TSP nonattainment area to attainment. For more details, see the proposal notice of March 20, 1985 (50 FR 11183).

Final Action

EPA has reviewed the submitted material and found it to meet EPA requirements. EPA is today approving:

(1) The Transportation Control Plan part of the 1982 CO SIP for Nashville-Davidson County because revisions to the TCM's have been made and (2), the redesignation of the La Follette TSP nonattainment area to attainment on the basis of eight quarters of air quality data and an EPA-approved control strategy.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in

proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects

40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter, Carbon monoxide.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: September 6, 1985.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(68) as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * *

(68) Revisions in the TCM portion of the 1982 CO SIP for Nashville-Davidson County, submitted on July 18, 1984, and adopted on June 4, 1984.

(i) *Incorporation by reference.* (A) Air Pollution Control Board of the State of Tennessee Board Order 13 84, which is a statement of intent to adopt two-cent gas tax equivalent measures in place of return of 1980 level of service in Nashville-Davidson County CO SIP TCM; and July 18, 1984 letter from the Tennessee Department of Health and Environment which approves the Metropolitan Nashville and Davidson County Legally Enforceable Limits and Schedules effective June 4, 1984.

(ii) *Additional materials.* (A) Revision of the calculations on reductions due to implementation of the Rideshare Program submitted on July 18, 1984.

Part 81 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 81—[AMENDED]

3. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

4. Section 81.343 is amended by consolidating the two Campbell County entries of the Tennessee—TSP table into a single entry reading as follows:

§ 81.343 Tennessee.

Tennessee—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Campbell County				

[FR Doc. 85–21812 Filed 9–12–85; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 261

[SWH—FRL–2896–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Wastes

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is today granting final exclusions for the solid wastes previously generated at two particular facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions received by the Agency under 40 CFR 260.20 and 260.22 to exclude wastes on a "site-specific basis" from the hazardous waste lists. The effect of this action is to exclude certain wastes generated at these facilities from listing as hazardous wastes under 40 CFR Part 261.

In addition, the Agency is responding to comments received on a study it conducted on polynuclear aromatic hydrocarbons as it affects our decision to grant the exclusion petitions filed by the Amoco Oil Company and the Cincinnati Metropolitan Sewer District.

EFFECTIVE DATE: September 13, 1985.

ADDRESS: The public docket for these final exclusions is located in Room S–212, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, and is available for public viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346 or at (202) 382–3000. For technical information contact Mr. Myles Morse, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460. (202) 475–8551.

SUPPLEMENTARY INFORMATION: On September 21, 1984, EPA granted (on a one-time basis) a final exclusion to the Cincinnati Metropolitan Sewer District (MSD) for the sluiced bottom ash generated from their incineration facility and contained in one of their two on-site lagoons (*i.e.*, the North Lagoon); the Agency deferred its decision on the sluiced bottom ash contained in the South Lagoon, however, due to potentially hazardous levels of certain polynuclear aromatic hydrocarbons (PNAs) found in the waste. See 49 FR 37068–37069; see also 49 FR 8965–8966, March 9, 1984. On October 23, 1984, the Agency also proposed to exclude (on a one-time basis) 150 million gallons of dissolved air flotation sludge (contained in four surge ponds) after chemical stabilization that will be generated by the Amoco Oil Company (Amoco) in Wood River, Illinois. See 49 FR 42589–42593. In that notice, the Agency also expressed concern over the level of PNAs found in the waste.

Since those notices were published, the Agency has completed a study on PNAs to determine: (1) The toxicity of the various PNAs, (2) background levels of PNAs normally found in the environment, and (3) the ability of PNAs to migrate from a waste into the environment. In particular, the Agency wanted to determine whether PNAs should be added as a basis for listing the sluiced bottom ash (contained in the South Lagoon) generated by MSD and the chemically stabilized dissolved air flotation sludge generated by Amoco. This study was made available for public comment on May 9 of this year (see 50 FR 19551).

Based upon the information contained in the PNA study, the Agency believes that the level of PNAs found in the wastes of these two facilities would not pose a threat to human health and the environment. This study was undertaken to enable the Agency to make a decision on these petitions; it does not represent the definitive Agency analysis of the mobility of PNAs. Since the PNA content in the waste was the

only remaining issue, (*i.e.*, based upon our tentative decisions to grant these exclusion petitions and based upon the comments received on our proposed decisions, no other issues were raised which would indicate that the petitions should not be granted), this notice makes final our decision to exclude these wastes from the list of hazardous waste. (See the specific discussion in this notice for a more detailed explanation of our basis for excluding these wastes.)

These actions are being taken in response to petitions submitted by these companies (pursuant to 40 CFR 260.20 and 260.22) to exclude their waste from hazardous waste control. In their petitions, these companies have argued that certain of their wastes were non-hazardous based upon the criteria for which the waste was listed. The petitioners also have provided information in order for the Agency to consider whether any other toxicants are present in the waste at levels of regulatory concern. The purpose of today's action is to grant final exclusions to Amoco and MSD and to make the exclusions effective immediately. More specifically, today's rule allows these facilities to manage these wastes as non-hazardous in accordance with any conditions of the exclusion. In addition, generators are still obliged to determine whether these wastes exhibit any of the characteristics of hazardous waste.

The Agency notes that the petitioners granted final exclusions in today's **Federal Register** have been reviewed for both the listed and non-listed criteria. As required under the Hazardous and Solid Waste Amendments of 1984, the Agency evaluated all factors (including additional constituents) for which there was a reasonable basis to believe that they could cause these wastes to be hazardous. These petitioners have demonstrated through extensive organic screening; EP toxicity test data for all EP toxic metals; oily waste EP toxicity test data (where appropriate); test data on the four hazardous waste characteristics; and in some cases additional test data, including total organic carbon and total oil and grease, that their wastes do not exhibit any of the hazardous waste characteristics and do not contain any other toxicants at levels of regulatory concern. The Agency, in its proposal to exclude the wastes covered by this rule, provided all pertinent information necessary to evaluate the additional factors. In addition, as indicated earlier, the Agency also made available for public comment a study which has been used by the Agency to evaluate the concentrations of PNAs found in the treatment residues petitioned for exclusion by MSD and Amoco.

It also should be noted that the Agency recently proposed to use a dispersion model in evaluating the migratory potential of toxicants from wastes which are landfilled. (See 50 FR 7882, February 26, 1985.) This change in review procedure was developed to assist in standardizing the petition review process. The petitioners in today's publication were not required to undergo review using this proposed approach, since our decisions regarding the hazardous potential of these wastes were proposed under previous procedures. We have decided to proceed to exclude these wastes from the lists of hazardous wastes without applying this dispersion model for two reasons. One, we have not fully evaluated the public comments on the model at this time and thus are not prepared to use it in making final delisting decisions. Second, no public comments were received which questioned the technical decisions to exclude the wastes listed below,[1] under the rationale advanced in the proposed rule.

Limited Effect of Federal Exclusion

States are allowed to impose requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

As a result of enactment of the Hazardous and Solid Waste Amendments of 1984, no State delisting programs are presently authorized. The final exclusions granted today, therefore are issued under the Federal program. States, however, still can decide whether to exclude these wastes under their State (non-RCRA) program. Since a petitioner's waste may be regulated by a dual system, (*i.e.*, both Federal RCRA and State non-RCRA programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

[1] Comments addressing other points such as terminology or sampling under the contingency plans were received and are addressed separately below.

The exclusions made final today involve the following petitioners:

Amoco Oil Company, Wood River, Illinois

Cincinnati Metropolitan Sewer District, Cincinnati, Ohio

I. Amoco Oil Company

A. Proposed Exclusion

The Amoco Oil Company (Amoco) has petitioned the Agency to exclude (on a one-time basis) approximately 150 million gallons of its dissolved air flotation sludge (contained in four surge ponds) after chemical stabilization (Chemfix®), from EPA Hazardous Waste No. K048. Amoco claimed that the Chemfix® treatment technology would bind all inorganic constituents within the waste matrix. In addition, Amoco claimed that any hazardous organic constituents, if present, are either at non-hazardous levels or are bound within the waste matrix. Amoco submitted test data from representative samples which included total digestion for metals, EP toxicity and oily waste EP toxicity test data, multiple extraction test data, oily waste multiple extraction test data, and total analyses for 95 potential organic contaminants.

Based upon this data, the Agency proposed to grant a conditional exclusion to Amoco, which would require continuous daily batch testing for lead and total chromium using the EP toxicity test and deposition of the treated waste into removable molds in the landfill area. At the same time, the Agency expressed concern over the presence of several PNAs in the waste.[2] The Agency was specifically concerned with the combined levels of benzo(a)pyrene, benzo(a)anthracene, chrysene, fluorene, naphthalene, phenanthrene, and pyrene and indicated a study would be undertaken to determine whether the PNAs should be added as a basis for listing the waste.[3] (See 49 FR 42589–42593, October 23, 1984, for a more detailed explanation of why EPA proposed to grant Amoco's petition).

B. Agency Response to Public Comment

The Agency received one comment from the petitioner requesting three modifications to the contingency testing program. First, Amoco requested that

[2] Since this waste was not listed due to its PNA content and since our decision was proposed before enactment of the Hazardous and Solid Waste Amendments of 1984, our proposed decision to exclude this waste was not based on the PNA content found in the waste.

[3] As discussed earlier, this study was completed and made available for public comment on May 9 of this year (see 50 FR 19551).

the daily composite testing requirement be limited to the first 30 days of the treatment period. Amoco proposes that if the variability of the data from this period is acceptable to the Agency (*i.e.*, if the leachate concentrations exhibit low relative standard deviations), then the testing requirement be reduced to every third day. (The petitioner indicated that daily composites would still be collected and maintained for verification. Second, Amoco requested that they be allowed to combine the two daily composites (one for each trailer) into a single sample for analysis. Amoco based these requests on the contention that representative sampling already performed on the impounded wastes would have identified any hotspots or stratification. In addition, Amoco claims that the impounded waste will be thoroughly homogenized by the Chemfix® process before treatment, resulting in a uniform waste. Third, Amoco requested that the treated waste not be required to be placed in removable molds to contain each day's production of the treated waste. Amoco contends that each day's production of treated waste can be isolated using cells created by berming the solidified treatment residue from previous days.

The Agency generally agrees with Amoco's first comment, that once homogenized, the likelihood that the treatment residue will exhibit variability will be reduced. Due to the large volume of waste involved, however, the efficacy of the Chemfix® process to homogenize the waste before treatment remains to be seen, especially since all of the data provided in support of this petition is based upon laboratory scale equipment. The contingency plan, therefore, will require daily composite testing. The Agency will review this data after the initial 30 days of operation. If the variability of the extract levels is low, Amoco may request that the Agency remove this requirement. Before the condition would be removed, however, the Agency would publish the data for notice and public comment. Regarding Amoco's second comment, the Agency believes that combined daily composites are not appropriate in this case, due to the large volume of treatment residue to be generated each day, and the possibility that certain portions of the waste may contain higher levels of contaminants. While the Agency generally agrees that the samples that Amoco took from the lagoon are representative, the Agency believes that there is a likelihood that some areas of the lagoon may not be well mixed. Since this compositing would essentially create one analysis for twice the generation rate, it may result in excessive averaging for the constituent concentrations in the residue. The Agency believes that requiring two daily composites (one for each trailer) is more appropriate, since each trailer processes in excess of 700,000 gallons of waste per day.

The Agency's primary concern in requiring removable cells was to assure that each day's production of treated waste was identifiable and if necessary, removable, in the event that the treatment process did not adequately stabilize the waste. Amoco's request to use bermed cells created from the solidified treated waste from previous days of operation is acceptable. The Chemfix® treated waste is a highly impermeable matrix similar to soil and clay, which can serve as a material for cell construction. The impermeable material will assure that none of the freshly treated waste will migrate until the required testing is completed. Furthermore, since each cell will be readily discernible from the next during the testing period, the Agency believes that the use of bermed cells can serve the purpose of the removable molds. The Agency, therefore, is not requiring the use of removable molds; however, Amoco's contingency plan now requires the use of bermed cells for each day's treated waste and that these cells be discernible until the waste is demonstrated, by testing, to be non-hazardous.

Amoco also commented on a discrepancy between the acceptable EP extract levels imposed in the contingency plan in the proposed exclusion published on October 23, 1984 and the correction notice published on December 5, 1984. The preamble of the proposed exclusion required a 0.5 ppm limitation while the correction notice, which included the proposed rule, identified a 1.5 ppm testing limit for lead and total chromium.[4] Amoco requested that the preamble be corrected to indicate the 1.5 value noted in the rule.

The Agency notes that the 1.5 ppm limit cited in the proposed rule was incorrect and should have reflected the 0.5 ppm level discussed in the preamble. The lower 0.5 level was used as the maximum acceptable extract limit in the contingency plan since the EP toxicity test was being used as the daily indicator test, rather than the Oily Waste EP toxicity test. In particular, the data submitted by Amoco generally indicates that the Oily Waste EP extract levels for lead were three times higher than the extract levels generated by the EP test. The acceptable extract level was set at 0.5 ppm, which is one-third of the level which would have been considered acceptable in this situation (if the waste had not been an oily waste) to allow the use of the EP toxicity test as the daily indicator test in the contingency testing program. The Agency notes that this limit was set in response to Amoco's request to be allowed to use the EP toxicity test rather than the Oily Waste EP toxicity test in their contingency testing program.

C. Final Agency Decision

Based upon samples of the waste taken from the four surge ponds indicating low extract values generated from corresponding Oily Waste EP toxicity tests, and Multiple Extraction Procedure (MEP) and Oily Waste MEP test data, Amoco has demonstrated that the Chemfix® treated waste successfully binds the inorganic toxicants within the matrix of the residue, thereby limiting their mobility. Oily Waste EP toxicity tests produced maximum lead and chromium levels of 1.28 and 0.32 ppm, respectively. These extract levels are twenty-six and six times the National Interim Primary Drinking Water Standards, respectively. Attenuation and dilution in the environment are expected to further reduce these lead and chromium levels below the National Interim Primary Drinking Water Standards. The Agency further believes that the matrix of the Chemfix® materials has a high binding capacity for metals and will decrease their mobility in the field.

The Agency further believes that the Chemfix® treated waste will not contain sufficient quantities of volatile organics to be of regulatory concern. Low levels of benzene (less than 1 ppm), toluene (less than 5 ppm), chloroform (less than 1 ppm), and 1,1-dichloroethylene (less than 1 ppm) were detected in the untreated waste. These levels are expected to be reduced somewhat by the treatment process (due to

[4] The Agency wishes to clarify statements made in the proposed exclusion (49 FR 42589, October 23, 1984) and the correction notice (49 FR 47510, December 5, 1984) with regard to chromium in Amoco's waste. Although hexavalent chromium is the listed constituent for EPA Hazardous Waste No. K048, the Agency also regulates wastes for total chromium as an EP toxic metal. The Agency has proposed to modify the EP toxicity characteristic to regulate hexavalent chromium rather than total chromium. This proposal has not been made final, however, and the Agency has not yet decided whether it should be made final. Since analysis for total chromium content is inclusive of hexavalent chromium, conditioning Amoco's waste for total chromium satisfies the regulations for the EP toxicity characteristic as well as for the listed constituent.

volatilization during the mixing process); in addition, these contaminants are expected to be further reduced due to attenuation in the environment. The presence of these constituents, therefore, is not expected to cause the waste to be hazardous. The only other toxic constituents found in the waste were the PNAs.

As indicated earlier, the Agency has completed its PNA study. Based upon this study, the Agency has determined that the PNA levels contained in the treated Amoco's waste are non-hazardous. The Agency had been primarily concerned with the presence of those PNAs that could be considered human carcinogens or potential human carcinogens. The Agency has determined from its PNA toxicity literature evaluation that a number of PNAs have not been adequately evaluated for potential carcinogenicity or mutagenicity. Until the Agency's Carcinogen Assessment Group (CAG), a division of the Office of Research and Development (ORD), evaluates each PNA for potential carcinogenicity, the Agency will evaluate delisting petitions only using the CAG carcinogens identified by ORD. (The Agency will also evaluate petitions for other toxicological effects when known. In this case, the only toxicity associated with the PNAs found in the waste is carcinogenicity.) Three of the six potential PNA carcinogens identified by CAG were found in Amoco's waste.[5] The maximum concentration of the PNAs regarded by CAG as carcinogens found in Amoco's waste are displayed in Table I.

Table I.—Concentrations of Potentially Carcinogenic PNAs

	[1]
Benzo(a)pyrene	3
Benzo(a)anthracene	11
Chrysene	8

[1] Concentration (ppm)

In its investigation of PNAs, the Agency collected data on the mobility of PNA compounds from materials of similar composition to the Chemfix® material. Data collected on fly ash wastes revealed that very little data on PNA mobility into water were available. The available data, however, do indicate that PNAs were not detected in water extracts from typical coal fly ash residues at a detection limit of approximately 1 ppb.[6] Data collected by the Agency during its evaluation of a new leachate test procedure also indicated that PNAs were not detected in water extracts of municipal fly ash residues at a detection limit of 1 ppb.[7] Since the Agency was concerned that PNAs may be more mobile from an oily matrix that has been Chemfix® treated than from fly ash residues, Amoco was requested to present data on mobility of PNAs in the Chemfix® treated residues using the Oily Waste EP (OWEP). Amoco provided data only using the EP toxicity test and the Multiple Extraction test.[8] Amoco did not perform the Oily Waste EP for PNAs because they believed that the OWEP would provide the same results as the original total constituent analysis of the waste. That is, Amoco stipulated that a strong solvent extraction would release all (or essentially all) of the organic material from the waste. The data from the aqueous extractions showed non-detectable extract levels at a detection limit of 10 ppb. These non-detectable extract levels support the fact that PNAs will not be released in significant quantities from the Chemfixed residue. While the Agency is not basing its decision solely upon this data, we believe they generally support the fact that aqueous media will not mobilize organics from the Chemfix® treated waste.

Based upon information gathered for the PNA report, the Agency believes that the levels of PNAs in Amoco's treated waste are not hazardous.[9] Use of the SESOIL model to predict the migration potential of benzo(a)pyrene (BaP) under worst-case conditions (a permeable soil with low organic content) indicated that no significant migration of BaP occurred, even for wastes containing up to 20 ppm Bap. By analogy, the PNAs present in Amoco's waste, which has been Chemfix® treated, would not be expected to migrate. In addition, none of the potentially carcinogenic PNAs, as identified by CAG, are present in Amoco's waste at concentrations in excess of 20 ppm. Furthermore, the SESOIL model would likely predict migration potentials for benzo(a)anthracene and chrysene similar to BaP, due to their size (both are 4-ringed PNAs) and their solubilities in water relative to BaP (5.7×10^{-3} mg/l for benzo(a)anthracene and 6×10^{-3} mg/l for chrysene; 3.8×10^{-3} for BaP). Due to their low solubility in water relative to other organics and the waste's capacity to bind the oil, the Agency believes that the levels of PNAs in Amoco's Chemfix® treated waste will not pose a hazard to human health.

The Agency, therefore, considers Amoco's treated waste generated from the Chemfix® treatment process to be non-hazardous for all reasons and believes it should be excluded from hazardous waste control under the conditions specified below. Due to the large volume of waste contained in Amoco's impoundments, the high content of toxic metals in the waste, and the fact that the data in the petition was based upon laboratory and pilot scale data, the Agency is requiring testing of the treated waste to assure that stabilization occurs and that each day's treated waste be identifiable and retrievable as follows:

(1) Mixing ratios should be monitored continuously to assure consistent treatment, and to ensure that they do not vary outside the limits presented by Amoco in their exclusion petition.

(2) One grab sample of the treated waste should be taken each hour as it is pumped to the holding area (cell) from each trailer unit. At the end of each production day, the grab samples from the individual trailer units will be composited and the EP toxicity test [11]

[5] The three PNAs identified as pontential human carcinogens *not* detected in Amoco's waste were dibenz(a,h)anthracene, indeno(1,2,3c,d)pyrene, and benzo(b)flouranthene.

[6] See "Estimating Leaching of Polycyclic Aromatic Hydrocarbons from Waste," JRB Associates Draft Report, 1984.

[7] The Agency notes that the reference of water and acetic acid or sodium acetate extract procedures is made here in an attempt to show the extremely limited mobility of PNAs from wastes containing alumino silicates. The Agency presently does not have an approved extraction procedure to determine the mobility of organics. The Agency is not at this time recommending the use of these tests as accurate tools to determine this mobility. The Agency is developing a proper test procedure to determine this mobility. Comparison of early data indicates that these tests may reasonably estimate the mobility of PNA constituents from an alumino-silicate waste matrix. (See Mobility of Toxic Compounds from Hazardous Waste PB-117-034; and Mobility of Toxic Compounds from Hazardous Waste: Phase 2 Comparison of Three Test Methods to a Lysimeter Model, Oak Ridge National Laboratory, May 1984, Interagency Agreement DOE 40-1087-80.)

[8] This data was made available for public comment in 50 FR 19550-19551, May 9, 1985.

[9] This determination is based upon the soil organic carbon partition coefficient, results obtained from the SESOIL model, and the fact that PNAs, when placed on alumina and silica chromatographic plates showed no measurable migration without the use of non-polar solvents (such as benzene, cyclohexane, etc.). Using these approaches, the results of the evaluations indicated that at levels of 20 ppm and less, PNAs in matrices similar to soils would not be expected to migrate from the waste. See the PNA study (available in the public docket) for a more detailed discussion.

[11] Since the results obtained using the Oily Waste EP were consistently higher by a factor of three than those obtained using the EP toxicity test, the Agency correlated these results and imposed a limitation of 0.5 ppm to correspond to this relationship. The limit was set at one-third of the

Continued

will be run on the two composite samples. If lead or total chromium concentrations exceed 0.5 ppm in the extract, the waste will be removed and retreated or disposed of as a hazardous waste.

(3) The treated waste must be pumped into bermed cells which are constructed to assure that the treated waste generated each day is identifiable and retrievable (*i.e.*, the material can be removed and either disposed of as a hazardous waste or re-treated if conditions 1 or 2 are not met).

The Agency believes that Amoco's treated waste generated by the Chemfix® process is non-hazardous under the conditions specified above. The Agency is therefore granting a final, conditional one-time exclusion to Amoco for the product that will result from the chemical stabilization of the dissolved air flotation float presently contained in four surge ponds at their Wood River, Illinois site. This exclusion does not apply to the four surge ponds or to the non-stabilized dissolved air flotation float.

II. Cincinnati Metropolitan Sewer District

A. Proposed Exclusion

The Cincinnati Metropolitan Sewer District (MSD) has petitioned the Agency to exclude (on a one-time basis) sluiced bottom ash contained in two on-site lagoons. MSD burns hazardous wastes F001, F002, F003, F004, and F005 along with sewage sludge.[12] The mixed ash is slurried with wastewater from the municipal wastewater treatment plant and pumped to the lagoons for dewatering. MSD requested delisting for the contents of both lagoons, which together contain approximately 50,000 cubic yards of ash.

MSD claims that the ash in these lagoons is non-hazardous due to the destruction of the hazardous constituents during combustion. MSD further claims that 99.75 percent of the incinerated waste which produces this ash is municipal waste, while only 0.25 percent of the incinerated waste is industrial waste (of which a smaller percentage are the listed hazardous wastes). MSD also provided data which indicate non-detectable concentrations of the listed solvents, with the exception of methylene chloride. Methylene chloride levels ranged from non-detectable to 1.9 ppm in the ash. (See 49 FR 8965, March 9, 1984). MSD also submitted data on the other non-listed hazardous constituents which reasonably may be expected to be present in the waste. This data indicated that the waste contained in the South Lagoon contains certain PNAs at potentially hazardous levels.[13] (See 49 FR 8965–8966, March 9, 1984, for a more detailed explanation of why EPA proposed to grant MSD's petition.)

B. Previous Agency Action and Response to Public Comments

On September 21, 1984, the Agency granted a final exclusion to MSD for its sluiced bottom ash contained in the North Lagoon since it contained non-hazardous levels of the listed solvents as well as non-hazardous levels for all other toxicants expected to be present in the waste, including the polynuclear aromatic compounds (PNAs). (See 49 FR 37067). The Agency also indicated that the level of solvents found in the South Lagoon were not of regulatory concern. The Agency and one public commenter, however, shared concerns over the potential toxicity of PNAs in the South Lagoon. The same commenter voiced concern that the Agency had not performed the necessary studies to determine whether the PNAs should be added as a basis for listing the waste. Since the Agency was considering including these toxicants as a basis for listing this waste, no final decision was made to delist the waste contained in the South Lagoon. Rather, the Agency chose to defer any final decision until an investigation evaluating these PNA levels (*i.e.*, chrysene 17.5 ppm, benzo(a)pyrene 16.6 ppm, etc.) was completed. This study was to include an evaluation of available toxicity information, retardation factors for PNAs in soils and ash, and an evaluation of PNA levels contained in non-hazardous incineration ash.

C. Final Agency Decision

As indicated on September 21, 1984, the Agency believes that this waste is non-hazardous except possibly for the ash in the South Lagoon. As a result, the Agency undertook a study to determine the hazardous potential of PNAs in materials such as fly ash. As a result of toxicity analyses, evaluation of background PNA levels in non-hazardous ashes, and their mobility from non-hazardous ashes, the Agency has determined that the PNA levels contained in the waste contained in MSD's South Lagoon are non-hazardous. The Agency had been primarily concerned with the presence of those PNAs that could be considered human carcinogens or potential human carcinogens. The Agency has determined from its PNA toxicity literature evaluation that a number of PNAs have not been adequately evaluated for potential carcinogenicity or mutagenicity. Until the Agency's Carcinogen Assessment Group (CAG), a division of the Office of Research and Development (ORD), evaluates each PNA for potential carcinogenicity, the Agency will evaluate delisting petitions only using the CAG carcinogens identified by ORD. (The Agency will also evaluate petitions for other toxicological effects when known. In this case, the only toxicity associated with the PNAs found in the waste is carcinogenicity.) Five of the six potential PNA carcinogens identified by CAG were found in the waste contained in MSD's South Lagoon.[14]

The maximum concentration of PNAs regarded by CAG as carcinogens found in the waste in the South Lagoon are displayed in Table II.

Table II.—Concentrations of Potentially Carcinogenic PNAs

Benzo(a)pyrene	16.66
Dibenzo(a,h)anthracene	3.9
Indeno(1,2,3c,d)pyrene	12.0
Benzo(a)anthracene	16.87
Chrysene	17.54

[1] Concentration (ppm)

In its investigation of PNAs, the Agency collected data on the mobility of PNA compounds from materials of similar composition. Data collected on fly ash wastes revealed that very little data on PNA mobility into water were available. The available data, however, do indicate that PNAs were not detected in water extracts from typical coal fly ash residues at a detection limit of approximately 1 ppb.[15] Data collected by the Agency during its evaluation of a new leachate test procedure also indicated that PNAs were not detectable in water extracts of municipal fly ash residues at a detection limit of 1 ppb.[16] These non-detectable extract levels support the view that PNAs have a high affinity for, and become tightly bound on, material such as fly ash.

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levels which would have normally been considered acceptable in this situation (*i.e.*, if the waste was not considered an oily waste) in order to allow the use of the EP toxicity test as the daily indicator test in the contingency testing program.

[12] In particular, MSD has requested exclusion of the sluiced bottom ash which contains all the solvents listed in F001, F002, F003, F004, and F005 and is contained in the North and South Lagoons.

[13] See footnote 2.

[14] The sixth PNA identified as a potential human carcinogen, benzo(b) fluoranthene, was not detected in MSD's waste.

[15] Set footnote 6.

[16] See footnote 7.

Based upon the information gathered in the PNA report, the Agency believes that the levels of PNAs in MSD's waste are not hazardous.[17] Use of the SESOIL model to predict the migration potential of benzo(a)pyrene (BaP) under worst-case conditions (a permeable soil with low organic content) indicated that for wastes containing up to 20 ppm BaP, no migration of BaP occurred. None of the potentially carcinogenic PNAs as identified by CAG are present in MSD's waste in excesss of 20 ppm. Furthermore, the SESOIL model would likely predict migration potentials for the other potentially carcinogenic PNAs found in MSD's waste similar to BaP, due to their size (benzo(a)anthracene and chrysene are 4-ringed PNAs; dibenz(a,h)anthracene and indeno(1,2,3-c,d)pyrene are 5-ringed PNAs) and their solubilities in water relative to BaP (5.7×10^{-3} mg/1 for benzo(a)anthracene, 6×10^{-3} mg/1 for chrysene, 5×10^{-3} mg/1 for dibenz(a,h)anthracene, 5.3×10^{-4} mg/1 for indeno(1,2,3-c,d)pyrene; 3.8×10^{-3} for BaP). Due to their low solubility in water relative to other organics and the waste's capacity to bind PNAs, the Agency believes that the levels of PNAs in MSD's waste will not pose a hazard to human health.

The Agency, therefore, is granting a final (one-time exclusion) top MSD for the waste contained in the South Lagoon (which contains residues from EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005) at its Cincinnati, Ohio location.

III. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that these rules should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

[17] See footnote 9.

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's listed hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

VI. List of Subjects in 40 CFR Part 261

Hazardous wastes, Recycling.

Dated: September 4, 1985.

Jack McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

Appendix: Response to Public Comments Received Regarding EPA's Review of Polynuclear Aromatic Hydrocarbons

On May 9, 1985, EPA published a notice of availability and request for comment on its review of polynuclear aromatic hydrocarbons (PNAs) with respect to delisting petitions filed by the Amoco Oil Company and the Cincinnati Metropolitan Sewer District (See 50 FR 19550–19551). One comment was received which concerned three points pertaining to the carcinogenic potential of PNAs.

First, the commenter questioned the validity of the Agency's conclusions with respect to classifying the majority of 4, 5, and 6-ringed PNAs as confirmed human or animal carcinogens. The Agency notes that the summary report was not explicit with regard to the exact list of PNAs considered in the literature review. A total of 82 PNAs were considered in the literature review, of which 80% had been evaluated by the International Agency for Research on Cancer (IARC) for carcinogenic risk to humans. For compounds not reviewed by IARC, exhaustive literature searches were performed using computerized toxicological data bases. Sufficient evidence was found to evaluate the carcinogenicity of 68 of the 82 compounds. Of the 68 PNAs for which data was gathered, 6 compounds consisted of two aromatic rings, 10 compounds consisted of three aromatic rings, 39 compounds consisted of four aromatic rings, 6 compounds consisted of five aromatic rings, 6 compounds consisted of six aromatic rings, and 1 compound consisted of seven aromatic rings. The PNAs considered in this study were either 4, 5, or 6-ringed PNAs. Of those 51 compounds, 18 showed sufficient evidence for animal carcinogenicity. An additional 15 PNAs showed limited evidence for carcinogenicity, nine of which were 4-ringed PNAs, four of which were 5-ringed PNAs, and 2 of which were 6-ringed PNAs. IARC defines sufficient evidence of carcinogenicity in animals as an increased incidence of malignant tumors: (1) In multiple species or strains; (2) in multiple experiments (preferably with different routes of administration or using different dose levels; or (3) to an unusual degree with regard to incidence, site, type of tumor, or age of onset. Limited evidence of carcinogenicity in animals, as defined by IARC, means that the data suggest a carcinogenic effect, but are limited because: (1) The studies involve a single species, strain, or experiment; (2) the experiments are restricted by inadequate dosage levels, inadequate duration of exposure to the agent, inadequate period of follow up, poor survival, too few animals, or inadequate reporting; or (3) the neoplasms produced often occur sponstaneously and, in the past, have been difficult to classify as malignant by histological criteria alone. Using the IARC definitions, the correct statement is that 35 percent of the 4, 5, and 6-ringed PNAs evaluated in this study showed sufficient evidence for animal carcinogenicity. An additional 29 percent showed limited evidence for animal carcinogenicity. The Agency has noted these changes and corrected the report as appropriate.

Second, the commenter questioned the Agency's conclusion that half of the 3-

ringed PNAs are suspect human or animal carcinogens. The Agency evaluated ten 3-ringed PNAs in its study. Of those ten compounds, one showed limited evidence for human carcinogenicity and two showed limited evidence for animal carcinogenicity. According to IARC, limited evidence of carcinogenicity in humans means that a casual interpretation is credible, but that alternative explanations, such as chance, bias, or confounding, could not adequately be excluded. An additional compound showed sufficient evidence for mutagenic activity in short-term tests, while an additional three of the ten compounds showed limited evidence for mutagenic activity in short-term tests. IARC defines sufficient evidence for mutagenic activity as a total of at least three positive results in at least two of the three test systems measuring DNA damage, mutagenicity, or chromosomal anomalies. Limited evidence for mutagenic activity is defined as at least two positive results, either from different endpoints or in systems representing two levels of biological complexity. Based upon these definitions, 30 percent of the 3- ringed PNAs show limited evidence for human or animal carcinogenicity. In addition, 10 percent show sufficient evidence for mutagenic activity in short-term tests and 30 percent show limited evidence for mutagenic activity in short-term tests. The Agency has noted these clarifications and corrected the report as appropriate.

Third, the commenter felt that contradictory statements were made in the report regarding the toxicity of 2-ringed PNAs. One sentence stated that data on the 2-ringed PNAs is insufficient to characterize their toxicity; another sentence states that there is no evidence that 2-ringed PNAs are carcinogens or mutagens.

Few of the 2-ringed PNAs have been tested adequately for carcinogenic or mutagenic effects by either animal studies or short-term studies. In most cases, the animal studies conducted have been inadequate for evalaution of the compounds carcinogenic potential. Most of the short-term tests performed on 2-ringed PNAs have shown negative results; however, a few of the tests have shown positive results. In summary, the tests that have been conducted on 2-ringed PNAs have been inadequate to determine their carcinogenic potential. The Agency has noted this comment and has amended the report to reflect this change.

The Agency received no other comments on any other aspect of the PNA report.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6905, 6912, 6921, and 6922).

2. In Appendix IX, add the following waste streams in alphabetical order:

Appendix IX—Waste Excluded under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
.	.	.
Amoco Oil Company	Wood River, IL	150 million gallons of DAF float from petroleum refining contained in four surge ponds after treatment with the Chemfix® stabilization process. This exclusion applies to the 150 million gallons of waste after chemical stabilization as long as the mixing ratios of the reagent with the waste are monitored continuously and do not vary outside of the limits presented in the demonstration samples, one grab sample is taken each hour from each treatment unit, composited, and EP toxicity tests performed on each sample. If the levels of lead or total chromium exceed 0.5 ppm in the EP extract, then the waste that was processed during the compositing period is considered hazardous, the treatment residue shall be pumped into bermed cells to ensure that the waste is identifiable in the event that removal is necessary
.	.	.

TABLE 2.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
.	.	.
Cincinnati Metropolitan Sewer District	Cincinnati, OH	Sluiced bottom ash sludge (approximately 25,000 cubic yards) contained in the South Lagoon, on September 13, 1985 which contains EPA Hazardous Waste Nos. F001, F002 F003, F004, and F005
.	.	.

[FR Doc. 85-21917 Filed 9-12-85; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Parts 420, 455 and 489

45 CFR Part 101

Medicare and Medicaid Programs; Fraud and Abuse

AGENCY: Office of The Secretary, HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule implements sections 2348 and 2370 of the Deficit Reduction Act respectively (1) by limiting payment for services furnished to beneficiaries by a home health agency or hospice whose provider agreement has been terminated, and (2) by expanding subpoena authority for civil monetary penalty hearings under Medicaid. In addition, this rule includes a series of technical changes to reflect the transfer of the responsibility for making fraud and abuse determinations from the Health Care Financing Administration (HCFA) to the Department's Office of Inspector General (OIG).

DATES: This regulation is effective on October 15, 1985.

Even though these regulations are published as final rules, we welcome comments on the provisions by October 28, 1985.

ADDRESSES: Address comments to: Office of Inspector General, Department of Health and Human Services, Attention: LRR–2, 330 Independence Avenue, SW., Room 5246, Washington, D.C. 20201.

If you prefer, you may deliver comments to Room 5246, 330 Independence Avenue, SW., Washington, D.C. In commenting please refer to file code *LRR–2*. Agencies and organizations are requested to submit comments in duplicate. Comments will be available for public inspection approximately two weeks from today in Room 5643, 330 Independence Avenue, SW., Washington, D.C., on Monday through Friday of each week from 9:00

a.m. to 5:00 p.m. Phone Number (202) 472–5270.

FOR FURTHER INFORMATION CONTACT: James Patton, (301) 594–3957.

SUPPLEMENTARY INFORMATION:

I. Payment for Home Health and Hospice Services After Termination of Provider Agreements

Section 2348 of the Deficit Reduction Act provides that whenever the Secretary terminates a provider agreement with a home health agency or a hospice, payments may be made for services furnished up to 30 days after the effective date of the termination to beneficiaries who were under a plan of care established prior to the effective date of the termination. Under the law in effect prior to the passage of the Deficit Reduction Act, payments for services furnished to these beneficiaries could be continued until the end of the calendar year in which the termination was effective.

In order to implement this technical amendment, we have made conforming changes to the regulations in §§ 455.208(c) and 455.213(b). In addition, we are revising §§ 420.115(c), 420.126(e), and 489.55 to correct the omission of hospice care services and to make other minor corrections.

II. Expanded Medicaid Subpoena Authority in Civil Monetary Penalty Hearings

45 CFR 101.115(b)(5) and 101.116(b)(2)(ii) originally limited the Department's subpoena power in a civil monetary penalty hearing to cases involving Medicare claims, since Administrative Law Judges who handle civil monetary penalty hearings had no statutory subpoena authority under Title XIX (Medicaid). Section 2370 of the Dificit Reduction Act enacted section 1918 of the Social Security Act to expand the Department's subpoena authority to encompass matters arising under Title XIX. We are amending sections 45 CFR 101.115 and 101.116 to reflect this statutory change.

III. Transfer of Fraud and Abuse Authorities Within the Department of Health and Human Services

On April 18, 1983, Secretary Margaret M. Heckler transferred the authorities for controlling fraud and abuse in the Department's health care financing programs from the Health Care Financing Administration to the Office of the Inspector General (48 FR 21662, May 13, 1983). Specifically, this delegation provides that the OIG will make determinations and effectuate sanctions under sections 1128, 1156(b), 1160(b) (as set forth prior to Pub. L. 97–248), 1862(d) (1) and (2) and 1866(b)(2) (D), (E), and (F).

In accordance with this delegation of authority, we have made conforming changes to HHS regulations in 42 CFR Parts 420, 455, and 489. The changes to regulations dealing with the sanction notification reflect the fact that the notification responsibilities are divided between HCFA and the OIG. In 42 CFR 420.109, 420.123, 420.124, 420.134, 455.210 and 455.230, we have stated that "HHS" will notify these parties to reflect this dual responsibility (i.e., HCFA continues to have the responsibility for notifying Medicare contractors and State agencies; the OIG is responsible for notifying the affected party, the public, and professional societies).

We have also modified 42 CFR 489.53 to state that "HHS" may terminate a provider agreement based on these violations in order to reflect the fact that OIG may terminate agreements for fraud and abuse violations reflected at § 489.53(a) (6), (7), and (8). The OIG was delegated the authority under section 1866(b)(2) (D), (E), and (F) to terminate a provider agreement based on a determination that the provider committed certain acts of fraud or abuse specified in these sections. HCFA has retained the responsibility for terminating provider agreements for all other types of violations specified in section 1866(b)(2), including non-compliance with the conditions of participation, failure on the part of the provider to submit requested information necessary for proper payment determinations, and failure of the provider to disclose information on convicted individuals and on its owners. The causes for termination are listed in the regulations at 42 CFR 489.53(a).

IV. Technical Changes

We have made four additional technical modifications. First, we have clarified our procedures concerning the reinstatement of providers who were previously excluded or terminated due to a fraud or abuse determination. In 42 CFR 420.134, we have added a new paragraph (b) that states that such providers must fulfill, or make arrangements to fulfill, all of the statutory and regulatory responsibilities of its previous provider agreement before such provider is reinstated. Second, we have added in 42 CFR 455.2 a definition for the term "furnished." This is the same definition presently contained in 42 CFR 420.2. In practice this definition has been used for suspensions under 42 Part 455 since May 1979 and reflects no modification to our existing policy. Third, we have included a definition for "suspension" in 42 CFR 420.2 that is consistent with the definition under 42 CFR 455.2.

In addition, we are correcting two errors in the civil monetary penalty regulations. First, through an oversight when the regulations were promulgated on August 26, 1983, a cross reference to the paragraph describing the "Amount of Assessment" (§ 101.104) was omitted from § 101.106(c) (1) and (2). These latter subparagraphs contain the guidelines for determining the amount of penalty and assessment to be imposed, and should contain a cross reference to the former paragraph. The second change relates to the handling of checks for witness fees and mileage in connection with subpoenas. The applicable regulation (45 CFR 101.116(b)(2)(ii)), requires the Department to issue a check for witness fees and mileage and to send the check with the subpoena. However, this requirement does not comport with the policy in Rule 45(c), Federal Rules of Civil Procedure, which provides that with respect to subpoenas in civil cases, "When the subpoena is issued on behalf of the United States or an officer or agency thereof, fees and mileage need not be tendered." Under the revised regulation, the Department will reimburse an individual for witness fees and mileage.

V. Impact Analyses

Executive Order 12291

We have determined that these regulations do not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291 because they will not have an annual effect on the economy of $100 million or more; cause a major increase in costs or prices for consumers, government agencies, industry, or a geographic region; or cause significant adverse effects on business or employment. We do not expect these regulations to have such an effect.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1930 (Pub. L. 96–354, 5 U.S.C. 604(a)) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues certain regulations that would have a significant economic impact on a substantial number of small businesses. The analysis is intended to explain what effect the regulatory action by the agency would have on small businesses and other small entities and to develop lower cost or burden alternatives. The law on which these regulations are based is specific, and

there is little leeway in implementing the requirements. Some of the sanctions that States and the Federal Government will impose as a result of these regulations will have an impact on small entities such as physicians, laboratories and other medical care providers. However, we do not anticipate that a substantial number of these small entities will be significantly affected by the regulations. Therefore, the Secretary certifies under 5 U.S.C. 605(b) that a regulatory flexibility analysis is not required for these regulations.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96-511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirement inherent in a proposed and final rule. These interim final rules do not contain information collection requirements or increase Federal paperwork burden on the public or private sector.

Waiver of Notice of Proposed Rulemaking

We find good cause for dispensing with a notice of proposed rulemaking. These rules implement sections 2348 and 2370 of the Deficit Reduction Act, effective on July 18, 1984. These changes are conforming amendments that do not expand upon the statute and merely paraphrase the statutory provisions. This rule also makes technical changes in existing regulations primarily to reflect the transfer of the fraud and abuse determination responsibility from HCFA to the OIG.

We are, however, soliciting public comment concerning the rule. We will carefully consider all comments and publish in the **Federal Register** any revisions resulting from the comments.

List of Subjects

42 CFR Part 420

Abuse, Administrative practice and procedures, Contracts (Agreements), Conviction, Convicted, Courts, Exclusion, Fraud, Health care, Health facilities, Health Maintenance Organizations (HMO), Health professions, Health Suppliers, Information (Disclosure), Lawyers, Medicaid, Medicare, Penalties, Reporting and recordingkeeping requirements, Supervision, Utilization and Quality Control Peer Review Organizations (PRO).

42 CFR Part 455

Abuse, Administrative practice and procedure, Claim, Conviction, Convicted, Exclusion, Grant-in-Aid program—health, Health care, Health facilities, Health professions, Information (Disclosure), Investigations, Medicaid, Medicaid Fraud Control Units, Medicaid personnel, Penalties, Reporting requirements, Suspension.

42 CFR Part 489

Clinics, Health care, Health facilities, Medicare, Provider Agreements, Rural health clinics, Termination procedures.

45 CFR Part 101

Penalties, Medicare, Medicaid, Administrative practice and procedures, Archives and records, Grant programs—social programs, Maternal and Child health.

TITLE 42—PUBLIC HEALTH

1. 42 CFR Chapter IV, Parts 420, 455, and 489 are amended as set forth below:

PART 420—PROGRAM INTEGRITY

A. Part 420 is amended as set forth below:

1. The authority citation for Part 420 continues to read as follows:

Authority: Secs. 1102, 1128, 1862(d), 1862(e), 1866(b)(2), (D), (E), and (F), 1871, 1902(a)(39), and 1903(i)(2) of the Social Security Act (42 U.S.C. 1302, 1320a-7, 1395y(d), 1395y(e), 1395cc(b)(2) (D), (E), and (F), 1395hh, 1396a(a)(39), and 1396b(i)(2)), unless otherwise noted.

2. In Subpart A, § 420.2 is amended by adding, in alphabetical order, definitions for "HHS", "OIG", "PRO" and "Practitioner", and by revising the definitions for "Provider", "Supplier" and "Suspension" to read as follows:

§ 420.2 Definitions.

* * * * *

"HHS" means Department of Health and Human Services.

"OIG" means Office of Inspector General of the Department of Health and Human Services.

"PRO" means Utilization and Quality Control Peer Review Organization as created by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248.

"Practitioner" means a physician or other individual licensed under State law to practice his or her profession.

"Provider" means (a) hospital, a skilled nursing facility, a comprehensive outpatient rehabilitation facility, a home health agency, or a hospice that has in effect an agreement to participate in Medicare, Medicaid, or the social services programs, or (b) a clinic, a rehabilitation agency, or a public health agency that has a similar agreement, but only to furnish outpatient physical therapy or speech pathology services.

* * * * *

"Supplier" or *"supplier of services"* means an individual or entity, other than a provider or practitioner, that furnishes health care services under Medicare, Medicaid, or the social services programs.

"Suspension" means that items or services furnished by a specified party who has been convicted of a program related offense in a Federal, State, or local court will not be reimbursed under Medicare or Medicaid.

Subpart B—Exclusion or Suspension of Practitioners, Providers, Suppliers of Services, and Other Individuals

3. The authority citations for Part 420, Subpart B, read as follows:

Authority: Secs. 1102, 1128, 1862(d), 1862(e), 1866(b)(2) (D), (E), and (F), 1871, 1902(a)(39), and 1903(i)(2) of the Social Security Act (42 U.S.C. 1302, 1320a-7, 1395y(d), 1395y(e), 1395cc(b)(2) (D), (E), and (F), 1395hh, 1396a(a)(39), and 1396b(i)(2)).

4. In Subpart B, § 420.101 is revised to read as follows:

Exclusions or Terminations on Basis of Fraud or Abuse

§ 420.101 Bases for exclusions for fraud or abuse; exceptions.

(a) Payment will not be made under Medicare for items or services furnished by a practitioner, provider, or other supplier of services that the OIG determines has;

(1) Knowingly and willfully made or caused to be made any false statement or misrepresentation of a material fact in a request for payment under Medicare or for use in determining the right to payment under Medicare.

(2) Furnished items or services that are substantially in excess of the beneficiary's needs or of a quality that does not meet professionally recognized standards of health care; or

(3) Submitted or caused to be submitted bills or requests for payment containing charges (or costs) that are substantially in excess of its customary charges (or costs).

(b) The OIG's determination under paragraph (a)(2) of this section, that the items or services furnished were excessive or of unacceptable quality, will be made on the basis of reports, including sanction reports, from the following sources:

(1) The PSRO or PRO for the area served by the practitioner, provider, or other supplier of services;

(2) State or local licensing or certification authorities;

(3) Peer review committees of fiscal agents or contractors;

(4) State or local professional societies; or

(5) Other sources deemed appropriate by the OIG.

4a. Section 420.105 is revised to read as follows:

§ 420.105 Notice of proposed exclusion or termination for fraud or abuse.

(a) If the OIG proposes to deny reimbursement in accordance with § 420.101, or to terminate a provider agreement in accordance with § 489.53(a) (6), (7), or (8) of this chapter, it will send written notice of its intent and the reasons for the proposed exclusion or termination to the practitioner, provider or other supplier of services.

(b) Within 30 days of the date on the notice, the party may submit: (1) Documentary evidence and written argument against the proposed action; or (2) A written request to present evidence or argument orally to an OIG official.

(c) For good cause shown by the party, the OIG may extend the 30-day period.

4b. Section 420.107 (a) and (b) are revised to read as follows:

§ 420.107 Notice of exclusion or termination to affected party.

(a) If, after a party has exhausted the procedures specified in § 420.105, the OIG decides to exclude the party under § 420.101 or to terminate a provider agreement under § 489.53(a) (6), (7), or (8), it will send written notice of its decision to the affected party at least 15 days before the decision becomes effective.

(b) The notice will state (1) the reasons for the decision; (2) the effective date; (3) the extent of its applicability to participation in the Medicare program; (4) the earliest date on which the OIG will accept a request for reinstatement; (5) the requirements and procedures for reinstatement; and (6) the appeal rights, available to the excluded party.

* * * * *

4c. Section 420.109 is revised to read as follows:

§ 420.109 Notice to others regarding exclusion or termination.

HHS will also give notice of exclusion or termination and the effective date to the public, to beneficiaries (in accordance with § 420.115(b)), and, as appropriate, to:

(a) State Medicaid and title V agencies, State Medicaid Fraud Control Units, and PROs.

(b) Hospitals, skilled nursing facilities, home health agencies and health maintenance organizations (HMOs);

(c) Medical societies and other professional organizations;

(d) Contractors, health care prepayment plans and other affected agencies and organizations; and

(e) The State or local authority responsible for licensing or certifying the excluded party.

4d. Section 420.114(b) is revised to read as follows:

§ 420.114 Duration of exclusion.

* * * * *

(b) The exclusion notice will specify the earliest date on which the excluded party may seek reinstatement. In setting that date, the OIG will consider:

(1) The number and nature of the program violations and other related offenses:

(2) The nature and extent of any adverse impact the violations have had on beneficiaries:

(3) The amount of any damages incurred by the Medicare program:

(4) Whether there are any mitigating circumstances:

(5) Any other facts bearing on the nature and seriousness of the violations or related offenses; and

(6) The previous sanction record of the excluded party under the Medicare or Medicaid program.

* * * * *

4e. Section 420.115 is revised to read as follows:

§ 420.115 Effect of exclusion.

(a) *Denial of payments during exclusion.* (1) Except as provided in paragraph (c) of this section, payment will not be made to an excluded practitioner, provider, or other supplier of services (that has accepted assignment of beneficiary claims), for items or services furnished on or after the effective date of exclusion specified in the exclusion notice.

(2) An assignment of a beneficiary's claim that is made on or after the effective date of exclusion will not be valid.

(b) *Denial of payment to beneficiaries.* If a beneficiary submits claims for items or services furnished by an excluded practitioner, provider, or other supplier of services after the effective date of the exclusion:

(1) HCFA will pay the first claim submitted by the beneficiary and immediately given notice of the exclusion.

(2) HCFA will not pay the beneficiary for items or services furnished by an excluded party more than 15 days after the date on the notice to the beneficiary or after the effective date of the exclusion, whichever is later.

(c) *Exceptions.* Payment is available for up to 30 days after the effective date of exclusion for—

(1) Inpatient hospital services (including inpatient psychiatric hospital services) or posthospital extended care services furnished to a beneficiary who was admitted before the effective date of exclusion; and

(2) Home health services and hospice care furnished under a plan established before the effective date of exclusion.

4f. Sections 420.122 and 420.123(a) are revised to read as follows:

Suspensions on Basis of Conviction of Program-Related Crime

§ 420.122 Bases for suspension for conviction of program-related crime and individuals affected.

(a) The OIG will suspend from participation in Medicare any party specified in paragraph (b) of this section who is convicted on or after October 25, 1977, of a criminal offense related to—

(1) Participation in the delivery of medical care or services under the Medicare, Medicaid, or the social services program; or

(2) Participation in the performance of management or administrative services relating to delivery of medical care or services under the Medicare, Medicaid, or the social services program.

(b) The suspension from participation in Medicare for conviction of a program-related crime, specified in paragraph (a) of this section, will apply to—

(1) Practitioners;

(2) Suppliers that are wholly owned by a convicted individual;

(3) Individuals who are employees, administrators, or operators of providers; and

(4) Any other individuals who, in any capacity, are receiving payment for providing services under Medicare, Medicaid, or the social services programs.

(c) The OIG will also require the State Medicaid agency to suspend any convicted party specified in paragraph (a) and (b) of this section whether or not that party is eligible to participate in the Medicare program.

§ 420.123 Notice to affected party of suspension for conviction of program-related crime.

(a) Whenever the OIG has conclusive information that a practitioner or other individual has been convicted of a crime related to his or her participation in the delivery of medical care or services under the Medicare, Medicaid, or the social services program, it will give the

party written notice that he or she is suspended from participation in Medicare beginning 15 days from the date on the notice. In the case of a party who is not eligible to participate in Medicare, HHS will provide written notice to the affected party that the State Medicaid agency will be required to suspend the party from Medicaid participation.

* * * * *

4g. Section 420.124 is revised to read as follows:

§ 420.124 Notice to others regarding suspension for conviction of program-related crime.

(a) HHS will also notify the following groups of the suspension concurrently with its notification to the suspended party:

(1) Any provider or supplier in which the suspended party is known to be serving as an employee, administrator, operator, or in which the party is serving in any other capacity and is receiving payment for providing services. The purpose of the notice is to inform the provider or supplier that Medicare payment will be denied for any services performed by the suspended party on or after the effective date of the suspension. However, the lack of this notice will not affect HCFA's ability to deny payment for these services;

(2) The State Medicaid agencies, in order that they can promptly suspend the party from participation in the Medicaid program (see § 455.210 of the chapter);

(3) The State or local authority responsible for the licensing or certification of the suspended party;

(4) Beneficiaries (in accordance with § 420.115(b));

(5) The public; and

(6) As appropriate—

(i) Title V agencies, State Medicaid Fraud Control Units, and PROs;

(ii) Hospitals, skilled nursing facilities, home health agencies, and health maintenance organizations (HMOs);

(iii) Medical societies and other professional organizations; and

(iv) Contractors, health care prepayment plans, and other affected agencies and organizations.

(b) The notice to the licensing or certifying authority will be accompanied by a request that the authority:

(1) Make appropriate, investigations;

(2) Invoke any sanctions available under State law and the authority's policies; and

(3) Keep HCFA and the OIG fully and currently informed of any action it takes.

4h. Section 420.125 is amended by revising paragraph (b) to read as follows:

§ 420.125 Duration of suspension.

* * * * *

(b) The suspension notice will specify the earliest date on which the suspended individual may seek reinstatement. In setting that date, the OIG will consider:

(1) The number and nature of the program violations and other related offenses;

(2) The nature and extent of any adverse impact the violations have had on beneficiaries;

(3) The amount of the damages incurred by the Medicare, Medicaid, and the social services programs;

(4) Whether there are any mitigating circumstances;

(5) The length of the sentence imposed by the court;

(6) Any other facts bearing on the nature and seriousness of the program violations; and

(7) The previous sanction record of the suspended party under the Medicare or Medicaid program.

4i. Section 420.126 is amended by revising paragraph (e) to read as follows:

§ 420.126 Effect of suspension.

* * * * *

(e) *Exceptions.* Payment is available for up to 30 days after the effective date of the suspension for—

(1) Inpatient hospital services (including inpatient psychiatric hospital services) or posthospital extended care furnished to a beneficiary who was admitted before the effective date of the suspension; and

(2) Home health services and hospice care furnished under a plan established before the effective date of the suspension.

5. In Subpart B, § 420.130 is revised to read as follows:

Reinstatement Procedures

§ 420.130 Timing and method of request for reinstatement.

(a) A practitioner, provider, or supplier of services excluded from participation for fraud and abuse under § 420.101 and a party suspended from participation for program-related crimes under § 420.122 may request reinstatement at any time after the date specified in the notice of exclusion or suspension by submitting to the OIG or authorizing the OIG to obtain:

(1) Statements from private health insurers, indicating whether there have been any questionable claims submitted during the period of exclusion or suspension;

(2) Statements from peer review bodies, probation officers, where appropriate, or professional associates, as required by the OIG, attesting to their belief, supported by facts, that the violations that led to exclusion or conviction will not be repeated; and

(3) A statement from the affected party setting forth the reasons why he should be reinstated.

6. In Subpart B, § 420.132 is amended by revising the introductory paragraph and designating it as paragraph (a), by redesignating existing paragraphs (a) and (b) as (1) and (2), and by adding a new paragraph (b) to read as follows:

§ 420.132 Criteria for action on request for reinstatement.

(a) *OIG criteria for action.* The OIG will not approve a request for reinstatement unless it is reasonably certain that the violations that led to exclusion or conviction will not be repeated. In making this determination, the OIG will consider, among other factors:

(1) Whether the applicant has been convicted in Federal, State or local court for activities related to his program participation; and

(2) Whether the State or local licensing authority has taken any adverse action against the party since the date of exclusion or suspension.

(b) *Additional criteria for providers requesting reinstatement.* When the OIG approves a request from a provider requesting reinstatement, such provider may not be reinstated until HHS finds that the provider has fulfilled or has made satisfactory arrangements to fulfill all of the statutory and regulatory responsibilities specified in its agreement.

7. In Subpart B, § 420.134 is revised to read as follows:

§ 420.134 Notice of action on request for reinstatement.

(a) *Notice of approval of request.* If the OIG approves the request for reinstatement, HHS will:

(1) Give written notice to the excluded or suspended party specifying the date when program participation may resume; and

(2) Given notice to the public and, as appropriate, to title V State agencies, State Medicaid agencies and Medicaid Fraud Control Units, hospitals, skilled nursing facilities, home health agencies, medical societies, other professional societies or associations, contractors, health care prepayment plans, health maintenance organizations (HMOs),

PROs, the State or local licensing or certifying authority, and other affected organizations.

(b) *Notice of denial of request.* (1) If the OIG does not approve the request for reinstatement, it will give written notice to the party.

(2) Within 30 days of the date on the notice, the excluded or suspended party may submit:

(i) Documentary evidence and written argument against the continued exclusion or suspension; or

(ii) A written request to present evidence or argument orally to an OIG official. (The decision to continue the exclusion or suspension is not an initial determination under the provisions of Part 405, Subpart O of this chapter.)

(c) *Action following consideration of additional evidence.* After evaluating any additional evidence submitted by the excluded or suspended party (or at the end of the 30 day period, if none is submitted), the OIG will send written notice:

(1) Confirming the denial, and indicating that a subsequent request for reinstatement will not be accepted until 6 months after the date of confirmation; or

(2) Approving reinstatement and specifying the date when program participation may be resumed. If the OIG approves reinstatement, HHS will notify the public and, as appropriate, the agencies and institutions as specified in paragraph (a)(2) of this section.

8. In Subpart B, § 420.136 is amended by revising paragraph (a) to read as follows:

§ 420.136 Reversed or vacated convictions of program related crime.

(a) The OIG will reinstate a suspended party whose conviction has been reversed or vacated.

* * * * *

PART 455—PROGRAM INTEGRITY

B. Part 455 is amended as set forth below:

1. The authority citations for Part 455 continues to read as follows:

Authority. Secs. 1102, 1124, 1126, 1128, 1902(a)(4)(A), 1902(a)(30), 1902(a)(36), 1902(a)(39), 1903(a)(6), 1903(b)(3), 1903(i)(2), 1903(n), 1903(q), and 1909 of the Social Security Act; 42 U.S.C. 1302, 1302a–3, 1302a–5, 1302a–7, 1396a(a)(4)(A), 1396a(a)(30), 1396a(a)(36), 1396a(a)(39), 1396b(a)(6), 1396b(b)(3), 1396b(i)(2) 1396b(n), 1396b(q), and 1396h.

2. Section 455.2 is amended to add definitions, in alphabetical order, for "Furnished" and "PRO", to read as follows:

§ 455.2 Definitions.

* * * * *

"Furnished" refers to items and services provided directly by, or under the direct supervision of, or ordered by, a practitioner or other individual (either as an employee or in his or her own capacity), a provider, or other supplier of services. (For purposes of denial of reimbursement within this Part, it does not refer to services ordered by one party but billed for and provided by or under the supervision of another.)

* * * * *

"PRO" means Utilization and Quality Control Peer Review Organization as created by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248.

* * * * *

Subpart C—Exclusion of Providers and Suspension of Practitioners

3. In Subpart C, § 455.206(c) is revised to read as follows:

§ 455.206 Notice of exclusion for fraud and abuse.

* * * * *

(c) The agency must also give notice of the exclusion and the effective date to the OIG, HCFA, the public, and, as appropriate, to—

(1) Recipients;

(2) PROs;

(3) Providers and organizations;

(4) Medical societies and other professional organizations;

(5) State licensing boards and affected State and local agencies and organizations; and

(6) Medicare carriers and intermediaries.

4. In Subpart C, § 455.208, paragraph (c) is revised to read as follows:

§ 455.208 Denial of FFP: Parties excluded or terminated under Medicare for fraud and abuse.

* * * * *

(c) *Exception: FFP available in payment made during exclusion or after termination.* Payment is available for up to 30 days after the effective date of the exclusion or termination for—

(1) Inpatient hospital services (including inpatient psychiatric hospital services) and posthospital extended care services furnished to a beneficiary who was admitted before the effective date of the exclusion or termination; and

(2) Home health services and hospice care furnished under a plan established before the effective date of the exclusion or termination.

* * * * *

5. In Subpart C, § 455.210 is revised to read as follows:

§ 455.210 Bases for suspension for conviction of program-related crimes.

The agency must suspend from the Medicaid program any party who has been suspended from participation in Medicare under § 420.122 of this chapter for conviction of a program-related crime. The agency must also suspend any convicted party who is not eligible to participate in Medicare whenever HHS directs such action.

6. In Subpart C, § 455.211, paragraph (a) is revised to read as follows:

§ 455.211 Duration of suspension.

(a) The suspension under Medicaid must be effective on the date established by the OIG for suspension under Medicare, and must be for the same period as the Medicare suspension. In the case of a convicted party who is not eligible to participate in Medicare, the suspension will be effective on the date and for the period established by the OIG.

* * * * *

7. In Subpart C, § 455.212, paragraph (a) is revised to read as follows:

§ 455.212 Notification of State or local convictions of crimes against Medicaid.

(a) The agency must notify the OIG whenever a State or local court has entered a judgment of conviction against an individual who is receiving reimbursement under Medicaid, for a criminal offense related to participation in the delivery of medical care or services under the Medicaid program.

* * * * *

8. In Subpart C, § 455.213, paragraph (b) is revised to read as follows:

§ 455.213 Effect of suspension.

* * * * *

(b) *Circumstances under which payment may be made after a suspension.* Payment is available for up to 30 days after the effective date of the suspension for—

(1) Inpatient hospital services (including inpatient psychiatric hospital services) and posthospital extended care services furnished to a beneficiary who was admitted before the effective date of the suspension; and

(2) Home health services and hospice care furnished under a plan established before the effective date of the suspension.

9. In Subpart C, § 455.214 is revised to read as follows:

§ 455.214 Waiver of suspension of parties.

(a) *Request.* The agency may request the OIG to waive suspension of a party under § 455.210 if it concludes that, because of the shortage of providers or

other health care personnel in the area, individuals eligible to receive Medicaid benefits would be denied adequate access to medical care.

(b) *Notice of waiver of suspension.* The OIG will notify the agency if and when it waives suspension in response to the agency's request.

10. In Subpart C, § 455.230 is revised to read as follows:

Reinstatement Procedures

§ 455.230 Reinstatement of parties suspended under Medicare.

(a) The agency may not reinstate in the Medicaid program a party that has been suspended from Medicare or suspended at the direction of HHS until HHS notifies the agency that the party may be reinstated.

(b) If HHS notifies the agency that it has reinstated a party under Medicare, the agency must automatically reinstate the party under Medicaid effective on the date of reinstatement under Medicare, unless a longer period of suspension was established in accordance with the State's own authorities and procedures.

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

C. Part 489 is amended as set forth below:

1. The authority citation for Part 489 continues to read as follows:

Authority: Secs. 1102, 1861, 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc, and 1395hh).

2. In Subpart E, § 489.53 is amended by revising the title, introductory paragraph (a) and paragraphs (a)(5) and (8), as well as by revising paragraphs (b)(1) and (2) and (c), to read as follows:

§ 489.53 Termination by HHS.

(a) *Cause for termination.* HHS may terminate an agreement if it determines that any of the failings listed in this paragraph (a) is attributable to the provider.

* * * * *

(5) It refuses to permit examination of its fiscal or other records by, or on behalf of HHS, as necessary for verification of information furnished as a basis for payment under Medicare.

* * * * *

(8) It has furnished items or services which the OIG has determined to be substantially in excess of the needs of individuals or of a quality that fails to meet professionally recognized standards of health care. (See § 420.101 of this chapter.) HHS will not terminate a provider agreement under this clause if it has waived a disallowance with respect to the services in question on the grounds that the provider and the beneficiary could not reasonably be expected to know that payment would not be made. (*See* section 1879(a) of the Act (42 U.S.C. 1395pp(a))).

* * * * *

(b) *Notice of termination.* (1) HHS will give the provider notice of termination at least 15 days before the effective date of termination of the agreement.

(2) HHS will concurrently give notice of termination to the public.

* * * * *

(c) *Appeal by the provider.* A provider may appeal a termination of its agreement by HHS, in accordance with Subpart O of Part 405 of this chapter. The termination of a provider agreement on grounds specified in paragraph (a)(6), (a)(7), or (a)(8) of this section is subject to the additional procedures specified in §§ 420.105 through 420.109 of this chapter.

3. In Subpart E, § 489.55 is revised to read as follows:

§ 489.55 Exceptions to effective date of termination.

Payment is available for up to 30 days after the effective date of termination for—

(a) Inpatient hospital services (including inpatient psychiatric hospital services) and posthospital extended care services furnished to a beneficiary who was admitted before the effective date of termination; and

(b) Home health services and hospice care furnished under a plan established before the effective date of termination.[1]

4. In Subpart E, § 489.57 is revised to read as follows:

§ 489.57 Reinstatement after termination.

When an agreement has been terminated in accordance with the provisions of this subpart, HHS will not accept a new agreement from that provider unless the following conditions are met.

(a) HHS finds that the reason for termination of the previous agreement has been removed and there is reasonable assurance that it will not recur.

(b) HHS finds that the provider has fulfilled, or has made satisfactory arrangements to fulfill, all of the statutory and regulatory responsibilities of its previous agreement.

[1] For termination before July 18, 1984 payment was available through the calendar year in which the termination was effective.

TITLE 45—PUBLIC WELFARE

PART 101—CIVIL MONEY PENALTIES AND ASSESSMENTS

II. 45 CFR Subtitle A, Part 101 is amended as set forth below:

1. The authority citations for Part 101 continues to read as follows:

Authority: Secs. 1102, 1128, and 1128A of the Social Security Act (42 U.S.C. 1302, 1320a–7 and 42 U.S.C. 1320a–7a).

2. In § 101.100, paragraph (a) is revised to read as follows:

§ 101.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128(c) and 1128A of the Social Security Act (42 U.S.C. 1370a–7(c) and 1320a–7a).

* * * * *

3. In § 101.106, paragraphs (c) (1) and (2) are revised to read as follows:

§ 101.106 Determinations regarding the amount of the penalty and assessment.

* * * * *

(c) As guidelines for determining the amount of the penalty and assessment to be imposed, for every item or service subject to a determination under § 101.102:

(1) If there are substantial or several mitigating circumstances, the aggregate amount of the penalty and assessment should be set at an amount sufficiently below the maximum permitted by § 101.103 and § 101.104, to reflect that fact.

(2) If there are substantial or several aggravating circumstances, the aggregate amount of the penalty and assessment should be set at an amount sufficiently close to or at the maximum permitted by § 101.103 and § 101.104, to reflect that fact.

* * * * *

4. In § 101.115, paragraph (b)(5) is revised to read as follows:

§ 101.115 Authority of ALJ.

* * * * *

(b) The ALJ shall have the authority to:

* * * * *

(5) Issue subpoenas in hearings involving Medicare and Medicaid claims.

5. In § 101.116, paragraph (b)(2) is revised to read as follows:

§ 101.116 Rights of parties.

* * * * *

(b) * * *

(2)(i) In all hearings, it shall be the obligation of each party to produce for examination any person, along with such documents as may be requested, at

the time and place, and on the date set forth in a notice to appear as witness, if that party has control over such person.

(ii) In hearings involving Medicare and Medicaid claims, a notice to appear as witness may be accompanied by an administrative subpoena. A party who desires the issuance of a subpoena shall, not less than 15 days prior to the time fixed for a hearing, file with the ALJ a written request therefor, designating the witness(es) or document(s) to be produced and describing the address and location thereof with sufficient particularity to permit such witness(es) or document(s) to be found. A subpoena issued under this section shall be in the name of the Secretary. The party requesting the subpoena shall pay the cost of service and the fees and the mileage of any witnesses so subpoenaed, as provided in 28 U.S.C. 1821. Subpoenas shall be served by the party requesting issuance in the manner provided in § 205(d) of the Act. A check for witness fees and mileage shall accompany the subpoena when served. When a subpoena is issued on behalf of the Inspector General, a check for witness fees and mileage need not accompany the subpoena when served.

(Catalog of Federal Domestic Assistance Programs, No. 13.714, Medical Assistance Program; No. 13.773, Medicare-Hospital Insurance Program; and No. 13.744, Medicare-Supplementary Medical Insurance Program)

Dated: May 3, 1985.

R.P. Kusserow,

Inspector General, Department of Health and Human Services.

Approved: July 24, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-21877 Filed 9-12-85; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 50943-5043]

Regulations Governing the Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Final rule; technical revocation.

SUMMARY: The National Marine Fisheries Service (NMFS) issues this final rule to remove expired material from its regulations governing the taking and importing of marine mammals. In 1977, the NMFS published expedited procedures governing formal hearings in order to consider in a timely manner, the merits of issuing a general permit to the American Tunaboat Association and to render a decision on or before January 1, 1978. These procedural regulations expired at the conclusion of that hearing process and are no longer valid.

EFFECTIVE DATE: September 13, 1985.

FOR FURTHER INFORMATION CONTACT: T. J. McIntyre, (Marine Resources Management Specialist, Office of Protected Species & Habitat Conservation, NMFS), 202/634-7529.

SUPPLEMENTARY INFORMATION: On July 13, 1977 (42 FR 35967), the NMFS published expedited procedures governing conduct during formal hearings held under section 103(d) of the Marine Mammal Protection Act. These expedited procedures were necessary to assure a decision on the issuance of a general permit and certificates of inclusion to the American Tunaboat Association by January 1, 1978. These procedural regulations terminated on December 23, 1977, the date of publication of the Director's final decision on the matter (42 FR 64548). This rule serves to remove this expired material from Chapter 50 of the Code of Federal Regulations, Part 216.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: September 9, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 216—[AMENDED]

1. The authority citation for 50 CFR Part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.* unless otherwise stated.

PART 216—APPENDIX [REMOVED]

2. 50 CFR Part 216—Appendix is hereby revoked and removed.

[FR Doc. 85-22026 Filed 9-12-85; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 178
Friday, September 13, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 27

Revised Requirements for Delayed Certification

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rulemaking would amend the regulation for delayed delivery of cotton on cotton futures contracts. The amendment would simplify the procedure and facilitate the more orderly and efficient delivery of cotton for delayed delivery on futures contracts.

DATE: Comments must be submitted on or before October 15, 1985.

ADDRESS: Written comments may be sent to Loyd R. Frazier, Chief, Marketing Service Branch, Cotton Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Loyd R. Frazier, (202) 447–2147.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in accordance with Executive Order 12291 and has been determined not to be a "major rule" since it does not meet the criteria for a major regulatory action as stated in the order. William T. Manley, Deputy Administrator, AMS has certified that this action would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the changes made to the present regulations would merely simplify the procedure for delayed delivery on cotton futures contracts and would result in reduced paperwork for all size entities. No new costs or additional requirements are being imposed on the affected industry or others.

Background

The U.S. Cotton Futures Act (90 Stat. 1841–46; 7 U.S.C. 15b; the "Act") requires that cotton delivered under futures contracts shall be in accordance with the classification as assigned pursuant to regulations of the Secretary of Agriculture (7 CFR Part 27) by such officer or officers of the Government designated for such purpose.

Under the Act, all cotton delivered under a futures contract is required to have, on the date fixed for delivery, USDA classification certificates covering the cotton involved in the transaction. The certificates are issued by the Cotton Division of AMS and show the results of the classification of the cotton as to grade, length of staple, and micronaire determination (7 CFR 27.39).

There is a procedure allowing for delayed certification when cotton classification certificates have not been issued by delivery day (7 CFR 27.52–56). In such instances, the regulations require that the tenderer give notice of delayed certification to the receiver of the cotton as well as the Marketing Services Office, Cotton Division, have the cotton duly inspected and sampled by an exchange inspection agency and have the samples delivered to the Cotton Division not later than the date of issuance of the transferable notice of delivery of cotton subject to a cotton futures contract. These requirements would not change under the proposed amendment.

Proposed Amendment

The present regulation that would be amended (7 CFR 27.55) requires that, in lieu of cotton class certificates on delivery day, the tenderer must present to the Area Director, Cotton Division a written notice identifying each bale and stating its grade to the best of the tenderer's knowledge and belief. This written notice is otherwise known as the "deliverer's class". This notice is then validated by a Cotton Division representative indicating that written notice of delayed delivery has been made and samples were received by the Marketing Services Office prior to the date of giving the transferable notice of delivery to the receiver of the cotton. The tenderer must deliver the written notice to the receiver of the cotton along with the warehouse receipt for each bale. Presently, prior to issuing cotton class certificates, the warehouse receipts must be returned to the Marketing Services Office for appropriate processing and then, in turn, returned to the receiver.

The Cotton Division, in consultation with the New York Cotton Exchange, has determined that this procedure could be simplified by eliminating the written notice by the Area Director, Cotton Division. Instead the tenderer would present to the receiver a receipt issued by an exchange inspection agency which inspects and samples cotton that is pending certification. This receipt would certify that the warehouse receipts have been received by the exchange inspection agency that they represent cotton weighed and sampled in an approved warehouse and that the warehouse receipts are in custody of the Cotton Division. It is the exchange inspection agency's receipt that could be delivered to the receiver of the cotton on delivery day in lieu of cotton class certificates and the warehouse receipts. The new procedure would eliminate the need for a deliverer's class and, the need for repetitive procedure. It will also eliminate the requirement of the receiver having to return warehouse receipts to the Cotton Division for certification when the classing is completed as they will remain in USDA custody.

The Department proposes to make this change by completely revising § 27.55 of the cotton futures regulations. In addition, § 27.56 which describes certain obligations of the person making the tender in regard to timely delivery of class certificates to the receiver after issuance would be removed since the requirements provided therein would be revised and incorporated into the proposed § 27.55. References to delivery of cotton class certificates by a specified hour would be deleted in favor of language which would require that tenderer furnish the cotton class certificates upon issuance by the Marketing Services Office.

Changes in §§ 27.47 and 27.52, of the regulations are being proposed to delete references to § 27.56, which would be removed under this proposal.

List of Subjects in 7 CFR Part 27

Classification, Cotton, Micronaire, Samples, Spot markets.

Accordingly, it is proposed to amend the regulations of 7 CFR Part 27 governing cotton classification under

cotton futures legislation as shown. The Table of Contents would be amended accordingly.

PART 27—[AMENDED]

1. The authority citation for Part 27 continues to read as follows:

Authority: 90 Stat. 1841–1846; 7 U.S.C. 15b.

§§ 27.47 and 27.52 [Amended]

2. In §§ 27.47 and 27.52 it is proposed to remove all references to "27.56" an replace it with "27.55".

3. Section 27.55 would be amended by revising it to read as follows:

§ 27.55 Requirements in lieu of cotton class certificates on delivery day.

If on the morning of the delivery day specified in the transferable notice the cotton class certificates covering the cotton involved are not ready for delivery when called for, the tenderer of the cotton shall present to the receiver a receipt issued by an exchange inspection agency certifying that warehouse receipts, listed by lot numbers, representing cotton weighed and sampled in an approved warehouse under the supervision of such agency, have been received by the exchange inspection agency and are in the custody of the Cotton Division Marketing Services Office where certification requests are required to be filed. The requirements of §§ 27.52–27.55 shall be complied with prior to delivery by the tenderer of the agency's receipt to the receiver. Upon issuance by Marketing Services Office, the tenderer shall furnish to the receiver the cotton class certificates complying with the regulations in this subpart, showing the cotton to be tenderable on a basis grade contract.

§ 27.56 [Removed]

4. Section 27.56 would be removed.

Dated: September 9, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–21907 Filed 9–12–85; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 51

U.S. Standards for Grades of Kiwifruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action would amend the voluntary United States Standards for Grades of Kiwifruit. The Kiwifruit Growers of California have requested that the grade standards be amended by changing the shape requirement for the U.S. Fancy grade, the application of tolerances section, revising the requirements of the definition of fairly uniform in size, and adding a section establishing the sample size used for grade determination. The Agricultural Marketing Service has the responsibility, in cooperation with industry, to maintain current grade standards.

DATE: Comments must be received on or before October 15, 1985.

ADDRESS: Interested persons are invited to submit written comments concerning the proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2069, South Building, Washington, D.C. 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Francis J. O'Sullivan, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 475–3125.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA Procedures and Executive Order 12291 and has been designated as a "nonmajor" rule. It will not result in an annual effect of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601), because it reflects current marketing practices.

The voluntary United States Standards for Grades of Kiwifruit became effective September 1982. Recently the Kiwifruit Growers of California requested that the standards be amended to change the shape requirement in the U.S. Fancy grade and the application of tolerances, to redefine fairly uniform in size and to add a section for sample size.

The U.S. Fancy grade requires fruit to be well formed. Due to varying degrees of shape encountered over the years, it is felt that well formed is too restrictive. This proposal would allow U.S. Fancy or U.S. No. 1 to be fairly well formed.

Recent changes in marketing practices include packing kiwifruit in consumer size containers. The present application of tolerances section applies to individual containers but does not make a distinction for consumer containers. This proposal would bring the application of tolerances in line with current industry practices.

A provision would be added to the application of tolerances permitting one fruit which is frozen or affected by decay in any consumer container, provided that the average percentage of defects for the entire lot not exceed lot tolerances. Present application of tolerances allows two such fruit in any container provided the average for the entire lot does not exceed the tolerance.

The present standards define "fairly uniform size" to mean that fruit in any container may not vary more than ¼ inch in diameter. Industry has pointed out that limiting diameter variation to only ¼ inch for large size fruit is too restrictive. Therefore, this proposal incorporates a sliding scale approach to the problem by allowing a greater variation in diameter for larger fruit than for fruit of smaller size. For fruit in containers numerically marked to denote size, fairly uniform in size would allow a variation of not more than ½ inch in sizes 30 or larger, ⅜ inch in sizes 31 thru 38, and ¼ inch in sizes 39 and smaller. A tolerance of 5 percent would be provided for fruit in any container which exceeds the diameter range specified.

A section would also be added concerning sample size. Industry in the last few years has added other types of containers to their standard tray flat. This section would address sampling for new and old types of containers.

List of Subjects in 7 CFR Part 51

Agricultural commodities.

PART 51—[AMENDED]

It is proposed that CFR Part 51 be amended as follows:

1. The authority citation for CFR Part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended, 7 U.S.C. 1622, 1624.

2. *In Subpart—United States Standards for Grades of Kiwifruit,* the

table of contents thereof would be revised to read as follows:

Subpart—United States Standards for Grades of Kiwifruit

Sec.
51.2335 Grades.
51.2336 Tolerances.
51.2337 Application of tolerances.
51.2338 Standard pack.
51.2339 Definitions.
51.2340 Classification of defects.
51.2341 Sample size for grade determination.

§ 51.2335 [Amended]

3. Section 51.2335 paragraph (a)(1)(vi) would be revised to read as follows:

* * * * *

(a) * * *
(1) * * *
(vi) Fairly well formed.

* * * * *

§ 51.2337 [Amended]

4. Section 51.2337 paragraph (a) would be revised to read as follows:

* * * * *

(a) Individual samples shall not have more than double a specified tolerance except that at least two defective specimens may be permitted in any container: *Provided,* that not more than one fruit which is frozen or affected by decay be permitted in any container 3 pounds or less; and, *Provided further,* that the averages for the entire lot are within the tolerances specified for the grade.

* * * * *

§ 51.2338 [Amended]

5. Section 51.2338 paragraph (d) would be revised to read as follows:

* * * * *

(d) "Fairly uniform in size" means that fruit in containers marked numerically to denote size may not vary in diameter more than ½ inch (12.7mm) in sizes 30 or larger; ⅜ inch (9.5mm) in sizes 31 through 38; and ¼ inch (6.4mm) in sizes 39 or smaller. Not more than 5 percent, by count, of the fruit in any container may exceed the diameter range specified.

* * * * *

§ 51.2339 [Amended]

6. Section 51.2339 would be amended by removing the definition for "Well formed."

7. 7 CFR Part 51 would be amended by adding a new section reading as follows:

§ 51.2341 Sample size for grade determination.

For fruit place-packed in tray pack containers, the sample shall consist of the contents of the individual container. For fruit jumble-packed in volume-filled containers, the sample shall consist of at least 50 fruit. When individual containers contain at least 50 fruit, each individual sample is drawn from one container. When individual containers contain less than 50 fruit, a sufficient number of adjoining containers are opened to form a 50-fruit sample.

Done in Washington, D.C. on September 9, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-21908 Filed 9-12-85; 8:45 am]

BILLING CODE 3410-02-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748

Report of Crime or Catastrophic Act

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: This proposed rule is a revision of § 748.1 (b) and (c) of the NCUA Rules and Regulations, requiring that all federally insured credit unions prepare, complete and, within 7 business days, report suspected criminal activity on NCUA Form 2362 (Criminal Referral Form—Long Form) or NCUA Form 2363 (Criminal Referral Form—Short Form) to the NCUA regional director, the U.S. Attorney, and the Federal Bureau of Investigation. In general, the long form is to be used to report suspected criminal activity involving probable loss of $10,000 or greater, whereas the short form is to be used to report suspected criminal activity involving actual or probable loss of less than $10,000. This revised rule results in support of and cooperation with the U.S. Department of Justice's effort, along with that of other financial insitution regulators to implement a criminal referral program to improve the detection, the investigation, and the prosecution of fraud in financial institutions.

DATE: Comments must be received on or before October 15, 1985.

ADDRESS: Send comments to Rosemary Brady, Secretary, National Credit Union Administration Board, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Wilmer A. Theard, Director, Division of Examination. Telephone Number (202) 357-1065.

SUPPLEMENTARY INFORMATION: This revised rule results in support of and cooperation with the U.S. Department of Justice's effort, along with that of other financial institution regulators to implement a criminal referral program to improve the detection, the investigation, and prosecution of fraud in financial institutions. In 1984, there have been an unprecedented number of financial institution failures which may be attributed largely to criminal misconduct by insiders. The rule is revised only to the extend of segregating the reporting of crimes and catastrophies, with no changes resulting for the reporting of the latter but requiring the use of NCUA Forms 2362 and 2363 for the reporting of suspected criminal activity.

Due to the reporting required by the Department of Justice and the FBI, the content of the forms follows closely the uniform standard questions required from all financial institutions. However, terms common to credit union operations have been used wherever possible.

Request For Comments

The NCUA Board requests public comments concerning the guidance it believes will be necessary to implement this program and on any other issues relating to criminal reporting by federally insured credit unions.

Regulatory Procedures

The NCUA Board hereby certifies that this rule will not have a significant economic impact on credit unions. As indicated by the FBI's 1984 statistics, only 172 violations were reported and investigated in federally insured credit unions.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule (NCUA Forms 2362 and 2363) have been submitted to and approved by the Office of Management and Budget.

List of Subjects in 12 CFR Part 748

Credit unions, Reporting and recordkeeping requirements, Security measures.

By the National Credit Union Administration on the 5th day of September 1985.

Rosemary Brady,

Secretary of the NCUA Board.

It is proposed to revised 12 CFR Part 748 to read as follows:

PART 748—REPORT OF CRIME OR CATASTROPHIC ACT

Sec.
748.0 Security program.
748.1 Filing of reports.

Authority: 12 U.S.C. 1785.

§ 748.0 Security program.

(a) Each federally insured credit union will develop a written security program within 90 days of the effective date of insurance.

(b) The security program will be designed to protect each credit union office from robberies, burglaries, and larcenies; to prevent destruction of vital records as defined in the *Accounting Manual for Federal Credit Unions;* and to assist in the identification of persons who commit or attempt such crimes.

§ 748.1 Filing of reports.

(a) *Compliance Report.* Each federally insured credit union shall file with the regional director an annual statement certifying its compliance with the requirements of this Part. The statement shall be dated and signed by the president or other managing officer of the credit union. The statement is contained on the Report of Officials which is submitted annually by federally insured credit unions after the election of officials. In the case of federally insured state-chartered credit unions, this statement can be mailed to the regional director via the state supervisory authority, if desired. In any event, a copy of the statement shall always be sent to the appropriate state supervisory authority.

(b) *Catastrophic Act Report.* Each federally insured credit union will notify the regional director within 5 business days of any catastrophic act that occurs at its office(s). Within a reasonable time after the catastrophic act occurs, the credit union shall ensure that a record of the incident is prepared and filed at its main office. In the preparation of such record, the credit union should include information sufficient to indicate the office where the catastrophic act occurred; when it took place; the amount of the loss, if any; whether any operational or mechanical deficiency(ies) might have contributed to the catastrophic act; and what has been done or is planned to be done to correct the deficiency(ies).

(c) *Criminal Referral Form.* Each federally insured credit union will notify the NCUA regional director, the U.S. Attorney, and the FBI within 7 business days of any crime that occurs at its office(s), utilizing NCUA form 2362 for suspected criminal activity involving probable loss of $10,000 or greater or NCUA form 2363 for suspected criminal activity involving actual or probable loss of less than $10,000.

[FR Doc. 85-21792 Filed 9-12-85; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 182

[Docket No. 81N-0314]

Sulfiting Agents; Proposal To Revoke GRAS Status for Use of Fruits and Vegetables Intended To Be Served or Sold Raw to Consumers

Correction

In FR Doc. 85-19282 beginning on page 32830 in the issue of Wednesday, August 14, 1985, on page 32833, second column, eighth line, remove the word "are" at the end of the line.

BILLING CODE 1505-01-M

21 CFR Part 314

[Docket No. 84N-0101]

New Drug and Antibiotic Application Review; Proposed User Charge

Correction

In FR Doc. 85-18657 beginning on page 31726 in the issue of Tuesday, August 6, 1985, make the following corrections:

1. On page 31726, second column, in the twelfth line, "20847" should read "20857".

2. On the same page, third column, in the thid paragraph, the thirteenth line, "OIAA" should read "IOAA".

3. On page 31728, third column, second complete paragraph, third line from the bottom, "F.d" should read "F.2d".

§ 314.50 [Corrected]

4. On page 31731, third column, in § 314.50(i), fifth line, "195" should read "1985".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-110-80]

Income of Foreign Governments; Withdrawal of Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking relating to income of a foreign government from loans and real property subject to net leases under section 892 that appeared in the **Federal Register** on July 22, 1980 (45 FR 48921). The proposed amendments are being withdrawn for further consideration of the subject matter.

FOR FURTHER INFORMATION CONTACT: Nerman Dobynes Hubbard of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC: LR:T (LR-110-80), 202-566-3289, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document withdraws the notice of proposed rulemaking under section 892 that appeared in the **Federal Register** on July 22, 1980 (45 FR 48921). The notice proposed regulations on income of foreign governments under two provisions that were reserved under paragraph (c)(2)(i) of § 1.892-1 when final regulations under section 892 of the Internal Revenue Code of 1954 were published in the **Federal Register** on July 22, 1980 (45 FR 48882). The proposed amendments to paragraph (c)(2) (i) of § 1.892-1, if adopted, would have established the circumstance under which the making of loans or holding of net leases on real property would have been considered to be investment activities. Foreign governments are exempt from United States income tax on income from investment activities. The proposed amendments are being withdrawn for further consideration of the subject matter. In that regard a study project is being established. Pending the conclusion of the study project and the later issuance of regulations, the two provisions that were reserved under paragraph (c)(2) (i) of § 1.892-1 shall remain reserved.

Drafting Information

The principle author of this document is Nerman Dobynes Hubbard of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing this document both in matters of substance and style.

Withdrawal of Proposed Amendments

The proposed amendments to 26 CFR Part 1, relating to income of a foreign government from loans and real property subject to net leases under section 892 and published in the **Federal**

Register on July 22, 1980 (45 FR 48921), are hereby withdrawn.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85-21985 Filed 9-12-85; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Public Comment and Opportunity for Public Hearing on a Modification to the Kentucky Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of certain program amendments submitted by the Commonwealth of Kentucky as a modification to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendments pertain to: Inspector authority to write Orders for Cessation and Immediate Compliance; hearing officer's discretion to deny intervention to certain parties; alternative enforcement actions; and, the definition of "substantial legal and financial commitments".

Except for the amendment pertaining to alternative enforcement, these amendments respond to a Judgment and Order issued on August 20, 1985, by the United States District Court for the Eastern District of Kentucky at Frankfort, in the case entitled *Sierra Club, Cumberland Chapter, et al, vs. James G. Watt, et al.*

This notice sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearing.

DATES: Written comments not received on or before October 15, 1985, will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on October 8, 1985 beginning at 10:00 a.m. at the location shown below under "**ADDRESSES.**"

ADDRESSES: Written comments should be mailed or hand delivered to: W. H. Tipton, Direcort, Lexington Field Office, Office of Surface Mining, 340 Legion Dirve, Suite 28, Lexington, Kentucky 40504.

If a public hearing is held its location will be at: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: W. H. Tipton, Director, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Kentucky program, the proposed modifications to the program, a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSM Offices and the Office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Office of Surface Maining, Reclamation and Enforcement, Room 5124, 1100 L Street, NW., Washington, DC 20240.

Bureau of Surface Mining, Reclamation and Enforcement, Capitol Plaza Tower, Third Floor, Frankfort, Kentucky 40601.

Pursuant to 30 CFR 732.17(h)(2)(ii), each requestor may receive, free of charge, one single copy of the proposed amendment by contacting OSM's Lexington Field Office listed under "ADDRESSES."

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Lexington, Kentucky Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by the close of business ten working days before the date of the hearing. If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather then a public hearing, may be held and the results of the meeting included in the Administrative Record.

Submission of written statements at the time of the hearing is requested and will greatly assist the transcriber. Submissions of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed in **ADDRESSES** by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

All such meetings are open to the public and if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background on the Kentucky State Program

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSM. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 **Federal Register** (47 FR 21404-21435).

Information pertinent to the general background on the Kentucky State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 **Federal Register** notice.

III. Submission of Program Amendments

On August 29, 1985, Kentucky submitted program amendments to modify requirements pertaining to: inspector authority to write Orders for

Cessation and Immediate Compliance; the hearing officer's discretion to deny intervention where the petitioner's interest is adequately represented by existing parties; alternative enforcement actions to be taken under certain circumstances; and the definition of "substantial legal and financial commitment."

Except for changes pertaining to alternative enforcement actions, the amendments respond to three requirements in the Judgment and Order issued August 20, 1985, in the case entitled *Sierra Club, Cumberland Chapter, et al,* vs. *James G. Watt, et al* (E.D. Ky., 1985).

Briefly, the proposed modifications and citations are:

1. Kentucky proposed to modify the language in paragraph D of Section II of its state program plan entitled "Field Enforcement Procedures." The modification would delete the qualifications applied to inspectors empowered to issue Orders for Cessation and Immediate Compliance, and would grant authority to all inspectors and other qualified field personnel to issue such orders.

2. Kentucky proposes to amend 405 KAR 7:090, section 12(3) to delete the introductory clause "unless the petitioner's interest is adequately represented by existing parties," so that the section would require the hearing officer to grant intervention where the petitioner had a statutory right to initiate the proceeding in which he wishes to intervene or has an interest which is or may be adversely affected by the outcome of proceeding.

3. Kentucky proposes to modify 405 KAR 7:090 section 11(2)(a) to include four alternative enforcement actions to be taken when a permittee's failure to abate a violation extends more than 30 days beyond the abatement period in the notice or order.

4. Minor editorial changes are proposed in 405 KAR 7:090.

5. Kentucky proposes to modify the definition in 405 KAR 24:030 Section 2(2) of "substantial legal and finanical commitments" to require the existence of a long term coal contract. Kentucky proposes further modification to Section 2(2) to clarify requirements and "to more fully reflect the current federal definition at 30 CFR 762.5, and to comply with the Secretary of the Interior's interpretation regarding 'existing mines' as discussed in the July 15, 1985 Memorandum Opinion in Flannery Round III."

Therefore, the Director, OSM is seeking public comment on the adequacy of the proposed program amendments. Comments should specifically address the issue of whether the proposed amendments are in accordance with SMCRA and no less effective than its implementing regulations.

IV. Additional Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 9, 1985.

Robert E. Boldt,

Acting Director, Office of Surface Mining.

[FR Doc. 85-21914 Filed 9-12-85; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 925

Missouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is seeking comment on Missouri's request to further extend the deadline for Missour to promulgate and submit rules governing the training, examination and certification of blasters. On August 6, 1984, Missouri requested for a one-year extension to develop and adopt a blaster certification program. On October 26, 1984, OSM granted Missouri a one-year extension to August 6, 1985. On August 4, 1985, Missouri requested another one-year extension for the development of a blaster certification program. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) were required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulation provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

DATE: Comments not received by October 15, 1985, at the address below will not necessarily be considered.

ADDRESS: Written comments should be mailed or hand delivered to Mr. Charles E. Sandberg, Field Office Director, Kansas City Field Office, Office of Surface Mining, 1103 Grand Avenue, Professional Building, Room 502, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Charles E. Sandberg, Field Office Director, Kansas City Field Office, Office of Surface Mining, 1103 Grand Avenue, Professional Building, Room 502, Kansas City, Missouri 64106; Telephone: (816) 374-5527.

Supplementary Information:

On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority of each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of the Missouri program, the applicable is 12 months after publication date of OSM's rule, or March 4, 1984.

On August 6, 1984, Missouri advised OSM that it would be unable to meet the August 6, 1984, deadline and requested an extension to develop and adopt a blaster certification program. On October 26, 1984, OSM granted Missouri

an extension to August 6, 1985 (49 FR 43055).

On August 4, 1985, the Director of the Missouri Land Reclamation Commission advised OSM that the State would require another extension of time to submit its blaster training and examination program (Administrative Record MO–282). He stated the reason for the extension is to provide the necessary time for: (1) Contract negotiations with consultants to establish certification procedures and a test; (2) preparation of appropriate procedures and test; (3) incorporation of the certification procedures and test format in the Missouri Code of Regulations, and (4) gaining approval of the State program amendment.

OSM is seeking comment on the State's request for additional time to develop and adopt a blaster certification program. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

Additional Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB. The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 925

Coal mi ing, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 9, 1985.

Robert E. Boldt,

Acting Director, Office of Surface Mining.

[FR Doc. 85–21913 Filed 9–12–85; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–85–40]

Drawbridge Operations Regulations; Atlantic Intracoastal Waterways, Florida

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of Flordia Department of Transportation the Coast Guard is considering a change to the regulations governing the Port Orange and Coronado Beach Bridges by permitting the number of openings to be limited during certain periods. This proposal is being made because vehicular traffic has increased. This action should accommodate the needs of vehicular traffic yet still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before October 28, 1985.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SE. 1st Avenue, Miami, Flordia 33130. The comments and other materials referenced in this notice will be available for inspection and copying at 51 SW. 1st Avenue, Room 816, Miami, Florida. Normal office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, (305) 350–4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all comunications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Proposed Regulations

The Coronado Beach bridge now opens on signal at all times. The Port Orange bridge does likewise except between 7:30 a.m. and 8:30 a.m. and between 4:30 p.m. and 5:30 p.m., Monday through Saturday, when the bridge need open only at 30 minute intervals. This proposal would revise the existing Port Orange regulations by making them effective Monday through Friday only and establish seasonal weekend regulations for both bridges.

The proposed new weekend regulations would be effective between March 15 and October 15 annually and would apply between 10 a.m. and 6 p.m., Saturdays, Sundays, and federal holidays. During these periods the Port Orange bridge would be authorized to open only at 20 minute intervals and the Coronado Beach bridge at 15 minute intervals. These timed openings should virtually eliminate back-to-back (multiple) draw openings which are a major factor in vehicular traffic congestion. The 15 and 20 minute intervals selected correspond to existing vessel traffic patterns and, for the Coronado Beach bridge, take into account the existing timed openings at the nearby Harris Saxon bridge.

The Coast Guard recently (50 FR 27026) proposed a revision to 33 CFR 117.261 which would authorize "on demand" draw openings for certain large vessels, delete weather related exemptions at certain bridges, and incorporate minor editorial changes. Since the revised format of this recent proposal is continued in today's proposal, paragraph designations do not coincide with those now in the Code of Federal Regulations.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. In § 117.261 paragraphs (g) and (h) are proposed to be revised to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Miami

* * * * *

(g) *SR AIA bridge, mile 835.5 at Port Orange.* The draw shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Friday except federal holidays, the draw need open only at 8 a.m. and 5 p.m. From March 15 through October 15 from 10 a.m. to 6 p.m. Saturdays, Sundays and federal holidays the draw need only open on the hour, 20 minutes past the hour and 40 minutes past the hour.

(h) *Coronado Beach bridge, mile 845 at New Smyrna Beach.* The draw shall open on signal; except that, from March 15 through October 15 from 10 a.m. to 6 p.m. Saturdays, Sundays and federal holidays the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour.

* * * * *

Dated: August 28, 1985.

R.P. Cueroni,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 85–21833 Filed 9–12–85; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW–4 FRL–2858–6]

South Carolina; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination of Application of South Carolina for Final Authorization, Comment Period and Availability of Public Hearing.

SUMMARY: In July 1984, the State of South Carolina applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA reviewed South Carolina's application and made a tentative decision on October 25, 1984, that South Carolina's hazardous waste program satisfied all of the requirements necessary to qualify for final authorization (49 FR 42959). On June 5, 1985, the South Carolina hazardous waste law was amended to establish increased fees for disposal of hazardous waste generated outside the State.

This notice solicits public comment on whether the higher fees for disposal of hazardous wastes generated outside the State unreasonably restrict, impede, or operate as a ban on the free movement of hazardous wastes. Information available to EPA does not indicate that the statutory change will unreasonably restrict or impede the movement of hazardous waste, and the Agency therefore is issuing a second tentative determination reaffirming its original decision to authorize the State program.

DATES: All written comments on South Carolina's amended law must be received by the close of business on October 15, 1985. A public hearing is scheduled for October 21, 1985. The Regional Administrator may cancel the public hearing if sufficient public interest is not expressed by October 18, 1985. If you wish to find out whether a public hearing will be held, write or telephone the contact person(s) listed below after October 18, 1985.

Otis Johnson, Chief, Waste Planning Section, Residuals Management Branch, Waste Management Division, Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365, (404) 881–3016; or

Mr. Robert E. Malpass, Chief, Bureau of Solid and Hazardous Waste Management, South Carolina Department of Health & Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201, (803) 758–5681

ADDRESSES: Written comments or indication of interest in EPA's holding a public hearing must be sent to Mr. Otis Johnson, EPA Region IV, Residuals Management Branch, 345 Courtland St. NE, Atlanta, GA 30365. EPA will hold a public hearing at 7:00 p.m., on October 21, 1985 at the Dennis Building, 1000 Assembly Street, Room 149, Columbia, South Carolina.

Copies of the amended law are available for inspection and copying during business hours 8:00 a.m. to 5:00 p.m. at EPA Region IV, or DHEC.

FOR FURTHER INFORMATION CONTACT: Patricia Herbert, EPA Region IV, Residuals Management Branch, 345 Courtland St. NE, Atlanta, Georgia 30365, phone: (404) 881–3016, FTS: 257–3016, or Robert E. Malpass, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201, phone: (803) 758–5681.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the RCRA allows EPA to authorize a State hazardous waste program to operate in the State in lieu of the Federal hazardous waste program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Act Amendments of 1984 (Pub. L. 98–616, Nov. 8, 1984). Authorization is granted by EPA if the State's program meets the following criteria: (1) It is "equivalent" to the Federal program, (2) it is "consistent" with the Federal program and other State programs, and (3) it provides for adequate enforcement (Section 3006(b) 42 U.S.C. 6226(b)). The Agency's implementing regulations at Title 40 Code of Federal Regulations (40 CFR) §§ 271.5 and 271.20 establish procedures for reviewing a State's application.

Under 40 CFR 271.5(c), the review period including public participation shall begin again upon receipt of a revised submission which materially changes the State's application. Under § 271.20(d), the Regional Administrator must give notice of the State's submission and the Agency's evaluation of it in the Federal Register for the public to consider and comment on during a 30 day period. A public hearing may also be held if sufficient public interest is expressed. The Regional Administrator may announce in the

notice on the public comment period the date and place for the public hearing. The notice may specify that the Regional Administrator may cancel the public hearing if sufficient public interest in a hearing is not expressed.

B. South Carolina

South Carolina submitted an application for final authorization in July 1984. On October 25, 1985 (49 FR 42959) EPA made the tentative determination that South Carolina's hazardous waste program satisfied the requirements for final authorization. However, before EPA made a final decision, South Carolina amended its Hazardous Waste Management Act (1985 Act No. 436, June 5, 1985).

South Carolina imposes a higher fee on land disposal of hazardous waste generated outside the State than it imposes on waste generated inside the State. The Act amended section 44–56–170 to raise the fee for land disposal of wastes generated within the State from $5.00 to $13.00 per ton. For land disposal of wastes generated outside the State, the fee was raised from $7.50 per ton to either $18.00 per ton or to the fee amount that would be charged for land disposal of wastes by the State in which the wastes were generated, whichever is higher.

The question which must be settled before EPA grants final authorization is whether the South Carolina fee schedule renders the State program inconsistent with the Federal program and other State programs. Under § 271.4(a) a State program is deemed inconsistent if it "... unreasonably restricts, impedes, or operates as a ban on the free movement across the State border of hazardous waste from or to other States for treatment, storage or disposal at facilities authorized to operate under the Federal or an approved State program ...."

EPA believes that higher fees for out-of-State wastes should not be encouraged. We are concerned that such fees may discourage wastes from going to the most appropriate facility. However, we do not believe that South Carolina's fee schedule violates § 271.4(a). The State has informed EPA that the fee imposed constitutes a "relatively small percentage" of the actual cost of disposal and would not unreasonably restrict or impede movement of hazardous waste. EPA has no evidence to suggest that South Carolina's new fees will unreasonably restrict, impede, or operate as a ban on the transportation of hazardous waste into the State.

Unless EPA receives information that shows that the law unreasonably restricts, impedes or operates as a ban on the importation of hazardous waste, EPA will make a final decision to approve the State's application for final authorization. Comments are therefore requested on whether the revised South Carolina law meets the consistency requirements of § 271.4(a).

In making a final determination on South Carolina's final authorization application, EPA will consider comments received at the hearing or during the public comment period. The EPA expects to make a final decision by November 15, 1985 on whether to approve South Carolina's program and will give notice of it in the **Federal Register.** The notice will include a summary of the reasons for the final determination and a response to all major comments.

Compliance with Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Inter-governmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority

The notice is issued under the authority of section 2002(A), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(A), 6926, 6974(b). EPA Delegation 8–7.

Dated: September 9, 1985.

Jack E. Ravan,

Regional Administrator.

[FR Doc. 85–22061 Filed 9–12–85; 8:45 am]

BILLING CODE [illegible]

40 CFR Part 721

[OPTS–50534; TSH FRL–2848–7]

Halogenated-N-(2-Propenyl)-N-[Substituted Phenyl] Acetamide; Proposed Determination of Significant New Uses

Correction

In FR Doc. 85–20304, beginning on page 34500, in the issue of Monday, August 26, 1985, make the following correction:

On page 34504, third column, § 721.54(b)(1), the second line should read "requirements of § 721.17, importers and".

BILLING CODE 1505–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 420

45 CFR Part 101

Medicare Program; Physician Fee Freeze Sanctions

AGENCY: Office of the Secretary.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking sets forth OIG procedures for the imposition of civil money penalties and Medicare program exclusions on physicians who choose not to be participating physicians and who raise charges to Medicare beneficiaries in violation of the freeze on such fees contained in Section 2306 of Pub. L. 98–369 (the Deficit Reduction Act of 1984). The proposed rule also modifies existing regulations to permit the OIG to impose civil money penalties and assessments on those who choose to be participating physicians under the Medicare program and who violate their participation agreements as set forth in Section 2306. This regulation does not pertain to HCFA's responsibility for the Physician Fee Freeze.

DATES: To assure consideration comments must be received by October 15, 1985.

ADDRESSES: Address comments to: Office of Inspector General, Department of Health and Human Services, Attention: LRR–1, 330 Independence Avenue, SW., Room 5246, Washington, D.C. 20201.

If you prefer, you may deliver comments to Room 5246, 330 Independence Avenue, SW.,

Washington, D.C. In commenting please refer to file code *LRR–1*. Agencies and organizations are requested to submit comments in duplicate. Comments will be available for public inspection approximately two weeks from today in Room 5643, 330 Independence Avenue, S.W., Washington, D.C., on Monday through Friday of each week from 9:00 a.m. to 5:00 p.m. Phone Number (202) 472–5270.

FOR FURTHER INFORMATION CONTACT: James Patton, (301) 594–3957.

SUPPLEMENTARY INFORMATION:

I. Violation of the Physician Fee Freeze

A. Background

Section 2306 of Pub. L. 98–369 added to the Social Security Act ("the Act") a new section 1842(b)(4), which imposes a freeze on Medicare reimbursement for physician services for a period, currently fifteen months, beginning July 1, 1984, and a new section 1842(h), which establishes a participation program for physicians and suppliers. It also added to the Act a new section 1842(j), which provides that if a non-participating physician knowlingly and willfully bills Medicare beneficiaries during the fifteen month period beginning July 1, 1984, for charges in excess of such physician's actual charges for the calendar quarter beginning April 1, 1984, the Secretary may: (1) Exclude the physician from Medicare program participation for up to five years; (2) impose a civil money penalty and assessment as described in Section 1128A of the Act; or (3) impose both the exclusion and the monetary penalty.

B. Detection and Referral of Violations

HCFA will refer cases for possible sanction and/or civil monetary action to the OIG. The method for making referrals to the OIG is set forth in procedures that have been established by the Health Care Financing Administration (HCFA). These procedures are not part of this regulation and are provided as information only.

HCFA has issued instructions that require the carrier to perform routine monitoring of the charges of nonparticipating physicians and investigate related beneficiary compliants (Medicare Part B Intermediary Letter 84–6). These instructions detail procedures for issuing a warning notice to a physician when the carrier believes that a violation has occurred.

The physician, at that time, has the opportunity to provide to the carrier a written explanation setting forth the reasons why the physician believes that the charges were not in violation of the freeze. If a physician does not provide adequate justification for the increased charges, the carrier will be required to determine if the physician thereafter corrects his or her billing practices based on the warning notice. If the physician takes corrective action, there will be no further development of the case. However, if the carrier detects a continuation of the suspected violations, the carrier will perform additional investigation. Where appropriate, the case will be referred to the OIG for a determination under the sanction and penalty authorities. This process, the responsibility of HCFA, is not of this regulation.

C. Exclusion and Monetary Penalty Determinations

The responsibility for making determinations of civil monetary penalties and assessments or exclusions rests with the OIG. The OIG will determine the nature and extent of the sanctions based on criteria, such as the severity and frequency of the violations and the impact of the violations on Medicare beneficiaries. The Conference Report accompanying the Act noted that the Secretary will "exercise this authority vigorously but prudently, applying sanctions commensurate with the offense," and that penalties will be imposed "on physicians who are serious violators of the program." The Conference Report also provided guidance on the factors to be considered by the Secretary in determining the sanction to impose. These factors include: (1) Whether there is a pattern of increased charges; (2) the extent to which patients faced (incurred) increased costs as a result; and (3) whether the amounts of the increased costs are significant (H.R. Rep. No. 98–861, 98th Cong., 2nd Sess., 1314 (1984) (Conference Report)). The OIG will consider these factors in its determination process.

We have included in this proposed regulation a new section 42 CFR 420.102 which states that the OIG will use, with minor conforming changes, the procedures with respect to determining the length of the exclusion and the amount of the monetary penalty and assessment that are contained in the existing regulations pertaining to fraud and abuse determinations. In addition, the notification, effectuation, and appeal procedures under the existing regulations will be used for the fee freeze provisions. The existing regulations for exclusions are contained in 42 CFR Part 420 and, for civil money penalties, in 45 CFR Part 101.

Section 2306 of the Deficit Reduction Act requires that exclusions from the Medicare program based on violations of the fee freeze may be for a period not exceeding five years. We are implementing this provision in 42 CFR 420.103 of these proposed regulations.

It should be noted that any physician excluded from program participation under this section will not be automatically reinstated into Medicare program participation until application for reinstatement is made under procedures contained in 42 CFR 420.130 through 420.136. However, we are modifying our reinstatement procedures to state that where the exclusion for violations of the freeze has been for five years the OIG must automatically approve an application for reinstatement. If the physician is also excluded for a longer period of time under another sanction provision the five year maximum exclusion period would not be applicable.

The Act also provides that an exclusion will not be imposed if the physician is a sole community physician or the sole source of essential specialized services in a community. We are implementing this provision in § 420.103 of these proposed regulations. As a practical matter, in making sanction determinations the OIG has always taken into account the effect that the sanction would have on beneficiary access to health care services. We will, however, take special care to insure that no exclusions are imposed against a sole community physician or a physician who is providing essential specialized services. Where we determine that such a physician has violated the fee freeze, we will impose only a monetary penalty and assessment.

D. Issues Related to Beneficiary Liability

The Department of Health and Human Services has established procedures that insure that beneficiaries are informed of exclusion actions and are protected from liability arising out of the fact that such services provided by an excluded physician are no longer reimbursable under Medicare (42 CFR 420.115). HCFA will continue to use those procedures. Whenever a beneficiary submits a claim for items or services furnished by an excluded party, HCFA pays the first claim and immediately sends a notice to the beneficiary explaining that the party has been excluded. HCFA will pay for services furnished to that beneficiary by the excluded party for up to 15 days after the date on the beneficiary notice. It should be noted, however, that if an

excluded party submits or causes to be submitted a claim for services furnished after the effective date of the exclusion, the OIG may impose a monetary penalty and assessment against the party. Implementation of this provision is a HCFA responsibility and is not contained as part of this regulation.

Section 1842(j)(4) of the Act permits the Secretary to reimburse the beneficiary, out of any monetary penalty or assessment collected, for the amount of the excess charges billed by the sanctioned physician to that beneficiary. This responsibility also rests with HCFA, and is not contained as a part of this regulation.

II. Violations of the Participation Agreement

Section 2306 of the Deficit Reduction Act also enacted section 1842 (h) and (i) of the Act. These sections are specifically designed to establish a participating physician and supplier program under Medicare.

A participating physician or supplier is one who voluntarily enters into an agreement to accept assignment for all services provided to Medicare patients during the period covered by the agreement. Under assignment, the approved charge determined by the Medicare program is the full charge for the service. The approved charge is the total of the Medicare payment and the applicable deductible and coinsurance amounts.

The participating physician or supplier would be in violation of the participation agreement if the party collected or attempted to collect from the beneficiary any amount in excess of the applicable deductible and coinsurance. A participating physician or supplier would also be in violation of the agreement if the party refused to accept assignment for an item or service that is reimbursable under Medicare.

Section 2306 of the Deficit Reduction Act also amended sections 1128(A)(a)(2) and 1877(d) of the Social Security Act to provide that if a participating physician or supplier violates the participation agreement, the party may be subject to civil money penalties and assessments, or criminal prosecution. The OIG will impose civil money penalties and assessments using the procedures contained with 45 CFR Part 101. We have modified 45 CFR 101.102 of the regulations, which sets forth the basis for imposing penalties, to include violations of a participation agreement as a basis for imposing penalties.

III. Impact Analysis

Executive Order 12291

We have determined that these proposed regulations do not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291 because they will not have an annual effect on the economy of $100 million or more; cause a major increase in costs or prices for consumers, government agencies, industry, or a geographic region; or cause significant adverse effects on business or employment. We do not expect these regulations to have such an effect.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 604(a)) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues certain regulations that would have a significant economic impact on a substantial number of small businesses. The analysis is intended to explain what effect the regulatory action by the agency would have on small businesses and other small entities and to develop lower cost or burden alternatives. The law on which these regulations are based is specific, and there is little leeway in implementing the requirements. Some of the sanctions that the Federal Government will impose as a result of these regulations will have an impact on physicians. However, we do not anticipate that a substantial number of physicians will be significantly affected by these proposed regulations. Therefore, the Secretary certifies that a regulatory flexibility analysis is not required for this rulemaking.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget for review and approval any reporting or recordkeeping requirement inherent in a proposed and final rule. This proposed rulemaking does not contain information collection requirements or increase Federal paperwork burden on the public or private sector.

IV. Response to Comments

Because of the large number of comments we expect to receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider comments and respond to them in the preamble to that rule.

List of Subjects

42 CFR Part 420

Abuse, Administration practice and procedures, Contracts, (Agreements), Conviction, Convicted, Courts, Exclusion, Fraud, Health care, Health facilitites, Health Maintenance Organization (HMO), Health professions, Health Suppliers, information (Disclosure), Lawyers, Medicaid, Medicare. Penalties, , Reporting and Recordkeeping requirements, Supervision, Utilization and Quality Control Peer Review Organizations (PRO).

45 CFR Part 101

Penalties, Medicare, Medicaid, Administrative practice and procedures, Archives and records, Grant programs—social programs, Maternal and Child health.

TITLE 42—PUBLIC HEALTH

A. 42 CFR Chapter IV, Part 420 is proposed to be amended as set forth below:

PART 420—PROGRAM INTEGRITY

1. The authority citation for Part 420 is revised to read as follows:

Authority: Secs. 1102, 1128, 1842(j), 1862(d), 1862(e), 1866(b)(2) (D), (E), and (F), 1871, 1902(a)(39), and 1903(i)(2) of the Social Security Act (42 U.S.C. 1302, 1320a–7, 1395(j), 1395y(d), 1395y(e), 1395cc(b)(2) (D), (E), and (F), 1395hh, 1396a(a)(39), and 1396b(i)(2)), unless otherwise noted.

2. The Table of Contents for Subpart B is amended by adding entries for §§ 420.102 and 420.103.

Subpart B—Exclusion or Suspension of Practioners, Providers, Suppliers of Services, and Other Individuals

Sec.

* * * * *

420.102 Sanction for violation of the freeze on physician charges.

420.103 Exclusion for violation of the freeze on physician charges.

* * * * *

3. In Subpart B, the authority citation and § 420.100 is revised to read as follows:

Subpart B—Exclusion or Suspension of Practitioners, Providers, Suppliers of Services, and Other Individuals

Authority: Secs. 1102, 1128, 1842(j), 1862(d), 1862(e), 1866(b)(2) (D), (E), and (F), 1871, 1902(a)(39), and 1903(i)(2) of the Social Security Act (42 U.S.C. 1302; 1320a–7, 1395u(j), 1395y(d) 1395y(e), 1395cc(b)(2) (D), (E), and (F), 1395hh, 1396a(a)(39), and 1396b(i)(2)).

§ 420.100 Basis and scope.

This subpart implements Sections 1128, 1842(j), and 1862 (d) and (e) of the act. It sets forth criteria and procedures for (a) excluding practitioners, providers, and suppliers of services who have defrauded of abused the Medicare program or, for those physician practitioners who are not participating physicians, who have violated the billing restrictions of section 1842(j) of the Act, and (b) for suspending practitioners and other individuals convicted of crimes related to their participation in the delivery of medical care or services under the Medicare, Medicaid, or the social services programs. It also specifies the appeal rights of a suspended individual and the procedures for reinstatement of excluded and suspended individuals. The procedures set forth in § 420.101 through 420.115 also apply to terminations of provider agreements under § 489.53(a) (6), (7), or (8) of this chapter.

4. Subpart B is amended by adding new §§ 420.102 and 420.103 to read as follows:

§ 420.102 Sanctions for violations of the freeze on physician charges.

(a) Whenever the OIG determines that a physician, who is not a participating physician under section 1842(h) of the Act, has during the statutory period of the freeze (1) provided services to a beneficiary and (2) knowingly and willfully billed that beneficiary for actual charges that are in excess of the physician's actual charges for the calendar quarter beginning on April 1, 1984, the CIG may exclude the physician from program participation for a period of up to five years, impose a monetary penalty or assessment against the physician, or both.

(b) If the OIG makes a determination under paragraph (a) of this section that involves a monetary penalty or assessment, the OIG will use the penalty determination, notification, effectuation, and appeal procedures contained in 45 CFR 101.100 through 101.133.

(c) If the OIG makes a determination under paragraph (a) of this section and proposes to exclude a physician from Medicare program participation without imposing a monetary penalty or assessment, the OIG will use the determination, notification, effectuation, appeal, and reinstatement procedures contained in § 420.100 through § 420.115 and § 420.130 through § 420.134.

§ 420.103 Exclusion for violations of the freeze on physician charges.

(a) In excluding a physician under § 420.102, the exclusion period determined under § 420.114 may not exceed five years.

(b) The OIG will not impose an exclusion if it determines that the physician is the sole source of essential specialized service or a sole community physician.

5. In Subpart B, § 420.134 is amended by adding a new paragraph (e) to read as follows:

§ 420.134 Notice of action on request for reinstatement.

* * * * *

(e) The OIG must automatically reinstate a physician excluded only on the basis of § 420.102 if that exclusion has been in effect for five (5) years.

TITLE 45—PUBLIC WELFARE

B. 45 CFR, Subtitle A, Part 101 is proposed to be amended as set forth below:

PART 101—CIVIL MONEY PENALTIES AND ASSESSMENTS

1. The authority citation for Part 101 is revised to read as follows:

Authority: Secs. 1102, 1128, 1128A and 1842(j) of the Social Security Act (42 U.S.C. 1302, 1320a–7 and 42 U.S.C. 1320a–7a and 1395u(j)).

2. In § 100.100(a), paragraph (a) is revised to read as follows.

§ 101.100 Basis and purpose.

(a) *Basis.* This part implements sections 1128(c), 1128A, and 1842(j) of the Social Security Act (42 U.S.C. 1320a–7(c), 1320a–7a, and 1395u(j)).

* * * * *

3. In § 100.102, is amended by revising paragraph (b) to read as follows:

§ 101.102 Basis for civil money penalties and assessments.

* * * * *

(b) The Department may impose a penalty against any person whom it determines in accordance with this part:

(1) Has presented or caused to be presented a request for payment in violation of the terms of:

(i) An agreement to accept payments on the basis of an assignment under section 1842(b)(3)(B)(ii) of the Act;

(ii) An agreement with a State agency not to charge a person for an item or service in excess of the amount permitted to be charged; or

(iii) An agreement to be a participating physician or supplier under section 1842(h) (1); or

(2) Is a non-participating physician under section 1842(j) of the Act and has knowingly and willfully billed individuals enrolled under Part B of Title XVIII of the Act, during the statutory period of the freeze, for actual charges in excess of such physicians, actual charges for the calendar quarter beginning on April 1, 1984.

* * * * *

(Catalog of Federal Domestic Assistance Programs, No. 13.744, Medicare-Supplementary Medical Insurance Program)

Dated: May 3, 1985.

Approved: July 24, 1985.

R.P. Kusserow,

Inspector General, Department of Health and Human Services.

Margaret M. Heckler,

Secretary.

[FR Doc. 85–21981 Filed 9–12–85; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2200

Procedures for Exchanges Involving Fee Federal Coal Deposits

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would establish procedures and standards by which fee coal exchanges being processed by the Bureau of Land Management would be reviewed by the Department of Justice. It would allow Bureau field officials to integrate Department of Justice consideration of the anti-trust consequences of such proposed exchange(s) into their decision as to whether an exchange is in the public interest.

DATE: Comments should be submitted by October 15, 1985. Comments postmarked or received after the date set out above may not be considered during the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

David Hemstreet, (202) 343–8693
or
Robert C. Bruce, (202) 343–8735.

SUPPLEMENTARY INFORMATION: The Commission on Fair Market Value Policy for Federal Coal Leasing recommended that the Bureau of Land Management pursue fee coal exchanges

"more vigorously, but in a careful and prudent manner, to consolidate Federal and non-Federal coal lease holdings of equivalent value into logical mining units." Although the Commission did not recommend that the Department of Justice review fee coal exchanges, its report recognized the controversial nature of such exchanges and the allegation from some that, in certain situations, such exchanges may have anti-trust consequences. In its response to the Commission Report, the Department of the Interior, among other things, recognized that a major concern in fee coal exchanges is their possible anti-trust consequences. The Department's response stated that the Bureau will routinely request a review by the Department of Justice when processing fee coal exchanges. The proposed rulemaking would provide the procedures that would be followed by the Bureau when referring coal exchanges to the Department of Justice for review.

The proposed rulemaking would provide for a public meeting on a fee coal exchange proposal shortly after its receipt or initiation. The public meeting would be open to comment on all public interest factors of such exchange. The public is asked to specifically comment on whether the public meeting should be held early in the exchange process, as provided in the proposed rulemaking, or with the issuance of the notice of realty action near the end of the exchange process.

Another issue on which public comment is requested is whether the final rulemaking should provide a minimum size threshold below which no anti-trust review would be required. A 100-million ton increase in a private party's marketable reserves has been suggested as that threshold.

The principal author of this proposed rulemaking is David Hemstreet, Division of Lands, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The proposed rulemaking would provide a procedure for Department of Justice review of the anti-trust considerations of any fee coal exchange being processed by the Bureau of Land Management. The advice of the Department of Justice on anti-trust consequences would become a component of the Bureau field official's determination as to whether a proposed exchange, whether for a large or small concern is in the public interest.

The information collection requirements that would be imposed by this proposed rulemaking would be exempt from clearance by the Office of Management and Budget under 44 U.S.C. 3508 because there would be fewer than 10 respondents per year, with the respondents rarely exceeding 2 in most years.

List of Subjects in 43 CFR Part 2200

Administrative practice and procedure, National forests, Public lands, Public lands—classification, Public lands—mineral resources.

Under the authority of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1701 et seq.), it is proposed to amend Part 2200, Group 2200, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 2200—[AMENDED]

1. The authority citation for Part 2200 would be revised to read:

Authority: 43 U.S.C. 1715, 1716, 1732 and 1740.

2. Part 2200 is amended by adding a new subpart 2203 to read:

Subpart 2203—Exchanges Involving Fee Federal Coal Deposits

Sec.

2203.0–6 Policy.
2203.0–9 Cross references.
2203.1 Opportunity for public comment and public meeting on exchange proposal.
2203.2 Submission of information concerning proposed exchange.
2203.3 Public meeting.
2203.4 Consultation with the Attorney General.
2203.5 Action on advice of the Attorney General.

Subpart 2203—Exchanges Involving Fee Federal Coal Deposits

§ 2203.0–6 Policy.

When determining whether a fee exchange of Federal coal deposits is in the public interest, it is the policy of the Department of the Interior to consider whether the exchange will create or maintain a situation inconsistent with the Federal anti-trust laws. The Bureau of Land Management shall consider the advice of the Attorney General of the United States in making the determination of public interest.

§ 2203.0–9 Cross references.

The authorized officer shall implement a fee exchange of Federal coal deposits in compliance with the requirements of subparts 2200 and 2201 of this title.

§ 2203.1 Opportunity for public comment and public meeting on exchange proposal.

Upon receipt of a proposal for a fee exchange of Federal coal deposits, the authorized officer shall publish a notice of initiation or notice of receipt of an exchange proposal as set forth in § 2201.2 of this title, which will:

(a) Include a request for public comments on the public interest factors of the exchange proposal; and

(b) Set the time and place where a public meeting will be held to receive public comments on the public interest factors of the proposed exchange.

§ 2203.2 Submission of information concerning proposed exchange.

(a) Any person submitting a proposal for a fee exchange of Federal coal deposits shall submit on a form approved by the Director, Bureau of Land Management, specific information concerning the coal reserves presently held in each geographic area involved in the exchange along with a description of the reserves that would be added or eliminated by the proposed exchange. In addition, the person filing a proposed exchange under this section shall furnish any additional information requested by the authorized officer in connection with the consideration of the anti-trust consequences of the proposed exchange.

(b) The authorized officer shall transmit a copy of the information required by paragraph (a) of this section to the Attorney General upon its receipt.

(c) All non-proprietary information submitted under paragraph (a) of this section shall be made a part of the public record on such proposed exchange. With respect to proprietary information submitted under paragraph (a) of this section, only a description of the type of information submitted shall be included in the public record.

§ 2203.3 Public meeting.

Any public meeting held pursuant to § 2203.1 of this title shall:

(a) Follow procedures established by the authorized officer, which shall be announced prior to the meeting; and

(b) Be recorded and a transcript prepared, with the transcript and all

written submissions being made a part of the public record of the proposed exchange.

§ 2203.4 Consultation with the Attorney General.

(a) The authorized officer shall, at the conclusion of the comment period and public meeting provided for in § 2203.1 of this title, forward to the Attorney General copies of the comments received in response to the request for public comments and the transcript and copies of the written comments received at the public meeting.

(b) The authorized officer shall allow the Attorney General 90 days within which the Attorney General may advise, in writing, on the anti-trust consequences of the proposed exchange.

(c) If the Attorney General requests additional information concerning the proposed exchange, the authorized officer shall request, in writing, such information from the person proposing the exchange, allowing a maximum period of 30 days for the submission of the requested information. The 90-day period provided in paragraph (b) of this section shall be extended for the period required to obtain and submit the requested information, or 30 days, whichever is sooner.

(d) If the Attorney General notifies the authorized officer, in writing, that additional time is needed to review the anti-trust consequences of the proposed exchange, the time provided in paragraph (b) of this section, including any additional time provided under paragraph (c) of this section, shall be extended for the period requested by the Attorney General. If the Attorney General has not responded to the request for anti-trust review within the time granted for such review, including any extensions thereof, the authorized officer may proceed with the exchange without the advice of the Attorney General.

§ 2203.5 Action on advice of the Attorney General.

(a) The authorized officer shall make any advice received from the Attorney General a part of the public record on the proposed exchange.

(b) Except as provided in § 2203.4(d) of this title, the authorized officer shall not make a final decision on proposed exchange and whether it is in the public interest until the advice of the Attorney General has been considered. The authorized officer shall, in the record of decision on the proposed exchange, discuss the consideration given any advice received from the Attorney General in reaching the final decision on the proposed exchange.

August 12, 1985.

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

[FR Doc. 85-21943 Filed 9-12-85; 8:45 am]

BILLING CODE 4310-84-M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. MC-177]

National Industrial Transportation League—Petition To Institute Rulemaking on Negotiated Motor Common Carrier

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: On February 25, 1985, the National Industrial Transportation League (NITL) filed a petition with the Commission seeking institution of a rulemaking proceeding concerning the reasonableness of unpublished motor carrier rates that are negotiated between a shipper and a carrier. According to NITL, there are an increasing number of instances where a shipper who has shipped goods, and initially has been billed in reliance on a negotiated rate, is later billed at the higher published rate due to the carrier's failure to file the lower negotiated rate with the Commission. Petitioner proposes a rule that would provide a limited judicial defense for a shipper who is sued for underchanges in those circumstances. The Commission is instituting this proceeding to allow the public to comment on this matter, including the rule proposed by NITL.

DATE: Comments are due October 15, 1985.

ADDRESSES:

Send an original and 10 copies of comments to: Ex Parte No. MC-177, Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423

Send one copy of comments to petitioner's representative: James E. Bartley, Executive Vice President, The National Industrial Transportation League, 1090 Vermont Avenue, NW, Suite 410, Washington, DC 20005

FOR FURTHER INFORMATION CONTACT:

Leonard L. Arnaiz, (202) 275-7831
Howell I. Sporn, (202) 275-7691

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423, or call (202) 275-7428.

This action does not appear to affect significantly the quality of the human environment or the conservation of energy resources.

This advance notice is issued under the authority of 49 U.S.C. 10321, 10701 and 10704; and 5 U.S.C. 553.

Decided: September 5, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Comissioner Andre commented with a separate expression. Chairman Taylor was absent and did not participate in the disposition of this proceeding.

James H. Bayne,

Secretary.

[FR Doc. 85-22099 Filed 9-12-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Extension of Final Rule To List the Bay Checkerspot Butterfly as Endangered and To Designate its Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of deadline and comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the deadline for taking final action on a proposal to list the bay checkerspot butterfly (*Euphydryas editha bayensis*) and to designate its critical habitat is extended for a period not to exceed 6 months in order to examine questions regading the taxonomy and status of this subsepcies. During the extended period, the Service will establish a scientific panel to review the information now available regarding the butterfly. The public comment period on this proposal is also extended for 60 days.

DATES: The deadline for final action on the proposal is now March 11, 1986. The public comment period is extended until November 12, 1985.

ADDRESSES: Comments and other materials concerning the status of the bay checkerspot butterfly should be sent to: Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500

N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATON CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

The bay checkerspot butterfly (*Euphydras editha bayensis*) has been reduced in both population size and geographical range. Of 16 colonies formerly known, 11 have recently become extinct. Colonies have been eliminated in the course of freeway construction, subdivision construction and the introduction of exotic plants, and livestock overgrazing coupled with drought.

On September 11, 1984 (49 FR 35665), the Service published a proposed rule to list as endangered and designate critical habitat for the bay checkerspot butterfly. The original comment period for this proposal closed on November 13, 1984. This period was extended on October 26, 1984 (49 FR 43076), until November 23, 1984, to allow for a public meeting that was held in San Mateo, California, on November 13, 1984. The comment period was subsequently reopened on March 14, 1985 (50 FR 10276), at the request of counsel for United Technologies Corporation (UTC). Once again, on August 12, 1985 (50 FR 32455), the comment period on this proposal was extended for a period of 10 days to allow further information to be entered into the record. On August 16, 1985, representatives of UTC and a biologist, Dr. Richard Arnold, who has conducted studies of the butterfly under contract to UTC, met with officials of the Department of the Interior to discuss the status of the subspecies. As a result of the information and reports prepared by Dr. Arnold and formally submitted to the Department at this meeting, the Service now finds that there is a substantial scientific disagreement regarding the sufficiency and accuracy of the available data supporting the listing of the butterfly. In particular, Dr. Arnold has suggested that the bay checkerspot may be more widespread than had been believed at the time of the proposal and has questioned whether it is subspecifically distinct from other known populations of the species farther to the south. When such a scientific disagreement exists regarding the interpretation of data relevant to the listing decision, the 1-year period within which the Service must ordinarily take final action on a proposal to list a species may be extended for not more than 6 months, in accordance sith section 4(b)(6)(B)(i) of the Endangered Species Act (Act). Final action on the proposal must now be taken by March 11, 1986. During this period, a panel will be established, composed of scientists within the Service, to review all the available evidence on the status of the bay checkerspot butterfly. The period for public comment on the proposal is also extended until November 12, 1985.

The Service will consider any recommendations of the panel and any further information submitted during the comment period in determining whether the bay checkerspot should be listed and its critical habitat designated, or whether the proposal should be withdrawn in accordance with section 4(b)(6)(B)(ii) of the Act.

Author

The primary author of this notice is Dr. John J. Fay, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1795 or FTS 235–1975).

Authority: Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub L. 93–205, 87 Stat. 884; Pub. L. 94–359; 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159; 93 Stat. 1255; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: September 10, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–22104 Filed 9–11–85; 3:29 pm]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 50, No. 178
Friday, September 13, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Agricultural Export Enhancement Advisory Group; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C App. I), the U.S. Department of Agriculture announces the following meeting:

Name: Agricultural Export Enhancement Advisory Group.

Date: October 9, 1985.

Time: 2:00 p.m. to 4:00 p.m.

Place: U.S. Department of Agriculture.

Purpose: To provide advice on the administration of the Agricultural Export Enhancement Program.

Type of Meeting: Closed.

Reason for Closing: The premature disclosure of information about the proposed Agricultural Export Enhancement Program would likely significantly frustrate implementation of the proposed program.

Authority to close meeting: This determination that this meting falls within exemption 9(b) of the Government in the Sunshine Act was made by the Secretary of Agriculture pursuant to the provisions of section 10(d) of the Federal Advisory Committee Act.

Contact Person: Melvin E. Sims, General Sales Manager and Assistant Administrator, 447–5173

Done at Washington, D.C. this 9th day of September , 1985.

Richard A. Smith,

Administrator, FAS.

[FR Doc. 85–21998 Filed 9–12–85; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Deerlodge National Forest Grazing Advisory Board; Meeting

The Deerlodge National Grazing Advisory Board will meet at 10:00 a.m., October 10, 1985, In Room 315 of the Federal Building, corner of Copper and Main in Buttle, Montana.

The purpose of the meeting will be a review of the Proposed Forest Plan for the Deerlodge National Forest.

The Advisory Board meeting is open to the public. Any member of the public who wishes to be on the agenda may submit a written statement and should contact Tom Griffith at the Deerlodge National Forest Supervisor's Office.

Frank E. Salomonsen,

Forest Supervisor.

September 4, 1985.

[FR Doc. 85–21956 Filed 9–12–85; 8:45 am]

BILLING CODE 3410–11–M

Florida National Scenic Trail Advisory Council; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Florida National Scenic Trail Advisory Council will be held at 9:00 a.m. on Saturday, September 28, 1985, at Wakulla Springs Lodge, Wakulla Springs, Florida 32305.

The purpose of the Florida National Scenic Trail Advisory Council is to advise the Secretary of Agriculture on all matters of planning, management and development of the Florida National Scenic Trail. The agenda will include a discussion of the proposed draft comprehensive management plan and trail symbol.

The members of the Advisory Council are as follows:

Mr. A.T. Andrews, Gainesville, Florida
Mr. John Anthony, Boca Raton, Florida
Mr. Ernest A. Baldini, Cocoa Beach, Florida
Ms. Constance Bersok, Gainesville, Florida
Mr. Paul F. Ebersbach, Avon Park Air Force Range, Florida
Mr. Karl F. Eichhorn, Cocoa Beach, Florida
Mr. Albert G. Gregory, Tallahassee, Florida
Mr. F. Norman Heintz, Tallahassee, Florida
Mr. Roger Hunziker, Lake Butler, Florida
Mr. James "Pete" Langstaff, Oklawaha, Florida
Mr. John Morehead, Homestead, Florida
Mr. John F. O'Meara, Tallahassee, Florida
Mr. W. James Pace, Lakeland, Florida
Ms. Ethel C. Palmer, Clearwater, Florida
Mr. Friedrich E. H. Schiller, West Palm Beach, Florida
Mr. John H. Schirard, Sanford, Florida
Mr. Ben Swendsen, Palmdale, Florida
Ms. Robin Will, St. Marks, Florida

The meeting will be open to the public; however, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Council a written statement concerning the matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements may contact F. Norman Heintz, Recreation Staff Officer, USDA–Forest Service, National Forests in Florida, 227 North Bronough Street, Tallahassee, Florida 32301, Telephone 904/681–7265. Minutes of the meeting will be available for public inspection at the above address approximately four weeks after the meeting.

Issued in Tallahassee, Florida on September 4, 1985.

Don Percival,

Forest Supervisor.

[FR Doc. 85–21957 Filed 9–12–85; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

The Electronic Instrumentation Technical Advisory Committee was initially established on October 23, 1973, and rechartered on January 5, 1984, in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

Time and place: October 3, 1985 at 9:30 a.m., Herbert C. Hoover Building, Room 3407, 14th and Constitution Avenue NW., Washington, D.C. The meeting will continue to its conclusion on October 4, 1985, in Room 3407, the Herbert C. Hoover Building.

This will be the first meeting of the EITAC since the enactment of the Export Administration Amendments Act of 1985. The Act provides for annual review of the list and prompt revisions as may be necessary after each review. Before beginning each annual review, notice shall be made in the **Federal Register**, with opportunity during the review for comment and the submission of data by interested parties. This data is to include the availability from sources outside the United States of goods and technology comparable to those subject to export controls. This meeting will receive such comments, especially with a view to developing an annual plan by October, 1985. The

controls affected will be for multilateral, unilateral, and for special (bulk) licensing.

Agenda

1. Introduction of members and guests.
2. Opening remarks by the Chairman.
3. Presentation of papers or comments by the public.
4. Discussion of recommendations on 1522 lasers for upcoming list review.
5. Discussion of 1558 (vacuum tubes) to determine the appropriateness of its coverage by the committee.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202–377–4217. For further information or copies of the minutes contact Jess M. Bratton 202–377–2583.

Dated: September 10, 1985.

Milton M. Baltas,

Director, Technical Programs Staff Office of Export Administration.

[FR Doc. 85–21932 Filed 9–12–85; 8:45 am]

BILLING CODE 3510–DT–M

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held on September 24, 1985, 10:00 a.m., Herbert C. Hoover Building, Room 1412, 14th and Constitution Avenue NW., Washington, D.C. 20030 (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements).

General Session: 10:00 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 11:00 a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part (1982)) and listed in 5 U.S.C. 552b(c)(1) and (9).

The general session will be open to the public with a limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 553b(c)(1) and (c)(9) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377–3031.

For further information or copies of the minutes contact Helen L. LeGrande (202) 377–3737.

Dated: September 9, 1985.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–21933 Filed 9–12–85; 8:45 am]

BILLING CODE 3510–DR–M

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument; Massachusetts Institute of Technology

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW Washington, D.C.

Docket No. 85–164. Applicant: Massachusetts Institute of Technology, Cambridge, MA 02139. Instrument: NMR Magnet System, Model 360/89 and Accessories. Manufacturer: Oxford Instruments Limited, United Kingdom. Intended Use: See notice at 50 FR 23171.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides a cryogenic environment, a stability of better than 5×10^{-8} per hour and a homogeneity (peak-to-peak variation) of better than 2×10^{-9}.

the capability of the foreign instrument described above is pertinent to the application's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the application's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Statutory Import Programs Staff.

[FR Doc. 85–21940 Filed 9–12–85; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Deep Seabed Mining; Approval of Exploration License Revision; Ocean Minerals Co.

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of approval of exploration license revision for Ocean Minerals Company.

SUMMARY: Pursuant to the Deep Seabed Hard Mineral Resources Act and 15 CFR Part 970, the National Oceanic and Atmospheric Administration (NOAA) on August 30, 1985, approved revision number 1 to *Deep Seabed Hard Mineral Resources Exploration License USA–1* as proposed by the licensee, the Ocean Minerals Company (OMCO), 465 N. Bernardo Avenue, Mountain View, California 94043, on May 30, 1985.

FOR FURTHER INFORMATION CONTACT: John W. Padan or M. Karl Jugel, Ocean Minerals and Energy Division, Office of Ocean and Coastal Resource Management, NOAA, Suite 105, Page 1 Building, 2001 Wisconsin Avenue, NW, Washington, DC 20235 (202) 653–8257.

Approved:

Dated: September 6, 1985.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 85–21945 Filed 9–12–85; 8:45 am]

BILLING CODE 3510–12–M

National Advisory Committee on Oceans and Atmosphere; Meeting

September 10, 1985.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 (1982), as amended, notice is hereby given that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold a meeting on Monday and Tuesday, September 30-October 1, 1985. The meeting will be held in Page Building #1, Rooms 416 and B–100, 2001 Wisconsin Avenue, NW., Washington, DC. The meeting will commence at 9:00 a.m. and end at 5:00 p.m. on September 30 and commence at 8:30 a.m. and end at 3:30 p.m. on October 1.

The Committee, consisting of 18 non-Federal members appointed by the President from academia, business and industry, public interest organizations, and State and local governments was established by Congress by Pub. L. 95–63 on July 5, 1977. Its duties are to (1) undertake a continuing review, on a selective basis, or national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to the carrying out of the programs administered by the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to the Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atmospheric activities, and submit such other reports as may from time to time be requested by the President or Congress.

The tentative agenda is as follows:

Monday, September 30, 1985

2001 Wisconsin Avenue, NW., Page Building #1, Rooms 416 & B-100, Washington, DC

9:00 a.m.–12:00 noon—Plenary

9:00 a.m.–9:30 a.m.
- Announcements

9:30 a.m.–10:30 a.m.
- Guest Speaker: TBA

10:30 a.m.–12:30 noon
- Committee Discussion of NOAA Roles and Missions Study

12:00 noon–1:00 p.m.—Lunch

1:00 p.m.–3:00 p.m.—Plenary

1:00 p.m.–2:00 p.m.—Guest Speaker: Richard E. Hallgren, Assistant Administrator for Weather Services, National Oceanic and Atmospheric Administration. Topic: Roles and Missions of the National Weather Service

2:00 p.m.–3:00 p.m.—Guest Speaker: Joseph O. Fletcher, Assistant Administrator for Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration. Topic: Roles and Missions of the Office of Oceanic and Atmospheric Research

3:00 p.m.–5:00 p.m.—Panel meetings

3:00 p.m.–5:00 p.m.—Atmospheric Affairs, Chairman: S. Fred Singer, Room B-100. Topic: Panel Work Session. Speakers: None

3:00 p.m.–5:00 p.m.—Exclusive Economic Zone, Chairman: Lee C. Gerhard, Room 416. Topic: Panel Work Session. Speakers: None

5:00 p.m.—Recess

Tuesday, October 1, 1985

2001 Wisconsin Avenue, NW., Page Building # 1, Rooms 416 & B-100, Washington, DC 20235

8:30 a.m.–12:00 noon—Plenary

8:30 a.m.–9:30 a.m.

Guest Speaker: William G. Gordon, Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration. Topic: Roles and Missions of the National Marine Fisheries Service

9:30 a.m.–10:30 a.m.

Guest Speaker: Paul M. Wolff, Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration. Topic: Roles and Missions of the National Ocean Service

10:30 a.m.–12:00 noon

Committee Discussion of NOAA Roles and Missions Study

12:00 a.m.–1:00 p.m.—Lunch

1:00 p.m. 3:30 p.m.—Plenary
- Panel Reports
- Old Business
- New Business

3:30 p.m.—Adjourn

The public is welcome at the sessions and will be admitted to the extent that seating is available. Persons wishing to make formal statements should notify the Chairman in advance of the meeting. The Chairman retains the prerogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after each session.

Additional information concerning these meetings may be obtained through the Committee's Acting Executive Director, Amor L. Lane, whose mailing address is: National Advisory Committee on Oceans and Atmospheric, 3300 Whitehaven Street, NW., Page Building #1, Suite 438, Washington, DC 20235. The telephone number is 202/653–7818.

Dated: September 10, 1985.

Amor L. Lane,

Acting Executive Director.

[FR Doc. 85–21967 Filed 9–12–85; 8:45 am]

BILLING CODE 3510–12–M

Marine Mammals; Issuance of Permit; Hagenbeck Tierpark.

On July 8, 1985, notice was published in the **Federal Register** (50 FR 27839) that an application had been filed by Hagenbeck Tierpark (P356), Postfach 54 09 03, 2000 Hamburg 54, (Stellingen), West Germany for a permit to take Atlantic bottlenose dolphins for the purpose of public display in West Germany.

Notice is hereby given that on September 6, 1985, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following office(s):

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW, Washington, DC; and

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: September 9, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85–22023 Filed 9–12–85; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Issuance of Permit; Los Angeles County Museum of Natural History

On May 22, 1985, notice was published in the **Federal Register** (50 FR 21108) that an application had been filed by the Los Angeles County Museum of Natural History, 900 Exposition Blvd., Los Angeles, California 90007 for a scientific research permit to study Pacific harbor seals (*Phoca vitulina richardii*).

Notice is hereby given that on September 6, 1985 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW, Washington, DC; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated September 9, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-22024 Filed 9-12-85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Restraint Limit for Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Mauritius

September 10, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 16, 1985. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On June 17, 1985 a notice was published in the **Federal Register** (50 FR 25113) which announced the signing on June 4, 1985 of a new Bilateral Cotton, Wool and Man-Made fiber Textile Agreement between the Governments of the United States and Mauritus. The notice also announced establishment under the agreement of a control limit of 115,000 dozen for the knitwear group which includes Categories 345 (cotton sweaters), 438 (wool knit skirts and blouses), 445 and 446 (wool sweaters) and 645 and 646 (man-made fiber sweaters), produced or manufactured in Mauritius and exported during the period which began on October 1, 1984 and extends through September 30, 1985. In the letter which follows this notice, the CITA Chairman directs the Commissioner of Customs to reduce the knitwear group limit to 106,950 dozen to account for carryforward used in the previous agreement period.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

September 10, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of June 12, 1985, which directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mauritus.

Effective on September 16, 1985, the directive of June 12, 1985 is hereby further amended to include an adjustment restraint limit of 106,950 dozen [1] for cotton wool and man-made fiber textile products in 345, 438, 445, 645 and 646 as a group.

The Committee for the Implemention of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-21937 Filed 9-12-85; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Textile Consultations With the Government of Hong Kong To Review Trade in Category 440 (woven wool shirts and blouses)

September 10, 1985.

On August 7, 1985 the Government of the United States requested consultations with the Government of Hong Kong with respect to Category 440. This request was made on the basis of the agreement, effected by exchange of notes dated June 23, 1982, as amended, between the Governments of the United States and Hong Kong relating to trade in cotton, wool and man-made fiber textiles and textile products.

[1] The limit has not been adjusted to account for any imports exported after September 30, 1984.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultation between the two governments, the United States Government may request the Government of Hong Kong to limit exports in Category 440, produced or manufactured in Hong Kong and exported to the United States during 1985. The Government of the United States reserves the right to control imports in this category at the established limit.

Anyone wishing to comment or provide data or information regarding the treatment of Category 440 is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-21938 Filed 9-12-85; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletions from procurement list.

SUMMARY: This action adds to and deletes from Procurement List 1985 commodities and a service to be

provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: September 13, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On April 12, May 20, June 7, July 5 and July 19, 1985, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (50 FR 14411, 50 FR 20824, 50 FR 24018, 50 FR 27650 and 50 FR 29469) of proposed additions and deletions to Procurement List 1985, October 19, 1984 (49 FR 41195).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities and service listed.

c. The actions will result in authorizing small entities to produce the commodities and provide the service procured by the Government.

Accordingly, the following commodities and service are hereby added to Procurement List 1985:

Commodities

Pallet, Material Handling, 3990–00–892–4394
(Requirements for Mechanicsburg, Pennsylvania; Memphis, Tennessee; Richmond, Virginia and Columbus, Ohio Depots only)
Wood Container, 8115–LI–599–7220, 8115–LI–599–7320, 8115–LI–599–7820, 8115–LI–599–8020, 8115–LI–599–8120, 8115–LI–599–7920, 8115–LI–465–0920, 8115–LI–465–1020, 8115–LI–465–4120
(Requirements for Robins Air Force Base, Georgia only)

Services

Commissary Shelf Stocking and Custodial, Oakland Army Base, Oakland, California

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

Accordingly, the following commodities are hereby deleted from Procurement List 1985:

Pillow, Bed, 7210–01–035–3342
Paper Set, Manifold and Carbon, 7530–00–205–0511, 7530–00–880–9154.

C.W. Fletcher,

Executive Director.

[FR Doc. 85–21925 Filed 9–12–85; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1985; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1985 commodities to be produced by and a service to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: October 16, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1985, October 19, 1984 (49 FR 41195):

Commodities

Strap, Webbing, Litter Securing, 6530–00–784–4335
Kit, First Aid, Eye Dressing, 6545–00–853–6309
Brush, 7920–00–255–5135, 7920–00–269–0933, 7920–00–267–1213, 7920–00–267–1215, 7920–00–269–1259
Aerosol Paint, Lacquer, 8010–00–721–9742, 8010–00–079–2754, 8010–00–141–2952, 8010–00–721–9743, 8010–00–584–3148, 8010–00–721–9479, 8010–00–141–2950, 8010–00–721–9744, 8010–00–721–9745, 8010–00–965–2389, 8010–00–079–2756, 8010–00–141–2951, 8010–00–584–3149, 8010–00–584–3154, 8010–00–721–9483, 8010–00–883–5329, 8010–00–965–2390, 8010–00–965–2392, 8010–00–721–9746, 8010–00–721–9747, 8010–00–721–9748, 8010–00–721–9753, 8010–00–141–2958, 8010–00–721–9749, 8010–00–721–9750, 8010–00–721–9754, 8010–00–835–7215, 8010–00–965–2391, 8010–00–290–6983, 8010–00–290–6984, 8010–00–582–5382, 8010–00–584–3150, 8010–00–721–9487, 8010–00–721–9751, 8010–00–721–9752, 8010–00–515–2487
Pin, Tent, Wood, 8340–00–261–9752

Services

Janitorial/Custodial, Defense Mapping Agency, 175 Brookside Avenue, West Warwick, Rhode Island.

C. W. Fletcher,

Executive Director.

[FR Doc. 85–21926 Filed 9–12–85; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Department of the Army

Military Traffic Management Command; Directorate of Personal Property; Freight Carriers; Correction

AGENCY: Miltary Traffic Management Command (MTMC), DOD.

ACTION: Correction.

SUMMARY: The action portion of this notice published on July 19, 1985, 50 FR 29470, is corrected and accordingly is to read as follows: Proposed procedures for the use of DD Forms 1840 and 1840R.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Gaige, HQ Military Traffic Management Command, ATTN: MT–PPM (Room No. 410), 5611 Columbia Pike, Falls Church, Virginia 22041–5050.

Peter J. Ladzinski,

Alternate Department of the Army, Liaison with the Federal Register.

[FR Doc. 85–21953 Filed 9–12–85; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Grants; Upward Bound Program; Application Notice for New Awards for Fiscal Year 1986

Applications are invited for new awards under the Upward Bound Program.

Authority for this program is contained in sections 417A and 417C of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1070d, 1070d–1a)

The Secretary is authorized to make grants under this program to institutions of higher education, public and private agencies and organizations, and, in exceptional cases, to secondary schools.

The purpose of the grant awards is to permit applicants to carry out projects designed to generate in participants the skills and motivation necessary for success in education beyond high school.

Closing Date for Transmittal of Applications: An application for a new award must be mailed or hand delivered by December 16, 1985.

Applications Delivered by Mail: An application sent by mail should be addressed to the U.S. Department of Education, Application Control Center, Room 3633, ROB #3, Attention: 84.047 (Upward Bound), Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept a private metered postmark or a private mail receipt as proof of mailing. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building 3, 7th and D Streets, SW, Washington, DC

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: The Secretary is accepting applications for up to three years of funding. However, the Secretary will not fund an applicant for a period of time longer than is requested by the applicant in its application. Applicants requesting multi-year funding must, in accordance with 34 CFR 75.117, submit information that shows why a multi-year project is needed; a budget for the first year of the project; and an estimate of the Federal funds needed for each additional year requested.

The applications for new awards will be evaluated competitively under the selection criteria for new awards contained in 34 CFR 645.31 for the Upward Bound Program. In addition, Upward Bound applicants that have conducted an Upward Bound project within three previous years may receive up to fifteen additional points on the basis of their prior experience of service delivery. The prior experience section of the application will be evaluated on the basis of the priority points as specified in 34 CFR 645.32 for the Upward Bound Program.

Available Funds: The Congress has not yet appropriated funds for fiscal year 1986 for the Special Programs for the Disadvantaged. The Senate Budget Resolution recommends fiscal year 1986 funding for these programs at the fiscal year 1985 level of $174,940,000. Should this amount be appropriated, approximately $73,708,800 would be available for the new grant awards under the Upward Bound program. The average grant award under the Upward Bound program in fiscal year 1985 was $175,100. Applications are being requested at this time to allow for sufficient time to evaluate them and complete the grants process prior to the end of the fiscal year.

Application Forms: Application forms and program information packages are expected to be ready for mailing no later than October 14, 1985. Application packages will not automatically be mailed to all institutions of higher education. However, they will be mailed to all currently funded grantees under the Upward Bound Program. Application packages may be obtained by contacting the Division of Student Services, Education Outreach Branch, U.S. Department of Education (Room 3060, Regional Office Building 3), 400 Maryland Avenue SW, Washington, DC 20202. Telephone number: (202) 245–2165.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations. (Approved by Office of Management and Budget under control number 1840–0550.)

Applicable Regulations: Regulations applicable to the Upward Bound Program are:

(a) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78, and especially 34 CFR 75.253; and

(b) Regulations governing the Upward Bound Program in 34 CFR Part 645.

Further Information: For further information, contact the Education Outreach Branch, Division of Student Services, U.S. Department of Education, Post Office Box 23772, Washington, D.C. 20026–3772. Telephone: (202) 245–2165.

(20 U.S.C. 1070d, 1070d–1a)

(Catalog of Federal Domestic Assistance Number: 84.047—Upward Bound Program)

Dated: September 6, 1985.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 85–21927 Filed 9–12–85; 8:45 am]

BILLING CODE 4000–01–M

National Center for Research in Vocational Education Advisory Committee; Meeting

AGENCY: National Center for Research in Vocational Education Advisory Committee.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Center for Research in Vocational Education Advisory Committee. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the

general public of their opportunity to attend.

DATE: September 23, 1985.

ADDRESS: The National Center for Research in Vocational Education, Ohio State University, 1960 Kenny Road, Columbus, Ohio 43210.

FOR FURTHER INFORMATION CONTACT: Dr. Howard F. Hjelm, Director, Office of Vocational and Adult Education, Division of Innovation and Development, 300 7th Street, SW., Rm. 519, Reporters Building, Washington, D.C. 20202–5516, (202) 732–2350.

SUPPLEMENTARY INFORMATION: The National Center for Research in Vocational Education Advisory Committee is established under section 404 of the Carl D. Perkins Vocational Education Act of 1984 (Pub. L. 98–524). The Committee is established to advise the Secretary and the National Center's Director with respect to policy issues in the administration of the National Center and in the selection and conduct of major research and demonstration projects and activities of the National Center. Meetings held at the request of the Secretary are conducted in accordance with the Federal Advisory Committee Act (FACA).

The meeting of the Committee is governed by FACA and is open to the public on September 23, 1985 from 1:00 p.m. to 4:00 p.m. The public is being given less than 15 days notice because of new committee members being appointed and difficulty in scheduling the meeting. The proposal agenda includes:

1:00–1:45

1. Swearing in of New Members
2. Orientation
   a. Discussion of Charter
   b. Advisory Committee Legislative Mandate

1:45–2:15

3. National Vocational Education Discretionary Programs

2:15–3:15

4. Secretary's National Priorities
5. Assistant Secretary for Vocational and Adult Education's National Priorities

3:15–4:00

6. Mid-Contract Review Report of the National Center for Research In Vocational Education

This meeting will be held in conjunction with a regular meeting of the Committee to advise the Center Director.

Records are kept of all Committee proceedings and are available for public inspection in the Program Improvement Systems Branch, 300 7th Street, SW., Rm. 519, Reporters Building, Washington, D.C. 20202–5516, (202) 732–2367.

Robert M. Worthington,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. 85–21887 Filed 9–12–85; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA–FC–85–021]

OFP Case No. 64011–3194–01–12

Powerplant Industrial Fuel Use; Prohibition Orders, Exemption Requests, etc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance of petition for exemption and availability of certification by LTV Steel Company, Inc., for its Aliquippa Works, Aliquippa, Pennsylvania, and notice and proposed rescission of an order granting a permanent fuel mixtures exemption for the same facility.

SUMMARY: On May 15, 1985, LTV Steel Company, Inc. (LTV), successor by merger to Jones and Laughlin Steel, Inc. (J&L), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act") based on the lack of alternate fuel supply not to exceed 1500 full load equivalent hours annually for a boiler located at its Aliquippa Works in Alquippa, Pennsylvania. Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new major fuel burning installation (MFBI) consisting of a boiler. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the exemption based on the lack of alternate fuel supply where an MFBI will not be operated in excess of 1500 full load equivalent hours annually are found at 10 CFR 503.32.

The petition for exemption based on a limitation not to exceed 1500 full load equivalent hours of operation annually was filed with a request that ERA, pursuant to 10 CFR 501.100 *et seq.*, rescind a permanent 25 percent fuel mixtures exemption granted by ERA to J&L on November 20, 1981, applicable to Boiler No. 61.[1] LTV's Request for Rescission is contingent upon the granting by ERA of the permanent exemption for Boiler No. 61 pursuant to 10 CFR 503.32. Thus, if ERA determines to deny LTV's petition pursuant to 10 CFR 503.32, ERA will treat the Request for Rescission as withdrawn. However, if ERA grants the petition pursuant to 10 CFR 503.32, the Rescission Order will be effective contemporaneously.

The project for which the exemption is requested is a boiler located at LTV's Aliquippa Works. The unit, which is already in place, is designated as Boiler No. 61, and will burn natural gas.

ERA has determined that the petition for exemption is sufficient to support an ERA determination, and it is therefore accepted pursuant to 10 CFR 501.3 and § 501.63. ERA retains the right, however, to request additional relevant information from LTV at any time during the proceeding, as circumstances may require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and § 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing. Also ERA is hereby giving notice to all parties to the original fuel mixtures exemption proceeding of their right, pursuant to 10 CFR 501.101(d), to file a written response to ERA's proposed rescission of the Order granting a permanent fuel mixtures exemption during the 45-day public comment period. The public file containing a copy of this Notice of Acceptance and Availability of Certification and the Notice of Proposed Rescission, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E–190, Washington, D.C. 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefore, would be published in the **Federal Register.**

[1] OFP Case No. 55368–3194–01–12 46 FR 57110 (November 20, 1981).

DATES: Written comments are due on or before October 28, 1985. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA–007, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585.

Docket No. ERA–FC–85–021 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

George G. Blackmore, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA–045, Washington, D.C. 20585, Telephone (202) 252–1774

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Buildings, Room 6A–113, 1000 Independence Avenue SW., Washington, D.C. 20585, Telephone (202) 252–6947.

SUPPLEMENTARY INFORMATION: Title II of FUA prohibits the use of natural gas or petroleum in new MFBI's that consist of a boiler unless an exemption for such use has been granted by ERA. LTV has filed a petition with ERA requesting a permanent exemption to permit the use of natural gas as the primary energy source for Boiler No. 61, which is already in place at LTV's Aliquippa Works.

Boiler No. 61 is one of six boilers in operation at the Aliquippa Works. LTV initially obtained a permanent 25 percent fuel mixtures exemption for Boiler No. 61, at the Aliquippa Works. Granting the requested exemption would permit efficient operation of each unit, reduce maintenance costs, reduce emissions, increase the useful life of the unit, and conserve energy.

Accordingly, LTV requests that it be granted a permanent exemption permitting it to operate Boiler No. 61 on natural gas for up to 1500 full load equivalent hours on an annual basis. The exemption, if granted, would substitute for the permanent 25 percent fuel mixtures exemption currently applicable to Boiler No. 61. In this connection, LTV is requesting simultaneously with this petition a Request for Rescission of the permanent 25 percent fuel mixtures exemption applicable to Boiler No. 61. LTV's Request for Rescission is contingent on the granting by DOE of LTV's petition for the new exemption for Boiler No. 61. LTV's Request for Rescission is based on its determination that significantly changed circumstances as defined in 10 CFR 501.102(b) exist with respect to the applicability of the fuel mixtures exemption to LTV.

Exemption Petition

Section 212(a)(1)(A)(ii) of the Act and 10 CFR 503.32 provide for a permanent exemption for lack of alternate fuel supplies where an MFBI will not be operated in excess of 1500 full load equivalent hours annually. In accordance with the requirements of § 503.32(c), LTV has certified that:

1. The unit will be operated less than 1500 full load hours annually;
2. The use of mixtures is not feasible, as required under § 503.9; and
3. Prior to operation, all applicable environmental certifications will be secured.

The last certification is required under 10 CFR 503.13(b)(1). In further compliance with that section, LTV submitted and certified as accurate the information required by the environmental checklist in § 503.13(b)(2).

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7976) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption based on the lack of an alternate fuel supply where an MFBI will not be operated in excess of 1500 full load equivalent hours annually, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. LTV has certified that it will secure all applicable permits and approvals prior to commencement of operation of the unit under exemption. DOE's Office of Environment, in consultation with the Office of the General Counsel, will review the completed environmental check-list submitted by LTV pursuant to 10 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on LTV's exemption that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

Pursuant to 10 CFR 503.3, ERA hereby accepts LTV's petition for a permanent exemption for lack of alternate fuel supplies where an MFBI will not be operated in excess of 1500 full load equivalent hours annually for Boiler No. 61. ERA retains the right, however, to request additional relevant information at any time during the pendency of these proceedings. As provided in 10 CFR 501.3(b)(4), acceptance of this petition for exemption by ERA does not constitute a determination that the petitioner is entitled to the exemption requested. That determination will be based on the entire record of these proceedings, including any comments received during the public comment period provided for in this notice.

Rescission Request

ERA hereby accepts LTV's Request for Rescission of Permanent 25 percent Fuel Mixtures Exemption Applicable to Boiler No. 61. LTV's request for rescission is based on its determination that significantly changed circumstances as defined in 10 CFR 501.102(b) exist with respect to the applicability of the fuel mixtures exemption to LTV. Accordingly, pursuant to 10 CFR 501.101(f), LTV has submitted documentation supporting its Request for Rescission. It was originally anticipated that the operation of the boiler would utilize a mixture of petroleum and natural gas with industrial and commercial waste oils and blast furnace gas. Since that time, the production levels at the Aliquippa Works have declined so that presently there is insufficient supplies of blast furnace gas available. In addition, due to the current operating mode of Boiler No. 61 in which it is off line for extended periods of time, supplies of industrial and commercial waste oils are not readily available. Therefore, the use of fuel mixtures is no longer economically feasible due to the operational characteristics of Boiler No. 61 and the production levels at the Aliquippa Works.

Based on LTV's submittal, ERA is proposing to rescind the fuel mixtures exemption for Boiler No. 61. If ERA receives no response within the 45-day public comment period, the Rescission Order shall become final as proposed, contingent on ERA's granting of LTV's petition for exemption pursuant to 10 CFR 503.32.

Issued in Washington, D.C. on August 30, 1985.

Robert L. Davies,

Director, Coal and Electricity Division Office of Fuels Programs Economic Regulatory Administration.

[FR Doc. 85–21906 Filed 9–12–85; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA-FC-85-014]

OFP Case No. 67039-9277-20-24

Powerplant and Industrial Fuel Use; Prohibition Orders, Exemptions Requests; Simpson Paper Co.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Order granting to Simpson Paper Company exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to Simpson Paper Company (Simpson or "the petitioner"). The permanent cogeneration exemption permits the use of natural gas as the primary energy source for a 33.37 MW (net, approximate) combined cycle congeneration facility designed to produce electricity and process steam at Simpson's paper mill in Pomona, California. The final exemption order and detailed information on the proceeding are provided in the

SUPPLEMENTARY INFORMATION: section, below.

DATE: The order shall take effect on November 12, 1985.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

George G. Blackmore, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-1174

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue SW., Washington, DC 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: On May 6, 1985, Simpson petitioned ERA under section 212(c) of FUA and 10 CFR 503.37 for a permanent cogeneration exemption to permit the use of natural gas in a 33.37 MW (net, approximate) combine cycle cogeneration facility consisting of a gas turbine generator, a waste heat recovery boiler, a duct burner and ancillary equipment. As all of the net annual generation of electric power from the unit will be sold to Southern California Edison Company (Edison), the unit is, by definition, an electric powerplant under 10 CFR 500.2. The facility will produce approximaterly 116,300 pounds of stream per hour which will supply Simpson's paper mill needs.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including Simpson's certification to ERA, in accordance with 10 CFR 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of such cogeneration facility, in accordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility will not be technically feasible, in acordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements

In accordance with the procedural requirements of Section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on June 17, 1985 (50 FR 25119), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on August 1, 1985; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment with the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that Simpson has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to Simpson to permit the use of natural gas as the primary energy source for its cogeneration facility at the Simpson's paper mill in Pomona, California.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review therof at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, D.C. on August 30, 1985.

Robert L. Davies,

Director, Coal & Electricity Division Office of Fuels Programs Economic Regulatory Administration.

[FR Doc. 85-21905 Filed 9-12-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER85-737-000]

Arkansas Power & Light Co.; Filing of Peaking Power Agreement

September 10, 1985.

The filing Company submits the following:

Take notice that Arkansas Power & Light Company (AP&L) filed on August 30, 1985, a proposed Peaking Power Agreement which is a supplement to the Power Coordination Interchange and Transmission Agreement between City of Conway, Arkansas and Arkansas Power & Light Company dated March 1, 1982. The agreement provides for the sale to the City of 20 MW of Peaking capacity and 4,800 MWH of peaking Energy during the months of May through September.

The proposed Peaking Power Agreement will effect a savings of approximately $27,000 per year for the City of Conway based on the actual billings for the twelve month period ended July 31, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 23, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-21999 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-740-000]

Centel Corp., Southern Colorado Power Division; Cancellation

September 10, 1985.

Take notice that on September 3, 1985, Centel Corporation-Southern Colorado Power Division (Centel) tendered for filing a Notice of Cancellation of its Purchase Power Agreement with the City of Las Animas Rate Schedule FERC No. 107.

The filing terminates the Purchase Power Agreement by which Las Animas received its total requirements of Power and energy.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 23, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22000 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-681-000]

Central Hudson Gas & Electric Corp.; Rate Filing

September 9, 1985.

The filing Company submits the following:

Take notice that Central Hudson & Gas Electric Corporation (Central Hudson), on August 8, 1985, tendered for filing as a rate schedule an executed agreement dated July 26, 1985 between Central Hudson and the New York Power Authority. The proposed rate schedule provides for Electric Transmission Service and Standby Electric service for generation associated with NYPA's Ashokan Hydro Electric Generating Plant.

The rate schedule provides for a monthly transmission charge of $1.67 per kilowatt and a standby charge of $8.50 per kilowatt per month during the summer and winter peak periods.

Central Hudson states that a copy of its filing was served on NYPA.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 16, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22001 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[ER85-720-000]

The Connecticut Light and Power Co.; Filing of Tariff Changes

September 10, 1985.

The filing Company submits the following:

Take notice that The Connecticut Light and Power Company (Company) on August 30, 1985, tendered for filing proposed changes in its FERC Electric Tariff Resale Service Rate W-2 pursuant to which it provides service to: Second Taxing District, City of Norwalk; Third Taxing District, City of Norwalk; and the Town of Wallingford. The Company also filed proposed changes in its FERC Electric Tariff Resale Service Rate F-2 pursuant to which it provides service to Bozrah Light and Power Company.

The Company proposes to rename the tariffs the "W-3 Rate" and "F-3 Rate" and proposes to a two-phase rate increase for each tariff. The Company states that the proposed Phase One increase in charges is intended to recover general increases in its costs of the higher level of costs to be incurred by the Company due to the expected commercial operation on or about May 1, 1986, of the Millstone Unit 3 nuclear generating station in Waterford, Connecticut.

The Company requests that, in the event that the Commission concludes that the Phase Two rates should be suspended for a period of more than one day, the alternate Phase One rates be made effective on October 30, 1985. The Company requests that the Phase Two rates be made effective on October 31, 1985. If the Phase Two rates are not suspended, or are suspended for only one day, the Company requests that the Phase One rates are to be deemed withdrawn. In addition, in order to synchronize the effectiveness of the Phase Two rate changes with the expected commercial operation of Millstone Unit 3 on or about May 1, 1986, the Companies agree that the effectiveness of the Phase Two filing be suspended until the later of a five-month suspension beyond the Phase Two requested effective date or the date of Commercial operation of Millstone Unit 3.

The Company states that the proposed Phase One increases for the W-3 Rate and the F-3 Rate together would increase total revenues from jurisdictional sales and service by $633,000 or 1.9 percent based on the twelve-month period ending December 31, 1986 (Period II). The Company also states that the proposed Phase Two increases (which include the Phase One increases as well) would increase total revenues from jurisdictional sales and service by $13,786,975 based on period II. After taking into account anticipated fuel savings which will result from replacing fossil-fired generation with nuclear-powered generation when Millstone Unit 3 enters commercial operation, the total Phase Two revenue increases during Period II are estimated by CL&P to be $11,088,078 or 34.7 percent.

Copies of the filing were served upon the Company's jurisdictional customers and the Connecticut Department of Public Utility Control.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 23, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–22002 Filed 9–12–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–741–000]

Idaho Power Co.; Compliance Filing

September 10, 1985.

Take notice that on August 29, 1985, the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes original Volume No. 1) during July 1985, along with cost justification on for the rate charged. The filing includes the following supplements:

Utah Power & Light Company—Supplement 45
Sierra Pacific Power Company—Supplement 41
Portland General Electric Company—Supplement 37
Southern California Edison Company—Supplement 31
San Diego Gas & Electric Company—Supplement 26
Washington Water Power Company—Supplement 31
Pacific Gas & Electric Company—Supplement 12
Western Area Power Administration—Supplement 5

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 23, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–22003 Filed 9–12–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA85–5–5–003]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

September 10, 1985.

Take notice that on September 9, 1985, Midwestern Gas Transmission Company (Midwestern) withdrew its July 26, 1985 PGA filing and tendered for filing Sixteenth Revised Tariff Sheet No. 5 to be effective September 9, 1985.

Midwestern states that the withdrawal of the July 26, 1985 PGA filing and this revised tariff sheet are the result of the Commission's rejection in Opinion No. 240 of a Settlement Agreement filed in Docket Nos. RP80–97, *et al.* Rejection of the Settlement requires that Midwestern's primary supplier Tennessee Gas Pipeline Company (Tennessee) impose a surcharge to recover its unrecovered purchased gas cost account balance which in turn will preclude Tennessee from maintaining the weighted average cost of gas reflected in its July 26, 1985 PGA filing. Accordingly, Midwestern is filing the instant rate adjustment in order to track Tennessee's adjustment to its Rate Schedule CD–1 gas rate being filed concurrently.

Additionally, Midwestern states that Tennessee has proposed two alternatives for recovery of its deferred account balance. The first of these alternatives is a direct billing mechanism and the second alternative is a twenty-four month amortization of the balance. Midwestern has also submitted revised tariff sheets which track Tennessee's rate Schedule CD–1 gas rate provided either of these alternatives are accepted by the Commission.

Midwestern requests waiver of the Commission's regulations to the extent necessary to accept the tariff sheet which tracks the Tennessee rate adjustment proposal accepted by the Commission.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–22004 Filed 9–12–85; 8:45 am]

BILLING CODE 6717–01–M

Monfort of Colorado, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

[Docket No. QF85–660–000]

September 9, 1985.

On August 23, 1985, Monfort of Colorado, Inc. (Applicant), of P.O. Box G, Greeley, Colorado 8062, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping cycle cogeneration facility will be located at the Applicant's beef slaughter and processing plant on Highway 85 in Weld County, one mile north of Greeley, Colorado. The facility will consist, of three Allison 501 KB–5 gas combustion turbine/generator units and a waste heat recovery boiler fitted with a supplementary firing burner. The total electric power production capacity of the facility will be 9,000 kW. The primary source of energy is natural gas. Installation of the facility is projected to begin in October 1, 1985.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–22018 Filed 9–12–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85-736-000]

Montaup Electric Co.; Rate Filing

September 10, 1985.

The filing Company submits the following:

Please take notice that on August 30, 1985 Montaup Electric Company filed an amendment of a unit sales contract between Montaup and Braintree Electric Department for the sale of capacity and energy from Canal Unit No. 2 (FERC Rate Schedule No. 60).

Under the amendment the contract is extended for three years through October 31, 1988 for 25,000 Kw (4.281%). The Capacity Charge of $4.57 per Kw/month agreed to in August, 1983 represents the cost at that time and is below the current cost of $4.78 per kw/month shown in Attachment A.

This filing was served on the affected customer and the Massachusetts Department of Public Utilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 23, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22005 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF85-655-000]

New York State Energy Research and Development Authority; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

September 9, 1985.

On August 16, 1985, New York State Energy Research and Development Authority (Applicant), of Two Rockefeller Plaza, Albany, New York 12233, submitted for filing an application for certification of a facility as a qualifying congeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping cycle cogeneration facility will be located in Auburn, New York. The facility will consist of a natural gas fueled reciprocating engine/generator unit equipped with heat exchangers designed to capture thermal energy from the reciprocating engine coolant and exhaust gases. The heat recovered from the heat exchangers will provide supplementary heat to a hydrothermal energy extraction system, a system designed to extract heat from a warm underground brine reservoir. The facility's total thermal energy will be used to satisfy the domestic hot water and space heating requirements of two nearby school buildings. The primary source of energy will be natural gas. The electric power production capacity of the facility is 115 kW.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22019 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-38-000]

Pel-Tex Oil Co.; Petition for Adjustment

Issued: September 9, 1985.

On May 6, 1985, Pel-Tex Oil Company (Pel-Tex) filed with the Federal Energy Regulatory Commission a petition for an adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978. Pel-Tex seeks a waiver of $171,025.25 of its Btu refund obligations incurred under Commission Order 399-A. In support of its request, Pel-Tex claims that, despite its best efforts, it has been unsuccessful in collecting these refunds from certain royalty and working interest owners.

The procedures applicable to the conduct of this adjustment proceeding are found in Supbart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the Federal Register.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22006 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-608-000]

Public Service Company of New Mexico; Order Accepting for Filing and Suspending Rates, Granting Intervention, Granting in Part and Denying in Part Requests for Waiver, and Establishing Hearing Procedures

Issued: September 6, 1985.

On July 8, 1985, Public Service Company of New Mexico (PNM) submitted two proposed modifications of the fuel adjustment clause (FAC) contained in its firm power rates to five wholesale customers,[1] together with a petition for waiver of § 35.14 of the Commission's regulations (18 CFR 35.14). Specifically, PNM proposes to revise its FAC to exclude the effect of the availability of test energy from Units 1, 2, and 3 of the Palo Verde Nuclear Generating Station (Palo Verde)[2] from the calculation of its fuel adjustment charges and to include fees for the disposal of spent nuclear fuel and/or high level radio-electricity from Palo Verde.

PNM notes that Unit 1 began generating test energy from test operation on June 12, 1985, and that Units 2 and 3 will begin test operations in late 1985. During these periods, PNM estimates that its share of Palo Verde will generate 600 million KWh of test energy, which will become a part of the energy supply available on PNM's system. Consequently, the fuel consumption of PNM's other generating units and purchased power costs would be reduced substantially. PNM intends to use this test energy to meet firm

[1] The Cities of Gallup and Farmington, New Mexico, Plains Electric Generation and Transmission Cooperative, Inc., Texas-New Mexico Power Company, and the Department of Energy at Los Alamos, New Mexico (DOE). PNM no longer serves DOE as a wholesale customer; accordingly, that rate schedule change is moot. *See* Attachment for rate schedule designations.

[2] PNM has a 10.2% (approximately 390 MW) ownership interest in Palo Verde.

customer requirements as well as to make off-system sales.

PNM contends that, since it is not recovering capital costs associated with Palo Verde construction work in progress (CWIP) through base rates, the savings due to test energy should not automatically flow through the FAC to wholesale customers, as such treatment is inconsistent with the Commission's Uniform System of Accounts, Electric Plant Instructions, section 3, Paragraph 8 (18 CFR 101). PNM states that the fair value of test energy will be charged through the FAC and used to offset the cost of construction of Palo Verde. Under PNM's proposed FAC, test energy will be first sold and dispatched to independent purchasers without affecting the fuel adjustment clause;[3] the remaining test energy will then be available to PNM as a system resource. The company proposes an effective date of June 12, 1985, for all customers except for the City of Gallup. With respect to the City of Gallup, PNM proposes an effective date of September 2, 1986, pursuant to the terms of the settlement approved by the Commission in Docket No. ER83-299-000, 27 FERC ¶ 61,396 (1984). The utility would continue to capitalize for later collection from the city fees for disposal of spent nuclear fuel or radioactive waste from the date of commercial operation of Unit 1 until September 2, 1986. Accordingly, PNM requests waiver of the notice requirements. In addition, PNM requests waiver of the requirement of § 35.14(a)(9)(ii) of the regulations (18 CFR 35.14(a)(9)(ii)) to the extent it is applicable. That provision requires an electric utility which proposes to change its FAC to provide full cost of service data unless it has had a rate approved by the Commission within the past year. PNM states that such information is not relevant to its filing. To the extent necessary, the company incorporates by reference the Period I and II statements filed in Docket No. ER83-299-000.[4]

Notice of the Company's filing was published in the **Federal Register**, [5] with comments due on or before July 29, 1985.

Timely motions to intervene were filed by Texas-New Mexico Power Company (TNP) and Plains Electric Generation and Transmission Cooperative, Inc. (Plains), both of which request suspension of the proposed FAC modification and a hearing. An untimely motion to intervene was filed on July 30, 1985, by the Cities of Gallup and Farmington, New Mexico (Cities) which also request suspension. The intervenors challenge PNM's method of calculating the value of test energy, as well as PNM's proposal to capitalize spent nuclear fuel disposal costs prior to commercial operation. Plains objects to PNM's proposed effective date. Presumably, the savings associated with test energy have been passed thorugh to PNM's wholesale customers since June 12, 1985. Thus, a surcharge would allegedly be needed in order to recoup the difference between actual and "fair value" energy costs from June 12 until the present. Plains argues that a surcharge would charge future customers for benefits received by past customers and, further, would, would constitute retroactice ratemaking.

The Cities contend that Gallup's rates cannot be modified prior to the time of a final Commission order. Thus, the filing should not become effective as to Gallup until either September 2, 1986, or the date of Commission approval of the proposed changes, which ever occurs later.

On August 12, 1985, PNM filed a timely response to the motions to intervene. While PNM does not oppose the intervention of Plains, TNP, or the Cities, the company denies that either suspension or a hearing is warranted. In support, the company disputes the allegations contained in the intervenors' pleadings. PNM states that any change in rate to Gallup may become effective only after Commission approval, although it believes that such an order would be issued prior to September 2, 1986.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely, unopposed motions to intervene serve to make TNP and Plains parties to this proceeding. Furthermore, we find that good cause exists to grant the Cities' untimely intervention, given the interests of the constituencies which they represent, the early stage of this proceeding, and the apparent absence of any undue prejudice or delay.

With respect to PNM's prposed treatment of test energy in its fuel adjustment clauses, we have previously accepted several similar applications. In *Pennsylvania Power and Light Co., (PP&L)* Opinion No. 176, 23 FERC ¶ 61,395 (1983), we granted the company's request for waiver and approved the modifications to its fuel adjustment clauses. In that case we found that, absent waiver of the fuel clause regulations, current ratepayers would receive the benefits of the test epergy in the form of decreased fuel costs. Future ratepayers would, however, incur all the costs associated with the test energy through higher rates which result from inclusion of such cost in the CWIP account and ultimately in rate base. We concluded that, by allowing waiver of the regulations and crediting the fair value of test energy to the plant account, future ratepayers who ultimely bear the costs associated with the facility undergoing testing will receive benefits through lower rates. This ratemaking would, the Commission determined, avoid problems of intergeneration inequality. PNM's proposed clause regarding test energy accomplishes the basic premise of *PP&L*, that present customers should not receive the full benefit of plants whose fixed costs will be borne by future customers. Therefore, we shall grant PNM's petition for waiver of the FAC regulations.[6]

The intervenors have alleged that PNM's method of calculating the fair value of test energy may be unreasonable. PNM's proposal is to value all test energy which displaces PNM generation at displacement costs and to value all test energy which displaces purchases at economy energy prices as determined by recent transactions. PNM's method differs from PP&L's in that it proposes to value test energy which displaces purchases at the average price for its economy energy sales and purchases for the latest prior four week period. PP&L valued all test energy at its replacement cost—*i.e.*, the cost which would have been incurred if the test energy were not available. In view of the intervenors' allegations, we shall set for hearing the question of whether PNM's method of determining fair value is just and reasonable.

PNM's proposed FAC includes language which specifically provides that fees for spent nuclear fuel disposal costs (SNFDC) will be included as a component of fuel cost. The company proposes to defer collection of these charges from Gallup until September 2, 1986.[7] We have previously held,

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[3] In this case, the test energy will not be available for system use, and revenues will simply be credited against Palo Verde's investment.

[4] PNM submitted its filing in Docket No. ER83-299-000 on February 1, 1983

[5] 50 F.R. 29,746 (1985).

[6] We agree with PNM that full cost of service data is unnecessary with respect to the company's filing and shall therefore waive the requirements of § 35.14(a)(9)(ii) of the Commission's regulations.

[7] Although PNM's petition requested that collection of SNFDC through the FAC commence upon commercial operation of Palo Verde, its proposed fuel clause provides for inclusion of SNFDC upon generation at Palo Verde. We shall require PNM to revise its proposed FAC to conform to its petition

however, that SNFDC related to current nuclear fuel burn is includable in the FAC, and that utilities need not file revisions in costs related to current fuel burn, so long as they simply reflect DOE cost determinations.[8] Therefore, while PNM is free to include specific SNFDC language in its FAC, such is not required for cost collection under its existing FAC since SNFDC is merely a component of nuclear fuel expense. PNM should therefore revise the proposed FAC for Gallup to delete the September 2, 1986, effective date.

Our review of the company's filing indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

In *West Texas Utilities Co.*, 18 FERC ¶ 61.189 (1982), we explained that where our preliminary examination indicates that the proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that the proposed rates may not yield substantially excessive revenues. Accordingly, we find that a nominal suspension of PNM's rates is appropriate.

As noted, PNM requests a June 12, 1985, effective date for customers other than Gallup and therefore seeks waiver of the notice requirements. PNM has not shown good cause for the waiver. Presumably, the company was aware before the June 12 date that Palo Verde Unit 1 would commence producing test energy and could have filed a timely petition for waiver of the Commission's fuel clause regulations. Further, one of the affected customers objects to the request for waiver. Accordingly, we shall deny the request for waiver. As to TNP, Plains, and Farmington, we shall therefore accept PNM's filing, as modified, and suspend it for one day from sixty days after filing, to become effective on September 8, 1985, subject to refund. Since DOE is no longer a wholesale customer, we shall deem the filing withdrawn as to it. With respect to Gallup, that city is served pursuant to two rate schedules, A and B. Whereas Rate Schedule B permits unilateral rate changes, Rate Schedule A may only be changed as of the date of a final Commission order. However, pursuant to the terms of the settlement agreement approved in Docket No. ER83–299–000, PNM may not increase its rates to Gallup prior to September 2, 1986. Accordingly, we shall: (1) Accept PNM's proposed FAC under Rate Schedule A, as modified, for filing and suspend it for one day, to become effective, subject to refund, on September 3, 1986, or the date of a final Commission order in these proceedings, whichever is later; and (2) accept PNM's proposed FAC under Rate Schedule B, as modified, for filing and suspend it for one day to become effective on September 3, 1986, subject to refund. Because PNM has submitted its filing to Gallup more than 120 days in advance of the proposed effective date, we shall grant waiver of the Commission's advance filing requirements.[9]

The Commission orders

(A) The Cities' motion to intervene is hereby granted subject to the Commission's Rules of Practice and Procedure.

(B) PNM's request for waiver of § 35.14 of the Commission's regulations is hereby granted. Further, PNM's request for waiver of the cost of service requirements of § 35.14.14(a)(9)(ii) is granted.

(C) PNM's request for waiver of the prior notice requirement is hereby denied. The Commission hereby grants waiver of the advance filing requirements.

(D) PNM is ordered to refile its fuel adjustment clauses to indicate that fees for SNFDC will be included upon commercial operation of Palo Verde and to delete the provision for collection of fees for SNFDC from Gallup on a deferred basis.

(E) PNM's proposed fuel clauses are hereby accepted, as modified, for filing and suspended for one day, to become effective on September 8, 1985, subject to refund with respect to all customers other than Gallup and DOE. As to DOE, PNM's filing is deemed withdrawn. As to Gallup, the FAC under Service Schedule A, as modified, is accepted for filing and suspended for one day, to become effective, subject to refund, on Septemer 3, 1986, or the date of a final Commission order in this proceeding, whichever is later. The fuel adjustment clause under Service Schedule B, as modified, is acceped for filing and suspended for one day, to become effective on September 3, 1986, subject to refund.

(F) PNM is hereby ordered to file, within thirty (30) days of the end of testing of Palo Verde, the accounting entries made to effect its treatment of test power, including a detailed explanation of the derivation of all figures.

(G) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of PNM's proposed fuel clauses.

(H) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(I) Subdocket –000 of Docket No. ER85–608–000 is hereby terminated. The evidentiary proceeding established herein is designated as Docket No. ER85–608–001.

(J) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

Attachment

Public Service Company of New Mexico Rate Schedule Designations Docket No. ER85–608–000

Description: Modified Fuel Adjustment Clause

Designation	Other party
(1) Supplement No. 40 to Rate Schedule FPC No 31 (Supersedes Supplement No 34)	Plains Electric Generation & Transmission Coop., Inc
(2) Supplement No 17 to Rate Schedule FPC No 32 (Supersedes Supplement No 16)	Texas-New Mexico Power Company
(3) Supplement No. 5 to Supplement No. 3 to Rate Schedule FERC No. 51 (Supersedes Supplement No. 4 to Supplement No. 3)	City of Farmington
(4) Supplement No 22 to Rate Schedule FPC No. 2 (Supersedes Supplement No 20)	City of Gallup—Service Schedule A
(5) Supplement No 23 to Rate Schedule FPC No 2 (Supersedes Supplement No. 21)	City of Gallup—Service Schedule B

[FR Doc. 85–22007 Filed 9–12–85; 8:45 am]

BILLING CODE 6717–01–M

[8] *See Western Massachusetts Electric Co.* 24 FERC ¶ 61.278 (1983).

[9] *See* 18 CFR 35.3 (1984).

[Docket No. ER85-710-000]

Public Service Electric and Gas Co.; Filing of Initial Rate Schedule

September 10, 1985.

The filing Company submits the following:

Take notice that on August 27, 1985, Public Service Electric and Gas Company (Public Service) tendered for filing an initial rate schedule to provide transmission service to the Borough of Park Ridge (Park Ridge). The Rate Schedule provides for a monthly transmission service charge of $1.35 per kilowatt for the delivery by Public Service of Park Ridge's share of the State of New Jersey's allocation of New York Power Authority neighboring state hydroelectricity from the New York/New Jersey border to Park Ridge.

Public Service requests a waiver of notice requirements with the customer's consent so that the Rate Schedule can be made effective as of July 1, 1985.

Public Service states that a copy of this filing has been served by mail upon customer.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 23, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22008 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-715-000]

Public Service Electric and Gas Co.; Filing of Initial Rate Schedule

September 6, 1985.

The filing Company submits the following:

Take notice that on August 28, 1985, Public Service Electric and Gas Company (Public Service) tendered for filing an initial rate schedule to provide transmission service to the Borough of Milltown (Milltown). The Rate Schedule provides for a monthly transmission service charge of $2.45 per kilowatt for the delivery by Public Service of Milltown's share of the State of New Jersey's allocation of New York Power Authority neighboring state hydroelectricity from the New York/New Jersey border to Milltown.

Public Service requests a waiver of notice requirements with the customer's consent so that the Rate Schedule can be made effective as of July 1, 1985.

Public Service states that a copy of this filing has been served by mail upon customer.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 22, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22009 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS66-84, et al.]

E.E. Reigle dba Richmond Drilling Co.; Applications for Small Producer Certificates [1]

September 9, 1985.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before September 25, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No	Date Filed	Applicant
CS66-84	Aug. 14, 1985 [1]	E E Reigle dba Richmond Drilling Co., First National Bank Building, P O Box 150, Midland, Texas 79702
CS77-669-001	Aug. 29, 1985	Tumbleweed Production Co., P.O. Box 3362, Borger, Texas 79007
CS85-95-000	Aug. 9, 1985	Dexco, Inc., P.O. Box 1089, Covington, Louisiana 70434
CS85-97-000	Aug. 16, 1985	Bailey Balken-No 1009—1509 Main St., Dallas, Texas 75201
CS85-98-000	Aug 26, 1985	Risa Energy Corporation, P.O. Box 2791, Corpus Christi, Texas 78403
CS85-99-000	Aug 22, 1985	Meadowbrook Oil Corporation of Oklahoma, Inc., Judith M Dean, Alan H Dean, Michael D. Dean, Lara M Dean, John R. Dean, Leslie Henshaw & Rayford C Bowen, 3612 South Epperly Drive, Del City, Oklahoma 73115
CS85-100-000	Aug 30, 1985	ENEX Oil Gas Income Program II, (ENEX Resources Corporation, General Partner), One Kingwood Place, Suite 205, Kingwood TX 77339
CS85-101-000	Sept. 3, 1985	J. Carter Henson, 42 Bendwood, Sugar Land, Texas 77478
CS85-102-000	do	David K. Spradlin dba S.E Production Company, P O Box 755, Hobbs New Mexico 88241
CS85-103-000	do	B L G Petroleum, Inc., P O Box 10888, Midland, TX 79702

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No	Date Filed	Applicant
CS85-104-000	do	J.R. Spiehler, Jr., P.O. Box 51353, Lafayette, Louisiana 70505.

By letter dated August 6, 1985, Applicant request that its certificate be amended to include the following persons and/or entities as certificate co-holders: R. Clark McDonald and C. B. L. M. Corporation; B. J. Tate Corporation and Betty J. Tate Living Trust, Mickey J. Stipe and ITX Corporation; E. E. Riegle, Edward E. Riegle-Trustee for Violet H. Riegle, dec., Edward Gordon Riegle, Edward Gordon Riegle, Trustee for Riegle-Williams Trust; Caroline Riegle Williams and C. J. Williams & Co. (a nominee partnership), E. Bradford Williams, indiv., E. Allan Williams, indiv., Eric John Riegle; and Karl Edward Riegle and Randal Kurt Riegle.

[FR Doc. 85-22017 Filed 9-12-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF85-599-000]

Derald Schnabel; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

September 9, 1985.

On July 11, 1985, Derald Schnabel (Applicant), of P.O. Box 479 Parkston, South Dakota 57366 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. Supplemental information was filed on August 30, 1985 to complete the application.

The 3.5 kilowatt wind facility is located in Newton, Iowa.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22020 Filed 9-12-85; 8:45am]
BILLING CODE 6717-01-M

[Docket No. G-8837-005, *et al.*]

Shell Offshore Inc.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates[1]

September 9, 1985.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 25, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
G-8837-005, D, Aug. 26, 1985	Shell Offshore Inc., P.O. Box 4480, Houston, Texas 77210.	Tennessee Gas Pipeline Company, Halter Island Field, Terrebonne Parish, Louisiana.	(2)	
G-11373-001, Aug 26, 1985	Mobil Oil Exploration & Producing Southeast, Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046	Texas Eastern Transmission Corporation, Greenwood-Waskom Field, Caddo Parish, Louisiana.	(3)	
CI65-1053-001, D, Aug 22, 1985	Sun Exploration and Production Company, P.O. Box 2880, Dallas, TX 75221-2880	Northern Natural Gas Company, Morrison Ranch Field, Roberts County, Texas.	(4)	
CI67-41-000, Aug 26, 1985	Sun Exploration and Production Company	Northern Natural Gas Company, Mocane-Laverne Area Field, Ellis County, Oklahoma.	(4)	
CI67-1085-000, D, Sept 3, 1985	Sun Exploration and Production Company	National Fuels Corp. & Oklahoma Natural Gas Gathering Corp. (now Ringwood Gathering Company), Ringwood Field, Major County, Oklahoma.	(5)	
CI67-1085-001, D, Sept. 3, 1985	Sun Exploration and Production Company	National Fuels Corp. & Oklahoma Natural Gas Gathering Corp. (Ringwood Gathering Company), Ringwood Field, Major County, Oklahoma	(6)	
CI68-966-000, D, Aug. 30, 1985	Sun Exploration and Production Company	Panhandle Eastern Pipe Line Co., Dover-Hennessey Field, Kingfisher and Garfield County, Oklahoma.	(7)	
CI74-334-002, Sept. 3, 1985	Chevron, U.S.A. Inc., P.O. Box 7309, San Francisco CA 94120-7309	Southern Natural Gas, Unknown Pass, Orleans Parish, Louisiana	(8)	
CI77-400-002, D, Sept 3, 1985	Texaco Inc., P.O. Box 52332, Houston, TX 77052	United Gas Pipeline Company and Southern Natural Gas Company, Eugene Island Blocks 26, 27, 47, Offshore Louisiana.	(9)	
CI85-634-000 (CS71-646), B, Aug. 19, 1985	Ladd Petroleum Corporation, 830 Denver Club Building, Denver, Colorado 80202	Transcontinental Gas Pipe Line Corp., Brazos, E., Brazos Block 409-L, Offshore Texas	(10)	
CI85-635-000 (CI74-52), B, Aug 19 1985	Chevron U.S.A. Inc	Natural Gas Pipeline Company, East Cameron Block 257, OCS-G-2041, East Cameron Block OCS-G-2128, Offshore Louisiana	(11)	
CI85-636-000 (CS80-182), B, Aug 21, 1985	Aganta Oil Company, P.O. Box 333, Corpus Christi, Texas 78403	United Gas Pipe Line Company, North Fort Merrill Field, Live Oak County, Texas	(12)	
CI85-637-000 (CS82-7-000), B, Aug. 21, 1985	Kaiser Energy, Inc., P.O. Box 8, Ravenswood, WV 26164	Gas Transport, Inc., Silverton Field, Jackson County, West Virginia	(13)	
CI85-638-000, A, Aug 26, 1985	Cities Service Oil and Gas Corporation, P.O. Box 300, Tulsa, Oklahoma 74102	Williston Basin Interstate Pipeline Company, Pavillion Field, Fremont County, Wyoming.	(14)	14.73

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI85-639-000 (G-2789), B, Aug. 22 1985	Amoco Production Company, Post Office Box 3092, Houston, Texas 77253	Texas Gas Pipe Line Corporation, Big Hill Field, Jefferson County, Texas	(1)	
CI85-640-000, B, Aug. 29, 1985	Hermes Fairman, et al. (Fairman Drilling Co.), P.O. Box 288, Dubois, PA 15801	New York State Nat. Gas Corp (Cons. Gas Trans Corp.); Hall Chase Well #1, Benezette Township, Elk County, Pennsylvania	(15)	
CI85-641-000, B, Aug 29, 1985	Hermes H. Fairman, et al. (Fairman Drilling Co.)	New York State Nat. Gas Corp (Cons. Gas Trans Corp.); Eugene Dollinger, et al. Well #2, Benezette Township, Elk County, PA	(16)	
CI85-643-000, A, Sept. 3, 1985	Exxon Corporation, Post Office Box 2180, Houston, Texas 77252-2180	Texas Eastern Transmission Corporation, South Pass Blocks 93 & 94, Offshore Louisiana	(17)	
CI85-644-000 (CS71-391), B, Sept 3, 1985	Jet Oil Company, 600 Mid-Continent Bldg., Tulsa, Oklahoma 74103	Transcontinental Gas Pipe Line Corp., Mosquito Bay Field, Terrebonne Parish, Louisiana.	(18)	
CI85-645-000 (CS77-40), B, Sept 3, 1985	Primary Fuels, Inc. (Succ in Int to ACF Petroleum Company, Inc.), P.O. Box 569, Houston, Texas 77001.	Transco Gas Pipe Line Corporation, Courtney No. 1 Well, Bassfield Field, Jefferson Davis County, Mississippi.	(19)	
CI85-646-000 (G-7146), B, Sept. 3 1985	Chevron U.S.A. Inc., P.O Box 7309, San Francisco, CA 94120-7309	United Gas Pipeline Company, Keeran Field, Victoria County, Texas	(20)	
CI85-647-000 (CI79-200), B, Sept 3, 1985	Exxon Corporation	Columbia Gas Transmission Corp., South Pass Blocks 93 and 94, Offshore Louisiana	(21)	
CI85-649-000, Sept. 4, 1985	MGPC, Inc., Suite 1600, 10880 Wilshire Boulevard, Los Angeles, California 90024	MIGC, Inc., Gillette Gas Plant, Campbell County, Wyoming	(22)	

[1] By agreement dated March 7, 1985, Shell Offshore Inc. has farmed-out certain acreage to Crescent Drilling & Development Inc., Peacock Oil and Gas Properties, Trafalgar House Oil and Gas Inc. and Odyssey Gulf Coast Partners 83, Ltd.
[2] Unit well plugged and abandoned and unit removed from contract commitment.
[3] Assignment of Mary T. Morrison "D" Unit to Kaiser-Francis Oil Company
[4] Property No. 853246, Carl Long Unit 1-26, F.B. Long et ux. Lease No. 922741 sold to Kaiser-Francis Oil Company
[5] Property No. 878328, Sawyer Unit, was sold to Earl R. Bruno
[6] Several properties sold to Entex Petroleum, Inc.
[7] Sale of properties by Partial Assignment and Bill of Sale to Spess Oil Company, Inc.
[8] Applicant is filing to change delivery point
[9] On March 29, 1985, federal lease OCS-G-0312 (Eugene Island Block 27) was surrendered to the MMS because of the discontinuance of production operations. The last well on Block 27 ceased production on October 8, 1984.
[10] All production related to the referenced field has ceased. The field is depleted and no further production is planned. The purchaser wishes to remove the pertinent facilities related to this well.
[11] Production has ceased from wells, and the leases have expired.
[12] Reserve depleted
[13] Purchase determined the purchase price of gas supplies from the Silverton Field is greater than the price for which it can purchase gas along its pipeline network and it is therefore willing to release the Silverton Field gas from the Gas Purchase Agreement.
[14] Applicant is filing under Rollover Gas Purchase Contract dated 11/30/84 (Original Contract between Shell Oil Company and Montana-Dakota Utilities Co., dated 2/26/64 ratified by Cities Service 4/22/64)
[15] All production from the dedicated property has ceased and all wells have been plugged and abandoned. The primary term of the gas sales contract expired June 1, 1974 and said contract was cancelled on May 16, 1980
[16] Natural gas reserves depleted
[17] Applicant proposes to sell gas under a contract dated July 24, 1985
[18] The State J.M. Smyth #1 well was plugged and abandoned June 1979. The purchaser wishes to remove the pertinent facilities related to this well
[19] All production related to the Courtney No. 1 well has ceased and the well has been plugged and abandoned
[20] Production has ceased and no further prospects for development exists.
[21] The Gas Sales and Purchase Agreement between Exxon and Columbia expired by its own terms on January 14, 1984. Columbia has advised Exxon that, due to the price and take requirements under R.S. No. 650, Columbia no longer desires to purchase the subject gas and will support Exxon's abandonment application.
[22] Initial application for exchange of natural gas filed under a Gas Exchange Agreement dated August 15, 1985.
Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage, E—Total Succession, F—Partial Succession.

[FR Doc. 85-22016 Filed 9-12-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER85-717-000]

Southern Company Services, Inc.; Filing of Service Schedule R to an Interchange Contract Between Gulf States Utilities Company and Southern Companies

September 6, 1985.

The filing Company submits the following:

Take notice that on August 29, 1985, Southern Company Services, Inc. on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company ("Southern Companies"), tendered for filing Service Schedule R to an interchange contract between Gulf States Utilities Company ("GSU") and Southern Companies.

Service Schedule R provides for non-firm energy sales from Southern Companies to GSU and allows GSU to purchase such energy in substitution for energy under a unit power sales agreement among the parties. The price of energy under Service Schedule R will be at the incremental cost of Southern Companies. Southern Companies and GSU request that the new service Schedule be allowed to become effective as of August 2, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 22, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85-22010 Filed 9-12-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. QF85-666-000]

Syracuse City School District; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

September 9, 1985.

On August 26, 1985, Syracuse City School District (Applicant), of 644 Madison Street Syracuse, New York 13210 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility is located at the Nottingham High School, in Syracuse, New York. The facility will consist of a natural gas fired engine. The steam and heat recovered from the facility will be used for domestic hot water and swimming pool and space heating. The electric power production capacity of the facility will be 200 kW. The primary energy source for the facility will be natural gas. The installation of the

facility is expected to begin in the spring of 1986.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22021 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-718-000]

Tampa Electric Co ; Filing

September 6, 1985.

The filing Company submits the following:

Take notice than on August 29, 1985, Tampa Electric Company (Tampa) tendered for filing Service Schedule X providing for extended economy interchange service between Tampa and the City of Vero Beach, Florida (Vero Beach). Tampa states that Service Schedule X is submitted for including as a supplement under the existing agreement for interchange service between Tampa and Vero Beach, designated as Tampa's Rate Schedule FERC No. 18.

Tampa proposes an effective date of September 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Vero Beach and the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 22, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22011 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-9-006]

Tennessee Gas Pipeline Company, a Division of Tenneco Inc.; Rate Change Under Tariff Rate Adjustment Provisions

September 10, 1985.

Take notice that on September 9, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), withdrew its July 26, 1985 PGA filing and tendered for filing Substitute Fourteenth Revised Sheet No. 21 to be effective July 1, 1985 to September 8, 1985 and Substitute Fifteenth Revised Tariff Sheet No. 21 to be effective on September 9, 1985

Tennessee states that the withdrawal of the July 26, 1985 PGA filing and these revised tariff sheets are a result of the Commisssion's rejection in its Opinion No. 240 of a Settlement Agreement filed in Docket Nos. RP80-97, et al. Rejection of the Settlement requires that Tennessee impose a surcharge to recover its unrecovered purchased gas cost account balance which in turn will preclude Tennessee from maintaining the weighted average cost of gas reflected in the July 26, 1985 PGA filing. Accordingly, Substitute Fourteenth Revised Tariff Sheet No. 21 maintains the rates established by Tennessee's May 29, 1985 PGA filing as modified by the imposition of a $1.2532 per dth surcharge. Substitute Fifteenth Revised Tariff Sheet No. 21 to be effective September 9, 1985 reflects rates based on a weighted average cost of gas of $3.1738 per dth and a surcharge of $1.2532 per dth.

Tennessee has also submitted for filing tariff sheets reflecting two alternatives for recovery of its deferred account balance. The first of these alternatives is a direct billing mechanism. Under this alternative Tennessee states that its customers will be billed in twelve equal monthly installments for their proportionate share of the balance in Tennessee's Unrecovered Purchased Gas Cost Account. Each customer's share of the balance is reflected in Appendix B to Tennessee's filing and is based on a ratio of: (a) The individual customer's purchases during the period January, 1983 through March, 1985 to (b) the total of all customer's purchases during this period. Tennessee states that if this alternative is accepted by the Commission, it should also accept Second Alternative Substitute Fifteenth Revised Tariff Sheet No. 21 to be effective on the date of the Commission's order, which tariff sheet reflects a weighted average cost of gas of $2.38 per dth and a $0 surcharge.

The second alternative proposed by Tennessee is a twenty-four month amortization of the deferred account balance beginning July 1, 1985. To implement this proposal Tennessee has submitted for filing Alternate Substitute Fourteenth Revised Tariff Sheet No. 21 to be effective July 1, 1985 and Alternative Substitute Fifteenth Revised Tariff Sheet No. 21 to be effective on the date of the Commission's order, both of which reflect a surcharge of 15.89[per dth and a weighted average cost of gas of $2.38 per dth].

Tennessee requests waiver of the Commission's regulations to the extent necessary to accept the tariff sheets effecting one of the three alternate proposals described above. Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, D.E. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22012 Filed 9-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-47-000]

Trend Exploration Limited; Petition for Adjustment

Issued: September 10, 1985.

Take notice that on July 29, 1985, Trend Exploration Limited filed with the Commission a petition for adjustment

under section 502(c) of the Natural Gas Policy Act of 1978.[1] The petition concerns refunds owed Trends' purchaser, Houston Pipeline Company, pursuant to Commission Order No. 399,[2] relating to refunds resulting from Btu measurement adjustments. Trend requests forgiveness of certain refunds to Order No. 399–A,[3] which provides for consideration of petitions for waiver of such refunds under certain circumstances.

Trend states that these refunds, totaling approximately $560, are attributable to certain royalty owners; that it has billed such owners twice; that the two largest owners have been contacted by phone as well; and that such collection efforts have been unsuccessful.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Subpart K within 15 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–22013 Filed 9–12–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–712–000]

West Penn Power Co. and Pennsylvania Electric Co. Tariff Change

September 6, 1985

The filing Company submits the following:

Take notice that West Penn Power Company ("West Penn") and Pennsylvania Electric Company ("Penelec") on August 28, 1985, tendered for filing proposed changes in their FERC Electric Service Tariffs, specifically, an Addendum constituting Supplement No. 3 to West Penn Rate Schedule FERC No. 17, Supplement No. 3 to Penelec Rate Schedule FERC No. 43, and Supplement No. 1 to Penelec Rate Schedule FERC No. 44. The proposed changes would increase revenues from jurisdictional sales and service by $1,839.46 to West Penn and $230.28 to Penelec, based on the twelve-month period ended May 31, 1985, and would terminate an emergency interconnection no longer deemed necessary by West Penn and Penelec.

The changes proposed are necessary in order to reflect increased costs since the Rate Schedules became effective in 1957 and 1964 and to terminate an interconnection point which is no longer needed.

A copy of the filling was served upon the Pennsylvania Public Utility Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 16, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–22014 Filed 9–12–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–716–000]

Yankee Atomic Electric Co.; Filing

September 6, 1985.

Take notice that on August 29, 1985, Yankee Atomic Electric Company (Yankee) tendered for filing requisite copies of an executed Amendment to the Yankee Atomic Power Contract. This Amendment incorporates all of the amendments described in Yankee's Offer of Settlement and Explanatory Statement and in the Commission's February 1, 1985 Order in this matter.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 22, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–22015 Filed 9–12–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM83–53–002]

Obligations of Sellers and Purchasers of First-Sale Natural Gas for Refunds Owed for Collections in Excess of Maximum Lawful Prices Under the Natural Gas Policy Act of 1978; Petition for Waiver

September 9, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of petition for waiver.

SUMMARY: On July 26, 1985, El Paso Natural Gas Company filed a petition for waiver of the Commission's regulations requiring payment of interest on refunds of overcollections occuring after stripper well disqualifications. The notice requests protests or interventions on this petition.

COMMENT DATE: October 15, 1985.

ADDRESS: Protests and interventions on this petition must be addressed to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 and should refer to Docket No. RM83–53–002. An original and fourteen copies should be filed.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357–8400.

SUPPLEMENTARY INFORMATION: On July 26, 1985, El Paso Natural Gas Company (El Paso), an interstate pipeline, filed a petition for waiver of the Commission's regulations requiring payment of interest on refunds of over-collections occurring after stripper well disqualifications.[1] El Paso also seeks waiver of the requirement set forth in 18 CFR 154.38(d)(4)(VII), as amended by Order No. 423,[2] that it include in its Purchased Gas Adjustment filings a report of those refunds, including the interest collected.

El Paso monitors production from the thousands of stripper wells from which it purchases gas, and has a computerized system for promptly recouping overpayments made after a stripper well's disqualification. However, its computerized system

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[1] 15 U.S.C. 3301, *et seq.*

[2] 28 FERC ¶ 61,379 (1984).

[3] 29 FERC ¶ 61,254 (1984)

[1] 18 CFR 270.101(c) (1984).

[2] 50 FR 23669 (1985).

cannot calculate the interest owed it. Accordingly, on January 18, 1985, the Director of the Office of Pipeline and Producer Regulation granted El Paso a staff adjustment permitting it not to collect such interest. The Director also required that El Paso file reports identifying the refunds every three months.[3]

In Order No. 423, issued May 30, 1985, the Commission restated that interest should be charged on amounts recouped by billing adjustments, in addition to imposing new reporting requirements on interstate pipelines. El Paso is concerned that Order No. 423 could be read as superseding the Director's January 18, 1985 order. Accordingly, it seeks waiver of the regulations promulgated by Order No. 423 to the extent necessary to keep the Director's order in effect.

Within thirty days of publication in the **Federal Register**, any person may file a protest or a petition to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. If you wish to become a party, you must file a petition to intervene. See Rules 214 or 211.[4]

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–22027 Filed 9–12–85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of August 16 Through August 23, 1985

During the Week of August 16 through August 23, 1985, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

September 5, 1985.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 16 through Aug. 23, 1985]

Date	Name and location of applicant	Case No	Type of submission
Aug. 19, 1985	Haiston Oil Co., Inc., Scottsbluff, NE	HEE-0161	Exception to the reporting requirements. If granted: Haiston Oil Company, Inc. would no longer be required to file Form 782B "Resellers/Retailers Monthly Petroleum Product Sales Reports".
Aug. 20, 1985	LBM Distributors, Inc., Lafayette, LA	HEE-0162	Exception to the reporting requirements. If granted: LBM Distributors, Inc would not be required to file Form 782B "Resellers/Retailers Monthly Petroleum Product Sales Report"
Aug. 21, 1985	Economic Regulatory Administration, Washington, DC	HRR-0112	Request for Modification/rescission. If granted: The July 25, 1985 Remedial Order (Case No. BRO-1144) issued to Energy Reserves Groups, Inc. would be modified regarding the refund disposition provisions.
Aug. 23, 1985	State of Minnesota, St. Paul, MN	HFA-0305	Appeal of an information request denial. If granted: The State of Minnesota would receive access to certain DOE information concerning radioactive waste

REFUND APPLICATIONS RECEIVED

[Week of Aug. 16 to Aug. 23, 1985]

Date received	Name of refund proceeding/name of refund application	Case No.
08/19/85	Aminoil/Linda Jo's Bottle Gas Co	RF139-84
08/19/85	Aminoil/Canlina Wholesales Gas Co	RF139-85
08/19/85	Aminoil/White's Gas & Appliance	RF139-86
08/19/85	Husky/Crestview Service	RF161-12
08/19/85	Arkansas Louisiana/Halliburton Co	RF154-7
08/19/85	Aminoil/Edington LP Gas, Inc	RF139-87
08/19/85	Inland/Ray Oil Company	RF176-4
08/19/85	Husky/Chem Oil & Tire Company	RF161-13
08/20/85	LARCO/Edin Oil Company	RF112-175
08/20/85	LARCO/Myers Oil Company	RF112-174
08/20/85	LARCO/University Gas	RF112-173
08/20/85	LARCO/Allen's, Inc	RF112-172
08/20/85	LARCO/G.S. Oil	RF112-171
08/20/85	LARCO/Service Oil Company	RF112-170
08/20/85	Red Triangle/Waldrum's Gulf Service	RF178-11
08/20/85	LARCO/Coutts & Company	RF112-178
08/20/85	LARCO/Joehem Oil Company	RF112-177
08/20/85	LARCO/Mace Tire & Oil Company	RF112-176
08/22/85	Aminoil/Freeman's Gas Service	RF139-88
08/22/85	Willis/Matz Mobil Service	RF41-23
08/22/85	Aminoil/Pennington LP Gas Company	RF139-89
08/23/85	Inland/Raymond Cornwell	RF176-5
08/23/85	Gulf/Oren S. Myers Gulf	RF40-3041
08/23/85	Southern Union/Union Carbide Corp	RF182-2
08/23/85	St. James/George Mizhir & Sons	RF180-20
08/23/85	St. James/Skuns Oil Company	RF180-19
08/23/85	Aminoil/Rural Gas Company	RF139-90
08/23/85	Armour/Golden Gate Petroleum Co	RF167-6

[FR Doc. 85–21899 Filed 9–12–85; 8:45 am]

BILLING CODE 6450-01-M

[3] 30 FERC ¶62.075.

[4] 18 CFR 385.214 or 385.211 (1984).

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $66,678.29 (plus accrued interest) obtained as the result of three separate consent orders which the DOE entered into with Big Bend Truck Plaza (Case No. HEF–0036), located in Tallahassee, Florida; Cougar Oil, Inc. (Case No. HEF–0057), located in Selma, Alabama; and Gate Petroleum, Inc. (Case No. HEF–0077), located in Jacksonville, Florida. The funds will be available to customers that purchased products specified in the consent orders during the relevant consent order periods.

DATE AND ADDRESS: Applications for refund of a portion of a consent order fund must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Big Bend, Cougar, or Gate Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All applications should conspicuously display a reference to the appropriate case number.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252–2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set forth below. The Decision and Order relates to three separate consent orders entered into by Big Bend Truck Plaza, located in Tallahassee, Florida; Cougar Oil, Inc., located in Selma, Alabama; and Gate Petroleum, Inc., located in Jacksonville, Florida (collectively referred to as "the consent order firms") which settled possible pricing violations with respect to the firms' sales of certain refined petroleum products during the periods specified in the consent orders. Under the terms of the consent orders, a total of $66,678.29 has been remitted by the consent order firms and is being held in three separate interest-bearing escrow accounts pending determination of its proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established two-stage refund procedures and solicited comments from interested parties concerning the proper disposition of three consent order funds. The Proposed Decision and Order discussing the distribution of the funds remitted by the consent order firms was issued on January 14, 1985, 50 FR 4742 (February 1, 1985).

The Decision and Order published with this Notice reflects an analysis of the comments received from interested parties. As the decision indicates, applications for refunds from the consent order funds may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Applications will be accepted from customers who purchased from a consent order firm during the relevant consent order period. The specific information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: August 29, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Special Refund Procedures

Names of Firms: Big Bend Truck Plaza, Cougar Oil, Inc., Gate Petroleum, Inc.

Date of Filing: October 13, 1983.

Case Numbers: HEF–0036, HEF–0057, HEF–0077.

Pursuant to the Department of Energy (DOE) procedural regulations, 10 CFR Part 205, Subpart V, on October 13, 1983, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) of the DOE in connection with three separate consent orders entered into with Big Bend Truck Plaza (Big Bend), located in Tallahassee, Florida; Cougar Oil, Inc. (Cougar), located in Selma, Alabama; and Gate Petroleum, Inc. (Gate), located in Jacksonville, Florida (these three firms shall be referred to collectively in this Decision as "the consent order firms").

I. Background

The consent order firms are "reseller-retailers" of refined petroleum products as that term was defined at 10 CFR 212.31. ERA audits of the consent order firms revealed possible violations of the Mandatory Petroleum Price Regulations. Subsequently, each of these firms entered into a separate consent order with the DOE in order to settle its disputes with the DOE and to resolve potential civil liability with respect to certain sales of refined petroleum products. None of the consent orders contains an admission by the consent order firm or a finding by the DOE that the firm violated the price regulations. Pursuant to these consent orders, the firms agreed to pay specified amounts to the DOE in settlement of their potential liability.[1] In addition, Big Bend also agreed in its consent order to refund money to one customer directly. *See* Appendix A. The firms' payments, which total $66,678.29, are currently being held in separate escrow accounts pending distribution by the DOE. Specific information regarding the individual firms and the consent orders is set forth in Appendices A–C to this Decision.

On January 14, 1985, we issued a Proposed Decision and Order (PDO) tentatively setting forth procedures to distribute refunds to parties who are injured by a consent order firm's alleged overcharges. *See Big Bend Truck Plaza et al.*, Case Nos. HEF–0036 *et al.* (January 14, 1985) (proposed decision), 50 FR 4742 (February 1, 1985). In the PDO, we described a two-stage process for distribution of the consent order funds. Specifically, we proposed to disburse funds in the first stage to claimants who could demonstrate that they were injured by a consent order firm's alleged overcharges during the period covered by the applicable consent order. We stated that any money available after payment of

[1] Both the Gate and Cougar consent orders cover sales of motor gasoline, including unleaded gasoline, during the consent order periods. Subsequent to the signing of the Gate consent order, the DOE stated that it would not seek to give effect to the portion of the unleaded gasoline rule, 10 CFR 212.112(b) (2) and (3), on which Gate's alleged overcharges in sales of unleaded gasoline were based. *See* DOE Ruling 1981–3, 2 Fed. Energy Guidelines ¶ 16,080. In a letter accompanying full payment of the consent order amount, Gate contended that Ruling 1981–3 totally deregulated sales of unleaded gasoline and that it should not be required to pay the portion of the consent order amount attributable to sales of unleaded gasoline.

This contention is without merit. As we stated in the PDO, during the Gate consent order period unleaded gasoline was subject to the reseller price rule at 10 CFR 212.93. PDO at 8 (citing *Leese Oil Co.*, 10 DOE ¶ 83,015 at 88,134 (1982)). By signing the consent order, Gate therefore was relieved of liability for possible violations of the price rule in its sales of unleaded gasoline. Accordingly, we reject Gate's contention.

refunds to eligible claimants in the first stage would be distributed through a second-stage process and that the ultimate disposition of those second-stage funds would not be determined until after the completion of the first stage.

In response to the PDO, we received comments from the State of Florida. Those comments, however, address second stage procedures to be used in distributing any funds which remain in the Big Bend escrow account after we have acted on all claims filed by customers of Big Bend. The purpose of this Decision is to establish procedures to be used for filing and processing claims in the first stage of the refund process. We will not address Florida's comments at this time, since our determination concerning the final disposition of any remaining funds will necessarily depend on the size of the funds. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981) (*Coline*).

II. Jurisdiction

The Subpart V regulations set forth general guidelines by which the OHA may formulate and implement a plan for distribution of funds received as part of a settlement agreement or pursuant to a Remedial Order. It is DOE policy to use the Subpart V process to distribute such funds. *See Office of Enforcement*, 9 DOE ¶ 82,553 at 85,284 (1982). For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Coline* and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*). As we stated in the PDO, we have determined that a Subpart V proceeding is an appropriate mechanism for distributing the three consent order funds. We will therefore grant the ERA's petition and assume jurisdiction over these funds.

III. Determination of Injury and Refund Amounts

Potential claimants in this proceeding will fall into the following categories: (1) Resellers (including retailers) of the products covered by the consent orders, and (2) firms, individuals, or ogranizations that were consumers (end-users) of those products. The products purchased by claimants will have been purchased either directly from a consent order firm or from another firm in a chain of distribution leading back to that firm. As explained below, the consent order funds shall be distributed to claimants who demonstrate satisfactorily that they have been injured by a consent order firm's alleged overcharges.

In general, resellers who file refund claims will be required to establish that they absorbed the alleged overcharges. To make this showing, they will have to demonstrate that, at the time they purchased refined petroleum products from a consent order firm, market conditions would not permit them to increase their prices to pass through the additional costs associated with the alleged overcharges. In addition, resellers will generally be required to show that they maintained "banks" of unrecovered costs in order to demonstrate that they did not subsequently recover those costs by increasing their prices. *See Office of Enforcement*, 10 DOE ¶ 85,029 at 88,125 (1982). The maintenance of banks will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982).

As in many prior special refund cases, we will adopt certain presumptions in order that refunds may be distributed efficiently and equitably. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of consent order products made by each consent order firm during the relevant consent order period. OHA has referred to this presumption in the past as a volumetric refund amount. Second, we shall adopt a presumption of injury with respect to small claims. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we are adopting in these cases are used to permit claimants to participate in the refund process without incurring disproportionate expenses and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The volumetric refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because of the manner in which the DOE price regulations required a regulated firm to account for increased costs in determining its prices. In the present cases, the audit files do not contain specific alleged overcharge amounts to particular customers that might serve as a basis for allocating refunds. Therefore, the volumetric approach is appropriate in these cases. However, we also recognize that the impact on an individual purchaser could have been greater, and any purchaser will be allowed to file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984); *Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984). In determining the per gallon volumetric factor, each consent order amount has been divided by the estimated total volume of refined petroleum products (covered by the consent order) which the consent order firm sold during the consent order period. The volumetric factors for the consent order firms are specified in the Appendices to this Decision. Refunds will be calculated by multiplying the volumetric factor by the total amount of the products that an applicant purchased from a consent order firm during the relevant consent order period. The interest which has accrued on the money in each escrow account will be distributed to each successful claimant in proportion to its refund amount.

The presumption that reseller claimants seeking refunds up to a certain threshold level were injured by the pricing practices settled in the consent orders that are the subjects of these proceedings is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982) (*Uban*). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information and the cost to the OHA of analyzing it may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumption is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and therefore to

utilize its limited resources more efficiently. Finally, we know that these smaller claimants purchased covered products from the consent order firms and were in the chain of distribution where the alleged overcharged occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The small claims presumption elimination the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level.[2] In the present cases, where the volumetric refund amounts are fairly low, we believe that the establishment of a presumption of injury for all claims of $5,000 or less is reasonable. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984) (*TOGCO*); *Marion Corp.*, 12 DOE ¶ 85,014 (1984).

We shall also adopt, our proposed finding that end-users, or ultimate consumers, including businesses that are unrelated to the petroluem industry, were injured by the alleged overcharges settled in the consent orders. Unlike regulated firms in the petroluem industry, members of this group generally were not subject to price controls during the consent order periods, and they were not required to keep records which justfied selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the increased cost of petroluem products on the final prices of non-petroluem goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983); *see also TOGCO*, 12 DOE at 88,209, and cases cited therein. We have therefore concluded that end-users of petroluem products covered by the consent orders and sold by the consent order firms need only document their purchase volumes from a consent order firm in order to make a sufficient showing that they were injured by the alleged overcharges.

Finally, we are establishing a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those cases. *See, e.g., Uban*, 9 DOE at 85,255; *see also* 10 CFR 205.286(b).

IV. Application for Refund Procedures

Applications for refund will now be accepted from parties who purchased products from a consent order firm during the relevant consent order period. Applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**. *See* 10 CFR § 205.286. An application must be in writing, signed by the applicant, and specify the consent order fund to which it pertains and the appropriate OHA case number. *See* the Appendices to this Decision.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, 1000 Independence Avenue, SW., Washington, DC. Any claimant whose application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the information which the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential.

Each application must also include the following statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, title, and telephone number of a person who may be contacted by the OHA for additional information concerning the application. All applications should be sent to: Big Bend, Cougar, or Gate Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, Washington, DC 20585. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR 205.284 and the procedures set forth in this Decision and Order.

In order to assist applicants in establishing eligibility for a portion of one of the consent order funds, the following subjects should be covered in Applications for Refund:

A. Each applicant should report its purchase volumes of the consent order product from the consent order firm by month for the period of time it is claiming it was injured by the alleged overcharges.

B. Each applicant should specify how it used the consent order product—i.e., whether it was a reseller or an end-user.

C. If the applicant is a reseller who wishes to claim a refund in excess of $5,000, it should also:

(i) State whether it maintained banks of unrecouped increased product costs from the date of the alleged violation until the product was decontrolled. It should furnish OHA with quarterly bank calculations; [3]

(ii) Submit evidence to establish that it did not pass on the alleged overcharges to its customers. For example, a firm may submit market surveys to show that price increases to recover alleged overcharges were infeasible.

D. Each applicant should state whether it was a spot purchaser.

E. Each applicant should state whether it was in any way affilliated with the consent order firm.

F. Each applicant should report whether it is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. Of course, the applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its application for refund. *See* 10 CFR 205.9(d).

It is therefore ordered that:

(1) Applications for refunds from the funds remitted to the Department of Energy by the consent order firms listed in the Appendices to this Decision and Order may now be filed.

(2) All applications must be filed no later than 90 days after publication of

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[2] Two groups of purchasers shall be presumed not to have been injured by any overcharges, and will therefore be ineligible for refunds in this proceeding, even if the refunds to which they would otherwise be entitled under the volumetric presumption fall below the threshold level. First, resellers that were spot purchasers from a consent order firm will be ineligible to receive any refunds, unless they make a showing that rebuts the presumption that they were not injured. As we have previously noted, a purchaser would not have made spot market purchases of a firm's product at increased prices unless it was able to pass through to its own customers the full amount of the firm's quoted selling price at the time of purchase. *See Vickers*, 8 DOE at 85,396–97. In order to overcome the rebuttable presumption that it was not injured, a spot purchaser should submit additional evidence to establish that it would be inappropriate to presume that the firm had discretion as to where and when to make the purchase(s) upon which the refund claim is based. Second, purchasers from a consent order firm that were affiliated with that firm in such a way that any refunds received by them would inure to the consent order firm shall be ineligible for refunds.

[3] The bank requirement for retailers was eliminated in the amendments to the retailer price rule effective July 15, 1979. 44 FR 42542 (July 19, 1979). Therefore, no showing of cost banks will be required of motor gasoline retailers after that date.

this Decision and order in the Federal Register.

Dated: August 29, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix A—Big Bend Truck Plaza

Case Number: HEF-0036
Consent Order Date: January 21, 1980
Period Covered by Consent Order: November 1, 1973 through April 30, 1976
Consent Order Amount: $18,000
Consent Order Product: Diesel Fuel
Volume Sold during Consent Order Period: 5,894,547 gallons
Volumetric Amount: $0.00305 per gallon
Location of firm: Tallahassee, Florida, Lloyd, Florida

Identified Purchasers

Alterman Transport
A&S Trucking
American Scrap
B.C. McWharton
B.H. Harrison
Butler Brokerage
Cachat Brother Produce
Cain T. Bullman, Inc.
Colonial Fast Freight
Jon Cream
Cunningham Produce
Deabus Transit
Duval Lumber
Duvard Hamsby
E.T. Griffis
Florida Beef Producers
Florida Refrigerated Service
James Friday
Global Van Lines
Grant Tomato
Gustafsons
Howard Hall
T.R. Johnson
Magic City Products
Maxi Mart
Mid-Continent Systems, Inc.
Middletown Produce
New Truck Lines
Nu Car Carriers
Osborn Truck Lines, Inc.
Petroleum Carrier Corporation
Peturis Brothers
Republic Van Lines
John Riley
Seminole Asphalt
T&T Trucking
Terrys Dream Bayou
Watkins Metal Lines
Weathus Brothers
West Nebraska Express
Wilson Brothers

Special Information

The Big Bend Consent Order provided for a refund of $854.57 to the Georgia Power Company, which purchased Big Bend diesel fuel sold by Mid-Continent, Inc. a Big Bend customer, in January and November 1974. Since the Big Bend Consent Order has explicitly provided for restitution with respect to alleged overcharges by Big Bend in sales of Big Bend product ultimately sold to Georgia Power during the entire audit period, we have not included those volumes in establishing the per gallon refund amount to be made available in the Big Bend refund proceeding. In addition, Georgia Power Company shall be ineligible for any further refunds in this proceeding, and neither Mid-Continent, Inc. nor any of its any refunds based upon the specified January and November 1974 transactions.

Appendix B—Cougar Oil, Inc.

Case Number: HEF-0057
Consent Order Date: November 2, 1981
Period Covered by Consent Order: January 1, 1979 through December 31, 1979
Consent Order Amount: $18,678.29*
Consent Order Product: Motor Gasoline
Volume Sold: 13,113,608 gallons
Volumetric Amount: $0.00142 per gallon
Location of Firm: Selma, Alabama and other Alabama locations

Identified Purchases

Adams Grocery*
Ashley Market
John Bitts*
Blacks Service Station
Brodford Garage
Cross Service Station*
J.N. Edward*
Jack Edwards*
Nolan Edwards*
Garree Montgomery*
Harold Lancaster
Harrigan Lumber Company
Holman Garage*
Holman Grocery
Holder Union 76 Service Station
Ronnie Jordan
Lone Star Service Station*
Douglas McDinir
A.J. McDonnell*
Salter's Welding Shop
David Stacey*
Uriah Well and Supply Company
R.B. Williams Company*

Special Information

Purchasers from Southern Energy Company (SECO), a subsidiary of Cougar located in Monroeville, Alabama, will be eligible for refunds only based on purchases that took place from June 1979 through December 1979, since SECO was acquired by Cougar in June 1979. For similar reasons, purchasers from Sentell Oil, another Cougar subsidiary, will be eligible only for refunds based on purchases that took place from April 1979 through December 1979, and purchasers from Sturgis, a SECO subsidiary, will be eligible only for refunds for purchases occurring in December 1979.

Appendix C—Gate Petroleum, Inc.

Case Number: HEF-0077
Consent Order Date: October 15, 1981
Period Covered by Consent Order: April 1, 1979 through September 30, 1979
Consent Order Amount: $30,000
Consent Order Product: Motor Gasoline (including ethyl)
Volume Sold: 26,842,484 gallons
Volumetric Amount: $0.00112 per gallon
Location of Firm: Jacksonville, Florida (gasoline sold in Florida, Georgia, Virginia, Kentucky, Tennessee, South Carolina, North Carolina)

Identified Purchasers

Joyce Arbuthnot
Asbury's Trading Post
Dewitt Head
Dutch Grocery
James W. Ellis
Fralick's Service Station
Green Acres Country Store
H&H Petroleum Company
Robert Hatcher
Harold Heafner
Hi-Way Market
Lake Asbury
Martin Oil Company
Mayport Motor Parts
Moody's Fast Food
North Florida Motors
Possum Petroleum
Repey Petroleum
Wesco Petroleum
Woodman's Grocery
Wright Trucks

[FR Doc. 85-21904 Filed 9-12-85; 8:45 am]

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*The amount specified in the Cougar consent order was actually $16,381.90. The amount Cougar actually paid includes interest charged to Cougar because the firm made its payments in installments.

*These purchasers were identified from 1973 sales invoices of SECO (See Special Information), a Cougar subsidiary. We are not certain that these purchases were Cougar customers during the audit period.

Issuance of Decisions and Orders; Week of July 29 Through August 2, 1985

During the Week of July 29 through August 2, 1985, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Implementation of Special Refund Procedures

Bayside Fuel Oil Depot Corporation, Butler Petroleum Corporation, Central Oil Company, Lawrence H. Glover, 8/1/85; HEF-0035; HEF-0046; HEF-0047; HEF-0081

The DOE issued a Decision and Order which establishes procedures for the distribution of funds totalling $203,975.29 obtained as a result of Consent Orders entered into between the DOE and Bayside Fuel Oil Depot Corporation, Butler Petroleum Corporation, Central Oil Company, and Lawrence H. Glover. The Decision sets forth refund application procedures for customers who purchased No. 2 heating oil from Bayside, motor gasoline form Butler, motor gasoline or No. 2 heating oil from Central, or propane from Glover during the firms' respective consent order periods. Specific information regarding the data to be included in refund applications is discussed in the Decision.

Oneok, Inc., 8/2/85; HEF-0571

The Office of Hearings and Appeals issued a final Decision and Order setting forth procedures to be used in filing applications for refund from the settlement funds obtained under a consent order with Oneok, Inc. formerly Oklahoma Natural Gas, and its subsidiary, ONG Exploration. The funds will be available to customers who purchased covered natural gas liquids and natural gas liquid products from five gas processing plants controlled by Oneok during the period August 1973 through January 1981.

Saber Energy, Inc. 7/30/85; HEF-0220

The Office of Hearings and Appeals issued a final Decision and Order setting forth procedures to be used in filing applications for refund from the settlement funds obtained under a consent order with Saber Energy, Inc., and its subsidiaries, Saber Petroleum and Saber Refining. The funds will be available to customers who purchased covered petroleum products from Saber during the period August 1973 through January 1981.

Refund Applications

Gary Energy Corporation/Pargas, Inc. 8/1/85; RF47-7

This Decision and Order relates to a distribution of an escrow account fund remitted by Gary Energy Corporation pursuant to a consent order which Gary Energy entered into with the DOE. Pargas, Inc. in this proceeding claims a refund on the grounds that it purchased 1.7 million gallons of natural gas liquid products from Gary Energy during the consent order period. The Doe Found that Pargas experienced a competitive disadvantage as a result of its NGLP purchases from the consent order firm and granted Pargas a refund of $18,328, plus accrued interest. The refund equals a share of the consent order fund allocated to Pargas on the basis of the volume of the products the firm purchased.

Gary Energy Corporation/Swallow Oil Company, 7/31/85; RF47-2

The DOE issued a Decision and Order concerning an Application for Refund filed by Swallow Oil Company, a reseller of Gary motor gasoline. Although the firm's purchases of Gary motor gasoline during the consent order period exceeded the threshold level established in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984) (TOGCO), Swallow elected to file its refund application is accordance with the presumption of injury and procedures for filing small claims outlined in the *TOGCO* decision. After examining the evidence and supporting data sumbitted by the firm, the DOE concluded that Swallow should receive a refund of $5,000 in principal and $505.76 of accrued interest, or a total of $5,5050.76.

Gulf Oil Corporation/City Coal Company of Sprinfield, et al., 8/1/85; RF40-00119 et al.

The DOE issued a Decision and Order concerning 45 Applications for Refund filed by retailers and resellers of Gulf covered petroleum products. All of the claimants applied for refunds based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). In accordance with these procedures, each applicant demonstrated that it would not have been required to pass through the customers a cost reduction equal to the refund claimed. The applicants also indicated that they have purchased covered products directly from Gulf. After examining the evidence and supporting documentation, the DOE concluded that the applicants should receive refunds of the full volumetric amount. The refunds granted in this decision total $134,466.

Gulf Oil Corporation/Greyhound Lines, Inc. et al., 8/2/85; RF40-48 et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund filed by end-users of Gulf petroleum products. In considering the Applications, the DOE found that each end-user should receive a volumetric refund amount of $.00122, plus interest, for each gallon of Gulf petroleum products purchased by the end-user during the Gulf consent order period. The total amount of refunds granted in this proceeding was $239,068.

Dismissals

The following submissions were dismissed.

Company name	Case No
Blue DOT Oil Co	RF73-9
Crown Central Petroleum Corp	HRD-0196, HRH-0196, HRD-0210
Grover Wilson	RF73-3
Moroney Oil Co	RF73-6

Kansas-Nebraska Natural Gasoline Company, Arapaho Petroleum Inc., Eagle Petroleum Company, Peoples Energy Corporation/Empire Gas Corporation, 8/2/85; RF113-6; RF119-3; RF121-3; RF142-2

Empire Gas Corporation filed Applications for Refund with respect to funds made available by four firms that entered into consent orders with the DOE: Kansas-Nebraska Natural Gasoline Company, Arapaho Petroleum, Inc., Eagle Petroleum Company and Peoples Energy Corporation. Empire indicated that it has purchased propane from four firms that had been identified as having been propane customers of the four consent order firms. The DOE found that empire, as an indirect purchaser, had failed to establish that it had actually purchased product that was sold by a consent order firm or shown the percentage of their own propane purchases that each of its suppliers made from the four consent order firms. The DOE therefore found that Empire had not shown that it was in the "chain of distribution" of covered products sold by a consent order firm. Accordingly, Empire's Application for Refund was denied.

Shelter Creek Chevron, Ken Betts/Bubble Machine, Hal Abel's Chevron, Pacifica Shell and Manor Shell/United States Postal Service, 7/31/85; RF163-1; RF164-1; RF165-1; RF166-1

The United States Postal Service filed four Applications for Refund seeking a portion of the funds obtained by the DOE through consent orders entered into by the agency and four motor gasoline retailers. In considering the applications the DOE found that in each case the U.S. Postal Service purchased a relatively small amount of gasoline from the four retailers. Using the volumetric allocation methodology, the DOE determined that the U.S. Postal Service's allocable share in each case was well below the presumption of injury level of $5,000. Rather than requiring the firm to make a showing of injury, therefore, the DOE decided that the U.S. Postal Service would receive a refund equalling the sum of its allocable shares, as determined in each of the four cases, totalling $1,011. In addition, the firm received accrued interest which brought the total refund amount to $1,112.

Standard Oil Company (Indiana)/E-Z Serve, Inc., 7/29/85; RF21-10409

E-Z Serve, Inc. filed an Application for Refund pursuant to the Amoco special refund procedures, *see Office of Special Counsel*, 10 DOE ¶ 85,048 (1982), based upon a claim that it had been injured by Amoco's alleged violations of the motor gasoline allocation regulations. The DOE determined, however, that Amoco did not have any supplier/purchaser relationship with E-Z Serve or a corresponding obligation to supply the firm during the consent order period. Consequently, E-Z Serve's refund application was denied.

Texas Oil and Gas Corporation/Conoco, Inc., 7/31/85; RF42-8

Conoco filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Texas Oil and Gas Corporation. The DOE found that Conoco paid above average market costs for natural gas liquids during several months of the Texas Oil and Gas consent order period. Using a three-step methodology, the DOE calculated a range of Conoco's competitive disadvantage. A refund of $64,199 was found to equitably compensate Conoco for any harm it experienced as a result of Texas Oil and Gas's alleged overcharges. The firm also

received accrued interest for a total refund of $98,297.

Texas Oil and Gas Corporation/Gulf Oil Corporation, 7/31/85; RF29–2

Gulf filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Texas Oil and Gas Corporation (TOGCO). The DOE found that Gulf paid above average market prices during numerous quarters of the TOGCO consent order period. Using a three-step methodology, the DOE calculated a range of Gulf's competitive disadvantage. A refund of $75,221 was found to equitably compensate Gulf for any harm experienced as a result of TOGCO's alleged overcharges. In addition, the firm received accrued interest of $55,760 for a total refund of $130,981.

Warren Holding Company/Ballard Motor Sales, Inc., Armenti Brothers Service Station, Duquette Service Station, Inc., 7/30/85; RF169–0002; RF169–0003; RF169–0004

The DOE issued a Decision and Order concerning three Applications for Refund filed by three retailers of Warren motor gasoline. The claimants applied for refunds based on the presumption of injury threshold established in *Warren Holding Co.*, 13 DOE ¶———, No. HED–0192 (June 4, 1985). After examining the evidence and supporting information submitted by the applicants, the DOE concluded that they should receive refunds totalling $8,785 based upon the total volume of their Warren motor gasoline purchases.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 3, 1985.

[FR Doc. 85–21900 Filed 9–12–85; 8:45 am]

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Issuance of Decisions and Orders; Week of August 5 Through August 9, 1985

During the week of August 5 through August 9, 1985, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

Sun Company, Inc., 8/7/85; HRO–0259

Sun Company, Inc. (Sun) objected to a Proposed Remedial Order (PRO) issued to the firm by the Economic Regulatory Administration (ERA) on October 22, 1984. In the PRO, the ERA alleged crude oil overcharges resulting from the improper classification of three properties. Sun's central defense to the PRO was that crude oil derived from well tests was not "produced" within the meaning of the newly discovered crude oil rule, 10 CFR 212.79(b), and was thus entitled to treatment as newly discovered crude oil. Sun also contended that it should not be held liable under the rule of operator liability for the actions of other interest owners because they took their production in kind and made their own pricing decisions. The Office of Hearings and Appeals (OHA) determined that crude oil derived from well tests was "produced" within the meaning of the newly discovered crude oil rule. OHA also determined that the rule of operator liability did not require a showing of administrative convenience by the ERA, and included circumstances where other interest owners took production in kind and made their own pricing decisions. Accordingly, the PRO was issued in final form.

Requests for Exception

Energy Cooperative, Inc. 8/7/85; BEE–1127

Energy Cooperative, Inc. (ECI) filed an Application for Exception from the provisions of 10 CFR 211.67 in which the firm sought retroactive exception relief in the form of increased Entitlements benefits for the period December 1979 through April 1980. The exception relief would increase ECI's Entitlements sale benefits to the level they would have reached if Alaska North Slope crude oil had been afforded full Entitlements benefits. In considering the request, the DOE found that ECI had received exception relief which already compensated the firm for any hardship attributable to the DOE regulatory program during the same time period. Accordingly, exception relief was denied.

Dwight Sours, 8/6/85; HEE–0145

On April 17, 1985, Dwight Sours filed an Application for exception seeking relief from the requirement to prepare and file Form EIA–782B with the DOE Energy Information Administration. In considering the request, the DOE found that Sours was not unduly burdened by the reporting obligation, particularly given his opportunity to use estimates to complete the form. Accordingly, exception relief was denied.

Refund Applications

Adolph Coors Company/Bob's Gas and Chemical Company, 8/8/85; RF87–1

DOE issued a Decision and Order concerning an Application for Refund filed by Bob's Gas and Chemical Company, a reseller of Coors NGLs. Although the firm's purchases of Coors NGLs during the consent order period exceeded the threshold level established in *Texas Oil & Gas Corp.*, 12 DOE ¶85,069 (1984) (*TOGCO*), Bob's elected to file its refund application in accordance with procedures for filing small claims, and based upon the presumption of injury, outlined in the *TOGCO* decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Bob's should receive a refund of $5,000 in principal and $2,666.07 of accrued interest for a total refund of $7,666.07.

Aminoil U.S.A., Inc./Gengnagel Fuel Company et al., 8/8/85; RF139–8 et al.

DOE issued a decision granting refunds to 16 purchasers of NGLPs from the Aminoil U.S.A., Inc. deposit escrow fund. The refunds to these firms total $217,090, representing $141,442 in principal and $75,648 in interest. All of the applicants are ultimate consumers of the NGLPs purchased or have filed for a refund of $5,000 or less. All of the applicants therefore, are presumed to have been injured by the alleged overcharges and thus, a separate detailed showing of injury was not required.

Gulf Oil Corporation/Charles Allen's Gulf Service et al., 8/9/85; RF40–7 et al.

DOE issued a decision granting refunds to 88 purchasers of refined petroleum products from the Gulf Oil Corporation deposit escrow fund. The refunds to these firms total $235,890, representing $208,540 in principal and $27,350 in interest. All of the refund applicants has demonstrated that they would not have been required to reduce selling prices to their customers by the amount of refund they received. Gulf may be required to pay additional interest; if so, each applicant will receive an additional, pro rata, refund.

Gulf Oil Corporation/Robert J. Check et al., 8/8/85; RF40–01074 et al.

The DOE issued a decision granting refunds to 57 purchasers of refined petroleum products from the Gulf Oil Corporation deposit escrow fund. The refunds to these firms total $90,897, representing $80,362 in principal and $10,535 in interest. All of the refund applications had demonstrated that they would not have been required to reduce selling prices to their customers by the amount of refund they received. Gulf may be required to pay additional interest; if so, each applicant will receive an additional, pro rata, refund.

Dismissals

The following submissions were dismissed:

Name	Case No
C.A. Dyer Oil Co	RF40–2640
Campbell Oil Co	RF104–3
Colonial Gulf-N-Haul	RF40–2277
Dobson Gulf	RF40–2272
Empire Gas Corp	RF104–6
Fuller Oil Co	RF104–2
Gulf Oil Corp	BRO–0211, HRO–0156; Thru HRO–0159; HRO–0168, HRO–0171, HRO–0172; HRO–0173; HRD–0168, HRH–0168, HRD–0191, HRD–0201, HRD–0207; HRD–0232, HRZ–0197, HRZ–0219
Minute Man Fuels, Inc	RF7–127
Pinewood Gulf	RF40–2279

Name	Case No
Reed Distributing Co	RF104-1
Torres Gulf	RF48-2393

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

August 29, 1985.

[FR Doc. 85-21902 Filed 9-12-85; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Order Filed; Week of July 29 Through August 2, 1985

During the week of July 29 through August 2, 1985, the notice of objection to proposed remedial orders listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 3, 1985.

Erickson Refining Corporation, Austin, Texas; HRO-0300, Crude Oil

On July 29, 1985, the Attorney General of Texas, P.O. Box 12548, Capitol Station, Austin, Texas 78711-2548 filed a Notice of Objection to a Proposed Remedial Order which the DOE Economic Regulatory Administraton, Office of Enforcement Programs issued to the Erickson Refining Corporation on May 30, 1985. In the PRO, the Office of Enforcement found that during November 1978, August 1979 and October 1979, Erickson received excessive amounts of Small Refiner Benefits when it improperly over-reported the volumes of its crude oil runs to stills.

According to the PRO, the violation resulted in Erickson's receipt of $218,183.16 of excess entitlements benefits.

[FR Doc. 85-21901 Filed 9-12-85; 8:45 am]

BILLING CODE 6450-01-M

Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $3,500,000.00 (plus accrued interest) obtained as the result of a consent order between the DOE and The True Companies. The funds will be distributed to refund applicants who purchased propane, butane, natural gasoline, natural gas liquid products, #1 fuel, #2 fuel, crude oil, and/or motor gasoline from The True Companies during the Consent Order period (August 19, 1973 through January 28, 1981). A Proposed Decision and Order establishing refund procedures and soliciting comments from the public was issued on June 21, 1985. 50 FR 27049 (July 1, 1985).

DATE AND ADDRESS: Applications for refund must be filed by December 12, 1985 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585. All applications must be filed in duplicate and should display conspicuously a reference to Case Number HEF-0557.

FOR FURTHER INFORMATION CONTACT: Thomas Wieker, Deputy Director or Irene Bleiweiss, Attorney, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2400.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order sets forth the procedures and standards that the DOE has formulated to distribute monies obtained from The True Companies (True). True entered into a Consent Order to settle possible pricing violations with respect to its sales of petroleum products during the period from August 19, 1973 and January 28, 1981. Under the terms of the Consent Order, True has remitted $3,300,000.00 which is being held in an interest-bearing escrow account pending determination of its proper distribution.

The DOE has decided to allocate one-third of the consent order monies to crude oil claims and two-thirds of the monies to non-crude oil claims. The crude oil refund pool will be distributed in accordance with the DOE restitutionary policy set forth at 50 FR 27400 (July 2, 1985). The non-crude oil refund pool will be distributed in a two stage refund proceeding. The first stage will attempt to refund moneys to customers who can document their purchases of True products. The Decision and Order provides that the funds will be distributed to successful claimants based on the number of gallons of product which they purchased and the extent to which they can prove that they were injured by the alleged overcharges. After meritorious claims are paid in the first stage, second-stage refund procedures may become necessary to distribute any remaining funds.

Applications for Refund may now be filed. Applications will be accepted provided they are received no later than 90 days after publication of this Decision and Order in the **Federal Register**. The specific information required in an application for refund is set forth in the Decision and Order.

Date: August 29, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Special Refund Procedures

August 29, 1985.

Name of Case: The True Companies
Date of Filing: December 7, 1984
Case Number: HEF-0557

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. *See* 10 CFR Part 205, Subpart V. Such procedures enable the DOE to refund monies to those injured by alleged violations of the DOE pricing regulations.

On December 7, 1984, the ERA requested that the OHA formulate and implement procedures to distribute funds which it received pursuant to a consent order with The True Companies (True).[1] This Decision

[1] "The True Companies" (True) is the name used in the Consent Order and in this Decision and Order to refer to six individuals (H. A. True, Jr., Jean D. True, Tamma T. Hatten, H. A. True III, Diemer D. True, and David L. True) doing business as the

Continued

and Order contains the procedures which the OHA has formulated to distribute that consent order fund.

I. Background

During the consent order period (August 19, 1973 through January 28, 1981) True produced, extracted, resold, and marketed petroleum products including crude oil, propane, butane, natural gasoline, and natural gas liquids. The True Consent Order also covers No. 2 fuel, No. 1 fuel, and motor gasoline although, according to True, the Companies did not sell these products but the products were included in the Consent Order solely to eliminate the potential for any further enforcement actions against True. Telephone Conversation between Irene Bleiweiss, OHS Staff Attorney, and Jack Blomstrom, Attorney for True (May 30, 1985). The Mandatory Petroleum Price Regulations, 10 CFR Part 212, governed the maximum prices that could lawfully be charged for all of the products covered by the Consent Order.

On August 6, 1981, the ERA issued a Proposed Remedial Order (PRO) to True Oil Company alleging that, from September 1, 1973 through October 31, 1978, True Oil Company charged more for propane, butane, and natural gasoline than it was permitted to by law. True Oil Company sold these products via transfer to an affiliated marketing company. The marketing affiliate was called Reserve Oil Purchasing Company until November 1973, and Black Hills Oil Marketers until November 1977, when it became True Oil Purchasing Company (TOPCO).

In order to settle the claims made in the PRO and any other claims which might have arisen from True's activities between August 19, 1973 and January 28, 1981, True and the DOE entered into a Consent Order on July 28, 1983. 48 FR 55768 (July 28, 1983). Pursuant to the Consent Order, True refunded the sum of $3,500,000.00 to DOE.

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following companies: True Oil Company; True Drilling Company; Eighty-Eight Oil Company; Equitable Purchasing Company; Smokey Oil Company; True Oil Purchasing Company, now a defunct corporation; Black Hills Oil Marketers, Inc., now a defunct corporation; Black Hills Trucking, Inc., Reserve Oil Purchasing Company, now a defunct corporation; Toolpushers Supply Company; Reserve Oil Field Supply Company; Belle Fourche Pipeline Company; True-Land and Royalty Company, now a defunct corporation; and Cambria Oil Company. Five of these companies (Toolpushers Supply Company, True Drilling Company, True Land and Royalty Company, Belle Fourche Pipeline Company, and Black Hills Trucking, Inc.) were engaged solely in non-regulated activities such as drilling and transportation. Telephone Conversation between Irene Bleiweiss, OHS Staff Attorney, and Jack Blomstrom, Attorney for True (May 30, 1985).

II. Jurisdiction and Authority to Fashion Refund Procedures

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds received as the result of a consent order are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable readily to identify the persons who may have been injured as a result of alleged or adjudicated violations or to ascertain the amount of each person's injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

On June 21, 1985, the OHA issued a Proposed Decision and Order tentatively concluding that the implementation of a Subpart V proceeding was appropriate in this case and setting forth a tentative plan to distribute the True consent order fund. 50 FR 27049 (July 1, 1985) (Proposed Decision). The Proposed Decision noted that the True Consent Order covers crude oil as well as other petroleum products. In similar situations, we have divided consent order funds into separate crude oil and non-crude oil pools of refund monies because the regulations treat crude oil differently. *E.g., Seminole Refining, Inc.*, 12 DOE ¶ 85,188 (1985). Therefore, we proposed to divide the consent order fund into separate pools in the present case. We found that it would be reasonable to allocate one-third of the fund ($1,166,666.70) to claims based on crude oil and two-thirds of the fund ($2,333,333.30) to claims based on purchases of other True products.

A copy of the Proposed Decision was published in the **Federal Register** and comments to the proposed refund procedures were solicited. In addition, we sent a copy of the Proposed Decision to firms which we tentatively identified, from the ERA audit file, as purchasers.

III. Refund Procedures

After considering the comments which we received to our proposed refund procedures, we have determined that the procedures set forth below are most appropriate.

A. Non-Crude Oil Products

The distribution of the non-crude oil refund pool will take place in two stages. The first stage will attempt to refund monies to those who purchased True products during the consent order period. Such purchasers must file claims and document their purchases in order to be eligible for a portion of the consent order fund. In addition, purchasers will be required to prove that they were injured by the alleged overcharges—i.e., that they did not pass any such overcharges on to their own customers.

After meritorious claims are paid in the first stage, a second stage may become necessary to distribute any remaining funds. *See generally Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). The Attorneys General of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, West Virginia, and Texas submitted comments to our discussion, in the Proposed Decision, of second stage refunds. These comments argue that state governments are the appropriate recipients of second stage refunds. It would be premature for us to follow the States' suggestion and establish second stage refund procedures at this time. Such procedures will necessarily depend on the size of the fund remaining after first stage procedures are completed. Therefore, we will not determine second stage refund procedures until after first stage refund procedures are completed.

1. Refunds to Identifiable Purchasers

During the first stage of the refund process, the True consent order fund will be distributed to claimants who satisfactorily demonstrate that they were injured by True's alleged overcharges. The audit file which provided the basis for the PRO issued to True Oil Company, identifies a number of customers who purchased that firm's propane, butane, and natural gasoline and who therefore might have been injured by the alleged overcharges. The names of these customers and the products and volumes which they purchased are set forth in the Appendix to this Decision and Order. However, since the customers identified in the Appendix are not the only customers who might have been injured by the prices which True charged, we will accept applications from the customers identified in the Appendix and any other parties who can demonstrate that they were injured by True's alleged overcharges.

All claimants will have to file an application in order to receive a refund. Applicants not specifically named in the Appendix will be required to provide all relevant information necessary to establish a claim, including documentation of the date, place, price and volume of the product(s) purchased. However, a customer named in the Appendix may utilize an alternative means to qualify for a refund if it is

unable to fully document its application. Under this alternative means, an identified customer must: (1) explain why documentation of its purchase volumes is not available or would be expensive or difficult to obtain; (2) certify that it was a purchaser of True products during the relevant period (see Appendix for dates); (3) certify that the specified purchase volumes in the Appendix appear reasonably accurate; and (4) limit its claims to the volumes and products set forth in the Appendix. *See Marion Corp.*, 12 DOE ¶ 85,013 (1984).

All applicants, with three exceptions discussed later in this Proposed Decision, will be required to show the extent to which they have been injured by the alleged overcharges. To the extent that any individual or firm can establish injury, it will be eligible for a share of the consent order fund. While there are a variety of ways in which a showing of injury may be made, a reseller will generally be required to demonstrate that during the period covered by the Consent Order, it had "banks" of unrecovered product costs which were at least equal to the amount of the refund claimed, and that it did not pass these costs through to its own customers. A reseller might establish that it absorbed the alleged overcharges by showing, for example, that market conditions would not permit it to increase its prices to pass additional costs through to its own customers. *Office of Enforcement*, 10 DOE ¶ 85,056 (1983); *Office of Enforcement*, 10 DOE ¶ 85,029 (1982). If a reseller of True products passed the alleged overcharges through to its own customers, then these indirect customers will be entitled to a refund if they themselves can prove injury. Therefore, we will permit customers who indirectly purchased True products as well as those who purchased directly from True to file applications for refunds.

In this case we will adopt three presumptions of injury which have been used in many previous special refund cases. First we will presume that end-users or ultimate consumers of True products whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges. Second, we will not require a showing of injury from agricultural cooperatives that passed the alleged overcharges on to their end-user members, provided that the cooperatives comply with standards set forth later in this Decision. Finally, we will presume that applicants who are claiming small refunds ($5,000 or less) were injured by the alleged overcharges. These presumptions will permit claimants to apply for refunds without incurring disproportionate expenses and will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. The presumptions of injury which we are adopting in this case are applicable to all refund applicants, whether they are named in the Appendix or not.

a. End-Users. We will not require end-users or ultimate consumers whose businesses are unrelated to the petroleum industry to show injury. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). Customers in this group might include, for example, businesses and individuals who purchased propane for heating purposes. The fuel costs of such end-users are only one, indistinguishable component of their prices for goods and services. Unlike regulated firms in the petroleum industry, other businesses were not subject to price controls during the consent order period and were not required to keep records. Thus, an analysis of the impact of the increased cost of petroleum products on the final prices of non-petroleum products and services would be beyond the scope of a refund proceeding. *Id.* Therefore, such end-users who document their purchase volumes of True products during the consent order period will be found to have made a sufficient showing of injury. On the other hand, refund applicants who were subject to the DOE regulatory program will be required to provide a detailed demonstration that they were injured, with the exception of those making small claims.

b. Applicants Claiming a Refund of $5,000 or Less. We recognize that making a showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of True products. For example, such firms may have limited accounting and data-retrieval capabilities and may therefore be unable to produce the records necessary to prove the existence of banks of unrecovered costs, or that they did not pass on the alleged overcharges to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In the past we have adopted a small claims procedure to assure that the costs of filing and processing a refund application do not exceed the benefits. *See, e.g., Aztex Energy Co.*, 12 DOE ¶ 85,115 (1984); *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,014 (1984). We will adopt such a procedure in this case. Therefore, any applicant claiming a refund of $5,000.00 or less need not make a detailed showing of injury in order to be eligible to receive a refund.

c. Agricultural Cooperatives. Agricultural cooperatives will not be required to show that they did not pass increased costs through to their customers. By its very nature, an agricultural cooperative would routinely pass through any overcharges to its member customers. Similarly, any refunds received by an agricultural cooperative would influence the prices charged to member customers. Therefore, we have held that agricultural cooperatives are not required to prove injury. *E.g., APCO Oil Corp.*, 12 DOE ¶ 85,144 (1985). Instead, an agricultural cooperative's refund application should explain fully the manner in which refunds will be passed through to its customers and how its members will be advised of the cooperative's receipt of the refund money. Sales by cooperatives to non-members, however, will be treated the same as sales by any other resellers.

d. Spot Purchasers. We also will adopt a rebuttable presumption that firms which made only spot purchases of True products have suffered no injury. Spot purchasers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot purchases of True's product at increased prices unless they were able to pass through the full amount of the alleged overcharges to their own customers. *See Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981). Accordingly, in order to overcome the rebuttable presumption that they were not injured, spot purchasers should submit additional evidence to establish that they were unable to recover the prices they paid for True products.

2. Calculation of Refund Amounts

We will use a volumetric method to divide the consent order fund among applicants who demonstrate that they are eligible to receive refunds. This method presumes that the alleged overcharges were spread equally over all the gallons of products which True sold. We have calculated a volumetric refund amount by dividing the consent order amount by the approximate number of gallons which True sold during the period covered by the Consent Order. Successful claimants will receive refunds based on their eligible purchase volumes multiplied by the volumetric refund amount, plus accrued interest.

We have tentatively set the True volumetric refund amount at $0.0469 per gallon. We derived this figure by dividing the consent order pool available for products other than crude oil ($2,333,333.30) by an estimate of the number of gallons of products which True sold during the consent order period (49,769,328).[2]

Since a consent order is necessarily the result of compromise, the volumetric refund amount derived from that consent order settlement is also a compromise. The volumetric refund amount does not purport to refund the exact amount that a customer may have been overcharged. Rather, it is a method by which a customer can receive an appropriate proportion of the consent order fund. We recognize that a particular purchaser could have suffered a disproportionate share of the injury. Therefore, any purchaser may file a refund application based on a claim that his share of the alleged overcharges was greater than the *pro rata* amount determined by the volumetric presumption. We also recognize that, if we receive refund applications based on total gallonages which exceed our estimate or if we receive applications based on purchases of fuel oil or motor gasoline, it may become necessary to adjust the per gallon refund amount downward.

As in previous cases, we will establish a minimum refund amount of $15.00 for first-stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15.00 outweighs the benefit of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

B. Crude Oil

In the Proposed Decision, we proposed to follow the requirement enunciated in the cases of *A. Johnson & Co.*, 12 DOE ¶ 85,102 (1984) (*Johnson*); *Office of Enforcement*, 9 DOE ¶ 82,521 (1982) (*Alkek*); and *Office of Enforcement*, 9 DOE ¶ 82,553 (1982) (*Adams*) that, in order to receive a refund, an applicant must demonstrate that it bore the burden of the alleged overcharges. On June 19, 1985, we issued a Report in the *Stripper Well Exemption Litigation*. We found that "it is impossible to trace these increased costs through an individual refiner's refinery, distribution and marketing operations." Report of the OHA at 25. As a result, the Deputy Secretary of the Department of Energy issued a statement establishing a DOE policy of restitution for crude oil overcharges and the OHA issued an order implementing that policy. 50 FR 27400 (July 2, 1985) (DOE policy); 50 FR 27402 (July 2, 1985) (OHA implementation). The OHA's order notified the public that the DOE policy is to hold crude oil overcharge funds attributable to miscertifications after the implementation of the Entitlements Program in escrow pending Congressional action. Comments on that policy are currently being received and evaluated. The distribution of the crude oil refund pool in this case will be governed by that policy.

IV. Applications for Refund

We have determined that the refund procedures described above are the best means of distributing the True consent order fund. Accordingly, we will now accept applications for refunds from the non-crude oil refund pool. Distribution of the crude oil refund pool will be governed by the procedures which the OHA adopts pursuant to its implmentation of the DOE restitutionary policy.

Applications must be in writing, signed by the applicant, and make reference to case number HEF-0557. Applicants must include a showing of injury, as explained above, or a statement that the applicant need not show injury because it was an end-user of the product, an agricultural cooperative, or is claiming a refund of $5,000 or less. In the case of a spot purchaser, additional documentation of injury must be submitted to overcome the presumption that such a purchaser was not injured. Applicants must document the date, place, price, and volume of the products they purchased. However, if an applicant which is identified in the Appendix to this Decision and Order is unable to provide such documentation the applicant may qualify for a refund by (1) explaining why such documentation is unavailable or would be expensive or difficult to obtain; (2) certifying that it was a purchaser of True products during the relevant period; (3) certifying that the specified purchase volumes in the Appendix appear reasonably accurate; and (4) limiting its claims to the volumes and products set forth in the Appendix.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. Any applicant who believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the information which the applicant claims is confidential has been deleted, together with a statement specifying why any such information is privileged or confidential. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.238(c), 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, title, and telephone number of a person who the OHA may contact for additional information concerning the application. All applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585.

It is therefore ordered that:

(1) Applications for refunds from the funds which The True Companies remitted to the Department of Energy pursuant to the Consent Order executed on July 28, 1983, may now be filed.

(2) All applications must be received no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: August 29, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix

Identified Customers of True Oil Company's Marketing Affiliate: Reserve Oil Purchasing Company; Black Hills Oil Marketers, True Oil Purchasing Company

PROPANE: SEPTEMBER 1, 1973 TO OCTOBER 31, 1978

Customer name	Gallons purchased
A & V Gas	72,626
Alden Oil Co	81,535
Amoco Production	57,182
Arrow Gas	158,233
Black Thunder	166,674
Butane Power & Equipment	326,995
Cal-Gas Co	479,915
Cal Liquid Gas Co	1,588,045
Cenex	13,047,765
Dews Oil	2,550
Dix-O-Gas	236,712
Empire Gas	1,741,357
Gary Operating	277,137
H.S. Sowards	17,272
Huntsmen Oil	65,951
Kerr-McGee	23,571

[2] The ERA audit file did not account for the entire consent order period. It did, however, contain monthly gallonage data for True's marketing affiliate's sales of propane (61 months), butane (18 months), and natural gasoline (9 months). We used this information to compute the average monthly gallonage of propane butane, and natural gasoline which True Oil Company's marketing affiliate sold. We then multiplied this figure by the number of months in the consent order period to obtain our estimate of total gallons sold.

PROPANE: SEPTEMBER 1, 1973 TO OCTOBER 31, 1978—Continued

Customer name	Gallons purchased
Little America	41,012
McCulloch Gas	119,753
Murphy Oil Co	410
N.C. Paving Co	142,377
Jenny Paton	150
Paving Corp	30,440
Petrolane Intermountain	415,387
Polar Gas	74,003
Rocky Mountain Natural Gas	306,664
T & T Gas Products	209,196
Tooke Engineering	158,381
Townsend Co /Bill Townsend	18,065
Uan Gas, Inc	35,507
V-1 Oil Co	2,720,897
W & S	8,836
Westland Oil Co	9,001

BUTANE: DECEMBER 1973 TO OCTOBER 1978

Customer name	Gallons purchased
Amoco Oil	60,315
Farmers Union	1,100,037
Pasco	44,123
Solar Petroleum	809,546
Texaco	205,306

NATURAL GASOLINE: JANUARY 1974 TO SEPTEMBER 1974

Customer name	Gallons purchased
Cenex	37,684
Farmers Union	508,455
Tesoro Petroleum Co	56,173

[FR Doc. 85-21903 Filed 9-12-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[EN-FRL-2892-3]

List of Violating Facilities; Addition

AGENCY: Environmental Protection Agency.

ACTION: Notice of placement of facility on EPA list of violating facilities.

SUMMARY: The EPA Assistant Administrator for Enforcement and Compliance Monitoring decided on August 21, 1985, to add to Sublist 2 of the EPA's List of Violating Facilities the Las Vegas, New Mexico, facility of Sierra Transit Mix Company based upon continual or recurring violations of an administrative order issued under Section 113 of the Clean Air Act.

Accordingly, no Agency shall enter into, renew, or extend any nonexempt contract, subcontract, grant, subgrant, loan or subloan where the facility listed would be utilized for the contract, subcontract, grant, subgrant, loan or subloan.

FOR FURTHER INFORMATION CONTACT: Allen Danzig, Listing Official, Office of Enforcement and Compliance Monitoring, Environmental Protection Agency, Rm. 3404, 401 M Street, SW., Washington, D.C. 20460. Telephone: (202)475-8785.

SUPPLEMENTARY INFORMATION: Pursuant to section 306 of the Clean Air Act (42 U.S.C. 1857 et seq., as amended by Public Law 91-604), Section 508 of the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq., as amended by Public Law 92-500], and Executive Order 11738, EPA has been authorized to provide certain prohibitions and requirements concerning the administration of the Clean Air Act and the Clean Water Act with respect to Federal contracts, grants, or loans. On April 16, 1975, regulations implementing the requirements of the statutes and the Executive Order were promulgated in the **Federal Register** (see 40 CFR Part 15, 40 FR 17124, April 16, 1975, as amended at 44 FR 6911, February 5, 1979). Section 15.20 of the regulations provides for the establishment of a List of Violating Facilities which will reflect those facilities ineligible for use in nonexempt Federal contract, grants or loans.

The List of Violating Facilities is contained in two sublists. Sublist 1 includes those facilities listed on the basis of a conviction under section 113(c)(1) of the Clean Air Act or section 309(c) of the Federal Water Pollution Control Act. Sublist 2 includes those facilities listed on the basis of: Any injunction, order, judgment, decree or other form of civil ruling by a Federal, State or local court issued as a result of noncompliance with clean air or water standards; or conviction in a State or local court for noncompliance with clean air or water standards; noncompliance with an order under section 113(a) of the Clean Air Act or section 309(a) of the Federal Water Pollution Control Act; or equivalent State or local proceedings to enforce clean air or water standards.

No agency shall enter into, renew, or extend any nonexempt contract, subcontract, grant, subgrant, loan or subloan where a facility listed would be utilized for the contract, subcontract, grant, subgrant, loan or subloan.

The purpose of this notice is to add to Sublist 2 the Las Vegas, New Mexico facility of Sierra Transit Mix Company based upon continual or recurring violations of an administrative order issued under Section 113 of the Clean Air Act.

Pursuant to the above-referenced authority, the Assistant Administrator for Enforcement and Compliance Monitoring, U.S. Environmental Protection Agency, certifies that the following facility is on the List of Violating Facilities as of August 21, 1985. The List of Violating Facilities will be revised periodically as any listings or delistings occur.

List of Violating Facilities

Sublist 1: Chemical Formulators Inc., Nitro, West Virginia Facility.

Sublist 2: Sierra Transit Mix Company, Las Vegas, New Mexico Facility.

Dated: August 22, 1985.

Richard H. Mays,

Acting Assistant Administrator for Enforcement and Compliance Monitoring.

[FR Doc. 85-21944 Filed 9-12-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-53073, FRL-2874-9]

Premanufacture Notices; Monthly Status Report for April 1985

Correction

In FR Doc. 85-18491 beginning on page 32294 in the issue of Friday, August 9, 1985, make the following corrections:

1. On page 32294, in table I:

a. In the Identity/generic name column for P85-733, "polyner" should read "polymer".

b. In the Identity/generic name column for P85-737, "polysubutituted" should read "polysubstituted".

2. On page 32295, in table I:

a. In the PMN No. column, the second entry now reading "P85-755" should read "P85-755"..

b. In the Identity/generic name column for P85-764, "-alkycyclo-" should read "-alkylcyclo-".

c. In the Identity/generic name column for P85-766, "cyclohetyl" should read "cyclohexyl".

d. In the Identity/generic name column for P85-767, "-alkycyclohexyl" should read "-alkylcyclohexyl".

e. In the Identity/generic name column for P85-775 and P85-776, "-alkoxyl-" should read "-alkoxy-".

f. In the PMN No. column, the entry now reading "P85-7" should read "P85-794".

g. In the Identity/generic name column for P85-801, "aciad" should read "acid".

h. In the Identity/generic name column for P85-817, "coumpunds" should read "compounds".

i. In the Identity/generic name column for P85-824, "alkyd" should read "alkyd resin".

3. On page 32296, in Table I:

a. In the Identity/generic name column for P 85–836 should read "(+)4-n-tetradecyl 4'-(2-methylbutyl)phenylbenzoate".

b. In the Identity/generic name column for P 85–837, "4"" should read "4'".

c. In the FR citation column for P 85–843, "1816(18917)" should read "18916(18917)".

d. In the Identity/generic name column for P 85–847, "-heptylviphenyl" should read "-heptylbiphenyl".

e. In the Identity/generic name column for P 85–867, "polyacid" should read "polyacid acid".

f. In the Identity/generic name column for P 85–870, "-termianted" should read "-terminated".

g. In the Identity/generic name column for P 85–40, "polymer" should read "polyol".

4. On page 32297, in table II:

a. In the Identity/generic name column for P 85–618, "-naphthalenedisulfonic" should read "-naphthalenesulfonic".

b. In the Identity/generic name column for P 85–629, P 85–630, P 85–631, and P 85–632, remove "Generic name:".

5. On page 32298, in table II:

a. In the Identity/generic name column for P 85–704, "tripshenol" should read "trisphenol".

6. On page 32299, in table III:

a. In the Identity/generic name column for P 85–424, "Diphyenylsulfone-" should read "Diphenylsulfone-".

b. In the Identity/generic name column for P 85–435, "digomer" should read "oligomer".

c. In the Identity/generic name column for P 85–28, "alkydrfesin" should read "alkyd resin".

7. On page 32300, in table IV:

a. In the Identity/generic name column for P 84–821, "epoxy" should read "epoxy resin".

8. On page 32300, in table V:

a. In the Identity/generic name column for P 83–677, "alkylaminoforminmidphenol" should read "alkylaminoformimidphenol".

b. In the Identity/generic name column for P 83–770, "phenolazonaphtol" should read "phenolazonaphthol".

c. In the Identity/generic name column for P 84–650, insert the word "sodium" at the end.

9. On page 32301, in table V:

a. In the Identity/generic name column for P 85–31, "heteromonocycle" should read "heteropolycycle".

b. In the Identity/generic name column for P 85–411, "imidaxolidines" should read "imidazolidines".

BILLING CODE 1505–01–M

[OPTS–59729; TSH–FRL 2889–2]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 85–20664 appearing on page 35313 in the issue of Friday, August 30, 1985, make the following correction:

In the third column, sixth line under Y 85–137 the Prod. range is corrected to read "285,648–1,142,592 kg/yr.".

BILLING CODE 1501–01–M

[OPTS–51586; TSH–FRL 2889–1]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 85–20665 beginning on page 35314 in the issue of Friday, August 30, 1985, make the following correction:

On page 35314, in the third column, the fourth line under P85–1362 is corrected to read "tris dodecylbenzenesulfonato-0.".

BILLING CODE 1505–01–M

[OPP–30000/37B; FRL 2883–1]

Amended Notice of Preliminary Determination Concluding Special Review of Pesticide Products Containing Dicofol; Availability of Supporting Documentation

Correction

In FR Doc. 85–19572, beginning on page 33008, in the issue of Thursday, August 15, 1985, make the following corrections:

On page 33012:

1. In the first column, second complete paragraph, thirteenth line, "there assement" should read "the reassessment".

2. In the second column:

a. Under "*C. Summary of Benefit Determinations*", eleventh line, "had" should read "has".

b. In paragraph "1. *Methodology.*", fourth line, remove the comma at the end of the line.

3. In the third column, in the fifteenth line from the bottom of the page, "yung" should read "young".

BILLING CODE 1505–01–M

[OPTS–51582; FRL–2875–1]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 856–18492, beginning on page 32290, in the issue of Friday, August 9, 1985, make the following corrections on page 32292:

1. In the second column, under **P 85–1233**, third line, "8–[5>–" should read "8–[5"–".

2. In the third column:

a. Under **P85–1235**, seventh line, "traizinylamino" should read "triazinylamino".

b. Under **P 85–1237**, sixth line, "6-(hydroxy" should read "6-(1"hydroxy".

c. Under **P 85–1238**, seventh line, "traizinylamino" should read "triazinylamino".

BILLING CODE 1505–01–M

[OPTS–51585; FRL–2887–4]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 85–20213, beginning on page 34189, in the issue of Friday, August 23, 1985, make the following correction:

On page 34190, first column, under **P 85–1331**, *Toxicity Data*, second line, "≤3.16" should read ">3.16".

BILLING CODE 1505–01–M

[OPTS–42072; FRL–2866–7]

2-Chloro-1, 3-Butadiene; Response to the Interagency Testing Committee

Correction

In FR Doc. 85–20308, beginning on page 34546, in the issue of Monday, August 26, 1985, make the following corrections on page 34547:

1. In the second column:

a. In the paragraph headed 1. *Production and use*, third line from the end of that paragraph, "contruction" should read "construction".

b. In the twelfth line from the bottom of the page, "cichloride" should read "dichloride".

2. In the third column:

a. In the seventh line, "Fat" should read "Fate".

b. In the sixteenth line, "water" should read "waste".

c. In the second complete paragraph, second line, "altmospheric" should read "atmospheric".

BILLING CODE 1505–01–M

[ER–FRL–2895–7]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements filed September 2, 1985 through September 6, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850371, Final, FAA, WI, Austin Straubel Field Airport Runway Extension, Brown County, Due: October 15, 1985, Contact: Glen Orcutt (612) 725–3346.

EIS No. 850374, DSuppl, COE, CA, Sacramento River Deep Water Ship Channel, Widening and Deepening, Environmental Impact Description Update, Yolo, Solano and Sacramento Counties, Due: October 28, 1985, Contact: Mike Welsh (915) 551–1891.

EIS No. 850375, Draft FHW, CA, Pacific Coast Highway/CA–1 Widening, CA–55 to Golden West Street, Orange County, Due: October 28, 1985, Contact: Glenn Clinton (916) 440–3578.

EIS No. 850376, Draft, SCS, WV, Middle Grave Creek Watershed Protection and Flood Prevention Plan, Marshall County, Due: November 5, 1985, Contact: Rollin Swank (304) 291–4151.

EIS No. 850377, Draft, COE, IA, Muscatine Island Levee District and Muscatine-Louisa County Drainage District No. 13 Local Flood Protection Plan, Muscatine and Louisa Cos., Due: October 28, 1985, Contract: Melvin Johnson (309) 788–6361.

EIS No. 850378, Final OSM, MT, Rosebud Mine Area D Expansion, Approval and Permits, Rosebud Couty, Due: October 15, 1985, Contact: Charles Albrecht (303) 844–5656.

EIS No. 850379, Final AFS, UT, WY, Wasatch-Cache National Forest, Land and Resource Management Plan, Due: October 15, 1985, Contact: Neil Hunsaker (801) 524–5030.

EIS No. 850380, Final MMS, AK, 1985 North Aleutian Basin Outer Continental Shelf (OCS) Oil and Gas Sale 92, Leasing, Bering Sea, Due: October 15, 1985, Contact: Thomas Boyd (907) 261–4668.

EIS No. 850381, DSuppl, IBR, CO, Colorado-Big Thompson, Windy Gap Projects, Green Mountain Reservoir Water Marketing, Summit, Grand, and Eagle Cos., Due: November 15, 1985, Contact: Richard Eggen (303) 236–0684.

EIS No. 850382, Final, EPA, PR, Culebra Wastewater Treatment Facility Plan, Design and Construction, Grant, Puerto Rico, Due: September 27, 1985, Contact: Robert Hargrove (212) 264–5390.

Amended Notice

EIS No. 850361, Final, COE, MS, Pearl River Basin Flood Control Plan, Hinds and Rankin Cos., Published FR 8–30–85—Retracted due to noncompliance of distribution.

Dated: September 10, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85–21987 Filed 9–12–85; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2895–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 26, 1985 through August 30, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D–BOP–E81025–FL, Rating LO, Marianna Federal Correctional Institution and Federal Prison Camp, Construction and Operation, FL. Summary: EPA's review did not identify any potential environmental impacts requiring changes to the preferred alternatives.

ERP No. D–CDB–F89023–MI, Rating EC2, Cobo Hall Convention Center, Renovation and Expansion, UDA and CDB Grants, MI. Summary: EPA believes that the DEIS did not adequately analyze potential impacts to air quality. EPA recommends that queue studies be done for all of the alternatives, and that an appropriate background level be incorporated into the CO concentrations presented for analysis. In addition, EPA recommended that further analysis of the secondary impacts resulting from an expanded Cobo Hall be included.

ERP No. D–CDB–K89058–CA, Rating LO, Chinatown Redevelopment Project, Construction, Grants, CA. Summary: EPA recommended that the FEIS address any potential impacts to ground and surface waters from construction work and the storage of toxic substances and new project flows on existing waste water treatment facilities. EPA also recommended the adoption of traffic system management measures to protect air quality.

ERP No. D–COE–E23005–Al, Rating EC2, Huntsville Spring Branch and Indian Creek System, DDT Contamination Isolation, Remedial Action Plan, Permits (COE/TVA/FWS), Redstone Arsenal, Wheeler Reservoir, Tennessee R., AL. Summary: EPA's review determined that the requirements for a "Cap" or low permeability cover are not justified or technically feasible based on the low potential of a DDT release from the contaminated soils and the long term problem associated with maintaining the integrity of a "cap" in stream channel subject to both ground water discharge from springs and frequent headwater/backwater flood conditions. We have a degree of environmental concern about the generic issue of pesticide contamination in the Huntsville Spring Branch/Indian Creek System, but believe that the proposed remedial action will appropriately deal with this situation if our technical recommendations are implemented.

ERP No. D–COE–E36154–FL, Rating LO, Upper St. John's River Basin Flood Damage Reduction Plan, FL. Summary: EPA, in general, was impressed by the selected alternative which apparently will have a beneficial effect on wetlands and water quality within the project area.

ERP No. D–FHW–E40685–TN, Rating EC2, TN–386 Extension, I–65 to Hendersonville Bypass, Construction, and Right-of-Way Acquisition (404 Permit), TN. Summary: EPA requested that the FEIS include additional evidence of the projects SIP conformity, an analysis of other build alternatives, noise mitigation for sites 4, 7 and 11, and analysis of alignments that would avoid the farm ponds.

ERP No. D–FHW–L40147–OR, Rating LO, Mt. Hood Highway/US 26 Improvements, Wildwood to Rhododendron, OR. Summary: EPA has no objections to the project provided the wetland mitigation measures identified in the DEIS are implemented.

ERP No. D–UAF–E13000–GA, Rating EC2, Winnersville Air-to-Surface Weapons Range, Construction and Operation, Near Moody Air Force Base for Primary Use of 347 Tactical Fighter Wing, GA. Summary: EPA expressed some environmental concern regarding the wetland and noise issues and the need for additional information on the manner in which these impacts will be mitigated.

Final EISs

F–BLM–K67006–CA, Amselco Colosseum Gold Mine Extraction and Milling Operation, Reopening and Expansion, CA. Summary: EPA continues to have concerns about potential impacts to groundwater resources and quality.

ERP No. F–COE–C36050–NJ, Lower Saddle R. and Sprout Brook Flood Control Plan, NJ. Summary: EPA has no objection to the proposed project. However, EPA also recommended that additional mitigation be proposed in order to avoid the potential alteration of a small wetlands area, which may be indirectly impacted by the proposed project.

ERP No. F–COE–C36051–NJ, Ramapo R. Flood Control Plan, Oakland Area, NJ. Summary: EAP has no objection to the proposed project. EPA's previous comments on the DEIS were adequately addressed in the FEIS.

ERP No. F–COE–C36054–NJ, Molly Ann's Brook Flood Control Plan, NJ. Summary: EPA is concerned that the FEIS did not adequately address wetland impacts. This impact was considered insignificant by the COE in its response to EPS's DEIS comment letter. EPA believes that this impact is significant and that mitigation should be proposed for the project to eliminate or reduce this impact to a small wetland area.

ERP No. F–FAA–K51030–CA, John Wayne Airport Expansion, Improvements and Land Acquisition, CA. Summary: EPA's review concluded that the FEIS adequately responded to concerns raised on the DEIS.

ERP No. F–FHW–F40184–IL, FAP–406 Supplemental/IL–121 Freeway Construction, I–55 in Lincoln to I–74 in Morton, IL. Summary: EPA's review of the FEIS did not identify any significant environmental impacts requiring changes to the proposed project.

ERP No. FS–HUD–K89034–HI, Kaka'ako Community Development Plan, Makai Area, Mortgage Insurance, Grants and Rental Housing Subsidies, HI. Summary: EPA recommended that the Record of Decision include certain carbon-monoxide reduction mitigation measures, which were tentatively agreed to by the Hawaii Community Development Agency.

ERP No. FS–STA–A82110–00, Cannabis Eradication in Foreign Western Hemisphere Nations, Aerial Application of Herbicide Glyphosate and Paraquat, Potential Health Risks from Smoking Marijuana Containing Residuals. Summary: EPA had no comments on the Final Supplement.

Dated: September 10, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85–21986 Filed 9–12–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50639; FRL–2878–4]

Issuance of Experimental Use Permits

Correction

In FR Doc. 85–18733, beginning on page 31917, in the issue of Wednesday, August 7, 1985, make the following corrections on page 31918:

1. In the second column, third complete paragraph, eighth line, "ornamental" should read "ornamentals".

2. In the third column, first complete paragraph, twelfth line, insert "Arizona," between "Alabama," and "Arkansas"

BILLING CODE 1505–01–M

[SAB FRL–2898–2]

Science Advisory Board, Radiation Advisory Committee; Amended Meeting

Notice is hereby given in accordance with Public Law 92–463 of a change in the agenda of the Radiation Advisory Committee meeting to be held September 19–20, 1985. Publication of the original agenda appeared in the **Federal Register** on September 5, 1985, page 36142. The amended notice is to inform the public that in addition to the issues listed in the September 5 **Federal Register** Notice, the Radiation Advisory Committee will provide advice and comment on EPA's Estimates of Lung Cancer Risk from Exposure to Radon Decay Products. As stated in the earlier notice, the Committee will meet at Westpark Hotel, 1900 North Fort Myer Drive, Shenandoah D Conference Room, Rosslyn, Virginia 22209, beginning at 10:00 a.m. on September 19 and 9:00 a.m. on September 20 and adjourning no later than 5:00 p.m. each day. For further information contact Kathleen White Conway, Executive Secretary to the Radiation Advisory Committee at (202) 382–2552 before close of business September 18, 1985.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 85–22082 Filed 9–12–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[File No. CCB–DFD–83–1; FCC 85–455]

Cox Cable Communications, Inc., Commline, Inc., and Cox DTS, Inc., Petition for Declaratory Ruling

AGENCY: Federal Communications Commission.

ACTION: Memorandum Opinion, Declaratory Ruling and Order.

SUMMARY: In response to a petition for declaratory ruling filed by Cox Cable Communications, and its wholly-owned subsidiaries, Cox DTS, Inc. and Commline, Inc., the Commission preempted the Nebraska Public Service Commission's prior certification requirements imposed on Commline of Omaha's provision of institutional transmission service. The Commission had been asked to preempt state and local regulation of facilities located within one state and used to originate, distribute or terminate interstate communications, including those facilities that also distribute intrastate communications. With respect to the Commline services, the Commission concluded it should preempt Nebraska's prior certification requirements because such requirements infringe on federal policies.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Emily Williams, Domestic Facilities Division, 202–634–1860.

Memorandum Opinion, Declaratory Ruling and Order

In the Matter of Cox Cable Communications, Inc., Commline, Inc. and Cox DTS, Inc.; FCC 85–455, File No. CCB–DFD–83–1. Petition for Declaratory Ruling.

Adopted: August 7, 1985.
Released: September 5, 1985.

By the Commission: Commissioner Quello dissenting and issuing a statement; Commissioner Rivera not participating.

1. The Commission has before it a petition for declaratory ruling filed by Cox Cable Communications, Inc. (Cox), and its wholly-owned subsidiaries, Cox DTS, Inc. (Cox DTS) and Commline, Inc. The petition seeks a ruling that "this Commission has jurisdiction over and has preempted state and local regulation of facilities located wholly within one state and used to originate, distribute or terminate interstate communications including such facilities [that] also distribute intrastate communications." [1] Thirty-eight parties filed comments on the petition and twenty-two parties filed replies.[2]

2. Cox's request arises from a Nebraska Public Service Commission (NPSC) order requiring Cox's subsidiary, Commline of Omaha, Inc. (Commline), to cease and desist from providing certain services in Omaha, Nebraska until it

[1] *See* paras. 6–8 *infra* for a complete discussion of the Cox request.

[2] *See* paras. 9–17 *infra*.

obtains a certificate of public convenience and necessity from the NPSC. For the reasons stated herein, we find that the uncertainty caused by the Nebraska prior certification requirement has impaired, and likely will continue to impair, Commline's ability to provide interstate services. We also find that the Nebraska prior certification requirement conflicts with and stands as an obstacle to the accomplishment and execution of our policies encouraging the development of a competitive interstate communications marketplace, encouraging the provision of services other than video services over cable facilities, and encouraging efficient use of communications facilities. Therefore, we hereby preempt the Nebraska prior certification requirement as it relates to the provision of service by Commline.

I. Background

3. Cox is an operator of cable television systems serving over 1.2 million subscribers in 23 states. Commline, Inc. was formed by Cox to develop and operate "institutional" [3] high-speed digital transmission services (including video teleconferencing, electronic mail, and high speed facsimile) in the markets in which Cox's cable television systems are franchised and committed to providing such services. Cox DTS was formed to be the licensee and operator of Digital Termination System (DTS) facilities.[4] Cox Cable of Omaha, Inc. (Cox-Omaha), a subsidiary of Cox, operates a cable television system in Omaha, Nebraska. Pursuant to a non-exclusive franchise granted by the city, two cables have been installed by Cox-Omaha: cable A, called the "residential" cable, is used to transmit television broadcasts and pay television programming and to provide Cox's INDAX (tm) service; [5] cable B, called the institutional cable, is used by Commline to provide high-speed digital transmission services to governmental and educational institutions and private businesses. According to its petition, Cox plans to interconnect the institutional cable network with DTS facilities for which Cox DTS has filed a construction permit application, in order to expand the coverage and increase the flexibility of the two technologies. Commline expects to provide service to interstate satellite and microwave carriers, such as MCI Telecommunications Corp. (MCI), for whom Commline already originates and terminates interstate traffic.

4. In December 1982 when Commline was preparing to provide its transmission services in Omaha, the NPSC instituted an investigation of Cox, Commline and MCI to determine: (1) Whether Commline and Cox's INDAX service were subject to NPSC authority and, therefore, whether Cox was required to obtain a certificate of public convenience under Nebraska statutes and (2) the impact of Commline/MCI services on Northwestern Bell Telephone Co. and other telecommunications carriers. On April 19, 1983, after conducting several days of hearings, the NPSC issued an order concluding that Commline "is a carrier furnishing communication services for hire in Nebraska intrastate commerce and, as such, is a common carrier subject to regulation by this Commission. . . ." [6] Thus, the NPSC ordered Commline to "cease and desist from offering communications service for hire in Nebraska" until it had received a certificate of public convenience and necessity from the NPSC.[7]

5. Shortly thereafter Cox filed a request for a preliminary injunction against the enforcement of the NPSC cease and desist order in the United States District Court for the District of Nebraska. The court found that it was not possible at that time to know whether the NPSC would grant a certificate to Commline or, if it did grant a certificate, what type of regulation would be imposed. Thus, it decided to abstain from ruling on the constitutional questions raised by the petitioners while Cox sought a certificate from the NPSC, but retained jurisdiction over the case. The court granted a preliminary injunction pending the outcome of the NPSC proceeding.[8]

A. The Cox Petition

6. In its petition, Cox generally asks that this Commission enter declaratory rulings that it has jurisdiction over and has preempted state and local regulation of all facilities located wholly within one state and used to originate or terminate interstate communications, including such facilities that also distribute intrastate comunications. Cox states that the NPSC investigation has had an adverse effect upon Commline's marketing and on the development of its business and that this Commission must preempt state regulation in order to encourage the rapid development of new and innovative cable services. State common carrier regulation, like that imposed by the NPSC, presents "a clear and present danger" to the development of cable television technology and new communications services, according to Cox.[9]

7. In support of the petition, Cox states that its institutional cable will be used to originate and terminate interstate traffic and as such is subject to this Commission's jurisdiction. Although its institutional cable also will be used for intrastate communications, Cox argues that the configuration of Commline's plant is such that a single coaxial cable channel assigned to a Commline customer will carry both the local and interstate traffic on a nonsegregable, combined basis.[10] Thus, relying on *North Carolina Utilities Comm'n v. FCC*, 537 F.2d 787 (4th Cir.), *cert. denied*, 429 U.S. 1027 (1976) (NCUC I), and *People of the State of California v. FCC*, 567 F.2d 84 (D.C. Cir. 1977), it argues that state and local regulation of the intrastate traffic should be preempted because such regulation would be infeasible and impractical and would interfere with interstate services and federal policies. Although some of its customers may not use the Commline facilities for any interstate services (*i.e.* all their communications would originate and terminate in Omaha) Cox argues that since these wholly intrastate customers will use the same cable and facilities as customers who have some interstate needs, it would be impractical to separate the interstate in intrastate use. Finally, Cox argues that this Commission already has preempted state regulation of DTS facilities and that state regulation that impedes interconnection with DTS likewise has been preempted.

8. Cox also argues that since it does not hold itself out to serve the public indiscriminately but rather chooses with

[3] As used in the pleadings, "institutional" services refer to services offered to businesses and institutions, as opposed to those services offered to residential customers.

[4] Digital Termination System (DTS) facilities are microwave radio facilities providing local distribution of communications in the Digital Electronic Message Service (DEMS).

[5] INDAX (tm) is Cox's residential subscriber service, which is offered on cable A and permits a variety of transactional services such as banking and information retrieval. The request for declaratory ruling is directed only to the services offered by Commline on the B cable. Cox Reply at 4.

[6] In the Matter of the Nebraska Public Service Commission Investigation into Proposed Operations of Cox Cable, MCI, and Commline, at 2 (April 19, 1983).

[7] *Id.* at 3.

[8] In granting the preliminary injunction, the court found that Commline would be placed at a severe disadvantage if it were forced to suspend operations pending the outcome of the state proceedings. Cox Cable Communications, Inc. v. Simpson, 569 F. Supp. 507, 517 (D. Neb. 1983).

[9] Petition at 36.

[10] Petition at 15–16. It argues that the only feasible way to segregate the intrastate traffic from the interstate traffic would be to build separate and distinct cables for interstate and intrastate use.

whom to deal and on what terms, it is not a common carrier.[11] If it is not a common carrier, section 2(b) and 221(b) of the Communications Act, 47 U.S.C. 2(b) and 221(b), which reserve to the states jurisdiction over intrastate and "exchange" common carrier services, do not apply and thus are no bar to federal preemption, according to Cox. Additionally, Cox argues that no "telephone exchange" services or facilities are involved in the Commline services or in the interconnection of Commline services with DTS facilities.[12] Finally, Cox states that it intends to offer "enhanced services" and, therefore, under this Commission's *Computer II* decision [13] state regulation of those services has been preempted.

B. Comments

9. Comments supporting the petition were received from cable companies,[14] cable equipment manufactures,[15] MCI Telecommunications Corp., Satellite Business Systems, the National Cable Telecommunications Association, Inc. (NCTA), and the cities of Santa Ana, California and Omaha, Nebraska. In addition to reiterating the legal arguments raised by Cox, many of the cable companies described difficulties that they had had with various telephone companies or state regulatory bodies in their attempts to provide services similar to those provided by Commline. These companies argue that if this Commission fails to act to preempt state regulation of their facilities and services, technological innovations in cable communications will be impeded.[16] Other commenters allege that Northwestern Bell and other telephone companies opposing similar services simply are trying to stifle competition.[17]

10. Comments opposing the petition were received from telephone companies,[18] the United States Independent Telephone Association (USITA), the states of California and New Jersey,[19] the Nebraska Department of Justice, the Michigan Public Service Commission, and the Washington Utilities and Transportation Commission. Several arguments were raised by these commenters. First, they argue that in *National Association of Regulatory Utility Commissioners* v. *FCC*, 533 F.2d 601 (D.C. Cir. 1976) (NARUC II), the D.C. Circuit already has determined that the FCC may not preempt state regulation of two-way, point-to-point, non-video communications.[20]

11. The telephone companies and states also argue that Commline is operating as a common carrier because its objective clearly is to serve as large a body of subscribers as it can. In response to the Cox assertion that it and other cable companies are not common carriers because they make individualized decisions relating to with whom they will deal and under what conditions, the telephone companies assert that a company cannot avoid common carrier status simply by opting out of some of the rules that govern the behavior of carriers. They also argue that the service is common carrier coummunications service because, unlike traditional cable services, the data and voice services available over Cox facilities are pure transmission service under which the customer transmits intelligence of his own design and choosing.[21]

12. These commenters argue that there is a lack of factual support for Cox's claim that it is impossible to segregate the inter- and intrastate services and that no reason has been demonstrated for exempting Cox and other cable companies from jurisdictional separations when other carriers are subject to that process.[22] Many of the telephone companies argue that Cox's use of coaxial cable utilizing broadband technology is not unique and object to what they see as an attempt to provide services identical to what the telephone companies provide without the regulatory burdens imposed upon the telephone companies.[23] They argue that it would be neither legal nor fair to grant cable companies such a favored position and state that the impact on local telephone companies could be severe resulting in a significant drain on revenues.[24] Northwestern argues that if the Commission does "preempt state regulatory jurisdiction over point-to-

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[11] In support of this argument Cox cites National Ass'n of Regulatory Util. Comm'r v. FCC, 525 F.2d 630 (D.C. Cir. 1976) (NARUC I) and National Ass'n of Regulatory Util. Comm'r v. FCC, 533 F.2d 601 (D.C. Cir. 1976) (NARUC II)

[12] Cox argues that its services are not switched and states that although the institutional cable can carry voice traffic with additional terminal equipment, Commline does not provide such equipment. Petition at 42–43. Cox also states that many of the services Commline offers are not or have not been generally available in Nebraska and, therefore, that Commline's operations will have little or no effect upon Northwestern Bell and its telephone exchange traffic and revenue

[13] Second Computer Inquiry, 77 FCC 2d 384 (1980), *reconsideration*, 84 FCC 2d 50 (1980), *further reconsideration*, 88 FCC 2d 512 (1981), *aff'd sub nom.* Computer & Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983), *second further reconsideration*, FCC 84–190 (released May 4, 1984).

[14] Cable companies submitting comments were: Warner Amex Cable Communications, Inc. (Warner); Westinghouse Broadcasting and Cable, Inc. (Westinghouse); A–R Telecommunication Division of Adams-Russell, Satellite Syndicated Systems, Inc., and Joseph S. Gans Cable TV, Inc. (joint comments) (A–R Telecommunications); Tribune Cable Communications Inc. and Continental Cablevision, Inc. (joint comments) (Tribune); Storer Communications, Inc. (Storer); General Electric Cablevision Corp. (General Electric); Viamcom International, Inc. (Viacom); Rogers U.S. Cablesystems, Inc. (Rogers); Cablevision Systems Development Co. (Cablevision); Times Mirror Cable Television, Inc. (Times Mirror); and Scripps-Howard Broadcasting Co. (Scripps-Howard). In addition, Albuquerque Cable Television Inc., Wentronics, Inc. and Santa Fe Cablevision Co. (Albuquerque) filed late comments together with a motion for acceptace of informal comments. We hereby accept Albuquerque's comments.

[15] Manufactuers submitting comments were: General Instrument Corp. (General Instrument); C-Cor Electronics, Inc., Texscan Corp. and Scientific Atlanta.

[16] General Instrument at 11–17; Cablevision at 9–11, 38; Albuquerque, passim. Westinghouse agrues that the viability of conventional cable programming may depend upon cable's ability to provide these new services. Westinghouse at 2. *See also* Reply Comments of Rogers which includes an appendix listing eight states that are considering regulation of Commline-type services.

[17] *See, e.g.*, Roger at 3. Rogers also argued that many of the services provided by its cable subsidiary, Cablesystems Pacific, are "enhanced services" under the *Second Computer Inquiry*, note 13 *supra*, and thus preempted on that basis.

[18] Telephone companies submitting comments include: The American Telephone and Telegraph Co. (AT&T); United Telecommunications (United); Pacific Telephone and Telegraph Co. (PT&T); Ameritech (on behalf of its telephone operating companies); Northwestern Bell Telephone Co., Mountain States Telephone and Telegraph Co. and Pacific Northwest Bell Telephone Co. (Northwestern); and the telephone companies of the NYNEX, Bell Atlantic, Bell South and Southwestern Bell regions (BOCs).

[19] The State of New Jersey also filed a motion to accept late filed pleadings. That motion is hereby granted.

[20] *See, e.g.*, AT&T at 7.

[21] *See, e.g.*, BOCs at 7.

[22] BOCs at 5; Ameritech at 15.

[23] Northwestern states that the "institutional" cable is a coaxial cable similar to those used in the telephone industry and that Northwestern itself provides the same services that Commline provides. It also aruges that Cox's request, if granted as proposed, would preempt practically all state regulation now in place over intrastate facilities and services.

[24] Ameritech at 3–4; Northwestern at 60–65. Northwestern states, for example, that the $2.5 million per year that Cox has stated it hopes to earn in the first five years of business is "the vast majority of Northwestern Bell's Omaha private line revenues of $3 million per year. Northwestern also requests that "[a]s part of [the Commission's] decision in this proceeding [we] should make it clear that [the] 'pole attachment' pricing rules do not apply to . . . cable used . . . to provide services that are similar to telecommunications services provided by telephone companies." *Id.* at 45.

point telecommunications cable facilities used to provide both interstate and intrastate communications within an exchange area, such preemption must be tailored so as not to favor one supplier (or one technology . . .) over another." [25]

13. Several commenters also question the advisability of ruling on questions of this importance and breadth pursuant to a declaratory ruling request. PT&T notes that the Commission's authority to issue a declaratory ruling is founded upon the adjudication section of the Administrative Procedure Act and argues that an agency should proceed by rulemaking if it seeks to establish rules of widespread application.[26] NTIA, agreeing with these comments, suggests that more information is needed on the threat of bypass before this Commission can properly rule on the petitions.[27] On the other hand MCI argues that if the Commission declines to act at this time, the services proposed by the cable companies will never develop. MCI suggests that if there is to be an inquiry it should follow a developmental period, after which the Commission would have meaningful information on whether regulation is desirable or necessary.

14. Reply comments were filed by twenty-two entities.[28] In large part, the replies reiterate the initial comments filed. Several additional arguments were raised, however, and Cox clarified its original request stating that its petition for declaratory ruling was directed only to Commline's facilities and services and not to INDAX, Cox's residential subscriber service offered on Cable A. Cox also stated that its "petition does not seek a declaratory ruling of federal preemption over *'all* state regulation' of 'switched' facilities . . . or the local 'loop' plant of telephone companies' intrastate monopoly services and 'local exchange service.' " It states that Cox has no intention of providing exchange or basic telephone service and does not seek federal preemption over such services if provided by cable sysems. Its petition is limited to its current or planned services which it describes as dedicated private lines "intended to be, and which demonstrably are, unlike local telephone exchange service."

15. Cox, and the commenters supporting its petition, challenge the assertion made by several commenters that *NARUC II* precludes this Commission from granting the requested relief. Although the Court in *NARUC II* held that this Commission could not preempt state common carrier regulation of a cable system's leased access channels used for two-way point-to-point communication, Cox argues that the *NARUC II* case is distinguishable from the case now before the Commission. According to Cox the only proposition for which the case may be cited is that the FCC may not preempt state regulation of such services based on its "reasonably ancillary to broadcasting" powers.

16. The cable companies also argue that it would make no sense to treat them as common carriers simply because they seek to maximize their customer base since all prudent businessmen seek to do so. Rather, they assert that the common carrier inquiry should focus on how a company deals with its customers, *i.e.*, whether a company undertakes to serve all customers indifferently.[29] Since Commline and other cable companies tailor their offerings to the individual customer, they should not be treated as common carriers, according to these commenters.

17. Reply comments filed by the telephone companies and others opposing Cox's petition argue, primarily, that Cox is in fact operating as a common carrier and that Cox's attempts to distinguish the services it provides from those provided by telephone companies should not be accepted by this Commission. Northwestern, for example, argues that simply labeling the services as "broadband" as Cox has done is irrelevant; whether a cable is broadband has nothing to do with service classification.[30] Regardless of the nature of the service, the telephone companies argue for parity in regulatory treatment. If the Commission allows Cox to provide its two-way services on an unregulated basis these companies argue that all businesses, including telephone companies, should be treated similarly.[31]

18. Finally, several commenters disagreed with NTIA's suggestion that the Commission conduct a rulemaking proceeding on the issues raised in the Cox petition. They argue that the primary questions to be resolved are legal rather than factual and that the legal issues have been fully briefed in the comments.

II. Discussion

A Procedural Matters

19. The first issue to be resolved is whether it is appropriate for this Commission to issue a declaratory ruling on the subjects raised by the Cox petition. As noted above, several parties urge us to refrain from issuing any ruling in this proceeding and, instead, commence a rulemaking. These commenters generally argue that there is insufficient information to issue a ruling at this time. In addition, USTA argues that we should not rule on the petition since the record is stale.

20. It is clearly within the power of this agency to proceed either by declaratory ruling or by rulemaking. *See NCUC I* at 790, n.2. The Commission has issued declaratory rulings on preemption issues on several occasions. *See, e.g., Ortho-Vision, 69 FCC2d 657 (1978), reconsideration,* 82 FCC2d 178 (1980), *aff'd sub nom. New York State Comm'n on Cable Television, v. FCC,* 699 F.2d 58 (2d Cir. 1982); *Earth Satellite Communications, Inc.,* FCC 83–526 (released Nov. 17, 1983), *aff'd sub nom. New York State Comm'n on Cable Television v. FCC,* 749 F.2d 804 (D.C. Cir. 1984); *Telerent Leasing Corp.,* 45 FCC2d 204 (1974), *aff'd sub nom. North Carolina Utilities Comm'n v. FCC, supra.*[32] We believe that with respect to at least some of the issues raised, the Commission has sufficient information

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[25] Northwestern at 17–18.

[26] PT&T at 3–5; *See also* Northwestern at 5–6; NYNEX Replay Comments at 2; AT&T Reply Comments at 4–5.

[27] NTIA at 5. Bypass generally refers to the phenomenon of telecommunications users abandoning the local exchange network by using alternative facilities, primarily user-owned and operated facilites. *See* Third Report and Order in MTS and WATS Market Structure, 93 FCC 2d 241, Appendix F (1983), *aff'd in part and remanded in part,* National Ass'n of Regualtory Utility Comm'rs v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), *petition for cert. filed,* No. 84–95 (filed July 18, 1985).

[28] Replies were filed by Ameritech, AT&T, the BOCs, Cox, General Electric Cablevision, Hughes, MCI, the Michigan Public Service Commission (Michigan), California, NARUC, NCTA, NTIA, Northwestern Bell, Rogers, Scripps-Howard, PT&T, California, Time, Inc., USITA, Warner Amex, and Westinghouse. In addition, the State of California filed an *ex parte* communication relating to its opposition to the enactment of H.R. 4103. Finally, on July 22, 1985, the United States Telephone Ass'n (formerly USITA) filed supplemental comments together with a motion to accept the comments. The supplemental comments argued that the lapse of time since the record in this case was closed render a decision at this time inappropriate. NCTA, United Cable Television Corp. and Cox opposed the motion and the National Telephone Cooperative Association, OPASTCO and North Pittsburgh Telephone Co. supported the motion. USTA replied. USTA's motion to accept the comments is hereby granted. Nonetheless, as indicated herein, we believe we have sufficient information to rule on a part of the Cox request.

[29] NCTA Reply Comments at 20.

[30] Northwestern Reply at 11.

[31] Ameritech Reply at 4–12.

[32] It also has declined to issue a requested ruling when it found it had insufficient information before it. *See Aeronautical Radio, Inc.,* 77 FCC 2d 535 (1980).

to rule. We have received extensive comments and reply comments on what primarily are legal and policy (rather than factual) issues, and it is not clear that further proceedings would generate additional relevant information contributing to a better decision.

B. Common Carrier Status [33]

21. As is noted above, Cox has asked this Commission to issue an order stating that as it currently operates, Commline is not a "common carrier" within the meaning of section 3(h) of the Communications Act, 47 U.S.C. 153(h). Whether Commline is operating as a common carrier within the meaning of section 3(h) does not affect this Commission's jurisdiction over Commline's interstate facilities and services. But because Section 2(b), 47 U.S.C. 152(b), limits this Commission's jurisdiction over intrastate communications of any common carrier, it may affect the preemption analysis. Thus, we shall first decide whether Commline is acting as a common carrier in its provision of service in Omaha for purposes of the Communications Act.

22. The test most often cited for whether an entity providing communications service is a common carrier was enunciated in *NARUC I*, note 11 *supra*. In that case the court found that to be a common carrier an entity must either be under a legal compulsion to "hold himself out indiscriminately to the clientele one is suited to serve" or, if not under legal compulstion, in fact to do so. *Id.* at 641.

23. The Nebraska PSC found that Commline is a common carrier and that "the record clearly shows that Commline would offer to serve any customer along its cable who had need of its service." We do not believe that finding satisfies the test articulated in *NARUC I*, since it does not include an "indiscriminiate holding out" or an indiscriminate offering of the services. In any event, we are not bound by the Nebraska finding for the purposes of determining common carrier status under the Communications Act.[34] We must make our own analysis of Commline's status.

24. Commline claims that it deals on an individual basis with each potential customer, that it does not have set prices or terms and conditions and that, therefore, it is not a common carrier.[35] No party brought forth evidence that Commline actually operates in a manner different than it claims. The evidence of the commenters on the other side amounts to little more than claims that Commline would like to sell its service to more customers and that if two customers did obtain the exact same service features, they would be charged the same price. An indiscriminate offering requires more than a desire to serve ore customers, and the consequent actions taken to obtain more customers (*e.g.*, a willingness to discuss the services offered with any interested party). An indiscriminate offering includes an offering to provide service without negotiation of provision of the service on an individualized basis. It appears that Commline does conduct business through individualized negotiations and does not hold itself out to serve the public indiscriminately.

25. When comparing Commline's services to the Specialized Mobile Radio Service (SMRS) found to be non-common carrier in *NARUC I*, it appears that Commline's services have most of the attributes of non-common carriage that SMRS has. In *NARUC I*, the court found SMRS not to be common carriage because the service "would involve the establishment of medium to long term relationships" with a fairly stable customer base and because the SMRS operators would make "individualized decisions about the desirability and compatibility of serving new customers." It appears that the Commline services also will tend to involve long relationships and, since the service is somewhat specialized, *see*, note 36 *supra*, it lends itself to individualized determinations as to the ability and desirability of serving new customers.

26. The second part of the *NARUC I* test is whether there is any legal compulsion for Commline to hold itself out indiscriminately to the public. *See generally Transponder Sales*, 90 FCC 2d 1238, 1255–57 (1982), *aff'd sub nom. World Communications, Inc. v. FCC*, 735 F.2d 1465 (D.C. Cir. 1984). Certainly, this Commission has never found Commline to be compelled to hold itself out indiscriminately. The other aspect of this question is whether there is any reason to require Commline to hold itself out indiscriminately, *i.e.*, is there any compelling reason to regulate Commline as a common carrier. We find that there is none.

27. Commline has little or no market power. Although there are some barriers to entry the market, they do not appear to be sufficiently high to vest Commline with market power. There are alternative methods of providing similar service.[36] DEMS is one alternative; over a dozen carriers have applied for DEMS in Omaha and several construction permits' have been granted. In addition, although Cox was able to lay its cable pursuant to a franchise granted by Omaha, that franchise is not exclusive.

28. In addition, the Commline service is similar to private line service and we assume that it will be used primarily by companies and institutions with some ability to protect their rights in dealing with Commline. Further, the Commline service does not have the characteristics of, and could compete to only a limited extent with, traditional telephone exchange service and switched access service.[37] Accordingly, we find there is no compelling reason to regulate Commline as a common carrier.[38]

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[33] Several commenters argue that the holding in *NARUC II*, note 11 *supra*, precludes a finding by this Commission that Commline's services and facilities are not common carriage. However, only one judge (Judge Wilkey) made a finding that the provision of two-way, point-to-point, non-video communications in that case was common carriage. The other two judges specifically in that case was common carriage. The other two judges specifically questioned Judge Wilkey's conclusion. In addition, Judge Wilkey's finding rested on the requirement, then contained in the Commission's rules, that cable operators provide "first-come, non-discriminatory access" to their leased channels. These rules were subsequently overturned in Midwest Video Corp. v. FCC, 440 U.S. 689 (1979). Therefore, *NARUC II* does not dictate any particular decision as to whether Commline is operating as a common carrier in Omaha.

[34] We note that the Nebraska statute defines "common carriers" as specifically including "contract carriers". *See* Neb. Rev. Stat. section 75–109.

[35] It its reply comments, Westinghouse described the specialized nature of these types of services as follows: "cable systems can be configured for a given customer so as to provide the precise bandwidth necessary to meet the particular mix of video, data, and/or audio transmission needs unique to a given user. . . . By selecting among different frequency arrangements and addressability techniques and by incorporating a variety of terminal devices and modems at customer sites, cable services are tailored to meet unique requirements. Cable services necessarily are founded on the given set of requirements that are unique to a given user, rather than a uniform channel or circuit assignment." Westinghoue Reply at 6–7.

[36] *See also* In re Lightnet, File No. W–P–C–5166, FCC 85–276 (released May 20, 1985).

[37] Although the "cable headend" performs a primitive switching function, the switch is unlike in the telephone hierarchy in that a cable subscriber cannot "call" every other subscriber connected to the switch; subscribers can only communicate with predesignated locations. In that way, the communications service is more like a point-to-point or point-to-multipoint private line service than a switched service or "telephone exchange service," which is defined in Section 3 of the Communications Act, 47 U.S.C. 153, as "interconnecting service of the character ordinarily furnished by a single exchange. . . ."

[38] We note that the State of California recently completed an investigation into the question of whether intraLATA toll competition should be allowed. While generally refusing to authorize intraLATA competition, it made an exception for high-speed data transmission services over private line networks. It based its decision in part upon findings that private line revenues are less than 2%

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C. Preemption

29. The second major ruling requested by Cox is that state regulation of facilities like Commline's that are used to originate and terminate interstate communications are preempted because of the effect such regulation would have on interstate communications and federal law and policy. There is no dispute that the service being provided by Commline is a communication service by wire and that at least one of its customers is using the facilities for the origination and/or termination of interstate communications.[39] Section 2(a) of the Communications Act, 47 U.S.C. 152(a), provides that the Act's provisions apply to "all interstate an foreign communication by wire or radio." It is also clear that the Commission has end-to-end jurisdiction over facilities used in interstate communication and the interstate services provided over those facilities regardless of the facilities' physical location. *See, e.g., People of the State of California v. FCC, supra. See also AT&T,* 71 FCC 2d 1 (1979); *AT&T* (Arco), Mimeo No. 636 (Nov. 8, 1983), *reconsideration,* Mimeo No. 3267 (April 3, 1984). In addition, it is clear the Commission has jurisdiction over the facilities used in interstate communications even if they are "primarily" used for intrastate service. *See, e.g., North Carolina Utilities Comm'n v. FCC,* 552 F.2d 1036, 1045–47 (4th Cir.), *cert. denied,* 434 U.S. 874 (1977) (NCUC II); *Puerto Rico Telephone Co v. FCC,* 553 F.2d 694, 700 (1st Cir. 1977).[40]

30. As a general matter federal law preempts state law when the state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz,* 312 U.S. 52, 67 (1941). Other courts have stated the test in slightly different language, but the concept remains one of federal supremacy over conflicting state laws or regulations. *See, e.g., Florida Lime and Avocado Growers, Inc. v. Paul,* 373 U.S. 132 (1963) (federal law will preempt state law when compliance with both federal and state law regulations is impossible); *Fidelity Federal Savings & Loan Co. v. de la Cuesta,* 458 U.S. 141 (1982) (nullifies state law to the extent that it actually conflicts with federal law). Moreover, in the communications field, the courts have acknowledged that our authority encompasses the power to preempt state regulation that substantially affects federal regulation of interstate communications or federal policy related thereto or when the dual use of the facilities renders separation for regulatory purposes impractical.[41]

31. Turning to the Cox petition, it is important, at the outset, to discuss several general arguments of the commenters opposing the Cox petition. First, they argue that the holding in *NARUC II* prevents this Commission from preempting state and local regulation over the use of cable system leased access channels used for two-way point-to-point, non-video communications. The holding in the *NARUC II* case was more narrow, however. Not only were the factual predicates of the decision different,[42] but also there was disagreement between the judges as to the reason for overturning the Commission. We agree with the commenters who assert that the only proposition for which *NARUC II* should be cited as precedent is that our decision to preempt in that case exceeded our jurisdication under the "ancillary to broadcasting" standard recognized in *United States v. Southwestern Cable Co.,* 392 U.S. 159 (1968). Our authority to preempt in this instance is not based upon our jurisdiction to regulate matters ancillary to broadcasting. Our actions are based upon our expansive ancillary federal authority over interstate wire communications, *see* 47 U.S.C. 152(a), and the effect that state regulation would have on various federal policies.

32. Second, the telephone companies argue that sections 2(b) and 221(b) of the Communications Act prevent the Commission from preempting state regulation in this case. Section 2(b) states only that nothing in the Act gives the Commission jurisdiction over "intrastate communications service . . . of any [common] carrier." Since we have found that Commline is not acting as a common carrier in this case, section 2(b) is inapplicable. *See NARUC I,* note 11 *supra;*[43] Likewise, section 221(b) does not affect the Commission's authority to preempt in this case. As the Commission stated in *AT&T,* FCC 85–368 (released July 25, 1985), section 221(b) "adds nothing to what is reserved to the states by the general exemption from Commission regulation . . . in section 2(b)(1) except as to local exchange service in cross-border exchange areas."[44]

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of Pacific Telephone's total local service revenues, and competitive does not threaten the universal network, and competition may solve the problem of customer dissatisfaction with private line service being provided at that time. *See* California Public Utilities Comm'n Order, 84–06–113 (June 13, 1984).

[39] As noted above, MCI has been a customer of Commline for some time. Telephone Bypass News (April 1985) reports that Commline now is providing local distribution facilities for GTE/Sprint as well as MCI.

[40] Some have argued that the Commission does not have jurisdiction over the Commline facilities and services if they are found to be non-common carrier. However, the Court in United States v. Southwestern Cable Co., 392 U.S. 159 (1968), stated: "Nothing in the language of § 152(a), in the surrounding language, or in the Act's history or purposes limits the Commission's authority to those activities and forms of communication that are specifically described by the Act's other provisions." *Id.* at 172; *but see* NARUC v. FCC, 533 F.2d 601, at 612, 622 (Opinion of Judge Wilkey and concurring opinion of Judge Lombard, suggesting that Section 2(a) powres are contingent upon specifically delegated powers). We need not decide here whether Section 2(a) constitutes an independent source of jurisdiction over these facilities and services because the preemptive authority exercised herein is clearly ancillary to our Title III and Title II powers.

[41] *See* Computer & Communications Industry Ass'n v. FCC, 693 F.2d 198, 215 (D.C. Cir. 1982); NCUC I, *supra.*

[42] *See, e.g.,* the opinion of Judge Wilkey, which distinguished the facts of *NARUC* from those of *Southwestern Cable* on the basis that *Southwestern Cable* dealt with activity that, as in the case here, was "unquestionably interstate". *NARUC II* at 613, n. 69.

[43] Even if Commline were acting as a common carrier, we would not be precluded from preempting state regulation of the services. In NCUC I, note 11 *supra,* the Court stated:

"We have no doubt that the provisions of section 2(b) deprive the Commission of regulatory power over local services, facilities and disputes that in their nature and effect are separable from and do not substantially affect the conduct or development of interstate communications. But beyond that, we are not persuaded that section 2(b) sanctions any state regulation formally restrictive only of intrastate communication that in effect encroaches substantially upon the Commission's authority under Section 201 through 205."

The reference to sections 201–205 reflects only that, in that case, state regulation relating to CPE interconnection would have violated this Commission's findings relevant to the reasonableness of certain tariff provisions. Of course, this Commission's power to preempt state action that substantially encroaches upon our authority over non-common carrier interstate communications is not triggered solely by state policies that impede our authority under sections 201–205, but may arise whenever any of our federal policies is impeded.

[44] Nor does section 621(d)(2) of the Cable Communications act of 1984 affect this Commission's authority to preempt in this case. That section provides that "Nothing in this title shall be construed to affect the authority of any State to regulate any cable operator to the extent that such operator provides any communication service other than cable service, whether offered on a common carrier or private contract basis." The legislative history makes clear that this section neither broadens nor narrows FCCor state jurisdiction over non-cable services. It states:

"It should be reiterated that it is the intent of Section 621(d) that with respect to non-cable communications services, both the power of any state public utility commission and the power of the FCC be unaffected by the provisions of Title VI. Thus, Title Vi is neutral with respect to such authority."

130 Cong. Rec. S124285 (daily ed. Oct. 11, 1984).

33. Finally, several commenters argue that this Commission cannot preempt state regulation of intrastate activities when the Commission itself does not regulate the facilities or services. There are many cases, however, in which federal preemption has been upheld when the federal policy is one of minimal regulation or forebearance. *See, e.g., Brookhaven Cable TV* v. *Kelly*, 573 F.2d 765 (2d Cir. 1978) (preemption of state price regulation of pay-cable upheld even though the FCC did not regulate pay cable prices); *Orthovision, supra* (preemption of regulation of MATV systems upheld even though the FCC does not regulate them); *Second Computer Inquiry*, not 13 *supra* (preemption of state regulation of CPE upheld even though the FCC had declined to regulate it).

34. With respect to the Commline services, we conclude that this Commission should preempt the Nebraska action requiring Commline to apply for a certificate of public convenience because the state action impermissibly infringes on federal policies. Because some of the Commline customers use the facilities for intrastate communications,[45] the Nebraska order, which only addresses intrastate service, did not exceed Nebraska state jurisdiction.[46] We find, however, that the Nebraska action has had and is likely to continue to have a substantial adverse effect upon interstate communications. Cox has presented evidence, and the evidence has not been convincingly rebutted, that the NPSC investigation of Cox has had an adverse effect upoon Commline's marketing and on the development of its services and business, including interstate access services, and that some customers have delayed taking service because of the NPSC actions.[47] In addition, the Nebraska statute relating to certificates of public convenience and necessity places a substantial burden on intities such as Commline.[48] In the event the application were denied, inefficient use of facilities would result which could lead to a severe increase in interstate costs because interstate charges would have to support the cost of the entire facility.[49] In addition, Cox testified before the Nebraska District Court that if the Nebraska order were not enjoined, Cox would shut down Commline's operations permanently.[50] Thus, we find that the Nebraska certification requirement has impaired, and likely will continue to impair, Commline's ability to provide interstate services.

35. We find that Nebraska's certification requirement conflicts with and obstructs several of our national communications policies. Both GTE/Sprint and MCI utilize Cox's cable facility to terminate their interstate telecommunications networks in Omaha. The state entry regulation inherently affects, and may even foreclose, use of these facilities by long distance service providers, and thereby frustrates the federal regulatory policies designed to facilitate competitive long distance services that we have promoted in our *Competitive Carrier Rulemaking*.[51] For almost two decades this Commission has been encouraging competition in the provision of interstate common carrier services.[52] These efforts have been designed to stimulate innovation, lower rates, increase diversity and encourage the efficient use of facilities.[53] Moreover, we have encouraged the interstate carriers to use alternative facilities and technologies in their systems.[54] Indeed, section 7(a) of the Act, 47 U.S.C. 157(a), requires us to encourage new developments and new technologies in communications. It provides that:

> It shall be the policy of the United States to encourage the provision of new technologies to the public. Any person . . . who opposes a new technology or services . . . shall have the burden to demonstrate that such proposal is inconsistent with the public interest.

Commline and Cox are attempting to develop a means of providing interstate communications by originating and terminating interstate common carrier traffic for entities such as MCI.[55] The Nebraska state entry regulation presents a clear possibility of barring these services and precluding the new alternatives that this Commission has sought to foster. There appears to be no practical or economical means of preventing Commline's customers from using these facilities for both intrastate and interstate communications, *see* note 45 *supra*. Even if there is a feasible way of preventing Commline customers from using the facilities for intrastate communications, this would result in inefficient use of facilities and, because there are few users, increase the cost of the facilities to Cox's interstate customers. Such an increase in costs could—and Cox stated in its testimony before the District Court would—destroy the viability of the service. Thus, to

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[45] It is unclear, however, how much of the communications on the Commline facilities is inter- or intrastate. Even the customers who Commline believes are using the facilities for intrastate service may be using the facilities for interstate communications through connection of the Commline facilities to a PBX or similar equipment on the customer's premises.

[46] The Nebraska statute gives the NPSC jurisdiction over both common carriers and contract carriers. *See* Neb. Rev. Stat. section 75–109.

[47] The district court found that "the uncertainty engendered by the NPSC investigation and order had deterred at least some potential customers from accepting Commline Services." 569 F. Supp. at 517. Comments by other cable companies reveal similar experiences.

[48] The Nebraska statute provides that: "Before granting a certificate of convenience and necessity, the Commission must find that: (1) The territory in which the applicant proposes to offer telephone service is not receiving reasonable adequate telephone service, (2) the portion of the territory of another telephone company in which or into which the applicant proposes to construct new lines . . . is not and and will not within a reasonable time receive reasonably adequate telephone service . . . or (3) that the application is agreeable . . . to both telephone companies, . . . will not create a duplication of facilities, [and] is in the public interest." Neb. Rev. Stat. section 75–604. Regardless of whether the NPSC eventually grants the Commline application, the evidence shows that the state already interfered with Commline's provision of service.

[49] In an analogous situation in AT&T, 56 F.C.C.2d 14 (1975), *aff'd sub nom.* People of the State of California v. FCC, *supra*, this Commission stated:

> "Requiring the customer to maintain two redundant facilities or to invest in expensive additional equipment simply because of jurisdictional conflicts would violate our congressional mandate in Section 1 of the Communications Act to regulate 'interstate and foreign commerce in communication by wire or radio as as to make available, in communication by wire or radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient , nationwide and world-wide wire and radio communications service with adequate facilities at reasonable charges.' "

Id. at 19. *See also* AT&T (TWX), 38 FCC 1127 (1965).

[50] In its reply comments Rogers states that the May 9, 1983, issue of *Cablevision* Magazine reported that the Nebraska Public Service Commission had "indicated that issuance of . . . a certificate [to Commline] would be highly unlikely." Rogers, Reply at 7.

[51] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorization Therefor: First Report and Order, 85 FCC 2d 1 (1980), Second Report and Order, 91 FCC 2d 59 (1982), *recon. denied*, 93 FCC 2d 54 (1983), Fourth Report and Order, 95 FCC 2d 554 (1983), Fifth Report and Order, 98 FCC 2d 1191 (1984), Sixth Report and Order, 57 Rad. Reg. 2d (P&F) 1391 (1985), *vacated*, MCI Telecommunications Corp. v. FCC, No. 85–1030 (D.C. Cir. July 9, 1985). The court in *MCI v. FCC* only addressed the issue whether the Commission has authority under Title II to require carriers to cancel tariffs.

[52] *See, e.g.*, Specialized Common Carriers, 29 FCC 2d 870 (1971), *aff'd sub nom.* Washington Utilities and Transportation Commission v. FCC, 513 F.2d 1142 (9th Cir. 1975), *cert. denied*, 423 U.S. 836 (1975); Resale and Shared Use of Common Carrier Domestic Public Switched Services, 83 FCC 2d 167 (1981).

[53] *See, e.g.*, NARUC v. FCC, No. 83–1354 (D.C. Cir. Oct. 26, 1984).

[54] *See* Notice of Proposed Rulemaking and Inquiry in Digital Telecommunications Services (Gen. Docket No. 79–188), FCC 79–464 (August 29, 1979).

[55] Some have argued that preemption in this case might result in bypass of telephone company facilities and services. This Commission has not, however, sought to prevent all bypass. We have focused upon cost-based access charges as a means of ensuring only that bypass not justified by service or cost considerations be limited.

ensure that interstate services may be provided consistent with our federal policies, the state certification requirement must be preempted.

36. Moreover, Cox intends to utilize its intrastate institutional cable systems in conjunction with DTS facilities to provide its customers with interstate telecommunications facilities. We have previously authorized and encouraged the use of DTS for interstate communications.[56] In the *Fifth Report and Order* in the Competitive Carrier Rulemaking, 98 FCC 2d 1191, 1205–09 (1984), we determined that a policy of regulatory forebearance would help promote the entry and expansion of DEMS and DTS systems by relieving carriers of the costs and delay of required tariff filings, would help promote competition, and would benefit consumers. *Id.* at 1207. Indeed, we have already indicated our intention to preempt inconsistent state regulation of DTS facilities because such regulation would impede the development of interstate systems.[57] State entry regulation of institutional cable systems used with DTS facilities could impede efficient development of these various interstate communications systems.[58]

37. Additionally, since the inception of cable television this Commission has recognized and encouraged the use of cable facilities for services other than traditional cable services. For example, as early as 1972 in our *Cable Television Report and Order*, 36 FCC 2d 143 (1972), we recognized that cable systems were capable of providing "facsimile reproduction of newspapers, magazines, documents, etc.; electronic mail delivery; merchandising; business concern links to branch offices, primary customers or suppliers; access to computers," and many other services. *Id.* at 144 n. 10. Throughout the Commission's history of regulation of cable, it has consistently articulated a desire not to interfere with these new services and, in fact, to promote them. *See, e.g., Notice of Inquiry in Docket 18397*, 15 FCC 2d 417 (1968); *Cable Television Report and Order*, 36 FCC 2d 143, 190 (1972); *Clarification of Cable Television Rules*, 46 FCC 2d 175, 199–200 (1974); *Duplicative and Excessive Over-Regulation-CATV*, 54 FCC 2d 855 (1975).

38. Preemption of entry barriers will further another important federal policy. Spectrum for private microwave systems is now highly congested in some areas. *See First Report and Order* in Private Radio Docket No. 83–426, FCC 85–53 (released April 1, 1985).[59] Private cable systems may provide an important alternative to these congested microwave frequencies. Through encouraging the development of private cable systems we can better ensure "a rapid, efficient, nationwide . . . wire and radio communication service. . . ." 47 U.S.C. 151.

39. In sum, we find that if the Commission does not preempt the Nebraska certification requirement, it is likely that the Commline interstate services will be severely impeded, if they are able to develop at all. This would be inconsistent with the federal policies designed to foster the development of new services, a competitive interstate communications marketplace, and the construction of efficient interstate telecommunications systems.[60]

40. From the comments received in this proceeding, it appears that other cable companies in other states also are having problems similar to Commline's caused by state certification and other regulatory requirements. It also appears that state certification or other regulatory requirements that have the effect of barring entry into the intrastate provision of institutional services offered by cable television companies generally may have an impact upon and may impede the provision of interstate services by these companies. Any state regulation of institutional services offered by cable companies that acts as a *de facto* or *de jure* barrier to entry into the interstate communications market or to the provision of interstate communications must be preempted.[61] At the same time, we recognize there may be instances in which cable companies wish to provide only intrastate service or in which a cable company's ability to provide intrastate service would have little impact upon its ability to provide interstate service. In those cases the federal interest in a state certification requirement would be less. In this order, we do not address those situations in which state regulation would have no effect upon the provision of interstate service. State regulation that does not act as a barrier to the provision of interstate communications may stand.[62]

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[56] In 1981, the Commission allocated radio spectrum for nationwide common carrier digital transmission networks (DEMS systems) providing high-speed, two-way transmissions. The intercity links of these networks employ satellite, microwave, fiber optics, or cable facilities, and the intracity facilities include digital termination systems (DTS) and internodal links.

[57] Digital Termination Systems, 86 FCC 2d 360, 389–90 (1981), *aff'd sub nom.* National Association of Regulatory Utility Comm'n v. FCC, 727 F.2d 1212 (D.C. Cir. 1984).

[58] The analogy between the provision of institutional interstate cable services and DTS can also be extended to the provision of Master Antenna Television (MATV) facilities. In utilizing its facilities to complete MCI's communications, Cox receives common carrier communications and then directs them over private facilities for completion. The reverse would also occur. This is analogous to what occurs when non-common carrier MATV facilities receive programming from multipoint distribution service carriers and then carry the programming to the MATV operator's customers. The Commission has previously preempted state regulation of MATV facilities because such regulation interfered with the interstate common carrier MDS services. *See* Orthovision, 69 FCC 2d 657 (1978), *reconsideration*, 82 FCC 2d 178 (1980), *aff'd sub nom.* New York State Comm'n on Cable Television v. FCC, 699 F.2d 58 (2d Cir. 1982); *see also* Earth Satellite Communications, Inc., FCC 83–526 (released November 17, 1983), *aff'd sub nom.* New York State Commission on Cable Television v. FCC, 749 F.2d 804 (D.C. Cir. 1984). Because Cox is terminating common carrier interstate traffic for MCI, this case has many of the same factual predicates as *Orthovision*.

[59] *See also First Report and Order*, Docket 82–334, 54 Rad. Reg. 2d 1001, 1003 (1983); *Public Notice*, Mimeo No. 35484 (released January 15, 1985) (lottery for 2.5 GHz channels); *Lottery Notice*, Mimeo No. 2429 (released February 7, 1985) (lottery for multiple address channels).

[60] We are mindful of the argument raised by the telephone companies that it is not fair to allow cable companies to provide services similar to services provided by the telephone companies if the cable companies are not subject to the same regulatory constraints as the telephone companies. With respect to our actions here, however, that argument holds little weight because the telephone company already is certificated, to the extent necessary, to provide services over its facilities that are most analogous to the cable facilities.

[61] A statutory requirement that only one company may provide "telephone services" in any given geographical area, coupled with a finding that the provision of institutional cable is the provision of "telephone services" is an example of a *de jure* barrier to entry. Any state regulation which treated certification as more than a ministerial act would be considered a *de facto* entry barrier, *i.e.*, a public need showing which would require a cable company to conduct interviews with businesses or provide demographic studies; or burdensome service provision regulation, such as, financial or character qualifications, if different from telephone company requirements. We recognize, however, that there may be matters relevant to the legitimate interests of states that may develop during the entry stage. To the extent that state regulation of such matters does not in any way have the effect of prohibiting or impeding entry into interstate markets, we do not propose preemption. For example, matters such as notice, zoning, health and safety may be regulated so long as the effect of such regulation is not to prohibit or impede entry. In addition, it may be necessary that states be notified of the fact that an entity is about to begin operation in order that the state can then exercise its legitimate post entry authority.

[62] Based on the comments in this proceeding we are unable to determine the effect state rate or other economic regulation would have upon interstate communications or federal law or policies. Cox argues that it is not possible to segregate interstate and intrastate use of its facilities for ratemaking purposes. The comments of the telephone companies dispute this and state that the telephone companies currently conduct usage studies for separations purposes on those facilities most closely resembling Commline's facilities. Thus, there is clearly a factual dispute as to the feasibility of separating traffic for ratemaking purposes and we do not rule on whether, in particular circumstances, this Commission would preempt state rate or other

Continued

41. We are hopeful that this general policy statement will serve as a guide to the states in their consideration of regulatory programs to be applied to transmission services similar to Commline's. However, we recognize that parties may need to bring specific situations to our attention. We are prepared to rule on specific situations on a case-by-case basis.

III. Conclusion

42. Nebraska's ordering of Commline to cease and desist from providing intrastate services until it first obtains a state certificate of public convenience makes it unlikely that Commline can successfully provide interstate service or provide the kinds of non-video services we have found cable systems should provide. Therefore, we shall preempt the prior state certification requirements imposed by the NPSC. As noted above, *supra* para. 40, we have made the finding that any state regulation of institutional services offered by cable companies that acts as a *de facto* or *de jure* barrier to entry into the interestate communications market must be preempted.[63]

43. Accordingly, it is ordered, that the petition for declaratory ruling filed by Cox Cable Communications, Inc., Commline, Inc. and Cox DTS, Inc. is granted to the extent indicated herein and is otherwise denied.

44. It is further ordered that the Secretary shall cause a copy of this decision to be printed in the **Federal Register.**

Federal Communications Commission.

William J. Tricarico,

Secretary.

August 7, 1985.

Dissenting Statement of Commissioner James H. Quello

In re: Petition for Declaratory Ruling filed by Cox Cable Communications, Inc., File No. CCB–DFD–83–1, seeking Commission preemption of state and local regulation of facilities located wholly within one state and used to originate or terminate interstate communications

I am not prepared to argue, at this point, that the majority has overstepped its authority in preempting entry regulation although that well might be the case. My concern rests with the policy established in this proceeding which seems to say to the states that we will preempt only a little now but stand ready to go further if the states exercise their perogatives to regulate these new carriers.

It isn't clear to me what significant national policy is to be furthered by forcing the states to accept bypass technology while this Commission remains unable to implement significant strategies to make bypass unattractive. Until we can remove the subsidy that flows to local ratepayers, benefits will continue to accrue to those who can avoid paying the subsidy. By its action, the majority has introduced a technology with significant potential to do what the Commission's attenuated subscriber line charge was designed to prevent.

Not to worry, say the proponents of preemption, the cable industry merely wants to provide "broadband" data services, an insignificant contributor to exchange revenues. If this Commission doesn't understand by now that the money is in message telephone service, its institutional memory has been ravaged by some dread malady. And, like Willie Sutton, the new entrants in the local exchange market will simply and unerringly go where the money is.

The states have the incentives to take whatever steps are necessary to prevent serious damage to the local exchange, and I believe that they should retain the means. Therefore, I dissent.

[FR Doc. 85–21974, Filed 9–12–85; 8:45 am]

BILLING CODE 6712–01–M

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economic regulaiton of Commline/type services. However, economic regulaiton could become a barrier to entry, and thereby be eligible for preemption if, for example, cable companies were subjected to it and telephone companies were exempted for provision of the same type of service.

[63] We decline to rule upon Northwestern's request that we clarify the applicability of the pole attachment rules to the Commline services. *See* note 24 *supra*. We have received no comments on this issue from other parties and therefore do not believe that it is appropriate to rule on that question at this time.

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–007680–058.

Title: American West African Freight Conference.

Parties:

America-Africa Line, Ltd.
Barber West Africa Line
Cameroon Shipping Lines
Farrell Lines, Inc.
Maersk Line
Portline
Societe Ivoirienne de Transport Maritime
Torm West Africa Line
Westwind Africa Line, Ltd.

Synopsis: The proposed amendment would restate the agreement to conform with the Commission's regulations concerning form and format. It would also add Portline as a party to the agreement, delete Companhia Nacional de Navegacao from agreement membership and admit Cameroon Shipping Lines as a full member of the agreement. This amendment replaces amendment 57, previously withdrawn by the parties.

Agreement No.: 207–009882–004.

Title: Pacific Australia Direct Line Joint Service Agreement.

Parties:

Associated Container Transportation (Australia) Ltd.
Rederiaktiebolaget Transatlantic

Synopsis: The proposed amendment would modify the agreement to (1) delete PAD Shipping Australia Pty. Ltd. as a party to the agreement; (2) extended the date upon which the parties may give notice of termination of the agreement from June 30, 1985 to December 31, 1985; and (3) restate the agreement to conform with the Commission's format, organization and content requirements. It would also make certain nonsubstantive changes to the language of the agreement.

Agreement No.: 212–010286–006.

Title: Italy-U.S.A. North Atlantic Pool Agreement.

Parties:

Costa Armatori, S.p.A.
Jugolinija
Nedlloyd Lines
Zim Israel Navigation Co., Ltd.
Farrell Lines, Inc.
Medamerica Express Service
Sea-Land Service, Inc.

Synopsis: The proposed amendment would modify the agreement to postpone the pool period which was scheduled to begin on September 1, 1985 until October 1, 1985. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: September 10, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–21928 Filed 9–12–85; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Revocations; Foot's Transfer & Storage Co., Ltd.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 1813
Name: Foot's Transfer & Storage Co., Ltd.
Address: 24701 Frampton Avenue, Harbor City, CA 90710
Date Revoked: August 21, 1985
Reason: Failed to maintain a valid surety bond

License Number: 2293
Name: Dan Beadle dba Dan Beadle Customs House Broker
Address: 609 Fannin, #1421, P.O. Box 52602, Houston, TX 77002
Date Revoked: August 23, 1985
Reason: Failed to maintain a valid surety bond

License Number: 2835
Name: Midwest Overseas Trading Corporation
Address: 1321 N. 37th Place, Milwaukee, WI 53208
Date Revoked: August 31, 1985
Reason: Failed to maintain a valid surety bond.

Robert G. Drew,
Director, Bureau of Tariffs.
[FR Doc. 85-21929 Filed 9-12-85; 8:45 am]
BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Reissuance of License; K.J. Segall Customhouse Broker

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No	Name/address	Date reissued
2665	Katherine J. Segall, dba K.J Segall, Customhouse Broker, 1520 State Street, #231, San Diego, CA 92101.	Aug 19, 1984

Robert G. Drew,
Director, Bureau of Tariffs.
[FR Doc. 85-21930 Filed 9-12-85; 8:45 am]
BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Applicants; Rock-It Cargo, U.S.A. Inc, et al.

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, D.C. 20573.

Rock-It Cargo, U.S.A. Inc., 5432 W. 104th Street, Los Angeles, CA 90245, Officers: Stephen W. Roper, President, Christopher Wright, Stockholder, Michael Porciello, Stockholder, Ian F. Haynes, Stockholder
Gabriel R. Soto, dba General Express Management, 1251 N.E. 141st Street, North Miama, Florida 33161
Jebco International, Inc., P.O. Box 63, Green Village, NJ 07935, Officer: Jay E. Bowlby Jr., President/Sole Officer
Cargonet (N.Y.) Inc., 145 Hook Creek Blvd., Valley Stream, NY 11581, Officers: Ari Van Donge, President, Dorothy Player, Vice President/Secretary/Treasurer, Martinus Robertus Van Der Meer, Chairman of the Board.

By the Federal Maritime Commission.
Dated: September 10, 1985.
Bruce A. Dombrowski,
Acting Secretary.
[FR Doc. 85-21931 Filed 9-12-85; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review by OMB

September 9, 1985.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register.**

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3822)

Proposal To Approve Under OMB Delegated Authority the Extension Without Revision of the Following Report

1. Report title: Report on Loans Granted to Executive Officers During Preceding Quarter
Agency form number: FR 2105S
OMB Docket number: 7100-0049
Frequency: Quarterly
Reporters: All state member banks
Small businesses are affected
General description of report:

This information collection is mandatory [12 U.S.C. 375a] and is given confidential treatment [5 U.S.C. 552(b)(4)].

This report provides information from all state member banks on the number of, total dollar amount of, and range of interest rates concerning loans to their own executive officers. The information provided is for the activity of the same quarter as the Call Report to which it is attached.

Board of Governors of the Federal Reserve System, September 9, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21911 Filed 9-12-85; 8:45 am]

BILLING CODE 6210-01-M

First Railroad & Banking Company of Georgia, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 4, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First Railroad & Banking Company of Florida*, Augusta, Georgia; to acquire 100 percent of the voting shares of Gwinnett Bank & Trust Company, Norcross, Georgia.

2. *Gulf & Southern Corporation*, Fort Myers, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of The National Bank of Lee County, Fort Myers, Florida.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Downstate Bancshares, Inc.*, Murphysboro, Illinois; to acquire 100 percent of the voting shares of First National Bank of Grand Tower, Grand Tower, Illinois.

Board of Governors of the Federal Reserve System, September 6, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21909 Filed 9-12-85; 8:45 am]

BILLING CODE 6210-01-M

Norstar Bancorp, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 3, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Norstar Bancorp, Inc.*, Albany, New York; to engage *de novo* through its subsidiary, Norstar Trust Company, Rochester, New York, in performing functions or activities that may be performed by a trust company, including activities of a fiduciary, agency, or custodial nature in the manner authorized by federal or state law, provided that the company will not accept deposits and will not make loans or investments other than call loans to securities and purchasing money market instruments such as certificates of deposit, commercial paper, government and municipal securities, and banks' acceptance (which loans and investments will not be used as a method of channeling funds to nonbanking affiliates of the company.)

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Provident Bancorp, Inc.*, Cincinnati, Ohio; to engage *de novo* through its subsidiary, Praxis Capital Management, Inc., Cincinnati, Ohio; in the nonbanking activity acting as an investment advisor, as permitted under Regulation Y, section 225.25(b)(4). Company will in addition provide portfolio investment advice to other persons and furnish general economic information and advice, general economic statistical forecasting services and industry studies. Comments on this application must be received not later than September 27, 1985.

Board of Governors of the Federal Reserve System, September 9, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21910 Filed 9-12-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of

Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on September 6, 1985.

Public Health Service

Food and Drug Administration

Subject: Exempt Infant Formulas—Revision—(0910–0158)
Respondents: Infant Formula Manufacturers

Alcohol, Drug Abuse, and Mental Health Administration

Subject: Alcohol, Drug Abuse, and Mental Health Services Block Grant Reporting Requirements—Revision—(0930–0080)
Respondents: State/local governments

Office of the Assistant Secretary for Health

Subject: National Medical Expenditure Survey—Inventory of Long-Term Care Places—Revision—(0937–0153)
Respondents: State/local governments, businesses, federal agencies, non-profit institutions, small businesses
Subject: Evaluation of National Cause-of-Death Data-Pilot Study—Revision—(0937–0133)
Respondents: Individuals or households, state/local governments, businesses or other for-profit institutions, federal agencies or employees, non-profit institutions, small businesses or organizations

National Institutes of Health

Subject: Biomedical Research Support Grant Application and Annual Progress Report—Extension—(0925–0008)
Respondents: Applicants for Biomedical Research Grants
OMB Desk Officer: Bruce Artim

Centers for Disease Control

Subject: Malaria Survey Among U.S. Travelers—Reinstatement—(0920–0154)
Respondents: Individuals or households
Subject: Reproductive Study of Women Who Work With Video Display Terminals—New
Respondents: Individuals or households

Health Resources and Services Administration

Subject: Application to Participate in the Health Professions Capitation Program—Extension—(0915–0089)
Respondents: Schools of Public Health Service
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Quarterly Report of Collections—OCSE 34—Extension—(0960–0238)
Respondents: States
Subject: Acknowledgement of Offer of Interview—SSA–311—New
Respondents: Individuals
OMB Desk Officer: Judy A. McIntosh.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503. Attn: (name of OMB Desk Officer)

Dated: September 9, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85–21920 Filed 9–12–85; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

[Docket No. 85F–0288]

Betz Laboratories, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Betz Laboratories, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *n*-dodecylguanidine hydrochloride as a slimicide in paper and paperboard intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3847) has been filed by Betz Laboratories, Inc., Trevose, PA 19047, proposing that § 176.300 *Slimicides* (21 CFR 176.300) be amended to provide for the safe use of *n*-dodecylguanidine hydrochloride as a slimicide in paper and paperboard intended for use in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c), as published in the **Federal Register** of April 26, 1985 (50 FR 16636).

Dated: September 5, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–21890 Filed 9–12–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85P–0384]

Canned Spinach Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to The Larsen Co. and Continental Can Co., Inc., to market test experimental packs of canned spinach containing added zinc chloride. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the food.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than December 12, 1985.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Center for Food Safety and Applied Nutrition (HFF–124), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0107.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to The Larsen Co., 520 North Broadway, P.O. Box 19027, Green Bay, WI 54307–9027, and Continental Can Co., Inc., 51 Harbor Plaza, Box Number 10004, Stamford, CT 06904–2004.

The permit covers limited interstate marketing tests of experimental packs of canned spinach. The test product deviates from the standard of identity for canned spinach (21 CFR 155.200) in

that it will contain added zinc chloride in an amount reasonably necessary to retain the green color of the product (up to 75 parts per million of zinc in the finished food). The test product meets all requirements of § 155.200, with the exception of this deviation.

The permit provides for the temporary marketing of 300,000 cases of the 307 x 306 (12½ oz) size can and 100,000 cases of the 603 x 700 (number 10) size can of the test product. The test product will be distributed in the continental United States.

The test product is to be manufactured at The Larsen Co. plants located in Fort Atkinson and Hortonville, WI.

The principal display panel of the label states the product name as "Cut Leaf Spinach." Each of the ingredients used is stated on the label as required by the applicable sections of 21 CFR Part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but no later than December 12, 1985.

Dated: September 9, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-21891 Filed 9-12-85; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Application Announcement for Grants for Programs for Physician Assistants

The Bureau of Health Professions, Health Resources and Services Administration, announces that applications for Fiscal Year 1986, Grants for Programs for Physician Assistants are being accepted under the authority of section 783(a) of the Public Health Service Act, as amended.

Applicants should be advised that this application announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year. The Administration's budget request for Fiscal Year 1986 does not include funding for this program. This notice regarding applications does not reflect any change in this policy.

In addition, programmatic changes may result from currently pending legislative action. Should such changes be necessary, all applicants will be notified at a later date.

Section 783(a) authorizes the award of grants to accredited schools of medicine or osteopathy and other public or nonprofit private entities to assist in meeting the cost of planning, developing and operating or maintaining programs for the training of physician assistants as defined under section 701(8) of the Public Health Service Act.

To receive support, programs must meet the requirements of sections 701(8) and 783(a) of the Act and program regulations implementing these sections published at 42 CFR Part 57, Subparts H and I.

Funding preference will be accorded approved applications with projects in which:

1. A program is conducted for training physician assistants to provide primary care patient services under the supervision of a doctor of medicine or osteopathy; and/or

2. Substantial training experience is provided in a health manpower shortage area(s), as defined in section 332 of the PHS Act, or in an area health education center funded, at least in part, under section 781 of the Act; and/or

3. A program is established in a State which does not have such a program; and/or

4. A program is conducted in conjunction with primary care physician education in a manner which shares educational resources and encourages the use of physician assistants by physicians.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-21), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Rm. 8C-22, Rockville, Maryland 20857, Telephone: (301) 443-6960

Questions regarding programmatic information should be directed to: Multidisciplinary Resources Development Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Rm. 4C-25, Rockville, Maryland 20857 Telephone: (301) 443-6817

The application deadline date is October 18, 1985. Applications shall be considered as meeting the deadline if they are either:

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

This program is listed at 13.886 in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, or 45 CFR Part 100.

Dated: September 9, 1985.

John H. Kelso,

Acting Administrator.

[FR Doc. 85-21948 Filed 9-12-85; 8:45 am]

BILLING CODE 4160-16-M

Application Announcement for Cooperative Agreements for Area Health Education Center Programs

The Bureau of Health Professions, Health Resources and Services Administration, announces that applications are now being accepted for Fiscal Year 1986 Cooperative Agreements for Area Health Education Center (AHEC) Programs under the authority of section 781(a)(1) of the Public Health Service Act, as amended.

Applicants should be advised that this application announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with needs of the program as well as to provide for even distribution of funds throughout the fiscal year. The Administration's budget request for Fiscal Year 1986 does not include funding for this program. This notice regarding applications does not reflect any change in this policy.

In addition, programmatic changes may result for currently pending legislative action. Should such changes be necessary, all applicants will be notified at a later date.

Section 781(a)(1) authorizes Federal assistance to medical and osteopathic schools which have cooperative arrangements with one or more public or nonprofit private area health education centers for the planning, development and operation of area health education center programs. New applications submitted under this authority will be accepted from medical and osteopathic schools for the purpose of planning, developing and operating new area health education center programs. Applicants may request up to three years of support with the expectation that centers planned and developed in years one and two would be operational no later than the third year.

To be eligible to receive support for an area health education center

cooperative agreement, the applicant must be a public or nonprofit private accredited school of medicine or osteopathy, or consortium of such schools, or the parent institution on behalf of such school(s).

To receive support, programs must meet the requirements of the regulations as set forth in 42 CFR Part 97, Subpart MM.

Funding Preference

In making awards for Fiscal Year 1986, the following funding preference is established. This preference was published in a **Federal Register** notice dated January 24, 1985.

(1) Competing continuation applications

(2) Planning and development projects under Section 781(a)(1) and

(3) Supplements to existing awards.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (U–76), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–22, Rockville, Maryland 20857, Telephone: (301) 443–6950.

Questions regarding programmatic information should be directed to: Division of Medicine, Area Health Education Center Branch, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C–05, Rockville, Maryland 20857, Telephone: (301) 443–6857.

The application deadline date is November 15, 1985. Applications will be considered as meeting the deadline if they are either:

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing.

This program is listed at 13.824 in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, or 45 CFR Part 100.

Dated: September 9, 1985.

John H. Kelso,

Acting Administrator.

[FR Doc. 85–21947 Filed 9–12–85; 8:45 am]

BILLING CODE 4160–16–M

Maternal and Child Health Research Grants Review Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1985.

Name: Maternal and Child Health Research Grants Review Committee

Date and Time: November 6–8, 1985, 9:00 a.m.–5:00 p.m.

Place: Conference Room L, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on Wednesday, November 6, 1985 at 9:00 a.m. to 10:00 a.m.

Closed for remainder of meeting.

Purpose: The Committee is charged with the review of all research grant applications in the program areas of maternal and child health administered by the Bureau of Health Care Delivery and Assistance.

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Maternal and Child Health, who will also report on program issues, Congressional activities and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on November 6, 1985, from 10:00 a.m. for the remainder of the meeting for the review of research grant applications. The closing is in accordance with the Provision set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination by the Acting Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92–463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other releveant information should write to or contact GONTRAN LAMBERTY, Dr.P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 6–17, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: 301–443–2190.

Agenda items are subject to change as priorities dictate.

Date: September 10, 1985.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 85–21949 Filed 9–12–85; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Announcement of Vacancy; Osage Tribal Education Committee

September 3, 1985.

25 CFR 122.5(e)(5) states that any vacancies shall be filled in the same manner described by this section for the selection of committee members. The period of time for receiving applications shall not exceed 30 days with the expiration date to be announced by the Assistant Secretary. The purpose of this announcement is to solicit nominations from individuals or from Osage organizations on behalf of nominees for this vacancy.

This notice announces that a vacancy has occurred on the Osage Tribal Education Committee. This vacancy is the Member At Large Representative.

The requirements of the Member at Large are:

(a) Must be an adult person of Osage Indian Blood, who is an allottee or a descendant of an allottee; and

(b) May include residents who are living anywhere in the United States.

The nominee or his representative organization should submit a brief statement requesting that he/she be considered as a candidate for the vacancy and the reason for desiring to serve on the committee. If nominated by an Osage organization, a written statement from the nominee stating his/her willingness to serve on the committee must be included with the Osage organization nomination.

Applications and nominations must be made no later than 30 days from the publishing date of this notice and shall be mailed to: Assistant Secretary-Indian Affairs, Attention: Director, Office of Indian Education Programs, Code 500, 18th & C Streets, NW., Washington, DC. 20240.

This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Hazel E. Elbert,

Acting Deputy Assistant Secretary, Indian Affairs.

[FR Doc. 85–21958 Filed 9–12–85; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau's clearance officer and the Office of Management and Budget Interior Department Desk Officer.

Washington, D.C. 20503, telephone 202–395–7313.

Title: Recordation of Mining Claims and Filing Proof of Annual Assessment Work or Notice of Intention to Hold Mining Claims, Mill sites, or Tunnel Sites.

Abstract: Section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744) requires that all locations of mining claims, mill sites, and tunnel sites under the Mining Law of 1872, as amended, be recorded with the Bureau of Land Management within 90 days of their location. The statute also requires that each calendar year after the mining claims are located the, owner shall file with the Bureau either an affidavit of annual assessment work or a notice of intent to hold by December 30. Failure to record the mining claim or site or failure to submit an annual filing foreach mining claim causes the mining claim or site to be declared statutorily abandoned, and therefore void.

Bureau Form Number: None; a copy of the original certificate or notice of location and/or annual proof of assessment work or notice of intent to hold.

Frequency: Respondent records each mining claim or site only once in the proper Bureau office. For each mining claim or site recorded, the respondent must file each year a copy of the affidavit of assessment work or a notice of intent to hold in order to keep the mining claim or site active.

Description of Respondent: Respondents may range from individuals to multi-national corporations.

Annual Responses: 1,100,000.

Annual Burden Hours: 91,630.

Bureau Clearance Officer: Rebecca Daugherty, 202–653–8833.

James M. Parker,

Acting Director, Bureau of Land Management.

August 30, 1985.

[FR Doc. 85–21959 Filed 9–12–85; 8:45 am]

BILLING CODE 4310–85–M

Iditarod National Historic Trail Advisory Council; Call for Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations to the recently re-chartered Iditarod National Historic Trail Advisory Council. The council serves to advise the Secretary of the Interior, through the Director, Bureau of Land Management, with regard to implementation of a comprehensive management plan for the Iditarod National Historic Trail, Alaska.

Of the 11 members comprising the council, several may be nominated by the public to represent corporation and individual land owners, and land users.

Council members will be appointed for two-year terms. At the discretion of the Secretary of the Interior, members may be reappointed to additional terms, but not to exceed a total of six years.

All members serve without salary but may be reimbursed for travel and per diem expenses.

Nominatins should include the individual's name, address, area of representation, and qualifying background. They should be submitted to: Anchorage District Office, BLM, Attention: Joette Storm, 4700 East 72nd Avenue, Anchorage, Alaska 99507–2899.

FOR FURTHER INFORMATION CONTACT: Public Affairs (907) 267–1200.

Wayne A. Boden,

District Manager.

[FR Doc. 85–21960 Filed 9–12–85; 8:45 am]

BILLING CODE 4310–JA–M

[CA–17015]

Realty Action; Exchange; Public Lands in Humboldt County, CA

The following described public land has been determined to be suitable for disposal under the provision of Pub. L. 91–476, an act to provide for the establishment of the King Range National Conservation Area (84 Stat. 1067), and sec. 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756).

Humboldt Meridian

T. 3 S., R. 1 E.,

Sec. 34: SW¼NW¼, NW¼SW¼.

Containing 80 acres total.

Kermit Miller, 244 Orchard Lane, Redway, California 95560, has applied to acquire the above described lands in exchange for the following described privately owned lands:

Humboldt Meridian

T. 3 S., R. 1 E.,

Sec. 30: NE¼NW¼.

Containing 40 acres total.

A mineral evaluation has been requested on the public land. If any minerals are identified, a reservation of identified minerals will be made to the United States. If no minerals are identified, the mineral estate of the public lands will be conveyed with the surface. The mineral estate of the privately owned lands will be conveyed with the surface.

The publication of this notice in the **Federal Register** shall segregate the applied for public lands from all other forms of appropriation under the public land laws, including the mining laws, for a period of two years. The exchange is expected to be consummated before the end of that period.

There will be reserved to the United States in the applied for lands, a right-of-way thereon for ditches and canals constructed by the authority of the United States (43 U.S.C. 945).

The purpose of this exchange is to acquire non-federal lands within the King Range National Conservation Area and to consolidate public land ownership for more effective management in the Scattered Blocks Planning Unit. This exchange is in conformance with Bureau planning and in the public interest.

Detailed information concerning the exchange, including the environmental analysis and the record of non-Federal participating, is available for review at the Arcata Area Office, BLM, 1125 16th Street, P.O. Box II, Arcata, California 95521.

For a period of 45 days from the first publication of this notice interested parties may submit comments to the California State Director, Bureau of Land Management, Rm. E–2841 Federal Office Building, 2800 Cottage Way, Sacramento, California 95825. Any adverse comments will be evaluated by the California State Director, who may vacate or modify this realty action and issue a final determination. In the absence of a vacation or modification this realty action will become the final determination of the Bureau.

Van W. Manning,

District Manager, Bureau of Land Management, Ukiah District, P.O. Box 940, 555 Leslie Street, Ukiah, California 95482.

[FR Doc. 85–21961 Filed 9–12–85; 8:45 am]

BILLING CODE 4310–84–M

[NM 60310]

Realty Action; New Mexico

Realty Action: Direct Sale of Public Lands; Eddy County, New Mexico. The Bureau of Land Management is proposing to dispose of the following described public lands by direct sale in compliance with the procedures of 43 CFR Part 2700 at no less than the fair market value as determined by appraisal.

Tract No	Legal description	Acreage	Fair market value	Purchaser
	T. 17 S., R. 30 E., N.M.P.M.			
1	Sec. 20, lot 5	93	$2,050	O.K. Hot Oil Service
2	Sec. 21, lots 16, 17, 18	3.69	6,100	Hope Enlp., Inc.
3	Sec. 21, lots 19, 20	2.28	2,725	Elwyn Peterson
4	Sec. 21, lots 65–69, S½ NW¼ SE¼ SW¼, S½ NE¼ SW¼ NE¼ SW¼, SE¼ SW¼ NE¼ SW¼, SW¼ SE¼ NE¼ SW¼	11.49	18,100	Anadarko Prod. Co.

The area described aggregates 19.16 acres in Eddy County, New Mexico. The lands are being offered by direct-noncompetitive sale to the following proponents: Anadarko Oil, O.K. Hot Oil Service, Hope Enterprises, Inc., and Elwyn Peterson. Lands in Tract No. 1 are currently vacant and adjacent to the O.K. Hot Oil Service. Lands in Tract No. 2 are being utilized for oil field equipment storage by Hope Enterprises, Inc. Lands in Tract No. 3 are occupied by Mr. Elwyn Peterson and Mr. William Curtis who work for Hope Enterprises in Loco Hills. Tract No. 4 is currently occupied by Anadarko Production Company as authorized by their 1934 lease number LC–029342(a).

All of the described tracts are within the town site of Loco Hills and adjacent to private land. Disposal by direct sale will legalize the occupancy of this land, protect the investments of the oil service industries, eliminate any undue hardship if the occupants were required to remove their improvements, make land available for future industrial growth, and rid the United States of small, difficult to manage tracts of public land because of their physical characteristics and private ownership of adjoining lands.

The subject lands are not required for any other Federal purpose and meet the disposal criteria of the regulations contained in 43 CFR 2710.0–3(a) and 43 CFR 2711.3–3(2) (2/3/4/5).

The terms and conditions and reservations applicable to this sale are:

1. The patents will include a reservation of a right-of-way for ditches and canals constructed by the authority of the United States in accordance with 43 USCA 946.

2. The sale of these lands will be subject to all valid existing rights.

3. All minerals together with the right to prospect for, mine, and remove under applicable laws, and such regulations as the Secretary may prescribe will be reserved to the United States (43 U.S.C. 1719).

4. Payment of no less than one-fifth of the full sale shall be made as a deposit at the time of sale. Purchasers shall submit the remainder of the full sale price prior to the expiration of 180 days from the date of sale. Failure to submit the full price prior to but not including the 180th day following the day of the sale, shall result in cancellation of the sale of the specific tract and the deposit shall be forfeited.

Continuing sale of public land tracts not sold pursuant to this notice shall remain available for sale at or above fair market value competitive bidding basis for a period of three months after full payment is due. Sealed bids marked plainly on the envelope as "Loco Hills Sealed Bid" will be opened each Wednesday at 10:00 AM local time after the full payment due date has expired.

Public documents concerning land use plans, decisions, environmental documentation, land report analysis, record of public comments and involvement and appraisal are available for inspection at the address given below.

The sale will be conducted at the Carlsbad Resource Area Headquarters, 101 East Mermod Street, Carlsbad, New Mexico 88220 at 2:00 PM on November 5, 1985.

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager at 1717 West Second Street, Roswell, New Mexico 88201. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Francis R. Cherry,

District Manager.

[FR Doc. 85–21964 Filed 9–12–85; 8:45 am]

BILLING CODE 4310–FB–M

New Mexico; Known Geothermal Resources Area

Pursuant to the authority vested in the Secretary of the Interior by Sec. 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1562; 30 U.S.C. 1020), and delegations of authority in 220 Departmental Manual 4.1 H; Geological Survey Manual 220.2.3, Conservation Division Supplement (Geological Survey Manual 220.2.1 G), and Secretarial Order 3071, the following described lands are hereby deleted from Lightning Dock, Radium Springs, and Socorro Peak KGRA's effective June 6, 1985.

(31) New Mexico.

Lightning Dock Known Geothermal Resource Area

New Mexico Principal Meridian, New Mexico

T. 24 S., R. 19 W.,
- Sec. 8;
- Sec. 19, lot 4, SE¼NW¼, and SE¼SW¼;
- Sec. 20, N½NE¼, SE¼NE¼, and S½SW¼;
- Sec. 29, NW¼NW¼, S½NW¼, and S½;
- Sec. 30, lots 1, 2, and 3, NE¼, E½NW¼, NE¼SW¼, and N½SE¼.

The deleted area aggregates 1885.42 acres, more or less.

Radium Springs Known Geothermal Resource Area

New Mexico Principal Meridian, New Mexico

T. 21 S., R. 1 W.,
- Sec. 1, lots 1 to 8, inclusive, N½N½, and S½;
- Sec. 12, E½.

The deleted area aggregates 990.88 acres, more or less.

Socorro Peak Known Geothermal Resources Area

New Mexico Principal Meridian, New Mexico

T. 4 S., R. 1 W., N.M.P.M.;
- Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
- Sec. 7, lot 2, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
- Sec. 8, SW¼NE¼, S½NW¼, and W½SE¼;
- Sec. 9.

T. 3 S., R. 2 W., N.M.P.M.,
- Sec. 1, lots 1 to 8, inclusive, S½NE¼, SE¼NW¼, and S½;
- Sec. 10;
- Sec. 12;
- Sec. 13, E½, E½W½, W½NW¼, and SW¼SW¼;
- Secs. 14 and 15;
- Secs. 22, 23, and 24;
- Sec. 25, NE¼NE¼, S½NE¼, W½W½, SE¼SW¼, and SE¼;
- Sec. 26, N½ and SE¼;
- Sec. 27;
- Sec. 34;
- Sec. 35, S½N½ and S½.

T. 4 S., R. 2 W., N.M.P.M.,
- Sec. 3, lots 1 to 4, inclusive, and S½N½;
- Sec. 4, S½.

The deleted area aggregates 11,064.28 acres, more or less.

The subject lands will be made

available to the first qualified applicant under regulations appeàring in 43 CFR Part 3210 beginning with the first calendar month following the date of this notice.

Charles W. Luscher,

State Director.

[FR Doc. 85–21962 Filed 9–12–85; 8:45 am]

BILLING CODE 4310–FB–M

[U–53819—U–53823]

Realty Action; Sale of Public Lands; Emery County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, U–53819, U–53820, U–53821, U–53822, U–53823, Sale of Public Lands in Emery County, Utah.

SUMMARY: The following described parcels of public land have been examined and identified as suitable for disposal under section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2750; 43 U.S.C. 1713). Sale will be at no less than fair market value.

Parcel No	Serial No	Legal description	Acres	Fair market value	Bidding procedure	Terms and conditions
		Salt Lake Meridian				
1	U–53819	T. 16 S., R. 10 E., Sec. 19, SW¼SE¼	40.0	$3,600	Modified competitive	1, 2, 3
2	U–53820	T. 16 S., R. 10 E., Sec. 21, W½NE¼, N½NW¼, NW¼SE¼	200.0	20,000	Competitive	1, 2, 3, 4a, 4b
3	U–53821	T. 16 S., R. 10 E., Sec. 27, NE¼NE¼	40.0	6,000	do	1, 2, 3, 4c
4	U–53822	T. 17 S., R. 9 E., Sec. 1, Lot 4	40.68	5,100	Direct	1, 2, 3, 4d, 4f, 5, 6
5	U–53822	T. 17 S., R. 9 E., Sec. 1, S½NW¼	80.0	10,000	Competitive	1, 2, 3, 4f, 4j
6	U–53823	T. 16 S., R. 9 E., Sec. 25, SE¼NE¼	40.0	6,000	Direct	1, 2, 3, 4e, 4g, 4h, 4i, 4k

Sealed bids will be accepted at the Price River Resource Area Office, P.O. Drawer AB, 900 North 700 EAst, Price, Utah 84501 until 11:00 a.m. on November 19, 1985. At that time, the bids will be opened. Oral bidding, if required, shall be held immediately followign the opening of sealed bids.

Any of the indentified parcels not sold on the sale date, will remain available for sale over the counter until February 25, 1986, unless sold or withdrawn from the market. Sealed bids will be accepted at the Price River ARea Office durign regular business hours, 7:45 a.m. to 4:30 p.m. Sealed bids will be opened the second and last Tuesday of each month at 11:30 a.m.

Bidders must be U.S. citizens, 18 years of age or more; a state or state instrumentality authorized to hold property; or a corporation authorized to own real estate in the State of Utah.

Parcel Number 1 will be offered for sale through modified competitive bidding. Mr. Harold Alger, Sunnyside, Utah, and Corey and Jill Hansen, Elmo, Utah, adjoining land owners, will have a preference right to meet the high bid.

Parcels Number 4 and 6 will be offered to the Castle Valley Special Service District, Castle Dale, Utah. Direct sale procedures will be used.

Terms and Conditions of the Sale

1. All minerals, including oil and gas, will be reserved to the United States with the right to prospect, explore, mine, and remove the minerals. A more detailed description of this reservation which will be incorporated in the patent document is available for review at the above office.

2. Rights-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

3. Patents will be issued subject to all valid existing rights and reservations of record.

4. Existing rights and privileges of record include:

a. Oil and gas lease U–53568

b. Grazing permit held by Dennis and Pauline McDougal valid until December 20, 1986.

c. County Road 7107

d. Right-of-way U–52813

e. Right-of-way U–54672

f. Washboard Allotment grazing permits valid until March 20, 1987.

g. Right-of-way U–53812

h. Right-of-way U–53808

i. Right-of-way U–01758

j. Oil and gas lease U–34161

k. Oil and gas lease U–34164

5. A 20-foot wide right-of-way will be reserved along the north boundary line of Lot 4 for a stock trail.

6. A 20-foot wide right-of-way will be reserved along the east boundary line of Lot 4 for a road.

The successful bidders on parcels 2 and 4 agree that they take the property subject to existing grazing uses. The privilege of the permittees to graze domestic livestock on the property according to the conditions on authorizations No. 4012 and No. 4115 shall cease on December 20, 1986, and March 20, 1987, respectively. The successful bidder is entitled to receive annual grazing fees from the permittees in an amount not to exceed that which would be authorized under the Federal grazing fee published annually in the **Federal Register.**

Additional information concerning the land, terms and conditions of sale, and bidding instructions may be obtained from Mark A. Mackiewicz, Area Realty Specialist at the above address, (801) 637–4584, or Brad Groesbeck, Moab District Office, P.O. Box 970, Moab, Utah 84532, (801) 259–6111.

For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

The BLM reserves the right to accept or reject any and all offers, or withdraw any land or interest in land from sale if, in the opinion of the Authorized Officer, consummation of the sale would not be fully consistent with section 203(g) of FLPMA or other applicable laws.

Upon publication of this Notice of Realty Action, the lands will be segregated from all forms of appropriation under the public land laws, including the mining and mineral leasing laws. This segregation shall terminate upon issuance of patent or other document of conveyance, upon publication in the **Federal Register** of a termination of segregation, or 270 days from the date this Notice is published in the **Federal Register,** whichever occurs first.

Dated: September 5, 1985.

Gene Nodine,

District Manager.

[FR Doc. 85–21965 Filed 9–12–85; 8:45 am]

BILLING CODE 4310–DQ–M

[A-20346-H]

Realty Action: Exchange of Public Lands, Maricopa County, AZ

Correction

In FR Doc. 85-20072, beginning on page 34012 in the issue of Thursday, August 22, 1985, the second line of the land description (last line of column 3, page 34012) should have read:

Secs. 3, 12 and 23.

BILLING CODE 1505-01-M

Fish and Wildlife Service

Yukon Flats National Wildlife Refuge Comprehensive Conservation Plan/ Environmental Impact Statement and Wilderness Review, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service has prepared, for public review, a draft Comprehensive Conservation Plan, Environmental Impact Statement (CCP/EIS), and Wilderness Review for the Yukon Flats National Wildlife Refuge, Alaska, pursuant to sections 304(g)(1) and 1317 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA); section 3(d) of the Wilderness Act of 1964; and section 102(2)(C) of the National Environmental Policy Act of 1969. The draft CCP/EIS describes five strategies for long-term management of the 8.47 million acre refuge. The plan also reviews these lands as to their suitability under each management alternative for possible addition to the National Wilderness Preservation System.

DATE: Remarks on the draft CCP/EIS must be submitted on or before December 6, 1985 to receive consideration by the Regional Director.

ADDRESS: Remarks should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503 (Attn: William Knauer).

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

A draft CCP/EIS has been prepared for general distribution. Copies of the draft comprehensive plan will be sent to all persons, organizations, and agencies which participated in either scoping, the alternative workshop, and/or the public review process. Copies of the draft CCP/EIS have been sent to all agencies and persons who have already requested copies. Those wishing to review the draft document may obtain a copy by contacting Mr. Knauer.

Copies of the draft CCP/EIS are available for public review at the above location; at the Yukon Flats National Wildlife Refuge Office, Federal Building, 101-12th Avenue, Fairbanks, Alaska; and at the following locations:

U.S. Fish and Wildlife Service, Division of Refuge Management, Interior Building, 18th and C Streets, NW, Washington, DC 20240
U.S. Fish and Wildlife Service, Wildlife Resources, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, OR 97232
U.S. Fish and Wildlife Service, Wildlife Resources, 500 Gold Avenue SW., Room 1306, Albuquerque, NM 87103
U.S. Fish and Wildlife Service, Wildlife Resources, Federal Building, Fort Snelling, Twin Cities, MN 55111
U.S. Fish and Wildlife Service, Wildlife Resources, Richard B. Russell Federal Bldg., 75 Spring Street, Atlanta, GA 30303
U.S. Fish and Wildlife Service, Wildlife Resources, One Gateway Center, Suite 700, Newton Corner, MA 02158
U.S. Fish and Wildlife Service, Wildlife Resources, 134 Union Blvd., Lakewood, CO 80225

SUPPLEMENTARY INFORMATION: The draft CCP/EIS for the Yukon Flats National Wildlife Refuge was developed by the U.S. Fish and Wildlife Service, Department of the Interior, to fulfill the requirements of section 304 of ANILCA relating to preparation of comprehensive conservation plans and the requirements of section 1317(a) of ANILCA and section 3(d) of the Wilderness Act relating to general wilderness suitability review of non-wilderness refuge lands.

Major issues addressed by the plan include management of fish and wildlife populations and habitats; access and transportation; trapping; subsistance use on the refuge; oil and gas development; recreational use of the refuge; and wilderness management.

The draft CCP/EIS describes five alternatives for long-term management of the refuge including one that would continue current management (the no action alternative). The other four alternatives cover a broad spectrum of management emphasis, ranging from maximum to minimum use of refuge resources. A preferred alternative, representing the FWS's preferred management strategy for the refuge, is identified.

The plan also describes the general wilderness suitability of 8.47 million acres of non-wilderness refuge lands under each management alternative. This complies with section 1317(a) of ANILCA which requires the Secretary of the Interior to review, in accordance with section 3(d) of the Wilderness Act, all non-wilderness refuge lands in Alaska as to their suitability for preservation as wilderness and report his/her recommendations to the President by 1987.

The Notice of Intent to prepare the CCP/EIS and Wilderness Review was published in the September 2, 1982, **Federal Register**. Other government agencies and the general public contributed to the development of this draft CCP/EIS and Wilderness Review.

Dated: September 5, 1985.

Robert E. Gilmore,

Regional Director.

[FR Doc. 85-21955 Filed 9-12-85; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Martin Luther King, Jr., National Historic Site and Preservation District Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal advisory Commission Act that a meeting of the Martin Luther King, Jr., National Historic Site Advisory Commission will be held at 10:30 a.m. on Monday, October 7, 1985, at The Martin Luther King, Jr., Center for Non-Violent Social Change, Inc., Freedom Hall, Room 261, 449 Auburn, Avenue, NE., Atlanta, Georgia 30312.

The purpose of the Martin Luther King, Jr., National Historic Site Advisory Commission is to consult with the Secretary of the Interior on matters of planning, development and administration of the Martin Luther King, Jr., National Historic Site. The purpose of this meeting will be to update the Commission on park planning and operations. A presentation of the final recommendations for the Development Program/Advisory Commission Study will be made.

The members of the Advisory Commission are as follows:

Mr. William Allison, Chairman.
Mr. John H. Calhoun, Jr.
Dr. Elizabeth A. Lyon
Mr. C. Randy Humphrey
Mrs. Christine King Farris
Mr. Handy Johnson, Jr.
Mr. James Patterson
Mrs. Freddye Scarborough Henderson
Mrs. Millicent Dobbs Jordan
Mr. John W. Cox
Reverend Joseph L. Roberts, Jr.
Mrs. Coretta Scott King, Ex-Officio Member
Director, National Park Service, Ex-Officio Member

The meeting will be open to the public; however, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements may contact Randolph Scott, Superintendent, Martin Luther King, Jr., National Historic Site, 522 Auburn Avenue, NE., Atlanta, Georgia 30312; Telephone 404/221-5190. Minutes of the meeting will be available approximately 4 weeks after the meeting.

Dated: September 3, 1985.

Robert M. Baker,

Regional Director Southeast Region.

[FR Doc. 85-21941 Filed 9-12-85; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Nestlé Holdings, Inc., c/o Nestlé Enterprises, Inc., 5757 Harper Road, Solon, Ohio 44139 (a Delaware corporation).

2. Wholly owned subsidiaries (and their respective divisions and subsidiaries) which will participate in the operations and their respective states of incorporation:

a. Carnation Company, 5045 Wilshire Boulevard, Los Angeles, CA 90036 (a Delaware corporation). Carnation Company includes certain divisions who operate under the names of Trenton Foods Division, Seaboard Carton Division, and Herff Jones Division.

In addition, wholly owned subsidiaries of Carnation Company include:

(1) Dayton Reliable Tool And Mfg. Co., Inc., 618 Greenmont Blvd., Dayton, Ohio 45419 (an Ohio corporation);

(2) Contadina Foods, Inc., 5045 Wilshire Boulevard, Los Angeles, CA 90036 (a Delaware corporation);

(3) Carnaco Transport, Inc., 5045 Wilshire Boulevard, Los Angeles, CA 90036 (a Delaware corporation).

b. Nestlé Foods Corporation, 100 Bloomingdale Road, White Plains, NY 10506 (a New York corporation). In addition, wholly owned subsidiaries of Nestlé Foods Corporation include:

(1) Cain's Coffee Co., 13131 Broadway Ext., Oklahoma City, Oklahoma 73114 (a Delaware corporation); and

(2) Paul F. Beich Company, 101 South Lumber Street, Bloomington, Illinois 61071 (an Illinois corporation).

c. Stouffer Foods Corporation, 5750 Harper Road, Solon, OH 44139 (a Pennsylvania corporation).

d. Beech-Nut Nutrition Corporation, 1035 Virginia Drive, Fort Washington, PA (a Delaware corporation).

e. Hills Bros. Coffee, Inc., Two Harrison Street, San Francisco, CA 94105 (a Delaware corporation).

f. Libby, McNeill & Libby, Inc., 200 Michigan Avenue, Chicago, IL 60604 (a Delaware corporation). In addition, wholly owned subsidiaries of Libby, McNeill & Libby, Inc. include: (1) Libby's Fresh Food Company, 300 East Crittenden Boulevard, Groveland, FL 32736 (a Delaware corporation).

1. Parent Corporation and Address of Principal Office:

Cooper Industries, 1st City Tower, 1001 Fannin Street, P.O. Box 4446, Houston, Texas 77210

2. Wholly-owned subsidiaries which will participate in the operations principal address and state(s) of incorporation:

McGraw Edison Company, 420 Rouser Road, Airport Office Park, Building No. 3, Caraopolis, Pennsylvania 15108, P.O. Box 2850, Pittsburgh, Pennsylvania 15230-2900, Incorporated in Pennsylvania

Divisions of McGraw Edison Company

Bussman Division, Ellisville, Missouri, P.O. Box 14460, St. Louis, Missouri 63178

Halo Lighting Division, 400 Busse Road, Elk Grove Village, Illinois 60007

Onan Corporation, 1400-73rd Avenue, NE., Minneapolis, Minnesota 55432, Incorporated in Minnesota

1. The parent corporation and principal office is Gallipolis Parts Warehouse, Inc., 210 Upper River Road, Gallipolis, Ohio 45631.

2. Listed below are wholly-owned subsidiaries which will participate in the operations:

Name of corporation	State of incorporation
Gallipolis Parts Warehouse, Inc., D/B/A United Automotive Warehouse	West Virginia
Gallipolis Parts Warehouse, Inc., D/B/A Central Ohio Parts Warehouse	Ohio

James H. Bayne,

Secretary.

[FR Doc. 85-22100 Filed 9-12-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Attorney General's Commission on Pornography; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Department of Justice announces the following meetings and hearings of the Attorney General's Commission on Pornography.

Meeting

Date and time: October 15, 1985, 7:30 p.m.-10:30 p.m.
Place: Hall of Administration, ERC Room 374, 500 West Temple, Los Angeles, California 90012
Status: Open to the public
Matters to be considered:
Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received and (3) Any other relevant matters

Hearing

Date and time: October 16, 1985, 8:30 a.m.-7:30 p.m.
Place: Board of Supervisors: County of Los Angeles—Hearing Room, Hall of Administration, Room 381, 500 West Temple, Los Angeles, California 90012
Status: Open to the public
Matters to be considered:
8:30 a.m., Opening of Fourth Public Hearing—Welcoming remarks;
8:40 a.m.-12:30 p.m., Testimony of witnesses and examination by Commissioners; 1:30 p.m.-7:30 p.m., Testimony of witnesses and examination by Commissioners

Meeting

Date and time: October 16, 1985, 8:00 p.m.-10:00 p.m.
Place: Hall of Administration, ERC Room 374A, 500 West Temple, Los Angeles, California 90012
Status: Open to the public
Matters to be considered:
Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received, (3) Review of alleged obscene and pornographic material and (4) Any other relevant matters.

Hearing

Date and time: October 17, 1985, 8:30 a.m.-7:30 p.m.

Place: Board of Supervisors: County of Los Angeles—Hearing Room, Hall of Administration, Room 381, 500 West Temple, Los Angeles, California 90012
Status: Open to the public
Matters to be considered at meeting:
8:30 a.m.–12:00 noon, Testimony of witnesses and examination by Commissioners; 1:30 p.m.–7:30 p.m., Testimony of witnesses and examination by Commissioners. At the conclusion of the last witness' testimony, the Commission may conduct a meeting
Matters to be considered at meeting:
Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received, (3) Review of alleged obscene and pornographic material and (4) Any other relevant matters.

The meetings and hearings will be open to the public, and written comments may be submitted regarding relevant issues. Approximately 400 seats will be available for the public (including 40 seats reserved for media representatives) on a first-come, first-served basis at the meetings and hearings on October 15, 16 and 17, 1985.

Copies of minutes will be available upon request, at the actual cost of duplication, 60 days after the final hearing on October 17, 1985.

Contact person for more information: Alan E. Sears, Executive Director, Attorney General's Commission on Pornography, Room 1018, HOLC Building, Department of Justice, 320 First Street, NW., Washington, D.C. 20530, (202) 724–7837.

Henry Hudson,

Commission Chairman.

[FR Doc. 85–21882 Filed 9–12–85; 8:45 am]

BILLING CODE 4410–01–M

Office of Juvenile Justice and Delinquency Prevention

National Conference of Member Representatives from State Advisory Groups; Meeting

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: This notice sets forth the schedule for the forthcoming meeting of the National Conference of Member Representatives from State Advisory Groups. Notice of the meeting is required by the Federal Advisory Committee Act.

DATE: Sunday, September 29, 4:00–7:00 p.m.; Tuesday, October 1, 4:15–7:00 p.m.; Wednesday, October 2, 10:30–11:00 a.m.

ADDRESS: Pittsburgh Hilton, Gateway Center, Pittsburgh, Pennsylvania.

SUPPLEMENTARY INFORMATION: The National Conference of Member Representatives from State Advisory Groups (Conference) will meet during the "1985 National Conference of State Juvenile Justice Advisory Groups" held from September 29, 1985 to October 2, 1985 at the Pittsburgh Hilton, Gateway Center, Pittsburgh, Pennsylvania.

The 1985 National Conference is sponsored by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the National Coalition of State Juvenile Justice Advisory Groups. The National Conference will provide attendees with an opportunity to hear expert speakers in the field of juvenile justice, attend panel sessions on contemporary issues in juvenile justice, and examine critical issues through in-depth workshops in such areas as: jail removal and detention; missing children; status offenders and runaways; minorities in the juvenile justice system; and delinquency prevention. Additional sessions and workshops will also be held.

In the course of the National Conference, the National Conference of Member Representatives from State Advisory Groups, an advisory committee established pursuant to 3(2)(A) of the Federal Advisory Committee Act (5 U.S.C. App. 2) will meet to carry out its advisory functions under Section 241(f)(3) and (4) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. These sessions, which will be open to the public, are scheduled at the above listed dates times.

FURTHER INFORMATION: For further information regarding the 1985 National Conference, please contact Marion Mattingly, Conference Coordinator, at (202) 547–6340. For information specific to the advisory committee function of the Conference, please contact Sharon Wagner, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, Washington, D.C. 20531 (202/724–7751).

Dated: September 10, 1985.

Alfred S. Regnery,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 85–22022 Filed 9–12–85; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–13,054]

Amstar Corp., Spreckels Sugar Division, Factory No. 1, Spreckels, CA; Further Determination on Remand

Pursuant to the U.S. Court of International Trade remand in *Sugar Workers Union #180* v. *Donovan* (USCIT No. 83–3–00346) ordering that the Department conduct a survey of Amstar's Spreckels Sugar Division's customers in order to determine the extent to which sugar imports contributed importantly to worker separations at the Spreckels Sugar Division's Factory No. 1 at Spreckels, California, the Department makes the following further determination.

The Department moved that the Court remand the instant case to the Department so that the Department could accomplish a more comprehensive investigation. The initial investigation, published in the **Federal Register** on August 27, 1982 (47 FR 37979), did not include a customer survey or sales and production data.

On remand, the Department obtained production and sales data for the Spreckels plant and sales data for the Spreckels Sugar Division for 1980, 1981 and 1982 plus a listing of the top major accounts of the Spreckels Sugar Division. The data showed that the Spreckels plant had increased production and sales in 1981 compared to 1980 before closing in mid-1982. These findings show that the Spreckels workers did not meet the decreased production or sales criterion in 1981.

The Department's survey of Spreckels Sugar Division's customers showed that the respondents to the survey, as a group, had a greater purchase reduction from the Spreckels Sugar Division in 1982 than the Spreckels Sugar Division had a decline in sales for 1982. The survey also revealed that none of the respondents imported sugar in 1980, 1981 or 1982. Over half of the customers reporting were industrial customers and nearly all of these reported the use of HFCS in their products. Several of the industrial respondents reported that they switched from domestic sugar to HFCS during the survey period and others had implemented the shift to HFCS a year or so before the Department's initial investigation.

The Spreckels plant closed, according to company officials, because of the high cost of transporting sugar beets from the growers to the refinery. Also, fewer

sugar beet growers remained in the Salinas, California area as they began to shift their acreage from sugar beets to other more profitable cash crops.

Conclusion

After reconsideration, I reaffirm the original denial of eligibility to apply for adjustment assistance for former workers at Amstar Corporation, Spreckels Sugar Division's Factory No. 1 at Spreckels, California.

Signed at Washington, D.C., this 5th day of September 1985.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 21997 Filed 9-12-85; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-85-87-C]

A.A. & W. Coals, Inc.; Petition for Modification of Application of Mandatory Safety Standard

A.A. & W. Coals, Inc., Box 392, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 15 Mine (I.D. No. 15-15185) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A sumary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The No. 15 Mine is in the No. 2 Elkhorn Seam ranging from 44 to 50 inches in height, with consistent ascending and descending grades creating dips in the coal bed.

3. Petitioner states that use of a canopy on the mine's equipment would result in a diminution of safety for the miners affected because the canopy will restrict the operator's seating position and limit the operator's visibility, increasing the chances of an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 15, 1985. Copies of the petition are available for inspection at that address.

Dated: September 4, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-21988 Filed 9-12-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-17-M]

American Gilsonite Co.; Petition for Modification of Application of Mandatory Safety Standard

American Gilsonite Company, 1150 Kennecott Building, Salt Lake City, Utah 84133 has filed a petition to modify the application of 30 CFR 57.19056 (automatic hoist) to its E-29 Shaft of its No. 30 Mine (I.D. No. 42-01781) located in Uintah County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that when automatic hoisting is used, a competent operator of the hoist shall be readily available at or near the hoisting device while any person is underground.

2. The No. E-30 mine is approximately 1000 feet west of the E-29 mine. There are four passageways between the two shafts at various levels and there is an underground mine phone in the E-29 mine which is connected to the E-30 hoist house system.

3. The hoist has been equipped with extra safety devices in addition to those incorporated in its design, and operates under limited and controlled conditions. Extra communications equipment for the underground miners has been provided to arrange for prompt assistance from underground personnel in the event of a hoist malfunction or emergency.

4. As an alternate method of compliance, petitioner proposes that in the event of an emergency or hoist failure, the miners can exit the conveyance at any point in the shaft and either call for assistance, climb the manway to the surface, or walk along one of the four passageways between the E-29 mine and the E-30 mine and gain access to the conveyance there for hoisting to the surface.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 15, 1985. Copies of the petition are available for inspection at that address.

Dated: September 4, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-21989 Filed 9-12-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-94-C]

J.J.G. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

J.J.G. Coal Company, 523 East Market Street, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its Whites Vein Slope (I.D. No. 36-06815) located in Dauphin County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine, which also has no history of an ignition, explosion, mine fire or harmful quantities of carbon dioxide and other noxious or poisonous gases.

2. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

3. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

4. As an alternate method, petitioner proposes that:

a. The minimum quantity of air reaching each working face by 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to

maintain a safe and healthful mine atmoshpere.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 15, 1985. Copies of the petition are available for inspection at that address.

Dated: September 4, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-21990 Filed 9-12-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-93-C]

Little Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Little Mining, Inc., P.O. Box 600, Wheelwright, Kentucky 41619 has filed a petition to modify the application of 30 CFR 75.1101 (deluge-type water sprays, foam generators; main and secondary belt conveyor drives) to its No. 1 Mine (I.D. No. 15-14724) located in Floyd County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that deluge-type water sprays be installed at main and secondary belt conveyor drives.

2. As an alternate method, petitioner states that a flame-resistant belt conveyor with a switch to prevent slippage is used. The entire belt is damp to wet and there is a fire sensor system installed for the belt conveyor. A miner is assigned to watch and service the belt drive and two-way communication exists.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 15, 1985. Copies of the petition are available for inspection at that address.

Dated: September 6, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-21991 Filed 9-12-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-92-C]

Marion Fuels, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Marion Fuels, Inc., P.O. Box 154, Wyatt, West Virginia 26463 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its No. 1 Mine (I.D. No. 46-05503) located in Harrison County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines.

2. As an alternate method, petitioner proposes to use spring-loaded metal locking devices, each consisting of a fabricated metal bracket and a metal locking device, in lieu of padlocks to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines. The metal locking device will be designed, installed and used to prevent the threaded rings securing the battery plugs to the battery receptacles from unintentionally loosening. The fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets. The locking device will be securely attached to the brackets to prevent accidental loss of the locking device.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators and maintenance personnel of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, trained in the hazards of breaking battery-plug connections under load, and trained in the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 15, 1985. Copies of the petition are available for inspection at that address.

Dated: September 6, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-21992 Filed 9-12-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-102-C]

McDaniel Mining Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

McDaniel Mining Company, Inc., Drawer C, Cool Ridge, West Virginia 25825 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its No. 3 Mine (I.D. No. 46-01297) located in Fayette County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return air courses be examined in their entirety on a weekly basis.

2. Accumulation of water in the travelway to the separation stoppings between Mine Nos. 2 and 3 makes it impossible to make preshift examinations in that area. Petitioner states that no methane is being liberated in the affected area.

3. As an alternate method, petitioner proposes to establish a check point station at the affected area where methane and air quantity readings will be made by a certified person. Access to and from the check point station will be kept in a travellable and safe condition. A date board will be located at the station for the certified person to record the results of all readings taken, and a

record will be kept in a book at the main office.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 15, 1985. Copies of the petition are available for inspection at that address.

Dated: September 6, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-21993 Filed 9-12-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-110-C]

Nemacolin Mines Corp.; Petition for Modification of Application of Mandatory Safety Standard

Nemacolin Mines Corporation, 1600 West Carson Street, Pittsburgh, Pennsylvania 15263 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its Nemacolin Mine (I.D. No. 36-00904) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mines Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all active workings be ventilated by a current of air containing not more than 0.5 volume per centum of carbon dioxide and not less than 19.5 volume per centum of oxygen.

2. As an alternate method, petitioner proposes to modify the air quality requirements of 18.5 volume per centum of oxygen and 2.5 volume per centum of carbon dioxide in the Number 2 Fan-North Split.

3. In support of this request, petitioner states that:

a. The air in the Number 2 Fan-North Split comes from a gob area and is not used to ventilate a working section;

b. The only personnel going to the area are Certified Mining Examiners, an Assistant Mine Foreman or the Mine Foreman; and

c. Personnel making the weekly examination carry a flame safety lamp, a methane detector, and a visual audible oxygen indicator which has an audible alarm for low oxygen.

4. At present, the No. 2 Fan is a return air fan only; there is no intake air. This fan acts as a return air fan/bleeder fan for more than 2300 acres of mined-out workings. The highest percentage of methane that has been detected is 0.3%

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 15, 1985. Copies of the petition are available for inspection at that address.

Dated: September 4, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-21994 Filed 9-12-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-95-C]

Plateau Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Plateau Mining Company, P.O. Drawer PMC, Plateau, Utah 84501 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Star Point No. 2 Mine (I.D. No. 42-00171) located in Carbon County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that weekly examinations for hazardous conditions be made in the return of each split of air where it enters the main return and in at least one entry of each intake and return air course in its entirety.

2. Petitioner seeks a modification of the standard as it applies to longwall operations in the mine's 7th Left Tailgate Entry. Petitioner states that application of the standard would result in a diminution of safety for those miners required to travel the entry. Despite the installation of extensive roof support in the tailgate entry, the area is unsafe to travel due to deteriorating roof conditions.

3. As an alternate method, petitioner proposes that:

(a) The primary (intake) and secondary (beltline) escapeways will be maintained in travelable condition at all times;

(b) The longwall tailgate entry will be examined at the longwall face and ventilation will be evaluated for hazardous conditions on each preshift examination. The tailgate entry will be examined at the junction with the main returns, and ventilation will be evaluated for hazardous conditions on each preshift examination. Measurements for air volume, methane content, oxygen deficiency, and carbon monoxide levels will be taken with approved devices. Any hazardous conditions found will be corrected before production is begun;

(c) A date board or book will be maintained at each evaluation point with the date, time and initials of the person making the evaluation. The results of each evaluation will be recorded in a book kept at each station and on the surface;

(d) A rock dusting unit has been installed on the last tailgate shield. This duster will be run continually during coal mining to prevent accumulations of float coal dust in the tailgate entry;

(e) Persons will not be allowed to enter the tailgate entry while the longwall is in operation;

(f) Six self-contained self-rescuers will be stored at the longwall tailgate and six will be stored at the midpoint of the longwall face; and

(g) This plan will remain in effect for the duration of the longwall panel using the 7th Left tailgate entry.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 15, 1985. Copies of the petition are available for inspection at that address.

Dated: September 4, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-21995 Filed 9-12-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-75-C]

Youghiogheny and Ohio Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Youghiogheny and Ohio Coal Company, P.O. Box 1000, St. Clairsville, Ohio 43950 has filed a petition to modify the application of 30 CFR 75.326 (air courses and belt haulage entries) to its Nelms No. 2 Mine (I.D. No. 33-00968) located in Harrison County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return air courses be separated from belt haulage entries.

2. Petitioner states that high horizontal roof pressures have resulted in additional roof support systems being installed in the entries, such as cribs, cross bars, roof trusses, and additional posts. These additional roof supports increased the resistance to air flow, thereby limiting the air volume which can be coursed through the air entries.

3. As an alternate method, petitioner proposes to use air in the belt haulage entries to assist in ventilating the active working places, in lieu of venting air into the return air course. Due to the large quantity and unpredictability of the flow rate of methane, an increased amount of air by using the belt haulage entry for intake air would improve ventilation of the working places. An approved Carbon Monoxide (CO) Belt Fire Detection System will also be used.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 15, 1985. Copies of the petition are available for inspection at that address.

Dated: September 4, 1985.

Patricia W. Silvey,

Director, Office of Standards Regulations and Variances.

[FR Doc. 85-21996 Filed 9-12-85; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-60]

NASA Advisory Council (NAC), Space Applications Advisory Committee (SAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Application Advisory Committee, Informal Advisory Subcommittee on Microgravity Science and Applications.

DATE AND TIME: September 23, 1985, 8:30 a.m. to 4:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 268, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Dudley G. McConnell, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1420).

SUPPLEMENTARY INFORMATION: The Informal Advisory Subcommittee on Microgravity Science and Applications will meet to discuss the further development of a constitutency for microgravity research. The meeting must be held at this time in order to formulate a report for the NASA Associate Administrator for Space Science and Applications which is to be presented at the meeting of the NAC Space Applications Advisory Committee on October 1-2, 1985. The Subcommittee is chaired by Dr. Robert F. Sekerka and is composed of 7 members. The meeting will be closed to the public. During this meeting the Committee will discuss and evaluate candidates being considered for membership. Throughout this meeting, the qualifications of candidates will be candidly discussed and appraised. Since the meeting will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that it should be closed to the public.

Type of meeting: Closed.

Dated: September 9, 1985.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 85-21896 Filed 9-12-85; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel, Choreographers Fellowship Section; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Choreographers Fellowships Section) to the National Council on the Arts will be held on Monday, September 30, 1985 from 9:00 am-8:00 pm, Tuesday, October 1, 1985 from 9:00 am-6:30 pm, Wednesday, October 2, 1985 from 9:00 am-9:00 pm and Thursday and Friday, October 3-4, 1985 from 9:00 am-6:00 pm in room MO-7 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

If time permits, a portion of this meeting will be open to the public on Friday, October 4, 1985 from 4:00-6:00 pm to discuss policy issues.

The remaining sessions of this meeting on September 30, 1985 from 9:00 am-8:00 pm, October 1, 1985 from 9:00 am-6:30 pm, October 2, 1985 from 9:00 am-9:00 pm, October 3, 1985 from 9:00 am-6:00 pm and October 4, 1985 from 9:00 am-4:00 pm are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation of the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

Dated: September 6, 1985.

John H. Clark,

Director, Office of Council and Panel Operations.

[FR Doc. 85-21966 Filed 9-12-85; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket 40-8027]

Finding of No Significant Impact; Renewal of Source Material License No. Sub-1010; Sequoyah Fuels Corp., (UF_6 Conversion), Gore, OK

The U.S. Nuclear Regulatory Commission (the Commission) is considering the renewal of Source Material License No. SUB-1010 for the continued operation of the Sequoyah Fuels Corporation's (SFC) UF_6 conversion facility at Gore, Oklahoma.

Environmental Assessment

Identification of the Proposed Action: The proposed action would allow SFC to continue operation for another 5 years essentially as it has been operated for the past years. The SFC plant produces high-purity UF_6 using uranium concentrates (yellowcake) as the starting material. The manufacturing process being used includes wet chemical purification to convert yellowcake to pure uranium trioxide followed by dry chemical reduction, hydrofluorination, and fluorination techniques to produce UF_6.

The Need for the Proposed Action: The SFC UF_6 conversion plant is one of only two such facilities in the United States. (The other is at Metropolis, Illinois.) The UF_6 production is one phase of the overall fuel cycle leading to production of fuel elements for nuclear reactors. Currently, the Sequoyah facility supplies UF_6 conversion services for the commercial nuclear power industry.

As long as the current demand for uranium fuel continues, the UF_6 production rate at either of the existing facilities is not expected to decrease. Denial of license renewal for the UF_6 conversion activity at the Gore site would require that similar activities expend at the only other existing UF_6 facility or at a new site. Although denial of renewal of the source material license for this plant is an alternative available to the NRC, it would be considered only if significant issues of public health and safety could be resolved to the satisfaction of the regultory authorities involved.

Environmental Impact of the Proposed Action: The SFC facility at Gore, Oklahoma, has been in operation since 1970. The overall production and impact of this facility from past operations were appraised by NRC in February 1975 and October 1977 in the following references: (1) U.S. Nuclear Regulatory Commission, Final Environmental Statement related to the Sequoyah Uranium Hexafluoride Plant, Keer-McKee Nuclear Corporation, Docket No. 40-8027, NUREG-75/007, February 1975; and (2) U.S. Nuclear Regulatory Commission, Environmental Impact Appraisal by the Divisions of Fuel Cycle and Material Safety, October 1977. No significant modifications of the production procedures have been made since the previous environmental assessment. For the current license renwal action, the NRC staff has determined that the scope of the environmental assessment should include: (1) Review the operation of the facility during the recent license period by comparing plant operation, effluent releases, and environmemtal monitoring data with license requirements or premissible levels of environmental contamination; (2) assess the impact on the environment from continued operation of the plant in its current configuration; and (3) discuss the alternatives to the proposed action as required by Section 102(2)(E) of NEPA. The Environmental Assessment (NUREG-1157) applies only to the renewal of the current license. The radiological impacts of the SFC facility were assessed by calculating the maximum dose to the individual living at the nearest residence and to the local population living within an 80-km (50 mile) radius of the plant site. Based on the past monitoring data, the NRC staff had calculated the 50-year dose commitments to the maximally-exposed individual living at the nearest residence (703 m NNE of the plant site); the committed doses are: whole-body—0.9 mrem; bone—6 mrem; and lung—15 mrem. The doses are in compliance with the 25 mrem limits set by the U.S. Environmental Protection Agency for the uranium fuel cycle facilities (40 CFR Part 190). The collective whole-body dose to the population within an 80-km (50 mile) radius of the plant is 2.4 man-rem which is only about 0.005 percent of the population dose of 4.6×10^4 man-rem resulting from the natural background radiation dose in the area. For nonradiological air effluents, the plant complies with the permit requirements issued by the State of Oklahoma. For nonradiological liquid effluents discharged to surface water, SFC is subject to the Natonal Pollutant Discharge Elimination System (NPDES) permit issued by the EPA. Compliance history for past years indicated that SFC is geneally in compliance with the NPDES permit except for a few occasional short-term violations. Therefore, the staff concludes that there will be no signficant impacts associated with the proposed action.

Agencies and Persons Consulted: The NRC staff met with representatives of the Oklahoma Water Resources Board on May 3, 1983, and the staff also contacted the Oklahoma State Department of Health, Air Quality Service.

Finding of No Significant Impact: The Commission has determined not to prepare an Environmental Impact Statement for the proposed action. Based upon the foregoing Environmental Assessment (NUREG-1157), we conclude that the proposed action will not have a significant effect on the quality of the human environment.

The Environmental Assessment (NUREG-1157) for the proposed action, on which this Finding of No Significant Impact is based, relied on the following environmental documents: (1) Kerr-McGee Nuclear Corporation, Sequoyah Facility License Renewal Application, License SUB-1010, Docket No. 40-8027, September 1, 1982; (2) Kerr-McGee Nuclear Corporation, Response to U.S. Nuclear Regulatory Commission's Site Visit Information Request, July 11, 12, and 20, and August 19, 1983; (3) Sequoyah Fuels Corporation, Sequoyah Facility License Renewal Application (Revised), License SUB-1010, Docket No. 40-8027, October 1983; and (4) Supplemental Environmental Information from Sequoyah Fuels Corporation in letter dated March 15, 1985.

The Environmental Assessment (NUREG-1157) and the above documents related to this proposed action are available for public inspection and for copying for a fee at the NRC Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Local Public Document Room at the Sallisaw City Library, 111 North Elm, Sallisaw, Oklahoma. Copies of NUREG-1157 may also be purchased by calling (301) 492-9530 or by writing to the Public Services Section, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, or purchased from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Silver Spring, Maryland this 5th day of September, 1985.

For the Nuclear Regulatory Commission.

W.T. Crow,

Acting Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 85-21881 Filed 9-12-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-461A]

Illinois Power Co. et al.; Updated Finding of No Significant Antitrust Changes and Time for Filing Requests for Reevaluation

The Director of Nuclear Reactor Regulation has made a finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensees' activities or proposed activities have occurred subsequent to the construction permit review of Unit 1 of the Clinton Power Station by the Attorney General and the Commission. The finding is as follows:

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the "significant change" determination to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the events since issuance of the Clinton 1 and 2 construction permits to the Illinois Power Company, the staffs of the Antitrust and Economic Analysis Section of the Site Analysis Branch, Office of Nuclear Reactor Regulation and the Antitrust Section of the Office of the Executive Legal Director, hereafter referred to as "staff," have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the antitrust construction permit review are not of the nature to require a second antitrust review at the operating license stage of the application.

In reaching this conclusion, the staff considered the structure of the electric utility industry in central and southern Illinois, the events relevant to the Clinton construction permit review and the events that have occurred subsequent to the construction permit review and the initial no significant change analyses.

The conclusion of the staff's analysis is as follows:

Staff completed its initial antitrust operating license review of the Clinton Nuclear Power Station (Clinton) in February of 1982. Several changes in the applicants' activities since the original construction permit (CP) review in 1974 were identified; however, staff concluded that,

"Based upon the successful implementation of CP license conditions and the lack of any detrimental conduct or activity (to the competitive process in central and southern Illinois) on the part of Illinois Power Company, Soyland Power Cooperative or Western Illinois Power Cooperative, staff recommends that no affirmative significant change determination be made pursuant to the application for an operating license for Unit 1 of the Clinton Nuclear Power Station." (Clinton "Finding of No Significant Antitrust Changes," March 11, 1982, **Federal Register**, p. 10655.)

Since the staff completed its initial antitrust operating license review in February of 1982, there have been construction delays necessitating changes in scheduled fuel load dates for the Clinton plant. Fuel loading is now scheduled for January of 1986, approximately four years after the staff completed its initial antitrust review. Staff felt this four year period created a "review vacuum" and requested updated information from the applicants pursuant to any changed activity since the initial antitrust operating license review.

After reviewing the updated Regulatory Guide 9.3 information and contacting various electric utility representatives in Illinois and other interested parties, staff identified several changes in the applicants' activities (principally those of Illinois Power Company) since the initial operating license review. Many of the changes, e.g., new interconnections and partial requirements wholesale power sales, by Illinois Power Company, represented extensions of those changes identified in the original operating license review and have provided additional procompetitive stimuli to the Illinois bulk power industry. Smaller power systems in Illinois have been able to successfully "shop" for alternative sources of power and energy. Applicants Illinois Power Company, Soyland Power Cooperative, Inc. and Western Illinois Electric Power Cooperative, Inc. have initiated a study to determine whether or not future jointly owned generating facilities would be economically feasible. New transmission agreements have been consummated between Illinois Power and its wholesale power customers that provide these smaller power systems with the means to take advantage of the benefits normally associated with larger, fully integrated power systems, e.g., access to short term economy and diversity power and energy sales and access to transmission for long term block purchases of power and energy from a number of different power suppliers. Increased coordination between those fully integrated power systems and the smaller, less diversified power systems has led to greater competition in the Illinois bulk power industry. This trend toward greater coordination among industry participants began with the institution of antitrust license conditions at the construction permit review stage.

The changes that have been identified since the construction permit review have by and large provided momentum for greater coordination, and consequently increased competition between all groups of power supply systems in central and southern Illinois. Staff observed this trend toward increased competition among bulk power suppliers in its initial antitrust operating license analysis. This trend has continued since 1982 and consequently staff sees no reason to change its recommendation that "no affirmative significant change determination be made pursuant to the application for an operating license for Unit 1 of the Clinton Nuclear Power Station."

Based on the staff's analysis, it is my finding that a formal operating license antitrust review of the Clinton Power Station, Unit 1 is not required.

Signed on September 4, 1985. Nuclear Reactor Regulation.

Harold R. Denton,
Director of Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding may file with full particulars a request for reevaluation with the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 for 30 days from the date of the publication of the **Federal Register** notice. Requests for a reevaluation of the updated no significant changes determination shall be accepted after the date when the Director's finding becomes final but before the issuance of the OL only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

For the Nuclear Regulatory Commission.
Donald P. Cleary,
Acting Chief, Site Analysis Branch, Division of Engineering, Office of Nuclear Reactor Regulation.

[FR Doc. 85-21972 Filed 9-12-85; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-416]

Mississippi Power & Light Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-29, issued to Mississippi Power & Light Company, Middle South Energy, Inc., and South Mississippi Electric Power Association (the licensees), for operation of the Grand Gulf Nuclear Station (GGNS), Unit 1, located in Claiborne County, Mississippi.

The GGNS Unit 1 is a boiling water reactor with a Mark III containment. The spent fuel pool is located in the auxiliary building, similar to spent fuel pool arrangements for pressurized water reactors. Above the GGNS reactor, and within the containment, there is an upper containment pool with racks for holding new fuel to be placed in the reactor and spent fuel removed from the reactor during refueling; however, before reactor startup after refueling, all spent fuel is transferred to the spent fuel pool for storage.

The amendment would revise section 5.6 "Fuel Storage" of the Technical Specifications to allow increased upper containment pool capacity and increased spent fuel storage capacity. This increased capacity would be obtained by replacing the fuel racks in the upper containment pool in the spent fuel storage pool with high density fuel racks. This reracking would increase the upper containment pool capacity from 170 to 800 fuel assemblies in order to hold a complete core unloading, if necessary, and increase the spent fuel pool storage capacity from 1270 to 4348 fuel assemblies. These changes were requested in the licensees' application for amendment dated May 6, 1985.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated: or (3) involve a significant reduction in a margin of safety. Our evaluation of the reracking of the spent fuel pool and of the upper containment pool are considered separately.

A. Spent Fuel Pool

The technical evaluation of whether or not an increased spent fuel pool storage capacity involves significant hazards considerations is centered on three standards: (1) Does increasing the spent fuel pool storage capacity significantly increase the probability or consequences of accidents previously evaluated? Reracking to allow closer spacing of fuel assemblies does not significantly increase the probability or consequences of accidents previously analyzed; (2) does increasing the spent fuel pool storage capacity create the possibility of a new or different kind of accident from any accident previously analyzed? With respect to Grand Gulf Nuclear Station (GGNS) Unit 1, the staff has not identified any new categories or types of accidents as a result of reracking to allow closer spacing for the fuel assemblies. The proposed reracking does not create the possibility of a new or different kind of accident previously evaluated for the spent fuel pool. In all reracking reviews completed to date, all credible accidents postulated have been found to be conservatively bounded by the evaluations cited in the Safety Evaluation Report (SERs) supporting each amendment: and (3) does increasing the spent fuel pool storage capacity significantly reduce a margin of safety? The staff has not identified significant reductions in safety margins due to increasing the storage capacity of the spent fuel pool. The expansion results in an increased heat load, but this heat load increase is generally well within the design limitations of the installed cooling systems. In some cases it may be necessary to increase the heat removal capacity by relatively minor changes in the cooling system, i.e., by increasing a pump capacity. But in all cases, the temperature of the pool will remain below design values. The small increase in the total amount of fission products in the pool is not a significant factor in accident considerations. The increased storage capacity may result in an increase in the pool reactivity as measured by the neutron multiplication factor (K_{eff}). However, after extensive study, the staff determined in 1976 that as long as the maximum neutron multiplication factor was less than or equal to 0.95, then any change in the pool reactivity would not significantly reduce a margin of safety regardless of the storage capacity of the pool. The licensee has indicated that the (K_{eff}) would not exceed 0.95. The techniques utilized to calculate (K_{eff}) have been bench-marked against experimental data and are considered very reliable. Reracking to allow a closer spacing between fuel assemblies can be done by proven technologies.

In summary, replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies is considered not likely to involve significant hazards consideration if two conditions are met. First, no new technology or unproven technology may be utilized in either the construction process or in the analytical techniques necessary to justify the expansion. Second, the (K_{eff}) of the pool must be maintained less than or equal to 0.95. Reracking to allow closer spacing satisfies these conditions.

The licensee's submittal included a discussion of the proposed action with respect to the issue of no significant hazards consideration. This discussion has been reviewed and the Commission finds it acceptable. Pertinent portions of the licensee's discussion, addressing each of the three standards, is provided herein.

The licensee has stated that its analysis of the proposed reracking was accomplished using currently acceptable codes and standards and conforms to staff guidance of April 1978. The results of the licensee's analysis in relation to the three standards is as follows:

First Standard

Involve a significant increase in the probability or consequences of an accident previously evaluated.

In the course of the analysis the licensee identified the following potential accident scenarios:

1. A spent fuel assembly drop in the spent fuel pool.
2. Loss of spent fuel pool cooling system flow.
3. A seismic event.
4. A spent fuel cask drop.

The probability of any of the four accidents is not affected by the racks themselves; thus reracking cannot increase the probability of these accidents. The installation of the high density racks will be completed prior to the storage of any spent fuel in the present racks; thus, a construction accident involving spent fuel is not possible. Accordingly, the proposed rerack will not involve a significant increase in the probability of an accident previously evaluated.

The consequences of: (1) A spent fuel assembly drop in the spent fuel pool are discussed in the licensee's submittal. For this accident condition, the criticality acceptance criterion is not violated. The radiological consequences of a fuel assembly drop are not changed from the previous analysis. The results of the staff's evaluation were transmitted to the licensee in September 1981. The licensee's analysis of the reracked design indicates a dropped fuel assembly would not penetrate through the base plate or distort the racks so they would not perform their safety function. Thus, the consequences of this type accident will not be significantly increased from previously evaluated spent fuel assembly drops, and have been found acceptable by the NRC.

The consequences of (2) loss of spent fuel pool cooling system flow have been evaluated for the existing spent fuel pool cooling system design as described in the GGNS FSAR. There are two spent fuel pool cooling system pump and heat exchanger trains. One train will be operating and the other train will be maintained in an operable condition per Technical Specifications in the event of a failure in the cooling system. The service water system that transports heat from the spent fuel pool cooling system to the ultimate heat sink is being

upgraded in accordance with License Condition 2.C.(20). If additional cooling capacity is required for the storage of a larger number of elements, such additional capacity will be provided or the license will be appropriately conditioned. The structural integrity of the spent fuel pool will be maintained and no new means of losing cooling water or flow have been identified. Thus, the consequences of this type accident will not be significantly increased from previously evaluated loss of cooling system flow accidents.

The consequences of (3) a seismic event have been evaluated. The new racks will be designed and fabricated to satisfy the NRC staff accepted design criteria. The racks are designed to Seismic Category I criteria. The racks are neither anchored to the pool floor nor are they attached to the pool side walls. The racks are structurally adequate to resist normal and accident load combinations. The racks are designed so that the floor loading from the racks filled with spent fuel assemblies does not exceed the structural capacity of the auxiliary building. Therefore, the integrity of the pool will be maintained and no new means of losing cooling water or flow have been identified. Thus, the consequences of a seismic event will not be signficantly increased from previously evaluated events.

The consequences of (4) a spent fuel cask drop accident are unchanged by the requested modification. The spent fuel cask handling crane rails do not extend over the spent fuel pool and the crane is designed to be single failure proof in accordance with the requirements of NUREG–0554 to preclude a drop on safety related equipment. In addition, the crane meets the guidelines of NUREG–0612. Accordingly, the consequences of a cask drop accident are not significantly increased from previously evaluated events.

Therefore, it is concluded that the proposed amendment to rerack the spent fuel pool will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Second Standard

Create the possibility of new or different kind of accident from any accident previously evaluated.

The proposed reracking was evaluated by the license in accordance with the guidance of the NRC position paper entitled, "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications," NRC Regulatory Guides, NRC Standard Review Plans, and Industry Codes and Standards as listed in the licensee's submittal. In addition, several previous NRC SERs for rerack applications similar to this proposal have been reviewed. Neither the licensee nor the NRC staff could identify a credible mechanism for breaching the structural integrity of the spent fuel pool which could result in loss of cooling water such that cooling flow could not be maintained. As a result of this evaluation and these reviews, it is concluded that the proposed reracking does not, in any way, create the possibility of a new or different kind of accident from any accident previously evaluated for the GGNS spent fuel storage racks.

Third Standard

Involve a significant reduction in a margin of safety.

The NRC staff safety evaluation review process has established that the issue of margin of safety, when applied to a reracking modification, will need to address the following areas:

1. Nuclear criticality considerations.
2. Thermal-hydraulic considerations.
3. Mechanical, material and structural considerations.

The established acceptance criteria for criticality is that the neutron multiplication factor in spent fuel pools shall be less than or equal to 0.95, including all uncertainties, under all conditions. This margin of safety has been adhered to in the criticality analysis methods for the new rack design as discussed in the licensee's submittal. The methods to be used in the criticality analysis conform with the applicable portions of the codes, standards, and specifications listed in the submittal. In meeting the acceptance criteria for criticality in the spent fuel pool, such that K_{eff} is always less than 0.95, including uncertainties of 95/95 probability confidence level, the proposed amendment to rerack the spent fuel pool will not involve a significant reduction in the margin of safety for nuclear criticality.

The licensee has stated in its analysis of the reracked pool that conservative methods were used to calculate the maximum fuel temperature and the increase in temperature of the water in the spent fuel pool. The calculated maximum fuel cladding temperature of 166°F is substantially less than the temperature at which local boiling would be initiated and sustained (243°F). The calculated maximum water temperature of 140°F for a normal refueling operation and 148°F for an abnormal unloading of the complete core are slightly higher than temperatures calculated for the present fuel racks; however, the temperatures for the new racks still meet the NRC staff's acceptance criteria of 140°F for normal refueling and 150°F for an abnormal unlaoding. Thus, there is no significant reduction in the margin of safety for thermal-hydraulic or spent fuel cooling concern.

The main safety function of the spent fuel pool and the racks is to maintain the spent fuel assemblies in a safe configuration through all normal and abnormal loadings, such as an earthquake, impact due to a spent fuel cask drop, drop of a spent fuel assembly, or drop of any other heavy object. The mechanical, material, and structural considerations of the proposed rerack are described in the licensee's submittal. The proposed racks are to be designed in accordance with applicable portions of the "NRC Position for Review and Acceptance of Spent Fuel Storage and Handling Applications," dated April 14, 1978, as modified January 18, 1979; and Standard Review Plan 3.8.4. The rack materials used are compatible with the spent fuel pool and the spent fuel assemblies. The structural considerations of the new racks address margins of safety against tilting and sliding, including impact on each other or the pool walls, damage of spent fuel assemblies, and criticality concerns. As previously stated, neither the licensee nor the NRC staff could identify a credible mechanism for breaching the structural integrity of the spent fuel pool which could result in loss of cooling water such that cooling flow could not be maintained. Thus, the margins of safety are not significantly reduced by the proposed rerack.

B. Upper Containment Pool

The technical evaluation of whether or not the reracking of the upper containment pool involves significant hazards considerations is also based on the three standards in 10 CFR 50.92.

First Standard

Involve a significant increase in the probability or consequences of an accident previously evaluated.

For the upper containment pool, the licensee identified the following potential accidents:

1. A spent fuel assembly drop in the pool.
2. Loss of pool cooling system flow.
3. A seismic event.
4. Drop of a heavy load.

The probability of any of these accidents is not affected by the racks themselves; thus reracking cannot increase the probability of these

accidents. The installation of the high density racks will be completed prior to unloading any fuel from the reactor; thus a construction accident involving spent fuel is not possible. Accordingly, the proposed rerack will not involve a significant increase in the probability of an accident previously evaluated.

The considerations of the structural damage of: (1) A spent fuel assembly drop in the upper containment pool are the same as the considerations for a drop in the spent fuel pool because the same design is used for the pool liner and the cells in the racks in both pools. The offsite radiological consequences of a fuel assembly drop inside primary containment are much less than for a drop of a fuel assmbly in the spent fuel pool, which is inside secondary containment. Staff's evaluation of radiological consequences provided in the SER, September 1981, is not changed by the reracking. Accordingly, the consequences of this type accident will not be significantly increased by the reracking.

The consequences of loss of upper containment pool cooling system flow have been evaluated. The cooling of spent fuel in the upper containment pool is accomplished by the spent fuel pool cooling system, supplemented by one train of the residual heat removal RHR system. Both the spent fuel pool cooling system and the RHR system have redundant pumps and heat enchangers, so that the inoperability of one component in the systems would be compensated by use of a redundant component. Reracking does not affect this capability. The structural integrity of the upper containment pool will be maintained and no new means of losing cooling water or flow have been identified. Thus, consequences of (2) loss of cooling flow will not be significantly increased from previously evaluated accidents of this type.

The consideration of the consequences of (3) a seismic event is the same as the consideration for the spent fuel pool because the rack design is the same. The upper containment pool rack modules are lighter than modules in the spent fuel pool (121 cells versus 304 cells). Therefore, the shear stress in the upper containment pool liner for a seismic event is bounded by the analysis for the spent fuel pool liner. The pool floor loading from the racks filled with spent fuel assemblies does not exceed the structural capacity of the floor. The portion of the upper containment pool which is used to store spent fuel during refueling is designed similar to the spent fuel pool to preclude drainage below a safe shielding level to assure no accidental loss of pool water. Therefore, the integrity of the pool will be maintained and no new means of losing cooling water or flow have been identified. Thus, the consequences of a seismic event will not be significantly increased from previously evaluated events.

The consequences of (4) drop of a heavy load on spent fuel in the upper containment pool were considered by the licensee. The containment polar crane and critical components of the fuel handling system are designed to seismic category I requirements so that they will not fail in a manner which results in unacceptable fuel damage or damage to safety-related equipment. Heavy load handling equipment inside containment meets the guidelines of NUREG–0612 "Control of Heavy Load at Nuclear Power Plants." The licensee has analyzed the consequences of a dropped fuel transfer canal gate on the fuel racks inside containment. The analysis showed that there would be no gross buckling of fuel cells in the racks and consequently the geometry of the active fuel in a fuel assembly would be preserved. Accordingly, the consequences of dropped heavy load are not significantly increased from previously evaluated accident analysis.

Second Standard

Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed reracking in the upper containment pool was evaluated by the licensee in accordance with the guidance of the NRC position paper "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications," NRC Regulatory Guides, NRC Standard Review Plans, and Industry Codes and Standards as listed in licensee's submittal. In addition, the staff has made a preliminary review of the proposal. Neither the licensee nor the staff could identify a credible mechanism for breaching the structural integrity of the upper containment fuel pool which could result in a loss of cooling water such that cooling flow could not be maintained. Accordingly, it is concluded that the proposed reracking does not create the possibility of a new or different kind of accident from any accident previously evaluated for the upper containment fuel pool racks.

Third Standard

Involve a significant reduction in a margin of safety.

The consideration of the margin of safety of the proposed reracking modification for the upper containment pool addressed the same three areas that were found necessary to be addressed in reracking of the spent fuel pool:

1. Nuclear criticality considerations.
2. Thermal-hydraulic considerations.
3. Mechanical, material and structural considerations.

As in the spent fuel pool, the neutron multiplication factor will be less than or equal to 0.95 including all uncertainties under all conditions. Methods used to calculate criticality are the same as those used for the spent fuel pool. Accordingly, the proposed reracking of the upper containment fuel pool will not involve a significant reduction in the margin of safety for nuclear criticality.

The licensee's analysis of maximum fuel and maximum pool temperature considered the interconnection of the spent fuel pool and the upper containment pool during refueling and the use of the spent fuel pool cooling system supplemented by the RHR system. The results of that analysis, which are described above for the spent fuel pool rerack considerations, show that NRC staff's acceptance criteria would be met. Accordingly, there is no significant reduction in the margin of safety for thermal hydraulic or upper containment fuel pool cooling concerns.

The mechanical, material and structural considerations of the proposed rerack in the upper containment pool are the same as those described above for the spent fuel pool. Accordingly, the margins of safety for these considerations in the upper containment pool are not significantly reduced by the proposed rerack.

C. Summary

The licensee's request to expand GGNS spent fuel storage pool and upper containment pool capacities satisfies the following conditions: (1) The storage capacity expansion method consists of modifying a portion of the existing racks with a design which allows closer spacing between stored spent fuel assemblies; (2) the storage capacity expansion method does not involve rod consolidation or double tiering; (3) the K_{eff} of the pools are maintained less than or equal to 0.95; and (4) no new technology or unproven technology is utilized in either the construction process or the analytical techniques necessary to justify the expansion. Consequently, the request does not involve significant hazards consideration in that it: (1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated, (2) does not create the possibility of a new or different kind of accident from any

accident previously evaluated, and (3) does not involve a significant reduction in a margin of safety.

Accordingly the Commission proposes to determine that these changes do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By October 15, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceedings; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

The Commission hereby provides notice that this proceeding is on an application for a license amendment falling within the scope of Section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. § 10154. Under Section 134 of the NWPA, the Commission, at the request of any petitioner or party to the proceeding, is required to employ hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." Section 134 procedures provide for oral argument on those issues "determined to be in controversy," preceded by discovery under the Rules of Practice, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law to be resolved at an adjudicatory hearing. Actual adjudicatory hearings are to be held only on those issues found to meet the criteria of Section 134 and set for hearing after oral argument on the proposed issues. However, if no petitioner or party requests the use of the hybrid hearing procedures, then the usual 10 CFR part 2 procedures apply.

At this time, the Commission does not have effective regulations implementing Section 134 of the NWPA although it has published proposed rules. See Hybrid Hearing Procedures for Expansion of Onsite Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors, 48 FR 54,499 (December 5, 1983).

Subject to the above requirements, and any limitations in the order granting leave to intervene, those permitted to intervene become parties to the proceeding, have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequenlty.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, and to Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW, Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Bethesda, Maryland, this 10th day of September 1985.

For the Nuclear Regulatory Commission.

Carl R. Stahle,

Acting Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 85–21973 Filed 9–12–85; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22–14205]

Application and Opportunity for Hearing; Chrysler Financial Corporation

September 6, 1985.

Notice is hereby given that Chrysler Financial Corporation (the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Commission that the trusteeship of Bankers Trust Company ("Bankers") under an indenture dated as of August 1, 1984 and Supplemental Indenture thereto (the "1984 Indenture") between the Company and Bankers which was heretofore qualified under the Act, and the trusteeship by Bankers under the indentures dated as of July 1, 1985, August 15, 1985 and August 28, 1985 (the "New Indentures") between Bankers, as trustee, and the Company, as issuer, which are not qualified under the Act, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Bankers from acting as Trustee under the 1984 Indenture or under the New Indentures.

Section 310(b) fo the Act, which is included in section 608 of the 1984 Indenture, provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of this section of the Act provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The present application, filed pursuant to clause (ii) of section 310(b)(1) of the Act (as set forth in section 608 of the 1984 Indenture), seeks to exclude the New Indenture from the operation of section 310(b)(1) of the Act.

The effect of the proviso contained in clause (ii) of section 310(b)(1) of the Act on the matter of the present application is such that the New Indentures may be excluded from the operation of section 310(b)(1) of the Act (as set forth in section 608 of the 1984 Indenture) if the Company shall have sustained the burden of proving by this application to the Commission that the trusteeships of Bankers under the 1984 Indenture and under the New Indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Bankers from acting as trustee under one of these Indentures.

The Company alleges that:

(1) As of August 19, 1985, the Company had outstanding $200,000,000 of its Subordinated Exchangeable Variable Rate Notes due 1994 (the "1994 Notes") and $100,000,000 of its 12⅛% Subordinated Notes Due February 15, 1990 (the "1990 Notes") under the 1984 Indenture. The 1994 Notes and the 1990 Notes were registered under the Securities Act and the 1984 Indenture was qualified under the Act.

(2) On July 4, 1985 the Company issued, and there are presently outstanding, Australian $55,000,000 aggregate principal amount of its 13⅝% Subordinated Bonds, Due 1992 (the "1992 Bonds") under the Indenture dated as of July 1, 1985. In addition, the Company proposes to issue ECU 75,000,000 aggregate principal amount of its 9% Subordinated Bonds Due 1992 and New Zealand $65,000,000 aggregate principal amount of its 17% Subordinated Notes Due August 1990 on or about August 22, 1985 and August 29, 1985, respectively, under the Indentures dated as of August 15, 1985 and August 28, 1985 respectively. The securities issued and to be issued under the New Indentures are hereinafter collectively called the "Bonds". The Bonds are unsecured obligations of the Company and will be subordinate and junior in right of payment to the Company's obligations to holders of senior debt.

(3) In accordance with the Commission's longstanding position that the registration requirements of Section 5 of the Securities Act of 1933 (the "Securities Act") are primarily intended to protect American investors, the issuance of the Bonds under the New Indenture outside the United States of America does not require registration of the Bonds under the Securities Act or qualification of the New Indenture under the Act.

(4) The Company's obligations under the 1984 Indenture and the New Indentures are wholy unsecured and all such obligations rank *pari passu inter se*.

(5) The Company is not in default under the 1984 Indenture, the 1994 Notes or the 1990 Notes and the Company is not in default under the New Indentures or the Bonds.

(6) Such differences as exist between the 1984 Indenture and the New Indenture are not so likely to invlove a material conflict of interst as to make it necessary in the public interest or for the protection of any of the investors to disqualify Bankers from acting as Trustee under one of the Indentures.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Securities and Exchange Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22–14205, which is on file in the offices of the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549.

Notice is further given that an order granting the application may be issued by the Commission at any time on or after September 26, 1985, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939. Any interested person may, not later than September 25, 1985 at 5:30 p.m., Eastern Time, in writing, submit to the Commission his views of any additional facts bearing upon this application or request a hearing thereon. Any such

communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

For the Commission, by the Division of Corporation Fianance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-21934 Filed 9-12-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22391; File No. SR-Amex-85-32]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc., Relating to an Airline Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 30, 1985 the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("Amex" or "Exchange") proposes to revise its Transportation Index ("XTI"), which is comprised of stocks engaged in the airline, railroad and trucking industries, to an index comprised exclusively of airline company stocks ("Airline Index"). To effectuate this change, the Exchange proposes to amend Rule 901C to reduce, from eight to five, the minimum number of stocks required to be included in an underlying index. In addition, Amex proposes to amend Rule 904C to establish positions and exercise limits on the Airline Index of 8,000 contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's of Statement the Purpose of, and Statutory Basis for, the Proposed Rule Change

In March 1984, the Exchange began options trading on the Transportation Index (XTI), a price-weighted index which reflects the stock prices of 20 corporations engaged primarily in the airline, railroad and trucking industries. The Exchange had developed the XTI to permit market participants to transfer the risks associated with stock ownership relating to the transportation industry as a whole. It was believed that a 20-stock index covering various segments of the industry would be an attractive trading vehicle.

Trading statistics show, however, that the index has failed to meet the Exchange's expectations. For example, the average daily volume in the seven-month period from January to July 1985 has been only 158 contracts, and in five of the seven months, average daily volume has been under ten contracts per month. Lack of interest in the index occurred, in part, because the stocks underlying the different sectors of the transportation industry do not move in relationship to one another. For example, it has not been uncommon for the airline stocks to move in one direction while stocks representing other sectors to move in another direction. As such, the index has neither attracted trading interest nor served as an effective tool for portfolio hedging.

The Exchange had experienced a similar situation with the stocks comprising its Oil and Gas Index (XOI). As introduced in September 1983, XOI included 30 companies engaged in the oil industry as well as in gas exploration, production and drilling activities. Trading volume in XOI was lower than expected, and investors and marketmakers has suggested that a narrowly-designed index bases on a smaller group of component stocks would be a preferable hedging vehicle. Accordingly, in October 1984 the Exchange revised the Oil and Gas Index by deleting all stocks other than the larger oil producing companies. As a result, options trading volume in the pure Oil Index has improved from that of the Oil and Gas Index.

Now, market participants have indicated that they would prefer to trade a narrowly-designed index based on one sector of the transportation industry comprised of a limited number of stocks. Thus, the Exchange proposes to revise the Transportation Index by deleting 15 of the 20 stocks to create a five-stock Airline Index comprised of the following stocks:

AMR Corporation (AMR)—holding company for American Airlines
Delta Airlines, Inc. (DAL)
Northwest Airlines, Inc. (NWA)
UAL, Inc., (UAL)—holding company for United Airlines
U.S. Air Group, Inc. (U)

The stocks which are proposed to be deleted from the XTI are:

Burlington Northern Inc. (BNI)
CNW Corporation (CNW)
CSX Corporation (CSX)
Canadian Pacific Limited (CP)
Carolina Freight Corporation (CAO)
Consolidated Freightways, Inc. (CNF)
Federal Express Corporation (FDX)
Norfolk Southern Corporation (NSC)
Overnite Transportation Co. (OVT)
RLC Corp. (RLC)
Santa Fe Southern Pacific Corporation (SFX)
Transway International Corporation (TNW)
TransWorld Airlines, Inc. (TWA)
Union Pacific Corporation (UNP)
Western Airlines, Inc. (WAL)

Like the Transportation Index, the Airline Index will be a price-weighted index, whereby the index value will be calculated by dividing the sum of the prices of the component stocks by a divisor. The divisor will remain constant except for adjustments necessary to avoid discontinuity to the index value due to stock splits, stock dividends, corporate reorganizations or other similar events. The day the index begins trading, the divisor will be two. As calculated on August 21, 1985, the index has a value of approximately 120.

All Exchange rules currently applicable to the trading of options on the Transportation Index will govern options trading on the Airline Index. However, to effectuate the revision of the Transportation Index to an Airline Index, Rule 901C must be amended to reduce, from eight to five, the minimum number of stocks required to be included in an underlying index. All of the five stocks in the proposed Airline Index are highly liquid and currently the subject of stock options trading. Further, no one stock dominates the proposed index. As of August 21, 1985, the percentage of the total index value represented by each stock is as follows: AMR–20.30%; DAL–20.35%; UAL–23.48%; NWA–21.86%; U–14.00%.

In addition, it is proposed that Rule 904C be amended to establish position and exercise limits on the Airline Index

of 8,000 contracts. This is the current limit applicable to all of the Exchange's other industry-based index options and two of the component stocks, AMR and UAL, currently have position and exercise limits of 8,000 contracts.

The proposed change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange in that options on an Airline Index would provide valuable hedging and trading opportunities for market participants. Therefore, the proposed rule change is consistent with Section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange's Stock Selection and New Products Committees have endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 4, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 9, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-21935 Filed 9-12-85; 8:45 am]

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[Release No. 34-22390; File No. SR-Phlx-85-26]

Self-Regulatory Organization; Proposed Rule Change by the Philadelphia Stock Exchange, Inc.; Relating to Additional Foreign Currency Expiration Months

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 29, 1985 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX") proposes, to introduce a new series of expiration cycles in foreign currency options. Under this proposal, the PHLX will have series of options trading in six expiration months: the four quarterly expiration months which PHLX currently is authorized to list and the nearest two expiration months which are not one of the quarterly cycle months.

The following chart illustrates the outstanding expiration months for each month in a year.

Italics indicates added series.

At expiration	Outstanding and new expirations.
December.....	*Jan., Feb.,* March, June, Sept., *Dec.*
January.....	Feb., March, *April,* June, Sept., Dec.
February	March, April, *May,* June, Sept., Dec.
March	April, May, June, Sept., Dec. *March*
April.....	May, June, *July,* Sept., Dec., March
May.....	June, July, *August,* Sept., Dec., March
June.....	July, August, Sept., Dec., March, *June*
July.....	August, Sept., *Oct.,* Dec., March, June
August	Sept., Oct., *Nov.,* Dec., March, June
September	Oct., Nov., Dec., March, June, *Sept.*
October	Nov., Dec., *Jan.,* March, June, Sept.
November.....	Dec., Jan., *Feb.,* March, June, Sept.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change

Historically foreign currency options have been listed for trading in three month intervals. Recently, the PHLX has experienced interest in consecutive monthly cycles in index options. These cycles give investors increased flexibility in short term investment opportunities. Recently, the PHLX has received approval to initiate monthly cycles for equity options pursuant to a pilot program. The PHLX does not know whether there will be similar interest in additional foreign currency option cycles. However, in anticipation of such interest and in order to compete with the new foreign currency option program of the Chicago Board Options Exchange ("CBOE"), which includes monthly

expirations, the PHLX is proposing that it be given discretion to initiate trading as proposed in Item 1 above at any time following Commission approval of the instant proposal. At the time it decides to initiate additional cycles, the PHLX will so notify the Division of Market Regulation.

The proposed rule change is consistent with Section 6(b)(5) of the Securities and Exchange Act of 1934 ("Act") in that it is intended to facilitate transactions in securities and will provide the PHLX with greater flexibility to list a more complete range of foreign currency options series for investors.

B. Self-Regulatory Organizations Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectivness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all wiritten communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 4, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 9, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-21936 Filed 9-12-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2199]

Massachusetts; Declaration of Disaster Loan Area

Worcester County in the State of Massachusetts constitutes a disaster area because of heavy rain and flooding which occurred July 31 through August 1, 1985. Applications for loans for physical damage may be filed until the close of business on November 4, 1985, and for economic injury until the close of business on June 5, 1986, at the address listed below:

Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, NJ 07410

or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Business (EIDL) without credit available elsewhere	4.000
Other (Non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 219906 for physical damage and for economic injury the number is 632800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 5, 1985.

Robert A. Turnbull,

Associate Deputy Administrator for Management & Administration.

[FR Doc. 85-21888 Filed 9-12-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area 2201]

Mississippi; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on September 4, 1985, I find that the Counties of Harrison and Jackson and the adjacent County of Hancock constitute a disaster loan area because of damage from Hurricane Elena and flooding beginning on or about September 2, 1985. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on November 4, 1985, and for economic injury until June 4, 1986, at:

Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., S.W., Suite 822 Atlanta, Georgia 30303

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 220108 for physical damage and for economic injury the number is 633000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 5, 1985.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-21889 Filed 9-12-85; 8:45 am]

BILLING CODE 8025-01-M

Albuquerque Advisory Council; Public Meeting

The U.S. Small Business Administration, located in the geographical area of Albuquerque, New Mexico, will hold a public meeting from 9:00 a.m. to 3:00 p.m. on Wednesday, September 25, 1985, at the Albuquerque Technical-Vocational Institute, Business Occupations Building, 717 University SE, Albuquerque, New Mexico 87108 to discuss such matters as may be presented by members, staff of the

Small Business Administration and others attending.

For further information, write or call Phil Ramos, District Director, U.S. Small Business Administration, 5000 Marble, NE., Suite 320, Albuquerque, New Mexico 87110 (505) 766–3430.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 4, 1985.

[FR Doc. 85–21895 Filed 9–12–85; 8:45 am]

BILLING CODE 8025–01–M

Baltimore Advisory Council; Public Meeting

The U.S. Small Business Administration, Region III, located in the geographical area of Baltimore, Maryland, will hold a public meeting at 12:00 p.m. on Monday, September 23, 1985, at the Donaldson Brown Center, 200 Mt. Ararat Farm Road, Port Deposit, Maryland 21904 to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call J. Arnold Feldman, District Director, U.S. Small Business Administration, 10 North Calvert Street, 3rd Floor, Baltimore, Maryland 21202, (301) 962–2054.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 4, 1985.

[FR Doc. 85–21894 Filed 9–12–85; 8:45 am]

BILLING CODE 8025–01–M

Region I Advisory Council; Public Meeting

The Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, will hold a public meeting from 10:00 a.m., on Tuesday, September 17, 1985, at the residence of Richard Gretsch, 44 Castle Hill Road, Newton, Connecticut, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call John P. Burke, District Director, U.S. Small Business Administration, One Hartford Square West, Suite 201, Hartford, Connecticut 06106—(203) 722–2511.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 5, 1985.

[FR Doc. 85–21893 Filed 9–12–85; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 02/02–0490]

WFG–Harvest Partners Ltd.; Notice of Application for a License To Operate as Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102. (1985)), by WFG–Harvest Partners Ltd. (the Applicant), 767 Third Avenue, New York, New York 10017, for a license to operate as a limited partnership small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder. The formation and licensing of a limited partnership SBIC is subject to the provisions of § 107.4 of the SBA Regulations.

The general partners, limited partners and investment adviser of the Applicant are as follows:

Name and address	Relationship to Applicant	Percent of ownership
Harvey J. Wertheim, 767 Third Avenue, New York, New York 10017	General partner	3846
Harvey Mallement, 767 Third Avenue, New York 10017	General partner	3846
Cloyd E. Marvin, 767 Third Avenue, New York, New York 10017	General partner	2308
WFG Deutsche Gesellschaft fur Wagniskapital mbH & Co. Kommanditgesellschaft von, 1984 (WFG-DGW), Ulmenstrasse 37–39, 6000 Frankfurt am Main 1, West Germany	Sole limited partner	99 0000
Harvest Ventures, Inc., 767 Third Avenue, New York, New York 10017	Investment adviser	

Messrs. Wertheim, Mallement and Marvin are managing directors of Harvest Ventures, Inc., the investment adviser.

WFG–DGW is a West German limited partnership (Kommanditgesellschaft) which is owned by five major West German banks as set forth below:

Name of bank	Percent of ownership
Dresdner Bank Aktiengesellschaft, Frankfurt/Main, West Germany	22
Deutsche Bank Aktiengesellschaft, Frankfurt/Main, West Germany	30
Commerzbank Aktiengesellschaft, Frankfurt/Main, West Germany	18
Westdeutsche Landesbank Girozentrale, Dusseldorf, West Germany	18
Bayerische Landesbank Girozentrale, Munchen, West Germany	12

The above named banks are the limited partners of WFG–DGW whose general partner is WFG Deutsche Gesellschaft fur Wagniskapital mbH Konigstein, Ulmenstrasse 37–39, 6000 Frankfurt am Main 1, West Germany.

The Applicant will begin operations with a capitalization of $1,600,000 and will be a source of long term loan funds and equity capital for eligible U.S. small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the general partners and the probability of successful operation of the Applicant under their management, including adequate profitability and financial soundness, in accordance with the Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 15 days from the date of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in the New York City area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 5, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85–21892 Filed 9–12–85; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[CM–8/887]

Chairman's Ad Hoc Group on Telecommunications Development of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The meeting of the Chairman's Ad Hoc Group on Telecommunications Development of the National Committee of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT)

originally scheduled for September 12, 1985, as published in the **Federal Register** on September 9, 1985, has been rescheduled owing to extenuating circumstances regarding the change in the date for the October meeting in Geneva on the ITU Center for Telecommunications Development, and the unforeseen conflicts in meeting dates affecting key participants. The Chairman's Ad Hoc Group will now meet on October 2, 1985 at 10:30 A.M. in Room 1207, Department of State, 2201 C Street, N.W., Washington, D.C.

The purpose of this meeting is to discuss issues related to the proposed ITU Centre for Telecommunications Development. The Ad Hoc Group will make recommendations on possible U.S. positions regarding the Advisory Board of the Centre and a preparatory meeting of donor countries on the Advisory Board.

Members of the general public, specifically representatives of the telecommunications industry and those who are concerned with telecommunications development issues in developing countries, are invited to attend the meeting and join in the discussion subject to the instructions of the Chairman. Admittance will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is requested that prior to the meeting, persons who plan to attend should so advise Mr. Earl Barbely, Department of State; telephone (202) 632–5832. All attendees must use the C Street entrance to the building.

Earl S. Barbely,

Acting Director, Office of Technical Standards and Development.

September 10, 1985.

[FR Doc. 85–21912 Filed 9–12–85; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits; Week Ended September 6, 1985

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Sept. 4, 1985..	43379	Guyana Airways Corporation, V. Michael Straus, Suite 335, 1001 Connecticut Avenue, NW., Washington, D.C. 20036 Application of Guyana Airways Corporation pursuant to Section 402 of the Act and Subpart Q of the Regulations applies for renewal of its current foreign air carrier permit, for a period of no less than five years. (Georgetown-Miami). Answers may be filed by October 2, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 21976 Filed 9–12–85; 8:45 am]

BILLING CODE 4910–62–M

Agreements Filed Week Ending September 6, 1985

Answers may be filed within 21 days from the date of filing.

Date filed	Docket No	Parties	Subject	Proposed effective date
Sept. 5, 1985.....	43382; R-1 thru R-4.....	Members of International Air Transport Association.	Change Argentinean currency from Peso to Peso to Austral, COMP MV/PC 0009, COMP MV/PC 0010, M.V. 949.	Oct. 1, 1985

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85–21975 Filed 9–12–85; 8:45 am]

BILLING CODE 4910–62–M

[Order 85–9–11]

Application of Midwestern Airlines, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause. Docket 42602.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that Midwestern Airlines, Inc., continues to be fit to engage in interstate and overseas scheduled air transportation of persons, property and mail.

DATE: Persons wishing to file objections should do so no later than October 1, 1985.

ADDRESSES: Responses should be filed in Docket 42602 and addressed to the Office of Documentary Services, Department of Transportation, 400 7th Street, SW, Room 4107, Washington, DC 20590 and should be served upon the parties listed in the Attachment to the order.

FOR FURTHER INFORMATION CONTACT: Carol A. Szekely, Special Authorities Division, Department of Transportation, 400 7th Street, SW, Washington, DC 20590 (202) 755–3812.

SUPPLEMENTARY INFORMATION: The complete text of Order 85–9–11 is available for inspection at our Documentary Services Division at the above address.

Dated: September 10, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-21977 Filed 9-12-85; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement; Martin County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Martin County, Florida.

FOR FURTHER INFORMATION CONTACT: R.V. Robertson, District Engineer, Federal Highway Administration, 227 North Bronough Street, Room 2015, Tallahassee, Florida 32302, Telephone: (904) 681-7231.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation, will prepare an Environmental Impact Statement (EIS) for an additional interchange on I-95 in Martin County, Florida. The proposed interchange is of a partial cloverleaf design. It is to be located east of the Florida Turnpike and north of the St. Lucie Canal at a proposed county road near Mapps Creek.

Alternatives under consideration include: (1) Taking no action; and (2) construction of the proposed interchange.

Federal, State, and local agencies have contributed early coordination comments. Additionally, a project planning team developing this project will contact Federal, State and local agencies, as well as interested private organizations and citizens, for their input. Public information meetings will be held during the development of this EIS. In addition, a public hearing will be held during 1986. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be made available for public and agency review and comment prior to the public hearing. A scoping meeting for this project is anticipated to be held early in the planning process.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: September 5, 1985.

P.E. Carpenter,

Division Administrator, Tallahassee, Florida.

[FR Doc. 85-21954 Filed 9-12-85; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

1977-85 Wayne School Buses; Public Hearing Rescheduled

The National Highway Traffic Safety Administration published a notice on August 13, 1985 (50 FR 32674) that it has issued an initial determination that school buses manufactured by Wayne Corporation failed to conform to Motor Vehicle Safety Standard No. 221 *School Bus Body Joint Strength*, and announced that a public proceeding on the matter was scheduled for September 4, 1985. On August 29, 1985, a notice appeared (50 FR 35174) rescheduling the proceeding for October 1, 1985.

The notice was in error. The correct date for the hearing is October 7, 1985, at 10:00 a.m. in Room 2230, Department of Transportation Headquarters Building, 400 Seventh Street SW., Washington, D.C.

Interested persons are invited to participate through written or oral presentations. Persons wishing to make oral presentations are requested to notify Ms. Gail Willis, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, Room 6113, 400 Seventh Street SW., Washington, D.C. 20590, telephone 202-426-2832, before close of business on September 30, 1985.

The agency's investigative file in this matter is available for public inspection during working hours (7:45 a.m. to 4:15 p.m.) in the Technical Reference Library, Room 5108, 400 Seventh Street SW., Washington, D.C. 20590.

Issued on September 9, 1985.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 85-21979 Filed 9-10-85; 4:38 pm]

BILLING CODE 4910-59-M

People's Car Company; Public Proceeding Rescheduled

The National Highway Traffic Safety Administration has rescheduled for October 9, 1985, a public proceeding originally scheduled for September 5, 1985, at which People's Car Co. will be afforded an opportunity to present data, views, and arguments relating to an intitial determination of noncompliance with several Federal motor vehicle safety standards. Notice of the initial determination of noncompliance and the original scheduling appeared in the Federal Register on August 13, 1985 (50 FR 32673).

The rescheduling of the proceeding responds to a petition for additional time in which to prepare for the proceeding, made by People's attorney in letters of August 30 and September 3, 1985. During the interim People's will investigate "the potential means by which People's may resolve the matter, including recall."

The agency believes the public interest will be best served by a brief postponement of the proceeding. Allowing People's additional time in which to investigate an appropriate means of remedeying the noncompliances will facilitate the ability of the company to resolve this matter in a manner consistent with the objectives of motor vehicle safety. Therefore in light of the foregoing, the public proceeding relating to the initial determination of noncompliance with several Federal motor vehicle safety standards will be held at 10:00 a.m. on October 9, 1985, in Room 2230, Department of Transportation Headquarters Building, 400 Seventh Street SW., Washington, D.C.

Interested persons are invited to participate through written or oral presentations. Persons wishing to make oral presentations are requested to notify Ms. Gail Willis, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, Room 6113, 400 Seventh Street, SW., Washington, D.C. 20590, telephone 202-426-2832, before close of business on October 2, 1985.

The agency's investigative file in this matter is available for public inspection during working hours (7:45 am to 4:15 pm) in the Technical Reference Library, Room 5108, 400 Seventh Street SW., Washington, D.C. 20590.

Issued on September 9, 1985.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 85-21980 Filed 9-10-85; 4:38 pm]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Notice of Grants and Denials of Applications for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in July 1985. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letter EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No	Applicant	Regulation(s) affected	Nature of exemption thereof
3630-X	DOT-E 3630	Mallinckrodt, Inc., Paris, KY	49 CFR 177.839(a), 177.839(b)	To authorize use of a DOT Specification 39A polystyrene case to contain four 5-pint glass bottles of nitric acid (mode 1)
3630-X	DOT-E 3630	Allied Chemical, Morristown, NJ	49 CFR 177.839(a), 177.839(b)	To authorize use of a DOT Specification 39A polystyrene case to contain four 5-pint glass bottles of nitric acid (mode 1).
3630-X	DOT-E 3630	Ashland Services Company, Dublin, OH	49 CFR 177.839(a), 177.839(b)	To authorize use of a DOT Specification 39A polystyrene case to contain four 5-pint glass bottles of nitric acid (mode 1).
4884-P	DOT-E 4884	Synthatron Corporation, Parsippany, NJ	49 CFR 173.302(a)(1), 175.3, 178.61	To become a party to Exemption 4884 (modes 1, 2, 3, 4, 5)
5206-P	DOT-E 5206	D.C. Guelich Explosive Co., Clearfield, PA	49 CFR 173.114a	To become a party to Exemption 5206 (mode 1)
5206-P	DOT-E 5206	Nelson Brothers, Inc., Parish, AL	49 CFR 173.114a	To become a party to Exemption 5206 (mode 1)
5206-P	DOT-E 5206	Explo-Midwest, Inc., Joplin, MO	49 CFR 173.114a	To become a party to Exemption 5206 (mode 1)
5746-X	DOT-E 5746	U.S. Department of Defense, Falls Church, VA	49 CFR 172.101, 173.145, 173.268, 175.3, 176.83(b)	To authorize shipment of contaminated missile components or detanking pumps containing a certain flammable liquid and a corrosive liquid packaged in wooden boxes or metal drums (modes 1, 2, 3, 4)
5923-X	DOT-E 5923	Union Carbide Corporation Danbury, CT	49 CFR 173.148(a)(4), 173.31(d)(9), 173.314	To authorize transport of certain flammable and nonflammable gases, in DOT Specification 106A500X and 110A500W multi-unit tank cars (modes 1, 2, 3).
6122-X	DOT-E 6122	Pennwalt Corporation Buffalo, NY	49 CFR 173.154(a)(12), 173.158(a)(3), 178.205-16	Request for modification to authorize use of a different style corrugated box for shipment of polyethylene bags containing an organic peroxide (modes 1, 2).
6122-X	DOT-E 6122	Pennwalt Corporation Buffalo, NY	49 CFR 173.154(a)(12), 173.158(a)(3), 178.205-16	To authorize use of DOT Specification 12B fiberboard box having higher gross weight than presently authorized and non-DOT specification fiber board with handholes, for shipment of certain dry organic peroxides (modes 1, 2)
6418-P	DOT-E 6418	Brown & Bryant, Inc., Shafter, CA	49 CFR 173.357(b)	To become a party to Exemption 6418 (mode 1)
6418-P	DOT-E 6418	PureGro Company, West Sacramento, CA	49 CFR 173.357(b)	To become a party to Exemption 6418 (mode 1)
6418-P	DOT-E 6418	Full Circle, Inc., DBA CENEX Soil Service Center, Connell, WA	49 CFR 173.357(b)	To become a party to Exemption 6418 (mode 1)
6452-X	DOT-E 6452	Pennwalt Corporation, Buffalo, NY	49 CFR 173.154	To authorize shipment of certain organic peroxides in one pound bags, overpacked in a DOT Specification 12B65 fiberboard box (modes 1, 2)
6530-P	DOT-E 6530	Fitch Industrial & Welding Supply, Inc., Lawton, OK	49 CFR 173.302(c)	To become a party to Exemption 6530 (modes 1, 2).
6658-X	DOT-E 6658	U.S. Department of Energy, Washington, DC	49 CFR 173.65	To authorize use of a non-DOT specification open-head steel drum, for transportation of certain Class A explosive (mode 1)
6658-X	DOT-E 6658	U.S. Department of Defense, Falls Church, VA	49 CFR 173.65	To authorize use of a non-DOT specification open-head steel drum, for transportation of a certain Class A explosive (mode 1).
6712-X	DOT-E 6712	Air Products and Chemicals, Inc., Allentown, PA	49 CFR 173.34(e)(15)(i)	To authorize shipment of certain flammable and nonflammable gases in DOT Specification 3A or 3AA cylinders or ICC-3, 3A or 3AA cylinders (modes 1, 2, 3, 4, 5)
6762-P	DOT-E 6762	Anderson Chemical Company, Macon, GA	49 CFR 173.286(b)(2), 175.3	To become a party to Exemption 6762 (modes 1, 2, 3, 4)
6766-X	DOT-E 6766	DuBois Chemical Company, Cincinnati, OH	49 CFR 173.256	To authorize use of DOT Specification MC-311 and MC-312 cargo tanks for shipment of a corrosive liquid (mode 1)
6800-X	DOT-E 6800	Plasti-Drum Corporation, Lockport, IL	49 CFR 173.266	To authorize shipment of hydrogen peroxide not to exceed 70% (modes 1, 2, 3)
6874-P	DOT-E 6874	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE	49 CFR 172.101, 173.370(a)(13)	To become a party to Exemption 6874 (modes 1, 2, 3)
6946-X	DOT-E 6946	Badger Welding Supplies, Inc., Madison, WI	49 CFR 173.34(e)(15)(i), 175.3	To authorize use of DOT Specification 3A or 3AA cylinders and ICC-3, 3A, or 3AA cylinders for shipment of certain compressed gases. Cylinders are over 35 years old (modes 1, 2, 3, 4, 5).
7007-X	DOT-E 7007	Allied Universal Corporation, Miami, FL	49 CFR 173.314(c), 179.3	To authorize shipment of chlorine in non-DOT specification multi-unit tank car tanks made in accordance with DOT Specification 110A500W (modes 1, 3)
7023-X	DOT-E 7023	Texas Instruments, Inc., Dallas, TX	49 CFR 173.245(a), 173.263(a), 173.264(a), 173.266, 173.268(f)(5), 173.272(g), 173.272(i)(24).	To authorize use of non-DOT specification steel portable tanks, for shipment of an oxidizer or corrosive material (mode 1)
7051-X	DOT-E 7051	Ozark-Mahoning Company, Tulsa, OK	49 CFR 173.246(a), 175.3	To authorize use of non-DOT specification Teflon bottles overpacked with either a DOT Specification 12A or 12B fiberboard box, for transportation of a corrosive liquid (modes 1, 4)
7269-X	DOT-E 7269	U.S. Department of Energy, Washington, DC	49 CFR 173.65(a)	To authorize use of sift-proof paper or plastic bags overpacked in DOT Specification 21C fiber drums, for transportation of certain Class A explosives (mode 1)
7440-X	DOT-E 7440	Revlon Professional Products, Inc., Jacksonville, FL	49 CFR 173.1200(a)(8)(ii)(A), 173.1200(a)(8)(ii)(E), 173.306(a)(3)(i), 173.306(a)(3)(v)	To authorize transport of a nonflammable gas, in non-DOT specification one-piece, impact-extrude, cylindrical, aluminum container (modes 1, 2, 3)
7458-X	DOT-E 7458	Ekohwerks Company, Eastlake, OH	49 CFR 173.304(a)(2), 178.42	To authorize manufacture, marking and sale of non-DOT specification seamless cylinders, for transportation of nonflammable gases (modes 1, 2, 3)
7482-X	DOT-E 7482	Monsanto Company, Saint Louis, MO	49 CFR 173.245b(a)(6)	To authorize use of reconditioned non-DOT specification blow-molded high molecular weight polyethylene drum, for shipment of certain corrosive solid waste materials (mode 1).
7526-X	DOT-E 7526	Schering, AG, West Berlin, West Germany	49 CFR 173.134	To authorize transport of certain pyrophonc liquids in non-DOT specification portable tanks (modes 1, 3)
7526-X	DOT-E 7526	Dow Chemical Co., Freeport, TX	49 CFR 173.134	To authorize transport of certain pyrophonc liquids in non-DOT specification portable tanks (modes 1, 3)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No	Exemption No	Applicant	Regulation(s) affected	Nature of exemption thereof
7555-X	DOT-E 7555	Provost Cartage, Incorporated, Ville d'Anjou, Quebec	49 CFR 173, Subpart F	To authorize manufacture, marking and sale of non-DOT specification cargo tanks made from non-metallic materials, for transportation of certain hazardous materials (mode 1)
7605-X	DOT-E 7605	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.101, 173.102, 173.113, 173.87, 173.92, 175.3, 176.83, 177.848	To authorize transport of certain explosives contained in a partially disassembled aircraft or canopy assembly (modes 1, 3, 4)
7605-X	DOT-E 7605	General Dynamics, Fort Worth, TX	49 CFR 173.101, 173.102, 173.113, 173.87, 173.92, 175.3, 176.83, 177.848	To authorize transport of certain explosives contained in a partially disassembled aircraft or canopy assembly (modes 1, 3, 4).
7607-X	DOT-E 7607	The Foxboro Company, South Norwalk, CT.	49 CFR 172.101, 175.3	To authorize shipment of hydrogen in certain non-DOT specification seamless stainless steel cylinders (modes 4, 5).
7616-P	DOT-E 7616	Denver and Rio Grande Western Railroad Company, Denver, CO	49 CFR 172.204(a), 172.204(d)	To become a party to Exemption 7616 (mode 2).
7628-X	DOT-E 7628	Chemtech Industries, Inc., St Louis MO	49 CFR 173.264(a)(11), 173.265(b)(3)	To authorize use of DOT Specification 111A100W-5 tank cars equipped with a safety relief valve instead of a vent, for shipment of certain corrosive liquids (mode 2)
7835-X	DOT-E 7835	MG Industries, Valley Forge, PA	49 CFR 177.848, Part 107 Appen B(1)	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, the flammable liquids label, the corrosive label or the poison gas and tank car tanks bearing the poison gas label (mode 1).
7835-X	DOT-E 7835	Liquid Air Corporation, San Francisco, CA.	49 CFR 177.848, Part 107 Appen B(1)	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle (mode 1).
7835-X	DOT-E 7835	Scott Environmental Technology, Incorporated, Plumsteadville, PA.	49 CFR 177.848, Part 107 Appen. B(1).	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, the flammable liquids label, the corrosive label or the poison gas and tank car tanks bearing the poison gas label (mode 1).
7835-X	DOT-E 7835	Matheson Gas Products, Inc., Secaucus, NJ	49 CFR 177.848, Part 107 Appen B(1).	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle (mode 1).
7835-X	DOT-E 7835	Liquid Carbonic Industries Corporation, Chicago, IL.	49 CFR 177.848, Part 107 Appen. B(1).	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle (mode 1).
7835-X	DOT-E 7835	Air Products and Chemicals, Inc., Allentown, PA	49 CFR 177.848, Part 107 Appen. B(1)	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, the flammable liquids label, the corrosive label or the poison gas and tank car tanks bearing the poison gas label (mode 1).
7886-X	DOT-E 7886	W M Barr & Company, Inc., Memphis, TN	49 CFR 173.245, 178.210	To authorize shipment of a corrosive liquid, in non-DOT specification metal can/fiberboard box packaging (modes 1, 3).
7928-X	DOT-E 7465	State of Alsaka, Department of Transportation, Juneau, AK	49 CFR 173.119, 173.304, 176.83, 175.905(1), Part 172, Part 176 Subpart H.	To authorize stowage of transport motor vehicles and liquefied petroleum gases aboard passenger vessels (mode 3)
7954-X	DOT-E 7954	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 172.504, 173.301(d)(2), 173.302(a)(3)	To authorize shipment of nonflammable gases in manifolded DOT Specification 3A2400, 3AA2400 or 3AAX2400 cylinders (modes 1, 3).
7985-X	DOT-E 7985	Process Engineering, Incorporated Plaistow, NH	49 CFR 173.315(a)	To authorize manufacture, marking and sale of non-DOT specification vacuum insulated portable tanks, for shipmnt of nonflammable gases (modes 1, 3).
8065-X	DOT-E 8065	U.S. Department of Energy, Washington, DC.	49 CFR 173.65, 173.93, 173.94	To authorize shipment of certain Class A and B explosives, in non-DOT specificaton plywood boxes (mode 1).
8127-X	DOT-E 8127	Union Explosivos Rio Tinto, S.A., Madrid, Spain	49 CFR 171.12(d), 173.127, 173.184, 178.224.	To authorize use of a non-DOT specification fiberboard drum, for shipment of wet nirocellulose (modes 1, 2, 3).
8131-X	DOT-E 8131	National Aeronautics and Space Administration, Washington, DC	49 CFR 173.301(d), 173.302(a), 173.34(d), 175.3	To authorize use of a non-DOT specification container made of inconel 718 metal, for shipment of a nonflammable gas (modes 1, 2, 4).
8156-X	DOT-E 8156	Scott Environmental Technology, Incorporated, Plumsteadville, PA.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1)	To authorize transport of certain flammable or nonflammable compressed gases and carbon bisulfied in a DOT Specification 39 steel cylinder up to 225 cubic inches in volume (modes 1, 2).
8178-X	DOT-E 8178	National Aeronautics and Space Administration, Washington, DC	49 CFR 173.302(a), 173.34(d), 175.3	To authorize use of a non-DOT specification composite cylinder, for a compressed nonliquefied gas (modes 1, 4).
8194-X	DOT-E 8194	Pennwalt Corporation, Buffalo, NY	49 CFR 173.119(m)(6), 173.221(a)(3), 178.205, 178.210-10	To authorize use of a fiberboard box complying with DOT Specificaton 12B (excpet for closure method and its one-piece, die-cut design), for shipment of liquid organic peroxides (modes 1, 3).
8215-X	DOT-E 8215	Olin Corp., East Alton, IL	49 CFR 173.101, 173.107, 173.60, 173.74, 173.78, 173.93	To authorize shipment of certain identified Class A, B, and C explosives, in non-DOT specification containers (modes 1, 2).
8225-X	DOT-E 8225	Hoover Universal, Inc., Beatrice, NE	49 CFR 173.119, 173.256, 173.266, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, cross-linked polyethylene portable tanks, for shipment of corrosive liquids, flammable liquids or an oxidizer (modes 1, 2 3).
8249-X	DOT-E 8249	LPS Industries Inc., Formerly Lawrence Packaging, Newark, NJ	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504(a), 173.126, 173.138, 173.237, 173.246, 173.25(a), 175.3	To authorize transport of packages bearing the DANGEROUS WHEN WET label, in motor vehicles which are not placarded FLAMMABLE SOLID W (modes 1, 2, 4).
8255-X	DOT-E 8255	Applied Environments Corporation, Woodland Hills, CA.	49 CFR 173.302, 175.3	To authorize manufacture, marking and sale of nonreusable (nonrefillable) non-DOT specificaton welded steel cylinders, for shipment of certain nonflammable gases (modes 1, 2, 4).
8256-X	DOT-E 8256	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.273(a)(4), 174.3, 179.102-16, 179.202-13	To authorize shipment of stabilized sulfur trioxide in DOT Specification 105A100W and 111A100W2 tank cars equipped with standpipe electrical heaters and a modified safety relief device (mode 2).
8308-P	DOT-E 8308	SGP Inc. Courier Service, East Islip, NY	49 CFR 177.842(a), 177.842(b)	To become a party to Exemption 8308 (mode 1).
8344-P	DOT-E 8344	Hodgdon Powder Company, Shawnee Mission, KS	49 CFR 173.197a	To become a party to Exemption 8344 (modes 1, 2).
8378-P	DOT-E 8378	Sigma Chemical Company, Saint Louis, MO	49 CFR 173.268, 175.3	To become a party to Exemption 8378 (modes 1, 2, 4).
8453-X	DOT-E 8453	Atlas Powder Company, Dallas, TX	49 CFR 173.114a	To authorize use of non-DOT specification cargo tanks and DOT Specificaton MC-306, MC-307, or MC-312 stainless steel cargo tanks, to transport blasting agent (mode 1).
8540-X	DOT-E 8540	U.S. Department of Defense, Falls Church, VA	49 CFR 176.83(b) Table II	To authorize shipment of oxygen candles in non-DOT specification triple wall corrugated fiberboard boxes (mode 3).

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No	Exemption No	Applicant	Regulation(s) affected	Nature of exemption thereof
8547-X	DOT-E 8547	Nalco, Inc., Chicago, IL	49 CFR 178.116, Part 173 Subpart F	To authorize manufacture, marking and sale of a non-DOT specification 55 gallon steel tight head drum incorporating a molded polyethylene top head, in lieu of a steel top head, for shipment of certain corrosive liquids (modes 1, 2)
8609-X	DOT-E 8609	do	49 CFR 177.841(e), 178.118	To authorize manufacture, marking and sale of non-DOT specification removable head metal drums, for transportation of poison B materials (mode 1).
8627-X	DOT-E 8627	Omega Treating Chemicals, Inc., Midland, TX	49 CFR 173.119, 173.245, 178.253	To authorize use of six non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis, for transportation of flammable and corrosive liquids (mode 1)
8667-X	DOT-E 8667	Federal Emergency Management Agency, Washington, DC	49 CFR 173.416	To authorize use of CDV-784 calibrators instead of DOT Specification or Nuclear Regulatory Commission certified packages, for shipment of radioactive materials (modes 1, 3, 4)
8678-X	DOT-E 8678	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE	49 CFR 173.315(a)	To authorize use of non-DOT specification IMO Type 5 portable tank, for shipment of flammable and nonflammable gases (modes 1, 2, 3)
8678-X	DOT-E 8678	Eurotainer, S.A., Paris, France	49 CFR 173.315(a)	To authorize use of non-DOT specification IMO Type 5 portable tank, for shipment of flammable and nonflammable gases (modes 1, 2, 3)
8684-X	DOT-E 8684	General American Transportation Corporation, Chicago, IL	49 CFR 173.315(a)(1), 178.337(1)(c)(2)(ii).	To authorize manufacture, marking and sale of DOT-Specification MC-331 cargo tanks equipped with a manway cover not fully complying with 49 CFR 178.337-1(c)(2)(ii), for transportation of nonflammable gases (mode 1)
8689-P	DOT-E 8689	Flopetrol Johnston, a Division of Schlumberger, Houston, TX	49 CFR 173.302, 173.304, 175.3	To become a party to Exemption 8689 (modes 1, 2, 3, 4)
8710-X	DOT-E 8710	Noury Chemical Corporation, Chicago, IL	49 CFR 173.119, 173.21, 173.221	To authorize transport of solutions of an organic peroxide, in cargo tanks complying with DOT Specification MC-307 and MC-312 (mode 1)
8748-P	DOT-E 8748	U.S. Department of Energy, Washington, DC	49 CFR 172.101, 173.302, 175.3	To become a party to Exemption 8748 (modes 1, 2, 3, 4, 5)
8813-X	DOT-E 8813	Nebraska Solvents Company, Grand Island, NE	49 CFR 172.328, 177.334(b)	To authorize display of FLAMMABLE placards, showing identification number (1993), on Nebraska Solvents Company's cargo tanks specified for the materials and having six or more compartments when transporting one or more hazardous materials (mode 1)
8872-P	DOT-E 8872	CIL Inc., Brampton, Ontario, Canada	49 CFR 173.154	To become a party to exemption 8872 (modes 1, 2)
8872-X	DOT-E 8872	Chase Bag Co., Oak Brook, IL	49 CFR 173.154	To authorize shipment of rubber scrap, flammable solid as an additional commodity and to authorize bags to be manufactured of 3 mil polyethylene (modes 1, 2).
8912-X	DOT-E 8912	Rheinpfalzische Emballagenfabrik G. Schonung & Co., Weinstrasse, West Germany	49 CFR 171.12(c), 178.116-6(a)	To authorize manufacture, marking and sale of non-DOT specification steel drums of one millimeter thickness, to be used in place of 20/18 gauge, 55-gallon capacity, DOT-17E steel drums (modes 1, 2, 3)
8932-X	DOT-E 8932	Catalyst Resources, Inc., Elyria, OH	49 CFR 173.119(m), 173.221	To authorize shipment of a flammable liquid which is also organic peroxide, in tank motor vehicles complying with DOT specifications MC-307 and MC-312 cargo tanks (mode 1)
8956-X	DOT-E 8956	Cal Mock Company, Conroe, TX	49 CFR 173.119, 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3, 176.3.	To manufacture, mark and sell certain steel cylinders for transporting samples of liquefied petroleum gas, oil well, natural gas, and other petroleum hydrocarbon gases or liquids (modes 1, 3, 4)
8975-X	DOT-E 8975	Baker Brothers Welding Inc., Norman, OK	49 CFR 173.119, 173.245, 178.253	To authorize manufacture, marking and sale of six sixty gallon non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassess, for transportation of flammable and corrosive liquids (mode 1)
8986-X	DOT-E 8986	Cook Slurry Company, Salt Lake City, UT.	49 CFR 173.114a(b)(3)	To authorize transport of slurry blasting agent, in DOT Specification MC-307 cargo tanks constructed of 304 stainless steel (mode 1)
8988-P	DOT-E 8988	Gearhart Industries, Inc., Fort Worth, TX	49 CFR 172.101, 173.110, 173.80, 175.30.	To become a party of Exemption 8988 (modes 1, 3, 4).
8990-X	DOT-E 8990	Pressure Pak, Inc., East Hampton, CT.	49 CFR 173.302(a)(1), 175.3, 178 65-2, 178.65-5(a)(4)	To authorize manufacture, marking and sale of non-DOT specification nonrefillable steel inside cylinders, for transportation of nonflammable compressed gases (modes 1, 2, 3, 4, 5)
8992-X	DOT-E 8992	General Dynamics/Pomona Division Aviation Dept., Pomona, CA	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B	To authorize transport of certain Class A and B explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment (mode 4)
9014-X	DOT-E 9014	Hunter Drums Limited, Burlington, Ont., Canada	49 CFR 173.262, 173 266	To authorize manufacture, marking and sale of non-DOT specification reusable, high density, blowmuided, ploy ethylene containers, for transportation of certain corroseve liquids and oxidizers (mode 1, 2, 3)
9026-X	DOT-E 9026	Continental Fibre Drum, Inc., Lombard, IL	49 CFR 178.224	To authorize manufacture, marking and sale of non-DOT specification fiber drums of not over 75-gallon capacity, similar to DOT Specification 21C except that the top head is of molded polyethylene and secured to the sidewall by a lever locking ring (mode 1, 2, 3).
9027-P	DOT-E 9027	Witco Chemical Corporation, Melrose Park, IL	49 CFR 178.131, 178.28(h), 178.28(m)	To become a party to Exemption 9027 (modes 1, 2).
9040-X	DOT-E 9040	Continental Fibre Drum, Inc., Lombard, IL.	49 CFR 173.249a(d)(3)	To authorize manufacture, marking and sale of non-DOT specification fiber drums of not over 55-gallon capacity, lined or coated on the inside with a plastic material, and having modified non-removable top heads of steel or plastic, for transportation of certain corroseve liquids (modes 1, 2, 3)
9041-X	DOT-E 9041	Hercules, Incorporated, Wilmington, DE	49 CFR 173 100(bb), 175.30	To authorize transport of explosives devices as detonating fuzes, in aluminum trays, packed in a DOT Specification 12H fiberboard box (modes 1, 4)
9048-X	DOT-E 9048	Brooks Instrument Div /Emerson Electric Co., Statesboro, GA.	49 CFR 173.119, 173.304, 173.315	To authorize manufacture, marking and sale of non-DOT specification containers, for transportation of flammable liquids and gases (mode 1).
9051-X	DOT-E 9051	Amerex Corporation, Trussville, AL	49 CFR 175.3, 178.50-19	To authorize manufacture, marking and sale of DOT Specification 4B cylinders, with specification marking on the footring, for transportation of certain hazardous materials (modes 1, 2, 3, 4, 5).
9052-X	DOT-E 9052	Chemical Handling Equipment Co., Inc., Southfield, MI	49 CFR 173.119, 173.125, 178.19, 178 253, Part 173, Subpart F.	To authorize manufacture, marking and sale of a non-DOT specification rotationally molded, cross-linked or linear polyethylene portable tank enclosed in a steel cage or hardwood overpack, for shipment of corrosive and flammable liquids or an oxidizer (modes 1, 2, 3).
9053-X	DOT-E 9053	Delaware Valley Industrial Gases, Inc., Waterford Works, NJ.	49 CFR 173.34(1)(1), 173.34(1)(2), 173.34(1)(3), Part 107, Appendix B	To authorize rebuilding, retesting, marking and selling of DOT Specification, 4B, 4BA and 4BW cylinders, for transportation of compressed gases, flammable liquids and corroseve materials (modes 1, 2, 3, 4, 5)
9059-X	DOT-E 9059	Boeing Aerospace Co., Seattle, WA	49 CFR 172.101, 172.202, 172.302(d), 173.34(d)(4)	To authorize use of cylinders currently used for transportation of fluorine, for shipment of a fluorine-helium mixture (modes 1, 2)
9062-X	DOT-E 9062	UOP Process Division, Des Plaines, IL	49 CFR 173.245	To authorize use of DOT Specification 57 carbon steel portable tanks, for transportation of a corroseve liquid (modes 1, 2).

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No	Exemption No	Applicant	Regulation(s) affected	Nature of exemption thereof
9064-X	DOT-E 9064	Amalgamet Canada—Division of Premetalco Inc. Toronto, Ontario, Canada	49 CFR 173.245, 173.271	To authorize shipment of corrosive materials, in a glass container placed in a cushioned cylindrical steel overpack, which is then packed in a cushioned plywood box, of which no more than four can be overpacked in a compartmented wooden outer box (modes 1, 3)
9064-X	DOT-E 9064	Optical Fibres, Deeside, Wales.	49 CFR 173.245, 173.271	To authorize shipment of corrosive materials, in a glass container placed in a cushioned cylindrical steel overpack, which is then packed in a cushioned plywood box, of which no more than four can be overpacked in a compartmented wooden outer box (modes 1, 3).
9064-X	DOT-E 9064	Preussag AG Metall, Goslar, West Germany	49 CFR 173.245, 173.271	To authorize shipment of corrosive materials, in a glass container placed in a cushioned cylindrical steel overpack, which is then packed in a cushioned plywood box, of which no more than four can be overpacked in a compartmented wooden outer box (modes 1, 3).
9064-X	DOT-E 9064	KBI Division of Cabot Corporation, Revere, PA.	49 CFR 173.245, 173.271	To authorize shipment of corrosive materials, in a glass container placed in a cushioned cylindrical steel overpack, which is then packed in a cushioned plywood box, of which no more than four can be overpacked in a compartmented wooden outer box (modes 1, 3).
9064-X	Dot-E 9064	J. T. Baker Chemical Company, Phillipsburg, NJ	49 CFR 173.245, 173.271	To authorize shipment of corrosive materials, in a glass container placed in a cushioned cylindrical steel overpack, which is then packed in a cushioned plywood box, of which no more than four can be overpacked in a compartmented wooden outer box (modes 1, 3)
9064-X	Dot-E 9064	Corning Glass Works, Corning, NY	49 CFR 173.245, 173.271	To renew and to authorize silicon tetrachloride, corrosive material, as an additional commodity (modes 1, 3).
9078-X	Dot-E 9078	Monsanto Company, Saint Louis, MO	49 CFR 173.245	To authorize use of DOT Specification 57 stainless steel portable tanks, for transportation of a waste formic acid/phenol mixture (mode 1)
9079-X	Dot-E 9079	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE	49 CFR 173.315	To authorize use of carbon steel DOT Specification 51 portable tanks, for transportation of a liquefied compressed gas (modes 1, 3).
9088-X	Dot-E 9088	Ethyl Corp., Baton Rouge, LA	49 CFR 173.252, 179.102-7	To authorize use of DOT Specification 105S500W tank car tank with a maximum commodity weight of 178,000 pounds, for transportation of corrosive material (mode 2).
9108-P	Dot-E 9108	Trojan Corporation, Salt Lake City, UT	49 CFR 173.77	To become a party to Exemption 9108 (mode 1).
9129-X	Dot-E 9129	Weldex Corporation, Grafton, MA	49 CFR 173.34, Part 107 Appendix B	To authorize regaining, rebuilding, retesting, marketing and sale of any DOT Specification 4B, 4BA and 4BW low pressure steel cylinders (modes 1, 2, 3, 4, 5)
9130-P	DOT-E 9130	Calgon Corporation, St. Louis, MO	49 CFR 173.154	To become a party to Exemption 9130 (modes 1, 2).
9130-P	DOT-E 9130	Chem-Tab Chemical Corporation, Carson, CA	49 CFR 173.154	To become a party to Exemption 9130 (modes 1, 2).
9130-P	DOT-E 9130	Bio-Lab, Incorporated, Conyers, GA	49 CFR 173.154	To become a party to Exemption 9130 (modes 1, 2)
9138-X	DOT-E 9138	National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.302(a), 173.34(d), 175.3	To authorize shipment of nitrogen in a fiber reinforced plastic full composite cylinder without a safety relief device (modes 1, 4).
9141-X	DOT-E 9141	Bristol Flare Corporation, Bristol, PA	49 CFR 172.101, 173.108	To authorize transport of certain hand signal devices, as a flammable solid instead of a class C explosive (mode 1)
9154-X	DOT-E 9154	Bennett Industries, Peotone, IL	49 CFR 178.116-6(a)	To authorize manufacture, marking and sale of non-DOT specification steel drums of 19-gauge (one millimeter) thickness, with corrugated top and bottom heads, and having double seamed chime construction, to be used in place of 20/18 gauge, 55-gallon capacity DOT Specification 17E drums (modes 1, 2, 3).
9271-P	DOT-E 9271	Burlington Northern Railroad, Ft.Worth, TX.	49 CFR 174.90	To become a party to Exemption 9271 (mode 2).
9271-P	DOT-E 9271	The Denver and Rio Grande Western Railroad Company, Salt Lake City, UT	49 CFR 174.90	To become a party to Exemption 9271 (mode 2).

NEW EXEMPTIONS

Application	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9386-N	DOT-E 9386	HTL Industries, Inc., Duarte, CA	49 CFR 173.302(a)(1), 175.3, 178.44	To authorize manufacture, marking and sale of non-DOT specification pressure vessel comparable to DOT Specification 3HT cylinder with certain exceptions, for transportation of compressed gases (modes 1, 2, 4, 5).
9389-N	DOT-E 9389.	Chilean Nitrate Sales Corporation, Norfolk, VA.	49 CFR 172.301(a) Part 107 Appen. B(1).	To authorize use of preprinted bags, labeled oxidizer, which are not marked with the proper shipping name and/or identification number, containing sodium nitrate or nitrate, n.o.s. (mode 1, 2)
9452-N	DOT-E 9452	American Chemical & Refining Company, Inc., Waterbury, CT.	49 CFR 177.848	To authorize transport of ammonium hydroxide solutions in the same vehicle with gold and silver cyanide solutions (mode 1)
9428-N	DOT-E 9428	CGTX Inc., Montreal, Quebec, Canada	49 CFR 179.102-2(a)(3)	To authorize use of a DOT Specification 105A500W tank car tank with a modified insulation system, for transportation of a nonflammable gas (mode 2).
9431-N	DOT-E 9431	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.63, 173.65, 173.87, 173.93	To authorize several types of explosives in the same package, in quantities greater than authorized by 49 CFR 173.87 (mode 1, 2, 4).
9433-N	DOT-E 9433	Aldrich Chemical Company, Inc., Milwaukee, WI	49 CFR 173.302, 173.303, 173.304	To authorize transport of flammable gases at atmospheric pressure in glass bulbs not exceeding one liter capacity, packed in DOT Specification 12A/12B fiberboard boxes (mode 1)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 9470-N	DOT-E 9470	B.F. Goodrich Company, Cleveland, OH.	49 CFR 173.314, 179.100-16	To authorize use of a non-DOT specification tank car which conforms to DOT Specification 105A300W except for certain prescribed bracket reinforcing pads, for transportation of flammable gases (mode 2).
EE 9471-N	DOT-E 9471	Union Oil Company, Los Angeles, CA	49 CFR 173.314, 179.100-16	To authorize use of DOT Specification tank cars which conform to DOT Specification 105A300W or 105J300W, except for certain prescribed bracket reinforcing pads, for transportation of a flammable gas (mode 2)

EMERGENCY EXEMPTIONS—Continued

Application No	Exemption No	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 9473-N	DOT-E 9473	CF Industries, Inc., Long Grove, IL	49 CFR 173.314, 179.100-16	To authorize use of non-DOT specification tank cars which conform to DOT Specification 105S300W except for certain prescribed bracket reinforcing pads, for transportation of a flammable gas (mode 2)
EE 9475-N	DOT-E 9475	Schlumberg Well Services, Rosharon, TX	49 CFR 172.101 column 6(b), 175.320(b), 175.30	To authorize transportation of shaped charges, commercial, aboard cargo aircraft (mode 4)
EE 9476-N	DOT-E 9476	Suffolk Chemical Company, Suffolk, VA.	49 CFR 173.249, 179.200-19	To authorize use of a non-DOT specification tank car which conforms to DOT Specification 111A100W1 except for certain prescribed bracket reinforcing pads, for transportation of a corrosive material (mode 2)
EE 9477-N	DOT-E 9477	Arco Chemical Company, Philadelphia, PA	49 CFR 173.314, 179.100-16	To authorize use of non-DOT specification tank cars which conform to DOT Specification 112J340W, except for certain prescribed bracket reinforcing pads, for tranportation of a flammable gas (mode 2)

WITHDRAWALS

Application No	Applicant	Regulation(s) affected	Nature of exemption thereof
5876-P	BASF Wyandotte Corporation, Parsippany, NJ	49 CFR 173.365, 178.241, Part 107, Appendix B.	To become a party to Exemption 5876 (modes 1, 2, 3, 4).

Denials

9215-N—Request by Orchard Supply Company of Sacramento, Sacramento, CA to authorize use of two non-DOT specification cargo tanks as authorized packagings for transportation of carbon disulfide denied July 15, 1985.

9439-N—Request by Unitek Environmental Service, Inc., Honolulu, HI to authorize shipment of lithium batteries for disposal to be transported by cargo vessel denied July 3, 1985.

EE 9461-N—Request by General American Transportation Corporation, Chicago, IL to authorize use of certain DOT Class 105 and DOT Class 111A tank cars which do not conform to the requirements of 49 CFR 179.100-16 and 179.200-19 denied July 8, 1985.

9465-N—Request by McDonnell Douglas Corporation, St. Louis, MO to authorize certain class B and C explosives in Specification packagings or equivalent, to be shipped over a public road within plant without shipping papers, marking or labeling and in mixed loads denied July 22, 1985.

EE 9472-N—Request by Union Oil Company, Schaumburg, IL to authorize use of certain specification tank cars which do not conform to specific requirements denied July 11, 1985.

9474-N—Request by Hamler Industries, Inc., Chicago Heights, IL to ship and transport anhydrous ammonia in four non-DOT specification ASME Code cargo tank motor vehicles denied July 15, 1985.

Issued in Washington, DC, on September 5, 1985.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-21978 Filed 9-12-85; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 85-156]

Customs Broker Licenses—Revocation of Customs Broker's Licenses No. 4549 and 5522

Notice is hereby given that the Assistant Secretary of the Treasury, on August 26, 1985, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and Part 111 of the Customs Regulations, as amended (19 CFR Part 111), revoked the individual Customs broker's license No. 4549 issued to Allen Robbins, Miami, Florida, for the Customs District of Miami, Florida, and the individual Customs broker's license No. 5522 issued to Stuart Robbins, Coral Gables, Florida, for the Customs District of Miami, Florida. This decision effectively revokes the license of the corporate entity Robbins, Inc., license No. 5390. The decision is effective as of 30 days from the publication date of this notice.

William Von Raab,

Commissioner of Customs.

[FR Doc. 85-21950 Filed 9-12-85; 8:45 am]

BILLING CODE 4820-02-M

[T.D. 85-144]

Recordation of Trade Name; "International Business Machines Corporation"

AGENCY: Customs Service, Treasury.

ACTION: Notice of Recordation.

SUMMARY: On June 26, 1985, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "International Business Machines Corporation" was published in the **Federal Register** (50 FR 26434). The notice advised that before final action was taken on the application, consideration would be given to any relevant data, views or arguments submitted in opposition to the recordation and received not later than August 26, 1985. No responses were received in opposition to the notice.

Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the name "International Business Machines Corporation" is recorded as the trade name used by International Business Machines Corporation, a corporation organized under the laws of the State of New York, located at Old Orchard Road, Armonk, New York 10504. The trademark is used in connection with the following merchandise manufactured in numerous foreign countries: information handling systems and associated component and supplies including data processing equipment; copying machines; printers; word processing; electromechanical office equipment; computers; terminals; input and output devices, computer programs, magnetic tape; magnetic disks; diskettes; modems; books, business forms, typewriter ribbons, educational publications and type fonts.

DATE: September 13, 1985.

FOR FURTHER INFORMATION CONTACT: Beatrice Moore, Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

Dated: September 5, 1985.

Donald W. Lewis,

Director, Entry Procedures and Penalties Division.

[FR Doc. 85-21951 Filed 9-12-85; 8:45 am]

BILLING CODE 4820-02-M

Fiscal Service

[Dept. Circ. 570, 1985 Rev., Supp. No. 2]

Surety Companies Acceptable on Federal Bonds; American Resources Insurance Company, Inc.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the United Sates Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1985 Revision, on page 27108 to reflect this addition:

American Resources Insurance Company, Inc. BUSINESS ADDRESS: P.O. Box 91149, Mobile, Alabama 36691. UNDERWRITING LIMITATION [b]: *$242,000. SURETY LICENSES* [c]: AL, KY, TN. INCORPORATED IN: Alabama. FEDERAL AGENTS [d]:

Certificates of Authority expire on June 30 each year, unless renewed prior to that date or revoked earlier. The certificates are subject to subsequent annual renewal so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to Underwriting Limitations, areas in which licensed to transact surety business and other information.

Copies of the circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Depatment of the Treasury, Washington, DC 20226.

Dated: September 4, 1985.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85-21916 Filed 9-12-85; 8:45 am]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on Wednesday, October 1, 1985 at 10:00 a.m., the Denver Regional Office Station Committee on Educational Allowances shall, in the Adjudication Hearing room, Room 410 of the Denver Veterans Administration Regional Office, 44 Union Blvd., Denver, Colorado, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons enrolled in the Stereo Equipment Salesman Course, offered by Cummings and Associates, 5701 W. 25th Avenue, Edge Water, Colorado, 80214, should be discontinued as provided in 38 CFR 21.4134, because a requirement of the law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: September 6, 1985.

James O'Dell,

Assistant Director.

[FR Doc. 85-21875 Filed 9-12-85; 8:45 am]

BILLING CODE 8320-01-M

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a reinstatement and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 10, 1985.

By direction of the Administrator.

Everett Alvarez Jr.,

Deputy Administrator.

Reinstatement

1. Office of Budget and Finance (Controller)
2. Work-Study Time Record (Veteran-Student Services)
3. VA Form 4-8690
4. On occasion
5. Small business or organizations
6. 40,000 responses
7. 10,000 hours
8. Not applicable

[FR Doc. 85-21939 Filed 9-12-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 50, No. 178

Friday, September 13, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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	Item
Federal Reserve System	1
Tennessee Valley Authority	2

1

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, September 18, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 10, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-21982 Filed 9-10-85; 4:41 pm]

BILLING CODE 6210-01-M

2

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1354]

TIME AND DATE: 10:15 a.m. (EDT), Tuesday, September 17, 1985.

PLACE: North Georgia Electric Membership Cooperation's Auditorium, 1850 Cleveland Road, Dalton, Georgia.

STATUS: Open.

Agenda

Approval of minutes of meeting held on August 29, 1985.

Action Items

A—Budget and financing

A1. Adoption of supplemental resolution authorizing 1985 Series E power bonds.

A2. Resolution authorizing the Chairman and other executive officers to take further action relating to issuance and sale of 1985 Series E power bonds.

A3. Payment from net power proceeds for fiscal year 1985 to the Treasury of the United States.

A4. Short-term borrowing from the U.S. Treasury.

C—Power Items

*C1. Agreement between the Institute of International Education and TVA whereby TVA will conduct an electric utility engineering seminar and internship training course for approximately 20 program participants from underdeveloped countries.

C2. Supplement to Contract No. TV-62313A with the State of Alabama for cooperation in the development and implementation of radiological emergency plans as required by the Nuclear Regulatory Commission and the Federal Emergency Management Agency.

C3. Amendment to Cooperative Agreement No. TV-65580A with Fluor Constructors, Inc., for erection services for the 160-MW Atmospheric Fluidized Bed Combustion Demonstration Plant Project.

D—Personnel Items

D1. Personal services contract with Management Analysis Company, San Diego, California, providing for services to TVA in connection with implementation of the Regulatory Performance Improvement Plan for the Browns Ferry Nuclear Plant, requested by Power and Engineering (Nuclear).

E—Real Property Transactions

E1. Resolution declaring approximately 2.13 acres of TVA land, located in Scott County, Virginia, as surplus and authorizing its sale by Scott County Redevelopment and Housing Authority as agent of TVA—Tract No. SCRHA-12.

E2. Filing of a Condemnation Case.

F—Unclassified

F1. Supplement to Contract No. TV-65944A between TVA and the Board of Trustees of the University of Alabama providing for a cooperative project to further the marketing and development of export markets for wood and wood products grown and produced in the Tennessee Valley and adjoining region.

F2. Contract No. TV-67505A between TVA and National Park Service providing for a mine reclamation and trail maintenance work project in the Big South Fork National River and recreation area.

F3. Supplement to Contract No. TV-63720A between TVA and Bicentennial Volunteers, Incorporated, for the administration of a TVA retiree volunteer program.

F4. Contract No. TV-67693A between TVA and Agency for International Development (AID) providing for TVA technical assistance in support of the AID infrastructure revitalization project in Grenada, West Indies.

F5. Revised TVA code on the Waste Management Community Assistance Program.

* Item approved by individual Board members. This would give formal ratification to the Board's action.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: September, 10 1985.

W.F. Willis,

General Manager.

[FR Doc. 85-22053 Filed 9-11-85; 10:17 am]

BILLING CODE 8120-01-M

Friday
September 13, 1985

Part II

Department of Labor

Employment Standards Administration,
Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modification to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Delaware:		
	DE85–3021	Apr. 19, 1985.
New Jersey:		
	NJ85–3031	Aug. 2, 1985.
	NJ85–3032	July 19, 1985.
North Dakota:		
	ND85–5009	Mar. 1, 1985.
Oklahoma:		
	OK85–4034	Aug. 23, 1985.
	OK85–4035	August 23, 1985.
Pennsylvania:		
	PA85–3012	March 8, 1985.
Rhode Island:		
	RI84–3043	November 30, 1984.
Texas:		
	TX80–4074	September 26, 1980.
	TX85–4019	June 14, 1985.
	TX84–4037	May 25, 1985.
Virginia:		
	VA85–3020	Apr. 6, 1985.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Maryland:	(MD81–3031)	MD85–3052.	May 15, 1981.
Virginia:	(VA82–3034)	VA85–3051.	Dec. 3, 1982

Signed at Washington, DC this 6th day of September 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510–27–M

DECISION NO. ND85-5009 - Mod. #3
(50 FR 8570 - March 1, 1985)
Burleigh, Morton and Ward Counties, North Dakota

	Basic Hourly Rates	Fringe Benefits
Change:		
Ironworkers:		
Structural, Ornamental & Reinforcing	$14.63	$3.16

DECISION NO. DE85-3021
MOD. #3
(50 FR 15693 - April 19, 1985)
Statewide Delaware

	Basic Hourly Rates	Fringe Benefits
ADD:		
LABORERS (Building Construction)		
New Castle County		
Class 1		
add; - Flaggers		
Kent & Sussex Cos.		
Class 1		
add; - Flaggers		
LABORERS (Heavy Const)		
New Castle County		
General Laborers - Flaggers	10.42	3.63
Kent & Sussex Cos.		
Common Laborers, - Flaggers	8.37	3.63

DECISION #OK85-4034-Mod.#1
50FR34360-August 23, 1985
METROPOLITIAN COUNTIES,

	Basic Hourly Rates	Fringe Benefits
CHANGE AREA OF COVERAGE TO READ:		
Canadian, Cleveland, Comanche, Creek, Garfield Logan, McClain, Oklahoma, Osage, Pottawatomie, Rogers, Sequoyah, Tulsa, and Wagoner Counties, Oklahoma.		

DECISION #OK85-4035-Mod.#1
50FR34360-August 23, 1985
RURAL COUNTIES, OKLAHOMA

	Basic Hourly Rates	Fringe Benefits
CHANGE AREA OF COVERAGE TO READ:		
All counties except Canadian, Cleveland, Creek, Comanche, Garfield, Logan, McClain, Oklahoma, Osage, Pottawatomie, Rogers, Sequoyah, Tulsa, and Wagoner, and also, excluding heavy construction within the city limits of Muskogee.		

DECISION NO. PA85-3012
MOD. NO. 5
(50 FR 9568 - March 8, 1985)
Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits
ADD:		
Alarm Installers	$8.15	2.96

DECISION NO. NJ85-3031
MOD. NO. 5
(50 FR 31459 - August 2, 1985)
Bergen, Essex, Hudson (excluding Ellis Island and Statue of Liberty Island), Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union and Warren Counties, New Jersey

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
LABORERS:		
ZONE 1B:		
(Heavy & Highway Const):		
Group 1	$13.20	3.55
Group 2	13.40	3.55
Group 3	13.70	3.55
Group 4	13.90	3.55
Group 5	14.15	3.55
Group 6	15.70	3.55
(Free Air Tunnel Jobs):		
Group 1	15.95	3.55
Group 2	14.25	3.55
Group 3	14.10	3.55
Group 4	13.60	3.55
ADD:		
LABORERS:		
ZONE 1B:		
Heavy & Highway Const:		
Group 1		
Traffic directors & salamander tenders:		
Group 2		
Power Tool Operator:		

DECISION NO. NJ85-3032
MOD. NO. 4
(50 FR 29594 - July 19, 1985)
Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean, and Salem Counties, New Jersey

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
HEAVY & HIGHWAY CONST:		
LABORERS:		
ZONE 1		
Group 1	13.20	3.55
Group 2	13.40	3.55
Group 3	13.70	3.55
Group 4	13.80	3.55
Group 5	14.15	3.55
Group 6	15.70	3.55
ZONE 2		
Group 1	13.20	3.55
Group 2	13.40	3.55
Group 3	13.70	3.55
Group 4	13.90	3.55
Group 5	14.15	3.55
Group 6	15.70	3.55
Free Air Tunnel Jobs:		
Group 1	15.95	3.55
Group 2	14.25	3.55
Group 3	14.10	3.55
Group 4	13.60	3.55

DECISION NO. RI84-3043
MOD. #7
(49 FR 47171 November 30, 1984)
Statewide Rhode Island

	Basic Hourly Rates	Fringe Benefits
ADD:		
LABORERS:		
Heavy, Highway & Tunnel Flagmen & Signal men	10.50	2.80

MODIFICATIONS P. 5

	Basic Hourly Rates	Fringe Benefits
DECISION #TX80-4074-MOD.#1 (45 FR 64058 - 9/26/80)		
HOWARD COUNTY, TEXAS		
CHANGE:		
Electricians	$14.90	$1.60 + 3.10%
DECISION #TX85-4019-MOD.# 3 (50 FR 25006 - 6/14/85)		
JEFFERSON & ORANGE COS., TEXAS		
CHANGE:		
Tile Setters:		
Commercial	$15.39	$2.50
Residential	13.80	2.50
DECISION #TX84-4037-MOD.#6 (49 FR 22191 - 5/25/85)		
Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher, & Wheeler Cos., Texas		
CHANGE:		
Electricians:		
Zone 1:		
Electricians	$14.48	$2.20+ 3.5%
Cable Splicers	15.93	" "
Line Construction:		
Zone 2:		
Lineman	14.48	2.20+ 3.5%
Cable Splicer	15.93	" "
Groundman	9.57	" "
Operator-Hole digger, Line truck	11.15	" "
Flat bed truck driver	8.40	" "
Sprinkler Fitters	16.66	3.40

	Basic Hourly Rates	Fringe Benefits
DECISION NO. VA85-3020-MOD. #5 (50 FR 13706-April 6,1985		
HENRICO and the Independent City of RICHMOND		
DELETE:		
IRONWORKERS - Structural Reinforcing and Ornamental	13.75	2.40
ADD:		
IRONWORKERS:		
Power Houses, Pulp Mill Work and Buildings constructed with structural steel and having elevators		
Structural, Reinforcing and Ornamental	13.75	2.42
All Other Work		
Structural, Reinforcing and Ornamental	11.25	2.42
CHANGE:		
LABORERS:		
Laborers	6.75	.71
TO READ:		
Laborers (not listed below)	8.15	.71
POWER EQUIPMENT OPERATORS		
Group 1	13.30	1.875
Group 2	10.64	1.875
Group 3	8.65	1.875
Group 4	8.38	1.875
Group 5	8.25	1.875

(5)

SUPERSEDEAS DECISION

STATE: MARYLAND COUNTIES: ALLEGANY AND GARRETT

DECISION NO.: MD85-3052 DATE: DATE OF PUBLICATION

Supersedes Decision No. MD81-3031 dated May 15, 1981 in 46 FR 27051

DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	15.88	5.29
BOILERMAKERS	17.675	2.915
BRICKLAYERS, MARBLE MASONS STONE MASONS, TERRAZZO WORKERS, & TILE SETTERS	15.34	1.55
CARPENTERS	14.41	3.74
CEMENT MASONS & PLASTERERS	16.43	1.50
ELECTRICIANS:		
Allegany & Garrett (East of Rt. 219 at the Lake)	15.00	3.50+ 3.75%
Garrett County (West of Rt. 219 at the Lake)	15.40	3.50+ 3.75%
ELEVATOR CONSTRUCTORS:		
Elevator Constructors	12.925	2.33+ a&b
Elevator Constructors' Helpers	9.048	2.33+ a&b
Elevator Constructors' Probationary Helpers	6.463	
GLAZIERS	13.44	3.98
IRONWORKERS:		
Structural, Ornamental, & Reinforcing	15.60	3.55
LABORERS:		
Water Boy	10.33	3.50
Laborer, landscape worker, tool checker, dumpman, spotter, handyman	10.61	3.50
Power tool operator, mason & plaster tender, mortar mixer by hand, scaffold builder, mortar mixer by machine hod carrier, concrete puddler, rammer, grade checker, tamper, pipelayer, asbestos worker, burner, large wacker	10.78	3.50

	Basic Hourly Rates	Fringe Benefits
Blaster/dynamite, air track driller, diamond bit driller	11.03	3.50
Tunnel workers: caisson, driller, mucker, laborer	11.63	3.50
Gunnite workers: nozzlemen, gun operator, laborer on scaffold, laborer on ground	10.78	3.50
LATHERS	9.25	.36
LINEMEN-Allegany and Garrett (East of Rt.219)		
Linemen	14.20	2.20+ 3.75%
Equipment Operator	13.49	2.20+ 3.75%
Truck Driver & Groundmen	9.23	2.20+ 3.75%
LINEMEN-Garrett County (West of Rt. 219)		
Linemen	14.60	2.20+ 3.75%
Equipment Operator	13.89	2.20+ 3.75%
Truck Driver & Groundmen	9.63	2.20+ 3.75%
PAINTERS:		
Brush, rollers, wall covering hangers, and installation of seamless type floors	10.45	.50
Spray, sandblasting and use of flame burning and power tools	11.45	.50
Toxic materials-brush and roller	10.95	.50
Toxic materials-spray	11.95	.50
PILEDRIVERMEN	14.84	3.74
PLUMBERS & STEAMFITTERS	15.10	3.23

(6)

DECISION NO.: MD85-3052

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Group I	15.88	3.30
Hourly additional pay for long boom cranes (including jibs), pile driver machines with leads:		
130' to 169' plus	$ .40	
170' to 209' plus	.60	
210' to 249' plus	.80	
250' to 299' plus	1.00	
300' & over plus	1.25	
Group II	15.31	3.30
Group III	14.72	3.30
Group IV	14.25	3.30
Group V	13.74	3.30
Group VI	13.26	3.30
ROOFERS:		
Composition	12.35	1.15
Mopmen-composition	12.60	1.15
Slaters	12.55	1.15
SHEET METAL WORKERS	15.24	.48
SPRINKLER FITTERS	16.90	2.40

TRUCK DRIVERS:	Basic Hourly Rates	Fringe Benefits
Group I	[illegible]	[illegible]
Group II	[illegible]	[illegible]
Group III	[illegible]	[illegible]
Group IV	[illegible]	[illegible]
Group V	[illegible]	[illegible]
Group VI	[illegible]	[illegible]
Group VII	[illegible]	[illegible]

Footnotes:

a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

b. Employer contributes 4% of basic hourly rate for 5 years of service or more and 2% of basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

DECISION NO.: MD85-3052

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

Group I - Operators handling or setting steel, stone, pre-stressed concrete or machine. Tower Cranes.

Group II - Backfiller, backhoe, concrete mixing plants, batching plants, cable way, derrick, derrick boat, dragline, elevating grader, compressors (2 or more), space heaters, hoist (2 active drums or more), pile driving machine, power crane, power shovel, standard guage locomotive, trenching machine, tunnel mucking machine, shirley rig, certified welders, concrete paver, double concrete pump, front end loader (over 2 yds.), over welders top scale (more than 6, another man), Elimco type overhead loader, wellpoint systems, mighty midget with compressor, equipment foreman, twin engine scraper (25 yds. & over), mechanic, mechanic's welder, grader, all bulldozer, tire maintenance trucks.

Group III - Tractor with attachments (2 or more).

Group IV - Concrete mixer, concrete pump, one drum hoist, narrow guage locomotive, power roller, asphalt spreader, pumps (not exceeding 4), well drill, engine driven welders (not exceeding 4), single compressors (over 210 CFM), steam hammer, pile extractor, conveyor, stone crusher, hi-lift, excavating scoop, front end loader (up to & including 2 yds.), finishing machine, bull float, longitudinal float, screeding machine, concrete spreader, sub grader.

Group V - Fireman, truck crane oiler, wheel tractor, grease truck operator.

Group VI - Oiler, greaser, mechanic's helper, (singe compressor over 180 CFM and up to 210 CFM).

TRUCK DRIVER CLASSIFICATIONS

Group I - Dumpmen.

Group II - Pick-ups, dump trucks (under 5 yds., capacity), straight trucks.

Group III - Helpers, panel trucks, straight trucks with multiple axle, dumpsters (under 5 yds. capacity), Transit mix, dumps (5 to 9 yds. capacity), flatbody material trucks (straight jobs), greasers, tiremen, mechanics' helpers, rubber-tired (towing & pushing flatbody vehicles), form trucks, dispatcher, yardmen.

Group IV - Dump trucks (10 to 15 yds. capacity).

Group V - Dump trucks (over 15 yds. capacity), button and end dump euclids, all other euclid type trucks, turnarockers, ross carriers, athey wagons, mechanics, semi-trailers or tractor-trailers, low boys, asphalt distributors, agitator mixer, dumpcretes or batch trucks, specialized earth moving equipment, off-highway tandem back-dump, twin engine equipment & double hitched equipment (where not self-loaded).

Group VI - All equipment listed in Group V over 49 tons to 59 tons.

Group VII - All equipment listed in Group V over 59 tons.

I I Virginia I Cities of Chesapeake, Portsmouth & Virginia Beach

DECISION NO.: VA85-3051
Supersedes Decision No. VA82-3011dated December 3, 1982 in 47 FR 54746
DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including 4 stories).

NOTE: Date of Publication

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	[illegible]	[illegible]
BOILERMAKERS	[illegible]	[illegible]
BRICKLAYERS & STONE MASONS	13.08	[illegible]
CARPENTERS, LATHERS AND SOFT FLOOR LAYERS	[illegible]	[illegible]
CEMENT MASONS:		
Cement Masons	[illegible]	.4[illegible]
Machine & Scaffold Men	[illegible]	.4[illegible]
ELECTRICIANS AND CABLE SPLICERS	[illegible]	[illegible]
ELEVATOR CONSTRUCTORS	[illegible]	[illegible]
ELEVATOR CONSTRUCTORS HELPERS	5.29	[illegible]
ELEVATOR CONSTRUCTORS PROBATIONARY HELPERS	5.42	
GLAZIERS	[illegible]	[illegible]
IRONWORKERS:		
Reinforcing, Ornamental, Structural, Riggers, Fence Erectors, Machinery Movers	[illegible]	2.95
LABORERS:		
Laborers(not listed below)	8.15	.71
Tenders, Motorized Georgia Buggy Operators, Nozzlemen (gunnite or sandblasting), Concrete Saw Operators, Air Tool and Vibrator Operators	8.25	[illegible]
Mortar Mixers, Hod Carriers, Pipelayers, Caulkers, Tile, Terrazzo and Marble Setter Helper	8.40	.71
Burners (wrecking)	8.50	.71
Floor, Base & Terrazzo Grinders	8.55	.71
Wagon Drill and Air Tract	8.65	.71
Powdermen	8.90	.71
LEAD BURNERS	10.75	.66+ c
LINE CONSTRUCTION:		
Linemen and Cable Splicer	13.45	9%+.60
MARBLE SETTERS	12.15	1.20
MILLWRIGHTS	15.95	1.61
PAINTERS:		
Brush and Roller	11.50	.70
Structural Steel from ground to 74 feet	12.00	.70
Spray, Paperhangers and Tapers	11.85	.70
Any work over 74 feet from the ground	12.80	.70
Bituminous Coating and Hot Cresote	13.15	.70
Swing State under 40 ft. Rollers with 6 ft. handles and over, epoxy brushed or rolled	[illegible]	.70
Swing Stage over 40 ft.	[illegible]	.70
Epoxy, sprayed	[illegible]	.70
Sandblasting	[illegible]	.70
PILEDRIVERMEN AND DOCK-BUILDERS	[illegible]	1.80
PLASTERS	[illegible]	.40
PLUMBERS & STEAMFITTERS	[illegible]	2.30
ROOFERS COMPOSITION	6.50	
ROOFERS HELPERS (Tearing off old roofing, carrying materials & clean-up)	6.50	
SHEET METAL WORKERS	14.30	2.055
SOUND & SIGNAL INSTALLER	5.00	
SPRINKLER FITTERS	13.87	3.40
TERRAZZO & TILE WORKERS	14.15	1.20
POWER EQUIPMENT OPERATORS		
Group 1	14.30	1.875
Group 2	13.64	1.875
Group 3	13.65	1.875
Group 4	13.38	1.875
Group 5	8.25	1.875

(9)

DECISION NO. VA85-305.

WELDERS - Receive rate prescribed for craft performing operation for which welding is incidental.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Workmen shall be allowed 2 hours with pay at the start or at the end of the work day on State and National Election days: Tuesday following the first Monday in November, provided they are qualified to and vote.

b. Employer contributes 3% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years service as vacation pay credit.

c. Holidays: A through F; Washington's Birthday, Good Friday and Christmas Eve provided the employee has worked 30 full days during the 90 calendar days prior to the holiday and the regular scheduled work days immediately preceeding and following the holiday.

POWER EQUIPMENT OPERATOR CLASSIFICATIONS:

Group 1 - Tunnel machine, cranes, derricks, pile drivers, pavers, two or more drum hoist, finish motor grader, mechanic, batch plant, gradall, quad, cableway.

Group 2 - Tractors with attachments, combination front end loader and backhoe, front end loader, rubber tired scraper and pans, rough motor grader, 20-ton locomotive, bulldozers, pump crete, trenching machine, mixer larger than 16 S, fort lift.

Group 3 - Compressor over 125 cu. ft., bottom and end dumps, tractors without attachments, 1 drum hoist, rollers, welding machines (gas or diesel), locomotive under 20-tons, power plant, generator (1200 KW or larger), pumps (over 2 inches, including wellpoints), A-frame trucks, mechanic's helper.

Group 4 - Firemen

Group 5 - Oilers

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

(10)

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Federal Register

Friday
September 13, 1985

Part III

Department of Agriculture

Competitive Research Grants Program for Fiscal Year 1986; Solicitation of Applications for Competitive Research Grants Program; Notice

DEPARTMENT OF AGRICULTURE

Office of Grants and Program Systems

Competitive Research Grants Program for Fiscal Year 1986; Solication of Applications for Competitive Research Grants Program

Applications are invited for competitive grant awards under the Competitive Research Grants Program for Fiscal Year 1986.

The authority for this program is contained in section 2(b) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(b)). Under this program, subject to the availability of funds, the Secretary may award competitive research grants, for periods not to exceed five years, for the support of research projects to further the programs of the Department of Agriculture. Proposals may be submitted by any State agricultural experiment station, college, university, other research institution or ogranization, Federal agency, private organization, corporation or individual. Proposals from scientists at non-United States organizations will not be considered for support.

Applicable Regulations

Regulations applicable to this program include the following: (a) The regulation governing the Competitive Research Grants Program, 7 CFR Part 3200 (49 FR 5570, February 13, 1984, as amended by 50 FR 5499, February 8, 1985), which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and awarding of grants, and regulations relating to the post-award administration of grant projects; and (b) the USDA Uniform Federal Assistance Regulations, 7 CFR Part 3015.

Specific Research Areas To Be Supported in Fiscal Year 1986

Standard grants and a small number of continuation grants will be awarded to support basic research in selected areas of plant science, human nutrition, biotechnology, animal science, insect pest science, acid precipitation, soybean research, and alcohol fuels research.

The research areas of plant and animal science and human nutrition have been considered by a number of scientific groups to possess exceptional opportunity for fundamental scientific discovery and for contributing, in the long run, to applied research and development vitally needed on high-priority food and nutrition problems.

The major initiative in biotechnological research is designed to provide opportunities to address research problems in all areas of agricultural science including plants, animals, forestry, and microoganisms associated with these biota. It is anticipated that this research will advance the Nation's competitive advantages in the food, feed, fiber and natural resource processes broadly. Ultimately, this information will be useful for advancing the understanding of key agriculturally important phenomena. Consideration will be given to research proposals which address fundamental questions in the areas noted below and which are consistent with the long-range agricultural needs of the Nation. While basic guidelines are provided to assist members of the scientific community in assessing their interest in the program areas and to delineate certain important areas where new information is vitally needed, the guidelines are not meant to provide boundaries or to detract from the creativity of potential investigators. USDA encourages the submission of innovative projects in the so-called "high-risk" category as well as those which may have a more certain payoff potential. In all instances, innovative new research will be given high priority.

Workshops or symposia that bring together scientists to identify research needs, update information, or advance an area of research are recognized as an integral part of research efforts. Support for a limited number of such meetings covering subject matter encompassed by this Competitive Research Grants solicitation will be considered for partial or, if modest, complete support.

The following specific research areas (program areas) and guidelines are thus provided as a base from which proposals may be developed:

1.0 *Plant Science.*

1.1 and 1.2 *Biological Stress on Plants.* Plants are exposed to many stresses that may adversely affect their productivity and usefulness to man. This program area will support research on stresses on plants arising from their interactions with other plants or with other biological agents such as weeds, insects, nematodes, fungi, bacteria, viruses, and mycoplasma-like organisms. The ultimate goal of the reseach supported in this area is to reduce losses in plant productivity from damage caused by biologically generated stresses. This program area will emphasize studies that enhance our understanding of (a) how stressful interactions are established between plants and other biological agents, (b) how plants react to stresses generated by interactions with biological agents, and (c) how damage from such interactions may be reduced or eliminated. The interactions may be studied at any number of levels (i.e., population, organismal, cellular and molecular) and by various approaches including genetics, molecular biology, and biochemistry. These may include studies on plants separated from stress-causing organisms or on stress-causing organisms separated from their target plants. However, proposals should indicate how the anticipated information will be relevant to the understanding of the causes, consequences, and avoidance of biologically generated stresses on plants. The research supported in this program area will focus on the identification of new approaches that will be both effective and compatible with social and environmental concerns.

To expedite processing and review of the large number of proposals submitted in the broad subject area of Biological Stress on Plants, proposals will be evaluated under two subprogram areas:

1.1 *Plant Pathology/Weed Science,* and

1.2 *Entomology/Nematology,* each of which will have a separate deadline for submission of proposals.

Within the guidelines described above, the Plant Pathology/Weed Science subprogram area will consider all proposals for research addressing plant pathogens or weeds affecting plant stress. In the subprogram area there will be only one deadline date for proposals dealing with weed science. The Entomology/Nematology subprogram area will consider all proposals for research addressing arthropods or nematodes stressing the plant.

1.3 *Genetic Mechanisms for Crop Improvement.* The goal of this program area is to encourage new and innovative approaches for the development of genetically superior varieties of agricultural crops. Proposals should be directed toward obtaining novel genetic combinations or gene modifications that cannot be achieved by using conventional plant breeding techniques. Studies addressing the basic cellular and genetic processes which contribute new information required for the development of novel approaches to crop improvement will be given high priority. This program area will emphasize the following but will not exclude other new or unusual approaches to crop improvement: (a) Acquisition of basic information on the structure, function, and expression of plant nuclear and organellar genes; (b) cell and tissue culture studies designed to increase our knowledge of the basic molecular, biochemical, and cellular

processes involved in regenerating whole plants from single cells; (c) development of cellular and molecular methods for identifying plant characteristics or genes which are important targets for genetic manipulation; (d) development of molecular and cellular methods for crop improvement using gene transfer or genetic engineering technology; (e) development of new methods for producing, selecting, and transferring agronomically important qualitative and quantitative traits; and (f) basic genetic studies on the alteration and utilization of unadapted and wild germplasm.

1.4 *Biological Nitrogen Fixation.* The most common limiting nutrient for plant growth is nitrogen. The presence of soil nitrogen is due to past accretions in nature, biological nitrogen fixation, or the application of nitrogenous fertilizer. The latter represents a significant energy input in cropping and ultimately increases food costs. Thus, the enhancement of biological nitrogen fixation capacity in plant-soil microbial associations is of major importance. Research aimed at understanding nitrogen-fixing mechanisms and related nitrogen metabolism in both symbiotic and free-living organisms as well as the fate of fixed nitrogen is of high priority.

In general, the objectives in this program area include building a foundation of basic information concerning nitrogen fixation as it relates to enhancing the process in currently known systems and in providing a base for developing new nitrogen-fixing associations, by genetic transfer or other means, for crop species not now possessing such capability. Moreover, the process of nitrification, the assimilation and utilization of ammonia and nitrate, and denitrification all play important roles in plant growth. Soil nitrogen, whether supplied by biological nitrogen fixation or as a chemical fertilizer, serves to increase food production only when it is present in an available form.

Examples of research encompassed in this program area include: (a) Structure and mechanism of action nitrogenase; the regulation of nitrogenase activity and synthesis; the relationship between nitrogenase and hydrogenase activities in nitrogen-fixing organisms; (b) energetics of the nitrogen fixation process including competitive processes within the plant; (c) infection by Rhizobium and conditions for effective nodulation; basis of the recognition process between symbiotic organisms; factors controlling symbiont specificity; competition in the soil; (d) study of the nitrogen-fixing capabilities of Actinomycetes, Azospirillum spp., Cyanobacteria, and other organisms potentially important in supplying nitrogen needs of plants; (e) relation between the fixation process and the processes of assimilation, nitrification, and denitrification; (f) the development of methods for the *in situ* measurement of nitrification and denitrification, and determination of the actual extent of these processes in nature; (g) an analysis of the distribution of denitrifying and nitrifying bacteria and elucidation of control mechanisms operating on nitrogen transformations in the major species; (h) studies of the metabolism of fixed nitrogen including the enzymes involved in the assimilation and dissimilation of fixed nitrogen in bacteria and crop plants and the partitioning of fixed nitrogen into various gene products or plant organs; and (i) the efficiency of nitrogen utilization by crop plants in the production of food proteins.

Emphasis in program priorities will be on innovative approaches which may contribute to a more thorough understanding of nitrogen cycling encompassing biochemistry, cellular and developmental biology, genetics and genetic manipulation, and other relevant life science disciplines. An understanding of these processes is essential to the development of strategies which maximize nitrogen fixation, minimize inputs of nitrogenous fertilizers, and optimize their utilization in agriculture.

1.5 *Photosynthesis.* Photosynthetic efficiency is an important factor in crop productivity. Basic research which provides information of limiting processes of photosynthesis and associated carbon metabolism will lead to a greater understanding of those factors which affect the ability of the plant to produce a usable product.

Research is needed in the following major subareas: (a) Aspects of photosynthetic energy conversion, including such areas as early events in photon capture by photosynthetic systems and the mechanisms of charge separation, the structure and function of photosynthetic membranes and membrane constituents, and the associated chemical and physical reactions; (b) photosynthetic carbon assimilation including CO_2 fixation, biochemistry and molecular biology of photosynthetic and related biosynthetic pathways, photorespiration, and aspects of cellular metabolism regulating these reactions; (c) control of photosynthate partitioning, translocation and utilization; (d) factors controlling development and senescence of the photosynthetic apparatus; (e) genetic and cellular manipulation to improve photosynthetic efficiency in plants including studies of the chloroplast genome, of nuclear genes regulating photosynthesis and related processes, and analysis of regulatory steps controlling both nuclear and extranuclear gene expression and their interactions; and (f) the photosynthetic process in leaves, whole plants, and canopies, including but not limited to involvement of the stomatal apparatus.

Other research designed to generate new information leading to a basic understanding of photosynthesis and its accompanying processes may also be considered a part of this program.

2.0 *Human Nutrition.* Proposals are invited in the area of human requirements for nutrients. Support will not be provided for clinical research, demonstration or action projects, nor for surveys of the nutritional status of population groups.

Research in the program area is intended to contribute to the improvement of human nutritional status by increasing our understanding of requirements for nutrients. The objective is to support basic creative research that will help to fill gaps in our knowledge about nutrient requirements, bioavailability, the interrelationships of nutrients, and the nutritional value of foods that are consumed in the U.S. and of the nutrient condition of healthy individuals, as all of these relate to human nutrient requirements. Special attention will be given to applications involving innovative approaches designed to improve methods of research and investigation that will increase the reliability and validity of data concerned with the quantitative evaluation of nutrient requirements and nutrient condition. The use of animals as model systems should be justified.

Proposals dealing with processing techniques in food technology should be clearly oriented toward determination of human nutrient requirements. Proposals which concern utilization or production of a food commodity should emphasize the relationship to specific human nutrient requirements. It is especially important that proposals emphasize innovative (creative), fundmental (basic) research.

3.0 *Biotechnology.* Any agriculturally important organism(s) may be used to accomplish the objectives of this program area. However, the use of experimental model systems should be justified relative to the objectives of this research area. In all instances, innovative new research will be given high priority.

3.1 *Molecular Biology.* One of the major limiting factors for the application of biotechnology to agriculture is the lack of basic information about genes. The primary objective of this category is to increase our understanding of the structure, function, regulation, and expression of genes of plant, animal, and their associated microbial systems.

This subprogram area will emphasize the following categories of research: (a) Identification, isolation and characterization of genes and gene products, (b) relationships between gene structure and function, (c) regulatory mechanisms of gene expression, (d) interactions between nuclear and organellar genes, and between extrachromosomal and chromosomal genes, (e) mechanisms of gene recombination and transposition, and (f) molecular basis of chromosomal replication, (g) mechanisms of interaction with beneficial or deleterious microorganisms.

3.2 *Molecular and Cellular Mechanisms of Growth and Development.* Suboptimal growth and development are limiting factors in animal and plant productivity. Yet, a basic understanding of the developmental processes in agriculturally important animals and plants is largely lacking. New experimental approaches are being developed through advances in molecular and cell biology. The goal of this subprogram area is to encourage the use of emerging techniques for the investigation of the developmental processes.

This research area will place emphasis on, but not be limited to, studies of (a) cellular and molecular mechanisms controlling growth and developmental processes, including reproduction, differentiation, and senescence, and (b) metabolic processes related to growth and development. Projects designed to identify molecular, cellular and organismal targets for genome manipulation are also encouraged.

3.3 *Genetic and Molecular Mechanisms Controlling Responses to Physical and Biological Stress.* Biological and physical stresses prevent the expression of the full genetic potential of an organism's productivity and set limits on where and when it thrives. A major goal of this subprogram area is to understand the molecular basis for the organism's interaction with these stresses and to identify which genetic systems causing these responses can be manipulated by techniques in biotechnology. Research on plants, animals, or their associated microorganisms should emphasize: (a) Identification, isolation, transfer, and expression of genes that are regulated by, or involved in, stresses; (b) physiological-genetic and biochemical-genetic analyses of identified genes or genomic segments that are likely to affect performance under stress; (c) molecular mechanisms underlying coordination of organismal responses to stress; (d) fundamental mechanisms of stress responses, injury, tolerance, and avoidance at the molecular, cellular, and organismal level; and (e) laboratory and field investigation on the physiology of the organism that contribute to an understanding of the causes, consequences and avoidance of stresses, rather than simply describing the effects of stress. Proposals in the Response to Stress-Animal program will be reviewed and evaluated in the Animal Molecular Biology or Growth and Development panels. Response to Stress proposals have deadline dates in accordance with the appropriate panels.

4.0 *Animal Science.* Suboptimal reproductive performance in domestic farm animals is the major factor limiting more efficient production of animal food products. This failure to achieve maximal reproductive efficiency is due to problems related to puberty, ovulation, corpus luteum formation and function, insemination, fertilization, prenatal death and poor survival of offspring.

The economic loss to the producer and increased costs of animal food products to the consumer due to inefficient reproductive performance makes the requirement for new knowledge in these areas a high priority. Although the exact needs may vary from species to species and region to region, there are areas where additional fundamental research is crucial.

4.1 *Brucellosis.* This subprogram area will support research at the cellular, molecular, and genetic levels that will (a) define the mechanisms by which *Brucella abortus* induces disease in cattle and (b) defines the basis of the bovine interactive response with B. *abortus* that results in protective immunity. Proposals are also encouraged which, through molecular biological analyses, identify and produce (a) antigens to differentiate non-infected, vaccinated, and the *B. abortus*-infected cattle, and (b) immunogens to stimulate long-lived protective immunity in cattle.

4.2 *Reproductive Physiology.* This subprogram area will support innovative research in the following categories: (a) Mechanisms affecting embryo survival, endocrinological control of embryo development, mechanisms of embryomaternal interactions, and embryo implantation; (b) gamete physiology, primarily gametogenesis including maturation processes, follicle growth ovulation, corpus luteum formation and function, and superovulation; fundamental processes of fertilization, mechanisms regulating gamete survival *in vivo* and *in vitro*, and basic questions regarding gamete transport; and (c) fundamental questions addressing parturition, postpartum interval to conception, and neonatal survival.

Emphasis will be on innovative approaches which may contribute to a thorough understanding of the reproductive processes in agriculturally important food and fiber-producing animals. The use of experimental model systems should be justified relative to the objectives of this research.

Proposals on the development of methods for *in vitro* manipulation and preservation of animal gametes and embryos will be considered, but overall objectives of such studies should be related to the development of fundamental knowledge in one or both of the foregoing areas.

5.0 *Insect Pest Science.* Uncontrolled insect pests are a major factor in reducing crop and forest productivity. Before successful strategies for managing insect pests can be developed, a strong basic insect biology research effort is needed. This program area, restricted to the insect pests listed below, will support research on behavioral physiology; chemical ecology; insect-host interaction; endocrinology; population dynamics; behavioral ecology; insect pathogens, parasites and predators; and epidemiology of beetle-borne pathogens. Proposals bringing a blend of approaches to a specific problem are encouraged.

The Insect Pest Science program will support studies on the following:

5.1, boll weevil/bollworm;
5.2, pine bark beetle; and
5.3 gypsy moth.

6.0 *Acid Precipitation.* Largely single-factor research on above-ground plant tissues has not provided clear evidence of reductions in plant growth or yield following exposure to acid precipitation. There is a need to take advantage of knowledge gained thus far and recognize that the problem is far more complex than initially projected. New research must reflect that complexity. More emphasis should be placed on multiple-factor studies that deal with both direct and indirect effects.

Priority will be given to research projects directly addressing the effects

of acid precipitation on economically important plants, including trees, and associated microorganisms.

These grant funds will continue to be administered as a contribution of USDA to the National (Federal) Acid Precipitation Assessment Program (NAPAP). In the regard, plans for use of these funds are coordinated with research underway or planned by the U.S. Environmental Protection Agency, the Electric Power Research Institute and other organizations working within or in coordination with the NAPAP. This coordination is mandated by the NAPAP to ensure complementarity and to avoid unnecessary duplication.

The research areas encouraged are not in order of priority for funding consideration. Proposals dealing with agricultural crops and forests will be considered.

1. Interactive effects of acidic rain with other atmospheric pollutants on plant productivity and quality.

2. Effects of excess hydrogen, nitrogen and sulfur on heavy metal mobilization and other soil processes.

3. Predisposition of plants to secondary effects (e.g., pathogens, insects, climate) as a result of acid deposition.

4. Mechanisms of response to acid deposition in plant species in which negative effects have been documented.

7.0 *Soybean Research.* The overall goal of this area program is to support long-term, basic biological research on soybeans that can generate new ideas, new knowledge, and innovative technologies which ultimately will contribute to increased productivity of the soybean crop. Interdisciplinary approaches are encouraged. This program area emphasizes research projects that are designed to: (a) Enhance the fundamental understanding of physiology and biochemistry of the soybean, and (b) develop innovative genetic and breeding strategies for enhanced soybean germplasm.

Proposals in this category will be reviewed and evaluated under the appropriate panels noted below. Soybean research proposals have deadline dates in accordance with the appropriate panels.

8.0 *Alcohol Fuels Research.* Proposals will be considered for research relating to the physiological, microbiological, biochemical and genetic processing controlling the biological conversion of agriculturally important biomass material to alcohol fuels and industrial hydrocarbons. Studies on factors which limit efficiency of biological production of alcohol fuels and means of overcoming these limitations will be within the scope of this program area.

How To Obtain Application Materials

Please note that potential applicants who were on the Competitive Research Grants mailing list for 1985, or who recently requested placement on the list for 1986, will automatically receive copies of this solicitation, the "Research Grant Application Kit," and the regulations governing the Competitive Research Grants Program, 7 CFR 3200 (49 FR 5570, February 13, 1984, as amended). All others may request copies from: Grants Administrative Management, Attention: Proposal Services Unit, Office of Grants and Program Systems, U.S. Department of Agriculture, Room 007, J. S. Morrill Building, 15th and Independence Avenue, SW., Washington, D.C. 20251. Telephone: (202) 475–5049.

What To Submit

An original and 14 copies of each proposal submitted are requested. This number of copies is necessary to permit thorough, objective peer evaluation of all proposals received before funding decisions are made.

Each copy of the proposal must include a Form S&E–661, "Grant Application," which is included in the "Research Grant Application Kit." Proposers should note that one copy of this form, preferably the original, must contain pen and ink signatures of the principal investigator(s) and the authorized organizational representative.

Each project description is expected by the members of review committees and the staff to be complete in itself. It should be noted that the reviewers are not required to read beyond 15 pages of the project description to evaluate the proposal. It would be helpful for the reviewers if the Principal Investigator(s) vitaes were limited to three (3) or four (4) pages.

All copies of a proposal must be mailed in one package. Due to the volume of proposals received, proposals submitted in several packages are very difficult to identify. Also, please see that each copy of each proposal is stapled securely in the upper left-hand corner. DO NOT BEND. Information should be typed on one side of the page only. Every effort should be made to ensure that the proposal contains all pertinent information when initially submitted. Prior to mailing, compare your proposal with the Application Requirements checklist contained in the "Research Grant Application Kit" and instructions contained in the regulations governing the Competitive Research Grants Program, 7 CFR Part 3200.

Applicants should not submit the same research proposal twice in the same fiscal year to different research program area categories within the Competitive Research Grants Program. Duplicate proposals will be returned without review.

Where and When To Submit Grant Application

Proposals submitted to the research program areas in this notice (e.g., 3.1 Molecular Biology) will be assigned by the Competitive Research Grants Office staff to the most appropriate peer review panel listed below. If necessary, further information may be obtained from the appropriate Associate Program Manager at the telephone numbers given below. Each research grant application must be submitted within the time limits listed below to: Grants Administrative Management, Attention: Competitive Research Grants Program, Office of Grants and Program Systems, U.S. Department of Agriculture, Room 007, J. S. Morrill Building, 15th and Independence Avenue SW., Washington, D.C. 20251. To be considered by the appropriate peer review panel for funding during Fiscal Year 1986 the proposals should be postmarked by the following dates:

Postmark date	Peer review panel	Contacts
November 4	Plant Genetics and Molecular Biology	475–5042
	Entomology and Nematology	475–5022
	Human Nutrition	475–5034
	Animal Growth and Development	475–3399
November 12	Photosynthesis	475–5030
	Plant Pathology and Weeds	475–5022
January 13	Plant Growth and Development	475–5042
February 10	Animal Science	475–5034
	Alcohol Fuels	475–5026
February 17	Nitrogen Fixation	475–5030
	Animal Molecular Biology and Brucellosis	475–3399
February 24	Insect Pest Science	475–5022
	Environmental Stress on Plants	475–5038
	Acid Precipitation	475–5038
March 3	Plant Pathology	475–5022
	Plant Genetics and Molecular Biology	475–5042

Proposals in the following areas may be submitted for either of two deadlines within the respective areas: (1) Plant Genetics and Molecular Biology—November 4, 1985 or March 3, 1986; (2) Plant Pathology—November 12, 1985 or March 3, 1986. Proposals within each area that are received *after* the first deadline will be held for the second deadline. Proposals within each area that are received *by* the first deadline and rated highly meritorious but not funded initially may be funded after the second deadline. These proposals will

not, however, be re-evaluated. It is anticipated that the majority of funding decisions for proposals received for the first deadline will be made at that time.

Special Instructions

The Competitive Research Grants Program should be indicated in Block 7 and the applicable program area and subprogram area (specific area of inquiry) should be indicated in Block 8 of Form S&E–661 provided in the Research Grant Application Kit. *Select one program area only.* The number assigned to the specific area of inquiry must also be cited in Block 8 of Form S&E–661. (Example: Biotechnology-Responses to Physical and Biological Stress 3.3). The final determination of the program and subprogram areas will be made by the program staff and/or appropriate peer panel. The code numbers assigned to program areas and subprogram areas are listed below:

1.0 Plant Science (Use *appropriate* subprogram area #1.1 through 1.5)
1.1 Biological Stress on Plants—Plant Pathology and Weeds
1.2 Biological Stress on Plants—Entomology and Nematology
1.3 Genetic Mechanisms for Crop Improvement
1.4 Biological Nitrogen Fixation
1.5 Photosynethesis
2.0 Human Requirements for Nutrients
3.0 Biotechnology (Use *appropriate* subprogram area #3.1 through 3.3)
3.1 Molecular Biology (Gene Structure)
3.2 Molecular and Cellular Mechanisms of Growth and Development
3.3 Responses to Stress
4.0 Animal Science (Use *appropriate* subprogram area #4.1 or 4.2)
4.1 Brucellosis
4.2 Reproductive Physiology
5.0 Insect Pest Science (Use *appropriate* subprogram area #5.1 through 5.3)
5.1 Boll weevil/Bollworm
5.2 Pine Bark Beetle
5.3 Gypsy Moth
6.0 Acid Precipitation
7.0 Soybean Research
8.0 Alcohol Fuels Research

Supplementary Information

The Competitive Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10206. For reasons set forth in the Final rule related Notice to 7 CRF Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consulation with State and local officials.

Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)), the collection of information requirements contained in this notice have been approved under OMB Document No. 0525–0001.

The award of any grants under the Competitive Research Grants Program during FY 1986 is subject to the availability of funds.

Done at Washington, D.C. this 9th day of September 1985.

Clare I. Harris,

Acting Administrator, Office of Grants and Program Systems.

[FR Doc. 85–21968 Filed 9–12–85; 8:45 am]
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federal register

Friday
September 13, 1985

Part IV

Environmental Protection Agency

40 CFR Part 50

Review of the National Ambient Air Quality Standards for Carbon Monoxide; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[AD-FRL-2866-6]

Review of the National Ambient Air Quality Standards for Carbon Monoxide

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In 1971, identical primary and secondary national ambient air quality standards (NAAQS) for carbon monoxide (CO) were promulgated at levels of 9 parts per million (ppm), 8-hour average, and 35 ppm, 1-hour average, neither to be exceeded more than once per year (36 FR 8186). In accordance with sections 108 and 109 of the Clean Air Act, EPA has reviewed and revised the criteria upon which the existing NAAQS for CO are based, and has reviewed those standards to determine if revisions to the standards are appropriate. On August 18, 1980, EPA proposed certain changes in the standards based on the scientific knowledge reported in the revised criteria document for CO (45 FR 55066). Today's notice announces EPA's decision not to revise the existing primary (health) standards at this time and revokes the secondary (welfare) NAAQS for CO. EPA plans to review several ongoing human health effect studies upon their completion and, if warranted, will reexamine this decision at that time.

EFFECTIVE DATE: This action is effective October 15, 1985.

ADDRESSES: A docket (Number OAQPS 79-7) containing information relating to EPA's review of the CO standards, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., on weekdays, at EPA's Central Docket Section, West Tower Lobby, Gallery I, Waterside Mall, 401 M Street SW., Washington, D.C. A reasonable fee may be charged for copying.

Availability of Related Information

The final revised criteria document, "Air Quality Criteria for Carbon Monoxide" (EPA-600/8-79-022, October 1979; NTIS PB 81-244840, $17.00 paper and $4.50 microfiche), an addendum to the criteria document, "Revised Evaluation of Health Effects Associated with Carbon Monoxide Exposure" (EPA-600/8-83-033F, August 1984; NTIS PB 85-103471, $10.00 paper and $4.50 microfiche) and the final staff paper, "Review of the NAAQS for Carbon Monoxide: Reassessment of Scientific and Technical Information" (EPA-450/5-84-004, July 1984; NTIS PB 84-231315, $10.00 paper and $4.50 microfiche) are available from: U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Jones, Strategies and Air Standards Division (MD-12), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Telephone: (919) 541-5531 (FTS 629-5531).

SUPPLEMENTARY INFORMATION:

Background

Legislative Requirements Affecting This Action

Two sections of the Clean Air Act govern the establishment, review, and revision of NAAQS. Section 108 (42 U.S.C. 7408) directs the Administrator to identify pollutants which may reasonably be anticipated to endanger public health or welfare and to issue air quality criteria for them. These air quality criteria are to reflect the latest scientific information useful in indicating the kind and extent of all identifiable effects on public health or welfare that may be expected from the presence of the pollutant in the ambient air.

Section 109(a) (42 U.S.C. 7409) directs the Administrator to propose and promulgate "primary" and "secondary" NAAQS for pollutants identified under section 108. Section 109(b)(1) defines a primary standard as one the attainment and maintenance of which in the judgment of the Administrator, based on the criteria and allowing for an adequate margin of safety, is requisite to protect the public health. The secondary standard, as defined in section 109(b)(2), must specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on the criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of the pollutant in the ambient air.

The courts have upheld EPA's interpretation that the requirement for an adequate margin of safety for primary standards is intended to address uncertainties associated with inconclusive scientific and technical information available at the time of standard setting. It is also intended to provide a reasonable degree of protection against hazards that research has not yet identified. *Lead Industries Association* v. *EPA*, 647 F.2d 1130, 1154 (D.C. Cir. 1980), *cert. denied*, 101 S. Ct. 621 (1980); *American Petroleum Institute* v. *Costle*, 665 F.2d 1176, 1177 (D.C. Cir. 1981), *cert. denied*, 102 S. Ct. 1737 (1982). Both kinds of uncertainties are components of the risk associated with pollution at levels below those at which human health effects can be said to occur with reasonable scientific certainty. Thus, in selecting primary standards with an adequate margin of safety, the Administrator is seeking not only to prevent pollution levels that have been clearly demonstrated to be harmful, but also to prevent lower pollutant levels that he finds pose an unacceptable risk of harm, even if that risk is not precisely identified as to nature or degree.

In evaluating such risks for the purpose of providing an adequate margin of safety, EPA has considered such factors as the nature and severity of the health effects involved, the size of the sensitive population(s) at risk, and the kind and degree of the uncertainties that must be addressed. Given that the "margin of safety" requirement by definition comes into play where no conclusive showing of harm exists, such factors, which involve unknown, qualitatively defined, or only partially quantified risks, have inherent limits as guides to action. The selection of any particular approach to providing an adequate margin of safety is a policy choice left specifically to the Administrator's judgment. *Lead Industries Association* v. *EPA*, *supra*, 647 F.2d at 1161-62.

The courts, however, have endorsed a reading of the Act that sets strict limits on the factors EPA may consider in providing an adequate margin of safety for primary standards. The leading judicial decisions state that the economic and technological feasibility of attaining primary standards are not to be relied upon in setting them, even in the context of a margin of safety. *Lead Industries Association* v. *EPA*, *supra*, 647 F.2d at 1148-1151; *American Petroleum Institute* v. *Costle*, *supra*, 665 F.2d at 1185, 1190. Such factors may, however, be considered to a degree in the development of State plans to implement the standards.

Section 109(d) of the Act (42 U.S.C. 7409(d)) requires periodic review and, if appropriate, revision of existing criteria and standards. If, in the Administrator's judgment, the Agency's review and revision of criteria make appropriate the proposal of new or revised standards, such standards are to be revised and promulgated in accordance with section 109(b). Alternatively, the Administrator may find that revision of the standards

is inappropriate and conclude the review by leaving the existing standard(s) unchanged. The process by which EPA has reviewed the original criteria and standards for carbon monoxide (CO) under section 109(d) is described in a later section of this notice.

States are primarily responsible for assuring attainment and maintenance of ambient air quality standards. Under section 110 of the Act (42 U.S.C. 7410), States are to submit to EPA for approval State implementation plans (SIPs) that provide for the attainment and maintenance of such standards through control programs directed to sources of the pollutants included. Other federal programs provide for nationwide reductions in emissions of these and other air pollutants through the federal motor vehicle control program, which involves controls for automobile, truck, bus, and motorcycle under Title II of the Act (42 U.S.C. 7501 to 7534), and through the development of new source performance standards for various categories of stationary sources under section 111 (42 U.S.C. 7411).

Original CO Standards, Revision of the Criteria Document, and Proposed Revisions of the Standards

Original CO Standards. On April 30, 1971, the Environmental Protection Agency (EPA) promulgated NAAQS for CO under section 109 of the Clean Air Act (36 FR 8186). Identical primary and secondary standards were set at levels of 9 ppm, 8-hour average, and 35 ppm, 1-hour average, neither to be exceeded more than once per year. The scientific and medical bases for these standards are described in the document, "Air Quality Criteria for Carbon Monoxide" (DHEW, 1970), published by the U.S. Department of Health, Education, and Welfare in March 1970. The primary standards set in 1971 were based largely on work by Beard and Wertheim (1967) suggesting that low-level CO exposures resulting in carboxyhemoglobin (COHb) levels of 2 to 3 percent were associated with impairment of ability to discriminate time intervals, a central nervous system effect.

Revision of the Criteria Document. On December 1, 1978, EPA announced that it was in the process of reviewing and updating the 1970 document, "Air Quality Criteria for Carbon Monoxide," and called for information that might be helpful in revising the document (43 FR 56250). In the process of developing the revised criteria document, EPA provided a number of opportunities for review and comment by organizations and individuals outside the Agency. Two successive drafts of a revised criteria document, prepared by EPA's Environmental Criteria and Assessment Office (ECAO), were made available for external review, and EPA received approximately 30 written comments on these drafts. The external review drafts of the criteria document were also reviewed by the Clean Air Scientific Advisory Committee (CASAC)[1] Subcommittee on Carbon Monoxide on January 30–31, 1979 and June 14–15, 1979. These meetings were open to the public and were attended by individuals and representatives of organizations who provided critical reviews and new information for consideration. A summary of EPA's responses to the comments on the two external review drafts of the criteria document has been placed in the public docket (Docket No. ECAO–CD–78–3). Transcripts of the two CASAC meetings have also been placed in the docket.

The CASAC prepared a "closure" memorandum (Hovey, 1979) to the Administrator indicating its satisfaction that the final draft of the criteria document was scientifically adequate for standard-setting purposes. The closure memorandum, dated October 9, 1979 also outlines major issues addressed by the CASAC's and CASAC's recommendation concerning those issues. A summary of the issues raised by CASAC and the general public prior to proposal is contained in the proposal notice (45 FR 55080).

On the basis of a careful review of scientific information contained in the revised Criteria Document (EPA, 1979a) EPA's Office of Air Quality Planning and Standards (OAQPS) prepared a Staff Paper (EPA, 1979a) in which several key considerations were identified as major factors to be considered in the possible revision of the CO standards. A draft of the Staff Paper was provided to the CASAC, made available to the public, and reviewed by the CASAC CO Subcommittee on June 14–15, 1979.

Proposed Revisions of the Standards. The principal findings of the Staff Paper are summarized in the August 18, 1980 proposal notice (45 FR 55066). As discussed in this notice and in the revised Criteria Document, the Beard and Wertheim (1967) study, the prinicipal basis for the 1971 primary standards, is no longer considered a sound scientific basis for the standards. However, medical evidence accumulated since 1970 indicated at the time of the 1980 proposal that aggravation of angina pectoris and other cardiovascular diseases could occur at COHb levels as low as 2.7 to 2.9 percent. Assessment of this and other medical evidence led EPA to propose: (1) retaining the 8–hour primary standard level of 9 ppm, (2) revising the 1-hour primary standard level from 35 ppm to 25 ppm, (3) revoking the existing secondary CO standards (since no adverse welfare effects have been reported at or near ambient CO levels), (4) changing the form of the primary standards from deterministic to statistical (i.e., EPA proposed to allow one expected exceedance of each standard level per year), (5) adopting a daily interpretation for exceedances of the primary standards, so that exceedances would be determined on the basis of the number of days on which the 8- or 1-hour average concentrations are above the standard levels (45 FR 55066). The proposal notice set forth in more detail the rationale for these and other proposed revisions of the CO NAAQS and background information related to the proposal.

Developments Subsequent to Proposal

Following proposal, EPA held two public meetings to receive comments on the proposed standard revisions. Meetings were held in Washington, D.C. on October 2, 1980 and Denver, Colorado on October 10, 1980; transcripts are available in the docket (Docket No. OAQPS 79–7). The CASAC CO Subcommittee also met on November 15, 1980 to review the notice of proposed rulemaking (45 FR 55066) with EPA officials, and the CASAC met on November 17, 1981 to hear a status report on the regulation. The public was invited to both CASAC meetings (45 FR 73790 and 46 FR 53210) and transcripts of the meetings have been placed in the docket (Docket No. OAQPS 79–7).

On June 18, 1982 EPA announced (47 FR 26407) an additional public comment period to address several key issues concerning the 1980 proposal and technical documents related to the review of the CO standards. These issues included: (1) role of the Aronow (1981) study, (2) consideration of a multiple exceedance 8–hour standard, (3) the technical adequacy of the revised draft sensitivity analysis on the Coburn model predictions of blood carboxyhemoglobin (COHb) levels, and (4) the technical adequacy of the revised exposure analysis. The CASAC met on July 6, 1982 to provide its advice on these issues. CASAC's recommendations arising from that meeting are summarized in an August

[1] CASAC is a standing committee of scientists and engineers external to the Federal government established under Section 109 of the Clean Air Act to advise the Administrator on the scientific basis for ambient air quality standards.

31, 1982 letter to the Administrator (Friedlander, 1982) which has been placed in the public docket (Docket No. OAQPS 79-7, IV-H-41).

The 1980 proposal was based in part on the evaluation by EPA staff and CASAC in 1979 of several health studies conducted by Dr. Wilbert Aronow. EPA concluded at that time, based in part on the Aronow studies, that COHb levels of 2.7-3.0 percent represent a health concern for individuals with angina and other types of cardiovascular disease. In March 1983 EPA learned that the Food and Drug Administration (FDA) had raised serious questions regarding the technical adequacy of several studies conducted by Dr. Aronow on experimental drugs, leading FDA to reject use of the Aronow drug studies data. While there was then no direct evidence that similar problems might exist for Dr. Aronow's CO studies, EPA concluded that an independent examination of these studies was advisable prior in a final decision on the CO NAAQS.

An expert committee was convened and met with Dr. Aronow to discuss his studies and to examine the limited available data and records from his 1981 CO study. In its report, the Committee (chaired by Dr. Steven M. Horvath, Director of the Institute of Environmental Stress, University of California-Santa Barbara) concluded that EPA should not rely on Dr. Aronow's data due to concerns regarding the research which substantially limit the validity and usefulness of the results (Horvath et al., 1983). In early June 1983, EPA received a detailed reply (Aronow, 1983) from Dr. Aronow disputing, but not effectively refuting, the major points raised in the "Horvath Committee" report.

Addendum to the 1979 Criteria Document and Staff Reassessment. On August 18, 1983, EPA announced (48 FR 37519) the availability of an external review draft of a document entitled "Revised Evaluation of Health Effects Associated with Carbon Monoxide Exposure: An Addendum to the 1979 Air Quality Criteria Document for Carbon Monoxide" (hereafter cited as Addendum). The Addendum reevaluates the scientific data base concerning health effects associated with exposure to CO at or near ambient exposure levels in light of the Horvath Committee's recommendations concerning Dr. Aronow's studies and taking into account new findings reported beyond those reviewed in the 1979 Criteria Document.

On September 16, 1983 EPA announced the availability of a draft staff paper, "Review of the NAAQS for Carbon Monoxide: 1983 Reassessment of Scientific and Technical Information" (hereafter cited as Staff Reassessment) and solicited public comment on the draft paper (48 FR 41608). The Staff Reassessment, prepared by the OAQPS, provided the staff's assessment of how the scientific data reviewed in the Addendum might be used in selection of final CO standards. CASAC held a public meeting on September 25, 1983 to review both the draft Staff Reassessment. In addition to comments from CASAC members, representation of several organizations also provided critical review of both EPA documents. A transcript of the CASAC meeting has been placed in the public docket (OAQPS 79-7).

The CASAC sent a closure letter to the Administrator on May 17, 1984 which concluded that both the Addendum and Staff Reassessment "represent a scientifically balanced and defensible summary of the current basis of our knowledge of the health effects literature for this pollutant" (Lippmann, 1984). The closure letter, which also discusses major issues addressed by the CASAC and CASAC's recommendations concerning those issues, has been placed in the public docket (Docket No. OAQP 79-7, IV-K-25).

On August 9, 1984, EPA announced (49 FR 31923) the availability of the final Addendum (EPA, 1984b) and final Staff Reassessment (EPA, 1984a) which were revised to reflect public and CASAC comments. Both final documents are available from the address given earlier in the Availability of Related Information Section of this notice. Where there are differences between the 1979 Criteria Document and 1980 proposal assessment of the health effects evidence and the more recent EPA documents, the final Addendum and final Staff Reassessment represented the Agency's interpretation as of their issuance. In the August 9, 1984 notice (49 FR 31923) EPA also reviewed the basis for EPA's proposal to revise the CO standards and solicited additional public comment.

Carbon Monoxide and Human Health Effects

Control of human exposures to sources of CO is important because CO, when inhaled, can enter the bloodstream and disrupt the delivery of oxygen to the body's tissues. A continous and adequate flow of oxygen to the body's tissues is essential to maintain normal health. After being inhaled into the lungs, oxygen normally enters the bloodstream and is delivered, via the circulating blood, to the body's energy-consuming organs, tissues, and cells. Once in the tissue cells, oxygen reacts with nutrients to form energy. This energy is essential to the normal functioning of cells, tissues, and organs.

Humans have specialized molecules in blood and other tissue cells for ensuring a large, continuous flow of oxygen to the tissues. The most important chemical substance is "heme," an iron-containing substance that has a special affinity for oxygen and that combines with proteins to form hemo-proteins. Hemoglobin, a highly specialized hemo-protein contained in red blood cells, binds oxygen to the lungs to form oxyhemoglobin (O_2Hb) and delivers the oxygen to all other tissues where it is released for use.

Unfortunately, CO can also bind to hemoglobin, forming carboxyhemoglobin (COHb), with an affinity that is 200 to 300 times greater than that of oxygen. For this reason, small elevations of CO in ambient air that enters the lungs can result in a relatively large displacement of oxygen from the carrier hemoglobin.

Mechanisms of CO Toxicity

The two principal sources of CO that contribute to levels of CO in the human body are: (1) endogenous CO production from the normal breakdown of hemoglobin constituents in the body and (2) inhalation of exogenous CO from ambient and non-ambient (e.g., occupational and indoor) exposures.[2] Endogenous CO production contributes roughly 0.3 to 0.7 percent of hemoglobin saturation (0.3 to 0.7 percent COH).

Presently, the most important mechanism of CO toxicity at low-level CO exposures is thought to be hypoxia. This mechanism generally involves diffusion of exogenous CO through the lungs into the blood with resultant formation of COHb. Such an increase in COHb levels disrupts normal delivery of oxygen to the tissues in two ways. First, CO displaces oxygen on the hemoglobin carrier so that the hemoglobin has a reduced capacity to carry oxygen through the blood to the tissues (EPA, 1979b). Second, CO makes it more difficult for the oxygen that is still transported by hemoglobin to be released at the tissue (EPA, 1979b). Under these conditions, the tissues must operate at lower than normal levels of oxygen, a condition known as hypoxia, and this amount of oxygen may be inadequate to meet the energy needs of the tissues. The effects of CO on the cardiovascular system, central nervous system, and other systems are thought

[2] The contribution of direct smoking to levels of CO in the body is not a part of this rulemaking.

to be directly related to this reduction in the ability of the blood to deliver oxygen to these systems and the resultant oxygen deficiency in the tissues themselves.

Other possible mechanisms of toxicity have been discussed (Coburn, 1979; EPA, 1984b). These alternative mechanisms involve the binding of CO to such intracellular hemoproteins as cytochrome oxidase, myoglobin, tryptophan deoxygenase, and tryptophan catalase. Because the affinity of CO for these proteins is much less than for hemoglobin, it is unlikely that they play a major role in CO hypoxia. However, in tissues with a high oxygen gradient between blood and tissue, it is likely that the interaction of CO with these proteins in these tissues may play a role in CO toxicity. This is particularly true of myoglobin in heart muscle cells. Myoglobin appears to facilitate the movement of oxygen through muscle cells and, as a short-term oxygen reservoir in muscle, it releases oxygen during sudden increased metabolic activity. The affinity of myoglobin for CO is about 40 times greater than the affinity of myoglobin for oxygen. The ratio of CO content in heart muscle to CO content in blood is approximately three. Therefore, given human exposure to CO, substantial amounts of CO may be stored in heart muscle. In situations of sudden, severe stress or exertion, the heart muscle's immediate oxygen supply may be inadequate, even in healthy persons and particularly in persons with a history of disease. This mechanism could provide theoretical support for experimental evidence of myocardial ischemia (in which part of the heart muscle is deprived of oxygen), such as electrocardiographic irregularities and decrements in work capacity discussed later in this notice. It is not known whether binding of CO to myoglobin is related to health effects observed at COHb levels as low as 4–5 percent (EPA, 1979b).

In summary, disruption of the normal transport of oxygen by formation of COHb in the blood appears to be the primary mechanism of CO toxicity. In addition, EPA concludes that regardless of the mechanism of toxicity, COHb levels provide a meaningful and useful physiological marker of the body's CO burden and exposure to exogenous sources of CO (EPA, 1948b).

Health Effects As A Result of CO Exposure

Exposure to high levels of exogenous CO can result in headache, dizziness, drowiness, nausea, vomiting, collapse, coma, or death, depending on how much the flow of oxygen to the body is impeded (EPA, 1979b). The most notorious effects of CO are severe functional losses and death, which can result from automobile or truck emissions trapped in the enclosed interior of a vehicle or garage. In this case, so much hemoglobin is bound with CO that a severely inadequate supply of oxygen is delivered to the tisses; the cause of death is severe hypoxia (or oxygen deficiency). Exposure to lower levels of CO (i.e., levels closer to ambient air levels) is associated with effects on several different organ systems. Because the cardiovascular system (including the heart) and the central nervous system (including the brain) are always active and have a continuous need for oxygen, even when the body is at rest, these organ systems are particularly sensitive to reduced supplies of oxygen.

Cardiovascular System. The heart and blood vessels are critical to human survival because they pump and carry, respectively, blood containing oxygen and essential nutrients to all organs, tissues, and cells of the body, including the brain and the heart muscle itself. Because the heart has almost no ability to function without oxygen, nor the ability (except in situations of clear heart muscle hypoxia) to increase extraction of oxygen from blood, the human body has compensatory mechanisms for ensuring that in low-oxygen situations, the heart continues to receive whatever oxygen is available (EPA, 1979b). These compensatory mechanisms include increasing heart rate, blood pressure, and blood flow to maximize the amount of oxygen available to the muscle (EPA, 1979b). Although these compensatory changes have not been associated experimentally with damage to the cardiovascular system, it is possible that the added stress on the body due to the functioning of the compensatory mechanisms themselves may result in damage to the heart muscle or vasculature (EPA, 1979b). The potential damage includes those effects associated with elevated blood pressure, primarily an increased risk of damage to the arteries, and elevated heart rate, which further increases the heart muscle's demand for oxygen. However, if the coronary arteries supplying the heart muscle are unable to compensate for CO exposure, parts of the heart muscle may receive amounts of oxygen inadequate for normal activity.

As a result, EPA is concerned that CO exposure may increase the risk of the following effects on the cardiovascular system:

- Local myocardial ischemia (in which a part of the heart muscle is deprived of oxygen);
- Aggravation of angina pectoris;
- Heart attack (myocardial infarction), including heart attacks leading to sudden death;
- Reduced exercise and physical work capacity; and
- Enhanced development of arteriosclerosis and coronary artery disease.

Associations between low-level CO exposure and angina and reduced work capacity are supported by human experimental evidence discussed later in this notice. Angina pectoris (or simply "angina") is a group of symptoms of pressure and pain in the chest resulting from a transient episode of insufficient oxygen supply to a portion of the heart muscle (EPA, 1948b). The pain probably results from an accumulation of unoxygenated metabolic products that irritate nerve endings in the heart muscle. The intensity of pain varies from mild chest discomfort to severe and incapacitating distress. Although angina, by definition falls short of inducing death of part of the heart muscle, it can cause serious discomfort, and each attack carries some risk of heart attach. Acute coronary insufficiency, coronary failure, and myocardial infarction result when an episode of ischemia is more prolonged and severe.

An individual with an underlying coronary insufficiency is at risk of having an angina attack under any condition that places an additional demand on the heart. CO exposures can place an added demand on the heart, and, therefore, would appear to increase the risk of having an angina attack, and may increase the risk of a more severe attack. There is some experimental evidence of reduced time to onset of angina attack and increased duration of angina attack associated with low COHb levels (Anderson et al. 1973).

A heart attack is usually a precipitous and frequently fatal consequence of coronary heart disease, which usually results from a sudden reduction or cessation of a significant portion of the blood and oxygen flow normally reaching the heart. Very little is known about the specific factors which induce or precipitate heart attack or sudden death. However, any agent that reduces the supply of oxygen available to the heart muscle in an individual with pre-existing heart disease is suspect as a precipitating factor for heart attacks and sudden death. A relation between elevated COHb and these cardiac effects is plausible in light of what is known about CO toxicity and possible

pathological mechanisms of heart disease.

EPA has reviewed the available epidemiological data relating to hypotheses of an association between elevated COHb or CO exposure and the risk of heart attack, sudden death, and progression of atherosclerosis and has found them to be inconclusive (EPA, 1979b). EPA would like to see further epidemiological research in this area, although, admittedly, these questions will be extremely difficult to resolve with absolute certainty because of the multitude of experimental confounding factors, the multitude of risk factors for heart disease, the variability in human response, and the technical difficulty in investigating them.

Nonetheless, from a theoretical standpoint, associations between CO and these coronary effects are possible. For this reason, and because the health effects in question are very serious, EPA believes that it is prudent to take early signs of cardiovascular effects and other potential, but not well understood, cardiovascular effects very seriously.

Central Nervous System. Elevated COHb levels can reduce the oxygen available to parts of the central nervous system (CNS), including the brain. It appears that the body can compensate, to some extent, by increasing the blood flow through the brain's vasculature (EPA, 1979b). However, in some circumstances compensation may not always occur, leaving the brain with a reduced amount of available oxygen. In addition, or alternatively, prolonged compensation may damage the brain's blood vessels (EPA, 1979b).

When elevated COHb reduces the amount of oxygen delivered to the brain to a level which is below critical needs, two types of damage may result. First, severe acute oxygen deprivation of sufficient duration and intensity can result in a stroke (the damage or death of brain cells (neurons)). Loss of mature brain cells is irreversible since the CNS is not thought capable of replacement of neurons. Depending upon the duration of oxygen deficit to the brain, the effects may range from unconsciousness and convulsions, brain swelling and protrusion, to death of parts of the brain or death of the individual. Individuals who recover often have significant deficits in brain function. Second, repeated episodes of impaired oxygen supply would be expected to damage the blood-brain barrier and possibly cause structural damage resulting in the inability of the CNS to transmit information.

At lower COHb levels there is evidence of neurobehavioral effects: impaired learning ability, reduced vigilance (ability to detect small changes in a subject's environment), decreased manual dexterity, impaired performance of complex tasks, and disturbed sleep activity (EPA, 1984b). Although the potential influence of ambient CO levels on drivers has received only slight attention, suggestive but not conclusive evidence has indicated that drivers in fatal auto accidents often have elevated COHb levels (Yabroff et al., 1974). There is no evidence with which to determine whether these effects at lower CO levels are associated with pathological changes to the CNS or with reduced oxygen tension in the CNS. Due to redundancy in structure of the CNS, functional changes (e.g., behavior changes) may not be observed until the structural damage is great. Observation of such effects may be more likely in the case of a severe reduction in oxygen or in an individual who has a history of an impaired oxygen delivery system.

Basis for Decision Not To Revise the Primary Standards

The current primary NAAQS for CO are 10 mg/m^3 (9 ppm), 8-hour average and 40 mg/m^3 (35 ppm), 1-hour average, neither of which is to be exceeded more than once per year. As indicated above, the Act requires review of the existing criteria and ambient air quality standards for CO and other pollutants every five years. During the current standard review for CO, EPA has considered whether it should retain the existing CO primary standards, repropose the same or different standards, or promulgate the revisions proposed in August 1980. For the reasons discussed below, the Administrator has concluded that there is no need to revise the existing primary CO standards at this time.

As indicated above, section 109(b)(1) of the Clean Air Act requires EPA to set primary standards, based on the air quality criteria which, in the Administator's judgment, are requisite to protect the public health with an adequate margin of safety. The legislative history of the Act makes clear the Congressional intent to protect sensitive persons who in the normal course of daily activity are exposed to the ambient environment. Air quality standards are to be established with reference to protecting the health of a represenative, statistically related, sample of persons comprising the sensitive group rather than a single person in such a group.

EPA's objective in reviewing primary standards, therefore, has been to determine whether new or revised standards are appropriate, based on the existing scientific evidence, assessment of the uncertainties in this evidence, understanding of underlying biological mechanisms, and the need to make a reasonable provision for scientific and medical knowledge yet to be acquired, in order to protect sensitive population groups with an adequate margin of safety. As for other ambient standard pollutants, none of the evidence presented in the 1979 Criteria Document or Addendum shows a clear threshold for adverse health effects of CO. Rather, there is a continuum, ranging from CO levels at which health effects are undisputed, through levels at which many, but not all scientists generally agree that health effects have been convincingly shown, down to levels at which the indication of health effects are less certain and more difficult to identify. This does not necessarily mean that there is no threshold, other than zero, for CO related health effects; it simply means that no precise threshold can be identified with certainty based on existing scientific evidence. Thus, in setting a standard, EPA is unable to append an exact margin of safety to a known threshold effect level. Rather, setting a standard with an adequate margin of safety is necessarily a public health policy judgment that must take into account both the known continuum of effects, understanding of the underlying biological mechanisms of effects, and any gaps and uncertainties in the existing scientific data base.

In determining whether revision of the primary CO standards is appropriate, EPA has made assessments and judgments in the following areas:

1. Identification of reported effect levels and associated exposure duration that scientific research has linked to health effects in healthy and sensitive persons.

2. Characterization of scientific uncertainties in the health effects evidence and judgments concerning which effects are important to consider in reviewing or setting primary standards.

3. Description of population groups believed to be most sensitive to CO and estimates of the size of those groups.

4. The estimated number of sensitive persons that would be exposed to elevated CO levels upon attainment of a given standard and the uncertainties in these exposure estimates.

5. The uncertainties in estimating carboxyhemoglobin (COHb) levels that result from exposures to CO.

6. Consideration of CO standard levels and averaging times that provide an adequate margin of safety based on CO levels and exposure periods that may affect sensitive population groups,

taking into account the various uncertainties.

Based on the assessment of relevant scientific and technical information in the Criteria Document and the Addendum, the Staff Reassessment outlines a number of key factors to be considered in each of the above areas. Both the staff and CASAC recommended that the Administrator focus consideration on a discrete range of policy options in each area. In most respects, the Administrator has adopted the recommendations and supporting reasons contained in the Staff Reassessment, the most recent CASAC closure letter (Lippmann, 1984) and applicable portions of the earlier Staff Paper (EPA, 1979b) and CASAC closure letters (Hovey, 1979; Friedlander, 1982). Rather than reiterating those discussions at length, the following discussion of the final decision focuses primarily on those considerations that were most influential in the Administrator's selection of a particular option, or that differ in some respect from considerations that influenced the staff and/or CASAC recommendations.

Assessment of Health Effects Evidence

The Staff Reassessment, which has been placed in the public docket (Docket No. OAQPS 79-7, IV-A-10), presents an assessment by OAQPS staff of the key health effect studies contained in the 1979 Criteria Document and in the Addendum and other critical scientific and technical issues relevant to the review of the existing CO standards.

TABLE 1.—LOWEST OBSERVED EFFECT LEVELS FOR HUMAN HEALTH EFFECTS ASSOCIATED WITH LOW LEVEL CARBON MONOXIDE EXPOSURE

Effects	COHb concentration (percent)*	References
Statistically significant decreased (~3-7%) work time to exhaustion in exercising young healthy men	2.3-4.3	Horvath et al., 1975, Drinkwater et al., 1974, Raven et al., 1974
Statistically significant decreased exercise capacity (i.e., shortened duration of exercise before onset of pain) in patients with angina pectoris	2.9-4.5	Anderson et al., 1973
Statistically significant decreased maximal oxygen consumption and exercise time during strenuous exercise in young healthy men	5-5.5	Klein et al., 1980, Stewart et al., 1978, Weiser et al., 1978
No statistically significant vigilance decrements after exposure to CO	Below 5	Haider et al., 1976 Winneke, 1974, Christensen et al., 1977, Bemgnus et al., 1977, Putz et al., 1976

TABLE 1.—LOWEST OBSERVED EFFECT LEVELS FOR HUMAN HEALTH EFFECTS ASSOCIATED WITH LOW LEVEL CARBON MONOXIDE EXPOSURE—Continued

Effects	COHb concentration (percent)*	References
Statistically significant impairment of vigilance tasks in healthy experimental subjects	5-7.6	Horvath et al., 1971, Groll-Knapp et al., 1972, Fodor and Winneke, 1972, Putz et al., 1976
Statistically significant diminution of visual perception, manual dexterity, ability to learn, or performance in complex sensorimotor tasks (such as driving)	5-17	Bender et al., 1971, Schulte, 1973, O'Donnell et al., 1971, McFarland et al., 1944, McFarland, 1973, Putz et al., 1976, Salvatore, 1974, Wright et al 1973, Rockwell and Weir, 1975, Rummo and Sarlanis, 1974, Putz et al., 1979, Putz, 1979
Statistically significant decreased maximal oxygen consumption during strenuous exercise in young healthy men	7-20	Ekblom and Huot, 1972, Pirnay et al 1971, Vogel and Gleser, 1972

* The physiologic norm (i.e., COHb levels resulting from the normal breakdown of hemoglobin and other heme-containing materials) has been estimated to be in the range of 0.3 to 0.7 percent (Coburn et al., 1963)

Table 1 is a summary of key clinical studies reporting human health effects associated with low-level exposures to CO. This table is based on evidence discussed in the 1979 Criteria Document (EPA, 1979a) and in the Addenum (EPA, 1984b) but excludes a series of studies by Dr. Aronow for reasons given below. The table is included primarily as an aid for the following discussion and should be used only in conjunction with qualifying statements made in the 1979 Criteria Document, in the Addenum, in the Staff Reassessment, or in this notice regarding the technical merits of each study.

Cardiovascular Effects. In reviewing the primary standards, a principal area of concern to the Administrator has been evidence linking aggravation of angina and other cardiovascular diseases to CO exposures. Angina patients who have been exposed to low levels of CO while resting have subsequently exhibited, during exercise, reduced time to onset of angina (Anderson et al., 1973). Increased duration of angina attacks has also been reported (Anderson et al., 1973). In proposing to revise the CO standards, EPA viewed aggravation of angina, as reported above, to be an adverse health effect (45 FR 55066) and CASAC concurred with EPA's judgment on this matter.

One controlled human exposure study (Anderson et al. 1973) reported that experimental subjects with angina exhibited statistically significant reduced time to onset of exercise-induced angina after exposure to low levels of CO resulting in mean COHb levels of 2.9 (range 1.3–3.8 percent) and 4.5 percent (range 2.8–5.4 percent). In the same study, it was reported that subjects experienced statistically significant increases in duration of angina attacks during exercise at a mean COHb level of 4.5 percent. Some concerns have been raised about the study findings due to ambiguities regarding the design and conduct of the study and the small number of subjects (N=10) examined. However, as discussed in the Addendum and in a subsequent section of this notice, a reevaluation of the Anderson et al. (1973) study, addressing major points of concern, found that the study provides reasonably good evidence for the hastening of angina occurring in angina patients at COHb levels of 2.9 to 4.5 percent.

In similar studies Aronow and Isbell (1973) and Aronow (1981) reported decreased time to onset of angina for exercising subjects with reported COHb levels in the range of 2 to 3 percent. In addition, Aronow et al. (1974) reported that subjects with peripheral vascular disease had reduced time to onset of leg pain at similar COHb levels. As discussed earlier in this notice, however, an expert committee convened to conduct an independent review of these CO studies expressed considerable concern about the validity of the result reported and concluded that EPA should not rely on Dr. Aronow's data (Horvath et al., 1983).[3] As stated earlier in this notice, Dr. Aronow provided EPA a detailed reply disputing, but not effectively refuting, the substance of the concerns raised by the Committee (Aronow, 1983). The Committee also recommended that EPA pursue and support both current in-house and independent scientific research to resolve the issues raised by the reevaluation of Dr. Aronow's CO studies. Because EPA shares the concerns raised by the committee and by some public comments, the Administrator has not considered Dr. Aronow's studies in his decision on the CO primary standards.

[3] The Committee's concerns included (1) apparent failure to maintain a "double blind" approach as reported in the publications, (2) raw data were lost or discarded, (3) available data were of poor quality, (4) quality control for COHb measurements was nonexistent or inadequate, and (5) there appeared to be discrepancies between hospital record descriptions of patient diagnosis and those reported in Dr. Aronow's publications (Horvath et al., 1983).

Another cardiovascular effect of concern is the possible detrimental effect of increased blood flow that occurs as a compensatory response to CO exposure (Ayres et al., 1969; Ayres et al., 1970; and Ayres et al., 1979). This effect may be related to coronary damage or cerebrovascular effects at very high blood flow rates due to the added stress on the cardiovascular system. However, community epidemiological studies have been inconclusive. In particular, based on EPA's evaluation of the Goldsmith and Landau (1968), Kurt et al. (1978), and Kurt et al. (1979) epidemiological studies, the relationship between CO exposures and effects such as mortality from myocardial infarction (heart attack), sudden death due to arteriosclerotic heart disease, and cardiorespiratory complaints remains in question.

Maximum aerobic capacity and exercise capacity are indirect measures of cardiovascular capacity which have been reported to be reduced in several carefully conducted studies involving normal healthy adults exposed to CO. A linear decline in maximum aerobic capacity for healthy individuals was reported for COHb levels ranging from 5–20 percent in a series of studies (Stewart et al., 1978; Weiser et al., 1978; and Ekblom and Huot, 1972). Horvath et al. (1975) found decreases in maximum aerobic capacity when COHb levels were 4.3 percent and that COHb levels of 3.3 and 4.3 percent reduced work time to exhaustion by 4.9 and 7.0 percent, respectively. The effects of lower CO exposure levels in healthy individuals have also been investigated under conditions of short-term, maximum exercise duration. In a series of studies involving different CO exposure levels, two alternative ambient temperatures (25°C and 35°C), and two different healthy adult populations (young and middle-aged), no statistically significant reduction in maximum aerobic capacity was observed for either group when CO exposures were compared with the clean air control. However, small (less than or equal to 5 percent) decreases in absolute exercise time were consistently observed in the non-smoking subjects whose COHb levels reached 2.3 and 2.5 percent (Drinkwater et al., 1974; Raven et al., 1974). These effects, while not as serious as aggravation of angina, are still a matter of concern since they have been found to occur in healthy individuals and such effects might impair the normal activity of more sensitive populations. Therefore, these effects have been considered in judging which CO standards provide an adequate margin of safety.

Central Nervous System Effects. Numerous studies (Putz et al., 1976; Bender et al., 1971; Schulte, 1973; O'Donnel et al., 1971; McFarland et al., 1944; McFarland, 1973; Salvatore, 1974; Wright et al., 1973; Rockwell and Weir, 1975; and Rummo and Sarlanis, 1974) have reported effects on the central nervous system for CO exposures resulting in COHb levels in the range 5–17 percent. The range of effects reported included impairment of vigilance, visual perception, manual dexterity, learning ability, and performance of complex tasks. While one study (Beard and Grandstaff, 1975) has suggested that vigilance effects may occur at levels as low as 1.8 percent COHb, several other studies (Haider et al., 1976; Winneke, 1976; Christensen et al., 1977; Benignus et al., 1977; and Putz et al., 1976) have not found any vigilance decrements below 5 percent COHb. Measurement methods used to detect effects may have been too insensitive to detect changes in the latter vigilance studies. Based on the assessment of the above mentioned studies, the Addendum concluded that, at least under some conditions, small decrements in vigilance occur at 5 percent COHb. A series of studies (Putz et al., 1976; Putz et al., 1979; and Putz 1979) has also found that 5 percent COHb produced decrements in compensatory tracking, a hand-eye coordination task. EPA considers hand-eye coordination effects as well as decrements in vigilance to be important since these functions are components of more complex tasks, such as driving, and reduced alertness or visual sensitivity could lead to increased vehicular accidents.

Fetal Effects. Based on limited animal toxicology data, the 1979 Criteria Document and the Addendum (EPA, 1984b) suggest that CO may produce effects on the fetus or newborn. CO from long-term or intermittent exposures is taken up and eliminated more slowly in the fetus than in the mother, so that a maternal exposure can result in mean fetal COHb concentrations well above maternal COHb levels (EPA, 1979b). Elevated COHb levels may lead to interference with fetal tissue oxygenation during development. Because the fetus may be developing at or near critical tissue oxygenation levels, even exposures to moderate levels of CO may produce deleterious effects on the fetus such as reduced birth weight, increased newborn mortality, and lower behavioral activity levels (Longo, 1977), although this remains to be demonstrated along with pertinent dose-response relationships (EPA, 1984b). Evidence from smoking mothers is suggestive of similar fetal and newborn effects due to CO exposures (Peterson, 1981). While the fact that cigarette smoke contains substances other than CO prevents a direct quantitative application of the results of these studies in setting the CO primary standards, these studies do suggest the need for caution in protecting unborn children from such potentially deleterious effects of CO exposures.

As discussed in the Addendum and Staff Reassessment, research on sudden infant death syndrome (SIDS) recently has suggested a possible link between ambient CO levels and increased incidence of SIDS (Hoppenbrowers et al., 1981). In response to this study, Goldstein (1982) has suggested that indoor sources of CO, as well as other pollutants (e.g., nitrogen dioxide, lead), may be at least as important as ambient CO in causing SIDS and that several covariates (e.g., seasonal trends) may be responsible for the associations reported. Because the number of potentially confounding factors makes finding an association between CO and SIDS extremely difficult, further confirmation is needed before any causal relationship can be inferred (EPA, 1984a; EPA, 1984b).

Sensitive Population Groups

In EPA's judgment, the available health effects data identify persons with angina or other types of cardiovascular disease (e.g., history of heart attack or peripheral vascular disease) as the groups at greatest risk from low-level, ambient exposures to CO. Based on 1980 census data (DOC, 1980) and earlier U.S. National Health Examination Survey data (DHEW, 1975), this group is estimated to number approximately 8.7 million individuals. As discussed previously, the concern for persons with cardiovascular disease results from the fact that their condition is due to an insufficient oxygen supply to cardiac tissue, so that persons with this condition have an inadequate oxygen reserve capacity and an impaired ability to compensate for the effects of excess CO.

The Addendum and Staff Reassessment also identify several other groups as likely to be particularly sensitive to low-level CO exposures based on EPA's review of the health effects evidence. These groups include: (1) persons with chronic respiratory disease (e.g., bronchitis, emphysema, and asthma), (2) elderly individuals, especially those with reduced

cardiopulmonary function, (3) fetuses and young infants, and (4) individuals suffering from anemia and those with abnormal hemoglobin types that affect oxygen carrying capacity or transport in the blood. In addition, individuals taking certain medications or drinking alcoholic beverages may be at greater risk for CO-induced effects based on some limited evidence suggesting interactive effects between CO and some drugs. Visitors to high altitude locations are also expected to be more vulnerable to CO health effects due to reduced levels of oxygen in the air they breathe. Finally, individuals with some combination of the disease states or conditions listed above (e.g., individuals with angina visiting a high altitude location) may be particularly sensitive to low-level CO exposures, although there is no experimental evidence to confirm this hypothesis.

For many of the groups cited above there is little specific experimental evidence to clearly demonstrate that they are indeed at increased risk for CO-induced health effects. However, it is reasonable to expect that individuals with preexisting illnesses or physiological conditions which limit oxygen absorption into blood or its transport to body tissues would be more susceptible to the hypoxic (i.e., oxygen deficiency) effects of CO. Since no human experimental evidence exists that identifies CO effect levels for these other groups, however, EPA is considering the possible effects of CO on these groups only in its determination of an adequate margin of safety.

Uncertainty in Estimating COHb Levels

The health effect studies discussed above report the effects observed at varying COHb levels. In order to make decisions about ambient CO standards based on these studies, it is necessary to estimate the ambient concentrations of CO that are likely to result in COHb levels at or near those observed in the studies. A model known as the Coburn equation (Coburn et al., 1965) has been developed to estimate COHb levels resulting from CO concentrations as a function of time and various physiological factors (e.g., blood volume, endogenous CO production rate). Table 2 presents "baseline" estimates (using typical values for the various physiological parameters) of COHb levels expected to be reached by adult nonsmokers exposed to various constant concentrations of CO for either 1 or 8 hours based on the Coburn model.

TABLE 2.—PREDICTED COHb RESPONSE TO EXPOSURE TO CONSTANT CO CONCENTRATIONS ASSUMING TYPICAL VALUES FOR PHYSIOLOGICAL PARAMETERS

[Percent COHb Based on Coburn Equation[a] Exposure Time

CO (ppm)	1 hour exposure		8 hours exposure	
	Intermittent rest/light activity	Moderate activity	Intermittent rest/light activity	Moderate activity
7.0	0.7	0.7	1.1	1.1
9.0	0.7	0.8	1.4	1.4
12.0	0.8	0.9	1.7	1.8
15.0	0.9	1.1	2.1	2.2
20.0	1.1	1.3	2.7	2.9
25.0	1.2	1.5	3.4	3.6
35.0	1.5	2.0	4.6	4.9

TABLE 2.—PREDICTED COHb RESPONSE TO EXPOSURE TO CONSTANT CO CONCENTRATIONS ASSUMING TYPICAL VALUES FOR PHYSIOLOGICAL PARAMETERS—Continued

[Percent COHb Based on Coburn Equation[a] Exposure Time

CO (ppm)	1 hour exposure		8 hours exposure	
	Intermittent rest/light activity	Moderate activity	Intermittent rest/light activity	Moderate activity
50.0	2.0	2.7	6.4	6.9

[a]Assumed parameters for non-smoking adults: alveolar ventilation rates = 10 liters/min (intermittent rest/light activity) and 20 liters/min (moderate activity); hemoglobin = 15 g/100 ml (normal male); altitude = sea level; initial COHb level = 0.5 percent; endogenous CO production rate = 0.007 ml/min; blood volume = 5500 ml; Haldane constant (measure of affinity of hemoglobin for CO) = 218; lung diffusivity for CO = 30 ml/min/torr

There are, however, at least two uncertainties involved in estimating COHb levels resulting from exposure to CO concentrations. First, for each of the physiological parameters used in the Coburn model, there is a distribution of values in the general population. These variations are sufficient to produce noticeable deviations from the COHb levels in Table 2, which as noted above were predicted using a set of typical physiological parameter values. Second, predictions based on exposure to constant CO concentrations inadequately represent the responses of individuals exposed to widely fluctuating CO concentrations that typically occur in ambient exposure situations.

As discussed in the proposal preamble (45 FR 55066), EPA attempted to represent these uncertainties in a draft Sensitivity Analysis (EPA, 1980).

This analysis used the Coburn model to examine the effects of fluctuating CO concentrations and variations in physiological parameters on COHb estimates. Since proposal, EPA has revised the Sensitivity Analysis to address concerns raised in several public comments and placed the report (Biller and Richmond, 1982) in the docket (QAQPS 79-7, IV-A-8). Table 3 presents estimates of the distribution of COHb levels in the adult non-smoking population based on variations in physiological parameters upon exposure to three different patterns of CO levels which just meet alternative 9 ppm and 12 ppm CO standards. The estimates given in Table 3 and others contained in the Sensitivity Analysis report (Biller and Richmond, 1982) are based on the assumption that the entire adult population is exposed to CO levels just meeting a given standard.

TABLE 3.—PERCENTAGE OF NON-SMOKING ADULTS WITH CARBOXYHEMOGLOBIN GREATER THAN OR EQUAL TO SPECIFIED PEAK VALUE WHEN EXPOSED TO AIR QUALITY ASSOCIATED WITH ALTERNATIVE EIGHT-HOUR CARBON MONOXIDE STANDARDS [a,b,c]

Peak COHb percent	9 ppm, 8-hr			12 ppm, 8-hr		
	Low pattern	Mid-range pattern	High pattern	Low pattern	Mid-range pattern	High pattern
3.7						<0.01
3.5						0.01
3.3						0.1
3.1					<0.01	0.6
2.9			<0.01		0.01	2
2.7			0.02	<0.01	0.2	[illegible]
2.5		<0.01	0.2	0.01	2	36
2.3		0.02	2	0.2	12	[illegible]
2.1	<0.01	0.4	10	[illegible]	49	100
1.9	0.05	5	53	[illegible]	[illegible]	100
1.7	3	35	[illegible]	91	99	100
1.5	39	[illegible]	100	100	100	100
1.3	97	100	100	100	100	100
1.1	100	100	100	100	100	100

[a] COHb responses to fluctuating CO concentrations were dynamically evaluated using the Coburn model prediction of the COHb level resulting from one hour's exposure as the initial COHb level for the next hour. The series of 1-hour CO concentrations used were from 20 sets of actual air quality data. Each pattern was proportionally rolled back or up so that its peak 8-hour average CO concentration equalled the level of the 8-hour standard. Of the 20 selected patterns, results from 3 patterns are presented here. The low pattern tends to give the lowest peak COHb levels, the midrange pattern tends to give a midrange value, and the high pattern tends to give the highest value.

[b] Haldane constant = 218. Alveolar ventilation rate = 10 liters/min. Altitude = 0.0 ft.

[c] The estimation of distributions for each of the physiological parameters used in the Coburn model and the Monte Carlo procedure used to generate these estimates are discussed in Appendix C of the Sensitivity Analysis (Biller and Richmond, 1982).

The impact of fluctuating air quality levels on COHb uptake can be roughly estimated by comparing the "baseline" result of a constant 9 ppm exposure for 8 hours (1.4 percent COHb from Table 2) with selected results shown in Table 3. For a "typical" (50th percentile) adult exposed to several different air quality patterns that result in the same maximum 8-hour dose (i.e., 9 ppm, 8-hour average), the results shown in Table 3 indicate that COHb levels ranging from approximately 1.4 to 1.9 percent can be reached. A similar comparison of the results for air quality with a 12 ppm, 8-hour average peak exposure indicates that fluctuating CO levels can increase the peak COHb value from that observed with a constant CO exposure by up to 0.7 percent OCHb (i.e., from 1.7 percent COHb in Table 2 to 2.4 percent COHb for the 50th percentile in the high pattern column of Table 3).

The Sensitivity Analysis results in Table 3 also illustrate the effect of using distributions of values for each physiological parameter rather than just a single representative set of values in applying the Coburn model. For any given air quality pattern, the effect of using the distribution of values for each physiological parameter is to generate a distribution of peak COHb levels that the population would reach. For example, the results in Table 3 show that 95 percent of the population is estimated to be within ±0.3 percent COHb of the median adult value after exposure to the midrange pattern with a peak 9 ppm, 8-hour average. This variation in COHb levels attained is one further source of uncertainty that is being considered in judging which standards provide an adequate margin of safety.

Since proposal, EPA has made considerable improvements in its exposure analysis methodology which, unlike the Sensitivity Analysis, treats movement of people and variation of CO concentration levels through time and space. EPA believes that the revised Exposure Analysis described below, represents the best available tool for estimating the percentage of the population that would reach various CO concentrations and COHb levels upon attainment of alternative CO standards. Since the Exposure Analysis model simulates the exposure of individuals on an hourly basis and simulates actual air quality patterns, the impact of fluctuating CO levels is largely taken into account in the Exposure Analysis results. The results of the revised Sensitivity Analysis are useful, however, in characterizing the uncertainties resulting from variations in physiological parameters in the population which at this time are not fully accounted for in the Exposure Analysis.

Exposure Analysis Estimates

EPA's revised exposure analysis report and addendum, "The NAAQS Exposure Model (NEM) Applied to Carbon Monoxide," (Johnson and Paul, 1983; Paul and Johnson, 1985) contain estimates of the numbers and percentages of urban American adults that would be exposed to various ambient CO levels if alternative 8-hour CO standards were just attained. In addition, estimates have been made of the percentage of this population that would exceed selected COHb levels each year. These latter estimates were derived by applying the Coburn model, which relates patterns of CO exposure to resultant COHb levels, to the exposure model outputs using a typical set of physiological parameters for adult men and a separate set of physiological parameters for adult women.

In contrast to the Sensitivity Analysis, the Exposure Analysis simulates pollutant concentrations and the activities of people with regard to time, place, and exercise level. In the exposure model, the population is represented by a set of "cohorts" (i.e. age-occupational groups that tend to "track together" in time and space). For each hour of the year each cohort is located in one of five "microenvironments." A microenvironment is a general physical location such as indoors-at-home or inside a transportation vehicle.

CO levels in each of the microenvironments are estimated by the use of multiplicative "transformation factors," which relate CO levels recorded at the nearest monitor to estimate CO levels for each microenvironment. This method is used since attainment of a standard is defined in terms of the monitoring system. Values of the multiplicative transformation factors that would give the best exposure estimates are uncertain. The values used for these factors were estimated making use of the available literature on (1) indoor and inside-motor-vehicle air pollution and (2) statistical analyses of monitoring data (e.g., how ambient values change with height and distance from a monitor). A more detailed description of the approach, input data, and assumptions used to derive exposure estimates appears in the Exposure Analysis reports (Johnson and Paul, 1983; Paul and Johnson, 1985).

The exposure analysis model described above was applied to four urban areas: Chicago, Los Angeles, Philadelphia, and St. Louis. Exposure estimates for the adult population living in urban areas in the United States were obtained primarily by associating each urban area in the United States having a population greater than 200,000 with one of the four cities mentioned above. The association was made on the basis of geographic proximity to one of the base areas, average wind speed, peak CO concentrations, observed climate, and general character of the area.

TABLE 4.—CUMULATIVE PERCENT OF ADULT POPULATION IN URBAN AREAS WHOSE COHb Levels Would Exceed Specified COHb Values Upon Attainment of Alternative 8-Hour Standards [a,b,c]

COHb level exceeded (percent)	8-Hour standards		
	9 ppm 1 expected exceedance	12 ppm 1 expected exceedance	15 ppm 1 expected exceedance
3.0		< 0.1	1.1
2.9		0.2	2.5
2.7		0.1	5.9
2.5		0.8	9.7
2.3	< 0.1	4.1	14
2.1	0.1 (< 0.1)[d]	8.6	20

[a] Projected cardiovascular and peripheral vascular disease population in all urbanized areas in the United States for 1987 is 5,240,000 adults.

[b] These exposure estimates are based on air quality distributions which have been adjusted to just attain the given standards.

[c] These exposure estimates are based on best judgments of microenvironment transformation factors. Projections for one urban area based on lower and upper estimates of the microenvironment transformation factors are provided in the Exposure Analysis report (Johnson and Paul, 1983).

[d] Exposure estimate for current 9 ppm, 8-hour average deterministic standard.

Table 4 provides estimates for 1987 of the percentage of the adult population living in urban areas who would exceed various COHb levels upon attainment of three alternative 8-hour standards. For example, less than 0.01 percent of the adult population in urban areas is estimated to exceed 2.1 percent COHb due to CO exposures associated with attainment of the current (deterministic) 9 ppm standard, and approximately 20 percent of the adult population is estimated to exceed 2.1 percent COHb upon attainment of a 15 ppm standard with 1 expected exceedance allowed per year. It should be noted that the estimates given in Table 4 are based on air quality distributions which have been adjusted to just attain the given standards.

Several factors make the accuracy of the nationwide exposure estimates uncertain. They include: (1) the paucity of information on several of the needed inputs (e.g., some of the microenvironment multiplicative transformation factors) and (2) the fact

that nationwide estimates were extrapolated from only four urbanized areas. In addition, the results of the Coburn Model Sensitivity Analysis, discussed previously, suggest that the use of two representative sets of physiological parameters (one for men and one for women), rather than the full distributions of the physiological parameters for the population, in applying the Coburn model to derive COHb estimates introduces some further uncertainty, although the uncertainty about such inputs as the microenvironment multiplicative transformation factors is much larger. Exposure Analysis report (Johnson and Paul, 1983) describes some limited sensitivity analysis runs for one urbanized area to give a rough idea of the range of possible COHb levels that would be reached.

Decision on the Primary Standards

The Staff Reassessment and 1984 CASAC findings and recommendations set forth a framework for considering whether revision of the primary CO standards is appropriate at this time. The discussion that follows relies heavily on that framework and on applicable supporting material in the 1979 Criteria Document, 1984 Addendum, 1979 Staff Paper, and earlier CASAC closure letters (Hovey, 1979; Friedlander, 1982).

Based on its assessment of scientific evidence discussed previously in this notice, EPA concludes that adverse health effects clearly occur, even in healthy individuals, at COHb levels in the range of 5 to 20 percent. EPA also remains concerned that adverse health effects may be experienced by large numbers of sensitive individuals with COHb levels in the range 3.0 to 5.0 percent. On this point, CASAC similarly concluded after reviewing the scientific literature (not including the Aronow studies), "that the critical effects level for NAAQS-setting purposes is approximately 3 percent COHb (not including a margin of safety)" (Lippmann, 1984).

In addition to concurring with EPA that cardiovascular effects are likely to occur at approximately 3 percent COHb (Anderson et al., 1973), the CASAC also indicated that several studies (Drinkwater et al., 1974; Raven et al., 1974; and Davies and Smith, 1980) reporting physiological effects in the range 2.3–2.8 percent COHb lend support to concerns about low level CO exposures and should be considered in determining whether a given standard provides an adequate margin of safety. As discussed previously, the Administrator has excluded Dr. Aronow's studies from consideration in his decision on the CO primary standards.

Based on the exposure analysis results summarized previously in Table 4 of this notice, 8-hour single exceedance CO standards in the range 9 to 12 ppm are estimated to keep more than 99 percent of the non-smoking cardiovascular population below 3.0 percent COHb. Different standards within this range would, of course, provide different levels of protection. For example, the current 9 ppm, 8-hour average standard is estimated to keep more than 99.9 percent of the adult cardiovasular population below 2.1 percent COHb. A 12 ppm, 8-hour standard is estimated to keep more than 99 percent of the population below 2.5 percent COHb. The 2.5 percent COHb level is in the range where physiological effects of concern to EPA and CASAC have been reported.

In considering whether revision of the existing primary CO standards is appropriate at this time, the Administrator has considered uncertainties regarding the lowest levels of COHb at which adverse health effects may occur, as well as uncertainties about the levels of COHb likely to result from CO exposure at the levels associated with attainment of alternative standards. More specifically, the Administrator considered the following factors and sources of uncertainty, discussed in the Staff Reassessment (EPA, 1984), in his decision:

1. Human susceptibility to health effects and the levels at which these effects occur vary considerably among individuals, and EPA cannot be certain that experimental evidence has accounted for the full range of susceptibility. In addition, for ethical reasons, clinical investigators have generally excluded from their studies individuals who may be especially sensitive to CO exposure, such as those with a history of myocardial infarction or multiple disease states (e.g., both angina and anemia). Another factor is that, once the Aronow et al. studies are excluded, there are no human exposure studies investigating effects on individuals with angina at COHb levels below the 2.9 percent level reported by Anderson et al. (1973).

2. There is some animal study evidence indicating that there may be detrimental effects on fetal development (e.g., reduced birth weight, increased newborn mortality, and behavioral effects) associated with CO exposure. Similar types of effects have also been found in studies examining effects of maternal smoking on human fetuses. However, it is not possible at this time to sort out the confounding influence of other components of tobacco smoke in causing the effects observed in the human studies. While human exposure-response relationships for fetal effects remain to be determined, these findings denote a need for caution in evaluating the margin of safety provided by alternative CO standards.

3. Other groups that may be affected by ambient CO exposures but for which there is little or no experimental evidence include: anemic individuals (over 3 million individuals), persons with chronic respiratory diseases (about 14 million individuals), elderly individuals (over 24.7 million individuals over 65 years old), visitors to high altitude locations, and individuals on certain medications. The levels of COHb that might produce adverse effects for each of these groups is uncertain. However, elevated COHb levels in even a small percentage of this very large potentially sensitive population would translate to a significant number of individuals. The large size of the potentially sensitive population, then, argues for standards providing a greater margin of safety.

4. There are a number of uncertainties regarding the uptake of CO, including those related to the accuracy of the Coburn equation, in assessing variations in the population due to differing physiological parameters and exposure to varying air quality patterns.

5. Several factors contribute to uncertainties about the exposure estimates of the expected number of individuals achieving various COHb levels upon attainment of alternative standards. These factors include: the paucity of information on several of the needed inputs, the fact that nationwide estimates were extrapolated from only four urbanized areas, and the use of two representative sets (one for men and one for women) of physiological parameters (e.g., blood volume) rather than distributions of physiological parameters in applying the Coburn model to derive COHb estimates in the exposure analysis. As indicated in the Staff Reassessment (pp. 18–21), some individuals with physiological parameters that maximize uptake of COHb, if exposed to certain patterns of air quality attaining a 12 ppm, 8-hour standard, would likely exceed 3.0 percent COHb. Consequently, the Agency is concerned that a 12 ppm, 8-hour standard may not provide an adequate margin of safety. EPA is continuing its CO exposure research efforts, which should lead to future

improvements in its exposure analysis and a better capability to assess the accuracy of the exposure estimates (Johnson, 1984; Hartwell et al., 1984).

6. There is uncertainty regarding adverse health effects that may result from very short duration, high-level CO exposures (the bolus effect). As discussed in the proposal notice (45 FR 55077), existing air quality data indicate that attainment of a 9 ppm, 8-hour averaging time standard should limit the magnitude of short-term peak concentrations.

7. There is some concern about possible interactions between CO and other pollutants, although there is little experimental evidence to document such interactions at this time.

8. Given the unsettled nature of the scientific information bearing on the level of the standard, EPA believes that there is much to be said for a policy that would maintain the status quo until the data become more adequate. That is particularly so given the absence of the information indicating with some assurance that the present standard is set at an incorrect level. For the reasons stated elsewhere in this preamble, the available information falls short of supporting such finding.

The CASAC concurred with the ranges of 9 to 12 ppm for the 8-hour and 25 to 35 ppm for the 1-hour primary standards recommended in the Staff Reassessment and characterized them as scientifically defensible standard ranges. They recommended that the Administrator consider choosing standards that maintain approximately the same level of protection as that afforded by the current standards (Lippman, 1984). In making its recommendation the CASAC cited the uncertainties associated with the scientific data base and margin of safety concerns and its belief" . . . that where the scientific data, as in this case, are subject to large uncertainties, it is desirable for the Administrator to consider a greater margin of safety than the numerical values of COHb generated by the Coburn equation might otherwise suggest" (Lippmann 1984).

Several ongoing human health effect studies are being conducted by EPA and other groups to investigate the effect of CO on aggravation of angina. Subjects in these studies are being exposed to CO levels that result in blood COHb levels in the range 2.0 to 4.0 percent. One study is being conducted by EPA, several are being conducted at the request of EPA by the Health Effects Institute (HEI), and another study is being sponsored by the California Air Resources Board (CARB). The Health Effects Institute is an independent organization which sponsors research on automotive pollutants and is jointly funded by EPA and automobile manufacturers. The peer-reviewed results of these studies are expected by December 1986. EPA will be initiating development of a new criteria document for CO in Fiscal Year 1986. Thus, the Agency should be in a good position to expeditiously assess the results from the above health studies, as well as other scientific evidence published since completion of the Addendum.

Given the uncertainty in the current data base and the fact that new studies are in progress, the Administrator considered deferring a final decision on the CO standards until these new studies have been completed. While this might allow the Administrator to base the decision on better information, the Clean Air Act appears to require periodic decisions on NAAQS notwithstanding any uncertainty in the data base. Deferring this decision would imply that the Agency has inadequate evidence to select an appropriate course of action at this time. However, both EPA and the CASAC have concluded that, even without the Aronow studies, a sufficient scientific data base exists upon which to base a decision. Given these findings, and the concern that a deferral of the decision could be perceived as a signal to relax or delay ongoing control programs, the Administrator has concluded that final action now on the CO standards is warranted and justified.

In reaching a final decision, the Administrator has focused primarily on the level of protection the CO standards should provide. As previously noted, after reassessing the available scientific data and EPA staff recommendations, the CASAC has recommended that the CO standards provide protection approximately equal to the current standards. Based on EPA's assessment of the scientific data, the Administrator concurs with this recommendation. Retention of the current standards would, of course, satisfy this objective.

As discussed above, the standards proposed in August 1980 would also provide approximately the same level of protection as that afforded by the current standards. In addition, these standards would provide some technical changes that the Agency believes would be advantageous. However, the proposed changes would require some modification in the way attainment of the standards is determined. Given the uncertainties in the existing data base and the possibility that the results of the new studies in progress might warrant further revisions within a few years, the Administrator has concluded that it would not be prudent to promulgate the proposed revisions at this time, particularly when they would alter the manner in which attainment is determined.

In short, the Administrator has concluded that it would not be prudent to defer a decision on the CO standards pending the results of the new research mentioned above, that the standards should provide approximately the same level of protection as that afforded by the current standards, and that disruption of ongoing control programs should be minimized. Given these considerations, the Administrator has concluded that the best course of action is not to revise the CO primary standards at this time. Together with the Administrator's decision to rescind the secondary standards (discussed below), this decision completes the current review of the NAAQS for CO under section 109(d). The ongoing studies conducted by the Agency, by the HEI, and by the CARB (all discussed above) will, of course, be considered in the next 5-year review cycle of the CO criteria and standards. Upon completion of this series of studies, the Agency plans to review the results with the CASAC and assess the need for any revisions in the primary standards. If revisions in the standards seem appropriate, the Agency will act expeditiously to revise the standards.

Welfare Effects and the Secondary Standards

Carbon monoxide is a normal constituent of the plant environment. Plants can both metabolize and produce CO. This may explain the fact that relatively high levels of CO are necessary before damage occurs to vegetation. The lowest level for which significant effects on vegetation have been reported is 100 ppm for 3 to 35 days. The effect observed in this study was an inhibition of nitrogen fixation in legumes. Since CO concentrations of this magnitude are rarely if ever observed in the ambient air, it is very unlikely that any damage to vegetation will occur from CO air pollution. No other effects on welfare have been associated with CO exposures at or near ambient levels. Because no standards appear to be requisite to protect the public welfare from any known or anticipated adverse effects from ambient CO exposures, EPA is rescinding the existing secondary standards.

Significant Harm Levels

Section 303 of the Clean Air Act authorizes the Administrator to take

certain emergency actions if pollution levels in an area constitute "an imminent and substantial endangerment to the health of persons." EPA's regulations governing adoption and submittal of SIP's contain a provision (40 CFR 51.16) that requires the adoption by States of contingency plans to prevent ambient pollutant concentrations from reaching specified significant harm levels. The existing significant harm levels for CO were established in 1971 (36 FR 24002) at the following levels and averaging times:

50 ppm—8-hour average
75 ppm—4-hour average
125 ppm—1-hour average

Exposure under these conditions could result in a widespread blood COHb concentration of 5 to 10 percent, the range EPA has determined would cause significant harm. On the basis of EPA's reassessment of the earlier data and assessment of more recent medical evidence, no modifications are being made to the existing significant harm designations. EPA's assessment of the medical evidence on exposure to higher CO concentrations that could lead to significant harm is contained in the 1979 Criteria Document (EPA, 1979b) and in the Addendum (EPA), 1984b).

Summary of Public Comments and Agency Responses

Overview of Comments

The following discussion summarizes in general terms the comments received, at various times since the 1980 proposal, from the public and from Federal and State agencies on the levels of the primary standards and on the related issue of multiple exceedance standards. Significant comments on all aspects of the CO proposal and Agency responses to these comments are summarized by category later in this section. A more detailed description of individual comments and Agency responses is contained in the public docket (OAQPS 79–7).

Comments on 1980 Proposal. Of the written comments received during the initial comment period (which closed November 24, 1980) that expressed some opinion on the level of the proposed 8-hour standard, 7 out of 11 favored EPA's proposed standard or a more stringent standard. Environmental group comments endorsed the proposed standard or recommended tightening of the standard, industry groups favored relaxation of the standard, and local and State agency comments supported the proposed standard or some relaxation of the standard.

Several comments were received on the Agency's proposal to lower the 1-hour standard to 25 ppm. Of the 18 written comments which expressed an opinion on the 1-hour standard, 8 comments favored the proposed standard level, 5 comments urged retention of the existing 35 ppm standard level, and 3 comments recommended revocation of the 1-hour standard. There also was one comment favoring further tightening of the 1-hour standard and one comment favoring a relaxation of the standard. Those favoring revocation of the 1-hour standard argued that the 1-hour standard was redundant since attainment of the 8-hour standard would effectively prevent 1-hour average levels from exceeding either 25 or 35 ppm.

Comments on the proposed revisions were received from five Federal agencies. Four of these agencies neither supported nor opposed the proposed standards. The Department of Commerce urged EPA to maintain the existing 35 ppm, 1-hour standard. The Council on Wage and Price Stability suggested, through the Regulatory Analysis Review Group, that the proposed standards should be based on cost-effectiveness analysis and that if costs were considered, the proposed standards might be excessively stringent.

Comments on Subsequent Notices. As discussed earlier in this notice, EPA announced an additional public comment period on June 18, 1982 to address several key issues, including the Agency's consideration of multiple expected exceedance 8-hour CO standards (47 FR 26407). Of the comments that expressed an opinion on the issue of multiple expected exceedances, 12 out of 23 favored the use of the multiple expected exceedances approach for ambient standards. While State and local governments' comments were almost evenly divided on the question, all industrial groups supported the concept and all environmental groups opposed multiple exceedance standards. Comments from private citizens were evenly divided for and against multiple exceedance standards.

During the period from November 24, 1980 through August 6, 1982 (the close of the second comment period), of those commenting on whether the 8-hour standard should be relaxed, 10 out of 45 favored relaxation. Most of the States (12 of 14) opposed relaxation, while 3 of 5 local governments favored relaxation. As in the earlier comment period, all industry comments favored relaxation while all environmental groups opposed relaxation.

Subsequent to the close of the second public comment period, the State and Territorial Air Pollution Program Administrators (STAPPA) submitted a resolution, endorsed by a majority of State air pollution agencies, which expressed several reservations about a multiple exceedance CO standard. The STAPPA resolution recommended promulgation of single exceedance CO standards.

EPA solicited additional public comment on the draft Staff Reassessment which evaluated the scientific data in view of the diminished value of Dr. Aronow's CO studies on September 16, 1983 (48 FR 41608). Of the 13 comments received in response to this notice that expressed an opinion on the levels of the standards, 7 favored retaining the current primary standards, 2 favored the proposed standards (i.e., 9 ppm for the 8-hour averaging time and 25 ppm for the 1-hour averaging time), and 4 favored relaxation of the 8-hour standard to 12 ppm or higher. Those supporting the proposed or current standards included an environmental group, several State environmental agencies, two health scientists, and one local environmental agency. Those favoring relaxation of the primary 8-hour standard included two from the automotive industry and two local environmental agencies.

On August 9, 1984, EPA summarized the basis for EPA's proposed revisions to the CO standards, announced availability of the final Addendum (EPA, 1984b) and Staff Reassessment (EPA, 1984a), and solicited additional public comment (49 FR 31923). Of the 7 comments received that expressed an opinion on the levels of the standards, 2 favored retaining the current primary standards, 2 favored the proposed primary standards (i.e., 9 ppm, 8-hour and 25 ppm, 1-hour), and 3 favored relaxation of the 8-hour standard to 12 ppm or higher. Two commentors argued that EPA should defer final action on the CO standards until the Health Effects Institute's CO research was completed.

Summary of Significant Comments and Agency Responses

Significant comments are summarized and responded to by category below.

I. Health Effects Criteria and Selection of the Primary Standards

A. Definition of An Adverse Health Effect

Comment: It is questionable whether a reduction in the time to onset of an angina attack following exercise is adverse.

Agency Response: EPA concludes that aggravation of angina represents an

adverse health effect. As explained in the proposal preamble (45 FR 55066), EPA considers such aggravation of angina to be an adverse health effect for several reasons. First, it may result in cardiovascular damage, which is unquantifiable using present technology. Second, aggravation of angina may be the first in a series of progressively more serious symptoms that accompany cardiovascular disease. At low levels of oxygen deprivation, angina patients experience symptoms of chest pain described above. Coronary insufficiency is a more serious symptom that occurs at greater levels of oxygen deprivation. This symptom is sometimes accompanied by changes in enzyme levels and electrocardiographic irregularities. The most serious effect in this continuum of effects is myocardial infarction. In addition to longer and more intense pain, myocardial infarction is accompanied by irreversible heart damage (death of myocardial cells) as indicated by enzyme level changes and electrocardiographic alterations. Finally, because aggravation of angina may be the first in a series of symptoms that may lead to permanent heart damage, EPA considers aggravation of angina an adverse effect and an indicator that more serious effects may occur in some individuals at the same COHb levels. EPA's judgment has been supported by the CASAC and CASAC CO Subcommittee (Hovey, 1979; Lippmann, 1984).

Comment: Scientific research on CO suggests that there is no clear threshold level at which adverse health effects begin. Rather, there appears to be an increase in severity of potential health effects with increasing levels of CO. The fact that a no-effects level cannot be identified may lead to a standard near zero. The current evidence can support standards other than those proposed by EPA.

Agency Response: EPA agrees that there is a continuum of effects consisting of COHb levels at which health effects are certain, through levels at which scientists can generally agree that medically significant effects have been convincingly shown, and down to levels at which health effects are less certain, are harder to identify, and the medical significance of which are typically disputed. In short, the present scientific evidence does not permit selection of an undisputed value for a primary standard. Rather, the Administrator in selecting a standard must make a judgment as to the level of physiological response that should be considered adverse and the relative acceptability of various degrees of uncertainty that any given level is low enough to prevent known and possible adverse health effects.

B. Scientific Validity of the Human Experimental Studies

Comment: Work of Dr. Wilbert Aronow is suspect because results are too consistent, data are not available for evaluation, the study was not double blind, and the subjects tested were not a representative set of angina patients. The Horvath Committee (Horvath et al., 1983) recommended that EPA not rely on Dr. Aronow's studies in setting the CO standards.

Agency Response: The Administrator agrees with the Horvath Committee that there are very serious technical questions about the validity of Dr. Aronow's CO studies and, therefore, is not considering the results of these studies in his decision.

Comment: The Anderson et al. (1973) study should be eliminated from consideration because Anderson et al. reported a COHb level of only 4.5 percent after a four hour, 100 ppm CO exposure, whereas other investigators have generally reported 8–10 percent COHb for similar exposures.

Agency Response: During the Anderson et al. (1973) study, subjects were allowed breaks and, thus, were exposed to CO intermittently, not continuously, for 4 hours. This would cause COHb levels to be substantially lower than for the continuous exposure periods used in other studies.

Comment: The Anderson et al. (1973) study should not be considered for drawing conclusions about lowest observed effect levels because of the (1) small number of subjects, (2) questionable double-blind conditions, (3) missing data for some subjects, (4) lack of dose-response relationships for onset and duration of angina in some subjects, (5) reliance on subjective responses, and (6) inadequate presentation of statistical procedures.

Agency Response: EPA has carefully reviewed the Anderson et al. (1973) study and the above criticisms of the study. A detailed response is contained in a February 20, 1985 memorandum prepared by EPA's scientists in the Office of Research and Development which has been placed in the public docket (OAQPS 79–7, IV–B–2). EPA does not challenge the proposition that the Anderson study has limitations that must be weighed in assessing the study's value for standard setting. Very few, if any, studies are perfect and thus conclusively demonstrate precise pollutant thresholds for the entire range of sensitive persons under various environmental conditions. However, the Agency does not agree with the commenters' characterization of the Anderson study limitations nor with the commenters' conclusion that those limitations are grounds for totally excluding the study from an assessment of the health risks of CO. After carefully evaluating the scientific merit of the study and considering the advice provided by the CASAC, EPA has concluded that the Anderson study should be considered in selecting a CO standard with an adequate margin of safety.

EPA's responses to the major points of concern about the Anderson et al. (1973) study are briefly summarized below:

1. EPA readily acknowledges that the subject sample size is small and that the study would be strengthened if the number of subjects had been greater. However, the sample size is adequate to treat the data statistically and large enough to use in making statistical inferences regarding effects and causal agents. These inferences are routinely made by clinical investigators conducting studies with relatively few subjects and treatment replications. In addition, even though only a small number of subjects were tested, they do represent some portion of the national population suffering from angina.

2. Because of the explicit precautions taken by the author to ensure the integrity of such a protocol, EPA rejects the speculative assertion that the study was not double blind. Specifically, a "double blind" study is one where both the administering investigator and patient are unaware of the nature of any treatment. EPA has contacted the author (Docket ECAO CD 78–3, IIA–J–3) who reaffirmed the study protocol which is consistent with the definition of double blind. The author cited the published study which states:

> A 5-day, double-blind exposure protocol was followed—Only the investigator administering the gas knew which concentration of CO was being used. The patient, technician, and the investigator conducting the exercise test were all unaware of the exposure condition. A curtain separated the gas tanks from the patient—On completion of the five exercise tests for each subject, the ECG records were assigned a random code number and interpreted by an investigator who had not been present and had no knowledge of the exposure sequence.

3. Because of the explicit double blind protocol practiced in the study, there is no basis for concluding that the two subjects who missed one day of exposure had in some way gained knowledge of the exposure conditions due to their missing one of the exposure

sessions. EPA rejects this assertion as illogical and unfounded.

4. The fact that the effects reported were not dose-related in the Anderson et al. study is not surprising given the small range of exposure concentrations, the fact that the exposures were close to the lower limits for CO-related effects, and the small number of subjects. However, EPA has not used this or any other study to develop a dose-response relationship which would show different levels of subject response over a specific range of administered CO doses. EPA has argued that the Anderson study does suggest an increased risk of aggravation of angina for sensitive individuals who have elevated COHb levels.

5. The fact that the endpoint measured by Anderson et al., namely time to onset of angina pian, is subjective in nature is no basis for ignoring this serious and important effect as carefully articulated in the proposal preamble (45 FR 55069):

> EPA considers such aggravation of angina to be an adverse health effect for several reasons. First, it may result in cardiovascular damage, which is unquantifiable using present technology. Second, aggravation of angina may be the first in a series of progressively more serious symptoms that accompany cardiovascular disease. At low levels of oxygen deprivation, angina patients experience symptoms of chest pain described above. Coronary insufficiency is a more serious symptom that occurs at greater levels of oxygen deprivation. This symptom is sometimes accompanied by changes in enzyme levels and electrocardiographic irregularities. The most serious symptom in this continuum of effects is myocardial infarction. In addition to longer and more intense pain, myocardial infarction is accompanied by irreversible heart damage (death of myocardial cells) as indicated by enzyme level changes and electrocardiographic alterations. Finally, because aggravation of angina may be the first in a series of symptoms that may lead to permanent heart damage, EPA considers aggravation of angina an adverse effect and an indicator that more serious effects may occur in some individuals at the same COHb levels.

6. EPA has reanalyzed the data from the Anderson et al. study using a more conservative multivariate analysis which tests each health endpoint separately for purposes of inference (see Appendix A in the Addendum; EPA 1984b). EPA believes that, had Anderson et al. originally used this technique, the effect of time to onset of angina would have been statistically significant ($p=0.014$ at the 97.5 percent confidence level) but that duration of angina experience would not have been statistically significant ($p=0.11$ at the 97.5 percent confidence level).

In conclusion, EPA agrees with the CASAC statement,

> . . . that it is important to replicate such a study, but the notion that a study has no validity until it's been replicated is flawed. Based upon its current knowledge of how the study was conducted, CASAC presumes that double blind protocols were, in fact, observed and that discrepancies between observed and predicted COHb levels are not as great or as serious as originally suggested. In summary, while CASAC treats the Anderson et al. study with caution, it can find no substantive reason at this time to dispute the reported values, and it recommends that the Agency not disregard its findings (Lippmann, 1984).

The Agency continues to believe that the Anderson et al. findings can be appropriately interpreted as providing reasonably good evidence of exacerbation of angina symptoms occurring in some segments of the population at approximately 2.9 to 4.5 percent COHb.

Comment: Psychological factors contribute to angina attacks, making it difficult to reproduce experiments linking CO and angina.

Agency Response: Although psychological factors may contribute to angina attacks, it has been reasonably shown in the study by Anderson et al. that exposure to CO does contribute independently to the aggravation of angina. Given the double-blind design of this study, there is no reason to suppose that the subjects were exposed to different psychological factors on experimental CO exposure days than they were on clean air control days.

C. Margin of Safety

Comment: EPA has proposed CO standards with an inappropriate margin of safety. The margin of safety was criticized as being either inadequate or excessive.

Agency Response: The decision regarding an adequate margin of safety is a judgment which must be made by the Administrator after weighing all the medical evidence bearing on the effects of CO. The factors to be taken into account include inconclusive evidence as well as findings from studies that are considered definitive and not subject to challenge. The Administrator has considered uncertainties regarding the lowest levels of COHb at which adverse health effects may occur, as well as uncertainties about the levels of COHb likely to result from CO exposure at the levels associated with attainment of alternative standards. More specifically, the Administrator considered the factors and sources of uncertainty, discussed earlier in the Decision on the Primary Standards section of this notice and in the Staff Reassessment (EPA, 1984).

EPA has examined the health protection afforded by alternatives to the current CO primary standards. For example, attainment of a 12 ppm, 8-hour CO standard is estimated to keep more than 99 percent of the population below 2.5 percent COHb. The 2.5 percent COHb level, however, is in the range where physiological effects of concern to EPA and CASAC have been reported. In addition, as indicated in the Staff Reassessment (pp. 18–21), some individuals with physiological parameters that maximize uptake of COHb if exposed to certain patterns of air quality attaining a 12 ppm, 8-hour standard would exceed 3.0 percent COHb. Consequently, the Administrator is concerned that a 12 ppm, 8-hour standard may not provide an adequate margin of safety. There is no credible scientific evidence that suggests more stringent CO primary standards than the current standards are required to protect public health with an adequate margin of safety.

D. Coburn Model Sensitivity Analysis of COHb Levels

Comment: The term used in the Coburn model analysis for inspired CO pressure was mistakenly interpreted as a pressure in dry ambient air. The term was intended to refer to CO pressure in air saturated with water vapor at body temperature.

Agency Response: EPA agrees with the comment and has revised all of the COHb estimates used in this notice and in the final COHb Sensitivity Analysis (Biller and Richmond, 1982) to reflect this change.

Comment: The parameters utilized in the EPA COHb Sensitivity Analysis were not representative of the medical literature. Modeling efforts of this kind should choose conservative values for physiological parameters in order to err on the side of protecting public health.

Agency Response: The values selected for the physiological parameters used in the Sensitivity Analysis were carefully reviewed with members of the scientific community and with consultants to the CASAC and were judged to be reasonable estimates. EPA does not agree that the most conservative values should be selected for the physiological parameters because this would introduce an additional margin of safety into an analysis attempting to estimate the effects of alternative standards. The Sensitivity Analysis does use a range of values for the various physiological parameters.

Comment: The draft Sensitivity Analysis does not adequately treat

differences in physiological parameters between men and women.

Agency Response: In an Appendix to the revised Sensitivity Analysis (Biller and Richmond, 1982), men and women are modelled separately and appropriate physiological parameters are selected for each sex based on a review of the scientific literature.

E. Exposure Estimates for Sensitive Population Groups

Comment: Various technical factors in the exposure analysis either systematically underestimate or overestimate exposures that would occur upon attainment of alternative standards. The exposure analysis should not be used in selecting the primary standards until all the recommended changes are incorporated into the analysis.

Agency Response: EPA has carefully reviewed these comments and separated them into three categories. The first category includes comments with which EPA agrees and for which changes have been made in the exposure analysis. The revised exposure analysis estimates are similar in magnitude, after taking these comments into account, to the original exposure estimates.

A second category of comments suggested changes that EPA agrees would refine the exposure assessment methodology, but which are not feasible at this time because of limitations on the resources and time available for this standard review. EPA will incorporate these comments into its plan for improving its exposure assessment capability. While the exact impact of these refinements cannot be clearly predicted at this time, EPA agrees with CASAC's conclusion that the exposure analysis is "acceptable given the current state-of-the-art of the scientific community's ability to model physiological and other parameters related to this pollutant" (Friedlander, 1982).

A third category consists of comments where EPA disagrees with the suggested changes. Detailed responses to these comments are provided in the docket (Docket OAQPS 79–7, V–C–1). EPA recognizes that there is uncertainty about the accuracy to the exposure estimates, but it believes that the revised estimates are reasonable given the state-of-the-art of exposure assessment.

While future refinements in the methodology and availability of additional data will undoubtedly reduce the degree of uncertainty in the exposure estimates, EPA believes that the current Exposure Analysis provides a useful tool to estimate the number of sensitive individuals who would be exposed to various COHb levels upon attainment of alternative standards.

II. Form of the Primary Standards

Comment: Some commenters favored retaining the current deterministic form; others supported either EPA's 1980 proposal to adopt single-expected-exceedance (statistical form) or the concept of multiple-expected-exceedances (statistical form) primary CO standards. Those in favor of adopting a statistical form argued that it would minimize the impact of unusual meteorological events on control strategies with minimal reductions in health protection offered by the standard. Those opposed to a multiple-expected-exceedances standard expressed concerns about the increased health risks to the sensitive population and the ability of the public to understand the basis for allowing multiple excursions of the standard levels.

Agency Response: Given the concerns expressed by the vast majority of State air pollution control agencies and others that a single-exceedance standard, either deterministic or statistical, more closely reflects the health basis for the standard and is more readily implemented and understood by the general public, EPA has decided to retain the single exceedance format for the primary standards. While EPA believes that adopting a statistical, single-exceedance standard would be a technical improvement, EPA is deferring any such change in the primary CO standards until the uncertainties regarding the health effects basis for the standards are better resolved.

III. Miscellaneous

A. Natural Background

Comment: It has been reported that 93% of the CO in the atmosphere is produced by vegetation and the oceans and, therefore, anthropogenic sources of CO should be of little concern.

Agency Response: Although much of the CO produced globally may be of natural origin, the elevated CO levels found in urban areas and in rural areas near roadways are principally a result of human activities involving the combustion of fossil fuels.

B. Stating Standards in ppm and Not mg/m^3

Comment: EPA should state the revised CO standards solely in parts per million (ppm) rather than mg/m^3. Changing to ppm would (1) avoid confusion as to the level of the standards at different altitudes, (2) provide additional protection for high altitude areas, and (3) be consistent with health and monitoring data using the Federal Reference Methods which are reported in ppm.

Agency Response: EPA is retaining both systems of units but is indicating that ppm is the preferred system of units. Section 50.3 specifies that measurements of air quality are to be corrected to standard conditions (i.e., 25 degrees centigrade and sea level pressure), the only difference between ppm and mg/m^3 (at standard conditions) is a scale factor that does not vary with altitude. That is, if a measurement is expressed in ppm units or mg/m^3 units (at standard conditions) the values will differ by a factor of 0.875 regardless of altitude. This conversion factor is specified in Appendix D of 40 CFR Part 50.

Revisions to Part 50 Regulations

Because EPA has decided not to revise the CO primary standards, there are no substantive changes to the Part 50 regulations concerning these standards. EPA is revising the text of the standards slightly, however, to make them clearer and more understandable to the public. EPA is also explicitly stating several data handling conventions that have traditionally been used in EPA's data systems and guidance. These changes are not intended to redefine the standard but simply to reduce potential ambiguity and to formalize existing data handling conventions. The specific points are the 75 percent data completeness rule that EPA has used when computing 8-hour averages and the number of significant figures retained when making comparisons with the levels of the standard. These changes were discussed in the proposal notice. EPA is also changing to ppm units as the preferred units as discussed in the proposal notice. Finally, EPA is also rescinding the secondary standards for CO, as proposed, because there is no evidence of welfare related effects at or near ambient levels.

Part 51 Regulations and SIP Development

This action does not modify the existing Part 51 regulations. Current guidance to State and local air pollution control agencies on how to interpret air quality data for purposes of attainment decisions and SIP development is contained in "Guidelines for the Interpretation of Air Quality Standards" (EPA, 1977).

Regulatory and Environmental Impacts

Regulatory Impact Analysis

As has been noted, the Clean Air Act specifically requires that NAAQS be based on scientific criteria relating to the level that should be attained to protect public health and welfare adequately. The courts have endorsed a reading of the Act that excludes reliance on the cost or feasibility of achieving such a standard in determining the level of the primary standards. In response to Executive Order 12291, EPA has prepared a regulatory impact analysis (RIA). However, EPA's analysis, "Regulatory Impact Analysis for Carbon Monoxide," has not been considered in determining the standard levels in this final notice. The document is available from the address given earlier in the For Further Information Contact section of this notice until supplies are exhausted and from the NTIS whose address is given in the Addressees section of this notice.

Both the RIA and this final notice were submitted to the Office of Management and Budget (OMB) for review under Executive Order 12291. Any written comments from OMB and any written EPA responses to those comments are available for public inspection at EPA's Central Docket Section, Docket No. OAQPS 79–7, West Tower Lobby, Gallery I, Waterside Mall, 401 M Street SW., Washington, D.C.

Environmental Impacts

Environmental impacts associated with control of CO emission have been examined in the Environmental Impact Statement, which is available in the docket (OAQPS 79–7, IV–A–13) or from EPA at the address given earlier in the For Further Information Contact Section of this notice. This analysis indicates that control strategies required to attain the standards will have minimal adverse impacts on other environmental media.

Impact on Small Entities

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires that all federal agencies consider the impacts of final regulations on small entities, which are defined to be small businesses, small organizations, and small governmental jurisdictions. EPA's analysis pursuant to this Act is summarized in a section of the final report, "Cost and Economic Assessment of Alternative National Ambient Air Quality Standards for Carbon Monoxide" (EPA, 1985). A NAAQS for CO by itself has no direct impact on small entities. However, it requires each State to design and implement control strategies for those areas not in attainment. Three possible sources of impacts on small entities include (1) the FMVCP for cars and trucks, (2) I&M programs, and (3) stationary source control programs. FMVCP requirements are largely established by statute or by regulatory provisions not directly related to the levels of these standards. In addition, they fall primarily on automobile manufacturers, none of which are classified as small businesses. Additionally, the incremental cost of CO control, which is passed on to purchasers of motor vehicles—including small entities—is a small fraction of the purchase price and, thus, the impact to these purchasers should be negligible.

I&M programs for CO control may have a slight negative economic impact on small entities, but may also have a positive economic impact on some small entities. The estimated per vehicle average annual cost for the CO portion of an I&M program is estimated to be $3.50 for the inspection fee and $19 for repairs to failed vehicles. (In those few areas needing an I&M program for CO only, these estimates would be doubled.) These costs should not impose a significant negative economic impact on small entities. On the other hand, some small entities such as gas stations and garages will be repairing failed vehicles resulting in a net increase in receipts due to a CO I&M program. In addition, if a decentralized I&M program is implemented using small businesses to inspect motor vehicles, then their net receipts will also increase due to receipt of the inspection fee, most of which they retain. (The remainder goes to the governmental unit sponsoring the area-wide I&M program.)

Finally, only the largest stationary sources of CO appear to need to implement controls to attain the CO standards that were analyzed. These sources are among the largest facilities within their standard industrial class, and therefore are not likely to be small entities.

Based on the analysis summarized above, EPA concludes that no small entity group will be significantly negatively affected due to retention of the primary CO NAAQS. Therefore, pursuant to 5 U.S.C. 605(b) the Administrator certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Impact on Reporting Requirements

There are no reporting requirements directly associated with this action. There are reporting requirements associated with related sections of the Act, particularly sections 107, 110, 160, and 317 (42 U.S.C. 7407, 7410, 7460, and 7617), however, there are no changes in reporting requirements associated with this final action since the current primary standards are being retained.

Federal Reference Method

The measurement principle and calibration procedure applicable to reference methods for measuring ambient CO concentrations to determine compliance with applicable CO standards are not affected by this action. The measurement principle and the calibration procedure for CO are set forth in Appendix C of 40 CFR Part 50. Reference methods, as well as equivalent methods, for monitoring CO are designated in accordance with 40 CFR Part 53. A list of all methods designated by EPA as reference or equivalent methods for measuring CO is available from any EPA Regional Office, or from EPA, Department E (MD–76), Research Triangle Park, N.C. 27711.

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Air pollution control, Carbon monoxide, Ozone, Sulfur oxides, Particulate matter, Nitrogen dioxide, Lead.

Dated: September 5, 1985.

Lee M. Thomas,

Administrator.

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

For the reasons set forth in the preamble, EPA amends Chapter I, Part 50, of Title 40 of the Code of Federal Regulations as follows:

1. The authority citation for Part 50 continues to read as follows:

Authority: Sec. 109 and 301(a), Clean Air Act, as amended (42 U.S.C. 7409, 7601(a)).

2. Section 50.8 is revised to read as follows:

§ 50.8 National primary ambient air quality standards for carbon monoxide.

(a) The national primary ambient air quality standards for carbon monoxide are:

(1) 9 parts per million (10 milligrams per cubic meter) for an 8-hour average concentration not to be exceeded more than once per year and

(2) 35 parts per million (40 milligrams per cubic meter) for a 1-hour average concentration not to be exceeded more than once per year.

(b) The levels of carbon monoxide in the ambient air shall be measured by:

(1) a reference method based on Appendix C and designated in accordance with Part 53 of this chapter, or

(2) an equivalent method designated in accordance with Part 53 of this chapter.

(c) An 8-hour average shall be considered valid if at least 75 percent of the hourly average for the 8-hour period are available. In the event that only six (or seven) hourly averages are available, the 8-hour average shall be computed on the basis of the hours available using six (or seven) as the divisor.

(d) When summarizing data for comparision with the standards, averages shall be stated to one decimal place. Comparison of the data with the levels of the standards in parts per million shall be made in terms of integers with fractional parts of 0.5 or greater rounding up.

[FR Doc. 85–22025 Filed 9–12–85; 8:45 am]

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Monday
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For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

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Housing and Urban Development Department

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THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: November 15; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Call JoAnn Harte, Workshop Coordinator, 202-523-5239.

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. The January 1986 Washington, D.C. workshop will include facilities for the hearing impaired. Dates and locations will be announced later.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 85–20 of September 7, 1985

Determination With Respect to Ethiopia

Memorandum for the Secretary of State

Pursuant to Section 812(c) of the International Security and Development Cooperation Act of 1985 (P.L. 99–83), I hereby determine on the basis of current evidence that the Ethiopian Government does not meet the condition specified in subsection (c)(1) of that section.

You are directed on my behalf to report this determination, together with the justification therefor, to the Congress immediately.

You are authorized and directed to publish this determination in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, September 7, 1985.

[Fr Doc. 85–22228
Filed 9–12–85; 3:46 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 360, Amdt. 1]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Amendment 1 of Regulation 360 increases the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period September 6–12, 1985. The amendment is needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 360, Amendment 1 (§ 908.660) is effective for the period September 6–12, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and have been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The amendment and the regulation are issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The actions are based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that these actions will tend to effectuate the declared policy of the act.

The amendment and the regulation are consistent with the marketing policy for 1984–85. The committee met by telephone on September 9, 1985, to consider the current and prospective conditions of supply and demand and recommended an increase in the quantity of Valencia oranges that may be handled during the specified week. The committee reports that demand for Valencia oranges continues to increase.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because there is insufficient time between the date when information upon which these regulations are based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the amendment and the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the amendment and regulation and its effective date.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—[AMENDED]

1. The authority citation for Part 7 CFR 908 continues to read as follows:,

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 908.660 is added to read as follows:

§ 908.660 Valencia Orange Regulation 360.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period September 6, 1985, through September 12, 1985, are established as follows:

(a) *District 1:* 314,000 cartons;
(b) *District 2:* 536,000 cartons;
(c) *District 3:* Unlimited cartons.

Dated: September 11, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–21800 Filed 9–13–85; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1079

Milk in the Iowa Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This action suspends for the months of September through November 1985 portions of the Iowa Federal milk order. The suspension would increase the limits on the quantity of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The suspension was requested by a cooperative association that represents producers supplying milk to the fluid market. The action is needed to achieve added economies in disposing of the cooperative's reserve milk supplies.

EFFECTIVE DATE: September 16, 1985.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 2, 1985, published August 8, 1985 (50 FR 32084).

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the order on certain milk handlers and tends to insure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et*

seq.), and of the order regulating the handling of milk in the Iowa marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 8, 1985, (50 FR 32084) concerning a proposed suspension of certain provisions of the order. Interested parties were afforded an opportunity to file data, views, and arguments thereon. Views in opposition to the proposed suspension were received from a cooperative association that supplies a portion of the market's fluid milk needs.

After consideration of all relevant information, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of September through November 1985 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1079.13(d) (2) and (3) the words "50 percent in the months of September through November and", and the words "in other months," as they appear in each paragraph.

Statement of Consideration

This action makes inoperative for September through November 1985 the 50-percent limitation on the proportion of a handler's producer milk that may be moved directly from the farm to a nonpool manufacturing plant and still be pooled. Under the current order, for example, a supply plant must ship 35 percent of its milk supply to fluid milk plants in order to be a pool supply plant. The remaining 65 percent of the supply plant's milk may be disposed of at manufacturing plants. However, only 50 percent can move directly from the farms to nonpool plants.

Associated Milk Producers, Inc. (AMPI), an association of producers that operates plants regulated by the Iowa milk order requested that the 50 percent diversion limitation be suspended for September through November 1985. The remaining diversion provisions in the order would permit a greater portion of a handler's producer milk receipts to be moved directly from farms to nonpool manufacturing plants and still be priced under the order.

AMPI stated that milk production by its members associated with the Iowa order has increased approximately 10 percent. AMPI further stated that its fluid milk sales have increased only slightly.

Market data indicates that the volume of milk pooled under the Iowa order for the months of April through June 1985 declined in comparison to the same months of the previous year. Milk production, however, increased from 213.4 million pounds in July 1984 to 226.1 million pounds in July 1985, or approximately 6 percent. Market data further indicates that daily average deliveries by producers have increased in all months since March 1985. Average daily deliveries by producers increased from 1,845 pounds in April 1984 to 1,906 pounds in April 1985, or approximately 3 percent. In July 1985, daily deliveries averaged 2,075 pounds compared to 1,765 pounds for July 1984, or approximately 18 percent higher. The Dairy Diversion Program, which was in effect throughout 1984, expired at the end of March 1985. Market data also indicates that milk production in surrounding markets since the expiration of this program has substantially increased.

The 50 percent limit on diversions to nonpool plants is inadequate to permit efficient handling of milk that is not needed for fluid milk uses in cases where nonpool plants are the only outlet used for disposing of reserve milk. For example, a supply plant must ship at least 35 percent of its milk supply to other plants to qualify as a pool plant. However, with diversions limited to 50 percent, the other 15 percent must be received at the supply plant and then transferred to a nonpool plant. AMPI contends that the extra handling involved adversely affects milk quality (more pumping than if diverted), and is an uneconomic means of pooling its reserve milk supplies. Suspending the 50 percent diversion limit will alleviate these concerns and allow improved handling efficiencies.

Under the conditions cited by AMPI and an analysis of market data, a suspension of the 50 percent limitation in the diversion provisions is appropriate so that producer milk receipts not needed for fluid use may be moved directly from farms to manufacturing plants and still be priced under the order. A suspension of the 50-percent limitation will tend to improve efficiencies in disposing of AMPI's reserve milk supplies.

Pool plant handlers should be aware that suspension of the 50-percent limitation does not mean that the diversion limit is now 70 percent. The effective diversion limit is the reciprocal of the pool performance standards. A supply plant, for example, would still have to ship 35 percent of its receipts; thus, for such plant operators the effective diversion limit is 65 percent rather than 70 percent. Distributing plant operators would be able to divert up to 60 percent of their producer milk.

Interested parties were given an opportunity to submit written data, views, and arguments concerning the proposed suspension. One opposing comment was received from the National Farmers' Organization, Inc. (NFO), a cooperative association that supplies a portion of the fluid milk needs of the market.

The opposing cooperative association stated that the suspension was not warranted because milk production pooled under the Iowa Federal marketing order during the period of January through June 1985 declined. Also, the association stated that AMPI can pool their additional reserve milk supplies by combining for reporting purposes the Grade A and Grade B operations at each of its plants that handle reserve milk for the Iowa market. This alternative, according to the opponent, would eliminate the unnecessary and expensive milk handling cited by AMPI and make unnecessary the suspension of the diversion limitations. The opposing association also expressed a concern about the possibility of additional milk supplies from distant areas being associated with this market while the milk is moved directly to distant nonpool plants.

It may be possible that AMPI could avoid some of the handling and associated costs of disposing of surplus milk by adopting different reporting procedures as suggested by NFO. However, there may be a variety of factors which would make changes in reporting procedures impractical or economically not feasible.

The oppponent's concern about the possibility of unneeded distant milk being associated with this market appears to be overstated since the pool performance standards continue to place an effective upper limit on the amount of milk that can be diverted and pooled under the Iowa Federal marketing order.

The suspension does not change the percentage of a supply plant's receipts that must be shipped to fluid plants to qualify the supply plant as a pool plant. The actual diversion limit for a supply plant for September through November 1985 will be 65 percent, which is the reciprocal of the 35 percent shipping requirement. Thus, the suspension should not result in any change in the proportions of a supply plant's receipts that are shipped to fluid milk outlets, or directed to manufacturing uses. What the suspension will do is permit milk that otherwise would have to be received at the supply plant and then shipped to a manufacturing plant to be moved directly from the farm to the manufacturing plant and still be pooled. This should provide additional

economies for AMPI by eliminating milk hauling and handling, which also adversely affects milk quality. Morever, such benefits of this action will be available to other handlers who may have more reserve milk to dispose of this fall.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area. Otherwise, uneconomic movements of milk would be made solely for the purpose of pooling the milk of the proponent's members who have regularly been associated with the Iowa market;

(b) The suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exists for making this order effective upon publication in the Federal Register.

List of Subjects in 7 CFR Part 1079

Milk marketing orders, Milk, Dairy products.

PART 1079—[AMENDED]

The authority citation for Part 1079 continues to read as follows:

Authority: Secs. 1–19, Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1079.13 [Temporarily suspended in part]

It is therefore ordered, that the following language in § 1079.13(d)(2) and (3) is suspended for the months of September through November 1985.

In § 1079.13(d)(2) and (3) the words "50 percent in the months of September through November and", the words "in other months," as they appear in each paragraph.

Effective date: September 16, 1985.

Signed at Washington, DC on: September 10, 1985.

Raymond D. Lett,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85–22118 Filed 9–13–85; 8:45 am]

BILLING CODE 3410–02–M

Rural Electrification Administration

7 CFR Part 1772

REA Bulletin 345–39, REA Specification for Telephone Station Protectors

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR § 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by incorporating by reference REA Bulletin 345–39, REA Specification for Telephone Station Protectors, which adopts, with several minor modifications by REA, PEG–2–1983, an industry standard. Concurrently, REA hereby withdraws REA's PE–42, a proprietary REA standard addressing the same product.

The Protection Engineers' Group (PEG) is a subordinate body of the U.S. Telephone Association's (USTA) Engineering Committee. PEG develops uniform industry standards for protective devices used in telecommunications systems in addition to other activities. The group enjoys broad support and participation from operating companies as well as a number of government agencies, including REA, from throughout the United States and Canada. PEG–2–1983, Specification for Telephone Station Protectors, represents a consensus of these participants as to the minimum acceptable performance requirements for a telephone station protector.

EFFECTIVE DATE: August 19, 1985.

FOR FURTHER INFORMATION CONTACT: M. Wilson Magruder, Director, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–8663. The Impact Analysis describing the options considered in developing this rule and the impact of implementing each option is available upon request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA hereby amends 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by incorporating by reference a revised Bulletin 345–39 (Previous issue dated May 5, 1980), REA Specification for Telephone Station Protectors. Copies of the bulletin are available upon request from the address stated above. It is also available for inspection at the Office of the Federal Register Information Center, Room 8401, 1100 L Street, NW., Washington, DC 20408. This incorporation by reference was approved by the Director of the Fderal Register on August 28, 1985. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the Federal Register.

The action will not: (1) Have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity, innovations, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and therefore has been determined to be "not major". This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the Final rule related Notice to 7 CFR 3015, Subpart V (48 FR 54317, Decembe 1, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Copies of PEG–2–1983 may be obtained for a nominal fee from the United States Telephone Association, 1801 "K" Street, NW, #1201, Washington, DC 20006, telephone (202) 872–1200.

Background

The present edition of PE–42 was developed in 1980 by REA. Industry comments were sought and considered by REA at several points in the development of PE–42. Various major operating telephone companies differed in the specifications they adopted for this product.

The Protection Engineers' Group (PEG) is a subordinate body of the U.S. Telephone Association's (USTA) Engineering Committee. PEG develops

uniform industry standards for protective devices used in telecommunications systems in addition to other activities. The group enjoys broad support and participation from operating companies as well as a number of government agencies, including REA, from throughout the United States and Canada. PEG–2–1983, Specification for Telephone Station Protectors, represents a consensus of these participants as to the minimum acceptable performance requirements for a telephone station protector.

REA is adopting and incorporating by reference this specification as issued with minor modifications by REA.This is in accordance with OMB Circular A–119 which urges Federal agencies to adopt private sector standards whenever practicable. The REA modifications to PEG–2–1983 essentially are reference changes. The references to certain other PEG specifications, not adopted by REA, are changed to reference specified REA bulletins or REA itself.

REA published a Proposed Rule in the **Federal Register** on November 20, 1984, Volume 49, No. 225, page 45752. There were no comments as a result of this proposal.

List of Subjects in 7 CFR Part 1772

Loan programs—communications, Telecommunications, Telephone.

PART 1772—[AMENDED]

In view of the above, the Administrator hereby amends 7 CFR Part 1772 by incorporating by reference REA Bulletin 345–39.

1. The authority citation for Part 1772 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.;* 7 U.S.C. 1921 *et seq.*

2. The table in § 1772.97 is amended by adding the entry 345–39 to read as follows:

§ 1772.97 Incorporation by reference of telephone standards and specifications.

* * * * *

REA Bulletin No	Specification No.	Date last issued	Title of standard or specification
345–39		Aug. 19, 1985	REA Specification for Telephone Station Protectors.

* * * * *

Dated: August 19, 1985.

Jack Van Mark,

Acting Administrator.

[FR Doc. 85–21861 Filed 9–13–85; 8:45 am]

BILLING CODE 3410–15–M

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 83–007F]

New Turkey Inspection System

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal poultry products inspection regulations by establishing a voluntary and alternate method of post-mortem inspection for turkeys known as the New Turkey Inspection (NTI) System. The NTI System requires one or two inspectors on each eviscerating line to examine the whole carcass and viscera of each bird. Under the NTI System establishments are responsible for independently performing the necessary trim of designated defects on passed carcasses and for operating a quality control program designed to assure that poultry is wholesome and properly prepared. The final rule also establishes staffing and facility requirements for the NTI System based on work measurement data. While continuing to provide consumers with wholesome products, the NTI System will increase the speed at which birds can be effectively inspected and increase inspection service and poultry plant efficiency.

EFFECTIVE DATE: October 16, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas L. Berndt, Acting Director, Slaughter Inspection Standards and Procedures Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–3219.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this rule is not a "major rule" under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The principal effect of this final rule is to offer the Department and industry a voluntary alternative to current turkey inspection procedures that would increase productivity. An establishment using the NTI System will be required to install new equipment and modify its production line, but the cost of these changes will be outweighed by savings from increased productivity and possible reduction of costs to the establishment for inspectors working overtime.

Effect on Small Entities

The Administrator, FSIS, has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601).

The NTI System is a voluntary and alternate inspection procedure which will allow an establishment using it to increase processing speeds over what is currently possible. The Agency estimates that of the approximately 110 federally inspected turkey slaughter facilities, the 60 largest producers—those that slaughter over 100,000 birds annually—will adopt the NTI System. Those facilities not adopting the NTI System will not be affected by this final rule.

Background

The Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) requires that the Department conduct a post-mortem inspection of the carcass of each domesticated bird (turkey, chicken, duck, goose, or guinea) processed in official establishments subject to inspection under the Act. Working on a moving production line, Department veterinarians or trained food inspectors under veterinary supervision follow standardized inspection procedures and examine the exterior, interior, and viscera (internal organs) of each bird slaughtered to detect disease or other conditions which could make the carcass of any part unwholesome or otherwise unfit for human food.

FSIS is the Agency responsible for carrying out the provisions of the Act. Because the cost of meat and poultry inspections is a large part of the FSIS budget, FSIS is especially concerned about the efficiency of inspection procedures. Achieving faster line speeds using the current traditional turkey inspection procedure has proven to be very difficult. FSIS, therefore, initiated

the development of an alternate inspection system which would increase inspector efficiency and permit higher line speeds. After conducting tests with the NTI System, FSIS has determined that use of the NTI System can make turkey post-mortem inspections more efficient and benefit both FSIS and the turkey processing industry without decreasing consumer protection.

Turkey Inspection Procedures

A. Traditional Inspection

The Traditional Inspection procedure is presently the only procedure available to the turkey processing industry. Using traditional turkey inspection, one inspector inspects the whole bird and is responsible for the proper disposition of the bird, including any required trimming, before it leaves the inspection station.

The inspector examines the entire turkey carcass in one continuous sequence. The inspector examines the outside, lifts the abdominal flap, examines the body cavity, and, finally, manipulates and observes the viscera. If trimming—that is, the removal of defects not serious enough to require condemnation of the entire bird—is required, then the inspector during the inspection process determines what must be trimmed, instructs a plant helper what to trim, and then verifies that the trim was done as instructed. The entire inspection takes from 3 to 6 seconds per bird. The time required for identifying, supervising and verifying the trim is a significant part of that 3 to 6 seconds.

B. The New Turkey Inspection (NTI) System

The Traditional Inspection procedure was satisfactory to FSIS and the turkey industry for many years. However, the turkey industry has grown and matured significantly over the last several years. The annual per capita consumption of turkey has increased from 8 pounds in 1970 to 11.2 pounds in 1984, a 40 percent increase. Turkey is no longer simply a holiday product but is consumed year-round. This increase in turkey consumption has been due in large part to improvement in genetics, nutrition, health and flock management. As a result of these improvements plus advances in processing methods, the turkey industry can now present uniform lots of birds to inspectors faster than inspectors can properly inspect the birds under the Traditional Inspection procedure. Merely increasing the use of the current procedure would be impractical and inefficient, and would place demands upon Department resources which would be difficult to meet. Therefore FSIS has developed the NTI System to accommodate this demand.

Recent studies have reinforced the Department's longstanding view that Federal inspection is more efficient and effective in establishments where quality control is emphasized. This is in contrast to establishments which do not have or maintain the facilities, personnel or procedures necessary to assure the highest practicable degree of quality control. Such establishments may tend to rely on Federal inspection as a substitute for the proper control of their own operations, and to place the Federal inspectors in a burdensome, quasi-supervisory role not appropriate under the Act. The NTI System eliminates much of the need for post-mortem inspectors to act in such a role. It requires that participating establishments have and maintain specific quality control facilities, personnel and procedures, as spelled out in a written partial quality control program approved by the Department, and thereby assure the inspector in charge that certain functions are being effectively performed by the establishment.

The "New Turkey Inspection" or "NTI" System utilizes one or two post-mortem inspectors on each eviscerating line. The inspector(s) inspect the outside, the inside, and the viscera of every bird presented. The inspector determines whether the bird should be condemned, salvaged, retained for disposition by a veterinarian, reprocessed, or proceed down the line as a passed bird subject to trim and reinspection.

After post-mortem inspection is completed at the inspection station(s), plant employees independently perform any necessary outside trim on all passed carcasses after the giblets are harvested. Under the Traditional Inspection procedure, the inspector is responsible for identifying those carcasses needing to be trimmed, directing the establishment employee to trim the defects, and verifying that the bird has been properly trimmed. However, the NTI System shifts the responsibility of performing specified outside trim to the establishment empolyees.

Thus, the complete NTI System consists of one or two inspectors performing whole bird inspection, and an inspector monitoring the application of the approved partial quality control program to assure that the program is being followed.

Poultry Carcass On-Line Quality Control (PCOLQC) Program

The poultry carcass on-line quality control (PCOLQC) program is a statistically based sampling system designed to assure control of an establishment's processing operations. It is the basis for approving use of the NTI System in any establishment. The program consists of two parts—plant quality control (QC) and the Department's monitoring of the QC program.

The plant QC program is a partial QC program, applied for and approved by the Administrator under 9 CFR 381.145(d) and the requirements in the regulation. It consists of identifying all points on the eviscerating line critical to the quality of the carcass, and checking periodically at each point during operation to determine compliance with predetermined standards. Products not meeting the standards would be subject to corrective actions predetermined and described in the approved QC program.

A carcass reinspection station is located at a point on the eviscerating line after the carcasses have been trimmed and washed. At this point, carcasses are sampled and examined, and findings are reported by plant quality control personnel as prescribed in the PCOLQC program.

The Department's monitoring program consists primarily of reviewing data and sampling product at the reinspection station and at those points on the eviscerating line critical to the performance of inspection activities and the wholesomeness of product.

Under the NTI System, USDA inspectors are responsible for carcass inspection, monitoring the plant's application of the quality control program, reviewing all data collected under the partial QC program, conducting regular verification and evaluation sampling and observations to assure that the plant's data are accurate and truthful, and assuring that ready-to-cook poultry conforms to all applicable regulatory requirements.

Designing and Testing the NTI System

Effectiveness studies to test the NTI System and compare it with the Traditional Inspection procedure were conducted. Testing was performed in three plants using Traditional Inspection for comparison.

The effectiveness test results indicated that there were no significant differences in error rates between Traditional Inspection and the NTI System.

Inspection Rates/Line Speeds

As part of the effectiveness studies of the NTI System, the Agency measured the amount of work performed by inspectors using the NTI System. The Agency used the results to determine both the time required to perform inspection tasks and maximum line speeds for the NTI System.

Turkeys are commonly slaughtered at weights ranging from approximately 10 to 25 pounds. It is slightly more work to inspect a heavier bird than a lighter bird because (1) the inside and outside surface areas are greater, and (2) the body cavity is longer, deeper, and more difficult to observe. Also, the greater amount of abdominal leaf fat and the increased size of the viscera organs on heavier birds require more time and effort to manipulate. As a consequence, inspection rates for heavier turkeys are somewhat slower than the rates for lighter turkeys. Since hens and fryer roasters generally weigh less than 16 pounds, and toms are usually not slaughtered until they weigh more than 16 pounds, the Agency is setting maximum inspection rates using 16 pounds as the division between light and heavy turkeys. The 16-pound standard is based upon the weight of the carcass and viscera when presented for inspection with the blood, feathers and feet removed.

With the NTI System using one inspector (NTI–1), the Agency has determined line speed maximums to be 32 light turkeys and 30 heavy turkeys per minute with the J-type opening cut and 25 light turkeys and 21 heavy turkeys with the Bar-type opening cut. With two inspectors (NTI–2), the maximum line speeds are 51 light turkeys and 41 heavy turkeys per minute with the J-type cut and 45 light turkeys and 35 heavy turkeys per minute with the Bar-type cut.

The line speeds were obtained using measurement data and test results obtained on lines using the standard 9-inch shackle on 12-inch centers, with birds on every shackle. Since some establishments use 9-inch or 16-inch centers, or skip shackles, or have other variations from the standard, each establishment using nonstandard facilities will be reviewed to determine appropriate maximum rates for that establishment. These rates will be the same or slower, but never faster than those in the following table.

MAXIMUM TURKEY INSPECTION RATES

Inspection procedure	Line configuration	Number of inspectors	Birds/Minute			
			J-type		Bar-type	
			(<16#) light	(>16#) [1] heavy	(<16#) light	(>16#) [1] heavy
NTI–1	12–1	1	32	30	25	21
NTI–2	[2] 24–2	2	51	41	45	35

[1] This weight refers to the bird at the point of post-mortem inspection without blood, feathers, or feet.
[2] The turkeys are suspended on the slaughter line at 12-inch intervals with two inspectors each looking at alternating birds at 24-inch intervals.

The maximum line speeds in the table are not to be exceeded for any reason and will be achieved only when all plant conditions are optimal. The inspector in charge is responsible for reducing the line speeds when in his or her judgment the existing NTI System does not permit adequate inspection because the birds are not presented properly or the health conditions of a particular flock dictate a need for a more extended inspection.

Impact of the NTI System and Facility Requirements

The NTI System is an alternate way of inspecting turkeys. The NTI System allows establishments to run their eviscerating lines at a faster rate than is now available using traditional Inspection. It requires establishments to develop and submit to the Administrator for approval a partial QC program designed to assure that poultry is wholesome and properly prepared. As previously discussed, the new system requires the industry to be responsible for trimming specified defects on the outside of carcasses after the giblets are harvested.

Establishments also must meet certain equipment and facility requirements in order to utilize the NTI System.

These requirements are all listed in the regulation herein. Although these facility changes will involve some cost to the establishments, FSIS anticipates those costs will be quickly outweighed by savings from operating at the higher line speeds achievable with the NTI System.

Discussion of Comments

Comments on the proposed rule were solicited from interested parties in the November 8, 1984, **Federal Register** (49 FR 44640) and again in the proposed rule extension of comment period published in the January 3, 1985, **Federal Register** (50 FR 280). The comment period closed February 21, 1985. The Agency received eight comments within the allotted time period—five from poultry processors and three from consumers.

The following are summaries of those comments and the Agency's response to each issue:

A. Poultry Processors

While many of the comments from the poultry processors were favorable and commended the Agency for its effort to modernize turkey inspection, they raised questions in four major areas: Facility requirements, line speeds, trimming, and the Quality Control (QC) program application.

Comment: Foot-operated, hand-rinsing facilities should be allowed in lieu of continuous water flow at each inspection and helper station.

Response: The requirement for "on-line" hand-rinsing facilities with a continuous flow of water at each inspector and helper station cannot be changed for two reasons. First, the amount of time for an inspector to rinse his/her hands, which has been measured by work measurement calculations, must be kept to an absolute minimum to achieve maximum inspection time. Any device requiring hand or foot operation places a greater workload on the inspector which may cause unnecessary delays in operations or slower line speeds. Second, the workload of the helper varies with the disease conditions of the birds. The birds on the line are continuously moving and when the amount of work increases, such as operating a water valve, helpers also may not have sufficient time to carry out their required functions properly.

Comment: The requirements for the reinspection station are too specific and superfluous. The inspector in charge (IIC) should be able to accept or reject the reinspection station in each plant. Separate reinspection stations for each line are unnecessary and redundant.

Response: The reinspection station is a critical point in the plant's quality control (QC) program and is one of the five inspectional critical points for the Department. During the development of the QC programs in the pilot plants, the Department believed that 6 feet of floor space along the conveyor line would be necessary to properly reinspect the 10-bird samples. Since then, it has become evident that the reinspection station can be placed near the conveyor line and adequately serve more than one line. Therefore, the requirement for separate

reinspection stations was eliminated and the final rule has been modified to require a minimum of 3 feet of floor space on each conveyor line so carcasses can be removed for evaluation. The remaining requirements for the reinspection station are necessary to allow reinspection activities to be performed effectively and efficiently. No comments were received on these requirements. The Department believes that approval of these facilities should be performed by one office in Washington, D.C., to prevent improper modifications to the requirements.

Comment: Criteria used by the IIC to govern line speeds should be clear and not subjective.

Response: The NTI System is designed to operate at maximum speeds when normal birds are slaughtered and the birds are presented to the inspectors correctly. Presentation defects have been identified and weighted values assigned to each error. These weighted values reflect an objective line speed determination based upon work measurement calculations. Actions to be taken by the plant when the presentation standard is exceeded are addressed in the plant's QC program. Due to the variability of disease conditions, it is very difficult to have objective guidelines for line speed reduction. When unusual disease conditions occur, the IIC does have the authority and responsibility of adjusting the line speed to allow the inspector(s) the proper amount of time to inspect such birds.

Comment: Plants desiring to use the Bar-Type cut to open the birds should be allowed to run the NTI System with equivalent line speeds to those plants using the J-Type opening cut.

Response: During the earlier development of the NTI System, plants did not show an interest in performing the Bar-Type of opening cut. Since then, requests have been made by companies wishing to switch to the Bar-Type cut from the J-Type cut. Therefore, the Department has work measured the inspection procedure for the Bar-Type cut, and line speeds have been determined and included in the final rule (9 CFR 381.68 (a) and (c)).

Comment: Appropriate line speeds should be set for each establishment, and industry-wide rates should be eliminated from the rule.

Response: The elimination of maximum inspection rates for the industry as a whole leads to the development of local standards which tend to be subjective, arbitrary, and capricious. The maximum inspection rates in the final rule are established by work measurement calculations and are based on the amount of time necessary for an inspector to properly perform the correct inspection procedure. Placing the maximum inspection rates in the final rule provides fair and equal treatment for all turkey establishments.

Comment: Plants should be given more flexibility for determining where trimming will occur and, if included in the QC program, be permitted to trim birds after chilling.

Response: The NTI System was tested and evaluated when all trim functions were completed prior to the final wash and the chillers. Additional studies are being considered to evaluate the effect of chilling on trim defects and to determine if the wholesomeness of commingled carcasses would be changed as they pass through the chiller.

Comment: The U.S. Department of Agriculture should not demand tighter standards for processing and trim defects than under Traditional Inspection.

Response: The finished product standards (FPS) for the NTI System were established by collecting processing and trim defect data from USDA passed birds in randomly selected turkey plants. These standards were compared against Acceptable Quality Level (AQL) standards used in traditional turkey operations and determined to be comparable. The two standards were also compared in the NTI System pilot plants, and the results revealed compatibility. The Department has determined that the two standards are the same although each is applied differently. The FPS are an integral part of the plant's QC program. With the NTI System, the Department is only asking for an equivalent level of quality as that produced under Traditional Inspection.

Comment: The defect classification criteria of "Trimmable Lesion/Condition" and "Failure to complete task as indicated by marking system" should be removed from the Finished Product Standards since they overshadow how well or poorly the trimmers are doing.

Response: The NTI System does not accept any unwholesome carcass or part. The FPS are one of many checks for determining the effectiveness of the plant-operated QC program. In the event that a sampled carcass is found to have defects which should have been trimmed during the processing operation, the defect shall be removed, the finding recorded, and the production supervisor notified. These actions are designed to monitor the performance of each plant trimmer and to provide the necessary feedback to correct performance deficiencies. Consequently, the Department feels these criteria are critical to the trim finished product standards.

Comment: There are various meat and poultry inspection bulletins in the field which conflict with the NTI System.

Response: A review of all active MPI bulletins revealed that most of the bulletins in question dealt with the traditional AQL reinspection program. Plants under the NTI System will perform only FPS tests. All actions and requirements will be included in the plant's QC program. Bulletins dealing with sanitary handling of product and equipment requirements will remain effective and the NTI System plants are required to comply.

Comment: A formal approval system should be established for QC program changes that the plant may want to make.

Response: A NTI System QC program will be approved by the Slaughter Inspection Standards and Procedures (SISP) Division, Meat and Poultry Inspection Technical Services, Washington, D.C. Certain subsequent modifications to the program of a minor nature may be conditionally approved at the local level. Such approvals will be reviewed for final approval by the SISP Division. Major revisions of the QC program must be directed to the SISP Division through the Meat and Poultry Inspection Operations' chain of command. The Agency has developed guidelines to allow plants to change to the NTI System while adjusting and correcting their QC programs.

B. Consumers

All three consumers' comments were in regard to quality and wholesomeness of product.

Comment: The NTI System will lead to a reduction in the quality and wholesomeness of turkey products in commerce.

Response: The NTI System was tested and compared with traditional inspection procedures. The test results indicated no differences in either the wholesomeness or quality of poultry produced under the NTI System.

Miscellaneous Amendments

On October 23, 1984, the Agency published a final rule in the **Federal Register** (49 FR 42550) establishing an alternate voluntary method of post-mortem inspection for broilers and cornish game hens known as the "New Line Speed" (NELS) Inspection System. The NELS Inspection System regulation affected identical sections in 9 CFR as the proposed rule on the NTI System. The NTI System final rule was already

in the rulemaking process and close to publication at the time the NELS Inspection System regulation was published. This situation prevented the Agency from including references of the NELS Inspection System regulation into the NTI System proposed rule. Therefore, this final rule has been amended to incorporate the NTI System provision into the applicable sections of the NELS Inspection System regulation, mainly those dealing with the partial quality control programs required under both the NELS Inspection System and the NTI System.

Final Rule

FSIS has determined that the NTI System offers a viable alternative to the traditional method of inspection. Any producer who chooses to implement the NTI System must comply with the facility requirements as listed in the final rule and maintain a PCOLQC program which meets Department approval. After careful consideration of the comments received following the publication of the proposed rule in the **Federal Register** on November 8, 1984 (49 FR 44640) and again in the proposed rule extension of comment period published January 3, 1985 (50 FR 280), and subsequent testing of the NTI System, FSIS is adopting the proposal as published with the modifications previously discussed herein.

List of Subjects in 9 CFR Part 381

Facilities, Poultry products inspection, Post-mortem, Quality control, Reporting and recordkeeping requirements.

PART 381—[AMENDED]

Accordingly, the poultry products inspection regulation (9 CFR Part 381) is amended as follows:

1. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*), unless otherwise noted.

2. Section 381.36 (9 CFR 381.36) is amended by adding a new paragraph (e) to read as follows:

§ 381.36 Facilities required.

* * * * *

(e) Facilities for the New Turkey Inspection (NTI) System. The following requirements for lines operating under the NTI System are in addition to the normal requirements to obtain a grant of inspection and to the requirements for the NTI System in § 381.76 (b) and (c).

(1) The following provisions apply to every inspection station:

(i) The conveyor line must be level for the entire length of the inspection station. The vertical distance from the bottom of the shackles to the top of the adjustable platform (paragraph (e)(1)(iii) of this section) in its lowest position shall not be less than 60 inches.

(ii) Floor space shall consist of 8 feet along the conveyor line; at least 4 feet for the inspector, and at least 4 feet for the establishment helper.

(iii) The inspector's station shall have an easily and rapidly adjustable platform with a minimum width of 2 feet which covers the entire length of the station (4 feet). The platform must adjust vertically a minimum of 14 inches, and must have a 42-inch rail on the back side and ½-inch foot bumpers on the sides and the front to allow safe working conditions.

(iv) Conveyor line stop/start switches shall be located within easy reach of each inspector.

(v) A trough or other facilities complying with § 381.53(g)(4) shall extend beneath the conveyor at all places where processing operations are conducted from the point where the carcass is opened to the point where the trimming has been performed. The trough must be wide enough to prevent trimmings, drippage, and debris from accumulation on the floor or platforms. The clearance between suspended carcasses and the trough must be sufficient to prevent contamination of carcasses by splash.

(vi) A minimum of 200 foot-candles of shadow-free lighting with a minimum color rendering index value of 85 [1] where the birds are inspected to facilitate inspection is required. The minimum lighting requirement for inspection stations in § 381.52(b) shall not apply.

(vii) On-line handrinsing facilities with a continuous flow of water shall be provided for and within easy reach of each inspector and each establishment helper.

(viii) Hangback racks shall be provided for and within easy reach of the establishment helper.

(ix) Receptacles shall be provided for condemned carcasses and parts conforming with the requirements of § 381.53(m).

(2) The following provisions shall apply only to the reinspection station:

(i) Floor space shall consist of a minimum of 3 feet along the conveyor line so carcasses can be removed from each line for evaluation. The space shall be level and protected from all traffic and overhead obstructions.

(ii) The vertical distance from the bottom of the shackles to the floor must not be less than 48 inches.

(iii) A table at least 3 feet wide and 2 feet deep designed to be readily cleanable and drainable shall be provided for reinspecting the sampled birds.

(iv) A minimum of 200 foot-candles of shadow-free lighting with a minimum color rendering index of 85 [1] at the table surface is required.

(v) A clipboard holder shall be provided for holding the recording sheets.

(vi) Handwashing facilities shall be provided for and within easy reach of persons working at the station.

(vii) Hangback racks designed to hold 10 carcasses shall be provided for and positioned within easy reach of the person at this station.

3. 9 CFR Part 381 is amended by adding a new § 381.68 under Subpart I to read as follows:

§ 381.68 Maximum inspection rates—New turkey inspection system.

(a) The maximum inspection rates for one inspector New Turkey Inspection (NTI–1) and two inspector New Turkey Inspection (NTI–2) are listed in the table below. These line speeds are for lines using standard 9-inch shackles on 12-inch centers with birds hung on every shackle and opened with J-type or Bar-type opening cuts. Maximum rates for those establishments having varying configurations will be established by the Administrator but will not exceed those in the table. Neither the rates in the table nor those established for establishments with varying configurations shall be exceeded under any circumstances.

(b) There are two categories of turkeys for determining inspection rates, "light turkeys" and "heavy turkeys". Light turkeys are all turkeys weighing less than 16 pounds. Heavy turkeys are all turkeys weighing 16 pounds or more. The weights refer to the bird at the point of post-mortem inspection, with blood, feathers and feet removed.

(c) The inspector in charge may reduce inspection line rates when in his/her judgment the prescribed inspection procedure cannot be adequately performed within the time available because the health conditions of a particular flock dictate a need for a more extended inspection.

[1] This requirement may be met by deluxe cool white fluorescent lighting.

MAXIMUM TURKEY INSPECTION RATES

Inspection system	Line configuration	Number of inspectors	[illegible]			
			J-Type		Bar-Type	
			(<16#) light	(>16#)[1] heavy	(<#) light	(>16#)[1] heavy
NTI–1	12–1	1	[illegible]	[illegible]	25	21
NTI–2	[2] 24–2	[illegible]	51	41	45	35

[1] This weight refers to the bird at the point of post-mortem inspection, without blood, feathers, or feet.
[2] The turkeys are suspended on the slaughter line at 12-inch intervals, with two inspectors each looking at alternating birds at 24-inch intervals.

4. Section 381.76 (9 CFR 381.76) is amended by revising the section heading and paragraphs (b)(1), (b)(2), the introductory text of (c), (c)(1), (c)(3), (c)(4), and (c)(6) and by adding a new paragraph (b)(5) to read as follows:

§ 318.76 Post-mortem inspection, when required; extent; Traditional, Modified Traditional, New Line Speed (NELS) Inspection System; and the New Turkey Inspection (NTI) System; rate of inspection.

* * * * *

(b)(1) There are four systems of post-mortem inspection: Modified Traditional Inspection which shall be used only for young chickens;[2] the New Line Speed (NELS) Inspection System, which shall be used only for broilers and cornish game hens; the New Turkey Inspection (NTI) System, which shall be used only for turkeys; and Traditional Inspection.

(i) Modified Traditional Inspection shall be used only for young chickens if:

(*a*) The operator requests Modified Traditional Inspection and the Administrator determines that the system will result in no loss of inspection efficiency; or

(*b*) The Administrator determines that Modified Traditional Inspection will increase inspector efficiency.

(ii) The NELS Inspection System shall be used only for broilers and cornish game hens if:

(*a*) The operator requests the NELS Inspection System, and

(*b*) The Administrator determines that the establishment has the intent and capability to operate at line speeds greater than 70 birds per minute, meets all the facility requirements in § 381.36(d), and receives approval of its partial quality control program as specified in paragraph (c) of the section.

(iii) The NTI System shall be used only for turkeys if:

(*a*) The operator requests it, and

(*b*) The Administrator determines that the establishment meets all the facility requirements in § 381.36(e), and receives approval of its partial quality control program as specified in paragraph (c) of this section.

(iv) Traditional Inspection shall be used for turkeys when the NTI System is not used. For other classes of poultry, Traditional Inspection shall be used when neither Modified Traditional Inspection nor the NELS Inspection System is used.

(2) The requirements of paragraph (a) of this section are applicable to all four inspection systems.

* * * * *

(5) The following requirements are also applicable to the NTI System:

(i) Inspection under the NTI System is conducted in two phases, a post-mortem inspection phase and a reinspection phase. The NTI–1 Inspection System requires that the establishment provide one inspection station for each line and adequate reinspection facilities so carcasses can be removed from each line for evaluation. The NTI–2 Inspection System requires that the establishment provide two inspection stations for each line and adequate reinspection facilities so carcasses can be removed from each line for evaluation.

(*a*) *Post-mortem inspection.* Each inspection station must comply with the facility requirements in § 381.36(e)(1). Each inspector shall be flanked by an establishment employee assigned to be the inspector's helper. The one inspector on an NTI–1 Inspection System line shall be presented every bird. Each inspector on an NTI–2 Inspection System line shall be presented every other bird on the line. An establishment employee shall present each bird to the inspector properly eviscerated with the back side toward the inspector and the viscera uniformly trailing or leading. Each inspector shall inspect the inside, viscera, and outside of all birds presented. The inspector shall determine which birds shall be salvaged, reprocessed, condemned, retained for disposition by a veterinarian, or allowed to proceed down the line as a passed bird subject to trim and reinspection. Turkey carcasses with certain defects not requiring condemnation of the entire carcass and specified in the partial quality control program described in paragraph (d) of this section as defects the establishment shall remove, shall be passed by the inspector, but shall be subject to reinspection to ensure the physical removal of the specified defects. The helper, under the supervision of the inspector, shall mark such carcasses for trim when the defects are not readily observable. Trimming of birds passed subject to reinspection shall be performed by: (a) The helper, time permitting, and (b) one or more plant trimmers positioned after the giblet harvest and prior to reinspection.

(*b*) *Reinspection.* A reinspection station shall be located at the end of the lines. This station shall comply with the facility requirements in § 381.36(e)(2). The inspector shall ensure that establishments have performed the indicated trimming of each carcass passed subject to reinspection by visually monitoring, checking data, and/or sampling product at the reinspection station and, if necessary, at other points, critical to the wholesomeness of product, on the eviscerating line. Specific reinspection activities shall be based on the establishment's partial quality control program described in paragraph (d) and its performance under that program as determined by the inspector.

(ii) The approved partial quality control program described in paragraph (c) for the establishment shall include critical control points on the eviscerating line, which shall be monitored by the inspector. Establishment quality control employees shall operate the quality control program and shall make immediately available to inspection personnel any and all data collected and maintained under the partial quality control program.

(iii) An inspector shall monitor the establishment's application of the quality control program described in paragraph (c) and shall take corrective action when he/she determines that the establishment has failed to maintain or correct its process as described in the approved partial quality control program.

(c) Applying for and terminating the Partial Quality Control Agreements for the NELS Inspection System and the NTI System.

(1) Any owner or operator of an official establishment preparing poultry products who wishes to apply for the NELS Inpsection System or NTI System must submit to the Administrator a partial quality control program designed to assure that poultry is wholesome and properly prepared and shall request a

[2] The standards in § 381.170(a) of the regulations (9 CFR 381.170(a)) specify which classes of chickens constitute young chickens.

determination as to whether or not that program is adequate to result in product being in compliance with the requirements of the Act and, therefore, qualify for the NELS Inspection System or NTI System. Such a request shall, as a minimum, include:

(i) A letter to the Administrator from the establishment owner or operator stating the objective of the program and willingness to adhere to the requirements of the program as approved by the Department; that all data and information generated under the program will be maintained and be available to departmental personnel to enable the Department to monitor compliance; that establishment quality control personnel will have authority to halt production or shipping of product in cases where the submitted quality control program requires it; and that the owner or operator (or his/her designee) will be available for consultation at any time departmental personnel consider it necessary.

(ii) Identification of establishment partial quality control personnel responsible for the partial control program. In the case of an establishment having one or more full-time persons whose primary duties are related to the partial quality control program, the request shall also include agreement that such people shall ultimately report to an establishment official whose partial quality control responsibilities are independent of or not predominantly production responsibilities. In the case of an establishment which does not have full-time quality control personnel, detailed information indicating the nature of the duties and responsibilities of the person who will be responbile for the quality control program shall be included.

(iii) Detailed information concerning the manner in which the program will function. Such information shall include, but not be limited to, the critical check or control points on each eviscerating line from the unloading area to the finished product, the nature and frequency of tests to be made at each check or critical point, the nature of charts and other records that will be maintained by the official establishment, the type of deficiencies the program is designed to identify and control, the defect criteria which will be used and the points at which corrective action will occur and the nature of the corrective action—ranging from the least to the most severe.

* * * * *

(3) The approval of the partial quality control program under the NELS Inspection System or the NTI System may be terminated at any time by the owner or operator of the official establishment upon written notice to the Administrator. Establishments which operated under the NELS Inspection System will be provided inspection under either Traditional Inspection or Modified Traditional Inspection, as appropriate. Establishments which operated under the NTI System will be provided inspection under the Traditional Inspection procedure.

(4) The approval of the partial quality control programs under the NELS Inspection System or the NTI System will terminate upon receipt by the establishment of written notice from the Administrator (or his designee). Such notice will specify the deficiency and will be issued:

(i) If unwholesome or otherwise adulterated poultry products are found by the Administrator to have been prepared for or distributed in commerce by the subject establishment, or

(ii) If the establishment fails to comply with the partial quality control program to which it has agreed.

* * * * *

(6) If approval of the partial quality control program under the NELS Inspection System or the NTI System has been terminated in accordance with the provisions of this section, an application and request for approval of the same or modified quality control program will not be evaluated by the Administrator for at least 2 months from the termination date. In order for the Department to provide the Federal inspection required under the Act, an establishment whose partial quality control program has been terminated will be allowed to continue operating under (i) Traditional Inspection or Modified Traditional Inspection if previously operating under the NELS Inspection System, or (ii) Traditional Inspection if previously operating under the NTI System, provided all requirements of the Act and regulations thereunder are met.

(The recordkeeping requirements contained in this section have been approved by the Office of Management and Budget under OMB No. 0583–0008.)

Done at Washington, DC, on: August 23, 1985.

L.L. Gast,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 85–22062 Filed 9–13–85; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85–AWP–18]

Amended Description of the Casa Grande, AZ, Transition Area.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: Amended definition to the existing Casa Grande, Arizona, Transition Area is necessary as a result of the name and identification change of the Casa Grande Very High Frequency Omni-directional Radio Range and Tactical Air Navigation Aid (VORTAC) facility to the Stanfield VORTAC. This action will not change the actual dimensions of the existing transition area, but will only provide editorial changes to the description.

DATES: Effective Date: 0901 G.m.t., November 21, 1985.

FOR FURTHER INFORMATION CONTACT: Curtis Alms, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, 1500 Aviation Boulevard, Hawthorne, California 90261; telephone (213) 536–6649.

SUPPLEMENTARY INFORMATION:

History

The Casa Grande Transition Area description used the Casa Grande VORTAC as the reference point. The renaming of the VORTAC requires updating the description accordingly. This action only provides editorial changes and does not change the dimension of the existing transition. The amended description refers to geographical coordinates to provide a more permanent reference that is not subject to location and name changes.

The Rule

The purpose of this amendment to § 71.181 of Part 71 of the Federal Aviation Regulation (14 CFR Part 71) is to change the description of the Casa Grande, Arizona, Transition Area. This action does not change the existing transition area, but only provides editorial changes. Section 71.181 of the Federal Aviation Regulations was published in Handbook 7400.6A dated January 2, 1985.

The FAA concludes that there is an immediate need for a regulation to reflect the correct description of the Casa Grande, Arizona, Transition Area.

Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is contrary to the public interest and that good cause exists for making this amendment effective coincident with the charting date of November 21, 1985. Description of the amended transition area is set forth below and depicted on the chart at the end of this document.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12201; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the FAR as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Casa Grande, AZ [Revised]

"That airspace extending upward from 700 feet above the surface beginning at lat. 32°57'30" N., long. 111°51'00" W., thence clockwise via the 5-mile radius of the Casa Grande Municipal Airport (lat. 32°57'11" N., long. 111°45'54" W.); to lat. 32°53'00" N., long. 111°48'00" W., to lat. 32°50'50" N., long. 111°53'00" N.; to lat. 32°55'20" N., long. 111°56'00" W.; thence to the point of beginning."

Issued in Los Angeles, California on August 30, 1985.

H.C. McClure,

Director, Western-Pacific Region.

[FR Doc. 85–22034 Filed 9–13–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 95

[Docket No. 24766; Amdt. No. 326]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: September 26, 1985.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO–230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on September 9, 1985.

John S. Kern,

Acting Director of Flight Operations.

Adoption of the Amendment

PART 95—[AMENDED]

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 G.m.t.: September 26, 1985.

1. The authority citation for Part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354 and 1510; 49 U.S.C. 106(g)((Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended as follows:

BILLING CODE 4910–13–M

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

AMENDMENT 326 EFFECTIVE DATE, SEPTEMBER 26, 1985

FROM	TO	MEA
§95.1001 DIRECT ROUTES-U.S.		
IS AMENDED TO READ		
CALBE, CA FIX	PALMDALE, CA VORTAC	10000 MAA-17500
PARADISE, CA VORTAC	*CALBE, CA FIX SE BND NW BND	[illegible] 10000
*8500 - MCA CALBE FIX, NW BND		MAA-17500
IS AMENDED TO READ IN PART		
NANTUCKET, MA VORTAC	BOSTON, MA VORTAC COP 58 ACK	*4000
*1700 - MOCA		
§95.1001 DIRECT ROUTES-U.S.		
IS ADDED		
DEERS, BF FIX	COSMO, BF FIX	2000
COSMO, BF FIX	COBBL, BF FIX	2000
COBBL, BF FIX	BURGO, BF FIX	2000
BURGO, BF FIX	LASSI, BF FIX	2000
§95.6002 VOR FEDERAL AIRWAY 2		
IS AMENDED TO READ IN PART		
VESTS, MT FIX	CONNS, MT FIX	10800
ALBANY, NY VORTAC *3000 - MOCA	MELRO, NY FIX	*10000
MELRO, NY FIX *10000 - MCA GRISY FIX, W BND **5000 - MOCA	*GRISY, MA FIX	**10000
§95.6003 VOR FEDERAL AIRWAY 3		
IS AMENDED TO READ IN PART		
HARVY, VA FIX *9000 - MRA **2000 - MOCA	*NUTTS, VA FIX	**2500
§95.6004 VOR FEDERAL AIRWAY 4		
IS AMENDED TO READ IN PART		
CENTRALIA, IL VORTAC	POCKET CITY, IN VORTAC	3000
§95.6014 VOR FEDERAL AIRWAY 14		
IS AMENDED TO READ IN PART		
COBIA, NY FIX *3800 - MOCA	CASIL, NY FIX	*5000

FROM	TO	MEA
§95.6014 VOR FEDERAL AIRWAY 14—Continued		
ALBANY, NY VORTAC *3000 - MOCA	MELRO, NY FIX	*10000
MELRO, NY FIX *10000 - MCA GRISY FIX, W BND **5000 - MOCA	*GRISY, MA FIX	**10000
§95.6018 VOR FEDERAL AIRWAY 18		
IS AMENDED TO READ IN PART		
JACKSON, MS VORTAC *3500 - MRA	*BAETT, MS FIX	2500
BAETT, MS FIX *3000 - MRA	*CONEE, MS FIX	2500
CONEE, MS FIX	MERIDIAN, MS VORTAC	2500
§95.6020 VOR FEDERAL AIRWAY 20		
IS AMENDED TO READ IN PART		
COLUMBUS, GA VORTAC	GRANT, GA FIX	2700
SOUTH BOSTON, VA VORTAC *9000 - MRA **1900 - MOCA	*NUTTS, VA FIX	**3000
§95.6051 VOR FEDERAL AIRWAY 51		
IS AMENDED TO READ IN PART		
PAHOKEE, FL VORTAC	VERO BEACH, FL VORTAC	[illegible]
VERO BEACH, FL VORTAC	OVIDO, FL FIX	[illegible]
OVIDO, FL FIX	ORMOND BEACH, FL VORTAC	[illegible]
§95.6066 VOR FEDERAL AIRWAY 66		
IS AMENDED TO READ IN PART		
MISSION BAY, CA VORTAC *6200 - MCA BRUNT FIX, E BND	*BRUNT, CA FIX	4000
BRUNT, CA FIX	BARET, CA FIX E BND W BND	8000 5500
BARET, CA FIX *6700 - MCA KUMBA FIX W BND	*KUMBA, CA FIX	8000
KUMBA, CA FIX	IMPERIAL, CA VORTAC	4100
CANER, GA FIX	GRANT, GA FIX	2700
§95.6133 VOR FEDERAL AIRWAY 133		

FROM	TO	MEA
§95.6133 VOR FEDERAL AIRWAY 133—Continued		
IS AMENDED TO READ IN PART		
SALEM, MI VORTAC	FLINT, MI VORTAC	[illegible]
§95.6155 VOR FEDERAL AIRWAY 155		
IS AMENDED TO READ IN PART		
COLUMBUS, GA VORTAC	GRANT, GA FIX	2700
WIPER, NC FIX	LAWRENCEVILLE, VA VORTAC	[illegible]
LAWRENCEVILLE, VA VORTAC	MELIA, VA FIX	6000
MELIA, VA FIX	FLAT ROCK, VA VORTAC	[illegible]
§95.6157 VOR FEDERAL AIRWAY 157		
IS AMENDED TO READ IN PART		
KINGSTON, NY VORTAC *1900 - MOCA	ATHOS, NY FIX	*2600
ATHOS, NY FIX *2100 - MOCA	GROUP, NY FIX	*2600
GROUP, NY FIX *2100 - MOCA	ALBANY, NY VORTAC	*2800
IS AMENDED TO READ IN PART		
DUFFI, NC FIX	LAWRENCEVILLE, VA VORTAC	6000
LAWRENCEVILLE, VA VORTAC	DALTO, VA FIX	6000
§95.6166 VOR FEDERAL AIRWAY 166		
IS AMENDED TO READ IN PART		
DUPONT, DE VORTAC	WOODSTOWN, NJ VORTAC	2000
§95.6218 VOR FEDERAL AIRWAY 218		
IS AMENDED TO READ IN PART		
LANSING, MI VORTAC	PONTIAC, MI VORTAC	3000
§95.6289 VOR FEDERAL AIRWAY 289		
IS AMENDED TO READ IN PART		
TEXARKANA, AR VORTAC *5000 - MRA **1700 - MOCA	*PROVO, AR FIX	**2900
PROVO, AR FIX *3500 - MCA UMPIR FIX, N BND	*UMPIR, AR FIX	2900

FROM	TO	MEA
§95.6345 VOR FEDERAL AIRWAY 365		
IS AMENDED TO READ IN PART		
VESTS, MT FIX	HELENA, MT VORTAC E BND W BND	10800 9700
§95.6417 VOR FEDERAL AIRWAY 417		
IS AMENDED TO READ IN PART		
FANEN, MS FIX	MERIDIAN, MS VORTAC	3000
§95.6437 VOR FEDERAL AIRWAY 437		
IS AMENDED BY ADDING		
PAHOKEE, FL VORTAC	MELBOURNE, FL VOR/DME	2000
§95.6454 VOR FEDERAL AIRWAY 454		
IS AMENDED TO READ IN PART		
COLUMBUS, GA VORTAC	GRANT, GA FIX	2700
LAWRENCEVILLE, VA VORTAC	JUNKI, VA FIX	6000
§95.6457 VOR FEDERAL AIRWAY 457		
IS AMENDED TO READ IN PART		
WESTMINSTER, MD VORTAC	LANCASTER, PA VORTAC	3000
§95.6458 VOR FEDERAL AIRWAY 458		
IS AMENDED TO READ IN PART		
KUMBA, CA FIX	IMPERIAL, CA VORTAC	4100
§95.6460 VOR FEDERAL AIRWAY 460		
IS AMENDED TO READ IN PART		
MISSION BAY, CA VORTAC	BRUNT, CA FIX	4000
*BRUNT, CA FIX	BARET, CA FIX E BND W BND	8000 5500
*6200 - MCA BRUNT FIX, E BND		
BARET, CA FIX	CANNO, CA FIX	8000
CANNO, CA FIX	JULIAN, CA VORTAC	6500
§95.6489 VOR FEDERAL AIRWAY 489		
IS AMENDED TO READ IN PART		
SILKY, NY FIX	ELLAN, NY FIX	4000
ELLAN, NY FIX *4900 - MOCA	ALBANY, NY VORTAC	*6000

FROM	TO	MEA

§95.6492 VOR FEDERAL AIRWAY 492

IS AMENDED TO READ IN PART

PALM BEACH, FL VORTAC	MELBOURNE, FL VOR/ DME	3000

§95.6506 VOR FEDERAL AIRWAY 506

IS AMENDED TO READ IN PART

KOWOK, AK FIX	CAYON, AK FIX	*
*7500 - MOCA		

§95.6402 HAWAII VOR FEDERAL AIRWAY 2

IS AMENDED TO READ IN PART

HONOLULU, HI VORTAC	PALAY, HI FIX	3000
PALAY, HI FIX	LANAI, HI VORTAC	

IS AMENDED TO DELETE

SOUTH KAUAI, HI VORTAC	LIHUE, HI VORTAC	5000
LIHUE, HI VORTAC	MOREY, HI FIX	
	SE BND	
	NW BND	
MOREY, HI FIX	BROMS, HI FIX	*3000
*1200 - MOCA		
BROMS, HI FIX	HONOLULU, HI VORTAC	

§95.6404 HAWAII VOR FEDERAL AIRWAY 4

IS AMENDED BY ADDING

BINJO, HI FIX	ZUKEY, HI FIX	
	W BND	
	E BND	
ZUKEY, HI FIX	GECKO, HI FIX	
	W BND	16000
	E BND	
GECKO, HI FIX	HONOLULU, HI VORTAC	

IS AMENDED TO DELETE

SQUAT, HI FIX	*TIKYS, HI FIX	4000
*13000 - MRA		
TIKYS, HI FIX	*POTEN, HI FIX	4000
*5000 - MRA		
POTEN, HI FIX	KOKO HEAD, HI VORTAC	4000

§95.6408 HAWAII VOR FEDERAL AIRWAY 8

IS AMENDED TO READ IN PART

HONOLULU, HI VORTAC	*ALANA, HI FIX	3000
*5000 - MRA		
*3500 - MCA ALANA FIX, E BND		
*3500 - MCA ALANA FIX, W BND		

FROM	TO	MEA

§95.6408 HAWAII VOR FEDERAL AIRWAY 8—Continued

ALANA, HI FIX	HAUNA, HI FIX	3000
HAUNA, HI FIX	LOKIE, HI FIX	2000
LOKIE, HI FIX	MOLOKAI, HI VORTAC	3500

§95.6409 HAWAII VOR FEDERAL AIRWAY 9

IS DELETED

*LULUS, HI FIX	CLANN, HI FIX	**9000
*9000 - MRA		
**1000 - MOCA		
CLANN, HI FIX	CORAL, HI FIX	*6000
*1000 - MOCA		
CORAL, HI FIX	MAKAI, HI FIX	*4000
*1000 - MOCA		
*MAKAI, HI FIX	SOLDO, HI FIX	**2000
*4000 - MCA MAKAI FIX, S BND		
**1200 - MOCA		
SOLDO, HI FIX	HONOLULU, HI VORTAC	
	S BND	4000
	S BND	2000

§95.6411 HAWAII VOR FEDERAL AIRWAY 11

IS AMENDED TO DELETE

MAUI, HI VORTAC	*NAPIR, HI FIX	5000
*7000 - MRA		
NAPIR, HI FIX	*MOLOKAI, HI VORTAC	7000
*5000 - MCA MOLOKAI VORTAC, E BND		
MOLOKAI, HI VORTAC	LINDY, HI FIX	3500
LINDY, HI FIX	MAKAI, HI FIX	2000

§95.6412 HAWAII VOR FEDERAL AIRWAY 12

IS AMENDED TO READ IN PART

KATHS, HI FIX	*NONNI, HI FIX	29000
*29000 - MRA		
NONNI, HI FIX	*LEANE, HI FIX	
	W BND	29000
	E BND	16000
*16000 - MRA		
LEANE, HI FIX	KEOLA, HI FIX	
	W BND	16000
	E BND	5000
KEOLA, HI FIX	*SHIGI, HI FIX	4000
*5000 - MRA		
SHIGI, HI FIX	HONOLULU, HI VORTAC	4000

§95.6413 HAWAII VOR FEDERAL AIRWAY 13

IS AMENDED TO DELETE

LIHUE, HI VORTAC	KOKO HEAD, HI VORTAC	4000

FROM	TO	MEA

§95.6414 HAWAII VOR FEDERAL AIRWAY 14

IS DELETED

*DOGGY, HI FIX	SOUTH KAUAI, HI VORTAC	**10000
*10000 - MRA		
**4000 - MOCA		
SOUTH KAUAI, HI VORTAC	KOKO HEAD, HI VORTAC	

§95.6415 HAWAII VOR FEDERAL AIRWAY 15

IS AMENDED TO READ IN PART

*CANON, HI FIX	LILIA, HI FIX	
	W BND	32000
	E BND	
*32000 - MRA		
LILIA, HI FIX	SOUTH KAUAI, HI VORTAC	
*4800 - MOCA		
SOUTH KAUAI, HI VORTAC	LIHUE, HI VORTAC	
LIHUE, HI VORTAC	BOOKE, HI FIX	*4000
*3800 - MOCA		
BOOKE, HI FIX	*SHIGI, HI FIX	
*5000 - MRA		
SHIGI, HI FIX	HONOLULU, HI VORTAC	
HONOLULU, HI VORTAC	KOKO HEAD, HI VORTAC	

§95.6416 HAWAII VOR FEDERAL AIRWAY 16

IS AMENDED TO READ IN PART

*SILVA, HI FIX	**PUPPI, HI FIX	
	W BND	
	E BND	11000
*32000 - MRA		
**11000 - MRA		
PUPPI, HI FIX	SOUTH KAUAI, HI VORTAC	
	E BND	*5000
	W BND	*11000
*4800 - MOCA		

§95.6405 HAWAII VOR FEDERAL AIRWAY 5

IS AMENDED TO READ IN PART

BLUSH, HI FIX	MAUI, HI VORTAC	5000

§95.1001 DIRECT ROUTES—U.S.

IS AMENDED TO DELETE

CARNE, LA FIX	*NEPTA, FL FIX	@**5000
*2600 - MRA		
**1000 - MOCA		
@18000 REQUIRED WITHOUT HF AIRBORNE COMMUNICATIONS EQUIPMENT		

FROM	TO	MEA

§95.6416 HAWAII VOR FEDERAL AIRWAY 16—Continued

SOUTH KAUAI, HI VORTAC	MORKE, HI FIX	
	NW BND	*4300
	SE BND	*3000
*4300 - MOCA		
MORKE, HI FIX	GRAIL, HI FIX	3000
GRAIL, HI FIX	KEOLA, HI FIX	5000
KEOLA, HI FIX	*ALANA, HI FIX	7000
*5000 - MRA		
ALANA, HI FIX	JULLE, HI FIX	5000
JULLE, HI FIX	GRAMY, HI FIX	2000
GRAMY, HI FIX	LANAI, HI VORTAC	

§95.6420 HAWAII VOR FEDERAL AIRWAY 20

IS AMENDED TO READ IN PART

HONOLULU, HI VORTAC	HAUNA, HI FIX	3000
HAUNA, HI FIX	JULLE, HI FIX	
JULLE, HI FIX	NANNU, HI FIX	
NANNU, HI FIX	FIRES, HI FIX	10000
FIRES, HI FIX	TYPHO, HI FIX	

§95.6421 HAWAII VOR FEDERAL AIRWAY 21

IS AMENDED TO READ IN PART

HONOLULU, HI VORTAC	*ALANA, HI FIX	
*5000 - MRA		
ALANA, HI FIX	JULLE, HI FIX	5000
JULLE, HI FIX	GRAMY, HI FIX	2000
GRAMY, HI FIX	LANAI, HI VORTAC	4000

§95.6422 HAWAII VOR FEDERAL AIRWAY 22

IS AMENDED BY ADDING

*MOLOKAI, HI VORTAC	PLUMB, HI FIX	7000
*5000 - MCA MOLOKAI VORTAC, E BND		
PLUMB, HI FIX	MAUI, HI VORTAC	

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT		CHANGEOVER POINTS	
FROM	TO	DISTANCE	FROM
	V-[illegible]		
	IS AMENDED BY ADDING		
ALBANY, NY VORTAC	GLENS FALLS, NY VORTAC	12	ALBANY
	V-[illegible]		
	IS AMENDED BY ADDING		
SOUTH BOSTON, VA VORTAC	LAWRENCEVILLE, VA VORTAC	32	SOUTH BOSTON
	V-[illegible]		
	IS AMENDED BY ADDING		
ALBANY, NY VORTAC	GLENS FALLS, NY VORTAC	12	ALBANY

[FR Doc. 85-22030 Filed 9-13-85; 8:45 am]
BILLING CODE 4910-13-C

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 31

Regulation of Certain Leverage Transactions

Correction

In FR Doc. 85–21032 beginning on page 36405 in the issue of Friday, September 6, 1985, make the following corrections:

1. On page 36410, second column, sixth line, insert the word "because" between "rate" and "of".

2. On page 36411, second column, in the first complete paragraph, eighteenth line, insert the word "of" between "None" and "those".

§ 31.26 [Corrected]

3. On page 36416, third column, in § 31.26(a), eleventh line, insert the word "to" between "or" and "the".

BILLING CODE 1505–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 85–109]

Passengers on Foreign Vessels Taken on Board and Landed in the United States; Correction

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error of omission in a document which amended the Customs Regulations relating to passengers on foreign vessels taken aboard and landed in the U.S. The document was published in the **Federal Register** on Monday, July 1, 1985 (50 FR 26981).

FOR FURTHER INFORMATION CONTACT: Paul G. Hegland, Carrier Rulings Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–5706).

SUPPLEMENTARY INFORMATION:

Background

In FR Doc. 85–15753, appearing at page 26981 in the issue of Monday, July 1, 1985, on page 26984, in the second column, the definition of "Nearby foreign port" in § 4.80a, Customs Regulations (19 CFR 4.80a), erroneously omitted the words "the Bermuda Islands" from the list of ports considered to be nearby foreign ports. The Bermuda Islands have been included in the definition of nearby foreign port in the Customs Regulations since 1969, and there was never any intention to omit their mention in the most recent amendment to § 4.80a, Customs Regulations, accomplished by T.D. 85–109. Accordingly, the words "the Bermuda Islands," should be inserted into the paragraph so that it reads as follows:

(2) *Nearby foreign port* means any foreign port in North America, Central America, the Bermuda Islands, or the West Indies (including the Bahama Islands, but not including the Leeward Islands of the Netherlands Antilles, i.e., Aruba, Bonaire, and Curacao). A port in the U.S. Virgin Islands shall be treated as a nearby foreign port.

Dated: September 11, 1985.

B. James Fritz,

Director, Regulations Control and Disclosure Law Division.

[FR Doc. 85–22153 Filed 9–13–85; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R–85–1253; FR–2008]

Multifamily Participation Review Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the designated membership of the Multifamily Participation Review Committee to reflect the joint utilization of the Committee by the Assistant Secretary for Housing—Federal Housing Commissioner and the Assistant Secretary for Public and Indian Housing. This change reflects HUD's 1983 reorganization that established the position of Assistant Secretary for Public and Indian Housing.

EFFECTIVE DATE: October 21, 1985.

FOR FURTHER INFORMATION CONTACT: Jon Will Pitts, Director, Participation and Compliance Division, Department of Housing and Urban Development, Room 6284, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755–6779 (This is not a toll free number).

SUPPLEMENTARY INFORMATION: In 1983, the Secretary of Housing and Urban Development established the position of Assistant Secretary for Public and Indian Housing to carry out the Department's programs relating to public and Indian housing. These functions were transferred to the new Assistant Secretary by a delegation of authority signed by the Secretary on September 7, 1983 (published in the **Federal Register** on September 13, 1983, 48 FR 41097).

On March 27, 1984, the Assistant Secretary for Housing—Federal Housing Commissioner and the Assistant Secretary for Public and Indian Housing agreed to continue to operate the Compliance and Previous Participation Review Program on a joint basis. Under the agreement, the Participation and Compliance Division of the Office of Management, under the direction of the Assistant Secretary for Housing—Federal Housing Commissioner, will continue to process compliance cases, conduct compliance reviews, and make determinations on previous participation records of principal participants in multifamily programs for both Assistant Secretaries. These functions are to be performed using the same staff, records resources, ADP system and procedures that were in use before the reorganization. Each Assistant Secretary, however, will retain the ability to determine compliance policy for matters within his or her jurisdiction.

As part of the agreement, the Assistant Secretaries agreed to continue the functions of the Multifamily Participation Review Committee. This Committee acts for the Assistant Secretaries in determining the acceptability of principal participants in multifamily proposals. The agreement, however, changed the membership of the Committee to ensure the representation of both affected offices. To reflect the agreement, this final rule revises 24 CFR 200.93, which governs the membership, organization, and functions of the Committee.

This final rule also makes minor revisions to § 200.93 to reflect the fact that the power of the Director, Participation and Compliance Division, to sign all notices, letters and directives on behalf of the Committee is being transferred to the Executive Secretary of the Committee, and that the Executive Secretary is the Participation Control Officer in the Office of Management, rather than an appointee of the Chairperson of the Committee.

The subject mater of this rulemaking action relates to Department organization and is therefore exempt from the notice and public comment requirements of section 553 of the Administrative Procedure Act.

A Finding of No Significant Impact with respect to the environment is

unnecessary. This rulemaking involves an internal administrative procedure, the content of which does not constitute a development decision nor affect the physical condition of project areas or building sites. It relates only to designations of officials and delegations of authority. This rulemaking is therefore categorically excluded from National Environmental Policy Act procedures under 24 CFR 50.20(k).

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets.

Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule involves only internal matters of agency management.

This rule was listed as item 28 in the Department's Semiannual Agenda of Regulations published April 29, 1985 (50 FR 17286, 17300) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program Numbers are 14.105 through 14.165.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs: housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum property standards, Incorporation by reference.

Accordingly, 24 CFR Part 200 is amended as follows:

PART 200—INTRODUCTION

1. The authority citation for Part 200 continues to read as follows:

Authority: Titles I and II, National Housing Act (12 U.S.C. 1701 through 1715z–18); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Section 200.93 also issued under Secs. 2, 4, 5, 8, and 14 of the United States Housing Act of 1937 (42 U.S.C. 1437, 1437b, 1437c, 1437f and 1437l).

2. Section 200.93 is revised to read as follows:

§ 200.93 Multifamily Participation Review Committee.

(a) *Members.* (1) The Multifamily Participation Review Committee is composed of the following voting members or their designees: (i) The Director, Office of Management, the Director, Office of Insured Multifamily Housing Development, the Director, Office of Lender Activities and Land Sales Registration, the Director, Office of Elderly and Assisted Housing, the Director, Office of Multifamily Housing Management and the Director, Participation and Compliance Division represent the Assistant Secretary for Housing-Federal Housing Commissioner; and (ii) the Director, Office of Indian Housing and the Director, Office of Public Housing represent the Assistant Secretary for Public and Indian Housing. The Director, Office of Management, serves as Chairperson and votes only in cases of a tie.

(2) The Committee is composed of the following non-voting members: The General Counsel or his or her designee, who provides legal counsel, and the Participation Control Officer in the Office of Management. The Participation Control Officer is the Executive Secretary to the Committee and is empowered to issue and sign all notices, orders, letters and directives on behalf of the committee, to keep minutes, and to perform other duties assigned by the Chairperson or directed by the Committee.

(b) *Functions.* The Committee will act for the Assistant Secretary for Housing-Federal Housing Commissioner and for the Assistant Secretary for Public and Indian Housing to determine the acceptability of participants in multifamily proposals under Subpart H of this part.

Dated: September 9, 1985.

Janet Hale,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85–22120 Filed 9–13–85; 8:45 am]

BILLING CODE 4210–27–M

24 CFR Part 232

[Docket No. R–85–1212; FR–1960]

HUD Board and Care Homes Regulations

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule permits HUD to provide mortgage insurance for the construction or rehabilitation of board and care homes, as authorized under section 437 of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98–181.

EFFECTIVE DATE: October 21, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Lewis, Room 6135, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755–6223. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On January 22, 1985, the Department published a proposed rule (50 FR 2830) in the **Federal Register** which would permit HUD to provide mortgage insurance for the construction or rehabilitation of board and care homes under section 437 of the Housing and Urban-Rural Recovery Act of 1983 (Act). A board and care home is a residential facility providing room, board, and continuous protective oversight to residents of the home.

Sixteen public comments were received on the proposed rule. All of the comments were favorable; however, several commenters had suggestions for substantive changes in the rule.

A commenter inquired whether the proposed revision of 24 CFR Part 232 permitted the construction of a board and care home adjacent to an existing section 221(d)(3) project. Another commenter stated that the program should cover board and care facilities which are connected with only a retirement complex. Such construction is permissible under this rule; however, in each case the board and care home must have its own separately insured mortgage.

Several detailed standards were suggested for the construction or rehabilitation of bathrooms in board and care homes. Instead of incorporating these standards into the rule, the

Department has determined that the applicant for mortgage insurance should be governed by the standards set by the State where the board and care home is located. [See § 232.39(b).]

Another commenter wanted the rule revised to allow either community bathing facilities (six persons per commode and ten persons per bathtub or shower) *or* one full bathroom for every two accommodations, as outlined in the proposed rule. Section 232.39(b) of the final rule has been revised to state that a maximum ratio of four persons per full bathroom shall be permitted in each board and care home (except where state and local occupancy requirements are more restrictive).

The same commenter wanted a maximum of two persons in each bedroom accommodation, rather than four, as in the proposed rule. HUD believes that, within certain minimum standards, the regulations should be flexible so that the program may respond to market needs. Accordingly, the Department has decided to retain the one-to-four person per room maximum, and to set a maximum ratio of four persons to every full bathroom. As noted above, a board and care home must also adhere to State and local occupancy requirements, even if a stricter degree of regulation is required under State or local law.

A commenter recommended that HUD clearly explain the requirements of section 1616(e) of the Social Security Act in order to eliminate any confusion in the board and care home mortgage insurance application process. Section 1616(e) is largely self-explanatory, and provides that:

> (1) Each State shall establish or designate one or more State or local authorities which shall establish, maintain, and insure the enforcement of standards for any category of institutions, foster homes, or group living arrangements in which (as determined by the State) a significant number of recipients of supplemental security income benefits is residing or is likely to reside. The standards must be appropriate to the needs of recipients and the character of the facilities involved, and shall govern such matters as admission policies, safety, sanitation, and protection of civil rights.
>
> (2) Each State shall annually make available for public review a summary of the standards established under the above-described requirements, and shall make available to any interested individual a copy of the standards, along with the procedures available in the State to insure the enforcement of the standards, and remedies for any violations of the standards that come to the attention of the authority responsible for their enforcement.
>
> (3) Each State shall certify annually to the Secretary that it is in compliance with the requirements of section 1616(e).

One commenter thought that the rule should be revised to allow the mixing of nursing home beds with board and care beds. The final rule was not so revised because to do so would defeat legislative intent, which was to facilitate the financing of alternative housing arrangements for elderly and other persons who do not need the health-related care available in nursing homes and intermediate care facilities, but who need continuous protective oversight.

Three commenters opposed the proposed ten accommodation minimum in a board and care home. The Department has reduced the minimum required in a board and care home to five. (See § 232.39(b).) This will allow smaller homes to be covered under the program.

A commenter stated that HUD should not use the site appraisal and market analysis (SAMA) letter to establish monthly bed rates. HUD does not set bed rates to be charged. In its processing of each SAMA letter, the Department adjusts the applicant's proposed bed rates to what market research indicates is obtainable in the current market for such facilities. This calculation is used for feasibility purposes only. If this amount is not sufficient for project feasibility, HUD must turn the project down or reduce the insurable mortgage amount to a figure that would be supportable by the market rate.

The same commenter also urged that HUD not require compliance with the Life Safety Code of the National Fire Protection Association, because the Code is not used in many States and local jurisdictions. Section 232.500 of the final rule provides that the applicant for mortgage insurance (nursing home, intermediate care facility or board and care home) may adhere to other fire safety requirements or codes approved by the Secretary of Health and Human Services, in lieu of the Life Safety Code. The commenter further suggested revision of § 232.500 to allow for the purchase of fire safety equipment to comply with State standards, and for the purchase of equipment that may exceed Federal standards but is generally acceptable and reasonable. Section 232.500 of the final rule allows the owner to (1) comply with state-imposed fire safety standards and (2), purchase fire safety equipment that is not mandatory under HHS' requirements, but which HHS determines to be acceptable and reasonable for fire-hazard protection.

This final rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the final rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, D.C. 20410.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The board and care program could potentially reduce or eliminate the costs of unnecessary institutionalization of persons. The number of small entities impacted by the rule, however, is not expected to be substantial.

The information collection requirements contained in this rule have been approved by OMB and have been assigned the approval numbers indicated following the appropriate provisions of the rule.

This rule was listed as item number 87 in the Department's Semiannual Agenda of Regulations published on April 29, 1985 (50 FR 17289) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 232

Fire prevention, Health facilities, Loan programs: Health, Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities, Board and care homes.

Accordingly, 24 CFR Part 232 is amended as follows:

1. The Authority citation for 24 CFR Part 232 continues to read as follows:

> Authority: Sections 211 and 232 of the National Housing Act (12 U.S.C. 1715b, 1715w); sec. 7(d), Department of HUD Act (42 U.S.C 3535(d)).

2. The Part Heading for 24 CFR Part 232 is revised to read as follows:

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

3. In § 232.1, paragraph (j) is revised, and a new paragraph (l) is added, to read as follows:

§ 232.1 Definitions.

* * * * *

(j) "Project" means a nursing home or intermediate care facility or combined nursing home and intermediate care facility, approved by the Commissioner under provisions of this subpart. A project may include such additional facilities as may be authorized by the Secretary for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day. "Project" also means a board and care home or a board and care home in combination with a nursing home or an intermediate care facility, or both.

* * * * *

(l) "Board and care home" means a proprietary residential facility or a residential facility owned by a private nonprofit corporation or association, providing room, board and continuous protective oversight that is regulated by a State in accordance with section 1616(e) of the Social Security Act, so long as the home is located in a State that, at the time an application is made for insurance under this part, has demonstrated to the Secretary that it is in compliance with the provisions of section 1616(e). Continuous protective oversight involves a range of activities or services which might include, for relatively independent occupants, such things as awareness on the part of management staff of an occupant's condition and whereabouts (and the ability to intervene in the event of crisis) or, for relatively dependent occupants, such services as supervision of nutrition or medication, assistance as necessary with activities of daily living, such as bathing, dressing, shopping, or eating, or a 24-hour responsibility for the welfare of the resident. Continuous protective oversight is not limited to the above activities, nor must it include the examples given.

4. In § 232.6, paragraph (a) is revised and the OMB Control Number is added to the end of the section to read as follows:

§ 232.6 Required certificates.

(a) *Certification by State agency.* (1) Every application for insurance of a nursing home or an intermediate care facility shall be accompanied by a certificate executed by the appropriate State agency for the State in which the project is or will be located, designated in accordance with section 604(a)(1) or section 1521 of the Public Health Service Act. Such certificate shall evidence that:

(i) There is need for the project.

(ii) There are in force in the State or other political subdivision of the State reasonable minimum standards for licensure and for methods of operation for the project.

(2) Every application for insurance involving a board and care home shall be accompanied by a statement executed by the appropriate State agency for the State in which the project is or will be located, certifying that the State is in compliance with section 1616(e) of the Social Security Act.

* * * * *

Information collection requirements approved by the Office of Management and Budget under Control Nos. 2502–0210.

5. Section 232.39 is revised to read as follows:

§ 232.39 Construction standards.

The project shall conform to standards satisfactory to the Commissioner.

(a) Nursing homes or intermediate care facilities shall consist of not fewer than 20 beds after completion of the construction or rehabilitation. The nursing home or intermediate care facility structure, or designated portion of a structure, must not contain board and care units.

(b) A board and care home shall be one or more free-standing structures or identifiable, separate portions of one or more free-standing structures containing not fewer than five residential one-bedroom or efficiency accommodations after completion of the construction or rehabilitation. A maximum ratio of four persons per full bathroom shall be permitted in each board and care home. Group dining facilities shall be available. Kitchen facilities are not required in each accommodation. Only one- to four-person occupancy will be permitted in each bedroom accommodation. A board and care home owner must also meet State and local occupancy requirements, including State or local requirements permitting fewer than four persons per accommodation. The board and care structure, or designated portion of the structure, shall not contain any nursing home or intermediate care beds.

6. In § 232.50, paragraphs (a)(1) (ii) and (iii) are revised to read as follows:

§ 232.50 Effect and term of SAMA letter, conditional and firm commitment.

(a) * * *

(1) * * *

(ii) The acceptability of the proposed project site, the proposed number of beds or accommodations, and the market for the number of proposed beds or accommodations. Where the application is not acceptable as submitted, but can be made acceptable by a change in the number of beds or accommodations, the SAMA letter may establish the specific lesser number of beds or accommodations that would be acceptable and any acceptable alternative plan.

(iii) The acceptability of the monthly bed rates or accommodation charges proposed. Where monthly bed rate or accommodation charge levels are unacceptable, the SAMA letter may establish specific levels that would be acceptable.

* * * * *

7. In § 232.81, paragraph (d) is revised to read as follows:

§ 232.81 Form of contract.

* * * * *

(d) *Federal or State assisted projects.* Where the mortgagor is to receive a Federal or State grant in connection with the development of the project, a lump sum contract may be used whether or not a cost plus form of contract would otherwise be required by the provisions of paragraph (C) of this section.

8. In § 232.500, paragraphs (c) and (d) are revised to read as follows:

§ 232.500 Definitions.

* * * * *

(c)(1) "Fire safety equipment" means equipment that is purchased, installed, and maintained in a nursing home, intermediate care facility, or board and care home and that meets the requirements for the appropriate level of occupancy under one of the following standards:

(i) The Life Safety Code of the National Fire Protection Association (any edition after 1966); or

(ii) A standard mandated by a State, under the provisions of section 1616(e) of the Social Security Act; or

(iii) Any appropriate requirement approved by the Secretary of Health and Human Services for providers of services under title XVIII or title XIX of the Social Security Act.

(2) In addition to those requirements approved by the Secretary of Health and Human Services as necessary for the appropriate level of occupancy, "fire safety equipment" may also include fire safety-related improvements that are not mandatory under the requirements of the Secretary of Health and Human Services, but which the Secretary of

Health and Human Services considers acceptable and reasonable for protection against the hazards of fire and which the borrower agrees to install.

(3) For the purposes of this definition, the terms "nursing home" and "intermediate care facility" shall include those facilities designated as skilled nursing facilities or intermediate care facilities by the Department of Health and Human Services.

(d) "Fire safety loan" means any form of secured or unsecured obligation determined by the Commissioner to be eligible for insurance under this subpart and, in the case of a board and care home, made with respect to such a home located in a State which the Secretary has determined is in compliance with the provisions of section 1616(e) of the Social Security Act.

* * * * *

9. In § 232.505, paragraph (b) is revised and the OMB control number is added to the end of the section to read as follows:

§ 232.505 Application and application fee.

* * * * *

(b) *Filing of application.* An application for insurance of fire safety loan for a nursing home, intermediate care facility or board and care home shall be submitted on an approved HUD form by an approved lender and by the owners of the project through the local HUD office.

* * * * *

(Information collection requirement approved by the Office of Management and Budget under Control No. 2502–0029)

10. Section 232.615 is amended by designating the present text as paragraph (a), and by adding a new paragraph (b), to read as follows:

§ 232.615 Eligible borrowers.

* * * * *

(b) Also eligible as a borrower shall be a profit or non-profit entity which owns a board and care home for which HUD has determined that the installation of fire safety equipment is approvable under the definition contained in § 232.500(c).

Dated: September 9, 1985.

Janet Hale,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85–22121 Filed 9–13–85; 8:45 am]

BILLING CODE 4210–27–M

Government National Mortgage Association

24 CFR Part 300

[Docket No. N–85–1550; FR–2121]

List of GNMA Attorneys-in-Fact

AGENCY: Government National Mortgage Association, HUD.

ACTION: Rule-related notice.

SUMMARY: This document updates the current list of persons appointed attorneys-in-fact by the Government National Mortgage Association (GNMA). Attorneys-in-fact are authorized to act for GNMA by executing documents in its name in conjunction with servicing GNMA's mortgage purchase programs. These appointments assist GNMA in carrying out its responsibilities under the National Housing Act.

EFFECTIVE DATE: September 16, 1985.

FOR FURTHER INFORMATION CONTACT: John Maxim, Associate General Counsel, Insured Housing and Finance, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW Washington, DC 20410. Telephone (202) 755–6274. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The Government National Mortgage Association (GNMA) periodically approves staff members of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Mortgage Corporation (Freddie Mac) to be delegated signatory authority to act in GNMA's behalf as attorneys-in-fact.

Until recently, lists of persons appointed to act have appeared in the Code of Federal Regulations (see 24 CFR 300.11(c) and (d), 1983 edition). In related documents published on August 12, 1983 (see 48 FR 36572, 36573) GNMA announced that it was removing these lists from the CFR, changing the procedure of announcing appointments to a notice document, and publishing a complete list of persons currently appointed to act as attorneys-in-fact. The rule removing the lists from the CFR, as well as the complete list of attorneys-in-fact, was effective on October 11, 1983. Additional changes to the list of persons appointed attorney-in-fact were published on December 29, 1983 (see 48 FR 57371), May 29, 1984 (49 FR 22278), August 27, 1984 (49 FR 33872), and on November 15, 1984 (49 FR 45128).

This notice today announces changes to the list of persons authorized to act as attorneys-in-fact. The changes include additions to and deletions from the Federal National Mortgage Association list. To enhance the usability of these notices, the Department has decided to republish the entire list of attorneys-in-fact each time changes are made.

Accordingly, the following lists represent all persons currently appointed as attorneys-in-fact delegated signatory authority to act in GNMA's behalf:

I. Staff Members of the Federal National Mortgage Association, a Government-Sponsored Private Corporation, Appointed Attorneys-in-Fact

Name	*Region*
Leo E. Abueg	Los Angeles, CA
Robert E. Allen	Los Angeles, CA
Angelina P. Alleva	Philadelphia, PA
Ellen W. Allison	Atlanta, GA
Pam Andrus	Los Angeles, CA
David P. Antczak	Chicago, IL
Victoria L. Arrington	Chicago, IL
Glenn T. Austin, Jr.	Atlanta, GA
J.J. Bacchus	Atlanta, GA
Irene S. Baggio	Philadelphia, PA
Darlene Bagley	Atlanta, GA
Susan L. Bale	Los Angeles, CA
Lynne Ballew	Atlanta, GA
J.C. Bellinger	Atlanta, GA
J.M. Benavides	Dallas, TX
Frances E. Bennett	Atlanta, GA
James H. Benson	Los Angeles, CA
E.N. Biggerstaff	Atlanta, GA
James R. Blakley	Los Angeles, CA
Norman T. Bolas	Los Angeles, CA
W.R. Bowen	Los Angeles, CA
W. James Bradley	Washington, D.C.
Stephen M. Brent	Los Angeles, CA
Joseph E. Brody	Chicago, IL
Craig J. Bromann	Chicago, IL
Larry W. Brown	Dallas, TX
Rosemary M. Brown	Washington, D.C.
Patricia L. Burgess	Atlanta, GA
Burleigh O. Burshem	Washington, D.C.
Rena L. Busby	Los Angeles, CA
J.L. Busselle	Dallas, TX
Roland B. Bynum	Los Angeles, CA
David Byrd	Atlanta, GA
Donna M. Cabrera	Los Angeles, CA
Dennis G. Campbell	Philadelphia, PA
E.P. Carr	Atlanta, GA
Loretta Casey	Philadelphia, PA
James S. Cash	Atlanta, GA
Robert A. Chambers	Atlanta, GA
Heinrich F. Charles	Los Angeles, CA
Patricia R. Charrier	Philadelphia, PA
Mary Churchwell	Dallas, TX
Russell B. Clifton	Washington, D.C.
John M. Coan	Washington, D.C.
Vincent Coletti, II	Philadelphia, PA
Bettye Cook	Los Angeles, CA
Diane E. Cozad	Los Angeles, CA
Jean V. Cunniff	Chicago, IL
Edward F. Czubernat	Chicago, IL
Nitin J. Dave	Atlanta, GA
John C. Diebel	Chicago, IL
Edward Dodson	Philadelphia, PA
James E. Domenico	Chicago, IL
Lawrence J. Dondero, Jr.	Philadelphia, PA
Elizabeth A. Downing	Los Angeles, CA
Samuel A. Duca	Philadelphia, PA
Wandra Durham	Atlanta, GA
J. Ellis Dykes	Atlanta, GA
Joseph R. Elred	Philadelphia, PA
Julieta England	Los Angeles, CA
David J. Evans	Atlanta, GA
R. Douglas Ezzell	Atlanta, GA
Leon Fine	Philadelphia, PA
Pamela K. Fite	Atlanta, GA
Carlton T. Foster, Jr.	Atlanta, GA
Robert R. Foster	Philadelphia, PA

Jimmy L. Gallahar	Atlanta, GA
Hettye D. Gates	Atlanta, GA
Thomas J. Gay	Dallas, TX
Robert R. Glinski	Philadelphia, PA
James D. Grady, Jr.	Philadelphia, PA
John J. Hagerty	Philadelphia, PA
Ann B. Hamilton	Philadelphia, PA
Philip E. Harrington	Chicago, IL
Mark S. Haney	Los Angeles, CA
Robert E. Haren	Chicago, IL
Charles W. Harvey, Jr.	Philadelphia, PA
Ronald W. Harwig	Chicago, IL
John R. Hayes	Chicago, IL
Robert J. Hearn	Philadelphia, PA
B.J. Hendryx	Dallas, TX
C.W. Haptinstall	Los Angeles, CA
J.W. Hester, Jr.	Atlanta, GA
JoAnne Holbert	Los Angeles, CA
R.R. Hoist	Los Angeles, CA
D. Howard	Dallas, TX
Carmen I. Huertas	Los Angeles, CA
Jeanne Hunter	Atlanta, GA
Robert A. Hunter	Atlanta GA
Louise E. Isabel	Chicago, IL
Stuart J. Jaffee	Philadelphia, PA
William S. Jones	Dallas, TX
Shelley J. Kauzlaric	Dallas, TX
Arthurine C. Kent	Los Angeles, CA
Carol King	Los Angeles, CA
Thomas L. Kinney	Washington, D.C.
John H. Kline, Jr.	Philadelphia, PA
William Jackson	Atlanta, GA
Denise Lee	Philadelphia, PA
Alfredo S. Loyola	Chicago, IL
Robert J. Mahn	Washington, D.C.
Elizabeth Mahoney	Los Angeles, CA
Noel J. Mangan	Chicago, IL
P. Jack Maniscalco	Dallas, TX
Renay A. McKenzie	Chicago, IL
Susan McMahon	Chicago, IL
Camillo Melchiorre	Philadelphia, PA
Allen P. Miller	Los Angeles, CA
Doris A. Morrow	Chicago, IL
Frederich W. Mowatt	Washington, D.C.
Charleen N. Munson	Philadelphia, PA
Randolph C. Nail, Jr.	Chicago, IL
Harbir S. Narang	Los Angeles, CA
Vincent H. Nelson	Atlanta, GA
Brenda J. Newbill	Chicago, IL
Phillip R. Nichols, Jr.	Philadelphia, PA
James W. Noack	Los Angeles, CA
Robert D. O'Connell	Chicago, IL
B.J. Odom	Atlanta, GA
Zach Oppenheimer	Philadelphia, PA
Bentley C. Palez, Jr.	Dallas, TX
Leslie A. Parsons	Los Angeles, CA
Dale L. Pea	Dallas, TX
Norman H. Peterson	Los Angeles, CA
Kathryn M. Phillips	Atlanta, GA
Robert G. Pike	Atlanta, GA
M. Kay Pollak	Los Angeles, CA
Douglass M. Porter	Washington, D.C.
Norman M. Reid	Los Angeles, CA
Clotelia S. Riddell	Los Angeles, CA
A.E. Rodenberger	Los Angeles, CA
Samuel D. Russell	Dallas, TX
Tim J. Ryan	Chicago, IL
E.L. Schreiber	Dallas, TX
Frank L. Scrivano	Dallas, TX
R.L. Shanteau	Atlanta, GA
Patricia L. Shaw	Chicago, IL
M. Faith Smith	Philadelphia, PA
Samuel M. Smith, III	Atlanta, GA
Susan T. Smith	Dallas, TX
Mary Lou Stellman	Dallas, TX
Roger Stewart	Washington, D.C.
Robert F. Sumbry	Atlanta, GA
T.J. Swanson, Jr.	Atlanta, GA
Robert N. Tanabe	Los Angeles, CA
Leta L. Terrell	Dallas, TX
Geri C. Thomas	Los Angeles, CA
Jimmie L. Thomas	Dallas, TX
William J. Tierney	Chicago, IL
Joseph D. Trombello	Dallas, TX
Carmeleta Turner	Dallas, TX
Ruth C. Turner	Los Angeles, CA
J.H. Van House	Atlanta, GA
Lewis A. Vidmar	Dallas, TX
Mary E. Voight	Los Angeles, CA
Esther O. Walder	Philadelphia, PA
Erlinda C. Weaver	Los Angeles, CA
Nancy L. Webster	Chicago, IL
Edward W. Wendell	Chicago, IL
James H. Whitehead	Atlanta, GA
Sherry L. Williamson	Atlanta, GA
John Wilson	Philadelphia, PA
S.L. Wisdom	Dallas, TX
W.E. Yeager	Atlanta, GA
Dick A. Yockey	Los Angeles, CA
Barbara Zwijacz	Chicago, IL

II. Staff Members of the Federal Home Loan Mortgage Corporation, Created Under the Laws of the United States, Appointed Attorneys-in-Fact

Name	*Region*
William T. Bings	Washington, D.C.
Philip R. Brinkerhoff	Washington, D.C.
Jerry Brooks	Atlanta, GA
Michael Coffey	Dallas, TX
Douglas R. Cottrell	Atlanta, GA
Kenneth Coulter	Los Angeles, CA
George E. Delgado	Arlington, VA
James L. Garrison	Arlington, VA
C. Gordon Gray	Chicago, IL
Ken Halterman	Dallas, TX
Philip N. Harrington	Washington, D.C.
Carl Hillis	Dallas, TX
John Horseman, Sr.	Washington, D.C.
Victor H. Indiek	Washington, D.C.
David S. Latimore	Atlanta, GA
Leon L. Linkroum	Los Angeles, CA
John E. Lott	Chicago, IL
Peter R. McNulty	Arlington, VA
J. Michael Materie	Atlanta, GA
Walter P. Moenning, Jr.	Chicago, IL
Ronald Morck	Atlanta, GA
Randall M. Nay	Dallas, TX
Jerry C. Nelson	Dallas, TX
Robert K. Ostengaard	Los Angeles, CA
Paul Quinn	Denver, CO
F. Michael Salb	Arlington, VA
Kenneth J. Sandin	Atlanta, GA
Fred Schwartz	Chicago, IL
Stu Strand	Los Angeles, CA
Ronald D. Struck	Washington, D.C.
Melvin L. Taylor	Seattle, WA
William R. Thomas, Jr.	Dallas, TX
Glenn Vaupel	Los Angeles, CA
William J. Verant	Los Angeles, CA
Edward Voss	Chicago, IL
Clifford A. Walters	Chicago, IL

Dated: September 9, 1985.

Louis C. Gasper,

Executive Vice President, Government National Mortgage Association.

[FR Doc. 85-22122 Filed 9-13-85; 8:45 am]

BILLING CODE 4210-32-M

Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-85-1134; FR-1822]

Community Development Block Grants; Secretary's Fund—Insular Areas

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This final rule updates and simplifies the general regulations applicable to all Secretary's Discretionary Fund Programs and the sections specifically related to Insular Area applicants for grants under the Secretary's Fund within the Community Development Block Grant (CDBG) program.

EFFECTIVE DATE: October 21, 1985.

FOR FURTHER INFORMATION CONTACT: Hazel P. Braxton or Leroy P. Gonnella, Office of Program Policy Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-6092. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: On August 7, 1984, the Department published a proposed rule revising provisions of the CDBG program related to Insular Areas, 49 FR 31446. HUD proposed to revise 24 CFR 570.400 and 570.405. The former section contains general provisions applicable to Subpart E of Part 570 (the Secretary's Fund), while the latter contains the provisions specifically applicable to the Insular Areas Program. The proposed rule removed certain program requirements that are no longer required by statute, made technical changes necessitated by changes to Part 570 published on September 23, 1983 (48 FR 43538), and also revised regulations related to the use of data from the Census Bureau; standards to be used in HUD review of applications; the criteria by which program amendments will be approved; the application period; permission to incur costs before approval of the application in hardship cases; threshold requirements for funding; and conditional grant approval.

No public comments were filed in response to the Notice of Proposed Rulemaking. Accordingly, the proposed rule will be adopted as final, with only the following technical revisions:

1. Under proposed § 570.400(c)(iii), applications for assistance under Subpart E would be reviewed by HUD to ensure that "required certifications have been properly executed". This provision will be revised to require that the "required certifications have been included in the application". This revision conforms the rule provision with the actual procedures that are, and have been, employed under the program.

2. Application and performance reporting requirements are set out under proposed § 570.405(e). Paragraph (e)(3) requires a recipient to submit an annual performance report of progress made on

previously funded grants. The report must contain a narrative description of a recipient's progress related to such matters as its activity completion rate, changes in scheduling, and funding allocations among projects. This provision will be revised to also require a comparison between the funds allocated to a recipient and funds obligated by the recipient. This requirement constitutes a logical extension of the informational requests already in the rule. While compliance with this requirement will not require any significant additional expenditure of resources by recipients, compliance will significantly assist both HUD and the recipient in assessing the recipient's progress.

3. Subpart O, made applicable to this regulation by § 570.400(a), authorizes reviews of the grantees' performance, and contains provisions for remedial actions and sanctions based on such reviews. Since the provisions in Subpart O are specifically written in terms of the entitlement, small cities and action grant programs, comparable provisions have been added to this regulation at § 570.400 (f) and (g).

Finally, an amendment to the Housing and Community Development Act of 1974 contained in the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98–181 (approved November 1983), added section 104(j) which provides that: "Each grantee shall provide for reasonable benefits to any person involuntarily and permanently displaced as a result of the use of assistance received under this title to acquire or substantially rehabilitate property." (The provision mandates the benefits to such displacees where the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 does not apply.) Until a final regulation implementing section 104(j) is published for effect, the requirement will be imposed through a special contract condition in the grant agreements.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

This rule does not constitute a major rule as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. For Insular Areas, there are fewer than 10 eligible applicants. The rules will simplify and reduce the requirements of applications. The other grantees under the program are relatively large entities and the changes made here should not have any significant economic impact on them. Additionally, in making grants, the program provides ample funds to cover those expenditures related to the administrative costs of the program.

This rule was listed as item number 176 in the Department's most recent Semiannual Agenda of Regulations published on April 29, 1985 under Executive Order 12291 and the Regulatory Flexibility Act, (50 FR 17286 at page 17327).

The Catalog of Federal Domestic Assistance program number and title is 14.225-Secretary's Discretionary Fund/ Territories Program.

List of Subjects in 24 CFR Part 570

Community development block grant, Grant programs: housing and community development, Loan programs: housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

Accordingly, the Department amends 24 CFR Part 570 as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for Part 570 is revised to read as set forth below and any authority citation following any section in Part 570 is removed:

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5321); Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

2. Section 570.400 is revised to read as follows:

§ 570.400 General.

(a) *Applicability.* The policies and procedures set forth in Subparts A, C, J, K, and O of this part shall apply to this subpart, except to the extent that they are specifically modified or augmented by the contents of this subpart, including specified exemptions described herein. The HUD Environmental Review Procedures contained in 24 CFR Part 58 also apply to this subpart, unless otherwise specifically provided herein.

(b) *Data.* Wherever data are used in this subpart for selecting applicants for assistance or for determining grant amounts, the source of such data shall be the most recent information available from the United States Bureau of the Census which is referable to the same point or period of time.

(c) *Review of applications for discretionary assistance.* (1) *Review Components.* An application for assistance under this subpart shall be reviewed by HUD to ensure that: (i) The application is postmarked or received on or before any final date established by HUD; (ii) The application is complete; (iii) required certifications have been included in the application; and (iv) The application meets the specific program requirements listed in the **Federal Register** Notice published in connection with a competition for funding, and any other specific requirements listed under this subpart for each of the programs.

(2) *Timing and Review.* HUD is not required by the Act to review and approve an application for assistance or a contract proposal within any specified time period. However, HUD will attempt to complete its review of any application/proposal within 75 days.

(3) *Notification to applicant/proposer.* HUD will notify the applicant/proposer in writing that the applicant/proposal has been approved, partially approved, or disapproved. If an application/ proposal is partially approved or disapproved, the applicant/proposer will be informed of the basis for HUD's decision. HUD may make conditional approvals under section § 570.304(d).

(d) *Program amendments.* (1) Recipients shall request prior written HUD approval for all program amendments involving changes in the scope or the location of approved activities.

(2) Any program amendments, whether or not they require HUD approval, must be fully documented in the recipient's records.

(e) *Performance reports.* Any performance report required of a discretionary assistance recipient shall be submitted in the form specified in this subpart, in the award document, or (if the report relates to a specific competition for an assistance award) in a form specified in a Notice published in the **Federal Register.**

(f) *Performance reviews and findings.* HUD may review the recipient's performance in carrying out the activities for which assistance is provided in a timely manner and in accordance with its approved application, all applicable requirements of this part and the terms of the assistance agreement. Findings of performance deficiencies may be cause for appropriate corrective and remedial actions under § 570.910.

(g) *Funding sanctions.* Following notice and opportunity for informal consultation, HUD may withhold, reduce or terminate the assistance where any corrective or remedial actions taken under § 570.910 fail to remedy a recipient's performance deficiencies, and the deficiencies are sufficiently substantial, in the judgment of HUD, to warrant sanctions.

3. § 570.405 is revised to read as follows:

§ 570.405 The insular areas.

(a) *Eligible applicants.* Eligible applicants are Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(b) *Threshold requirements.* HUD shall review each grantee's progress on outstanding grants made under this section based on the grantee's performance report, the timeliness of close-outs and compliance with fund management requirements and pertinent regulations, taking into consideration the size of the grant and the degree and complexity of the program. If HUD determines upon such review that the applicant does not have the capacity effectively to administer a new grant, or a portion of a new grant, in addition to grants currently under administration, the applicant shall not be invited to submit an application for the current year's funding.

(c) *Previous audit findings and outstanding monetary obligations.* HUD shall not accept for review an application from an applicant that has either an outstanding audit finding for any HUD program, or an outstanding monetary obligation to HUD that is in arrears, or for which a repayment schedule has not been established and agreed to. The Field Office manager may waive this restriction if he or she finds that the applicant has made a good faith effort to clear the audit. In no instance, however, shall a waiver be provided when funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made and payments are current.

(d) *Criteria for funding.* The Secretary shall establish, for each fiscal year, an amount for which eligible applicants may apply. Grant amounts will be based on population of the applicant and its performance in previous years. In determining performance, HUD will consider program achievements and the applicant's effectiveness in using program funds. Effectiveness in using program funds shall be measured by reviewing audit, monitoring and performance reports.

(e) *Application and performance reporting.* Application and performance reporting requirements are as follows:

(1) Applicants must submit applications within 90 days of the notification of the grant amount from HUD.

(2) Applicants must meet the application requirements in § 570.430 relating to small cities single purpose grants.

(3) At a time determined by the Field Office, grant recipients shall submit an annual performance report of progress made on previously funded grants. The status report shall be in narrative form addressing three areas:

(i) *Progress:* Progress in completing activities, the work remaining, changes in the implementation schedule, a breakdown of funds expended on each approved project and a comparison between the amount allocated to the recipient and amounts obligated by the recipient;

(ii) *Grantee assessment:* A description of the effectiveness of funded activities in meeting the recipient's community development needs; and

(iii) *Environment:* A status report on each of the following:

(A) The environmental assessments and environmental impact statements prepared by the recipient;

(B) Action taken in compliance with other environmental obligations;

(C) For exempt activities, compliance with the conditions of 24 CFR 58.34; and

(D) If appropriate, environmental reviews of emergency projects uner 24 CFR 58.33.

(f) *Costs incurred by the applicant.* (1) Notwithstanding any other provision of this part, HUD will not reimburse or recognize any costs incurred by an applicant before submission of the application to HUD.

(2) Normally, HUD will not reimburse or recognize costs incurred before HUD approval of the application for funding. However, under unusual circumstances, the Field office manager may consider and conditionally approve written requests to recognize and reimburse costs that will be incurred after submission of the application but before it is approved where failure to do so would impose undue or unreasonable hardship on the applicant. Conditional approvals will be made only before the costs are incurred and where the conditions for release of funds have been met in accordance with 24 CFR 58.22, and with the understanding that HUD has no obligation whatsoever to approve the application or to reimburse the applicant should the application be disapproved.

(g) *Criteria for conditional approval.* HUD may approve a grant subject to specified conditions. In any such case, the obligation and utilization of funds may be restricted. The reasons for the conditional appproval and the actions necessary to remove the conditions shall be specified. Failure of the applicant to satisfy the conditions may result in a termination of the grant. A conditional approval may be granted under any of the following circumstances:

(1) When local environmental reviews under 24 CFR Part 58 have not yet been completed;

(2) To ensure that actual provision of other resources required to complete the proposed activities will be available within a reasonable period of time;

(3) To ensure that a project can be completed within its estimated costs;

(4) Where the grantee is required to satisfy an outstanding debt due to HUD under a payment plan executed between the grantee and the Department;

(5) Pending resolution of problems related to specific projects or the capability of the grantee to obtain resources needed to carry out, operate or maintain the project; or

(6) Pending approval of site and neighborhood standards for proposed housing projects.

(h) *Citizen participation.* (1) The applicant shall provide for appropriate citizen participation in the application and amendment process. The applicant must, at least, do each of the following:

(i) Furnish citizens with information concerning the amount of funds available for community development and housing activities and the range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income, and the plans of the grantee for minimizing displacement of persons as a result of activities assisted with such funds and to assist persons actually displaced;

(ii) Hold one or more public hearings (scheduled at convenient times and places) to obtain the views of citizens on community development and housing needs;

(iii) Develop and publish or post the community development statement in such a manner as to afford affected citizens an opportunity to examine its contents and to submit comments;

(iv) Afford citizens an opportunity to review and comment on the applicant's performance under any community development block grant.

(2) Before submitting the application to HUD, the applicant shall certify that it has (i) met the requirements of paragraph (h)(1) of this section; (ii) considered any comments and views expressed by citizens; and (iii) if appropriate, modified the application accordingly and made the modified application available to citizens.

Dated: September 9, 1985.

Alfred C. Moran,

Assistant Secretary for Community Planning and Development.

[FR Doc. 85-22123 Filed 9-13-85; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 169

[DoD Directive 4100.15]

Commercial Activities Program

AGENCY: Department of Defense.

ACTION: Final Rule.

SUMMARY: The Department of Defense revised its rules regarding the Commercial Activities Program to incorporate substantive changes to Part 169 required by Office of Management and Budget (OMB) Circular A-76, "Performance of Commercial Activities," August 3, 1983. The Department of Defense reaffirms the Government's general policy of reliance on the private sector for commercial activities while recognizing that Government personnel must perform intrinsic governmental functions and must consider cost effectiveness.

EFFECTIVE DATE: August 12, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas B. Hansen, Office of the Assistant Secretary of Defense (Acquisition and Logistics), Installation Assistance, Pentagon, Washington, DC 20301-8000. Telephone: 202-325-0537.

SUPPLEMENTARY INFORMATION: In FR Doc. 85-10688, appearing in the **Federal Register** (50 FR 18886) on May 3, 1985, the Office of the Secretary of Defense published Part 169 as a proposed rule to provide more definitive guidelines to ensure consistency and equity to all parties in its implementation. The Office of the Secretary of Defense previously published Part 169 in FR Docs. 67-10186 (32 FR 12607) August 31, 1967; 69-6119 (34 FR 14184) May 23, 1969; 71-10943 (36 FR 14184) July 31, 1971; and 80-8173 (45 FR 17138) March 18, 1980. Some comments and editorial changes received from the private sector and internal DoD Components were incorporated into the final rule.

List of Subjects in 32 CFR Part 169

Armed forces, Government procurement.

Accordingly, 32 CFR Chapter I, is amended by revising Part 169, reading as follows:

PART 169—COMMERCIAL ACTIVITIES PROGRAM

Sec.

169.1 Purpose.
169.2 Applicability and scope.
169.3 Definitions.
169.4 Policy.
169.5 Responsibilities.

Authority: 5 U.S.C. 301 and 552 and Pub. L. 93-400.

§ 169.1 Purpose.

This part reissues OMB Circular A-76. It also updates DoD policies and assigns responsibilities for commercial activities (CAs) as required by OMB Circular A-76.

§ 169.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

(b) Encompasses DoD policy for CAs in the United States, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) Is not mandatory for CAs staffed solely with civilian personnel paid by nonappropriated funds, such as military exchanges. However, its provisions are mandatory for CAs when they are staffed partially with civilian personnel paid by or reimbursed from appropriated funds, such as libraries, open messes, and other morale, welfare, and recreation (MWR) activities. When related installation support functions are being cost-compared under a single solicitation, a DoD Component may decide that it is practical to include activities staffed solely with civilian personnel paid by nonappropriated funds.

(d) This part does not:

(1) Apply to governmental functions as defined in § 169.3.

(2) Apply when contrary to law, executive orders, or any treaty or international agreement.

(3) Apply in times of a declared war or military mobilization.

(4) Provide authority to enter into contracts.

(5) Apply to the conduct of research and development, except for severable in-house CAs in support of research and development, such as those listed in enclosure 3 of DoD Instruction 4100.33.[1]

(6) Justify conversion to contract solely to avoid personnel ceilings or salary limitations.

(7) Authorize contracts that establish an employer-employee relationship between the Department of Defense and contractor employees as described in Federal Acquisition Regulation (FAR) 37.104.

§ 169.3 Definitions.

Commercial Activity Review. The process of evaluating CAs for the purpose of determining whether or not a cost comparison will be conducted.

Commercial Source. A business or other non-Federal activity located in the United States, its territories and possessions, the District of Columbia, or the Commonwealth of Puerto Rico that provides a commercial product or service.

Conversion to Contract. The changeover of a CA from performance by DoD personnel to performance under contract by a commercial source.

Conversion to In-House. The changeover of a CA from performance under contract to performance by DoD personnel.

Cost Comparison. The process of developing an estimate of the cost of performance of a CA by DoD employees and comparing it, in accordance with the requirements in DoD Instruction 4100.33 to the cost to the Government for contract performance of the CA.

Directly Affected Parties. DoD employees and their representative organizations and bidders or offerers on the solicitation.

Displaced DoD Employee. Any DoD employee affected by conversion to contract operation (including such actions as job elimination, grade reduction, or reduction in rank). It includes both employees in the function converted to contract and employees outside the function who are affected adversely by conversion through reassignment or the exercise of bumping or retreat rights.

DoD Commercial Activity (CA). An activity that provides a product or service obtainable (or obtained) from a

[1] Copies may be obtaind, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120. ATTN: Code 301.

commercial source. A DoD CA is not a Governmental function. A DoD CA may be an organization or part of another organization. It must be a type of work that is separable from other functions or activities so that it is suitable for performance by contract. A representative list of the functions performed by such activities is provided in enclosure 3 of DoD Instruction 4100.33. A DoD CA falls into one of two categories:

(a) *In-House CA.* A DoD CA operated by a DoD Component with DoD personnel.

(b) *Contract CA.* A DoD CA managed by a DoD Component operated with contractor personnel.

DoD Employee. Refers to only civilian personnel of the Department of Defense.

DoD Governmental Function. A function that is related so intimately to the public interest as to mandate performance by DoD personnel. These functions require either the exercise of discretion in applying Government authority or the use of value judgment in making the decision for the Department of Defense. Services or products in support of Governmental functions such as those listed in enclosure 3 of DoD Instruction 4100.33 are normally subject to this part and its implementing instructions. Governmental functions normally fall into two categories:

(a) The act of governing; that is, the discretionary exercise of Governmental authority. Examples include criminal investigations, prosecutions, and other judicial functions; management of Government programs requiring value judgments, as in direction of the national defense; management and direction of the Armed Services; activities performed exclusively by military personnel who are subject to deployment in a combat, combat support, or combat service support role; conduct of foreign relations; selection of program priorities; direction of Federal employees; regulation of the use of space, oceans, navigable rivers, and other natural resources; direction of intelligence and counterintelligence operations; and regulation of industry and commerce, including food and drugs.

(b) Monetary transactions and entitlements, such as tax collection and revenue disbursements; control of the money supply treasury accounts; and the administration of public trusts.

DoD Personnel. Refers to both military and civilian personnel of the Department of Defense.

Expansion. The modernization, replacement, upgrading, or enlargement of a DoD CA involving a cost increase exceeding either 30 percent of the total capital investment or 30 percent of the annual personnel and material costs. A consolidation of two or more CAs is not an expansion unless the proposed total capital investment or annual personnel and material costs of the consolidation exceeds the total of the individual CAs by 30 percent or more.

New Requirement. A recently established need for a commercial product or service. A new requirement does not include interim in-house operation of essential services pending reacquisition of the services prompted by such action as the termination of an existing contract operation.

Preferential Procurement Programs. Mandatory source programs such as Federal Prison Industries (FPI) and the workshops administered by the Committee for Purchase from the Blind and Other Severely Handicapped under the Javits-Wagner-O'Day Act. Also included are small, minority, and disadvantaged businesses; and labor surplus area set-asides and awards made under section 8(a) of the Small Business Act.

§ 169.4 Policy.

It is DoD policy to:

(a) *Ensure DoD Mission Accomplishment.* This part and its implementing instructions shall consider the overall mission of the Department of Defense and the defense objective of maintaining readiness and sustainability to ensure a capability to mobilize the defense force and support structure.

(b) *Retain Governmental Functions In-House.* Certain functions inherently are Governmental in nature, being so intimately related to the public interest as to mandate performance only by DoD personnel. These functions are not in competition with commercial sources; therefore, these functions shall be performed by DoD personnel.

(c) *Rely on the Commercial Sector.* DoD Components shall rely on commercially available sources to provide commercial products and services. Except when required for national defense, when no satisfactory commercial source is available, or when in the best interest of direct patient care, DoD Components will not start, expand, or carry on any CAs to provide commercial products or services if the products or services can be procured more economically from commercial sources.

(d) *Achieve Economy and Enhance Productivity.* Competition enhances quality, economy, and productivity. Whenever performance by a commercial source of a DoD in-house CA is permissible, in accordance with this part and its implementing instructions, a comparison of the cost of contracting and the cost of in-house performance normally shall be performed to determine who will do the work. The restriction of a solicitation to a preferential procurement program does not negate this requirement.

(e) *Permit Interim In-House Operation.* A DoD in-house CA may be established on a temporary basis if a contractor defaults. Action shall be taken to resolicit bids or proposals in accordance with DoD Instruction 4100.33.

§ 169.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Acquisition and Logistics)*, or his designee, shall:

(1) Formulate and develop policy consistent with this part for the DoD CA program.

(2) Issue instructions to implement the policies of this part.

(3) Maintain an inventory of in-house DoD CAs.

(4) Monitor program implementation.

(5) Establish the use of automatic data processing (ADP) for DoD CA program surveillance and managerial control.

(6) Develop, register, coordinate, and maintain data elements for use in ADP systems and reporting in accordance with the requirements of DoD Directive 5000.11.[1]

(7) Review DoD Component decisions to perform DoD CAs in-house for reasons other than cost, new requirements, or expansions.

(8) Establish criteria for determining whether a CA is required to be operated for reasons of national defense by either DoD military or civilian employees.

(b) *The Assistant Secretary of Defense (Comptroller)* shall provide policy guidance to the DoD Components on procedures and systems for obtaining cost data for use in preparing the in-house cost estimate.

(c) The *Heads of DoD Components* shall:

(1) Implement this part in accordance with the instructions issued by the ASD (A&L).

(2) Designate an official at the Assistant Secretary or equivalent level to implement this part.

(3) Establish an office to serve as a central point of contact for implementing this part.

(4) Evaluate their functions and activities to determine which CAs are subject to this part.

(5) Prepare, maintain, and report CA

Program data in accordance with DoD Instruction 4100.33.

(6) Schedule reviews of the in-house CAs listed in their inventories and ensure that the initial reviews and cost comparisons are completed by September 30, 1987. Commercial activities approved for retention in-house, for any reason, shall be reviewed again at least once every 5 years.

(7) Approve or disapprove in-house performance of DoD CAs, new requirements, and expansions for reasons of national defense (under the criteria established in subparagraph E.2.a.(1)(a) of DoD Instruction 4100.33), a lack of a satisfactory commercial source, or when in the best interest of direct patient care.

(8) Schedule for cost comparison (unless a waiver is appropriate) CAs not justified for in-house performance for national defense, a lack of a satisfactory commercial source, or when in the best interest of direct patient care.

(9) Ensure that contracts resulting from cost comparisons conducted under this Directive are solicited and awarded in accordance with the Federal Acquisition Regulation (FAR) and DoD FAR Supplement (DFAR) which require the inclusion of provisions relating to labor matters such as equal employment opportunities, safety and occupational health, veterans' preference, minimum wages and fringe benefits, and right of first refusal for employment by the contractor for displaced DoD employees.

(10) Ensure that the Office of Federal Procurement Policy (OFPP) Policy Letter No. 78–3 is considered in responding to requests for disclosure of contractor-supplied information obtained in the course of procurement.

(11) Ensure that high standards of objectivity and consistency are maintained in compiling and maintaining the CA inventory and conducting the reviews and cost comparisons.

(12) Exert maximum effort to find suitable employment for any displaced DoD Component employee, including:

(i) Placing them in the DoD Priority Placement Program.

(ii) Paying reasonable costs for training and relocation when these will contribute directly to placement.

(iii) Coordinating with the Office of Personnel Management (OPM) to ensure displaced DoD Component employees have access to Government-wide placement programs, including the OPM-operated Displaced Employee Program (DEP) and the Interagency Placement Assistance Program (IPAP).

(iv) Coordinating with the Department of Labor and other agencies to promote private sector employment for separated workers.

(v) Consistent with postemployment restrictions, advising DoD Component displaced employees that they have the right of first refusal for employment on the contract in positions for which they are qualified, and assisting them in applying for such employment.

(13) Maintain the technical competence necessary to ensure effective and efficient management of the CA program.

(14) Notify the Joint Committee on Printing (JCP) at least 30 days before commencing a cost comparison of a field printing operation. These JCP notifications shall be coordinated with the appropriate legal counsel.

Dated: September 11, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85–22064 Filed 9–13–85; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–9–FRL–2898–1]

Approval and Promulgation of State Implementation Plan: Oregon; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule relating to the Oregon State Implementation Plan which was published at 50 FR 31370, August 2, 1985. In FR Doc. 85–18271 appearing on August 2, 1985, the following correction is made to the Code of Federal Regulations portion of the document.

EFFECTIVE DATE: September 16, 1985.

FOR FURTHER INFORMATION CONTACT: Ann Williamson, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. Telephone No. (206) 442–8633, FTS: 399–8633.

In § 52.1970(c), the paragraph numbered (70) should instead read (71).

Authority: 42 U.S.C. 7401–7642.

Dated: August 20, 1985.

Ernesta Barnes,

Regional Administrator.

[FR Doc. 85–22083 Filed 9–13–85; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–55

Collection of Claims Owed the United States

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) recently proposed regulations implementing the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1754) (49 FR 30080, July 26, 1984). GSA is required by law to issue these regulations.

In response to GSA's proposal, a number of parties submitted comments. These comments have been reviewed and GSA is now adopting a modified rule which responds to the suggestions received. The rule incorporates a new § 105–55.003, dealing with the applicability of the Debt Collection Act to claims arising from activities under GSA's jurisdiction.

By following the procedures outlined in this part, GSA will be able to more efficiently collect, compromise, or terminate, by administrative offset, outstanding claims for money.

EFFECTIVE DATE: September 16, 1985.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Jr., Chief Counsel (LG), General Services Administration, 18th & F Streets, NW., Washington, DC 20405. 202–566–1460.

SUPPLEMENTARY INFORMATION: On July 26, 1984 (49 FR 30080), GSA published for comment in the **Federal Register** a proposed rule implementing the Federal Claims Collection Act, as amended in 1982 by the Debt Collection Act. The proposal provided procedures by which GSA would:

(a) Collect claims owed to the United States arising from activities under GSA's jurisdiction;

(b) Determine and collect interest and other charges on those claims;

(c) Compromise claims; and,

(d) Refer unpaid claims for litigation.

The proposed part was designed to supplement regulations previously published by the General Accounting Office in conjunction with the Department of Justice (4 CFR Parts 101–105).

GSA received five comment letters in response to its notice of proposed rulemaking, two from staff offices within GSA, two from private law firms, and one from the Public Contract Law Section of the American Bar Association. The letter from the ABA

Section, as well as both of the law firm letters, addressed in detail GSA's proposed § 105–55.003. In addition, one of the law firm letters also addressed § 105–55.004 dealing with the Government's right to demand payment of outstanding claims; this section was the focus of one of the GSA letters, as well. The other GSA letter commented on § 105–55.010, "Disclosure to consumer reporting agencies and referrals to collection agencies."

The three comments which addressed the applicability of the regulations to activities under GSA's jurisdiction focused on paragraph (c) of § 105–55.003. Paragraph (c)(1) exempted "acquisition contracts subject to the . . . Federal Acquisition Regulations (FAR) and the General Services Administration Acquisition Regulations (GSAR) . . . ." 49 FR 30081. Paragraph (c)(2) provided that contract claims not subject to either the FAR or GSAR which were "the subject of a contracting officer's final decision" pursuant to the Contract Disputes Act of 1978 were susceptible to collection, compromise, or termination under this part, except that "no additional review of the debt" was to be granted beyond that provided by the Contract Disputes Act. *Id.*

Each of the comments received complained that paragraph (c)(1) was ambiguous and was not in accordance with the provisions of the Debt Collection Act. The Debt Collection Act expressly exempted only certain types of federal contracts from the administrative offset provisions; acquisition contracts, as a class, were not among those excused. Therefore, the commenters argued, paragraph (c)(1) was without legal force. The commenters also pointed out that there was no system known as the Federal Acquisition Regulations Systems, the term used by GSA to refer to the body of regulations codified in the FAR and GSAR.

Two commenters complained that paragraph (c)(2) was in conflict with both paragraph (c)(1) and the provisions of the Debt Collection Act. First, the commenters pointed out, the language of paragraph (c)(2), "[i]f not otherwise provided in the FAR system," conflicted with paragraph (c)(1). Second, the commenters asserted that the provisions of paragraph (c)(2) violated the Debt Collection Act because any review additional to that provided by the contracting officer pursuant to the Contract Disputes Act was prohibited.

Section 105–55.004, "Demand for payment," was the subject of two comment letters. One comment stated that the 30-day interval between demand letters called for by paragraph (a) was too lengthy a period of time. Instead, the commenter urged, the interval should be 15 calendar days. The effect of this shorter period, it was argued, would both speed the collection process and ensure the protection of the Government's rights. The other comment letter focused on paragraphs (b)(7) and (b)(8) of § 105–55.004, which deal with the rights of the debtor to review of the Government's claim and to offer to make a written agreement with the Government, respectively. The regulations contained in these proposed sections, it was argued, would violate both the Debt Collection Act and the Contract Disputes Act.

In the view of the commenter, paragraph (b)(7) violated the Debt Collection Act because the right to review provided was prohibited by the provisions of § 105–55.003(c)(2), discussed above. Even if this barrier were overcome, the commenter asserted, the provisions of paragraph (b)(7) of § 105–55.004 would violate the Contract Disputes Act because it created a new review mechanism without Congressional authorization. The Contract Disputes Act provided contractors with two avenues of review: an agency board of contract appeals or the United States Claims Court. The Debt Collection Act did not, argued the commenter, authorize the creation of a third mechanism.

Paragraph (b)(8) was allegedly in violation of the Debt Collection Act because it granted GSA discretion to not enter into written repayment agreements with a debtor, even if the debtor favored the making of an arrangement of this type. The Debt Collection Act, claimed the commenter, created a presumption that a debtor had a right to a written repayment agreement, a presumption which could be overcome by the Government only by demonstrating why an agreement should not be permitted.

Finally, one commenter addressed the provisions of § 105–55.010, "Disclosure to consumer reporting agencies and referrals to collection agencies." At the present time the section states, in part, that: "The Comptroller [of GSA] and Regional Controllers and their designees may disclose delinquent debts to consumer reporting agencies. . . ." 49 FR 30083. In order to eliminate administrative burden and expense, the commenter suggested that the above language be revised to read: "The Comptroller and his designees may disclose commerical accounts and delinquent consumer accounts. . . ."

After considering these comments, GSA attempted to revise paragraph (c) of § 105–55.003 to clarify the applicability of the regulations to contract claims due the United States. During this process, however, it was determined that paragraph (c) should be deleted in its entirely in order to bring GSA's regulations in line with the legal position of the Department of Justice that, when offsetting claims arising under contract subject to the Contract Disputes Act of 1978, 41 U.S.C. 601 et seq., the Government need not comply with the Debt Collection Act since the Contract Disputes Act sets forth a complete mechanism of administrative procedure for settling disputes.

No other changes have been made to this part. The decision to leave unaltered a particular provision was made, in each instance, only after carefully analyzing the section in question in light of the comments received.

One comment recommended shortening the interval between Government demand letters from thirty to fifteen days. The longer period was retained, however, because insufficient evidence exists to support the commenter's claim that a fifteen day period was necessary to ensure that the Government's rights would be protected. Given the evidence available, it was felt that a slightly longer period would be more equitable to the debtor and would not significantly hamstring the Government's efforts to collect, by administrative offset, debts owed to it.

Paragraph (b)(8) of § 105–55.004 was criticized for improperly conferring discretion upon the Government to decide whether to enter into deferred payment schedules with a debtor. It was argued by one commenter that this provision was not authorized by the Debt Collection Act. We do not agree.

Section 3716(a) of title 31, United States Code, states, in pertinent part, that:

> The head of [an executive or legislative] agency may collect [a claim] by administrative offset only after giving the debtor—
>
> * * * * *
>
> (2) an opportunity to inspect and copy the records of the agency related to the claim;
>
> (3) an opportunity for a review within the agency of the decision of the agency related to the claim; and
>
> (4) an opportunity to make a written agreement with the head of the agency to repay the amount of the claim.

The commenter argued that, in the context of subsection (a), "opportunity" should be read to mean "right." In addition, the commenter asserted that there is a presumption that a debtor is entitled to a deferred payment agreement, with the burden on the Government to show otherwise.

The commenter has confused the granting of a procedural entitlement by Congress—i.e. the options of seeking or not seeking a deferred payment agreement—with the entering into of a substantive agreement of legal significance. The commenter does not argue that, merely by exercising his "right" to have an agency's decision on a claim reviewed by a higher authority, the debtor thereby creates a presumption that the decision should be overturned in his favor. In fact, the converse is true; a heavy presumption of regularity attaches to an agency's administrative decisions. The analysis is the same for paragraph (b)(8). A presumption that a debtor is entitled to a deferred payment agreement cannot be created simply because the debtor takes advantage of a procedure made available by Congress.

This conclusion is strengthened by the provisions of subsection (b) of section 3716. Subsection (b) states, in pertinent part, that:

> Before collecting a claim by administrative offset . . . the head of an executive or legislative agency must prescribe regulations on collecting by administrative offset based on—
>
> (1) the best interests of the United States Government.

Part 105–55 was promulgated with this command in mind. A deferred payment plan is a contract that confers rights and imposes obligations upon the parties to it. The Government places many requirements upon contractors which must be satisfied before it will even consider entering into a contract. Paragraph (b)(8) of § 105–55.004 contains several requirements of this nature. One of these is the requirement that a debtor who requests a repayment schedule because an offset of the entire amount due would create a "financial hardship" must first submit to an evaluation, by the appropriate GSA Regional Finance Division, of his financial status. Based upon this evaluation, a decision is made whether to grant the debtor's request. This procedure is in the "best interests of the Government." Therefore, paragraph (b)(8) was not revised.

Finally, one commenter addressed § 105–55.010. The first comment suggested that the first sentence in § 105–55.010 be changed to read, in part: "The Comptroller and Regional Controllers and their designees may disclose *commercial accounts and delinquent consumer accounts to credit reporting agencies and may refer . . . .*" (Emphasis added.) To be consistent, the commenter also suggested a change in the heading of the section. The basis for these proposed alterations was the elimination of administrative burden and expense to be incurred by notifying debtors that a record of their delinquent accounts had been forwarded to credit bureaus. In the absence of documentary evidence supporting this assertion, we fail to see the need for the proposed change. It is felt that the current provisions serve upon commercial debtors adequate notice that credit information may be made available by GSA to credit reporting agencies.

This commenter also noted that certain words in the sentence beginning with "Information" had been omitted. We have made the necessary correction and we thank the commenter for bringing the omission to our attention.

We thank all of the commenters for taking the time to submit thoughtful comments.

List of Subjects in 41 CFR Part 105–55

Disclosures and referrals, Credit reports, Claims.

Title 41 of the Code of Federal Regulations is amended by adding Part 105–55 to read as follows:

PART 105–55—COLLECTION OF CLAIMS OWED THE UNITED STATES

Sec.

105–55.001 Background.
105–55.002 Purpose.
105–55.003 Applicability.
105–55.004 Demand for payment.
105–55.005 Interest, administrative charges, and penalty charges.
105–55.006 Responsibility for collection.
105–55.007 Collection by offset.
105–55.008 Settlement of claims.
105–55.009 Referral for litigation.
105–55.010 Disclosure to credit reporting agencies and referrals to collection agencies.
105–55.011 Credit report.

Authority: 31 U.S.C. 3701–3719; Pub. L. 97–365, 96 Stat. 1754.

§ 105–55.001 Background.

The Department of Justice and the General Accounting Office have jointly issued amended Federal Claims Collection Standards (4 CFR Parts 101–105) which reflect changes to the Federal Claims Collection Act of 1966 (31 U.S.C. 3701–3719) made by the passage of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1754). The preamble to the amended Federal Claims Collection Standards instructs individual agencies to adopt their own regulations as to detailed procedures in furtherance of the Federal Claims Collection Standards. Additionally, the Debt Collection Act of 1982 directs, as reflected in the Federal Claims Collection Standards, that each agency must prescribe regulations on collecting by administrative offset and that each agency may prescribe regulations identifying circumstances appropriate to waive collection of interest and charges in conformity with the Federal Claims Collection Standards.

§ 105–55.002 Purpose.

In keeping with the suggestion in the preamble to the amended Federal Claims Collection Standards and the directives in the Debt Collection Act of 1982 and the Federal Claims Collection Standards as to administrative offset and the collection of interest and charges, this part provides procedures for the General Services Administration to collect, compromise, or terminate collection action on claims owed to the United States arising from activities under GSA jurisdiction. It implements the Federal Claims Collection Act as amended by the Debt Collection Act. It supplements the regulations published jointly by the General Accounting Office and the Department of Justice. It sets forth procedures by which GSA:

(a) Will collect claims owed to the United States;

(b) Will determine and collect interest and other charges on those claims;

(c) Will compromise claims; and

(d) Will refer unpaid claims for litigation.

§ 105–55.003 Applicability.

(a) This part applies to all claims due the United States under the Federal Claims Collection Act, as amended by the Debt Collection Act, arising from activities under the jurisdiction of the General Services Administration, except those claims arising out of contracts subject to the Contract Disputes Act of 1978, 41 U.S.C. 601 et. seq. The word claims includes but is not limited to amounts due the United States from fees, overpayments, fines, civil penalties, damages, interest, and other sources.

(b) Claims arising from the audit of transportation accounts pursuant to 31 U.S.C. 3726 shall be determined, collected, compromised, terminated or settled in accordance with regulation published under the authority of 31 U.S.C. 3726 (see 41 CFR Part 101–41, administered by the Director, Office of Transportation Audits) and are otherwise excepted from these regulations.

§ 105–55.004 Demand for payment.

(a) A total of three progressively stronger written demands at approximately 30-day intervals will normally be made, unless a response or other information indicates that

additional written demands would either be unnecessary or futile. When necessary to protect the Government's interest, written demand may be preceded by other appropriate actions under the Federal Claims Collection Standards, including immediate referral for litigation and/or offset.

(b) The initial written demand for payment shall inform the debtor of:

(1) The basis for the claim;

(2) The amount of the claim;

(3) The date when payment is due; (30 days from date of mailing or hand delivery of the initial demand for payment);

(4) The provision for interest, penalties, and administrative charges in accordance with 31 U.S.C. 3717, if payment is not received by the due date [See § 105–55.005 for details regarding interest, administrative charges, and penalty charges.]

(5) The intent of the agency to collect by administrative offset, including asking the assistance of other Federal agencies to help in the offset whenever possible, if the debtor has not made payment by the payment due date, has not requested a review of the claim within the agency as set out in paragraph (b)(8) of this section or has not made an arrangement for payment by the payment due date;

(6) The right of the debtor to inspect and copy the records of the agency related to the claim. Any costs associated therewith shall be borne by the debtor. The debtor shall give reasonable notice in advance to the agency of the date upon which it intends to inspect and copy the records involved;

(7) The right of the debtor to a review of the claim within the agency. If the claim is disputed in full or part, the debtor shall respond to the demand in writing by making a request for a review of the claim within the agency by the payment due date stated in the demand. The debtor's written response shall state the basis for the dispute. If only part of the claim is disputed, the undisputed portion should be paid by the date stated in the initial demand. The agency shall acknowledge receipt of the request for a review, and upon completion of consideration shall notify the debtor whether its determination has been sustained, amended, or canceled within 15 days of the receipt of the request for a review. If the agency either sustains or amends its determination, it shall notify the debtor of its intent to collect by administrative offset unless payment is received within 15 days of the mailing of the notification of its decision following a review of the claim.

(8) The right of the debtor to offer to make a written agreement to repay the amount of the claim. The acceptance of such an agreement is discretionary with the agency. If the debtor requests a repayment arrangement because a payment of the amount due would create a financial hardship, the appropriate GSA Regional Finance Division will analyze the debtor's financial condition. Dependent upon the Regional Finance Division's evaluation of the financial strength of the debtor, the Comptroller or the appropriate designee and the debtor may agree to a written installment repayment schedule. The debtor shall execute a confess-judgment note which specifies all of the terms of the arrangement. The size and frequency of installment payments should bear a reasonable relation to the size of the debt and the debtor's ability to pay. Interest, administrative charges, and penalty charges shall be provided for in the note. The debtor shall be provided with a written explanation of the consequences of signing a confess-judgment note. The debtor shall sign a statement acknowledging receipt of the written explanation which shall recite that the statement was read and understood before execution of the notice and that the note is being signed knowingly and voluntarily. Some form of objective evidence of these facts should be maintained in the agency's file on the debtor.

(c) If no response to the demand is received by the date stated in the demand, GSA will take further action under this subpart or under the Federal Claims Collection Standards. These actions may include reports to credit bureaus, referrals to collection agencies, termination of contract, debarment, offset of Federal salary, and other administrative offset, as authorized in 31 U.S.C. 3701–3719.

§ 105–55.005 Interest, administrative charges, and penalty charges.

(a) GSA shall assess interest on unpaid claims at the rate of the current value of funds to the Treasury as prescribed by the Secretary of the Treasury on the date interest begins to run. GSA shall assess administrative charges to cover the costs of processing and handling overdue claims. GSA shall assess penalty charges of six percent a year on any part of a debt more than 90 days past due. The imposition of interest, administrative charges, and penalty charges are made in accordance with 31 U.S.C. 3717.

(b) Interest will be computed from the date of *mailing* or *hand delivery* of the initial demand if the amount of the claim is not paid within 30 days. The 30-day period may be extended in individual cases if there is good cause to do so and it is in the public interest. Interest will only be computed on the principal of the claim and the interest rate will remain fixed for the duration of the indebtedness, except where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement. A new rate which reflects the current value of funds to the Treasury at the time the new agreement is executed may be set if applicable and interest on interest and related charges may be charged where the debtor has defaulted on a previous repayment agreement. Charges which accrued but were not collected under the defaulted agreement shall be added to the principal to be paid under the new repayment schedule.

(c) GSA may waive interest, administrative charges, or penalty charges if it finds that:

(1) The debtor is unable to pay any significant sum toward the claim within a reasonable period of time;

(2) Collection of interest, administrative charges, or penalty charges will jeopardize collection of the principal of the claim; or

(3) It is otherwise in the best interests of the United States, including the situation where an offset or installment payment agreement is in effect.

§ 105–55.006 Responsibility for collection.

(a) Heads of Central Office Services and Staff Offices and Regional Administrators must initiate actions on claims arising from their program operations and immediately notify the appropriate Regional Finance Division. A claim will be recorded and controlled by the Regional Finance Division upon receipt of documentation from a competent authority establishing the amount due.

(b) The collection of claims under the control of Regional Finance Divisions will be aggressively pursued in accordance with the provisions of Part 102 of the Federal Claims Collection Standards (4 CFR, Part 102). Whenever feasible, debts owed to the United States, together with interest, administrative charges and penalty charges, should be collected in full in one lump sum. If the debtor requests installment payments, the Regional Finance Divisions shall be responsible for determining the financial hardship of debtors and when appropriate shall arrange installment payment schedules. Claims which cannot be collected either directly or by administrative offset shall either be written off as administratively uncollectible in accordance with

authority delegated to the Director, Office of Finance and the Directors, Regional Finance Divisions, or referred to the appropriate Assistant General Counsel or Regional Counsel for further consideration.

(c) The General Counsel, delegated officials in the Office of General Counsel, and each Regional Counsel may compromise or suspend or terminate the collection of, referred claims under $20,000, exclusive of interest, penalties and administrative charges under the Act and the Federal Claims Collection Standards 4 CFR Parts 103 and 104.

(d) The Office of General Counsel officials listed in paragraph (c) of this section have the responsibility for referring to the Department of Justice all claims over $20,000 exclusive of interest, penalties and administrative charges which cannot be compromised, suspended or terminated in accordance with the Federal Claims Collection Act and the Federal Claims Collections Standards. Referrals to the Department of Justice shall be made in accordance with 4 CFR Part 105 of the Federal Claims Collections Standards.

§ 105–55.007 Collection by offset.

(a) Whenever feasible, after a debtor fails to pay the claim, request a review of the claim, or make an arrangement for payment, the Comptroller or his appropriate regional designee will collect claims under this part by means of administrative offset against obligations of the United States to the debtor, pursuant to 31 U.S.C. 3716, except offset of Federal salaries.

(b) Salary offsets and offsets against military retired pay are governed by 5 U.S.C. 5514.

(c) Collection by administrative offset of amounts payable from Civil Service Retirement and Disability Fund will be made pursuant to 5 U.S.C. 5514 and 5 U.S.C. 5705 and regulations thereunder.

(d) In making collection by administrative offset under 31 U.S.C. 3716, GSA must do so in accordance with the requirements set forth in § 105–55.004(b).

(e) GSA will promptly make requests for offset to other agencies holding funds payable to a debtor and provide instructions for the transfer of these funds. Requests for offset received from other agencies shall be processed promptly and the funds transferred to the requesting agency.

(f) If administrative offset cannot be effected through GSA or other known agency accounts receivable, then GSA will place a complete stop order against amounts otherwise payable to the debtor by placing the name of that debtor on the Department of the Army "List of Contractors Indebted to the United States." If any amounts are discovered under this procedure, they will be offset against the debt owed to GSA.

(g) GSA should not attempt to effect collection by administrative offset when:

(1) The debtor has ceased to do business and there are no known or potential obligations payable by any agency of the United States Government to the debtor.

(2) The debt in question is over ten years old.

(3) The debtor has either gone into receivership and has liquidated all of its assets or has filed a petition in bankruptcy as a no asset debtor, and there is no likelihood of the debtor resuming operations; and there are no known or potential obligations payable by any agency of the United States Government to the debtor. In the case of a bankruptcy petition, the automatic stay against setoff must be honored pending release from the stay.

(4) The debtor is deceased, and there are no attachable assets in the estate.

(5) Any other circumstances which would indicate that the likelihood of collection by administrative offset is less than probable.

§ 105–55.008 Settlement of claims.

(a) In accordance with the provisions of 4 CFR Part 103, GSA officials listed in § 105–55.006(c) may settle claims not exceeding $20,000 exclusive of interest, penalties and administrative charges by compromise at less than the principal of the claim if:

(1) The debtor shows an inability to pay the full amount within a reasonable time;

(2) The Government would be unable to enforce complete collection by any means within a reasonable time;

(3) The amount of the claim does not justify the actual foreseable collection cost of the claim; or

(4) A combination of the above reasons.

(b) GSA may suspend or terminate collection action in accordance with the terms and procedures contained in 4 CFR Part 104.

§ 105–55.009 Referral for litigation.

Claims which cannot be settled under § 105–55.008 or for which collection action cannot be suspended or terminated under 4 CFR Parts 103 and 104, will be referred to the General Accounting Office or the Department of Justice, whichever is appropriate, in accordance with the procedures in 4 CFR Part 105.

§ 105–55.010 Disclosure to credit reporting agencies and referrals to collection agencies.

The Comptroller and his designees may disclose debtor information to credit reporting agencies and may refer delinquent debts to debt collection agencies under the Federal Claims Collection Act, as amended, and other applicable authorities, provided, however, that no claim arising from the dishonor of any check or other negotiable instrument shall be disclosed to a credit reporting agency or referred to a collection agency without the concurrence of the appropriate Regional Inspector General for Investigations. Information will be disclosed to reporting agencies and referred to debt collection agencies in accordance with the terms and conditions of agreements entered into between GSA and the reporting and collection agencies. The terms and conditions of such agreements shall specify that all of the rights and protections afforded to the debtor under 31 U.S.C. 3711(f) have been fulfilled.

§ 105–55.011 Credit report.

In order to aid the agency in making appropriate determinations as to the collection and compromise of claims; the collection of interest, administrative charges, and penalty charges; the use of administrative offset; the use of other collection methods; and the likelihood of collecting the claim, the Comptroller or his designees may institute a credit investigation of the debtor immediately following receipt of knowledge of the claim.

Dated: July 19, 1985.

Raymond A. Fontaine,

Comptroller, General Services Administration.

[FR Doc. 85–22065 Filed 9–13–85; 8:45 am]

BILLING CODE 6820–AM–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1039, 1056, 1063, 1135, 1136, 1137, 1160, 1165, and 1312

[Docket No. 37321]

Revision of Tariff Regulations, All Carriers; Technical Amendments

AGENCY: Interstate Commerce Commission.

ACTION: Final rules; technical amendments.

SUMMARY: At 49 FR 38614, October 1, 1984, the Commission revised its rules governing the construction, filing, and

posting of tariffs and related documents. The new rules were assigned to a new Part 1312, Part 1300 was transferred to Title 18, and Parts 1303–1310 were removed. These technical amendments make conforming changes to appropriate sections in Title 49 of the Code of Federal Regulations.

EFFECTIVE DATE: September 13, 1985.

FOR FURTHER INFORMATION CONTACT: Larry Herzig, (202) 275–7151.

SUPPLEMENTARY INFORMATION:

List of Subjects

49 CFR Parts 1039, 1135, 1137, and 1312

Railroads.

49 CFR Part 1056

Motor carriers.

49 CFR Part 1063

Buses, Motor carriers.

49 CFR Part 1136

Buses, Motor carriers,

49 CFR Parts 1160 and 1165

Buses, Freight forwarders.

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1039—CONTRACTS AND EXEMPTIONS

(1) The authority citation for 49 CFR Part 1039 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10713, 10762, and 11105; 5 U.S.C. 553.

§ 1039.2 [Amended]

(2) Paragraph (a) of § 1039.2 is amended by removing the reference to "49 CFR 1300.313(a)(4)" and inserting in its place "49 CFR 1312.41(d)(1)(iv)".

§ 1039.3 [Amended]

(3) Paragraph (a) of § 1039.3 is amended by removing the reference to "45 CFR 1300.300–1300.315" and inserting in its place "49 CFR 1312.41".

PART 1056—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE OR FOREIGN COMMERCE

(4) The authority citation for 49 CFR Part 1056 continues to read as follows:

Authority: 49 U.S.C. 10321, 11109, 11110, and 5 U.S.C. 553.

(5) Paragraph (b)(11) of § 1056.6 is revised to read as follows:

§ 1056.6 Receipt or bill of lading.

* * * * *

(b)* * *

(11) The required released rates valuation statement.

* * * * *

PART 1063—REGULATIONS GOVERNING THE ADEQUACY OF INTERCITY MOTOR COMMON CARRIER PASSENGER SERVICE

(6) The authority citation for 49 CFR Part 1063 continues to read as follows:

Authority: 49 U.S.C. 301 et seq., secs. 304(a)(1), 304(a)(6), 308(a), 316, 317, 319, 320, and 322, and 5 U.S.C. 553 and 559.

§ 1063.3 [Amended]

(7) Paragraph (g) of § 1063.2 is amended by removing the reference to "§ 1306.0(d)" and inserting in its place "1312.1(b)(33)".

PART 1135—RAILROAD COST RECOVERY PROCEDURES

(8) The authority citation following § 1135.1 continues to read as follows:

(49 U.S.C. 10321 and 10707; 5 U.S.C. 550)

§ 1135.1 [Amended]

(9) Paragraph (f) of § 1135.1 is amended by removing the reference to "49 CFR 1300.13(f)" and inserting in its place "49 CFR 1312.17(k)".

PART 1136—RAIL AND MOTOR CARRIER COMMUTATION OF SUBURBAN PASSENGER FARE INCREASE PROCEEDINGS

(10) The authority citation for 49 CFR Part 1136 continues to read as follows:

Authority: 49 U.S.C. 10321, 10707, and 10706; 5 U.S.C. 559.

§ 1136.4 [Amended]

(11) Section § 1136.4 is amended by removing the reference to "49 CFR 1303.34(j) or 1306.6(e)" and inserting in its place "49 CFR 1312.5(c)".

PART 1137—PROCEDURES RELATING TO RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

(12) Part 1137 is amended by removing the authority citation which follows § 1137.2 and by adding an authority citation to the part to read as follows:

Authority: 49 U.S.C. 10321, 10705, and 10728; 5 U.S.C. 553, 559.

§ 1137.2 [Amended]

(13) Paragraph (c) of § 1137.2 is amended by removing the reference to "49 CFR 1300.3" and inserting in its place "1312.12".

(14) Paragraph (d) of § 1137.2 is amended by removing the reference to "49 CFR 1300.29" and inserting in its place "1312.4".

PART 1160—HOW TO APPLY FOR OPERATING AUTHORITY

(15) Part 1160 is amended by removing the authority citations under §§ 1160.10, 1160.20, 1160.66, 1160.76, 1160.67 and for Subparts D, E and F and by revising the authority citation for the part to read as follows:

Authority: 49 U.S.C. 10101, 10305, 10321, 10921, 10922, 10923, 10924, and 11102; 5 U.S.C. 553 and 559.

§ 1160.19 [Amended]

(16) Paragraph (a), (b), (d), and (e) are amended by removing the references to Parts "1310", "1307", "1308", and "1309", respectively, and inserting in their places "1312".

§ 1160.86 [Amended]

(17) Section 1160.86 is amended by removing the reference to Part "1306 (tariffs)" and inserting in its place "1312 (tariffs)".

PART 1165—REMOVAL OF RESTRICTION FROM AUTHORITIES OF MOTOR CARRIERS OF PROPERTY, MOTOR CARRIERS OF PASSENGERS AND FREIGHT FORWARDERS

(18) The authority citation for 49 CFR Part 1165 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10922(h)(i); 5 U.S.C. 553.

§ 1165.15 [Amended]

(19) Section 1165.15 is amended by removing the references to Part "1310" and inserting in its place "1312".

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

(20) The authority citation for 49 CFR Part 1312 continues to read as follows:

Authority: 49 U.S.C. 10762; 5 U.S.C. 553.

§ 1312.28 [Amended]

(21) Section 1312.28 is amended by redesignating paragraph (e) as paragraph (d).

James H. Bayne,

Secretary.

[FR Doc. 85–22102 Filed 9–13–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 31012–199]

Atlantic Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of annual adjustment to General category quota.

SUMMARY: NOAA issues this notice (1) allocating 50 short tons (st) of the 650 st General category fishery quota to the New York Bight area west of a line at 72°50'W. longitude to be used beginning September 15, 1985, and (2) allocating the balance of 89 st of the inseason adjustment amount to the General category fishery for a total annual quota of 689 st. The 50 st allocation for the New York Bight area west of the above coordinates will provide fishermen a reasonable opportunity to fish without exceeding the overall quota.

EFFECTIVE DATE: September 12, 1985. Fishing for the 50 st allocation in the New York Bight area may begin on September 15, 1985.

FOR FURTHER INFORMATION CONTACT: William C. Jerome, Jr., 617–281–3600, extension 325, or David S. Crestin, 617–281–3600, extension 253.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971–971h) regulating the take of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction were published in the **Federal Register** on June 17, 1983 (48 FR 27745). They were amended by rules published in the **Federal Register** on July 24, 1984 (49 FR 29796).

Section 285.22(a) (49 FR 29796) for the *General* category provides: "If the Assistant Administrator determines (based on dealer reports, availability of giant Atlantic bluefin tuna on the fishing grounds, and any other relevant information) that variations in seasonal distribution, abundance, or migration patterns of Atlantic bluefin tuna and the catch rate may prevent fishermen in an identified area from harvesting their share of the quota, the Assistant Administrator may set aside an allocation for such area. The amount of any allocation will not exceed the greater of 50 st or the maximum reported landings in the identified area in any of the preceding three years. The daily catch rate limit for the identified area will be set at one giant Atlantic bluefin tuna per day per vessel."

The unanticipated and unusually high catch rate of giant Atlantic bluefin tuna in the General category fishery east of a straight line originating on the southern shore of Long Island at 72°50'W. longitude (approximately the town of Moriches) and running SSE 150° true, will result in an early closure of the General category fishery. This frustrates the intent of the rules to provide fishermen throughout the range of the fishery a reasonable opportunity to fish. Early closure of the fishery will prevent the traditional giant Atlantic bluefin tuna fishery which occurs later in the season in the New York Bight area from taking place. Therefore, the Assistant Administrator has determined based on dealer reports that variations in seasonal distribution, abundance, and the catch rate (landings) will prevent an identified area from harvesting its share of the quota. Consequently, the Assistant Administrator hereby allocates 50 st of the 650 st General category quota to the New York Bight area west of a straight line originating on the southern shore of Long Island at 72°50'W. longitude (approximately the town of Moriches) and running SSE 150° true to be taken at the rate of one giant Atlantic bluefin tuna per day per vessel. Giant Atlantic bluefin tuna harvested under this 50 st allocation may only be landed in the area identified above, beginning September 15, 1985.

Section 285.22(a) (49 FR 29796) provides for an annual quota of 650 st of giant Atlantic bluefin tuna to be taken by vessels permitted in the General category in the regulatory area, which has been adjusted down to 600 st, as stipulated above. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), is authorized under § 285.22(g) (48 FR 27745) to release amounts from the reserve for inseason adjustments to increase the quota for any fishery segment. Data reported on the catch of Atlantic bluefin tuna in the General category indicate that the quota for this category will be exceeded very shortly. Therefore, under the inseason adjustment authority, the remaining balance of 89 st of the inseason adjustment amount is hereby transferred to the General category for a new total of 689 st. This will extend the opportunity to fish in the General category for as long as possible.

Notice of this action has been mailed to all Atlantic bluefin tuna dealers and vessel owners holding a valid vessel permit for this fishery.

Other Matters

This action is taken under the authority specified at 50 CFR 285.22, and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 285

Administrative practice and procedure, Fish, Fisheries, Fishing, Imports, International operations, Penalties, Reporting and recordkeeping requirements.

(16 U.S.C. 971 *et seq.*)

Dated: September 11, 1985.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 85–22141 Filed 9–12–85; 8:45 am]

BILLING CODE 3510–08–M

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50 CFR Part 661

[Docket No. 50458–5048]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) announces the closure of the recreational salmon fishery in the fishery conservation zone (FCZ) between the Queets River, and Leadbetter Point, Washington, at midnight, September 11, 1985, to ensure that the coho salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with the Washington Department of Fisheries (WDF) that the recreational fishery quota of 74,000 coho salmon for the area will be reached by midnight, September 11, 1985. The intended effect is to ensure conservation of coho salmon.

EFFECTIVE DATE: Closure of the FCZ between the Queets River and Leadbetter Point, Washington, to recreational salmon fishing is effective at 2400 hours Pacific Dayljght Time, September 11, 1985.

ADDRESS: Information relevant to this notice has been compiled in aggregate form and is available for public review at the Northwest Region, NMFS, 7600 Sand Point Way N.E., Building 1, Seattle, Washington, from 8:00 a.m. to 4:30 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director), 206–526–6150.

SUPPLEMENTARY INFORMATION: The regulations implementing the framework amendment to the ocean salmon fishery management plan (49 FR 43679, October 31, 1984) specify at § 661.21(a)(1) that: "When a quota for the commercial or the recreational fishery, or both, for any salmon species during any period open to fishing in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register**, close the commercial or recreational fishery, or both, for all

salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Under the provisions of the framework amendment, the 1985 management measures were published on May 2, 1985 (50 FR 18672). The 1985 recreational season in the FCZ between the Queets River, and Leadbetter Point, Washington, was established as June 30 through the earliest of September 19 or attainment of a quota of either 74,000 coho salmon or 23,300 chinook salmon. Based on the most recent catch and effort information supplied by WDF, the recreational fishery catch in the area is projected to reach the 74,000 coho salmon quota by midnight, September 11, 1985. The Secretary therefore issues this notice to close the recreational fishery in the FCZ between the Queets River, and Leadbetter Point, Washington, effective midnight, September 11, 1985. This notice does not apply to treaty Indian fisheries operating in the same area or to other fisheries which may be operating in other areas.

The Regional Director consulted with the Director of WDF regarding this closure. The Director of WDF has confirmed that Washington will also close the recreational fishery in State waters adjacent to this area of the FCZ.

Other Matters

This action is taken under the authority of 50 CFR Part 661 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Dated: September 11, 1985.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 85-22140 Filed 9-11-85; 5:04 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 179
Monday, September 16, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Proposed Rulemaking.

SUMMARY: The Office of Personnel Management is proposing to amend its regulations governing the submission and adjudication of job grading appeals under the Federal Wage System. These revisions will correct erroneous information in current regulations regarding available avenues of appeal. These revisions are the result of a Merit System Protection Board decision clarifying the job grading appeals adjudication authority.

DATE: Comments must be submitted on or before November 15, 1985.

ADDRESS: Send to Mr. Reginald M. Jones, Jr., Assistant Director for Pay Programs, Compensation Group, Room 3353, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Lee Hall, (202) 632–7830.

SUPPLEMENTARY INFORMATION:

a. Section 532.701 is revised to clarify that the filing of a job grading appeal does not negate any other employee appeal or grievance rights.

b. Paragraph § 532.703(b)(3) is revised in its entirety. Currently, this paragraph permits the appeal of classification issues to MSPB under 5 CFR Part 752. MSPB has ruled that classification issues are properly within the purview of OPM, and the Board's scope of review is limited to determining whether the action comports with law.

c. Paragraph § 532.703(b)(8) is revised to delete the reference to adverse action appeals.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they are changes which will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Job Grading Appeals.

Office of Personnel Management.

Constance Horner,

Director.

PART 532—PREVAILING RATE SYSTEMS

Accordingly, OPM is proposing to amend 5 CFR Part 532 as follows:

1. The authority citation for Part 532 continues to read:

Authority: 5 U.S.C. 5343, 5346.

2. OPM is proposing to revise 5 CFR 532.701 and 532.703(b)(3) and (b)(8) to read as follows:

§ 532.701 General.

A prevailing rate employee may at any time appeal the occupational series, grade, or title to which the employee's job is assigned, but may not appeal under this subpart the standards established for the job, nor other matters such as the accuracy of the job description, the rate of pay, or the propriety of a wage schedule rate. The filing of a job grading appeal does not negate any other appeal or grievance rights which may be available under applicable law, rule, regulation or negotiated agreement.

§ 532.703 Agency review.

* * * * *

(b) * * *

(3) An application may be filed at any time. However, when the application involves a downgrading or other job grading action which resulted in a reduction in grade or loss of pay, in order to be entitled to retroactive corrective action, an employee must request a review under the provisions of this subpart within 15 calendar days of the effective date of the change to lower grade in order to obtain any retroactive benefits.

* * * * *

(8) When an employee applies for a review of a downgrading or other job grading action that resulted in a reduction of pay, and the decision of an agency reverses in whole or in part the downgrading or other job grading action, the effective date of that decision shall be retroactive to the effective date of the action being reviewed when the initial application to the agency was submitted in accordance with paragraph (b)(3) of this section. However, when the agency decision raises the grade or level of the job above its grade or level immediately preceding the downgrading, retroactivity shall apply only to the extent of restoration to the grade or level immediately preceding the downgrading.

[FR Doc. 85–22029 Filed 9–13–85; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 540

Performance Management and Recognition System; Minimum Performance Award Funding

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing the minimum percentage for calculating funds to pay performance awards to Performance Management and Recognition System (PMRS) employees for Fiscal Year 1986. Establishing a new minimum percentage each year is required by title II of the Civil Service Retirement Spouse Equity Act of 1984, which established the PMRS.

DATE: Comments will be considered if received no later than October 1, 1985.

ADDRESS: Send or deliver written comments to: John W. Fossum, Assistant Director for Performance Management; Office of Personnel Management; 1900 E Street, N.W., Room 7520; Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Jack Pokoyk (202) 632–7620.

SUPPLEMENTARY INFORMATION: The funding for performance awards to be paid to PMRS employees is determined as a percentage of the estimated aggregate amount of PMRS employees' pay for each fiscal year. Section 5406(c)(2)(A)(i)(II) of title 5, U.S. Code, provides that the minimum percentage used by an agency to determine the aggregate amount of performance

awards paid during any fiscal year shall, for each of the four fiscal years after FY 85 ". . . be adjusted incrementally (by equal increments or otherwise) over the percentage for the preceding fiscal year by the appropriate agency head in accordance with regulations which the Office of Personnel Management shall prescribe;".

The interim regulations implementing the PMRS, issued on March 25, 1985 (50 FR 11788), provide that the minimum percentage will be adjusted each year in accordance with OPM instructions. This proposed rule provides instructions on calculating the aggregate amount of performance awards to be paid for Fiscal Year 1986.

OPM is proposing that the minimum percentage for calculating the aggregate amount of PMRS performance awards to be paid by each agency during Fiscal Year 1986 will be .85 percent of the estimated aggregate amount of PMRS employees' pay for Fiscal Year 1986.

Procedures agencies must follow to calculate the aggregate amount of performance awards to be paid for each fiscal year are described at 5 CFR 540.109(b).

I find that because agencies must determine estimated award budgets at the beginning of the fiscal year (October 1985), good cause exists for setting the comment period on this proposed rulemaking at 15 days. This will allow interested parties to comment, but will allow agencies time to prepare their award budgets by October 1985.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations will only affect Government employees and agencies.

List of Subjects in 5 CFR Part 540

Government employees, Wages.

U.S. Office Of Personnel Management.

Constance Horner,

Director.

PART 540—PERFORMANCE MANAGEMENT AND RECOGNITION SYSTEM

Accordingly, OPM proposes to amend 5 CFR Part 540 as follows:

(1) The authority citation for Part 540 continues to read as follows:

Authority: 5 U.S.C. Chapters 43 and 54.

(2) Section 540.109(b)(1)(i) is revised to read as follows:

§ 540.109 Peformance awards.

* * * * *

(b) * * *

(1) * * *

(i) Each agency is required to pay a minimum of .85 percent of the estimated aggregate amount of PMRS employees' basic pay for fiscal year 1985 for performance awards;

* * * * *

[FR Doc. 85–22127 Filed 9–13–85; 8:45 am]

BILLING CODE 3325-01-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1944

Farm Labor Housing

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulation in order to define substantial portion income as it relates to domestic farm laborers which includes migrant laborers. This action is necessary in order to satisfy a judicial requirement to define in the Labor Housing procedures and authorizations, "substantial portion of income" and "domestic farm laborers." The intended effect of this action is to: (1) sufficiently cover activities performed by farm laborers, (2) furnish guidelines for determining substantial portion income through universal and quantifiable terminology, (3) comply with judicial requirements.

DATES: Comments must be received on or before November 15, 1985.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, Farmers Home Administration, Room 6346, South Agriculture Building, Washington, D.C. 20250. All comments made pursuant to this notice will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Rebecca W. Johnson, Loan Officer, (202) 382–1604, Farmers Home Administration, Room 5337, South Agriculture Building, 14th and Independence Avenues SW., Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in Secretary's Memorandum 1512–1 which implements Executive Order 12291, and has been determined to be nonmajor, because there is no substantial change from practices under existing rules that would have an annual effect on the economy of $100 million or more. Also, there is no major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions. Furthermore, there is no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

The FmHA programs and projects which are affected by this instruction will be subject to intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities, (available in any FmHA Office).

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G," Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an environmental impact statement is not required.

The Catalogue of Federal Domestic Assistance program affected is No. 10.405, Farm Labor Housing Loans and Grants.

Dwight O. Calhoun, Acting Associate Administrator, has determined that the proposed action will not have a significant economic impact on a substantial number of small entities because the proposed action will only effect a small number of rural communities.

This action is required because the Honorable William M. Hoeveler, Judge for the Southern Federal District of Florida, has required the FmHA to define, in the Labor Housing procedures and authorizations, "substantial portion of income" and "domestic farm laborers" which includes laborers housed in seasonal housing.

List of Subjects in 7 CFR Part 1944

Farm labor housing, Grant programs—Housing and community development, Loan programs—Housing and community development, Migrant labor, Nonprofit organizations, Public housing, Rent subsidies, Rural housing.

Therefore, as proposed, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1944—HOUSING

1. The authority citation for Part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

2. Section 1944.153 is amended by revising paragraphs (a) and (x) and by adding paragraphs (y) and (z) to read as follows:

§ 1944.153 Definitions.

* * * * *

(a) *Domestic farm laborer.* Persons who receive a substantial portion of their income as laborers on farms in the United States, Puerto Rico, or the Virgin Islands and either are citizens of the United States, or reside in the United States, Puerto Rico, or the Virgin Islands after being legally admitted for permanent residence, and may include the immediate families of such persons. Retired or disabled domestic farm laborers who are eligible tenants at the time of their retirement or becoming disabled may continue to occupy a project that they initially occupied as an eligible domestic farm laborer.

(1) On a farm, in the employ of the owner, tenant or other operator of a farm, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or aquaculture commodity; or

(2) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or aquacultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed; or

(3) In the employ of a group of farm operators in the performance of services described in paragraph (a)(2) of this section, but only if such operators produced all of the commodities with respect to which such service is performed; but shall not be applicable with respect to services performed in connection with commercial canning or commercial freezing or in connection with any agricultural or aquacultural commodity after its delivery to a terminal market for distribution for consumption.

* * * * *

(x) *Migrant agricultural laborers.* Are defined as agricultural laborers and family dependents who establish a temporary resident while performing agricultural work at one or more locations away from the place he/she calls home or *home base.* (This does not include day/haul agricultural laborers whose travels are limited to work areas within one day of their work locations). A home base State is a State which the migrant farmwork claims as his/her domicile.

(y) *Seasonal housing.* Described in Exhibit I of Subpart A of Part 1924 of this chapter.

(z) *Substantial portion of income.* That portion of income received which has been derived from *farm labor* performed by a domestic *farm laborer* as defined in paragraph (a) of this section.

(1) To determine if income is considered substantial, two measures may be used:

(i) Actual dollars earned from farm labor by farm laborers other than migrant laborers must equal at least 60 percent of the very low-income limit according to the size of household (up to the 4 persons household) as established by the Department of Housing and Urban Development (HUD) for that country or Metropolitan Statistical Area (MSA). For migrant farm laborers living in seasonal housing the actual dollars earned from farm labor must equal at least 35 percent of the very low-income limit according to the size of household (up to 4 person household) as established by HUD. Very low income limits are set forth in Exhibit C of Subpart A of Part 1944 of this chapter.

(ii) The duration of time actually worked as a farm laborer, during the preceding 12 months, or over the past two to three years, should amount to at least 110 whole days. When using a period of more than one year, a yearly average amounting to at least 110 days per year must be computed.

(2) When a natural disaster has occurred, such as a drought, flood or freeze, figures for the last full year of work will be used to determine if the income received from farm labor is substantial under paragraph (z)(1) of this section.

Dated: June 24, 1985.

Charles A. Jewell,

Acting Associate Administrator, Farmers Home Administration.

[FR Doc. 85-22117 Filed 9-13-85; 8:45 am]

BILLING CODE 3410-07-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Engineering, Architectural, and Surveying Services

AGENCY: Small Business Administration.

ACTION: Proposed Rule.

SUMMARY: SBA is proposing to amend its size standards regulation for engineering, architectural, and surveying services (except for military and aerospace equipment and weapons, and except for marine engineering and naval architecture) to $1.5 million. This proposed action is being done as a result of a reevaluation of Federal procurement requirements, public comments, industry structure, and the impact of the proposed change upon firms in the industry. Under this proposal, the only issue under consideration is whether to retain the current size standards of $7.5 million for engineering and $3.5 million for architectural and surveying services, or to lower them to $1.5 million. This action is intended to more precisely define that segment of the industry in need of SBA assistance.

DATE: Written comments must be submitted on or before November 15, 1985 and should contain the reasons for the commentor's position as well as clearly identify the commentor and any organization that employs him or her.

ADDRESS: Address all comments to: Andrew A. Canellas, Director, Size Standards Staff, Small Business Administration, 1441 L Street, NW, Room 500, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Norman S. Salenger, Size Standards Staff, (202) 653-6373.

SUPPLEMENTARY INFORMATION: On February 9, 1984, the Small Business Administration published a Final Rule in the **Federal Register** (49 FR 5023) revising most of its size standards. Almost all size standards expressed in dollars were increased to account for inflation since they were last adjusted, generally since 1975. Prior to February 9, 1984, all engineering services, except marine engineering, were subject to one size standard, $7.5 million in average annual receipts (averaged over the firm's last three completed fiscal years). Architectural and surveying services had a $2.0 million size standard.

There has been considerable controversy about the engineering standard, expecially as it applies to Federal procurement of construction

related engineering services. Many firms wanted the size standard much lower, while others wanted it retained or raised for inflation, as was the case with size standards for other industries. For engineering services directly related to military and aerospace equipment and weapons, however, there was public support for an increase in the size standard. Consequently, SBA in its Final Rule separated engineering into four components. An inflationary increase was made for architecture and surveying, and engineering services related to military and aerospace equipment and weapons. The civil and marine engineering components were left unchanged.

SBA then began a study to reexamine the engineering size standards. The size standard for marine engineering was separate from other engineering size standards prior to the 1984 revision and it remains so now. The application of this proposal is for all engineering services other than marine engineering, and other than for military and aerospace equipment and weapons.

Approximately 84 percent of Federal civil engineering, the type of engineering of concern in this proposal, is for design services used in construction.[1] Over the past 5 years, more comments have been received from construction related engineering firms in response to SBA's proposals than from any of the other approximately 800 industries for which SBA has size standards. During the 5 year period, all comments were directed to the applicability of the engineering size standard for Federal procurement purposes, none to its use for loan eligibility. Thus, this discussion is directed to the effect of the size standard on Federal procurements.

The engineering industry is not highly dependent on Federal procurement, relative to the national market. Less than 6 percent of total industry receipts come from Federal contracts. An examination of Federal contract data clearly establishes that there is a wide distribution of engineering awards among firms and no firm can be identified as highly dependent on Federal awards. Most of the recipients were awarded less than $100,000 in contracts in a year and most received only one award. Since there are many more engineering firms than Federal contracts, most firms received no awards in any year. Additionally, it is the policy of the Department of Defense, which accounts for about 80 percent of the Federal government's construction related engineering contracts, to "spread the work" among many engineering firms. This policy does not exist for other industries. A recent law prohibited the Department of Defense from setting aside military construction related engineering contracts in excess of $85,000. This is the only industry with a set-aside limit.

Firms under the current size standard of $7.5 million and above $1.5 million are successful in bidding in unrestricted competition against large firms except for awards in excess of $250,000. Less than 10 percent of all contracts awarded in both FY's 1983 and 1984 were in excess of $250,000 and most of these were not set aside, but purchased on an unrestricted basis. Lowering the size standard to $1.5 million is not expected to significantly change the small business share, since most contracts are less than $100,000 and are within the capabilities of firms with revenues of $1.5 million or less.

Prior to the Final Rule of 1984 revising the size standard in general, the size standard for engineering covered services for military and aerospace equipment and weapons. Firms in this type of engineering activity are considerably larger than the typical engineering firm in the remainder of the industry. Thus, this industry has a higher size standard in recognition of the requirements of sophisticated weapons systems and the larger average size of these firms.

There are approximately 15,000 engineering firms not primarily involved in military and aerospace equipment, weapons or ships. Of these 15,000 firms, only 250 exceed the current size standard of $7.5 million, 1,550 have revenues between $1.5 million and $7.5 million, and the remaining 13,200 have receipts of less than $1.5 million. Under the proposed $1.5 million size standard, 88 percent of these firms would be eligible to bid for set-asides, compared to 98 percent under the current $7.5 million size standard.

Based on the most recent Census Bureau data, the average employment of engineering firms with employees is approximately 20 employees, the equivalent in annual 1985 revenue of about $1.1 to $1.2 million. The current size standard of $7.5 million is equivalent to 125 to 135 employees, while the proposed size standard of $1.5 million is equivalent to about 26 employees.

Federal agencies have informed SBA that, in general, they are not opposed to a much lower size standard. Their objection to a reduction concerns only those few highly specialized engineering contracts such as nuclear or other energy projects.

During the past several years, most of the comments from the public to SBA's notices for revision of the engineering size standard support a considerable decrease. Out of 69 comments to SBA's most recent proposal in May 1983, only 10 firms wished to retain the $7.5 million size standard, 3 firms wanted it increased above $7.5 million, 54 firms wanted the standard reduced below $7.5 million (of which 46 were large firms), and 2 firms were vague as to their position. The 10 firms desiring to retain the current standard were all identified as having between $3.5 and $7.5 million in annual revenues and would lose their eligibility to bid on set asides at the proposed lower standard, although they would still be eligible for unrestricted procurements. Of those wanting a reduction, almost all wanted the standard at $1 million or less. Both currently as well as in the past, several associations of engineering firms have strongly advocated a decrease in the size standard from $7.5 million to $1 million or less. No evidence has been presented to show that engineering firms with revenue between $1.5 and $7.5 million are at a disadvantage in competing with larger engineering firms except for a very few sophisticated contracts.

The most recent Economic Census reported 10,954 architectural firms in the United States with at least one employee. The average firm has approximately 8 employees. Average annual receipts of these firms is $450,000. Approximately 400 firms exceed $1.5 million in annual receipts, whereas approximately 225 exceed the current $3.5 million standard. Under the proposed standard of $1.5 million 96 percent of architectural firms would be within the size standard, comparable to the percent for other industries. Comments from architectural firms favor a size standard for $1 to $1.5 million.

The 5800 surveying firms average aproximately 6 employees and $250,000 in annual receipts. Sixty firms would exceed the proposed size standard of $1.5 million. Comments to prior proposals favored a lower size standard for this service.

The proposed size standard for engineering is based on SEA's belief that firms larger than $1.5 million are able to compete successfully for engineering contracts without set-asides. This is illustrated by the high percentage of unrestricted awards to small business. Also, firms larger than $1.5 million typically are viable enough

[1] In 1984, the Federal government purchased $2.1 billion in engineering services. No breakdown by type of engineering is available, i.e., civil, marine, military.

to branch out into additional offices. Thus, firms greater than $1.5 million in size are less in need of SBA assistance than firms below this level.

SBA certifies that this regulation is a nonmajor rule as defined by Executive Order 12291. The anticipated impact is on those firms with annual revenues between $1.5 and the current size standards, since these would lose eligibility for set-asides. There are about 2,000 such firms, but not all are interested in Federal contracts, and those interested would still be able to bid on contracts not set aside for small business. The economic impact on these firms is unlikely to be in excess of $30 million, because no firm is heavily dependent on Federal contracts due to the Government's "spread the work" policy described above. This regulation is not likely to result in a major increase of cost or prices or have a significant adverse effect on the United States economy.

SBA also certifies that this regulation contains no reporting or recordkeeping requirements which are subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

This rule defines the maximum size a firm may be to bid on contracts set aside for small firms in this industry. The legal basis for this proposal is section 5(b) of the Small Business Act, 15 U.S.C. 634(b). There are no Federal rules which duplicate, overlap, or conflict with the proposed rule. There are no reporting, recordkeeping or other compliance requirements of the proposed rule.

List of Subjects in 13 CFR Part 121

Small businesses.

PART 121—[AMENDED]

Accordingly, SBA proposes to amend Part 121 of 13 CFR as follows:

1. The authority citation for Part 121 of 13 CFR continues to read as follows:

Authority: 15 U.S.C. 634(b)

§ 121.2 [Amended]

2. In § 121.2(c)(2), Major Group 89—Miscellaneous Services, the entries for Item 8911—are revised as follows:

8911—Engineering, Architectural and Surveying Services; Except for Military and Aerospace Equipment, Military Weapons, Marine Engineering and Naval Architecture—$1.5 million.

8911—Engineering Services for Military and Aerospace Equipment (Except Marine Engineering) and for Military Weapons—$13.5 million.

8911—Marine Engineering and Naval Architecture—$9.0 million

* * * * *

Dated: July 24, 1985.

James C. Sanders,

Adminstrator,

[FR Doc. 85-21520 Filed 9-13-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-ASO-13]

Proposed Designation of Transition Area; Metter, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to designate the Metter, Georgia, transition area to accommodate Instrument Flight Rule (IFR) operations at Metter Municipal Airport. This action will lower the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure, based on the proposed Metter Non-directional Radio Beacon (RBN), is being developed to serve the airport and the controlled airspace is required for protection of IFR aeronautical activities.

DATES: Comments must be received on or before: October 27, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-ASO-13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this ruemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that will designate the Metter, Georgia, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to Metter Municipal Airport. If the proposed designatfon of the transition area is found acceptable, the operating status of the airport will be changed to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to

keep them operationally current. It, therefore; (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); [14 CFR 11.65]; 49 CFR 1.47.

2. By amending § 71.181 as follows:

Metter, GA—[New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Metter Municipal Airport (Lat. 32°22'30"N., Long. 82°04'45"W.); within 3 miles each side of the 283° bearing from the Metter RBN (Lat. 32°22'20"N., Long. 82°05'03"W.), extending from the 6.5-mile radius area to 8.5 miles west of the RBN.

Issued in East Point, Georgia, on September 4, 1985.

Jonathan Howe,

Director, Southern Region.

[FR Doc. 85–22032 Filed 9–13–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 85–AWP–32]

Proposed Alteration of Santa Ynez, CA, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to extend the existing transition area at Santa Ynez, California. The extension of the 700-foot transition area is required to contain the Standard Instrument Approach Procedures established for Santa Ynez Airport, Santa Ynez, California. This action is necessary to ensure aircraft operating under Instrument Flight Rules (IFR) would have exclusive use of that airspace when visibility is less than 3 miles, thereby enhancing the safety of such operations.

DATES: Comments must be received on or before November 1, 1985.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, Docket No. 85–AWP–32, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007.

The official docket may be examined in the Office of the Western-Pacific Regional Counsel, Room 6W14, at 15000 Aviation Boulevard, Hawthorne, California.

An informal docket may also be examined during normal business hours at the Airspace and Procedures Branch, Room 6E4, at the above address.

FOR FURTHER INFORMATION CONTACT: Curtis Alms, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration (FAA), at 15000 Aviation Boulevard, Hawthorne, California 90261; telephone (213) 536–6649.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–AWP–32." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above, both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, 15000 Aviation Boulevard, Hawthorne, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide additional controlled airspace to ensure that aircraft conducting IFR operations at Santa Ynez Airport are segregated from aircraft conducting Visual Flight Rules (VFR) operations when the visibility is less than 3 miles, thereby enhancing the safety of such operations. Section 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The FAA determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic and air navigation it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 71

Transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the FAR as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Santa Ynez, CA—[Revised]

"That airspace extending upward from 700 feet above the surface beginning at a point lat. 34°33'30" N., long. 120°00'10" W.; to lat. 34°29'00" N., long. 120°06'00" W.; to lat. 34°29'00" N., long. 120°12'20" W.; to lat. 34°37'10" N., long. 120°22'30" W.; to lat. 34°45'40" N., long. 120°18'40" W.; to lat. 34°40'30" N., long. 120°02'00" W.; thence within a 5-mile radius circle of Santa Ynez Airport (lat. 34°36'25" N., long. 120°04'30" W.); to the point of beginning."

Issued in Los Angeles, California on September 3, 1985.

H.C. McClure,

Director, Western-Pacific Region.

[FR Doc. 85–22033 Filed 9–13–85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–301A]

Concrete and Masonry Construction Safety Standards

AGENCY: Occupational Safety and health Administration, U.S. Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: With this notice, the Occupational Safety and Health Administration (OSHA) proposes to revise the construction industry safety standards addressing concrete and masonry construction. The standards proposed for revision regulate general concrete and masonry construction, specifically addressing the hazards of reinforcing steel, concrete placement, equipment, formwork, precast concrete and masonry work.

The proposed revisions are intended to correct problems related to the existing standards, including ambiguities, redundancies and gaps in coverage. All incorporations by reference to national consensus standards have been deleted, as the applicable requirements from those standards are proposed for inclusion in the body of this proposed standard. This inclusion is intended to assist employers in determining what is required by a provision without having to refer to documents outside Part 1926.

This approach is another step in OSHA's plan to review its safety standards and to revise them as necessary to provide safer working conditions without unnecessarily imposing burdensome requirements. The proposed revisions would continue to address employee exposure to the hazards of concrete and masonry construction, but would do so using performance criteria, where possible, rather than specification standards. This proposal is being issued after appropriate consultation with the Advisory Committee on Construction Safety and Health (ACCSH).

DATES: Comments on this proposed rulemaking must be postmarked by November 15, 1985. Hearing requests must be postmarked by November 15, 1985.

ADDRESS: Comments, notifications, and requests for a hearing are to be sent to the Docket Officer, Docket No. S–301A U.S. Department of Labor, Room N3670, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Room N3637, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 523–8148.

SUPPLEMENTARY INFORMATION: The author of this proposed rulemaking is Roger McClellan, Office of Construction and Civil Engineering Safety Standards, Occupational Safety and Health Administration.

I. Background

The shortened forms listed below are used throughout this preamble to refer to the following sources: Advisory Committee on Construction Safety and Health-ACCSH; American National Standards Institute-ANSI; American Concrete Institute-ACI; American Society for Testing and Materials-ASTM; and exhibits in the rulemaking record-(Ex.—).

Congress amended the Contract Work Hours Standards Act (CWHSA) (40 U.S.C. 327 et seq.) in 1969 by adding a new Section 107 (40 U.S.C. 333) to provide employees in the construction industry with a safer work environment and to reduce the frequency and severity of construction accidents and injuries. The amendment, commonly known as the Construction Safety Act (CSA) (Pub. L. 91–54; August 9, 1969), significantly strengthened employee protection by providing for occupational safety and health standards for employees of the building trades and construction industry in Federal and Federally-financed or Federally-assisted construction projects. Accordingly, the Secretary of Labor issued Safety and Health Regulations for Construction in 29 CFR Part 1518 (36 CFR Part 7340, April 17, 1971) pursuant to section 107 of the Contract Work Hours and Safety Standards Act.

The Occupational Safety and Health Act (the Act) [84 Stat. 1590; 29 U.S.C. 655 et seq.], which was enacted by Congress in 1970, authorized the Secretary of Labor to adopt established Federal Standards issued under other statutes, including the Construction Safety Act, as occupational safety and health standards. Accordingly, the Secretary of Labor adopted the Construction Standards, which were issued under the Construction Safety Act in 29 CFR Part 1518, in accordance with section 6 of the Act (36 FR 10466, May 29, 1971). The Safety and Health Regulations for Construction Part 1518 were redesignated as part 1926 at the end of 1971 (36 FR 25232, December 30, 1971). The standard entitled Concrete, Concrete Forms, and Shoring, § 1926.700 through .702, was adopted as an OSHA standards as part of this process.

One of the hazards associated with concrete and masonry structures in the construction industry is the collapse or failure of the entire structure or its forms and shoring. The accidents are often catastrophic, involving many workers, but even when the failure does not involve the entire structure, the risk of being crushed, struck, or asphyxiated is high. In the last few years, there have been several catastrophic and well-publicized construction accidents attributed to failure or collapse of the concrete structure including the disaster at the Willow Island, West Virginia cooling tower, which claimed 51 lives, and the collapse of the Skyline Tower Plaza in Fairfax County, Virginia, which took 14 lives. Causes of these types of collapses or failures of concrete structures include defective formwork, inadequate shoring, and premature removal of forms or shores.

The nature and dimensions of the catastrophic structure failures noted above suggested a review of the existing standard to determine if new standards are required to prevent such occurances. A review of the Willow Island and Skyline Tower Plaza accident investigations indicates that the underlying causes of these accidents were employer non-compliance with existing regulations.

The review included, however, an Advanced Notice of Proposed Rulemaking (ANPR) which was

published in the Federal Register (FR 590, February 9, 1982). The ANPR requested the public to comment on the effectiveness of the existing standard to reduce accidents in concrete and masonry construction industries. OSHA has concluded from a review of the ANPR comments (Ex. 1), and from a review of the existing standard, that a revision to Subpart Q is required to prevent other serious accidents.

A review of many OSHA case files on concrete and masonry accidents indicates that gaps do exist in the coverage of the existing standard. There have been several collapses of precast concrete and masonry walls caused by the lack of bracing. There are no existing standards to require such bracing. The proposed standard would include such a requirement. The proposal contains requirements to cover other gaps in coverage that OSHA identified in the existing standard such as formwork erection.

The review of the existing standard also identified several provisions which are considered to be ambiguous and redundant. For example, the requirement for concrete buckets equipped with hydraulic or pneumatically operated gates states that the installation of positive safety latches or equivalent devices is to prevent aggregate and loose material from accumulating on the top and sides. This is misleading because the real purpose of safety latches is to prevent the accidental or premature dumping of the bucket, not to prevent material accumulation. The proposed standard states the correct purpose. Another requirement for concrete redi-mix trucks is the blocking of the wheels and setting of the brake to prevent movement while discharging on a slope. This is redundant because this requirement is already covered in Subpart O, "1926.600(a)(3)(ii)". The proposal deletes this requirement from Subpart Q.

The existing standard does not clearly indicate which of the provisions of ANSI A10.9–1970 are referenced by existing paragraph .700(a). This paragraph references applicable provisions of ANSI relating to equipment and materials. The proposal incorporates directly the applicable provisions of ANSI that have been determined by OSHA to be referenced by existing paragraph .700(a).

In response to other comments received (Ex. 1), OSHA's review of the present methods for testing concrete revealed that new methods have been accepted by the construction industry to test concrete prior to the removal of forms. These methods are called "in situ" because they test the concrete directly in the forms. OSHA believes that these new methods will provide the employer with additional procedures to reduce the hazards of premature form removal—hazards which have already resulted in several catastrophic building collapses. The proposal will allow these additional methods to be used for testing concrete prior to the removal of forms.

As a result of OSHA's review, and as a result of comments received, (Ex. 1), the Agency proposes to revise its concrete and masonry safety standards. Provisions which were identified as ambiguous have been clarified. Provisions which were identified as redundant have been deleted. OSHA believes that these clarifications and deletions will help employers to understand the requirements of Subpart Q, and will provide protection from the hazards associated with concrete and masonry construction.

The ANPR comments (Ex. 1), ACCSH recommendations (Ex. 2), and comments of other interested parties have been considered in the development of this proposal. Many of the changes in the standard being proposed reflect these recommendations and suggestions. Relevant ACCSH comments are discussed below in the Summary and Explanation Section. Comments that were inconclusive or did not result in a specific recommendation have been considered but are not discussed in this preamble.

II. Hazards in Concrete and Masonry Construction

Concrete and masonry accidents continue to occur despite the development and promulgation of OSHA Construction Standards in 1971.

OSHA has examined the hazards related to concrete and masonry construction, and has included in the following discussion, examples of the types of accidents and fatalities that have occurred. The selected examples are not intended to cover all types of concrete and masonry accidents. The examples reference the provisions of the existing standards and the proposal which are directed at the cause of the accident.

• *March 2, 1973:* 14 fatalities and 34 injuries. Employees were removing the concrete forms supporting the 23rd floor of an apartment building under construction. The 23rd floor collapsed which caused the progressive failure of other floors of the apartment building. The fatalities and injuries resulted from the collapse of these floors. The National Bureau of Standards (NBS), in a report for OSHA, concluded that premature removal of forms was a contributing factor to the building collapse (Ex. 3, pg. 85). Observance of existing provisions in ANSI A10.9–1970, Section 6.4.7 or 6.4.8, or of the provision in proposed paragraph .705(d), might have prevented this accident. Both of these provisions require that the concrete develop the strength to support all loads prior to the removal of forms. The requirement for form removal has been clarified to make it easier to understand.

May 19, 1976: Two fatalities. Two employees were tacking metal decking using an electric welder at a high school under construction (Ex. 4). A nearby masonry wall collapsed, and struck and killed both employees. There is no existing standard to cover this hazard. Observance of the proposed paragraph .707(a)(1) would have prevented the accident by requiring the bracing of masonry walls to prevent collapse.

• *June 11, 1976*: One fatality. Powered concrete buggies were being used to transport concrete from the ground level to the second floor of a building under construction. An operator lost control of a buggy and fell onto vertically protruding reinforcing steel (Ex. 5). Observance of existing paragraph .700(b)(2) or proposed paragraph .701(a) might have prevented this fatality. The existing paragraph .700(b)(2) has been revised to allow additional methods to protect employees from the hazard of impalement by vertically protruding reinforcing steel.

• *March 31, 1978*: One fatality. An employee was erecting precast concrete wall panel (Ex. 6), the panel fell and crushed the worker. The panel was not braced to prevent collapse. There is no existing standard to cover this hazard. Observance of proposed paragraph .706(a)(1) might have prevented this accident by requiring the bracing of precast panels to prevent collapse.

• *April 27, 1978*: 51 fatalities. Concrete was being placed in the forms for a cooling tower under construction at Willow Island, West Virginia. The formwork collapsed when the third bucket of concrete was being hoisted up to the working platform for lift 29. All employees on the formwork fell to the ground below. The NBS, in a report for OSHA, concluded that the most probable cause of the collapse was due to the imposition of construction loads on the cooling tower before the concrete of lift 28 had gained adequate strength to support these loads (Ex. 7). Observance of the provisions in existing paragraphs. 701(a)(1) and .701(a)(4) or proposed paragraphs .701(b) and .705(a)(1) might have prevented this accident. These requirements address

the imposition of loads on partially completed structures.

• *September 29, 1978*: One fatality. An employee was removing the cables suspended from a crane which temporarily held a section of concrete formwork in place (Ex. 8). The formwork fell on the employee after the cables were removed. The formwork was not properly braced to prevent collapse. There is no existing standard to cover this hazard. Observance of proposed paragraph .705(a)(1) might have prevented this accident by requiring the bracing of concrete formwork to prevent collapse.

The available evidence therefore suggests that there is a significant risk to workers employed in the concrete and masonry construction industry if proper precautions are not followed. OSHA solicits further information on the nature and extent of that risk.

III. Summary and Explanation of Proposal

All incorporations by reference of national consensus standards and other outside materials are deleted in the proposed standard, as the applicable requirements from those standards are proposed for inclusion in the body of the standard. This policy is intended to assist employers in determining what is required by a provision without reference to documents outside Part 1926. The following discussion summarizes and explains the substantive changes made to Subpart Q.

Subpart Q Concrete and Masonry Construction.

The title of Subpart Q would be changed from "Concrete, Concrete Forms, and Shoring" to "Concrete and Masonry Construction." The existing title implies that the scope of Subpart Q covers only the hazards associated with concrete and the forms and shoring for concrete. The Subpart also covers the hazards of masonry construction, a coverage which is not reflected in the current title. The proposed title would reflect the entire scope of the proposed standard, as set forth below.

Section 1926.700 Scope, Application and Definitions.

Paragraph (a) contains the proposed scope and application. The proposal contains procedural, equipment and material requirements for precast concrete and masonry construction. These requirements will control or eliminate employee exposure to the hazards of concrete and masonry construction.

Paragraph (b) lists and defines the terms which identify the concrete operations covered by the proposal. Many of the definitions are the same as those in the existing standard.

The following are the terms which are new and which would be added to the definitions paragraph in the proposed standard:

"Lift Slab." This is a method of concrete construction in which floor and roof slabs are cast on or at ground level and hoisted into position by jacking. This term has been added to identify the type of precast concrete construction covered by proposed paragraph .706(b).

"Precast Concrete." This is a concrete member which is formed, cast, and cured prior to placement in the structure. This term has been added to identify the type of concrete construction covered by proposed § 1926.706. This is a new section containing applicable provisions of ANSI A10.9–1970 which are referenced by existing paragraph .700(a).

"Reshoring." This is the construction operation in which original shoring is removed and replaced in such a manner as to prevent collapse of the concrete. This term has been added to identify the concrete operation covered by proposed paragraph .705(e).

In addition, two current definitions are proposed for deletion. The definition for "bull float" in existing paragraph .702(a) would be deleted because the term "bull float" is not used in the proposed standard. The hazards from using bull floats are already covered by existing paragraph .400(c). The definition for "guy" in existing paragraph .702(c) would be deleted because the term "guy" has been replaced by the term "laterally supported" in the proposal.

Section 1926.701 General Requirements.

This section specifies the general requirements applicable to all concrete and masonry construction.

Paragraph (a) would prohibit the imposition of any construction loads on partially completed structures unless the loads have been approved by the engineer or architect. This is the same requirement as existing paragraph .701(a)(4). This requirement is intended to prevent the collapse of partially completed structures due to overloading.

The proposal deletes the reference to ANSI A10.9–1970 (Ex. 9) in paragraph .700(a). This referenced requirements from ANSI for equipment and material have been included in the proposal. Most of these requirements are similar to ANSI A10.9–1983. Applicable requirements covered by other subparts, such as form scaffolding, have been deleted.

Section 1926.702 Reinforcing Steel.

This section contains specific requirements applicable to reinforcing steel. Paragraph (a) would prohibit employees from working above vertically protruding reinforcing steel unless the reinforcing steel has been protected to eliminate impalement or the employees are protected from impalement by the use of a fall protection system. This is a revision of the requirement in existing paragraph .700(b)(2) which is intended to prevent impalement by vertically protruding reinforcing steel. The existing rule prevents impalement with a requirement which eliminates the hazard. The hazard is eliminated by covering, shielding, or bending over the reinforcing steel. The proposed paragraph, in addition, would permit employers to use fall protection systems to protect employees from impalement. OSHA believes that fall protection systems would prevent impalement because they could prevent employee contact with the reinforcing steel. The hazard of impalement would be eliminated by shielding, covering, or bending over the reinforcing steel. Fall protection systems such as body belts and guardrails could prevent contact with the reinforcing steel. This revision is in accordance with a recommendation made by the National Chimney Construction Safety and Health Advisory Committee (Ex. 10).

Paragraph (b) would require that employees placing and typing reinforcing steel in vertical structures more than six feet above any adjacent working surface be protected by the use of a safety belt of equivalent device. This is a revision of the requirement in existing paragraph .700(b)(1), which is intended to protect employees from the hazards associated with falling. The existing rule requires that employees be provided with a safety belt or equivalent device in accordance with Subpart E. This rule does not protect employees from falling because it does not specifically require that employees wear safety belts or equivalent devices. The proposed rule would require that employees be protected by the use of a safety belt or equivalent protection under these circumstances. This is in accordance with an ACCSH recommendation that employees be protected by the use of a safety belt or equivalent protection (Ex. 2). A concurrent revision to Subpart M proposes to relocate this requirement to that Subpart.

The proposed rule would also delete the reference to Subpart E. This is in accordance with an ACCSH

recommendation that OSHA delete the reference to other subparts in the standards (Ex. 2, pp. 74–80).

Paragraph (c)(1) would require that reinforcing steel in vertical structures be laterally supported to resist overturning forces. This is the same requirement as existing paragraph .700(b)(3), which is intended to prevent the erected reinforcing steel from falling due overturning forces such as the wind.

Paragraph (c)(2) would require that lateral supports for reinforcing steel be capable of withstanding the forces that will be applied to them during construction. This is a new rule which is intended to prevent the overturning of erected reinforcing steel due to inadequate lateral supports.

Paragraph (d) would require that wire mesh rolls be secured at each end to prevent recoiling action. This is the same requirement as existing paragraph .700(b)(4).

Section 1926.703 Concrete Placement.

This section contains specific requirements which cover the placement of concrete. Paragraph (a) would prohibit employees from riding concrete buckets. This is the same requirement as the first part of existing paragraph .700(d)(1)(ii), which is intended to protect employees from the hazards associated with falling while riding concrete buckets.

Paragraph (b) would prohibit vibrator crews from being under concrete buckets suspended from cranes or cableways. This is the same requirements as the second part of existing paragraph .700(d)(7)(ii), which is intended to protect vibrator crews from the hazards associated with falling concrete buckets.

Paragraph (c) would require all nozzlemen applying a cement, sand, and water mixture through a pneumatic hose to wear protective head and face equipment. This is the same requirement as existing paragraph .700(d)(9), which is intended to protect employees from rebounding particles.

The proposal would drop the requirement for "bull floats" in existing paragraph .770(d)(3). This paragraph requires that "bull float" handles be made from non-conducting material where they may contact energized electrical conductors. This requirement is intended to eliminate electrical hazards while using "bull floats" near energized electrical conductors. It is redundant because the requirement in existing paragraph .400 (c) already protects employees from electrical hazards while using "bull floats."

Section 1926.704 Equipment.

This section contains specific requirements which cover the equipment used in concrete construction. Paragraph (a) would require that bulk storage bins, containers, or silos be equipped with conical or tapered bottoms and a mechanical or pneumatic means of starting the flow of material. This is the same requirement as existing paragraph .700(c), which is intended to eliminate the placement of employees inside the facility to start the flow of materials.

Paragraph (b) would prohibit the placement of employees inside storage facilities unless the ejection system is shut down and locked out. This is a revision of the requirement in ANSI A10.9–1970 (Ex. 9), section 4.3.2, which is referenced by existing paragraph .700(a). The existing requirement is intended to prohibit the inadvertent operation of the ejection system whenever employees are inside the facility for cleaning. OSHA believes that the ejection system should be shut down and locked out whenever employees are inside the storage facility for any purpose because they would also be exposed to hazards associated with the inadvertent operation of the ejection system. This revision incorporates the revised ANSI–A10.9–1983, Safety Requirements (Ex. 11).

Paragraph (c)(1) would require that concrete mixers with loading skips greater than one yard be equipped with a mechnical device to clear materials from the skip (loading hopper). This is the same requirement as existing paragraph .700(d)(1), which is intended to protect employees from the hazards associated with the manual clearing of materials from the skip.

Paragraph (c)(2) would require that concrete mixers with loading skips greater than one yard be equipped with guardrails on each side of the skip. This is the same requirement as existing paragraph .700(d)(2), which is intended to prevent employees from underneath elevated skips.

Paragraph (d) would require that powered and rotation-type concrete troweling machines that are manually-guided be equipped with a control switch that will automatically shut off the power whenever the operator removes his or her hands from the equipment handles. This is the same requirement as existing paragraph .700(d)(4), which is intended to prevent unattended powered concrete troweling machines from striking employees.

Paragraph (e) would prohibit concrete buggy handles from extending beyond the wheels on either side. This is the same requirement as existing paragraph .700(d)(5), except the recommendation for knuckle guards has been deleted. This requirement is intended to prohibit the buggy handles from contacting other objects. OSHA believes that the knuckle guards are unnecessary because the requirement in the proposed paragraph would provide the same protection as knuckle guards. Employees would be prevented from contacting fixed objects whenever the buggy handles are inside the wheels.

Paragraph (f) would require that pipe supports for concrete pumping systems be designed for 100 percent overload. This is the same requirement as the first sentence of existing paragraph .700(d)(6), which is intended to prevent collapse of the pipes.

Paragraph (g) would require that compressed air hoses used in concrete pumping systems be equipped with positive fail-safe joint connectors. This is the same requirement as the second sentence of existing paragraph .700(d)(6), which is intended to prevent the separation of compressed air hose sections.

Paragraph (h) would require the installation of positive safety latches or similar devices on concrete buckets equipped with hydraulic or pneumatically-operated gates to prevent premature or accidental dumping. This is a revision of the requirement in existing paragraph .700(d)(7)(i). The requirement in the existing paragraph requires that concrete buckets be equipped with positive safety latches or similar safety devices to prevent the accumulation of aggregate and loose materials on the top and sides. This requirement is not clearly stated currently, because the purpose of the safety latches is to prevent premature or accidental dumping, and not to prevent the accumulation of aggregate and loose material. This is in accordance with ANSI A10.9–1983 safety requirements (Ex. 11).

Paragraph (i) would require that concrete buckets be designed to prevent concrete from hanging up on the top and sides. This is the same requirement contained in ANSI A10.9–1970 (Ex. 9), section 5.2.10, which is referenced by existing paragraph .700(a). A similar requirement for the design of concrete buckets is found in section 5.2.10 of ANSI A10.9–1983 (Ex. 11). This requirement is intended to prevent employees from being struck by falling concrete.

Paragraph (j) would require that sections of tremies and similar concrete conveyances be secured with wire rope or equivalent in addition to the regular couplings or connections. This is the

same requirement contained in ANSI A10.9–1970 (Ex. 9), section 5.2.11, which is referenced by existing paragraph .700(a), except "equivalent" has been added. A similar requirement for sections of tremies is found in section 5.2.11 of ANSI A10.9–1983 (Ex. 11). OSHA believes that other material exists which would be acceptable for securing sections of concrete conveyances. For example, steel chains could be used to secure the sections. The purpose of this requirement is to prevent separation of sections of tremies and similar concrete conveyances.

Paragraph (k) would require that equipment, such as compressors, mixers, screens, and cement pumps be locked out and tagged prior to making repairs. This is a revision of the requirement contained in ANSI A10.9–1970 (Ex. 9), section 5.2.15, which is referenced by existing paragraph .700(a). Sections 4.2.1 and 5.2.15 of ANSI A10.9–1983 (Ex. 11) contains similar requirements for compressors, mixers, screens, and cement pumps. The purpose of the existing requirement is to prevent the inadvertent operation of stationary electrically driven equipment while repairs are being performed. OSHA believes that other equipment should be locked out and tagged prior to making repairs because they may be inadvertently operated. This is in accordance with an ACCSH recommendation that OSHA delete "stationary electric-driven" from the proposed paragraph (Ex. 2, p.99).

The requirement in existing paragraph .700(d)(8) for blocking the wheels and setting the brake of ready-mix trucks would be deleted because it is redundant. The requirement in existing paragraph .600(a)(3)(ii) already requires equipment parked on inclines to have the wheels chocked and parking brake set.

Section 1926.705 Formwork.

This section contains specific requirements which cover formwork. The formwork requirements in existing § 1926.701 would be relocated to this section. The title would be changed from "Forms and Shoring" to "Formwork." This change is being made to reflect the correct scope of the section, which includes reshoring.

Paragraph (a) General Requirements.

Paragraph (a) contains the general requirements which are applicable to all formwork. The general requirements are currently located in existing paragraph .701(a) and ANSI A10.9–1970 (Ex. 9), which is referenced by existing paragraph .700(a).

Paragraph (a)(1) would require that formwork be capable of supporting all vertical and horizontal loads that may be imposed. This is a revision of the requirement in existing paragraph .701(a)(1), which is intended to prevent formwork collapses during the placement of concrete. The existing rule is the same requirement as the proposed rule except the phrase "during the placement of concrete" has been deleted. OSHA believes that formwork should be capable of supporting the imposed loads at all times to prevent collapse. This is in accordance with ANSI A10.9–1983 safety requirements (Ex. 11).

Paragraph (a)(2) would require that drawings or plans be available at the job site showing all formwork, jack layout, shoring, working decks, and scaffolding. This is the same requirement as existing paragraph .701(a)(2), which is intended to provide guidelines for erecting formwork.

Paragraph (a)(3) would require the strengthening of supports for formwork whenever equipment or materials are superimposed. This is the same requirement as existing paragraph .700(e)(1)(i), which is intended to prevent the collapse of formwork.

The requirement in existing paragraph .701 (a)(3) for housekeeping would be deleted because it is redundant. The requirement in existing paragraph .25(a) already covers housekeeping.

Paragraph (b) Vertical Slip Forms.

Paragraph (b) contains specific requirements which cover vertical slip forms. Slip forms are special types of forms which move while the concrete is being placed.

Paragraph (b)(1)(i) would require that the steel rods or pipes on which jacks climb or by which the forms are lifted be specifically designed for that purpose. This is the same requirement as existing paragraph .701(b)(1), which is intended to prevent collapse of the slip forms due to inadequate supports.

Paragraph (b)(1)(ii) would require that the steel rods or pipes on which jacks climb or by which the forms are raised be adequately braced where not encased in concrete. This is the same requirement as existing paragraph .701 (b)(1), which is intended to prevent collapse of the slip forms due to inadequate supports.

Paragraph (b)(2) would require the positioning of jacks and vertical supports so that the vertical loads are distributed equally and do not exceed the capacity of the jacks. This is the same requirement as existing paragraph .701(b)(2), which is intended to prevent collapse of the slip forms due to overloading the jacks.

Paragraph (b)(3) would require that jacks or other lifting devices be provided with mechanical dogs or other automatic holding devices to support the slip form whenever failure of the power supply or the lifting mechanism occurs. This is the same requirement as existing paragraph .701(b)(3).

Paragraph (b)(4) would require that lifting of the slip form be steady and uniform and not exceed the predetermined safe rate of lift. This is the same requirement as existing paragraph .700(b)(4), which is intended to prevent collapse of the slip forms due to exceeding the predetermined rate of lift. The employer determines the rate of lift after considering the weather, concrete slump, workability, and the many exigencies which arise during a slide and cannot be predicted accurately beforehand. A change in one of the above factors may alter the rate of lift during concrete placement.

Paragraph (b)(5) would require lateral and diagonal bracing of the slip forms to prevent distortion of the structure during the jacking operation. This is the same requirement as existing paragraph .701 (b)(5).

Paragraph (b)(6) would require that slip forms be maintained in line and plumb during the jacking operations. This is the same requirement as existing paragraph .701 (b)(6), which is intended to prevent the collapse of the slip form due to eccentric loads.

Paragraph (b)(7) would require that all vertical slip forms be provided with scaffolding or work platforms where employees are required to work or pass. This is a revision of the requirement contained in existing paragraph .701(b)(7), which is intended to protect employees from the hazards associated with falling. The existing rule requires that all lift forms be provided with scaffolding or work platforms completely encircling the area of placement. The proposed rule would allow the elimination of scaffolding or work platforms not required for employee protection.

Paragraph (c) Shoring.

Paragraph (c) contains requirements which cover shoring.

Paragraph (c)(1) would require that the sills for shoring be sound, rigid, and capable of carrying the maximum intended load. This is the same requirement as existing paragraph .700(e)(1)(ii), which is intended to prevent collapse of the formwork due to inadequate sills.

Paragraph (c)(2)(i) would require the inspection of shoring equipment prior to erection for conformance with the formwork plans. This is the same requirement as the first sentence of existing paragraph .700(e)(1)(iii).

Paragraph (c)(2)(ii) would prohibit the use of shoring equipment found damaged during the inspection. This is the same requirement as the second sentence of existing paragraph .700(e)(1)(iii), which is intended to prevent the use of damaged shoring equipment which could cause a collapse of the formwork.

Paragraph (c)(3)(i) would require the inspection of erected shoring equipment prior to, during, and immediately after the placement of concrete. This is the same requirement as the first sentence of existing paragraph .700(e)(i)(iv), which is intended to locate damaged or weakened shoring equipment after erection.

Paragraph (c)(3)(ii) would require that shoring equipment found damaged or weakened during the inspection be immediately reinforced or reshored. This is the same requirement as the second sentence of existing paragraph .700(e)(1)(iv).

Paragraph (c)(4) would require that all base plates, shore heads, extension devices, and adjustment screws be in firm contact with the footing sill and the form. This is the same requirement as existing paragraphs .700(e)(2)(v), .701(c)(4), and .701(d)(2), which is intended to prevent the displacement of shores due to movement of the forms.

Paragraph (c)(5) would require a structural engineer to design and inspect the layout for single post shores whenever these shores are used in more than one tier. This is the same requirement as existing paragraph .701(d)(3), which is intended to prevent the collapse of formwork due the improper design and erection of single post shores in more than one tier. The ACCSH recommended that OSHA prohibit the use of single post shores in more than one tier (Ex. 2, p. 175). A review of accident investigations involving the failure of double tiered single post shoring indicates that the employer failed to comply with the existing regulation. OSHA believes that single post shores may be used in more than one tier if properly designed and inspected by a structural engineer.

Paragraph (c)(6) would prohibit eccentric loads on shore heads and similar members unless they have been designed for such loading. This is the same requirement contained in ANSI A10.9–1970 (Ex. 9), sections 8.2.9, 8.3.9, and 8.4.6, which is referenced by existing paragraph .700(a). This requirement for shore heads and other members is similar to sections 6.5.9, 6.6.9 and 6.7.4 of ANSI A10.9–1983 (Ex. 11). This rule is intended to prevent the collapse of formwork due to the placement of eccentric loads on shore heads and similar members.

There are several existing specific requirements in the standard for shoring which are adequately covered by proposed general requirements. The proposal deletes these specific requirements since they would be redundant. The following table contains the specific requirements along with the corresponding general requirements:

Existing specific requirement	Proposed requirement
.700(e)(2)(i)	.705(a)(1)
700(e)(2)(ii)	.705(a)(1)
700(e)(2)(iii)	.705(a)(1)
700(e)(2)(iv)	.705(a)(1)
701(c)(1)	705(c)(2)(ii)
701(c)(2)	.705(a)(1)
701(c)(3)	.705(a)(1)
701(d)(1)	.705(a)(1)
701(d)(4)	.705(a)(1)
701(d)(6)	.705(c)(2)(ii)
701(d)(7)	.705(c)(2)(i)
701(d)(8)	.705(c)(2)(ii)
701(d)(9)	.705(c)(2)(ii)
701(d)(10)	.705(a)(1)

The proposal deletes the requirement in existing paragraph .701(d)(5) which prohibits the adjustment of single post shores after the placement of concrete. This rule is not required for employee protection, because there is no danger of concrete collapse due to the adjustment of single post shores. This rule was intended to protect property.

Paragraph (d) Removal of Forms and Shores.

Paragraph (d) contains requirements for determining when forms and shores may be removed. The existing regulations for form removal requires that engineer specifications and local building codes be followed in determining the length of time forms should remain place following concrete placement. When field operations are not controlled by engineer specifications or local building codes, under ordinary conditions forms and supports must remain in place for not less than the period of time specified in ANSI A10.9–1970. In either case tests on field-cured concrete specimens must also be made to insure that concrete has obtained sufficient strength to support all loads prior to removal of forms.

The revised ANSI A10.9 (Ex.11) has dropped the requirement to follow the engineer specifications or the specified times. It requires that the concrete be tested with the type of test specified by the formwork designer. The forms cannot be removed unless the tests indicates that the concrete has obtained adequate strength specified by the engineer/architect or specifications.

The proposal would also drop the requirement to follow the engineer specifications, however, Table Two has been retained. The proposal would require that the concrete be tested or the forms remain in place for the period of time in Table Q–1 before removal. This provision is based upon the revised ANSI A10.9 and recommendations in "Recommended Practice for Concrete Formwork" (ACI 347–78) (Ex. 12). ACI 347–78 allows the use of Table Q–1 for form removal under ordinary conditions when field operations are not controlled by engineering specifications.

Paragraph (d)(1) would prohibit the removal of forms and shores (except for slabs on grade and slip forms) until the forms and shores have been in place for the length of time and under the conditions specified in Table Q–1. This is the same table contained in ANSI A10.9–1970 (Ex. 9), section 6.4.8, which is referenced by existing paragraph .700(a). This rule is intended to prevent the collapse of concrete structures due to premature removal of the forms and shores.

Paragraph (d)(2)(i) and (d)(2)(ii) would prohibit the removal of forms and shores (except for slabs on grade and slip forms) unless the concrete has been properly tested and the test results indicate that the concrete has gained sufficient strength to support its weight and superimposed loads. The revision permits the use of other testing methods for concrete strength evaluation during construction. The proper procedures for the selected test method must be followed during the concrete testing. The employer may obtain information on concrete testing from the standard procedures listed in Appendix A.

The ACCSH recommended that OSHA require written test procedures and that the test results be made available (Ex. 2, pp. 234–285). OSHA was unable to determine the employee protection that would be provided by making this recommendation a requirement. OSHA solicits information on the employee protection that would be provided by a requirement for written test procedures and results being made available at the job site.

Paragraph (e) Reshoring.

Paragraph (e) contains requirements relating to the reshoring of concrete structures.

Paragraph (e)(1) would require that reshores be erected after the removal of formwork whenever the concrete is required to support loads in excess of its

capacity. This is the same requirement as existing paragraph .700(e)(1)(v), which is intended to provide support for the excessive loads.

Paragraph (e)(2) would prohibit the removal of reshores until the concrete structure has attained adequate strength to support all imposed loads. This is a new rule which is based upon the revised ANSI A10.9–1983 (Ex. 11). This requirement is intended to prevent the collapse of the concrete structure due to premature removal of reshores.

Section 1926.706 Precast Concrete.

This section specifies the requirements which cover precast concrete.

Paragraph (a) sets forth the general requirements for precast concrete. Paragraph (a)(1) would require that precast wall units, structural framing, and tilt up wall panels be laterally supported until permanent connections are completed. This is a new requirement which is intended to prevent these precast members from overturning where such members are incapable of withstanding the forces that will be applied to them. The requirment is based on the revised ANSI A10.9–1983 (EX 11) safety requirements.

Paragraph (a)(2) would require that lateral supports for precast wall units, structural framing, and tilt-up wall panels be capable of withstanding a wind load of 15 pounds per square foot applied to these members. This is the same requirement contained in ANSI A10.1970 (Ex. 9), section 10.3, which is referenced by existing paragraph .700(a), except the load has been increased from 10 to 15 pounds per square foot. This revision incorporates the increased wind load in ANSI A10.9–1983 safety requirements (Ex. 11). This requirement is intended to prevent the overturning of percast concrete members due to inadequate lateral supports.

Paragraph (a)(3) is a new requirement, and would prohibit employees from being located under precast concrete members being lifted or tilted into position. This is in accordance with ANSI A10.9–1983 safety requirements (Ex. 11). This requirement is intended to protect employees from the hazards associated with falling precast concrete members.

Paragraph (a)(4)(i) would require that lifting inserts for tilt-up precast concrete members be capable of supporting two times the load applied or transmitted to them. This is the same requirement contained in ANSI A10.9–1970 (Ex. 9), section 6.2.6, which is referenced by existing paragraph .700(a). This requirement is intended to prevent the collapse of tilt-up precast concrete members due to inadequate lifting inserts.

Paragraph (a)(4)(ii) would require that other types of lifting inserts for precast concrete members be capable of supporting four times the load applied or transmitted to them. This is the same requirement contained in ANSI A10.9–1970 (Ex. 9), section 6.2.6, which is referenced by existing paragraph .700(a), except the safety factor would be increased from 3 to 4. This revision incorporates the increased safety factor in ANSI A10.9–1983 safety requirements (Ex. 11). This requirement is intended to prevent the collapse of other precast concrete members due to inadequate lifting inserts.

Paragraph (b) contains requirements relating to the lift slab method of concrete construction.

Paragraph (b)(1) would require that the threaded rods and other members which transmit loads to the jacks be capable of supporting two and one-half times the load applied or transmitted to them. This is the same requirement contained in ANSI A10.9–1970 (Ex. 9), section 11.3.1, which is referenced by existing paragraph .700(a). This requirement is intended to prevent the collapse of the precast concrete members due to inadequate supports.

Paragraph (b)(2) would require that jacks be installed and designed to stop lifting when overloaded. This is the same requirement contained in ANSI A10.9–1970 (Ex. 9), section 11.3.2, which is referenced by existing paragraph .700(a). This requirement is intended to prevent the collapse of precast concrete members due to overloading the jacks.

Paragraph (b)(3) would require the synchronization of jacking operations to insure even and uniform lifting. This is the same requirement contained in ANSI A10.9–1970 (Ex. 9), section 11.4, which is referenced by existing paragraph .700(a). This requirement is intended to prevent the collapse of the precast members due to non-uniform lifting.

Section 1926.707 Masonry Construction.

This section specifies the requirements for masonry construction.

Paragraph (a) sets forth the general requirements which apply to all masonry construction.

Paragraph (a)(1) would require that masonry walls be laterally supported where such walls are incapable of withstanding the horizontal forces that are applied during Construction. This is a new requirement shich is intended to prevent the collapse of masonry walls. The requirement is based on the ANSI A10.9–1983 (Ex. 11) safety requirements.

Paragraph (a)(2) would require that lateral supports for masonry walls be capable of withstanding a load of 15 pounds per square foot applied to the wall. This is a new requirement which is intended to prevent the collapse of masonry walls due to inadequate lateral supports. This requirement is based on the ANSI A10.9–1983 safety requirements.

Paragraph (b) contains the requirements relating to equipment used in masonry construction.

Paragraph (b)(1)(i) would require semi-circular guards over masonry saw blades. This is the same requirement contained in ANSI A10.9–1970 (Ex. 9), section 12.3.1, which is referenced by existing paragraph .700(a). The purpose of the guards is to prevent contact with the blade.

Paragraph (b)(1)(ii) would require that masonry saws be equipped with a slotted horizontal hinged bar underneath the blade guard to retain fragments of shattered blades. This is the same requirement contained in ANSI A10.9–1970 (Ex. 9), section 12.3.1, which is referenced by existing paragraph .700(a).

IV. Specific Issues

The public is invited to comment on the following issues. The comments should contain adequate information which supports the position of the writer.

1. Concrete tests are used to evaluate the strength of the concrete. The ACCSH recommended that employers prepare written procedures for testing the concrete and make available the results of the tests. What purpose would such requirements serve? What benefits would be derived from such requirements?

2. Some comments have been received which recommend that only in place testing methods be permitted to evaluate the strength of concrete. In place testing methods rather than cylinder are those methods which test the concrete in the forms. What are the reasons for restricting or not restricting the testing of concrete to in place methods?

3. The current standard seems to require that concrete forms be left in place for the length of time indicated by the engineering specifications or local building codes, if they exist, or as specified in Table two of ANSI A109–1970. Also, tests are required, on field-cured concrete specimens in order to insure that concrete has obtained sufficient strength to safety support the load prior to the removal of forms. What is current industry practice for

determining when the forms may be removed?

4. The proposal would allow employees to either satisfy the requirement to leave the forms in place for a time specified in Table Q–1 or test the concrete for strength. Should both the length of time and the testing provisions be required? If so, why? If not, why not?

5. Employees are often required to climb erected reinforcing steel during construction. The weight of the employee may cause the reinforcing steel ties to break, thus exposing the employee to falling hazards. What requirements are needed to protect employees while climbing erected reinforcing steel?

6. Engineers often inspect concrete construction operations to evaluate the employers performance with the plans and specifications. Local building officials may also inspect the construction for determining compliance with building codes. How would a requirement for such engineering inspections by OSHA improve worker safety?

7. Concrete buckets are used to transport concrete to the forms. The buckets are suspended from cranes or cableways and often are hoisted over employees. Some of the buckets have fallen and crushed employees working below. The existing regulation covering this hazard prohibits only vibrator crews from being under concrete buckets suspended from cranes or cableways. Other employees have been injured by falling concrete buckets. What impact would such a requirement to prohibit all employees from being under concrete buckets have on construction procedures?

8. Tensioned wire rope elements are often used to impart stress to concrete members through bonding or end bearing. The elements may be tensioned before the placement of concrete (pre-tensioning) or after the placement of concrete (post-tensioning). What are the hazards associated with such operations? What standards are required to protect employees performing such operations?

9. Formwork has been defined to mean the total system of support for freshly placed concrete, including the mold or sheeting that contacts the concrete as well as all supporting members, hardware, and bracing. Formwork is intended to include the shores, and reshores as supporting the members. Should the definition of formwork be revised to exclude shores and reshores? If so, why?

10. Masonry units such as concrete blocks are often built upward some 15 to 20 feet without lateral supports. The wall then is a simple cantilever, vulnerable to even moderate winds. Proposed paragraph 1926.707(a)(1) which is adopted from section 11.5 of ANSI A10.9–1983 would require that masonry walls be laterally supported to prevent collapse. The proposal does not specify the height of wall when lateral support would be required. At what height should masonry walls be laterally supported? What are the reasons for selecting this height? Also, are pilasters, partition walls, end walls, and masonry walls with reinforcement adequate lateral supports? What are the conditions which must exist for masonry walls to become a hazard? What is the current industry practice for laterally supporting these walls? In what ways is this practice inadequate?

11. The standard is generally written in performance language to provide flexibility for compliance. What if any requirements in the proposal should OSHA make more specific?

V. Summary of the Regulatory Impact and Regulatory Flexibility Assessment

Introduction

Executive Order 12291 (46 FR 13197, February 19, 1981) requires that a regulatory analysis be conducted for any rule having major economic consequences on the national economy, geographical regions, individual industries, or levels of government. In addition, the Regulatory Flexibility Act of 1980 (Pub. L. 96–353, 94 Stat. 1164 (5 U.S.C. 601 et seq.)) requires the Occupational Safety and Health Administration (OSHA) to determine whether the proposed regulation will have a significant economic impact on a substantial number of small entities.

Consistent with these requirements, OSHA has prepared a Preliminary Regulatory Impact and Regulatory Flexibility Assessment for the current and proposed revisions to the standards governing Concrete and Masonry Construction. This analysis includes a profile of affected firms and industries, a description of the regulatory and nonregulatory alternatives, estimates of the effectiveness and benefits of compliance with either alternative, the costs of full compliance for the alternatives, and the potential economic and environmental impacts. The complete analysis, as summarized in this section, is based on data and information provided by JACA Management Consultants, in *An Economic Impact Statement/ Technological Feasibility Study of the Proposed Revisions to Part 1926 Subpart Q*, which is available in the rulemaking record.

The Secretary has determined that this action would not be a "major rule" as defined by section 3(b) of Executive Order 12291 as it will not have an annual effect on the economy of $100 million or more, cause major increases in costs or prices for individual industries, or have any other significant adverse effects. The Secretary also certifies that this action would not have a significant impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. The Preliminary Regulatory Impact and Regulatory Flexibility Assessment is available for inspection and copying in the rulemaking docket.

To provide information to the public, OSHA also considered the economic impact, on the construction industry as a whole, of this proposed revision combined with six other construction standards that are currently in the proposed rulemaking stage. OSHA estimated that the annual incremental costs of all the proposed revisions would, taken together, be about $2.7 million for Underground Construction, $2.2 million for Crane- or Derrick-Suspended Personnel Platforms, $8.4 million for Ladders and Stairways, and cost savings of $5.9 million for Scaffolds, $17 million for Fall Protection, and $15.9 million for Subpart K—Electrical Construction. The net incremental impact of these proposed actions along with this action would be an annual cost savings of $8 million.

On March 31, 1983, the Office of Management and Budget (OMB) published a new 5 CFR Part 1320, implementing the information collection provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq. (48 FR 13666)). Part 1320, which became effective on April 30, 1983, sets forth procedures for agencies to follow in obtaining OMB clearance for information collection requirements in proposed and final rules. In particular, 1320.13 requires agencies to submit information requirements contained in proposed rules to OMB not later than the date of publication of the proposal in the **Federal Register**. It also requires agencies to include a statement in the notice of proposed rulemaking, indicating that such information requirements have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act.

In accordance with the provisions of the Paperwork Reduction Act and the regulations issued pursuant thereto, OSHA certifies that it has submitted the justification for the information

collection requirements contained in its proposed standard for Concrete and Masonry Construction to OMB for review under section 3504(h) of that Act. The standard's only recordkeeping requirement is for maintenance of formwork plans at the job site. This requirement is a part of the existing standard and has a current OMB clearance number (1218–0095). Comments on this information collection requirement may be submitted by interested parties to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for OSHA.

Statement of the Problem and Summary of Industry Profile

The existing standards governing safety hazards associated with concrete and masonry construction in Subpart Q of 29 CFR Part 1926 were adopted in 1971 with only minor revisions since that time. A number of factors have lead OSHA to propose revisions to Subpart Q at this time. First, the requirements of the standard are complicated and confusing as a result of the incorporation by reference of the American National Standards Institute (ANSI) standard for concrete, formwork and shoring (ANSI A10.9–1970). The ANSI standard, in turn, references that of the American Concrete Institute (ACI No. 347). Thus, the contractor who wishes to comply with OSHA regulations would need to refer to up to three overlapping, and possibly conflicting, sets of rules. To further complicate matters, Subpart Q only requires that any equipment and materials that are used meet ANSI standards not that the equipment itself be used. Moreover, both ANSI and ACI have updated their standards but the existing Subpart Q still refers to the old ANSI standard.

In addition to these difficulties, Subpart Q is becoming increasingly out of date, creating gaps in coverage. Hazards associated with the collapse of masonry walls have never been adequately covered. Newer technologies, such as the use of precast concrete, are not addressed by the standard, and new techniques for in-place testing of concrete are inadequately considered.

A final difficulty has been that Subpart Q's requirements for formwork design and removal have been very narrowly interpreted by Administrative Law Judges. The standard requires that they be adequate during the placement of concrete. This has been interpreted to mean that formwork that collapsed immediately before or after placement was not in violation of the standard.

For all these reasons, OSHA proposes to revise Subpart Q at this time. The four major purposes of the revisions are to clarify and simplify the standard, to cover inadequately addressed hazards, to revise or delete provisions found not to address serious hazards, and to incorporate recent advances in concrete construction technology.

Concrete and masonry work occurs across a broad range of four-digit Standard Industrial Classification (SIC) codes within the construction industry. OSHA has determained that the proposal would affect most of SIC 15 (Building Construction) and SIC 16 (Construction Other Than Buildings). In SIC 17, SICs 1741 (Masonry), 1751 (Carpentering), 1771 (Concrete Work), 1794 (Excavation and Foundation Work), and 1799 (Special Trade Contractors not Elsewhere Classified) would also be affected. OSHA has assumed that virtually all firms with paid employees within these affected SIC's would be affected by the standard, although this is doubtlessly an overestimate, particulary for special trade contractors. There were 311,749 firms in these SIC's in 1977, and OSHA estimates that the number has increased to about 351,000 in 1983, based on a 2 percent growth rate.

OSHA has also estimated the amount of construction that would be affected by the proposal. The proposal is estimated to affect about 13.7 percent of total new construction, or about $32 billion in 1983. OSHA has also estimated the affected population in several ways. The best estimate of the population potentially at risk is about 374.000 full-time equivalent workers in 1983, with an assumed increase of 1.9 percent annually. This is also likely to be an overestimate of actual exposure since it is recognized that not all of these workers would be exposed to all hazards of concrete work all of the time.

Feasibility and Benefits

OSHA has determined that the proposal would be technologically feasible. No new equipment is required in order to comply, and in most cases, the new requirements simply mandate what is current industry practice for the majority of firms.

Benefits from the revisions would accrue to those workers who are at risk from the hazards of concrete construction. OSHA has estimated this affected population in several ways. The best estimate of the population potentially at risk is 373,614 full-time equivalent workers in 1983, although not all of these workers would be exposed to all hazards of concrete work all the time.

The proposed standards would be more protective than is the current standard. Moving form current practices to full compliance with the present Subpart Q would prevent an estimated 10 fatalities and 2,797 lost workday injuries. Full compliance with the proposal would prevent an additional 13 fatalities and 508 lost workday injuries.

For illustrative purposes, OSHA has valued these benefits based on a range of willingness-to-pay estimates found in the available economic literature centering on a value of $3.5 million for a fatality avoided. The results indicate that at the midpoint value annual benefits from full compliance with the current standard would be $127.4. Incremental benefits from the proposal would provide an additional $62.1 million, yielding total annual benefits of $189.5 million for full compliance with the proposed standard.

In view of the subjective nature of the value of life estimates selected as the basis for calculating the benefit a sensitivity analysis was conducted. A value of $2 million was used as the low end of the range and $5 million as the high end, with the values for lost workdays and non-lost workday injuries held constant at $32,000 and $600 respectively. This produced annual incremental benefits ranging from $42.6 to $81.6 million and total benefits ranging from $155 to $224 million for full compliance with the proposal. Even if the low end of this range were the more appropriate value to use in estimating the benefits to be realized from this proposal there would still be first year incremental benefits 2.6 times the incremental costs of the proposal. Moreover, the value attached to fatalities is not the decisive factor in the proposal's cost-effectiveness in that the lost workday injuries avoided under the proposal taken alone are $16.6 million in the first year and in excess of the cost. The main effect of increases in the value attributed to fatalities prevented, therefore, is to produce a more favorable ratio of benefits to costs. It would not, however, change the conclusion as to the cost-effectiveness of the proposal as a whole.

Costs of Compliance

As a first step, OSHA estimated the increased costs of compliance in going from existing work practice to full compliance with the existing standards. On that basis, OSHA estimated that the annualized costs of full compliance with the current standard would be approximately $11 million. OSHA estimated that full compliance with the proposal, net of any savings, would cost

an additional $16.3 million. The total cost of going from current practice to full compliance with the proposal would be $27.4 million.

Regulatory Flexibility and International Trade Impacts

Full compliance with either standard would generate only minor economic impacts. The industry most affected by the proposal would be SIC 1741, Masonry and Stonework. A full passthrough of costs by this industry could result in as much as a 2–4 percent increase in its costs, and output and profits might decline by about 3 percent. No other industry would experience cost increases as much as one fifth this large.

Due to the large number of relatively small construction firms, it is expected that the proposal may affect a substantial number of small entities, but will not have a significant economic impact. There appear to be no economies of scale in compliance and no requirements for sophisticated or expensive technology that could place small firms at a disadvantage. Because the cost impacts would be largest on SIC 1741, OSHA has computed the impact of the proposal by firm size for this industry. The smallest size class of firms, those with fewer than nine employees, would experience an average cost increase of $175 per firm per year—the smallest of any size class of firms. In addition, the proposal would have no adverse effect upon international trade.

Environmental Impact Assessment—Finding of No Significant Impact

This proposal has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4231 et seq.), the guidelines of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and OSHA's DOL NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule would have no significant environmental impact.

The proposed revisions consist primarily of work practices and procedures, including requirements for reinforcing steel, concrete placement, equipment, formwork, precast concrete, and masonry construction. In addition the revisions include a clarification of the language of the subpart to eliminate ambiguities, uninformative provisions, and redundancies found in the existing standards. To the extent that the proposed safety procedures are in place and integrated into daily construction operations, the potential for occupational accidents and injuries will be reduced and the safety of the workplace will be enhanced. The proposed changes will not affect the environment outside the workplace and are generally excluded under Subpart B, Section 11.10 of the DOL NEPA Regulations (29 CFR Part 11) because they are unlikely to influence air, water or soil quality, plant or animal life, the use of land or other aspects of the environment.

Although activities in the vicinity of construction work as well as the disposal of materials removed from construction sites may tend to impact on the local environment, there is no reason to believe that there will be any adverse impacts on air, water or soil quality beyond what will ordinarily occur from such construction operations. That is, the proposed revisions will not alter the nature of these operations, nor further affect the makeup or disposal of the material generated or removed during concrete and masonry construction work.

Based on this and other information presented in this Notice, OSHA concludes that this proposal will not significantly imact on the external environment. OSHA, of course, reserves the right to evaluate this determination based on additional data and evidence that may be presented in response to this proposed action.

VI. Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to this proposal. The comments must be postmarked by November 15, 1985, and submitted in quadruplicate to the Docket Officer, Docket No. S–301A, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3637, 200 Constitution Avenue NW., Washington, D.C. 20210.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding.

Additionally, under section 6(b)(3) of the OSH Act (29 U.S.C. 657), section 107 of the Construction Safety Act (41 U.S.C. 333), and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Officer at the address above and must comply with the following conditions:

1. The objections must include the name and address of the objector;

2. The objections must be postmarked by November 15, 1985;

3. The objections must specify with particularity the provisions of the proposed rule to which each objection is taken and must state the grounds therefor;

4. Each objection must be separately stated and numbered; and

5. The objections must be accompanied by a detailed summary for the evidence proposed to be adduced at the requested hearing.

VII. State Plan Requirements

The 25 States with their own OSHA-approved occupational safety and health plans must revise their existing standard within six months of the publication date of the final standard or show OSHA why there is no need for action, e.g., because an existing State standard covering this area is already "at least as effective" as the revised Federal standard. These States are: Alaska, Arizona, California, Connecticut, (State and local government workers only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York, (State and local government workers only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

List of Subjects in 29 CFR Part 1926

Construction safety, Occupational safety and health, Concrete placement, Formwork, Precast concrete, Masonary construction.

VIII. Authority

This document was prepared under the direction of Patrick R. Tyson, Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Third and Constitution Avenue NW., Wasshington, D.C. 20210.

Accordingly, pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655), section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96, 40 U.S.C. 333), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, it is proposed to amend Part 1926 of Title 29 of the Code of Federal Regulations as set forth below.

Signed at Washington, D.C., this 10th day of September, 1985.

Patrick R. Tyson,

Acting Assistant Secretary of Labor.

PART 1926—[AMENDED]

1. The authority citation for Part 1926 is revised to read as follows:

Authority: Sec. 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 29 U.S.C. 655), sec. 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96, 40 U.S.C 333), Secretary of Labor's Order No. 9–83 (48 FR 35736, August 5, 1983), and 29 CFR Part 1911.

2. Part 1926 would be amended by revising Subpart Q to read as follows:

Subpart Q—Concrete, Concrete Forms and Shoring

Sec.

1926.700 Scope, application, and definitions.
1926.701 General requirements.
1926.702 Reinforced steel.
1926.703 Concrete placement.
1926.704 Equipment.
1926.705 Formwork.
1926.706 Precast concrete.
1926.707 Masonry construction.
Appendix A—Reference Documents.

Subpart Q—Concrete, Concrete Forms and Shoring

§ 1926.700 Scope, application, and definitions.

(a) *Scope and Application.* This Subpart contains procedural, equipment, and material requirements to eliminate or control employee exposure to the hazards of concrete and masonry construction. The hazards of concrete and masonry construction covered by this subpart include:

(1) Improperly Constructed Formwork
(2) Premature Removal of Forms
(3) Inadvertent Operation of Equipment
(4) Failure to use Personal Protective Equipment
(5) Failure to Guard Equipment
(6) Failure to Support Precast Concrete Panels and Masonry Walls

(b) *Definitions.*

(1) "Formwork" means the total system of support for freshly placed concrete, including the mold or sheeting that contacts the concrete as well as all supporting members, hardware, and bracing.

(2) "Lift slab" means a method of concrete construction in which floor and roof slabs are cast on or at ground level and hoisted into position by jacking.

(3) "Precast concrete" means a concrete member which is formed, cast, and cured prior to placement in the structure.

(4) "Reshoring" means the construction operation in which the original shoring is removed and replaced in such a manner as to prevent collapse of the concrete structure.

(5) "Shore" means a supporting member that resists a compressive force imposed by a load.

(6) "Vertical slip forms" means forms which are jacked vertically and continuously during placement of the concrete.

§ 1926.701 General Requirements

Construction loads shall not be permitted on the partially completed structure unless such loading has been approved by the engineer or architect.

§ 1926.702 Reinforcing steel.

(a) Employees shall not be permitted to work above vertically protruding reinforcing steel unless: (1) The reinforcing steel has been protected to eliminate the hazard of impalement or; (2) The employees are protected from the hazard of impalement by the use of a fall protection system.

(b) Employees placing and tying reinforcing steel more than six feet (1.8m) above any adjacent working surfaces shall be protected by the use of a safety belt, or equivalent protection.

(c)(1) Reinforcing steel for walls, piers, columns, and similar vertical structures shall be laterally supported to resist overturning forces.

(2) The lateral supports for reinforcing steel shall be capable of withstanding the forces that will be applied to them during construction.

(d) Wire mesh rolls shall be secured at each end to prevent recoiling action.

§ 1926.703 Concrete placement.

(a) Employees shall not ride concrete buckets.

(b) Vibrator crews shall be kept out from under concrete buckets suspended from cranes or cableways.

(c) Nozzlemen applying a cement, sand, and water mixture through a pneumatic hose shall be required to wear protective head and face equipment.

§ 1926.704 Equipment.

(a) Bulk storage bins, containers, or silos shall be equipped with: (1) Conical or tapered bottoms; and (2) mechanical or pneumatic means of starting the flow of material.

(b) The ejection system of storage facilities shall be shut down and locked out whenever the placement of an employee inside the facilities cannot be avoided.

(c) Concrete mixers equipped with one cubic yard ($.8m^3$) or larger loading skips shall be equipped with: (1) A mechanical device to clear the skip of material; and (2) guardrails installed on each side of the skip.

(d) Powered and rotating-type concrete troweling machines that are manually-guided shall be equipped with a control switch that will automatically shut off the power whenever the operator removes his hands from the equipment handles.

(e) Concrete buggy handles shall not extend beyond the wheels on either side of the buggy.

(f) Concrete pumping systems using discharge pipes shall be provided with pipe supports designed for 100 percent overload.

(g) Compressed air hoses used in concrete pumping systems shall be provided with positive fail-safe joint connectors to prevent separation of sections when pressurized.

(h) Concrete buckets equipped with hydraulic or pneumatically-operated gates shall have positive safety latches or similar safety devices installed to prevent premature or accidental dumping.

(i) Concrete buckets shall be designed to prevent concrete from hanging up on the top and the sides.

(j) Sections of tremies and similar concrete conveyances shall be secured with wire rope or equivalent in addition to the regular couplings or connections.

(k) Equipment, such as compressors, mixers, screens, and cement pumps, shall be locked out and tagged prior to making repairs.

§1926.705 Formwork.

(a) *General requirements.* (1) Formwork shall be designed, fabricated, erected, supported, braced and maintained so that it will support all vertical and lateral loads that may be imposed.

(2) Drawings or plans for the jack layout, formwork, shoring, working decks, and scaffolding, shall be available at the jobsite.

(3) Whenever reinforcing steel, materials, or equipment is stored on top of formwork, these areas shall be strengthened to support the superimposed load.

(b) *Vertical Slip Forms.* (1) The steel rods or pipe on which the jacks climb or by which the forms are lifted shall be: (i) Specifically designed for the purpose; and (ii) adequately braced where not encased in concrete.

(2) Jacks and vertical supports shall be positioned in such a manner that the vertical loads are distributed equally and do not exceed the capacity of the jacks.

(3) The jacks or other lifting devices shall be provided with mechanical dogs or other automatic holding devices to support the slip forms whenever failure of the power supply or the lifting mechanism occurs.

(4) Lifting shall proceed steadily and uniformly and shall not exceed the predetermined safe rate of lift.

(5) Lateral and diagonal bracing of the forms shall be provided to prevent

excessive distortion of the structure during the jacking operation.

(6) The form structure shall be maintained in line and plumb during the jacking operation.

(7) All vertical slip forms shall be provided with scaffolding or work platforms where employees are required to work or pass.

(c) *Shoring.* (1) The sills for shoring shall be sound, rigid, and capable of carrying the maximum intended load.

(2)(i) All shoring equipment shall be inspected prior to erection to determine that it is as specified in the formwork plans.

(ii) Shoring equipment found to be damaged shall not be used for shoring.

(3)(i) Erected shoring equipment shall be inspected immediately prior to, during, and immediately after the placement of concrete.

(ii) Shoring equipment that is found to be damaged or weakened shall be immediately reinforced or reshored.

(4) All base plates, shore heads, extension devices, and adjustment screws shall be in firm contact with the foundation and the form.

(5) The layout for single post shores shall be designed and inspected by a structural engineer whenever single post shores are used in more than one tier.

(6) Eccentric loads on shore heads and similar members shall be prohibited unless they have been designed for such loading.

(d) *Removal of Forms and Shores.* Forms and shores shall not be removed (except for slabs on grade and slip forms) until: (1) The formwork and shoring has been in place for the length of time and under the conditions specified in Table 1; or unless (2)(i) the concrete has been properly tested with an appropriate ASTM standard test method designed to indicate the concrete compressive strength and (ii) the test results indicate that the concrete has gained sufficient strength to support its weight and superimposed loads.

TABLE Q–1.—MINIMUM PERIOD OF TIME BEFORE REMOVAL OF FORMS AND SUPPORTS[1,2]

A. Walls[3]	12 hours.	
B. Columns[3]	12 hours.	
C. Sides of beams and girders[3]	12 hours.	
D. Pan Joist forms:[4]		
30 inches (76.2 cm) wide or less	3 days.	
Over 30 inches (76.2 cm) wide	4 days.	
E. Post-tensioned slab system	As soon as full post-tensioning has been applied.	
Where design live load is:	Less than dead load	More than dead load
F. Arch centers	14 days	7 days.
G. Joist, beam, or girder soffits.		
Under 10 feet (3.0 m) clear span between structural supports.	7 days[5]	4 days.
10 feet (3.0 m) to 20 feet (6.1 m) clear span between structural supports.	14 days[5]	7 days.
Over 20 feet (6.1 m) clear span between structural supports.	21 days[5]	14 days.
H. One way floor slabs:		
Under 10 feet (3.0 m) clear span between structural supports.	4 days[5]	3 days.
10 feet (3.0 m) to 20 feet (6.1 m) clear span between structural supports.	7 days[5]	4 days.
Over 20 feet (6.1 m) clear span between structural supports.	10 days[5]	7 days.

[1] This table is reproduced from American Concrete Institute's Recommended Practice for Concrete Formwork (ACI 347 78)

[2] The periods of time in table 1 represent cumulative number of days, or hours, not necessarily consecutive, during which the temperature of the air surrounding the concrete is above 50 °F (10 °C)

[3] Whenever forms for walls, columns, or the sides of beams and girders also support formwork for slab or beam soffits, the removal times for the slab or beam soffits shall govern

[4] The removal times for pan joist forms are for the type which can be removed without disturbing forming or shoring

[5] Whenever the forms for joist, beam, or girder soffits may be removed without disturbing shores and the design live load is less than dead load, one-half of the values shown may be used but not less than three days

(e) *Reshoring.* (1) Reshores shall be erected after the removed of forms to transfer loads to other members whenever the concrete is required to support loads in excess of its capacity.

(2) Reshores shall not be removed until the concrete being supported has attained adequate strength to support all loads imposed upon it.

§ 1926.706 Precast concrete.

(a) *General Requirements.* (1) Precast concrete wall units, structural framing, or tilt-up wall panels shall be laterally supported to resist overturning forces until permanent connections are completed.

(2) The lateral supports for precast concrete wall units, structural framing, or tilt-up wall panels shall be capable of withstanding a load of 15 pounds per square foot (73.2 Kg./M²) applied to these units.

(3) Employees shall not be permitted under precast concrete members being lifted or tilted into position.

(4)(i) The lifting inserts for tilt-up precast concrete members shall be capable of supporting at least two times the maximum intended load applied or transmitted to them.

(ii) Other types of lifting inserts for precast concrete members shall be capable of supporting at least four times the maximum intended load applied or transmitted to them.

(b) *Lift slab operations.* (1) The threaded rods and other members that transmit loads to ther jacks shall be capable of supporting at least two and one-half times the maximum intended load applied or transmitted to them.

(2) Jacks shall be installed and designed so that they will not continue to lift when overloaded.

(3) Jacking operations shall be synchronized in such a manner to insure even and uniform lifting of the slab.

§ 1926.707 Masonry construction.

(a) *General Requirements.* (1) Masonry walls shall be laterally supported to resist horizontal forces where such walls are incapable of withstanding the forces that will be applied to them during Construction.

(2) The lateral supports for masonry walls shall be capable of withstanding a load of 15 pounds per square foot (73.2 Kg./M²) applied to the wall.

(b) *Equipment.* (1) Masonry saws shall be guarded with: (i) a semicircular enclosure over the blade; and (ii) a slotted horizontal hinged bar mounted underneath the guard enclosure to retain fragments of shattered blades.

Appendix A—Reference Documents

The following references provide information which can be helpful in understanding and complying with the requirements contained in Subpart Q.

- Recommended Practice for Concrete Formwork (ACI 347–78).
- Building Code Requirements for Reinforced Concrete (ACI 318–83).
- Safety Requirements for Concrete and Masonry Work (ANSI A10.9–1983).
- Standard Test Method for Compressive Strength of Cylindrical Concrete Specimens (ASTM C803–82).
- Standard Test Method for Penetration Resistance of Hardened Concrete (ASTM C803–82).
- Standard Test Method for Pullout Strength of Hardened Concrete (ASTM C900–82).
- Standard Test Method for Compressive Strength of Concrete Cylinders Cast In-Place in Cylindrical Molds (ASTM C873–80).
- Accident Prevention Manual for Industrial Operations Seventh Edition; National Safety Council.

[FR Doc. 85–22129 Filed 9–13–85; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Parts 204 and 207

Naval Danger Zones and Restricted Areas, Vicinity of Norfolk and Virginia Beach, VA

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Navy has requested that several regulations which establish danger zones and a restricted area in the Norfolk-Virginia Beach, Virginia area be amended as follows: (1) Change the title of § 204.50 to remove an obsolete command title, (2) Amend §§ 205.51a and 204.52 to allow for nighttime uses of the ranges within the danger zones, and (3) Amend § 207.155 by enlarging the restricted area boundaries to incorporate government owned lands. These amendments are necessary to meet changing conditions at those areas.

DATE: Comments must be submitted on or before October 16, 1985.

ADDRESS: HQDA, DAEN–CWO–N, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Harrel (804) 441–3653 or Mr. Ralph Eppard (202) 272–0199.

SUPPLEMENTARY INFORMATION: The Commander, U.S. Naval Base, Norfolk, VA., has found that the restricted area established in 33 CFR 207.155 does not encompass the entire pier area at the Naval Station, Norfolk, and has requested an expansion of the restricted area. The Commander has also requested the title of 33 CFR 204.50 be changed from "Chesapeake Bay off Fort Monroe, VA; restricted area, U.S. Naval Base and Naval Ordnance Laboratory" to "Chesapeake Bay off Fort Monroe, VA; restricted area, U.S. Naval Base and Naval Surface Weapon Center."

The Commanding Officer, Fleet Combat Training Center, Atlantic, has requested the regulations which establish danger zones in 33 CFR 204.51a and 33 CFR 204.52 be amended to allow for nighttime use of the ranges.

Note.—This proposed regulation is issued with respect to a military function of the Defense Department, is not a major rule within the meaning of Executive Order 12291, and accordingly, the provisions of Executive Order 12291 do not apply. The Corps of Engineers also certifies that this regulation would not have a significant economic impact on a substantial number of entities and thus does not require preparation of regulatory flexibility analysis.

List Subjects in 33 CFR Part 204 and Part 207

Navigation, Navigation (water), Water transportation, Waterways.

Accordingly, 33 CFR Parts 204 and 207 are amended as follows:

PART 204—DANGER ZONE REGULATIONS

1.The authority for Part 204 continues to read as follows:

Authority: 40 Stat. 266; 33 U.S.C. 1 and 40 Stat. 892; 33 U.S.C. 3.

2. Section 204.50 is amended by revising the heading to read as follows:

§ 204.50 Chesapeake Bay off Fort Monroe, VA; restricted area, U.S. Naval Base and Naval Surface Weapon Center.

* * * * *

3. Section 204.51a is amended by revising paragraph (b) *The regulations,* as follows:

§ 204.51a Atlantic Ocean south of entrance to Chesapeake Bay off Dam Neck, VA, naval firing range.

* * * * *

(b) *The regulations.*

(1) Vessels shall proceed through the area with caution and shall remain therein no longer than necessary for purposes of transit.

(2) When firing is in progress during daylight hours, red flags will be displayed at conspicuous locations on the beach. During periods of darkness, red lights will be visible on the beach.

(3) Firing on the ranges will be suspended as long as any vessel is within the danger zone.

(4) Lookout posts will be maintained by the Fleet Combat Training Center, Atlantic, Dam Neck, Virginia Beach, VA.

(5) There shall be no firing on any ranges during periods of low visibility which would prevent the recognition of a vessel (to a distance of 5000 yards) which is properly displaying navigational lights.

(6) The regulations in this section shall be enforced by the Commanding Officer, Fleet Combat Training Center, Atlantic, Dam Neck, Virginia Beach, VA., and such agencies as he/she may designate.

4. Section 204.52 is amended by revising paragraph (b) *The regulations,* as follows:

§ 204.52 Atlantic Ocean south of entrance to Chesapeake Bay: Firing range.

* * * * *

(b) *The regulations.* (1) Vessels shall proceed through the area with caution and shall remain therein no longer than necessary for the purposes of transit.

(2) When firing is in progress during daylight hours, red flags will be displayed at conspicuous locations on the beach. During periods of darkness, red lights will be visible on the beach.

(3) Firing on the ranges will be suspended as long as any vessel is within the danger zone.

(4) Lookout posts will be maintained by Fleet Combat Training Center, Atlantic, Dam Neck, Virginia Beach, Va.

(5) There shall be no firing on any ranges during periods of low visibility which would prevent the recognition of a vessel (to a distance of 14,000 yards) which is properly displaying navigational lights.

PART 207—NAVIGATION REGULATIONS

5. The authority for Part 207 continues to read as follows:

Authority: 40 Stat. 266; 33 U.S.C. 1.

6. Section 207.155 is amended by revising paragraph (a) *The area,* introductory text, and paragraph (b)(2) as follows:

§ 207.155 Hampton Roads and Willoughby Bay, off Norfolk Naval Base; naval restricted area.

(a) *The area.* Beginning at a point on shore at the Destroyer Submarine Piers at latitude 36 56'00", longitude 76 19'30"; thence westerly to latitude 36 55'59", longitude 76 20'08.5"; thence northerly along the eastern limit of Norfolk Harbor Channel to latitude 36 57'52", longitude 76 20'00", thence easterly to latitude 36 57'52", longitude 76 19'35"; thence to latitude 36 57'47.7", longitude 76 18'57"; thence southeasterly to latitude 36 57'28", longitude 76 18'42" thence easterly to latitude 36 57'26.2", longitude 76 17'55.2"; thence southerly to latitude 36 57'05", longitude 76 17'52", thence southeasterly to latitude 36 56'56.2", longitude 76 17'27"; thence northerly to latitude 36 57'10", longitude 76 16'29"; and thence to the shoreline at latitude 36 57'18.8", longitude 76 16'22" at the Naval Air Station.

(b) *The regulatons.* * * *

(2) This section shall be enforced by the Commander, Naval Base, Norfolk, Virginia, and such agencies as he/she may designate.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 85–22116 Filed 9–13–85; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8370

Use Authorizations; Amendment to the Appeals Provisions of the Regulations for Special Recreation Permits Other Than on Developed Sites

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed Rulemaking.

SUMMARY: This proposed rulemaking would amend § 8372.6(b) to provide that

only certain decisions of the authorized officer will remain in effect pending appeal of such decision. This change would provide that only those decisions affecting competitive uses and events would be fully effective during appeal rather than all decisions made pursuant to subpart 8372 as is provided in the existing regulations. The proposed rulemaking would also clarify where a request for a stay of those decisions that are fully effective should be filed.

DATE: Comments should be filed by November 15, 1985. Comments received or postmarked after this date may not be considered in the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street, N.W., Washington, D.C. 20240

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Bruce Brown, (202) 343–9353
Robert C. Bruce, (202) 343–8735

SUPPLEMENTARY INFORMATION: Section 8472.6(b) was amended by a final rulemaking that was published in the **Federal Register** of August 29, 1984 (49 FR 34338). The amendment provided that all decisions issued pursuant to subpart 8372, which covers the issuance of special recreation permits, other than those for developed sites, would remain in effect during the pendency of an appeal of those decisions unless the Secretary of the Interior ruled otherwise. This provision was put in the regulations to prevent frivolous appeals from stopping an authorized and legitimate use of the public lands. However, the section further provided that an aggrieved party could petition for a stay of the decision pending an appeal. A careful analysis of operations under the regulations during the year the provision has been in effect shows that only those decisions authorizing competitive uses and events need to be effective pending appeal. The provision is not necessary for all other special recreation use permits. The provision is needed for competitive uses and events because these uses involve long range plans and investment of time, money and effort on the part of permittees and a permittee should, once a permit has been issued, be allowed to proceed unless a complaining party files a petition for a stay and shows to the satisfaction of the Office of Hearings and Appeals a significant reason for staying the decision to issue a permit.

The proposed rulemaking would make all special recreation permits, except competitive uses and events, subject to the provisions of 43 CFR Part 4.21(a), which provides an automatic stay for all but a very limited number of decisions of Department of the Interior during the pendency of an appeal. Thus, an appeal of a decision involving a special recreation permit, other than for competitive uses and events, would automatically stay that decision until the appeal has been acted on by the Office of Hearings and Appeals.

In addition, there has been some confusion about where a request for a stay pending appeal should be filed. The proposed rulemaking would remove this doubt by providing that a request for a stay shall be filed with the Director, Office of Hearings and Appeals. This office is part of the Office of the Secretary of the Interior.

The principal author of this proposed rulemaking is Robert C. Bruce, Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The changes made by this proposed rulemaking will equally affect all members of the public affected by a decision of the Bureau of Land Management regarding the issuance of special recreation permits other than on developed sites.

There are no additional information collection requirements contained in this proposed rulemaking that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR Part 8370

Public land—recreation, Recreation areas, Surety bonds.

Under the authority of 43 U.S.C. 1201, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Oregon and California Railroad and Coos Bay Wagon Road Grant Land Act (43 U.S.C. 1181a), the Act of September 15, 1960, as amended (16 U.S.C. 670g–n), the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460*l*–6a) and the National Trails System Act (16 U.S.C. 1241 et seq.), it is proposed to amend supart 8372, Part 8370, Group 8300, Subchapter H, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

PART 8370—[AMENDED]

1. The authority citation for part 8370 continues to read:

Authority: 16 U.S.C. 460(l—6a), 16 U.S.C. 670(g–n), 16 U.S.C. 1271–1287, 6 U.S.C. 1241–1249, 43 U.S.C. 1181(a), 43 U.S.C. 1201, 43 U.S.C. 1701 et seq.

§ 8372.6 [Amended]

2. Section 8372.6(b) is revised to read:

* * * * *

(b) All decisions of the authorized officer relating to the issuance of a permit for a competitive use or event shall remain effective pending appeal unless the Secretary rules otherwise. Petitions for stay of such decisions shall be filed with the Office of Hearings and Appeals, Department of the Interior. All other decisions of the authorized officer under this subpart shall be subject to the provisions of § 4.21(a) of this title.

Dated: February 13, 1985.

Leona A. Power,

Acting Assistant Secretary of the Interior.

[FR Doc. 85–22047 Filed 9–13–85; 8:45 am]
BILLING CODE 4310–84–M

Notices

Federal Register
Vol. 50, No. 179
Monday, September 16, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

1985 Tobacco Price Support Levels

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Notice of Determination of 1985 Tobacco Price Support Levels.

SUMMARY: The purpose of this Notice of Determination is to announce the levels of price support for all eligible kinds of tobacco (except flue-cured) for the 1985 marketing year. The levels of price support for these kinds of tobacco are made in accordance with section 106 of the Agricultural Act of 1949, as amended.

EFFECTIVE DATE: September 16, 1985.

FOR FURTHER INFORMATION CONTACT: Robert H. Miller, (202) 447–8839 or Robert Tarczy, (202) 447–5187. The Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Mr. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1, and has been classified as "not major." The provisions of this notice will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of this notice.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consulation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The determinations set forth in this notice have been made on the basis of the latest available statistics of the Federal Government and after due consideration of data, views, and recommendations received from tobacco producers and other interested persons pursuant to a Notice of Proposed Determination which was published on April 17, 1985 (50 FR 15200).

Discussion

Price support is required to be made available for each crop of a kind of tobacco for which marketing quotas are in effect or for which marketing quotas have not been disapproved by producers at a level which is determined in accordance with a formula prescribed in section 106 of the Agricultural Act of 1949, as amended (7 U.S.C. 1445). Section 106(f)(2) provides that the support level for the 1985 crop of flue-cured tobacco shall be the level in cents per pound at which the 1982 crop was supported if the support level otherwise determined under section 106(b) for the 1985 crop would not be more than 5 percent greater than the support level determined under section 106(b) for the 1984 crop. Since the support level determined under section 106(b) for the 1985 crop was only 2.8 percent higher than for the 1984 crop, the 1985 support level must equal the 1982 support level, which was 169.9 cents per pound.

Section 106(f)(3) provides that, with respect to the 1985 crop of any kind of tobacco (other than flue-cured and burley tobacco) for which marketing quotas are in effect or for which marketing quotas are not disapproved by producers, the Secretary of Agriculture shall establish the support price at such level as will not narrow the normal price support differential between flue-cured tobacco and such other kind of tobacco.

Section 106(f)(3) requires that, in determining the 1985 levels of price support for all kinds of tobacco (except flue-cured and burley), the Secretary shall take into consideration for each kind of tobacco the cost of production, supply and demand factors, the comments received in response to the public notice of the proposal, and other relevant factors as the Secretary deems appropriate.

Section 106(f)(4) provides that the level of support for the 1985 crop of burley tobacco shall be the level in cents per pound at which the 1984 crop was supported, adjusted by the difference (plus or minus) between the 1985 "basic support level" and the 1984 "basic support level". See the notice published at 50 FR 15201.[1] However, section 106(d) of the 1949 Act further provides that the Secretary of Agriculture may reduce the level of support which would otherwise be established for any grade of burley tobacco which the Secretary determines will likely be in excess supply. However, in making the reduction in the level of support, the weighted average of the level of support for all eligible grades of such tobacco must, after such reduction, reflect not less than (1) 65 percent of the increase in the support level for such kind of tobacco which would otherwise be established under section 106 of the 1949 Act if the support level is higher than the support level for the preceding crop, or (2) the support level for such kind of tobacco established under section 106 if the support level therefor is not higher than the support level for the preceding crop. Before any such reduction is made, the Secretary must consult with the

[1] The average parity indexes for 1982, 1983, and 1984 have been revised slightly; however, the resulting basic support level remains unchanged from that basic support level set forth in the notice of proposed determination.

associations handling price support loans and consideration must be given to the supply and anticipated demand of such tobacco, including the effect of such reduction on other kinds of quota tobacco. In determining whether the supply of any grade of any kind of tobacco of a crop will be excessive, the Secretary shall take into consideration the domestic supply, including domestic inventories, the amount of such tobacco pledged as security for price support loans, and anticipated domestic and export demand, based on the maturity, uniformity and stalk position of such tobacco.

A detailed analysis of the key factors used in determining the support level for each kind of tobacco for the 1985 marketing year is set forth in the following table:

Kind and type	See footnotes for explanation of columns				
	(1)	(2)	(3)	(4)	(5)
Burley, type 31	3.67	20.1	12.9	35.3	0.90
Virginia fire-cured, type 21	3.16	0.8	9.2	35.1	.90
Kentucky-Tennessee fire-cured, types 22-23	3.02	8.0	38.0	13.8	.90
Dark air-cured, types 35-36	4.11	0.7	31.3	32.6	.85
Virginia sun-cured, type 37	4.75	1.4	5.6	20.0	.90
Cigar filler and binder, types 42-44, 54-55	3.91	-9.3	21.3	18.5	1.0
Puerto Rican filler, type 46	5.75	-2.0	4.0	89.5	NA

[1] Estimated 1984 supply-use ratio.
[2] The amount, in cents per pound, that the 1984 support level exceeds the 1985 estimate of cost of production.
[3] The amount, in cents per pound, that the projection of 1985 grower price exceeds the 1984 support level.
[4] The percentage of tobacco pledged as collateral for CCC loans compared to 1984 total ending stocks.
[5] 1985 national quota factor.

During the comment period, a total of 21 comments were received from farmers, members of the trade (including associations), farm groups, and State Departments of Agriculture.

Of the five comments received which pertained to the support level for the 1985 crop of burley tobacco, 4 desired the minimum increase in the support level allowed by statute while 1 comment recommended a decrease in the support level for 1985. All who commented pointed to the oversupply of burley tobacco.

Under section 106 of the 1949 Act, the increase in the price support level for burley may be limited to 65 percent of the difference between the "basic support levels" for the 1984 and 1985 crops of burley tobacco. The difference is 5.7 cents per pound. See the calculations published in the notice at 50 FR 15201.[1] Supplies of burley tobacco are excessive and the support level currently exceeds the estimated cost of production. Accordingly, the support level for the 1985 burley tobacco crop will be 178.8 cents per pound, an increase of 3.7 cents per pound (i.e., 65 percent of 5.7 cents) above the 1984 support level.

For all other kinds of tobacco, 16 comments were received. Three comments were received from the three tobacco associations through which CCC price support is made available to producers of dark air-cured tobacco. These comments requested a decrease in the 1985 support level for dark air-cured tobacco. The other 13 comments recommended that support levels for all other kinds of tobacco remain the same. In accordance with Section 106, the normal price support differential between flue-cured tobacco and these kinds of tobacco cannot be narrowed. Since the support levels for these kinds of tobacco are less than the level for flue-cured tobacco, the 1985 support levels are for these kinds of tobacco can be decreased but not increased.

Supplies of these kinds of tobacco range from ample to excessive. However, estimated costs of production for these kinds of tobacco are near or below the respective 1984 price support levels. Accordingly, for all other kinds of tobacco, except dark air-cured, the 1984 levels of price support will remain at their respective 1984 levels. The price support level for the 1985 crop of dark air-cured tobacco will be 1 cent per pound below the support level which was applicable to the 1984 crop. A reduction in the price support level for dark air-cured tobacco is necessary because of the more severe supply-demand imbalance which currently exists with respect to dark air-cured tobacco and is in accordance with the recommendations of the associations through which price support is made available for dark air-cured tobacco.

Determinations

Accordingly, it has been determined that the following support levels will be applicable for the following kinds of 1985-crop tobacco:

Kind and type	Support (Cents per pound)
Burley, type 31	178.8
Virginia fire-cured, type 21	118.8
Kentucky-Tennessee fire-cured, types 22–23	123.0
Dark air-cured, types 35–36	104.7
Virginia sun-cured, type 37	109.4
Cigar filler and binder, types 42–44, 53–55	90.7
Puerto Rican filler, type 46	74.0

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended, 1072 (15 U.S.C. 714b, 714c); Secs. 101, 106, 401, 403, 406, 63 Stat. 1054, as amended, 74 Stat. 6, as amended, 63 Stat. 1054, as amended, 1055 (7 U.S.C. 1441, 1445, 1421, 1423, 1426).

Signed at Washington, D.C., on September 10, 1985.

John R. Block,

Secretary of Agriculture.

[FR Doc. 85-22119 Filed 9-13-85; 8:45 am]

BILLING CODE 3410-05-m

Forest Service

Blowdown Salvage and Watershed Restoration in the Bull Run Watershed Management Unit, Mt. Hood National Forest, Multnomah and Clackamas Counties, OR; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement for assessing the kinds of activities necessary for the rehabilitation of blowdown timber areas in the Bullrun Watershed area of the Columbia Gorge Ranger District. The environmental impact statement will be prepared in accordance with existing approved land and resource management plans.

A range of alternatives, from no treatment to major rehabilitation will be considered. One of the alternatives will be No Action.

Federal, State, local agencies and the City of Portland; potential timber sale purchasers; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping and planning process. Scoping meeting notices will be mailed to interested individuals or organizations and published in local newspapers. This process will include:

1. Identification of those issues to be addressed.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues, those covered by previous environmental analysis and those issues not within the scope of this decision.
4. Determination of potential cooperating agencies and assignment of responsibilities.
5. Development of an acceptable range of alternates.
6. Providing information to the responsible official that will aid in the decision making process.

The Forest Supervisor will accept written comments and suggestions during the scoping process. The Columbia Gorge District Ranger or his

staff will also be available to accept comments and suggestions via telephone or in person at the Columbia Gorge Ranger District Office, 503–695–2276.

Richard J. Pfilf, Forest Supervisor of the Mt. Hood National Forest is the responsible official.

The analysis is expected to take about 6–9 months. The draft environmental impact statement should be available for public review by July 1986. The final environmental impact statement is scheduled to be completed by January, 1987. This schedule may be revised as work plans are finalized.

Questions about the proposed action and environmental impact statement should be directed to Gene Zimmerman, District Ranger, Columbia Gorge Ranger District, Mt. Hood National Forest, 31520 SE. Woodard Road, Troutdale, Oregon 97009, phone 503–695–2276.

Dated: September 6, 1985.

Norman Arseneault,

Acting Forest Supervisor.

[FR Doc. 85–22074 Filed 9–13–85; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Perilla Mountain Watershed, AZ; Intent To Reauthorize Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Perilla Mountain Watershed Project, Cochise County, Arizona.

FOR FURTHER INFORMATION CONTACT: Verne M. Bathurst, State Conservationist, Soil Conservation Service, 201 East Indianola Avenue, Suite 200, Phoenix, Arizona 85012, Telephone 602–241–2247.

SUPPLEMENTARY INFORMATION: A determination has been made by Verne M. Bathurst that the proposed works of improvement for the Perilla Mountain Watershed Project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Verne M. Bathurst, State Conservationist, at the above address and telephone number. No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.094, Watershed Protection and Flood Prevention. State and local review procedures for federal and federally assisted programs and projects are available.

Dated: August 21, 1985

Verne M. Bathurst,

State Conservationist.

[FR Doc. 85–22140 Filed 9–13–85; 8:45 am]

BILLING CODE 3410–16–M

Agricultural Marketing Service

Notice of Emergency Meeting

An emergency meeting of the Flue-Cured Tobacco Advisory Committee is scheduled to be held on Friday, September 20, 1985, at 1 p.m., in the Tobacco Division, Agricultural Marketing Service, Laboratory, Room 223, Flue-Cured Tobacco Cooperative Stabilization Corporation, 1306 Annapolis Drive, Raleigh, North Carolina 27608.

Several members of the Committee have requested an urgent meeting to discuss the effect of a growing volume of non-auction sales on the establsihed selling schedules of designated auction markets. These members have expressed concerns that the total volume of auction and non-auction sales could exceed the weekly capacity of the redrying plants and disrupt the orderly marketing of flue-cured tobacco.

The meeting is open to the public. Persons, other than member, who wish to address the Committee at the meeting should contact Lioniel S. Edwards, Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, 300 12th Street, SW., Washington, D.C. 20250, (202) 447–2567. Written statements should be submitted prior to or at the meeting.

Dated: September 13, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–22260 Filed 9–13–85; 10:07 am]

BILLING CODE 3410–02–M

COMMISSION ON CIVIL RIGHTS

Georgia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Georgia Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 6:00 p.m. on October 18, 1985, at the Holiday Inn Downtown, 175 Piedmont Avenue, NE, Ellis Room, Atlanta, Georgia. The purpose of the meeting is to plan for community forum on the status of women in Georgia and a report on the National State Advisory Committee Chairpersons' Conference in June of 1985.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson John Ruffin or Bobby Doctor, Director of the Southern Regional Office, at (404) 221–4391, (TDD 404/221–4391).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., September 10, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–22049 Filed 9–13–85; 8:45 am]

BILLING CODE 6335–01–M

North Dakota Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the North Dakota Advisory Committee to the Commission will convene at 10:30 a.m. and adjourn at 1:30 p.m. on September 27, 1985, at the Townhouse Motel, 301 3rd Avenue, Windsor Room, Fargo, North Dakota. The purpose of the meeting is to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Robert Feder, or William Muldrow, Acting Director of the Rocky Mountain Regional Office at (303) 844–2211, (TDD 303/844–3031.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., September 10, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–22050 Filed 9–13–85; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-469-008]

Carbon Steel Wire Rod From Spain; Final Results of Changed Circumstances; Administrative Review and Revocation of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order.

SUMMARY: On June 4, 1985, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on carbon steel wire rod from Spain and announced its tentative determination to revoke the order. The review covers the period from October 1, 1984.

We gave interested parties an opportunity to comment. We received written comments from the petitioners and an importer in this proceeding. After our analysis of those comments, we determine that domestic interested parties are no longer interested in continuation of the order. Therefore, we are revoking the order. In accordance with petitioners' notification the revocation will apply to all carbon steel wire rod from Spain exported on or after October 1, 1984.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Chip Hayes or G. Leon McNeill, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 23485) the preliminary results of its changed circumstances administrative review of the antidumping duty order on carbon steel wire rod from Spain (49 FR 46181, November 23, 1984). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of carbon steel wire rod from Spain. Such merchandise is currently classifiable under item 607.1700 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received written comments from Atlantic Steel Co., Continental Steel Corp., North Star Texas, Inc., and Raritan River Steel Co., the petitioners in this proceeding. We also received a comment on merchandise entered prior to October 1, 1984 from Hansa World Cargo Service, Inc., an importer.

Comment 1: The petitioners claim that our notice of preliminary results does not adequately describe the conditions of their support for the revocation of the antidumping duty order. In that notice, we stated that the petitioners had advised the Department that they (the petitioners) were "no longer interested in" the antidumping duty order. However, petitioners maintain they have no objection to the initiation of proceedings to review and revoke the antidumping duty order only so long as the conditions in their May 9, 1985 letter are satisfied.

Department's Position: Our understanding is that the petitioners are no longer interested, i.e., have no objection to our review and revocation of the antidumping duty order as long as the conditions of their letter are met. We are meeting the conditions of the letter.

Comment 2: The petitioners claimed that there is a discrepancy in the wording between our notice of preliminary results and the terms of the Arrangement Concerning Trade in Steel Products between Spain and the United States ("the Arrangement"). The Arrangement provides that *shipments* of Spanish carbon steel wire rod on or after October 1, 1984 will be subject to export ceilings. Our notice provided that "the revocation will apply to all carbon steel wire rod *entered, or withdrawn from warehouse,* for consumption on or after October 1, 1984."

The petitioners argue that we should adhere to the Arrangement by making the revocation applicable only to shipments made on or after October 1, 1984.

Department's Position: Since the petitioners' lack of interest in continuation of the antidumping duty order is the basis of the revocation, and since the petitioners have unambiguously stated that their lack of interest in continuation applies only to shipments made on or after October 1, 1984, we are revoking this order with respect to shipments of Spanish wire rod exported on or after October 1, 1984. Exports prior to October 1, 1984 that are entered, or withdrawn from warehouse, for consumption after that date continue to be subject to the antidumping duty order.

If any interested party chooses to request, in accordance with the Interim Final/Final Rule (50 FR 32556, August 13, 1985), an administrative review for the period immediately preceding October 1, 1984, we will consider arguments that the revocation should affect exports (shipments) prior to October 1 that were entered after October 1.

Comment 3: Hansa argues that the revocation should include merchandise entered prior to October 1, 1984. Hansa states its belief that the Arrangement was negotiated with the understanding that ". . . all unliquidated, suspended entries would be liquidated at the normal tariff rate."

Department's Position: The Arrangement contains no provision requiring that revocation cover all suspended entries.

Final Results of the Review and Revocation

After review of the comments received, we determine that the domestic interested parties are no longer interested in continutation of the antidumping duty order on carbon steel wire rod from Spain and that the order should be revoked on this basis.

Therefore, we are revoking the order on carbon steel wire rod from Spain effective October 1, 1984. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise exported on or after October 1, 1984 without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries.

This notice does not cover unliquidated entries of carbon steel wire rod from Spain which were exported prior to October 1, 1984. The Department will cover entries exported before October 1, 1984, not covered in a prior administrative review, in a separate review, if one if requested.

This administrative review, revocation and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: September 4, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-22105 Filed 9-13-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-405]

Grand and Upright Pianos From the Republic of Korea; Final Determination of Sales at Not Less Than Fair Value

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that grand and upright pianos (pianos) from the Republic of Korea are not being, nor are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination.

EFFECTIVE DATE: September 16, 1985.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 377-4087.

Final Determination

We have determined that pianos from the Republic of Korea are not being, nor are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). We made fair value comparisons on approximately 82 percent of all sales of Korean pianos to the United States during the period of investigation. We have found that the margins for all companies compared are zero or *de minimis*.

Case History

On September 21, 1984, we received a petition from counsel for Aeolian Pianos, Inc., Baldwin Piano & Organ Co., Kohler & Campbell, Inc. and Sohmer & Co., Inc., on behalf of the U.S. piano industry. In accordance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that pianos from the Republic of Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening material injury to, a U.S. industry. After reviewing the petition, we determined it contained sufficient grounds to initiate an antidumping investigation. We notified the U.S. International Trade Commission (ITC) of our action and initiated such an investigation on October 11, 1984 (49 Fed. Reg. 40627). The ITC subsequently found, on November 5, 1984, that there is a reasonable indication that imports of pianos from the Republic of Korea are materially injuring a United States industry.

We presented antidumping duty questionnaires to counsel for two Korean firms, Samick Musical Instruments Mfg. Co., Ltd. (Samick) and Young Chang Akki Co., Ltd. (Young Chang). On January 31, 1985, counsel for the petitioners requested the Department to extend the preliminary determination until not later than April 19, 1985. On February 8, 1985, we granted the request (50 FR 6226). Between March 7 and 18, 1985, we verified questionnaire responses in Los Angeles and Korea. On April 19, 1985, we made a negative preliminary determination (50 FR 16331). On May 16, 1985, we held a hearing to afford interested parties an opportunity to comment on the preliminary determination. On May 17, 1985, counsel for petitioners requested that we postpone the final determination until not later September 9, 1985. On June 17, 1985 we granted that request (50 FR 26020).

Scope of Investigation

The products covered by this investigation are grand and upright pianos as currently provided for under item numbers 725.0320 and 725.0100, respectively, of the *Tariff Schedules of the United States Annotated*. We investigated sales of these pianos which were made by two Korean producers and sold to the United States during the period of investigation, April 1, 1984, through September 30, 1984. Sales by the firms investigated accounted for approximately 82 percent of all Korean pianos sold to the United States during the period of investigation.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value. For Samick and Young Chang we compared United States price based on both purchase price and exporter's sales price with foreign market value based on home market sales.

United States Price

For a portion of the Young Chang and Samick sales, we used the purchase price of the subject merchandise to represent the United States price, as provided in section 772(b) of the Act, because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price on the f.o.b., c.i.f., or c. & f. price to unrelated purchasers in the United States or to unrelated trading companies for sale to the United States. We made deductions, where appropriate, for inland freight, ocean freight, marine insurance and brokerage charges. For the remainder of the Young Chang and Samick sales we used exporter's sales price to represent the United States price because the merchandise was sold to unrelated purchasers after importation into the United States. For these sales we made additional deductions, where appropriate, for U.S. brokerage, U.S. customs duties, U.S. inland freight and insurance, commissions, credit expenses, discounts, advertising and warranty expenses and other selling expenses incurred in the United States. We made additions to purchase price and exporter's sales price for import duties which were rebated, or not collected, by reason of the exportation of the merchandise to the United States, pursuant to section 772(d)(1)(B) of the Act. We also made an adjustment for indirect taxes imposed upon home market merchandise which have not been collected upon exported merchandise by reason of its exportation to the United States. Section 772(d)(1)(C) also states that the adjustment for indirect taxes be made "but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation." Petitioners proposed a methodology to calculate the relative tax burdens of buyers and sellers in the home market by measuring the relative elasticities of supply and demand for pianos in Korea. Refer to the "Comments" section for a further discussion of this issue.

Foreign Market Value

Sales of such or similar merchandise in the home market were used to represent foreign market value, as provided for in section 773(a)(1)(A) of the Act. We made comparisons between pianos of the same type (grand or upright) and size. Comparisons were made using sales at the same level of trade as the U.S. sales. Calculations for foreign market value were based on delivered or ex-factory, unpacked prices to unrelated purchasers in the home market. Deductions were made, as appropriate, for inland freight. We also made adjustments for differences in

commissions, credit, warranty and advertising expenses, as appropriate. For some home market sales used for comparison to U.S. purchase price, sales commissions were paid in one market and not the other. In these cases we made adjustments for the differences between commissions in the applicable market and indirect selling expenses in the other market, used as an offset to the commissions, in accordance with § 353.15(c) of our regulations. Where we used exporter's sales price, we deducted home market indirect selling expenses to offset U.S. selling expenses. U.S. export packing was added to all home market prices. We also adjusted for physical differences in the merchandise in accordance with section 353.16 of the Commerce Regulations.

In calculating foreign market value, we made currency conversions from Korean Won to United States dollars in accordance with section § 353.36(a)(1) of our regulations, using certified daily exchange rates as furnished by the Federal Reserve Bank of New York.

Verification

We have verified the data used in reaching the final determination in this investigation, by using standard verification procedures, including on-site inspection of the manufacturers' operations and examination of accounting records and randomly selected documents.

Comments

Petitioners argue that Congress amended the antidumping law in 1974 to require the Department to take account of the allocation of indirect taxes betwen sellers and consumers in the home market for purposes of computing dumping margins. Specifically, petitioners contend that section 772(d)(1)(C) of the Act requires the Department to limit the adjustment for indirect taxes not collected or rebated to the amount of those taxes "passed through" to home market consumers of the merchandise under investigation. The source of this requirement, petitioners argue, is the portion of section 772(d)(1)(C) which states: "but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation." Petitioners base their interpretation of this language (the "passthrough clause") on the House Report, which states that "(t)o the extent that the exporter absorbs indirect taxes in his home market sales, no adjustment to purchase price will be made and the likelihood or size of dumping margins will be increased." H.R. Rep. No. 93–571, 93d Cong., 2d Sess. 69(1973). Petitioners also rely on the Department's statement in *Color Television Receivers From Korea; Final Results of Administrative Review of Antidumping Order*, 49 FR 50420, 50421 (1984), that Congress, in enacting the passthrough clause, intended that the Department measure the amount of the tax absorbed by the seller and limit the adjustment to the amount passed through to home market purchasers.

Petitioners further argue that references in the legislative history of section 772(d)(1)(C) to comparable antidumping and countervailing duty treatment of indirect tax rebates relate only to the requirement that the taxes rebated must have been imposed directly on the export product or its components. Petitioners add that even if Congress intended to achieve some degree of parallel tax treatment under the two laws, the passthrough clause is clear and must be given effect. Finally, petitioners argue that sections 772(d)(1)(C) and (d)(1)(D), when read together, do not evidence Congressional intent to treat only those indirect tax rebates found to be "unfair" under the countervailing duty law as "unfair" for purposes of section 772(d)(1)(C). They argue that Commerce does not have the statutory authority in an antidumping case to address the countervailing duty issue of whether a tax rebate is excessive, and in any event, the reasons for taking account of the taxes under each law are completely different and require different treatment. Petitioners reiterate their argument that Congress desire for comparable treatment of indirect taxes relates only to the requirement that the rebates be directly related to taxes assessed on the exported product or its components.

Respondents argue that Congress did not intend us to use a complex theoretical model such as petitioners propose. Rather, the passthrough clause only requires us to determine whether the taxes are "added to" a pre-tax price base to derive a final home market sale price. The amount of passthrough can be derived by subtracting the pre-sale base price from the final sale price, provided the price after imposition of the tax is not less than the pre-tax base price, as is the case here.

DOC Position

The Department first confronted this issue in its final determinations in *Color Television Receivers from Korea*, 49 FR 7620, 7623–24 (1984), and *Color Television Receivers from Taiwan*, 49 FR 7628, 7631–32 (1984). In those determinations, the Department stated its view that the language of section 772(d)(1)(C) required the Department to measure tax absorption and to limit the adjustment to United States price to the amount of tax passed through by the producer in the home market. However, the Department also concluded that it was impossible to measure the degree of tax absorption. Therefore, the Department declined to limit the adjustment under section 772(d)(1)(C) to the tax passed through in the home market. The Department adhered to this position in its first section 751 review in *Color Television Receivers from Korea*, 49 FR 50420, 50420–21 (1984).

Upon further reflection, however, we have determined that this earlier interpretation of section 772(d)(1)(C) is incorrect. We do not believe that section 772(d)(1)(C) requires the Department to measure tax absorption in individual cases. Instead, based upon our review of the relevant legislative history, we think that Congress intended merely that in the case of tax rebates, the Department should apply to the antidumping law the same presumptions concerning tax absorption that it applies under the countervailing duty law. Our reasons for this conclusion are as follows.

Congress added the passthrough clause to the antidumping law in the Trade Act of 1974. That Act amended sections 202 and 203 of the Antidumping Act of 1921, which defined purchase price and exporter's sale price, respectively. However, when the Trade Act of 1974 was under consideration, the Treasury Department had a well-established practice concerning the rebate of taxes under the countervailing duty law. Treasury did not regard the non-excessive rebate of final stage indirect taxes (such as the taxes involved in the instant case) or prior stage indirect taxes on physically incorporated inputs as a subsidy. This position was based upon a theory of tax incidence that producers shifted these types of taxes forward so that consumers bore the tax burden. On the other hand, Treasury did consider the rebate of other indirect taxes (i.e. those on inputs not physically incorporated in the final product, often called *taxes occulte*) to be a subsidy, on the theory that producers did not shift these types of taxes forward, but bore the tax burden themselves. *See, e.g., American Express Co.* v. *United States*, 472 F. 2d 1050 (C.C.P.A. 1973). In addition, Treasury regarded the rebate of direct taxes, such income taxes, as a subsidy, again because of the tax incidence theory that producers bore the tax burden of these types of taxes. At the time, Treasury's practice with respect to tax rebates was known as the "directly

related"test.[1] Congress was aware of the Treasury practice and the assumptions upon which it was based.

However, because of the then-existing language of the antidumping law, there was the potential for different treatment of tax rebates under the antidumping and countervailing duty laws. Sections 203 and 204 allowed an adjustment to purchase price or exporter's sales price for "taxes imposed in the country of exportation upon the *manufacturer, producer, or seller,* in respect to the *manufacture, production or sale* of the merchandise, which have been rebated . . ." (Emphasis added). This provision arguably allowed an addition to purchase price and exporter's sales price for rebates of taxes occulte and direct taxes, both which were (and remain) countervailable practices. In other words, the antidumping law arguably sanctioned a practice which Treasury regarded as unfair under the countervailing duty law.

Treasury proposed legislation to remedy this anomaly. Treasury proposed to amend sections 202 and 203 by substuting the following language:

> and plus the amount of any taxes imposed in the country of exportation directly upon the exported merchandise or components thereof, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States. . . .

This language would have incorporated into the antidumping law Treasury's directly related test under the countervailing duty law.

Congress ultimately did enact this language in the Trade Act of 1974. However, when the House Ways and Means Committee reported the bill, it included not only the Treasury amendment to sections 202 and 203, but also the passthrough clause. The Committee explained its amendment as follows:

> The second amendment deals with the treatment of certain types of tax rebates in computing purchase price. The amendment would conform the standard in the Antidumping Act to the standard under the countervailing duty law, thereby harmonizing tax treatment under the two statutes. However, your committee, in recommending this amendment, does not express approval or disapproval of the standard employed by the Treasury Department in administering the countervailing duty law with regard to the treatment under that law of rebates or remissions of direct and indirect taxes.
>
> With the amendment, no adjustment to the advantage of the foreign exporter would be permitted for indirect tax rebates unless the direct relationship of the tax to the product being exported, or components thereof, could be demonstrated. Further, an adjustment for such tax rebates would be permitted only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation. This is to insure that the rebate of such taxes confers no special benefit upon the exporter of the merchandise that he does not enjoy in sales in his home market. To the extent that the exporter absorbs indirect taxes in his home market sales, no adjustment to purchase price will be made and the likelihood or size of dumping margins will be increased.
>
> H.R. Rep. No. 571, 93d Cong., 1st Sess. 69 (1973).

The Ways and Means Committee amendment passed the House. The Senate Finance Committee adopted the House amendment without change, explaining the purpose of the amendment as follows:

> The second amendment deals with the treatment of certain types of tax rebates in computing purchase price and would provide that foreign indirect taxes, rebated or remitted upon export of the imported merchandise in question, will be added back to purchase price only if such indirect taxes are imposed directly upon the exported product or its components, and then only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation. The present standard for the treatment of such tax rebates or remissions which is now contained in the Act is significantly broader and requires the adding back to the purchase price of a wider range of taxes, to the advantage of the foreign manufacturer, than would be allowed under the proposed amendment. The standard in the proposed amendment parallels that standard employed by the Treasury Department under the countervailing duty law in determining whether tax rebates and remissions constitute bounties or grants. However, the Committee, in recommending this amendment, does not express approval or disapproval of that Treasury practice.
>
> S. Rep. No. 1298, 93d Cong., 2d Sess. 172 (1974).

Petitioners contend that the Department must measure tax absorption in every case, and that the Department must limit the adjustment to United States price to the amount of tax found to be passed through in the home market to the consumer. The principal argument for this position is that if Congress had intended merely to conform the antidumping law standard concerning tax rebates to Treasury's standard under the countervailing duty law, the passthrough clause would have been superfluous. Because there is a presumption against interpreting statutory language in a manner that renders it superfluous, the Department must give independent meaning to the passthrough clause by construing it in the manner proposed by petitioners.

This argument is flawed. First, nothing in either the statute or the above-quoted legislative history requires that the Department measure tax absorption in individual cases. Because Congress was aware of the problems inherent in measuring tax absorption, if Congress truly intended that the Department embark upon such a hazardous undertaking, it surely would have made its intent more clear.

Second, and more important, petitioners' position is inconsistent with the clear congressional objective of "harmonizing tax treatment" under the antidumping and countervailing duty laws. As indicated above, the Treasury position was that the exemption or non-excessive rebate of final stage indirect taxes was not a subsidy. In administering the countervailing duty law, Treasury did not measure the degree of tax shifting in individual cases involving final stage indirect taxes. In 1978, the Supreme Court upheld the Treasury practice. *Zenith Radio Corp.* v. *United States,* 437 U.S. 459. In 1979, Congress incorporated the Treasury practice into the countervailing duty law.[2] Thus, the law was and is that the exemption or non-excessive rebate of final stage indirect taxes or prior stage indirect taxes on physically incorporated inputs are not subsidies, regardless of the degree of tax shifting in individual cases. Yet petitioners would apply a different test under the antidumping law, thereby rendering unfair a practice which both Congress and the courts have deemed to be fair under the countervailing duty law. Obviously, this defeats the goal of "harmonizing tax treatment," and, therefore, we cannot accept petitioners' interpretation.

We believe that there is a more plausible explanation of the passthrough clause. Although Congress knew of the Treasury directly related test and the tax incidence assumptions underlying it, it did not necessarily approve of it. In particular, Congress was aware that modern economic theories questioned the economic assumptions adhered to by Treasury. Congress also was aware that a countervailing duty petition had been filed which challenged Treasury's

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[1] This test should not be confused with the "directly related" test for circumstances of sale adjustments under the antidumping law.

[2] With respect to indirect tax rebates, Treasury practice is reflected in paragraphs (g) and (h) of the Illustrative List of Export Subsidies attached to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade, H.R. Doc. No. 153, Part I, 96th Cong., 1st Sess. 259 (1979), which Congress incorporated by reference into the countervailing duty law. 19 U.S.C. 1677(5)(A).

practice with respect to final stage indirect taxes.[3] However, Congress declined to take a position with respect to Treasury's practice. *See, e.g.*, S. Rep. No. 1298, 93d Cong., 2d Sess. 172 (1974).

More generally, there is a vast literature which indicates that Congress was aware that the United States, whose fiscal system is based upon direct taxes, might be at a competitive disadvantage vis-a-vis countries that rely more heavily upon indirect taxes. Because of these concerns, in the Trade Act of 1974, Congress directed the Executive Branch to attempt to negotiate a solution to this potential problem in the upcoming Multilateral Trade Negotiations. *See, e.g., id.*, p. 84. At the same time, Congress knew that our trading partners might prove unwilling to negotiate on this issue, and that the status quo with respect to tax rebates might prevail. *See, e.g.*, H.R. Rep. No. 571, 93d Cong., 1st Sess. 75–76 (1973).

In summary, Congress knew of the Treasury countervail practice, but also knew that this practice might change as the result of either judicial action or international negotiation. However, Congress was unwilling to tamper with the Treasury practice or the assumptions underlying it. Congress also wanted "harmonized tax treatment" under the antidumping and countervailing duty laws.

Thus, the only reasonable explanation for the passthrough clause is that, given the uncertainty at the time as to the ultimate fate of Treasury's countervail practice, Congress was attempting to ensure that whatever happened, there would be "harmonized tax treatment" between the two statutes. If as a result of judicial action or international negotiation the countervailing duty law changed so as to require the measurement of tax absorption in individual cases, the passthrough clause could be read so as to require a similar measurement in antidumping cases.[4] On the other hand, if either the courts or the international community affirmed the tax incidence assumptions underlying the Treasury countervail practice, the passthrough clause could be read so as to require simply the application of those assumptions to the antidumping law as well. Regardless of the outcome, through the passthrough clause Congress could ensure that practices deemed fair under the countervailing duty law would be deemed fair under the antidumping law, and that practices deemed unfair under the countervailing duty law also would be deemed unfair under the antidumping law.

Under the statute and judicial precedent, exemption from the taxes in question is a fair practice under the countervailing duty law. Therefore, based on our interpretation of section 772(d)(1)(C), we will not limit the adjustment to United States price for these taxes.

The language and history of section 772(d)(1)(D), enacted simultaneously with section 772(d)(1)(C), supports our conclusion. This provision requires us to add to United States price the amount of any countervailing duty imposed on the merchandise to offset an export subsidy. The House Ways and Means Committee explained the provision as follows:

> The third amendment would assure that imported merchandise benefitting from tax rebates which the Secretary has already determined to be a bounty or grant, and thus subject to countervailing duties, would not be unfairly penalized by subjecting them to antidumping duties as well by reason of the same tax rebates.

H.R. Rep. No. 571, 93d Cong. 1st Sess. 70 (1973). The Senate Report contains virtually the same language. S. Rep. No. 1298, 93d Cong. 2d Sess. 172 (1974). Thus, where an affirmative countervailing duty determination has been made with respect to merchandise subject to an antidumping investigation, we add to United States price under section 772(d)(1)(D) the amount of the rebated or exemption found to be an export subsidy, and add the portion found to be "allowable" under (C). See *Carbon Steel Wire Rod from Argentina: Final Determination of Sales At Less Than Fair Value*, 49 FR 38170 (1984). Petitioner's proposed passthrough methodology would almost always yield less than 100% passthrough of the "allowable" portion, thus creating or increasing margins by the amount of the tax found to be "absorded" by the seller. Such a result is clearly contrary to Congress's purpose because it would lead to assessment of both antidumping and countervailing duties by virtue of the same tax rebates in a combined case.

Finally, the Department can perceive no economic justification for adjusting the home market-U.S. price differential by anything less than the actual amount of final stage taxes paid by the producers. We believe that the antidumping duty law is intended to remedy situations in which a foreign producer accepts a lesser return on his U.S. sales than on his home market sales. Where the costs of production and sale are identical in both markets, any difference in price will represent a difference in return. Where the costs of production and sale differ between markets, any difference in price will represent a difference in return only after the price differential has been adjusted by the net amount of the differences in cost. A difference in final stage tax liability is just as much a difference in the cost of production and sale as any difference in material costs or credit expenses. Therefore, just as we have always adjusted the price differential by the amount of any difference in material costs and credit expenses, we believe we should also make such an adjustment for any difference in final stage tax liability.

Final Results

The final results of our investigation are as follows:

Manufacturer/seller/exporter	Weighted-average margin percentage
Young Chang	0.0000
Samick	0.1077

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Walter J. Olson,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 85–22106 Filed 9–13–85; 8:45 am]

BILLING CODE 3510–DS–M

[C–791–008]

Steel Wire Rope From South Africa; Final Results of Administrative Review of Suspension Agreement

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final results of administrative review of suspension agreement.

SUMMARY: On March 8, 1985, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on steel wire rope from South Africa. The review covers the period July 1, 1983 through December 31, 1983, and four programs.

We gave interested parties an opportunity to comment on the preliminary results. We received no

[3] This case resulted in the decision in *Zenith Radio Corp.* v. *United States*, *supra*.

[4] The proposed Treasury amendment to sections 202 and 203 would not have ensured this result.

comments. Based on our analysis, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: September 16, 1985.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Philip Otterness, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 9478) the preliminary results of its administrative review of the suspension agreement on steel wire rope from South Africa (47 FR 54130, December 1, 1982). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of South African steel wire rope. Such merchandise is currently classifiable under items 642.1200, 642.1610, and 642.1650 of the Tariff Schedules of the United States Annotated. The review covers the only known exporter of South African wire rope to the United States, Haggie Limited, the signatory to the suspension agreement.

The review covers the period July 1, 1983, through December 31, 1983, and four programs: (1) Preferential rail rates; (2) Export Incentive Program; (3) the Iron/Steel Export Promotion Scheme; and (4) the General Levy and Import Subsidy Scheme.

Final Results of the Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of the review are the same as the preliminary results. We determine that Haggie has complied with the terms of the suspension agreement for the period July 1, 1983, through December 31, 1983. Haggie renounced all benefits associated with exports of wire rope to the United States, did not accept substitutes or equivalent benefits, and met all of the reporting requirements of the agreement. Haggie continued to account for at least 85 percent of imports of South African wire rope into the United States.

Therefore, the suspension agreement for South African wire rope shall remain in effect.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: September 3, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary Import Administration.

[FR Doc. 85–22111 Filed 9–13–85; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–006]

Certain Steel Pipes and Tubes From Japan; Intention To Review and Preliminary Results of Changed Circumstances; Administrative Review and Tentative Determination To Revoke Antidumping Duty Order

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of intention to review and preliminary results of changed circumstances administrative review and tentative determination to revoke antidumping duty order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the antidumping duty order on certain steel pipes and tubes from Japan. The review covers the period from October 1, 1984. The petitioner and other domestic interested parties to this proceeding have notified the Department that they are no longer interested in the antidumping duty order. These affirmative statements of no interest from domestic interested parties provide a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioner's notification, the revocation will apply to certain steel pipes and tubes entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Chip Hayes or G. Leon McNeill, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 8522–23) an antidumping duty order on certain steel pipes and tubes from Japan.

The petitioner, Babcock & Wilcox, and other domestic interested parties, United States Steel Corporation and Al Tech Specialty Steel Corporation, informed the Department that they were no longer interested in the order and stated their support for revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

Scope of the Review

Imports covered by the review are shipments of seamless heat-resisting pipes and tubes, currently classifiable under items 610.5206, 610.5208, 610.5229, and 610.5234 of the Tariff Schedules of the United States Annotated and seamless stainless pipes and tubes, currently classifiable under items 610.5205, 610.5229, and 610.5230 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the domestic interested parties' affirmative statements of no interest in continuation of the antidumping duty order on certain steel pipes and tubes from Japan provide a reasonable basis for revocation of the order.

Therefore, we tentatively determine to revoke the order on certain steel pipes and tubes from Japan effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of certain steel pipes and tubes from Japan which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

September 9, 1985.

[FR Doc. 85-22109 Filed 9-13-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-501]

Offshore Platform Jackets and Piles From Japan; Postponement of Preliminary Antidumping Duty Determination

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: The preliminary antidumping duty determination involving offshore platform jackets and piles from Japan is being postponed until not later than November 15, 1985.

EFFECTIVE DATE: September 16, 1985.

FOR FURTHER INFORMATION CONTACT: Frank Crowe, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, Telephone (202) 377-4087.

SUPPLEMENTARY INFORMATION: On May 9, 1985, we announced the initiation of an antidumping duty investigation to determine whether offshore platform jackets and piles from Japan are being, or are likely to be, sold in the United States at less than fair value (50 FR 20252). The notice stated that we would issue or preliminary determination by September 26, 1985.

As detailed in that notice, the petition alleged that imports of offshore platform jackets and piles from Japan are being, or are likely to be, sold in the United States at less than fair value. On September 6, 1985, counsel for petitioners, Kaiser Steel Corporation and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, requested that the Department extend the period for the preliminary determination until not later than 210 days after the date of receipt of the petition in accordance with section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act).

Accordingly, the due date for preliminary determination in this investigation is hereby postponed. We intend to issue a preliminary determination not later than November 15, 1985.

This notice is published pursuant to section 733(c)(2) of the Act.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

September 6, 1985.

[FR Doc. 85-22107 Filed 9-13-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-505]

Offshore Platform Jackets and Piles From the Republic of Korea; Postponement of Preliminary Antidumping Duty Determination

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: The preliminary antidumping duty determination involving offshore platform jackets and piles from the Republic of Korea is being postponed until not later than November 15, 1985.

EFFECTIVE DATE: September 16, 1985.

FOR FURTHER INFORMATION CONTACT: Frank Crowe, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone (202) 377-4087.

SUPPLEMENTARY INFORMATION: On May 9, 1985, we announced the initiation of an antidumping duty investigation to determine whether offshore platform jackets and piles from the Republic of Korea are being, or are likely to be, sold in the United States at less than fair value (50 FR 20254). The notice stated that we would issue our preliminary determination by September 26, 1985.

As detailed in that notice, the petition alleged that imports of offshore platform jackets and piles from the Republic of Korea are being, or are likely to be, sold in the United States at less than fair value. On September 6, 1985, counsel for petitioners, Kaiser Steel Corporation and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, requested that the Department extend the period for the preliminary determination until not later than 210 days after the date of receipt of the petition in accordance with section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act).

Accordingly, the due date for preliminary determination in this investigation is hereby postponed. We intend to issue a preliminary determination not later than November 15, 1985.

This notice is published pursuant to section 733(c)(2) of the Act.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

September 6, 1985.

[FR Doc. 85-22108 Filed 9-13-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-333-502]

Preliminary Affirmative Countervailing Duty Determination; Deformed Steel Concrete Reinforcing Bar From Peru

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Peru of deformed steel concrete reinforcing bar (rebar) from Peru. The estimated net bounty or grant is 76.36 percent *ad valorem*. We are directing the U.S. Customs Service to suspend liquidation of all entries of rebar from Peru that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond on entries of rebar in the amount equal to the estimated net bounty or grant.

If this investigation proceeds normally, we will make our final determination by November 20, 1985.

EFFECTIVE DATE: September 16, 1985.

FOR FURTHER INFORMATIN CONTACT: Laura Winfrey or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-0160 or 377-2438.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Peru of rebar. For purposes of this investigation, the following programs are preliminarily found to confer a bounty or grant:

- Certificate of Tax Rebate System (CERTEX)
- Nontraditional Export Fund (FENT)
- Law for the Promotion of Exports of Nontraditional Goods (Export Law)
- Equity Infusions into SIDERPERU
- Forgiveness and Capitalization of Debt
- Government Loans

We estimate the net bounty or grant to be 76.36 percent *ad valorem* for rebar.

Case History

On June 13, 1985, we received a petition from Florida Steel Corporation of Tampa, Florida and Chaparral Steel Company of Midlothian, Texas, on behalf of the U.S. industry producing rebar. In compliance with the filing requirements of section 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Peru of rebar receive directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on July 2, 1985, we initiated the investigation (50 FR 28230). We stated that we expected to issue a preliminary determination by September 6, 1985.

Since Peru is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise being investigated is dutiable, sections 303(a)(1) and (b) of the Act apply to this investigation. Accordingly, the petitioners are not required to allege that, and that U.S. International Trade Commission is not required to determine whether imports of these products materially injure, or theaten material injury to, a U.S. industry.

We presented detailed government and company questionnaires to the government of Peru on July 12, 1985 and stated that a response should be submitted by August 12, 1985. Upon request, the deadline for submission was extended until August 23, 1985. Responses were received on August 23, 1985, from the government of Peru, Empresa Siderurgica del Peru (SIDERPERU), and Aceros Arequipa II, S.A. (AREQUIPA). Laminadora del Pacifico, S.A. responded that it does not produce rebar.

Scope of Investigation

For purposes of this investigation the term deformed steel concrete reinforcing bar covers hot-rolled steel bars, of solid cross section, having deformation of various patterns on their surfaces which are currently classifiable in the *Tariff Schedules of the United States, Annotated* (TSUSA) under item numbers 606.7900 and 606.8100.

Deformed steel concrete reinforcing bars are hot-rolled bar products, consisting of special deformed sections used to resist tension, compression, temperature and/or shear stresses for reinforcing concrete. The category includes all deformed concrete reinforcing bars rolled from new billet steel, rail steel, or axle steel including straight lengths and coils.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of this investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Order", which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

The responses provided by the government of Peru and SIDERPERU in this investigation were incomplete and inadequate and thus could not be considered for purposes of this preliminary determination. The response provided by Arequipa indicated that Arequipa is not exporting rebar to the United States and has not exported rebar to the United States in the past. Therefore, we are limiting our analysis to SIDERPERU, and calculating a country-wide rate of benefit.

To determine whether an alleged program or equity infusion confers a bounty or grant, we used best information available, as required under § 355.39 of our regulations (19 CFR 355.39), adversely inferring countervailability and receipt of benefits based on the absence of adequate responses. We also used best information available to calculate the amount of benefit to SIDERPERU from the programs found to confer bounties or grants. As best information available, we used the highest rate of benefit found for each program in any past countervailing duty determination (preliminary or final) or final results of administrative reviews involving Peru, or included in the petition in this case. If a program was not alleged or investigated in any past investigation, and if we could not use the information in the petition, we looked at the financial statements attached to SIDERPERU's response to determine if figures could be easily discerned for purposes of our calculations. Where no information was available from any of these sources, we are requesting more information to determine whether a bounty or grant is being conferred on SIDERPERU.

For purposes of this preliminary determination, the period for which we are measuring bounties or grants ("the review period") is calendar year 1984.

Based upon our analysis of the petition and the responses to our questionnaires, we preliminarily determine the following:

I. Programs Determined To Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in Peru of rebar under the following programs.

A. Certificate of Tax Rebate System (CERTEX)

Under this program, qualifying exporters are eligible to apply for certificates issued by the government in amounts equal to a percentage of the f.o.b. invoice price of export shipments. The applicable CERTEX percentage is determined by whether the exports are classified as being of low, medium, or high value-added. CERTEX certificates may be applied against taxes owed the Peruvian government or they may be negotiated as commercial paper.

The CERTEX program is specifically export oriented. The amount of benefits available under the program is based solely on export performance. Consequently, consistent with our determinations in other Peruvian cases, we preliminarily determine that the CERTEX program operates to confer countervailable export bounties or grants on Peruvian rebar.

As best information available, we preliminarily determine that SIDERPERU used this program. To calculate the benefit derived from this program, we used the information provided in the petition as best information available. The petition alleged that exporters of rebar qualify for a rebate certificate of 32 percent of the value of exports and receive 88 percent of the gross amount. On this basis, we preliminarily determine that

the benefit conferred by this program is 28.16 percent *ad valorem.*

B. Nontraditional Export Fund ("FENT")

Under this program, the government of Peru provides short-term export financing to exporters of goods not traditionally exported. There are three types of this short-term financing: local currency loans, foreign currency loans, and mixed local and foreign currency loans. In most instances, this financing is available at preferential rates. The loans are drawn from a fund established by the Banco Central de Reserve del Peru, and passed through the Banco Industrial del Peru and a commercial disbursing bank. Because this program provides preferential financing on the basis of export performance, we preliminarily determine that it confers bounties or grants, consistent with our determinations in other Peruvian cases. As best information available, we preliminarily determine that SIDERPERU participated in this program during the review period.

To determine the benefits during the review period, we used the rate found in the "Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders; Certain Textile Mill Products and Apparel From Peru" (50 FR 9871) (1985) of 5.41 percent *ad valorem.*

C. Articles 12, 13, 14 and 16, of the Law for the Promotion of Nontraditional Goods (the Export Law)

Petitioners alleged that a number of benefits are provided to producers, manufacturers, or exporters of rebar in Peru under various articles of the Export Law.

The aim of the Export Law is to improve the foreign trade structure of Peru by promoting nontraditional exports. We preliminarily determine that benefits are provided under articles 12, 13, 14, and 16, as described below:

1. Article 12 allows exporters to claim an additional amount of depreciation on their tax returns. The amount they are able to claim is 50 percent above the normal rate of depreciation. Since the additional depreciation is contingent on export performance, we preliminarily determine that Article 12 confers a bounty or grant on the export of rebar from Peru, conistent with our determination in other Peruvian cases. We preliminarily determine, as best information available, that SIDERPERU used Article 12.

The benefit was determined by using the rate found in the "Final Results of Administrative Review of Countervailing Duty Order; Cotton Sheeting and Sateen from Peru" (49 FR 34542(1984)). On this basis, we preliminarily determine a bounty or grant of 1.06 percent *ad valorem.*

2. Article 13 of the Export Law states that enterprises may capitalize the earnings invested or reinvested with an exemption from the income tax, provided that they do so within six years, inclusive of the fiscal year in which the tax exemption is obtained.

Under Decree Law 22037 of December 1977, any company may capitalize earnings which are invested or reinvested within five years, and receive an exclusion from the five percent income tax on capitalization. The benefit provided by this Article is the additional year in which exporters are allowed to capitalize earnings with an exemption from income tax. Since the use of Article 13 is contingent on export performance, we preliminarily determine that Article 13 confers a bounty or grant on the export of rebar from Peru, consistent with our determinations in other Peruvian cases. We preliminarily determine, as best information available, that SIDERPERU used Article 13.

We determine the amount of benefit by using the rate found in the "Preliminary Affirmative Countervailing Duty Determination: Certain Textile Mill Products From Peru; Preliminary Negative Countervailing Duty Determination; Certain Apparel from Peru" (49 FR 49678(1984)). On this basis, we preliminarily determine a bounty or grant of 0.84 percent *ad valorem.*

3. According to Article 14 of the Export Law, enterprises that increase the number of permanent jobs in relation to those existing in the previous year may deduct, as an expense of the fiscal year, the amount of remuneration paid out as a result of the new jobs created. Thus, companies may receive an income tax credit ranging from 30 to 60 percent.

Since this income tax deduction in the amount of the remuneration paid out on new jobs is available only to exporters, we regard the resulting income tax savings as a bounty or grant. Using the "Preliminary Affirmative Countervailing Duty Determination; Certain Textile Mill Products and Apparel From Peru" (49 FR 49678(1984)) as best information available, we determine the rate of benefit to be less than 0.005.

4. Article 16 of the Export Law provides for an interim suspension and eventual exemption of import duties on imported capital equipment or machinery if an exporter of nontraditional goods meets certain requirements established by law and signs a written contract with the government. To obtain the exemption, the exporter must export 40 percent of its annual production within a maximum of two years from the date of the importation of the equipment or machinery and must generate a net profit in foreign currency equal to 100 percent of the value of the imported machinery or equipment within five years of the importation.

The exporter's duties are suspended during the two-year period in which the first requirement must be met, and, if it is met, they continue to be suspended until the second requirement is met. This must occur within five years. When this second requirement is met, there is a full exoneration of the suspended duties.

If the exporter cannot meet the two requirements for exemption within the applicable time periods, for reasons approved by the Ministry of Industry, Tourism and Integration, it may cancel the contract with the government and repay the duties over a term of years, without penalties or interest. If the exporter otherwise fails to meet the terms of the contract, the exporter may be subject to the payment of penalties and interest.

Article 16 of the Export Law provides a suspension and/or exemption from the payment of import duties on the machinery contingent upon export performance. We preliminarily determine, as best information available, that SIDERPERU used this program.

To determine the benefit arising from this program, we used the "Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders; Certain Textile Mill Products and Apparel From Peru (50 FR 9871(1984)). On this basis, we preliminarily determine an *ad valorem* rate of 2.77 percent.

D. Equity Infusions

Petitioners alleged that the government of Peru has provided bounties or grants through equity infusions to SIDERPERU on terms inconsistent with commercial considerations. Petitioners alleged that the government of Peru purchased stock in SIDERPERU, a company whose stock was not publicly traded, between 1979 and 1984. As best information available, we preliminarily determine that SIDERPERU has been unequityworthy since 1979. Therefore, we preliminarily determine that the government equity infusions between 1979 and 1984 confer a bounty or grant because they were made on terms inconsistent with commercial considerations.

Using information from the financial statements provided by SIDERPERU, we calculated the benefits from these

infusions according to the methodology contained in the Subsidies Appendix. As best information available, we preliminarily determine the company's rate of return on equity to be zero. We used the effective annual interest rate on soles borrowings in Peru during 1984 for the national average rate of return, as best information available. This rate, 83.11 percent, was obtained from Peruvian government responses in prior cases. We multiplied the rate of return shortfall by the amount of equity received by SIDERPERU since 1979. In no case did we countervail an amount greater than that calculated treating each infusion as an outright grant. We then allocated the aggregate benefit over the value of SIDERPERU's total sales. On this basis, we preliminarily determine a bounty or grant of 34.29 percent *ad valorem*.

E. Government Loans

Petitioners alleged that SIDERPERU was uncreditworthy when it received loans from the government of Peru or from official institutions of the Government. We preliminarily determine, as best information available, that the long-term liabilities listed on SIDERPERU's financial statements were received under this program, and that SIDERPERU was uncreditworthy. We used as our benchmark the effective annual interest rate on soles loans in Peru during 1984. This rate, 83.11 percent, was obtained from Peruvian government responses in prior cases. We added to this rate the risk premium, determined in accordance with the Subsidies Appendix. As best information available, we assume that the interest rate charged to SIDERPERU is zero percent. We then allocated the benefit over the value of SIDERPERU's total sales. On this basis, we preliminary determines a bounty or grant of 3.83 percent *ad valorem*.

F. Forgiveness and Capitalization of Debt

Petitioners alleged that the Government of Peru has forgiven debt and permitted the capitalization of debt for SIDERPERU. We preliminary determine, as best information available, that SIDERPERU received foregiveness and capitalization of debt from the Government of Peru. We did not calculate a benefit, however, because we have already considered all of the equity and debt of SIDERPERU to be countervailable under other programs described above.

II. Programs for Which We Need More Information

The following programs either have not been investigated or were found not to be subsidies in previous cases. Further, neither the petition nor any other source now available to us contains any information as to the level of benefits that might be received. Thus, we preliminarly detemine that we need additional information to determination if a bounty or grant has been bestowed on the products under investigation.

A Export Promotion Fund (FOPEX) and the Peruvian Export Credit Insurance Company S.A (SECREX)

Petitioners alleged that FOPEX, a government agency, maintains its own programs of direct support to exporters and also participates through SECREX to provide export financing. Petitioners alleged that FOPEX and SECREX provided export credit subsidies in the form of loans, loan guarantees and insurance; and that these subsidies are provided at preferential rates or on terms inadequatue to cover long-term operating costs and losses. Since the respondent did not provide information with respect to these programs, and the Department of Commerce has not investigated these programs in prior Peruvian cases, we cannot determine whether benefits were received which confer a bounty or grant, nor can we quantify the amount of any such bounty or grant.

B. Exemption of Import Duties

Petitioners alleged that key Peruvian industries, including rebar producers, are exempted from paying tariffs on imported raw materials which are unavailable in Peru. Since the respondent did not provide information concerning import duty exemptions and we have not investigated this program in prior Peruvian cases, we cannot determine whether this program confers a bounty or grant on rebar producers, nor can we quantify the amount of any such bounty or grant.

C. Loan Guarantees

Petitioners alleged that the respondent received preferential loan guarantees from the Peruvian government through the Banco Industrial del Peru and COFIDE. Because the respondents did not provide information with regard to loan guarnatees and we have not investigated this program in prior Peruvian cases, we cannot determine whether this program confers a bounty or grant.

D. Articles 8 and 9 (Export Law)

The General Law of Industries established four priorities for the various industrial groups, with each priority having a different percentage and selectivity index which determined the amount of net income that could be invested or reinvested free of income tax. Decree Law 22401 of December 1978, changed the reinvestment benefit from a tax deduction to a tax credit. Under Articles 8 and 9 of the Export Law, exporters are permitted to upgrade their priority one level. In the "Final Affirmative Countervailing Duty Determinations and Countervailing Duty Orders; Certain Textile Mill Products and Apparel from Peru" (50 FR 9871(1984)), we determined that the reinvestment priority system was terminated by the General Law of Industries enacted in 1982. Because we have no new information regarding this program, we cannot determine whether SIDERPERU had benefited from this program.

E. Articles 23 and 31 of the Export Law

Petitioners alleged that under Article 23 of the Export Law, the government of Peru has provided tax exemptions and tax refund certificates to certain consortia formed for the exportation of nontraditional goods. Petitioners further alleged that under Article 31 the government of Peru provides a benefit by permitting shippers to grant preferential shipping rates to exporters of nontraditional goods. Because we were provided no information on the alleged subsidies and do not have information from other sources, we cannot determine if a bounty or grant is being conferred on the respondent.

F. Reimbursement of Duties

Petitioners alleged that the government of Peru may intend to reimburse SIDERPERU for any countervailing duties assessed. The Department of Commerce has never investigated such an allegation in prior Peruvian cases and the respondent provided no information regarding possible reimbursement of duties. Without more information concerning the existence of or the manner in which the Peruvian Government intends to administer the program, we cannot quantify the amount of any potential bounty or grant. If, however, during the course of this investigation, we determine that SIDERPERU is to be reimbursed by the Peruvian government for duties assessed, we will impose the appropriate countervailing duty to compensate for the reimbursement.

G. Regional Incentives.

Petitioners alleged that under the 1982 Industrial Law, Peruvian firms are provided with tax incentives for investment outside the Department of Lima or the Province of Callao. Because we have never investigated this program in prior Peruvian cases and no other information has been provided, we cannot determine whether benefits were received which confer a bounty or grant.

Verification

In accordance with section 776(a) of the Act, we will verify the data used in making our final determination. We will not accept any statement in the response that cannot be verified in our final determination.

Suspension Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of rebar from Peru which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require an *ad valorem* cash deposit or bond for each such entry of this merchandise in the amount of 76.36 percent *ad valorem*. This suspension will remain in effect until further notice.

Public Comment

In accordance with section 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 2:00 p.m. on October 15, 1985, at the U.S. Department of Commerce, Room 1414, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B–099, at the above address within 10 days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, pre-hearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by October 8, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 355.33(d) and 19 CFR 355.34. Written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within 10 days after the hearing transcript is available.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

September 6, 1985.

[FR Doc. 85–22110 Filed 9–13–85; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Alaska Coastal Management Program and Ohio Old Woman Creek National Estuarine Sanctuary; Intent To Evaluate

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management Commerce.

ACTION: Notice of intent to evaluate.

SUMMARY: The National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), announces its intent to evaluate the performance of the Alaska Coastal Management Program and the Ohio Old Woman Creek National Estuarine Sanctuary through December 31, 1985. These reviews will be conducted pursuant to Section 312 of the Coastal Zone Management Act (CZMA) which requires a continuing review of the performance of the states with respect to coastal management, and their adherence to the terms of financial assistance awards funded under the CZMA. Coastal zone management is funded under CZMA Section 306, and the National Estuarine Sanctuary Program is authorized by CZMA Section 315. The reviews involve consideration of written submissions, a site visit to the state, and consultations with interested Federal, State and local agencies and members of the public. Public meetings will be held as part of the site visits. The state will issue notice of these meetings. Copies of each state's most recent performance report, as well as the OCRM's notification letter and supplemental information request letter to the state are available upon request from the OCRM. A subsequent notice will be placed in the **Federal Register** announcing the availability of the Final Findings based on each evaluation once these are completed.

FOR FURTHER INFORMATION CONTACT: John H. McLeod, Acting Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven Street NW., Washington, D.C. 20235 (telephone: 202/634–4245).

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration)

Dated: September 4, 1985.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 85–22077 Filed 9–13–85; 8:45 am]

BILLING CODE 3510–08–M

Evaluation of State/Territorial Coastal Management Programs, Coastal Energy Impact Programs and National Estuarine Sanctuaries

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management, Commerce.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the American Samoa, Florida, Massachusetts, New Hampshire, Oregon, and Washington Coastal Management Programs. Section 312 of the Coastal Zone Management Act of 1972, as amended, requires a continuing review of the performance of each coastal state with respect to the implementation of its federally approved Coastal Management Program. The states evaluated were found to be adhering both to the programmatic terms of their financial assistance awards and/or to their approved coastal management programs; and to be making progress on award tasks, special award conditions, and significant improvement tasks aimed at program implementation and enforcement, as appropriate. Accomplishments in implementing coastal zone management programs were occurring with respect to the national coastal management objectives identified in Section 303(2)(A)–(I) of the Coastal Zone Management Act. A copy of the assessment and detailed findings for these programs may be obtained on request from: John H. McLeod, Acting Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven Street NW., Washington, D.C. 20235 (telephone: 202/634–4245).

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration)

Dated: September 4, 1985.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 85-22076 Filed 9-13-85; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Hazardous Waste Storage in the Tidewater Virginia Area; Notice of Intent

AGENCY: Defense Reutilization and Marketing Service (DRMS), Defense Logistics Agency (DLA), Department of Defense (DoD).

ACTION: Notice.

SUMMARY: In accordance with 40 CFR 1501.7, the Defense Logistics Agency issues this Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for DoD hazardous waste storage in the Tidewater Virginia area. Interested parties are invited to attend public scoping meetings on 2 and 3 October 1985 at the sites listed below.

FOR FURTHER INFORMATION CONTACT: Ms. Irene C. Sailer, Environmental Officer, Defense Reutilization and Marketing Service (DRMS-HT), Federal Center, 74 North Washington, Battle Creek, Michigan 49016-3412, Telephone: (616) 962-6511, Ext 6959.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency, through the Defense Reutilization and Marketing Service, is responsible for the disposition of DoD generated excess material. This includes waste material from DoD industrial-type activities which is subject to the hazardous waste management regulations of the Resource Conservation and Recovery Act (RCRA). In order to accomplish its mission in a safe and efficient manner, DLA requested comments in February 1983 on a proposal to modify facilities at St. Juliens Creek Annex, Portsmouth, VA, for the receipt and temporary storage of regulated hazardous material and waste. An environmental assessment (EA) of this proposal was published in May 1983. In January 1984, an addendum to the environmental assessment was issued to address specific issues raised by local representatives. Subsequent meetings were held with community representatives, including a public meeting on 9 January 1985 with Federal, State and local representatives, regulatory authorities, community groups and concerned citizens. Comments were received regarding the degree of local involvement in the decision-making process, the methodology used by the Defense Logistics Agency for comparing alternatives, safety precautions and other issues. As a result, the Defense Logistics Agency decided not to proceed with the project until completion of an Environmental Impact Statement. As a first step in this process, scoping meetings will be held on 2 October 1985, 7:30-10:30 pm, at York High School, 2890 George Washington Highway, Yorktown, VA 23692 and on 3 October 1985, from 7:30-10:30 pm, at Churchland High School, 5601 High St. W., Portsmouth, VA 23703. The purpose of these meetings is to determine the scope of issues to be addressed and to identify significant issues. DLA is particularly interested in public comments concerning alternative sites to be considered in the Environmental Impact Statement and methods for comparing sites. All interested parties are encouraged to attend one of the scoping meetings. Written comments may also be submitted to the address above by 9 October 1985. A draft Environmental Impact Statement will be available for public comment approximately 15 weeks after completion of the scoping process. Interested parties wishing copies of the draft Environmental Impact Statement may submit their name and address to the person indicated above or may leave their name and address at one of the scoping meetings.

Dated: September 6, 1985.

Maxim I. Kovel,

Colonel, USA, Staff Director, Installation Services and Environmental Protection.

[FR Doc. 85-22072 Filed 9-13-85; 8:45 am]

BILLING CODE 3820-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee's Panel on Naval Special Warfare will meet on October 2, 1985, at the Naval Research Laboratory, Washington, D.C., Building 43. The meeting will commence at 8:30 a.m. and terminate at 4:30 p.m. on October 2, 1985. The entire meeting will be closed to the public.

The purpose of the meeting is to discuss, review and finalize the draft report dealing with the technological capability of Naval Special Warfare forces to respond to warfare situations that require mobile, self-contained forces of an unconventional nature. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting.

Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000, Telephone number (202) 696-4870.

Dated: September 11, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-22103 Filed 9-13-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

National Institute of Handicapped Research; Proposed Funding Priorities for Research and Training Centers for Fiscal Year 1986

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Secretary of Education proposes funding priorities for research activities to be supported by the National Institute of Handicapped Research (NIHR) through the Research and Training Centers program in Fiscal Year 1986. NIHR is required under the Rehabilitation Act of 1973 as amended, to develop a long-range research plan which identifies rehabilitation research that needs to be conducted and to determine funding priorities which will facilitate the support of these activities within available resources. These proposed priorities are derived from the NIHR Long-Range Plan and are articulated within the goals, objectives, and research activities specified in the Plan. These proposed priorities are for the Research and Training Center (RTC) program only; priorities which NIHR expects to support under other programs will be proposed in a separate announcement.

Authority for the Research and Training Center program of NIHR is contained in section 204(b)(1) of the Rehabilitation Act of 1973, as amended by Pub. L. 95–602 and by Pub. L. 98–122.

DATE: Interested persons are invited to submit comments or suggestions regarding the proposed priorities on or before October 16, 1985.

ADDRESS: All written comments and suggestions should be sent to Betty Jo Berland, National Institute of Handicapped Research, Department of Education, 400 Maryland Avenue, SW., Room 3070, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute of Handicapped Research. Telephone (202) 732–1139; deaf and hearing impaired individuals may call (202) 732–1198 for TTY services.

SUPPLEMENTARY INFORMATION: Under this program, awards are issued to public and private agencies and organizations, including institutions of higher education. NIHR is permitted to make awards for periods up to 60 months.

The purpose of the awards is to support the establishment and operation of Rehabilitation Research and Training Centers to conduct coordinated and advanced programs of rehabilitation research and to provide training to rehabilitation personnel engaged in research or the provision of services.

NIHR final regulations (46 FR 45300, September 10, 1981, as amended March 12, 1984 at 49 FR 9324 and April 26, 1985 at 50 FR 16672) authorize the Secretary to establish research priorities by reserving funds to support particular research activities (see 34 CFR 352.32).

NIHR invites public comment on the merits of the proposed priorities both individually and collectively, including suggested modifications to the proposed priorities. Comments can include factors which support the importance of a priority to handicapped individuals and other interested parties.

This notice does not solicit application proposals or concept papers. The final priorities will be selected on the basis of public comment, the availability of funds, and any other relevant Departmental considerations. These final priorities will be announced in the **Federal Register.** An Application Notice for the transmittal of applications for Research and Training Centers (RTC's) is also published in this issue of the **Federal Register**, requesting that applicants submit applications based on the proposed priorities, on the assumption that the changes in the final priorities will be minor. If there are important changes in the final priorities, applicants will be notified and given an opportunity to amend their applications.

The three proposed priorities contained in this notice represent areas in which NIHR proposes to support Research and Training Centers through grants or cooperative agreements. Research and other activities which NIHR intends to procure through contracts will be announced by Requests for Proposals published in the *Commerce Business Daily*; other research priorities which NIHR intends to support under other grant program mechanisms will be announced in a separate issue of the **Federal Register.**

The publication of these proposed priorities does not bind the United States Department of Education to fund projects in any or all of these research areas. Funding or particular projects depends on both the availability of funds and on responses to this notice.

NIHR is authorized to support research and related activities in a variety of areas and through several program authorities. The priorities proposed in this notice cover research and related activities to be conducted through Rehabilitation Research and Training Centers. Following is a brief description of this program.

Research and Training Centers (RTCs) have been established to conduct coordinated and advanced programs of rehabilitation research and to provide training to rehabilitation personnel engaged in research or the provision of services. RTC's must be operated in collaboration with institutions of higher education and must be associated with a rehabilitation service program. Ideally, each Center conducts a program of research, evaluation, and training activities focused on a particular rehabilitation problem area. Each Center is encouraged to develop practical applications for all of its research findings through a scientific evaluation process which tests and validates its findings, as well as related findings of other Centers. Center training programs generally disseminate and encourage the utilization of new rehabilitation knowledge through such means as undergraduate and graduate texts and curricula, in-service training, and continuing education. Each RTC will conduct a program of rehabilitation research training which will contribute to the number of qualified researchers working in the area of rehabilitation research and will also conduct state-of-the-art studies in relevant aspects of their priority areas.

Priorities for Research and Training Centers (3)

Cardiovascular Rehabilitation

Currently, 4 million persons in the United States have some manifestation of coronary heart disease. Of these, approximately 600,000 will survive a myocardial infarction; while some of these survivors will return to their customary activities after convalescence, others will experience complications which will interfere with their rehabilitation. Prior evidence indicates that approximately one-third of the survivors will continue to experience cardiac symptoms in performing their daily activities, and may experience psychologial difficulties which further impede their return to full functioning.

Research on cardiac improvement is needed to identify physical and psychological factors associated with reinfarction and rehabilitation, to refine quantitative methods for assessing cardiac performance, to develop and quantify norms for the demands made upon cardiac capacity by certain kinds of physical activity and psychological stress, and to study differences among various subgroups of survivors of myocardial infarction.

An RTC is proposed which would:

—Evaluate the benefits and hazards of various prescribed exercise testing programs on survivors of myocardial infarction, including the changes that may be necessary to strengthen the protocols developed for exercise testing;

—Determine the factors in heart lesions that lead some patients to limit their exercise or fail to achieve normal exercise performance for their age following definitive coronary artery or valve repair;

—Determine the predictors that reflect progression of the athero-sclerotic process or additional impairment;

—Identify patient personality characteristics that enhance rehabilitation and those that retard it;

—Develop effective interventions to prevent and treat complications of cardiovascular disease and infarction;

—Identify and disseminate strategies which lead to more rapid return to normal daily activities and return to full employment following myocardial infarction; and

—Identify any technological devices which aid the rapid return to full employment after myocardial infarction.

Rehabilitation of Blind and Severely Visually Impaired Individuals

The blind and visually impaired population, particularly that of working age individuals, represents one of the biggest challenges to public and private rehabilitation agencies in the United States today. About two-thirds of this population is not working, and underemployment has been documented to be a significant problem for this group.

Approximately 400,000 persons report a work disability due to visual problems. This population is projected to increase by 8 percent between 1980 and 1990 with the largest increase in the 20 to 44 year old category. Some additional data reported by NIHR-supported researchers indicate that many blind and visually impaired individuals served by private and public rehabilitation agencies have additional disabilities with resulting functional limitations that increase the challenge to the rehabilitation service delivery system. The problem is further complicated by the lower levels of education of visually impaired persons as compared to other working-age Americans. Sixty percent of blind and severely visually impaired persons of working age have not graduated from high school. The intrinsic attributes of blindness and visual impairments such as reduced visual acuity are made more complex by the extrinisic attributes of blindness such as negative stereotyping and the failure of society to acknowledge the potential productivity of blind and visually impaired people. An RTC is needed to address the rehabilitation needs of blind and visually impaired youth in transition to the workplace and blind and visually impaired adults of working age, including those of older working age.

An RTC is proposed which would:

—Identify and classify the career transition problems of blind and visually impaired youth and adults in order to develop strategies which may be used by consumers and professionals to reduce the unemployment and underemployment problems of blind and visually impaired persons;

—Identify management practices and other job tasks performed by blind persons in the operation of business enterprises established under the authority of the Randolph-Sheppard program and identify, introduce, and evaluate state-of-the-art technology which could be used to facilitate the increased productivity of the Business Enterprise Program;

—Develop long-term and short-term multidisciplinary training programs for rehabilitation and eye care professionals, educators, especially vocational educators, employers, and blind and visually impaired consumers concerned with rehabilitative and educational services;

—Develop curricula for graduate level courses in rehabilitation counseling of blind persons as well as short and long-term inservice training, continuing education, and other training mechanisms for professionals working with blind persons;

—Develop work assessment devices and techniques and study existing techniques to assist blind and visually impaired consumers and professionals to identify appropriate career objectives, training and employment opportunities;

—Develop a low vision database relating demographic characteristics, diagnoses, aids prescribed, treatment intervention, client employment history, and visual characteristics of the job environment to rehabilitation outcome;

—Identify the costs in time and money associated with blindness and visual impairment and the relationship of the costs to other factors, e.g., unemployment rate, in the United States as they affect the rehabilitation process;

—Study the Business Enterprise Program of the State licensing agencies in the areas of investment patterns, site selection, and facility design and develop training materials for inservice and short-term training programs based on best practices and innovative techniques;

—Provide technical assistance to state and private rehabilitation agencies and service providers through the assessment of factors in the rehabilitation process which lead to the competitive employment of blind and visually impaired individuals, especially those who are multiply handicapped;

—Investigate strategies and techniques for assessing the visual functioning of the low vision individual in the workplace and develop procedures to assist rehabilitation practitioners and consumers to use these strategies and techniques in the job modification and accommodation process;

—Investigate areas of current concern to those involved in the rehabilitation of deaf-blind persons and provide state-of-the-art training opportunities for those service providers who are involved in the career development and job placement of deaf-blind persons; and

—Identify the roles and functions of rehabilitation teachers, orientation and mobility instructors, and rehabilitation counselors for the blind in public and private rehabilitation agencies to be used as a base for developing curricula for long-term and short-term training programs.

Rehabilitation of Deaf and Hearing-Impaired Individuals

The estimated 14.2 million individuals with hearing impairment comprise the largest single disability group in the United States. A Research and Training Center on Deafness and Hearing Impairment is needed to address problems of the vocational, personal, social, and community adjustment problems resulting from severe hearing impairment and to disseminate and promote the utilization of research findings and knowledge through training and materials development.

An RTC is proposed to:

—Assess the factors which promote successful transition of deaf and severely hard-of-hearing individuals from educational and training settings to the work world, and devise and test rehabilitation interventions to facilitate this transition;

—Develop and test models for developing long-term supportive linkages between Vocational Rehabilitation agencies and employers to enhence the probability of successful work adjustment and career development for deaf and severely hard-of-hearing individuals;

—Assess the rehabilitation needs of, and identify effective rehabilitation interventions to address, the chronically unemployed, underemployed, and displaced deaf or severely hard-of-hearing worker;

—Devise strategies to assist families and rehabilitation personnel to work cooperatively and effectively in providing independent living or rehabilitation service that make optimal use of the client's personal resources (community, peers, interests, and abilities);

—Develop and test models to assess and address the needs of deaf and severely hard-of-hearing individuals to acquire the social and community living skills necessary for successful psychosocial functioning in the workplace and the community.

—Identify and evaluate innovative and effective practices in independent living services for severely disabled deaf and deaf-blind individuals in the United States and increase the use of these practicies in other communities

through training dissemination, and technical assistance networks;

—Develop and test computer—assisted occupational information and exploration system in the career guidance and counseling of deaf and severely hard-of-hearing rehabilitation clients;

—Develop and test the use of a computerized statewide job bank which deaf applicants can access to obtain listing of employers who hire and/or are receptive to employing qualified deaf workers;

—Develop, validate, and calculate norms for a manual communication test battery which can be used in the rehabilitation assessment of the receptive and expressive sign language skills of deaf individuals;

—Provide technical assistance to State rehabilitation agencies and other service providers in the development and implementation of rehabilitation services for deaf severely hard-of-hearing individuals; and

—Develop training programs for rehabilitation personnel in the core areas of: (1) Rehabilitation evaluation, (2) rehabilitation guidence, counseling, and placement, and (3) personal and social adjustment strategies and interventions.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these priorities. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before October 16, 1985 will be considered before the Secretary issues final priorities. All comments submitted in response to these proposed priorities will be available for public insection during and after the comment period in Room 3070, Mary E. Switzer Building, 330 C Street, SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 761a, 762)

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Dated: September 11, 1985

William J. Bennett,

Secretary of Education.

[FR Doc. 85–22126 Filed 9–13–85; 8:45 am]

BILLING CODE 4000–01–M

Office of Special Education and Rehabilitative Services

National Institute of Handicapped Research; Notice for Transmittal of Applications for Research and Training Centers for Fiscal Year 1986

AGENCY: Department of Education.

ACTION: Notice.

Applications are invited for new Rehabilitation Research and Training Centers in selected priority areas for Fiscal Year 1986 under the National Institute of Handicapped Research.

Authority for this program is contained in section 204(b)(1) of the Rehabilitation Act of 1973, as amended by Pub. L. 95–602 and Pub. L. 98–221 (29 U.S.C. 762(b)(1).

Closing Date for Transmittal of Applications: Applications for new awards must be mailed or hand delivered on or before November 22, 1985.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.133B, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building #3, 7th and D Streets, SW., Washington D.C. 20202.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand delivered will not be accepted after 4:30 p.m. on the closing date.

Available Fund: NIHR expects to make up to $1,150,000 available to award grants or cooperative agreements under this program. However, these estimates do not bind the U.S. Department of Education to any specific number of awards or to the amount of any guard unless that amount is otherwise specified by statute or regulations.

Program Information: The National Institute of Handicapped Research (NIHR) is authorized to support research and related activities under several program authorities, including a program of Rehabilitation Research and Training Centers (RTC's). NIHR has proposed three priorities in which it expects to fund Research and Training Centers in Fiscal Year 1986; these proposed priorities are published in a separate notice in this issue of the **Federal Register.** A description of the Research and Training Center program is also included in that notice.

NIHR is permitted to make awards for up to 60 months. It is the intention of NIHR to provide financial assistance to successful applicants through grants or cooperative agreements. If at the time of the award, NIHR determines that substantial Federal programmatic involvement is warranted, it will negotiate cooperative agreements with the successful applicants.

NIHR expects to fund one new RTC in each of the following proposed priority areas:

- Rehabilitation of Deaf and Hearing Impaired Individuals—in an amount up to $400,000 per year for up to 60 months.
- Rehabilitation of Blind and Visually Impaired Individuals—in an amount up to $400,000 per year for up to 60 months.
- Rehabilitation of Cardiovascular Impairment—in an amount up to $350,000 per year for up to 60 months.

Prospective applicants should consult the detailed description of each of these priorities published elsewhere in this issue of the **Federal Register** and should submit their applications based on the assumpton that these will become the final priorities.

Application Forms: Application forms and further information may be obtained by writing to or calling the National Institute of Handicapped Research, U.S. Department of Education, Mailstop 3070–2305, Switzer Office Building, 400 Maryland Avenue, SW., Washington, D.C. 20202 (Attention: Peer Review Unit), Telephone (202) 732–1607. Deaf

and hearing impaired individuals may call (202) 732-1198 for TTY services. Requests should refer to applications for Research and Training Centers, 84.133B.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those imposed under the statute and regulations. Applicants should note the page limitations for this program in the application kit. Federal rules prescribe that NIHR may require the applicant to submit only the original application and two copies. However, to facilitate the peer review process and also to assure that any special features of the application can be reproduced, NIHR would find it helpful if an applicant would submit five copies along with the original. Submission of extra copies is optional and will not affect the review of the application.

(Approved by the Office of Management and Budget under Control Number 1820-0027.)

Applicable Regulations: Regulations governing this program include the following:

(a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

(b) Regulations governing the National Institute of Handicapped Research (34 CFR Part 350 and 352).

A Notice of Proposed Annual Funding Priorities for this program is published in this issue of the **Federal Register.** Prospective applicants are advised that the proposed annual funding priorities are subject to modification in response to public comment, or on the basis of other Department of Education considerations. In the event any substantive changes are made in the final priorities or other requirements for new awards, applicants will be given the opportunity to amend or resubmit their applications.

For Further Information Contact: National Institute of Handicapped Research, U.S. Department of Education, Switzer Office Building, Room 3070, 330 C Street, SW., Washington, D.C. 20202. Telephone (202) 732-1607; deaf and hearing impaired individuals may call (202) 732-1198 for TTY services.

(29 U.S.C. 762)

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Dated: September 11, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-22142 Filed 9-13-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

National Petroleum Council; U.S. Petroleum Refining Coordinating Subcommittee on U.S. Petroleum Refining; Date Change of Meeting

The date and location of the September 12, 1985, seventh meeting of the Coordinating Subcommittee on U.S. Petroleum Refining has been changed (reference Date Change for Meeting, 50 FR 33995, Thursday, August 22, 1985, FR DOC 85-20147 filed 8/21/85). The new date and location should read: Wednesday, September 18, 1985, starting at 9:00 a.m., in the Arboretum Room of the Hyatt Regency Houston Hotel, 1200 Louisiana Street, Houston, Texas. Notice of this meeting first appeared in 50 FR 27652, Friday, July 5, 1985 (FR Doc 85-16092 filed 7/3/85).

Issued at Washington, D.C., September 6, 1985.

Donald L. Bauer,

Acting Assistant Secretary for Fossile Energy.

[FR Doc. 85-22131 Filed 9-13-85; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the following collections to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The form number; (2) Form title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the form; and (9) A brief abstract describing the proposed collection.

DATE: Last Notice published Monday, August 19, 1985 (50 FR 33404).

FOR FURTHER INFORMATION CONTACT:

John Gross, Director, Data Collection Services Division (DCSD), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 252-2308

Vartkes Broussalian, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7313

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer for the appropriate agency as shown above.

If you anticipate commenting on a form, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C., September 10, 1985.

Yvonne M. Bishop,

Director, Statistical Standards Energy Information Administration.

DOE FORMS UNDER REVIEW BY OMB

Form No	Form title	Type of request	Response frequency	Response obligation	Respondent description	Estimated number of respondents	Annual respondent burden	Abstract
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
EIA-28	Financial Reporting System.	Ext.	Annually	Mandatory	Oil and Gas Producers.	22	33,066	EIA-28 collects financial, production and reserves data. The data, required pursuant to Pub. L. 95-91, are used to evaluate the competitive environment for energy products supply/development, and to analyze energy resource development/supply/distribution arrangements. EIA publishes the data. Respondents are 22 major oil and gas producers
EIA-182	Domestic Crude Oil First Purchase Report	Ext.	Monthly	Mandatory	Crude Oil Purchasers.	225	10,800	Data are used as inputs to the *Petroleum Marketing Monthly*, the *Monthly Energy Review* and the *Annual Energy Outlook*. EIA-182 provides information on crude oil prices and the market shares of crude oil production in the U.S. Respondents are crude oil first purchasers.

[FR Doc. 85-22130 Filed 9-13-85; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER85-728-000 et al.]

Electric Rate and Corporate Regulation Filings; Arizona Public Service Co. et al.

September 10, 1985.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER85-728-000

Take notice that on August 30, 1985, Arizona Public Service Company ("APS") tendered for filing a proposed new rate schedule under section 205 of the Federal Power Act for service to the Papago Tribal Utility Authority ("PTUA") in excess of 6 MW's.

APS now serves electric power to PTUA pursuant to a Wholesale Power Agreement (Agreement), Rate Schedule FPC No. 52. The maximum Demand under this Agreement is scheduled to decrease to 6 MW's effective October 12, 1985, and this filing is intended to establish a rate for power taken in excess of 6 MW's in the event of load overruns.

APS requests waiver of the notice requirements of the Commission's Rules and Regulations, 18 CFR 35.3 and 35.11, in order for the rate schedule to become effective as of October 12, 1985, simultaneous with the effective date of the reduction in PTUA's Maximum Demand under its existing rate schedule.

Copies of the filing were served upon PTUA and the Arizona Corporation Commission.

Comment date: September 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Central Vermont Public Service Corporation

[Docket No. ER85-729-000]

Take notice that Central Vermont Public Service Corporation (Central Vermont) on August 30, 1985, tendered for filing proposed changes in its Electric Service Rate Schedule FERC No. 88. The proposed changes would increase revenues from jurisdictional sales and service by $158,976 for the twelve month period ending October 31, 1985.

Central Vermont states that the change is proposed in accordance with Article V of Central Vermont's Power Purchase Contract with Vermont Electric Generation and Transmission Cooperative, Inc. which provides that charges will be updated annually to incorporate Central Vermont's purchased power cost experience for the preceding twelve months ending October and Central Vermont's capacity cost associated with company-owned generating facilities for the preceding calendar year. Central Vermont proposes an effective date of November 1, 1985.

Copies of this filing were served upon the Vermont Electric Generation and Transmission Cooperative, Inc. and the Vermont Public Service Board.

Comment date: September 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Central Vermont Public Service

[Docket No. ER85-730-000]

Take notice that Central Vermont Public Service Corporation (Central Vermont) on August 30, 1985 tendered for filing proposed changes in its Electric Service Rate Schedule FERC No. 111. The proposed changes would increase revenues from jurisdictional sales and service by $11,625 for the twelve month period ending October 31, 1985.

Central Vermont states that the change is proposed in accordance with Article V of Central Vermont's Power Purchase Contract with Village of Hyde Park Water and Light Department which provides that charges will be updated annually to incorporate Central Vermont's purchased power cost experience for the preceding twelve months ending October and Central Vermont's capacity cost associated with Company-owned generating facilities for the preceding calendar year. Central Vermont proposes an effective date of November 1, 1985.

Copies of this filing were served upon the Village of Hyde Park Water and Light Department and the Vermont Public Service Board.

Comment date: September 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Central Vermont Public Service Corporation

[Docket No. ER85-731-000]

Take notice that Central Vermont Public Service Corporation (Central Vermont) on August 30, 1985 tendered for filing proposed changes in its Electric Service Rate Schedule FERC No. 106. The proposed changes would increase revenues from jurisdictional sales and service by $28,318 for the twelve month period ending October 31, 1985.

Central Vermont states that the change is proposed in accordance with Article V of Central Vermont's Power Purchase Contract with Village of Johnson Water and Light Department

which provides that charges will be updated annually to incorporate Central Vermont's purchased power cost experience for the preceding twelve months ending October and Central Vermont's capacity cost associated with company-owned generating facilities for the preceding calendar year. Central Vermont proposed an effective date of November 1, 1985.

Copies of this filing were served upon the Village of Johnson Water and Light Department and the Vermont Public Service Board.

Comment date: September 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. The Cleveland Electric Illuminating Company

[Docket No. ER85-745-000]

Take notice that on September 4, 1985, The Cleveland Electric Illuminating Company (CEI) tendered for filing executed Service Agreements and Exhibits A and B thereto, providing for transmission by CEI of approximately 22 MW of power from the 345 kv interconnection point on CEI's Ashtabula/Erie-West Line with Pennsylvania Electric Company to the City of Cleveland, Ohio (City) in accordance with the terms and conditions of CEI's FERC Transmission Service Tariff.

CEI has requested waiver of the FERC's 60-day notice requirement in order to permit commencement of transmission service on August 1, 1985, and September 1, respectively.

Comment date: September 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power Corporation

[Docket No. ER85-727-000]

Take notice that on August 30, 1985, Florida Power Corporation (Florida Power) tendered for filing Service Schedule F providing for assured capacity and energy interchange service between Florida Power and the Orlando Utilities Commission. Florida Power states that service Schedule F is submitted for inclusion as a supplement to the existing contract for interchange service between Florida Power and the Orlando Utilities Commission designated as Florida Power's Rate Schedule FERC No. 86.

Florida Power requests that Service Schedule F be permitted to become effective September 1, 1985 and therefore, requests waiver of the sixty day notice requirement. Copies of this filing have been served upon the Orlando Utilities Commission and the Florida Public Service Commission.

Comment date: September 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. The Kansas Power and Light Company

[Docket No. ER85-734-000]

Take notice that on August 30, 1985, The Kansas Power and Light Company (KPL) tendered for filing a newly executed renewal contract dated August 1, 1985, with the City of Enterprise, Kansas for wholesale service to that community. KPL states that this contract permits the City of Enterprise to receive service under rate schedule WSM-12/83 designated Supplement No. 9 at R. S. FERC No. 175. The proposed effective date is September 25, 1985. The proposed contract change provides essentially for the ten year extension of the original terms of the presently approved contract. In addition, KPL states that copies of the contract have been mailed to the City of Enterprise and the State Corporation Commission.

Comment date: September 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Company Company

[Docket No. ER85-724-000]

Take notice that New England Power Company (NEP) on August 30, 1985 tendered for filing a proposed amendments to its FERC Rate Schedule No. 309 as presently on file and effective with this Commission.

The proposed amendment would increase the effective rates for full cost capacity charges to Public Service Company of New Hampshire for unit power entitlements during the period November 1, 1985 through October 31, 1986, and would result in an increase in the fixed charges of $1,020, 332, per year.

The proposed effective date is November 1, 1985.

Comment date: September 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. New England Power Company

[Docket No. ER85-726-000]

Take notice that New England Power Company (NEP) on August 30, 1985 tendered for filing as initial rate schedules agreements for unit power sales by NEP to 1 (Vermont Marble Company and 2) Newport Electric Corporation.

The agreements are priced on a full cost of service basis and provide for sale of 25 megawatt-years of power for the period November 1, 1985 through October 31, 1990 to Vermont Marble Company and 150 megawatt-years of power from November 1, 1985 through October 31, 1995 to Newport Electric Corporation.

The proposed effective date is November 1, 1985.

Comment date: September 23, 1985 in accordance with Standard Paragraph E at the end of this notice.

10. Portland General Electric Company

[Docket No. ER85-744-000]

Take notice that Portland General Electric Company (PGE) on September 4, 1985 tendered for filing a Sales Agreement with the State of California. Department of Water Resources which provides for the sale of 100 MW of firm energy surplus to PGE for a time period of 4 months. The contract rate for energy to be sold is based upon its incremental cost of production plus an additional amount for fixed charges (not exceeding fully distributed fixed charges) plus the costs of transmission.

PGE states the reason for the proposed Sales Agreement is to allow it to recover a portion of its fixed charges applicable to certain of its thermal generating resources during a short period of time when such thermal resources are not required for its system loads.

PGE requests an effective date of June 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served upon the State of California, Department of Water Resources, and the Oregon Public Utility Commissioner.

Comment date: September 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

11. South Carolina Electric & Gas Company

[Docket No. ER85-722-000]

Take notice that South Carolina Electric and Gas Company on August 30, 1985, tendered for filing a proposed change in its August 13 service agreement with Town of Winnsboro, South Carolina.

Under the proposed change, South Carolina Electric and Gas Company proposes to replace the current Exhibit A dated January 25, 1974, with the revised Exhibit A. This has been done to increase the available capacity necessary to meet the customer's expanding requirements.

Copies of this filing were served upon Town of Winnsboro, South Carolina.

Comment date: September 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

12. Portland General Electric

[Docket No. ER85-682-000]

Take notice that on August 8, 1985, Portland General Electric Company (PGE) tendered for filing a Summary of Sales made under the Company's first revised Electric Service Tariff, Volume No. 1, during June of 1985, along with a cost justification for the rates charged. This filing also includes new Service Agreements with City of Pasadena, City of Burbank and Sierra Pacific Power Company.

Portland General Electric Company requests an effective date of July 31, 1985, and therefore requests a waiver of the Commission's notice requirements.

Copies of this filing were served upon parties having service agreements with PGE, parties to the Intercompany Pool Agreement (revised), intervenors in Docket No. ER77-131 and the Oregon Public Utility Commissioner.

Comment date: September 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22138 Filed 9-13-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59202A FRL-2898-4]

Certain Chemicals Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-86-62. The test marketing conditions are described below.

EFFECTIVE DATE: September 9, 1985.

FOR FURTHER INFORMATION CONTACT: Jane Talarico, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm E-611E, 401 M St. SW., Washington DC 20460, (202 382-5506).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-85-62. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-85-62. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME. In addition, each Company shall maintain the following records until five years after dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplies in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

4. The applicant must maintain the following information on disposal of the TME substance: dates waste material is provided to state-certified transporters for disposal at a RCRA-approved facility, the identiy of the transporters, volume of any disposed solid material, and estimated volume of any liquid wastes containing the TME substance.

T-85-62

Date of Receipt: August 1, 1985.
Notice of Receipt: August 9, 1985 (50 FR 32302).
Applicant: Confidential.
Chemical: (G) Adduct of an aliphatic amine with an epoxy resin.
Use: Used as an epoxy crosslinking agent for potting, sealing and encapsulation of electrical components.
Prod. Range: Confidential.
Toxicity Data:
Acute Oral: 11.4 g/kg (rat), 15.6 g/kg (mouse), 19.8 g/kg (rabbit);
Acute dermal: >20 mg/kg;
Irritation: Skin—moderate; Eye—moderate; Inhalation—No death in saturated air for 8 hours.
Worker Exposure: Confidential.
Environmental Release/Disposal: No data submitted.
Test Marketing Period; One year.
Commencing on: September 9, 1985.

Risk Assessment: EPA identifed no significant concerns for human health effects. Therefore, the test marketing substance will not pose any unreasonable risk of injury to health. The Agency did identify potential adverse effects on aquatic organisms. However, since wastes from manufacturing, processing and use will be disposed at a RCRA—approved facility pursuant to 40 CFR 122 or 264 the test market substance will not pose any unreasonable environmental risk.

Additional Restrictions: The applicant and its four customers shall dispose of all wastes containing the TME substance by contracting with state-certified transporters for disposal at a RCRA-approved facility pursuant to 40 CFR 122 or 264.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: September 9, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85-22097 Filed 9-13-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-53074; FRL-2897-9]

Premanufacture Notices; Monthly Status Report for May 1985

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) pending before the Agency and the PMNs for which the review period has expired since publication of the last monthly summary. This is the report for May 1985.

DATE: Written comments are due no later than 30 days before the applicable notice review period ends on the specific chemical substance.

Nonconfidential portions of the PMNs may be seen in Rm. E-107 at the address below between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "[OPTS-53074]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613, 401 M Street SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during May; (b) PMNs received previously and still under review at the end of May; (c) PMNs for which the notice review period has ended during MAY; (d) chemical substances for which EPA has received a notice of commencement to manufacture during MAY and (e) PMNs for which the review period has been suspended. Therefore, the MAY 1985 PMN Status Report is being published.

Dated: September 5, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

Premanufacture Notices Monthly Status Report, May 1985

I. 117 PREMANUFACTURE NOTICES RECEIVED DURING THE MONTH:

PMN No	Identity/generic name	FR citation	Expiration date
P 85-887	Indium orthoborate	50 FR 19798 (19800) (5-10-85)	July 28, 1985
P 85-888	Generic name: Modified polyglycol polymer	50 FR 19798 (19800) (5-10-85)	Do
P 85-889	Generic name: Copolymer of acrylic acid esters, vinyl acetate, acrylic acid amide, crotonic acid, and fumaric acid ester	50 FR 19798 (19801) (5-10-85)	Do
P 85-890	Generic name: Polypropylene glycol alkyl ether	50 FR 19798 (19801) (5-10-85)	Do
P 85-891	Generic name: Polypropylene glycol alkyl ether	50 FR 19798 (19801) (5-10-85)	Do
P 85-892	Generic name: Polypropylene glycol alkyl ether	50 FR 19798 (19801) (5-10-85)	Do
P 85-893	Generic name: Polyfluoro substituted alkyl-N-substituted amino alcohol acetate	50 FR 19798 (19801) (5-10-85)	July 30, 1985
P 85-894	Generic name: Epoxidized natural oil	50 FR 19798 (19801) (5-10-85)	Do
P 85-895	Generic name: Alkoxylated polyol, diacid adduct	50 FR 19798 (19801) (5-10-85)	Do
P 85-896	Cuprate(3-),(2-((((3-((4,6-dichloro-1,3,5-triazin-2-yl)amino)-2-hydroxy-5-sulfophenyl)azo)phenylmethyl)azo)-4-sulfobenzoato(5-))-, disodium hydrogen, (SP-4-3)-	50 FR 19798 (19801) (5-10-85)	Do
P 85-897	2 8,10-trioxa-5-azadodecanoic acid, 5-(5-chloro-2-methoxy-4-((5-nitro-2-thiazolyl)azo)phenyl-9-oxo-, ethyl ester	50 FR 19798 (19801) (5-10-85)	July 29, 1985
P 85-898	Phosphanic acid, alkyl esters	50 FR 19798 (19801) (5-10-85)	July 30, 1985
P 85-899	Generic name: Ethoxylated polyester	50 FR 19798 (19801) (5-10-85)	Do
P 85-900	Generic name: Polyamino-polyamide	50 FR 20596 (5-17-85)	July 31, 1985
P 85-901	Generic name: Polyamino-polyamide-epich lorohydrin polymer	50 FR 20596 (20597) (5-17-85)	Do
P 85-902	Generic name: N-substituted lauroylamide	50 FR 20596 (20597) (5-17-85)	Do
P 85-903	Generic name: Tetrasubstituted amine	50 FR 20596 (20597) (5-17-85)	Do
P 85-904	Generic name: Alkoxylated alcohol	50 FR 20596 (20597) (5-17-85)	Do
P 85-905	Sodium aluminum tetrahydride	50 FR 20596 (20597) (5-17-85)	Do
P 85-906	Generic name: Polymer reacted by a poly (aliphatic) isocyanate	50 FR 20596 (20597) (5-17-85)	Do
P 85-907	Generic name: Polymer reacted by a poly (aliphatic) isocyanate	50 FR 20596 (20597) (5-17-85)	Do
P 85-908	Generic name: Short oil alkyd resin	50FR 20596 (20597) (5-17-85)	Do
P 85-909	Generic name: Aliphatic, cycloaliphatic polyester	50FR 20596 (20597) (5-17-85)	Do
P 85-910	Generic name: Aliphatic, aromatic copolyester	50FR 20596 (20597) (5-17-85)	Do
P 85-911	Trifluoromethanesulfonic acid 2-propynyl ester	50FR 20596 (20597) (5-17-85)	Aug. 3, 1985
P 85-912	Generic name: Substituted alkanol adduct of a long chain diisocyanate	50FR 20596 (20597) (5-17-85)	Do
P 85-913	Generic name: Polyol sulfate	50FR 20596 (20597) (5-17-85)	Do
P 85-914	Generic name: Trisubstituted triazole	50FR 20596 (20597) (5-17-85)	Do
P 85-915	2,4,6-tri-(2-pyridyl)-1,3,5-triazine 1:1 salt with para-toluenesulfonic acid	50FR 20596 (20597) (5-17-85)	Do
P 85-916	Generic name: 1,2-diaminocyclohexane, epoxy resin reaction product	50FR 20596 (20597) (5-17-85)	Do
P 85-917	Generic name: Copolymer of terephthalic, isophthalic, adipic, trimellitic acid and ethylene glycol	50FR 20596 (20597) (5-17-85)	Do
P 85-918	Generic name: Methylene diisocyanatobenzene adduct with a polyether glycol and a propenoate ester	50FR 20596 (20597) (5-17-85)	Aug. 4, 1985
P 85-919	Generic name: Modified aromatic isocyanate	50FR 20596 (20597) (5-17-85)	Do
P 85-920	Generic name: Ethoxylated amidoamine of rosin	50FR 20596 (20597) (5-17-85)	Do
P 85-921	Reaction product of thiodipropionic acid and para-aminodiphenylamine	50FR 20596 (20597) (5-17-85)	Do
P 85-922	Benzenesulfonic acid, 2-amino-4-acetyl-amino-5-(4-((2-(sulfooxyl)ethyl)sulfonyl)phenyl)azo-, sodium salt	50FR 20596 (20597) (5-17-85)	Do
P 85-923	Generic name: Fatty acid modified silicone polyester	50FR 20596 (20597) (5-17-85)	Do
P 85-924	Polymer of 2,2-dimethyl-3-hydroxypropyl-2, 2-dimethyl-3-hydroxypropionate; trimethylol propane; 2,4-toluene diisocyanate, adipic acid; E-caprolactone.	50FR 20596 (20597) (5-17-85)	Do
P 85-925	Polymer of: 2-ethanol, 1,1'=thiobis; ethanol, 2-mercapto, reaction product with propylene oxide; 3-thiahept-5-ene-1-ol, ethanol, 2-mercapto, reaction product with propylene oxide; 3-thiahept-5-ene-1-ol, ethanol, 2-mercapto, reaction product with oxirane, [2-propenyl (oxy)methyl], 4, 4'-thiodiphenol, ethanethiol, 2, 2'=[1,2-ethanediyl bis(oxy)]bis	50FR 20596 (20597) (5-17-85)	Do
P 85-926	Generic name: Ethoxylated amidoamine of rosin	50FR 20596 (20597) (5-17-85)	Do
P 85-927	Generic name: Modified essential oil	50FR 20596 (20599) (5-17-85)	Do
P 85-928	Polymer of: pentaerythritol; benzoic acid; tall oil fatty acid; neopentyl glycol; isophthalic acid, phthalic anhydride, styrene; and acrylic acid	50FR 20596 (20599) (5-17-85)	Do
P 85-929	Generic name: Alkylated aromatic diamine	50FR 20596 (20599) (5-17-85)	Do
P 85-930	1,2-benzenedicarboxylic acid-4-((3-amino-phenyl)hydroxymethyl)methyl ester	50FR 20596 (20599) (5-17-85)	Do
P 85-931	Generic name: Disubstitutedalkyltriazine salt	50 FR 20596 (20599) (5-17-85)	Aug. 6, 1985
P 85-932	Generic name: Disubstitutedalkyltriazine	50 FR 20596 (20599) (5-17-85)	Do
P 85-933	Generic name: Disubstitutedalkyltriazine	50 FR 20596 (20599) (5-17-85)	Do

I. 117 PREMANUFACTURE NOTICES RECEIVED DURING THE MONTH—Continued

PMN No.	Identity/generic name	FR citation	Expiration date
P 85-934	Generic name: Acrylated alkyd	50 FR 20596 (20599) (5-17-85)	Do.
P 85-935	Generic name: Isophorone diisocyanate adduct of a polyether glycol, an alkanediol, and a substituted alkanol.	50 FR 21498 (21499) (5-24-85)	Aug. 7, 1985.
P 85-936	Benzamide, N,N'-(14-chloro-5,6,7,12,13,17,22,23,25,26-decahydro-5,7,12,17,22,25,26-heptaoxonaphthol(2,3-C)Bisnaphth(2',3:6,7)indolo(3,2-a:3',2'-i)acridine-1,18-diyl)bis-.	50 FR 21498 (21499) (5-24-85)	Do
P 85-937	Generic name: Alkyl diamine	50 FR 21498 (21499) (5-24-85)	Do
P 85-938	Generic name: Substituted ethenes, aliphatic acid, substituted aliphatic acid	50 FR 21498 (21499) (5-24-85)	Do
P 85-939	Generic name: Polymer of a natural product oil and alkylene oxide	50 FR 21498 (21499) (5-24-85)	Do.
P 85-940	Generic name: Saturated/unsaturated branched chain secondary alcohol/ketone mixture having 12 carbon atoms.	50 FR 21498 (21499) (5-24-85)	Do
P 85-941	Generic name: Substituted alkylamine salt	50 FR 21498 (21499) (5-24-85)	Aug. 10, 1985
P 85-942	Generic name: Substituted alkyl propanamide	50 FR 21498 (21499) (5-24-85)	Do
P 85-943	Generic name: Substituted alkyl acetamide	50 FR 21498 (21499) (5-24-85)	Do.
P 85-944	Generic name: Phenol formaldehyde resin	50 FR 21498 (21499) (5-24-85)	Do
P 85-945	Generic name: Acrylic ester terpolymer	50 FR 21498 (21499) (5-24-85)	Do
P 85-946	Generic name: Halogenated alkyl aromatic	50 FR 21498 (21500) (5-24-85)	Do
P 85-947	Generic name: Halogenated alkyl aromatic compound	50 FR 21498 (21500) (5-24-85)	Do.
P 85-948	Generic name: Substituted nitro aromatic compound	50 FR 21498 (21500) (5-24-85)	Do.
P 85-949	Generic name: Organosilane polymer	50 FR 21498 (21500) (5-24-85)	Aug. 11, 1985
P 85-950	Generic name: Aralkylene ether epoxide	50 FR 21498 (21500) (5-24-85)	Do
P 85-951	Generic name: Oligomeric aralkylene ether diol	50 FR 21498 (21500) (5-24-85)	Do.
P 85-952	Generic name: Polyether polyurethane polymer	50 FR 21498 (21500) (5-24-85)	Do.
P 85-953	Generic name: Polyacrylate/vinyl chloride graft polymer	50 FR 21498 (21500) (5-24-85)	Do.
P 85-954	Generic name: Polydimethylsiloxy, methyl alkene siloxane copolymer	50 FR 21498 (21500) (5-24-85)	Do.
P 85-955	Generic name: Copolymer of acrylonitrile, acrylic acid and aliphatic amine, salt	50 FR 21498 (21500) (5-24-85)	Do.
P 85-956	Generic name: Substituted cyclohexenyl epoxy alkanone	50 FR 21498 (21500) (5-24-85)	Do
P 85-957	Generic name: Alkyl alkylpolyoxyethyl ether	50 FR 21498 (21500) (5-24-85)	Do.
P 85-958	Generic name: Imidazoline	50 FR 21498 (21500) (5-24-85)	Do
P 85-959	Generic name: Barium fluorobromide	50 FR 21498 (21500) (5-24-85)	Do.
P 85-960	Generic name: Substituted triazole	50 FR 21498 (21501) (5-24-85)	Do
P 85-961	Generic name: Amine polyglycol	50 FR 21498 (21501) (5-24-85)	Aug. 12, 1985
P 85-962	Generic name: Amine polyglycol	50 FR 21498 (21501) (5-24-85)	Do.
P 85-963	Generic name: Alkenylether-substituted polyester	50 FR 21498 (21501) (5-24-85)	Do.
P 85-964	Generic name: Phenolic condensation product of xylene-formaldehyde resin	50 FR 21498 (21501) (5-24-85)	Do.
P 85-965	Generic name: Phenolic condensation product of xylene-formaldehyde resin	50 FR 21498 (21501) (5-24-85)	Do.
P 85-966	3,9-diethyl tridecan-6-one	50 FR 21498 (21501) (5-24-85)	Do
P 85-967	3,9-diethyl 7-tridecene-6-one	50 FR 21498 (21501) (5-24-85)	Do
P 85-968	5-ethyl heptan-2-one	50 FR 21498 (21501) (5-24-85)	Do
P 85-969	5-ethyl 3-hepten-2-one	50 FR 21498 (21501) (5-24-85)	Do
P 85-970	Humic acids, ammonium salts	50 FR 21498 (21501) (5-24-85)	Do
P 85-971	Generic name: Tetrafunctional mercapto ester reaction product with propylene dicarboxylic acid	50 FR 21498 (21501) (5-24-85)	Do
P 85-972	Generic name: Acrylate capped polyether ester of benzophenone tetracarboxylic dianhydride	50 FR 21498 (21501) (5-24-85)	Do
P 85-973	Generic name: Triglycidyl ether of a substituted tri(hydroxyphenyl)methane	50 FR 21498 (21502) (5-24-85)	Do.
P 85-974	Generic name: Modified trisphenol novolac	50 FR 21498 (21502) (5-24-85)	Do
P 85-975	Generic name: Substituted alkenol	50 FR 21498 (21502) (5-24-85)	Do
P 85-976	Generic name: Reaction product of an organic polymer, silane, organosilanes and a functional organosilane.	50 FR 21498 (21502) (5-24-85)	Do
P 85-977	Generic name: Substituted alkyl amine	50 FR 21498 (21502) (5-24-85)	Do
P 85-978	Generic name: Amine polyglycol	50 FR 21498 (21502) (5-24-85)	Do
P 85-979	Generic name: Amine polyglycol	50 FR 21498 (21502) (5-24-85)	Do
P 85-980	Generic name: Copolymer of unsaturated polyester and allyl-compounds	50 FR 21385 (23186) (5-31-85)	Aug. 14, 1985
P 85-981	Generic name: Amide acetal	50 FR 23185 (23186) (5-31-85)	Aug. 17, 1985
P 85-982	Generic name: Poly[alkylene arylene malonimide]	50 FR 23185 (23186) (5-31-85)	Aug. 18, 1985.
P 85-983	Generic name: Alkylene-bis(arylene malonimide)	50 FR 23185 (23186) (5-23-85)	Do
P 85-984	Generic name: Polyether with pendant methacrylate groups	50 FR 23185 (23186) 5-31-85)	Do
P 85-985	Generic name: Reaction product of polyisocyanate, a polyalkylene oxide, a polyol and [illegible]	50 FR 23185 (23186) (5-31-85)	Do
P 85-986	Generic name: Aliphatic isocyanate-crosslinked polyester	50 FR 23185 (23186) (5-31-85)	Do
P 85-987	Generic name: Substituted sulfoaryl aryldioxazine	50 FR 23185 (23186) (5-31-85)	Do.
P 85-988	Generic name: Azosubstituted aminonaphthol salt	50 FR 23185 (23186) (5-31-85)	Do.
P 85-989	Generic name: Azosubstituted aminonaphthol salt	50 FR 23185 (23186) (5-31-85)	Do
P 85-990	Generic name: Polymer of substituted norbornane derivative, a glycol and a terephthalate	50 FR 23185 (23186) (5-31-85)	Do
P 85-991	Generic name: 4,4'-(octahydro-4,7-methano-5H-inden-5-ylidene)bis(2-phenoxy ethanol)	50 FR 23185 (23186) (5-31-85)	Do
P 85-992	Generic name: Urethane acrylate	50 FR 23185 (23186) (5-31-85)	Do.
P 85-993	Generic name: Polyester-polyol-terminated toluene diisocyanate polymer	50 FR 23185 (23187) (5-31-85)	Aug. 19, 1985
P 85-994	Generic name: Benzothiazolesulfonic acid, substituted-((substituted-pynmidinyl)azo) carbomonocycle-, alkali metal salt.	50 FR 23185 (23187) (5-31-85)	Do.
P 85-995	Generic name: Benzothiazolesfulfonic acid, substituted-((substituted-pynmidinyl)azo) carbomonocycle-, substituted amine salt.	50 FR 23185 (23187) (5-31-85)	Do
P 85-996	Generic name: Benzothiazolesulfonic acid, substituted-((substituted-pynmidinyl)azo) carbomonocycle-, alkali metal salt.	50 FR 23185 (23187) (5-31-85)	Do
P 85-997	Generic name: Poly((azo, oxo, partially hydrogenated aryl) sulfenyloxy) substituted aromatic compound.	50 FR 23185 (23187) (5-31-85)	Aug. 20, 1985
P 85-998	Generic name: Mixed esters of butane polyols	50 FR 23185 (23187) (5-31-85)	Do
P 85-999	Generic name: Polyfunctonal methacrylate of polyisocyanate adduct of alkoxylated polyol	50 FR 24936 (23187) (6-14-85)	Aug. 21, 1985
P 85-1000	Generic name: Polyeter from carbomonocyclic anhydride, alkanols and a substituted alkanoic acid.	50 FR 24936 (24937) (6-14-85)	Do
P 85-1001	Generic name: Functionally modified aliphatic polyester	50 FR 24936 (24937) (6-14-85)	Do
P 85-1002	Generic name: Crude alkanol diester of alkandioic acid	50 FR 24936 (24937) (6-14-85)	Aug 25, 1985.
P 85-1003	Humic acids, titanium salts	50 FR 24936 (24937) (6-14-85)	Do.
P 85-1004	Humic acids, zinc salts	50 FR 24936 (24937) (6-14-85)	Do
P 85-1005	Generic name: Polyester resin	50 FR 24936 (24937) (6-14-85)	Do
P 85-1006	Bis(2-amino-2-methylproply) amine	50 FR 24936 (24937) (6-14-85)	Do.
P 85-1007	Generic name: Alkoxylated oxazole	50 FR 24936 (24937) (6-14-85)	Do.
P 85-1008	Propanoic acid, 3(N-2 (C_{6-18} amido) ethyl) oxyethyl amino, sodium salt	50 FR 24936 (24937) (6-14-85)	Do
P 85-1009	Generic name: Polyfunctonal acrylate of alkyl aryl polyether, polyurethane, polyester	50 FR 24936 (24937) (6-14-85)	Aug. 26, 1985
P 85-1010	3-Bromopropanoyl chloride	50 FR 24936 (24937) (6-14-85)	Do
P 85-1011	Generic name: Substituted bromopropanoic acid derivative	50 FR 24936 (24937) (6-14-85)	Do
P 85-1012	1-Hexanamine, 2-ethyl-N,-N-bis(2-ethylhexyl)-	50 FR 24936 (24937) (6-14-85)	Do.
P 85-1013	Generic name: Aliphatic diurethane acrylate ester	50 FR 24936 (24937) (6-14-85)	Do

I. 117 Premanufacture Notices Received During the Month—Continued

PMN No	Identity/generic name	FR citation	Expiration date
P 85-1014	Polymer of Methacrylic acid; succinic anhydride; phenol, 4,4'-(1-methylethylidene)bis-polymer with (chloromethyl); 2-methylimidazole.	50 FR 24936 (24938) (6-14-85)	Sept 16, 1985
P 85-1015	Generic name: Salt of block copolymer of modified polyvinyl chloride, polyvinyl acetate and styrene unsaturated anhydride copolymer.	50 FR 24936 (24938) (6-14-85)	Aug 28, 1985
P 85-1016	Ethanamine, 2,2'-oxybis-bis-(aminoethyl) ether	50 FR 24936 (24938) (6-14-85)	Do
P 85-1017	Generic name: Disubstituted benzenesulfonate salt	50 FR 24936 (24938) (6-14-85)	Do
P 85-1018	3-(4-methylbenzylidine) camphor	50 FR 24936 (24938) (6-14-85)	Do
P 85-1019	Humic acids, iron salts	50 FR 24936 (24938) (6-14-85)	Aug 27, 1985
P 85-1020	Generic name: Polyurethane polymer with pendant acylate esters	50 FR 24936 (24938) (6-14-85)	Do
P 85-1021	Generic name: Polyurethane polymer with pendant acylate esters	50 FR 24936 (24938) (6-14-85)	Do
P 85-1035	Humic acids, zinc salts	50 FR 24938 (24940) (6-14-85)	Aug 25, 1985
P 85-1036	Humic acids, zinc salts	50 FR 24938 (24940) (6-14-85)	Do
P 85-1037	Humic acids, iron salts	50 FR 24938 (24940) (6-14-85)	Do
P 85-1038	Humic acids, iron salts	50 FR 24938 (24940) (6-14-85)	Do
P 85-1039	Humic acids, iron salts	50 FR 24938 (24940) (6-14-85)	Do
P 85-1040	Humic acids, iron salts	50 FR 24938 (24940) (6-14-85)	Do
Y 85-71	Generic name: Polyester	50 FR 21503 (5-24-85)	June 4, 1985
Y 85-72	Generic name: Methacrylic tetrapolymer	50 FR 23187 (5-31-85)	June 18, 1985
Y 85-73	Generic name: Styrene-methacrylate terpolymer	50 FR 23187 (5-31-85)	June 11, 1985
Y 85-74	Polymer of dimethyl glutarate, dimethyl adipate dimethyl azelate, 1,4-butanediol and 2-ethylhexanol	50 FR 23187 (5-31-85)	Do
Y 85-75	Generic name: Acrylic-methacrylic polymer	50 FR 23187 (23188) (5-31-85)	June 12, 1985
Y 85-76	Generic name: Acrylic-methacrylic polymer	50 FR 23187 (23188) (5-31-85)	Do
Y 85-77	Generic name: Acrylic-methacrylic polymer	50 FR 23187 (23188) (5-31-85)	Do
Y 85-78	Generic name: Acrylic-methacrylic polymer	50 FR 23187 (23188) (5-31-85)	Do
Y 85-79	Generic name: Alkyd resin	50 FR 24935 (24936) (June 14, 1985)	June 18, 1985
Y 85-80	Generic name: Polyoxyalkylene modified dimethylsilicone	50 FR 24935 (24936) (June 14, 1985)	Do
Y 85-81	Generic name: Propylene oxide, polymer with alkyl phenol, formaldehyde and alkyl polycarboxylic acid	50 FR 24935 (24936) (June 14, 1985)	June 18, 1985
Y 85-82	Generic name: Ethylene oxide, polymer with propylene oxide, alkyl phenol, formaldehyde and alkyl polycarboxylic acid	50 FR 24935 (24936) (June 14, 1985)	Do
Y 85-83	Generic name: Ethylene oxide, polymer with propylene oxide, mixed alkyl phenols, formaldehyde and alkyl polycarboxylic acid.	50 FR 24935 (24936) (June 14, 1985)	Do
Y 85-84	Generic name: Ethylene oxide, polymer with propylene oxide, mixed alkyl phenols, formaldehyde and alkyl polycarboxylic acid	50 FR 24935 (24936) (June 14, 1985)	Do
Y 85-85	Generic name: Ethylene oxide, polymer with propylene oxide, mixed alkyl phenols, formaldehyde and alkyl polycarboxylic acid	50 FR 24935 (24936) (June 14, 1985)	Do
Y 85-86	Generic name: Ethylene oxide, polymer with propylene oxide, mixed alkyl phenols, formaldehyde and alkyl polycarboxylic acid	50 FR 24935 (24936) (June 14, 1985)	Do
Y 85-87	Generic name: Ethylene oxide, polymer with propylene oxide, alkyl phenol, glycerol formaldehyde and alkyl polycarboxylic acid	50 FR 24935 (24936) (June 14, 1985)	Do

II. 166 Premanufacture Notices Received Previously and Still Under Review at the End of the Month

PMN No	Identity/generic name	FR citation	Expiration date
P 85-725	Generic name: Polymer of alkyl methacrylates, substituted alkyl methacrylates and styrene	50 FR 14439 (4-12-85)	June 29, 1985
P 85-726	Generic name: Alicyclic carboxylic acid	50 FR 14439 (4-12-85)	Do
P 85-727	Generic name: Calcium inpac	50 FR 14439 (4-12-85)	Do
P 85-728	Generic name: Modified trisphenol novolac	50 FR 14439 (14440) (4-12-85)	June 30, 1985
P 85-729	Generic name: Acrylate, methacrylate, polymer styrene	50 FR 14439 (14440) (4-12-85)	Do
P 85-730	Generic name: Substituted phosphate ester	50 FR 14439 (14440) (4-12-85)	Do
P 85-731	Generic name: Neutralized acrylic polymer	50 FR 14439 (14440) (4-12-85)	Do
P 85-732	Generic name: Halogenated aromatic substituted alkane	50 FR 14439 (14440) (4-12-85)	Do
P 85-733	Generic name: Halogenated aromatic polymer	50 FR 14439 (14440) (4-12-85)	Do
P 85-734	Generic name: Halogenated aromatic alkane	50 FR 14439 (14440) (4-12-85)	Do
P 85-735	Generic name: Substituted pyridine disazo dye	50 FR 14439 (14440) (4-12-85)	Do
P 85-736	Generic name: Modified rosin, calcium-zinc salt	50 FR 14439 (14440) (4-12-85)	Do
P 85-737	Generic name: Copolymer of polyfluoroalkyl substituted methacrylate and polysubstituted methacrylate	50 FR 14439 (14440) (4-12-85)	Do
P 85-738	Generic name: Alkyl resin	50 FR 14439 (14440) (4-12-85)	Do
P 85-739	Generic name: Phenol-substituted alkane	50 FR 14439 (14440) (4-12-85)	Do
P 85-740	Generic name: Ploymer of acrylates, substituted acrylamide and dimethyl diallyl ammonium chloride	50 FR 14439 (14441) (4-12-85)	Do
P 85-741	Generic name: Acrylic acid—acrylamidosulfonic acid copolymer including phosphino groups	50 FR 14439 (14441) (4-12-85)	Do
P 85-742	Generic name: Alkyl polyoxyalkylene phosphate esters	50 FR 14439 (14441) (4-12-85)	July 1, 1985
P 85-743	Generic name: Isocyanato oxazolidenyl isocyanurate	50 FR 14439 (14441) (4-12-85)	Aug. 7, 1985
P 85-744	4-N-tetradecyl 4'-(2-methylbutyl)phenylbenzoate	50 FR 14439 (14441) (4-12-85)	July 1, 1985
P 85-745	4-n-Hexyloxyphenyl 4-(2-methylbutyl)biphenyl 4'-carboxylate	50 FR 14439 (14441) (4-12-85)	Do
P 85-746	4-(2-methylbutyl)phenyl 4-(2-methylbutyl)biphenyl 4-(2-methylbutyl)biphenyl 4'-carboxylate	50 FR 14439 (14441) (4-12-85)	Do
P 85-747	4-Cyanophenyl-4-(2'-methylbutyl)biphenyl 4'-carboxylate	50 FR 14439 (14441) (4-12-85)	Do
P 85-748	4-N-octyloxyl 4'-(2-methylbutyl)-phenylbenzoate	50 FR 14439 (14441) (4-12-85)	Do
P 85-749	4-n-Hexyloxy 4'-(2-methylbutyl)-phenylbenzoate	50 FR 14439 (14441) (4-12-85)	Do
P 85-750	4-n-decyloxy 4'-(2-methylbutyl)-phenylbenzoate	50 FR 14439 (14441) (4-12-85)	Do
P 85-751	4-n-dodecyloxy 4'-(2-methylbutyl)-phenylbenzoate	50 FR 14439 (14441) (4-12-85)	Do
P 85-752	4(2-methylbutyl)phenyl 4'-n-octylbiphenyl carboxylate	50 FR 14439 (14441) (4-12-85)	Do
P 85-753	4-n-propyl 4-(2-methylbutyl)-phenylbenzoate	50 FR 14439 (14442) (4-12-85)	Do
P 85-754	4-n-Pentyl 4'-(2-methylbutyl)-phenylbenzoate	50 FR 14439 (14442) (4-12-85)	Do
P 85-755	4(2-methylbutyl)phenyl 4'-n-octylbiphenyl carboxylate	50 FR 14439 (14442) (4-12-85)	Do
P 85-756	4-n-heptyl 4'-(2-methylbutyl)-phenylbenzoate	50 FR 14439 (14442) (4-12-85)	Do
P 85-757	4-N-nonyl 4'-(2-methylbutyl)-phenylbenzoate	50 FR 14439 (14442) (4-12-85)	Do
P 85-758	4-(2-methylbutyl)phenyl 4'-pentylbiphenyl carboxylate	50 FR 14439 (14442) (4-12-85)	Do
P 85-759	Generic name: Reaction product of triglycidyl ether of substituted tri-(hydroxyphenyl) methane and substituted phenol	50 FR 14439 (14442) (4-12-85)	July 2, 1985
P 85-760	Generic name: Acrylate, methacrylate, styrene polymer	50 FR 14439 (14442) (4-12-85)	Do
P 85-761	Generic name: Diphenylmethane diisocyanate-terminated polyol polyurethane prepolymer	50 FR 14439 (14442) (4-12-85)	Do
P 85-762	Generic name: Bis(disubstituted anthraquinone) heterocycle	50 FR 15629 (4-19-85)	July 3, 1985
P 85-763	Generic name: Polycarboxylic and polyheterocyclic compound with anthraquinone and carbazole substructures	50 FR 15629 (4-19-85)	Do
P 85-764	Generic name: 4-(Trans-4-n-alkylcyclo-hexeyl)-n-alkylbenzene	50 FR 15629 (15630) (4-19-85)	Do

II. 166 PREMANUFACTURE NOTICES RECEIVED PREVIOUSLY AND STILL UNDER REVIEW AT THE END OF THE MONTH—Continued

PMN No	Identity/generic name	FR citation	Expiration date
P 85-765	Generic name: 4-N-alkoxyphenyl-4-trans-n-pentyl cyclohexyl carboxylate	50 FR 15629 (15630) (4-19-85)	Do
P 85-766	Generic name: 4-(Trans-4-n-alkylcyclo-hexeyl)-4'-Trans-4-n-alkyl' cyclohexyl biphenyl	50 FR 15629 (15630) (4-19-85)	Do
P 85-767	Generic name: 4-alkoxyphenyl-trans-4-n-alkylcyclohexyl carboxylate	50 FR 15629 (15630) (4-19-85)	Do
P 85-768	Generic name: Trans-5-n-alkyl-2-[4-cyano-biphenyl]-1,3-dioxane	50 FR 15629 (15630) (4-19-85)	Do
P 85-769	Generic name: Trans-5-n-alkyl-2-[4-cyano-biphenyl]-1,3-dioxane	50 FR 15629 (15630) (4-19-85)	Do
P 85-770	Generic name: 4-n-alkoxyphenyl-trans-4-n-alkylcyclohexyl carboxylate	50 FR 15629 (15630) (4-19-85)	Do
P 85-771	Generic name: 4-n-alkoxyphenyl-4-trans-n-alkyl cyclohexyl carboxylate	50 FR 15629 (15630) (4-19-85)	Do
P 85-772	Generic name: 4-n-alkyl-4'(4-trans-n-alkyl') cyclohexyl biphenyl	50 FR 15629 (15630) (4-19-85)	Do
P 85-773	Generic name: 4-(Trans-4-n-alkylcyclo-hexyl)-N-alkoybenzene	50 FR 15629 (15630) (4-19-85)	Do
P 85-774	Generic name: 4-(Trans-4-N-alkylcyclo-hexyl)-n-alkyl' benezene	50 FR 15629 (15630) (4-19-85)	Do
P 85-775	Generic name: 5-n-alkyl-2-[4-n-alkoxy-phenyl]-1,3-pyrimidine	50 FR 15629 (15630) (4-19-85)	Do
P 85-776	Generic name: 5-n-alkyl-2-[4-N/alkoxy-phenyl]-1,3-pyrimidine	50 FR 15629 (15631) (4-19-85)	Do
P 85-777	Generic name: Trans-5-n-alkyl-2-[4-cyano-biphenyl]-1,3,-dioxine	50 FR 15629 (15631) (4-19-85)	Do
P 85-778	Generic name: 5-n-a;kyl-2-[4-n-alkoxyl-phenyl].1,3-pyremdine	50 FR 15629 (15631) (4-19-85)	Do
P 85-779	Generic name: 5-n-alkyl-2-[4-n-alkoxy phenyl]-1,3-pyrimidine	50 FR 15629(15631) (4-19-85)	Do
P 85-780	Generic name: Condensed aminomethylated tannins	50 FR 15629 (15631) (4-19-85)	July 7, 1980
P 85-781	Generic name: Substituted polyglycol	50 FR 15629 (15631) (4-19-85)	Do
P 85-782	Generic name: Substituted polyglycol	50 FR 15629 (15631) (4-19-85)	Do
P 85-783	Generic name: Adduct of chlorinated olefin/polydine	50 FR 15629 (15631) (4-19-85)	Do.
P 85-784	Generic name: Substituted polyglycol	50 FR 15629 (15631) (4-19-85)	Do.
P 85-785	Generic name: Copolyacrylate	50 FR 15629 (15631) (4-19-85)	Do
P 85-786	Generic name: Fatty dibasic acids, amides from polyoxyalkylene amines	50 FR 15629 (15631) (4-19-85)	July 8, 1985
P 85-787	Generic name: Substituted acylimdazolidene	50 FR 15629 (15631) (4-19-85)	Do
P 85-788	Generic name: Substituted benzoate ester of polyphenylene oxide	50 FR 15629 (15631) (4-19-85)	Do
P 85-789	Generic name: Polyester polydiacylurea resin	50 FR 15629 (15632) (4-19-85)	Do
P 85-790	Generic name: Polyester polydiacylurea resin	50 FR 15629 (15632) (4-19-85)	Do
P 85-791	Generic name: Haloborane—aromatic phosphate complex	50 FR 15629 (15632) (4-19-85)	Do
P 85-792	Generic name: Substituted indole	50 FR 15629 (15632) (4-19-85)	Do
P 85-793	Generic name: Carboxyphenylcarbonylindole	50 FR 15629 (15632) (4-19-85)	Do
P 85-794	Generic name: Carboxyphenylacrbonylindole	50 FR 15629 (15632) (4-19-85)	Do
P 85-795	Generic name: Isobenzofuranone	50 FR 15629 (15632) (4-19-85)	Do
P 85-796	Generic name: Isobenzofuranone	50 FR 15629 (15632) (4-19-85)	Do
P 85-797	Generic name: Diamino-polydimethylsilo-xane	50 FR 15629 (15632) (4-19-85)	July 9, 1985
P 85-798	Generic name: Polyimide siloxane	50 FR 15629 (15632) (4-19-85)	Do
P 85-799	Generic name: Modified polyacrylate polymer	50 FR 15629 (15632) (4-19-85)	Do.
P 85-800	Generic name: Sodium salt of polycarboxylic acid	50 FR 16541 (4-26-85)	July 10, 1985
P 85-801	Generic name: Adduct of polymeric 4,4'-phenylmethane diisocyanate and hydroxyester of terephthalic acid.	50 FR 16541 (4-26-85)	Do
P 85-802	Generic name: Functionalized styrene methacrylic polymer	50 FR 16541 (4-26-85)	July 13, 1985
P 85-803	Generic name: 4,4'-phenylmethane diisocyanate adduct of polyether polyol	50 FR 16541 (4-26-85)	Do
P 85-804	Generic name: 2-methyl-6-quinolinamine hydrochlonde	50 FR 16541 (4-26-85)	July 14, 1985
P 85-805	Generic name: 2-methyl-6-quinolinamine	50 FR 16541 (4-26-85)	Do
P 85-806	Generic name: 2-methyl-6-nitroquinoline	50 FR 16541 (4-26-85)	Do
P 85-807	Generic name: Polyperester of ketopolycyclic polyacid	50 FR 16541 (4-26-85)	Do
P 85-808	Generic name: Polyester resin	50 FR 16541 (4-26-85)	Do
P 85-809	Generic name: Terpolymer with styrene and methyl methacrylate	50 FR 16541 (16542) (4-26-85)	Do.
P 85-810	(Z)-1-bromo-3-hexene	50 FR 16541 (16542) (4-26-85)	Do
P 85-811	Generic name: Polyurethane polyol	50 FR 16541 (16542) (4-26-85)	July 15, 1985
P 85-812	Generic name: 2-[3',5'-disubstituted-2'-hydroxyphenyl]benzotriazole	50 FR 16541 (16542) (4-26-85)	July 15, 1985
P 85-813	Generic name: Copolymer of unsaturated polyester and allyl-compounds	50 FR 16541 (16542) (4-26-85)	Aug. 14, 1985.
P 85-814	Generic name: Copolymer of unsaturated polyester and allyl-compounds	50 FR 16541 (16542) (4-26-85)	Do
P 85-815	Generic name: Copolymer of unsaturated polyester and allyl-compounds	50 FR 16541 (16542) (4-26-85)	Do
P 85-816	Generic name: Copolymer of unsaturated polyester and allyl-compounds	50 FR 16541 (16542) (4-26-85)	Do
P 85-817	Generic name: Copolymer of unsaturated polyester and allyl-compounds	50 FR 16541 (16542) (4-26-85)	Do
P 85-818	Generic name: Benzenesulfonic acid, 4-[[-substituted]-3-methyl-5-oxo-2-pyrazolin-1-yl]-, salt	50 FR 16541 (16542) (4-26-85)	July 16, 1985
P 85-819	Generic name: Tall oil fractions, unsaturated hydrocarbon resin dieneophile modified polymer with pentaerythritol.	50 FR 16541 (16542) (4-26-85)	Do
P 85-820	Generic name: Carboxylic modified resin	50 FR 16541 (16542) (4-26-85)	Do
P 85-821	Generic name: Alkyd resin	50 FR 18916 (5-3-85)	July 17, 1985
P 85-822	Generic name: Substituted alkyl alkanol	50 FR 18916 (5-3-85)	Do
P 85-823	Generic name: Alkene-methacrylate copolymer	50 FR 18916 (5-3-85)	Do.
P 85-824	Generic name: Acrylic modified alkyd resin	50 FR 18916 (5-3-85)	July 20, 1985.
P 85-825	Generic name: 1-H-pyrazole-3-carboxylic acid, 4,5-dihydro-5-oxo-1-(4-sulfophenyl)-4-[(4-sulfophenyl)azo],- mixed salt.	50 FR 18916 (5-3-85)	July 20, 1985
P 85-826	Generic name: Polyfluoror substituted alkyl, N-substituted amino alcohol	50 FR 18916 (5-3-85)	Do
P 85-827	Generic name: Phenoxazinium, bis(substitutedamino), salt	50 FR 18916 (5-3-85)	Do.
P 85-828	Generic name: Cycloalkenylpentenol	50 FR 18916 (5-3-85)	Do
P 85-829	Generic name: Isothiocyanate of substituted polycyclic compound	50 FR 18916 (5-3-85)	Do
P 85-830	Generic name: Thioacarbamate of substituted polycyclic compound	50 FR 18916 (5-3-85)	Do
P 85-831	Generic name: Isothiocyanate of substituted polycyclic compound	50 FR 18916 (18917) (5-3-85)	Do
P 85-832	Generic name: Polyester resin	50 FR 18916 (18917) (5-3-85)	Do
P 85-833	Generic name: Urethane with blocked multifunctional isocyanates	50 FR 18916 (18917) (5-3-85)	Do
P 85-834	Generic name: Vinyl-substituted organosilicone copolymer	50 FR 18916 (18917) (5-3-85)	Do
P 85-835	Generic name: Organosilicone copolymer	50 FR 18916 (18917) (5-3-85)	Do
P 85-836	(+) 4-n-tetradecyl 4'-(2-methylbutyl) phenylbenzoate	50 FR 18916 (18917) (5-3-85)	Do
P 85-837	(+) 4-n-hexyloxyphenyl 4-(2-methylbutyl) biphenyl 4' carboxylate	50 FR 18916 (18917) (5-3-85)	Do
P 85-838	(+)-4-(2-methylbutyl) phenyl 4-(2-methyl butyl) biphenyl 4'-carboxylate	50 FR 18916 (18917) (5-3-85)	Do
P 85-839	(+)-4-cyanophenyl-4-(2"-methylbutyl) biphenyl 4 carbonxylate	50 FR 18916 (18917) (5-3-85)	Do
P 85-840	(+)4-n-octyloxyl 4'-(2-methylbutyl phenylbenzoate	50 FR 18916 (18917) (5-3-85)	Do
P 85-841	(+)4-n-hexyloxy 4'-(2-methylbutyl)-phenyl-benzoate	50 FR 18916 (18917) (5-3-85)	Do
P 85-842	(+)4-n-decyloxy 4'-(2-mehtylbutyl)-phenyl-benzoate	50 FR 18916 (18917) (5-3-85)	Do
P 85-843	(+)4-n-dodecyloxy 4'-(2-methylbutyl)-pnehyl-benzoate	50 FR 18916 (18917) (5-3-85)	Do
P 85-844	(+)4(2-methylbutyl)phenyl 4'-octyl-biphenyl carboxylate	50 FR 18916 (18917) (5-3-85)	Do
P 85-845	(+)4-n-propyl 4'-(2-methylbutyl)-phenyl-benzoate	50 FR 18916 (18918) (5-3-85)	Do
P 85-846	(+)4-n-pentyl 4'-(2-methylbutyl)-phenyl-benzoate	50 FR 18916 (18918) (5-3-85)	Do
P 85-847	(+)4(2 methylbutyl) phenyl 4'-n-heptyl-biphenyl carboxylate	50 FR 18916 (18918) (5-3-85)	Do
P 85-848	(+)4-n-hepty 4'-(2-methylbutyl)-phenyl-benzoate	50 FR 18916 (18918) (5-3-85)	Do
P 85-849	(+)4-n-nonyl 4'-(2-methylbutyl) phenyl-benzoate	50 FR 18916 (18918) (5-3-85)	Do
P 85-850	(+)4-(2-methylbutyl) 4'-phentylbiphenyl carboxylate	50 FR 18916 (18918) (5-3-85)	Do
P 85-851	Generic name: Copolymer of vinyl acetate and olefins	50 FR 18916 (18918) (5-3-85)	July 22, 1985
P 85-852	Generic name. Alkyl ester of phosphorus acid	50 FR 18916 (18918) (5-3-85)	Do
P 85-853	Generic name. Cycloaliphatic and cyclo-aromatic composite poylester	50 FR 18916 (18918) (5-3-85)	Do

II. 166 PREMANUFACTURE NOTICES RECEIVED PREVIOUSLY AND STILL UNDER REVIEW AT THE END OF THE MONTH—Continued

PMN No	Identity/generic name	FR citation	Expiration date
P 85-854	Generic name: Triglycidyl ether of substituted tri(hydroxyphenyl) methane	50 FR 18916 (18918) (5-3-85)	Do
P 85-855	Generic name: Triglycidyl ether of substituted tri(hydroxyphenyl) methane	50 FR 18916 (18918) (5-3-85)	Do
P 85-856	Generic name: Oxime based polyurethane	50 FR 18916 (18919) (5-3-85)	Do
P 85-857	Generic name: Alkylaluminum halide	50 FR 18916 (18919) (5-3-85)	Do
P 85-858	Generic name: Polyester	50 FR 18916 (18919) (5-3-85)	Do
P 85-859	Generic name: Acrylic resin	50 FR 19798 (5-10-85)	Do
P 85-860	Generic name: Functionally modified acrylate type polymer	50 FR 19798 (5-10-85)	Do
P 85-861	Generic name: Ammonium salt	50 FR 19798 (5-10-85)	Do
P 85-862	Generic name: Blocked aliphatic polyisocyanate	50 FR 19798 (5-10-85)	Do
P 85-863	Generic name: Polymer of ethylene, ethyl acrylate, and maleic anhydride	50 FR 19798 (19799) (5-10-85)	Do
P 85-864	Generic name: Dimethylhydrogen terminated polysiloxane	50 FR 19798 (19799) (4-12-85)	July 27, 1985
P 85-865	Generic name: Substituted phenyl acetonitrile	50 FR 19798 (19799) (5-10-85)	Do
P 85-866	Generic name: Substituted phenyl acetonitrile	50 FR 19798 (19799) (5-10-85)	Do
P 85-867	Generic name: Ketopolycyclic polyacid, acid	50 FR 19798 (19799) (5-10-85)	Do
P 85-868	Generic name: Diacetyl polycyclic hydrocarbon	50 FR 19798 (19799) (5-10-85)	Do
P 85-869	Generic name: Ketopolycyclic polyacidchloride	50 FR 19798 (19799) (5-10-85)	Do
P 85-870	Generic name: Isocyanate-terminated polyurethane	50 FR 19798 (19799) (5-10-85)	Do
P 85-871	Generic name: Hydroxy-terminated polyurethane	50 FR 19798 (19799) (5-10-85)	Do
P 85-872	Generic name: Fatty acid, resinous amidoamine	50 FR 19798 (19799) (5-10-85)	Do
P 85-873	Generic name: Resinous amidoamine	50 FR 19798 (19799) (5-10-85)	Do
P 85-874	3-dithiahept-5-ene-1-ol	50 FR 19798 (19799) (5-10-85)	Do
P 85-875	Generic name: Alkylamidopropyl betaine	50 FR 19798 (19799) (5-10-85)	Do
P 85-876	Generic name: Alkylamidopropyl betaine	50 FR 19798 (19800) (5-10-85)	Do
P 85-877	Generic name: Alkylaminopropyl betaine	50 FR 19798 (19800) (5-10-85)	Do
P 85-878	Generic name: Alkylaminopropyl betaine	50 FR 19798 (19800) (5-10-85)	Do
P 85-879	Generic name: Alkylaminopropyl betaine	50 FR 19798 (19800) (5-10-85)	Do
P 85-880	Generic name: Sodium bisulfite reaction product with an epoxidized natural oil	50 FR 19798 (19800) (5-10-85)	Do
P 85-881	Generic name: 2,2,6,6-tetramethyl-4 N-(substituted)aminopiperidine	50 FR 19798 (19800) (5-10-85)	Do
P 85-882	Octadecenamide, N-[2-[(2-hydroxyethyl) amino]ethyl]-, monohydrochloride (salt)	50 FR 19798 (19800) (5-10-85)	Do
P 85-883	Generic name: Polyurethane	50 FR 19798 (19800) (5-10-85)	Do
P 85-884	Generic name: Blocked-isocyanate polyurethane polyether	50 FR 19798 (19800) (5-10-85)	Do
P 85-885	Generic name: Unsaturated polyester resin	50 FR 19798 (19800) (5-10-85)	Do
P 85-886	Generic name: Brominated unsaturated polyester resin	50 FR 19798 (19800) (5-10-85)	Do

II. 130 PREMANUFACTURE NOTICES FOR WHICH THE NOTICE REVIEW PERIOD HAS ENDED DURING THE MONTH. (EXPIRATION OF THE NOTICE REVIEW PERIOD DOES NOT SIGNIFY THAT THE CHEMICAL HAD BEEN ADDED TO THE INVENTORY)

PMN No	Identity/generic name	FR citation	Expiration date
P 83-1006	Generic name: (Amino)-(hydroxy)-(substituted)(substituted) naphthalenedisulfonic acid, and (amino)-(hydroxy)-(substituted)-(substituted) naphthalenedisulfonic acid, salts with sodium and potassium	48 FR 36647 (36648 (8-12-83)	May 10, 1985
P 83-1007	Generic name: (Substituted)-(substituted)-hydroxy-naphthalenesulfonic acid, sodium salts	48FR 36647 (36648) (8-12-83)	Do
P 83-1012	Generic name: Bis(sulfophenylchlorotriazineaminosulfophenylazo) hydroxyaminodisulfonaphthalene	48FR 36647 (36648) (8-12-83)	May 20, 1985
P 84-64	Generic name: Substituted-phenylamino monoachloro-triazinylamino sulfophenylazo-substituted-disulfonaphthalenylazo-naphthalene-disulfonic acid, hexasodium salt	48FR 50951 (59053) (11-4-83)	May 10, 1985
P 84-1204	Generic name: Substituted, sulfonated naphthylazo sodium salt	49FR 38356 (38359) (9-28-84)	Do
P 85-457	Generic name: Reaction product of polytetramethylene glycol, methylene bis phenylisocyanate) and alcohols	50FR 6383(6384) (2-15-85)	May 1, 1985
P 85-458	Generic name: Alkyl ester of a trialkoxysilane	50FR 6383(6384) (2-15-85)	May 4, 1985
P 85-460	Generic name: Substituted succinic anhydride, reaction product with heterocyclic amine	50FR 6383(6384) (2-15-85)	Do
P 85-461	Generic name: Hydroxy terminated polyester diol reaction benzophenone tetracarboxylic dianhydride, terminated with hydroxyethyl methacrylate.	50FR 6383 (6384) (2-15-85)	Do
P 85-462	Generic name: Acrylic polymer	50FR 6383 (6384) (2-15-85)	May 5, 1985
P 85-463	Generic name: Silane	50FR 6383 (6384) (2-15-85)	Do
P 85-464	Generic name: Substituted phenyl azo substituted heteromonocycle	50FR 6383 (6384) (2-15-85)	Do
P 85-465	Generic name: Mercaptan terminated polyether polymer	50FR 6383 (6384) (2-15-85)	Do
P 85-466	N-butyl cyanoacetate	50FR 6383 (6384) (2-15-85)	Do
P 85-467	Generic name: Functional vinyl copolymer	50FR 6383 (6384) (2-15-85)	May 6, 1985
P 85-468	Generic name: Polycylic sulfonic acid salt	50FR 6383 (6384) (2-15-85)	May 7, 1985
P 85-469	Generic name: Phosphate(mono/di) methacrylate monomer	50FR 6383 (6385) (2-15-85)	Do
P 85-470	Generic name: Substituted alkyl butylester	50FR 6383 (6385) (2-15-85)	Do
P 85-471	Generic name: Carbomonocylic butyl ester	50FR 6383 (6385) (2-15-85)	Do
P 85-472	Generic name: Aromatic polycarbodiimide	50FR 6383 (6385) (2-15-85)	Do
P 85-473	Generic name: Alkylaluminum chloride	50FR 6383 (6385) (2-15-85)	Do
P 85-474	Generic name: Alkylaluminum chloride	50 FR 6383 (6385) (2-15-85)	Do
P 85-475	Generic name: Alkylaluminum chloride	50 FR 6383 (6385) (2-15-85)	Do
P 85-476	Generic name: Substituted cyclohexene	50 FR 7640 (2-25-85)	May 8, 1985
P 85-477	Generic name: Substituted cyclohexene carboxylic acid	50 FR 7640 (2-25-85)	Do
P 85-478	Found to be on the inventory		
P 85-479	2,5-furandimethanol	50 FR 7640 (2-25-85)	Do
P 85-480	Generic name: Cellulose ester	50 FR 7640 (7641) (2-25-85)	Do
P 85-481	Generic name: Polyamic acid polymer A	50 FR 7640 (7641) (2-25-85)	Do
P 85-482	Generic name: Polyamic acid polymer B	50 FR 7640 (7641) (2-25-85)	Do
P 85-483	Generic name: Polyamic acid polymer C	50 FR 7640 (7641) (2-25-85)	Do
P 85-484	Generic name: Polyamic acid polymer D	50 FR 7640 (7641) (2-25-85)	Do
P 85-485	Found to be on the inventory		
P 85-486	Found to be on the inventory		
P 85-487	Generic name: Alkylalcohol ethoxylate, phosphate ester, sodium salt	50 FR 7640 (7641) (2-25-85)	May 11, 1985
P 85-488	Generic name: Vinyl acetate copolymer	50 FR 7640 (7641) (2-25-85)	Do
P 85-489	Generic name: Polyvinyl alcohol	50 FR 7640 (7641) (2-25-85)	Do
P 85-490	Generic name: Substituted benzene-sulfonamide	50 FR 7640 (7641) (2-25-85)	Do
P 85-491	Generic name: Carbonic acid, polymer with 4,4'-(1-methylethylidene)bis(phenol) and hydroxy arene	50 FR 7640 (7641) (2-25-85)	Do
P 85-492	Generic name: Carbonic acid, polymer with 4,4'-(1-methylethylidene)bis(phenol) and 4-alkyl phenol	50 FR 7640 (7641) (2-25-85)	Do
P 85-493	Generic name: Carbonic acid, polymer with 4,4'-(1-methylethylidene)bis(phenol)and 4-aralkyl phenol	50 FR 7640 (7641) (2-25-85)	Do

III. 130 PREMANUFACTURE NOTICES FOR WHICH THE NOTICE REVIEW PERIOD HAS ENDED DURING THE MONTH. (EXPIRATION OF THE NOTICE REVIEW PERIOD DOES NOT SIGNIFY THAT THE CHEMICAL HAD BEEN ADDED TO THE INVENTORY)—Continued

PMN No	Identity/generic name	FR citation	Expiration date
P 85-494	Generic name: Carbonic acid, polymer with 4,4'-(1-methylethylidene)bis(phenol) and 4-arcy-cloalkyl phenol	50 FR 7640 (7641) (2-25-85)	Do
P 85-495	Ethanone, 1-(3-fluorophenyl)-	50 FR 7640 (7642) (2-25-85)	May 12, 1985
P 85-496	Invalid submission		
P 85-497	2 hydroxy-3-epsilon lysino propyl trimethyl ammonium chloride derivatized soy protein isolate	50 FR 7640 (7642) (2-25-85)	May 13, 1985.
P 85-498	2-hydroxy-3-epsilon lysino propyl trimethyl ammonium chloride derivatized soy protein isolate	50 FR 7640 (7642) (2-25-85)	Do
P 85-499	Generic name: Polyether polyurethane derivative	50 FR 7640 (7642) (2-25-85)	Do
P 85-500	Generic name: Modified styrene copolymer	50 FR 7640 (7642) (2-25-85)	Do
P 85-501	Generic name: Substituted benzopyran	50 FR 7640 (7642) (2-25-85)	Do
P 85-502	Generic name: Substituted benzopyran	50 FR 7640 (7642) (2-25-85)	Do
P 85-503	Generic name: Substituted imidic acid, methyl ester, hydrochloride	50 FR 7640 (7642) (2-25-85)	Do
P 85-504	Generic name: Substituted diisocyanate polymer	50 FR 7640 (7642) (2-25-85)	May 14, 1985
P 85-505	Generic name: Propoxylated quaternary ammonium compound	50 FR 7640 (7642) (2-25-85)	Do
P 85-506	Generic name: Inorganic complex of rosin	50 FR 7640 (7642) (2-25-85)	Do
P 85-507	Generic name: Substituted quinoline	50 FR 7640 (7642) (2-25-85)	Do
P 85-508	Generic name: Substituted benzopyran	50 FR 7640 (7642) (2-25-85)	Do
P 85-509	Generic name: Substituted-substituted-substituted-anthraquinone	50 FR 7640 (7643) (2-25-85)	Do
P 85-510	Generic name: Poly(oxy-1,2-ethanediyl), alpha-higher alkyl C>30, omega-hydroxy	50 FR 7640 (7643) (2-25-85)	Do
P 85-511	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethyl-ene ether glycol and alkane diols	50 FR 7640 (7643) (2-25-85)	May 12, 1985
P 85-512	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethy-lene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do
P 85-513	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethyl-ene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do
P 85-514	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethyl-ene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do
P 85-515	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethyl-ene ether glycol and alkane diols	50 FR 7640 (7643) (2-25-85)	Do
P 85-516	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethyl-ene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do
P 85-517	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethyl-ene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do
P 85-518	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethyl-ene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do
P 85-519	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with poly-tetramethyl-ene ether glycol and alkane diols	50 FR 7640 (7643) (2-25-85)	Do
P 85-520	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with polytetramethy-lene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do
P 85-521	Generic name: Terephthalic acid and C_{36}-saturated dimer acid polymer with polytetramethy-lene ether glycol and alkane diols.	50 FR 7640 (7643) (2-25-85)	Do
P 85-522	Generic name: Polymer of functional acrylates and methacrylates	50 FR 8390 (8391) (3-1-85)	May 15, 1985
P 85-523	Generic name: Functionally modified urethane	50 FR 8390 (8391) (3-1-85)	Do
P 85-524	Polymer of hydroxy ethyl acrylate, Desmodur W, Duracarb 122, and Jeffamine D230	50 FR 8390 (8391) (3-1-85)	Do
P 85-525	Generic name: Modified acrylic terpolymer	50 FR 8390 (8391) (3-1-85)	May 19, 1965
P 85-526	Generic name: Modified acrylate terpolymer	50 FR 8390 (8391) (3-1-85)	Do
P 85-527	Generic name: Vinyl-epoxy ester	50 FR 8390 (8391) (3-1-85)	May 20, 1985
P 85-528	Generic name: Anthranilate schiff base	50 FR 8390 (8391) (3-1-85)	Do
P 85-529	Generic name: Trisubstituted naphthalenecarboxamide	50 FR 8390 (8391) (3-1-85)	Do
P 85-530	Generic name: Trisubstituted naphthalenecarboxamide	50 FR 8390 (8391) (3-1-85)	Do
P 85-531	Prepolymer of ethanol-1,1'-thiobis, ethanol-2-mercapto, reaction product with propylene oxide, and benzene, isocyanato	50 FR 8390 (8392) (3-1-85)	Do
P 85-532	Generic name: Modified epoxy resin	50 FR 8390 (8392) (3-1-85)	Do
P 85-533	Generic name: Aminated epoxy resin	50 FR 8390 (8392) (3-1-85)	Do
P 85-534	Generic name: Alkyl sulfonate	50 FR 8390 (8391) (3-1-85)	Do
P 85-535	Generic name: Substituted pyridine	50 FR 8390 (8392) (3-1-85)	Do
P 85-536	Invalid submission	50 FR 8390 (8392) (3-1-85)	Do
P 85-537	1-(1-phenylethylidene)-2,2-diphenyl-hydrazine	50 FR 8390 (8392) (3-1-85)	Do
P 85-538	2,3,3-trimethyl-5-nitro-3H-indole	50 FR 8390 (8392) (3-1-85)	Do
P 85-539	Generic name: Indole-isoxazolidinone merocyanine	50 FR 8390 (8392) (3-1-85)	Do
P 85-540	1,2,3,3-tetramethyl-5-nitro-3H-indolium 4-methylbenzene sulfonate	50 FR 8390 (8392) (3-1-85)	Do
P 85-541	Generic name: Indolo-pyrrolopyridine carbocyanine	50 FR 8390 (8392) (3-1-85)	Do
P 85-542	Generic name: Polymethacrylate cationic polymer	50 FR 8390 (8392) (3-1-85)	Do
P 85-543	2-butenedioic acid (Z-), mono[2-[1-oxo-2-propenyl)oxy]ethyl]-ester	50 FR 8390 (8392) (3-1-85)	Do
P 85-544	2-propenoic acid, 2-methyl-, 7,7,9-trimethyl-4,13-dioxo-3,1,4-dioxa-5,12-diaza hexadecane-1,16-diylester.	50 FR 10536 (10537) (3-15-85)	Do
P 85-545	2-propenoic acid-3-(dimethylamino)-2,2-dimethyl-propyl ester	50 FR 10536 (10537) (3-15-85)	Do
P 85-546	2-propenoic acid, 2-methyl-3,3,5-trimethyl-cyclohexylester	50 FR 8390 (8393) (3-1-85)	Do
P 85-547	2-propenoic acid, ,3,5-trimethylcyclo-hexylester	50 FR 8390 (8393) (3-1-85)	Do
P 85-548	Generic name: Oligoamineester	50 FR 8390 (8393) (3-1-85)	Do
P 85-549	Generic name: Poly (methacrylate)	50 FR 8390 (8393) (3-1-85)	Do
P 85-550	Generic name: Poly (methacrylate)	50 FR 8390 (8393) (3-1-85)	Do
P 85-551	3-carbomethoxypropionyl chloride	50 FR 8390 (8393) (3-1-85)	Do
P 85-552	Generic name: Tetraallyloxyethane/methacrylate polymer	50 FR 8390 (8393) (3-1-85)	Do
P 85-553	Generic name: Unsaturated ester	50 FR 8390 (8393) (3-1-85)	Do
P 85-554	Generic name: Unsaturated ester	50 FR 8390 (8393) (3-1-85)	Do
P 85-555	Generic name: Unsaturated ester	50 FR 8390 (8393) (3-1-85)	Do
P 85-556	1,3,5-triazine, 2,4,6-triamine, N,N',N''-tris(4-aminophenyl)-	50 FR 8390 (8393) (3-1-85)	Do.
P 85-557	Generic name: Methine dye.	50 FR 9390 (8393) (3-1-85)	Do
P 85-558	Generic name: Waterborne urethane-acrylic polymer	50 FR 9504 (3-8-85)	May 22, 1985.
P 85-559	Generic name: Alkyl caluaryl acetate	50 FR 9504 (3-8-85)	Do.
P 85-560	Generic name: Substituted olefinic ketone	50 FR 9504 (9505) (3-8-85)	Do.
P 85-561	Generic name: Substituted olefinic alcohol	50 FR 9504 (9505) (3-8-85)	Do.
P 85-562	Generic name: Alkanolokane tnacrylate octylamine adduct	50 FR 9504 (9505) 3-8-85)	Do.
P 85-563	Generic name: Polyester polymer composed of fumarated rosin, glycerine, diethylene glycol and a polyhydroxyl prepolymer	50 FR 9504 (9505) (3-8-85)	Do.
P 85-564	Polymer of hydroxylethyl acrylate, 4,4'-diphenylmethane diisocyanate, and polymethylene polyphenyl isocyanate	50 FR 9504 (9505) (3-8-85)	Do
P 85-565	Generic name: Organo sulfonic acid, zinc salt	50 FR 9504 (9505) (3-8-85)	Do
P 85-566	Generic name: Alcohol ether sulfate amine salt	50 FR 9504 (9505) (3-8-85)	Do
P 85-567	Generic name: Silyl ketone acetal	50 FR 9504 (9505) (3-8-85)	May 25, 1985

III. 130 Premanufacture Notices for Which the Notice Review Period has Ended During the Month (Expiration of the Notice Review Period Does Not Signify That the Chemical Had Been Added to the Inventory)—Continued

PMN No	Identity/generic name	FR citation	Expiration date
P 85-568	Generic name: Difunctional ester	50 FR 9504 (9505) (3-8-85)	May 26, 1985
P 85-569	Generic name: Styrene/acrylate/methacrylate polymer	50 FR 9504 (9505) (3-8-85)	Do.
P 85-570	Generic name: Ester of olefinic acid	50 FR 9504 (9505) (3-8-85)	Do.
P 85-571	Generic name: Ester of olefinic acid	50 FR 9504 (9505) (3-8-85)	Do.
P 85-572	Generic name: Quaternary ammonium montmorillonite	50 FR 9504 (9505) (3-8-85)	Do.
P 85-573	Generic name: Quaternary ammonium hectorite	50 FR 9504 (9505) (3-8-85)	Do.
P 85-574	Generic name: Substituted benzocyazol-ethylidine	50 FR 9504 (9505) (3-8-85)	Do.
P 85-575	Generic name: Substituted bisbenzophenone	50 FR 9504 (9506) (3-8-85)	Do.
P 85-576	Polymer of phthalic anhydride, 2,2,4-trimethyl-1,3-pentanediol, 2,2'-oxybis (ethanol), and Fascat 4100.	50 FR 9504 (9506) (3-8-85)	Do.
P 85-577	Polymer of 1,3-benzenedicarboxylic acid, 1,4-benzenedicarboxylic acid, 2,2'-oxybis (ethanol), 2,2-dimethyl-1,3-propanediol, and t2,2,4-trimethyl-1,3-pentanediol.	50 FR 9504 (9506) (3-8-85)	Do.
P 85-578	Generic name: Substituted stilbene	50 FR 9504 (9506) (3-8-85)	Do.
P 85-579	Generic name: Sulfonated styrene-containing polymer	50 FR 9504 (9505) (3-8-85)	Do.
P 85-580	Generic name: Sulfonated styrene-containing polymer	50 FR 9504 (9506) (3-8-85)	Do.
P 85-581	Generic name: Chlorine-containing styrene copolymer	50 FR 9504 (9506) (3-8-85)	Do.
P 85-582	Generic name: Styrene-containing ion exchange material	50 FR 9504 (9506) (3-8-85)	Do.
P 85-583	Generic name: Chlorosulfonated polystyrene	50 FR 9504 (9506) (3-8-85)	Do.
P 85-584	Generic name: Polymer of acrylate-acrylonitrile, salt	50 FR 9504 (9506) (3-8-85)	May 27, 1985
P 85-585	Generic name: Alkyd resin	50 FR 9504 (9506) (3-8-85)	Do.
P 85-586	Generic name: Functionally modified acrylic system	50 FR 9504 (9506) (3-8-85)	Do.
P 85-587	Generic name: Reaction product of monosulfonated heterocyclic compound with cyclic amine	50 FR 9504 (9507) (3-8-85)	Do.
P 85-588	Generic name: Reaction product of monosulfonated heterocyclic compound with cyclic amine	50 FR 9504 (9507) (3-8-85)	Do.
P 85-589	Generic name: Reaction product of monosulfonated heterocyclic compound with cyclic amine	50 FR 9504 (9507) (3-8-85)	Do.
P 85-590	Generic name: Reaction product of monosulfonated heterocyclic compound with cyclic amine	50 FR 9504 (9507) (3-8-85)	Do.
P 85-591	Generic name: Reaction product of monosulfonated heterocyclic compound with cyclic amine	50 FR 9504 (9507) (3-8-85)	Do.
P 85-592	Generic name: Heterocyclic substituted butane	50 FR 9504 (9507) (3-8-85)	Do.
P 85-593	Generic name: Polyamine ion exchange resin	50 FR 9504 (9507) (3-8-85)	Do.
P 85-594	Generic name: Polyamine ion exchange resin	50 FR 9504 (9507) (3-8-85)	Do.
P 85-595	Generic name: Emulsion tetrapolymer	50 FR 9504 (9507) (3-8-85)	Do.
P 85-596	Generic name: 1-substituted-3-alkyl-heteromonocyclic-4-hydroxybenzene	50 FR 9504 (9507) (3-8-85)	Do.
P 85-597	Generic name: 3-alkylheteromonocyclic-4-hydroxy-1-substituedbenzene	50 FR 9504 (9507) (3-8-85)	Do.
P 85-598	Generic name: Di(trisubstitutedheteromonocyclic(carbomonocyclicsubstituted)) heteropolycycle	50 FR 9504 (9507) (3-8-85)	Do.
P 85-599	Generic name: Di(trisubstitutedheteromonocyclic(carbomonocyclicsubstituted)) heteropolycycle	50 FR 9504 (9507) (3-8-85)	Do.
P 85-600	Generic name: Di(trisubstitutedheteromonocyclic(carbomonocyclicsubstituted)) heteropolycycle	50 FR 9504 (9507) (3-8-85)	Do.
P 85-601	Generic name: Disubstituted phenol	50 FR 9504 (9508) (3-8-85)	Do.
P 85-602	Generic name: 2,4-diheteromonocyclic phenol	50 FR 9504 (9508) (3-8-85)	Do.
P 85-603	Generic name: (3-alkylheteromonocyclic-4-hydroxyphenylsubstituted)(3'-subsstituted-4'-hydroxy-phenylsubstituted) alkyl.	50 FR 9504 (9508) (3-8-85)	Do.
P 85-604	Generic name: Di(trisubstitutedheteromonocyclic(carbomonocyclicsubstituted)) heteropolycycle	50 FR 9504 (9508) (3-8-85)	Do.
P 85-605	Generic name: Trisubstituted phenol	50 FR 9504 (9508) (3-8-85)	Do.
P 85-606	Generic name: (3-alkylheteromonocyclic-4-hydroxyphenylsubstituted) (3'-substituted-4'-hydroxyphenylsubstituted) alkyl.	50 FR 9504 (9508) (3-8-85)	Do.
P 85-607	Generic name: 2-alkylheteromonocyclic-4-substitutedphenol	50 FR 9504 (9508) (3-8-85)	Do.
P 85-608	Polymer of hydroxy ethyl acrylate, Desmodur W, Jeffamine D230, Teracol 650, and Dianol	50 FR 9504 (9508) (3-8-85)	May 28, 1985
P 85-609	Generic name: Functionally modified methacrylate polymer	50 FR 9504 (9508) (3-8-85)	Do.
P 85-610	Generic name: Aryl-alkyl dithioether	50 FR 9504 (9508) (3-8-85)	Do.
P 85-611	Generic name: Copper complex of substitute-disazo-naphthalene trisulfonic acid	50 FR 9504 (9508) (3-8-85)	Do.
P 85-612	Generic name: Polymer of substituted aryl olefin	50 FR 9504 (9508) (3-8-85)	Do.
P 85-613	Generic name: Dialkylamine substituted aryl-n-arylnitrone	50 FR 10536 (10537) (3-15-85)	May 29, 1985
P 85-614	Generic name: Dialkylamine substituted aryl-n-arylnitrone	50 FR 10536 (10537) (3-15-85)	Do.
P 85-615	Generic name: Nitrobenzoic acid ester	50 FR 10536 (10537) (3-15-85)	Do.
P 85-616	Generic name: Brominated propanoic acid derivative	50 FR 10536 (10537) (3-15-85)	Do.
P 85-617	Generic name: Substituted-phenylazo-substituted-naphthalenedisulfonic acid, sodium salt	50 FR 10536 (10537) (3-15-85)	Do.
P 85-618	Generic name: Substituted-phenylazo-substituted-naphthalenesulfonic acid, sodium salt	50 FR 10536 (10537) (3-15-85)	Do.
P 85-620	Generic name: Functionally substituted acrylic/methacrylic/styrene polymer	50 FR 9504 (9509) (3-8-85)	May 28, 1985
Y 85-55	Generic name: Polyoxyalkylene ester modified alkoxysilane	50 FR 16543 (4-26-85)	May 2, 1985
Y 85-56	Generic name: Alkyd resin	50 FR 16543 (4-26-85)	May 6, 1985
Y 85-57	Generic name: 1-substituted propane, 2-methyl-2-[(1-oxo-2-propenyl)amino]-, mono sodium salt, polymer with 2-propenoamide and 2-propenoic acid, sodium salt.	50 FR 16543 (4-26-85)	Do.
Y 85-58	Generic name: Polyester resin	50 FR 18919 (18920) (5-3-85)	May 12, 1985
Y 85-59	Generic name: Polyester resin made from dibasic aromatic and aliphatic acids and aliphatic glycols.	50 FR 18919 (18920) (5-3-85)	Do.
Y 85-60	Generic name: Polyester resin made from dibasic aromatic and aliphatic acids and aliphatic glycols.	50 FR 18919 (18920) (5-3-85)	Do.
Y 85-61	Generic name: Urethane modified alkyd resin	50 FR 18919 (18920) (5-3-85)	May 14, 1985
Y 85-62	Generic name: Phthalic modified alkyd resin	50 FR 18919 (18920) (5-3-85)	Do.
Y 85-63	Generic name: Isophthalic modified alkyd resin	50 FR 18919 (18920) (5-3-85)	Do.
Y 85-64	Generic name: Phthalic modified alkyd resin	50 FR 18919 (18920) (5-3-85)	Do.
Y 85-65	Generic name: Copolymer of vinyl acetate and olefins	50 FR 18919 (18920) (5-3-85)	Do.
Y 85-66	Generic name: Linseed fatty acid modified	50 FR 18919 (18920) (5-3-85)	May 15, 1985
Y 85-67	Generic name: Polyester	50 FR 18919 (18920) (5-3-85)	Do.
Y 85-68	Generic name: Alkyd resin	50 FR 18919 (18920) (5-3-85)	Do.
Y 85-69	Generic name: Acrylated alkyd	50 FR 18919 (18920) (5-3-85)	Do.
Y 85-70	Generic name: Acrylic copolymer	50 FR 19797 (19798) (5-10-85)	May 20, 1985

IV. 101 Chemical Substances for Which EPA Has Received Notices of Commencement to Manufacture

PMN No	Chemical identification	FR citation	Date of commencement
P 81-134	Generic name: Disubstituted cyclohexenol	46 FR 45807 (45809) (9-15-81)	Apr. 25, 1985
P 81-493	Generic name: Co-polymeric organopoly-siloxane	46 FR 49945 (49946) (10-8-81)	May 1, 1985
P 83-86	Generic name: Mercaptoalkylsilane	47 FR 52220 (52221) (11-19-82)	Do.
P 83-87	Generic name: Siloxanes and silicones, dimethyl, methyl(mercapto-alkyl), trimethyl end-blocked.	47 FR 52220 (52221) (11-19-82)	Do.
P 83-236	Generic name: Alkyl substituted imidazole derivative of methyl pyrimidinone-azo-metyl phenyl-benzothiazole	47 FR 53782 (11-29-82)	Jan. 9, 1985

IV. 101 Chemical Substances for Which EPA Has Received Notices of Commencement to Manufacture—Continued

PMN No	Chemical identification	FR citation	Date of commencement
P 83-351	Polymer of: Trimethylol propane, ethylene glycol, adipic acid, phthalic anhydride.	48 FR 1819 (1-14-83)	Mar. 6, 1985
P 83-1026	Generic name: Polyester resin	48 FR 37699 (8-19-83)	Apr. 17, 1985
P 83-1233	Generic name: Phosphorothioic acid ester, amine salt	48 FR 43397 (43399) (9-23-83)	Apr. 12, 1985
P 83-1234	Generic name: Vinyl-epoxy ester	48 FR 43397 (43399) (9-23-83)	May 20, 1985
P 83-1294	Generic name: Dimer acids, monocarboxylic acid, dicarboxylic acids, diamines, polyamide resin	48 FR 45842 (10-7-83)	Apr. 25, 1985
P 83-1297	Generic name: Polyurethane	48 FR 45842 (10-7-83)	May 13, 1985
P 84-117	Generic name: Substituted aromatic polymer	48 FR 50944 (50946) (11-4-83)	May 7, 1985
P 84-163	Generic name: Substituted triazine	48 FR 50944 (50949) (11-4-83)	May 6, 1985
P 84-167	Generic name: Fluorine substituted dioxan-2-one	48 FR 50944 (50950) (11-4-83)	Do.
P 84-256	Methyl methacrylate, 2-ethyl hexyl acrylate, dimethyl amino ethyl methacrylate	48 FR 56846 (12-23-83)	Mar. 7, 1985
P 84-397	Polymer of hydroxy ethyl acrylate, iso-phorone diisocyanate and Duracarb 122	49 FR 6991 (2-24-84)	Mar. 25, 1985.
P 84-453	Generic name: Thiadiazole derivative	49 FR 9013 (9015) (3-9-84)	Aug. 23, 1984.
P 84-503	Generic name: Modified styrene/acrylic polymer	49 FR 13746 (13747) (4-6-84)	Apr. 9, 1985
P 84-530	Generic name: Polyester polymer derived from glycols and cyclic and alkyl dicarboxylic acids.	49 FR 13744 (13745) (4-6-84)	Apr. 30, 1985
P 84-575	Acetyl dimethyl tetrahydro naphthindane	49 FR 16833 (16834) (4-20-84)	Mar. 26, 1985
P 84-770	Generic name: Alkyd resin	49 FR 23916 (23918) (6-8-84)	May 6, 1985
P 84-996	Generic name: Poly alkyl benzene sulfonic acid	49 FR 31136 (31137) (8-3-84)	Apr. 15, 1985
P 84-1008	Generic name: Alkyl thiadiazole	49 FR 32110 (8-10-84)	Do.
P 84-1125	Generic name: Methanone, alkyl-aryl	49 FR 35414 (35416) (9-7-84)	Apr. 17, 1985
P 85-20	Generic name: Arylhydrozonotrimethylin dolium, salt	49 FR 41102 (41103) (10-19-84)	Mar. 27, 1985
P 85-104	Generic name: Alkenyl substituted carbomonocyclic alkenyl ether	49 FR 44676 (44678) (11-8-84)	May 13, 1985.
P 85-105	Generic name: Poly alkenyl substituted carbomonocyclic ether	49 FR 44676 (44678) (11-8-84)	Do.
P 85-106	Generic name: Alkenyl substituted carbomonocyclic alcohol	49 FR 44676 (44678) (11-8-84)	Do.
P 85-110	Generic name: Polysulfide polymer	49 FR 45657 (11-19-84)	May 14, 1985
P 85-148	Generic name: Modified acrylic copolymer	49 FR 47108 (11-30-84)	Apr. 18, 1985
P 85-201	Generic name: Substituted dioxazine	49 FR 47921 (47922) (12-7-84)	Apr. 25, 1985
P 85-202	Generic name: Substituted dioxazine	49 FR 47921 (47922) (12-7-84)	Do.
P 85-264	Generic name: Substituted terpene resin	49 FR 49895 (49896) (12-24-84)	May 20, 1985
P 85-308	Generic name: Substituted alkyl silyl	49 FR 50444 (12-28-84)	Apr. 15, 1985
P 85-358	Polymer of 2,2-dimethyl-3-hydroxypropyl-1,-1,2-dimethyl-3-hydroxypropionate, methylene bis (4-cyclohexyl isocyanate), polycaprolactone triol, adipic acid, and E-caprolactone.	50 FR 1630 (1631) (1-11-85)	May 13, 1985
P 85-398	Generic name: Vinyl acetate acrylic copolymer	50 FR 3592 (3593) (1-25-85)	May 15, 1985
P 85-401	Generic name: Substituted aminoazobenzene	50 FR 3593 (3593) (1-25-85)	Apr. 29, 1985
P 85-414	Generic name: Acrylated alkyd resin	50 FR 4897 (4897) (2-4-85)	Apr. 22, 1985
P 85-416	Generic name: Acrylic resin	50 FR 4897 (4897) (2-4-85)	Apr. 18, 1985
P 85-418	Generic name: Acrylic resin	50 FR 4897 (4897) (2-4-85)	Apr. 19, 1985
P 85-419	Generic name: Acrylic resin	50 FR 4897 (4897) (2-4-85)	Apr. 20, 1985
P 85-420	Generic name: Acrylic resin	50 FR 4897 (4897) (2-4-85)	Apr. 19, 1985
P 85-421	Generic name: Acrylic resin	50 FR 4897 (4897) (2-4-85)	Apr. 21, 1985
P 85-422	Generic name: Acrylic resin	50 FR 4897 (4897) (2-4-85)	Apr. 18, 1985
P 85-423	Generic name: Acrylic resin	50 FR 4897 (4897) (2-4-85)	Apr. 19, 1985
P 85-425	Generic name: Ether dicarboxylate	50 FR 4897 (4897) (2-4-85)	Apr. 22, 1985
P 85-434	Generic name: Substituted cyclopropane carboxylic acid chloride	50 FR 4897 (4898) (2-4-85)	Apr. 29, 1985
P 85-447	Polymer of 4,4'-isopropylidenedicyclo-hexanolepichlorohydrin, terephthalic acid, isophthalic acid, adipic acid, tetramethylammonium chloride, and linseed fatty acid.	50 FR 5416 (2-8-85)	May 17, 1965
P 85-450	Generic name: Alkyd resin	50 FR 5416 (5417) (2-8-85)	May 1, 1985.
P 85-451	Generic name: Alkyd resin	50 FR 5416 (5417) (2-8-85)	Apr. 30, 1985
P 85-452	Generic name: Alkyd resin	50 FR 5416 (5417) (2-8-85)	Do.
P 85-453	Generic name: Alkyd resin	50 FR 5416 (5417) (2-8-85)	Do.
P 85-456	Generic name: Substituted phenylazopyridone trisulfonic acid, alkali metal salt	50 FR 5416 (5417) (2-8-85)	Mar. 1, 1985
P 85-461	Generic name: Hydroxy terminated polyester diol reaction with benzophenone tetracarboxylic dianhydride, terminated with hydroxyethyl methacrylate.	50 FR 6383 (6384) (2-15-85)	May 5, 1985
P 85-476	Generic name: Substituted cyclohexene carboxylic acid	50 FR 7640 (2-25-85)	May 21, 1985
P 85-477	Generic name: Substituted cyclohexane carboxylic acid	50 FR 7640 (2-25-85)	Do.
P 85-505	Generic name: Propoxylated quaternary ammonium compound	50 FR 7640 (7642) (2-25-85)	May 22, 1985
Y 85-17	Generic name: Ethylene terpolymer	50 FR 5417 (5418) (2-8-85)	Apr. 29, 1985
Y 85-34	Generic name: Calcium salt of 2-acryl-amide-2-methyl-propanesulfonic acid copolymer	50 FR 12626 (3-29-85)	Apr. 25, 1985
Y 85-41	Generic name: Polyester polyol	50 FR 14446 (4-12-85)	Do.
Y 85-47	Generic name: Alkali soluble styrene and acrylate random copolymer	50 FR 15632 (15633) (4-19-85)	May 20, 1985
Y 85-48	Generic name: Alkali soluble styrene and acrylate random copolymer	50 FR 15632 (15633) (4-19-85)	Do.
Y 85-49	Generic name: Alkali soluble styrene and acrylate random copolymer	50 FR 15632 (15633) (4-19-85)	Do.
Y 85-50	Generic name: Alkali soluble styrene and acrylate random copolymer	50 FR 15632 (15633) (4-19-85)	Do.
Y 85-52	Generic name: Alkyl methacrylate polymer	50 FR 15632 (15633) (4-19-85)	May 7, 1985.
Y 85-53	Generic name: Alkyl methacrylate polymer	50 FR 15632 (15633) (4-19-85)	Do.
Y 85-54	Generic name: Alkyl methacrylate polymer	50 FR 15632 (15633) (4-19-85)	Do.
Y 85-58	Generic name: Polyester resin	50 FR 18919 (18920) (5-3-85)	May 13, 1985

V. 126 Premanufacture Notices for Which the Review Period Has Been Suspended

PMN No	Identity/generic name	FR citation	Date suspended
P 83-1	Generic name: Polyhalogenated aromatic alkylated hydrocarbon.	47 FR 46371 (10-18-82)	Oct. 22, 1982
P 83-333	Generic name: Reaction product of polycyclesulfonic acid salt with phosphorus halide/halogen, subsequent reaction with an amine, subsequent reaction with an aldehyde/sodium bissulfite alkali	48 FR 72 (73) (1-3-83)	Mar. 14, 1983
P 83-418	Generic name. Benzenedisulfonic acid, chlorotriazinylaminodimethylphenylazo-sulfonaphthaleneazo-.	48 FR 5304 (5306) (2-4-83)	Feb. 19, 1985
P 83-461	Generic name. Substituted alkoxy silane	48 FR 7299 (7300) (2-18-83)	July 1, 1983
P 83-634	Generic name. Substituted mono azo aromatic	48 FR 17385 (4-22-83)	July 5, 1983
P 83-669	Generic name: Chromium complex of substitutedphenolazosulfonaphthol with naphtholazosulfonaphthol	48 FR 20490 (5-6-83)	Aug. 5, 1983
P 83-677	Generic name: Chromium complex of substituted alkylaminoformimidphenol with sulfonaphtholazosulfophenylpyrazolone.	48 FR 20490 (20491) (5-6-83)	Do.
P 83-770	Generic name. Cobalt complex of a substituted phenolazonaphthol	48 FR 24967 (24968) (6-3-83)	Aug. 15, 1983
P 83-771	Generic name: Chromium complex of substituted phenolazoalkylarylamino-formimdphenol with sulfonaphthylazo-sulfonaphthol.	48 FR 24967 (24968) (6-3-83)	Do.
P 83-860	Generic name: Metal complexed substituted aromatic azo compound	48 FR 30434 (30435) (7-1-83)	Sept. 21, 1983
P 83-875	4-(2-cyano-4-nitrophenylazo)-[N-(2-cyanoethyl)-N-(2-phenoxyethyl)amino] benzene	48 FR 31460 (31462) (7-8-83)	May 24, 1985.

V. 126 Premanufacture Notices for Which the Review Period Has Been Suspended—Continued

PMN No	Identity/generic name	FR citation	Date suspended
P 83-876	4-(2-cyano-4-nitrophenylazo)-[N,N-bis(2-propionyloxyethyl)amino]-3-chlorobenzene	48 FR 31460 (31462) (7-8-83)	Do
P 83-913	Generic name: Copper sulfonylphenazopoly-hydroxy phenazobenzoate	48 FR 32381 (32383) (7-15-83)	Oct. 1, 1983
P 83-1018	Generic name: Substituted-naphthalene tetradisulfonic acid, bis[(substituted-hydroxyphenylazo)phenyl]derivative	48 FR 36647 (36649) (8-12-83)	Oct. 24, 1983
P 83-1238	Generic name: Substituted anthraquinone	48 FR 43397 (43400) (9-23-83)	Dec. 9, 1983
P 84-15	Generic name: Substituted heterocyclic metal complex	48 FR 48863 (48864) (10-21-83)	Feb. 9, 1985
P 84-17	Generic name: Substituted heterocyclic metal complex	48 FR 48863 (48864) (10-21-83)	Do
P 84-18	Generic name: 1(1,1 dimethylethoxy)-propan-2-ol	48 FR 48863 (48864) (10-21-83)	Feb 28, 1985
P 84-36	Generic name: Substituted heterocyclic metal complex	48 FR 48863 (48866) (10-21-83)	Feb 9, 1985
P 84-50	Generic name: Substituted heterocyclic metal complex	48 FR 50951 (50952) (11-4-83)	Do
P 84-108	Generic name. Trisubstituted heterocyclic disubstituted monocycle	48 FR 50944 (50945) (11-4-83)	Mar 5, 1984
P 84-121	Generic name: Substituted heterocyclic metal complex	48 FR 50944 (50946) (11-4-83)	Feb 9, 1985
P 84-306	Benzoic acid, 2-((((2-((2-methyl-1-oxo-2-propenyl)oxy)ethyl)amino)carbonyl)oxy-, methyl ester	49 FR 930 (932) (1-6-84)	Mar 22, 1984
P 84-307	2-propenoic acid, 2-methyl-, 2-((hexahydro 2-oxo-1H-azepin-1-yl) carbonyl)amino)ethyl ester	49 FR 930 (932) (1-6-84)	[illegible]
P 84-375	Generic name: Sodium salt of alkyl dithiocarbamates	49 FR 4980 (4981) (2-9-84)	Jan. 10, 1985
P 84-376	Generic name: Aryl esters of alkyl dithiocarbamates	49 FR 4980 (4981) (2-9-84)	Do
P 84-391	Generic name: Cuprate(5-), [5-hydroxy-2-[[4-[[5-hydroxy-6-[[2-methoxy-5-(substituted) phenyl]azo]-7-sulfo-2-naphthalenyl]amino]-6-[(3-sulfophenyl)amino)]-1,3,5-triazin-2-yl]amino]-6-[(2-hydroxy-5-sulfophenyl)]azo-1,7-naphthalene-disulfonato(7-)], pentasodium.	49 FR 6160 (6162) (2-17-84)	Apr 27 1984
P 84-392	Generic name: Alkoxylated cycloaliphatic diamine	49 FR 6160 (6162) (2-17-84)	[illegible]
P 84-485	Generic name: Poly(oxy-1,2-ethanediyl)alpha-acyl-w-alkyl	49 FR 11009 (11010) (3-23-84)	June 4, 1984
P 84-591	Generic name: Sodium salt of an alkylated, sulfonated aromatic	49 FR 16833 (16835) (4-20-84)	Aug. 21, 1984
P 84-597	Generic name: Blocked aliphatic polyisocyanate	49 FR 16833 (16835) (4-20-84)	July 19, 1984
P 84-649	Generic name: Chromate, bis(substituted substituted phenolato) inorganic salts	49 FR 19110 (19113) (5-4-84)	July 20, 1984
P 84-650	Generic name: Chromate, bis(substituted substituted substituted pyrazolyl), sodium	49 FR 19110 (19113) (5-4-84)	Do
P 84-651	Generic name: Chromate, bis(substituted substituted naphthalenolato)sodium	49 FR 19110 (19113) (5-4-84)	Do
P 84-664	Generic name: Chromate, (substituted substituted phenolato) (substituted substituted substituted phenolato)sodium	49 FR 20060 (20061) (5-11-84)	Do
P 84-665	Generic name: Chromate, bis(substituted substituted substituted phenolato), sodium	49 FR 20060 (20061) (5-11-84)	Do
P 84-669	Oleic, linoleic, palmitic acid ester of ethoxylated $C_{12}C_{14}$ alcohols	49 FR 20060 (20061) (5-11-84)	May 17, 1985
P 84-673	Generic name: Chromate (substituted naphthalenolato) (substituted substituted naphthalenolato) inorganic salts.	49 FR 20060 (20061) (5-11-84)	July 20, 1874
P 84-698	Generic name: 9,10-Anthracenedione sulfonic acid, sodium salt	49 FR 22128 (22129) (5-25-84)	Aug. 10, 1984
P 84-703	Oxo-octyl acetate	49 FR [illegible] (22130) (5-25-84)	Oct. 29, 1984
P 84-713	Generic name: Acrylated alkoxylated aliphatic polyol	49 FR [illegible] (22130) (5-25-84)	Feb. 1, 1985
P 84-737	Generic name: Glycol ether	49 FR [illegible] (22866) (6-1-84)	Mar 21, 1985
P 84-738	Generic name: Glycol ether	49 FR 22865 (22866) (6-1-84)	Do
P 84-742	Generic name: Cross-linked modified polyvinyl amide	49 FR [illegible] (22866) (6-1-84)	Aug. 22, 1984
P 84-796	Generic name: Polyfunctional aziridine	49 FR 24782 (6-15-84)	Dec. 17, 1984
P 84-814	Generic name: Polysubstituted polyol	49 FR [illegible] (24784) (6-15-84)	Jan. 4, 1985
P 84-824	Generic name: Brominated aromatic	49 FR [illegible] (6-22-84)	Feb 7, 1985
P 84-858	Generic name: Polyalkylene glycol ether acrylate	49 FR [illegible] (26801) (6-29-84)	Jan. 3, 1985
P 84-881	Generic name: Modified polymer of styrene with alkyl acrylate and alkyl methacrylates	49 FR 28614 (28615) (7-13-84)	May 15, 1985
P 84-886	Generic name: Triazine derivative	49 FR 28614 (28615) (7-13-84)	Oct. 22, 1984
P 84-895	Generic name: Substituted-substituted benzenesulfonic acid couple with substituted-substituted benzenes and substituted substituted naphthalenediol-sulfonic acid, sodium salt.	49 FR 28614 (28616) (7-13-84)	Nov 16, 1984
P 84-900	1,3,5-Triazine-2,4,6 (1H,3H,5H)-trione, 1,3,5-tris(2,3-dibromopropyl)-	49 FR 28616 (28617) (7-13-84)	Mar 26 1985
P 84-901	Bis(tetrabromobisphenol A)Bis(tribromo-phenyl)ethylenetetracarbonate	49 FR 28616 (28617) (7-13-84)	Feb 7, 1985
P 84-902	Hexabromodiphenyl amine	49 FR 28616 (28617) (7-13-84)	Do
P 84-903	N-methylhexabromodiphenyl amine	49 FR 28616 (28617) (7-13-84)	Do
P 84-913	Generic name: N,N'-bis(2-(2-(3-alkyl) thiasoline)vinyl)-1,4-phenylene diamine double salt	49 FR 28616 (28618) (7-13-84)	Nov 28, 1984
P 84-938	Polymer of hydroxy ethyl acrylate and polyisocyanate T 1890/100	49 FR 29451 (29453) (7-20-84)	Jan 3, 1985
P 84-954	Generic name: Substituted aromatic	49 FR 30238 (30239) (7-27-84)	Apr 29, 1985
P 84-1005	Generic name. Alkyl amine derivative	49 FR 32110 (8-10-84)	Oct. 24, 1984
P 84-1053	Generic name: Ethoxylated vegetable fatty acids, end-capped	49 FR 33718 (33720) (8-24-84)	Oct. 26, 1984
P 84-1062	Methyl vinyl sulfone	49 FR 33718 (33721) (8-24-84)	Mar 25, 1985
P 84-1079	Generic name: Alkylated diphenyl oxide	49 FR 34572 (34573) (8-31-84)	Nov 26, 1984
P 84-1114	Generic name: Sodium salt of sulfonated, alkylated diphenyl oxide	49 FR 35414 (35416) (9-7-84)	Nov 19, 1984
P 84-1128	Generic name: Isoalkyleneoxy alkanol	49 FR 35414 (35417) (9-7-84)	Nov 26, 1984
P 84-1129	Acetic acid, ester with C_9-C_{11} iso alcohols, C_{10}-rich	49 FR 35414 (35417) (9-7-84)	Jan 10, 1985
P 84-1130	Acetic acid, ester with C_9-C_{10} alcohols, C_9-rich	49 FR 35414 (35417) (9-7-84)	Do
P 84-1131	Acetic acid, ester with C_{11}-C_{14} iso alcohols, C_{13}-rich	49 FR 35414 (35417) (9-7-84)	Do
P 84-1136	Generic name. Substituted aromatic amide	49 FR 36151 (36152) (9-14-84)	Feb 4, 1985
P 84-1137	Generic name Cycloaliphatic epoxide	49 FR 36151 (36152) (9-14-84)	[illegible]
P 84-1144	Generic name: Isoalkyleneoxy alkanoate	49 FR 36151 (36152) (9-14-84)	Feb 11, 1985
P 84-1145	Generic name Alkyltrialkoxysilane	49 FR 36151 (36152) (9-14-84)	Nov 27, 1984
P 84-1182	Generic name. Aminopolyamide-epichlorohydrin resin	49 FR 38356 (38357) (9-28-84)	Jan. 11, 1985
P 84-1183	Generic name: Aminopolyamide-epichlorohydrin polymer	49 FR 38356 (38357) (9-28-84)	[illegible]
P 84-1188	Generic name: Modified acrylamide polymer	49 FR 38356 (38357) (9-28-84)	Dec 7, 1984
P 84-1204	Generic name: Substituted, sulfonated naphthylazo sodium salt	49 FR 38356 (38359) (9-28-84)	Dec. 17, 1984
P 84-1219	Generic name: Substituted pyridine	49 FR 39379 (39380) (109-5-84)	Feb 5, 1985
P 84-1228	Generic name: Polyisoalkoxyalkanol	49 FR 39379 (39381) (10-5-84)	Jan 8, 1985
P 84-1229	Generic name: Polyisoalkoxyalkanol	49 FR 39379 (39381) (10-5-84)	Do
P 85-16	Generic name: Acrylamide unsaturated quaternary ammonium copolymer	49 FR 41102 (41103) (10-19-84)	Jan. 4, 1985
P 85-18	Generic name Substitued amino anthranquinone	49 FR 41102 (411003) (10-19-84)	May 23, 1985
P 85-30	Generic name. Carbopolycycle sulfonate of substituted phenyl azo substituted heteromonocycle	49 FR 43105 (43106) (10-26-84)	Jan 9, 1985
P 85-31	Generic name: Carbopolycycle sulfonate of substituted heteropolycycle	49 FR 43105 (43106) (19-26-84)	Do
P 85-36	Generic name: Substituted pyridine	49 FR 43105 (43106) (10-26-84)	Feb 5, 1985
P 85-67	2,2'-diallly-4,4'-sulfonyl diphenol	49 FR 44139 (44140) (11-2-84)	Jan 23, 1985
P 85-109	Generic name. Arylthiodialkanoylhydrazide	49 FR 45657 (11-19-84)	Apr 17, 1985
P 85-141	Generic name Polyester acrylate	49 FR 46852 (46853) (11-26-84)	Feb 12, 1985
P 85-142	Generic name: Aromatic epoxy ester	49 FR 46852 (46853) (11-26-84)	Do
P 85-155	Generic name: Halogenated aromatic sulfamide	49 FR 47108 (47109) (11-30-84)	Apr 12, 1985
P 85-159	Generic name: Polymeric aliphatic polyol acrylate ester	49 FR 47108 (47109) (11-30-84)	Feb 11, 1985
P 85-160	Generic name: Polymeric aliphatic polyol acrylate ester	49 FR 47108 (47109) (11-30-84)	Do
P 85-161	Generic name: Polymeric aliphatic polyol acrylate ester	49 FR 47108 (47109) (11-30-84)	Do
P 85-162	Generic name: Polymeric aliphatic polyol acrylate ester	49 FR 47108 (47109) (11-30-84)	Do
P 85-194	Generic name Acid amide salt	49 FR 47921 (12-7-84)	Feb 20, 1985
P 85-198	Generic name. Alkylated aromatic diamine	49 FR 47921 (47922) (12-7-84)	Mar 8, 1985
P 85-203	Generic name. Sulfur-containing polyalkylene oxide	49 FR 47821 (42722) (12-7-84)	Mar 5, 1985
P 85-216	Generic name. Substituted pyridine	49 FR 47921 (47922) (12-7-84)	Feb 19, 1985

V. 126 PREMANUFACTURE NOTICES FOR WHICH THE REVIEW PERIOD HAS BEEN SUSPENDED—Continued

PMN No	Identity/generic name	FR citation	Date suspended
P 85-234	Generic name: Disubstituted sulfide	49 FR 47921(47924) (12-7-84)	Apr. 25, 1985
P 85-236	Generic name: Substituted pyridine	49 FR 48801(48802) (12-14-84)	Apr. 16, 1985
P 85-258	Generic name: Substituted phenylazo substituted carbopolycycle-carboxylic acid, salt	49 FR 48801(48803) (12-14-84)	Apr. 23, 1985
P 85-259	Generic name: Substituted phenylazo substituted heteropolycycle	49 FR 48801(48803) (12-14-84)	Mar. 22, 1985
P 85-265	Amines, tri ($C_{(n+1)}$ iso-C_n rich)	49 FR 49895(49896) (12-24-84)	Mar. 5, 1985
P 85-296	Generic name: Silicone ester polyacrylate	49 FR 49895(49898) (12-24-84)	Mar. 13, 1985
P 85-298	Generic name: Amino acrylate monomer	49 FR 49895(49898) (12-24-84)	Do.
P 85-301	Generic name: Urethane acrylate	49 FR 50444 (12-28-84)	Mar. 26, 1985
P 85-317	Phosphine oxide, diphenyl(2,4,6-tri-methyl-benzoyl)-	49 FR 50444(50445) (12-28-84)	Mar. 14, 1985
P 85-344	Benzoic acid, 2-(3-(1,3-benzodioxole-5-yl)-2 methyl propylidene)amino, methyl ester	49 FR 543(544) (1-4-85)	May 6, 1985
P 85-360	Generic name: Partial metal complex of aminomethylene phosphonic acid	49 FR 1630(1631) (1-4-85)	Mar. 22, 1985
P 85-367	Generic name: Halcalkyl substituted cyclic ether	49 FR 6130(1631) (1-11-85)	Mar. 25, 1985
P 85-368	Generic name: Halcalkyl substituted cyclic ether	49 FR 1630(1631) (1-11-85)	Do.
P 85-369	Generic name: Halcalkyl substituted cyclic ether	50 FR 1630(1631) (1-11-85)	Do.
P 85-383	Phenol, 2,4-bis[(di-methylamino)methyl]-6-methyl	50 FR 2719 (1-18-85)	Apr. 5, 1985
P 85-395	Generic name: Substituted polyester resin	50 FR 2719(2720) (1-18-85)	Apr. 1, 1985
P 85-415	Generic name: Acrylic ester	50 FR 4896(4897) (2-4-85)	Apr. 5, 1985
P 85-428	Generic name: Ester modified phenolic resin	50 FR 4896(4898) (2-4-85)	Apr. 17, 1985
P 85-431	1-Propanol, 3-mercapto-	50 FR 4896(4898) (2-2-85)	Apr. 22, 1985.
P 85-444	Generic name: Aromatic amidoamine	50 FR 5416 (2-8-85)	Apr. 19, 1985.
P 85-458	Generic name: Alkyl ester of a trialkoxy silane	50 FR 6383(6384) (2-15-85)	Apr. 29, 1985.
P 85-459	Generic name: Aromatic tertiary diamine	50 FR 6383(6384) (2-15-85)	Feb. 19, 1985
P 85-460	Generic name: Substituted succinic anhydride, reaction product with heterocyclic amine	50 FR 6383(6384) (2-15-85)	Apr. 30, 1985.
P 85-463	Generic name: Silane	50 FR 6383(6384) (2-15-85)	Apr. 25, 1985
P 85-466	Generic name: Polycyclic sulfonic acid salt	50 FR 6393(6384) (2-15-85)	May 21, 1985.
P 85-467	2-hydroxy-3 epsilon hydro propyl trimethyl ammonium chloride derivitized hydrolyzed soy protein isolate	50 FR 7640(7642) (2-25-85)	May 9, 1985
P 85-498	2 hydroxy-3 epsilon hydro propyl trimethyl ammonium chloride derivatized soy protein isolate	50 FR 7640(7642) (2-25-85)	Do.
P 85-523	Generic name: Functionally modified urethane	50 FR 8391 (3-1-85)	May 28, 1985.
P 85-528	Generic name: Aminoacrylate schiff base	50 FR 8391 (3-1-85)	May 20, 1985
P 85-535	Generic name: Substituted pyridine	50 FR 8391 (3-1-85)	May 17, 1985
P 85-556	Generic name: Substituted pyridine	50 FR 8391 (3-1-85)	Do.
P 85-562	Generic name: Alkano-alkane diacrylate octylamine adduct	50 FR 9504 (9505) (3-8-85)	May 14, 1985.
P 85-564	Polymer of hydroxyethyl acrylate, 4,4'-diphenylmethyane diisocyanate and polymethylene polyphenyl isocyanate	50 FR 9504 (9505) (3-8-85)	May 8, 1985
P 85-567	Generic name: Silyl ketone acetal	50 FR 9504 (9505) (3-8-85)	May 15, 1985
P 85-612	Generic name: Polymer of substituted aryl olefin	50 FR 9504 (9508) (3-8-85)	May 23, 1985.
P 85-619	Generic name: Tetra substituted aminocarboxylic acid	50 FR 10536 (10537) (3-15-85)	Mar. 22, 1985
P 85-627	Generic name: Alkenic cyanate	50 FR 10536 (10538) (3-15-85)	May 17, 1985
P 85-743	Generic name: Isocyanate oxazolidonyl isocyanurate	50 FR 14439 (14441) (4-12-85)	Apr. 19, 1985

[FR Doc. 85-22098 Filed 9-13-85; 8:45 am]
BILLING CODE 6560-50-M

[SAB-FRL-2898-3]

Science Advisory Board, Environmental Engineering Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Ground Water Monitoring Guidance Review Subcommittee of the Environmental Engineering Committee, Science Advisory Board, will be held in Conference Room 1101 West Tower, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C., on October 3-4, 1985. The meeting will begin at 9:00 a.m. and end at approximately 5:00 p.m. each day.

The purpose of the meeting will be to review the Office of Waste Programs Enforcement's draft document "RCRA Ground Water Monitoring Technical Enforcement Guidance Document". The document is available by calling the RCRA/Superfund Hotline at 800-424-9346 or (202) 382-3000 or by writing to Michael Barclay, RCRA Enforcement Division (WH-527), Office of Waste Programs Enforcement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The meeting is open to the public. Any member of the public wishing to participate or obtain further information about the meetings should contact Harry C. Torno, Executive Secretary, at (202) 382-2552, or Terry F. Yosie, Director, Science Advisory Board, at (202) 382-4126. Public comment will be accepted at the meeting on the draft guidance document. Written comments will be accepted in any form, and there will be opportunity for brief oral statements. Anyone wishing to make such statements must contact Mr. Torno prior to September 27, in order to be placed on the agenda. The draft RCRA Ground Water Monitoring Technical Enforcement Guidance Document is not intended to be used by the regulated community in making compliance decisions as required by the loss of interim status provisions of the Hazardous and Solid Waste Amendments of 1987.

Dated: September 5, 1985

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 85-22084 Filed 9-13-85; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Technical Subgroup of Radio Advisory Committee Resumes Meeting September 17, 1985

The technical subgroup of the Advisory Committee on Radio Broadcasting resumes its continuing meeting Tuesday September 17, 1985, at 10:00 a.m. in the Vincent Wasilewski Room of the National Association of Broadcasters, 1771 N Street NW, Washington, DC.

The subgroup will consider the recent discussions with Mexico which have led to an agreement in principle between the United States and Mexico on a new bilateral AM Agreement.

The subgroup also will continue its consideration of recommendations to the Federal Communications Commission concerning matters pertinent to preparations for the upcoming Region 2 Conference on expansion of the AM band.

In addition, the Subgroup also may consider other relevant matters of concern to the participants at the meeting.

The meeting, a continuing one, will be resumed after the September 17, 1985,

session at such time and place as is decided at that session.

All meetings of the Technical Subgroup are open to the public. All interested parties are invited to participate in these meetings.

For further information, please call the Subgroup Chairman, Mr. Wallace E. Johnson, at (703) 841–0500.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–22054 Filed 9–13–85; 8:45 am]

BILLING CODE 6712–01–M

Allocations Subgroup of Radio Advisory Committee; Meeting Cancellation

The meeting of the allocations subgroup of the Advisory Committee on Radio Broadcasting which had been tentatively scheduled for Thursday September 12, 1985, has been cancelled.

In view of the completion of the Report by the subgroup on issues connected with preparations for the upcoming Conference on Expansion of the AM Broadcast Band, there were no issues on which the subgroup needed to meet at this time.

A subsequent meeting will be scheduled when preparations for the Conference or other matters related to the concerns of the subgroup warrant.

For further information, please call the subgroup chairman, Jonathan David, at (202) 632–7792.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–22055 Filed 9–13–85; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

September 9, 1985.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of the submissions are available from Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395–7231.

OMB Number: None.
Title: Section 78.27, License Conditions.
Action: New collection.
Respondents: Cable television relay service (CARS) stations.
Estimated Annual Burden: 204 Responses; 34 Hours.

OMB Number: 3060–0210.
Title: Section 73.1930, Political Editorials.
Action: Extension.
Respondents: Commercial broadcast stations.
Estimated Annual Burden: 1,800 Responses; 5,400 Hours.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–22028 Filed 9–13–85; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection: Application for Consent to Exercise Trust Powers (OMB No. 3064–0025).

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a form SF–83, "Request for OMB Review," for extending the expiration date of the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, D.C. 20429.

Comments: Comments on this collection of information should be submitted on or before October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary (Administration), Federal Deposit Insurance Corporation, Washington, D.C. 20429, telephone (202) 389–4351.

SUMMARY: The FDIC is requesting OMB to extend the expiration date of the form used by insured state nonmember banks to apply to the FDIC for consent to exercise trust powers. The application Form FDIC 6200/09, OMB No. 3064–0025 expiring September 30, 1985, contains information needed by the FDIC to evaluate the qualifications of bank management to administer a trust department and to verify that a bank's financial condition will not be jeopardized as a result of the trust corporation. It is estimated that the preparation of the application imposes an annual paperwork burden of 15.7 hours on the average bank.

Dated: August 26, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–22073 Filed 9–13–85; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–742–DR]

Alabama; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–742–DR), dated September 7, 1985, and related determinations.

DATED: September 7, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 646–3616.

Notice: Notice is hereby given that, in a letter of September 7, 1985, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the State of Alabama resulting from Hurricane Elena and flooding beginning on or about September 2, 1985, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75

percent of total eligible costs in the designated area. Pursuant to section 408(b) of Pub. L 93–288, you are authorized to advance to the State its 25-percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Thomas P. Credle to the Federal Emergency Management Agency to act as the Federal Coordinating Officer for his declared disaster.

I do hereby determine the following areas of the State of Alabama to have been affected adversely by this declared major disaster:

Baldwin and Mobile Counties for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85–22057 Filed 9–13–85; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Costa Armatori S.p.A. and Costa Cruises, Inc, c/o Costa Cruises, One Biscayne Tower, Miami, Florida 33131.

Dated: September 11, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–2212 Filed 9–13–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Fifth Third Bancorp et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing .

Unless otherwise noted, comments regarding each of these applications must be received not later than October 4, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Fifth Third Bancorp,* Cincinnati, Ohio; to merge with American Bancorp, Inc., Newport, Kentucky, thereby indirectly acquiring American National Bank, Newport, Kentucky. Comments on this application must be received not later than October 9, 1985.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Cullman Bancshares, Inc.,* Cullman, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of People's Bank of Cullman County, Cullman, Alabama.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dryer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Busey Corporation,* Urbana, Illinois; to acquire 92 percent or more of the voting shares of The First National Bank of Thomasboro, Thomasboro, Illinois.

2. *The Viking Corporation,* Omaha, Nebraska; to acquire 100 percent of the voting shares of the Landmands Corporation, Kimballton, Iowa, and thereby indirectly acquire 90.37 percent of the voting shares of Landmands National Bank, Audubon, Iowa and 26.88 percent of the voting shares of Sibley State Bank, Sibley, Iowa.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Financial Bancshares, Inc.,* La Vista, Nebraska; to acquire 99 percent or more of the voting shares of Bank of Nebraska in Omaha, Omaha, Nebraska (also known as First State Savings Company).

Board of Governors of the Federal Reserve System, October 10, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–22051 Filed 9–13–85; 8:45 am]

BILLING CODE 6210–01–M

Landmark Bancshares Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the

evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 2, 1985.

A. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Landmark Bancshares Corporation*, Clayton, Missouri; to engage *de novo* through its subsidiary, LBC Securities, Inc., Ladue, Missouri ("Landmark Securities"). The primary activity of Landmark Securities is to be a discount broker. Landmark Securities may also conduct related securities credit activities pursuant to the Board's Regulation T and incidental activities such as offering custodial services, individual retirement accounts, and cash management services.

Board of Governors of the Federal Reserve System, September 10, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-22052 Filed 9-13-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds for Demonstration Grants to States for Projects of Emergency Medical Service for Children

Correction

In FR Doc. 85-21555 beginning on page 36922 in the issue of Tuesday, September 10, 1985, on page 36922, in the first column under **SUMMARY** in the third line, the last word reading "not", should read "now".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Solar Energy and Energy Conservation Bank; Meeting of the Solar Energy and Energy Conservation Advisory Committees

[Docket No. N-85-1549]

AGENCY: Solar Energy and Energy Conservation Bank, HUD.

ACTION: Notice: Meeting of the Solar Energy and Energy Conservation Advisory Committees.

SUMMARY: This Notice announces a meeting of the Solar Energy and Energy Conservation Advisory Committees. The meeting will be held on October 10 and 11, 1985 in Washington, DC. The purpose of the meeting is to discuss Bank business.

FOR FURTHER INFORMATION CONTACT: Colet Ritter, Office of the Solar Energy and Energy Conservation Bank, Housing and Urban Development, 451 7th Street, SW, Room 7110, Washington, DC 20410; Telephone (202) 755-7166. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Energy Security Act of 1980 established Energy Conservation and Solar Energy Advisory Committees for the purpose of assisting the Board in carrying out the activities of the Bank which relate to energy conserving improvements and solar energy systems. Each committee consists of five members, appointed by the Board from among individuals who are not officers or employees of any governmental entity, as follows:

(1) One individual who is able to represent the views of consumers as a result of the individual's education, training and experience.

(2) One individual who is able to represent the views of financial institutions as a result of the individual's education, training and experience.

(3) One individual who is able to represent the views of builders as a result of the individual's education, training and experience.

(4) One individual who is able to represent the views of architectural or engineering interests as a result of the individual's education, training and experience.

(5)(a) For the Solar Energy Committee, one individual who is able to represent the views of the solar energy industry as a result of the individual's education, training and experience.

(b) For the Energy Conservation Committee, one individual who is able to represent the views of producers or installers of residential and commercial energy conserving improvements as a result of the individual's education, training and experience.

In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. I, 10(a)(2), announcement is made of the following meeting:

The Solar Energy and Energy Conservation Advisory Committees will meet on October 10 and 11, 1985. The meetings are open to the public and will convene at 9:30 a.m. on Thursday, October 10, 1985 at the Department of Housing and Urban Development, 451 7th Street, SW, #7106, Washington, DC 20401.

An agenda will be available at the meeting. Inquiries concerning the agenda and the meeting may be made by contacting the Office of the Solar Energy and Energy Conservation Bank at (202) 755-7166.

Authority: Title V, Subtitle A, of the Energy Security Act of 1980 (Pub. L. 96-294, 12 U.S.C. 3601 *et seq.*).

Dated: August 26, 1985.

Approved:

Lillian W. Lazenberry,

Advisory Committee Chairperson.

Dated: August 19, 1985.

Approved:

Richard H. Francis,

Manager, Solar Energy and Energy Conservation Bank.

[FR Doc. 85-22124 Filed 9-13-85; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Intent To Prepare an Environmental Impact Statement of Rangeland Vegetation Management Program, Western United States

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement and conduct scoping.

SUMMARY: Notice is hereby given that, in accordance with the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM), Division of Environmental Services, will prepare an environmental impact statement (EIS) on proposed treatment measures for competing rangeland vegetation treatment on BLM administered lands in the contiguous Western States. The purpose of the treatment is to improve forage conditions, wildlife habitat, watershed conditions, and increase livestock production. Potential competing vegetation treatment measures include biological, burning, herbicidal, and mechanical methods, individually and in combination. The EIS will analyze gound and aerial application of herbicides. Herbicides to be used could include 2,4-D, Dicamba, Picloram, Tebuthiron, Triclopyr, and Ureabor.

DATE: Comments should be submitted by October 16, 1985.

Scoping: The public is invited to submit issues, concerns, and suggestions in writing, which will be used to determine the scope of the analysis. Comments will be accepted through

October 13, 1985. Comments or requests for further information shoud be addressed to Robert E. Pizel, Project Leader, Bureau of Land Management, Division of Environmental Services, 555 Zang Street, First Floor East, Denver, Colorado 80228.

SUPPLEMENTARY INFORMATION: The proposed action is a combination of competing vegetation treatment measures which would integrate manual, mechanical, herbicidal and biological methods to achieve the most cost effective and biorational solutions. Alternatives will include integrated control with no herbicides, and no action.

This EIS will analyze impacts of various methods of treating competing vegetation proposed in Grazing Environmental Impact Statements and Resource Management Plans.

The EIS will be prepared by an interdisciplinary team.

The Environmental Consequences of the Proposed Action and Alternatives to be considered include effects on soil, water, vegetation, fish and wildlife, cultural and human environment; short-term vs. long-term productivity; and irreversible or irretrievable commitment of resources.

Dated: September 10, 1985.

Robert F. Burford,

Director

[FR Doc. 85-22048 Filed 9-13-85; 8:45 am]

BILLING CODE 4310-84-M

[CA 16976, CA 16977, and CA 16978]

Noncompetitive Sale of Public Lands in Trinity County, CA; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty Action—Noncompetitive Sales of Public Lands in Trinity County, California.

SUMMARY: The following described public lands have been examined and identified as suitable for disposal by sale under Sec. 203(a)(1) of the Act of October 21, 1976 (90 Stat. 2750; 43 U.S.C. 1713), at no less than the appraised fair market value. Appraisal value will be available prior to the end of the comment period at the BLM Area Office, Redding, California.

Legal Description:

Township 33 North, Range 10 West, M.D.B.&M.

Section 12,

Lot 13 (containing 0.45 acres)
Lot 16 (containing 0.74 acres)
Lot 17 (containing 0.74 acres)

These three parcels of land will be offered as direct sales to:

Lot 13 (CA 16976), Barbara Jean Reed
Lot 16 (CA 16976), Joseph W. McWilliams, Trustee of the Joseph W. McWilliam and Ila R. McWilliams Trust
Lot 17 (CA 16978), Dale and Lotus Hubbard.

These direct sales are necessary to protect equities arising from inadvertent unauthorized use, as a result of private surveying errors. All proposed sale areas contain a portion of their residence and improvements which have been established for many years. Areas to be conveyed will accommodate the inadvertent trespasses upon public land, comply with Trinity County Planning Department requirements, and assure than no uneconomic, difficult to manage, remnant is created. Failure to accept and offer to purchase the offered lands within the time specified by the authorized officer shall constitute a waiver of this preference consideration.

These lots have been examined and found suitable for disposal under the said Act of October 21, 1976, and are consistent with the approved Redding Resource Area Land Use Plans. Sale Procedures are pursuant to regulations contained in Title 43, Code of Federal Regulations, Part 2710.

BLM may withdraw these lands from sale at any time if, in the opinion of the Authorized Officer, consummation of the sale would not be in the best interest of the United States.

The terms and conditions applicable to the sale are as follows:

1. The patent will reserve to the United States a right-of-way for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 954).

2. All minerals (or partial or specific mineral interests, where applicable) shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office. However, should the mineral report conclude that the mineral interest being offered for conveyance have "no known mineral value", acceptance of the direct sale offcer will also constitute an application for conveyance of those mineral interests offered for conveyance in the sale, and a $50.00 non-refundable fee (43 CFR 2720.1-2(c)) will be required; the mineral estate will then be sold simultaneously with the surface estate.

Publication of this Notice the **Federal Register**, segregates the public land from appropriation under the public land laws, including the mining laws. The segregative effect shall terminate upon issuance of patent, or 270 days from the date of publication, whichever occurs first.

Detailed information concerning the sale, including the environmental assessment and land report are available for review at the Redding Resource Area Office, 355 Hemsted Drive, Redding, California 96002.

DATE: For a period of 45 days from the date of first publication of this notice in the **Federal Register**, interested parties may submit comments to the following address.

ADDRESS: Comments and suggestions should be sent to: Area Manager, Redding Resource Area, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96002.

Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHR INFORMATION CONTACT: Robert J. Bainbridge, (916) 246-5325.

Dated: September 3, 1985.

Robert C. Korfhage,

Acting Redding Area Manager.

[FR Doc. 85-22075 Filed 9-13-85; 8:45 am]

BILLING CODE 4310-40-M

New Mexico; White Sands Resource Area Final Resource Management Plan/Environmental Impact Statement (RMP/EIS)

AGENCY: Interior, Bureau of Land Management (BLM), Las Cruces District.

ACTION: Notice of availability.

SUMMARY: The Final RMP/EIS for the White Sands Resource Area, New Mexico is available for the public. The RMP/EIS analyzes the impacts of managing and allocating land and resources on 1.8 million acres of public land in Otero and Sierra Counties in south-central New Mexico. The Final RMP/EIS contains the Proposed Plan. The Proposed Plan is a modified version of the Preferred Alternative published in the Draft RMP/EIS in March 1985. All parts of the Proposed Plan may be protested. A 30-day protest period is provided as required by BLM planning regulations (43 CFR 1610.5-2).

DATE: Protests on the Proposed Plan must be received no later than 30 days from this notice.

ADDRESS: Protests should be sent to the Director (202), BLM, 18th and C Streets NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Larry Nunez, Area Manager BLM, White Sands Resource Area, 1800 Marquess Street, Las Cruces, New Mexico 88005, (505) 525–8228 or FTS 571–8312.

SUPPLEMENTARY INFORMATION: Persons who have participated in this planning process and have interests which may be adversely affected may protest approval of the plan. Protests should be made to the BLM Director with the following information:

1. Name, mailing address, telephone number, and interest of the person filing the protest.

2. A statement of the issue and issues being protested.

3. A statement of the part and parts being protested.

4. A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date of the issue or issues were discussed for the records.

5. A concise statement explaining why the protesting party disagrees with BLM's Proposed Plan.

At the end of the 30-day protest period, the Proposed Plan, excluding any portions under protest, shall become final. Approval shall be withheld on any portion of the plan under protest until final action has been completed on such protest. Upon approval the final plan will be published with the Record of Decision. This is scheduled to be completed by March of 1986.

A limited number of copies of the RMP/EIS are available from the BLM, Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico 88005. Public reading copies are available for review at the BLM New Mexico State Office, other BLM District Offices in New Mexico, and public and university libraries in Alamogordo, Truth or Consequences, Las Cruces, Portales, Santa Fe, and Albuquerque, New Mexico and El Paso, Texas.

Dated: August 30, 1985.

Monte G. Jordon,

State Director.

[FR Doc. 85–22125 Filed 9–13–85; 8:45 am]

BILLING CODE 4310–FB–M

Office of Surface Mining Reclamation and Enforcement

Availability of Final Environmental Impact Statement on the Proposed Area D Expansion of the Rosebud Mine, Rosebud County, Montana (Federal Coal Mining Lease No. M-547131)

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of final environment impact statement (OSM–EIS–19).

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) and the Montana Department of State Lands (DSL) are making available a jointly prepared final environmental impact statement (EIS) on the proposed Area D expansion of the Rosebud mine. The EIS has been prepared to assist the Department of the Interior and Montana DSL in making a decision on the Western Energy Company application to surface mine coal approximately 1 mile northwest of Colstrip, Montana.

ADDRESSES: Copies of the final EIS may be obtained from Allen D. Klein, Administrator, Attn: Charles Albrecht, OSM, Western Technical Center, Second Floor, Brooks Towers, 1020 Fifteenth Street, Denver, Colorado 80202, or from Kit Walther, Montana DSL, Environmental Analysis Bureau, Capitol Station, Helena, Montana 59620.

FOR FURTHER INFORMATION CONTACT: Charles Albrecht, Chief, Environmental Analysis Branch (telephone: 303–844–2451) at the Denver, Colorado, location given under "ADDRESSES."

SUPPLEMENTARY INFORMATION: Western Energy's Rosebud mine is an existing surface mine made up of five mining units planned to eventually cover 22,000 acres of land surrounding the town of Colstrip, Montana. Of this total acreage, about 9,000 acres in four of the five mining units have already been permitted by OSM and Montana DSL. Western Energy is currently seeking approval to remove 68.5 million tons of coal from the Area D mining unit over an 18-year period at an average rate of approximately 3.8 million tons per year. The proposed expansion into the Area D mining unit would add 3,073 acres to the approximate 9,000-acre Rosebud mine permit area, in secs. 13 through 15, 22 through 27, and 35, T. 2N., R. 41 E., Montana principal meridian, of which 2,615 acres would be disturbed.

The EIS analyzes both the 18-year operation proposed for the Area D application area and Western Energy's long-range plan for Area D over the next 23 years. The long-range plan would be eventually to add another 1,309 acres to the Area D permit area, bringing its total acreage to 4,382 acres and the total acreage of the five mining-unit permit areas making up the Rosebud mine to approximately 13,382 acres. Five alternatives are analyzed in the EIS that cover the range of decisions available to OSM and DSL on the Area D application: approve the application as proposed, reject the application, selectively reject approval, approve mining with special conditions, and no action. OSM and Montana DSL have identified "approve mining with special conditions" as the preferred alternative.

OSM and Montana DSL jointly analyzed the impacts of the proposal and its alternatives. The final EIS has been prepared in an abbreviated format and contains (1) corrections and new information brought to the attention of its preparers by commenters on the draft, (2) written comments submitted to OSM and Montana DSL regarding the Rosebud D draft EIS, and (3) responses to those comments considered substantive in nature. Portions of the draft EIS are reproduced only where corrections have been made or where new information has been added to the text. In all cases, chapters, and pages from the draft EIS are identified so that the reader can refer to the draft EIS for the place of change.

Dated: September 11, 1985.

Brent Wahlquist,

Assistant Director, Technical Services and Research.

[FR Doc. 85–22114 Filed 9–13–85; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

Rail Carriers; Release of Waybill Data For Use in Research Project

The Commission has received a request from a professor at the University of Maryland for permission to use the Commission's 1977 and 1983 Waybill Sample to investigate the welfare effects of freight deregulation. The waybill data are needed to calculate changes in the overall consumer welfare. These changes will be calculated through a discrete choice model involving intermodal rate and service comparisons before and after deregulation. Specifically, the following waybill data will be needed: commodity, shipment size, origin, destination, routing information, and rate. The results of the project will be presented in aggregated form and published in the form of a monograph by the Brookings

Institute. No commercial use will be made of any of the waybill data.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Certain requirements designed to protect the data's confidentiality are agreed to by the requesting party and (2) public notice is provided so affected parties have an opportunity to object. (48 FR 40328, September 6, 1983).

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Commission's Director of Office of Transportation Analysis will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

James H. Bayne,

Secretary.

[FR Doc. 85-22101 Filed 9-13-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Portland Cement Association

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98-462 ("the Act"), the Portland Cement Association ("PCA") has filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. Specifically, Atlantic Cement Company, Inc. is now listed under the name of its parent company, Blue Circle Atlantic. Cianbro Corporation has sold its cement-producing assets to Dragon Products Company. Accordingly, Dragon Products Company is now a member of the PCA. Effective July 31, 1985, Davenport Cement Company resigned from membership in the PCA.

At present the members of the PCA are:

Aetna Cement Corporation
Alaska Basic Industries
Arkansas Cement Corporation
Ash Grove Cement Company
Ash Grove Cement West, Inc.
Blue Circle Atlantic
Blue Circle Inc.
CalMat Co.
Capitol Aggregates, Inc.
Dragon Products Company
General Portland Inc.
Genstar Cement Company
Gifford-Hill & Company, Inc.
Canada Cement Lafarge Ltd.
Ciment Quebec, Inc.
Federal White Cement Ltd.
Genstar Cement Limited
Lake Ontario Cement Limited
Ideal Basic Industries, Cement Division
Independent Cement Corporation
Lehigh Portland Cement Company
Lone Star Industries, Inc.
The Monarch Cement Company
Moore McCormack Cement, Inc.
Northwestern States Portland Cement Co.
Rinker Portland Cement Corp.
Rochester Portland Cement Corp.
St. Marys Peerless Cement Co.
St. Marys Wisconsin Cement Inc.
The South Dakota Cement Plant
Southwestern Portland Cement Co.
Miron Inc.
North Star Cement Limited
St. Lawrence Cement Inc.
St. Marys Cement Limited

In addition, the following equipment suppliers are involved as "Participating Associates," together with PCA members, in the activities of the Manufacturing Process Subcommittee of PCA's General Technical Committee:

Holderbank Consulting, Ltd.
Humboldt Wedag Company
Centennial Engineering, Inc.
Allis-Chalmers Corp.
Bendy Engineering, M.K./H.K. Ferguson
F.L. Smidth and Company
Claudius Peters, Inc.
Polysius Corp.
The Fuller Company

The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The original notification, identifying the original parties to the venture and describing in general terms the area of planned activities of the venture, is published at 50 FR 5015 (1985), as amended at 50 FR 14175 (1985).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85-22071 Filed 9-13-85; 8:45 am]

BILLING CODE 4410-01-M

Proposed Termination of Final Judgment; Cannon Mills Co.

Notice is hereby given that Cannon Mills Company ("Cannon") has filed with the United States District Court for the Southern District of New York a motion to terminate the final judgment in *United States* v. *Cannon Mills Company*, Civil No. 70-2827, and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the judgment but has reserved the right to withdraw its consent for at least seventy (70) days after publication of this notice. The complaint in this case (filed on June 30, 1970) alleged that Cannon had conspired with wholesalers and department store retailers to stabilize the retail price of Cannon prime line sheets and pillowcases and to eliminate, curtail and restrict the sale of such sheets and pillowcases by cut-price retailers. The judgment (entered on July 31, 1970), among other things, enjoins Cannon from directly or indirectly entering into, adhering to, maintaining or claiming any rights under any contract, agreement, understanding, plan or program with nay wholesaler or retailer in the United States to: (A) Fix, maintain or stabilize prices, markups or other terms or conditions relating to price for the sale of its sheets to any third person; (B) hinder, restrict, limit or prevent the sale of its sheets by any person or class of persons; and (C) restrict, limit or preclude Cannon from selling its sheets, other than sheets, other than sheets identified only by a trademark or trade name of a person other than Cannon, to a specified person or a specific class of persons.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and final judgment, Cannon's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection at the Legal Procedure Unit of the Antitrust Division,

Room 7416, United States Department of Justice, Tenth Street and Pennsylvania Avenue NW., Washington, D.C. 20530 (telephone: 202–633–2481), and at the Office of the Clerk of the United States District Court for the Southern District of New York, United States Court House, Foley Square, New York, New York 10007. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the fee set by Department of Justice regulations.

Interested persons may submit comments concerning this matter by sending them to Ralph T. Giordano, Chief, New York Office, Antitrust Division, Department of Justice, New York, New York 10278 (telephone: 212–264–0390). Such comments must be received by the Division within sixty (60) days.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85–22068 Filed 9–13–85; 8:45 am]

BILLING CODE 4410–01–M

Proposed Termination of Final Judgment; Marshall & Ilsley Corp. et al.

Notice is hereby given that Marshall & Ilsley Bank Stock Corporation (now known as Marshall & Ilsley Corporation), Marshall & Ilsley Bank (now known as M&I Marshall & Ilsley Bank) and Northern Bank (now known as M&I Northern Bank) (hereinafter referred to collectively as "M&I") have filed with the United State District Court for the Eastern District of Wisconsin a motion to terminate the final judgment in *United States* v. *Marshall & Ilsley Bank Stock Corporation, Marshall & Ilsley Bank, Northern Bank, and The Bank of Commerce.* Civil Action No. 61–C–54; and the Department of Justice ("Department"), in a stipulation also filed with the Court, has consented to termination of the final judgment, but has reserved the right to withdraw its consent for a least seventy (70) days after the publication of this notice. The complaint in this action, which was filed on March 21, 1961, alleged that the acquisitions of stock of Marshall & Ilsley Bank, Northern Bank and The Bank of Commerce ("BOC") by M&I were in violation of section 7 of the Clayton Act, 15 U.S.C. 18. The final judgment, as modified, required M&I to divest itself of all shares of stock of BOC and enjoined and restrained M&I from acquiring any assets, any share capital or any other financial ownership interest in BOC. In accordance with the Final Judgment, as modified, M&I divested itself of all shares of stock of BOC. BOC is now known as Associated Commerce Bank and is a subsidiary of Associated Banc-Corp, Green Bay, Wisconsin.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the final judgment would serve the public interest. Copies of the complaint and final judgment (as modified), M&I's motion papers, the stipulation containing the government's consent, the Department's memorandum and all further papers filed with the Court in connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7231, Department of Justice, 10th Street and Pennsylvania Avenue NW., Washington, D.C. 20530 and at the Office of the Clerk of the United States District Court for the Eastern District of Wisconsin, 517 East Wisconsin Avenue, Room 362, Milwaukee, Wisconsin 53202. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Department. Such comments must be received within sixty days, and will be filed with the Court. Comments should be addressed to Barry Grossman, Chief, Special Regulated Industries Section, Antitrust Division, Department of Justice, 521 12th Street NW., Room 504B, Washington, D.C. 20530.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85–22069 Filed 9–13–85; 8:45 am]

BILLING CODE 4410–01–M

Proposed Termination of Final Judgment; Springs Industries, Inc.

Notice is hereby given that Springs Industries, Inc. (formerly Springs Mills, Inc., hereinafter "Springs") has filed with the United States District Court for the Southern District of New York a motion to terminate the final judgment in *United States* v. *Springs Mills, Inc.,* Civil No. 70–2826, and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the judgment but has reserved the right to withdraw its consent for at least seventy (70) days after publication of this notice. The complaint in this case (filed on June 30, 1970) alleged that Springs had conspired with wholesalers and department store retailers to stabilize the retail prices of Springs prime line sheets and pillowcases and to eliminate, curtail and restrict the sale of such sheets and pillowcases by cut-price retailers. The judgment (entered on July 31, 1970), among other things, enjoins Springs from directly or indirectly entering into, adhering to, maintaining or claiming any rights under any contract, agreement, understanding, plan or program with any wholesaler or retailer in the United States to: (A) Fix, maintain or stabilize prices, markups or other terms or conditions relating to price for the sale of its sheets to any third person; (B) hinder, restrict, limit or prevent the sale of its sheets by any person or class of persons; and (C) restrict, limit or preclude Springs from selling its sheets, other than sheets identified only by a trademark or trade name of a person other than Springs, to a specified person or a specific class of persons.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and final judgment, Cannon's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection at the Legal Procedure Unit of the Antitrust Division, Room 7416, United States Department of Justice, Tenth Street and Pennsylvania Avenue NW., Washington, D.C. 20530 (telephone: 202–633–2481), and at the Office of the Clerk of the United States District Court for the Southern District of New York, United States Court House, Foley Square, New York, New York 10007. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the fee set by Department of Justice regulations.

Interested persons may submit comments concerning this matter by sending them to Ralph T. Giordano, Chief, New York Office, Antitrust Division, Department of Justice, New York, New York 10278 (telephone: 212–264–0390). Such comments must be received by the Division within sixty (60) days.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85–22070 Filed 9–13–85; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[Application No. D–6232 et al.]

Proposed Exemptions; Chris Stone & Associates et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526; U.S. Department of labor, 200 Constitution Avenue N.W., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Programs, U.S. Department of labor, Room N–4677, 200 Constitution Avenue NW., Washington, D.C. 20216.

Notice of Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION CONTACT: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The Chris Stone and Associates Defined Benefit Pension Plan (the CSA Plan) and The Pacific Fabric Printers, Inc. Defined Benefit Pension Plan (the PFP Plan, collectively, the Plans) Located in Los Angeles, California

[Application No. D–6232 and D–6233]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of the section 406(a), 406 (b)(1) and (b)(2) and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed loans (the Loans) by the Plans of amounts not to exceed, in the aggregate, 25% of the assets of the Plans, to Chris Stone and Associates (CSA), Pacific Fabric Printers, Inc. (PFP), and Pacific Fabric Finishers (PFF, collectively, the Companies) on a recurring basis over a five-year period, provided that the terms and conditions of each such Loan are at least as favorable to the Plans as those obtainable in arm's length transactions between unrelated parties.

Temporary Nature of Exemption: This exemption is temporary and will expire five years from the date a grant of this exemption is published in the **Federal Register**. Subsequent to the expiration of this exemption, the Plans may continue to hold Loans originated during the five-year period for the remaining terms of such Loans.

Summary of Facts and Representations

1. The Plans are defined benefit plans. As of June 28, 1985, the CSA Plan had 42 participants and net assets of approximately $153,307 and the PFP Plan had 75 participants and net assets of approximtely $94,303. The CSA Plan was adopted by CSA on November 25, 1981. CSA is in the business of importing, converting and selling fabric. The PFP Plan was adopted by PFP on December 31, 1981 and by PFF on July 30, 1983. PFP is in the business of imprinting designs and patterns on fabric and PFF is engaged in the preliminary processing of greige fabric. The trustee of the Plans is Mr. Chris Stone (Mr. Stone). Mr. Stone is the owner of 69% of the outstanding shares of stock of CSA and is the owner of all the outstanding shares of stock of PFP and PFF. Investment decisions for the Plans are currently made by Mr. Stone. The Plan's assets are commingled for investment purposes.

2. Each Loan will be evidenced by a promissory note (collectively, the Notes) having a term of five years and bearing interest at a variable interest rate equal to the greater of 12% per annum or two percent per annum above the prime rate of City National Bank (the Bank), Beverly Hills, California, on the date of such Loan's execution. The interest rate will be adjusted annually on the anniversary date of each Loan to the greater of 12% per annum or two percent above the then-current prime rate of the Bank. Each Note will require monthly payments of principal and interest calculated to amortize the principal balance over the Note's five-year term, subject to annual adjustments in the amount of the installment payments to reflect changes in the Bank's prime rate. At the end of the term of each Note, any unpaid principal and accrued interest will be payable in full. Principal and accrued interest may be prepaid at any time without penalty.

3. The Notes will be secured by a perfected first security interest in certain machinery and equipment (the Collateral) owned by CSA. The Collateral was appraised as of May 31, 1985 by Howard P. Shelton, A.S.A. (Mr. Shelton) of Howard P. Shelton, Inc., Tustin, California. Mr. Shelton and Howard P. Shelton, Inc. are independent of CSA, PFP and PFF. Howard P. Shelton, Inc. is in the business of machinery and equipment appraisals, technical valuations and cost surveys. Mr. Shelton has been an independent fee appraiser of machinery and equipment since 1970, has taken special courses in engineering and textiles, and

is a senior member of the American Society of Appraisers, Discipline: Equipment and Machinery, and of the National Association of Review Appraisers. Mr. Shelton established the fair market value of the Collateral, as of May 13, 1985, to be $897,000, and stated that there is an active market in the processing and fabric converting equipment and machinery comprising the Collateral. Mr. Shelton stated additionally that processing and fabric converting machinery has not changed substantially in recent years and is not likely to be subject to obsolesence in the near future. Further, all of the Collateral could be installed in another location, provided that it was suitably equipped with plumbing, electrical connections and foundations. Mr. Shelton appraised the Collateral in place and in the condition in which it is currently used in production.

4. The applicants represent that the fair market value of the Collateral on the date on which each Loan is made will equal or exceed 200 percent of the amount of the Loan plus the aggregate outstanding balance of all other indebtedness secured by the Collateral. Each Note will require the acceleration of payments of principal and accrued interest to the extent that the fair market value of the Collateral falls below 200 percent of the aggregate outstanding balance of all indebtness secured by the Collateral.

The Collateral will be insured against fire and other hazards in an amount equal to or exceeding the aggregate outstanding balance of the Loans for as long as any Loan remains unpaid, with the Plants named as loss-payee on the insurance policy to the extent of the Plans' interest in the Collateral.

Security agreements evidencing the Plans' first security interest in the Collateral will be perfected by filings with the appropriate authorities, as required for the perfection of such security interests under the laws of the State of California.

5. Before any Loan is made, the Bank will succeed Mr. Stone as trustee of the Plans. The Bank will have full and sole authority to act on the Plans' behalf with respect to the Loans. All other investments of the Plans will be directed by an administrative committee comprised of officers and employees of the Companies. The Bank has some commercial relationships with the Companies and their principals, however, these relationships are minimal. As of June 26, 1985, the aggregate deposits in the Bank of the Companies and their principals represented less than one-tenth of one percent of the Bank's total deposits, and loans (including unused lines of credits) to the Companies and their principals comprised less than one-tenth of one percent of the Bank's loan portfolio. Neither the Bank nor any of its officers owns any interest in any of the Companies or serves as a director or officer of any of the Companies. Neither the Companies nor their principals own any interest in the Bank, nor do any principals, directors or officers of any of the three Companies serve as directors or officers of the bank.

The Bank represents that it has broad experience in pension and profit sharing plan administration and is familiar with its fiduciary responsibilities and the possible liabilities of plan fiduciaries under the Act. Before any Loan is made, the Bank will review the proposed Loan, the Collateral and the Plans' overall investment portfolio (including any outstanding Loans) and will receive information from the administrative committee of each Plan concerning the anticipated cash flow needs of the Plans during the term of the proposed Loan. The proposed Loan will be made only if (i) it will not cause the principal balance of all Loans to exceed 25 percent of the Plans' assets and 50 percent of the fair market value of the Collateral; (ii) it will not impair the Plans' anticipated cash flow needs; (iii) it will not require a Plan to liquidate more favorable investments; and (iv) the Bank determines that the Loan is an appropriate investment for the Plans and is in the best interest of the Plans and their participants and beneficiaries.

From time to time, but not less frequently than annually, the Bank will review the Collateral. If the Bank determines that additional Collateral is required to keep the total fair market value of the Collateral equal to at least 200 percent of such outstanding balance, the Bank will demand that the applicants either prepay the Loans or provide additional Collateral.

The Bank will exercise full and sole discretion in connection with making the Loans and with monitoring and enforcing the terms of the Loans, including making demand for timely payment and bringing suit or other appropriate process in the event of default.

6. In summary, the applicants respresent that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Loans will be approved, monitored, and enforced by an independent fiduciary;

(b) The Loans will be secured by a perfected first security interest in the Collateral, which at all times will be at least equal to 200% of the outstanding balances of the Loans;

(c) The value of the Collateral has been determined by a qualified, independent appraiser; and

(d) The aggregate outstanding balances of the Loans will constitute no more than 25% of the Plans' assets.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523–8882. (This is not a toll-free number.)

Operating Engineers Pension Trust (the Plan) Located in Pasadena, California

[Application No. D–6171]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of the section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed purchase by the Plan, for the total cash consideration of $962,457, of certain real property (the Subject Property) from the International Union of Operating Engineers, Local Union No. 12 (the Union), provided the price paid for the Subject Property is not more than its fair market value at the time the transaction is consummated.

Summary of Facts and Representations

1. The Plan is a collectively-bargained, multiemployer pension plan having 28,760 participants and net assets totaling $565,844,683 as of June 30, 1984. The Plan is administered by a Board of Trustees (the Trustees) consisting of fourteen members. Seven Trustees are appointed by the Union; the remaining seven Trustees are appointed by the employer associations which are parties to a Trust Agreement. The Trustees make investment decisions for the Plan.

2. The Union is an employee organization within the meaning of section 3(4) of the Act and a labor organization affiliated with the Building and Construction Trades Department of the AFL–CIO. The Union represents employees for purposes of collective bargaining on terms and conditions of employment in the geographic area which includes the twelve southern counties of California and the four southern counties of Nevada. The employees represented by the Union work primarily in the building and

construction industry a well as in related industries. The Union normally has collective bargaining agreements in effect with about 6,000 employers, of which about 2,500 employers are active at any particular time. The Union has 25,000 members, of whom about 10,000 are retired.

3. The Plan presently owns two lots of real property (the Trust Property), located at the northeast corner of the intersection of North Raymond Avenue and Chestnut Street in the city of Pasadena, California. The Plan acquired the Trust Property, which consists of 18,000 square feet, from unrelated parties. The Plan requests an exemption to purchase two additional lots adjoining the north side of the Trust Property. The Subject Property, consisting of 29,478 square feet of "L"-shaped, vacant and generally level land, is presently owned by the Union. If acquired, the Trust Property and the Subject Property would comprise the entire frontage of the east side of North Raymond Avenue between Corson Street and Chestnut Street. The Plan intends to construct an office building on the combined parcels, primarily for use by the administrative offices serving the Plan and released trusts.[1] The Union would continue to own a third parcel adjoining the Subject Property and the Trust Property. The Union proposes to construct an office building on the site for its own use.

4. The Union purchased both the Subject Property and the property it will retain as a single parcel from M.J. Brock, a real estate developer and a contributing employer to the Plan. At the time of the purchase, the entire parcel consisted of 60,009 square feet of land, for which the Union paid a purchase price of $1,960,000 on December 19, 1984. The Union has offered to sell the Subject Property to the Plan for the total cash consideration of $962,457. The Plan has accepted this offer. No real estate commissions or fees will be paid by the Plan in connection with the proposed transaction. In addition, the Plan will purchase the Subject Property free of any encumbrances.

5. The proposed transaction will be evidenced by a document titled Escrow Instructions and Purchase Agreement (the Purchase Agreement) under which the Plan will make an initial deposit of $25,000 and pay the remaining $937,457 prior to the close of escrow and execute any instruments the escrow requires. Closing of escrow will be contingent upon a number of terms and conditions, including the granting of this exemption by the Department.

6. The Subject Property was independently appraised by Messrs. Stephen J. Beck and Robert A. Steele (Messrs. Beck and Steel), who are affiliated with Robert Anson Steele Associates of Santa Ana, California. Mr. Beck is an associate of the appraisal firm. Mr. Steele is the president of the firm as well as a member of the American Institute of Real Estate Appraisers and the American Society of Real Estate Counselors. In an appraisal report dated June 11, 1985, Messrs. Beck and Steele placed the fair market value of the Subject Property at $1,100,000 as of June 6, 1985. In an amendment to the appraisal dated July 10, 1985, Mr. Steele placed the fair market value of the Subject Property at $1,030,000. Mr. Steele stated that due to market conditions, the Subject Property should be valued at $1,030,000.

7. Buss-Shelger Associates (BSA), a real estate consulting and appraisal firm with more than 20 years' experience and maintaining its principal place of business in Los Angeles, California, will serve as the independent fiduciary with respect to the proposed transaction. BSA represents that it has acted as an independent real estate advisor to the Plan on a wholly noncontingent basis and that it has been paid on an hourly rate to provide consultive advice regarding real estate matters, exclusively. BSA also represents that it does not have (nor does it contemplate having) any kind of commercial involvement with the contributing employers. BSA further states that there are no officials of the Union who are involved in its activities. Finally, BSA represents that it not only understands its role as an independent fiduciary and the regulations under which it must function, but it accepts these duties, responsibilities and liabilities inherent therewith.

BSA's duties are enumerated in an independent fiduciary agreement (the Independent Fiduciary Agreement) it entered into with the Plan on June 11, 1985. Among its duties, BSA is authorized to: (a) Determine whether to enter into the Purchase Agreement on behalf of the Plan following a review of the appraisal report and other pertinent documents; (b) execute the Purchase Agreement on behalf of the Plan subject to the approval and the granting of this exemption by the Department; and (c) monitor the performance of the Plan and the Union under the Purchase Agreement through the close of escrow and completion of the proposed transaction provided the Purchase Agreement is made by BSA and the exemption is granted. The term of the Independent Fiduciary Agreement will continue until either of the following events occurs: (a) The exemption is denied by the Department; (b) the Purchase Agreement expires, is terminated or is fully performed; and (c) either the Plan or the Union terminates the agreement.

BSA has determined that the proposed transaction is appropriate for the Plan and in the best interests of its participants and beneficiaries. BSA has reviewed and evaluated the Purchase Agreement for the purpose of ascertaining whether or not the Plan should enter into the contract. BSA states that it is mindful of the general objectives of the Plan, which are to achieve a maximum return on invested assets and to preserve the principal. Recognizing these criteria, BSA has concluded that the Plan's entering into the Purchase Agreement is in the Plan's best interest.

BSA also concurs with the Subject Property's most recent value estimate of $1,030,000. BSA asserts that there is an obvious value advantage to the Plan if the Subject Property can be acquired for $962,457. More importantly, BSA states that land values are market dependent and it illustrates this point by alluding to a softening of the Pasadena commercial market. BSA explains that while a May 1985 study it prepared does not indicate that it would be advisable for the Plan to erect a rental office building at this time, the long term prospects for construction in mid-1986 and for the delivery of space at higher rents are excellent. Also, BSA believes the venture will result in minimal risk to the Plan.

8. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The purchase of the Subject Property will be a one-time transaction for cash; (b) the Plan will not be required to pay any real estate fees or commissions in connection therewith; (c) the purchase price will be less than the fair market value of the Subject Property as established by an independent appraisal; and (d) BSA, which will monitor the terms of the Purchase Agreement on behalf of the Plan, has determined that the acquisition of the Subject Property is an appropriate transaction for the Plan and in the best interest of the Plan's participants and beneficiaries.

[1] The exemption application states that any leasing arrangements between the Plan and parties in interest that affect the Trust Property and the Subject Property will comply with the terms and conditions of Prohibited Transaction Exemption 76-1 and 77-10.

Notice to Interested Persons: Notice to interested persons will be provided within 30 days of the date of publication of this notice in the **Federal Register.** Comments and hearing requests are due within 60 days of the date of publication.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Compton Press, Inc. Employee Profit Sharing Plan (the Plan) Located in Hanover Township, New Jersey

[Application No. D–6163]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the past loan of $250,000 (the Loan) by the Plan to C.P.I. Realty Co., a party in interest with respect to the Plan, provided that the terms of the Loan are no less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated third party.

Effective Date: If the exemption is granted, the effective date will be January 31, 1985.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan with approximately 85 participants. As of December 31, 1984, the Plan had total assets of approximately $3,089,390. Compton Press, Inc. (the Employer) is a New Jersey corporation engaged in the commercial printing business. As of December 31, 1984, the Employer had total assets of $6,032,163. C.P.I. Realty Co. is a New Jersey general partnership (the Partnership) whose partners own 100% of the issued and outstanding stock of the Employer. The Partnership is a real estate holding company with assets having a fair market value of approximately $1,200,000 as of December 31, 1984.

2. The Employer requests an exemption for the past loan of $250,000 by the Plan to the Partnership, a party in interest with respect to the Plan. The Loan agreement was entered into on January 31, 1985. Most of the proceeds of the Loan were used to pay off an existing first mortgage, including closing costs, on certain real property located in Hanover Township, New Jersey (the Property). The Property is owned by the Partnership, which leases it to the Employer for use as its principal place of business. The remaining proceeds of the Loan have been used to make capital improvements on the Property.

3. The Loan is evidenced by a promissory note and secured by a first mortgage on the Property. An independent appraisal of the Property performed on November 13, 1984 by John Hurley of Hurley Realtors, Morris Plains, New Jersey, established a fair market value of approximately $1,200,000. The interest rate of the Loan is fixed at 14½% per annum. The applicant represents that on October 4, 1984, it qualified for an interest rate of 14% for five years for continued financing by Summit and Elizabeth Trust Company (the Company), which provided the original financing for the Property. The original financing provided for a balloon payment of approximately $177,600 payable on January 1, 1985. The applicant's respresentation is supported by a letter from John Parcette of the Company offering to extend the mortgage for five years at that interest rate. The Loan will be repaid in monthly installments of principal and interest over a period of fifteen (15) years.

4. First Morris Bank in Morristown, New Jersey is serving as the Plan's independent fiduciary (the Independent Fiduciary) for the Loan. The Independent Fiduciary represents that the Employer and the Partnership have less than 1% of its total outstanding loans and deposits. The Employer and the Independent Fiduciary entered into an agreement dated January 31, 1985 in which the Independent Fiduciary agreed to monitor the payments made by the partnership on the Loan and to initiate foreclosure or other appropriate action in the event of default.

5. The Independent Fiduciary represents that it determined prior to the Loan that the transaction is in the best interests of the Plan and its participants and beneficiaries for the following reasons:

(a) The Loan is a suitable investment for the Plan;

(b) The Loan represents less than 25% of the appraised fair market value of the collateral;

(c) The interest rate is at least as favorable as the Plan could obtain by investing in similar loans secured by commercial real property with an unrelated third party;

(d) The Partnership and the Employer are financially secure and are able to meet their obligations under the transaction; and

(e) The Partnership could have obtained comparable or better terms for a loan from a bank, finance company, or other third party lender.

6. In summary, the applicant represented that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(a) The Loan is adequately secured by a promissory note and recorded first lien on commercial real property with an appraised fair market value of at least 150% of the outstanding balance of the Loan;

(b) The Loan has been and will continue to be monitored by an independent fiduciary; and

(c) The Independent Fiduciary determined that the Loan is in the best interests of the Plan and its participants and beneficiaries.

For Further Information Contact: Ms. Linda Shore of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

The Group Insurance Plan for Certain Personnel on a Monthly, Semi-Monthly, Weekly Salary or Hourly Payroll (the Management-Weekly Plan) and the Caterpillar Tractor Co. Group Insurance Plan (the Hourly Plan, collectively, the Plans) Located in Peoria, Illinois

[Application No. D–6006]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Caterpillar Insurance Co., Ltd. (CICL) from insurance contracts sold by Metropolitan Life Insurance Company (Metropolitan), or another insurance company as described herein, to provide benefits to the Plans, provided that the following conditions are met:

(a) CICL–

(1) Is a party in interest with respect to the Plans by reason of a stock or partnership affiliation with Caterpillar Tractor Co. (Caterpillar) that is described in section 3(14) (E) or (G) of the Act;

(2) Is licensed to sell insurance or conduct reinsurance operations in a "State" as defined in section 3(10) of the Act;

(3) Has obtained a Certificate of Authority from the Insurance

Commissioner of the Virgin Islands which has neither been revoked nor suspended; and

(4) (A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of the Virgin Islands) by the Commissioner of Insurance of the Virgin Islands within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred.

(b) The Plans pay no more than adequate consideration for the insurance contracts;

(c) No commissions are paid with respect to the direct sale of the contract, or the reinsurance thereof; and

(d) For each taxable year of CICL, the gross premiums and annuity considerations received in that taxable year by CICL for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which CICL is a party in interest by reason of a relationship to such employer described in section 3(14) (E) or (G) of the Act does not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance (whether direct insurance or reinsurance) in that taxable year by CICL. For purpose of this condition (d):

(1) The term "gross premiums and annuity considerations received" means as to the numerator the total of premiums and annuity considerations received, both for the subject reinsurance transactions as well as for any direct sale or other reinsurance of life insurance, health insurance or annuity contracts to such plans (and their employers) by CICL. This total is to be reduced (in both the numerator and denominator of the fraction) by experience refunds paid or credited in that taxable year by CICL.

(2) All premium and annuity considerations written by CICL for plans which it alone maintains are to be excluded from both the numerator and denominator of the fraction.

Preamble

On August 7, 1979, the Department published a class exemption (Prohibited Transaction Exemption 79–41 (PTE 79–41), 44 FR 46365) which permits insurance companies that have substantial stock or partnership affiliations with employers establishing or maintaining employee benefit plans to make direct sales of life insurance, health insurance or annuity contracts which fund such plans, if certain conditions are satisfied. In PTE 79–41, The Department stated its view that if a plan purchases an insurance contract from a company that is unrelated to the employer pursuant to an arrangement or understanding, written or oral, under which it is expected that the unrelated company will subsequently reinsure all or part of the risk related to such insurance with an insurance company which is a party in interest with respect to the plan, the purchase of the insurance contract would be a prohibited transaction. The Department further stated that as of the date of publication of PTE 79–41, it had received several applications for exemption under which a plan or its employer would contract with an unrelated company for insurance, and that unrelated company would, pursuant to an arrangement or understanding, reinsure part or all of the risk with (and cede part or all of the premiums to) an insurance company affiliated with the employer maintaining the plan. The Department felt that it would not be appropriate to cover the various types of reinsurance transactions for which it had received application within the scope of the class exemption, but would instead consider such application on the merits of each individual case.

Summary of Facts and Representations

1. Caterpillar is a manufacturing company incorporated under the laws of the State of California. The Plans, which are sponsored by Caterpillar, provide life insurance, disability insurance and hosiptal and medical insurance for active and certain retired employees of Caterpillar and its subsidiaries. The Plan provide such benefits throught the purchase of insurance or through qualified group insurance trusts. The life insurance portion of the Plans is currently underwritten by Metropolitan, a party unrelated to the Plans and Caterpillar. As of February 7, 1985, the Management-Weekly Plan had approximately 23,150 participants and the Hourly Plan had approximately 39,100 participants.

2. CICL, a corporation organized in 1983 under the laws of Bermuda with its principal offices in Hamilton, Bermuda, is a wholly-owned subsidiary of Caterpillar. Presently CICL is reinsuring and making available its administrative services with respect to an extended warranty insurance program for Caterpillar's dealers and is reinsuring the interests of Caterpillar and its subsidiaries and Caterpillar dealer franchisees under a cargo insurance program. In the fiscal year ending September 30, 1984, CICL's gross premium volume was $10.1 million; it had capital and surplus of $1.8 million; and its total assets were $11.4 million. CICL is licensed to do business in and to conduct reinsurance operations from the U.S. Virgin Islands. CICL's charter permits it to a party of all lines of insurance and does not prohibit the reinsurance of life insurance.

3. Metropolitan, an unrelated, independent insurer, unconditionally provides all life insurance benefits covered by the Plans. The reinsurance agreement would provide that CICL would be liable to Metropolitan for the same percentage of claims as the percentage of premiums ceded to CICL attributable to the Plans up to an aggregate expected loss amount to be agreed upon annually by the parties to the reinsurance agreement. In addition, CICL will be liable for claims above the aggregate expected loss amount, not to exceed 25% of the aggregate expected loss amount. The Plans will not be a party to the reinsurance agreement.

4. The applicant represent that the subject reinsurance transactions will meet all of the conditions of PTE 79–41 covering direct insurance transactions:

(a) CICL is a party in interest with respect to the Plans as described in section 3(14)(G) of the Act by reason of its stock affiliation with Caterpillar.

(b) CICL is licensed to conduct reinsurance operations from the Virgin Islands.

(c) CICL received a Certificate of Authority from the Virgin Islands effective May 10, 1985, and expects to receive an annual renewal of such Certificate in the future.

(d) CICL has undergone an examination by the independent certified public accounting firm of Price Waterhouse for its last completed taxable year, ending September 30, 1984.

(e) No more than adequate consideration is paid for the insurance contracts. Metropolitan is one of the largest life insurance underwriters in the country and enjoys substantial economies of scale in computerized policy administration. Thus, the premium charged to the Plans' participants is highly competitive. The reinsurance agreement is not a factor in Metropolitan's premium computations and thus, does not in any way affect the cost to the Plans.

(f) No commissions will be paid with respect to either the direct sale of life insurance by Metropolitan to the Plans or with respect to the proposed reinsurance agreement between Metropolitan and CICL.

(g) For each taxable year of CICL, the gross premiums and annuity

considerations received in that taxable year by CICL for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which CICL is a party in interest by reason of a relationship to such employers described in section 3(14)(E) or (G) of the Act do not and will not exceed 50% of the gross premiums and annuity considerations received for all lines of insurance in that taxable year by CICL. Approximately 90% of CICL's written direct premium is with companies other than Caterpillar and any of its subsidiaries and affiliates.

5. The applicants have also requested relief for the reinsurance of risks and the receipt of premiums therefrom by CICL from an insurance company other than Metropolitan, provided that Caterpillar finds that it can achieve comparable insurance coverage for its employees from another company at an equal or better rate. The applicants represent that any such insurance company will be required to be a legal reserve life insurance company having assets of not less than $500,000,000, and will at all times be primarily and unconditionally responsible for the payment of life insurance benefits even though such benefits have been reinsured with CICL.

6. In summary, the applicants represent that the subject transactions meet the criteria of section 408(a) of the Act because: (1) Plan participants and beneficiaries are afforded insurance protection by Metropolitan, one of the largest and most experienced group insurers in the United States, at competitive rates arrived at through arm's length negotiations; (2) CICL is a sound, viable reinsurance company which does a substantial amount of business outside its affiliated group of companies; and (3) each of tthe protections provided to the Plans and their participants and beneficiaries by PTE 79–41 will be met under the subject reinsurance transactions.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523–8882. (This is not a toll-free number.)

The Tharco Affiliated Companies Profit Sharing Plan Trust (the Plan) Located in San Lorenzo, California

[Application No. D–5792]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to a proposed loan (the Loan) by the Plan to Tharco Precision, Inc., a California corporation (Tharco), a party in interest as described herein, provide the terms of the Loan remain at least as favorable as an arms-length transaction with an unrelated party.

Summary of Facts and Representations

1. Tharco, a designer and manufacturer of industrial corrugated packaging and foam plastics, is one of four affiliated companies of which Tharco and one other company sponsor the Plan. As of September 30, 1984, Tharco had total assets of $6,975,724 and 53 employees covered by the Plan. The four affiliated companies are all owned by members of the Aitchison family as individuals or as custodians for family members or as trustees of family trusts. Thomas W. Aitchison and James F. Aitchison, as the respective trustees of two different trusts, equally divide the ownership of Tharco.

2. The Plan is a profit sharing plan with a total of 84 participants and total assets of $2,868,810, as of June 29, 1984. The assets of the Plan are held in trust by the Sumitomo Bank of California (the Trustee). The Plan also has an advisory committee (the Committee) which is the administrator for the Plan. The Committee members are Thomas W. Aitchison, James F. Aitchison, and Dennis Busch, each of whom are participants of the Plan and officers and/or directors of Tharco and its affiliated companies. Currently, only Tharco and Tharco Containers Colorado, Inc. (TCC) contribute to the Plan, the other two affiliated companies' employees are covered by a collectively bargained plan. Since Tharco and TCC have separate employees, the Trustee maintains separate accounts in the Plan for accepting, allocating, and determining earnings and forfeitures of Plan contributions from Tharco and TCC, respectively. As of June 29, 1984, the funds held in the Plan by the Trustee for the benefit of the employees of Tharco was $1,991,678 and for the benefit of the employees of TCC was $877,132. Also, as of March 29, 1985, there was an outstanding principal balance of $100,018 remaining upon a loan from the Plan to TCC which had been made pursuant to an individual exemption granted by the Department (PTE 81–70, 46 Fr 44536, September 4, 1981). The Loan as proposed plus the prior loan to TCC will be less than 18.6 percent of the total assets of the Plan, as of June 29, 1984.

3. Tharco and the Plan are requesting an exemption from the prohibited transaction provisions of the Act which would premit the Plan to loan to Tharco the sum of $435,000 for use as partial payment on a $2,700,000 general line of credit issued by Wells Fargo Bank, N.A. of San Francisco, California (Wells Fargo) to Tharco and its affiliated companies. As of August 31, 1984, there was outstanding and owing on this line of credit the sum of $1,200,000 plus a floating rate of interest of ¾ percent over the Wells Fargo prime rate. Wells Fargo and the Tharco affiliated companies maintain a continuing bank-customer relationship. Except for this relationship, Wells Fargo is independent of Tharco and its affiliated companies. When advancing funds for the Loan, the Trustee will prorate the amount of the advance from two separate accounts which the Plan maintains for the benefit of employees of Tharco and TCC, respectively. Based upon the amount of assets of the Plan held in each separate account, as of June 29, 1984 (Tharco—$1,991,678; TCC—877,132) the prorated share that the Tharco account will contribute to the Loan is $302,000 and the prorated share that the TCC account will contribute to the Loan is $133,000, for a total of $435,000.

4. The Loan will be evidenced by a Loan Agreement executed by Tharco and two affiliated companies of Tharco (Tharco Containers Oakland and Precision Packaging, Inc., both California corporations) and by a Promissory Note issued by Tharco and secured by the motor vehicles, equipment, furniture, machinery, and all other tangible personal property of Tharco, with the exception of its inventory. In addition, the two aforementioned affiliated companies of Tharco have agreed, as evidenced by a Guaranty Agreement, to guarantee all amounts due by Tharco to the Plan under the Loan Agreement. As security for these guarantees, these two affiliated companies of Tharco will join Tharco in filing respective Security Agreements, including the Form UCC–1, with the State of California. Under California law these filings will grant a prior security interest in the three respective companies' motor vehicles, equipment, furniture, machinery, and all other tangible personal property, with the exception of their inventories. All this collateral securing the Loan is located in San Lorenzo, California where it was appraised by the American Appraisal Associates, Inc. of Oakland, California to have a "Forced Liquidation Value" of

not less than $1,500,000, as of February 15, 1985.

5. The principal of the Loan in the sum of $435,000 will be paid back to the Plan in 60 equal monthly installments of $7,250 and will provide monthly interest payments at a floating rate of ¾ percent over the Wells Fargo prime rate. In no event will the interest rate of the Loan be less than 13 percent per annum. Furthermore, in a form acceptable to the Trustee, Wells Fargo will subordinate its security interest in the collateral for the Loan to the security interest of the Plan. Also, if Tharco or either corporate guarantor should misrepresent information in any of their financial statements or Tharco should default in any way on the Loan or with other creditors, including Wells Fargo, such misrepresentation or default will accelerate the Loan so as to give the Plan a preference with respect to any other creditor of Tharco. The various information agreements provide, in part, that the collateral will be (a) maintained in good working order and condition; (b) kept fully insured; (c) considered as personal property at all times and not a fixture in any sense; (d) free of liens except as permitted under the security agreements (i.e., the security interest granted to the Plan in connection with the proposed Loan, the subordinated security interest to the Loan which is granted Wells Fargo as security for its $2,700,000 line of credit, and such additional security interest which may be consented to in writing by the Trustee, as secured party); (e) not sold or otherwise disposed of without prior written consent of the Plan, except for transactions in the ordinary course of business dealing with replacements or retirements of damaged or obsolete property; and (f) maintained at a value of at least 200 percent of the unpaid balance of the Loan.

6. The application for exemption states that the Trustee is an independent fiduciary and does not have any relationship with Tharco or its affiliated companies other than acting as trustee for the Plan. Furthermore, the Trustee is represented to be totally independent in exercising its fiduciary obligations under the loan documents and will perform its duties so as to be acting in the best interests of the Plan and its participants. The Trustee represents that it is acting as an independent fiduciary in approving, monitoring, and enforcing all rights and obligations of the Plan under the Security Agreements and the Promissory Note, including making demand for timely payment, bringing suit or other appropriate action in case of any default on the Loan. Furthermore, before approving the Loan, the Trustee represents that it reviewed the investiment portfolio of the Plan, the cash flow needs of the Plan, the necessity of sale of any Plan assets, diversification requirements of the Plan, both before and after the Loan, and all of the Loan documents. Based on the review, the Trustee determined that the proposed transaction is appropriate for the Plan and in the best interests of the Plan and its participants and beneficiaries and the return on this investment is a fair market rate for such transaction. The Trustee further represents that the Loan is administratively feasible with adequate independent safeguards to protect Plan assets in the event of default.

7. In summary, the applicants represent that the proposed Loan satisfies the statutory criteria of section 408(a) of the Act because (a) the Trustee has determined that the proposed transaction is appropriate for the Plan and its participants and beneficiaries; (b) the terms of the Loan will produce a fair market rate of return and such investment is secured by assets which substantially exceed the Loan; (c) the Trustee, as the independent fiduciary will pursue the rights of the Plan and its participants and beneficiaries in the event of default, including attachment and foreclosure on the security of the Loan; (d) the Loan will be secured at all times by collateral with a value of at least 200 percent of the outstanding balance of the Loan; and (e) the collateral will be appraised at any time the Trustee deems it necessary.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–7901. (This is not a toll-free number.)

Rahlves Organizations Profit Sharing Plan (RO Plan) and the Rahlves and Rahlves, Inc. Profit Sharing (RR Plan; collectively the Plans) Located in San Ramon, California

[Application No. D–5716]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply for a period of five years to the proposed purchases of interests in a parcel of real property by the Plans involving up to 25% of each Plan's assets from the Rahlves Organization (RO) and the leasing of the property purchased to Bay Vista Partnership (the Partnership), provided that the terms and conditions of the transactions are at least as favorable to the Plans as those obtainable in an arm's-length transaction with an unrelated party at the time of consummation of each transaction.

Summary of Facts and Representations

1. The Plans are profit sharing plans with each Plan having the same 3 participants (Louis G. Rahlves, Dennis L. Rahlves and Margy Urnberg). As of October 31, 1984, there was $795,000 in the RO Plan and $848,500 in the RR Plan.

The members of each Plans' advisory committee are Louis G. Rahlves and Dennis L Rahlves. Both of said individuals are participants in each Plan and are officers, directors and employees of RO and Rahlves and Rahlves, Inc. (RR). The outstanding stock of RO is owned 76% by Louis G. Rahlves and 24% by Dennis L. Rahlves. The outstanding stock of RR is owned 63% by Dannis L. Rahlves and 37% by irrevocable intervivos trusts created for the benefit of his two children. RO sponsors the RO Plan and RR sponsors the RR Plan. RO is engaged in the purchase and development of industrial and commercial properties in Benicia and San Ramon, California.

2. On June 18, 1984, RO purchased from Dr. Pepper Bottling Company of San Francisco approximately 5.7 acres of unimproved land (the Property) located in Benicia, California for $638,400. On July 7, 1984, RO leased the Property (Ground Lease) to the Partnership. The Partnership is owned 50% by RO and 50% by RR.

3. RO proposes to sell undivided fractional interests in the Property to the RO Plan and the RR Plan. For purposes of such sale, the total value of the Property will be deemed to be $638,400 and each Plan will purchase an undivided fractional interest in the Property in an amount not to exceed 25% of each Plans' respective assets at the time of each such sale. Each undivided fractional interest will be sold free and clear of any and all liabilities, encumbrances, restrictions, easements, etc., except for (i) items of record as of closing (ii) current real and personal property taxes not yet due and payable as of the closing date and (iii) the existing Ground Lease. No broker will be employed in connection with the subject sale or any subsequent sales, not will any sales commission or other remuneration be paid in connection with

the sales of fractional interests to the Plans.

Rents, property taxes, and/or other charges will be prorated between RO and the Plans as of closing. The purchase price for the respective Plans' undivided interests will be payable in cash, on closing.

4. With respect to purchases of additional fractional interests in the Property, such purchases will be approved by the Plans' independent fiduciary (see representation ±7) and the purchase price will be determined pursuant to a current fair market appraisal. The Plans, however, at no time will purchase interests in the Property which would cause either Plan to exceed 25% of its total assets. The applicant represents that the rental income generated from the Ground Lease will be allocated among the parties in proportion to their percentage of ownership.

5. As a result of the proposed transactions, RO, the RO Plan, and the RR Plan will each own an undivided fractional interest in the Property as tenants in common. Contemporaneously with the proposed sale, RO and the independent fiduciary acting on behalf of the Plans will enter into a Tenants-In-Common Agreement. The Tenants-In-Common Agreement will provide that any and all decisions concerning the operation, management, development and disposition (including the exercise of the purchase option referred to in the Ground Lease) of the Property shall be made in the sole discretion of the independent fiduciary.

6. The terms and conditions of the Ground Lease executed between RO and the Partnership as amended provide:

a. A term of 25 years plus the construction period (which will not exceed 9 months).[2]

b. An initial triple net rent of $76,608 (representing approximately 12% of the value of the underlying land), said rent to be adjusted every three years during the term of the lease to the current fair rental value of the Property.

c. At any time prior to the 15th anniversary date of said Ground Lease, the Landlord can require the tenant to purchase the Landlord's interest in the leased premises for cash, at a purchase price equal to the greater of the Property's appraised value, or $638,400.

d. All improvements will revert to the Landlord upon termination of the lease.

It is represented that the Partnership and its corporate general partners have a net worth in excess of $8,000,000, and accordingly, are fully able to perform their obligations under the Ground lease, including the obligation to purchase the Plans' interest in the leased premises.

Mr. James H. Shaw, an M.A.I. appraiser with the firm of James H. Shaw & Associates, Danville, California, pursuant to an investigation of ground leases in the area where the Property is located, determined that as of July 15, 1985, a long term ground lease in the subject vicinity would provide for an annual net return of 12% of the current market value of the Property.

7. Mr. John Barnard (Mr. Barnard), an attorney with the firm of Davis, Young & Mendelson of Alameda, California, has agreed to serve as an independent fiduciary for the proposed transactions. Mr. Barnard represents that after reviewing the proposed transactions with respect to (i) the Plans' overall investment portfolio, (ii) the cash flow needs of the Plans, (iii) the necessity of sale of any of the Plans' assets, (iv) diversification, both before and after the proposed transaction, and (v) related documents and history of RO, the Partnership and the respective Plans, Mr. Barnard has concluded that the proposed transactions would be appropriate and in the best interest of the Plans and suitable for the Plans and their respective participants and beneficiaries. Mr. Barnard represents that he will make a similar determination immediately before each transaction is consummated. Mr. Barnard states that the terms and conditions of the proposed transactions are comparable, if not more favorable to the Plans than those which the Plans might receive in similar transactions with an unrelated third party. Also, the terms of said Ground Lease, the rental under said Ground Lease, and the remaining terms and conditions of the Ground Lease are commercially reasonable given the nature, extent and location of the Property. Mr. Barnard states that the rent on the Property, that being 12% per annum, represents a very attractive rate of return in light of the triple net lease and provison for rent increases.

8. As independent fiduciary, Mr. Barnard has agreed to accept the responsiblilty of enforcing the terms of the Ground Lease, the Purchase Agreement, and the Tenants-in-Common Agreement on behlaf of the Plans, including making demand for the timely payment of rent and enforcement of all obligations of the tenant under the Ground Lease, bringing suit or other appropriate process in order to enforce the Plans' rights under any of the agreements in the event of threatened or actual default or breach, and keeping adequate records and reporting annually to the Plans' trustees as to the performance of the subject transactions.

As an attorney, Mr. Barnard represents that he is aware of his duties, responsibilities and potential liabilities in serving as an independent fiduciary. Mr. Barnard states that although his firm represents RO from time to time, the annual fees paid to this firm by RO and/or any of its affiliated entities represent less than 1% of the gross receipts of his firm.

9. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

a. The transactions will be approved and maintained by Mr. Barnard;

b. The exemption will be limited to a five year period with respect to purchase transactions; and

c. Mr. Barnard has determined that the transactions are appropriate and suitable for the Plans.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted, will expire five years after the date of grant with respect to purchases of additional interests in the Property by the Plan. Should the applicant wish to continue selling additional parcels of the Property to the Plans beyond the five year period, the applicant may submit another application for exemption.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Southern Fruit Distributors, Inc. Employees Profit Sharing and Benefit Plan (the Plan) Located in Orlando, FL

[Application No. D–5573]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the past cash sale on June 29, 1984 by the Plan of: 1) its 60% interest (the Southside Interest) in certain real property known as the Southside

[2] In December 1984, the Partnership completed construction of an industrial office and warehouse facility at a cost of $1,427,000.

Shipping Center (Southside) for $1,629,612 to Southside Shopping Center, Ltd. (the Partnership), a Florida limited partnership, and 2) its 10% limited partnership interest (the Compton Interest) in a limited partnership known as Compton Properties, Ltd. (Compton) for $407,988 to the other partners in Compton, provided that the purchase price for the Interests was not less than their fair market value as of June 29, 1984.

Effective Date: If this proposed exemption is granted, the effective date will be June 29, 1984.

Summary of Facts and Representations

1. The Plan is a profit sharing plan which had 276 participants as of September 30, 1983. The Plan had assets of $5,818,207 as of the same date. Austin A. Caruso is the trustee (the Trustee) of the Plan and the president of Southern Fruit Distributors, Inc. (the Employer) the Plan sponsor.

2. The Plan acquired the Southside Interest on April 21, 1958. Southside is a shopping center located in Orange County, Florida. The Trustee, his two brothers and his brother-in-law, acting as trustees under personal trusts acquired the remaining 40% interest in Southside. Subsequently this 40% interest was transferred to the Partnership which includes lineal descendents and other relatives of the Trustee, his two brothers and his brother-in-law, thus making the sale of the Southside Interest to the Partnership a prohibited transaction. The Trustee, his two brothers and his brother-in-law do not own partnership interests in the Partnership. Eight of the seventeen partners in the Partnership are participants in the Plan. The Partnership, however, is not a party in interest with respect to the Plan under section 3(14) of the Act.

3. The Plan acquired the Compton Interest on August 1, 1972. Compton is a Florida limited partnership investing in real estate. The remaining 90% of Compton is owned by the Trustee, his two brothers, his brother-in-law and their lineal descendents, thus making the sale of the Compton Interest to the other partners in Compton a prohibited transaction. Twelve of the twenty-one partners in Compton are participants in the Plan.

4. On January 11, 1983, the applicants applied for an exemption to sell the Interests to parties in interest with respect to the Plan and an extension of credit to such parties in interest by the Plan in connection with the sale. This exemption request was withdrawn on April 20, 1983. The applicant represents that the transactions were covered by section 414(c)(3) of the Act, but that there is sufficient question as to whether the conditions of section 414(c)(3) were met such that they are seeking exemptive relief pursuant to section 408(a) of the Act.[3] On June 26, 1984, the current application was filed, requesting an exemption to permit the cash sale of the Interests by the Plan. The applicant represents that in order to preserve their position that the transaction was covered by section 414(c)(3) of the Act, the transactions were engaged in on June 29, 1984.

5. The applicant represents that the Plan has several reasons to sell the Interests to the respective buyers. First, the four major participants in the Plan have or will shortly attain retirement age, and the Plan may have to make cash distributions of $3,422,953 through the end of the 1988 Plan year. This amount represents approximately 60% of the Plan's assets as of September 30, 1983. If the Southside and Compton Interests were not sold, more than 90% of the remaining Plan assets would have had to have been liquidated to fund the anticipated distributions. This would have caused the Interests to increase from 35% of the Plan's assets as of September 30, 1983 to in excess of 85% after the 1988 Plan year. The sale of the Interests therefore helped to diversify the Plan's investment portfolio. Finally the applicant represents that the sale of the Compton Interest to a third party would have resulted in a lower price to the Plan because it is a minority interest with no participation in managing Compton, which could have resulted in a 10–20% discount to such a buyer.

6. Real Property Analysts, Inc., M.A.I. (RPA), of Winter Park, Florida, was retained to appraise the fair market value of the Southside and Compton Interests. RPA is an independent real estate appraisal firm, which represents that none of the officers, directors, or employees of the Employer, the partners in Compton or Southside own an interest in RPA, and that in 1984 no fees were received from those individuals or the Employer, Compton, or the Partnership other than fees of $8600 for the appraisal of the Southside and Compton Interests. RPA did its initial appraisal on September 30, 1983, with updates on February 15 and May 31, 1984. As of May 31, RPA valued the Southside Interest at $1,590,000 and the Compton Interest at $378,500.

7. On June 15, 1984, Peat, Marwick, Mitchell & Co., C.P.A.'s (Peat), prepared a financial report to reflect all other assets and liabilities, in addition to the real property, affecting the Plan's Interests. The applicant represents that Peat is the accountant for Southside and Compton, as well as the Employer and many of its officers and shareholders and their relatives. The fees Peat received from these parties in 1984 was $87,665, which represented less than 3% of the annual receipts of Peat's Orlando, Florida office, and less than 0.01% of Peat's annual receipts nationally. None of the parties involved owns an interest in Peat. The applicant represents that Peat, a Big Eight accounting firm, was the only firm with sufficient knowledge of and experience with Southside and Compton to properly value the Plan's Interests. Peat valued the Southside Interest at $1,629,612 and the Compton Interest at $407,988.

8. In order to assure that the transactions were conducted at arm's-length, on December 21, 1983 the Trustee and the Employer engaged Sun Bank, N.A. (the Bank) to act as special Trustee on behalf of the Plan. The applicant represents that the Employer had no current banking relationship with the Bank in 1984. The Bank determined that the fair market value of the Interests was the net value of the Interests as estimated by Peat. On behalf of the Plan, the Bank negotiated the terms and conditions of the sales of the Interests and consummated the sales on June 29, 1984. The Plan bore not costs with respect to the sale; all costs were borne by the Employer or the buyers of the Interests.

9. In summary, the applicant represents that the transactions satisfied the statutory criteria of section 408(a) of the Act because: (a) the sale of Interests was a one-time transaction for cash; (b) the Plan received the fair market value of the Interests, as determined by RPA and Peat; (c) the Plan bore no costs or expenses with respect to the sale; and (d) the Plan was able to diversify its investments and acquire needed liquidity.

For Further Information Contract: David Lurie of the Department, telephone (202) 523–8884. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or

[3] The Department expresses no opinion herein as to whether the sale of the Interests by the Plan satisfied the conditions of section 414(c)93) of the Act

disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Futhermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 10th day of September, 1985.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor

[FR Doc. 85-22036 Filed 9-13-85; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 85-150; Exemption Applications No. D-5403 et al.]

Grant of Individual Exemptions; Mortgage Asset Management Associates et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Mortgage Asset Management Associates (Mortgage Associates) Located in Sausalito, California

[Prohibited Transaction Exemption 85-150; Exemption Application No. D-5403]

Exemption

Section I—Exemption for Certain Transactions Involving the Purchase and Sale of Units in the Trust

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the purchase and sale of units of the Trust between Mortgage Associates and an employee benefit plan that is participating in the Trust (Participating Plan) where Mortgage Associates provides or will provide investment management services and therefore is or will be a fiduciary, provided that:

(a) Each purchase or sale is authorized in writing by a fiduciary of a Participating Plan who is independent of Mortgage Associates and any of its affiliates;

(b) Not more than 10 percent of a Participating Plan's assets are invested in the Trust; and

(c) The applicable conditions set forth in Section IV of this exemption are met.

Section II—Transactions With Persons Who Are Parties in Interest With Respect to the Trust Solely by Virtue of Being Certain Service Providers or Certain Affiliates of Service Providers

The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any transaction between the Trust and a person who is a party in interest with respect to the Trust, if:

(a) The person is a party in interest (including a fiduciary) solely by reason of providing services to the Trust or solely by reason of a relationship to a service provider described in section 3(14) (F), (G), (H), or (I) of the Act, or both; and

(b) The person is not Mortgage Associates or any affiliate thereof.

Section III—Transactions With Persons Who Are Parties in Interest With Respect to a Participating Plan

the restrictions of section 406(a)(1) (A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to any transaction

between the Trust and a person who is a party in interest with respect to a Participating Plan that has an interest in the Trust, if:

(a) The person is a party in interest (including a fiduciary) and the person neither exercised nor has any descretionary authority, control, responsibility or influence wth respect to the investment of the Participating Plan's assets in, or held by the Trust;

(b) The person is not Mortgage Associates or any affiliate thereof;

(c) The person is a party in interest with respect to a Participating Plan, which Participating Plan's interest in the Trust, together with the interest(s) held by any other plans maintained by the same employer or employee organization, does not exceed 20 percent of the total assets of the Trust.

Section IV—General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of Mortgage Associates or its affiliates, the terms of the transaction are not less favorable to the Trust than the terms generally available in arm's-length transactions between unrelated parties.

(b) Mortgage Associates or its affiliates maintain for a period of six years from the date of the transaction the records necessary to enable the persons described in subsection (c) of this section to determine whether the conditions of this exemption have been met, except that: (1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Mortgage Associates or its affiliates, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by subsection (c) below.

(c)(1) Except as provided in paragraph (2) below and notwithstanding any provision of subsections (a) (2) and (b) of section 503 of the Act, the records referred to in subsection (b) of this section are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a Participating Plan who has authority to acquire or dispose of the interests in the Trust or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Participating Plan, or any duly authorized employee or representative of such employer, or

(D) Any participant or beneficiary of any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) above shall be authorized to examine trade secrets of mortgage Associates or its affiliates, or commercial or financial information which is privileged or confidential.

Section V—Definitions and General Rules

For purposes of this exemption,

(a) an "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any officer, director, employee, relative of, or partners in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employeee.

For the purpose of this subsection (a), the term "affiliate" shall not be limited to persons or entities that are in existence on the effective date of this exemption.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "Trust" means: (i) Any group trust that is currently managed by Mortgage Associates or its affiliates (the MAMA Trust); or (ii) any group trust that may hereafter be established and managed by Mortgage Associates or its affiliates, provided that in all material respects such trusts will be similar to the MAMA Trusts.

(d) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or a renewal that requires the consent of the Trust occurs on or after the date of granting of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Notwithstanding the foregoing, this exemption shall cease to apply to a transaction or holding exempt by virtue of Section III at such time as the interest of any Participating Plan exceeds the percentage interest limitations of Section III unless no portion of such excess results from the purchase of an additional interest in the Trust by such Participating Plan. For this purpose, purchases do not include the reinvestment of Trust earnings. Nothing in this subsection (d) shall be construed to exempt a transaction entered into by the Trust which becomes a transaction entered into by the Trust which became a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(e) Each Participating Plan shall be considered to own the same proportionate undivided interest in each asset of the Trust as its proportionate interest in the total assets of the such trust as calculated on the most recent preceding valuation date of the Trust.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 2, 1985 at 50 FR 27381.

FOR FURTHER INFORMATION CONTACT: Paul R. Antsen of the Department, telephone (202) 523–8753. (This is not a toll-free number.)

Byung Soon Lee, M.D., P.C., Employees' Profit Sharing Plan (the Plan) Located in Mount Clemens, Michigan

[Prohibited Transaction Exemption 85–151; Exemption Application No. D–5898]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the September 1, 1981 purchase by Dr. and Mrs. Byong Soon Lee, parties in interest with respect to the Plan, of certain improved real property from the Plan for $184,126, provided that the sale price was not less than fair market value on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this

exemption refer to the notice of proposed exemption published on July 15, 1985 at 50 FR 28664.

EFFECTIVE DATE: The effective date of this exemption is September 1, 1981.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Shore of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Everett & Hurite Ophthalmic Association Money Purchase Pension Plan and Trust (the Money Purchase Plan) and Everett & Hurite Ophthalmic Association Defined Benefit Pension Plan and Trust (the Defined Benefit Plan) Located in Pittsburgh, Pennsylvania

[Prohibited Transaction Exemption 85–152; Exemption Application No. D–6003 and D–6004]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the past sale by the Defined Benefit Plan of a painting (the Painting) to the Money Purchase Plan for $225,000 in cash, provided that the sale price was the fair market value of the Painting on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 15, 1985 at 50 FR 28665.

EFFECTIVE DATE: The effective date of this exemption is July 18, 1984.

FOR FURTHER INFORMATION CONTACT: David M. Cohen of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

Cone, Wagner, Nugent, Johnson, Hazouri & Roth, P.A. Profit Sharing Plan and Trust (the Plan) Located in Palm Beach, Florida

[Prohibited Transaction Exemption 85–153; Exemption Application No. D–6038]

Exemption

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale of a certain condominium unit (the Property) by the individually directed account (the Account) in the Plan of David Roth (Mr. Roth) to Mr. Roth, for the greater of the Property's fair market value or the Account's costs in acquiring and holding the Property.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 26, 1985 at 50 FR 30542.

FOR FURTHER INFORMATION CONTACT: Mr. David Lurie of the Department, telephone (202) 523–8884. (This is not a toll-free number.)

Altmeyer Home Stores, Inc. Employees' Profit Sharing Plan (the Plan) Located in New Kensington, Pennsylvania

[Prohibited Transaction Exemption 85–154; Exemption Application No. D–6056]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan to Altmeyer Home Stores, Inc., the Plan sponsor, of certain real property (the Real Property) for the cash consideration of $86,000, provided that the price paid for the Real Property is not less than its fair market value at the time the transaction is consummated.

For a more complete statement of the facts and representatives supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 19, 1985 at 50 FR 29496.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523–7222. (This is not a toll-free number.)

Buffalo Laborers Pension Fund (the Plan)

[Prohibited Transaction Exemption 85–155; Located in Buffalo, New York Exemption Application No. D–6096]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed purchase by the Plan of certain improved real property (the Property) from Local 210, Inc. (the Union Corporation), a party in interest with respect to the Plan; (2) the subsequent leasing by the Plan of space in the Property to the Laborer's International Union of North America, Local 210, the Union Corporation and the Buffalo Laborers Welfare Plan; and (3) section 406(b)(2) of the Act shall not apply to the subsequent leasing by the Plan of space in the Property to the Buffalo Laborers Training Fund and the Buffalo Laborers Supplemental Unemployment Benefit Fund; provided that the terms and conditions of all of the above transactions are at least as favorable to the Plan as those obtainable by the Plan in arm's length transactions with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 15, 1985 at 50 FR 28666.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine D. Lewis of the Department, telephone (202) 523–8882. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 10th day of September, 1985.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-22037 Filed 9-13-85; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-6065]

Withdrawal of Proposed Exemption; Professional Golfers Association of America Pension Plan Trust (the Plan) Located in Palm Beach, FL

In the **Federal Register** dated July 8, 1985, (50 FR 27859), the Department of Labor (the Department) published a notice of pendency (the Notice) of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1954. The Notice concerned an application filed on behalf of the Plan and involved the past sale out of the Plan of common stock of IBM, Masco, and Outboard Marine to a pension trust, American Resources, Inc. Retirement Trust (the American Trust), and a foundation account, the Edward C. Stuart Foundation, which were managed by Colonial Trust Company, N.A., (the Applicant) a trustee for the Plan and fiduciary for the American Trust.

By a telephone conversation of August 9, 1985, the Applicant informed the Department that it wished to withdraw its request for exemptive relief.

Accordingly, the Department has reconsidered its earlier action and is hereby withdrawing its previously published Notice.

Signed at Washington, D.C., this 29th day of August 1985.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-22038 Filed 9-13-85; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

Public Service Co. of New Hampshire, et al. (Seabrook Station, Units 1 and 2); Reconstitution of Board

[Docket Nos. 50-443-OL and 50-444-OL; ASLBP No. 82-471-02 OL]

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *Public Service Company of New Hampshire, et al.* (Seabrook Station, Units 1 and 2), Docket Nos. 50-443-OL and 50-444-OL, is hereby reconstituted by appointing Administrative Judge Sheldon J. Wolfe as Chairman of this Licensing Board for all safety and onsite emergency planning issues in place of Administrative Judge Helen F. Hoyt, who is temporarily unable to continue to serve.

As reconstituted, the Board is comprised of the following Administrative Judges:

Sheldon J. Wolfe, Chairman
Dr. Emmeth A. Luebke
Dr. Jerry Harbour

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new board member is: Administrative Judge Sheldon J. Wolfe, Chairman, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Bethesda, Maryland, this 9th day of September, 1985.

Robert M. Lazo,

Acting Chief Administrative Judge Atomic Safety and Licensing Board Panel.

[FR Doc. 85-22139 Filed 9-13-85; 8:45 am]

BILLING CODE 7590-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Forms Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Requet for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATE: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESS: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: L. Jacqueline Brent, Office of Personnel and Administration, Overseas Private Investment Corporation, Suite 461, 1615 M Street NW., Washington, D.C. 20527; Telephone (202) 457-7151.

OMB Reviewer: Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; Telephone (202) 395-7231.

SUMMARY:

Type of Request: Revision
Title: Project Information Report
Form Number: OPIC-71
Frequency of Use: On occasion—a function of the sampling criteria
Type of Respondent: Business or other institutions (except farms)
Standard Industrial Classification Codes: All
Dscription of Affected Public: Business and other institutions
Number of Responses: 50 per year
Reporting Hours: 1½ hrs per application
Authority for Information Collection: Section 231(k) of the Foreign Assistance Act of 1961, as amended.
Abstract (Needs and Uses): The Project Information Report is necessary to elicit and record the information on the developmental, environmental, and U.S. economic effects of OPIC-assisted projects. The information will be used by OPIC's staff and management solely as a basis for monitoring these projects and reporting the results, as required by Congress, in aggregate form.

Dated: August 22, 1985.

Robert C. O'Sullivan,

Office of the General Counsel.

[FR Doc. 85-22078 Filed 9-13-85; 8:45 am]

BILLING CODE 3210-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-49]

Initiation of Investigation Under Section 301; Brazil's Informatics Policy

Pursuant to his authority under section 302(c) of the Trade Act of 1974, as amended (19 U.S.C. 2412(c)), the United States Trade Representative is hereby initiating an investigation into Brazil's informatics policy in order to advise the President concerning the exercise of his authority under section 301 of the Trade Act of 1974.

In 1984, Brazil codified a pre-existing policy designed to promote a national informatics industry. The informatics law imposes a wide array of restrictions on foreign participation in this sector. For example, it provides broad authority to restrict imports for at least eight years and grants to Brazilian-owned firms the exclusive right to produce and sell certain types of high technology products. It also provides certain incentives for national firms. The law also restricts foreign direct investment through the imposition of local content and export performance requirements.

During the period this policy has been in effect, U.S. firms in Brazil have been denied approval to manufacture new product lines and have found it increasingly difficult to import needed inputs.

Moreover from 1980–1982, when the Brazilian market expanded rapidly, U.S. exports grew at less than half the rate of Brazilian market growth.

Interested parties are invited to submit written comments with respect to issues arising from the investigation, including the appropriate scope of the investigation. Such comments should be filed in accordance with the procedures set forth in 15 CFR 2006.8 and should be submitted to the Chairman, Section 301 Committee, Office of the U.S. Trade Representative, Room 223, 600 17th Street, NW., Washington, D.C. 20506, no later than October 11, 1985. Rebuttal briefs must be submitted no later than October 18, 1985.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 85–22245 Filed 9–13–85; 8:45 am]

BILLING CODE 3190–01–M

[Docket No. 301–51]

Initiation of Investigation Under Section 301; Korea's Restrictions on Insurance Services

Pursuant to his authority under section 302(c) of the Trade Act of 1974, as amended (19 U.S.C. 2412(c)), the United States Trade Representative is hereby initiating an investigation into Korea's policy of prohibiting or restricting foreign insurance firms from providing insurance services in Korea in order to advise the President concerning the exercise of his authority under section 301 of the Trade Act of 1974.

For years, the Government of the Republic of Korea has restricted the ability of foreign insurance providers to offer their services in the Korean market under the same terms and conditions as those applicable to Korean insurance providers. For example, foreign firms are not permitted to underwrite life insurance policies, which account for a large majority of the total Korean insurance market; nor are they permitted to underwrite certain types of fire insurance.

Interested parties are invited to submit written comments with respect to issues arising from this investigation, including the appropriate scope of the investigation. Such comments should be filed in accordance with the procedures set forth in 15 CFR 2006.8 and should be submitted to the Chairman, Section 301 Committee, Office of the U.S. Trade Representative, Room 223, 600 17th Street, NW., Washington, D.C. 20506, no later than October 11, 1985. Rebuttal briefs must be submitted no later than October 18, 1985.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 85–22244 Filed 9–13–85; 8:45 am]

BILLING CODE 3190–01–M

[Docket No. 301–50]

Initiation of Investigation Under Section 301; Japan's Practice With Respect to the Manufacture, Importation and Sale of Tobacco Products

Pursuant to his authority under section 302(c) of the Trade Act of 1974, as amended (19 U.S.C. 2412(c)), the United States Trade Representative is hereby initiating an investigation into Japan's policies and practices with respect to the manufacture, importation and sale of tobacco products in order to advise the President concerning the exercise of his authority under section 301 of the Trade Act of 1974.

For years, Japan maintained barriers to imports of foreign tobacco products. These barriers included high tariffs, discriminatory rules on marketing, advertising and distribution, and maintenance of a government monopoly on the importation and sale of tobacco products. They have resulted in higher prices for imported products than for domestically-produced products. While Japan has taken steps to liberalize and modify these practices, it continues to impose relatively high tariffs, to prohibit foreign firms from manufacturing tobacco products in Japan and to restrict the distribution of tobacco products.

Interested parties are invited to submit written comments with respect to issues arising from this investigation, including the appropriate scope of the investigation. Such comments should be filed in accordance with the procedures set forth in 15 CFR 2006.8 and should be submitted to the Chairman, section 301 Committee, Office of the U.S. Trade Representative, Room 223, 600 17th Street, NW., Washington, D.C. 20506, no later than October 11, 1985. Rebuttal briefs must be submitted no later than October 18, 1985.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 85–22243 Filed 9–13–85; 8:45 am]

BILLING CODE 3190–01–M

PEACE CORPS

Peace Corps Advisory Council; Meeting

AGENCY: Peace Corps.

ACTION: Peace Corps Advisory Council; Meeting.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), notice is hereby given that an open meeting of the Peace Corps Advisory Council will be held on September 24, 1985, from 9:00 a.m. to 4:00 p.m. in room 414 of Peace Corps Headquarters, 806 Connecticut Avenue, NW, Washington, D.C.

The purposes of the meeting are to review the Council activities since last April and to discuss and possibly formulate a report from the Council to the President.

In accordance with Chapter 101, section 6.1015(b)(2), of the General Services Administration regulations, notice is hereby given also that less than 15 days notice is being given prior to the meeting because of the following exceptional circumstances:

(1) The Peace Corps Advisory Council is to sunset on October 6th and therefore there is a very limited amount of time in which to schedule a meeting;

(2) Sufficient time must be allowed between the meeting and the sunset date to provide for the formulation of a report and any other unfinished business;

(3) Due to the conflicting schedules of the members of the Council confirmation of the above date was delayed, and similarly, selection of another date is infeasible.

Further information on the meeting may be obtained by contacting Marcia Nauckhoff at 254–6360.

Signed this 11th day of September in Washington, D.C.

Jack Burgess,

Acting Director.

[FR Doc. 85–22067 Filed 9–13–85; 8:45 am]

BILLING CODE 6051–01–M

Peace Corps Background Information Form; Extension

AGENCY: Peace Corps.

ACTION: Extension of Peace Corps Background Information Form.

SUMMARY: Pursuant with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Peace Corps has submitted to the Office of Management and Budget, a request to extend approval of the Peace Corps Background Information Form. The OMB approval and identification number for the current background form expires December 31, 1985.

Section 22 of the Peace Corps Act (22 U.S.C. 2501 et seq) mandates that "all persons employed or assigned to duties under this Act shall be investigated to insure that employment or assignment is consistent with national interest in accordance with standards and procedures established by the President." A copy of the form may be obtained from Mr. Phillip Seder, Peace Corps, Office of Placement, by telephoning (202) 632–6594.

For information about the proposed collection:

Agency Address: Peace Corps, 806 Connecticut Ave. NW., Washington, DC 20526

Type of Request: Extension

Frequency of Request: Recurring—Voluntary

General Description of Rerspondents: Individuals who have applied for Peace Corps service and have been nominated to a specific program

Estimated Number of Respondents: 10,000

Estimated Hours for Respondents to Complete Form; 3,333

Respondents Obligation to Reply: Voluntary

Comments: Telephone comments on this proposal should be directed to Francine Picoult, Desk Officer, Office of Management and Budget on area code (202) 395–7231. A copy of this form can be obtained by contacting Bob Harrison at (202) 632–6594. This is not a request to which 44 U.S.C. S3504(h) applies.

This notice was issued in Washington, D.C., on September 11, 1985.

Linda Rae Gregory

Associate Director for Management.

[FR Doc. 85–22066 Filed 9–13–85; 8:45 am]

BILLING CODE 6051-01-M

POSTAL RATE COMMISSION

[Order No. 632; Docket No. A85–26]

North Scituate, MA (Merrill A. Merritt, P.H.M., Petitioner); Accepting Appeal and Establishing Procedural Schedule

Issued September 9, 1985.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; James H. Duffy; Bonnie Guiton.

Docket No. A85–26

Name of affected post office: North Scituate, Massachusetts 02060

Name(s) of petitioner(s): Merrill A. Merritt, P.H.M.

Type of determination: Consolidation

Date of filing of appeal papers: September 3, 1985

Categories of issues apparently raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
2. Economic savings [39 U.S.C. 404(b)(2)(D)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before September 18, 1985.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

Appendix—Docket No. A85–26, North Scituate, Massachusetts 02060

September 3, 1985—Filing of Petition.

September 9, 1985—Notice and Order of Filing of Appeal.

September 30, 1985—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].

October 8, 1985—Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)].

October 28, 1985—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].

November 12, 1985—(1) Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].

November 19, 1985—(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument [*see* 39 CFR 3001.116].

January 2, 1986—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 85–22079 Filed 9–13–85; 8:45 am]

BILLING CODE 7715-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2200]

Alabama; Declaration of Disaster Loan Area

Walker County and the adjacent County of Cullman in the State of Alabama constitute a disaster area because of a tornado which occurred on August 16, 1985. Applications for loans for physical damage may be filed until the close of business on November 7, 1985, and for economic injury until the close of business on June 6, 1986, at the address listed below:

Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St. SW., Suite 822, Atlanta, GA 30303

or locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 220012 for physical damage and for economic injury the number is 632900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 6, 1985.

Robert A. Turnbull,

Associate Deputy Administrator for Management & Administration.

[FR Doc. 85–22056 Filed 9–13–85; 8:45 am]

BILLING CODE 8025-01-M

Indiana Advisory Council; Public Meeting

The U.S. Small Business Administration, located in the geographical area of Indianapolis, Indiana, will hold a public meeting at 10:30 a.m., E.s.t., Tuesday, October 8, 1985, at the North Meridian Inn, Indianapolis, Indiana, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Robert D. General, District Director, U.S. Small Business Administration, Minton-Capehart Federal Building, Room 578, 575 North Pennsylvania Street, Indianapolis, Indiana 46204–1584—(317) 269–7275.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 4, 1985.

[FR Doc. 85–22058 Filed 9–13–85; 8:45 am]

BILLING CODE 8025-01-M

Region VIII Advisory Council; Public Meeting

The Small Business Administration Region VIII Advisory Council, located in the geographical area of Helena, Montana, will hold a public meeting at 9:30 a.m. on Friday, October 11, 1985, at the Federal Office Building, 301 South Park, Room 389, Helena, Montana, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call John R. Cronholm, District Director, U.S. Small Business Administration, Federal Office Building, 301 South Park, Drawer 10054, Helena, Montana 59626—(406) 449–5381.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 4, 1985.

[FR Doc. 85–22059 Filed 9–13–85; 8:45 am]

BILLING CODE 8025-01

Region X Advisory Council; Public Meeting

The Small Business Administration Region X, Portland District Office, Advisory Council, located in the geographical area of Oregon and southwest Washington, will hold a public meeting at 1:00 p.m. on Thursday, October 10, 1985, at The Riverhouse Motel and Restaurant, 3075 N. Highway 97, Bend, Oregon, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Peter A. Plumridge, Acting District Director, U.S. Small Business Administration, Room 676, 1220 SW, Third Avenue, Portland, Oregon 97204—(503) 294–5226.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 4, 1985.

[FR Doc. 85–22060 Filed 9–13–85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM–8/889]

Integrated Services Digital Network (ISDN) Joint Working Party and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the ISDN Joint Working Party and Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on October 11, 1985 in Room 1207, Department of State, 2201 C Street NW., Washington, D.C. The meeting will begin at 9:30 a.m.

The agenda for the meeting is as follows:

1. Report on the meeting of CCITT Study Group XVIII (June 1985) and on the meeting of Rapporteurs of CCITT Study Group IX (Boulder, Colorado, July 1985);

2. Consideration of contributions to the Study Group XI meeting (Geneva, October 21–November 8, 1985);

3. Consideration of contributions to the meeting of the ISDN Working Parties of Study Group XVIII (Kyoto, December 2–13, 1985);

4. Any other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, D.C.; telephone (202) 632–5832. All attendees must use the C Street entrance to the building.

Dated: August 23, 1985.

Domenick Iacovo,

Acting Director, Office of Technical Standards and Development.

[FR Doc. 85–22134 Filed 9–13–85; 8:45 am]

BILLING CODE 4710-07-M

[CM–8/890]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Working Group on the Carriage of Dangerous Goods; Meeting

The Working Group on the Carriage of Dangerous Goods of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on October 9, 1985, at 9:30 A.M. in Room 2415 at Coast Guard Headquarters, 2100 2nd Street, S.W., Washington, D.C. 20593.

The purpose of this meeting is to discuss:

1. Decisions of the 37th Session of the IMO Subcommittee on the Carriage of Dangerous Gods held May 13–17, 1985, including those related to:

—The adoption of an International Maritime Dangerous Goods (IMDG) Code chapter to permit relaxations for hazardous materials in limited quantities;

—The preparation of a draft of the Class 7 IMDG Code requirements for radioactive materials incorporating the provisions of the 1985 International Atomic Energy Agency revisions;

—The inclusion of additional shipping requirements in the IMDG Code for marine pollutants;

—The IMDG Code requirements for marking gas cylinders used to carry hazardous materials; and

—The IMDG Code standards for portable tanks used to carry hazardous materials.

2. The United States position on the rewrite of the IMDG Code stowage and segregation requirements.

3. Possible United States proposals to the 38th Session of the IMO Subcommittee on the Carriage of Dangerous Goods to be held April 21–25, 1986.

4. IMO activities of a continuing nature.

Members of the public may attend up to the seating capacity of the room.

For further information contact Lieutenant Commander John P. Aherne, U.S. Coast Guard Headquarters (G–MTH–1), 2100 2nd Street SW., Washington, D.C. 20593. Telephone: (202) 426–1577.

Dated: September 6, 1985.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 85-22133 Filed 9-13-85- 8:45 am]

BILLING CODE 4710-07-M

[CM—8/891]

State Department; American Private Sector Overseas Security Advisory Council; Closed Meeting

Under the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), dated October 6, 1972, the Department of State announces a meeting of the State Department—American Private Sector Overseas Security Advisory Council on October 24, 1985 at 9 a.m. in Room 6320 N.S., U.S. Department of State. Under the provisions of United States Code Title 5, Section 553b(c) (1) and (4), and Executive Order #12356, it has been determined the meeting will be closed to the public. This decision relates to the anticipated discussion of matters that are to be kept secret in the interest of national defense and foreign policy, and items of a priviledged commercial nature. The agenda calls for the approval of working agendas of new committees, briefings on a recent hijacking and a discussion of Federal law enforcement practices and procedures.

Dated: August 29, 1985.

David C. Fields,

Deputy Assistant Secretary for Security.

[FR Doc. 85-22132 Filed 9-13-85; 8:45 am]

BILLING CODE 4710-24-M

[CM-8/888]

Study Group C of the U.S. Organization for the International Telegraph & Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on October 1, 1985 at 9:30 a.m. in Conference Room 918, AT&T Building, 1120 20th Street NW., Washington, D.C.

The purpose of this meeting is to review contributions to the October 7-18 meeting of CCITT Study Group II Working Parties and related topics as appropriate.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Requests for further information should be directed to Mr. Earl Barbely, Department of State, Washington, D.C.; telephone (202) 632-5832.

Dated: September 5, 1985.

Domenick Iacovo,

Acting Director, Office of Technical Standards and Development.

[FR Doc. 85-22135 Filed 9-13-85; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 85-064]

Towing Safety Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92—463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC). The meeting will be held on 10 October 1985 in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. The meeting is scheduled to begin at 9:00 a.m. and end at 4: p.m. The agenda is expected to be as follows:

1. TSAC discussion and/or recommendations concerning the following past agenda items:

(a) Air Quality: Vapor Control/ Recovery.

(b) Hazardous Cargo Containers on Deck Cargo Barges.

(c) Bulk Liquid Cargoes.

(d) Tankerman Requirements.

(e) Certification of Seamen.

(f) Licensing of Maritime Personnel.

(g) Intervals for Drydocking and Tailshaft Inspection Requirements.

(h) Inspection Intervals for Pressure Vessels and Cargo Tanks.

(i) Licensing of Pilots; Manning of Vessels—Pilots.

(j) Hybrid PFDs

(k) Recent International Maritime Organization Developments.

(l) Bridge Lighting and Other Signals.

(m) Documentation of Vessels.

(n) Waste Reception Facilities.

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director no later than the day before the meeting.

For further information contact: Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G-CMC/21), Washington, D.C. 20593, (202) 426-1477.

Dated: September 11, 1985.

R.F. Ingraham,

Captain, U.S. Coast Guard, Executive Director, Towing Safety Advisory Committee.

[FR Doc. 85-22113 Filed 9-13-85; 8:45 am]

BILLING CODE 4910-14-M

[CGD 85-065]

Towing Safety Advisory Committee; Subcommittee Meetings

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of all Subcommittees of the Towing Safety Advisory Committee (TSAC). The subcommittee meetings will be held on 9 October 1985 in Room 3328-30 of the Department of Transportation Headquarters (NASSIF) Building 400 7th Street SW., Washington, D.C. The meeting will begin at 1:30 p.m. and end at 4:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.

2. Discussion of the following topics:

(a) Air Quality: Vapor Control/ Recovery.

(b) Tankerman Requirements.

(c) Licensing of Maritime Personnel.

(d) Recent International Maritime Organization Developments.

(e) Bridge Lighting and Other Signals.

3. Presentation of any new items for consideration of the Subcommittees.

4. Adjournment.

Attendance is open to the interested public. Members of the public may present oral or written statements at the meeting. Additional information may be obtained from Captain R.F. Ingraham, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G-CMC/21), Washington, D.C. 20593 or by calling, (202) 426-1477.

Dated: September 11, 1985.

R.F. Ingraham,

Captain, U.S. Coast Guard, Executive Director, Towing Safety Advisory Committee.

[FR Doc. 85-22115 Filed 9-13-85; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Airway Science Grants; Solicitation for Proposals

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Solicitation For Airway Science Grant Proposals.

SUMMARY: The Federal Aviation Administration (FAA) is authorized by Pub. L. 98–473 (98 Stat. 1837) to solicit competitive proposals for Airway Science (AWS) grants from accredited 4-year public or nonprofit private colleges an universities with FAA Airway Science Curriculum programs. The FAA expects to award most, if not all, of an available $3,000,000 in the form of grants, to a small, select number of these institutions of higher learning.

The grant awards are available for the purchase, lease, or construction of buildings and associated facilities, instructional materials or equipment to be used in conjunction with AWS curricula. No funds are to be used for salaries, operating expenses or research and development.

Proposors' Conference: The FAA will sponsor a 1-day AWS conference in Washington, D.C., on September 19, 1985, to discuss the solicitation.

FOR FURTHER INFORMATION CONTACT: Virginia Hancock Krohn, Airway Science Grant Manager, Federal Aviation Administration, APT–200, Room 524, 800 Independence Avenue, SW., Washington, D.C. 20591. Telephone: (202) 426–8878.

Closing deadline: The original and 10 copies of the proposal from an interested institution must be submitted to the FAA by either mail or hand delivery, no later than November 29, 1985.

Proposals Submitted by Mail: A proposal submitted by mail must be addressed to: Federal Aviation Administration, Airway Science Grant Manager, APT–200, Room 524, 800 Independence Avenue, SW., Washington, D.C. 20591.

A grant applicant must show proof of having mailed the proposal package no later than November 29, 1985, consisting of one of the following:

(1) A legible, dated U.S. Postal Service postmark;

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;

(3) A dated shipping label, invoice, or receipt from a commercial carrier; or

(4) Any other proof of mailing acceptable to the Administrator of the FAA.

If a proposal package is sent through the U.S. Postal Service, the FAA will not accept either of the following as proof of mailing:

(1) A private metered postmark; or

(2) A mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encourage to use registered or, at least, first class mail. Each late applicant will be notified that its application will not be considered.

Proposals Submitted by Hand: A proposal that is hand delivered must be taken to the Federal Aviation Administration, Office of the AWS Grant Manager, Room 524, 800 Independence, SW., Washington D.C. 20591. The Office of the AWS Grant Manager will accept hand delivered proposals between the hours of 8:30 a.m. and 4:30 p.m. (e.s.t.), daily except Saturdays, Sundays, and Federal holidays. A proposal that is hand delviered will not be accepted after 4:30 p.m. on the closing date.

No supplemental materials received after the application deadline date will be considered unless such material is specifically solicited by the AWS Grant Manager. Questions regarding grants management requirements should be referred to the AWS Grant Manager.

Background

The FAA is engaged in a comprehensive program to modernize the Nation's airway system to meet the challenge of aviation growth in the coming decades. The modernization program is reflected in the agency's National Airspace System plan which takes advantage of current technological advances to increase the capacity and efficiency of the Nation's airspace system while reducing relative costs to Nation's taxpayers.

The FAA recognized the increasing complexity of the technical and managerial skills necessary to accommodate the technological advances in equipment, systems and configurations being planned and implemented. The FAA decision to sponsor an AWS curriculum was a direct result of a FAA assesament of the human resources needed to realize the full benefits of the forthcoming airspace and airway system modernization.

Beginning in 1982, in collaboration with the University Aviation Association, the FAA developed and recommended a specific college-level airway science curriculum. The airway science curriculum was designed to meet normal university academic and accredtation requirements, be easily adapted to existing aviation-related programs, and allow individual educational institutions the option of offering any number of the five areas of concentration according to their individual resources. (48 FR 32490, July 15, 1983).

The five areas of concentration are: (1) Airway Science Management, (2) Airway Computer Science, (3) Aircraft Systems Management, (4) Airway Electronics Systems, and (5) Aviation Maintenance Management. Graduates of educational institutions offering recognized airway science programs are eligible for recruitment by the FAA in one of four agency career fields: air traffic control, electronics technology, aviation safety inspection (general aviation operations and maintenance), and computer sciences.

The FAA has recognized 25 institutions with one or more airway science areas of concentration. Their curricula directly support FAA's human resource needs by producing graduates with the necessary knowledge and skills to pursue aviation-related technical careers in the public and private sectors. Another 25 institutions have presented their AWS programs to the FAA for AWS recognition.

References: Those parties interested in the FAA's previous AWS activities may refer to the following Federal Register notices: March 18, 1983 (48 FR 11672, the FAA proposed Airway Science curriculum demonstration project plan); July 15, 1983 (48 FR 32490; Office of Personnel Management approval of the FAA demonstration project final plan); and June 1, 1984 (49 FR 22903; a notice that announced the first competitive criteria initially employed by the FAA in selecting its first AWS grant recipient).

The Airway Science Grant

Authority: This solicitation represents a continuation of the FAA's Airway Science Grant Program. This Program funds projects at selected institutions of higher learning which have evidenced a commitment to the agency's AWS curriculum program. These grants are authorized by Pub. L. 98–473 (98 Stat. 1837). An amount of $3,000,000 is available for grant awards for the purchase, lease, or construction of buildings and associated facilities, instructional materials or equipment to be used in conjunction with AWS curricula. Monies are not available for salaries, operating expenses or research and development.

Eligibility: Eligible institutions must be accredited four-year public and non-profit colleges or universities in the United States and its possessions. To be eligible an applicant institution must either: (1) Have an established FAA recognized AWS curriculum in place, (2) have submitted its AWS curriculm to the FAA for recognition and be in the process of receiving AWS program

recognition, or (3) submit an AWS curriculum proposal to the FAA no later than 30 days from the date of this announcement. In no event will a final grant award be made to an institution without a recognized AWS curriculum.

Proposal Format and Content

Each AWS grant proposal is subject to the provisions of applicable FAA regulations and OMB Circulars A–21, A–73, A–88 and A–110. Proposals should contain the following information in the order listed:

1. Cover Sheet. Near the top of the Cover Sheet, type the title "Airway Science Grant Proposal." The legal name of the proposed grantee institution, its mailing address and Employer Identification Number, as assigned by the Internal Revenue Service, should be centered on the Cover Sheet. The names, titles and telephone numbers of the proposed Project Director and of an official authorized to sign for the proposed grantee institution should be typed on the lower left and right corners, respectively, of the Cover Sheet. The Cover Sheet of one copy of the proposal must bear the original signature of each of the above individuals. The signature of the authorized official signifies institutional endorsement of the proposal, cognizance of the eligibility and limitation requirements and a commitment to provide the specific support for the proposed activities in the event the grant is made.

2. Project Summary. A concise summary of the proposed project, including a statement of the goals and objectives, the plan to achieve these goals and objectives and the long-term benefits of the project to the institutional and national AWS programs. The summary should not exceed two (2) double-spaced typewritten pages and should be written so that a layperson can understand the use of federal funds to support the proposed project.

3. Budget Plan. The proposal must contain a Budget Plan that includes a detailed itemization of proposed expenditures according to the following categories:

(a) Equipment
(b) Materials and supplies
(c) Publications
(d) Computer services
(e) Travel
(f) Consultant services
(g) Facilities
(h) Other direct costs
(i) Indirect costs

Each line item within each of the above categories must show the allocations of expenditures between the FAA grant funds and the institutional matching funds and/or equivalent support services. The Budget Plan must also include a description of the items listed in each of the above categories.

4. *Narrative.* The proposal narrative should be clearly written and not exceed forty (40) double-spaced typewritten pages in length. The Narrative should contain the following:

(a) *Introduction*—The introduction should present a brief description of the institution including historical background, full-time graduate and undergraduate student enrollment, student body profile, location (rural, urban, etc.), fields of emphasis and degrees awarded.

(b) *Background*—The Narrative should provide a descripton of the institution's current programs in mathematics, science and engineering, computer sciences, management and the aviation sciences. The description should characterize these programs according to: the number of full-time faculty, total student enrollment, the number of majors by discipline, undergraduate degrees awarded during the 1984–1985 academic year, average faculty salaries, and the average teaching loads (in semester or quarter hours).

(c) *The Existing AWS Program*—The Narrative should include a description of the current AWS program. Discuss the relationship of the proposed project to the goals and objectives of the overall AWS program at the institution. Assess the impact of the project upon other AWS program activities. Information should be provided on the number of full- and part-time faculty, average salaries, the total student enrollment in the AWS program, the number of AWS majors by AWS concentration area, the number of AWS degrees awarded, and projections of student enrollment and expected degrees to be conferred over the next five years. Describe institutional plans to attract students to the AWS program. If the AWS program is presently in the process of implementation, describe the current activities and projected student enrollment.

An institution that has a recognized AWS program in place should enclose, with the proposal submission, a copy of the official course catalog and/or other brochure(s) showing the AWS course offerings to students during the 1985–1986 academic year. An institution that does not have a recognized AWS curriculum in place should enclose a copy of its proposed AWS curriculum.

(d) *Institutional Needs in Airway Science*—The Narrative should identify and discuss the institution's needs for funds, faculty, facilities and other resources in terms of the institution's goals and objectives for the AWS curriculum. The role of the proposed project should be discussed in this context.

(e) *Project Plan*—A Project Plan should be prepared that sets forth the goals and objectives of the proposed project and the various activities and tasks necessary to bring the project to a successful conclusion. The plan should include time schedules for performance with appropriate mile-stones relating to the conduct of the project. The Plan should describe the mechanisms that will be used to manage and monitor the progress of the project. Anticipated progress reports, advisory committee meetings and similar events should be described.

(f) *Project Personnel*—Identify and describe the relevant skills of those individuals who will have major project responsibilities. A Curriculum Vitae should be appended to the proposal for each individual who has a significant project responsibility. The amount of time each such person will be required to devote to the projeet must be stated.

The role of the Project Director is particularly critical. The proposal must provide information indicating that the Project Director has well-defined responsibilities and sufficient time and adequate academic and institutional authority and support to effectively manage the project. If the AWS program is in the implementation stage, and a Project Director has not yet been appointed, describe the procedures being used to locate and evaluate candiates for the position. Provide a statement of the required credentials.

(g) *Evaluation Plan*—As part of the Narrative, a project Evaluation Plan should be outlined. The purpose of the Evaluation Plan, when completed at the close of the project, is to permit FAA officials an other educational and aviation specialists to assess whether the objectives of the project have been achieved and assess the impact of the project upon the AWS program at the grantee institution. The completed Evaluation Plan should give attention to the enhanced skills and subsequent occupational marketability of those AWS students who have benefited from the project. The Evaluation Plan may be prepared entirely by institutional staff or in collaboration with outside consultants. The results of the completed evaluation are to be included in the Final Project Report. The FAA anticipates that FAA representatives will make site visits to each grantee

institution during the lifetime of the project.

(h) *Equipment and Facilities*—The Narrative should present a detailed discussion of each Equipment and Facilities item for which grant award funds are proposed to be spent. This must include the need for the item, the source, the time-table and method (lease, purchase or construction) for acquisition and the proposed disposition at the close of the project. Award applicants may submit photographs, architectural drawings, site plans or other visual representtions that would aid the reviewing panel in assessing the relative merits of the proposed facilities. The institution must include a detailed description of how the specific items directly support its AWS curriculum.

Reporting Requirements

Until the proposed project is completed, the FAA requires that each awardee institution prepare an Annual Project Report, not to exceed twenty (20) double-spaced typewritten pages in length. The Annual Project Report is to be submitted to the FAA AWS Grant Manager within 90 days of the close of each fiscal year of the awardee institution. The Report should include a summary of project progress, highlights and accomplishments, personnel changes and a status report on expenditures and account balances for each of the line items presented in the proposed Budget Plan.

In addition, a Final Project Report is to be prepared and sent to the FAA AWS Grant Manager within 90 days of project completion. The Final Project Report should include summaries of project activities, accomplishments and Budget Plan expenditures. The Report must contain the completed Evaluation Plan described above. "Project completion" will be determined by the FAA in terms of the proposed project goals and objectives and usually will occur after the principal project objectives have been achieved and the award funds expended.

Local Review Statement

The proposal must have appended to it a statement, signed by the Chief Executive Officer of the institution, that contains: (a) An endorsement of the proposed project; (b) a description of how the proposed project supports the larger institutional goals and objectives in AWS; and (c) a commitment to provide the institutional resources necessary to complete the proposed project and continuing support for the AWS program after the grant award funds have been expended.

Proposal Review

Proposals will be reviewed, evaluated and ranked on the basis or merit by a panel of educational and aviation specialists from the public and private sectors, including academia, private industry and the Federal Government. For the purposes of review, all proposals received by the FAA will be placed into one of three competitive classes: (1) Minority institutions (see 49 FR 22903), (2) majority institutions with a full-time under-graduate student enrollment less than 6,500, and (3) majority institutions with a full-time undergraduate student enrollment greater than 6,500. Competitive class assignments will be validated by the latest statistics from the U.S. Department of Education. Proposals presenting a joint project shared by two or more institutions will be placed into the competitive class appropriate to the lead institution.

Grant awards will be made on a competitive basis, not to exceed $1,000,000 in each of the respective classes. The awards within a given competitive class will range from $1,000,000 to the $1,000,000 maximum. Each proposal will be reviewed, evaluated and ranked, within the competition class to which it is assigned by the FAA. If a proposed grantee institution fails to be awarded a grant within its competition class, the institution will not be allowed to compete for funds in the other two classes.

The FAA does not intend to fund all proposed projects or necessarily all components of a proposal selected for award. The agency expects to distribute most, if not all, of the $3,000,000 available.

Evaluation Criteria

Evaluation criteria are designed to enable the reviewing panel and FAA officials to effectively evaluate the relative merit of proposals submitted in response to this solicitation. Each reviewer will be instructed to consider the weighted factors listed below and rate each proposal on a 100-point numerical scale. The evaluation criteria are the following:

1. *Institutional Impact.* Each proposal will be evaluated to determine the extent to which the proposing institution has assessed:

(a) The need for funding of its AWS program in terms of the AWS program goals and objectives;

(b) The role grant funding will play in achieving these goals and objectives;

(c) The impact the grant funding will have upon the existing AWS program; and

(d) The expected benefits that will accrue to the institution and its AWS graduates.

The proposal should identify the ways in which the proposed project will support the overall institution goals and objectives in related disciplines such as mathematics, science and engineering, management and the computer sciences. (15 points maximum)

2. *Institutional Commitment.* Each proposal will be evaluated as to the extent of the institution's commitment to the AWS Program. This includes consideration of the following, (a) recognized AWS curriculum vs. proposed curriculum submitted to FAA; (b) the amount of institutional matching funds, facilities and other collateral resources provided toward the support of the proposed grant project; and (c) the continued support and growth of the institutional AWS program, including the beneficial impact of the proposed project after the grant funds are expended. In addition, the Local Review Statement from the Chief Executive Officer of the institution will be considered in determining how the proposed project will assist the institution in attaining the goal of establishing a quality AWS program (20 points maximum)

3. *Qualifications of Key Personnel.* The reviewing panel will evaluate the professional qualifications and experience of the institution's present AWS personnel and other key individuals who would be involved in the proposed AWS project, with particular attention being given to the Project Director. The relationship of the qualifications and past experience of these individuals to the goals and objectives of the project will be considered. (10 points maximum)

4. *Project Plan Quality.* The Project Plan for each proposed AWS project will be evaluated in regard to the following characteristics:

(a) The relationship between the goals and objectives of the proposed project and those of the other AWS programs of the institution;

(b) The adequacy of the institutional resources for achieving the goals and objectives of the proposed project;

(c) The effectiveness of the proposed mechanisms for the management and coordination of the faculty, administrative, facility and other institutional resources in achieving the goals and objectives of the proposed project;

(d) Project management mechanisms that provide for the effective administration and technical direction of the project, including the

establishment of specific project goals and objectives, time-tables for performance and milestones that permit monitoring of the progress of the project and the measurement of its overall effectiveness;

(e) A Budget Plan that sufficiently details proposed expenditures by budget category and line item and shows the allocation between grant funds and institutional matching funds and/or equivalent support services. The budget figures should be appropriate for the goods and services being procured and consistent with the project narrative presented elsewhere in the Project Plan;

(f) Adequate institutional budgeting and other fiscal controls that allow for periodic review of resource commitments and determinations that expenditures are in accordance with the Project Plan; and

(g) The identification of significant educational, technical and administrative innovations that would further the attainment of the institutional and national goals and objectives for the AWS programs. (30 points maximum)

5. *Expected Benefits.* The benefits of the proposed project to both the institutional and national AWS programs will be evaluated. The reviewers will consider: (a) The long-term benefits to the institution, including the AWS students, faculty, facilities and curriculum development efforts; (b) the applicability and usefulness of educational, technical and administrative innovations to AWS programs at other institutions and in other instructional and occupational environments; (c) the benefit to future employers of AWS program graduates, including academia, private industry and Federal, state and local governments; and (d) projections of the number of AWS program graduates over the next five years, in each of the concentration areas of the FAA AWS curriculum (15 points maximum)

6. *Evaluation Plan.* The reviewing panel will consider the adequacy of the proposed Evaluation Plan in assessing project performance and the impact of the project upon the existing institutional AWS program and the quality of graduating AWS students. (10 points maximum)

Award Date

The FAA expects to announce the institutional recipients of the AWS grant awards during January 1986.

Issued in Washington, D.C., on September 9, 1985.

E.V. Curran,

Director of Personnel and Technical Training.

[FR Doc. 85-22035 Filed 9-13-85; 8:45 am]

BILLING CODE 4910-13-M

Organization and Functions; Flight Service Station Kansas City, MO; Closure

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Flight Service Station at Kansas City, MO; Closure.

SUMMARY: Notice is hereby given that on September 30, 1985, the Flight Service Station at Kansas City, Missouri, will be closed. Thereafter services to the general aviation public at Kansas City will be provided by the Columbia, Missouri, Flight Service Station. This information will be reflected in the next issue of the FAA Organizational Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Kansas City, Missouri, on September 6, 1985.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 85-22031 Filed 9-13-85; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Bell Township Westmoreland County, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Westmoreland County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: George J. Catselis, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108-1086, Telephone (717) 782-3411 or Timothy R. O'Brien, Project Manager, Pennsylvania Department of Transportation, North Gallatin Avenue Extension, P.O. Box 459, Uniontown, Pennsylvania, 15401, Telephone (412) 439-7133.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT), will prepare an environmental impact statement on a proposal to improve traffic safety by eliminating the sharp curves, steep grades, narrow widths and poor sight distance on Traffic Route 981 (Legislative Route 990) and Legislative Route 64261 in Bell Township. Also, the proposal will alleviate the traffic flow by diverting traffic, particularly by reducing the number of large trucks around the communities of Salina and Tinsmill, located in southwestern Pennsylvania. The proposed project is approximately 1.7 to 2.5 miles in length and may consist of a relocation of T.R. 981 (L.R. 990) and L.R. 64261 around the community of Salina and/or Tinsmill. The project begins just west of Salina near the intersection of T.R. 819 and L.R. 64261 and extends to the east, ending at the intersection of T.R. 981 and T.R. 156.

Three basic build alternatives will be considered in conjunction with the project: Two alternatives would be south of Salina but north of the Tinsmill community. The third alternative would be south of the Tinsmill community. The three alternatives being considered will be relocations of the existing highway (L.R. 64261 and L.R. 990) described above. A do-nothing alternative will also be considered. For each alternative under study, the following areas will be investigated: traffic, preliminary design and cost, air, noise, socioeconomics and land use, historical resources, cultural resources, archaeological resources, water resources, floodplains, stream modifications, wetlands, vegetation and wildlife, prime or unique agricultural lands, energy, visual impacts, construction impacts, and mineral resources. The plan of study (POS) will be sent to the appropriate Federal, State and local agencies in late August or early September of 1985. Scoping meetings with the concerned agencies are planned for September 1985.

Since this project was originally advanced in 1973, numerous public meetings and public officials meetings were held. In 1977 further design development on the project was deferred due to a lack of sufficient State funds and a need to complete higher priority projects. In 1981 the project design was reactivated and further public meetings and public officials meetings were held in 1982. Further public involvement opportunities will consist of a public display of plans, at which time the preferred alternative will be presented to the public. The opportunity to request a public hearing will be afforded the public via an advertisement in the newspapers of the project area.

To ensure the full range of range of issues related to this proposed action are addressed and all significant issues are identified, comments or questions concerning this action and the environmental impact statement should be directed to the FHWA or PennDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this program.

Issued On: September 9, 1985.

Louis M. Papet,

Division Administrator Harrisburg, Pennsylvania.

[FR Doc. 85-22128 Filed 9-13-85; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closed October 28, 1985.

ADDRESS: Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, D.C.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9497-N	Pressure Pak, East Hampton, CT	49 CFR 173.302(a)(4), 173.304, 175.3	To manufacture, mark and sell non-DOT specification steel cylinders comparable to DOT Specification 39 for shipment of those flammable and nonflammable compressed gases authorized in DOT Specification 39. (Modes 4, and 5.)
9498-N	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.370	To authorize shipment of sodium cyanide and potassium cyanide, class B poisons in non-DOT specification woven polypropylene flexible intermediate bulk containers not to exceed 2,205 pound each. (Modes 1, 2, and 3.)
9499-N	Cleveland Container Corporation, Cleveland, OH.	49 CFR 173.119, 173.245, 173.346	To manufacture, mark and sell DOT Specification 35 containers not to exceed 6 gallon capacity for shipment of certain flammable, corrosive and poison B liquids. (Modes 1, 2, and 3.)
9500-N	Boner Rosedale Plastics Ltd. Lindsay, Canada	49 CFR Part 173, Subpart D, F	To manufacture, mark and sell non-DOT specification rotationally molded polyethylene containers of 300 gallon capacity enclosed in a steel frame for shipment of certain flammable or corrosive materials. (Modes 1, and 2.)
9501-N	Hughes Aircraft Company, Los Angeles, CA	49 CFR 173.301, 175.3, 178.65	To authorize shipment of nickel-hydrogen battery cells contained in a pressure vessel configuration comparable to DOT Specification 39 overpacked in specially designed packaging. (Modes 1, 3, and 4.)
9502-N	Callery Chemical Company, Evans City, PA	49 CFR 173.302(g)	To authorize shipment of diborane and diborane mixtures, classed as flammable gas, in DOT Specification 3A1800 and 3E1800 cylinders. (Modes 1, 2, and 3.)
9503-N	Rotational Molding, Inc., Gardena, CA	49 CFR Part 173, Subpart D, E, F	To manufacture, mark and sell non-DOT specification polyethylene portable tanks encased in steel structure for shipment of certain flammable, or corrosive liquids or hydrogen peroxide solution 52% or less, classed as an oxidizer. (Modes 1, and 2.)
9504-N	Dow Chemical Company, Midland, MI	49 CFR Part 172, Subpart B, Part 173, Subpart A, B, D, E, Subpart C, D, E, F, Subpart F, G, H, I, Subpart J, K, L, M.	To authorize shipment within a 10 mile radius, of standard analytical laboratory samples in inside glass, plastic or metal containers not to exceed 1 quart capacity overpacked in specially designed shipping case, as essentially nonregulated. (Mode 1.)
9505-N	The Norac Company, Azusa, CA	49 CFR 173.157(a)(5), 173.157(b)(3)	To authorize shipment of benzoyl peroxide with at least 30% water contained in one polyethylene container overpacked in 12B fiberboard box not to exceed 35 pounds dry weight without cushioning material or with at least 20% water not to exceed 25 pounds dry weight without cushioning material. (Mode 1.)
9506-N	Akzo Chemie America McCook, IL	49 CFR 173.286, 175.3	To authorize shipment of certain alkaline, flammable, and corrosive liquids contained in 16 plastic 8 ounce bottles overpacked in specially designed sample chemical kits. (Modes 1, 2, 4, and 5.)
9507-N	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.301, 173.320, 173.304, 173.327	To authorize shipment of damaged or deficient DOT Specification cylinders containing various hazardous materials, overpacked in a recovery cylinder, for repair or disposal. (Mode 1.)
9508-N	Callery Chemical Company, Evans City, PA	49 CFR 173.34(e)	To authorize shipment of sodium potassium alloy liquid in DOT Specification 4BW240 with a retest period of 10 years rather than 5 years. (Modes 2, and 3.)
9511-N	Ticar Chemical Company, Inc., Asheville, NC	49 CFR 173.245b	To ship approximately 500 caustic soda (solid) drums with pin holes loaded in a polyethylene lined metal, roll-off container mounted on a motor vehicle chassis to a disposal site. (Mode 1.)

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on September 10, 1985.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation Materials Transportation Bureau.

[FR Doc. 85–22137 Filed 9–13–85; 8:45 am]

BILLING CODE 4910–60–M

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of applications for renewal or modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections of affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATE: Comment period closes October 1, 1985.

ADDRESS: Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No	Applicant	Renewal of exemption
3128-X	U.S. Department of Defense, Falls Church, VA.	3128
3415-X	Aerojet Strategic Propulsion Co., Sacramento, CA	3415
4453-X	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE	4453
4453-X	Ireco Incorporated, Salt Lake City, UT	4453
5243-X	Aappalachian Explosives, Inc., Romney, WV	5243
6250-X	U.S. Department of Defense, Falls Church, VA.	6250
6614-X	Air Pure Chemical Company, Tracy, CA	6614
6614-X	Hasa Chemicals, Inc., Saugus, CA	6614
6614-X	GPS Industries, City of Industry, CA	6614
6800-X	Plasti-Drum Corporation, Lockport, IL	6800
6902-X	Halocarbon Products Corporation, Hackensack, NJ	6902
6984-X	Aappalachian Explosives, Inc., Romney, WV	6984
7035-X	Owen-Illinois, Inc., Toledo, OH	7035
7052-X	Flow Research Corporation, Houston, TX	7052
7072-X	Container Corporation of America, Wilmington, DE	7072
7541-X	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE	7541
7616-X	Union Pacific Railroad Company, Omaha, NE	7616
7616-X	Missouri Pacific Railroad Company, Omaha, NE	7616
7616-X	The Kansas City Southern Railway Co., Kansas City, MO	7616
7616-X	The Atchison, Topeka and Santa Fe Railway Company Chicago, IL.	7616
7835-X	Big Three Industries, Inc., Houston, TX.	7835
7835-X	Airco Industrial Gases, Riverton, NJ.	7835
7835-X	Lincoln Big Three, Inc., Baton Rouge, LA	7835
7887-X	Centun Engineering Co., Inc., Penrose, CO	7887
7887-X	Flight Systems, Inc., Raytown, MO	7887
7887-X	Flight Systems, Inc., Burns Flat, OK	7887
7887-X	Crown Rocket Technology, Mountlake Terrace, WA	7887
7887-X	Estes Industries, Inc., Penrose, CO	7887
8063-X	Taylor-Wharton Division of Harsco Corporation, Indianapolis, In.	8063
8180-X	Dow Corning Corp., Midland, MI	8180
8214-X	Morton Thiokol, Inc., Ogden, Ut (See Footnote 1)	8214
8215-X	Olin Corp East Alton, IL (See Footnote 2)	8215
8269-X	M-D Trailer Company, Fort Worth, TX.	8269
8301-X	Container Corporation of America, Wilmington, DE	8301
8344-X	All-Sports Supply, Inc., Portland, OR	8344
8344-X	Western-Hoegee Company, Glendale, CA	8344
8348-X	Frell, Inc., Corpus, Christi, TX	8348
8354-X	Compagnie des Containers Reservoirs (CCR), Paris, France	8354
9579-X	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE	8579
8460-X	Fruehauf Corporation, Omaha, NE	8640
8698-X	Union Carbide Corporation, Danbury, CT.	8698
8706-X	Prairie State Equipment, Inc., Sioux Falls, SD.	8706
8708-X	Great Lakes Chemical Corp., El Dorado, AR	8708
8708-X	Trical, Inc., Hollister, CA	8708
8732-X	Delta Solvents & Chemicals Co., Longview, TX	8732
8742-X	Cusco Fabricators Ltd., Richmond Hill, Ont., Can.	8742
8772-X	Akzo Chemie Amanca, Chicago, Il	8772
8871-X	Chase Bag Co., Oak Brook, IL (See Footnote 3)	8871
8988-X	Welex, Houston, TX	

Application No	Applicant	Renewal of exemption
9027-X	McGean-Rohco, Inc., Cleveland, OH	9027
9043-X	Ozella Harrington Trucking Company, Benson, AZ	9043
9057-X	Olympic Chemical Company, Orange, CA.	9057
9059-X	Air Products and Chemicals, Inc., Allentown, PA	9059
9120-X	Dresser Industries, Inc., Houston, Tx	9120
9132-X	Welchem, Inc., Houston, TX	9132
9149-X	Ethyl Corp., Baton Rouge, LA	9149
9150-X	Hoover Universal, Inc., Beatrice, NE	9150
9169-X	Pacific Smelting Company, Torrance, CA	9169
9170-X	Transport Company, Inc., El Dorado, AR	9170
9170-X	Davison Transport Co., Inc., Ruston, LA.	9170
9174-X	The National Aeronautics and Space Administration, Washington, DC	9174
9222-X	Willms Trucking Company, Inc., Charleston Heights, SC (See Footnote 4)	9222
9367-X	Manno Technology/Champion International Corp., West Nyack, NY (See Footnote 5)	9367
9425-X	American Chemical & Refining Company, Inc., Waterbury, CT (See Footnote 6)	9425

[1] To renew, to authorize certain mechanical modifiction of the inflator system and to use DOT Specification 15A wooden box as packaging for module.

[2] To authorize use of 3 gallon porcelain buckets for in plant shipments of rejected small arms ammunition

[3] to authorize shipment of arsenic trioxide, solid and aresenical flue dust, class B posions as additonal commodities

[4] To expand travel distance by changing points of origination and detination

[5] To authorize cargo vessel as an additional mode of transportation

[6] To authorize sodium potassium and calcium hydroxide solutions classed as corrosive materials as additional commodities

Application No	Applicant	Parties to exemption
3004-P	National Welders, Charlotte, NC	3004
3187-P	Silor Optical of Florida, Inc., St Petersburg, FL	3187
4453-P	Stockdale and Means Explosives, Inc., Frostburg, PA.	4453
4990-P	Joseph E. Seagram & Sons, Inc., New York, NY	4990
5038-P	National Welders, Charlotte, NC	5038
5206-P	Austin Sales, Inc., Vansant, VA	5206
5372-P	National Welders, Charlotte, NC	5372
5649-P	Olin Chemicals, Stamford, CT	5649
6296-P	Rhone-Poulenc Inc., Monmouth Junction, NJ.	6296
6349-P	National Welders, Charlotte, NC	6349
6530-P	National Welders, Charlotte, NC	6530
6543-P	National Welders, Charlotte, NC	6543
6614-P	GLD Distributors, Inc., Fairport, NY	6614
6626-P	National Welders, Charlotte, NC	6626
6670-P	Airco, The BOC Group, Inc., Murray Hill, NJ	6670
6752-P	3M—St. Paul, MN	6752
7052-P	Amoco Battery Technology Corporation, Naperville, IL.	7052
7052-P	Compton Parkinson PLC of United Kingdom, England.	7052
7052-P	ACR Electronics, Inc., Hollywood, FL	7052
7808-P	Cline-Buckner, Inc., Cerritos, CA	7808
7835-P	National Welders, Charlotte, NC	7835
7887-P	Aero Technology Company, Rancho Cordova, CA	7887
8074-P	Airco, The BOC Group, Inc., Murray Hill, NJ.	8074
8127-P	Israel Military Industries, Washington, DC	8127
8445-P	ECOFLO, Inc. Tuxedo, MD	8445
8451-P	Martin Electronics, Inc., Perry, FL	8451
8554-P	Atlas Powder Company, Dallas, TX	8554
8582-P	Boston and Maine Corporation, North Billenca, MA.	8582
8582-P	Delaware & Hudson Railway Company, North Billenca, MA	8582
8582-P	Maine Central Railroad Company, North Billenca, MA.	8582
8838-P	Olin Corporation, Stamford, CT	

Application No	Applicant	Parties to exemption
9041-P	Ireco Incorporated, Salt Lake City, UT.	9041
9057-P	PPG Industries, Inc., Pittsburgh, PA	9057
9329-P	Geo Vann, Inc., Kenai, AL	[illegible]
9331-P	Olin Chemicals, Stamford, CT	[illegible]

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on September 10, 1985.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation Materials Transportation Bureau.

[FR Doc. 85-22136 Filed 9-13-85; 8:45 am]

BILLING CODE 4910-60-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Italian Renaissance Sculpture in the Time of Donatello" (included in the list[1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to loan agreements between the Founders Society Detroit Institute of Arts and foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Detroit Institute of Arts, Detroit, Michigan, beginning on or about October 21, 1985, to on or about January 5, 1986; and the Kimbell Museum, Fort Worth, Texas, beginning on or about February 24, 1986, to on or about April 27, 1986, is in the national interest.

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: September 5, 1985.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 85-22080 Filed 9-13-85; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Medical Research Service Merit Review Boards; Meetings

The Veterans Administration gives notice pursuant to Public Law 92-463 of the meetings of the following Merit Review Boards.

Merit review board	Date	Time	Location
Immunology	Oct. 1, 1985	8 a.m. to 5 p.m	Holiday Inn [1]
Do	Oct. 2, 1985	do	Do
Infectious Diseases	Oct. 2, 1985	7 p.m. to 11 p.m.	Amfac Hotel [2]
Do	Oct. 3, 1985	8 a.m. to 5 p.m.	Do
Do	Oct. 4, 1985	do	Do
Hematology	Oct. 4, 1985	do	Room 119, VA Central Office [3]
Respiration	Oct. 7, 1985	do	Room 119, Va
Do	Oct. 8, 1985	do	Central Office [3]
Cardiovascular Studies	Oct. 10, 1985	do	Room 119, VA
Do	Oct. 11, 1985	do	Central Office [3]
Surgery	Oct. 13, 1985	do	Chicago Hilton & Towers [4]
Nephrology	Oct. 17, 1985	do	Room 119, VA
Do	Oct. 18, 1985	do	Central Office [3]
Gastroenterology	Oct. 18, 1985	do	Holiday Inn [1]
Do	Oct 19, 1985	do	Do
Oncology	Oct 29, 1985	do	Room 119, Va Central Office [3]
Neurobiology	Oct. 31, 1985	do	Room 119, VA
Do	Nov. 1, 1985	do	Central Office [3]
Do	Nov. 2, 1985	do	Do
Alcoholism and Drug Dependence	Nov. 1, 1985	do	Room 119, VA Central Office [3]
Basic Sciences	Nov 4, 1985	do	Holiday Inn [1]
Do	Nov. 5, 1985	do	Do
Mental Health and Behavioral Sciencs	Nov. 6, 1985	do	Holiday Inn [1]
Do	Nov. 7, 1985	do	Do.
Endocrinology	Nov 8, 1985	do	Do
Do	Nov. 14, 1985	do	Sheraton Plaza [5]
	Nov. 15, 1985	do	Do

[1] Holiday Inn, 1501 Rhode Island Ave., NW, Washington, DC 20005
[2] Amfac Hotel, 30 South Street, Minneapolis, MN 55402.
[3] Veterans Administration Cental Office, 810 Vermont Avenue, NW, Washington, DC 20420.
[4] Chicago Hilton & Towers, 720 South Michigan Ave., Chicago, IL 60605.
[5] Sheraton Plaza, 400 East Tahquitz-McCallum Way, Palm Springs, CA 92262.

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Veterans Administration investigators working in Veterans Administration Medical Centers and clinics.

The meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Board meetings will be closed to the public after approximately one-half hour from the start, for the review, discussion and evaluation of initial, and renewal research projects.

The closed portion of the meeting involves: discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Pub. L. 92-463, as amended by Pub. L. 94-409, closing portions of these meetings are in accordance with 5 U.S.C., 552b(c)(6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Mr. Howard M. Berman, Chief, Program Review Division, Medical Research Service, Veterans Administration, Washington, DC, (202) 389-5085 at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Boards may be obtained from this source.

Dated: September 10, 1985.

By direction of the Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85-22081 Filed 9-13-85; 8:45 am]

BILLING CODE [illegible]

Sunshine Act Meetings

Federal Register
Vol. 50, No. 179
Monday, September 16, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, September 10, 1985.

CHANGE IN THE MEETING: The following matter was withdrawn from the closed portion of the meeting and will not be resubmitted.

Request for Authorization of Contract for Special Masters in Support of a Court Case

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634–6748.

This Notice Issued September 11, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 85–22180 Filed 9–12–85; 1:01 pm]

BILLING CODE 6750–06–M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, September 10, 1985.

CHANGE IN THE MEETING: The following matters were postponed and rescheduled for 9:30 a.m. (eastern time), September 17, 1985:

1. Proposed Amendment to the Department of Education's Title IX Regulations
2. Proposed Ninety-Day Notice: TWA v. Thurston

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634–6748.

This Notice Issued September 11, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 85–22181 Filed 9–12–85; 1:01 pm]

BILLING CODE 6750–06–M

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 p.m. (eastern time), Tuesday, September 17, 1985.

CHANGE IN THE MEETING: The following matter has been postponed and rescheduled for 9:30 a.m. (eastern time), September 24, 1985:

Recommended FY 1986 State and Local Expenditures

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634–6748.

This Notice Issued September 11, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 85–22182 Filed 9–12–85; 1:01 pm]

BILLING CODE 6750–06–M

4

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 9:30 a.m. (eastern time), Tuesday, September 24, 1985.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Recommended FY 1986 State and Local Expenditures

Closed

Litigation Authorization; General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634–6748.

Dated: September 11, 1985.

Cynthia C. Matthews,

Executive Officer.

[FR Doc. 85–22183 Filed 9–12–85; 1:01 pm]

BILLING CODE 6750–06–M

5

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

September 11, 1985.

TIME AND DATE: 10:00 a.m., Tuesday, Steptember 17, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Pittsburgh & Midway Coal Mining Co., Docket No. CENT 83–65. (Issues include whether the administrative law judge erred in concluding that the operator violated 30 CFR 77.202, a mandatory safety standard prohibiting the dangerous accumulation of coal dust.)

It was determined by a unanimous vote of Commissioners that a meeting be held on this item and that no earlier announcement of the meeting was possible. 5 U.S.C. 552b(e)(1).

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 85–22221 Filed 9–12–85; 3:28 pm]

BILLING CODE 6735–01–M

6

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, October 2, 1985.

PLACE: Board Hearing Room 8th Floor, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of September, 1985.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthy report of the Board's notation voting actions will be available from the Executive Secretary's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Secretary, Tel: (202) 523–5920.

Date of Notice: September 9, 1985.

Mr. Rowland K. Quinn, Jr.,

Executive Secretary, National Mediation Board.

[FR Doc. 85–22150 Filed 9–12–85; 9:38 am]

BILLING CODE [illegible]



Monday
September 16, 1985

Part II

Environmental Protection Agency

40 CFR Part 300

National Oil and Hazardous Substances Contingency Plan; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[SWH-FRL 2853-1a]

National Oil and Hazardous Substances Contingency Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and Executive Order 12316, the Environmental Protection Agency (EPA) is amending § 300.66(b) of the National Contingency Plan (NCP). As amended, § 300.66(b)(4) adds a mechanism by which EPA can place sites on the National Priorities List (NPL) promulgated pursuant to section 105 of CERCLA. This section allows the EPA to list sites on the NPL under certain limited circumstances where a site would not have previously qualified but where a public health threat exists and where a Fund-financed remedial action may be warranted and more cost-effective than a removal action.

DATES: The effective date for § 300.66(b)(4) of the NCP shall be October 16, 1985.[1]

ADDRESSES: The public docket for § 300.66(b)(4) of the revised NCP is located in the sub-basement of the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Linda Garczynski, Office of Emergency and Remedial Response (WH-548 D), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, or telephone the RCRA/Superfund Hotline at (800) 424-9346 or in the Washington, DC area (202) 382-3000.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9605 ("CERCLA" or "the Act") and Executive Order 12316, the Environmental Protection Agency ("EPA" or "the Agency"), on February 12, 1985, proposed revisions to the National Contingency Plan (NCP) (50 FR 5862). Section 300.66(b)(4) of these proposed revisions would expand the circumstances under which EPA can list a release on the National Priorities List (NPL) and thus make it eligible for Fund-financed remedial action. EPA provided a 30-day comment period on § 300.66(b)(4) rather than the 60-day comment period provided for the remainder of the proposed revisions of the NCP. The Agency received 18 comments during the comment period on proposed § 300.66(b)(4).

Today, the Agency is promulgating § 300.66(b)(4) of the NCP, essentially as it was proposed. The Agency has carefully considered all of the public comments submitted on § 300.66(b)(4) of the proposed revisions to the NCP. In response to the public comments, the Agency has made a clarifying change in the language of § 300.66(b)(4) and explains below how the Agency expects to use this provision of the NCP.

All significant comments on § 300.66(b)(4) and the Agency's responses to them are discussed in sections III–VIII of this notice. All other actions on the February 12, 1985, proposed revisions to the NCP will be taken in a separate rulemaking at a later date.

The Agency is also adding the Lansdowne Radiation Site in Lansdowne, PA, to the final NPL in a separate final rulemaking. The Lansdowne Site was proposed to be added to the NPL in the NPL Update #3 on the basis of proposed § 300.66(b)(4) of the NCP (50 FR 14115, April 10, 1985). At that time, the Agency stated in the preamble that EPA would not add the Lansdowne Site to the final NPL until § 300.66(b)(4) of the NCP became final.

II. Purpose of § 300.66(b)(4)

Section 105(8)(A) of CERCLA requires that the NCP include criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action. Removal action involves cleanup or other actions that are taken in response to emergency conditions or on a short-term or temporary basis [CERCLA section 101(23)]. Remedial action tends to be long-term in nature and involves response actions which are consistent with the permanent remedy for a release [CERCLA section 101(24)].

To be eligible for Fund-financed remedial action, a site must be listed on the NPL (40 CFR 300.68(a)). The primary purpose of the NPL is to serve as an informational tool for use by EPA in identifying sites that appear to present a significant risk to public health or the environment.

The initial identification of a site of the NPL is intended primarily to guide EPA in determining which sites warrant further investigation in order to assess the nature and extent of the public health and environmental risks associated with the site and to determine what response action, if any, may be appropriate. Inclusion of a site on the NPL does not establish that EPA necessarily will undertake response actions. Moreover, listing does not require any action of any private party, nor does it determine the liability of any party for the cost of cleanup at the site. In addition, the NPL serves as guidance to EPA in setting priorities among sites for possible response actions. Criteria for determining priorities for listing on the NPL are included in the Hazard Ranking System (HRS), which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982). A release will also be listed on the NPL if the release is designated by a State as its highest priority release (40 CFR 300.66(d)(3)).

The Agency has found that the HRS generally provides a good estimated of the relative hazards at sites for the purpose of establishing a list of national priorities for possible remedial action. The HRS total score used for the NPL is designed to take into account a standard set of factors related to the potential for harm from migration of substances through ground water, surface water, and the air. The HRS also provides an approximation of harm from direct contact with substances and from the possibility of fire and explosion. The pathway scores for direct contact and fire and explosion, however, are not considered in computing the HRS total score of a site for purposes of listing. Rather, scores from the direct contact and fire and explosion pathways are used as guidance in determining the need for removal action at a site. A site need not be on the NPL to qualify for Fund-financed removal action.

Since the direct contact scores are not included in calculating the HRS total score for purposes of listing sites on the NPL, some of the sites involving direct contact to residents, where remedial action, rather than removal action, appears necessary to address the problem, may not receive a sufficiently high HRS total score to be listed on the

[1] CERCLA section 305 provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S.C. 919, 103 S.Ct. 2764 (1983), cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives. If any action by Congress calls the effective date of this regulation into question, the Agency will publish a notice of clarification in the **Federal Register**.

NPL to make them eligible for remedial action. There are also other circumstances where a site would not qualify for the NPL under the HRS but where a public health threat exists and where a Fund-financed remedial action may be warranted and more cost-effective than a removal action. One example is a site where a small number of people are or will be exposed to a hazardous substance. The HRS was designed so that larger exposed populations receive higher scores than smaller exposed populations.

The Lansdowne Radiation site in Lansdowne, Pennsylvania, is an example of a site that presents a significant risk to the public that may warrant remedial action, although its HRS total score is too low for the site to be include on the NPL. This site consists of a residential duplex where for approximately 20 years, beginning in the 1920's, the basement of the duplex was used by a radiochemist to manufacture radium sources for radiotherapy. In 1964, the property was decontaminated by the Pennsylvania Department of Health and the U.S. Public Health Service, and the property was certified safe for residential use. In 1984, measurements of radon and radon daughters in the indoor atmosphere of the property indicated elevated levels of radiation. The study, conducted by the Argonne National Laboratory concluded that many measurements of radon daughters exceeded EPA recommended action levels and many measurements or external gamma radiation exceeded the EPA remedial action guideline of 20 microroentgens per hour. On March 5, 1985, HHS issued a public health advisory citing that the entire duplex structure should be considered to pose a significant health risk to long-term occupants. EPA's current assessment is that remedial action (e.g., permanent relocation) as opposed to a removal action—may be the most cost-effective response that adequately protects human health and the environment. Lansdowne was proposed to be added to the NPL in the NPL Update #3 (50 FR 14115, April 10, 1985) on the basis of § 300.66(b)(4) of the proposed NCP.

EPA is promulgating § 300.66(b)(4) to address situations like those existing at the Lansdowne site. Several commenters suggested that adoption of § 300.66(b)(4) will add large numbers of sites to the NPL, resulting in a decrease in the effectiveness of CERCLA. EPA, however, intends to apply § 300.66(b)(4) to a limited number and type of sites. To qualify for inclusion on the NPL through the application of § 300.66(b)(4) as promulgated in today's rulemaking, several criteria must be met: (1) The Agency for Toxic Substances and Disease Registry (ATSDR) must have issued a public health advisory recommending dissociation of individuals from the source of harmful exposure; (2) EPA must have determined that the potential for harm presented is significant from the standpoint of the CERCLA program; and (3) EPA anticipates that it will be more cost-effective to use remedial authority than to use removal authority to respond to the release.

The Agency intends to continue using the HRS as the decisionmaking tool for listing sites for the vast majority of the sites considered. The HRS has proven to be an effective tool for approximating the potential for harm posed by sites and, with rare exception, will remain the principal criterion for listing sites on the NPL.

In addition, EPA wants to clarify that the sites being added to the NPL pursuant to § 300.66(b)(4) would be proposed for inclusion on the NPL through the usual rulemaking process. The public will be given the opportunity to comment on the significance of the threat and each specific health advisory when a site is proposed to be added to the NPL. This will help ensure that § 300.66(b)(4) is applied in a manner consistent with CERCLA and the NCP.

III. Comments on EPA's Authority To Establish the New Listing Mechanism

Comment: Several commenters argued that EPA does not have statutory authority to list sites on the NPL on any basis other than an appropriate score under the HRS or designation as a State's top priority site.

Response: CERCLA does not require that the HRS be the exclusive method for listing sites (other than states' top priority sites) on the NPL. Section 105(8)(B) requires that a national priorities list be developed and revised, at least annually, based upon the criteria set forth in section 105(8)(A). Section 105(8)(A) lists some of the considerations that should be taken into account by EPA in compiling the list and leaves others to the Agency's discretion. Section 105(8)(A) provides:

> Criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action. Criteria and priorities under this paragraph shall be based upon relative risk or danger to public health or welfare or the environment, in the judgment of the President, taking into account to the extent possible the population at risk, the hazard potential of the hazardous substances at such facilities, the potential for contamination of drinking water supplies, the potential for direct human contact, the potential for destruction of sensitive ecosystems, State preparedness to assume State costs and responsibilities, and other appropriate factors.

The Agency believes that § 300.66(b)(4) of the NCP is entirely consistent with section 105(8)(B) of CERCLA. Among other things, the additional listing mechanism allows the Agency to list a site on the basis of a public health advisory issued from ATSDR which considers, among other factors, whether there is a potential threat arising from direct contact. This is one of the factors listed in section 105(8)(A). The Agency also will consider other factors specified in section 105(8)(A) when applying § 300.66(b)(4). The inclusion of "other appropriate factors" in section 105(8)(A) indicates, moreover, that EPA was to have broad discretion in implementing that provision of the statute.

Comment: Several commenters suated that there are established criteria under the HRS for placing sites on the NPL. They believe that if the HRS is not working satisfactorily, then it should be modified.

Response: EPA believes that the HRS has proven to be an effective tool for approximating the potential for harm posed by the vast majority of sites that should qualify for Fund-financed remedial action. EPA intends § 300.66(b)(4) to cover rare situations. It is not possible for the Agency now to predict all of the circumstances in which sites that would not score high enough on the HRS would present a significant threat and warrant Fund-financed remedial action. Thus it is not feasible to modify the HRS to accommodate these situations. See Section V of this notice.

IV. Comments on the Necessity of the New Listing Mechanism

Comment: Several commenters stated that they believed this proposed additional listing mechanism to be unnecessary because EPA's existing removal authority under section 104 of CERCLA could be used to respond to these types of situations.

Response: There are certain situations where EPA's removal authority does not extend, e.g. permanent relocation cannot be performed as part of a removal response. EPA intends to use § 300.66(b)(4) to place a site on the NPL in these situations only if EPA anticipates that exercising its remedial authority will be more cost-effective

than EPA uses its removal authority to respond to the release. EPA will not use § 300.66(b)(4) to place a site on the NPL if EPA anticipates that a removal action is the most cost-effective response that adequately protects human health and the environment.

Comment: Some commenters stated that the additional listing mechanism is not necessary because the authority granted in section 106 of CERCLA may be used to respond to a release if there is an immediate and substantial endangerment. There is no requirement under CERCLA section 106 that the release be included on the NPL.

Response: The Agency agrees with the commenters that existing enforcement authorities can be used to respond to releases similar to those that would be considered candidates for listing pursuant to § 300.66(b)(4) in many situations. However, that enforcement authority may, in appropriate cases, be available does not mean that a release may not also warrant a fund-financed response. As is discussed earlier, the Agency has concluded that releases that meet the criteria of § 300.66(b)(4) should be placed on the NPL so that a fund-financed response would be available. The Agency then, in appropriate cases, would be able to choose whether a fund-financed response or an enforcement action would provide the more effective or expeditious response. Moreover, it should be noted that there are situations where existing enforcement authority is not adequate. For example, sometimes no responsible party can be found, or it may appear that a responsible party is not likely to take necessary action if a section 106 order is issued.

Comment: One commenter stated that the Resource Conservation and Recovery Act (RCRA) provides adequate authority for ensuring that releases are remedied at RCRA facilities, and that it is EPA's policy not to list RCRA facilities on the NPL. The commenter believes that the 1984 Solid Waste Disposal Act strengthens this position.

Response: EPA does not agree with the commenter's position. EPA's current policy is that where a site consists only of "regulated units" of a RCRA facility operating pursuant to a permit or interim status, it will not be included on the NPL but, to the extent possible, will be addressed under the authorities of RCRA (49 FR 40334, October 15, 1984). EPA does, however, consider eligible for listing on the NPL those RCRA facilities at which a significant portion of the release appears to come from nonregulated land disposal units of the facility, that is, portions of the facility that ceased operation prior to January 26, 1983. Regulated land disposal units of RCRA facilities generally have not been included on the NPL except where the facility is abandoned or lacks sufficient resources and RCRA corrective action could not be enforced. The new RCRA amendments [42 U.S.C. 6901-i] give the Agency considerably greater authority to respond to releases under RCRA. Therefore, the Agency has announced that it is reconsidering the current policy of listing RCRA-related sites on the NPL. [See 50 FR 14115, April 10, 1985]. Specifically, the Agency is considering deferring listing RCRA-related sites on the NPL until the Agency determines that RCRA corrective measures are not likely to succeed due to factors such as: (1) The inability or unwillingness of the owner/operator to pay for such actions; (2) the inadequacies of the financial responsibility guarantees to pay for such costs; or (3) the Agency or State priorities for addressing the sites under RCRA. The Agency has not yet decided whether to modify its existing policy with respect to listing RCRA-related sites.

Since current EPA policy does not preclude the listing of RCRA related sites that are regulated units, EPA will apply the current policy in deciding whether to use § 300.66(b)(4) to add such sites to the NPL. If EPA alters this policy after it considers comments received on the April 10, 1985, Federal Register discussion of options for a deferred listing policy for RCRA related sites, any such new policy could be applied to sites listed pursuant to § 300.66(b)(4).

V. Comments on the Lack of Explicit Standards and Procedures for Health Advisories

Comment: Many of the commenters oppose the use of health advisories as a basis for adding sites to the NPL. The commenters requested clarification of (1) the criteria for determining whether a health advisory should be issued; (2) the health advisory issuance process including opportunities for public review and comment; and (3) which office within HHS would be involved in issuing public health advisories. The commenters were concerned that the lack of criteria for issuing health advisories would give EPA unbounded discretion to avoid using the HRS.

Response: EPA has consulted with ATSDR of HHS on this comment and believes, based on its advice from ATSDR, that the wide variety of considerations which, of necessity, must be taken into account in deciding whether to issue a public health advisory precludes the development of specific criteria. Instead, ATSDR bases its issuance of public health advisories on a case-by-case application of best medical judgment. In response to these comments, however, the Agency has limited the applicability of § 300.66(b)(4) to situations in which the public health advisory recommends disassociation of individuals from the release.

To date, there have been over 200 health assessments conducted by ATSDR at Superfund sites. Out of these health assessments only 39 have resulted in the issuances of public health advisories. Of the 39 public health advisories issued, very few recommend dissociation of an individual from the release. This illustrates that the potential number of sites qualifying under the first criterion of § 300.66(b)(4) is small.

In response to the comment concerning the opportunities for public review and comment on the public health advisory, EPA wants to clarify that the public will be given the opportunity to comment on each specific public health advisory when the site is proposed to be added to the NPL. The sampling data gathered by EPA or other lead agencies upon which the issuance of a public health advisory may be based, will be available to the public.

In response to the comment that EPA clarify which office within HHS would be involved in issuing a public health advisory, EPA has added language to § 300.66(b)(4) saying that ATSDR will be the agency within HHS responsible for issuing the public health advisories.

VI. Comments on the Lack of Guidelines for Determining What Releases Pose a Significant Threat

Comment: The Agency received several comments requesting EPA to clarify the meaning of the phrase "significant threat" to public health. Specifically, they requested clarification of the language to specify (1) the factors to be considered in evaluating whether a threat is significant; (2) the role quantitative assessment plays in determining whether a threat is significant and (3) the procedures for determining whether a significant threat exists. One commenter suggested that the threshold be changed from significant threat to "imminent and substantial" threat.

Response: Section 300.66(b)(4) gives EPA the discretion to determine whether a release for which ATSDR has issued a public health advisory is of sufficient priority to be included on the NPL. The issuance of a public health advisory does not, by itself qualify a release for inclusion on the NPL. A threat may be significant for purposes of ATSDR to

issue a public health advisory, but not for purposes of the response programs under CERCLA. Until the Agency has had more experience with situations which may be candidates for listing pursuant to § 300.66(b)(4), it is not possible to indicate all the situations in which EPA will decide that a threat is significant for purposes of § 300.66(b)(4). In general, however, EPA intends to apply § 300.66(b)(4)(2) only in situations where the release meets the threshold required for taking a removal action.

In response to the comment regarding the role of quantitative assessment, EPA does not intend to use quantitative risk assessemnts to evaluate sites for possible application of § 300.66(b)(4). The Agency believes the quantitative risk assessment is not necessary to list sites on the NPL nor would adequate data be available for a quantitative assessment at the time of listing. Additional data may be collected during the investigatory stage of work conducted at the site, and in some cases, the Agency may perform a quantitative risk assessment prior to selection of the remedy.

EPA does not agree that § 300.66(b)(4) should apply only where EPA makes a finding that there is an imminent and substantial threat. Where the three criteria are met, EPA has the authority to list a site on the NPL and to take remedial actions. As is discussed earlier, EPA does not believe that many sites will meet the three criteria of § 300.64(b)(4).

VII. Extension of the Listing Mechanism Beyond Public Health Concerns

Comment: Several commenters expressed approval of the additional listing criteria but suggested that EPA extend the listing mechanism beyond strictly public health concerns to embrace environmental threats as well. They did not want to limit EPA's authority to list on the NPL pursuant to § 300.66(b)(4) situations where HHS issues a public health advisory. One commenter proposed that § 300.66(b)(4) be expanded to enable the Agency to include on the NPL any releae that poses "a significant threat to a sensitive ecosystem or the human food chain." On the other hand, EPA received several comments suggesting that this new listing method be limited to releases at which health, not welfare or the environment is threatened, since the additional listing criteria focuses on public health advisories.

Response: EPA intends that the HRS remain the primary mechanism for listing sites on the NPL. The HRS considers environmental factors such as sensitive ecosystems. The Agency sees no need to expand § 300.66(b)(4) to include sensitive ecosystems and food chain exposure, and these issues are unrelated to this rulemaking. The Agency is examining whether the HRS should include additional provisions for food chain exposure, but has not decided what changes, if any, are appropriate.

VIII. Other Comments

Comment: EPA received several comments requesting that they clarify whether EPA may act only when a public health advisory has been issued or whether EPA may make an independent finding of threat to public health.

Response: § 300.66(b)(4) has been changed to clarify that in order for the additional listing criteria to be applied, ATSDR must have issued a public health advisory which recommends dissociation of individuals from the release. In addition, EPA must make a determination that the release is a significant threat to public health and that taking a remedial action is more cost-effective than a removal action.

Comment: Several commenters argued that this additional listing mechanism should be applied only to hazardous waste sites. They asserted that Fund resources should not be used to respond to sites not involved in hazardous waste releases such as asbestos and pesticide sites because it would be diverting resources away from the primary purpose of CERCLA—the cleanup of abandoned or inactive waste sites.

Response: CERCLA does not limit response to hazardous waste sites, and the Agency does not believe that it would be appropriate to so limit § 300.66(b)(4). ATSDR may issue public health advisories with respect to other releases, and the threats posed may be significant and warrant national response. If a commenter believes that a particular release that is proposed for listing on the NPL would not merit a fund-financed response because of other, more urgent CERCLA priorities, these concerns should be raised as comments on the proposed listing. As noted earlier, EPA in general, intends to limit the use of § 300.66(b)(4) to categories of sites that are most appropriately addressed under CERCLA.

Comment: Several commenters stated that inclusion of sites on the NPL brings into play the more expensive and time consuming remedial investigation/feasibility study (RI/FS) process. This could create delays and needless expense at the sites that are listed pursuant to § 300.66(b)(4).

Response: Whenever the Agency lists a release on the NPL under § 300.66(b)(4), it may, as it may for any other release listed on the NPL undertake whatever response actions are appropriate for the release, removal as well as remedial. The Agency is free to undertake removal actions in response to the release while it considers the appropriate remedial measure. To the extent the removal action would eliminate the need for further response actions, the site would not meet the criteria established by § 300.66(b)(4). In planning remedial actions, the Agency may use "operable units." An operable unit is a discrete response measure that is consistent with a permanent remedy, but is not the permanent remedy in and of itself. This concept entails the practice of phasing remedial action at sites that present complex cleanup problems. For example, it is often appropriate first to conduct a surface cleanup of a site, and then, after additional analysis of more complex hydrogeological factors, to select and implement remedial measures addressing ground-water contamination.

Comment: Several commenters stated that States have their own hazardous waste laws and are capable of responding to a small but dangerous release that does not warrant national prioritization.

Response: While some States may have adequate resources and authority to respond to sites listed under § 300.66(b)(4), not all States have adequate laws or resources to cover these situations. In addition, State laws vary. Thus, EPA does not wish to rely solely on the States to take remedial action at sites that meet the criteria of § 300.66(b)(4) and thus listing of these sites is appropriate for all States.

Comment: One commenter claimed that few benefits, if any, would be derived from the adoption of this proposed rule, and on the other hand, it will have adverse impacts on persons associated with listed sites. NPL listing may, for example, effectively "down-zone" property, decrease property value, prohibit development, require disclosure in auditors' statements, etc.

Response: The purpose of the NPL which has been discussed at length in earlier **Federal Register** notices (e.g., 50 FR 14116, April, 10, 1985), is to identify sites that warrant further investigation and possible remedial action. Listing does not require any action for any private party, nor does it impose any liability on any party for the cost of cleanup at the sites. It is possible that EPA may conclude that it is not desirable to conduct response action at

some sites on the NPL because of more pressing needs at other sites.

Comment: Several commenters urged that EPA and ATSDR be responsive to input and recommendations from the State. In particular, a commenter wanted to know if health advisories issued by State Departments of Health will have the same impact as ATSDR's public health advisories.

Response: States will have an opportunity to comment on each release when it is proposed to be added to the NPL. EPA will consider all comments received from States during the comment period.

The Agency believes that in order to assure national consistency in implementing § 300.66(b)(4), public health advisories issued by State Departments of Health cannot be used, in lieu of public health advisories issued by ATSDR, to invoke the § 300.66(b)(4) listing mechanism. States can, however, recommend to ATSDR they they issue a public health advisory.

IX. Summary of Supporting Analyses

A. Classification Under E.O. 12291

Regulations must be classified as major or nonmajor to satisfy the rulemaking protocol established by Executive Order 12291. E.O. 12291 establishes the following criteria for a regulation to qualify as a major rule:

1. An annual effect on the economy of $100 million or more;

2. A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or on the enterprises to compete with foreign-based enterprises in domestic or export markets.

Section 300.66(b)(4) of the NCP is a nonmajor rule because it would have no significant incremental economic effects. Placing sites on the NPL does not impose any costs directly. The proposed listing of sites on the NPL does not in itself require any action of any private party, nor does it determine the liability of any party for the cost of cleanup at the site. As a consequence, it is hard to predict impacts on any group. A site's inclusion on the NPL could increase the likelihood that adverse impacts to responsible parties (in the form of cleanup costs) will occur, but EPA cannot identify the potentially affected businesses at this time nor estimate a number of small businesses that might be affected. This regulation was submitted to OMB for review under Executive Order 12291.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, Agencies must evaluate the effects of a regulation on "small entities." That Act recognizes three types of such entities:

1. Small businesses (specified by Small Business Administration regulations);

2. Small organizations (independently owned, nondominant in their field, nonprofit); and

3. Small governmental jurisdictions (serving communities with fewer than 5,000 people).

If the rule is likely to have a "significant impact on a substantial number of small entities," the Act requires that a Regulatory Flexibility Analysis be performed. The Agency does expect that certain industries and firms within industries that have caused a proportionately high percentage of waste site problems could be significantly affected by CERCLA actions. However, EPA does not expect the impacts from the listing of sites under this section to have a significant economic impact on a substantial number of small businesses.

C. Paperwork Reduction Act

Today's final rule on § 300.66(b)(4) does not impose any regulatory burden on parties outside of EPA, including any reporting or information collection requirements.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Hazardous substances, Intergovernmental relations, National resources, Occupational safety and health, Oil pollution, Reporting and record-keeping requirements, Superfund, waste treatment and disposal, Water pollution control, Water supply.

Dated: August 14, 1985.

Lee M. Thomas,

Administrator.

For the reason set forth in the preamble, Part 300, Subpart J, Chapter I of Title 40, Code of Federal Regulations is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

1. The authority citation for Part 300 continues to read as follows:

Authority: Sec. 105 Pub. L. 96–510, 94 Stat. 2764, 42 U.S.C. 9605; Sec. 311(c)(2), Pub. L. 92–500 as amended, 86 Stat. 865, 33 U.S.C. 1321(c)(2); E.O. 12316, 46 FR 42237; E.O. 11735, 38 FR 21243.

Subpart F—Hazardous Substance Response

2. In 40 CFR Part 300, § 300.66 is amended by revising paragraph (b) to read as follows:

§ 300.66 Site evaluation phase and national priorities list determination.

* * * * *

(b) Methods for Establishing Priorities. As soon as practicable, an inspection will be undertaken to assess the nature and extent of the release and to assist in determining its priority for Fund-financed response.

(1)–(3) [Reserved]

(4) In addition to those release whose HRS scores qualify them for the NPL, EPA may include on the NPL any other release if (i) the Agency for Toxic Substances and Disease Registry of Health and Human Services has issued a public health advisory which recommends dissociation of individuals from the release; (ii) the EPA determines that the release poses a significant threat to public health; and (iii) EPA anticipates that it will be more cost-effective to use its remedial authority than to use removal authority to respond to the release.

* * * * *

[FR Doc. 85–21138 Filed 9–13–85; 8:45 am]

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Monday
September 16, 1985

Part III

Environmental Protection Agency

40 CFR Part 300

Amendment to National Oil and Hazardous Substances Contingency Plan: National Priorities List; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[SWH-FRL 2853-16]

Amendment to National Oil and Hazardous Substances Contingency Plan: National Priorities List

AGENCY: Environmenal Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency ("EPA") is amending the National Oil and Hazardous Substances Contingency Plan ("NCP"), which was promulgated on July 16, 1982, pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") and Executive Order 12316. This amendment revises the National Priorities List ("NPL"), which initially was promulgated as Appendix B of the NCP on September 8, 1983, by adding the Lansdowne Radiation site located in Lansdowne, Pennsylvania to the final NPL. CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, and contaminants throughout the United States, and that the list be revised at least annually. The NPL constitutes this list and meets those requirements. The Lansdowne site is being added to the NPL because the site meets the eligibility requirements of the NPL. EPA has included on the NPL releases and threatened releases of designated hazardous substances as well as "pollutants or contaminants" which may present an imminent and substantial danger to the public health or welfare. Inclusion of the Lansdowne site on the NPL makes this site eligible for Fund-financed remedial actions as specified in § 300.68(a) of the NCP.

DATE: The effective date for this amendment to the NCP shall be October 16, 1985.[1]

FOR FURTHER INFORMATION CONTACT: Trudi Fancher, Hazardous Site Control Division, Office of Emergency and Remedial Response (WH-548E), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, Phone (800) 424-9346 (or 382-3000 in the Washington, D.C., metropolitan area).

SUPPLEMENTARY INFORMATION:

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III. Addition of the Lansdowne Radiation Site, Lansdowne, Pennsylvania to the NPL
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V. Regulatory Flexibility Act Analysis

I. Background of the NPL

Pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. sections 9601-9657 ("CERCLA or the Act"), and Executive Order 12316 (46 FR 42237, August 20, 1981), the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180). Those amendments to the NCP implemented responsibilities and authorities created by CERCLA to respond to releases and threatened releases of hazardous substances, pollutants, and contaminants.

Section 105(8)(A) of CERCLA requires that the NCP include criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action. Removal action involves cleanup or other actions that are taken in response to releases or threats of releases on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions which are consistent with a permanent remedy for a release (CERCLA section 101(24)).

Section 105(8)(B) of CERCLA requires that these criteria be used to prepare a list of national priorities among the known releases of threatened releases throughout the United States, and that to the extent practicable, at least 400 sites be designated individually on the National Priorities List (NPL). Section 105(8)(B) also requires that the list of priorities be revised at least annually. EPA has included on the NPL releases and threatened releases of designated hazardous substances as well as "pollutants or contaminants" which may present an imminent and substantial danger to the public health or welfare. CERCLA requires that the NPL be included as part of the NCP. An initial NPL of 406 sites was promulgated on September 8, 1983, (48 FR 40658). The NPL has been amended several times since then. On May 8, 1984, EPA amended the NCP by adding four sites in San Gabriel, California, to the NPL. On September 21, 1984, EPA further amended the NCP by adding 128 sites to the NPL (49 FR 37070), and deferred final rulemaking on four sites. The second proposed update was published in the **Federal Register** on October 15, 1984 (49 FR 40320). The second update proposed the addition of 244 sites, two of which were promulgated in the **Federal Register** on February 14, 1985 (50 FR 6320). In addition, the third update proposed 26 sites on April 10, 1985 (50 FR 14115). Today's final rulemaking action adds to the NPL the Lansdowne Radiation site, Lansdowne, Pennsylvania, which was proposed on April 10, 1985 (50 FR 14115). This action is taken pursuant to § 300.66(b)(4) of the NCP which is promulgated in a separate notice in today's **Federal Register**.

Additional discussion on the purpose and development of the NPL and on generic issues relating to the HRS are included in the preambles to the NPL promulgated on September 8, 1983 (48 FR 40658), and amended on September 21, 1984 (49 FR 37070). Section 300.68(a) of the NCP reserves Fund-financed remedial action for sites on the NPL. Inclusion of a site on the NPL is not necessary for other types of response actions such as removal actions or enforcement actions. Moreover, a site need not be on the NPL to be the subject of a private party cost recovery action pursuant to section 107(a)(4)(B) of CERCLA.

The principal criteria used by the Agency for determining site eligibility for inclusion on the NPL are included in the Hazard Ranking System (HRS) which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982). The HRS total score used for the NPL is designed to take into account a standard set of factors related to risks from migration of substances through groundwater, surface water, and air. At present, sites whose scores are 28.50 or above are eligible for the NPL.

Section 300.66(b)(4) of the NCP has been amended to allow some sites that do not score 28.50 or greater to be added to the NPL. These sites may qualify for the NPL if: (1) The Agency for Toxic Substances and Disease Registry of the U.S. Department of Health and Human Services (ATSDR) has issued a health advisory which recommends dissociation of individuals from the release; (2) the Agency determines that the release poses a significant threat to public health; and (3) EPA anticipates that it will be more cost-effective to use

[1] CERCLA section 305 provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919, 103 S. Ct. 2764 (1983), cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives. If any action by Congress calls the effective date of this regulation into question, the Agency will publish a notice of clarification in the **Federal Register**.

remedial authority than if EPA uses its removal authority to respond to the release. The Agency has determined that the Lansdowne site meets these three criteria as described in Section II below.

II. Background of the Lansdowne Radiation Site, Lansdowne, Pennsylvania

The Lansdowne Radiation site located in Lansdowne, Pennsylvania, was included in the proposed rulemaking for Update #3 of the NPL (50 FR 14115, April 10, 1985). The Lansdowne site consists of a residential duplex structure situated on a 0.5 acre lot in a residential area. The basement of the residence at 105 E. Stratford Avenue was used from 1924–1944 by a chemistry/physics professor to manufacture radium sources for medical radiation therapy. In mid-1983, EPA and the Pennsylvania Department of Environmental Resources, Office of Radiation Programs identified the Lansdowne site as suitable for inspection. Since that time, several radiological studies of the site have been completed.

The first of these studies was conducted in June of 1984 by EPA and State of Pennsylvania Department of Environmental Resources (PADER). Results revealed levels of gamma radiation ten times above the level to which the general population is exposed, and levels of radon daughters one hundred times higher than background levels.

In September, 1984, EPA and the Federal Emergency Management Agency, as part of a CERCLA-funded immediate removal, temporarily relocated the two residents living in the structure. EPA Region III recognized that a permanent solution would far exceed the six month, $1 million limit on immediate removal, and requested a time extension for relocation pursuant to Part 300.65(d)(3) of the NCP.

In the Fall of 1984, the Argonne National Laboratory conducted a survey of the structure to determine levels of radon gas and gamma radiation. Data revealed that all interior measurements of radon daughters exceeded the EPA recommended action level of 0.02 Working Levels (WL). In addition, most interior measurements of gamma radiation exceeded the EPA remedial action guideline of 20 microroentgens/hour above background.

ATSDR reviewed the results of the two above mentioned studies, and on March 5, 1985 issued a health advisory warning that environmental measurements of radon daughters and gamma radiation inside the duplex dwelling indicated exposure levels in excess of those ATSDR considered safe for human habitation. The advisory recommended dissociation of exposed individuals from the structure.

Inhalation of radon gas and its decay products exposes the lungs to alpha radiation, thereby increasing the chances of developing lung cancer. Both radon and its decay products readily adhere to particulate matter, and can be entrained in dust when disturbed, increasing the potential for ingestion, particularly by children. Moreover, the site poses a potential threat of release to the surrounding community which would be particularly severe if a fire occurred. EPA has installed a sprinkler system in the house to temporarily reduce the threat of fire, but believes this is an acceptable solution only for the short term.

In December of 1984, the Argonne Laboratory collected soil samples from the property at 105–107 E. Stratford Avenue. Results of this sampling revealed that radioactive material has migrated beyond the property boundary. Samples were also collected from the off-site sewer. Preliminary data indicated the presence of radioactive materials in the sanitary sewer beneath E. Stratford Avenue.

EPA considers the risks posed by this site to be significant. EPA has also determined pursuant to § 300.66 (b)(4) that a remedial approach to this situation will provide the lowest cost alternative which effectively mitigates and minimizes damage to, and provides adequate protection of, public health. EPA views the complete removal of the house from the surrounding residential community as the only appropriate way to permanently ameliorate this significant health hazard.

III. Addition of the Lansdowne Radiation Site, Lansdowne, Pennsylvania to the NPL

The action being taken today will add the Lansdowne Radiation site in Lansdowne, Pennsylvania to the NPL. EPA received comments from five parties regarding Lansdowne during the 30-day comment period which ended May 10, 1985. EPA has reviewed the comments addressed below and has determined that no new information has come to the Agency's attention during the comment period that would change EPA's decision to include this site on the NPL.

Several commenters objected to EPA's listing a site on the NPL using a procedure which they perceived as having not yet been promulgated.

The Agency has promulgated an amendment to § 300.66(b)(4) of the NCP which provides EPA with a new mechanism for including releases on the NPL irrespective of their HRS scores, when specific criteria are met (see Section II of the § 300.66(b)(4) preamble published elsewhere in today's **Federal Register**). Sites may be added to the NPL based on this amendment if, as is true at Lansdowne, a small number of people are or will be exposed to hazardous substances through one of several routes of exposure.

One commenter concluded that no immediate threat to public health exists at the site.

EPA disagrees with the commenter's assessment of the public health hazards associated with the site. A detailed explanation of the public health concerns associated with the site is provided in Section II of this preamble.

One commenter agrees with EPA's decision to relocate the occupants of the home, and believes that the security measures (sprinkler system, alarm, fence) are adequate to mitigate any immediate threat until EPA has considered public comment on the February 12, 1985 proposed amendments to the NCP.

EPA has considered comments received regarding the February 12, 1985 proposed NCP amendments and has promulgated § 300.66(b)(4) of the NCP in a separate notice of today's **Federal Register**. EPA sees no reason to delay permanently remedying this public health threat.

One commenter stated that the cost estimate for remedial action at Landsdowne is unjustifiably high.

EPA's preliminary cost estimate for remedial action at the site is approximately $3.5 million. This cost estimate includes dismantling and packing the structure, transport to an acceptable disposal facility, disposal costs, monitoring, and financial reimbursement to the owners of the house. EPA views the complete removal of the house from this residential area as the only appropriate way to permanently ameliorate this significant health hazard, and believes the costs are not excessive.

One commenter suggested that the cleanup of contaminated residences is an inappropriate use of CERCLA. The commenter stated that CERCLA is primarily an inactive waste site cleanup program. The commenter felt that by diverting its focus away from hazardous waste site cleanup, EPA would not only divert scarce CERCLA management and legal resources, but it could also put an intolerable drain on Fund resources.

EPA believes that neither CERCLA nor the Hazardous Ranking System limits response to hazardous waste

sites, and it would be inappropriate to so limit § 300.66(b)(4). ATSDR may issue advisories with respect to other releases, and the threats posed may be significant and warrant national response. EPA does not expect that the amendment to § 300.66(b)(4) of the NCP will result in a substantial re-direction of CERCLA resources. In particular, the Agency does not foresee using substantial portions of the CERCLA Trust Fund to clean up private residences. Few site are expected to be added to the NPL pursuant to § 300.66(b)(4), and not all sites listed pursuant to § 300.66(b)(4) will be residences. But where, as is the case of the Landsdowne Radiation site, releases at residences threaten both inhabitants and the surrounding community, the Agency believes it appropriate to consider them candidates for fund-financed remedial action. As the commenter notes, CERCLA's authority is very broad and can extend to residences.

One commenter compared the situation at Landsdowne to that of the approximately 733,000 asbestos-contaminated buildings in the United States, and stated that responding to this analogous situation could dwarf the program for hazardous waste sites. The commenter asserted that listing the Landsdowne site would be inconsistent with the following statement in EPA 's CERCLA 301(a)(1)(c) study: "EPA's current policy is that the Agency will not respond to air releases within buildings. However, if EPA were to make a policy change to address such indoor releases, this would significantly affect the number of sites to which Superfund responds."

As previously stated, EPA does not expect that the amendment to § 300.66(b)(4) will result in a substantial re-direction of CERCLA Trust Fund monies from hazardous wastes sites to private residences. In addition, the quotation from the study was taken out of context. The sentences were contained in a paragraph which discussed asbestos inside schools and other buildings. It did not address situations in which indoor releases present threats or potential threats to the ambient atmosphere, as in the case of Landsdowne.

One commenter stated that Congress intended the Superfund petrochemical feedstock tax structure to reflect some relationship between "front-end" chemicals taxed and their fate of ending up at waste sites. The commenter further added "that Congress had no radiation-contaminated residence nexus in mind when designing the tax."

As discussed previously, the Agency believes it has the authority to respond to sites at which releases of radiation present a threat to public health and the environment, unless those releases are expressly excluded by the statutory language. The Landsdowne site does not fit within any of the statutory exclusions.

Several commenters resubmitted comments regarding amendments to § 300.66(b)(4) of the NCP as they would apply to the Landsdowne site. The comments are summarized below, and responses are provided in the preamble to the promulgation of § 300.66(b)(4) of the NCP.

- The commenters opposed the procedure used to list the Lansdowne site. The commenters believed that the use of a health advisory as the basis for listing a site is premature and inappropriate because the term health advisory has not been defined, nor do any criteria for the issuance of health advisories exist. The commenters felt that this would lead to § 300.66(b)(4) being used to address any of a number of sites beyond those where a significant health risk to a small number of individuals exists.
- Although the commenter supports EPA's efforts to address a small number of seriously threatened individuals, the commenter felt that EPA already possesses statutory authority to respond to imminent hazards under section 106 of CERCLA.
- The commenter stated that the term "HHS health advisory" requires clarification. The commenter further stated that neither the proposed regulations nor the preamble defines the term, nor do they provide any guidance as to what constitutes a "significant" threat to public health.
- The commenter suggested that the NCP regulations should specify which office of HHS is charged with issuing health advisories for the purpose of adding sites to the NPL.

IV. Regulatory Impact

The addition of this site to the final rulemaking of the NPL does not meet the Executive Order 12991 definition of the term "major rule."

The purpose of the NPL is primarily to serve as an informational tool for use by EPA in identifying sites that appear to present a significant risk to public health or the environment. The initial identification of a site on the NPL is intended primarily to guide EPA in determining which sites warrant further investigation designed to assess the nature and extent of the public health and environmental risks associated with the site and to determine what response action, if any, may be appropriate. Inclusion of a site on the NPL does not establish that EPA necessarily will undertake response actions. Moreover, listing does not require any action of any person, nor does it determine the liability of any person for the cost of cleanup at the site.

The information collected to support selecting a site for the NPL is not sufficient in itself to determine the appropriate remedy for a particular site. EPA generally relies on further, more detailed studies conducted at the site to determine what response, if any, is appropriate. Decisions on the type and extent of action to be taken at this site will be made on the basis of such studies and in accordance with the criteria contained in Subpart F of the NCP.

A full assessment of the cost of remedial action at the Lansdowne site has not been completed, but preliminary cost estimates are approximately $3.5 million. Thus, the possible remedial action will not cause an annual effect on the economy of $100 million or more. It is not expected that remedial action will cause a major increase in costs or prices, nor will it have significant adverse effects on competition, employment, investment or any other criteria of Executive Order 12291. Rather, beneficial effects are anticipated from any actions taken to reduce exposures, from radon daughters and gamma radiation.

V. Regulatory Flexibility Act Analysis

After reviewing the criteria for significant economic impact on substantial numbers of small entities as defined by the Regulatory Flexibility Act, EPA has determined that listing does not require any action of any private party for the cost of cleanup at the site. Currently, EPA and the State of Pennsylvania expect to fund remedial activities at the site. It is unlikely that any EPA remedial activities at this site would significantly affect a substantial number of small business entities.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and Recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: August 14, 1985.

Lee M. Thomas,

Administrator.

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: Sec. 105 Pub. L. 96–510, 94 Stat. 2764, 42 U.S.C. 9605; Sec. 311(c)(2), Pub. L. 92–500 as amended, 86 stat. 865, 33 U.S.C. 1321(c)(2); E.O. 12316, 46 FR 42237; E.O. 11735, 38 FR 21243.

Appendix B—[Amended]

2. The National Priorities List, which is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan, is hereby amended to add the following site as the last item in Group 9 of the non-Federal portion of the NPL.

Appendix B—National Priorities List

* * * * *

Group 9	EPA Reg	State	Site Name[1]	City/ county	Response status[2]			
					V	R	E	D
03	PA	Lansdowne Radiation Site	Lansdowne			R		

[1] States' designated top priority sites
[2] Response status
V = Voluntary or negotiated response
R = Federal and State Response
E = Federal and State enforcement
D = Actions to be determined

[FR Doc. 85–21139 Filed 9–13–85; 8:45 am]
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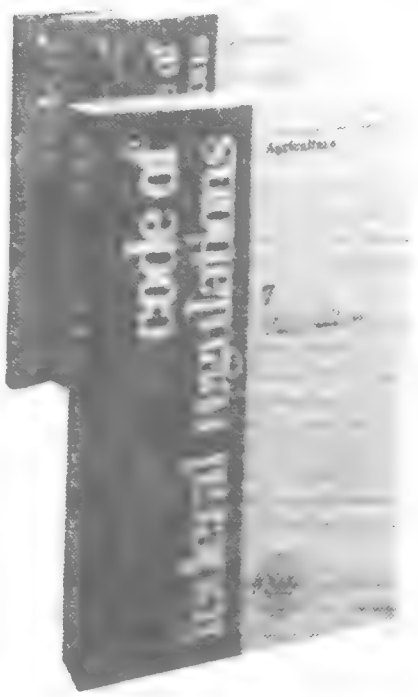
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[2] No amendments to this volume were promulgated during the period Apr. 1, 1984 to March 31, 1985. The CFR volume issued as of Apr. 1, 1984, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

[4] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.



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Vol. 50 No. 180

federal register

Tuesday
September 17, 1985

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For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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Animal Diseases
Animal and Plant Health Inspection Service

Aviation Safety
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Dairy Products
Agricultural Marketing Service

Endangered and Threatened Species
Fish and Wildlife Service

Food Assistance Programs
Food and Nutrition Service

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Investment Companies
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Agricultural Marketing Service

Meat and Meat Products
Agricultural Marketing Service

Milk Marketing Orders
Agricultural Marketing Service

Public Assistance Programs
Social Security Administration

Quarantine
Animal and Plant Health Inspection Service

CONTINUED INSIDE

Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Surface Mining
Surface Mining Reclamation and Enforcement Office

Veterans
Defense Department
Veterans Administration

Viticultural Areas
Alcohol, Tobacco and Firearms Bureau

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: November 15; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Call JoAnn Harte, Workshop Coordinator, 202-523-5239.

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. The January 1986 Washington, D.C. workshop will include facilities for the hearing impaired. Dates and locations will be announced later.

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Presidential Documents

Title 3—

The President

Proclamation 5366 of September 14, 1985

National Hispanic Heritage Week, 1985

By the President of the United States of America

A Proclamation

One of the greatest strengths of our Nation is its rich mixture of people from various cultural backgrounds. Americans of Hispanic heritage have made an immense and unique contribution. In thousands of communities across the land, Hispanics are a vital element in fostering America's achievements in fields as diverse as the arts and industry, agriculture and education, religion and business, science and politics.

People from Spain were among the first explorers and settlers in the New World, long before the United States became an independent Nation. They came in search of a better life for themselves and their children, and they have helped to create a richer life for all of us.

In our international relations, Hispanic Americans also contribute to our Nation's identity—our own perception of who we are and our role in the world. The strong family and cultural ties which bind Hispanics in the United States with our nearest neighbors are an important element of strength, unity, and understanding in the Western Hemisphere. The freedom of our neighbors is our freedom. Their security is our security. We Americans seek justice, economic progress, the spirit of good neighborliness throughout the hemisphere, and we count on Americans of Hispanic heritage for special insight and leadership as we work together toward these goals.

In recognition of the many achievements of the Hispanic American community, the Congress, by Joint Resolution approved September 17, 1968 (Public Law 90–498), has authorized and requested the President to issue annually a proclamation designating the week which includes September 15 and 16 as "National Hispanic Heritage Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning September 15, 1985, as National Hispanic Heritage Week, in recognition of the Hispanic individuals, families, and communities that enrich our national life. I call upon the people of the United States, especially the educational community, to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 85–22402
Filed 9–16–85; 11:13 am]
Billing code 3195–01–M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 85-379]

Ethylene Dibromide; Mangoes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends "Subpart—Fruits and Vegetables" by removing provisions that previously allowed for fumigation with ethylene dibromide (EDB) as a condition-of-entry treatment for the importation of mangoes into the United States. Because of action taken by the Environmental Protection Agency, EDB may no longer be used for such purpose.

EFFECTIVE DATE: The effective date of this document is September 17, 1985. Written comments concerning this final rule must be received on or before November 18, 1985.

ADDRESSES: Written comments concerning this document should be submitted to Thomas O. Gessel, Director, Relgulatory Coordination Staff, USDA, APHIS, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 85-379. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Charles M. Amyx, Senior Staff Officer, Technology Analysis and Development Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 671, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8896.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables" (contained in 7 CFR 319.56 *et seq.* and referred to below as the regulations) regulate the importation of fruits and vegetables into the United States.

Prior to the effective date of this document, § 319.56-2h of the regulations provided for fumigation with ethylene dibromide (EDB) in the country of origin as a condition-of-entry treatment for the importation of mangoes into the United States from Central America, the West Indies, and Brazil. Also, prior to the effective date of this document, § 319.56-2i of the regulations provided for fumigation with EDB in Mexico as a condition-of-entry treatment for the importation of mangoes into the United States from Mexico. The EDB treatments were designed to protect against the introduction into the United States of certain fruit flies.

This document removes the provisions in §§ 319.56-2h and 319.56-2i. Consequently, the regulations no longer provide for fumigation with EDB as a condition-of-entry treatment for the importation of mangoes into the United States. This action is necessary because of action taken by the Environmental Protection Agency (EPA).

Prior to September 1, 1985, a tolerance of .03 ppm (in the edible pulp) for residues of EDB per se in or on mangoes had been established by EPA for the use of EDB in foreign countries as a fumigant after harvest in accordance with the Mediterranean Fruit Fly Control Program or the Quarantine Program of the U.S. Department of Agriculture. However, effective September 1, 1985, the tolerance expired, and consequently the tolerance for residues of EDB per se in or on mangoes is zero (See 50 FR 2546-2550). EDB cannot be used as a fumigant for mangoes without leaving residues.

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without prior opportunity for a public comment period on this interim rule. It is necessary to make this interim rule effective immediately. Because of action taken by EPA, EDB may no longer be used as a condition-of-entry treatment for the importation of mangoes into the United States.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedure with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register**. Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon possible.

Executive Order 12291 and Regulatory Flexibility Act

The interim rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This document merely reflects that because of action taken by EPA, EDB may no longer be used as a condition-of-entry treatment for the importation of mangoes into the United States. Also, for this reason, no analysis of this action has been made under the Regulatory Flexibility Act.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372

which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

List of Subjects in 7 CFR Part 319

Agricultural Commodities, Imports, Plant diseases, Plant pests, Plants (agriculture), Quarantine, Transportation, Mangoes.

PART 319—FOREIGN QUARANTINE NOTICES

Under the circumstances referred to above, Part 319 is amended to read as follows:

1. The authority citation for 7 CFR Part 319 is revised to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51 and 371.2(c).

2. Under the circumstances referred to above, "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56–8) is amended by removing the provisions of §§ 319.56–2h and 319.56–2i, and by designating these sections as "Reserved".

Done at Washington, D.C., this 12th day of September, 1985.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85–22229 Filed 9–16–85; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 361, Amdt. 1; Valencia Orange Reg. 362]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Amendment 1 of Regulation 361 increases the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period September 13–19, 1985. Regulation 362 establishes the quantity of such fruit that may be shipped to market during the period September 20–26. The amendment and regulation are needed to provide for orderly marketing of fresh Valencia oranges for the periods specified due to the marketing situation confronting the orange industry.

DATES: Regulation 361, Amendment 1 (§ 908.661) is effective for the period September 13–19, 1985. Regulation 362 (§ 908.662) is effective for the period September 20–26, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The amendment and the regulation are issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The actions are based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that these actions will tend to effectuate the declared policy of the act.

The amendment and the regulation are consistent with the marketing policy for 1984–85. The committee met publicly on September 10, 1985, to consider the current and prospective conditions of supply and demand and recommended the quantities of Valencia oranges that it deemed advisable to be handled during the specified weeks. The committee reports that demand for Valencia oranges has improved.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because there is insufficient time between the date when information upon which these regulations are based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the amendment and the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the amendment and regulation and its effective date.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—[AMENDED]

1. The authority citation for Part 908 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 908.661 is added to read as follows:

§ 908.661 Valencia Orange Regulation 361.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period September 13, 1985, through September 19, 1985, are established as follows:

(a) *District 1:* 333,000 cartons;
(b) *District 2:* 567,000 cartons;
(c) *District 3:* Unlimited cartons.

3. Section 908.662 is added to read as follows:

§ 908.662 Valencia Orange Regulation 362.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period September 20, 1985, through September 26, 1985, are established as follows:

(a) *District 1:* 333,000 cartons;
(b) *District 2:* 567,000 cartons;
(c) *District 3:* Unlimited cartons.

Dated: September 12, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–22168 Filed 9–16–85; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1106

Milk in the Southwest Plains Marketing Area; Temporary Revision of a Certain Provision of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of a rule.

SUMMARY: This action extends the application of a lower pooling standard for plants operated by cooperative associations under the Southwest Plains Federal milk order. Through February 1986, the percentage of milk marketed by cooperative associations that must be physically received at pool distributing plants during the month in order for plants operated by cooperative associations to be pooled is reduced from 50 to 40 percent. The extension was requested by Mid-America Dairymen, Inc., a cooperative association that operates plants and represents producers who supply the

market, in order to prevent uneconomic movements of milk.

Notice of the proposed action was published in the **Federal Register** and interested parties were given an opportunity to comment. No opposing views were received.

EFFECTIVE DATE: September 17, 1985.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Proposed Temporary Revision: Issued August 16, 1985; published August 22, 1985 (50 FR 33975).

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1106.7(d) of the Southwest Plains milk order.

Notice of proposed rulemaking was published in the **Federal Register** (50 FR 33975) concerning the proposal to decrease the percentage of milk marketed by cooperative associations that must be physically received at pool distributing plants in order for plants operated by cooperative associations to qualify for pool status under the order during the months of September 1985 through February 1986. Interested parties were given the opportunity to comment on the proposal by submitting written data, views, and arguments. No views in opposition to the proposal were received.

Statement of Consideration

This action continues through February 1986 the application of a lower delivery percentage for plants operated by cooperative associations. The revision reduces the percentage of milk marketed by a cooperative association that must be physically received at pool distributing plants during the month by 10 percentage points, from 50 to 40 percent, for plants operated by cooperative associations to qualify for pool status under the order. Section 1106.7(d) of the order provides that the Director of the Dairy Division may increase or decrease the delivery percentage by up to 10 percentage points to obtain needed shipments or to prevent uneconomic shipments of milk.

Due to the significant change in the market's supply-demand relationship, that resulted from the termination of the St. Louis-Ozarks order on April 1, 1985, the delivery percentage was reduced from 50 to 40 percent for the months of May through August 1985. The downward revision of the delivery percentage was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that operates plants and represents producers supplying the Southwest Plains market. Mid-Am has requested that the 40-percent pooling standard continue to apply through February 1986 to accommodate the efficient pooling of milk supplies that are now associated with the market.

When the St. Louis-Ozarks order was terminated, certain plants and producer milk supplies formerly regulated under that order became regulated under the Southwest Plains order. This structural change had a dramatic impact on the size and supply-demand relationship of the Southwest Plains market. From March to April 1985, milk priced under the order was up more than 104 percent while producer receipts used in Class I increased only 59 percent. As a result, the market's Class I utilization declined almost 13 percentage points from 57.3 percent to 44.5 percent. During July 1985, the market's 46.1 percent Class I utilization was almost 9 percentage points below July 1984 and more than 11 percentage points below such utilization for March 1985 (the month immediately preceding the month in which the significant structural change in the Southwest Plains market resulting from the St. Louis-Ozarks order termination occurred).

In view of the change in the market's supply-demand relationship, it is concluded that a reduction of 10 percentage points in the pooling standard for cooperative association plants should be continued for the months of September 1985 through February 1986. In the absence of a lowering of the pooling standard, more milk would have to be delivered to distributing plants than is necessary to meet the fluid milk needs of the market. A lowering of the pooling standard will prevent costly and inefficient movements of milk to distributing plants solely for the purpose of pooling the milk of dairy farmers who supply the market.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unncessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of September 1985 through February 1986;

(b) This temporary revision does require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision. No opposing views were received.

Therefore, it is appropriate to reduce the delivery percentage specified in § 1106.7(c) by 10 percentage points for the months of September 1985 through February 1986 to prevent uneconomic shipments of milk.

List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

It is therefore ordered, That the 50-percent delivery requirement specified in § 1106.7(c) of the order be reduced to 40 percent for the months of September 1985 through February 1986.

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1106.7 [Amended]

In 7 CFR Part 1106 in § 1106.7(c) the 50-percent delivery requirement is reduced to 40 percent for the months of September 1985 through February 1986.

Effective date: September 17, 1985.

Signed at Washington, D.C., on September 11, 1985.

Edward T. Coughlin,

Director, Dairy Division.

[FR Doc. 85–22166 Filed 9–16–85; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1106

Milk in the Southwest Plains Marketing Area; Order Suspending a Certain Provision of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of a rule.

SUMMARY: This action continues, for September 1985 through February 1986, a prior suspension that removed the

requirement that plants operated by cooperative associations need to be located either in the marketing area or in a county adjacent to the marketing area to be eligible for regulation under the order. The continuing action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that operates supply plants and represents producers who supply the fluid milk needs of distributing plants located in southwest Missouri that became regulated under the Southwest Plains order when the adjacent St. Louis-Ozarks order was terminated on April 1, 1985. The action is needed to avoid costly and inefficient movements of milk through plants solely for the purpose of assuring that dairy farmers, who supply the fluid milk needs of southwest Missouri distributing plants, will continue to have their milk priced and pooled under the order.

EFFECTIVE DATE: September 17, 1985.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 16, 1985; published August 22, 1985 (50 FR 33974).

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action lessens the regulatory impact of the order on certain milk handlers and tends to insure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order or suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Southwest Plains marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 22, 1985 (50 FR 33974) concerning a proposed suspension of a certain provision of the order. Interested persons were given an opportunity to file written data, views, and arguments thereon. No comments opposing an extension of the prior suspension were received.

After consideration of all revelant information, including the proposal set forth in the notice, the comments received, and other available information, it is hereby found and determined that for the months of September 1985 through February 1986 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1106.7(c) the words "located in the marketing area or in a county adjacent to the marketing area".

Statement of Consideration

The order provides for the pooling of cooperative association plants that are located in the marketing area or a county adjacent to the marketing area if 50 percent or more of the cooperative's producer milk is physically received at distributing plants. This action, for September 1985–February 1986, continues a prior suspension that removed the location requirement as a basis of pooling eligibility for plants operated by cooperative associations during the months of April–August 1985.

A continuation of the suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that operates supply plants and represents producers who supply the fluid milk needs of distributing plants located in southwest Missouri. Such plants, and the supplies of producer milk associated with such plants, became regulated under the Southwest Plains order when the adjacent St. Louis-Ozarks order was terminated on April 1, 1985. Supplemental milk has historically been furnished to these distributing plants from Mid-Am's supply plants, which also located in southwest Missouri.

Mid-Am indicates that during the upcoming fall and winter months there will be a sufficient supply of milk available to furnish the fluid milk needs of the distributing plants on a direct-shipped basis. However, since Mid-Am's supply plants are not located inside the marketing area or in a county adjacent to the marketing area, Mid-Am will not be able to pool the milk of its member producers without making costly and inefficient shipments of milk from the supply plants to the distributing plants. With a suspension action, the milk can be pooled on the basis of Mid-Am's total performance in supplying distributing plants with direct-shipped milk, thus eliminating the need to make costly and inefficient movements of milk through plants solely for the purpose of assuring that dairy farmers, who supply the fluid needs of southwest Missouri distributing plants, will continue to have their milk pooled and priced under the order.

Interested parties were given an opportunity to submit written data, views, or arguments concerning this action. No comments in opposition to a continuation of the suspension were received.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to assure the orderly marketing of milk in the marketing area in that without the suspension costly and inefficient movements of milk would be made solely for pooling purposes;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this suspension. No opposing views were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1106

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

It is therefore ordered, That the following language in § 1106.7 of the order is hereby further suspended for the months of September 1985 through February 1986.

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

§ 1106.7 [Temporarily suspended in part]

In 7 CFR Part 1106 in § 1106.7(c), the words "located in the marketing area or in a county adjacent to the marketing area".

Effective date: September 17, 1985.

Signed at Washington, D.C., on September 11, 1985.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85–22160 Filed 9–16–85; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1137

Milk in the Eastern Colorado Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends, for the months of September through December 1985, provisions of the Eastern Colorado Federal milk order relating to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Also suspended for the same period is the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during the previous September through February, and the "touch-base" requirement that each producer's milk be received at least three times each month at a pool distributing plant. Suspension of the provisions was requested by a cooperative association representing producers supplying the market. The action is necessary to assure that the milk of producers who regularly have supplied the fluid milk needs of the market will continue to be priced and pooled under the order without requiring unnecessary and uneconomic movements of milk.

EFFECTIVE DATE: September 17, 1985.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 19, 1985; published August 22, 1985, (50 FR 33976).

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Eastern Colorado marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 22, 1985 (50 FR 33976) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing the proposed action were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of September through December 1985 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In the second sentence of § 1137.7(b), the words "of March through August".

2. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing plant".

3. In the second sentence of § 1137.12(a)(1), the words "20 percent", "of", and "distributing".

Statement of Consideration

This action removes for the months of September through December 1985 the limit on the amount of producer milk that a cooperative association may divert from pool plants to nonpool plants. Also suspended for the same period is the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during the previous September through February, and the "touch-base" requirement that each producer's milk be received at least three times each month at a pool distributing plant.

The order now provides that a cooperative association may divert a quantity of milk not in excess of 20 percent of the cooperative association's member milk received at pool distributing plants. The suspension allows up to 50 percent of a cooperative's member milk supply to be diverted to nonpool plants and remain eligible to share in the marketwide pool.

The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association of producers supplying the market. The cooperative association indicates that producer receipts on the Eastern Colorado order since April 1985 have exceeded those of the same months of 1984 by percentages ranging from 12.2 to 20.5 percent, while producer milk used in Class I has increased only slightly. Mid-Am estimates that during the September through December period, shipments to surplus handling plants in eastern Kansas and Nebraska will average approximately 100 loads per month. Without suspension of the requested provisions, qualification of Mid-Am member milk in western Kansas and western Nebraska under the provisions of the Eastern Colorado order would require approximately 40 loads of milk per month to be shipped to pool distributing plants. Such shipments would displace Denver-area milk, which would have to be moved to surplus handling plants. The cooperative contends that suspension action therefore is necessary to prevent uneconomic movements of milk for the sole purpose of pooling the milk of producers historically associated with the Eastern Colorado order.

No comments in opposition to the proposed action were received. However, Mountain Empire Dairymen's Association, a cooperative association which represents a substantial majority of the producers on the market, filed comments supporting the suspension action as a means of avoiding costly and inefficient movements of milk.

Milk production is significantly above year-earlier levels and consequently a greater proportion of the available milk supplies will have to be shipped to manufacturing plants for surplus uses. Favorable weather conditions and ample feed supplies provide strong indications that current production trends will continue, without offsetting increases in Class I use. In view of these circumstances, it is concluded that the diversion limits and "touch-base" requirements of the Eastern Colorado milk order should be suspended for the months of September through December 1985 to ensure the orderly marketing of milk supplies. The suspension will prevent uneconomic movements of some milk through pool plants merely for the purpose of qualifying it for producer milk status under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without extensive unnecessary and expensive hauling and handling substantial quantities of milk from producers who regularly supply the market otherwise would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data,

views or arguments concerning this suspension. No comments were filed in opposition to this action.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1137

Milk marketing orders, Milk, Dairy products.

The authority citation for Part 1137 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

It is therefore ordered, That the following provisions of the Eastern Colorado order are hereby suspended for the months of September through December 1985:

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

§ 1137.7 [Temporarily suspended in part]

In 7 CFR Part 1137, in the second sentence of § 1137.7(b), the words "of March through August".

§ 1137.12 [Temporarily suspended in part]

1. In 7 CFR Part 1137, in the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing plant".

2. In 7 CFR Part 1137, in the second sentence of § 1137.12(a)(1), the words "20 percent", "of", and "distributing".

Effective Date: September 17, 1985.

Signed at Washington, D.C., on September 11, 1985.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85–22161 Filed 9–16–85; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1150

Dairy Promotion Program; Determination of Approval; Order of Continuance

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Determination of approval and continuance of rule.

SUMMARY: This document orders the continuation of the Dairy Promotion and Research Order that became effective May 1, 1984. This program provides for dairy product promotion, research and nutrition education. It is funded by a mandatory 15-cent per hundredweight assessment on all milk marketed by producers in the 48 contiguous States. A referendum was conducted in August 1985 to determine whether producers favored continuation of the program. More than the necessary majority of the producers voting in the referendum favor continuation of the program. Thus, it is ordered that the Dairy Promotion Program shall remain in effect.

FOR FURTHER INFORMATION CONTACT: Richard M. McKee, Chief, Promotion and Research Staff, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–6909.

SUPPLEMENTARY INFORMATION: Title I, subtitle B, of the Dairy and Tobacco Adjustment Act of 1983, which authorized and mandated the implementation of the Dairy Promotion and Research Order, also provided that a referendum be conducted among producers within the 60-day period preceding September 30, 1985, to ascertain whether the Dairy Promotion and Research Order should be continued. Continuation of the program is authorized only if the Secretary determines that is has been approved by not less than a majority of the producers voting in the referendum, who during a representative period (as determined by the Secretary) were engaged in the production of milk for commercial use. The representative period for the purposes of this referendum was April 1985. Of the 120,330 producers voting, 107,926 or 89.69 percent favored continuation of the order.

It is hereby determined, That continuation of the Dairy Promotion and Research Order has been approved by not less than a majority of the producers voting in the referendum, who during the April 1985 representative period were engaged in the production of milk for commercial use.

It is therefore ordered, That the Dairy Promotion and Research Order, 7 CFR Part 1150, that is now in effect shall be continued.

List of Subjects in 7 CFR Part 1150

Milk, Dairy products, Promotion, Research.

The authority citation for 7 CFR Part 1150 continues to read as follows:

Authority: (Pub. L. 98–180, 97 Stat. 1128)

Signed at Washington, D.C., on: September 11, 1985.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 85–22162 Filed 9–16–85; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

Procedures for Production or Disclosure of Records or Information in Response to Subpoenas or Demands of Courts or Other Authorities

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) has added Subpart D to Part 9 of Chapter 10 of the Code of Federal Regulations to prescribe procedures with respect to the production of documents or disclosure of information in response to subpoenas or demands of courts or other judicial or quasi-judicial authorities in State and Federal proceedings (excluding Federal grand jury proceedings). This rule clarifies Commission procedures regarding subpoenas or other judicial or quasi-judicial demands on NRC employees to produce NRC records or to disclose information through testimony or depositions. The rule also ensures that the responsibility for determining the response to the demands is placed on the appropriate Commission official.

EFFECTIVE DATE: October 17, 1985.

FOR FURTHER INFORMATION CONTACT: Theresa W. Hajost, Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (202) 634–1493.

SUPPLEMENTARY INFORMATION:

I. Background

Over the past several years there has been a substantial increase in the Nuclear Regulatory Commission's inspection and investigation functions resulting in enforcement actions taken against NRC licensees. As a result of this activity, and in the wake of many cancellations of nuclear power plants, there are now increasing demands for access to NRC records and for testimony by NRC employees by parties in litigation to which the NRC is not a party. This regulation is limited to situations where the NRC is not a party. NRC personnel have been and are expected to be subpoenaed for depositions or testimony in private actions and called upon to produce NRC records or to disclose information relating to licensing and enforcement activities. The NRC had not uniform written policies or procedures for dealing with these demands. It is the purpose of these amendments to

prescribe a uniform policy to provide NRC personnel with clear guidance on how to respond to subpoenas or other demands for disclosure.

Following the lead of other Federal agencies that have established a "clearinghouse" or centralized decisionmaking approach to subpoenas, the amendments establish that copies of all subpoenas or other demands served on NRC employees will be referred to the General Counsel. A minor change requiring simultaneous service of such demands on the General Counsel was made in order to expedite this process and ensure efficient internal administration of subpoenas or other demands for production or disclosure. The General Counsel is to review the proposed discovery, ascertain the scope of the proposal, and decide on the approach to be followed in each case, including authorizing litigation, if necessary, to resolve disputes between the NRC and the party seeking the discovery. In addition, the amendments set forth the procedures to be followed in the event a response to a subpoena is required before instructions from the General Counsel are received. If a court or other authority declines to stay its demand pending the employee's receipt of instructions, the regulations direct the employee to invoke the case of *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951) and these regulations. *Touhy* holds that government agencies may lawfully establish housekeeping procedures to facilitate the orderly processing of requests for agency information. It further provides that a requesting party's failure to follow those procedures may be valid grounds for an agency and its employees to refuse to provide the requested information.

In deciding whether and to what extent to make documents or testimony available pursuant to a demand, the General Counsel is to consider, among other things, whether the discovery would be proper under the general provisions governing discovery set forth in Fed. R. Civ. P. 26(b) and under the rules of procedure governing the case or matter in which the demand arose. The General Counsel must also consider whether disclosure is appropriate under the relevant substantive law concerning various discovery privileges, including those unique to the government and its agencies, general statutes and regulations governing possession and use of government and corporate information; laws governing trade secret or proprietary information; policies governing ongoing investigations or concerning investigative methods, informants, or similar considerations. The General Counsel will advise the party seeking discovery of the results of the NRC's deliberations in writing as far in advance of the response date as is practicable. Any claim of privilege or assertions of unreasonable burden which cannot be resolved by the General Counsel and the requesting party will, as always, ultimately be reviewed and resolved by the appropriate court.

II. Comments

Four letters of comment were received, each containing several comments and suggestions. The individual comments and suggestions were considered by NRC and are discussed in terms of two categories: (A) those that led to a change in the regulations as proposed and (B) those that did not lead to any changes.

A. Comments That Led to a Change in the Regulations as Proposed

1. *Former employees should not be included within the scope for the rule.* Each of the four commenters responded to Commissioner Asselstine's request for comments on the desirability of applying these regulations to former employees. All four commenters opposed applying the rule to former employees. The Commission has decided not to extend these regulations to cover former employees.

2. *Before disclosing documents in its files which were submitted by contractors, applicants, or licensees and which may contain trade secrets or other privileged information, the NRC should contact the submitter.* In order to ensure, before disclosure of any information or production of documents, that the material is reviewed to see if it contains any trade secrets or proprietary information, the words "trade secrets or proprietary information" have been added to the list of items for the General Counsel to consider when he or she is deciding whether and to what extent to make documents or testimony available pursuant to a demand. The NRC already has a general policy of contacting the submitter of proprietary information before releasing such information. *See* 10 CFR 2.790.

B. Comments Which Did Not Lead to Any Changes in the Final Rule

1. *The NRC has no legal authority to promulgate rules dealing with demands for testimony of its employees.* The authorities relied on in the publication of the proposed rule where section 161, Pub. L. 83–703, 68 Stat. 948 (42 U.S.C. 2201) and section 210, Pub. L. 93–438, 88 Stat. 1242 (42 U.S.C. 5841). Section 201 of the Energy Reorganization Act of 1974 establishes the Nuclear Regulatory Commission and transfers to it all the licensing and regulatory functions of the Atomic Energy Commission. *See* 42 U.S.C. 5841(f). Section 161 of the Atomic Energy Act of 1954 details the general duties of the Atomic Energy Commission, including promulgating such rules as necessary to carry out the purposes of the Act. *See* 42 U.S.C. 2201(p). The Courts have found this section to be a broad grant of rulemaking authority paralleling the discretion given NRC in its broad regulatory scheme which enables it to achieve its statutory objective. *See Public Service Company of New Hampshire* v. *Nuclear Regulatory Commission*, 582 F.2d 77, 82 (1st Cir.), *cert. denied*, 439 U.S. 1046 (1978); *Westinghouse Electric Corp.* v. *Nuclear Regulatory Commission*, 555 F. 2d 82, 83 (3d Cir. 1977); *Siegel* v. *Atomic Energy Commission*, 400 F. 2d 778, 783 (D.C. Cir. 1968). Proper protection of classified and safeguards materials, e.g., 42 U.S.C. 2167, proprietary and trade secrets data, e.g., 18 U.S.C. 1905, and various types of privileged information is necessary if the NRC is to carry out its statutory duties. Thus, the NRC has clear authority to promulgate these rules.

2. *Touhy* v. *Ragen does not apply to the NRC because it is an independent, not an executive, agency.* The Department of Justice regulations which were upheld in *Touhy* v. *Ragen*, 340 U.S. 462 (1951), were promulgated under the Federal housekeeping statute, 5 U.S.C. 22 (now 5 U.S.C. 301), which applies only to executive and military departments. Although the Federal housekeeping statute does not apply to the NRC, 42 U.S.C. 2201(p), one of the statutes under which these regulations were promulgated, gives the NRC the authority to promulgate such rules as it believes are necessary to carry out the Atomic Energy Act. In *Touhy*, the Supreme Court's inquiry focused on the validity of the Department of Justice's rule suggesting that as long as the agency regulations are validly promulgated under a statutory grant of authority, the *Touhy* rationale will apply. Thus, applying the reasoning of the Supreme Court in *Touhy*, the independent status of the NRC would be irrelevant as long as the rule was valid. The case cited in the comment, *General Engineering, Inc.* v. *National Labor Relations Board*, 341 F.2d 367 (9th Cir. 1965), held that the National Labor Relations Board NLRB) was not an executive agency and, therefore, could not promulgate rules based on the Federal housekeeping statute. The court, however, did not strike down the

NLRB's rule which was also promulgated under the general authority given it to promulgate such rules as would further its mission. After some preliminary observations on the validity of the rule, the court considered whether the NLRB's claim of privilege was valid. 341 F.2d 367 at 375. In another case concerning the NLRB and assertion of privilege, the court recognized that "[A]n agency has a legitimate and tidy housekeeping objective in centralizing the determinations of when to assert and when not to assert a privilege." *National Labor Relations Board* v. *Capitol Fish Co.*, 294 F.2d 868, 875 (5th Cir. 1961).

Although the facts in *Touhy* dealt solely with written records, the Court's analysis is equally applicable to information contained in NRC files which is sought by a demand for oral testimony. Lower courts have applied *Touhy* to oral testimony. *See United States* v. *Winner*, 641 F.2d 825 (10th Cir. 1981); *United States* v. *Allen*, 554 F.2d 399, 406 (10th Cir. 1977); *Davis* v. *Braswell Motor Freight Lines, Inc.*, 363 F.2d 600 (5th Cir. 1966). It would be too easy to circumvent an agency's valid claim to withhold certain information if all that need be done to gain access to the desired information would be to rephrase a demand to request oral testimony.

3. *Incorporate additional language recognizing that these regulations do not provide any new or additional authority to withhold information or testimony.* These regulations do not give the Commission any new substantive bases for claims of privilege; they do not purport to do so; and thus there is no need to state this fact in the body of the regulations. Failure to follow the procedures set forth in the regulations, however, may be grounds for not providing the requested information. *See Touhy* v. *Ragen*, 340 U.S. 462 (1951).

4. *The General Counsel should be required to inform the Commission of any adverse determination under these regulations.* The Commission does not believe this is necessary. The NRC manual delegates to the General Counsel the responsibility of representing and protecting the interests of the NRC in various court proceedings. NRC–0115–032.[1]

[1] 10 CFR 1.2 states: "The definitive statement of the NRC's . . . delegations of authority is in the Nuclear Regulatory Commission Manual and other elements of the NRC's Management Directives System . . ." The NRC Manual is available in the NRC Public Document Room, located at 1717 H Street, NW, Washington, DC.

5. *The proposed regulations could delay or withhold information from State Public Utilities Commissions and State Utility Consumer Advocates.* The new regulations are merely procedural and give the NRC no new authority to withhold either information or records. The Commission feels that any slight delay which may be caused by compliance with these regulations is more than offset by the benefits of allowing the Commission the opportunity to better protect privileged information.

6. *The rule should contain a policy statement that the NRC intends to cooperate fully with other tribunals in the production of the requested documents and testimony.* The purpose behind this rule is to allow the NRC to respond to such requests expeditiously. The NRC is in the same position as any other entity from which discovery is requested and owes the same duties of cooperation. The Commission does not believe such a statement is necessary. Its objections to discovery or claims of privilege will be treated like those of any other governmental entity.

7. *The rule's requirement that litigants submit an outline or plan with their demand for oral testimony is inappropriate.* One comment suggested that the Commission's requirement for a plan or summary of the oral testimony desired will affront other tribunals. The Commission disagrees. The NRC requires that a plan of the oral testimony desired be submitted only so that the General Counsel may ascertain whether the proposed testimony will lead to the disclosure of privileged information or will be unnecessarily burdensome. The Commission has acknowledged that any claim of privilege or assertion of unreasonable burden will ultimately be reviewed by a court. The opportunity for judicial review of the General Counsel's decision makes more explicit guidelines for the decision, as suggested by another comment, unnecessary.

Another comment suggested that the NRC's requirement of a plan will require divulgence of attorney work product. The requested information need not include material which would be subject to the attorney work product privilege. It merely must provide the NRC with details in order to allow it to determine whether to oppose the discovery request on grounds of privilege or burden. The NRC has a legitimate interest in obtaining this information.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget Approval number 3150–0043.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this final rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule affects only those activities which involve NRC regulatory, licensing, or enforcement activities. The companies that own, build, or design these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CRF Part 121.

List of Subjects in 10 CFR Part 9

Freedom of information, Penalty, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

For the reasons set out in the preamble and under authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 9.

PART 9—PUBLIC RECORDS

1. The authority citation for Part 9 continues to read as follows:

Authority: Sec. 161, Pub. L. 83–703, 68 Stat. 948 (42 U.S.C. 2201); sec. 201 Pub. L. 93–438, 88 Stat. 1242 (42 U.S.C. 5841). Subpart A also issued under 5 U.S.C. 552; Subpart B also issued under 5 U.S.C. 552a; Subpart C also issued under 5 U.S.C. 552b.

2. Section 9.1 is revised to read as follows:

§ 9.1 Scope.

The regulations in this part: (a) Implement the provisions of the Freedom of Information Act, 5 U.S.C. 552, with respect to the availability to the public of Nuclear Regulatory Commission records for inspection and copying; (b) implement the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, with respect to disclosure and availability of certain Nuclear Regulatory Commission records maintained on individuals; (c) implement the provision of the Government in the Sunshine Act, 5 U.S.C. 552b, with respect to opening Commission meetings to public observation; and (d) describe procedures with respect to the production of agency records,

information, or testimony in response to subpoenas or demands of courts or other judicial or quasi-judicial authorities in State, and Federal proceedings.

3. Section 9.1a is revised to read as follows:

§ 9.1a Subparts.

Subpart A sets forth special rules applicable to matters pertaining to the Freedom of Information Act. Subpart B sets forth special rules applicable to matters pertaining to the Privacy Act of 1974. Subpart C sets forth special rules applicable to matters pertaining to the Government in the Sunshine Act. Subpart D sets forth Commission procedures regarding subpoenas or other judicial or quasi-judicial demands on current or former employees for the production of NRC records or the disclosure of information through depositions or testimony.

4. In § 9.12, paragraph (b) is revised to read as follows:

§ 9.12 Production or Disclosure of Exempt Records.

(b) NRC personnel and NRC contractors from whom a record exempt from disclosure is sought by non-judicial means shall follow the procedure specified below. Where the record is sought by judicial or similar process, NRC personnel and contractors shall follow the procedure specified in Subpart D:

(1) If an exempt record is sought from NRC personnel by non-judicial means, the request shall promptly be forwarded to the Director, Office of Administration, who shall process the request as provided in this Part or take such other action as may be appropriate.

(2) If an exempt record is sought from an NRC contractor by non-judicial means, the request shall promptly be forwarded to the NRC contracting officer administering the contract who will then follow the procedure specified in paragraph (b)(1) of this section.

5. Subpart D (§§ 9.200 thru 9.204) is added to read as follows:

Subpart D—Production or Disclosure in Response to Subpoenas or Demands of Courts or Other Authorities

Sec.
9.200 Scope of subpart.
9.201 Production or disclosure prohibited unless approved by appropriate NRC official.
9.202 Procedure in the event of a demand for production or disclosure.
9.203 Procedure where response to demand is required prior to receiving instructions.
9.204 Procedure in the event of an adverse ruling.

Subpart D—Production of Disclosure in Response to Subpoenas or Demands of Courts or Other Authorities

§ 9.200 Scope of subpart.

(a) This subpart sets forth the procedures to be followed when a subpoena, order, or other demand (hereinafter referred to as a "demand") for the production of NRC records or disclosure of NRC information, including testimony regarding such records, is issued by a court or other judicial or quasi-judicial authority in a proceeding, excluding Federal grand jury proceedings, to which the NRC is not a party. Information and documents subject to this subpart include:

(1) Any material contained in the files of the NRC;

(2) Any information relating to material contained in the files of the NRC.

(b) For purposes of this subpart, the term "employee of the NRC" includes all NRC personnel as that term is defined in § 9.2, including NRC contractors.

(c) This subpart is intended to provide instructions regarding the internal operations of the NRC and is not intended, and does not, and may not, be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the NRC.

§ 9.201 Production or disclosure prohibited unless approved by appropriate NRC official.

No employee of the NRC shall, in response to a demand of a court or other judicial or quasi-judicial authority, produce any material contained in the files of the NRC or disclose, through testimony or other means, any information relating to material contained in the files of the NRC, or disclose any information or produce any material acquired as part of the performance of that employee's official duties or official status without prior approval of the General Counsel of NRC.

§ 9.202 Procedure in the event of a demand for production or disclosure.

(a) Prior to or simultaneous with a demand upon an employee of the NRC for the production of material or the disclosure of information described in § 9.200, the party seeking production or disclosure must serve the General Counsel of the NRC with an affidavit or statement as described in paragraphs (b)(1) and (2) of this section. Whenever a demand is made upon an employee of the NRC for the production of material or the disclosure of information described in § 9.200, that employee shall immediately notify the General Counsel. If the demand is made upon a regional NRC employee, that employee shall immediately notify the Regional Counsel who, in turn, shall immediately request instructions from the General Counsel.

(b)(1) If oral testimony is sought by the demand, a summary of the testimony desired must be furnished to the General Counsel by a detailed affidavit or, if that is not feasible, a detailed statement by the party seeking the testimony or the party's attorney. This requirement may be waived by the General Counsel in appropriate circumstances.

(2) The General Counsel may request a plan from the party seeking discovery of all demands then reasonably foreseeable, including but not limited to, names of all NRC personnel from whom discovery is or will be sought, areas of inquiry, length of time away from duty involved, and identification of documents to be used in each deposition, where appropriate.

(c) The General Counsel will notify the employee and such other persons, as circumstances may warrant, of his or her decision on the matter.

§ 9.203 Procedure where response to demand is required prior to receiving instructions.

If a response to the demand is required before the instructions from the General Counsel are received, a U.S. attorney or NRC attorney designated for the purpose shall appear with the employee of the NRC upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the appropriate NRC official and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions. In the event that an immediate demand for production or disclosure is made in circumstances which would preclude the proper designation or appearance of a U.S. or NRC attorney on the employee's behalf, the employee shall respectfully request the demanding authority for sufficient time to obtain advice of counsel.

§ 9.204 Procedure in the event of an adverse ruling.

If the court or other judicial or quasi-judicial authority declines to stay the

effect of the demand in response to a request made in accordance with § 9.203 pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing these regulations and *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

Dated at Washington, DC, this 11th day of September, 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-22227 Filed 9-16-85; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 75

[Airspace Docket No. 84-ASO-27]

Alteration of Jet Route J-91; Lakeland, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment realigns a portion of Jet Route J-91 in the vicinity of Lakeland, FL, to improve the flow of air traffic between the Atlanta, GA, and Miami, FL, terminal areas. This action will aid flight planning and reduce controller workload.

EFFECTIVE DATE: 0901 GMT, November 21, 1985.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

History

On January 30, 1985, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to realign J-91 between Atlanta, GA, and Miami, FL, (50 FR 4230) to improve the traffic flow between those terminal areas. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations realigns J-91 between Atlanta, GA, and Miami, FL. Recent construction in the vicinity of the Lakeland, FL, VORTAC has rendered J-89 unusable north of Lakeland; therefore, traffic proceeding over Atlanta to South Florida is routinely rerouted via Atlanta, J-91 to Cross City, FL, then vectors until southeast of Lakeland. With J-91 realigned to replace the unusable portions of J-89, traffic flow and flight planning is improved, controller workload is reduced, and arrival/departure operations in the Atlanta and Miami terminal areas are more efficiently handled by the system.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the critieria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Jet routes, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended as follows:

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.69; and 49 CFR 1.47.

2. § 75.100 is amended as follows:

J-91 [Revised]

From INT Orlando FL, 242° and Cross City, FL, 136° radials; Cross City, INT Cross City 338° and Atlanta, GA, 169° radials: Atlanta; Knoxville, TN; Henderson, WV; to Bellaire, OH.

Issued in Washington, D.C., on September 6, 1985.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR.Doc. 85-22144 Filed 9-16-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 24764; Amdt. No. 1303]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

EFFECTIVE DATE: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—Approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents,

U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the pubic interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979; and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, . Aviation safety.

Issued in Washington, DC on September 6, 1985.

John S. Kern,

Acting Director of Flight Operations.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449), January 12, 1983; and 14 CFR 11.49(b)(2)).

PART 97—[AMENDED]

2. By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

** * * Effective November 21, 1985*

Clinton, OK—Clinton-Sherman, VOR 1 RWY 35L, Amdt. 10
Enid, OK—Enid Woodring Muni, VOR RWY 17, Amdt. 8
Enid, OK—Enid Woodring Muni, VOR RWY 35, Amdt. 9
Norman, OK—University of Oklahoma Westheimer Airpark, VOR/DME RWY 3, Amdt. 2
Oklahoma City, OK—Clarence E. Page Muni, VOR-B, Amdt. 4, Cancelled
Oklahoma City, OK—Clarence E. Page Muni, VOR-B, Orig
Oklahoma City, OK—Sundance Airpark, VOR RWY 17, Orig, Cancelled
Oklahoma City, OK—Sundance Airpark, VOR Rwy 17, Orig
Oklahoma City, OK—Wiley Post, VOR RWY 17L, Amdt. 9
Oklahoma City, OK—Wiley Post, VOR-A, Amdt. 3, Cancelled
Oklahoma City, OK—Wiley Post, VOR-A, Orig
Oklahoma City, OK—Wiley Post, VOR-C, Amdt. 3, Cancelled
Oklahoma City , OK—Will Rogers World, VOR RWY 12, Admt. 20, Cancelled

** * * Effective October 24, 1985*

Bay Minette, AL—Bay Minette Muni, VOR RWY 8, Amdt. 4
Washington, DC—Dulles Intl, VOR/DME or TACAN RWY 12, Admt. 6
Athens, GA—Athens Muni, VOR RWY 27, Admt. 10
Elberton, GA—Elbert County—Patz Field, VOR/DME RWY 10, Admt. 2
Champaign-Urbana, IL—University of Illinois-Willard, VOR RWY 4, Admt. 9
Champaign-Urbana,IL—University of Illinois-Willard, VOR/DME RWY 22, Admt. 6
Waterville, ME—Waterville Robert LaFleur, VOR/DME RWY 5, Admt. 5
Ocean City, MD—Ocean City, VOR-A, Amdt. 1
Columbia, MS—Columbia-Marion County, VOR/DME RWY 23, Admt. 8
Ashland, OH—Ashland County, VOR-A, Amdt. 4
Coshocton, OH—Richard Downing, VOR-A, Amdt. 6
Portage, WI—Portage Muni, VOR/DME-A, Amdt. 4

** * * Effective September 3, 1985*

Grand Ledge, MI—Abrams Muni, VOR-A, Amdt. 3

3. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

** * * Effective November 21, 1985*

Enid, Ok—Enid Woodring Muni, LOC RWY 35, Amdt. 3
Norman, OK—University of Oklahoma Westheimer Airpark, LOC RWY 3, Amdt. 3
Oklahoma City, OK—Sundance Airpark, LOC RWY 17, Orig
Oklahoma City, OK—Will Rogers World, LOC BC RWY 17L, Amdt. 4
Oklahoma City, OK—Will Rogers World, LOC BC RWY 35L, Amdt. 9

** * * Effective October 24, 1985*

Calhoun, GA—Tom B. David Fld, LOC RWY 35, Orig

Champaign-Urbana, IL—University of Illinois-Willard, LOC BC RWY 14, Amdt. 6
Waterville, ME—Waterville Robert LaFleur, LOC RWY 5, Admt. 3

* * * *Effective September 26, 1985*

Mosinee, WI—Central Wisconsin, LOC BC RWY 26, Amdt. 9

4. By amending § 97.27 NDB and NDB/DME SIAPs identified as follows:

* * * *Effective November 21, 1985*

Clinton, OK—Clinton-Sherman, NDB RWY 17R, Amdt. 9
Elk City, OK—ELK City Muni, NDB RWY 17, Amdt. 4
Enid, OK—Enid Woodring Muni, NDB RWY 35, Amdt. 2
Holdenville, OK—Holdenville Muni, NDB RWY 17, Amdt. 2
Norman, OK—University of Oklahoma Westheimer Airpark, NDB RWY 3, Amdt. 5
Oklahoma City, OK—Will Rogers World, NDB RWY 17L, Amdt. 2 Cancelled
Oklahoma City, OK—Will Rogers World, NDB RWY 17R, Amdt. 22
Oklahoma City, OK—Will Rogers World, NDB RWY 35L, Amdt. 2, Cancelled
Oklahoma City, OK—Will Rogers World, NDB RWY 35R, Amdt. 4
Shawnee, OK—Shawnee Muni, NDB RWY 17, Amdt. 5
Woodward, OK—West Woodward, NDB RWY 17, Amdt. 2
Babelthuap Island, Carolina Is., TT—Babelthuap/Koror, NDB/DME RWY 9, Orig

* * * *Effective October 24, 1985*

Hartford, CT—Hartford-Brainard, NDB RWY 2, Orig
Calhoun, GA—Tom B. David Fld, NDB RWY 35, Amdt. 1, Cancelled
Calhoun, GA—Tom B. David Fld, NDB RWY 35, Orig
Champaign-Urbana, IL—University of Illinois-Willard, NDB RWY 32, Amdt. 9
Waterville, ME—Waterville Robert LaFleur, NDB-A, Amdt. 11
Marysville, MO—Marysville Memorial, NDB RWY 14, Amdt. 2
Ashland, OH—Ashland County, NDB RWY 18, Amdt. 6
Toledo, OH—Toledo Express, NDB RWY 7, Amdt. 20
Emporia, VA—Emporia Muni, NDB RWY 33, Amdt. 6
Waupaca, WI—Waupaca Muni, NDB RWY 30, Amdt. 2

* * * *Effective September 26, 1985*

Chicago, IL—Chicago Midway, NDB RWY 4R, Amdt. 12
Chicago, IL—Chicago Midway, NDB RWY 31L, Amdt. 10

* * * *Effective August 22, 1985*

Mekoryuk, AK—Mekoryuk, NDB/DME-A, Amdt. 1

5. By amending § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

* * * *Effective November 21, 1985*

Clinton, OK—Clinton-Sherman ILS RWY 17R, Amdt. 5
Oklahoma City, OK—Wiley Post, ILS RWY 17L, Amdt. 7
Oklahoma City, OK—Will Rogers World, ILS RWY 35R, Amdt. 6
Oklahoma City, OK—Will Rogers World, ILS RWY 17R, Amdt. 8

* * * *Effective October 24, 1985*

Champaign-Urbana, IL—University of Illinois-Willard, ILS RWY 32, Amdt. 10
Gulfport, MS—Gulfport-Biloxi Rgnl, ILS RWY 13, Amdt. 10
Toledo, OH—Toledo Express, ILS RWY 7, Amdt. 20
Burlington, VT—Burlington Intl, ILS RWY 15, Amdt. 19

* * * *Effective September 26, 1985*

Chicago, IL—Chicago Midway, ILS RWY 4R, Amdt. 9
Chicago, IL—Chicago Midway, ILS RWY 13R, Admt. 38
Chicago, IL—Chicago Midway, ILS RWY 31L, Amdt. 1
Memphis, TN—Memphis Intl, ILS RWY 36L, Amdt. 10
Mosinee, WI—Central Wisconsin, ILS RWY 8, Amdt. 9

* * * *Effective August 22, 1985*

New Orleans, LA—Lakefront, ILS RWY 18R, Amdt. 9

6. By amending § 97.31 RADAR SIAPs identified as follows:

* * * *Effective November 21, 1985*

Oklahoma City, OK—Wiley Post, RADAR-1, Admt. 1
Oklahoma City, OK—Will Rogers World, RADAR-1, Amdt. 19

* * * *Effective October 24, 1985*

Washington, DC—Washington National, RADAR-1, Amdt. 25
Champaign-Urbana, IL—University of Illinois-Willard, RADAR-1, Amdt. 5
Toledo, OH—Toledo Express, RADAR-1, Amdt. 14

7. By amending § 97.33 RNAV SIAPs identified as follows:

* * * *Effective November 21, 1985*

Elk City, OK—Elk City Muni, RNAV RWY 17, Amdt. 2
Norman, OK—University of Oklahoma Westheimer Airpark, RNAV RWY 3, Amdt. 3, Cancelled
Norman, OK—University of Oklahoma Westheimer Airpark, RNAV RWY 3, Orig
Oklahoma City, OK—Clarence E. Page Muni, RNAV RWY 17, Amdt. 2, Cancelled
Oklahoma City, OK—Clarence E. Page Muni, RNAV RWY 17R, Orig
Oklahoma City, OK—Clarence E. Page Muni, RNAV RWY 35, Amdt. 2, Cancelled
Oklahoma City, OK—Clarence E. Page Muni, RNAV RWY 35L, Orig
Oklahoma City, OK—Sundance Airpark, RNAV RWY 35, Orig, Cancelled
Oklahoma City, OK—Sundance Airpark, RNAV RWY 35, Orig
Shawnee, OK—Shawnee Muni, RNAV RWY 17, Amdt. 2

* * * *Effective October 24, 1985*

Washington, DC—Dulles Intl, RNAV RWY 1R, Amdt. 5
Washington, DC—Dulles Intl, RNAV RWY 12, Amdt. 8
Washington, DC—Dulles Intl, RNAV RWY 19R, Amdt. 7
Mt. Vernon, IL—Mt. Vernon-Outland, RNAV RWY 5, Amdt. 5, Cancelled
College Park, MD—College Park, RNAV RWY 15, Orig
Coshocton, OH—Richard Downing, RNAV RWY 22, Orig

[FR Doc. 22143 Filed 9-16-85; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-22397; File No. S7-5-85]

Confirmation Disclosure for Reported Securities

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting amendments to its rule governing customer confirmation disclosure to require more complete disclosure for principal transactions in reported securities. The amendments require broker-dealers to report on confirmations, the trade prices and markups in principal transactions with customers, thus providing customers with additional information regarding the quality and costs of broker-dealer services.

EFFECTIVE DATE: March 17, 1986.

FOR FURTHER INFORMATION CONTACT: Leland Goss II, Esq. (202) 272-2827, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

Rule 10b-10 [1] under the Securities Exchange Act of 1934 ("Act") [2] requires a broker-dealer executing a transaction with a customer to provide a written confirmation at or before completion of the transaction disclosing information concerning the transaction. The confirmation provides customers [3] the

[1] 17 CFR 240.10b-10.
[2] 15 U.S.C. 78a *et seq.*
[3] The term "customer" as used in Rule 10b-10 excludes broker-dealers.

terms of trades executed by broker-dealers. For trades in which the broker-dealer acts as agent for the customer, the confirmation must disclose both the transaction price and the commission.[4] In trades in which the broker-dealer acts as principal, however, other than "riskless principal" transactions,[5] Rule 10b–10 currently permits the transaction to be confirmed at a single "net" price to the customer.

On February 12, 1985, the Commission issued a release requesting comment on a proposed amendment to Rule 10b–10 ("Release").[6] The amendment would require a broker-dealer to disclose on customer confirmations the trade price and resulting mark-up in principal transactions in reported securities. These "reported securities" include listed securities meeting New York or American Stock Exchange listing requirements and over-the-counter ("OTC") National Market System ("NMS") Securities.[7]

Specifically, under the amendment a broker-dealer executing a trade as principal must disclose on the customer confirmation the customer's reported trade price, which for trades in OTC/NMS Securities would be the price the broker-dealer reported pursuant to the NASD's real-time last sale reporting requirements,[8] and for listed securities would be the price reported pursuant to exchange requirements and the CTA Plan. The amendment also requires the broker-dealer to disclose on the confirmation the dealer mark-up or commission equivalent, calculated by subtracting the reported trade price from the net price to the customer.[9]

The Commission received 24 comments in response to the Release. After reviewing those comments and evaluating the proposed amendment in light of those comments, the Commission has determined to adopt an amendment to Rule 10b–10 substantially similar to that proposed. In addition, the Commission has determined to provide a phase-in period before the effective date of the amendment of 180 days from the date of publication of this release, to allow broker-dealers time to adapt to the new requirements.

II. Comments

The Commission received 24 comments: five from investors,[10] seven from broker-dealers,[11] eight from law firms and bar associations,[12] the American Stock Exchange ("Amex") and Midwest Stock Exchange ("Midwest"),[13] the Securities Industry Association ("SIA"),[14] and the NASD.[15]

The commentators generally were divided over the desirability of the proposed amendments with a majority of the comment letters supporting adoption of the amendment. All of the investors as well as two broker-dealers submitting comments favored, and one broker-dealer did not oppose adoption of the amendment. Three broker-dealer commentators, on the other hand, generally opposed the amendment.[16] The Amex, Midwest, two law firms and one bar association supported the amendment, while the NASD, one law firm and three bar association committees opposed the amendment. The SIA supported the goal of the amendments but questioned whether the anticipated benefits would result.

Commentators that supported the amendment argued that it would increase the efficiency of the market as a whole. One commentator noted:

> [w]hile [the amendment] clearly should have a positive effect on best execution and the ability of customers to make informed decisions regarding the brokerage commissions they pay, disclosure of trade

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[4] 17 CFR 240.10b–10(a)(7)(i).

[5] *See* 17 CFR 240.10b–10(a)(8)(i).

[6] Securities Exchange Act Release No. 21708 (February 4, 1985), 50 FR 5766.

[7] "Reported securities" are defined in Rule 11Aa3–1 under the Act (17 CFR 240.11Aa3–1(a)(4)) as securities covered by an effective transaction reporting plan adopted pursuant to Rule 11Aa3–1. Listed securities meeting New York or American Stock Exchange listing requirements are reported pursuant to the Consolidated Tape Association ("CTA") Plan. OTC securities designated as NMS Securities pursuant to Rule 11Aa2–1 under the Act (*see* Securities Exchange Act Release No. 17549 (February 17, 1981), 46 FR 13992, adopting this rule) are reported pursuant to the National Association of Securities Dealers, Inc.'s ("NASD") Transaction Reporting Plan.

[8] To comply with the last sale reporting requirements applicable to OTC/NMS Securities, OTC market makers must determine, pursuant to NASD rules, a trade price for each trade in an NMS Security and report this price to the NASD within 90 seconds of execution of the trade. Last sale reporting requirements are contained in Rule 11Aa3–1 under the Act, the NASD's Transaction Reporting Plan adopted pursuant to Rule 11Aa3–1 (*see* Securities Exchange Act Release No. 18590 (March 24, 1982), 47 FR 13617, and the NASD's transaction reporting rules (NASD By-Laws, Article VII Schedule D, IV(2)(d)(3)).

[9] The amendment does not, however, require a broker-dealer to disclose the price at which it acquired the securities. For example, assume an OTC broker-dealer buys a stock for its own account at 8. A week later the inside market for the stock is 10 bid and 10¼ ask. After executing a sale to a customer at 10¼, the broker-dealer adds a ¼ point mark-up charge to the customer, with a resulting net price of 10½. Under these circumstances the broker-dealer would report the trade price of 10¼ to the NASD, excluding the ¼ point mark-up. *See* NASD By-Laws, Article VII, Schedule D, IX(2)(d)(3).

Under the amendment, the broker-dealer would be required to disclose on the customer confirmation the customer's net price, which is 10½, the customer's trade price, which is 10¼, and the difference between the two, which is the mark-up of ¼. The broker-dealer need not disclose that he acquired the stock at a price of 8.

[10] Letter from Arthur F. Peterson, to John Wheeler, Secretary, SEC (February 7, 1985); letter from Frank S. Moran, Plante & Moran, to John Wheeler, Secretary, SEC (February 27, 1985); letter from Joseph C. White, Revere AE Capital Fund, Inc. ("Revere Fund letter"), to John Wheeler, Secretary, SEC, (March 20, 1985); letter from Joseph and Marion Oravec, to John Wheeler, Secretary, SEC (March 22, 1985); letter from Alan R. Silberman, President, Quantum Pharmics, Ltd., to John Wheeler, Secretary, SEC (March 22, 1985) ("Pharmics letter").

[11] Letter from John E. Herzog, President, Herzog, Heine Geduld, to John Wheeler, Secretary, SEC (March 11, 1985) ("Herzog letter"); letter from Frederic J. Reif, Vice President, Operations Division, A.G. Edwards & Sons, Inc., to John Wheeler, Secretary, SEC (March 22, 1985) ("A.G. Edwards letter"); letter from Norman J. Wechsler, President, Wechsler & Krumholz, Inc., to John Wheeler, Secretary, SEC (March 22, 1985); letter from Glenn E. Anderson, Chairman, Carolina Securities Corporation, to John Wheeler, Secretary, SEC (March 27, 1985) ("Carolina Securities letter"); letter from Joseph R. Hardiman, Alex. Brown & Sons, Inc., to John Wheeler, Secretary, SEC (March 28, 1985); letter from Kathy Miller, Treasurer, Charter Investment Group, Inc., to John Wheeler, Secretary, SEC (April 10, 1985) ("Charter letter"); letter from Samuel E. Hunter, Senior Vice President and Division Director, Securities Trading Division, Merrill Lynch Capital Markets, to John Wheeler, Secretary, SEC (May 6, 1985) ("Merrill letter").

[12] Letters from Richard D. Greenfield, Greenfield, Chimicles & Lewis, to the Division of Market Regulation (February 5, 1985 and April 25, 1985) ("Greenfield letter"); letter from Milton H. Cohen, to John Wheeler, Secretary, SEC (February 8, 1985) ("Cohen letter"); letter from Sullivan & Cromwell, to John Wheeler, Secretary, SEC (March 29, 1985) ("Sullivan & Cromwell letter"); letter from Raymond L. Aronson, Committee on Securities & Exchanges, New York County Lawyers' Association, to John Wheeler, Secretary, SEC (April 4, 1985); letter from Arnold S. Jacobs, Chairman, Association of the Bar of the City of New York, to John Wheeler, Secretary, SEC (March 28, 1985); letter from Richard M. Phillips, Chairman, Committee on Federal Regulation of Securities and Robert C. Lewis, Chairman, Subcommittee on Broker-Dealer Matters, Section on Corporation, Banking, and Business Law, American Bar Association, to John Wheeler, Secretary, SEC (May 1, 1985); letter from Richard R. Howe, Chairman, Committee on Securities Regulation, New York State Bar Association, to John Wheeler, Secretary, SEC (May 28, 1985).

[13] Letter from Richard O. Scribner, Executive Vice President, Legal and Regulatory Affairs, Amex, to John Wheeler, Secretary, SEC (March 28, 1985) ("Amex letter"); letter from J. Craig Long, Vice-President-Legal and Secretary, Midwest, to John Wheeler, Secretary, SEC (July 9, 1985) ("Midwest letter").

[14] Letter from J. Patrick Campbell, Chairman, OTC Trading Committee, and William R. Harman, Chairman, Federal Regulation Committee, SIA, to John Wheeler, Secretary, SEC (April 26, 1985) ("SIA letter").

[15] Letter from Gordon S. Macklin, President, NASD, to John Wheeler, Secretary, SEC (May 24, 1985) ("NASD letter").

[16] Herzog, letter, *supra* note 11. A.G. Edwards letter, *supra* note 11. Alex Brown letter, *supra* note 11.

price and commission charges on confirmations on a consistent basis—regardless of whether the trade was executed in the OTC market or on an exchange—will have a beneficial impact on competition.[17]

Others indicated that the number of instances of abuse of customers (e.g., undisclosed excessive mark-ups), or the potential for such abuse, would be greatly reduced by the increased disclosure, which would "alert the investor to any abuse or suggest the benefit of shopping around with other brokers."[18] One commentator who urged adoption of the amendment reported that he had observed numerous instances of customers misled by brokers who had indicated that "net" transactions were commission-free, and stated that customers often have no idea as to what commission or mark-up has been factored into the net price, nor realize the incentives brokers have in promoting and recommending certain securities.[19]

Some commentators advocated adoption of the amendment to achieve consistency in the reporting and confirming of OTC transactions, and to obtain greater comparability of quotations and transaction reports in the exchange and OTC markets.[20] Others suggested that the amendment would act to reduce the bid-ask spread, increase efficiency in the OTC market,[21] and benefit the public by making trading in the OTC market a fairer and more efficient process.[22] One large integrated firm stated that the amendment "would enable customers better to evaluate transaction costs and execution quality, would provide certain regulatory benefits, and, limited to reported securities, would not impose significant incremental costs on broker-dealers."[23]

Commentators opposing adoption of the amendment raised several arguments. First, they suggested that the additional disclosure would create confusion and mislead customers.[24] While some other commentators agreed that customers would benefit by the ability to better monitor execution costs, they concluded that customers would fail to understand the reason for a high mark-up printed on the confirmation.[25] This would in turn cause misunderstandings between customers and brokers,[26] with the latter being "open to criticism by the client, suspicion and possibly loss of the account to a competitor."[27] Commentators also argued that because of the "flexibility" and "subjective considerations" in last sale reporting under NASD guidelines, customers would not always receive useful information from which to evaluate execution quality.[28]

Several commentators, including the NASD, questioned whether the amendment would be beneficial as applied to transactions with institutional customers. In their view, because many institutions have ready access to real-time quotation and last sale information and enjoy a strong bargaining position, disclosure of the information required by the amendment would provide them little benefit or protection.

Some commentators stated that the language of the proposed amendment required clarification.[29] They pointed out that the amendment as drafted only called for disclosure of the "mark-up, mark-down, or similar remuneration," while the discussion in the Release made clear that disclosure of the trade price would be required as well. It was suggested that the language of the rule be revised to indicate specifically that the rule required disclosing the reported trade price and the mark-up or mark-down, together with the presently disclosed net price. In addition, because the proposed rule amendment did not define "mark-up," some felt the words could be misconstrued as meaning the entire difference between the broker-dealer's acquisition cost of the security and the price to the customer.[30]

The Commission requested in the Release that commentators address the issue of the potential costs of the proposed amendment. Although a number of comments discussed this issue, none provided any numerical data estimating the costs of compliance for broker-dealers. A number of commentators favoring adoption of the amendment either questioned whether the amendment would result in significant costs to broker-dealers or believed that any costs could be minimized or eliminated.[31] These commentators doubted that reporting trade prices and mark-ups would impose much operational burden on broker-dealers because the amendment would apply only to reported securities and the information is already computed internally and made available to the registered representative.[32] They further argued that the value of the amendment would outweigh any additional burden that might result for brokerage firms. Merrill Lynch, which has voluntarily disclosed mark-ups in principal transactions in the over-the-counter market since 1968, stated that disclosure of this information had been beneficial to its customers without being unduly burdensome to the firm.[33]

Comentators opposing the amendment argued that the amendment would place an additional burden on broker-dealers by consuming more time in providing the additional information required by the amendment. Two broker-dealers noted the additional responsibility the amendment would place on personnel who already must capture and enter quantity, description, account number, and price data,[34] at least for smaller broker-dealers who do not have internal automated execution and confirmation systems.[35] The NASD concluded, however, that if the proposal is adopted an exemption for small broker-dealers who do a limited number of principal trades is not warrented "because competitive considerations require that

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[17] Midwest letter, *supra*, note 13.

[18] Revere Fund letter, *supra* note 10.

[19] Greenfield letter, *supra* note 12.

[20] *See, e.g.*, Cohen letter, *supra* note 12 at 12; Amex letter, *supra* note 13.

[21] Revere Fund letter, *supra* note 10.

[22] Pharmics letter, *supra* note 10.

[23] Merrill letter, *supra* note 11.

[24] Commentators expressed concern that a customer would conclude, inappropriately, that he was better off in a trade with a low mark-up, compared to another trade with a higher mark-up and a slightly better execution price. *See, e.g.*, Alex. Brown letter, *supra* note 11.

[25] For example, some commentators noted that higher mark-ups were warranted for "difficult" trades than routine ones, but that customers would mistakenly interpret such higher mark-ups as evidence of over-reaching by their broker. *Id.*

[26] Alex Brown letter, supra note 11.

[27] Herzog letter, *supra* note 11.

[28] The ABA offered the following example: The trader's inside spread for a stock is 10 bid and 10¼ ask. Because the trader has a sizeable inventory of this stock which he wants to reduce, he gives his retail broker a price of 10; ¼ point below the lowest ask price of any other market maker. The ABA stated that if the retail broker-dealer added a ⅜ point mark-up "the customer's confirmation would show execution at 10 and a relatively high mark-up of ⅜. Since [the confirmation] would not inform the customer of the inside spread . . . at the time the transaction was executed, the confirmation would not inform the customer that he received a good price in relation to the market or that the retail broker's ⅜ mark-up, set in contemplation of the good price from the trader, could have been less without the very favorable wholesale price."

[29] *See, e.g.*, Merrill, SIA letters, *supra* notes 11 and 14.

[30] *See, e.g.*, Charter letter, *supra* note 11.

[31] *See, e.g.*, Greenfield, Revere Fund, Merrill, and Midwest *supra*.

[32] *See, e.g.*, Greenfield letter, *supra* note 12.

[33] Merrill letter, *supra* note 11.

[34] A.G. Edwards argued that even for firms that have automated systems, the amendment could impose operational burdens where those firms' confirmation and transaction reporting functions are not integrated. Thus, costs would be imposed by having to duplicate reporting information on confirmation systems, or from integrating trade reporting and confirmation systems. A.G. Edwards letter, *supra* note 11.

[35] Alex. Brown letter, *supra* note 11.

similar transactions be reported in a similar fashion by all broker-dealers."

Some commentators said that the Commission had effectively avoided placing any significant burden on broker-dealers by limiting the proposal to securities for which last sale information is already being reported to the consolidated system, e.g., OTC/NMS Securities.[36] Moreover, the NASD stated that the actual costs of complying with the Rule amendment would depend a great deal on its effective date. Thus, the NASD and one other broker-dealer requested a deferred effective date and phase-in period for the amendments so that with sufficient time existing supplies of confirmation forms could be exhausted and new ones re-ordered, thereby making these costs negligible.[37]

III. Discussion

After careful consideration the Commission has determined to adopt the proposed amendment to Rule 10b–10 with certain non-substantive revisions to provide definitional clarity.

A. Benefits of the Amendment

The Commission believes that disclosure of the reported trade price and mark-up on customer confirmations provides significant tangible benefits to investors and will encourage market efficiency.

1. Ability to Evaluate Transaction Costs

First, the Comission has concluded that disclosure of the trade price and mark-up will provide investors with important information regarding the investor's transaction costs. This disclosure will allow an investor over a period of time to assess the charges of his broker-Dealer in principal transactions and may permit comparison of those costs to similar charges of other firms. Investors currently can make these evaluations and comparisons in agency and riskless principal trades, where commissions, mark-ups, or commission equivalents must be disclosed. An investor's knowledge of his transaction costs is equally as important in other principal transactions; an investor's ability to negotiate or obtain competitive transaction charges is limited, absent this knowledge.

Disclosure of the trade price and mark-up may also discourage excessive charges by broker-dealers by permitting customers to police the handling of their accounts.[38] By simply disclosing to investors their transaction costs, the amendment will enable investors to take a larger role in protecting against unreasonable mark-ups, instead of relying solely on Commission or self-regulatory organization inspection and enforcement efforts to control mark-ups.[39] Providing this information will place investors in a more informed bargaining position with broker-dealers in principal transactions, a position which customers have enjoyed since at least 1937 in agency transactions. Customers who feel they are not being charged reasonable mark-ups will be able to shift their brokerage business immediately to broker-Dealers willing to charge more competive mark-ups. In this way, the market will be able to operate more fairly and efficiently.

2. Ability to Evaluate Execution Quality

In addition to increasing the investor's ability to evaluate his transaction costs, disclosure of trade prices and mark-ups on customer confirmations would afford an additioinal major benefit by enhancing the ability of the investor to monitor execution quality. Disclosure of trade prices and mark-ups on customer confirmations will inform the customer for the first time of the actual price at which his trade occurred. The customer then can compare this trade price to the best available price for the security being purchased or sold, either by monitoring a real time display, obtaining quotes for the security from his registered representative at the time he enters the order, or by comparing this price to the high and low prices for the day reported in newspaper stock tables. At present, an investor cannot ascertain his trade price from the single net price disclosed on his confirmation or readily determine whether the execution was favorable.

While achieving the most favorable net price is the rational goal of investors, disclosure of the separate components of this price allows the investor to assess each component of an execution and determine where improvement can be achieved. Thus, with disclosure of trade prices and resulting mark-ups, the investor can seek to obtain both the best trade price *and* a competitive mark-up.

3. Trade Reporting Benefits

The Commission also believes that the amendments will have a beneficial effect on trade reporting, especially in the OTC market. For the first time, OTC market makers will be required to disclose to customers the price at which the trade was reported; if this reported price differs from the trade price understood by the customer, customers can be expected to bring this disparity to the attention of the broker-dealer, and where necessary, regulatory authorities. Thus, customer monitoring will provide a safeguard strengthening the integrity of the trade reporting process.[40]

The Commission recognizes that some comments have suggested that the NASD last sale reporting requirements[41] do not provide clear rules for the determination of reported trade prices, and as a result, trade prices and resulting mark-ups or mark-downs are largely hypothetical,[42] and of little use in evaluating transaction costs and execution quality. As an initial matter, it should be noted that the amendment directly addresses the issue of the lack of reliability of OTC trade reporting by causing broker-dealers to take greater care in determining a trade report price to avoid questions from their customers about an unrepresentative trade price or an unexpectedly large resulting mark-up shown on the customer's confirmation.

Moreover, the Commission believes that the NASD last sale reporting rules do not grant reporting parties the degree of flexibility that some commentators have suggested. The NASD reporting rules clearly state that where principal transactions include a mark-up, mark-down, or service charge, the price reported shall exclude that mark-up, mark-down or service charge.[43] Thus, where an integrated firm has an established mark-up schedule that the firm's OTC trading desk routinely adds to the trade price to obtain the net price to the customer, it is clear that the price

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[36] *See, e.g.*, Revere Fund, and Merrill Letters, *supra* notes 10 and 11.

[37] *See* Carolina Securities letter, *supra* note 11.

[38] Confirmation disclosure of mark-ups obviously will deter the possibility for fraud or confusion by registered representatives who might suggest to their customers that principal transactions are "commission-free," thereby implying that transaction costs have not been factored into the price of the trade to the customer.

[39] Although the Commission recognizes that the enforcement of the NASD's mark-up policy has been valuable in reducing incidents of excessive mark-ups, observers have long noted that improving investor disclosures concerning these mark-ups would be an important adjunct to self-regulatory organization activity. *See The Special Study of the Securities Markets of the Securities and Exchange Commission*, H.R. Doc. No. 95, Pt. 2, 88th Cong., 1st Sess., 673 (1963).

[40] In this connection, the Midwest argued in its comment that because "NASD rules do not provide any enforceable objective standard for determining the reported price * * * the best method of providing an independent check against the possibility of abuse in this area is the customer himself." Midwest letter, *supra* note 13.

[41] *See* Article IX of Schedule D of the NASD By-Laws, section 2(d)(3).

[42] *See generally*, Sullivan & Cromwell letter, *supra* note 12.

[43] NASD By-Laws Schedule D, Article IX, section (2)(d)(3).

reported must be the net price minus the added mark-up.[44] Furthermore, in those circumstances composing the majority of trades where there is an objectively determinable trade price, the NASD rule anticipates that that trade price will be reported.[45] Accordingly, the NASD rules stating that the reported price must be "reasonably related" to the market and providing guidance on factors bearing on this price only come into play in those relatively few trades where there is no clear benchmark which dictates the appropriate reported price.

The Commission is of the view that present rules governing last sale reporting in the OTC market are sufficiently reliable to ensure that disclosure of the trade price and resulting mark-up to customers is meaningful. From these items the customer can evaluate the proximity of the reported trade price to the prevailing market price, and the portion of the net price disclosed as the mark-up. Moreover, by requiring that the trade price disclosed on a customer confirmation be the same as that already determined and disseminated for real-time public reporting purposes, the rule avoids the potential arbitrariness of calculating a trade price for confirmation purposes alone. For these reasons, the Commission finds that the disclosure provided by the amendment is of substantial value.

B. Minimal Costs

The Commission specifically requested that commentators address the issue of costs with regard to the disclosure required by the amendment. Based on these comments and its own consideration, the Commission has determined that the amendment would impose relatively few costs on broker-dealers, and these costs would be substantially outweighed by the benefits of the amendment.

None of the comments received presented numerical cost data. Although several firms said that the amendment would result in direct costs of recording the trade price, it appears that, given the existing trade reporting, bookkeeping, and confirmation obligations of broker-dealers, disclosing the additional information the amendment requires is relatively simple. The Commission understands that traders at many firms already record the reported trade price for bookkeeping and compliance purposes, and this information can be provided to customers on confirmations by an adjustment of existing computer programs.[46] In addition, the increased use of internal computerized order tracking and execution systems simplify these processes even further. The Commission finds it significant that Merrill Lynch commented that the proposed disclosure requirement "would not impose significant incremental costs on broker-dealers."[47]

Smaller firms that do not have automated systems and have employees manually enter and report last sale price data would at most be burdened by the incremental task of transferring that same data onto the confirmation form. This function would not differ from the existing task of identifying a commission on each agency confirmation.

One regional broker-dealer[48] commented that "the simplest procedure would be to handle principle transactions in the same way that we handle agency transactions by changing the heading on our confirmations which now reads "Commission" to read "Commission or Markup." This firm also suggested that a period of time be allowed to exhaust existing supplies of printed confirmation forms. Furthermore, comments received from one firm and the NASD indicate that transition costs can be minimized by deferring the effective date of the amendment. Accordingly, the Commission has determined to defer the effective date of the amendment for a period of 180 days.

C. Institutional Orders

The NASD and some other commentators argued that, because institutional investors generally conduct business with OTC market makers on a "net" basis, disclosure of the reported trade price and mark-up would not be of significant value to these institutional customers. Thus, these commentators suggested that transactions for institutions should be exempted from the amendment's provisions.

The Commission agrees with the commentators who stated that institutional investors generally deal with OTC market makers on a net basis without charging a separate mark-up; in these circumstances, the reported trade price should equal the net price, *i.e.*, the price the customer pays the broker. In such situations the amendment would help ensure, through institutional monitoring, that OTC institutional trades executed on a net basis are reported at the trade price. Furthermore, if, in the future, institutions increasingly begin to pay mark-ups on OTC transactions, the amendment will provide institutional customers benefits similar to those received by retail customers in monitoring transaction costs. In addition, institutional investors do pay mark-ups in listed securities trades executed by broker-dealers as principal. While institutions and money managers often have access to real time quotation information, they may be trading a number of stocks simultaneously and may not be able to monitor the quality of a particular execution without the aid of additional confirmation disclosure. Accordingly, the Commission believes there are significant benefits, and no additional costs, from including institutional OTC transactions within the scope of the amendment.[49]

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[44] Some commentators raised questions concerning the relation between mark-ups and internal sales credits under the amendment. Specifically, it was claimed that the traders will at times offer a larger sales credit to retail salespersons, providing an extra incentive to sell securities the firm wishes to liquidate from its inventory, by lowering the trade price while keeping the net price to the customer the same. Commentators suggested that if these prices were disclosed as the trade price, customers would be confused by the appearance of higher mark-ups without understanding that they received a superior execution price in relation to the market.

The Commission believes that this problem is overstated. If in these circumstances the firm wishes to allocate an extra sales credit to the salesperson without reducing its interdealer price, the firm can use internal systems to credit the salesperson without reducing the reported trade price and hence increasing the mark-up—the difference between the prevailing market price and the price to the customer—charged by the firm and displayed on the confirmation.

[45] For instance, in small trades executed routinely at the inside NASDAQ quote, the appropriate reported price would be the NASDAQ quote price. Given that the NASD's automated Small Order Execution System ("SOES") provides automated executions in all NASDAQ stocks at the quote for orders up to 500 shares (with a proposal to increase that ceiling to 1,000 shares), and other automated execution systems already provide quote executions up to 1,000 shares, there is little question that at least the inside NASDAQ quote price would be the objectively determinable market price for OTC orders of this size. Moreover, for OTC institutional orders executed on a net basis without any retail mark-up, the appropriate reported price for these trades is obvious.

[46] In addition, standardized confirmation forms currently used by many integrated broker-dealers already provide column space for printing the commission charged in agency transactions, and would require little alteration to also provide mark-up information.

[47] See Merrill letter, *supra* note 11, at page 2.

[48] See Carolina Securities letter, *supra* note 11.

[49] Indeed, it would appear that greater costs would be imposed on brokers by having to earmark institutional transactions for exclusion from the disclosure requirement than simply providing confirmation disclosures across the board. In the absence of comments suggesting any harms from providing confirmation disclosure of mark-ups to institutions, the Commission believes that the actual benefits provided to institutions in instances where mark-ups are currently charged, coupled with the potential benefits provided should that practice expand, warrant extending the rule to cover institutional transactions.

Moreover, the amendment also requires confirmation disclosure of the reported trade price and mark-up in principal block transactions in exchange listed securities, transactions in which institutions generally do pay mark-ups. The Commission believes that the disclosure provided by the amendment would allow customers engaging in principal block trades in listed securities a further means of monitoring their mark-ups, and would help to prevent the practice known as "tape dancing."[50] Tape dancing occurs, for example, when a broker-dealer dealing with an institutional customer on a net basis charges an unusually high mark-up equivalent or mark-up in a block trade, and reflects that mark-up or a portion of it in the sale price reported to the consolidated tape to make that reported price higher than the previous sale price. The Commission believes that artificially inflating a block's reported price in this manner to create an "uptick" violates the antifraud and possibly other provisions of the federal securities laws.[51] In addition, the New York Stock Exchange ("NYSE") has indicated that tape dancing violates its reporting rules. Providing institutional customers and money managers or advisors (who have fiduciary obligations to their institutional investors) the opportunity to observe on confirmations the reported price in block trades in listed stocks, should help reduce tape dancing concerns.

D. Revisions to the Proposed Amendment

The Commission received a number of comments indicating that the proposed language of the amendment was inadequate to achieve the goals asserted in the Release. Specifically, by requiring disclosure of the "mark-up, mark-down, or other remuneration", the amendment, it was argued, did not expressly require disclosure of the reported trade price. The Commission generally is in agreement with these comments and accordingly is modifying the text of the amendment in the Release to require disclosure of "the trade price reported," "the price to the customer in the transaction" and the "difference, if any, between this reported trade price and the price to the customer in the transaction."[52] The Commission believes that this modified language will provide disclosure to the customer of the "wholesale" price (reported trade price), the "retail" price (net price to the customer), and the commission equivalent or mark-up, which is the difference between the two.[53]

IV. Conclusion

Confirmation disclosure of trade prices and mark-ups for principal transactions in reported securities offers substantial benefits to public investors. In addition, such disclosure does not appear to present significant calculation difficulties or significant costs to broker-dealers. Because market makers presently must determine and report a last sale price for each trade, that same price can be used to determine and report a trade price on the customer confirmation. Consequently, the Commission has determined to adopt the amendments requiring disclosure on customer confirmations of the reported trade price, the net price, and the difference, if any. This disclosure approach is predicated on the belief that, through such disclosure, customers will be better able to monitor the quality and cost of their securities transactions. It will also provide for equivalent disclosure to all customers effecting transactions in reported securities, whether executed on an agency or principal basis.

V. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a)(2) of the Act[54] requires the Commission, in adopting rules under the Act, to consider the anti-competitive effects of such rules, if any, and to balance any anti-competitive impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has examined the amendment to Rule 10b–10 in light of the standards set forth in section 23(a) and concludes that adoption of the amendment will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Indeed, as discussed above, the Commission believes the amendments will further competition by providing investors important additional information to evaluate and compare the transaction costs imposed by their broker and the overall quality of the executions they receive. The Commission believes that the amendment will substantially benefit the markets for reported securities, and will further the development of aspects of the NMS, in accordance with the Act.

The Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[55] regarding the amendment to the Rule. The FRFA indicates that the amendment requires broker-dealers to disclose any mark-up, mark-down, or similar remuneration on customer confirmations for principal transactions in reported securities. The FRFA states that the proposed new disclosure does not entail significant increases in costs for small broker-dealers, and that any minimal costs resulting from the new disclosure may be offset by benefits to market makers, investors, and the securities markets.

The Commission in the Release and Initial Regulatory Flexibility Analysis requested comment on exempting certain small broker-dealers who transact a limited number of trades from the requirements of the amendment. The NASD has concluded that such an exemption is not warranted because competitive considerations require that similar transactions be reported in a similar fashion by all broker-dealers. The Commission agrees with the NASD. Further, no smaller firms suggested that the amendments would place a disproportionate burden on them. Accordingly, the Commission has determined not to create an exemption for small broker-dealers which transact a limited number of principal trades from the requirements of the amendment.

A copy of the FRFA may be obtained by contacting Leland H. Goss, (202) 272–2827, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

List of Subjects in 17 CFR Part 240

Reporting and record keeping requirements, Securities.

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[50] *See Big Block Trading Pits Institutions, Dealers in Fast Tough Game*, Wall Street Journal, December 20, 1984, at 1.

[51] A similar scenario involving mark-downs could also be utilized by a trader to create an artificial decline in the reported price of a security.

[52] *See infra* page 10.

[53] The Commission notes that the definition of "mark-up" as used in the amendment is not intended to control traditional determinations of whether a broker-dealer has charged an illegally excessive mark-up to a customer. Generally, determining mark-ups for compliance with the NASD's mark-up policy or the antifraud provisions of the federal securities laws involves comparing the price charged to the customer with the prevailing market price at the time of the transaction, as determined in a variety of ways. *See, e.g., In re*, Alstead, Dempsey & Company, Incorporated, Securities Exchange Act Release No. 20825 (April 15, 1984).

[54] 15 U.S.C. 78w(a)(2).

[55] 5 U.S.C. 604.

VI. Statutory Basis and Text of Amendment

The Commission proposes to amend Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citation:

Authority: Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w.* * * section 240.10b–10 is also authorized under sections 2, 3, 9, 10, 11, 11A, 15, 17, 23, 48 Stat. 891, 89 Stat. 97, 121, 137, 158, (15 U.S.C. 78b, 78c, 78i, 78j, 78k, 78k–1, 78o, 78q) * * *

2. § 240.10b–10 is amended by revising paragraph (a)(8)(i) and adding (e) (7) and (8) as follows:

§ 240.10b–10 Confirmation of transactions.

(a) * * *

(8) If he is acting as principal for his own account (i)(A). If he is not a market maker in that security and, if, after having received an order to buy from such customer, he purchased the security from another person to offset a contemporaneous sale to such customer or, after having received an order to sell from such customer, he sold the security to another person to offset a contemporaneous purchase from such a customer, the amount of any mark-up, mark-down, or similar remuneration received in an equity security; or

(B) In any other case of a transaction in a reported security, the trade price reported in accordance with an effective transaction reporting plan, the price to the customer in the transaction, and the difference, if any, between the reported trade price and the price to the customer.

* * * * *

(e) * * *

(7) "Reported security" shall have the meaning provided in Rule 11Aa3–1 under the Act.

(8) "Effective transaction reporting plan" shall have the meaning provided in Rule 11Aa3–1 under the Act.

* * * * *

By the Commission.

Dated: September 11, 1985.

John Wheeler,

Secretary.

[FR. Doc. 85–22247 Filed 9–16–85; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Part 270

[Release No. 14711; Filed No. S7–25–85]

Custody of Investment Company Assets Outside the United States

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of rule amendments.

SUMMARY: The Securities and Exchange Commission is adopting amendments to clarify a rule that gives investment companies exemptive relief to maintain their assets outside the United States under certain circumstances.

EFFECTIVE DATE: October 17, 1985.

FOR FURTHER INFORMATION CONTACT: Jack W. Murphy, Staff Attorney, or Elizabeth K. Norsworthy, Chief, Office of Regulatory Policy (202) 272–2048, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

After the effective date, questions should be directed to the Office of Chief Counsel, (202) 272–2030, Division of Investment Management, Securities & Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to rule 17f–5 [17 CFR 270.17f–5] under section 17(f) [15 U.S.C. 80a–17(f)] of the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*]. Rule 17f–5 makes exemptive relief from section 17(f) available to registered management investment companies to maintain their assets outside the United States under certain circumstances. The amendments clarify the rule with respect to: (i) The extent to which an investment company must monitor the eligibility of its foreign custodians; and (ii) the length of time which an investment company may have to make alternative arrangements after the company's board of directors has determined that an existing arrangement no longer complies with the rule.

Background

Rule 17f–5 was adopted in September, 1984.[1] At that time, investment companies that had established foreign custody arrangements in reliance upon the exemptive orders granted to Chase Manhattan Bank ("Chase") [2] and the Bank of New York ("BONY"),[3] or upon the staff's no-action position,[4] were given until March 1, 1985 to bring those arrangements into compliance with the conditions of the rule or of the orders as modified.[5] The Commission twice extended the date by which investment companies were required to comply with rule 17f–5 or the amended orders. The first extension set the date as June 1, 1985.[6] The second and final extension designated September 1, 1985 as the compliance date.[7]

In addition to requests for additional time to comply with rule 17f–5, the Commission staff received several questions from industry representatives with regard to the meaning of certain requirements contained in the rule. In order to resolve the issues raised by these inquiries, the Commission proposed amendments to clarify the rule.[8]

Discussion

Rule 17f–5 gives registered management investment companies exemptive relief to place and maintain their assets in the care of eligible foreign custodians under certain circumstances. The rule defines eligible foreign custodians to include foreign banking institutions and trust companies that have at least $200 million in shareholders' equity (U.S. $ or the equivalent of U.S. $). Under the rule, a majority-owned foreign subsidiary of a

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[1] *See* Investment Company Act Release No. 14132 (September 7, 1984).

[2] *See* Investment Company Act Release No. 12053 (November 20, 1981).

[3] *See* Investment Company Act Release No. 12658 (September 14, 1982) [49 FR 36080].

[4] The staff had taken the position that enforcement action would not be recommended with regard to investment company foreign custody arrangements that conformed to the conditions contained in the Chase order and in rule 17f–5 as initially proposed. *See* response of the Division of Investment Management to the request of the Mitsubishi Bank of California [pub. avail. September 1, 1982]; *See also* response of the Division of Investment Management to the request of State Street Bank and Trust Company (pub. avail. January 16, 1984).

[5] *See* Release 14132, cited *supra* note 1. Notice of the Commission's intention to modify the Chase and BONY orders to bring those orders into conformance with rule 17f–5 was given in Investment Company Act Release Nos. 14133 and 14134 (September 7, 1984) [49 FR 36183 and 36182]. The orders were amended in Investment Company Act Release Nos. 14183 and 14184 (October 9, 1984).

[6] *See* Investment Company Act Release No. 14347 (February 4, 1985) [50 FR 5234].

[7] *See* Investment Company Act Release No. 14556 (May 31, 1985) [50 FR 24506]. The Division of Investment Management has taken the position that this compliance date applies to foreign custody arrangements made after the rule's adoption as well as to foreign custody arrangements existing at the time of the rule's adoption. *See* letter from the Division of Investment Management to IDS International Fund, Inc. (pub. avail. May 10, 1985).

[8] *See* Investment Company Act Release No. 14548 (May 31, 1985) [50 FR 24540].

qualified [9] U.S. bank or bank-holding company is considered an eligible foreign custodian if it has at least $100 million in shareholders' equity (U.S. $ or the equivalent of U.S. $). An investment company may place and maintain assets in the care of eligible foreign custodians so long as a majority of the company's board of directors has approved each custody arrangement as consistent with the best interests of the company and its shareholders and so long as the directors re-evaluate those arrangements at least once a year.[10]

The proposed amendments to rule 17f–5 were intended to clarify the rule in several respects. First, the amendments would relieve investment company directors of the obligation of monitoring the eligibility of their foreign custodians. Second, the amendments would give the directors a ninety-day grace period in which to make alternative custodial arrangements where necessary. Finally, the amendments would require the eligibility of foreign custodians under the rule's shareholders' equity requirements to be determined in accordance with U.S. generally accepted accounting principles ("GAAP").

In response to the proposed amendments, the Commission received five comment letters. One of the commenters approved of the proposal in its entirety, while the other commentators agreed with certain aspects of the proposal and disagreed with other aspects. As discussed below, on the basis of the comments received, the Commission is adopting two of the proposed amendments and deferring action on the third.[11]

The proposal stated that, to be considered an eligible custodian under the rule, a foreign custodian would have to meet the rule's minimum shareholders' equity requirements as of the close of the fiscal year most recently completed prior to the directors' evaluation of that custodian. Some commentators objected to the language of the proposed amendments, which could be read to mean that a custodian would become ineligible as of the close of its fiscal year, even though the fund's directors did not evaluate the arrangement until a later date. The amendments have therefore been reworded to make clear that a foreign custodian would become ineligible only after the board of directors of the investment company has made a determination that the custodian no longer satisfies the rule's requirements. This determination is to be made at the time that the custodial arrangements are periodically reviewed by the board, and should be based upon information current as of the close of the institution's most recently completed fiscal year. The amendments, as modified, should give the directors sufficient flexibility to schedule their periodic review of the arrangements at a time when the necessary financial information regarding the custodian may be obtained.[12]

The Commission is also adopting in final form those provisions of the proposed amendments that would allow an investment company a period of time in which to make alternative custodial arrangements after the board of directors finds that a foreign custodian is no longer eligible under the rule or that continuance of the custody arrangement is no longer in the best interests of the company and its shareholders for other reasons. In response to the suggestions of the commentors, the maximum grace period has been expanded from the ninety days originally proposed to one hundred and eighty days, in order to ensure that investment companies will have sufficient time in which to negotiate alternative arrangements. The proposed amendments have also been modified to make clear that the grace period runs from the date of the director determination.

As noted above, the proposed amendments would have amended the rule to state explicitly that the shareholders' equity of foreign banks should be calculated in accordance with U.S. GAAP for purposes of determining whether those foreign banks would be considered eligible foreign custodians under the rule. This proposal, which was issued in response to inquiries from several investment companies and their U.S. bank representatives, was intended to provide a uniform, objective method of calculating compliance with the rule's shareholders' equity requirements.

Three of the commentators on the proposed amendments objected to this aspect of the proposal. These commentators felt that such a requirement would impose an undue burden upon investment companies because the compliance costs would be excessive. In light of these cost estimates, the Commission believes that final action on the U.S. GAAP proposal should be postponed until the issue can be more closely examined.

Regulatory Flexibility Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission previously certified that the proposed amendments to rule 17f–5 will not have a significant economic impact on a substantial number of small entities. No comments were received on that certification.

List of Subjects in 17 CFR Part 270

Investment companies, reporting and recordkeeping requirements, securities.

Text of Rule Amendments

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended by revising § 270.17f–5 to read as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 is amended by adding the following citation:

Authority: Secs. 38, 40, 54 Stat. 841, 842, 15 U.S.C. 80a–37, * * * Section 270.17f–5 also issued under sec. 6(c) (15 U.S.C. 80a–6(c)).

2. Section 270.17f–5 is amended by adding paragraph (b)(4) and revising paragraphs (c)(2)(i) and (c)(2)(ii) as follows:

§ 270.17f–5 Custody of investment company assets outside the United States.

* * * * *

(b) * * *

(4) Where a majority of directors has determined that a foreign custodian may no longer be considered eligible under the rule or that continuance of the arrangement would not otherwise be consistent with the best interests of the company and its shareholders, the company must withdraw its assets from the care of that custodian as soon as reasonably practicable, and in any event within 180 days of the date when the directors made the determination.

(c) * * *

(2) * * *

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[9] The term "Qualified U.S. Bank" is defined in rule 17f–5(c)(3) and generally tracks the definition of "bank" contained in section 2(a)(5) of the Act [15 U.S.C. 80a–2(a)(5)] and the qualifications prescribed in paragraph (1) of section 26(a) of the Act [15 U.S.C. 80a–26(a)] for the trustees of unit investment trusts.

[10] The Chase and BONY exemptive orders were amended to require investment companies relying on the orders to conform to these requirements. *See* Investment Company Act Release Nos. 14183 and 14184 cited *supra*.

[11] In adopting the amendments, the Commission does not propose to modify the Chase and BONY orders again to reflect the amendments. However, the clarifications contained in the amendments are equally applicable to the rule requirements as incorporated in the amended orders.

[12] As stated in the proposed release, the directors may rely upon information obtained from the foreign custodian's annual report or chief financial officer.

(i) A banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated as such by that country's government or an agency thereof and that has shareholders' equity in excess of $200,000,000 (U.S. $ or the equivalent of U.S. $) as of the close of its fiscal year most recently completed prior to the date when the directors approve the written contract as provided in paragraph (a)(1)(iii) of this section, and thereafter, as of the close of its fiscal year most recently completed prior to the date when the directors review and approve the continuance of those arrangements as provided in paragraph (a)(3) of this section; or

(ii) A majority-owned direct or indirect subsidiary of a qualified U.S. bank or bank-holding company that is incorporated or organized under the laws of a country other than the United States and that has shareholders' equity in excess of $100,000,000 (U.S. $ or the equivalent of U.S. $) as of the close of its fiscal year most recently completed prior to the date when the directors approve the written contract as provided in paragraph (a)(1)(iii) of this section, and thereafter, as of the close of its fiscal year most recently completed prior to the date when the directors review the continuance of those arrangements as provided in paragraph (a)(3) of this section; or

* * * * *

By the Commission.

Dated: September 11, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-22179 Filed 9-16-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Disapproval of Permanent Program Amendment From the Commonwealth of Kentucky Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the disapproval of a proposed amendment to the Kentucky Permanent Regulatory Program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On May 26, 1982, Kentucky submitted a proposed amendment to its approved program to modify its requirements concerning regulation of operations involving the crushing, screening or loading of coal. After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director of OSM has determined that the amendment does not meet the requirements of SMCRA and the Federal regulations. Accordingly, the Director is disapproving the amendment. The Federal rules at 30 CFR Part 917, which codify decisions concerning the Kentucky program, are being amended to implement this action. Under a separate notice appearing in today's Federal Register, the Director is proposing to preempt and supersede the changes to the Kentucky statute.

EFFECTIVE DATE: September 17, 1985.

ADDRESSES: Copies of the Kentucky program and the Administrative Record for the Kentucky program are available for public inspection and copying during business hours at:

Office of Surface Mining Reclamation and Enforcement, Room 5124, 1100 L Street, NW, Washington, DC 20240

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504

Bureau of Surface Mining, Reclamation and Enforcement, Capitol Plaza Tower, Third Floor, Frankfort, Kentucky 40601

FOR FURTHER INFORMATION CONTACT: W.H. Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504. Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSM. On April 13, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 Federal Register (47 FR 21404-21435).

Information pertinent to the general background on the Kentucky State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982 Federal Register notice.

Proposed Amendment

By a transmittal dated May 26, 1982, Kentucky submitted to OSM pursuant to 30 CFR 732.17, an amendment to the Kentucky program to revise its requirements for regulation of operations involving the crushing, screening or loading of coal.

The amendment consisted of language in Senate Bill 218 adding paragraph 22 to the Kentucky Revised Statute (KRS) 350.060 1980 Acts Chapter 62, Section 5, to read: "All operations involving the crushing, screening, or loading of coal which do not separate the coal from its impurities, and which are not located at or near the mine site, shall be exempt from the requirements of this chapter." Kentucky also submitted on October 28, 1983, as part of its program amendment, Reclamation Advisory Memorandum (RAM) No. 33 and a legal opinion to clarify the definitions for coal processing operations and loading facilities, and to clarify which loading facilities were required to be permitted under the Kentucky program. The RAM had been in effect since April 27, 1982.

RAM No. 33 confines "coal processing operations" to those where coal "is subjected to chemical or physical processing *and separated from its impurities* (waste is generated)." All coal processing operations would be regulated regardless of location. RAM No. 33 defines "loading facilities" to be a collection of facilities, including associated support facilities and operations, at which coal is placed in carriers for the purpose of transporting it, and may include coal processing facilities that do *not* separate the coal from its impurities. Loading facilities at or near the mine site with which they are associated must be permitted.

Kentucky also submitted numerous other program changes which have since been acted upon by OSM. The decision to approve or disapprove the amendment concerning coal processing and loading facilities has been deferred by OSM for various reasons a number of times since Kentucky's May 1982 submission. The following is a chronology of events related to the amendment.

On May 26, 1982, Kentucky submitted various amendments to its program including the subject amendment (coal processing and loading facilities) contained in Senate Bill 218. OSM published a notice in the Federal Register on July 23, 1982, announcing receipt of the amendments and inviting public comment thereon (47 FR 31890).

The public comment period ended August 23, 1982. A public hearing was held August 12, 1982. On January 4, 1983, OSM published a **Federal Register** notice which deferred action on the pertinent paragraph of Senate Bill 218 (48 FR 245). On May 5, 1983, OSM published a **Federal Register** notice, effective June 6, 1983, amending the Federal rules concerning support facilities and coal preparation plants (48 FR 20392). On June 13, 1983, OSM reopened the public comment period on the subject Kentucky amendment to allow the public an opportunity to review and comment on the Kentucky amendment in light of the related Federal rule changes (48 FR 27101). On July 11, 1983, OSM reopened the comment period for an additional 15 days (48 FR 31668). On October 28, 1983, Kentucky submitted additional material in response to concerns raised by OSM on the amendment. The material consisted of a legal opinion and Reclamation Advisory Memorandum No. 33 (dated April 27, 1982). On November 30, 1983, OSM reopened the comment period for 30 days for consideration of the new material (48 FR 54080). On July 6, 1984, in a Round I decision in the suit entitled *In Re: Permanent Surface Mining Regulation Litigation II* (D.D.C. 1985), the U.S. District Court for the District of Columbia remanded the Federal rules at 30 CFR 700.5 and 701.5 pertaining to the definitions of a surface coal mining operation and coal processing and coal preparation plants. The court found that the Secretary has jurisdiction under SMCRA to regulate these offsite facilities including processing plants and remanded the pertinent definitions for reconsideration and correction. On October 3, 1984, OSM published a notice in the **Federal Register** which deferred action on the Kentucky amendment concerning coal processing and loading facilities until OSM could evaluate fully the impacts of the court's order (49 FR 39053).

On July 10, 1985, OSM published an interim final rule (effective September 9, 1985) amending certain Federal rules pertaining to coal preparation plants and other offsite facilities (50 FR 28186). The action was taken as a result of and in compliance with the District Court's July 6, 1984 ruling. The revised Federal rules: bring additional coal preparation plants and other surface coal mining operations under the permanent program regulations; allow persons operating facilities not previously subject to the Federal rules time to obtain a permit; and make certain performance standards immediately applicable to such operations.

In view of this interim final rule, the Director has decided to disapprove the Kentucky amendment, because it is inconsistent with the court decision and Federal rule.

II. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 that the proposed amendment concerning regulation of coal processing and loading facilities submitted on May 26, 1982, and the legal opinion (insofar as it relates to this amendment) and RAM No. 33 submitted on October 28, 1983, fail to meet the requirements of SMCRA and the Federal regulations.

The Director finds that the Kentucky amendment to add paragraph 22 to KRS 350.060, 1980 Acts Chapter 62, Section 5, is inconsistent with the SMCRA definition of "surface coal mining operations" at section 701(28), in that it exempts from regulation under the Act, "all operations involving the crushing, screening, or loading of coal which do not separate the coal from its impurities, and which are not located at or near the mine site." The U.S. District Court for the District of Columbia, in a Round I decision in the case entitled *In Re: Permanent Surface Mining Regulation Litigation II* (D.D.C. 1985), held that facilities which in any way leach, chemically process, or physically process coal should be regulated even when located away from a mine site and even if they do not separate the coal from its impurities.

The Director finds also that the Kentucky statutory amendment is less effective than the Federal interim final rules published July 10, 1985, 50 FR 28186, concerning the definition of "surface coal mining operations" at 30 CFR 700.5 and the definitions of "coal preparation" and "coal preparation plant" at 30 CFR 701.5. The revision to the definition of "surface coal mining operations" at 30 CFR 700.5 means that "leaching, chemical or physical processing" no longer would be limited by the phrase "in situ." Therefore, these operations will be regulated wherever they occur. The revisions to the definitions of "coal preparation" and "coal preparation plant" at 30 CFR 701.5 make it clear that facilities for chemical or physical processing and the cleaning, concentrating or other processing or preparation of coal, even if they do not separate coal from its impurities, are included in the definition of coal preparation plant, and are regulated under SMCRA and OSM regulations.

The Director finds that the Kentucky statutory revision would exclude some of these facilities from jurisdiction under Kentucky's program and, therefore, finds the amendment less effective than the Federal interim final rules at 30 CFR 700.5 and 701.5 which were published July 10, 1985 to become effective September 9, 1985 (50 FR 28186).

The Director finds that Kentucky's RAM No. 33, dated April 27, 1982, submitted to OSM on October 28, 1983, to further explain and clarify its statutory amendment, is less stringent than section 701(28) of SMCRA and less effective than 30 CFR 700.5 and 701.5, insofar as the RAM clarifies KRS 350.060(22) which the Director is disapproving. The RAM specifies that loading facilities "may include facilities for the physical processing of coal such as crushing, screening, sizing, or blending, which does not separate coal from its impurities." The RAM further says that loading facilities must be permitted under KRS Chapter 350 only if located at or near a coal mining operation or a coal processing operation with which it is associated. This conflicts with the Round I decision of the District Court in *In Re: Permanent Surface Mining Regulation Litigation II*, wherein the court held that facilities which in any way leach, chemically process or physically process coal should be regulated even when located away from a mine site and even if they do not separate the coal from its impurities. The RAM is also less effective than the Federal definitions for "surface coal mining operations" at 30 CFR 700.5 and for "coal preparation" and "coal preparation plant" at 30 CFR 701.5 published in an interim final rule on July 10, 1985 to reflect the Court's decision. This decision does not affect mere loading facilities that are not engaged in the physical processing of coal which are not located at or near the mine site.

Under a separate notice appearing in today's **Federal Register**, the Director is proposing to preempt and supersede KRS 350.060(22), since that amendment is currently in effect in Kentucky.

III. Public Comment

Public comments were received in response to the July 23, 1982 **Federal Register** notice announcing receipt of the amendment, at the August 12, 1982 hearing on the amendment and in response to the various reopenings of the comment period. Comments were submitted by Thomas J. FitzGerald, representing the Appalachian Research and Defense Fund of Kentucky, Inc., and by the Kentucky Coal Association.

At the August 12, 1982 hearing, Mr. FitzGerald commented that KRS 350.060(22) is directly inconsistent with the Federal Act because it excludes processing plants that crush and screen coal from coverage under the Act. Mr. FitzGerald said that the definition of surface coal mining operations in the Act reflects Congress' intent to regulate all coal processing.

In January 1983, Mr. FitzGerald commented that OSM cannot legally approve Kentucky's statutory revision to KRS 350.060(22) because it establishes an "at or near the mine site" test for coverage of off-site preparation facilities in conflict with Federal rules and the Act. In comments dated January 23, 1983, Mr. FitzGerald said that Kentucky's statutory revision to KRS 350.060(22) is "directly inconsistent with the rules promulgated by the Office, and with the controlling statutory interpretation of the pertinent provisions of the Federal Act." Mr. FitzGerald said the impact of the revision would be to exclude a vast number of processing and preparation plants that crush and screen coal, from coverage under the Act. He said that the Act is expansive in its coverage of coal processing, as reflected in the definition in section 701(28) of SMCRA which includes as surface coal mining operations, activities for chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal. Mr. FitzGerald said that the definition in 30 CFR 700.5 and the preamble language explaining the definition of "surface coal mining operations" clarify that OSM considered crushing of coal to be a distinct process from loading of coal (March 13, 1979, 44 FR 14914). He stated that OSM further clarified this in a June 1980 rulemaking, in stating that the loading of coal does not include the crushing or sizing of coal, for purposes of the definition of "surface coal mining operations" (45 FR 42334).

Mr. FitzGerald objected to the January 17, 1983, reopening of the comment period on this rule, and said that OSM was delaying action on the issue until the Federal rules could be revised, so that the Kentucky rule could be approved.

In comments dated June 22, 1983, Mr. FitzGerald stated that OSM cannot legally approve KRS 350.060(22) because it establishes a test of "at or near the mine site" for off-site coal crushing and screening facilities which is contrary to provisions in the Federal Act. The commenter said that the language of the Act, legislative history and judicial interpretation all support broad coverage of crushing and screening activities regardless of whether they involve coal cleaning.

Mr. FitzGerald submitted comments on December 12, 1983, saying that "any limitation on jurisdiction over independent coal crushing facilities . . . is illegal" and conflicts with SMCRA. Mr. FitzGerald said that as soon as OSM became aware that the Kentucky statutory revision excluding coverage of off-site, independent coal crushing, screening and sizing activities had been made effective without OSM approval, OSM should have immediately implemented Federal permitting, inspection and enforcement of these sites. Mr. FitzGerald said that OSM delayed a decision on Kentucky's amendment in order to allow new Federal rules to be promulgated. He said that OSM's new final rule was patently illegal. Mr. FitzGerald submitted segments of the Plaintiff's brief challenging the Federal rule and asked that they be considered as comments on the Kentucky amendment.

Mr. FitzGerald discussed the legal opinion and Reclamation Advisory Memorandum (RAM) No. 33 submitted by Kentucky on October 28, 1983, to clarify its amendment. He said that RAM No. 33 and the legal opinion cannot be approved because they improperly limit coverge of activities "at or near the mine site" and unduly limit coverage of activities conducted "in connection with" mining. Mr. FitzGerald said that RAM No. 33 was unacceptable also because it restricted coverage to coal loading facilities that were at or near a mine site *and* under common control of the same person or persons or family. Mr. FitzGerald said this was narrower than and inconsistent with even the new Federal rules.

The Kentucky Coal Association also submitted comments on Kentucky's amendment, but supported the amendment to KRS 350.060(22) saying that it correctly interprets the SMCRA section 701(28), definition of "surface coal mining operations." In comments dated January 11, 1983, the commenter stated that the loading of coal is regulated only if it occurs at or near the mine site and in connection with a coal mine. The commenter said that crushing and screening of coal occur routinely at many loading sites and that, since these activities do not produce waste, no significant environmental harm results. Therefore, the commenter said, these facilities should not be regulated.

In comments dated July 8, 1983, the Kentucky Coal Association supported the Kentucky Amendment saying that the statutory revision is consistent with OSM's definition. The commenter said that "under OSM's new definition, 'coal loading, crushing, sizing and other such activities' do not constitute coal preparation unless they result in the separation of coal from its impurities." The commenter said that Kentucky's rule is virtually identical to the Federal rule and should be approved.

On December 29, 1983, the Kentucky Coal Association commented further on the proposed amendment. The commenter stated that although OSM and Kentucky were both interpreting SMCRA section 701(28) too narrowly, the Association would comment only on whether the amendment was in conformance with Federal requirements.

The commenter said that KRS 350.060(22) and RAM No. 33 are clearly in accordance with the Federal Act and regulations. The commenter said that the requirements of the Federal regulations and the Kentucky law are virtually identical, and that restriction of coverage to facilities at or near the mine site and associated with the mine site is proper and consistent with Federal requirements.

The commenter said that SMCRA was not intended to cover pure loading facilities if they are not at or near the mine site, and that there are no adverse environmental impacts from such facilities. The commenter also stated that Kentucky's "at or near" test of one half mile is a logical physical distance and is not inconsistent with the Federal rule even though the Federal rule does not contain an "at or near" test.

All comments have been considered by the Director, but most of the comments have been either confirmed or invalidated by the decision of the U.S. District Court for the District of Columbia in the case entitled *In re: Permanent Surface Mining Regulation Litigation II* (D.D.C., 1985). In its Round I decision in that case, the court held that facilities which in any way leach, chemically process, or physically process coal should be regulated even when located away from a mine site and even if they do not separate coal from its impurities. Since Kentucky's amendment is contrary to the court's decision, OSM cannot approve the amendment and is proposing to set aside the statutory provision KRS 350.060(22).

OSM recognizes that there have been numerous delays in this decision process. Initial decisions were delayed because OSM was considering revising its rules in a manner similar to the Kentucky revisions. On May 5, 1983, OSM did publish new rules. Subsequently, OSM asked for additional

material from Kentucky to clarify its amendment in light of the Federal rules. On June 24, 1984, the District Court decision remanded the Federal rules back to the Secretary. OSM's publication of interim final rules on July 10, 1985, has clarified OSM's position and resulted in the decision that Kentucky's amendment must be disapproved.

IV. Director's Decision

The Director has considered Kentucky's amendment in light of all information and comments submitted and in light of the District Court's decision and subsequent modifications to the Federal requirements, and has determined that the amendment does not meet the requirements of SMCRA and the Federal regulations. Therefore, the Director, based on the above findings, is disapproving the Kentucky amendment to the Kentucky Revised Statute 350.060(22) submitted May 26, 1982, and the legal opinion (insofar as it relates to this issue) and Reclamation Advisory Memorandum No. 33, submitted October 28, 1983. The amendment and explanatory material fail to meet the requirements of SMCRA and the Federal regulations. The Director is proposing, in a separate notice appearing in today's **Federal Register**, to preempt and supersede KRS 350.060(22).

V. Procedural Requirements

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSM is exempt from the requirement to prepare a Regulatory Impact Analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 9, 1985.

Robert E. Boldt,

Acting Director, Office of Surface Mining.

PART 917—KENTUCKY

1. The authority citation for Part 917 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 917.17 is amended by adding a new paragraph (b) to read as follows:

§ 917.17 State program provisions disapproved.

* * * * *

(b) The amendment at Kentucky Revised Statute 350.060(22) submitted by Kentucky on May 26, 1982, and the legal opinion (insofar as it relates to this amendment) and Reclamation Advisory Memorandum No. 33 submitted by Kentucky on October 28, 1983, are hereby disapproved effective September 17, 1985.

[FR Doc. 85–22157 Filed 9–12–85; 11:32 am]

BILLING CODE 4310–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Part 201

Grants to States for Public Assistance Programs; Adjustment of Federal Share for Uncashed or Cancelled Checks

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: This final regulation provides that the Federal share of cancelled (voided) checks must be refunded quarterly to the Federal government since there has been no expenditure made by the State. The final regulation also requires States to refund to the Federal government the Federal share of all checks that remain uncashed beyond a period of 180 days from the date of issuance, i.e., the date of the checks, since these will no longer be considered amounts expended. A 1979 report by the General Accounting Office (GAO) recommended that uniform requirements be established for States to credit the Federal government for its portion of uncashed Aid to Families with Dependent Children (AFDC) assistance payments checks. This regulation implements that recommendation.

EFFECTIVE DATE: September 17, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara M. Levering, Director, Office of Intergovernmental Communications, Office of Family Assistance, Social Security Administration, 2100 Second Street, SW., Washington, DC 20201, telephone (202) 245–2637.

SUPPLEMENTARY INFORMATION: On February 22, 1983, a notice of proposed rulemaking was published in the **Federal Register** (48 FR 7479–7481).

A 1979 GAO report recommended that uniform requirements be established for the States to credit the Federal government for its portion of uncashed AFDC assistance checks. Even though the GAO recommendations focused solely on uncashed AFDC assistance checks under a State's AFDC program, we have extended the scope of this regulation to apply to: (1) Uncashed or cancelled (voided) checks to or on behalf of AFDC recipients, (2) uncashed or cancelled (voided) checks to or on behalf of recipients under titles I, X, XIV, or XVI (AABD) being administered in Guam, Puerto Rico, and the Virgin Islands, and (3) uncashed or cancelled (voided) checks for administrative costs under titles I, IV–A, X, XIV, and XVI (AABD). Since some States make payments in the form of warrants, the term "check" is defined in the regulation to include warrants as well.

The final regulation requires that the Federal share of checks outstanding for more than 180 days and the Federal share of cancelled checks be refunded to the Federal government each quarter. It is a generally accepted banking practice to consider 180 days as a reasonable time period for checks to be presented to be cashed, and banks often will not accept checks which are presented after that time frame.

Moreover, this regulation is consistent with the statutory provisions for the Supplemental Security Income Program (SSI) in section 1631(i) of the Social Security Act that apply a 180-day time period to outstanding SSI checks. Under this provision, the portion of Federal SSI checks that represents State supplementary payments made by the

Federal government on behalf of the States must be refunded to the States for checks that have not been cashed for 180 days from date of issuance although the SSI checks may still be negotiated thereafter.

Similarly, we are not requiring that AFDC checks be voided 180 days after issuance. To do this would cause unwarranted administrative expense to States. Thus, in the event that a check is honored for payment after the Federal share has been refunded to the Federal government, we are allowing a State to file a new claim.

The regulation also codifies a longstanding policy that the Federal share of a cancelled check must be refunded to the Federal government in the quarter in which the check is cancelled.

Because this requirement is a part of the grants process to States, we amended 45 CFR 201.5 to add a cross reference to 45 CFR 201.67, the new section where this rule will be set out.

Response to Public Comments on Notice of Proposed Rulemaking

A 60-day comment period was provided in the February 22, 1983, notice of proposed rulemaking. We received comments from 14 States. Responses to these comments follow.

State Authority for Check Cancellations in Excess of 180 Days

Comment: Nine States were concerned that the regulations conflicted with State statutes which allow checks to remain outstanding in excess of 180 days before cancellation action is required.

Response: This regulation does not require States to cancel checks after 180 days. It requires States to refund the FFP for checks which remain uncashed after 180 days of the date of issuance by adjusting their claims. Therefore, no conflict exists between State statutes and this Federal regulation.

Federal Matching Rate Applicable to a Claim for FFP After Refund of FFP is Completed

Comment: Two States asked which Federal matching rate would be applicable to a claim for FFP after a State has already refunded the FFP of an outstanding check which subsequently is cashed. One State agency noted that the claim for the check should not be a new claim, but instead it should be an adjustment increasing the claim for a prior period.

Response: The matching rate to use is the one in effect for the quarter when the check is eventually cashed. As the new claim pertains to a check which remained uncashed for an extended period of time, the FFP was refunded and the original claim was treated as if no expenditure occurred. When the check was subsequently cashed it resulted in a payment being made thereby providing a basis for a new claim for the quarter when that occurred. This policy seems more consistent with provisions at sections 3, 403, 1003, 1403, and 1603 of the Act and 45 CFR § 95.13 than a position under which an expenditure is held to occur a full 6 or more months before the check was actually cashed.

When a check remains uncashed for an extended period of time, there would seem to be little justification for a State to expect the Department to continue considering it to be an expenditure for the quarter in which the check was issued. Therefore, the more appropriate manner to file this claim is as a new claim.

Conformity of the 180-Day Rule with Generally Accepted Banking Practices for Uncashed Checks

Comment: Two States disputed that it is a generally accepted banking practice to consider 180 days as a reasonable time period for checks to be presented to be cashed.

Response: We contacted the American Bankers Association and were informed that most banks follow the general rule of a 180-day time frame and do not honor checks that are over six months old. This is consistent with section 4–404 of the Uniform Commerical Code which provides that a bank is under no obligation to pay a check, other than a certified check which is presented for payment more than six months after its date. Furthermore, it is our understanding that all States have adopted this provision.

Legal Basis for this Regulation

Comment: One State questioned the legal basis for this regulation and asserted that this regulation would appear to change the point in time that an expenditure is recognized.

Response: Sections 3, 403, 1003, 1403, and 1603 of the Social Security Act provide for Federal matching of State agency expenditures. 45 CFR 95.13(a) sets out the criteria under which an expenditure for an assistance payment is considered to have been made. According to that section, "[w]e consider a State agency's expenditure for assistance payments under title I, IV–A, IV–E, X, XIV, or XVI(AABD) to have been made in the quarter in which the payment was made to the assistance recipient. . . ." Thus, an expenditure does not occur until the recipient presents his assistance check for payment.

Accordingly, we believe that it is a reasonable application of section 1102 of the Act (which provides broad authority to promulgate regulations necessary for the efficient administration of the Social Security Act) to require States to return FFP that they have received for checks that they themselves voided by requiring them to adjust the quarterly statement of expenditures pertaining to the quarters in which they voided the checks; obviously, these checks will never be cashed. In the case of outstanding checks, we believe that payees should be given a resonable time to cash them before States are required to return the FFP. Since 180 days following issuance is generally accepted by the banking community to be the period of time for checks to be presented for payment, it would seem to be a reasonable standard for us to follow in determining when States must refund FFP for uncashed checks.

Applicability of the 180-Day Rule to these Programs

Comment: One State asked why the 180-day rule is being applied to the programs noted in this regulation and not to other programs run by HHS.

Response: As previously stated, the impetus for this regulation is the GAO report. That report indicates that the Federal government should establish uniform requirements for States to credit the Federal government for its portion of uncashed checks in the AFDC program. Since assistance payments and administrative payments are handled in a similar manner for the adult programs as they are for the AFDC program, we concluded that it is appropriate to apply the same regulation to these programs as well.

Other components of the Department outside of the Social Security Administration will be reviewing our experience to determine whether this regulation would also be appropriate in the programs that they administer.

Prior Agreements On Outstanding Checks

Comment: One State noted a negotiated agreement it had with an HHS component responsible for audit resolutions which exceeded the 180-day rule. It allowed the State to retain FFP for uncashed AFDC assistance checks for up to one year.

Response: No Departmental policy existed regarding the refund of the Federal share of outstanding checks when the resolution noted by the State agency was reached. In the absence of

any established and written policy on this subject, the HHS component, during the negotiation process, agreed to the time period used by the State. This regulation now establishes a written policy which applies to all States and supersedes any such agreement.

Cost Effectiveness

Comment: Four States indicated that applying the 180-day rule would not be cost effective in their respective States. One State requested a waiver from implementing this regulation on grounds that its cost is not justified.

Response: The Federal government has lost the use of funds to which it is legally entitled resulting in the need to borrow these monies at substantial interest rates. We estimate that the current backlog of Federal funds due from uncashed checks is $14.4 million. In addition, we estimate that this total is increased by $1 million each year. This regulation would result in restoring the funds to the Federal government and would decrease the amount of monies the Department of the Treasury would otherwise have to borrow. In light of the sum of money involved, we believe that the 180-day rule is cost-effective from the perspective of the overall program costs.

Of course we are sensitive to the problems that are incurred by States in the administration of the AFDC and adult assistance programs. We intend to monitor State experience in implementing these regulations and will propose changes that appear to be needed.

In the meantime, to the extent that a State is able to demonstrate to the agency that Federal funds due from uncashed checks are minimal and that the administrative cost of returning these funds is excessive, a State may apply for approval of a demonstration project in accordance with section 1115 of the Social Security Act.

Regulatory Procedures

Executive Order 12291

These regulations have been reviewed under Executive Order (EO) 12291 and do not meet the criteria for a major regulation. These regulatory changes will result in the Federal government collecting approximately $1 million annually. Since these changes will not have a $100 million effect on the national economy, they are not a major rule within the definition of E.O. 12291 and no regulatory impact analysis is required.

Paperwork Reduction Act

States will use the Quarterly Statement of Expenditures (SSA–41) to report adjustments to Federal matching funds granted for past periods for uncashed and cancelled checks. OMB has approved the present format of this report (OMB Number 0960–0294). Sections 45 CFR 201.5, 201.67(c)(2), and 201.67(d)(2) of this final rule contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Office of Management and Budget (OMB) has approved the collection requirements contained in the regulation provisions cited. This approval is valid until April 30, 1986 (OMB Number 0960–0333).

Regulatory Flexibility Act

We certify that this regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities because it affects only the transfer of funds between the Federal government and the States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.808—Public Assistance—Maintenance Assistance (State Aid).)

List of Subjects in 45 CFR Part 201

Aid to Families with Dependent Children, Family assistance office, Grant programs, Social programs, Guam, Public assistance programs, Puerto Rico, Virgin Islands.

Dated: July 23, 1984.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: December 11, 1984.

Margaret M. Heckler,

Secretary of Health and Human Services.

Part 201 is amended as follows:

The Table of Contents in Part 201 is revised to read as follows:

PART 201—GRANTS TO STATES FOR PUBLIC ASSISTANCE PROGRAMS

Sec.
201.0 Scope and applicability.
201.1 General definitions.

Subpart A—Approval of State Plans and Certification of Grants

201.2 General.
201.3 Approval of State plans and amendments.
201.4 Administrative review of certain administrative decisions.
201.5 Grants.
201.6 Withholding of payment; reduction of Federal financial participation in the costs of social services and training.
201.7 Judicial review.

Subpart B—Review and Audits

201.10 Review of State and local administration.
201.11 Personnel merit system review.
201.12 Public assistance audits.
201.13 Action on audit and review findings.
201.14 Reconsideration under section 1116(d) of the Act.
201.15 Deferral of claims for Federal financial participation.
201.66 Repayment of Federal funds by installments.
201.67 Treatment of uncashed or cancelled checks.

Part 201 of Chapter II, Title 45 of the Code of Federal Regulations is amended as set forth below:

1. The Authority citation for 45 CFR Part 201 continues to read:

Authority: Sec. 1102, 49 Stat. 647; 42 U.S.C. 1302.02.

2. Section 201.5 is amended by revising paragraph (a)(3) to read as follows:

§ 201.5 Grants.

* * * * *

(a) *Form and manner of submittal.*

* * *

(3) The State agency must also submit a quarterly statement of expenditures for each of the public assistance programs under the Act. This is an accounting statement of the disposition of the Federal funds granted for past periods and provides the basis for making the adjustments necessary when the State's estimate for any prior quarter was greater or less than the amount the State actually expended in that quarter. The statement of expenditures also shows the share of the Federal Government in any recoupment, from whatever source, of expenditures claimed in any prior period, and also in expenditures not properly subject to Federal financial participation which are acknowledged by the State agency, including the share of the Federal Government for uncashed or cancelled checks as described at 45 CFR 201.67 in this part, or which have been revealed in the course of an audit.

* * * * *

3. A new § 201.67 is added to read as follows:

§ 201.67 Treatment of uncashed or cancelled checks.

(a) *Purpose.* This section provides the rules to ensure that States refund the Federal portion of uncashed or cancelled (voided) checks under titles I, IV–A, X, XIV, and XVI (AABD).

(b) *Definitions.* As used in this section—"Check" means a check or warrant that the State or local agency uses to make a payment.

"Cancelled (voided) check" means a check issued by the State agency or local agency which prior to its being cashed is cancelled (voided) by State or local agency action, thus preventing disbursement of funds.

"Uncashed check" means a check issued by the State agency or local agency which has not been cashed by the payee.

(c) *Refund of Federal financial participation (FFP) for uncashed checks*—(1) *General provisions.* If a check remains uncashed beyond a period of 180 days from the date it was issued, i.e., the date of the check, it will no longer be regarded as an amount expended because no funds have actually been disbursed. If the State agency has claimed and received FFP for the amount of the uncashed check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the State agency must identify those checks which remain uncashed beyond a period of 180 days after issuance. The State agency must report on the Quarterly Statement of Expenditures for that quarter all FFP that it received for uncashed checks. Once reported on the Quarterly Statement of Expenditures for a quarter, an uncashed check is not to be reported on a subsequent Quarterly Statement of Expenditures. If an uncashed check is cashed after the refund is made, the State agency may submit a new claim for FFP.

(d) *Refund of FFP for cancelled (voided) checks*—(1) *General provisions.* If the State agency has claimed and received FFP for the amount of a cancelled (voided) check, it must refund the amount of FFP received.

(2) *Report of refund.* At the end of each calendar quarter, the State agency must identify those checks which were cancelled (voided). The State agency must report on the Quarterly Statement of Expenditures for that quarter all FFP received by the State agency for these checks. Once reported on the Quarterly Statement of Expenditures for a quarter, a cancelled (voided) check is not to be reported on a subsequent Quarterly Statement of Expenditures.

[FR Doc. 85-22251 Filed 9-16-85; 8:45 am]

BILLING CODE 4190-11-M

Proposed Rules

Federal Register
Vol. 50, No. 180
Tuesday, September 17, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 54

Change in the Form of Official Certificates for Meat and Meat Products Graded and Certified Under the Meat Grading and Certification Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Agricultural Marketing Service proposes to convert its daily agricultural products grading and acceptance certificates and biweekly agricultural products grading certificates to weekly agricultural products grading and acceptance certificates. These new weekly certificates will reduce certificate preparation and processing costs and will faciliate computer processing.

DATES: Comments must be submitted on or before October 17, 1985.

ADDRESS: Written comments may be mailed to Eugene M. Martin, Chief; Meat Grading and Certification Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA; 14th Street and Independence Avenue, SW., Room 2638–S; Washington, DC 20250. (For further information regarding comments, see "Comments" under "**SUPPLEMENTARY INFORMATION.**")

FOR FURTHER INFORMATION CONTACT: Eugene M. Martin (202/382–1113).

SUPPLEMENTARY INFORMATION:

Regulatory Impact Analysis

This action was reviewed under USDA procedures established to implement Executive Order 12291 and was classified as a nonmajor rule pursuant to sections 1(b) (1), (2), and (3) of that Order. Accordingly, a regulatory impact analysis is not required. This action also was reviewed under the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C., 601 *et seq.*). William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this rule will not have a significant economic impact on a substantial number of small entities. The change to weekly agricultural products grading and acceptance certificates is expected to reduce certificate preparation time, certificate processing costs, and interface with the planned implementation of the Agency's updated automated data processing (ADP) program. This change will result in cost savings which, in turn, will enable the Agency to provide more cost-effective service to the industry.

Comments

Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Washington, DC, Meat Grading and Certification Branch and should bear a reference to the date and page number of this issue of the **Federal Register**. Comments submitted pursuant to this document will be made available for public inspection during regular business hours.

Background

The Agricultural Marketing Act (AMA) of 1946, as amended, 7 U.S.C. 1621 *et seq.*, authorizes the Secretary of Agriculture to provide voluntary Federal meat grading and certification services to facilitate the orderly marketing of meat and meat products and to enable consumers to obtain the quality of meat they desire. The Act also provides the Secretary of Agriculture with the authority to promulgate such orders, rules, and regulations that the Secretary deems necessary to carry out the provisions of the Act. Under this authority, the Agricultural Marketing Service prepares and issues agricultural products grading and acceptance certificates. These certificates serve as official documentation that meat and meat products were officially graded and/or certified in compliance with applicable standards, specifications, and regulations. Additionally, these certificates are the basic documents for assessing charges for grading and certification services and for sources of data on the scope and volume of grading and certification work performed. The Agency currently uses three types of certificates: (1) Biweekly agricultural products grading certificates, (2) daily agricultural products grading and acceptance certificates, and (3) weekly agricultural products acceptance certificates.

The Agency has successfully used the daily and biweekly certificates for many years. The continued use of daily certificates would be inconsistent with the Agency's cost-reduction efforts and its efforts to reduce paperwork. Additionally, in those situations where daily certificates are required, the weekly certificate can and will be used as a daily certificate. Further, the present design of the daily certificate makes its adaptation to the new ADP system difficult. Even though the use of the biweekly certificate has reduced the number of certificates meat graders prepare and the related preparation time and processing costs, the certificate restricts revenue flow and causes other delayed billing problems. These delayed billing problems are caused by the mailing time required for the certificate to reach the initial processing office (main station office) and from the main station office to the National Finance Center (NFC) for billing. This situation occurs when the end of the biweekly period coincides with NFC's closing date for the monthly billing period. This situation results in a 6-week delay in receipt of income for services. Additionally, these delayed billings do not facilitate prompt corrections of billing errors. Further, since the biweekly certificate is mailed every other week, clerical workload is heavy every other week, rather than being evenly distributed. Finally, the biweekly certificate does not lend itself for use as a products acceptance certificate because of the limited space available for written product descriptions and/or required special statements.

Therefore, the Agency is proposing to eliminate biweekly and daily certificates, replacing them with weekly agricultural products grading and acceptance certificates. The weekly acceptance certificate has been used successfully on a test basis. The Agency's reason for converting all certificates to weekly certificates is threefold. First, the weekly certificates will significantly reduce the number of certificiates meat graders must prepare and the related amount of preparation time. This reduced number of certificates is expected to decrease the

Agency's certificate processing costs. The anticipated decrease in certificate preparation time will directly reduce the Agency's charges to the industry. Second, with only minor changes, the format of the weekly certificate will be compatible with the Agency's ADP system, which is scheduled for implementation in the near future. The new ADP system is expected to reduce the Agency's certificate processing costs, improve billing accuracy, and facilitate billing adjustments. Third, the weekly certificate provides a more evenly distributed clerical workload in the Agency's field offices, which will result in more efficient utilization of field clerical personnel.

In conclusion, Federal meat graders prepare about 170,000 agricultural products certificates to cover the approximately 14 billion pounds of meat graded and certified annually. The Agency's proposal is expected to reduce the number of agricultural products certificates prepared from 170,000 to approximately 40,000 per year. This reduction is expected to save nearly $300,000 in certificate preparation and processing costs. Equally important, the new weekly certificates will be compatible with the planned ADP system and will eliminate the need to revise the daily and biweekly certificates to facilitate computer processing. This proposed rule will be acted upon after evaluations of comments received in response to this notice.

Accordingly, it is proposed that the section in 7 CFR Part 54 relating to official certificates for Federal grading and certification of meats, prepared meats, and meat products, be amended as set forth below:

List of Subjects in 7 CFR Part 54

Meat and meat products, Grading and certification, Beef, Veal, Lamb, Pork.

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for Part 54 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Sec. 203, 205, as amended; 60 Stat. 1087, 1090, as amended (7 U.S.C. 1622, 1624).

2. 7 CFR 54.14(b) is revised to read as follows:

§ 54.14 Official certificates.

* * * * *

(b) *Form.* The following forms (Figures 1 and 2) constitute forms of official certificates for products under the regulations. Where weight is certified, the word "Not" shall be deleted from the phrase "Wts. Not Verified."

* * * * *

Done at Washington, D.C., September 12, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

BILLING CODE 3410-22-M

U.S. DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

AGRICULTURAL PRODUCTS GRADING CERTIFICATE

WEEK BEGINNING — CY | MONTH | DAY

APPLICANT (Name, City and State)

CERTIFICATE NO. G-

SUB C. NO. 3 3 5 0 0 7 2

APPLICANT NO. 4 4

CODES ON REVERSE: SPECIES | CAR./CUT | QUALITY | YIELD

This certificate is receivable by all officers and all courts of the United States as prima facie evidence of the truth of the statement therein contained. (This certificate does not excuse failure to comply with any of the regulatory laws enforced by the U. S. Department of Agriculture.)

DESCRIPTION OF PRODUCT	SLAUGHT.	DAILY PIECES GRADED	SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	TOTAL

U.S. DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

AGRICULTURAL PRODUCTS ACCEPTANCE CERTIFICATE

WEEK BEGINNING — CY | MONTH | DAY

APPLICANT (Name, City and State)

APPLICANT NO.

CERTIFICATE NO. A-

C. NO. 3 2 7

This certificate is receivable by all officers and all courts of the United States as prima facie evidence of the truth of the statement therein contained. *(This certificate does not excuse failure to comply with any of the regulatory laws enforced by the U.S. Department of Agriculture.)*

SHIPPER OR SELLER (Name, City and State)

RECEIVER OR BUYER (Name, City and State)

LOCATION (City and State)

DESCRIPTION OF PRODUCT ☐ ACCEPTED ☐ REJECTED ☐ OTHER	SPECIFICATION & ITEM NO	WEIGHT RANGE	GRADE OR OTHER QUALITY	C	SUNDAY Units	SUNDAY Lbs.	MONDAY Units	MONDAY Lbs.	TUESDAY Units	TUESDAY Lbs.	WEDNESDAY Units	WEDNESDAY Lbs.	THURSDAY Units	THURSDAY Lbs.	FRIDAY Units	FRIDAY Lbs.	SATURDAY Units	SATURDAY Lbs.	TOTAL

Food and Nutrition Service

7 CFR Part 235

Child Nutrition Programs; Allocation of State Administrative Expense Funds for State Commodity Processing Activities

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food and Nutrition Service (FNS) is proposing to amend the regulations governing the use of State Administrative Expense (SAE) funds to change the manner in which discretionary funds are allocated to State agencies. Under this proposal, some of the discretionary SAE funds would be allocated to State distributing agencies for State commodity processing activities. These funds would assist State distributing agencies to establish or expand State commodity processing efforts in order to encompass commodity processing currently conducted under the FNS administered National Commodity Processing (NCP) System. This proposed rule would also amend the sanction provisions of the SAE regulations to allow FNS to withhold a distributing agency's SAE funds for failure to comply with the Food Distribution Program regulations (7 CFR Part 250).

DATE: To be assured of consideration, comments must be postmarked on or before November 18, 1985.

ADDRESS: Comments should be sent to Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written submissions will be available for public inspection in Room 509, 3101, Park Center Drive, Alexandria, Virginia, during regular business hours (8:30 a.m. to 5:00 p.m), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Pastura at the address listed above or call (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

The propose rule has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act. The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant adverse economic impact on a substantial number of small entities.

Although this rule proposes a number of changes to Part 235, the reporting and recordkeeping requirements remain unchanged. These requirements were approved by the Office of Management and Budget (OMB) for use through January 1, 1986. (OMB No. 0584–0067 and 0584–0319).

This activity (SAE) is listed in the Catalog of Federal Domestic Assistance under No. 10.560 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983.)

Background

Section 203 of the Temporary Emergency Food Assistance Act of 1983 (7 U.S.C. 612c *note*) directed the Secretary of Agriculture to encourage the consumption of certain commodities through the use of processing agreements with private companies. In response to the Congressional directive to encourage processing agreements, the Department established the NCP System through an interim rule that amended 7 CFR Part 250 and was published on June 23, 1983 at 48 FR 28609. Under that interim amendment, FNS entered into agreements with commercial food processors for the processing and distribution of designated donated foods to eligible recipient agencies. All agreements under the NCP were scheduled to terminate on June 30, 1985 since the program expired on that date. However, a one year extension of this program is contained in the Second Supplemental Appropriations Act for Fiscal Year 1985 (Pub. L. 99–88).

After 2 years of operation, the Department believes that the NCP System should be phased out. Evaluations of the system have disclosed several problems which support this conclusion. Specifically, sales under NCP were less than anticipated; the majority of sales were concentrated among a few processors and a small number of schools in only a few States; the Federal cost of administering NCP has exceeded any reductions in Federal food storage costs; and NCP has primarily displaced rather than supplemented State processing. Moreover, the Department has determined that the NCP system lacked adequate accountability.

In spite of NCP's shortcomings, the Department continues to support the concept of commodity processing as a way to increase the utilization of donated foods that are in abundant supply. The Department feels that most of the problems associated with NCP stem from the fact that NCP is a centralized approach that lacks State involvement and support. This centralized approach is in marked contrast to the traditional Federal/State/local approach that is used in administering other FNS programs. The Department believes that a more effective and efficient commodity processing system would result if States assumed primary responsibility for the negotiation and management of processing agreements and if the Department supported State commodity processing efforts with financial and technical assistance as necessary. In keeping with this position, the Department, under separate rulemaking (50 FR 33470, August 19, 1985) has proposed to amend the Food Distribution Program regulations to require States to implement commodity processing programs in order to continue receiving donated foods which are provided in addition to the State's authorized level of assistance. Under that proposal, these commodities will be made available only to States that participate in commodity processing. Such donated foods, which include butter, cheese and nonfat dry milk, are currently made available to State distributing agencies for distribution to eligible recipient agencies to the extent that they can be used without waste. These foods are available in bulk and lend themselves to processing into a variety of desirable menu items that can be used in child nutrition programs and other federally assisted food programs.

Under this rulemaking action, the Department is proposing to direct SAE funds to State distributing agencies to assist them in the expansion of State commodity processing programs. States that are not currently participating in commodity processing would be able to establish processing systems in order to continue receiving donated foods which are provided in addition to the State's authorized level of assistance. However, these SAE funds would not be provided to distributing agencies where FNS has determined that commodity processing is not feasible. The Department believes

that commodity processing may not be feasible in some remote areas, particularly in the Pacific, where commercial food processing and distribution facilities are limited.

Under this proposal, the total amount of SAE funds to be made available for commodity processing would be determined annually by FNS and would be allocated to appropriate State distributing agencies through application of a two-part formula. Initially, FNS proposes to designate approximately 2 million dollars for allocation under this formula. These funds would be considered one-time start-up funds and would come from available SAE recoveries and reserves. This is in keeping with the current FNS practice of providing start-up SAE funds to State agencies that assume responsibility for the operation of child nutrition programs that have been previously administered by FNS. However, for following years, commodity processing would be considered along with other discretionary SAE fund uses in determining annual allocation levels. Decisions regarding these levels would reflect program needs and priorities as identified by the Department and would involve redirecting available funds among the various discretionary provisions. To provide maximum flexibility to shift funds between these provisions, the Department is proposing to remove the requirement that the SAE allocation level for AIMS be at, or above, the Fiscal Year 1980 level.

The proposed two-part formula for allocating SAE funds for commodity processing is designed to provide each eligible distributing agency with an equitable amount of funds. If 2 million dollars in SAE funds is designated for commodity processing, each eligible distributing agency would receive an equal share of 1 million dollars under the first part of the formula. Under the second part of the formula, amounts provided to distributing agencies would depend upon each State's proportionate share of reimbursable meals served under the National School Lunch and School Breakfast Programs and meals and supplements served under the Child Care Food Program in child care centers. Breakfasts and supplements would be weighted in this part of the formula to reflect their approximate share of processed commodity usage. Two breakfasts or four supplements would be counted as one lunch or supper. The total amount of funds allocated to each distributing agency under the two-part formula would range from approximately $20,000 to somewhat more than $100,000. While the Department believes that this formula provides an equitable method for initially allocating funds to eligible distributing agencies, changes in the formula may be proposed in the future to reflect the actual level of commodity processing in each State.

It should be noted that the second part of the formula considers only meals served under those child nutrition programs that SAE funds are intended to support. Futhermore, only child care meals and supplements served in child care centers, not day care homes, are considered since day care homes generally do not receive donated commodities or benefits from commodity processing.

However, since day care homes are eligible to receive certain designated commodities and processed commodity products through their sponsoring organizations, the Department would appreciate receiving comments on this proposed exclusion of day care meals and supplements. Commenters who feel that such meals and supplements should be counted are requested to provide suggestions on how this might be accomplished without providing an undue advantage to States where commodity benefits are not generally available to day care homes.

SAE funds for commodity processing would be made available only to those distributing agencies which distribute USDA donated commodities to public and private schools as defined in § 235.2(o)(1) of the SAE regulations and which currently receive SAE funds under § 235.4(b)(2). Other distributing agencies would not receive SAE funds. Distributing agencies receiving SAE funds are expected to use those funds for activities that support the distribution of USDA donated commodities to schools, residential child care institutions and child care centers. Thus, State commodity processing activities funded with SAE funds must be for the principal benefit of those recipients. The Department recognizes that processing agreements often benefit a broader range of food distribution recipient agencies, such as charitable institutions, and would endorse the use of SAE funds to negotiate and administer such agreements if the principal beneficiaries are schools, residential child care institutions and child care centers. For example, a distributing agency's review of a processor's operations would constitute an allowable use of SAE funds, even though the review would indirectly benefit other recipient agencies. Processing activities that solely or principally benefit other categories of recipient agencies should not be funded with SAE funds. An example of this type of activity would be a review of a charitable institution's ordering, use of, and payment for processed commodity products. Distributing agencies with activities that fit this description should plan to fund them from State sources or assessments. If the amount of SAE funds provided for commodity processing exceeds the amount required to fund processing activities principally for the benefit of schools, residential child care institutions and child care centers, distributing agencies should use the additional funds for other activities attributable to the administration of the Food Distribution Program for these categories of recipient agencies.

This proposed rule would also amend the SAE sanction provisions to allow FNS to recover, withhold or cancel payment of SAE funds for failure to comply with the requirements of the Food Distribution Program regulations. Under this authority, FNS would not make SAE funds for commodity processing available to a distributing agency after the start-up year unless the agency were participating in commodity processing.

Finally, this proposal makes several nonsubstantive revisions in § 235.4, paragraphs (a), (b)(2) and (b)(3) for the sake of consistency and clarity.

List of Subjects in 7 CFR Part 235

Food assistance programs, National School Lunch Program, School Breakfast Program, Special Milk Program, Grants administration, Intergovernmental relations, Reporting and recordkeeping requirements, Administrative practice and procedure.

Accordingly, it is proposed that Part 235 be amended as follows:

PART 235—STATE ADMINISTRATIVE EXPENSE FUNDS

1. The authority citation for Part 325 continues to read as follows:

Authority: Secs. 7 and 10, Pub. L. 89–642, 80 Stat. 888, 889 (42 U.S.C. 1776, 1779).

2. In § 235.4:

a. Paragraph (a) is amended by revising the first sentence.

b. Paragraph (b)(2) is amended by removing the words "and any Food Distribution Program allocation provided for in paragraph (b)(4) of this section";

c. Introductory paragraph (b)(3) is revised;

d. Paragraph (b)(3)(iv) is amended by revising the last sentence;

e. Paragraph (b)(4) is redesignated as paragraph (b)(5), a new paragraph (b)(4)

is added, and the first sentence of newly redesignated paragraph (b)(5) is amended by changing the words "For the fiscal year ending September 30, 1980, and for each succeeding fiscal year," to the words "For each fiscal year," and by changing the words "(b)(2) and (b)(3)" to the words "(b)(2), (b)(3), and (b)(4)".

The revisions and addition specified above read as follows:

§ 235.4 Allocation of funds to States.

(a) For each fiscal year, FNS shall allocate to each State agency which administers the National School Lunch, School Breakfast or Special Milk Programs and amount equal to one (1) percent of the funds expended by the agency within the State during the second preceding fiscal year under sections 4 and 11 of the National School Lunch Act, as amended, and sections 3 and 4 of the Child Nutrition Act of 1966, as amended. * * *

(b) * * *

(3) For each fiscal year, FNS shall allocate to each State agency which is allocated funds under paragraph (a) of this section amounts derived by application of the following four-part formula:

* * * * *

(iv) * * * The amount of State Administrative Expense funds designated by FNS for AIMS and subject to allocation under paragraphs (b)(3)(i) through (b)(3)(iv) of this section shall be determined annually by FNS.

(4) For each fiscal year, FNS shall allocate amounts derived by application of the following two-part formula to each State agency which distributes foods donated by the Secretary to schools as defined in § 235.2(o)(1) of this part except in States where FNS has determined that State commodity processing is not feasible:

(i) One equal share of fifty (50) percent of the funds designated by FNS for State commodity processing activities under Part 250 of this title.

(ii) The ratio of the weighted number of meals served under the National School Lunch and School Breakfast Programs and meals and supplements served under the Child Care Food Program in centers within the State during the second preceding fiscal year to the weighted number of such meals and supplements served in all States times fifty (50) percent of the funds designated by FNS for State commodity processing activities under Part 250 of this title. For weighting purposes, two breakfasts or four supplements shall be counted as one lunch or supper.

§ 235.6 [Amended]

3. In § 235.6, the first sentence of paragraph (c) is amended by changing the words "(b)(2) and (b)(4)" to the words "(b)(2), (b)(4) and (b)(5)" and by changing the words "(b)(4), and (f)" to "(b)(5), and (f)".

§ 235.11 [Amended]

4. In § 235.11:

(a) Paragraph (b)(1) is amended by removing the word "and 226 of this title." from the end of the paragraph, inserting a comma after 220 and adding the words "226 and 250 of this title."

(b) Paragraph (b)(3) is amended by changing the reference "§ 235.4 (b)(4)" to "§ 235.4(b)(5)."

(c) Paragraph (b)(5)(vi) is amended by changing the words "school nutrition programs" to "programs for which SAE funds were made available."

Dated: September 11, 1985.

Robert E. Leard,

Administrator.

[FR Doc. 85-22231 Filed 9-16-85; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Parts 911 and 915

[Docket Nos. AO-267-A10 and AO-254-A9]

Limes Grown in Florida; Avocados Grown in South Florida; Recommended Decision and Opportunity To File Written Exceptions to Proposed Further Amendment of Marketing Agreements and Orders 911 and 915, as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites written exceptions on proposed amendments to the marketing agreements and Marketing Orders 911 and 915 (7 CFR Parts 911 and 915), covering limes grown in Florida and avocados grown in South Florida. The proposals would: (1) Broaden handler representation on the Florida Lime Administrative Committee and the Avocado Administrative Committee by limiting each handler organization to one handler member and alternate from each of the two districts within the respective production area; (2) provide that the Secretary conduct a referendum every six years under each order starting in 1990 to ascertain if producers favor continuation of the lime and avocado marketing orders; and (3) add authority in the lime order to require that handlers mark undersized limes with an approved food dye to prevent such fruit from entering regulated marketing channels.

DATE: Written exceptions to this recommended decision must be filed by October 17, 1985.

ADDRESS: Interested persons may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Room 1079, South Building, Washington, D.C. 20250. Four copies of all written exceptions should be submitted, and they will be made available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (Pub. L. 96-354), effective January 1, 1981, seeks to insure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposals on small business. Such evidence was considered in arriving at the findings and conclusions contained in this decision.

During the fiscal year ending April 30, 1984, 26 handlers shipped limes under M.O. 911 for fresh market with an estimated crop value of $16.0 million, and 34 handlers shipped avocados under M.O. 915 for fresh market with an estimated crop value of $12.4 million. The average value per handler for limes and avocados was $615,385 and $384,706, respectively. Given the applicable definition of a small business concern almost all of the handlers of limes and avocados would fall within that definition. Thus, few handlers can be considered large or predominant in a relative or absolute sense.

The Agricultural Marketing Agreement Act requires the application of uniform rules to regulated handlers. Since handlers covered under M.O.'s 911 and 915 are predominantly small businesses, the orders themselves are tailored to the size and nature of small businesses.

Further, while the amendments recommended herein would impose some requirements on affected small businesses, any added burden should

not be significant in light of the potential benefits that should be derived by such small businesses.

The testimony presented at the hearing indicated that the proposal to broaden handler representation on the lime and avocado committees would benefit smaller handlers as it would afford them a greater opportunity to serve on these committees and participate in decision making. Adding a requirement to each order that a referendum be conducted every six years beginning in 1990 to ascertain if the orders continue to have the support of growers, would benefit lime and avocado growers and handlers, most of whom are small businesses. The testimony indicated that adding authority to the order to require the dyeing of undersize limes would benefit lime growers and handlers, as such requirements would tend to prevent the sale of small, immature, unpalatable limes which bring low returns and fail to provide consumer satisfaction, thus damaging the market for good quality fruit. Such requirements should assure marketing of acceptable sizes of limes which would benefit retail food stores, restaurants, and other outlets, many of which are small businesses that sell fresh limes to the public in various forms.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed further amendment of marketing agreements and Orders Nos. 911 and 915, regulating the handling of limes grown in Florida and avocados grown in South Florida, and of the opportunity to file written exceptions thereto. Copies of this decision may be obtained from William J. Doyle.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et. seq.*), hereinafter referred to as the "act", and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

On January 15, 1985, a public hearing was held on proposed further amendment of the marketing agreements, as amended, and Order Nos. 911 and 915, as amended (7 CFR Parts 911 and 915). The hearing was held in Homestead, Florida, pursuant to the provisions of the act and the applicable rules of practice. Notice of this hearing was published in the **Federal Register** on December 31, 1984 (49 FR 50731). The notice of hearing contained proposals submitted by the Florida Lime Administrative Committee and Avocado Administrative Committee which administer the orders. These proposals would amend the orders to broaden handler representation on each administrative committee by limiting each handler organization to one member and alternate from each district and provide for periodic referenda. In addition, the Florida Lime Administrative Committee submitted a proposal to add authority to the lime order to require marking of undersize limes. The Fruit and Vegetable Division, Agricultural Marketing Service, USDA, submitted a proposal to make any necessary conforming changes.

Material Issues

The material issues of record addressed in this decision are to: (1) Broaden handler representation of the Florida Lime Administrative Committee and the Avocado Administrative Committee by limiting each handler organization to one handler member and alternate from each of the two districts within the respective production areas; (2) provide that the Secretary conduct a referendum every six years under each order starting in 1990 to ascertion if producers favor continuation of the lime and avocado marketing orders; (3) add authority in the lime order to require that handlers mark undersized limes with an approved food dye to prevent such fruit from entering regulated marketing channels; and (4) make conforming changes.

Findings and conclusions

The findings and conclusions on the material issues, all of which are based on the evidence adduced at the hearing and record thereof, as as follows:

(1) Section 911.20 and 915.20 of the lime and avocado marketing orders should be amended to provide that no handler may be represented on the Florida Lime Administrative Committee (FLAC) and the Avocado Administrative Committee (AAC) by more than one handler member and alternate from each district within the respective production area. Presently, there are two districts for both limes and avocados. The hearing record indicates that two problems exist as to handler representation on the respective committees. Under the present order provisions, a single handler or its employees may occupy more than one member and alternate position on each committee. The order language also permits handlers, who own a number of packinghouses or entities, to have a member and alternate from each packinghouse or entity.

Instances have recently occurred where more than one handler member and alternate on such committees have been affiliated with the same handler entity. For example, in the 1984–85 season, four handler members of AAC and one handler member and three alternates on the FLAC were all employees of one handler. This was made possible because in voting for nominees to serve as handler members on these committees, the votes of handlers are weighted by the volume of limes and avocados, as the case may be, shipped by the handler during the preceding calendar year. At the present time, two handlers are predominant in the handling of fresh limes and avocados grown in Florida. The current provision of the orders which allows for weighting of votes of handlers in the nomination process is to assure that the interests of the major handlers are represented in committee recommendations and deliberations. However, it was not the intent of the orders that a handler or handler organization could dominate representation on these committees by virtue of the fact that it controls a majority of the fresh shipments of limes and avocados handled. Providing that no handler may be represented by more than one handler member and alternate for each district should rectify this situation. The amendment should also broaden handler representation on the committees, and permit more handlers to participate in the decision making process.

It is not uncommon in the Florida lime and avocado industry for a single handler organization to own, have substantial interest in, or control an number of packinghouses. Thus, a limitation on the number of handler members representing a single packinghouse would not necessarily accomplish the purpose of the proposed amendments. It would therefore be appropriate and consistent with record evidence to have such limitation apply to each handler organization, regardless of the number of packinghouses or entities owned, controlled by, or in which such organization has a substantial interest. Information available to the committees from reports filed by handlers is considered to be adequate to determine the officers and employees of corporations and other business units owned or controlled by these handlers.

The production areas for limes and avocados are divided into two districts for purposes of representation on these committees. The orders currently provide that no handler shall participate in the election of nominees in more than one district in any one fiscal year. The

proponents testified that a handler should be allowed to be represented on the committees by one handler member and alternate in each district. If the proposed amendments regarding limiting handler representation are adopted, which would assure that handlers who have interests in each of the producing districts are adequately represented in each district, it would be appropriate that the orders should be amended to remove the current restriction on participation in election of nominees in more than one district.

At the present time, there are a sufficient number of handlers to fill all the handler member and alternate positions on each committee. However, the situation may change is the future and, though not likely, it is possible that the number of handlers could decline to the point where there is an insufficient number of handlers to fill handler member positions. To provide for that contingency, the orders should provide for waiving by the Secretary the requirement that no handler or handler organization may be represented on the committee by more than one handler member and alternate from each district if an insufficient number of handlers are available to fill all handler member positions on these committees.

(2) The orders should be amended to require periodic referenda beginning in 1990. Periodic referenda would provide the lime and avocado industries with a means of regularly reassessing the level of producer support for these orders.

At present, the Secretary is required to terminate the provisions of the orders at the end of any fiscal year, whenever the Secretary finds that continuance is not favored by a majority of the producers. Such termination must be announced on or before March 15 of the then current fiscal year.

When the orders were originally established, they provided for one referendum and a poll of handlers to be held two years after the programs began. The proposed language submitted would remove this obsolete language and provide for a continuance referendum by producers every sixth year beginning in 1990. Holding such referendum is in keeping with the Departments guidelines for marketing orders.

Testimony at the hearing concluded that continuance referenda held on the lime and avocado orders would allow the producers to express their views regarding continuance of the orders. These referenda will enable the industries to determine the effectiveness of marketing orders. Currently it is felt that there is strong support for the orders, but, as the market may change in the next six years, a vote on continuance would show if support within the industries for the orders still exists.

There were two objections to this proposed amendment. Both objections were aimed at the six-year interval between the referenda. Apparently since it takes an avocado tree 12 to 15 years to fully mature, some opponents felt six years is too short of a time period in order to protect their capital investments. Testimony revealed that some producers favor a longer time period between referenda to better reflect the time required for avacados to reach maturity. They also felt that current provisions in the orders allow the industries to ask for referenda if the need arises.

Based on evidence and testimony submitted at the hearing relative to periodic referenda, the orders should be amended to include periodic referenda every six years. A period of time greater than a six-year period is too long an interval between regular referenda. Regardless of the length of time for an avocado or lime tree to mature, the market for such commodities can change drastically in six years due to changing market conditions. A longer time period would not protect their capital investments, since new plantings are occurring every year. A period of six years between referenda appears to be reasonable. Thus, the orders should be amended to provide that a continuance referenda be held every six years beginning in 1990. Of course, in the event there is a demonstrated reason, the order provides that the Secretary can hold a continuance referenda at any time.

(3) Section 911.48 of the lime marketing order should be amended to add authority to require that handlers mark undersize limes with a food dye approved by the Food and Drug Administration (FDA) to prevent such fruit from entering regulated marketing channels.

The record indicates that there have been instances of shipments of fresh limes which have not met minimum size regulations in effect. This has generally occurred at certain times during the year, particularly in the winter and spring months, when prices for limes are relatively high. Undersized limes tend to have very low juice content and may be immature and unsuitable for fresh consumption. The presence of undersized limes in the marketplace has a price depressing effect on shipments of better quality larger size limes and weakens consumer confidence in the overall quality of limes.

The marketing order authorizes establishment of minimum grade and size regulations to promote orderly marketing conditions for fresh shipments of limes. Those limes failing to meet such minimum requirements are customarily processed into limeade, lime oil and other lime products. The marketing order also requires Federal or Federal-State inspection and certification that limes for the fresh market meet applicable grade and size regulations in effect prior to shipment. Minimum grade and size regulations are currently in effect for Florida lime shipments.

Undersize limes are separated from marketable size limes during the packing process prior to being offered for inspection and certification as meeting marketing order size requirements. Undersize limes are customarily held for later processing into juice or conversion to other uses. The record indicates, however, that in some instances undersize limes are placed into fresh market channels contrary to marketing order requirements.

It was asserted by proponents that marking undersize limes with an approved food dye could inhibit movement of such limes to fresh market destinations because it would be readily apparent to inspectors, handlers, and prospective buyers that any such limes so marked did not meet minimum requirements. Such marking of limes should take place at the handler's packinghouse and only undersize limes should be so marked.

The record indicates that procedures for marking undersize limes with a FDA approved food dye have been developed, and equipment for marking such limes is commercially available. Two methods of marking limes were discussed. One involves marking the limes with cord wicks as the fruit moves along a conveyor belt, and another involves rolling the fruit over a dye pad. However, the record also indicates that handlers should be able to select either of these methods or any other committee-approved method to mark undersize limes. Any such approval would be contingent on use of a FDA-approved food dye. It is anticipated that any method which may be used in marking the fruit can be integrated into handlers' existing packing lines without any appreciable difficulty. Disposition of undersize limes which are marked with dye into any of the outlets which customarily use such fruit would not be adversely affected by the use of such dye.

One major handler of limes conducted a research project in 1984, under the auspices of the Florida Lime Administrative Committee, to determine the feasibility of marking undersize limes with food dye meeting FDA criteria. The results of the project were reported to the committee at the FLAC meeting on August 8, 1984. The results of the project indicates that marking such limes is practical and could be carried out at minimal cost.

One witness commented that the lime dyeing requirements may be needed throughout the shipping season for limes to accomplish the stated purposes. Another witness indicated that the diversion or undersize limes to fresh market tends to occur only during part of the season and any marking requirements should be made effective only during designated periods. In order that such marking requirements may be implemented when needed, the committee, with the approval of the Secretary, should prescribe the periods when limes must be marked with an approved dye and the terms and conditions under which such marking shall be performed.

The Dade County Supervisor of the State and Federal Inspection Service, testified that that agency does not anticipate any problems with the proposal to dye undersize limes.

(4) A proposal in the notice of hearing by the Department was that consideration be given to making such other changes in the orders as may be necessary to make the orders conform to any amendments that may result from this proceeding. This proposal was supported at the hearing without opposition, and such changes as are necessary are incorporated into the order.

Rulings on Briefs of Interested Persons

At the conclusion of the hearing, the Administrative Law Judge fixed February 4, 1985, as the final date for interested persons to file proposed findings and conclusions and written arguments or briefs based on the evidence received at the hearing.

No briefs were filed.

General Findings

Upon the basis of the record, it is found that:

(1) The findings hereinafter set forth are supplementary, and in addition, to the previous findings and determinations which were made in connection with the issuance of the marketing agreements and orders and each previously issued amendment thereto. Except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of said prior findings and determinations are hereby ratified and affirmed.

(2) The marketing agreements and orders as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(3) The marketing agreements and orders as amended, and as hereby proposed to be further amended, regulate the handling of limes grown in Florida and avocados grown in South Florida, in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing agreements and orders upon which hearings have been held;

(4) The marketing agreements and orders, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable consistent with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production areas would not effectively carry out the declared policy of the act:

(5) There are no differences in the production and marketing of limes grown in the production area which make necessary different terms and provisions applicable to different parts of such area;

(6) The marketing agreement and order prescribe, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the difference in the production and marketing of avocados grown in the production area; and

(7) All handling of limes and avocados grown in the production areas defined in the marketing agreements and orders, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Parts 911 and 915

Marketing agreements and orders, Florida, Limes, Avocados.

Recommended Amendment of the Marketing Agreements and Orders

The following amendments of the marketing agreements and orders, as amended, are recommended as the detailed means by which the foregoing conclusions may be carried out:

1. The authority citation for 7 CFR Parts 911 and 915 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 911—LIMES GROWN IN FLORIDA

2. Section 911.20 would be amended by adding one sentence at the end of paragraph (a) to read as follows:

§ 911.20 Establishment and membership.

(a) * * * No handler or handler organization shall be permitted to have more than one handler member and alternate on the committee from each district: *Provided,* That this requirement may be waived by the Secretary in the event that there are not enough persons available to be nominated and selected to serve on the committee.

* * * * *

3. Section 911.22 would be amended by revising paragraph (b)(3) to read as follows:

§ 911.22 Nomination.

* * * * *

(b) * * *

(3) Only handlers may participate in the nomination and election of nominees for handler members and their alternates. Each handler is entitled to cast only one vote for each nominee to be elected in the district in which such handler handles limes. Each vote shall be weighted by the volume of limes shipped by such handler during the immediately preceding twelve-month period, January through December.

4. Section 911.64 would be amended by revising paragraph (c), adding a new paragraph (d), and redesignating current paragraph (d) as paragraph (e) to read as follows:

§ 911.64 Termination.

* * * * *

(c) The Secretary shall terminate the provisions of this part whenever the Secretary finds the referendum or otherwise that such termination is favored by a majority of the producers: *Provided,* That such majority has, during a representative period determined by the Secretary, produced more than 50 percent of the volume of the limes, produced within the production area: *Provided further,* That such termination shall be announced by March 15 of the then current fiscal year.

(d) The Secretary shall conduct a referendum as soon as practicable after the end of the fiscal year ending March 31, 1990, to ascertain whether termination of this part is favored by the

producers voting in such referendum as set forth in paragraph (c) of this section. The Secretary shall conduct such a referendum at such time every sixth fiscal year thereafter.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

5. Section 911.48 would be amended by adding a proviso at the end of paragraph (a)(1) to read as follows:

§ 911.48 Issuance of regulations.

* * * * *

(a) * * *

(1) * * * *Provided,* That such regulation may require that limes not meeting minimum size requirements established under this section be marked with a Food and Drug Administration approved food dye, as a necessary and incidental safeguard to insure that such limes do not enter fresh marketing channels for regulated limes.

* * * * *

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

6. Section 915.20 would be amended by adding one sentence at the end of paragraph (a) to read as follows:

§ 915.20 Establishment and membership.

(a) * * * No handler or handler organization shall be permitted to have more than one handler member and alternate on the committee from each district: *Provided,* That this requirement may be waived by the Secretary in the event that there are not enough persons available to be nominated and selected to serve on the committee.

* * * * *

7. Section 915.22 would be amended by revising paragraph (b)(3) to read as follows:

§ 915.22 Nomination.

* * * * *

(b) * * *

(3) Only handlers may participate in the nomination and election of nominees for handler members and their alternates. Each handler is entitled to cast only one vote for each nominee to be elected in the district in which such handler handles avocados. Each vote shall be weighted by the volume of avocados shipped by such handler during the immediately preceding twelve-month period, January through December.

8. Section 915.64 would be amended by revising paragraph (c), adding a new paragraph (d), and redesignating current paragraph (d) as paragraph (e) to read as follows:

§ 911.64 Termination.

* * * * *

(c) The Secretary shall terminate the provisions of this part whenever the Secretary finds the referendum or otherwise that such termination is favored by a majority of the producers: *Provided,* That such majority has, during a representative period determined by the Secretary, produced more than 50 percent of the volume of the avocados, produced within the production area: *Provided further,* That such termination shall be announced by March 15 of the then current fiscal year.

(d) The Secretary shall conduct a referendum as soon as practicable after the end of the fiscal year ending March 31, 1990, to ascertain whether termination of this part is favored by the producers voting in such referendum as set forth in paragraph (c) of this section. The Secretary shall conduct such a referendum at such time every sixth fiscal year thereafter.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

Dated: September 12, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-22230 Filed 9-16-85; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Parts 71 and 80

[Docket No. 85-019]

Paratuberculosis in Domestic Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to remove 9 CFR Part 80, "Paratuberculosis in Domestic Animals," and certain regulations in 9 CFR Part 71, and thereby delete federal restrictions on the interstate movement of domestic animals affected with paratuberculosis. These regulations were established for the purpose of preventing the spread of paratuberculosis. Funding is not available for activities to detect paratuberculosis infected animals, to review and amend the regulations as changing program conditions would require, or to otherwise administer a paratuberculosis program.

DATE: Comments must be received on or before November 18, 1985.

ADDRESS: Written comments concerning this proposed rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to docket number 85-019. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hosker, Cattle Diseases Staff, VS, APHIS, USDA, Room 818, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8715.

SUPPLEMENTARY INFORMATION:

Background

This document proposes to remove 9 CFR Part 80, "Paratuberculosis in Domestic Animals," and corresponding regulations in 9 CFR Part 71, and thereby delete federal restrictions on the interstate movement of domestic animals affected with paratuberculosis. Paratuberculosis, also known as Johne's disease, is a chronic infectious disease of cattle and other ruminants.

The regulations were established for the purpose of preventing the spread of paratuberculosis. Funding is not available for activities to detect paratuberculosis infected animals, to review and amend the regulations as changing program conditions would require, or to otherwise administer a paratuberculosis program. Accordingly, it appears that the regulations regarding paratuberculosis should be deleted.

Executive Order 12291 and Regulatory Flexibility Act

This proposal is issued in conformance with executive Order 12291 and has been determined to be not a major rule. The Department has determined that this rule would not have a significant annual effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would have no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based

enterprises to compete with foreign-based enterprises in domestic or export markets.

It appears that the removal of the regulations as proposed by this document would not significantly affect marketing patterns and would not have a significant economic impact on those persons affected by this proposed rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects

9 CFR Part 71

Animal diseases, Livestock and livestock products, Poultry and poultry products, Quarantine, Transportation.

9 CFR Part 80

Animal diseases, Livestock and livestock products, Transportation, Paratuberculosis Johne's Disease.

Accordingly, it is proposed to amend 9 CFR Subchapter C, Interstate Transportation of Animal (Including Poultry) and Animal Products, as follows:

PART 71—GENERAL PROVISIONS

1. The authority citation for Part 71 would be revised as set forth below and the authority citations following all sections in Part 71 would be removed:

Authority: 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 127, 134b, 134c, 134e, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 71.3 [Amended]

2. In § 71.3, paragraph (a) would be amended by deleting "paratuberculosis,".

3. In § 71.3, paragraph (c)(1) would be amended by deleting "or paratuberculosis," and "in the case of brucellosis reactors and with the provisions of Part 80 of this subchapter in the case of paratuberculosis reactors".

PART 80—[REMOVED]

4. Part 80 would be removed and reserved.

Done at Washington, D.C., this 12th day of September 1985.

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85–22158 Filed 9–16–85; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 43, 91, 121, 127, and 135

[Docket No. 23799; Notice No. 85–16]

Air Traffic Control Radar Beacon System and Mode S Transponder Requirements in the National Airspace System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes future requirements pertaining to the use, installation, inspection, and testing of Air Traffic Control Radar Beacon System (ATCRBS) and Mode S Transponders in U.S.-registered civil aircraft. Proposed is the mandatory use of either the ATCRBS or Mode S Transponder as well as automatic pressure altitude reporting equipment within all terminal control areas (TCA) (specifically to include Group II TCA's), and above 12,500 feet mean sea level (MSL) within the contiguous U.S. and the District of Columbia excluding airspace at and below 2,500 feet above ground level (AGL). Also, transponder installation requirements are proposed which would result in a gradual phase-in of Mode S in the National Airspace System (NAS). After January 1, 1992, all newly installed transponders in U.S.-registered civil aircraft would be required to meet requirements of the technical standard order (TSO) for airborne Mode S Transponder equipment. Projected increases in air traffic will require improved aircraft location and identification information, which will be provided by the proposed Mode S and automatic pressure altitude reporting reporting equipment requirements.

Those requirements are an essential component of the NAS Plan. This notice also proposes test and inspection requirements for the Mode S Transponder and a new output power test requirement for the ATCRBS transponder.

DATES: Comments must be received on or before December 16, 1985.

ADDRESS: Send comments on the proposal in duplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–204), Docket No 23799, 800 Independence Avenue, SW, Washington, DC 20591; or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue, SW, Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Falsetti, Airspace and Air Traffic Rules Branch, Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposal by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned decisions on the proposals. Comments are specifically invited on the overall economic, environmental, and energy aspects of the proposals. Communications should identify the notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 23799." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered by the Administrator before taking any future action on the proposal. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this proposal will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 426–8058). Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future notices should also requests a copy of Advisory Circular No. 11–2, "Notice of Proposed Rulemaking Distribution

System," which describes the application procedures.

Background

On October 18, 1983, the FAA published an Advance Notice of Proposed Rulemaking (ANPRM) announcing the proposed use of Mode S Transponders in the NAS (48 FR 48364, Notice No. 83–16). The preamble of the advance notice contained discussions on—

1. The NAS Plan.
2. The role of Mode S in the new NAS.

The advance notice proposed that the following actions take effect by 1992 or earlier, as noted:

1. Issuance of a TSO for airborne Mode S Transponder equipment. It was proposed that with issuance of the TSO for Mode S, TSO authorization to manufacture ATCRBS transponders would be terminated effective in 1986.
2. Amendment of Part 43 of the Federal Aviation Regulations (FAR) to set forth appropriate tests and testing procedures to ensure the continuance of correct functioning of the Mode S transponders.
3. Amendments to Part 91 of the FAR as follows:

a. Newly installed transponders in U.S.-registered civil aircraft would meet requirements of the new TSO for airborne Mode S Transponder equipment.

b. Either a Mode S or ATCRBS Transponder, as well as automatic pressure altitude reporting equipment, would be necessary to operate in TCA's.

c. Either an operable Mode S or ATCRBS Transponder, as well as automatic pressure altitude reporting equipment, would be necessary above 12,500 feet MSL within the contiguous U.S. and the District of Columbia excluding airspace at and below 2,500 feet AGL. It was further proposed to retain the current exception for gliders above 12,500 feet MSL but below the floor of positive control areas, and also retain provisions in current effect for helicopters and air traffic control (ATC) authorized deviations.

d. Automatic pressure altitude reporting equipment would be required for operations in Group II TCA's.

(d) Amendments to FAR Sections 121.345(c), 127.123(b), and 135.143(c) to be consistent with the amendments to Part 91.

Comments

Comments were generally favorable to the introduction of Mode S in NAS. Twelve (12) comments were received which, though generally supportive, expressed some concern in several areas.

The International Air Transport Association (IATA) expressed its concern over the U.S. withdrawal of its TSO for the manufacture of ATCRBS Transponders. IATA said that U.S. TSO's were used by many civilian aviation agencies outside the U.S. for their own regulatory purposes. These agencies, representing other countries throughout the world, are most likely to experience a continuing demand for new/replacement transponders conforming to International Civil Aviation Organization (ICAO) standards after 1986. The problem, as IATA saw it, was that even though ICAO is considering implementation of the new Mode S, it is likely that implementation will lag behind U.S. plans. IATA suggested that some alternative procedure be examined to preserve the existing TSO while achieving the U.S. objective. One suggested alternative was that proposed rulemaking be directed at aircraft installations made after 1986 with exemptions for installations in aircraft manufactured in the U.S. to be delivered to foreign countries.

The Bendix Corporation, General Aviation Avionics Division, basically agreed with the principles of the notice saying that a long-range plan for updating the traffic control system along with the benefits of data link definitely warranted industry support. Although in general agreement with the plan for Mode S, Bendix registered its belief that the termination date for ATCRBS production should be delayed to at least 3 years after formal issuance of the new TSO, rather than the proposed specific year of 1986. In addition, it further suggested that exceptions should be permitted for foreign sales to be determined by foreign acceptance and implementation of Mode S. Bendix believed this action would allow more of a planned obsolescence to the ATCRBS rather than require the abrupt disruption in production of what it termed a technically mature unit.

The Collins Air Transport Division, Rockwell International, made the following points:

1. Many countries certify avionics equipment on the basis of U.S. FAA TSO approvals.
2. Approximately 50 percent of Collins ATCRBS Transponder production is based on orders received from non-U.S. customers.
3. Many non-U.S. aircraft operators have no requirement to operate within the U.S. airspace.
4. Implementation of Mode S in other countries may not be on the U.S. schedule.
5. The regulatory actions of other countries are not known regarding existing certifications based on the current ATCRBS TSO.

Collins concluded that avionics manufacturers will continue to have requirements to supply ATCRBS transponders, manufactured under TSO authorization, to non-U.S. customers after the proposed termination date. Under the proposal, a U.S. manufacturer's only means of competing in the international market would be to supply transponders meeting the requirements of the Mode S TSO. This would place U.S. manufacturers at a competitive disadvantage due to the added costs of the unique Mode S capability.

Rather than terminate the ATCRBS TSO in 1986, Collins recommended that the manufacture of TSO-approved ATCRBS Transponders be permitted as long as a valid market potential exists. It recommended that a schedule requiring Mode S Transponders in all new installations, and ultimately, in all installations intended for operation within U.S. airspace, would accomplish the desired transition.

The Department of Defense (DOD) advised it was still in the process of making a detailed evaluation of the operational and economic impact of Mode S as well as DOD's need for Mode S. When the comments were submitted, DOD had not completed the need analysis. DOD considered the need analysis a necessary step considering the nature of its worldwide operations, the configuration of its aircraft, and the cost of equipping the fleet with Mode S. Due to the configuration and space limitations in some of the unique military aircraft, DOD believed installation costs would be considerably higher than those for the civil sector. DOD said that the costs associated with Mode S had to be balanced with national defense needs. Therefore, Mode S costs would be a significant consideration which may point toward the need for other alternatives to meet DOD requirements.

Of further concern to DOD was the proposed 1986 termination date for the manufacture of ATCRBS Transponders. The Department expects that new aircraft will be added to the aircraft weapons inventory beyond that date but still prior to the determination of new equipment that could accommodate full or partial Mode S. Accordingly, DOD recommended that the present TSO authorization for the ATCRBS Transponder be continued for installation in military aircraft until such

time as the military needs for the data link feature are determined.

The Air Transport Association of America (ATA) commented that for many years it has supported and encouraged the upgrading of ATCRBS and the addition of data link services to provide for automation of ATC functions. Also, FAA's proposal was in keeping with the general objective to improve system safety and capacity through more accurate and more complete surveillance. While endorsing the use of Mode S in NAS, ATA urged that the scope of the proposal be expanded to include widespread installation of altitude reporting transponders where radar surveillance and ATC services are provided. ATA also endorsed a requirement for improved accuracy of the altitude data reported. ATA's concern was that all aircraft sharing airspace where radar surveillance and ATC services are provided should carry operating altitude reporting transponders to enable ATC to perform its primary role of aircraft separation. In addition, the proposal should address the potential for improved surveillance accuracy in the vertical dimension. The Association said the ATC system would benefit and that the ultimate success of the Traffic Advisory and Collision Avoidance System as a backup to the system is dependent upon the accuracy of reported aircraft altitude data. The ATA also felt that FAA must make a firm commitment to provide services that the purchaser will recognize as a return on the investment in new avionics. In reference to original implementation of altitude reporting equipment, ATA stated that the airlines were equipped for years before the ground surveillance facilities could use the information.

Aerospace Industries Association of America, Inc. (AIA) described implementation of Mode S as a welcome development if properly implemented. AIA did note what it believed were problem areas. One such area was traffic awareness. AIA noted that ATC clearances and traffic advisories are now communicated on common very high frequency channels, comparing it to a "party line." Although inefficient in use of controller and pilot time, AIA said the "party line" provides all an awareness of the overall traffic situation. The awareness helps pilots to detect inappropriate clearances and otherwise helps them execute clearances more effectively. AIA maintains that traffic awareness will be reduced by the silent digital transmission of messages to particular aircraft. Monitoring and error detection will be lost and the pilot's ability to stay ahead of the aircraft will be reduced.

Another concern of AIA was that Mode S not create new cockpit workload. AIA noted there will be concurrent introduction of many other digital systems; i.e., flight management, flight guidance, electrical, etc. Often, such systems have resulted in added workload in the cockpit. AIA cautioned that Mode S should not merely reduce work at the centers at the expense of the cockpit.

AIA's third concern was that automated control systems will be more dependent upon and vulnerable to errors in altitude reporting than the present manual system. It was stated that substantial errors are known to exist in many classes of aircraft which will be required to report altitude. The Association's position was that these errors are not well controlled by current regulations and that new standards for altitude reporting will be needed for successful implementation of Mode S.

The Air Traffic Control Association (ATCA) supported the planned implementation of Mode S. The Association's main concern was that while range and azimuth accuracy is improved significantly with Mode S, the precision of altitude reporting was not. ATCA contended that accuracy of ground-based altitude tracking would be improved if the quantization of aircraft reported altitude was reduced from the current 100 feet to 25 feet. ATCA said it believed this would result in performance increases, as viewed by the air traffic controller, for several functions that rely on tracking of the Mode C data. Those functions included En Route and Terminal Conflict Alert, Minimum Safe Altitude Warning, and Automated En Route ATC.

The Aircraft Owners and Pilots Association (AOPA) stated that the benefits derived from Mode S would accomplish its acceptance and that it should not be mandated by regulation. Specifically, AOPA asked if there would be tangible benefits to users equipped with Mode S and would those benefits be available only to turbojet aircraft operating in the jet route structure. AOPA also questioned how FAA intended to allow low-altitude traffic to use Mode S Data Link. The Association would be opposed if, as written in the preamble to the proposal, carriage of Mode S would be mandated above 6,000 feet.

With respect to the proposal that newly-installed transponders be Mode S, AOPA suggested that there would be less user opposition if the word "installed" were changed to "manufactured." If the requirement were applicable to newly-installed transponders, AOPA argued that aircraft owners could not sell an ATCRBS to another owner for installation in another aircraft. According to AOPA, this would make thousands of ATCRBS's obsolete overnight.

In final comment, AOPA noted that FAA did not justify the proposed requirement for altitude reporting equipment (Mode C) in Group II TCA's.

The Soaring Society of America (SSA) agreed with the FAA proposal to continue to except gliders from transponder/altitude encoder requirements when operating above 12,500 feet MSL. The Society also agreed with the proposal that altitude reporting equipment be required for operations in Group II TCA's. However, the Society took the position that gliders should have the same exemption as helicopters with regard to the need for very high frequency omnirange receivers, noting the relatively low demand gliders make on ATC and their sensitivities to weight, balance, power demand, and space.

The Air Line Pilots Association concurred in the proposal.

One private citizen believed that the Mode S system was premature considering that a satellite-based navigational system with its combined transponder and data link capabilities would obviate the need for Mode S.

Discussion of Comments

From review and analysis of comments received, the areas of concern centered on:

1. The ramifications to U.S. manufacturers, foreign governments, and various international users regarding cutoff of the TSO authorization to manufacture ATCRBS Transponders in 1986.

2. The need for improved accuracy of altitude data, improved automatic pressure altitude reporting equipment, and reduced quantization of aircraft reported altitude in the Mode S environment.

3. The impact of the proposed installation requirement on DOD and on general aviation aircraft owners and operators.

4. The impacts on pilot cockpit workload, awareness of other air traffic, and the vulnerability to errors in altitude reporting in an automated system.

5. The extent of U.S. airspace within which Mode S would be required.

6. The bottom-line services and benefits that Mode S offers users,

particularly general aviation users, in NAS.

The FAA appreciates the concerns of manufacturers, the international community, and the U.S. defense establishment relative to the originally proposed 1986 withdrawal of the ATCRBS TSO. An early U.S. withdrawal of the ATCRBS TSO authorization is likely to have an unnecessarily disruptive and adverse economic effect on U.S. manufacturers' international sales of the ATCRBS Transponder. In addition, it may adversely affect the regulatory and certification processes of foreign countries that base their requirements on the U.S. TSO. In particular, it is likely to have a penalizing impact on the ICAO community of nations whose Mode S implementation schedule is likely to be behind that of the U.S. The FAA believes DOD would be subject to similar effects with regard to the equipage and use of Mode S on its aircraft inventory.

Upon consideration of the views expressed in these areas, the agency has determined that a modification of the originally proposed 1986 ATCRBS TSO cutoff date is warranted. Accordingly, the FAA proposes to permit continued manufacture of ATCRBS Transponders for such purposes as foreign sales, installation in aircraft destined for foreign countries, and to coincide with DOD transition to correspond to the Mark XV implementation schedule. The FAA is confident that the manufacture and sale of ATCRBS Transponders can be continued for foreign and DOD needs while, concurrently, there is accomplished an orderly phase-in of the Mode S Transponder within the U.S. NAS. To achieve the dual objective, the FAA proposes a phasing in of new installations of ATC transponder equipment applicable to all U.S.-registered civil aircraft. The intent of the phase-in is to permit continued use of ATCRBS in designated airspace areas while also permitting gradual yet positive integration of Mode S into NAS. The essence of this proposal is as follows:

All ATC transponder equipment installed in U.S.-registered civil aircraft, except equipment reinstalled in an aircraft from which it was removed for maintenance, would be required to meet TSO performance and environmental requirements in accordance with the following schedule:

1. *Through December 31, 1986:*
   Any class of TSO–C74b or any class of TSO–C74c as appropriate; or any class of TSO–C112 (Mode S).
2. *January 1, 1987, through January 1, 1992:*
   Any class of TSO–C75b or TSO–C74c if the equipment was manufactured before January 1, 1987; or any class of TSO–C112 (Mode S).
3. *After January 1, 1992:*
   Any class of TSO–C112 (Mode S).

If adopted, this proposal would permit a U.S. civil aircraft operator to use a previously installed ATCRBS Transponder as long as it can be properly maintained. Through December 31, 1986, the operator would also have several other options without restriction. For example, the owner/operator of a U.S.-registered civil aircraft would be able to replace a previously installed transponder or install a newly manufactured or used ATCRBS Transponder that meets appropriate ATCRBS TSO requirements. As another option, the operator may elect to install a Mode S Transponder meeting the appropriate Mode S TSO requirements. After January 1, 1987, the owner/operator may elect the same options with one restriction, if he/she elects to install a new or different ATCRBS Transponder, it must have been manufactured prior to that date. The third and last phase of the schedule begins on January 1, 1992. After that date, all newly installed ATC transponder equipment (i.e., all equipment except equipment reinstalled in an aircraft from which it was removed for maintenance) would be required to meet Mode S TSO requirements.

There were concerns that overall pilot traffic awareness and pilot workload in the cockpit would be adversely affected. Traffic awareness would be reduced because the silent digital transmission of messages would replace the "party line" radio frequency environment. In addition, digital systems, such as Mode S, could result in added pilot cockpit workload. Moreover, automated control systems would be more vulnerable to error in altitude reporting.

The Mode S System has data link capability for carrying digital messages back and forth between aircraft and ground. The messages could contain weather data, air traffic control requests or instructions, NOTAMS, etc. Some messages—air traffic control instructions requiring near term action, for example—may benefit from the party line over which they are heard today, while other messages—such as weather data—would be of interest only to a single aircraft. Some messages, if transmitted over data link could increase cockpit workload compared with voice link, while with others—weather reports and forecasts, or long air traffic control route clearances, for example—a considerable reduction of cockpit workload would result. In its implementation of data link, FAA will involve the public in its studies of these and other factors for each kind of message being considered for data link.

All of the above concerns are more closely associated with an advanced stage of ATC which would employ the benefits of an operationally tested and proven data link system. Concerns in these areas will be addressed through the appropriate procedures as evaluation data become available. This notice is limited to the use, testing, and installation of ATCRBS/Mode S Transponders. It contains no proposals as to the uses, systems, practices, or procedures involving data link or automated control systems. Concerns in these areas are, therefore, not addressed here since they will be the subject of future FAA evaluation and implementation procedures.

The initial Mode S coverage is planned to be provided above 12,500 feet MSL in en route airspace, within TCA's, and down to the surface at qualifying airports. Under the NAS Plan, additional systems will extend surveillance/data link operation down to 6,000 feet MSL by the year 2000. This coverage area is similar to airspace areas within which ATCRBS is now utilized. Services will be available to anyone in this coverage area equipped with Mode S.

We believe that the concerns related to the bottom-line benefits, the scope of airspace wherein Mode S is proposed, and the service capabilities of Mode S, are best addressed in a summary of the benefits of the NAS Plan. The goals of the NAS Plan are to meet the pressures of increased demands for aviation services, limit costs, and provide and improve facilities. The plan for Mode S is incorporated in the NAS Plan because it is considered to be the airborne link to NAS.

The NAS Plan

Essentially, the NAS Plan is a comprehensive plan supported by large increases in automation to yield significant improvements in service and cost savings to the airspace user, the taxpayer, and the ATC system. Cost savings are expected through reductions in delays and fuel consumption due to improved traffic handling capabilities and the increased ability of the ATC system to accommodate direct, pilot-preferred routings.

The new NAS will make extensive use of automation in terminal and en route

ATC, flight services, and subsystems that support and provide radar surveillance and communications. Closely associated with increased automation are the programs and improvements designed to achieve state-of-the-art ATC separation and advisory services. The end products of these programs will help ATC to integrate, separate, meter, and otherwise provide air traffic services. They include programs to organize and manage the systemwide flow of air traffic.

The effectiveness of NAS will be dependent, in great part, upon a surveillance system which can provide accurate position information, relatively interference-free aircraft identity through selective addressing, and automatic pressure altitude reporting equipment. The Mode S Transponder, coupled with its associated automatic pressure altitude reporting equipment, is considered a key piece of avionics necessary to participate fully in and receive the benefits of the NAS.

The Mode S system is an evolutionary advancement of the ATCRBS. The capability for an evolutionary transition from ATCRBS to Mode S has been achieved by providing a high degree of compatibility between Mode S and ATCRBS. Mode S uses the same interrogation and reply frequencies as ATCRBS. In addition, the Mode S ground station performs the ATCRBS functions. The ground station will interrogate using ATCRBS, intermode, and Mode S formats. "Intermode" is the generic term for interrogations that elicit replies from both ATCRBS and Mode S Transponders. This degree of compatibility permits a smooth transition in which Mode S ground stations provide surveillance of ATCRBS-equipped aircraft and Mode S Transponders reply to ATCRBS ground station. Mode S can, therefore, be introduced into the present ATCRBS environment without impacting present services.

A principal feature of the Mode S system is that each aircraft is assigned a unique address code. Using this unique code, interrogations can be directed to a particular aircraft and replies can be identified without ambiguity. Channel interference is minimized because a sensor can limit its interrogation to targets of interest. In addition, by proper timing of interrogations, replies from closely spaced aircraft can be received without mutual interference.

The discrete addressing and digital encoding of Mode S transmissions also permit their use as a digital data link. The interrogation and reply formats of the Mode S system have been designed to contain sufficient coding space to permit the transmission of data. In support of data link functions, the Mode S Transponder will serve much the same purpose as a modem (modulator/demodulator) which connects a computer to other computers by telephone lines. The Mode S Transponder and additional data link equipment (including appropriate input/output devices) will be necessary for full use of data link services. With the data link capability provided by Mode S and complementing equipment, the Mode S system could provide a computer to cockpit message medium for nonverbal transmission and confirmation of ATC clearances, traffic advisories, and weather information. Permanent copies of messages could be provided by system equipment when appropriate.

The Mode S data link capability to deliver the most currently available weather information may well be considered as the most promising flight safety and efficiency benefit to the pilot/operator. The potential value of weather data products that become readily accessible via Mode S is apparent. Some of the weather products currently considered as candidates for data link transmission are surface observations, digital weather maps, terminal forecasts, alert weather watches, winds aloft forecasts, convective significant meteorological reports, and pilot reports. Some weather information via data link is expected to be available beginning in 1988 with enhanced services available in later years.

To summarize the role of Mode S in NAS, Mode S is an advanced secondary radar system expected to provide improved accuracies in the surveillance of aircraft position and more interference-free identity and altitude reports to ATC. Through its inherent capabilities, Mode S will:

1. Aid in providing the enhanced surveillance and communication capabilities necessary for effective operation of the automated ATC system.
2. Provide a basis for a supporting ground-air-ground data link.
3. Help accommodate future user demand with increased efficiency.
4. Support automated functions of the NAS.
5. Provide dynamic advisory and flight safety information to the pilot.
6. Enhance ATC services while helping to increase controller productivity.

The first Mode S/Data Link ground site is expected to be operational and providing surveillance services and data link services in 1988. By 1992, 137 systems are expected to provide surveillance coverage and data link services at selected high density terminal, support, and en route sites.

The 137 sensors with associated interface equipment are planned for 108 terminal sites, (automated radar terminal systems, or "ARTS II/III"), 25 en route sites, two at FAA's Technical Center, one training, and one at FAA's depot.

Benefits of improved ATC coverage and services will be available to any aircraft equipped with the Mode S transponder and within coverage of a Mode S ground site.

Automatic Pressure Altitude Reporting Equipment

In addition to the sue of the Mode S Transponder, the FAA proposes that associated automatic pressure altitude reporting equipment be required for operations in Group II TCA's as well as Group I TCA's as now required. The Mode S Transponders and automatic pressure altitude reporting equipment together form the key aircraft avionics components necessary to fully participate in and benefit from the automated NAS. TCA's were established around large air transportation hubs to help reduce the midair collision potential between aircraft operating in accordance with an ATC clearance and other aircraft operating within the same airspace without the knowledge of the air traffic controller. The requirements associated with a TCA provide for a positive separation assurance to afford the greatest safety and protection for the greatest number of people. The use of automatic pressure altitude reporting equipment in conjunction with use of the Mode S Transponder provides ATC an increased efficiency and capability to provide aircraft separation service. Automatic pressure altitude reporting equipment has been in use in the NAS for many years. Experience has shown that its use can help to—

1. improve ATC system safety by automatically displaying the altitude of all aircraft operating in selected airspace;
2. reduce the midair collision potential through provision of constant and current aircraft altitude data;
3. reduce volume of communication and controller workload by eliminating the need for oral altitude reports;
4. improve use of airspace through continuous altitude data on climbing and descending aircraft;
5. increase ATC effectiveness through greater controller selectivity in viewing targets;

6. reduce number of traffic advisories or avoidance vectors during the provision of radar service; and

7. improve ATC system safety by enhancing participation in automated safety systems such as Conflict Alert and Minimum Safe Altitude Warning.

In further support for use of automatic pressure altitude reporting equipment, a task group of the National Airspace Review (NAR) also recommends its use in all TCA's as proposed by the task group. The NAR was established as a large scale combined FAA/industry program to review airspace use and procedural aspects of the ATC system. In June of 1982 NAR Task Group 1–2.1 convened to review terminal airspace, particularly TCA's. Among other recommendations, the task group supported continuance of TCA's but proposed that there be only a single class of TCA. The group's proposed establishment criteria, primarily enplaned passenger and aircraft operations, generally were somewhat lower than current Group I TCA criteria, and somewhat higher than current Group II criteria. The FAA published the recommendation as an ANPRM on February 5, 1985 (50 FR 5055). The task group associated the recommended need for automatic pressure altitude reporting equipment with the proposed single-class TCA criteria.

In consideration of the high density environment of a TCA and the need to ensure the safe and efficient movement of air traffic within its bounds, Task Group 1–2.1 considered Mode C automatic pressure altitude reporting equipment necessary to reduce radio frequency congestion. This reduction was considered necessary to create more efficiency within the system, thereby increasing capacity while providing an increased level of safety over operations with non-Mode C aircraft. In particular, the group pointed to weather conditions which cause pilots of visual flight rules (VFR) aircraft to change altitude to maintain appropriate separation from clouds. In a high density environment, this altitude change is not immediately forwarded to the controller; however, the Mode C readout on the controller's radar display does provide this information. The task group's majority view was that in busy complex areas with high concentrations of traffic, a continuous readout of aircraft altitude is a necessity for maintaining a continuous three-dimensional (range, azimuth, altitude) view of the traffic picture. It was the task group's finding that sufficient justification exists in the form of traffic volume, complexity, aircraft mix, controller/pilot workload, and frequency congestion to warrant a requirement for use of automatic pressure altitude reporting equipment in all TCA's.

The benefits from use of automatic pressure altitude reporting equipment within the single class of TCA's envisioned by NAR are similarly expected from its use in the airspace environment of today's current Group II TCA's. The U.S. NAS is the busiest and most complex in the world. Projections are for continued growth in the number of aircraft operations, diversity of operations, number of aircraft, and sophistication of aircraft. Many of our key metropolitan areas, which include the Group II locations, are either experiencing or will experience congestion from concentrated air traffic demand, along with overburdening of airport facilities and passenger handling capacities. To further the aviation safety and system efficiency goals of the NAS Plan, and in light of the experienced benefits of automatic pressure altitude reporting equipment, the FAA proposes mandatory use of this equipment in Group II TCA's. Consistent with the Mode S schedule, it is proposed that automatic pressure altitude reporting equipment be required in Group II TCA's after January 1, 1992.

This proposal, which would be effective in 1992, would apply to a current Group II classification of TCA's. It is made with full awareness of other possible airspace actions which may make the Group II classification obsolete by that date. For example, the FAA has under consideration a separate NAR recommendation, previously referred to, which would classify all appropriately designated TCA's as Group I TCA's. Future terminal airspace classifications notwithstanding, it is the higher density metropolitan air traffic airspace environment, with its attendant pilot and ATC equipment needs, and which are now classified as Group I and Group II TCA's, for which the FAA proposes mandatory use of this equipment. The FAA will amend its proposal and/or rule if future terminal airspace reclassification actions or airspace safety and efficiency indicate a different requirement for the equipment.

The comments concerning the need for improved accuracy of altitude data, improved automatic pressure altitude reporting equipment, and reduced quantization of aircraft reported altitude in the Mode S environment all suggest certain refinements in equipment or procedures used in altitude reporting. The FAA agrees that there would be benefits from greater precision in automatic altitude reporting. However, each of the proposals urged by the commenters would require a period of development of the technology or procedures, and in each case the FAA would seek public and industry input on the proposal. Moreover, existing equipment and procedures are fully adequate to support the additional reporting requirements proposed in this notice. For these reasons, the FAA is not incorporating the above suggestions in this rulemaking. However, the agency will consider the institution of separate rulemaking for adoption of the requested improvements.

ATC Transponder Tests and Inspections

To assist in providing for the surveillance and communication capabilities necessary for the safe effective operation of the ATC system, amendments to FAR Part 43, Appendix F, are proposed which include:

1. *Power output measurements for ATCRBS Transponders.* This is a new measurement which would be incorporated in existing periodic test requirements for ATCRBS Transponder equipment.

2. *Mode S Transponder tests.* Test procedures and standards are proposed which are similar to the existing test for ATCRBS equipment but which reflect the technical characteristics of Mode S equipment.

Also proposed are editorial changes to correct misspellings and change the reference from § 91.177 to § 91.172.

Economic Evaluation

The following is a summary of the draft regulatory evaluation associated with this proposal. The complete evaluation is in the public docket for inspection. The FAA invites comments on all aspects of this evaluation.

The proposals outlined in this NPRM involve some costs and benefits. There are three aspects of the NPRM which may have potential economic impacts:

1. The requirements for use of automatic pressure altitude reporting equipment in Group II TCA's after January 1, 1992.

2. The basic Mode S Transponder and maintenance requirements.

3. The change to maintenance testing of the ATCRBS Transponder.

Group II TCA Requirement

The proposal for automatic pressure altitude reporting equipment within Group II TCA's has an effective date of January 1, 1992. Due to the delayed compliance date and because of voluntary equipping trends, the FAA believes there will be virtually no

additional costs above those voluntarily assumed by the general aviation fleet. By 1992, FAA projects that over 90 percent of the general aviation fleet will be equipped with transponders, and almost 70 percent will have automatic pressure altitude reporting capability (Mode C). This equipping continues a trend which is clear in reviewing historical data. In 1977, 60 percent of the general aviation fleet had ATCRBS Transponders, and 39 percent of these had Mode C capability. By 1983, the percentage of the fleet with transponders grew to 81 percent and 51 percent had Mode C capability. The recent growth in these percentages has been continual, and FAA believes the equipping rates for aircraft with transponders and Mode C capability will continue to increase, even without a regulatory requirement. By 1992, FAA expects 92 percent of the general aviation fleet will have transponders, and 69 percent will have automatic pressure altitude reporting equipment.

Benefits will accrue in the form of improved ATC services to all NAS participants as aircraft equip with automatic pressure altitude reporting equipment.

By far, the major application effects of this propopsal are to general aviation. The air carrier/commuter fleet is a small fraction of the general aviation fleet. The FAA believes that given the above consideration, the voluntary equipping trend that includes air taxis, the delayed compliance date, and the fact that all major-size carriers and many commuters now carry Mode C equipment, there will be virtually no added costs to air carriers/commuters from this proposal. In addition, if some users of Group II TCA's lack a transponder and automatic pressure altitude reporting equipment, regulations will still permit the pilot to request a deviation from ATC.

There are benefits associated with automatic pressure altitude reporting equipment specifically, improved aircraft control within Group II TCA's. However, since FAA believes that the equipment trend will generate the benefits rather than regulation, the benefits are not assignable to regulation.

Mode S Transponder Requirements

The regulatory cost of the Mode S proposal can be developed by estimating Mode S installations and multiplying this forecast by an estimate of the net cost of compliance.

Forecast of Installations

Installations of Mode S Transponders are forecast to begin in 1987, with only 10 percent of new installations being Mode S that year, but increasing to 100 percent in 1992. Total transponder installations are estimated as the net annual increase in active aircraft in forecast years, plus 3 percent of the previous year's active aircraft. Using FAA forecasts for future years (FAA Aviation Forecast, February 1985), installations of Mode S Transponders would exceed 12,000 in 1990 and average approximately 10,000 a year for the decade from 1991 to the year 2000.

Net Cost of Installation

The added cost per unit for a Mode S Transponder, compared to projected transponder equipage in the absence of this proposed regulation, is expected to be approximately $600, installed. This cost estimate assumes installation of a Mode S surveillance transponder with data link connectors, but not the cost of data link processing or display capability. Data link capability could be integrated into the transponder or added later. The price for a Mode S Transponder will be about $1,000 more than for an ATCRBS Transponder for about 4 years to account for recovery of development costs.

Based on these assumptions, the regulatory cost of the Mode S proposal for the period 1987 thru 2000 is $33.2 million on a discounted cost basis.

Benefits of Mode S

Mode S is a major component of the NAS Plan. There are many benefits of Mode S, and all are associated with the benefits of the NAS implementation. The benefits of NAS implementation have been estimated at almost $20 billion in cost savings through the year 2000, due to system operations and maintenance costs, as compared to the "1981 equivalent" systems. There is no reasonable way to allocate a portion of the overall NAS benefits to the Mode S regulatory proposal but Mode S is considered necessary to successful implementation of the NAS Plan.

Transponder Maintenance Tests

There are proposed additions to Appendix F of Part 43 which provide for additional testing appropriate for Mode S Transponders. There is also an added power output test required for ATCRBS Transponders. This test should not involve notable additional costs. The Mode S inspection costs are expected to be moderately higher. Assuming the cost of the Mode S biennial test will be moderately higher than today's tests, any offsetting benefits are in the same general category of general NAS benefits and cannot be specifically allocated to Mode S.

For the reasons set forth in the preamble: (1) The FAA has determined that the proposal does not involve a major proposal under Executive Order 12991; (2) is considered nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) I certify that under the criteria of the Regulatory Flexibility Act, this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A copy of the draft Regulatory Evaluation prepared for this action is contained in the regulatory docket, and a copy may be obtained by contacting the person identified under the caption, "FOR FURTHER INFORMATION CONTACT."

Summary of Proposed FAA Actions

Consistent with FAA's plan to modernize the NAS, and the planned role of the Mode S surveillance system in the NAS, the FAA proposes to take the following actions:

1. Issue a TSO for Airborne Mode S Transponder Equipment.

Concurrently, TSO authorization to manufacture ATCRBS Transponders will continue in effect. The intent of continuing the ATCRBS TSO is to allow continued manufacture of ATCRBS Transponders for foreign sale and for installation in aircraft destined for foreign countries and to schedule DOD transition to correspond to the Mark XV implementation schedule.

Issuance of the TSO's is not accomplished through rulemaking and, therefore, the Mode S TSO is not a regulatory portion of this rulemaking package. However, consistent with FAA practice, the new TSO for Mode S has been published for comment.

2. Amend the Following FAR

FAR Part 43, Appendix F. ATC transponder test and inspection requirements would apply to both ATCRBS and Mode S Transponders. Test areas would include Radio Reply Frequencies, Suppression, Receiver Sensitivity, Radio Frequency, and Output Power. Those tests applicable only to Mode S Transponders include Mode S Diversity Transmission Channel Isolation, Mode S Address, Mode S Formats, Mode S All-Call Interrogations, ATCRBS-Only All-Call Interrogations, and Squitter. The reference to § 91.177 would be changed to § 91.172. The present requirement for recordkeeping will be retained.

FAR Part 91, § 91.24(a). All transponder installations, except equipment reinstalled in an aircraft from which it was removed for maintenance in U.S.-registered civil aircraft, would meet requirements of TSO's applicable

to ATCRBS or Mode S Transponder equipment in accordance with a phase-in schedule. The installation requirements specific to Part 91 would have basic application to:

a. All U.S.-registered civil aircraft.

b. All operations not conducted under Parts 121, 127, or 135.

c. All airspace.

Section 91.24(b). All aircraft operated in the airspace areas below would be required to have either a combination ATCRBS or a Mode S Transponder and automatic pressure altitude reporting equipment. The new requirement would apply essentially the same airspace areas as the current rule, namely:

1. In Group I TCA's;

2. In Group II TCA's; and

3. In all controlled airspace of the 48 contiguous States and the District of Columbia, above 12,500 feet MSL, excluding the airspace at and below 2,500 feet AGL.

Apart from the fact that aircraft may be equipped with Mode S, the only new requirement is that automatic pressure altitude reporting (Mode C) equipment would be required in Group II TCA's.

The exceptions to the current rule would be retained, namely:

1. Operations of helicopters in TCA's at or below 1,000 feet AGL under a letter of agreement.

2. Operations of gliders above 12,500 feet MSL but below the floor of positive control area.

No Group III TCA's exist or are planned. FAA plans to delete the regulatory provisions for Group III TCA's by the time Mode S requirements are implemented.

An editorial change has been made to substitute the word "operating" for the word "operable" in § 91.24(b). Substitution of the word "operating" for the word "operable" is proposed to reflect the existing requirement that transponders must be turned on, as indicated by the language of the existing rule requiring that transponder equipment be "replying" to Mode 3/A interrogations.

Section 91.90(b)(2)(iii). To be consistent with the requirement of § 91.24(b), aircraft operating in Group II TCA's would be required to be equipped with automatic pressure altitude reporting equipment.

Consistent with the amended transponder installation requirements of Part 91, the following FAR sections would be amended:

1. FAR Part 121, § 121.345(c);

2. FAR Part 127, § 127.123(b); and

3. FAR Part 135, § 135.143(c).

List of Subjects

14 CFR Part 43:

Air transportation, Aircraft, Aviation safety, and Safety.

14 CFR Part 91:

Aviation safety, Safety, Aircraft, Air traffic control, Pilots, Airspace, Air transportation, and Airports.

14 CFR Part 121:

Aviation safety, Safety, Air traffic control, Air transportation, Aircraft, Airplanes, Airports, Airspace, and Transportation.

14 CFR Part 127:

Aircraft, Airworthiness, Air Traffic control, Helicopters, and Airspace.

14 CFR Part 135:

Aviation safety, Safety, Air transportation, Airworthiness, Aircraft, Transportation, Helicopters, Air traffic control, Airspace, and Airplanes

The Proposal

In consideration of the foregoing, it is proposed to amend Parts 43, 91, 121, 127, and 135 of the Federal Aviation Regulations, as follows:

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

1. The authority citation for Part 43 is revised to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By revising Appendix F to Part 43 to read as follows:

* * * * *

Appendix F—ATC Transponder Tests and Inspections

The ATC transponder test required by § 91.172 of this chapter may be conducted using a bench check or portable test equipment and must meet the requirements prescribed in paragraphs (a) through (j) of this appendix. If portable test equipment with appropriate coupling to the aircraft antenna system is used, operate the test equipment for ATCRBS Transponders at a nominal rate of 235 interrogations per second to avoid possible ATCRBS interference. Operate the test equipment at a nominal rate of 50 Mode S interrogations per second for Mode S. An additional 3 dB loss is allowed to compensate for antenna coupling errors during receiver sensitivity measurements conducted in accordance with paragraph (c)(1) when using portable test equipment.

(a) Radio Reply Frequency:

(1) For all classes of ATCRBS Transponders, interrogate the transponder and verify the reply frequency is 1090±3 Megahertz (MHz).

(2) For classes 1A and 2A Mode S Transponders, interrogate the transponder and verify that the reply frequency is 109±3 MHz.

(3) For classes 1A and 2A Mode S Transponders that incorporate the optional 109±1 MHz reply frequency, interrogate the transponder and verify that the reply frequency is correct.

(4) For classes IB, 2B, 3 and 4 Mode S Transponders, interrogate the transponder and verify that the reply frequency is 109±1 Mhz.

(b) Suppression: When Classes 1B and 2B ATCRBS Transponders, or Classes 1A and A Mode S Transponders are interrogated Mode 3/A at an interrogation rate between 230 and 1,000 interrogation per second; or when Classes 1A and 2A ATCRBS Transponders, or Classes 1B, 2B, 3 and 4 Mode S Transponders are interrogated at a rate between 230 and 1,200 Mode 3/A interrogations per second:

(1) Verify that the transponder does not respond to more than 1 percent of ATCRBS interrogations when the amplitude of P_2 pulse is equal to the P_1 pulse.

(2) Verify that the transponder replies to at least 90 percent of ATCRBS interrogations when the amplitude of the P_2 pulse is 9 dB less than the P_1 pulse. If the test is conducted with a radiated test signal, the interrogation rate shall be 235±5 interrogations per second unless a higer rate has been approved for the test equipment used at that location.

(c) Receiver Sensitivity:

(1) Verify that for any class of ATCRBS Transponder, the receiver minimum triggering level (MTL) of the system is −73±4 dBm, or that for any class of Mode S Transponder the receiver MTL for Mode S format (P6 type) interrogations is −73±4 dBm by use of a test set either:

(i) connected to the antenna end of the transmission line;

(ii) connected to the antenna terminal of the transponder with a correction for transmission line loss; or

(iii) utilizing a radiated signal.

(2) Verify that the difference in Mode 3/A and Mode C receiver sensitivity does not exceed 1 dB for either any class of ATCRBS Transponder or any class of Mode S Transponder.

(d) Radio Frequency (RF) Peak Output Power:

(1) Verify that the transponder RF output power is within specifications for the class of transponder. Use the same conditions as described in (c)(1)(i), (ii), and (iii) above.

(i) For Class 1A and 2A ATCRBS Transponders, verify that the minimum RF peak output power is at least 21.0 dBW (125 Watts).

(ii) For Class 1B and 2B ATCRBS Transponders, verify that the minimum RF peak output power is at least 18.5 dBW (70 Watts).

(iii) For Classes 1A and 2A Mode S Transponders, verify that the minimum RF peak output power is at least 18.5 dBW (70 Watts).

(iv) For Class 1B, 2B, 3, and 4 and those Class 1A and 2A Mode S Transponders that include the optional high RF peak output

power, verify that the minimum RF peak output power is at least 21.0 dBW (125 Watts).

(v) For any class of ATCRBS or any class of Mode S Transponders, verify that the maximum RF peak output power does not exceed 27.0 dBW (500 Watts).

Note.—The tests in (e) through (j) apply only to Mode S Transponders.

(e) Mode S Diversity Transmission Channel Isolation: For any class of Mode S Transponder that incorporates diversity operation, verify that the RF peak output power transmitted from the selected antenna exceeds the power transmitted from the nonselected antenna by at least 20 dB.

(f) Mode S Address: Interrogate the Mode S Transponder and verify that it replies only to its assigned address. Use the correct address and at least two incorrect addresses. The interrogations should be made at a nominal rate of 50 interrogations per second.

(g) Mode S Formats: Interrogate the Mode S Transponder with uplink formats (UF) for which it is equipped and verify that the replies are made in the correct format. Use the surveillance formats UF=4 and 5. Verify the altitude reported in the replies to UF=4 are the same as that reported in a valid ATCRBS Mode C reply. Verify the identify reported in the replies to UF=5 are the same as that reported in a valid ATCRBS Mode 3/A reply. If the transponder is so equipped, used the communication formats UF=20, 21, and 24.

(h) Mode S All-Call Interrogations: Interrogate the Mode S Transponder with the Mode S-Only All-Call format UF=11, and the ATCRBS/Mode S All-Call formats (1.6 microsecond P_4 pulse) and verify that the correct address and capability are reported in the replies (downlink format DF=11).

(i) ATCRBS-Only All-Call interrogation: Interrogate the Mode S Transponder with the ATCRBS-Only All-Call interrogation (0.8 microsecond P_4 pulse) and verify that no reply is generated.

(j) *Squitter:* Verify that the Mode S Transponder generates a correct squitter approximately once per second.

(k) *Records:* Comply with the provisions of § 43.9 of this chapter as to content, form, and disposition of the records.

PART 91—[AMENDED]

3. The authority citation for Part 91 is revised to read as follows:

Authority: 49 U.S.C 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 21, 1983).

4. In section 91.24 paragraphs (a) and (b) are revised to read as follows:

§ 91.24 ATC Transponder and altitude reporting equipment and use.

(a) *All airspace: U.S.-registered civil aircraft.* For operations not conducted under Parts 121, 127, or 135 of this chapter, ATC transponder equipment (except equipment reinstalled in an aircraft from which it was removed for maintenance) installed within time periods indicated below must meet the performance and environmental requirements of the following TSO's:

(1) *Through December 31, 1986:* (i) Any class of TSO–C74b or any class of TSO C74c as appropriate; or

(ii) Any class of TSO–C112 (Mode S).

(2) *January 1, 1987, through January 1, 1992:* (i) Any class of TSO–C74b or TSO–C74c if the equipment was manufactured before January 1, 1987; or

(ii) Any class of TSO–C112 (Mode S).

(3) *After January 1, 1992:* Any class of TSO–112 (Mode S).

(b) *Controlled Airspace: All aircraft.* Except for persons operating helicopters in TCA's at or below 1,000 feet AGL under the terms of a letter of agreement, and except for persons operating gliders above 12,500 feet MSL, but below the floor of the positive control area, no person may operate an aircraft in the controlled airspace prescribed in paragraphs (b)(1) through (b)(3) of this section, unless that aircraft is equipped with an operating coded radar beacon transponder having either a Mode 3/A 4096 code capability, replying to Mode 3/A interrogations with the code specified by ATC, or a Mode S capability, replying to Mode 3/A interrogations with the code specified by ATC and intermode and Mode S interrogations in accordance with the applicable provisions specified in TSO–C112, and that aircraft is equipped with automatic pressure altitude reporting equipment having a Mode C capability that automatically replies to Mode C interrogations by transmitting pressure altitude information in 100-foot increments. This requirement applies—

(1) In Group I TCA's governed by § 91.90(a);

(2) In Group II TCA's governed by § 91.90(b) except as provided therein; and

(3) In all controlled airspace of the 48 contiguous States and the District of Columbia, above 12,500 feet MSL, excluding the airspace at and below 2,500 feet AGL.

* * * * *

5. In Section 91.90, paragraph (b)(2)(iii) is revised to read as follows:

§ 91.90 Terminal control areas.

* * * * *

(b) *Group II terminal control areas.*

* * * * *

(2) *Equipment requirements.*

* * * * *

(iii) The applicable equipment specified in § 91.24, except that for operations conducted prior to January 1, 1992, automatic pressure altitude reporting equipment is not required for any operation within the TCA. A transponder is not required for IFR flights operating to or from an airport outside of but in close proximity to the TCA when the commonly used transition, approach, or departure procedures to such airport require flight within the TCA.

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PART 121—[AMENDED]

6. The authority citation for Part 121 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

7. In § 121.345, paragraph (c) is revised to read as follows:

§ 121.345 Radio equipment.

* * * * *

(c) ATC transponder equipment (except equipment reinstalled in an aircraft from which it was removed for maintenance) installed within the time periods indicated below must meet the performance and environmental requirements of the following technical standard orders:

(1) *Through December 31, 1986:* (i) Any class of TSO–C74b or any class of TSO C74c as appropriate: or

(ii) Any Class of TSO–C112 (Mode S).

(2) *January 1, 1987, through January 1, 1992:* (i) Any class of TSO–C74b or TSO–C74c if the equipment was manufactured before January 1, 1987; or

(ii) Any class of TSO–C112 (Mode S).

(3) *After January 1, 1992:* Any class of TSO–C112 (Mode S).

PART 127—[AMENDED]

8. The authority citation for Part 127 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1422, 1423, 1424, 1425, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

9. In § 127.123, paragraph (b) is revised to read as follows:

§ 127.123 Radio equipment.

* * * * *

(b) ATC transponder equipment (except equipment reinstalled in an aircraft from which it was removed for maintenance) installed within the time periods indicated below must meet the performance and environmental requirements of the following technical standard orders:

(1) *Through December 31, 1986:* (i) Any class of TSO–C74 or any class of TSO C74c as appropriate; or

(ii) Any class of TSO–C112 (Mode S).

(2) *January 1, 1987, through January 1, 1992:* (i) Any class of TSO–C74b or TSO–C74c if the equipment was manufactured before January 1, 1987; or

(ii) Any class of TSO–C112 (Mode S).

(3) *After January 1, 1992.* Any class of TSO–C112 (Mode S).

PART 135—[AMENDED]

10. The authority citation for Part 135 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

11. In § 135.143, paragraph (c) is revised to read as follows:

§ 135.143 General requirements.

* * * * *

(c) ATC transponder equipment (except equipment reinstalled in an aircraft from which it was removed for maintenance) installed within the time periods indicated below must meet the performance and environmental requirements of the following TSO's:

(1) *Through December 31, 1986:* (i) Any class of TSO–C74b or any class of TSO C74c as appropriate: or

(ii) Any class of TSO–C112 (Mode S).

(2) *January 1, 1987, through Jaunary 1, 1992:* (i) Any class of TSO–C74b or TSO–C74c if the equipment was manufactured before January 1, 1987; or

(ii) Any class of TSO–C112 (Mode S).

(3) *After January 1, 1992:* Any class of TSO–C112 (Mode S).

Issued in Washington, D.C., on September 9, 1985.

Donald D. Engen,

Administrator.

[FR Doc. 85–21878 Filed 9–16–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 85–AAL–7]

Proposed Alteration and Designation of Federal Airways; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice or proposed rulemaking.

SUMMARY: This notice proposes to amend the descriptions of several airways and also designate new airways in western Alaska. This action is proposed due to the installation of new navigational aids, and publishing instrument flight rule (IFR) approach procedures. This will enhance instrument flight, flight planning and also improve the flow of traffic.

DATES: Comments must be received on or before October 29, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Alaskan Region, Attention: Manager, Air Traffic Division, Docket No. 85–AAL–7, Federal Aviation Administration, 701 C Street, Box 14, Anchorage, AK 99513.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Burton Chandlers, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–AAL–7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availabilty of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Comunications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the description of several airways and also designate new airways in western Alaska. This action is proposed due to the installation of new navigational aids and publication of IFR approach procedures. This will enhance instrument flight, flight planning and also improve the flow of traffic. Section 71.125 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated Janaury 2, 1985.

The FAA has determined that this proposed regulations only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR federal airways.

PART 71—[AMENDED]

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part

71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.125 is amended to read as follows:

V-319 [Amended]

By removing the words "to Bethel, AK." and substituting the words "Bethel, AK; to Hooper Bay, AK."

V-333 [New]

From Cape Newenham, AK, NDB via Kipnuk, AK; Hooper Bay, AK; Nome, AK; to Shishmaref, AK, NDB.

V-350 [New]

From Dillingham, AK, via Togiak, AK, NDB; to Bethel, AK.

V-401 [New]

From Ambler, AK, NDB via Kotzebue, AK, to Shismaref, AK, NDB.

V-452 [Amended]

By removing the words "From Nome, AK , via" and substituting the words "From Kukuliak, AK, via Nome, AK;"

V-453 [Amended]

By removing the period after "Bethel" and substituting the words "Anvik, AK; to Unalakleet, AK."

V-477 [New]

From Galena, AK, via Huslia, AK; Selawik, AK; to Ambler, AK, NDB.

V-480 [Amended]

By removing the words "From" and substituting "From St. Paul Island, AK, NDB via Kipnuk, AK;"

V-488 [Amended]

By removing the word "From" and substituting the words "From Hooper Bay, AK, via Unalakleet, AK;"

V-531 [New]

From Fairbanks, AK, via Tanana, AK; Huslia, AK; Selawik, AK; Kotzebue, AK; to Point Hope, AK, NDB.

Issued in Washington, D.C., on September 6, 1985.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-22147 Filed 9-16-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AWA-39]

Proposed Alteration of VOR Federal Airway

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter Federal Airway V-15 between Neosho, MO, and Okmulgee, OK. This relignment would eliminate the dogleg which currently exists in that area. This action would improve flight planning and aid navigation by realigning this segment as a direct route. This shorter direct route would also save fuel.

DATES: Comments must be received on or before October 28, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Central Region, Attention: Manager, Air Traffic Division, Docket No. 85-AWA-39, Federal Aviation Administration, 601 East 12th Street, Federal Building, Kansas City, MO 64106.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWA-39." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430,800 Independence Avenue SW., Washington DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter VOR Federal Airway V-15 segment located between Neosho, MO, and Okmulgee, OK. The realignment of this segment would eliminate the dogleg which now exists in that area. This action would improve flight planning and aid navigation by making this segment of V-15 a direct route which is a shorter distance, thereby saving fuel. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal Airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

V-15 [Amended]

By removing the words "Okmulgee, OK; INT Okmulgee 048° and Neosho, MO, 223° radials; to Neosho." and substituting the words "Okmulgee, OK, to Neosho, MO."

Issued in Washington, DC, on September 9, 1985.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85-22145 Filed 9-16-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-ACE-08]

Proposed Alteration of Transition Area; Abilene, Kansas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to alter the 700-foot transition area at Abiline, Kansas, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Abilene, Kansas, Municipal Airport utilizing the Salina, Kansas VORTAC as a navigational aid.

DATES: Comments must be received on or before October 21, 1985.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-540, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, Operations, Procedures and Airspace Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Dale L. Carnine, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 374-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Discussion

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by altering the 700-foot transition area at Abilene, Kansas. To enhance airport usage, an additional instrument approach procedure to the Abilene, Kansas, Municipal Airport is being established utilizing the Salina VORTAC as a navigational aid. The establishment of this new instrument approach procedure based on this navigational aid entails alteration of the transition area at Abilene, Kansas, at and above 700 feet above ground level within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. By amending § 71.181 as follows:

Abilene, Kansas

That airspace extending upward from 700 ft. above the surface within a 5-mile radius of the Abilene Municipal Airport (Latitude 38°54'20" N; Longitude 97°14'08" W); within 2 miles each side of the 180° bearing from the MAIME waypoint (Latitude 39°02'36" N; Longitude 97°14'12" W) extending from the 5-mile radius area to 5.75 miles north of the airport; within 2 miles each side of the Salina VORTAC 086° bearing extending from the 5-mile radius area to 5.75 miles west of the airport.

Issued in Kansas City, Missouri, on September 4, 1985.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 85-22148 Filed 9-16-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 85-AWA-34]

Proposed Establishment of Jet Route J-599; Mullan Pass, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to extend Jet Route J-599 from Mullan Pass, ID, USA, to Cranbrook, BC, Canada. Transport Canada has requested this route extension. The proposed route would support the Edmonton, Canada, Area Control Flow Management Program.

DATE: Comments must be received on or before November 12, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 85-AWA-34, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The offical docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWA-34." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application precedure.

The Proposal

The FAA is considering an amendment to § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to extend J-599 from Mullan Pass, ID to Cranbrook, BC, Canada. The establishment of this route will support the Edmonton, Canada, Area Control Center Flow Management Program and is proposed at the behest of Transport Canada. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Jet routes, Aviation safety.

The Proposed Amendment

PART 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as follows:

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 75.100 is amended as follows:

J-599 [New]

From Mullan Pass, ID, to Cranbrook, BC, Canada. The airspace within Canada is excluded.

Issued in Washington, DC, on September 9, 1985.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85-22146 Filed 9-16-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 832 3042]

Larry Brog; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a former chief executive officer of a Salt Lake City, Utah manufacturer and distributor of a dry milk substitute, among other things, to cease making any representations concerning the health benefits or expected shelf life for "Meadow Fresh White", a powdered, dairy-based milk substitute, or other food products, without reliable and competent substantiation. Also, respondent would be prohibited from excluding some distributors in computing "average" distributor

earnings without proper disclosures concerning the method of computation.

DATE: Comments must be received on or before November 18, 1985.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Larry M. Hodapp, FTC/H-238A, Washington, DC 20580. (202) 523-3860.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and 2.34 of the Commision's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Powdered milk drinks, Trade practices.

Before Federal Trade Commission

[File No. 832-3042]

Agreement Containing Consent Order To Cease and Desist

In the matter of Larry Brog, individually and a former officer of Meadow Fresh Farms, Inc.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Larry Brog, individually and as a former officer of Meadow Fresh Farms, Inc., (hereinafter sometimes referred to as proposed respondent) and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Larry Brog, individually and as a former officer of Meadow Fresh Farms, Inc., and his attorney, and counsel for the Federal Trade Commission that:

1. Meadow Fresh Farms, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Utah, with its office and principal place of business located at 391 South Orange Street, in Salt Lake City, State of Utah.

Proposed respondent Larry Brog is a former officer of said corporation. He, among others, formulated, directed and controlled the policies, acts and practices of said corporation and his address was the same as that of said corporation.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access of Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60 days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right he may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. He understands that once the order has been issued, he will be required to file one or more compliance reports showing that the has fully complied with the order. Proposed respondent further understands that he may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent Larry Brog, individually and as a former officer of Meadow Fresh Farms, Inc., and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, advertising, offering for sale, sale, or distribution of a powdered, a dairy-based drink called "Meadow Fresh" or any other food product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, unless at the time of such representation respondent possesses and relied upon reliable and competent scientific evidence that substantiates any such representation, (a) any benefit to health to be derived from using any such product, (b) any nutritional or other health related attribute of such product, or (c) any expected shelf life of such product. "Reliable of competent" shall mean for purposes of this order those tests, analyses, research, studies, or other evidence conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

II

It is further ordered that respondent Larry Brog, individually and as former officer of Meadow Fresh Farms, Inc., and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the

manufacturing, advertising, offering for sale, sale or distribution of any product or service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing as an "average," directly or by implication, any computation of income levels, earnings, sales or other payments received by distributors as a whole or by a specified distributor category which is based on less than all distributors in the stated category, unless the fact that some distributors are excluded and the basis for any such exclusion are clearly and prominently disclosed in close proximity to such representation.

"Distributor" as used in this order shall refer to any person, partnership or corporation which is granted the right to offer, sell or distribute goods or services manufactured, processed, distributed, offered or sold by respondent or to recruit other persons, partnerships or corporations to be distributors of respondent's goods or services.

III

It is further ordered that respondent shall, for at least three years after the date the representation is last disseminated, maintain and upon request make available to the Federal Trade Commission for inspection and copying copies of:

1. All materials relied upon to substantiate any representation covered by this order; and

2. All test reports, studies, surveys, or demonstrations in his possession or control, or of which he has knowledge, that contradict any representation covered by this order.

IV

It is further ordered that respondent shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment and of his affiliation with a new business or employment and that, for a period of four years from the date of service of this order, respondent shall promptly notify the Commission of each affiliation with a new business or employment, with each such notice to include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged, as well as a description of respondent's duties and responsibilities in connection with the business or employment.

V

It is further ordered that respondent shall forthwith distribute a copy of this order to all distributors of products manufactured or marketed by respondent.

VI

It is further ordered that respondent shall, within sixty (60) days after service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Larry Brog, former Chief Executive Officer of Meadow Fresh Farms, Inc., South Orange Street, Salt Lake City, Utah, a multilevel marketer of powdered milk drinks.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that Larry Brog has represented that "Meadow Fresh", a powdered, dairy-based drink, is associated with a reduction in the incidence of cardiovascular disease due to reduced levels of xanthine oxidase, that xanthine oxidase is a major contributor to cardiovascular problems, that Meadow Fresh has an expected storage life of up to ten years under reasonable storage conditions, and that he possessed and relied upon a reasonable basis for these representations. The complaint alleges that at no time has Larry Brog possessed and relied upon a reasonable basis for such representations.

In addition, the complaint alleges that Larry Brog has made false and misleading representations regarding the income being derived by distributors of Meadow Fresh. The complaint alleges that Larry Brog disseminated figures which purported to be average monthly income figures, but which were, in fact, computed by considering only the minority of distributors who actually earned some income during the applicable period. The complaint alleges that this manner of computation results in income figures which are substantially larger than those that would be found by including all distributors in the computation and providing the average of their income.

The proposed consent order prohibits Larry Brog from making any representation regarding any benefit to health to be derived from a food product, any nutritional or other health related attribute of such product, or any expected shelf life of such product, unless at the time of such representation he possesses and relies upon reliable and competent scientific evidence that substantiates such representation.

The proposed consent order also would prohibit Larry Brog from representing as an average any computation of earning or sales of distributors of any product or service which is based upon less than all distributors, unless he discloses the fact that some distributors are excluded and the basis for such exclusion at the same time.

Finally, the proposed order would require Larry Brog to retain any substantiation required by the proposed order for three years, to notify the Commission of any change in his business affiliation for a four year period, to provide all his distributors with a copy of the order, and to file a compliance report within 60 days after service of the order.

The purpose of this analysis is to facilitate public comment on the proposed order; it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85-22171 Filed 9-16-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 668

[FHWA Docket No. 85-5]

Emergency Relief

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA requests comments on proposed revisions to its regulation on Emergency Relief (ER). Emergency Relief is a program established by Congress to assist the States in the repair of serious damage to highways. The regulation specifies procedures for program and project administration and provides guidance on eligibility of work. The proposed revisions are intended to bring the existing regulation up to date considering recent legislative and administrative changes in the program.

DATE: Comments must be receive by December 16, 1985.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 85–5, Federal Highway Administration, Room 4205, HCC–10, 400 7th Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. James A. Carney, Railroads, Utilities and Programs Branch, Office of Engineering, (202) 226–0450, or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 426–0762, Federal Highway Administration, 400 7th Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The clear purpose of the ER program is to assist State and local authorities in unusually heavy expenses associated with an emergency involving Federal-aid highways. The policies, procedures and requirements for administering the Emergency Relief program are set forth in 23 CFR Part 668. In carrying out the requirements of section 125 of Title 23, United States Code, to provide funds to pay for the repair or reconstruction of Federal-aid highways, which are found to have suffered serious damage by natural disasters over a wide area or catastrophic failures, the Secretary of Transportation is authorized by 23 U.S.C. 315 to prescribe and promulgate rules and regulations. This authority is delegated to the Federal Highway Administrator by 49 CFR 1.48. The regulation, 23 CFR 668, establishes the authority and responsibility of the Federal Highway Administrator to approve funds on the basis of an application by the State highway agency (SHA). It is necessary to have the parameters of emergency situations sufficiently defined to permit a clear determination of eligibility prior to approval. Furthermore, it is desirable to establish and maintain a national policy which assures a consistent application of criteria used to determine if an occurrence qualifies as a disastrous situation with regard to serious highway damage and which work may be included as necessary to repair such damage.

Upon submission of an application by the SHA, FHWA reviews the submitted information and approves or disapproves the application according to the information provided.

The FHWA allocates Emergency Relief funds to the States on the basis of estimates made by FHWA in conjunction with the SHA. Since eligible projects are on Federal-aid systems, appropriate classes of regular Federal-aid funds are available which permits greater flexibility in the development of repair projects. It is not the purpose of this program to provide funds for instances of isolated serious damage to road facilities which as a matter of normal road operations should be routinely budgeted and provided for by the States; nor is it the intent of this program to compensate for a lack of State assistance to local agencies within the State. States and local authorities (through the States) should not seek Emergency Relief funding for routine repairs or correction of normally expected road damage. This type of road damage should be provided for through regular road fund contingency planning. The Emergency Relief program should be considered as a "last resort" to be used when an emergency situation goes beyond that which could and should reasonably be accommodated by a State's emergency or contingency programs. Therefore, the inability of State or local authorities to pay is not in itself a warranting criterion in itself to justify the approval of ER funds.

There can be no nationwide definitive break point between routine and extraordinary repair expenses. However, as a general rule FHWA considers situations where the estimated cost of work necessary to correct potentially ER eligible sites is less than $500,000 for a single occurrence in a State to be of a nature which could be handled by a State under its routine procedures.

This is not an absolute threshold but it is a reasonable point where FHWA must more critically review proposals for lesser amounts and consider whether the situation meets the intent of the ER program.

Summary of Revisions

The proposed revisions are intended to bring the existing regulation up to date considering recent legislative and administrative changes in the program. Generally, the proposed changes include (1) recent legislative provisions in the 1982 Surface Transportation Assistance Act [Pub. L. 97–424, 96 Stat. 2133–2134] (1982 STAA) (a) placing a $30,000,000 limitation on the amount of Emergency Relief funds which can be obligated on a particular disaster in a State, (b) establishing the Federal share at 100 percent, and (c) adding more definitive eligiblilty language, (2) simplifying program procedures, and (3) clarification of the wording of several sections to assure more consistent coordination and review of proposed projects. The following specific revisions are being proposed:

Definitions—The definition of "Catastrophic failure" would be clarified by emphasizing that a highway failure must result from an external cause as specified in 23 U.S.C. 125. The term "External cause" would be added as a definition. The term would be defined as: "An outside force or phenomenon which is separate from the damaged element and not primarily the result of existing conditions." The definition of "Natural disaster" would be clarified to include the conditions "sudden" and "unexpected." A definition for "Serious damage" would also be added.

Policy—This section would be amended to: (1) Add a paragraph to restate a longstanding policy that emergency funds are not intended to supplant other funds for correction of pre-existing, non-disaster related deficiencies; (2) add a paragraph providing for cost effectiveness that ER funds should be expended so as to reduce, to the greatest extent feasible, the cost of permanent restoration work; and (3) clarify the provision for prompt crediting when insurance or other compensatory proceeds are involved.

Federal Share Payable—This section provides that the Federal pro-rata share may amount to 100% of the eligible costs of Emergency Relief work. It is presumed that it will be a rare occurrence when a State would request a lesser Federal pro-rata share but it is permitted if the State so elects. It would most likely occur for projects covered by a disaster limited by the $30 million cap.

Eligibility—This section would be amended to: (1) Specifically list the activities which are not eligible for emergency funds and (2) clarify that the total cost of a project eligible for ER may not exceed the cost of repair or reconstruction of a comparable facility.

Application Procedures—This section would be amended to: (1) Simplify the application procedure by eliminating the need to specify the State's form of intent and (2) clarify the provision for the field report on the natural disaster or catastrophic failure by specifically outlining the content requirements.

Program and Project Procedures—This section would be amended to simplify the procedures for program implementation, including providing for alternative procedures, and to assure expeditious funding.

Regulatory Impact

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. The revisions proposed in this document are primarily technical in nature, provide language clarifications, and provide a more current delineation of legislative mandates. The revisions will impose no additional burdens on the States or local agencies and could reduce implementation burdens by providing a more current regulation and procedural simplifications. For these reasons, the anticipated economic impact, if any, will be minimal. Therefore, a full regulatory evaluation is not required. For the same reasons and under the criteria of the Regulatory Flexibility Act (Pub. L. 96–354), the FHWA hereby certifies that this action, if promulgated, will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing and under the authority of 23 U.S.C. 101, 120(f), and 315; 42 U.S.C. 5155; 49 CFR 1.48(b); the FHWA proposes to revise Part 668, Subpart A of title 23, Code of Federal Regulations, to read as set forth below.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 668

Grant programs—transportation, Highways and roads, Emergency relief, Reporting and recordkeeping requirements.

Issued on: September 11, 1985.

R.D. Morgan,

Executive Director, Federal Highway Administration.

Part 668 is amended by revising Subpart A to read as follows:

PART 668—EMERGENCY RELIEF

Subpart A—Procedures for Federal-Aid Highways

Sec.

668.101 Purpose.
668.103 Definitions.
668.105 Policy.
668.107 Federal share payable.
668.109 Eligibility.
668.111 Application procedures.
668.113 Program and project procedures.

* * * * *

Subpart A—Procedures for Federal-Aid Highways

Authority: 23 U.S.C. 101, 120(f), and 315; 42 U.S.C. 5155; 49 CFR 1.48(b).

§ 668.101 Purpose.

To establish policy and provide program guidance for the administration of emergency funds for the repair or reconstruction of Federal-aid highways, which are found to have suffered serious damage by natural disasters over a wide area or catastrophic failures. Guidance for application by Federal agencies for reconstruction of Federal roads not on the Federal-aid system is contained in 23 CFR Part 668, Subpart B.

§ 668.103 Definitions.

In addition to those contained in 23 U.S.C. 101(a), the following definitions shall apply as used in this regulation:

(a) *Applicant.* The State highway agency is the applicant for Federal assistance under 23 U.S.C. 125 for State highways and local roads and streets which are a part of the Federal-aid highway system.

(b) *Catastrophic failure.* The sudden failure of a major element or segment of the highway system due to an external cause. The failure must not be primarily attributable to gradual and progressive deterioration or lack of proper maintenance. The closure of a facility becaues of imminent danger of collapse is not in itself a sudden failure.

(c) *Emergency repairs.* Those repairs including temporary traffic operations undertaken during or immediately following the disaster occurrence for the purpose of:

(1) Minimizing the extent of the damage,

(2) Protecting remaining facilities, or

(3) Restoring essential travel.

(d) *External cause.* An outside force or phenomenon which is separate from the damaged element and not primarily the result of existing conditions.

(e) *Federal roads.* Public roads which are Forest highways, park roads, parkways, public lands highways, or Indian reservation roads.

(f) *Natural disaster.* A sudden, unexpected and unusual natural occurrence, such as a flood, hurricane, severe storm, tidal wave or earthquake, which causes serious damage.

(g) *Proclamation.* A declaration of emergency by the Governor of the affected State.

(h) *Serious Damage.* Heavy, major or unusual damage to a highway which severely impairs the usefulness of the highway or results in road closure. Serious damage would not result from routine road operations and would be beyond the scope of heavy maintenance. A proliferation of damage, minor in nature, does not constitute serious damage for the purpose of this section.

§ 668.105 Policy.

(a) The Emergency Relief program is intended to aid States in repairing road facilities which have suffered widespread serious damage resulting from a natural disaster over a wide area or serious damage from a catastrophic failure.

(b) Emergency funds are not intended to supplant other funds for correction of preexisting, nondisaster related deficiencies.

(c) The expenditure of ER funds for emergency repair shall be in such a manner so as to reduce, to the greatest extent feasible, the cost of permanent restoration work.

(d) The availability of emergency funds to repair or restore damaged highways resulting from a natural disaster shall be based on the combination of the extraordinary character of the natural disturbance and the wide area of impact as well as the seriousness of the damage. Storms of unusual intensity occurring over a small area may not meet the above conditions.

(e) Diligent efforts shall be made to recover repair costs from the legally responsible parties to reduce the project costs particularly where catastrophic damages are caused by ships, barge tows, highway vehicles, vehicles with illegal loads or where natural disaster or catastrophic damage is exacerbated by improperly controlled objects or events.

(f) Emergency funds shall not duplicate assistance under another Federal program or compensation from insurance or any other source. Partial compensation for a loss by other sources will not preclude emergency fund assistance for the part of such loss not compensated otherwise. Any compensation for damages or insurance proceeds including interest recovered by the State must be promptly applied to the project or appropriately credited to Federal accounts upon receipt.

(g) The processing of Emergency Relief requests shall be given prompt attention and shall be given priority over non-emergency work.

(h) Emergency Relief projects shall be promptly constructed. Any project that has not advanced to the construction obligation stage by the end of the second fiscal year following the disaster occurrence will not be advanced unless suitable justification to warrant retention is furnished to the Federal Highway Administration (FHWA).

(i) Permanent repair and reconstruction work shall be done by the contract method where feasible. Where the State determines that the public interest is best served, emergency repairs may be performed by force account or negotiated contract methods as necessary to protect public health and safety.

§ 668.107 Federal share payable.

(a) The Federal share payable generally will amount to 100 percent of the cost.

(b) Total obligations of Federal Emergency Relief funds in any State for all projects (including projects on both the Federal-aid systems and those on Federal roads and trails), resulting from a single natural disaster or a single catastrophic failure, shall not exceed $30 million per disaster or catastrophic failure except where Federal law specifically provides otherwise.

§ 668.109 Eligibility.

(a) The eligibility of all work is contingent upon approval by the Federal Highway Administrator of an application for emergency funds and inclusion of the work in an approved program of projects.

(1) Prior FHWA approval or authorization is not required for emergency repairs and preliminary engineering (PE).

(2) Permanent repairs or restoration must have prior FHWA program approval and authorization, unless done as part of the emergency repairs.

(b) Emergency funds may participate in:

(1) Repair to or reconstruction of seriously damaged highway elements within the right-of-way (ROW) limits, including necessary clearance of debris and other deposits in drainage courses;

(2) Restoration of stream channels outside the highway ROW when:

(i) The public highway agency has responsibility for the maintenance and proper operation of the stream channel section, and

(ii) The work is necessary for satisfactory operation of the highway system involved;

(3) Actual PE and construction engineering costs on approved projects;

(4) Emergency repairs;

(5) Temporary operations, including emergency traffic services such as flagging traffic through inundated sections of highways, undertaken by the applicant during or immediately following the disaster; and

(6) Betterments, such as relocation, replacement, upgrading or other added features not existing prior to the disaster, only where clearly economically justified to prevent future recurring damage. Economic justification must weigh the cost of the betterment against the risk of eligible recurring damage and the cost of future repair.

(c) Emergency funds may not participate in:

(1) Heavy maintenance to repair damage not directly associated with serious damage to the road consisting primarily of eroded shoulders, filled ditches and culverts, pavement settlement, mud and debris deposits, slope sloughing, minor slides, and slip-outs in cut or fill slopes which do not extend to the travelled way;

(2) Repair of surface damage caused by traffic whether or not the damage was aggravated by saturated subgrade or inundation, unless such traffic was necessary for emergency repairs of seriously damaged sections of the road;

(3) Repair of damage not directly related to, and isolated away from, the pattern of the disaster;

(4) Maintenance of detours and temporary surfaces, upon completion of emergency repairs and prior to permanent reconstruction;

(5) Replacement of damaged or lost material not incorporated into the highway;

(6) Reconstruction of facilities affected by long-term, pre-existing conditions or predictable developing situations such as flooding in basin areas or slow moving slides;

(7) Permanent repair or replacement of deficient bridges scheduled for replacement with other Federal-aid funds; and

(8) Other normal maintenance and operation functions on the highway system.

(d) Replacement highway facilities are appropriate when it is not technically and economically feasible to repair or restore a seriously damaged element to its predisaster condition and are limited in Emergency Relief reimursement to the cost of a new facility to current design standards of comparable capacity and character to the destroyed facility. With respect to a bridge, a comparable facility is one which meets current geometric and construction standards for the type and volume of traffic it will carry during its design life.

(e) The total cost of a project eligible for Emergency Relief may not exceed the cost of repair or reconstruction of a comparable facility. Emergency funds may participate to the extent of eligible repair costs when proposed projects contain betterments or other work not eligible for emergency funds.

§ 668.111 Application procedures.

(a) *Notification.* As soon as possible after the disaster, the applicant shall notify the FHWA Division Administrator of its intent to apply for emergency funds.

(b) *Field report.* As soon as practical after the occurrence, the State will promtly make a preliminary field survey, working cooperatively with the FHWA Division Administrator and other governmental agencies with jurisdiction over eligible highways. The preliminary field survey should be coordinated with the Federal Emergency Management Agency work if applicable to eliminate duplication of effort. The purpose of this survey is to determine the general nature and extent of damage to eligible highways for preparation of a field report.

(1) The purpose of the field report is to provide a factual basis for the Federal Highway Administrator's finding that serious damage to Federal-aid highways has been caused by a natural disaster over a wide area or a catastrophe. The report should include a description of the types and extent of damage to highways and a preliminary estimate of cost of restoration or reconstruction for Federal-aid systems and other roads to the extent information is available. A description of the nature and characteristics of the disaster or catastrophe, and dates of occurrence (incident period) should be coordinated with the Federal Emergency Management Agency (FEMA) and included in the report. When the President has declared "a major disaster," detailed information on the extraordinary natural disturbance is not required, however, the seriousness of the road damage must be documented. Pictures showing the kinds and extent of damage and sketch maps detailing the damage areas should be included in the field report.

(2) Upon completion, the field report will be forwarded with the State's application to FHWA Headquarters. Unless very unusual circumstances prevail, receipt of the field report will be expected within 6 weeks following the applicant's notification.

(c) *Application.* Before funds can be made available, an application for Emergency Relief must be made to, and approved by, FHWA. The application shall be submitted to the FHWA Division Administrator, who will forward it through channels to FHWA Headquarters. The application shall include:

(1) A copy of the Governor's proclamation or request for a Presidential proclamation (neither is

required where Federal roads only are involved);

(2) A copy of the field report.

(d) *Approval of application.* The Federal Highway Administrator's finding of eligibility under 23 U.S.C. 125 shall constitute approval of the application.

(Information collection requirements approved by the Office of Management and Budget under Control No. 2125–0525.)

§ 668.113 Program and project procedures.

(a) Immediately after approval of an application, the FHWA Division Administrator will notify the applicant to proceed with preparation of a program consistent with requirements of 23 CFR Part 630. The program should be submitted to the FHWA Division Administrator within 3 months of receipt of this notification. The FHWA field office will assist the applicant and other affected agencies in preparation of the program. This work may involve joint site inspections to view damage and reach tentative agreement on type of permanent corrective work to be undertaken. Program data should be kept to a minimum, but should be sufficient to identify the approved disaster or catastrophe and to permit a determination of the eligibility and propriety of proposed work. If the field report is determined by the FHWA Division Administrator to be of sufficient detail to meet these criteria, additional program support data need not be submitted.

(b) Project procedures:

(1) Projects shall be processed in accordance with regular Federal-aid procedures except as modified herein or with approved Certification Acceptance procedures where applicable.

(2) Simplified procedures, including abbreviated plans should be used where appropriate.

(3) The FHWA may approve a waiver of the advertising requirement if:

(i) Such procedures are authorized by State or local law; and,

(ii) Bids are solicited from a reasonable number of contractors or material supply companies.

(4) Program items for emergency repairs and PE will be reviewed promptly and funds obligated to cover the approved items.

[FR Doc. 85–22249 Filed 9–16–85; 8:45 am]
BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 570]

Northern Neck Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Proposed rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area located in the tidewater area of Virginia to be known as the Northern Neck. The proposed viticultural area is a five county peninsula or neck located to the east of Fredericksburg. This proposal is the result of a petition submitted by Mr. Carl F. Flemer, Jr., President of the Ingleside Plantation vineyards located in Oak Grove, Westmoreland County, Virginia. The petitioner proposed the name George Washington Brithplace for the viticultural area. However, the petition contains insufficient evidence to support that name. Rather, ATF believes the evidence more strongly supports another name, Northern Neck, and that is the name proposed in this notice.

The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will enable consumers to better identify the wines they may purchase.

DATE: Written comments must be received by November 1, 1985.

ADDRESSES: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385.

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4406, Federal Building, 12th and Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ed Reisman, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, Telephone (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR defines and American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9.

Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural area from the surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S. maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

ATF has received a petition proposing an American viticultural area to be known as George Washington Birthplace. The petitioner, Carl F. Flemer, Jr., is the owner of Ingleside Plantation Vineyards, a bonded winery located in Oak Grove, Westmoreland County, Virginia. This is the only bounded winery found within the boundary of the proposed viticultural area. The proposed 922 square mile viticultural area includes all the land in an area known locally and historically as the Northern Neck. The five counties in the area are Westmoreland, King George, Richmond, Northumberland and Lancaster. There are 16 established vineyards with a total of 92.5 acres planted in vitis Vinifera and French-

American hybrid grapes located within the boundary of the proposed viticultural area. According to the petitioner, there is considerable interest in establishing other vineyards in the proposed viticultural area. Another bonded winery is proposed for King George County. Also, newspaper articles indicate that there is local interest in grape growing in the proposed viticultural area.

ATF has reservations about the validity of the petitioned name George Washington Birthplace applying to the peninsula. Although the petitioner has provided some evidence for the name George Washington Birthplace, the evidence more strongly supports another name. The land area as proposed by the petitioner, encompassing the entire neck or peninsula separated by the Rappahannock and Potomac Rivers and the Chesapeake Bay, is supported by evidence indicating that a more appropriate name would be the Northern Neck.

Evidence That the Name George Washington Birthplace Is Locally or Nationally Known as Referring to the Area Specified in the Petition

The petitioner stated that the name George Washington Birthplace is the one name nationally associated with the Northern Neck. Although the petitioner acknowledges that the petitioned area is locally known as the Northern Neck, he claims that the name Northern Neck is not very well known throughout the rest of the State of Virginia and is almost unknown regionally or nationally. The petitioner said that in order to utilize fully the advantages in having a viticultural area established, the name, if appropriate and fitting, should be one that is recognizable to the general public not only in the State but also in the region and the nation.

George Washington was born in Westmoreland County at the Pope's Creek Plantation (later called Wakefield Plantation) home of his father Augustine, on February 22, 1732. George Washington's Birthplace National Monument, now encompassing a portion (538 acres) of the original Pope's Creek farm, as well as the birthplace site, has been since 1932 open to the public as a national landmark and maintained by the U.S. National Park Service under the supervision of the U.S. Department of the Interior. Today, a memorial house stands near the site of the original plantation home which accidentally burned down in the winter of 1779/1780. A U.S. Postal Station is located here, using the official postmark designation "Washington Birthplace, Virginia 22575." According to the petitioner, this land of the Northern Neck, as epitomized by this national monument, is widely and properly known and recognized as "The Birthplace of George Washington."

H. Ragland Eubank in his 1934 *Guidebook of the Northern Neck*, states that the Historic Northern Neck of Virginia is the Land of George Washington. Further, he states that Mary Ball, the mother of Washington, was closely identified and associated with each of the five Northern Neck Counties, having been born in Lancaster, having lived in Northumberland, Westmoreland and King George, and having owned property in Richmond County. The Mary Ball Washington Museum and Library located at Lancaster, Lancaster County, contains mementos relating to the Washington family.

The Westmoreland Association, Inc., formed in the 1920's, states that the Northern Neck is the Land of George Washington and Robert E. Lee and that "From its four corners came the blood that flowed in their veins."

The Northern Neck Historical Society was established in 1950 to collect and preserve data peculiar to the region and to publish a magazine called *Northern Neck Historical Magazine* to disseminate such information. Its organizational meeting is held each year at the County Seat of Westmoreland, the Birthplace of George Washington.

According to the petitioner, the *Northern Neck News*, published in Warsaw, Richmond County, is probably the most widely distributed and most widely read of all weekly newspapers of the Northern Neck. This publication claims to serve the "Heart of Historyland—In the land of Lee and Washington."

According to newspaper articles submitted by the petitioner, the Virginia Division of Tourism has appropriated funds and has been promoting tours of the Virigina wineries and nearby historical areas. One of these promotions features the Fredericksburg and Northern Neck areas, including the National Park Service facilities at the site of George Washington's Birthplace (Wakefield), the Ingleside Plantation Winery located within a few miles of the National Park Service site, Stratford Hall (the ancestral home of the Lee family) and other places of interest on the Northern Neck.

The petitioner summarized his arguments supporting the name George Washington Birthplace viticultural area by saying the following: George Washington's family, both father and mother, for three generations before his birth were either residents, land owners, or intimately connected in some way with each of the five Northern Neck counties of the proposed viticultural area. The petitioner felt that the name George Washington Birthplace was appropriate for this area of land, based on the previous information submitted by the petitioner.

Evidence That the Name Northern Neck is Locally or Nationally Known as Referring to the Area Specified in the Petition

There are many references to the name Northern Neck as indicated in the foregoing paragraphs. These references and the following evidence support ATF's position that the name Northern Neck is more appropriate than that of George Washington Birthplace proposed by the petitioner.

According to information gathered by the petitioner from various written references, no more history attaches to any small geographical area in the United States than to that of the peninsula between the Rappahannock and Potomac Rivers known as the Northern Neck of Virginia. According to U.S. Senator Robert O. Norris, Jr., who wrote the foreword in the *Northern Neck Historical Magazine* in December 1951, "It may truthfully be said that this section was the birthplace of the nation."

In the book titled *The Stronghold (A Story of the Historic Northern Neck of Virginia and Its People)* written by Miriam Haynie (1969), there is included a map which depicts the five county petitioned area of land. The map specifically identifies that land area as the Northern Neck of Virginia. The book states that on the western shore of the Chesapeake Bay there are three peninsulas or necks carved out of Virginia's shoreline by the tidal rivers. The third and northernmost of the peninsulas, the Northern Neck, lies between the Rappahannock and the Potomac Rivers. According to the author, the name Northern Neck appeared in print as early as 1677 on an official document reading "Ye Northern Neck."

In the book titled *Land Grants of Virginia 1607–1699* by W. Stitt Robinson, Jr., it is said that separate provisions for the Northern Neck land area went back as far as the days of King Charles II in 1649. At that time parts of tidewater Virginia were given as payment in the form of land grants to faithful followers of the King of England (Charles II).

The book entitled *George Washington's Country* written by Marietta M. Andrews, says that the

Northern Neck is remarkable for having been the birthplace of many of the principal characters who distinguished themselves in American History.

The Northern Neck Planning District Commission is located at Callao, Northumberland County. This commission encourages tourism to the various attractions on the Northern Neck.

Historical and Current Evidence That the Boundaries of the Proposed Viticultural Area Are as Specified in the Petition

The Northern Neck is an elongated land area bounded on the north by the Potomac River and Potomac Creek, on the east by the Chesapeake Bay, on the south by the Rappahannock River and on the west by the King George County/Stafford County line. The land in the proposed viticultural area includes all of the counties of Westmoreland, King George, Richmond, Northumberland and Lancaster. The total area of the proposed Northern Neck viticultural area is 922 square miles or 590,080 acres.

Evidence Relating to the Geographical Characteristics Which Distinguish the Proposed Northern Neck Viticultural Area From the Surrounding Areas

General Geographical Evidence

The Northern Neck extends approximately 100 miles from the Chesapeake Bay westward to within a few miles of the city of Fredericksburg, Virginia. The distance on land from north to south between the Potomac and Rappahannock Rivers varies from 10 to 20 miles, making the area a long narrow neck or peninsula between the two tidal rivers. The climate begins to change throughout the proposed viticultural area, from the gentle influence of the Chesapeake Bay and the Potomac and Rappahannock Rivers to the more harsh influences of Piedmont Virginia.

The Northern Neck is entirely within the Northern Coastal Plain with topography running into two general agricultural types called neckland and upland. Neckland, located along the river flats, is nearly level with a gently sloping plateau along the center of the Northern Neck with elevations beginning at 50 feet above sea level and reaching 190 feet above sea level in the western areas of Westmoreland and King George Counties.

All of the parent material that has given rise to the soils of the Northern Neck is transported material that has been moved by marine and stream action. The soils have a wide range in age. Those of the upland ridges are older and well developed while soils of the necklands are considered younger soils.

According to the petitioner, a ridge with elevations up to 190 feet extends generally through the center of King George County and eastward through Westmoreland County with sandy clay and well drained soil types. Other excellent agricultural soils are found along each of the rivers in what is generally called the river flats with excellent air drainage and a moderating climate influenced by the huge bodies of surrounding water.

Historical evidence of growing conditions conducive to grape growing found within the proposed viticultural area is documented in references presented by the petitioner.

In addition, since 1960 wine grape production has increased steadily throughout the proposed viticultural area with approximately 16 vineyards now in production. Today, general agriculture predominates the farming communities in the proposed viticultural area with small grains, corn and soybeans being the leading cash crops. French-American hybrids and vitis Vinifera grapes are being used for wine production in the proposed viticultural area.

According to the petitioner, in recent years national awards have been won by the Ingleside Plantation Vineyards for their wines. In 1983, Ingleside won medals at the Eastern Wineries Association and the Governor's Cup of Virginia. Awards were also earned in 1984 at the 3rd Annual Virginia Wine Competition in Washington, DC, and at the San Francisco Fair and Exposition. 1984 Virginia State Department of Agriculture records indicate that Ingleside Plantation Vineyards is Virginia's largest Farm Winery with a finished production of over 23,000 wine gallons in 1983.

"With proper management grape growing has economic potential for the Northern Neck," said Westmoreland County Agricultural Extension Agent Sam Johnson in a recent newspaper article. According to the petitioner, this is good news for local farmers and business people who seek grape growing as an additional income in the proposed viticultural area.

Elevation

The petitioner claims that there is a significant difference in topography and elevation, ranging from flat, near sea level land found in the proposed Northern Neck viticultural area, to that of mountainous elevations of Louisa County located to the west. Part of these mountainous lands are within the Piedmont Plateau.

Climate and Rainfall

According to the following climate and rainfall statistics, based on climatic summaries of the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, three different locations are compared during some specific years:

The periods 1941–1970 at Louisa, Virginia, 1946–1970 at Orange, Virginia (Piedmont Research Station) and 1941–1971 at Warsaw, Virginia (located within the boundaries of the proposed viticultural area) are compared as follows:

At the Virginia Research Station at Warsaw (located in the proposed viticultural area) in central Richmond County, some distinct evidence is found. This research station lies in the Coastal Plain. The topography within the area is low and relatively flat. Elevations range from near sea level to about 170 feet above sea level. The mountains to the west, the Chesapeake Bay to the east with its tidal tributaries, and the Atlantic Ocean, also to the east, are major factors controlling the climate of the proposed viticultural area, in addition to the latitude and location of the proposed viticultural area on the North American Continent. The mountains to the west produce various steering, blocking, and modifying effects on storms and air masses. The large open bodies of water nearby and to the east, which are slow in reacting to atmospheric changes, contribute to the humid summers and mild winters.

The growing season, defined as the period between the average date of the last freezing temperature in spring (April 15) and the average date of the first freezing temperature in fall (October 26), is 194 days at the Warsaw Research Station. Precipitation at Warsaw averages about 15 inches a year.

The Virginia Research Station at Louisa located to the west of the proposed viticultural area is in the central part of Louisa County in the Central Piedmont Plateau. The topography within the area is generally rolling with elevations ranging from 200 to 500 feet above sea level. The growing season is April 24 through October 14, averaging 173 days. Precipitation there averages 20 inches annually.

The Virginia (Piedmont) Research Station at Orange, to the west of the proposed viticultural area, is located in the central part of the Piedmont Plateau. The topography at this location is generally rolling but becomes steep at the mountains.

Elevations range from 200 to 500 feet above sea level. The growing season

averages 189 days, from April 17 to October 23. Precipitation averages 22 inches a year.

The following information was obtained from U.S. Department of Agriculture's Soil Survey of Westmoreland County, 1981:

The climate of the proposed Northern Neck viticultural area is greatly influenced by the waters of the Chesapeake Bay and the Potomac and Rappahannock Rivers. The moderating effect of the surrounding waters places most of the proposed viticultural area in zone 8 of the U.S. Department of Agriculture hardiness zone map.

From temperatures recorded at Colonial Beach (located in the western part of the proposed viticultural area) during the periods 1963 to 1978, it is noted that the approximate average last frost date during the Spring occurs about April 22nd. The earliest average Fall frost date is approximately October 26th. This gives an average of over 210 days of frost free growing season. For the counties to the east, this growing season is extended by a few days due to the moderating effect of the Chesapeake Bay.

The petitioner states that climatic features are the most prominent and compelling characteristics which distinguish the five county Northern Neck as a separate viticultural area.

The climate of the proposed area is vastly influenced by the Chesapeake Bay, the Potomac and Rappahannock Rivers which, indeed, almost surround it. The moderating effect of these huge bodies of surrounding water is the chief reason native stands of longleaf pine (pinus taeda), southerrn bayberrry (myrica cerifera) and other plants are found growing from King George County eastward to the Chesapeake Bay and these varieties of native stands are not found in any substantial degree to the west of King George County in Stafford County. By contrast, there are in Stafford County, native stands of hemlock (tsuga canadensis), which are not found anywhere in the Northern Neck counties.

To summarize the evidence submitted by the petitioner, the climate of the Northern Neck is milder, its native plants more southern, its snowfall less severe, its frost free days longer, its temperatures more even and moderate than the Piedmont Plateau Region located to the west, beginning at Stafford County and the city of Fredericksburg. In addition, the classification of the major agricultural soils of the Northern Neck by the U.S. Department of Agriculture as being prime farmland, combined with a mild climate, a short but freezing winter season, a 15-inch average yearly rainfall, and a generally dry, sunny grape ripening and harvest time, make for ideal growing conditions for wine grape production, especially the vitis Vinifera varieties grafted on American rootstocks.

A Description of the Specific Boundaries of the Viticultural Area, Based on Features which can be Found on United States Geological Survey (U.S.G.S.) Maps of the Largest Applicable Scale

The appropriate maps for determining the boundaries of the proposed Northern Neck viticultural area are two Eastern United States U.S.G.S. maps titled Richmond, VA; MD. (1973), 1:250,000 minute series and Washington, DC; Maryland; Virginia (1957-Revised 1979), 1:250,000 minute series.

The proposed Northern Neck viticultural area is in tidewater Virginia and includes all the counties of King George, Westmoreland, Richmond, Lancaster and Northumberland. It encompasses a total of 922 square miles of land. The area is bounded on the north by the Potomac River, on the east by the Chesapeake Bay, on the south by the Rappahannock River and on the west by the King George County/ Stafford County boundary line.

Copies of the appropriate U.S.G.S. maps with the boundary prominently marked on them were submitted by the petitioner. A comprehensive description of the boundary marked on the appropriate maps, is found in the regulations section of this document in 27 CFR Part 9, Subpart C.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this proposal is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or

(c) A significant adverse affect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

Public Participation-Issues on Which Comments Are Requested

ATF requests comments from all interested persons concerning the proposed viticultural area. ATF especially requests comments concerning evidence of name and boundary. The petitioner requested the name George Washington Birthplace for the proposed viticultural area. Mr. Flemer said that petitioners should be allowed to use the most prominent names applicable to viticultural area identification. He said that names such as Shenandoah, Monticello and George Washington Birthplace are excellent choices for names of American viticultural areas. The petitioner claimed the reason why the name Northern Neck or Northern Neck of Virginia was not used as the name of this proposed viticultural area was because that over the years, that designation has not gained popular acceptance across Virginia or the United States.

ATF believes, based upon a review of the petition, that the evidence supports the name Northern Neck rather than George Washington Birthplace. Although it is a fact that one of the prominent historic sites on the Northern Neck is George Washington's birthplace at Wakefield (538 acres), the petitioned area of land (590,080 acres) is historically recognized by maps, books, local landmarks, etc. as the Northern Neck. ATF believes that the name George Washington Birthplace only describes the land now designated as the National Park Service Landmark

memorial site at the Wakefield Farm on Pope's Creek in Westmoreland County. In addition, the Northern Neck was also the birthplace of two other U.S. Presidents as well as other prominent famous Americans. ATF seeks comments on any other name or boundary description that may be appropriate in identifying the proposed viticultural area.

All comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material or comment as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of any person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on this proposed regulation should submit a written request to the Director within the 45-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing should be held.

Drafting Information

The principal author of this document is Edward A. Reisman, Specialist, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

PART 9—[AMENDED]

27 CFR Part 9—American Viticultural Areas is amended as follows:

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: August 29, 1935, Chapter 814, Sec. 5, 49 Stat. 981, as amended 27 U.S.C. 205, unless otherwise noted.

Par. 2. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.109 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.109 Northern Neck.

Par. 3. Subpart C, is amended by adding § 9.109 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.109 Northern Neck.

(a) *Name.* The name of the viticultural area described in this section is "Northern Neck."

(b) *Approved maps.* The approved maps for determining the boundary of the Northern Neck viticultural area are 2 U.S.G.S. 1:250,000 scale maps. They are entitled:

(1) Washington, D.C.; Maryland; Virginia 1957 (Revised 1979) and

(2) Richmond, VA; MD. 1973

(c) *Boundary.* The proposed Northern Neck viticultural area takes in a land area locally and nationally known as the Northern Neck of Virginia. It consists of all of the land in the Counties of Westmoreland, King George, Northumberland, Lancaster and Richmond. The boundary is as follows:

Beginning on the Washington, D.C.; Maryland; Virginia U.S.G.S. map at a point on Potomac Creek where the King George County western boundary line at its northernmost point intersects Potomac Creek, thence easterly along the Potomac Creek shoreline approximately 3 miles to the Potomac River, thence easterly and southeasterly on the Richmond, VA; MD. U.S.G.S. map, along the Virginia shoreline of the Potomac River for approximately 66 air miles to Smith Point on the Chesapeake Bay, thence southerly along the shoreline of the Chesapeake Bay for approximately 20 air miles to Windmill Point at the mouth of the Rappahannock River, thence northwesterly approximately 72 air miles to Muddy Creek at the point where the western boundary line of King George County at its southernmost point begins, thence northward along the King George County-Stafford County line approximately 7 air miles to the point of the beginning.

Signed: September 3, 1985.

W.T. Drake,

Acting Director.

[FR Doc. 85-22155 Filed 9-16-85; 8:45 am]

BILLING CODE 4810-31-M

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27 CFR Part 9

[Notice No. 569]

Ozark Mountain Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Proposed rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in Arkansas, Missouri, and Oklahoma to be known as "Ozark Mountain." This proposal is the result of a petition submitted by Mr. Al Wiederkehr, a grape grower and winery proprietor in the proposed area. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising enables winemakers to label wines more precisely and helps consumers to better identify the wines they purchase.

DATE: Written comments must be received by November 1, 1985.

ADDRESSES: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Notice No. 569).

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4406, Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

ATF regulations in 27 CFR Part 4 provide for the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

Part 9 of 27 CFR provides for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

ATF has received a petition from Mr. Al Wiederkehr of Altus, Arkansas, proposing an area in southern Missouri, northern Arkansas, and northeastern Oklahoma as a viticultural area to be known as "Ozark Mountain." The area contains about 55,000 square miles. There are about 4,280 acres of grapes currently planted in the proposed area. The petitioner states that approximately 35 wineries are operating within the area.

Name

The petitioner claims that the proposed viticultural area is known by the name of "Ozark Mountain." To support this, he submitted the following evidence;

(a) Wine labels from Wiederkehr Wine Cellars and others have borne the appellation "Ozark Mountain" since as far back as 1959.

(b) This area has been referred to as the "Ozark Mountain" region in many geographical books, including *Natural Regions of the United States and Canada* by C.B. Hunt (W.H. Freeman & Co., San Francisco, 1974) and *The Ozarks* by Richard Rhodes (Time-Life Books, New York, 1974).

(c) The Ozark Mountain area is well-known as a winemaking region, as is shown by this quote: "Like all of the other American wine regions, the Ozarks [Mountains] are quietly seething with new ideas, new personalities, new grape varieties and a new sense of direction." (*Restauranteurs' Guide to American Wines, Part IV: The Wines and Wineries of the Ozarks.* "Dining," April–May 1973, p. 58.)

Geography

The proposed viticultural area is distinguished geographically from the surrounding areas. In his book, *The Ozarks,* Richard Rhodes states (pp. 19, 22), as quoted by the petitioner:

> Stretching from the forests of southern Missouri outside St. Louis through northern Arkansas to the Oklahoma plains near Tulsa, the 55,000 square miles of the Ozarks are bounded by five major rivers: The Mississippi, the Missouri, the Osage, the Neosho, and the Arkansas. The Ozark highlands, the only extensive elevated area in the United States between the Appalachians and the Rocky Mountains, consist of low mountains and hills shaped by springfed streams and rivers . . . cutting their way through the elevated bed rock . . .
>
> . . . These boundaries do not merely locate the Ozarks on the map, but also serve to isolate some of the region's plant and animal life . . .
>
> The Ozarks mark the farthest western extension of the great deciduous forest that once covered the eastern United States. Their western border is the beginning of the prairie that runs from Western Missouri to the Rockies and from Texas to Canada. Their northern border, the Missouri River, is about as far south as the glacier of the ice age came . . . And the hot, lush alluvial lands of the Mississippi begin at the Ozarks' abrupt southeastern edge, in the Missouri bootheel.
>
> With four different climatic regions pressing against them, the Ozarks serve as a sanctuary for a selection of plants and animals from all sides . . .

Geologically, the Ozarks are regarded as an upland plateau, in which mountains and valleys have been carved out by numerous streams and rivers. The land is hilly to mountainous, and the soils are characteristically stony and well-drained. The distinctive soil of the Ozark region is "Clay from deeply weathered, well consolidated sedimentary and deeply weathered volcanic rocks." (Hunt, op. cit., pp. 122–123.) Most of the land remains forested, as it was before the arrival of civilization, in contrast to the neighboring plains country.

The primary effect which the mountainous terrain has on the climate of the Ozarks is to divide the region into innumerable small microclimatic temperature zones. This is demonstrated by the following quote from Milton D. Rafferty in *The Ozarks, Land and Life* (University of Oklahoma Press, Norman, 1980), p. 29:

> Within the Ozarks, temperatures will vary widely with the orientation of slope, nature of surface materials, relief, and presence of water. South and west-facing slopes receive the greatest amount of sunlight and are subject to higher rates of evaporation . . . In winter, perhaps the most noticeable effect of temperature differences within a small area is the duration of snow and icicles on the north-facing slopes . . .
>
> Air drainage creates the most readily observed temperature differences in summer. Nights are notable for the cool breeze that drains down the slopes, beginning an hour or two before sunset . . .
>
> . . . As a rule, frosts occur in the valleys several weeks earlier in fall and later in spring than they do on the uplands, especially in the case of the larger valleys lying in the hill regions. The margins of the uplands have the best air drainage and are least subject to frosts.

Ozark viticulturists rely on their knowledge of local microclimatic conditions to select the best sites for their vineyards. Such sites possess generally similar conditions of soil and climate, thus giving Ozark viticulture a distinctive character. Favorable conditions for viticulture can be found at locations throughout the Ozarks, from Herman in the north to Altus in the south. The reason for this is summarized succinctly by Milton D. Rafferty in the book mentioned above (p. 160): "The growing of grapes is well suited to the climate and soils of the Ozarks."

Boundaries

The boundaries of the proposed viticultural area have been drawn by the petitioner to follow the five major rivers mentioned above in the quote from Richard Rhodes. These boundaries may be found on 11 U.S.G.S. maps in the scale of 1:250,000, titled St. Louis, Jefferson City, Springfield, Joplin, Tulsa, Fort Smith, Russellville, Memphis, Poplar Bluff, Paducah, and Rolla. The boundaries would be as described in the proposed § 9.108. The following approved viticultural areas are entirely enclosed within the proposed Ozark Mountain boundaries: Altus (§ 9.77) and Hermann (§ 9.71).

In establishing a large viticultural area based on geographical features which affect viticultural features, ATF recognizes that the distinctions between a small area and its surroundings are more refined than the differences between a large area and its surroundings. It is possible for a large viticultural area to contain approved viticultural areas, if each area fulfills the requirements for establishment of a viticultural area.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have significant economic impact on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities. Further, the proposal will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of Feb. 17, 1981, the Bureau has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice, because no requirement to collect information is proposed.

Public Participation—Written Comments

ATF requests comments concerning this proposed viticultural area from all interested persons. Furthermore, while this document proposes possible boundaries for the Ozark Mountain viticultural area, comments concerning other possible boundaries for this viticultural area will be given consideration.

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as suggestions for possible future ATF action.

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

List of Subjects in 27 CFR Part 9

Administrative practice and procedures, Consumer protection, Viticultural areas, Wine.

Drafting Information

The principal author of this document is Steve Simon, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Issuance

Accordingly, the Director proposes the amendment of 27 CFR Part 9 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph A. The authority citation for Part 9 continues to read a follows:

Authority: August 29, 1935, Chapter 814 sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205), unless otherwise noted.

Par. B. The table of sections in 27 CFR Part 9, Subpart C, is revised to add the title of § 9.108, to read as follows:

* * * * *

Subpart C—Approved American Viticultural Areas

Sec

* * * * *

9.108 Ozark Mountain.

* * * * *

Par. C. Subpart C of 27 CFR Part 9 is amended by adding § 9.108, which reads as follows:

§ 9.108 Ozark Mountain.

(a) *Name.* The name of the viticultural area described in this section is "Ozark Mountain."

(b) *Approved maps.* The appropriate maps for determining the boundaries of Ozark Mountain viticultural area are 11 U.S.G.S. maps in the scale of 1:250,000. They are titled—

(1) St. Louis, Missouri (1963, revised 1969);

(2) Jefferson City, Missouri (1955, revised 1970);

(3) Springfield, Missouri (1954, revised 1969);

(4) Joplin, Missouri; Kansas (1954, revised 1974);

(5) Tulsa, Oklahoma; Arkansas; Missouri; Kansas (1958, revised 1973);

(6) Fort Smith, Arkansas-Oklahoma (1978);

(7) Russellville, Arkansas (compiled in 1954);

(8) Memphis, Tennessee; Arkansas; Missouri (1953, revised 1978);

(9) Poplar Bluff, Missouri; Arkansas (1957, revised 1978);

(10) Paducah, Kentucky; Illinois; Missouri; Indiana (1949, revised 1969); and

(11) Rolla, Missouri; Illinois (1954, revised 1969).

(c) *Boundary*—(1) *General.* The Ozark Mountain viticultural area is located in Missouri, Oklahoma, and Arkansas. The starting point of the following boundary description is the point at which the Missouri River joins the Mississippi River north of St. Louis, Missouri (on the St. Louis map).

(2) *Boundary Description*—(i) The boundary proceeds from the starting point westward along the Missouri River until it meets the Osage River;

(ii) Then further westward along the Osage River (flowing through Lake of the Ozarks and the Harry S. Truman Reservoir) until it passes adjacent to Missouri Highway 82 in Osceola, Missouri (on the Jefferson City map);

(iii) Then southwestward along Missouri Highway 82 until it intersects U.S. Highway 54 in Eldorado Springs, Missouri (on the Joplin map);

(iv) Then westward along U.S. Highway 54 until it intersects U.S. Highway 71 near Nevada, Missouri;

(v) Then southward along U.S. Highway 71 until it intersects Interstate Highway 44 approximately 5 miles south of Carthage, Missouri;

(vi) Then westward and southwestward along Interestate Highway 44 into the State of Oklahoma, and continuing southwestward until Interstate Highway 44 crosses the Neosho River near Miami, Oklahoma (on the Tulsa map);

(vii) Then southward along the Neosho River (flowing through the Lake of the Cherokees, Lake Hudson, and Fort Gibson Lake) until it flows into the Arkansas River approximately 2 miles west of Fort Gibson, Oklahoma (on the Fort Smith map);

(viii) Then southward and eastward along the Arkansas River (flowing through the Robert S. Kerr Lake) into the State of Arkansas, and continuing eastward until the Arkansas River is joined by Caldron Creek approximately 6 miles west of Conway, Arkansas (on the Russellville map);

(ix) Then northeastward and eastward along Caldron Creek for about 2½ miles until passes under U.S. Highway 64 approximately 3½ miles west of Conway, Arkansas;

(x) Then eastward along U.S. Highway 64 until it intersects U.S. Highway 67 near Beebe, Arkansas (on the Memphis map);

(xi) Then northeastward along U.S. Highway 67 into the State of Missouri, then northward until U.S. Highway 67 intersects U.S. Highway 60 in Poplar Bluff, Missouri (on the Poplar Bluff map);

(xii) Then eastward along U.S. Highway 60 until it crosses the western boundary of Stoddard County (here that boundary is the St. Francis River);

(xiii) Then northward, northeastward, and eastward along the boundary of

Stoddard County until it joins the southern boundary of Cape Girardeau County (on the Cape Girardeau map);

(xiv) Then northeastward along the Cape Girardau County boundary until it meets the Mississippi River south of Cape Girardeau, Missouri;

(xv) Then northward along the Mississippi River to the starting point.

Signed: September 2, 1985.

W.T. Drake,

Acting Director.

[FR Doc 85-22154 Filed 9-16-85; 8:45 am]

BILLING CODE 4310-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Proposal To Supersede a Provision of State Law

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: This document announces and seeks public comment on a proposed action by OSM to preempt and supersede Kentucky Revised Statute (KRS) 350.060(22). This provision proposed for preemption and supersession involves the exemption of "operations involving the crushing, screening, or loading of coal which do not separate the coal from its impurities, and which are not located at or near the mine site" from the requirements of the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program).

The proposed action would not require that mere loading facilities that are not engaged in the physical processing of coal which are not located at or near the mine site be regulated.

This action is being taken because the Director has determined that these provisions are inconsistent with the requirements of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The Director's determination is based on reasons cited in the "Director's Findings" section in a separate notice announcing disapproval of the statutory provision in today's **Federal Register**.

DATE: Written comments or other information not received on or before October 17, 1985 will not necessarily be considered.

ADDRESSES: Written comments should be mailed or hand delivered to: W.H. Tipton, Director, Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Copies of the Kentucky program, the proposed modification to the program, and all written comments received in response to this notice will be available for review and copying at the OSM Offices and the Office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Office of Surface Mining, Reclamation and Enforcement, Room 5124, 1100 L Street, NW., Washington DC 20240.

Bureau of Surface Mining, Reclamation and Enforcement, Capitol Plaza Tower, Third Floor, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: W.H. Tipton, Director, Lexington Field Office, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Public Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanation in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Lexington, Kentucky Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

II. Background

Detailed background on the actions proposed in this document can be found in a notice of final rulemaking pertaining to the Kentucky program which also appears in today's **Federal Register**.

III. Director's Findings and Proposed Action

Pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), the Director proposes to preempt and supersede KRS 350.060(22) which reads as follows:

> (22) All operations involving the crushing, screening, or loading of coal which do not separate the coal from its impurities, and which are not located at or near the mine site, shall be exempt from the requirements of this chapter.

The Director proposes to take this action because he has determined that this provision is inconsistent with section 701(28) of SMCRA and less effective than 30 CFR 700.5 and 701.5 based on the reasons cited under "Director's Findings" in a separate notice of final rulemaking pertaining to the Kentucky program, also being published in today's **Federal Register**.

This proposed action will not require that the State of Kentucky regulate mere loading facilities that are not engaged in the physical processing of coal which are not located at or near the mine site. However, this proposed action would remove any legal bar to Kentucky being able to regulate processing facilities, and OSM expects Kentucky to submit a schedule for the prompt permitting of them.

The Director is now soliciting comments on this proposal to preempt and supersede KRS 350.060(22). If no evidence is received demonstrating why this provision should not be preempted and superseded, a final notice will be published to effect the supersession of the provision by Federal law. This action, if taken, will require the State to operate and enforce the approved program as if the preempted and superseded provisions did not exist.

IV. Additional Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 9, 1985.

Robert E. Boldt,

Acting Director, Office of Surface Mining.

[FR Doc. 85-21915 Filed 9-12-85; 8:45 am]

BILLING CODE 4310-05-M

VETERANS ADMINISTRATION

DEPARTMENT OF DEFENSE

38 CFR Part 21

Veterans Education; Waiver of Right to Receive Benefits Under the G.I. Bill

AGENCY: Veterans Administration and Department of Defense.

ACTION: Proposed regulations.

SUMMARY: These regulations implement those provisions of the Veterans' Compensation and Program Improvements Amendments of 1984 which affect VEAP (the Post-Vietnam Era Veterans' Educational Assistance Program). The most far-reaching provision permits some veterans who are eligible for benefits under the G.I. Bill to waive their eligibility and elect to receive benefits under VEAP instead. This proposal will acquaint the public with the way in which the VA intends to implement the new provision of law.

DATES: Comments must be received on or before October 17, 1985.

ADDRESSES: Send written comments to: Administrator of Veterans' Affairs (271A), Veterans Administration, 810 Vermont Avenue NW; Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until November 1, 1985.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits, (202) 389-2092.

SUPPLEMENTARY INFORMATION: Various regulations in the 38 CFR 21.5000 series are amended to provide that some veterans may waive their eligibility under the G.I. Bill and elect to receive benefits under VEAP. The regulations provide that a veteran who is aware of his or her eligibility under the G.I. Bill, and who negotiates a VEAP benefit check has made an irrevocable election to receive benefits under VEAP. Other regulations are amended to show that a veteran, who is eligible under more than one of the various educational programs available to veterans and their dependents, may not receive concurrent benefits under more than one provision of law for pursuit of the same program of education.

Upon final publication the VA (Veterans Administration) and Department of Defense propose to make these regulations retroactively effective on March 2, 1984. Retroactive effect is justified for the following reasons:

These regulations are liberalizing since they relieve several restrictions. These changes are interpretive rules which construe the meaning of some of the provisions of Pub. L. 98-223.

Moreover, the VA and the Department of Defense find that good cause exists for proposing that these regulations, like the sections of the statute they implement, shall be made retroactively effective on March 2, 1984. To achieve the maximum benefit of this legislation for the affected individuals it is necessary to implement these provisions of law as soon as possible. A delayed effective date for these regulations would be contrary to statutory design; would complicate administration of these provisions of law; and might result in denial of a benefit to a veteran who is entitled by law to it.

The VA and the Department of Defense have determined that these proposed regulations are not major rules as that term is defined by E.O. 12291, entitled, Federal Regulation. The proposal will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veteran's Affairs and the Secretary of Defense have certified that the proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b) these proposed regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because these changes affect only individual benefit recipients. Furthermore, any impact will be the result of the underlying law. It will not result from the regulations themselves.

The Catalog of Federal Domestic Assistance number for the program affected by this regulaion is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: July 8, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Lieutenant General E.A. Chavarrie,

Deputy Assistant Secretary of Defense.

38 CFR Part 21, *Vocational Rehabilitaiton and Education,* is amended as follows:

PART 21—[AMENDED]

1. Section 21.5022 is revised to read as follows:

§ 21.5022 Eligibility under more than one program.

(a) *Concurrent benefits under more than one program.* An individual eligible to receive educational assistance under 38 U.S.C. ch. 32 and the provisions of the § 21.5000 series of VA regulations is not eligible to receive educational assistance allowance under 38 U.S.C. ch. 34. An individual may not receive educational assistance under 38 U.S.C. ch. 32 concurrently with benefits under any of the following provisions of law for the same program:

(1) 38 U.S.C. ch. 31,

(2) 38 U.S.C. ch. 35,

(3) 10 U.S.C. ch. 107,

(4) Section 903 of the Department of Defense Authorization Act, 1981, or

(5) The Hostage Relief Act of 1980.

(38 U.S.C. 1781(b); Pub. L. 98-223)

(b) *Total eligibility under more than one program.* (1) No one may receive a combination of educational assistance benefits under 38 U.S.C. ch. 32 and any of the following provisions of law for more than 48 months (or part-time equivalent):

(i) 38 U.S.C. ch. 35,

(ii) 10 U.S.C. ch. 107,

(iii) Section 903 of the Department of Defense Authorization Act, 1981, or

(iv) The Hostage Relief Act of 1980.

(2) No one may receive assistance under 38 U.S.C. ch. 31 in combination with assistance under 38 U.S.C. ch. 32 in excess of 48 months (or the part-time equivalent) unless the VA determines that additional months of benefits under 38 U.S.C. ch. 31 are necessary to accomplish the purposes of a rehabilitation program.

(38 U.S.C. 1631, 1795; Pub. L. 94-502, Pub. L. 96-466, Pub. L. 98-223)

2. Section 21.5040 is amended by revising paragraph (b)(1)(ii) and adding paragraph (g) to read as follows:

§ 21.5040 Basic eligibility.

* * * * *

(b) * * *

(1) * * *

(ii) Must not have and except as provided in paragraph (g) of this section must not have had basic eligibility under 38 U.S.C. ch. 34;

* * * * *

(g) *Election to receive educational assistance allowance under 38 U.S.C. ch. 32.* Some individuals who have eligibility under 38 U.S.C. ch. 34 may elect instead to receive educational assistance allowance under 39 U.S.C. ch. 32.

(1) In order to qualify to make this election the veteran must—

(i) Have served a period of active duty for training for at least 181 consecutive days under provisions of 10 U.S.C. 511(d) in an enlistment in the Army National Guard or the Air National Guard or as a reservist in the Army, Navy, Air Force, Marine Corps or Coast Guard Reserve. At least one of the 181 consecutive days of active duty for training must have occurred before January 1, 1977.

(ii) After December 31, 1976 have served on active duty for a period of one year or more so that the service described in paragraph (g)(1)(i) of this section is the sole reason for the veteran's potential eligibility for educational assistance allowance under 38 U.S.C. ch. 34.

(iii) Never have received educational assistance allowance under 38 U.S.C. ch. 34 for pursuit of a program of education.

(iv) Otherwise have basic eligibility under 38 U.S.C. ch. 32 by meeting the requirements listed in this section.

(2) If a veteran makes an election and negotiates an educational assistance check under 38 U.S.C. 32, the election is irrevocable.

(3) If, as a result of the retroactive effect of this regulation or due to other circumstances, a veteran negotiates an educational assistance check under 38 U.S.C. ch. 32 without knowledge of his or her eligibility under 38 U.S.C. ch. 34, the negotiation of the check shall not constitute an irrevocable election to receive educational assistance allowance under 38 U.S.C. ch. 32.

(38 U.S.C. 1602(1); Pub. L. 98–223)

3. In Section 21.5058, paragraph (b) is revised to read as follows:

§ 21.5058 Resumption of participation.

* * * * *

(b) A person who has disenrolled in order to receive educational assistance allowance under 38 U.S.C. ch. 34 may not reenroll if he or she has negotiated a check under that chapter for pursuit of a program of education. Any other person who has disenrolled may reenroll, but will have to qualify again for minimum participation as described in § 21.5052(a).

(38 U.S.C. 1602(1), 1621; Pub. L. 98–223)

* * * * *

4. In Section 21.5060, paragraph (a) is revised to read as follows:

§ 21.5060 Disenrollment.

(a) *Voluntary disenrollment.* (1) An individual may disenroll at anytime after the initial 12 months of participation.

(2) An individual may elect to disenroll at anytime within the initial 12 months of participation only—

(i) For reasons of personal hardship; or

(ii) Because he or she has decided to receive educational assistance allowance under 38 U.S.C. ch. 34 rather than electing to receive educational assistance allowance under ch. 32. See § 21.504(g).

(38 U.S.C. 1602, 1621; Pub. L. 94–502, Pub. L. 98–223)

* * * * *

[FR Doc. 85–22185 Filed 9–16–85; 8:45 am]

BILLING CODE 8320–01–M

ENVIROMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL–2899–5]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, Including Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of hearing; cancellation.

SUMMARY: This is a notice that EPA is cancelling the public hearing on proposed rules (50 FR 35402, August 30, 1985) concerning nonconformance penalties for heavy-duty engines and heavy-duty vehicles, including light-duty trucks, and that EPA will instead hold a public workshop as requested by a commenter. The workshop will cover the development of nonconformance penalty rates and will be held on September 19, 1985, beginning at 9:00 a.m. in the conference room at the EPA Motor Vehicle Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI, 48105. Because of the workshop, EPA is extending the comment period on the proposed rules from September 30, 1985 to October 19, 1985.

The hearing was scheduled to take place, if requested, on September 19, 1985, beginning at 9:00 a.m. in the conference room at the EPA Motor Vehicle Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI, 48105. The hearing is being cancelled because it was not requested by September 9, 1985, as required by the proposal (50 FR 35402).

DATES: All comments on the nonconformance penalty proposal (50 FR 35402, August 30, 1985) should be received on or before October 19, 1985.

ADDRESSES: Send written comments on the proposed rule to: Public Docket EN–85–02, Central Docket Section (A–130), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. If possible, a copy of the written comments should be submitted to the EPA contact listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Montgomery, Manufacturers Operations Division [EN–340F], Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone: (202) 382–2487.

Dated: September 12, 1985.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 85–22220 Filed 9–16–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 122

[OW–FRL–2889–1]

National Pollutant Discharge Elimination System Permit Regulations; Storm Water Point Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of public comment period.

SUMMARY: The United States Environmental Protection Agency (EPA) is today providing notice that the public comment period for EPA's Notice of Additional Information and Request for Comments, published in the Federal Register on August 12, 1985, is being extended.

Since publication of the August 12 notice, the agency has received several requests to lengthen the comment period

to allow sufficient time to consider and respond to the issues raised.

DATES: All comments on the Notice of Additional Information and Request for Comments must be received on or before November 12, 1985.

ADDRESS: Interested persons may submit written comments to: Martha Kirkpatrick, Permits Division (EN-336), Office of Water Enforcement and Permits, U.S. Environmental Protection Agency, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Tom Laverty, Telephone: (202) 426-7035.

SUPLEMENTARY INFORMATION: On September 26, 1984, EPA published final regulations (49 FR 37998) that addressed several issues concerning the National Pollutant Discharge Elimination System (NPDES) program administered under the Clean Water Act. One aspect of those amended rules concerned the regulation of point sources of storm water runoff. These rules identified storm water dischargers subject to the NPDES permitting process, established application requirements for the different types of storm water dischargers, and set a deadline of April 26, 1985 for the submittal of NPDES permit applications.

In response to concerns raised with the September 26 rule, including the difficulty of sampling due to winter weather conditions and the size of the task of identifying, sampling and testing storm water point sources, the Agency published proposed changes to the storm water regulations on March 7, 1985 (50 FR 9362). This notice proposed an application deadline of December 31, 1985 for all storm water point sources, and proposed eliminating the requirement that Group I dischargers submit effluent data.

With regard to the application deadline, on August 29, 1985, EPA published a final rule establishing an application deadline of December 31, 1987 for Group I and June 30, 1989 for Group II storm water point sources (50 FR 35200). With regard to the application requirements for Group I, on August 12, 1985 (50 FR 32548), the Agency reopened the comment period on the March 7 notice to seek comment on the testing, sampling and analysis requirements for Group I storm water point sources. The notice discussed a group application process whereby a trade association would submit representative sampling data covering a particular subcategory of dischargers. The August 12 notice set a period of 30 days for the receipt of public comments.

Since publication of the August 12 notice, the agency has received several requests to lengthen the comment period to allow sufficient time to consider and respond to the issues raised. In response to these requests and to ensure adequate opportunity for public comment on the issues raised by the August 12 notice, EPA has decided to extend the comment period to November 12, 1985.

Dated: September 10, 1985.

Edwin L. Johnson,

Acting Assistant Administrator for Water.

[FR Doc. 85-22213 Filed 9-16-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 391

Federal Income Tax Aspects of the Capital Construction Fund

AGENCY: Maritime Administration, DOT.

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: The Maritime Administration (MARAD) is withdrawing a notice of proposed rulemaking (NPRM) that was published jointly with the Department of the Treasury in 1972 (37 FR 11887). The NPRM proposed conditions for the utilization of funds that U.S. ship operators deposit into a Capital Construction Fund (CCF).

FOR FURTHER INFORMATION CONTACT: James L. Westcott, Director, Office of Ship Financing, Maritime Administration, 400 Seventh Street, SW., Washing, DC 20590; Tel. (202) 382-0389.

SUPPLEMENTARY INFORMATION: Pursuant to 46 U.S.C. 1177, a United States citizen owner or operator of an "eligible vessel," as defined, may establish a CCF, by agreement with the Secretary of Transportation. The proceeds of the CCF are to be used for the eventual construction of "qualified vessels" in U.S. shipyards. Funds deposited in a CCF represent income from ship operations, and the Federal income tax that would otherwise be payable currently on such income is deferred. In 1972, a notice of proposed rulemaking was published with the Department of the Treasury that proposed conditions for the use of funds that U.S. ship operators deposit in the CCF.

MARAD believes that it should now formally terminate rulemaking action for the following reasons. The proposed regulations in the NPRM would have merely formalized policy that is presently used, understood and accepted by participants in the CCF program. MARAD has perceived no public interest in finalizing this regulation. Further, the Department of the Treasury has not recognized this as an active rulemaking on its entry in the Semi-Annual Unified Regulatory Agenda. Accordingly, the NPRM is being withdrawn.

(46 U.S.C. 1114(b) 49 CFR 1.66)

By order of the Maritime Administrator.

Dated: September 11, 1985.

Georgia P. Stamas,

Secretary, Maritime Administration.

[FR Doc. 85-22211 Filed 9-16-85; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-06; Notice 3]

Federal Motor Vehicle Safety Standards; Extension of Comment Period

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Extension of comment period.

SUMMARY: This notice grants a request from the Motor Vehicle Manufacturers Association for extension of the period to submit written comments on a proposed new brake standard for passenger cars. The period for comment is extended to January 13, 1986.

DATES: Comments on Docket No. 85-06; Notice 1 must be received by January 13, 1986.

ADDRESS: Comments should refer to the docket and notice number and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. (Docket Room hours 8 a.m.-4 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Duane Perrin, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone (202) 426-2800.

SUPPLEMENTARY INFORMATION: On May 10, 1985 (50 FR 19744), NHTSA issued a notice of proposed rulemaking seeking comments on a proposal to adopt a new braking standard for passenger cars. Comments were requested by October 7, 1985. The Motor Vehicle Manufacturers Association (MVMA) has timely requested an extension of the period to comment on the NPRM. MVMA said the Economic Commission for Europe (ECE) has been working for the past three years to harmonize the requirements of

Federal Motor Vehicle Safety Standard No. 105 and ECE Regulaton 13. MVMA pointed out that there are three upcoming ECE meetings that are being held specifically to prepare comments on the proposed NHTSA braking standard. The meetings will be held on October 1–3, October 21–25, and December 9–13. MVMA noted that after the meetings, the ECE staff will need time to prepare the final comments and circulate it in the three languages required by ECE procedures.

The agency has participated over the past several years in the ECE's work on developing an international harmonized brake standard for passenger cars. NHTSA agrees with MVMA that the comments generated as a result of the three ECE meetings will be of substantial assistance in this rulemaking proceeding. NHTSA has therefore has decided to extend the comment period for this notice to January 13, 1986 to allow the ECE sufficient time to prepare and submit its comments.

(Secs. 103, 119, Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on September 12, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85–22250 Filed 9–13–85; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearings and Reopening of Comment Periods on Proposed Threatened Status and Critical Habitat for the Loach Minnow (Tiaroga Cobitis) and the Spikedace (Meda Fulgida)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rules; notice of public hearings and reopening of comment periods.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that public hearings will be hold to discuss its proposals to list two fish, *Meda fulgida* (spikedace) and *Tiaroga cobitis* (loach minnow), as threatened species and to designate critical habitat for them. The period for acceptance of comments on these two proposals is reopened. Comments are solicited on these proposals from all interested parties.

DATES: Public hearings will be held on these proposals as follows:

1. October 7, 1985 (Monday), 7:00 to (9:00 p.m. MDT, Silver City, New Mexico;
2. October 8, 1985 (Tuesday), 7:00 to 9:00 p.m. NST, Thatcher, Arizona;
3. October 9, 1985 (Wednesday), 7:00 to 9:00 p.m. MST, Phoenix, Arizona.

The comment periods on these proposals are reopened on October 7, 1985. The comment periods, both of which originally closed on August 19, 1985, will now close on November 8, 1985. Comments received after the closing date may not be considered in the final decision on these proposals.

ADDRESSES: The public hearings will be held at the following locations:.

1. Silver City, New Mexico, Light Hall, Western New Mexico University—October 7, 1985;
2. Thatcher, Arizona, South Campus Lecture Room 2, Eastern Arizona College—October 8, 1985;
3. Phoenix, Arizona, Maricopa County Board of Supervisors' auditorium, 205 West Jefferson—October 9, 1985.

Written comments and materials concerning these proposals should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, 500 Gold Avenue, SW Room 4000, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: Sally Stefferud, Endangered Species Biologist, U.S. Fish and Wildlife Service, 505/766–3972 (FTS 474–3972) (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Meda fulgida is a small minnow, native to the Gila River basin. Because of habitat destruction and alteration, and competition and predation by introduced fish species, *Meda fulgida* has been eliminated from 96 percent of its historic range. Threats to its continuing survival come from water development, stream channel and watershed disturbances, and predation and competition from nonnative fish. A proposal to list *Meda fulgida* as a threatened species and to designate critical habitat for this species was published in the **Federal Register** on June 18, 1985 (50 FR 25390). Critical habitat is proposed for a portion of Aravaipa Creek in Graham and Pinal Counties, Arizona; portions of the Gila, West Fork of the Gila, and Middle Fork of the Gila Rivers in Grant and Catron Counties New Mexico; a portion of the Verde River in Yavapai County, Arizona; and a small portion of Sycamore Creek in Yavapai County, Arizona.

Tiaroga cobitis is also a small native minnow of the Gila River basin. It has been subjected to the same habitat destruction and alteration and competition and predation as has *Meda. Tiaroga cobitis* has been eliminated from 85 percent of its historic range. Threats to its future survival also come from water development, stream channel and watershed disturbances, and predation and competition from nonnative fish. A proposal to list *Tiaroga cobitis* as a threatened species and to designate critical habitat for this species was published in the **Federal Register** on June 18, 1985 (50 FR 25380). Critical habitat is proposed for a portion of Aravaipa Creek in Graham and Pinal Counties, Arizona; portions of the Gila, West Fork of the Gila, East Fork of the Gila, and Middle Fork of the Gila Rivers in Grant and Catron Counties, New Mexico; portions of the San Francisco River in Greenlee County, Arizona, and Catron County, New Mexico; a portion of the Tularosa River in Catron County, New Mexico; and the Blue River in Greenlee County, Arizona.

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held, if requested within 45 days of the publication of a proposed rule. That 45-day period, for these proposals, ended on August 2, 1985. Requests for hearings were received from: The Southwest New Mexico Council of Governments, Silver City, New Mexico, on July 25, 1985; the Hooker Dam Association, Silver City, New Mexico, on July 25, 1985; the New Mexico State Engineer Office, Santa Fe, New Mexico, on July 29, 1985; the Graham County Board of Supervisors, Safford, Arizona, on July 29, 1985; the Arizona Cattle Growers' Association, Phoenix, Arizona, on August 2, 1985; and the Southwest New Mexico Industrial Development Corporation, Silver City, New Mexico, on August 13, 1985. In response to these requests, the Service has scheduled public hearings for October 7, 1985, from 7:00 to 9:00 p.m. MDT, Light Hall, Western New Mexico University, Silver City, New Mexico; October 8, 1985, from 7:00 to 9:00 p.m. MST, South Campus Lecture Room 2, Eastern Arizona College, Thatcher, Arizona; and October 9, 1985, from 7:00 to 9:00 p.m. MST, Maricopa County Board of Supervisors' auditorium, 205 West Jefferson, Phoenix, Arizona. Those parties wishing to make statements for the record should have available a copy of their statements, to be presented to the moderator at the start of the hearings. Oral statements may be

limited to 5 or 10 minutes, if the number of statements to be presented necessitates some limitation. There are no limits on the length of written comments which may be presented at these hearings or mailed to the Service during the comment period.

The comment period on these two proposals originally closed on August 19, 1985. In order to accommodate these hearings, the Service is reopening the comment period on both proposals. Written comments will now be received from October 7 until November 8, 1985 (see **ADDRESSES**).

Author

This notice was prepared by Sally Stefferud, Endangered Species Biologist, U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

Authority

The authority for the action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: September 11, 1985.

Jerry L. Stegman,

Acting Regional Director.

[FR Doc. 85–22151 Filed 9–16–85; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 50, No. 180
Tuesday, September 17, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Federal Grain Inspection Service Advisory Committee; Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Avisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: October 8, 1985.

Place: Landmark Metairie Hotel, 2601 Severn Avenue, Metairie, Louisiana 70002.

Time: 8:30 a.m.

Purpose: To provide advice to the administrator of the Federal Grain Inspection Service on the efficient and economical implementation of the U.S. Grain Standards Act of 1976 and to assure the normal movement of grain in an orderly and timely manner.

The agenda includes: (1) Subcommittee reports on insect infestation and dust; (2) financial matters; (3) updates on research, safety, and health activities; and (4) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwise requested by the Committee Chairman. Persons, other than members, who wish to address the Committee at the meeting or submit written statements before or at the meeting should contact Dr. Kenneth A. Gilles, Administrator, FGIS, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382–0219.

Dated: September 11, 1985.

D.R. Galliart,

Acting Administrator, Federal Grain Inspection Service.

[FR Doc. 85–22159 Filed 9–16–85; 8:45 am]

BILLING CODE 3410-EN-M

Food and Nutrition Service

National Advisory Council on Child Nutrition; Meeting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the National Advisory Council on Child Nutrition, established by section 15 of the National School Lunch Act to make a continuing study of the Child Nutrition Programs of the U.S. Department of Agriculture, has scheduled a meeting for October 22–24, 1985.

DATES: The meeting will take place from 9:00 a.m. to 5:00 p.m. on Tuesday and Wednesday, October 22 and 23 and Thursday, October 24 from 9:00 a.m. to noon.

ADDRESS: The meeting will be held at the Days Inn of Crystal City, 2000 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Mr. James P. Gatley, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756–3620.

SUPPLEMENTARY INFORMATION: The meeting will be devoted primarily to a discussion of the Department's response to the council's recommendations contained in the 1984 biennial report to the President and the Congress, as well as current program issues. If time permits, the general public will be allowed to participate in the discussions. The agenda will be available 15 days prior to the meeting. Requests for the agenda should be sent to Mr. George A. Braley, Executive Secretary, National Advisory Council on Child Nutrition, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302.

Dated: September 10, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85–22232 Filed 9–16–85; 8:45 am]

BILLING CODE 3410-30-M

Soil Conservation Service

Environmental Impact Statement; Perley Brook Watershed, ME

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Perley Brook Watershed, Aroostook County, Maine.

FOR FURTHER INFORMATION CONTACT: Ron E. Hendricks, State Conservationist, Soil Conservation Service, USDA Office Building, University of Maine, Orono, Maine 04473, telephone 207–866–2132.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Ron E. Hendricks, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for wateshed protection and flood prevention. The planned works of improvement include land treatment measures on 2520 acres of cropland to protect the resource base from deterioration and some 2200 feet of diversions with pipe outlets for flood damage reduction.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Ron E. Hendricks.

No administrative action on implementation of the proposal will be

taken until 30 days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904-Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: September 9, 1985.

Ron E. Hendricks,

State Conservationist.

[FR Doc. 85-22226 Filed 9-16-85; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-502]

Certain Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes From Canada; Preliminary Determination of Sales at Not Less than Fair Value

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain heavy-walled rectangular welded carbon steel pipes and tubes from Canada are not being, nor are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. If this investigation proceeds normally, we will make our final determination by November 18, 1985.

EFFECTIVE DATE: September 17, 1985.

FOR FURTHER INFORMATION CONTACT: William Kane, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1766.

Preliminary Determination

We have preliminarily determined that certain heavy-walled rectangular welded carbon steel pipes and tubes from Canada are not being, nor are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1673b(b)) (the Act). We made fair value comparisons on two companies representing approximately 87 percent of sales of the class or kind of merchandise to the United States during the period of investigation. Comparisons were based on the United States price, home market price, and constructed value. We have preliminarily found that the margins for both companies investigated are *de minimis*.

Case History

On March 25, 1985, we received a petition from the Committee on Pipe and Tube Imports on behalf of the domestic industry producing certain heavy-walled rectangular welded carbon steel pipes and tubes. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of certain heavy-walled rectangular welded carbon steel pipes and tubes from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or threatening material injury to, a United States industry. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on April 15, 1985 (50 FR 15771). On May 9, 1985, the ITC determined that there is a reasonable indication that imports of certain heavy-walled rectangular welded carbon steel pipes and tubes from Canada are materially injuring a U.S. indusrty (50 FR 20302).

We presented an antidumping duty questionnaire to Titan Industrial Corporation (Titan), whose exports account for approximately 80 percent of the products under investigation, on May 10, 1985. Their response to our questionnaire was received on June 25, 1985. Additional voluntary responses were received from Welded Tube of Canada (Welded Tube), on June 25, 1985, July 10, 1985, and July 30, 1985, from Acier Royalcor Steel, Inc. (Royalcor), on July 2, 1985, and from Capco Tubular Products Co. (Capco), on July 27, 1985. The response of Royalcor was included in our analysis. The responses of Welded Tube were found to be untimely and inadequate for consideration. The response of Capco represented only one sale of the subject merchandise, which we considered to be too insignificant to warrant inclusion in our analysis.

Products Under Investigation

The products covered by this investigation are certain welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness not less than 0.156 inches, not threaded and not otherwise advanced, other than pipe conforming to American Petroleum Institute specifications for oil well casing, currently provided for in item 610.3955 of the *Tariff Schedules of the United States, Annotated*.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold prior to the date of importation to unrelated purchasers in the United States. We calculated the purchase price based on the ex-factory, packed, or C.I.F., duty paid, delivered, packed price. We made deductions, where appropriate, for U.S. inland freight, foreign inland freight, U.S. brokerage charges, foreign brokerage charges, and U.S. customs duty.

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value for Titan based on constructed value, as there were insufficient sales in the home market or to third countries to provide viable comparisons. For Royalcor we calculated foreign market value based on home market ex-factory, packed prices to unrelated purchasers.

Royalcor's packing costs are incorporated in their acquisition cost of the subject merchandise, and appear to be identical for both markets. No claims were made for circumstances of sale.

We made comparisons of "such or similar" merchandise based on grade, dimension, wall thickness, and whether or not cut to length, as selected by Commerce Department industry experts.

To determine foreign market value for Titan, we calculated constructed value by totaling the costs of materials used in producing such or similar merchandise, fabrication, general expenses, profit and the cost of packing on U.S. shipments. Since the amount for general expenses was less than ten percent of the cost of materials and fabrication, we used the statutory minimum of ten percent. The amount added for profit was the statutory minimum of eight percent of the sum of materials, fabrication costs, and general expenses, since the actual level of profit was less than eight percent. We made adjustments, where appropriate, for after-sale warehousing expenses incurred on United States sales in accordance with section 353.15 of the Commerce regulations.

In a letter dated August 2, 1985, counsel for petitioner noted that the ratio of cost of materials and fabrication to sales price for the sales in the response is below the figure which would be indicated in the final statements. For purposes of this preliminary investigation, an analysis of this ratio and of the cost response was conducted using the information available at this time. Specifically, the cost of coil, a major component of both the cost of manufacture contained in the response, and cost of goods sold was reviewed by a Department product expert. It was found that coil cost, although low, was within the range of prices available in the market during the period of investigation.

In our analysis, two expenses were noted which were not included by respondent in the cost of fabrication. For purposes of this preliminary determination, we considered warehousing expenses incurred by the Canadian subsidiary of Titan for the storage of finished goods prior to sale to be costs of fabrication rather than general expenses as claimed in Titan's response. We also included in the cost of fabrication a penalty payment made by Titan for failing to meet minimum purchase requirements in a contract for the conversion of skelp into pipe.

Even with these adjustments there remains a discrepancy between the cost of production data in the response and the audited financial statements, but the discrepancy is not greater than would appear reasonable given the different purposes of the two sets of data. The financial statements include a significant proportion of products which are not under investigation and the time periods covered by those statements are not concurrent with our review period. A detailed reconciliation to the audited financial statements will be conducted at verification.

Verification

In accordance with section 776(a) of the Act, we will verify the information provided by the respondents by using standard verification procedures, including examination of relevant sales, financial and cost records of the company.

Preliminary Results

The preliminary results of our investigation are as follows:

Manufacturer/Seller/Exporter	Weighted-average margin percentage
Titan Industrial Corp. (Dominion)	0.47 (*de minimis*)
Acier Royaloor Steel, Inc	0.10 (*de minimis*)

ITC Determination

In accordance with section 733(f) of the Act, we will notify the ITC of our determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on October 11, 1985, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B–099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by October 4, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)).

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

September 3, 1985.

[FR Doc. 85–22215 Filed 9–16–85; 8:45 am]

BILLING CODE 3510-DS-M

A–582–501]

Postponement of Final Antidumping Duty Determination; Photo Albums and Filler Pages from Hong Kong

AGENCY: International Trade Administration, Imort Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondent in this investigation that the final determination be postponed until not later than 99 days after the date of publication of the preliminary determination, as provided for in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)); and that we have determined to postpone our final determination as to whether sales of photo albums and filler pages from Hong Kong have occurred at less than fair value until not later than October 23, 1985.

EFFECTIVE DATE: September 17, 1985.

FOR FURTHER INFORMATION CONTACT: Steven Lim or Ken Stanhagen, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 377–1777.

SUPPLEMENTARY INFORMATION: On February 19, 1985, we published a notice in the Federal Register (50 FR 7624) that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether imports of photo albums and filler pages from Hong Kong were being, or were likely to be, sold at less than fair value. On March 18, 1985, the International Trade Commission determined that there is a reasonable indication that imports of photo albums and filler pages from Hong Kong are materially injuring a U.S. industry. On July 16, 1985, we published a preliminary determination of sales at less than fair value with respect to this merchandise (50 FR 28829). The notice stated that if the investigation proceeded normally, we would make our final determination by September 23, 1985.

On August 13, 1985, counsel for Climax Paper Converters, the respondent in this case, requested that we extend the period for the final determination until not later than 99 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2)(A) of the Act. Setion 735(a)(2)(A) of the Act provides that the Department may postpone its final determination concerning sales at less than fair value until not later than 135 days after the date on which it published a notice of its preliminary determination, if exporters who account for a significant portion of the merchandise which is the subject of the investigation request a postponement after an affirmative preliminary determination.

Climax Paper Converters is qualified to make such a request since it accounts for virtually all exports of the merchandise under investigation. If a qualified exporter properly requests an extension after an affirmative preliminary determination, the Department is required, absent compelling reasons to the contrary, to grant the request. Accordingly, the Department will issue a final

determination in this case not later than October 23, 1985.

The public hearing is also being postponed until 9:30 a.m. on September 26, 1985 at the U.S. Department of Commerce, Room 1412, 14th Street and Constitution Avenue NW, Washington, DC 20230. Accordingly, prehearing briefs must be submitted to the Deputy Assistant Secretary by September 23, 1985.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

September 3, 1985.

[FR Doc. 85-22216 Filed 9-16-85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-614-503]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Lamb Meat from New Zealand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to producers, processors or exporters in New Zealand of lamb meat as described in the "Scope of Investigation" section of this notice. The net bounty or grant for the review period is NZ$0.3602/lb. Therefore, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of lamb meat from New Zealand which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit on these products equal to the net bounty or grant.

EFFECTIVE DATE: September 17, 1985.

FOR FURTHER INFORMATION CONTACT: Gary Taverman or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-0161 or 377-3464.

SUPPLEMENTARY INFORMATION: .

Final Determination

For purposes of this investigation, the following programs have been found to confer bounties or grants:

- Meat Producers Board Price Support Scheme
- Supplementary Minimum Price Scheme
- Export Market Development Taxation Incentive
- Export Performance Taxation Incentive
- Export Suspensory Loan Scheme
- Regional Development Suspensory Loan Scheme
- Livestock Incentive Scheme

The net bounty or grant for the review period is NZ$0.3602/lb.

Case History

On March 26, 1985, we received a petition from the American Lamb Company of Chino, California; the Denver Lamb Company of Denver, Colorado; and the Iowa Lamb Corporation of Hawarden, Iowa, filed on behalf of the U.S. lamb meat industry. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleged that producers, processors or exporters of lamb meat in New Zealand directly or indirectly receive benefits which constitute bounties or grants within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

On April 11, 1985 (after the filing of the petition and prior to the intitiation of this investigation), the Office of the United States Trade Representative terminated New Zealand's status as a "country under the Agreement" within the meaning of section 7019(b)(1) of the Act.

Since New Zealand is no longer a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise under investigation is dutiable, sections 303(a)(1) and 303(b) of the Act apply to this investigation. Accordingly, the ITC is not required to determine whether imports of these products cause or threaten material injury to a U.S. industry, or are materially retarding the establishment of an industry in the United States.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on April 15, 1985, we initiated the investigation (50 FR 15949). We stated that we expected to issue our preliminary determination by June 19, 1985.

On April 25, 1985, we presented a questionnaire to the New Zealand government in Washinton, D.C. concerning the petitioner's allegations. Responses to the questionnaire were received on May 31, 1985, with supplementary information submitted on June 17, 1985.

On June 25, 1985, we published our preliminary determination that benefits which constitute bounties or grants are being provided to producers, processors, or exporters in New Zealand (50 FR 26236).

During the period July 1 to 16, 1985, we conducted a verification of the response submitted by the government of New Zealand.

At the request of the petitioners, we held a public hearing on July 30, 1985, to allow the parties an opportunity to address the issues arising in the investigation. Both petitioners and respondents filed briefs discussing these issues.

Scope of Investigation

The product covered by this investigation is lamb meat from New Zealand, currently classified in the *Tariff Schedules of the United States* (TSUS) under item 106.30.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of this investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Contervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

For purposes of this determination, the period for which we are measuring bounties or grants ("the review period") is April 1, 1984, through March 31, 1985, which corresponds to the 1985 fiscal year of the government of New Zealand.

Based upon our analysis of the petition, the responses to our questionnaire, our verification, and comments submitted by interested parties, we determine the following:

I. Programs Determined To Confer Bounties or Grants

We determine that bounties or grants are being provided to producers, processors, or exporters in New Zealand of lamb meat under the following programs:

A. Meat Producers Board Price Supports Scheme

Pursuant to the Meat Export Prices Act of 1955 (amended in 1976 and 1982), the Meat Board Price Support Scheme was established to compensate meat producers for fluctuations in market prices and to guarantee them a minimum return on export sales of their products. The scheme is administered by the Meat Producers Board (the Board), the Ministry of Agriculture and Fisheries, and the Meat Export Prices Committee.

It is financed through the Meat Income Stabilization Account (MISA), an overdraft account maintained by the Board at the Reserve Bank of New Zealand.

The New Zealand Parliament established the Board through the Meat Export Control Act of 1921–22. The Board controls virtually all aspects of the meat trade including grading, handling, polling, slaughtering, storing, shipping, selling and disposing of all meat exported from New Zealand. Although established by Act of Parliament, the Board is not an agency of the government. Of the nine members of the Board, two are appointed by the government, six are elected as representatives of sheep and diary farmers and one is appointed by the Dairy Board. While the Board is subject to government audit of its activities and finances, it does not report to the government and is not legally required to follow government policy.

The Board appears to have four primary sources of funds: (1) A levy set by the board and collected by processors from lamb, sheep and cattle growers at the time of slaughter; (2) return on investments; (3) short-term borrowings from commercial lenders in New Zealand and overseas; and (4) advances from the Meat Industry Reserve Account (the MIRA).

Each production season, the Meat Export Prices Committee (the Committee), an independent, non-governmental committee, establishes a "schedule (minimum) price" for each grade of lamb slaughtered for export. Those prices are set at the beginning of the season and remain in effect for the entire season. At the time of slaughter, the processing company pays the schedule price, less slaughtering and freezing costs, to the producers. The processing company, in turn, is reimbursed by the Board at the schedule price. The Board, in effect buys all the meat which is subsequently exported. In addition, the Committee annually establishes a "trigger price" above which the meat income stabilization levy is collected from producers. The meat income stabilization levy is deposited into the MISA when the market price exceeds the trigger price.

The Board has two methods by which it can support the price of meat. If the market price falls below the schedule price, the Board may either: (1) Purchase meat at the schedule price, or (2) purchase meat at the market price and make a stablization payment equal to the difference between the market price and the schedule price. In either case, the funds used to support the price are drawn from the MISA. Since November, 1983, the Board has elected to purchase all export lamb meat at the schedule price.

According to the questionnaire response, the MISA is meant to be self-balancing, *i.e.*, producer levies collected during periods of high prices cover the cost of support payments made during periods of low prices. When the MISA is in a deficit position, the government authorizes the Board to meet its commitments through a low-cost overdraft arrangement with the Reserve Bank of New Zealand (MISA Account No. 1). On October 1, 1984, a new overdraft account (MISA Account No. 2) was established to provide coverage on deficits incurred subsequent to the date. The New Zealand Meat Producers Board 1984 Annual Report indicate that the MISA Account No. 1 deficit would be converted to a 30-year subordinated loan, with no interest or principal repayable until September 30, 1989.

We do not consider the minimum price support payments funded by producer levies to constitute a bounty or grant within the meaning of the countervailing duty law. However, this program does operate to guarantee producers a minimum return on export sales, and provides government funds to the Meat Producers Board on terms that are not available from commercial sources. Therefore, we determine that the portion of the payments represented by government funds provides an indirect bounty or grant on exports within the meaning of the countervailing duty law.

In our preliminary determination, we treated the accumulated lamb meat deficit in the MISA Account No. 1 as a one-year, interest-free loan. However, we have reconsidered this issue and have now determined that the government's coverage of the MISA deficit should be viewed *de facto* as a continuing price support payment to lamb meat producers and, as such, countervailable in the year of receipt. This support program has been in operation since 1976 and, while in theory the MISA is self-funding, deficits on lamb meat have grown to a level of NZ$332 million as of March 31, 1984. Counsel for petitioners has stated, and we concur, that it is unrealistic to expect the MISA Account No. 1 deficit to be repaid. Trigger prices have consistently been higher than market prices and, as such, producer levies have not been generated. Given the current pricing mechanism in effect, producer levies are not likely to be generated in the immediate future. Although the Board, in its 1984 Annual Report, discussed the conversion of the accumulated deficit in the MISA Account No. 1 into a 30-year loan, we have verified that the conversion agreement has not been finalized. Therefore, we have no evidence that the deficit will in fact be repaid, nor do we have evidence indicating that additional deficits will not be incurred. To the contrary, we were informed at verification that the first advance against the MISA Account No. 2 overdraft facility is expected later this year to cover current deficits. Therefore, consistent with our treatment of government price support payments in the *Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled and Frozen Pork Products from Canada* (50 FR 25097), we have determined that benefits provided under this program are, in fact, recurring price support payments and should be allocated to the year of receipt. Dividing the value of the MISA Account No. 1 deficit attributable to lamb meat during the period of investigation by the total weight of the lamb products exported resulted in a net bounty or grant amount of NZ$0.10171/lb.

B. Supplementary Minimum Prices Scheme (SMP)

The Ministry of Agriculture and Fisheries established the SMP in 1978 to augment the support payments provided under the Meat Producers Board Price Support Scheme. Each year, the government established a supplementary minimum price support level (supplementary price) which was set above the Board's schedule price level. Support payments equal to the difference between those two prices were drawn from the government-funded Supplementary Minimum Meat Prices Account (SMMPA). If the market price falls below the Board's schedule price, payments are then made from both the Meat Board's Minimum Price Support Scheme *and* the Supplementary Minimum Price Support Scheme. Supplementary payments are made only on meat sold for export consumption.

In September, 1984, the Minister of Finance terminated the SMP and instead provided the SMMPA with a lump-sum payment estimated to equal the value of payments that were provided under the SMP. Because of the overlap between the government's fiscal year (April-March) and the production period (October-September), the Board received payments under both the SMP and the lump-sum disbursement during the review period.

Because price support payments provided under the SMP and lump-sum schemes represent direct government payments limited to the exported product, we determine them to be

bounties or grants within the meaning of the countervailing duty law. To calculate the benefit from this program, we divided the value of the 1984–85 payments (SMP's and lump-sum payments) by the total weight of lamb products exported during the review period. This resulted in net bounty or grant of NZ$0.1741/lb.

C. Export Market Development Taxation Incentive (Section 156F, Income Tax Act 1976) (EMDTI)

Under the 1999 Amendment of the Income Tax Act 1976, export market development expenditures, such as expenses incurred principally for seeking and developing markets, retaining existing markets, and obtaining market information, qualify for a tax credit equal to 67.5 percent of the total expenditure. However, an exporter who takes advantage of this program may not deduct the qualifying expenditures as ordinary business expenses in calculating taxable income. Because the normal corporate tax rate in New Zealand is 45 percent, the net benefit to exporters under this program is 22.5 percent of the qualifying expenditure amount. We have verified that the Meat Export Development Company (Devco) received benefits under this program during the review period.

According to our tax methodology, tax benefits earned during a given fiscal/tax year are treated as received the following year, the year the tax return is filed.

Because eligibility for this program is limited to exporters, we determine that the EMDTI provides a bounty or grant within the meaning of the countervailing duty law. Accordingly, we divided 22.5 percent of the U.S.-related qualifying expenditures incurred by Devco in 1983/84 by the weight of its lamb products exported to the United States during the review period. This resulted in a bounty or grant amount of NZ$0.0348/lb.

D. Export Performance Taxation Incentive (Section 156A, Income Tax Act 1976) (EPTI)

Under the 1979 Amendment of the Income Tax 1976, exporters receive a tax credit based on the f.o.b. value of qualifying goods exported. Credits are available as a deduction against income tax payable and, if the tax credit exceeds the income tax payable, the balance is paid to the taxpayer in cash. The rate, or specified percentage of the tax credit is dependent upon the predetermined government value-added category into which the product falls. The amount of the tax credit is calculated by multiplying the specified percentage corresponding to the value-added category into which the product falls by the f.o.b. value of export sales. Lamb meat processed beyond the primal cut stage falls into value-added category D, for which the corresponding specified percentage is 7.7 percent. The specified percentages under this program will be reduced in the tax years ending on March 31, 1986, and March 31, 1987. Devco received benefits under this program during the review period.

Becaues eligibility for this program is limited to exporters, we determine that it provides a bounty or grant within the meaning of the countervailing duty law. To calculate the tax benefit, we divided the amount of the tax credit claimed for qualifying laws products exported to the United States in 1983/84 by the weight of lamb products exported to the United States during the review period. This resulted in a net bounty or grant of NZ$0.0292/lb.

E. Export Suspensory Loan Scheme

The Export Suspensory Loan Scheme (ESLS), administered by the Department of Trade & Industry and the Development Finance Corporation (DFC), was established in the 1973 budget and modified by Cabinet decision in 1978. The purpose of the program is to provide loans to assist exporters in purchasing equipment needed to expand their production of export goods. The loans cover up to 40 percent of eligible expenditures and are converted to grants if pre-determined export targets are met. If the export targets are not met, the loans may be partially converted to grants or called in full at the DFC's long-term interest rates. The ESLS terminated on March 31, 1985; no new loans under this program will be granted.

Because this program is contingent on export performance and provides loans: (1) That may be at rates lower than those available from commercial sources, and (2) that may be converted to grants, we determine it confers bounties or grants within the meaning of the countervailing duty law.

To calculate the benefit from this program, we treated the loans which had not yet been forgiven as a series of one-year loans rolled over each year. For our benchmark, we used national average commercial interest rate on overdraft accounts, as this is the preponderant source of short-term financing in New Zealand. In this case, the interest rates charged were above our benchmark rate and, therefore, no countervailable benefits were bestowed. For loans which had been forgiven because the export targets were met, the amount forgiven was treated as a grant. The amounts forgiven prior to the review period were small enough that the benefits would have been allocated to the year of forgiveness. Therefore, we have not included these grants in our calculation. We have included the forgiveness that occurred during the review period and allocated the entire benefit to the review period because the *ad valorem* benefit was less than 0.5%.

Dividing the benefit from the grant portion of the program by the total weight of the lamb products exported during the review period resulted in a net bounty or grant amount of NZ$0.00005/lb. We have not adjusted the net bounty or grant amount to account for this program's termination because there are still loans outstanding that may be converted to grants in the future.

F. Regional Development Suspensory Loan Scheme (RDSL)

The New Zealand Government established the Regional Development Assistance Program to encourage utilization of resources in priority regions of New Zealand. Regions designated by the government as non-priority do not qualify for regional developement assistance. The RDSL program, one of a variety of regional development programs administered by the DFC, provides interest-free loans which are later converted to grants if development objectives are met. One freezing works (*i.e.*, a company that slaughters lambs and processes lamb meat) located in a priorty region in New Zealand has received a loan under this program to be used for the production of products subjects to this investigation.

Because this program provides government-funded financing to specific regions in New Zealand on terms inconsistent with commercial considerations, we determine it to be a regional subsidy, and is therefore countervailable. To calculate the benefit from this program, we treated the loans which had not yet been forgiven as a series of one-year loans rolled over each year. For our benchmark, we used the national average commercial interest rate on overdraft accounts. For loans which had been forgiven because the development targets were met, the amounts forgiven were treated as grants, and because the *ad valorem* benefit was less than 0.5%, were allocated to the year the conversion occurred. There were no conversions made during the review period.

Dividing the value of the benefits from the loan portion of the program by the total weight of the lamb portion of the program by the total weight of the lamb

products sold during the review period resulted in a net bounty or grant amount of NZ$0.00001/lb.

C. Livestock Incentive Scheme

The Livestock Incentive Scheme (the scheme) was introduced in 1976 under section 174 of the Income Tax Act 1976, and is administered by the Rural Banking and Finance Corportion (RBFC). The RBFC was established to provide loans and other development assistance for farming, other primary industries, and related service industries.

This particular schemes encourages farmers to increase permanently the numbers of livestock carried. Under the scheme, a farmer employing a stock increase program for a minimum of one and a maximum of three years may opt for one of two incentives: (1) An interest-free suspensory loan of NZ$12.00 for each additional qualifying stock unit carried, or (2) a deduction of NZ$24.00 from assessable income for each additional qualifying stock unit carried. (A "stock unit" represents one breeding-ewe equivalent; *e.g.*, one breeding ewe=1 stock unit, other sheep=0.7 stock units, a dairy cow=7 stock units, *etc.*) The last date for making applications under the scheme was March 31, 1982.

Under the loan option, no interest was charged on the loan if the recipient complied with the conditions of the scheme. Upon breach of the conditions, the principal was repayable in cash or over a term with interest at the RBFC rate for development loans.

Farmers choosing the tax incentive could claim deductions at the time of livestock increases or at the end of the program plus the two-year sustaining period. All other qualifying criteria are the same as for the loan option.

If the livestock increase was sustained for two years following the development program's completion, farmers who elected to take out suspensory loans could write the loans off as tax-free grants. For farmers electing the tax option, the provisional tax deduction was confirmed and could be applied toward tax liability in any of the three years after completion of the development program.

Because benefits under this program are limited to farmers with livestock herds and are on terms inconsistent with commercial considerations, we determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, and is therefore countervailable.

To calculate the benefit received from the loan option portion of this program, we treated the amounts forgiven as grants and allocated those benefits over five years, the average useful life of breeding stock. The discount rate chosen for allocation purposes was the national weighted-average trading-bank loan rate. For the portion that has not yet been forgiven, we treated the amount as a one-year loan and compared the interest rate to the benchmark as described above. The benefit under the tax option was determined to be the amount of the tax deductions that were available to be used during the review period. We added the value of the benefits from the loan and tax option portions of the program, and multiplied the result by a factor determined to represent the value of lamb meat as a percentage of total sheep production. Dividing that result by the total weight of the lamb products sold during the review period resulted in a net bounty or grant amount of NZ$0.0149/lb.

II. Programs Determined Not To Confer Bounties or Grants

We determine that bounties or grants are not being provided to producers, processors, or exporters of lamb meat in New Zealand under the following programs:

A. Loans and Loan Guarantees Provided by the Meat Producers Board

The petitioners alleged that the Board is issuing loans and providing guarantees for various companies involved in lamb production and exportation, loans and guarantees that they claim are countervailable. In our preliminary determination, we stated that the Meat Board entered into these financial transactions as one independent party, whose funds are its own, dealing with another. We have since verified that the funds used for the loans and loan guarantees are not its own, but those of the MIRA.

During World War II, the government of New Zealand took control of the marketing of all meat products, and entered into a bulk-purchasing agreement with the United Kingdom. The profits from the sale of meat products remaining when that agreement was terminated in 1942 were put into the Meat Pool Account, the stated purpose of which was to provide a fund for the future benefit of the industry. Additional profits resulting from increases in the price paid by the United Kingdom for meat products were credited to the Meat Income Stabilization Account.

Note.—This Meat Income Stablization Account is different from the one discussed previously in this notice.

Like the Meat Pool Account, the funds in this account were also to be held for the future benefit of the industry. These two accounts were eventually combined and provided the seed money for the MIRA. Since its establishment, the MIRA has grown through investment to approximately NZ$150 million. There have no government infusions of funds into the account. The Board administers the account for the benefit of the industry, and determines how its funds are to be used.

Therefore, because the MIRA contains industry money, which the Board administers for the benefit of the industry, we determine that the use of the MIRA to fund these programs operated by the Meat Producers Board is not a bounty or grant within the meaning of the countervailing duty law.

B. Fertilizer Price Subsidy

Under the administration of the Ministry of Agriculture and Fisheries, the government of New Zealand provides payments to wholesalers or importers of phosphate rock, phosphatic, potassic, nitrogenous and compound fertilizers, and on all organic fertilizers. The response indicates that wholesalers and fertilizer producers pass these payments on to farmers in the form of reduced prices.

In our preliminary determination, we stated that the purpose of this program was to maintain a low cost of fertilizer to farmers in order to encourage adequate *pasture* maintenance and development. As such, we determined that its benefits were limited to a specific enterprise or industry, or group of enterprises or industries, and were countervailable.

We have since verified that benefits under this program were available to and used by a wide variety of agricultural producers. We found no government restrictions, either *de jure* or *de facto*, that would lead us to conclude that the provision of benefits under this program was limited by industry, sector or region. Therefore, we find this program not countervailable.

C. Fertilizer and Lime Transportation Subsidy

Under the administration of the Ministry of Agriculture and Fisheries, the government of new Zealand provided payments to retailers and wholesalers of fertilizer and lime to cover their costs of transporting those products from the superphosphate works, ports of landing, or approved limeworks. We verified that these payments are, in turn, passed on to farmers in the form of reduced prices

In our preliminary determination, it was our understanding that the purpose of the program was to ensure that the rate of fertilizer application was kept at levels allowing for adequate *pasture* maintenance and development. We stated that because benefits under this program appeared to be provided primarily to sheep and other livestock farmers, we determined that its benefits were limited to a specific enterprise or industry, or group of enterprises or industries, and were countervailable.

We have since verified that benefits under this program were available to and used by a wide variety of agricultural producer's. We found no government restriction, either *de jure* or *de facto*, that would lead us to conclude that the provision of benefits under this program was limited. Therefore, we find this program not countervailable.

D. Fertilizer and Lime Bounty

Under the administration of the Ministry of Agriculture and Fisheries, the government of New Zealand sponsored two programs under this heading. The first, called "The Fertilizer and Lime Bounty," was terminated in 1979. The second, called "The Fertilizer Aerial Spreading Bounty," provided payments to aerial spreading companies, payments which were then credited to the farmer.

In our priliminary determination, we found this program to be limited to a specific enterprise or industry, or group of enterprises or industries, because the majority of payments appeared to be provided to sheep and other livestock farmers.

We have since verified that benefits under this program were available to and used by a wide variety of agricultural producers. We found no government restriction, either *de jure* or *de facto*, that would lead us to conclude that the provision of benefits under this program was limited by industry, sector or region. Therefore, we find this program not countervailable.

E. Deductions for Capital Expenditures for Development of Domestic Farmland

This program is administered by the Inland Revenue Department. Under sections 126, 127 and 129 of the Income Tax Act 1976, a deduction is available for certain expenditures incurred in clearing and preparing farming and agricultual land. The deductions may be taken in the year incurred or spread over that year and the next four tax years. Any taxpayer engaged in farming or agricultural business on land in New Zealand may claim a deduction for qualifying capital expenditures.

We verified that any taxpayer engaged in any farming or agricutural business or land in New Zealand may apply for this deduction. Therefore, we determine that this program is not limited to a specific enterprise or industry, or group of enterprises or industries, and is not countervailable.

F. Land Development Encouragement Loans

Under the administration of the Rural Bank, contingent liability loans were provided for the development of pastoral and agricutural land. All farmers were eligible for financing provided the minimum area for development was 10 hectares. Expenditures qualifying for these loans included sowing of permanent pastures, clearing, cultivation, seeding, fertilizing, and drainage. The program, which was open for applications from August 1, 1978, to March 1981, offered maximum loans of NZ$250 per hectare of land. The loans were for a 15-year term and, provided the land was maintained to the satisfaction of the Rural Bank, no interest was charged on the loan and half of the principal could be written off.

This program was preliminarily found to be countervailable in our 1981 *Preliminary Affirmative Countervailing Duty Determination: Lamb Meat from New Zealand* (46 FR 58128). However, we have verified that this program neither designates specific agricultual products for receipt of funding, nor established differing terms for specific products. Therefore, we determine it is not countervailable. *See Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled and Frozen Pork Products from Canada* (50 FR 25097, 25107).

G. Standard and Nil Value of Livestock

Under section 85 of the Income Tax Act 1976, trading stock (inventory) must be valued at either cost, market, or replacement value. The choice and use of the valuation method is subject to review by the Commissioner of Inland Revenue. If inventory increased in value and is recorded as such by the taxpayer, that increase must be included as (assessable) taxable income for that year. If an end-of-the-year valuation of trading stock results in a decrease of value, the loss is allowed as a deduction in calculating the assessable income for that year. As an alternative to this system, owners of livestock may adopt the standard value and a nil value of livestock method for recording inventory for income tax purposes.

Under the standard value of livestock system, the Commissioner of Inland Revenue will periodically establish minimum acceptance levels of standard value, *i.e.*, value per head of livestock. These values are based on average market returns over a period of time, taking into account costs of production, and serve as a buffer against price fluctuations. A farmer may elect to value his inventory using the standard value or any higher value. However, once a standard value has been adopted by a farmer for a class of livestock, it cannot be reduced without the approval of the Commissioner. This system has been in operation since 1915.

Under the nil value of livestock system, a farmer can elect to adopt a nil value for all or part of the increase in his herd over a basic number of livestock. That basic number is established as the greater of the number of livestock on hand at the end of either of the two income years immediately preceding the year in which the decision is made to join the system. By using this scheme, the farmer can defer part of his tax liability by not paying tax on increases in stock until the livestock is actually sold. Upon sale, income taxes are payable on the net proceeds.

This program appears merely to be a method of taxation accounting, used not only by livestock producers, but by other manufacturers in New Zealand as well that hold reserve stocks for maturity purposes (*e.g.*, manufacturers of wine, brandy, and whiskey). As such, we determine that this program does not bestow a countervailable bounty or grant within the meaning of the Act.

H. Government Contributions to the Meat Industry Research Institute

In 1955, under the administration of the Department of Scientific and Industrial Research (DSIR), the government of New Zealand established the Meat Industry Research Institute (MIRINZ) to carry out research and development in all aspects of meat and meat by-product processing and to promote the adoption of new technology in the meat industry. MIRINZ is funded by the Meat Board, the New Zealand Freezing Companies Association and the government.

In our preliminary determination, we found government contributions to MIRINZ research limited to the meat industry. At the time, we had no indication that the results of the research and development were publicly available. However, at verification, we learned that MIRINZ is one of many DSIR-funded research institutions. Other institutions conduct research for the fertilizer, logging, dairy, leather and shoe, heavy engineering, building, concrete, coal, textile and wool

industries. The results of government-funded DSIR/MIRINZ research are published in scientific papers, technical reports, journals, digests and bulletins.

Because DSIR funds are provided to a variety of industrial and agricultural sectors and because the results of such government-funded research are publicly available, we find that government funding of MIRINZ does not provide a countervailable bounty or grant. *See, Final Affirmative Countervailing Duty Determination: Certain Carbon Steel Products from Belgium* (47 FR 39304), Appendix 2.

I. Noxious Plants Control Scheme

The Ministry of Agriculture and Fisheries provides to farmers payments that are equal to 50 percent of their costs for chemical or mechanical control of specified weeds, *i.e.*, sweet briar, blackberry, broom, gorse, and barberry. While projects must be approved in order to receive funding under this scheme, there is no indication that this scheme is limited to producers of any particular agricultural commodities. In fact, we are informed that the control of these weeds is as crucial to producers of corn, soybean and other grain as it is to livestock farmers. Therefore, we determine that this program is not limited to a specific enterprise or industry or group of enterprises or industries, nor to a specific region, and is not countervailable.

J. Suspension of Government Inspection Fees

This service, administered by the Ministry of Agriculture and Fisheries, ensures that all meat and meat by-products comply with domestic inspection and hygiene standards, and the requirements of overseas importing countries. Since 1978, government inspection fees on meat for domestic consumption, as well as for export, have been waived. It is reported that the government of New Zealand will phase in a partial cost recovery program, *i.e.*, a collection of some inspection fees, beginning October 1985.

As the government bears the cost of inspecting meat for both the domestic and export markets, inspection fee waivers do not confer a subsidy on exports. Moreover, numerous other agricultural products, such as poultry, fish, rabbits and margarine are similarly inspected. We find the provision of this type of service to be a legitimate function of government, namely ensuring that agricultural products sold domestically and abroad meet minimum health and quality standards. In addition, the provision by the government of this type of service is as beneficial to consumers as to producers, *i.e.*, consumers get a better quality product and producers receive higher returns for their commodities. Thus, we determine that this practice is not countervailable as an export subsidy, nor is it limited to a specific enterprise or industry, or group of enterprises or industries.

III. Programs Determined Not To Be Used

Based on our verification of the responses of the New Zealand Meat Producers Board, various freezing companies, and the government, we determine that producers, processors, or exporters in New Zealand of lamb meat did not use the following programs:

A. Export Programme Grant Scheme (EPGS/Export Programme Suspensory Loan Scheme (EPSLS)

The EPGS was established in the 1979 Budget to encourage marketing research in targeted foreign markets. The grants, amounting to 64 percent of budgeted expenditures, were available for up to three years. In 1982, the grant program was converted to the EPSLS, a suspensory loan program. Loans covering up to 40 percent of eligible expenditures are available to established exporters who increase their net foreign exchange earnings through the marketing of specific goods or services in a designated foreign market. If a predetermined sales forecast is accomplished, the suspensory loan is converted into a grant; if the forecast is not met, the exporter repays the loan with interest.

We verified that neither producers, processors, nor exporters of lamb meat to the United States received benefits under either portion of this program.

B. Rural Export Suspensory Loans

The purpose of this program, which was introduced in 1974 and closed to new applicants on March 31, 1985, was to promote the export of non-traditional agricultural, horticultural, fish products not previously exported, and products for which market expansion was possible. We verified that lamb meat, considered a traditional export product, has never been eligible for this program, and that no loans have been granted to the producers, processors, or exporters of lamb. Therefore, we determine that this program was not used.

IV. Program Determined To Be Terminated

A. Meat Industry Hygiene Grants

The government of New Zealand, in its 1977 budget, provided special temporary grants to assist meat export processing companies in upgrading buildings, plant and machinery, and operations in freezing works required to meet the hygiene standards imposed by importing countries. We verified that the scheme expired on September 30, 1981, and that final payments were made in 1983/84.

In our preliminary determination, we stated that since this program provided benefits which were limited to processors who produce meat for export, we determined it to be countervailable. Despite the fact that payments had been terminated, because these were grants, we allocated the benefits over 10 years, the average useful life of machinery and equipment used for freezing-works facilities.

We have since verified that the total value of grants bestowed in any given year was less than 0.5 percent of the value of production of lamb meat in those years, and are therefore allocable to the year in which they were received. Since the federal payments under this program were made in 1983/84, no products now entering the United States are benefiting from grants provided under this program. Therefore, we determine this program to be terminated.

Petitioners' Comments

Comment 1. Petitioner argue that because statistics on domestic and non-U.S. export sales are reported on a carcass-weight basis, and are reported on a product-weight basis for exports to the United States, a conversion factor must be applied to achieve weight equivalency. They believe that most of the lamb legs and shoulders exported to the United States are in boneless form and therefore the appropriate conversion factor should be either the one published by Devco for boneless cuts (excluding breast/flap and neck) of 59.6 percent, or an average of that factor and the one published by Devco for bone-in cuts of 80.4 percent. Respondents rebut this argument by stating that boneless cuts enter the United States under TSUS 107.76 (lamb or mutton (prepared or preserved)), a duty-free classification and not subject to this investigation.

DOC Position. We agree with petitioners that weight equivalency should be achieved in order to determine the proper denominator used in our benefit calculations. However, we disagree with their proposal that a factor of 59.6 percent be used. There is no verified evidence on the record indicating: 1) that most of the lamb legs and shoulders entering the United States

are in boneless form, or 2) what the product mix (legs, loins, racks, shoulders shanks, breast/flap) of lamb meat exported to the United States was during our period of investigation. We do known, however, that most of the imported product does indeed enter the United States in cartons (*i.e.*, cut form), and that the TSUS classification covering the products subject to this investigation does include "meat even though completely detendonized or deboned". Therefore, since both boneless and bone-in cuts are entering the United States, we are using and average of the boneless and bone-in factors. We have, however, included the breast/flap and neck because this factor is being used to convert total lamb meat production, and not only that portion exported to the United States.

Comment 2. Petitioners state that the establishment of a risk premium for uncreditworth institutions should be based, not on the difference between the Moddy's Aaa and Baa corporate bond rates calculated as a percentage of the prime rate in the United States, but instead on the difference in rates between high yield bonds, (as reported by Morgan Stanley & Company) and Moody's Aaa rated bonds. They claim that this methodology more closely approximates the risk premium for uncreditworthy institutions.

DOC Position. This issue is moot. None of the calculation methodologies used in this determination required the use of a risk premium.

Comment 3. Petitioners suggest that, with respect to grants to sheep producers under the Livestock Incentive Scheme, benefits should be spread over five years, and not ten years as was done for the preliminary determination. This would be in accordance with the U.S. Internal Revenue Service Class Life Asset Depreciation Range System for breeding sheep. Respondents contend that a four year range should be used, as this is the standard for breeding stock in New Zealand.

DOC Position. We agree with petitioners. When determining the period over which to allocate benefits resulting from grants, our practice is to use the Internal Revenue Service's depreciation range. We followed that practice in this case.

Comment 4. Petitioners contend that, if duties are assessed uniformly on a per pound basis, it will act as an incentive for New Zealand to export only the higher-valued cuts and thereby significantly avoid the remedial nature of a countervailing duty. They suggest that the amount of the bounties or grants be countervailed by apportionment to the primal cuts imported from New Zealand according to their relative value. They believe that there would be no significant administrative inconvenience in the assessment of duties based on the method suggested.

DOC Position. We disagree. First, none of the programs found to be countervailable provides benefits on a per cut basis. Both the SMP and Meat Board Price Support Schemes provide benefits on the basis of a certain dollar amount per kilogram of lamb. Other programs found to be countervailable provide benefits without regard for the type of cut produced or the relative value of individual cuts. Second, we believe that any future increase in New Zealand's export to the United States of more valuable cuts would be the result of market demand, not because the duty rate is on a per pound basis. We do not believe that the New Zealand exporters would ship more valuable cuts in order to evade the effect of a countervailing duty order if those cuts could not be sold in the United States. Finally, it has been our practice in recent countervailing duty investigations to establish countervailing duty rates that are on terms consistent with the costoms duty rates published in the TSUS. In this case, lamb meat classified under TSUS 106.30 has a duty rate 0.5 cents per pound. *See Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled and Frozen Pork Products from Canada* (50 FR 25097).

Comment 5. Petitioners argue that the MISA has no assets and will generate income only in the event that market prices for lamb meat exceed the trigger prices, an event they claim is unlikely to occur. As such, if government funding of the MISA through September 30, 1984, is not regarded as a continuing, recurring price support payment to producers, they claim that it should be treated as a long-term loan to an uncreditworthy borrower (*e.e.*, the Meat Board) and the benchmark interest rate should reflect that fact. They further argue that the government funding of the MISA since October 1, 1984, should be regarded as a continuing, recurring price support payment to producers, and therefore countervailed at the time of receipt. While the theoretical framework is in place for repayment of the MISA advances, petitioners contend that such repayments can hardly be expected given the current and projected condition of the industry.

DOC Position. We have treated the MISA deficit as a price support payment countervailable in the year of receipt, and, therefore, the benchmark issue is moot.

Comment 6. Petitioners question the accuracy of the amount of the SMP payments reported for the 1984/85 fiscal year (our period of investigation) given (1) the intent of the government of New Zealand's to keep SMP payments on an equivalent basis with the preceding year, and (2) the fact that payments for the year ended September 30, 1984, were considerably higher than those reported for the 1984/85 fiscal year.

DOC Position. We have verified the value of the actual SMP and lump-sum payments made during the period of investigation and have used these figures in calculating the net bounty or grant.

Comment 7. Petitioners claim that a benchmark interest rate based on prime commercial bills is inappropriate for purposes of calculating benefits under the Export Suspensory Loan Scheme. They claim that these loans are provided to farmers, and that even in the United States, borrowers such as these would have to pay at least 2 percentage points over the prime lending rate.

DOC Position. For the preliminary determination, we used the rate for prime commercial bills because, at that time, we believed that it was the most representative rate for alternative short-term financing. For the final determination, we have used the national average commercial interest rate on overdraft accounts, published by the Reserve Bank of New Zealand in the *Reserve Bank Bulletin*, and reported in the questionnarie response. Because this is a weighted-average rate on all overdraft loans, and not just a rate for prime borrowers, the question of including an additional spread over prime is moot. This choice of benchmark is consistent with the policy for short-term loans outlined in the Subsidies Appendix (49 FR 18006) loans.

Comment 8. Petitioners suggest that government contributions to the Meat Industry Research Institute be allocated only over export production because the activities of that organization are related solely to export production and export processing of lamb.

DOC Position. We have found this program not countervailable. See section II.H of this notice.

Comment 9. Petitioners contend that nearly all of the benefits provided under the Livestock Incentive Scheme are attributable to increases in sheep stock, not only 8.6 percent as was allocated in the preliminary determination. They reference the Meat Producers Board's 1983 Annual Report, which indicates that while the number of dairy cattle has remained unchanged and the number of

beef cattle has declined since 1978, the number of sheep has increased by approximately 15 percent. In addition, they contend that virtually every livestock farm eligible for benefits under this program carries sheep.

DOC Position. Our preliminary analysis was based on unverified information contained in the response. We have since verified that, in fact, sheep farms have received well over 90 percent of the money provided under this program. Our final calculations reflect this fact.

Comment 10. With respect to the Fertilizer and Lime Transport Subsidy and the Fertilizer Price Subsidy, petitioners assert that the Department's 46 percent allocation of the total benefit to sheep production was too low. They claim that a more reasonable allocation would be 75 percent, the allocation used by the government of New Zealand for the Fertilizer and Lime Bounty.

DOC Position. We have found the three programs not countervailable. See section II.B, II.C, and II.D of this notice.

Comment 11. Petitioners assert that the source of funds for the Meat Board loans and loan guarantees is the MIRA, which they claim is an account of the government. Therefore, those loans and loan guarantees should be found countervailable to the extent that their terms are inconsistent with commercial considerations.

DOC Position. While we agree that, technically, the MIRA is an account of the Ministry of Agriculture and Fisheries, we do not agree with petitioners' assertion that the use of MIRA funds as the source of the Meat Board's loans and loan guarantees provides a countervailable benefit. See section II.A of this notice.

Comment 12. Petitioners argue that, while inspection of meat for domestic consumption is an appropriate action of government, inspection of meat to meet special standards of importing countries is a service designed solely to benefit export marketing, and is therefore countervailable.

DOC Position. We disagree. See section II.J of this notice.

Comment 13. Petitioners contend that the Noxious Plants Control Scheme is limited to specific weeds which are solely pastoral and that the program is of benefit only to livestock producers; therefore, this program should be found countervailable.

DOC Position. We disagree. See section II.I of this notice.

Comment 14. Petitioners argue that, because the MISA and SMP complement one another, the time periods for calculating the two programs' benefits should be identical. They contend that the appropriate period should be October 1, 1983, through September 30, 1984 (the Meat Board's financial year).

DOC Position. When selecting the period used for the measurement of bounties or grants, the Department attempts to look at the most recent fiscal period for which complete information is available. In this case, we selected the government of New Zealand's 1985 fiscal year (April 1, 1984, through March 31, 1985). Choosing this period enabled us to tie the information contained in the response to audited government budget documents and financial statements. While the two price support programs do operate on an October through September basis, the government of New Zealand was able to compile, and we were able to verify, expenditures on these programs made during our period of investigation.

Comment 15. Petitioners take issue with the respondents' ratio of the value of lamb meat:pelts:wool:offal. They argue that, based on information available to them, the lamb meat accounts for a significantly higher portion of the value of a lamb than that reported by respondents.

DOC Position. We are required to use verified information for our final determination. In this case, while petitioners have provided data on this issue, we note that the sources of their information are (1) a three-year old New Zealand Meat and Wool Board Report, and (2) U.S. domestic industry experience. On the other hand, respondents have provided, and we have verified, information on the product ratios that is current and reflective of the New Zealand industry. Accordingly, we have used respondents' information for allocation purposes.

Respondents' Comments

Comment 1. Respondents contend that the Fertilizer and Lime Transportation Subsidy, the Fertilizer and Lime Bounty, and the Fertilizer Price Subsidy programs are generally available and, even though the Department recognized the termination of the first two programs in its preliminary determination, all three programs should be found not countervailable for the final determination.

DOC Position. We agree. See sections II.B, II.C, and II.D of this notice.

Comment 2. Respondents also contend that government contributions to the Meat Industry Research Institute are not countervailable because government funding in New Zealand is available to a wide variety of research associations and industries, and that the findings of government funded research is publicly available.

DOC Position. We agree. See section II.H of this notice.

Comment 3. Respondents state that because the Meat Industry Hygiene Grant program was terminated in September, 1981, and that the value of grants in any given year were verified to be less than 0.5 percent *ad valorem*, the Department should find this program terminated with no benefits bestowed during the period of investigation.

DOC Position. We agree. See section IV of this notice.

Comment 4. With respect to the Export Suspensory Loan Scheme, respondents contend that the bonding rate should reflect the program's termination and take into account only those loans outstanding. They also argue that there is no concessional element in the rate of interest charged on those loans and, therefore, there is no countervailable element with respect to interest.

DOC Position. We recognize the termination of the program. With respect to any concessional element in the rate of interest charged, we verified that the DFC charges its borrowers rates of interest that are higher than its own costs to borrow. Our benchmark interest rate, however, is not based on the DFC's borrowing history, but on what comparable commercial loans would cost in New Zealand.

Comment 5. Respondents assert that, with respect to the Meat Board Price Support Scheme: (a) Devco has not contributed to the MISA deficit, (b) our preliminary determination did not take into account the fact that 1 percent interest was paid by the Meat Board on the deficit, and (c) that the appropriate benchmark interest rate should be a weighted-average of term-loans and overdraft rate in New Zealand, *i.e.*, the commercial rates that are charged to prime borrowers such as packing companies in New Zealand.

DOC Position. There is no evidence on the record to support respondents' assertion that Devco's sales to North America have not contributed to the MISA deficit. We did not take into account the 1 percent interest charged on the MISA deficit in our preliminary determination because the Board's annual report indicated that the deficit has been converted to a 30-year loan, interest-free for the first five years. We have since verified that 1 percent interest had been paid and, accordingly, have taken the interest payment into account for the final determination. We are now treating the deficit as a price support payment to lamb meat producers and countervailing it in the

year of receipt. Therefore, the benchmark issue is moot.

Comment 6. Respondents submit that because the SMP program was terminated as of September 20, 1984, the bonding rate for this program should be based solely on the lump-sum payment allocable to the period of investigation.

DOC Position. We disagree. While we have verified that the SMP program was terminated, we note that the state purpose of its replacement, the lump-sum payment, was to provide an equivalent level of benefits to lamb meat producers for the 1984/85 production year. While the lump-sum program itself is scheduled to be terminated on September 30, 1985, we have verified that the price supports for subsequent periods are being considered. At its August 1984 mid-year meeting, the Meat Board's Electoral Committee stated that a review would be undertaken to identify an alternative means of support for the period after 1984/85. Therefore, given that the lump-sum program is not scheduled to terminate until September 30, 1985, and because there may be another support system in place after that date, we do not believe that it is appropriate to reduce the bonding rate for this program.

Comment 7. Respondents argue the EPTI is not a tax program requiring a cash flow analysis under the Department's traditional tax methodology. Respondents maintain that EPTI tax benefits are earned on a sale-by-sale basis for specific tax years. The Department has verified that under the New Zealand government's schedule for phasing-out the EPTI program, Devco's exports of lamb meat to the United States will earn a 3.85 percent EPTI credit during Devco's 1986 tax year (October 2, 1984—October 1, 1985), a 1.925 percent EPTI credit during Devco's 1987 tax year (October 2, 1985—October 1, 1986), and no more credits on or after October 2, 1986. Respondents conclude that any EPTI tax credits can be offset precisely by assessing a countervailling duty rate equal to the specified EPTI credit rates in effect during the tax years of the phase-out period.

DOC Position. We disagree. We consider tax benefits to the countervailable when a company actually receives the benefits, rather than when a company becomes eligible to receive them. Tax law changes, such as the EPTI phase-out schedule, cannot be considered to be in effect until fully implemented by the government and used by the respondent. We verified that Devco claimed and received a 7.7 percent EPTI tax credit in its most recently completed tax return. The 3.85 percent EPTI credit will not be available to Devco until the company's 1986 fiscal year, and, under our tax methodology, these benefits are not realized until the 1986 tax return is filed. As such, current exports to the U.S. of lamb meat are benefiting from a bounty or grant equal to the 7.7 percent EPTI rate, which is the rate we are using for duty deposit purposes. If the scheduled EPTI changes are claimed in future tax returns, we will consider these changes in a section 751 administrative review, if one is required.

Verification

In accordance with section 776(a) of the Act, we verified the data used in making our final determination. During verification we followed normal verification procedures, including meeting with government officials and inspection of documents, as well as on-site inspection of the accounting records of the company producing and exporting the merchandise under investigation to the U.S.

Administrative Procedures

We afforded interested parties an opportunity to present oral views in accordance with our regulations (19 CFR 355.35). A public hearing was held on July 30, 1985. In accordance with the Department's regulation (19 CFR 355.34(a)), written views have been received and considered in this determination.

Suspension of Liquidation

The suspension of liquidation ordered in our preliminary affirmative countervailing duty determination shall remain in effect until further notice. The net bounty or grant is NZ$0.3602/lb. Therefore, in accordance with section 706(a)(3) of the Act, we are directing the United States Customs Service to require a cash deposit in the amount indicated above for each entry of the subject merchandise from New Zealand which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to assess countervailing duties in accordance with section 706(a)(1) and 751 of the Act.

This notice is published in accordance with section 703(f) of the Act (19 U.S.C 1671b(f))

Dated: September 3, 1985.

Walter J. Olson, Jr.,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 85–22190 Filed 9–16–85; 8:45 am]

BILLING CODE 3510–DS–M

Wool From Argentina; Final Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Countervailing Duty Order.

SUMMARY: On May 6, 1985, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on wool from Argentina The review covers the period July 1, 1983, through June 30, 1984, and six programs.

We gave interested parties an opportunity to comment on the preliminary results. After review of the comment received, the final results of the review are the same as the preliminary results.

EFFECTIVE DATE: September 17, 1985.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone; (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On May 6, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 19046) the preliminary results of its administrative review of the countervailing duty order on wool from Argentina (48 FR 14423, April 4, 1983). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Argentine wool. Such merchandise is currently classifiable under items 306.3152, 306.3172, 306.3253, 306.3273, 306.3354, and 306.3374 of the Tariff Schedules of the United States Annotated.

The review covers the period July 1, 1983, through June 30, 1984, and six programs: (1) Incentives for exports from southern ports; (2) the reembolso, a cash rebate of taxes; (3) perferential pre-export financing; (4) multiple exchange rates; (5) government assistance to wool growers in Patagonia; and (6) financial reorganization aids.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the

preliminary results. We received a written comment from C. Dana Draper Company, and importer of Argentine wool.

Comment: Draper argues that the Department should not have used data from the original investigation to establish the percentages of wool shipped from the various ports in Argentina. Rather, the Department should have ascertained the actual volume of the wool exports from each port by examining the records of the various ports from which the wool is shipped.

Department's Position: In conducting administraive reviews, the Department relies on information provided by respondent governments and other interested parties. In its response to our questionnaire, the Argentine government was unable to provide export data on a port-by-port basis. We therefore relied on the best information otherwise available, verified data from the original investigation.

Final Results of the Review

After review of the comment received, the final results of the review are the same as the preliminary results. We determine the total bounty or grant to be 6.98 percent for the period July 1, 1983, through June 30, 1984. The Department will instruct the Customs Service to assess countervailing duties of 6.98 percent of the f.o.b. invoice price on any shipments of wool exported on or after July 1, 1983, and on or before June 30, 1984.

The Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided for in section 751(a)(1) of the Tariff Act, of 6.98 percent of the entered value on any shipment of Argentine wool entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of Commerce Regulations (19 CFR 355.41).

Dated: September 6, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary Import Administration.

[FR Doc. 85-22191 Filed 9-16-85; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

Review of Commercial Activities

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of Revision of Schedule for Review of Commercial Activities.

Pursuant to OMB Circular No. A-76 and Department of Commerce Administrative Order 201-41, the National Bureau of Standards announces that it is revising the schedule for review of its commercial activities that was published in the Federal Register on May 6, 1985 (50 FR 19426). The revised schedule set out below replaces the previous NBS inventory listings that were published in that earlier notice and is the result of combining several small activities into larger studies. Commercial activities are those which are operated by the agency and which provide a product or service which could be obtained from a commercial service.

This notice is not an invitation for sealed bids or a request for proposals.

FOR FURTHER INFORMATION CONTACT: Mrs. Paige Gilbert, A-76 Coordinator, Office of the Director of Administration, National Bureau of Standards, Gaithersburg, Maryland 20899 (301) 921-3567.

Dated: September 6, 1985.

Ernest Ambler,

Director.

NATIONAL BUREAU OF STANDARDS PRODUCTIVITY IMPROVEMENT PROGRAM REVIEW LIST

Identifier	Name of activity	Location	Review period
NBS-45-C	Plant Operations	Boulder	7/9/85-10/10/86
NBS-46-C	Plant Operations	Gaithersburg	10/31/85-1731/87
NBS-47-C	Consolidated Administrative Services	Gaithersburg	9/30/86-12/31/87
NBS-21-CP	Instrument Shops	Boulder	3/31/86-6/30/87
NBS-22-GP	Library	Gaithersburg	5/1/87-11/15/87
NBS-33-GP	Visual Arts	Gaithersburg	6/30/86-9/30/87

[FR Doc. 85-22225 Filed 9-16-85; 8:45 am]

BILLING CODE 3510-13-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Control Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

September 12, 1985.

The Chairman of the Committe for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 18, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Governments of the United States and the Republic of Singapore have exchanged notes further amending their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 21, 1981, as amended to convert the existing minimum consultation levels for cotton and man-made fiber gloves in Categories 331 and 631, cotton dresses in Category 336 and men's and boys' woven shirts of man-made fibers in Category 640, cotton and man-made fiber playsuits in Categories 337 and 637 and other cotton apparel, including cotton vests, in Category 359 to designated consultation levels for the duration of the agreement. The letter to the Commissioner of Customs which follows this notice establishes these increased levels and controls for the first time in 1985 the levels for Categories 337, 631, 637 and 640. The sublevels for cotton vests in Category 359 (only T.S.U.S.A. numbers 379.0258, 379.0654, 379.3949, 379.5700, 379.5820, 383.0648, 383.0652, 383.4200, 383.4320, 383.0351 and 383.3043) is also being controlled by Customs for the first time in 1985. The levels for these latter five categories have not been adjusted to reflect any imports exported during 1985. As the data become available, such charges will be made.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 28622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical

Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

September 12, 1985

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 21, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements concerning imports of cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Singapore and exported during 1985.

Effective on September 18, 1985, the directive of December 21, 1984 is hereby further amended to adjust the restraint levels for cotton textile products in Categories 331, 336 and 359 and control the levels for Categories 337, 631, 637 and 640 and the sublevel for Category 359pt.[1] as follows:

Category	Twelve-Month Levels [2]
331	250,000 dozen pairs
336	35,000 dozen
337	Do.
359	300,000 pounds of which not more than 200,000 pounds shall be in category 359pt.[1]
631	250,000 dozen pairs
637	47,000 dozen
640	65,000 dozen

[1] In Category 359, only T.S.U.S.A. number 379.0258, 379.0654, 379.3949, 379.5700, 379.5820, 383.0648, 383.0652, 383.4200, 383.4320, 383.0351 and 383.3043.
[2] The levels have not been adjusted to reflect any imports exported after December 31, 1984.

Textile products in Categories 337, 631, 637 and 640 which have been exported to the United States prior to January 1, 1985 shall not be subject to this directive.

Textile products in Category 337, 631, 637 and 640 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-22206 Filed 9-16-85; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 359, only T.S.U.S.A. numbers 379.0258, 379.0654, 379.3949, 379.5700, 379.5820, 383.0648, 383.0652, 383.4200, 383.4320, 383.0351 and 383.3043.

Denial of Entry of Incorrectly Visaed Gloves of Man-Made Fibers Produced or Manufactured in Taiwan

September 12, 1985.

The Chairman of the Committee for the implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 20, 1985. For further information contact Claire McDermott, Deputy Director, International Agreements and Monitoring Division, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On April 26, 1984 a notice was published in the **Federal Register** (49 FR 18026) which announced that, in order to meet the "correct category" requirement of the existing visa mechanism, certain apparel products, including man-made fiber gloves in Category 631, produced or manufactured in Taiwan and exported to the United States on and after May 1, 1984, must include on the visas certain specified letter designations to differentiate among products in the category. In the case of Category 631, the designations are "631-W" for work gloves and "631-0" for gloves other than work gloves. The purpose of this notice is to advise the public that the Chairman of the Committee for the Implementation of Textile Agreements is directing the Commissioner of Customs, until further notice, to deny entry for consumption and withdrawal from warehouse for consumption in the United States of man-made fiber which are visaed as gloves, other than work gloves in Category 631-0 (all T.S.U.S.A. number in the Category except 704.3215, 704.8525, and 704.900)), but are determined by the U.S. Customs Service to be properly classified in Category 631-W (only T.S.U.S.A. numbers 704.3215, 704.8525, 704.9000). Conversely, man-made fiber gloves, visaed as Category 631-W, but found to be properly classified as gloves, Category 631-0, will also be denied entry.

A description of the textile categories in terms of T.S.U.S.A numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenaham,

Chairman, Committee for the Implementation of Textile Agreements.

September 12, 1985

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but doe not cancel, the directive of September 27, 1972, as amended, from the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of certain cotton, wool and man-made fiber textile products produced or manufactured in Taiwan, for which the authorities in Taiwan had not issued an appropriate export visa.

Effective on September 20, 1985 and until further notice, you are directed to prohibit entry for consumption, or withdrawal from warehouse for consumption, in the United States of man-made fiber textile products which are visaed as Category 631-0 (all T.S.U.S.A. numbers except 704.3215, 704.8525, 704.9000), but are determined to be Category 631-W (only T.S.U.S.A. numbers 704.3215, 705.8525, and 704.9000). Entry should also be denied to man-made fiber textile products, visaed as Category 631-W, which are found to be Category 631-0.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-22207 Filed 9-16-85; 8:45 am]

BILLING CODE 3510-DR-M

Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

September 12, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 18, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212.

Background

On December 27, 1984 a notice was published in the **Federal Register** (50 FR

50231) which established import control limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1985 and extends through December 31,1985. In the letter which follows this notice the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to also control imports of cotton sweaters in Category 345 and men's and boys' other coats of man-made fibers in Category 634 produced or manufactured in the Philippines and exported during the same period at the designated limits. The new limits have not been adjusted to account for any imports in these categories, exported during 1985. As the data become available these charges will be made.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

September 12, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 21, 1984 which directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines.

Effective on September 18, 1985, the directive of December 21, 1985 is hereby further amended to include the following limits for cotton and man-made fiber textile products in Categories 345 and 634:

Category	Twelve-Month Restraint Limit[1]
345	34,583 dozen
634	218,437 dozen

[1] The limits have not been adjusted to account for any imports exported after December 31, 1984. Imports in Categories 345 and 634 during the January-July period of 1985 have amounted to 16,093 dozen and 34,841 dozen, respectively.

Textile products in Categories 345 and 634 which have been exported to the United States prior to January 1, 1985 shall not be subject to this directive.

Textile products in Categories 345 and 634 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-22205 Filed 9-16-85; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Textile Consultations With the Government of Hong Kong To Review Trade in Category 360 (Cotton Pillowcases)

September 12, 1985.

On August 29, 1985 the Government of the United States requested consultations with the Government of Hong Kong with respect to Category 360. This request was made on the basis of the agreement, effected by exchange of notes dated June 23, 1982, as amended, between the Governments of the United States and Hong Kong, relating to trade in cotton, wool and man-made fiber textile and textile products.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the two governments, the United States Government may request the Government of Hong Kong to limit exports in Category 360, produced or manfuactured in Hong Kong and exported to the United States during 1985. The Government of the United States reserves the right to control imports at the established limit.

Anyone wishing to comment or provide data or information regarding the treatment of Category 360 is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreemnts considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-22208 Filed 9-16-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF EDUCATION

Education Appeal Board Hearings; Applications to Review

AGENCY: Department of Education.

ACTION: Notice of application for review accepted for hearing by Education Appeal Board.

SUMMARY: This notice lists the applications for review accepted for hearing by the Education Appeal Board (Board) between June 16, 1985, and August 15, 1985. A summary of each appeal has been included to help potential intervenors. In addition, the notice explains how interested third parties may intervene in proceedings before the Board.

FOR FURTHER INFORMATION CONTACT: Orman W. Ketcham, Acting Chairman, Education Appeal Board, 400 Maryland Avenue SW. (Room 1065, FOB-6), Washington, DC 20202. Telphone: (202) 245-7835.

SUPPLEMENTARY INFORMATION: Under sections 451 through 454 of the General Education Provisions Act (20 U.S.C. 1234 *et seq.),* the Education Appeal Board has authority to conduct (1) audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the Secretary of Education, and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board.

The Secretary has designated the Board as having jurisdiction over appeal proceedings related to final audit determinations, the withholding or termination of funds, and cease and desist actions for most programs administered by the Department of Education (ED).The Secretary also has designated the Board as having jurisdiction to conduct hearings

concerning most ED administered programs that involve (a) a determination that a grant is void, (b) the disposal of a request for permission to incur an expenditure during the term of a grant, or (c) determinations regarding cost allocation plans or special rates negotiated with specified grantees. Final regulations governing Board jurisdiction and procedures were published in the **Federal Register** on May 18, 1981, at 46 FR 27304 (34 CFR Part 78).

Applications Accepted

Vocational Rehabilitation

Appeal of the Hawaii State Board of Vocational Education, Docket No. 15–(190)–85, Audit Control No. 09–30003.

The Hawaii State Board of Vocational Education (Hawaii) appealed a final audit determination issued by the Assistant Secretary for Vocational and Adult Education. The underlying audit reviewed programs conducted under the Vocational Eucational Act of 1963 (Act) during the period July 1, 1977, through June 30, 1980.

Costs were disallowed because Federal disadvantage funds allegedly were not used for purposes mandated under the Act and because expenditures for guidance and counseling allegedly were not documented adequately.

The Department seeks a refund of $333,887. Hawaii disputes its liability.

Appeal of the State of Wyoming, Docket No. 16–(191)–85, Audit Control No. 08–30009.

Wyoming requested review of a final audit determination issued by the Assistant Secretary for Vocational and Adult Education. The underlying audit reviewed the vocational education program administered by Wyoming during fiscal years 1979 through 1982.

Costs were disallowed because (1) funds allegedly were awarded to the University of Wyoming Adult Re-Entry Center, Goshen County School District #1, and Albany County School District #1 contrary to the State plan; (2) allegedly students were served who were not handicapped or disadvantaged; and (3) fulfillment of the matching requirement allegedly was not documented.

The Department requests a refund of $201,922. Wyoming disputes this liability.

Miscellaneous Programs

Appeal of the Texas Education Agency, Docket No. 17–(192)–85, Audit Control No. 06–20112.

The Texas Education Agency (Texas) appealed a final audit determination issued by the Assistant Secretary for Special Education and Rehabilitative Services. The final audit determination was based on a review of the accuracy of the counts of handicapped children served under Public Law 94–142, Part B on December 1, 1978, 1979, and 1980.

A refund of funds awarded for Fiscal Year 1980 was requested because the count of handicapped children upon which that year's grant award was based allegedly overstated the number of handicapped children served in the Fort Worth Public Schools.

The Department seeks a refund of $161,178. Texas disputes this liability.

Appeal of the California State Department of Education, Docket No. 18–(193)–85, Audit Control No. 09–20102.

The California State Department of Education (California) requested review of a final audit determination issued by the Grants and Contracts Service. The underlying audit reviewed unemployment insurance charges to Federal grants during the period January 1, 1972, through December 31, 1980.

The final audit determination seeks to establish joint and several liability against California and the California Employment Development Department which administers the unemployment compensation fund. The disallowance is based on an allegedly higher unemployment insurance contribution rate for employees of Federally funded programs than for employees of State funded programs.

The Department requests a refund of $2,752,000. California disputes this liability.

Intervention

Section 78.43 of the final regulations establishing procedures for the Education Appeal Board provides that an interested person, group, or agency, may upon application to the Board Chairman, intervene in appeals before the Education Appeal Board.

An application to intervene must indicate to the satisfaction of the Board Chairman or, as appropriate, the Panel Chairperson, that the potential intervenor has an interest in, and information relevant to, the specific issues raised in the appeal. If an application to intervene is approved, the intervenor becomes a party to the proceedings.

Applications to intervene, or questions, should be addressed to Orman W. Ketcham, Acting Chairman, Education Appeal Board, 400 Maryland Avenue SW. (Room 1065, FOB–6), Washington, DC 20202. Telephone: (202) 245–7835.

(Catalog of Federal Domestic Assistance No. not applicable)

(20 U.S.C. 1234)

Dated: September 11, 1985.

A. Wayne Roberts,

Deputy Under Secretary, Intergovernmental and Interagency Affairs.

[FR Doc. 85–22233 Filed 9–16–85; 8:45 am]

BILLING CODE 4000–01–M

Office of Postsecondary Education

Graduate and Professional Opportunity Fellowships Program Application Notice for Fiscal Year 1986; Extension of Closing Date

The Assistant Secretary extends the period that institutions of higher education may submit proposals under the Graduate and Professional Opportunity Fellowships Program (G*POP) to October 11, 1985.

Because of printing problems, materials for this program were not available to institutions as originally scheduled. These materials are now available and have been distributed to the public. Accordingly, the extended closing date of October 11, 1985 will allow institutions sufficient time to submit proposals.

An Application Notice for this program was published in the **Federal Register** on July 26, 1985 (50 FR 30497). Information concerning available funds and other program information is contained in that Notice.

Authority for this program is contained in Part B of Title IX of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1134d–1134g)

(Catalog of Federal Domestic Assistance No. 84.094B, Graduate and Professional Opportunity Fellowships Program)

Dated: September 12, 1985.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 85–22234 Filed 9–16–85; 8:45 am]

BILLING CODE 4000–01–M

Application Notice for 1985 for the National Graduate Fellows Program (NGFP)

The National Graduate Fellows Program offers fellowships to students at accredited institutions of higher education to pursue graduate study at the doctoral level. Applications are invited for awards to be made in 1985. Authority for this program is contained in the Higher Education Act of 1965, as amended (20 U.S.C. 1134h–k).

Applications are invited for 30 month fellowship awards for the period from

January 1, 1986 through June 30, 1988. These awards are intended to be used during the portion of the 1985–86 academic year beginning January 1, 1986, and during the 1986–87 and 1987–88 academic years.

At its initial meeting held on August 14–16, 1985, the National Graduate Fellows Program Fellowship Board determined which disciplines within the arts, the humanities, and the social sciences will be considered as eligible for fellowship awards under this program. The disciplines are contained in the NGFP program brochure. Those determinations are the statutorily mandated responsibility of this Presidentially-appointed Fellowship Board (20 U.S.C. 1134i(a)(2)(B)).

Closing Date for Transmittal of Application

An application for the NGFP must be mailed or hand-delivered by October 17, 1985. The Fellowship Board will meet prior to the closing date to appoint review panels so that the review process may begin as soon as applications are received. Therefore, applicants are encouraged to make every effort to mail their completed applications well in advance of the application deadline.

Applications Delivered by Mail

An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.173, National Graduate Fellows Program, 400 Maryland Avenue, SW., Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that the application will not be considered.

Applications Delivered by Hand

An application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Eligible Applicants

The program regulations (34 CFR 650.2) require that at the time of application, candidates for NGFP fellowships must be eligible to begin or continue graduate study at the doctoral level at an accredited institution of higher education. Candidates must be citizens or nationals of the U.S.; be permanent residents of the U.S.; provide evidence from the Immigration and Naturalization Service that they are in the U.S. for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or be permanent residents of the Trust Territories of the Pacific Islands or Northern Mariana Islands. All applicants must meet any additional requirements established by the Fellowship Board. These requirements are included in the application package.

The Fellowship Board has determined that an individual is eligible for a NGFP fellowship if applying to, accepted, or already enrolled in a graduate program with the expressed intent of obtaining a doctorate or other doctoral level degree. According to the Fellowship Board, the NGFP is not intended to support students seeking Master's degrees, except where such a Master's degree is an integral preparatory step to a doctorate or other doctoral level degree.

Available Funds

The Department of Education Appropriations Act, 1985, provided $2.5 million for the NGFP. The Supplemental Appropriations Act, 1985, Pub. L. 99–88, extended the availability of these funds until December 31, 1985.

Under §§ 650.5 and 650.42 of the regulations, a fellowship award consists of (1) an annual allowance, paid to the institution in which the fellow is enrolled, of $6,000 or tuition and other expenses required by the institution as part of the fellow's instructional program, whichever is less, and (2) an annual stipend of $10,000 or the amount of the fellow's financial need, whichever is less. For the 1985–86 academic year, the Secretary intends to prorate these amounts to cover the period beginning January 1, 1986.

Application Forms

Application forms will be available for mailing on September 24, 1985. They may be obtained by writing to the National Graduate Fellows Program, Office of Postsecondary Education, U.S. Department of Education, P.O. Box 44367, L'Enfant Plaza Station, Washington, DC 20026–4367.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the application package. However, the application package is intended to aid applicants in applying for assistance under this competition. Nothing in the package is intended by the Department of Education to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under statute and regulations governing the competition.

Applicable Regulations

Regulations applicable to this program include the following:

(a) Regulations governing the NGFP, 34 CFR Part 650, 50 Fed. Reg. 33220 (August 16, 1985).

(b) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74 and 75, except for the following provisions in EDGAR 34 CFR Part 75, which do not apply:

(1) Subpart C—How to apply for a grant.

(2) Subpart D—How grants are made.

(3) Sections 75.580—75.592 of Subpart E. What conditions must be met by a grantee?

Further Information

For further information, contact the U.S. Department of Education, National Graduate Fellows Program, P.O. Box 44367, L'Enfant Plaza Station, Washington, DC 20026–4367; (202) 245–9274.

(20 U.S.C. 1134h–k)

(Catalog of Federal Domestic Assistance No. 84.173, National Graduate Fellows Program)

Dated: September 13, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–22324 Filed 9–16–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposed Firm Displacement Rate and Opportunity for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice and Request for Comments. *BPA File No:* FD–85.

BPA requests that all comments and documents submitted as part of the Official Record compiled in the process of developing the Firm Displacement rate contain the file number designation FD–85.

SUMMARY: The Pacific Northwest Electric Power Planning and Conservation Act (Pacific Northwest Power Act), enacted on December 5, 1980, provides that BPA is obligated to establish and periodically revise BPA's rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS).

BPA forecasts a regional firm capacity surplus for at least 20 years and a firm energy surplus for at least the next 5 years. BPA seeks to develop rates to market its surplus power at cost on a long term basis. BPA is therefore proposing to develop a Firm Displacement (FD) rate that will apply to contract purchases of BPA power by Pacific Northwest (PNW) utilities to replace the utilities' firm resources. The displaced resources would be exported from the region on a firm basis. This arrangement would provide power to Pacific Southwest utilities on a long-term basis.

BPA will conduct a hearing under sec. 7(i) of the Pacific Northwest Power Act in establishing the FD rate. Opportunities will be available for interested persons to review the proposed rate, to participate in hearings, and to submit written comments. During the development of the final rate proposal, BPA will evaluate all written and oral comments received in this process. Consideration of comments and more current data may result in the final rate proposal differing from the rate proposed in this notice.

Responsible Official: Mr. John D. Carr, Assistant Director, Division of Rates, is the official responsible for the development of BPA's FD rate.

DATES: Persons wishing to become a formal "party" to the proceedings must notify BPA in writing of their intention to do so. The notification must be received by September 27, 1985, and should be addressed as follows: Hearing Officer—APR, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

A prehearing conference, required by the rate procedures, will be held before the Hearing Officer at 9 a.m. on September 27, 1985, in the Auditorium, Building DOB1, 5411 Hwy. 99, Ross Complex, Vancouver, Washington. Registration for the prehearing conference will begin at 8:30 a.m.

During the prehearing conference, dates will be set for the presentation of direct cases, rebuttal cases, cross-examination, oral argument, and briefs. A notice of the dates and times of the hearing will be mailed to all parties of record. All formal hearing sessions will be held in the Auditorium, Building DOB1, 5411 Hwy. 99, Ross Complex, Vancouver, Washington.

Written comments may be submitted until the close of all hearings. The last day for receipt of written comments will be specified in a later **Federal Register** notice (currently expected to be published in February 1986).

ADDRESSES: Written comments should be submitted to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen S. Johnson, Public Involvement Office, at the address above. Telephone numbers, voice/TTY, for the Public Involvement Office are: 503–230–3478 in Portland; toll-free 800–452–8429 for Oregon outside of Portland; 800–547–6048 for Washington, Idaho, Montana, Wyoming, Utah, Nevada, and California.

Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379

Mr. Reginald M. Kaiser, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4130

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706

Mr. Frederic D. Rettenmund, Boise District Manager, Owyhee Plaza, Suite 245, 1109 Main Street, Boise, Idaho 83707, 208–334–9137.

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I. Background

A. Relevant Statutory Provisions

Section 7 of the Pacific Northwest Power Act, 16 U.S.C. 839e, contains a number of general directives that the BPA Administrator must consider in establishing rates for the sale of electric energy and capacity. In particular, section 7(a)(1), 16 U.S.C. 839e(a)(1), provides:

> [s]uch rates shall be established and, as appropriate, revised to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal Columbia River Power System (including irrigation costs required to be repaid out of power revenues) over a reasonable period of years and the other costs and expenses incurred by the Administrator pursuant to this Act and other provisions of law.

Section 7 of the Pacific Northwest Power Act also contains specific directives regarding the establishment of particular rates. For example, section 7(b) addresses the establishment of rates for firm power sales to BPA's public body, cooperative, and Federal agency customers. Similary, section 7(c) addresses the establishment of rates for firm power sales to BPA's direct service industrial customers. Of particular relevance to the establishment of the FD rate is section 7(f), which provides:

> Rates for all other firm power sold by the Administrator for use in the Pacific Northwest shall be based upon the cost of the portions of Federal base system resources, purchases of power under section 5(c) of this Act and additional resources which, in the

determination of the Administrator, are applicable to such sales.

Rates established by BPA can only become effective upon interim approval or confirmation and approval by the Federal Energy Regulatory Commission (FERC). 16 U.S.C. 839e(a)(2).

In addition to the Pacific Northwest Power Act, BPA ratemaking is governed by the Bonneville Project Act, 16 U.S.C. 832, *et seq.*, the Federal Columbia River System Act, 16 U.S.C. 838, *et seq.* and the Flood Control Act of 1944, 16 U.S.C. 825, *et seq.*

BPA power sales are subject to the provisions of the Pacific Northwest Regional Preference Act, 16 U.S.C. 837 *et seq.* This Act, in conjunction with section 9(c) of the Pacific Northwest Power Act, 16 U.S.C. 839f)c), guarantees PNW consumers first call on Federal power generated in the PNW. While FD sales would only be made to serve loads within the PNW region, the Regional Preference Act places certain constraints on Federal sales to regional utilities where Federal power is used "as replacement, directly or indirectly, with the Pacific Northwest for hydroelectic energy delivered for use outside that region by a non-federal utility . . ." 16 U.S.C. 837b(a).

B. History

BPA first proposed an FD rate in September 1984 as part of BPA's 1985 initial wholesale rate proposal. the proposed FD rate was part of a package of rates designed to give BPA the flexibility needed to sell surplus firm power in a market characterized by a high degree of uncertainty. However, on December 11, 1984, BPA notified all parties to the rate hearing that the proposed FD rate was withdrawn from consideration. Although BPA believed that the firm displacement concept had considerable merit, the rate itself needed further study.

Thereafter, BPA pursued discussions with PNW and California utilities regarding potential sales of PNW surplus firm power to California markets. When several utilities expresed interest in the FD concept, BPA began a series of informal weekly meetings with interested parties in June 1985 to explore an appropriate FD rate design. At the same time, contract negotiations between BPA and individual utilities were proceeding. After assessing the results of the weekly meetings, BPA announced in early July that it would undertake a section 7(i) process to develop an FD rate.

II. Procedures Governing Rate Adjustments and Public Participation

Section 7(i) of the Pacific Northwest Power Act, 16 U.S.C. 839e(i), establishes procedures for public participation in the development of BPA's rates. In order to advise the public regarding in BPA's rates. In order to advise the public regarding participation in BPA's rate adjustment proceedings and to elaborate on the procedures established in section 7(i), BPA published on February 10, 1982, "Procedures Governing Bonneville Power Administration (BPA) Rate Adjustments" in the **Federal Register** (46 FR 6240). These procedures were used in BPA's 1985 wholesale power and transmission rate adjustment proceedings. On March 23, 1984, BPA published its "Interim Amendment of Procedures Governing BPA Rate Adjustments" (49 FR 1090) and requested comments from interested parties. This amendment was necessary in order to comply with a judicial determination that BPA ratemaking proceedings are subject to the ex parte communication restrictions found in section 557(d) of the Administrative Procedures Act. See 5 U.S.C. 557(d). BPA is in the process of evaluating comments on the Interim Amendment and will finalize the Interim Amendment as soon as possible. BPA's procedures, as amended, will be applicable to the section 7(i) hearings on the FD rate.

The Pacific Northwest Power Act prescribes a **Federal Register** notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments outside the hearings; and a decision by the Administrator based on the record developed during the hearing process. BPA's procedures expand these requirements. They provide for publication of a notice of the proposed rates, a prehearing conference, a hearing, receipt of written comments, preparation of decision documents, a decision, and the transmittal of the decision with supporting documentation to FERC.

The process begins with publication of the notice of the proposed rates which includes a discussion of the research, studies, analyses, and other available information in support of the proposed rates, the deadline for claiming status as a "party," and the beginning date for the hearing.

The procedures further provide for a prehearing conference if scheduled by an Indpendent Hearing Officer. A prehearing conference has been schedule before the Hearing Officer on September 27, 1985, at BPA's Ross Complex. Issues for discussion at the prehearing conference may include disputes concerning status as a party, discovery, the scope of cross-examination, hearing schedules, and other pertinent matters. BPA will prefile the testimony of its witnesses at or before the prehearing conference.

BPA distinguishes between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from "participants," who are defined in the procedures as interested persons who may express their views, but who may not cross-examine other witnesses, participate in the prehearing conference, or serve or be served with documents. Participants are provided the opportunity to request materials presented during the hearings. Participants' written comments will be made part of the Official Record. The "participants" category of interest has been established to give the public the maximum opportunity to participate and have its views considered without assuming the obligations incumbent upon "parties."

The second category of interest is that of a "party." A party may be either a party of right because of its legal and/or contractual relationship with BPA, and hence its direct interest, or it may be a person seeking to represent a significant and otherwise unrepresented interest in the hearings. Parties may participate in the prehearing conference, may call and cross-examine witnesses, and are entitled to service of documents from all other parties.

Parties may also be cross-examined and required to serve documents on the other parties. To avoid unnecessary delay, cross-examination by parties may be limited by the Hearing Officer. Where two or more parties have substantially like interest and positions, the Hearing Officer, to expedite the hearing, may order appropriate limitations on the number of attorneys (or parties appearing pro se) who will be permitted to cross-examine witnesses and file motions and objections on behalf of such parties. If a party demonstrates that it would not be represented adequately in the joint presentation of an issue or issues, the Hearing Officer may permit separate examination or argument regarding such issue or issues.

In order to facilitate discovery and promote the efficient use of cross-examination, the Hearing Officer may order BPA, the parties, or both, to make witnesses available for clarifying sessions. BPA expects that clarification

sessions will be followed by the presentation of the parties' direct cases, the presentation of rebuttal cases, cross-examination, oral argument, and briefing. The times for these proceedings will be established by the Hearing Officer at the prehearing conference and will be announced in a subsequent order that will be served upon all parties of record.

After the close of the hearings, BPA will file an Evaluation of the Record which addresses significant technical issues. The Hearing Officer will extend an opportunity to other parties to evaluate the record and analyze the pertinent law through briefs. The Hearing Officer also will extend an opportunty to all parties to file reply briefs.

Persons need not attend the hearings in order to have their views included in the record. Written comments may be included in the record if they are submitted before the close of the hearings. Procedures for submitting comments to BPA's Public Involvement Manager are detailed in the Dates and Addresses sections of this notice. Participants will be kept informed of activity at the formal hearings through regular summary letters.

The record will include, among other things, transcripts of the hearings, written material submitted by the parties and participants, documents developed by the BPA staff, and other material accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, will supplement it if necessary, and will certify the record to the BPA Administrator for decision.

The Administrator will develop the final proposed FD rate based on the entire record, including the record certified by the Hearing Officer, comments received from participants, other material and information submitted to or developed by the Administrator, and any other comments received during the rate development process. The basis for the final proposed rate will be expressed in the Administrator's Record of Decision. The Administrator will serve copies of the Administrator's Record of Decision on all parties and will file the final proposed rate and record with FERC for approval.

III. Rate Schedule

Schedule FD–85—Firm Displacement Power Rate

Section 1. Availability

This schedule is available for Firm Displacement contract purchases by Pacific Northwest utilities for use within the Pacific Northwest. Firm Displacement purchases must replace firm resources exported from the region on a firm basis for a period of at least 3 years. The amount of Firm Displacement purchase may not exceed the planned output of the resource(s) identified by the purchaser as dedicated to serve extraregional load.

Section II. Rate

A. *Demand Charge.* $70.80 per kilowatt per year of contract demand billed monthly at the rate of $5.90 per kilowatt of contract demand for contracts that specify 12 months of service per year.

1. *Partial Year Service.* For contracts which specify service for fewer than 12 months per year, the monthly demand charge of $5.90 per kilowatt shall be increased by:

$$\$5.90 * \frac{(12 - \text{number of specified service months}) * .25}{\text{number of specified service months}}$$

The monthly demand charge shall be assessed only for specified service months.

2. *Load Factor Credit.* A credit shall be granted based on the purchaser's annual load factor.

a. For annual load factors equal to or greater than 55 percent, the credit shall be $1.17 per kilowatt of billing demand per month.

b. For annual load factors less than 55 percent the credit shall be equal to:

$$\$1.17 * \frac{\text{Annual Load Factor}}{55 \text{ percent}}$$

Annual load factor is the ratio of the average energy load in kilowatts during the contractually specified service months to the peak load in kilowatts during that period. The average load and peak load shall be contractually specified.

B. *Energy Charge.* 22.2 mills per kilowatthour of billing energy.

Section III. Billing Factors

The billing factors shall be the Contract Demand and Contract Energy, unless otherwise specified in the contract.

Section IV. Adjustments and Special Provisions

A. *Escalation Factor.* The FD–85 rate shall be subject to change each October 1, beginning October 1, 1987.

1. *Energy Charge.* The FD–85 energy charges through September 30, 1991, shall be calculated according to one of the two formulas below. The applicable formula shall be contractually specified.

a. $Rate_n = Rate_{n-1} * 1.075$

where:

$Rate_n$ = the energy charge in the year (October 1 through September 30) for which the FD–85 rate is being calculated; and

$Rate_{n-1}$ = the energy charge of the FD–85 rate in the previous year (year n–1);

b. $Rate_n = Rate_{n-1} * (1 + INC_{n-1})$

where:

$Rate_n$ = the energy charge in the year (October 1 through September 30) for which the FD–85 rate is being calculated;

$Rate_{n-1}$ = the energy charge of the FD–85 rate in the previous year (year n–1);

INC_{n-1} = the weighted average increase in the cost of exchange resources in year n–1 as calculated on October 1 in year n. The average cost of exchange resources shall be based on the average system costs of exchanging investor-owned utilities (IOUs). If any IOU equalizes rates in year n–1 pursuant to section 10 of the Residential Purchase and Sale Agreement, the calculation of INC shall not reflect the average system cost of that utility.

2. *Demand Charge.* The FD–85 demand charge, including charges for Partial Year Service and the Load Factor Credit, through September 30, 1991, shall be calculated as follows:

$Rate_n = Rate_{n-1} * 1.05$

where:

$Rate_n$ = the demand charge in the year (October 1 through September 30) for which the FD–85 rate is being calculated; and

$Rate_{n-1}$ = the demand charge of the FD–85 rate in the previous year (year n–1).

B. *Extended Peaking and Returned Energy Surcharges.* Surcharges for extended peaking and returned energy (similar to those listed in sections IV.E and IV.F of the CF–85 rate schedule) will be established pursuant to contract unless BPA determines that appropriate service provisions established in the contract make these unnecessary. Billing factors for these surcharges will be established in the contract.

C. *Demand Charge Ceiling.* Beginning fiscal year 1992, the rate ceiling for the FD demand charge shall be determined for each fiscal year (October–September) on October 1 of the relevant fiscal year. The FD demand charge shall not be higher than the charge calculated according to the following formula:

$(PF_n/PF_1) * FD_1$

where:

PF_n = the average annual Priority Firm Power (PF) rate or its successor (in mills per kilowatthour) that is in effect on October 1 of the fiscal year for which the ceiling is being calculated. Such average annual PF rate shall be calculated at 55 percent load factor, assuming a uniform demand in each of the twelve months of the year. If there is more than one PF rate, PF_n shall be based on the weighted average PF rate using sales forecasted at each rate in the development of the PF rate.

PF_1 = The average annual PF rate (in mills per kilowatthour) that is in effect on the effective date of the contract for the purchase of Firm Displacement power. Such average annual PF rate shall be calculated at 55 percent load factor, assuming a uniform demand in each of the 12 months of the year.

FD_1 = The Firm Displacement demand charge in dollars per kilowattyear that is in effect on the effective date of the contract for the purchase of Firm Displacement power.

The same test will be applied to the Load Factor Credit and the Partial Year Service charge.

Section V. Resource Cost Contribution

In compliance with Sec. 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the FD–85 rate is 99.2 percent Exchange and 0.8 percent New Resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 17.6 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 33.0 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following acts, as amended: the Flood Control Act of 1944, 16 U.S.C. 825, *et seq.;* the Bonneville Project Act, 16 U.S.C. 832, *et seq.;* the Regional Preference Act, 16 U.S.C. 837, *et seq.;* the Federal Columbia River Transmission System Act, 16 U.S.C. 838, *et seq.;* and the Pacific Northwest Power Act, 16 U.S.C. 839, *et seq.*

IV. General Rate Schedule Provisions

Firm Displacement Power

Firm Displacement Power is electric power that BPA will make available to Pacific Northwest utilities for use within the Pacific Northwest. The power will replace firm resources exported from the region on a firm basis for a period of at least 3 years. The amount of Firm Displacement purchase may not exceed the planned output of the resource(s) identified by the purchaser as able to be dedicated to serve extraregional load. BPA may limit the amount of Firm Displacement sale under this rate schedule to the amount specified in the contract between BPA and the utility as actually serving extraregional load from the utility's displaced resources. Firm displacement sales, however, may be restricted pursuant to the Restriction of Deliveries section of the General Rate Schedule Provisions (section V.F.).

V. Rate Derivation and Design

BPA has firm capacity available for sale in the amount of at least 2000 megawatts for 20 years. Surplus energy also is available on a firm basis through at least 1991. In order to help market this firm surplus, BPA has developed the Firm Displacement rate schedule. This schedule is available for contract purchases by Pacific Northwest utilities. Firm Displacement purchases must be used within the Pacific Northwest region to replace firm resources exported from the region.

The proposed FD–85 rate is based on the cost and rate studies prepared for the 1985 wholesale power and transmission rate proposals. These studies use a fiscal year (FY) 1987 (October 1986 through September 1987) test year. The FD rate is calculated from the costs allocated to the Surplus Firm Power (SP–85) rate, and it features a demand charge that varies with the amount of energy purchased. If the FD customer is purchasing only capacity, the rate is the same as the SP–85 demand charge: $70.80/kilowattyear (Kw-yr). Purchases having a load factor that equals or exceeds 55 percent are assessed a demand charge of $56.76/kW-yr. A Load Factor Credit is applied to reduce the demand charge as load factor increases from zero to 55 percent. The energy rate is 22.2 mills/kilowatthour (kWh).

The calculation of the FD rate can be divided into three steps. In the first step, the average SP–85 rate at 100 percent load factor is calculated from its demand ($70.80/kW-yr, or $5.90/kilowattmonth (kW-mo)) and energy (20.6 mills/kWh) rate components. The average SP–85 rate is equal to 28.7 mills/kWh. In the second step, new rate components are calculated from this average SP–85 rate by setting the energy charge equal to 22.2 mills/kWh, the NF–85 Standard rate. In order for the new rate components to collect the same average revenue at 100 percent load factor as the SP–85 rate, demand charge must be decreased to $56.76/kW-yr ($4.73/kW-mo). At a 55 percent load factor, this new rate averages 34.0 mills.

The third step in designing the FD rate allows BPA to charge the higher SP–85 demand rate, $70.80/kW-yr, for capacity-only sales while maintaining an average rate of 34.0 mills/kWh at 55 percent load factor. This is accomplished through development of the Load Factor Credit, which reduces the demand charge by $.225/kW-yr for every 1 percent increase in load factor up through 55 percent. The Load Factor Credit is determined by first subtracting the monthly SP–85 demand charge ($5.90/kW-mo) from the demand charge developed in the second step ($4.72/kW-mo). This difference in the two demand charges is multiplied by the ratio of the purchaser's annual load factor to 55 percent which yields the reduction in the FD–85 demand charge for that particular annual load factor. Above a 55 percent load factor, the credit remains constant. The Load Factor Credit thus offers an incentive for purchasing FD firm power at higher load factors.

Another feature of the FD demand rate is Partial Year Service, in which a customer may elect to purchase FD power for less than 12 months per year. A charge is assessed for taking Partial Year Service, through an increased demand charge for the months when service is taken. This increased charge equals 25 percent of the demand charge that would have been assessed for those months that the customer elects not to purchase capacity. This adjusted demand charge ensures that BPA recovers some of the revenue foregone by reserving capacity for a period of less than 12 months, and thus, precluding other long-term sales.

In order to adjust rates in future years to account for cost increases, escalation factors are included as part of the FD–85 rate for the four years following FY 1987. The escalation factor for the FD–85 energy charge is similar to that in the SP–85 rate. Two energy escalation factors are provided, one of which must be selected by contract. The variable escalation factor is based on the annual rate of increase in the cost of investor-owned utility exchange resources. The fixed escalation factor is 7.5 percent, based on forecasts of the average rate of increase in BPA's New Resource rate, plus a risk factor of 2.5 percent.

The demand charge escalation factor is the 5 percent factor used for the energy escalation factor, without the risk factor. This 5 percent escalator reflects the lesser risk associated with surplus capacity sales, due to a larger and longer lasting capacity surplus and expectations of slower growth in capacity costs.

The demand charge escalation factor will be used only in the first 5 years of the FD contract. Thereafter, the demand charge will be revised through a Sec. 7(i) process. However, this rate will be subject to a ceiling which cannot be exceeded through the 20-year term of the FD contract. The demand charge ceiling is set to equal the cumulative increase in the average Priority Firm Power (PF) rate at 55 percent load factor times the FD demand charge in effect when the FD contract first becomes effective. The PF rate is considered BPA's most stable and lowest firm power rate; the ceiling will provide purchasers with some assurance regarding the level of the FD demand charge over the anticipated 20-year life of the FD purchase contracts.

Issued in Portland, Oregon, on September 6, 1985.

Peter T. Johnson,

Administrator.

[FR Doc. 85-22239 Filed 9-12-85; 4:22 pm]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-83-14; ERA Case No. 51825-3630-01-02-03-82]

Concurrence on Certificate and Issuance of Final Prohibition Orders; Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Amendment to notice of concurrence on certification and issuance of final prohibition orders—Medina Electric Cooperative, Inc. (49 FR 32102).

SUMMARY: The amendment to Notice of Concurrence should read: The revised project schedules for conversion checkout and test dates of Medina's Pearsall plant units are as follows:

Unit No. 1—April 1989
Unit No. 2—July 1989
Unit No. 3—October 1989.

Dated: August 30, 1985.

Robert L. Davies,

Director, Coal and Electricity Division, Economic Regulatory Administration.

[FR Doc. 85-22240 Filed 9-16-85; 8:45 am]

BILLING CODE 6450-01-M

Pester Derby Oil Co.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Ecomomic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Revised Proposed Remedial Order which was issued to Pester Derby Oil Company.

This Revised Proposed Remedial Order alleges pricing violations in the amount of $271,595.60 plus interest in connection with the sale of refined products at prices in excess of those permitted under 10 CFR Part 212 during the time period November 1, 1973 through May 8, 1974.

A copy of the Proposed Remedial Order, with confidential information deleted may be obtained from the Office of Freedom of Information Reading Room, U.S. Department of Energy, 1000 Independence Ave. SW., Room: 1E-190, Forrestal Building, Washington, DC 20585. Within fifteen (15) days of publication of this notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Ave. SW., Room: 6F-078, Forrestal Building, Washington, DC 20585, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas, on the 13th day of August, 1985.

Ben Lemos,

Director, Office of Field Operations, Economic Regulatory Administration.

[FR Doc. 85-22187 Filed 9-16-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ST85-1203-000, et al.]

Columbia Gulf Transmission Co., et al.; Self-Implementing Transactions

September 10, 1985.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to section 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.149(d) of the Commission's Regulatons.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant to § 157.209 of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "C/F(157)" indicates intrastate pipeline transportation which is incidental to a transportation by an interstate pipeline to an end-user pursuant to a blanket certificate under 18 CFR 157.209. Similarly, a "G/F(157)" indicates such transportation performed by a Hinshaw Pipeline or distributor.

Any person desiring to be heard or to make any protests with reference to a transaction reflected in this notice should on or before September 30, 1985, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No. [1]	Transporter/seller	Recipient	Subpart	Date filed	Expiration date [2]	Transportation rate (cents per MMBTU)
ST85-1203	Columbia Gulf Transmission Co	Southern Natural Gas Co	G	07-01-85		
ST85-1204	do	Texas Gas Transmission Corp	G	07-01-85		
ST85-1205	Equitable Gas Co	Koppers Co., Inc	F(157)	07-01-85		
ST85-1206	Sea Robin Pipeline Co	Dayton Power and Light Co	[illegible]	07-01-85		
ST85-1207	Delhi Gas Pipeline Corp	Mississippi River Transmission Corp	C	07-01-85		
ST85-1208	Northern Natural Gas Co	Archer Daniels Midland Co	F(157)	07-01-85		
ST85-1209	Texas Eastern Transmission Corp	La Gloria Oil and Gas Co	F(157)	07-01-85		
ST85-1210	Valero Transmission Co	Richardson Fuels, Inc	C	07-01-85		
ST85-1211	Llano, Inc	Pacific Lighting Gas Supply Co	D	07-01-85	11-26-85	10 20
ST85-1212	Panhandle Eastern Pipeline Co	Texas Gas Transmission Corp	G	07-01-85		
ST85-1213	ANR Pipeline Co	Bethlehem Steel Corp	F(157)	07-01-85		
ST85-1214	do	Kaiser Aluminum & Chemical Corp	F(157)	07-01-85		
ST85-1215	Panhandle Eastern Pipeline Co	Warner Gear, Div. of Borg-Warner Automotive	F(157)	07-01-85		
ST85-1216	do	Cargill, Inc	F(157)	07-01-85		
ST85-1217	Trunkline Gas Co	Natural Gas Pipeline Co. of America	G	07-01-85		
ST85-1218	Southern Natural Gas Co	Transcontinental Gas Pipeline Corp	G	07-02-85		
ST85-1219	Northern Natural Gas Co	NGP Pipeline Co	[illegible]	07-02-85		
ST85-1220	PGC Pipeline	New Jersey Natural Gas Co	D	07-02-85		
ST85-1221	Producer's Gas Co	Connecticut Natural Gas Corp	D	07-02-85		
ST85-1222	National Fuel Gas Supply Corp	Milk Products Cooperative, Inc	F(157)	07-02-85		
ST85-1223	Transcontinental Gas Pipeline Corp	Lone Star Gas Co	[illegible]	07-02-85		
ST85-1224	Producer's Gas Co	Dayton Power and Light Co	D	07-02-85		
ST85-1225	Transcontinental Gas Pipeline Corp	Public Works Commission of Fayetteville	F(157)	07-03-85		
ST85-1226	do	Carolina Yarn Processors	F(157)	07-03-85		
ST85-1227	do	Burlington Industries	F(157)	07-03-85		
ST85-1228	do	Republic Refining Co	F(157)	07-03-85		
ST85-1229	El Paso Natural Gas Co	Inspiration Consolidated Copper Co	F(157)	06-24-85		
ST85-1230	Transcontinental Gas Pipeline Corp	Owens-Corning Fiberglass Corp	F(157)	07-03-85		
ST85-1231	Trunkline Gas Co	Elizabethtown Gas Co	[illegible]	07-03-85		
ST85-1232	Panhandle Eastern Pipeline Co	Allegheny Ludlum Steel Corp	F(157)	07-03-85		
ST85-1233	do	Frito-Lay, Inc	F(157)	07-03-85		
ST85-1234	United Gas Pipeline Co	Newport Steel Corp	F(157)	07-03-85		
ST85-1235	Transcontinental Gas Pipeline Corp	Firestone Tire & Rubber Co	F(157)	07-03-85		
ST85-1236	do	Collins & Aikman Corp.	F(157)	07-03-85		
ST85-1237	do	Westpoint Pepperell Alamac Knitting Div	F(157)	07-03-85		
ST85-1238	do	J.P. Stevens and Co., Inc	F(157)	07-03-85		
ST85-1239	do	Hercofina	F(157)	07-03-85		
ST85-1240	do	Cannon Products	F(157)	07-03-85		
ST85-1241	do	American Efird	F(157)	07-03-85		
ST85-1242	do	Kayser-Roth Hosiery, Inc	F(157)	07-03-85		
ST85-1243	Panhandle Eastern Pipeline Co	Phenix Transmission Co	[illegible]	07-03-85		
ST85-1244	ANR Pipeline Co	Baltimore Gas and Electric Co	[illegible]	07-03-85		
ST85-1245	Texas Gas Transmission Corp	General Tire and Rubber Co	F(157)	07-09-85		
ST85-1246	Panhandle Eastern Pipeline Co	Aluminum Co. of America	F(157)	07-05-85		
ST85-1247	do	Chrysler Corp	F(157)	07-05-85		
ST85-1248	Michigan Gas Storage Co	James-River Corp.-Norwalk	F(157)	07-05-85		
ST85-1249	Northwest Pipeline Corp	NGL Production Co	F(157)	07-08-85		
ST85-1250	do	Northwest Alloys, Inc	F(157)	07-08-85		
ST85-1251	do	Spindletop Gas Distribution System	B	07-08-85		
ST85-1253	Transcontinental Gas Pipe Line Corp	Atlanta Gas Light Co	[illegible]	07-03-85		
ST85-1254	do	Bowman, GA	B	07-03-85		
ST85-1255	do	Buford, GA	B	07-03-85		
ST85-1256	do	Butler, AL	[illegible]	07-03-85		
ST85-1257	do	Clanton, AL	[illegible]	07-03-85		
ST85-1258	do	Commerce, GA	B	07-03-85		
ST85-1259	do	Covington, GA	[illegible]	07-03-85		
ST85-1260	do	East Central Alabama Gas District	[illegible]	07-03-85		
ST85-1261	do	Elberton, GA	[illegible]	07-03-85		
ST85-1262	do	Hartwell, GA	[illegible]	07-03-85		
ST85-1263	do	Lawrenceville, GA	B	07-03-85		
ST85-1264	do	Liberty, MS	[illegible]	07-03-85		
ST85-1265	do	Linden, AL	[illegible]	07-03-85		
ST85-1266	do	Madison, GA	[illegible]	07-03-85		
ST85-1267	do	Maplesville, AL	[illegible]	07-03-85		
ST85-1268	do	Monroe, GA	[illegible]	07-03-85		
ST85-1269	do	Roanoke, AL	[illegible]	07-03-85		
ST85-1270	do	Rockford, AL	[illegible]	07-03-85		
ST85-1271	do	Royston, GA	[illegible]	07-03-85		
ST85-1272	do	Social Circle, GA	[illegible]	07-03-85		
ST85-1273	do	Sugar Hill, GA	[illegible]	07-03-85		
ST85-1274	do	Thomaston, AL	[illegible]	07-03-85		
ST85-1275	do	Toccoa, GA	[illegible]	07-03-85		
ST85-1276	do	Tri-County Natural Gas Co	[illegible]	07-03-85		
ST85-1277	do	United Cities Gas Co., GA	B	07-03-85		
ST85-1278	do	Wadley, AL	B	07-03-85		
ST85-1279	do	Wedowee, AL	B	07-03-85		
ST85-1280	do	Winder, GA	[illegible]	07-03-85		
ST85-1281	do	Bessemer City, NC	B	07-03-85		
ST85-1282	do	Blacksburg, SC	[illegible]	07-03-85		
ST85-1283	do	Clinton-Newberry Natural Gas Authority	B	07-03-85		
ST85-1284	do	Commonwealth Gas Pipeline Corp	[illegible]	07-03-85		
ST85-1285	do	Danville, VA	B	07-03-85		
ST85-1286	do	Fort Hill Natural Gas Authority	[illegible]	07-03-85		
ST85-1287	do	Fountain Inn, SC	[illegible]	07-03-85		

Docket No. [1]	Transporter/seller	Recipient	Subpart	Date filed	Expiration date [2]	Transportation rate (cents per MMBTU)
ST85-1288	do	Greenwood, SC	[illegible]	07-03-85		
ST85-1289	do	Greer, SC	[illegible]	07-03-85		
ST85-1290	do	Kings Mountain, NC	[illegible]	07-03-85		
ST85-1291	do	Laurens, SC	[illegible]	[illegible]		
ST85-1292	do	Lexington, NC	[illegible]	07-03-85		
ST85-1293	do	Lynchburg Gas Co	[illegible]	07-03-85		
ST85-1294	do	North Carolina Gas Service Co	[illegible]	07-03-85		
ST85-1295	do	North Carolina Natural Gas Corp	B	07-03-85		
ST85-1296	do	Piedmont Natural Gas Co., Inc	[illegible]	07-03-85		
ST85-1297	do	Public Service Co. of North Carolina, Inc	[illegible]	07-03-85		
ST85-1298	do	Shelby, NC	[illegible]	07-03-85		
ST85-1299	do	South Carolina Pipeline Corp	[illegible]	07-03-85		
ST85-1300	do	Southwestern Virginia Gas Co	[illegible]	07-03-85		
ST85-1301	do	Union, SC	[illegible]	07-03-85		
ST85-1302	do	United Cities Gas Co., NC & SC Div	[illegible]	07-03-85		
ST85-1303	do	Washington Gas Light Co	[illegible]	07-03-85		
ST85-1304	do	Brooklyn Union Gas Co	[illegible]	07-03-85		
ST85-1305	do	Columbia Gas Transmission Corp	G	07-03-85		
ST85-1306	do	Consolidated Edison Co. of NY, Inc	[illegible]	07-03-85		
ST85-1307	do	Delmarva Power and Light Co	[illegible]	07-03-85		
ST85-1308	do	Eastern Shore Natural Gas Co	G	07-03-85		
ST85-1309	do	Elizabethtown Gas Co	B	07-03-85		
ST85-1310	do	Frederick Gas Co	B	07-03-85		
ST85-1311	do	Long Island Lighting Co	[illegible]	07-03-85		
ST85-1312	do	Pennsylvania Gas and Water Co	[illegible]	07-03-85		
ST85-1313	do	Philadelphia Electric Co	[illegible]	07-03-85		
ST85-1314	do	Philadelphia Gas Works	[illegible]	07-03-85		
ST85-1315	do	Public Service Electric and Gas Co	[illegible]	07-03-85		
ST85-1316	do	South Jersey Gas Co	[illegible]	[illegible]		
ST85-1317	do	UGI Corp	[illegible]	07-03-85		
ST85-1318	[illegible]	Union Gas Co	[illegible]	07-03-85		
ST85-1319	Ozark Gas Transmission System	Elizabethtown Gas Co	[illegible]	07-15-85		
ST85-1320	Transcontinental Gas Pipe Line Corp	Witco Chemical Corp	F(157)	07-09-85		
ST85-1321	do	National Can Corp	F(157)	07-09-85		
ST85-1322	Sabine Pipe Line Co	ANR Pipeline Co	G	07-10-85		
ST85-1323	do	Natural Gas Pipeline Co. of America	G	07-10-85		
ST85-1324	MGTC, Inc	Mountain Fuel Resources, Inc	C	07-10-85		
ST85-1325	MIGC, Inc	Big Horn Fractionation Co., et al	G	07-10-85		
ST85-1326	Algonquin Gas Transmission Co	Boston Gas Co	[illegible]	07-11-85		
ST85-1327	Midwestern Gas Transmission Co	SCM Corp	F(157)	07-11-85		
ST85-1328	Arkla Energy Resources	Northwest Central Pipeline Corp	G	07-12-85		
ST85-1329	Consolidated Gas Transmission Corp	Mobay Chemical Corp	F(157)	07-12-85		
ST85-1330	do	Wheeling-Pittsburgh Steel Corp	F(157)	07-12-85		
ST85-1331	Delhi Gas Pipeline Corp	Mississippi River Transmission Corp	C	07-15-85		
ST85-1332	do	Columbia Gas Transmission Corp	C	07-15-85		
ST85-1333	Equitable Gas Co	H.J. Heinz Co	F(157)	07-15-85		
ST85-1334	Columbia Gulf Transmission Co	Creole Gas Pipeline Corp	[illegible]	07-15-85		
ST85-1335	United Gas Pipe Line Co	Mississippi River Transmission Corp	G	07-15-85		
ST85-1336	Transcontinental Gas Pipe Line Corp	National Fuel Gas Supply Corp	G	07-15-85		
ST85-1337	do	Kendall Mills	F(157)	07-15-85		
ST85-1338	do	Clinton Mills	F(157)	07-15-85		
ST85-1339	do	Tomington Co	F(157)	07-15-85		
ST85-1340	do	Kayser-Roth Plant	F(157)	07-15-85		
ST85-1341	do	Greenwood Mills	F(157)	07-15-85		
ST85-1342	do	Hercules, Inc	F(157)	07-15-85		
ST85-1343	do	Ithaca Mills	F(157)	07-15-85		
ST85-1344	do	North Carolina Natural Gas Corp	[illegible]	07-15-85		
ST85-1345	United Gas Pipe Line Co	UGI Corp	[illegible]	07-15-85		
ST85-1346	do	Pine Pipeline, Inc	[illegible]	07-15-85		
ST85-1347	Northwest Central Pipeline Corp	Arkla Energy Resources	G	07-15-85		
ST85-1348	Transok, Inc	Illinois Power Co	C	07-16-85	12-13-85	21 75
ST85-1349	Texas Eastern Transmission Corp	Elizabethtown Gas Co	[illegible]	07-15-85		
ST85-1350	El Paso Natural Gas Co	West Texas Gas, Inc	[illegible]	07-15-85		
ST85-1351	Columbia Gulf Transmission Co	Lukens Steel Co	F(157)	07-15-85		
ST85-1352	Columbia Gas Transmission Corp	Owens-Illinois, Inc	F(157)	07-15-85		
ST85-1353	do	Lukens Steel Co	F(157)	07-15-85		
ST85-1354	Northern Natural Gas Co	Romar Energy, Inc	[illegible]	07-19-85		
ST85-1355	Columbia Gulf Transmission Co	Owens-Illinois, Inc	F(157)	07-15-85		
ST85-1356	Transcontinental Gas Pipe Line Corp	Gerber Products	F(157)	07-17-85		
ST85-1357	do	Beacon Manufacturing Co	F(157)	07-17-85		
ST85-1358	do	Berkeley Mills	F(157)	07-17-85		
ST85-1359	do	Threads USA	F(157)	07-17-85		
ST85-1360	do	Ithaca Textiles, Inc	F(157)	07-17-85		
ST85-1361	do	Armtex, Inc	F(157)	07-17-85		
ST85-1362	do	Asheville Dyeing & Finishing	F(157)	07-17-85		
ST85-1363	do	Harnet & Henderson Yarns	F(157)	07-17-85		
ST85-1364	do	Amtex	F(157)	07-17-85		
ST85-1365	do	Pharr Yarns, Inc	F(157)	07-17-85		
ST85-1366	do	Cone Mills Corp	F(157)	07-17-85		
ST85-1367	do	J.C. Cowan Plant	F(157)	07-17-85		
ST85-1368	do	Durham Domestics	F(157)	07-17-85		
ST85-1369	do	W.G. Lord Plant	F(157)	07-17-85		
ST85-1370	do	Mooresville Mill	F(157)	07-17-85		
ST85-1371	do	Sandoz Chemical Corp	F(157)	07-17-85		
ST85-1372	do	Wheaton Industries	F(157)	07-17-85		
ST85-1373	do	Scott Paper Co	F(157)	7-17-85		
ST85-1374	do	Collins & Aikman Corp	F(157)	7-17-85		
ST85-1375	do	Granite Finishing	F(157)	7-17-85		
ST85-1376	do	Piedmont Processing	F(157)	7-17-85		
ST85-1377	do	N.C. State Dept. of Mental Health	F(157)	7-17-85		
ST85-1378	do	Mount Hope Finishing Co	F(157)	7-17-85		
ST85-1379	do	Cannon Mills Co	F(157)	7-17-85		

Docket No. [1]	Transporter/seller	Recipient	Subpart	Date filed	Expiration date [2]	Transportation rate (cents per MMBtu)
ST85-1380	Sea Robin Pipeline Co	Texas Gas Transmission Corp	G	7-18-85		
ST85-1381	Transcontinental Gas Pipe Line Corp.	Burlington Industries, Inc.	F(157)	7-18-85		
ST85-1382	do	Texaco Refining & Marketing Inc	F(157)	7-18-85		
ST85-1383	United Gas Pipe Line Co	Hudson Gas Systems, Inc	B	7-19-85		
ST85-1384	ANR Pipeline Co	Eastern Shore Natural Gas Co	[illegible]	7-19-85		
ST85-1385	do	Eastex Gas Transmission Co	B	7-19-85		
ST85-1386	do	Long Island Lighting Co	[illegible]	7-19-85		
ST85-1387	Texas Transmission Corp	St. Joe Resource Co	F(157)	7-22-85		
ST85-1388	do	System Fuels, Inc	F(157)	7-22-85		
ST85-1389	El Paso Natural Gas Co	American Distribution Co	[illegible]	7-23-85		
ST85-1390	Transcontinental Gas Pipe Line Corp	Washington Gas Light Co	G	7-23-85		
ST85-1391	do	Venice Maid Co	F(157)	7-23-85		
ST85-1392	do	Progresso Quality Foods	F(157)	7-23-85		
ST85-1393	Columbia Gas Transmission Corp	SCM Corp. Glidden Coatings & Resins	F(157)	7-19-85		
ST85-1394	Columbia Gulf Transmission Co	do	F(157)	7-19-85		
ST85-1395	do	Atlantic Cement Co. Inc	F(157)	7-19-85		
ST85-1396	Columbia Gas Transmission Corp	Empire Detroit Steel	F(157)	7-19-85		
ST85-1397	Kansas Power and Light Co	Michigan Consolidated Gas Co	D	7-23-85		
ST85-1398	Tennessee Gas Pipeline Co	Tenneco Oil Co	F(157)	7-26-85		
ST85-1399	Norther Natural Gas Co	Phelps Dodge Refining Corp	F(157)	7-24-85		
ST85-1400	Transcontinental Gas Pipe Line Corp	National Spinning Co	F(157)	7-24-85		
ST85-1401	do	Texfi K	F(157)	7-24-85		
ST85-1402	do	Abbott Laboratories	F(157)	7-24-85		
ST85-1403	ANR Pipeline Co	Texas Eastern Transmission Corp	G	7-26-85		
ST85-1404	Transcontinental Gas Pipe Line Corp	Burroughs Welcome	F(157)	7-24-85		
ST85-1405	do	Cherry Hospital	F(157)	7-24-85		
ST85-1406	do	Gold Bond Building Products	F(157)	7-24-85		
ST85-1407	do	Texfi Industries	F(157)	7-24-85		
ST85-1408	El Paso Natural Gas Co	Southern California Gas Co	[illegible]	7-25-85		
ST85-1409	do	do	[illegible]	7-25-85		
ST85-1410	Panhandle Gas Co	Providence Gas Co	D	7-25-85		
ST85-1411	Northern Natural Gas Co	Energy Systems Co	F(157)	7-25-85		
ST85-1412	Northwest Pipeline Corp	J.R. Simplot Co	F(157)	7-25-85		
ST85-1413	United Gas Pipe Line Co	Entex, Inc	[illegible]	7-25-85		
ST85-1414	do	Allied Corp	F(157)	7-25-85		
ST85-1415	do	Public Service Electric and Gas Co	[illegible]	7-25-85		
ST85-1416	do	Gulf Coast Energy, Inc	[illegible]	7-25-85		
ST85-1417	Columbia Gulf Transmission Co	Dayton Power and Light Co	[illegible]	7-26-85		
ST85-1418	Valero Transmission Co	Southern California Gas Co	C	7-26-85		
ST85-1419	do	Pacific Lighting Gas Supply Co	C	[illegible]		
ST85-1420	do	Petrofina Gas Pipeline Co	C	7-26-85		
ST85-1421	Transcontinental Gas Pipe Line Corp	Providence Gas Co	[illegible]	7-26-85		
ST85-1422	do	System Fuels, Inc	F(157)	7-26-85		
ST85-1423	Valero Transmission Co	Trunkline Gas Co	C	7-26-85		
ST85-1424	do	El Paso Natural Gas Co	C	7-26-85		
ST85-1425	do	Southwest Gas Corp	C	[illegible]		
ST85-1426	Midwestern Gas Transmission Co	Northern Petrochemical Co	F(157)	7-29-85		
ST85-1427	Algonquin Gas Transmission Co	Boston Gas Co	B	7-29-85		
ST85-1428	Tennessee Gas Pipeline Co	Southern Connecticut Gas Co	[illegible]	7-29-85		
ST85-1429	Equitable Gas Co	Equitable Gas Energy Co	F(157)	[illegible]		
ST85-1430	Palo Duro Pipeline Co., Inc	El Paso Natural Gas Co	C	7-29-85		
ST85-1431	Natural Gas Pipeline Co. of America	Firestone Tire & Rubber Co	F(157)	7-29-85		
ST85-1432	Tennessee Gas Pipeline Co	Graham Oil & Gas Ltd	F(157)	[illegible]		
ST85-1433	Columbia Gulf Transmission Co	Baltimore Gas and Electricity Co., et al	[illegible]	07-29-85		
ST85-1434	Transcontinental Gas Pipe Line Corp	Foote Mineral Co	F(157)	07-29-85		
ST85-1435	do	Stowe Mills, Inc	F(157)	[illegible]		
ST85-1436	United Gas Pipe Line Co	Borden Inc	F(157)	[illegible]		
ST85-1437	do	B.F. Goodrich, Inc	F(157)	07-30-85		
ST85-1438	National Fuel Gas Supply Corp	Sharon Tube Co	F(157)	[illegible]		
ST85-1439	Transcontinental Gas Pipe Line Corp	Cincinnati Gas and Electric Co	[illegible]	[illegible]		
ST85-1440	Michigan Gas Storage Co	Clark Material Systems Technology Co	F(157)	[illegible]		
ST85-1441	Northern Natural Gas Co	Central Hudson Gas and Electric Co	[illegible]	[illegible]		
ST85-1442	do	Pacific Lighting Gas Supply Co	[illegible]	[illegible]		
ST85-1443	Tennessee Gas Pipeline Co	Boston Gas Co	[illegible]	07-31-85		
ST85-1444	do	Creole Gas Pipeline Co	[illegible]	07-31-85		
ST85-1445	do	Midwestern Gas Transmission Co	G	07-31-85		
ST85-1446	El Paso Natural Gas Co	Southern California Gas Co	[illegible]	07-31-85		
ST85-1447	Panhandle Eastern Pipe Line Co	Northern Petrochemical Co	F(157)	07-31-85		
ST85-1448	Trunkline Gas Co	do	F(157)	07-31-85		
ST85-1449	Lone Star Gas Co	Kickman Group, Inc	F(157)	07-31-85		
ST85-1450	Columbia Gulf Transmission Co	Roanoke Gas Co	[illegible]	07-31-85		
ST85-1451	ANR Pipeline Co	Texas Eastern Transmission Corp	G	07-31-85		
ST85-1452	Riverway Gas Pipeline Co	Southern Natural Gas Co	C	07-31-85		
ST85-1453	Southern Natural Gas Co	THC Pipeline Co	[illegible]	07-31-85		
ST85-1454	Gasdel Pipeline System, Inc	Public Service Electric and Gas Co	[illegible]	07-31-85		
ST85-1455	Consolidated Gas Transmission Corp	St. Joe Resource Co	F(157)	07-31-85		
ST85-1456	do	Union Carbide Corp	F(157)	07-31-85		
ST85-1457	Transwestern Pipeline Co	Pacific Lighting Gas Supply Co	B	07-31-85		
ST85-1458	ANR Pipeline Co	Northern Intrastate Pipeline Co	[illegible]	07-31-85		

The following docket numbers are noticed out of sequence. They were initially filed as 48 hour reports and assigned docket numbers at that time. However, only initial full reports and petitions for rate approval are noticed. The official filing date is when the appropriate filing fee is received

ST85-1191	Tennessee Gas Pipeline Co	Commonwealth Gas Co	[illegible]	07-27-85		
ST85-1192	do	Connecticut Light and Power Co	[illegible]	07-26-85		
ST85-1194	Valero Transmission Co	Northern Natural Gas Co	C	07-26-85		
ST85-1195	Arkansas Oklahoma Gas Corp	Brooklyn Union Gas Co., et al	G	08-13-85		
ST85-1198	Tennessee Gas Pipeline Co	Warrior Basin Gas Co	B	07-26-85		
ST85-1200	American Pipeline Co	American Distribution Co	C	07-26-85		

[1] The noticing of these filings does not constitute a determination of whether the filings comply with the commission's regulations

[2] The intrastate pipeline has sought commission approval of its transportation rate pursuant to section 284.123(B)(2) of the Commission's regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 85-22173 Filed 9-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT85-23-000]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 10, 1985.

Take notice that on Sept. 3, 1985, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77001 tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective as of July 1, 1985.

First Revised Volume No. 1—

First Revised Sheet No. 67 and
First Revised Sheet No. 68

Reason for Filing:

The change reflected in the First Revised Sheet Nos. 67 and 68 reflects the name change of FGT's customer from Gulfside Gas Company to Mustang Energy Company as of July 1, 1985.

The above-mentioned changes are being made pursuant to Part 154 of the Commission's Regulations Under the Natural Gas Act (18 CFR 154, *et. seq.).*

FGT states that a copy of its filing has been served on all jurisdictional customers served by FGT and the appropriate State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 17, 1985. Protests will be considered by the Commission in determinng the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22174 Filed 9-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-117-009]

Midwestern Gas Transmission Co.; Filing of Tariff Rate Adjustments

September 10, 1985.

Take notice that on September 3, 1985, Midwestern Gas Transmission Company (Midwestern) tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective August 1, 1985:

Original Volume No. 1

Substitute Fifteenth Revised Sheet No. 5
Fifteenth Revised Sheet No. 6
Twelfth Revised Sheet No. 37
Sixth Revised Sheet No. 62K
Fifth Revised Sheet No. 62L
Fourth Revised Sheet No. 64F

Midwestern has also submitted a revised cost of service upon which the revised tariff sheets are predicated.

Midwestern states that the purpose of this filing is to comply with Opinion No. 236 issued June 18, 1985 in Docket No. RP82-117-000. Specifically, the revised cost of service and revised tariff sheets reflect the rate of return and income tax allowance derived from the capital structure and costs of equity approved for Midwestern by Opinion No. 236. Additionally, the revised cost of service and revised tariff sheets reflect the cash working capital allowance approved in the Amended Stipulation and Agreement filed July 9, 1984 in Docket Nos. RP81-17, RP81-57 and RP82-117.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 18, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22175 Filed 9-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-66-009]

Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff

September 10, 1985.

Take notice that on Sept. 3, 1985 Mississippi River Transmission Corporation ("Mississippi") tendered for filing revised tariff sheets to its FERC Gas Tariff as listed on the attached Appendix A.

Mississippi states the purpose of the tariff filing is to implement changes in the provisions of Mississippi's tariff to comply with the Commission Order issued June 19, 1985 in the captioned docket. The revised tariff sheets reflect revised billing rates and Purchased Gas Cost Adjustment procedures to implement the use of a 34% load factor in determining the D-1 demand charge unit amounts applicable to Rate Schedule SGS-1 customers.

Mississippi states that copies of its filing have been served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

MISSISSIPPI RIVER TRANSMISSION CORP.

[RP83-66 (Reserved Issues)]

Second Revised Volume No. 1	Effective Date
Twelveth Revised Sheet No. 4	Sept. 1, 1985
Fifth Revised Sheet No. 42	Sept. 1, 1985
Third Revised Sheet No. 43	Sept. 1, 1985
Third Revised Sheet No. 49	Sept. 1, 1985
Fourth Revised Sheet No. 50	Sept. 1, 1985

[FR Doc. 85-22176 Filed 9-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-41-000, 001]

Southwest Gas Corp.; Change in Rates Pursuant to Purchased Gas Cost Adjustment

September 10, 1985.

Take notice that Southwest Gas Corporation (Southwest) on September 3, 1985, tendered for filing Twenty-seventh Revised Sheet No. 10 and Tenth Revised Sheet No. 10A pursuant to Section 9, Purchased Gas Adjustment Clause (PGAC), of the General Terms and Conditions contained in its FERC Gas Tariff, Original Volume No. 1. Southwest's filing is occasioned by an increase in rates from Southwest's northern Nevada sole supplier of gas, Northwest Pipeline Corporation,

proposed to become effective October 1, 1985.

Southwest states that a copy of this filing has been mailed to the Nevada Public Service Commission, the California Public Utilities Commission, Sierra Pacific Power Company and CP National.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22177 Filed 9-16-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-196-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

September 10, 1985.

Take notice that on September 6, 1985, Transcontinental Gas Pipe Line Corporation (Transco) filed Original Sheet No. 2328-A to its FERC Gas Tariff, Original Volume No. 2, proposed to be made effective October 6, 1985. Transco states that such tariff sheet will provide for a change in the rate applicable to Transco's Rate Schedule X-235 under which Transco provides transportation service to United Gas Pipe Line. Transco further states that this tariff filing is being made to bring the subject rate schedule into harmony with Transco's currently effective rates under Rate Schedule T-II for upstream deliveries within Zone 1 of Transco's market area.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22178 Filed 9-16-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51584; FRL-2883-5]

Certain Chemicals Premanufacture Notice

Correction

In FR Doc. 85-19711 beginning on page 33630 in the issue of Tuesday, August 20, 1985, on page 33631 under P85-1315 in the tenth line "LC_6O" should read "LC_60". In the eleventh line "LC_5O" should read "LC_60".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

New FM Stations; Applications for Consolidated Hearing; B & B Communications and Thomas A. Voss Enterprises

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city/state	File No	MM Docket No.
A. B & B Communications; Newcastle, WY.	BPH-840217AA	85-277
B. Thomas A. Voss Enterprises, Inc.; Newcastle, WY.	BPH-840229CA	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue heading and applicant(s)

1. Air Hazards, B
2. Comparative, A, B
3. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in the proceeding may be obtained by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-22188 Filed 9-16-85; 8:45 am]

BILLING CODE 6712-01-M

New FM Stations; Applications for Consolidated Hearing; Milyana Broadcasters, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city/state	File No	MM Docket No.
A. Milyana Broadcasters Palm Desert, CA	BPH-820715AH	85-276
B. Palm Desert Broadcast Co.; Palm Desert, CA.	BPH-821217AM	
C. Pennino Music Co. Inc.; La Quinta, CA.	BPH-821217BO	
D. John H. Gayer d.b.a. Radio Rancho Rancho Mirage, CA.	BPH-821221AM	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant

Issue heading and applicant (s)

1. (See Appendix, D
2. 307(b), A,B,C,D
3. Contingent Comparative, A,B,C,D
4. Ultimate A,B,C,D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to

which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, DC 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

APPENDIX

ISSUE(S)

1. To determine with respect to the following applicant(s) whether, in light of the evidence adduced concerning the deficiency set forth above in paragraph 8 [1], the applicant(s) is financially qualified: D (Radio Rancho)

[FR Doc. 85-22189 Filed 9-16-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 85-20]

Harrington & Company, Inc. and Palmetto Shipping & Stevedoring Company, Inc. v. Georgia Ports Authority; Filing of Complaint and Assignment

Notice is given that a complaint filed by Harrington & Company, Inc. and Palmetto Shipping & Stevedoring Company, Inc. against Georgia Ports Authority was served September 9, 1985. Complainant alleges that respondent has violated section 16, First and section 17 of the Shipping Act, 1916 and section 10 (b)(11), (b)(12), (d)(1), (d)(2) and (d)(3) of the Shipping Act of 1984, by attempting to hold agents liable as principals and guarantors for port/terminal charges through certain tariff provisions and by requiring data sheets of each party desiring credit arrangements with respondent.

This proceeding has been assigned to Administrative Law Judge Normal D. Kline. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by September 11, 1986 and the final decision of the Commission shall be issued by January 12, 1987.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-22163 Filed 9-16-85; 8:45 am]

BILLING CODE 6730-01-M

[1] Paragraph 8 reads as follows:

The material submitted by the applicant(s) below does not demonstrate its financial qualifications. Accordingly, an issue will be specified concerning the following deficiency: *Applicant(s)*—D (Radio Rancho); *Deficiency*—No Section III financial information or certification submitted.

FEDERAL RESERVE SYSTEM

New Superior Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

Correction

In FR Doc. 85-21281 appearing on page 36485 in the issue of Friday, September 6, 1985, the date in the third paragraph should read "September 27, 1985."

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatend Species; Receipt of Application for Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.):

Applicants:

U.S. Fish and Wildlife Service, Regional Director, Region 3, Minneapolis, MN—PRT-697830

Regional Director, Region 4, Atlanta, GA—PRT-697819

Regional Director, Region 5, Boston, MA—PRT-697823

The applicants request permits to take various wildlife and plants for scientific purposes and the enhancement of propagation or survival in accordance with Recovery Plans, listing or other Service work for those species.

Applicant:

Jack Risken, Jr., Corpus Christi, TX—PRT-697798

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd of Phil van der Merwe in Cape Province, South Africa, for the purpose of enhancement of survival of the species.

Applicant:

Ted M. Siouris, New York, NY—PRT-[illegible]

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd of Mr. F.W.M. Bowker in Grahamstown, South Africa, for the purpose of enhancement of survival of the species.

Applicant:

Leonard Hinckley, Camp Hill, PA—PRT-697804

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd of F.W.M. Bowker in Grahamstown, South Africa, for the purpose of enhancement of survival of the species.

Applicant:

Charles Mooney, Kerrville, TX—PRT-697809

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd of Phil van der Merwe in Cape Province, South Africa, for the purpose of enhancement of propagation and survival of the species.

Applicant:

Andrew Caridis, Foster City, CA—PRT-698117

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*), culled from the captive heard of C.J. Retief, Harrismith, South Africa, for the purpose of enhancement of survival of the species.

Applicant:

Natalie M. Eckel, Tarzana, CA—PRT-695739

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*), called from the captive herd of M.J. D'Alton, Cape Province, South Africa for the purpose of enhancement of survival of the species.

Applicant:

Frank Bess, Albuquerque, NM—PRT-698474

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd of F.W.M. Bowker, Jr. in Grahamstown, South Africa, for the purpose of enhancement of survival of the species.

Applicant:

Hawaii Division of Fish & Wildlife.

Honolulu, HI—PRT–691504

The applicant requests an amendment to their permit PRT–691504 which authorizes take, banding, rehabilitation, etc. of the Hawaiian ('alala) crow (*Corvus hawaiiensis [=Tropicus]*). The amendment would allow the transfer of the Hawaiian crow to a new endangered species propagation facility on the island of Maui in order to eliminate stress to the birds caused by the present facility's proximity to the U.S. Army's Pohakuloa Training Center on the island of Hawaii.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing the the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: September 11, 1985.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85–22169 Filed 9–16–85; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[W–96702]

Wyoming; Proposed Withdrawal and Opportunity for Public Meeting

Correction

In FR Doc. 85–21007 beginning on page 35876 in the issue of Wednesday, September 4, 1985, make the following corrections:

1. On page 35876, third column, fourth line from the bottom, "E½SW¼" should read, "E½E½SW¼".

2. On page 35877, first column, first paragraph, fifteenth line, "2" should appear between "terminate" and "years".

BILLING CODE 1505–01–M

[W–89355]

Realty Action; Noncompetitive Sale of Public Lands in Lincoln County, WY

September 9, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), public land described as the SW¼SW¼, Section 15, T. 34 N., R. 119 W., 6th P.M., Wyoming, containing 40 acres, is proposed for direct sale to Max Larsen of Thayne, Wyoming at the fair market value of $20,000.00 as determined by appraisal.

SUMMARY: This sale involves an isolated tract of public land. All private land surrounding this tract is owned by Max Larsen, who also holds the only livestock grazing lease on this tract. There is no legal public access to this tract, and Mr. Larsen has asked the BLM to sell the land to him. If a sale parcel is isolated by a single landowner, the tract is offered to that landowner at the appraised fair market value. Because the tract is difficult and uneconomic to manage as part of the public lands, direct sale of this tract would best serve the interests of the Federal Government and the general public. Sale of the land is consistent with Bureau and local governmental land use planning.

DATES: Interested parties may submit comments for a period of 45 days from the date of this notice. The proposed sale will not be held until 60 days after publication of this notice.

ADDRESS: Detailed information concerning the sale is available for review at: Kemmerer Resource Area Office, P.O. Box 632, Kemmerer, Wyoming 83101, 307–877–3933. Comments should also be directed to this office.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are as follows:

1. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at the BLM office.

2. Reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

3. All valid existing rights (e.g., rights-of-way, easements, and leases of record).

All comments received will be evaluated by the District Manager who may vacate or modify this realty action. In the absence of any action by the District Manager, this realty action will be the final determination of the Department of the Interior.

Gene C. Herrin,

Associate District Manager.

[FR Doc. 85–22224 Filed 9–17–85; 8:45 am]

BILLING CODE 4310–22–M

[W–88008]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

September 9, 1985.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–88008 for lands in Campbell County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–88008 effective July 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 85–22223 Filed 9–16–85; 8:45 am]

BILLING CODE 4310–22–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 7, 1985. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of Interior, Washington, DC 20243.

Written comments should be submitted by October 2, 1985.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Calhoun County

Anniston, *Anniston Transfer Company (Anniston MRA)*, 911 Wilmer Ave.

Jefferson County

Birmingham (also in Mountain Brook), *Red Mountain Suburbs Historic District*, Roughly Valley View, Milner Heights, Altamont & Redmont Rds. and Redmont Park

Birmingham, *Smith, Joseph Riley, Historic District*, 300 & 400 Blks. of Tenth Ave., 100–400 Blks. of Ninth Ct. W and 944 Fourth W & 948 Third W Sts.

Birmingham, *Smithfield Historic District*, Between Eighth Ave. N & Fourth Terr. N and Sixth St. W to First St. W

Birmingham, *Wimberly-Thomas Warehouse*, 1809 First Ave. S.

Sumter County

Gainesville, *Coffin Shop (Gainesville MRA)*, McKee & Monroe St.

Gainesville, *Colgin Hill (Gainesville MRA)*, Off AL 39

Gainesville, *Gainesville Historic District (Gainesville MRA)*, Roughly bounded by North Carolina, Lafayette & Webster Sts. and end of Town Grid

Gainesville, *Gibbs House (Gainesville MRA)*, S.W. of Spruce & Webster Sts.

Gainesville, *Lee-Snow House (Gainesville MRA)*, Washington St.

Gainesville, *Main-Yankee Street Historic District (Gainesville MRA)*, Roughly bounded by Main, Washington & School Sts.

Gainesville, *Park and Bandstand (Gainesville MRA)*, State & McKee Sts.

Gainesville, *Watson, Laura, House (Gainesville MRA)*, Epes Rd.

ARKANSAS

Clark County

Arkadelphia, *Habicht-Cohn-Crow House*, Eigth & Pine

Pulaski County

Little Rock, *Frank, Joseph M., House*, 912 W. Fourth

MARYLAND

Montgomery County

Bethesda, *Taylor, David W., Model Basin*, Bounded by MacArthur Blvd. & George Washington Memorial Pkwy.

MASSACHUSETTS

Middlesex County

Lowell, *Lowell National Historical Park*, Roughly bounded by Northern, Eastern, Hamilton & Pawtucket Canals

Norfolk County

Brookline, *Anderson, Larz, Park Historic District (Brookline MRA)*, Bounded by Goddard & Avon St.

Brookline, *Arcade Building (Brookline MRA)*, 314—320A Harvard St.

Brookline, *Beacon Street Historic District (Brookline MRA)*, Roughly on Beacon St. from Saint Mary's to Ayr Rd.

Brookline, *Beaconsfield Terraces Historic District (Brookline MRA)*, Beacon and Tappan Sts. & Garrison Rd.

Brookline, *Bowditch, William Ingersoll, House (Brookline MRA)*, 9 Toxteth St.

Brookline, *Brandegee Estate (Brookline MRA)*, 280 Newton St.

Brookline, *Building (Brookline MRA)*, 30–34 Station St.

Brookline, *Cabot, Lewis, Estate (Brookline MRA)*, 514 Warren St.

Brookline, *Candler Cottage (Brookline MRA)*, 447 Washington St.

Brookline, *Chestnut Hill Historic District (Brookline MRA)*, Roughly bounded by Middlesex Rd., Boylston St. & Dunster Rd.

Brookline, *Child, Isaac, House (Brookline MRA)*, 209 Newton St.

Brookline, *Corey, Timothy, House No. 1 (Brookline MRA)*, 808 Washington St.

Brookline, *Corey, Timothy, House No. 2 (Brookline MRA)*, 786–788 Washington St.

Brookline, *Cypress—Emerson Historic District (Brookline MRA)*, Roughly bounded by Waverly, Emerson & Cypress Sts.

Brookline, *Davis, Robert S., House (Brookline MRA)*, 50 Stanton Rd.

Brookline, *Davis, Thomas Aspinwall, House (Brookline MRA)*, 29 Linden Pl.

Brookline, *Douglas, Alfred, House (Brookline MRA)*, 157 Clyde St.

Brookline, *Elliot, General Simon, House (Brookline MRA)*, 61 Heath St.

Brookline, *Emmett Cottage (Brookline MRA)*, 217 Freeman St.

Brookline, *Fernwood (Brookline MRA)*, 155 Clyde St.

Brookline, *Fire Station No. 7 (Brookline MRA)*, 665 Washington St.

Brookline, *Fisher Hill Historic District (Brookline MRA)*, Roughly bounded by Clinton & Sumner Rds. Boylston St. and Chestnut Hill Ave.

Brookline, *Francis, Dr. Tappan Eustis, House (Brookline MRA)*, 35 Davis Ave.

Brookline, *Fuller, Peter, Building (Brookline MRA)*, 808 Commonwealth Ave.

Brookline, *Goddard, John, House (Brookline MRA)*, 235 Goddard Ave.

Brookline, *Graffam Development Historic District (Brookline MRA)*, Roughly bounded by Abbottsford Rd., Babcock St., Manchester & Naples Rds.

Brookline, *Green Hill District (Brookline MRA)*, Roughly Warren St., Sargent Rd. & Cottage St.

Brookline, *Harris, House and Farm (Brookline MRA)*, 284 Newton St.

Brookline, *Heath, Charles, House (Brookline MRA)*, 12 Heath Hill

Brookline, *Heath, Ebenezer, House (Brookline MRA)*, 30 Heath St.

Brookline, *Holyhood Cemetery (Brookline MRA)*, Heath St.

Brookline, *Hotel Adelaide (Brookline MRA)*, 13–21 High St.

Brookline, *Hotel Kempsford (Brookline MRA)*, 72 Walnut St.

Brookline, *House (Brookline MRA)*, 156 Mason Terr.

Brookline, *House (Brookline MRA)*, 89 Rawson Rd & 86 Colburne Crescent

Brookline, *House (Brookline MRA)*, 38–40 Webster Pl.

Brookline, *House (Brookline MRA)*, 12–16 Corey Rd.

Brookline, *House (Brookline MRA)*, 5 Lincoln Rd.

Brookline, *House (Brookline MRA)*, 25 Stanton Rd.

Brookline, *House (Brookline MRA)*, 44 Stanton Rd.

Brookline, *House (Brookline MRA)*, 155 Reservoir Rd.

Brookline, *House (Brookline MRA)*, 83 Penniman Pl.

Brookline, *House (Brookline MRA)*, 12 Linden St.

Brookline, *House (Brookline MRA)*, 19 Linden St.

Brookline, *House (Brookline MRA)*, 4 Perry St.

Brookline, *House (Brookline MRA)*, 105 Marion St.

Brookline, *House (Brookline MRA)*, 53 Linden St.

Brookline, *House (Brookline MRA)*, 9 Linden St.

Brookline, *House (Brookline MRA)*, 44 Linden St.

Brookline, *House (Brookline MRA)*, 12 Vernon St.

Brookline, *House (Brookline MRA)*, 76–96 Harvard Ave.

Brookline, *Jackson, Thaddeus, House (Brookline MRA)*, 15 Alberta Rd.

Brookline, *Kilsyth Terrace (Brookline MRA)*, 15–27 Kilsyth Rd.

Brookline, *Linden Park (Brookline MRA)*, Linden Pl. & Linden St.

Brookline, *Linden Square (Brookline MRA)*, Linden Pl.

Brookline, *Lynch-O'Gorman House (Brookline MRA)*, 41 Mason Terr.

Brookline, *Milestone (Brookline MRA)*, Boylston St.

Brookline, *Milestone (Brookline MRA)*, Harvard St.

Brookline, *Murphy, William, House (Brookline MRA)*, 97 Sewall Ave.

Brookline, *Orrock, Rev. John, House (Brookline MRA)*, 68 Winchester St.

Brookline, *Paine Estate (Brookline MRA)*, 325 Heath St.

Brookline, *Perkins Estate (Brookline MRA)*, 450 Warren St.

Brookline, *Reservoir Park (Brookline MRA)*, Boylston St.

Brookline, *Richie Building (Brookline MRA)*, 112 Cypress St.

Brookline, *Roughwood (Brookline MRA)*, 400 Heath St.

Brookline, *Saint Aidan's Church and Rectory (Brookline MRA)*, 207 Freeman St. & 158 Pleasant St.

Brookline, *Saint Mary of the Assumption Church, Rectory, School and Convent (Brookline MRA)*, 67 Harvard St. and 3 & 5 Linden Pl.

Brookline, *Saint Paul's Church, and Parish House (Brookline MRA)*, 15, 27 Saint Paul St. & 104 Aspinwall Ave.

Brookline, *Saint Paul's Rectory (Brookline MRA)*, 130 Aspinwall Ave.

Brookline, *Sargent's Pond (Brookline MRA)*, Sargent Rd.

Brookline, *Second Unitarian Church (Brookline MRA)*, 11 Charles St.
Brookline, *Spurr, Eliphalet (Brookline MRA)*, 103 Walnut St.
Brookline, *Standish, James H., House (Brookline MRA)*, 54 Francis St.
Brookline, *Strathmore Road Historic District (Brookline MRA)*, Strathmore Rd. & Clinton Path
Brookline, *Toussaint, Winand, House (Brookline MRA)*, 203 Aspinwall Ave.
Brookline, *Town Stable (Brookline MRA)*, 237 Cypress St.
Brookline, *Tuckerman, William F., House (Brookline MRA)*, 63 Harvard Ave.
Brookline, *Twitchell, Ginery, House (Brookline MRA)*, 17 Kent St.
Brookline, *Walnut Hills Cemetery (Brookline MRA)*, Grove St. & Allandale Rd.
Brookline, *White Place Historic District (Brookline MRA)*, White Pl. between Washington St. & Davis Path
Brookline, *White, Benjamin, House (Brookline MRA)*, 203 Heath St.

MISSISSIPPI

Holmes County

Howard vicinity, *Clifton Plantation House*, Off MS 12

MISSOURI

Butler County

Poplar Bluff vicinity, *Hargrove Pivot Bridge*, CR 159

Jackson County

Lee's Summit, Saint Paul's Episcopal Church, Fifth & S. Green Sts.

NEW YORK

Columbia County

Hudson, *Hudson Historic District (Hudson MRA)*, Roughly bounded by Warren, Fourth, Sixth, Seventh & Eight Sts., Union, Allen & Grant Sts. & Penn Central RR
Hudson, *Rossman-Prospect Avenue Historic District (Hudson MRA)*, Propsect and Rossman Aves.

Madison County

Cazenovia, *Cazenovia Village Historic District (Cazenovia Town MRA)*, Roughly bounded by Union, Lincklaen & Chenango Sts., Rippleton Rds., & Foreman St.

Westchester County

Yonkers, *Public Bath House No. 2 (Yonkers Public Bath House TR)*, 27 Vineyard Ave.
Yonkers, *Public Bath House No. 3 (Yonkers Public Bath House TR)*, 48 Yonkers Ave.
Yonkers, *Public Bath House No. 4 (Yonkers Public Bath House TR)*, 138 Linden St.

NORTH CAROLINA

Wilson County

Wilson vicinity, *Pender, Joseph John, House (Wilson MRA)*, SR 1418 & Sr 1002

RHODE ISLAND

Providence County

Georgiaville, *Georgiaville Historic District*, Bounded by Farnum Pike, Stillwater Rd., Cross St. & Whipple Ave.
Gloscester, *Manton—Hunt—Farnum Farm*, Putnam Pike.

[FR Doc. 85-22242 Filed 9-16-85; 8:45 am]
BILLING CODE 4310-70-M

Fredericksburg and Spotsylvania National Military Park, Environmental Assessment/Finding of No Significant Impact, for Deep Run Sewer Intercepter, MD

AGENCY: National Park Service, Interior.
ACTION: Notice of Availability.

SUMMARY: Notice is hereby given that the Department of the Interior, National Park Service has prepared an environmental assessment and a finding of no significant impact for a right-of-way grant to construct an underground sewer line through Fredericksburg and Spotsylvania National Military Park lands.

ADDRESSES: Copies of the Assessment/FONSI are on file and available for inspection in the office of the Superintendent, Fredericksburg and Spotsylvania National Military Park, 120 Chatham Lane, Fredericksburg, Virginia 22405; the Central Rappahannock Regional Library, 1201 Caroline Street, Fredericksburg, Virginia 22401; office of the Administrator, Spotsylvania County, Spotsylvania Court House, Spotsylvania, Virginia 22553; the office of the Mid-Atlantic Region, National Park Service, 143 South Third Street, Philadelphia, Pennsylvania 19106; and in the office of the National Park Service, Department of the Interior, 18th and C Streets, Washington, D.C. 20240.

Comments should be addressed to the Superintendent within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Superintendent James R. Zinck, Fredericksburg and Spotsylvania National Military Park, telephone 703/373-4461.

SUPPLEMENTARY INFORMATION: The proposed action would provide for a right-of-way grant to the County of Spotsylvania, Virginia to construct an underground sewer line through Fredericksburg and Spotsylvania National Military Park lands. The purpose of the underground sewer line would be to replace an existing pump station with a gravity feed line to improve sanitary services alleviating a waste overflow problem and reducing sanitary services costs. The subject line will be on park lands for a distance of approximately 2,225 feet. The park crossing would be accomplished by entering the park from the west and trenching a short distance to Lee Drive, boring under Lee Drive, and then trenching to the northern edge of the intersection with Lansdowne Road. The park is 240 feet wide at this point. The line would then be bored under Lansdown Road and continue eastward through the park twenty feet from the south shoulder of Lansdowne Road. Slightly more than 2,000 feet of the line along Lansdowne Road would be within the park, paralleling but offset fifteen feet from an existing 16-inch county water line which is located within the state highway right-of-way. A permanent 15-foot right-of-way easement for the the line through the park would be required after construction. During construction a temporary additional easement of 20 feet in width is being requested.

A range of alternatives for improving the sanitary services in the Deep Run Watershed were considered. One of the alternatives, the No Action alternative, would mean continued use of the Spostwood Pump Station at the risk of waste overflow into adjacent land and waterways due to mechanical and/or power failures at the pump station. The County has been advised by the Virginia State Water Control Board and the State Health Department to eliminate the pump station. Other alternatives considered were as follows: Continued use of the pump station with improved safeguards, however, standby generators do not guarantee the elimination of breakdowns and a holding pond for spillage is undersirable because of aesthetic and health reasons; relocation of the park crossing at an existing private easement eliminating a portion of the route across park-owned land. The desirability is offset by the need for a pump station and increasing the area served by about 1300 acres; limit crossing to the Lee Drive only (park land) and use private ownership land north of the park. Problems with this alternative involves the relocation of electric, telephone and cable television services, easements required of the entire backyards of property owners and construction complications involving an existing 3' deep by 20' wide drainage ditch.

The environmental assessment outlines the design proposal for the improved sanitary facilities and the mitigating actions to be taken by Spotsylvania County.

Dated: September 9, 1985.

James W. Coleman, Jr.,
Regional Director, Mid-Atlantic Region.

[FR Doc. 85-22209 Filed 9-16-85; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. MC-F-16608]

Champion International Corp.; Continuance in Control Exemption; Moscow, Camden and San Augustine Railroad and Angelina and Neches River Railroad

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Champion International Corporation (Champion), which seeks initial motor carrier authority under Docket No. MC-185405, has filed a petition under 49 U.S.C. 11343(e) seeking an exemption from the requirement of prior regulatory approval for its continuance in control of Moscow, Camden and San Augustine Railroad (MC&SA) and Angelina and Neches River Railroad (A&NR). The MC&SA is a wholly owned subsidiary of Champion, purchased in 1968. The purchase was approved by the Commission in 1969. MC&SA owns seven miles of trackage in Texas and serves Champion's mills at Camden, TX. Its president, Terry Wurtzbacher, is Champion's director of transportation and manages Champion's trucking operations. The A&NR became a non-consolidated, 50 percent affiliate of Champion as a result of the liquidation of the St. Regis Corporation when it merged with Champion. A&NR owns 11.6 miles of mainline track and four miles of sidetrack and yards in Texas. Thus, Champion, upon its institution of operations as a regulated carrier, will continue in control of two railroads. Continuance in control of a carrier by any number of carriers may be carried out only under Commission regulation or under an exemption from regulation. See 49 U.S.C. 11343(a)(3) and 11343(e).

DATE: Comments must be received by October 7, 1985.

ADDRESSES: Send comments (an original plus 10 copies) referring to Docket No. MC-F 16608 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Jeanne Sisson, Manager Transportation Adminstration, Champion International Corporation, Knightsbridge Drive, Hamilton, OH 45020.

FOR FURTHER INFORMATION CONTACT: Jasneth C. Metz (202) 275-7974.

SUPPLEMENTARY INFORMATION: Champion seeks an exemption under 49 U.S.C. 11343(e) and the Commission's regulation in Ex Parte No. 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed By Motor Carriers of Property, Under 49 U.S.C. 11343*, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

A copy of the petition may be obtained from petitioners' representative, or it may be inspected at the Washinton, DC office of the Interstate Commerce Commission during normal business hours.

Decided: September 6, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 85-22156 Filed 9-16-85; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Literature Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Creative Writing Fellowships Section) to the National Council on the Arts will be held on October 3-5, 1985, from 9:00 a.m.-5:30 p.m. in rooms 714 (Prose) and M-14 (Poetry) of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on October 5, 1985, from 3:30-5:30 p.m. in room M-14. The topics for discussion will be policy and guidelines.

The remaining sessions of this meeting on October 3-4, 1985, from 9:00 a.m.-5:30 p.m. and on October 5, from 9:00 a.m.-3:30 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

John H. Clark, Director,

Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 85-22241 Filed 9-16-85; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel For Cellular Physiology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting.

Name: Advisory Panel for Cellular Physiology

Date and time: Tuesday, Wednesday and Thursday October 1, 2 and 3, 1985, from 9:00 a.m. until 5:00 p.m.

Place: Room 1141, National Science Foundation, 1800 G Street, NW., Washington, DC 20550

Type of meeting: Closed

Contact person: Maryanna P. Henkart, Program Director, Cellular Physiology, Room 332, Telephone: 202/357-7377.

Purpose of advisory panel: To provide advice and recommendations concerning support for research in Cellular Physiology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. R. Winkler,

Committee Management Officer.

September 11, 1985.

[FR Doc. 85-22192 Filed 9-16-85; 8:45am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Power Authority of the State of New York; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50-333]

The U.S. Nuclear Regulatory Commission (NRC/the Commission) is

considering issuance of an exemption from the requirements of Appendix J of 10 CFR Part 50 to the Power Authority of the State of New York (PASNY/the licensee) for the James A. FitzPatrick Nuclear Power Plant located in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action

The exemption would permit the licensee to perform the seal leakage test specified in Paragraph III.D.2(b)(iii) of Appendix J in lieu of the full airlock test specified in Paragraph III.D.2(b)(ii), prior to plant startup following a period of cold shutdown, provided that no maintenance was performed on the airlock during this period.

The Need for the Proposed Action

The existing airlock doors are so designed that a full pressure test of an entire airlock can only be performed after strong backs (structural bracing) have been installed on the inner door. Strong backs are required because the pressure exerted on the inner door during the test is in a direction opposite to the pressure direction following a postulated accident and the locking mechanisms are not designed to withstand the reverse forces associated with test pressure. Installation of the strong backs must commence approximately 24 hours prior to establishing containment integrity. During this 24-hour period, approximately 1 hour is required to inspect the door seal and door seat surfaces; 3 hours are required to install strong backs; and 16 to 20 hours are required to pressurize the airlocks to the test pressure and to troubleshoot. This could delay plant startup by up to 24 hours. Furthermore, the licensee has estimated that the entire airlock test including the installation and removal of the strong backs, results in an expenditure of 18 hours and 0.15 man-rem compared with 0.5 hours and 0.025 man-rem for the seal leakage test.

Environmental Impacts of the Proposed Action

The periodic 6-month leak test of Paragraph III.D.2(b)(i) of Appendix J and the 3-day test requirements of Paragraph III.D.2(b)(iii) provide assurance that the airlock leakage rate will not be increased as a result of the airlock being opened during a period of cold shutdown when no maintenance has been performed. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the James A. FitzPatrick Nuclear Power Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated May 2, 1985 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC, and at the Penfield Library, State University College of Oswego, Oswego, New York.

Dated at Bethesda, Maryland, this 10th day of September, 1985.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Assistant Director for Operating Reactors, Division of Licensing.

[FR Doc. 85-22236 Filed 9-16-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-354A]

Public Service Electric and Gas Co.; and Atlantic City Electric Co.; Finding of no Significant Antitrust Changes and Time for Filing Requests for Reevaluation

September 11, 1985.

The Director of Nuclear Reactor Regulation has made an initial finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensees' activities or proposed activities have occurred subsequent to the previous construction permit review of the Hope Creek Nuclear Generating Station by the Attorney General and the Commission. The finding is as follows:

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the "significant change" determination to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the events since issuance of the Hope Creek construction permit to the Public Service Electric and Gas Company, and Atlantic City Electric Company, the staffs of the Antitrust and Economic Analysis Section of the site Analysis Branch, Office of Nuclear Reactor Regulation and the Antitrust Section of the Office of the Executive Legal Director, hereafter referred to as "staff", have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the antitrust construction permit (CP) review are not of the nature to require a second antitrust review at the operating license (OL) stage of the application.

In reaching this conclusion, the staff considered the structure of the electric utility industry in New Jersey, the events relevant to the Hope Creek (formerly Newbold Island) construction permit review and the events that have occurred subsequent to the construction permit review.

The conclusion of the staff's analysis is as follows:

Since the construction permit antitrust review, there have been several changes in the plans and activities of the Public Service Electric and Gas Company (PSE&G) and Atlantic City Electric Company (ACE), co-owners of Hope Creek, but none of these changes indicate any anticompetitive actions by PSE&G or ACE. The changes have involved a decrease in load growth and the accompanying changes in generation and transmission requirements, including a delay in Hope Creek Unit No. 1 and cancellation of Unit No. 2. Other changes have involved changes in rates and rate structure, particularly at the retail level, and some wholesale load changes. These types of changes were common to the electric utility industry following the 1973 oil embargo. Further, there have been inquiries and studies by smaller electric utilities as to the costs for participation in Hope Creek, but none of these studies have led to actual participation in the unit. Based on the NRC staff review, neither PSE&G nor ACE has unreasonably restrained these utilities from further participation in Hope Creek, Unit 1.

Based on the staff's analysis, it is my finding that a formal operating license antitrust review of the Hope Creek Nuclear Generating Station is not required.

Signed on September 4, 1985 by Harold R. Denton, *Director of Office of Nuclear Reactor Regulation.*

Any person whose interest may be affected by this finding may file with full particulars a request for reevaluation with the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 30 days from the date of this notice. Request for a reevaluation of the no significant change determination shall be accepted after the date when the Director's finding becomes final but before the issuance of the OL only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

Donald P. Cleary,

Acting Chief, Site Analysis Branch, Division of Engineering, Office of Nuclear Reactor Regulation.

[FR Doc. 85-22235 Filed 9-16-85; 8:45 am]

BILLING CODE 7590-01-M

Issuance, Availability and Request for Comments on NUREG/CR-4214, "Health Effects Model for Nuclear Power Plant Accident Consequence Analysis"

The U.S. Nuclear Regulatory Commission has received a report from Sandia National Laboratories entitled "Health Effects Model for Nuclear Power Plant Accident Consequence Analysis," NUREG/CR-4214. This report was prepared by a group of emminent scientists and practitioners in the field, headed by the Harvard University School of Public Health under subcontract to Sandia National Laboratories. Public comments on this report are solicited.

This report was prepared at the request of the Nuclear Regulatory Commission to update and revise the health effects models used for accident consequence estimates in the Reactor Safety Study (NUREG 75/014), the analyses for which were performed in the early 1970s. The revised models proposed in NUREG/CR-2414 include improved models for early and continuing severe injuries, early fatalities, latent cancers, latent cancer fatalities, and genetic effects due to various levels of exposures to ionizing radiation. Models have been added for skin burns, mental retardation due to exposure of the fetus, and life shortening, amongst others. Early and continuing health effects have been modeled using hazard functions, which is a new approach. Estimates of uncertainty are presented for the various models. During 1986, these models will be evaluated by the NRC staff for applications in the regulatory process. In the meantime, the staff intends to use them on a trial basis in uncertainty analyses of reactor accident consequence estimates.

The NRC intends to use the methods and data contained in this report in areas of broad public interest such as probabilistic risk analyses, emergency response planning, siting, safety goal applications, and cost/benefit analyses—indeed, wherever risks to public health are considered in regulatory applications. Thus, although a substantial peer review was conducted during the course of the study that resulted in the report, it is considered imperative that an opportunity be provided for public comment on the results as presented in the report. Comments should be sent to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: J. A. Martin, Division of Risk Analysis and Operations. Comments will be most useful to the staff if they are received by December 15, 1985.

Copies of NUREG/CR-4214 may be obtained after September 15, 1985 by written request to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082, or by calling (202) 275-2060 or (202) 275-2171. Other copies will be available for inspection at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC and at the Commission's local public document rooms located in the vicinity of nuclear power plants. Addresses of these local public document rooms can be obtained from the Chief, Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-7526.

(5 U.S.C. 552(a))

Dated at Bethesda, Maryland, this 10th day of September 1985.

For the Nuclear Regulatory Commission.

Frank P. Gillespie,

Director, Division of Risk Analysis and Operations, Office of Nuclear Regulatory Research.

[FR Doc. 85-22237 Filed 9-16-85; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

Southern California Edison Co., et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (The Commission) is considering issuance of an exemption from the requirements of 10 CFR Part 20, Appendix A, footnote d-2(c), to the Southern California Edison Company and San Diego Gas & Electric Company, who hold Provisional Operating License No. DPR-13, which authorizes operation of the San Onofre Nuclear Generating Station Unit No. 1, and to the Southern California Edison Company, The City of Anaheim, California, and the City of Riverside, California, who hold Facility Operating License Nos. NPF-10 and NPF-15, which authorize operation of the San Onofre Nuclear Generating Station, Unit Nos. 2 and 3. Units 1, 2, and 3 (the facilities) are pressurized water reactors located in San Diego County, California.

Environmental Assessment

Identification of the Proposed Action

The exemption from 10 CFR Part 20 would allow the use of a radioiodine protection factor of 50 for MSA GMR-I canisters at San Onofre Units 1, 2, and 3.

The Need for the Proposed Action

The exemption is needed to facilitate refueling operations at San Onofre by reducing the time and person-rem exposure required to complete tasks that require respiratory protection.

Environmental Impacts of the Proposed Action

There are no environmental impacts of the proposed action. The proposed exemption involves a change in the installation or use of the facility's componets located within the restricted areas as defined in 10 CFR Part 20. The staff has determined that the proposed exemption involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite and that there is no significant increase in individual or cumulative occupation radiation exposure.

With regard to potential non-radiological impacts, the proposed exemption involves systems located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

We have concluded that there is no measurable environmental impact associated with the proposed exemption. The principal alternative would be to deny the requested exemption. This would not reduce

environmental impacts of plant operation.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Proposed San Onofre Nuclear Generating Station Units 2 and 3" dated March 1973, the "Final Environmental Statement Related to the Operation of San Onofre Nuclear Generating Station Units 2 and 3", dated April 1981, and the Errata to the Final Environmental Statement dated June 1981.

Agencies and Persons Consulted

The NRC staff reviewed the licensees' request and did not consult other agencies or persons.

Findings of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the requests for exemption dated March 20, July 11, and July 31, 1985, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the San Clemente Branch Library, 242 Avenida Del Mar, San Clemente, California 92672.

Dated at Bethesda, Maryland this 13th day of September, 1985.

For The Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing.

[FR Doc. 85-22340 Filed 9-16-85; 9:49 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Mainstem Passage Advisory Committee; Meeting Notice

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.
Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Mainstem Passage Advisory Committee of the Mainstem Passage Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Estimating smolt survial at Corps projects on the Lower Snake and Lower Columbia rivers.
- Other.
- Pulic comment.

DATE: September 20, 1985. 8:30 a.m.

ADDRESS: The meeting will be held in the Council's Meeting Room, 850 SW Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-22165 Filed 9-16-85; 8:45am]

BILLING CODE 0000-00-M

Economic Forecasting Advisory Committee; Regular Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.
Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Economic Forecasting Advisory Committee, to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Discussion of 1985 Draft Power Plan
- Public comment, followed by adjournment

DATE: Thursday, October 3, 1985, 9:00 a.m.

ADDRESS: The meeting will be held at the Council's Central Office, 850 SW Broadway; Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Debbie Kitchin, (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-22164 Filed 9-16-85; 8:45 am]

BILLING CODE 0000-00-M

POSTAL SERVICE

Privacy Act of 1974; Matching Program; Postal Service/U.S. Department of Housing and Urban Development, Office of Inspector General

AGENCY: Postal Service.

ACTION: Notice of a Matching Program—U.S. Postal Service/U.S. Department of Housing and Urban Development.

SUMMARY: The U.S. Postal Service (USPS) plans to match by computer certain records in its Payroll System file with the U.S. Department of Housing and Urban Development (HUD) records on individuals receiving assisted housing benefits. The match will be made under a written agreement between the USPS and HUD. The USPS will perform the match using certain data provided by HUD.

DATE: The match will begin in September 1985 unless comments are received that result in a contrary determination.

ADDRESS: Send any comments to Records Officer, U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC 20260-5010. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m. Monday through Friday in Room 8121 at the above address.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Office (202) 245-4797.

SUPPLEMENTARY INFORMATION: At the request of HUD, the USPS has agreed to match certain data in USPS payroll system files (USPS 050.020 Finance Records—Payroll System) with HUD assisted housing benefit recipient files for the purpose of identifying those postal employees receiving benefits and determining their eligibility under the National Housing Act. Set forth below is the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget (47 FR 21656; May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Report of a Matching Program: U.S. Postal Service/U.S. Department of Housing and Urban Development

a. *Authority:* 39 U.S.C. 404.

b. *Program Description:* Under the planned program, the U.S. Department of Housing and Urban Development (HUD) will submit to the U.S. Postal Service (USPS) a computer tape containing the social security numbers (SSNs) of its assisted housing benefit recipients which the USPS will match against its payroll system file (USPS 050.020). For matched employee SSNs (i.e., "hits"), the USPS will disclose to HUD the following information from its payroll file: name, SSN, home address, and annual gross wage, which HUD will use to make a determination of eligiblity under the National Housing Act. Further, the USPS Inspection Service may participate in the investigation of hits as

a result of this matching program and establish investigative case files within the parameters of Privacy Act system USPS 080.010, Inspection Requirements Investigative File System (last published in 48 FR 10975 of March 15, 1983). Disclosure of this information is authorized by routine use No. 28 in USPS 050.020, Payroll System, most recently published in 50 FR 28863, July 16, 1985.

c. *Period of the Match:* The matching program will being in September 1985 and will be continuing for a period not to exceed five years. Follow-up work on resultant matches is expected to be completed within 6 months after completion of each computer match.

d. *Security:* The USPS personnel who perform the match will: (a) have the only USPS access to the HUD computer tape; (b) use it for the purpose of the match and for no other purpose; and (c) safeguard it from unauthorized access. Likewise, the postal employee information disclosed to HUD will be used by authorized HUD personnel only for the purpose of the match and for no other purposes and will be safeguarded from unauthorized access.

e. *Disposition of Records:* The USPS will not retain or copy the tape provided by HUD and must return it upon completion of the match. All information compiled as a result of this matching effort must be destroyed as soon as the determination is made that it relates to a legitimate, non-fraud situation.

f. *Other Comments:* No bestowed rights, privileges or benefits will be terminated solely on the basis of a "hit" or the records provided by the USPS in connection with this program.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85-22184 Filed 9-16-85; 8.45 am]

BILLING CODE 7710-12-M

Adjustment of Preferred Rates

Recognizing that appropriations for revenue forgone for Fiscal Year 1986 may not exceed $749 million, a level sufficient to support step 16 preferred rates and continuation of free mail for the blind, the Governors of the Postal Service on September 6, 1985 adopted Resolution 85-7, adjusting preferred rates of postage. This rate schedule appears below.

The purpose of publishing these rates at this time is to give mailers entitled to the preferred rates as much notices as possible of the extent of the possible increase of their rates. The new rates appearing below will be effective at 12:01 a.m. on October 1, 1985, unless prior to that time funds in excess of $749 million for revenue forgone are provided to the Postal Service. In that event a new schedule of rates will be published.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

CHAPTER 4—SECOND-CLASS MAIL

. . . . . .

.32 In-County Rates

.321 General Application. In-county rates apply to copies of second-class publications (except commingled nonsubscriber copies in excess of the 10% allowance, and requester copies) that are to be delivered to addresses within the county of publication if such copies are:

a. Mailed at the office or original entry; or

b. Mailed at an office of additional entry within the county of publication.

Note.—If the postmaster of an office of entry directs a publisher to deposit copies of the publication at a postal facility serving that office, these copies will be considered as mailed at the office of entry. Copies are subject to in-county rates if they are addressed to destinations within the county and are entered at a post office which serves those addresses, but is located outside the county.

.322 Rates. In-County rates are:

	Cents
Per Pound	7.9
Per Piece:	
Level J—Not Presorted to Carrier Route	4.3
Level K—Presorted to Carrier Route. Packages of six or more addressed pieces for carrier route or finer sort destinations	2.5

. . . . . .

.33 Special Nonprofit Rate

.331 Per Pound Rates. Rates per pound or fraction of a pound:

	Cents
Nonadvertising portion	7.6
Advertising portion:	
Zones 1 and 2	10.1
Zone 3	11.5
Zone 4	13.7
Zone 5	17.0
Zone 6	20.5
Zone 7	24.7
Zone 8	28.2

Note: The advertising zone rates are applicable to issues in which the advertising portion exceeds 10 per cent. Issues containing 10 percent or less advertising will be computed at the nonadvertising rate.

.332 Per Piece Rates. The three per piece rates reflect the level of presort. The sortations that must be accomplished to qualify for those rates are prescribed in 468.

	Cents
Level G—Basic—Pieces not qualifying for Level H—5-Digit or Level I-Carrier (3-Digits which are not unique 3-digit cities. SCF, states, mixed states)	8.4
Level H—5-Digit—Packages of six or more addressed pieces for 5-digit, a unique 3-digit city, or multi-ZIP Coded city destinations listed in Exhibit 122.63	5.8
Level I—Carrier—Packages of six or more addressed pieces for carrier route or finer sort destinations	3.9

.333 Intra SCF Rate. Pieces in properly prepared carrier route, 5-digit, optional city, 3-digit, or SCF packages of six or more addressed pieces for delivery within the SCF of mailing may qualify for the intra SCF rate. This rate equals the applicable per-piece rate minus 1.0 cent per addressed piece.

SCF's and the areas served by each are in Exhibits 122.63c and 122.63d.

. . . . . .

.34 Classroom

.341 Per Pound Rates. Rates per pound or fraction of a pound:

	Cents
Nonadvertising portion	6.2
Advertising portion:	
Zones 1 and 2	8.2
Zone 3	9.4
Zone 4	11.5
Zone 5	14.8
Zone 6	18.2
Zone 7	22.3
Zone 8	26.0

.342 Per Piece Rate. The per piece rate is 5.6 cents.

.343 Intra SCF Rate. Pieces in properly prepared carrier route, 5-digit, optional city, 3-digit, or SCF packages of six or more addressed pieces for delivery within the SCF of mailing may quality for the intra SCF rate. This rate equals the applicable per-piece rate minus 1.0 cent per addressed piece. SCF's and the areas served by each are in Exhibits 122.63c and 122.63d.

.35 Science of Agriculture

.351 General. These rates apply to copies of publications which will be delivered to addresses outside the county where published and entered, and on copies mailed at an office of additional entry located outside the county where published and entered, when the total number of copies furnished during any 12-month period to

subscribers residing in rural areas consists of at least 70% of the total number of copies distributed by any means for any purpose.

.352 Per Pound. Rates per pound of fraction of a pound:

	Cents
Nonadvertising portion	11.8
Advertising portion:	
Zones 1 and 2	10.1
Zone 3	16.6
Zone 4	18.2
Zone 5	20.7
Zone 6	23.3
Zone 7	26.0
Zone 8	28.8

.353 Per Piece Rates. The three per price rates reflect the level of presort for mailings of 5,000 or more copies per issue. The sortations that must be accomplished to qualify for these rates are prescribed in 460.

	Cents
Level A—Basic. Pieces not qualifying for Level B–5–Digit or Level C—Carrier (3-Digits which are not unique 3-Digit cities, SCF states, mixed states)	12.3
Level B—5-Digit. Packages of six or more addressed pieces for 5-digit, a unique 3-Digit city, or multi-ZIP Coded city destinations listed in Exhibit 122.63	9.6
Level C—Carrier. Packages of six or more addressed pieces for carrier route or finer sort destinations	7.8

.354 Intra SCF Rate. Pieces in properly prepared carrier route, 5-digit, optional city, 3-digit, or SCF packages of six or more addressed pieces for delivery within the SCF of mailing may qualify for the intra SCF rate. This rate equals the applicable per-piece rate minus 1.0 cent per addressed piece. SCF's and the areas served by each are in Exhibits 122.63c and 122.63d.

* * * * *

.36 Limited Circulation

.361 General. These rates apply to copies of publications (except commingled nonrequester/non-subscriber copies in excess of the 10% allowance (see 411.38), requester, special nonprofit, classroom, and limited circulation science of agriculture) which will be delivered to addresses outside the county where published and entered, and on copies mailed at an office of additional entry located outside the county where published and entered, when the total number of out-of-county copies is less than 5,000.

.362 Per Pound Rates. Rates per pound of fraction of a pound:

	Cents
Nonadvertising portion	11.8
Advertising portion:	
Zones 1 and 2	15.8
Zone 3	16.6
Zone 4	18.2
Zone 5	20.7
Zone 6	23.3
Zone 7	26.0
Zone 8	28.9

.363 Per Piece Rates. The three per piece rates reflect the level of presort for mailings of less than 5,000 out-of-county copies per issue:

	Cents
Level D—Basic. Pieces not qualifying for Level E—5-Digit or Level F—Carrier (3-Digits which are not unique 3-Digit cities, SCF, states, mixed states)	8.4
Level E—5-Digit. Packages of six or more addressed pieces for 5-digit, a unique 3-Digit city, or multi-ZIP Coded city destinations listed in Exhibit 122.63	5.8
Level F—Carrier. Packages of six or more addressed pieces for carrier route or finer sort destinations	3.9

.364 Intra SCF Rate. Pieces in properly prepared carrier route, 5-digit, optional city, 3-digit, or SCF packages of six or more addressed pieces for delivery within the SCF of mailing may qualify for the intra SCF rate. This rate equals the applicable per-piece rate minus 1.0 cent per addressed piece. SCF's and the areas served by each are in Exhibits 122.63c and 122.63d.

* * * * *

.37 Limited Circulation Science of Agriculture

.371 General. These rates apply to copies of science of agriculture publications which will be delivered to addresses outside the county where published and entered, and on copies mailed at an office of additional entry located outside the county where published and entered, when the total number of out-of-county copies is less than 5,000, and when the total number of copies furnsihed during any 12-month period to subscribers residing in rural areas consists of at least 70% of the total number of copies distributed by any means for any purpose.

.372 Per Pound Rates. Rates per pound or fraction of a pound:

	Cents
Nonadvertising portion	11.8
Advertising portion:	
Zone 1 and 2	10.1
Zone 3	16.6
Zone 4	18.2
Zone 5	20.7
Zone 6	23.3
Zone 7	26.0
Zone 8	28.9

.373 Per Piece Rates. The three per piece rates reflect the level of presort for mailings of less than 5,000 out-of-county copies per issue:

	Cents
Level D—Basic. Pieces not qualifying for Level E—5–Digit or Level F—Carrier (3–Digits which are not unique 3–Digit cities, SCF, states, mixed states)	8.4
Level E—5–Digit. Packages of six or more addressed pieces for 5–Digit, a unique 3–digit city or multi-ZIP Coded city destinations listed in Exhibit 122.63	5.8
Level F—Carrier. Packages of six or more addressed pieces for carrier route or finer sort destinations	3.9

.374 Intra SCF Rate. Pieces in properly prepared carrier route, 5–digit, optional city, 3–digit, or SCF packages of six or more addressed pieces for delivery within the SCF of mailing may qualify for the intra SCF rate. This rate equals the applicable pre-piece rate minus 1.0 cent per addressed piece. SCF's and the area served by each are in Exhibits 122.63c and 122.63d.

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CHAPTER 6.—THIRD-CLASS MAIL

610 Rates and Fees

* * * * *

611 Rates

611.2 Bulk Rates (See Exhibit 611.2 a and b)

* * * * *

Special Rates for Authorized Nonprofit Organizations Only—See 623.

Pieces which weigh *more* than 3.5069 ounces and are mailed at the 5–digit or basic rate are subject to the per pound rate and the applicable per piece rate.

[illegible]

Presort level:		
Per pound or fraction		
Basic	21.9 Plus 2.6 per piece.	7.4

		Minimum rate per piece (cents)
5–digit	21.9 Plus 1.5 per piece.	6.3
Carrier route.	21.9	4.8

Pieces which are *equal to or weigh less* than 3.5069 ounces, or 0.21918 pound, or 99.507 grams must be paid at the prescribed minimum per piece rate for each presort level.

Exception: When the postage computed at the bulk third-class rate is higher than a fourth-class rate for which the matter and the mailing could qualify except for weight, the fourth-class rate may be paid without the necessity of adding needless additional weight. *Example:* A piece which weighs less than 1 pound and which meets all prescribed requirements, other than weight, for fourth-class bound printed matter may be mailed at the fourth-class bound printed matter rate. All other requirements of bulk third-class remain applicable.

Exhibit 611.2b—Third-Class (Special Rates)

Up to (ounces)	CAR-RT (cents)	5-digit rate (cents	Basic rate (cents)
1	4 8	6 3	7 4
2	4 8	6 3	7 4
3	4 8	6 3	7.4
3.5	4 8	6 3	7.4
3 6	5	6 5	7 6
3.7	5.1	6 6	7.7
3 8	5 2	6.7	7 8
3 9	5.4	6 9	8
[illegible]	5 5	7	8 1
4.1	5.7	7 2	8 3
4.2	5.8	7 3	8 4
4.3	5.9	7.4	8 5
4.4	6.1	7.6	8.7
4.5	6.2	7.7	8 8
4 6	6 3	7.8	8 9
4 7	6 5	[illegible]	9 1
4 8	6 6	8.1	9 2
4 9	6 7	8 2	9 3
5	6 9	8 4	9 5
5 1	7	8.5	9 6
5 2	7 2	8 7	9 8
5 3	7 3	8 8	9 9
5.4	7 4	8 9	10
5.5	7 6	9 1	10.2
5 6	7 7	9.2	10.3
5.7	7 8	9 3	10 4
5 8	[illegible]	9 5	10.6
5 9	8 1	9 6	10 7
[illegible]	8 3	9 8	10.9
6.1	8 4	9 9	11
6.2	8.5	10	11.1
6.3	8.7	10 2	11.3
6 4	[illegible]	10 3	11.4
6 5	8 9	10 4	11 5
6 6	9 1	10.6	11.7
6.7	9 2	10 7	11 8
6 8	9 3	10.8	11.9
6 9	9 5	11	12.1
7	9 6	11.1	12.2
7.1	9 8	11.3	12.4
7 2	9 9	11.4	12 5
7.3	10	11.5	12.6
7.4	10 2	11.7	12 8
7 5	10 3	11.8	12.9
7 6	10 4	11.9	13
7 7	10 6	12.1	13.2
7 8	10 7	12.2	13.3
7 9	10 9	12.4	13 5
8	11	12.5	13 6
8.1	11.1	12.6	13.7
8 2	11.3	12 8	13 9
8.3	11.4	12.9	14
8.4	11.5	13	14.1
8 5	11.7	13.2	14.3
8 6	11 8	13.3	14.4
8.7	11.9	13.4	14.5
8 8	12.1	13.6	14.7
8 9	12.2	13 7	14.8
9	12.4	13 9	15
9 1	12.5	14	15.1
9.2	12.6	14.1	15.2
9.3	12 8	14.3	15.4
9 4	12 9	14.4	15.5
9 5	13	14.5	15.6
9 6	13 2	14.7	15.8
9.7	13.3	14.8	15.9
9 8	13.5	15	16.1
9 9	13 6	15.1	16 2
10	13.7	15.2	16 3
10.1	13.9	15.4	16.5
10.2	14	15 5	16 6
10.3	14.1	15 6	16.7
10 4	14 3	15.8	16 9
10.5	14.4	15.9	17
10 6	14 5	16	17.1
10.7	14.7	16.2	17.3
10 8	14 8	16.3	17.4
10.9	15	16.5	17.6
11	15.1	16.6	17.7
11.1	15.2	16.7	17.8
11.2	15.4	16.9	18
11.3	15.5	17	18.1
11 4	15.6	17.1	18.2
11.5	15 8	17.3	18 4
11 6	15 9	17.4	18 5
11.7	16.1	17.6	18.7
11 8	16.2	17.7	18 8
11.9	16.3	17 8	18 9
12	16.5	18	19.1
12.1	16 6	18.1	19.2
12 2	16.7	18.2	19 3
12.3	16 9	18.4	19 5
12 4	17	18 5	19 6
12 5	17.1	18 6	19.7
12 6	17.3	18.8	19.9
12.7	17.4	16.9	[illegible]
12 8	17.6	19 1	20 2
12.9	17.7	19.2	20.3
13	17.8	19.3	20.4
13.1	18	19.5	20 6
13.2	18.1	19.6	20.7
13.3	18.2	19.7	[illegible]
13.4	18.4	19.9	21
13.5	18.5	[illegible]	21.1
13.6	18.7	20.2	21.3
13.7	18.8	20.3	21.4
13.8	18.9	20.4	21.5
13.9	19.1	20 6	21.7
14	19.2	20.7	21.8
14.1	19.3	20 8	21.9
14 2	19.5	21	22 1
14.3	19 6	21 1	22.2
14.4	19 8	21 3	22.4
14 5	19.9	21 4	22.5
14.6	20	21 5	22.6
14.7	20 2	21.7	22.8
14.8	20 3	21.8	22.9
14.9	20 4	21.9	23
15	20 6	22.1	23.2
15.1	20 7	22 2	23.3
15 2	20 8	22.3	23.4
15.3	21	22.5	23.6
15.4	21.1	22.6	23.7
15.5	21.3	22 8	23.9
15.6	21.4	22 9	24
15.7	21 5	23	24.1
15.8	21.7	23 2	24.3
15.9	21.8	23.3	24.4

Exhibit 611.2d—Individually Metered Mail—Special Rates

CHAPTER 7.—FOURTH-CLASS MAIL

710 Rates and Fees

711 Rates

* * * * *

Kind of mail	Rate (without regard to zone)		
	First pound or fraction of a pound (cents)	Each additional pound or fraction through 7 pounds (cents)	Each pound or fraction over 7 pounds (cents)
Books; printed music; bound volumes of adcademic theses; sound recordings; penodicals; other liberary materials; museum and herbanum materials; 16-millimeter or narrower width films, filmstrips, transparencies, slides, microfilms, scientific or mathematical kits, instruments, or other devices; also catalogs, guides or scnpts for some of these matenals See 725	[illegible]	17	[illegible]

Exhibit 711.4.—Library Rates

[FR Doc. 85–22172 Filed 9–16–85; 8:45 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–23824; 70–7143]

Alabama Power Co. et al.; Proposal To Acquire Evidences of Indebtedness

September 6, 1985.

Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, Georgia Power Company ("Georgia"), 33 Piedmont Avenue, NE., Atlanta, Georgia 30308, Gulf Power Company ("Gulf"), 75 North Pace Boulevard, Pensacola, Florida 32520, Mississippi Power Company ("MPC"), 2992 West Beach, Gulfport, Mississippi 39501, Southern Company Services, Inc. ("SCSI"), 800 Shodes Creek Parkway, Birmingham, Alabama 35202, and Southern Electric International, Inc. ("SEI"), 3500 Piedmont Road, NE., Suite 500, Atlanta, Georgia 30305 (collectively the "Companies"), wholly owned subsidiaries of The Southern Company, a registered holding company, have filed an application with this Commission subject to section 9(c)(3) of the Public Utility Holding Company Act of 1935 ("Act").

Each of the Companies has a program whereby it provides assistance loans to employees to purchase energy efficient facilities and improvements for their primary residences. The Companies propose to extend such loan assistance to: (1) Retired employees; (2) surviving spouses of retired employees; and (3) surviving spouses of employees, (collectively the "Retirees"). Under such program, each of the Companies would

provide loan assistance to Retirees in various amounts up to $10,000 for a period of up to 10 years and at an interest rate of up to 3% per annum. Each company proposes to continue the loan assistance program through October 1, 1990, but may terminate it at any time prior to such date.
After completion of the improvements, the respective company will enter into a security agreement with the Retiree which will grant such company a security interest in the improvements being financed.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 30, 1985, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this manner. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-22193 Filed 9-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 3523823; 70-7152]

Allegheny Generating Co.; Proposal To Issue and Sell Commercial Paper; Exception From Competitive Bidding

September 6, 1985.

Allegheny Generating Company ("AGC"), 320 Park Avenue, New York, NY 10022, a wholly owned subsidiary of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company, which are wholly owned subsidiaries of Allegheny Power System, Inc., a registered holding company, has filed a declaration with the Commission subject to section 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) thereunder.

AGC proposed to issue and sell from October 1, 1985 through March 31, 1987, up to $300 million of commercial paper. The commercial paper will be backed by a funding commitment through the $400 million revolving credit agreement ("Revolving Credit Agreement") authorized by the Commission on July 18, 1985 (HCAR No. 23766). Total short-term debt outstanding, including the Revolving Credit Agreement and this commercial paper issuance, will not at any time exceed $400 million.

There is a commitment fee of 3/16 of 1% per annum of the average daily unused portion of Revolving Credit Agreement. Borrowings under the Revolving Credit Agreement bear interest at either (i) the alternative base rate which is the higher of Chemical Bank's floating prime rate of 3/8 of 1% over the average weekly three-month certificate of deposit rate, (ii) the London Interbank Offer Rate ("LIBOR") plus 3/8 of 1% per annum from the approval date through December 31, 1989 and then the LIBOR plus 1/2 of 1% per annum thereafter until December 31, 1990, or (iii) the CD rate plus 3/8 of 1% per annum from the effective date through December 31, 1989 and then the CD rate plus 1/2 of 1% per annum thereafter until December 31, 1990. The effective cost of borrowing for these three options would range from 8.084 to 9.50 percent. Merrill Lynch Markets, Inc., and Paine Webber Inc. will be designated as the dealers for the commercial paper.

AGC intends to issue commercial paper only if (1) the interet cost thereof is reasonably equal to or less than the effective interest cost at which AGC could borrow the same amount pursuant to the Revolving Credit Agreement at that time or (2) AGC cannot at that time borrow the same amount for the same period of time.

AGC requests an exception from the competitive bidding requirements of Rule 50 for the proposed sale of its commercial paper, pursuant to paragraph (a)(5).

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested Persons wishing to comment or request a hearing should submit their views in writing by September 30, 1985, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-22194 Filed 9-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23822; 70-7135]

CNG Producing Co. and CNG Development Co.; Proposal To Obtain Letters of Credit in Amounts up to $7 Million

September 6, 1985.

CNG Producing Company ("Producing"), Suite 3100, One Canal Place, New Orleans, Louisiana 70130, and CNG Development Company ("Development"), One Park Ridge Center, P.O. Box 15746, Pittsburgh, Pennsylvania 15244, natural gas exploration and development subsidiaries of Consolidated Natural Gas Company, a registered holding company, have filed a declaration with this Commission pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act").

In response to a proposal by Fossil Associates ("Fossil"), located in Denver, Colorado, Producing entered into an operating agreement with Fossil whereby Producing and Fossil would participate in simultaneous drawings for leasehold acreage in the Rocky Mountain area, offered by the United States Bureau of Land Management. Fossil will act as agent for Producing in the drawings. Each application to the Bureau of Land Management for parcels must be accompanied by a $75 filing fee and the first year's rental payment.

Producing now proposes that the most economical means of furnishing its share of funds adequate for the drawing is to obtain a letter of credit in the amount of $300,000 from Whitney National Bank of New Orleans. Whitney National Bank will charge Producing a fee estimated at less than $500 for the letter of credit. The letter of credit will be issued to United Bank of Denver ("United") to cover any advances made to Fossil by United for the benefit of Producing. Any advances to Fossil by United will bear interest at the prime rate of interest as quoted by United plus one-half of one percentage point per year and will fluctuate on the same day as United's prime rate of interest changes. Each advance will be limited to the amount required for the

simultaneous filing, with the letter of credit securing the loan.

Because both Producing and Development are likely to become engaged in similar transactions in greater frequency in the future, Producing and Development propose that they be authorized to obtain letters of credit in amounts larger than in this initial instance. Therefore, they request authorizations to obtain letters of credit in the aggregate amounts of $5,000,000 for Producing, and $2,000,000 for Development. Terms and conditions of future transactions will be filed by post-effective amendment.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 30, 1985, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-22195 Filed 9-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23828; 70-6991]

Empire Exploration, Inc., et al.; Proposal to Transfer Assets at Adjusted Valuation

September 9, 1985.

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112 a registered holding company, and its subsidiaries National Fuel Gas Supply Corporation ("Supply"), Seneca Resources Corporation ("Seneca"), and Empire Exploration, Inc. ("Empire"), all located at 10 Lafayette Square, Buffalo, New York 14203, have filed a post-effective amendment to their application-declaration with this Commission pursuant to section 6(a), 7, 9(a), 10, 12(f) and 13 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45, 50(a)(3), 86, 87, 90 and 91 thereunder.

By order dated November 1, 1984 (HCAR No. 23465) and January 30, 1985 (HCAR No. 23585), Supply was authorized to transfer to Empire, a newly acquired oil and gas exploration and development subsidiary (HCAR No. 23082, October 4, 1983), its right to receive from Seneca the repayment of $3.2 million in emergency loans. Additionally, it was authorized to convey to Empire certain oil and gas properties, all in return for 500 shares of Empire common stock, with a $10 par value. Supply could then declare these shares a dividend to National.

Seneca was authorized to convey to Empire certain oil and gas properties in exchange for the discharge of debt in an equal amount. The remaining undischarged debt was to be paid in cash, or if the book value thereof exceeded $3.2 million, Empire would pay the difference to Seneca in cash. All property valuations herein were to be determined as of September 30, 1984.

The Commission has now been informed that certain dollar and acreage limits contained in the application-declaration, as heretofore amended, inadvertently omitted certain assets, and should accordingly be adjusted. In particular, Supply proposes to transfer to Empire title in up to 17 joint operating agreements, not in excess of 20,000 acres; and 175 farmout agreements, not in excess of 175,000 acres. The agreements have no aggregate net book value. Seneca proposes to transfer to Empire certain fee properties, and oil and gas rights and leaseholders, located in New York and Pennsylvania. The acreage will not exceed 500,000, and the net book value will not exceed $1.5 million. Additionally, Seneca will convey to Empire up to 12 farmout agreements, and up to 9,000 acres with no aggregate net book value. The applicants-declarants require an additional year, until September 30, 1986, to accomplish the authorized transfers.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by October 3, 1985 to Secretary, Securities and Exchange Commission, Washington, DC, 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service by affidavit or, in case of an attorney at law, by certificate, should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice of order issued in this matter. After said date the amended application-declaration, as filed or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-22196 Filed 9-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23825; 70-7155]

Massachusetts Electric Co. Notice of Proposal To Provide Conservation Loans

September 9, 1985.

Massachusetts Electric Company ("MEC") 25 Research Drive, Westborough, Massachusetts 01582, an electric utility subsidiary of New England Electric System, a registered holding company, has filed with this Commission an application pursuant to sections 9(a)(1) and 10 of the Public Utility Holding Company Act of 1935 ("Act").

MEC proposes to institute a pilot conservation program in two "enterprise zones" encompassing twenty towns within the Commonwealth of Massachusetts. The program includes a residential conservation program under which customers would arrange to have energy saving measures installed by eligible contractors who would be paid with funds borrowed by the customers from MEC. MEC will disburse the funds directly to the contractor selected by the customer to install such measures. The annual interest on loans under this program will be 10%. The term for repayment of all loans shall range from six months to five years at the customer's option. Evidence of the debt will be in the form of unsecured notes given to MEC by the eligible customers.

MEC estimates that the maximum amount of loans to be outstanding in connection with the financing of conservation measures under this pilot program will not exceed $2,000,000 at any one time. Such loans will be financed by MEC with its own funds obtained through normal operations.

The application and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to

comment or request a hearing should submit their views in writing by October 3, 1985 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy of the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as now or as it may be amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-22197 Filed 9-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14709; File No. 812-6011]

Application and Opportunity for Hearing; Metropolitan Tower Life Insurance Co., et al.

September 10, 1985.

Notice is hereby given that Metropolitan Tower Life Insurance Company (the "Company"), Metropolitan Tower Separate Account One ("Separate Account One"), and Metropolitan Tower Separate Account Two ("Separate Account Two"), at One Madison Avenue, New York, New York 10010, filed an application on December 21, 1984, and an amendment thereto on August 5, 1985, requesting, pursuant to section 6(c) of the Act, an amendment to a previous exemptive order to exempt the Company and Separate Account One from sections 9(a), 13(a), 15(a), and 15(b) of the Investment Company Act of 1940 (the "Act") to the same extent as provided in Rule 6e-2(b)(15) (i), (ii), and (iii), notwithstanding the use of the same funding medium for both scheduled and flexible premium variable life insurance policies, and requesting an exemptive order from Rule 6e-3(T)(c)(1) to the extent necessary to permit allocations of amounts provided for investment under flexible premium variable life insurance policies issued by the Company to be allocated to the Company's general account. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the text of relevant provisions.

Applicants state that the Company, a wholly-owned subsidiary of Metropolitan Life Insurance Company ("Metropolitan Life"), is a stock life insurance company organized under Delaware law in 1982, and Separate Account One is a separate investment account of the Company that is organized as a unit investment trust under the Act. Applicants state that the Company and Separate Account One Offer and sell scheduled premium variable life insurance policies funded through Separate Account One, and that divisions of Separate Account One invest solely in shares of the portfolios of Metropolitan Series Fund, Inc., (the "Fund"), a management investment company of the series type, organized under Maryland law in 1982. Metropolitan Life serves as the investment manager of each of three portfolios of the Fund, and State Street Research & Management Company, a wholly-owned subsidiary of Metropolitan Life, serves as sub-investment manager with respect to the Fund's Growth and Income Portfolios.

Applicants state that the Company and Separate Account One rely generally on the exemptions afforded by Rule 6e-2 under the Act with respect to their schedule premium variable life insurance ("VLI") policies. Applicants state that Rule 6e-2(b)(15) (i), (ii), and (iii) provide partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the Act and that the Company and Separate Account One obtained from the Commission an exemptive order to ensure that these exemptions would be available if, in addition to Separate Account One, separate accounts funding variable annuity ("VA") contracts invested in the Fund.

Applicants state that the Company has filed with the Commission a registration statement relating to a flexible premium VLI policy, which will be issued through Separate Account Two, a registered unit investment trust, and funded through the Fund. Applicants state that the exemptions in Rules 6c-3 and 6e-3(T) will generally be relied upon with respect to these or other flexible premium VLI policies issued by the Company or its affiliates. Applicants represent that Rule 6e-3(T)(b)(15) specifically permits the flexible premium VLI policies to rely on its exemptions from Sections 9(a), 13(a), 15(a), and 15(b) notwithstanding that VA contracts and scheduled premium VLI policies will also be funded through the Fund. However, Applicants seek to amend the order previously obtained by the Company and Separate Account One so that exemptive relief comparable to that afforded by Rule 6e-2(b)(15) (i), (ii) and (iii) will be afforded to scheduled premium VLI policies issued by the Company or its affiliates, notwithstanding that flexible premium VLI policies (as well as VA contracts) also will be funded through the Fund. Applicants state that the literal terms of Rule 6e-2(b)(15) may require this relief since that exemption is available only in connection with an underlying fund which offers its shares "exclusively to variable life insurance separate accounts," and Applicants submit that the term "variable life insurance separate accounts" for this purpose could be read to exclude separate accounts used to fund flexible premium VLI policies.

Applicants assert that applying Section 9(a) in full to the Fund merely because it will not be used to fund flexible premium VLI policies would have anomalous results because of the additional number of individuals who would have to be monitored for compliance and the costs of continually monitoring these persons. Applicants assert that the Commission should not administer Rule 6e-2(b)(15)(iii), which provides an exemption from sections 13(a), 15(a), and 15(b), so as to make its exemptive relief unavailable merely because flexible premium VLI separate accounts invest in the Fund. Applicants assert that the Commission deemed this exemption, which permits the Company to disregard voting instructions of policy owners in certain instances, necessary to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposal reasonably could be expected to increase the risks undertaken by the life insurer. Applicants further assert that the Commission will in no way compromise the regulatory goals of sections 9(a), 13(a), 15(a), or 15(b) by granting the requested exemptions, and that by permitting flexible premium VLI policies to be funded through the Fund, the Commission will make possible the elimination of duplication of start-up and administrative expenses, which ultimately must be borne by the purchasers of insurance products. Further, Applicants assert that permitting more products to be funded through the Fund should increase the Fund's assets, thereby making effective portfolio management strategies easier

to implement and promoting other economies of scale.

Applicants state that the previous exemptive order was subject to certain conditions, but in order that the Company and Separate Account One not be subject to two sets of differing conditions, Applicants propose that the amended order be subject to conditions which are in general adapted from the conditions in Rule 6e–3(T)(b)(15). The conditions are summarized as follows: (1) The Fund's Board of Directors (a majority of whom shall not be "interested persons" of the Fund) will monitor the Fund for the existence of any material irreconcilable conflict between the interests of owners of VA contracts and scheduled premium or flexible premium VLI policies for which the Fund serves as an investment medium, (2) The life insurers whose separate accounts invest in the Fund will be responsible for reporting any potential or existing conflicts to the directors, (3) if a material irreconcilable conflict exists, such insurance companies will, at their own expense, take whatever action is necessary to remedy such conflict, including establishing a new registered management investment company and segregating the assets underlying the VA contracts and the scheduled or flexible premium VLI policies, and (4) the Fund's prospectuses will disclose certain matters with regard to its funding both VA contracts and scheduled and flexible premium VLI policies. Applicants represent that should amendments to rule 6e–2 be adopted specifically permitting flexible premium VLI policies to invest in the Fund, Applicants will thereafter rely on and observe any conditions and requirements contained in said amendments, rather than continuing to rely on the amended exemptive order.

Applicants also request an exemption from Rule 6e–3(T)(c)(1) to resolve any uncertainty as to whether the definition of "flexible premium variable life insurance contract," as defined in that provision, includes flexible premium VLI policies under which policy owners may allocate amounts available for investment to the issuing company's general account. Applicants state that under the policies currently proposed to be issued through Separate Account Two, policyowners will be able, subject to certain limitations, to allocate or transfer all or part of the amount provided for investment to the general account of the Company. Applicants assert that the Commission's past administration of variable life insurance pursuant to both Rules 6e–2 and 6e–3(T) and administration of variable annuities, among other matters, are consistent with a Commission intention to have Rule 6e–3(T) permit allocation of net premiums to general accounts under flexible premium variable life insurance policies. Applicants further assert that the general account option will provide a beneficial or desirable alternative for many policyowners, and represent that all charges imposed in connection with use of the general account option will be computed at the same rates and in the same manner as the corresponding charges in connection with separate account investment options under the flexible premium variable policies. Applicants state that they understand that any Commission order granting exemptive relief in this regard will not constitute a judgment of the Commission as to the propriety or impropriety of registration or non-registration of either interests in the general account as securities under the Securities Act of 1933 or the general account as an investment company under the Investment Company Act. Accordingly, Applicants request an exemptive order pursuant to section 6(c) of the Act from Rule 6e–3(T)(c)(1) to the extent necessary to permit allocations of amounts provided for investment under flexible premium VLI policies issued by the Company to be allocated to the Company's general account.

Notice is further given that any interested person wishing to request a hearing on the application may, not later then October 4, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request should be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–22198 Filed 9–16–85; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSIONS

[Release No. 35–23820; 70–6951]

New England Electric System et. al; Proposal to Increase Short Term Borrowing

September 6, 1985.

New England Electric System ("NEES"), a registerd holding company, and five of its subsidiaries, Grante State Electric Company, Massachusetts Electric Company, The Narragansett Electric Company, New England Power Company ("NEP"), and New England Power Service Company, all located at 25 Research Drive, Westbrough, Massachusetts 01582, have filed a post-effective amendment to the application-declaration in this proceeding with this Commission pursuant to sections 6(a), 7, 9(a), 10, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 45 and 50(a)(5) thereunder.

By order of the Commission dated November 19, 1984 (HCAR No. 23484), authorization was extended through December 31, 1987 for NEP to borrow up to $195 million outstanding at any one time from banks, and the NEES Money Pool and through dealers in commercial paper. NEP now requests an increase in such short-term borrowing authority to up to $300 million outstanding at any one time.

As previously described in this proceeding, NEP was required to demonstrate to the Seabrook Joint Owners an ability to finance its share of the costs of complete Seabrook Unit 1. NEP had planned to issue up to $100 million of long-term debt and/or other permanent capital. NEP does not currently have regulatory approval for any such long-term financing. As a result, NEP now plans to finance its share of Seabrook Unit 1 through a combination of internally generated cash and temporary external financing sources.

In the event that NEP experiences increased construction costs and/or decreased cash flow due to (i) extended delays in the current schedules for completion of two jointly-owned nuclear generating units in which it participates, (ii) certain possible adverse regulatory rulings or legislation, and/or (iii) passage of proposed tax legislation, NEP would require significant additional external funds. Pending receipt of regulatory approvals to issue long-term securities, these external funds would have to be in the form of additional short-term borrowings. This could raise the level of NEP's short-term debt $300 million.

The amended application-declaration and any amendments thereto is available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by October 3, 1985 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicants-declarants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this manner. After said date, the amended application-declaration, as filed or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–22199 Filed 9–16–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14710; File No. 812–6143]

Application and Opportunity for Hearing; Providentmutual Variable Life Insurance Co., et al.

September 10, 1985.

Notice is hereby given that Providentmutual Variable Life Insurance Company (the "Company"), Providentmutual Variable Life Growth Account ("Growth Account"), Providentmutual Variable Life Money Market Account ("Money Market Account"), Providentmutual Variable Life Bond Account ("Bond Account") (the latter three collectively referred to as the "Separate Accounts"), and Market Street Fund, Inc. (the "Fund") (together referred to as "Applicants"), at 1600 Market Street, Philadelphia, Pennsylvania 19103, filed an application on July 1, 1985, and amendment thereto on September 5, 1985, requesting an order of the Commission (1) pursuant to section 17(b) of the Investment Company Act of 1940 (the "Act") granting an exemption from section 17(a) of the Act to the extent necessary to permit each of the Separate Accounts to transfer its portfolio assets to the Fund in return for shares of a corresponding portfolio of the Fund and to permit a simultaneous reorganization, (2) pursuant to section 17(d) of the Act and Rule 17d–1 thereunder to the extent necessary to permit each of the Separate Accounts to transfer its portfolio assets to the Fund in return for shares of a corresponding portfolio of the Fund and to permit a simultaneous reorganization, and (3) pursuant to section 6(c) of the Act to exempt certain life insurance companies and variable life insurance separate accounts from sections 9(a), 13(a), 15(a), and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit shares of the Fund to be sold to variable annuity and variable life insurance separate accounts of the Company and of affiliated and unaffiliated life insurance companies, and to exempt the Company and the Separate Accounts from sections 26(a) and 27(c)(2) to the extent necessary to permit the deduction of the cost of insurance in connection with the offering of scheduled premium variable life insurance contracts. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and rules thereunder for the text of relevant provisions.

Applicants state that the Company is a stock life insurance company organized in 1981 under the laws of the Commonwealth of Pennsylvania, and is a wholly-owned subsidiary of Provident Mutual Life Insurance Company of Philadelphia ("Provident Mutual"). Applicants state that the Company offers a scheduled premium variable life insurance policy. The Separate Accounts, which were established by the Company in 1983 under Pennsylvania law, are separate investment accounts to which assets are allocated to support benefits payable under variable life insurance policies, and are registered as open-end diversified management investment companies. The Separate Accounts receive investment advice from Provident Mutual Investment Management Company (the "Adviser"), all the outstanding voting stock of which is owned by Provident Mutual through a wholly-owned subsidiary. The Adviser employs Shearson/American Express Asset Management, Inc., to provide it with investment advice to be used in connection with the Growth Account. The Fund, which was organized under Maryland law on March 21, 1985, is an open-end diversified management investment company that currently has four portfolios: the Growth Portfolio, the Money Market Portfolio, the Bond Portfolio, and the Managed Portfolio. Applicants submit that the investment objectives, policies, and restrictions of these portfolios will be identical to those of the corresponding Separate Accounts following adjustments, subject to policyowner approval, to the investment policies and restrictions of the Separate Accounts immediately prior to the reorganization.

Applicants state that subject to approval by the Separate Accounts' policyowners, after the Separate Accounts modify their investment policies and restrictions to permit additional types of investments, the Separate Accounts will be reorganized as unit investment trusts, which shall be registered collectively as a single unit investment trust. The Separate Account will invest exclusively in shares of a corresponding portfolio of the Fund, which will mirror the amended investment policies and restrictions of the corresponding Separate Account immediately prior to the reorganization. Another separate account organized as a unit investment trust also will be registered with the Commission as part of the registered unit investment trust and will invest in the Fund's Managed Portfolio. The registration statement of the Growth Account will be amended to reflect the proposed reorganization, and following the reorganization the Money Market and Bond Accounts will file an application to deregister under section 8(f) of the Act. Applicants represent that the Fund will succeed to the portfolio assets and related liabilities of the Separate Accounts and will be the continuing funding vehicle for the scheduled premium variable life insurance policies offered by the Company. Applicants further state that in the future, shares of the Fund will be available to the unit investment trusts and to other separate accounts of the Company, Provident Mutual, and other affiliated insurance companies, and may be made available to separate accounts of unaffiliated insurance companies to fund variable contracts.

Applicants submit that, pursuant to an Agreement and Plan of Reorganization, ("the Plan") on the proposed effective date of the reorganization, the Company will transfer the portfolio assets and related liabilities of each of the Separate Accounts to the Fund in return for shares of a corresponding portfolio of the Fund. The number of shares of the applicable portfolio to be issued to each Separate Account will be determined by dividing the value of the net assets to be transferred by each Separate Account by the initial per share value of the portfolio Fund shares, which has been established at $10.00 for the Growth Portfolio, $1.00 for the Money Market

Portfolio, and $10.00 for the Bond Portfolio. Applicants submit that the interests of all policyowners in the Growth, Money Market, and Bond Accounts immediately following the reorganization will be equivalent to their interests in the same Accounts immediately prior to the reorganization. Applicants submit that the Company will assume all costs to be incurred in effecting the reorganization and that the reorganization will not have any adverse economic impact on policyowners' interests under the Company's existing scheduled premium variable life insurance policy. Further, the Applicants submit that the reorganization will not alter the total amount of fees and charges assessed, directly or indirectly, under each such existing policy. Applicants represent that the Fund will bear certain operating expenses, such as custodial expenses, not currently charged against the Separate Accounts, but that with respect to the Company's scheduled premium variable life insurance policies currently outstanding and all future policies which may be issued on the same policy form, the Company will make adjustment in policy values to fully offset the effect of any and all expenses of a type or in an amount which would not have been borne by the Separate Accounts had the reorganization not occurred.

Section 17 Relief

Applicants state that each Applicant may be deemed to be an affiliated person of each other or an affiliated person of an affiliated person under section 2(a)(3) of the Act, and that the reorganization may be deemed to entail one or more purchases or sales of securities or property between and among certain Applicants. Therefore, Applicants assert, the Plan and the reorganization may require an exemption from section 17(a) of the Act pursuant to section 17(b) of the Act. Applicants represent that the terms of the proposed transactions are reasonable and fair, do not involve overreaching, are consistent with the investment policies of each Separate Account, and are consistent with the general purposes of the Act. Applicants submit that the proposed reorganization will benefit existing and future owners of the Company's scheduled premium variable life policies by increasing the current investment opportunities and facilitating the future expansion of investment alternatives under the existing policy. To the extent the Fund is used to fund other variable contracts of the Company as well as variable contracts issued by other participating companies, Applicants assert that policyowners will benefit from the economies of scale with regard to the level of fixed administrative expenses, thereby resuting in a reduced ratio of fees and expenses.

Applicants assert that the reorganization may be deemed to be a transaction that is prohibited under section 17(d) and may require an order pursuant to Rule 17d–1 thereunder. Applicants submit that they believe that the participation of each Account in the proposed Plan will be on a equal basis and will not result in advantages to any one of the Separate Accounts to the detriment of any other Separate Account. Applicants assert that there should be no liquidation of assets of any of the Separate Accounts or the Fund as a result of the reorganization, that none of the Separate Accounts or the Fund will incur any extraordinary costs such as brokerage commissions in effecting the transfer of assets, and that none of the Separate Accounts or the Fund will bear any of the costs of the reorganization. Further, Applicants assert that the exchange of portfolio securities of each Separate Account for corresponding Fund shares will be effected on the same basis in conformity with section 22(c) of the Act and Rule 22c–1 thereunder, so there will be no dilution of value for any of the Separate Accounts or the Fund. Applicants further assert that although the voting rights under the new unit investment trust structure will be different from the voting rights under the Separate Account structure, Applicants believe that these rights, in all fundamental respects, will be unaffected since, under the proposed Plan, the Company will vote the shares in accordance with instructions from policyowners in proportion to their respective interests in such shares at the time of the vote.

Mixed Funding and Shared Funding Relief

Applicants state that in the future, the Fund may offer its shares to separate accounts of the Company, Provident Mutual, and to any other affiliated or unaffiliated insurance companies in order to fund variable annuity contracts, single premium variable life insurance contracts, scheduled premium variable life insurance contracts, and flexible premium variable life insurance contracts.

Applicants request exemptive relief from sections 9(a), 13(a), 15(a), and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) to the extent necessary to permit shares of the Fund to be offered and sold to both variable annuity and variable life insurance separate accounts ("mixed funding") and to permit shares of the Fund to be sold to separate accounts of unaffiliated life insurance companies ("shared funding"). Applicants seek this relief for themselves and for the class consisting of life insurers and separate accounts investing in the Fund. Applicants state that they believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investor and purposes fairly intended by the policy and provisions of the Act.

With respect to section 9(a), Applicants believe it is unnecessary to apply that section to the individuals in various unaffiliated insurance companies that may utilize the Fund as the funding medium for variable contracts, where those persons play no role in the management or administration of the Fund. Under the relief requested, Applicants submit, section 9 would still work and insulate the Fund from those individuals who are disqualified under the Act.

Applicants assert that the Commission deemed the exemption from sections 13(a), 15(a) and 15(b) in Rule 6e–2(b)(15) necessary to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer. Applicants further assert that Rule 6e–3(T)'s corresponding provisions were undoubtedly adopted in recognition of the same factors.

Applicants assert that the rights of an insurance company or of a state insurance regulator to disregard policyowners' voting instructions are not inconsistent with mixed funding of different insurance products or shared funding by unaffiliated insurers. In any event, Applicants assert that the conditions in the application are designed to safeguard against any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer will be permitted to withdraw its separate account's investment in the Fund, and this provision will be provided for in agreements that will be entered into by participating insurers with respect to participation in the Fund. Further, Applicants assert that if a particular insurer's disregard of voting instructions could conflict with the majority of policyowner voting instructions, then if the insurer's judgment represents a

minority position or would preclude a majority vote, the insurer will be permited to withdraw its separate account's investment in the Fund. Applicants represent that this provision will be provided for in the agreements entered into with respect to participation in the Fund.

Applicants submit that making the Fund available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result in increased competition with respect to both variable contract design and pricing. Applicants further assert that mixed and shared funding should benefit owners of variable contracts by eliminating a significant portion of the cost of establishing and administering separate funds, and that granting the requested relief should result in an increased amount of assets available for investment by the Fund. This may benefit owners of variable contracts by promoting economies of sale, by permitting greater safety through greater diversification, and by making the addition of new portfolios of the Fund more feasible.

Applicants state that to the extent required by the Commission, they consent to certain conditions, which are summarized as follows: (1) A majority of the Board of Directors of the Fund shall consist of persons who are not "interested persons" of the Fund. (2) The Board will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the policyowners of all separate accounts investing in the Fund. An irreconcilable material conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretation letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any series are being managed; (e) a difference in voting instructions given by participating companies or by owners of variable annuity contracts and owners of variable life insurance contracts; or (f) a decision by an insurer to disregard the voting instructions of policyowners. (3) Participating insurance companies and the Adviser will report any potential or existing conflicts to the Board of Directors of the Fund. Participating insurance companies and the Adviser will be responsible for assisting the Board in carrying out its responsibilities under these conditions, by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever policyowner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all insurers investing in the Fund under their agreements governing participation in the Fund and such responsibilities will be carried out with a view only to the interest of the policyowners. (4) If it is determined by a majority of the Board of the Fund or a majority of its disinterested directors that a material irreconcilable conflict exists, the relevant insurance companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors) take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (1) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any series and reinvesting such assets in a different investment medium, including another series of the Fund, or submitting the question whether such segregation should be implemented to a vote of all affected policyowners and, as appropriate, segregating the assets of any appropriate group that votes in favor of such segregation, or offering to the affected policyowners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all participating insurance companies under their agreements governing participation in the Fund and these responsibilities will be carried out with a view only to the interests of policyowners. The Board shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Fund or the Adviser be required to establish a new funding medium for any variable contract. No participating insurance company shall be required by this condition 4 to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of policyowners materially adversely affected by the irreconcilable material conflict. (5) The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly in writing to all participating insurance companies. (6) Participating insurance companies will provide pass-through voting privileges to all variable contractowners so long as the Commission continues to interpret the Act to require pass-through voting privileges for variable contractowners. Participating insurance companies shall be responsible for assuring that each of their separate accounts participating in the Fund calculates voting privileges in a manner consistent with other participating insurance companies, and this shall be a contractual obligation of all participating insurance companies. The Company will vote shares of the Fund held in the Separate Accounts in accordance with instructions received from policyowners. The Company also will vote shares of the Fund held in the Separate Accounts for which no timely instructions from policyowners are received, and shares of the Fund held in its general account, in the same proportion as those shares for which instructions are received. (7) The Fund will notify all participating insurance companies that the prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. (8) The Fund and/or the participating insurance companies shall comply with Rules 6e–2, 6e–3(T), and, if adopted, 6e–3, if and to the extent they are amended to provide exemptive relief with respect to mixed or shared funding. (9) All reports received by the Fund's Board and all action with regard to a conflict will be properly recorded in the minutes of the Board or other appropriate records. Applicants further represent that the Fund's By-Laws provide that the Fund will conform its investment objectives, policies and restrictions to the insurance law requirements of the Commonwealth of Pennsylvania, and an insurer whose actions conflict with these requirements will be presumed to be the insurer creating the irreconcilable material conflict.

Other Relief

Applicants seek additional relief pursuant to section 6(c) of the Act, exempting the Company and the Separate Accounts from the provisions of sections 26(a) and 27(c)(2) of the Act to the extent necessary to permit the deduction of the cost of insurance. Applicants state that a charge for the cost of insurance protection is deducted from the cash value daily and from the

amount provided for investment annually.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 2, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request should be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with request.

After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–22200 Filed 9–16–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–23827; 70–7141]

Vermont Yankee Nuclear Power Corp. Proposal To Issue Short Term Debt; Exception From Competitive Bidding

September 9, 1985

Vermont Yankee Nuclear Power Corporation ("VYNPC"), R.D. 5, Ferry Road, Box 169, Brattleboro, VT 05301, a wholly owned subsidiary of New England Electric System and Northeast Utilities, both registered holding companies, has filed an application with the Commission subject to section 6(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 50(a)(2) and 50(a)(5) thereunder.

VYNPC proposes to establish a revolving credit facility in an aggregate principal amount at any one time outstanding of not more than $75 million for a period of five years. Any borrowings under the revolving credit facility will be evidenced either by promissory notes ("Notes") to a group of major international banks ("Banks"), pursuant to a Eurodollar Credit Agreement, with Societe Generale acting as agent bank ("Agent Bank") for the other banks in the group, or by commercial paper notes ("Commercial Paper") to be sold to Paine Webber, Inc., as dealer, for resale to its cutomers. The Commercial Paper would be supported by irrevocable letters of credit issued by the Agent Bank which will result in the Commercial Paper having the highest rating and therefore the lowest cost. The Notes and Commercial Paper will be secured by a security agreement providing a security interest in VYNPC's nuclear fuel at the plant site, including assemblies ready for loading, fuel in the core and spent fuel. The purpose of the financing is to establish a revolving credit facility, which replaces and expands an existing facility, for the purposes of meeting VYNPC's anticipated short term financing requirements for its general corporate expenditures, including fuel costs, spent fuel disposal payments and plant additions.

The letter of credit facility would require a fee of ½ of 1% per annum on the average daily outstanding amount of letters of credit. VYNPC will also pay a commitment fee during the term of the credit facility of ¼ of 1% per annum of the unused portion of the total facility and will pay additional fees and expense.

The revolving credit facility would permit VYNPC to select from time to time interest periods of one, two, three or six months' duration for each revolving credit loan. The interest rate on each revolving credit loan will be either the London Inter-Bank Offering Rate ("LIBOR") for the interest period selected plus ½ of 1%, or the adjusted certificate of deposit rate plus ⅝ of 1%; in each case the interest rate being established by the arithmetic average of the rates of four representative lending banks.

Based on prevailing rates on July 11, 1985: assuming a one-month LIBOR of 7.81% and borrowings of $75 million, the effective cost of borrowings would be 8.31%; assuming a one-month ajusted certificate of deposit rate of 7.7% and borrowings of $75 million, the effective cost of borrowings would be 8.33%; assuming a 30-day commercial paper rate of 7.55%, use of the letter of credit facility would have an effective cost of 8.30%. To the extent that these borrowings are participated out to other banks the cost to VYNPC would be reduced. VYNPC does not intend to utilize the letter of credit facility if the effective cost would exceed that of the revolving credit facility. VYNPC has the right at any time to terminate in whole or reduce in part (by $5 million decrements) the unused portion of the facility.

VYNPC requests an exception from the competitive bidding requirements of Rule 50 for the proposed sale of commercial paper, pursuant to paragraph (a)(5).

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by October 3, 1985, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–22201 Filed 9–16–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No PA–10]

Privacy Act of 1974, Modification of System of Records

AGENCY: Securities and Exchange Commission.

ACTION: Notification of modification of an existing system of records.

SUMMARY: The Commission is modifying an existing system of records which was previously identified in the **Federal Register**, 41 FR 41591, on September 22, 1976, as SEC–49, Office of Personnel Employment and Staffing Files.

EFFECTIVE DATE: November 18, 1985.

FOR FURTHER INFORMATION CONTACT: Carol K. Scott (202–272–2474) or Jeanne Carter (202–272–2447), Office of the General Counsel.

SUPPLEMENTARY INFORMATION: The system of records known as the "Office of Personnel Employment and Staffing Files" contains information on applicants for SEC employment and present and past employees. The system inlcudes nine categories of records, only one of which, category (h), is affected by the planned modification. Category (h) includes information concerning an employee's work history at the Commission (e.g., promotions, salary, awards, etc.). This information is maintained by each division and office, and each regional and branch office only on the employees assigned to the specific unit. Currently, this information is maintained on employee record cards.

Following the modification, an office will maintain this information on either employee records cards or on micro computer diskettes.

The modification allows the Commission's divisions and offices to utilize computerized recordkeeping. As a result, the system will be less cumbersome and time-consuming to use.

The Commission is amending SEC–49 to reflect this enhancement to the Office of Personnel Employment and Staffing Files. The Commission is also making several non-substantive changes, such as substituting the name of the Office of Personnel Management for the Civil Service Commission, which has been abolished, wherever it appears. The applicable changes are set forth below. The amended portions of the notice are italicized.

1. In "Categories of records in the system," add that records may be maintained on micro computer diskettes, and substitute the Office of Personnel Management for the Civil Service Commission.

2. In "Routine uses of records maintained in the system, including categories of users and the purposes of such uses," substitute the Office of Personnel Management for the Civil Service Commission.

3. In "Storage," delete reference to "Kardex," which is no longer in uses, as the particular type of file drawer in which records are kept; add that records in category (h) may be kept in diskette jackets.

4. In "Safeguards," add that micro computer diskettes are kept under lock, as are employee record cards; and clarify that it is the national office in Washington, D.C., which has a 24-hour security guard.

5. In "System manager(s) and address," change the street address of the Commission.

6. In "Notification procedure," change the street address of the SEC Public Reference Room, and substitute the Privacy Act Officer as the person to whom written requests should be mailed.

7. In "Record access procedures," substitute the Privacy Act Officer as the person to whom access inquires should be addressed.

SEC–49

SYSTEM NAME:

Office of Personnel Employment and Staffing Files—SEC.

SYSTEM LOCATION:

Securtities and Exchange Commission, Washington, D.C. 20549. (Items (h) and (i) below are kept in Washington, D.C. headquarters and in the Commission's Regional and Branch Offices across the country. Each Regional and Branch Office maintains records on only the employees assigned to it).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on applicants for SEC employment and present and past employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system of records includes the following category of records: (a) Applicant files (Standard Forms 171 and resumes, attorney supplements to applications, applicant correspondence and evaluations, and summer employment files); (b) Official personnel folders *(Office of Personnel Management Files);* (c) Service record cards; (d) Merit promotion posting files, including supervisory appraisals for jobs advertised under SEC Merit Promotion Program; (e) Request to *Office of Personnel Management* for Schedule C personnel actions; (f) Chronological copies of personnel actions (Standard Forms 50); (g) *Office of Personnel Management* clerk-typist and clerk-steno examination papers for applicants tested under SEC's delegated recruiting authority; (h) Division/Office/Region employee record cards *or micro computer diskettes;* (i) Regional Office employee files, including copies of applications and notifications of personnel action (Standard Forms 50) on the employee concerned.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR, Sections 213, 293, 302, and 335; 5 U.S.C. 3109 and Civil Service Regulations promulgated thereunder.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and the information contained in these records may be used as follows;

1. Records in category (a) above are used by SEC staff to make referrals to supervisors or administrative assistants in offices with vacancies for which applicants may be considered. Offices may retain copies of applications/resumes and evaluations of candidates they interview whom they feel may be contenders for employment offers later in the year.

2. SEC staff uses records in category (b) above for (i) retention of official personnel documents; (ii) verification of employment; (iii) determination of qualifications for jobs and elegibility for training; (iv) processing of personnel actions.

3. SEC staff uses records in category (c) above for (i) computation of personnel strength of divisions/offices; (ii) verification of employment for credit checks or job applications; (iii) recording of personnel actions processed.

4. SEC staff uses records in category (d) above to maintain records required by *the Office of Personnel Management* of competitive promotion actions, including (i) records to determine how an announcement for a particular job reads; (ii) records for statistical reports; (iii) records for program effectiveness studies (to send questionnaires to supervisors who made selections under the program, for example). Supervisory appraisals are scored and used in determining employee's overall standing among all applicants for the job; they are sent to selecting supervisors for review if the employee is certified for consideration (interview).

5. SEC staff uses records in category (e) above to identify *Office of Personnel Management* control numbers for Schedule C positions and to aid in preparing new submissions.

6. SEC staff uses records in category (f) above for statistical reports.

7. SEC staff forwards records in category (g) above to the *Office of Personnel Management* at the end of each month if the applicant is not hired; if applicant is hired, records are retained for one year and then destroyed.

8. SEC staff uses records in category (h) above to monitor personnel actions concerning their staffs (i.e., date of employee's last promotion, employee's position description number, etc.) and to record date personnel action requests and reports were forwarded to the Office of Personnel.

9. SEC Regional Offices use records in category (i) above as a reference in preparing personnel actions requests on employees, determining employee eligibility for training or career development counseling and for back-up data in preparing award nominations, etc.

10. Any of the records described above may be used by the Commission in connection with any action or proceeding brought by an employee before another agency or a court of law to review personnel action taken by the Commission or the failure by the Commission to take action.

11. In any proceeding where the Federal securities laws are in issue or in which the Commission or past or present members of its staff is a party or otherwise involved in an official capacity.

12. A record from this system of records may be disclosed as a "routine use" to a Federal, State or local governmental authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

13. A record from this system of records may be disclosed to a Federal, State or local governmental authority, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

14. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate specific individuals for personnel research or other personnel management functions.

15. To aid in responding to inquiries from an employee, Member of Congress, the press or others concerning personnel action taken with respect to a specified employee or employees.

Records in this system may, in the discretion of the Commission's staff, be disclosed to any person during the course of any inquiry or investigation conducted by the Commission staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of inquiry.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

The information contained in this system of records will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular A–19 at any stage of the legislative coordination and clearance process as set forth in that circular.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in categories (a) and (d)–(f) are kept in folders in file cabinets. Records in categories (b) and (g) are kept in a Diebold power file. Records in category (c) are kept in file drawers. Records in category (h) are kept in file drawers, file boxes *or diskette jackets*. Records in category (i) are kept in folders in locked cabinets.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Records in categories (a)–(g) are pulled and refiled by Office of Personnel staff only and that Office is locked each evening. Access to official Personnel Folders is limited to employee concerned, his/her supervisors and administrative assistant, supervisors/administrative assistants considering him/her for a job or employee's designated representative; access by other individuals on official business is on a need-to-know basis as approved by the Director or Assistant Director of Personnel. Personnel folders are locked in the Diebold file each evening. Division/Office Directors and Regional Administrators are responsible for keeping employee record cards, *micro computer diskettes* or employee files (Regional Offices only) under lock and for assuring that their confidentially is maintained. The *national office in Washington, D.C.* has a 24-hour security guard.

RETENTION AND DISPOSAL:

Records in category (a) are retained 6 months and then destroyed. Records in caregory (b) are fowarded to Federal Records Center 30 days after the employee leaves the SEC by retirement, resignation or death or forwarded to agency to which employee transfers as soon as new agency requests them. Records in category (c) are retained indefinitely. Records in category (d) are retained two years and then destroyed. Records in category (e) are retained indefinitely. Records in category (f) are retained 5 years and then destroyed. Records in category (g) are sent to the *Office of Personnel Management* at the end of the month if the applicant is hired. If the applicant is not hired, records are retained one year and then destroyed. Records in category (h) are retained indefinitely. Records in category (i) are retained while employee is assigned to office and forwarded to new SEC office if he/she transfers or destroyed if employee leaves the SEC.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be made in person during normal business hours at the SEC Public Reference Room at 450 Fifth Street NW., Washington, D.C., or by mail addressed to the Securities and Exchange Commission, *Privacy Act Officer*, Washington, D.C. 20549.

RECORD ACCESS PROCEDURE:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contract or address their inquiries to the Securities and Exchange Commission, *Privacy Act Officer*, Washington, D.C. 20549.

CONTESTING RECORD PROCEDURES:

See Record access procedures above.

RECORD SOURCE CATEGORIES:

Records in category (a) are obtained from applicant concerned and interviewer evaluating the applicant. Records in category (b) are obtained from employee and supervisors concerned. Records in category (c) are obtained from official personnel folder of the employee concerned. Records in category (d) are obtained from employees applying for job and their supervisors. Records in category (e) are obtained from employees and supervisors concerned. Records in category (f) are obtained from employees and supervisors concerned. Records in category (g) are obtained from applicant. Records in category (h) are obtained from official personnel actions, employees and supervisors concerned. Records in category (i) are obtained from official personnel actions, employees and supervisors concerned.

By the Commission.

John Wheeler,

Secretary.

September 11, 1985.

[FR Doc. 85–22210 Filed 9–16–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-22386; File No. SR-CBOE-85-31]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc.; Relating to Discretionary Transactions

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that July 25, 1985 the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Note: Additions are italicized.

Discretionary Transactions

Rule 6.75. No Floor Broker shall execute or cause to be executed any order or orders on this Exchange with respect to which such Floor Broker is vested with discretion as to: (1) the choice of the class of options to be bought or sold, (2) the number of contracts to be bought or sold, or (3) whether any such transactions shall be one of purchase or sale; however, the provisions of this paragraph shall not apply to any discretionary transaction executed by a Market-Maker for an account in which he has an interest. *Under normal market conditions, and in the absence of a "not held" instruction, a Floor Broker may not exercise time discretion on market or marketable limit orders and shall immediately execute such orders at the best price or prices available.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to codify the rule that floor brokers should not hold marketable non-discretionary agency orders and work them against other orders in their deck, instead of immediately executing them. By codifying this rule, the Exchange believes off-floor orders will be handled in a more expeditious and uniform fashion. This is consistent with existing Exchange rules, including Rules 8.8 (separation of principal and agency functions) and 6.53(a) (Market order definitions as an order to be executed at the best price obtainable when the order reaches the post).

A customer has a reasonable expectation of the soonest possible execution on his order. His order, if marketable, therefore, should be executed and not held back by the floor broker to aid the floor broker in serving as the contraside of the other orders represented by the broker.

On the other hand, floor brokers may require time discretion to acquit their obligation of due diligence to customer orders in unusual market conditions, including where he believes the quoted market is insufficient. Thus, this amended language to Rule 6.75 is not intended to vitiate the floor broker's due diligence responsibilities, enumerated in Rule 6.73 and Interpretations and Policies thereto.

The proposed rule change is consistent with the provisions of the Act and in particular section 6(b)(5) in that the rule change is designed to protect public customer orders and encourage the efficient and uniform handling thereof.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

This rule change is the implementation of one of the recommendations of the CMTF which was endorsed by a membership vote concluded on November 20, 1984.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should flie six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 8, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 6, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-22202 Filed 9-16-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22387; File No. SR-CBOE-85-33]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change; Relating to Extension of the RAES Pilot Program

Introduction and Background

The Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted on July 23, 1985, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to extend the CBOE's retail automatic execution system ("RAES") pilot program, which permits the automatic execution of certain public customer market orders in a limited number of

OEX series.[1] The proposal would extend the operation of the pilot program from August 3, 1985 through November 8, 1985.[2] The CBOE applied for an extension of time because it has requested the Commission to consider, by November 1985, a companion rule filing wherein the CBOE requests that the RAES pilot in OEX be made permanent. In the interim, the Exchange seeks to continue RAES in OEX on a pilot basis.[3]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commision release (Securities Exchange Act Release No. 22275, July 29, 1985) and by publication in the **Federal Register** (50 FR 31266, August 1, 1985). The Commission did not receive any comments with respect to the proposed rule change.

Discussion

In its January and August Orders, the Commission expressed concern about the reduced priority accorded public customer limit orders on the book which may result from the absence of a linkage between RAES and the public customer limit order book. Based upon the CBOE's representations, however, that even though RAES may by-pass public customer limit orders at the same pirce, those limit orders generally are executed, the Commission found that an extension of the pilot until August 1985 was not inappropriate. The Commission did, however, request the CBOE to monitor the execution of booked limit orders to verify that they are, in fact, executed.

The CBOE recently has responded to the Commission's request.[4] The CBOE states that, based upon a comparison of various trade match data and disseminated book data collected in May 1985, it continues to believe "the vast majority of booked limit orders are being executed promptly when entitled under prevailing market quotations."[5] The CBOE estimates that the average time interval between a RAES trade execution at the best bid or offer on the book and all orders on the book at that price being executed is 8.8 minutes, and that in 60% of these instances, all orders on the book at the price of a RAES trade are executed in less than five minutes from that trade. CBOE concludes that only 3.8% of RAES trades were executed at the booked bid or offer when all orders on the book at the price of the RAES trade were not executed the same day.

In addition to these estimates, CBOE represents that the pilot continues to operate successfully and without technical or other difficulties. On May 2, 1985, RAES was expanded to handle customer market orders of up to 10 contracts, and on July 1, 1985, series in the second term options were incorporated into the pilot. As of July 8, 1985, 15 CBOE member firms were participating in the pilot, and transactions executed through RAES accounted for approximately 10% of the most active firms' public customer orders. By comparison, during March 1985 RAES transactions accounted for 7% of the public customer orders of member firms on the system.

In light of the CBOE's representations discussed above, the Commission finds that an extension of the pilot program to November 8, 1985, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, in particular, sections 6(b)(5) and 11(A) of the Act. It does not appear that extending the duration of the pilot until this time will impose any undue burdens on public customers of OEX, or on any other public customers.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 6, 1985

John Wheeler,

Secretary.

[FR Doc. 85-22203 Filed 9-16-85; 8:45 am]

BILLING CODE 8010-01-M

[1] A more complete description of RAES is provided in the Commission's initial order approving CBOE's implementation of the RAES pilot program. *See* Securities Exchange Act Release No. 21695 (January 28, 1985), 50 FR 4823 (File No. SR-CBOE-84-30) ("January Order").

[2] The Commission previously has approved one other extension of time for the RAES pilot program. The program as originally proposed expired on April 30, 1985. *See* January Order, *id.* Thereafter the Commission extended the pilot, as modified in certain respects, until August 2, 1985. *See*, Securities Exchange Act Release No. 22015 (May 6, 1985), 50 FR 19832 (File No. SR-CBOE-85-14) ("August Order").

[3] *See* Securities Exchange Act Release No. 22274 (July 29, 1985), 50 FR 31264 (File No. SR-CBOE-85-32). The CBOE also has filed with the Commission a proposed rule change to extend the RAES system to certain classes of individual stock options on a six month pilot basis. *See* Securities Exchange Act Release No. 22270 (July 26, 1985), 50 FR 31449 (File No. SR-CBOE-85-18, Amendment No. 2).

[4] *See* letter to Eneida Rosa, Branch Chief, Division of Market Regulation, SEC, from Frederic M. Krieger, Assistant General Counsel, CBOE, dated July 8, 1985 ("CBOE Letter").

[5] CBOE Letter, *id* at 2.

[Release No. 34-22392; File Nos. SR-MCC-85-4 and SR-MCC-85-5]

Self-Regulatory Organizations; Midwest Clearing Corp.; Filing and Immediate Effectiveness of Proposed Rule Changes

The Midwest Clearing Corporation ("MCC") on June 25 and August 23, 1985, submitted proposed rule changes (File Nos. SR-MCC-85-4 and SR-MCC-85-5, respectively) to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). MCC's proposals revise MCC procedures to reflect implementation of Phase V of the National Municipal Comparison System. The Commission is publishing this notice to solicit public comment on the proposals.

The National Municipal Comparison System is an automated comparison system for municipal securities transactions operated by the National Securities Clearing Corporation through links with Midwest Clearing Corporation and other registered clearing agencies.[1] Prior to implementation of Phase V of that system, processing was limited to "regular-way" municipal securities transactions, *i.e.*, transactions with a standard five day settlement period. Phase V permits processing of "when-issued" municipal securities transactions (where settlement of trades is delayed until issuance) and other transactions where the parties agree on a settlement date beyond the five day industry standard. Phase V is intended to expand the number of municipal securities transactions processed through the National Municipal Comparison System.

MCC's proposals also include several Phase V processing changes. First, the Demand Withhold instruction (including Demand Withhold Advisory) has been discontinued. That instruction, which allowed participants unilaterally to delete transactions from comparison, was not being used. Incorrect trades still may be deleted through submission of Withhold instructions from both parties. Second, participants no longer may accept partially Demand As-Of Advisory instructions. Partial deliveries are prohibited by Municipal Securities Rulemaking Board Rules G-12 and G-15, and partial acceptance of Demand As-Of Advisories violates that prohibition. Third, terminal screen displays on MCC's MST System will be changed to reflect these changes. MCC's proposals

[1] Stock Clearing Corporation of Philadelphia and Pacific Clearing Corporation also participate in the National Municipal Comparison System.

adopt these processing changes on a pilot basis (File No. SR–MCC–85–4) and formally incorporate them into MCC procedures (File No. SR–MCC–85–5).

MCC believes that the proposals will facilitate municipal bond trade comparison, thus assisting the establishment of a national system for clearance and settlement of securities transactions. MCC further believes that the proposals provide for the prompt and accurate clearance and settlement of municipal securities transactions. MCC thus believes that the proposals are consistent with the Act in general, and in particular with section 17A of the Act.

MCC's proposals have become effective under section 19(b)(3)(A) of the Act. At any time within 60 days the proposals were filed, however, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Copies of the proposals and all related documents, other than those that may be withheld under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC, and at MCC's principal offices. Please refer to File Nos. SR–MCC–85–4 and SR–MCC–85–5 and file six copies of comments on the proposals with the Secretary of the Commission, 450 Fifth Street NW., Washington, DC 20549, by October 8, 1985.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: September 9, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–22204 Filed 9–16–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Cuyahoga and Geauga Counties, OH

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Cuyahoga and Geauga Counties, Ohio

FOR FURTHER INFORMATION CONTACT: Mr. Marvin I. Espeland, Division Administrator, or Mr. Thomas M. Wahtola, District Engineer, Federal Highway Administration, 200 North High Street, Columbus, Ohio 43215. Telephone (614) 469–6896 or 469–5148.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the Ohio Department of Transportation, will prepare an environmental impact statement on the proposed construction of approximately 11.5 miles of four-lane, median strip divided, limited access highway on new location. The project is to connect a completed section of four-lane freeway at SR–91 in Solon, Ohio with a completed four-lane section of US–422 at Auburn Corners, Ohio. Interchanges would be provided at SR 306 and SR 44 to allow access for both east and west bound traffic and fourteen bridges would be constructed as part of the project.

The proposed action is consistent with regional transportation plans and has been under consideration since the late 1950's.

In 1962, ODOT prepared a report titled *Preliminary Engineering Report for the Proposed Relocation of U.S. Route 422 in Cuyahoga and Geauga Counties,* which investigated possible alterantives. The alternatives studied were designed to connect up with the then proposed I–271/Randal Interchange and the completed section of U.S. 422 across LaDue Reservoir, built in 1960.

On October 30, 1962, a public hearing was held on the relocation of U.S. 422 from I–271 to Route 44. All feasible alternatives were considered before a selection was made.

The selected alignment east of Route 91, the subject of this Notice of Intent, was journalized by the Director of Ohio Department of Transportation on November 23, 1962. The portion west of Route 91 was not journalized until a second public hearing was held on January 8, 1963 to address public concerns raised at the previous public hearing. The western portion from I–271 to Route 91 was built between 1973 and 1975, opening in December 1975.

Design of the preferred alignment began in 1963 and was completed in 1969. State funded property acquisition began in 1966 on CUY/GEA 422–18. 40/0.00 and in 1970 for GEA–422–3.19. All right-of-way has been purchased and all households and commercial establishments have been relocated.

Since 1976, when the last parcels were acquired, the proposed action has been delayed pending completion of the necessary environmental documentation and lack of funds to build the two sections. If and when funds become available and the project has received all the necessary environmental clearances, it is likely that the project would be built in two stages, the first priority being the completion of U.S. 422 between S.R. 91 and S.R. 306 in Bainbridge. The remaining section would be completed at a later date depending upon the availability of funds. It is envisioned that involvement with the public and other agencies will continue througout the development of the proposed project and, therefore, it is not anticipated that a formal scoping meeting will be held.

A Corps of Engineers 404 permit may be required. To insure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments or questions concerning this action should be addressed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A–95 regarding state and local clearing house review of Federal and federally assisted program and projects apply to this program)

James J. Steele,

Assistant Division Administrator, Columbus, OH.

[FR Doc. 85–22152 Filed 9–16–85; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1984 Rev., Supp. No. 37]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Prestige Casualty Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Guard Casualty and Surety Insurance Company, of Indianapolis, Indiana, under Sections 9304 to 9308 of Title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds is hereby terminated effective this date.

The company was last listed as an acceptable surety on Federal bonds at 49 FR 27259, July 2, 1984.

With respect to any bonds currently in force with Prestige Casualty Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Financial

Management Service, Department of the Treasury, Washington, D.C. 20226, telephone (202) 634–2350.

Dated: August 5, 1985.

W. E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85–22170 Filed 9–16–85; 8:45 am]

BILLING CODE 4810–35–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30724]

Wisconsin and Calumet Railroad Co., Inc.; Notice of Modified Certificate of Public Convenience and Necessity

September 12, 1985.

By notice served February 14, 1985, in Finance Docket No. 30620, the Chicago, West Pullman & Southern Railroad Company (CWPS) was authorized, pursuant to a modified certificate of public convenience and necessity under 49 CFR 1150 Subpart C, to operate two lines of railroad for a period of 120 days beginning January 31, 1985. The first was a 58.95-mile line segment acquired, in separate portions, by the State of Wisconsin Department of Transportation (WISDOT) and the South Central Wisconsin Rail Transit Commission (SCWR) following consummation of the abandonment authorized by this Commission in Docket No. AB–43 (Sub-No. 28), *Illinois Central Gulf R. Co.-Abandonment—Betw. Freeport, IL and Madison, WI* (not printed), served December 22, 1980. The second was a 79.6-mile line segment acquired by WISDOT pursuant to an order of abandonment issued January 21, 1980, in Case No. 77 B 8999, *In the Matter of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor* (U.S. Dist. Ct. Northern District of Illinois, Eastern Division). The two line segments are controlled by SCWR and the Pecatonia Rail Transit Commission (PRTC), each a public agency of the State of Wisconsin.

On August 23, 1985, the Wisconsin and Calument Railroad Company, Inc. (WCR), which, like CWPS, is a wholly-owned subsidiary of Chicago West Pullman Corp., submitted a notice of permanent continuation of previously authorized temporary operations and transfer of modified certificate within corporate family. Although WCR's notice was submitted for filing in Finance Docket No. 30620, and was originally recorded in that docket, I have concluded that a separate modified certificate should be issued in the name of WCR. Therefore, the notice has been redocketed in Finance Docket No. 30724.

WCR is now authorized to operate over the two line segments in question for a period of 96 years pursuant to respective operating agreements which it has entered into with SCWR and PRTC. The 58.95-mile segment extends from milepost 2.42 near Freeport, IL to milepost 61.37 at Madison, WI, while the 79.6-mile segement extends from milepost 11.0 at Jonesville, WI to milepost 90.6 at Mineral Point, WI. WCR will interchange with the Illinois Central Gulf Railroad Company at Freeport, IL and with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee,) at Madison, WI. Assuming successful agreements are reached for WCR to operate over Milwaukee's line between milepost 9.46 and milepost 11.0 in Jonesville, WCR also will interchange with Milwaukee at Jonesville.

This notice must be served on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 85–22410 Filed 9–16–85; 12:04 pm]

BILLING CODE 7035–01–M

FEDERAL RESERVE SYSTEM

Ellinwood Bankshares, Inc.; Formation of; Acquistion by; or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than September 26, 1985.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Ellinwood Bankshares, Inc.*, Salina, Kansas; to become a bank holding company by acquiring 94 percent of the voting shares of The Peoples State Bank and Trust Company, Ellinwood, Kansas.

Board of Governors of the Federal Reserve System, September 13, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–22397 Filed 9–16–85; 11:19 am]

BILLING CODE 8210–01–M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 180
Tuesday, September 17, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 16, 23, 30, and October 7, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 16

Tuesday, September 17

10:30 a.m.
Continuation of 7/24 Briefing on Davis-Besse (Public Meeting)
2:00 p.m.
Status of Progress on Environmental Qualification of Electrical Equipment (Public Meeting)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Wednesday, September 18

9:00 a.m.
Status of Interpretation of Appendix R—Fire Protection (Public Meeting)

Week of September 23—Tentative

Thursday, September 26

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of September 30—Tentative

Tuesday, October 1

2:00 p.m.
Discussion of Plant Issues with Regional Administrators (Public Meeting)

Thursday, October 3

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of October 7—Tentative

Wednesday, October 9

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for River Bend (Public Meeting)

Thursday, October 10

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

Julia Corrado,
Office of the Secretary.
September 12, 1985.

[FR Doc. 85–22333 Filed 9–13–85; 3:36 pm]
BILLING CODE 7990–01–M

2

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [50 FR 36183 September 5, 1985].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATES PREVIOUSLY ANNOUNCED: August 29, 1985.

CHANGE IN THE MEETING: Additional item.

The following additional item was considered at a closed meeting held on Tuesday, September 10, 1985, following the 2:30 p.m. open meeting.

Formal order of investigation.

Chairman Shad and Commissioners Cox and Peters determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, pleade contact: Douglas Michael at (202) 272–2467.

John Wheeler,
Secretary.
September 12, 1984.

[FR Doc. 85–22246 Filed 9–12–85; 4:46 pm]
BILLING CODE 8010–01–M

Federal Register

Tuesday
September 17, 1985

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Announcement of Preliminary Consultation on Two Potential Sites for Designation as National Marine Sanctuaries; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Announcement of Preliminary Consultation on Two Potential Sites for Designation as National Marine Sanctuaries

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: NOAA is announcing preliminary consultation on two sites for potential National Marine Sanctuary designation: (1) At Norfolk Canyon, (off the cost of Virginia) and (2) Ten Fanthom Ledge/Big Rock (off the coast of North Carolina). Preliminary consultation is the first step toward designation of a National Marine Sanctuary. NOAA will review and consider public comments in determining whether these sites should become active candidates for possible designation. If a site is selected as an active candidate, an environmental impact statement will be prepared under the National Environmental Policy Act and NOAA will conduct public hearings. After selection as an active candidate, the complete Sanctuary designation process could take from 2–5 years. The public, and state, local and Federal Governmental agencies are invited to comment on the potential of making these sites active candidates for formal considerations as National Marine Sanctuaries. NOAA intends to designate no more than one Sanctuary per year.

DATE: Comments on the Preliminary Consultation will be accepted until November 18, 1985.

ADDRESS: Send comments to Dr. Nancy Foster, Chief, Sanctuary Programs Division, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, NW., Washington, DC 20235, (202) 634–4236.

FURTHER INFORMATION CONTACT: Mr. Edward Lindelof, Senior Policy Analyst, at the above telephone and address.

SUPPLEMENTARY INFORMATION:

I. Selection Procedures

Title III of the Marine Protection, Research, and Sanctuaries Act of 1972 as amended, 16 U.S.C. 1431 *et seq.* (the Act), authorizes the Secretary of Commerce to designate ocean waters, as far seaward as the outer edge of the continental shelf and over which the United States exercises jurisdiction, consistent with international law, as national marine sanctuaries. The purpose of designating national marine sanctuaries is to protect and manage distinctive areas of the marine environment for those conservation, recreational, ecological, historical, research, educational or aesthetic values which give these areas special national significance. The Act is administered by the Natonal Oceanic and Atmospheric Administration (NOAA) through the Office of Ocean and Coastal Resource Management (OCRM), Sanctuary Program Division (SPD).

On August 4, 1983, NOAA published the Site Evaluation List (SEL) (48 FR 35568) consisting of 29 sites that could possibly be considered for National Marine Sanctuary status through 1988. Each site has been placed on the SEL because it possesses high natural resource value, and may warrant further analysis to determine its feasibility as an Active Candidate (formal proposal for consideration as a National Marine Sanctuary).

Before a site is selected as an Active Candidate, the current regulations at 15 CFR Part 922, § 922.30(c), require that NOAA undertake preliminary consultation with relevant local, state and Federal government agencies; the appropriate Fishery Management Council; any relevant international agencies, and the public. The 1984 amendments to the Act (Title I of Pub. L. 98–498, codified to 16 U.S.C. 1431–1439) also require consultation with the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science and Transporation of the Senate.

The purpose of this preliminary consultation is to seek relevant information about the sites to aid NOAA in its determination as to whether to designate one or both as Active Candidates. Evaluating a site for placement on the list of Active Candidates represents the next stage in the National Marine Sanctuary designation process.

After a 60-day review of comments and relevant information, NOAA will evaluate these sites in terms of the Active Candidate criteria. Therefore, information relevant to this analysis would be particularly useful. These criteria are:

(1) The area's natural resource and ecological qualities, including its contribution to biological productivity; maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, and the biogeographic representation of the site;

(2) The area's historical, cultural, archaeological, or paleontological significance;

(3) The present and potential uses of the area that depend on maintenance of the area's resources, including commerical and recreational fishing, subsistence uses, other commercial and recreational activities, and research and education;

(4) The present and potential activities that may adversely affect the factors identified in subparagraphs (1), (2), (3);

(5) The existing state and Federal regulatory and management authorities applicable to the area and the adequacy of those authorities to fulfill the purpose and policies of this title;

(6) The manageability of the area, including such factors as its size, its ability to be identified as a discrete ecological unit with definable boundaries, its accessibility, and its suitability for monitoring and enforcement activities;

(7) The public benefits to be derived from sanctuary status, with emphasis on the benefits of long-term protection of nationally significant resources, vital habitats, and resources which generate tourism;

(8) The negative impacts produced by management restrictions on income-generating activities such as living and nonliving resources development; and

(9) The socioeconomic effects of sanctuary designation.

Within 180 days after publication of this notice NOAA shall determine which, if any, of the two sites described below will become Active Candidates and publish a notice of this determination in the **Federal Register** describing how each site meets the criteria. If a site is not selected, a short statement of the reasons for the negative determination shall be specified in the notice.

Selection as an Active Candidate formally triggers the National Environmental Policy Act (NEPA) environmental impact analysis process. At this stage NOAA begins preparation of a draft management plan and draft environmental impact statement, including a resource assessment report. Subsequent steps include a public hearing, preparation of a final environmental impact statement, and a recommendation of approval to the Secretary of Commerce. Congress then has the opportunity to disapprove the designation. Opportunities for public comment exist throughout this process and will be advertised in the local media, and other appropriate channels.

II. Preliminary Consultation

Consistent with the current final regulations for designating national marine sanctuaries, NOAA is undertaking preliminary consultation on two sites: Ten Fathom Ledge/Big Rock and Norfolk Canyon. Although Norfolk Canyon does not appear on the SEL, it is eligible for consideration.

At the time of development of the Site Evaluation List the following sites were under consideration for designation by NOAA: Cordell Bank (California), Norfolk Canyon (South Atlantic), La Parguera (Puerto Rico); Monterey Bay (California), Hawaiian waters and Fagatele Bay (American Samoa). The scientific teams responsible for making recommendations were instructed not to consider these sites for SEL listing since they had already been selected by NOAA for further evaluation. At that time a contract had been awarded to the Virginia Institute of Marine Sciences for the purpose of synthesizing information on the physical and biological features of Norfolk Canyon. This site is the last of the pre-SEL candidates to be actively considered.

(1) Norfolk Canyon

Latitude: 37° 03. 3' N.
Longtitude: 74° 38. 4' W.

This site which is located approximately 60 nautical miles off the coast of Virginia is the southernmost submarine canyon in a series of prominent, deep water features on the eastern continental margin of the United States (Figure 1). Like their counterparts on land, submarine canyons are some of the most rugged features on the face of the earth, with deep V-shaped valleys, steep, rocky and often unstable walls and swift currents. In spite of its ruggedness and depth, the Norfolk Canyon supports an abundance of marine life, of which its huge Alcyanarian tree corals and "pueblo villages" (*i.e.*, areas along the canyon wall where large invertebrates and some finfish dig extensive depressions, caves and burrows for their lodging) are especially prominent.

The topographic expression of Norfolk Canyon begins in the shelf-break region at depths of 80 to 100 meters. The head of the Canyon is characterized by high relief (up to 400 meters between shelf and canyon floor) and a symmetrical V-shaped cross section. It incises the shelf approximately 16 to 19 km and is 6 km wide near the shelf break. Other major canyons in the Middle Atlantic are less symmetrical, having more abrupt profiles on their northeastern flanks as opposed to southwestern flanks. Terraces in the head of Norfolk Canyon are found on the canyon walls, clustered at various depths on the upper slope. They are more numerous at the shallower depths (100–250) and on the northeast sandy, foraminiferal-rich mud distinct from the gravelly, shell-rich sands characterizing the shelf. The depth of transition between the shelf and slope faces generally occurs between 250 and 300 meters in Mid-Atlantic Canyons, but has not been reported precisely for Norfolk Canyon.

The deep-sea biota of the eastern continental margin, both in and out of canyon systems, is best known with respect to its megafaunal components. The megafauna include both mobile benthopelagic or epibenthic forms such as decapods and echinoderms. Less abundant, but often observed, are various anthozoans, particularly soft-bottom forms such as sea pens and tube anemones.

The same faunal elements seen on the open slope and rise occur in canyon areas as well, although sometimes in greater abundance than observed outside of canyon systems. In addition to the usual deep-sea assemblages, many canyon areas also support a much greater variety of hard-bottom forms than can be found in the inter-canyon areas. This is due to the generally much greater availability of hard substrates in canyons, particularly at upper to mid-slope depths and various soft corals, especially gorgonians, at deeper levels. In general, the bathymetric distributions of most species are broad.

Another distinctive feature of canyon systems is the extensive bioerosion of canyon walls often observed in the heads of these systems. This creates a unique habitat both for the primary eroders and many additional species which make use of these areas, referred to as "pueblo village" communities.

The mobile megabenthos of the Norfolk Canyon area is quite similar compositionally to that found at comparable depths along the eastern continental margin. The demersal fish fauna is dominated by macrourids, morids, gadids, zoarcids, and the Synaphobranchid eel, *Synaphobranchus kaupi*. The longfin hake, *Phycis chesteri*, is dominant on the upper slope; the blue hake, *Antimora rostrata*, is a major constituent of the fauna on the lower slope; and the rattail species, *Corphaenoides armatus*, is dominant on the rise.

Decapods commonly observed on the upper slope include lobsters, *Cancer* crabs, and the galatheid crab, *Munida iris iris*. Over a broad range of mid-slope depths, red crabs (*Geryon quinquedens*) dominate the decapod fauna. On the lower slope and rise, a variety of crangonid, polychetid, nematocarcinid and galatheid species are observed.



In the head of Norfolk Canyon, diverse habitat types, including boulder-covered bottom, bioeroded areas, and terraced areas supporting extensive

stands of a very large, hard-bottom gorgonian, *Paragorgia arborea*, have been observed during submersible and photographic surveys. From the data available, the development of the *Paragorgia* stands appears to be more extensive than in other Mid-Atlantic canyons. A variety of other soft and hard corals are also found in the Canyon to depths of more than 2000 meters. Several of these (e.g. *Primnoe reseda*) may not be common in east coast or Mid-Atlantic canyons, although more data are required before this can be known with certainty.

Human Uses

Major human activities pursued on the eastern continental margin include commercial and recreational fisheries, mineral resources development, ocean dumping and military operations. Although the Norfolk Canyon area may not provide uniquely important fishing grounds compared with other canyon or intercanyon areas on the outer shelf or upper slope, it is visited regularly by vessels from a variety of fisheries. Squid, red crabs, lobsters, and scallops are actively fished in this area, and it is trawled for various demersal finfish as well. Other species sought commercially in this area include butterfish, offshore mackeral, and swordfish. Tilefish, landed both north and south of Virginia and caught primarily in canyon areas, are not fished in Norfolk Canyon.

Because of its distance from shore (60 nm), Norfolk Canyon is not as heavily used by recreational fishermen as are nearshore waters. However, various offshore pelagic species are sought in this area, among which the white marlin (*Teptrapturus albidus*) is the most important.

No mineral resources are currently mined in the vicinity of Norfolk Canyon. Those resources with the greatest near-term potential for development are oil and gas. Upcoming lease sale number 111 in the Mid-Atlantic area is tentatively scheduled for February 1986.

Although no ocean disposal of wastes is occurring at present in Norfolk Canyon, the area has been used previously for the dumping of radioactive wastes. There are two former dumpsites, one located at about the 1000-meter isobath, the other, more extensive, lying at depths between about 2000 and 2500 meters. Both occur on or near the axis of the Canyon.

The U.S. Atlantic Fleet claims to make use of the waters and airspace above Norfolk Canyon for gunnery practice and for transiting surface and submerged ships.

(2) Ten Fathom Ledge/Big Rock

Latitude/Longitude:

Ten Fathom Ledge
34°26′ N. 76°37′ W.
34°13′ N. 76°37′ W.
34°26′ N. 76°29′ W.
34°13′ N. 76°29′ W.
Big Rock Area
34°12′ N. 76°15′ W.
34°07′ N. 76°15′ W.
34°12′ N. 76°10′ W.
34°07′ N. 76°10′ W.

The proposed Ten Fathom Ledge/Big Rock site includes six separate hard ground ledges of varying relief, displaying similar tropical algal and coral communities representing the northernmost extension of hard ground habitats that occur off Florida, Georgia, and South Carolina (Figure 2). Two separate areas are included.



LOCATION

FIGURE 2

The inner shelf site, called the Ten Fathom Ledge area, is approximately 15 mi. offshore and includes such features as Ten Fathom Ledge, West Rock Area, Thirty-mile Rock area, and a World War II submarine wreck (total area: 135 mi^2 or 350 Km^2). The outer shelf site, some 36 mi. (58 km) offshore, includes the Big Rock area encompassing 36 mi^2 (90 Km^2). Both sites lie entirely within Federal waters, offshore of North Carolina.

A wide variety of unique habitats is included in the study areas. The nearshore live-bottom areas harbor shallow-water subtropical populations. Due to the influence of seasonal temperatures, subtropical communities are not permanently established. The offshore sites, whose benthic communities are not as influenced by seasonal water temperature changes, offer permanent residence to subtropical species. These permanent offshore communities, as well as the "Gulf Stream transport," supply recruits to the near shore areas. Water temperature is the main factor influencing the distribution of the subtropical biota; depth is of secondary importance. Many of these subtropical flora and fauna in the Cape Lookout area are at the northern extension of their range.

The algae, invertebrates and fishes of Ten Fathom Ledge (a high relief area 3–16 ft: 1–5 m), have been identified from the Ledge; most have southern affinities. The area harbors commercially and recreationally sought species such as black sea bass, gag, scamp, longspine porgy, whitebone porgy, tautog, sheepshead, and gray triggerfish. At least 40 algal species, dominated by brown algae, have been recorded from the ledge. The algae are seasonal in occurrence and abundance, with fluctuations in red algae species most noticeable. Ten Fathom Ledge is used recreationally by fishermen and scuba divers; commercial use is predominantly harvesting of black sea bass.

Live bottom areas in the transitional depths of 100–130 ft (30–40 m), such as West Rock and Thirty-Mile Rock, show

an increase in the dominance of subropical biota which is less influenced by seasons than the nearshore areas. The fauna includes deep-water components, rare in the shallower depths. Purple reef fish, yellowtail reef fish, sportfin hogfish, spanish hogfish, hogfish, bank butterflyfish, red snapper, vermilion snapper, red porgy, and knobbed porgy are examples of species occurring on habitats at these depths. Scuba, hook and line, and submersible data have indicated the presence of at least 100 species of fishes at the two mentioned locations. Diving and commercial and recreational fishing occur on live-bottom sites of these depths.

Diversity of fishes peaks on offshore live-bottom areas in the depth range of 130–246 ft (40–75 m). These areas are typically low in profile (less than 6 ft; 2 m) and offer stable temperatures. Epinepheline groupers, lutjanids, and red porgy dominate the recreational and commercial catches of these areas. Species such as reef butterflyfish, bigeye, and tattler, rare in shallower environments, have been collected in depths of this range. These sites are fished recreationally and commercially.

The Big Rock area marks the seaward boundary of the area under consideration. The Big Rock is a large area on the continental shelf break, ranging in depth from 200–400 ft (60–120m). The deepest areas, although decreased in diversity due to cold-water upwelling from the continental slope, maintain several fish populations of commercial importance. Trolling for billfish is a frequent activity in the area.

Nearby Beaufort inlet provides easy access for fishermen, divers, and researchers. The proposed area receives high recreational and commercial use. The predominant commercial activity is hook and line fishing, but some trapping for sea bass occurs; trawling activities are negligible. Adjacent (within 30 mi 50 km) to the proposed site are calico scallop beds which are periodically dredged.

Human Uses

The major human use of the Ten Fathom Ledge/Big Rock complex is recreational. Scuba-diving clubs and recreational fishermen visit the area. Commmercial trawling occurs over some low-relief hard grounds. A significant commercial headboat (i.e., commercial boats which take private rod-and-reel fishermen out for a day of recreational fishing) fishery makes use of the hard grounds.

Scientific research has been conducted in varying degrees at the different live bottoms since 1920, and increased research emphasis on these habitat is anticipated.

Commercial and recreational fishing, using hand and long lures, occurs in the area and there is an increasing utilization of potentially destructive fishing gear (i.e., roller trawls) designed to fish reef habitats, for grouper and snapper. Although the trawlers may avoid high-relief areas, some of the coral colonies occur on relatively flat bottom away from the pinnacles.

Ten Fathom Ledge/Big Rock areas may have potential for mineral resources including oil and gas, phosphate, and possibly uranium associated with phosphate. Both Ten Fathom Ledge and Big Rock may be considered for oil and gas leasing as part of the OCS lease sales for the South Atlantic tentatively scheduled for July 1989.

(Federal Domestic Assistance Catalog No. 11.419, Coastal Zone Management Program Administration)

Dated: August 30, 1985.

James P. Blizzard,

Acting Director, Office of Ocean and Coastal Resource Management.

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Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 176, 177, 178, and 180

Requirements for Cargo Tanks; Proposed Rulemaking and Public Hearing

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 176, 177, 178 and 180

[Docket Nos. HM-183, 183A; Notice No. 85-4]

Requirements for Cargo Tanks

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration (DOT).

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: MTB proposes to revise and clarify the Hazardous Materials Regulations (HMR) (49 CFR Parts 171–179) pertaining to the manufacture of cargo tanks and the operation, maintenance, repair and requalification of all specification cargo tanks (including specifications not authorized for new construction). This proposal would revise and clarify certain commodity sections in Part 173, organize the cargo tank specifications in Part 178, provide for vacuum-loaded cargo tanks, and establish a new Part 180, Subpart E, containing requirements governing the maintenance, use, inspection, repair, retest and requalification of cargo tanks used to transport hazardous materials.

This action is being taken to correct certain deficiencies in the requirements pertaining to cargo tanks that have been brought to the attention of MTB and the Bureau of Motor Carrier Safety (BMCS), Federal Highway Administration, through research findings, petitions for rulemaking, requests for interpretation of the regulations, and recommendations from other agencies. The intended effect of this action is to enhance the safe transportation of hazardous materials in cargo tanks.

DATES: (1) *Written Comments:* Comments must be submitted on or before February 11, 1986.

(2) *Public briefing.* A public briefing will be held on October 15, 1985, 8:30 a.m. to 1:00 p.m., Rosemont, Illinois.

(3) *Public hearings.* Public hearings will be held on—December 4, 1985, 9:00 a.m. to 5:00 p.m., Burlingame, California; and January 9, 1986, 9:30 a.m. to 5:00 p.m., Washington, D.C.

ADDRESS: The public briefing and hearings will be held at the following locations:

1. October 15, 1985—Hyatt Regency O'Hare (Rosemont B), 9300 West Bryn Mawr Ave., Rosemont, Illinois 60018.

2. December 4, 1985—Days Inn (Bayside I, II, III), 777 Airport Blvd., Burlingame, California 94010.

3. January 9, 1986—U.S. Department of Transportation (Room 2230, Nassif Bldg.), 400 Seventh Street, SW, Washington, DC 20590.

Any person wishing to present an oral statement at the briefing may notify the Dockets Branch no later than October 11, 1985, by telephone. Any person wishing to present an oral statement at a public hearing may notify the Dockets Branch, by telephone or in writing, at least two days in advance of the hearing date. Each request must identify the speaker; organization represented, if any; daytime telephone number; and the anticipated length of the presentation, not to exceed 10 minutes. Written text of oral statements should be presented to the hearing officer prior to the oral presentation. *Written comments* should be submitted to Dockets Branch, Materials Transportation Bureau, Research and Special Programs Administration, U.S. Department of Transportation, Washington, D.C. 20590. Comments should identify the docket and be submitted, if possible, in 5 copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Telephone number (202) 426–3148. Office hours are 8:30 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:
James O'Steen, Jose Pena or Charles Hochman (202) 755–4906, Office hours are 8:00 a.m. to 4:30 p.m., Office of Hazardous Materials Regulation, Materials Transportation Bureau: or
Joseph J. Fulnecky (202) 755–1011, Office hours are 7:45 a.m. to 4:15 p.m., Bureau of Motor Carrier Safety, Federal Highway Administration, U.S. Department of Transportation, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This proposal includes provisions—

1. To require that all manufacturers of cargo tanks hold a current ASME certificate of authorization.

2. To require that each cargo tank designed with an internal design pressure of 15 psig or greater be "constructed and certified in conformance with the ASME Code", and each cargo tank with an internal design pressure less than 15 psig be "constructed in accordance with the ASME Code".

3. To require that all new specification cargo tanks be certified by an Authorized Inspector who is commissioned by the National Board of Boiler and Pressure Vessel Inspectors (National Board).

4. To require that ring stiffeners on a cargo tank be of a design that can be visually inspected.

5. To authorize the use of external self-closing stop valves in place of internal self-closing stop valves in certain circumstances.

6. To require that the strength of connecting structures on a multitank cargo tank be equal to that required of the cargo tank motor vehicle.

7. To specify minimum standards for the strength and size for a manhole on all new cargo tanks.

8. To require retrofit of any manhole closures not conforming to the prescribed strength requirement, within five years from the effective date of the final rule.

9. To specify the accident damage protection required for cargo tank motor vehicles.

10. To specify in Parts 173 and 177 the relationship between the cargo tank and its lading to guide manufacturers and shippers.

11. To clarify that the prescribed minimum thickness for the tank shell and heads excludes materials added for cladding, lining or corrosion allowance.

12. To specify the parameters to be considered in determining the effective stresses on a cargo tank.

13. To clarify that a remote means of closure for all internal or external self-closing stop valves is required.

14. To require that on all cargo tanks constructed after (the effective date of the final rule) all pressure relief devices be reclosing, except a frangible disc may be used in series with a reclosing pressure relief device.

15. To revise the MC 307 and MC 312 cargo tank specifications to provide for the manufacture of vacuum-loaded cargo tanks.

16. To specify a minimum design pressure of 15 psig for Specification MC 312 cargo tanks.

17. To require that all specification cargo tanks be pressure retested.

18. To require that all specification cargo tanks be visually inspected every year.

19. To require that the shell and head of an unlined cargo tank in a service corrosive to tank metal be thickness tested at least once every two years.

20. To specify certain additional safety control measures for a cargo tank used to transport a lading having more than one hazard class.

21. To require that a cargo tank used to transport a poison B material and certain hazardous materials having

multiple hazards have a minimum design pressure of 25 psig.

22. To require that a cargo tank inspector or tester meet certain minimum knowledge and experience qualifications.

23. To require that major repairs on cargo tanks be performed by a facility that is a holder of a ASME U stamp, a National Board R stamp or be witnessed and certified by an Authorized Inspector.

24. To require that an owner of a cargo tank used in the transportation of hazardous materials retain certain records.

I. Background

Cargo tanks are used for the bulk transport by highway of vast quantities of liquid and gaseous hazardous material essential to the support of our Nation's economy. This transportation over our Nation's highways represents a significant potential collective risk to the public and requires a continuing examination of safety control measures to ensure that the risk is minimized.

Each year MTB receives a large number of incident reports on the release of hazardous materials as a result of cargo tank motor vehicle collisions, overturns and loading/unloading accidents. As a result of these reports, BMCS and MTB jointly initiated in 1975 a long term research and development program. The objective of the research has been to evaluate the records of cargo tank accidents, re-examine existing HMR pertaining to cargo tanks, and document typical industry practices with respect to all DOT cargo tank specifications, except the recently adopted MC 338 cryogenic cargo tank. The industry practices portion of the research program included the examination of industry design, fabrication, operation, inspection, maintenance, test, and repair practices and procedures.

The initial focus of the program was on the MC 306 type cargo tank which is the major highway transport vehicle used to transport flammable and combustible liquids, such as gasoline and fuel oils. For the purpose of the research, the MC 306 type cargo tank included the MC 306 and its predecessors, the MC 300, MC 301, MC 302, MC 303, and MC 305 cargo tanks. Research findings showed that the MC 306 type cargo tank is highly susceptible to leakage and presents a substantial fire risk when the tank is involved in overturn accidents. Based on these findings, MTB and BMCS issued an advance notice of proposed rulemaking (ANPRM), which was published in the **Federal Register** under Docket HM-183, on June 28, 1982 (47 FR 27876). In the ANPRM, MTB and BMCS solicited comments on the advisability of revising the HMR covering MC 306 type cargo tanks to reduce the risk of release of lading from the cargo tank in overturn accidents. Comments to Docket HM-183 are included in the subject and the section-by-section discussions herein.

The second cargo tank type studied was the specification MC 331 and its predecessor, the MC 330. The MC 331 type cargo tank is used to transport liquefied gases, such as ammonia (NH_3) and liquefied petroleum gas (LPG). Because of the high pressure integrity required to contain these gases and the high potential risks associated with their release, cargo tanks used to transport these gases are designed, constructed and certified to the American Society of Mechanical Engineers (ASME), Boiler and Pressure Vessel Code. The ASME Code prescribes requirements for manufacturer qualification, manufacturing quality control and independent inspection and certification. Research findings confirmed that, while these cargo tanks are for the most part adequately designed and constructed, in some cases they are not being properly maintained and requalified. External corrosion which caused leaks, particularly in hidden areas such as the fifth wheel and stiffening rings, frequently went undetected. A large percentage of the pressure relief valves failed the basic operating tests. The study also found a substantial amount of stress-corrosion cracking, a condition that may severely degrade the integrity of a cargo tank. The regional geographical distribution of cargo tanks showing evidence of stress corrosion cracking suggests that shippers in certain locales are offering hazardous materials for transportation in cargo tanks when those materials are not compatible with the tank material. The research contractor, Dynamics Sciences, Inc., pointed out that such practices were most probably induced by improper quality control procedures for the lading. Additionally, HMR contain no requirement pertaining to the qualification of cargo tank testers and research findings indicate that cargo tank tests are not always being performed by persons who are qualified to perform those functions.

The third group of cargo tanks studied was the MC 307 type cargo tank including its predecessor, the MC 304; and the MC 312 type cargo tank including its predecessors, the MC 310 and MC 311. The MC 307 and MC 312 type cargo tanks are used to transport high vapor pressure flammable liquids, poisonous materials, corrosive materials, and hazardous materials meeting two or more of these hazard classes. The variety of hazardous materials transported in these cargo tanks is substantial. Like the MC 331 type cargo tank, the MC 307 and MC 312 type cargo tanks with higher design pressures are required to conform with the ASME Code. As with the other types of cargo tanks, research findings have shown that poor maintenance, repair and requalification of these cargo tanks are major problems. Corrosion (external and internal) resulting from the road environment, lading spillage and chemical reaction between the lading and the tank materials, is a predominant problem. Another serious problem that has been identified is leakage of lading during loading and unloading operations due to malfunctioning valves.

MTB and BMCS believe these research findings have identified many shortcomings, inconsistencies and ambiguous requirements that currently exist in the cargo tank regulations. These deficiencies have resulted in situations, in which improper procedures have been used (intentionally as well as unintentionally) in the construction, operation, repair, and testing of cargo tanks.

MTB and BMCS agree with the research findings that cargo tank integrity and therefore safety in the transportation of hazardous materials in cargo tanks could be improved by revising and clarifying the HMR. This proposal is intended to accomplish that goal as follows:

(1) Sections 173.33, 177.814 would be completely revised. The requirements dealing with the continuing qualification, maintenance, and periodic testing of cargo tanks contained in those sections would be removed and placed in proposed Part 180, Subpart E. Other requirements pertaining to the manufacturing of cargo tanks contained in those sections have been removed and placed in the appropriate specifications in Part 178.

(2) Sections 178.340, 178.341, 178.342, and 178.343 would be revised for clarity. Identical requirements applicable to MC 306, MC 307, and MC 312 cargo tanks would be contained in the general section, § 178.340. The sections in the

individual specifications, i.e., §§ 178.341, 178.342, 178.343, would be arranged to correspond with the sections contained in § 178.340. For example, § 178.340–10 contains requirements on pressure relief devices applicable to MC 306, MC 307 and MC 312 cargo tanks. Any specific requirement applicable to an individual specification appears in § 178.341–10 for MC 306 cargo tanks, § 178.342–10 for MC 307 cargo tanks, and § 178.343–10 for MC 312 cargo tanks.

In the past years, MTB has received in excess of 25 petitions for rulemaking, granted in excess of 40 exemptions, and issued numerous telephonic and written interpretations on regulations pertaining to cargo tanks. In preparing this NPRM, MTB and BMCS have considered all the comments to Docket HM–183, the applicable outstanding petitions for rulemaking interpretations issued by the MTB and BMCS, and the recommendations made by the research contractors, and the National Transportation Safety Board (NTSB), as well as some found in general literature.

Both MTB and BMCS have participated in the development and issuance of the research contracts, the ANPRM and this NPRM. In the interest of brevity "we" is used hereinafter in referring to "MTB and BMCS."

II. Specification Design and Construction Requirements

A. Cargo Tank Overturn Integrity

Research conducted by the States of Michigan and California and DOT has shown that failures of the tank shell, manhole closures and pressure relief valves occur frequently in cargo tank overturn accidents. In a substantial number of instances, these failures resulted in serious leakage, sometimes resulting in fires. These research studies showed that leakage resulted from tank shell puncture, tank shell rupture, weld failure, manhole closures being blown off or badly deformed and, thereby, not reseating, and failure of pressure relief valves and vents.

As an example, a December 1981 study by the California Highway Patrol titled "California Tank Truck Accident Survey" provides insight into the problem. The report analyzed 131 tank truck accidents that occurred from February 1, 1980 to January 31, 1981. The report states: "Spills occurred in 79 percent of the overturns and 16 percent of the nonoverturns spills." With respect to frequency of fires, the study states: "Fires occurred in 22 percent of the spill accidents and two percent of those without spills" and "Forty-four (44) percent of the fires were with cargoes of gasoline, whereas this type of cargo was being carried in only 23 percent of all tank truck accidents."

With respect to the source of spills, the report states: "Most of the spills for which the source was reported occurred through cracks, ruptures, and punctures (52 percent). Another 44 percent occurred through dome covers, vents, or safety valves. The domes also leaked or came open in 11 of the 33 cases of ruptures or punctures of the tank."

The identification of manhole closures as a major source of spills in overturn accidents has resulted in many manufacturers developing a manhole closure of greater integrity. Many cargo tank owners have equipped their new cargo tanks and, in some cases, retrofitted existing cargo tank with these higher integrity manhole closures. Further, the Truck Trailer Manufacturers Association (TTMA) has adopted a recommended practice, RP#61–82, that all manhole closures be capable of withstanding a minimum static pressure of 36 psig without leakage or permanent deformation. We are proposing that all manhole closures on construction of new cargo tanks be designed and tested to a minimum static pressure of 36 psig without leakage or permanent deformation. Because of the severe consequences of manhole closure failures and the fact that cargo tanks may remain in service for 30 years or more, we believe that the retrofitting of manhole closures on existing cargo tanks is necessary. To minimize the economic impact of any retrofitting, we are proposing that the retrofitting be accomplished over a five-year period, with at least 20% of the affected cargo tanks being retrofitted each year. We believe a five year period will permit scheduled replacement that can coincide with normal tank testing, repair, and component replacement, thereby minimizing the cost of retrofit. Based on comments to Docket HM–183 and the research program, the estimated cost of such a retrofit ranges between $20 and $250 per manhole when included as part of scheduled maintenance and testing.

Substantially increasing the tank wall thickness is often proposed as a countermeasure to tank puncture and rupture. We believe that a cargo tank should retain its lading in an overturn on the roadway if the cargo tank does not strike a substantial obstacle. Many cargo tanks have survived such accidents without loss of lading. However, we believe that requiring a substantial increase in cargo tank wall thickness to eliminate tank puncture or rupture would constitute such a major action that more detailed accident analyses, engineering analyses and the consideration of costs and benefits should be studied before such an action is initiated. Although we are not proposing an increase in wall thickness in this rulemaking, we are proposing greater manufacturing quality controls on cargo tanks, improved accident damage protection and more comprehensive and systematic consideration of cargo tank overturn integrity. Discussion of these issues are found later in this preamble.

B. Design Pressure of Cargo Tanks

We are aware that the present regulations do not clearly state a specific relationship between the design pressure of the cargo tank and the properties of the lading. Further, the regulations do not specify a consistent relationship between the design pressure and operational factors such as loading and unloading pressures and the pressure of gas paddings. The lack of such a specific set of relationships can result in: (1) The release of a hazardous material under normal transportation conditions; and (2) the uncontrolled release of a hazardous material as a result of an overturn accident even when the cargo tank is not severely damaged.

As an example, the MC 306 cargo tank has a design pressure of not less than the static pressure generated by the lading, and the pressure relief devices are set-to-discharge at 3 psig. Section 173.119 permits the transportation in cargo tanks of a flammable liquid with a vapor pressure of 16 psia (1.3 psig) at 100 °F. Some of these ladings have a vapor pressure as high as 5.8 psig at 115° F. Thus such a lading would continuously vent under normal transportation conditions. Further, in an overturn accident the pressure relief device is required to withstand both the vapor pressure and the static pressure of the lading. For a typical MC 306 cargo tank the static pressure of the lading at the bottom of an inverted vehicle is in the range of 1 to 2 psig. The resulting pressure on a pressure relief device set-to-discharge at 3 psig could be as high as 7.4 psig. This condition would result in the uncontrolled release of the flammable liquid lading though the pressure relief system of an inverted cargo tank that is not in motion (static condition) even though the system is undamaged and operating as designed. Such potential releases are unacceptable and are not limited to MC 306 cargo tanks. MC 307 and 312 cargo tanks are vulnerable under similar conditions. MC 307 cargo tanks often transport ladings protected by a gas pad at or near the tank's design pressure. The pressure from this pad, in addition

to the vapor pressure and static pressure from the lading, could result in an uncontrolled release of the lading in an overturn accident. The MC 312 cargo tank specification has no minimum design pressure limit and yet such a cargo tank is often used to transport high density ladings that can produce substantial static pressures.

We believe that such conditions may present an unacceptable risk. Accordingly, we are proposing to specify both design and shipper requirements for relating the cargo tank design pressure to both operational factors and lading physical properties. Included would be a design reference temperature of 115 °F. for liquid hazardous materials transported in cargo tanks, the same as presently specified for liquefied gases in uninsulated cargo tanks. The proposal would require that the design pressure be greater than or equal to the largest of the following:

(1) The minimum pressure prescribed in the individual specification;

(2) The pressure prescribed for the lading in Part 173;

(3) 120 percent of the sum of the vapor pressure of the lading at 115 °F., the pressure of any gas pad (including air) in the ullage space, and the maxmium static pressure exerted by the lading; or

(4) The maximum pressure used to load or unload the lading.

The design pressure requirement would apply to cargo tanks constructed after the effective date of the final rule and could result in an increase in the design pressure of some cargo tanks which are used for the transportation of certain materials. We believe, however, that the design pressure of cargo tanks used for most ladings, including gasoline, will not be significantly affected by this necessary change.

Under proposed § 173.33, shippers would be required to verify that the design pressure of the cargo tank is adequate for their hazardous material. In some cases, certain hazardous materials will no longer be authorized for transportation in the lower pressure cargo tanks. We believe this change will affect a relatively small percentage of hazardous materials being transported in cargo tanks and will not have a substantial effect on most shippers and carriers.

We are aware that:

(1) Many MC 305 and 306 cargo tanks have been manufactured and marked with a design pressure of zero psig in non conformance with § 178.341–1(b) which states, "The design pressure of each cargo tank shall be not less than that pressure exerted by the static head of the fully loaded tank in the upright position";

(2) The present MC 312 cargo tank specification authorizes a design pressure of zero psig;

(3) The MC 300, 301, 302, 303, and 305 cargo tank specifications do not address design pressure and do not require the marking of the design pressure; and

(4) The MC 310 and 311 cargo tank specifications require the marking of maximum allowable working pressure (MAWP) and maximum working pressure (MWP), respectively, but not the design pressure.

Notwithstanding these marking and manufacturing inconsistencies, each MC 300, 301, 304, 303, 305, 306, 310 and 311 cargo tank has been pressure tested to at least 3 psig. Accordingly, proposed § 173.33 would not preclude the use of a cargo tank having a design pressure of less than 3 psig or without a marked design pressure, nor would it preclude the remarking of the marked design pressure on a cargo tank.

Specifically, we are proposing that:

(1) Any existing MC 306 type or MC 312 cargo tank whose pressure relief system is set-to-discharge at 3 psig may be marked with a design pressure not greater than 3 psig;

(2) Any existing MC 300, 301, 302, 303, 304, 305, 306, 307, 310, or 312 cargo tank may be marked or remarked with a design pressure based on the design requirements of proposed § 178.340–1(l);

(3) MC 300, 301, 302, 303, 305, 306, and 312 cargo tanks with no marked design pressure or a design pressure of less than 3 psig may be used for authorized ladings where the largest pressure derived from the design pressure requirements in proposed § 173.33 is less than or equal to 3 psig; and

(4) MC 310 and MC 311 cargo tanks may be used for authorized ladings where the largest pressure derived from the design pressure requirements in proposed § 173.33 is less than or equal to the marked MAWP and MWP, respectively.

C. Accident Damage Protection

We believe the cargo tank design should take into consideration: (1) The need to protect the structural integrity of the head, shell, and piping in collision and overturn accidents; (2) the puncture, abrasion, and crush resistance of the head and shell; and (3) the distribution of loads transmitted into the head and shell by projections, fittings, appurtenances and protection devices. We have observed cargo tanks where little or no consideration was given to the distribution of accident loads from roll-over guards into the tank shall. The involvement of these cargo tanks in accidents in some cases has resulted in the puncture or tearing of the tank shell and the subsequent loss of lading. To clarify the requirement that the cargo tank motor vehicle has to be considered as a system with respect to accident damage protection, it is proposed that accident damage protection devices or projections be designed to distribute any potential accident load into the tank shell so that the stress resulting from the specified loads in combination with the stresses resulting from maximum design pressure during transportation do not result in a stress in the tank shell greater than 75 percent of the ultimate strength of the tank material at that point. We believe that any projections from a tank shell, fitting, or closure that retain lading under any tank orientation should reasonably be able to withstand the forces to which they may be subjected due to collision with other vehicles or objects or in cargo tank rollover or else be adequately protected. Accordingly, in the proposal on accident damage protection, both general and specific requirements are prescribed where we believe the present requirements have allowed questionable design practices.

D. Vacuum-Loaded Cargo Tanks (Waste Tanks)

MTB received two petitions (P–870, P–883) requesting the addition of provisions to the HMR covering the transportation of hazardous waste materials in vacuum-loaded cargo tanks. The petitions requested that MTB add a new vacuum-loaded cargo tank specification based on the present MC 307 or MC 312 cargo tank specification modified to allow (a) the use of external self-closing valves that are protected by the truck's suspension and frame in place of internal self-closing valves, (b) the use of circumferential reinforcements placed much farther apart than prescribed in the regulations and compensated for by a thicker cargo tank shell, (c) design and construction with a minimum internal design pressure of 25 psig and external design pressure of 15 psig because of the partial vacuum developed in the tank.

We have included these provisions in the proposed MC 307 and MC 312 cargo tank specifications. We are not proposing to restrict transportation in MC 307 and MC 312 vacuum-loaded cargo tanks to hazardous wastes. We believe that the structural integrity of these cargo tanks would be adequate for other hazardous materials and that there is no significant difference in the risks associated with the transportation of hazardous wastes and other types of hazardous materials. If adopted in a

final rule, these provisions would eliminate the need for over 40 exemptions authorizing the use of vacuum-loaded cargo tanks.

E. Cargo Tank; Manufacturer Qualification, Quality Control, and Certification

The present DOT certification system for cargo tanks, with the exception of ASME Code cargo tanks, allows the manufacturer to certify that a cargo tank conforms with all requirements of the appropriate specification. The manufacturer's technical knowledge and skill, integrity and product liability are some factors that assure the cargo tank purchaser and the public that the cargo tank is in conformance with the HMR and adequate for the safe transport of hazardous materials. The HMR provides no specific criteria for the assessment of any of these factors. Most cargo tank manufacturers exhibit great knowledge, skill and integrity. On the other hand, however, a number of manufacturers have demonstrated very limited knowledge and skill with respect to matters such as stress analyses, welding, metallurgy, recognized good design and quality control practices, and the HMR.

In contrast, a plumber or an electrical contractor involved in the construction of a building in most cases has to demonstrate knowledge and skill with respect to his trade including knowledge of local regulations. Further, a plumber's or electrician's work is generally inspected by a State, city, county, insurance inspector or an independent engineering firm to assure the building is adequately constructed, and provides an acceptable level of safety for the public. The construction of boilers and pressure vessels used in buildings are similarly regulated. We believe that the risk to the public from the transport of bulk quantities of hazardous materials in cargo tanks over our streets and highways is no less than that presented by a building's plumbing, electrical systems and boilers or pressure vessels. For this reason, we believe that a qualification system is necessary for cargo tank manufacturers and repair facilities. Further, we believe that an independent inspector is needed to assure cargo tank design construction, and test quality. Pursuant to this goal, we are proposing that all cargo tank manufacturers hold a current ASME certficate of authorization and that each cargo tank be certified in accordance with the ASME Code and the appropriate specifications by an Authorized Inspector holding a valid commission from the National Board of Boiler and Pressure Vessel Inspectors (National Board). The National Board "is organized for the purpose of promoting greater safety to life and property by securing concerted action and maintaining uniformity in the construction, installation, inspection and repair of boilers and other pressure vessels and their appurtenances, thereby assuring acceptance and interchangeability among Jurisdictional Authorities responsible for the administration and enforcement of the various sections of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code". Its inspectors are employees of states or cities or work for an "Authorized Inspection Agency," such as an insurance company.

Most States in the United States and every Province in Canada now require pressure vessels having a design pressure of 15 psig or greater to be designed, fabricated, and inspected in conformance with the ASME Code by a National Board Authorized Inspector. Presently, the HMR require ASME Code construction on MC 330, MC 331 and MC 338 cargo tanks, MC 307 cargo tanks with a design pressure in excess of 50 psig, and MC 312 cargo tanks that are unloaded with a pressure in excess of 15 psig. This proposal would align the Federal standards for cargo tanks having a design pressure of 15 psig or greater with the system of quality assurance used by most of the States. For cargo tanks built with a design pressure of 15 psig and greater, both the manufacturer and the Authorized Inspector must certify on the cargo tank certificate that the cargo tank is constructed and certified in conformance with the appropriate MC specification and the ASME Code.

Cargo tanks built with a design pressure less than 15 psig are below the lower boundary of applicability defined by the ASME Code. We are proposing to use the ASME Code for tanks in this lower pressure range in order to gain the many benefits of the ASME Code. Because ASME makes no provisions for certification and stamping of such tanks, we are proposing that both the manufacturer and the Authorized Inspector certify on the cargo tank certificate that the cargo tank meet the appropriate cargo tank specification and, thereby, "constructed in accordance with the ASME Code".

We realize that the cargo tank specifications contained in this proposal would differ in some respect from the requirements in the ASME Code. These differences result because a cargo tank is a highway transport vehicle and is subject to different accident scenarios and dynamic shock loadings during transportation. These forces are not considered by the ASME Code, which basically establishes standards for stationary pressure vessels. Therefore, we have provided for these additional factors, which are unique to the road transport of hazardous materials.

We recognize also that at the present time many Authorized Inspectors are not knowledgeable about the requirements contained in the DOT cargo tank specifications. It is very important that an Authorized Inspector be knowledgeable of the specification requirements to insure the adequacy of the overall cargo tank motor vehicle. To achieve this goal, we intend to work in combination with the National Board to develop a qualification process for Authorized Inspectors desiring to certify DOT specification cargo tank motor vehicles.

III. Increased Testing and Inspection

A major problem uncovered during the research program was that maintenance and testing of cargo tanks is inadequate. This is particularily true where the requirements for cargo tank retesting and reinspection are concerned. The requirements in § 177.824 are generally assumed to apply to the testing and inspection of repaired cargo tanks rather than to an ongoing test and inspection program. Several commenters to Docket HM–183 stated that it was not clear whether § 177.824 applied to cargo tank repairs or to an ongoing test and inspection program.

In reviewing the existing regulations concerning the maintenance, testing and inspection of cargo tanks, we have found that there are no well defined requirements for an ongoing cargo tank maintenance program. We have placed too much reliance on the provisions of § 173.24(d) which states "For specification containers, compliance with the applicable specifications in Parts 178 and 179 of this subchapter shall be required in all details, except as otherwise provided in this subchapter" for the continuing qualification, maintenance and testing of cargo tanks. This reliance on § 173.24(d) has led many shippers and carriers who are not fully aware of all the requirements of the HMR to think that no ongoing cargo tank maintenance program is required. Several omissions regarding the requirements of the HMR which have surfaced are:

(1) Other than a 2 year visual inspection, there is no requirement for an ongoing cargo tank maintenance system;

(2) There is no requirement for cargo tanks to be subject to a formalized and systematic maintenance program; and

(3) Cargo tank corrosion is not adequately addressed in the present HMR.

We agree with both the research findings and commenters that the maintenance, inspection and testing of cargo tanks are inadequate. Further, we believe that the present requirements are inadequate to properly protect the public and are therefore unacceptable. This conclusion is supported by the enactment in October 1984 of Pub. L. 98–554 (Motor Carrier Safety Act of 1984), specifically section 210(b), which states:

> The Secretary shall, by rule, establish Federal standards for inspections of commercial motor vehicles and retention by employers of records of such inspections. Such standards shall provide for annual or more frequent inspections of commercial motor vehicles unless the Secretary finds that another inspection system is as effective as an annual or more frequent inspection system. For purposes of this title, such standards shall be deemed to be regulations issued by the Secretary under section 206.

While not a part of the Hazardous Materials Transportation Act, the authority for the HMR, this law is an example of the public's and Congress' understanding of the importance placed on the maintenance and inspection of parts and accessories necessary for safe operation of a commercial motor vehicle, including a cargo tank motor vehicle. It is obvious that maintenance and inspection of a cargo tank containing a hazardous material during transportation is even more critical to public safety than a commercial motor vehicle used to transport food products. Accordingly, we are proposing requirements for annual and other periodic inspections as well as a requirement for a formal tank maintenance program for cargo tanks. These proposed requirements would be in addition to the requirements in the FHWA Federal Motor Carrier Safety Regulations governing maintenance and inspection of equipment.

The present § 177.824(a) requires inspection and retesting of all authorized specification cargo tanks, except for a cargo tank having a capacity of 3,000 gallons or less used exclusively for flammable liquids. There is litle basis in terms of safety for such an exception. Such cargo tanks are built to the same specifications, operated under similar conditions, and operated over the same roads with the same hazardous materials as typical 4,000 to 9,000 gallon cargo tanks motor vehicles. Although smaller in capacity than a typical cargo tank motor vehicle, a vehicle transporting 3,000 gallons of flammable liquid may pose a risk to the public in an accident. Further, we believe that periodic maintenance, inspection, and retest of any vehicle transporting hazardous material must be an integral part of any responsible operator's safety management program. For these reasons, we are proposing that all cargo tank motor vehicles be subject to test and inspection requirements.

In order to ensure that all DOT specification cargo tanks undergo a formalized maintenance program, we have expanded and placed all the requirements for the maintenance and retesting of cargo tanks presently contained in §§ 173.33 and 177.824 in Subpart E to Part 180. Subpart E of Part 180 would be entitled, "Cargo Tanks: Qualification, Maintenance and Use." Proposed § 180.307(a) Table shows the specific type of testing and inspection required for each DOT Specification cargo tank. The table also specifies the test and inspection interval for various cargo tank configurations. Other provisions contained in this subpart are procedures for the test, inspection, repair and modification of a cargo tank. To ensure that all work is properly performed, requirements for the qualification of persons performing and certifying this type of work are also proposed.

Part 180 would contain all requirements applicable to persons who perform functions relating to maintenance and continuing qualification of packagings, such as the prescribed inspections, testing, reconditioning and repair requirements. Persons performing these functions include retesters, reconditioners, approval and inspection agencies, shippers and carriers. We believe that consolidating all the qualification, maintenance and use requirements in one part of the HMR will result in regulations that are easier to understand. Also, this action removes test and inspection criteria from regulations applicable to shippers in Part 173 and to carriers in Parts 174–177. An outline of the subparts that would be contained in part 180 and the present sections containing these requirements is as follows:

Part 180—Continuing Qualification and Maintenance of Packagings

Subpart A—General.

Subpart B—Non-bulk packagings (except cylinders); Qualification and maintenance (§ 173.28).

Subpart C—Cylinders; Qualification and maintenance (§ 173.34).

Subpart D—Portable Tanks; Qualification and maintenance (§ 173.32, 173.32a, 173.32b, 173.32c).

Subpart E—Cargo Tanks; Qualification and maintenance (§ 173.33).

Subpart F—Tank Cars; Qualification and maintenance (§173.31).

Only the requirements contained in subpart E are addressed in this proposal.

IV. Transportation of Hazardous Materials in Cargo Tanks

A. Flammable Liquids or Pyrophoric Liquids

We propose to eliminate several discrepancies pertaining to the transportation of flammable liquids and pyrophoric liquids in cargo tanks. In this proposal, § 173.119 and certain other sections in Subpart D are revised to clarify and reiterate the following:

(a) MC 310, MC 311 and MC 312 cargo tanks that are used in flammable liquid service must be equipped with preasure relief devices having venting capacities adequate for flammable liquid ladings. We are proposing that pressure relief system on these cargo tanks when used in flammable liquid service must be equivalent to a pressure relief system required for a MC 307 cargo tank.

(b) Any cargo tank with bottom outlets would have to be equipped with self-closing stop valves capable of being remotely operated by both thermal and mechanical means as required for MC 306 and MC 307 cargo tanks.

(c) Under the present § 173.119(m), there is no requirement for safeguards to assure the containment integrity of a cargo tank used to transport flammable liquids with secondary hazards. Based on a petition (P–807), parameters would be provided to allow the use of certain cargo tanks for a lading with more than one hazard class. In the proposal, a cargo tank used to transport a flammable liquid that is also corrosive must be constructed of, or lined with a material that is compatible with the lading or be constructed with added shell thickness for a corrosion allowance. A cargo tank transporting a flammable liquid that is also a poison B liquid must have a design pressure of 25 psig. These design parameters agree with the requirements of subparts F and H of the HMR.

(d) The use of air pressure to unload a cargo tank containing a lading having a flash point of 20°F. closed cup or less would be prohibited. We believe the unloading procedure may pose a potential risk of fire should an air enriched atmosphere at or near the flammability range of the flammable liquid lading be created in the vapor space of the tank.

(e) The use of non-reclosing pressure relief devices would be prohibited except when such devices are arranged in series with a spring loaded pressure relief valve. Nonreclosing pressure relief devices present the risk of a continuous release of lading as compared to a partial release to relieve pressure. Such a continuous release of a flammable lading in the event of a fire could produce catastrophic results.

Sections that would be affected by these revisions are as follows: 173.119, 173.135, 173.145

B. Flammable Solids, Oxidizers and Organic Peroxides

We believe that certain flammable solids, oxidizers and organic peroxides have hazardous characteristics similar to flammable liquids and pyrophoric liquids. Therefore, we are proposing that cargo tanks equipped with bottom outlets when used to transport these hazardous materials have self-closing stop valves capable of being remotely operated by both thermal and mechanical means as required for other cargo tanks used in flammable liquid service.

Sections that would be affected by this revision are as follows: 173.154, 173.190, 173.224.

C. Corrosive Materials

Requirements for corrosive materials in cargo tanks would be standardized. We are proposing that a cargo tank used to transport a corrosive material be constructed of, or lined with a material that is compatible with the lading or have added shell thickness for a corrosion allowance. Further, cargo tanks equipped with bottom outlets when used to transport corrosive materials would be required to be equipped with self-closing stop valves that are capable of being remotely operated by mechanical means.

Sections that would be affected by this revision are as follows:

173.245, 173.247, 173.248, 173.249, 173.250a, 173.252, 173.253, 173.254, 173.255, 173.257, 173.262, 173.263, 173.264, 173.266, 173.267, 173.268, 173.271, 173.272, 173.273, 173.274, 173.276, 173.280, 173.289, 173.292, 173.294, 173.295, 173.296, 173.297

D. Poison B Materials

Requirements for poison B materials in cargo tanks would be standardized. Given the substantial acute and environmental risks associated with the release of a poisonous material, we are proposing that a cargo tank used to transport a poison B material have a design pressure of 25 psig. Any cargo tank equipped with bottom outlets used to transport a poison B liquid would be required to have self-closing stop valves capable of being remotely controlled by both thermal and mechanical means. The type of cargo tank authorized to transport poison B solids would be based on the specific properties of these materials.

Sections that would be affected by these revisions are as follows:

173.346, 173.347, 173.352, 173.358, 173.359, 173.369, 173.373, 173.374

V. Other Issues

Question eight in Docket HM 183 asked "Should the scope of this docket be expanded to address the design and construction of the MC 306 cargo tank in its entirety?" "No!", with some qualification was the anwer given by all manufacturers and operators of MC 306 cargo tanks. The commenters stated that the basic design of the MC 306 cargo tank was adequate and major changes were not justified. On the other hand, several commenters stated that gains in safety and productivity are probable in a major redesign of cargo tanks. These commenters stated, and we agree, that to achieve such gains would require considering the cargo tank motor vehicle as a system and, further, the highway and vehicle as part of a transportation system. Such an effort involves vehicle size and weight laws and vehicle design standards and is a large, long term undertaking.

A number of cargo tank operators commented that more uniform requirements and a greater level of enforcement are necessary to stimulate improvement in cargo tank maintenance. We agree with these commenters. Aiding enforcement personnel by removing the many regulatory shortcomings, inconsistencies and ambiguous requirements is a goal of this NPRM.

Additionally, the DOT has been active in fostering adoption of the Federal regulations by States and supporting them in their enforcement efforts. MIB's State Hazardous Materials Enforcement Development program provided monies to States to adopt and enforce the HMR. Concommitant with this program is the training of enforcement personnel in the technical aspects of the regulations dealing with the transport of hazardous materials. BMCS also has an ongoing program, titled the Motor Carrier Safety Assistance Program, whose objective is to substantially increase commercial motor vehicle enforcement programs by providing development and implementation grants to States in return for their agreeing to adopt Federal safety programs, including the Federal Motor Carrier Safety Regulations and the HMR, or compatable requirements, and establishing enforcement policies and programs. Again, many State personnel have and are being trained in enforcement procedures and regulatory compliance requirements.

New training courses in cargo tank regulations have been developed by BMCS in an effort to provide better training of enforcement personnel. Emphasis areas dealing with such requirements as minimum shell thickness measurements during inspections provide for uniform compliance on the part of industry.

Many commenters stated the driver qualifications and trainings are as important to controlling safety as packaging integrity. We agree that driver qualification and training are critical to the safe transport of any commodity and particularly hazardous materials. The strengthening of driver qualification and training requirements will be addressed in future rulemaking actions.

Review By Section

The following is an analysis and explanation, by section, of the more significant features of this regulatory proposal.

Section 171.3. This section would permit the continued use of a non DOT specification cargo tank for transportation a hazardous waste provided it is operated exclusively by an intrastate motor carrier in a State where its use is permitted by that State.

Section 171.7. This section would incorporate the latest edition of the ASME Code, as requested by petitioners (P–794, P–824); extend applicability to include Sections II and V of the ASME Code; reflect a change in the reference numbering of the American Welding Society (AWS) Code from 3.0 to 2.1 (and a change in address); incorporate additional ASTM and CGA standards; and add references to certain publications of the Rubber Manufacturers Association and the American Society for Non-Destructive Testing.

Section 171.8. Definitions of "Authorized Inspector" and "Authorized Inspection Agency" would be added to clarify who is qualified to perform inspections as required by the HMR. The definition of "cargo tank" would be revised to clarify that the term includes all attached appurtenances, reinforcements, fittings and closures. A definition of "cargo tank motor vehicle" would be added for clarity and to provide for consistent use of terminology when referring to the transport vehicle.

Section 172.203. This section would remove the reference "173.315(a)(1)" and insert in its place "173.315(a)" for consistency with a change made in that section.

Section 173.33. This section would be completely revised and entitled "Hazardous materials in cargo tank motor vehicles". It would contain only general shipper requirements for the use of cargo tanks transporting hazardous materials. For example, this section would provide a means for a shippper to determine if the design pressure of a cargo tank is adequate for a particular commodity. Present requirements pertaining to commodities, cargo tank design, qualification, maintenance and use of cargo tanks would be revised and placed as appropriate in Parts 173, 177, 178 and 180. Highlights of other proposed changes are:

(1) MC 300, MC 301, MC 302, MC 303, MC 305, MC 306 and MC 312 cargo tanks with no marked design pressure or marked with a design pressure of less than 3 psig may be used for authorized ladings where the largest pressure derived under paragraph (d) is less than or equal to 3 psig.

(2) MC 310 and MC 311 cargo tanks may be used for authorized ladings where the largest pressure derived from paragraph (d) is less than or equal to the marked MAWP or MWP, respectively.

(3) "MC 306 type" cargo tanks may be upgraded to the MC 306 cargo tank specification; MC 304 cargo tanks to the MC 307 specification; and "MC 312 type" cargo tanks to the MC 312 specification.

(4) Non-reclosing pressure relief devices are prohibited on a cargo tank used in flammable liquid service unless such device is in series with a spring loaded pressure relief valve.

(5) A cargo tank may not be loaded with a hazardous material if a dangerous reaction may occur in the tank between a contaminant or a residue and the new lading.

(6) No two or more materials, the mixing of which may produce an unsafe condition, may be transported in a cargo tank motor vehicle.

Sections 173.119—173.374. These sections would be revised as discussed earlier in this preamble under the heading "Transportation of Hazardous Materials in Cargo Tanks." In addition, certain other changes would be made for clarity.

Section 173.131 would remove the reference to 178.340–10; 178.341–4 and 178.341–5 and insert in their place references to §§ 178.340–14 and 178.340–16, 178.341–10 and 178.341–11, as applicable.

Section 173.250a would delete paragraph (a)(2) as unnecessary since these requirements are contained in paragraph (a)(1).

Section 173.252 would clarify that the ⅜ inch minimum thickness prescribed for the tank shell and head is exclusive of any lining, cladding or corrosion allowance.

Section 173.272 would clarify that the temperature of the lading may not exceed the design temperature of the cargo tank.

Section 173.289 would delete paragraph (a)(4) as unnecessary since the requirement is contained in paragraph (a)(1).

Section 173.292 would delete paragraph (a)(2) as unnecessry since the requirement is contained in paragraph (a)(1).

Section 173.294 would clarify that the tank must be made of, or lined with, pure nickel or stainless steel.

Section 173.295 would clarify that cargo tanks made of steel are authorized for stabilized benzyl chloride only. The requirements in paragraph (a)(10) pertaining to cargo tanks made of nickel would be removed and placed in paragraph (a)(9). Paragraph (a)(10) would be reserved.

Section 173.315 would remove references to § 173.33 and add the applicable reference to Part 180. Additionally, the present provisions of §§ 173.33(f)(7)(8) and (9) would be removed and placed in §§ 173.315(h)(4), 173.315(n) and 173.315(o), respectively.

Section 173.318 would add the present requirements contained in § 173.33(d)(1)(ii) as new § 173.318(g)(4).

Section 176.76. The requirement in § 173.33(a)(1) authorizing a cargo tank motor vehicle containing a hazardous material to be transported aboard a vessel would be removed and placed in § 176.76(b)(1).

Sections 177.800, 177.801 and 177.802. Sections 177.800 and 177.801 would be simplified and revised for clarity. Section 177.802 would be removed and a new section governing the inspection of carrier facilities and records would be added. These inspection requirements are similar to those applicable to rail and air carriers.

Section 177.814. The existing provisions on record retention and reporting requirements of this section would be removed and placed in § 180.317. A new § 177.814 would reference those requirements.

Section 177.824. The existing provisions on the inspection and retest of cargo tanks of this section would be removed and placed in Part 180 of this sub-chaper. A new § 177.824 would reference those requirements.

Section 177.840. Paragraph (f) would inform carriers of certain equipment testing requirements applicable to the transportation of chlorine that are contained in § 173.315(o).

Section 178.337. This section would add those requirements presently found in § 173.33 which pertain to the manufacture of a DOT Specification MC 331 cargo tank.

In § 178.337–1, paragraph (a) would remove a reference to § 173.33(i) and insert in its place a reference to paragraph (e). Paragraph (e) would remove a reference to § 173.33(i). The requirements presently contained in § 173.33(i) would be added in new paragraph (e)(2).

Section 178.337–2(c) would remove the reference to § 173.33(g)(1) and add those requirements presently contained in § 173.33(g)(1). Also a provision to allow the use of properly joined aluminum baffles would be added.

Section 178.337–3 would revise the minimum thickness formula contained in paragraph (b), as discussed earlier in this preamble under § 178.340–3.

Section 178.337–4(b) would require that welding procedure and welder performance tests be performed in accordance with the ASME Code.

Section 178.337–6(a) would be revised to require manholes on all cargo tanks.

Section 178.337–8(b) would remove the references to § 173.33(f)(9), (h)(4) and (5). The special requirements for chlorine angle valves contained in paragraph (b) would be placed in § 178.337–9(b).

Section 178.337–9 would contain requirements for piping, pipe fittings, pressure devices, hoses and other pressure parts. New paragraph (b)(7) would incorporate certain special requirements for chlorine cargo tanks now found in §§ 173.33 and 178.337–8.

Paragraph (d)(1) would incorporate the provision now found in § 173.33(j) permitting mounting a refrigeration unit on a motor vehicle.

Section 178.337–11(a) would remove all references to § 173.33(h) and add those requirements presently contained in § 173.33(h) through (h)(2) and certain provisions presently contained in § 178.337–11(c). A new paragraph (a)(4) would incorporate certain special requirements for chlorine excess flow values that are presently contained in § 173.33(h)(4). Paragraph (b) would remove the reference to § 173.33(h)(3) and add the requirements contained in that paragraph. Paragraphs (f) and (g) would require that cable linkages for the internal valve be corrosion resistant.

Section 178.337–14(b) would remove the reference to § 173.33(f)(7) and add

the requirements contained in that paragraph.

Section 178.337–15 would remove the references to § 173.33(f) (6) and (10) and add the requirements contained in those paragaphs.

Section178.338. This section would be revised by adding those requirements presently found in § 173.33 which pertain to the manufacture of a DOT Specification MC 338 cargo tank.

Section 178.338–8(b) would remove the reference to § 173.33(f) and add certain applicable requirements contained in § 173.33 (f) through (f)(5).

Section 178.338–17 would remove the references to §§ 173.33(f)(6) and 173.318(a)(4) and add the requirements now contained in those paragaphs.

Section 178.340. This section contains the general design and construction requirements applicable to MC 306, MC 307 and MC 312 cargo tanks. This section would add a table of headings covering §§ 178.340–1 through 178.340–14 for easier reference of the requirements contained in these sections.

Section 178.340–1. In this section, over 30 terms would be defined for clarity. New terms would be used whenever existing terms are found inappropriate. For example, "fail safe" device would replace the term "shear section" to permit the use of any device designed to fail in order to protect a major part. This proposal considers each "compartment" a separate cargo tank. Similarly, a multiple compartment tank is a series of connected cargo tanks. Thus, the term "compartment" will no longer be used.

This section would specify the ASME Code as well as the appropriate specification as the basis for cargo tank motor vehicle design and construction. Each cargo tank with a design pressure of 15 psig or greater would have to be "constructed and certified in conformance with the ASME Code" and code stamped. Each cargo tank with a design pressure of less than 15 psig would have to be "constructed in accordance with the ASME Code", but may not bear on ASME code stamp. In either case, the design and construction techniques would be the same and the design and construction would be certified by an Authorized Inspector. This procedure will provide shippers, cargo tank motor vehicle owners, and insurance carriers with greater assurance that each specification cargo tank motor vehicle conforms to spsecification requirements.

Based on satisfactory experience under the exemption program and several petitions (P–537, P–768, P–870, P–883), vacuum-loaded cargo tanks made to the MC 307 and MC 312 cargo tank specifications would be authorized.

Design parameters for connecting structures would provide for the over-all structural integrity of the cargo tank motor vehicle based, in part, on NTSB recommendations H–83–25 through –30.

The structural requirements specified for connecting structures are the same as those specified for a cargo tank with the exception of pressure.

Section 178.340–2. Requirements for construction materials, including the thickness of these materials, would be contained in this section. All construction materials for the cargo tank shell, heads, bulkheads and baffles would be of a metal suitable for building pressure vessels in conformance with the ASME Code. This provision, in response to a petition for rule change (P–870) and satisfactory exemption experience, would expand the types of construction materials authorized and, thereby, eliminate the need for an exemption for cargo tanks made of metallic materials other than steel or aluminum.

Two petitioners (P–310, P–452) requested that the minimum thicknesses for shells, heads, bulkheads and baffles be expressed in decimals in place of gauge. These petitions are denied as unnecessary since the proposed specifications would require conformance with the ASME Code.

The present requirement that cargo tanks in corrosive service must be designed for a 10-year service life would be removed. We believe this requirement restricts the economic optimization of the tank design and does not provide assurance that the tank shell thickness is greater than the prescribed minimum thickness. We are proposing that cargo tanks may be designed for any service life. An acceptable level of safety would be maintained by new inspection and thickness monitoring requirements specified in proposed subpart E, of Part 180. Tanks with shells below the minimum thickness must be repaired or the specification plate must be removed.

Section 178.340–3. Requirements for the structural integrity of cargo tanks would be contained in this section. The shell thickness and cargo tank structure would conform with the structural requirements prescribed in this section, in addition to the minimum shell and head thickness requirements in the individual specification and the accident damage protection requirements in § 178.340–8. Further, the cargo tank manufacturer must consider all structural loading and damage that would result from accidents, such as an overturn on the roadway.

The proposal contains a requirement that stresses resulting from specific operating loadings be evaluated in the design of a cargo tank in place of the present general loading requirement. We are proposing to specify the same loadings presently prescribed for the MC 331 cargo tank. We believe the MC 331 loading requirements adequately take into account the forces actually encountered in transportation. For frameless cargo tank motor vehicles, where the tank shell serves as the vehicle frame, the basic structural integrity of a cargo tank would be calculated using a specific formula. The proposed formula is an improved version of that specified in § 178.337–3 of the MC 331 cargo tank specification. The proposed formula was developed as a part of the MC 331 cargo tank integrity study by the research contractor, Dynamic Sciences, Inc., and its industry advisors. The proposed formula includes shear stresses resulting from internal pressure, a factor not included in the present formula in § 178.337–3. For cargo tanks mounted on a frame or built with integral structural supports, the stress analysis appropriate to the tank and structural configuration would be made using the required loadings. Since conformance with the ASME Code would be required, the present 5:1 safety factor would be relaxed to the 4:1 safety factor allowed by the ASME Code.

Section 178.340–4. Requirements for the joints in the tank would be contained in this section. Joint preparation, welding procedures and welder performance are as prescribed in the AMSE Code. This Code includes supervision of welding, information on proper type and size of electrodes used, number of passes, etc., and in addition, require that work drawings indicate details and tolerances as well as verification of welder competence all of which are necessary to assure the structural integrity of the tank.

Since conformance with the ASME Code would be required, the confusing requirements of optimum fabrication techniques and efficiency determination would be removed. Any welding technique and its corresponding allowable weld efficiency permitted by the ASME Code would now be acceptable. Conformance with the ASME Code would also obviate the need for the compliance test in addition to ASME Code requirements.

Section 178.340–5. Manhole requirements would be contained in this section. Under the proposed rule, a manhole closure would have a structural strength much greater than that presently prescribed. A minimum

manhole size would also be prescribed. Additional comments and changes to this section are addressed earlier in this preamble under the heading "Cargo Tank Overturn Integrity".

Section 178.340–6. Supports and anchoring requirements would be contained in this section. The minimum dynamic loadings specified for the cargo tank would be applicable to the tank supports and anchoring systems. See earlier preamble discussion under § 178.340–3.

Section 178.340–7. Circumferential reinforcement requirements would be contained in this section. These requirements are relaxed to permit, under certain conditions, the unreinforced portion of the shell to exceed 60 inches. This relaxation is based on a petition (P–537) and the satisfactory experience of cargo tanks made to this requirement under exemption. This section would also prohibit any type of reinforcement that precludes visual inspection of the tank shell or head. The placement of reinforcement rings over circumferential shell joints would be prohibited.

Section 178.340–8. Requirements for protection from accident damage would be contained in this section. This proposal is organized into both general requirements and individual requirements for the following accident protection zones: the bottom damage protection zone (the lower ⅕ of the tank), the roll over damage protection zone (the upper ⅗ of the tank), and the rear-end tank protection zone (area subject to rear-end or backing collisions).

The general requirements for accident damage protection would require a cargo tank, its piping, closures and valves that may contain lading to be designed and constructed to minimize the potential for loss of lading resulting from an accident. Projections from the cargo tank shell that retain lading such as domes and sumps would be required to be designed to minimized the possibility of the loss of lading in an accident, be constructed of a material having a strength equivalent to that of the tank shell, and have a thickness at least equal to that specified by the appropriate specification. Any projection that extends more than two inches from the tank shell would be required to be protected from accident damage. To provide for maximum design freedom and to minimize cargo tank cost, projections that have a strength of at least 125 percent of the requirements specified for the appropriate accident damage protection device would not be required to have accident damage protection. Additionally, such projections may be considered as accident damage protection devices for the protection of fittings, piping, etc.

a. *Bottom damage protection.* Bottom damage protection devices are intended to protect any outlet, projection, sump, or piping located in the bottom damage protection zone from accidental damage such as a collision with another vehicle or with a road side structure, such as a guard rail.

The present specifications require the use of internal self-closing stop valves to provide lading rention in collision accidents. Vacuum-loaded cargo tanks, operating under DOT exemption, are authorized to have external self-closing stop valves which are protected by bottom accident damage protection. These cargo tanks have demonstrated a high level of intergrity. The bottom accident damage protection used on vacuum-loaded cargo tanks consists of the vehicle frame, rear wheels, suspension system and rear end tank protection. Because of the excellent safety record of vacuum-loaded cargo tanks, we are proposing to allow external self-closing stop valves with bottom accident damage protection as an alternative to the internal self-closing stop valves on all MC 307 and MC 312 cargo tanks.

Accident data from studies of under-ride accidents indicate that a significant percentage of under-ride accidents occur at or near highway speed limits. Based on these studies, we are proposing that the bottom accident damage protection system must be capable of absorbing or deflecting an energy of 275,000 foot-pounds based on the ultimate strength of the material. This is equivalent to the impact of a 4,000 pound automobile at a speed of 50 miles per hour or the impact of a 80,000 pound truck backing into a stationary structure at 10 miles per hour. This impact energy is applied to the bottom damage protection device at any point and from any direction, i.e. front, rear, side or bottom, over an area not greater than 6 square feet.

Also, requirements would be relaxed to allow the use of valve protection features other than a shear section to provide greater flexibility for cargo tank manufactures and operators.

b. *Rollover damage protection.* The most common highway accident involving the loss of cargo tank lading is a rollover. Such accidents generally result in damage to the upper ⅗ of the cargo tank. The most vulnerable areas are the cargo tank sides, top and front head. Present requirements allow the lateral strength of rollover damage protection devices to be only ¼ the strength required normal to the shell. In a rollover accident, the rollover damage protection system can receive lateral loads that equal or exceed the normally applied load. For this reason, we are proposing that the rollover damage protection system on each cargo tank motor vehicle be designed for a lateral load equivalent to twice the gross weight of the loaded cargo tank motor vehicle. If more than one rollover protection device is used, each device must be designed for a lateral load no less than one-half the gross weight of the loaded cargo tank motor vehicle.

c. *Rear-end tank protection.* A petitioner (P–452) maintains that the present rear bumper requirements serve two functions. First, as required by § 178.340–8 the bumper must protect the cargo tank and any tank component that may retain lading from damage as a result of a collision with another vehicle or with a structure during backing. Second, as required by 49 CFR 393.86 the bumper serves as a rear-end under-ride protection device to protect occupants of any vehicle that may collide with the rear-end of the cargo tank. The petitioner requested that the regulations be revised to separate the two functions.

We agree and are proposing to relax the requirement for rear-end protection by allowing a rear-end tank protection device which may be different from the rear-end under-ride protection device. This would be accomplished by removing the height restriction for the location of the rear-end tank protection. The placement of the rear-end tank protection device would protect the cargo tank and any piping, fittings, etc., from collision damage. The strength requirements for the rear-end tank protection device would remain unchanged. The rear-end under-ride device must conform with the design and strength requirements specified in 49 CFR 393.86.

MTB has received several petitions (P–904, P–911, P–923) for rule change requesting that rear-end tank protection be required only on the rearmost unit of a "double" cargo tank motor vehicle configuration. The petitioners argued that the present requirement adds cost and weight to the cargo tank configuration with no safety benefits. We do not agree. We believe that the forward unit of a "double" is vulnerable to rear-end tank damage particularly in turning maneuvers. This vulnerability increases in proportion to the length of the draw bar between the cargo tank units. The forward unit of a "double" is at times operated without the protection afforded by the rear units. Operation of such a forward unit, whether with a full load or with only residual lading

presents an unacceptable risk. Furthermore, we believe that the removal of the location restriction on rear-end tank protection devices, as proposed in this rule, would eliminate the need for a heavy supporting structure and minimize the cost and weight of the protection device. For these reasons, these petitions are denied.

Section 178.340–9. This section would contain and clarify the present requirements relative to pumps, piping, hoses, connections, etc. contained in §§ 178.340–8(d) (3), (4), (5) and (8). It would also contain a provision that hose couplings must be designed for a burst pressure of not less than 120 percent of the design burst pressure of the hose.

A requirement would be added that loading/unloading and charging lines be of sufficient strength or be protected by a fail-safe device in order to prevent damage to the cargo tank that could result in loss of lading from any forces applied by loading/unloading or charging lines attached to the cargo tank. This should prevent the uncontrolled loss of lading from the cargo tank should the cargo tank motor vehicle be moved while the loading/unloading or charging lines are still attached to the facility's tanks. Finally, a provision would be added to authorize the use of nonmetallic piping, valves or connections located outboard of the lading retention system.

Section 178.340–10. Pressure relief device requirements would be contained in this section. The proposal differs from existing regulations as follows:

1. Provisions for possible arrangements, types, location and pressure setting of pressure relief devices are expanded and revised for clarity. This section contains requirements currently found in §§ 178.341–4, 178.342–4 and 178.343–4.

2. Research and experiments have shown that cargo tanks can experience short duration pressure surges of up to 50 psig in a rollover. This has been shown to cause the release of about two gallons of lading through the pressure relief devices on a typical MC 306 cargo tank. The proposal clarifies the fact that the present regulations require pressure relief systems to be capable of withstanding a pressure surge without leakage of lading and yet be capable of operating when there is a sustained pressure rise in the tank.

3. We are not aware of a valid reason for a normal vent valve set-to-discharge at 1 psig since, in many rollover conditions, the static head of the lading would open and operate such a valve. Additionally, the vapor pressure of some ladings exceeds 1 psig in transportation resulting in continuous venting. Therefore, we are proposing to prohibit the use of normal vent valves.

4. We propose to revise the procedures used to establish the rated flow capacity for pressure relief devices. The proposal requires that a manufacturer of a pressure relief device certify that the pressure relief device model (design, size and set pressure) is designed, tested and meets the requirements contained in this section and the applicable cargo tank specification. Each pressure relief device model would be flow capacity tested prior to its first use. The rated flow capacity for each pressure relief device model would be based on testing of at least three prototype pressure relief devices. The marked rated flow capacity of the pressure relief device would not be greater than 90 percent of the average value for the devices tested. Additionally, we are proposing that an Authorized Inspector withness and approve the flow capacity test for each pressure relief device model and sign the manufacturers certification for that model.

5. We believe that the risk from hazardous material transportation is substantially reduced when packaging is designed to retain the lading in non catastrophic accidents and to minimize the quantity of lading released when release is inevitable. However, in a cargo tank accident, particularly an overturn followed by a fire, the functioning of a frangible disc or a fusible element would result in the release of a substantial quantity of lading. A reclosing pressure relief device on the other hand would minimize the quantity of lading released. Further, we believe that frangible disc and fusible elements particularly in low pressure applications are much more likely to fail as a result of impact and liquid surge than reclosing pressure relief devices. Accordingly, for all cargo tanks constructed after the effective date of the final rule, we are proposing that all pressure relief devices be reclosing, except a frangible disc may be used in series with a reclosing pressure relief device.

Section 178.340–11. Requirements for tank outlets would be contained in this section. In this proposal, the present requirements contained in §§ 178.341–5, 178.342–5 and 178.343–5 are revised to provide practical guidelines for the design of cargo tank openings, outlets and their attached piping, connections and appurtenances.

Requirements for remote closure of a cargo tank loading/unloading outlet would be clarified. Each cargo tank self-closing stop valve used for loading and/or unloading would be required to have a remote means of closure. When used to transport a flammable liquid, pyrophoric liquid, oxidizer or Poison B liquid, a cargo tank would be required to be equipped with a self-closing stop valve capable of being remotely operated by both thermal and mechanical means. These requirements presently are contained in § 173.119 but have not been consistently required for all flammable liquids and other hazardous materials presenting similar risks. Non self-closing stop valves with mechanical means of remote closures would be authorized for corrosive materials.

Based on a petition (P–537) and on exemption experience, requirements for internal outlet self-closing stop valves would be relaxed to allow the use of an external self-closing stop valve in certain cases. See the preamble discussion of § 178.340–8 on accident damage protection.

Provisions regarding top outlets would be clarified. An opening in the top of a cargo tank that is securely closed during transportation with a welded or bolted blank flange or by a threaded plug would not be considered an outlet. Such openings would be considered projections and if they extend more than two inches from the tank shell or head accident damage protection would be required. See proposed § 178.340–8(a)(1).

Section 178.340–12. Gauging device requirements would be contained in this section. Existing requirements for gauging devices are applicable only to MC 307 cargo tanks. These requirements would be revised and made applicable to MC 306 and MC 312 cargo tanks. As proposed, any method that measures the maximum permitted liquid level or amount of the lading to an accuracy of 0.5 percent would permitted. Sight glass gauging devices would continue to be prohibited.

Section 178.340–13. This section would contain the general pressure testing requirements presently found in §§ 178.341–7, 178.342–7 and 178.343–7. This section would also contain a general pressure test procedure which emphasizes that a cargo tank must be subjected to a prescribed test pressure to assure the pressure integrity of the cargo tank.

The proposal authorizes pneumatic pressure testing for all DOT Specification MC 306, MC 307 or MC 312 cargo tanks. If pneumatic testing is used, the cargo tank must be inspected for leakage or other signs of defects at the inspection pressure specified in the applicable specification. The pneumatic inspection pressure specified would be

lower than test pressure due to the potential hazards involved in a pneumatic pressure test.

Section 178.340–14. This section would revise and clarify the cargo tank marking requirements presently contained in § 178.340–10. The required markings will all be found on the cargo tank nameplate or the cargo tank motor vehicle specification plate. It would also require that all markings must be in English.

Since all DOT Specification MC 306, MC 307 and MC 312 cargo tanks will either be "constructed and certified in conformance with the ASME Code" or "constructed in accordance with the ASME Code", each cargo tank nameplate would be required to contain all the information required by the ASME Code. In addition, the nameplate would also be required to contain other markings such as cargo tank design pressure, cargo tank test pressure, cargo tank design temperature range, material specification (shell and heads), minimum shell and head thickness, and maximum design density of the lading.

The marking of the cargo tank design pressure would be required because shippers of hazardous materials must be able to determine if a cargo tank has adequate lading retention capability for the commodity to be shipped. The cargo tank design temperature range marking would make shippers and carriers aware of the temperature range at which the cargo tank can be safely operated. Operating the cargo tank at temperatures outside this range might affect the strength and physical properties of the cargo tank's material of construction. Marking the minimum shell thickness for the cargo tank top, side and bottom, would acknowledge the industry practice, especially in MC 306 cargo tank construction, of building a cargo tank with thicker top and bottom plates and a thinner sidewall. Marking the maximum design density of the lading on the nameplate should prevent the loading of a cargo tank with a lading which is heavier than the design density of the cargo tank.

Additionally, each cargo tank motor vehicle would be required to have a specification plate providing safety and operational data. The specification plate would contain such information as exposed surface area, maximum loading and unloading rates, heating system design pressure and temperature, lining material, the name of the cargo tank and cargo tank motor vehicle manufacturer and the cargo tank motor vehicle certification date.

The marking of the exposed surface area would provide a means of determining the required venting capacity. The marking of the maximum loading and unloading rates and the heating system design pressure and temperature would provide shippers and carriers with important operational information about the cargo tank motor vehicle. For example, this information could prevent the use of a heating medium which is warmer than the design temperature of the system.

The proposal allows the combination of the nameplate and specification plate on an uninsulated cargo tank. In this case, the combination plate would be welded or brazed to the cargo tank. For an insulated cargo tank, the nameplate would be required to be welded or brazed to the cargo tank and the specification plate would be welded, brazed, or riveted to the insulation jacket or to an integral supporting structure of the cargo tank motor vehicle. The ASME Code requires that the nameplate be visible after insulation is applied. Additionally, paragraph UG-119(f) of the ASME Code contains provisions for installation of a duplicate nameplate on the insulation jacket. The use of duplicate plates is also important on ASME Code cargo tanks if the specification plate is lost or becomes illegible. The nameplate which is on the cargo tank would serve to verify ASME Code construction and would enable the owner to replace the specification plate.

Secton 178.340–15. This section would revise and clarify the certification requirements presently contained in § 178.340–10. The proposal requires that in addition to a responsible official of the manufacturer that an Authorized Inspector would also be required to sign a certificate certifying that the cargo tank or cargo tank motor vehicle is designed, fabricated, tested and completed in conformance with the application specification.

Additionally, the proposal requires that the manufacturer of each stage of a cargo tank motor vehicle construction not only must furnish a certificate covering its work to any succeeding manufacturer, but also must pass along any certificates received from earlier manufacturers. This will ensure that at the end of staged construction, the final manufactuer will possess certificates covering the entire construction process. The proposal also would require that the manufacturer furnish the owner with all certificates and other documentation required by this section.

Section 178.341. Individual specification requirements applicable to an MC 306 cargo tank motor vehicle are contained in this section.

The MC 306 type cargo tank is a low pressure cargo tank used mostly for the transportation of low vapor pressure flammable liquids. The research contractor estimates that there are approximately 102,500 cargo tanks of all specifications in hazardous materials service and that approximately 57 percent (57,900) of these are MC 306 type cargo tanks. The MTB incident data base for the years 1960 through 1983 shows that MC 306 type cargo tanks accounted for about 88 percent of the deaths reported for cargo tanks of known type in hazardous material service. We believe that this data depicts the combined high risk potential of the highly flammable hazardous materials transported and the comparatively low integrity of MC 306 type cargo tanks relative to other specification cargo tanks. MC 306 type cargo tanks have a thin shell and heads that require additional reinforcement to accommodate the prescribed environmental loads.

Because we do not have sufficient data to assess the suitability of the basic shell integrity of MC 306 type cargo tanks in accidents or to evaluate various countermeasures such as increased shell and head thickness and improved roll stability, we have not proposed any revision of the regulations on this issue. This proposal, however, does address the matching of hazardous material properties with tank design parameters.

Presently there are no requirements for the design pressure specified for the MC 306 cargo tank except that the tank must be designed for a "Design Pressure" not less than the static head of the fully loaded tank in the upright position. Several petitioners (P–562, P–827) requested revision of the requirement that the tank shell be designed to withstand a pressure not less than that exerted by the static head of the lading. The petitioners claim that the design pressure of a typical MC 306 cargo tank is zero. We disagree. At present, MC 306 cargo tanks must have a design pressure of not less than the static head of a fully loaded tank and be pressure tested at 3 psig. The low capacity normal vent is set-to-discharge at one psig. The emergency pressure relief devices for fire conditions are set-to-discharge at 3 psig and are flow rated at 5 psig. The unloading relief protection system is designed to prevent pressure in the tank from exceeding 3 psig. The tank is in effect normally operated at up to 3 psig and in an emergency situation at 5 psig which is 166 percent of the test pressure.

MC 306 cargo tanks should be designed for a test pressure of 5 psig, the pressure at which the pressure relief valve is rated. Section 173.119 permits MC 306 cargo tanks for ladings with a

vapor pressure of 16 psia at 100 °F. or 1.3 psig. Some of these ladings have a vapor pressure of 5.8 psig at 115 °F, the reference design temperature. For a typical MC 306 cargo tank of elliptical cross section, minor axis of 61 inches, typical ladings can produce a static pressure of 1.5 to 2.0 psig. For example, pentane should be transported in a cargo tank with a design pressure of at least 8.7 psig [1.2 times [vapor pressure at 115 °F = 5.8 psig; plus the static head = 1.4 psig for a tank 60 inches high)]. Given the potential magnitude and the variability of these properties over the vast number of hazardous materials authorized, we believe a design pressure of not less than 3 psig is necessary. A maximum design pressure of 14.9 psig is being proposed for the MC 306 cargo tank.

The pressure design parameters for a tank are generally based on the vapor and static pressure of the lading and the loading/unloading pressure. For most cargo tanks, the tank test pressure is 150 percent of the design pressure and the emergency relief devices are set-to-discharge and flow rated at not lower than the design pressure and not above the test pressure. This philosophy assures that the emergency relief devices would not operate under normal transportation conditions and yet during an emergency condition would operate at less than or equal to a pressure for which the tank has been proof-tested.

Based on this discussion, we propose to revise the MC 306 specification as follows:

1. A minimum design pressure of 3 psig would be specified for MC 306 cargo tanks. This design pressure is consistent with the setting presently used for both loading/unloading and emergency relief devices.

2. The maximum design pressure for MC 306 cargo tanks would be increased to 14.9 psig. This is a relaxation of the present requirements and will be consistent with § 173.119 which allows the MC 306 for a lading with a vapor pressure of 16 psia at 100 °F. and takes into account that some ladings will have higher vapor pressures at 115 °F.

3. A test pressure of 150% of the design pressures, and in no case less than 5 psig, would be required for MC 306 cargo tanks. This is an extension of the present requirement of flow rating the relief devices at 5 psig (1.66 times 3 psig). We believe this 1.66 ratio is adequate for a 3 psig design pressure and is compatible with the presently used operating and emergency venting pressures.

4. The minimum set-to-discharge pressure for any pressure relief valve would be the design pressure [3 psig minimum]. The pressure relief valve must close at not less than the design pressure.

5. For a cargo tank designed to be loaded or unloaded with the dome cover closed, the cargo tank must be equipped with a vacuum relief device to limit the vacuum to 1 psig and a pressure relief valve to limit the tank pressure to design pressure based on the product transfer rate marked on the cargo tank specification plate. This change allows greater flexibility for cargo tanks having a design pressure greater than 3 psig.

6. The use of the existing relief valve for normal venting conditions (set-to-discharge at 1 psig) would be prohibited. This relief valve has been shown by research to be a source of leakage in a cargo tank rollover and allows the release of lading under normal transportation conditions. The release of lading through these valves does not conform to the no leakage requirement in § 178.341–4(d)(2) of the present regulations. The leakage in a rollover may be due to static pressure plus vapor pressure of lading acting on the device.

Certain other revisions to the MC 306 cargo tank motor vehicle specification would also be made. The use of rupture discs would continue to be prohibited in cargo tanks intended for a flammable liquid lading. As stated earlier in the preamble discussion to § 178.340–5, the required strength of the manhole would be increased to that used by most of the tank manufacturers.

Section 178.342. Individual specification requirements applicable to a MC 307 cargo tank motor vehicle are contained in this section. Based on exemption experience, construction of a vacuum-loaded cargo tank motor vehicle designed in conformance with the MC 307 cargo tank motor vehicle specification would be authorized.

Petitioners (P–262, P–327) have requested a revision that would change the maximum allowable stress of ⅙ of the ultimate strength of the metal used to ¼. This suggested revision has been incorporated by the adoption of the ASME Code.

Section 178.343. Individual specification requirements applicable to a MC 312 cargo tank motor vehicle are contained in this section. Based on exemption experience, construction of a vacuum-loaded cargo tank motor vehicle with an internal design pressure of 25 psig and an external design pressure of 15 psig designed in conformance with the MC 312 cargo tank specification would be authorized. Given the substantial acute and environmental risks associated with the release of corrosive materials, we are proposing a minimum design pressure of 15 psig for MC 312 cargo tank motor vehicle.

Section 180 Subpart E. The requirements for the continuing qualification, maintenance and periodic testing of MC 300 thru MC 312, MC 330, MC 331 and MC 338 cargo tank motor vehicles presently found in §§ 173.33, 177.814 and 177.824 would be contained in this new subpart.

Section 180.405 This section would contain general requirements for the use of cargo tank motor vehicles. The requirements are based on the regulations presently found in § 173.33 or have been developed as a result of the research programs described earlier in the preamble. The requirements would provide for the continued use of—an existing cargo tank motor vehicle made to an obsolete specification, cargo tank motor vehicles conforming with and used under a DOT exemption whose provisions have been incorporated into the HMR, and DOT Specification cargo tank motor vehicles having no marked design pressure or a marked design pressure of less than 3 psig (see earlier preamble discussion titled "Design Pressure of Cargo Tank"). These requirements would assure that the level of safety of each cargo tank motor vehicle would be in accordance with the intent of the regulations.

As stated earlier in the preamble discussion to § 178.340–5, research findings have shown that in a rollover condition manhole covers frequently fail or are deformed, causing lading leakage. To correct this problem, proposed § 180.305(g) would require a retrofit on certain cargo tank manhole closures within 5 years of the effective date of the final rule with at least 20 percent of the affected cargo tanks being retrofitted each year. Each manhole closure would be required to be capable of withstanding a static internal pressure of at least 36 psig or the cargo tank test pressure, whichever is greater, without leakage or permanent deformation.

Presently § 173.33(b)(2) authorizes MC 304 cargo tanks to have pressure relief devices and outlets which conform with DOT Specification MC 307 cargo tanks. We can find no valid reason why other DOT Specification cargo tanks made to an obsolete specification cannot be similarly modified. This proposal would allow MC 300, MC 301, MC 302, MC 303 and MC 305 cargo tanks to have pressure relief devices and outlets which conform with MC 306 cargo tanks, MC 310 and MC 311 cargo tanks to have pressure relief devices and outlets which conform with MC 312 cargo tanks, and MC 330 cargo tanks to have

pressure relief devices and outlets which conform with MC 331 cargo tanks.

Section 180.407. This section would contain all the requirements for the test and inspection of DOT Specification cargo tank motor vehicles. It would contain the general requirements presently in §§ 173.33 and 177.824, in addition to the proposed new requirements which have been developed as a result of the research program. Among the revisions to the general requirements is a clarification of the test requirements and the required test and inspection frequency in tabular format. The proposed test frequency would be consistent with and justified by the research program and associated recommendations and findings. Additionally, this section would emphasize the need to have trained and experienced inspectors.

Paragraph (d) would contain the requirements for an annual external visual inspection and testing. This section would contain the present periodic testing and inspection requirements contained in § 177.824(b) and the following new requirements:

(a) The annual external visual inspection would be expanded to include DOT Specification MC 330, 331 and 338 cargo tank motor vehicles based on the need demonstrated by the research studies;

(b) Provisions on the inspection and testing of remote closure devices and the inspection of other appurtenances and accessories (that the research studies have shown should be inspected) would be added.

Paragraph (e) would provide the conditions under which an annual internal visual inspection is required. This section would contain some of the present requirements contained in § 177.824(b).

Paragraph (f) would contain the retesting requirements on all lined cargo tanks. These are proposed new requirements which resulted from the research program and NTSB recommendations.

Paragraph (g) would specify the pressure retest requirements for all cargo tanks. This section would contain the requirements presently found in §§ 177.824(c), (d) and 173.33(d), and the following revisions or additions:

(a) Specify the retest pressure for all cargo tanks in tabular form.

(b) Specify that each cargo tank must be pressurized to test pressure, except that the inspection for leaks and damage at design pressure would be permitted if the cargo tank is pneumatically retested.

(c) Require that pressure bearing parts of a cargo tank heating system be hydrostatically tested at a minimum of one and one-half times the heating system design pressure once every five years. The test pressure is based on several petitions for rulemaking (P–262, P–316, P–327).

(d) Require that each pressure retest be witnessed and certified by an Authorized Inspector. Additionally, each cargo tank motor vehicle would be required ferred to have an external and internal visual inspection performed by an authorized inspector every five years as part of the pressure retest. To minimize the economic impact of pressure retesting all affected DOT specification cargo tanks, we are proposing that at least 20% of each owner's affected cargo tanks be retested each year.

(e) Establish a requirement that each MC 330 and MC 331 cargo tank constructed of QT steel be subjected to periodic internal fluorescent magnetic particle reinspection when used for the transport of liquefied petroleum gas or any lading that may cause stress corrosion cracking, the same as is now required for cargo tanks in ammonia service. Research on the integrity of MC 330 and MC 331 cargo tanks shows that the incidence of stress corrosion cracking is increasing and not limited to cargo tanks in anhydrous ammonia service. We believe requiring fluorescent magnetic particle reinspection is necessary for cargo tanks that transport any material that may cause stress corrosion cracking, except those constructed of other than part UHT materials that are postweld heat treated. We are specifically soliciting comments and rationale as to whether this proposed requirement should be extended to cargo tanks made of steel that are not postweld heat treated and to cargo tanks of less than 3500 gallons capacity without a manhole.

(f) Paragraph (h) would require an annual leakage test on all cargo tanks. This would be a new requirement based on the results of the research studies which found numerous leaks in the majority of cargo tank compartments tested. In order to limit cost and equipment down time, the test prescribed in the Environmental Protection Agency's "Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test" is an acceptable alternative test.

(g) Paragraph (i) would require thickness testing of cargo tank motor vehicles under certain conditions. This requirement is based on the need shown by analysis of accidents involving cargo tank motor vehicles in corrosive service. This requirement is consistent with a rule-related notice that was published in the Federal Register (48 FR 15127; April 7, 1983) requiring the owner to assure himself that the cargo tank motor vehicle conforms at all times with the specification under which it was constructed.

Thickness testing would be required when:

1. Visual inspection at any time indicates significant corrosion.

2. A cargo tank motor vehicle is unlined and is in corrosive service or is exposed to a corrosive environment capable of affecting the structural integrity of the cargo tank motor vehicle.

Section 180.409. This section would establish minimum qualification standards for any persons performing or witnessing a test or inspection required in § 180.407. Specific qualification standards are prescribed for each required test or inspection. This section would be included to assure that all cargo tanks are tested and inspected by experienced and qualified personnel who are familiar with both the cargo tank motor vehicle specifications and proper testing methods. This section addresses a finding in the cargo tank research program that showed some testers are unqualified.

Section 180.411. This section would establish pass-fail criteria for each required test and inspection contained in § 180.407. The establishment of pass-fail criteria would ensure that the results of each required test and inspection in § 180.407 would be evaluated in the same way.

Section 180.413. This section would contain the repair, replacement of appurtenances, and modification requirements presently prescribed in §§ 173.33–(d)(11), (e) and 177.824, and the following revisions:

1. Repair requirements for MC 300 thru MC 305, MC 310 and MC 311 cargo tanks would be specified. Such requirements are merely implied in the existing regulations.

2. All cargo tank repairs would be required to be performed in a facility having a current certificate of authorization from the ASME for Section VIII (Division 1), having a current certificate from the National Board, or under the direct supervision of an Authorized Inspector.

3. Modification, stretching, and rebarrelling parameters would be specified and qualifications for facilities performing such work would be prescribed. The facility requirements would be identical to those specified for repairs.

Section 180.415. This section would contain the marking requirements presently contained in § 177.824(h) plus a new requirement to identify the type

of test or inspection performed. This new requirement would enable shippers, carriers and enforcement personnel to readily determine if a cargo tank motor vehicle has been tested or inspected as required by proposed § 180.407.

Section 180.417. This section would contain the reporting and record retention requirements presently prescribed in §§ 173.33 and 177.824, and the following revisions:

1. A requirement that each owner of a cargo tank motor vehicle retain in its files a certificate or manufacturer's data report certifying that the cargo tank motor vehicle is in conformance with the specification under which it was constructed. This proposed requirement has been added based on the results of the research program which indicated that a significant number of owners did not have these documents in their possession. Additionally, the research program showed that most owners did not have drawings or calculations for their equipment. This information will be of great assistance to the owner and other persons in verifying that a cargo tank conforms with the regulations. If a manufacturer's certificate is unavailable, owners of non-ASME Code stamped cargo tanks manufactured before the effective date of the final rule would be permitted to certify their equipment when supervised by an Authorized Inspector, owners of ASME Code stamped cargo tanks would be able to obtain a copy of the manufacturer's data report from the National Board or copy the information contained on the cargo tank nameplate and ASME Code plate. In both cases, the owner and the Authorized Inspector would be required to sign the certificate stating that the cargo tank fully conforms to the appropriate specification.

2. This section would expand the information required on the cargo tank test or inspection report presently required in § 177.824. The additional information will make readily available to all concerned parties exactly what type of testing or inspection was performed along with the results of each test or inspection. This proposed requirement was based upon the recommendations of the research program and comments to Docket HM–183 recommending close monitoring of compliance with the HMR.

3. Reporting requirements for MC 330 and MC 331 cargo tanks carrying liquefied petroleum gas or any other material that may cause stress corrosion cracking would be specified. This is presently required for MC 330 and MC 331 cargo tanks in anhydrous ammonia service. We believe that this requirement is justified because research has shown that the incidence of stress corrosion cracking is increasing and is not limited to cargo tanks in anhydrous ammonia service.

Comments

MTB and BMCS are requesting that interested persons submit constructive comments, together with supporting data, for or against the rules proposed in this notice. The submission of general comments without supporting data or documentation will not assist MTB and BMCS in the development of a final rule. In order to fully consider the impact of this complex and technical proposal on public safety and the regulated industry, commenters are strongly encouraged to provide substantive data, calculations and test results to support their views. Commenters are requested to make their comments in a manner that will clearly identify the particular matters on which they are commenting. Unless comments are general in nature pertaining to the entire Notice, it is requested that each paragraph of comments be identified in the following manner:

"*Part 176.* We think ——" or "*Section 172.503* We believe ——".

MTB and BMCS are particularly interested in receiving constructive comments in the following areas:

(1) What would be the incremental cost and benefits to the public and to cargo tank motor vehicle purchasers of requiring ASME Code construction of new cargo tank motor vehicles?

(2) What would be the incremental cost and benefits of requiring the use of National Board Authorized Inspectors and requiring that an Authorized Inspector certify that a cargo tank motor vehicle conforms with the applicable DOT specification?

(3) What would be the incremental cost and benefits of requiring that repairs to a cargo tank be performed by the following: a cargo tank manufacturer holding an ASME "U" stamp; a repair facility holding a "R" stamp; or under the direct supervision of an Authorized Inspector who certifies the repair as being acceptable?

(4) What would be the incremental savings on insurance to cargo tank manufacturers and cargo tank motor vehicle operators on cargo tank motor vehicles built to the ASME Code and certified by an Authorized Inspector?

(5) What would be the incremental savings realized by authorizing the use of external self-closing stop valves as proposed in § 178.340–11(a)?

(6) What would be the incremental savings realized if the rear end tank damage protection requirements as proposed in § 178.340–8(d) were adopted?

(7) Should we require National Board registration for all new construction of cargo tank motor vehicles?

(8) Should we require that an Authorized Inspector perform and approve or witness and approve all the tests and inspections specified in Part 180 of this proposal?

(9) What would be the impact of no longer authorizing the use of MC 300, MC 301, MC 302, MC 303, or MC 305 cargo tank motor vehicles for transporting hazardous materials?

(10) Should we limit the service life of a cargo tank motor vehicle in hazardous materials service? If so, what should this service life limit be?

(11) Are there any hazardous materials presently authorized in MC 306 type cargo tanks that are too hazardous to be transported in such tanks?

(12) Is it likely that a lined cargo tank with external insulation could have corrosion that significantly reduces its structural integrity yet would still pass the prescribed pressure test? If so, what test or inspection procedures could be used to identify and prevent this condition?

(13) Should MTB required special construction, test, operational or restricted lading authorizations on a cargo tank fitted with a very large closure (e.g. an openable rear head) located below the normal liquid level of a full cargo tank?

(14) In addition to answers to the above questions, MTB solicits comments on the overall cost effectiveness (and the incremental cost change) if the rules proposed in this Notice are adopted.

VII. Administrative Notice

A. Executive Order 12291

The effect of this rule, as proposed, does not meet criteria specified in § 1(b) of Executive Order 12291 and is, therefore, not a major rule, but is a significant rule under the regulatory procedures of the Department of Transportation (44 FR 11034). This proposed rule does not require a Regulatory Impact Analysis, or an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 et sq.) A regulatory evaluation and flexibility analysis is available for review in the Docket.

B. Impact on Small Entities

Based on limited information concerning size and nature on entities likely affected by this proposed rule, I certify this proposal will not, if

promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of a review of comments received in response to this proposal. A preliminary regulatory flexibility analysis is available for review in the docket.

C. Paperwork Reduction Act

Information collection requirements contained in this proposal are being submitted for approval to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. Law 96–511).

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Incorporation by reference.

49 CFR Part 172

Hazardous materials transportation.

49 CFR Part 173

Gases, Hazardous materials transportation, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Cargo vessels.

49 CFR Part 177

Hazardous materials transportation, Motor carriers.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers.

49 CFR Part 180

Hazardous materials transportation, Packaging and containers.

In consideration of the foregoing, Parts 171, 172, 173, 176, 177 and 178 of Title 49, Code of Federal Regulations, would be amended and a new Part 180 would be added to read as follows:

PART 171—GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1807, 1808; 49 CFR 1.53(e).

2. In § 171.3, paragraph (f) would be added to read as follows:

§ 171.3 Hazardous waste.

* * * * *

(f) A nonspecification cargo tank motor vehicle manufactured prior to (effective date of final rule) may continue to be used for the transportation of a hazardous waste if the cargo tank motor vehicle—

(1) Was manufactured to a standard reasonably equivalent to a DOT MC 307 or MC 312 specification cargo tank;

(2) Was used to transport a hazardous waste prior to (effective date of final rule);

(3) Has a capacity of 3,500 gallons or less;

(4) Is operated exclusively by an intrastate motor carrier in a State where its operation was permitted by the laws of that State prior to (effective date of final rule);

(5) Is operated in that State in accordance with all other requirements of this subchapter; and

(6) Is maintained, retested and inspected as specified for a MC 307 or MC 312 cargo tank motor vehicle in Subpart E, Part 180, of this subchapter.

3. In § 171.7, paragraphs (c)(21), (d)(1) and (d)(15)(i) would be revised; paragraphs (c)(32), (c)(33), (c)(34), (d)(3)(x), (d)(28), (d)(29) and (d)(30) would be added to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(c) * * *

(21) AWS: American Welding Society, 550 NW LeJeune Rd., Miami, Florida 33126.

* * * * *

(32) ASNT: American Society for Nondestructive Testing, P.O. Box 21124, Columbus, Ohio 43221.

(33) RMA: Rubber Manufacturers Association, 1400 K St., N.W., Washington, D.C. 20005.

(34) National Board: National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229.

(d) * * *

(1) ASME Code means Sections II (Parts A and B), V, VIII (Division 1), and IX of the 1983 edition of the "American Society of Mechanical Engineers Boiler and Pressure Vessel Code" and addenda thereto through December 31, 1984.

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(3) * * *

(x) CGA Technical Bulletin TB–2 is titled, "Guidelines for Inspection and Repair of MC 330 and MC 331 Cargo Tanks," 1980 edition.

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(15) * * *

(i) AWS Code 2.1 is titled, "Standard Qualification Procedure," 1984 edition.

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(28) ASNT Recommended Practice No. SNT–TC–1A is titled "Personnel Qualification and Certification in Nondestructive Testing," 1980 edition, and applicable supplements.

(29) RMA Technical Bulletin 13 is titled "Procedure for Spark Testing Elastomeric Sheet Lining," 7–1985 edition.

(30) National Board Inspection Code is titled "National Board Inspection Code, A Manual for Boiler and Pressure Vessel Inspectors" NB–23, Rev. 4, 1983 edition.

* * * * *

4. In § 171.8, the definition of "cargo tank" would be revised and a definition for "Authorized Inspector", "Authorized Inspection Agency" and "cargo tank motor vehicle" would be added in alphabetical sequence to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

"Authorized Inspector" means an Inspector who is currently commissioned by the National Board of Boiler and Pressure Vessel Inspectors and employed as an Inspector by an Authorized Inspection Agency.

"Authorized Inspection Agency" means (1) a jurisdiction which has adopted and administers one or more sections of the ASME Boiler and Pressure Vessel Code as a legal requirement and has a representative serving as a member of the ASME Conference Committee, or (2) an insurance company which has been licensed or registered by the appropriate authority of a State of the United States or a Province of Canada to write boiler and pressure vessel insurance in such State or Province.

* * * * *

"Cargo tank" means a tank (including the appurtenances, reinforcements, fittings and closures) having a capacity over 110 gallons that is permanently attached to or forms a part of a motor vehicle, or is not permanently attached to a motor vehicle but which by reason of its size, construction or attachment to a motor vehicle is loaded and unloaded without being removed from the motor vehicle. For "tank", see § 178.340–1(c). A packaging fabricated under a specification for cylinders, portable tanks, tank cars or multi-unit tank car tanks is not a cargo tank.

"Cargo tank motor vehicle" means a motor vehicle with one or more cargo tanks permanently attached to or forming an integral part of the motor vehicle.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

5. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1807, 1808, 49 CFR 1.53(e).

6. In § 172.203, paragraph (h)(2) would be amended by removing the reference "§ 173.315(a)(1), Note 15" and inserting in its place the reference "§ 173.315(a), Note 15".

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

7. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1807, 1808; 49 CFR 1.53(e).

8. Part 173, Subpart B of the Table of sections would be amended by revising the entry for § 173.33 to read as follows:

Supbart B—Preparation of Hazardous Materials for Transportation.

Sec.

* * * * *

173.33 Hazardous materials in cargo tank motor vehicles.

* * * * *

9. In § 173.22, the introductory text to paragraph (a)(2) and paragraph (b) would be revised to read as follows:

§ 173.22 Shipper's responsibility.

(a) * * *

(2) The shipper must determine that the packaging or container is an authorized packaging, including all special requirements, and that the packaging has been manufactured, assembled and marked in accordance with:

* * * * *

(b) When a person performs a function covered by or having an effect on a specification prescribed in Part 178, 179 or 180 of this subchapter, an approval issued under this subchapter, or an exemption issued under Subchapter B of this chapter, that person must perform the function in accordance with that specification, approval or exemption, as appropriate.

* * * * *

10. Section 173.33 would be revised to read as follows:

§ 173.33 Hazardous materials in cargo tank motor vehicles.

(a) *General requirements.* (1) No person may offer a hazardous material for transportation in a cargo tank motor vehicle except as authorized by this subchapter.

(2) No two or more materials, the mixing of which may produce an unsafe condition, may be shipped in a cargo tank motor vehicle.

(3) A cargo tank motor vehicle for which the prescribed periodic retest or reinspection under subpart E of Part 180 of this subchapter is due may not be filled and offered for transportation until the retest or inspection has been successfully completed. This paragraph does not apply to any cargo tank motor vehicle filled prior to the retest or reinspection due date.

(b) *Loading requirements.* (1) A hazardous material may not be loaded in a cargo tank if any part of the tank in contact with the hazardous material during transportation would have a dangerous reaction with the hazardous material.

(2) A cargo tank may not be loaded with hazardous material that:

(i) May combine chemically with any residue or contaminants in the tank to produce an unsafe condition.

(ii) Has a density exceeding the maximum density of lading specified on the tank specification plate.

(iii) Is warmer or colder than the design temperature range specified on the tank specification plate.

(3) Air pressure may not be used to load or unload any lading if it may create an air-enriched mixture within the flammability range of the lading in the vapor space of the tank.

(4) The loading or unloading rate used must be less than or equal to that indicated on the cargo tank specification plate, except as specified in § 173.315 or § 173.318.

(c) *Design pressure.* (1) Prior to a cargo tank motor vehicle being filled and offered for transportation, the shipper must confirm that the cargo tank motor vehicle conforms with the specification required for the lading and that the design pressure of the cargo tank is greater than or equal to the largest of the following:

(i) 120 percent of the sum of the vapor pressure of the lading at 115 °F., the tank static head exerted by the lading, and any pressure exerted by the gas padding, including air in the ullage space or dome;

(ii) The pressure prescribed in Subpart B, D, E, F, G or H, as applicable; or

(iii) The maximum pressure used to load or unload the lading.

(2) Any Specification MC 300, MC 301, MC 302, MC 303, MC 305, MC 306 or MC 312 cargo tank motor vehicle with no marked design pressure, or marked with a design pressure of 3 psig or less may be used for an authorized lading where the largest pressure derived from § 173.33(d) of § 178.340–1 of this subchapter is less than or equal to 3 psig.

(3) Any Specification MC 310 or MC 312 cargo tank motor vehicle may be used for an authorized lading where the largest pressure derived from § 173.33(d) or § 178.340–1(l) of this subchapter is less than or equal to the MAWP or MWP respectively, as marked on the specification plate.

(4) Any material that meets the definition of a Poison B material must be shipped in a cargo tank motor vehicle having a design pressure of 25 psig or greater.

(5) Any material that meets the definition of more than one hazard class must be transported in a cargo tank motor vehicle having a design pressure of 25 psig or greater.

(d) *Relief system.* (1) A non-reclosing pressure relief device, except when installed in series with a pressure relief valve, should not be fitted in a cargo tank used to transport hazardous materials. However, a cargo tank constructed before (effective date of final rule) that is fitted with a non-reclosing pressure relief device installed paralled to a pressure relief valve may continue to be used in hazardous material service.

(2) Each cargo tank used to transport a gaseous hazardous material must have a pressure relief system that provides the venting capacity prescribed in § 178.340–10(e) of this subchapter.

(3) A cargo tank made to a specification listed in column 1 may be ungraded or have the relief devices or outlets modified to conform with the applicable requirement for the specification listed in column 2 without changing the markings on the tank's specification plate.

Column 1	Column 2
MC 300, MC 301, MC 302, MC 303, MC 305	MC 306
MC 304	MC 307
MC 310, MC 311	MC 312
MC 330	MC 331.

(e) *Excess flow valves and back flow check valves.* Each MC 330 and MC 331 cargo tank used to transport a flammable liquid must have each liquid or vapor discharge opening equipped with a remotely controlled internal self-closing stop valve conforming to § 178.337–11(a) of this subchapter.

11. In § 173.119, paragraphs (m)(11) and (m)(12) would be removed and reserved; the introductory text of paragraphs (a) and (b), and paragraphs (a)(17), (b)(1), (e)(3), and (m)(10) would be revised; and paragraph (b)(12) would be added to read as follows:

§ 173.119 Flammable liquids not specifically provided for.

(a) *Flammable liquids with flash point 20 °F., or below.* Flammable liquids with flash points of 20 °F., or below and having a vapor pressure (Reid [1] test) not over 16 pounds per square inch, absolute, at 100 °F., other than those for which special requirements are prescribed in this Part, must be offered for transportation in specification containers constructed of materials that will not react dangerously with or be decomposed by the lading, as follows:

* * * * *

(17) Specification MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, MC 312, MC 330, or MC 331 (§§ 178.340, 178.341, 178.342, 178.343, 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must be equipped with a pressure relief system conforming to § 178.341–10 or § 178.342–10 of this subchapter, except that pressure relief devices on Specification MC 330 and MC 331 cargo tanks must conform to § 178.337–9 of this subchapter.

(ii) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1)(i) of this subchapter are authorized, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

* * * * *

(b) *Flammable liquids with flash points above 20 °F. to 73 °F.* Flammable liquids with flash points above 20 °F. to 73 °F. having vapor pressure (Reid [1] test) not over 16 pounds per square inch, absolute, at 100 °F., other than those for which special requirements are prescribed in this Part, must be offered for transportation in specification containers constructed of materials that will not react dangerously with or be decomposed by the lading, as follows:

(1) Containers as prescribed in paragraph (a) of this section, except paragraph (a)(17). Openings greater than 2.3 inches in diameter in barrels and drums are authorized when permitted by the specification.

* * * * *

(12) Any cargo tank motor vehicle as prescribed in paragraph (a)(17) of this section, except that top unloading is permitted. (See § 173.33(b)(3).

* * * * *

(e) * * *

(3) Specification MC 304, MC 307, MC 310, MC 311, MC 312, MC 330 or MC 331 (§§ 178.340, 178.342, 178.337, 178,337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The design pressure must be at least 25 psig.

(ii) Each cargo tank must be equipped with a pressure relief system conforming to § 178.342–10 of this subchapter, except that pressure relief devices on Specification MC 330 and MC 331 cargo tanks must conform to § 178.337–9 of this subchapter.

(iii) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1)(i) of this subchapter are authorized, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

* * * * *

(m) * * *

(10) Specification MC 304, MC 307, MC 310, MC 311, MC 312, MC 330 or MC 331 (§§ 178.337, 178.340, 178.342, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Not authorized for a flammable liquid which is also an organic peroxide, oxidizer or radioactive material.

(ii) A cargo tank used to transport a flammable liquid that is also a Poison B material must have a design pressure of at least 25 psig.

(iii) A cargo tank used to transport a flammable liquid that is also a corrosive liquid must conform to the corrosion protection requirements of § 178.340–2 or § 178.343–2 of this subchapter.

(iv) The design pressure must be at least 25 psig or as prescribed in § 178.340–1(l) of this subchapter whichever is greater.

(v) Each cargo tank must be equipped with a pressure relief system conforming to § 178.342–10 of this subchapter, except that pressure relief devices on Specifications MC 330 and MC 331 cargo tanks must conform to § 178.337–9 of this subchapter.

(vi) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1)(i) of this subchapter are authorized, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

(11)–(12) [reserved]

* * * * *

12. In § 173.123, paragraph (a)(6) would be revised to read as follows:

§ 173.123 Ethyl chloride.

(a) * * *

(6) Specification MC 330 or MC 331 (§ 178.337 of this subchapter) cargo tank motor vehicle, subject to the following condition: Bottom outlets must be equipped with internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

* * * * *

13. In § 173.131, the introductory text to paragraph (a) and paragraph (a)(2) would be revised to read as follows:

§ 173.131 Road asphalt, or tar, liquid.

(a) Road asphalt, or tar, liquid must be packed in containers as follows:

* * * * *

(2) A nonspecification cargo tank motor vehicle that is at least equivalent in design and construction to a Specification MC 306 (§ 178.340, 178.341 of this subchapter) cargo tank motor vehicle, except for the requirements of §§ 178.340–14, 178.340–15, 178.341–5, 178.341–10, and 178.341–11 of this subchapter.

14. In § 173.134, paragraph (a)(6) would be revised to read as follows:

§ 173.134 Pyroforic liquids, n.o.s.

(a) * * *

(6) Specification MC 330 or MC 331 (§ 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The design pressure must be at least 175 psig.

(ii) Each pressure relief device must have direct communication with the vapor space in the tank when fully loaded.

(iii) Bottom outlets must be equipped with internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

* 15. In § 173.135, paragraph (a)(9) would be revised to read as follows:

§ 173.135 Diethyl dichlorosilane, dimethyl dichlorosilane, ethyl dichlorosilane, ethyl trichlorosilane, methyl trichlorosilane, trimethyl chlorosilane, and vinyl trichlorosilane.

(a) * * *

(9) Specification MC 304, MC 307, MC 330 or MC 331 (§§ 178.340, 178.342, 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank must be fabricated from steel or stainless steel.

(ii) The design pressure of the cargo tank must be as prescribed in § 178.340–1(l) of this subchapter.

(iii) Each cargo tank, except Specification MC 330 and MC 331 cargo tanks, must conform to the corrosion protection requirements in § 178.340–2(c) or § 178.343–2 of this subchapter.

(iv) Each cargo tank must be equipped with a pressure relief system conforming to § 178.342–10 of this subchapter, except that pressure relief devices on Specification MC 330 and MC 331 cargo tanks must conform to § 178.337–9 of this subchapter.

(v) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1)(i) of this subchapter are authorized, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

* * * * *

16. In § 173.136, paragraph (a)(8) would be revised to read as follows:

§ 173.136 Methyl dichlorosilane and trichlorosilane.

(a) * * *

(8) Specification MC 330 or MC 331 (§ 178.337 of this subchapter) cargo tank motor vehicle, subject to the following condition: Bottom outlets must be equipped with internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

* * * * *

17. In § 173.141, paragraph (a)(8) would be revised to read as follows:

§ 173.141 Amyl mercaptan, butyl mercaptan, ethyl mercaptan, isopropyl mercaptan, propyl mercaptan, and aliphatic mercaptan mixtures.

(a) * * *

(8) Specification MC 330 or MC 331 (§ 178.337 of this subchapter) cargo tank motor vehicle, subject to the following condition: Bottom outlets must be equipped with internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

* * * * *

18. In § 173.145, paragraph (a)(7) would be revised to read as follows:

§ 173.145 Dimethylhydrazine, unsymmetrical, and methylhydrazine.

(a) * * *

(7) Specification MC 304, MC 307, MC 310, MC 311 or MC 312 (§§ 178.340, 178.342, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The design pressure of the cargo tank must be as prescribed in § 178.340–1(l) of this subchapter.

(ii) Each cargo tank must be equipped with steel pressure relief valves conforming to § 178.341–10 or § 178.342–10 of this subchapter.

(iii) Each cargo tank must conform to the corrosion protection requirements in § 178.340–2(c) or § 178.343–2 of this subchapter.

(iv) Bottom outlets are not authorized.

(v) Tanks must be fabricated from steel or stainless steel.

* * * * *

19. In § 173.148, paragraph (a)(5) would be revised to read as follows:

§ 173.148 Monoethylamine.

(a) * * *

(5) Any cargo tank motor vehicle as prescribed in § 173.119(e)(3).

* * * * *

20. In § 173.154, paragraph (a)(18) would be removed and reserved; paragraph (a)(4) would be revised, to read as follows:

§ 173.154 Flammable solids, organic peroxide solids and oxidizers not specifically provided for.

(a) * * *

(4) Specification MC 303, MC 304, MC 306, MC 307, MC 311 or MC 312 (§§ 178.340, 178.341, 178.342, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Authorized only for sodium perchlorate or magnesium perchlorate, wet, with 10 percent or more water, equally distributed within the cargo tank; however, Specifications MC 311 and MC 312 cargo tanks are also authorized for potassium nitrate solutions.

(ii) An insulated Specification MC 307 or MC 311 cargo tank designed for operation at temperatures up to 250 °F. is authorized for the transportation of ammonium nitrate with 15 percent or more water in solution at a maximum temperature of 240 °F., except that transportation by vessel is not authorized.

(iii) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1)(i) of this subchapter are authorized.

(iv) A cargo tank may have heating coils if an inorganic heating medium is used.

(v) Only a Specification MC 304 or MC 307 cargo tank motor vehicle is authorized for transportation by vessel.

* * * * *

(18) [reserved]

* * * * *

21. In § 173.190, paragraph (b)(4) would be revised to read as follows:

§ 173.190 Phosphorus, white or yellow.

* * * * *

(b) * * *

(4) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The lading must be completely immersed in water or be completely blanketed with an inert gas. Loading temperature must not exceed 140 °F.

(ii) The cargo tank must have insulation at least 4 inches thick, or at least 2 inches thick if the tank is equipped with an exterior heating jacket. Interior heating coils are not authorized.

(iii) Bottom outlets are not authorized.

(iv) An empty cargo tank motor vehicle may not be offered for transportation unless the tank is cleaned, or is filled to capacity with water having a temperature not exceeding 140 °F.

* * * * *

22. In § 173.206, paragraph (c)(3) would be revised to read as follows:

§ 173.206 Sodium or potassium, metallic; sodium amide; sodium potassium alloys; sodium aluminum hydride; lithium metal; lithium silicon; lithium ferro silicon; lithium hydride; lithium borohydride; lithium aluminum hydride; lithium acetylide-ethylene diamine complex; aluminum hydrides; cesium metal; rubidium metal; zirconium hydride, powdered.

* * * * *

(c) * * *

(3) Specification MC 330 or MC 331 (§ 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The material must be in molten condition when loaded and solidified before being moved over a public highway. Outage must be 5 percent or more at a sodium temperature of 208 °F.

(ii) The design pressure must be at least 150 psig.

(iii) The tank must be equipped with exterior heating coils fusion-welded to the tank shell and properly stressed relieved.

(iv) Each cargo tank must be equipped with pressure relief devices conforming to § 178.337–9 of this subchapter.

* * * * *

23. In § 173.224, paragraph (a)(4) would be revised to read as follows:

§ 173.224 Cumene hydroperoxide, dicumyl peroxide, diisopropylbenzene hydroperoxide, paramenthane hydroperoxide, pinane hydroperoxide, and tertiary butylisopropyl benzene hydroperoxide.

(a) * * *

(4) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Cargo tanks are authorized for:

(A) Diisopropylbenzene hydroperoxide not over 60 percent strength in a nonvolatile solvent.

(B) Paramenthane hydroperoxide not over 60 percent strength in a nonvolatile solvent.

(C) Pinane hydroperoxide not over 45 percent strength in a nonvolatile solvent.

(ii) Specifications MC 311 and MC 312 cargo tanks are also authorized for cumene hydroperoxide not over 90 percent strength in a nonvolatile solvent.

(iii) Bottom outlets are not authorized.

24. In § 173.245, paragraphs (a)(30) and (a)(31) would be removed and reserved; paragraph (a)(29) would be revised to read as follows:

§ 173.245 Corrosive liquids not specifically provided for.

(a) * * *

(29) Specification MC 303, MC 304, MC 306, MC 307, MC 310, MC 311 or MC 312 (§§ 178.340, 178.341, 178.342, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Specification MC 303 and MC 306 cargo tanks fabricated from Type 316 stainless steel not less than 0.100 inch thick are authorized only for monoethanolamine, primary amyl alcohol, phosphoric acid, and solutions thereof.

(ii) A Specification MC 306 cargo tank fabricated of aluminum is authorized only for monoethanolamine and primary amyl alcohol.

(iii) Each cargo tank must conforming to the corrosion protection requirements in § 178.340–2(c) or § 178.343–2 of this subchapter.

(iv) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

(30)–(31) [reserved]

* * * * *

25. In § 173.247, paragraph (a)(12) would be revised to read as follows:

§ 173.247 Acetyl bromide; acetyl chloride; acetyl iodide; antimony pentachloride; benzoyl chloride; boron trifluoride acetic acid complex; chromyl chloride; dichloroacetyl chloride; diphenylmethyl bromide solutions; pyrosulfuryl chloride; silicon chloride; sulfur chloride (mono and di); sulfuryl chloride; thionyl chloride; tin tetrachloride (anhydrous); titanium tetrachloride; trimethyl acetyl chloride.

(a) * * *

(12) Specification MC 310, MC 311, MC 312, MC 330, or MC 331 (§§ 178.340, 178.343, 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must conform to the corrosion protection requirements in § 178.340–2(c) or § 178.343–2 of this subchapter.

(ii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

(iii) Cargo tanks made from aluminum are not authorized.

* * * * *

26. In § 173.247a, paragraph (a)(3) would be revised to read as follows:

§ 173.245a Vanadium tetrachloride and vanadium oxytrichloride.

(a) * * *

(3) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Authorized only for vanadium oxytrichloride padded with an inert non-soluble gas adequate to exclude the presence of air.

(ii) Each cargo tank must conform to the corrosion protection requirements in § 178.340–2(c) or § 178.343–2 of this subchapter.

(iii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

(iv) Not authorized for transportation by vessel.

(v) Cargo tanks made of aluminum are not authorized.

* * * * *

27. In § 173.248, paragraph (a)(6) would be revised to read as follows:

§ 173.248 Spent sulfuric acid, or spent mixed acid.

(a) * * *

(6) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 78.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must conform to the corrosion protection requirements in § 178.340–2(c) or § 178.343–2 of this subchapter.

(ii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

28. In § 173.249, paragraph (a)(1) and (a)(6) would be revised to read as follows:

§ 173.249 Alkaline corrosive liquids, n.o.s; alkaline liquids, n.o.s.; alkaline corrosive battery fluid; potassium fluoride solution; potassium hydrogen fluoride solution; sodium aluminate, liquid; sodium hydroxide solution; potassium hydroxide solution.

(a) * * *

(1) In packagings prescribed in § 173.245, except paragraph (a)(29).

* * * * *

(6) Specification MC 303, MC 304, MC 306, MC 307, MC 310, MC 311 or MC 312 (§§ 178.340, 178.341, 178.342, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Specification MC 303 cargo tanks must be fabricated from steel or stainless steel. Specification MC 303 cargo tanks fabricated of steel are authorized for alkaline corrosive liquid, n.o.s., and alkaline liquid, n.o.s. only. Not authorized for transportation by vessel.

(ii) Each cargo tank must conform to the corrosion protection requirements in § 178.340–2(c) or § 178.343–2 of this subchapter.

(iii) Specification MC 306 cargo tanks must be fabricated from Type 316 stainless steel not less than 0.100 inch thick.

(iv) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

29. In § 173.249a, paragraph (d)(1) would be revised, and a new paragraph (d)(6) would be added, to read as follows:

§ 173.249a Cleaning compound, liquid; coal tar dye, liquid; dye intermediate, liquid; mining reagent, liquid; and textile treating compound mixture, liquid.

(d) * * *

(1) In specification packagings as prescribed in § 173.245, except paragraph (a)(29).

* * * * *

(6) Specification MC 303, MC 304, MC 306, MC 307, MC 310, MC 311 or MC 312 (§§ 178.340, 178.341, 178.342, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must conform to the corrosion protection requirements in § 178.340–2(c) or § 178.343–2 of this subchapter.

(ii) Specification MC 303 cargo tanks must be made from steel or stainless steel and are not authorized for transportation by vessel.

(iii) Specification MC 306 cargo tanks must have tanks fabricated from Type 316 stainless steel not less than 0.100 inch thick.

(iv) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

30. In § 173.250a, paragraphs (a)(1) and (a)(2) would be revised to read as follows:

§ 173.258a Benzene phosphorus dichloride and benzene phosphorus thiodichloride.

(a) * * *

(1) In specification packagings prescribed in § 173.245, except paragraph (a)(29), which are made of or lined with materials compatible with the lading.

(2) Specification MC 304, MC 307, MC 310, MC 311 or MC 312 (§§ 178.340, 178.342, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must conform to the corrosion protection requirements in § 178.340–2(c) or § 178.343–2 of this subchapter.

(ii) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

31. In § 173.252, paragraph (a)(4) would be revised to read as follows:

§ 173.252 Bromine.

(a) * * *

(4) Specification MC 310 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The total volume of bromine loaded into a cargo tank must be at least 88 percent and not more than 98 percent of the volume of the tank.

(ii) Tank shell and heads must be at least ⅜ inch thick, excluding lining, cladding or corrosion allowance.

(iii) Each tank must have a nickel cladding material on the inside surface comprising at least 20 percent of the total thickness, or be lined with lead at least 3/16 inch thick. The cladding material must conform to ASME SB–162. The composite plate must conform to ASME SA–265.

(iv) Each cargo tank must conform to the corrosion protection requirements in § 178.340–2(c) or § 178.343–2 of this subchapter.

(v) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

32. In § 173.253, paragraph (a)(6) would be revised to read as follows:

§ 173.253 Chloroacetyl chloride.

(a) * * *

(6) Specification MC 310, MC 311 and MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must be fabricated from at least 99 percent nickel, or Type 316 stainless steel.

(ii) Each cargo tank must conform to the corrosion protection requirements in § 178.340–2(c) or § 178.343–2 of this subchapter.

(iii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchaper are authorized.

* * * * *

33. In § 173.254, paragraph (a)(5) would be revised to read as follows:

§ 173.254 Chlorosulfonic acid and mixtures of chlorosulfonic acid-sulfur trioxide.

(a) * * *

(5) Specification MC 310, MC 311, MC 312 (§§ 178.340, 173.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must conform to the corrosion protection requirements in § 178.340–2(c) or § 178.343.2 of this subchapter.

(ii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

34. In § 173.255, paragraph (a)(5) would be revised to read as follows:

§ 173.255 Dimethyl sulfate.

(a) * * *

(5) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must conform to the corrosion protection requirements in § 178.340–2(c) or § 178.343–2 of this subchapter.

(ii) Bottom outlets must be equipped with internal self-closing stop valves conforming to § 178.340–11(a)(1) of this subchapter.

* * * * *

35. In § 173.257, paragraph (a)(4) would be revised to read as follows:

§ 173.257 Electrolyte (acid) and alkaline corrosive battery fluid.

(a) * * *

(4) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must be lined with rubber or equally acid-resistant material of equivalent strength and durability.

(ii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

36. In § 173.262, paragraphs (a)(11) and (b)(4) would be revised to read as follows:

§ 173.262 Hydrobromic acid.

(a) * * *

(11) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must be lined with rubber or equally acid-resistant material of equivalent strength and durability.

(ii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

(b) * * *

(4) Cargo tank motor vehicles as prescribed in paragraph (a)(11) of this section.

* * * * *

37. In § 173.263, paragraph (a)(10) would be revised to read as follows:

§ 173.263 Hydrochloric (muriatic) acid; hydrochloric (muriatic) acid mixtures; hydrochloric (muriatic) acid solution, inhibited, sodium chlorite solution (not exceeding 42 percent sodium chlorite); and cleaning compounds, liquids, containing hydrochloric (muriatic) acid.

(a) * * *

(10) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each tank must be lined with rubber, or other equally acid-resistant material of equivalent strength and durability, except that an unlined tank made from Type 304 or Type 316 stainless steel is authorized for sodium chlorite solutions not exceeding 42 percent strength.

(ii) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

38. In § 173.264, Note 1 to paragraph (a)(14) would be removed; paragraphs (a)(14) and (b)(3) would be revised to read as follows:

§ 173.264 Hydrofluoric acid; White acid.

(a) * * *

(14) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must be lined, except that an unlined cargo tank is authorized for hydrofluoric acid solutions of 60 percent to 65 percent concentration provided the lading is inhibited so that the corrosive effect on steel is not greater than that of 65 percent hydrofluoric acid.

(ii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

(b) * * *

(3) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this

subchapter) cargo tank motor vehicle, subject to the following condition: Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of ths subchapter are authorized.

* * * * *

39. In § 173.265, paragraph (a)(4) would be revised to read as follows:

§ 173.265 Fluorosilicic acid (hydrofluorosilicic acid) (hydrofluorsilicic acid).

(a) * * *

(4) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must be lined with rubber or equally acid-resistant material of equivalent strength and durability.

(ii) Bottom outlets must be equipped with internal self-closing stop valves conforming to § 178.340–11(a)(1) of this subchapter.

* * * * *

40. In § 173.266, paragraph (f)(2) would be revised to read as follows:

§ 173.266 Hydrogen peroxide solution in water.

* * * * *

(f) * * *

(2) Specification MC 310, or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each tank must be fabricated from aluminum conforming with Aluminum Association designation 1060, 1260, 5254, or 5262 alloy, and have a minimum wall thickness of 0.50 inches.

(ii) The design pressure must be at least 40 psig.

(iii) Each tank must be designed and fabricated so that the internal surfaces can be effectively cleaned and passivated. All openings must be located on the top of the tank.

(iv) Bottom outlets are not authorized.

(v) A cargo tank in hydrogen peroxide service may be used in hydrogen peroxide service only and the cargo tank specification plate must be so marked. Each such cargo tank must also be marked in letters not less than 1 inch high "FOR HYDROGEN PEROXIDE ONLY" in additon to and near the marking prescribed in § 172.328 of this subchapter.

41. In § 173.267, paragraph (a)(7) would be revised to read as follows:

§ 173.267 Mixed acid (nitric and sulfuric acid) (nitrating acid).

(a) * * *

(7) Any cargo tank motor vehicle as prescribed in § 173.254(a)(5).

* * * * *

42. In § 173.268, paragraph (b)(3) would be revised to read as follows:

§ 173.268 Nitric acid.

* * * * *

(b) * * *

(3) Any cargo tank motor vehicle as prescribed in § 173.254(a)(5).

* * * * *

43. In § 173.271, paragraph (a)(8) would be revised to read as follows:

§ 173.271 Methyl phosphonic dichloride, phosphorus oxybromide, phosphorus oxychloride, phosphorus trichloride, and thiophosphoryl chloride.

(a) * * *

(8) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each tank must be:

(A) Fabricated from mild steel, stainless steel, or at least 99 percent nickel (with all cast metal parts of the tank in contact with the lading at least 96.7 percent nickel); or

(B) Clad with Type 316 stainless at least 20 percent as thick as the tank parent metal; or

(C) Lined with lead at least 1/32 inch thick, or nickel at least 99 percent pure and at least 1/32 inch thick, at all points including rivets, welds and other joints, and edges of tank plates.

(ii) A tank fabricated from, or clad with, Type 316 stainless steel is authorized only for phosphorous oxychloride, phosphorous trichloride, and thiophosphoryl chloride.

(iii) A tank fabricated from mild steel or austenitic stainless steel, without cladding or lining, is authorized only for phosphorous trichloride service.

(iv) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

44. In § 173.272, paragraphs (i)(25) and (i)(28) would be removed and reserved; paragraphs (c), (d), (e), (f) and (i)(21) would be revised, to read as follows:

§ 173.272 Sulfuric acid.

* * * * *

(c) *Sulfuric acid concentration of 51 percent or less:* Authorized packaging is described in paragraphs (i)(1), (16), (21), (24), and (28) of this section.

(d) *Sulfuric acid concentration of greater than 51 percent to not over 65.25 percent:* Authorized packaging is described in paragraphs (i)(1)–(16), (21), and (27)–(29) of this section.

(e) *Sulfuric acid concentration of greater than 65.25 percent to not over 77.5 percent:* Authorized packaging is described in paragraphs (i)(1)–(16), (20)–(22), and (29) of this section.

(f) *Sulfuric acid concentration of greater than 77.5 percent to not over 95 percent:* Authorized packaging is described in paragraphs (i)(1)–(22), and (29) of this section.

* * * * *

(i) * * *

(21) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) A cargo tank lined with rubber or equally acid-resistant material of equivalent strength and durability is authorized.

(ii) An unlined steel cargo tank is authorized for sulfuric acid of 85.25 percent or greater concentration, provided the corrosive effect on steel is not greater than that of 85.25 percent sulfuric acid measured at 100 °F.

(iii) The temperature of the lading may not exceed the design temperature of the cargo tank marked on the cargo tank specification plate.

(iv) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

(25) [reserved]

* * * * *

(28) [reserved]

* * * * *

45. In § 173.273, paragraphs (a)(5) and (b)(2) would be revised to read as follows:

§ 173.273 Sulfur trioxide.

(a) * * *

(5) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must be equipped with a pressure relief system conforming to § 178.340–10 of this subchapter and consisting of a spring-loaded pressure relief valve.

(ii) A tank equipped with interior heating coils is not authorized.

(iii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

(b) * * *

(2) Specification MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must be insulated.

(ii) A tank equipped with interior heating coils is not authorized.

(iii) Each cargo tank must be equipped with a pressure relief system conforming to § 178.340–10 of this subchapter and consisting of a spring-loaded pressure relief valve or a spring-loaded pressure relief valve and a frangible disc

installed in series with the relief valve. When the pressure relief system consists of the pressure relief valve and a frangible disc installed in series with the pressure relief valve, the spring-loaded pressure relief valve must be set-to-discharge at a pressure not exceeding 150 percent of the design pressure.

* * * * *

46. In § 173.274, paragraph (a)(4) would be revised to read as follows:

§ 173.247 Fluosulfonic acid.

(a) * * *

(4) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following condition: Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

47. In § 173.276, paragraph (a)(6) would be revised to read as follows:

§ 173.276 Anhydrous hydrazine and hydrazine solution.

(a) * * *

(6) Specification MC 310, MC 311, MC 312, MC 330 or MC 331 (§§ 178.340, 178.343, 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must be fabricated from Type 304 or Type 347 stainless steel with molybdenum content not exceeding 1 percent.

(ii) Vapor space in each cargo tank must be filled with nitrogen gas at not less than atmospheric pressure.

(iii) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop valves conforming to § 178.337–11(c) of this subchapter.

* * * * *

48. In § 173.277, paragraph (a)(9) would be revised to read as follows:

§ 173.277 Hypochlorite solutions.

(a) * * *

(9) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle (except that continued use of nonspecification cargo tanks is authorized if they were used to transport hypochlorite solutions prior to January 1, 1983), subject to the following conditions:

(i) Each cargo tank must be lined with rubber or equally acid-resistant material of equivalent strength and durability.

(ii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

49. In § 173.280, paragraph (a)(8) would be revised to read as follows:

§ 173.280 Trichlorosilanes.

(a) * * *

(8) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each tank must be made of steel or stainless steel.

(ii) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

50. In § 173.287, paragraph (b)(8) would be revised to read as follows:

§ 173.287 Chromic acid solution.

(b) * * *

(8) Any cargo tank motor vehicle as prescribed in § 173.254(a)(5).

* * * * *

51. In § 173.289, paragraphs (a)(1) and (a)(4) would be revised to read as follows:

§ 173.289 Formic acid and formic acid solutions.

(a) * * *

(1) In packagings prescribed in § 173.245, except (a)(14), (a)(29), and Spec. 5A (§ 178.81 of this subchapter).

* * * * *

(4) Any cargo tank motor vehicle as prescribed in § 173.254(a)(5).

* * * * *

52. In § 173.292, paragraphs (a)(1) and (a)(2) would be revised to read as follows:

§ 173.292 Hexamethylene diamine solution.

(a) * * *

(1) In packagings as prescribed in § 173.249, except paragraph (a)(6).

(2) Specification MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311 or MC 312 (§§ 178.340, 178.341, 178.342, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank must conform to the corrosion protection requirements in § 178.340–2(c) or § 178.343–2 of this subchapter.

(ii) Each Specification MC 306 cargo tank must be fabricated from Type 316 stainless steel not less than 0.100 inch thick.

(iii) Each Specification MC 303 cargo tank must be fabricated from steel or stainless steel.

(iv) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

53. In § 173.294, paragraph (a)(3) would be revised to read as follows:

§ 173.294 Monochloroacetic acid, liquid or solution.

(a) * * *

(3) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each tank must be fabricated from mild steel, Type 304 or Type 316 stainless steel, at least 99 percent nickel, titanium conforming to ASME SA–265, or suitably lined with nickel or stainless steel.

(ii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

54. In § 173.295, paragraph (a)(10) would be removed and reserved; paragraph (a)(9) would be revised, to read as follows:

§ 173.295 Benzyl chloride.

(a) * * *

(9) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Stabilized benzyl chloride must be transported in steel cargo tanks.

(ii) Unstabilized benzyl chloride must be anhydrous and free from impurities such as iron, and must be transported in a tank fabricated from at least 99 percent nickel. All cast metal parts of the tank in contact with the lading must be fabricated from at least 96.7 percent nickel.

(iii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

(10) [reserved]

* * * * *

55. In § 173.296, paragraph (a)(2) would be revised to read as follows:

§ 173.296 Di iso octyl acid phosphate.

(a) * * *

(2) Any cargo tank motor vehicle as prescribed in § 173.254(a)(5).

* * * * *

56. § 173.297, paragraph (a)(1) would be revised to read as follows:

§ 173.297 Titanium sulfate solution containing not more than 45 percent sulfuric acid.

(a) * * *

(1) Specification MC 310, MC 311 or MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle subject to the following conditions:

(i) Each cargo tank must be rubber lined.

(ii) Bottom outlets equipped with stop valves conforming to § 178.340–11(a)(1) of this subchapter are authorized.

* * * * *

§ 173.300 [Amended]

57. In § 173.300, paragraph (i) would be amended by removing the reference "173.315(a)(1)" and inserting in its place "173.315(a)".

58. In § 173.315, Note 4 and paragraph (5) of note 17 following paragraph (a), and paragraphs (a) introductory text, (h)(4), (i)(1) and (k)(5) would be revised; and paragraphs (n) and (o) would be added, to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

(a) A compressed gas offered for transportation in a cargo tank motor vehicle or a portable tank must be prepared in accordance with this section, § 173.32 and subpart E of Part 180 of this subchapter; for cryogenic liquids, see § 173.318 (for marking requirements see §§ 172.326 and 172.328 of this subchapter). A compressed gas must be loaded and offered for transportation in conformance with the following table:

* * * * *

Note 4.—Material must be steel. See paragraph (d) of this section for minimum thickness and corrosion allowance requirements.

* * * * *

Note 17.—* * *

(5) Has been inspected and tested in accordance with Subpart E of Part 180 of this subchapter as specified for MC 331 cargo tanks.

* * * * *

(h) * * *

(4) Each opening for a pressure gauge, except on a tank used exclusively for the transportation of carbon dioxide, refrigerated liquid; or nitrous oxide, refrigerated liquid must be restricted at or inside the tank by an orifice no larger than 0.060 inch in diameter. For carbon dioxide, refrigerated liquid; or nitrous oxide, refrigerated liquid service, the pressure gauge need only be used during the filling operation.

(i) * * *

(1) The safety relief valves on each tank must have a total relieving capacity as determined by the flow formulas contained in Section 5 of CGA Pamphlet S–1.2. These relief valves must have a total relieving capacity sufficient to prevent a maximum pressure in the tank of more than 120 percent of the design pressure. The flow capacity testing and rating must be in accordance with Section 5 of CGA Pamphlet S–1.2 and witnessed and certified by an Authorized Inspector. For an insulated tank, the required relieving capacity of the relief valves must be the same as for an uninsulated tank, unless the insulation will remain in place and will be effective under fire conditions. In this case, each insulated tank must be covered by a sheet metal jacket of not less than 16 gauge thickness. An MC 330 cargo tank that has relief valves sized by Fetterly's formula dated November 27, 1962, may be continued in service. Copies of this formula may be obtained from the Bureau of Explosives.

* * * * *

(k) * * *

(5) Has been inspected and tested in accordance with Subpart E of Part 180 of this subchapter as specified for MC 331 cargo tanks;

* * * * *

(n) Each MC 330 and MC 331 cargo tank used to transport a flammable gas, anhydrous ammonia or hydrogen chloride, refrigerated liquid must have each liquid or vapor discharge opening equipped in accordance with § 178.337–11 of this subchapter.

(o) *Chlorine cargo tanks.* Each cargo tank motor vehicle used for the transportation of chlorine must conform to the following:

(1) No piping, hose, or other means of loading or unloading may be attached to any valve, except at the time of loading or unloading. No hose, piping, or tubing used for loading or unloading may be mounted or carried on the motor vehicle. Except at the time of loading or unloading, the pipe connection of each angle valve must be closed with a screw plug which is chained or otherwise fastened to prevent misplacement.

(2) Each chlorine cargo tank angle valve must be tested to be leak free at not less than 225 psig using dry air or inert gas before installation and thereafter once every five loadings or once a week, whichever occurs first. Prior to each loading, the cargo tank must be inspected and the angle valves and gasketed joints must be examined and tested at a pressure of not less than 50 psig to determine that they are not leaking and are in proper condition for transportation. Any leaks must be corrected before the cargo tank is offered for transportation.

(3) Excess flow valves on the cargo tank must conform to § 178.337–11(a)(4) of this subchapter.

59. In § 173.316, paragraph (b)(1)(iii) would be revised and paragraphs (g)(3) would be added to read as follows:

§ 173.318 Cryogenic liquids in cargo tanks.

* * * * *

(b) * * *

(1) * * *

(iii) The rated relieving capacity for each pressure relief valve, pressure control valve and frangible disc must be as determined by the flow formulas in paragraph 5.3.4.4 of CGA Pamphlet S–1.2. The flow capacity testing and rating must be in accordance with Section 5 of Pamphlet S–1.2 and must be witnessed and approved by an Authorized Inspector.

* * * * *

(g) * * *

(3) Each cargo tank motor vehicle used to transport a flammable cryogenic liquid must be examined after each shipment to determine its actual holding time. The record required by § 177.840(h) of this subchapter may be used for this determination. If the examination indicates that the actual holding time of the cargo tank, after adjustment to reflect an average ambient temperature of 85 °F., is less than 90 percent of the marked rated holding time (MRHT) for the cryogenic liquid marked on the specification plate or adjacent thereto (see § 178.338–18(b) of this subchapter), the tank may not be refilled with any flammable cryogenic liquid until it is restored to its marked rated holding time value or it is re-marked with the actual marked rated holding time determined by this examination. If the name of the flammable cryogenic liquid that was transported and its marked rated holding time is not displayed on or adjacent to the specification plate, this requirement may be met by deriving the MRHT of the cargo tank for that flammable cryogenic liquid and comparing that derived MRHT with the actual holding time after adjustment.

60. In § 173.346, paragraph (a)(12) would be revised to read as follows:

§ 173.346 Poison B liquids not specifically provided for.

(a) * * *

(12) Specification MC 306, MC 307, MC 310, MC 311, MC 312, MC 330 or MC 331 (§§ 178.340, 178.342, 178.343, 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The design pressure must be at least 25 psig.

(ii) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1)(i) of this subchapter are authorized, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with

internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

* * * * *

61. In § 173.347, paragraph (a)(3) would be revised to read as follows:

§ 173.347 Aniline oil.

(a) * * *

(3) Any cargo tank motor vehicle as prescribed in § 173.346(a)(12).

* * * * *

62. In § 173.352, paragraph (a)(5) would be revised to read as follows:

§ 173.352 Sodium and potassium cyanide solutions, and cyanide solution, n.o.s..

(a) * * *

(5) Any cargo tank motor vehicle as prescribed in § 173.346(a)(12), except that the tank must be at least 0.250 inch thick and bottom outlets are not authorized.

* * * * *

63. In 173.353, paragraph (e) would be revised to read as follows:

§ 173.353 Methyl bromide and methyl bromide mixtures.

* * * * *

(e) Specification MC 330 or MC 331 (§ 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(1) The design pressure must be at least 250 psig.

(2) The tank must have sufficient outage so that it will not become filled with lading at 130 °F.

(3) Bottom outlets must be equipped with internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

64. In § 173.354, paragraph (a)(5) would be revised and Note 1 and footnote 1 would be removed to read as follows:

§ 173.354 Motor fuel antiknock compound or tetraethyl lead.

(a) * * *

(5) Specification MC 330 or MC 331 (§ 178.337 of this subchapter) cargo tank motor vehicle, subject to the following condition: Authorized for motor fuel antiknock compound only.

* * * * *

65. In § 173.358, paragraph (a)(14) would be revised to read as follows:

§ 173.358 Hexaethyl tetraphosphate, methyl parathion, organic phosphate compound, organic phosphorus compound, parathion, tetraethyl dithio pyrophosphate, and tetraethyl pyrophosphate, liquid.

(a) * * *

(14) Specification MC 310, MC 311, MC 312, MC 330, or MC 331 (§§ 178.340, 178.343, 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Lading must be under no pressure except its own vapor pressure.

(ii) Only a Specification MC 330 or MC 331 cargo tank is authorized for hexaethyl tetraphosphate, parathion, tetraethyl dithio pyrophosphate or tetraethyl pyrophosphate, liquid.

(iii) Each Specification MC 310, MC 311 and MC 312 cargo tank must have a minimum shell and head thickness of $\frac{3}{16}$ inch for a steel tank and 0.266 inch for an aluminum tank. Each such tank must be designed for a lading weight of at least 13 pounds per gallon.

(iv) The design pressure must be at least 25 psig.

(v) Transportation is authorized by private motor carrier only.

(vi) Bottom outlets equipped with self-closing stop valves conforming to § 178.340-(11)(a)(1)(i) of this subchapter are authorized, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

* * * * *

66. In § 173.359, paragraph (a)(16) would be revised to read as follows:

§ 173.359 Hexaethyl tetraphosphate mixtures; methyl parathion mixtures; organic phosphorus compound mixtures; organic phosphate compound mixtures; parathion mixtures; tetraethyl dithio pyrophosphate mixtures; tetraethyl pyrophosphate mixtures, liquid (includes solutions, emulsions, or emulsifiable liquids).

(a) * * *

(16) Specification MC 310, MC 311, MC 312, MC 330 or MC 331 (§§ 178.340, 178.343, 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Lading must be under no pressure except its own vapor pressure.

(ii) Each Specification MC 310, MC 311 and MC 312 cargo tank must have a minimum shell and head thickness of $\frac{3}{16}$ inch for a steel tank and 0.266 inch for an aluminum tank. Each such tank must be designed for a lading weight of at least 13 pounds per gallon.

(iii) The design pressure must be at least 25 psig.

(iv) Transportation; is authorized by private motor carrier only.

(v) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1)(i) of this subchapter are authorized, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop valves conforming to § 178.337–11(a) of this subchapter.

* * * * *

67. In § 173.369, paragraph (a)(14) would be revised to read as follows:

§ 173.369 Carbolic acid (phenol), not liquid.

(a) * * *

(14) Specification MC 304, MC 307, MC 310, MC 311 or MC 312 (§§ 178.340, 178.342, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The design pressure must be at least 25 psig.

(ii) The tank must have sufficient outage so that it will not become filled with lading at 130 °F.

(iii) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1)(i) of this subchapter are authorized.

* * * * *

68. In § 173.373, paragraph (a)(6) would be revised to read as follows:

§ 173.373 Ortho-nitroaniline and paranitroaniline.

(a) * * *

(6) Specification MC 304, MC 307, MC 310, MC 311 or MC 312 (§§ 178.340, 178.342, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Authorized only for ortho-nitroaniline loaded in a liquefied state at a temperature not over 180 °F.

(ii) Each cargo tank must be made of steel and insulated.

(iii) The design pressure must be at least 25 psig.

(iv) Bottom outlets equipped with self-closing stop valves conforming to § 178.340–11(a)(1)(i) of this subchapter are authorized.

(v) Not authorized for transportation by vessel.

69. In§ 173.374, paragraph (a)(4) would be revised to read as follows:

§ 173.374 Nitrochlorobenzene, meta or para.

(a) * * *

(4) Specification MC 312 (§§ 178.340, 178.343 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Authorized only for para nitrochlorobenzene, solid.

(ii) Each cargo tank must be insulated and equipped with heating coils.

(iii) The design pressure must be at least 25 psig.

(iv) Not authorized for transportation by vessel.

* * * * *

PART 176—CARRIAGE BY VESSEL

70. The authority citation for Part 176 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53(e).

71. In § 176.76, paragraph (b) would be revised to read as follows:

§ 176.76 Highway vehicles, railroad vehicles, freight containers, and portable tanks containing hazardous materials.

* * * * *

(b) * * *

(1) A cargo tank motor vehicle containing hazardous materials may be transported—

(i) On a carfloat or trailership if the material is authorized aboard a cargo vessel by § 172.101 of this subchapter, or

(ii) On a passenger ferry vessel or railroad car ferry vessel if the material is authorized aboard a passenger vessel by § 172.101 of this subchapter.

(2) [Reserved]

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

72. The authority citation for Part 177 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53(e).

73. Part 177, Subpart A of the table of sections would be amended by revising the headings for §§ 177.800, 177.801, 177.802, and 177.814 to read as follows:

Subpart A—General Information and Regulations

Sec.

177.800 Purpose and scope.
177.801 Unacceptable hazardous materials shipments.
177.802 Inspection.
* * * * *
177.814 Retention of cargo tank motor vehicle manufacturer's certificate, maintenance and other reports.
* * * * *

74. Sections 177.800, 177.801, 177.802 and their headings would be revised to read as follows:

§ 177.800 Purpose and scope.

(a) This part prescribes requirements, in addition to those contained in Parts 171, 172, 173, 178 and 180 of this subchapter, that are applicable to the acceptance and transportation of hazardous materials by private, common or contract carriers by motor vehicle.

(b) It is the duty of each motor carrier to make the prescribed regulations effective and to thoroughly instruct employees in relation thereto.

§ 177.801 Unacceptable hazardous materials shipments.

A hazardous material that is not prepared for transportation in accordance with the subchapter may not be accepted for transportation or transported by motor vehicle.

§ 177.802 Inspection.

(a) Records, equipment, packagings and containers under the control of a motor carrier, insofar as they affect safety in transportation of hazardous materials by motor vehicle, must be made available for examination and inspection by a duly authorized representative of the Department.

(b) Methods of manufacture, packaging, and storage of hazardous materials, insofar as they affect safety in transportation by motor vehicle, must be made available for examination and inspection by a duly authorized representative of the Department and the initial carrier.

(c) A duly authorized representative of this Department may enter upon, inspect and examine the records and properties of motor carriers operating in commerce for the purpose of determining compliance with this subchapter.

75. Section 177.814 and heading would be revised to read as follows:

§ 177.814 Retention of cargo tank motor vehicle manufacturer's certificate, maintenance and other reports.

Each owner of a cargo tank motor vehicle and a motor carrier must comply with the reporting and record retention requirements contained in § 180.317 of this subchapter.

76. Section 177.824 would be revised to read as follows:

§ 177.824 Retesting and inspection of cargo tanks.

Except as otherwise provided in this subchapter, no motor carrier may operate a cargo tank motor vehicle containing a hazardous material unless the cargo tank motor vehicle is in conformance with the retest and inspection requirements set forth in subpart E of Part 180 of this subchapter. This paragraph does not apply to any cargo tank filled prior to the retest or inspection due date.

77. In § 177.840, paragraph (f) would be revised to read as follows:

§ 177.840 Compressed gases.

* * * * *

(f) No cargo tank motor vehicle used for transportation of chlorine may be moved, coupled or uncoupled, when any loading or unloading connections are attached to the vehicle, nor may it be left without the power unit attached unless the vehicle is chocked or equivalent means are provided to prevent motion. For additional requirements, see § 173.315(o) of this subchapter.

* * * * *

PART 178—SHIPPING CONTAINER SPECIFICATIONS

78. The authority citation for Part 178 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53(e).

79. Part 178, Subpart J of the table of sections would be amended by revising the headings for §§ 178.337, 178.340, 178.341, 178.342 and 178.343 to read as follows:

Subpart J—Specifications for Containers for Motor Vehicle Transportation.

Sec.

* * * * *
178.337 Specification MC 331; cargo tanks primarily for transportation of compressed gases as defined in the Compressed Gas Section.
* * * * *
178.340 General design and construction requirements applicable to Specification MC 306 (§ 178.341), MC 307 (§ 178.342) and MC 312 (§ 178.343) cargo tank motor vehicles.
178.341 Specification MC 306; cargo tank motor vehicle.
178.342 Specification MC 307; cargo tank motor vehicle.
178.343 Specification MC 312; cargo tank motor vehicle.
* * * * *

80. In § 178.337, the heading would be revised to read as follows:

§ 178.337 Specification MC 331; cargo tanks primarily for transportation of compressed gases as defined in the Compressed Gas Section.

* * * * *

81. In § 178.337–1, paragraphs (a)(3) and (e) would be revised to read as follows:

§ 178.337–1 General requirements.

(a) * * *

(3) Made of steel or aluminum; however, if aluminum is used, the cargo tank must be insulated and the hazardous material to be transported must be compatible with the aluminum (see §§ 173.315(a) Table Note 11, 178.337–1(e) and 178.337–2(a)(1) of this subchapter); and

* * * * *

(e) *Insulation.* (1) Compliance with the requirements for use and performance of insulation is required (see §§ 173.315(a)

Table Note 11 and 178.337–1(a)(3) of this subchapter).

(2) Each tank intended for chlorine; carbon dioxide, refrigerated liquid; or nitrous oxide, refrigerated liquid service must have suitable insulation of such thickness that the overall thermal conductance is not more than 0.08 Btu per square foot per degree F. differential per hour. The conductance must be determined at 60 °F. Insulation material used on tanks for nitrous oxide, refrigerated liquid must be noncombustible. Insulation material used on tanks for chlorine must be corkboard or self-extinguishing polyurethane foam, with minimum thickness of 4 inches.

* * * * *

82. In § 178.337–2, paragraph (c) would be revised to read as follows:

§ 178.337–2 Material.

* * * * *

(c) A cargo tank in anhydrous ammonia service must be constructed of steel. The use of copper, silver, zinc or their alloys is prohibited. Baffles made from aluminum may be used only if joined to the tank by a process not requiring postweld heat treatment of the tank.

83. Section 178.337–3 would be revised to read as follows:

§ 178.337–3 Structural integrity.

(a) The maximum calculated design stress value may not exceed the maximum design stress values prescribed in Section VIII of the ASME Code. Corrosion allowance material may not be used to satisfy the design requirements.

(1) The design and construction of each cargo tank must provide for all potential structural loadings, including but not limited to impact loading, dynamic pressure, inertial loadings, and the effect of temperature gradients resulting from lading and ambient temperature extremes. When dissimilar materials are used, their thermal coefficients must be considered in the calculation of the design stress value.

(2) Maximum concentrated stresses which might be created at pads, cradles or supports due to shear, bending and torsion shall also be calculated in accordance with Appendix G of Section VIII of the ASME Code.

(3) The design calculations for the cargo tank heads and shell must include the load resulting from the design pressure in combination with the dynamic pressure resulting from a longitudinal deceleration of 2 "g".

(b) The effective stress on the tank shell in a plane normal to the longitudinal axis may not exceed 25 percent of the minimum specified tensile strength of the metal or the maximum stress values prescribed in Section VIII of the ASME Code, at any point in the cargo tank. The forces, loads and stresses must take into account the weight of the tank, the maximum weight of lading, and structures supported by the cargo tank, but not including the weight of the structures supporting the tank in normal conditions. The stresses due to the internal pressure and vertical loadings must be applied in all considerations. The accelerative, decelerative and lateral forces must be applied separately. The combination case which produces the maximum effective stress shall govern. Stress calculations must include all the following:

(1) The circumferential tensile stress due to internal pressure;

(2) The longitudinal tensile stress due to internal pressure;

(3) The tensile or compression stress generated by the axial load and bending moment resulting from both accelerative and decelerative forces equal to twice the weight of the fully loaded vehicle applied independently to each suspension assembly at the road surface;

(4) The tensile or compression stress generated by the axial load and bending moment resulting from both accelerative and decelerative forces equal to twice the weight of the fully loaded vehicle applied to the horizontal pivot of the fifth wheel supporting the vehicle;

(5) The tensile or compression stress due to a bending moment produced by a vertical force equal to three times the static weight of the tank and contents;

(6) The vertical shear stress due to a vertical force equal to three times the static weight of the tank and contents;

(7) The lateral shear stress due to a lateral accelerative force applied at the road surface which will produce a force equal to twice the static weight of the tank and contents; and

(8) The torsional shear stress due to a lateral accelerative force applied at the road surface based on half the loaded weight of the motor vehicle that will produce a force equal to twice the static weight of the tank and contents.

(c) For a frameless cargo tank motor vehicle where the cargo tank shell serves as the vehicle frame, the minimum thickness of the tank shell must be such that at no point will the effective stress in the tank shell exceed the stresses specified in paragraph (b) of this section. Calculation of the basic structural integrity must be made by the following formula:

$$S=(S_y+S_x)/2+[((S_y-S_x)^2)/4+S_s^2]^{0.5}$$

where at any given point under consideration, and for the worst combination of loadings that can occur at the same time, the stress levels produced at the point being considered are:

S = Effective stress as limited by this requirement, in psi.
S_y = The circumferential tensile stress due to internal pressure, in psi.
S_x = All of the tensile and compressive stresses as specified in paragraph (b) of this section that apply, including the longitudinal tensile stresses due to internal pressure, in psi.
S_s = Any of the shear stresses specified in paragraph (b) of this section that apply, in psi.

(d) A tank shell or head thickness less than that specified in paragraph (c) of this section may be used if the tank is supported by a frame or other form of structural support, provided that the effective stresses prescribed in paragraph (b) of this section are fully evaluated; except that steel less than 5/16 inch or aluminum less than 0.270 inch thick may not be used for the shell or heads of the tank. A corrosion allowance of at least 20 percent of the minimum shell and head thickness or 0.100 inch, whichever is less, must be added to the thickness requirement for a cargo tank used in chlorine or sulfur dioxide service. The head and shell thickness for chlorine tanks must be at least 5/8 inch, including corrosion allowance.

(e) The design, construction, and installation of any appurtenance to the shell or heads of the cargo tank must minimize the possibility of appurtenance damage or failure adversely affecting the lading retention integrity of the tank. Where a tank support is attached to any part of the tank head, the stresses imposed on the head must conform with the requirements of paragraph (a) of this section.

(1) A lightweight attachment, such as a conduit clip, brakeline clip or placard holder, must be constructed of a material of lesser strength than the tank shell or head material and may not be more than 72 percent of the thickness of the the tank shell or head to which it is attached. The attachment may be secured directly to the tank shell or head if the device is designed and installed in such a manner that if damaged it will not affect the lading retention integrity of the tank. The attachment must be secured to the tank shell or head by continuous weld or in such manner as to preclude formation of pockets, which may become sites for incipient corrosion.

(2) Except as prescribed in §§ 178.337–3(e)(1) and 178.337–13(d), the welding of any appurtenance to a shell or head must be made by attachment of a mounting pad so that there will be no adverse effect upon the lading retention integrity of the tank if any force is applied to the appurtenance, from any direction. The thickness of a mounting pad may not be less than that of the shell or head to which it is attached, and not more than 1.5 times the shell or head thickness. However, a paid not less than ¼ inch thick may be used when the shell or head is over ¼ inch thick. If weep holes or tell-tale holes are used, the pad must be drilled or punched at its lowest point before it is attached to the tank. Each pad must:

(i) Extend at least 2 inches in each direction from any point of attachment of an appurtenance;

(ii) Have rounded corners, or otherwise be shaped in a manner to minimize stress concentrations on the shell or head; and

(iii) Be attached by a continuous weld around the pad using filler material conforming to the recommendations of the manufacturer of the head or shell material.

84. In § 178.337–4, the first sentence in paragraph (b) would be revised to read as follows:

§ 178.377–4 Joints.

* * * * *

(b) Welding procedure and welder performance must be in accordance with Section IX of the ASME Code. * * *

* * * * *

85. In § 178.337–6, paragraph (a) would be revised to read as follows:

§ 178.377–6 Closure for manhole.

(a) A cargo tank must be provided with a manhole conforming to paragraph UG–46(g)(1) and other requirements of the ASME Code.

* * * * *

86. In § 178.337–8, paragraph (b) would be revised to read as follows:

§ 178.377–8 Outlets.

* * * * *

(b) Outlets on chlorine cargo tanks must conform with § 178.337–1(c)(2).

87. In § 178.337–9, the section heading, paragraph (a) heading, and paragraphs (b) and (d)(1) would be revised to read as follows:

§ 178.337–9 Pressure relief devices, piping, values, hose and fittings.

(a) *Pressure relief devices.* * * *

(b) *Piping, valves, hose, and fittings.*

(1) The burst pressure of all piping, pipe fittings, hose and other pressure parts, except for pump seals and pressure relief devices, must be at least 4 times the design pressure of the tank. Additionally, the burst pressure may not be less than 4 times any higher pressure to which each pipe, pipe fitting, hose or other pressure part may be subjected to in service. For chlorine service, see paragraph (b)(7) of this section.

(2) Pipe joints must be threaded, welded or flanged. If threaded pipe is used, the pipe and fittings must be Schedule 80 weight or heavier. Malleable metals must be used in the construction of valves and fittings. Where copper tubing is permitted, joints shall be brazed or be of equally strong metal union type. The melting point of the brazing material may not be lower than 1000° F. The method of joining tubing may not reduce the strength of the tubing, such as by the cutting of threads.

(3) Each *hose coupling* must be designed for a pressure of at least 120 percent of the hose design pressure and so that there will be no leakage when connected.

(4) Piping must be protected from damage due to thermal expansion and contraction, jarring, and vibration. Slip joints are not authorized for this purpose.

(5) *Piping and fittings* must be grouped in the smallest practicable space and protected from damage as required by § 178.337–10.

(6) All *piping, valves, and fittings* on a cargo tank must be proved free from leaks. This requirement is met when such piping, valves, and fittings have been tested after installation with gas or air and proved leak tight at not less than the design pressure marked on the cargo tank. This requirement is applicable to all hoses used on a cargo tank, except that hose may be tested before or after installation on the tank.

(7) *Chlorine cargo tanks.* Cargo tanks used to transport chlorine must conform with the following:

(i) No hose, piping or tubing used for loading or unloading may be mounted or carried on the cargo tank motor vehicle.

(ii) Angle valves on chlorine cargo tank motor vehicles must conform to the standards of The Chlorine Institute, Inc., as follows:

(A) For a cargo tank manufactured before January 1, 1975, to either Dwg. 104–4, dated May 5, 1958, or Dwg. 104–5, dated September 1, 1972.

(B) For cargo tank manufactured on or after January 1, 1975, to Dwg. 104–5, dated September 1, 1972.

(iii) Before installation, each angle valve must be tested for leakage at not less than 225 psig using dry air or inert gas.

* * * * *

(d) *Refrigeration and heating coils.* (1) Refrigeration and heating coils must be securely anchored, with provision for thermal expansion. The coils must be pressure tested externally to the tank test pressure, and internally to either the tank test pressure or twice the working pressure of the heating/refrigeration system, whichever is higher. A tank may not be placed in service if any leakage occurs or other evidence of damage is found. The refrigerant or heating medium to be circulated through the coils must not be capable of causing any adverse chemical reaction with the tank in the event of leakage. The unit furnishing refrigeration may be mounted on the motor vehicle.

* * * * *

88. Section 178.337–11 would be revised to read as follows:

§ 178.337–11 Emergency discharge control.

(a) *Excess flow valves, back flow check valves and stop valves.* (1) When required by § 178.337–8(a)(2), an excess flow valve or back flow check valve must be located inside the tank or inside a welded nozzle which is an integral part of the tank.

(i) Each internal self-closing stop valve or access flow valve must automatically close if any of its attachments are sheared off or if any attached hoses or piping are ruptured.

(ii) Each self-closing valve or excess flow valve must be located inside the tank or at a point outside the tank where the line enters or leaves the tank. The valve seat must be located inside the tank or within a welded flange, its companion flange, a nozzle or a coupling. The installation must be made so as to assure that any undue strain which causes a failure requiring the functioning of the valve will not impair the operation of the valve.

(iii) All parts of the valve inside the tank, or within a nozzle, flange, companion flange, or coupling must be made of material not subject to corrosion or other deterioration in the presence of the lading.

(iv) Any liquid level gauging device must be constructed so that the outward flow of the tank lading does not exceed the flow through a 0.060 inch diameter opening.

(v) Each excess flow valve must close automatically at the rated flow of gas or liquid, as specified by the valve manufacturer. The flow rating of the piping, fittings, valves, and hose on each side of the excess flow valve must be at

least that of the excess flow valve. If branching or any other restriction is incorporated in the system so that the flow rating is reduced to less than that of the excess flow valve at the tank, additional excess flow valves must be located where the flow rates are reduced. The additional valves must have sufficient flow rating so that total capacity equals or exceeds the excess flow valve capacity.

(vi) An excess flow valve may be designed with a bypass, not to exceed a 0.040-inch diameter opening, to allow equalization of pressures.

(vii) On a tank over 3,500 gallons water capacity, each internal self-closing stop valve must be provided with remote means of automatic closure, both mechnical and thermal, that are installed at the ends of the tank in at least two, diagonally opposite locations. Cable linkage between closures and remote operators must be corrosion resistant and effective in all types of environment and weather. If the discharge connection at the tank is not in the general vicinity of one of the two locations specified above, one additional fusible element must be installed so that heat from a fire in that area will activate the emergency control system. Fusible elements may not have a melting point exceeding 250 °F.

(viii) On a tank of 3,500 gallons water capacity or less, each internal self-closing stop valve must be provided with at least one remote means of automatic closure, which may be mechanical, installed at one end of the tank, away from the discharge connection area.

(2) Each liquid or vapor discharge opening in a cargo tank intended for the transportation of a flammable liquid; flammable compressed gas; hydrogen chloride, refrigerated liquid; or anhydrous ammonia must be equipped with a remotely controlled internal self-closing stop valve. For cargo tanks intended for use in chlorine service, see paragraph (a)(4) of this section.

(3) Unless otherwise specified in paragraph (c) of this section, each outlet of a cargo tank intended for the transportation of a nonflammable gas (except carbon dioxide, refrigerated liquid) must be provided with an internal self-closing stop valve or an automatic excess flow valve. Each outlet of a cargo tank intended for the transportation of a flammable liquid; a flammable liquefied gas; hydrogen chloride, refrigerated liquid; or anhydrous ammonia must be equipped with a remotely controlled internal self-closing stop valve.

(4) Excess flow valves on chlorine cargo tank motor vehicles must conform to the standards of The Chlorine Institute, Inc., as follows:

(i) For a cargo tank manufactured before January 1, 1975:

(A) A valve conforming to either Dwg. 101–4, dated May 16, 1969, or Dwg. 101–5, dated September 1, 1973, must be installed under each liquid angle valve.

(B) A valve conforming to either Dwg. 101–3, dated May 16, 1973, or Dwg. 101–5, dated September 1, 1973, must be installed under each gas angle valve.

(ii) For a cargo tank manufactured on or after January 1, 1975:

(A) A valve conforming to Dwg. 101–6, dated September 1, 1973, must be installed under each liquid angle valve.

(B) A valve conforming to Dwg. 106–5, dated September 1, 1973, must be installed under each gas angle valve.

(b) *Shut-off valves.* Each filling and discharge line must be provided with a manual stop valve located as close to the tank a practicable. However, if an automatic internal self-closing stop valve is used, the manual stop valve must be located in the line outboard of the hose connection. A single so-called "stop-check" or excess flow valve may not be used to satisfy the requirements of both this paragraph and of paragraph (a)(4) of this section, except as provided in paragraph (c) of this section.

(c) The requirements in paragraph (a) of this section do not apply to:

(1) A vapor or liquid discharge opening of less than 1¼ inch NPT equipped with an excessive flow valve together with a manually operated external self closing stop valve, in place of a remotely controlled internal self-closing stop valve.

(2) A vapor or liquid discharge opening of 1¼ inch NPT equipped with an excess flow valve together with a manually operated external stop valve installed before October 1, 1984.

(3) An engine fuel line, on a truck-mounted tank, of not over ¾ inch NPT equipped with a valve having an integral excess flow valve.

89. In § 178.337–14, paragraph (b) would be revised to read as follows:

§ 178.337–14 Gauging devices.

* * * * *

(b) *Pressure gauges.* (1) See § 173.315(h) of this subchapter.

(2) Each cargo tank used in carbon dioxide, refrigerated liquid or nitrous oxide, refrigerated liquid service must be provided with a suitable pressure gauge. A shut-off valve must be installed between the pressure gauge and the tank.

* * * * *

90. Section 178.337–15 would be revised to read as follows:

§ 178.337–15 Pumps and compressors.

(a) *Liquid pumps or gas compressors,* if used, must be of suitable design, adequately protected against breakage by collision, and kept in good condition. They may be driven by motor vehicle power takeoff or other mechanical, electrical, or hydraulic means. Unless they are of the centrifugal type, they shall be equipped with suitable pressure actuated by-pass valves permitting flow from discharge to suction or to the tank.

(b) A liquid chlorine pump may not be installed on a cargo tank intended for the transportation of chlorine.

91. In § 178.338–18, the first and second sentences of paragraph (a) would be revised to read as follows:

§ 178.337–18 Marking.

(a) The tank vehicle manufacturer must supply, and the owner must obtain, a tank manufacturer's data report as required by the ASME Code, and a certificate stating that the completed cargo tank motor vehicle conforms in all respects with Specification MC 331 and the ASME Code. The certificate must be signed by a responsible official of the manufacturer and an Authorized Inspector. * * *

* * * * * *

92. Section 178.338–3 and heading would be revised to read as follows:

§ 178.338–3 Structural integrity.

(a) The maximum calculated design stress value may not exceed the maximum design stress values prescribed in Section VIII of the ASME Code. Corrosion allowance material may not be used to satisfy the design requirements.

(1) The design and construction of each cargo tank must provide for all potential structural loadings, including but not limited to impact loading, dynamic pressure, internal loadings, and the effect of temperature gradients resulting from lading and ambient temperature extremes. When dissimilar materials are used, their thermal coefficients must be considered in the calculation of the design stress value.

(2) Maximum concentrated stresses which might be created at pads, cradles or supports due to shear, bending and torsion shall also be considered and calculated in accordance with Appendix G of Section VIII of the ASME Code.

(3) The design calculations for the cargo tank heads and shell must include the load resulting from the design pressure in combination with the dynamic pressure resulting from a longitudinal deceleration of 2 "g".

(b) The effective stress on the tank shell in a plane normal to the longitudinal axis may not exceed 25 percent of the minimum specified tensile strength of the metal or the maximum stress values prescribed in Section VIII of the ASME Code, at any point in the cargo tank. The forces, loads and stresses must take into account the weight of the tank, the maximum weight of lading, and structures supported by the cargo tank, but not including the weight of the structures supporting the tank in normal conditions. The stresses due to internal pressure and vertical loadings must be applied in all considerations. The accelerative, decelerative and lateral forces must be applied separately. The combination case which produces the maximum effective stress shall govern. Stress calculations must include all the following:

(1) The circumferential tensile stress due to internal pressure;

(2) The longitudinal tensile stress due to internal pressure;

(3) The tensile or compression stress generated by the axial load and bending moment resulting from both accelerative and decelerative forces equal to twice the weight of the fully loaded vehicle applied independently to each suspension assembly at the road surface;

(4) The tensile or compression stress generated by the axial load and bending moment resulting from both accelerative and decelerative forces equal to twice the weight of the fully loaded vehicle applied to the horizontal pivot of the fifth wheel supporting the vehicle;

(5) The tensile or compression stress due to a bending moment produced by a vertical force equal to three times the static weight of the tank and contents;

(6) The vertical shear stress due to a vertical force equal to three times the static weight of the tank and contents;

(7) The lateral shear stress due to a lateral accelerative force applied at the road surface which will produce a force equal to twice the static weight of the tank and contents; and

(8) The torsional shear stress due to a lateral accelerative force applied at the road surface based on half the loaded weight of the motor vehicle that will produce a force equal to twice the static weight of the tank and contents.

(c) For a frameless cargo tank motor vehicle where the cargo tank shell serves as the vehicle frame, the minimum thickness of the tank shell must be such that at no point will the effective stress in the tank shell exceed the stresses specified in paragraph (b) of this section. Calculation of the basic structural integrity must be made by the following formula:

$$S=(S_y+S_x)/2+\{((S_y-S_x)^2)/4+S_s^2\}^{a.5}$$

where at any given point under consideration, and for the worst combination of loadings that can occur at the same time, the stress levels produced at the point being considered are:

S = Effective stress as limited by this requirement, in psi.

S_y = The circumferential tensile stress due to internal pressure, in psi.

S_x = All of the tensile and compressive stresses as specified in paragraph (b) of this section that apply, including the longitudinal tensile stresses due to internal pressure, in psi.

S_s = Any of the shear stresses specified in paragraph (b) of this section that apply, in psi.

(d) A tank shell or head thickness less than that specified in paragraph (c) of this section may be used if the tank is supported by a frame or other form of structural support, provided that the effective stresses prescribed in paragraph (b) of this section are fully evaluated; except that steel less than 3/16 inch thick may not be used for the shell or heads unless the tank is evacuated or has a load bearing jacket. Steel less than 0.110 inch thick may not be used for the shell or head under any circumstance.

(e) The design, construction, and installation of any appurtenance to the shell or head of the cargo tank must minimize the possibility of appurtenance damage or failure adversely affecting the lading retention integrity of the tank. Where a tank support is attached to any part of the tank head, the stresses imposed on the head must conform with the requirements of paragraph (a) of this section.

(1) A lightweight attachment, such as a conduit clip, brakeline clip or placard holder, must be constructed of a material of lesser strength than the tank shell or head material and may not be more than 72 percent of the thickness of the tank shell or head to which it is attached. The attachment may be secured directly to the tank shell or head if the device is designed and installed in such a manner that if damaged it will not affect the lading retention integrity of the tank. The attachment must be secured to the tank shell or head by continuous weld or in such manner as to preclude formation of pockets, which may become sites for incipient corrosion.

(2) Except as prescribed in §§ 178.338–3(e)(1) and 178.338–338–13(a), the welding of any appurtenance to a shell or head must be made by attachment of a mounting pad so that there will be no adverse effect upon the lading retention integrity of the tank if any force is applied to the appurtenance, from any direction. The thickness of a mounting pad may not be less than that of the shell or head to which it is attached, and not more than 1.5 times the shell or head thickness. However, a pad not less than 3/16 inch thick may be used when the shell or head is over 3/16 inch thick. If weep holes or tell-tale holes are used, the pad must be drilled or punched at its lowest point before it is attached to the tank. Each pad must:

(i) Extend at least 2 inches in each direction from any point of attachment of an appurtenance;

(ii) Have rounded corners, or otherwise be shaped in a manner to minimize stress concentrations on the shell or head; and

(iii) Be attached by a continuous weld around the pad using filler material conforming to the recommendations of the manufacturer of the head or shell material.

93. In § 178.338-3, paragraph (b) would be revised to read as follows:

§ 178.338–8 Pressure relief devices, piping, valves, and fittings.

* * * * *

(b) * * *

(1) The burst pressure of all piping, pipe fittings, hoses and other pressure parts, except for pump seals and pressure relief devices, must be at least 4 times the design pressure of the tank. Additionally, the burst pressure may not be less than 4 times any higher pressure to which each pipe, pipe fitting, hose or other pressure part may be subjected to in service.

(2) Pipe joints must be threaded, welded or flanged. If threaded pipe is used, the pipe and fittings must be Schedule 80 weight or heavier. Malleable metals must be used in the construction of valves and fittings. Where copper tubing is permitted, joints shall be brazed or be of equally strong metal union type. The melting point of the brazing materials may not be lower than 1000 °F. The method of joining tubing may not reduce the strength of the tubing, such as by the cutting of treads.

(3) Each *hose coupling* must be designed for a pressure of at least 120 percent of the hose design pressure and so that there will be no leakage when connected.

(4) Piping must be protected from damage due to thermal expansion and contraction, jarring, and vibration. Slip joints are not authorized for this purpose.

(5) All *piping, valves, and fittings* on a cargo tank must be proved free from leaks. This requirement is met when such piping, valves, and fittings have been tested after installation with gas or air and proved leak tight at not less than the design pressure marked on the cargo tank. This requirement is applicable to all hoses used in a cargo tank, except that hose may be tested before or after installation on the tank.

(6) Each valve must be suitable for the tank design pressure at the tank design service temperature.

(7) All fittings must be rated for the maximum tank pressure and suitable for the coldest temperature to which they will be subjected in actual service.

(8) All piping, valves and fittings must be grouped in the smallest practicable space and protected from damage as required by § 178.338–10.

(9) When a pressure-building coil is used on a tank designed to handle oxygen or flammable ladings, the vapor connection to that coil must be provided with a valve or check valve as close to the tank shell as practicable to prevent the loss of vapor from the tank in case of damage to the coil. The liquid connection to that coil must also be provided with a valve.

94. Section 178.338–17 would be revised to read as follows:

§ 178.338–17 Pumps and compressors.

(a) *Liquid pumps and gas compressors,* if used, must be of suitable design, adequately protected against breakage by collision, and kept in good condition. They may be driven by motor vehicle power takeoff or other mechanical, electrical, or hydraulic means. Unless they are of the centrifugal type, they shall be equipped with suitable pressure actuated by-pass valves permitting flow from discharge to suction or to the tank. Proper precautions must be taken to assure that no grease or oil contacts the lading when such pumps or compressors are used in oxygen, refrigerated liquid service.

(b) A valve or fitting made of aluminum with internal rubbing or abrading aluminum parts that may come in contact with oxygen in the cryogenic liquid form may not be installed on any cargo tank used to transport oxygen, cryogenic liquid.

95. In Part 178, §§ 178.340, 178.341, 178.342 and 178.343 and their headings would be revised to read as follows:

§ 178.340 General design and construction requirements applicable to Specification MC 306 (§ 178.341), MC 307 (§ 178.342), and MC 312 (§ 178.343) cargo tank motor vehicles.

§ 178.340–1 General requirements.

(a) Specification MC 306, MC 307, and MC 312 cargo tank motor vehicles must conform with this section in addition to the requirements of the applicable specification contained in § 178.341, § 178.342, or § 178.343.

(b) All specification requirements are minimum requirements.

(c) *Definitions.* The following terms apply to §§ 178.340, 178.341, 178.342 and 178.343.

"Appurtenance" means any cargo tank accessory attachment that has no lading retention or containment function and provides no structural support to the cargo tank.

"Baffle" means a device that deflects, checks or regulates fluid motion in a tank.

"Bottom damage protection zone" means the bottom ⅕ of a cargo tank, the area that is most vulnerable to damage as a result of collision with another vehicle or object.

"Bulkhead" means a tank head shared by two cargo tanks.

"Charging line" means a hose, tube, pipe, or similar device used to pressurize a tank with material other than the lading.

"Companion flange" means one of two mating flanges where the flange faces are in contact or separated only by a thin leak sealing gasket.

"Connecting structure" means the structure joining two cargo tanks.

"Constructed and certified in conformance with the ASME Code" means a cargo tank constructed, inspected, certified and stamped by an Authorized Inspector.

"Constructed in accordance with the ASME Code" means a cargo tank having a design pressure below 15 psig or other design features authorized by DOT that fall outside the scope of the ASME Code, and thus cannot be certified and stamped as an ASME pressure vessel. Notwithstanding this limitation on design pressure, such tank must meet all the requirements of the ASME Code, except as modified by the applicable specification and be constructed by a manufacturer holding a current ASME certificate of authorization.

"Design pressure" See § 178.340–1(l).

"Fail-safe device" means a device designed to fail sacrificially under load in order to prevent damage to any lading retention part or device.

"Flange" means the structural ring for guiding or attachment of a pipe or fitting with another flange (companion flange), pipe, fitting or other attachment. For size and shape, see ANSI B16.5.

"Inspection pressure" means the pressure used to determine leak tightness of the tank when testing with pneumatic pressure.

"Internal self-closing stop valve" means a self-closing stop valve designed so that the valve seat and the self-stored energy source are located inside the tank, or within a welded flange, its companion flange, a nozzle or a coupling attaching the stop valve to the tank.

"Lading" means the hazardous material contained in a cargo tank.

"Loading/unloading connection" means the fitting in the loading/unloading line farthest from the loading/unloading outlet to which the loading/unloading hose or device is attached.

"Loading/unloading outlet" means the tank outlet used for normal loading/unloading operations.

"Loading/unloading stop valve" means the stop valve farthest from the tank loading/unloading outlet to which the lading loading/unloading connection is attached.

"Manufacturer" means any person engaged in the manufacture or assembly of a cargo tank or cargo tank equipment, including any person who imports a cargo tank or cargo tank equipment for resale in the United States.

"Maximum allowable working pressure" or "MAWP" See § 178.340–1(k).

"Multispecification cargo tank motor vehicle" means a cargo tank motor vehicle equipped with cargo tanks fabricated to more than one cargo tank specification.

"Nozzle" means the subassembly consisting of a pipe section with a welded or forged flange on one end in which the flange is an integral part of the neck extension.

"Outlet" means any opening in the shell or head of a tank, including the means for attaching a closure; except that the following are not outlets: A threaded opening securely closed during transportation with a threaded plug, a flanged opening securely closed during transportation with a bolted or welded blank flange, or a manhole.

"Outlet stop valve" means the stop valve at the tank loading/unloading outlet.

"Pipe coupling" means a fitting with internal or external threads on both ends.

"Rear bumper" means the structure designed to prevent a vehicle or object from underriding the rear of a motor vehicle. See § 393.86 of this title.

"Rear-end tank protection device" means the structure designed to protect a cargo tank and any lading retention piping or devices in case of a rear end collision.

"Rollover damage protection zone" means the upper ⅓ of a cargo tank, the area that is most vulnerable to damage in the event of an overturn.

"Self-closing stop valve" means a stop valve held in the closed position by means of a self-stored energy, which opens only by application of an external force and which closes when the external force is removed.

"Shell" means the circumferential portion of a tank defined by the basic design radii excluding the closing heads.

"Stop valve" means a valve that stops the flow of lading.

"Sump" means a protrusion from the bottom of a tank shell designed to facilitate complete unloading of the lading.

"Tank" means a receptacle, consisting of a shell and heads, that forms a pressure tight vessel having openings designed to accept pressure tight fittings or closures, but excludes any appurtenances, reinforcements, fittings, or closures.

"Test pressure" means the pressure to which a tank is subjected to determine pressure integrity.

"Toughness of material" means the capability of a material to absorb relatively large quantities of energy and is represented by the area under the stress strain curve indicating the energy absorbed per unit volume of the material up to the point of rupture.

"Vacuum tank" means a tank that is loaded by reducing the pressure in the tank to below atmospheric pressure.

"Variable specification cargo tank" means a cargo tank that is constructed in accordance with one specification, but which may be altered to meet another specification by changing relief devices, closures, lading discharge devices, and other lading retention devices.

"Void" means the space between tank heads or bulkheads and a connecting structure.

(d) A manufacturer of a cargo tank must hold a current ASME certificate of authorization.

(e) All construction must be certified by an Authorized Inspector.

(f) Each cargo tank must be designed and constructed in conformance with the requirements of the applicable cargo tank specification. Each cargo tank with an internal design pressure of 15 psig or greater must be "constructed and certified in conformance with the ASME Code", except as limited or modified by the applicable cargo tank specification. Each cargo tank with an internal design pressure less than 15 psig must be "constructed in accordance with the ASME Code", except as limited or modified by the applicable cargo tank specification.

(g) Requirements relating to parts and accessories on motor vehicles, which are contained in Part 393 of the Federal Motor Carrier Safety Regulations of this title, are incorporated into these specifications.

(h) Any additional requirement prescribed in Part 173, 177, or 180 of this subchapter that pertain to the transportation of specific ladings are incorporated into these specifications.

(i) *Cargo tank motor vehicle composes of multiple cargo tanks.*

(1) A cargo tank motor vehicle composed of more than one cargo tank may be constructed with the cargo tanks made to the same specification or to different specifications. Each cargo tank must conform in all respects with the specification for which it is certified.

(2) The strength of the connecting structure joining multiple cargo tanks in a cargo tank motor vehicle must conform with the structural design requirements in § 178.340–3. Any void within the connecting structure must be vented to the atmosphere by a drain of at least 1 inch inside diameter which shall be kept open at all times. The connecting structure must have inspection openings of sufficient size and number to permit proper visual internal inspection of the connecting structure and cargo tank surfaces. Each drainage and inspection opening must be accessible.

(j) *Variable specification cargo tank.* A cargo tank that may be physically altered to conform to another cargo tank specification must have the required physical alterations to convert from one specification to another clearly indicated on the variable specification plate.

(k) *Maximum Allowable Working Pressure (MAWP).* The MAWP for each cargo tank must be greater than or equal to the largest of the following:

(1) The MAWP, as stated in the ASME Code;

(2) Vapor pressure of the most volatile lading, at 115 °F. (expressed in psig); or

(3) The maximum pressure used to load or unload the lading.

(l) *Design Pressure.* The design pressure for each cargo tank must be greater than or equal to the largest of the following:

(1) The minimum pressure prescribed in the individual specification;

(2) The pressure prescribed for the lading in Part 173; or

(3) 1.2 times the sum of the MAWP, excluding loading and unloading pressure, plus the maximum static pressure exerted by the lading at the maximum lading density.

§ 178.340–2 Material and material thickness.

(a) All material for shell, heads, bulkheads, and baffles must be metal compatible with the lading intended to be transported therein and must conform to Section II, Parts A and B, of the ASME Code.

(b) *Minimum thickness.* (1) The minimum thickness for the shell and heads must be in accordance with the ASME Code and must be such that the maximum stress levels specified in § 178.340–3 (b), (c) or (d) of this subpart are not exceeded.

(2) For mild steel, in no case may the shell and head thickness be less than 0.110 inch, with a guaranteed minimum tensile strength of 45,000 psi and a guaranteed elongation of 20 percent.

(3) For material other than the mild steel, the minimum thickness for the shell and heads must be obtained from the following formula, but in no case may the thickness be less than 0.090 inch:

$$e_1 = (92.2e_o)/(R_{m1}A_1)^{1/2}$$

Where:

e_o = Required thickness of the reference steel (See § 178.340–2 (b)(2)), in inches;

e_1 = Equivalent thickness of the material used, in inches;

R_{m1} = Specified minimum tensile strength of the material used, in psi; and

A_1 = Specified minimum percentage elongation of the material used, in percent times 100 (i.e., if 20% use 20.0)

(4) If the maximum allowable stress value is based on actual tensile strength, yield strength or elongation of the material used to fabricate the tank—

(i) The tensile strength, yield strength or the elongation values may not be greater than 120 percent of the minimum specified in the ASME Code; and

(ii) The test records and certification of test results must be approved by an Authorized Inspector and retained by the tank manufacturer for a period of not less than 15 years and made available to any duly identified representative of the Department or the owner of the tank.

(c) *Corrosion or abrasion protection.* A cargo tank or a part thereof, subject to thinning by corrosion, mechanical abrasion, or any other action, must be protected by providing the tank or part with a suitable increase in thickness of material, a lining, or some other suitable method of protection.

(1) *Corrosion allowance.* Material added for corrosion allowance need not be of uniform thickness if different rates of attack can reasonably be expected for various areas of the tank.

(2) *Lining.* Lining material must consist of a nonporous, homogeneous material not less elastic than the parent metal and substantially immune to attack by the lading. The lining material must be imperforate when applied, and bonded or attached by other appropriate means. Any joint or seam in the lining must be made by fusing the materials together, or by other satisfactory means.

§ 178.340–3 Structural integrity.

(a) The maximum calculated design stress value may not exceed the maximum design stress values prescribed in Section VIII of the ASME Code. Corrosion allowance material may not be used to satisfy the design requirements.

(1) The design and construction of each cargo tank must provide for all potential structural loadings, including but not limited to impact loading, dynamic pressure, inertial loadings, and the effect of temperature gradients resulting from loading and ambient temperature extremes. When dissimilar materials are used, their thermal coefficients must be considered in the calculation of the design stress value.

(2) Maximum concentrated stresses which might be created at pads, cradles or supports due to shear, bending and torsion shall also be calculated in accordance with Appendix G of Section VIII of the ASME Code.

(3) The design calculations for the cargo tank heads and shell must include the load resulting from the design pressure in combination with the dynamic pressure resulting from a longitudinal deceleration of 2 "g".

(b) The effective stress on the tank shell in a plane normal to the longitudinal axis may not exceed the maximum design stress values prescribed in Section VIII of the ASME Code, at any point in the cargo tank. The forces, loads and stresses must take into account the weight of the tank, the maximum weight of lading, and structures supported by the cargo tank, but not including the weight of the structures supporting the tank in normal conditions. The stresses due to internal pressure and vertical loadings must be applied in all considerations. The accelerative, decelerative and lateral forces must be applied separately. The combination case which produces the maximum effective stress shall govern. Stress calculations must include all the following:

(1) The circumferential tensile stress due to internal pressure;

(2) The longitudinal tensile stress due to internal pressure;

(3) The tensile or compression stress generated by the axial load and bending moment resulting from both accelerative and decelerative forces equal to twice the weight of the fully loaded vehicle applied independently to each suspension assembly at the road surface;

(4) The tensile or compression stress generated by the axial load and bending moment resulting from both accelerative and decelerative forces equal to twice the weight of the fully loaded vehicle applied to the horizontal pivot of the fifth wheel supporting the vehicle;

(5) The tensile or compression stress due to a bending moment produced by a vertical force equal to three times the static weight of the tank and contents;

(6) The vertical shear stress due to a vertical force equal to three times the static weight of the tank and contents;

(7) The lateral shear stress due to a lateral accelerative force applied at the road surface which will produce force equal to twice the static weight of the tank and contents; and

(8) The torsional shear stress due to a lateral accelerative force applied at the road surface based on half the loaded weight of the motor vehicle which will produce a force equal to twice the static weight of the tank and contents.

(c) For a frameless cargo tank motor vehicle where the cargo tank shell serves as the vehicle frame, the minimum thickness of the tank shell must be such that at no point will the effective stress in the tank exceed the stresses specified in paragraph (b) of this section. Calculation of the basic structural integrity must be made by the following formula:

$$S = (S_y + S_x)/2 + [((S_y - S_x)^2)/4 + S_s^2]^{0.5}$$

where at any given point under consideration, and for the worst combination of loadings that can occur at the same time, the stress levels produced at the point being considered are:

S = Effective stress as limited by this requirement in psi.
S_y = The circumferential tensile stress due to internal pressure, in psi.
S_x = All of the tensile and compression stresses as specified in paragraph (b) of this section that apply, including the longitudinal tensile stresses due to internal pressure, in psi.
S_s = Any of the shear stresses specified in paragraph (b) of this section that apply, in psi.

(d) If a tank is supported by a vehicle frame or other form of structural support, a tank shell or head thickness less than that specified in paragraph (c) of this section may be used provided that the effective stresses prescribed in paragraph (b) of this section are fully evaluated.

(e) The design, construction, and installation of any appurtenance to the shell or head of the cargo tank must minimize the possibility of appurtenance damage or failure adversely affecting the lading retention integrity of the tank.

(1) Structural members, the suspension subframe, accident protection devices and external rings should be used as sites for attachment of appurtenances and other accessories to the cargo tank when practicable.

(2) A lightweight attachment, such as a conduit clip, brakeline clip or placard holder, must be constructed of a material of lesser strength than the tank shell or head material and may not be more than 72 percent of the thickness of the tank shell or head to which it is attached. The attachment may be secured directly to the tank shell or head if the device is designed and installed in such a manner that if damaged it will not affect the lading rention integrity of the tank. The attachment must be secured to the tank shell or head by continuous weld or in such manner as to preclude formation of pockets, which may become sites for incipient corrosion.

(3) Except as prescribed in paragraphs (e)(1) and (e)(2) of this section, the welding of any appurtenance to a shell or head must be made by attachment of a mounting pad so that there will be no adverse effect upon the lading rention integrity of the tank if any force is applied to the appurtenance, from any direction. The thickness of a mounting pad may not be less than that of the shell or head to which it is attached, and not more than 1.5 times the shell or head thickness. However, a pad not less than 3/16 inch thick may be used when the shell or head is over 3/16 inch thick. If weep holes or tell-tale holes are used, the pad must be drilled or punched at its lowest point before it is attached to the tank. Each pad must:

(i) Extend at least 2 inches in each direction from any point of attachment of an appurtenance;

(ii) Have rounded corners, or otherwise be shaped in a manner to minimize stress concentrations on the shell or head; and

(iii) Be attached by a continuous weld around the pad using filler material conforming to the recommendations of the manufacturer of the head or shell material.

§ 178.340–4 Joints.

(a) All joints between tank shell, heads, baffles, baffle attaching rings, and bulkheads must be welded in conformance with the ASME Code.

(b) Where practical all welds must be easily accessible for inspection.

§ 178.340–5 Manhole Assemblies.

(a) Each cargo tank must be accessible through a manhole at least 15 inches in diameter.

(b) Unless otherwise provided in the applicable individual specification, each manhole must have a secure closure that is structurally capable of withstanding, without leakage or permanent deformation, static internal fluid pressures of at least 36 psig, or test pressure, whichever is greater.

(c) Each manhole cover must be fitted with a safety device that prevents the manhole cover from opening fully when internal pressure is present.

(d) Each manhole and filler cover must be secured with fastenings that will prevent opening of the covers as a result of vibration under normal transporation conditions or shock impact due to an accident.

§ 178.340–6 Supports and anchoring.

(a) A cargo tank with a frame not integral to the tank must have the tank secured by restraining devices to eliminate any motion between the tank and frame that may abrade the tank shell due to the stopping, starting, or turning of the vehicle. The design calculations of the support elements must include the stresses indicated in § 178.340–3(b). Such restraining devices must be readily accessible for inspection and maintenance, except that insulation and jacketing are permitted to cover the restraining devices.

(b) A cargo tank designed and constructed so that it constitutes in whole or in part the structural member used in lieu of a frame must be supported in such a manner that the resulting stress levels in the tank do not exceed those specified in § 178.340–3(a). The design calculations of the support elements must include the stresses indicated in § 178.340–3(b).

§ 178.340–7 Circumferential reinforcements.

(a) A tank with a shell thickness of less than $^3/_{16}$ inch must be circumferentially reinforced with bulkheads, baffles, or ring stiffeners, or any combination thereof, in addition to the tank heads.

(1) Circumferential reinforcement must be located so that the thickness and tensile strength of the shell material in combination with the frame and circumferential reinforcement produces structural integrity at least equal to that prescribed in §§ 178.340–3(a) and (b).

(2) Circumferential reinforcement must be located within 1 inch of points where discontinuity in longitudinal shell sheet alignment exceeds 10 degrees unless otherwise reinforced with structural members capable of maintaining shell stress levels authorized in § 178.340–3(a).

(b) No reinforcement may cover any circumferential joint.

(c) A baffle or baffle attachment ring, if used as a required reinforcement member, must produce structural integrity at least equal to that prescribed in § 178.340–3.

(d) *Stiffening rings.* (1) Stiffening rings, when used to conform with this section, must be as prescribed in the ASME Code.

(2) Stiffening rings must be of the type that can be visually inspected. Hat shaped or open channel rings precluding visual inspection of the tank shell are prohibited.

§ 178.340–8 Accident Damage Protection.

(a) *General.* Each cargo tank and its associated piping, closures, and values must be designed and constructed to minimize the potential for the loss of lading due to an accident. The cargo tank design and construction must take into consideration forces relating to puncture, abrasion, crush, dynamic pressure, and impact and inertial loadings:

(1) Any projection from the cargo tank shell that retains lading, e.g., domes, sumps, washouts, must be designed, constructed, and installed so as to minimize the possibility of impact during an accident which may adversely affect the lading retention integrity of the cargo tank. Such projections must be constructed from a material of a toughness equivalent to that of the tank shell and with a thickness at least equal to that specified by the appropriate cargo tank specification. Any projection that extends more than two inches from the tank shell must have accident damage protection devices as specified in this section, or when not so protected, the projection must:

(i) Be 125 percent as strong as the otherwise required accident damage protection device, or

(ii) Conform with the requirements of paragraph (a)(3) of this section.

(2) Outlets, valves, closures, associated piping, or any devices that if damaged in an accident could result in a loss of lading from the cargo tank must be protected by accident damage protection devices as specified in this section, or when not so protected these parts must:

(i) Be 125 percent as strong as the otherwise required accident damage protection device; or

(ii) Conform with the requirements of paragraph (a)(3) of this section.

(3) Accident damage protection devices attached to the shell of a cargo tank must be designed, constructed, and installed so as to maximize the distribution of loads to the shell and minimize the possibility of adversely affecting the lading retention integrity of the cargo tank. Each accident damage protection device must be designed to prevent loss of the lading retention capability of the cargo tank by failure of the device. Accident induced stress resulting from the accident damage protection device requirements in combination with the stresses from the tank operating at the design pressure may not result in a tank shell stress greater than 75 percent of the ultimate strength of the tank shell material.

(4) Piping that extends beyond an accident damage protection device must be equipped with a stop-valve and fail-safe device located within the accident damage protection device to prevent any accidental loss of lading. The fail-safe device must be located in the piping system outboard of the stop-valve. The fail-safe device must be designed to prevent damage to the stop-valve and to any piping between the tank outlet and the stop-valve due to loads transferred by the piping in an accident.

(5) All manhole covers, filling covers, washout covers, piping and stop-values that retain lading during transportation must be designed and fabricated to withstand all applicable dynamic and inertial loads resulting from an accident in which the cargo tank would be expected to retain its containment integrity without loss of lading.

(6) *Minimum road clearance.* The minimum allowable road clearance of any cargo tank component or protection device located between any two adjacent axles on a vehicle or vehicle combination shall be at least one-half inch for each foot separating such axles, and in no case less than 12 inches.

(b) *Bottom damage protection.* Each outlet, projection or piping located in the bottom damage protection zone that could be damaged in an accident thereby resulting in the loss of lading must be protected by a bottom damage protection device or must be 125 percent as strong as the otherwise required bottom damage protection device.

(1) A bottom damage protection device must be able to withstand or deflect away from the cargo tank an

impact equivalent to an energy of 275,000 foot-pounds applied to the bottom damage protection device at any point from any direction (front, side, rear or bottom) over an area not greater than 6 square feet, based on the ultimate strength of the material.

(2) A lading discharge opening equipped with an internal self-closing stop valve need not conform with paragraph (b)(1) of this section provided it is protected so as to reasonably assure against the accidental loss of lading. Protection for lading discharge piping must be provided by a fail-safe device located outboard of each internal self closing stop valve and within 4 inches of the major radius of the tank shell. The fail-safe device must break under strain at no more than 80 percent of the strength of the shell material and leave the internal self-closing stop valve and its attachment to the tank intact and capable of retaining lading.

(c) *Rollover Damage Protection.* Each closure for an opening, including but not limited to filling, manhole, or inspection openings, and each valve, fitting, pressure relief device, or other accessory located in the rollover damage protection zone must be protected by being enclosed inside the body of the tank, by being enclosed inside a rollover damage protection device, or by being 125 percent as strong as the otherwise required damage protection device.

(1) A rollover damage protection device on a cargo tank motor vehicle must be designed and installed to withstand a load normal and tangential to the tank shell equal to at least twice the weight of the loaded cargo tank motor vehicle, based on the ultimate strength of the material used. These design loads may be considered independently. If more than one rollover protection device is used, each device must be capable of carrying at least one-fourth the required total tangential load and its proportionate share of the load normal to the tank shell. The design must be proven capable of carrying the required loads by calculations, tests or a combination of tests and calculations.

(2) A rollover damage protection device that would otherwise allow the accumulation of liquid on the top of the tank, must be provided with a drain that directs the liquid to a safe point of discharge away from any structural component of the cargo tank motor vehicle.

(d) *Rear-end tank protection.* Each cargo tank shall be provided with a rear-end tank protection device to protect the cargo tank and piping in the event of a rear-end collision and minimize the possibility of any part of the colliding object damaging the tank. The outboard surface of the rear-end tank protection device shall be located at least 6 inches to the rear of any vehicle component used for loading or unloading or that may contain lading while in transit. This protection device must be designed to successfully absorb (i.e. incur no damage that will cause leakage of lading) the impact of the cargo tank motor vehicle loaded at its rated payload, with a deceleration of 2 "g" using a safety factor of two based on the ultimate strength of the materials used. Such impact must be considered uniformly distributed and applied horizontally (parallel to the ground) from any direction at an angle not exceeding 30 degrees to the longitudinal axis of the vehicle. The rear-end tank protection device must be of a width and height adequate to protect the cargo tank, and all the valves, fittings and piping located at the rear of the cargo tank, from damage that could result in loss of lading.

§178.340–9 Pumps, piping, hoses and connections.

(a) Each loading or unloading pump mounted on a cargo tank motor vehicle must be provided with an automatic means to prevent the pressure from exceeding the design pressure of the tank and tank-mounted equipment.

(b) Each hose, piping, stop valve, lading retention fitting, and closure for each cargo tank must be designed for a bursting pressure of at least 100 psig, and not less than four times the cargo tank design pressure. Each hose coupling must be designed for a bursting pressure of not less than 120 percent of the design bursting pressure of the hose and must be so designed that there will be no leakage when connected.

(c) Suitable provision must be made to allow for and prevent damage due to expansion, contraction, jarring, and vibration. Slip joints may not be used for this purpose.

(d) Any heating device, when installed, must be so constructed that the breaking of its external connections will not cause leakage of the tank lading.

(e) Any gauging, loading, or charging device, including associated valves, must be provided with an adequate means of secure closure to prevent leakage.

(f) Each loading/unloading or charging line must be constructed with sufficient strength, or be protected by a fail safe device, such that any load applied by loading/unloading or charing lines connected to the cargo tank cannot cause damage resulting in loss of lading from the cargo tank.

(g) Use of a nonmetallic pipe, valve or connection that is not as strong and heat resistant as the tank material is authorized only if such attachment is located outboard of the product retention system.

§ 178.340–10 Pressure relief.

(a) Each cargo tank must be equipped with a pressure and vacuum relief system in conformance with this section and the applicable individual specification. The pressure and vacuum relief system must be designed to operate and have sufficient capacity to prevent tank rupture or collapse under any condition of overpressurization or vacuum resulting from tank heating, cooling, loading or unloading.

(b) *Type and construction of relief systems and devices.* (1) Each cargo tank must be provided with a primary pressure relief system consisting of one or more spring-loaded pressure relief valves. A secondary pressure relief system consisting of another spring-loaded pressure relief valve in parallel with the primary pressure relief system may be used to augment the total venting capacity of the cargo tank. Non-reclosing pressure relief devices are not authorized in any cargo tank except when in series with a spring-loaded pressure relief valve.

(2) If a frangible disc is inserted in series with a spring-loaded valve, the space between the frangible disc and the value must be provided with a suitable tell-tale indicator to permit detection of any frangible disc pinholing or leakage which may cause a malfunction of the pressure relief system. The frangible disc must rupture at a tank pressure within the range specified in paragraph (d)(1) of this section.

(3) Each pressure relief system must be designed to prevent loss of lading from the system in case of pressure surges, vehicle upset or accident. Each pressure relief system must be designed to withstand a dynamic pressure surge of 50 psig applied for at least 300 milliseconds without leakage of liquid lading regardless of vehicle orientation. Each pressure actuated relief system must function in the event of sustained pressure rise in excess of the prescribed set pressure.

(4) Each spring-loaded pressure relief valve must be constructed and installed in a manner to prevent unauthorized adjustment of the relief setting.

(5) No shut-off valve of other device that could prevent venting through the pressure relief system may be installed in a pressure relief system.

(6) The pressure relief system must be mounted, shielded and drained so as to eliminate the accumulation of material that could impair the operation or discharge capability of the system by freezing, corrosion or blockage.

(c) *Location of relief devices.* Each pressure relief device must communicate with the vapor space of the tank in a position as near as possible to the longitudinal and transverse center of the tank. The discharge from any device must be unrestricted. Protective devices which deflect the flow of vapor are permissible provided the required vent capacity is maintained.

(d) *Settings of pressure relief system*—(1) *Primary pressure relief systems.* Unless othewise prescribed in the applicable individual specification, each primary pressure relief valve must be set to function at design pressure. For all tanks, the spring-loaded value must close after discharge at a pressure not less then 90 percent of the set-to-discharge pressure and remain closed at lesser pressures.

(2) *Secondary pressure relief system.* Each spring-loaded pressure relief valve used as a secondary relief device may not be set-to-discharge at a pressure greater than 125 percent of the design pressure of the cargo tank.

(e) *Venting capacity of pressure relief systems.* The pressure relief system (primary and secondary, including any piping) in each tank must have sufficient venting capacity to limit the tank internal pressure to a maximum of 130 percent of the tank's design pressure. This total venting capacity may not be less than that shown in Table I of this paragraph.

(1) *Primary pressure relief systems.* Unless otherwise specified in the applicable individual specification, the primary pressure relief system must have a minimum venting capacity of 12,000 SCFH per 350 square feet of exposed tank area, but in any case at least one fourth the required total venting capacity for the cargo tank.

(2) *Secondary pressure relief system.* If the primary pressure relief system does not provide the required total venting capacity, additional capacity must be provided by a secondary pressure relief system.

TABLE I.—Minimum Emergency Vent Capacity in Cubic Feet; Free Air/Hour (14.7 psia and 60 °F.)

Exposed area square feet	Cubic feet, free air per hour
20	15,800
30	23,700
40	31,600
50	39,500
60	47,400
70	55,300
80	63,300
90	71,200
100	79,100
120	[illegible]
140	110,700
160	126,500
180	142,300
200	158,100
225	191,300
250	203,100
275	214,300
300	225,100
350	245,700
400	[illegible]
450	283,200
500	300,600
550	317,300
600	333,300
650	348,800
700	363,700
750	378,200
800	392,200
850	405,900
900	419,300
950	432,300
1,000	445,000

Note 1: Interpolate for intermediate sizes.

(f) *Certification of pressure relief devices.* The manufacturer of any pressure relief device, including valves, frangible discs, vacuum vents and combination devices, must certify that the device model was designed and tested in accordance with this section and the appropriate cargo tank specification. The certificate must contain sufficient information to describe the device and its performance. The certificate must be signed by a responsible official of the manufacturer and the Authorized Inspector who approved the flow capacity certification.

(g) *Rated flow capacity certification test.* (1) Each pressure relief device model must be successfully flow capacity certification tested prior to first use. Devices having one design, size and set pressure are considered to be one model. The testing requirements are as follows:

(i) At least 3 devices of each specific model must be flow capacity tested at a pressure not greater than 130 percent of the design pressure of the cargo tank. For a device to be certified, the capacities of the devices tested must fall within a range of plus or minus 5 percent of the average for the devices tested.

(ii) The rated flow capacity of a device model may not be greater than 90 percent of the average value for the devices tested.

(iii) The rated flow capacity derived for each device model must be approved by an Authorized Inspector.

(h) *Marking of pressure relief devices.* Each pressure relief device must be permanently marked with the following:

(1) Manufacturer's name;

(2) Model number;

(3) Set-to-discharge pressure, in psig; and

(4) Rated flow capacity, in SCFH at the rating pressure, in psig.

§ 178.340–11 Tank Outlets.

(a) Each tank outlet that may contain lading in any tank attitude must be equipped with an stop valve or other leak tight closure in accordance with the following (such tank outlets, closures and associated piping must be protected in accordance with § 178.340–8):

(1) Each loading/unloading outlet must be equipped with a external self-closing stop valve located as close as possible to the tank shell or with an internal self-closing stop valve that is located inside the tank, within a welded flange, its companion flange, a nozzle or a coupling. Each internal or external self-closing stop valve must be fitted with a remotely activated means of closure located more than 10 feet from the stop valve, as specified below. Cable linkage to these closures must be corrosion resistant and effective in all types of environment and weather. Any loading/unloading connecton extending beyond the self-closing stop valve must be fitted with another manually or mechanically operated stop valve at the end of such connection.

(i) For cargo tanks intended for flammable, pyrophoric, oxidizing or Poison B liquids, the remote means of closure must be activated for closure by manual or mechanical means and in case of fire by an automatic heat activated means. Thermally activated closures must activate at a temperature not over 250 °F.

(ii) For cargo tanks intended exclusively for a lading other than those mentioned in paragraph (a)(1)(i) of this section, the remote means of closure may be actuated by manual or mechanical means only.

(2) Each tank outlet that is not a loading/unloading outlet must be equipped with a stop valve or other leak tight closure located as close as practicable to the tank outlet. Any connection extending beyond this closure must be fitted with another stop valve at the end of such connection.

(b) A loading/unloading outlet designed and installed so that a ruptured loading/unloading line would not result in release of lading by gravity or pressure need not be equipped with a self-closing stop valve.

§ 178.340–12 Gauging devices.

Each cargo tank, except a tank intended to be filled by weight, must be equipped with a gauging device that indicates the maximum permitted liquid level to an accuracy of 0.5 percent. Gauge glasses are not permitted.

§ 178.340–13 Pressure tests.

(a) Each tank must be pressure tested in accordance with this section and § 178.341–13(a), § 178.342–13(a) or § 178.343–13(a), as applicable.

(b) Each tank must be tested hydrostatically or pneumatically. Each cargo tank of a multi-tank cargo tank motor vehicle must be tested with the adjacent cargo tanks empty and at atmospheric pressure. Every closure, except the pressure relief device and a loading and unloading venting device rated at less than the prescribed test pressure must be in place during the test. If the venting device is not removed during the test such device must be rendered inoperative by a clamp, plug or other equally effective restraining device, which may not prevent the detection of leaks, or damage the device, and which must be removed immediately after the test is completed.

(1) *Hydrostatic method.* Each tank, including its domes, must be filled with water or other liquid having similar viscosity, the temperature of which may not exceed 100 °F. The tank must then be pressurized as prescribed in the applicable specifications. The pressure must be gauged at the top of the cargo tank. The cargo tank must hold the prescribed test pressure for at least 10 minutes during which time the tank must be inspected for leakage, bulging or other defect.

(2) *Pneumatic method.* A pneumatic test may be used in place of the hydrostatic test. Due regard must be taken because of the potential hazard involved in a pneumatic test. The cargo tank must be pressurized with air or similar gas. Test pressure must be reached gradually by increasing the pressure to one-half of test pressure. Thereafter, the pressure must be increased in steps of approximately one-tenth of the test pressure until test pressure is reached and held for at least 5 minutes. The pressure must then be reduced to inspection pressure which must be maintained while the entire cargo tank surface is inspected for leakage or other sign of defects. The inspection method must consist of coating the entire surface of the tank, particularly each joint, with a solution of soap and water or other equally sensitive method. Suitable safeguards must be provided to protect employees and other persons should a failure occur.

(c) The cargo tank with all its accessories in place and operable must be leak tested at not less than 80 percent of design pressure, or 3 psig, whichever is higher, with the pressure maintained for at least 5 minutes.

(d) Any cargo tank that leaks, bulges or shows any other sign of defect while being tested in accordance with paragraphs (b) and (c) of this section must be suitably repaired and successfully retested. The retest after any repair must use the same method of test under which the cargo tank was originally rejected.

§ 178.340–14 Marking.

(a) *General.* The manufacturer shall certify that each cargo tank motor vehicle has been designed, constructed and tested in accordance with the applicable Specification MC 306, MC 307 or MC 312 (§§ 178.340, 178.341, 178.342, 178.343 of this part) cargo tank requirements, and the ASME Code. The certification shall be accomplished by marking the tank as prescribed in paragraphs (b) and (c) of this section and by preparing the certificate prescribed in § 178.340–15.

(1) *Multi-cargo tank motor vehicle.* Each cargo tank of a multi-tank cargo tank motor vehicle must be marked as prescribed in paragraph (b) of this section. For each cargo tank fabricated to the requirements of a different specification, details pertaining to the multispecification cargo tank motor vehicle configuration must be clearly indicated on the manufacturer's certificate and on the specification plate.

(2) *Variable specification cargo tank.* The alterations that must be performed in order for the tank to be modified from one specification to another must be clearly indicated on the manufacturer's certificate and on the variable specification plate.

(b) *Nameplate.* On the left side near the front of each tank, a corrosion resistant metal nameplate must be permanently affixed, by brazing or welding around its perimeter. The nameplate must be plainly marked, in English, by stamping, embossing, or other means of forming letters into the metal of the plate, in characters at least 3/16 inch high. The following information, in addition to that required by the ASME Code, must be included (parenthetical abbreviations may be used):

(1) DOT Specification number MC XXX (DOT MC XXX), where "XXX" is replaced with the applicable specification number.

(2) Original test date (Orig. Test Date).

(3) Tank design pressure, in psig (Design Pressure).

(4) Tank test pressure, in psig (Test Pressure).

(5) Tank design temperatures range, in degrees Fahrenheit (Design Tem. —— °F to —— °F).

(6) Nominal water capacity, in gallons (Water Cap.)

(7) Maximum design density of lading, in pounds per gallon (Max. Design Density Lading).

(8) Material specification number shell (Mat. Spec.—shell yyy * * *), where "yyy" is replaced with the alloy designation and "* * *" by the alloy type).

(9) Material specification number—heads (Mat. Spec.—heads yyy * * *), see paragraph (b)(8) of this section.

(10) Minimum thickness—shell, in inches (Min. Thick—shell top ——, side ——, bottom ——).

(11) Minimum thickness—heads, in inches (Min. Thick—head).

(12) Weld material (Weld Mat.).

(c) *Specification plate.* An additional plate, a corrosion resistant metal specification plate, must be affixed as prescribed by paragraph (d) or (e) of this section. The specification plate must be marked in English, by stamping, embossing, or other means of forming letters into the metal of the plate, in characters at least 3/16 inch high, with the information specified in paragraph (b) of this section and, in addition, the following (parenthetical abbreviations may be used):

(1) Cargo tank motor vehicle manufacturer (CTM Veh. Mfr.).

(2) Cargo tank motor vehicle certification date (CTM Veh. Cert. Date), if different from the cargo tank certification date.

(3) Cargo tank manufacturer (CT Mfr.);

(4) Cargo tank date of manufacturer (CT Date of Mfr.).

(5) Maximum design static pressure, in psig (Max. Design Static Press.).

(6) Exposed surface area, in square feet.

(7) Maximum weight of lading, in pounds (Max. Lading Wt.).

(8) Maximum loading rate, in gallons per minute at maximum loading pressure, in psig, (Max. Load. Rate —— gpm at —— psig).

(9) Maximum unloading rate, in gallons per minute at maximum unloading pressure in psig, (Max. Unload Rate —— gpm at —— psig).

(10) Lining material (Lining).

(11) Heating system design pressure, in psig, if applicable (Heating Sys. Press).

(12) Heating system design temperature, in degrees Fahrenheit, if applicable (Heating Sys. Temp).

(d) *Uninsulated cargo tanks.* For a cargo tank motor vehicle without an insulation jacket, having one or more cargo tanks all made to the same specification and not separated by any void space, the nameplate specified in paragraph (b) of this section is not require, provided—

(1) A specification plate is permanently affixed, by brazing or welding around its perimeter, to each cargo tank on the left side near the front, a place readily accessible for inspection; and

(2) The information required on the specification plate by paragraph (c) of this section must be listed from front to rear in the order of the corresponding cargo tanks.

(e) *Insulated cargo tanks.* For a cargo tank motor vehicle, with an insulation jacket, having one or more cargo tanks all made to the same specification and not separated by any void space, the nameplate specified in paragraph (b) of this section must be affixed to each tank. In addition,—

(1) A specification plate must be welded, brazed or riveted to the jacket or to an integral supporting structure on the left side near the front, in a place readily accessible for inspection; and

(2) The information required on the specification plate by paragraph (c) of this section is listed from front to rear in the order of the corresponding cargo tanks.

(f) *Variable specification cargo tank.* Each variable specification cargo tank must have a corrosion resistant metal variable specification plate permanently affixed, by brazing or welding, in a place readily accessible for inspection near the specification plate. The mounting of this variable specification plate must be secure and allow it to be configured so that only the plate identifying the applicable specification under which the tank is being operated is legible. The variable specification plate must be plainly marked, in English, in characters at least 3/16 inch high. The following information must be included (parenthetical abbreviations are authorized):

DOT Specification MC XXX (DOT MC XXX) where "XXX" is replaced with the applicable specification number.

Equipment required	Required rating—to meet the applicable specification
Pressure relief devices:	
Pressure actuated type	
Fusible type	
Frangible type	
Lading discharge devices	
Top	
Bottom	
Pressure unloading fitting	
[illegible]	
Manhole	
Fill openings	
Discharge openings	

(1) If no change of the information appearing in the specification plate is required, the letters "NC" must follow the rating required. If cargo tank is not so equipped, the word "None" must be inserted.

(2) *Color Coding.* The equipment that is changed or added to conform with the applicable specification and the appropriate variable specification plate must be identified using the following colors:

Specification	Color
MC 306	Red.
MC 307	Green.
MC 312	Yellow.
Nonspecification	Blue.

(3) Those parts to be changed or added must be stamped with the appropriate MC Specification.

(4) Any alteration or modification to a cargo tank so that it can be used as a variable specification tank must be clearly indicated on the variable specification plate and on the manufacturer's certificate.

§ 178.340–15 Certification.

(a) The manufacturer of a cargo tank motor vehicle made to any of these specifications must furnish the owner, at or before the time of delivery, the following:

(1) A certificate signed by a responsible official of the manufacturer and an Authorized Inspector certifying that the cargo tank motor vehicle is designed, fabricated, tested and completed in conformance with the applicable specification. The certificate must include drawings, sketches and other information to indicate the location, make, model and size of each stop valve and pressure relief device and the arrangement of all piping associated with the cargo tank motor vehicle.

(2) For a cargo tank required to be "constructed in conformance with the ASME Code", a certificate certifying compliance with the ASME Code signed by an Authorized Inspector, and including the ASME Code required forms.

(3) For a cargo tank not requiring ASME Code certification, a certificate signed by a responsible official of the manufacturer and an Authorized Inspector certifying that the cargo tank is "constructed in accordance with the ASME Code".

(4) For a variable specification cargo tank, a certificate signed by a responsible official of the manufacturer and an Authorized Inspector that the cargo tank is constructed for variable specification service. The certificate must include all the information required and marked on the variable specification plate.

(b) In the case of a cargo tank motor vehicle manufactured in two or more stages, each manufacturer who performs a manufacturing operation on the incomplete vehicle or portion thereof shall furnish to the succeeding manufacturer, at or before the time of delivery, a certificate covering the particular operation performed by that manufacturer and any certificates received from previous manufacturers. The certificates must include sufficient sketches, drawings, and other information to indicate the location, make, model and size of each valve and the arrangement of all piping associated with the tank. Each certificate must be signed by a responsible official of the manufacturing firm for the portion of the complete cargo tank motor vehicle represented thereby, such as basic tank fabrication, insulation, jacket, or piping. The final manufacturer shall furnish the owner with all certificates, as well as the documents required by paragraph (a) of the section.

(c) The owner shall retain the data report, certificates, and related papers in accordance with § 180.317 of this subchapter.

§ 178.341 Specification MC 306; cargo tank motor vehicle.

§ 178.341–1 General requirements.

(a) Each Specification MC 306 cargo tank motor vehicle must conform with the general design and construction requirements in § 178.340, in addition to the specific requirements contained in this section.

(b) Design pressure: The design pressure of each cargo tank must be no lower than 3 psig and no higher than 14.9 psig.

(c) Vacuum loaded cargo tanks may not be constructed to this specification.

(d) Each cargo tank must be "constructed in accordance with the ASME Code".

(e) Each cargo tank must have a cross sectional design capable of being analyzed either mathematically, or by experimental method contained in UG–101 of Section VIII of the ASME Code, or

by other methods acceptable to the Associate Director for HMR, MTB.

§ 178.341-2 Material and thickness of material.

The type and thickness of material for MC 306 cargo tanks must conform with § 178.340-2.

§ 178.341-3 Structural integrity.

The structural integrity of each cargo tank motor vehicle must conform with § 178.340-3.

§ 178.341-4 Joints.

All joints in the fabrication of each cargo tank must conform with § 178.340-4.

§ 178.341-5 Manhole assemblies.

Each manhole on each cargo tank must conform with § 178.340-5.

§ 178.341-6 Supports and anchoring.

Supports and anchoring on each cargo tank motor vehicle must be in conformance with § 178.340-6.

§ 178.341-7 Circumferential reinforcement.

The circumferential reinforcement on each cargo tank must conform with § 178.340-7.

§ 178.341-8 Accident damage protection.

Each cargo tank motor vehicle must be protected from accident damage in accordance with § 178.340-8.

§ 178.341-9 Pumps, piping, hoses and connections.

Each pump on each cargo tank motor vehicle must conform with § 178.340-9.

§ 178.341-10 Pressure relief.

(a) Each cargo tank must be equipped with pressure relief devices in accordance with § 178.340-10, and this section.

(b) *Type and construction.* In addition to the pressure relief devices required in § 178.340-10, each MC 306 cargo tank must be equipped with one or more vacuum relief devices. Pressure and vacuum relief devices must prevent the loss of lading through the device in the event of vehicle overturn.

(c) *Pressure settings of relief valves.* The setting of each pressure relief valve must be in accordance with § 178.340-10(d). Each tank must be equipped with one or more vacuum relief devices set to open at no more than 6 ounces vacuum.

(d) *Venting capacities.* (1) The total venting capacity of the pressure relief system must limit the cargo tank pressure to not greater than the cargo tank test pressure. The total venting capacity, rated at no greater than the cargo tank test pressure, must be at least that specified in the Table in § 178.340-10(e).

(2) The primary pressure relief valve must have a minimum venting capacity of at least 6000 SCFH, of free air, rated at not greater than the test pressure.

(3) If the cargo tank is designed to be loaded or unloaded with the dome cover closed, the pressure relief system must limit the vacuum to 1 psi and the cargo tank pressure to the design pressure, based on the maximum product loading rate as indicated on the specification plate. Unless automatic protection against overfilling is made, the pressure relief system must also have sufficient liquid capacity to prevent the pressure from exceeding the tank design pressure in case of accidental overfilling.

§ 178.341-11 Outlets.

All outlets on each tank must conform with § 178.340-11, except that external self-closing stop valves are not authorized as an alternative to internal self closing stop valves on loading/discharge outlets.

§ 178.341-12 Gauging devices.

Any gauging device must conform with § 178.340-12.

§ 178.341-13 Pressure test.

(a) Each cargo tank must be tested in accordance with § 178.340-13.

(b) Test pressure must be as follows:

(1) Using the hydrostatic test method, the test pressure must be 5.0 psig or 1.5 times the design pressure, whichever is greater.

(2) Using the pneumatic test method, the test pressure must be 5 psig or 1.5 times the design pressure, whichever is greater. The inspection pressure must be 3 psig or the design pressure, whichever is greater.

§ 178.341-14 Marking.

Each cargo tank motor vehicle must be marked in accordance with § 178.340-14.

§ 178.341-15 Certification.

Each cargo tank motor vehicle must be certified in accordance with § 178.340-15.

§ 178.342 Specification MC 307; cargo tank motor vehicle.

§ 178.342-1 General requirements.

(a) Each Specification MC 307 cargo tank motor vehicle must conform with the general design and construction requirements in § 178.340, in addition to the specific requirements contained in this section.

(b) The design pressure of each cargo tank must be at least 25 psig. Any cargo tank built to this specification must be constructed, certified and stamped in conformance with the ASME Code. The external design pressure for a cargo tank loaded by vacuum must be at least 15 psig.

(c) Each tank must be of circular cross-section.

§ 178.342-2 Material and thickness of material.

The type and thickness of tank material must conform with § 178.340-2. The knuckle radius of the head must be at least three times the material thickness. For butt-welded heads the straight flange must be at least three times the material thickness. For heads with pressure on the convex side the material thickness prescribed in section 178.340-2(b) must be increased by 67 percent, unless such heads are braced to prevent excessive distortion.

§ 178.342-3 Structural integrity.

The structural integrity of each cargo tank motor vehicle must conform with § 178.340-3.

§ 178.342-4 Joints.

All joints in the fabrication of each cargo tank must conform with § 178.340-4.

§ 178.342-5 Manhole assemblies.

Each manhole on each cargo tank must conform with § 178.340-5, except that closures for manholes must be capable of withstanding internal fluid pressures of 40 psig or 1.5 times the design pressure of the tank, whichever is greater.

§ 178.342-6 Supports and anchoring.

The supports and anchoring on each cargo tank motor vehicle must conform with § 178.340-6.

§ 178.342-7 Circumferential reinforcements.

The circumferential reinforcement for each cargo tank must conform with § 178.340-7.

§ 178.342-8 Accident damage protection.

Each cargo tank motor vehicle must be protected from accident damage in accordance with § 178.340-8.

§ 178.342-9 Pumps, piping, hoses and connections.

Each pump on each cargo tank must conform with § 178.340-9.

§ 178.342-10 Pressure relief.

(a) Each cargo tank must be equipped with pressure relief devices in accordance with § 178.340-10.

(b) If pressure loading or unloading devices are provided, the relief device must have adequate vapor and liquid

capacity to limit the tank pressure to 130 percent of design pressure at maximum loading rate. Such limits must be included on the metal specification plate.

§ 178.342-11 Outlets.

All outlets on each tank must conform with § 178.340-11.

§ 178.342-12 Gauging device.

Any gauging device must conform with § 178.340-12.

§ 178.342-13 Pressure test.

(a) Each cargo tank must be tested in accordance with § 178.340-13.

(b) Test pressure must be at least 40 psig or 1.5 times the design pressure, whichever is greater. Inspection pressure for the pneumatic test is the tank design pressure.

§ 178.342-14 Marking.

Each cargo tank motor vehicle must be marked in accordance with § 178.340-14.

§ 178.342-15 Certification.

Each cargo tank motor vehicle must be certified in accordance with § 178.340-15.

§ 178.343 Specification MC 312; cargo tank motor vehicle.

§ 178.343-1 General requirements.

(a) Each Specification MC 312 cargo tank motor vehicle must conform with the general design and construction requirements in § 178.340, in addition to the specific requirements contained in this section.

(b) The design pressure of each cargo tank must be at least 15 psig.

(c) The design pressure for each cargo tank loaded by vacuum must be at least 25 psig internal and 15 psi external.

(d) Each cargo tank must be "constructed and certified in conformance with the ASME Code."

(e) Each tank must be of circular cross section.

§ 178.343-2 Material and thickness of material.

The tank material must conform with § 178.340-2, except that the minimum thickness for the reference steel must be 0.125 inch, or 0.110 inch if stronger steels are used.

§ 178.343-3 Structural integrity.

The structural integrity of each cargo tank motor vehicle must conform with § 178.340-3.

§ 178.343-4 Joints.

All joints in the fabrication of each cargo tank must conform with § 178.340-4.

§ 178.343-5 Manhole assemblies.

Each manhole on each tank must conform with § 178.340-5.

§ 178.343-6 Supports and anchoring.

The supports and anchoring on each cargo tank motor vehicle must conform with § 178.340-6.

§ 178.343-7 Circumferential reinforcement.

The circumferential reinforcement on each cargo tank must conform with § 178.340-7.

§ 178.343-8 Accident damage protection.

Each cargo tank motor vehicle must be protected from accident damage in accordance with § 178.340-8.

§ 178.343-9 Pumps, piping, hose and connections.

Each pump on each cargo tank must conform with § 178.340-9.

§ 178.343-10 Pressure relief.

(a) Each cargo tank must be equipped with pressure relief devices in accordance with § 178.340-10.

(b) If pressure loading or unloading devices are provided, the relief valve must have adequate vapor and liquid capacity to limit tank pressure to 130 percent of design pressure at maximum inlet loading rate.

§ 178.343-11 Outlets.

All outlets on each cargo tank must conform with § 178.340-11.

§ 178.343-12 Gauging devices.

Any gauging device must conform with § 178.340-12.

§ 178.343-13 Pressure test.

(a) Each cargo tank must be tested in accordance with § 178.340-13.

(b) Test pressure must be at least 1.5 times the design pressure. When using the pneumatic test method the inspection pressure is the design pressure.

§ 178.343-14 Marking.

Each cargo tank motor vehicle must be marked and certified in accordance with § 178.340-14.

§ 178.343-15 Certification.

Each cargo tank motor vehicle must be certified in accordance with § 178.340-15.

96. A new part 180 would be added to Subchapter C of Title 49 to read as follows:

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

Subpart A—General

Sec.
180.1 Purpose and scope.
180.2 Applicability
180.3 General requirements.

Subpart B-D—[Reserved]

Subpart E—Qualification and Maintenance of Cargo Tanks

180.401 Applicability.
180.403 Definitions.
180.405 Qualification of cargo tanks.
180.407 Requirements for test and inspection of cargo tanks.
180.409 Minimum qualifications for inspectors and testers.
180.411 Acceptable results of tests and inspections.
180.413 Repair or modification of cargo tanks.
180.415 Test and inspection marking.
180.417 Reporting and record retention requirements.

Subpart F—[Reserved]

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53(e).

Subpart A—General

§ 180.1 Purpose and scope.

This part prescribes requirements pertaining to the maintenance, reconditioning, repair, inspection and testing of packagings, and any other function having an effect on the continuing qualification and use of a packaging under the requirements of this subchapter.

§ 180.2 Applicability.

(a) Any person who performs a function prescribed in this part shall perform that function in accordance with this part.

(b) Any person who performs a function prescribed in this part is considered subject to the regulations of this subchapter when that person—

(1) Makes any representation indicating compliance with one or more of the requirements of this part; or

(2) Reintroduces a packaging into commerce that bears markings indicating compliance with this part.

§ 180.3 General requirements.

(a) No person may represent, mark, certify, sell, or offer a packaging or container as meeting the requirements of this part, or an exemption pertaining to this part issued under Subchapter B of this chapter, whether or not the packaging or container is intended to be used for the transportation of a hazardous material, unless it is marked, maintained, reconditioned, repaired, or

retested, as appropriate, in accordance with this part, an approval issued thereunder, or an exemption issued under Subchapter B of this chapter.

(b) The representations, markings, and certifications subject to the prohibitions of paragraph (a) of this section include:

(1) Identifications that include the letters "DOT" or "UN";

(2) Exemption, approval, and registration numbers that include the letters "DOT";

(3) Test dates displayed in association with specification, registration, approval, or exemption markings indicating conformance to a test or retest requirement of this subchapter, an approval issued thereunder, or an exemption issued under Subchapter B of this chapter;

(4) Documents indicating conformance to the testing, inspection, maintenance or other continuing qualification requirements of this part; and

(5) Sales literature, including advertising, indicating that the packaging or container represented therein conforms to requirements contained in Subchapter B or C of this chapter.

Subpart B–D—[Reserved]

Subpart E—Qualification, Maintenance and Use of Cargo Tanks

§ 180.401 Applicability.

This subpart prescribes requirements, in addition to those contained in Parts 171, 172, 173 and 178 of this subchapter, applicable to any person responsible for the continuing qualification, maintenance or periodic testing of a cargo tank.

§ 180.403 Definitions.

In addition to the definitions contained in §§ 171.8 and 178.340–1 of this subchapter, the following definitions apply to this subpart.

"Owner" means the owner of a cargo tank motor vehicle used for the transportation of hazardous materials, or his authorized agent.

"Modification" means any change to a cargo tank's original design and construction.

"Rebarrelling" means replacing more than 25 percent of the shell material of a cargo tank.

"Repair" means any work done to return a cargo tank to its original design and construction, or to a condition prescribed for that cargo tank specification in effect at the time of repair.

"Stretching" means any change in length, width or diameter of the cargo tank, or any change to a cargo tank motor vehicle's undercarriage that may affect the cargo tank's structural integrity, for example, lengthening the wheel base of the cargo tank motor vehicle.

§ 180.405 Qualification of cargo tanks.

(a) *General:* Unless otherwise provided in this subpart, each cargo tank used for the transportation of a hazardous material must be an authorized packaging.

(b) To qualify as an authorized packaging, each cargo tank must conform with this subpart, the applicable requirements specified in part 173 of this subchapter for the specific lading, and an applicable specification in effect on the date the initial construction began: MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, MC 312, MC 330, MC 331, or MC 338 (§ 178.340, § 178.341, § 178.342, § 178.343, § 178.337, § 178.338 of this subchapter).

(c) *Cargo tank specifications no longer authorized for construction.* (1) A cargo tank made to a specification listed in Column 1 may be used when authorized in this Part, provided tank construction began before the date listed in Column 2:

Column 2	Column 1
MC 300	Sept. 2, 1967
MC 301	June 12, 1961
MC 302, MC 303, MC 304, MC 305, MC 310, MC 311	Sept. 2, 1967
MC 330	May 15, 1967

(2) A cargo tank of a specification listed in paragraph (c)(1) above, may have its pressure relief devices and outlets modified as follows:

(i) A Specification MC 300, MC 301, MC 302, MC 303 or MC 305 cargo tank, to conform with a Specification MC 306 cargo tank (See §§ 178.341–10 and 178.341–11 of this subchapter).

(ii) A Specification MC 304 cargo tank, to conform with a Specification MC 307 cargo tank (See §§ 178.342–10 and 178.342–11 of this subchapter).

(iii) A Specification MC 310 or MC 311 cargo tank, to conform with a Specification MC 312 cargo tank (See §§ 178.343–10 and 178.343–11 of this subchapter).

(iv) A Specification MC 330 cargo tank, to conform with a Specification MC 331 cargo tank (See §§ 178.337–8 and 178.337–9 of this subchapter).

(d) *MC 338 cargo tanks.* The owner of a cargo tank that conforms to and was used under an exemption issued before October 1, 1984, that authorizes the transportation of a cryogenic liquid shall remove the exemption number stenciled on the cargo tank and stamp the specification plate (or a plate placed adjacent to the specification plate) "DOT MC 338" followed by the exemption number, for example, "DOT MC 338–E *****". (Asterisks to be replaced by the exemption number.) The cargo tanks must be re-marked prior to the expiration date of the exemption. During the period the cargo tank is in service, the owner of a cargo tank that is re-marked in this manner must retain at its principal place of business a copy of the last exemption in effect. No new construction of cargo tanks pursuant to such exemptions is authorized.

(1) The holding time must be determined, as required in § 178.338–9 of this subchapter, on each cargo tank or on at least one cargo tank of each design. Any subsequent cargo tank manufactured to the same design, if not individually tested, must have the optional test regimen performed during the first shipment (see §§ 178.338.9 (b) and (c) of this subchapter). For the purpose of performing the holding time test, the term "same design" means cargo tanks having the same manufacturer, same drawings, same dimensions (of length, diameter, and volume), same materials of construction, and the same insulation system.

(2) the holding time determined by test for one authorized cryogenic liquid may be used as the basis for establishing the holding time for the other authorized cryogenic liquids.

(e) *MC 331 cargo tanks.* The owner of a MC 331 (§ 178.337 of this subchapter) cargo tank that conforms to and was used under an exemption issued before October 1, 1984, that authorizes the transportation of ethane, refrigerated liquid; ethane-propane mixture, refrigerated liquid; or hydrogen chloride, refrigerated liquid shall remove the exemption number stenciled on the cargo tank and stamp the exemption number on the specification plate (or a plate placed adjacent to the specification plate), immediately after the DOT Specification, for example, "DOT MC 331–E*****". (Asterisks to be replaced by the exemption number.) The cargo tank must be re-marked prior to the expiration date of the examption. During the period the cargo tank is in service, the owner of a cargo tank that is re-marked in this manner must retain at its principal place of business a copy of the last exemption in effect.

(f) *MC 306, MC 307, MC 312 cargo tanks.* An Authorized Inspector and the owner of a MC 306, MC 307 or MC 312 cargo tank motor vehicle constructed in accordance with and used under an exemption issued before (effective date of final rule) that authorizes a condition

specified in paragraph (f)(1) of this section must determine and certify that the cargo tank motor vehicle conforms with the exemption and the specification in effect at time of manufacture.

(1) The determination must indicate conformance with each of the following conditions that apply:

(i) A vacuum-loaded cargo tank constructed after August 1, 1981, or the date specified in the applicable exemption, must have an ASME Code stamped specification plate indicating a minimum internal design presure of 25 psig, and a minimum external design pressure of 15 psig.

(ii) A cargo tank having an outlet equipped with an external self-closing stop valve must have the stop valve and associated piping protected within the vehicle's rear-end tank protection device, the vehicle frame or an equally adequate accident damage protection device (See § 178.340–8 of this subchapter.) The external self-closing stop valve must be equipped with a remotely actuated means of closure consisting as follows:

(A) For a cargo tank used in other than corrosive service, the remote means of closure must be activated for closure by manual or mechanical means and, in case of fire, by an automatic heat activated means.

(B) For a cargo tank used in corrosive service, the remote means of closure may be actuated by manual or mechanical means only.

(iii) A cargo tank having an unreinforced portion of the shell exceeding 60 inches must have the circumferential reinforcement located so that the thickness and tensile strength of shell material in combination with the frame and circumferential reinforcement produces a structural integrity at least equal to that prescribed in § 178.340–4 of the specification in effect at time of manufacture.

(iv) A cargo tank having a projection from the tank shell or head that may contain lading in any tank position is authorized, provided such projection is as strong as the tank shell or head and is located within the motor vehicle's rear-end tank protection or other appropriate accident damage protection device.

(v) A cargo tank constructed of nickel, titanium, or other ASME sheet or plate material in accordance with an exemption.

(2) The owner of a cargo tank for which a determination had been made that the cargo tank is in conformance with paragraph (f)(1) of this section shall complete a written certification, in English, signed by the owner and an Authorized Inspector, containing at least the following information:

(i) A statement certifying that each cargo tank conforms with paragraph (f)(1) of this section;

(ii) The applicable DOT exemption number, the applicable specification number and the owner's and manufacturer's serial number for the cargo tank;

(iii) A statement setting forth any modifications made to bring the cargo tank into conformance with paragraph (f)(1) of this section, or the applicable specification;

(iv) A statement identifying the person certifying the cargo tank and the date of certification.

(3) The owner of a certified cargo tank shall remove the exemption number stenciled on the cargo tank and must durably mark the specification plate (or a plate placed adjacent to the specification plate) "DOT MC +++ E****####" (where "+++" is to be replaced by the applicable specification number, "* * * *" by the exemption number and "# # # #" by the alloy.)

(4) During the period the cargo tank is in service, and for one year thereafter, the owner of a cargo tank that is certified and re-marked in this manner must retain on file at its principal place of business a copy of the certificate and the last exemption in effect.

(g) *Cargo tank manhole closures.* (1) On or before (5 years after effective date of final rule), each owner of a cargo tank authorized for the transportation of a hazardous material must have the cargo tank equipped with a secure closure on each manhole. The manhole closure must be structurally capable of withstanding for at least 5 minutes, without leakage or permanent deformation, a static internal fluid pressure of at least 36 psig or the cargo tank test pressure, whichever is greater.

(2) The owner of a cargo tank requiring retrofit of the manhole closure must retrofit at least 20 percent of the affected cargo tanks each year beginning in 198X.

(h) *Flammable cryogenic liquids.* Each cargo tank used to transport a flammable cryogenic liquid must be examined after each shipment to determine its actual holding time. (See § 173.318(g)(4) of this subchapter.)

(i) A specification cargo tank that no longer meets the applicable specification may not be used to transport hazardous materials unless the cargo tank is repaired and retested in accordance with §§ 180.313 and 180.307 prior to being returned to hazardous materials service. If the cargo tank is not brought into conformance with the applicable specification requirements, but it conforms with § 173.24 of this subchapter, it may be used to transport a material not required by this subchapter to be in a DOT specification cargo tank; however, in this event, the specification plate on the cargo tank must be removed, obliterated or covered in a secure manner with the blue non-specification plate described in § 178.340–14(b)(2)(ii) of this subchapter.

(j) *DOT specification cargo tanks with no marked design pressure or a marked design pressure of less than 3 psig.* (1) An MC 300, MC 301, MC 302, MC 303, MC 305, MC 306 or MC 312 cargo tank manufactured before (effective date of final rule),

(i) Which has a pressure relief system set at 3 psig, may be marked or re-marked with a design pressure of not greater than 3 psig; or

(ii) May be marked or re-marked with a design pressure based on the design requirements contained in § 178.340–1(1) of this subchapter.

(2) An MC 310 or MC 311 cargo tank manufactured before (effective date of final rule), may be marked or re-marked with a design pressure based on the design requirements contained in § 178.340–1(1) of this subchapter.

§ 180.407 Requirements for test and inspection of cargo tanks.

(a) *General.* (1) A cargo tank constructed in accordance with a DOT specification for which a test or inspection specified in this section has become due, may not be filled and offered for shipment unit the test or inspection has been successfully completed. This paragraph does not apply to any cargo tank filled prior to the test or inspection due date.

(2) Except during a pressure test, a cargo tank may not be subjected to a pressure greater than its design pressure.

(3) A person witnessing or performing a test or inspection specified in this section must meet the minimum qualifications prescribed in § 180.409.

(4) Each cargo tank which has successfully passed a test or inspection specified in this section must be marked in accordance with § 180.415.

(5) A cargo tank that fails a prescribed test or inspection must:

(i) Be repaired and retested in accordance with § 180.413; or

(ii) Be removed from hazardous materials service and the specification plate removed, obliterated or covered in a secure manner with the blue non-

specification plate specified in § 178.340–14(f)(2) of this subchapter.

(b) *Conditions requiring test and inspection of cargo tanks.* Without regard to any other test or inspection requirements, a cargo tank must be tested and inspected in accordance with this section if:

(1) The cargo tank shows evidence of bad dents, corroded or abraded areas, leakage, or any other condition that might render it unsafe for transportation.

(2) The cargo tank has been in an accident and has been damaged to an extent that may adversely affect its lading retention capability.

(3) The cargo tank has been out of hazardous materials transportation service for a period of one year or more.

(4) The cargo tank has been modified from its orginal design specification.

(5) The Department so requires based on the existence of probable cause that the cargo tank is in an unsafe operating condition.

(c) *Periodic test and inspection.* Each cargo tank must be tested and inspected as specified in the following table by a trained and experienced inspector meeting the qualifications in § 180.409.

Test or inspection	Period	Cargo tank specification	Configuration (see Note 1)	Service (see Note 2)
Inspections:				
External Visual and Testing	1 year	All	All	All.
Internal Visual	1 year	All except MC 330, MC 331, MC 338	Insulated, baffles or internal stiffening rings.	All.
	1 year	All	All	Lading corrosive to tank.
	5 years	All except MC 338	All	All.
Lining	1 year	All	Lined	Lading corrosive to tank.
Tests:				
Leakage	1 year	All except MC 338	All	All.
Pressure (hydrostatic or pneumatic)	1 year	All except MC 338	Insulated with no manholes or jacketed and lined.	All.
	2 years	MC 330, MC 331	All	Chlorine.
	5 years	All others	All	All.
Thickness over entire tank	2 years	All except MC 338	Unlined	Lading corrosive to tank.

Note 1.—"Configuration" means the internal and external design of a DOT Specification cargo tank.

Note 2.—"Service" means the hazardous materials being transported in a DOT Specification cargo tank.

(d) *External visual inspection and testing.* (1) The external visual inspection and testing must include as a minimum the following:

(i) The tank shell and heads must be inspected for corroded or abraded areas, dents, distortions, defects in welds and any other conditions, including leakage, that might render the tank unsafe for transportation service;

(ii) The piping, valves, and gaskets must be carefully inspected for corroded areas, defects in welds, and other conditions, including leakage, that might render the tank unsafe for transportation service;

(iii) All devices for tightening manhole covers must be operative and there must be no evidence of leakage at manhole covers or gaskets;

(iv) All emergency devices and valves including self-closing stop valves and excess flow valves, must be free from corrosion, distortion, erosion and any damage that will prevent safe operation. Remote closure devices for controlling self-closing stop valves must be inspected for corrosion or defects and functioned to demonstrate proper operation;

(v) Missing bolts, nuts and fusible links must be replaced, and loose bolts and nuts must be tightened;

(vi) All required markings on the cargo tank must be legible;

(vii) The cargo tank motor vehicle must conform with Part 393 of this title (the Federal Motor Carrier Safety Regulations) and, where appropriate, Part 571 of this title (the Federal Motor Vehicle Standards);

(viii) All major appurtenances on the cargo tank including, but not limited to, the fifth wheel assembly, suspension system attachments, and connecting structures, must be inspected for any corrosion or damage which might prevent safe operation.

(2) All spring-loaded pressure relief valves must be removed from the cargo tank for inspection and testing. Each spring-loaded pressure relief valve must open and reseat to a leak-tight condition at the pressure prescribed in the applicable cargo tank specification.

(3) Corroded or abraded areas must be thickness tested in accordance with the procedures set forth in paragraphs (i) (2), (3), (4), (6) and (7) of this section.

(4) The inspector must record the results of the external visual examination as specified in § 180.417(b).

(e) *Internal visual inspection.* (1) The internal visual inspection must include as a minimum the following:

(i) The tank shell and heads must be inspected for corroded and abraded areas, dents, distortions, defects in welds, and any other condition that might render the tank unsafe the transportation service.

(ii) If lined, the lining material must be inspected for defects. Tank liners must be inspected as specified in § 180.407(f).

(2) Corroded or abraded areas must be thickness tested in accordance with paragraphs (i) (2), (3), (4), (6) and (7) of this section.

(3) Degraded or defective areas of the tank liner must be removed and the tank shell or head below the defect must be inspected. Corroded areas must be thickness tested in accordance with § 180.407(i).

(4) The inspector must record the results of the internal visual inspection as specified in § 180.417(b).

(f) *Lining inspection.* The integrity of the lining on all lined cargo tanks must be verified at least once each year as follows:

(1) Rubber lining must be tested in accordance with the RMA Protection Bulletin 18.

(2) Linings made of other than rubber must be tested using equipment and procedures prescribed by the lining manufacturer.

(g) *Pressure retest.* (1) All pressure bearing portions of a cargo tank heating system employing a medium such as, but not limited to, steam or hot water for heating the lading must be hydrostatically pressure tested at least once every five years. The test pressure must be at least one and one-half times the heating system design pressure and must be maintained for five minutes. A heating system employing flues for heating the lading must be tested to ensure against lading leakage into the flues or into the atmosphere.

(2) *Test Prodecure.* (i) As part of the pressure test, the Authorized Inspector must perform an external and internal visual inspection, except that on MC 338 cargo tank an internal inspection is not required.

(ii) Each cargo tank must be tested hydrostatically or pneumatically to the minimum internal pressure specified in the following table:

Specification	Test pressure
MC 300, 301, 302, 303, 305, 306	5 psig.
MC 306 (manufactured after the effective date of the final rule).	5 psig or 1.5 times the design pressure, whichever is greater.
MC 304, 307	40 psig or 1.5 times the design pressure, whichever is greater.

Specification	Test pressure
MC 310, 311, 312	5 psig or 1.5 times the design pressure, whichever is greater.
MC 330, 331	1.5 times either the design pressure or the re-rated pressure, whichever is applicable
MC 338	1.25 times either the design pressure or the re-rated pressure, whichever is applicable.

(iii) Each owner of DOT Specification cargo tanks that must be pressure tested every five years must pressure test at least 20 percent of the cargo tanks in his ownership each year beginning in 198X.

(iv) Each cargo tank of a multi-tank cargo tank motor vehicle must be tested with the adjacent cargo tanks empty and at atmospheric pressure.

(v) All closures except pressure relief devices must be in place during the test. All prescribed loading and unloading venting devices rated at less than test pressure may be removed during the test. If retained, the devices must be rendered inoperative by clamps, plugs, or other equally effective restraining devices. Restraining devices may not prevent detection of leaks or damage the venting devices and must be removed immediately after the test is completed.

(vi) *Hydrostatic test method.* Each cargo tank, including its domes, must be filled with water or other liquid having similar viscosity, at a temperature not exceeding 100 °F. The cargo tank must then pressurized to not less than the pressure specified in paragraph (g)(2)(ii) of this section. The pressure must be gauged at the top of the cargo tank. The cargo tank must hold the prescribed test pressure for at least 10 minutes during which time it shall be inspected for leakage, bulging or any other defect.

(vii) *Pneumatic test method.* The cargo tank must be pressurized with air or a similar gas. The pneumatic test pressure in the cargo tank must be reached by gradually increasing the pressure to one-half of the test pressure. Thereafter, the pressure must be increased in steps of approximately one-tenth of the test pressure until the required test pressure has been reached. The test pressure must be held for at least 5 minutes. The pressure must then be reduced to the design pressure, which must be maintained during the time the entire cargo tank surface is inspected. During the inspection, a suitable method must be used for detecting the existence of leaks. This method must consist either of coating the entire surface of all joints under pressure with a solution of soap and water, or using other equally sensitive methods. When a pneumatic test is performed, suitable safeguards should be provided to protect employees and other persons should a failure occur.

(3) When testing an insulated cargo tank, the insulation and jacketing need not be removed unless it is otherwise impossible to reach test pressure and maintain a condition of pressure equilibrium after test pressure is reached, or the vacuum integrity cannot be maintained in the insulation space. If an MC 338 cargo tank used for the transportation of a flammable gas or oxygen, refrigerated liquid is opened for any reason, the cleanliness must be verified prior to closure using the procedures contained in § 178.338–15 of this subchapter.

(4) Each MC 330 and MC 331 cargo tank constructed of quenched and tempered steel (Part UHT of the ASME Code), or constructed of other than quenched and tempered steel but without postweld heat treatment, used for the transportation of anhydrous ammonia, liquefied petroleum gas, or any other hazardous material that may cause corrosion stress cracking, must be internally inspected by the wet fluorescent magnetic particle method immediately prior to and in conjunction with the performance of the pressure test prescribed in this section. The wet fluorescent magnetic particle inspection must be in accordance with section V of the ASME Code and CGA Technical Bulletin TB–2. This paragraph does not apply to cargo tanks that do not have manholes. (See § 180.417(c) for reporting requirements.)

(5) *Acceptance criteria.* A cargo tank that leaks, fails to retain test pressure or pneumatic inspection pressure, shows distortion, excessive permanent expansion, or other evidence of weakness that might render the cargo tank usafe for transportation service, may not be returned to service.

(6) The inspection must record the results of the pressure test as specified in § 180.417(b).

(h) *Leakage test.* (1) Each cargo tank shall be leak tested on an annual basis. The cargo tank, with all valves and accessories in place and operative, must be tested at not lest than 80 percent of the tank design pressure. The pressure must be maintained for at least 5 minutes.

(2) Where applicable, the Environmental Protection Agency's "Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test," 40 CFR Part 60 Appendix A, is an acceptable alternate test.

(3) A cargo tank that fails to retain test pressure may not be returned to service as a specification cargo tank.

(4) The inspector must record the results of the leakage test as specified in § 180.417(b).

(i) *Thickness testing.* (1) The shell and head thickness of all unlined cargo tanks used for the transportation of a material corrosive to the tank must be measured at least once every 2 years, except that cargo tanks measuring less than the sum of the minimum prescribed thickness, plus one-fifth of the original corrosion allowance, must be tested annually.

(2) Measurements must be made using a device capable of accurately measuring thickness to 0.002 of an inch.

(3) Any person performing ultrasonic thickness testing must be qualified as a NDT Level II Technician in accordance with the ASNT Recommended Practice SNT–TC–IA.

(4) Ultrasonic testing must be performed in accordance with section V (SE–114) of the ASME Code for ultrasonic testing.

(5) Thickness testing must be performed on the following areas, as a minimum:

(i) Areas of the tank shell and heads and any piping that retains lading;

(ii) Areas of high shell stress such as the bottom center of the tank;

(iii) Areas near openings;

(iv) Joints;

(v) Shell reinforcements;

(vi) Appurtenance attachments;

(vii) Fifth wheel assembly attachments;

(viii) Suspension system attachments and connecting structures; and

(ix) Known thin areas in the tank shell and nominal liquid level lines.

(6) An owner of a cargo tank that no longer conforms with the minimum prescribed thickness may not return the cargo tank to hazardous materials service. The tank's specification plate must be removed, obliterated or covered in a secure manner with the blue non-specification plate described in § 178.340–14(f)(2) of this subchapter.

(7) The inspector must record the results of the thickness test as specified in § 180.417(b).

§ 180.409 Minimum qualifications for inspectors and testers.

(a) *Visual inspection and test.* Persons performing or witnessing the prescribed inspections and tests must be familiar with the cargo tank and skillful in the use of the inspection and testing equipment needed.

(b) *Thickness test.* Persons performing thickness testing must be qualified in accordance with ASNT Level II for ultrasonic testing.

(c) *Pressure test.* Persons performing the pressure test must be trained and experienced in ASME Code testing. If the person performing such a test is not an Authorized Inspector, the test must be witnesed and certified by an Authorized Inspector.

§ 180.411 Acceptable results of tests and inspections.

(a) *Corroded or abraded areas.* The minimum thickness may not be less than that prescribed in the applicable specification.

(b) *Dents, cuts, digs and gouges.* (See CGA Pamphlet C–6 for evaluation procedures.)

(1) For dents at welds or that include a weld, the maximum allowable depth is ¼ inch. For dents away from welds, the maximum allowable depth is 1/10 of the greatest dimension of the dent, but in no case may the depth exceed one inch.

(2) No cut, dig or gouge may be greater than 4 inches in length. The minimum thickness remaining beneath the cut dig or gouge may not be less than that prescribed in the applicable specification.

(c) *Weld or structural defects.* Any cargo tank with a weld defect or a structural defect must be taken out of hazardous materials service until repaired.

(d) *Leakage.* All sources of leakage must be properly repaired prior to returning a tank to hazardous materials service.

(e) *Relief valves.* Any pressure relief valve that fails to open and reclose at the prescribed pressure must be repaired or replaced.

(f) *Liner integrity.* Any defect shown by the test must be properly repaired.

(g) *Pressure test.* Any tank that fails to meet the acceptance criteria as found in the individual specification that applies must be properly repaired.

§ 180.413 Repair or modification of a cargo tanks.

(a) Any repair or modification of a cargo tank must be performed in conformance with the requirements of this section.

(b) *Repair.* A cargo tank that fails a prescribed test or inspection contained in § 180.407 may be repaired, provided that repairs are made in accordance with the following:

(1) All cracks and other defects that are found must be repaired as follows:

(i) MC 306, MC 307 and MC 312 cargo tanks must be repaired in accordance with the specification requirements in effect at the time of manufacture or at the time of repair;

(ii) MC 300, MC 301, MC 302, MC 303 and MC 305 cargo tanks must be repaired in accordance with the original specification or with the MC 306 specification in effect at the time of repair;

(iii) MC 304 cargo tanks must be repaired in accordance with the original specification or with the MC 307 specification in effect at the time of repair;

(iv) MC 310 and MC 311 cargo tanks must be repaired in accordance with the original specification or with the MC 312 specification in effect at the time of repair;

(v) MC 338, cargo tanks must be repaired in accordance with the specification requirements in effect at the time of manufacture or at the time of repair; and

(vi) MC 330 and MC 331 cargo tanks must be repaired in accordance with the repair procedures described in CGA Technical Bulletin TB–2 and section VIII of the ASME Code under which the cargo tank was built. Each cargo tank having cracks and defects requiring welded repairs must meet all of the requirements of § 178.337–16 of this subchapter, except that postweld heat treatment after minor weld repairs is not required. When any repair is made of defects revealed by the wet fluorescent magnetic particle inspection, including those by grinding, the cargo tank must again be examined by the wet fluorescent magnetic particle method after hydrostatic testing to assure that all defects have been removed.

(2) Prior to any repair work the cargo tank must be emptied of any hazardous material lading. Cargo tanks containing flammable or toxic lading must be purged.

(3) No cargo tank may be repaired in a manner to cause leakage or cracks or the likelihood of leakage or cracks; for example, cracks may result from areas of stress concentration due to sharp fillets, reversal of stresses or shrinkage of cooling metal in welding operations.

(4) All repairs on a cargo tank involving welding on the shell or head must be certified by an Authorized Inspector in accordance with the following:

(i) All ASME Code "U" stamped cargo tanks, cargo tanks manufactured after (the effective date of the final rule), and all other DOT Specification cargo tanks with a design pressure of 15 psig or greater, must be in accordance with the National Board Inspection Code.

(ii) All DOT Specification cargo tanks with a design pressure of less than 15 psig, which were manufactured before (the effective date of the final rule), must be repaired:

(A) By a cargo tank manufacturer holding a valid ASME Certificate of Authorization for the use of the ASME "U" stamp;

(B) By a repair facility holding a valid National Board Certificate authorizing the use of the "R" stamp; or

(C) Under the direct supervision of an Authorized Inspector, provided the Authorized Inspector witnesses the repair and subsequent testing of the repair and then certifies the repair as being acceptable.

(5) The suitability of any repairs affecting the structural integrity of the cargo tank must be determined by the testing prescribed in the applicable specification.

(6) Each owner of a cargo tank must retain at its principal place of business all records of repairs made to each tank during the time the tank is in service and for one year thereafter.

(c) *Repair or replacement of piping, valves, hoses or fittings.* In the event of repair or replacement, any piping, valve, or fitting must be tested in accordance with the provisions of the applicable specification before the cargo tank is returned to hazardous materials service. Piping, valves and fittings must be tested after installation; hoses may be tested either before or after installation on the cargo tank.

(d) *Modification, stretching and rebarrelling.* Modification, stretching or rebarrelling of a cargo tank is authorized if:

(1) The modification, stretching or rebarrelling conforms with the requirements of the specification in effect at the time of such work. Modification, stretching, or rebarrelling must be performed as follows:

(i) For Specification MC 300, MC 301, MC 302, MC 303 and MC 305 cargo tanks in accordance with Specification MC 306;

(ii) For Specification MC 304 cargo tanks in accordance with Specification MC 307;

(iii) For Specification MC 310 and MC 311 cargo tanks in accordance with Specification MC 312;

(iv) For Specification MC 330 cargo tanks in accordance with Specification MC 331.

(2) The person performing the modification, stretching or rebarrelling must:

(i) Have knowledge of the original design concept, particularly with respect to structural design analysis, material and welding procedures;

(ii) Assure compliance with the rebuilt cargo tank's venting and accident damage protection requirements;

(iii) Assure compliance with all applicable Federal Motor Carrier Safety

regulations for any newly installed safety equipment;

(iv) Have a current certificate of authorization from the ASME for section VIII (Division 1) pressure vessel construction, or a current certificate from the National Board;

(v) Pressure retest each cargo tank in accordance with § 180.407(g);

(vi) Change the existing specification plate to reflect the cargo tank as modified, or remove the existing specification plate and attach a new specification plate to the cargo tank;

(vii) On a variable specification cargo tank, install a new variable specification plate; and

(viii) Certify that the modified, rebarrelled or stretched cargo tank has been designed, constructed and tested in accordance with the applicable specification by issuing a new manufacturer's certificate.

§ 180.415 Test and inspection markings.

Each cargo tank successfully completing the test and inspection requirements contained in § 180.407 must be marked as specified in this section. The inspector or Authorized Inspector must durably and legibly mark, in English, each cargo tank with the test date (month and year) followed by the type of test or inspection. The marking must be in letters and numbers at least 1¼ inches high near the specification plate. The type of test or inspection may be abbreviated as follows: *V* for external visual inspection and test; *I* for internal visual inspection; *P* for pressure retest; *L* for lining test; and *T* for thickness test. For example, the marking "10–85 P, V, L" would indicate that in October 1985 the cargo tank received and passed the prescribed pressure retest, external visual inspection and test, and the lining inspection.

§ 180.417 Reporting and record retention requirements.

(a) *Vehicle certification.* (1) Each owner of a cargo tank shall retain the manufacturer's data report or certificate and related papers certifying that the cargo tank identified in the documents was manufactured and tested in accordance with the applicable specification. The owner shall retain the documents throughout his ownership of the cargo tank and for one year thereafter. In the event of change of ownership, the prior owner shall retain non-fading photo copies of these documents for at least one year.

(2) Each motor carrier who uses a specification cargo tank must obtain a copy of the manufacturer's certificate and related papers or the alternative report authorized in paragraph (a)(3) (i) or (ii) of this section and retain the documents as specified in this paragraph. A motor carrier who is not the owner of a cargo tank must retain a copy of the vehicle certification report at its principal place of business for as long as the cargo tank motor vehicle is used by that carrier and for one year thereafter. Upon a written request to, and with the approval of, the Regional Director, Office of Motor Carrier Safety, Federal Highway Administration, for the region in which a motor carrier has its principal place of business, a motor carrier may retain the certificate and related papers required by this paragraph at a regional or terminal office. The addresses and jurisdictions of the various Regional Motor Carrier Safety Offices are provided in § 390.40 of this title. The provisions of this section do not apply to a motor carrier leasing a cargo tank for less than 30 days.

(3) *DOT Specification cargo tanks manufactured before (effective date of final rule)*—(i) *Non-ASME Code stamped cargo tanks.* If an owner does not have a manufacturer's certificate for a cargo tank and he wishes to certify it as a specification cargo tank, the owner must perform appropriate tests and inspections, under the direct supervision of an Authorized Inspector, to determine if the cargo tank conforms with the applicable specification. Both the owner and the Authorized Inspector must certify that the cargo tank fully conforms with the applicable specification. The owner must retain the certificate, as specified in this section.

(ii) *ASME Code stamped cargo tanks.* If the owner does not have the manufacturer's certificate and data report required by the specification, the owner may contact the National Board for a copy of the manufacturer's data report, if the cargo tank was registered with the National Board, or copy the information contained on the cargo tank's identification and ASME Code plates. Additionally, both the owner and the Authorized Inspector must certify that the cargo tank fully conforms with the specification. The owner must retain such documents, as specified in this section.

(b) *Test or inspection reporting.* Each cargo tank which is tested or reinspected as specified in § 180.407 must have a written report, in English, prepared in accordance with this paragraph.

(1) The test or inspection report must include the following:

(i) Type of test or inspection performed and a listing of all items either tested or inspected (a checklist is acceptable);

(ii) Owner's and manufacturer's serial numbers;

(iii) DOT Specification;

(iv) Test Date (Month and year);

(v) Location of defects found and method used to repair each defect;

(vi) Name and address of person performing the test;

(vii) Disposition statement, such as "Cargo tank returned to service" or "Cargo tank withdrawn from service"; and

(viii) Dated signature of inspector and owner.

(2) The owner and the motor carrier, if not the owner, must each retain a copy of the test and inspection reports until the next test or inspection of the same type is successfully completed. This requirement does not apply to a motor carrier leasing a cargo tank for less than 30 days.

(c) *Additional requirements for Specification MC 330 and MC 331 cargo tanks.* (1) After completion of the pressure test specified in § 180.407(g)(4), each motor carrier operating a Specification MC 330 or MC 331 cargo tank in anhydrous ammonia, liquefied petroleum gas, or any other service that may cause corrosion stress cracking, must make a written report containing the following information:

(i) Carrier's name, address of principal place of business, and telephone number;

(ii) Complete identification plate date required by Specification MC 330 or MC 331, including data required by ASEM Code;

(iii) Carrier's equipment number;

(iv) A statement indicating whether or not the tank was stress relieved after fabrication;

(v) Name and address of the person performing the test and the date of the test;

(vi) A statement of the nature and severity of any defects found, if any. In particular, information must be furnished to indicate the location of defects detected, such as in weld, a heat-affected zone, the liquid phase, the vapor phase, or the head-to-shell seam. If no defect or damage was discovered, that fact must be reported;

(vii) A statement indicating the methods employed to make repairs, who made the repairs, and the date they were completed. Also, a statement of weather or not the tank was stress relieved after repairs and, if so, whether full or local stress relieving was performed;

(viii) A statement of the disposition of the cargo tank, such as "cargo tank

scrapped" or "cargo tank returned to service", and

(ix) A statement of whether or not the cargo tank is used in anhydrous ammonia, liquefied petroleum gas, or any other service that may cause corrosion stress cracking. Also, if the cargo tank has been used in anhydrous ammonia service since the last report, a statement indicating whether each shipment of ammonia was certified by its shipper as containing 0.2 percent water by weight.

(2) A copy of the report must be retained by the carrier at its principal place of business during the period the tank is in the carrier's service and for one year thereafter. Upon a written request to, and with the approval of, the Director, Regional Officer of Motor Carrier Safety, Federal Highway Administration for the region in which a motor carrier has its principal place of business, the carrier may maintain the reports at a regional or terminal office.

(3) The requirement in paragraph (c)(1) of this section does not apply to a motor carrier leasing a cargo tank for less than 30 days.

(d) *Supplying reports.* Each carrier offering a DOT Specification cargo tank for sale or lease must make available for inspection a copy of the most recent report made under this section to each purchaser or lessee. Copies of such reports must be provided to the purchaser, or the lessee if the cargo tank is leased for more than 30 days.

Subpart F—[Reserved]

Issued in Washington, D.C. on September 9, 1985. Under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-21821 Filed 9-16-85; 8:45 am]

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federal register

Tuesday
September 17, 1985

Part IV

Department of Labor

Mine Safety and Health Administration

30 CFR Part 57
Gassy Mines; Metal and Nonmetal Mining; Public Hearings

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

Gassy Mines; Metal and Nonmetal Mining; Public Hearings

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of Public Hearings.

SUMMARY: The Mine Safety and Health Administration (MSHA) will hold public hearings on its proposal to revise existing safety standards for gassy metal and nonmetal underground mines. The hearings will be held in Carlsbad, New Mexico; Salt Lake City, Utah; and New Orleans, Louisiana, and are in response to requests received from the public. Each hearing will cover the major issues raised by commenters in response to the proposed rule.

DATES: All requests to make oral presentations for the record should be submitted at least five days prior to each hearing date. However, immediately before each hearing begins, time will be made available to persons making late requests.

The public hearings will be held at the following locations on the dates indicated, beginning at 9:00 a.m.:

October 22, 1985: Carlsbad, New Mexico
October 24, 1985: Salt Lake City, Utah
October 29, 1985: New Orleans, Louisiana

ADDRESSES: The hearings will be held at the following locations:

October 22, 1985: Best Western Motel Stevens, 1829 South Canal, Carlsbad, New Mexico 88220.
October 24, 1985: Salt Palace Center, Room C–102, 100 South West Temple, Salt Lake City, Utah 84101.
October 29, 1985: Hale Boggs Building, Room 1005, 500 Camp Street, New Orleans, Louisiana 70130.

Send requests to make oral presentations to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235–1910.

SUPPLEMENTARY INFORMATION: On June 4, 1985, MSHA published proposed revisions to its existing safety standards in 30 CFR Part 57, Subpart T, for gassy metal and nonmetal underground mines (50 FR 23612). All of the metal and nonmetal safety and health standards, including those for gassy mines, were recodified as Part 56 and 57 on January 29, 1985 (50 FR 4048). The comment period for the proposed rule on gassy mines closed on September 5, 1985. In the comments filed to the proposed rule, MSHA received requests to hold public hearings.

The purpose of the public hearings is to receive relevant comment and to answer questions concerning the proposal. The hearings will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence will not apply, the presiding official may exercise discretion in excluding irrelevant or unduly repetitious material and questions.

Each hearing will begin with an opening statement from MSHA. The public will then be given an opportunity to make oral presentations. During these presentations, the hearing panel will be available to answer relevant questions. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. Time will be made available at the end of each hearing for rebuttal statements. A verbatim transcript of each proceeding will be taken and made part of the rulemaking record. Copies of the hearing transcript will be available for review by the public.

MSHA will also accept additional written comments and other appropriate data from interested parties, including those not presenting oral statements. Written comments and data submitted to MSHA will be included in the rulemaking record. To allow for the submission of post-hearing comments, the record will remain open until November 22, 1985.

Issues

Commenters requested clarification of or changes to specific provisions of the proposed rule. Some of the provisions of the rule received extensive comment. These issues are outlined in this notice and MSHA specifically solicits additional comment on them, as well as any other issues raised in the proposal.

Mine Category or Subcategory

Proposed standard 57.30003 requires that all underground mines be placed into a category or subcategory and operated in accordance with the safety standards applicable to that category or subcategory. Each category and subcategory is defined in the proposal.

Commenters were opposed to the term "intermittently liberates methane," which is used in the definition of Categories III and IV mines. They recommended that "intermittently liberates methane" be replaced with a new term "hazardous concentrations of methane," for clarity. They suggested that the Agency use the following definition of "hazardous concentrations of methane":

Hazardous concentrations of methane. A concentration of methane that is explosive *per se* or is capable of forming explosive mixtures if mixed with air as determined by Figure 22 in U.S. Bureau of Mines Bulletin No. 503 (4th Ed.) which is incorporated by reference.

Placement or Change in Placement, Notice and Investigation

Proposed standard 57.30004 sets forth procedures to be used by MSHA in determining category or subcategory placement, or change in placement.

Commenters recommended that the procedures allow mine operators to request a change in catetory placement, if mining conditions warrant.

Blasting From the Surface

Proposed standards 57.31601, 57.33603, and 57.38601 require that all development, production, and bench rounds be initiated electrically from the surface after all persons are out of the mine.

Commenters opposed the requirement for Subcategory I–A, I–C, and V–A mines that blasting be performed from the surface, with all persons out of the mine. Instead, they recommended that blasting be done on-shift with miners at fresh-air locations underground.

Permissible Equipment

Proposed standards 57.31303, 57.33304, and 57.38302 require that all electrical and diesel-powered equipment used in or beyond the last open crosscut be permissible. Proposed standard 57.33304 for Subcategory I–C mines permits only permissible electrical equipment underground. Commenters objected to the exclusion of diesel-powered equipment in Subcategory I–C mines.

Commenters opposed the requirement of "permissible" equipment for Subcategories I–A and V–A mines, where large-size equipment will be used. These commenters stated that some of this equipment is not available as permissible, and suggested that the Agency allow the use of equipment with "explosive-proof" components as an alternative.

Dated: September 12, 1985.

David A. Zegeer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 85–22212 Filed 9–16–85; 8:45 am]

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Federal Register

Tuesday
September 17, 1985

Part V

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 458

Commercial and Apartment Conservation Service Federal Standby Plan; Final Rule

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 458

[Docket No. CE-RM-83-126]

Commercial and Apartment Conservation Service Federal Standby Plan

August 30, 1985.

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is issuing this regulation to implement section 741(a) of the National Energy Conservation Policy Act (NECPA) which was added by the Energy Security Act (ESA). Section 741 is part of Title VII of NECPA, which established the Commercial and Apartment Conservation Service (CACS) Program. The CACS Program requires large gas and electric utilities to perform energy audits on request for eligible customers in small commercial buildings and most apartment buildings of five or more units. The CACS Program is intended to be carried out by these utilities in conformance with plans submitted to DOE by States. Where States choose not to submit plans, where a plan submitted is subsequently disapproved, or where an approved plan is being inadequately implemented, DOE is required to implement CACS directly under CACS Federal Standby authority. For regulated utilities, DOE implements Federal Standby by requiring those utilities to carry out programs under the CACS Federal Standby Plan. This final rule is the CACS Federal Standby Plan promulgated under section 741 of NECPA.

In developing this CACS Federal Standby Plan (CACS Standby Plan, Standby Plan or FSP), DOE has relied heavily on the final regulation for the CACS Program (48 FR 49622, October 26, 1983) and on comments submitted to the docket during the comment period. However, this final rule does differ from the CACS final rule since DOE is required to assume, when necessary, the responsibilities associated with directly administering the CACS Program.

Pursuant to section 741(a) of NECPA, regulated utilities are subject to the provisions of the CACS Standby Plan only after DOE issues an order directing a particular regulated utility to comply with the CACS Standby Plan.

EFFECTIVE DATE: October 17, 1985.

FOR FURTHER INFORMATION CONTACT:

Shelly Launey or Bill Woodard, CE-222, Office of Conservation and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Room 6A-081, Washington, DC 20585 (202) 252-1650;

Vivian Lewis, GC-12, Office of General Counsel, U.S. Department of Energy, 1000 Independnce Avenue, SW, Room 6B-144, Washington, DC 20585 (202) 252-9513.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. General Discussion of Issues Raised
III. Discussion of Specific Comments and DOE Response
IV. Regulatory Impact Analysis
V. Regulatory Flexibility Act
VI. Environmental Impacts
VII. Paper Reduction Act

I. Introduction

The Commercial and Apartment Conservation Service (CACS) Program was established by Title VII of the National Energy Conservation Policy Act (NECPA), as added by the Energy Security Act (ESA), 42 U.S.C. 8281 *et seq.* The CACS Program, as mandated by statute, requires large electric and natural gas utilities (with retail sales greater than 750 million kWh and 10 billion cubic feet, respectively) to offer to perform energy audits for eligible customers in commercial and apartment buildings. Commercial buildings qualify for the audit if they consume less than 4,000 kWh per month, 1,000 therms of natural gas per month, and 100 million Btu's of any other fuel. Apartment buildings qualify if they contain five or more units and are centrally heated or cooled, or centrally metered for heating or cooling. The CACS Program is intended to be carried out by utilities in conformance with plans submitted to DOE by States. State participation, however, is voluntary.

For those States that elect to participate in CACS, the legislation requires detailed State planning and oversight activity. Section 741(a) of NECPA provides that, if a State does not have an approved plan, or if DOE determines, after notice and opportunity for a public hearing, that an approved plan is not being implemented adequately in a State, DOE must promulgate a plan that meets the requirements of the Act. Section 741(a) also provides that DOE must order each covered utility in such State to implement the CACS Federal Standby Plan within 90 days of that order. Thus, where States are unwilling or unable to carry out their role under the law, the legislation requires implementation of a CACS Standby Plan.

DOE has encouraged States to submit plans and adequately implement them, thus eliminating the need for Federal involvement in the local administration of this program. Nevertheless, since several States have informed DOE that they do not intend to submit CACS plans, DOE is issuing this CACS Standby Plan to carry out its responsibilities under NECPA.

A proposed Federal Standby Plan was issued December 31, 1984, and a public hearing was held on February 13, 1985. Eleven persons testified at the hearing and 37 written comments were submitted to the docket. These comments were carefully considered when the final rule was drafted.

Section 741(a)(1) of NECPA requires that the CACS Standby Plan meet the requirements of Section 722 for CACS plans. Thus, there is a great degree of uniformity between the CACS Standby Plan and the final regulation concerning State plans (10 CFR Part 458, Subparts B and C). The basic difference between the two rules is that in the CACS Standby Plan, DOE assumes the role and responsibility otherwise delegated to the State lead agency under the CACS final rule. This means that, wherever the State lead agency is the responsible party for a statutory element of the CACS Program, DOE has that responsibility under the CACS Standby Plan. It also means that where the CACS final rule provides the States with flexibility and discretion in implementing a provision, under the CACS Standby Plan DOE determines how to exercise such discretion. Thus, the CACS Standby Plan includes mandatory provisions from the final rule and also specifies how DOE has exercised the discretion given to States as program administrators in the CACS final rule.

When it was necessary to develop provisions not in the CACS final rule, DOE attempted to balance a number of objectives. These are:

(1) To provide adequate control and oversight by DOE, as the direct administrator of the CACS Program in States where Federal Standby is involved, to ensure safe, effective, and nondiscriminatory implementation of the program by affected utilities;

(2) To interpret DOE's role as the "lead agency" with enough specificity to provide for the rapid and comparatively uniform implementation of the plan by utilities in any given State;

(3) To provide utilities with enough flexibility to enable them to develop programs reflecting the economic and climatic conditions of their service area; and

(4) To minimize the administrative workload of both the affected utilities and DOE.

A major goal of the CACS final rule was to provide flexibility to the States. However, DOE cannot provide the same degree of flexibility to individual utilities in the CACS Federal Standby Plan. This is because, as program administrator, DOE must prescribe schedules, procedures, and alternatives that would otherwise have been prescribed by the lead agency in the State plan.

DOE's approach to the flexibility issue has been to vary the amount of flexibility allowed to utilities, depending upon the issue. The Standby Plan includes many requirements which may not be changed by utilities. There are also requirements and options in particular provisions which allow for variations or require utilities to submit additional information. These latter requirements and options are referenced throughout the rule, and are summarized in § 458.716. In this way, DOE hopes to enable utilities operating under a current CACS plan in one State to adopt a similar program in a State operating under the CACS Federal Standby Plan.

The discussion below addresses comments and concerns raised during the comment period. The preamble does not discuss the provisions of the CACS Federal Standby Plan which are identical or similar to those in the CACS final rule or the proposed Standby rule, unless the provisions were discussed in comments submitted to the docket. Throughout the discussion, the term "utilities" includes participating building heating suppliers, unless otherwise noted.

II. General Discussion of Issues Raised

Several general issues were raised which were not specifically related to the provisions of the rule. These included competition concerns, fuel switching, and exemptions and are discussed in detail below. By far the most frequent issues raised by commenters were those relating to potential anticompetitive abuses of the CACS Program. These were addressed by every commenter.

A. Competition

In the preamble to the proposed rule, DOE discussed suggestions submitted by the Small Business Administration (SBA) and the Alliance for Fair Competition (a group of small business trade associations) designed to prevent utilities from engaging in potentially anticompetitive practices. Specifically they recommended that: (1) A utility be required to enter into a contract to perform the audits rather than perform them with its own staff; (2) a utility be prohibited from making its audit results available to its own marketing department; (3) a utility be required to notify a customer's other fuel suppliers prior to the audit; and (4) a utility disclose any potential conflict of interest.

All 37 written comments and 11 oral statements addressed one or more of these recommendations. Generally, representatives of the utility industry objected to each recommendation and representatives of the small business sector supported them. In reviewing these comments, DOE was particularly interested in determining how widespread actual competitive abuses by utilities might be. In addition, DOE conducted its own study to determine the nature of utility/small business relationships as they relate to marketing and installing conservation products. A paper on this study, titled "Utility/Independent Business Cooperation in the Provision of Energy Conservation Services," examines the issue of competition between utilities and independent businesses and identifies opportunities for utility/independent business cooperation which avoid potentially unfair competition. It also includes four case studies of utilities which have initiated a variety of mutually beneficial relationships with contractors. These cooperative activities include shared advertising, appliance rebates, utility arrangement of installation services and contractual arrangements for conducting audits. The report identifies the elements that make these relationships work, problems which may have been encountered, and identifies considerations which are important for other utilities interested in similar cooperative arrangements. A copy of the report is available by writing: U.S. Department of Energy, Conservation and Renewable Energy, CE–222, 1000 Independence Avenue, SW., Washington, DC 20585.

Summaries of comments and a discussion of DOE's position on each of the SBA and the Alliance for Fair Competition recommendations follow.

(1) *Should utilities be required to contract out their audits?* Representatives of small business claimed that many of their members currently provide energy audits either independently or in conjunction with other sources. Because utility audits may be subsidized by ratepayers, while small businesses must charge full cost, the small businesses said they cannot compete effectively with the utility in providing audit services. While utilities did not necessarily object to contracting for audit services, they argued strongly for the right to determine for themselves the best approach for auditing. One utility claimed to have provided commercial audits for years and found, during the audits, that their customers often had questions regarding rates, classes of service and load management programs. The utility believed that only an experienced utility employee could adequately answer these questions. Another utility commenter suggested that requiring utilities to contract out audits was in itself anticompetitive. This commenter claimed that because there were no local firms which bid on conducting the utility's audits, the bids from firms outside the utility's service area included the cost of setting up a new business, which led to higher audit costs.

NECPA clearly assigned the responsibility to utilities for conducting audits. DOE does not believe it appropriate to reassign the responsibility given to utilities to other entities; nor do we believe the record supports such a change. Since the passage of NECPA in 1978, many utilities have gone to significant effort and expense to acquire auditing expertise. DOE believes it is in the customer's best interest for each utility to determine the most cost-effective means of meeting its audit responsibilities. Each situation requires a specific analysis of the utility's operating environment. Many utilities have decided or will decide that auditing will be most efficiently handled by contracting out the responsibility. DOE encourages utilities to consider this as an option. However, each utility deserves the opportunity to make its own determination. Therefore, DOE has made no changes to the final rule.

(2) *Should utilities be prohibited from making audit results available to their marketing department?* Representatives of small business contended that utilities should not be granted exclusive access to audit results. They claimed that because utilities already have considerable data on consumption, credit, etc., that sole access to audit results would give them control over the market for energy conservation activities. Another commenter asserted that access to audit results by unregulated utility supply and installation divisions would constitute a ratepayer subsidy of an unregulated activity and was therefore improper. Another commenter suggested that if utilities were permitted to use information obtained from the audits, that information should be open to the public and any small businessman who

elected to use it. A commenter from the electric utility industry noted that marketing is much broader than merely supply and installation—"Marketing encompasses all demand side strategies that bring the needs and wants of the consumer in better equilibrium with the industry's capability to produce electricity to the benefit of all involved. It is these demand side strategies which influence the utilities' ability to shape loads thereby improving financial performance, reducing capital requirements and increasing system utilization." The commenter further noted that the marketing department would likely be the office which would review before and after energy performance of a building necessary for program evaluation and an analysis of program costs and benefits.

The comments, however, brought forth no specific instances of actual abuse. Accordingly, at this time DOE is not adopting any regulatory restrictions in this area. The Department will, however, do everything within its authority to correct any actual abuses which are brought to its attention. Finally, DOE notes that marketing use of audit information could also be of proper interest to a utility's regulatory authority.

(3) *Should utilities be required to notify a customer's other fuel suppliers prior to the audit?* Not unexpectedly, most utilities and utility associations could see no need for such a requirement and characterized it as an unnecessary cost and record-keeping burden and a precondition in violation of § 458.706(b), which contains a general prohibition against preconditions for providing CACS Standby audits and discrimination among customers in providing audits. They believed that if customers want to involve their fuel suppliers, they are free to contact them directly and should not be second guessed on the contact they chose to make. Customers, for whatever reason, may not desire another fuel supplier involved.

On the other hand, many commenters believed that the inherent advantage utilities enjoyed under the umbrella of a CACS audit program should be balanced to some degree by additional protection (i.e., knowledge) for those fuel suppliers and utilities outside the CACS program. They did not believe that notification of alternate fuel suppliers would require an inordinate amount of effort on the part of the utility, but would contribute to fairer competition in an open market.

DOE recognizes that both sides of the argument are supportable to some degree. Therefore, DOE has determined that, while the utility should not be required to provide notice in every instance, the customer should be given the choice whether to initiate the notification process. Thus, the Standby Plan has been revised to require that the utility provide the space and the opportunity in its audit request form to allow its customers to request that the utility notify their alternate fuel supplier of their audit request. As the audit requests are received, the utility can provide written notification to the fuel supplier prior to or immediately following the audit.

(4) *Should utilities be specifically required to disclose any potential conflict of interest?* DOE was not convinced by the comments which supported the need for additional regulations regarding conflict of interest, nor that utility customers under the CACS program are less able to recognize a situation where a potential conflict of interest may exist. DOE believes that the prohibitions provided in §§ 458.705(d) and 458.706(g) adequately address this issue. Therefore, DOE has decided not to include in the CACS Standby Plan any additional specific requirements regarding conflict of interest.

B. Fuel Switching

The proposed rule did not permit fuel switching. That is, utility auditors were not permitted to provide costs and savings associated with a replacement heating or cooling system if that system used a different fuel type. Of the eight commenters who addressed this issue, five were in favor of permitting fuel switching. They claimed that a prohibition against fuel switching was not in the best interest of the customers, that it would result in a less accurate audit and would therefore detract from the credibility of the program. Opponents of fuel switching did not provide any rationale for their opposition.

Considerable discussion has been allotted to the fuel switching issue in previous Residential Conservation Service (RCS) and CACS rulemakings and there is no need here to repeat all of it. The Department's original position, however, has not changed. In the CACS rule, States were permitted to add measures which could include replacement heating or cooling systems of a different fuel type. If a State elected to add such measures, the State was wholly responsible for ensuring that measures were audited in a manner equitable to all. Under the Standby Plan, DOE must accept this responsibility for all Standby utilities. DOE does not have sufficient local experience or knowledge to judiciously assess the impact of fuel switching on each utility and its competitors. Therefore no changes have been made to the final rule; fuel switching is not permitted.

C. Exemptions

The proposed rule made no provision for exempting utilities from conducting a CACS program. However, two commenters raised this issue. One commenter requested that if exemptions were requested, they should be subject to public notice and comment. The other commenter requested that if exemptions were requested that the ratemaking authority be permitted to determine whether they be granted. In the CACS final rule, exemption requests were permitted if they were filed within six months of the effective date of the rule. This means that any exemption would have to have been filed within six months after December 5, 1984, which was the date the CACS rule became effective. Because NECPA made no other provisions for granting exemptions, DOE has made no changes to the final rule. Utilities may no longer request exemptions for any reason.

III. Discussion of Specific Comments and DOE Response

A. Section 458.705 CACS Standby Announcement

Proposed § 458.705(a) required Standby utilities to send out program announcements to each eligible customer no later than 90 days after the Federal Standby order is issued. Twelve commenters objected to this short time period, pointing out that it would not allow utilities enough time to obtain DOE approval of all the information and procedures to be submitted. DOE has no discretion to change this 90-day deadline, since it is required by section 741 of NECPA. However, DOE intends to minimize the constraints of this deadline by utilizing a prenotification process suggested by some of the commenters and also utilized under the RCS Federal Standby Plan. DOE will notify each utility covered by the FSP that it will be receiving a compliance order requiring the utility to implement a CACS program within 90 days. Such advance notification would provide utilities with lead time to begin developing their implementation procedures and information.

Proposed § 458.705(b) (now 458.705(c)) required utilities to provide an unconditional audit offer within one year after a conditional offer is provided. This provision differed from the two-year requirement in the CACS

program regulations but matched the one-year requirement under the RCS Federal Standby regulations. Several commenters maintained that the one-year interval would place an unnecessary strain on their resources and requested that this time period be changed to coincide with the two-year period under the CACS regulations. Since the implementation of the CACS program in most States will not significantly precede any CACS Standby activities ordered within the next year, DOE has decided to change this requirement to allow utilities two years after the conditional offers to complete their unconditional offers.

Proposed § 458.705(c) (now § 458.705(b)) required that the program announcement contain certain specific information. In the preamble to the proposed rule, DOE invited comments on whether information on available financial assistance (e.g., applicable State tax credits or other available financial incentives) should be required in the program announcement. All comments responding to this request opposed any change which would require information on specific financial assistance to be included in the program announcement. Commenters stated that due to the wide variety of customer needs and eligibilities, the program announcement would be an inappropriate conduit for this information and would probably be counter-productive in marketing the audit program. Consequently, DOE has not added any requirements to the content of the program announcement.

Proposed § 458.705(d) required that no advertising be included in the program announcement without the approval of the Assistant Secretary. This approval will be based upon the reasonable assurance that such advertising will not be anticompetitive or unfairly discriminate against any customer. Of the six commenters addressing this issue, one argued that advertising should be prohibited, while the others requested modifications which would either expand or limit utilities' flexibility concerning advertising. DOE believes that the inclusion of advertising in the program announcement should not be prohibited, and that a similar level of flexibility allowed to States under the CACS regulations should be retained by DOE under the Standby regulations. Therefore, the final rule permits advertising as long as DOE determines that it will be neither unfairly discriminatory nor anticompetitive.

Many commenters, as described earlier, requested that DOE require utilities to notify alternate fuel suppliers prior to conducting an audit if the building being audited used a heating fuel not supplied by the utility. DOE has determined that customers should be given the option whether a utility notifies an alternate fuel supplier. Therefore, the final rule has been modified to require utilities to include in their announcement, a place for customers requesting an audit to signify if they want their alternate fuel supplier notified. The customer must also include the name and address of the fuel supplier. The utility must notify the fuel supplier prior to or immediately after conducting the audit. For a further discussion of this issue, see section II.A.3.

B. Section 458.706 CACS Standby Audit

(1) Timing of a CACS Standby Audit

In the proposed § 458.706, DOE had set forth more specific audit requirements than were required in the CACS final rule. The proposal required utilities to respond to all audit requests within a specified period of time. For those utilities that provide only unconditional audit offers, DOE proposed to require that they provide the audit within 90 days of the customer's request. For those utilities that first conditionally offer audits to customers, DOE proposed to require that they provide the audit within 45 days of the customer's request in response to a subsequent unconditional offer. DOE received several comments suggesting that utilities should be expected to perform audits within a reasonable time after a request, and that 90 days was more reasonable than 45 days.

In this final rule, DOE has retained the audit response time provisions as proposed. Acting as the surrogate "State agency" for this CACS Plan, DOE has determined that these time provisions constitute a reasonable time for utilities to respond to audit requests. If a utility sends only unconditional audit offers, a customer could expect to wait up to six months before receiving an audit (90 days to announce the program and 90 days to respond to a request). However, if a utility initially sent conditional offers, a customer could wait up to 28½ months before receiving an audit (90 days to announce the program, two years to provide an unconditional offer, and 45 days to respond to a request). It is not reasonable to extend the possible wait for the latter customer to 30 months simply for the sake of a standardized response period. DOE allowed utilities the flexibility of phasing in their unconditional offers over a two-year period so that effective planning and scheduling of audits would result. Careful contingency planning can minimize unforeseen schedule disruptions and excess demands on resources.

(2) Operation and Maintenance (O and M) Procedures

Proposed § 458.706(e)(1)(ii) required auditors to provide an estimate, to the extent feasible, of the energy savings which result from the application of specified O and M procedures. Two commenters requested that this requirement be deleted. This requirement is also included in the CACS final rule. DOE believes the words "to the extent feasible" provide sufficient flexibility for auditors. If an auditor does not think it feasible to provide savings estimates for a particular procedure in a particular situation, he is not required to do so. Therefore no changes were made to the final rule.

(3) Consumption Data

Proposed § 458.706(e)(1)(i) required that auditors provide a report showing "the type, quantity, and rate of energy consumption" of the audited building. Seven commenters expressed concern about acquiring fuel data for fuels not provided by the auditing utility. Four commenters suggested that it was the customer's responsibility to provide the fuel data and that providing the fuel data should be a precondition to receiving the audit. Without the fuel data, these commenters argued, auditors would not be able to provide useful or accurate audit results. Two commenters suggested that auditors only be required to provide audit results based on their utilities' records. Another commenter suggested that the auditor should only be required to conduct the audit if the alternate fuel data was available. Another commenter suggested that DOE clarify that utilities are neither prohibited from nor required to obtain fuel data from other utilities.

DOE recognized the importance of complete and accurate fuel consumption data in order to provide useful audit results. However, the Department has consistently maintained in all RCS and CACS rulemakings that there should be no preconditions, other than that under § 458.706(c), to providing eligible customers with a CACS audit. NECPA clearly intended that the audit service be made as easily available to eligible customers as possible. Therefore, DOE has not permitted utilities to require alternate fuel consumption data from eligible customers as a precondition to providing the audit. Utilities are

encouraged to use whatever means is appropriate to acquire complete consumption data. Moreover, because most CACS eligible customers will be paying complete or partial audit costs, DOE believes it is in their best business interest to contribute as fully as possible to ensuring complete and accurate audit results. Therefore no changes have been made to the final rule.

(4) Audit Validation

Proposed § 458.706(d)(2) required that all Standby utilities use validated audits. These audits could have been previously validated by DOE (see Appendix III) or they could be validated by the utility using procedures contained in Appendix II. For a further discussion and explanation of the audit validation process and of the information that is required to be submitted to DOE, the following document is available: "CACS Audit Validation Procedures for Federal Standby," August 1985. Write to: U.S. Department of Energy, Conservation and Renewable Energy, CE–222, 1000 Independence Ave. SW., Washington, DC 20585. Several commenters stated that they assumed that "a self-validated audit by a utility implies approval by DOE and relieves the utility of subsequent responsibility originating from the self-validation process." To a limited extent, DOE can approve procedures which a utility uses to validate its audit. DOE cannot approve, however, the actual validation process conducted by the utility. Regardless of this distinction, the utility must always accept full responsibility for the audit results it provides.

One commenter noted that the validation procedures required a breakdown of energy end use by fuel type, while the audit did not. The commenter requested that the requirement for this breakdown be deleted from the validation procedures. Although DOE assumed that energy end use data would be incorporated into the audit, it was not specifically required. DOE also recognizes, however, that it may not always be necessary to have a breakdown of energy end uses to calculate savings for all measures. In some cases, groups of energy end uses may be sufficient. The final rule has therefore been changed to reflect this (§ 458.716(b)(5)).

(5) Prohibitions

Proposed § 458.706(g)(1) prohibited auditors from providing costs and savings for conservation devices unless they are defined in § 458.104 as program measures. Two commenters objected to this because they believed the auditor needed the flexibility to respond to customer inquiries. In addition, auditor judgement and experience, they suggested, should prevail when necessary.

DOE recognizes the conflict inherent in this prohibition. However, in order to ensure that unfair competition does not occur as a result of utilities marketing products which are not subject to the same requirements for audit validation requirements of § 458.707, DOE has retained this prohibition. In this way, audited customers, small business competitors and competing utilities are assured that costs and savings provided will be based only on validated calculations and only for measures which are generally assumed to pay back within seven years. No change was made to the final rule.

(6) Tenant Information

The proposed rule required the utility to provide "information developed by the audit relating to operation and maintenance procedures and program measures which is applicable to individual apartments" (§ 458.706(e)(1)(v)). The multi-family building owner has to agree to distribute the information to his tenants as a precondition to receiving the audit (§ 458.706(c)). Nine commenters expressed concern about the utility's responsibility to prepare and to distribute this information. Several commenters stated it was not the utility's responsibility to ensure distribution of the information to tenants. Another commenter stated that DOE had no authority to expand the original legislative provision which required multi-family buildings owners to distribute information developed by the audit applicable to individual dwelling units.

Comments indicated there appears to be reluctance by utilities to prepare tenant information as well as confusion regarding what DOE expects the information to be. DOE has expressed concern throughout CACS rulemakings that multi-family building owners will be unlikely to participate in the CACS program if they are fully responsible for ensuring that their tenants receive applicable portions of a CACS audit. In an effort to ensure greater participation by this sector, DOE has attempted to remove all unnecessary barriers. DOE envisions a general energy conservation brochure for apartment dwellers which may be customized by climate zone or by various building characteristics. Althouth the audit may only evaluate a few specific apartments, it is reasonable to assume that these apartments are representative of others in the building. The brochure should be designed to show tenants how they can more efficiently use energy within their apartments. It should address all program measures and O&M procedures which are applicable to an individual apartment.

DOE still believes the utility is in a better position to prepare such information than the building owner. If a brochure is not made available to the building owner, the owner's only other recourse is to distribute all or part of the audit results to his tenants. If the building owner must be responsible for determining which part of the audit report, if any, is appropriate for his tenants and then duplicating and distributing it, he may decide not to request an audit.

DOE has attempted to ease the burden on utilities of preparing the tenant information brochure by preparing one for use by any utility which requests it. The brochure entitled, "Tips for an Energy-Efficient Apartment" was written with the help and suggestions of several utilities. It offers general conservation information in the following areas: heating, air conditioning, lighting, water, and appliances. Utilities that wish to receive a copy of the brochure may write to: Office of Public Affairs, Mail Stop 1E–218, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

If any utility elects to use or modify the brochure, it can then print copies as necessary. Once a utility receives certification from a multi-family building owner that he will distribute the information to the tenants and the utility provides the building owner with a sufficient number of copies, the utility has no further responsibility to ensure distribution of the information. No changes were made to this requirement in the final rule.

(7) Additional Information Requirement

The proposed rule required auditors to provide an explanation of how to find more specific information on the purchase, financing and installation of program measures (§ 458.706(e)(1)(iv)). Section 458.706(g)(2) prohibits auditors from recommending suppliers, contractors or lenders. Two commenters stated that these two requirements conflicted with each other. Other commenters stated that the first requirement might force utilities to develop a "yellow pages" type listing to avoid claims that the utility was acting anticompetitively.

DOE does not believe that such a conflict exists. The requirement to provide an explanation for how to find

more information is not intended to result in specific recommendations. Instead, it is intended to give customers generic information on the type of service or product which may meet the customers' needs and on where to look for that service or product. For instance, the CACS audit process may show that significant savings are possible in the area of lighting beyond what can be shown in the audit report. The auditor might discuss with the customer the role a lighting engineer might play and assist the customer in locating some. Therefore, no changes were made to the final rule.

C. Section 458.707 Adding and/or Deleting Measures.

The proposed rule permitted utilities to add or delete measures from the list in Appendix III (see § 458.104) with DOE approval, if certain criteria were met. Two commenters addressed this section. One commenter requested that utilities not be allowed to add any measure which the utility supplies or installs. Some utilities have long been in the business of supplying or installing products or services. As long as these products meet the criteria listed in § 458.707(a), DOE will permit utilities to include additional measures in the audit. The criteria in § 458.707(a) are intended to ensure that only measures which will enhance the energy-efficiency of an audited building are included. Some of these measures may also be supplied or installed by covered utilities and, regardless of the existence of the CACS program, utilities will continue to supply and install them. Therefore, no changes have been made to the final rule.

Another commenter requested that the criteria for adding a measure be the same as those of deleting a measure. The only criterion used to justify exclusion of a measure was whether the measure has a payback period of over seven years. On the other hand, the criteria for adding measures are that the measure has a payback period of seven years or less and that replacement measures have to replace measures of the same fuel type. For a more complete discussion of fuel switching, see section 2 under General Discussion. As described there, DOE has not changed its position on fuel switching and therefore has made no changes in § 458.707(a) of the final rule.

D. Section 458.708 Auditor Qualifications.

The proposed rule listed qualifications which auditors needed to meet. One commenter stated that the requirements were unnecessarily rigorous. Two other commenters stated that it was not necessary to require all auditors to meet all criteria. This, they felt, would preclude a utility from tailoring its audit workforce to meet specific, individual needs.

DOE does not believe that the criteria are overly burdensome nor that it is unreasonable for all auditors to have some knowledge in each of the areas described. Section 458.708(a) requires "a general knowledge," "a familiarity," or an "understanding" of a variety of systems and measures. DOE believes there is sufficient flexibility built into these criteria so that utilities can easily tailor their program needs to fit the program requirements. Although we recognize that it is often preferable to have auditors who are specialized in particular areas, it is not unreasonable to expect these auditors to have a "general understanding" of the entire audit process as long as that process is applicable to the building and system types found within the utility service area. Therefore no changes were made to the final rule.

Three commenters stated that there were no steam systems in the small commercial or apartment buildings in their area and requested that auditor qualifications be tailored to match the requirements of the energy systems and buildings in each area. DOE agrees that when a specific auditor qualification criterion is inappropriate for a specific utility, the utility should not have to train its auditors in that area. The final rule has been modified to incorporate such an approach. Section 458.708 now permit a utility to delete specific auditor qualifications if it submits to DOE local data to justify such a deletion.

One commenter stated that most furnaces and boilers would benefit from a combustion tuneup. Because the tuneup is a standard recommendation, they felt that "a working ability to calculate the steady state efficiency" was excessive. DOE believes that while an auditor may be able to recommend a boiler or furnace tuneup in most cases, a working ability to determine steady state efficiency is an important part of understanding how the efficiencies of these systems are affected by high stack (vent) temperatures and by excess air. For the replacement furnace or boiler measure, no reasonable recommendation can be made without knowing the efficiency of the existing furnace or boiler. Unless this measure is deleted (see § 458.707(b)), the need for auditors to have this knowledge is important. Therefore, no changes will be made to the final rule; but if a utility decides to delete replacement boilers and furnaces, they may request an exception to this requirement as described in § 458.716.

Two commenters requested that we delete the requirement that utilities submit to DOE the number of full-time auditors (§ 458.708(c)(4)). One of these commenters claimed to have no full-time auditors. The other commenter suggested that this information would be more appropriately submitted as part of the annual report. DOE has reconsidered this requirement and determined that the number of *full-time* auditors does not necessarily reflect the commitment of a utility to complete audits expeditiously. Therefore the phrase "full-time" has been deleted from § 458.708(c)(4).

E. Section 458.710 Subsequent Customers.

The proposed CACS Standby Plan required utilities to retain a copy of each Standby audit report for 10 years, to make such reports available to subsequent customers, and to inform subsequent customers of the availability of these audit reports. A few utilities objected to being required to provide previous audit results to subsequent customers, noting that changes in the operation and occupancy of the building may make the previous audit results irrelevant, and that release of such information could pose confidentiality problems.

DOE originally addressed this concern in the proposed Standby Plan by specifically requiring the utilities to provide a copy of the audit *report* rather than a copy of the audit *results*. DOE believes that an audit report need not contain confidential information. Since the legislation requires that previous audit reports be made available to subsequent customers, DOE does not have the option to remove this requirement. However, under § 458.710(d), if the customer agrees, a utility may perform a new audit of a building rather than provide the report of a previous audit. Therefore, no changes were made to the final rule.

F. Section 458.711 Participating Building Heating Suppliers.

The proposed rule outlined requirements for heating suppliers to participate in CACS. Heating suppliers could request that the Assistant Secretary waive all but two program requirements. Two commenters noted that if the quality and integrity of the CACS program are to be maintained, heating suppliers should not be exempt from conducting validated audits. DOE agrees that there should be a consistency in the quality of audits

performed under this program, and has modified the final rule accordingly.

G. Section 458.715 Reporting and Recordkeeping.

The proposed rule specified certain information that must be submitted with each annual report. Section 458.715(b)(6) requires utilities to submit "the number and description of complaints received." One commenter requested deletion of this item since everyday minor complaints would be of little interest to DOE and noncompliance is already reported directly to DOE. Because DOE is responsible for administering the program under Federal Standby and the number and nature of everyday complaints can sometimes indicate problems, DOE has not deleted this requirement.

Another commenter requested that the requirement to keep records on file for 10 years be changed to 5 years (§ 458.715(c)). Since section 731(a)(3) of NECPA specifically requires audit reports to be maintained for 10 years, no change has been made to the final rule.

H. Appendix I—Applicability Criteria

The proposed rule contained several applicability criteria which were intended to define objectively situations where program measures would be unlikely to perform as intended and therefore would be unlikely to be cost-effective. They were intended to provide assistance to the auditor at the audit site by making preliminary determinations about the cost-effectiveness or utility of specific measures in specific situations. Measures which did not meet the applicability criteria did not need to be included in the audit.

The proposed rule stated that installation of a measure, to be applicable, could not violate a Federal, State, or local law or regulation. One commenter objected to this because it placed utilities in the position of interpreting codes. This was never DOE's intent. Instead, DOE intended to ensure that the CACS rule would not supersede local codes or regulations and the auditors would not have to evaluate measures which the customer could not legally install. For instance, if a State or local building code prohibited the modification of the flue or vent of an existing heating system, vent dampers would not meet the applicability criteria in that area and auditors would not need to be trained to evaluate them. No changes were deemed necessary to the final rule to reflect this intent.

Another commenter requested that the applicability criteria for thermosyphon air panels and solaria sunspaces be modified to limit these measures to climate zones with more than 2000 heating degree days or less than 2000 cooling degree days. This criterion would allow auditors in Florida and Hawaii to eliminate these measures from their audits statewide. It would also allow auditors in parts of Georgia, Mississippi, Louisiana, Texas, Arizona, and California to eliminate these passive solar measures from some service areas. Because DOE found these measures generally not cost-effective in the RCS program in areas of less than 2000 heating degree days, DOE agrees with the commenter and has modified the applicability criteria accordingly.

I. Appendix III—List of DOE-Validated Audits

For the convenience of Standby utilities, DOE has included in Appendix III a list of those audits which were validated by DOE. In June 1984, DOE offered a CACS audit validation service to lead agencies. Lead agencies could recommend to DOE an audit for validation from a commercial auditing firm or utility. The process of ensuring the accuracy of each calculation was a very time-consuming and comprehensive process. Of the firms and utilities recommended to us, only three have an audit which has been subsequently validated.

IV. Regulatory Impact Analysis

Section 3(c)(2) of Executive Order 12291 generally requires that an agency prepare a Regulatory Impact Analysis (RIA) for rules that are likely to have a major impact on the economy.

DOE prepared an RIA which was published in conjunction with the CACS final rule (48 FR 49622, October 26, 1983). Since the CACS Federal Standby Plan regulation is not a new program, but rather allows DOE to administer the program where States choose not to administer the program themselves, DOE determined that the CACS Standby Plan regulation is covered in the scope of the overall CACS Program analysis. A separate regulatory analysis was therefore not required for this rulemaking. Copies of the RIA (DOE/CE-0051) may be obtained by writing the Building Services Division at the address which appears at the beginning of this notice. A summary of the findings of the RIA was provided in the preamble of the CACS final rule.

DOE received one comment which asserted that the data used to project energy savings from and costs of the CACS program were "highly speculative." The commenter further stated that until another RIA is prepared, the CACS program should not be implemented. The commenter also requested that DOE urge Congress to repeal the program.

Since DOE addressed a similar comment in the preamble of the CACS final rule, it is unnecessary to respond fully to this latest comment. DOE, however, would like to point out again that despite the lack of sufficient data to calculate *precise* costs and savings for the program, the researchers used reasonable care in evaluating the data available and used professional judgment in selecting data values. In addition, DOE and the Administration have supported repeal of the CACS program in the past because the program was expected to be burdensome, overly restrictive, and often not cost effective. DOE and the Administration continue to support the program's repeal. Until the Congress repeals the CACS program, however, DOE will faithfully execute its responsibilities pursuant to NECPA. Consistent with Departmental and Administration policy, DOE has attempted to design these final regulations to meet the relevant requirements of NECPA while minimizing the burdens on affected parties.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96-354) requires, in part, that an agency prepare a regulatory flexibility analysis for any proposed rule unless it determines that the rule will not have a "significant economic impact on a substantial number of small entities." In the event that such an analysis is not required for a particular rule, the agency must publish a certification of that determination in the **Federal Register**.

In the NOPR of December 31, 1984, DOE certified that the proposed rule would not have a significant impact on a substantial number of small entities. DOE stated that this rule, under the provisions of Title VII of NECPA, imposes requirements on, and would therefore have its major impact on major utilities. DOE noted its interest in minimizing any anticompetitive effects of the regulations.

DOE has received several similar comments which disagreed with DOE's certification. The focus of these comments was to identify potential anticompetitive utility activities which might adversely affect small businesses. DOE is aware of the potential for some indirect impacts of these regulations and has developed the final regulations to minimize any potential adverse impacts on small entities, consistent with the requirements of the program and NECPA. It should also be noted that small entities are not subject to any

requirements under these regulations and will only participate indirectly in aspects of the program on a voluntary basis. Accordingly, DOE again certifies that these amendments will not have a significant economic impact on a substantial number of small entities.

VI. Environmental Impacts

In accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), DOE prepared a Final CACS Supplemental to the Final Environmental Impact Statement (EIS) for the Residential Conservation Service Program (DOE/EIS–0050–FS in August 1983). The program analyzed in the EIS included the possible Federal role in promulgating a plan for utilities in States that refuse to or are unable to participate. The notice of availability was published in the **Federal Register** on November 4, 1983 (48 FR 50935). Copies may be obtained by writing: U.S. Department of Energy, Conservation and Renewable Energy, CE–115, 1000 Independence Avenue, SW, Washington, DC 20585. The subject matter of this rulemaking is within the scope of the CACS Environmental Impact Statement Supplement, and accordingly the impacts of this rulemaking were adequately addressed in the CACS EIS Supplement.

VII. Paperwork Reduction Act

The information collection requirements contained in §§ 458.715 and 458.716 have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 1910–1400.

List of Subjects in 10 CFR Part 458

Energy audits, Energy conservation, Housing, Insulation, Reporting and recordkeeping requirements, Solar energy, and Utilities.

In consideration of the foregoing, the Department of Energy hereby amends Chapter II, Title 10, Part 458 of the Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., September 9, 1985.

Donna R. Fitzpatrick,

Acting Assistant Secretary, Conservation and Renewable Energy.

PART 458—COMMERCIAL AND APARTMENT CONSERVATION SERVICE PROGRAM

1. The authority citation for Part 458 continues to read as follows:

Authority: Title VII of the National Energy Conservation Policy Act, Pub. L. 95–619, as added by Subtitle D of Title V of the Energy Security Act, Pub. L. 96–294, 94 Stat. 752–758 (42 U.S.C. 8281–8284); Department of Energy Organization Act, Pub. L. 95–91, 91 Stat. 565–613 (42 U.S.C. 7101–7352).

2. 10 CFR Part 458 is amended by adding and reserving Subpart F and by adding Subpart G to read as follows:

Subpart F—[Reserved]

Subpart G—Commercial and Apartment Conservation Service Federal Standby Plan

Sec.

458.701 Purpose and scope.
458.702 Definitions.
458.703 Coverage.
458.704 Procedures for investigating and enforcing compliance with the CACS Standby Plan.
458.705 CACS Standby announcement.
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458.711 Participating building heating suppliers.
458.712 Accounting and payment of costs.
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Appendix I—Applicability Criteria.
Appendix II—CACS Audit Validation Procedures.
Appendix III—List of DOE Validated Audit Procedures.

Subpart F—[Reserved]

Subpart G—Commercial and Apartment Conservation Service Federal Standby Plan

§ 458.701 Purpose and scope.

(a) This subpart contains the Commercial and Apartment Conservation Service Federal Standby Plan which DOE is required to promulgate in accordance with section 741 of NECPA. DOE will implement the CACS Standby Plan in a State when the State does not have an approved CACS State Plan within the necessary time limits or fails to implement adequately a DOE approved State Plan.

(b) The CACS Standby Plan contains the functions which Standby utilities will be required to perform under a DOE order issued under § 458.503(b). The core of the CACS Standby Plan is the offer and performance of an on-site energy audit of an eligible customer's building.

§ 458.702 Definitions.

The definitions in §§ 458.102–458.104 are applicable to this subpart. In addition, for purposes of this subpart, the term—

"CACS Federal Standby Plan" (hereinafter also "CACS Standby Plan" or "Standby Plan") means the plan set forth in this subpart.

"CACS Standby Announcement" means the offer of a CACS Standby audit which § 458.705 requires a Standby utility or a participating building heating supplier to provide to each eligible customer.

"CACS Standby Audit" means an on-site inspection of a commercial building or an apartment building which meets the requirements of § 458.706.

"Participating Building Heating Supplier" means a building heating supplier that has elected to participate in the Standby Plan pursuant to § 458.711.

"Standby Utility" means a covered regulated utility which has received an order under § 458.503(b) for implementation of a CACS Standby Plan.

§ 458.703 Coverage.

(a) Utilities subject to the CACS Standby Plan. All covered regulated utilities which provide utility service in a State where the Assistant Secretary has issued an order under § 458.503(b) for implementation of the CACS Standby Plan shall be subject to the CACS Standby Plan.

(b) Participating building heating suppliers. Any building heating supplier in a State where the Assistant Secretary has issued a Standby order which wishes to participate in the Standby Plan may so notify the Assistant Secretary in accordance with § 458.711.

§ 458.704 Procedures for investigating and enforcing compliance with the CACS Standby Plan.

(a) Each Standby utility and each participating building heating supplier shall comply with the Standby Plan upon receipt of an order under § 458.503(b).

(b)(1) Individuals or groups of individuals who wish to report possible noncompliance with the CACS Standby Plan may inform the Assistant Secretary.

(2) Each Standby utility and each participating building heating supplier shall inform its customers how to report possible noncompliance with the Standby Plan to the Assistant Secretary. The CACS Standby announcement distributed pursuant to § 458.705 must contain this information.

(c) The Assistant Secretary shall investigate any allegation of noncompliance or any complaint

submitted to DOE concerning the implementation of the CACS Standby Plan and may initiate reviews of the activities of Standby utilities or participating building heating suppliers to determine compliance with the Standby Plan.

§ 458.705 CACS Standby announcement.

(a) *Distribution*—(1) *Utilities.* Each Standby utility shall send each eligible customer a CACS Standby announcement no later than 90 days after the Assistant Secretary issues an order under § 458.503(b) for compliance with the Standby Plan, and shall repeat the announcement every two years thereafter until January 1, 1990.

(2) Participating building heating suppliers. Each participating building heating supplier shall send each eligible customer a CACS Standby announcement no later than 90 days after the Assistant Secretary approves its participation in the Standby Plan and shall repeat the announcement every two years thereafter until January 1, 1990.

(b) *Content.* A CACS Standby announcement must at a minimum include—

(1) An offer to perform the CACS Standby audit described in § 458.706;

(2) An explanation of how to request a CACS Standby audit. This explanation shall include for each customer the opportunity to identify any alternate fuel supplier which the customer desires the utility to notify of the audit request. If the customer identifies an alternate fuel supplier, the notification must take place prior to or immediately following the audit;

(3) The costs, if any, of receiving the CACS Standby audit which will be charged directly to the customer;

(4) An explanation of how complaints of possible non-compliance with the Standby Plan may be reported to the Assistant Secretary in accordance with § 458.704(b); and

(5) A notice to any customer who would be an eligible customer except for the fact that the customer's building had previously been audited by a covered utility or building heating supplier under an approved CACS State Plan or the Standby Plan. The notice must inform the customer of the availability, upon request and without charge, of the results of the previous audit and explain how to request the report.

(c) *Conditional audit offers.* The offer of a CACS Standby audit may, with the approval of the Assistant Secretary, be conditioned upon a nondiscriminatory factor such as serving one geographic area at a time or serving a certain type of energy user first. Utilities shall provide an unconditional offer within two years after a conditional offer. Standby utilities and participating building heating suppliers which wish to make the offer of a CACS Standby audit conditional shall submit a request to the Assistant Secretary in accordance with § 458.716.

(d) *Prohibitions.* (1) The CACS Standby audit announcement shall not include any advertising for the supply, installation or financing by any supplier, contractor or lender (including the regulated covered utility or participating building heating supplier) of any program measure, energy conserving operation and maintenance procedure or any other energy conserving product, unless the Assistant Secretary approves it pursuant to § 458.716. Any request submitted by a Standby utility or a participating building heating supplier under § 458.716 shall contain procedures which reasonably assure that such advertising will not be anticompetitive or unfairly discriminate against any person.

(2) Standby utilities and participating building heating suppliers are prohibited from unfairly discriminating among program measures, eligible customers, suppliers, contractors and lenders when providing information under this section.

§ 458.706 CACS Standby audit.

(a) *Timing of CACS Standby audit.*—(1) *Unconditional offers.* Each Standby utility and each participating building heating supplier that first unconditionally offers a CACS Standby audit to an eligible customer shall provide the audit within 90 days of the customer's request.

(2) *Conditional offers.* Each Standby utility and each participating building heating supplier that first conditionally offers a Standby audit to an eligible customer shall provide an audit within 45 days after a customer's request which responds to an unconditional offer.

(b) Prohibition against preconditions and discrimination. Each Standby utility and each participating building heating supplier is prohibited from—

(1) Requiring any preconditions for providing a CACS Standby audit to an eligible cutomer, except as provided in paragraph (c) of this section; and

(2) Discriminating unfairly among eligible customers in providing CACS Standby audits.

(c) Condition for receiving a CACS Standby audit of an apartment building. Each Standby utility and each participating building heating supplier shall require an eligible customer to certify, as a condition for receiving a CACS Standby audit of an apartment building, that the customer agrees to provide to each tenant, in a timely manner, the infomation relevant to individual apartment units included in the audit results pursuant to paragraph (e)(1)(v) of this section.

(d) *Content of a CACS Standby audit.*—(1) Each Standby utility and each participating building heating supplier shall provide (either directly or through one or more auditors under contract) to each eligible customer, upon request, an on site audit which addresses all the program measures in § 458.104, any measures added under § 458.707(a) and all the operation and maintenance procedures in § 458.103, except as provided in paragraph (d)(3) of this section and § 458.707(b).

(2) Each Standby utility and each participating building heating supplier shall use CACS Standby audits which have been validated by DOE or by the utility. Procedures for validating audits must be in accordance with those set out in CACS Audit—*Validation Procedures,* Appendix II.

(3) The auditor shall determine in each CACS Standby audit the applicability of each program measure to the audited building based on the DOE applicability criteria in Appendix I to this part. A Standby utility or a participating building heating supplier may develop its own applicability criteria or modify the DOE applicability criteria and submit the new or modified criteria to the Assistant Secretary for approval in accordance with § 458.716. The utility shall include in its submission a description of the basis and purpose for the additional or different applicability criteria.

(e) *CACS Standby audit results.* (1) Each Standby utility and each participating building heating supplier shall provide the following information to each eligible customer who receives a CACS Standby audit:

(i) A report of the type, quantity, and rate of energy consumption of the audited commercial building or apartment building;

(ii) Identification and explanation of the energy conserving operation and maintenance procedures defined in § 458.103, which would be appropriate for the audited building, together with an estimate to the extent feasible of the energy savings expressed in units of energy and in dollars or a range of dollars, to result from the application of each of these procedures;

(iii) A report on the need, if any, for the purchase and installation of program measures included in the audit pursuant to § 458.104 and § 458.707 together with—

(A) An estimate of the total cost, expressed in dollars or a range of dollars, of the purchase and installation of each program measure included in the audit (except caulking and weatherstripping); and

(B) An estimate of the first year energy savings, expressed in units of energy and in dollars or a range of dollars, resulting from the installation of each program measure included in the audit;

(iv) An explanation of how to find more specific information on the purchase, financing and installation of program measures and information on other commercially available audit services; and

(v) In the case of a CACS Standby audit of an apartment building, information developed by the audit relating to operation and maintenance procedures and program measures which is applicable to individual apartments.

(2) If a Standby utility or a participating building heating supplier does not provide results of CACS Standby audits in person, it shall give the customer an opportunity to discuss the results of the audit with a qualified person.

(f) *Submissions.* Each Standby utility and each participating building heating supplier shall submit to the Assistant Secretary the following information in accordance with § 458.716:

(1) The audit validation procedures for each measure as described in paragraph (d)(2) of this section, unless the audit has been validated previously by DOE; and

(2) The informational brochure or material to be provided to tenants in apartment buildings in accordance with paragraph (e)(1)(v) of this section.

(g) *Prohibitions.* (1) Unless approved by the Assistant Secretary pursuant to § 458.716, an auditor is prohibited from estimating, as part of a CACS Standby audit, the energy and cost savings of installing any product which is not a program measure.

(2) Auditors are prohibited from recommending any supplier, contractor, or lender who supplies, installs, or finances the sale or installation of program measures.

(3) A standby utility or a participating building heating supplier is prohibited from unfairly discriminating among program measures or eligible customers.

§ 458.707 Adding and/or deleting measures.

(a) A Standby utility or a participating building heating supplier may only add measures to the program measures listed in § 458.104 for the Standby audit, with the approval of the Assistant Secretary, if:

(1) The measure has a payback (P) of 7 years or less when the installed first cost (F) of the measure minus any applicable Federal and State tax credits (T), by the first year energy savings in dollars (S):

$$P = \frac{F-T}{S} \quad ; P \leq 7 \text{ years; and}$$

(2) A replacement measure replaces an existing measure of the same fuel type.

(b) A Standby utility or a participating building heating supplier may only exclude a program measure listed in § 458.104 from its CACS Standby audit, with the approval of the Assistant Secretary, if, when utility or building heating supplier derived data is used to determine the measure payback period, the program measure has a payback period (P) of more than seven years, as determined by dividing the installed first cost (F) of the measure, less any applicable Federal and State tax credits (T), by the first year energy savings in dollars (S):

$$P = \frac{F-T}{S} \quad ; P > 7 \text{ years.}$$

(c) In accordance with § 457.716, the utility or building heating supplier shall provide the Assistant Secretary with data to document each element in the formula in paragraph (a) or (b) of this section to support any proposed addition or exclusion of program measures under paragraphs (a) or (b) of this section.

(d) The utility or building heating supplier shall define any measures it proposes to add in accordance with § 458.716.

§ 458.708 Auditor qualifications.

(a) Each Standby utility and each participating building heating supplier shall provide an adequate number of auditors for the CACS Standby program who have successfully completed an auditor training program approved by DOE. The training program shall address the following auditor qualifications:

(1) A general understanding of commercial and apartment building construction, particularly a knowledge of the heating and cooling systems, heat transfer and related environmental effects the different types and applications of program measures, and any relevant State installation standards;

(2) The capability to conduct the audit including:

(i) A familiarity with the program measures and operation and maintenance procedures;

(ii) The ability to use the applicability criteria to determine which program measures to evaluate;

(iii) A proficiency in pertinent auditing procedures for each applicable program measure; and

(3) A general knowledge of utility rates.

(b) Specifically, the audit work force shall have:

(1) A working ability to calculate or determine the steady state efficiency of a furnance or boiler;

(2) A general knowledge of pneumatic, electrical and mechanical control systems and their applicability to automatic energy control systems;

(3) An understanding of the inter-relationship between the various loads in the eligible building population including the ability to anticipate the corresponding effects on one load of changes to the other;

(4) A general knowledge of lamps and lighting systems used in commercial and multifamily buildings;

(5) A general knowledge of the functions and operating characteristics of steam systems in commercial and apartment buildings, as well as the various types and symptoms of steam system failure.

(6) An understanding of automatic energy control systems and the relationships among the occupants, the structure and the mechanical and lighting systems (energized systems); and

(7) General knowledge of the nature of solar energy and its applications.

(c) Paragraphs (a) and (b) of this section do not apply to any auditor who has performed audits in accordance with a DOE approved State CACS Plan or who has conducted onsite audits which conform to the requirements of §§ 458.709(b) and (c).

(d) Each Standby utility and each participating building heating supplier shall provide to the Assistant Secretary for approval the following information in accordance with § 458.716:

(1) The procedures for training auditors;

(2) A description of all training materials;

(3) A timetable for the implementation of the training procedures for auditors; and

(4) The number of auditors qualified to conduct CACS audits.

(e) In accordance with § 458.716, any Standby utility or participating building

heating supplier may request approval from the Assisitant Secretary to modify or delete one or more of the auditor qualifications set forth in paragraphs (a) and (b) of this section. The utlity must submit to DOE data showing that the area of expertise is inappropriate to the climate or building types existing in the utility's service areas.

§ 458.709 Ongoing programs.

(a) The Assistant Secretary shall have the discretion to allow a standby utility which is currently complying in good faith with a DOE approved CACS State plan to continue to operate under that plan in the State for which the Standby order has been issued under § 458.503(b). A utility which desires this opportunity must provide all required information to the Assistant Secretary in accordance with § 458.716.

(b) A Standby utility need not conduct a Standby audit for any commercial or apartment building which was audited previously pursuant to § 458.709(a) or which received an energy audit under 10 CFR Part 455 (Grant Programs for Schools and Hospitals and Buildings Owned by Units of Local Government and Public Care Institutions).

(c) (1) The Assistant Secretary shall have the discretion to determine that a Standby utility need not conduct a Standby audit for any commercial or apartment building for which the utility has performed a previous on-site audit if—

(i) The audit estimated the energy and cost savings that could result from all the program measures defined in § 458.104, except those excluded under § 458.707(b); and

(ii) A report of the audit is available for subsequent customers.

(2) A utility which meets the requirements under § 458.709(c)(1) must provide all required information to the Assistant Secretary in accordance with § 458.716.

§ 458.710 Subsequent customers.

(a) A Standby utility must retain in its files, for not less than 10 years from the date of the audit, a report of each audit performed pursuant to §§ 458.706 and 458.709.

(b) A Standby utility must make a report of the Standby audit for a building available to any customer who would be an eligible customer except for the fact that a Standby utility had previously audited the customer's building under the CACS Standby Plan or an approved CACS State Plan.

(c) A Standby utility must inform each subsequent customer of the availability of a report of a previous audit in accordance with § 458.705(b)(5).

(d) A Standby utility, with the agreement of the customer, may choose to reaudit a previously audited building instead of providing the report described in § 458.710(b).

(Reporting and record keeping requirements in paragraph (a) approved by the Office of Management and Budget under control number 1910–1400.)

§ 458.711 Participating building heating suppliers.

(a) *Participation.* (1) Any building heating supplier in a State for which a Standby order has been issued may participate in the Standby Plan in the State.

(2) A building heating supplier who wishes to participate in the Standby Plan may submit a written request to the Assistant Secretary.

(b) *Waiver of requirements.* (1) Except as provided in paragraph (b)(2) of this section, a participating building heating supplier may request in writing from the Assistant Secretary a waiver of any requirement of the Standby Plan on the basis of limited resources.

(2) The Assistant Secretary will not waive the following requirements for any participating building heating supplier:

(i) Section 458.704 (Procedures for investigating and enforcing compliance with the Standby Plan);

(ii) Section 458.706(d)(2) (Procedures for validating audits); and

(iii) Section 458.706(g) (Prohibitions for a Standby audit).

(c) *Withdrawal.* (1) Any participating building heating supplier may voluntarily withdraw from the Standby Plan by submitting a written notice to the Assistant Secretary.

(2) Prior to withdrawing, the participating building heating supplier shall notify any eligible customers who have requested a Standby audit and shall refer the customers to the appropriate Standby utility in the same service area.

§ 458.712 Accounting and payment of costs.

(a) *Accounting.* All amounts expended or received by a Standby utility which are attributable to the CACS Program, including any penalties paid under Subpart E of this part (Federal Standby Authority and Enforcement Provisions), shall be accounted for on the books and records of the utility separately from amounts attributable to all other activities of the utility.

(b) *Payment of costs.* Standby utilities shall treat costs as described in this paragraph and shall notify the Assistant Secretary how the costs described in paragraph (b)(2) of this section will be treated in accordance with § 458.716.

(1) All amounts expended by a utility for the CACS Standby announcement and all public education and program promotion directly related to providing information about the CACS program shall be treated as a current expense of providing utility service and be charged to all ratepayers of the utility in the same manner as other current operating expenses of providing such utility service.

(2) The State Regulatory Authority shall specify the manner in which all other program costs will be recovered, except that the amount that may be charged directly to the owner of an apartment building for whom a CACS Standby audit is performed pursuant to § 458.706 must not exceed a total of $15 per apartment in the building or the actual cost of the CACS Standby audit, whichever is less, and there may be no charge for a report of a previous audit.

(3) In determining the amount to be charged directly to eligible customers as provided in paragraph (b)(2) of this section, the State Regulatory Commission shall take into consideration, to the extent practicable, the eligible customers' ability to pay and the likely levels of participation in the program which will result from such charge.

§ 458.713 Customer Billing.

Every charge to an eligible customer by a Standby utility or by a participating building heating supplier for any portion of the costs of carrying out a CACS Standby audit that is charged to the eligible customer for whom the audit is performed, and that is included on a bill for utility or fuel service submitted by the utility or building heating supplier, shall be stated separately from the cost of providing utility or fuel service. Nothing in this paragraph shall be construed to require that charges for a CACS Standby audit must be included on a periodic utility or fuel bill.

§ 458.714 Coordination.

The Assistant Secretary shall contact annually the appropriate Federal, State, and local officials responsible for energy conservation programs within and affecting a State for which a CACS Standby order has been issued.

§ 458.715 Reports and recordkeeping.

(a) Each Standby utility and each participating building heating supplier shall submit a report to the Assistant Secretary no later than six months after the date of DOE approval of all information submitted in accordance

with § 458.716. Each utility and building heating supplier shall submit an annual report no later than each July 1 thereafter, unless the initial six months report is required to be submitted less than 90 days prior to July 1, in which case the first annual report shall be submitted the following July 1.

(b) Each report must include the following information, as indicated:

(1) The approximate number of eligible customers;

(2) A copy of the CACS Standby announcement, if not previously submitted;

(3) The number of CACS Standby announcements distributed, including the number of those making conditional audit offers;

(4) The number and type of CACS Standby audits requested and provided for commercial building and multifamily buildings separately;

(5) The estimated costs of implementing the CACS program during the reporting period including revenues received for providing audit service; and

(6) The number and description of complaints received.

(c) Each regulated covered utility subject to the CACS Standby Plan and each participating building heating supplier shall keep a copy of each Standby audit report for not less than 10 years from the date of the audit and shall make such reports available to the Assistant Secretary upon request.

(d) Any other provisions of this section notwithstanding, the Assistant Secretary may, as deemed essential to DOE's responsibilities under the CACS program—

(1) Require additional information; or

(2) Waive any reporting and recordkeeping requirements, except the requirement of paragraph (c) of this section.

(Reporting and recordkeeping requirements approved by the Office of Management and Budget under OMB Control Number 1910–1400.)

§ 458.716 Information to be submitted to the Assistant Secretary.

(a) *Required submittals.* Each regulated covered utility subject to the CACS Standby Plan and each participating building heating supplier shall submit the following to the Assistant Secretary for approval before carrying out this Standby Plan:

(1) A copy of the CACS Standby announcement;

(2) A copy of the information developed pursuant to § 458.706(e)(1)(v) to be given to apartment building customers as part of the audit results;

(3) Qualification procedures for auditors, a description of all training materials, and a timetable for implementing training procedures, as required by § 458.708(d), as well as the number of auditors which will be qualified to conduct audits; and

(4) Information on how program costs shall be treated, as required by § 458.712.

(b) *Optional submittals.* Any Standby utility or participating building heating supplier may submit information relating to the following to the Assistant Secretary for approval:

(1) If conditional audit offers are to be given in the first round of Standby announcements, pursuant to § 458.705(c), a description of the conditions that are to be used;

(2) If advertising is to be included in the Standby announcement, pursuant to § 458.705(d)(1), a description of the type of advertising to be allowed and the procedures developed to assure that the advertising will not result in any anticompetitive activity;

(3) If different applicability criteria than those set forth in Appendix I are to be applied during the audit, a description of the applicability criteria must be submitted including documentation which justifies and explains the changes;

(4) If additions or deletions to the list of program measures set forth in § 458.104 are to be made, the utility must submit adequate documentation incorporating the requirements of § 458.707. Documentation includes the source of each element in the following formula:

$$P = \frac{F - T}{S}$$

and an explanation of all assumptions used. The calculation or algorithm for S (first year energy savings in dollars) must be included. If measures are added, a definition of the new measures must be included;

(5) If a utility does not use a DOE validated audit procedure, it must validate its audit procedures in accordance with the requirements set out in Appendix II. Calculation procedures for all CACS measures (unless deleted in accordance with § 458.707) must be validated for both multifamily buildings that are centrally heated or cooled or centrally metered (for gas or electricity), and small commercial buildings. In order to verify properly the energy savings for CACS measures, the validation should first address a breakdown of energy end uses, or group of energy end uses, e.g., heating, cooling, fan, lighting, hot water, other by fuel type. Typically only one fuel will be used for a particular end use.

(6) If audits performed in an ongoing audit program for commercial or apartment buildings meet the requirements in § 458.709 and the utility wishes these audits to qualify as CACS audits, the utility shall submit the following in lieu of the information requested in paragraph (b)(5) of this section:

(i) Identification of an approved CACS State Plan and evidence that the utility is complying with it; or

(ii) If the utility is not operating under an approved Plan, a description of the audit as required under § 458.305 including a list of program measures included in the audit and a description of the procedures used to validate the audit; and

(7) If deletions or modifications to the auditor qualifications set forth in §§ 458.708(a) and (b) are to be made, the utility must submit with its request for approval adequate documentation to substantiate the proposed changes.

(Information collection requirements approved by the Office of Management and Budget under OMB Control Number 1910–1400.)

Appendix I—Program Measure Applicability Criteria

I. A program measure is applicable in a building if:

(a) The measure is not already present in good condition and the potential exists to save energy and/or reduce energy demand in the building by installing it. A replacement measure is applicable only if a less efficient device performing the same function, which is more than 5 years old, is already present in the building.

(b) Installation of the measure is not a violation of Federal, State, or local law or regulations.

II. Energy recovery systems (when waste heat from an air conditioner is used to assist in heating water) are applicable if:

- The building uses at least 50 gallons of hot water per day;
- The building has a source of waste heat of 3400–5800 Btu/hour (*e.g.*, the equivalent of waste heat from a two-ton air conditioner); and
- The building is located in an area with more than 2000 cooling degree days.

III. Furnace flue opening modifications are applicable if the furnace combustion air is taken from a conditioned area.

IV. Ceiling insulation is applicable if the differential between the existing insulation and the insulation level recommended by ASHRAE 90–80 exceeds R–11.

V. Lighting system modification to use daylighting is applicable if any electric lighting fixtures are located within 15 feet of an existing window or skylight in a commercial building or in common areas of an apartment building.

VI. Passive solar hearing thermosyphon air systems are applicable in areas with more than 2000 heating degree days or less than 2000 cooling degree days and if the building has a south-facing (+ or −45 ° of true south) wall free of a major obstruction to sunshine during the heating season.

VII. Solar domestic hot water systems are applicable if the building consumes more than 80 gallons of hot water per day and has access to a site clear of major obstructions to solar radiation which allows solar collectors to be oriented + or −45 ° of true south.

VIII. Solaria/sunspace systems are applicable to an apartment building if it has existing balconies, patios, or available adjacent ground area on the south-facing (+ or −45 ° of true south) wall and the building is located in an area with more than 2000 heating degree days or less than 2000 cooling degree days. Solaria/sunspace systems are not applicable to commercial buildings.

IX. Solar swimming pool heater replacements are applicable only for apartment buildings and only if the pool uses electricity or other nonrenewable energy for heating.

X. Window heat gain retardants are applicable to buildings which have glass on the south, east, or west sides if they are exposed to sunlight.

XI. Pipe and duct insulation is applicable to hot water pipes and to heating and cooling ducts which extend through unconditioned spaces.

Appendix II—CACS Audit Validation Procedures[1]

Each Standby Utility must provide the following information:

CACS Audit Validation Submittal

Cover Sheet

Name of Organization: _____
Contact Person:[2] _____
Title: _____
Phone Number: _____
Address: _____

Required Information

Each Standby utility must submit the following information for each energy end use and CACS program measure included in the audit it intends to use.

Energy End Use or Measure Name:

Difference Between Small Commercial and Multifamily Audits:

Methods and References Used for Validation of Each Energy End Use or Measure:

(Include title, author, chapter, page numbers, etc. of each reference used)

Appendix III—List of DOE Validated Audit Procedures

1. Enercom, Inc.
2. Xenergy, Inc. (all measures except solar replacement swimming pool heaters and passive solar heating systems).
3. Volt Energy Management Services (all measures except solar hot water heaters, solar replacement swimming pool heaters and passive solar heating systems).

[FR Doc. 85–22238 Filed 9–16–85; 8:45 am]

BILLING CODE 6450–01–M

[1] For a discussion and explanation of the audit validation process and of the information that is required to be submitted to DOE, the following document is available: "CACS Audit Validation Procedures for Federal Standby," (August 1985). Copies may be obtained by writing to: Department of Energy, Office of State and Local Programs, CE–222, 1000 Independence Ave., SW, Washington, DC 20585.

[2] Please provide the name of the person who can answer specific engineering questions about the audit procedure.

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9-18-85
Vol. 50 No. 181

Federal Register

Wednesday
September 18, 1985

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9-18-85
Vol. 50 No. 181
Pages 37831-37984

federal register

Wednesday
September 18, 1985

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For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

Selected Subjects

Administrative Practice and Procedure
Federal Communications Commission
Internal Revenue Service

Air Pollution Control
Environmental Protection Agency

Aviation Safety
Federal Aviation Administration

Electric Power Rates
Energy Department

Elementary and Secondary Education
Education Department

Endangered and Threatened Species
Fish and Wildlife Service

Flood Insurance
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Marketing Agreements
Agricultural Marketing Service

Motor Vehicle Safety
National Highway Traffic Safety Administration

Organization and Functions (Government Agencies)
Immigration and Naturalization Service

Pesticides and Pests
Environmental Protection Agency

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Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Radio
Federal Communications Commission

Reporting and Recordkeeping Requirements
Economic Analysis Bureau

Superfund
Environmental Protection Agency

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: November 15; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Call JoAnn Harte, Workshop Coordinator, 202–523–5239.

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. The January 1986 Washington, D.C. workshop will include facilities for the hearing impaired. Dates and locations will be announced later.

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Presidential Documents

Title 3—

The President

Proclamation 5367 of September 16, 1985

Citizenship Day and Constitution Week, 1985

By the President of the United States of America

A Proclamation

In this, the commencement year of the 100th anniversary renovation of the Statue of Liberty, Americans are called on to renew and deepen their appreciation of the unique and precious heritage passed on to us by our Founding Fathers. This heritage finds its most sustained and formal expression in the United States Constitution. It is truly a marvel that a group of people assembled from a small population could develop a document capable of guiding the course of this Nation through nearly 200 years of growth to become the greatest on earth. The wisdom and foresight of the architects of the Constitution is manifest in the fact that this dynamic document has required so few amendments over the 198 years of its existence, and has remained a powerful governing tool throughout.

The kind of society our Constitution has created—free and fair and reformable—helps to explain the desire of many foreign nationals to become United States citizens. Last year, over a quarter of a million people, more than ever before in a single year, took the oath of United States citizenship. Clearly the fire of liberty enshrined in the Constitution is not only a hearth to warm, it remains a beacon that draws people from every continent.

How grateful to God all Americans should be that our Constitution remains as Judge David Davis observed more than a century ago: "A law for rulers and people, equally in war and peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances."

In recognition of the importance of our Constitution and the role of our citizenry in shaping our government, the Congress, by Joint Resolution of February 29, 1952 (36 U.S.C. 153), designated September 17 of each year as Citizenship Day and authorized the President to issue annually a proclamation calling upon officials of the government to display the flag on all government buildings on that day. The Congress, by Joint Resolution of August 2, 1956 (36 U.S.C. 159), also requested the President to proclaim the period beginning September 17 and ending September 23 of each year as Constitution Week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, call upon appropriate government officials to display the flag of the United States on all government buildings on Citizenship Day, September 17, 1985. I urge Federal, State and local officials, as well as leaders of civic, educational, and religious organizations, to conduct appropriate ceremonies and programs that day to commemorate the occasion.

I also proclaim the period beginning September 17 and ending September 23, 1985, as Constitution Week, and I urge all Americans to observe that week with fitting ceremonies and activities in their schools, churches, and other suitable places.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 85-22516
Filed 9-17-85; 11:59 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 361, Amdt. 2]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Amendment 2 of Regulation 361 increases the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period September 13–19, 1985. The amendment is needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

DATES: Regulation 361, Amendment 2 (§ 908.661) is effective for the period September 13–19, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and have been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The amendment and the regulation are issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The actions are based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that these actions will tend to effectuate the declared policy of the act.

The amendment is consistent with the marketing policy for 1984–85. The committee members were contacted by telephone on September 12, 1985, to consider the current and prospective conditions of supply and demand and recommended an increase in the quantity of Valencia oranges that may be handled during the specified week. The committee reports that demand for Valencia oranges continues to increase.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because there is insufficient time between the date when information upon which these regulations are based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the amendment and the regulation at an open meeting. To effectate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the amendment and regulation and its effective date.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—[AMENDED]

1. The authority citation for 7 CFR Part 908 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

2. Section 908.661 is added to read as follows:

§ 908.661 Valencia Orange Regulation 361.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period September 13, 1985, through September 19, 1985, are established as follows:

(a) District 1: 370,000 cartons;
(b) District 2: 630,000 cartons;
(c) District 3: Unlimited cartons.

Dated: September 13, 1985.

Thomas R. Clark,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–22341 Filed 9–17–85; 8:45 am]
BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 100

Statement of Organization

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Service organization statement to reflect the recent redelegation of the Hartford, Connecticut office from a district office to a suboffice. This change is made for more efficient management.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633–3291.

SUPPLEMENTARY INFORMATION: Service management has reviewed the jurisdictional responsibilities, workloads and types of work under the jurisdiction of the Hartford office. It has been determined that the responsibilities and variety of work do not justify the continued classification of Hartford as an independent district office. Hartford has become a suboffice under the jurisdiction of the Boston, Massachusetts district. This change will not affect the location of the office or the full range of I&NS services provided to the public.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary as this rule deals solely with agency management and organization.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant impact on a

substantial number of small entities. This order is not a rule as defined in section 1(a) of E.O. 12291 as it relates to agency organization and management.

List of Subjects in 8 CFR Part 100

Administrative practice and procedure, Authority delegations (government agencies), Organization and functions (government agencies).

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for PART 100 continues to read as follows:

Authority: Sec. 103 of the Immigration and Nationality Act (8 U.S.C. 1103)

2. In § 100.4, paragraph (a) is revised to read as follows:

§ 100.4 Field Service.

* * * * *

(a) *Regional offices.* The Eastern Regional Office, located in Burlington, Vermont, has jurisdiction over districts 2, 3, 4, 5, 7, 21, 22, 25, and 27 and Border Patrol sectors 1, 2, 3, and 4. The Southern Regional Office, located in Dallas, Texas, has jurisdiction over districts 6, 14, 15, 20, 26, 28, 38, and 40, and Border Patrol sectors 15, 16, 17, 18, 19, 20, and 21. The Northern Regional Office, located in Fort Snelling, Twin Cities, Minnesota has jurisdiction over districts 8, 9, 10, 11, 12, 19, 24, 29, 30, 31, and 32 and Border Patrol sectors 5, 6, 7, 8, and 9. The Western Regional Office, located in San Pedro, California, has jurisdiction of over districts 13, 16, 17, 18, and 39 and Border Patrol sectors 10, 11, 12, 13, and 14.

* * * * *

3. In § 100.4, paragraph (b)(2) is revised and paragraph (b)(23) is removed as follows:

§ 100.4 Field Service.

* * * * *

(b) * * *

(2) *Boston, Massachusetts.* The district office in Boston, Massachusetts has jurisdiction over the States of Connecticut, New Hampshire (except the port of entry at Pittsburg, New Hampshire), Massachusetts and Rhode Island.

* * * * *

(23) [Reserved]

* * * * *

4. In § 100.4, paragraph (c)(2), district 2, is revised and district 23 is removed as follows:

§ 100.4 Field Service.

* * * * *

(c) * * *

(2) * * *

District No. 2—Boston, Massachusetts

Class A

Boston, Mass. (the port of Boston includes, among others, the port facilities at Beverly, Braintree, Chelsa, Everett, Hingham, Lynn, Manchester, Marblehead, Milton, Quincy, Revere, Salem, Saugus, and Weymouth Mass.)
Gloucester, Mass.
Hartford, Connecticut. (the port of Hartford includes, among others, the port facilities at Bridgeport, Groton, New Haven, and New London, Connecticut.)
Providence, R.I., (the port of Providence includes, among others, the port facilities at Davisville, Melville, Newport, Portsmouth, Quonset Point, Saunderstown, Tiverton, and Warick, R.I.; and at Fall River, New Bedford, and Somerset, Mass.)

Class C

Newburyport, Mass.
Plymouth, Mass.
Provincetown, Mass.
Sandwich, Mass.
Woods Hole, Mass.
Portsmouth, N.H.

* * * * *

District No. 23—[Reserved]

* * * * *

Dated: September 13, 1985.

Thomas C. Ferguson,

Deputy Commissioner, Immigration and Naturalization Service.

[FR Doc. 85-22344 Filed 9-17-85; 8:45 am]
BILLING CODE 4410-10-M

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8 CFR Part 287

Field Officers; Powers and Duties

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations relating to the admissibility of official records of foreign public documents. In order to conform to existing requirements, the rule distinguishes between nonsignatories and signatories of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents.

DATE: September 18, 1985.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536, Telephone: (202) 633-3048

For Specific Information: William P. Joyce, Associate General Counsel, Immigration and Naturalization Service, 425 I Street NW., Washington, D.C. 20536, Telephone: (202) 633-3211

SUPPLEMENTARY INFORMATION: This final rule revises the provisions for authentication of official records in order to conform existing requirements to the exceptions noted for signatories of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents. The rule is divided into two parts. Section (a) implements the existing rule as to nonsignatories of the Convention. Section (b) enacts relevant operating provisions for signatories of the Convention. The Convention provisions simplify requirements for legalization of foreign documents.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this amendment relates to foreign affairs functions of the United States.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant impact on a substantial number of small entities. This order is not a rule within the definition of section 1(a) of E.O. 12291 because it relates to the foreign affairs functions of the U.S.

List of Subjects in 8 CFR Part 287

Administrative practice and procedure, Archives and records.

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

PART 287—FIELD OFFICERS; POWERS AND DUTIES

1. The authority citation for Part 287 continues to read as follows:

Authority: Sections 103 and 287 of the Immigration and Nationality Act, as amended, (8 U.S.C. 1103 and 1357).

2. Section 287.6 is revised to read as follows:

§ 287.6 Proof of official records.

(a) *Domestic.* In any proceeding under this chapter, an official record or entry therein, when admissible for any purpose, shall be evidenced by an official publication thereof, or by a copy attested by the official having legal custody of the record or by an authorized deputy.

(b) *Foreign: Countries not Signatories to Convention.* (1) In any proceeding under this chapter, an official record or entry therein, when admissible for any purpose, shall be evidenced by an official publication thereof, or by a copy

attested by an officer so authorized. This attested copy in turn may but need not be certified by any authorized foreign officer both as to the genuineness of the signature of the attesting officer and as to his/her official position. The signature and official position of this certifying foreign officer may then likewise be certified by any other foreign officer so authorized, thereby creating a chain of certificates.

(2) The attested copy, with the additional foreign certificates if any, must be certified by an officer in the Foreign Service of the United States, stationed in the foreign country where the record is kept. This officer must certify the genuineness of the signature and the official position either of (i) the attesting officer; or (ii) any foreign officer whose certification of genuineness of signature and official position relates directly to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation.

(c) *Foreign: Countries Signatory to Convention Abolishing the Requirement of Legalization for Foreign Public Documents.* (1) In any proceeding under this chapter, a public document or entry therein, when admissible for any purpose, may be evidenced by an official publication, or by a copy properly certified under the Convention. To be properly certified, the copy must be accompanied by a certificate in the form dictated by the Convention. This certificate must be signed by a foreign officer so authorized by the signatory country, and it must certify (i) the authenticity of the signature of the person signing the document; (ii) the capacity in which that person acted, and (iii) where appropriate, the identity of the seal or stamp which the document bears.

(2) No certification is needed from an officer in the Foreign Service of public documents.

(3) In accordance with the Convention, the following are deemed to be public documents:

(i) Documents emanating from an authority or an official connected with the courts of tribunals of the state, including those emanating from a public prosecutor, a clerk of a court or a process server;

(ii) Administrative documents;

(iii) Notarial acts; and

(iv) Official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date, and official and notarial authentication of signatures.

(4) In accordance with the Convention, the following are deemed not to be public documents, and thus are subject to the more stringent requirements of § 287.6(b) above:

(i) Documents executed by diplomatic or consular agents; and

(ii) Administrative documents dealing directly with commercial or customs operations.

Dated: September 13, 1985.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 85-22345 Filed 9-17-85; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 903

Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions

AGENCY: Department of Energy.

ACTION: Amendment to final regulations.

SUMMARY: Notice is given that the Deputy Secretary has adopted regulations establishing common public participation procedures for power and transmission rate adjustments and extensions for four Power Marketing Administrations (PMAs) of the Department of Energy: Alaska Power Administration, Southeastern Power Administration, Southwestern Power Administration, and Western Area Power Administration. The Bonneville Power Administration is not included because the Pacific-Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501 (December 5, 1980) (16 U.S.C. 839), establishes unique procedural requirements for Bonneville rate adjustments. The regulations govern the development of rate proposals by the administrators of the four PMAs and the confirmation and approval of rates on an interim basis, subject to refund, by the Deputy Secretary pursuant to the authority delegated by the Secretary of Energy in Delegation Order No. 0204-108 (48 FR 55664, December 14, 1983).

Proposed procedures were published in the **Federal Register** on January 2, 1985 appearing at 50 FR 206. Opportunity for written comments was provided and comments were received from 7 individuals and entities.

EFFECTIVE DATE: The regulations are effective September 18, 1985.

FOR FURTHER INFORMATION CONTACT:

Leon Jourolmon, Jr., Director of Fiscal Operations, Southeastern Power Administration, Samuel Elbert Building, Elberton, Georgia 30635 (404) 283-3261

Richard K. Pelz, Office of the General Counsel, Forrestal Building, U.S. Department of Energy, Washington, DC 20585 (202) 252-2918

SUPPLEMENTARY INFORMATION:

I. Introduction

The existing regulations in 10 CFR Part 903, Subpart A, set forth the procedures for public participation in the development of power and transmission rates for the Alaska, Southeastern, Southwestern, and Western Area Power Administrations. The Bonneville Power Administration is not included because section 7 of the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501 (December 5, 1980) (16 U.S.C. 839), establishes unique procedural requirements for Bonneville rate adjustments.

The existing regulations were published in the **Federal Register** on December 31, 1980 (44 FR 86983). They supplement Delegation Order No. 0204-33, which became effective January 1, 1979. That delegation order, among other things, authorized Assistant Secretary for Conservation and Renewable Energy (originally the Assistant Secretary for Resource Applications) to develop power and transmission rates, acting by and through the Administrators of the PMAs, and to confirm, approve and place such rates into effect on an interim basis. The Federal Energy Regulatory Commission (FERC) was given the authority to confirm and approve such rates on a final basis or to disapprove them.

Delegation Order No. 0204-108, which became effective on December 14, 1983 (48 FR 55664), replaced Delegation Order No. 0204-33. Among other changes the new delegation order gave the authority to confirm and approve rates on an interim basis to the Deputy Secretary rather than the Assistant Secretary; provided that rates would be developed by the Administrators; authorized the Administrators to submit rates to the FERC for confirmation and approval on a final basis without prior confirmation and approval on an interim basis; gave the Administrators the authority to put rates for short-term sales into effect on a final basis; and required a certification by the Administrator that the rate is consistent with applicable law and is the lowest possible rate to customers consistent with sound business principles. The revisions to Part 903 incorporate these changes.

The regulations also make several changes, based on four years of

experience with the existing procedures, primarily for the purpose of simplifying the regulations and providing more flexibility in their application. The following are the principal changes: Paragraph (c) has been added to both §§ 903.15 and 903.16 authorizing the Administrator to dispense with public information forums and public comment forums if he or she determines that there is no interest in holding them. A provision for informal public meetings for minor rate adjustments has been added. Rates for short term sales are exempted from the regulations at the discretion of the Administrator. The defined terms "Minor new service," "New service," "Revised Proposed Rates" and "Proposed Substitute Rates" have been deleted. The definition of "Rate" has been revised to delete the reference to surcharges and discounts. A sentence has been added explaining that FERC confirmation of a higher Substitute Rate on a final basis constitutes final confirmation of the lower Provisional Rate during the interim period that it was in effect. The provisions relating to refunds have been simplified. The authority of the Deputy Secretary to extend rates on a temporary basis pending further proceedings has been recognized.

A draft of the proposed regulations was published in the **Federal Register** of January 2, 1985 (50 FR 206). Written comments were invited to be submitted by March 4, 1985. In response to this opportunity, written comments were received from 7 individuals or groups, a list of which is included in the notice.

These procedures shall become effective September 18, 1985.

II. Major Issues

1. Reduction in comment period from 90 days to 45 days on major rate adjustments (§ 903.14(a))

Four commenters objected to the reduction in the comment period on major rate adjustments from 90 days to 45 days. They stated that due process requires that sufficient time be allowed to make meaningful comment.

After further consideration the 90-day provision of the previous procedures has been retained.

2. Elimination of requirement to have a comment period on minor rate adjustments (§ 903.14(a))

Three commenters objected to the elimination of the 30-day comment period for a minor rate adjustment. It is thought that even though a minor rate adjustment may have little economic impact for the PMA, it might have significant impact in the view of a customer.

After further consideration the 30-day provision of the previous procedures has been retained.

3. Elimination of public informtion and comment forums at the discretion of the Administrator (§ 903.15(c) and 903.16(c))

Two commenters objected to the elmination of the requirement to have a public information and public comment forum if the Administrator determines that there is no significant interest in holding one. One commenter states that the potential loss of these forums could significantly hurt the interests of the customers. One other commenter did not object to the elimination of the forums, but suggested that the public forum needed to be scheduled and noticed, and may be cancelled if no person indicates in writing by a prescribed date an intention to appear at such public forum.

After due consideration, the suggestion to schedule public forums suject to cancellation if no person indicates in writing by a prescribed date, an intent to appear, has been adopted.

4. Elimination of "discounts and surcharges" in the definition of a rate (§903.2(1))

One commenter objects to the elimination of "discounts and surcharges" in the definition of a rate. The commenter states that it creates a wide-open loophole in PMA determination of power and transmission rates.

Although "discounts and surcharges" have been deleted from the definition of rates, the definition of rates does not specifically exclude "discounts and surcharges" as it does leasing fees, service facility charges, or other types of facility use charges. The reason is that it sometimes is appropriate to consider "discounts and surcharges" as rates or elements of rates which should be subject to public review and comment, and other times it is not necessary, or appropriate, that they be subjected to public review and comment. There are other terms which are commonly used in rates, or rate schedules, which are similarly neither automatically included or excluded from public review and comment. The elimination of "discounts and surcharges" in the definition of a rate does not create a wide open loophole as suggested because where discounts, surcharges, credits, addons, etc., are appropriately a part of the rate they will be included in the rate review process. Therefore, "discounts and surcharges" have been eliminated from the definition of a rate.

5. Allowing Administrator to make "other procedural changes" (§ 903.14)

One commenter objected to allowing the Administrator to make other procedural changes. The commenter stated that the Administrator could change the proposed rulemaking itself. The commenter recommended that the statement be appended by saying that the Administrator could make a procedural change "not inconsistent with these rules."

After reviewing the proposed change and evaluating the comment received, the language of the existing procedures, which had been shortened for simplification and not for the purpose of eliminating a showing of good cause, was reinstated.

6. Deputy Secretary setting the effective date of a provisional rate (§ 903.21(b))

One commenter objected to allowing the Deputy Secretary to set an effective date that was retroactive. The commenter recommended that the effective date be prospective only.

After evaluating the comment received, the language of the existing procedures was reinstated, amended as follows: replace "Assistant Secretary" with "Deputy Secretary." The intention was simplification, not confusion, of the process.

7. Applicability of procedures to rates for short-term sales (§ 903.1(c))

One commenter noted that the statement that these procedures are not applicable to short term sales of capacity, energy, or transmission is misleading because there are procedural requirements of the DOE Organization Act and the Administrative Procedure Act which do apply.

It is agreed that the provision of the Acts are applicable and the Administrator will comply with them. The misleading statement in § 903.1(c) has been amended for clarification.

8. Applicability of procedures to substitute rates (§ 903.22(c))

One commenter stated that not providing an opportunity to make comments regarding substitute rates, which could be major rate adjustments, if not fair to the consumer.

Substitute rates are prepared in response to the Federal Energy Regulatory Commission (FERC) action. If a customer or interested party is not in agreement with FERC, then any comments or any action should be directed to FERC, which customarily

provides the opportunity for comment. This is the same recourse available to the PMA. The provision of an opportunity to comment by the Administrator remains discretionary, as in the language of the existing procedures.

Entities who commented—Listed below are the parties that submitted comments in response to the proposed procedures published in the **Federal Register** on January 2, 1985 (50 FR 206).

1. American Public Power Association (APPA).
2. Northeast Texas Electric Cooperative, Inc. and Tex-La Electric Cooperative of Texas, Inc.
3. Western Area Power Administration.
4. Arizona Public Service Company.
5. Southeastern Power Resources Committee.
6. Sacramento Municipal Utility District.
7. DOE, Albuquerque Operations Office.

Executive Order 12291

Under the provisions of section 3 of Executive Order 12291, dated February 17, 1981, a Regulatory Impact Analysis must be made prior to the publication of a major rule. The proposed revision of the regulations are of technical nature and simplify procedural requirements applicable to the development of rates. They are considered to be non-major rules within the meaning of the Executive Order. Regulations relating to the sale of electrical power by the various power marketing administrations have been exempted by the Office of Management and Budget (OMB) from prepromulgation review by that agency. Accordingly, no clearance of these proposed regulations by OMB is required.

Regulatory Flexibility Act

Pursuant to sections 601 and 603 of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) each agency when required to publish a general notice of proposed rulemaking for any proposed rule shall prepare for public comment an initial Regulatory Flexibility Analysis to describe the impact of the proposed rule on small entities. Under section 601(2) of this Act, "rates," "prices" or "practices," "relating to rates and prices," as used in this Act, are not considered rules for purposes of the Act. The proposed regulations established revised procedures and practices for the development of rates at which power is sold by the power marketing administrations. It follows that the regulations are exempt from the Act. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501–3520 (1982)) requires that certain information collection requirements be approved by the Office of Management and Budget before information is demanded of the public. OMB has issued a final rule controlling Paperwork Burdens on the Public (48 FR 13666, March 31, 1983). Ample opportunity is provided in the proposed rules for the interested public to participate with the power marketing administrations in the development of rates. Nevertheless, this is at their sole election. There is no requirement that members of the public participating in the development of rates supply information about themselves to the Government. It follows that the proposed regulations are exempt from the Paperwork Reduction Act.

List of Subjects in 10 CFR Part 903

Electric power rates.

In view of the foregoing, the Department of Energy hereby revises Part 903 to Title 10, Code of Federal Regulations entitled "Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions" as set forth below:

Issued in Washington, DC, September 4, 1984.

Danny J. Boggs,

Deputy Secretary.

10 CFR Part 903 is revised to read as follows:

PART 903—POWER AND TRANSMISSION RATES

Subpart A—Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions for the Alaska, Southeastern, Southwestern, and Western Area Power Administrations

Sec.

903.1 Purpose and scope; application.
903.2 Definitions.
903.11 Advance announcement of rate adjustment.
903.13 Notice of proposed rates.
903.14 Consultation and comment period.
903.15 Public information forums.
903.16 Public comment forums.
903.17 Informal public meetings for minor rate adjustments.
903.18 Revision of proposed rates.
903.21 Completion of rate development; provisional rates.
903.22 Final rate approval.
903.23 Rate extensions.

Authority: Secs. 301(b), 302(a), and 644 of Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7101 *et seq.*); sec. 5 of the Flood Control Act of 1944 (16 U.S.C. 825s); the Reclamation Act of 1902 (43 U.S.C. 372 *et seq.*), as amended and supplemented by subsequent enactments, particularly sec. 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and the Acts specifically applicable to individual projects or power systems.

Subpart A—Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions for the Alaska, Southeastern, Southwestern, and Western Area Power Administrations

§ 903.1 Propose and scope; application.

(a) Except as otherwise provided herein, these regulations establish procedures for the development of power and transmission rates by the Administrators of the Alaska, Southeastern, Southwestern, and Western Area Power Administrations; for the providing of opportunities for interested members of the public to participate in the development of such rates; for the confirmation, approval, and placement in effect on an interim basis by the Deputy Secretary of the Department of Energy of such rates; and for the submission of such rates to the Federal Energy Regulatory Commission with or without prior interim approval. These regulations supplement Delegation Order No. 0204–108 of the Secretary of Energy, which was published in the **Federal Register** and became effective on December 14, 1983 (48 FR 55664), with respect to the activities of the Deputy Secretary and the Administrators.

(b) These procedures shall apply to all power and transmission rate adjustment proceedings for the Power Marketing Administrations (PMAs) which are commenced after these regulations become effective or were in process on the effective date of these regulations, but for which the FERC had not issued any substantive orders on or before December 14, 1983. These procedures supersede "Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions for the Alaska, Southeastern, Southwestern, and Western Area Power Administrations" published in 45 FR 86983 (December 31, 1980) and amended at 46 FR 6864 (January 22, 1981) and 46 FR 25427 (May 7, 1981).

(c) Except to the extent deemed appropriate by the Administrator in accordance with applicable law, these procedures do not apply to rates for short term sales of capacity, energy, or transmission service.

§ 903.2 Definitions.

As used herein—

(a) "Administrator" means the Administrator of the PMA whose rate is involved in the rate adjustment, or anyone acting in such capacity.

(b) "Department" means the Department of Energy, including the PMAs but excluding the Federal Energy Regulatory Commission.

(c) "Deputy Secretary" means the Deputy Secretary of the Department of Energy, or anyone acting in such capacity.

(d) "FERC" means the Federal Energy Regulatory Commission.

(e) "Major rate adjustment" means a rate adjustment other than a minor rate adjustment.

(f) "Minor rate adjustment" means a rate adjustment which (1) will produce less than 1 percent change in the annual revenues of the power system or (2) is for a power system which has either annual sales normally less than 100 million kilowatt hours or an installed capacity of less than 20,000 kilowatts.

(g) "Notice" means the statement which informs customers and the general public of Proposed Rates or proposed rate extensions, opportunities for consultation and comment, and public forums. The Notice shall be by and effective on the date of publication in the **Federal Register**. Whenever a time period is provided, the date of publication in the **Federal Register** shall determine the commencement of the time period, unless otherwise provided in the Notice. The Notice shall include the name, address, and telephone number of the person to contact if participation or further information is sought.

(h) "Power Marketing Administration" or "PMA" means the Alaska Power Administration, Southeastern Power Administration, Southwestern Power Administration, or Western Area Power Administration.

(i) "Power system" means a powerplant or a group of powerplants and related facilities, including transmission facilities, or a transmission system, that the PMA treats as one unit for the purposes of establishing rates and demonstrating repayment.

(j) "Proposed Rate" means a rate revision or a rate for a new service which is under consideration by the Department on which public comment is invited.

(k) "Provisional Rate" means a rate which has been confirmed, approved, and placed in effect on an interim basis by the Deputy Secretary.

(l) "Rate" means the monetary charge or the formula for computing such a charge for any electric service provided by the PMA, including but not limited to charges for capacity (or demand), energy, or transmission service; however, it does not include leasing fees, service facility charges, or other types of facility use charges. A rate may be set forth in a rate schedule or in a contract.

(m) "Rate adjustment" means a change in an existing rate or rates, or the establishment of a rate or rates for a new service. It does not include a change in rate schedule provisions or in contract terms, other than charges in the price per unit of service, nor does it include changes in the monetary change pursuant to a formula stated in a rate schedule or a contract.

(n) "Rate schedule" means a document identified as a "rate schedule," "schedule of rates," or "schedule rate" which designates the rate or rates applicable to a class of service specified therein and may contain other terms and conditions relating to the service.

(o) "Short term sales" means sales that last for no longer than one year.

(p) "Substitute Rate" means a rate which has been developed in place of the rate that was disapproved by the FERC.

§ 903.11 Advance announcement of rate adjustment.

The Administrator may announce that the development of rates for a new service or revised rates for an existing service is under consideration. The announcement shall contain pertinent information relevant to the rate adjustment. The announcement may be through direct contact with customers, at public meetings, by press release, by newspaper advertisement, and/or by **Federal Register** publication. Written comments relevant to rate policy and design and to the rate adjustment process may be submitted by interested parties in response to the announcement. Any comments received shall be considered in the development of Proposed Rates.

§ 903.13 Notice of proposed rates.

(a) The Administrator shall give Notice tht Proposed Rates have been prepared and are under consideration. The Notice shall include:

(1) The Proposed Rates;

(2) An explanation of the need for and derivation of the Proposed Rates;

(3) The locations at which data, studies, reports, or other documents used in developing the Proposed Rates are available for inspection and/or copying;

(4) The dates, times, and locations of any initially scheduled public forums; and

(5) Address to which written comments relative to the Proposed Rates and requests to be informed of FERC actions concerning the rates may be submitted.

(b) Upon request, customers of the power system and other interested persons will be provided with copies of the principal documents used in developing the Proposed Rates.

§ 903.14 Consultation and comment period.

All interested persons will have the opportunity to consult with and obtain information from the PMA, to examine backup data, and to make suggestions for modification of the Proposed Rates for a period ending (a) 90 days in the case of major rate adjustments, or 30 days in the case of minor rate adjustments, after the Notice of Proposed Rates is published in the **Federal Register**, except that such periods may be shortened for good cause shown; (b) 15 days after any answer which may be provided pursuant to § 903.15(b) hereof; (c) 15 days after the close of the last public forum; or (d) such other time as the Administrator may designate; whichever is later. At anytime during this period, interested persons may submit written comments to the PMA regarding the Proposed Rates. The Administrator may also provide additional time for the submission of written rebuttal comments. All written comments shall be available at a designated location for inspection, and copies also will be furnished on request for which the Administrator may assess a fee. Prior to the action described in § 903.21, the Administrator may, by appropriate announcement postpone any procedural date or make other procedural changes for good cause shown at the request of any party or on the Administrator's own motion. The Administrator shall maintain, and distribute on request, a list of interested persons.

§ 903.15 Public information forums.

(a) One or more public information forums shall be held for major rate adjustments, except as otherwise provided in paragraph (c) of this section, and may be held for minor adjustments, to explain, and to answer questions concerning, the Proposed Rates and the basis of and justification for proposing such rates. The number, dates, and locations of such forums will be determined by the Administrator in accordance with the anticipated or demonstrated interest in the Proposed Rates. Notice shall be given in advance of such forums. A public information

forum may be combined with a public comment forum held in accordance with § 903.16.

(b) The Administrator shall appoint a forum chairperson. Questions raised at the forum concerning the Proposed Rates and the studies shall be answered by PMA representatives at the forum, at a subsequent forum, or in writing at least 15 days before the end of the consultation and comment period. However, questions that involve voluminous data contained in the PMA records may be answered by providing an opprotunity for consultation and for a review of the records at the PMA offices. As a minimum, the proceedings of the forum held at the principal location shall be transcribed. Copies of all documents introduced, and of questions and written answers shall be available at a designated location for inspection and copies will be furnished by the Administrator on request, for which a fee may be assessed. Copies of the transcript may be obtained from the transcribing service.

(c) No public information forum need be held for major rate adjustments if, after the Administrator has given Notice of a scheduled forum, no person indicates in writing by a prescribed date an intent to appear at such public forum.

§ 903.16 Public comment forums.

(a) One or more public comment forums shall be held for major rate adjustments, except as otherwise provided in paragraph (c) of this section, and may be held for minor rate adjustments, to provide interested persons an opportunity for oral presentation of views, data, and arguments regarding the Proposed Rates. The number, dates, and locations of such forums will be determined by the Administrator in accordance with the anticipated or demonstrated interest in the Proposed Rates. Notice shall be given at least 30 days in advance of the first public comment forum at each location and shall include the purpose, date, time, place, and other information relative to the forum, as well as the locations where pertinent documents are available for examination and/or copying.

(b) The Administrator shall designate a forum chairperson. At the forum, PMA representatives may question those persons making oral statements and comments. The chairperson shall have discretion to establish the sequence of, and the time limits for, oral presentations and to determine if the comments are relevant and noncumulative. Forum proceedings shall be transcribed. Copies of all documents introduced shall be available at a designated location for inspection, and copies shall be furnished on request for which the Administrator may assess a fee. Copies of the transcript may be obtained from the transcribing service.

(c) No public comment forum need be held for major rate adjustments if, after the Administrator has given notice of a scheduled forum, no person indicates in writing by a prescribed date an intent to appear at such public forum.

§ 903.17 Informal public meetings for minor rate adjustments.

In lieu of public information or comment forums in conjunction with a minor rate adjustment, informal public meetings may be held if deemed appropriate by the Administrator. Such informal meetings will not require a Notice or a transcription.

§ 903.18 Revision of proposed rates.

During or after the consultation and comment period and review of the oral and written comments on the Proposed Rates, the Administrator may revise the Proposed Rates. If the Administrator determines that further public comment should be invited, the Administrator shall afford interested persons an appropriate period to submit further written comments to the PMA regarding the revised Proposed Rates. The Administrator may convene one or more additional public information and/or public comment forums. The Administrator shall give Notice of any such additional forums.

§ 903.21 Completion of rate development; provisional rates.

(a) Following completion of the consultation and comment period and review of any oral and written comments on the Proposed Rates, the Administrator may: (1) Withdraw the proposal; (2) develop rates which in the Administrator's and the Deputy Secretary's judgment should be confirmed, approved, and placed into effect on an interim basis (Provisional Rates); or (3) develop rates which in the Administrator's judgment should be confirmed, approved, and placed into effect by the FERC on a final basis without being placed into effect on an interim basis. A statement shall be prepared and made available to the public setting forth the principal factors on which the Deputy Secretary's or the Administrator's decision was based. The statement shall include an explanation responding to the major comments, criticisms, and alternatives offered during the comment period. The Administrator shall certify that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles. The rates shall be submitted promptly to the FERC for confirmation and approval on a final basis.

(b) The Deputy Secretary shall set the effective date for Provisional Rates. The effective date shall be at least 30 days after the Deputy Secretary's decision except that the effective date may be sooner when appropriate to meet a contract deadline, to avoid financial difficulties, to provide a rate for a new service, or to make a minor rate adjustment.

(c) The effective date may be adjusted by the Administrator to coincide with the beginning of the next billing period following the effective date set by the Deputy Secretary for the Provisional Rates.

(d) Provisional Rates shall remain in effect on an interim basis until: (1) They are confirmed and approved on a final basis by the FERC, (2) they are disapproved and the rates last previously confirmed and approved on a final basis become effective, (3) they are disapproved and higher Substitute Rates are confirmed and approved on a final basis and placed in effect by the FERC, (4) they are disapproved and lower Substitute Rates are confirmed and approved on a final basis by the FERC, or (5) they are superseded by other Provisional Rates placed in effect by the Deputy Secretary, whichever occurs first.

§ 903.22 Final rate approval.

(a) Any rate submitted to the FERC for confirmation and approval on a final basis shall be accompanied with such supporting data, studies, and documents as the FERC may require, and also with the transcripts of forums, written answers to questions, written comments, the Administrator's certification, and the statement of principal factors leading to the decision. The FERC shall also be furnished a listing of those customers and other participants in the rate proceeding who have requested they be informed of FERC action concerning the rates.

(b) If the FERC confirms and approves Provisional Rates on a final basis, such confirmation and approval shall be effective as of the date such rates were placed in effect by the Deputy Secretary, as such date may have been adjusted by the Administrator. If the FERC confirms and approves on a final basis rates submitted by the Administrator without

interim approval, such confirmation and approval shall be effective on a date set by the FERC.

(c) If the FERC disapproves Provisional Rates or other submitted rates, the Administrator shall develop Substitute Rates which take into consideration the reasons given by the FERC for its disapproval. If, in the Administrator's judgment, public comment should be invited upon proposed Substitute Rates, the Administrator may provide for a public consultation and comment period before submitting the Substitute Rates. Whether or not such public consultation and comment periods are provided, the Administrator will, upon request, provide customers of the power system and other interested persons with copies of the principal documents used in the development of the Substitute Rates. Within 120 days of the date of FERC disapproval of submitted rates, including Substitute Rates, or such additional time periods as the FERC may provide, the Administrator will submit the Substitute Rates to the FERC. A statement explaining the Administrator's decision shall accompany the submission.

(d) A Provisional Rate that is disapproved by the FERC shall remain in effect until higher or lower rates are confirmed and approved by the FERC on a final basis or are superseded by other rates placed into effect by the Deputy Secretary on an interim basis: Provided, That if the Administrator does not file a Substitute Rate within 120 days of the disapproval or such greater time as the FERC may provide, and if the rate has been disapproved because the FERC determined that it would result in total revenues in excess of those required by law, the rate last previously confirmed and approved on a final basis will become effective on a date and for a period determined by the FERC and revenues collected in excess of such rate during such period will be refunded in accordance with paragraph (g) of this section.

(e) If a Substitute Rate confirmed and approved on a final basis by the FERC is higher than the provisional rate which was disapproved, the Substitute Rate shall become effective on a subsequent date set by the FERC, unless a subsequent Provisional Rate even higher than the Substitute Rate has been put into effect. FERC confirmation and approval of the higher Substitute Rate shall constitute final confirmation and approval of the lower disapproved Provisional Rate during the interim period that it was in effect.

(f) If a Substitute Rate confirmed and approved by the FERC on a final basis is lower than the disapproved provisional rate, such lower rate shall be effective as of the date the higher disapproved rate was placed in effect.

(g) Any overpayment shall be refunded with interest unless the FERC determines that the administrative cost of a refund would exceed the amount to be refunded, in which case no refund will be required. The interest rate applicable to any refund will be determined by the FERC.

(h) A rate confirmed and approved by the FERC on a final basis shall remain in effect for such period or periods as the FERC may provide or until a different rate is confirmed, approved and placed in effect on an interim or final basis: *Provided,* That the Deputy Secretary may extend a rate on an interim basis beyond the period specified by the FERC.

§ 903.23 Rate extensions.

(a) The following regulations shall apply to the extension of rates which were previously confirmed and approved by the FERC or the Federal Power Commission, or established by the Secretary of the Interior, and for which no adjustment is comtemplated:

(1) The Administrator shall give Notice of the proposed extension at least 30 days before the expiration of the prior confirmation and approval, except that such period may be shortened for good cause shown.

(2) The Administrator may allow for consultation and comment, as provided in these procedures, for such period as the Administrator may provide. One or more public information and comment forums may be held, as provided in these procedures, at such times and locations and with such advance Notice as the Administrator may provide.

(3) Following notice of the proposed extension and the conclusion of any consultation and comment period, the Deputy Secretary may extend the rates on an interim basis.

(b) Provisional Rates and other existing rates may be extended on a temporary basis by the Deputy Secretary without advance notice or comment pending further action pursuant to these regulations or by the FERC. The Deputy Secretary shall publish notice in the **Federal Register** of such extension and shall promptly advise the FERC of the extension.

[FR Doc. 85-22365 Filed 9-17-85; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-AWP-6]

Revocation and Establishment of Compulsory Reporting Points, Hawaii; Correction

AGENCY: Federal Aviation (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action revokes the SEIZE, SQUAT and VILET Compulsory Reporting Points west and southwest of the state of Hawaii. Revocation of these reporting points was inadvertently overlooked in Airspace Docket 85-AWP-6 which revoked and established several compulsory reporting points due to relocation of the Honolulu, HI, air navigation facility.

EFFECTIVE DATE: 0901 GMT, September 26, 1985.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 85-18286 was published on August 1, 1985. In that document, the FAA published an amendment to FAR Part 71 that revoked seven and established seven other compulsory reporting points in the state of Hawaii (50 FR 31157). The locations of three of the new reporting points are such that they are approximate to the former SEIZE, SQUAT and VILET Reporting Points. Inadvertently, no action was taken to revoke the replaced reporting points. This action corrects that oversight.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a

significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Compulsory reporting points.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 85–18286, as published in the **Federal Register** on August 1, 1985, (50 FR 31157) is corrected by amending § 71.215 as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 2348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.215 [Amended]

2. Section 71.215 is amended as follows:

SEIZE [Revoked]
SQUAT [Revoked]
VILET [Revoked]

Issued in Washington, D.C., on September 11, 1985.

Daniel Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85–22284 Filed 9–17–85; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 71 and 75

[Airspace Docket No. 85–AWA–22]

Realignment of VOR Federal Airways and Jet Routes—Oklahoma

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action realigns both the low altitude Federal Airway and Jet Route structures associated with the Oklahoma City, OK, (OKC) very high frequency omni-directional radio range and tactical air navigation aid (VORTAC). The Oklahoma City VORTAC is being relocated to an on-airport site at the Will Rogers World Airport and renamed the Will Rogers (IRW) VORTAC.

EFFECTIVE DATE: 0901 G.m.t., November 21, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–8626.

SUPPLEMENTARY INFORMATION:

History

On June 5, 1985, the FAA proposed to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to realign both the low altitude VOR Federal Airways and Jet Routes associated with the Oklahoma City, OK, (OKC) VORTAC. The Oklahoma City VORTAC is being relocated to an on-airport site at the Will Rogers World Airport (50 FR 13450). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. The Oklahoma City (OKC) VORTAC is also being renamed to the Will Rogers (IRW) VORTAC. Except for the VORTAC renaming action and editorial changes, these amendments are the same as those proposed in the notice. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations realign both the low altitude VOR Federal Airways and Jet Routes associated with the relocation of the Oklahoma City, OK, (OKC) VORTAC to an on-airport site (lat. 35°21'31" N., long. 97°36'32" W.) at the Will Rogers World Airport and renames OKC to Will Rogers (IRW) VORTAC. Segments of V–14, V–17, V–77, V–163, V–210, V–272, V–354, V–358, V–436, V–440, V–507, J–20 and J–21 are amended due to the OKC to IRW VORTAC relocation. Additionally, although the legal descriptions of the following Jet Routes are not changed because they remain direct routes, the charted depictions of J–6, J–14, J–23, J–74, J–78 and J–98 are altered in conjunction with the OKC to IRW VORTAC relocation.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR Federal airways and jet routes.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as amended (50 FR 14089, 14091 and 15540) are further amended as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V–14 [Amended]

By removing the words "Tulsa, OK;" and substituting the words "INT Oklahoma City 052° and Tulsa, OK, 246° radials; Tulsa;"

V–17 [Amended]

By removing the words "INT Duncan 011° and Oklahoma City, OK, 180° radials; Oklahoma City;" and substituting the words "Oklahoma City, OK;"

V–77 [Amended]

By removing the words "Oklahoma City, OK, 202°" and substituting the words "Oklahoma City, OK, 216°"

V–163 [Amended]

By removing the words "INT Ardmore 342° and Oklahoma City, OK, 154° radials; to Oklahoma City." and substituting the words "to Oklahoma City, OK."

V–210 [Amended]

By removing the words "INT Liberal 137° and Oklahoma City, OK, 282° radials; Oklahoma City; INT Oklahoma City 109° and Okmulgee, OK, 241° radials;" and substituting the words "INT Liberal 137° and Oklahoma City, OK, 284° radials; Oklahoma City; INT Oklahoma City 113° and Okmulgee, OK, 238° radials;"

V–272 [Amended]

By removing the words "to McAlester, OK; Fort Smith, AR." and substituting the words

"INT Oklahoma City 113° and McAlester, OK, 286° radials; McAlester; to Fort Smith, AR."

V–354 [Amended]

By removing the words "via INT Oklahoma City 045° and Pioneer, OK, 186° radials;" and substituting the words "via INT Oklahoma City 030° and Pioneer, OK, 179° radials;"

V–358 [Amended]

By removing the words "INT Ardmore 327° and Oklahoma City, OK, 180° radials;" and substituting the words "INT Ardmore 327° and Oklahoma City, OK, 195° radials;"

V–436 [Revised]

From Hobart, OK, via INT Hobart 085° and Oklahoma City, OK, 216° radials; Oklahoma City; INT Oklahoma City 068° and Tulsa, OK, 230° radials; to Tulsa.

V–449 [Amended]

By removing the words "INT Sayre 101° and Oklahoma City, OK, 242° radials;" and substituting the words "INT Sayre 104° and Oklahoma City, OK, 248° radials;"

V–507 [Amended]

By removing the words "INT Oklahoma City 282° and Gage, OK, 152° radials;" and substituting the words "INT Oklahoma City 284° and Gage, OK, 152° radials;"

PART 75—[AMENDED]

3. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

4. Section 75.100 is amended as follows:

J–29 [Amended]

By removing the words "INT Liberal 137° and Oklahoma City, OK, 282° radials;" and substituting the words "INT Liberal 137° and Oklahoma City, OK, 284° radials;"

J–21 [Amended]

By removing the words "INT Dallas-Fort Worth 355° and Oklahoma City, OK, 158° radials; Oklahoma City; Wichita, KS;" and substituting the words "INT Dallas-Fort Worth 355° and Oklahoma City, OK, 162° radials; Oklahoma City; Pioneer, OK; Wichita, KS;"

Issued in Washington, D.C., on September 11, 1985.

Daniel Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85–22282 Filed 9–17–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

[T.D. 85–158]

Country of Origin Marking of Pistachio Nuts

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Recission of rulings.

SUMMARY: Customs previously ruled that imported pistachio nuts which are processed by roasting, need not subsequently be marked as products of the foreign country where grown, but become a product of the country where the roasting is performed.

Customs has received a request to rescind these rulings because the roasting process does not substantially transform pistachio nuts which have otherwise attained the character in which they will be sold to consumers prior to importation. Specifically, it has been called to Customs attention that pistachio nuts which are grown in Iran are then roasted elsewhere than in Iran. These roasted pistachio nuts are then sold without any indication that the nuts are products of Iran, and under brand names which imply that they are products of Califorina. Customs has decided that the roasting; roasting and salting; or roasting, salting, and coloring; of pistachio nuts, without more, does not result in a substantial transformation. Accordingly, the previous rulings are being rescinded and the containers of such products must be marked to indicate the country of origin of the raw products.

EFFECTIVE DATE: October 18, 1985.

FOR FURTHER INFORMATION CONTACT: Lorrie R. Rodbart, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, (202–566–5765).

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that all articles of foreign origin, or their containers, imported into the U.S. shall be marked in a conspicuous place with the English name of their country of origin to indicate to an ultimate purchaser in the U.S., the country of origin of the article. This statute was enacted to make consumers aware of the country of origin of articles so that they can choose between buying domestic or foreign articles. Part 134, Customs Regulations (19 CFR Part 134), sets forth the country of origin marking requirements of 19 U.S.C. 1304. Section 134.1(b), Customs Regulations (19 CFR 134.1(b)), defines "country of origin" as "the country of manufacture, production, or growth of any article of foreign origin entering the United States." An article which is grown or manufactured in a particular country and processed prior to its sale to a retail purchaser is considered to be the product of the country in which it was grown or manufactured unless the processing substantially transforms the article. A substantial transformation has traditionally been defined as a change which results in a new and different article of commerce with a new name, character, or use. Although trade usage and opinion are important in making this determination, it is Customs' position that a substantial transformation will not occur, with a resultant change in country of origin, if the process is merely a minor one which leaves the identity of the article intact. To hold otherwise would thwart the purposes for which country of origin determinations must be made, and would be inconsistent with recent court decisions and the purposes for which Congress enacted the marking statute.

Customs' previous rulings on the significance of the roasting process have been questioned by domestic producers. In ruling #724350, dated June 4, 1984, and ruling #726412, dated September 25, 1984, the issue before Customs was whether the process of roasting imported raw pistachio nuts substantially transformed these goods into a new and different article of commerce. Customs held that the roasting was a substantial transformation.

Customs has been requested to rescind these rulings on the basis that the roasting of these products does not result in a substantial transformation, both because it does not result in a new and different article of commerce with a new name, character, or use; and because roasting is not a substantial manufacturing or processing operation. Customs determined that a review of the above rulings was warranted and published a notice in the **Federal Register** on February 11, 1985 (50 FR 5629), soliciting public comments before any change was made.

Discussion of Comments

Sixty-six comments were received in response to the notice. The issues raised by the commenters are analyzed under the following six topics:

The Statute

Section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that, "every article of foreign origin (or its container, as provided in subsection (b) hereof) imported into the United States shall be marked . . . in such manner as to indicate to *an ultimate purchaser in the United States the English name of the country of origin of the article*" (emphasis added).

According to *United States v. Friedlaender & Co., Inc.*, 27 CCPA 297, 302, C.A.D. 104 (1940), the purpose of the statute is to "mark the goods so that at the time of purchase the ultimate purchaser may, knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will", cited in *Globemaster, Inc. v. United States*, 68 Cust. Ct. 77, 80, C.D. 4340, 340 F. Supp. 974, 976 (1972) and *United States v. Ury*, 106 F. 2d 28, 29, (2d Cir. 1939). In addition, as to imported products from competing foreign sources, it was recognized that particular foreign origin is relevant. This is based upon the general reputation for quality; the political and social conditions in the country, and the national origin of the particular consumer. See, generally, *United States v. Friedlaender & Co., Inc., supra.*

As stated in the notice of February 11, 1985 (50 FR 5629), the impetus for this solicitation of comments came from a group of domestic pistachio nut growers who are competing with foreign pistachios, primarily from Iran. The notice provided by a country of origin marking on a retail package is necessary to give a retail purchaser the information needed to make a choice between products of different countries.

The Need for Marking

The language of 19 U.S.C. 1304 makes it plain that imported merchandise must be marked, as much as the nature of the article permits, in a way which will reach the ultimate purchaser. If an imported product is substantially transformed, the person who transforms the article is the ultimate purchaser of the article. If the imported article is repacked after this substantial transformation, the container in which it is repacked and in which it is purchased by a retail purchaser does not have to bear a country of origin marking. The substantial transformation of an imported article ends its status as a product of that foreign country of origin for Customs purposes. This is permissible pursuant to 19 U.S.C. 1304 and judicial precedent such as *United States v. Gibson-Thomsen Co., Inc.*, 27 CCPA 267, C.A.D. 98 (1940) and *Midwood Industries, Inc. v. United States*, 64 Cust. Ct. 499, C.D. 4026, 315 F. Supp. 951 (1970), appeal dismissed, 57 CCPA 141 (1970).

A number of commenters have argued that Customs need not be concerned with country of origin marking on retail containers of imports for the following reasons:

1. Labeling is more appropriately dealt with by other governmental bodies such as the Food and Drug Administration (FDA) and the Federal Trade Commission (FTC) and by the use of other legal remedies such as private redress in section 43(a) of the Lanham Act (15 U.S.C. 1125(a)) and public remedies such as antidumping and countervailing duty provisions.

2. The cost and difficulty of keeping track of different imports from different countries which are combined before a retail product is made from these imports is substantial.

We do not agree that the legislative intent behind 19 U.S.C. 1304 is similar to that behind most of the other statutes cited. FTC requirements are directed toward providing information which the consumer should be aware of such as content and care labels. The antidumping provisions are directed toward preventing unfair economic competition in the international marketplace. None of these statutes is intended to give a purchaser notice of the country were a particular article was produced.

Thus, rather than reading these statutes as directed toward the same legislative concerns, Customs views each to be addressed to a separate and distinct legislative concern. However, FDA requirements are directed toward country of origin marking pursuant to 21 U.S.C. 16, 343. These requirements are in addition to those Customs enforces pursuant to 19 U.S.C. 1304.

Moreover, we do not agree with the suggestion that Customs is free to ignore the clear requirements of a statute. The efficacy of a statute and the wisdom of its enactment are proper concerns of the legislature. Once a statute is enacted, agencies of the Executive Branch are not free to repeal it administratively by refusing to enforce it, or by enforcing it only in those circumstances in which the outcome is believed to be desirable. Although Customs retains some limited discretion to interpret the language of the statute, we cannot go beyond the language to a question of whether to enforce or not enforce it.

The cost of compliance is noted by commenters as the third reason for non-enforcement. The statutory language allows limited exemptions from the marking requirement where the expense of marking is economically prohibitive. This subject is discussed below in more detail, in the section entitled "Problems of Compliance."

Scope of Proposal

The notice solicited comments concerning the processing of pistachio nuts.

One commenter contends that any marking of retail packages should await the receipt of enough information on the processing done to each product. We agree. The wording of the notice was designed to afford importers of a wide variety of agricultural goods an opportunity to provide information to enable us to decide whether various agricultural products are substantially transformed by the processes they undergo. The concept of substantial transformation is particularly fact oriented, and the facts in the record determine the ultimate decision.

Substantial Transformation

Judicial precedent, such as *United States v. Gibson-Thomsen Co., Inc., supra; Midwood Industries, Inc. v. United States, supra;* are most recently, *Uniroyal Inc. v. United States*, 3 CIT 220, 452 F. Supp. 1026 (1982), concern the importation of articles which are then "processed" in the U.S. The question involved in each case was, even though the imported article was processed after importation, did the imported article need to be marked under the statute.

To arrive at this conclusion, the courts in each case had to determine if an article produced as a result of this processing was a new and different article of commerce with a new name, character, or use. In making this determination, it is necessary to examine the changes wrought by the U.S. processing to determine whether U.S. processing is substantial, and creates a new and different article of commerce, or alternatively, is insignificant, and leaves the identity of the imported articles intact.

This distinction between a minor change and a change in the basic character of an article, has been incorporated in Part 134, Customs Regulations. Section 134.1(d)(1) provides, "If an imported article will be used in manufacture, the manufacturer may be the 'ultimate purchaser' if he subjects the imported article to a process which results in a substantial transformation of the article, ..." Section 134.1(d)(2) provides, "If the manufacturing process is merely a minor one which leaves the identity of the

imported articles intact, the consumer or user of the article, who obtains the article after the processing, will be regarded as the 'ultimate purchaser.' "

In determining whether an imported article has been subjected to substantial manufacturing or processing operations in the U.S. which transforms it into a new and different article of commerce, or only to insignificant processing which leaves the identity of the article intact, Customs will consider the following factors:

(1) The physical change in the article as a result of the manufacturing or processing operations in each foreign country or U.S. insular possession, and in the U.S.

(2) The time involved in the manufacturing or processing operations in each foreign country or U.S. insular possession, and in the U.S.

(3) The complexity of the manufacturing or processing operations in each foreign country or U.S. insular possession, and in the U.S.

(4) The level or degree of skill and/or technology required in the manufacturing or processing operations in each foreign country or U.S. insular possession, and in the U.S.

(5) The value added to the article in each foreign country or U.S. insular possession, compared to value added in the U.S.

These criteria are not exhaustive, and one or more criteria may be determinative.

Substantial Transformation Applied

We received several comments on pistachio nuts; some on behalf of domestic growers, others on behalf of importers. The comments on behalf of the domestic growers stress that the moisture in pistachio nuts is reduced from a range of 40 to 60 percent to a range of 4 to 6 percent before roasting. The "roasting" process dries the pistachio nuts further to a moisture content between 2 and 4 percent. This decrease in the moisture is accomplished by drying the pistachio nuts for 25 to 50 minutes in a belt dryer or rotary drum by a person who is unskilled or semiskilled, and this reduction in the moisture costs 2.5 to 3 cents per pound. The final, dried nuts are crisper and may be a different shade of green, but according to these comments, there is no substantial change in the taste or appearance of the nut. According to some producers, pistachio nuts are eaten by consumers both before and after the roasting. However, it should be noted that expert sources consulted by Customs indicated that there is no significant market for unroasted pistachio nuts, particularly for "snack" consumption. See, Woodruff, J.G., *Tree Nuts*, Second Edition, AVI Publishing Co. (1979) at page 598.

The comments for the importers stress that inshell (unshelled) raw pistachio nuts are shelled, screened and sorted, roasted, salted, and in most cases colored red with food color. The roasting of these nuts for 20 to 30 minutes brings the internal temperature of the nut to 280 degrees Fahrenheit, and substantially changes the chemical composition of the nut. It also destroys mold, spores, and bacteria. After roasting, the nuts are cooled and packaged. Once roasted, the nuts must be protected or else they will become rancid. The value added by roasting is over 100 percent.

The submissions on behalf of the domestic growers and importers do not present a substantially different description of the processing to which pistachio nuts are subjected. Rather, they conflict on the very basic issue of the significance of the changes to the physical and commercial character of the nuts which result from this processing. The domestic producers conclude that the pistachios are merely further dried, and the importers conclude that the heat applied to these nuts changes their fundamental character. Since the conclusions are contradictory, we believe it is appropriate to look to the sufficiency of the evidence presented.

The description of the roasting process by the importers concludes with the statement that this processing substantially changes the chemical composition of the nuts. This change is claimed to necessitate the protection of these nuts from the air. Two appendices were submitted, one for "dried" nuts, the other for "dry roasted" nuts, each of which contains lists of quantities for various components of the nuts. Some of the differences are striking; others do not appear to be of much consequence. For example, the changes in the amount of fiber, phosphorus, and sodium are minimal. The changes in the amount of water, protein, carbohydrates, iron, magnesium, ascorbic acid, and amino acids are substantial.

The submissions on behalf of the domestic growers characterize the application of heat to the pistachios as a drying rather than a substantial transformation. This characterization of the processing is based upon expert opinion by Professor Martin W. Miller of the University of California at Davis which includes a very complete description of the processing of the nuts and the results of such processing. This expert opinion provides the link between the recorded data and the conclusions as to changes in the physical and commercial character of the nuts. According to this expert, the pistachio nut, after roasting, is merely crisper. The nuts' taste remains the same, and if the color of the nut is changed at all, the change is not noticeable.

After reading all the submissions on this point, it is Customs view that the physical and commercial changes which occur in the pistachio nuts as a result of roasting are not significant, and that the identity and use of the pistachio nut remains intact. Authoritative sources consulted by Customs indicated no commercial uses for green pistachio nuts, and if such uses exist, they are apparently negligible. Roasting appears to be, like picking, sorting, and bagging, simply one of several processing steps to which all pistachio nuts are subjected, no one of which alters or limits the intended or potential commercial use. In view of this, we conclude that there has been no change in the commercial designation or identity, in the fundamental character, or commercial use of the article. So characterized, we believe that the pistachio nuts are not changed into a new and different article by virtue of roasting or other similar incidental processing. Thus, they are not substantially transformed.

Problems of Compliance

Many of the comments focus on the problems created by a conclusion that no substantial transformation of these imported goods has taken place. This conclusion requires that each container of pistachio nuts which, for example, contains pistachio nuts from a number of different countries, be marked with the name of each country from which the pistachio nuts originate. The concern expressed is that such a container would have to contain the names of a large number of countries.

The commenters suggest some options: (1) Standardize labels to include the English name of every country of origin from which the pistachio nuts originate and (2) print a number of different labels and keep track of the countries from which pistachio nuts in a particular container are packaged. The first option is criticized by these commenters because the labels might not accurately reflect the country of origin of the pistachio nuts except coincidentally. They point out that any container which does not include pistachio nuts from each country specified on the container will be incorrectly labelled. According to the commenters, the adoption of the second

option will necessitate an elaborate system of tracking the pistachio nuts from each country to determine in which particular container they have been placed. This, according to the comments, is an extremely difficult and costly process. Because the pistachio nuts are fungible, it is difficult to determine if the countries from which the contents of a specific container originate match the marking of the containers in which the pistachio nuts are packaged.

Customs is not convinced by the argument that country of origin marking on a container of pistachio nuts precludes the pistachio nut purchaser from purchasing from other countries. The economic and marketing factors that impel purchasers to buy from particular countries far outweigh any influence on these decisions that the cost of compliance with the marking law might have. Customs believes that in every instance the buyer must compare the economic advantages resulting from purchasing from a new source country with the cost of compliance with the country of origin marking law.

Customs has not required that an importer track the origins of each pistachio nut in a particular container. A listing on the container of the countries which provides the constituents of the blend at the time of packing is sufficient. We believe that such a rule of reason eliminates the necessity for tracking each individual pistachio nut while permitting compliance with the marking requirement with a minimum of interference.

Given the flexibility which Customs has allowed by permitting "shotgun" marking, we do not believe that any of the commenters has shown that compliance with the marking law would be excessively costly.

Action

Accordingly, this document rescinds ruling #724350, dated June 4, 1984 and ruling #726412, dated September 25, 1984. We do not view this to be a change in an "established and uniform practice" which entails the protections of section 315(d), Tariff Act of 1930 (19 U.S.C. 1315(d)). The roasting, or roasting and salting of pistachio nuts, without more, is not a substantial transformation of the raw pistachios into new and different articles of commerce. Therefore, the containers of pistachio nuts, which have been roasted; salted; or blended; or any combination of the three processes; must be marked to indicate the country of origin of the raw products in accordance with Part 134, Customs Regulations.

Certification Requirements

In many instances, an importer of these articles does not sell them directly to the ultimate purchaser i.e. the articles are repacked after their release from Customs custody and sent forward for further distribution. In view of this, Customs believes that to further ensure that an ultimate pruchaser in the U.S. is aware of the country of origin of these articles, importers must comply with the certification requirements of § 134.25, Customs Regulations (19 CFR 134.25), set forth in T.D. 83–155, published in the **Federal Register** on July 28, 1983 (48 FR 33860). Section 134.25 requires importers to certify to the district director having custody of the articles that: (a) If the importer does the repacking, the new container must be marked in accordance with applicable law and regulations; or (b) if the article is sold or transferred, the importer must notify the subsequent purchaser or repacker, in writing, at the time of sale or transfer, that any repacking of the article must conform to the marking requirements.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved September 4, 1985.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 85–22406 Filed 9–17–85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 84C–0098]

Poly(Hydroxyethyl Methacrylate)-Dye Copolymers; Listing of Color Additives for Coloring Contact Lenses

Correction

In FR Doc. 85–19672, beginning on page 33336, in the issue of Monday, August 19, 1985, make the following corrections:

1. On page 33337, second column, in the section headed **"IV. Conclusion"**, thirteenth line, "this" should read "the".

§ 73.3121 [Corrected]

2. On page 33338, first column, § 73.3121(a)(6), third line "((4,6,-dichloro" should read "((4,6-dichloro".

BILLING CODE 1505-01-M

21 CFR Part 178

[Docket No. 83F–0097]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Surface Lubricants Used in the Manufacture of Metallic Articles

Correction

In FR Doc. 85–21113, beginning on page 36872, in the issue of Tuesday, September 10, 1985, make the following corrections:

1. On page 36872:

a. In the second column, in the SUMMARY paragraph, twelfth line, "hydroxpoly" should read "hydroxypoly".

b. In the third column, first line, "C_8–C_{15}" should read "C_{12}–C_{15}".

2. On page 36874, first column, second complete paragraph, insert the following between the twelfth and thirteenth lines: "public disclosure before making the documents available for".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[FAP 5H5457/R794; FRL–2897–1]

Pesticide Tolerance for [(1R,3S)3[(1'RS, (1',2',2',2'-Tetrabromoethyl)]-2,2-Dimethylcyclopropane Carboxylic Acid (S)Alpha-Cyano-3-Phenoxybenzyl Ester]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a food additive regulation to permit the combined residues of the insecticide [(1*R*,3*S*)3[(1'*RS*) (1',2',2',2'-tetrabromoethyl)]-2,2-dimethylcyclopropane-carboxylic acid (*S*)-alpha-cyano-3-phenoxybenzyl ester] and its metabolites calculated as parent in cottonseed oil. This regulation to establish the maximum permissible level for residues of the insecticide in cottonseed oil was requested by American Hoechst Corp. acting as the registered U.S. Agent for Roussel-Uclaf of Paris, France.

EFFECTIVE DATE: Effective on September 18, 1985.

ADDRESS: Written objections, identified by the document control number [FAP 5H5457/R794], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Timothy A. Gardner, Product Manager (PM) 17, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557–2690.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of April 1, 1985 (50 FR 12868) which announced that American Hoechst Corporation, Rte. 202–206 North, Somerville, NJ 08876 had submitted food additive petition (FAP) 5H5457 proposing that 21 CFR Part 193 be amended by establishing a regulation permitting the combined residues of the insecticide [(1*R*,3*S*)3[(1'*RS*) (1',2',2',2'-tetrabromoethyl)]-2,2-dimethylcyclopropane-carboxylic acid (*S*)-alpha-cyano-3-phenoxybenzyl ester] and its metabolites (*S*)-alpha-cyano-3-phenoxybenzyl(1*R*,3*R*)-cis,trans-2,2-dimethyl-3-(2,2-dibromovinylcyclopropanecarboxylate calculated as parent in the food commodity cottonseed oil at 0.16 part per million (ppm). The tolerance level was subsequently increased to 0.20 ppm.

There were no comments received in response to this petition.

The data submitted in the petition and other relevant material have been evaluated. The toxicity and other relevant data pertaining to this insecticide are discussed and included in a related final rule document, [PP 4F2993/R793], establishing a tolerance in or on the raw agricultural commodity cottonseed appearing elsewhere in this issue of the Federal Register.

The insecticide is considered useful for the purpose for which the food additive regulation is sought and it is concluded that the insecticide may be safely used in accordance with the prescribed manner when such use is in accordance with the label and labeling registered pursuant to FIFRA as amended, (86 Stat. 973, 89 Stat. 973, 89 Stat. 751, U.S.C. 135(a) *et seq.*) Therefore, the food additive regulation is established as set forth below.

Any person adversely affected by this regulation may, within 30 days afer publication of this rule in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this rule from the OMB review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–602), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24945).

List of Subjects in 21 CFR Part 193

Food additives, Pesticides and pests.

Dated: September 6, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 21 CFR Part 193 is amended as follows:

PART 193—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 348.

2. Section 193.418 is added to read as follows:

§ 193.418 [(1R,3S)3[(1'RS)(1',2',2',2'-Tetrabromoethyl)]-2,2-dimethylcyclopropanecarboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester].

A regulation is established to permit the combined residues of the insecticide [(1*R*,3*S*)3[(1'*RS*)(1',2',2',2'-tetrabromoethyl)]-2,2-dimethylcyclopropanecarboxylic acid (*S*)-alpha-cyano-3-phenoxybenzyl ester] and its metabolites (*S*)-alpha-cyano-3-phenoxybenzyl(1*R*,3*R*)-cis,trans-2,2-dimethyl-3-(2,2-dibromovinyl-cyclopropanecarboxylate calculated as parent in or on the following food commodities:

Commodities	Parts per million
Cottonseed oil	0.20

[FR Doc. 85–22092 Filed 9–17–85; 8:45 am]

BILLING CODE 6560–50–M

21 CFR Part 561

[FAP 5H5466/R780; FRL–2898–3]

Pesticide Tolerance for Carbaryl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide carbaryl in or on the animal feed commodity pineapple bran. This regulation to establish a maximum permissible level for residues of carbaryl in or on pineapple bran was requested in a petition by the Union Carbide Agricultural Products Co., Inc.

EFFECTIVE DATE: Effective on September 18, 1985.

ADDRESS: Written objections, identified by the document control number [FAP 5H5466/R780], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of August 7, 1985 (50 FR 31916), which announced that Union Carbide Agricultural Products Co., Inc., PO Box 12014, Research Triangle Park, NC 27709, had submitted feed additive petition 5H5466 to EPA proposing the establishment of a tolerance for residues of the insecticide carbaryl (1-napthyl *N*-methyl carbamate) in or on the feed commodity pineapple bran at 20.0 parts per million (ppm).

There were no comments received in response to the notice of filing.

A tolerance of 2.0 was recently established for carbaryl in or on fresh pineapples in the Federal Register issue of May 8, 1985 (50 FR 19359). Since only residue data submitted to support this tolerance was from Mexico, the Agency stated that the tolerance would not support carbaryl's use on domestically

grown pineapples (Hawaii and Puerto Rico). To support such a use, the Agency stated that additional residue data would be needed from Hawaiian grown pineapples along with a proposed pineapple forage tolerance. The Food and Drug Administration (FDA) submitted a pineapple processing study in support of the carbaryl pineapple tolerance. That study demonstrated that carbaryl does not concentrate in the edible pulp or juice, but instead concentrates in the inedible portion (bran) which can be used as livestock feed. The Agency stated that a feed additive tolerance of 20.0 ppm would be established at a later date for wet and dry pineapple bran.

The data submitted in the petition and all other relevant material have been evaluated. The toxicological data considered in support of the tolerance included a three-generation rat reproduction study with a no-observed-effect level (NOEL) of 200 milligrams per kilogram (mg/kg); a rat feeding study which was negative for oncogenic effects at 400 ppm, the highest level tested (HLT), and had a NOEL of 200 ppm (10 mg/kg). Also, ten other studies were used to evaluate the oncogenic potential for carbaryl. No significant increase in the incidence of tumors was observed in these studies at levels as high as 400 ppm (HLT). Although each study was found to contain some flaws in scientific design or reporting of data, the Agency believes that when the ten studies are examined collectively they provide sufficient evidence that carbaryl is not oncogenic in experimental animals and, therefore, does not pose a risk to humans.

Twenty-four studies were used to evaluate the teratogenic potential of carbaryl. After evaluating these studies, the Agency has concluded that the available data do not indicate that carbaryl constitutes a potential human teratogen or reproductive hazard under proper use. However, because certain teratology studies with dogs indicated the sensitivity of that species to carbaryl, concern has been expressed for dogs treated with carbaryl to control fleas and ticks. The Registration Standard for carbaryl issued in March 1984 required that carbaryl registrants conduct an additional dog teratology study to settle this matter. In response to that requirement, Union Carbide requested that the Agency reconsider the necessity of another teratology study in the dog. EPA has reevaluated the need for this study and has determined that this study is not needed. The Agency has concluded that carbaryl would not constitute a potential teratogenic hazard to humans based on the overall weight of the 24 teratology studies that have been conducted. The Agency also believes that the dog is not an appropriate model to use to perform a teratology study and relate it to humans. While the two previous dog studies were of questionable quality, they do indicate the sensitivity of the dog to carbaryl. The Agency believes that the exposure of dogs to carbaryl can be minimized through labeling.

The metabolism of carbaryl is adequately understood and an adequate analytical method using high-pressure liquid chromotography (HPLC) and a fluorescence detector is available for enforcement purposes.

The pesticide is considered useful for the purpose for which the regulation is sought. There are no regulatory actions pending against the continued registration of the pesticide. Based on the data submitted and evaluated, the Agency has concluded that the pesticide may be safely used in the prescribed manner when use is in accordance with the label and labeling registered pursuant to FIFRA, as amended. (86 Stat. 973, 89 Stat. 751, 7 U.S.C. 136(c) *et seq.*) Therefore, 21 CFR Part 561 is amended as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

List of Subjects in 21 CFR Part 561

Feed additives, Pesticides and pests.

Dated: September 5, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs

Therefore, 21 CFR Part 561 is amended as follows:

PART 561—[AMENDED]

1. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348

2. Section 561.66 is added to read as follows:

§ 561.66 Carbaryl.

A tolerance is established for residues of the insecticide carbaryl (1-napthyl *N*-methyl carbamate) in or on the feed commodity pineapple bran (wet and dry) at 20 parts per million.

[FR Doc. 85–22095 Filed 9–17–85; 8:45 am]

BILLING CODE 6560–50–M

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21 CFR Part 561

[FAP 2H5325/R779; FRL–2897–6]

Thiodicarb; Extension of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends interim feed additive tolerances for the insecticide thiodicarb and its metabolite in soybean hulls at 0.4 part per million (ppm) and cottonseed hulls at 0.8 ppm. Union Carbide Agricultural Products Co., Inc., requested this extension.

EFFECTIVE DATE: Effective on July 8, 1985.

ADDRESS: Written objections, identified by the document control number [FAP 2H5325/R779], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Jay Ellenberger, (PM) 12, Registration Division (TS–767C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA issued a rule, published in the **Federal Register** of September 7, 1983 (48 FR 40369), which established an interim regulation permitting the combined residues of the insecticide thiodicarb (dimethyl *N*, *N*'-[thiobis [(methylamino) carbonyloxy]] bis [ethanimidothioate], and its metabolite methomyl (*N*-[methylcarbamoyl)oxy] thioacetimidate

resulting from application of the pesticide to growing crops under an experimental program.

In accordance with a request from Union Carbide Agricultural Products Co., Inc., P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709, EPA is extending the interim regulation until July 8, 1986, to permit the marketing of the commodities treated in accordance with experimental use permit 264–EUP–61, which is being extended (see related document [PP 2G2581/T496], which is published in the Notices section of this issue of the **Federal Register**). Scientific data show that the tolerances are adequate to cover residues resulting from the experimental use and that such tolerances will protect the public health.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register,** file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new food or feed additive levels, or conditions for safe use of additives, or raising such food or feed additive levels do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24945).

List of Subjects in 21 CFR Part 561

Feed additives, Pesticides and pests.

Dated: September 4, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 21 CFR Part 561 is amended as follows:

PART 561—[AMENDED]

1. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

2. Section 561.386 is amended by revising the table therein to read as follows:

§ 561.386 Thiodicarb.

* * * * *

Feeds	Parts per million	Company	Expiration date
Cottonseed, hulls.	0.8	Union Carbide Corp.	July 8, 1986
Soybean, hulls.	0.4	..... do	Do.

[FR Doc. 85–22087 Filed 9–17–85; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Approval of Permanent Program Amendments for the State of Ohio Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of certain amendments to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

On May 23, 1985, OSM approved several amendments submitted by Ohio on February 27, 1985, revising Ohio rules 1513–13–01 through 1513–13–22 which establish the Reclamation Board of Review's (RBR) rules of procedures (50 FR 21256). On July 3, 1985, Ohio requested that OSM consider an informal submittal of amendments dated May 20, 1985, as a formal request for a program amendment. The amendments are to the RBR's rules of procedure and revise some of its procedures. OSM published a notice in the **Federal Register** on July 30, 1985, inviting public comment on the adequacy of the proposed amendment (50 FR 30863).

After providing opportunity for public comment and conducting a thorough review of the program amendments, the Director of OSM has determined that the amendments meet the requirements of SMCRA and the Federal regulations. Accordingly, the Director is approving the program amendments. The Federal rules at 30 Part CFR 935 which codify decisions on the Ohio program are being amended to implement these rules.

This final rule is being made effective immediately to expedite the State program amendment process and encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EFFECTIVE DATE: September 18, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

The Ohio program was approved effective August 16, 1982, by notice published in the August 10, 1982 **Federal Register.** The approval was conditioned on the correction of 28 minor deficiencies contained in 11 conditions. Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982 **Federal Register** (47 FR 34688).

II. Discussion of the Amendments

On May 23, 1985, OSM approved several amendments submitted by Ohio on February 27, 1985, revising rules OAC 1513–3–01 through 1513–3–22 which established the Reclamation Board of Review (RBR) rules of procedures (50 FR 21256). On July 3, 1985, Ohio requested that OSM consider an informal submittal of amendments to the RBR rules dated May 20, 1985, as a formal request for a program amendment.

OSM responded to that request by publishing an announcement of the receipt of the amendments and inviting public comment on the adequacy of the proposal in the July 30, 1985 **Federal Register.** The notice stated that a public hearing would be held only if requested. Since there were no requests for a hearing, a hearing was not held. The comment period closed on August 29, 1985, and no comments were received.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.17 and 732.15, that the program amendments submitted by Ohio on July 3, 1985 dated May 20, 1985, meet the requirements of SMCRA and 30 CFR Chapter VII, as discussed in

the findings below. However, the Ohio rules have not been promulgated as final rules. The Chief of the Ohio Division of Reclamation has indicated that Ohio intends to adopt the new rules by emergency rulemaking as soon as they are approved by OSM. The Director, OSM, is approving the rules provided that they are fully promulgated in identical form to the rules submitted to and reviewed by OSM.

Ohio Administrative Code Rules (OAC) 1513–3–01 through 1513–3–22, Reclamation Board of Review Rules of Procedure.

The amendments to these rules include a definition of the term "burden of persuasion", RBR procedures for resolution of tie votes, procedures applicable when there is not a quorum present, and procedures for maintaining and making records available for inspection. The amendments also include procedures for issuance of subpoenas; the filing of appeals and clarifying sections concerning actions governed by amended rules, appearance and practice before the RBR; and grounds for which a review may be sought. OAC 1513–3–11 has been amended to include granting motions and reconsidering motions and OAC 1513–3–12 has been amended to clarify pre-hearing procedures. Amendments have also been made to sections concerning the granting or denying of continuances; allowing a site view; conducting evidentiary hearings; voluntary dismissal and settlement, and the reports and recommendations of hearing officers.

The majority of the revisions clarify the previously approved procedures and operation of the RBR. Other changes are editorial in nature.

The Director finds that the amendments are in accordance with SMCRA and are no less effective than the Federal regulations.

IV. Public Comments

Acknowledgements were received from the following Federal agencies: Soil Conservation Service, Mine Safety and Health Administration, Farmers Home Administration and the Department of the Army, Office of the Chief Engineer. The disclosure of Federal agency comments is made pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(10)(i).

V. Director's Decision

The Director, based on the above findings, is approving the July 3, 1985 amendments dated May 20, 1985. The Director is amending Part 935 of 30 CFR Chapter VII to reflect approval of the State program amendments. However, as noted above, because the Ohio rules have not been fully promulgated, the rules will not take effect for purposes of the Ohio program until the revised rules have been promulgated as final rules in Ohio.

VI. Procedural Matters

1. *Compliance with the National Environmental Policy Act*

The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act*

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act*

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 12, 1985.

Jed. D. Christensen,

Director, Office of Surface Mining.

PART 935—OHIO

30 CFR Part 935 is amended as follows:

1. The authority citation for Part 935 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. In Part 935, § 935.15 is amended by adding a new paragraph (r) as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(r) The following amendments submitted to OSM on July 3, 1985, are approved effective upon promulgation of the revised rules by the State, provided the rules are adopted in identical form as submitted to OSM: Ohio Administrative Code Sections 1513–3–01 through 1513–3–22.

[FR Doc. 85–22323 Filed 9–17–85; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 207

Ohio River, Mississippi River Above Cairo, IL, and Their Tributaries

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers is amending the regulations which govern the use, administration, and navigation of the Ohio River, Mississippi River above Cairo, Illinois, and their tributaries. This revision notifies all users of the Cumberland River in Tennessee that the Cordell Hull Lock will be staffed with contract personnel. There are no changes in locking procedures.

EFFECTIVE DATE: September 18, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. James Marlow, Office of the Chief of Engineers, DAEN–CWO–M, Washington, DC 20314–1000 or call (202) 272–0241.

SUPPLEMENTARY INFORMATION: The rules and regulations governing locking procedures at the Cordell Hull Lock on the Cumberland River have not changed. The major impact of the revision will be that, when passing through the lock, waterway users will no longer be in direct contact with a Federal government employee, referred to as the lockmaster, who is responsible for enforcing all rules and regulations for use of the locks. The Corps of Engineers Nashville District Engineer will notify waterway users and the general public through appropriate notices and media concerning the location and identity of the government employee designated as having those responsibilities. All other duties and responsibilities of the lockmaster referred to in the previous regulations will be performed by the contract lock operator.

The regulations in § 207.300 are amended only with respect to paragraph (a) *Authority of Lockmasters.*

Note: The Department of the Army has determined that this document does not contain a major rule requiring a regulatory impact analysis under Executive Order 12291 because it will not result in an annual effect on the economy of $100 million or more and it will not result in a major increase in costs or prices. I also certify that this rule will not have a significant economic impact on a substantial number of entities and thus does not require the preparation of a regulatory flexibility analysis.

List of Subjects in 33 CFR Part 207

Navigation, Navigable waters, Transportation.

PART 207—[AMENDED]

Accordingly, 33 CFR Part 207 is amended as follows:

1. The authority citation for Part 207 continues to read as follows:

Authority: 40 Stat. 266; 33 U.S.C. 1.

2. By revising paragraph (a) of § 207.300 to read as follows:

§ 207.300 Ohio River, Mississippi River above Cairo, Illinois, and their tributaries; use, administration, and navigation.

(a) *Authority of Lockmasters.*—(1) *Locks Staffed with Government Personnel.* The provisions of this paragraph apply to all waterways in this section except for Cordell Hull Lock located at Mile 313.5 on the Cumberland River in Tennessee. The lockmaster shall be charged with the immediate control and management of the lock, and of the area set aside as the lock area, including the lock approach channels. He/she shall see that all laws, rules, and regulations for the use of the lock and lock area are duly complied with, to which end he/she is authorized to give all necessary orders and directions in accordance therewith, both to employees of the government and to any and every person within the limits of the lock and lock area, whether navigating the lock or not. No one shall cause any movement of any vessel, boat, or other floating thing in the lock or approaches except by or under the direction of the lockmaster or his/her assistants. In the event of an emergency, the lockmaster may depart from these regulations as he deems necessary. The lockmasters shall also be charged with the control and management of federally constructed mooring facilities.

(2) *Locks Staffed with Contract Personnel.* The provisions of this paragraph apply to Cordell Hull Lock located at Mile 313.5 on the Cumberland River in Tennessee. Contract personnel shall give all necessary orders and directions for operation of the lock. No one shall cause any movement of any vessel, boat or other floating thing in the locks or approaches except by or under the direction of the contract lock operator. All duties and responsibilities of the lockmaster set forth in this section shall be performed by the contract lock operator except that responsibility for enforcing all laws, rules, and regulations shall be vested in a government employee designated by the Nashville District Engineer. The district engineer will notifdy waterway users and the general public through appropriate notices and media concerning the location and identity of the designated government employee.

* * * * *

Dated: August 8, 1985.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 85-22332 Filed 9-17-85; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[00000/R745; FRL-2896-8]

Revocation of 2,4-Dichlorophenyl P-Nitrophenyl Ether Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule revokes the tolerances for the combined residues of the herbicide 2,4-dichlorophenyl *p*-nitrophenyl ether (commonly called nitrofen; trade name, TOK™) and its metabolities containing the diphenyl ether linkage (hereafter, this chemical) in or on certain raw agricultural commodities. EPA is taking this action because of its concern about the teratogenic risk and potential oncogenic and mutagenic risks associated with this chemical.

EFFECTIVE DATE: Effective on September 18, 1985.

ADDRESS: Written objections, identified by the document control number [00000/R745], may be submitted to the: Hearing Clerk, Environmental Protection Agency, Rm 3708 (A-110), 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Patricia Critchlow, Registration Division (TS-767), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7700).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of May 16, 1984 (49 FR 20733), which proposed the revocation of tolerances for the combined residues of the herbicide 2,4-dichlorophenyl *p*-nitrophenyl ether (commonly called nitrofen; trade name, TOK™) and its metabolities containing the diphenyl ether linkage (hereafter, this chemical) in or on the raw agricultural commodities listed at 40 CFR 180.223.

No requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

The Agency received one comment from the National Food Processors Association (NFPA). NFPA commented that most canned food products remain in the marketplace for about 2 years, and that some canned food products remain in the marketplace for as long as 6 years. NFPA recommends that tolerances for this chemical be maintained as action levels through 1986 in order to avoid the recall of legally treated food products. NFPA feels that this time period would permit the legal distribution and sale of remaining inventories of stock prepared from properly treated raw products.

The Agency has considered the concerns expressed by the NFPA regarding the potential probelm of residues of this cancelled pesticide remaining in existing food stocks after the Agency revokes the tolerances. The producer ceased marketing of this chemical in 1980 and subsequently requested voluntary cancellation which become effective on February 17, 1984. According to the NFPA, the chemical has not been used since 1982. Surveillance data from the Food and Drug Administration (FDA) show only five food samples with detectable residues of this chemical during 1981 through 1982 and none in 1983. Since this chemical is not persistent and the processing (washing, cooking, etc.) prior to packing is expected to eliminate any trace residues still present on the treated commodities, the Agency does not expect any residues resulting from legal use to be present in any canned products at this time. Therefore, there is no need to recommend action levels to the Food and Drug Administration.

Based on the information considered by the Agency and discussed in detail in the May 16, 1984 proposal, the Agency is hereby revoking the tolerances in 40 CFR 180.223 as follows:

PESTICIDE TOLERANCES BEING REVOKED

Commodities	Existing tolerances (in ppm)
Broccoli	0.75
Brussels sprouts	.75
Cabbage	.75
Carrots	.75
Cauliflower	.75
Celery	.75
Horseradish	05
Kohlrabi	.75
Onions (green or in dry bulb form)	.75
Parsley	.75
Rice	.1
Rice straw	.1
Sugar beets (roots and tops)	.05
Taro (corm)	02
Eggs	.05
Fat, meat and meat byproducts of cattle, goats, hogs, horses, and sheep	05
Fat of poultry	.2
Meat and meat byproducts of poultry	.05
Milk fat	[1]0.5

[1] Reflecting 0.02 ppm in whole milk.

Any person adversely affected by this regulation revoking the tolerances may, within 30 days after the date of publication of this regulation in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

This document has been sent to the Office of Management and Budget for review as required by section 3 of Executive Order 12291.

In order to satisfy requirements for analysis as specified by Executive Order 12291 and the Regulatory Flexibility Act, the Agency has analyzed the costs and benefits of the revocation of tolerances for this chemical. This analysis is available for public inspection in Rm. 236, at the address given above.

Executive Order 12291

As explained in the proposal published on May 16, 1984, the Agency has determined, pursuant to the requirements of Executive Order 12291, that the revocation of these tolerances will not cause adverse economic impacts on significant portions of U.S. enterprises. Furthermore, revocation of tolerances for this chemical should aid U.S. enterprises by eliminating any unfair advantage that foreign enterprises have gained through the continuance of these tolerances.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354; 94 Stat. 1164, 5 U.S.C. 601 *et seq.*) and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the May 16, 1984, proposal.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 6, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

§ 180.223. [Removed]

2. By removing § 180.223.

[FR Doc. 85–22093 Filed 9–17–85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 4F2993/R793; FRL–2896–9]

Pesticide Tolerance for [(1R,3S)3[(1'RS, (1',2',2',2'-Tetrabromoethyl)]-2,2-Dimethylcyclopropanecarboxylic Acid (S) Alpha-Cyano-3-Phenoxybenzyl Ester]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the insecticide [(1*R*,3*S*)3[(1'*RS*) (1',2',2',2'-(tetrabromoethyl)]-2,2-dimethylcyclopropanecarboxylic acid(*S*)-alpha-cyano-3-phenoxybenzyl ester] and its metabolites calculated as parent in or on the raw agricultural commodity cottonseed. This regulation to establish the maximum permissible level for residues of the insecticide on cottonseed was requested by American Hoechst Corp. acting as the registered U.S. Agent for Roussel-Uclaf of Paris, France.

EFFECTIVE DATE: Effective on September 18, 1985.

ADDRESS: Written objections, identified by the document control number [PP 4F2993/R793], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: By mail; Timothy A. Gardner, Product Manager (PM) 17, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2690).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of February 8, 1984 (49 FR 4839), which announced that American Hoescht Corp., Rte. 202–206, North Somerville, NJ 08876, acting as the registered U.S. agent for Roussel-Uclaf, 163 Ave. Ganbetta, 750 Paris, France, had submitted pesticide petition (PP) 4F2993, proposing to amend 40 CFR Part 180 by establishing a tolerance for residues of the insecticide [(1*R*,3*S*)3[(1'*RS*) (1',2',2',2'-tetrabromoethyl)]-2,2-dimethylcyclopropanecarboxylic acid (*S*)-alpha-cyano-3-phenoxybenzyl ester] and its metabolites (*S*)-alpha-cyano-3-phenoxybenzyl(1*R*,3*R*)-cis, trans-2,2-dimethyl-3-(2, 2-dibromo-vinyl)cyclopropanecarboxylate calculated as parent, in or on the raw agricultural commodity cottonseed at 0.02 part per million (ppm).

There were no comments received in response to this petition.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance include an acute oral rat toxicity study with a median lethal dose (LD_{50}) of 84.9 milligrams (mg)/kilogram (kg) for male rats and 95.4 mg/kg for female rats; an acute dermal toxicity study on rabbits with an LD_{50} greater than 2.0 grams/kg; an acute inhalation LC_{50} study on rats with an LC_{50} greater than 0.286 milligram/litre; a delayed hypersensitization study in guinea pigs (not a sensitizer); 13-week oral toxicity studies in rats and dogs with a no-observed-effect level (NOEL) of 1.0 mg/kg/day for both rats and dogs; a 1-year oral toxicity study in dogs with a NOEL of 1.0 mg/kg/day; 24-month rat and mouse chronic feeding oncogenicity studies with a NOEL of 0.75 mg/kg/day for both rats and mice and no oncogenic effects; teratology studies in rats and rabbits with no teratogenic effects in rats at 18 mg/kg (highest dose tested; (HDT)) or rabbits at 32 mg/kg (HDT); a 2-generation reproduction study in rats with a NOEL of 0.75 mg/kg/day; and the following mutagenicity studies: reverse mutation assay, Slater diffusion assay, micronucleus test, dominant lethal study, chromosome aberration assay, forward gene mutation assay (all negative except for the forward gene

mutation assay which was positive with metabolic activation but negative without metabolic activation).

The acceptable daily intake (ADI) is calculated to be 0.0075 mg/kg/day based on the 2-year rat chronic feeding study and its NOEL of 0.75 mg/kg/day using a 100-fold safety factor. The maximum permissible intake (MPI) is calculated to be 0.45 mg/day for a 60-kg person. Approval of the tolerance for cottonseed and the related tolerance for cottonseed oil would result in a theoretical maximum residue contribution (TMRC) of 0.0004 mg/day (1.5 kg) and will utilize 0.10 percent of the ADI.

The metabolism of the chemical is adequately understood and an analytical method is available for the insecticide and the metabolites calculated as parent. This analytical method consists of gel permeation chromatography and gas liquid chromatography with an electron capture detector and is adequate for enforcement purposes.

Because of the long lead time from establishing this tolerance to publication of the enforcement methodology in the Pesticide Analytical Manual II, an interim analytical methods package is being made available to the state pesticides enforcement chemists when requested from:

By mail: William Grosse, Chief, Information Service Branch (TS–757C), Program Management Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Office location and telephone number: Rm. 222, CM# 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–2613).

There are currently no regulatory actions pending against the registration of this pesticide.

A related document [FAP 5H5457/R794], establishing a regulation permitting residues of the insecticide in cottonseed oil appears elsewhere in this issue of the **Federal Register.**

The pesticide is considered useful for the purpose for which the tolerance is sought, and it is concluded that the tolerance for residues of the insecticide in or on cottonseed will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this rule in the **Federal Register,** file written objections with the Hearing Clerk at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objection. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis. In addition, the Office of Management and Budget (OMB) has exempted this rule from the OMB Review requirements of Executive Order 12291, pursuant to section 8(b) of that Order.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 501–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemption from tolerance requirements do not have significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 6, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.422 is added to read as follows:

§ 180.422 [(1'RS)(1',2',2',2'-Tetrabromoethyl)]-2,2-dimethylcyclopropanecarboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester]; tolerances for residues.

Tolerances are established for the combined residues of the insecticide (1*R*,3*S*)3[(1'*RS*)(1',2',2',2'-tetrabromoethyl)]-2,2-dimethylcyclopropanecarboxylic acid (*S*)-alpha-cyano-3-phenoxybenzyl ester and its metabolites (*S*)-alpha-cyano-3-phenoxybenzyl (1*R*,3*R*)-cis,trans-2,2-dimethyl-3-(2,2-dibromovinyl)cyclopropanecarboxylate calculated as parent, in or on the following raw agricultural commodites.

Commodities	Parts per million
Cottonseed	0.02

[FR Doc. 85–22094 Filed 9–17–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6677]

Suspension of Community Eligibility; Alabama et al.

AGENCY: National Flood Insurance Administration, Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The third date ("Susp.") listed in the fifth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator Office of Loss Reduction Federal Insurance Administration (202) 646–2717 500 C Street, Southwest FEMA—Room 416 Washington, D.C. 20475.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with

program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register.**

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 94–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

PART 64—[AMENDED]

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of eligible communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Region IV					
Alabama:					
Fayette	Unincorporated areas	010219B	Jan. 17, 1976, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp	Jan. 10, 1975 and May 21, 1976	Sept. 18, 1985
Lamar	Millport, town of	010137B	Aug. 6, 1974, Emerg.; Sept. 18, 1985, Reg., Sept. 18, 1985, Susp	June 28, 1974 and Jan. 2, 1976	Do
Florida St. Johns	Unincorporated areas	125147D	Sept. 25, 1970, Emerg.; July 6, 1973, Reg., Sept. 18, 1985, Susp	July 6, 1973, June 1, 1974, May 28, 1976 and Oct. 1, 1983	Do
Region V					
Wisconsin: Sauk	Rock Springs, village of	550403C	April 30, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Dec. 17, 1973, May 21, 1976 and Dec. 28, 1979	Do
Region X					
Oregon: Lane	Creswell, city of	410121A	Dec. 13, 1974, Emerg.; Sept. 18, 1985, Reg., Sept. 18, 1985, Susp		Sept. 18, 1985
Region I—Minimal Conversions					
Maine:					
Washington	Danforth, town of	230136B	April 14, 1975, Emerg.; Sept. 18, 1985, Reg., Sept. 18, 1985, Susp	Aug. 9, 1974 and Sept. 17, 1976	Do
Penobscot	Garland, town of	230387B	Mar. 19, 1976, Emerg.; Sept. 18, 1985, Reg. Sept. 18, 1985, Susp.	Feb. 7, 1975 and Sept. 3, 1976	Do
Washington	Marshfield, town of	230316B	Aug. 8, 1975 Emerg.; Sept. 18, 1985, Reg., Sept. 18, 1985, Susp.	Oct. 20, 1974 and Sept. 24, 1976	Do
Waldo	Morrill, town of	230262A	July 16, 1975, Emerg.; Sept. 18, 1985, Reg. Sept. 18, 1985, Susp	Feb. 7, 1975	Do
do	Patten, town of	230115C	Mar. 5, 1976, Emerg.; Sept. 18, 1985, Reg., Sept. 18, 1985, Susp	Nov. 1, 1974, Aug. 21, 1981 and Oct. 8, 1976	Do
Penobscot	Stetson, town of	230402A	Aug. 18, 1975 Emerg.; Sept. 18, 1985, Reg., Sept. 18, 1985, Susp.	Jan. 31, 1975	Do
Waldo	Waldo, town of	230270A	June 2, 1975, Emerg.; Sept. 18, 1985, Reg., Sept. 18, 1985, Susp	Feb 14, 1975	Do
Vermont:					
Windsor	Barnard, town of	500292B	June 16, 1975, Emerg.; Sept. 18, 1985, Reg., Sept. 18, 1985, Susp	Sept 6, 1974 and Nov. 19, 1976	Do
Rutland	Ira, town of	500260B	Dec. 24, 1975, Emerg.; Sept 18, 1985, Reg. Sept. 18, 1985, Susp	Dec 6, 1974 and Sept. 17, 1976	Do
Do	Mendon, town of	500095B	June 19, 1975 Emerg.; Sept 18, 1985, Reg Sept. 18, 1985, Susp	Sept. 16, 1974 and Nov 19, 1976	Do

State and county	Location	Community No	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	[illegible] *
Do	Middletown Springs, town of	500261A	June 30, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Dec. 6, 1974	Do.
Addison	Ripton, town of	500010B	Feb. 6, 1976, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp	Jan. 17, 1975 and Mar. 4, 1977	Do.
Orange	Tunbridge, town of	500076B	July 25, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	May 31, 1974 and June 25, 1976	Do
Windsor	Weathersfield, town of	500156B	Sept. 22, 1975 Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	June 14, 1974 and Oct. 29, 1976	Do.
Region IV					
Alabama					
Choctaw	Pennington, town of	010035B	July 16, 1979, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Mar 3, 1978	Do
St. Clair	Steele, town of	010291A	Aug. 25, 1977, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Feb. 7, 1975	Do.
Kentucky:					
Wayne	Monticello, city of	210221B	July 2, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	May 24, 1974, and June 4, 1976	Do.
Estill	Ravenna, city of	210319B	May 19, 1976, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	May 17, 1974 and July 16, 1976	Do
Mississippi: Itawamba	Mantachie, town of	280082C	May 27, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	June 21, 1974, Aug. 13, 1976 and Feb. 8, 1980.	Do.
Region V					
Illinois:					
Williamson	Bush, village of	170784B	July 23, 1976, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Mar. 29, 1974 and June 11, 1976	Do.
Do	Hurst, city of	170792B	Aug. 22, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp	Mar. 15, 1974 and May 7, 1976	Do.
Illinois:					
Moultrie	Lovington, village of	170523C	Dec. 23, 1974, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	June 7, 1974, May 21, 1976 and Mar. 11, 1977.	Do.
Gallatin	Omaha, village of	170248B	Aug. 1, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	May 10, 1974 and June 6, 1976	Do
Vermilion	Potomac, village of	170799B	Sept. 23, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Mar. 22, 1974 and Aug. 27, 1976	Do.
Do	Rankin, village of	170668B	Aug. 1, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	May 17, 1974 and Oct. 31, 1975	Do.
Moultrie	Sullivan, city of	170524B	June 20, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Sept. 20, 1974 and Oct. 17, 1975	Do
Indiana: Newton	Kentland, town of	180182A	Nov. 13, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	May 24, 1974 and Aug. 13, 1976	Do.
Michigan: Monroe	Summerfield, township of	2601568	June 23, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Feb. 15, 1974 and July 9, 1976	Do.
Minnesota:					
Benton	Foley, city of	270020B	May 2, 1974, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Mar. 29, 1974, June 4, 1976 and Apr. 2, 1982.	Do
Mille Lacs	Onamia, city of	207290C	Nov. 21, 1974, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	May 10, 1974 and Mar. 26, 1976	Do
Ramsey	White Bear, township of	270688B	Apr. 28, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp	Mar 17, 1978	Do.
Wisconsin:					
Bayfield	Bayfield, city of	550017A	June 6, 1974, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Aug. 16, 1976	Do.
Shawano	Bonduel, village of	550414A	June 9, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Aug. 16, 1976	Do
Columbia	Cambria, village of	550057C	June 11, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Apr. 12, 1974, June 11, 1976 and Apr. 6, 1979.	Do
Marathon and Clarke	Colby, city of	550049C	Nov. 29, 1974 Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	May 31, 1974, Mar. 19, 1976 and Mar 23, 1979.	Do
Columbia	Doylestown, village of	550059B	Apr. 30, 1976, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	May 17, 1974 and June 11, 1976	Do
Shawano	Gresham, village of	550418B	May 8, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Jan. 9, 1974 and May 14, 1976	Do
Oconto	Lena, village of	550296B	July 17, 1975, Emerg.; Sept. 18, 1985, Reg., Sept. 18, 1985, Susp.	June 28, 1974 and Feb. 21, 1976	Do
Columbia	Poynette, village of	550064	July 29, 1975, Emerg.; Sept. 18, 1985, Reg., Sept. 18, 1985, Susp.	May 3, 1974, May 23, 1976 and Mar. 30, 1979.	Do
Taylor	Rib Lake, village of	550436B	Aug. 15, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	May 24, 1974 and May 28, 1976	Do
Jefferson	Sullivan, village of	550197B	July 10, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Apr. 12, 1974 and July 2, 1976	Do
Chippewa	Stanley, city of	550047B	Apr. 1, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	May 3, 1974 and May 28, 1976	Do.
Jefferson	Waterloo, city of	550198B	July 25, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Dec. 28, 1973 and July 30, 1976	Do.
Region VII					
Iowa:					
Lyon	Alvord, city of	190197B	Nov. 7, 1975, Emerg., Sept. 18, 1985, Reg. Sept. 18, 1985, Susp	Sept. 13, 1974 and Jan. 16, 1976	Do.
Woodbury	Cushing, city of	190289B	Apr. 28, 1975, Emerg. Sept. 18, 1985, Reg., Sept. 18, 1985, Susp.	Aug. 9, 1974 and Jan. 2, 1976	Do
Do	Danbury, city of	190290B	Aug. 5, 1975, Emerg., Sept. 18, 1985, Reg., Sept. 18, 1985, Susp.	Jan. 9, 1974 and Apr. 16, 1976	Do.
Audubon	Exira, city of	190013B	July 25, 1975, Emerg., Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp	May 10, 1974 and Mar. 26, 1976	Do.
Lyon	Little Rock, city of	190448A	Sept. 23, 1976, Emerg., Sept. 18, 1985, Reg., Sept. 18, 1985, Susp.	Sept. 19, 1975	Do.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Harrison	Logan, city of	190146B	Jan. 16, 1975, Emerg.; Sept. 18, 1985, Reg., Sept. 18, 1985, Susp.	Apr. 12, 1974 and Mar. 12, 1976	Do
Osceola	Ocheyedon, city of	190472A	June 30, 1976, Emerg.; Sept. 18, 1985, Reg., Sept. 18, 1985, Susp.	Mar 19, 1976	Do
Woodbury	Pierson, city of	[illegible]	June 25, 1975, Emerg.; Sept. 18, 1985, Reg., Sept. 18, 1985, Susp.	Sept. 13, 1974 and May 14, 1976	Do.
Plymouth	Unincorporated areas	1908998	May 6, 1980, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Oct. 25, 1977	Do
Dallas	Redfield, city of	190361A	Oct. 28, 1976, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Mar 26, 1976	Do
O'Brien	Sheldon, city of	190216B	July 25, 1975, Emerg.; Sept. 18, 1985, Reg., Sept. 18, 1985, Susp.	Dec 24, 1976	Do
Missouri: Scott	Oran, city of	290413B	Mar. 5, 1975, Emerg.; Sept. 18, 1985, Reg.; Sept. 18, 1985, Susp.	Mar 1, 1974 and Jan. 9, 1976	Do
Nebraska: Gage	Clatonia, village of	310093A	Dec. 10, 1975, Emerg.; Sept. 18, 1985, Reg., Sept. 18, 1985, Susp.	Nov 29, 1974	Do

[1] Certain Federal assistance no longer available in special flood hazard areas.
Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: September 13, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-22276 Filed 9-17-85; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 85-321]

Amendment of the Rules To Strengthen the Office of Science and Technology and the Commission's International Programs

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action implements a reorganization of the Office of Science and Technology (OST) and the Commission's International Programs. The functions and staffing of two branches in OST are being revised; OST's International Staff is being disbanded; responsibility for conference preparation is being transferred to the bureaus; and additional staff support is being provided to the Chairman, the Chairman's International Assistant and the Managing Director.

This action will allow OST to focus its resources on the most important technical and spectrum management issues facing the Commission, and will streamline conference preparation and improve oversight of international programs.

This action will improve resource utilization in OST and strengthen the Commission's management and execution of its international programs.

EFFECTIVE DATE: May 20, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:
Ron Stone: Office of Managing Director (202) 632-3906.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 0

Organization and functions.

Order

In the Matter of Amendment of Part 0 of the Commission's Rules to Strengthen the Office of Science and Technology and the Commission's International Programs.

Adopted: April 11, 1985.
Release: September 11, 1985.
By the Commission.

1. This reorganization will have a twofold effect: (1) It will allow the Office of Science and Technology (OST) to focus its resources on the most important technical and spectrum management issues facing the Commission; and (2) It will streamline conference preparation and improve the Commission's oversight of international activities. The above will be accomplished by revising the functions of the Mathematical Modeling Branch and the Propagation and Terrestrial Systems Branch of OST (renamed the Telecommunications Analysis Branch and Propogation and Analysis Branch respectively); disbanding OST's International Staff and Transferring responsibility for conference preparation to the bureau most affected by a conference; and providing additional staff support for the Chairman, the Chairman's International Assistant and the Managing Director. These changes will require revision of § 0.32 of the Commission's Rules and Regulations.

2. OST has three principal functions. First, the Office provides direct service to the public through its spectrum management activities, which includes the equipment authorization program and administration of Parts 2, 5, 15 and 18 of the FCC's Rules. Second, OST provides technical aid to the operating bureaus in support of licensing and technology-related activities. Third, OST facilitates implementation of new technologies by assessing their feasibility and removing unnecessary entry or use barriers.

3. In addition, to the functions described above, OST has been coordinating the FCC's preparation for a variety of international conferences. OST has led this effort since the FCC began preparing for the 1979 General WARC which affected almost all communication services. Since that time, however, the conferences have been limited in scope to particular services or frequency bands that usually fall within the primary operational responsibility of a single bureau. Therefore, it has become more efficient to give lead responsibility for conference preparation to the operating bureaus since they are most familiar with the needs of the affected licensees. As a result, OST can now turn its attention and resources to new projects that focus most directly on the basic functions mentioned above. OST also will continue its major role in international consultative committees (CCIR and CCITT) and other organizations that contribute to telecommunications technology policy.

4. Commission oversight of international activities will be improved by the establishment of a Foreign Affairs Advisor. This action will further the Commission's objective "(to) promote the coordination and planning of international communications which assures the vital interests of the American public . . ." The Foreign Affairs Advisor will assist the Chairman, the Chairman's International Assistant and Managing Director in coordinating international telecommunications matters, with a primary focus on international conference preparation. This will involve coordinating FCC staff and

interagency planning, and interfacing with other agencies and international organizations.

5. The amendments adopted herein pertain to agency organization. The prior notice procedure and effective date provisions of Section 4 of the Administrative Procedures Act are therefore, inapplicable. Authority for the amendments adopted herein are contained in sections 4(i) and 5(b) of the Communications Act of 1934, as amended.

6. In view of the foregoing, it is ordered, effective May 20, 1985, that Part 0 of the Rules and Regulations is amended as set forth in the Appendix hereto.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 0—[AMENDED]

Part 0 of Chapter 1 of Title 47 of the Code of Federal Regulations is hereby amended as indicated below:

1. Section 0.32 of the Commissions Rules and Regulations is revised to read as follows:

§ 0.32 Units in the Office.

The Office of Science and Technology is comprised of the following units:

(a) Immediate Office of the Chief Scientist;

(b) Policy and Management Staff;

(c) Authorization and Standards Division;

(d) Spectrum Management Division;

(e) Technical Analysis Division.

[FR Doc. 85-22264 Filed 9-17-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 1

[FCC 85-487]

Revision of the Rules To Require the Inclusion of a Table of Contents and Summary of Filing in Filings Longer Than Ten Pages

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises the rule regarding filing summaries and tables-of contents in Commission proceedings. This action is being taken to exempt from the summary and table of contents requirements certain discovery pleadings. All documents and pleadings filed with the Commission in any proceeding that exceeds ten pages must include a table of contents and a summary unless one of the stated exceptions apply.

EFFECTIVE DATE: October 21, 1985.

FOR FURTHER INFORMATION CONTACT: Randy W. Thomas, Office of General Counsel, Federal Communications Commission, Washington, D.C. 20554, (202) 632-6990.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Second Order

In the Matter of Revision of the FCC's Rules to Require the Inclusion of a Table of Contents and Summary of Filing in Filings Longer than Ten Pages.

Adopted: September 5, 1985.
Released: September 12, 1985.

By the Commission: Commissioner Rivera not participating.

1. In September, 1984 the Commission adopted a *Memorandum Opinion and Order* in this proceeding that amended § 1.49 of the Rules to provide that all pleadings and documents filed in any proceeding must contain both a summary and table of contents if the pleading or document exceeds ten pages in length. FCC 84-438, Mimeo No. 34997, released, Sept. 19, 1984.

2. The Federal Communications Bar Association ("FCBA"), by its Executive Committee and its Practice and Procedure Subcommittee, has filed a "Petition for Modification of Rule" requesting that the recently adopted § 1.49 (b) and (c) of the Commission's Rules, 47 CFR 1.49 (b) and (c), be amended to clarify the new requirements and to limit the scope of their applicability.

3. After careful consideration and review of Petitioner's proposal, we are of the view that certain filings do not readily lend themselves to the requirements of § 1.49. Thus, this Order adds § 1.49(d) to the Rules to exempt from the scope of the summary and table of contents requirements certain discovery pleadings, *viz.*, interrogatories, answers to interrogatories, depositions, transcripts of testimony and hearing exhibits.

4. It should be emphasized that it is the Commission's intention that *all* documents and pleadings filed in any proceeding, regardless of the nature of the proceeding, comply with the requirements of § 1.49 of the Rules, unless one of the exceptions in § 1.49(d) applies.

5. We find that prior notice and public comment procedures are unnecessary to implement this amendment involving general rules of agency practice and procedure. 5 U.S.C. 553(b)(3)(A).

6. In view of the foregoing and pursuant to sections 1, 4(i) and (j) and 309(i) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j) and 309(i), it is hereby ordered that Part 1 of the Commission's Rules is amended as set forth in the attached Appendix, effective October 21, 1985, it is further ordered that the FCBA's petition is granted to the extent indicated herein and is otherwise denied.

7. For further information contact Randy W. Thomas, Office of General Counsel (202) 632-6990.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 1—[AMENDED]

§ 1.49 [Amended]

1. In § 1.49, paragraph (d) is added to read as follows:

* * * * *

(d). The requirements of paragraphs (b) and (c) of this section shall not apply to certain discovery pleadings, *viz.*, interrogatories, answers to interrogatories, depositions, transcripts of testimony and hearing exhibits.

[FR Doc. 85-22265 Filed 9-17-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 95

[FCC 85-485]

Amendment To Clarify That the Prohibition Against Digital Modulation Techniques in the Personal Radio Services Does Not Apply to the Non-Voice R/C Radio Service

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: This document amends §§ 95.207, 95.211 and 95.627 of the rules to clarify that the prohibition against digital modulation techniques in the Personal Radio Service does not apply to the non-voice R/C Radio Service. In Part 95 Subpart E, Technical Regulations for the Personal Radio Service, § 95.626(d) prohibits the use of digital modulation techniques in all three Personal Radio Services. Digital modulation techniques are useful in the Radio Control R/C Radio Service.

DATES: These rules become effective September 18, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John T. Small, Private Radio Bureau, Washington, D.C. 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 95

Communications equipment, Radio Control (R/C) Radio Service, Radio.

Order

In the matter of amendment of 47 CFR Part 95, Subparts C and E, Personal Radio Services.

Adopted: September 4, 1985.

Released: September 11, 1985.

By the Commission; Commissioner Rivera not participating.

1. In Part 95 Subpart E, Technical Regulations for the Personal Radio Services, § 95.627(d) prohibits the use of digital modulation techniques in all three Personal Radio Services. While this is appropriate for the two voice-only services (General Mobile Radio Service and Citizens Band Radio Service) digital modulation techniques are useful in the non-voice Radio Control (R/C) Radio Service. Type acceptance grants are routinely made for R/C Radio Service transmitters which employ certain digital modulation techniques.

2. This Order amends § 95.627 of the rules to clarify that the prohibition against digital modulation techniques in the Personal Radio Services does not apply to the non-voice R/C Radio Service. Sections 95.207 and 95.211 are also amended to make it clear that there are no restrictions to the emission types which may be employed for radio control purposes in the R/C Radio Service.

3. We have been routinely granting type acceptance for RC Radio Service transmitters employing digital modulation techniques without any complaint or problems. Therefore, we believe this change constitutes a minor amendment to our rules in which the public is not likely to be interested. Accordingly, we find for good cause that compliance with the notice and comment procedure of the Administrative Procedure Act (APA) is unnecessary. *See* 5 U.S.C. 553(b)(B). Furthermore, because this rule change relieves a restriction, the effective date provisions of the APA are inapplicable. *See* 5 U.S.C. 553(d)(1). These rule changes, therefore, will become effective immediately upon publication in the **Federal Register.**

4. Authority for this action is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and section 0.231(d) of the Commission's Rules.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 95 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 95—[AMENDED]

1. The authority citation for Part 95 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609.

2. Subparagraph (2) of paragraph (c) of § 95.211 is redesignated as paragraph (f) of § 95.207. Subparagraph (4) of paragraph (c) of § 95.211 is redesignated as paragraph (g) of § 95.207. Subparagraphs (1) and (3) of paragraph (c) of § 95.211 are removed. As revised, paragraph (c) reads as follows:

§ 95.211 (R/C Rule 11) What communications may be transmitted?

* * * * *

(c) Your R/C station may transmit any appropriate non-voice emission.

3. Subparagraphs (b) and (d) of § 95.627 are revised, and a new paragraph (e) is added, as follows:

§ 95.627 Emission types.

* * * * *

(b) An R/C transmitter may employ any appropriate non-voice emission which meets the emission limitations of § 95.631.

* * * * *

(d) Digital emissions are not permitted in the General Mobile Radio Service or the Citizens Band (CB) Radio Service.

(e) The transmission of data is prohibited in the Personal Radio Services.

[FR Doc. 85–22263 Filed 9–17–85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81–11; Notice 14]

Lamps, Reflective Devices and Associated Equipment; Corrections

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; corrections.

SUMMARY: This notice corrects three errors in the amendment published on May 22, 1985, relating to lamps, reflective devices and associated equipment. The errors appear in the amendments to paragraph S4.1.1.36, paragraph S4.1.1.36(e)(4)(ii), and paragraph S6.7.1(a). It is therefore necessary to correct the errors.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202–426–2720).

SUPPLEMENTARY INFORMATION: On May 22, 1985, Motor Vehicle Safety Standard No. 108 was amended to allow motor vehicles other than motorcycles to be equipped with replaceable bulb headlamp systems consisting of either four lamps with single standardized replaceable light sources, or two lamps each with two such light sources. (50 FR 21052) The Notice consisted of 20 amendments containing the errors, and corrects them.

In amendment 3, paragraph S4.1.1.36 was amended to delete the word "two". The word, however, appears in two places in the paragraph and it was NHTSA's intent to delete it only with reference to permissible headlighting systems on four-wheeled motor vehicles, and not be delete it for motorcycles. In reviewing this error, NHTSA has concluded that the paragraph should be rewritten to more clearly state NHTSA's intent, and thus is correcting the error by revising this paragraph in a manner which does so.

In amendment 9, as published, the last sentence of paragraph S4.1.1.36(e)(4)(ii) reads: "The lens of each such such headlamp shall be permanently marked with the letter 'U' ". A corrective amendment is made to delete a superfluous "such".

In amendment 13, the title of paragraph S6.7.1(a) appeared as "Test for a headlamp with on standardized replaceable light source". "On" should be "one".

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

1. On page 21056, amendment 3. is corrected to read: "3. Paragraph S4.1.136 is revised to read:

S4.1.1.36 Instead of being equipped with a headlighting system specified in Table I or Table III, a motor vehicle manufactured on or after July 1, 1983, may be equipped with a system of one or two replaceable bulb headlamps, if the vehicle is a motorcycle, or two or four replaceable bulb headlamps, if the vehicle is a passenger car, multipurpose passenger vehicle, truck or bus. Each replaceable bulb headlamp shall be designed to conform to the following requirements."

2. On page 21056, the last sentence of subparagraph (e)(4)(ii) of paragraph S4.1.1.36 is corrected to read: "The lens of each such headlamp shall be permanently marked with the letter 'U' ".

3. On page 21057, the title of subparagraph (a) of paragraph S6.7.1 is corrected to read "(a) *Test for a headlamp with one standardized replaceable light source.*"

The lawyer and program official principally responsible for this correction are Z. Taylor Vinson and Jere Medlin, respectively.

Issued on September 10, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-22252 Filed 9-17-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Acanthomintha obovata ssp. duttonii (San Mateo Thornmint)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines the San Mateo thornmint (*Acanthomintha obovata* ssp. *duttonii*) to be an endangered species. This action is being taken because populations and/or population segments (colonies) of this annual plant have been eliminated as a result of urban development, highway and road construction, and other land use activities that altered the natural plant communities upon which this subspecies depends. The San Mateo thornmint is known only from one small population (approximately 1,000–2,000 individuals) at Edgewood County Park in San Mateo County, California. The population occupies approximately 1,940 square feet (180 square meters) on a grassy knoll. This determination that the San Mateo thornmint is an endangered species will implement the full protection provided by the Endangered Species Act of 1973, as amended.

DATES: The effective date of this rule is October 18, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

The San Mateo thornmint is an annual herb of the mint family (Lamiaceae). The plants, often branched from near the base, grow 4–7 inches high and have opposite leaves and squarish stems. The fruit is a group of four small nutlets. The oblong to ovate leaves are ¼ to ¾ inch long with obscurely toothed margins. The upright flowers are creamy white with rose to purplish pigment in the lower notched lip. Each flower is surrounded by spiny leaf-like bracts.

The San Mateo thornmint was first collected in April 1900 by H.A. Dutton. The type specimen (H.A. Dutton no. 63392, Dudley Herbarium) was labeled as coming from "Woodside serpentine." Jepson (1943) considered the San Mateo County plants to be a hairy, serpentine-inhabiting form of *Acanthomintha ilicifolia* Gray. Abrams (1951) described the plants as a subspecies of *A. obovata* Jepson, based on the degree, distribution, and type of hairiness. Other distinctive features of the San Mateo plants that undoubtedly influenced the subspecific placement included their occurrence on serpentine soils, and the disjunct distribution, which effectively isolated them from all other congeners.

Historically, the San Mateo thornmint grew on grassy serpentine hillsides scattered infrequently along the east side of the San Andreas fault from Woodside (Niehaus 1977) to as far north as the Crystal Springs Reservoir (Thomas 1961, Dr. L.R. Heckard, University of California, Berkeley, pers. comm.). Only one small population is now known to exist at Edgewood County Park near Redwood City. This population grows on a grassy slope on soils derived from serpentine rock. The site, owned by San Mateo County, lies within Edgewood County Park. As recently as the spring of 1984, off-road vehicle (ORV) activities damaged the population. Damage from ORVs was most severe prior to the county obtaining ownership of the area. But even now, under County ownership and protection, unauthorized vehicle and foot traffic damage the population sporadically. Increased protective measures such as fencing and increased patrols may be necessary to prevent horses, hikers, and ORVs, from severely damaging the population. In addition, two incidents of unauthorized collection of the plant have occurred.

Although the removal of plants and soil from the thornmint population may have been an attempt at transplantation, this has not been confirmed. The net result has been the loss of potentially productive individuals from the wild population and disruption of life history studies by the California Department of Fish and Game.

Although San Mateo County has maintained Edgewood Park as essentially natural open space up to this time, several recreational uses are being considered for the park, including day camps, picnic areas, expanded hiking and equestrian trails, and an 18-hole golf course. All of these uses have the potential to directly or indirectly disrupt and/or extirpate the small thornmint population.

The Secretary of the Smithsonian Institution, as directed by section 12 of the Endangered Species Act of 1973, as amended; prepared a report to Congress on those native U.S. plants considered to be endangered, threatened, or extinct. This report (House Document No. 94–51), which included the San Mateo thornmint, was presented to Congress on January 9, 1975. On July 1, 1975, the Fish and Wildlife Service published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) of the Act (acceptance of petitions is now governed by section 4(b)(3) of the Act). On June 16, 1975, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species, including the San Mateo thornmint, to be endangered species pursuant to the Act. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not then been made final, along with four other proposals that had expired. On December 15, 1980, the

Service published a revised notice for plants (45 FR 82480). This notice included the San Mateo thornmint as a category 1 species. Category 1 is composed of taxa for which the Service has sufficient biological information to support their being listed as endangered or threatened species. On June 18, 1984, the Service reproposed the San Mateo thornmint as an endangered species (49 FR 24906).

Summary of Comments and Recommendations

In the June 18, 1984, proposed rule to list the San Mateo thornmint (49 FR 24906), and associated newspaper and written notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county and city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *San Francisco Chronicle/Examiner* on July 15, 1984, the *San Jose Mercury News* on July 24, 1984, and *Northwest Publications* on July 15, 1984. On July 25, 1984, Mr. Paul Koening, Department of Environmental Services, County of San Mateo, requested a public hearing on the proposal to list the San Mateo thornmint. As a result of discussions with the county and other interested agencies and individuals, the Service decided to hold a combined public hearing for the thornmint and bay checkerspot butterfly (*Euphydryas editha bayensis*), which has also been proposed to be listed as endangered (49 FR 35665). Notification of the public hearing was published in the **Federal Register** on Friday, October 26, 1984 (49 FR 43076) and in the following local newspapers: *San Jose Mercury News* (October 26, 1984), *San Francisco Chronicle/Examiner* (October 18, 1984), *Palo Alto Times* (October 30, 1984), and the *San Mateo Times and News Leader* one publication (October 30, 1984). Written notification also was sent to interested State, local, and Federal agencies, and interested individuals and organizations.

On November 13, 1984, the Service held a public hearing at the Hillsdale Inn in San Mateo County, California, on the proposals to list the San Mateo thornmint and bay checkerspot butterfly as endangered species and to designate critical habitat for the butterfly. Approximately 120 people attended the hearing. Comments from the hearing as well as written comments have been carefully considered in preparing this final rule. Seventy-four written comments were received during the comment period from various individuals, organizations, and government agencies, and 39 more were received during the public hearing. Nineteen of those presenting oral comments at the public hearing also provided written comments. Multiple comments (whether written or oral) from the same individual were regarded as one comment. Sixty-four of the commenters expressed support for listing the San Mateo thornmint as endangered and 10 opposed the thornmint listing. Twelve commenters gave no clear indication of their positions on the thornmint listing. Most comments expressing concern or opposition to the listing presented no substantive data refuting the need for listing the thornmint, but merely stated their support for a golf course at Edgewood Park. Similarly, many of the comments in favor of the thornmint listing merely agreed with the data presented in the proposal and opposed a golf course at Edgewood Park.

Comments from the California Department of Fish and Game (CDFG) supported the thornmint proposal and provided specific information on the occurrence of, and threats to, the plant. The CDFG data agreed with, and corroborated much of the information presented in the proposal. CDFG agreed that designation of critical habitat for the San Mateo thornmint could be detrimental.

The National Park Service (NPS) Regional Office and Golden Gate National Recreation Area commented that Federal listing is required for the thornmint and that listing would effect needed protection for the plant. NPS indicated that weather patterns in 1982–1983 may have contributed to the reduction in the thornmint population during those years, but that in 1984 the population increased slightly. NPS also noted that water flows to the upper thornmint colony have been restricted because of blockage in a nearby culvert. The Service believes that blockage of, or alterations to, natural water flows to the thornmint population could constitute a significant threat to the species. NPS provided photographs showing damage to the thornmint population in 1981 from unauthorized removal of plants and the activities of ORVs.

The California Native Plant Society (Santa Clara Valley Chapter, San Francisco Bay Area Chapter, and the Rare Plant Program) and the Committee for Green Foothills voiced strong support for listing the San Mateo thornmint. Their comments included additional information on the occurrence of the thornmint, past survey efforts, and additional information on likely effects of golf course construction, including the following: increased human intrusion into the habitat of the thornmint; possible changes to the hydrological regime within the thornmint habitat; destruction, disturbance, or adverse changes to between 42 and 64 percent of the serpentine grassland as a result of golf course construction, use, and maintenance; significant increased erosion in graded areas that could adversely affect the thornmint and its habitat; and inadvertent damage to nearby "protected habitats" resulting from the use of fertilizers, herbicides, and insecticides.

Other organizations supporting the listing of the thornmint included the Environmental Defense Fund (EDF), the Garden Club of America, Sierra Club (San Mateo County Group), Defenders of Wildlife, Friends of the Earth, Bay Land Area Study Team, and the National Audubon Society, Inc. (Santa Clara Valley Chapter).

Five professional botanists (three from the University of California, Berkeley, one from Stanford University, one from the Missouri Botanical Garden) and one professional ecologist (no affiliation given) voiced support for listing the San Mateo thornmint and presented information on the very restricted distribution of the thornmint. The ecologist and botanists from Berkeley and Stanford indicated that the only extant population known is at Edgewood Park. The ecologist stated that he has been searching the serpentine areas within the thornmint's historic range since 1979 and knows of no other sites supporting the plant.

A geologist supportive of the thornmint listing discussed the possible transmission of waters through the serpentine body at Edgewood Park. He expressed concern that golf course irrigation could enter the serpentine fracture system and resurface within or near the thornmint population. The geologist also noted that this water could carry various chemicals such as insecticides, herbicides, and fertilizers if a golf course were placed nearby. He expressed concern that such transmissions could inadvertently damage or destroy the thornmint population.

One comment by a licensed pest control operator supported listing the thornmint and provided information on likely adverse effects of insecticide and herbicide applications for a golf course at Edgewood Park. He stated that control of broadleaf plants on the golf

course would threaten the thornmint colony.

Another individual commenting in support of listing the San Mateo thornmint provided a report on her studies of the population at Edgewood Park conducted since 1977 (Sommers, 1979). This report presents detailed information on the size of the population (number of plants and occupied acreage), potential habitats, and threats to the population, including past incidents of unauthorized taking, urbanization, ORV damage, and recreational activities (including the proposed golf course).

Ten individuals expressed concern that listing the San Mateo thornmint would affect the proposed golf course at Edgewood Park. Most of those commenting in this vein indicated that the Endangered Species Act is being used by local environmentalists to halt San Mateo County's recreation plans for Edgewood Park; specifically, a golf course development.

The Service responds that indentifying and listing endangered or threatened species pursuant to the Endangered Species Act, as amended, is a requirement mandated by Congress. Moreover, section 4 of the Act requires the Service to concentrate on biological factors in determining whether to list a species and prevents the Service from giving any weight to economic and other non-biological considerations. The Service recognizes that listings may affect various State and local entities and planned and approved development proposals through the local planning process. Listing of the thornmint, however, will primarily constrain Federal activities and federally-authorized activities that may affect the thornmint or its habitat. In addition, even in instances where local or Federal developments or proposed activities may adversely affect federally listed species, the Service has found that modifications or alternative designs usually allow projects to proceed while providing adequate protection for the species. Specific procedures for conflict resolution are provided in sections 7 and 10(a)(2) of the Act. With respect to previously authorized projects, such projects are not automatically exempt from the provisions of the Act; however, section 7(g) does provide for exemptions.

The proposed golf course at Edgewood Park is but one of many activities and factors that may adversely affect the San Mateo thornmint. San Mateo County's Stage II Final Supplement to its Environmental Impact Report (1984) identified the environmental effects of the proposed Master Plan for Edgewood Park, which includes the proposed golf course development and other recreation facilities. This document indicates that 42 percent to 64 percent of the serpentine grassland habitat at Edgewood Park will be destroyed as a result of Master Plan implementation. The document also indicates that the San Mateo thornmint and other Federal candidate plants may be adversely affected by project design, construction, operation, and maintenance activities. Because local or even absolute extinction of the San Mateo thornmint is a real possibility even without disturbance, the Service views the County's existing Master Plan (1984) and proposed recreation developments at Edgewood Park as a significant threat to the San Mateo thornmint. This does not mean, however, that future modifications or alternative designs could not eliminate or significantly reduce those threats.

San Mateo County provided several comments on the listing of the thornmint, indicating that it was premature to say the thornmint exists only at Edgewood Park considering the extensive amount of potential serpentine habitat on San Francisco's watershed lands. The county stated that the Service should undertake a complete survey before listing, and further stated that the thornmint receives more protection today under county ownership and surveillance than at any time in the past.

The Service responds that the only site now known for the San Mateo thornmint is at Edgewood County Park. Extensive efforts by many local botanists (professional and non-professional) over the last 10–15 years, as well as recent efforts by the California Department of Fish and Game and the Service, have been unable to locate any additional populations on any of the remaining serpentine areas within the historic range of the thornmint, including serpentine areas on the San Francisco watershed lands. This situation was emphasized at the public hearing, when all attending local botanists stated that no other locations have been found despite many hundreds or possibly thousands of hours of effort. The Service finds that the best scientific and commercial data available on the thornmint strongly suggest that it now exists at only one location, Edgewood County Park. The known occurrence at only one site and the very small number of plants in the population make the thornmint critically vulnerable to extinction.

County efforts to protect the thornmint are well recognized. However, the Service believes additional efforts are necessary to adequately protect and recover the plant. Federal listing not only would provide additional conservation measures, but is required by Congressional mandate when a species fits one or more of the five criteria identified in section 4(a) of the Act. The thornmint clearly fits the criteria (se following section of this rule).

Two comments opposing the listing of the thornmint stated that Interstate 280 destroyed hundreds of acres of serpentine rock-outcroppings, implying that many likely habitats for the thornmint were also destroyed. The comments also noted that construction of Interstate 280 was vigorously supported by many of those now hoping to block the golf course development.

The Service replies that the destruction of serpentine habitat as a result of the construction of Interstate 280 is well known. This is one of the activities contributing to the decline of the thornmint identified in the original proposal. Whether a particular group or groups of people supported the highway construction, however, has no bearing on the determination of endangered status for the thornmint.

Several comments stated that designation of the San Mateo thornmint as an endangered species was inappropriate since it is not a full species. They stated that the Act was designed to protect full species.

The Service replies that pursuant to section 3(16) of the Act, the term "species" includes any species or subspecies of fish, wildlife, or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. Consequently, the San Mateo thornmint (*Acanthomintha obovata* ssp. *duttonii*) qualifies as a "species" as defined in Section 3(16) of the Act. The subspecific designation for the San Mateo thornmint is recognized in the most recent available scientific literature and the Service knows of no recent alternative taxonomic treatments that controvert this status.

San Mateo County commented on the thornmint listing that threats from disease are highly speculative and unfounded. They state that disease and natural predation are normal biological phonomena. The County notes that since the plant was first discovered at Edgewood Park in 1977, there has been no indication of loss from disease and that such loss would not necessarily be controllable by man. The County further indicated that Federal listing offers no additional assistance over and above

that which is now available from the County without listing. The County indicated that certain recovery actions such as raising plants and seeds in a botanic garden and implementing efforts to reestablish populations in appropriate habitats elsewhere within the range can be achieved without Federal controls or listing.

The Service responds that the San Mateo thornmint is known only from one small area at Edgewood County Park, occupying a nearly contiguous area of about 1,940 square feet (180 square meters). It is well known that the risk of extinction is most acute in small isolated populations (Frankel and Soulé 1981, Pickett and Thompson 1978, Soulé 1983, Beardmore 1983). In such circumstances otherwise minor events, such as a relatively short, dry spell, locally increased predation, or a local disease outbreak or infection can easily result in the extinction of a small population at a single site. The highly clustered distribution of the plants makes this possibility even greater (Soule 1983). Without additional populations, random events such as these represent significant potential threats that could easily cause the extinction of the thornmint. As stated previously, Federal listing is required by law for those species facing high risk of extinction regardless of whether or not the threats are controllable by man. The Service believes that Federal listing will provide additional opportunities for the conservation of the thornmint as discussed in the section titled "Available Conservation Measures" later in this rule.

One comment indicated that the file information on the listing was not reasonably available to people in the local area.

The Service responds that notifications of the proposal and the public hearing were made public through several notices published in the **Federal Register** and in local newspapers (refer to the previous background section for specific newspapers and publication dates). With respect to the reasonable availability of the file information, this information was available at the Regional Office in Portland, Oregon. A phone number and address were provided in the notifications for those wishing to ask questions or inquire about the file information. This information was also available through the Freedom of Information Act, and was so requested by one agency, San Mateo County. The Service finds that all requirements of Section 4(b)(5) of the Act have been met.

One comment from a private citizen complained about the conditions under which the public hearing was conducted. The public address system at first did not work, and then later periodically played music, making it difficult to hear the speakers. He also felt the Service took too much time explaining the reasons for listing the species; this information had been previously discussed in the **Federal Register**. The commenter felt equal time was not allotted for each side to present relevant facts. A videotaped presentation prepared by Mr. Robert Trent Jones was delayed until after 10 p.m. and by that time most of the audience had left.

The Service apologizes for any inconvenience to the audience caused by the public address system, but this did not appear to be a significant problem at the hearing. Several other individuals commented that they felt the conduct and conditions at the public hearing were very good. The court recorder experienced no difficulties, and the transcript of the hearing is complete. The Service believes presentations on the provisions of the Act and background information in support of the listings were necessary to clarify the proposal and background information, and ensure that everyone was familiar with the purpose of the public hearing. The hearing officer ensured that all those wishing to comment were given adequate time to present relevant facts. No one was denied an opportunity to speak, and the hearing was extended to accommodate all speakers. Mr. Jones' video recording was held until last so that all individuals actually present would be given an opportunity to speak first.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Acanthomintha obovata* ssp. *duttonii* (San Mateo thornmint) should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Acanthomintha obovata* Jepson ssp. *duttonii* Abrams (San Mateo thornmint) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The San Mateo thornmint historically was found at scattered locations in San Mateo County, California, from Crystal Springs Reservoir in the north to Woodside in the south. Most of these sites have been destroyed, presumably by urban development, highway and road construction, and similar land use alterations. The only known remaining colony is at Edgewood Park, San Mateo County, California. The proposed recreation plan and golf course development of San Mateo County could adversely affect the thornmint colony and, considering the small number of plants at the one site, could easily destroy the entire population.

The possibility that additional colonies may exist on the Crystal Springs Reserve property has been mentioned by Dr. J.H. Thomas of Stanford University (pers. comm.), but none have been located recently. This situation has been substantiated by many knowledgeable local botanists, professional and non-professional.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* During the Spring in 1981 and 1983, patches of soil containing individuals of the thornmint were removed from Edgewood Park. It is not known who removed the soil and plants, or for what purpose they were removed. Because soil was taken along with plants, this action may have been an attempt at transplantation or cultivation, but this has not been confirmed. Such unauthorized and uncoordinated removal from this small and localized population may exacerbate the already vulnerable condition of the thornmint.

C. *Disease or predation.* Although mortalities from disease or predation have not been reported for the San Mateo thornmint in the literature, the small size of the population (1,000–2,000 individuals), its occurrence at only one known site (total occupied area of about 1,940 square feet or 180 square meters), and its clustered distribution make this plant exceedingly vulnerable to any disease outbreak or increase in predation.

D. *The inadequacy of existing regulatory mechanisms.* The thornmint is listed as an endangered species by the California Fish and Game Commission and is thus protected under State law, which principally provides for salvage of plants (when there is a change in land use) and restrictions on trade. In addition, County regulations provide some restrictions on the taking of the thornmint. Lawful taking is provided by the County under a permit system from the County Parks and Recreation

Department. Federal listing would provide additional options for protecting the species in its natural habitat.

E. *Other natural or manmade factors affecting its continued existence.* Unauthorized activities such as ORV use and trash dumping, which adversely affected the plant in the past, have been largely eliminated by County management of the site. However, incursions still occur, but at a much reduced frequency. Complete protection of the thornmint colony from ORV damage is very difficult without costly increased patrols and/or fencing. Also, a previously unstable slope above the thornmint colony was recently graded and hydroseeded to stabilize it. Landslides onto the road above the thornmint colony threatened to block the drainages that provide water to the thornmint habitat. It is too early to know if this slope has been adequately stabilized to prevent future slides from adversely affecting the colony. Low thornmint population numbers raise concerns that genetic depletion and reduced reproductive potential may further threaten the plant.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in preparing this final rule. Based on this evaluation, the preferred action is to list *Acanthomintha obovata* ssp. *duttonii* (San Mateo thornmint) as an endangered species. Historically, the San Mateo thornmint occurred on grassy serpentine hillsides from Crystal Springs Reservoir on the north to Woodside in the south, a range of approximately 5 miles. Today, this plant is known only from Edgewood County Park, about 2 miles north of Woodside. Searches of previous collection locations and presumably suitable habitat have failed to locate any additional populations. Most of the historic sites have been destroyed or severely disturbed as a result of urbanization and/or road or highway construction. The known population consists of between 1,000 and 2,000 individuals occupying a total area of about 1,940 square feet (180 square meters). A proposed recreation plan by San Mateo County involving construction of a golf course and other recreation facilities at Edgewood Park could adversely affect the plant. As a consequence of this critical situation, the Service finds that endangered classification is most appropriate for the San Mateo thornmint. For reasons set forth in the "Critical Habitat" section, the Service further finds that it is not prudent to designate critical habitat for the thornmint at this time.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. Considering the highly vulnerable status of the one known population at Edgewood Park, the lack of Federal protection from taking on non-Federal land, and past unauthorized collections, this finding is appropriate. Publication of precise maps and descriptions of the critical habitat would make this plant even more vulnerable, could increase law enforcement problems, and could contribute to the taxon's continued decline.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by other Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal activities that could affect the San Mateo thornmint in the future include, but are not limited to, the following: the issuance of permits or approvals for roads or transmisison lines, or funding or approval to build or construct any structures or facilities in or near any of the areas now supporting the San Mateo thornmint.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to the San Mateo thornmint, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, is part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity,or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. No trade is known for this plant and it is anticipated that few trade permits will be sought or issued for the San Mateo thornmint.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This prohibition now applies to the San Mateo thornmint, though, as noted below, the species currently is known to occur only on non-Federal lands. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (43 FR 31417). Because the San Mateo thornmint is only known to occur on non-Federal lands, it is anticipated that few collecting permits for the species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section

(4)(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Thomas, J.H. 1961. Flora of the Santa Cruz Mountains of California. Stanford University Press, Palo Alto.

Author

The primary author of this final rule is Monty D. Knudsen, Sacramento Endangered Species Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1823, Sacramento, California 95825 (916/484–4935 or FTS 468–4935).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order, under the family Lamiaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	[illegible]	Critical habitat	Special rules
Scientific name	Common name					
LAMIACEASE—MINT FAMILY						
Acanthomintha obovata ssp. *duttoni*	San Mateo thornmint	U.S.A. (CA)	E		NA	NA

Dated: September 3, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–22270 Filed 9–17–85; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 50, No. 181
Wednesday, September 18, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 18605/80-AEA-8]

Proposed Alteration of Group I Terminal Control Area (TCA)—NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This action withdraws Airspace Docket No. 18605/80-AEA-8 published on January 8, 1981, in which the FAA proposed to modify the airspace description of the New York Terminal Control Area (TCA) (46. FR 2088). The FAA is taking this action as the proposed airspace description has been overcome by the planned airspace realignments associated with the development and implementation of an east coast traffic management plan.

EFFECTIVE DATE: September 18, 1985.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8783.

Withdrawal of the Proposal

On January 8, 1981, a notice of proposed rulemaking was published in the **Federal Register** to amend the airspace description of the New York TCA (46 FR 2088). The FAA has reviewed the proposal in light of the comments received, in conjunction with the Flushing, NY, special air traffic rules in Part 93, and with respect to current activities associated with the development and implementation of an east coast traffic management plan. Based on the review it is determined that Airspace Docket No. 18605/80-AEA-8 should be withdrawn. This action does not, however, preclude the FAA from issuing future notices should safety or air traffic management efficiency require such actions.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control area.

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the Notice of Proposed Rulemaking concerning Airspace Docket No. 18605/80-AEA-8, as published in the **Federal Register** on January 8, 1981, (46 FR 2088) is hereby withdrawn.

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

Issued in Washington, D.C., on September 11, 1985.

Daniel Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85-22287 Filed 9-17-85; 8:45 am]
BILLING CODE 4910-13-M

14 CFR part 71

[Airspace Docket No. 85-ASO-17]

Proposed Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter a portion of Federal Airway V-290 by changing the name to read V-266. This action would enhance safety and correct a current airway structure deficiency that permits a pilot to transition from Federal Airway V-139 to Federal Airway V-290 at two different intersecting locations.

DATES: Comments must be received on or before November 4, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Southern Region, Attention: Manager, Air Traffic Division, Docket No. 85-ASO-17, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Robert G. Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-ASO-17." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to rename a portion of VOR Federal Airway V–290 between Franklin, VA, and Wright Brothers, NC. Aircraft navigating along intersecting airways can now intercept V–290 in two places 45 miles apart. To preclude incorrect transition between airways, V–290 will be changed to V–266 between Franklin, VA, and Wright Brothers, NC. Section 71.123 of Part 71 of the Federal Aviation Regulations was published in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V–290 [Amended]

By removing the words "From Franklin, VA; Elizabeth City, NC; to Wright Brothers, NC."

V–266 [Amended]

By removing the words "Franklin, VA." and substituting the words "Franklin, VA; Elizabeth City, NC; to Wright Brothers, NC."

Issued in Washington, D.C., on September 11, 1985.

Daniel Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85–22281 Filed 9–17–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 85–AWA–2]

Proposed Establishment of Airport Radar Service Areas; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This action corrects the date for the informal airspace meeting for the Lubbock International Airport, TX, Airport Radar Service Area (ARSA) as published in the **Federal Register** on August 2, 1985 (50 FR 31472).

FOR FURTHER INFORMATION CONTACT: Robert G. Burns, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–8783.

The date given for the meeting on page 31480 was "October 10, 1986." The correct date is "October 10, 1985."

Issued in Washington, DC on September 11, 1985.

Daniel Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85–22283 Filed 9–17–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 18605/79–AWE–18]

Proposed Group II Terminal Control Area (TCA), Phoenix, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: This action withdraws the notice of proposed rulemaking associated with the establishment of a Terminal Control Area (TCA) at Phoenix, AZ. This action is being taken because the FAA is currently evaluating Phoenix as an airport radar service area (ARSA) candidate in conjunction with the recently adopted ARSA program.

DATE: This withdrawal is effective September 18, 1985.

FOR FURTHER INFORMATION CONTACT: William C. Davis, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426–8783.

Withdrawal of the Proposal

On April 7, 1980, the FAA published a notice of proposed rulemaking to establish a TCA at Phoenix, AZ, (45 FR 23457). After reviewing the proposal in the light of the comments received and in conjunction with Phoenix being identified as an airport radar service area candidate, the FAA has determined that further rulemaking in this regard is not appropriate at the present time and that Airspace Docket No. 18605/79–AWE–18 should be withdrawn. The withdrawal of the notice, however, does not preclude the FAA from considering Phoenix as a candidate for a TCA and issuing a similar notice in the future.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas.

The Withdrawal

Accordingly, pursuant to the authority delegated to me, the Notice of Proposed Rulemaking concerning Airspace Docket No. 18605/79–AWE–18, as published in the **Federal Register** on April 7, 1984, (45 FR 23457) is hereby withdrawn.

Authority: 49 U.S.C. 1384(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

Issued in Washington, D.C., on September 11, 1985.

Daniel Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85-22285 Filed 9-17-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-AWA-23]

Proposed Revocation of VOR Federal Airways Restrictions; AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revoke the restrictions to Federal Airways V-95, V-327 and V-567 located in the vicinity of Phoenix, AZ. The airway restrictions were added when the Williams 4 Military Operations Area (MOA) was established. These restrictions for use of V-95, V-327 and V-567 are no longer required. This action would restore controlled airspace for more effective airway usage by the public.

DATE: Comments must be received on or before October 30, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 85-AWA-23, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8626.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWA-23." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke airway restrictions on segments of VOR Federal Airways V-95, V-327 and V-567. Willams Air Force Base no longer utilizes the Williams 4 MOA. Therefore, there is no further need for the airway restrictions imposed when the MOA was in use. This action would return airspace for public use. Section 71.123 of Part 71 of the Federal Aviation Regulations was published in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

VOR Federal airways, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-95 [Amended]

By removing the words "The airspace 14,000 feet MSL and above is excluded from 23 NM northeast of Phoenix to 22 NM southwest of Winslow, from 1300 GMT to 0200 GMT, Monday through Friday, and other times as advised by a Notice to Airmen."

V-327 [Revised]

From Phoenix, AZ; to Flagstaff, AZ.

V-567 [Revised]

From Phoenix, AZ; via INT Phoenix 006°T(352°M) and Winslow, AZ, 224°T(210°M) radials; 52 miles, 95 MSL; to Winslow.

Issued in Washington, D.C., on September 10, 1985.

Daniel Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85-22286 Filed 9-17-85; 8.45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 50836-5136 8/13]

Surveys of International Trade in Services Between U.S. and Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice sets forth proposed rules for mandatory surveys of trade in services between U.S. and foreign persons, to be conducted by the Bureau of Economic Analysis (BEA). The proposed rules would implement the President's responsibilities for collecting data on U.S. services trade under the International Investment and Trade in Services Survey Act. These responsibilities have been delegated to the Secretary of Commerce, who has redelegated them to BEA. If the proposed rules are adopted, they would replace the present regulations regarding surveys of U.S. services transactions contained in 15 CFR Parts 802 and 803, which would be deleted. They would also institute a new BE-20, Benchmark Survey of U.S. Services Transaction with Unaffiliated Foreign Persons.

DATE: Comments on the proposed rules will receive consideration if submitted in writing on or before November 18, 1985.

ADDRESSES: Comments may be mailed to Office of the Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand delivered to Room 608, Tower Building, 1401 K Street, NW., Washington, DC 20005. Comments received will also be available for inspection in Room 608, Tower Building, between 8:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: George R. Kruer, Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, phone (202) 523-0657.

SUPPLEMENTARY INFORMATION:

Background

In response to urgent concerns expressed by representatives of U.S services industries to the U.S. Congress and to the Administration about the need to reduce international barriers to services trade, Congress included an amendment in the Trade and Tariff Act of 1984 authorizing mandatory surveys of trade in services. Under the General Agreements on Tariffs and Trade and in other interntional fora, the U.S. has taken the initiative to make reduction in barriers to services trade a topic for negotiations. Such negotiations can only be conducted effectively if U.S. Government officials have sufficient data to assess the size of U.S. services trade, both in aggregate and by individual country and industry; to evaluate the extent to which U.S. trade has been disadvantaged by trade barriers; and to determine the benefits that would result from a reduction in those barriers. The data from the surveys will also result in improvement in U.S. balance of payments statistics and in the ability of U.S. services businesses to identify and evaluate market opportunities.

The surveys on services transactions presently conducted under the Bretton Woods Agreements Act (59 Stat. 515, 22 U.S.C. 286(f)) are inadequate to achieve these purposes. They do not, in practice, cover all services industries or all types of services transactions, so that major gaps in coverage exist. Also, many of the surveys are voluntary, and the response rates and reliability of the data have deteriorated over time.

Statutory Authority

The Trade and Tariff Act of 1984 amended the International Investment Survey Act of 1976 to extend the latter's coverage to international services trade, and to rename it the International Investment and Trade in Services Survey Act (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended by section 306 of Pub. L. 98-573), hereafter "the Act." Section 4 of the Act authorizes the conduct of mandatory surveys of trade in services between U.S. and foreign persons. It provides that "The President shall, to the extent he deems necessary and feasible—(1) conduct a regular data collection program to secure current information on international capital flows and other information related to international investment and trade in services . . .; (4) Conduct (not more frequently than once every five years and in addition to any other surveys conducted pursuant to paragraphs (1) and (2)) benchmark surveys with respect to trade in services between unaffiliated United States persons and foreign persons; and (5) publish for the use of the general public and the United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection . . ." In section 3 of Executive Order 11961, as amended by Executive Order 12518 of June 3, 1985, the President delegated the authority under the Act as concerns trade in services to the Secretary of Commerce. The Secretary of Commerce has, in turn redelegated this authority to BEA.

Content of Proposed Rule

The proposed rule sets forth the reporting requirements for mandatory surveys of trade in services between U.S. and foreign persons. In particular:

(1) It sets forth the reporting requirements for a new BE-20, Benchmark Survey of U.S. Services Transactions with Unaffiliated Foreign Persons. The year of coverage will be 1985. The survey will collect data on services transactions of U.S. persons, other than the U.S. Government, with unaffiliated foreign persons (that is, with foreign persons that are neither the foreign affiliate nor the foreign parent or other member of the affiliated foreign group of the U.S. person), by type of service and by country.

(2) It sets forth BEA's intention to conduct an annual sample survey in subsequent nonbenchmark years, to update the information obtained in the benchmark survey.

(3) It transfers authority for existing surveys of U.S. services transactions from the Bretton Woods Agreement Act to the International Investment and Trade in Services Survey Act.

(4) It replaces the current rules for three existing, mandatory surveys of U.S. services transactions, as contained in 15 CFR Parts 802 and 803, with new rules. 15 CFR Part 802 sets forth the rules and regulations for two surveys—the BE-29, Foreign Carriers' Ocean Freight Revenues and Expenses in the United States, and the BE-36, Foreign Airline Operators Revenues and Expenses in the United States. These surveys will continue to be conducted in essentially the same form as before but pursuant to the new rules and authority. 15 CFR Part 803 sets forth the rules and regulations for the BE-93 survey, International Transactions in Royalties, Licensing Fees, Film Rentals, Management Fees, etc., with Unaffiliated Foreign Residents. For 1985, that survey will be merged with, and replaced by, the new BE-20 benchmark survey. For subsequent nonbenchmark years, it will be replaced by the annual sample follow-on survey to the BE-20 benchmark survey.

(5) It makes response to four existing voluntary surveys of U.S. services transactions mandatory. Two of these surveys—the BE-47, Foreign Contract Operations of U.S. Construction, Engineering, Consulting, and Other

Technical Services Firms, and the BE–48, Reinsurance Transactions with Insurance Companies Resident Abroad, will be merged with, and replaced by, the BE–20 benchmark survey and annual sample follow-on survey, both of which will be mandatory. Two other existing, voluntary surveys—the BE–30, Ocean Freight Revenues and Expenses—United States Carriers, and the BE–37, U.S. Airline Operators Foreign Revenues and Expenses—will continue to be conducted in essentially the same form as before, but on a mandatory basis.

Public Input

Within the Government, BEA has consulted with the Interagency Task Force on Services Trade Data Needs in developing the 1985 BE–20 benchmark survey. Beginning in November 1984, it also sought technical input on the design and content of the benchmark survey from a number of services companies and business groups, including the Business Advisory Council on Federal Reports. These proposed rules, and the draft of the BE–20 benchmark survey that has been submitted to OMB for approval, reflect the comments received thus far.

In response to additional public comments received as a result of this notice, BEA will prepare final rules for submission to OMB for approval.

Executive Order 12291

BEA has determined that this proposed rule is not "major" as defined in E.O. 12291 because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

This proposed rule contains collections of information requirements subject to the Paperwork Reduction Act. The collections of information are necessary to secure information on U.S. services transactions with unaffiliated foreign persons which will be used to develop U.S. trade policy, and to support U.S. trade policy initiatives in international fora and bilateral negotiations with foreign countries. Requests to collect this information have been submitted to the Office of Management and Budget for review under section 3504(h) of that Act. Comments from the public on the collections of information requirements contained in the proposed rule are specifically invited and should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530, Attention: Desk Officer for the Department of Commerce.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to preparation of an initial regulatory flexibility analysis are not applicable to this proposed rulemaking because it will not have significant economic impact on a substantial number of small entities. Small businesses, whether services or goods oriented, are unlikely to engage in international transactions. Furthermore, the exemption levels established for the surveys will exclude most of the small businesses that do have such transactions. Even if a small business is required to file, it is unlikely to be very diversified and will probably have to report only on the one form or schedule relevant to its particular activity, thus further minimizing burden.

Accordingly, the General Counsel, Department of Commerce, has certified under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the proposed rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 801

Economic statistics, Foreign trade, Reporting and recordkeeping requirements, Services.

Allan Young,

Director, Bureau of Economic Analysis.

For the reasons set out in the preamble, 15 CFR, Chapter VIII is amended by adding a new Part 801 and removing Parts 802 and 803.

1. It is proposed to add Part 801 as follows:

PART 801—SURVEYS OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

Sec.

801.1 Purpose.
801.2 Recordkeeping requirements.
801.3 General reporting requirements.
801.4 Response required.
801.5 Confidentiality.
801.6 Penalties.
801.7 General definitions.
801.8 Miscellaneous.
801.9 Reports required.
801.10 Rules and regulations for BE–20, Benchmark Survey of U.S. Services Transactions with Unaffiliated Foreign Person—1985.

Authority: 5 U.S.C. 301; Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101–3108, as amended by Section 306 of Pub. L. 98–573; and Executive Order 11961, as amended by Executive Order 12518.

§ 801.1 Purpose.

The purpose of this part is to set forth the rules and regulations necessary to carry out the data collection program concerning international trade in services that is required by, or provided for in, the International Investment and Trade in Services Survey Act (Pub. L. 94–472, 90 Stat. 2059, 22 U.S.C. 3101 to 3108, as amended by section 306 of Pub. L. 98–573), hereafter "the Act." The overall purpose of the Act with respect to services trade is to provide comprehensive and reliable information pertaining to international trade in services, and to do so with the minimum burden on respondents and with no unnecessary duplication of effort. The data are needed for policymaking purposes, for conducting international negotiations on trade in services, and for improving the recording of services transactions in the U.S. balance of payments accounts.

§ 801.2 Recordkeeping requirements.

In accordance with section 5(b)(1) of the Act (22 U.S.C. 3104) persons subject to the jurisdiction of the United States shall maintain any information (including journals or other books of original entry, minute books, stock transfer records, lists of shareholders, or financial statements) which is essential for carrying out the surveys and studies provided for by the Act.

§ 801.3 General reporting requirements.

(a) In accordance with section 5(b)(2) of the Act (22 U.S.C. 3104) persons subject to the jurisdiction of the United States shall furnish, under oath, any report containing information which is determined to be necessary to carry out the surveys and studies provided for by the Act.

(b) Such reports may be required from any U.S. person, other than the U.S. Government, engaged in international trade in services. Specific reporting requirements for a given report form are given below and, in more detail, on the form itself.

§ 801.4 Response required.

Reports, as specified below, are required from all U.S. persons coming within the reporting requirements,

whether or not they are contacted by BEA. In addition, any person BEA contacts, either by sending them report forms or by written inquiry concerning the person's being subject to the reporting requirements of a survey conducted pursuant to this part must respond in writing. The response must be made by filing the properly completed report form, or by certifying in writing, within 30 days of being contacted, to the fact that the person has no international services transactions within the purview of the Act or the regulations contained herein. A person receiving report forms from BEA may accomplish the latter by completing and returning to BEA a valid exemption claim form. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act.

§ 801.5 Confidentiality.

Information collected pursuant to § 801.3 is confidential (see section 5(c) of the Act, 22 U.S.C. 3104).

(a) Access to this information shall be available only to officials and employees (including consultants and contractors and their employees) of agencies designated by the President to perform functions under the Act.

(b) Subject to paragraph (d) of this section, the President may authorize the exchange of information between agencies or officials designated to perform functions under the Act.

(c) Nothing in this part shall be construed to require any Federal agency to disclose information otherwise protected by law.

(d) This information shall be used solely for analytical or statistical purposes or for a proceeding under § 801.6.

(e) No official or employee (including consultants and contractors and their employees) shall publish or make available to any other person any information collected under the Act in such a manner that the person to whom the information relates can be specifically identified.

(f) Reports and copies of reports prepared pursuant to the Act are confidential and their submission or disclosure shall not be compelled by any person without the prior written permission of the person filing the report and the customer of such person where the information supplied is identifiable as being derived from the records of such customer.

§ 801.6 Penalties.

(a) Whoever fails to furnish any information required by the Act or by § 801.3, or to comply with any other rule, regulation, order or instruction promulgated under the Act, may be subject to a civil penalty not exceeding $10,000 in a proceeding brought in an appropriate United States court and to injunctive relief commanding such person to comply, or both (see section 6 (a) and (b) of the Act, 22 U.S.C. 3105).

(b) Whoever willfully fails to submit any information required by the Act or by § 801.3, or willfully violates any other rule, regulation, order or instruction promulgated under the Act, upon conviction, shall be fined not more than $10,000 and, if an individual, may be imprisioned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violation, upon conviction, may be punished by a like fine, imprisonment, or both (see section 6(c) of the Act, 22 U.S.C. 3105).

(c) Any person who willfully violates § 801.5 relating to confidentiality, shall, upon conviction, be fined not more than $10,000, in addition to any other penalty imposed by law (see section 5(d) of the Act, 22 U.S.C. 3104).

§801.7 General definitions.

(a) "Services" means economic activities whose outputs are other than tangible goods. Such term includes, but is not limited to, banking, insurance, transportation, communications and data processing, retail and wholesale trade, advertising, accounting, construction, design, engineering, management consulting, real estate, professional services, entertainment, education, and health care;

(b) "United States," when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States;

(c) "Foreign," when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States;

(d) "Person" means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government sponsored agency);

(e) "United States person" means any person resident in the United States or subject to the jurisdiction of the United States;

(f) "Foreign person" means any person resident outside the United States or subject to the jurisdiction of a country other than the United States;

(g) "Business enterprise" means any organization, association, branch, or venture which exists for profitmaking purposes or to otherwise secure economic advantage, and any ownership of any real estate;

(h) "Unaffiliated foreign person" means, with respect to a given U.S. person, any foreign person that is not an "affiliated foreign person" as defned in paragraph (i) of this section;

(i) "Affiliated foreign person" means, with respect to a given U.S. person, (1) a foreign affiliate of which the U.S. person is a U.S. parent, or (2) the foreign parent or other member of the affiliated foreign group of which the U.S. person is a U.S. affiliate;

(j) "Parent" means a person of one country who, directly or indirectly, owns or controls 10 per centum or more of the voting stock of an incorporated business enterprise, or an equivalent ownership interest in an unincorporated business enterprise, which is located outside that country;

(k) "Affiliate" means a business enterprise located in one country which is directly or indirectly owned or controlled by a person or another country to the extent of 10 per centum or more of its voting stock for an incorporated business or an equivalent interest for an unincorporated business, including a branch;

(l) "U.S. parent" means the U.S. person that has direct investment in a foreign business enterprise;

(m) "Foreign affiliate" means an affiliate located outside the United States in which a U.S. person has direct investment;

(n) "Foreign parent" means the foreign person, or the first person outside the United States in a foreign chain of ownership, which has direct investment in a U.S. business enterprise, including a branch;

(o) "U.S. affiliate" means an affiliate located in the United States in which a foreign person has a direct investment;

(p) "Affiliated foreign group" means (i) the foreign parent, (ii) any foreign person, proceeding up the foreign parent's ownership chain, which owns more than 50 per centum of the person below it up to and including that person which is not owned more than 50 per centum by another foreign person, and (iii) any foreign person, proceeding down the ownership chain(s) of each of these members, which is owned more than 50 per centum by the person above it;

(q) "U.S. Reporter" is the U.S. person required to file a report.

§ 801.8 Miscellaneous.

(a) *Required information not available.* All reasonable efforts should be made to obtain information required for reporting. Every applicable question on each form or schedule should be answered. When only partial information is available, an appropriate indication should be given.

(b) *Estimates.* If actual figures are not available, estimates should be supplied and labeled as such. When a data item cannot be fully subdivided as required, a total and an estimated breakdown of the total should be supplied.

(c) *Specify.* When "specify" is included in certain data items, the type and dollar amount of the major items included must be given for at least items mentioned in the line or column instruction.

(d) *Space on form insufficient.* When space on a form is insufficient to permit a full answer to any item, the required information should be submitted in the "comments" section of the form or schedule or on supplementary sheets, appropriately labeled and referenced to the item or column number and the form or schedule.

(e) *Extensions.* Requests for an extension of a reporting deadline will not normally be granted. However, in a hardship case, a written request for an extension will be considered provided it is received at least 15 days prior to the due date of the report and enumerates substantive reasons necessitating the extension.

(f) *Number of copies.* A single original copy of each form or schedule shall be filed with the Bureau of Economic Analysis. This should be the copy with the address label if such a labeled copy has been provided. In addition, each respondent must retain a copy of its report to facilitate resolution of problems. Both copies are protected by law; see § 801.5.

(g) *Other.* Instructions concerning filing dates, where to send reports, and whom to contact concerning a given report are contained on each form.

§ 801.9 Reports required.

(a) *Benchmark surveys.* BE–20, Benchmark Survey of U.S. Services Transactions with Unaffiliated Foreign Persons: Section 4(a)(4) of the Act (22 U.S.C. 3103) provides that benchmark surveys of trade in services between U.S. and unaffiliated foreign persons be conducted, but not more frequently than once every 5 years. The survey is referred to as the "BE–20." Specific reporting requirements, exemption levels, and the year of coverage of a given BE–20 survey may be found in § 801.10.

(b) *Annual surveys.* (1) BE–29, U.S. Expenses of Foreign Ocean Carriers: A BE–29 report is required from U.S. agents on behalf of foreign ocean carriers transporting freight or passengers to or from the United States U.S. agents are steamship agents and other persons representing foreign carriers in arranging ocean transportation of freight and cargo between U.S. and foreign ports and in arranging port services in the United States. Foreign carriers are foreign persons that own or operate ocean going vessels calling at U.S. ports, including VLCC tankers discharging petroleum offshore to pipelines and lighter vessels destined for U.S. ports. They include carriers who own or who operate their own or chartered (United States of foreign-flag) vessels. They also include foreign subsidiaries of U.S. companies operating their own or chartered vessels as carriers for their own accounts. Where the vessels under foreign registry are operated directly be a U.S. carrier for its own account, the operations of such vessels should be reported on Form BE–30, Ocean Freight Revenues and Foreign Expenses of U.S. Carriers.

(2) BE–36, Foreign Airline Operators' Revenues and Expenses in the United States: A BE–36 report is required from U.S. offices, agents, or other representatives of foreign airlines that are engaged in transporting passengers or freight and express to or from the United States. If the U.S. office does not have all the information required, it must obtain the additional information from the foreign airline operator.

(3) Other annual surveys: An annual sample survey to update the information obtained in the BE–20, Benchmark Survey of U.S. Services Transactions with Unaffiliated Foreign Persons, will be conducted for nonbenchmark years beginning with 1986. The precise content, reporting requirements, and exemption levels for the survey to be conducted will be determined after the 1985 BE–20 benchmark survey to be conducted will be determined after the 1985 BE–20 benchmark survey has been taken (see § 801.10 below). In addition to information needed to identify the U.S. Reporter, such an annual survey will collect the data now obtained on Forms, BE–47, BE–48, and BE–93, which are to be replaced by Schedules A, B, C, and E of the 1985 BE–20, and data for other services activities shown to be significant by the 1985 BE–20.

(c) *Quarterly surveys.* (1) BE–30, Ocean Freight Revenues and Foreign Expenses of U.S. Carriers: A BE–30 report is required from U.S. carriers, i.e., from U.S. persons that own or operator dry cargo, passenger (including combination), and tanker vessels regardless of whether the vessels are registered in the United States or in foreign countries. Operators are persons who enter into any form of transportation contract with shippers of merchandise (or their agents) for the transportation of freight and cargo between U.S. and foreign ports or between foreign ports, whether on the operators' own vessels or chartered vessels.

(2) BE–37, U.S. Airline Operators' Foreign Revenues and Expenses: A BE–37 report is required from all U.S. airline operators engaged in transportation of passengers and freight to and from the United States or between foreign points

§ 801.10 Rules and regulations for the BE–20, Benchmark Survey of U.S. Services Transactions with Unaffiliated Foreign Persons—1985.

A BE–20, Benchmark Survey of U.S. Services Transactions with Unaffiliated Foreign Persons, will be conducted covering fiscal year 1985. All legal authorities, provisions definitions, and requirements contained in §801.1 through 801.9(a) are applicable to this survey. Additional rules and regulations for the BE–20 survey are given below. More detailed instructions are given on the report form itself.

(a) *Who must report.* (1) A BE–20 report is required from every U.S. person, other than the U.S. Government, that sold or purchased services to or from an unaffiliated foreign person at any time during the U.S. person's 1985 fiscal year. As defined in § 801.7(h), an unaffiliated foreign person is a foreign person that is neither the foreign affiliate nor the foreign parent or other member of the affiliated foreign group of the U.S. person filing the report. A U.S. person's 1985 fiscal year is its financial reporting year that has an ending date in calendar year 1985.

(2) In addition, a U.S. person that had reinsurance transactions with a foreign person, *whether affiliated or unaffiliated,* in its 1985 fiscal year must report such transactions in the survey.

(3) Finally, a U.S. activity or operation carried out by a foreign person for its own account in fiscal year 1985 must be reported by the U.S. activity or operation.

(b) *Exemption.* A U.S. person otherwise required to report is exempt from reporting in the survey if the sum of all covered services transactions in the persons' 1985 fiscal year is less than $500,000.

(c) *Excepted transactions.* The following types of transactions by or with a comapny or entity are not to be reported in the BE–20 survey:

(1) Certain transactions by or with banks and bank holding companies: security and commodity brokers, dealers, and exchanges; and other credit agencies. U.S. banks and bank holding companies; security and commodity brokers, dealers, and exchanges; and other credit agencies that, either directly or indirectly through domestic (U.S.) subsidiaries, engage in activities, or have transactions of the types, covered by the BE–20 survey are subject to reporting those activities or transactions. Such firms are not, however, required to report data relating to lending and borrowing activities; securities transactions; or related fee, dividend, and interest income receipts and payments. Other U.S. persons' lending and borrowing activities, securities transactions, and related fee, dividend and interest income receipts and payments with unaffiliated foreign banks and bank holding companies; security and commodity brokers, dealers, and exchanges; or other credit agencies are also not to be reported.

(2) Transactions with the U.S. and foreign facilities or airlines and ship operators. Sales to, or purchases from, foreign airlines and ship operators' U.S. stations, ticket offices, and terminal and port facilities, or repair work done in U.S. ports on foreign ships, and are not to be reported. (They are to be reported instead on Forms BE–29 and 36.) Also, sales or purchases by U.S. airlines and ship operators' foreign stations, ticket offices, and terminal and port facilities are not to be reported. (They are to be reported instead on Forms (BE–30 and 37.) The U.S. operators should, however, report their own sales and purchases of covered services to or from unaffiliated foreign persons.

(3) Certain transactions with international organizations, and foreign embassies and consulates located in the United States. Sales to international organizations' U.S. facilities, or to foreign embassies and consulates located in the United States, that were for the operation of such entities are not to be reported. However, data on construction services performed for such entities, and sales by the U.S. Reporter that were arranged through, or facilitated by, an embassy or consulate, but that were actually for their foreign government, should be reported as sales to that country.

(4) Financial leasing.

(5) Wholesale and retail trade activities.

(6) Expenditures related to business and pleasure travel from and to the United States, including those for transportation, lodging and food.

(7) Transportation charges on U.S. merchandise exports and imports.

(8) Sales or purchases of real estate.

(d) *Forms and schedules required.* The BE–20 survey consists of Form BE–20 proper, which is to be completed by all U.S. Reporters, and twelve schedules (A–L), each of which covers a particular group of services and is to be completed only by Reporters that have transactions of the type covered by the individual schedule. The schedules are:

(1) Schedule A—Royalties, License, Fees, and Rentals.

(2) Schedule B—Franchise Fees (Business Format Franchises).

(3) Schedule C—U.S. Reporters' Reinsurance Transactions with Insurance Companies Resident Abroad.

(4) Schedule D—Direct Insurance Transactions.

(5) Schedule E—Foreign Contract Operations of U.S Construction, Engineering, Architectural, and Mining Services Firms.

(6) Schedule F—Advertising Services.

(7) Schedule G—Computer and Data Processing Services.

(8) Schedule H—Data Base and Other Information Services.

(9) Schedule I—Telecommunications Services.

(10) Schedule J—Performing Arts, Sports, and Other Live Performances, Presentations, and Events.

(11) Schedule K—Selected Services (Agricultural services; research and development, and commercial testing, laboratory services; management services; management of health care facilities; consulting services; public relations services; accounting, auditing, and bookkeeping services; legal services; educational and training services; mailing, reproduction, and commercial art; employment agencies and temporary help supply services; industrial engineering services; industrial-type maintenance and repair services; installation, startup, and training services provided by a manufacturer in connection with the sale of a good; and construction, engineering, architectural, and mining services.

(12) Schedule L—Miscellaneous Disbursements by U.S. Persons Abroad, or by Foreign Persons in the United States.

(e) *Due date.* BE–20 reports, comprising Form BE–20 proper and Schedules A–L, as applicable, are due on or before May 31, 1986.

PARTS 802 AND 803—[REMOVED]

2. It is proposed to remove Parts 802 and 803.

[FR Doc. 85–22309 Filed 9–17–85; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 160

[Docket No. 85P–0028/CP]

Lysozyme and Avidin Reduced Dried Egg Whites; Proposed Amendment of the Standard of Identity

Correction

In FR Doc. 85–20374 beginning on page 34721 in the issue of Tuesday, August 27, 1985, make the following corrections:

§ 160.145 [Corrected]

1. On page 34722, in the first column, in § 160.145(c)(1), in the fourth line, § 101.3(3)(4)(i)" should read § 101.3(e)(4)(i)".

2. Also on page 34722, in the second column, in § 160.145(c)(2), in the second line, § 43.253.257" should read "secs. 43.253–43.257".

BILLING CODE 1505–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[LR–289–82]

Returns Required on Magnetic Media

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to returns required to be filed on magnetic media. Changes to the applicable tax law were made by the Tax Equity and Fiscal Responsibility Act of 1982 and the Interest and Dividend Tax Compliance Act of 1983. The proposed regulations apply to persons required to file certain returns (other than individuals, estate, and trust income tax returns), and provide guidance concerning the magnetic media filing requirements.

DATES: Written comments and requests for a public hearing must be delivered by November 18, 1985. The regulations are proposed to be effective as of the date of publication in the Federal

Register as final regulations and would apply to returns filed after December 31, 1986.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–289–82), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: C. Scott McLeod of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T), (202) 566–3288, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR Part 301) under section 6011 of the Internal Revenue Code of 1954 relating to returns required to be filed on magnetic media. These amendments are proposed to reflect the addition to the Code of section 6011 (e) by section 319 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248, 96 Stat. 610) and its amendment by section 109 of the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98–67, 97 Stat. 383). The proposed regulations provide magnetic media filing requirements for certain returns (other than individual, estate, and trust income tax returns).

This document also contains proposed amendments to the table of OMB control numbers under the Paperwork Reduction Act (26 CFR Part 602).

Explanation of Provisions

The proposed regulations generally would require that where the use of Form 1042S (Income Subject to Withholding Under Chapter 3, Internal Revenue Code), 1098 (Mortgage Interest Statement), 1099 series (Information Return), 5498 (Individual Retirement Arrangement Information), 6248 (Annual Information Return of Windfall Profit Tax), 8027 (Employer's Annual Information Return of Tip Income and Allocated Tips), W–2 (Wage and Tax Statement), W–2G (Statement for Recipients of Certain Gambling Winnings), W–2P (Statement for Recipients of Annuities, Pensions, Retired Pay, or IRA Payments), or W–4 (Employee's Withholding Allowance Certificate) is required by the applicable regulations for the purpose of making a return, the information required by such forms shall be submitted on magnetic media. Failure to file a return on magnetic media when required to do so by the regulations would be treated as a failure to file such return and would subject the filer to the corresponding penalty. A person required to file a return on magnetic media may receive a waiver from such requirement in appropriate circumstances upon a showing of hardship.

Under the proposed regulations, filers would be required to obtain prior consent to the use of the magnetic medium on which the information is submitted. For additional information and requirements with respect to filing on magnetic media, including descriptions of types and formats of media that are acceptable, please see Rev. Proc. 85–40 (1985–34 I.R.B. 39) and SSA Pub. No. 42–032 (April 1984). Although the proposed regulations would apply only to returns filed after December 31, 1986, filers are encouraged to begin use of magnetic media as soon as possible and voluntarily to begin filing on magnetic media for returns due after December 31, 1985.

The proposed regulations would provide that applications for consent to the use of a magnetic medium and requests for waiver generally must be filed at least 90 days before the filing of the first return for which consent or waiver is requested. In the case of certain returns (Forms W–2 and W–2P) filed in 1987 and 1988, however, the application for consent or request for waiver would be due no later than June 30 of the preceding year. Although the proposed regulations do not explicitly address the issue, applicable procedures would permit filing of an application for consent to the use of a particular magnetic medium together with a related request for waiver in appropriate cases.

The term "person," as used in these regulations with respect to filers of any return, includes any person required to make such return. Thus, in the case of Form W–2 or W–2P, an employer corporation in a person required to make the return even if returns are acutally filed by reporting units within the corporation.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

It is hereby certified that the regulations proposed in this document will not have a significant impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). The certification is based on a determination that the economic impact of the proposed reporting requirements will be minimal in most cases and, in any event, is primarily attributable to requirements directly imposted by the statute. Section 6011 (e)(2) provides that any taxpayer who is required to file returns under sections 6042(a), 6044(a), or 6049(a) (relating to dividends, patronage dividends, and interest) with respect to more than 50 payees for any calendar year shall file such returns on magnetic media. Section 6011 (e)(1) directs the Secretary to prescribe regulations requiring magnetic media filing taking into account the ability of taxpayers to comply with the requirement at a reasonable cost.

In the case of returns to which section 6011(e)(2) applies, the magnetic media filing requirements in the proposed regulations are imposed by the statute. In the case of other returns, the proposed regulations impose no more reporting or recordkeeping requirements than are necessary to carry out the statutory directives. Moreover, under existing voluntary magnetic media reporting procedures, a significant number of those persons who would be affected by these regulations already file on magentic media.

Under the proposed regulations, magnetic media filing is required only where the volume of filings enables magnetic media filing to be done at a reasonable cost. This is generally the case if the taxpayer's operations are computerized because filing in accordance with the proposed regulations should be less costly than paper filing. Even if the taxpayer's operations are not computerized, the incremental cost of magnetic media filing should be nominal in most cases because of the availability of computer service bureaus. The Service recognizes that filing a small number of returns on magnetic media may not be cost effective. For calendar years (or annual filing periods) beginning before January 1, 1987, the proposed regulations generally permit filing on a paper form if fewer than 500 returns of information were required to be filed on that form for the preceding year (or annual period). For calendar years (or annual filing periods) beginning on or after January 1, 1987, the proposed regulations generally permit filing on a paper form if fewer than 250 returns of information were required to be filed on that form for the preceding year (or annual period). The paper form, however, must be machine-readable if applicable revenue procedures provide a machine-readable form. The proposed regulations

also provide that the Commissioner may waive the magnetic media requirement upon a showing of hardship. It is anticipated that the waiver authority will be exercised so as not to unduly burden taxpayers lacking both the necessary data processing facilities and access at a reasonable cost to computer service bureaus.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatary Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Drafting Information

The principal author of these proposed regulations is Linda M. Kroening of the Legislation and Regulations Division of the Office of Chief Council, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

Lst of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

The proposed amendments to 26 CFR Part 301 are as follows:

;

Procedure and Administration Regulations

PART 301—[AMENDED]

Paragraph 1. The authority for Part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 301.6011–2 also issued under 26 U.S.C. 6011(e).

Par. 2. New § 301.6011–2 is added immediately after § 301.6011–1 to read as follows:

§ 301.6011–2 Required use of magnetic media.

(a) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media.* The term "magnetic media" means any magnetic media permitted under applicable regulations, revenue procedures, or Social Security Administration publications. These generally include magnetic tape, disk, diskette, and cassette as well as other media specifically permitted under the applicable regulations or procedures. Use of diskette and cassette may be subject to certain limitations or special rules in the case of returns of the information required by Form W–2 or W–2P.

(2) *Machine-readable paper form.* The term "machine-readable paper form" means—

(i) Optical-scan paper form; or

(ii) Any other machine-readable paper form permitted under applicable regulations, revenue procedures, or Social Security Administration publications.

(3) *Person.* The term "person" includes the United States, a State, the District of Columbia, a foreign government, a political subdivision of a State or a foreign government, or an international organization.

(b) *Returns required on magnetic media.* (1) If the use of Form 1042S, 1098, 1099 series, 5498, 6248, 8027, W–2G, W.4, or other form treated as a form specified in this paragraph (b)(1) is rquired by the applicable regulations or revenue procedures for the purpose of making a return, the information required by such form shall, except as otherwise provided in paragraph (c) of this section, be submitted on magnetic media. Returns on magnetic media shall be made in accordance with applicable revenue procedures. Pursuant to these procedures, the consent of the Commissioner of Internal Revenue (or other authorized officer or employee of the Internal Revenue Service) to a magnetic medium shall be obtained prior to submitting a return on such magnetic medium. An applications for such consent shall be in writing and must be filed at least 90 days before the filing of the first return for which consent is requested.

(2) If the use of Form W–2, W–2P, or other form treated as a form specified in this paragraph (b)(2) is required by the regulations or revenue procedures for the purpose of making a return (not including the attachment of Form W–2 or W–2P to an Individual Income Tax Return), the information required by such form shall, except as otherwise provided in paragraph (c) of this section, be submitted on magnetic media. Returns on magnetic media shall be made in accordance with applicable Social Security Administration procedures. Thus, the consent of the Secretary of Health and Human Services (or other authorized officer or employee of the Department of Health and Human Services) to a magnetic medium shall be obtained prior to submitting a return on such magnetic medium. An application for such consent shall be in writing and must be filed—

(i) On or before June 30, 1986, in the case of returns filed in 1987;

(ii) On or before June 30, 1987, in the case of returns filed in 1988; and

(iii) At least 90 days before the filing of the first return for which consent is requested in all other cases.

(3) The Commissioner may prescribe by revenue procedure that additional forms are treated, for purposes of this section, as forms specified in paragraph (b)(1) or (b)(2) of this section.

(c) *Exceptions*—(1) *Low-volume filers*—(i) *In general.* A person required to make returns of information on a particular type of form specified in paragraph (b) of this section (other than Form 1099–DIV, 1099–PATR, 1099–INT, or 1099–OID) may make such returns on a prescribed paper form for a calendar year or other applicable annual period (whether such returns are filed during the calendar year or annual period or during the subsequent calendar year or annual period) if—

(A) In the case of a calendar year or annual period beginning before January 1, 1987—

(*1*) On the first day of such calendar year or annual period the person reasonably expects to file fewer than 500 returns of inforamtion on such form for the calendar year or annual period; and

(*2*) The person was not required to file 500 or more returns of information on such form for the preceding calendar year or annual period; or

(B) In the case of a calendar year or annual period beginning on or after January 1, 1987—

(*1*) On the first day of such calendar year or annual period the person reasonably expects to file fewer than 250 returns of information on such form for the calendar year or annual period; and

(*2*) The person was not required to file 250 or more returns of information on such form for the preceding calendar year or annual period.

Alternatively, such persons may make returns on magnetic media in accordance with paragraph (b) of this section.

(ii) *Machine-readable forms.* Returns made on a paper form under this paragraph (c)(1) shall be machine-readable if applicable revenue procedures provide for a machine-readable paper form.

(iii) *Form 1099 series.* Each form within the Form 1099 series is considered a separate type of form for purposes of this paragraph (c)(1).

(2) *Special rule for Form 1099–DIV, 1099–PATR, 1099–INT, 1099–OID*—(i) *50 or fewer returns.* A person required to make returns on Form 1099–DIV, 1099–PATR, 1099–INT, or 1099–OID may make such returns on a machine-readable paper form for a calendar year if—

(A) On the first day of such calendar year the person reasonably expects to file 50 or fewer returns of information on such forms for the calendar year; and

(B) The person was not required to file more than 50 returns of information on such forms for the preceding calendar year.

Alternatively, such persons may make returns on magnetic media in accordance with paragraph (b) of this section.

(ii) *Aggregation of returns.* For purposes of determining the number of returns that a person was required to file or reasonably expects to file on Form 1099–DIV, 1099–PATR, 1099–INT, or 1099–OID, all such returns shall be aggregated. For example, if a person filed 30 Form 1099–INT's and 30 Form 1099–DIV's for a calendar year, or reasonably expects to do so for the succeeding calendar year, all returns made by such person on Form 1099–DIV, 1099–PATR, 1099–INT and 1099–OID for the succeeding calendar year shall be on magnetic media.

(3) *Provided by regulations*—(i) *In general.* This section does not apply to a return if the regulations relating to such return require reporting on magnetic media.

(ii) *Example.* The following example illustrates the application of the rule in paragraph (c)(3)(i) of this section:

Example. Section 1.6045–1(l), relating to returns of information of brokers and barter exchanges, requires the use of magnetic media as the method of reporting. Thus, this section does not apply to returns of information under section 6045.

(4) *Waiver.* The Commissioner may waive the requirements of this section if hardship is shown in an application filed in accordance with this paragraph (c)(4). Such waiver shall secify the type of form and period to which it applies and shall be subject to such terms and conditions regarding the method of reporting as may be prescribed by the Commissioner. In determining whether hardship has been shown, the principal factor to be taken into account will be the amount, if any, by which the cost of filing returns in accordance with this section exceeds the cost of filing the returns on other media. A request for waiver shall be in writing and must be filed—

(i) On or before June 30, 1986, in the case of returns on Form W–2 or W–2P filed in 1987;

(ii) On or before June 30, 1987, in the case of returns on Form W–2 or W–2P filed in 1988; and

(iii) At least 90 days before the filing of the first return for which a waiver is requested in all other cases.

(d) *Paper form returns.* Returns submitted on paper forms (whether or not machine-readable) permitted under paragraph (c) of this section shall be made in accordance with applicable revenue or Social Security Administration procedures.

(e) *Applicability of current procedures.* Until procedures are prescribed which further implement the mandatory filing on magnetic media provided by this section, a return to which this section applies shall be made in the manner and shall be subject to the requirements and conditions (including the requirement of applying for consent to the magnetic medium) prescribed in the regulations, revenue procedures and Social Security Administration publications relating to the filing of such return on magnetic media. In addition, consent to the use of a magnetic medium obtained in accordance with such regulations, revenue procedures and Social Security Administration publications (regardless of when obtained will be considered consent to the use of such medium for purposes of paragraph (b) of this section.

(f) *Failure to file.* If a person fails to file a return on magnetic media when required to do so by section 6011(e) and this section, such person is deemed to have failed to file the return and is subject to the corresponding penalties for failure to file such return.

(g) *Effective date.* This section applies to returns filed after December 31, 1986.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85–22271 Filed 9–13–85; 10:53 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[Docket No. DCO–IV–8506; A–4–FRL–2899–7]

State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Proposed Approval of an Administrative Order Issued by the Memphis and Shelby County Health Deparment of Jehl Cooperage Co., Inc.

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an Administrative Order issued by the Memphis and Shelby County Health Department (MSCHD) to Jehl Cooperage Company, Inc. The Order requires Jehl Cooperage to bring air emissions from its two (2) spray booths and two (2) drying ovens in Memphis, Tennessee, into compliance with air pollution control regulations contained in the federally approved Tennessee State Implementation Plan (SIP) by December 31, 1985. Because the Order has been issued to a major source of air pollution and permits a delay in compliance with provisions of the SIP, the Administrative Order must be approved by EPA before it becomes effective as a Delayed Compliance Order under the Clean Air Act (the Act). If approved by EPA, the Order will constitute an addition to the SIP. In addition, a source in compliance with an approved Order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approved of the Order as a Delayed Compliance Order.

DATE: Written comments must be received on or before October 18, 1985.

ADDRESS: Comments should be submitted to Director, Air, Pesticides, and Toxics Management Division, EPA, Region IV, 345 Courtland Street, NE.,

Atlanta, Georgia, 30365. The State Order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mr. Floyd Ledbetter, Chief, Northern Compliance Section, Air Compliance Branch, Air, Pesticides, and Toxics Management Division, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30365, Telephone Number (404) 881–4298.

SUPPLEMENTARY INFORMATION: Jehl Cooperage Company, Incorporated operates two spray booths, one of which coats the interior of the steel drums and one of which coats the exterior of said drums, and two drying ovens (the combination of which is hereinafter referred to as drum coating operations) at its plant located at 4 East Virginia, Memphis, Tennessee 38101, for the purpose of producing new and reconditioned steel drums. Calculations that were made by MSCHD from Respondent's September 3, 1980, permit applications indicated that VOC emissions were in excess of the allowable. The spray booth used for interior coating of the drums was calculated to emit an average of 5.2 pounds of VOC per gallon of coating applied, excluding water. The spray booth used for exterior coating of the drums was calculated to emit an average of 4.83 pounds of VOC per gallon of coating applied, excluding water. The Respondent was requested to submit a compliance plan on December 4, 1982, and on July 14, 1983, which detailed how the Respondent intended to bring the drum coating operations into compliance with the regulations. Jehl did not comply with the original compliance date of December 31, 1982. On February 27, 1984, EPA cited the Respondent in violation of Rule 1200–3–18–.21 of the Tennessee Air Quality Act. On March 30, 1984, the Respondent submitted a response to the EPA Notice of Violation and included a strategy of compliance. On November 14, 1984, the department cited the Respondent in violation for failure to obtain operating permits and failure to comply with the MSCHD Miscellaneous Metal Parts rule. This Notice allowed the Respondent the opportunity to submit additional compliance plan to the Department within ten (10) days of receipt of the Notice of the Department would proceed to issue a Delayed Compliance Order. Since no additional plans were received from the Respondent, the Department proceeded to issue a draft Delayed Compliance Order on January 2, 1985, based upon the plans and application on file with the Department. On February 13, 1985, the Department met with Respondent's representatives to discuss revisions to the draft Delayed Compliance Order. EPA submitted its comments on the draft Delayed Compliance Order to the Department on February 22, 1985. On April 10, 1985, the revised Delayed Compliance Order was signed by the Respondent and submitted to EPA for publication on September 3, 1985. The Order under consideration addresses VOC emissions from the two (2) spray booths and two (2) drying ovens. These emission points are subject to Section 3–22 Memphis City Code (MCC), Reference 1200–3–18.21 of the Tennessee Air Quality Act (TAQA). These regulations limit the emissions of VOCs and are part of the federally approved Tennessee State Implementation Plan. The Order requires final compliance with the above regulation by December 31, 1985, through the implementation of the following schedule for the construction or installation of control equipment, reformulation or equipment modifications.

On or after December 31, 1985, the respondent shall (1) reduce the VOC emissions from interior and exterior extreme performance coating operations to a maximum of 3.5 pounds per gallon as applied, excluding water; and (2) reduce the VOC emissions from the interior clear coating operations to a maximum of 4.3 pounds per gallon as applied, excluding water.

The source has consented to the terms of the Order and has agreed to meet the Order's increments during the period of this informal rulemaking. The source is required to submit bi-monthly reports commencing in May 1985, and continuing through December 1985, indicating progress toward each milestone in the schedule of compliance. If any delay is anticipated in meeting said milestones, Jehl Cooperage shall immediately notify the MSCH in writing of the anticipated delay and reasons therefor. Notification of the delay shall not excuse the delay. In addition, Jehl Cooperage shall submit, no later than five (5) days after the deadline for completing each milestone required by the above schedule, certification to the MSCHD whether or not such milestone has been met.

As an interim control measure, VOC emissions from the interior and exterior extreme performance coating operation and from the interior clean coating operation shall not exceed 5.23 and 4.75 pounds per gallon applied, excluding H_2O, respectively from the effective date of this Order until December 31, 1985.

Because this Order has been issued to a major source of VOC emissions and permits a delay in compliance with the applicable state air pollution control regulation(s), it must be approved by EPA before it becomes effective as a Delayed Compliance Order under section 113(d) of the Clean Air Act (the Act). EPA may approve the Order only if it satisfies the appropriate requirements of this subsection. EPA has tentatively determined that the above-referenced Order satisfies these legal requirements.

If the submitted Administrative Order is approved by EPA, source compliance with its terms would preclude federal enforcement action under section 113 of the Act against the source for violations of the regulation(s) covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provision of the Act (section 304) would be similarly precluded. If approved, the Order would also constitute an addition to the Tennessee SIP. Compliance with the proposed Order will not exempt the company from the requirements contained in any subsequent revision to the SIP which are approved by EPA.

All interested persons are invited to submit written comments on the proposed Order. Written comments received by the date specified above will be considered in determining whether EPA may approve the Order. After the public comment period, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the Order in 40 CFR Part 65.

List of Subjects in 40 CFR Part 65

Air Pollution Control.

Authority: 42 U.S.C. 7413, 7601.

Dated: September 6, 1985.

Sanford W. Harvey, Jr.,

Acting Regional Administrator, Region IV.

[FR Doc. 85–22292 Filed 9–17–85; 8:45 am]

BILLING CODE [illegible]

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No 85–273; RM–4902]

Amendments To Relax Restrictions on Certain Frequencies in the Business Radio Service

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: The Commission has adopted a Notice of Proposed Rule Making proposing to amend § 90.75 of the rules to relax restrictions on ten pairs of Business Radio Service frequencies in the UHF band. The proposal would allow additional users to occupy these frequencies, resulting in more efficient use of the spectrum.

DATES: Comments are due October 14, 1985. Reply Comments are due October 29, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Stuart Overby, Private Radio Bureau, Land Mobile and Microwave Division, Rules Branch, (202) 634–2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Private land mobile radio services, Radio.

Proposed Rule Making

In the Matter of Amendment of Part 90 of the Commission's Rules to Relax Restrictions on Certain Frequencies in the Business Radio Service, PR Docket No. 85–273, RM–4902.

Adopted: August 27, 1985.

Released: September 5, 1985.

By the Commission.

Introduction

1. This *Notice of Proposed Rule Making* (*Notice*) proposes to relax certain restrictions on ten specific frequency pairs in the Business Radio Service. The *Notice* proposes to amend § 90.75(c)(25) of the rules to effect these changes.

Discussion

2. Under the provisions of § 90.75(c)(25) of the Commission's rules, ten pairs of frequencies in the Business Radio Service are reserved in certain areas for entities engaged in furnishing commercial air transportation services.[1] Specifically, in urban areas of 200,000 or more population [2] the frequency pairs 460.650/465.650, 460.675/465.675, 460.700/465.700, 460.725/465.725, 460.750/465.750, 460.775/465.775, 460.800/465.800, 460.825/465.825, 460.850/465.850, and 460.875/465.875 MHz may be assigned only to an entity which provides commercial air transportation services, or to a non-profit corporation or association which furnishes communication services for such a business. Stations operating on these frequencies must be located on or near airports which serve the designated urban areas and are to be used only in connection with the servicing of aircraft. These stations are used for ground support operations, not air traffic control.

3. The above-referenced frequencies may also be assigned to any Business Radio Service eligible at locations removed by 75 or more miles (120 km) from the borders of airports serving urban centers of 200,000 or more population. Futhermore, these frequencies may be assigned to low power (2 watts or less) stations in the Business Radio Service for use in areas removed by at least 5 miles (8 km) from the airport boundaries. These low power operations are restricted to the confines of an industrial complex or manufacturing yard area. There are 87 urban areas on the country where these provisions apply.[3]

4. On February 12, 1985, the National Association of Business and Educational Radio (NABER) filed a Petition for Rule Making requesting that the Commission relax its rules to allow operation on the above-referenced frequencies by any Business Radio Service eligible within 50 miles, rather than 75 miles, of the designated airport facilities.[4] NABER suggested that such operations be limited to an effective radiated power of 300 watts.[5] NABER also suggested that the Commission specifically condition authorizations for these operations to require that no interference be caused to those licensees operating in and around the designated airport areas. Aeronautical Radio, Inc. (ARINC), which coordinates use of these frequencies in the airport areas, has expressed support for NABER's petition.

5. The subject frequency pairs were reserved for airport operations during a rulemaking proceeding in 1968.[6] Since that time, the number of licensees in the Business Radio Service has increased substantially. In 1968, there were approximately 110,000 authorized stations in the Business Radio Service.[7] By 1983, the number of authorized stations had grown to almost 505,000.[8] Much of this growth has occurred in and around major urban centers. In its petition, NABER cites the dramatic growth in the number of Business Radio Service users since 1968, especially in the major urban centers, as well as the projected future growth in all land mobile services. NABER states that adoption of its proposal would allow more users to occupy the ten designated frequencies, resulting in more efficient use of the spectrum.

The Proposal

6. We propose to relax our rules as noted in Appendix B to permit use of these ten frequency pairs for general Business Radio Service activities in locations which are removed by 50 miles or more from airports serving the designated urban areas. We also propose to limit such operations to 300 watts effective radiated power as suggested in the petition. NABER's point that interference can be controlled more easily by specifying effective radiated power rather than transmitter output power appears to be valid. However, there are already a substantial number of stations outside the 75 mile areas authorized under the current rules to operate with 110 watts transmitter output power. While a maximum effective radiated power is not specified for these stations, in many cases it may exceed the 300 watts recommended by NABER. Accordingly, we propose to allow these existing stations to continue operation with a maximum transmitter output power of 110 watts and no specified effective radiated power. We request comments on whether the 300 watt limitation as suggested by NABER and proposed herein is appropriate for new operations that would be allowed to locate 50 or more miles from the protected airport areas. Also, as NABER suggested, we propose to condition authorizations for such new operations to require that no interference be caused to those licensees operating in and around the designated airports in connection with the servicing of aircraft.

7. We also wish to address one matter which was not raised in the petition. Some applications for Business Radio Service stations received by the Commission specify transmitter sites that do not meet the required spacings from airport facilities. Such an

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[1] 47 CFR 90.75(c)(25).

[2] As listed in U.S. Census of Population, 1980, vol. 1, table 23, page 1-50.

[3] A list of these areas is provided in Appendix A.

[4] *Petition for Rule Making* filed by the National Association of Business and Educational Radio, Inc. (NABER), RM–4902. *See* Commission Public Notice, Report No. 1500 (March 4, 1985).

[5] Currently Business Radio Service stations operating outside the 75 mile radius are limited to a maximum permissible *transmitter output power* of 110 watts. The *effective radiated power* of such an operation varies depending on the antenna gain and transmission system losses, but is routinely several times greater than the transmitter output power. NABER suggests specifying effective radiated power rather than transmitter output power as a more effective means of controlling the interference potential of Business Radio Service stations that are unrelated to airport operations.

[6] *Second Report and Order* in Docket No. 13847, 11 FCC 2d 648 (1968).

[7] *34th Annual Report/Fiscal Year 1968*, Federal Communications Commission, p. 145.

[8] *49th Annual Report/Fiscal Year 1983*, Federal Communications Commission, p. 98.

application is now dismissed as unacceptable for processing. Oftentimes, the application is refiled, accompanied by a statement from ARINC that the particular airport facility to which the proposed station is shortspaced does not require protection. Upon such a showing, the subject application is normally granted. It appears that the licensing process could be made more efficient and less time consuming by identifying the airport facilities that require protection. Further, since definitive informtion on the location of an airport's boundary is not always readily available, it would be more convenient to measure the afforded mileage protection from its reference coordinates.

8. We propose to establish a list of airport facilities serving urban areas of 200,000 or more population (as listed in the 1960 census) which require protection. Comments are requested on which airports should be included in this list. Also, we propose to specify protection to an identified airport in terms of required distance from its reference coordinates rather than from its boundary. We plan to use the reference coordinates listed in the Airport Facility Directory.[9] These changes in our procedures should streamline the licensing process for the applicant, the coordinators, and the Commission. We request comments on what modification, if any, must be made in the required mileage spacings should we reference such spacing to an airport's coordinates as listed in the Airport Facility Directory, rather than to the airport's boundary.

Initial Regulatory Flexibility Analysis

9. Pursuant to the Regulatory Flexibility Act of 1980, the Commission finds as follows:

I. Reason for Action

This proposal would modify the Commission's rules to relax the restrictions currently applied to certain frequencies in the Business Radio Service. This will increase the number of radio channels available to users in certain geographical areas to meet their growing need for additional communications capacity.

II. Objective

The Commission is advancing this proposal to make more effective use of the spectrum allocated to the private land mobile community.

III. Legal Basis

The proposed action is authorized under sections 4(i), 303(c), 303(f), 303(r), and 331(a) of the Communications Act of 1934, as amended, which authorize the Commission to make such rules and regulations as may be necessary to improve the efficiency of spectrum use.

IV. Description, Potential Impact and Number of Small Entities Affected

The relaxation of restrictions on certain frequencies will provide some relief from congestion on existing Business Radio Service channels. This will allow present systems to expand and new systems to be implemented. We expect that this ultimately will result in increased business efficiency. This proposal will also expand market opportunities for radio manufacturers, some of which are small businesses. Beyond this, we are unable to quantify the potential effects on small entities. We therefore invite specific comments on this point by interested parties. Additionally, it is ordered that the Secretary shall serve a copy of this Notice on the Small Business Administration.

V. Reporting, Recordkeeping and Other Compliance Requirements

No new requirements will be imposed upon Private Land Mobile Radio Service Licensees.

VI. Federal Rules which Overlap, Duplicate or Conflict with this Rule

None.

VII. Significant Alternatives

There are no significant alternatives other than those enumerated in this *Notice* which would accomplish our stated objective of making the most effective use of the spectrum allocated to the private land mobile community. Additionally, retaining the *status quo* represents a continuing burden on those licensees.

10. For purposes of this non-restricted notice and comment rule making, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of the presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy of the Commission official receiving the oral presentation. Each *ex parte* presentation described above must also state by docket number the proceeding to which it relates. See generally, §1.1231 of the Commission's rules, 47 CFR 1.1231.

11. This action is taken pursuant to sections 4(i), 303(c), 303(f), 303(r), and 331 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(r), and 332. Interested persons may file comments on this proposal on or before October 15, 1985, and reply comments on or before October 30, 1985. All relevant and timely comments filed in accordance with sections 1.415 and 1.419 of our rules and regulations (47 CFR 1.415 and 1.419) will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the Commission's reliance on such information is noted in its final decision.

12. In accordance with the provisions of § 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and five copies of their comments and other material. Participants wishing each Commissioner to have a personal copy of their comments should file an original and eleven copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy of their comments without regard to form (as long as the docket number is clearly stated in the heading). All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

Paperwork Reduction Act Statement

13. The action proposed herein has been analyzed, with respect to the Paperwork Reduction Act of 1980 and

[9] *United States Government Flight Information Publication, Airport Facility Directory*, U.S. Department of Commerce, published periodically.

found to contain no new or modified form, information collection, and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase or decrease burden hours imposed on the public.

14. For further information concerning this rule making contact Stuart Overby at (202) 634–2443, Private Radio Bureau, Federal Communications Commission, Washington, D.C.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A. List of Urbanized Areas of 200,000 or More Population*

Akron, OH
Albany-Troy-Schenectady, NY
Albuquerque, NM
Allentown-Bethlehem, PA
Atlanta, GA
Baltimore, MD
Birmingham, AL
Boston, MA
Bridgeport, CT
Buffalo, NY
Canton, OH
Charlotte, NC
Chattanooga, TN
Chicago, IL-Northwest, IN
Cincinnati, OH
Cleveland, OH
Columbus, OH
Dallas, TX
Davenport, IA-Rock Island, Moline, IL
Dayton, OH
Denver, CO
Des Moines, IA
Detroit, MI
El Paso, TX
Flint, MI
Fort Lauderdale-Hollywood, FL
Forth Worth, TX
Fresno, CA
Grand Rapids, MI
Harrisburg, PA
Hartford, CT
Honolulu, HI
Houston, TX
Indianapolis, IN
Jacksonville, FL
Kansas City, MO–KS
Los Angeles, CA
Louisville, KY
Memphis, TN
Miami, FL
Milwaukee, WI
Minneapolis-ST Paul, MN
Mobile, Al
Nashville, TN

New Haven, CT
New Orlean, LA
Newport News-Hampton, VA
New York-Northeast, NJ
Norfolk-Portsmouth, VA
Oklahoma City, OK
Omaha, NE
Orlando, FL
Philadelphia, PA-NJ
Phoenix, AZ
Pittsburgh, PA
Portland, OR
Providence-Pawtucket, RI–MA
Richmond, VA
Rochester, NY
Sacramento, CA
Saint Louis, MO–IL
Saint Petersburg, FL
Salt Lake City, UT
San Antonio, TX
San Bernardino, CA
San Diego, CA
San Francisco-Oakland, CA
San Jose, CA
Scranton, PA
Seattle, WA
Shreveport, LA
South Bend, IN
Spokane, WA
Springfield, MA
Syracuse, NY
Tacoma, WA
Tampa, FL
Toledo, OH
Trenton, NJ–PA
Tucson, AZ
Tulsa, OK
Washington, D.C.
Wichita, KS
Wilkes-Barre, PA
Wilmington, DE
Worcester, MA
Younstown-Warren, OH–PA

* As listed in U.S. Census of Population, 1980, vol. 1, table 23, page 1–50.

Appendix B

We propose to amend Part 90 of Chapter I of Title 47 of the Code of Federal Regulations as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES—[AMENDED]

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. In § 90.75, paragraph (c)(25)(vi) would be revised to read as follows:

§ 90.75 Business radio service.

* * * * *

(c) * * *

(25) This frequency is available for assignment to stations located on or near airports listed below and may be assigned only to persons engaged in furnishing commercial air transportation service, or to a nonprofit corporation or association for the purpose of furnishing radio communications service to persons so engaged on a nonprofit cost-sharing basis. Stations on this frequency may be used only in connection with the servicing and supplying of aircraft at the airport. Common frequency signal boosters may be employed in accordance with the following criteria:

* * * * *

(vi) If signal boosters are to be used in conjunction with other facilities, the number of such boosters must be stated on the license application.

This frequency may also be assigned to low power (2 watts or less transmitter output power) stations in the Business Radio Service for use in areas removed by 8 or more km (5 or more mi.) from the reference coordinates of airports listed below. All such use is restricted to the confines of an industrial complex or manufacturing yard area. In addition, this frequency is available for assignment to stations in the Business Radio Service for use at locations removed by 80 or more km (50 or more mi.) from the reference coordinates of the airports listed below at a maximum effective radiated power (ERP) of 300 watts. Stations at these locations first licensed on or after (effective date of these rules) may operate only on a non-interference basis to the co-channel facilities of air carriers located on or near the airports specified below. Business Radio Service stations first licensed prior to (effective date of these rules) may continue to operate with the facilities authorized as of that date.

The airports referenced in this section are:

* * * * *

[FR Doc. 85–22261 Filed 9–17–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 94

[PR Docket No. 83–426; FCC 85–454]

Amendment To Authorize Private Carrier Systems in the Private Operational-Fixed Microwave Radio Service

AGENCY: Federal Communications Commission.

ACTION: Further Notice of Proposed Rule Making.

SUMMARY: In this *Further Notice of Proposed Rule Making* the Commission proposes to permit licensees in the Private Operational-Fixed Microwave Radio Service (Part 94 of the Commission's Rules and Regulations) to lease capacity on their private microwave systems to common carriers in order to allow the transmission of

common carrier communications on private radio service frequencies. This *Further Notice* also considers whether the Commission should preempt state regulation of private fiber optic systems. This action is necessary to permit Commission consideration of whether additional amendments to Part 94 regarding private microwave carrier operations would be in the public interest.

DATES: Comments are due October 21, 1985 Reply Comments are due November 5, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mary Beth Hess, Private Radio Bureau, Land Mobile and Microwave Division, (202) 634–2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 94

Private operational-fixed microwave radio service, Radio.

Further Notice of Proposed Rule Making

In the Matter of Amendment of Part 94 of the Commission's Rules and Regulations to Authorize Private Carrier Systems in the Private Operational-Fixed Microwave Radio Service, PR Docket No. 83–426.

Adopted: August 7, 1985.

Released: September 12, 1985.

By the Commission.

I. Summary

1. In this *Further Notice of Proposed Rule Making* we propose to permit licensees in the Private Operational-Fixed Microwave Radio Service (Part 94 of the Commission's Rules and Regulations, 47 CFR 94.1 *et. seq.*) to lease capacity on their private microwave systems for the transmission of common carrier communications by non-dominant common carriers.

II. Background

2. On January 31, 1985, we adopted a *First Report and Order* in the above-captioned proceeding to permit the offering of a communications service on a commercial basis by eligibles in the Private Operational-Fixed Microwave Radio Service (OFS).[1] The *First Report and Order* provided: (1) That licensees in the Operational-Fixed Service who operate private microwave systems to meet internal telecommunications requirements could make excess capacity on their systems available to other private service eligibles on a for-profit basis; and (2) that the Operational-Fixed Service frequencies would be available for licensing to entrepreneurs who wished to establish microwave systems to provide a communications service for other on a private carrier basis.[2] With respect to both the sale of excess capacity and the licensing of entrepreneurs to provide a private carrier communications service, the new rules provided that the service could be offered only to entities eligible under Part 94 of the Rules.[3]

3. In the *First Report and Order*, we concluded, relying on *National Association of Regulatory Utility Commissioners v. FCC* (NARUC I),[4] that we had the clear legal authority to permit private carrier operation. It was noted that private carrier microwave licensees would be likely to establish medium-to-long-term contractual relations with relatively stable clientele and that the private operators would likely tailor their offerings based on the operational compatibility of potential users vis-a-vis the users already on the system. We determined that for-profit private carriage in the Operational-Fixed Service would serve the public interest by facilitating access to microwave communications systems, thereby making it easier for Part 94 eligibles to benefit from the economies and efficiencies which such systems permit.[5] In the *First Report and Order* we adopted in substance all of the proposals put forth in the initial *Notice of Proposed Rule Making* in this proceeding.[6] However, we declined to make changes relating to two issues raised by participants in the docket. First, we determined not to allow Part 94 licensees to lease capacity on their systems to common carriers for the transmission of common carrier communications. Second, we did not address the issue of federal preemption of state regulation of private communication systems which consisted solely of fiber optic links. However, we did indicate that we would issue this *Further Notice of Proposed Rule Making* to consider both of these issues.[7]

III. Discussion

4. The rules adopted in the *First Report and Order* provide that only Part 94 eligibles may lease capacity on a private microwave carrier system. Included in the term "Part 94 eligibles" are all entities who qualify for licensing in the Private Land Mobile Radio Services (Part 90 of the Rules). Part 90 of the Rules delineates different categories of entities who qualify for licensing in the Private Land Mobile Services. One of these categories, the Business Radio Service, includes all entities engaged in the operation of a commercial activity.[8] Common carriers are, of course, engaged in commercial activities, and therefore qualify for eligibility in the Business Radio Service. Thus, there is nothing in the Commission's Rules which bars common carriers from gaining access to the Operational-Fixed Service frequencies. As with Part 94 users generally, however, the current rules limit common carriers' use of the OFS frequencies to communications which are internal in nature, such as inter-office traffic related to administrative, management, or maintenance functions.[9] The transmission of common carrier traffic over OFS frequencies is specifically prohibited by Section 94.9(b) of the Rules. Therefore, it is the Part 94 regulations governing the permissibility of communications, rather than the eligibility rules, that preclude the use of OFS frequencies for common carrier traffic.

5. In comments submitted in response to the earlier *Notice of Proposed Rule Making* in this docket, Kansas City Southern Industries, Inc. (KCSI), which operates a number of subsidiaries holding licenses in the Operational-Fixed Service, argued that we should permit OFS licensees to lease their microwave capacity to common carriers. Specifically, KCSI suggested changes to Part 94 which would permit the leasing of excess capacity to entities affiliated with a Part 94 licensee, even if the affiliated entity did not operate in a fashion which satisfies the Part 94 rule requirements.[10] KCSI also suggested that

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[1] *First Report and Order* in Docket No. 83–426 (FCC 85–53), released April 1, 1985, 50 FR 13,338 (April 4, 1985).

[2] Entrepreneurs were permitted access to all OFS frequency bands except the three bands which are not available generally to Business Radio Service eligibles. *See* §§ 94.61(b) and 94.65(a)(1) of the Rules (47 CFR 94.61(b) and 94.64(a)(1)).

[3] Eligibility in Part 94 is limited to entities qualified for licensing in a radio service under either Part 81 (Stations on Land in the Maritime Service and Alaska-Public Fixed Stations), Part 87 (Aviation Services), or Part 90 (Private Land Mobile Radio Services). *See* § 94.5 of the Commission's Rules (47 CFR 94.5).

[4] 525 F.2d 630 (D.C. Cir. 1976), *cert. denied*, 425 U.S. 992 (1976).

[5] For a discussion of the benefits which enhanced use of private microwave systems provides, *see* generally, *First Report and Order*, Docket No. 83–426, *supra*.

[6] *Notice of Proposed Rule Making* in Docket No. 83–426 (FCC 83–172), released May 17, 1983, 48 FR 24 950 (June 3, 1983).

[7] Because there is not a case in controversy before us at this time, we are not now taking any action on the issue of federal preemption of state regulation of systems consisting solely of fiber optic links.

[8] Section 90.75(a)(1) of the Rules, 47 CFR 90.75(a)(1).

[9] Section 94.9, 47 CFR 94.9.

[10] KCSI's comments related that it also owned 25% of the voting stock of LDX, Inc., a reseller of

Continued

we could, if deemed necessary, require that the leasing of OFS capacity to entities not eligible to conduct their business under Part 94 of the Commission's rules be on a secondary basis, subject to future withdrawal or other limitations necessary to ensure that the legitimate telecommunications needs of other OFS eligibles were satisfied. KCSI asserted that if its subsidiaries were permitted to lease excess capacity to common carriers, it would improve substantially the spectral efficiency of its existing OFS systems by putting idle channel capacity to economic and productive use.

6. KCSI's proposal was opposed by the Utilities Telecommunications Council (UTC) and the Central Committee on Telecommunications of the American Petroleum Institute (API). UTI argued that the Operational-Fixed Service spectrum should be preserved for use by Part 94 eligibles and that the changes recommended by KCSI would violate the fundamental purpose of discrete allocations of spectrum for private radio and common carrier use. Both UTC and API expressed concern that expanding the permissible uses of OFS systems to include the transmission of common carrier traffic would further deplete the already congested private microwave spectrum and would blur the legal distinctions between private and common carriage.

7. In the *First Report and Order*, we concluded that the record did not support authorization of the leasing of private microwave capacity for common carrier traffic. Therefore, private carriers were restricted to providing service to other Part 94 eligibles for satisfying internal communications requirements. Nonetheless, we see at least two possible policy advantages to widening the range of uses permitted on OFS frequencies. First, more permissible uses would encourage more efficient spectrum use. We would expect many licensees to invest in equipment having greater transmission capacity if they were able to recover those costs through resale of unused capacity. A second policy advantage of allowing more types of communications in the OFS is that it would provide a safety valve that could help relieve congestion in other microwave services.

8. In spite of the potential for fuller use of the OFS bands and the consumer benefits of enhanced interexchange common carrier competition, we are concerned that relaxing the permissible communications restrictions could have a serious negative effect on traditional private microwave users. Allowing common carrier traffic on OFS frequencies could result in a de facto reallocation of the private radio spectrum for common carrier purposes. Furthermore, allowing all common carriers to lease capacity could cause confusion due to the different regulatory schemes governing private and common carriers. In light of these concerns, we propose in this *Further Notice* to extend permissible communications to common carrier traffic with the following restrictions.

9. Common carriers are designated as being either "dominant" or "non-dominant" and the regulations governing each vary significantly.[11] Because dominant common carriers are required to offer services on a tariffed basis, we are concerned that allowing them to use the OFS for traffic other than their own internal communications could lead to monitoring problems with regard to, among other things, accounting and filing requirements. Consequently, under the proposed rule changes, dominant common carriers would be prohibited from using the OFS for their own common carrier traffic and from leasing capacity to other common carriers for common carrier traffic. A dominant common carrier could, however, lease capacity from any OFS licensee for its own internal communications. Similarly, a dominant common carrier could lease excess capacity to other Part 94 eligibles for non-common carrier traffic. Additionally, non-dominant common carriers who are licensed to use OFS channels would be prohibited from using the channels for transmission of their own common carrier traffic.

10. We recognize that the regulatory framework which would result if this proposal were adopted would be complex. If the proposed rules were ultimately implemented, a non-dominant common carrier entity could be licensed to operate an OFS system on a private carrier basis and could make capacity available to other non-dominant common carriers for the transmission of common carrier traffic but would be prohibited from using its OFS system for transmitting its own common carrier communications. We recognize that, in such a situation, there would be some incentive for a common carrier entity licensed in the Operational-Fixed Service to enter into a deal with another common carrier entity whereby each would sell capacity to the other for transmitting its own common carrier communications, or for a common carrier to attempt to "resell" its OFS capacity to itself, perhaps through the creation of a subsidiary whose sole function would be to serve as the holder of the private radio license. In the interest of developing a more complete record, we seek public comment on the following specific issues:

(1) Is it in the public interest to broaden the permissible communications provisions of Part 94 to permit private microwave licensees, excluding dominant common carriers, to lease their capacity to non-dominant common carriers for the transmission of common carrier traffic?

(2) If we determine that it is not in the public interest to permit such leasing, are there more limited approaches we should consider?

(3) If we permit the leasing of OFS capacity to non-dominant common carrier entities for the transmission of common carrier traffic, should there be any regulatory restraints imposed to preclude the use of artificial organizational structures developed to permit a non-dominant common carrier to "resell" capacity to itself?

(4) Should we permit the leasing of capacity on a private carrier basis for other non-private purposes, such as the point-to-point distribution of broadcast or cable television programming?

(5) What effect would permitting private licensees, excluding dominant common carriers, to resell capacity for the transmission of common carrier and other communications have on the availability of spectrum to accommodate traditional private radio communications?[12]

(6) What structural guidelines are necessary in order to assure that the use of OFS spectrum for the transmission of common carrier and other non-private radio communications is consistent with the concept of private carriage established in NARUC I?

IV. Privacy and National Security Concerns

11. We are concerned that common carrier use of private microwave

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MTS/WATS telephone traffic operating between Shreveport, LA, Dallas, TX, Kansas City, MO, St Louis, MO, Denver, CO and other cities in the region.

[11] A dominant common carrier is defined by the rules as a carrier found by the Commission to have market power (i.e. power to control prices). A non-dominant common carrier is a carrier not found to be dominant. 47 CFR 61.15a.

[12] Of relevance to this inquiry is the record which has already been developed in Gen. Docket No. 82-334 regarding development of a spectrum utilization policy for the fixed and mobile services in the bands between 947 MHz and 40 GHz. *See Notice of Proposed Rule Making* (FCC 83-2), released January 13, 1983, 48 FR 6,730 (February 15, 1983), and *First Report and Order* (FCC 83-393), released September 30, 1983, 48 FR 50,722 (November 3, 1983).

facilities may have privacy and national security impacts. We have addressed this concern previously with respect to radio bypass systems in general[13] and in the *First Report and Order* in this docket. We urge the Executive Branch to submit its recommendations as comments in this proceeding so that they can be considered before final action is taken.

V. Regulatory Flexibility Act Initial Analysis

12. *Reason for action:* We believe that spectral efficiencies could result from permitting certain licensees in the Private Operational-Fixed Microwave Service to lease capacity on their private microwave systems for the transmission of common carrier communications.

13. *Objectives:* Our objective is to permit more effective use of the operational-fixed service spectrum and to allow increased use of microwave communications for satisfying communications needs.

14. *Legal Basis:* The actions proposed herein are taken pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended.

15. *Description, potential impact and number of small entities affected:* We do not believe that this *Further Notice of Proposed Rule Making* will have a significant economic impact upon a substantial number of small entities. There are no regulatory burdens or administrative responsibilities which will result for small entities if the proposal in this *Notice* is ultimately adopted. Any economic impact which may result will likely benefit all licensees, both large and small, since the proposal may generate additional sources of revenue for operators of OFS systems.

16. *Recording, record keeping and other compliance requirements:* No additional recording, record keeping, or other compliance requirements are anticipated.

17. *Federal rules which overlap, duplicate, or conflict with this rule:* None.

18. *Any significant alternatives minimizing impact on small entities:* None.

VI. Paperwork Reduction Act Statement

19. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements. The proposal will not increase or decrease burden hours imposed on the public.

VII. Ordering Clauses

20. Accordingly, NOTICE IS HEREBY GIVEN of rule making to amend the Commission's Rules and Regulations, in accordance with the proposal set forth in the attached appendix.

21. We encourage all interested parties to respond to this *Further Notice of Proposed Rule Making* since such information as they may provide often forms the basis for further Commission action. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised the *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating a substantive disposition of the matter is to be considered at a forthcoming meeting, or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings or formal oral arguments) between a person outside the Commission and a Commissioner of a member or the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding must prepare a written summary of that presentation. On the day of that oral presentation, a written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See* generally, § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

22. Pursuant to applicable procedures set out in § 1.415 of the Rules and Regulations, 47 CFR 1.415, interested parties may file comments on or before, October 21, 1985 and reply comments on or before November 5, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

23. In accordance with the provisions of § 1.419 of the Rules and Regulations, 47 CFR 1.419, formal participants shall file an original and five copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting on copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

24. IT IS ORDERED THAT the Secretary shall cause a copy of this *Further Notice of Proposed Rule Making* to be served upon the Chief Counsel for Advocacy of the Small Business Administration. The Secretary shall also cause a copy to be published in the Federal Register.

25. For further information on this proceeding, contact Mary Beth Hess, Land Mobile and Microwave Division, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554, (202) 634–2443.

Federal Communications Commission

William J. Tricarico,

Secretary.

Appendix

Part 194 of the Commission's Rules and Regulations is proposed to be amended as follows:

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

1. The authority citation for Part 94 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303. unless otherwise noted.

2. Section 94.9 is amended by revising paragraph (b)(1) to read as follows:

§ 94.9 Permissibility of communications.

* * * * *

(b) * * *

(1) Rendition of a common carrier communication service, except that:

(i) The stations carrying public correspondence associated with public coast stations licensed under Part 81

[13] *See* Order in CC Docket No. 78–72, Phase 1 released January 16, 1985, FCC 84–635 at para. 3.

may continue in operation for the balance of the term of their licenses and for an additional five-year renewal term.

(ii) The facilities of licensees engaged in the leasing of microwave capacity on a private carrier basis may be used for the transmission of common carrier communications by common carrier entities who lease capacity from a private carrier. However, such facilities shall not be used by dominant common carriers (§ 61.15a of this Chapter) for the rendition of a common carrier communications service. Additionally, the radio facilities of dominant common carriers engaged in the leasing of microwave capacity on a private carrier basis shall not be used by any entity, including the carrier who owns the facility, for the rendition of a common carrier communications service.

* * * * *

[FR Doc. 85-22262 Filed 9-17-85; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-11; Notice 15]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: *Proposed Changes in Replaceable Light Source Specifications.* This notice proposes an amendment to Safety Standard No. 108 that would amend the specifications for the standardized replaceable light source. This will allow a manufacturer to determine the diameter of the glass capsule, while specifiying the location of the black cap for assuring the interchangeability of the standardized light source in different lamp designs to achieve the required photometric performance. The proposed amendment would relieve certain design restrictions currently in effect, and achieve greater interchangeability for the light source. It implements the grants of petitions for rulemaking submitted by General Electric Corporation, North American Philips Corporation, General Motors Corporation and Hella KG. By this action, the agency is denying a petition from the Valeo Group (CIBIE-Marchal) of France.

DATES: Comment closing date for the proposal is November 4, 1985. Any requests for an extension of time in which to comment must be received not later than 10 days before that date (49 CFR 533.19). Effective date of the amendment would be upon publication of the final rule in the **Federal Register.**

ADDRESS: Comments should refer to the docket number and notice number of the notice, and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590. (Docket hours are from 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Richard V. Iderstine, Office of Rulemaking, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202-426-2720).

SUPPLEMENTARY INFORMATION: On June 2, 1983, NHTSA amended Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment,* to allow use of a replaceable bulb headlamp system (48 FR 20490). The paramount component of this system is a standardized replaceable light source, more specifically an assembly of a headlamp bulb, base, and terminals as described in Figure 3 of the standard. For purposes of this rulemaking action, attention is directed to Figure 3-5 and Figure 3-6, captioned "Interchangeability Drawing Headlamp Bulk Assembly Halogen Capsule". These Figures specify dimensions for the capsule diameter, minimum area of undistorted glass tubing, and as a minimum that the black cap cover the glass tubing distortion line.

On July 11, 1983, Hella KG of the Federal Republic of Germany and on July 25, 1983, the Valeo Group of France (CIBIE-Marchal) submitted petitions for reconsideration of the black cap location requirements and other aspects of the standardized light source. The petitions were not timely and, in accordance with agency regulations, were treated as petitions for rulemaking. On June 15, 1984, General Electric ("GE") petitioned for rulemaking to change the capsule diameter, the subject also of a petition by North American Philips Lighting Company ("Philips") on January 16, 1985.

As presently specified, the black cap location and glass capsule diameter are based on information provided by the original petitioner, Ford Motor Company. In developing their own versions of standardized replaceable light sources, other manufacturers have found that certain requirements are design restrictive and have little effect on performance. One of these requirements is the diameter of the glass capsule. As presently specified, the capsule diameter and black cap locations are related and a change in the capsule diameter could cause adverse photometric effects unless there was an attendant change in the black cap location. In addition, Standard No. 108 does not require the black cap to be on a bulb during lumen testing. By fixing the cap in relation to the filament, not the glass, and by requiring it to be present for testing, a lumen test can be performed on an assembled light source, a more representative test of real world performance.

The three important points behind this rulemaking proposal are: for any given light source design, fixing the position of the black cap with respect to the filament is an important parameter for proper functioning; in order for any individual headlamp to meet the performance requirements, any light source used in it, whether original or replacement, must have the same filament/black cap relationship; finally, in order to validate the performance of the light source, it must be tested with the black cap and base installed.

How can the relationship between the black cap and the filament be fixed so that the diameter of the glass capsule has no effect? The solution is to use an angular dimensioning of the cap location. This solution was proposed by NHTSA to GE as less design restrictive than GE's original suggestion. GE responded positively, and the idea was subsequently supported by Philips. The Valeo petitioned for an angle different from that originally used in the light source by Ford and Sylvania; this is not acceptable to NHTSA because it is incompatible with the light sources in headlamps already in service. Assuming that the black cap may be specified in this fashion and the capsule diameter becomes unregulated, other aspects of the capsule are affected such as the covering of distorted glass by the black cap, the retention of control over a span of undistorted glass, and overall capsule length and width. Distorted glass is located at the tip and base of the capsule. At the tip it is covered by the black cap, thus providing a control over the direction of the light. At the base, light rays generally land on the base and no black cap is necessary, but the location of either distorted or undistorted glass needs to be controlled. This is presently done by Dimension F of Figure 3-5, referencing the dimension of the black cap. Since this proposal allows movement of the black cap, referencing any dimension to the black cap will cause adverse effects to the characteristic being controlled.

Therefore, a solution is to reference it in a manner similar to that proposed for the black cap: a dimension based on angles referenced to the design position of the filaments.

NHTSA is therefore proposing a new Figure 3–5 with the following characteristics:

- Point B is a design point on the centerline of the glass capsule and at the light center length (LCL) from the reference plane on the connector base. The value, 44.5 mm, is the distance from that reference plane to the design center of the lower beam filament. The value, 44.5 mm, is taken from Figures 3–1 and 3–2 of Standard No. 108, and is used to determine dimensions F and G.
- An angle of 38° along the line B, Q, P, and the reference plane on the connector base is the angle selected by GE and the SAE Replaceable Headlamp Bulb Task Force as appropriate for this source for use in locating the black cap and limit of distorted glass. This value is different than that presently in Standard No. 108 which is 34.2° minimum, and no maximum. The value proposed of 38° is a design value from which the actual black cap location, dimension F, may be calculated.
- An angle of 43° along the line B, R, S, and the reference plane on the connector base is an angle determined by NHTSA by using past dimensions in Standard No. 108, and based on Ford's original intent for the design. Again, 43° is a design value from which the actual limit of the distorted glass dimension G, may be calculated.
- Dimension F is the location of the black cap and the limit of distorted glass, as measured from the reference plane. It is determined by trigonometry and is given a tolerance of plus or minus one millimeter. With this tolerance, photometry effects are minimal. The tolerance value is recommended by GE and the SAE Replaceable Headlamp Bulb Task Force. The formula is: $F = 44.5 +$ (actual capsule radius $\times$ tangent 38°). In actual manufacturing, the black cap is typically defined and placed using this method.
- Dimension G is the limit of distorted glass at the capsule crimp and is also determined by trigonometry. The formula is: $G = 44.5 -$ (actual capsule radius $\times$ tangent 43°). It is a maximum value from the reference plane.
- Dimension H and dimension J (24.5 mm max. and 70 mm max. respectively) set location limits for the parts comprising the light source to prevent interference with parts within the headlamp such as glare shields. The values proposed are those recommended by Philips in a November 7, 1984, letter to NHTSA and by GE in its March 5, 1985, letter. The shape of the volume described by "H" and "J" is the one suggested by Philips. Hella KG had also suggested a similar limiting envelope.
- Note 1 provides for optically clear capsule glass. Note 2 provides for an unobstructed view of the reflector by the filaments. Note 3 provides the formula for determining Dimensions "F" and "G".

The changes proposed allow more design and production freedom for both the light source and the lamp manufacturer. This occurs because of the deregulation of capsule diameter and the establishment of performance oriented interchangeability dimensions. These dimensions establish responsibilities between the light source manufacturer and the lamp manufacturer which have not existed previously. Such intechangeability dimensions also help maintain the level of photometric performance designed into the lamp, and, therefore, help maintain the level of roadway illumination deemed appropriate by the vehicle manfacturer for its vehicle. This would occur because all light sources intended for us in any given lamp would be manufactured to be more alike in terms of performance, and, therefore, be less likely to cause performance changes in the headlamp.

One aspect of design freedom that already exists is the freedom to place the glass capsule centerline in a location that is not coincident with the centerline of the light source base. From drawings and a sample submitted by General Electric, NHTSA notes that GE plans to produce a version of the light source which, in fact, has the centerline of the glass capsule offset from the centerline of the base by an amount equal to the offset of the lower beam filament from the centerline of the base. This design departs from that of other manufacturers known to NHTSA. This offset appears to provide for both a more simplified manufacturing process, and a more balanced angular relationship between the black cap and the lower beam filament. GE has supplied data which shows that no significant performance loss occurs. NHTSA would like comments on GE's design approach and the advisability of controlling the amount of offset between the glass capsule centerline and the light source base centerline, and recommendations for the dimensions to provide that control.

Testing the light source with the black cap in place requires a revised lumen test which woud necessitate amendments to paragraph S4.1.1.38. The test is currently performed without the black cap, meaning that aftermarket light sources must have the cap removed before compliance testing. This is not possible with all light sources. Additionally, should a lamp failure occur indicating noncompliance with the photometrics, and its light source be tested for luminous output, that source (now without a black cap) cannot be used to demonstrate that the lamp has failed photometrics. Performing the lumen test with the black cap in place would solve this problem. NHTSA is therefore proposing that the lumen test be performed in accordance with the Illuminating Society of North America Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps. LM–45, April 1980, with the electrical connector and light souce base (except for that portion normally located within the interior of a lamp housing) shrouded with an opaque white colored cover. Since there would no longer be light emanating from the top of the bulb covered by the cap, a lower level of luminous output than currently specified is recommended. In accordance with recommendations of the Bulb Task Force of the SAE, the lower beam lumens, now 1067±10%, would become 700±15%, and the upper beam, now 1738±10%, would become 1200±15%.

On May 8, 1985, General Motors Corporation (GM) petitioned NHTSA for a reduction in the allowable tolerances of the standardized replaceable light source with a view towards a more accurate orientation of beam patterns. The lower beam filament may vary now in three directions. In GM's opinion, two of these directions, up-down and right-left, should be reduced from ±0.020" to ±0.010". There is also a fore-aft tolerance of ±0.015" which would be reduced by one-third, "which will reduce the convergence and divergence of the beam pattern by a corresponding amount". Similarly, tolerances for the upper beam would also be reduced.

A slightly different conclusion has been reached by NHTSA, which has done an analysis of the effect of variations in filament location on the location of the beam pattern. This analysis, a copy of which is in the docket, indicates that a tolerance of ±.008" (±0.20 mm) for two of the three filaments axes is needed on the location of the lower-beam filament in order to assure that the light pattern produced by a lamp will not vary more than 0.25° when the bulb is replaced. Therefore, the agency is also proposing, and asking for comment on, a tolerance of ±.008" (±.20 mm) for the location of the lower-beam filament, with the thought of

adopting only one of the two proposed sets of values.

These changes are illustrated in proposed Figure 3–2 which will allow a side-by-side comparison; the current values are crossed through with diagonals, and the proposed values are not crossed through. Hella KG had also petitioned for changes in filament tolerances and positions in its petition for reconsideration.

In evaluating this proposal for tolerance reduction, NHTSA seeks specific comments on the names of manufacturers and the number of replaceable light sources that have been designed and manufactured to tolerances outside those suggested by GM or those suggested by the NHTSA analysis, indicating whether these have been for use as original or replacement equipment, and the manufacturing practicability of the reduced tolerances specified in each proposal, as shown in Figure 3–2. NHTSA is also seeking data or other comment which would support or contradict its analysis.

The proposed amendment would be effective upon publication of the final rule in the **Federal Register.** Because the proposed rule would relieve a restriction and create no additional burden, it is hereby found for good cause shown that an effective date earlier than 180 days after issuance of the final rule would be in the public interest.

NHTSA has considered this proposal and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation" or significant under Department of Transportation regulatory policies and procedures, and that neither a regulatory impact analysis nor a full regulatory evaluation is required. The proposal would not impose additional requirements or costs but would permit manufacturers greater flexibility in design of headlighting systems.

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The proposal would have no effect on the human environment since the weight and quantity of materials used in the manufacture of headlamps would not be changed.

The agency has also considered the impacts of this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and headlamps, those affected by the proposal, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions would not be significantly affected since the price of new vehicles and headlamps will be minimally impacted.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

The engineer and lawyer primarily responsible for this proposal are Richard Van Iderstine and Taylor Vinson, respectively.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment,* be amended as follows:

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. The first sentence of paragraph (b) of paragraph S4.1.1.38 would be revised to read:

(b) The standardized replaceable light source shall meet the requirements in paragraphs (b)(1) through (b)(7) of this section.

3. In paragraph (b)(1) of paragraph S4.1.1.38 the tabular portion of the general specifications would be amended as follows:

[In percent]

	Lower beam	Upper beam
Lumens at 12.8V design voltage	700 – 15	1200 – 15

4. A new paragraph (b)(7) would be added to paragraph S4.1.1.38 to read:

(b)(7) Lumens shall be measured in accordance with the Illuminating Society of North America, LM–45: IES Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filaments Lamps (April 1980), and with that electrical connector and light source base (except for the portion normally located within the interior of a lamp housing) shrouded with an opaque white colored cover.

5. Figure 3–2 would be revised as follows:

FIGURE 3–2.—INTERCHANGEABILITY DRAWING HEADLAMP BULB ASSEMBLY

[Dimensional specifications—figure 3-1]

Dimension	Inches	Millimeters
A	.085 to .083 .002 either side CL.	2.15 to 2.10 .05 either side CL.
F	.906	23.00.
H	.079	2.00
K Lower beam	1.752 ± .010 or .008	44.50 ± .25 or .20
Upper beam	CL upper beam to be within ± .020 of CL of lower beam.	CL upper beam to be within .25 of CL of lower beam.
M	.974	24.75.

FIGURE 3-2.—INTERCHANGEABILITY DRAWING HEADLAMP BULB ASSEMBLY—Continued

[Dimensional specifications—figure 3-1]

Dimension	Inches	Millimeters
N	(1.335 to 1.331) .002 either side CL.	(33.90 to 33.80) .05 either side CL.
O	.517±0.020	13.13±.50
P	1.673	42.50
R	(1.126 to 1.122) .002 either side CL.	(28.60 to 28.50) .05 either side CL.
U	1.181	30.00
V	.413	10.50

FIGURE 3-2.—INTERCHANGEABILITY DRAWING HEADLAMP BULB ASSEMBLY—Continued

[Dimensional specifications—figure 3-1]

Dimension	Inches	Millimeters
W	.128	3.25
X	189	4.80
AC	.045±.010 or .008	1.15±.25 or .20
AD	091±.020	2.30±.50
AE	047±.010 or .008	1.20±.25 or .20
AF	094±.020	2.40±.50
AH	356	9.05
AM	.415	10.54

FIGURE 3-2.—INTERCHANGEABILITY DRAWING HEADLAMP BULB ASSEMBLY—Continued

[Dimensional specifications—figure 3-1]

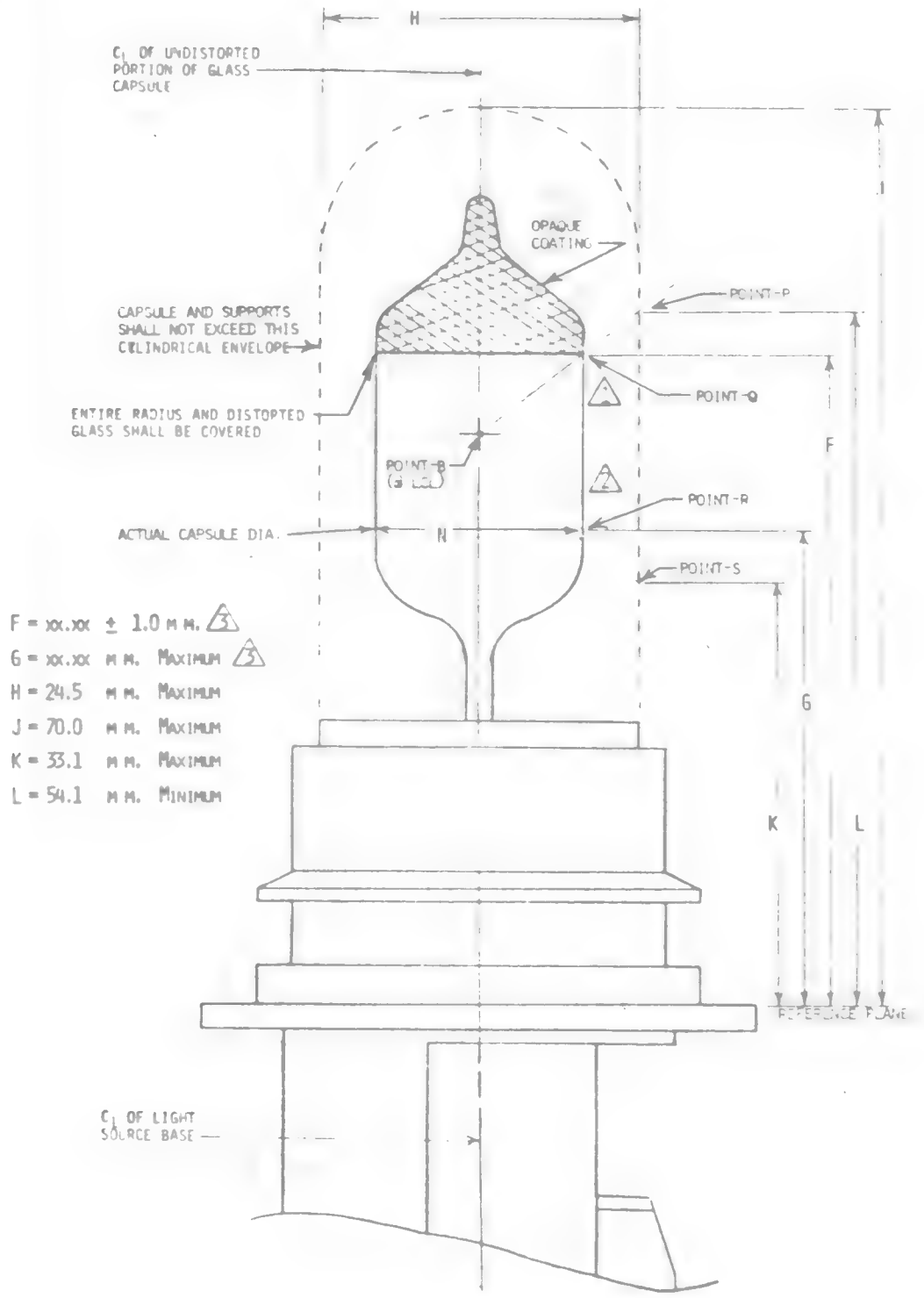
Dimension	Inches	Millimeters
AN	.673	17.10

6. Figure 3–5 would be revised as follows:

BILLING CODE 4910-59-M

FIGURE 3-5

INTERCHANGEABILITY DRAWING
[illegible]
HALOGEN CAPSULE



1. GLASS CAPSULE PERIPHERY SHALL BE OPTICALLY DISTOPTION FREE BETWEEN THE PLANES PERPENDICULAR TO THE CENTEPLINE AT POINTS Q AND R.

2. THERE SHALL BE NO OBSTRUCTION TO LIGHT WITHIN THE VOLUME OF ROTATION OF THE PLANE BOUNDED BY POINTS P, Q, R, AND S ABOUT THE CENTERLINE.

3. EXACT VALUES OF F AND G SHALL BE DETERMIND BY USING THE FOLLOWING:
F=44.5+ (N/2) Tan 38
G=44.5+ (N/2) Tan 43

7. Figure 3–6 would be deleted.

Issued on September 12, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85–22288 Filed 9–17–85; 8:45 am]

BILLING CODE [illegible]

Notices

Federal Register
Vol. 50, No. 181
Wednesday, September 18, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 13, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs Office of Management and Budget, Washington, D.C. 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Agricultural Marketing Service
Marketing Order No. 917—California Pears, Plums, and peaches
Recordkeeping; On occasion; Monthly; Semi-annually
Farms: Businesses or other for-profit; Small businesses or organizations; 23,921 responses; 3,020 hours; not applicable under 3504(h)
William J. Doyle (202) 447–5975

• Agricultural Marketing Service
Marketing Order No. 926—Tokay Grapes Grown in San Joaquin County, California
Recordkeeping; On occasion; Annually; One every three years
Farms: Businesses or other for-profit; Small businesses or organizations; 179 responses; 49 hours; not applicable under 3504(h)
William J. Doyle (202) 447–5975

• Agricultural Stabilization and Conservation Service
7 CFR Parts 724, 725, and 726
MQ–79
Weekly: As needed
Businesses or other for-profit; 5,000 responses; 1,250 hours; not applicable under 3504(h)
Raymond S. Fleming (202) 447–4318

• Food and Nutrition Service
Model Food Stamp Forms—Eligibility, Notices, Claims recovery, Disqualification
FNS 385, 386, 387, 394, 396, 437, 439, 441, and 442
Recordkeeping; On occasion; Monthly; Quarterly; Semi-annually; Annually
Individuals or households; State or local governments; 90,087,783 responses; 18,527,160 hours; not applicable under 3504(h)
Peggy Hickman (703) 756–3454

Reinstatement

• Food and Nutrition Service
Summer Food Service Program for Children (SFSPC) Food Service Management Company Application for Registration
FNS 189
Annually
State or local governments; Business or other for-profit; Federal agencies or employees; 236 responses; 579 hours; not applicable under 3504(h)
Albert V. Perna (703) 756–3600

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 85–22346 Filed 9–17–85; 8:45 am]
BILLING CODE 3410–01–M

Office of the Secretary

Determination of Import Quotas on Sugar for Quota Year 1986 and Modification of the Quota Period

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice establishes the annual quota year sugar import quota for the period December 1, 1985 through September 30, 1986 at 1,722,000 short tons, raw value, and provides that, for shipments of sugar shipped in time to arrive during one quota period but whose arrival was delayed until the next quota period due to forces beyond the importer's control, those shipments may be charged to the earlier quota period with the approval of the Secretary of Agriculture.

EFFECTIVE DATE: December 1, 1985.

ADDRESS: Mail comments to Chief, Sugar Group, Horticultural and Tropical Products Division, Foreign Agricultural Service, Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT:
John Nuttall, Foreign Agricultural Service, Department of Agriculture, Washington, DC 20250, Telephone: (202) 447–2916.

SUPPLEMENTARY INFORMATION:
Presidential Proclamation No. 4941, dated May 5, 1982, amended Headnote 3 of subpart A, part 10, schedule 1 of the Tariff Schedules of the United States (TSUS) to establish a system of import quotas for foreign sugar coming into the United States. Under the terms of Headnote 3, the Secretary of Agriculture established an annual sugar import quota period of October 1-September 30 beginning October 1, 1982. (47 FR 34812.)

For the 1985 quota year the quota level was set at 2,552,000 short tons, raw value, and the quota period was initially established as October 1, 1984-September 30, 1985. (49 FR 38669.) The 1985 quota year was later changed to the period October 1, 1984 through November 30, 1985. (50 FR 2303.) For the 1986 quota year (December 1, 1985

through September 30, 1986), the 1986 sugar import quota is set at 1,722,000 short tons, raw value.

Presidential Proclamation No. 4941 also permits the Secretary of Agriculture, after consultations with the U.S. Trade Representative and the Department of State, to proclaim quota periods other than quarterly, if he determines that such periods give due consideration in the United States sugar market to the interests of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade. After the appropriate consultations, I have determined that it is appropriate for the 1986 quota period to begin on December 1, 1985 and terminate on September 30, 1986 and that it is appropriate to make special provisions for shipments of sugar intended for one quota period and shipped in time to arrive during that particular quota period, but whose arrival was delayed until the next quota period due to forces beyond the importer's control.

Notice

Notice is hereby given that, in accordance with the requirements of Headnote 3, subpart A, part 10, schedule 1 of the TSUS, I have determined that up to 1,772,000 short tons, raw value, of sugar described in items 155.20 and 155.30 of the TSUS may be entered or withdrawn from warehouse for consumption during the period December 1, 1985 through September 30, 1986. Of the 1,722,000 short tons, raw value, 2,000 short tons, raw value, are reserved for specialty sugars from countries listed in paragraph (c)(ii) of Headnote 3.

I have also determined that this quota amount gives due consideration to the interests in the United States sugar market of domestic producers and materially affected contracting parties to the General Agreement on Tariffs and Trade.

In conformity with the above, paragraph (a) of Headnote 3, subpart A, part 10, schedule 1 of the TSUS is modified to read as follows:

3. (a)(i) The total amount of sugars, sirups and molasses described in items 155.20 and 155.30, the products of all foreign countries entered, or withdrawn from warehouse for consumption, between December 1, 1985 and September 30, 1986, inclusive, shall not exceed in the aggregate 1,772,000 short tons, raw value. Of this amount, the total amount permitted to be imported for purposes of paragraph (c)(i) of this headnote (the total base quota amount) shall be 1,720,000 short tons, raw value, and the remaining 2,000 short tons, raw value, may only be used for the importation of "specialty sugars," as defined by the United States Trade Representative in accordance with paragraph (c)(ii) of this headnote.

(ii) Sugar entering the United States during a quota period may be charged to the previous quota period with the approval of the Secretary of Agriculture. The Secretary may only grant such approval if (A) the sugar was shipped in time to enter the United States during the previous quota period and (B) the sugar would have successfully entered the United States during the previous quota period but for forces beyond the control of the importer, including but not limited to engine failure of the transporting ocean carrier, unexpectedly severe weather conditions, and acts of God.

Signed at Washington, DC on September 13, 1985.

Frank W. Naylor, Jr.,

Acting Secretary of Agriculture.

[FR Doc. 85-22347 Filed 9-17-85; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-455-501]

Termination of Antidumping Duty Investigation; Carbon Steel Wire Rod From Poland

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In a letter dated July 29, 1985, petitioners withdrew their antidumping duty petition, filed on April 8, 1985, on carbon steel wire rod (wire rod) from Poland. Based on the withdrawal, we are terminating the investigation.

EFFECTIVE DATE: September 18, 1985.

FOR FURTHER INFORMATION CONTACT: Karen L. Sackett, Office of Investigation, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C 20230; telephone: (202) 377-1756.

SUPPLEMENTARY INFORMATION:

Case History

On April 8, 1985, we received a petition from Atlantic Steel Company, Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Company, on behalf of the U.S. industry producing wire rod. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the International Trade Commission (ITC) of our action and initiated the investigation on April 29, 1985 (50 FR 18905). On May 30, 1985 (50 FR 23084), the ITC found that there was a reasonable indication that imports of wire rod from Poland materially injure, or threaten material injury to, a United States industry.

Scope of Investigation

The product under investigation is carbon steel wire rod, currently classifiable under item 607.17 of the *Tariff Schedules of the United States* (TSUS).

Withdrawal of Petition

In a letter dated July 29, 1985, from Atlantic Steel Company, Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Company, petitioners, notified us that they were withdrawing their April 8, 1985, antidumping duty petition, and requested that the investigation be terminated. A copy of petitioners' letter is appended to this notice. Under section 734(a) of the Tariff Act of 1930, as amended by section 604 of the Trade and Tariff Act of 1984 (the Act), upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. This withdrawal is based on a bilateral arrangement with the Government of Poland to limit the volume of imports of this product. We have assessed the public interest factors set out in section 734(a) of the Act and consulted with potentially affected producers, workers, consuming industries, and with the ITC. On the basis of our assessment of the public interest factors and our consultations, we have determined that termination would be in the public interest.

We have notified all parties to the investigation and the ITC of petitioners' withdrawal and our intention to terminate.

For these reasons, we are terminating our investigation.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

September 3, 1985.

July 29, 1985.

Mr. Gilbert B. Kaplan
Acting Deputy Assistant Secretary for Import Administration,
U.S. Department of Commerce,
Washington, DC 20230.

Attention: Central Records Unit, Room B-099

Re: *Carbon Steel Wire Rod from Poland*

Dear Mr. Kaplan: We have been advised by the United States Trade Representative ("USTR") that the United States has entered into an Arrangement with Poland which establishes import ceilings for various steel products, including carbon steel wire rod. The Arrangement provides that certain pending petitions concerning Arrangement

products from Poland are to be withdrawn as a condition precedent to its entry in force. Included among these pending matters is the ongoing investigation involving carbon steel wire rod initiated by Petition filed on April 8, 1985.

Atlantic Steel Company, Continental Steel Corporation, Georgetown Steel Corporation, North Star Steel Texas, Inc., and Raritan River Steel Company are the Petitioners in the Polish proceeding, in which the Department is currently investigating whether wire rod imported from the respondent during the period of investigation was sold at less than fair value. Petitioners' expectation is that should this investigation proceed to an order, antidumping duties would be imposed to deal specifically with this "unfairly traded" steel wire rod. In these circumstances, the Petitioners are entitled to construe the Arrangement as the functional equivalent of a suspension of an investigation even though there has not been a preliminary determination. As you know, a suspension agreement pursuant to section 734(c)(1)(A) of the 1979 Trade Agreements Act requires a commitment from the exporters (and agents) that "the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented."

Petitioners recognize that there are no procedures to ensure that there will be no "suppression or undercutting of price levels of domestic products by imports . . ." of the wire rod that will be licensed for importation. Accordingly, Petitioners advise the Department that should there be price undercutting or suppression, as defined in section 734(c), by Polish producers of wire rod, or by importers thereof, they will consider it their perogative at any time to initiate proceedings under the antidumping law without regard to whether or not the Arrangement is in effect. In any event, Petitioners do not waive or affect any rights to take or continue action pursuant to U.S. law or otherwise.

In sum, the Petitioners, in reliance upon the wire rod import ceiling set forth in the Arrangement with Poland and its other terms and conditions and upon the further provisions and understandings of this letter, withdraw the petition conditioned upon the following:

1. That the Department will provide assurance, by the notice published in the **Federal Register**, that the Arrangement with Poland is in full force and effect and subject to no contingency (whether expressed in the Arrangement or any modifications therefore by side letter or otherwise) that would revise, delay, or impair the implementation of the specific restraints concerning wire rod.

2. That the United States does not plan to agree to any modifications of the Arrangement that would affect the obligations of Poland concerning wire rod to the detriment of the domestic industry during the Arrangement term.

3. That Petitioners do not waive any statutory rights or otherwise restrict their rights concerning action under the trade laws.

4. That the Arrangement with the Poland is a "bilateral arrangement" within the meaning of section 804 of the Steel Import Stabilization Act of 1984 and the President is authorized to enforce the Arrangement pursuant to section 805(a) of said Act. As a consequence of those provisions and the requirements and terms of the Arrangement, the United States will prohibit entry into the Customs territory of the United States of wire rod from Poland that (i) is not accompanied by an export certificate, and (ii) is not issued consistent with the quantitative limitations specifically applicable to Poland as defined by the Arrangement.

5. That the Department will publish this letter in the **Federal Register**, together with the notice that the Petitioners have withdrawn the Petition conditioned upon satisfaction of the terms set forth herein.

Petitioners reiterate that the withdrawal of the Petition contemplated by this letter does not have any force or effect, and provides the Department with no authority to terminate the investigation, until the foregoing provisions are met.

Respectfully submitted,

Charles Owen Verrill, Jr.

Wiley & Rein, 1776 K Street, NW., Washington, D.C. 20006, (202) 429–7000.

Counsel for Petitioners: Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc. Raritan River Steel Co.

cc: Service List

David E. Birenbaum

Fried, Frank, Harris, Shriver & Jacobson (A Partnership Including Professional Corporations) 600 New Hampshire Ave., N.W. Washington, D.C. 20037 (202) 342–3500.

Counsel for Petitioners: Atlantic Steel Co.

[FR Doc. 85–22310 Filed 9–17–85; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–047]

Elemental Sulphur From Canada; Final Results of Administrative Review of Antidumping Finding and Revocation in Part

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of administrative review of antidumping finding and revocation in part.

SUMMARY: On August 15, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on elemental sulphur from Canada. The review covers 44 of the 48 known manufactures and/or exporters of this merchandise to the United States currently covered by the finding and generally the period December 1, 1981, through November 30, 1982.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and review of our preliminary results, we have changed the rate for Drummond Petroleum, Ltd. The final results for all other firms remain unchanged from those presented in our preliminary results.

EFFECTIVE DATE: September 18, 1985.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Edward Haley, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–5255/2923.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 32632–4) the preliminary results of its administrative review and intent to revoke in part the antidumping finding on elemental sulphur from Canada (38 FR 34655, December 17, 1973). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of elemental sulphur, currently classifiable under item 415.5000 of the Tariff Schedules of the United States Annotated. The review covers 44 and the 48 known manufacturers and/or exporters of Canadian elemental sulphur to the United States currently covered by the finding and generally the period December 1, 1981, through November 30, 1982.

Analysis of Comments Received

We invited interested parties to comment on our preliminary results and intent to revoke in part. We received written comments from one domestic interested party, Freeport Minerals Company.

Comment 1: Freeport notes that the Department intends to revoke the finding with respect to seven companies. Freeport does not oppose revocation of six of those companies but does oppose revocation for Dome Petroleum, Ltd.

Freeport contends that several brokerage firms purchased elemental sulphur from Dome in 1982 in Canada at prices significantly below those generally in effect on sales to Canadian customers. Those brokerage firms subsequently have either acquired, or have been acquired by, U.S. phosphoric acid manufacturers and are importing Canadian sulphur for use in phosphoric acid plants. Freeport believes that Dome made those 1982 and subsequent sales to the brokers at low prices knowing that the sulphur would be exported to the U.S. and intending to avoid the

consequences of the antidumping finding. Freeport contends that it would be improper for the Department to revoke the finding with regard to Dome without further examining those arrangements, and the Dome is continuing to sell at less than foreign market value.

Department's Position: The Department requires that for a company to qualify for revocation it must demonstrate, at a minimum, that it had: (1) Two years of sales at not less than foreign market value, (2) four years of no shipments, or (3) a three-year combination of at least one year of sales at not less than foreign market value and two years of no shipments. The company must also agree to reinstatement in the finding or order in the event of its resuming less than foreign market value sales of the merchandise.

Dome did not manufacture and export Canadian elemental sulphur to the U.S. from the date of the finding through November 30, 1980, and all sales by Dome during the period December 1, 1980, through November 30, 1981, were made at not less than foreign market value. Dome did not manufacture and export this merchandise to the U.S. during the current review period December 1, 1981, through November 27, 1982. The Department and the Customs Service also have no records of Dome selling elemental sulphur to any exporter to the United States.

In addition, Dome has agreed in writing to an immediate suspension of liquidation and reinstatement of the finding if circumstances develop which indicate that elemental sulphur manufactured and exported by Dome to the United States is being sold at less than foreign market value. Therefore, Dome has met the requirements under our regulations for revocation regarding its exports. We are only revoking the finding with regard to sulphur manufactured *and* exported to the U.S. by Dome.

Comment 2: Freeport questions the validity of the array of questionnaire response data showing a substantial variation among respondent's Candian market prices during the review period. Freeport complians that, because the Department did not verify the questionnaire responses of the Canadian producers for the period, the price variations for a homogeneous product like sulphur increase Freeport's concern about the validity of the provided Canadian market data.

Department's Position: Freeport stated that its comments on the variations in the sample prices disclosed were preliminary and that it might wish to comment further after additional review. Freeport subsequently did not provide additional comments. It is unclear from Freeport's comments whether it was concerned with price variations over time or with variations at the same point in time. The Department is not aware of (and Freeport has not pointed out) instances of the latter situation, and the former situation is not uncommon. Without additional specifics about the potential problem, we see no reason to undertake at this time verification of numerous companies' responses.

Comment 3: Freeport objects to the fact that the cash deposit requirement for new exporters will be reduced from 5.56 percent to 1.98 percent (based on the highest margin for a responding company with shipments during the review period). Freeport contends that this is not an appropriate basis for the cash deposit rate nor, in Freeport's view, the Department's ordinary practice. The cash deposit requirements from the last review include much higher rates for many Canadian companies that did not ship during this review period. Freeport's concern is based in part of the fact that many Canadian companies have used or created export brokers or intermediaries, which the Department may inadvertently treat as "new exporters," in an attempt to avoid the payment of higher cash deposits established in earlier reviews.

Department's Position: The Department requires cash deposits on shipments by new exporters equal to the highest margin found for a responding firm with shipments in the current review period. We have consistently applied this rule in reviews of antidumping cases since our creation of the new exporter cash deposit concept. Our rule states that, to receive the new exporter rate, a firm must be unrelated to any previously reviewed firm. We have no evidence that any new shippers are related to manufacturers or exporters already covered by any review of this finding.

Final Results of the Review and Revocation in Part

Based on our analysis of the comments received and review of our preliminary results, we have changed the margin for Drummond Petroleum, Ltd. from 5.54 percent to zero percent. The final results for all other firms remain unchanged from those presented in our preliminary results, and we determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Amerada Minerals	12/01/81-11/30/82	[1] 28.90
Amoco Canada Petroleum Company, Ltd.	12/01/81-12/27/82	0
Brimstone	12/01/81-11/30/82	0
BP/Canamex	12/01/81-06/30/82	[2]
Canamex	07/01/82-11/30/82	0
Canterra/Brimstone	12/01/81-11/30/82	[1] 26.95
Canterra/Canamex	12/01/81-11/30/82	[1] 5.56
Canterra Energy, Ltd. (formerly Aquitaine Company of Canada, Ltd.)	12/01/81-12/27/82	0
Canadian Reserve	12/01/81-11/30/82	[1] 19.05
Canadian Reserve/Canamex	12/01/81-11/30/82	[1] 15.24
CDC Oil Gas, Ltd.	12/01/81-12/27/82	[1] 0
Cities Service	10/01/79-11/30/82	[2]
Cornwall Chemicals	12/01/81-11/30/82	[1] 3.84
Delta Marketing	12/01/81-11/30/82	0
Delta/Canamex	12/01/81-06/30/82	0
Dome Petroleum, Ltd.	12/01/81-12/27/82	[1] 0
Drummond (formerly known as Union Texas, Ltd.)	12/01/81-11/30/82	0
Fanchem	12/01/81-11/30/82	[1] 0
Home Oil/Canamex	12/01/81-06/30/82	0
Hudson's Bay/Canamex	12/01/81-06/30/82	[2]
Hudson's Bay/Sulbow	12/01/81-11/30/82	[1] 0
Imperial Oil	12/01/81-11/30/82	0
Imperial Oil Ltd./Exxon Chemical Americas, Inc.	12/01/81-12/27/82	0
Interdec	06/01/81-12/31/82	0
Koch Oil	12/01/81-11/30/82	[1] 0
Marathon Oil	12/01/81-11/30/82	[1] 0
Marathon Oil/Canamex	12/01/81-11/30/82	[1] 15.54
Mobil/Canamex	12/01/81-06/30/82	0
Pan Canadian Petroleum, Ltd.	12/01/81-12/27/82	0
Pan Canadian/Canamex	12/01/81-06/30/82	[2]
Petro-Canada	12/01/81-11/30/82	1.98
Petro-Canada/Canamex	12/01/81-06/30/82	0
Petrogas Processing	12/01/81-11/30/82	[1] 0
Petrosul	12/01/81-11/30/82	[1] 0
Rampart Resources/ Sulbow Minerals	12/01/81-11/30/82	[1] 0
Real International	12/01/81-11/30/82	0
Sulbow Minerals	12/01/81-11/30/82	[1] 0
Sulpetro	12/01/81-11/30/82	[1] 28.90
Suncor, Inc.	12/01/81-11/30/82	[1] 26.95
Suncor/Canamex	12/01/81-11/30/82	[1] 20.28
Texaco Canada Resources	12/01/81-11/30/82	[1] 28.90
Tiger Chemicals, Ltd.	12/01/81-12/27/82	[2]
Western Decalta	12/01/81-11/30/82	[1] 28.90
Westcoast Transmission	12/01/81-11/30/82	[1] 28.90

[1] No shipments during the period

Also as a result of the review the Department revokes the antidumping finding on elemental sulphur from Canada with respect to Tiger Chemicals Ltd., Pan Canadian Petroleum Ltd., Amoco Canada Petroleum Company Ltd., Imperial Oil Ltd./Exxon Chemical Americas, Inc., Canterra Energy Ltd. (formerly Aquitaine Company of Canada, Ltd.), CDC Oil & Gas Ltd., and Dome Petroleum Ltd. For the reasons set forth in the preliminary results, we are satisfied that there is no likelihood of resumption of sales at less than foreign market value by these firms. This partial revocation applies to all unliquidated entries of this merchandise exported by Tiger Chemicals Ltd. and CDC Oil & Gas Ltd., or produced and exported by Pan Canadian Petroleum Ltd., Amoco Canada Petroleum Company Ltd., Imperial Oil Ltd./Exxon Chemicals Americas, Inc., Canterra Energy Ltd., and Dome Petroleum Ltd., and entered, or withdrawn from warehouse, for consumption on or after December 27,

1982, the date of publication of our tentative determination to revoke with regard to these firms.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, the Department shall require a cash deposit of estimated antidumping duties based on the above margins for these firms. For any future shipment from a new exporter not covered in this or prior administrative reviews, whose first shipments of Canadian elemental sulphur occurred after November 30, 1982, and who is unrelated to any reviewed firm, we shall require a cash deposit of 1.98 percent. These deposit requirements are effective for all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible.

This administrative review, partial revocation, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

September 11, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-22319 Filed 9-17-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-008]

Carbon Steel Plate From Brazil, Final Results of Changed Circumstances; Administrative Review and Termination of Suspended Countervailing Duty Investigation

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Administrative Review and Termination of Suspended Countervailing Duty Investigation.

SUMMARY: On July 23, 1985, the Department of Commerce published the preliminary results of its administrative review of the suspended countervailing duty investigation on carbon steel plate from Brazil and announced its tentative determination to terminate the suspended investigation. The review covers the period from September 7, 1982.

We gave interested parties an opportunity to comment. We received no comments. We therefore determine that domestic interested parties are no longer interested in continuation of the suspended investigation, and we are terminating the suspended investigation. In accordance with the petitioner's notification, the termination will apply to all carbon steel plate entered, or withdrawn from warehouse, for consumption on or after September 7, 1982.

EFFECTIVE DATE: September 7, 1982.

FOR FURTHER INFORMATION CONTACT: Peggy Clarke or AJ Jemmott, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Backgound

On July 23, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 29996) the preliminary results of its changed circumstances administrative review of the suspended countervailing duty investigation on carbon steel plate from Brazil (47 FR 39394; September 7, 1982). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Brazilian carbon steel plate. The term "carbon steel plate" covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold-rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in items 607.6615 or 607.9400 of the Tariff Schedules of the United States Annotated ("TSUSA"); and hot- or cold-rolled carbon steel plate which has been coated or plated with zinc including any material which has been painted or otherwise covered after having been coated or plated with zinc, as currently provided for in items 608.0711 or 608.1100 of the TSUSA. Semi-finished products of solid rectangular cross section with a width at least four times the thickness in the as cast condition and processed only through primary mill hot-rolling are not included. This review covers the period from September 7, 1982.

Final Results of the Review and Termination

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to terminate. We received no comments.

As a result of our review, we determine that the domestic interested parties are not longer interested in continuation of the suspended countervailing duty investigation on carbon steel plate from Brazil and that the suspension of investigation should be terminated on this basis. Therefore, we are terminating the suspended investigation on carbon steel plate from Brazil effective September 7, 1982.

This administrative review, termination, and notice are in accordance with sections 750 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: September 12, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-22336 Filed 9-17-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-489-502]

Postponement of Preliminary Countervailing Duty Determinations; Certain Welded Carbon Steel Pipe and Tube Products From Turkey

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioners, the standard pipe subcommittee and the line pipe subcommittee of the Committee on Pipe and Tube Imports (CPTI) and each of their member companies which produce standard pipe and line pipe, the Department of Commerce is postponing its preliminary determinations in countervailing duty investigations of certain welded carbon steel pipe and tube products from Turkey. The preliminary determinations will be made on or before October 21, 1985.

EFFECTIVE DATE: September 18, 1985.

FOR FURTHER INFORMATION CONTACT: Peter Sultan or Mary Martin, Office of Investigations, Import Administration,

International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377–2815 or 377–3464.

SUPPLEMENTARY INFORMATION: On August 2, 1985, the Department initiated countervailing duty investigations on certain welded carbon steel pipe and tube products from Turkey. In our notice of initiation, we stated that we would issue our preliminary determinations on or before October 9, 1985 (50 FR 32248, August 9, 1985).

On September 5, 1985, the petitioners filed a request that the preliminary determinations in these investigations be postponed to October 21, 1985.

Section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), provides that the preliminary determination in a countervailing duty investigation may be postponed, where the petitioner has made a timely request for such a postponement. Pursuant to this provision and the request by petitioners in these investigations, the Department is postponing its preliminary determinations to not later than October 21, 1985.

This notice is published pursuant to section 703(c)(2) of the Act.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

September 12, 1985.

[FR Doc. 85–22337 Filed 9–17–85; 8:45 am]

BILLING CODE 3510–DS–M

President's Export Council; Open Meeting

A meeting of the President's Export Council will be held September 23, 1985, 1:45 p.m.–3:30 p.m. in Room 4830 of the Department of Commerce, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW, Washington, D.C. The Council's purpose is to advise the President on matters relating to United States export trade.

Agenda: Opening remarks; overview of the current U.S. trade position; discussion of organizational issues; and establishment of subcommittees.

The meeting will be open to the public with a limited number of seats available. Prior to the meeting, there will be ceremonial activities at the White House to swear-in the new members. The ceremony will be closed to the public for reasons of White House security. For further information reservations to attend the open session, or copies of the minutes contact Laureen Daly (202) 377–1125.

Dated: September 16, 1985.

Henry P. Misisco,

Acting Director, Office of Planning and Coordination.

[FR Doc. 85–22428 Filed 9–17–85; 8:45 am]

BILLING CODE 3510–DR–M

Patent and Trademark Office

Interim Protection for Mask Works of Nationals, Domiciliaries, and Sovereign Authorities of Certain Member States of the European Economic Community

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Issuance of interim orders.

SUMMARY: The Secretary of Commerce has delegated to the Assistant Secretary and Commissioner of Patents and Trademarks, by Amendment 1 to Department Organization Order 10–14; the authority under section 914 of title 17 of the United States Code (the copyright law) to make findings and issue orders for the interim protection of mask works.

On June 20, 1985, the Patent and Trademark Office received a petition for the issuance of an interim order from the Commission of the European Communities on behalf of the European Economic Community. Comments on the petition were requested on or before July 19, 1985. Comments were received from the Semiconductor Industry Association (SIA), the Union of Industries of the European Community (UNICE), and the European Electronic Component Manufacturers Association (EECA).

In their comments the SIA, UNICE, and the EECA supported the issuance of an interim order. SIA urged that any order issued should be limited to one year, and the Commission and UNICE have argued for an 18 month order. The Commissioner has determined that, in view of the demonstrated good faith efforts and reasonable progress in the European Communities toward providing protection for mask works of U.S. nationals and domiciliaries, orders for the Member States of the European Economic Community should issue for one year from the date of signature of the orders.

EFFECTIVE DATE: The effective date of these orders shall be June 20, 1985, the date of receipt of the petition.

Termination Date: These orders shall terminate on September 12, 1986, one year from their date of signature.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557–3065, or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: Chapter 9 of title 17 of the United States Code establishes an entirely new form of intellectual property protection for mask works that are fixed in semiconductor chip products. Mask works are defined in 17 U.S.C. 901(a)(2) as:

> A series of related images, however, fixed or encoded
>
> (A) Having or representing the predetermined, three-dimensional pattern of metallic, insulating or semi-conductor material present or removed from the layers of a semiconductor chip product; and
>
> (B) In which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

Chapter 9 provides for a 10-year term of protection for original mask works, measured from the earlier of their date of registration in the U.S. Copyright Office, or their first commercial exploitation anywhere in the world. Mask works must be registered within 2 years of their first commercial exploitation to maintain this protection. Section 913(d)(1) provides that mask works first commercially exploited on or after July 1, 1983, are eligible for protection provided that they are registered in the U.S. Copyright Office before July 1, 1985.

Foreign mask works are eligible for protection under basic criteria set out in 17 U.S.C. 902. First, the owner of the mask works must be a national, domiciliary, or sovereign authority of a foreign nation that is a party to a treaty providing for the protection of a mask work to which the United States is also a party, or a stateless person wherever domiciled; second, the mask work must be first commercially exploited in the United States; or that the mask work comes within the scope of a Presidential proclamation. Section 902(a)(2) provides that the President may issue such a proclamation upon a finding that:

> A foreign nation extends to mask works of owners who are nationals or domiciliaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided under this chapter, the President may by proclamation extend protection under this chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals,

domiciliaries, or sovereign authorities of that nation, or (ii) which are first commercially exploited in that nation.

In order to encourage steps toward a regime of international comity in mask works protection, section 914(a) provides that the Secretary of Commerce may extend the privilege of obtaining interim protection under chapter 9 to nationals, domiciliaries, and sovereign authorities of foreign nations if the Secretary finds:

(1) That the foreign nation is making good faith efforts and reasonable progress toward—

(A) Entering into a treaty described in section 902(a)(1)(A), or

(B) Enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and

(2) That the nationals, domiciliaries, and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in the misappropriation, or unauthorized distribution or commercial exploitation of mask works; and

(3) That issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works.

Section 914 of the SCPA provides for the issuance of interim orders with respect to foreign nations, but it also recognizes that a petition requesting such an order may be submitted by any person. In this proceeding we have a petition submitted by an international organization on behalf of its Member States. By their June 19 Council Resolution the Member States of the European Community have acknowledged the importance of providing for the legal protection of semiconductor chips, and have unanimously resolved to "examine the proposal for a directive which the Commission will soon be submitting on the legal protection of the typographies of semiconductor products with a view of deciding on its adoption as rapidly as possible, subject to whatever amendments may be necessary, in particular, in light of the Opinion of the European Parliament and the Economic and Social Committee."

At the July 23 hearing Mr. Robert J. Coleman, Head of the Intellectual Property and Unfair Competition Division of the Commission of the European Communities, explained the Commission procedures and the activity that has taken place with respect to the protection of semiconductor chips. He explained that the Commission is planning to issue a "directive" that would create a legal framework for the protection of semiconductor chip designs in the Member States of the Community. The present proposed directive, which was published as part of the Notice of Initiation of Proceeding for Interim Protection for Mask Works of Nationals, Domiciliaries, and Sovereign Authorities of the European Economic Community, 50 FR 26821 (June 28, 1985), seeks to define the fundamental conditions for the availability and scope of protection to be provided for semiconductor chip designs in the laws of the various Member States. Mr. Coleman explained that after extensive consultations with industry and governmental experts, a draft, including any appropriate revisions, will be submitted to the Council of the European Community. He expects that this will take place in November, 1985. After that, the proposed directive will be considered by the European Parliament. When adopted, the directive will obligate member states to take legal action to comply with its terms. If States fail to act, proceedings to enforce the directive can be undertaken in the European Court of Justice. Mr. Coleman asserts "that the historical record show this process is effective in ensuring that directives are respected, even if it may take a little time to do so." In its comments, the SIA states that it "believes that the outline of the draft directive submitted by the Commission of the European Communities shows that the Commission is making good faith efforts to implement semiconductor chip protection legislation that will be substantially on the same basis as that enacted under the United States SCPA." Both the SIA and the Commission acknowledge that the minimum standards of protection set out in the draft directive do not contain the level of detail found in the U.S. law or in a national law.

Consequently, in this instance, it is reasonable to conclude that the actions being undertaken by the Commission of the European Communities are being undertaken on behalf of all of its Member States and that the requisite findings and conclusions called for in § 914 of the SCPA with respect to the Commission's activities are equally applicable to its Member States.

At the July 23 hearing the SIA discussed a number of the areas in which they believed more detail or specificity in the decree would be appropriate, including:

- Registration and deposit procedures;
- Notice of protection to be affixed to the work;
- The extent to which intermediate forms of chip products will be protected;
- The extent of permissible reverse engineering;
- The protection of innocent infringers;
- The extent of copying that will constitute an infringement; and
- Dispute resolution procedures and damages.

Because of their belief that the Community is making good faith efforts toward encouraging the development of national level chip protection laws in its respective Member States, SIA supports the issuance of an appropriate interim order but, because of the number of remaining open questions about the form and the detailed provisions of such legislation, SIA urges that a one-year order would be appropriate. The Commission, on the other hand, in view of the complexity of the political system and the technological issues involved has argued that such an order should issue for at least eighteen months.

During the course of this proceeding there has been no information submitted that alleges that nationals, domiciliaries, and sovereign authorities of the Member States of the European Community are engaged in misappropriation or unauthorized commercial exploitation of mask works. The comments of UNICE suppot this view.

In his testimony, Mr. Coleman argues forcefully that the Commission's actions will have a positive effect on the rapid development of a body of law that will afford appropriate protection to semiconductor chips. He further suggests that the issuance of an appropriate interim order will encourage continued progress toward international comity in mask work protection. The SIA, in its statement, welcomes the Commission's efforts and expresses hope that these efforts will promote "moving toward a global system of harmonized mask work protection."

Based upon our analysis of the record of this proceeding we have concluded that granting interim orders for the Memer States of the European Community will promote international comity in the protection of mask works. As shown in the preceeding discussion, the conditions for the issuance of those interim orders have been fulfilled.

The record supports the conclusion that the Commission of the European Communities, on behalf of its Member States, is engaged in good faith efforts to develop effective legislation to protect semiconductor chip products. However, we recognize that these activities are in a preliminary stage of development. We have determined that, a review of progress would be appropriate, but the order should be long enough to permit the Europen Community to make significant progress toward developing

its directive and legislative proposals Accordingly, these orders will endure until one year from their date of signature. This will permit a timely review of progress without unduly burdening either the parties to this proceeding or the Government

Accordingly, I am issuing interim orders for the Member States of the European Community, excluding Great Britain since a full-term order has already been issued for that country. The interim order for the Netherlands issued on June 22, 1985, 50 FR 26818, will be extended to expire on September 12, 1986, to provide for a uniform review of progress in the development of the Community's legislative proposals.

Order Extending Interim Protection Under Chapter 9, Title 17, United States Code, to Natonals, Domiciliaries, and Sovereign Authorities of Belgium

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10–14 regarding 17 U.S.C. 914, and based upon the records of this proceeding commenced on June 28, 1985, I find that: Belgium is and has, since June 20, 1985, been making good faith efforts toward providing effective protection for mask works in compliance with 17 U.S.C. 902(a)(2); Belgian nationals, domiciliaries, and sovereign authorities and persons controlled by them are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, nationals, domiciliaries, and sovereign authorities of Belgium are entitled to protection under chapter 9 of title 17 of the United States Code subject to compliance with all formalities specified therein. The effective date of this order shall be June 20, 1985, and this order shall terminate on September 12, 1986, one year from its date of signature.

Order Extending Interim Protection Under Chapter 9, Title 17, United States Code, to Nationals, Domiciliaries, and Sovereign Authorities of Denmark

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10–14 regarding 17 U.S.C. 914, and based upon the records of this proceeding commenced on June 28, 1985, I find that: Denmark is and has, since June 20, 1985, been making good faith efforts toward providing effective protection for mask works in compliance with 17 U.S.C. 902(a)(2); Danish nationals, domiciliaries, and sovereign authorities and persons controlled by them are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, nationals, domiciliaries, and sovereign authorities of Denmark are entitled to protection under chapter 9 of title 17 of the United States Code subject to compliance with all formalities specified therein. The effective date of this order shall be June 20, 1985, and this order shall terminate on September 12, 1986, one year from its date of signature.

Order Extending Interim Protection Under Chapter 9, Title 17, United States Code, to Nationals, Domiciliaries, and Sovereign Authorities of France

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10–14 regarding 17 U.S.C. 914, and based upon the records of this proceeding commenced on June 28, 1985, I find that: France is and has, since June 20, 1985, been making good faith efforts toward providing effective protection for mask works in compliance with 17 U.S.C. 902(a)(2); French nationals, domiciliaries, and sovereign authorities and persons controlled by them are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, nationals, domiciliaries, and sovereign authorities of France are entitled to protection under chapter 9 of title 17 of the United States Code subject to compliance with all formalities specified therein. The effective date of this order shall be June 20, 1985, and this order shall terminate on September 12, 1986, one year from its date of signature.

Order Extending Interim Protection Under Chapter 9, Title 17, United States Code, to Nationals, Domiciliaries, and Sovereign Authorities of the Federal Republic of Germany

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10–14 regarding 17 U.S.C. 914, and based upon the records of this proceeding commenced on June 28, 1985, I find that: the Federal Republic of Germany is and has, since June 20, 1985, been making good faith efforts toward providing effective protection for mask works in compliance with 17 U.S.C. 902(a)(2); German nationals, domiciliaries, and sovereign authorities the Federal Republic of Germany and persons controlled by them are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, nationals, domiciliaries, and sovereign authorities of the Federal Republic of Germany are entitled to protection under chapter 9 of title 17 of the United States Code subject to compliance with all formalities specified therein. The effective date of this order shall be June 20, 1985, and this order shall terminate on September 12, 1986, one year from its date of signature.

Order Extending Interim Protection Under Chapter 9, Title 17, United States Code, to Nationals, Domiciliaries, and Sovereign Authorities of Greece

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10–14 regarding 17 U.S.C. 914, and based upon the records of this proceeding commenced on June 28, 1985, I find that: Greece is and has, since June 20, 1985, been making good faith efforts toward providing effective protection for mask works in compliance with 17 U.S.C. 902(a)(2); Greek nationals, domiciliaries, and sovereign authorities and persons controlled by them are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, nationals, domiciliaries, and sovereign authorities of Greece are entitled to protection under chapter 9 of title 17 of the United States Code subject to compliance with all formalities specified therein. The effective date of this order shall be June 20, 1985, and this order shall terminate on September 12, 1986, one year from its dated of signature.

Order Extending Interim Protection Under Chapter 9, Title 17, United States Code, to Nationals, Domiciliaries, and Sovereign Authorities of Ireland

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10–14 regarding 17 U.S.C. 914, and based upon the records of this proceeding commenced on June 28, 1985, I find that: Ireland is and has, since June 20, 1985, been making good faith efforts toward providing effective protection for mask works in compliance with 17 U.S.C. 902(a)(2); Irish nationals, domiciliaries, and sovereign authorities and persons

controlled by them are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, nationals, domiciliaries, and sovereign authorities of Ireland are entitled to protection under chapter 9 of title 17 of the United States Code subject to compliance with all formalities specified therein. The effective date of this order shall be June 20, 1985, and this order shall terminate on September 12, 1986, one year from its date of signature.

Order Extending Interim Protection Under Chapter 9, Title 17, United States Code, to Nationals, Domiciliaries, and Sovereign Authorities of Italy

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10–14 regarding 17 U.S.C. 914, and based upon the records of this proceeding commenced on June 28, 1985, I find that: Italy is and has, since June 20, 1985, been making good faith efforts toward providing effective protection for mask works in compliance with 17 U.S.C. 902(a)(2); Italian nationals and domiciliaries, and sovereign authorities and persons controlled by them are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, nationals, domiciliaries, and sovereign authorities of Italy are entitled to protection under chapter 9 of title 17 of the United States Code subject to compliance with all formalities specified therein. The effective date of this order shall be June 20, 1985, and this order shall terminate on September 12, 1986, one year from its date of signature.

Order Extending Interim Protection Under Chapter 9, Title 17, United States Code, to Nationals, Domiciliaries, and Sovereign Authorities of Luxembourg

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10–14 regarding 17 U.S.C. 914, and based upon the records of this proceeding commenced on June 28, 1985, I find that: Luxembourg is and has, since June 20, 1985, been making good faith efforts toward providing effective protection for mask works in compliance with 17 U.S.C. 902(a)(2); nationals, domiciliaries, and sovereign authorities of Luxembourg and persons controlled by them are not engaged in the misappropriation or unauthorized distribution of commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, nationals, domiciliaries, and sovereign authorities of Luxembourg are entitled to protection under chapter 9 of title 17 of the United States Code subject to compliance with all formalities specified herein. The effective date of this order shall be June 20, 1985, and this order shall terminate on September 12, 1986, one year from its date of signature.

Dated: September 12, 1985.

Donald J. Quigg,

Commissioner of Patents and Trademarks—Designate.

[FR Doc. 85–22320 Filed 9–17–85; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Requesting Public Comment on Bilateral Textile Consultations With Uruguay Concerning Category 335

September 13, 1985.

On August 29, 1985, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, requested the Government of Uruguay to enter into consultations concerning exports to the United States of women's, girls' and infants' cotton coats in Category 335, produced or manufactured in Uruguay.

The purpose of this notice is advise the public that, if no solution is agreed upon with the Government of Uruguay in consultations during the sixty-day period which began on August 29, 1985 and extends through October 27, 1985, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton textile products in Category 335, produced or manufactured in Uruguay and exported to the United States during the twelve-month period which began on August 29, 1985 and extends through August 28, 1986 at a level of 32,201 dozen.

A summary market statement follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of this category is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in respose to this notice will be available for public inspection in the Office of Textile and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Uruguay—Market Statement

Category 335—Women's, Girls', and Infants' (WGI) Cotton Coats, etc.

August 1985.

Summary and Conclusions

United States imports of Category 335 from Uruguay were 38,000 dozens in the year-ending June 1985. This compares with 1,000 dozens imported in the previous twelve months. Seventy-one percent of these imports were shipped in the first six months of 1985. Annualized, the year to date imports would be close to 54,000 dozens. Imports from Uruguay were 11,000 dozens in calendar year 1984, and less than 5 dozen in the previous year.

Production

U.S. production of Category 335 coats averaged 1.5 million dozens during the first half of the seventies, 905,000 dozens during the second half and 665,000 dozens from 1980 through 1983. Production in 1983 amounted to 661,000 dozens, down 25 percent from the 782,000 dozens produced in 1982. Production in 1984 was down an additional 21 percent from the 1983 level.

Imports

U.S. imports of Category 335 from all sources were at a record level of 2,177,000 dozens in 1984, up 33 percent from the 1,632,000 dozens imported in 1983. Year-ending June 1985 imports were up 10 percent from the same period in 1984.

Import Penetration

During the first half of the seventies, the ratio of imports to domestic production of Category 335 averaged 30 percent. This almost tripled to 88 percent during the last half of the decade and rapidly escalated to

246 percent during the first four years of the eighties. The 1984 ratio reached an all time high of 414.7 percent, one of the highest ratios of all apparel items.

The domestic producers' share of the market for domestically produced and imported Category 335 declined precipitously during the seventies and continued downward in the early eighties. They accounted for only 19 percent of the market in 1984.

Import Values

Approximately 80 percent of the year ending June 1985 imports of Category 335 from Uruguay entered under one TSUSA classification. This was 383.3477—Women's other coats, not ornamented, over 4 U.S. dollars.[1] These items entered at duty paid values below the U.S. producers' prices for similar garments.

[FR Doc. 85-22321 Filed 9-17-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Navy

Board of Advisors to the Superintendent, Naval Postgraduate School; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Board of Advisors to the Superintendent, Naval Postgraduate School, Monterey, California, will meet on December 5–6 1985, in Herrmann Hall at the School. On both days the first session will commence at 8:15 a.m. and terminate at 12:00 noon and the second session will commence at 1:15 p.m. and terminate at 5:00 p.m. All sessions are open to the public.

The purpose of the meeting is to elicit the advise of the board on the Navy's Postgraduate Education Program. The board examines the effectiveness with which the Naval Postgraduate School is accomplishing its mission. To this end the board will inquire into the curricula; instruction; physical equipment; administration; state of morale of the student body, faculty and staff; fiscal affairs; and any other matters relating to the operation of the Naval Postgraduate School as the board considers pertinent.

For further information concerning this meeting contact: Commander M. R Merickel, USN (Code 007), Naval Postgraduate School, Monterey, California 93943, Telephone: (408) 646–2514.

[1] 1984 TSUSA Classification 383.3477

Dated: September 12, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 85-22280 Filed 9-17-85; 8:45 am]

BILLING CODE 3810-AE-M

Board of Visitors to the United States Naval Academy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet October 25, 1985, at the United States Naval Academy, Annapolis, Maryland. The session, which is open to the public, will commence at 8:30 a.m. and terminate at 11:55 a.m., October 25, 1985, in Room 301, Rickover Hall.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic method of the Naval Academy.

For further information concerning this meeting contact: Captain John W. Renard, U.S. Navy, Retired, Secretary to the Board of Visitors, Dean of Admissions, United States Naval Academy, Annapolis, Maryland 21402–5017, (301) 267–4361.

Dated: September 12, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 85-22278 Filed 9-17-85; 8:45 am]

BILLING CODE 3810-AE-M

Naval Discharge Review; Hearing Locations

In November 1975, the Naval Discharge Review Board commenced to convene and conduct prescheduled discharge review hearings for a number of days each quarter in locations outside of the Washington, D.C. area. The cities in which these hearings are scheduled are determined in part by the concentration of applicants in a geographical area.

The following NDRB itinerary for February 1986 through November 1986 has been approved, but remains subject to modification if required:

3 through 14 February 1986—San Diego/San Francisco, California
24 through 28 March 1986—Chicago, Illinois
28 April through 2 May 1986— Dallas, Texas
4 through 15 August 1986—San Diego/San Francisco, California
22 through 26 September 1986—Chicago, Illinois
3 through 7 November 1986—Dallas, Texas.

Any former member of the Navy or Marine Corps who desires a discharge review, either in Washington, D.C. or in a city nearer to their residence, should file an application with the Naval Discharge Review Board using DD Form 293. If a personal appearance is requested, the petitioner should enter on the application the hearing location which is preferred. Application forms (DD 293) may be obtained from, and the completed application should be mailed to, the following address: Naval Discharge Review Board, Suite 905, 801 North Randolph Street, Arlington, Virginia 22203–1989.

Notice is hereby given that, since the foregoing itinerary is subject to modification and since, following receipt of a new application, the Naval Discharge Review Board must obtain the applicant's military records before a hearing may be scheduled, the submission of an application to the Naval Discharge Review Board is not tantamount to scheduling a hearing. Applicants and representatives will be mailed a notification of the date and place of their hearing when personal appearance has been requested.

For further information concerning the NDRB, contact: Captain L. E. Hilder, U.S. Navy, Executive Secretary, Naval Discharge Review Board, Suite 905, 801 North Randolph Street, Arlington, Virginia 22203–1989, (202) 696–4881.

Dated: September 12, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-22279 Filed 9-17-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before October 18, 1985.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs.

Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 426–7304.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract.

OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: September 13, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

Office of Intergovernmental and Interagency Affairs

Type of Review Requested: Revision
Title: Presidential Adcademic Fitness Award (PAFA) School Participation Order Form
Agency Form Number: L60–1P
Frequency: Annually
Affected Public: State or local governments; Non-profit institutions
Reporting Burden Responses: 50,000; Burden Hours: 16,650
Recordkeeping Burden, Recordkeepers: 0; Burden Hours: 0

Abstract: This form will be sent to all schools, public and private, grades K–12. Schools that wish to participate in the Presidential Academic Fitness Award (PAFA) program will return the form, confirming their address and other preprinted data from the NCES school universe tape, and indicate on the form the number of awards needed by the exit grade at the school.

Office of Special Education and Rehabilitative Services

Type of Review Requested: New
Title: Parent Survey
Agency Form Number: ED 925
Frequency: One-time
Affected Public: Individuals or households; State or local governments
Reporting Burden, Responses: 160; Burden Hours: 160
Recordkeeping Burden, Recordkeepers: 0; Burden Hours: 0

Abstract: This study will identify possible relationships between the needs of parents of children with severe handicaps and the family's decisions to place such children in out-of-home residential facilities.

Office of Educational Research and Improvement

Type of Review Requested: Revision
Title: National Assessment of Educational Progress 1985–86 Assessment Part II: Background/Attitude, Math, Reading, Science, Computers, Office of Bilingual Education and Minority Language Affairs, Foundations of Literacy—U.S. History and Literature
Agency Form Number: ED 2371–17
Frequency: Non-recurring
Affected Public: Individuals or households; State or local governments
Reporting Burden, Responses: 103,400; Burden Hours: 93,060
Recordkeeping Burden, Recordkeepers: 0; Burden Hours: 0

Abstract: Congress mandated the collection of National Assessment survey data. The data collection, to occur in the Spring of 1986, includes (1) cognitive exercises in math, reading, science, computers, U.S. history and literature; (2) achievement-related student, teacher and school background and attitude questionnaires; and (3) a study of language minority students. Respondents will be a national sample of students ages 9, 13 and 17 (grades 3, 7 and 11) and their teachers and principals. Data will be useful for policy makers in education, research, legislatures and the public.

Office of Planning, Budget and Evaluation

Type of Review Requested: New
Title: Selection Procedures for Identifying Students in Need of Special Language Services
Agency Form Number: P75–5P
Frequency: One-time
Affected Public: State or local governments
Reporting Burden, Responses: 1,200; Burden Hours: 1,800
Recordkeeping Burden, Recordkeepers: 0; Burden Hours: 0

Abstract: As required by section 735 (b)(4) of Title VII of the Elementary and Secondary Education Act, as amended by Pub. L. 98–511, the Department is conducting a study to determine the effectiveness of different testing procedures to identify students for placement into special language programs and for reclassification once they have developed sufficient English language proficiency to benefit from an all-English instructional program.

Office of Postsecondary Education

Type of Review Requested: Revision
Title: Student Aid Report
Agency Form Number: ED 255–1
Frequency: Annually
Affected Public: Individuals or households; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
Reporting Burden: Responses: 15,102,102; Burden Hours: 1,954,094
Recordkeeping Burden: Recordkeepers: 6,100; Burden Hours: 491,066

Abstract: This report contains parental and/or student income and asset information which is used to determine the amount of Federal aid the student receives for educational purposes.

Type of Review Requested: Revision
Title: Report of Defaulted Loans as of December 31
Agency Form Number: E40–1P (formerly ED 574)
Frequency: Annually
Affected Public: Non-profit institutions; For-profit institutions
Reporting Burden, Responses: 4,000; Burden Hours: 2,000
Recordkeeping Burden, Recordkeepers: 2; Burden Hours: 512

Abstract: This report is used by institutions that have established a loan fund under the National Direct Student Loan Program to provide information to the Secretary on defaulted student loans. The data may be used to determine default trends and to compare the performance of various institutions.

[FR Doc. 85–22325 Filed 9–17–85; 8:45 am]
BILLING CODE 4000–01–M

Office of Postsecondary Education

National Resource Centers Program and Foreign Language and Area Studies Fellowships Program; Application for Non-Competing Continuation Awards for Fiscal Year 1986

Applications are invited for non-competing continuation awards under the National Resource Centers Program and the Foreign Language and Area Studies Fellowships Program. Applications are for the second funding year of a 3-year project period established by last year's competition.

Authority for these programs is contained in section 602 of the Higher Education Act of 1965, as amended. (20 U.S.C. 1122)

Under these programs, the Secretary makes awards to institutions of higher education.

The purpose of the National Resource Centers Program is to provide general assistance for nationally recognized centers of excellence in modern foreign languages and area studies and in modern foreign languages and international studies. The purpose of the Foreign Language and Area Studies Fellowships Program is to provide incentive awards to meritorious students undergoing advanced training in modern foreign languages and related area and international studies. The fellowships are awarded through approved institutions of higher education.

Closing Date for Transmittal of Applications

To be assured of consideration for funding, an application for a non-competing continuation grant should be mailed or hand delivered by December 2, 1985. If an application is late the Department of Education may lack sufficient time to review it with other non-competing continuation applications and may decline to accept it.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.015, National Resource Centers and Fellowships Programs, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a date postmark. Before relying on this method, an applicant should check with the local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications Delivered by Hand

An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Available Funds

Fiscal year 1986 funds have not yet been appropriated for the National Resource Centers and Foreign Language and Area Studies Fellowships Programs. However, applications are invited to allow sufficient time to evaluate applications and complete the grants process prior to the end of the fiscal year, should the Congress appropriate funds for these programs. In FY 1985, approximately 93 awards were made to National Resource Centers at an average level of approximately $131,000. The apportioning of funds will favor priority activities described in the application closing date notice for the FY 1985 competition.

Approximately $7,550,000 may be available for the Fellowships Program. Approximately 800 awards could be made in FY 1986 at this level of funding. Expected stipend levels would be $5,000 for an academic year fellowship and $1,250 for a summer intensive language fellowship. Fellowships to be used at summer cooperative programs on other campuses or abroad may also include travel funds, which would be expected not to exceed $500 for each fellowship.

These estimates do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless the amount is otherwise specified by statute or regulations. This would be the second of a three-year funding commitment, with this and third year funding dependent on performance and availability of funds.

Application Forms

Application forms and program information packages are expected to be ready for mailing by September 20, 1985. They are available only for currently funded centers and fellowships programs and may be obtained by writing to the Advanced Training and Research Branch, Center for International Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3923 ROB–3), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. The program information package is intended only to aid applicants in applying for assistance under this budget period. Nothing in the program information package is intended to impose any paperwork, application content reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing the competition. The Secretary strongly urges that the narrative portion of the application not exceed 30 pages, double-spaced, for single institutions and 45 pages for consortia, and that appendices be limited to course lists and vitae of any faculty and professional staff hired since the original application was submitted.

(Approved by OMB under control number 1840–0068)

Applicable Regulations

Regulations applicable to these programs include the following:

(a) Regulations governing the National Resource Centers Program 34 CFR Parts 655 and 656.

(b) Regulations governing the Foreign Language and Area Studies Fellowships Program, 34 CFR Parts 655 and 657.

(c) Regulations governing both programs: Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77 and 78.

Further Information

For further information contact Joseph F. Belmonte, Advanced Training and Research Branch, Center for International Education, U.S. Department of Education, 400 Maryland Avenue, S.W., (Room 3923, ROB–3),

Washington, D.C. 20202. Telephone: (202) 245–9425.

(Catalog of Federal Domestic Assistance No. 84.015—National Resource Centers and Fellowships Programs)

(20 U.S.C. 1122)

Dated: September 21, 1985.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 85–22327 Filed 9–17–85; 8:45 am]

BILLING CODE 4000–01–M

Office of Vocational and Adult Education

Bilingual Vocational Programs; Applications

AGENCY: Department of Education.

ACTION: Extension of closing date for transmittal of applications for new projects for the Bilingual Vocational Training Program, the Bilingual Vocational Instructor Training Program, and the Bilingual Vocational Materials, Methods, and Techniques Program for fiscal year 1986.

SUMMARY: The September 9, 1985 closing date for transmittal of applications for fiscal year 1986 new projects under the Bilingual Vocational Training Program, the Bilingual Vocational Instructor Training Program, and the Bilingual Vocational Materials, Methods, and Techniques Program is extended. The new closing date is October 7, 1985. The original closing date and application notices were published in the **Federal Register** of July 26, 1985, 50 FR 30498. Extension of the closing date is necessary because several requests for applications were not delivered to the new address of the Office of Vocational and Adult Education. Those potential applicants did not receive application packages.

Applications are invited for new projects under the Bilingual Vocational Training Program, the Bilingual Vocational Instructor Training Program, and the Bilingual Vocational Materials, Methods, and Techniques Program. Program information and procedures for applying are contained in the application notice published July 26, 1985.

Intergovernmental review: This program is subject to the requirements of the Executive Order 12372 and the regulations in 34 CFR Part 79. The new date for comments from the State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by December 6, 1985 to the following address:

The Secretary, U.S. Department of Education, Room 4181, (CFDA Nos. 84.077, 84.099, or 84.100), 400 Maryland Avenue, SW., Washington, D.C. 20202. Proof of mailing will be determined on the same basis as that used for applications.

FOR FURTHER INFORMATION CONTACT: For further information contact Ron Castaldi, Program Coordinator, National Projects Branch, Office of Vocational and Adult Education, Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone (202) 732–2369.

(Catalog of Federal Domestic Assistance Nos. 84.077 (Bilingual Vocational Training Program), 84.099 (Bilingual Vocational Instructor Training program), and 84.100 (Bilingual Vocational Materials, Methods, and Techniques Program))

(20 U.S.C. 347(a))

Dated: September 12, 1985.

Robert M. Worthington,

Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 85–22326 Filed 9–17–85; 8:45 am]

BILLING CODE 4000–01–M

Meeting; National Advisory Council on Adult Education

AGENCY: Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Adult Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: October 13, 1985, 8:00 p.m. to 10:00 p.m., Executive Committee Meeting; October 14–16, 1985, 9:00 a.m. to 5:00 p.m., Full Council Meeting.

ADDRESS: Sheraton-Tobacco Valley Inn, 450 Bloomfield Avenue, Windsor (Hartford), Connecticut.

FOR FURTHER INFORMATION CONTACT: Helen Banks, National Advisory Council on Adult Education, 2000 L Street, NW, Washington, DC 20036, 202/634–6300.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under section 313 of the Adult Education Act (20 U.S.C. 1201). The Council is established to advise the Secretary on policy matters concerning the management of the Act, review program and administration effectiveness, and make reports and submit recommendations to the President and Congress relating to Federal adult education activities and services.

The meeting of the Council is open to the public. The proposed agenda includes:

Oath of Office Ceremonies
Department of Education Report
Federal Legislative Update
Adult Education Program Visitations
Standing Committee Reports

Records are kept of all Council proceedings, and are available for public inspection at the office of the National Advisory Council on Adult Education, 2000 L Street, NW, Suite 570, Washington, DC 20036, from the hours of 8:00 a.m. to 4:30 p.m.

Signed at Washington, DC on September 12, 1985.

Lynn Ross Wood,

Executive Director, National Advisory Council on Adult Education.

[FR Doc. 85–22334 Filed 9–17–85; 8:45 am]

BILLING CODE 4000–01–M

National Advisory Council on Women's Educational Programs; Meeting

AGENCY: National Advisory Council on Women's Educational Programs, Education.

ACTION: Notice of regular Council meeting, Executive committee, Civil Rights committee, WEEA Program committee, Federal Policies, Practices and Programs committee and national forum: Opportunities for Women in Transportation.

SUMMARY: This notice sets forth the schedule and proposed agenda of the National Advisory Council on Women's Educational Programs and its Executive; Civil Rights; WEEA Program; and Federal Policies, Practices and Programs Committees. This notice also sets forth the schedule and proposed agenda for the NACWEP-sponsored national forum on Opportunities for Women in Transportation.

The Council agenda will include budget-review, briefing on forum Opportunities for Women in Transportation, discussion of proposed site visits and study of proposal for NACWEP-sponsored national forum on Opportunities for Women at Home.

The agenda for the Civil Rights committee will include election of chairman and vice-chairman and general discussion. The agenda for the WEEA Program committee will include discussion of Education Publishing Center site visit and election of officers. The agenda for the Federal Policies Programs and Practices committee will

include election of officers and general discussion.

Agenda for forum on Opportunities for Women in Transportation will include presentations and discussion from representatives of the transportation industry and the educational system. This notice also describes the function of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: September 25, 1985: 7:00 p.m. to 9:00 p.m. (Executive Committee).

September 26, 1985: 8:00 a.m. to 9:00 a.m. (Civil Rights committee, WEEA Program committee, Federal Policies, Practices and Program committee).

September 26, 1985: 9:00 a.m. to 4:00 p.m. (NACWEP meeting) Recess.

September 26, 1985: 4:00 p.m. to 9:30 p.m. (Registration and opening session of forum on Opportunities for Women in Transportation.

September 27, 1985: 8:00 a.m. to 5:00 p.m. (Forum: Opportunities for Women in Transportation).

September 27, 1985: 5:00 p.m.–7:00 p.m. Council re-convenes.

ADDRESS: All meetings will be held at the Chase Hotel, 212 North Kingshighway, St. Louis, Missouri 63108.

FOR FURTHER INFORMATION CONTACT: Patricia Weber, Deputy Director, National Advisory Council on Women's Educational Programs, 2000 L Street, NW., Suite 568, Washington, DC 20036. (202) 634–6105.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Women's Educational Programs is established pursuant to Pub. L. 95–561. The Council is mandated to (a) advise the Secretary on matters relating to the administration of the Women's Educational Equity Act of 1978; (b) make recommendations to the Secretary with respect to the allocation of any funds pursuant to the Act, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation; (c) recommend criteria for the establishment of program priorities; (d) make such reports as the Council determines appropriate to the President and Congress on the activities of the Council; and (e) disseminate information concerning the activities of the Council.

The Executive Committee will meet on Wednesday, September 25, 1985 from 7:00 p.m. to 9:00 p.m. The agenda will include budget review, briefing on transportation forum and general discussions.

The meetings of the Civil Rights Committee; WEEA Program Committees; and Federal Policies, Practices and Programs, will take place on Thursday, September 26, 1985, from 8:00 a.m to 9:00 a.m. The agenda will include election of officers and general discussions.

The meetings of the Council and forum are open to the public. Records will be kept of the proceedings and will be available for public inspection at the office of the National Advisory Council on Women's Educational Programs, 2000 L Street, NW., Suite 568, Washington, DC 20036.

Signed at Washington, D.C. on September 11, 1985.

Sally A. Todd,

Executive Director.

[FR Doc. 85–22364 Filed 9–17–85; 8:45 am]

BILLING CODE 4000–01–M

National Advisory Council on Continuing Education; Meeting

AGENCY: National Advisory Council on Continuing Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the National Advisory Council on Continuing Education and a conference on Continuing Education and Training in Industrial Nations. It also describes the functions of the Council. Notice of meetings is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: October 9–12, 1985.

ADDRESS: The Ramada Renaissance Hotel, 1143 New Hampshire Avenue, NW., Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: Dr. William G. Shannon, Executive Director, National Advisory Council on Continuing Education, 2000 L Street, NW., Suite 560, Washington, D.C. 20036, Telephone: (202) 634–6077.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Continuing Education is established under section 117 of the Higher Education Act (20 U.S.C. 1109), as amended. The Council is established to advise the President, the Congress, and the Secretary of the Department of Education on the following subjects:

(a) An examination of all federally supported continuing education and training programs, and recommendations to eliminate duplication and encourage coordination among these programs;

(b) The preparation of general regulations and the development of policies and procedures related to the administration of Title I of the Higher Education Act; and

(c) Activities that will lead to changes in the legislative provisions of this title and other federal laws affecting federal continuing education and training programs.

The meetings of the Council are open to the public. However, because of limited space, those interested in attending are asked to call the Council's office beforehand.

The meeting agenda follows:

October 9

9:00 a.m.–1:00 p.m Briefing for Council members

2:00 p.m.–5:00 p.m. Conference registration

7:00 p.m.–10:00 p.m. Conference reception and dinner

October 10

9:00 a.m.–10:00 p.m. Conference on Continuing Education and Training in Industrial Nations

October 11

9:00 a.m.–10:00 p.m. Conference on Continuing Education and Training in Industrial Nations

October 12

9:00 a.m.–12:00 Noon Council meeting on policy implications and follow-up activities related to the conference.

Records are kept of all Council proceedings and are available for public inspection at the office of the National Advisory Council on Continuing Education, 2000 L Street, NW., Suite 560, Washington, D.C.

Signed at Washington, D.C. on September 11, 1985.

Richard F. McCarthy,

Acting Executive Director.

[FR Doc. 85–22294 Filed 9–17–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Atomic Energy Agreements; Subsequent Arrangements; Proposed Subsequent Arrangement; Canada

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation

Between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement, involved approval for disposal as waste within Canada of 282.6 kilograms or uranium enriched to 2.93% in U–235, and 84.5 kilograms of uranium enriched to 2.0% in U–235. The material, which is owned by the Department of Energy, is now in the form of irradiated fuel pieces which were irradiated in the NRU research reactor, then subjected to post-irradiation examination. The material was originally exported from the U.S. to Canada pursuant to U.S. Nuclear Regulatory Commission license XSNM 1671, Amendment 1. The contract for supply of this material by the Department of Energy was processed as a "subsequent arrangement." Disposal within Canada will be of economic benefit to the U.S., since the present value of the material would not justify the costs of return to the United States.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: September 12, 1985.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85–22368 Filed 9–17–85; 8:45 am]

BILLING CODE 6450–01–M

Atomic Energy Agreements; Proposed Subsequent Arrangement; Japan

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/EU(JA)–83, from Mitsubishi Nuclear Fuel Co., Ltd, Japan to Belgonucleaire, Belgium, 13,066 grams of uranium, containing 785 grams of U–235 (6% enrichment) for irradiation testing in the BR–3 reactor. The test rods contain gadolinium, and are to be tested in order to investigate behavior during irradiation in an effort to develop high burn-up fuels. The material is to be disposed of by Belgonucleaire after completion of post-irradiation examination.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: September 12, 1985.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs, and Energy Emergencies.

[FR Doc. 85–22369 Filed 9–17–85; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RP85–122–001]

Colorado Interstate Gas Co.; Revised Changes in Rates

September 11, 1985.

Take notice that Colorado Interstate Gas Company (CIG) on September 6, 1985, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume Nos. 1 and 2.

The purpose of this filing is to comply with the directive stated in Ordering Paragraph (D) of the Commission's Order of April 22, 1985, requiring CIG to eliminate from Docket No. RP85–122 all costs associated with facilities which have not been placed in service by September 30, 1985. The filing also incorporates the rate design principles requried by the Commission's Order of August 20, 1985, in Docket No. RP83–86. The proposed effective date of the replacement tariff sheets is September 28, 1985.

Copies of this filing have been served upon the Company's jurisdictional customers and upon interested bodies as well as all parties to this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 18, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–22313 Filed 9–17–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI85–652–000]

Diamond Shamrock Exploration Co.; Application

Issued September 12, 1985.

Take Notice that on September 9, 1985, Diamond Shamrock Exploration Company filed an Application for Limited-Term Partial Abandonment Authorization and for Blanket Limited-Term Certificate Authorization for Sales and Transportation. The authority sought therein would grant limited-terms abandonment of sales of gas released by purchasing pipelines and the resale of that and other committed or dedicated gas with pregranted abandonment, pursuant to section 7 of the Natural Gas Act. In addition, the proposed authorization would grant a limited-term certificate with pre-granted abandonment to cover transportation of gas sold under authorization therein and to cover transportation of gas which has been removed from Commission jurisdiction by reason of NGPA section 601(a). Diamond Shamrock is requesting the authorizations therein to the extent the Commission does not issue a final rule containing these authorizations on a generic basis and such rule is in effect on or before November 1, 1985.

These authorizations are being requested to permit continuation of sales and deliveries of gas previously initiated under Diamond Shamrock's Special Marketing Program and other special marketing programs and to permit Diamond Shamrock to maximize its efforts to sell gas to existing and new markets. Eligibility for these authorizations is limited to gas priced in excess of the prevailing ceiling price under NGPA section 109. Diamond Shamrock requests that such authorizations be issued prior to November 1, 1985 and be effective as of

November 1, 1985 to avoid market disruptions which may be caused by termination of sales under Diamond Shamrock's DSSMP and other authorized special marketing programs on October 31, 1985.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should on or before September 24, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with he Commission's Rules.

Under the procedure herein provided for, unless Diamond Shamrock is otherwise advised, it will be unnecessary for Diamond Shamrock to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22314 Filed 9-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI62-1015-000]

Perry L. Larson Operating Co.; Application

September 12, 1985.

Take notice that on September 10, 1985, Perry L. Larson Operating Company (Larson), 8350 North Central Expressway, Suite 808, Dallas, Texas, 75206, filed in Docket No. CI62-1015-000 an application pursuant to section 7(b) of the Natural Gas Act and Part 157 of the Commission's regulations thereunder, to abandon certain jurisdictional sales to Lone Star Gas Company (Lone Star) within the State of Texas.

More particularly, Larson seeks authorization to abandon the sale to Lone Star of natural gas produced from a single well (Craft #1-C) on the H. P. Craft lease, Grayson County, Texas. Larson states that sales from the subject well have effectively terminated due to pressure increases in Lone Star's pipeline facilities which have prevented the physical flow of Larson's production (at relatively low pressure) into Lone Star's pipeline. Larson further states that installation of compressor facilities necessary to permit resumption of deliveries of gas in commercial quantities is not economically feasible. According to Larson, Lone Star has consented to the release and proposed abandonment and has indicated that its ability to meet its inter-state supply and market requirements will not in any way be affected by Commission approval of Larson's application.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before September 25, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Larson to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22316 Filed 9-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2209-000]

Edward J. Mroczka; Filing

September 12, 1985.

The filing party submits the following:

Take notice that on September 3, 1985, Edward J. Mroczka, pursuant to Section 305(b) of the Federal Power Act, submitted for filing a supplemental application for authority to hold the following position:

Assistant Treasurer, Connecticut Yankee Atomic Power Company, Public Utility

Any person desiring to be heard or to protest said supplemental application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such petitions or protests should be filed on or before September 21, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this supplemental application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22315 Filed 9-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8929-000 et al.]

Modular Hydro Research Corp. et al.; Availability of Environmental Assessment and Finding of No Significant Impact

September 13, 1985.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the application exemption from licensing listed below and has assessed the environmental impacts of the proposed development.

Project No.	Project Name	State	Water body	Nearest town	Applicant
			Exemptions		
8929-000	Tierckenkull Falls	NY	Mill Creek	Rensselaer	Modular Hydro Research Corps
9045-000	Glenn-Colusa	CA	Glen-Colusa Canals	Maxwell	Glenn-Colusa Irrigation District.
8764-000	San Gabriel Dam.	CA	San Gabriel River	Azusa	San Gabriel Hydroelectric Partnership
9079-000	Upper Spears	ME	Spears Stream	Peru	Mark A. Vaughn

Project No	Project Name	State	Water body	Nearest town	Applicant
			Licenses		
4659-002	White River Lock and Dam	AR	White River	[illegible]	Independence County
8498-000	Ingram Warm Springs	ID	Warm Springs Creek	Challis	Ingram Warm Springs Ranch Partnership
8601-000	Jore	MT	Unnamed Tributary to Mollman Creek	Ronan	Merle Jore and Son

Environmental assessment (EA's) were prepared for the above proposed projects. Based on an independent analysis of the above action as set forth in the EA's, the Commission's staff concludes that this project would not have significant effects on the quality of the human environment. Therefore, an environmental impact statement will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22312 Filed 9-17-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30257; FRL-2898-5]

Certain Companies; Applications To Register Pesticide Products

AGENCY: Environmental Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register a pesticide product containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by October 18, 1985.

ADDRESS: By mail submit comments indentified by the document control number [OPP-30257] and the registration/file number, attention Product Manager (PM) named in each application at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Registration Division (TC-767C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product manager	Office location/ telephone number	Address
PM 15, George LaRocca	Rm. 204, CM#2 (703-557-2400)	EPA, 1921 Jefferson Davis Hwy., Arlington, VA 22202
PM 23, Richard Mountfort	Rm. 237, CM#2 (703-557-1830).	Do

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register a pesticide product containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing an Active Ingredient Not Included in Any Previously Registered Product

1. File Symbol: 618-OU. Applicant: MSD AGVET, Division of Merck and Co., Inc, Rahway, NJ 07065. Product name: Affirm™ Fire Ant Insecticide. Insecticide. Active ingredient: [A mixture of avermectins containing >80% avermectin B_1a) (5-0-demethyl-avermectin A_1a) and <20% avermectin B_1b) (5-0-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_1a)] 0.011%. Proposed classification/Use: General. To control imported fire ants on turf, lawns, and non-agricultural areas. Type registration: Conditional. (PM 15)

2. File Symbol: 618-OG. Applicant: MSD AGVET, Division of Merck and Co., Inc. Product name: Affirm ™ Fire Ant Insecticide Bait. Insecticide. Active ingredient: [A mixture of avermectins containing >80% avermectin B_1a) (5-0-demethyl-avermectin A_1a) and <20% avermectin B_1b) (5-0-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_1a)] 0.011%. Proposed classification/Use: General. To control imported fire ants on turf, lawns, and non-agricultural areas. Type registration: Conditional. (PM 15)

3. File Symbol: 464-ANG. Applicant: Dow Chemical U.S.A. PO Box 1706, Midland, MI 48640. Product name: Verdict Herbicide. Herbicide. Active ingredient: Methyl 2-4-((3-chloro-5-(trifluoromethyl)-2-pyridinyl)oxy)phenoxy) propanoate 25.7% Proposed classification/Use: General. For postemergence control of annual and perennial grass in soybeans. (PM 23)

4. File Symbol: 8340-RI. Applicant: American Hoechst Corp., Rt. 202-206 North, Somerville, NJ 08876. Product name: Acclaim 1 EC Herbicide. Herbicide. Active ingredient: Fenoxaprop-ethyl (±)-ethyl] 2-[4-[(6-chloro-2-benzoxazolyl)oxy]phenoxy]propanoate 12.50%. Proposed classification/Use: General. For selective postemergence annual and perennial grass control in turfgrass, including sod farms, commercial and residential turf and right-of-way. Type registration: Conditional. (PM 23)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register.** The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support

Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703–557–3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: September 5, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–22096 Filed 9–17–85; 8:45 am]

BILLING CODE [illegible]

[OPP–00215; FRL–2897–7]

FIFRA Scientific Advisory Panel; Open Meeting of Subpanel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) Subpanel, which will be convened by EPA to provide a technical review of the preliminary design of a national survey for pesticides in ground water. The Subpanel will be chaired by Dr. Christopher Wilkinson of the SAP.

DATES: The meeting will be held Thursday, October 3, 1985, from 9 a.m. to 4 p.m.

ADDRESS: The meeting will be held at: Environmental Protection Agency Rm. 1112, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT:

By mail: Philip H. Gray, Jr., Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS–768C), Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1115, Crystal Mall Building No. 2, Arlington, VA, (703–557–7096).

SUPPLEMENTARY INFORMATION: EPA's Office of Pesticide Programs (OPP) and Office of Drinking Water (ODW) have been designing a national survey for pesticides in ground water. The survey has a complex, statistical design, and will focus on several dozen different pesticides used in agriculture and turf management. Multi-residue methods will be used to detect a broad spectrum of chemicals in wells, including pesticides, pesticide metabolites, nitrates, and other related chemicals. The goals of the survey are to characterize the extent of the problem of pesticides in wells, correlate the well findings with field conditions related to ground water vulnerability and pesticide usage, and estimate the human exposure. The proposed design is stratified random sampling, with unequal precision in the different strata. The stratification variables are ground water vulnerability and pesticide usage. A three-stage design is proposed—select counties, then select county segments, then select wells. The survey is in the first design stage now.

The survey results are needed by OPP's and ODW's regulatory programs. Information will be useful to support restriction and cancellation actions, as well as Maximum Contaminant Levels (MCLs) and flexible monitoring requirements for MCLs. Other benefits will be listed at the meeting.

Before EPA undertakes a major study of this nature, it must be peer reviewed. This meeting is part of the peer review process.

Experts in the following areas have been selected to serve on the Subpanel: Survey statistics, State health regulation and monitoring, pesticide usage, modeling and survey design, hydrogeology, analytical chemistry, and environmental fate, in addition to a representative of the National Drinking Water Advisory Council.

Copies of documents relating to this peer review process may be obtained by contacting:

By mail: Stuart Cohen, Hazard Evaluation Division (TS–769), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 815, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–7347).

Any member of the public wishing to submit written comments should contact Philip H. Gray, Jr. at the address or telephone number given above to be sure that the meeting is still scheduled. Interested persons are permitted to file such statements before the meeting, and may, upon advance notice to the Executive Secretary, present oral statements to the extent that time permits. All statements will be made part of the record and will be taken into consideration by the Subpanel in formulating comments. Persons wishing to make oral and/or written statements should notify the Executive Secretary and submit 10 copies of a summary no later than September 25, 1985, in order to ensure appropriate consideration by the Panel.

Dated: September 6, 1985

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85–22085 Filed 9–17–85; 8:45 am]

BILLING CODE 6560–50–M

[PP 5G3233/T498; FRL–2897–3]

MAAG Agrochemicals; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the insect growth regulator fenoxycarb, ethyl[2-(4-phenoxyphenoxy)ethyl] carbamate in or on certain raw agricultural commodities. These temporary tolerances were requested by MAAG Agrochemicals.

DATE: These temporary tolerances expire August 9, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Timothy Gardner, Product Manager (PM) 17, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 207, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2690).

SUPPLEMENTARY INFORMATION: MAAG Agrochemicals, Research and Development, HLR Sciences, Inc., Kings Highway, P.O. Box X, Vero Beach, FL 32960, has requested in pesticide petition PP 5G3233 the establishment of temporary tolerances for residues of the insect growth regulator fenoxycarb, ethyl[2-(4-phenoxyphenoxy)ethyl] carbamate, in or on the raw agricultural commodities grass (pasture and rangeland) at 0.2 part per million (ppm) and grass hay (pasture and rangeland) at 0.05 ppm.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 35977–EUP–2, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use

permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. MAAG Agrochemicals must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The compnay must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire August 9, 1986. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: (21 U.S.C. 346a(j)).

Dated: September 3, 1985.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–22089 Filed 9–17–85; 8:45 am]

BILLING CODE [illegible]

[PP 2G2581/T496; FRL–2897–5]

Thiodicarb; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for the combined residues of the insecticide thiodicarb and its metabolite in or on certain raw agricultural commodites.

DATE: These temporary tolerances expire July 8, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of September 7, 1983 (48 FR 40438), announcing the establishment of temporary tolerances for the combined residues of the insecticide thiodicarb, dimethyl *N*', *N*'-[thiobis[[(methylamino) carbonyl]oxy]]bis[ethanimidothioate], and its metabolite methomyl, *N*-[(methylcarbamoyl)oxy] thioacetimidate, in or on the raw agricultural commodities cottonseed at 0.4 part per million (ppm) and soybeans at 0.1 ppm. A related document extending a feed additive regulation on soybean hulls at 0.4 part per million (ppm) and cottenseed hulls at 0.8 ppm appears elsewhere in this issue of the **Federal Register.**

These tolerances were issued in response to pesticide petition PP 2G2581, submitted by Union Carbide Agricultural Products Co., Inc., P.O. Box 12014, Research Triangle Park, NC 27709. These temporary tolerances have been extended to permit the continued marketing of the raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit 264–EUP–61 which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Union Carbide must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire July 8, 1986. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 610–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: (21 U.S.C. 346a(j)).

Dated: July 29, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–22088 Filed 9–17–85; 8:45 am]

BILLING CODE [illegible]

[PP 3G2782/T497; FRL–2897–4]

Thiodicarb; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for the combined residues of the insecticide thiodicarb and its metabolite in or on certain raw agricultural commodities.

DATE: These temporary tolerances expire July 8, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Jay Ellenberger, Product Manager (PM) 12, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection

Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 202, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA. (703–557–2386).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of August 17, 1983 (48 FR 37282), announcing the establishment of temporary tolerances for the combined residues of the insecticide thiodicarb, dimethyl *N*, *N*'-[thiobis[[(methylamino)carbonyl] oxy]]bis[ethanimidothioate], and its metabolite methomyl, N-[(methylcarbamoyl)oxy] thioacetimidate, in or on the raw agricultural commodities field corn grain at 0.1 part per million (ppm) and corn forage and fodder at 150 ppm.

These tolerances were issued in response to pesticide petition PP 3G2782, submitted by Union Carbide Agricultural Products Co., Inc., P.O. Box 12014, Research Triangle Park, NC 27709.

These temporary tolerances have been extended to permit the continuted marketing of the raw agricultural commodities named above when treated in accordance with the provisions of experimental use permits 264–EUP–63 and 264–EUP–64 which are being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permits and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permits.

2. Union Carbide must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire July 8, 1986. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permits and temporary tolerances. These tolerances may be revoked if the experimental use permits are revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–534, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: September 5, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–22090 Filed 9–17–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP–50642; PH–FRL 2899–4]

Issuance of Experimental Use Permits; Rohm and Haas Co. et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT:

By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has isued the following experimental use permits:

707–EUP–108. Issuance. Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 360 pounds of the herbicide oxyfluorfen on broccoli, cabbage, and cauliflower to evaluate the control of preemergence broadleaf weeds. A total of 720 acres are involved; the program is authorized only in the States of California, Delaware, Georgia, Florida, Illinois, Indiana, Maryland, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, and Virginia. The experimental use permit is effective from July 9, 1985 to July 9, 1986. A temporary tolerance for residues of the active ingredient in or on broccoli, cabbage, and cauliflower has been established. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703–557–1830))

707–EUP–111. Issuance. Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 2,400 pounds of the herbicide oxyfluorfen on almonds, pistachios, and walnuts to evaluate the control of various weeds. A total of 1,200 acres are involved; the program is authorized only in the State of California. The experimental use permit is effective from July 1, 1985 to December 31, 1986. A permanent tolerance for residues of the active ingredient in or on almonds, pistachios, and walnuts has been established (40 CFR 180.381). (Richard Mountfort, PM 23, Rm. 237, CM#2, (703–557–1830))

476–EUP–111. Issuance. Stauffer Chemical Company, 1200 South 47th St., Richmond, CA 94804. This experimental use permit allows the use of 400 pounds of the herbicide methyl-3-hydroxy-4-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]-pentanoate on soybeans to evaluate the control of grassy weeds. A total of 550 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, North Carolina, Ohio, Tennessee, and Wisconsin. The experimental use permit is effective from September 1, 1985 to September 1, 1986. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703–557–1830))

264–EUP–60. Renewal. Union Carbide Agricultural Products Company, P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709. This experimental use permit allows the use

of 9,776 pounds of the insecticide thiodicarb on cotton an soybeans to evaluate the control of various insect pests. A total of 4,895 acres are involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, and Virginia. The experimental use permit was previously effective from June 19, 1984 to June 11, 1985. The permit is not effective from July 8, 1985 to July 8, 1986. A temporary tolerance for residues of the active ingredient in or on cottonseed and soybeans has been established. A temporary feed additive tolerance for residues of the active ingredient in or on cottonseed hulls and soybean hulls has been established. (Jay Ellenberger, PM 12, Rm. 202, CM#2, (703–557–2386))

264–EUP–64. Renewal. Union Carbide Agricultural Products Company, P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709. This experimental use permit allows the use of 14,176 pounds of the insecticide thiodicarb on field corn and sweet corn to evaluate the control of various insect pests. A total of 4,895 acres are involved; the program is authorized only in the States of Alabama, Colorado, Delaware, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Texas, Virginia, Washington, West Virginia, and Wisconsin. A temporary tolerance for residues of the active ingredient in or a field corn grain and corn fodder and forage has been established. A permanent tolerance fo residues of the active ingredient in or on sweet corn grain has been established (40 CFR 180.407). The experimental use permit was previously effective from June 14, 1983 to June 14, 1984. The permit is now effective from July 8, 1985 to July 8, 1986. (Jay Ellenberger, PM 12, Rm. 202, CM#2, (703–557–2386))

264–EUP–70. Renewal. Union Carbide Agricultural Products Company, P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709. This experimental use permit allows the use of 21,640 pounds of the insecticide thiodicarb on cotton, field and sweet corn, and soybeans to evaluate the control of various insect pests. A total of 7,490 acres are involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, and Wisconsin. The experimental use permit was previously effective from June 13, 1984 to June 13, 1985. The permit is now effective from July 8, 1985 to July 8, 1986 A temporary tolerance for residues of the active ingredient in or on cottonseed, field corn grain, corn fodder and forage, and soybeans has been established. A permanent tolerance for residues of the active ingredient in or on sweet corn grain has been established. Also, a temporary feed additive tolerance for residues of the active ingredient in or on cottonseed hulls and soybean hulls has been established. (Jay Ellenberger, PM 12, Rm. 202, CM#2, (703–557–2386))

264–EUP–113. Renewal. Union Carbide Agricultural Products Company, P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709. This experimental use permit allows the use of 512 pounds of the insecticide thiodicarb on cotton to evaluate the control of various insect pests. A total of 100 acres are involved; the program is authorized only in the States of Arizona and California. The experimental use permit was previously effective from June 19, 1984 to June 19, 1985. The permit is now effective from July 8, 1985 to July 8, 1986. A temporary tolerance for residues of the active ingredient in or on cottonseed has been established. A temporary feed additive tolerance for residues of the active ingredient in or on cottonseed hulls have been established. (Jay Ellenberger, PN 12, Rm. 202, CM#2, (703–557–2386))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the pesons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: September 5, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–22219 Filed 9–17–85; 8:45 am]

BILLING CODE [illegible]

[OPP–50646; PH–FRL 2899–3]

Issuance of Experimental Use Permits; E.I. dupont de Nemours & Co. et al.

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT:

By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

352–EUP–106. Renewal. E.I. duPont de Nemours & Company, Inc., Barley Mill Plaza, Wilmington, DE 19898. This experimental use permit allows the use of 801 pounds of the insecticide methomyl on pineapples to evaluate the control of various insects. A total of 400 acres are involved; the program is authorized only in the State of Hawaii. The experimental use permit was previously effective from May 22, 1984 to April 28, 1985. The permit is now efective from August 8, 1985 to August 8, 1987. Temporary tolerances for residues of the active ingredient in or on pineapples and pineapple forage have been established. (Jay Ellenberger, PM 12, Rm. 202, CM#2, (703–557–2386))

279–EUP–86. Extension. FMC Corporation, Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 686.40 pounds of the insecticide cypermethrin on various crops to evaluate the control of various

insects. A total of 1,227 acres are involved; the program is authorized in the States of Arizona, Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, and Wisconsin. The experimental use permit is effective from June 21, 1985 to June 21, 1986. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703–557–2690))

279–EUP–109. Issuance. FMC Corporation, 2000 Market St., Philadelphia, PA 19103. This experimental use permit allows the use of 2,196 pounds of the herbicide 2-(2-chlorophenyl)methyl-4,4-dimethyl-3-isoxazolidinone on fallow cropland to evaluate the control of annual grasses and broadleaf weeds. A total of 2,200 acres are involved; the program is authorized only in the States of Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, and Wyoming. The experimental use permit is effective from August 14, 1985 to August 14, 1987. This permit is issued with the limitation that wheat is planted no sooner than 10 months after a late summer of fall application. (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1800))

35977–EUP–2, Extension. MAAG Agrochemicals, Research and Development, Kings Highway, P.O. Box X, Vero Beach, FL 32960. This experimental use permit allows the use of 50.25 ponds of the insect growth regulatory fenoxycarb on pastures and rangelands to evaluate the control of the imported fire ant. A total of 3,350 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, and Texas. The experimental use permit is effective from August 9, 1985 to August 9, 1986. A temporary tolerance for residues of the active ingredient in or on grass and grass hay has been established. (Timothy Gardner, PM 17, R. 207, CM#2, (703–557–2690))

400–EUP–53. Extension. Uniroyal, Inc., 74 Amity Rd., Bethany, CT 06525. This experimental use permit allows the use of 105 pounds of the plant growth regulator dimethipin on sunflowers to evaluate seedhead desiccation of sunflowers. A total of 210 acres are involved; the program is authorized only in the States of Illinois, Minnesota, North Dakota, and South Dakota. The experimental use permit is effetive from August 7, 1985 to August 7, 1986. This permit is issued with the limitation that all crops are destroyed or usd for research purposes only. (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1800))

20954–EUP–21. Extension. Zoecon Corporation, 975 California Ave., Palo Alto, Ca 94304. This experimental use permit allows the use of 117.4 pounds of the insecticide (alpha-*RS*,2*R*)-fluvalinate [(*RS*) alpha-cyano-3-phenoxybenzyl(*R*)-2-[2-chloro-4-(trifluoromethyl)-anilino]-3-methylbutanoate on various crops to evaluate the control of various insects. A total of 485 acres are involved; the program is authorized only in the States of Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Illinois, Louisiana, New Mexico, Mississippi, Missouri, North Carolina, Ohio, Oklahoma, South Carolina, and Texas. The experimental use permit is effective from June 19, 1985 to June 19, 1986. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Timothy Gardner, PM 17, Rm. 207, CM#2, (703–557–2690))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: September 5, 1985.

Douglas D. Campt.

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–22218 Filed 9–17–85; 8:45 am]

BILLING CODE 6560–50–M

[OW–4–FRL–2898–8]

Availability of the Freshwater Wetlands for Wastewater Management Handbook

AGENCY: Environmental Protection Agency.

ACTION: Announcing the Availability of the Freshwater Wetlands for Wastewater Management Handbook (EPA 904/9–85 135).

SUMMARY: EPA Region IV recently completed an environmental assessment handbook addressing the use of natural, freshwater wetlands for wastewater management in the southeastern United States. The Freshwater Wetlands for Wastewater Management Handbook provides institutional, scientific and engineering guidance for the use of natural, freshwater wetlands for wastewater management. The Handbook presents a variety of procedures, tools and options that can assist in making wetland wastewater management decisions.

ADDRESS: Copies of the Handbook may be obtained by contacting: Mr. Robert B. Howard, Chief, NEPA Compliance Section, EPA—Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365 (Commercial number: 404/881–3776, FTS number: 257–3776).

Dated: September 3, 1985.

John A. Little,

Acting Regional Administrotor.

[FR Doc. 85–22217 Filed 9–17–85; 8:45 am]

BILLING CODE 6560–50–M

[A–4–FRL–2899–2]

PSD Permit Extension for Estech, Inc., Duette, FL

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that a Prevention of Significant Deterioration (PSD) permit extension has been granted to Estech, Inc. This action extends the effective date of their permit (PSD–FL–036) until February 2, 1987, for the commencement of construction of a phosphate mining and rock drying operation in Duette, Florida.

DATES: This action is effective as of August 1, 1985, and grants an 18-month permit extension beginning August 2, 1985, and expiring on February 2, 1987.

ADDRESSES: Copies of the PSD permit, permit application, preliminary and final determinations, and justification for permit extensions granted on August 5, 1982, January 31, 1984, and August 1, 1985, are available for public inspection upon request at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, Air, Pesticides, & Toxics Management Division, 345 Courtland Street, NE., Atlanta, GA 30365

Bureau of Air Quality Management, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301

FOR FURTHER INFORMATION CONTACT: Michael Brandon of the EPA—Region IV, Air Programs Branch at the Atlanta address given above, telephone 404/881-4901 or (FTS) 257-4901.

SUPPLEMENTARY INFORMATION: On May 17, 1985, the Florida Department of Environmental Regulation (FDER) prepared a preliminary determination concerning the March 8, 1985, request for an 18-month extension to commence construction of the Estech, Inc. mine, located in Duette, Florida. In that determination the FDER recommended granting the 18-month extension with modifications to the permit conditions for the fluid bed rock dryer, eight dry rock storage silos, and two dry rock loading stations (reflecting New Source Performance Standards for Phosphate Rock Plants—40 CFR Part 60, Subpart NN), and more restrictive visible emission limits for the oil-fired boiler. After the public notice period, the FDER prepared a final determination dated July 2, 1985, recommending the 18-month extension be granted with modifications to the permit conditions as mentioned above.

On July 2, 1985, the FDER granted an 18-month extension requested by Estech, Inc. for the state air construction permit, because the company had pursued but had been unable to obtain all permits required to begin construction of their phosphate rock drying and handling facility. These permits include a ground water discharge permit from the FDER and an operating permit from Manatee County. Because these delays in starting of construction of the Duette Mine were related to permitting problems in the State of Florida independent of the PSD requirements and outside the control of Estech, Inc., EPA granted an additional 18-month extension to Estech, Inc. to commence construction of the air pollution facilities authorized by federal PSD permit PSD-FL-036 with the following modifications:

1. Visible emissions from the two fluidized bed rock dryers shall not exhibit greater than 10 percent opacity*.
2. Visible emissions from the eight dry rock storage silos and the two dry rock loading stations shall exhibit no visible emissions*.
3. Emissions from the 3.99 million Btu per hour oil-fired boiler shall not exhibit greater than 15 percent opacity*.

*As determined by EPA reference method 9

These conditions become a binding part of federal PSD permit PSD-FL-036 which was issued by the Environmental Protection Agency on January 29, 1981. If construction has not commenced within 18 months from August 2, 1985 (or by February 2, 1987), or if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time, federal PSD permit PSD-FL-036 shall expire and authorizaiton to construct shall become void.

(Secs. 160-169 of the Clean Air Act (42 U.S.C. 7470-7479))

Dated: September 3, 1985.

John A. Little,

Acting Regional Administrator.

[FR Doc. 85-22214 Filed 9-17-85; 8:45 am]

BILLING CODE [illegible]

[OPP-66124; FRL-2890-5]

Certain Pesticide Products; Intent To Cancel Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

Correction

In FR Doc. 85-20927 beginning on page 35862 in this issue of Wednesday, September 4, 1985, make the following corrections:

1. On page 35863, at the end of the product name for Registration No. 912-43, insert "Insecticide".
2. On page 35864, in the Registrant column for Registration No. 10233-5, insert "do".

BILLING CODE 1505-01-M

[A-4-FRL-2898-9]

Ambient Air Monitoring Reference and Equivalent Methods; Designation of Ambient Air Monitoring Equivalent Method for Lead

Notice if hereby given that EPA, in accordance with 40 CFR Part 53 (40 FR 7049, 41 FR 11255, 44 FR 37916), has designated another equivalent method for the determination of lead in suspended particulate matter collected from ambient air. The new designated method is:

EQL-0785-059, "Determination of Lead Concentration in Ambient Particulate Matter by Flameless Atomic Absorption Spectrometry (Omaha-Douglas County Health Department)."

The applicant's request for an equivalent method determination for the above method was received on July 18, 1984. Additional requested information pertinent to the original submittal was received on April 1, 1985.

This method has been tested by the applicant, Omaha-Douglas County Health Department, in accordance with the test procedures prescribed in 40 CFR Part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with Part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file at EPA's Environmental Monitoring Systems Laboratory, Research Triangle Park, North Carolina, and will be available for inspection to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

This method uses the sampling procedure specified in the reference method for the determination of lead in suspended particulate matter collected from ambient air (43 FR 46258). Lead in the particulate matter is solubilized by extraction using a hot extraction procedure similar to that of the reference method. The lead content of the sample is analyzed by flameless atomic absorption spectrometry using the 283.3 nm lead absorption line and instrumental conditions optimized by the applicant. In the analytical procedure, a sample of the extract solution is placed in a graphite furnace which is heated in three stages to dry, char, and atomize the sample. The graphite furnance is coupled to an atomic absorption spectrometer and is capable of improving the detection limit for lead by 2 to 3 orders of magnitude over that obtained with conventional flame atomic absorption. Technical questions concerning the method should be directed to the Omaha-Douglas County Health Department, 1819 Farnam Street, Omaha, Nebraska 68183.

As a designated equivalent method, this method is acceptable for use by states and other control agencies under requirements of 40 CFR Part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the procedures and specifications provided in the method description. States or other agencies using flameless atomic absorption spectrometric methods that employ procedures and specifications significantly different from those in this method must seek approval for their particular method under the provisions of section 2.8 of Appendix C to 40 CFR Part 58 (Modification of Methods by Users) or may seek designation of such methods as equivalent methods under the provisions of 40 CFR Part 53.

For Further Information Contact: Elenora Karicher at (202) 382-7355.

Additional information concerning this action may be obtained by writing to Director, Environmental Monitoring

Systems Laboratory, Quality Assurance Division (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not a major regulation because it imposes no additional regulatory requirements, but instead announces the designation of an additional equivalent method that is acceptable for use by states and other control agencies for purposes of 40 CFR Part 58. Ambient Air Quality Surveillance or other applications where use of a reference or equivalent method is required.

This notice was exempted by the Office of Management and Budget for review as required by Executive Order 12291.

September 6, 1985.

Thomas Murphy,

Acting Assistant Administrator for Research and Development.

[FR Doc. 85–22291 Filed 9–17–85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Cape Cod Bank and Trust Co., Hyannis, MA; Application To Withdraw Securities From Listing With the Boston Stock Exchange

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

DATE: All comments must be received no later than September 30, 1985.

SUMMARY: The above-named bank has filed application with the Federal Deposit Insurance Corporation pursuant to section 12(d) of the Securities Exchange Act of 1934, to withdraw its common stock from listing on the Boston Stock Exchange, in order to allow the bank's shares to be traded in the over-the-counter market.

Interested persons are invited to submit written data, views and arguments concerning the above-referenced application. Following this opportunity for hearing, the Federal Deposit Insurance Corporation will approve the application if it finds, based upon all information available to it, that the withdrawing of the common stock from listing with the Boston Stock Exchange is consistent with the public interest and the protection of investors.

ADDRESS: Comments should be mailed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C., 20429.

FOR FURTHER INFORMATION CONTACT: Dennis Wm. Chapman, Financial Analyst, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429 (202/389–4651).

By order of the Board of Directors, September 3, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–22295 Filed 9–17–85; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Mississippi; Amendment to Notice of a Major-Disaster Declaration

[FEMA–741–DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA–741–DR), dated September 4, 1985, and related determinations.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646–3616.

NOTICE: The notice of a major disaster for the State of Mississippi, dated September 4, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 4, 1985: Pearl River County for Individual Assistance and Public Assistance.

Dated: September 11, 1985.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85–22277 Filed 9–17–85; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 15 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217–010823.

Title: Canadian Transport Company/C.M.B. n.v. Space Charter Agreement.

Parties:

Canadian Transport Company CTCO)

C.M.B. n.v. (CMB)

Synopsis: The proposed agreement would permit CTCO to (1) charter vessel space to CMB for the carriage of full containers in the trade between ports in Europe on the one hand, and ports on the West Coast of the United States and Canada on the other, and inland points via such ports; (2) allow CMB to supply container equipment and have exclusive responsibility for marketing and sales; (3) permit the parties to share the difference between costs and revenues of the container service; and (4) allow CMB to operate a full container service between the same areas as owners or disponent owners of the container equipment required, but without deploying the vessels to carry the same containers.

By Order of the Federal Maritime Commission.

Dated: September 13, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–22318 Filed 9–17–85; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for

comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010820.

Title: Philadelphia Terminal Agreement

Parties:

Philadelphia Port Corporation (PPC)

Lavino Shipping Company (LSC)

Synopsis: PPC currently leases to LSC certain property within the Port of Philadelphia which is used by LSC for the operation of container terminal facilities. Agreement No. 224–010820 provides for certain payments to be made or received by PPC or LSC, as the case may be, in respect of containers which are lifted onto or off of ships or barges docked at the port terminals subleased by LSC from PPC. The term of the agreement shall be for one year. The parties have requested a shortened review period for the agreement.

Agreement No.: 224–010821.

Title: Philadelphia Terminal Agreement

Parties:

Philadelphia Port Corporation (PPC)

I. T. O. Corporation (ITO)

Synopsis: PPC currently leases to LSC certain property within the Port of Philadelphia which is used by ITO for the operation of container terminal facilities. Agreement No. 224–010821 provides for certain payments to be made or received by PPC or ITO, as the case may be, in respect of containers which are lifted onto or off of ships or barges docked at the port terminals subleased by LSC to ITO. The term of the agreement shall be for one year. The parties have requested a shortened review period for the agreement.

Agreement No.: 222–010822

Title: Long Beach Terminal Equipment Agreement

Parties:

City of Long Beach (City)

Pacific Maritime Services, Inc. (PMS).

Synopsis: The agreement provides for the assigning of a crane to be used in connection with terminal operations as provided for under Agreement No. T–4016 between the City and PMS at Pier J within the Port of Los Angeles. The term of the agreement will terminate on the same date as the termination of Agreement No. T–4016. The compensation for the use of the crane is on a straight rental basis for the first segment of the term, with renegotiations required on a five year interval in accordance with the term of the Charter of the City.

By Order of the Federal Maritime Commission.

Dated: September 13, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–22317 Filed 9–17–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

First Indiana Bancorp et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Baord of Governors not later than October 8, 1985.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Indiana Bancorp,* Elkhart, Indiana; to engage *de novo* through its subsidiary, First Indiana Life Insurance Company, Phoenix, Arizona, in acting as underwriter with respect to insurance limited to asuring repayment of the outstanding balance due on a specific extention of credit by the bank holding company or its subsidiary banks in the event of the death or disability of the debtor, pursuant to section 4(c)(8)(A) of the Act.

2. *Irvin Union Corporation,* Columbus, Indiana; to engage *de novo* through its subsidiary, Inland Mortgage Corporation, Indianapolis, Indiana, in the origination of FHA, VA and conventional mortgage loans.

B. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation,* Minneapolis, Minnesota; to engage *de novo* through its subsidiary, Norwest Financial Services, Inc., Des Moines, Iowa, and its subsidiaries, in general insurance activities pursuant to 4(c)(8)(G) of the Act. Norwest Corporation is a registered bank holding company and prior to January 1, 1971, was engaged directly or indirectly, in insurance agency activities as a consequence of Board approval prior to that date. These activities would be performed nationwide (except where the Company may not lawfully engage in such activities under state law).

Board of Governors of the Federal Reserve System, September 12, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–22272 Filed 9–17–85; 8:45 am]

BILLING CODE 6210–01–M

Peconic Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing

must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 9, 1984.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Peconic Bancshares, Inc.*, Riverhead, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Peconic Bank, Riverhead, New York.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *N.B.W.P., Inc.*, Berlin, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Western Pennsylvania Bank, N.A., Inc., Berlin, Pennsylvania. Comments on this application must be received not later than October 10, 1985.

2. *National Bank of Western Pennsylvania Employee Stock Ownership Trust, Inc.*, Berlin, Pennsylvania; to become a bank holding company by acquiring 33.481 percent of the voting shares of N.B.W.P., Inc., Berlin, Pennsylvania. Comments on this application must be received not later than October 10, 1985.

C. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Union Corporation*, Charlotte, North Carolina; to acquire, through Queen City Special Company B, Charlotte, North Carolina 100 percent of the voting shares of Central Florida Bank Corporation, Dade City, Florida, thereby indirectly acquiring The Bank of Pasca County, Date City, Florida.

2. *M & M Financial Corporation*, Oak Hill, West Virginia; to acquire 100 percent of the voting shares of Valley Bank & Trust Company, Bluefield, West Virginia.

D. **Federal Reserve Bank of Talanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Ocean Bankshares, Inc.*, Miami, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Ocean Bank of Miami, Miami, Florida.

2. *Riverside Banking Company*, Fort Pierce, Florida; to become a bank holding company by acquiring 80 percent of the voting shares of Riverside National Bank of Florida, Fort Pierce, Florida.

3. *Wiregrass Bancorporation*, Ashford, Alabama; to become a bank holding company by acquiring 66.2 percent of the voting shares of The First National Bank of Ashford, Ashford, Alabama.

E. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Summcorp*, Fort Wayne, Indiana; to retain 15.5 percent of the voting shares of Decatur Financial, Inc., Decatur, Indiana.

F. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Commercial Corporation*, Little Rock, Arkansas and *FC Bancshares, Inc.*, Conway, Arkansas; to become a bank holding company by acquiring at least 80 percent of the voting shares of First National Bank, Conway, Arkansas ("BANK").

FC Bancshares, Inc., a proposed bank holding company, will acquire direct control of BANK by acquiring at least 80 percent of the voting shares of BANK's parent, Faulkner County Bankshares, Inc., Conway, Arkansas. FC Bancshares, Inc., will be a wholly-owned subsidiary of First Commercial Corporation, Faulkner County Bankshares, Inc., will cease to exist. Comments on this application must be received not later than October 4, 1985.

G. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Lexington State Bank and Trust Co.*, Lexington, Nebraska and *Lexington State Bank and Trust Co. Employees Stock Ownership Plan*, Lexington, Nebraska; to become a bank holding company by acquiring 36.71 percent of the voting shares of Lexington State Bancshares, Inc., Lexington, Nebraska, parent of Lexington State Bank and Trust Co., Lexington, Nebraska and Seven V Banco, Inc., Callaway, Nebraska, and its subsidiary, Seven Valleys State Bank, Callaway, Nebraska.

Board of Governors of the Federal Reserve System, September 12, 1985

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-22273 Filed 9-17-85; 8:45 am]

BILLING CODE 6210-01-M

Baltimore Bancorp Proposed Acquisition of Savings and Loan Association

Baltimore Bancorp has applied under § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire all of the voting shares of Charles Street Savings and Loan Association, Inc. (in organization) ("Charles Street"), a state chartered stock savings and loan association. Charles Street will be the successor by merger to Municipal Savings and Loan Association, Inc., Baltimore, Maryland, a state chartered mutual savings and loan association. Baltimore Bancorp will thereby engage in the activity of operating a savings and loan association within Maryland. Upon consummation of the proposal, Applicant indirectly would acquire 100 percent of the voting shares of Towson Service Corporation, Towson, Maryland, a corporation engaged in real estate development activities.

Although the Board has not added the operation of a savings and loan association to the list of nonbanking activities permissible for bank holding companies set forth in § 225.25(b) of the Board's Regulation Y (12 CFR 225.25(b)), the Board has determined by individual order that the operation of a savings and loan association is closely related to banking.

Interested persons may express their views in writing on the question whether consummation of the proposed acquisitions can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comments must conform with the requirements of the Board's Rules of Procedure (12 CFR 262.3(e)).

In light of the exigent situation involving savings and loan associations formerly insured by the Maryland Saving-Share Insurance Corporation, a shortened comment period is reasonable and appropriate in this case. Comments regarding this application must be submitted in writing and must be received at the offices of the Board of Governors not later than 5:00 P.M. on September 26, 1985. This application is available for immediate inspection at the offices of the Board of Governors

and the Federal Reserve Bank of Richmond.

Board of the Governors of the Federal Reserve System, September 16, 1985

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-22467 Filed 9-17-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Immunization Practices Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control announces the following Committee meeting:

Name: Immunization Practices Advisory Committee.

Date: October 24-25, 1985.

Place: Auditorium A, Centers for Disease Control 1600 Clifton Road, NW., Atlanta, Georgia 30333.

Time: 8:30 a.m.

Type of Meeting: Open.

Contact Person: Jeffrey P. Kpolan, M.D., Executive Secretary of Committee, Centers for Disease Control (1-2047), 1600 Clifton Road, NE., Atlanta, Georgia 30333. Telephones: FTS: 236-3751. Commercial: 404/329-3751.

Purpose: The Committee is charged with advising on the appropriate uses of immunizing agents.

Agenda: The Committee will review and discuss data on poliomyelitis, including efficacy and safety of oral polio vaccine (OPV) and inactivated polio vaccine (IPV), current status of the vaccination program, prospects for new vaccines, current vaccine policy and alternatives; discuss use of MMR/DTP/OPV (measles-mumps-rubella vaccine, diphtheria and tetanus toxoids and pertussis vaccine) vaccine at 15 months; hear updates on adult immunization, measles-rubella (MR) vaccine, pertussis vaccine development, influenza control, *Haemophilus influenzae* type b, and varicella zoster vaccine; and will consider other matters of relevance among the Committee's objectives.

Agenda items are subject to change as priorities dictate.

The meeting is open to the public for observation and participation. A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: September 12, 1985.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 85-22311 Filed 9-17-85; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Ear, Nose, and Throat Devices Panel

Date, time, and place. October 10, 8:30 a.m., Rm. 503-529A, 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m.; open committee discussion, 9:30 a.m. to 4:30 p.m.; Lillian Yin, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Ave.; Silver Spring, MD 20910, 301-427-7555.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 27, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for a cochlear implant system.

Psychopharmacologic Drugs Advisory Committee

Date, time, and place. October 10 and 11, 9 a.m., Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD

Type of meeting and contact person. Open public hearing, October 10, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to conclusion; open public hearing, October 11, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to conclusion; Frederick J. Abramek, Center for Drugs and Biologics (HFN-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4020.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drug products for use in the practice of psychiatry and related fields.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will (1) review the new drug application (NDA 18-936) submitted by Eli Lilly & Co. for fluoxetine, and (2) review the submission (NDA 18-701) by McNeil Pharmaceutical for haloperidol decanoate.

Peripheral and Central Nervous System Drugs Advisory Committee

Date, time, and place. October 18, 9 a.m., Conference Rms. G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, October 18, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to conclusion; Frederick J. Abramek, Center for Drugs and Biologics (HFN-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4020.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational drugs proposed for marketing for use in the treatment of neurological disease.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss an investigational new drug application (IND 17,213; Gamma Vinyl GABA), an experimental anticonvulsant that was previously reviewed by the committee (May 18, 1984). At that meeting, the committee recommended that if brain vacuoles were detected in an ongoing monkey toxicity study, the committee should be reconvened to discuss the findings. The sponsor, Dow-Merrell Research Institute, has informed FDA that interim sacrifices of monkeys have detected vacuoles. The committee will be asked to assess these findings and give its opinion about whether testing of this potentially useful anticonvulsant drug should be allowed to continue.

Medical Radiation Advisory Committee

Date, time, and place. October 21 and 22, 9 a.m., Rm. T–416, 12720 Twinbrook Parkway, Rockville, MD.

Type of meeting and contact person. Open public hearing, October 21, 9 a.m. to 10 a.m.; open committee discusssion, October 21, 10 a.m. to 4:30 p.m., October 22, 9 a.m. to 4:30 p.m.; Donald R. Hamilton, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2436.

General function of the committee. The committee advises the Commissioner of Food and Drugs in the formulation of policy and development of a coordinated program relating to medical application of radiation directed at obtaining the maximum diagnostic information and therapeutic benefits per unit of radiation exposure through utilization of professional and technical resources and radiation related equipment.

Agenda—Open public hearing. Interested persons may present data, information, or views orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 7, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addressses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. General areas for consideration will include mammography screening programs, teleradiology, new imaging technology, imaging procedure databases, and consumer education. A complete agenda will be available on request after October 7.

Anti-Infective Drugs Advisory Committee

Date, time, and place. October 28 and 29, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, October 28, 8:30 a.m. to 9:30 a.m.; open committee discussion, October 28, 9:30 a.m. to 4:30 p.m.; October 29, 8:30 a.m. to 4:30 p.m.; Thomas E. Nightingale, Center for Drugs and Biologics (HFN–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of infectious diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the contact person.

Open committee discussion. The committee will discuss: (1) Draft guidelines for the prophylactic use of antibiotics; (2) antibiotic prophylaxis in surgery; (3) draft points to consider for the safety evaluation of antiviral drugs for non-life-threatening diseases; and (4) postmarketing studies of acyclovir capsules (ZOVIRAX/Burroughs Wellcome Co.; NDA 18–828).

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures to expedite electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: September 11, 1985.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–22258 Filed 9–17–85; 8:45 am]

BILLING CODE 4160–01–M

Health Professional Organizations' Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming meeting of health professional organizations to be chaired by Frank E. Young, Commissioner of Food and Drugs. The agenda will include presentations of FDA's Action Plan highlighting the new FDA fellowship program; acquired immunodeficiency syndrome (AIDS), which will address test kit results, clinical investigations and treatment, and precautions for health professionals; aspirin and Reye syndrome; the diversion of drugs (the "gray market"); and physicians' access to investigational drugs under the revised investigational new drug (IND) regulations.

DATE: The meeting will be held from 2 to 4 p.m., Monday, September 30, 1985.

ADDRESS: The meeting will be held in Conference Room 703A, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Robert Veiga, Office of Health Affairs (HFY–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5470.

Dated: September 11, 1985.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–22259 Filed 9–13–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85M–0401]

Alcon Laboratories, Inc.; Premarket Approval of Opti-Soft Solution, Opti-Clean Daily Cleaner, and Opti-Tears™ Comfort Dops

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Alcon Laboratories, Inc., Fort Worth, TX, for premarket approval, under the Medical Device Amendments of 1976, of the Soft™ Solution, Opti-Clean® Daily Cleaner, and Opti-Tears™ Comfort Drops. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by October 18, 1985.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Lippman, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On June 30, 1983 Alcon Laboratories, Inc., Fort Worth, TX 76101, submitted to CDRH an application for premarket approval of the Opti-Soft™ Solution, Opti-Clean® Daily Cleaner, and Opti-Tears™ Comfort Drops. The regimen is for use in a heat lens care system for soft (hydrophilic) contact leases with 45 percent or less water content worn on a daily or an extended wear basis. Opti-Soft™ Solution is indicated for rinsing, thermal disinfection, daily storage, and relief of dryness while wearing lenses; Opti-Clean® Daily Cleaner is indicated for daily cleaning of lenses; and Opti-Tears™ Comfort Drops is indicated for moistening of daily wear and extended wear lenses while wearing lenses during the day. On January 31, 1984, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On August 9, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295, 90 Stat. 539–583), contact lenses made of polymers other than polymethylmethacrylate (PMMA) and solutions for use with such contact lenses were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), contact lenses made of polymers other than PMMA and solutions for use with such lenses are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of contact lenses made of polymers other than PMMA or solutions for use with such lenses comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310), until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Docket Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Richard E. Lippman (HFZ–460), address above.

The labeling of the Opti-Soft™ Solution, Opti-Clean® Daily Cleaner, and Opti-Tears™ Comfort Drops states that the solutions are respectively designed for heat disinfection, rinsing, and storage; cleaning; and moistening of soft (hydrophilic) contact lenses with a water content of 45 percent or less. Manufacturers of any soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of CDRH's approval of a new solution for use with an approved soft contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the manufacturer. A manufacturer who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41–58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93–637). Furthermore, failure to update the restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F).

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practives and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 18, 1985, file with the Dockets Management Branch (address above) two copies of each petition and suppoting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday, through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices ad Radiological Health (21 CFR 5.53).

Dated: September 11, 1985

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85–22257 Filed 9–17–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85M–0391]

Lasers for Medicine, Inc.; Premarket Approval of Phototome™ System 2700 Nd:YAG Laser

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Lasers for Medicine, Inc., Hauppauge, NY, for premarket approval, under the Medical Device Amendments of 1976, of the Phototome™ System 2700 Nd:YAG Laser. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by October 18, 1985.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Docket Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip J. Phillips, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–8221.

SUPPLEMENTARY INFORMATION: On April 26, 1985, Lasers for Medicine, Inc., Hauppauge, NY 11788, submitted to CDRH an application for premarket approval of the Phototome™ System 2700 Nd:YAG Laser. The Phototome™ System 2700 Nd;YAG Ophthalmic Laser is a neodymium;yttrium-aluminum-garnet (Nd:YAG) ophthalmic laser that is indicated for discission of the posterior capsule of the eye (posterior capsulotomy). On May 13, 1985, the Ophthalmic Devices Panel, and FDA advisory committee, reviewed and recommended approval of the application. On August 8, 1985, CDRH approved the application by letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Philip J. Phillips (HFZ–460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a reviews of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 18, 1985, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 11, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85–22256 Filed 9–17–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 78P–0419 et al.]

Availability of Approved Variances for Laser Light Shows

Correction

In FR Doc. 85–20377 beginning on Page 34756 in the issue of Tuesday, August 27, 1985, make the following corrections:

In the third column, in the **SUMMARY,** in the fifth line, "Carter" should read "Center"; the last sentence should read as follows: "The projectors provide a laser light display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences."

BILLING CODE 1505–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N–85–1551]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Report Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of

information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what member of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding these proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Community Development Block Grant (CDBG) Entitlement Program
Office: Community Planning and Development
Form number: HUD–7091.1, 7091.2, 4949.1 thru 4949.7 SF–424 and Narrative
Frequency of submission: Anually
Affected public: State or Local Governments
Estimated burden hours: 324,000
Status: Revision
Contact:
James R. Broughman, HUD, (202) 755–9267
Robert Fishman, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Deaprtment of Housing and Urban Development Act, 42 U.S.C. 3535(d)

Dated: August 29, 1985.

Proposal: Troubled Public Housing Agencies: Workout Plans and Quarterly Report on Workout Plan Progress
Office: Public and Indian Housing
Form number: HUD–53330, 53331, and 53332
Frequency of submission: Quarterly, Semi-Annually, and Annually
Affected public: State or Local Governments
Estimated burden hours: 4,000
Status: Extensioin
Contact:
Roger W. Braner, HUD, (202) 755–7970
Robert Fishman, OMB (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 3, 1985.

Proposal: Indian Preference Statement of Policy
Office: Public and Indian Housing
Form number: None
Frequency of submission: On Occasion
Affected public: State or Local Governments, Businesses or Other For-Profit, and Small Businesses or Organizations
Estimated burden hours: 4,680
Status: Revision
Contact:
John V. Meyers, HUD, (202) 755–1015
Robert Fishman, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 29, 1985.

Dennis F. Geer,
Director of Information Policies and Systems.

[FR Doc. 85–22275 Filed 9–17–85; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On August 9, 1985, a notice was published in the **Federal Register** (Vol. 50, No. 154) that an application had been filed with the Fish and Wildlife Service by Dr. Donald Siniff, University of Minnesota (PRT–678319) for an amendment to his permit to take 150 Alaskan sea otters (*Enhydra lutris*). The amendment was requested to authorize recapture of these otters in order to obtain additional data.

Notice is hereby given that on September 9, 1985, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Fish and Wildlife Service amended the permit subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Fish and Wildlife Service's Permit Office in Room 605, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: September 12, 1985.

Larry LaRochelle,
Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85–22274 Filed 9–17–85; 8:45 am]
BILLING CODE 4310–55–M

Bureau of Reclamation

Coordinated Operation Agreement Central Valley Project/State Water Project, California; Availability of Draft Joint Environmental Impact Statement-Environmental Impact Report and Public Hearing

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1959, as amended, and section 21002 of the California Environmental Quality Act, the Bureau of Reclamation, Department of the Interior, and the California Department of Water Resources have prepared a draft joint environmental impact statement-environmental impact report (EIS-EIR). The EIS-EIR assesses the impacts associated with executing the new Coordinated Operation Agreement (COA) for the State Water Project (SWP) and Federal Central Valley Project (CVP).

The purpose of the proposed COA is to provide a reliable and mutually acceptable basis for coordinating the operations of the SWP and the CVP while protecting the water-related environment in the Scaramento-San Joaquin Delta. The COA would obligate the SWP and CVP to meet water quality and outflow standards extracted from the State Water Resources Control Board Decision 1485 designed for protecting the beneficial uses of the Delta.

The COA quantifies the annual water supplies for each project and allows the SWP and CVP to operate facilites for mutual benefit. The COA also calls for negotiations toward a contract for the purchase of interim CVP water by the SWP.

Copies are available at the following locations:

Director, Office of Environmental Affairs, U.S. Bureau of Reclamation, Room 7425, Washington, D.C. 20240, Telephone: (202) 343–4991
Property and Services Branch, Technical Publications and Library Branch, Engineering and Research Center, Code 960, Denver, CO 80225, Telephone: (303) 236–6963
Regional Environmental Quality Officer, U.S. Bureau of Reclamation, 2800 Cottage Way, Room W–1102,

Scramento, CA 95825–1898.
Telephone: (916) 978–5130
James U. McDaniel, California Department of Water Resources, 3251 S Street, P.O. Box 160088, Sacramento, CA 95816, Telephone: (916) 445–5631

Single copies of the statement may be obtained on request to the above-listed offices. Copies may be reviewed at the following libraries in the project vicinity:
Shasta County Library, 1855 Shasta Street, Redding, CA 96001
Beal Memorial Library, 1315 Truxton Avenue, Bakersfield, CA 93305
Sacramento Public Library, 828 I Street, Sacramento, CA 95814
Public Library of Stockton and San Joaquin County, 605 North El Dorado Street, Stockton, CA 95202
Fresno County Free Library, 2420 Mariposal Street, Fresno, CA 93721
Concord Public Library, 2900 Salvio Street, Concord, CA 94519

Written comments on the EIS–EIR should be submitted to the Bureau of Reclamation office in Sacramento, California; or the Department of Water Resources Office by the date stamped in the document.

The Bureau and the Department will schedule a public hearing process to receive comments on the draft EIS–EIR. The time and place will be announced at a later date.

Both oral and written comments on the draft EIS–EIR will be considered in preparing the final EIS–EIR on the proposed project.

Dated: September 13, 1985.

William C. Klostermeyer,

Acting Commissioner.

[FR Doc. 85–22370 Filed 9–17–85; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–218]

Certain Automatic Bowling Machine Printed Circuit Control Boards

AGENCY: U.S. International Trade Commission.

ACTION: Review of the termination of the investigation, including that portion of the presiding administrative law judge's initial determination (Order No. 9) terminating the above-captioned investigation with respect to respondent Richard J. Lynch Company, Inc.

SUMMARY: On August 12, 1985, the presiding administrative law judge (ALJ) granted the motion of the complainant James C. Hudson d/b/a Omega-Tek to withdraw his complaint based on a settlement agreement with respondent Richard J. Lynch Company, Inc. (Lynch). The ALJ issued an initial determination that initial determination with respect to the termination of the investigation and the termination of respondent Lynch on the basis of the withdrawal of the complaint, and requests comments concerning Lynch's termination in light of the settlement agreement and in light of Commission rule 210.51(b) (19 CFR 210.51(b)).

FOR FURTHER INFORMATION CONTACT: Kristian E. Anderson, Esq., Office of the General Counsel, U.S. International Trade Commission, Washington, D.C. 20436, telephone 202–523–0074.

SUPPLEMENTARY INFORMATION:

Statutory Authority

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rules 210.51(b) and 210.55 (19 CFR 210.51(b), 210.55).

Written Comments

Interested persons may file written comments with the Commission concerning termination of respondent Lynch in light of the settlement agreement. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit all or part of a document to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

Public Inspection

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By Order of the Commission.

Issued: September 12, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–22348 Filed 9–17–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701–TA–248 (Final)]

Offshore Platform Jackets and Piles From the Republic of Korea

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: September 9, 1985.

FOR FURTHER INFORMATION CONTACT: Daniel Dwyer (202–523–4618), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION: On July 19, 1985, the Commission instituted the subject investigation and established a schedule for its conduct (50 FR 31932, August 7, 1985). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from September 30, 1985 to December 10, 1985 (50 FR 35108, August 29, 1985). The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: Requests to appear at the hearing must be filed with the Secretary to the Commission not later than December 2, 1985; the prehearing conference will be held in room 117 of the U.S. International Trade Commission Building at 10:30 a.m. on December 6, 1985; the public version of the prehearing staff report will be placed on the public record on November 27, 1985; the deadline for filing prehearing briefs is December 9, 1985; the hearing will be held in room 331 of the U.S. International Trade Commission Building on December 12, 1985; and the deadline for filing all other written submissions, including posthearing briefs, is December 19, 1985.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, Part 207, subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

Authority: This investigation is being conducted under authority of the Tariff Act of

1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: September 13, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-22349 Filed 9-17-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-258-260 (Preliminary) and 731-TA-283-285 (Preliminary)]

Certain Table Wine From the Federal Republic of Germany, France, and Italy

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations and scheduling of a conference to be held in connection with these investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigations Nos. 701-TA-258-260 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Federal Republic of Germany, France, and Italy of certain table wine,[1] provided for in item 167.30 of the Tariff Schedules of the United States, which are alleged to be subsidized by the Governments of the Federal Republic of Germany, France, and Italy. As provided in section 703(a), the Commission must complete preliminary countervailing duty investigations in 45 days, or in these cases by October 25, 1985.

The Commission also gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-283-285 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Federal Republic of Germany, France, and Italy of certain table wine, provided for in item 167.30 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in these cases by October 25, 1985.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: September 10, 1985.

FOR FURTHER INFORMATION CONTACT: Cynthia Wilson (202-523-0291), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed on September 10, 1985, by the American Grape Growers Alliance for Fair Trade, a non-profit association that represents growers which produce grapes that are crushed for ordinary table wine production and wineries which produce ordinary table wine.

Participation in the Investigation

Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on October 1, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Cynthia Wilson (202-523-0291) not later than September 27, 1985, to arrange for their appearance. Parties in support of the imposition of countervailing and/or antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before October 3, 1985, a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority. These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

[1] For purposes of these investigations, "certain table wine" is defined as still wine produced from grapes, containing not over 14 percent of alcohol by volume, in containers each holding not over 1 gallon, other than wines categorized by the appropriate authorities in the Federal Republic of Germany as "Qualitatswein mit Pradikat"; in France as "Appelation d'Origine Controlee" or "Vins Delimites de Qualite Superieure"; and in Italy as "Denominazione di Origine Controllata."

Issued: September 12, 1985

Kenneth R. Mason,

Secretary.

[FR Doc. 85-22351 Filed 9-17-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 104-TAA-26]

Sugar Content of Certain Articles From Australia

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 104(b) of the Trade Agreements Act of 1979 (19 U.S.C. 1671 note), that industries in the United States would not be materially injured or threatened with material injury, nor would the establishment of an industry in the United States be materially retarded, by reason of imports of the sugar content of certain articles from Australia [2] if the countervailing duty order covering those imports were to be revoked.

Background

The outstanding countervailing duty order was issued on March 24, 1923, as a result of an investigation that was conducted by the U.S. Department of Treasury after the predecessor of the National Food Processors Association filed a countervailing duty petition in 1922.

On September 9, 1982, the U.S. International Trade Commission received a request from the Government of Australia to review the outstanding countervailing duty order under section 104(b)(1) of the Trade Agreements Act of 1979 to determine whether an industry in the United States would be materially injured, or threatened with material injury, or the establishment of an industry would be materially retarded, by reason of the sugar content of certain articles from Australia if the outstanding countervailing duty order regarding such merchandise were to be revoked. Accordingly, on May 9, 1985, the Commission instituted investigation No. 104-TAA-26, concerning the sugar content of certain articles from Australia.

Notice of the institution of the Commission's investigation and of a hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on May 30, 1985 (50 FR 23086). The hearing was held in Washington, DC on July 18, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 9, 1985. The views of the Commission are contained in USITC Publication 1748, entitled "Sugar Content Of Certain Articles From Australia: Determination of the Commission in Investigation No. 104-TAA-26 Under Section 104(b) of the Trade Agreements Act of 1979, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: September 10, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-22350 Filed 9-17-85; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(i) of the Commission's rules of practice and procedure (19 CFR 207.2(i)).

[2] Imports covered by the investigation are canned peaches, classified in items 148.77 and 148.78 of the Tariff Schedules of the United States, canned pears, classified in TSUS item 148.86, and canned fruit mixtures, classified in TSUS item 150.05. The Commission terminated the investigation as to all other products covered by the outstanding countervailing duty order with a finding that no domestic industry would be materially injured or threatened with material injury, nor would the establishment of a domestic industry be materially retarded, by reason of the revocation of the countervailing duty order (50 FR 29001, July 17, 1985 and 50 FR 35170, August 19, 1985).

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30663]

Chicago, Central & Pacific Railroad Co.; Purchase (Portion), Trackage Rights, and Securities Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Chicago, Central & Pacific Railroad Company (CCPR) has filed a petition under 49 U.S.C. 10505 seeking exemption from the requirements of 49 U.S.C. 10901 for its acquisition and operation of Illinois Central Gulf Railroad Company's 679-mile Chicago, IL, to Omaha, NE, rail line and incidental trackage rights and from 49 U.S.C. 11301 for its issuance of securities. CCPR also seeks a protective order for certain exhibits in its petition. The Commission has denied the request without prejudice and has determined that further information on the merits is required because the impact of the proposed acquisition cannot be ascertained from the present record.

DATES: Interested parties desiring to file comments must first file and serve on CCPR's representative by October 3, 1985, a notice of intent to participate. CCPR shall file a motion for a protective order or alternative relief by September 30, 1985. Replies to the motion or alternative relief shall be filed by October 8, 1985. CCPR shall file evidence to supplement its petition by October 8, 1985, responsive evidence shall be filed by November 7, 1985, replies shall be filed by November 18, 1985.

ADDRESSES: Send comments referring to Finance Docket No. 30663 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Peter A. Gilbertson, Witkowski, Weiner, McCaffrey and Brodsky, P.C., 1575 Eye Street, NW, Washington, DC 20005

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: September 6, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Lamboley concurred with a separate expression.

Kathleen M. King,

Acting Secretary.

[FR Doc. 85-22342 Filed 9-17-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Apollo Dyeing & Finishing Co. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period September 2, 1985-September 6, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for

adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–15,975; Apollo Dyeing & Finishing Co., Paterson, NJ

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–16,003; Wilson Jones Co., Elizabeth, NJ

Separations form the subject firm resulted from a transfer of production to other domestic facilities.

TA–W–16,017; Consolidation Coal Co., Blacksville Operation, Wana, WV

Aggregate U.S. imports of coal are negligible.

TA–W–15,957; Bethlehem Steel Corp., Sparrows Point Shipyard, Sparrows Point, MD

The number of ships intended for United States registry under construction in foreign shipyards declined in 1984 compared to 1983.

TA–W–16,136; American Nuclear Corp., Gas Hills Project, Gas Hills, WY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations

TA–W–15,984; Leader Dyeing & Finishing Co., Paterson, NJ

A certification was issued covering all workers of the firm separated on or after October 1, 1984.

TA–W–15,989; Zenith Dyeing & Finishing Co., Paterson, NJ

A certification was issued covering all workers of the firm separated on or after October 1, 1984.

TA–W–15,997; Standard Metals Corp., Silverton Div., Silverton, CO

A certification was issued covering all workers of the firm separated on or after August 2, 1984.

TA–W–15,903; Zenith Electronics Corp., of Texas, McAllen, TX

A certification was issued covering all workers of the firm separated on or after April 1, 1984 and before April 1, 1985.

TA–W–16,049; Revere Copper Products, Inc., Rome, NY

A certification was issued covering all workers of the firm separated on or after May 10, 1984.

TA–W–15,945; Kellwood Co., Alamo, TN

A certification was issued covering all workers of the firm separated on or after July 1, 1984 and before August 1, 1985.

TA–W–15,971; United Pioneer Co., Waycross, GA

A certification was issued covering all workers of the firm separated on or after November 1, 1984 and before July 1, 1985.

TA–W–16,082; Zenith Electronics Corp., Springfield, MO

A certification was issued covering all workers of the firm separated on or after February 15, 1985 and before August 15, 1985.

TA–W–16,085; Fiatallis North America, Inc., Springfield, IL

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA–W–16,012; Ranco Controls Div., Plain City, OH

A certification was issued covering all workers of the firm separated on or after May 7, 1984.

TA–W–15,987; Umetco Minerals Corp., Grand Junction Offices, Grand Junction, CO

A certification was issued covering all workers of the firm separated on or after November 1, 1984.

TA–W–15,995; Morrison Machine Co., Paterson, NJ

A certification was issued covering all workers of the firm separated on or after May 6, 1985.

TA–W–15,960; Conaway-Winter, Inc., Willow Springs, MO

A certification was issued covering all workers of the firm separated on or after April 16, 1984.

I hereby certify that the aforementioned determinations were issued during the period September 2, 1985–September 6, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, D.C. during normal business hours or will be mailed to persons who write to the above address.

Dated: September 10, 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85–22267 Filed 9–17–85; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; AFA Corp. et al.

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than Septenber 30, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than (10 days after public.). September 30, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 9th day of September, 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
AFA Corporation (workers)	Miami Lakes, FL	9/5/85	8/24/85	TA-W-16,374	Plastic trigger sprayers.
American Cyanamid Co., Fibers Div (workers)	Milton, FL	8/30/85	8/23/85	TA-W-16,375	Acrylic fibers.
Basque Cedar Co (workers)	Clallam Bay, WA	9/3/85	8/25/85	TA-W-16,376	Cedar shakes and shingles.
Boston Fashions (ILGWU)	Boston, MA	8/26/85	8/22/85	TA-W-16,377	Ladies jackets for suits.
Copperweld Steel Co (company)	Warren, OH	8/30/85	8/15/85	TA-W-16,378	Hot rolled bars, rounds, squares, hexagon, octagon, flat [illegible] twisted bars thermal bars.
Danskin East #5 (workers)	York, PA	9/3/85	8/26/85	TA-W-16,379	Exercise bodywear, leg warmers, unitards.
Hine/Snowbridge, Inc. (workers)	Boulder, CO	8/30/85	8/27/85	TA-W-16,380	Bicycles bags, seat, handlebar, touring.
LTV Steel Co (USWA)	Youngstown, OH	8/2[illegible]/85	8/19/85	TA-W-16,381	Erw and car pipes
Western Nuclear, Inc (workers)	Lakewood, CO	8/29/85	8/21/85	TA-W-16,382	Uranium oxide
Do	Jeffrey City, WY	8/29/85	8/21/85	TA-W-16,383	Do.
Do	Wellpinit, WA	8/29/85	8/21/85	TA-W-16,384	Do.
Do	Thoreau, NM	8/29/85	8/21/85	TA-W-16,385	Do.
B F Goodrich Co (URW)	Miami, OK	9/3/85	8/28/85	TA-W-16,386	Tires—passenger car, farm equipment, trucks.
Cooper Tire & Rubber Co. (URW)	Findlay, OH	9/3/85	8/30/85	TA-W-16,387	Passenger car and truck tires for replacements.
Hitachi-Magna Lock Corp (workers)	Big Rapids, MI	9/3/85	8/26/85	TA-W-16,388	Magnetic chucks.
Washington State Dept. of Agriculture (workers)	Olympia, WA	9/4/85	8/30/85	TA-W-16,389	Grading, weighing and certification of export grain
Do	Pasco, WA	9/4/85	8/30/85	TA-W-16,390	Do.
Do	Colfax, WA	9/4/85	8/30/85	TA-W-16,391	Do.
Do	Spokane, WA	9/4/85	8/30/85	TA-W-16,392	Do.
Do	Seattle, WA	9/4/85	8/30/85	TA-W-16,393	Do.
Do	Tacoma, WA	9/4/85	8/30/85	TA-W-16,394	Do.
Do	Longview, WA	9/4/85	8/30/85	TA-W-16,395	Do.
Do	Kalama, WA	9/4/85	8/30/85	TA-W-16,396	Do.
Do	Vancouver, WA	9/4/85	8/30/85	TA-W-16,397	Do.
Arbor Manufacturing Co. (ILGWU)	Harrison, NJ	8/5/85	8/1/85	TA-W-16,398	Children's apparel
Cessna Aircraft Co (company)	Wichita, KS	9/6/85	8/20/85	TA-W-16,399	Jet aircrafts.

[FR Doc. 85-22266 Filed 9-17-85; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-15, 771]

Wolverine World Wide, Inc., Factory C, Big Rapids, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 20, 1985, applicable to all workers of Factory C, Wolverine World Wide, Incorporated, Big Rapids, Michigan. The Notice of Certification was published in the **Federal Register** on June 4, 1985 (50 FR 23539).

On the basis of additional information, the Office of Trade Adjustment Assistance, reviewed the certification. The additional information revealed that some layoffs occurred a few months after the termination date set in the Department's certification.

The intent of the certification is to cover all workers at Factory C of Wolverine World Wide at Big Rapids, Michigan who were affected by the decline in the sales or production of women's and children's shoes related to increased import competition. The notice, therefore, is amended by providing a new termination date of May 1, 1985.

The amended notice applicable to TA-W-15, 771 is hereby issued as follows:

All workers of Factory C, Wolverine World Wide, Incorporation, Big Rapids, Michigan who became totally or partially separated from employment on or after January 22, 1984 and before May 1, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 10th day of September, 1985.

Stephen A. Wander,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 85-22268 Filed 9-17-85; 8:45 am]
BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-61]

NASA Advisory Council; Renewal

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Renewal.

SUMMARY: Pursuant to section 14(b)(1) of the Federal Advisory Committee Act, Pub. L. 92-463, and after consultation with the Committee Management Secretariat, General Services Administration, the National Aeronautics and Space Administration has determined that renewal of the following NASA advisory committees is in each case in the public interest in connection with the performance of duties imposed upon NASA by law:

NASA Advisory Council (NAC);
NAC Aeronautics Advisory Committee;
NAC Aeronautics Advisory Committee, Subcommittee on Aviation Safety Reporting System;
NAC History Advisory Committee;
NAC Life Sciences Advisory Committee;
NAC Space Applications Advisory Committee;
NAC Space and Earth Science Advisory Committee;
NAC Space Systems and Technology Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, National Aeronautics and Space Administration, Code LB, Washington, DC 20546 (202/453-8335).

SUPPLEMENTARY INFORMATION: The function of the Council is to consult with and advise the NASA Administrator or designee with respect to plans for, work in progress on, and accomplishments of NASA's aeronautics and space programs.

Dated: September 11, 1985.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 85-22269 Filed 9-17-85; 8:45 am]
BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9421

OMB Desk Officer: Carlos Tellez, (202) 395-7340

Title: Proposal/Award Information

Affected Public: Universities, Colleges, Small Businesses, and Individuals
Number of Responses: 35,000 respondents; total of 4,200,000 burden hours

Abstract: The National Science Foundation initiates and supports fundamental and applied research in all the scientific and engineering disciplines, science and engineering education and policy research. This support is through grants, contracts, and other agreements awarded to universities, university consortia, non-profit, and other research organizations.

Dated: September 13, 1985.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 85–22362 Filed 9–17–85; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for the Mathematical Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for the Mathematical Sciences.

Date and time: October 3, 1985—9:00 a.m. to 5:00 p.m. October 4, 1985—8:30 a.m. to 5:00 p.m. October 5, 1985—8:30 a.m. to 1:00 p.m.

Place: Room 540, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.

Type of meeting: 10/3 OPEN—9:00 a.m. to 11:00 a.m. 10/3 CLOSED—11:00 a.m. to 5:00 p.m. 10/4 CLOSED—8:30 a.m. to 2:30 p.m. 10/4 OPEN—2:30 p.m. to 5:00 p.m. 10/5 OPEN—8:30 a.m. to finish.

Contact person: Dr. Judith S. Sunley, Deputy Division Director, Division of Mathematical Sciences, Room 339, National Science Foundation, Washington, D.C. 20550 Telephone (202) 357–9669. Anyone planning to attend this meeting should notify Dr. Sunley no later than September 30, 1985.

Purpose of committee: To provide advice and recommendations concerning support for research in the mathematical sciences.

Agenda:

Thursday, October 3, 1985—9:00 a.m. to 11:00 a.m.—Open
- Introductory remarks
- Meeting with the Assistant Director for Mathematical and Physical Sciences
- Current status of the Division

Thursday, October 3, 1985—11:00 a.m. to 5:00 p.m.—Closed
- Program oversight review

Friday, October 4, 1985—8:30 a.m. to 2:30 p.m.—Closed
- Program oversight review

Friday, October 4, 1985—2:30 p.m. to 5:00 p.m.—Open
- Mathematical Sciences research at other Federal agencies; Activities of the Board of Mathematical Sciences; Planning for the future—setting priorities

Saturday, October 5, 1985—8:30 a.m. to finish—Open
- Report on program oversight reviews
- Planning for the future—setting priorities

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposal. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

September 13, 1985.

[FR Doc. 85–22330 Filed 9–17–85; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Ecology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Ecology.

Date and time: October 3 & 4, 1985—8:30 a.m. to 5:00 p.m. each day.

Place: Room 1242A, National Science Foundation, 1800 G St., NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Patrick W. Flanagan, Program Director, Ecology (202) 357–9734, Room 1140, National Science Foundation, Washington, D.C. 20550.

Purpose of panel: To provide advice and recommendations concerning support for research in ecology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was designated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

September 13, 1985.

[FR Doc. 85–22328 Filed 9–17–85; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Ecosystem Studies; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Ecosystem Studies.

Dated and time: October 3 & 4, 1985—8:30 a.m. to 5:00 p.m. each day.

Place: Room 543, National Science Foundation, 1800 G St., NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. James R. Gosz, Program Director, Ecosystem Studies (202) 357–9596, Room 1140, National Science Foundation, Washington, D.C. 20550.

Purpose of panel: To provide advice and recommendations concerning support for research in ecosystem studies.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reasons for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b)(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

September 13, 1985.

[FR Doc. 85–22329 Filed 9–17–85; 8:45 am]

BILLING CODE 7555–01–M

NSF Advisory Committee on Merit Review; Open Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: NSF Advisory Committee on Merit Review.

Date and time: October 3, 1985—9:00 a.m.–5:00 p.m. October 4, 1985—9:00 a.m.–3:30 p.m.

Place: Room 523, National Science Foundation 1800 G Street, NW., Washington, D.C. 20550.

Type of Meeting: Open.

Contact person: Dr. Carlos Kruytbosch, Head, Science Indicators Unit, National Science Foundation, Washington, D.C. 20550 (202) 634–4682.

Anyone planning to attend this meeting should notify Dr. Kruytbosch no later than September 30, 1985.

Summary minutes: Dr Carlos Kruytbosch, at above address.

Purpose of committee: To evaluate merit review as practiced by NSF and other agencies and provide its advice and recommendations concerning alternative systems of merit review and selection of projects.

Summarized agenda: Reports from the NSF Directorates on merit review systems in use, discussion with the NSF Director, and other items.

M. Rebecca Winkler,

Committee Management Officer.

September 13, 1985.

[FR Doc. 84–22302 Filed 9–17–85; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reports or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information, collection: Current Occupational Radiation Exposure.

3. The form number if applicable: NRC Form-5

4. How often the collection is required: Quarterly and annually.

5. Who will be required or asked to report: NRC Licensees.

6. An estimate of the number of responses: 3,600,000.

7. An estimate of the total number of hours needed to complete the requirements or request: 124,740.

8. An indication of whether Section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract:

Licensees use NRC Form-5 data to assess and control ongoing radiation protection programs and to document to the NRC and the licensee's workers that their occupational doses have not exceeded applicable limits.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395–7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland this 12th day of September 1985.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85–22338 Filed 9–17–85; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reports or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information, collection: Occupational Radiation Exposure History.

3. The form number if applicable: NRC Form-4.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: NRC Licensees.

6. An estimate of the number of responses: 30,000.

7. An estimate of the total number of hours needed to complete the requirements or request: 7500.

8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.

9. Abstract:

A licensee needs to know the magnitude of a worker's prior occupational dose received during the current calendar year and planned special exposures and overexposures received during the lifetime of the worker so that additional exposure in the licensee's facility will not cause the worker's occupational dose to exceed applicable limits. Necessary data are recorded on NRC Form-4 or its equivalent.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395–7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland this 12th day of September 1985.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85–22339 Filed 9–17–85; 8:45 am]

BILLING CODE 7590–01–M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Conservation Programs Task Force; Open Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Conservation Programs Task Force, to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I.

1–4. Activities will include:

- Discussion of the Conservation Action Plan.

DATE: Thursday, October 3, 1985, 9:00 a.m.–5:00 p.m.

ADDRESS: The meeting will be held at the Council's Central Office, 850 SW. Broadway; Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Mark Cherniack (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–22296 Filed 9–17–85; 8:45 am]

BILLING CODE 0000–00–M

Hydropower Assessment Steering Committee; Open Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Hydropower Assessment Steering Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- River assessment study.
- Anadromous fish productivity analysis.
- Consultation on draft losses statement.
- FERC update.
- Other.
- Public comment.

DATE: September 24, 1985, 10:00 a.m.

ADDRESS: The meeting will be held at the Airport conference room, Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Peter Paquet 503–222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 85–22297 Filed 9–17–85: 8:45 am]

BILLING CODE 0000–00–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–22396; Files Nos. SR–Amex–85–1 and SR–NYSE–85–25]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Proposed Rule Changes

AGENCY: Securities and Exchange Commission.

ACTION: Request for public comment.

SUMMARY: The American ("Amex") and New York ("NYSE") Stock Exchange propose to amend their rules to permit a member organization affiliated with a specialist or specialist unit to: (1) Trade specialty securities, (2) trade options on specialty securities, (3) accept orders in specialty securities from the issuer, its insiders and institutions, (4) perform research and advisory services with respect to specialty securities, (5) "popularize" specialty securities, and (6) engage in business transactions with a company in whose stock the specialist is registered, provided certain conditions are met which, among other things, result in the establishment of an exchange-approved "Chinese Wall" between such a person and the affiliated specialist unit on the floor. This release outlines the various issues presented by the proposed rule changes of the Amex and the NYSE and solicits comments on the proposals.

DATE: Comments must be received on or before October 18, 1985.

ADDRESS: Interested persons should submit three copies of their comments to John Wheeler, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Comment letters should refer to File Nos. SR–Amex–85–1 and SR–NYSE–85–25. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Pamela Konieczka, ESQ., (202) 272–2855, Division of Market Regulations, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Summary

The Securities and Exchange Commission ("Commission") today is issuing a release that describes and requests public comment on proposed rule changes by the Amex and the NYSE which would encourage retail broker-dealers to affiliate with specialists by easing the current restrictions imposed on such affiliates. Instead, the proposals would require an organizational separation (a so-called Chinese Wall) between the specialist activity and other parts of the firm. The proposals, therefore, if approved by the Commission, would alter significantly the current relationship between specialists and retail firms and thereby raise significant competitive, manipulation and conflict of interest issues. Commentators are asked to focus on whether: (1) The procedures for establishing the Chinese Wall are adequate; (2) the procedures for maintaining the Wall are adequate; (3) the procedures for auditing the maintenance of the wall are adequate; and (4) particular restrictions applicable to an approved person should continue to apply to the approved person notwithstanding the creation of the Wall. Specific questions target, among other topics, potential benefits achieved from easing the restrictions, the use of an unaffiliated broker by an affiliated retail firm, the forms of internal surveillance firms should develop to justify the concept, and the type of relationship an approved person and associated specialist unit should have when the approved person is engaged in underwriting activites in stock in which the associated specialist is registered.

II. Background

On January 30, 1985, the Amex filed with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] proposed changes to its Rules 190 and 193 which would permit an approved person[2] or member organization affiliated with a specialist or specialist unit to: (1) Trade specialty securities, (2) trade options on specialty securities, (3) accept orders in specialty securities from the issuer, its insiders and institutions, (4) perform research and advisory services with respect to specialty securities, (5) "popularize" specialty securities, and (6) engage in business transactions with a company in whose stock the specialist is registered.[3] On March 19, 1985, Amex filed with the Commission Amendment No. 1 to the rule change describing the exemptive guidelines for establishing an exchange-approved "Chinese Wall" between the affiliated upstairs firm and the specialist unit on the floor.[4]

Similarly, on June 20, 1985, the NYSE filed with the Commission proposed Rule 98.[5] The Rule essentially provides

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] The term "approved person" is defined in Article I, Section 3(g) of the Amex Constitution (CCH ¶ 9003) as well as in Article I, section 3(g) of the NYSE Constitution (CCH ¶ 1003) as an individual or corporation, partnership or other entity which controls a member or member organization, or which is engaged in the securities business and is either controlled by, or under common control with, a member or member organization, or which is the owner of a membership held subject to a special transfer agreement. "Control" is defined as the power to direct or cause the direction of the management or policies of a person, whether through ownership of securities, by contract, or otherwise. A person is presumed to control another person if such person, directly or indirectly, has the right to vote or cause to be voted 25% or more of the voting securities, is entitled to receive 25% or more of the net profits, or is a director (or person occupying a similar status or performing similar functions) of such person. Any person who does not come within one of the foregoing categories shall be presumed not to control such other person. *See* Amex Definition 13 (CCH ¶ 9213) and NYSE Rule 2 (CCH ¶ 2002).

[3] *See* Amex Rules 170(e), 175, 190(b), 190 Commentary, 190(a); (CCH ¶ 9310, 9315, 9330).

[4] The Commission published notice of the Amex filing in Securities Exchange Act Release No. 21916, April 2, 1985; 50 FR 14058 (File No. SR–Amex–85–1).

[5] The Commission published notice of the NYSE filing in Securities Exchange Act Release No. 22183, June 28, 1985; 50 FR 27875 (File No. SR–NYSE–85–25). Both with respect to the Amex and NYSE proposals, prespective commentators were asked to consider whether they would prefer to comment on the Amex or NYSE proposals or in connection with the Commission's separate release. As of August 23, 1985, the Commission has received no comments on the Amex or NYSE proposals.

In conjunction with its filing of proposed Rule 98, the NYSE withdrew a pending proposed rule change (File No. SR–NYSE–78–59) which would have relieved approved persons of members and member organizations from the provisions of certain Exchange rules, including Rule 98, Rule 104.13, Rule 113 and Rule 113.20

that an approved person which has established an organizational separation between itself and an associated specialist unit in conformity with guidelines published by the NYSE would be exempt from a number of significant restrictions on specialist activity similar to those imposed by the Amex.[6]

No Amex or NYSE rules currently prohibit exchange member firms from affiliating with specialist units. Relatively few retail firms on the Amex and NYSE,[7] however, are affiliated with specialist units because any activity which an affiliated firm might have in specialty stocks would be subject to exchange restrictions placed on approved persons of specialists.

The Amex and NYSE restrictions noted above would be eased if a retail firm and its affiliated specialist unit were to erect a Chinese Wall between themselves. Among other characteristics, the Wall would entail a separate and distinct organization between the retail firm and the affiliated specialist unit, separate and distinct books, records and accounts, separate satisfaction of all applicable capital requirements, confidential treatment of the specialist's book, and no influence or control over the other's conduct with respect to particular securities.

One significant difference between the Amex and NYSE guidelines is their approach with respect to underwriting activities of approved persons. While Amex would allow an upstairs affiliated firm to participate in an underwriting of a specialty issuer's equity security in any capacity, the NYSE would only permit an approved person to act as a member of an underwriting syndicate or selling group but not as a managing underwriter for a distribution of equity or convertible securities of an issuer in whose securities an associated specialist is registered.

Regional exchanges have not been required to adopt similar restrictions on approved persons affiliated with specialist units, primarily beause of their limited trading volume and because they are not the primary exchange market for most securities traded on those exchanges.[8] As a result, the Philadelphia ("Phlx"), Pacific "PSE") and Boston ("BSE") Stock Exchanges currently have a number of major retail firms associated with specialist units on their floors.[9]

The current restrictions imposed by Amex Rules 190 and 193 and by NYSE Rules 104, 105, 113, and 460 are intended to address two primary concerns that arise when a specialist unit becomes affiliated with a non-specialist retail organization. First, if an approved person of a specialist unit had access to the affiliated specialist's book, including confidential information relating to the number and size of buy and sell orders at various prices as well as information regularly provided to him by other market participants because of his central role as a primary market specialist, the approved person would have a perceived advantage over competing firms and the public at large in trading stocks assigned to the affiliated specialist. Conversely, if the specialist unit had advance information about the activities of the upstairs firm (*e.g.*, a change in the firm's buy or sell recommendation or an imminent block transaction away from the market), the specialist could position itself from price changes that might result once that information became publicly available. Second, an affiliated specialist unit could favor its approved person by providing orders placed by the affiliate with more favorable executions and by providing useful market information to the affiliated firm (or to its broker on the exchange trading floor) but not to others. In some cases, such conflicts of interest could result in the specialist neglecting his duty to make a fair and orderly market by giving an affiliate's principal or agency orders a more favorable execution.

The proposals suggested by the Amex and the NYSE have produced a range of reactions from member organizations. In response to its Special Membership Bulletin of July 26, 1984, discussing the topic of member firms as new entrants into the specialist business, and outlining possible NYSE Rule 98, the NYSE received twelve comment letters.[10] NYSE members supporting proposed NYSE Rule 98 generally believe that the rule change would strengthen the specialist system by attracting new sources of capital which would improve the liquidity and quality of exchange markets. In their view it would promote equality of regulation between exchange and over-the-counter market makers, by removing unnecessary regulatory burdens. In this regard, they believe that the integrity of the marketplace would be preserved if the retail firm and the associated specialist unit established a Chinese Wall to preclude the flow of potentially privileged information and to prevent conflicts of interest, manipulative opportunities or unfair advantages to one or both of the parties. The objective of the guidelines is to provide an exemption from the restrictions discussed above where an approved person and an associated specialist member organization organize their respective operations in such a way that the activities of each entity are clearly separate and distinct. Exchange guidelines attempt to ensure that regulatory objectives would not be compromised, and attempt to provide flexibility so that the association of a member organization with a specialist unit could be viewed as a viable business combination for those interesed in such an association.

Commentators opposing the proposals, however, stress the difficulty of maintaining the Chinese Wall in practice, if not in theory. They also do

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[6] *See* NYSE Rules 104, 104.13, 105, 113, 113.20, 460; (CCH ¶2104, 2105, 2113, 2460).

[7] Drexel Burnham Lambert, Inc. and Bear, Stearns & Co. are the two retail firms that are affiliated with specialist units on the Amex floor. Bear, Stearns & Co. is also affiliated with a specialist unit on the NYSE. In addition, the following NYSE specialist firms do retail business either directly or through an affiliate: Asiel & Co.; Ernst & Co.; Purcell, Graham & Co, Inc.; A.C. Partners; Spear, Leeds & Kellogg; and Quick & Reilly Spec. Corp.

[8] Because the large majority of stocks traded on the regional exchanges are listed on the NYSE or Amex, and are traded on the regionals pursuant to unlisted trading privileges granted by the Commission under section 12(f)(1) of the Act, traditionally the Commission has not required regional exchange specialists to operate under the same regulatory regime as primary market specialists. *See, e.g.*, Securities Exchange Act Release No. 7485 (November 23, 1984), at 3; SEC, *Report of Special Study of Securities Market*, 88th Cong., 1st Sess., H. Doc. No. 95, pt. 2, at 167.

[9] Drexel Burnham Lambert, Inc. and Dean Witter Reynolds, Inc. are the two retail trading firms that are affiliated with specialist units on the Phlx. Shearson/American Express, Inc.; Goldberg Securities; Wedbush, Noble, Cooke, Inc.; Moseley, Hallgarten, Estabrook & Weeden, Inc., Jeffries & Co.; AGF Securities; Crowell Weedon & Co.; Easton & Co.; Bateman Eichler, Hill Richards, Inc.; Trading Co. of the West; Mitchum Jones & Templeton, Inc.; Drexel Burnham Lambert, Inc.; ABD Securities, Inc.; Merrill Lynch, Pierce, Fenner & Smith, Inc.; the Pershing Division of Donaldson Lufkin Jenrette Securities, Inc.; Seidler Amdec Securities, Inc.; Paine Webber; and Spear Leeds and Kellogg are the retail trading firms affiliated with specialist units on the PSE. Dean Witter Reynolds, Drexel Burnham Lambert, Fidelity Brokerage Services, and Jospehthal & Co., Inc. are the retail trading firms affiliated with specialist units on the BSE.

In its filing with the Commission, Amex cites its need to remain competitive with the regional exchanges as a reason for easing its restrictions on affiliated upstairs firms associated with specialists. In its filing the NYSE states that an easing of restrictions would enhance competition in the specialist community, and would improve the liquidity and quality of exchange markets.

[10] Eight of the twelve comment letters supported the rule change (Ernst & Co-Homans & Co.—Ware & Keelips—Victor Inc; Paine Webber Mitchell Hutchins Inc.; Mesirow & Company; A.B. Tompane & Co; Prudential-Bache Securities; Dean Witter Reynolds, Inc; Stephen Peck (PPN Partners) and Donald Stott (Wagner, Stott, & Co); and Merrill Lynch, Pierce, Fenner, & Smith, Inc.) and three expressed opposition (J. Streicher & Co; Wertheim & Co., Inc.; and Morgan Stanley & Co., Inc.). In one letter (Securities Industry Association) a position was not stated.

not believe that the change would enable the specialist firm to function more effectively. On the contrary, they view the business and economic realities as making it highly likely that the combination of specialist and memer firm activities would create manipulative opportunities and substantial unfair advantages. They contend that the proposal would aggravate the problem of declining public participation in the equities markets by adding to the reality as well as to the perception of conflict of interest and advantage accruing to a few. Others criticized the proposals, perceiving them as restructuring the exchange and securities markets on an *ad hoc* basis outside the context of an overall plan.

To evaluate more fully the potential impact of the rule changes, the Commission is publishing this release to solicit comment on the proposals, in general, and the appropriateness and adequacy of the proposed guidelines for establishing a Chinese Wall between a specialist unit and an affiliated upstairs firm, in particular.

III. The NYSE Proposal

A. Restrictions Affected

The NYSE is proposing to renumber existing Rule 98 as Rule 98A and provide for the reporting of transactions by an approved person entitled to the exemptions provided by proposed Rule 98 in such form and with such frequency as the NYSE shall from time to time determine. Under this rule if an approved person establishes an organizational separation and adopts a "functional regulation" program in accordance with guidelines promulgated by the NYSE, it would be exempt from the following specialist regulations:

(1) NYSE Rule 104—a specialist cannot effect transactions for the account of an associated approved person unless such transactions are necessary to maintain fair and orderly markets;

(2) NYSE Rule 105—an approved person may trade in options overlying a specialty stock for hedging purposes only;

(3) NYSE Rule 104.13—the approved person's specialty stock transactions must be for investment purposes and must be effected in a stabilizing manner; the approved person's orders may not be executed ahead of agency orders received by the specialist;

(4) NYSE Rule 113.20—an approved person may not popularize (*e.g.*, solicit orders, issue buy/sell recommendations, etc.) a stock in which an associated specialist is registered;

(5) NYSE Rule 460—an approved person cannot engage in "business transactions" with a company in whose stock the specialist is registered.

B. Substance of Guidelines

The NYSE guidelines outline the minimum requirements that an approved person would be expected to demonstrate it has satisfied in order to achieve an organizational separation appropriate to its operations. The internal controls which the NYSE believes promote this separation include the following:

—Formal organizational separation should exist between the approved person and the associated specialist unit. The specialist member organization must function as an entirely freestanding, separate entity responsible for its own trading decisions, and may not function in any manner as a "downstairs" extension of an "upstairs" trading desk.

—Separate books, records and financial accounting must be maintained. The approved person should avoid commingling its funds or securities with funds or securities of the associated specialist member organization for any purpose other than as may be specifically approved by the NYSE.

—Applicable capital requirements must be met separately by both the approved person and specialist organization.

—The approved person may participate in general managerial oversight, such as fulfillment of profitability targets and personnel selection.

—The approved person should have no influence on particular specialist trading decisions.

—The specialist must accord confidential treatment to orders left on the specialist's book, information regarding trading positions, and information derived from margin and clearing arrangements.

—Trading information and information derived from clearing and margin financing arrangements of specialists' positions may be made available only to those employees actually performing clearing and margin financing activity and those persons in senior management positions at the approved person who are involved in exercising general managerial oversight over the specialist member organization. In general, this includes the approved person's chief executive officer, chief operational officer, chief financial officer, and senior officer responsible for managerial oversight of the associated member organization.

—An approved person must accord confidential treatment to information derived from business transactions between the approved person and the issuer of any specialty stock.

—Margin financing arrangements must be sufficiently flexible so as not to limit the ability of any specialist in the specialist member organization to meet market-making or other obligations under Exchange rules.

—No individual associated with the approved person may act as a Competitive Trader or Registered Competitive Market Maker in a specialty stock.

C. Implementation of Guidelines

The approved person seeking exemptive relief would be required to obtain prior written approval from the NYSE confirming that it had complied with the Exchange's guidelines in establishing its separate organizational structure and that it had established proper compliance and audit procedures to ensure the maintenance of the functional separation. If an approved person chooses not to develop internal controls and to submit them to the Exchange and obtain its approval, the approved person would remain subject to the present restrictions.

In addition to detailing internal controls, the written statement submitted to the Exchange by the approved person seeking the exemption and the specialist member organization with which such approved person is associated must also identify:

—Audit and compliance procedures to be adopted to ensure that internal controls are maintained;

—The individuals in senior management positions (and their titles/levels of responsibility) with supervisory responsibility over the specialist firm;

—The frequency with which information concerning the specialist member organization's trading activities and stock positions is made available to the approved person, and the format in which such information is made available;

—If any partner, director, officer or employee of the approved person intends to serve in any such capacity with the associated specialist member organization, or vice versa, the duties of the particular individual at both entities, and why it is necessary for such individual to be a partner,

director, officer or employee of both entities. Only if the dual affiliation is for overall management control purposes will this approval for service at both entities be granted.

Internal controls would include the following:

—The NYSE would not approve any joint accounts between a specialist member organization that is associated with an approved person entitled to the exemptions provided by proposed Rule 98, and any other specialist member organization unless and until such other specialist member organization, and such approved person, have agreed with the NYSE to comply with each of the guideline conditions as thought the approved person were associated with such other member organization.

—An approved person's proprietary orders that are executed as part of a "cross" transaction in the normal course of the approved person's block positioning activity may be handled by a broker affiliated with the approved person. The NYSE would require, however, that the approved person use an unaffiliated broker for its proprietary orders to minimize the possible appearance or perception that special treatment might be given to a broker affiliated with an approved person of a specialist member organization.

—Requests by an approved person for information about market conditions in a specialty stock, and all market "probes" in connection with an approved person's block trading activities in specialty stock, need not be made by an unaffiliated broker; rather, the rule allows a specialist to make available to a broker affiliated with an approved person only the sort of market information that it would make available in the normal course of its specializing activity to any other broker, and in the same manner that it would make information available to any other broker.

—An approved person would be permitted to be part of an underwriting syndicate or selling group, but not to act as a managing underwriter for a distribution of equity or convertible securities of an issuer in whose securities an associated specialist unit is registered. When the approved person is part of a distribution, the associated specialist unit must "give up the book" to another specialist unit, which shall act as a full time relief specialist for the period during which Rule 10b–6 under the Act [11] is applicable to the regular specialist unit.[12]

—If an approved person entitled to a Rule 98 exemption decides to popularize a security in which an associated specialist is registered, it must disclose that it is associated with a specialist who makes a market in the security, that at any given time the associated specialist may have an inventory position, either "long" or "short," in the security, and, as a result of the associated specialist's function as a market maker, such specialist may be on the opposite side of orders executed on the floor of the NYSE in the security.

—The NYSE would amend Rule 460 ("Specialists Participating in Contests") to enable an approved person entitled to an exemption from the rule to engage in business transactions with an issuer of a specialty stock, and to underwrite a specialty stock to the extent permitted in new Rule 460.20.

D. Surveillance and Oversight

To emphasize the NYSE's commitment to maintaining the integrity of its market under the functional regulation proposal, the Exchange's Board of Directors, in approving Rule 98, adopted a resolution stating that any breach of the Rule and the implementing Guidelines would be considered "an extremely serious matter." In any case brought by the Exchange staff alleging such a breach, the staff will be directed to seek as a penalty the de-registration of one or more of the specialist unit's most "profitable" stocks. If the Exchange Hearing Panel found for the staff but declined to impose such a penalty, the staff would be directed to appeal to the Exchange Board of Directors the sufficiency of whatever penalty the Hearing Panel did impose.

In its rule filing the NYSE also stressed that its current surveillance is more sophisticated than it was when the rules for which exemptive relief is being proposed were first adopted. The NYSE has developed substantial automated surveillance capability. In addition, NYSE is implementing an equity audit trail that it believes will permit it to accurately identify the parties to each trade. The NYSE asserts that its current surveillance capabilities augmented by the audit trail and member organizations' audit and compliance procedures, would provide sufficient means for detecting unusual trading activity by specialist member organizations and any approved persons associated with them.

IV. The Amex Proposal

A. Restrictions Affected

Amex is proposing to amend Rules 190 and 193 to exempt an approved person or member organization which is affiliated with a stock specialist or specialist unit from the following Amex restrictions:

(1) Amex Rule 170(e), prohibiting an affiliated upstairs firm from purchasing or selling any security, in which the specialist is registered, for any account in which such person or party has a direct or indirect interest;

(2) Amex Rule 175, prohibiting an affiliated upstairs firm from holding or granting any option in any security in which the specialist is registered;

(3) Amex Rule 950(k), extending certain of Rule 190's prohibitions to options specialists;

(4) Amex Rule 190(b), prohibiting an affiliated upstairs firm from accepting orders in specialty securities directly from the issuers, its insiders and certain designated institutions;

(5) Amex Rule 190, Commentary, prohibiting an affiliated upstairs firm from "popularizing" (*e.g.*, soliciting orders or issuing buy/sell recommendations) a security in which a specialist is registered;

(6) Amex Rule 190(a), prohibiting an affiliated upstairs firm from engaging in any business transactions with the issuer of a specialty security and its insiders.

B. Substance of Guidelines

Amex's proposed guidelines cover many of the same areas as the NYSE's guidelines. In brief, they would require the following:

—A separate and distinct organization between the affiliated upstairs firm and the specialist unit.

—Separate and distinct books, records and accounts.

—Separate satisfaction of all applicable capital requirements.

—Confidential treatment of the specialist's book.

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[11] 17 CFR 240.10b–6.

[12] Rule 10b–6 prohibits an underwriter and its affiliates, including an affiliated specialist unit, from bidding for or purchasing the security being distributed or any related security during a distribution. Rule 10b–6(a)(3)(xi) excepts from that prohibition bids or purchases by an underwriter of the security being distributed prior to the applicable cooling-off period specified by the Rule. Thus, the underwriter and its affiliated specialist unit could not bid for or purchase the security being distributed or a related security as of the commencement of the cooling-off period until the completion of the distribution.

—No influence or control over the other's conduct with respect to particular securities.

Amex outlines the "influence or control" concept in detail, specifying that—

—Any general managerial oversight must not conflict with, or compromise in any way, the specialist's market-making responsibilities pursuant to the Amex rules;

—An affiliated upstairs firm and specialist organization must prohibit the use of material, non-public corporate or market information to influence particular trading decisions of an associated specialist or the misuse of specialist market information to influence particular day to day trading decisions of trading areas of the upstairs affiliated firm;

—Knowledge of pending transactions or the upstairs firm's recommendations should not be taken advantage of.

In addition, Amex would require that, if the upstairs affiliated firm is a participant in any capacity in an underwriting of a specialty issuer's equity securities, then the specialist unit must give up the book in the security being distributed to another specialist unit during the period of time required by Commission Rule 10b–6.[13]

C. Implementation of Guidelines

Under the Amex's guidelines, an affiliated upstairs firm must obtain prior Exchange approval of its procedures to qualify for the exemptions from the restrictions discussed above. Firms should develop guidelines to restrict the flow of material non-public information as appropriate to its operations. An upstairs firm affiliated with a specialist unit must outline in a written statement to Amex:

(1) The matter in which it intends to satisfy each of the guideline conditions, and the compliance and audit procedures it proposes to implement to ensure that the functional separation is maintained;

(2) Designation and identification of the individual within the affiliated upstairs firm responsible for the maintenance and surveillance of such procedures;

(3) The use of an unaffiliated broker for orders in a specialty security for the proprietary account of an affiliated upstairs firm of a specialist organization (other than orders left with the specialist for execution or orders to be executed in a cross-transaction to facilitate executions of customer orders in the normal course of block positioning activity);[14]

(4) Appropriate disclosures by a retail firm popularizing a specialty security that an associated specialist is making a market in the stock, may have a position in the stock, and may be on the opposite side of public orders executed on the Amex floor in the stock; in addition, the firm must notify the Exchange immediately after the issuance of a research report or written recommendation;

(5) Procedures under which the firm will take appropriate remedial action against any person violating these Guidelines or the firm's internal compliance and audit procedures;

(6) Procedures to ensure that information with respect to clearing activities will not be used to compromise the firm's Chinese Wall if an affiliated upstairs firm intends to clear proprietary trades of the specialist organization;[15]

(7) That an upstairs affiliated firm will file with the Exchange such information and reports as Amex may periodically require relating to its transactions in a specialty security;

(8) That the upstairs firm and its associated specialist organization each recognizes that Amex may take appropriate remedial action, including, without limitation, the reallocation of specialty securities and/or the revocation of the exemption provided in Rule 193, in the event of a violation; and

(9) That no individual associated with the affiliated upstairs firm may act as a Competitive Trader or Registered Equity Market Maker in a specialty stock.

D. Surveillance and Oversight

Amex states that, under the proposal, it would focus surveillance and oversight efforts in three areas:

(1) In assessing the applications of firms seeking the exemption, Amex would study not only whether the procedures meet Amex's guidelines but also the level of capability of the firm's compliance personnel and the firm's past record for meeting Amex's overall compliance record.

(2) Amex's existing market surveillance would be strengthened upon the forthcoming completion of its equity audit trail. The audit trail will enable Amex to reconstruct the market more rapidly and determine whether a specialist's trading activities are consistent with its market-making responsibilities.

(3) Amex intends to develp new surveillance and inspection programs which would entail additional reports of upstairs research and trading activities for firms exempt under Rule 193.

More specifically, Amex, in its discussion of exemptions,[16] suggests augmenting its surveillance for possible breaches of the Chinese Wall as follows:

(1) *Proprietary Trading*—Rule 170(e)—Amex would require daily reports of all proprietary trades in specialty securities directly from the upstairs firm, which it would then compare to specialist positions and market-making performance;

(2) *Business Transactions with Issuer*—Rule 190(a)—Amex's Securities Division, which monitors the business activities of Amex-listed companies, would direct relevant information to the Trading Analysis Division, which could then conduct reviews to determine whether the specialist traded while in possession of material non-public information, or was influenced by knowledge of business dealings by the affiliated upstairs firm, in carrying out his market-making responsibilities;

(3) *Overlying Options*—Rule 175(a)—Amex intends to institute a special surveillance routine for abusive trading by receiving and analyzing daily options trading reports and comparing them to underlying stock trading by the parent firm and the specialist.

IV. Request for Comment

A. Background

Traditionally, the trading activity of a primary exchange specialist has been subject to special scrutiny and regulation because, in view of the

[1] *See* note[13], *supra*.

[14] The specialist organization may make available to a broker affiliated with it only the type of market information that it would make available in the normal course of its specializing activity to any other broker and only in the same manner that it would make information available to any other broker. The specialist organization may only make such information available to a broker affiliated with the upstairs firm pursuant to a request by the broker for such information. It may not provide such broker with such information on its own initiative.

[15] Only firms that currently clear third party trades will be permitted to self-clear for the specialist organization. These procedures, at a minimum, must be the same as those presently used by the firms to clear trades of third parties.

[16] Both Amex and the NYSE would request a no-action position, or an interpretation from the Commission, that Rule 10a–1 under the Act, 17 CFR 240.10a–1, the short sale rule, would not require that an approved person and associated specialist unit "net" their respective stock positions to determine whether the entities were net long or net short, in the aggregate, for purposes of the rule. According to Amex, a firm seeking to abide by the exemption offered in proposed Rule 193 could not comply with the provisions of Rule 10a–1 and still preserve the integrity of a Chinese Wall because the Wall requires that there be no sharing of information regarding the specialty security positions of the specialist and its affiliated upstairs firm.

specialist's pivotal position in the trading process, the specialist's role provided unique opportunities for abuse.[17] Specifically, a specialist is required, in part, to trade, insofar as practicable, to maintain a fair and orderly market, and is precluded from trading, insofar as practicable, otherwise than as is reasonably necessary to maintain such a market.[18] Such restrictions are designed, in part, to minimize the potential that a specialist might abuse: (1) Its time and place advantage (that is, the advantages that accrue from the unique access a primary market specialist has to trading activity, trading crowd interest and orders on its limit order book), (2) a specialist's ability to influence, at least for short periods of time, the direction of a security's price, (3) the inherent conflict of interest created when a specialist acts both as dealer and agent, and (4) a specialist's ability to provide one customer or group of customers preferential treatment over another customer or group of customers.[19]

B. Regulatory Approaches

Implicitly at least, the traditional view has been that a specialist's dominant market position was justified by its contribution to market liquidity and orderliness. With regard to this view, it has been felt that the potential for abuse of the position could be ameliorated, if not eliminated, through regulation and surveillance (*e.g.*, affirmative and negative obligations).[20] The instant proposals, to some extent, represent a break from this model. These proposals would provide a framework whereby retail firm capital could be made available for the specialist's market-making role. In this light, these proposals appear to be a positive step toward increasing the liquidity of the nation's securities markets.

At the same time, however, combining the unique position of a primary market specialist[21] with the retail distribution networks and investment banking relationships of a large retail firm, significantly heighten the potential for abuse. These proposals, therefore, are critically dependent on the creation of effective internal controls, so-called Chinese Walls, to eliminate such potential.[22] Moreover, not only must effective controls be in place, these controls must be of such a nature that they can be adequately monitored.

Accordingly, in responding to the specific questions detailed below, the Commission specifically requests that commentators address whether: (1) The procedures for establishing the Chinese Wall are adequate; (2) the procedure for maintaining the Wall are adequate; [23] (3) the procedures for auditing the maintenance of the wall are adequate; and (4) particular restrictions presently applicable to an approved person should continue to apply to the approved person notwithstanding the creation of the Wall. With respect to the last issue, the Commission notes that, in the past, even when a Wall has been constructed, often certain types of information have been deemed to be so fraught with the potential for abuse that an absolute prohibition on certain types of activities should continue to be applied.[24] Turning to the specific proposals, areas that the Commission requests commentators to address include the use of an unaffiliated broker by an affiliated retail firm, the form of internal surveillance firms should develop to justify the concept, and the type of relationship an approved person and associated specialist unit should have when the approved person is engaged in underwriting activities in stock in which the associated specialist is registered. In addressing the issues raised by the proposals, please quantify your answers to the degree possible and provide appropriate data.

C. Potential Benefits of the Proposals

Several NYSE members and member organizations who express support for the proposed rule change believe that the NYSE's proposal would strengthen the specialist system by attracting new sources of capital which would improve the liquidity and quality of exchange markets. For instance, in its letter on NYSE proposed Rule 98, Prudential-Bache Securities wrote that:

> The limited capitalization of some specialists has apparently dampened their enthusiasm to commit the funds often necessary to satisfy the demands of the institutional investor. Possible new Rule 98 and the guidelines will encourage, and we expect successfully, the entrance of major

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[17] For an overview and history of the regulation of specialists, see N. Wolfson, R. Phillips & T. Russo *Regulation of Brokers, Dealers and Securities Markets* 11–1 to 11–46 (1977) ("Wolfson").

[18] *See* Rule 11b–1 under the Act, 17 CFR 240.11b–1 (1984)

[19] *See, e.g., Special Study, supra* note[8], at 65–66 ("Although the [Pecora] investigation centered on . . . the activities of specialists as participants in the pools and other manipulative activities . . ., it is apparent from the face of section 11 [of the Act] that Congress was also concerned with the specialist's trading advantages and the conflicts of interest inherent in the mingled broker-dealer functions.")

[20] Another approach is revised stock allocation and reallocation procedures. *See, e.g.*, NYSE Rule 103A. Under this system, a specialist's performance is evaluated on a quarterly basis (both through statistical methods and questionnaires) with a view toward determining how, if at all, a specialist's performance may be improved. In effect, the evaluators are designed to serve as a surrogate for the marketplace discipline of reduced order flow in the event of poor performance.

[21] The Commission recognizes that there is a continuing debate regarding the degree to which specialists today retain significant time and place advantages over other market participants. [Cf. letter from James Buck, Secretary, NYSE, to George Fitzsimmons, Secretary, SEC, dated March 20, 1984.] The point here is that these proposals would, in effect, combine specialist firms with upstairs retail trading firms—the very trading firms which are supposed to counterbalance the specialists' time and place advantages.

[22] In this regard, the Commission notes that the so-called Chinese Wall solution to the problem of multi-service firms, with conflicting duties, acquiring confidential information has been used in a variety of circumstances. *See, e.g., Fund of Funds, Ltd. v. Arthur Anderson & Co.*, 567 F.2d 225 (2d Cir 1977) (accounting firms); Harzel & Colling, The Chinese Wall Revisited, 6 *Corp. L. Rev.* 116 (1983) (banks); and Comment, The Chinese Wall Defense to Law-Firm Disqualification, 128 *U. Penn. L. Rev* 677 (1980) (law firms). Indeed, the Commission has endorsed the use of Chinese Walls in limited circumstances. *See, e.g.*, Rule 14e–3(b) under the Act, 17 CFR 240.14e–3 (1984); and *In the Matters of Merrill Lynch, Pierce, Fenner & Smith, Inc.*, Securities Exchange Act Release No. 8459 (1967–69 Transf. Binder) *Fed. Sec. L. Rep.* (CCH) ¶ 77,629 at 83,349–50 (Nov. 25, 1968). (SEC entered into settlement with Merrill Lynch whereby Merrill Lynch adopted policy procedures prohibiting the disclosure of inside information obtained by the firm's underwriting department to anyone other than senior Merrill Lynch executives and employees working on the particular underwriting.)

[23] For example, one commentator has noted that many informal ways in which a Wall can be breached, *e.g.*, shop talk at a firm-wide gathering, particular transactions where the temptation to profit is too great to resist, and having the same person subject to the rule responsible for determining whether the information is privileged. *See* Comment, *supra*, note 22, at 707–708.

[24] For example, in promulgating Rule 14e–3, the Commission endorsed the continued use of so-called "watch lists" and "restricted lists" as well as "the practice that a broker-dealer does not trade for its own account . . . when the broker-dealer possesses material, nonpublic information relating to a tender offer." Securities Exchange Act Release No. 17120 (Oct. 14, 1980), 45 FR 60410, 60416 n.46. Similarly, one set of commentators believes a firm in possession of material, non-public information should not be allowed to invest for the firm's own account. They argued, in part, that:

> The possibility of self-interest abuse mandates that the Chinese Wall approval not be extended to permit a firm with departmentally isolated information to invest for its own account through a department that does not have the information [W]here self-interest is intense, abuses are so likely as to warrant a proscription that is absolute.

Lipton & Mazur, The Chinese Wall Solution to the Conflict Problems of Securities Firms, 50 *N.Y.U. L Rev.* 459, 501 (1975). *See* Varn, The Multi-Service Securities Firm and the Chinese Wall: A New Look in the Light of the Federal Securities Code, 63 *Neb L. Rev.* 197 (1984). With respect to Messrs. Lipton and Mazur's similar suggestion that a firm refrain from recommending a security while in possession of material, non-public information, *compare* Chazen, Reinforcing the Chinese Wall: A Response, 51 *N.Y.U. L. REV.* 552 (1976) *and* Wolfson, Investment Banking and Broker-Dealers, *in* Twentieth Century Fund Report, *Abuse on Wall Street: Conflicts of Interest in the Securities Markets* 405–13 (1980), *with* Lipton & Mazur, The Chinese Wall: A Reply to Chazen, 51 *N.Y.U. L. Rev.* 579 (1976).

well-capitalized firms into the specialist business.[25]

The NYSE also contends that its proposal would both strengthen the capital base of the exchange trading system and stimulate competition among market makers on the Exchange. In this regard, commentators may wish to focus on the following concerns.

1. Do the NYSE or Amex suffer from a liquidity problem? Would the NYSE or Amex be adversely affected if the rule amendments suggested by their proposals were not adopted?

2. Will easing the restrictions imposed on approved persons affiliated with specialist units significantly benefit the current specialist system by providing additional capital from large retail broker-dealers? Will those firms commit substantial amounts of additional capital to market-making on the floor of the exchange? Should specialists particiapte more actively in block trading? What has been the quality of markets provided by specialists affiliated with large retail firms on regional exchanges? Please quantify your answers to the degree possible.

3. Will easing these restrictions stimulate and enhance competition in the specialist community and lead to a higher level of overall market quality on the exchanges? On the other hand, will the addition of specialists affiliated with retail firms increase the effort needed to receive sufficiently high floor broker ratings to ensure allocation of desirable new issues? So long as each specialist retains the preponderance of order flow in most of this specialty securities, is it clear that the introduction of new potential owners of specialist units will increase competition or affect market quality?

4. There has been a historical contraction in the number of specialist units on the exchange floors. In 1964, for example, 360 NYSE members were registered as specialists and organized into 110 specialist units. Currently, the NYSE has 416 specialists organized into 57 specialist units. What effect will the proposed rule change have upon this historical contraction and upon competition among exchange markets?

5. Assuming the capital adequacy of the specialist units is a problem, are there practical alternative approaches to resolving this problem without raising the regulatory concerns associated with retail firms acting as specialists? For example, is the continued combining of specialist units to increase capital in recent years, an approach that can provide for more effective utilization of capital, and hence improve market quality, without raising the concerns of the Amex and NYSE proposals?

D. Internal Controls

The key to avoiding the concerns raised by commentators about the Amex and NYSE proposals is the establishment of an effective organizational separation between the upstairs firm and associated specialist unit. Without an effective Chinese Wall, there would be significant opportunities for manipulation, conflicts of interest, possible unfair competitive advantages and other abuses. Under the exchange proposals, the upstairs firms and the associated specialist unit are to maintain separate organizational structures as well as separate books, records and financial accounting to restrict the two entities' access to each other. As discussed above, the exchanges' guidelines also provide for internal auditing systems and exchange surveillance procedures to monitor for possible breaches of the Chinese Wall.

6. Is this Chinese Wall approach, as laid out by the Amex and NYSE, a workable arrangement whereby potential conflicts arising between specialist units associated with member firms could be effectively avoided? Is it possible to audit compliance with such a Wall effectively? Would such an arrangement effectively prevent the upstairs firm and associated specialist unit from influencing one another's conduct regarding particular securities or the flow of otherwise privileged information between the two firms? [26] Would a Chinese Wall established on a permanent basis likely be less effective and more permeable than one established on a short-term basis (*e.g.*, a Wall established only for the duration of a particular underwriting)?

7. Under the proposed Amex and NYSE rule changes, an approved person affiliated with a specialist unit would be exempt from the following trading prohibitions: (1) The trading of specialty securities (Amex Rule 170(e); NYSE Rule 104, 104.13; (2) trading options on specialty securities (Amex Rule 190(b), NYSE Rules 105); (3) accepting orders in specialty securities from the issuer, its insiders and institutions (Amex Rule 190(b); NYSE Rules 104, 113) (4) performing advisory and research services with respect to the specialty securities (Amex Rule 190, Commentary; NYSE Rule 113.20); (5) "popularizing" specialty securities (Amex Rule 190, Commentary; NYSE Rules 113.20) and (6) engaging in business transactions with a company in whose stock and specialist is registered (Amex Rule 190(a); NYSE Rule 460). Should all of these restrictions be modified or could one or more of these restrictions be retained in some form without detracting from the overall effectiveness of the proposed system of functional regulation?

For example, the Amex and NYSE would require that popularization would have to be accompanied by clear disclosure of the relationship between the upstairs and associated specialist firms. Outside of the investment banking context (discusses below), is it necessary that the upstairs firm be able to have other business relationships with the issuers of specialty securities? Could a materiality test be used to reduce the risks of possible abuse from any business dealings? Similarly, how serious a hardship would be imposed on affiliated upstairs firms by preventing them from accepting orders in specialty securities from such issuers and their insiders?

8. Under proposed guidelines, an approved persons must accord confidential treatment to information derived from business transactions between the approved person and the issuer of any specialty stock. What other types of business transactions should be accorded confidential treatment?

Some commentators have suggested that the use of an unaffiliated broker by the upstairs firm provides at most cosmetic protection, because an associated specialist would quickly become aware of the unaffiliated broker used by its upstairs affiliate. Is the use by the affilated upstairs firm of an unaffilated broker an effective device for dealing with orders in a speciality stock for the proprietary account of the firm? Would allowing the sue of an affiliated broker with an audit trail and heightened surveillance be better? [27] Would the use of an affiliated broker, in fact, assist the "crowd" in detecting any improper tradihg arrangements in a specialty stock for the firm's proprietary

[25] Letter from Leland B. Paton, Executive Vice President, Prudential Bache Securities, to Donald J. Solodar, Senior Vice President, NYSE, dated August 31, 1984.

[26] For example, in its comment letter on proposed NYSE Rule 98, Merrill Lynch & Co., Inc., observed, "in short, a specialist's activities are conducted within a glass house, making it unlikely that any abusive practice would be tolerated or permitted." Letter from Robert P. Rittereiser, Executive Vice President, Merrill Lynch & Co., Inc., to Donald J. Solodar, Senior Vice President, NYSE, dated October 19, 1984.

[27] This is not to say that the firm might not be otherwise required to use an unaffiliated broker. *See* section 11(a)(1) of the Act, 15 U.S.C. 78k(a)(1); Rules 11a–1, 15 CFR 11a–1; 11(a)2–2(T) 15 CFR 11(a) 2–2(T) under the Act.

account? Requests by an approved person for information about market conditions in a specialty stock and all market probes in connection with an approved person's block trading activities in specialty stock, however, will be made by affilated brokers. Is this appropriate?

10. Both exchanges' proposals would allow an affiliated upstairs firm to clear properietary trades of the specialist organization. This would appear to create a significant risk for breaches of the Chinese Wall, because it would give access to important financial and transactional information on a daily and even intra-day basis about both the upstairs and specialist organizaitons to a group of employees below the senior management level. That clearing information could serve as a conduit for breaches of the Chinese Wall by either entity. Should an upstairs firim be allowed to clear for an associated specialist unit? What are the costs or other consequences of not permitting such clearing arrangements? Please quantity your answers to the degree possible. Are there additional procedures which would help ensure that clearing information would not be used to compromise the firm's Chinese Wall?

11. One of the underlying purposes of the organizational separation of a member firm and an associated specialist unit is to prevent privileged information from flowing between the two entities. What information should be viewed as privileged in this context? What type of information legitimately should be allowed to flow between an upstairs firm and an associated specialist unit? What type of information would result in a trading advantage to the specialist unit or affiliated upstairs firm?

12. With regard to privileged information, Amex and NYSE draw a line based on an "influence or control" concept, and contrast general managerial oversight activities with day to day trading decisions, and allow only the former.[28] Is the distinction between "general managerial oversight" and "day to day trading" decisions sufficiently clear to be enforceable?[29] Are the other protections used to buttress the informational separation (*e.g.*, the limitation to identified senior management of any information exchange) sufficient even if it is not possible to draw a clear line between general oversight and particular decisions? Should the senior officer responsible for managerial oversight of the associated specialist be restricted in his dealings with the firm's trading and investment banking activities?

13. Applicant firms must specify "internal audit and compliance" procedures as part of the Exchange's qualification process. What forms of internal surveillance should firms develop to justify reliance on this concept? Given the size and complexity of some integrated firms, what elements of information should be captured and what sorts of abuses should be the focus of the internal surveillance programs? How can the exchanges and the Commission monitor the effectiveness of such programs (*e.g.*, routine examinations or periodic inspections)?

14. Under the NYSE's rule proposal, in any case brought by the Exchange staff alleging a serious breach of Rule 98 or the implementing guidelines adopted thereunder by an approved person or its associated specialist, the staff will be directed to seek as a penalty the de-registration of one or more of the specialist unit's most "profitable" stocks. Would such a sanction be too severe a sanction in some instances? Will it provide an adequate incentive to ensure that the Wall is maintained?

15. Should any of the NYSE's unique guidelines be factored into the Amex proposal or vice versa?

E. Unfair Competitive Advantages

16. In easing the restriction imposed on member firms associated with specialist units, some commentators voiced concerns that upstairs firms with associated specialists would have a competitive advantage over other upstairs firms. It was felt that even if such upstairs firms. It was felt tht even if such upstairs firms were not actually able to influence their specialist to provided the institution a better execution, or utilize information from the specialist in timing the trade or otherwise achieve an optimal execution, there would be a perception reinforced by tacit marketing efforts of upstairs firm, that it could provide such superior executions. For instance, one commentator on proposed NYSE Rule 98 argued that:

> If such a system were to become prevalent, it would occur to me that there would be a major proclivity on the part of institution to direct their orders toward those firms that own the specialist books in the stocks that they were interested in. What will this potentially do to institutional commissions, pressures for discounts or premium bids and other gimmickry? [30]

In contrast, the NYSE argues that no such proclivity would result if the guidelines are adhered to, as it believes will be the case. As a practical matter, would the Amex and NYSE's proposal eliminate any advantage, real or perceived, that an approved person might have in attracting institutional order flow?

F. Investment Banking

17. A significant difference between the NYSE and Amex proposals relates to restrictions on investment banking activities. Amex, for instance, would allow an upstairs firm to participate in an underwriting in any capacity, but the NYSE would only permit an approval person to act as a member of an underwriting syndicate or selling group but not as a managing-underwriter for a distribution of equity or convertible securities of an issuer in whose securities an associated specialist unit is registered.[31] The NYSE believes such a

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[28] The NYSE filing states, at 22, "The Exchange intends the term 'particular trading decisions' of a specialist to mean the specialist's trading decisions made at the opening and at the close, as well as intra day, moment-to-moment trading decisions made by a specialist in the discharge of his market making responsibilities. The Exchange does not intend to preclude after-the-fact review of specialist trading activity as part of the managerial oversight of the specialist member organization conducted by the approved person's senior management.

[29] For example, it would appear that information about general trading strategies being pursued by one portion of the firm could be utilized profitably by the other even though it did not involve day-to day or particular trading decisions. Similarly, it would appear that certain financial decisions (*e.g.*, a decision to reduce the risk exposure of a bullish specialist with aggressive risk positions) also could be used profitably by the upstairs firms. Finally, information that either the firm or the specialist had acquired an extremely large position and therefore was at unsually great risk might cause increased pressures on the Wall because of normal reactions of senior management to employ the firm's retail network (or the specialist's market making activity) to help the specialist (or the firm) out.

[30] Letter from Frederick A. Klingenstein, Chairman of the Board Wertheim & Co. Inc., to Donald J. Solodar, Senior Vice President, NYSE, dated August 6, 1984. In this regard, the Commission notes that when it addressed a similar issue in connection with potential amendments to Rule 113 it stated: [I]f it appeared that institutional fiduciaries were under undue pressure to deal directly with market makers the Commission would take prompt action to investigate the circumstances to ensure that institutional managers were not inhibited in exercising their judgement. . . . However, the possibility that the duties of institutional managers may require clarification in the manner set forth above in no event should be permitted to deter a national resolution of the issues raised by Rule 113 and 190."

SEC, Policy Statement on the Structure of a Central Market System (March 29, 1973) as reprinted in [1973] *Sec. Reg. & Rep.* (BNA) No. 196 at D–10 (April 4, 1973). *See also*, Subcommittee on Securities of the Senate Comm. on Banking, Housing & Urban Affs., Securities Industry Study 93rd Congr., 1st Sess. at 119

[31] Under both the Amex and NYSE proposals, an approved person who participates in an underwriting would be required to "give up the book" to another specialist unit which would act as

Continued

procedure is appropriate because a managing underwriter has greater and more diverse contact with the issuer and a greater financial stake in the successful outcome of the distribution than does a syndicate or selling group member. The restriction against acting as a lead underwriter is an accommodation to those investment bankers who are concerned that diversified firms with specialist affiliates could enjoy a competitive advantage in being selective by issuers of specialty securities as lead underwriters.

What type of relationship should an approved person and associated specialist unit have when the approved person is engaged in underwriting activities in stock in which the associated specialist unit is registered? In NYSE's distinction between managing underwriters and participants necessary or appropriate? Is "giving up the book" on a regular basis feasible in the primary market, especially in connection with shelf offerings? If so, is the fact that the specialist must give up the book sufficient to mitigate any perceived competitive advantages the affiliated upstairs firm may have in competing to be managing underwriter?

G. Trading Restrictions

18. Both the Amex and NYSE request a no-action position or interpretation from the Commission, that Rule 10a–1 under the Act,[32] the short sales rule, would not require an approved person and an associated specialist unit to "net" their respective stock positions to determine whether the two positions were, in the aggregate, net long or net short for purposes of Rule 10a–1. Is such a clarification appropriate? Is similar clarification required with respect to a determination of the positions of an approved person and an associated specialist unit in the context of Rule 10b–4[33] (short tendering of securities) or other rules?

H. Equal Regulation

19. The NYSE believes that the current disparity in regulation between primary and regional exchanges has the effect of encouraging diversified firms that desire to enter the specialist business, without disrupting their other lines of business, to become specialists on a regional exchange rather than on the NYSE. In the NYSE's view this imposes a two-fold burden on competition: as between the NYSE and other market centers, and as between existing specialist member organizations on the NYSE and diversified firms that desire to enter the specialist business on the NYSE market. What have been the effects of the increased number of specialists with retail firms on regional exchanges? Do those firms route all or most of their order flow to the affiliated exchange? If the NYSE and Amex proposals are not adopted, should the regional exchanges adopt restrictions similar to those currently in place on the NYSE amd Amex? If the NYSE and Amex proposals are adopted, should the regional exchanges adopt similar internal control requirements? In the alternative, should such controls only be required for regional exchange specialists associated with a retail firm achieving a certain volume of trading, *e.g.*, 25% of the market?[34]

Dated: September 11, 1985.
By the Commission.
John Wheeler,
Secretary.
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a full-time relief specialist for the period during which Rule 10b-6 is applicable to the regular specialist unit.

[32] 17 CFR 240.10a–1.

[33] 17 CFR 240.10b–4.

[34] Traditionally, the Commission has not required regional exchange specialists to operate under the same regulatory regime as primary market specialists because the limited trading volume attributable to such specialists coupled with their dependence on dual trading (*i.e.*, trading stocks otherwise listed on a primary exchange) reduced their potential market impact. *See, e.g.*, Securities Exchange Act Release No. 7465 (Nov. 23, 1964), at 3; *Special Study, supra* note [8], at 167.

[1] 12 CFR 220.8(a)(3)(ii) (1984).

[Release No. 22393; File No. Phlx–85–18]

Self-regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Partially Approving Proposed Rule Change

The Philadelphia Stock Exchange, Inc. submitted on May 28, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, a portion of which would permit the use of cash or cash equivalents to collateralize escrow receipts or letters of guarantee issued to cover short put positions in foreign currency options. Under existing Phlx rules and the rules of the other options exchanges, cash and cash equivalents can be used to cover short put positions in individual equity options and index options. Under current Phlx rules, however, only cash can be used to cover short put positions in foreign currency options. Under the proposal, cash equivalents, as defined in § 220.8(a)(3)(ii) of Regulation T,[1] also would be permitted to be used as collateral to cover short put options positions in foreign currencies.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22258, July 19, 1985) and by publication in the **Federal Register** (50 FR 30553). No comments were received on this portion of the proposed rule change.

The Commission finds that the portion of Phlx's rule change that would permit the use of cash equivalents, in addition to cash, in lieu of margin, to cover short put options positions in foreign currencies, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to Phlx and, in particular, the requirements of section 6 and the rules and the regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the portion of Phlx's proposed rule change discussed above, hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 9, 1985.
John Wheeler,
Secretary.
[FR Doc. 85–22255 Filed 9–17–85; 8:45 am]
BILLING CODE 8010–01–M

[Release No. IC–14714; File No. 812–6088]

Application and Opportunity for Hearing; Variable Insurance Products Fund (Formerly Fidelity Cash Reserves II) and Certain Life Insurance Companies and Variable Life Insurance Separate Accounts Investing Therein

September 11, 1985.

Notice is hereby given that Variable Insurance Products Fund ("Fund"), 82 Devonshire Street, Boston, Massachusetts 02109, and certain life insurance companies and variable life insurance separate accounts investing therein (together, "Applicants), filed an application on April 29, 1985, and an amendment thereto on August 23, 1985, for an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act"), exempting Applicants from the provisions of sections 9(a), 13(a), 15(a), and 15(b) of the Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Fund to be sold to and held by variable annuity and variable life insurance separate accounts of both

affiliated and unaffiliated life insurance companies. All persons are referred to the application on file with the Commission for a statement of the representations, which are summarized below, and to the Act and rules thereunder for a statement of the relevant provisions.

The Fund is a Massachusetts business trust registered under the Act as an open-end diversified management investment company. Fidelity Management and Research Company ("FMR") is the investment adviser for the Fund. Applicants state that the Fund currently serves as the underlying investment medium for variable annuity contracts issued by Fidelity Variable Annuity Account, a separate account of Pacific Fidelity Life Insurance Company. The Fund proposes to offer its shares to other separate accounts which issue either variable annuity contracts, scheduled premium variable life insurance contracts, or flexible premium variable life insurance contracts (together, "variable life"). These separate accounts will be separate accounts of either affiliated or unaffiliated insurance companies ("Participating Insurance Companies"). (The use of a common management company as the investment medium of both variable annuities and variable life insurance is referred to herein as "mixed funding." The use of a common management company as the investment medium for separate accounts of unaffiliated insurance companies is referred to herein as "shared funding.")

Rules 6e–2 and 6–3(T) under the Act provide certain exemptions from the Act in order to permit insurance company separate accounts to issue variable life insurance. Rule 6e–2(b)(15), however, precludes mixed and shared funding, and Rule 6e–3(T)(b)(15) precludes shared funding. Applicants propose that the requested relief extend to a class consisting of life insurers and variable life separate accounts investing in the Fund (and principal underwriters and depositors of such separate Accounts) which would otherwise be precluded from investing in the Fund by virtue of the Fund offering its shares to variable annuity separate accounts or unaffiliated variable life separate accounts.

Applicants assert that granting the request for relief to do mixed and shared funding will benefit variable contractowners by: (1) Eliminating a significant portion of the costs of establishing and administering separate funds; (2) allowing for the development of larger pools of assets resulting in greater cost efficiencies, diversification, and investment flexibility; (3) making the addition of new portfolios more feasible, thus, providing contract-owners with additional investment alternatives; and (4) encouraging more insurance companies to offer variable contracts, which should result in increased competition and lower contract charges. Applicants state that the Fund will not be managed to favor or disfavor any particular insurer or type of insurance product.

1. Disqualification

Applicants request relief from section 9(a) and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) to the extent necessary to permit mixed and shared funding; *i.e.*, Applicants propose that the relief granted by paragraphs (b)(15) of Rule 6e–2 and Rule 6e–3(T) from section 9(a) be extended to a class of insurance companies and variable life separate accounts which may be used to Fund as an investment medium to fund variable life insurance contracts, subject to the conditions regarding conflicts set out in the application and summarized *infra*. In support of this request for relief, Applicants assert that the same policies that led the Commission to limit the provisions of Section 9(a) to those employees of the insurance company engaged in managing the separate account are applicable to insurance companies and their separate accounts that are funded by a fund offering mixed and shared funding. Thus, Applicants argue that it is unnecessary to apply the provisions of section 9(a) to the many employees of the insurance companies whose separate accounts may utilize the Fund as a funding medium for variable life insurance contracts. Moreover, Applicants submit that applying the requirements of section 9(a) in such cases would increase the costs of monitoring for compliance with that section, which would reduce the net rates by contractowners.

2. Voting

Applicants request relief from sections 13(a), 15(a) and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit mixed and shared funding; *i.e.*, Applicants propose that the relief granted by paragraphs (b)(15) of Rules 6e–2 and 6e–3(T) from sections 13(a), 15(a), and 15(b) be extended to a class of insurance companies and variable life separate accounts which may use the Fund as an investment medium to fund variable life contracts, subject to the conditions regarding conflicts set out in the application and summarized *infra*.

In support of this request for relief, Applicants state that all variable annuity and variable life contractowners will be provided voting rights with respect to Fund shares attributable for their contracts inasmuch as all sponsoring insurance companies will vote these shares in accordance with contractowner instructions. Because paragraphs (b)(15) of both Rule 6e–2 and Rule 6e–3(T) permit the insurance company to disregard these voting instructions in certain limited circumstances, Applicants acknowledge that this may cause an irreconcilable conflict to develop among the separate accounts. Applicants propose to resolve these potential conflicts through undertakings it proposes as conditions to receipt of exemptive relief set out *infra*. Thus, according to Applicants, if a particular insurance company's disregard of voting instructions conflicted with a majority of contractowners' voting instuctions, or precluded a majority vote, the insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund.

Applicants state that this requirement (which also encompasses the situation where a particular state insurance regulator's decision conflicts with the majority of other state regulators) will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to participation in the Fund.

3. Conditions

Applicants state that they will comply with certain conditions set forth in the application, which are summarized as follows: (1) A majority of the board of trustees of the Fund ("board") shall consist of persons who are not "interested person" of the Fund, as defined by the Act. (2) The Fund will comply with all provisions of the Act requiring voting by shareholders, and in particular the Fund will either provide for annual meetings or comply with section 16(c) of the Act (although the Fund is not one of the trusts described in section 16(c) of the Act) as well as with section 16(a) and, if applicable, section 16(b). Further, the Fund will act in accordance with the Commission's interpretation of the requirements of section 16(a) with respect to periodic election of trustees and with whatever rules the Commission may promulgate with respect thereto. (3) The board will monitor the Fund for the existence of any material irreconcilable conflict between the interests of the contract-owners of all separate accounts investing in the Fund. An irreconcilable material conflict may arise for a variety of reasons, including: (a) An action by

any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any series are being managed; (e) a difference in voting instructions given by variable annuity contractowners and variable life insurance contractowners; or (f) a decision by an insurer to disregard the voting instructions of contractowners. (4) Participating Insurance Companies and FMR will report any potential or existing conflicts to the Fund's board. Participating Insurance Companies and FMR will be responsible for assisting the board in carrying out its responsibilities under these conditions, by providing the board with all information reasonably necessary for the board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the board whenever contractowner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the board will be a contractual obligation of all insurers investing in the Fund under their agreements governing participation in the Fund and such responsibilities will be carried out with a view only to the interests of the contract-owners. (5) If it is determined by a majority of the board of the Fund, or a majority of its disinterested trustees, that a material irreconcilable conflict exists, the relevant insurance companies shall, at their expense and to the extent reasonable practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, up to and including: (a). Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any series and reinvesting such assets in a different investment medium, including another series of the Fund, or submitting the questions whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contractowners, life insurance contractowners, or variable contractowners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contractowners the option of making such a change; and (b), establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contractowner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Fund, and these responsibilities will be carried out with a view only to the interests of contractowners. For purposes of this condition 5, a majority of the disinterested members of the board shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict, but in no event will the Fund or FMR be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this condition 5 to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of contractowners materially adversely affected by the irreconcilable material conflict. (6) The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly to all Participating Insurance Companies. (7) Participating Insurance Companies will provide pass-through voting privileges to all variable contractowners so long as the Commission continues to interpret the Act to require pass-through voting privileges for variable contractowners. Participating Insurance Companies shall be responsible for assuring that each of their separate accounts participating in the Fund calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in the Fund shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in the Fund. (8) The Fund will notify all Participating Insurance Companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. (9) All reports received by the board of potential or existing conflicts, and all board action with regard to determining the existence of a conflict, notifying Participating Insurance Companies of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request. (10) Finally, Applicants represent that if and to the extent that Rule 6e–2 and Rule 6e–3(T) are amended, or Rule 6e–3 is adopted, to provide exemptive relief from any provision of the Act or the rules promulgated thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested in this Application, then the Fund and/or the Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

Notice is further given that any interested person wishing to request a hearing on the application may, no later than October 7, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices or orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–22360 Filed 9–17–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC-14720; 812-6163]

Application for an Order Pursuant to Section 6(c) of the Act Exempting Applicant From the Provisions of Section 12(d)(3) of the Act; Shearson Lehman Special Portfolios

September 12, 1985.

Notice is hereby given that Shearson Lehman Special Portfolios ("Applicant"), Two World Trade Center, New York, New York 10048, registered under the Investment Company Act of 1940 ("Act") as a diversified, open-end investment company, filed an application on July 31, 1985, for an order pursuant to section 6(c) of the Act exempting Applicant from the provisions of section 12(d)(3) to permit the Tax-Exempt Income Portfolio ("Portfolio") of Applicant to acquire stand-by commitments for its portfolios securities from broker/dealers. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below and to the Act and rules thereunder for the relevant provisions.

As described in its registration statement, Applicant intends to offer investors a selection of three investment portfolios, one of which is the Portfolio. The investment objective of the Portfolio is the maximization of current income exempt from federal income taxes by investing primarily in intermediate and long-term municipal bonds and notes rated A, Baa or Ba by Moody's Investors Service or A, BBB or BB by Standard & Poor's Corporation ("Municipal Securities").

Applicant states that in order to permit the Portfolio to be as fully invested as practicable in Municipal Securities, while achieving a reasonable level of portfolio liquidity to permit Applicant to honor redemption orders received from shareholders in the Portfolio and to meet payment obligations for securities purchased on a when-issued basis, the Board of Trustees of Applicant proposes to adopt policies permitting Applicant to acquire stand-by commitments on behalf of the Portfolio. When Applicant purchases a Municipal Security for the Portfolio from a broker, dealer or other financial institution, it proposes to have the flexibility from time to time to acquire, in addition, the option to sell the same principal amount of such securities back to the seller or to a third party at a specified price ("stand-by commitments"). The investment policies adopted by Applicant relating to the Portfolio will permit the acquisition of stand-by commitments solely to facilitate liquidity of the Portfolio.

Applicant submits that it intends to acquire stand-by commitments for the Portfolio which will have the following features: (1) They will be in writing and will be physically held by Applicant's custodian; (2) they will be exercisable by Applicant on behalf of the Portfolio at any time prior to the maturity of the underlying securities; (3) they will be entered into only with brokers, dealers and banks which, in the opinion of the Portfolio's investment advisers, present minimal risks of default; (4) Applicant's right to exercise them will be unconditional and unqualified; (5) although they will not be transferable, municipal obligations purchased subject to a commitment could be sold to a third party at any time, even though the commitment is outstanding; and (6) their exercise price will be (i) with respect to Municipal Securities with remaining maturities of 60 days or less, (a) the Portfolio's acquisition cost of the Municipal Securities which are subject to a commitment (excluding any accrued interest which the Portfolio paid on their acquisition), less any amortized market premium or plus any amortized market or original issue discount during the period it owned the securities, plus (b) all interest accrued on the securities since the last interest payment date during the period the securities were owned by the Portfolio, and (ii) with respect to all other Municipal Securities, (a) the market value of the Municipal Securities which are subject to a commitment (excluding any accrued interest which the Portfolio paid on their acquisition), plus (b) all interest accrued on the securities since the last interest payment date during the period the securities were owned by the Portfolio. The Portfolio's ability to exercise a stand-by commitment will depend on the ability of the issuing institution to pay for the underlying securities at the time the stand-by ommitment is exercised. The Applicant's investment advisers intend to periodically evaluate the credit of institutions issuing stand-by commitments to the Portfolio.

According to the application, Applicant expects that stand-by commitments purchased on behalf of the Portfolio will generally be available without the payment of any direct or indirect consideration. Payment of consideration for stand-by commitments either separately in cash or by paying a higher price for portfolio securities acquired subject to commitments will be made if such payment is deemed necessary or advisable. As a matter of operating policy, the total amount "paid" in either manner for outstanding stand-by commitment held as assets of the Portfolio will not exceed ½ of 1% of the value of the Portfolio's total assets calculated immediately after any stand-by commitment is acquired.

Applicant submits that during the term of a stand-by commitment, it will be difficult to evaluate the likelihood that the commitment will be exercised or the potential benefit to the Portfolio should the commitment be exercised. In light of such uncertainties, the stand-by commitments will be valued at zero, regardless of whether any direct or indirect consideration is paid for the commitment. Where Applicant has paid for a stand-by commitment, that cost will be reflected as unrealized depreciation for the period during which the commitment is held in the Portfolio. Applicant states that the proposed acquisition of stand-by commitments will not affect the net asset value per share of the Portfolio for purposes of sales and redemption.

Applicant contends that the requested exemption is appropriate, is in the public interest and is consistent with the protection of investors. The acquisition of stand-by commitments will not impose new investment risks, but rather will improve the Portfolio's liquidity, ability to promptly meet redemptions, and to meet its payment obligations for securities purchased on a when-issued basis.

Notice is further given that any interested person wishing to request a hearing on the Application may, not later than October 7, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon the Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the Application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-22358 Filed 9-17-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22402; SR-NASDA-85-6]

Self-Regulary Organizations; National Association of Securities Dealers, Inc.; Order Approving Rule Change

September 12, 1985.

The National Association of Securities Dealers, Inc. ("NASD"), submitted on March 11, 1985, a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to amend the Venture Capital Restrictions ("Venture Capital Restrictions") of the Interpretation of the Board of Governors—Review of Corporate Financing ("Interpretation") pursuant to Article III, Section 1 of the NASD's Rules of Fair Practice.[1] The Venture Capital Restrictions prohibit members and certain of their control persons from selling shares that they beneficially own during an initial public offering of such securities and also establish one year holding period for those securities.

Under the proposed rule change, an underwriter may sell its own securities in a initial public offering and is not subject to a holding period if the price of an issue is established by a qualified independent underwriter.[2] In addition, the proposed rule change would provide a *de minimis* exception from the rule's application if the number of securities sold by the member in the offering does not exceed one percent of the securities offered. If an underwriter does not use a qualified independent underwriter to price its securities or if the *de minimis* exception is not available, the proposed rule would continue to prohibit an underwriter or its control persons from selling its shares during an offering but would reduce the post-offering holding period from one year to ninety days. The proposal also clarifies that the provision applies to immediate family members and sister subsidiaries of NASD members.[3]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Release No. 21861, March 18, 1985) and by publication in the **Federal Register** (50 FR 11777). No comments were received with respect to the proposed rule change.

The proposed rule change significantly reduces certain of the limitations contained in the NASD's Venture Capital Restrictions. Nevertheless, the Commission believes that the protections contained in the proposed rule change should be sufficient to deter conflicts of interest when broker-dealer acts as both an underwriter and selling shareholder. In addition, the *de minimis* exception appears to be set at a level that should not give rise to serious risks of abuse. The Commission also finds that the proposal's increased flexibility should facilitate venture capital and related financings without seriously increasing possible risks of abuse. Therefore, the proposed rule change furthers the goals of section 15A(b)(6) of the Act. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to 19(b)(2) of the Act, that proposed rule change SE–NASD–85–6, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: September 12, 1985.

[FR Doc. 85–22357 Filed 9–17–85; 8:45 am]

BILLING CODE 8010–01–M

[1] During the time that the Commission was reviewing the proposed rule change, the NASD filed two amendments. The first amendment makes certain technical amendments to the filing. *See* Amendment No. 1 to SR–NASD–85–6–(March 11, 1985). The second amendment makes an additional technical change to the proposed rule and also adds a footnote defining "immediate family member." *See* Amendment No. 2 to SR–NASD–85–6 (August 23, 1985).

[2] A "qualified independent underwriter" is defined in section 2(k) of Schedule E to Article VII, section 1(a)(4) of the NASD's By-Laws. This definition also specifies that such an underwriter must not beneficially own securities of the issuer, must participate in the preparation of the registration statement and the prospectus, and must exercise the usual standards of "due diligence."

[3] The present rule proposal evolved from the Policy of the Board of Governors on Venture Capital and Other Investments by Broker/Dealers Prior to Public Offerings ("Venture Capital Policy") under the interpretation. The Venture Capital Policy was adopted by the NASD in 1968 and governed venture capital investments in securities prior to the initial public offerings of such securities. The Venture Capital Policy established an eighteen month holding period for members who make venture capital investments and receive securities in return. In addition, the Venture Capital Policy barred without exception a member who sells such securities in a public offering from acting as an underwriter or participating in the distribution of that issue. In 1983, the Venture Capital Policy was rescinded and the current Venture Capital Restrictions were imposed. *See* Securities Exchange Act Release 19828 (May 23, 1983), 48 FR 28164.

[Release No. 34-22399; File No. SR-NASD-85-22]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD") submitted on July 31, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to amend the NASD's Certificate of Incorporation, which presently permits the NASD to transact business in the United States. The proposed rule change deletes the references to the United States thereby enabling the NASD to transact business anywhere it chooses.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22301, August 5, 1985) and by publication in the **Federal Register** (50 FR 32941, August 15, 1985). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the NADS's proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: September 11, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–22361 Filed 9–17–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-22401; File No. SR-PSDTC-85-07]

Self-Regulatory Organizations; Proposed Rule Change by Pacific Securities Depository Trust Co., Relating to Proposed Underwriting Program; Filing

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 19, 1985, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Security and Exchange Commission ("Commission")

the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PSDTC and its affiliated clearing corporation, Pacific Clearing Corporation ("PCC"), are proposing to implement a program to provide settlement and distribution services in connection with certain underwritings of PSDTC-eligible securities. The proposed underwriting program will consist of a consolidation of various services currently provided by PSDTC (including book-entry movement and safekeeping of securities) and PCC (including window services and securities collections and deliveries). Pending Commission approval of the underwriting program, PSDTC and PCC are proposing to implement it on a limited basis as a pilot program.

A PSDTC participant serving as a managing underwriter may request PSDTC and PCC to act as its agent in connection with a specific underwriting by submitting a completed letter of authorization at least two weeks before the expected settlement date, accompanied by additional information about the underwriting. In the letter of authorization, PSDTC and PCC may be requested to provide (1) pick-up services, (2) distribution services only or (3) distribution and money settlement services. The managing underwriter will instruct the issuer's transfer agent or trustee bank to issue the securities in appropriate denominations, registered in the name of PSDTC's nominee. PSDTC will require the applicable instruction forms, money settlement schedule and distribution information to be delivered to it forty-eight hours before the closing of the underwriting.

If requested by the managing underwriter, PCC personnel will arrange to pick up the securities from the transfer agent or trustee bank on the day before settlement of the underwriting. The securities will be retained in safekeeping in a custody account pending the closing of the underwriting. When it has been advised that the underwriting has closed, PSDTC will transfer the securities out of the custody account and process bookentry movements and physical releases, in accordance with instructions previously given to PSDTC. Drafts and third party items will be forwarded to PCC's Securities Collection Division for distribution in accordance with its procedures. Non-PSDTC participants may receive securities against payment by cashiers check at a PCC branch office, or may effect settlement directly with the underwriter or through a correspondent. At the end of the day, all securities remaining in PSDTC's possession will be valued and forwarded to its vault in San Francisco, California, for safekeeping.

Where PSDTC and PCC are to provide distribution services only, the underwriter will deliver the securities to PCC's clearing window on the settlement day, and the position will be credited to the underwriter's account. Upon receipt of a release from the transfer agent or trustee bank, movements and releases will be processed. Where PSDTC and PCC are to provide money settlement and distribution services, selling group members will make payment to PSDTC, and settlement proceeds will be transmitted to the underwriter by PSDTC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in (A), (B) an (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed underwriting program is intended to facilitate securities underwritings, by expediting the issuance and distribution of securities, reducing the issuance and distribution of securities, reducing the necessity for physical deliveries and encouraging the use of bookentry transfers of securities.

PSDTC believes that the proposed rule change is consistent with section 17A(b)(3)(F) of the Act, in that it is intended to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding fo securities and funds and in general to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition.

PSDTC perceives no burden on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others.

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Secrities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 9, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 11, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-22355 Filed 9-17-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22400; File No. SR-PCC-85-05]

Self-Regulatory Organizations; Proposed Rule Change by Pacific Clearing Corp. Relating to Proposed Underwriting Program; Filing

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 19, 1985, the Pacific Clearing Corporation ("PCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCC and its affiliated securities depository, Pacific Securities Depository Trust Company ("PSDTC"), are proposing to implement a program to provide settlement and distribution services or connection with certain underwritings of PSDTC-eligible securities. The proposed underwriting program will consist of a consolidation of various services currently provided by PSDTC (including bookentry movement and safekeeping of securities) and PCC (including window services and securities collections and deliveries). Pending Commission approval of the underwriting program, PCC and PSDTC are proposing to implement it on a limited basis as a pilot program.

A PSDTC participant serving as a managing underwriter may request PCC and PSDTC to act as its agent in connection with a specific underwriting by submitting a completed letter of authorization at least two weeks before the expected settlement date, accompanied by additional information about the underwriting. The signed letter of authorization will be retained at the PCC office through which the underwriting will be completed. (PCC's principal office is located in San Francisco, California; PCC also maintains offices in Los Angeles, California; Denver, Colorado; New York, New York; Portland, Oregon; and Seattle, Washington.) In the letter of authorization, PCC and PSDTC May be requested to provide (1) pick-up services, (2) distribution services only or (3) distribution and money settlement services. The managing underwriter will instruct the issuer's transfer agent or trustee bank to issue the securities in appropriate denominations, registered in the name of PSDTC's nominee. Applicable instruction forms, money settlement schedules and distribution information must be delivered to PSDTC by the managing underwriter forty-eight hours before the closing of the underwriting.

If requested by the managing underwriter, PCC personnel will arrange to pick up the securities from the transfer agent or trustee bank on the day before settlement of the underwriting. Authorized PCC staff members and one or more representatives of the underwriter wil count, verify and package the securities at the office of the transfer agent or trustee bank and deliver them to PCC's clearing area, where they will be retained for safekeeping in a custody account pending the closing of the underwriting. When it has been advised that the underwriting has closed, PSDTC will transfer the securities out of the custody account and process bookentry movements and physical releases, in accordance with instructions previously given to it. Drafts and third party items will be forwarded to PCC's Securities Collection Division in accordance with its procedures. PCC's Securities Collection Division may make arrangements for the delivery of securities to other registered securities depositories and for the making of physical withdrawals and draft deliveries through PCC's branch offices. Non-PSDTC participants may effect settlement directly with the underwriter or through a correspondent. At the end of the day, all securities remaining in PSDTC's possession at any PCC branch office will be valued and forwarded to PSDTC's vault in San Francisco, California, for safekeeping.

Where PCC and PSDTC are to provide distribution services only, the underwriter will deliver the securities to PCC's clearing window on the settlement day, and the position will be credited to the underwriter's account. Upon receipt of a release from the transfer agent or trustee bank, movements and releases will be processed. Where PCC and PSDTC are to provide money settlement and distribution services, selling group members will make payment to PSDTC, and settlement proceeds will be transmitted to the underwriter by PSDTC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed underwriting program is intended to facilitate securities underwritings, by expediting the issuance and distribution of securities. reducing the necessity for physical deliveries and encouraging the use of bookentry transfers of securities.

PCC believes that the proposed rule change is consistent with section 17A(b)(3)(F) of the Act, in that it is intended to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds and in general to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PCC preceives no burden on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 9, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 11, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-22356 Filed 9-17-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

September 12, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Herman's Sporting Goods, Inc., Common Stock, $0.01 Par Value (File No. 7-8597)

Intelogic Trace, Inc., Common Stock, $0.01 Par Value (File No. 7-8598)

LAC Minerals Ltd., Common Shares, No Par Value (File No. 7-8599)

OKC Limited Partnership, Depository receipts (File No. 7-8601)

Placer Development Limited, Common Stock, No Par Value (File No. 7-8602)

Cubic Corporation (Delaware), Common Stock, No Par Value (File No. 7-8603)

Northrop Corporation (Delaware), Common Stock, $1.00 Par Value (File No. 7-8604)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 3, 1985, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-22359 Filed 9-17-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-5485]

Formosa Capital Corp.; Issuance of License To Operate as a Small Business Investment Company

On April 17, 1985, a notice was published in the **Federal Register** (50 FR 15265) stating that an application had been filed by Formosa Capital Corp., 605 King George Post Road, Fords, New Jersey 08863, with the Small Business Administration (SBA), for a license to operate as a small business investment company (SBIC), pursuant to § 107.102 of the Regulations governing SBICs (13 CFR 107.102 (1985)).

Interested parties were given until the close of business May 17, 1985, to submit their comments on the application to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other information, SBA issued License No. 02/02-5485 to Formosa Capital Corp. on August 22, 1985 to operate as a section 301(d) SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: September 9, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-22289 Filed 9-17-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area 2202]

Declaration of Disaster Loan Area; Alabama

As a result of the President's major disaster declaration on September 7, 1985, I find that the Counties of Baldwin and Mobile constitute a disaster loan area because of damage from hurricane Elena and flooding beginning on or about September 2, 1985. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on November 7, 1985, and for economic injury until June 9, 1986, at: Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., SW., Suite 822, Atlanta, Georgia 30303, or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 220208 for physical damage and for economic injury the number is 633100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 10, 1985.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-22298 Filed 9-17-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area 2204]

Declaration of Disaster Loan Area; Louisiana

The Parish of Washington and the adjacent Parishes of St. Tammany and Tangipahoa in the State of Louisiana constitute a disaster area because of damage caused by Hurricane Elena which occurred on September 2, 1985. Applications for loans for physical damage may be filed until the close of business on November 12, 1985, and for economic injury until the close of business on June 11, 1986, at the address listed below: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051, or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 220408 for physical damage and for economic injury the number is 663300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 11, 1985.

Martin D. Teckler,

Acting Administrator.

[FR Doc. 85-22299 Filed 9-17-85; 8:45 am]

BILLING CODE 8025-01-M

[Designation of Disaster Loan Area #2203]

Declaration of Disaster Loan Area; New Jersey

The area affected is bordered on the north by South Street, on the south by Lodi Street and 8th Street, on the east by the Passaic River, and on the west by 7th Street, including residential buildings bordering on Boundary streets in the City of Passaic, Passaic County, New Jersey. This constitutes a disaster area because of damage resulting from a fire which occurred on September 2, 1985. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on November 12, 1985, and for economic injury until the close of business on June 11, 1986, at the address listed below: Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn New Jersey 07410, or other locally announced locations.

Interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Business without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 220305 for physical damage and for economic injury the number is 633200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 11, 1985.

Martin D. Teckler,

Acting Administrator.

[FR Doc. 85-22300 Filed 9-17-85; 8:45 am]

BILLING CODE 8025-01-M

Minority Small Business and Capital Ownership Development; Management and Technical Assistance Application Announcement

Summary: The Small Business Administration, Office of Minority Small Business and Capital Ownership Development (MSB&COD) announces that it is soliciting applications under its 7(j) Program to provide management and technical assistance services nationally to cover 88 separate geographical areas. Projects for each area are to operate for an 8 month period beginning February 1, 1936, and will range from approximately $14,000.00 to $245,000.00, with a total cost not to exceed $3,125,000.00.

The announcement number is MSB-86-001-01.

Funding Instrument: The funding instruments, as defined by the Federal Grants and Coperative Agreements Act of 1977 (Pub. L. 95-224) will be cooperative agreements.

Program Description: The SBA provides management and technical assistance services to eligible small businesspersons under two Programs, 7(j) (1-9) and 7(j)(10). Cooperative agreements awarded under both programs will be on a competitive basis to small business consulting firms. Firms who are eligible to receive services offered under 7(j) (1-9) are existing or potential businesspersons who are economically or socially disadvantaged or who are located in areas of high concentration of unemployed, or who are participants in activities authorized by section 7(i) of the Small Business Act, as amended.

Applicants applying for 7(j)(1-9) awards must be capable of providing assistance in such areas as accounting, production, engineering and technical assistance, feasibility studies, market analyses, specialized services, government contracts, and advertising assistance. Small businesspersons certified by the SBA as 8(a) are eligible to receive assistance under the 7(j)(10) Program. Applicants responding to one of the geographical areas under 7(j)(10) must be capable of providing services in such cases as loan packaging, the development of business plans, financial counseling, surety bond and construction management assistance, and areas of specialized assistance particularly germane to a specific 8(a) firm. All applicants responding to any one of the geographical areas listed in the announcement must have had an office physically located within that geographical area for a period of one year prior to the release date of the announcement. No partial applications will be accepted for consideration. Important—"a *separate* application must be submitted for each geographical area as specified in our program announcement. Any multiple/combined submissions for two or more geographical areas will be rejected fom consideration." Applicants must submit their application/proposal on or before October 11, 1985, at 5:00 p.m., local time, at the respecive SBA Regional Office. The Grant Application reporting requirements have been approved under the Office of Management and Budget number 3245-0140.

Eligible Applicants: This announcement is a total 100% small business set-aside. Any concern making application for services is classified as small if its average annual sales or receipts for its preceeding three (3) fiscal years do not exceed 3.5 million.

Application Materials: Applications will be forwarded to interested participants upon telephone request, contact Ms. Bernita Kane at (202) 653-5689 or Ms. Lillian Harris at (202) 653-6439 or upon written request to the U.S. Small Business Administration, Office of Minority Small Business and Capital Ownership Development, Office of Private Industry Programs, 1441 L Street, NW, Room 602, Washington, DC 20416. All awards will be announced in the **Federal Register** and the Commerce Business Daily.

Evaluation and Award Process: All proposals received as a result of this announcement will be evaluated by an SBA review panel. the awarding of MSB&COD Cooperative Agreements is discretionary. Generally, projects are

supported in order of merit to the extent permitted by available funds.

Disposition of Proposals: Notification of awards will be made by the Grants Management Officer. Organizations whose proposals are unsuccessful will be sent an awards list advising them of the successful awardees. Nothing in this announcement shall be construed as committing MSB&COD to divide available funds among all qualified applicants.

(59.007 Management and Technical Assistance for Disadvantaged Businesspersons)

Dated: September 12, 1985.

Martin D. Teckler,

Acting Administrator.

[FR Doc. 85-22301 Filed 9-17-85; 8:45 am]

BILLING CODE 8025-01-M

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund two of its 41 Small Business Development Centers (SBDC's) for calendar year 1986. It should be noted that fiscal year 1986 funding is contingent upon legislative appropriation of the SBDC program. The following SBDC's are intended to be refunded: California, and Texas at Arlington. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDC's to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through December 17, 1985.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application of presently existent Small Business Development Centers (SBDC's) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published three months in advance of the date of refunding of these existent SBDC's. Relevant information identifying these SBDC's and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to each affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. Copies of such written comments should also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Porgrams, U.S. Small Business Administration, 1441 L Street, NW, Washington, DC 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 90 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 90-day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDC's are authorized under section 21 of the Small Business Act (15 U.S.C. 648). SBDC's operate pursuant to the provisions of section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDC's operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDC's focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDC's act in an advocacy role to promote local small business interests. SBDC's concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDC's coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDC's are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters of offer service coverage to the small business

community. The SBDC network is managed and directed by a single full-time Director. SBDC's must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDC's provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDC's emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: Management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agribusiness, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree to which SBDC resources are directed toward specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDC's should emphasize the provision of training is specialized areas other than basic small business management subjects. SBDC's should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas is provided to the State small business community through the State SBDC network. As a condition of this agreement, SBDC must perform but not be limited to the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small businesses that are not presently associated with the SBDC district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDC's shall operate on a 40-hour week basis, or during normal State business hours, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

(c) All counseling assistance offered through the Small Business Development Center network shall be provided at no cost to the client.

Dated: September 9, 1985.

Martin D. Teckler,

Acting Administrator.

Addresses of Relevant SBDC Director

Ms. Brooke Bassett, SBDC Director, Department of Commerce, State of California, 1121 L Street, Suite 600, Sacramento, California 95814, (916) 324–8102

Dr. John E. Troutman, Arlington SBDC Director, Technology Enterprises Development Center, University of Texas at Arlington, College of Engineering, P.O. Box 19209, Arlington, Texas 76019, (817) 273–2559

[FR Doc. 84–22302 Filed 9–17–85; 8:45 am]
BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.); Week Ended March 1, 1985

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application, following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No	Description
Feb 24, 1985	42895	Wardair Canada Inc., c/o Walter D. Hansen, Burwell, Hansen, Manley & Peters, 1706 New Hampshire Avenue, NW., Washington, D.C. 20009 Application of Wardair Canada Inc., pursuant to Section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit to engage in foreign air transportation of persons, property and mail between the co-terminal points Montreal and Toronto, Canada, on the one hand, and the terminal point San Juan, Puerto Rico, on the other hand. Answers may be filed by March 25, 1985

Date filed	Docket No.	Description
Mar 1, 1985	42053	Trans-Panama, S. A., c/o Richard P. Taylor, Steptoe & Johnson, 1330 Connecticut Avenue, NW., Washington, D.C. 20036. Supplement to Application of Trans-Panama, S. A. for renewal of foreign air carrier permit. Answers may be filed by March 29, 1985

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-22305 Filed 9-17-85; 8:45 am]

BILLING CODE 4910-62-M

[Order 85-9-18; Docket 43009]

Application of Sierra Trans Air, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 85-9-18) Docket 43009.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order granting Sierra Trans Air, Inc., a certificate to engage in interstate and overseas charter air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than October 3, 1985.

ADDRESSES: Responses should be filed in Docket 43009 and addressed to the Office of Documentary Services, Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, D.C. 20590 and should be served the parties listed in Appendix B to the order.

FOR FURTHER INFORMATION CONTACT: Dayton Lehman, Jr., Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4116, Washington, D.C. 20590 (202) 426-7631.

SUPPLEMENTARY INFORMATION: The complete text of Order 85-9-18 is available for inspection at our Documentary Services Division at the above address.

Dated: September 12, 1985.

Jeffrey N. Shane,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-22307 Filed 9-17-85; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

[Order 85-9-19; Docket No. 43210]

Application of Bassett and Tesini, Inc. d.b.a. Amerijet International, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause. (Order 85-9-19) Docket 43210.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that Bassett and Tesini, Inc. d/b/a Amerijet International continues to be fit, willing, and able to conduct operations as a domestic all-cargo air carrier, and that its domestic all-cargo certificate should be reissued in the name of Amerijet International, Inc.

DATES: Persons wishing to file objections should do so no later than October 3, 1985.

ADDRESSES: Responses should be filed in Docket 43210 and addressed to the Office of Documentary Services, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Barbara P. Dunnigan, Special Authorities Division, Department of Transportation, 400 7th Street, SW. Washington, D.C. 20590 (202) 755-3812.

Dated: September 12, 1985.

Jeffery N. Shane

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-22306 Filed 9-17-85; 8:45 am]

BILLING CODE 4910-62-M

Request for Letters To Implement Surety Bonding Program

AGENCY: Department of Transportation, Office of the Secretary, Office of Small and Disadvantaged Business Utilization (OSDBU).

ACTION: Notice and Request for Applicants Interested in Establishing a Surety Bonding Program for Minority and Women-Owned Business Enterprises (M/WBEs) Bidding on or Performing Transportation-Related Contracts.

Background

The Department of Transportation's Office of Small and Disadvantaged Business Utilization (OSDBU) through the Minority Business Resource Center has conducted a surety bonding program for M/WBEs since 1982. The program began by focusing on providing bonding for M/WBEs working on railroad revitalization projects and was expanded in 1983 to a Department-wide program.

Since its inception, the program has operated through an agreement with the Fireman's Fund Insurance Companies. That agreement provides that DOT will cover 50 percent of any losses (up to $5 million) incurred by Fireman's Fund in bonding disadvantaged business enterprises (DBEs) which are referred by DOT and bonded through the program. By mutual agreement the Fireman's Fund and DOT plan to terminate their agreement by March of 1986.

In addition, the 1985 DOT Appropriations Act and accompanying House and Senate reports directed the Federal Highway Administration (FHWA) and the Urban Mass Transportation Administration (UMTA) to conduct a feasibility study for implementing a Department-wide surety bonding program for socially and economically disadvantaged businesses. In the House report on that Act, the FHWA was also directed to conduct a $5 million demonstration bonding program in at least three states (Pennsylvania, New York and Florida).

The FHWA and UMTA performed the feasibility study and submitted it to the Congress in June 1985. The study concluded that a unified Departmentwide bonding program is feasible because it already exists in the OSDBU program. In light of this conclusion the FHWA has decided to expand the funding for the OSDBU program as an element of its demonstration bonding program.

SUMMARY: The OSDBU is interested in soliciting letters of interest from surety organizations to implement a surety bonding program for socially and economically disadvantaged businesses. The letters should outline the organization's concept for the program, the organization's past experience in surety bonding, experience with the surety bonding of DBEs and if the surety organization has been authorized by the Department of the Treasury as a surety company acceptable on Federal bonds and as acceptable reinsuring companies. The bonding program should be designed to provide bonding to DBEs on a nation-wide scale. The FHWA will be conducting an intensive "bonding readiness" program to qualify DBEs in highway construction for bonding in the

three States of Pennsylvania, New York and Florida. The OSDBU envisions that their bonding program will be compatible with the FHWA "bonding readiness" effort and that the selected surety will have the ability to conduct business in those three States.

The total available Federal funding for this program may be up to $9.4 million depending on the nature of the proposed surety bonding program.

DATE: The deadline for submitting a letter expressing interest in the program and requesting additional information is October 21, 1985.

ADDRESS: Interested surety organizations may submit letters to the Director, Office of Small and Disadvantaged Business Utilization, U.S. Department of Transportation, 400 7th Street, SW, room 9414, Washington, D.C. 20590, not later than the submission date shown above. Such submission shall indicate the docket number shown on this notice.

Issued this 13th day of September, 1985, at Washington, D.C.

Amparo B. Bouchey,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 85-22308 Filed 9-17-85; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

[Docket No. IP84-9; Notice 2]

Mack Trucks, Inc., Grant of Petition for Exemption From Notice and Recall for Inconsequential Noncompliance

This grants the petition by Mack Trucks, Inc., of Allentown, Pa., to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.302, Motor Vehicle Safety Standard No. 302, *Flammability of Interior Materials*. The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on April 30, 1984, and an opportunity afforded for comment (49 FR 18373).

Section 54 of Standard No. 302 and related interpretations require that headlining and components incorporated into it, when tested in accordance with specified procedures, shall not burn or transit a flame across its surface, at a rate of more than 4 inches per minute. Radio speaker covers supplied in the headling of 5,015 Mack Trucks manufactured between August 1977 and June 1983 may not comply with the standard. Mack discovered that the radio grille does not meet the requirements "and causes assemblies to exceed the burn rate by a nominal 1.3 to 1.8 inches per minute." Other components of the assembly (speaker housing and grille retainer ring) "easily meet" the flammability requirements. Mack understands that the covers are also used by other manufacturers in the heavy duty truck and recreational vehicle industries.

Petitioner argued that the noncompliance was inconsequential because "it is our considered opinion that these speaker covers, with a minimal area of 26 square inches will not expedite the spread of a fine * * *." In Mack's experience, vehicle fires are most likely to originate" in the lower portions of a cab either in the firewall area of on the floor"; the speaker assemblies at issue are located in the "sleeper box" in the upper portion of the cab behind the driver's head, and by the time flames reached it, the entire cab might be in flames. The risk of a fire originating in the speaker area is considered low "due to the low level electrical current running through the related wiring in that area."

No comments were received in response to the petition.

The agency has decided to grant the petition. Grilles are normally perforated, and these performations can cause erratic of variable burn rates. The small total area of the component and its remote location in the headlining area of the cab minimize the possibility that the component represents a fire hazard.

Accordingly, it is hereby found that petitioner has met its burden of persuasion that the noncompliance with Standard No. 302 herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on September 13, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-22303 Filed 9-17-85; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP84-17; Notice 2]

Western Star Trucks, Inc.; Grant of Petition for Exemption From Notice and Recall for Inconsequential Noncompliance

This notice grants the petition by Western Star Trucks, Inc., of Kelowna, B.C., Canada, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.302, Motor Vehicle Safety Standard No. 302, *Flammability of Interior Materials*. The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on December 3, 1984 and an opportunity afforded for comment (49 FR 47354).

Section S4 of Standard No. 302 and related interpretations require that headlining and components incorporated in it, when tested in accordance with specified procedures, shall not burn or transmit a flame across its surface at a rate of more than 4 inches per minute. Plastic speaker grille retainer rings located in the headlining of the cab, and supplied in 514 trucks manufactured between January 1982 and June 1984, may not comply with the standard. Petitioner discovered that the rings do not meet the requirements and cause assemblies to exceed the burn rate by ½ to ¾ inch per minute. Petitioner averred tghat the rings were also used by other manufacturers in the heavy duty truck, automotive and recreational vehicle industries.

Petitioner argued that the noncompliance was inconsequential because "rings with a minimal volume of 2.75 cubic inches, will not expedite the spread of a fire". In petitioner's experience, vehicle fires are most likely to originate in the lower portions of a cab, either in the firewall area or on the floor; the speaker grille retaining rings at issue are located in the sleeper box, in the upper portion of the cab behind the driver's head, and by the time flames reached it, the entire cab might be in flames. The risk of a fire originating in the speaker area is considered low du to the low level electrical current running through the related wiring in that area.

No comments were received in response to the petition.

The agency has decided to grant the petition. The small total area of the component and its remote location in the headlining area of the cab minimize the possibility that the component represents a fire hazard.

Accordingly, it is hereby found that petitioner has met its burden of persuasion that the noncompliance with Standard No. 302 herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on September 13, 1985.

Barry Felrice

Associate Administrator.

[FR Doc. 85-22304 Filed 9-17-85; 8:45 am]

BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 181
Wednesday, September 18, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:45 p.m. on Thursday, September 12, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Moncor Bank, National Association, Roswell, New Mexico, which was closed by the Deputy Comptroller of the Currency on Thursday, September 12, 1985; (2) accept the bid for the transaction submitted by First National Bank of Chaves County, Roswell, New Mexico, a newly-chartered national bank; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 13, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-22403 Filed 9-16-85; 11:15 am]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552B), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, September 23, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to purchase assets and assume liabilities:

Metropolitan Bank St. Paul, St. Paul, Minnesota, an insured State nonmember bank, for consent to purchase the assets of and assume the liabilities of Metro Thrift Company, Inc., St. Paul, Minnesota, a non-FDIC-insured institution.

Application for consent to merge and establish one branch:

Oxford Bank and Trust, Oxford, Maine, an insured State nonmember bank, for consent to merge, under its charter and title, with Mechanic Falls Savings and Loan Association, Mechanic Falls, Maine, a non-FDIC-insured institution, and to establish the sole office of Mechanic Falls Savings and Loan Association as a branch of the resultant bank.

Application for consent to transfer assets in consideration of the assumption of deposit liabilities:

Equibank, Latrobe, Pennsylvania, an insured State nonmember bank, for consent to transfer certain assets to Charleroi Federal Savings and Loan Association, Charleroi, Pennsylvania, a non-FDIC-insured institution, in consideration of the assumption of the liability to pay deposits made in the New Eagle Branch of Equibank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,311-L
Girod Trust Company, San Juan, Puerto Rico
Case No. 46, 312-SR
Prairie County Bank, Hazen, Arkansas
Case No. 46,323-NR
Franklin National Bank, New York, New York

Memorandum and Resolution re: Final amendments to Part 338 of the Corporation's rules and regulations, entitled "Fair Housing," which provide that insured State nonmember banks having assets of $50 million or less and having received fewer that 25 home loan applications in the prior calendar year would no longer be required to collect and record in a log-sheet certain data concerning home loan applications, with the Corporation's Board of Directors retaining the right to require such recordkeeping by a bank if it has reason to believe the bank may be engaged in discriminatory home loan practices (including illegal prescreening).

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and Resolution re: Issuance of a Statement of Policy Regarding Bank Merger Transactions which would (1) provide the framework to permit the Corporation's Board of Directors to approve all proposed mergers between financially sound financial service institutions unless there is compelling evidence of an anticompetitive impact which would clearly violate the antitrust standards; (2) reflect the Corporation's view of an expanding market for financial services products; and (3) serve as a workable policy position as interstate expansion in the banking industry becomes more prevalent.

The meeting will be held in the Board Room on the sixth floor of the FDIC

Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: September 16, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–22436 Filed 9–16–85; 3:06 pm]

BILLING CODE 6714–01–M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, September 23, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshne Act" (5 U.S.C. 552(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for Federal deposit insurance and for consent to exercise full trust powers:

Drexel Trust Company, an operating noninsured trust company located at Five Marineview Plaza, Hoboken, New Jersey.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: September 16, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–22437 Filed 9–16–85; 3:06 pm]

BILLING CODE 6714–01–M

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

September 11, 1985.

TIME AND DATE: 10:00 a.m., Tuesday, September 17, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: In addition to the previously announce item, the Commission will also consider and act upon the following:

2. Youghiogheny & Ohio Coal Company, Docket No. LAKE 84–98. (Consideration of the operator's petition for discretionary review.)

It was determined by a unanimous vote of Commissioners that this item be added to the agenda and that no earlier announcement of the addition was possible. 5 U.S.C. 552b(e)(1).

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 85–22372 Filed 9–16–85; 9:45 am]

BILLING CODE 6735–01–M

5

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, September 23, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on September 16, 1985.)

2. Proposed purchase of computers within the Federal Reserve System.

3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 13, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–22363 Filed 9–13–85; 4:37 pm]

BILLING CODE 6210–01–M

6

FEDERAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Monday, September 16, 1985.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Consideration of staff recommendation that the Commission terminate the Standards and Certification Rulemaking R911001.

CONTACT PERSON FOR MORE INFORMATION: Susan B. Ticknor, Office of Public Affairs: (202) 523–1892, Recorded Message: (202) 523–3806.

Emily H. Rock,

Secretary.

[FR Doc. 85–22383 Filed 9–16–85; 10:46 am]

BILLING CODE 6750–01–M

7

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [To be published].

STATUS: Open meeting.

PLACE: 450 Fifty Street, NW., Washington, D.C.

DATES PREVIOUSLY ANNOUNCED: September 6, 1985.

CHANGE IN THE MEETING: Additional item.

The following additional item will be considered at an open meeting scheduled for Thursday, September 19, 1985, at 10:00 a.m.:

In connection with the Commission consideration of side-by-side market making pilot, as previously announced in 50 FR 37110, Sept 11, 1985 the Commission also will consider the NASD's Petition for Reconsideration of and comments on Securities Exchange Act Release No. 22028 ("OTC Options release"). For further information, please contact Alden Adkins at (202) 272–2843 or Sharon Lawson at (202) 272–2825.

Commissioner Cox, as duty officer, determines that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Powers at (202) 272–2091.

John Wheeler,

Secretary.

September 12, 1985.

[FR Doc. 85–22413 Filed 9–16–85; 12:49 pm]

BILLING CODE 8010–01–M

federal register

Wednesday
September 18, 1985

Part II

Environmental Protection Agency

40 CFR Part 300

Amendment to National Oil and Hazardous Substances Contingency Plan; the National Priorities List; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[SWH-FRL 2874-1]

Amendment to National Oil and Hazardous Substances Contingency Plan; the National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency ("EPA") is proposing the fourth update to the National Priorities List ("NPL"). This update contains 38 sites, including one re-proposed site. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan ("NCP"), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") and Executive Order 12316. CERCLA requires that the NPL be revised at least annually, and today's notice proposes the fourth such revision.

These sites are being proposed because they meet the eligibility requirements of the NPL. EPA has included on the NPL releases and threatened releases of designated hazardous substances, as well as "pollutants or contaminants" which may present an imminent and substantial danger to the public health or welfare. This notice provides the public with an opportunity to comment on the listing of these 38 sites on the NPL.

DATES: Comments may be submitted on or before November 18, 1985.

ADDRESSES: Comments may be mailed to Russel H. Wyer, Director, Hazardous Site Control Division (Attn: NPL Staff), Office of Emergency and Remedial Response (WH-548E), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. The Headquarters public docket for the fourth update to the NPL will contain: Hazard Ranking System (HRS) score sheets for each proposed site and each Federal facility site listed in Section IV of this notice; a Documentation Record for each site describing the information used to compute the scores; and a list of document references. The Headquarters public docket is located in EPA Headquarters, Waterside Mall sub-basement, 401 M St., SW., Washington, D.C. 20460, and is available for viewing by appointment only from 9:00 a.m to 4:00 p.m., Monday through Friday excluding holidays. Requests for copies of the documents from the Headquarters public docket should be directed to the EPA Headquarters docket office. The HRS score sheets and the Documentation Record for each site in a particular EPA Region will be available for viewing in that Regional Office when this notice is published. These Regional dockets will also contain documents with the background data EPA relied upon in calculating or evaluating the HRS scores. Copies of these background documents may be viewed in the appropriate Regional Office and copies may be obtained from the Region. A third category of documents with some relevance to the scoring of each site also may be viewed and copied by arrangement with the appropriate EPA Regional Office. An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any of these documents. Requests for HRS score sheets and Documentation Records should be directed to the appropriate Regional Office docket (see addresses below). Requests for background documents should be directed to the appropriate Regional Superfund Branch office.

Copies of comments submitted to headquarters during the 60-day public comment period may be viewed only in the Headquarters docket during the comment period. A complete set of comments pertaining to sites in a particular EPA Region will be available for viewing in the Regional Office docket approximately one week following the close of the formal comment period. Comments received after the close of comment period will be available at Headquarters and in the appropriate Regional Office docket on an "as received" basis. An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of these comments. Addresses for the Headquarters and Regional Office dockets are:

Denise Sines, Headquarters, U.S. EPA CERCLA Docket Office, Waterside Mall, Subbasement, 401 M Street, SW., Washington, DC 20460, 202/382-3046

Peg Nelson, Region I, U.S. EPA Library, Room E121, John F. Kennedy Federal Bldg., Boston, MA 02203, 617/223-5791

Carol Peterson, Region II, U.S. EPA Library, 26 Federal Plaza, 7th Floor, Room 734, New York, NY 10278, 212/264-8677

Diane McCreary, Region III, U.S. EPA Library, 5th Floor, 841 Chestnut Bldg., 9th & Chestnut Streets, Philadelphia, PA 19106, 215/597-0508

Gayle Alston, Region IV, U.S. EPA Library, Room G-6, 345 Courtland Street, NE., Atlanta, GA 30365, 404/881-4216

Lou Tilley, Region V, U.S. EPA Library, Room 1420, 230 South Dearborn Street, Chicago, IL 60604, 312/353-2022

Martha McKee, Region VI, InterFirst II Bldg., 1201 Elm Street, Dallas, TX 75270, 214/767-9809

Connie McKenzie, Region VII, U.S. EPA Library, 726 Minnesota Avenue, Kansas City, KS 66101, 913/236-2828

Dolores Eddy, Region VIII, U.S. EPA Library, 1960 Lincoln Street, Denver, CO 80295, 303/844-2560

Jean Circiello, Region IX, U.S. EPA Library, 6th Floor, 215 Fremont Street, San Francisco, CA 94105, 415/974-8076

Joan McNamee, Region X, U.S. EPA, 11th Floor, 1200 6th Avenue, Seattle, WA 98101, 206/442-4903

FOR FURTHER INFORMATION CONTACT: Jane Metcalfe, Hazardous Site Control Division, Office of Emergency and Remedial Response (WH-548E), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Phone (800) 424-9346 (or 382-3000 in the Washington, D.C., metropolitan area).

SUPPLEMENTARY INFORMATION:

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I Introduction
II Purpose of the NPL
III NPL Update Process and Schedule
IV Eligibility
V Contents of the Proposed Fourth NPL Update
VI Regulatory Impact Analysis
VII Regulatory Flexibility Act Analysis

I. Introduction

Pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601-9657 ("CERCLA" or "the Act") and Executive Order 12316 (46 FR 42237, August 20, 1981), the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180). Those amendments to the NCP implement the responsibilities and authorities created by CERCLA to respond to releases and threatened releases of hazardous substances, pollutants, or contaminants.

Section 105(8)(A) of CERCLA requires that the NCP include criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action.

Removal action involves cleanup or other actions that are taken in response to emergency conditions or on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions which are consistent with a permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities are included in the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982).

Section 105(8)(B) of CERCLA requires that the statutory criteria be used to prepare a list of national priorities among the known releases or threatened releases throughout the United States, and that to the extent practicable, at least 400 sites be designated individually. CERCLA requires that this National Priorities List ("NPL") be included as part of the NCP. Today, the Agency is proposing the addition of 38 sites to the NPL. This brings the number of proposed sites to 309 in addition to the 541 that have been promulgated.

EPA is proposing to include on the NPL sites at which there are or have been releases or threatened releases of hazardous substances, or of "pollutants or contaminants." The discussion below may refer to "releases or threatened releases" simply as "releases," "facilities," or "sites."

II. Purpose of the NPL

The primary purpose of the NPL is stated in the legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d. Sess. 60 (1980)):

> The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to serve as an informational tool for use by EPA in identifying sites that appear to present a significant risk to public health or the environment. The initial identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation, to assess the nature and extent of the public health and environmental risks associated with the site, and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. Inclusion of a site on the NPL does not establish that EPA necessarily will undertake remedial actions. Moreover, listing does not require any action of any private party, nor does it determine the liability of any party for the cost of cleanup at the site. In addition, a site need not be on the NPL to be the subject of CERCLA-financed removal actions or of actions brought pursuant to sections 106 or 107(a)(4)(B) of CERCLA.

In addition, although the HRS scores used to place sites on the NPL may be helpful to the Agency in determining priorities for cleanup and other response activities among sites on the NPL, EPA does not rely on the scores as the sole means of determining such priorities, as discussed below. The information collected to develop HRS scores is not sufficient in itself to determine the appropriate remedy for a particular site. EPA relies on further, more detailed studies to determine what response, if any, is appropriate. These studies will take into account the extent and magnitude of contaminants in the environment, the risk to affected populations and environment, the cost to correct problems at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of action to be taken at these sites are made in accordance with the criteria contained in Subpart F of the NCP. After conducting these additional studies, EPA may conclude that it is not desirable to conduct response action at some sites on the NPL because of more pressing needs at other sites. Given the limited resources available in the Hazardous Substance Response Trust Fund established under CERCLA, the Agency must carefully balance the relative needs for response at the numerous site it has studied. Also, it is possible that EPA will conclude after further analysis that no action is needed at a site because the site does not present a significant threat to public health, welfare, or the environment.

III. NPL Update Process and Schedule

Pursuant to section 105(8)(B) of CERCLA, 42 U.S.C. 9605(8)(B), EPA is required to establish, as part of the NCP, a priority list of sites. The NPL fulfills that obligation. The purpose of this notice is to propose the addition to the NPL of 38 new sites.

CERCLA requires that the NPL be revised at least once per year. Accordingly, EPA published the first NPL on September 8, 1983 (48 FR 40658), containing 406 sites. EPA has proposed three updates to the NPL since then. One hundred and thirty-three sites were proposed on September 8, 1983 as NPL Update #1. Four of these sites were promulgated on May 8, 1984 (48 FR 19480) and 128 sites, including five sites deferred from the September 8, 1983 rulemaking, were promulgated on September 21, 1984 (49 FR 37030). On October 15, 1984 (49 FR 40320), 244 sites were proposed as NPL Update #2. Two of these 244 sites were placed on the final NPL on February 14, 1985 (50 FR 6320) and 242 remain proposed. In Update #3, twenty-six sites were proposed on April 10, 1985 for inclusion on the NPL. One of these sites was recently added to the NPL, bringing the number of final NPL sites to 541.

In addition to these periodic updates, EPA believes it may be desirable in rare instances to propose or promulgate separately individual sites on the NPL because of the apparent need for expedited remedial action. This occurred in the case of the proposing listing of Times Beach, Missouri (48 FR 9311, March 4, 1983), the promulgation of four San Garbriel Valley, California, sites (49 FR 19480, May 8, 1984), the promulgation of two New Jersey radium sites (50 FR 6320, February 14, 1985), and the promulgation of the Lansdowne Radiation site in Landsdowne, Pennsylvania.

As with the establishment of the initial NPL and subsequent revisions, States have the primary responsibility for selecting and scoring sites that are candidates and submitting the candidate sites to the EPA Regional Offices. States may also designate a single site as the State priority site. For each proposed NPL update, EPA informs the States of the closing dates for submission of candidate sites to EPA. This proposed update is the third within one year and continues EPA's plan to increase the frequency of updating of the NPL. The EPA Regional Offices then conduct a quality control review of the State's candidate sites. After conducting this review, the EPA Regional Offices submit candidate sites to EPA Headquarters. The Regions may include candidate sites in addition to those submitted by States. In reviewing these submissions, EPA Headquarters conducts further quality assurance audits to ensure accuracy and consistency among the various EPA and State offices participating in the scoring.

EPA recently promulgated an amendment to section 300.66(b)(4) of the NCP allowing certain sites with HRS scores below 28.50 to be eligible for the NPL. These sites may qualify for the NPL if all of the following occur:

• The Agency for Toxic Substances and Disease Registery of the U.S. Department of Health and Human Services (ATSDR) has issued a health advisory which recommends dissociation of individuals from the release.

• The Agency determines that the release poses a significant threat to public health.

• EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

This **Federal Register** notice lists sites not currently on the NPL that the Agency is proposing to add to the NPL. These proposed additions are listed immediately following this preamble.

Public Comment Period

EPA requests public comment on these 38 proposed sites. Comments on the proposed sites will be accepted for 60 days following publication of this notice in the **Federal Register**. EPA is also soliciting comments on three Federal facilities that have HRS scores of 28.50 or higher and that may be added to the NPL in the future. The following section of this preamble identifies these sites and discusses EPA's Federal facility approach. See the "ADDRESSES" portion of this notice for information on where to obtain documents relating to the scoring of the 38 non-Federal and three Federal sites. After considering the relevant comments received during the comment period and determining the final score for each site, the Agency will add to the NPL all proposed sites that meet EPA's criteria for listing. In past NPL rulemakings, EPA has considered comments received after the official close of the comment period. Because the Agency has now increased the schedule of rulemaking to three NPL updates per year, EPA may no longer have the opportunity to consider late comments. EPA may add the three Federal facility sites without a further comment period, contingent upon the outcome of proposed changes to the NCP (50 FR 5862, February 12, 1985). This is discussed in greater detail in the following section.

IV. Eligibility

CERCLA restricts EPA's authority to respond to certain categories of releases and expressly excludes some substances from the definition of release. In addition, as a matter of policy, EPA may choose not to use CERCLA to respond to certain types of releases because other authorities can be used to achieve cleanup of these releases. Preambles to previous NPL rulemakings have discussed examples of these policies. See, e.g., 48 FR 40658 (September 8, 1983); 49 FR 37074 (September 21, 1984); and 49 FR 40320 (October 15, 1984). Generally, this proposed update continues these past eligibility policies.

NPL eligibility policies of particular relevance to this proposed update are discussed below, and include the RCRA, Federal facilities and the mining waste site policies.

RCRA-Related Sites

The Hazardous and Solid Waste Amendments of 1984 expanded the Agency's authority to require corrective measures under the Resource Conservation and Recovery Act (RCRA). The Agency intends to use the new RCRA authorities, where practical, to effect cleanup. In the preamble to Update #3 (50 FR 14115, April 10, 1985), the Agency discussed a concept for a revised policy for listing RCRA-related sites. Specifically, EPA suggested deferring the listing of certain categories of RCRA-related sites that scored 28.50 or above until the Agency determines that RCRA measures are not likely to succeed due to factors such as: (1) The inability or unwillingness of the owner/operator to pay for such action; (2) the inadequacies of the financial responsibility guarantees to pay for such costs; or (3) Agency or State priorities for addressing the sites under RCRA. This suggested deferred listing policy would be applicable only to sites with releases subject to RCRA regulatory or enforcement authorities.

As stated in the preamble to proposed NPL Update #3, the Agency intends to apply any revised RCRA-related site listing policy to RCRA-related sites that are currently proposed or promulgated on the NPL, and, in appropriate cases, delete sites from the NPL. For example, such sites could be removed from the proposed or final NPL if the Agency determines that: (1) All necessary corrective measures are likely to be completed under RCRA authorities and (2) CERCLA Fund-financed activities, such as remedial investigation/feasibility studies, remedial design or remedial action, or CERCLA enforcement action have not been initiated. If such a policy were applied to currently proposed and promulgated sites on the NPL and it is determined that such sites should be removed from the proposed or final NPL, these sites could be relisted if the Agency later determines that RCRA corrective measures at these sites are not likely to succeed.

EPA presented this information in more detail in the preamble to Update #3 and requested comment on the suggested RCRA listing policy. Because the Agency is still receiving and evaluating comments on this suggested RCRA listing policy and has not yet adopted a final policy, RCRA-related sites will be considered for listing on the basis of the current RCRA listing policy (See 49 FR 37070, September 21, 1984). EPA will use the expanded RCRA permitting authorities and RCRA enforcement authorities, and, if necessary, appropriate CERCLA authorities, for cleaning up sites.

Under the current RCRA listing policy, EPA has considered eligible for listing those RCRA facilities where a significant portion of the release appeared to come from a "non-regulated land disposal unit" of the facility. Non-regulated land disposal units are defined as portions of the facility that ceased receiving hazardous waste prior to January 26, 1983, the effective date of EPA's permitting standards for land disposal (47 FR 32339, July 26, 1982). Under the current policy, regulated land disposal units of RCRA facilities generally would not be included on the NPL, except where the facility had been abandoned or lacked sufficient resources and RCRA corrective action could not be enforced.

The Agency proposed four RCRA-related sites for Update #3 on the basis of the current RCRA listing policy. Nine RCRA-related sites with HRS scores of 28.50 or above were submitted for Update #4. We have applied our current RCRA listing policy to these sites and have included them on the proposed list. These sites are:

• Interstate Lead Co. (ILCO), Leeds, Alabama

• Martin Marietta (Denver Aerospace), Waterton, Colorado

• Firestone Industrial Products Co., Noblesville, Indiana

• Prestolite Battery Division, Vincennes, Indiana

• John Deere (Dubuque Works), Dubuque, Iowa

• Hooker (Montague Plant), Montague, Michigan

• Kysor Industrial Corp., Cadillac, Michigan

• Monroe Auto Equipment Co., Cozad, Nebraska

• Matlack, Inc., Woolwich Township, New Jersey

Of the nine RCRA-related sites listed above, eight are nonregulated units. One site, Interstate Lead Company in Leeds, Alabama, is a regulated unit which is currently under Chapter 11 bankruptcy and therefore may lack sufficient resources for cleanup. The listing of this site is consistent with our existing RCRA listing policy as outlined in the

preamble to the **Federal Register** notice announcing the promulgation of NPL Update #1 (49 FR 37070, September 21, 1984).

Federal Facility Releases

CERCLA section 111(e)(3) prohibits use of the Trust Fund for remedial actions at Federally-owned facilities and § 300.66(e)(2) of the NCP prevents including Federal facilities on the NPL. The Agency has approached this issue in a number of different ways. Prior to proposed NPL Update #2 (49 FR 40320, October 15, 1984), EPA did not list any sites on the NPL where the release resulted solely from a Federal facility, regardless of whether contamination remained on-site or migrated off-site. However, based on public comments received from previous NPL announcements, EPA proposed 36 Federal facilities for NPL Update #2. As discussed in the preamble to Update #2, EPA will promulgate the 36 Federal facilities only if the NCP is revised to permit the listing of Federal facilities on the NPL.

On February 12, 1985, EPA proposed amendments to § 300.66(e)(2) of the NCP and requested public comments on whether to list Federal facilities on the NPL. In Update #3 (50 FR 14115, April 10, 1985), the Agency identified six new sites in the preamble to the **Federal Register** notice that met the criteria for proposal. EPA requested comments on the scoring of these sites pending resolution of the NCP amendments.

Because the amendments to § 300.66(e)(2) of the NCP have not yet been promulgated, EPA is continuing the procedure of naming those Federal facilities that meet the criteria for proposal in the preamble to the **Federal Register** notice.

For Update #4, the Agency has applied the HRS to Federal facilities and has determined that the following Federal facilities would qualify for proposed listing:

NPL group	State	Site name	City or county	Response category [1]	Cleanup status [2]
04	NJ	Naval Air Engineering Center	Lakehurst	R	
04	WA	Naval Air Station (Ault Field)	Whidbey Island	R	
07	WA	Naval Air Station (Seaplane Base)	Whidbey Island	R	

[1] R = Federal or State response: F = Federal enforcement, S = State enforcement; V = Voluntary or negotiated response D = Actions to be determined.
[2] = Implementation activity underway, one or more operable units; O = one or more operable units completed, others may be underway; C = Implementation activity completed for all operable units

The Agency is requesting comments on the scoring of these sites and may promulgate them without another comment period if the Agency determines that listing Federal facilities is appropriate.

Mining Waste Sites

It is the Agency's position, as discussed in the preambles to previous rulemakings (47 FR 58476, December 30, 1982; 48 FR 40658, September 8, 1983), that mining wastes may be hazardous substances, pollutants or contaminants under CERCLA. This position was affirmed recently by the United States Court of Appeals for the District of Columbia Circuit (*Eagle-Picher Industries, Inc.* v. *EPA*, 759 F. 2d 922 D.C. Cir. 1985)

In the past, EPA has included mining waste sites on the NPL. However, in proposed Update #3 (50 FR 14115, April 10, 1985), EPA deferred the listing of one mining waste site—Silver Creek Tailings in Park City, Utah—until the Agency could determine whether the Department of Interior (DOI) would take appropriate action under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) to protect public health and the environment at this site. The Agency has had preliminary discussion with DOI and the State of Utah on their programs for addressing mining sites, and plans to continue these and other discussions until a more comprehensive Federal policy can be developed. While this policy is under development, we are moving forward with proposing the Silver Creek Tailings site on the NPL. In addition, the Agency is currently developing an appropriate NPL listing policy for any sites which may be adequately addressed under the response authorities of SMCRA.

Pratt & Whitney Aircraft, United Technologies Corp., West Palm Beach, Florida

The Pratt & Whitney Aircraft Site was proposed on October 15, 1984 (49 FR 40320) as an NPL Update #2 site. In response to comments on the proposal, the Agency completely re-evaluated the site and has made a significant change in the HRS scoring for the Pratt & Whitney Aircraft site. Consequently, the Agency has determined that it would be most appropriate to repropose the site in NPL Update #4 and solicit comment on the revised HRS score. Comments on the reproposal will be accepted for the same period as for other sites in this proposal.

V. Contents of the Proposed Fourth NPL Update

All sites in today's proposed revision to the NPL received HRS scores of 28.50 or above.

Following this preamble is a list of the 38 proposed Update #4 sites. Each entry on the list contains the name of the facility, the State and city or county in which it is located, and the corresponding EPA Region. Each proposed site is placed by score in a group corresponding to the groups of 50 sites presented within the final NPL. For example, sites in group 3 of the proposed update have scores that fall within the range of scores covered by the third group of 50 sites on the final NPL. Each entry is accompanied by one or more notations referencing the status of response and cleanup activities at the site at the time this list was prepared. This site status and cleanup information is described briefly below.

EPA categorizes the NPL sites based on the type of response at each site (Fund-financed, Federal enforcement, State enforcement, and/or voluntary action). In addition, codes indicating the general status of site cleanup activities are provided. EPA is including the cleanup status codes to identify sites where significant response activities are underway or completed. The cleanup status codes on this NPL update are included in response to public requests for information regarding actual site cleanup activities and to acknowledge situations where EPA, States, or responsible parties have undertaken response actions. The response categories/status codes for these proposed sites and all final NPL sites will be updated each time EPA promulgates additional sites to the NPL.

Response Categories

The following response categories are used to designate the type of response underway. One or more categories may apply to each site.

Federal and/or State Response (R). This category includes sites at which EPA or State agencies have started or completed response actions. These include removal actions, nonenforcement remedial planning, initial remedial measures, and/or remedial actions under CERCLA [NCP, § 300.66(f)–(i) 47 FR 31217, July 16, 1982]. For purposes of assigning a category, the response action commences when EPA obligates funds.

Federal Enforcement (F). This category includes sites where the United

States has filed a civil complaint (including cost recovery actions) or issued an administrative order under CERCLA or RCRA. It also includes sites where a Federal court has mandated some form of response action following a judicial proceeding. All sites at which EPA has obligated funds for enforcement-lead remedial investigations and feasibility studies are also included in this category.

A number of sites on the NPL are the subject of legal investigations or have been formally referred to the Department of Justice for possible enforcement action. EPA's policy is not to release information concerning a possible enforcement action until a lawsuit has been filed. Accordingly, sites subject to pending Federal action are not included in this category, but are included under "Category To Be Determined."

State Enforcement (S). This category includes sites where a State has filed a civil complaint or issued an administrative order under CERCLA or RCRA. It also includes sites at which a State court has mandated some form of response action following a judicial proceeding. Sites where a State has obligated funds for enforcement-lead remedial investigations and feasibility studies are also included in this category.

It is assumed that State policy precludes the release of information concerning possible enforcement actions until such action has been formally taken. Accordingly, sites subject to possible State legal action are not included in this category, but are included under "Category To Be Determined."

Voluntary or Negotiated Response (V). This category includes sites where private parties have started or completed response actions pursuant to settlement agreements, consent decrees, or consent orders to which EPA or the State is a party. Usually, the response actions result from a Federal or State enforcement action. This category includes privately-financed remedial planning, removal actions, initial remedial measures, and/or remedial actions.

Category To Be Determined (D). This category includes all sites not listed in any other category. A wide range of activities may be in progress at sites in this category. EPA or a State may be evaluating the type of response action to undertake, or a response action may be determined but funds not yet obligated. Sites where a Federal or State enforcement case may be under authorities other than CERCLA or RCRA are also included in this category. Additionally included in this category are sites where responsible parties may be undertaking cleanup actions that are not covered by a consent decree, consent order, or administrative order.

Cleanup Status Codes

EPA has decided to indicate the status of Fund-financed or private party cleanup activities underway or completed at proposed and final NPL sites. Fund-financed response activities which are coded include: significant removal actions, initial remedial measures, source control remedial actions, and off-site remedial actions. The status of cleanup activities conducted by responsible parties under a consent decree, court order, or an administrative order also is coded, as are similar cleanup activities taken independently of EPA and/or the State. Remedial planning activities or engineering studies do not receive a cleanup status code.

Many sites listed on the NPL are cleaned up in stages or "operable units." For purposes of cleanup status coding, an operable unit is a discrete action taken as part of the entire site cleanup that significantly decreases or eliminates a release, threat of release, or pathway of exposure. One or more operable units may be necessary to complete the cleanup of a hazardous waste site. Operable units may include significant removal actions taken to stabilize deteriorating site conditions or provide alternative water supplies, initial remedial measures, and remedial actions. A simple removal action (constructing fences or berms or lowering free-board) that does not eliminate a significant release, threat of release, or pathway of exposure is not considered an operable unit for purposes of cleanup status coding.

The following cleanup status codes (and definitions) are used to designate the status of cleanup activities at proposed and final sites on the NPL. Only one code is used to denote the status of actual cleanup activity at each site since the codes are mutually exclusive.

Implementation Activities Are Underway for One or More Operable Units (I). Field work is in progress at the site for implementation of one or more removal or remedial operable units, but no operable units are completed.

Implementation Activities Are Completed for One or More (But Not All) Operable Units. Implementation Activities May be Underway for Additional Operable Units (O). Field work has been completed for one or more operable units, but additional site cleanup actions are necessary.

Implementation Activities Are Completed for All Operable Units (C). All actions agreed upon for remedial action at the site have been completed, and performance monitoring has commenced. Further site activities could occur if EPA considers such activities necessary.

VI. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to listing on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. The EPA has conducted a preliminary analysis of the economic implications of today's proposal to add new sites. The EPA believes that the kinds of economic effects associated with this revision are generally similar to those effects identified in the regulatory impact analysis (RIA) prepared in 1982 for the revisions to the NCP pursuant to section 105 of CERCLA (47 FR 31180, July 16, 1982) and the economic analysis prepared for the recently proposed amendments to the NCP (50 FR 5882, February 12, 1985). The Agency believes the anticipated economic effects related to proposing the addition of 38 sites to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis.

Costs

The EPA has determined that this proposed rulemaking is not a "major" regulation under Executive Order 12291 because inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA will necessarily undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs associated with responding to all sites included in a proposed rulemaking. This action was submitted to the Office of Management and Budget (OMB) for review.

The major events that follow the proposed listing of a site on the NPL are a responsible party search and a remedial investigation/feasibility study (RI/FS) which determines whether remedial actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may

continue after construction has been completed.

Cost associated with responsible party searches are initially borne by EPA. Responsible parties may bear some or all the costs of the RI/FS, design and construction, and O&M, or the costs may be shared by EPA and the States on a 90%:10% basis (50%:50% in the case of State-owned sites). Additionally, States assume all costs for O&M activities after the first year at sites involving Fund-financed remedial actions.

Rough estimates of the average per-site and total costs associated with each of the above activities are presented below. At this time EPA is unable to predict what portions of the total costs will be borne by reponsible parties, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of cost recovery actions where such actions are brought.

Cost category	Average total cost per site[1]
RI/FS	$800,000
Remedial design	440,000
Remedial action	7,200,000
Initial remedial measures (IRM) at 10% of sites	80,000
Net present value of O&M [2]	3,770,000

[1] 1985 U.S. dollars
[2] Assumes cost of O&M over 30 years, $400,000 for the first year and 10% discount rate

Source: "Extent of the Hazardous Release Problem and Future Funding Needs-CERCLA Section 301(a)(1)(c) Study", December 1984, Office of Solid Waste an Emergency Response, U.S. EPA.

Costs to States associated with today's proposed amendment arise from the required State cost-share of: (1) 10 percent of remedial implementation (remedial action and IRM) and first year O&M costs at privately-owned sites; and (2) 50 percent of the remedial planning (RI/FS and remedial design), remedial implementation and first year O&M costs at State or locally-owned sites. States will assume all the cost for O&M after the first year. Using the assumptions developed in the 1982 RIA for the NCP, EPA has assumed that 90 percent of the 38 non-Federal sites proposed to be added to the NPL in this amendment will be privately-owned and 10 percent will be State or locally-owned. Therefore, using the budget projections presented above, the cost to States of undertaking Federal remedial actions at all 38 sites would be $172 million, of which $130 million is attributable to the State O&M cost.

The act of listing a hazardous waste site on the final NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of response costs, but the Agency considers such factors as: the volume and nature of the wastes at the site; the parties' ability to pay; and other factors when deciding whether and how to proceed against potentially responsible parties.

Economy-wide effects of this proposed amendment are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this revision on output, prices, and emploment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The benefits associated with today's proposed amendment to list additional sites are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, this proposed expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts to avoid potential adverse publicity, private lawsuits, and/or Federal or State enforcement actions.

As a result of the additional NPL remedies, there will be lower human exposure to high risk chemicals, and higher quality surface water, ground water, soil, and air. The magnitude of these benefits is expected to be significant, although difficult to estimate in advance of completing the RI/FS at these particular sites.

Associated with the costs of remedial actions are significant potential benefits and cost offsets. The distributional costs to firms of financing NPL remedies have corresponding "benefits" in that funds expended for a response generate employment, directly or indirectly (through purchased materials).

VII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities the Act refers to small businesses, small governmental jurisdictions, and nonprofit organizations.

While proposed modifications to the NPL are considered revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. The proposed listing of sites on the NPL does not in itself require any action of any private party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are effected as a whole. As a consequence, it is hard to predict impacts on any group. A site's proposed inclusion on the NPL could increase the likelihood that adverse impacts to responsible parties (in the form of cleanup costs) will occur, but EPA cannot identify the potentially affected businesses at this time nor estimate the number of small businesses that might be affected.

The Agency does expect that certain industries and firms within industries that have caused a proportionately high percentage of waste site problems could be significantly affected by CERCLA actions. However, EPA does not expect the impacts from the proposed listing of these 38 sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would only occur through enforcement and cost recovery actions which are taken at EPA's discretion on a site-by-site basis. EPA considers may factors when determining what enforcement actions to take, including not only the firm's contribution to the problem, but also the firm's ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

For the reasons set forth in the preamble, Part 300, Subpart J, Chapter I of Title 40, of the Code of Federal Regulations is proposed to be amended as set forth below.

Dated: September 5, 1985.

J. Winston Porter,

Assistant Administrator, Office of Solid Waste and Emergency Response.

PART 300—[AMENDED]

It is proposed to amend Appendix B of 40 CFR Part 300 by adding 38 sites to the National Priorities List. In addition, it is proposed to amend the format of Appendix B of 40 CFR Part 300 by adding the columns "NPL Rank" and "Cleanup Status". The sites would appear in the list of proposed non-Federal sites as follows:

NATIONAL PRIORITIES LIST PROPOSED UPDATE 4 SITES

NPL rank	EPA RG	State	Site name	City/county	Response category #	Cleanup status(a)
			Group 2			
	07	NE	Monroe Auto Equipment Co.	Cozad	D	
			Group 3			
	05	OH	Ormet Corp	Hannibal	D	
	07	IA	Lawrence Todtz Farm	Camanche	D	
	05	IL	H.O.D. Landfill	Antioch	S	
			Group 5			
	[illegible]	CO	Martin Marietta, Denver, Aerospace	Wateron	F S	
	05	MN	Freeway Sanitary Landfill	Burnsville	D	
	[illegible]	IN	Columbus Old Municipal Lndfll #1	Columbus	D	
	07	IA	A.Y. McDonald Ind., Inc.	Dubuque	F	
	03	PA	Route 940 Drum Dump	Pocono Summit	D	
	03	PA	C&D Recycling	Foster Township	D	
			Group 6			
	04	AL	Interstate Lead Co. (ILCO)	Leeds	D	
			Group 7			
	08	UT	Silver Creek Tailings	Park City	D	
	05	WI	Hagen Farm	Stoughton	S	
			Group 8			
	05	IN	Prestolite Battery Division	Vincennes	D	
			Group 9			
	03	DE	Standard Chlonne of Delaware, Inc	Delaware City	D	
	07	IA	John Deere (Dubuque Works)	Dubuque	D	
	06	AR	Arkwood, Inc.	Omaha	D	O
	05	MI	Hooker (Montague Plant)	Montague	V S	I
	02	NJ	Mattack, Inc.	Woolwich Township	[illegible]	
	05	WI	Lemberger Fly Ash Landfill	Whitelaw	S	
	05	MI	Kysor Industrial Corp.	Cadillac	D	
	05	MN	St. Augusta SLF/St. Cloud Dump	St Augusta Township	S	
	05	WI	Sheboygan Harbor & River	Sheboygan	D	
			Group 10			
	03	PA	Bendix Flight Systems Division	Bridgewater Township	D	O
	05	MI	Kent City Mobile Home Park	Kent City	D	
	10	WA	Wyckoff Co.—Eagle Harbor	Bainbridge Island	D	
	04	FL	Pratt & Whitney Air/ United Tech	West Palm Beach	V S	O
	07	IA	Midwest Manufacturing/North Farm	Kellogg	D	
	05	MN	Waite Park Wells	Waite Park	R	
	03	PA	Croydon TCE	Croydon	D	
	03	PA	Revere Chemical Co.	Nockamixon Township	R	O
	03	DE	Halby Chemical Co.	New Castle	D	
			Group 11			
	05	IN	Firestone Industrial Products Co	Noblesville	D	
	04	FL	Yellow Water Road Dump	Baldwin	R	O
	07	IA	Shaw Avenue Dump	Charles City	D	
	02	NY	Warwick Landfill	Warwick	D	
	05	IN	Tri-State Plating	Columbus	D	
	05	MN	East Bethel Demolition Landfill	East Bethel Township	D	

V = Voluntary or negotiated response; R = Federal and State response; F = Federal Enforcement; S = State enforcement; D = Actions to be determined.

(a): I = implementation activity underway, one or more operable units; O = one or more operable units completed, others may be underway; C = implementation activity completed for all operable units.

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Federal Register

Wednesday
September 18, 1985

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Vertebrate Wildlife; Notice of Review

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Vertebrate Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: The Service issues a revised notice identifying vertebrate animal taxa, native to the U.S., being considered for possible addition to the List of Endangered and Threatened Wildlife. The Service emphasizes that this notice is not a proposal for such addition, and that the involved taxa do not receive substantive or procedural protection pursuant to the Endangered Species Act of 1973, as amended. The Service does, however, encourage Federal agencies and other appropriate parties to take these taxa into account in environmental planning. Also identified in this notice are vertebrate taxa that were previously under consideration for listing, but that are currently presumed either to be extinct, to not be valid species or subspecies, or to be more abundant and widespread than previously thought and/or not subject to substantial threats.

DATE: Comments may be submitted until further notice.

ADDRESSES: Interested persons or organizations are requested to submit comments to: Director (OES), 500 Broyhill Building, U.S. Fish and Wildlife Service, Washington, DC 20240. Comments and materials relating to this notice are available for public inspection, by appointment, during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia.

Information relating to particular taxa may be obtained from appropriate Service Regional Offices, as listed below:

Region 1. California, Hawaii, Idaho, Nevada, Oregon, Washington, American Samoa, Commonwealth of the Northern Mariana Islands, Guam, and Trust Territory of the Pacific Islands.

Regional Director (ARD/FA), U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

Region 2. Arizona, New Mexico, Oklahoma, and Texas.

Regional Director (ARD/AFF), U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

Region 3. Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

Regional Director (ARD/AFF), U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111 (612/725–3596 or FTS 725–3596).

Region 4. Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands.

Regional Director (ARD/FA), U.S. Fish and Wildlife Service, The Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303 (404/221–3583 or FTS 242–3583).

Region 5. Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.

Regional Director (ARD/FA), U.S. Fish and Wildlife Service, Suite 700, One Gateway Center, Newton Corner, Massachusetts 02158 (617/965–5100 ext. 316 or FTS 829–9316, 7, 8).

Region 6. Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

Regional Director (ARD/FA), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (303/234–2496 or FTS 234–2496).

Region 7. Alaska.

Regional Director (ARD/AFF), U.S. Fish and Wildlife Service, 1101 East Tudor Road, Anchorage, Alaska 99503 (907/263–3539 or FTS 263–3539).

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, 500 Broyhill Building, U.S. Fish and Wildlife Service, Washington, DC. 20240 (703/235–2771 or FTS 235–2771), or the appropriate Regional Office.

SUPPLEMENTARY INFORMATION: The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) requires determination of whether species of wildlife and plants are endangered or threatened based on the best available scientific and commercial data. For many years, the U.S. Fish and Wildlife Service has been gathering data on taxa of vertebrates (fishes, amphibians, reptiles, birds, and mammals), native to the United States, that have appeared, at least at times, to warrant consideration for addition to the List of Endangered and Threatened Wildlife. The accompanying table identifies many of these taxa (including, by definition, biological subspecies) and assigns each to one of the three categories described below. Unless the subject of a published proposed or final rule determining endangered or threatened status, none of these taxa receive substantive or procedural protection pursuant to the Act.

Category 1 comprises taxa for which the Service currently has substantial information on hand to support the biological appropriateness of proposing to list as endangered or threatened. Proposals have not yet been issued because they have been precluded at present by other listing activity. Development and publication of proposed rules on these taxa are anticipated, however, and the Service encourages Federal agencies and other appropriate parties to give consideration to such taxa in environmental planning.

Category 2 comprises taxa for which information now in possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support proposed rules. The Service emphasizes that these taxa are not being proposed for listing by this notice, and that there are no specific plans for such proposals, unless additional information becomes available. Further biological research and field study may be needed to ascertain the status of taxa in this category, and it is likely that many will be found to not warrant listing. The Service hopes that this notice will encourage investigation of the status and vulnerability of these taxa, and consideration of them in the course of environmental planning.

Category 3 comprises taxa that were once being considered for listing as endangered or threatened, but are not currently receiving such consideration. These taxa are included in one of the following three subcategories.

Subcategory 3A comprises taxa for which the Service has persuasive evidence of extinction. If rediscovered, however, such taxa might warrant high priority for addition to the List of Endangered and Threatened Wildlife.

Subcategory 3B comprises taxa that were once thought to be biological species or subspecies, but that, on the basis of recent systematic work, usually as represented in published revisions and monographs, are not now considered distinctive and do not meet the Act's legal definition of species. Future systematic investigation could lead to reevaluation of the listing qualifications of such taxa.

Subcategory 3C comprises taxa that are now considered to be more abundant or widespread, and/or substantially less subject to identifiable threats, than previously thought. Should new information suggest that any such taxon is experiencing a numerical or distributional decline, or is under a substantial threat, it may be considered for transfer to category 1 or 2.

Many of the taxa in the accompanying table were also covered by the Service's previous Review of Vertebrate Wildlife, published in the **Federal Register** of December 30, 1982 (47 FR 58454–58460), as corrected on May 17, 1983 (48 FR 22173–22174). Certain of the taxa covered by the previous notice, however, have already had emergency, proposed, and/or final determinations of endangered or threatened status, and therefore these taxa are not included in this notice of review (for the complete U.S. Lists of Endangered and Threatened Wildlife and Plants, contact any of the offices in the above "**ADDRESSES**" section).

The Service hereby solicits data concerning the taxa in the accompanying table. Especially sought is information:

(1) Indicating that a taxon would more properly be assigned to a category other than the one in which it appears;

(2) Nominating a taxon not included in the table;

(3) Recommending an area as critical habitat for a taxon, or indicating why critical habitat may not be prudent or determinable for a taxon;

(4) Documenting threats to any listed taxon;

(5) Pointing out taxonomic changes for any taxon;

(6) Suggesting new or more appropriate names; or

(7) Noting errors, such as in the indicated distributions.

The Service intends to consider all data received in response to this notice, to make appropriate amendments to the accompanying table, and to indicate intentions with regard to future listing actions. Substantive changes in status may be announced by periodic notices in the **Federal Register**.

The accompanying table is arranged in a general systematic order, beginning with fishes and ending with mammals. For each taxon, the assigned category appears on the left, followed by the common name, the scientific name, the family name, and the known range. Range is indicated by abbreviations of State names (also AS=American Samoa, CM=Commonwealth of the Northern Mariana Islands, GU=Guam, PR=Puerto Rico, TT=Trust Territory of the Pacific Islands, and VI=Virgin Islands), and by the full names of foreign regions and Navassa Island, a U.S. possession in the Caribbean. The species may no longer occur in some of the areas shown. Some taxa have been included that have not yet been formally described in the scientific literature. Such taxa are indicated by the abbreviation "sp." after the generic name, or "ssp." after the generic and specific names. In the section on birds, the abbreviation "N" indicates the nesting range of the species, and the abbreviation "V" indicates additional areas in which the species is a regular visitor.

The primary authors of this notice are C. Kenneth Dodd, Jr. (herpetologist), George E. Drewry (programmer), Ronald M. Nowak (mammalogist), Jay M. Sheppard (ornithologist), and James D. Williams (ichthyologist), Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1975 or FTS 235–1975).

Authority: Endangered Species Act (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: September 6, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

BILLING CODE 4310-55-M

CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	RANGE
	FISHES			
2	Lake sturgeon	*Acipenser fulvescens*	Acipenseridae	AL,AR,GA,IA,IL,IN,KS,KY,LA, MI,MN,MO,MS,NE,NY,OH,PA,SD, TN,VT,WI,WV, Canada.
2	Gulf sturgeon	*Acipenser oxyrhacus desotoi*	Acipenseridae	AL,FL,GA,LA,MS.
2	Pallid sturgeon	*Scaphirhynchus albus*	Acipenseridae	AR,IA,IL,KS,KY,LA,MO,MS,MT,ND, NE,SD,TN.
2	Alabama shovelnose sturgeon	*Scaphirhynchus platorynchus* ssp.	Acipenseridae	AL,MS.
3C	Paddlefish	*Polyodon spathula*	Polyodontidae	AL,AR,IA,IL,IN,KS,KY,LA,MN, MO,MS,MT,ND,NE,OH,OK,PA,SD, TN,TX,WI.
3A	Deepwater cisco	*Coregonus johannae*	Salmonidae	IL,IN,MI,MN,WI, Canada.
2	Kiyi	*Coregonus kiyi*	Salmonidae	IL,IN,MI,MN,NY,WI, Canada.
3A	Blackfin cisco	*Coregonus nigripinnis nigripinnis*	Salmonidae	IL,IN,MI,WI, Canada.
1	Shortnose cisco	*Coregonus reighardi*	Salmonidae	IL,IN,MI,NY,WI, Canada.
2	Shortjaw cisco	*Coregonus zenithicus*	Salmonidae	IL,IN,MI,MN,WI, Canada.
2	Colorado cutthroat trout	*Salmo clarki pleuriticus*	Salmonidae	CO,UT,WY.
1	Bonneville cutthroat trout	*Salmo clarki utah*	Salmonidae	UT,WY,NV.
3C	Rio Grande cutthroat trout	*Salmo clarki virginalis*	Salmonidae	CO,NM.
3A	Alvord cutthroat trout	*Salmo clarki* ssp.	Salmonidae	NV,OR.
2	Willow/Whitehorse cutthroat trout	*Salmo clarki* ssp.	Salmonidae	OR.
2	Kern River rainbow trout	*Salmo gairdneri gilberti*	Salmonidae	CA.
2	Redband trout	*Salmo* sp.	Salmonidae	CA,OR,ID,NV.
2	Bull trout	*Salvelinus confluentus*	Salmonidae	CA,ID,MT,NV,OR,WA.
2	Montana Arctic grayling	*Thymallus arcticus montanus*	Salmonidae	MT.
2	Olympic mudminnow	*Novumbra hubbsi*	Umbridae	WA.
2	Mexican stoneroller	*Campostoma ornatum*	Cyprinidae	AZ,TX, Mexico.
2	Devil's River minnow	*Dionda diaboli*	Cyprinidae	TX.
2	Sheldon tui chub	*Gila bicolor eurysoma*	Cyprinidae	NV,OR.
3A	Independence Valley tui chub	*Gila bicolor isolata*	Cyprinidae	NV.
2	Newark Valley tui chub	*Gila bicolor newarkensis*	Cyprinidae	NV.
2	Lahontan tui chub	*Gila bicolor obesa*	Cyprinidae	NV.
2	Oregon Lakes tui chub	*Gila bicolor oregonensis*	Cyprinidae	OR.
2	Cowhead Lake tui chub	*Gila bicolor vaccaceps*	Cyprinidae	CA.
2	Big Smoky Valley tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
2	Catlow tui chub	*Gila bicolor* ssp.	Cyprinidae	OR.
2	Dixie Valley tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
2	Fish Creek Springs tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
2	Fish Lake Valley tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
2	Hot Creek Valley tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
2	Railroad Valley tui chub	*Gila bicolor* ssp.	Cyprinidae	NV.
2	Summer Basin tui chub	*Gila bicolor* ssp.	Cyprinidae	OR.
2	Leatherside chub	*Gila copei*	Cyprinidae	ID,UT,WY.
3A	Thicktail chub	*Gila crassicauda*	Cyprinidae	CA.
2	Gila chub	*Gila intermedia*	Cyprinidae	AZ,NM.
2	Gila roundtail chub	*Gila robusta grahami*	Cyprinidae	AZ,NM.
1	Virgin River chub	*Gila robusta seminuda*	Cyprinidae	AZ,NV,UT.
2	Moapa roundtail chub	*Gila robusta* ssp.	Cyprinidae	NV.
2	Oregon chub	*Hybopsis crameri*	Cyprinidae	OR.
2	Sturgeon chub	*Hybopsis gelida*	Cyprinidae	AR,IA,IL,KY,KS,LA,MO,MS,MT, NB,ND,SD,WY,TN.
2	Sicklefin chub	*Hybopsis meeki*	Cyprinidae	AR,IA,IL,KS,KY,LA,MO,MS,NB,ND,SD,TN.
2	Least chub	*Iotichthys phlegethontis*	Cyprinidae	UT.
2	Virgin spinedace	*Lepidomeda mollispinis mollispinis*	Cyprinidae	AZ,NV,UT.
2	Smalleye shiner	*Notropis buccula*	Cyprinidae	TX.
2	Blue shiner	*Notropis caeruleus*	Cyprinidae	AL,GA,TN.
2	Bluestripe shiner	*Notropis callitaenia*	Cyprinidae	AL,FL,GA.
2	Chihuahua shiner	*Notropis chihuahua*	Cyprinidae	TX.
2	Arkansas River shiner	*Notropis girardi*	Cyprinidae	AR,KS,NM,OK,TX.
3C	Rio Grande shiner	*Notropis jemezanus*	Cyprinidae	NM.
1	Cape Fear shiner	*Notropis mekistocholas*	Cyprinidae	NC.
3A	Phantom shiner	*Notropis orca*	Cyprinidae	TX, Mexico.
2	Sharpnose shiner	*Notropis oxyrhyncus*	Cyprinidae	TX.
3C	Peppered shiner	*Notropis perpallidus*	Cyprinidae	AR,OK.
2	Proserpine shiner	*Notropis proserpinus*	Cyprinidae	TX.
2	Rio Grande bluntnose shiner	*Notropis simus simus*	Cyprinidae	NM.
2	Blackmouth shiner	*Notropis* sp.	Cyprinidae	FL.
1	Cahaba shiner	*Notropis* sp.	Cyprinidae	AL.
2	Palezone shiner	*Notropis* sp.	Cyprinidae	AL,KY,TN.
2	Kanawha minnow	*Phenacobius teretulus*	Cyprinidae	NC,VA,WV.
1	Blackside dace	*Phoxinus cumberlandensis*	Cyprinidae	KY,TN.
2	Relict dace	*Relictus solitarius*	Cyprinidae	NV.
2	Cheat minnow	*Rhinichthys bowersi*	Cyprinidae	NV.
1	Independence Valley speckled dace	*Rhinichthys osculus lethoporus*	Cyprinidae	NV.
2	Moapa speckled dace	*Rhinichthys osculus moapae*	Cyprinidae	NV.
1	Clover Valley speckled dace	*Rhinichthys osculus oligoporus*	Cyprinidae	NV.
2	Pahranagat speckled dace	*Rhinichthys osculus velifer*	Cyprinidae	NV.
2	Amargosa Canyon speckled dace	*Rhinichthys osculus* ssp.	Cyprinidae	CA.
2	Diamond Valley speckled dace	*Rhinichthys osculus* ssp.	Cyprinidae	NV.
2	Meadow Valley Wash speckled dace	*Rhinichthys osculus* ssp.	Cyprinidae	NV.
2	Monitor Valley speckled dace	*Rhinichthys osculus* ssp.	Cyprinidae	NV.
2	Oasis Valley speckled dace	*Rhinichthys osculus* ssp.	Cyprinidae	NV.
2	White River speckled dace	*Rhinichthys osculus* ssp.	Cyprinidae	NV.
2	Sandhills chub	*Semotilus lumbee*	Cyprinidae	NC,SC.

CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	RANGE
2	White River desert sucker	*Catostomus clarki intermedius*	Catostomidae	NV.
2	Meadow Valley Wash desert sucker	*Catostomus clarki* ssp.	Catostomidae	NV.
2	Zuni Mountain sucker	*Catostomus discobolus yarrowi*	Catostomidae	AZ,NM.
3B	Webug sucker	*Catostomus fecundus*	Catostomidae	UT.
2	Goose Lake sucker	*Catostomus occidentalis lacusanserinus*	Catostomidae	CA,OR.
2	Jenny Creek sucker	*Catostomus riblculus* ssp.	Catostomidae	CA,OR.
2	Klamath largescale sucker	*Catostomus snyderi*	Catostomidae	CA,OR.
2	Wall Canyon sucker	*Catostomus* sp.	Catostomidae	NV.
2	Lost River sucker	*Deltistes luxatus*	Catostomidae	CA,OR.
2	Shortnose sucker	*Chasmistes brevirostris*	Catostomidae	CA,OR.
2	Blue sucker	*Cycleptus elongatus*	Catostomidae	AL,AR,IA,IL,IN,KS,KY,LA,MN, MO,MS,MT,ND,NE,NM,OH,OK,PA, SD,TN,TX,WI,WV, MEXICO.
3C	Rustyside sucker	*Moxostoma hamiltoni*	Catostomidae	VA.
2	Razorback sucker	*Xyrauchen texanus*	Catostomidae	AZ,CA,CO,NV,UT,WY.
3C	Headwater catfish	*Ictalurus lupus*	Ictaluridae	NM,TX.
2	Carolina madtom	*Noturus furiosus*	Ictaluridae	NC.
1	Orangefin madtom	*Noturus gilberti*	Ictaluridae	NC,VA.
2	Ouachita madtom	*Noturus lachneri*	Ictaluridae •	AR.
2	Frecklebelly madtom	*Noturus munitus*	Ictaluridae	AL,GA,LA,MS,TN.
1	Neosho madtom	*Noturus placidus*	Ictaluridae	KS,MO,OK.
2	Pygmy madtom	*Noturus stanauli*	Ictaluridae	TN.
2	Caddo madtom	*Noturus taylori*	Ictaluridae	AR.
2	Widemouth blindcat	*Satan eurystomus*	Ictaluridae	TX.
2	Toothless blindcat	*Trogloglanis pattersoni*	Ictaluridae	TX.
2	Northern cavefish	*Amblyopsis spelaea*	Amblyopsidae	IN,KY.
2	Preston White River springfish	*Crenichthys baileyi albivallis*	Cyprinodontidae	NV.
2	Moapa White River springfish	*Crenichthys baileyi moapa*	Cyprinodontidae	NV.
2	Conchos pupfish	*Cyprinodon eximius*	Cyprinodontidae	TX, Mexico.
2	Pecos pupfish	*Cyprinodon pecosensis*	Cyprinodontidae	NM,TX.
2	White Sands pupfish	*Cyprinodon tularosa*	Cyprinodontidae	NM.
3A	Monkey Springs pupfish	*Cyprinodon* sp.	Cyprinodontidae	AZ.
2	Palomas pupfish	*Cyprinodon* sp.	Cyprinodontidae	NM, Mexico.
3A	Whiteline topminnow	*Fundulus albolineatus*	Cyprinodontidae	AL.
3C	Barrens topminnow	*Fundulus julisia*	Cyprinodontidae	TN.
2	Waccamaw killifish	*Fundulus waccamensis*	Cyprinodontidae	NC.
2	Blotched gambusia	*Gambusia senilis*	Poeciliidae	TX, Mexico.
1	Waccamaw silverside	*Menidia extensa*	Atherinidae	NC.
2	Barred pygmy sunfish	*Elassoma* sp.	Centrarchidae	NC,SC.
1	Spring pygmy sunfish	*Elassoma* sp.	Centrarchidae	AL.
2	Guadalupe bass	*Micropterus treculi*	Centrarchidae	TX.
2	Crystal darter	*Ammocrypta asprella*	Percidae	AL,AR,FL,IA,IL,IN,KY,LA,MN, MO,MS,OH,OK,TN,WI,WV.
2	Eastern sand darter	*Ammocrypta pellucida*	Percidae	IL,IN,KY,MI,NY,OH,PA,VT,WV.
2	Sharphead darter	*Etheostoma acuticeps*	Percidae	NC,TN,VA.
2	Coppercheek darter	*Etheostoma aquali*	Percidae	TN.
2	Coldwater darter	*Etheostoma ditrema*	Percidae	AL,GA,TN.
2	Rio Grande darter	*Etheostoma grahami*	Percidae	TX, Mexico.
3C	Greenthroat darter	*Etheostoma lepidum*	Percidae	NM,TX.
2	Pinewoods darter	*Etheostoma mariae*	Percidae	NC,SC.
3C	Yellowcheek darter	*Etheostoma moorei*	Percidae	AR.
2	Cumberland Johnny darter	*Etheostoma nigrum suzanae*	Percidae	KY.
2	Finescale saddled darter	*Etheostoma osburni*	Percidae	VA,WV.
3C	Paleback darter	*Etheostoma pallididorsum*	Percidae	AR.
3B	Waccamaw darter	*Etheostoma perlongum*	Percidae	NC.
2	Trispot darter	*Etheostoma trisella*	Percidae	AL,GA,TN.
2	Tuscumbia darter	*Etheostoma tuscumbia*	Percidae	AL,TN.
2	Jewel darter	*Etheostoma (Doration)* sp.	Percidae	TN.
2	Elk River darter	*Etheostoma (Nothonotus)* sp.	Percidae	AL,TN.
2	Yazoo darter	*Etheostoma (Ulocentra)* sp.	Percidae	MS.
1	Goldline darter	*Percina aurolineata*	Percidae	AL,GA.
2	Bluestripe darter	*Percina cymatotaenia*	Percidae	MO.
2	Freckled darter	*Percina lenticula*	Percidae	AL,GA,LA,MS.
2	Longhead darter	*Percina macrocephala*	Percidae	KY,NC,NY,OH,PA,TN,VA,WV.
2	Longnose darter	*Percina nasuta*	Percidae	AR,MO,OK.
1	Roanoke logperch	*Percina rex*	Percidae	VA.
2	Stargazing darter	*Percina uranidea*	Percidae	AR,IL,IN,LA,MO.
2	Tidewater goby	*Eucyclogobius newberryi*	Gobiidae	CA.
1	O'opu alamo'o	*Lentipes concolor*	Gobiidae	HI.
2	Rough sculpin	*Cottus asperrimus*	Cottidae	CA.
2	Malheur mottled sculpin	*Cottus bairdi* ssp.	Cottidae	OR.
1	Shoshone sculpin	*Cottus greenei*	Cottidae	ID.
2	Wood River sculpin	*Cottus leiopomus*	Cottidae	ID.
1	Pygmy sculpin	*Cottus pygmaeus*	Cottidae	AL.
	AMPHIBIANS			
2	Flatwoods salamander	*Ambystoma cingulatum*	Ambystomatidae	AL,FL,GA,MS,SC.
2	California tiger salamander	*Ambystoma tigrinum californiense*	Ambystomatidae	CA.
2	Sonoran tiger salamander	*Ambystoma tigrinum stebbinsi*	Ambystomatidae	AZ, Mexico.
2	Hellbender	*Cryptobranchus alleganiensis*	Cryptobranchidae	AL,AR,GA,IA,IL,IN,KY,KS,MD, MN,MO,MS,NC,NY,OH,PA,SC,TN, VA,WV.
2	Green salamander	*Aneides aeneus*	Plethodontidae	AL,GA,KY,MD,MS,NC,OH,PA,SC,TN,VA,WV.
2	Sacramento Mountains salamander	*Aneides hardii*	Plethodontidae	NM.
2	Inyo Mountains salamander	*Batrachoseps campi*	Plethodontidae	CA.

CATEGORY AND COMMON NAME	SCIENTIFIC NAME	FAMILY	RANGE
2 Channel Islands slender salamander	*Batrachopseps pacificus pacificus*	Plethodontidae	CA.
2 Kern Canyon slender salamander	*Batrachoseps simatus*	Plethodontidae	CA.
2 Tehachapi slender salamander	*Batrachoseps stebbinsi*	Plethodontidae	CA.
2 Yellow-blotched ensatina	*Ensatina eschscholtzi croceator*	Plethodontidae	CA.
2 Large-blotched ensatina	*Ensatina eschscholtzi klauberi*	Plethodontidae	CA.
2 Barton Springs salamander	*Eurycea* sp.	Plethodontidae	TX.
2 Dark-sided salamander	*Eurycea aquatica*	Plethodontidae	AL, TN.
2 Junaluska salamander	*Eurycea junaluska*	Plethodontidae	NC.
3A Cascade Caverns salamander	*Eurycea latitans*	Plethodontidae	TX.
2 Texas salamander	*Eurycea neotenes*	Plethodontidae	TX.
2 Comal blind salamander	*Eurycea tridentifera*	Plethodontidae	TX.
3B Valdina Farms salamander	*Eurycea troglodytes*	Plethodontidae	TX.
2 Oklahoma salamander	*Eurycea tynerensis*	Plethodontidae	AR,OK,MO.
2 Tennessee cave salamander	*Gyrinophilus palleucus*	Plethodontidae	AL,GA,TN.
2 West Virginia spring salamander	*Gyrinophilus subterraneus*	Plethodontidae	WV.
2 Georgia blind salamander	*Haideotriton wallacei*	Plethodontidae	GA,FL.
2 Limestone salamander	*Hydromantes brunus*	Plethodontidae	CA.
2 Mount Lyell salamander	*Hydromantes platycephalus*	Plethodontidae	CA.
2 Shasta salamander	*Hydromantes shastae*	Plethodontidae	CA.
2 Caddo Mountain salamander	*Plethodon caddoensis*	Plethodontidae	AR.
2 Fourche Mountain salamander	*Plethodon fourchensis*	Plethodontidae	AR.
2 Peaks of Otter salamander	*Plethodon hubrichti*	Plethodontidae	VA.
3C Coeur d'Alene salamander	*Plethodon idahoensis*	Plethodontidae	ID.
2 Larch Mountain salamander	*Plethodon larselli*	Plethodontidae	OR,WA.
2 Jemez Mountain salamander	*Plethodon neomexicanus*	Plethodontidae	NM.
2 Cheat Mountain salamander	*Plethodon nettingi*	Plethodontidae	WV.
2 Ouachita salamander	*Plethodon ouachitae*	Plethodontidae	AR,OK.
2 White-spotted salamander	*Plethodon punctatus*	Plethodontidae	VA,WV.
2 Shenandoah salamander	*Plethodon shenandoah*	Plethodontidae	VA.
2 Siskiyou Mountain salamander	*Plethodon stormi*	Plethodontidae	CA,OR.
2 Blanco blind salamander	*Typhlomolge robusta*	Plethodontidae	TX.
3C Carolina waterdog	*Necturus lewisi*	Proteidae	NC.
2 Sipsey Fork waterdog	*Necturus maculosus* ssp.	Proteidae	AL.
2 Black-spotted newt	*Notophthalmus meridionalis*	Salamandridae	TX, Mexico.
2 Gulf Hammock dwarf siren	*Pseudobranchus striatus lustricolus*	Sirenidae	FL.
2 Rio Grande lesser siren	*Siren intermedia texana*	Sirenidae	TX, Mexico.
2 Black toad	*Bufo exsul*	Bufonidae	CA.
2 Puerto Rican toad	*Bufo lemur*	Bufonidae	PR.
2 Arroyo toad	*Bufo microscaphus californicus*	Bufonidae	CA, Mexico.
2 Amargosa toad	*Bufo nelsoni*	Bufonidae	NV.
2 Sonora green toad	*Bufo retiformis*	Bufonidae	AZ, Mexico.
2 Pine Barrens treefrog (northern populations)	*Hyla andersonii*	Hylidae	NC,NJ.
2 Illinois chorus frog	*Pseudacris streckeri illinoensis*	Hylidae	AR,IL,MO.
2 Guajon	*Eleutherodactylus cooki*	Leptodactylidae	PR.
2 Web-footed coqui	*Eleutherodactylus karlschmidti*	Leptodactylidae	PR.
3B Ranos bromeliad frog	*Eleutherodactylus ranosi*	Leptodactylidae	PR.
3B Duckwater frog	*Rana* sp.	Ranidae	NV.
3A San Felipe leopard frog	*Rana* sp.	Ranidae	CA.
2 Florida gopher frog	*Rana areolata aesopus*	Ranidae	FL,GA.
2 Carolina gopher frog	*Rana areolata capito*	Ranidae	GA,NC,SC.
2 Dusky gopher frog	*Rana areolata sevosa*	Ranidae	AL,FL,LA,MS.
2 California red-legged frog	*Rana aurora draytoni*	Ranidae	CA, Mexico.
3B Vegas Valley leopard frog	*Rana (pipiens) fisheri*	Ranidae	NV.
3A Relict leopard frog	*Rana onca*	Ranidae	AZ,NV,UT.
1 Tarahumara frog	*Rana tarahumarae*	Ranidae	AZ, Mexico.
REPTILES			
2 Alligator snapping turtle	*Macroclemys temminckii*	Chelydridae	AR,AL,FL,GA,IL,IN,KY,KS,LA, MO,MS,OK,TN,TX.
2 Western pond turtle	*Clemmys marmorata*	Emyidae	CA,OR,WA,Canada.
2 Bog turtle	*Clemmys muhlenbergi*	Emydidae	CT,DE,GA,MA,MD,NC,NY,NJ,PA,RI,SC,VA.
2 Barbour's map turtle	*Graptemys barbouri*	Emydidae	AL,FL,GA.
2 Cagle's map turtle	*Graptemys caglei*	Emydidae	TX.
2 Yellow-blotched sawback	*Graptemys flavimaculata*	Emydidae	MS.
3C Black-knobbed sawback	*Graptemys nigrinoda*	Emydidae	AL,MS.
1 Pinged sawback	*Graptemys oculifera*	Emydidae	LA,MS.
3C Sabine map turtle	*Graptemys ouachitensis sabinensis*	Emydidae	LA,TX.
2 Texas map turtle	*Graptemys versa*	Emydidae	TX.
2 Alabama red-bellied turtle	*Pseudemys alabamensis*	Emydidae	AL.
3C Sumanee cooter	*Pseudemys concinna sumanensis*	Emydidae	FL,GA.
2 Jicotea	*Pseudemys (decussata) stejnegeri*	Emydidae	PR.
2 Big Bend slider	*Pseudemys scripta gaigeae*	Emydidae	TX, Mexico.
2 Rev mud turtle	*Kinosternon baurii baurii*	Kinosternidae	FL.
3C Arizona mud turtle	*Kinosternon flavescens arizonense*	Kinosternidae	AZ, Mexico.
1 Yellow mud turtle (northern populations)	*Kinosternon flavescens flavescens*	Kinosternidae	IA,IL,MO,NE.
3B Illinois mud turtle	*Kinosternon flavescens spooneri*	Kinosternidae	IA,IL,MO.
2 Big Bend mud turtle	*Kinosternon hirtipes murrayi*	Kinosternidae	TX, Mexico.
1 Flattened musk turtle	*Sternotherus depressus*	Kinosternidae	AL.
2 Desert tortoise	*Scaptochelys agassizii*	Testudinidae	AZ,CA,NV,UT, Mexico.
2 Gopher tortoise	*Gopherus polyphemus*	Testudinidae	AL,FL,GA,LA,MS,SC.
3C Baker's legless lizard	*Amphisbaena bakeri*	Amphisbaenidae	PR.
2 Panamint alligator lizard	*Elgaria panamintinus*	Anguidae	CA.
2 Black legless lizard	*Anniella pulchra nigra*	Anniellidae	CA.

CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	RANGE
2	Barefoot gecko	*Anarbylus switaki*	Gekkonidae	CA, Mexico.
3C	Big Bend gecko	*Coleonyx reticulatus*	Gekkonidae	TX, Mexico.
2	Gila monster	*Heloderma suspectum*	Helodermatidae	AZ,CA,NM,NV,UT, Mexico.
2	Puerto Rican pygmy anole	*Anolis occultis*	Iguanidae	PR.
2	Reticulate collared lizard	*Crotaphytus reticulatus*	Iguanidae	TX, Mexico.
3A	Navassa Island iguana	*Cyclura cornuta bigerrina*	Iguanidae	Navassa Island.
3A	No common name	*Leiocephalus eremitus*	Iguanidae	Navassa Island.
2	San Diego horned lizard	*Phrynosoma coronatum blainvillei*	Iguanidae	CA, Mexico.
2	Flat-tailed horned lizard	*Phrynosoma mcalli*	Iguanidae	AZ,CA, Mexico.
3C	Sand dune lizard	*Sceloporus graciosus arenicolous*	Iguanidae	TX,NM.
2	Florida scrub lizard	*Sceloporus woodi*	Iguanidae	FL.
2	Colorado Desert fringed-toed lizard	*Uma notata notata*	Iguanidae	CA, Mexico.
3C	Cowles fringe-toed lizard	*Uma notata rufopunctata*	Iguanidae	AZ, Mexico.
3C	Pandanus skink	*Aulacoplax leptosoma*	Scincidae	TT.
2	Florida Keys mole skink	*Eumeces egregius egregius*	Scincidae	FL.
2	Blue-tailed mole skink	*Eumeces egregius lividus*	Scincidae	FL.
3C	Arizona skink	*Eumeces gilberti arizonensis*	Scincidae	AZ.
2	Sand skink	*Neoseps reynoldsi*	Scincidae	FL.
2	Blue-tailed ground lizard	*Ameiva wetmorei*	Teiidae	PR.
3C	Gray-checkered whiptail	*Cnemidophorus dixoni*	Teiidae	NM,TX.
2	Orange-throated whiptail	*Cnemidophorus hyperythrus*	Teiidae	CA, Mexico.
2	Southern rubber boa	*Charina bottae umbratica*	Boidae	CA.
3A	St. Croix ground snake	*Alsophis sanctcrucis*	Colubridae	VI.
2	Culebra garden snake	*Arrhyton exiguum exiguum*	Colubridae	PR.
2	Kirtland's snake	*Clonophis kirtlandi*	Colubridae	IL,IN,KY,MI,OH,PA,WI.
2	Key ringneck snake	*Diadophis punctatus acricus*	Colubridae	FL.
3C	Desert king snake	*Lampropeltis getulus splendida*	Colubridae	AZ,NM,OK,TX.
3C	Gray-banded king snake	*Lampropeltis mexicana alterna*	Colubridae	TX.
2	San Diego Mountain king snake	*Lampropeltis zonata pulchra*	Colubridae	CA.
2	Alameda striped racer	*Masticophis lateralis euryxanthus*	Colubridae	CA.
2	Copperbelly water snake	*Nerodia erythrogaster neglecta*	Colubridae	IL,IN,KY,MI,OH.
3C	Brazos water snake	*Nerodia harteri harteri*	Colubridae	TX.
1	Concho water snake	*Nerodia harteri paucimaculata*	Colubridae	TX.
2	Lake Erie water snake	*Nerodia sipedon insularum*	Colubridae	OH, Canada.
2	Black pine snake	*Pituophis melanoleucus lodingi*	Colubridae	AL,LA,MS.
2	Florida pine snake	*Pituophis melanoleucus mugitus*	Colubridae	AL,FL,GA,SC.
2	Santa Cruz Island gopher snake	*Pituophis melanoleucus pumilis*	Colubridae	CA.
2	Louisiana pine snake	*Pituophis melanoleucus ruthveni*	Colubridae	LA,TX.
2	Short-tailed snake	*Stilosoma extenuatum*	Colubridae	FL.
2	Rimrock crowned snake	*Tantilla oolitica*	Colubridae	FL.
2	Short-headed garter snake	*Thamnophis brachystoma*	Colubridae	NY,PA.
2	Giant garter snake	*Thamnophis couchi gigas*	Colubridae	CA.
2	Mexican garter snake	*Thamnophis eques*	Colubridae	AZ,NM, Mexico.
2	Narrow-headed garter snake	*Thamnophis rufipunctatus*	Colubridae	AZ,NM, Mexico.
2	No common name	*Tropidophis melanurus bucculentus*	Colubridae	Navassa Island.
3C	Arizona ridge-nosed rattlesnake	*Crotalus willardi willardi*	Viperidae	AZ, Mexico.
2	Eastern massasauga	*Sistrurus catenatus catenatus*	Viperidae	IA,IL,IN,MI,MO,MN,NY,OH,PA, Canada.
	BIRDS			
2	Reddish egret	*Egretta rufescens*	Ardeidae	N=FL,TX, Mexico, West Indies; V=AL,CA,LA,MS.
2	White-faced ibis (Great Basin population)	*Plegadis chihi*	Threskiornithidae	N=AZ,CA,CO,NM,NV,OR,UT; V=ID,WY, Mexico.
3C	Tule white-fronted goose	*Anser albifrons elgasi*	Anatidae	N=AK ; V=CA,OR.
2	West Indian whistling duck	*Dendrocygna arborea*	Anatidae	PR,VI, West Indies.
2	Fulvous whistling duck (Southwestern U.S. population)	*Dendrocygna bicolor*	Anatidae	N=AZ,CA; V=Mexico.
2	Lesser white-cheeked pintail	*Anas bahamensis bahamensis*	Anatidae	PR,VI, West Indies, South America.
2	West Indian ruddy duck	*Oxyura jamaicensis jamaicensis*	Anatidae	PR,VI, West Indies.
2	American swallow-tailed kite	*Elanoides forficatus forficatus*	Accipitridae	N=AL,AR,FL,GA,IA,IL,KS,LA,MN, MO,MS,NC,OK,SC,TN,TX,WI; V=Central America.
2	Puerto Rican sharp-shinned hawk	*Accipiter striatus venator*	Accipitridae	PR.
2	Puerto Rican broad-winged hawk	*Buteo platypterus brunnescens*	Accipitridae	PR.
2	Swainson's hawk	*Buteo swainsoni*	Accipitridae	N=AK,AZ,CA,CO,IA,ID,KS,MN,MO, MT,ND,NE,NM,NV,OK,OR,SD,TX,UT, WA,WY, Canada; V=FL, Mexico, Central and South America.
2	Ferruginous hawk	*Buteo regalis*	Accipitridae	N=CO,ID,MT,ND,NE,NM,NV,OK,OR, SD,TX,UT,WA,WY, Canada; V=AZ,CA, Mexico.
2	Crested caracara (Florida population)	*Polyborus plancus audubonii*	Falconidae	FL.
2	Southeastern American kestrel	*Falco sparverius paulus*	Falconidae	AL,FL,GA,LA,MS.
2	Western sage grouse	*Centrocercus urophasianus phaios*	Phasianidae	OR,WA, Canada.
2	Mangrove clapper rail	*Rallus longirostris insularum*	Rallidae	FL.
2	California black rail	*Laterallus jamaicensis coturniculus*	Rallidae	AZ,CA, Mexico.
2	Caribbean coot	*Fulica caribaea*	Rallidae	PR,VI, West Indies.
2	Western snowy plover	*Charadrius alexandrinus nivosus*	Charadriidae	N=CA,CO,KS,NM,NV,OK,OR,TX,UT, WA ; V=AZ, Mexico.
2	Southeastern snowy plover	*Charadrius alexandrinus tenuirostris*	Charadriidae	AL,FL,LA,MS,PR, Greater Antilles.
2	Mountain plover	*Charadrius montanus*	Charadriidae	N=CO,KS,MT,ND,NE,NM,OK,SD,TX, WY ; V=AZ,CA,NV,UT, Mexico.
2	Long-billed curlew	*Numenius americanus*	Scolopacidae	N=CA,CO,IA,ID,KS,MT,ND,NE,NM, NV,OK,OR,SD,TX,UT,WA,WI,WY, Canada; V=AZ,LA,MN, Mexico.

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1	Roseate tern (North American population)	*Sterna dougallii dougallii*	Laridae	N=CT,FL,MA,ME,NJ,NY,PR,VA,VI, Canada, West Indies; V=Central and South America.
2	White-crowned pigeon	*Columba leucocephala*	Columbidae	FL, West Indies, Central America.
2	Radak Micronesian pigeon	*Ducula oceanica ratakensis*	Columbidae	TT (Marshall Islands).
2	Truk Micronesian pigeon.	*Ducula oceanica teraoki*	Columbidae	TT (Caroline Islands).
3C	Mariana fruit dove	*Ptilinopus roseicapillus*	Columbidae	GU,CM.
3C	Guam white-throated ground dove	*Gallicolumba xanthonura xanthonura*	Columbidae	GU,CM.
3C	Palau Nicobar pigeon	*Caloenas nicobarensis pelewensis*	Columbidae	TT (Caroline Islands).
2	Western yellow-billed cuckoo	*Coccyzus americanus occidentalis*	Cuculidae	N=AZ,CA,CO,ID,NM,NV,OR,TX,UT,WA, Canada, Mexico; V=Central and South America.
2	Virgin Islands screech owl	*Otus nudipes newtoni*	Strigidae	PR,VI.
2	Southern spotted owl	*Strix occidentalis lucida*	Strigidae	AZ,CO,NM,TX,UT, Mexico.
1	Ponape short-eared owl	*Asio flammeus ponapensis*	Strigidae	TT (Caroline Islands).
1	Florida scrub jay	*Aphelocoma coerulescens coerulescens*	Corvidae	FL.
2	Appalachian Bewick's wren	*Thryomanes bewickii altus*	Troglodytidae	AL,GA,KY,MD,NC,OH,PA,SC,TN,VA,WV, Canada.
3A	San Clemente Bewick's wren	*Thryomanes bewickii leucophrys*	Troglodytidae	CA.
2	Coastal black-tailed gnatcatcher	*Polioptila melanura californica*	Muscicapidae	CA, Mexico.
3C	Truk monarch	*Metabolus rugensis*	Muscicapidae	TT (Caroline Islands).
1	Guam rufous-fronted fantail	*Rhipidura rufifrons uraniae*	Muscicapidae	GU.
1	Palau white-breasted wood-swallow	*Artamus leucorhynchus pelewensis*	Artamidae	TT (Caroline Islands).
2	Migrant loggerhead shrike	*Lanius ludovicianus migrans*	Laniidae	N=AR,CT,DE,DC,IA,IL,IN,KS,KY,MA,MD, ME,MI,MN,MO,MS,NC,NE,NH,NJ,NY,OH, OK,PA,RI,TN,TX,VA,VT,WI,WV,Canada; V=AL,FL,GA,LA,SC.
3C	Cardinal honey-eater	*Myzomela cardinalis saffordi*	Melephagidae	GU,CM.
2	Bishop's oo	*Moho bishopi*	Melephagidae	HI.
2	Rota bridled white-eye	*Zosterops conspicillata rotensis*	Zosteropidae	CM.
1	Truk greater white-eye	*Rukia ruki*	Zosteropidae	TT (Caroline Islands).
3C	Arizona Bell's vireo	*Vireo bellii arizonae*	Vireonidae	N=AZ,CA,NV,UT; V=Mexico.
1	Black-capped vireo	*Vireo atricapillus*	Vireonidae	N=KS,OK,TX; V=Mexico.
3C	Colima warbler	*Vermivora crissalis*	Emberizidae	N=TX; V=Mexico.
2	Golden-cheeked warbler	*Dendroica chrysoparia*	Emberizidae	N=TX; V=Mexico, Central America.
2	Stoddard's yellow-throated warbler	*Dendroica dominica stoddardi*	Emberizidae	AL,FL.
1	Kirtland's warbler	*Dendroica kirtlandii*	Emberizidae	PR.
1	Saltmarsh yellowthroat	*Geothlypis trichas sinuosa*	Emberizidae	CA.
	Yuma brown towhee	*Pipilo fuscus relictus*	Emberizidae	AZ.
2	Bachman's sparrow	*Aimophila aestivalis*	Emberizidae	AL,AR,FL,GA,IL,IN,KY,LA,MD,MO,MS,NC, OH,OK,PA,SC,TN,TX,VA,WV.
2	Texas Botteri's sparrow	*Aimophila botterii texana*	Emberizidae	TX, Mexico.
3C	Yuma rufous-crowned sparrow	*Aimophila ruficeps rupicola*	Emberizidae	AZ.
2	Belding's savannah sparrow	*Passerculus sandwichensis beldingi*	Emberizidae	CA, Mexico.
2	Large-billed savannah sparrow	*Passerculus sandwichensis rostratus*	Emberizidae	N=Mexico; V=AZ,CA.
1	Florida grasshopper sparrow	*Ammodramus savannarum floridanus*	Emberizidae	FL.
3A	Texas Henslow's sparrow	*Ammodramus henslowii houstonensis*	Emberizidae	TX.
2	Wakulla seaside sparrow	*Ammodramus maritima juncicola*	Emberizidae	FL.
2	Smyrna seaside sparrow	*Ammodramus maritima pelonota*	Emberizidae	FL.
-	Aleak song sparrow	*Melospiza melodia aleaka*	Emberizidae	AK.
2	Tricolored blackbird	*Agelaius tricolor*	Emberizidae	CA,OR, Mexico.
1	Palau blue-faced parrotfinch	*Erythrura trichroa pelewensis*	Estrildidae	TT (Caroline Islands).

MAMMALS

2	Tuckahoe masked shrew	*Sorex cinereus nigriculus*	Soricidae	NJ
2	Pribilof shrew	*Sorex hydrodromus*	Soricidae	AK
2	Lyell shrew	*Sorex lyelli*	Soricidae	CA
2	Preble's shrew	*Sorex preblei*	Soricidae	ID,MT,OR,WA,WY.
2	Homosassa shrew	*Sorex longirostris eionis*	Soricidae	FL.
2	Salt marsh vagrant shrew	*Sorex vagrans halicoetes*	Soricidae	CA.
3B	San Bernardino dusky shrew	*Sorex monticolus parvidens*	Soricidae	CA.
2	Buena Vista Lake shrew	*Sorex ornatus relictus*	Soricidae	CA.
2	Monterey ornate shrew	*Sorex ornatus salarius*	Soricidae	CA.
2	Ornate salt-marsh shrew	*Sorex ornatus salicornicus*	Soricidae	CA.
2	Suisun shrew	*Sorex ornatus sinuosus*	Soricidae	CA.
2	Santa Catalina shrew	*Sorex ornatus willetti*	Soricidae	CA.
2	Ashland shrew	*Sorex trigonirostris*	Soricidae	OR.
2	Southern water shrew	*Sorex palustris punctulatus*	Soricidae	MD,PA,TN,VA,WV.
2	Glacier Bay water shrew	*Sorex alaskanus*	Soricidae	AK.
2	Arizona shrew	*Sorex arizonae*	Soricidae	AZ,NM.
2	Long-tailed shrew	*Sorex dispar*	Soricidae	MA,ME,NC,NH,NY,PA,TN,VA,VT,WV.
2	Destruction Island shrew	*Sorex trowbridgii destructioni*	Soricidae	WA.
2	Northeastern pygmy shrew	*Microsorex hoyi thompsoni*	Soricidae	MA,ME,MI,NH,NY,OH,PA,VT,WI,WV.
2	Southern pygmy shrew	*Microsorex hoyi winnemana*	Soricidae	IL,IN,KY,MD,NC,OH,TN,VA.
2	Martha's Vineyard short-tailed shrew	*Blarina brevicauda aloga*	Soricidae	MA.
2	Nantucket short-tailed shrew	*Blarina brevicauda compacta*	Soricidae	MA.
2	Aransas short-tailed shrew	*Blarina brevicauda plumbea*	Soricidae	TX.
2	Sherman's short-tailed shrew	*Blarina brevicauda shermani*	Soricidae	FL.
3C	Dismal Swamp short-tailed shrew	*Blarina brevicauda telmalestes*	Soricidae	NC,VA.
2	Anastasia Island mole	*Scalopus aquaticus anastasae*	Talpidae	FL.
2	Englewood mole	*Scalopus aquaticus bassi*	Talpidae	FL.
2	Presidio mole	*Scalopus aquaticus texanus*	Talpidae	TX.
2	Star-nosed mole	*Condylura cristata parva*	Talpidae	GA,MD,NC,SC,TN,VA,WV.
2	Mariana fruit bat (northern populations)	*Pteropus mariannus mariannus*	Pteropodidae	CM.

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2	Pagan fruit bat	*Pteropus mariannus paganensis*	Pteropodidae	CM.
2	Samoan fruit bat	*Pteropus samoensis samoensis*	Pteropodidae	WS, Western Samoa.
2	Sheath-tailed bat	*Emballonura semicaudata*	Emballonuridae	CM,GU,TT (Caroline Islands).
2	Insular long-tongued bat	*Monophyllus plethodon frater*	Phyllostomidae	PR.
2	Big long-nosed bat	*Leptonycteris nivalis*	Phyllostomidae	TX, Mexico.
2	Little long-nosed bat	*Leptonycteris sanborni*	Phyllostomidae	AZ,NM, Mexico.
2	Desmarest's fig-eating bat	*Stenoderma rufum*	Phyllostomidae	PR.
2	Eastern small-footed bat	*Myotis subulatus leibii*	Vespertilionidae	AR,CT,DE,GA,IL,IN,KY,MA,MD, ME,MO,NC,NH,NJ,NY,OH,OK,PA, RI,TN,VA,VT,WV, Canada.
2	Occult bat	*Myotis lucifugus occultus*	Vespertilionidae	AZ,CA,NM,TX, Mexico.
2	Southeastern bat	*Myotis austroriparius*	Vespertilionidae	AL,AR,FL,GA,IL,IN,KY,LA,MO, MS,NC,OK,SC,TN,TX.
2	Southwestern cave bat	*Myotis velifer brevis*	Vespertilionidae	AZ,CA,NM.
2	Spotted bat	*Euderma maculatum*	Vespertilionidae	AZ,CA,CO,ID,MT,NM,NV,OR,UT, WY,TX, Canada, Mexico.
2	Townsend's western big-eared bat	*Plecotus townsendii townsendii*	Vespertilionidae	CA,OR,WA, Canada.
2	Southeastern big-eared bat	*Plecotus rafinesquii*	Vespertilionidae	AL,AR,FL,GA,IL,IN,KY,LA,MO, MS,NC,OH,OK,SC,TN,TX,VA,WV.
2	Greater mastiff bat	*Eumops perotis californicus*	Molossidae	AZ,CA,NM,TX, Mexico.
2	Underwood's mastiff bat	*Eumops underwoodi*	Molossidae	AZ, Mexico, Central America.
2	Florida mastiff bat	*Eumops glaucinus floridanus*	Molossidae	FL.
2	Barnes' pika	*Ochotona princeps barnesi*	Ochotonidae	UT.
2	Cinnamon pika	*Ochotona princeps cinnamomea*	Ochotonidae	UT.
2	Copenhagen Basin pika	*Ochotona princeps clamosa*	Ochotonidae	ID.
2	Lasal pika	*Ochotona princeps lasalensis*	Ochotonidae	UT.
2	Heliotrope pika	*Ochotona princeps moorei*	Ochotonidae	UT.
2	Goat Peak pika	*Ochotona princeps nigrescens*	Ochotonidae	NM.
2	Wasatch pika	*Ochotona princeps wasatchensis*	Ochotonidae	UT.
2	Riparian brush rabbit	*Sylvilagus bachmani riparius*	Leporidae	CA.
2	Lower Keys rabbit	*Sylvilagus palustris hefneri*	Leporidae	FL.
2	Micco cottontail rabbit	*Sylvilagus floridanus amoenophilus*	Leporidae	FL.
2	Smiths Island cottontail rabbit	*Sylvilagus floridanus hitchensi*	Leporidae	VA.
2	Davis Mountains cottontail rabbit	*Sylvilagus floridanus robustus*	Leporidae	TX.
2	New England cottontail rabbit	*Sylvilagus transitionalis*	Leporidae	AL,GA,KY,MA,MD,ME,NC,NH,NJ, NY,PA,TN,VA,VT,WV.
2	Sierra Nevada snowshoe hare	*Lepus americanus tahoensis*	Leporidae	CA.
1	White-sided jackrabbit	*Lepus callotis gaillardi*	Leporidae	NM, Mexico.
2	Sierra Nevada Mountain beaver (Mono Basin population)	*Aplodontia rufa californica*	Aplodontidae	CA.
2	Point Arena mountain beaver	*Aplodontia rufa nigra*	Aplodontidae	CA.
2	Point Reyes mountain beaver	*Aplodontia rufa phaea*	Aplodontidae	CA.
3A	Penasco chipmunk	*Eutamias minimus atristriatus*	Sciuridae	NM.
2	Organ Mountains chipmunk	*Eutamias quadrivittatus australis*	Sciuridae	NM.
2	Hidden Forest chipmunk	*Eutamias umbrinus nevadensis*	Sciuridae	NV.
2	Mount Ellen chipmunk	*Eutamias umbrinus sedulus*	Sciuridae	UT.
2	Palmer's chipmunk	*Eutamias palmeri*	Sciuridae	NV.
2	Wet Mountains marmot	*Marmota flaviventris notioros*	Sciuridae	CO.
2	Nelson's antelope ground squirrel	*Ammospermophilus nelsoni*	Sciuridae	CA.
1	Northern Idaho ground squirrel	*Spermophilus brunneus* ssp.	Sciuridae	ID.
2	Southern Idaho ground squirrel	*Spermophilus brunneus* ssp.	Sciuridae	ID.
2	Richardson's ground squirrel	*Spermophilus richardsoni nevadensis*	Sciuridae	ID,NV,OR.
2	Allen's 13-lined ground squirrel	*Spermophilus tridecemlineatus allenі*	Sciuridae	WY.
3C	White Mountains ground squirrel	*Spermophilus tridecemlineatus monticola*	Sciuridae	AZ.
2	Mohave ground squirrel	*Spermophilus mohavensis*	Sciuridae	CA.
2	Palm Springs ground squirrel	*Spermophilus tereticaudus chlorus*	Sciuridae	CA.
2	Arizona prairie dog	*Cynomys ludovicianus arizonensis*	Sciuridae	AZ,NM,TX, Mexico.
2	Mangrove fox squirrel	*Sciurus niger avicennia*	Sciuridae	FL.
2	Sherman's fox squirrel	*Sciurus niger shermani*	Sciuridae	FL.
2	Chiricahua squirrel	*Sciurus nayaritensis chiricahuae*	Sciuridae	AZ.
2	Santa Catalina Mountains squirrel	*Sciurus arizonensis catalinae*	Sciuridae	AZ.
2	Graham Mountains red squirrel	*Tamiasciurus hudsonicus grahamensis*	Sciuridae	AZ.
2	San Bernardino flying squirrel	*Glaucomys sabrinus californicus*	Sciuridae	CA.
2	Prince of Wales flying squirrel	*Glaucomys sabrinus griseifrons*	Sciuridae	AK.
2	Roy Prairie pocket gopher	*Thomomys mazama glacialis*	Geomyidae	WA.
2	Goldbeach pocket gopher	*Thomomys mazama helleri*	Geomyidae	OR.
2	Louie's pocket gopher	*Thomomys mazama louiei*	Geomyidae	WA.
2	Tacoma pocket gopher	*Thomomys mazama tacomensis*	Geomyidae	WA.
2	Fish Spring pocket gopher	*Thomomys umbrinus abstrusus*	Geomyidae	NV.
2	Amargosa pocket gopher	*Thomomys umbrinus amargosae*	Geomyidae	CA.
2	Bonneville pocket gopher	*Thomomys umbrinus bonnevillei*	Geomyidae	UT.
2	Clear Lake pocket gopher	*Thomomys umbrinus convexus*	Geomyidae	UT.
2	San Antonio pocket gopher	*Thomomys umbrinus curtatus*	Geomyidae	NV.
2	Pistol River pocket gopher	*Thomomys umbrinus detumidus*	Geomyidae	OR.
2	Mount Ellen pocket gopher	*Thomomys umbrinus dissimilis*	Geomyidae	UT.
3C	Animas pocket gopher	*Thomomys umbrinus emotus*	Geomyidae	NM.
3C	Graham Mountains pocket gopher	*Thomomys umbrinus grahamensis*	Geomyidae	AZ.
2	Guadalupe pocket gopher	*Thomomys umbrinus guadalupensis*	Geomyidae	NM,TX.
2	Hualapai pocket gopher	*Thomomys umbrinus hualpaiensis*	Geomyidae	AZ.
2	Limpia pocket gopher	*Thomomys umbrinus limpiae*	Geomyidae	TX.
2	Mearns' pocket gopher	*Thomomys umbrinus mearnsi*	Geomyidae	NM.
2	Stansbury Island pocket gopher	*Thomomys umbrinus minimus*	Geomyidae	UT.
2	Prospect Valley pocket gopher	*Thomomys umbrinus ruralis*	Geomyidae	AZ.
2	Antelope Island pocket gopher	*Thomomys umbrinus nesophilus*	Geomyidae	UT.
2	Ceballeta pocket gopher	*Thomomys umbrinus paguatae*	Geomyidae	NM.
2	Salt Gulch pocket gopher	*Thomomys umbrinus powelli*	Geomyidae	UT.

CATEGORY	AND COMMON NAME	SCIENTIFIC NAME	FAMILY	RANGE
2	Pajarito pocket gopher	Thomomys umbrinus quercinus	Geomyidae	AZ.
2	Skull Valley pocket gopher	Thomomys umbrinus robustus	Geomyidae	UT.
2	Swasey Spring pocket gopher	Thomomys umbrinus sevieri	Geomyidae	UT.
2	Searchlight pocket gopher	Thomomys umbrinus subolus	Geomyidae	AZ.
2	Harquahala pocket gopher	Thomomys umbrinus subsimilis	Geomyidae	AZ.
2	Limpia Creek pocket gopher	Thomomys umbrinus texensis	Geomyidae	TX.
2	Mer Rouge pocket gopher	Geomys bursarius breviceps	Geomyidae	LA.
2C	White Sands pocket gopher	Geomys arenarius brevirostris	Geomyidae	NM.
2	Maritime pocket gopher	Geomys personatus maritimus	Geomyidae	TX.
2	Carrizo Springs pocket gopher	Geomys personatus streckeri	Geomyidae	TX.
3A	Sherman s pocket gopher	Geomys pinetis fontanelus	Geomyidae	GA.
3A	Goff s pocket gopher	Geomys pinetis goffi	Geomyidae	FL.
3B	Colonial pocket gopher	Geomys colonus	Geomyidae	GA.
2	Cumberland pocket gopher	Geomys cumberlandius	Geomyidae	GA.
2	White-eared pocket mouse	Perognathus alticola alticola	Heteromyidae	CA.
2	Tehachapi pocket mouse	Perognathus alticola inexpectatus	Heteromyidae	CA.
2	Silky pocket mouse	Perognathus flavus goodpasteri	Heteromyidae	AZ.
2	Los Angeles pocket mouse	Perognathus longimembris brevinasus	Heteromyidae	CA.
2	Pacific pocket mouse	Perognathus longimembris pacificus	Heteromyidae	CA.
2	Coconino pocket mouse	Perognathus apolus arbuscula	Heteromyidae	AZ.
2	Yavapai pocket mouse	Perognathus apolus apolus	Heteromyidae	AZ.
2	Mupatki pocket mouse	Perognathus apolus cineris	Heteromyidae	AZ.
2	San Joaquin pocket mouse	Perognathus inornatus inornatus	Heteromyidae	CA.
2	Salinas pocket mouse	Perognathus inornatus psammophilus	Heteromyidae	CA.
2	Black Mountain pocket mouse	Perognathus intermedius nigrescens	Heteromyidae	AZ.
2	Fletcher kangaroo mouse	Microdipodops megacephalus nasutus	Heteromyidae	NV.
2	Desert Valley kangaroo mouse	Microdipodops megacephalus albiventer	Heteromyidae	NV.
2	Dolphin Island awl-toothed kangaroo rat	Dipodomys ordii cineraceus	Heteromyidae	UT.
2	Gunnison Island kangaroo rat	Dipodomys microps alfredi	Heteromyidae	UT.
2	Marble Canyon kangaroo rat	Dipodomys microps leucotis	Heteromyidae	AZ.
2	Dolphin Island chisel-toothed kangaroo rat	Dipodomys microps russeolus	Heteromyidae	UT.
2	Marysville kangaroo rat	Dipodomys heermanni exilus	Heteromyidae	CA.
1	Stephen s kangaroo rat	Dipodomys stephensi	Heteromyidae	CA.
2	Big-eared kangaroo rat	Dipodomys elephantinus	Heteromyidae	CA.
2	Texas kangaroo rat	Dipodomys elator	Heteromyidae	TX.
2	Merriam s kangaroo rat	Dipodomys merriami frenatus	Heteromyidae	UT.
2	Short-nosed kangaroo rat	Dipodomys nitratoides brevinasus	Heteromyidae	CA.
2	Tipton kangaroo rat	Dipodomys nitratoides nitratoides	Heteromyidae	CA.
2	Pine Island rice rat	Oryzomys palustris planirostris	Muridae	FL.
2	Sanibel Island rice rat	Oryzomys palustris sanibeli	Muridae	FL.
1	Silver rice rat	Oryzomys argentatus	Muridae	FL.
2	Chiricahua harvest mouse	Reithrodontomys megalotis arizonensis	Muridae	AZ.
2	Southern marsh harvest mouse	Reithrodontomys megalotis limicola	Muridae	CA.
2	Stansbury Island harvest mouse	Reithrodontomys megalotis ravus	Muridae	UT.
2	Santa Cruz harvest mouse	Reithrodontomys megalotis santacruzae	Muridae	CA.
2	Pinacate mouse	Peromyscus eremicus papagensis	Muridae	AZ, Mexico.
2	Black Mountain mouse	Peromyscus eremicus pullus	Muridae	AZ.
3A	Fallid beach mouse	Peromyscus polionotus decoloratus	Muridae	FL.
2	Santa Rosa beach mouse	Peromyscus polionotus leucocephalus	Muridae	FL.
2	Southeast beach mouse	Peromyscus polionotus niveiventris	Muridae	FL.
2	St. Andrews beach mouse	Peromyscus polionotus peninsularis	Muridae	FL.
2	Anastasia beach mouse	Peromyscus polionotus phasma	Muridae	FL,SC.
2	Anacapa mouse	Peromyscus maniculatus anacapae	Muridae	CA.
2	San Clemente mouse	Peromyscus maniculatus clementis	Muridae	CA.
2	Monomoy mouse	Peromyscus leucopus nesodytes	Muridae	MA.
2	Pungo mouse	Peromyscus leucopus easti	Muridae	VA.
2	Martha s Vineyard mouse	Peromyscus leucopus fuscus	Muridae	MA.
2	Anastasia Island cotton mouse	Peromyscus gossypinus anastasae	Muridae	FL,GA.
2	Chadwick Beach cotton mouse	Peromyscus gossypinus restrictus	Muridae	FL.
2	Palo Duro mouse	Peromyscus comanche	Muridae	TX.
2	Florida mouse	Peromyscus floridanus	Muridae	FL.
2	Yuma cotton rat	Sigmodon hispidus eremicus	Muridae	CA,AZ, Mexico.
3C	Lower Keys cotton rat	Sigmodon hispidus exsputus	Muridae	FL.
2	Insular cotton rat	Sigmodon hispidus insulicola	Muridae	FL.
2	Micco cotton rat	Sigmodon hispidus littoralis	Muridae	FL.
2	Yavapai cotton rat	Sigmodon arizonae jacksoni	Muridae	AZ.
2	Colorado River cotton rat	Sigmodon arizonae plenus	Muridae	CA.
2	Hot Springs cotton rat	Sigmodon fulviventer goldmani	Muridae	NM.
2	Southern Appalachian woodrat	Neotoma floridana haematoreia	Muridae	GA,NC,SC.
2	Eastern woodrat	Neotoma floridana magister	Muridae	AL,CT,IL,IN,KY,MD,NC,NJ,NY, OH,PA,TN,VA,WV.
2	White Sands woodrat	Neotoma micropus leucophaea	Muridae	NM.
2	Santa Catalina Mountains woodrat	Neotoma mexicana bullata	Muridae	AZ.
2	San Joaquin Valley woodrat	Neotoma fuscipes riparia	Muridae	CA.
2	Kentucky red-backed vole	Clethrionomys gapperi maurus	Muridae	KY.
2	Pymatuning red-backed vole	Clethrionomys gapperi paludicola	Muridae	OH,PA.
2	Rittatiny red-backed vole	Clethrionomys gapperi rubricola	Muridae	PA.
2	White-footed vole	Arborimus albipes	Muridae	CA,OR.
2	Duke s salt marsh vole	Microtus pennsylvanicus dukecampbelli	Muridae	FL.
2	Potholes meadow vole	Microtus pennsylvanicus kincaidi	Muridae	WA.
2	Block Island meadow vole	Microtus pennsylvanicus provectus	Muridae	RI.
2	Penobscot meadow vole	Microtus pennsylvanicus shattucki	Muridae	ME.
2	Beach vole	Microtus breweri	Muridae	MA.
3C	Arizona montane vole	Microtus mexicanus arizonensis	Muridae	AZ,NM.
2	Pahranagat Valley vole	Microtus mexicanus fucosus	Muridae	NV.

CATEGORY	COMMON NAME	SCIENTIFIC NAME	FAMILY	RANGE
2	Ash Meadows vole	*Microtus montanus nevadensis*	Muridae	NV.
2	Virgin River montane vole	*Microtus montanus rivularis*	Muridae	UT.
2	San Pablo vole	*Microtus californicus sanpabloensis*	Muridae	CA.
2	Owens Valley vole	*Microtus californicus vallicola*	Muridae	CA.
2	Shaw Island vole	*Microtus townsendii pugeti*	Muridae	WA.
2	Amak vole	*Microtus oeconomus amakensis*	Muridae	AK.
2	Montague vole	*Microtus oeconomus elymocetes*	Muridae	AK.
3C	Grahae Mountains vole	*Microtus longicaudus leucophaeus*	Muridae	AZ.
2	Southern rock vole	*Microtus chrotorrhinus carolinensis*	Muridae	NC,TN,VA,WV.
1	Mualapai Mexican vole	*Microtus mexicanus hualpaiensis*	Muridae	AZ.
2	Navaho Mountain Mexican vole	*Microtus mexicanus navaho*	Muridae	AZ,UT.
3A	Louisiana vole	*Microtus ochrogaster ludovicianus*	Muridae	LA,TX.
2	Round-tailed muskrat	*Neofiber alleni*	Muridae	FL,GA.
3C	Dismal Swamp bog lemming	*Synaptomys cooperi helaletes*	Muridae	NC,VA.
2	Nebraska bog lemming	*Synaptomys cooperi relictus*	Muridae	NE.
2	Kansas bog lemming	*Synaptomys cooperi paludis*	Muridae	KS.
2	Northern bog lemming	*Synaptomys borealis sphagnicola*	Muridae	ME,NH, Canada.
2	New Mexican jumping mouse	*Zapus hudsonius luteus*	Zapodidae	AZ,NM.
2	Preble's jumping mouse	*Zapus hudsonius preblei*	Zapodidae	CO,WY.
2	Point Reyes jumping mouse	*Zapus [illegible]*	Zapodidae	CA.
2	Sierra Nevada fox	*Vulpes vulpes necator*	Canidae	CA,NV.
2	Swift fox	*Vulpes velox*	Canidae	CO,KS,MT,ND,NE,NM,OK,SD,TX, WY, Canada.
2	Santa Catalina fox	*Urocyon littoralis catalinae*	Canidae	CA.
2	San Clemente fox	*Urocyon littoralis clementae*	Canidae	CA.
2	San Nicolas fox	*Urocyon littoralis dickeyi*	Canidae	CA.
2	San Miguel fox	*Urocyon littoralis littoralis*	Canidae	CA.
2	Santa Cruz fox	*Urocyon littoralis santacruzae*	Canidae	CA.
2	Santa Rosa fox	*Urocyon littoralis santarosae*	Canidae	CA.
3C	Glacier bear	*Ursus americanus emmonsii*	Ursidae	AK.
2	Florida black bear	*Ursus americanus floridanus*	Ursidae	FL,GA.
2	Louisiana black bear	*Ursus americanus luteolus*	Ursidae	LA,MS,TX.
2	Key Vaca raccoon	*Procyon lotor auspicatus*	Procyonidae	FL.
2	Key West raccoon	*Procyon lotor incautus*	Procyonidae	FL.
3C	Eastern marten	*Martes americana americana*	Mustelidae	MA,ME,MI,ND,NH,NY,OH,PA,VT, WI, Canada.
2	Florida long-tailed weasel	*Mustela frenata peninsulae*	Mustelidae	FL.
2	Everglades mink	*Mustela vison evergladensis*	Mustelidae	FL.
2	Florida mink	*Mustela vison lutensis*	Mustelidae	FL.
2	North American wolverine	*Gulo gulo luscus*	Mustelidae	CO,ID,MN,MT,ND,NV,UT,WY.
2	California wolverine	*Gulo gulo luteus*	Mustelidae	CA,OR,WA.
2	Channel Islands spotted skunk	*Spilogale putorius amphiala*	Mustelidae	CA.
2	Colorado hog-nosed skunk	*Conepatus mesoleucus figginsi*	Mustelidae	CO.
2	Big Thicket hog-nosed skunk	*Conepatus mesoleucus telmalestes*	Mustelidae	TX.
2	Southwestern otter	*Lutra canadensis sonorae*	Mustelidae	AZ,CA,CO,NM,UT.
2	North American lynx	*Felis lynx canadensis*	Felidae	AK,CO,ID,ME,MI,MN,MT,ND,NH, NV,NY,OR,UT,VT,WA,WI,WY, Canada.
2	Texas margay	*Felis wiedii cooperi*	Felidae	TX, Mexico.
2	Yuma puma	*Felis concolor browni*	Felidae	AZ,CA, Mexico.
2	Wisconsin puma	*Felis concolor schorgeri*	Felidae	IA,IL,KS,MN,MO,WI, Canada.
2	Hilton Head deer	*Odocoileus virginianus hiltonensis*	Cervidae	SC.
2	Blackbeard Island deer	*Odocoileus virginianus nigribarbis*	Cervidae	GA.
2	Bulls Island deer	*Odocoileus virginianus taurinsulae*	Cervidae	SC.
2	Hunting Island deer	*Odocoileus virginianus venatoria*	Cervidae	SC.
2	Woodland caribou (Montana population)	*Rangifer tarandus caribou*	Cervidae	MT.
2	California bighorn	*Ovis canadensis californiana*	Bovidae	CA,OR,WA, Canada.
2	Peninsular bighorn	*Ovis canadensis cremnobates*	Bovidae	CA, Mexico.

[FR Doc. 85–22293 Filed 9–17–85; 8:45 am]

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Wednesday
September 18, 1985

Part IV

Department of Transportation

Federal Highway Administration

23 CFR Part 658

Truck Size and Weight; Interpretation and Policy Statement; Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. 83-14]

Truck Size and Weight; Interpretation and Policy Statement; Proposed Rulemaking

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: This notice provides a statement of FHWA interpretation and policy addressing issues in relation to the truck size and weight provisions contained in the Surface Transportation Assistance Act of 1982 (STAA), as amended by the Tandem Truck Safety Act of 1984 (TTSA). This notice addresses (1) conditions under which segments of the National System of Interstate and Defense Highways may be deleted from the National Network for trucks, (2) conditions affecting the designation of new routes on the Federal-aid Primary System as part of the National Network, and (3) new access provisions for 102-inch wide 28½-foot semitrailers. The TTSA issue relative to the qualifications of highways previously designated with lane widths less than 12 feet is the subject of a separate rulemaking (April 1, 1985, 50 FR 12825, FHWA Docket No. 83-14).

DATE: Written comments must be received on or before November 4, 1985.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 83-14, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Sheldon G. Strickland, Office of Traffic Operations, (202) 426-1993, Mr. David C. Oliver, Office of the Chief Counsel, (202) 426-0825, or Mr. Richard A. Torbik, Office of Highway Planning (202) 426-0233, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590, Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On October 30, 1984, the Tandem Truck Safety Act of 1984 (TTSA), (Pub. L. 98-554, 98 Stat. 2829) amending the Surface Transportation Assistance Act of 1982 (STAA), (Pub. L. 97-424, 96 Stat. 2097) became law. In addition to the 12-foot lane issue which is being addressed in a separate notice, the TTSA also amended the STAA as described in the following sections:

Interstate Deletion—Length

Section 411 was amended to enable the deletion of a specific segment of an Interstate route from the National Network either on the Secretary's own initiative or at the request of the Governor of the State (see proposed § 658.11(b)(2)) if that segment is not capable of safely accommodating the longer trucks or combinations authorized by the STAA. Before making a request to the Secretary, the Governor shall consult with units of local government within the State in which the specific highway segment is located and with the Governor of any State adjacent to that State that might be directly affected by such deletion. As part of these consultations, potential alternative routes must be considered.

Further guidance is offered by the Senate Committee Report: [1]

> The Committee does not intend that this consultative procedure be lengthy or complicated. In requiring a Governor to consult with units of local government and Governors of adjacent States, the Committee seeks to ensure that the effects of an exemption of a highway segment—in terms of ths safety impacts and the impacts of interstate commerce—on the entire surrounding area be carefully considered and evaluated. For example, during the Surface Transportation Subcommittee's hearing on S. 2217, Senator Frank Lautenberg expressed concern about a potential "spillover" problem—for example, if all highways in New York City were closed to tandem truck traffic, highways in New Jersey, some of which might not be able safely to handle the traffic, might be forced to accept the tandem units. * * * If, however, the Governor of an adjacent State or local government representatives do not choose to participate in the consultative process, the Governor seeking the exemption need only note in his or her petition that contact was made with the other parties and that they did not choose to participate.
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> In requiring the Governor seeking an exemption to consider alternative routes during the consultative process, the Committee wishes to emphasize its desire for the unimpeded flow of commerce, subject to safety criteria. The Committee intends that these alternative routes provide a logical connection to the interstate and primary system, to the maximum extent feasible, and do not create conditions of unreasonable circuity. The Committee also intends that governors consider and provide to the Secretary available data on the potential economic impact of the alternative route or routes on the businesses and industries that would be affected by the change.
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> The Committee intends that the Secretary consider four factors in making an exemption determination pursuant to this legislation: (1) The effect of an exemption on transportation safety, (2) the effect of an exemption on interstate commerce, (3) the presence and suitability of an alternative route or routes, and (4) the effect on other segments of the interstate and defense highway system and other highways. It is unequivocally the Committee's intent that highway safety, the first factor, be the Secretary's primary concern.

Any request for deletion of an Interstate segment must include a discussion of the above four factors prior to consideration by the Secretary of Transportation (see proposed § 658.11(b)(2)).

An additional factor established by FHWA in this proposal includes consideration and discussion of operating restrictions in lieu of deletion. This would allow the segment's continued use by STAA vehicles, but with restraints such as peak hour use limitations and lane use requirements.

Interstate Deletion—Width

Section 416 was also amended to enable the deletion of a specific segment of an Interstate from the National Network on the Secretary's own initiative or at the request of the Governor of the State if that segment is not capable of safely accommodating the 102-inch wide vehicles authorized by the STAA. The procedures for the 102-inch wide vehicles are identical to those established for the longer trucks and tandem trailer units, and are incorporated in proposed § 658.11(b)(2).

National Network Additions

Section 416 of the 1982 STAA was amended to provide that the designation of additional routes in a State subsequent to those designated in the June 5, 1984, rule, must be approved by the Governor of the State (see proposed 23 CFR 658.11(a)(2)). A new sentence has been added to section 416(a)[2] and reads as follows:

> Section 416. (a) * * * After the date of the enactment of this sentence, any Federal-aid highway (other than any Interstate highway) which was not designated under this subsection on June 5, 1984, may be designated under this subsection only with

[1] S. Rep. No. 505, 98th Cong., 2nd Sess. 11, 12 (1984).

[2] Tandem Truck Safety Act of 1984, section 105 of Pub. L. 98-554, 98 Stat. 2829, 2832, enacted on October 30, 1984.

the agreement of the Governor of the State in which the highway is located.

Reasonable Access

Section 412 was amended to extend the reasonable access privileges, previously afforded only to household goods carriers, to truck tractor-semitrailer combinations where the semitrailer does not exceed 28½ feet in length and 102 inches in width, and which generally operates as part of a tandem trailer combination described in section 411(b) of the STAA. The following is quoted from the Senate Committee Report[3]:

> While the STAA authorized and guaranteed access to terminals and facilities for food, fuel and rest for the twin trailer combination vehicles, it did not include the necessary language to assure access for local delivery operations for the individual, 28-foot by 102-inch, trailers. If any State requirement were interpreted to restrict access for such local operations, the value to the carrier and shippers of the more efficient equipment would be substantially diminished. There would be sharp decline in purchases of new equipment from manufacturers while the inconsistency in Federal and State law was under judicial and/or administrative review.
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> * * * * *
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> * * * [The TTSA] therefore provides authority for safer and more efficient motor carrier operations in pickup and delivery service by assuring reasonable access to points of loading and unloading to a limited and clearly-defined class of commercial motor vehicles on a uniform national basis. * * * As more carriers convert to the STAA-authorized equipment, single 28-foot trailers will replace the standard 45-foot trailer in pickup and delivery service, thus resulting in significantly improved traffic conditions in local service as well as more economical and efficient motor carrier service to shipper and the consuming public through a reduction in freight handling costs.

While the Senate report consistently refers to 28-foot trailers, the actual language in the approved bill refers to 28½-foot trailers in recognition of the grandfather right for 28½-foot trailers to operate under the provisions of section 411(b) of the STAA of 1982. This revision is incorporated in proposed § 658.19(a).

This notice proposes to amend 23 CFR Part 658 as described above and requests comments on these proposed changes.

Regulatory Impact

The FHWA has considered the impacts of this proposal and has determined that it is not a major rulemaking action within the meaning of E.O. 12291 and not a significant rulemaking under the regulatory policies and procedures of the Department of Transportation (DOT). These determinations by the agency are based on the nature of the rulemaking. The FHWA has determined that this rulemaking action proposes to technically amend the June 5 final rule, incorporating revisions mandated by the TTSA. The proposed revisions address finalizing procedures for additions and deletions to the system and the degree of local access afforded to 102-inch-wide trailing units of twin trailers as well as clarifying current law as opposed to substantively revising the current regulations or changing the impacts initially projected. A Regulatory Impact Analysis has been prepared for the June 5 rulemaking while a Draft Regulatory Evaluation has been prepared for this notice of proposed rulemaking. Both are available for inspection in the headquarters office of FHWA, 400 7th Street, SW., Washington, DC. Copies may be obtained by contacting Mr. Sheldon G. Strickland, Mr. Richard A. Torbik, or Mr. David C. Oliver at the address provided under the heading "**FOR FURTHER INFORMATION CONTACT**".

For the same reasons and under the criteria of the Regulatory Flexibility Act, FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing, the FHWA is proposing to amend Chapter I of Title 23, Code of Federal Regulations, by amending Part 658 as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation and Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highways and roads, Motor carriers—size and weight.

Issued on: September 10, 1985.

R.D. Morgan,

Executive Director, Federal Highway Administration.

PART 658—TRUCK SIZE AND WEIGHT ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS AMENDED

1. The authority citation for 23 CFR Part 658 is revised to read as follows:

Authority: Secs. 133, 411, 412, 413, and 416 of Pub. L. 97–424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. 2311, 2312, 2313; 49 U.S.C. App. 2316), as amended by Pub. L. 98–17, 97 Stat. 59, and Pub. L. 98–554, 98 Stat. 2829; 23 U.S.C. 315; and 49 CFR 1.48.

2. Section 658.1 is revised to read as follows:

§ 658.1 Purpose.

The purpose of this part is to identify a National Network of highways available to vehicles authorized by provisions of the Surface Transportation Assistance Act of 1982 (STAA) (Pub. L. 97–424, 96 Stat. 2097), as amended by Pub. L. 98–17, 97 Stat. 59 and Pub. L. 98–554, 98 Stat. 2829, and to prescribe national policies that govern truck size and weight.

3. In § 658.11, paragraphs (a) and (b) are revised to read as follows:

§ 658.11 Additions, deletions, exceptions, and restrictions.

* * * * *

(a) *Additions.* (1) Requests for additions to the National Network, including justification, shall be submitted in writing to the appropriate FHWA Division Office. Routes proposed for addition to the National Network shall be assessed on the basis of the criteria of § 658.9.

(2) Proposals for additions that meet the criteria of § 658.9 and have the endorsement of the Governor or the Governor's authorized representative will be published as necessary in the **Federal Register** for public comment as a Notice of Proposed Rulemaking (NPRM), and if found acceptable, as a final rule.

(b) *Deletions*— (1) *Federal-aid Primary—Other than Interstate.* Changed conditions or additional information may require the deletion of a designated route or a portion thereof. The deletion of any route or route segment shall require FHWA approval. Requests for deletion of routes from the National Network, including the reason(s) for the deletion, shall be submitted in writing to the appropriate FHWA Division Office. These requests shall be assessed on the basis of the criteria of § 658.9.

(2) *Federal-aid Interstate.* The deletion of any specific segment of the Interstate highway system from the National Network shall be made on the Secretary's own initiative, or by the request of the Governor of the State in which the Interstate segment is located. Requests from the Governor shall be submitted in writing to the appropriate FHWA Division Office for transmittal to Washington Headquarters. Such submission shall as a minimum (i) specify evidence of safety problems supporting the deletion as identified in § 658.11(d); (ii) analyze impact on interstate commerce; (iii) analyze and recommend any alternative routes that

[3] S. Rep. No. 505, 98th Cong. 2nd Sess. 16, 17 (1984).

can safely accommodate the commercial motor vehicle of the dimensions and configurations described in §§ 658.13 and 658.15 and serve the area in which such segment is located; (iv) show consultation with the local government in which the segment is located, as well as the Governor of any adjacent State that might be directly affected by such a deletion; and (v) consider and discuss operating restrictions in lieu of deletion.

(3) Proposed deletions will be published in the **Federal Register** as a Notice of Proposed Rulemaking, except in the case of an emergency deletion as prescribed in § 658.11(c).

* * * * *

4. In § 658.19 paragraph (a) is revised to read as follows:

§ 658.19 Reasonable access.

(a) All States must allow vehicles with dimensions authorized by the STAA reasonable access between the National Network described in the regulation and terminals and facilities for food, fuel, repairs, and rest. For household goods carriers, and for any truck tractor-semitrailer combination in which the semitrailer has a length not to exceed 28½ feet and which generally operates as part of a vehicle combination described in §§ 658.13 and 658.15, the lenght and width provisions require reasonable access to points of loading and unloading in addition to terminals and facilities as listed above.

* * * * *

[FR Doc. 85-22248 Filed 9-17-85; 8:45 am]

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Wednesday
September 18, 1985

Part V

Department of Education

Office of Elementary and Secondary Education

34 CFR Part 298

Chapter 2 of the Education Consolidation and Improvement Act of 1981; Final Rule

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 298

Chapter 2 of the Education Consolidation and Improvement Act of 1981

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations amending the regulations published on November 19, 1982 in 47 FR 52368–86 for activities authorized under Subchapters A, B, and C of Chapter 2 of the Education Consolidation and Improvement Act of 1981 (ECIA). These final regulations implement changes made to Chapter 2 by the Education Consolidation and Improvement Act of 1981 Technical Amendments to improve the administration of the program. The final regulations also make other changes in certain provisions of the November 19, 1982 regulations to implement statutory language and to conform provisions to the corresponding provisions that apply to Chapter 1 of the ECIA.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Allen King, Deputy Director, Division of Educational Support, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Mail Stop 6264, Washington, DC 20202. Telephone: (202) 245–7965.

SUPPLEMENTARY INFORMATION:

Overview of Chapter 2

Chapter 2 of the Education Consolidation and Improvement Act of 1981 (ECIA) was enacted as part of Subtitle D of Title V of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35). Chapter 2 consolidated over 40 education grant programs into a single authorization of grants to States for the same purposes as the antecedent programs, but to be used in accordance with the educational needs and priorities of State and local educational agencies (SEAs and LEAs) as determined by those agencies. The basic responsibility for the administration of Chapter 2 funds is in the SEAs. Responsiblity for the design and implementation of Chapter 2 programs, however, rests mainly with LEAs, school superintendents and principals, and classroom teachers and supporting personnel. Final regulations implementing the provisions of Chapter 2 were published on November 19, 1982 in 47 FR 52368–86 as 34 CFR Part 298.

On December 8, 1983, the President signed into law the Education Consolidation and Improvement Act of 1981 Technical Amendments (Pub. L. 98–211) to improve the implementation of the ECIA. A notice of proposed rulemaking (NPRM) was published on July 10, 1984 in 49 FR 28212–14. These final regulations implement the changes made to Chapter 2 by Pub. L. 98–211. The final regulations also make other changes in certain provisions in the final Chapter 2 regulations published on November 19, 1982 to implement statutory language and to conform provisions to the corresponding provisions that apply to Chapter 1 of the ECIA.

Overview of These Final Regulations

The following discussion summarizes the changes made by these final regulations to the final Chapter 2 regulations published on November 19, 1982.

Sections Implementing Changes Made to Chapter 2 by Pub. L. 98–211

Section 298.3 General responsibilities of State and local educational agencies

This section implements three changes made by Pub. L. 98–211. First, paragraph (a)(2) implements section 9(b) of Pub. L. 98–211, which requires States to assure in their Chapter 2 applications that, apart from providing technical and advisory assistance and monitoring compliance with Chapter 2, an SEA has not exercised any influence in the decisionmaking processes of its LEAs concerning the LEAs' expenditures of Chapter 2 funds. Second, paragraph (b) incorporates the provision on State rulemaking contained in section 15 of Pub. L. 98–211. This provision replaces the prior authority for State rulemaking contained in § 298.3(a)(2). Third, paragraph (c)(2) implements section 9(c) of Pub. L. 98–211, which places responsibility on each LEA to ensure that each expenditure of funds under Chapter 2 is for the purpose of meeting the educational needs within the schools of the LEA.

Section 298.5 Allotments to States of Chapter 2 funds

Paragraph (a)(1) implements the change made by section 11 of Pub. L. 98–211, which requires the Secretary to reserve one percent of the Chapter 2 appropriation for payments to the Insular Areas.

Section 298.7 LEA applications

Paragraph (a) implements the requirement in section 13 of Pub. L. 98–211 that SEAs certify LEA applications.

Section 298.8 Allocation of Chapter 2 funds to LEAs

Paragraph (b) implements the change made by section 21(a) of Pub. L. 98–211, which deletes the world "nonpublic" and inserts instead "private, nonprofit" in section 565(a) of Chapter 2.

In the Conference Report accompanying Pub. L. 98–211, the conferees stated that it was their intent, under Section 565(a) of Chapter 2, "that State Chapter 2 distribution formulas provide adjusted allocations to LEAs with only the greatest numbers or percentages of high cost children rather than allocations to LEAs with any number or percentage of such children." H. Rept. 574, 98th Cong., 1st Sess. 15 (1983) (Conference Report). Paragraph (b) does not incorporate the Conference Report language because the Secretary believes that regulating the SEAs' distribution of funds to their LEAs would intrude on the flexibility and responsibility vested in SEAs under Chapter 2, thereby undermining the central legislative decision made by Congress in enacting Chapter 2—namely, to make it a State-administered program with a minimum Federal role.

Consistent with this philosophy, paragraph (b) allows each SEA to decide whether to implement the Conference Report language. Upon careful analysis of the overall needs within the State, an SEA may determine that adjusted allocations under Section 565(a) should go only to those LEAs with the greatest numbers or percentages of high-cost children. The Secretary encourages SEAs to review their allocation formulas in light of the Conference Report language.

Section 298.51 Practice and procedure

Section 16 of Pub. L. 98–211 deletes the references to a hearing "on the record" in section 592(a) of the ECIA. In so doing, Congress made clear that it did not intend the lengthy and time-consuming hearing procedures required by the Administrative Procedure Act (APA) to apply to withholding hearings under the ECIA. Therefore, as paragraph (a) indicates, practice and procedure before the Education Appeal Board (EAB) for withholding hearings under the ECIA will be governed by the same rules that govern other Chapter 2

proceedings. These rules include transcribing the proceedings. *See* 34 CFR 78.48.

Section Implementing Other Changes

Section 298.14 Availability of funds

Section 298.14 has been amended to clarify that references to fiscal year mean the Federal fiscal year.

Section 298.16 Federal audits and access to records

Paragraph (a)(1) reflects the language on access to records contained in section 437(b) of the General Education Provisions Act (GEPA), made applicable to Chapter 2 by section 18(a) of Pub. L. 98–211. Paragraph (a)(2) implements the authority granted to the Inspector General by the Inspector General Act of 1978. Paragraph (b) incorporates minor editorial changes to make the language consistent with the corresponding provision in Chapter 1 of the ECIA.

Section 298.17 State audits

Paragraph (a) indicates that the Single Audit Act of 1984, enacted on October 19, 1984, applies to SEAs and LEAs that receive Chapter 2 funds. That Act establishes audit requirements for State and local governments and applies to those governments with respect to any of their fiscal years that begin after December 31, 1984. The Secretary recently published final regulations in 50 FR 37356 (September 13, 1985) implementing the provisions of the Act. Paragraph (b)(1) deletes the reference to "other subgrantees," thereby indicating that an LEA is responsible for repaying to the SEA any Chapter 2 funds the LEA or its subgrantee has misspent.

Section 298.18 Audit claims

Paragraph (a) states that the Department may establish an audit claim after a State or Federal audit is conducted. Paragraph (b)(1) lists the factors contained in 4 CFR Part 103 (Standards for the Compromise of Claims) and section 452(f) of GEPA that the Secretary takes into account when considering whether to compromise an audit claim. This list does not include the factor regarding a debtor's inability to pay the claim in full contained in 4 CFR 103.2 because it is not applicable to collection actions against States. Paragraph (b)(2) indicates that it is the policy of the Secretary to consider the probability of the claim being upheld to be the most important factor in deciding whether to compromise an audit claim.

Section 298.31 By-pass—General

Paragraph (c) incorporates the statutory provision in section 586(e)(2) of Chapter 2 concerning the withholding of funds pending final resolution of an investigation or a complaint that could result in a by-pass.

Section 298.37 Judicial review of by-pass actions

Section 298.37 concerning judicial review of by-pass action implements the statutory provision in section 586(h)(2) of Chapter 2.

Section 298.38 Continuation of the by-pass

Section 298.38 implements the statutory provision in section 586(f) of Chapter 2, which indicates that a by-pass action continues until the Secretary determines that there will no longer be any failure or inability on the part of the SEA or LEA that is being by-passed to meet the requirements in §§ 298.21–298.28.

Section 298.41 General; 298.42 Jurisdiction; 298.43 Definitions; 298.45 Written notice; 298.46 Filing an application for review; 298.47 Review of the written notice; 298.49 Rejection of the application; 298.52 The Panel's decision

Section 451(a)(4) of GEPA authorizes the Secretary to designate proceedings to be reviewed by the EAB. This statutory provision has been incorporated into the final regulations at a number of places to indicate that the Secretary may designate other Chapter 2 proceedings to be reviewed by the EAB.

Section 298.44 Eligibility for review

Paragraph (a)(4) incorporates the provision in section 451(a)(4) of GEPA authorizing the Secretary to designate other Chapter 2 proceedings to be reviewed by the EAB. Paragraph (b) indicates that a recipient who is dissatisfied with a Department action that may be reviewed by the EAB must seek this administrative review before seeking judicial review. Paragraph (c) indicates that a Panel of the EAB may dismiss an appeal if there are no issues in the appeal within the EAB's jurisdiction.

Section 298.51 Practice and procedure

Paragraph (b) implements the provision in section 452(b) of GEPA, which requires an appellant to prove before the EAB the allowability of the expenditures disallowed in a final audit determination.

Section 298.54 The Secretary's decision

Section 452(d) of GEPA authorizes the Secretary, for good cause shown, to modify or set aside an EAB Panel's decision in the review of a final audit determination. Under the authority in sections 451(a) and (e) of GEPA to designate cases to be heard by the EAB and to establish appropriate procedures to guide the EAB's review, § 298.54 permits the Secretary to remand a Panel's decision to the EAB for further review and consideration. If the Secretary does remand a Panel's decision, no final agency action will have occurred.

Application of Other Statutes and Regulations

Public Law 98–211 makes several changes in the applicability of other statutes that affect Chapter 2. Section 18(a) of Pub. L. 98–211 amends section 596 of the ECIA to clarify the applicability of GEPA to Chapter 2. As amended, section 596 provides that, unless a section of GEPA is specifically excluded by section 596, the provisions in GEPA apply to chapter 2. With two exceptions, the amendment to section 596 coincides with the Department's position on the applicability of GEPA published on November 19, 1982 in 47 FR 52370. The first exception concerns the applicability of section 425 of GEPA, which deals with appeal procedures at the State and Federal levels available to an LEA that has been adversely affected by a decision of its SEA. The second exception concerns the applicability of section 437(b) of GEPA, which authorizes the Secretary and the Comptroller General of the United States to have access to records of recipients' funds for purposes of audit or program compliance. Pub. L. 98–211 makes sections 425 and 437(b) applicable to Chapter 2.

Section 18(b) of Pub. L. 98–211 repeals a portion of the "State Uses of Federal Funds" report required by sections 406A(a) of GEPA. The repealed section required States to collect and furnish information on the amount of Federal funds received by each LEA, the purposes for which those funds were spent, and the individuals served by those activities, all tabulated with respect to the second preceding year.

According to section 596 of the ECIA, sections 434, 435, and 436 of GEPA are not applicable to Chapter 2 "except to the extent that such sections relate to fiscal control and fund accounting procedures. . . ." The Secretary indicated in the preamble of the final Chapter 2 regulations that the provision in section 434 that applies to Chapter 2 is subsection (a)(2) pertaining to the Secretary's discretionary authority to request a plan on audits. The Secretary decided not to require such a plan for audits of the Chapter 2 program. *See* 47

FR 52370 (Nov. 19, 1982). Upon further consideration in conjunction with the review of GEPA applicability in Pub. L. 98-211, the Secretary has determined that sections 434(b) (2) and (3) relating to SEA suspension and withholding of payments to LEAs that have failed to comply with Federal program requirements also deals with fiscal control and fund accounting procedures and is therefore applicable to Chapter 2.

Public Participation

During the ninety-day comment period, approximately sixty-three comments and recommendations were received. The Secretary carefully considered all comments received and made changes to the proposed regulations warranted by those comments. A summary of the comments and the Secretary's responses to those comments are contained in the appendix to these regulations. The appendix will not appear in the Code of Federal Regulations.

In addition, the Secretary has made other changes to certain provisions in the final Chapter 2 regulations published on November 19, 1982 to implement statutory language and to conform provisions to the corresponding provisions that apply to Chapter 1 of the ECIA. For the reasons stated below, the Secretary is waiving proposed rulemaking for these changes.

Waiver of Proposed Rulemaking

It is the practice of the Secretary to publish proposed regulations for comment in accordance with section 431(b)(2)(A) of GEPA (20 U.S.C. 1232(b)(2)(A)) and section 553 of the APA (5 U.S.C. 553). However, under certain circumstances, the Secretary may waive proposed rulemaking under section 553(b) of the APA. Specifically, section 553(b) permits waiver of interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice, or when an agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

These final regulations include changes to the Chapter 2 regulations that were not published as proposed rules. The Secretary has decided to waive proposed rulemaking on the provisions containing these changes for several reasons. First, for most of the provisions, the Secretary has determined that it is unnecessary to take public comment under the good cause exception in section 553(b)(B) because the revised provisions merely restate the law and establish no new substantive policy. The changes in § 298.14 concerning the availability of funds, for example, indicate that section 412(b) of GEPA refers to Federal fiscal years. The changes in § 298.16 concerning Federal audits and access to records conform the provision to section 437(b) of GEPA and implement the Inspector General's authority under the Inspector General Act of 1978. In § 298.17 concerning State audits, the changes implement the Single Audit Act of 1984. In § 298.18 concerning audit claims, paragraph (a) implements the authority to establish claims contained in section 452(a) of GEPA and paragraph (b)(1) implements the authority to compromise claims contained in 4 CFR Part 103 and section 452(f) of GEPA. New §§ 298.31(c), 298.37, and 298.38 implement statutory provisions in section 586 of Chapter 2 concerning by-pass arrangements. Likewise, the change in § 298.51(b) concerning practice and procedure before the EAB implements the provision in section 452(b) of GEPA, which requires an appellant to prove before the EAB the allowability of the expenditures disallowed in a final audit determination. The changes in § 298.54 concerning the Secretary's decision, which indicate that the Secretary may remand a Panel's decision to the EAB for further review or consideration, implement section 452(d) of GEPA. Finally, changes implementing section 451(a)(4) of GEPA, which authorizes the Secretary to designate other proceedings to be reviewed by the EAB, have been made in the following due process provisions to indicate that the Secretary may designate other Chapter 2 proceedings to be reviewed by the EAB: § 298.41 General; § 298.42 Jurisdiction; § 298.43 Definitions; § 298.45 Written notice; § 298.46 Filing an application for review; § 298.47 Review of the written notice; § 298.49 Rejection of the application; and § 298.52 The Panel's decision. All of these changes restate or implement statutory provisions and most of the changes were included, as a result of public comment, in the final regulations for Chapter 1 of the ECIA published on April 30, 1985 in 50 FR 18415-19.

The Secretary has decided to waive proposed rulemaking on two other provisions for different reasons. In § 298.18 concerning audit claims, paragraph (b)(2) indicates that it is the general policy of the Secretary to consider the probability of the claim being upheld to be the most important factor in deciding whether to compromise an audit claim. Because this is a general, nonbinding statement of policy that indicates the Secretary's intent to give the probability of the claim being upheld the greatest weight, the Secretary has decided to waive proposed rulemaking. A notice of proposed rulemaking is not required for general statements of policy under section 553(b)(A) of the APA.

The changes in § 298.44 concerning eligibility for review indicate that a recipient of Chapter 2 funds must exhaust its administrative remedies before seeking judicial review. Exhaustion of administrative remedies is well-established in the case law interpreting the APA. Moreover, section 455 of GEPA, which authorizes judicial review of certain decisions of the Secretary regarding Chapter 2, contemplates exhaustion of administrative remedies first. Thus, the Secretary has determined that this provision is an interpretative rule within the meaning of section 553(b)(A) of the APA. It should be noted that the Secretary proposed identical changes to the corresponding provision that applies to Chapter 1 of the ECIA on August 9, 1984 in 49 FR 31918-23. No public comments were received challenging the substance of that provision.

Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities. To the extent that these regulations affect States and State agencies, they will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act.

These regulations will affect all small LEAs receiving Federal financing assistance under Chapter 2. However, the regulations will not have a significant economic impact on the LEAs affected. The regulations implement technical amendments enacted by Congress and make other changes in the existing Chapter 2 regulations to implement statutory language and to conform provisions to the corresponding provisions that apply to Chapter 1 of the ECIA. The regulations contain minimal requirements to ensure the proper allocation and expenditure of Chapter 2 funds. Some provisions of the regulations may reduce burdens and increase flexibility for LEAs.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States. Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 298

Administrative practice and procedure, Education, Elementary and secondary education, Grant programs—education, Private schools, Reporting and recordkeeping requirements, State-administered programs.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance No. 84–151, Chapter 2 of the Education Consolidation and Improvement Act of 1981)

Dated: September 13, 1985.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 298 of Title 34 of the Code of Federal Regulations as follows:

1. The Table of Contents is revised to read as follows:

PART 298—CHAPTER 2 OF THE EDUCATION CONSOLIDATION AND IMPROVEMENT ACT OF 1981

Subpart A—How a State or Local Educational Agency Obtains Funds Under Chapter 2

Sec.
298.1 Purpose.
298.2 Definitions.
298.3 General responsibilities of State and local educational agencies.
298.4 State applications.
298.5 Allotments to States of Chapter 2 funds.
298.6 State advisory committee.
298.7 LEA applications.
298.8 Allocation of Chapter 2 funds to LEAs.
298.9 Reallocation.
298.10 Use of Chapter 2 funds.

Subpart B—Fiscal Requirements That a State or Local Educational Agency Must Meet

298.11 Maintenance of effort.
298.12 Waiver of the maintenance of effort requirement.
298.13 Supplement, not supplant.
298.14 Availability of funds.
298.15 Recordkeeping requirements.
298.16 Federal audits and access to records.
298.17 State audits.
298.18 Audit claims.
298.19 Commingling of funds.
298.20 [Reserved].

Subpart C—How Children Enrolled in Private Schools Participate in Chapter 2 Programs

298.21 Responsibility of SEAs and LEAs
298.22 Consultation with private school officials.
298.23 Needs, number of children, and types of services.
298.24 Factors used in determining equitable participation.
298.25 Funds not to benefit a private school.
298.26 Use of public school employees.
298.27 Equipment and supplies.
298.28 Construction.
298.29–298.30 [Reserved].

Subpart D—Due Process Procedures

Procedures for by-Pass

298.31 By-pass—General.
298.32 Notice by the Secretary.
298.33 By-pass procedures.
298.34 Appointment and functions of a hearing officer.
298.35 Hearing procedures.
298.36 Post hearing procedures.
298.37 Judicial review of by-pass actions.
298.38 Continuation of the by-pass.
298.39–298.40 [Reserved].

Other Due Process Procedures

298.41 General.
298.42 Jurisdiction.
298.43 Definitions.
298.44 Eligibility for review.
298.45 Written notice.
298.46 Filing an application for review.
298.47 Review of the written notice.
298.48 Acceptance of the application.
298.49 Rejection of the application.
298.50 Intervention.
298.51 Practice and procedure.
298.52 The Panel's decision.
298.53 Opportunity to comment on the Panel's decision.
298.54 The Secretary's decision.
298.55 Cease and desist hearing.
298.56 Cease and desist written report and order.
298.57 Enforcement of a cease and desist order.

Authority: Secs. 561–596 of the Education Consolidation and Improvement Act of 1981, 20 U.S.C. 3811–3876, unless otherwise noted.

2. Section 298.3 is revised to read as follows:

§ 298.3 General responsibilities of State and local educational agencies.

(a) *State educational agencies.* (1) Except as provided in paragraph (a)(2) of this section, a State educational agency (SEA)—

(i) Has the basic responsibility for the administration of funds made available under Chapter 2; and

(ii) Is the State agency responsible for the administration and supervision of programs assisted with Chapter 2 funds.

(2) Apart from providing technical and advisory assistance and monitoring compliance with Chapter 2, an SEA may not exercise any influence in the decisionmaking process of a local educational agency (LEA) concerning the expenditures described in the LEA's application under section 566 of Chapter 2.

(b) *State rulemaking.* (1) Chapter 2 does not—

(i) Authorize States to issue rules, regulations, or policies that apply to LEAs operating programs or projects funded under Chapter 2, except as related to State audits and financial responsibilities; or

(ii) Encourage, preempt, or prohibit rules, regulations, or policies issued under State law.

(2) If a State issues, pursuant to procedures established by State law, any rules, regulations, or policies relating to the administration and operation of programs funded under Chapter 2 (including those based on State interpretation of any Federal statute, regulation, or guideline), the State shall—

(i) Ensure that the rules, regulations, or policies do not conflict with the provisions of—

(A) Chapter 2;

(B) The regulations in this part; or

(C) Other applicable Federal statutes and regulations; and

(ii) Identify the State rules, regulations, or policies as State-imposed requirements.

(c) *Local educational agencies.* (1) Section 566(c) of Chapter 2 provides that each LEA has complete discretion, subject only to the provisions of Chapter 2, in determining how funds the agency receives under section 565(a) of Chapter 2 are distributed among the purposes of Chapter 2 in accordance with the LEA's Chapter 2 application.

(2) In exercising this discretion, an LEA shall ensure that each expenditure of Chapter 2 funds is for the purpose of meeting the educational needs within the schools of that LEA.

(Sec. 561(b), 20 U.S.C. 3811(b); Sec. 564(a), 20 U.S.C. 3814(a); Sec. 566(c), 20 U.S.C. 3816(c); Sec. 591(d), 20 U.S.C. 3871(d))

3. Section 298.5 is amended by revising paragraph (a)(1) to read as follows:

§ 298.5 Allotments to States of Chapter 2 funds.

(a) * * *

(1) Reserves one percent of the Chapter 2 appropriation for payments to Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana

Islands to be allotted in accordance with their respective needs. If no more reliable data are available, the Secretary determines respective needs according to the relative enrollments in public and private schools within each territory;

* * * * *

(Sec. 563, 20 U.S.C. 3813)

4. Section 298.7 is amended by revising paragraph (a) to read as follows:

§ 298.7 LEA applications.

(a) An LEA may receive its allocation of funds under Chapter 2 for any year for which its application to the SEA has been certified by the SEA to meet requirements in Section 566(a) of Chapter 2.

* * * * *

(Sec. 566, 20 U.S.C. 3816)

5. Section 298.8 is amended by revising paragraph (b) to read as follows:

§ 298.8 Allocation of Chapter 2 funds to LEAs.

* * * * *

(b) From the funds made available each year under Chapter 2, an SEA shall distribute not less than 80 percent to LEAs within the State according to the relative enrollments in public and private, nonprofit schools within the school districts of those agencies, adjusted, in accordance with criteria approved by the Secretary, to provide higher per pupil allocations to LEAs that have the greatest numbers or percentages of children whose education imposes a higher than average cost per child, such as—

(1) Children from low-income families;

(2) Children living in economically depressed urban and rural areas; and

(3) Children living in sparsely populated areas.

* * * * *

(Sec. 565, 20 U.S.C. 3815)

6. Section 298.14 is revised to read as follows:

§ 298.14 Availability of funds.

(a) An SEA or LEA may obligate funds during the Federal fiscal year for which the funds were appropriated and during the succeeding Federal fiscal year.

(b) The SEA or LEA shall return to the Department any funds not obligated by the end of the succeeding Federal fiscal year.

(c)(1) Chapter 2 funds are obligated when an SEA or LEA—

(i) Commits funds, according to State law or practice, to the support of specific programmatic or administrative activities; and

(ii) Identifies Chapter 2 funds allocated for a particular Federal fiscal year as supporting those specific programmatic or adminstrative activities.

(2) For purposes of this section, the SEA's distribution of funds to LEAs under Section 565(a) of Chapter 2 is not the obligation of those funds.

(Sec. 596(a), 20 U.S.C. 3876(a); Sec. 412(b) of the General Education Provisions Act (GEPA), 20 U.S.C. 1225(b))

7. Section 298.16 is amended by revising paragraphs (a) and (b)(1) and the citation of authority to read as follows:

§ 298.16 Federal audits and access to records.

(a)(1) For the purpose of evaluating and reviewing the use of Chapter 2 funds, the Secretary and the Comptroller General of the United States, and their authorized representatives, shall have access to any records and personnel that may be related or pertinent to programs assisted with Chapter 2 funds.

(2) Any SEA, LEA, or other subgrantee that receives Chapter 2 funds shall cooperate with the Inspector General of the Department in the conduct of audits authorized by the Inspector General Act of 1978, including providing access to information and access to agency personnel for the purpose of obtaining explanations of the information.

(b)(1) An SEA shall repay to the Department the amount of Chapter 2 funds that the Department determines after an audit was not spent in accordance with applicable law.

* * * * *

(Sec. 564(a)(6), 20 U.S.C. 3814(a)(6); Sec. 566(a)(3), 20 U.S.C. 3816(a)(3); Sec. 437(b) of GEPA, 20 U.S.C. 1232f(b); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 1744 of the Omnibus Budget Reconciliation Act of 1981, 31 U.S.C. 7304; Secs. 3, 4, and 6 of the Inspector General Act of 1978, as amended, 5 U.S.C. App.; Sec. 202 of the Intergovernmental Cooperation Act of 1968, 42 U.S.C. 4212)

8. Section 298.17 is amended by removing paragraphs (b) and (c), by redesignating paragraph (d) as paragraph (b), and by revising paragraphs (a) and newly designated (b)(1), and the citation of authority to read as follows:

§ 298.17 State audits.

(a) *Basic requirement.* Each SEA and LEA shall comply with the audit requirements in the Single Audit Act of 1984 with respect to any of the agency's fiscal years that begin after December 31, 1984.

(b) *Audit remedy.* (1) An LEA shall repay to the SEA the amount of Chapter 2 funds that the State determines was not spent in accordance with applicable law.

* * * * *

(Single Audit Act of 1984, 31 U.S.C. 7501 *et seq.*)

9. Section 298.18 is revised to read as follows:

§ 298.18 Audit claims.

(a) *Establishment of claims.* After a State or Federal audit is conducted, the Department may establish an audit claim.

(b) *Compromise.* (1) In deciding whether to compromise an audit claim, or in recommending possible compromise to the United States Department of Justice, the Secretary considers the following factors in accordance with 4 CFR Part 103 and Section 452(f) of the General Education Provisions Act:

(i) The probability of the claim being upheld.

(ii) The cost of collecting the claim.

(iii) Whether the Department's enforcement policy in terms of deterrence and securing compliance would be adequately served.

(iv) Whether the practices of the SEA or LEA that resulted in the claim have been corrected and will not recur.

(v) Whether collection would be in the public interest or practical.

(2) It is the policy of the Secretary to consider the probability of the claim being upheld to be the most important of the factors in paragraph (b)(1) of this section.

(Sec. 564(a)(6), 20 U.S.C. 3814(a)(6); Sec. 566(a)(3), 20 U.S.C. 3816(a)(3); Sec. 452 of GEPA, 20 U.S.C. 1234a; Federal Claims Collection Act, 31 U.S.C. 3701 *et seq.*; 4 CFR Part 103)

10. Section 298.31 is amended by adding paragraph (c) to read as follows:

§ 298.31 By-pass—General.

* * * * *

(c) Pending the final resolution of an investigation or a complaint that could result in a by-pass action, the Secretary may withhold from the allocation of the affected SEA or LEA the amount the Secretary estimates is necessary to pay the cost of the services referred to in paragraph (b) of this section.

(Sec. 586 (d), (e),a nd (g), 20 U.S.C. 3862 (d), (e), and (g))

11. A new § 298.37 is added to read as follows:

§ 298.37 Judicial review of by-pass actions.

If an SEA or LEA is dissatisfied with the Secretary's final action after a proceeding under §§ 298.33–298.36, it

may, within 60 days after receiving notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located.

(Sec. 586(h)(2), 20 U.S.C. 3862(h)(2))

12. A new § 298.38 is added to read as follows:

§ 298.38 Continuation of the by-pass.

Any by-pass action by the Secretary continues until the Secretary determines that there will no longer be any failure or inability on the part of the SEA or LEA that is being by-passed to meet the requirements in §§ 298.21–298.28.

(Sec. 586(f), 20 U.S.C. 3862(f))

13. Section 298.41 is revised to read as follows:

§ 298.41 General.

(a) Sections 298.41–298.57 contain rules for the conduct of proceedings arising under Chapter 2 regarding—

(1) The review of final audit determinations;

(2) Withholding hearings;

(3) Cease and desist proceedings; and

(4) Other proceedings designated by the Secretary.

(b) If the Secretary designates other proceedings to the Education Appeal Board (Board) under paragraph (a)(4) of this section, the designation may specify that certain of the rules governing Board proceedings are modified as may be appropriate.

(Sec. 592, 20 U.S.C. 3872; Sec. 451(a) of GEPA, 20 U.S.C. 1234(a); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c)

14. Section 298.42 is revised to read as follows:

§ 298.42 Jurisdiction.

Under Chapter 2, the Education Appeal Board has jurisdiction to—

(a) Review final audit determinations;

(b) Conduct withholding hearings;

(c) Conduct cease and desist proceedings; and

(d) Conduct other proceedings designated by the Secretary.

(Sec. 592, 20 U.S.C. 3872; Sec. 451(a) of GEPA, 20 U.S.C. 1234(a); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c)

15. Section 298.43 is amended by revising the definitions of "appellant," "final audit determination," "panel," and "party" to read as follows:

§ 298.43 Definitions.

* * * * *

"Appellant" means an SEA that requests—

(a) A review of a final audit determination;

(b) A withholding hearing; or

(c) A hearing in other proceedings designated by the Secretary.

* * * * *

"Final audit determination" means a written notice by an authorized Department official issued after an audit disallowing expenditures made by a recipient under Chapter 2.

* * * * *

"Panel" means an Education Appeal Board Panel, consisting of at least three members of the Board, designated by the Board Chairperson to conduct any case.

* * * * *

"Party" means—

(a) The recipient requesting or appearing at a hearing under these regulations;

(b) The authorized Department official who issued the final audit determination being appealed, notice of an intent to withhold funds, the cease and desist complaint, or any other notice that the Board has jurisdiction to review; and

(c) Any person, group, or agency whose application to intervene is approved.

* * * * *

(Sec. 592, 20 U.S.C. 3872; Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c)

16. Section 298.44 is revised to read as follows:

§ 298.44 Eligibility for review.

(a) Review under these regulations is available to a recipient of Chapter 2 funds that receives a written notice from an authorized Department official of—

(1) A final audit determination;

(2) An intent to withhold funds;

(3) A cease and desist complaint; or

(4) A proceeding designated by the Secretary.

(b) If a recipient receives written notice and brings a lawsuit to challenge that notice, the recipient has failed to exhaust administrative remedies and the Secretary may move for dismissal of the lawsuit on that basis.

(c) If the Panel assigned to hear an appeal finds that there are no issues in the appeal within the Board's jurisdiction, the Panel may, at the request of a party or Panel member, issue a decision or order to that effect.

(Sec. 592, 20 U.S.C. 3872; Sec. 451(a) of GEPA, 20 U.S.C. 1234(a); Sec. 452 of GEPA, 20 U.S.C. 1234a; Sec. 454 of GEPA, 20 U.S.C. 1234c; Sec. 455 of GEPA, 20 U.S.C. 1234d)

17. Section 298.45 is amended by revising paragraphs (a)(2) (iii) and (iv), (b)(2) (i) and (ii), and (c)(2) (i) and (ii) and by adding paragraph (d) to read as follows:

§ 298.45 Written notice.

(a) * * *

(2) * * *

(iii) Cites the requirements with which the recipient has allegedly failed to comply; and

(iv) Advises the recipient that it must repay the disallowed expenditures to the Department or, within 30 calendar days of its receipt of the written notice, request a review by the Board of the final audit determination.

* * * * *

(b) * * *

(2) * * *

(i) Indicates the reasons for finding that the recipient failed to comply substantially with a requirement that applies to the funds;

(ii) Cites the requirement with which the recipient has allegedly failed to comply; and

* * * * *

(c) * * *

(2) * * *

(i) Indicates the reasons for finding that the recipient failed to comply substantially with a requirement that applies to the funds;

(ii) Cites the requirement with which the recipient has allegedly failed to comply; and

* * * * *

(d) *Written notice of other determinations.* (1) The Secretary may issue a written notice to a recipient under Chapter 2 of any other determination with regard to the recipient's use of these funds.

(2) That notice indicates that the Secretary has designated the Board to hear any application for review that the recipient may file and specifies that the recipient may file an application for review within 30 calendar days of receipt of the notice.

(3) The Secretary sends the written notice to the recipient by certified mail with return receipt requested.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(a), (e) of GEPA, 20 U.S.C. 1234(a), (e); Sec. 452(a) of GEPA, 20 U.S.C. 1234a(a); Sec. 454(a) of GEPA, 20 U.S.C. 1234c(a))

18. Section 298.46 is amended by revising the heading and paragraph (a) to read as follows:

§ 298.46 Filing an application for review.

(a) An appellant seeking review of a final audit determination, a withholding hearing, or other determination designated by the Secretary shall file a written application with the Board Chairperson no later than 30 calendar days after the date it receives the written notice.

* * * * *

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451 (a), (e) of GEPA, 20 U.S.C. 1234 (a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

19. Section 298.47 is revised to read as follows:

§ 298.47 Review of the written notice.

(a) The Board Chairperson reviews the written notice of the final audit determination, intent to withhold funds, or other determination after an application is received under § 298.46 to ensure that the written notice meets the applicable requirements in § 298.45.

(b) If the Board Chairperson decides that the written notice does not meet the applicable requirements in § 298.45, the Board Chairperson—

(1) Returns the determination to the official who issued it so that the determination may be properly modified; and

(2) Notifies the appellant of that decision.

(c) If the official makes the appropriate modifications and the appellant wishes to pursue its appeal to the Board, the appellant shall amend its application within 30 calendar days of the date it receives the modifications.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451 (a), (e) of GEPA, 20 U.S.C. 1234 (a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

20. Section 298.49 is amended by revising paragraph (c) to read as follows:

§ 298.49 Rejection of the application.

* * * * *

(c) If an application is rejected twice, the Department may take appropriate administrative action to—

(1) Collect the expenditures disallowed in the final audit determination;

(2) Withhold funds; or

(3) Carry out the decision described in the written determination.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451 (a), (e) of GEPA, 20 U.S.C. 1234 (a), (e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

21. Section 298.51 is revised to read as follows:

§ 298.51 Practice and procedure.

(a) *General.* Practice and procedure before the Board in proceedings conducted under the regulations in this part are governed by the rules in Subpart E of 34 CFR Part 78 (Education Appeal Board).

(b) *Burden of proof.* The appellant shall present its case first and shall have the burden of proving the allowability of the expenditures disallowed in a final audit determination.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451(e) of GEPA, 20 U.S.C. 1234(e); Sec. 452(b) of GEPA, 20 U.S.C. 1234a(b))

22. Section 298.52 is amended by revising paragraph (a) to read as follows:

§ 298.52 The Panel's decision.

(a) The Panel issues a decision, based on the record as a whole, in an appeal from a final audit determination, a notice of an intent to withhold funds, or other final determination within 180 days after receiving the parties' final submissions, unless the Board Chairperson, for good cause shown, grants the Panel an extension of this deadline.

* * * * *

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451 (a), (e) of GEPA, 20 U.S.C. 1234 (a), (e); Sec. 452(d) of GEPA, 20 U.S.C. 1234a(d))

23. Section 298.54 is amended by revising paragraphs (a), (c), (d), and (e) and the citation of authority to read as follows:

§ 298.54 The Secretary's decision.

(a) The Panel's decision in § 298.52 becomes the final decision of the Secretary 60 calendar days after the date the appellant receives the Panel's decision unless the Secretary, for good cause shown—

(1) Modifies or sets aside the Panel's decision; or

(2) Remands the Panel's decision to the Board for further review or consideration.

* * * * *

(c)(1) Execpt as provided in paragraph (c)(2) of this section, the final decision of the Secretary is the final decision of the Department.

(2) If the Secretary remands the Panel's decision to the Board, neither the Panel's decision nor the Secretary's remand becomes the final decision of the Department.

(d) The Board Chairperson sends to the Panel and to each party a copy of the Secretary's final decision and statement of reasons, a notice that the Panel's decision has become the Secretary's final decision, or a copy of the Secretary's decision to remand.

(e) In proceedings involving an appeal from a final audit determination, intent to withhold funds, or other determination, to the extent feasible but consistent with the Secretary's obligation to enforce compliance with Chapter 2, the Secretary defers to a State's interpretation of the statutory requirements under Chapter 2.

(Sec. 592(a), 20 U.S.C. 3872(a); Sec. 451 (a), (e) of GEPA, 20 U.S.C. 1234 (a), (e); Sec. 452(d) of GEPA, 20 U.S.C. 1234a(d); Sec. 455 of GEPA, 20 U.S.C. 1234d)

Note.—This appendix will not appear in the Code of Federal Regulations.

Appendix—Summary of Revisions, Comments, and Responses

The following paragraphs summarize public comments received on the notice of proposed rulemaking (NPRM) implementing changes made to Chapter 2 of the Education Consolidation and Improvement Act of 1981 (ECIA) by Pub. L. 98–211, and the Secretary's responses to those comments. Those comments relating to the text of the regulations are organized according to the order of the sections in the final regulations. Those comments relating to additional rules not included in the final regulations are discussed at the end of the summary.

Several commenters did not recommend changes in the regulations but, instead, requested clarification about certain regulatory provisions. The Department will provide clarification on many of those provisions in the Chapter 2 nonregulatory guidance.

Preamble

Application of Other Statutes and Regulations.

Comment: One commenter, representing SEAs, noted with pleasure the Department's recognition that section 434(b) (2) and (3) of the General Education Provisions Act (GEPA) applies to Chapter 2. The commenter pointed out that since that section provides the authority for suspending and withholding payment to LEAs that have failed to comply with Chapter 2 program requirements, it clearly concerns fiscal control and fund accounting procedures. The commenter also noted approvingly the Department's recognition of the modification in section 406A(a) of GEPA, which reduces the data gathering burden of SEAs.

Response: No change has been made. The Secretary appreciates the commenter's approval of the regulations.

Section 298.3 General responsibilities of State and local educational agencies

Comment: Two commenters welcomed the clarification of general responsibilities of State and local educational agencies. Two other commenters, however, noted that the requirement in § 298.3(a)(2) that an SEA not exercise any influence in the decisionmaking process of an LEA could hamper SEA technical assistance and monitoring. One of those commenters pointed out that § 298.3(a)(1) assigns the SEA responsibility to administer Chapter 2 funds while § 298.3(a)(2) hampers that administration. The second commenter, noting the same

conflict, suggested that "influence" be defined or that a list be included of what actions by an SEA would be considered to influence the decionmaking process of an LEA.

Response: No change has been made. The provisons in § 298.3(a)(2) accurately reflect the statutory language in the technical amendment to section 564(a)(7) of Chapter 2. Moreover, the Secretary does not believe § 298.3(a)(2) hampers an SEA's ability to provide technical assistance or to monitor. The assurance in section 564(a)(7) of Chapter 2 must be read in conjunction with the provision in Section 566(c) that grants each LEA "complete discretion," subject only to the provisions of Chapter 2, in determining how to distribute its Chapter 2 funds among the purposes of Chapter 2. Thus, an SEA must assure that it will not influence an LEA's decisionmaking process in selecting those Chapter 2 activities for which to use its Chapter 2 funds. This assurance, however, does not prevent the SEA from ensuring that the activities selected by an LEA are allowable under Chapter 2 or that the LEA is complying with other Chapter 2 requirements. It also does not prevent the SEA from working with an LEA to advise or suggest ways of meeting the LEA's educational needs. It does, however, prohibit the SEA from substituting its judgment for that of an LEA as to the LEA's needs or from applying pressure on the LEA to fund projects in which there is little or no local interest. *See* 129 Cong. Rec. H1891 (daily ed. Apr. 12, 1983). The Secretary declines to define "influence" or list unallowable SEA activities in the regulations. According to the House Report accompanying the technical amendments, section 564(a)(7) "does not confer authority on the Secretary to issue regulations defining those activities in which [SEAs] either may or may not engage." H. Rept. 51, 98th Cong., 1st Sess. 6 (1983).

Comment: A number of commenters commented on the State rulemaking provision in § 298.3(b). Several of those commenters expressed concern that State-imposed rules could limit the discretion granted to LEAs under § 298.3(a)(2) and (c). Other commenters expressed concern that the provision in § 298.3(b)(2)(ii), which requires a State to identify State-imposed rules relating to the administration and operation of Chapter 2, conflicts with the provision in § 298.3(b)(1)(i), which only specifically authorizes a State to issue rules relating to State audits and financial responsibilities. Several commenters recommended that the provision in § 298.3(b)(2)(ii) be deleted. Others recommended that the kinds of rules relating to the administration and operation of Chapter 2 be clarified.

Response: No change has been made. The provisions in § 298.3(b) accurately reflect the statutory provisions in section 591(d) of the ECIA that were added by the technical amendments. Section 591(d)(1) and § 298.3(b)(1)(i) only specifically authorize a State to issue regulations related to a State's audit and financial responsibilities. However, as indicated in section 591(d)(2) and § 298.3(b)(1)(ii), a State is not preempted or prohibited by Chapter 2 from issuing other regulations as long as they are issued pursuant to State law and they do not conflict with the provisions of Chapter 2. According to the House and Senate reports accompanying the technical amendments, Congress intended Chapter 2 to be neutral on the issue of State rulemaking. *See* H. Rept. 51, 98th Cong., 1st Sess. 8 (1983); S. Rept. 166, 98th Cong., 1st Sess. 13 (1983). Thus, if State law permits, a State may issue regulations that relate to topics other than the State's audit and financial responsibilities. Nothing in section 591(d) or § 298.3(b), however, permits a State to issue regulations that conflict with section 566(c) of Chapter 2 giving LEAs complete discretion to decide how to distribute their Chapter 2 funds among the authorized activities. *See id.*

The Secretary has not deleted § 98.3(b)(2)(ii) requiring States to identify regulations that they issue under Chapter 2 as State-imposed requirements, because that provision is required by section 591(d). Likewise, the Secretary does not believe that clarification in § 298.3(b)(2) as to what rules relate to the administration and operation of Chapter 2 is necessary because, according to Congress, section 591(d) requires States to identify *any* State rule or policy relating to Chapter 2 as a State-imposed requirement. *See* H. Rept. 51, 98th Cong., 1st Sess. 8 (1983); S. Rept. 116, 98th Cong., 1st Sess. 13 (1983). Thus, the phrase "rules, regulations, or policies relating to the administration and operation of programs funded under Chapter 2" includes all rules that a State promulgates to implement Chapter 2—even those relating to a State's audit and financial responsibilities.

Comment: One commenter questioned why § 298.3(b)(1)(i) does not include the statutory language that a State regulation must be "issued pursuant to procedures as established by State law . . . ."

Response: A change has been made. Section 298.3(b)(2) has been revised to include the phrase "issues, pursuant to procedures established by State law, . . ."

Comment: A number of commenters commented on the provision in § 298.3(c)(2) that requires an LEA to ensure that each expenditure of Chapter 2 funds is for the purpose of meeting the educational needs within the schools of the LEA. One commenter, for example, asked whether this provision should be added to the list of assurances required in an LEA's application and whether the phrase "educational needs" precludes the use of Chapter 2 funds for improving school management. Another commenter questioned whether an SEA would be justified in requesting LEAs to include in their applications statements of educational needs, objectives that address those needs, and an evaluation design that demonstrates progress toward meeting those needs. One commenter recommended adding "or the educational needs of children enrolled in private, nonprofit schools located in the LEA" to § 298.3(c)(2).

Response: No change has been made. The technical amendment to section 566(c) of Chapter 2, upon which the provision in § 298.3(c)(2) is based, was made to ensure that an LEA uses its Chapter 2 funds to meet the needs of children in the LEA, and that the State will not control how the LEA uses those funds. The amendment was added to guard against a practice that allegedly occurred under Titles III and IV–C of the Elementary and Secondary Education Act of 1965 whereby LEAs were used as "conduits" to fund projects of interest to the State, using Federal dollars that were intended by Congress to go to the LEAs. *See* H. Rept. 51, 98th Cong., 1st Sess. 6 (1983); 129 Cong. Rec. H1890–91 (daily ed. Apr. 12, 1983); 129 Cong. Rec. H10604–05 (daily ed. Nov. 18, 1983). Thus, this section requires that an LEA expend Chapter 2 funds only to meet the educational needs of children in its own district. The phrase "educational needs," however, does not in any way limit the activities authorized under Chapter 2 for which an LEA may use its funds. Moreover, included in the requirement are the needs that an LEA has identified for children in private, nonprofit schools in the LEA. Therefore, the Secretary does not believe it is necessary to add specific language relating to the needs of children in private schools.

Because the legislative history indicates that the amendment to section 566(c) was added to ensure that an LEA uses Chapter 2 funds only to meet the educational needs of children in the LEA, the Secretary does not believe that

either section 566(c) or § 298.3(c)(2) adds a needs assessment requirement not otherwise required by Chapter 2. As a result, it does not appear that the addition of this provision in the statute or the regulations should stimulate extensive State rulemaking. For example, because section 566(a)(2) of Chapter 2 already requires an LEA to assure in its application that it will comply with the provisions of Chapter 2, the Secretary does not believe that an additional assurance relating to § 298.3(c)(2) is required. However, an SEA, under its administrative and supervisory responsibilities under Chapter 2, may decide that additional rules relating to § 298.3(c)(2) are necessary. Any State rulemaking concerning this provision, of course, must comport with the requirements in section 591(d) of the ECIA and § 298.3(b).

Section 298.5 Allotments to States of Chapter 2 funds

Comment: One commenter, representing one of the Insular Areas, questioned whether the distribution of Chapter 2 funds to the Insular Areas on the basis of enrollment data fulfills the requirement for a distribution based on respective needs. The commenter suggested that relative per pupil expenditures be used as a basis for determining respective needs.

Response: No change has been made. The Secretary is not convinced that relative per pupil expenditures, in the absence of any measure of the cost of providing an adequate education, are a better measure of respective needs than enrollment. Moreover, no objections to the use of enrollment data to determine respective needs were received from any other Insular Area.

Section 298.17 State audits

Comment: One commenter applauded the modification of the biennial audit requirement for LEAs receiving less than an average of $5,000 per year because of the reduction in burden for small LEAs.

Response: A change has been made. Subsequent to publication of the NPRM, Congress enacted the Single Audit Act of 1984, which supersedes the effect of the technical amendments with regard to the performance of LEA audits. Section 298.17, therefore, has been changed to incorporate the audit requirements in the Single Audit Act.

Section 298.51 Practice and procedure

Comment: One commenter, noting that § 298.51 requires Chapter 2 due process proceedings before the Education Appeal Board (EAB) to follow the rules in 34 CFR Part 78 governing other EAB proceedings, questioned why the provision in 34 CFR Part 78 that only requires a lead time of ten days from notice before funds are cut off applies to Chapter 2 when the Chapter 2 statute provides for sixty days.

Response: No change has been made. Section 298.51 only makes the regulations in Subpart E of 34 CFR Part 78 governing practice and procedure before the EAB applicable to Chapter 2 due process proceedings. None of the provisions in Subpart E deals with the length of time from notice until funds are cut off. Rather, the provision to which the commenter is apparently referring is 34 CFR 78.25(b)(2) concerning written notice of an intent to suspend funds. This provision, which implements section 453(c) of GEPA, is not applicable to Chapter 2 both because it is not contained in Subpart E and because section 453 of GEPA has been superseded by section 592 of the ECIA. *See* section 596(b)(6) of the ECIA as amended by the technical amendments. Accordingly, under Chapter 2, the Secretary would not withhold funds until sixty days after the date he provided notice of his intent to do so.

Allocation of Chapter 2 funds to LEAs

Comment: A number of commenters recommended that the regulations include a provision that would require SEAs under section 565(a) of Chapter 2 to provide higher per pupil allocations only to LEAs having the greatest numbers or percentages of children whose education imposes a higher than average cost per child rather than to LEAs with any number or percentage of those children. In support of their position, the commenters cited the Conference Report accompanying the technical amendments, which states:

> It is the intent of the conferees that section 565(a) of the Education Consolidation and Improvement Act of 1981 be interpreted such that State Chapter 2 distribution formulas provide adjusted allocations to LEAs with only the greatest numbers or percentages of high cost children rather than allocations to LEAs with any number or percentage of such children.

H. Rept. 574, 98th Cong., 1st Sess. 15 (1983) (Conference Report). One of the commenters urged that the regulations specify the percentage of LEAs that would be eligible to receive funds generated by high-cost children and the percentage of the State's allocation that would be distributed on that basis. Another commenter suggested that the regulations require a State to demonstrate that its formula has been designed to produce an actual impact which reasonably reflects overall differences in costs among LEAs and, in particular, that the formula gives sufficient weight to the high-cost factors the State has chosen to accomplish that result.

Other commenters disagreed with this position and recommended that the Conference Report language not be followed in the regulations. One commenter, representing the SEAs, noted that, "under present allocation formulas, more LEAs than ever before are receiving Federal education dollars and districts which have high cost students *are* receiving larger per pupil allocations."

Another commenter, after surveying school district superintendents in one State, reported a consensus that there should be no changes in the formula requirements.

Response: No change has been made. Section 298.8(b) repeats the statutory requirement in section 565(a) of Chapter 2. In the technical amendments to Chapter 2, Congress did not change that requirement with respect to the distribution of funds on the basis of high-cost children. However, in the Conference Report accompanying the technical amendments to Chapter 2, the conferees stated that it was their intent "that State Chapter 2 distribution formulas provide adjusted allocations to LEAs with only the greatest numbers or percentages of high cost children rather than allocations to LEAs with any number or percentage of such children." H. Rept. 574, 98th Cong., 1st Sess. 15 (1983) (Conference Report).

The Secretary has not incorporated the Conference Report language in § 298.8(b) of the Chapter 2 regulations because the Secretary believes that requiring SEAs to implement the Conference Report language, and therefore prohibiting them from exercising other options that may also be consistent with the statutory language, would undermine the decisionmaking authority regarding allocation formulas that Chapter 2 vests in SEAs. For the same reason, the Secretary has not specified the percentage of LEAs that should be eligible to receive funds generated by high-cost children or the percentage of a State's allocation that should be distributed on that basis. As provided in section 561 of Chapter 2, SEAs have the basic responsibility for the administration of Chapter 2. Consistent with this policy, section 565 gives SEAs wide latitude to allocate funds to their LEAs in the manner that best meets each State's particular needs and priorities. Regulating their area at the Federal level would intrude on the flexibility and responsibility vested in

the SEAs under Chapter 2, thereby undermining the central legislative decision made by Congress in enacting Chapter 2—namely, to make it a State-administered program with a minimum Federal role.

Consistent with this philosophy, § 298.8 allows each SEA to decide whether to implement the Conference Report language. Upon careful analysis of the overall needs within the State, an SEA may determine that adjusted allocations under section 565(a) should go only to those LEAs with the greatest numbers or percentages of high-cost children. The Secretary encourages SEAs to review their allocation formulas in light of the Conference Report language.

Use of Funds Reserved for a State's Use

Comment: One commenter encouraged the Department to promulgate a regulation that would require an SEA to use most of the Chapter 2 funds reserved for the State's use to support school effectiveness directly. The commenter expressed concern that a disproportionate amount of a State's Chapter 2 funds is being used for the administration of Chapter 2 and for the SEA's internal operations. Another commenter also suggested that the Department require an SEA to develop criteria for directing funds reserved for the State's use to LEAs having the highest concentrations of high-cost children.

Response: No change has been made. Section 561(a) of Chapter 2 states that the purpose of Chapter 2 is to consolidate over 40 categorical programs into a single authorization of grants to States for the same purposes contained in the antecedent categorical programs, but to be used in accordance with the educational needs and priorities of SEAs and LEAs as determined by those agencies. Similiarly, section 561(b) indicates that the basic responsibility for the administration of Chapter 2 funds is in the SEAs.

Under Chapter 2, SEAs are authorized to reserve for their own use up to 20 percent of the State's Chapter 2 funds for activities authorized by Chapter 2. The Secretary believes it would be contrary to the statutory purpose and intent of Chapter 2 for the Department to promulgate a regulation that would interfere with the discretion afforded an SEA in deciding how to use the Chapter 2 funds reserved for the State's use. As long as the SEA uses those funds for activities authorized under Chapter 2, the statute permits the SEA, with advice from the State Advisory Committee, to decide how to use its Chapter 2 funds.

Parental Participation

Comment: A number of commenters recommended that the final regulations include a requirement that an LEA must have written policies to ensure that: parents have been consulted in the planning, development, and operation of Chapter 2 programs; parents have had an opportunity to express their views concerning those policies; and Chapter 2 program plans and evaluations are provided to parents and the public. As the basis for their recommendation, the commenters cited the Conference Report accompanying the technical amendments:

> The conferees agree that, in eliminating the House provision regarding the applicability of Sec. 427 of the General Education Provisions Act to ECIA, the responsibility of the local education agencies to assure adequate parental involvement shall in no way be diminished. Accordingly, LEAs shall have policies to assure parental consultation in the planning, development and operation of programs; assure that parents have had an opportunity to express their views concerning those policies, and; [sic] have policies to assure the adequate provision of program plans and evaluations to parents and the public.

H. Rept. 574, 98th Cong., 1st Sess. 13 (1983) (Conference Report). Another commenter supported parental involvement, but opposed any Federal regulations that would regulate the manner of this involvement. It was the commenter's belief that regulations would interfere with the flexibility afforded an LEA under Chapter 2 to provide for parent participation that best meets the needs of the LEA.

Response: No change has been made. Section 566(a)(4) of Chapter 2 requires an LEA to provide, in its Chapter 2 application, for systematic consultation with parents concerning the allocation of Chapter 2 funds for authorized programs and the design, planning, and implementation of those programs. Section 298.7(c) of the Chapter 2 regulations currently in effect specifically highlights that requirement. In addition, the Chapter 2 nonregulatory guidance contains several questions and answers that provide clarification of the parent consultation requirement.

As indicated in the preamble to the Chapter 2 regulations currently in effect (*see* 47 FR 52370 (1982)), the parental consultation requirement in section 566(a)(4) supersedes section 427 of GEPA (concerning parental involvement and dissemination). Congress clearly recognized this fact (*see* H. Rept. 574, 98th Cong., 1st Sess. 13 (1983) (Conference Report)). Moreover, in the technical amendments, Congress did not change the parental consultation requirement in section 566(a)(4). It was only in the Conference Report accompanying the technical amendments that the conferees suggested that an LEA should develop policies concerning parental involvement and dissemination similar to those that would be required if the Secretary invoked section 427 of GEPA. Consistent with the purpose of Chapter 2 to return decisionmaking to the State and local levels, the Secretary is not adding regulatory requirements not contained in the statute. The fact that the Secretary is not adding regulations requiring an LEA to establish written policies, however, in no way diminishes the Chapter 2 requirement that the LEA systematically consult with parents concerning the allocation of Chapter 2 funds for authorized programs and the design, planning, and implementation of those programs. The Secretary is merely affording an LEA the flexibility to decide how that consultation can best be accomplished. The Secretary will consider incorporating some of the commenters' suggestions in the Chapter 2 nonregulatory guidance.

Participation of Children in Private Schools

Comment: One commenter urged the Department to promulgate a regulation permitting an LEA to charge administrative costs for providing equitable participation under Chapter 2 to children enrolled in private schools.

Response: No change has been made. An LEA may use Chapter 2 funds to pay for reasonable administrative costs for providing Chapter 2 services to private school children as well as to public school children. The rate for charging those administrative costs, however, must be applied equally to the amounts of Chapter 2 funds available for services to public and private school children.

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

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3. The important elements of typical Federal Register documents.
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: November 15; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Call JoAnn Harte, Workshop Coordinator, 202–523–5239.

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. The January 1986 Washington, D.C. workshop will include facilities for the hearing impaired. Dates and locations will be announced later.

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Rules and Regulations

Federal Register
Vol. 50, No. 182
Thursday, September 19, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Atlantic Gulf Airlines

AGENCY: Immigration and Naturalization Service; Justice.

ACTION: Final rule.

SUMMARY: This rule adds Atlantic Gulf Airlines to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

EFFECTIVE DATE: August 28, 1985.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, N.W., Washington, DC 20536, Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Atlantic Gulf on August 28, 1985, to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilitates the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportation lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restriction.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for Part 238 continues to read as follows:

Authority: Secs. 103 and 238 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1228).

§ 238.3 [Amended]

In § 238.3 Aliens in immediate and continuous transit, the listing of transportation lines in paragraph (b) *Signatory lines* is amended by: Adding in alphabetical sequence, Atlantic Gulf Airlines.

Dated: August 30, 1985.

Marvin J. Gibson,

Acting Associate Commissioner, Examinations Immigration and Naturalization Service.

[FR Doc. 85–22378 Filed 9–18–85; 8:45 am]
BILLING CODE 4410–10–M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Farm Credit System Banks and Associations; Organization; Liquidation

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by its Federal Farm Credit Board (Federal Board), adopts new regulations which replace the existing regulation, 12 CFR 611.1130, relating to voluntary and involuntary liquidations of Farm Credit System (System) banks and associations. The final regulations incorporate the provisions contained in the orders that have been issued by the FCA to date in connection with specific receiverships and set forth the powers and duties of receivers, the rights of creditors and stockholders, and the inventory and examination requirements associated with receiverships.

EFFECTIVE DATE: Thirty days from this publication date during which either or both Houses of Congress are in session. Notice of the actual effective date will be published.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22101–5090, (703) 883–4020.

SUPPLEMENTARY INFORMATION: In the February 23, 1985 **Federal Register** (50 FR 6000–6005), the FCA published proposed amendments to its regulation relating to the voluntary or involuntary liquidation of System banks and associations. The comment period closed March 15, 1985. The FCA received approximately 50 comments from System institutions, members of Congress, the attorney generals of two states, and other members of the public. Several parties stated that there was a need for public hearings on the proposed regulations and other parties stated that the comment period should be extended. The Federal Board did not believe there was any need for public hearings since any comments relevant to the proposed regulations could be readily reduced to written form and submitted to the Agency through the mail. Even though the volume of comments suggested the existence of broad public awareness of the regulations, the Federal Board decided to extend the comment period to May 1, 1985. Notification of the comment period extension was published in the April 10, 1985 **Federal Register** (50 FR 14110). The FCA received no additional comments during the extended comment period. The Federal Board considered each comment received during its regular June and August 1985 meetings, made changes to the proposed regulations where appropriate, and adopted final regulations.

Following is a discussion of the significant comments received.

Two respondents recommended changes to § 611.1160 regarding the role of a supervisory bank in a decision to place an association into voluntary or involuntary liquidation. One respondent recommended that no voluntary

liquidation should take place without the approval of the supervisory bank. The other respondent recommended that the Governor should consult with the supervisory bank prior to appointing a receiver for an involuntary liquidation except in the event that the Governor determines such notification would not be in the best interests of the creditors and stockholders of the association.

The Farm Credit Act of 1971, as amended (Act), does not require the approval of the supervisory bank in connection with voluntary and involuntary liquidations, but does authorize the FCA to issue regulations governing such liquidations. This is contrasted with other provisions of the Act, such as the provisions relating to mergers of associations, where the proposed activity requires approval of the supervisory bank.

In the case of an involuntary liquidation, the Federal Board does not believe it would be prudent to prescribe a requirement for bank approval. An involuntary decision is one that often needs to take place in an expeditious manner. While the Governor, as a mattter of practice, avails himself on an ongoing basis of the views of the supervisory bank regarding associations experiencing difficulties, it would be improvident to include a specific requirement for consultation, since circumstances may arise where specific consultation on the liquidation decision is not possible.

In the case of a voluntary liquidation, the Act provides that the decision of an association board to liquidate the association is a corporate decision which, by statute, is subject only to the approval of the FCA. The Federal Board believes that a requirement for bank approval would, in effect, impose conditions upon the FCA, which is the party whose approval of voluntary liquidation is required by the Act. The Federal Board believes that the FCA's authority in such matters should not be impinged upon.

Several respondents believed § 611.1160(b) should be amended to clarify the nature of the obligations upon which an association can default, and to provide procedures and substantive standards regarding a decision to liquidate an association.

The Federal Board agrees that clarification of the regulation is appropriate. Accordingly, the regulation has been amended to include a provision stating that such defaults can occur "on the payment of principal or interest of any financial obligation" of the institution. However, such are not the only circumstances under which default can occur. The Federal Board does not believe it is appropriate to attempt to provide an all inclusive set of procedural requirements on the subject of default since the manner in which a default can occur depends entirely on the type of obligation involved and the circumstances giving rise to the default. Any attempt to quantify those criteria with specific examples would not be especially useful and could cause problems since it would be difficult to anticipate the range of obligations that might be involved and conditions of default that are unique to each one.

Two respondents believed that the regulations should specifically provide for a notice to borrowers prior to the appointment of a receiver by the Governor.

The Federal Board believes that this recommendation is in direct contradiction with the basic responsibilities of the FCA in connection with liquidations. In many respects, the liquidation of a System institution creates the same potential for a "run" on the institution that exists in connection with the liquidation of a depository institution. Prior notification to stockholders of a pending liquidation would provide borrowers who can obtain credit elsewhere an opportunity to pay down their loans and retire their stock. The effect of such a drain on the capital and assets of the institution would jeopardize the ability of creditors to receive equitable payment on their claims. In addition, it could further impair the remaining stock of the institution, which would result in a greater financial burden on those stockholders who were unable to retire their stock.

Two commentators believed that the provision in § 611.1160(d) that provides for the automatic suspension of the officers and directors of an association should be amended to permit the receiver to have some discretion in this area.

The Federal Board does not believe that any change to this regulation is necessary since the regulation already provides the receiver with discretion in this regard. While officers and directors are immediately suspended upon the appointment of the receiver, the receiver has full authority to employ such officers as the receiver deems necessary to carry on the business of the association in liquidation. Additionally, the receiver has the authority to consult with any persons, including the ex-directors of the association, to obtain their input during the conduct of the liquidation.

Several respondents made recommendations regarding § 611.1160 that generally challenged the basic premise of the regulation. These respondents said that the rights, privileges, and powers of an association board of directors should never be suspended except by the shareholders and that the liquidation of an association should only be conducted under the direct supervision of the board.

The Federal Board believes these respondents misconstrued the purpose and function of a receivership. When a financial institution is placed in involuntary liquidation, further operations of that institution are no longer carried on at the discretion of the personnel responsible for its financial condition. Rather, in accordance with appropriate Federal or State law, a third party is placed in direct or indirect control of the institution in order to wind up its affairs in a manner consistent with the best interests of its creditors and stockholders. In the case of System institutions, the Act and FCA Regulations control the appointment of the receiver. State law continues to control the debtor-creditor relationships between the receiver and the borrowers of the institution. Since the directors of the association are the persons directly responsible for the insolvency of the association, it is not appropriate for such directors to exercise control over the liquidation of the institution. Accordingly, no changes were made to accommodate these comments.

One commentator believed that the board of an association in liquidation should have the authority to obtain an independent audit of the association and require the Governor to turn over the association to its previous management on the basis of the results of such audit. The Federal Board believes this recommendation contravenes the essential statutory function of the FCA to examine System institutions. The exercise of this examination authority provides the basis upon which all supervisory and regulatory activities of the FCA are conducted and establishes the foundation for any analysis of the financial condition of individual System institutions or the System as a whole. In order to avoid unnecessary and damaging delays that can injure the creditors and stockholders of an institution, these examinations must be the final, authoritative basis upon which the financial condition of System institutions is determined.

Two respondents inquired whether there was a conflict between § 611.1160(d), which provides for the suspension of the board and management of an association placed in liquidation, and § 611.1161(g), which

authorizes the Governor to remove or replace receivers.

There is no conflict between these two provisions since one provides for the termination of directors and employees of a System institution placed in liquidation, while the other preserves the authority of the Governor to halt a liquidation and return the association to its previous management. However, the Federal Board amended § 611.1160(g) to further clarify that the subsection merely preserves the authority of the Governor to remove or replace the receiver and that, in the event the Governor terminates the receivership and returns the association to its previous management, the provisions of this subpart relating to liquidations would no longer apply.

One commentator was concerned that the regulations appeared to be addressed primarily to liquidations, both voluntary and involuntary, of insolvent institutions, and that the regulations may not be entirely appropriate in all respects for liquidations of solvent institutions. To correct this problem, the respondent recommended that the regulations be amended to provide for input by the board of directors in connection with the voluntary liquidation of a solvent institution.

The regulations are primarily directed at the voluntary and involuntary liquidations of insolvent institutions. While the rights, duties, and powers of receivers would be the same in any type of liquidation, the Federal Board agrees that, in the case of the liquidation of a solvent institution, the directors of the institution should have a role regarding the appointment of the receiver and the conduct of the receivership. Therefore, a new paragraph § 611.1160(h) has been added to the regulation that specifically provides that in the case of a voluntary liquidation of a solvent association the Governor shall take into consideration the recommendation of its board of directors in appointing a receiver. In addition, the paragraph specifically authorizes the board of directors, at the discretion of the Governor, to remain in office to provide advice and recommendations to the receiver. While providing for input by the association board, the Federal Board believes it is appropriate for the Governor to retain discretion in these two areas to deal with situations where an association may be technically solvent but where its financial condition has deteriorated to a considerable degree and the Governor determines that further involvement by its directors could jeopardize the best interests of its creditors and stockholders.

One respondent commented about the need to clarify that when a bank serves as a receiver for an association, it enjoys the same immunities against liability as are afforded the FCA under law. This respondent observed that § 611.1161(s) refers generally to immunities "specifically authorized or conferred by the FCA" and recommended that a specific provision be included in the regulation which confers governmental immunities on the banks when they act as receivers.

The regulations establish a relationship among the parties that provides all receivers appointed by the FCA, including banks, with the same immunities against individual liability that are conferred upon officers and agents of the Federal Government. Such immunities only extend to claims against a receiver in the receiver's individual and personal capacity, and do not affect the ability of a litigant to recover damages from the association in liquidation based on contract or tort theories. In that regard, the regulations include specific criteria that establish that agency relationship and specifically refer to such receivers as agents. In order to further clarify that status and to clarify that the receiver is acting as trustee of the association in receivership for the benefit of its creditors and stockholders, § 611.1161 has been amended to explain those roles, immunities, and responsibilities.

One commentator believed that § 611.1161(l), which authorizes a receiver to sell assets for cash, should be expanded to include the authority to sell assets on terms other than cash.

The Federal Board agrees that a situation may arise where a receiver is unable to sell assets for cash and is required to accept other terms, such as contracts for deed. Therefore, the regulation was amended to accommodate sales of assets on terms other than cash.

One respondent recommended that § 611.1161 be amended to clarify: (1) The authority of the receiver to hire accountants, appraisers, and other professionals; (2) the authority of the receiver to exercise all powers in the name of the association in receivership; and (3) the authority of the receiver to sell any real or personal property owned by the receiver. The Federal Board agreed with these recommendations and the final regulations have been amended to clarify these authorities.

One commentator stated that the regulations give excessive authority to the receiver without adequate provisions for review or appeal and that there are no guidelines for loan extensions, renewals, and terminations.

The Federal Board does not agree that the regulations give excessive authority to the receiver. The regulations set forth the general powers and duties of receivers and establish their status as trustees for the associations in liquidation. Receivers must have broad general powers but, as provided for in the regulations, the exercise of those powers is subject to the supervision of the FCA as provided for in the receivership manual and specific controls imposed by the FCA. In addition, the receiverships are examined by the FCA on an annual basis. The regulations do not contain provisions granting borrowers any rights regarding renewals, extensions, etc., because no such rights exist for borrowers of solvent associations who are subject to collection actions by the association. When an association is placed in liquidation, the existing contractual obligations of its borrowers remain the same. Each borower's obligation to pay debts owed to the association continues in accordance with the terms of the contract. The receiver has the same authority that the association had to pursue judicial and nonjudicial remedies under State law to collect obligations of borrowers that are in default. The regulations cannot limit those authorities since such limits would be inconsistent with the receiver's responsibility to maximize return on the assets of the association for the benefit of its creditors and stockholders.

One respondent commented that the provision in § 611.1162 that prohibits the issuance, allocation, retirement, sale, or distribution of stock may come into conflict with outstanding court orders that may require the retirement of stock for application against a borrower's debt.

The Federal Board does not believe that any change to the regulation should be made in response to this recommendation. During the pendency of a liquidation, the regulations prohibit the retirement of stock and there is no basis upon which a value can be placed on that stock. To that extent, the Federal Board believes that this provision preempts contrary State laws, and that no court should issue an order that would require actions that conflict with the regulation. This does not mean that in a collection action involving counterclaims or where the borrower's indebtedness is in dispute, a court cannot require a reduction in the borrower's indebtedness in connection with a requirement that the borrower release any right to receive proceeds

payable to stockholders upon final liquidation. Such judicial orders would not conflict with the regulations.

Upon further review of § 611.1162, the Federal Board adopted a technical amendment which deletes a phrase in paragraph (b) that is redundant with the provisions of paragraph (a).

One respondent recommended that § 611.1164(a) be amended to provide greater flexibility regarding the timing for the publication of notices to creditors. Another respondent recommended that the regulation specify the types of newspapers appropriate for publication and mandate that personal letters regarding claims filing procedures be sent to all shareholders and all parties with whom the association has done business during the past 5 years.

The concern raised by the first comment is that it may not be possible because of publication dates, weekends, etc., to meet the specific 30- and 60-day publication dates provided for in the regulation and that flexibility to accommodate such concerns should be incorporated into the regulation. The Federal Board agrees with the comment and has amended § 611.1164 to provide such flexibility. However, the Federal Board does not believe the regulation need any additional detail regarding the types of papers used for publishing notice. The receiver should exercise his best judgment regarding the types of publication(s) that will afford the best chance of putting affected parties on notice. In response to the second comment, the regulation already requires that personal notices be sent to all creditors of record. It would be burdensome and possibly counterproductive to impose on the receiver the burden of speculating on the names of other parties who may have claims against the association. Such parties are amply protected by the public notices that are provided.

Several comments were received regarding the provisions of § 611.1165 that authorize the receiver to sell loans at their fair market value, including any amount borrowed to purchase stock. Some respondents questioned whether this permitted the sale of loans at a discount and other respondents questioned how one determines the fair market value of stock of an association in liquidation.

In response to this comment, the Federal Board amended the regulation to provide that the receiver may sell loans at "not less than fair market value." This change clarifies that, consistent with the receiver's obligation to administer the receivership in the best interests of its creditors and stockholders, a loan can be sold at a price below book value but not less than fair market value. There is no necessity for determining fair market value of the stock in connection with the sale of loans. The borrower's note is sold, not the stock or any other property acquired with the proceeds of the note. The determination of the value of the note is dependent on the borrower's ability to pay and the collateral supporting the obligation. The borrower's stock in the liquidating association is not transferred and has no value, for collateral purposes, to the transferee association. Therefore, its fair market value need not be determined. When a liquidating association sells a loan for less than book value, the association will continue to have a deficiency claim against the borrower for the difference between book value and sale price. While the liquidating association will try to collect this deficiency, in many instances there will be no other collateral or resources available to satisfy the claim. Finally, when all of the collectible claims of the association have been realized, and all of the creditors have been paid, the receiver will make a final distribution to stockholders. However, immediately prior to such distribution, the receiver will satisfy any remaining deficiency claims against borrowers by retiring their stock and applying those proceeds against the borrowers' outstanding debts. Such retirements will be made at the book value of the stock immediately prior to final distribution. Thereafter, the final distribution of the liquidating dividend will only be made to stockholders against whom the association has no outstanding claims.

One respondent believed § 611.1165 should be amended to authorize the purchaser of a loan from an association in receivership to in turn sell that loan to another association on the same basis as the loan was sold by the association in receivership. This respondent also believed that the regulation should be amended to provide greater specificity regarding agreements between the supervising bank, the borrowers, and the liquidating association in connection with interest-free loans extended by a bank to enable borrowers to purchase stock in a transferee association.

The Federal Board does not believe there is a need for this regulation to deal with subsequent transactions involving loans that were initially made by an association in liquidation. Such subsequent transactions are governed by other regulations and do not put at issue any of the powers, duties, responsibilities, etc., of the receiver. Similarly, the Federal Board does not believe that the regulations should mandate additional terms and conditions for interest-free loans made in connection with the purchase of stock in a transferee association. It should be pointed out that the regulation merely authorizes, and does not require, the bank to make available interest-free stock purchase loans. Subject to the limitations in the regulations, a bank's decision to make such loans is within the discretion of the bank and the terms and conditions of the loan documents are subject to the agreement of the parties.

One commentator believed that § 611.1165 was too restrictive and suggested the regulation be amended to permit interest-free stock purchase loans to be outstanding for a period of time following the final liquidation of an association. The regulation provides that such loans must be repaid on or before the termination of the liquidation. Usually, the loan contracts require repayment within the lesser of 5 years or the completion of the liquidation. If the liquidation occurs before the end of the 5-year period, the payment of the liquidating dividend to the bank on behalf of the borrower will be made before the charter of the association is revoked. Any deficiency between the liquidating dividend and the loan for stock in the transferee association must be paid at that time, either in cash or by increasing the borrower's loan from the transferee association. The Federal Board believes that the regulation provides more than sufficient time to accommodate the transition period for borrowers and that any extension beyond that point would cause an unacceptable drain on the finanical resources of the bank.

One respondent believed that § 611.1165 should be amended to clarify what occurs when a borrower of an association in liquidation refuses to purchase stock in and become a member of the association to which the loan was transferred.

Generally, soon after a receiver is appointed, the association's commercially salable loans are transferred to an association whose charter includes or has been amended to include the territory of the liquidating association. The agreement under which the loans are transferred provides the transferee association with the right to reject any loan for any reason at its sole discretion. Under current practice, transferee associations generally have at least 90 days to exercise this option. Any sale of a loan by a receivership to a transferee association is subject to the statutory requirement that the borrower purchase stock in and execute a

membership agreement with the transferee association. If such an agreement is not executed, the transferee association cannot retain that loan. If a transferee association rejects a loan because the borrower refuses to become a member of the transferee association or because the loan doesn't meet collateral or credit criteria or for any other reason, the loan must be repurchased by the receiver. In response to the comment, the Federal Board amended § 611.1165 to include a new paragraph (c) which explains these rights and obligations of associations and their borrowers.

One respondent questioned why a borrower whose loan is sold to another association is required to purchase stock in the transferee association when there is no similar stock purchase requirement if the loan is sold to a non-System lender. This party apparently overlooked the fact that the requirement for borrowers to purchase stock in a transferee association is a statutory requirement imposed on all association borrowers. There is no comparable requirement for stock purchase in loans sold to non-System lenders since such institutions are not subject to statutory stock purchase requirements.

One respondent inquired whether the priority of claims set forth in § 611.1166 complied with the provisions of the Act that grant Federal intermediate credit banks (FICBs) and Federal land banks (FLBs) first liens on stock issued by such banks to associations. The proposed regulation provides that all secured claims have a priority over the claims of unsecured creditors. In order to clarify that secured claims include FICB and FLB claims secured by both equities and assets of an association, the Federal Board amended the regulation to specifically reference such priority.

One respondent raised a concern regarding the administrative expenses of a bank acting as a receiver, seeking clarification as to whether such expenses would be paid from the receivership assets.

The administrative expenses of a receiver, whether a bank or otherwise, are included in § 611.1166(a)(1) as the claims having the highest priority of claims payable from the receivership assets. The final regulation was amended to eliminate any confusion regarding this matter.

A related question has arisen in connection with the retirement of System bank stock held by an association in liquidation. Under the regulations, the bank in question would normally retire such stock in connection with a corresponding reduction in the bank's claim against the association. However, instances can arise, especially involving the voluntary liquidation of solvent associations, where such retirement could exacerbate existing financial difficulties of the supervising bank. In light of this concern, the Federal Board amended the regulation to include a specific provision requiring FCA approval prior to a bank's retiring such stock. It is recognized that under normal circumstances such approval would be granted as a matter of course since the retirement of bank stock would not jeopardize the capital position of the bank.

One respondent correctly noted that while § 611.1166 provides that final distribution of the association's assets is made in accordance with the bylaws of the association, such bylaws do not specifically set forth the priorities for distribution in the event of liquidation. The regulation was referring (without reference) to the bylaw provisions relating to the priorities set forth with regard to impairment. In order to clarify this point, the regulation has been amended to include a reference to "priorities for impairment."

Two additional technical corrections were incorporated in 12 CFR 611.1167. The final regulation specifically provides that the annual audit of an association in liquidation can be conducted by an independent private auditor appointed by the FCA as well as by FCA examiners. The regulation was also amended to reference the responsibility of the FCA to conduct a final examination of the receivership pursuant to 12 CFR 617.7090.

In response to another comment, the Federal Board amended § 611.1167 to require receivers to provide annual reports and a final report to the shareholders of associations.

One respondent believed the regulation should require that associations be examined more frequently than on an annual basis and should get forth the accounting practices applicable to receiverships.

The requirement for annual examinations is the same frequency applicable to all production credit associations. The regulation merely establishes the minimum frequency of examinations and does not affect the authority of the FCA to conduct examinations on a more frequent basis, as it determines necessary. The accounting practices applicable to receiverships are the same as the comparable provisions relating to ongoing associations. Accounting practices applicable to System institutions are set forth in the Uniform Chart and Description of Accounts, which is distributed to all System institutions and is not required to be published in regulation form.

One respondent inquired whether § 611.1168 should include a provision regarding the final distribution of the records of a liquidated association.

The final disposition of the records of a liquidated association is the responsibility of the FCA. In response to this concern, the Federal Board amended the regulation to include a specific statement clarifying that the records of a receivership shall be stored and maintained in a manner determined by the FCA.

The comments received by the FCA regarding liquidations of associations, to the extent applicable, were also directed at Subpart K, which governs the liquidation of banks. Accordingly, the Federal Board incorporated the amendments made to Subpart J into the appropriate provisions of Subpart K. In addition, one comment was received that was directed specifically at the regulations governing the liquidation of banks.

The commentator questioned the legal basis for § 611.1170(b), which authorizes the Governor to declare a bank insolvent and appoint a receiver upon a determination, in accordance with section 4.4 of the Act, that the bank will default on a portion of its Systemwide and/or consolidated obligations.

This provision was included in the proposed regulation for the purpose of clarifying the interrelationships between two provisions in the Act. Section 4.12 of the Act conditions a declaration of insolvency and appointment of receiver on the default of an obligation by a bank. Concurrently, section 4.4 requires that prior to a default on a Systemwide or consolidated obligation by a bank, the Governor must assess all of the other financial institutes jointly and severally liable on the obligation to ensure payment of the obligation. Therefore, while the bank may default on its portion of the obligation, the obligation itself will be paid. The proposed regulation addresses this matter by specifically providing that in the event the Governor is forced to make a determination that a bank will default unless an assessment is made pursuant to section 4.4 of the Act, the bank will be deemed to have defaulted for purposes of section 4.12.

The Federal Board determined that it was necessary to amend the regulations to clarify that the provisions of Subpart J also govern the liquidation of service organizations chartered by the FCA. While the inclusion of service corporations is implicitly provided for in 12 CFR 611.1140, a specific reference to

service corporations was included in the final regulations in order to avoid any confusion. In connection with the amendment to § 611.1170, the Federal Board also made a conforming amendment to § 611.1174 that specifies the responsibility of the receiver of a service organization to ensure the timely payment of obligations of the service organization on which Systems banks have liability.

The Federal Board made other changes to the final regulation. Section 611.1173 requires that the receiver notify the shareholders of the institution in receivership of various matters, including the number of shares or certificates such holders own. The Federal Board expanded this provision to include a requirement for notification of the value of any equities specifically allocated to such members. This change will provide greater information to the shareholders and a better basis upon which the shareholders can analyze the potential return from the liquidation. Section 611.1174 provides that holders of book entry securities are not required to file claims with the receiver because information regarding the ownership of such securities is readily available and it would be unduly burdensome to make such a requirement. The Federal Board expanded this exemption to include holders of definitive securities. Records regarding such securities are also available and can be provided to the receiver. This will avoid the necessity of filing individual claims regarding such securities.

The Federal Board also reconsidered the provisions of proposed regulation § 611.1174 that govern the process by which creditors of a bank in liquidation must file claims and the priority among such claims. The Act provides that all banks that participate in an issue of consolidated or Systemwide bonds or discount notes are jointly and severally liable on the entire amount of the issue. While there is no distinction in the liability of participating banks to purchasers of an issue of bonds or discount notes, the Act differentiates "primary" and "secondary" liability of the banks to each other on an issue. Under the Act, a bank that participates in an issue of consolidated or Systemwide bonds or discount notes may be called upon by the FCA to make payments of principal and interest on any of those obligations for another participating bank that is primarily liable but is unable to meet its liability on the obligations. The Federal Board determined that it was necessary for the regulation to specify the rights of a bank that is required to make such payments to the collateral supporting the bonds or discount notes so paid.

Accordingly, § 611.1174 was reworded to provide for the Governor to make an assignment of primary liability for the payment of principal and interest on any consolidated or Systemwide bond or discount note to any bank secondarily liable thereon, and to give the bank(s) to which assignment is made the right to and title in those assets of the defaulting bank as are eligible and available as collateral under section 4.3(a) of the Act for those bonds or discount notes. The Federal Board also reworded the final regulation to establish the priority rights of creditors whose claims are secured by specific assets, and the claims of holders of bonds that are the individual obligation of a bank to specific collateral securing those bonds, over claims of holders of consolidated and Systemwide bonds. These changes are necessary in order to clarify the priority of secured creditors and the rights of holders of individual bank bonds issued under prior Farm Credit Acts to specific collateral. In addition, the changes will clarify the prospective priority status of System securities such as mortgage-backed securities and other obligations which may be issued and tied to individual assets.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, Banking, Organization and functions (Government agencies), Rural areas.

As stated in the preamble, Part 611 of Chapter VI, Title 12, Code of Federal Regulations, is revised by adding new Subparts J and K to 12 CFR Part 611 to read as follows:

PART 611—ORGANIZATION

Subpart J—Liquidation of Associations

Sec

611.1160 Appointment of receiver.
611.1161 Powers and duties of the receiver
611.1162 Preservation of equity.
611.1163 Notice to stockholders.
611.1164 Creditors' claims.
611.1165 Sale and transfer of loans.
611.1166 Priority of claims.
611.1167 Inventory, examination, audit, and report to stockholders.
611.1168 Final discharge and release of receiver.

Subpart K—Liquidation of Banks

611.1170 Appointment of receiver.
611.1171 Powers and duties of the receiver.
611.1172 Preservation of equity.
611.1173 Notice to associations, cooperative borrowers, and other financing institutions.
611.1174 Creditors' claims and priority of claims.
611.1175 Inventory, examination, and audit.
611.1176 Final discharge and release of receiver.

Authority: Secs. 1.13, 2.10, 4.12, 5.9, 5.12, 5.18, Pub. L. 92-181, 85 Stat. 619, 620, 621 (12 U.S.C. 2031, 2091, 2183, 2243, 2246 and 2252).

Subpart J—Liquidation of Associations

§ 611.1160 Appointment of receiver.

(a) The board of directors of an association, by the adoption of an appropriate resolution, may vote to liquidate the association, and upon approval of the resolution by the Farm Credit Administration after consultation with the supervisory bank, the Governor by order may place the association in receivership and appoint a receiver.

(b) Upon default on the payment of principal or interest on any financial obligation by an association, the Governor by order may declare the association insolvent and appoint a receiver.

(c) Upon the appointment of a receiver and acceptance by the receiver of the appointment, the Governor shall immediately notify the institution and its supervisory bank and notice of the appointment shall be published in the Federal Register.

(d) Upon the issuance of the order placing an association in liquidation, all rights, privileges, and powers of the board of directors, officers, and employees of the association are vested exclusively in the receiver, and said individuals are suspended except as provided for in paragraph (h) of this section relating to the voluntary liquidation of a solvent association.

(e) The voluntary or involuntary liquidation of an association shall be conducted by the receiver as agent of the Farm Credit Administration. The receiver shall be responsible for collecting the assets, paying the creditors, and paying any liquidating dividend to stockholders of the association. Upon completion of the liquidation and discharge of the receiver by the Farm Credit Administration, the Governor will cancel the charter of the association.

(f) When the Governor approves the voluntary liquidation of an association, except as provided for in paragraph (h) of this section, the Governor shall appoint the supervisory bank as the receiver, except where the Governor determines in his sole discretion that such appointment would not be in the best interests of the creditors and stockholders of the association. Subject to the approval of the Farm Credit Administration, the supervisory bank may appoint liquidating agents for

collecting the assets, paying the creditors, and paying any liquidating dividends to the stockholders of the association. Upon completion of the liquidation and discharge of the receiver by the Farm Credit Administration, the Governor will cancel the charter of the association.

(g) The Governor may at any time remove or replace the receiver or may terminate the receivership and direct the receiver to turn over the association to its previous management, in which event the provisions of this subpart shall no longer apply.

(h) In the case of the voluntary liquidation of an association which is not in default on an obligation or otherwise insolvent, the Governor may appoint a receiver, taking into consideration the recommendations of the board of directors of the liquidating association. The board of directors of the association may, at the discretion of the Governor, remain in office to provide advice and recommendations to the receiver during the pendency of the liquidation.

§ 611.1161 Powers and duties of the receiver.

The receiver of an association serves as the trustee of the receivership estate and conducts its operations for the benefit of the creditors and stockholders of the association. In this capacity, as trustee of the estate, the receiver is an agent of, and is subject to the specific procedures and approval requirements established by the Farm Credit Administration and enjoys the same immunities against personal liability that exist for all employees and agents of the Farm Credit Administration. When a supervising bank is appointed receiver of an association in voluntary liquidation, such bank shall adopt, subject to Farm Credit Administration approval, appropriate procedures governing the activities of its liquidating agents. As the agent of the Farm Credit Administration and acting on behalf of the association in receivership, the receiver is authorized and empowered to:

(a) Exercise all powers as are conferred upon the officers and directors of the association under law and the charter, articles, and by-laws of the association;

(b) Take any action the receiver considers appropriate or expedient to carry on the business of the association during the process of liquidating its assets and winding up its affairs;

(c) Extend credit to existing borrowers as necessary to honor existing commitments and to effectuate the purposes of the receivership;

(d) Borrow such sums as may be necessary to effectuate the purposes of the receivership;

(e) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect the association's assets or property, or rehabilitate or improve such property and assets;

(f) Pay any sum the receiver deems necessary or advisable to preserve, conserve, or protect any asset or property on which the association has a lien or in which the association has a financial or property interest, and pay off and discharge any liens, claims, or charges of any nature against such property;

(g) Investigate any matter related to the conduct of the business of the association including, but not limited to, any claim of the association against any individual or entity, and institute appropriate legal or other proceedings in the name of the association to prosecute such claims;

(h) Institute, prosecute, maintain, defend, intervene, and otherwise participate in the name of the association in any legal proceeding by or against the association or in which the association or its creditors or members have any interest, and represent in every way the association, its members and creditors;

(i) Employ attorneys, accountants, appraisers, and other professionals to give advice and assistance to the receivership generally or on particular matters, and pay their retainers, compensation, and expenses, including litigation costs;

(j) Hire any employees necessary for proper administration of the receivership, including the hiring of liquidation agents, which employees shall be covered by a bond satisfactory to the receiver and the Farm Credit Administration;

(k) Execute, acknowledge, and deliver, in person or through a general or specific delegation, any instrument necessary for any authorized purpose, and any instrument executed under this paragraph shall be valid and effectual as if it had been executed by the association's officers by authority of its board of directors;

(l) Sell for cash or otherwise, any mortgage, deed of trust, chose in action, note, contract, judgment or decree, stock, or debt owning to the association, or any property (real or personal, tangible or intangible);

(m) Purchase or lease office space, automobiles, furniture, equipment, and supplies, and purchase insurance, professional, and technical services necessary for the conduct of the receivership;

(n) Release any assets or property of any nature, regardless of whether the subject of pending litigation, and repudiate, with cause, any lease or executory contract the receiver considers burdensome;

(o) Settle, release, or obtain release of, for cash or other consideration, claims and demands against or in favor of the association or the receiver;

(p) Pay out of the assets of the association all expenses of the receivership and all costs of carrying out or exercising the rights, powers, privileges, and duties as receiver;

(q) Pay out of the assets of the association all approved claims of indebtedness in accordance with priorities established in this subpart;

(r) Take all actions in the name of the association in receivership, and have such rights, powers, and privileges as are necessary and incident to the exercise of any specific power; and

(s) Take such actions, and have such additional rights, powers, privileges, immunities, and duties as the Farm Credit Administration authorizes, directs, confers, or imposes by order or by amendment of an order or by regulation.

§ 611.1162 Preservation of equity.

(a) Except as provided for upon final distribution of the assets of the association, no capital stock, participation certificates, equity reserves, or other allocated equities of an association in receivership shall be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities.

(b) Immediately upon the adoption of a resolution by its board of directors to liquidate the association, the capital stock, participation certificates, equity reserves, and allocated equities of the association shall not be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities until such time as the Farm Credit Administration disapproves such resolution. In the event the resolution is approved and the association is placed in receivership, the provisions of paragraph (a) of this section shall govern further disposition of the equities of the association.

§ 611.1163 Notice of stockholders.

As soon as practicable after the receiver takes possession of the association, the receiver shall notify, by first class mail, each holder of stock and participation certificates of the following matters:

(a) The number of shares such holder owns;

(b) That the stock and other equities of the association may not be retired or transferred until the liquidation is completed; whereupon, the receiver will distribute a liquidating dividend, if any, to the owners of such equities.

(c) The options available to such holder regarding the repayment or transfer of loans;

(d) The services available to current borrowers during the winding up of the affairs of the association;

(e) The name(s) and location(s) of the other association(s) to which the territory has been transferred; and

(f) Such other matters as the receiver or the Farm Credit Administration deems necessary.

§ 611.1164 Creditors' claims.

(a) The receiver shall publish promptly a notice to creditors to present their claims against the association, with proof thereof, to the receiver by a date specified in the notice, which shall be 90 calendar days after the first publication. The notice shall be published again on or about 30 days and 60 days, respectively, after the first publication. Claims filed after the specified date shall be disallowed, except as the receiver may approve them for full or partial payment from the association's asets remaining undistributed at the time of approval. The receiver shall promptly send, by first class mail, a similar notice to any creditor shown on the association's books at the creditor's last address appearing thereon.

(b) The receiver shall allow any claim that is timely received and proved to the receiver's satisfaction. The receiver may disallow in whole or in part any creditor's claim or claim of security, preference, or priority which is not proved to the receiver's satisfaction or is not timely received and shall notify the claimant of the disallowance and reason therefor. Sending the notice of disallowance by first class mail to the claimant's address appearing on the proof of claim shall be sufficient notice. The disallowance shall be final, unless, within 30 days after notice of disallowance is mailed, the claimant files a written request for payment regardless of the disallowance. The receiver shall reconsider any claim upon the timely request of the claimant and may approve or disapporve such claim in whole or in part.

(c) The receiver shall cause to be filed with the Farm Credit Administration, at such times and in such manner as the Farm Credit Administration shall require, a complete list of claims presented, indicating the character of each claim and whether allowed by the receiver.

(d) Creditors' claims that are allowed shall be paid by the receiver from time to time, to the extent funds are available therefor and in accordance with the priorities established in this subpart and in such manner and amounts as the receiver deems appropriate. In the event the asociation has a claim agaisnt a creditor of the association, the receiver shall offset the amount of such claim against the claim asserted by such creditor.

§ 611.1165 Sale and transfer of loans.

(a) The receiver is authorized to sell loans to any commercial lending institution at fair market value (including any amount borrowed to purchase stock in the assocition); and

(b) The receiver is authorized to sell loans to an association (hereafter referred to as "purchasing association") that has been authorized, by charter amendment, agreement, or otherwise, to make loans in the territory heretofore served by the association in liquidation only on the following basis:

(1) A loan may be sold at not less than its fair market value (including the amount borrowed to purchase stock or participation certificates in the liquidating association) and the borrower will immediately make the required capital investment in the purchasing association by providing cash sufficient therefor or by increasing the loan by an amount necessary to make such capital investment; or

(2) The loan may be sold at not less than its fair market value (including the amount borrowed to purchase stock or participation certificates in the liquidating association) in conjunction with an agreement between the borrower, the receiver, the supervising bank, and the purchasing association, which provides for a loan from the supervising bank to the borrower or the purchasing association in the amount of the required capital investment in the purchasing association, to be repaid on or before the completion of the liquidation of the association, on terms set forth in the agreement.

(c) An association to which the receiver proposes to sell a loan shall have not less than 90 days to purchase the loan. The association may purchase any such loan at its discretion provided that the borrower agrees to buy stock and become a member of the association.

§ 611.1166 Priority of claims.

(a) The following priority of claims shall apply to the distribution of the assets of an association in liquidation:

(1) All costs, expenses, and debts that were incurred by the receiver in connection with the administration of the receivership.

(2) All claims for taxes.

(3) All claims of creditors, including the supervisory bank, which are secured by assets or equities of the association in accordance with Federal or State law.

(4) All claims of the supervising bank, other than as provided for in paragraph (a)(3) of this section, based on the financing agreement between the association and the bank, including interest accrued before and after the appointment of the receiver, minus any setoff for stock or other equity of the supervising bank owned by the association made in accordance with this paragraph or paragraph (a)(3) of this section. Prior to making such setoff, the supervising bank must obtain the approval of the Farm Credit Administration for the retirement of such equities.

(5) All claims of general creditors.

(b) All claims of each class described in paragraph (a) of this section shall be paid in full, or provision made for such payment, prior to the payment of any claim of a lesser priority. If there are insufficient funds to pay any class of claims in full, distribution on such class shall be on a pro rata basis.

(c) Following the payment of all claims, the receiver shall distribute the remainder of the assets of the association to the owners of stock, participation certificates, and other equities in accordance with the priorities for impairment set forth in the bylaws of the association.

§ 611.1167 Inventory, examination, audit, and report to stockholders.

(a) As soon as practicable after taking possession of an association, the receiver shall make an inventory of the assets and liabilities as of the date possession was taken. Such inventory shall include the book value and the fair market value of the association's assets. The method of listing assets must provide such information to the satisfaction of the Farm Credit Administration. One copy of the inventory shall be filed with the Farm Credit Administration.

(b) The association in receivership shall be examined and audited on an annual basis by the Farm Credit Administration or, at the discretion of the Farm Credit Administration, by an independent private auditor. The cost of

such examination and audit, as determined by the Farm Credit Administration, shall be paid from the assets of the association in receivership.

(c) The Farm Credit Administration may from time to time prescribe accounting practices to be followed and require such audit or other reports covering any matters related to the operations of the association or the receivership as it deems appropriate on such forms as it may prescribe. One copy of the reports required by this section shall be filed with the Office of Examination and Supervision, Farm Credit Administration, and one copy shall be retained in the receiver's principal office.

(d) The receiver shall cause to be sent to each stockholder of record of the association, not later than 90 days following the end of each fiscal year, a report on the financial condition of the association in receivership. Upon the final liquidation of the association, the receiver shall cause to be sent to each stockholder of record a report summarizing the activities of the receiver and describing the disposition of the assets of the receivership and claims against the receivership.

§ 611.1168 Final discharge and release of receiver.

The association shall continue as an association chartered in accordance with the Act until such time as the liquidation has been completed and the charter of the association has been canceled by the Governor of the Farm Credit Administration. When the receiver recommends final distribution of assets or is otherwise relieved of its duties by the Farm Credit Administration, the receiver shall file with the Farm Credit Administration a detailed report in a form satisfactory to the Farm Credit Administration. Upon final liquidation of the receivership or when the receiver completes or is otherwise relieved of its duties, the receivership shall be examined and audited pursuant to § 617.7090 of this chapter. The receiver's accounts shall thereupon be approved or disapproved, and if approved, the receiver shall thereby be completely and finally released. The records of the receivership shall be stored and maintained in the manner directed by the Farm Credit Administration.

Subpart K—Liquidation of Banks

§ 611.1170 Appointment of receiver.

(a) The board of directors of a bank, by the adoption of appropriate resolution, may vote to liquidate the bank, and upon approval of the resolution by the Farm Credit Administration, the Governor may, by order, place the bank in receivership and appoint a receiver.

(b) Upon default on the payment of principal or interest on any financial obligation by a bank, or upon a determination by the Governor, in accordance with section 4.4 of the Act (12 U.S.C. 2155), that the bank will default on its portion of a Systemwide and/or consolidated obligation in the absence of an assessment by the Governor of other System banks that are jointly liable on such obligation, the Governor, by order, may declare the bank insolvent and appoint a receiver.

(c) Upon the issuance of an order placing a bank in liquidation, all rights, privileges, and powers of the board of directors, officers, and employees of the bank are vested exclusively in the receiver, and such individuals are suspended, except as provided for in paragraph (g) of this section relating to the voluntary liquidation of a solvent bank.

(d) Upon the appointment of a receiver, and acceptance by the receiver of the appointment, the Governor shall immediately notify the institution, and notice of the appointment shall be published in the **Federal Register**.

(e) A voluntary or involuntary liquidation of a bank shall be conducted by the receiver, as agent of the Farm Credit Administration. The receiver shall be responsible for collecting the assets, paying the creditors, paying any liquidating dividend to stockholders, and winding up the affairs of the bank. Upon completion of the liquidation, the Governor will revoke the charter of the bank.

(f) The Governor may at any time remove and replace the receiver or may direct the receiver to return the bank to the previous management, in which event the provisions of this subpart shall no longer apply.

(g) In the case of the voluntary liquidation of a bank which is not in default on an obligation or otherwise insolvent, the Governor may appoint a receiver, taking into consideration the recommendations of the board of directors of the liquidating bank. The board of directors may, at the discretion of the Governor, remain in office to provide advice and recommendations to the receiver during the pendency of the liquidation.

(h) For purposes of this subpart, the term "bank" shall be read to include any service organization chartered pursuant to Part D of Title IV of the Act.

§ 611.1171 Powers and duties of the receiver.

A receiver of a bank is an agent of the Farm Credit Administration and has the same powers and duties with respect to a bank in receivership as the receiver of an association has in accordance with § 611.1161. In interpreting § 611.1161 for purposes of this section, the word "bank" shall be read for the word "association."

§ 611.1172 Preservation of equity.

(a) Except as provided for upon a final distribution of the assets of the bank, no capital stock, participation certificates, equity reserves, or other allocated equities of a bank in receivership shall be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities.

(b) Immediately upon the adoption of a resolution by its board of directors to liquidate a bank, the capital stock, participation certificates, equity reserves, and allocated equities shall not be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owner of such equities until such time as the Farm Credit Administration disapproves such resolution. In the event the resolution is approved and the bank is placed in receivership, the provisions of paragraph (a) of this section shall govern further deposition of the equities of the bank.

§ 611.1173 Notice to associations, cooperative borrowers, and other financing institutions.

As soon as practicable after the receiver takes possession of the bank, the receiver shall notify, by first class mail, the production credit associations, Federal land bank associations, cooperative borrowers, and other financing institutions that own stock or other equities of the bank of the following matters:

(a) The number of shares or certificates such holder owns and the value of any equity specifically allocated to such member.

(b) The steps that will be taken to provide for the purchase of assets and assumption of liabilities by the bank that is or will be chartered to serve the territory formerly served by the bank in liquidation.

(c) Such other matters as the receiver or the Farm Credit Administration deems necessary.

§ 611.1174 Creditors' claims and priority of claims.

(a) Except as provided for in paragraph (b) of this section, the

provisions of § 611.1164 regarding the claims of creditors of associations in receivership shall also apply to the claims of creditors of a bank in receivership. In interpreting § 611.1164 for purposes of this section, the word "bank" shall be read for the word "association."

(b) The holders of long-term notes, bonds, debentures, or other similar obligations, or discount notes (hereinafter referred to collectively as "bonds") in book entry and definitive form issued by the bank individually or jointly with one or more System banks pursuant to 12 U.S.C. 2153(b), (c), (d), or (e) are not required to submit claims in accordance with this section. The Farm Credit Administration shall advise the receiver of the outstanding amount of bonds issued by or on behalf of the bank for which the bank is primarily liable within the meaning of 12 U.S.C. 2155(a).

(c) Except for any consolidated or Systemwide bonds issued on behalf of a bank which are assumed by one or more other banks of the System, when a bank is placed in receivership the Governor shall assign such bank's primary liability (as that term is used in 12 U.S.C. 2155(a)) on bonds to the other banks of the System in accordance with 12 U.S.C. 2155(a) as of the date of the appointment of the receiver. Upon such assignment, the assignee banks shall acquire rights to and title in such assets of the bank as shall be eligible and available as collateral under 12 U.S.C. 2154(b) up to an aggregate value equal to the total amount of the bonds so assigned, with priority of claims as provided in paragraph (d) of this section.

(d) The following priority of claims shall apply to the distribution of assets of a bank in liquidation:

(1) All costs, expenses, and debts that were incurred by the receiver in connection with the administration of the receivership.

(2) All claims for taxes.

(3) All claims of creditors which are secured by specific assets of the bank, with priority of conflicting claims of creditors within this same class to be determined in accordance with priorities of applicable Federal or State law.

(4) All claims of holders of bonds issued by the bank individually to the extent such are collateralized in accordance with 12 U.S.C. 2154.

(5) All claims of holders of consolidated and Systemwide bonds and claims of the other banks of the System related to assignments made by the Governor under paragraph (c) of this section.

(6) All claims of general creditors.

(e) All claims of each class described in paragraph (d) of this section shall be paid in full, or provisions shall be made for such payment prior to the payment of any claim of lesser priority. The receiver shall immediately reserve funds sufficient to pay all claims provided for in paragraphs (d) (1) and (2) of this section. Thereafter, the receiver may enter into a purchase and assumption agreement with a System bank authorized to serve the territory, pursuant to which the purchasing bank will acquire loan assets of the receivership and assume a like amount of obligations of the bank in receivership on its notes and bonds. The receiver shall then liquidate the remaining assets of the bank in a manner that minimizes the potential for any interruption in the timely repayment of principal and interest on claims provided for in paragraphs (d) (4) and (5) of this section in accordance with the maturity dates of such obligations.

(f) Following the payment of all claims, the receiver shall distribute the remainder of the assets of the bank to the owners of stock, participation certificates, and other equities in accordance with the priorities for impairment set forth in the bylaws of the bank.

§ 611.1175 Inventory, examination, and audit.

(a) As soon as practicable after taking possession of a bank, the receiver shall make an inventory of the assets and liabilities of the bank as of the date possession was taken. Such inventory shall include the book value and fair market value of the bank's assets and the book value of the bank's liabilities and any security therefor. The method of listing assets and liabilities must provide such information to the satisfaction of the Farm Credit Administration. One copy of the inventory shall be filed with the Farm Credit Administration.

(b) The bank in receivership shall be examined and audited on an annual basis by the Farm Credit Administration or, at the discretion of the Farm Credit Administration, by an independent private auditor. The cost of such examination and audit, as determined by the Farm Credit Administration, shall be paid from the assets of the bank in receivership.

(c) The Farm Credit Administration may from time to time prescribe accounting practices to be followed and require such audit or other reports covering any matters related to the operations of the bank or the receivership as it deems appropriate on such forms as it may prescribe. One copy of the reports required by this section shall be filed with the Office of Examination and Supervision, Farm Credit Administration, and one copy shall be retained in the receiver's principal office.

§ 611.1176 Final discharge and release of receiver.

The bank in receivership shall continue as a bank chartered in accordance with the Act until such time as the liquidation has been completed and the charter of the bank has been canceled by the Governor of the Farm Credit Administration. When the receiver recommends final distribution of assets or is otherwise relieved of its duties by the Farm Credit Administration, the receiver shall file a detailed report with, and in a form satisfactory to the Farm Credit Administration. Unless the Farm Credit Administration otherwise directs, upon final liquidation of the receivership or when the receiver completes or is otherwise relieved of its duties, the receivership shall be examined and audited pursuant to § 617.7090 of this chapter. The receiver's accounts shall thereupon be approved or disapproved, and if approved, the receiver shall thereby be completely and finally released. The records of the receivership shall be stored and maintained in the manner directed by the Farm Credit Administration.

Donald E. Wilkinson,

Governor.

[FR Doc. 85-22427 Filed 9-18-85; 8:45 am]

BILLING CODE 8705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85-AWA-16]

Alteration of the Detroit, MI, Terminal Control Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the Detroit, MI, Terminal Control Area (TCA). Runway 3R/21L was added after the initial design of the Detroit TCA. Its addition had provided an availability of simultaneous instrument landing system (ILS) approaches. Consistent with the purpose of a TCA, the new capability created a need to modify the TCA – airspace configuration to totally contain aircraft inbound to Detroit Metropolitan Airport.

EFFECTIVE DATE: 0901 G.m.t., October 24, 1985.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

History

One June 25, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Detroit, MI, TCA (50 FR 26218). The addition of Runway 3R/21L provides the availability of simultaneous ILS approaches. Consistent with the purpose of a TCA, the new capability creates the need to modify the TCA to totally contain aircraft inbound to Detroit Metropolitan Airport in the TCA. The intended effect of the action is to return to general aviation use a significant amount of airspace which is presently unavailable for use while making adjustments to the TCA configuration to assure proper containment of aircraft within TCA limits.

This amendment to the Detroit TCA entails no increase in the heights of TCA airspace, no impact on air traffic or air navigation facilities, no need for additional equipment or personnel and no change to flight patterns. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment was received in response to the NPRM. The Air Line Pilots Association supports the proposal. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.401(b) of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The rule

This amendment to Part 71 of the Federal Aviation Regulations revises the Detroit, MI, TCA as follows:

Area A. Surface to 8,000 Feet Area (Surface to 80). The airspace area of the core of the TCA area is expanded to a 7-nautical-mile arc. This change allows for maneuvering room for aircraft inbound to Runway 3R.21L. The expansion eliminates the small wedge of airspace created by control zone extensions and allows the 2,300 to 8,000 feet area to be eliminated in all areas except a small portion southwest of Detroit Metropolitan Airport, which is raised to 2,500 to 8,000 feet mean sea level (MSL) to accommodate arrivals on Runways 3L and 3R and departures on Runway 21L.

Area B. 2,300 to 8,000 feet Area (23/80). This area has been eliminated with the exception of that airspace from 2,500 feet to 8,000 feet between the 7- and 11-nautical-mile distance measuring equipment (DME) arcs of the Detroit ILS Localizer, Runway 3L (I–DTW) and which generally begins at the southern boundary of the Willow Run (YIP) (Ypsilanti) Control Zone and proceeds easterly to YIP Terminal Very High Frequency Omni-Directional Radio Range (TVOR) 105° radial.

Area C. 3,000 to 8,000 feet Area (30/80). This area extends to the east and encompasses airspace over an existing Canadian Positive Control Zone. It provides for VFR operation below 3,000 feet MSL along the Detroit River. A lower altitude is not needed in this area and it is believed the airspace user will be better served by improved availability of VFR arrival and departure routes for airports underlying this airspace.

Area D. 5,000 to 8,000 feet Area (50/80). Both north and south ends of the TCA were reduced in lateral size and altitude. The redesigned area has a lowered floor of 4,000 feet. The lower floor permits simultaneous ILS approaches to Runways 21L/3R and 21R/3L. The reduced lateral limits allow VFR flights a more direct route to or from the Salem VORTAC.

The amended description of the Detroit TCA utilizes existing navigational aids rather than geographical lines.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.401(b) is amended as follows:

Detroit, MI [Revised]

Primary Airport, Detroit Metropolitan Wayne County Airport (lat. 42°13'07" N., long 83°20'55" W.).

Boundaries

Area A. That airspace extending upward from the surface to and including 8,000 feet MSL within the lateral limits of the airspace beginning at the intersection of the Willow Run, MI, VOR 050° radial and the Detroit Willow Run Airport, MI, Control Zone; thence northeast along the Willow Run VOR 050° radial until intercepting the 7-mile DME arc of the Detroit Instrument Landing System (ILS) Localizer Runway 3L (I–DTW); thence clockwise along the I–DTW 7-mile DME arc until intercepting the Detroit Willow Run Airport Control Zone; thence counterclockwise along the Detroit Willow Run Airport Control Zone to the point of origin.

Area B. That airspace from 2,500 feet MSL to and including 8,000 feet MSL within the lateral limits of the airspace beginning at the intersection of the I–DTW 7-mile DME arc and the Detroit Willow Run Airport Control Zone counterclockwise along the I–DTW 7-mile DME arc until intercepting the Willow Run VOR 105° radial; thence southwest on a 216° bearing from that intersection until intercepting the I–DTW 11-mile DME arc; thence clockwise along the I–DTW 11-mile DME arc until intercepting the Willow Run VOR 190° radial; thence direct to the point of origin.

Area C. That airspace from 3,000 feet MSL to and including 8,000 feet MSL within the airspace (excluding Areas A and B) beginning at the intersection of the Salem, MI, VORTAC 200° radial and the I–DTW 17-mile DME arc, counterclockwise along the I–DTW 17-mile DME arc until intercepting the Windsor, Canada, VOR 226° radial; thence northeast along the Windsor VOR 226° radial until intercepting the I–DTW 20-mile DME arc; thence counterclockwise along the I–DTW 20-mile DME arc until intercepting the Windsor VOR 323° radial; thence northwest along the Windsor VOR 323° radial until intercepting the U.S./Canadian international boundary; thence southwest along the U.S./Canadian international boundary until intercepting the I–DTW 11-mile DME arc; thence counterclockwise along the I–DTW 11-mile DME arc until intercepting the Salem VORTAC 5-mile DME arc; thence clockwise

along the Salem VORTAC 5-mile DME until intercepting the Salem VORTAC 200° radial; thence southwest along the Salem VORTAC 200° radial to the point of origin.

Area D. That airspace from 4,000 feet MSL to and including 8,000 feet MSL within lateral limits beginning at the intersection of the Salem VORTAC 050° radial and the I–DTW 19-mile DME arc; thence clockwise along the I–DTW 19-mile DME until intercepting the Windsor VOR 323° radial; thence southeast along the Windsor VOR 323° radial until intercepting the U.S./Canadian international boundary; thence southwest along the U.S./Canadian international boundary until intercepting the I–DTW 11-mile DME arc; thence counterclockwise along the I–DTW 11-mile DME arc until intercepting the Salem VORTAC 5-mile DME arc; thence counterclockwise along the Salem VORTAC 5-mile DME arc until intercepting the Salem VORTAC 050° radial; thence northeast along the Salem VORTAC 050° radial to the point of origin; and that airspace within the lateral limits beginning at the intersection of the Salem VORTAC 200° and the I–DTW 17-mile DME arc counterclockwise along the I–DTW 17-mile DME arc until intercepting the Windsor VOR 228° radial, thence southwest along a 216° bearing until intercepting the I–DTW 20-mile DME arc, thence clockwise along the I–DTW 20-mile DME arc until intercepting the Salem VORTAC 200° radial, thence north along the Salem VORTAC 200° radial to the point of origin.

Issued in Washington, D.C., on September 11, 1985.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85–22371 Filed 9–18–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 373

[Docket No. 40110–5076]

Revision of Distribution License Procedure

Correction

In FR Doc. 85–12598, beginning on page 21562, in the issue of Friday, May 24, 1985, make the following corrections:

On page 21573, first column, § 373.3:

1. In the first complete paragraph, *Amendments of Distribution Licenses* should be codified as paragraph (l), not paragraph (1).

2. In § 373.3(l)(3)(i), eighth line, "paragraph (k)(3)(ii)" should read "paragraph (l)(3)(ii)".

BILLING CODE 1505–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 6

[T.D. 85–157]

Customs Regulations Amendment Relating to Entry and Clearance of Civil Aircraft

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to the size, type of paper, and ink used on forms required for the entry and clearance of civil aircraft by Customs. These changes are less restrictive than current standards. They are minor changes which will apply only to the forms involved. They will facilitate the procedures involved in entering and clearing civil aircraft without making any substantive changes in those procedures.

EFFECTIVE DATE: October 21, 1985.

FOR FURTHER INFORMATION CONTACT: Operational Aspects: Jerry Worley, Office of Cargo Enforcement and Facilitation (202–566–8151). Legal Aspects: John Mathis, Carriers, Drawback and Bonds Division (202–566–5706), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

SUPPLEMENTARY INFORMATION:

Background

Section 6.6(a), Customs Regulations (19 CFR 6.6(a)), currently provides that the size of Customs Form 7507 (General Declaration) and Customs Form 7509 (Cargo Manifest), required for the entry and clearance of civil aircraft, shall be approximately but not to exceed 8½ inches wide and 14 inches long. Additional specifications provided for in § 6.6(a) are that the forms shall be on white bond paper that will not discolor or become brittle within 20 years; that if these forms are dittoed or if the entries on them are to be dittoed, the paper must be substance 40, 17 inches by 22 inches, 1,000 sheet basis; if printed or typewritten, at least 25 percent rag, substance 26, 17 inches by 22 inches, 1,000 sheet basis. Also, these forms and the entries thereon must be dittoed, typewritten, or printed with ink, or dye that will not fade or "feather" within 20 years.

Section 6.6(b), Customs Regulations (19 CFR 6.6(b)), currently provides that these forms may be printed or dittoed by private parties, provided the forms so printed or dittoed conform to the official forms currently in use, with respect to size, wording arrangement, style and size of type, and paper specifications.

After a review of these requirements, Customs believes the specifications for these two forms are too restrictive, particularly with regard to their size. Therefore, by a document published in the **Federal Register** on January 11, 1985 (50 FR 1544), Customs proposed to reduce the size of the forms to 8½ inches by 11 inches, with a provision permitting the private printing of the forms up to a maximum size of 8½ inches by 14 inches. Customs recognizes that there also may be some justification, due to the exigencies of aircraft operation of which we are unaware, for permitting some minimum size that is smaller than 8½ inches by 11 inches. The proposed changes provide for these extenuating circumstances. In addition to the change in size specifications, Customs also proposed to eliminate all restrictions with regard to the type of paper and ink used on the forms.

Customs does not believe that Annex 9 to the Convention on International Civil Aviation precludes any of the proposed changes. No restrictions on the type of paper or ink to be used for the forms exist. With regard to size, Annex 9 does not specify a size, but does provide specimen copies of forms in metric sizes equal to 8¼ inches by 11¾ inches. However, the size recommended by Annex 9 is not binding as evidenced by the fact that the present forms measure 8½ inches by 14 inches.

Discussion of Comments

The only comment received in response to the notice document favored the proposal and urged that it be implemented as soon as possible. Accordingly, after a further review of the matter, Customs has determined to adopt the proposal as described in the notice.

Executive Order 12291

Because this document will not result in a regulation which would be a "major" rule as defined by section 1(b) of E.O. 12291, a regulatory impact analysis and review is not required.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service Headquarters. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 6

Air carriers, Aircraft, Airports, Cuba, Customs duties and inspection, Freight, Penalties, Reporting and recordkeeping requirements.

Amendment to the Regulations

Part 6, Customs Regulations (19 CFR Part 6), is amended as set forth below.

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved:

David D. Queen,

Acting Assistant Secretary of the Treasury.

PART 6—AIR COMMERCE REGULATIONS

1. The authority citation for Part 6 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624, 49 U.S.C. 1474, 1509; § 6.2 also issued under 19 U.S.C. 1322, 1448, 1450, 1451, 1644; § 6.6 also issued under 19 U.S.C. 1431; § 6.7 also issued under 19 U.S.C. 1644; § 6.8 also issued under 19 U.S.C. 1644, 46 U.S.C. 91, 92; § 6.17 also issued under 19 U.S.C. 1551, 1552, 1553; §§ 6.18 and 6.20 also issued under 19 U.S.C. 1552, 1553.

2. Sections 6.6 (a) and (b) are revised to read as follows:

§ 6.6 Document; form.

(a) The forms described in §§ 6.7 and 6.8 shall be the primary documents required for the entry and clearance of the aircraft, passengers, crewmembers and merchandise carried thereon. The forms shall be approved by the Commissioner of Customs. The forms shall be approximately 8½ inches wide and 11 inches long and shall be on white writing paper. If a document or the entries thereon are in a foreign language, a translation in English shall be furnished with the original and with each copy.

(b) The Customs forms described in §§ 6.7 and 6.8 are in the English language and are obtainable from district directors upon payment by the owner or operator of the aircraft. A small quantity of each of the forms shall be set aside by district directors for free distribution and official use. These forms may be printed by private parties, provided the forms so printed conform to the official forms currently in use with regard to wording arrangement, style and size of type and quality of paper. While minimal variation in size of the forms is acceptable, the size of the forms shall not exceed 8½ inches wide and 14 inches long.

* * * * *

[FR Doc. 85-22422 Filed 9-18-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 84F-0151]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of bis (*beta*-carbobutoxyethyl) tin bis (isooctylmercaptoacetate) and *beta*-carbobutoxyethyltin tris (isooctylmercaptoacetate) as stabilizers for polyvinyl chloride and vinyl chloride copolymers intended for use in contact with food. This action responds to a petition filed by Interstab Chemicals, Inc.

DATES: Effective September 19, 1985; objections by October 21, 1985.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 6, 1984 (49 FR 23455), FDA announced that a petition (FAP 4B3776) had been filed by Interstab Chemicals, Inc., 500 New Jersey Ave., New Brunswick, NJ 08903, proposing that § 178.2650 *Octyltin stabilizers in vinyl chloride plastics* (21 CFR 178.2650) be amended to provide for the safe use of bis (*beta*-carbobutoxyethyl) tin bis (isooctylmercaptoacetate) and *beta*-carbobutoxyethyltin) tris (isooctylmercaptoacetate) as stabilizers for polyvinyl chloride and vinyl chloride copolymers intended for use in contact with food.

Recently, the agency has reconsidered the statement in § 178.2650 indicating that the isooctyl radical in the mercaptoacetate is derived from oxo process isooctyl alcohol. Oxo process isooctyl alcohols used to prepare the mercaptoacetate portion of the tin stabilizers listed in this section can be manufactured by at least two oxo processes. To permit both processes of manufacture and to accommodate the variable composition of the alcohol mixtures that result from each process, the agency has determined that the isooctyl alcohol portion of the mercaptoacetates, which are authorized by the present order, should be described as oxo process primary octyl alcohols. Furthermore, the agency has evaluated the appropriate codification of the two stabilizers and has decided that they should be listed in 21 CFR 178.2650. However, because the two tin stabilizers listed in this order are not octyltin stabilizers, FDA is making an editorial change. The title of 21 CFR 178.2650 is being changed to a more generic "organotin stabilizers" replacing the current "octyltin stabilizers."

FDA has evaluated data in the petition and other relevant material and concludes that the proposed use is safe and that the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at any

time on or before October 21, 1985 submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 178.2650 by revising the section heading, the introductory paragraph, and the introductory text of paragraph (a), and by adding new paragraph (a)(5) and (6) to read as follows:

§ 178.2650 Organotin stabilizers in vinyl chloride plastics.

The octyltin chemicals identified in paragraph (a) of this section may be safely used alone or in combination, at levels not to exceed a total of 3 parts per hundred of resin, as stabilizers in polyvinyl chloride and vinyl chloride copolymers complying with the provisions of § 177.1950 or § 177.1980 of this chapter and that are intended for use in contact with food of types I, II, III, IV (except liquid milk), V, VI (except malt beverages and carbonated nonalcoholic beverages), VII, VIII, and IX described in table 1 of § 176.170(c) of this chapter, except for the octyltin chemical identified in paragraph (a)(3) of this section which may be used in contact with food of types I through IX at temperatures not exceeding 75 °C (167 °F), and further that the octyltin chemicals identified in paragraph (a)(5) and (6) of this section may be used in contact with food of types I through IX, at temperatures not exceeding 66 °C (150 °F), conditions of use D through G described in table 2 of § 176.170(c) of this chapter, in accordance with the following prescribed conditions:

(a) For the purpose of this section, the octyltin chemicals are those identified in paragraph (a)(1), (2), (3), (4), (5), and (6) of this section.

* * * * *

(5) Bis(*beta*-carbobutoxyethyl)tin bis(isooctylmercaptoacetate) (CAS Reg. No. 63397–60–4) is an estertin chemical having 14.0 to 15.0 percent by weight of tin (Sn) and having 7.5 to 8.5 percent by weight of mercapto sulfur. It is made from bis(*beta*-carbobutoxyethyl)tin chloride. The isooctyl radical in the mercaptoacetate is derived from oxo process primary octyl alcohols. The bis(*beta*-carbobutoxyethyl)tin dichloride has an organotin composition that is not less than 95 percent by weight of bis(*beta*-carbobutoxyethyl)tin chloride and not more than 5 percent by weight of bis(*beta*-carbobutoxyethyltin chloride. The triestertin chloride content of bis(*beta*-carbobutoxyethyltin) dichloride shall not exceed 0.02 percent.

(6) *Beta*-carbobutoxyethyltin tris(isooctylmercaptoacetate) (CAS Reg. No. 63438–80–2) is an estertin chemical having 13.0 to 14.0 percent by weight of tin (Sn) and having 10.5 to 11.5 percent by weight of mercapto sulfur. It is made from *beta*-carbobutoxyethyltin trichloride. The isooctyl radical in the mercaptoacetate is derived from oxo process primary octyl alcohol. The *beta*-carbobutoxyethyltin trichloride has an organotin composition that is not less than 95 percent by weight of *beta*-carbobutoxyethyltin trichloride and not more than 5 percent total of triestertin chloride and diestertin chloride.

* * * * *

Dated: September 6, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–22377 Filed 9–18–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3 85–60]

Special Local Regulations; Head of Connecticut Regatta, Connecticut River, Middletown, Connecticut

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Head of Connecticut Regatta being sponsored by the City of Middletown, Connecticut. This event will be held on October 13, 1985 between the hours of 9:00 a.m. and 6:00 p.m. This regulation is needed to provide for the safety of participants and spectators on navigable waters during this event.

EFFECTIVE DATE: This regulation becomes effective on October 13, 1985 from 9:00 a.m. to 6:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Lucas A. Dlhopolsky (212) 668–7974.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rule Making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Final details of the operation of the race were unable to be completed until August 27, 1985 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Mr. Lucas A. Dlhopolsky, Project Officer, Third Coast Guard District Boating Safety Division, Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The eleventh annual Head of Connecticut Regatta sponsored by the City of Middletown, Connecticut is well known to the boaters and residents of this area. In the past few years it has grown to become one of the largest crew shell race events of its type on the East Coast. Approximately 410 crew shells will race against the clock in 18 heats during the day. The sponsor will provide 6 to 8 vessels in conjunction with Coast Guard and local authorities to patrol this event. Several of the sponsors vessels may assist in controlling the spectator fleet which has been growing larger in the past few years despite the late date of this event. Although the race

course has not been altered, several changes to these Special Local Regulations have been made as a result of a Coast Guard review of last year's event. In the Special Local Regulations for last year's (1984) regatta, a period of time (12:30 p.m. to 1:45 p.m.) was set aside for transit of vessels larger than 20 meters in length. Due to difficulty in adhering to those specific times and the need for the Patrol Commander to exercise his judgment concerning the safety of the race participants, this specific time period will not be in effect for this year's event. There is minimal commercial traffic this far up the Connecticut River at this time of the year. On the average, fewer than 2 fuel barges transit this section of the river on any given day en route to oil facilities along the river. The Coast Guard will restrict vessel movement within the regulated section of the Connecticut River during this event to provide for the safety of the participants and spectators on navigable waters. All non-participating vessels wishing to transit through the regulated area will be permitted to do so only at the discretion of the Coast Guard Patrol Commander and only with Coast Guard or Coast Guard Auxiliary escort at no wake speeds. Mariners are urged to use extreme caution when transiting the regulated area. The Coast Guard Captain of the Port, New London has made notification to and requested the cooperation of the upstream commercial facilities in scheduling any vessel deliveries prior to or after completion of the races. The Coast Guard will issue a safety voice broadcast on the day of the race and this regulation will be published in the Local Notice To Mariners to advise the general boating public and commercial users of the Connecticut River of the event.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation of Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by adding a temporary § 100.35–321 to read as follows:

§ 100.35–321 Head of Connecticut Regatta, Middletown, Connecticut.

(a) *Regulated Area.* That section of the Connecticut River between the southern tip of Gildersleeve Island and aids to navigation light Number 87.

(b) *Effective Period.* This regulation will be effective from 9:00 a.m. to 6:00 p.m. on October 13, 1985.

(c) *Special Local Regulations.* (1) The regulated area shall be closed to all vessel traffic during the effective period. No person or vessel shall enter or remain in the regulated area when it is closed unless participating in the event or authorized by the event sponsor or the Coast Guard Patrol Commander.

(2) Vessels awaiting passage through the regulated area shall be held in the vicinity of the southern tip of Gildersleeve Island, if southbound; and at Light 87 if northbound, until escorted at no wake speeds by Coast Guard or Guard Auxiliary patrol vessels through the race course.

(3) The sponsor shall ensure that all races are completed by 6:00 p.m. on October 13, 1985.

(4) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(5) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: September 12, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 85–22464 Filed 9–18–85; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD2–85–47]

Special Local Regulations; Madison Fall Regatta, Indiana

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Mile 557.0 to 558.0 OHIO RIVER. The "MADISON FALL REGATTA", an approved marine event, will be held on September 21 and 22, 1985, at MADISON, INDIANA. These special local regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations will be effective from 12:00 noon of Setember 21, and terminate at 6:00 p.m. on September 22, 1985.

FOR FURTHER INFORMATION CONTACT: LCDR. B.J. Willis, Chief, Boating Technical Branch Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103.

SUPPLEMENTARY INFORMATION: These special local regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR Part 100.35, for the purpose of promoting the safety of life and property on the Ohio River between miles 557.0 and 558.0 during the "MADISON FALL REGATTA", September 21 and 22, 1985. This event will consist of several classes of hydroplane races, which could pose hazards to navigation in the area. Therefore, these special local regulations are deemed necessary for the promotion of safety of life and property in the area during this event. A notice of proposed rule making has not been published for these regulations and they are being made effective less than 60 days from the date of publication. Following normal rule making procedures would have been impracticable. The application for this event was not received until July 22, 1985, and there was insufficient time in which to publish proposed rules in advance of the event, or to provide for a delayed effective date. These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5–22–80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to ensure the protection of life and property in the area during the event.

Drafting Information

The drafters of this regulation are BMCM W.L. Giessman, USCGR, project officer, Boating Technical Branch, and LT. R.E. Kilroy, USCG, project attorney, Second Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. In Part 100, a new temporary § 100.35–0247 is added, to read as follows:

§ 100.35–0247 Ohio River, mile 557.0 through 558.0.

(a) *Regulated Area.* The area between Mile 557.0 and 558.0 Ohio River is designated the regatta area, and may be closed to commercial and recreational navigation or mooring between the hours of 12:00 noon on September 21, and 6:00 p.m. on September 22, 1985. All times listed are local time. These times represent a guideline for possible intermittent river closures not to exceed THREE (3) hours in duration. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special Local Regulations.* The Coast Guard will maintain a patrol consisting of regular and auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "COAST GUARD PATROL COMMANDER". Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(c) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signalled shall stop and shall comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(g) This § 100.35–0247 will be effective from 12:00 noon on September 21, and terminate at 6:00 p.m. on September 22, 1985. (local time).

Dated: September 3, 1985.

B.F. Hollingsworth,

Rear Admiral, U.S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 85–22465 Filed 9–18–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD7–85–23]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Florida Department of Transportation and the Venice Chamber of Commerce the Coast Guard is changing the regulations governing the Venice Avenue and Hatchett Creek drawbridges by permitting the number of openings to be limited during certain periods. This change is being made because of the proximity of these drawbridges to a major vehicular intersection in downtown Venice. This action will accommodate the needs of vehicular traffic yet still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on October 21, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, (305) 350–4103.

SUPPLEMENTARY INFORMATION: On June 10, 1985 the Coast Guard published (50 FR 24238) a proposal to revise these regulations. The proposed regulations were also published in a public notice issued by Commander, Seventh Coast Guard District on June 21, 1985. In each notice interested persons were given until July 25, 1985 to submit comments.

Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

Discussion of Comments

Eight letters were received in response to the proposal. Five supported it. One opposed it, favoring continual on demand openings. Another favored opening once an hour. Another favored regulations only during rush hours on weekdays. These restrictions are beyond the scope of the proposed regulation. Other comments in the letters received asked that the bridges be opened and closed expeditiously. This matter is addressed in 33 CFR 117.9. Another suggested the installation of signs with the opening times posted one-half to three-quarter mile from the bridges. Placing of signs is addressed in 33 CFR 117.55. One commentor suggested the installation of VHF radios on the drawbridges. The matter is under study by the Florida Department of Transportation.

Economic Assessment and Certification

The regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.287 is revised by adding a new paragraph (a–1) and revising paragraph (b) to read as follows:

§ 117.287 Gulf Intracoastal Waterway, Caloosahatchee River to Perdido River.

* * * * *

(a–1) The draw of the Venice Avenue bridge, mile 56.6 at Venice, shall open on signal; except that, from 7 a.m. to 6 p.m., Monday through Friday except federal holidays, the draw need open only at 10 minutes after the hour, 30 minutes after the hour, and 50 minutes after the hour.

(b) The draw of the Hatchett Creek (US 41) bridge, mile 56.9 at Venice, shall open on signal, except that, from 7 a.m. to 6 p.m., Monday through Friday except federal holidays, the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. On Saturdays, Sundays and federal holidays from 7:30 a.m. to 6 p.m. the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour.

* * * * * *

Dated: September 6, 1985.

R.P. Cueroni,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 85–22462 Filed 9–18–85; 8.45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD8–85–10]

Drawbridge Operation Regulations; Company Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulation governing the operation of the vertical lift bridge over Company Canal, mile 8.1, on LA24 at Bourg, Terrebonne Parish, Louisiana, by requiring that at least four hours advance notice be given for an opening of the draw between 10 p.m. and 6 a.m. The draw would continue to open on signal from 6 a.m. to 10 p.m. The draw presently is required to open on signal at all times.

This change is being made because of the infrequent requests for opening the draw during the advance notice period. This action will relieve the bridge owner of the burden of having a person constantly available at the bridge to open the draw from 10 p.m. to 6 a.m. and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on October 21, 1985.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: On 8 July 1985, the Coast Guard published a proposed rule (50 FR 27832) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 17 July 1985. In each notice interested persons were given until 22 August 1985 to submit comments.

Drafting Information

The drafters of this regulation are Perry Haynes, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Comments

The only comments received were letters of no objection from the Louisiana Department of Natural Resources and the National Marine Fisheries Service.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels pass this bridge during the advance notice period of 10 p.m. to 6 a.m., as evidenced by the 1983 and 1984 bridge opening statistics which show that the bridge averaged one opening about every three days. These vessels can reasonably give four hours advance notice for a bridge opening by placing a collect call to the bridge owner at any time. The advance notice for opening the draw is given by placing a collect call during normal working hours to the LDOTD office in Houma, Louisiana, telephone (504) 851–0900, or, at any time to the LDOTD District Office in Lafayette, Louisiana, telephone (318) 233–7404. The LDOTD recognizes that there may be an unusual occasion to open the bridge on less than four hours notice for an emergency or to operate the bridge on demand for an isolated but temporary surge in waterway traffic, and has committed to doing so if such an event should occur. Mariners requiring the bridge openings are mainly repeat users and scheduling their arrival at the bridge at the appointed time should involve little or no additional expense to them. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46(c)(5) and 33 CFR 1.05–1(g).

2. Section 117.438a is redesignated as § 117.438, the text is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 117.438 Company Canal.

* * * * *

(b) The draw of the S24 bridge, mile 8.1 at Bourg, shall open on signal; except that, from 10 p.m. to 6 a.m. the draw shall open on signal if at least four hours notice is given. During the advance notice period, the draw shall open on less than four hours notice for an emergency and shall open on demand should a temporary surge in waterway traffic occur.

Dated: September 6, 1985.

E.B. Acklin,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 85–22463 Filed 9–18–85; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP San Diego Reg. 85–05]

Safety Zone Regulations; San Clemente Island, CA, Pacific Ocean

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the vicinity of West Cove, San Clemente Island, California. This safety zone is being established at the request of the United States Navy and is needed to protect an underwater cable array in that location from damage due to vessels anchoring in this location. Vessels may transit this zone without restriction, but are prohibited from anchoring in this zone.

EFFECTIVE DATES: This regulation becomes effective on September 19, 1985. It terminates on January 17, 1986.

FOR FURTHER INFORMATION CONTACT: LCDR Steven P. Mojonnier, USCG, c/o U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101–1064, telephone (619) 293–5860.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) was not published for this regulation and it is being made effective in less than 30 days from the date of publication. Publishing an NPRM and delaying its effective date would have been contrary to the public interest since immediate action is needed to prevent damage to the underwater cable array.

Drafting Information

The drafters of this regulation are LCDR Steven P. Mojonnier, project officer for the Captain of the Port, and LT Joseph R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

In September 1984, the U.S. Navy established an underwater cable array in West Cove, San Clemente Island, California. This cable array is highly susceptible to damage from vessels anchoring in the area. Since the cable array was established, the operator of the cable array has had difficulty controlling vessels anchoring in the area. The U.S. Navy has requested that the U.S. Army Corps of Engineers establish a restricted area in this location, under the authority of section 1, Title 33 United States Code (U.S.C.) to protect the cable array. This rulemaking was originally expected to take at least 4 months to accomplish, and a temporary safety zone to protect the array was established at that time (33 CFR 165.T1181, 25 February 1985, 50 FR 7587). It is now expected that a permanent restricted area will be established in this location within the next 4 months. The U.S. Navy requested on 15 August 1985 that the Captain of the Port of San Diego reestablish the safety zone in this location, under the authority of Title 33, Code of Federal Regulations, Part 165, to protect the cable array until the restricted area can be established. Vessels may transit this area without restriction, but are prohibited from anchoring in the zone unless authorized by the Captain of the Port or the operator of the cable array, Commander, Anti-Submarine Warfare Wing, U.S. Pacific Fleet, San Diego, California. The Commander, Anti-Submarine Warfare Wing can be reached at: Commander, Anti-Submarine Warfare Wing, U.S. Pacific Fleet, Naval Air Station, North Island, San Diego, CA 92135, (619) 437–6814 or 437–6828.

It is anticipated that this regulation will have no significant impact on vessel operators in the vicinity of San Clemente Island. Sufficient alternate anchorage areas are available to accommodate the vessels using this area. These alternate areas are to close to shore and as convenient to use as the area of this zone.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: Subparts A and F issued under sec. 2, Pub. L. 95–474, 92 Stat. 1475, 1477 (33 U.S.C. 1225, 1231); C. 30, sec. 1, 40 Stat. 220, as amended, (50 U.S.C. 191); sec. 6(b)(1), 80 Stat. 938 (49 U.S.C. 1655(b)(1)); E.O. 10173, 3 CFR 1949–1953 Comp. 356; E.O. 11249, 3 CFR 1964–1965 Comp. 349; 33 CFR Part 6; 49 CFR 1.46(b) and (n)(4).

Subparts B and C issued under sec. 2, Pub. L. 95–474, 92 Stat. 1475, 1477 (33 U.S.C. 1225, 1231); 49 CFR 1.46(n)(4).

(The other authority citations in Part 165 do not apply to this rule.)

2. In Part 165, a new § 165.T1188 is added to read as follows:

§ 165.T1188 San Clemente Island, California—Safety Zone.

(a) *Location:* The waters within the following boundaries are a safety zone:

Starting at a point on the shore of San Clemente Island at West Cove in position 33°00′52″ N. 118°36′18″ W. for a point of beginning, thence southwesterly to latitude 32°59′30″ N. longitude 118°37′30″ W., thence southerly to latitude 32°58′30″ N., longitude 118°36′40″ W.; thence northeasterly to latitude 32°00′40″ N., longitude 118°35′27″ W.; thence generally westerly along the shore of San Clemente Island to the point of beginning.

(b) *Regulations:*

(1) All vessels may transit or navigate within the safety zone.

(2) No vessel may anchor within the safety zone without the permission of the Captain of the Port or the Commander, Anti-Submarine Warfare Wing, U.S. Pacific Fleet, San Diego, California.

Dated: September 16, 1985.

E.A Harmes,

Commander, U.S. Coast Guard, Captain of the Port.

[FR Doc. 85–22469 Filed 9–18–85; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP San Diego Reg. 85–06]

Safety Zone Regulations; San Diego Bay, CA, Pacific Ocean

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending 33 CFR 165.1107 to expand a previously existing safety zone in the vicinity of Coast Guard Air Station San Diego. This safety zone is needed to protect vessels anchored in the area of Air Station San Diego, and Coast Guard vessels and aircraft operating out of Air Station San Diego. Vessels may transit this zone without restriction, but are prohibited from remaining or anchoring in this zone, or approaching within 100 yards (92 meters) of the Air Station unless authorized by the Captain of the Port. An interim final rule expanding this safety zone was published on April 15, 1985.

EFFECTIVE DATES: This regulation became effective on April 5, 1985. A ninety (90) day comment period was provided in the interim rule. This comment period expired on July 5, 1985. This final rule affirms the effective date of this regulation.

FOR FURTHER INFORMATION CONTACT: LCDR Steven P. Mojonnier, USCG, c/o U.S. Coast Guard Captain of the Port, 2710 N. Harbor Drive, San Diego, CA 92101, telephone (619) 293–5860.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) was not published for this regulation and it was made effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would have been contrary to the public interest since immediate action was needed to respond to potential hazards to aircraft, vessels and persons in the area. A ninety (90) day comment period was provided, which expired on July 5, 1985.

Drafting Information

The drafters of this regulation are LCDR Steven P. Mojonnier, project officer for the Captain of the Port, and LT Joseph R. McFaul, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The circumstances requiring this regulation were described in the interim final rule, published April 15, 1985. These conditions remain the same, and the rule remains necessary. Enforcement action, consisting of a warning, was taken against a total of eight (8) vessels, none of which resulted in penalty action.

The ninety (90) day comment period provided for in the interim final rule expired on July 5, 1985. No comments were received on the interim rule, and no public hearing was requested. Although no comments were received, it is apparent that the public has accepted this safety zone extension without disagreement, and that it has caused no significant impact.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: Subparts A and F issued under sec. 2, Pub. L. 95–474, 92 Stat. 1475, 1477 (33 U.S.C. 1225, 1231); C. 30, sec. 1, 40 Stat. 220, as amended, (50 U.S.C. 191); sec. 6(b)(1), 80 Stat. 938 (49 U.S.C. 1655(b)(1)); E.O. 10173, 3 CFR 1949–1953 Comp. 356; E.O. 11249, 3 CFR 1964–1965 Comp. 349; 33 CFR Part 6; 49 CFR 1.46(b) and (n)(4).

Subparts B and C issued under sec. 2, Pub. L. 95–474, 92 Stat. 1475, 1477 (33 U.S.C. 1225, 1231); 49 CFR 1.46(n)(4).

(The other authority citations in Part 165 do not apply to this rule.)

2. In Part 165, § 165.1107 as published on Monday, 15 April 1985 at 50 FR 14703 is affirmed as a final rule effective on 5 April 1985.

Dated: September 4, 1985.

E. A. Harmes,

Commander, U.S. Coast Guard, Captain of the Port.

[FR Doc. 85–22468 Filed 9–18–85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–5–FRL–2900–4]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Clarification and Correction.

By notice dated February 5, 1985, EPA rescinded its interim enforcement policy for sulfur dioxide (SO_2) emission limitations in Indiana (50 FR 4975). The Indiana interim limitations in Indiana (50 FR 4975). The Indiana interim enforcement policy was issued on December 31, 1981 (46 FR 63270). The February 5 notice included statements that the Agency has proposed to retain short-term national ambient air quality standards (NAAQS) for SO_2, that the Agency is no longer considering measures to address sulfur variability, and that SO_2 compliance determination on a short-term average basis is necessary to assure protection of the short-term NAAQS.

Today's notice corrects two statements and clarifies a third statement in the February 5, 1985 notice. First, the Agency has not yet proposed rulemaking regarding the review of the SO_2 NAAQS. Second, the subject of sulfur variability is being addressed in several regulatory contexts. Finally, with regard to the relationship between compliance determinations and the NAAQS, the Agency has made no generic determination that long term compliance averaging can or cannot assure protection of the short term NAAQS.

EPA has determined, however, that continuation of the interim enforcement policy is no longer appropriate in Indiana. This notice does not affect the previous rescission of the interim enforcement policy, but merely clarifies that notice. Today's notice also corrects an error in the February 5, 1985 notice which should have been published under 40 CFR Part 52, not Part 60.

DATE: Today's notice is merely a clarification of USEPA's February 5, 1985, notice. USEPA's rescission of its interim enforcement policy remains effective as of January 9, 1985.

ADDRESSES: Materials relating to this decision are available for inspection at the following addresses: (It is recommended that you telephone David A. Schulz, at (312) 353–2088, before visiting the Region V Office.) U.S. Environmental Protection Agency, Region V, Air Compliance Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David A. Schulz, Air Compliance Branch (5AC–26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 353–2088.

(42 U.S.C. 7410, 7502, and 7601)

Dated: April 12, 1985.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85–22418 Filed 9–18–85; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 4E3123/R788; PH–FRL 2895–2]

Pesticide Tolerance for Carbofuran

Correction

In FR Doc. 85–21571 appearing on page 36579 in the issue of Monday, September 9, 1985, make the following corrections:

1. In the third column, in § 180.254(a), the tenth line should read, "3-oxo-7-benzofuranol, and 2,3-dihydro-".

2. Also in the third column, in § 180.254(b), in the eleventh line, "2,3-dihydro-2,3-" should read "2,3-dihydro-2,2-".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

Cable Television Service; Suspension of Certain Rules

AGENCY: Federal Communications Commission.

ACTION: Suspended Enforcement of certain Sections of 47 CFR Part 76.

SUMMARY: We are hereby giving notice that because of the decision of the United States Court of Appeals, District of Columbia Circuit in *Quincy Cable TV, Inc. v. FCC*, No. 83–1283 (D.C. Cir. July 19, 1985), we are suspending enforcement of certain rules in 47 CFR Part 76 relating to this Commission's mandatory signal carriage rules. Those sections for which enforcement is suspended are as follows: §§ 76.7(g), 76.55(a)(2) and (3), (c) and (d); and 76.57–64. Petitions for special relief, show cause, or forfeiture relating to the above rules will not be accepted for filing. These rules will remain codified in 47 CFR Part 76 pending final action of the Supreme Court on the Quincy Case noted above.

EFFECTIVE DATE: July 19, 1985.

ADDRESS: Federal Communications Commission; Wahington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Stephen R. Ross, Chief, Cable Television Branch, Video Services Division, Mass Media Bureau, (202) 632–7480.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 76

Cable Television Service.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-22596 Filed 9-18-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Parts 301, 304, 305, 306, 307, 313, 314, 315, 316, 319, 323, 332, 333, 337, 342, 352 and 370

Acquisition Regulation; Amendments

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule; amendments.

SUMMARY: This rule finalizes and amends the interim rule with request for comments published in the **Federal Register** of May 31, 1985 (50 FR 23126-23136).

The interim rule amended the Department of Health and Human Services Acquisition Regulation (HHSAR), 48 CFR Chapter 3, to implement revisions to the Federal Acquisition Regulation (FAR), 48 CFR Chapter 1, resulting from the Competition in Contracting Act of 1984, Title VII of Pub. L. 98-369, and the Small Business and Federal Procurement Competition Enhancement Act of 1984, Pub. L. 98-577. The interim rule also amended the HHSAR to indicate organizational nomentclature changes, reflect the transfer of construction and architect-engineer acquisition responsibilities from the Office of the Secretary to the Public Health Service, and make other administrative corrections.

EFFECTIVE DATE: September 19, 1985.

FOR FURTHER INFORMATION CONTACT: Ed Lanham, Senior Procurement Analyst, Office of Procurement and Logistics Policy, telephone (202) 245-8901.

SUPPLEMENTARY INFORMATION: The interim rule published on May 31, 1985 requested comments from interested parties. No comments were received from either the public or departmental activities. As a result, the amendments in the interim rule are finalized as originally published, except as indicated herein.

Since the publication of the interim rule, Federal Acquisition Circular 84-9 was published in the **Federal Register** (June 20, 1985, 50 FR 25680-25681). Some of the amendments contained in the Circular revise portions of FAR Subpart 33.1- Protests, and necessitate revisions to the implementing HHSAR Subpart 333.1- Protests published in the interim rule. These revisions, which are internal administrative procedures, are included in this final rule.

In addition, an erroneous citation to cost principles applicable to hospitals was disclosed in three contract clauses, and this is being corrected.

The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of Subjects in 48 CFR Parts 301, 304, 305, 306, 307, 313, 314, 315, 316, 319, 323, 332, 333, 337, 342, 352 and 370

Government procurement.

Accordingly, the Department amends 48 CFR Chapter 3 as set forth below.

Dated: September 12, 1985.

Henry G. Kirschenmann, Jr.,

Deputy Assistant Secretary for Procurement, Assistance and Logistics.

As indicated in the preamble, Chapter 3 of Title 48, Code of Federal Regulations, the interim rule, published on May 31, 1985 (50 FR 23126-23136) is adopted as final with the following changes:

1. The authority citation for Parts 301, 304, 305, 306, 307, 313, 314, 315, 316, 319, 323, 332, 333, 337, 352, and 370 continues to read as follows:

Authority: 5 U.S.C. 301, 40 U.S.C. 486(c).

PART 306—[AMENDED]

306.502 [Amended]

2. Section 306.502 is amended by removing the second sentence in paragraph (b), and correcting the word "competitive" in the first sentence to read "competition."

PART 333—[AMENDED]

333.104 [Amended]

3. Section 333.104 is amended as follows:

a. In paragraph (b) *Protests before award.*, redesignate the existing paragraph (b)(2) as paragraph (b)(4), revise paragraph (b)(1), and add a new paragraph (b)(2):

(b) * * *

(1) To make an award notwithstanding a protest, the contracting officer shall prepare a finding using the criteria in FAR 33.104(b)(1), have it executed by the head of the contracting activity, and forward it, along with a written request for approval to make the award, to the Director, OPLP.

(2) If the request to make an award notwithstanding the protest is approved by the Director, OPLP, the DPCO shall notify GAO. Whether the request is approved or not, the DPCO shall telephonically notify the contracting activity's protest control officer of the decision by the Director, OPLP, and the contracting activity's protest control officer shall immediately notify the contracting officer. The DPCO shall confirm the decision by memorandum to the contracting activity's protest control officer.

b. In paragraph (c) designate the language after *Protests after awards.*, as paragraph (c)(6) and add the following as paragraph (c)(2):

(c) * * *

(2) If the contracting officer believes performance should be allowed to continue notwithstanding the protest, a finding shall be prepared by the contracting officer, executed by the head of the contracting activity, and forwarded, along with a written request for approval, to the Director, OPLP. The same procedures for notification stated in 333.104(b)(2), above shall be followed.

* * * * *

c. Redesignate paragraphs (e) and (f) as paragraphs (f) and (h) respectively. Newly redesignated paragraph (h) is further amended by revising the second sentence to read as follows:

(h) The contracting officer shall involve OGC-BAL as early as possible after receiving notification of the invocation of the express option, and obtain the concurrence of the cognizant OGC-BAL attorney prior to transmitting the protest file to the DPCO.

333.105 [Amended]

4. Section 333.105 is amended as follows:

a. The parenthetical expression in the first sentence in paragraph (b) is revised to read "(See FAR 33.105(b), especially (b)(7)).".

b. Paragraph (b) is further amended by adding the following as the last sentence: "After consultation with the cognizant OGC-BAL attorney, the DPCO shall transmit the protest file to the GSBCA."

c. Paragraph (b)(7) is revised to read "The DPCO shall provide all parties with a list of documents furnished to the GSBCA for *in camera* review."

333.106 [Amended]

5. Section 333.106 is amended by revising the title to read "Solicitation provision and contract clause.", and by designating the existing paragraph as "(a)".

PART 352—[AMENDED]

352.216–7, 352.216–71, and 352.270–4 [Amended]

6. Sections 352.216–7, 352.216–71, and 352.270–4 are amended by correcting the reference to "45 CFR Part 78" to read "45 CFR Part 74 Appendix E" in each of the contract clause texts.

[FR Doc. 85–22411 Filed 9–18–85; 8:45 am]

BILLING CODE 6156–04–M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 525

[APD 2800.12 CHGE 17]

General Services Administration Acquisition Regulation; Purchases Under the Trade Agreements Act of 1979

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) Chapter 5, is amended to revise section 525.402 to provide the current dollar threshold established by the U.S. Trade Representative under Executive Order 12260 for applicability of the Trade Agreements Act of 1979. This change cancels GSAR Acquisition Circular AC–85–2. The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

EFFECTIVE DATE: September 11, 1985.

FOR FURTHER INFORMATION CONTACT: Marjorie Ashby, Office of GSA Acquisition Policy and Regulations (VP), 18th & F Sts., NW, Washington, D.C. 20405, (202) 523–3822.

SUPPLEMENTARY INFORMATION:

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Therefore, no regulatory flexibility analysis has been prepared. This rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 525

Government procurement.

PART 525—[AMENDED]

1. The authority citation for 48 CFR Part 525 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. Section 525.402 is revised to read as follows:

§ 525.402 Policy.

(a) Pursuant to FAR 25.402(a), contracting officers shall evaluate offers of $156,000 or more for an eligible product without regard to the restrictions of the Buy American Act or the Balance of Payments Program. The $156,000 threshold shall be inserted in paragraph (b) of the FAR clause at 52.225–9 (see Article 30 of the GSA Form 3507, Supply Contract Clauses).

(b) Pursuant to FAR 25.402(d), acquisitions of eligible products meet the requirements for full and open competition in FAR Subpart 6.1 if all responsible prospective contractors, as defined in FAR 9.101, offering United States or designated country end products are permitted to submit offers.

(c) Acquisitions of eligible products without full and open competition (i.e., all otherwise responsible sources are not permitted to submit offers) shall be made under the authorities in FAR Subparts 6.2 or 6.3 and comply with the respective requirements of these FAR subparts for Determinations and Findings or approved justifications. When acquiring eligible products without full and open competition using the authorities in FAR 6.302–3(a)(2)(i) or 6.302–7, a copy of the approved justification shall be furnished to the Assistant Administrator for Acquisition Policy for subsequent transmittal to the U.S. Trade Representative.

Dated: September 11, 1985.

Allan W. Beres,

Assistant Administrator for Acquisition Policy.

[FR Doc. 85–22439 Filed 9–18–85; 8:45 am]

BILLING CODE 6820–61–M

Proposed Rules

Federal Register
Vol. 50, No. 182
Thursday, September 19, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 53 and 54

Standards for Grades of Carcass Beef and Slaughter Cattle

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of Proposed rule.

SUMMARY: The U.S. Department of Agriculture (USDA) published a proposed rule to revise the official U.S. standards for grades of carcass beef and the related standards for grades of slaughter cattle in the November 8, 1984, **Federal Register** (49 FR 44724). A public hearing was held in Washington, DC on December 19, 1984. The following is the Department's decision on that proposal.

Fifty-six written comments were received. Also, a public hearing was conducted and a total of nine persons made statements at this session and a transcript of all statements was made. The transcript, as well as all submitted comments, are public information available to anyone caring to review them at the Agricultural Marketing Service (AMS), USDA.

Based upon comments received and all information available, the USDA has decided to withdraw the proposed beef yield grade changes, and to implement no changes in this voluntary, user-paid-for service at this time.

DATE: This withdrawal is effective September 19, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Michael L. May, Chief, Standardization and Review Branch, Livestock and Seed Division, AMS, USDA, Room 2649–South Building, Washington, DC 20250; (202) 447–4486.

SUPPLEMENTARY INFORMATION:

Background

A proposed rule to revise the official U.S. standards for grades of carcass beef (7 CFR Part 54) and the related standards for grades of slaughter cattle (7 CFR Part 53) was published in the November 8, 1984, **Federal Register** (49 FR 44724–44737). The closing of the comment period was extended twice (50 FR 2055 and 50 FR 10236) and closed on May 1, 1985. A public hearing was held in Washington, DC, on December 19, 1984.

The proposed changes were largely developed in response to a petition submitted by the American Meat Institute (AMI) in May 1983. To fully explore the kidney, pelvic, and heart (KPH) fat removal issue raised in the AMI petition, staff members of AMS's Livestock and Seed Division met with representatives of national organizations representing the beef production, slaughter, and processing industries and renderers, restaurateurs, retailers, and consumers. Information gained through these meetings was used in the development of the proposed changes.

The proposed changes would have revised the current yield grade standards in Part 54 to alow those portions of the industry desiring to remove KPH fat for economic or efficiency reasons an opportunity to do so, but would have required the removal of KPH fat which could adversely affect some segments of the industry. The proposed revisions would have eliminated the consideration of KPH fat in the determination of yield grade, and the method of determining yield grades would have been on a KPH fat out basis. Carcasses graded with KPH fat in would have been identified in a manner that would distinguish them from carcasses graded with KPH fat removed. Both the yield grade equation and the proposed shortcut method would have been recognized as official methods for determining yield grade. The proposed changes were intended to improve the accuracy of application of the yield grade formula and increase the uniformity of fat and muscling characteristics within each of the yield grades.

Comments

Comments were presented by nine persons at the public hearing and 56 official written comments were received. These comments ranged from individual views to those of national organizaitons. When the hearing and written comments presented by the same organization or individual were combined, a total of 60 comments were received.

National organizations representing livestock production; meat packing; hotel, restaurant, and institutional (HRI) suppliers; restaurateurs; and renderers filed comments. In addition, several state and regional organizations filed comments. There was agreement in many of the comments that some potential efficiencies, particularly to the meat packing sector, were possible due to the proposed changes. However, the net effect of these efficiencies was questioned by many of the comments from the other sectors of the industry, and some of the comments from the meat packers also questioned whether there would be any overall net savings to the industry.

There were several common concerns expressed by the commentors. The most common were the concern over the reverse roll identification, the shift in the consist of the yield grades, the negative impact on small packers and renderers, the potential for damage to the tenderloin, and the concern over confusion in the marketplace related to new cuts, new yields, and shifting of carcasses into new yield grades. A large majority of the organization and individual comments indicated a belief that the concerns and possible impacts associated with the proposed changes offset any potential benefits that might accrue to the industry.

Much of the information received during the comment period reflected information of which AMS was already aware. This included the concern of several industry segments over the possible quality and/or physical damage to the terderloin. The potential for increased efficiency to the slaughtering sector was also recognized.

However, in addition to this information that was anticipated, some new concerns were raised by many of the comments. Foremost was the widespread concern over the probable consist of the fed-beef supply that the proposed changes would create. Although the impact of the viable alternative equations on the consist had been presented to the industry representatives during the meetings, the potential shift of approximately 20 percent of the fed-beef supply has become a major concern of not only cattlemen and buyers of beef, but also some packers. Generally, they believed

that the proposed change would not only create considerable marketing problems and confusion, but it would be detrimental to the industry's goal of producing leaner beef. The increased percentage of Yield Grade 3's was seen as making the grade ineffective as a marketing tool by most of the industry segments due to too large of a percentage of the fed-beef supply being included in this grade. There was also concern, particularly from cattlemen and packers, over the decreased number of Yield Grade 2's. The foodservice segment of the industry was particularly concerned over the shift of current Yield Grade 4 carcasses into the Yield Grade 3.

There is no apparent alternative that can adequately address all of the major concerns expressed in the comments. Based on the comments and all other information available, it appears that the present standards and requirements are more acceptable to the industry than any of the alternatives we could adopt or propose at this time.

In consideration of the foregoing, the proposal published in the **Federal Register** (49 FR 44724–44737) on November 8, 1984, is hereby withdrawn.

List of Subjects in 7 CFR Part 53 and Part 54

Livestock, Cattle, Beef carcasses, Meat and meat products; Grading and certification, Standards.

Done at Washington, D.C., on: September 16, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–22455 Filed 9–18–85; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1079

Proposed Temporary Revision of Shipping Percentage; Milk in the Iowa Marketing Area

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This notice invites written comments on a proposal to relax temporarily certain provisions of the Iowa Federal milk order. The proposed action would relax for October and November 1985 the supply plant shipping requirements. This action was requested by the operator of a pool supply plant who ships milk to distributing plants regulated by the order.

DATE: Comments are due not later than September 26, 1985.

ADDRESS: Comments (two copies) should be sent to: Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–4829. .

SUPPLEMENTARY INFORMATION: Eddie F. Kimbrell, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact on certain milk handlers and would tend to assure that the market would be adequately supplied with milk for fluid use with a smaller proportion of milk shipments from pool supply plants.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1079.7(b)(1) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Iowa marketing area is being considered for the months of October and November 1985.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to the Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include October 1985 in the temporary revision.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provisions proposed to be revised are the supply plant shipping percentages for the months of October and November 1985. The proposed action would reduce the shipping requirement 10 percentage points from the present 35 percent to 25 percent.

Pursuant to the provisions of § 1079.7(b)(1), the supply plant shipping percentages set forth in § 1079.7(b) may be increased or decreased by up to 10 percentage points during any month to encourage additional milk shipments to pool distributing plants or to prevent uneconomic shipments.

Beatrice Companies, Inc. (Beatrice), on behalf of Beatrice Cheese, requested this action in order to prevent uneconomic shipments of milk during October and November 1985. Beatrice said that marketwide producer receipts during the April through July 1985 period, with the exception of June 1985, showed an increase of approximately 11 percent each month over the prior month. Beatrice stated that producer receipts for June 1985 was lower than May 1985 because a pool plant normally associated with the Iowa pool became regulated under another Federal milk marketing order. Beatrice indicated that receipts at their supply plant in recent months have been approximately 16 percent higher than for the same period of 1984 and that other handlers are experiencing similar increases. Beatrice anticipates that producer receipts for October and November 1985 will be substantially higher than normal. Beatrice also indicated that without a downward revision in the supply plant shipping standards, it would have to uneconomically backhaul approximately 2.5 to 3.0 million pounds of milk per month in order to pool this milk.

The petition states that distributing plants could be adequately served if supply plant shipping requirements were lowered to 25 percent. Beatrice said that thus there will be no need for supply plants to ship as much as 35 percent of their producer receipts and that a temporary lowering of the supply plant shipping requirement to a 25 percent shipping standard, is needed to prevent uneconomic shipments of fluid milk.

Therefore, comments are sought concerning whether it may be approriate to relax the aforementioned provisions of § 1079(b) for the months of October and November 1985 to prevent uneconomic shipments of milk.

List of Subjects in 7 CFR Part 1079

Milk Marketing Orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1079 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.

Signed at Washington, DC on: September 17, 1985.

Edward T. Coughlin

Director, Dairy Division.

[FR Doc. 85–22488 Filed 9–18–85; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1427

CCC Cotton Loan Program Regulations (Amendment 6)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation (CCC) is proposing to amend the regulations governing the 1980 and subsequent crops cotton loan programs to provide another option for making price support available to producers of upland and extra long staple (ELS) cotton. Under the provisions of this proposed rule, CCC may authorize a person or firm to act as an authorized loan servicing agent ("authorized LSA") for CCC for the purpose of making and servicing Form A cotton loans that are presently handled by a county Agriculture Stabilization and Conservation Service (ASCS) office. This notice invites written comments on the proposed changes.

DATE: Comments must be received on or before October 21, 1985, in order to be assured of consideration.

ADDRESS: Director, Cotton, Grain and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Grady Bilberry, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013, (202) 447-7987.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs of prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program that this rule applies to are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

An environmental evaluation has been completed. It has been determined that this action is not expected to have any significant impact on the quality of the human environment. In addition, it has been determined this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The purpose of this proposed rule is to provide another mechanism through which producers may obtain price support loans for upland and ELS cotton. Presently, CCC makes price support loans available to eligible cotton produces on eligible upland and extra long staple cotton. A producer may obtain loans from CCC through the following four mechanisms:

(1) Individual Form CCC Cotton A loans prepared and disbursed through the producer's local county ASCS office.

(2) Approved loan clerks who assist produces in preparing the loan documents and who advance loan proceeds to producers. The loan clerk transmits the loan documents through a financial institution for disbursement of the loan through the producer's local county ASCS office.

(3) Approved authorized agents who prepare loan documents on behalf of producers, advance loan proceeds and transmit the loan documents through a financial institution to a central county ASCS office designated by CCC for disbursement of the loan.

(4) Approved cotton cooperative associations who obtain loans for their eligible producer-members through a servicing agent bank who is an approved agent for CCC.

This proposed rule will permit producers to obtain loans through a private entity which may be more accessible to the producer. The private entity may be able to provide faster and more convenient service to producers in obtaining and repaying loans. It is not anticipated that there will be any increased administrative costs incurred by CCC with respect to the cotton loan program as a result of the changes made by this proposed rule.

Under the proposed rule, CCC may enter into a written agreement with a person or firm which meets the terms and conditions prescribed by CCC to be an authorized loan servicing agent ("authorized LSA") for CCC. The authorized LSA would act as the agent of CCC in performing most Form A loanmaking and loan servicing functions for producers which are now performed by a county ASCS office, except that the authorized LSA must contact the producer's local county ASCS office to determine: (1) Whether the producer is an eligible producer and otherwise meets the requirements of the applicable commodity regulations, and (2) whether the producer's loan proceeds are subject to setoff and withholding under applicable CCC setoff and withholding regulations.

The authorized LSA, upon presentation of eligible warehouse receipts and class cards by eligible producers, would be able to perform the loanmaking and loan servicing functions prescribed in the written agreement with CCC. These loan servicing functions will include: (1) The preparation and execution of loan documents for individual producer loans; (2) the disbursement of loans; (3) the collection of loan repayments from producers; (4) the transmittal of funds of CCC; (5) the extension of loans when such extensions are authorized by CCC; (6) the payment of applicable warehouse charges to warehouseman storing the cotton pledged as collateral; (7) the handling of documents involved in the reconcentration of cotton pledged as loan collateral from one warehouse location to another; (8) the handling of documents involving the forfeiture of collateral to CCC; and (9) the collection of loan data for reporting to CCC as may be prescribed by CCC.

Under the proposed rule, the authorized LSA would be permitted to charge producers a loan service fee. However, the fee could not exceed $1.50 per loan plus 25 cents for each bale of cotton pledged as loan collateral.

CCC, under the terms and conditions which will govern the scope of authority of an authorized LSA and which will govern the eligibility of a person to be an authorized LSA, is considering: (1) Allowing an authorized LSA to act as the agent for producers for the propose of securing a CCC cotton loan and redeeming the cotton pledged as security for such loan; (2) allowing the authorized LSA to act as the marketing agent of the producer; (3) requiring the authorized LSA to make and service CCC cotton loans for all eligible producers who request its services; and (4) requiring an authorized LSA to furnish security to CCC to guarantee performance by such LSA.

The proposed rule would also add an additional requirement for eligible cotton. The proposed rule amends § 1427.5 to provide that eligible cotton must not have been sold, nor any sales option on eligible cotton granted, to a buyer under a contract which provides that the buyer may direct the producer to pledge the cotton to CCC as collateral for a price support loan. This amendment is necessary to ensure that only producers of cotton are the direct beneficiaries of a CCC cotton loan.

In addition, other minor amendments are proposed which will update the existing cotton loan program regulations including: (1) editorial changes, and (2) changing the name of the Management Field Office to the Kansas City Management Office.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs—agriculture, Packaging and containers, Price support programs, Surety bonds, Warehouse.

Proposed Rule

Accordingly, it is proposed to amend 7 CFR Part 1427, Subpart—Cotton Loan Program Regulations, as follows:

PART 1427—[AMENDED]

1. The authority citation for 7 CFR Part 1427 Subpart—Cotton Loan Program Regulations is revised to read as follows:

Authority: Secs. 4, 5, 62 Stat. 1070, as amended (15 U.S.C. 714b and c); secs. 101, 103, 401, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1444, 1421); sec. 602, 91 Stat 934, as amended (7 U.S.C. 1444).

2. Section 1427.2 is amended by revising paragraphs (b) and (c) and by adding new paragraphs (k) and (l) to read as follows:

§ 1427.2 Definitions.

* * * * *

(b) "Kansas City Management Office" shall mean the Kansas City Management Office, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(c) "Kansas City Commodity Office" shall mean the Kansas City Commodity Office, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

* * * * *

(k) "Authorized LSA" shall mean a person or firm that enters into a written agreement with CCC to act as a loan servicing agent for CCC in making and servicing individual Form A cotton loans. The authorized LSA may perform, on behalf of CCC, certain CCC cotton loanmaking services specifically prescribed by CCC including: (1) Preparing and executing loan documents, (2) disbursing loan proceeds, (3) handling the extension of loans as authorized by CCC, (4) accepting cotton loan repayments, (5) handling documents involved with forfeiture of cotton loan collateral to CCC, and (6) providing loan data to CCC for statistical purposes.

(l) "Cotton" shall mean upland cotton and extra long staple cotton.

3. Section 1427.3 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 1427.3 Administration.

(a) *Responsibility.* The Cotton, Grain, and Rice Price Suport Division, ASCS, will administer the regulations in this subpart under the general supervision and direction of the Deputy Administrator, State and County Operations, ASCS, in accordance with program provisions and policy determined by the CCC Board of Directors and the Executive Vice President, CCC. In the field, the regulations in this subpart will be administered by the Agricultural Stabilization and Conservation State and county committees (hereinafter called State and county committees) the Kansas City Commodity Office, and the Kansas City Management Office.

(b) *Documents.* (1) Any member of the county committee, the county executive director, or other employee of the county ASCS office (hereinafter called county office) designated in writing by the county executive director to act in the county executive director's behalf (such delegation to be filed in the county office) is authorized to approve documents under this program except where otherwise specified in the regulations in this subpart. County committees or county executive directors also may approve loan clerks at convenient locations to assist producers in preparing loan documents.

(2) Authorized LSA's may execute and approve documents under this program as specifically authorized by CCC.

(c) *Limitation of authority.* County executive directors, State and county committees, the Kansas City Commodity Office, Kansas City Management Office and authorized LSA's do not have authority to modify or waive any of the provisions of the regulations in this subpart.

* * * * *

4. Section 1427.5 is amended by revising paragraphs (a) and (b), by redesignating paragraphs (n), (o), and (p) as (o), (p), and (q), respectively, and by adding a new paragraph (n) to read as follows:

§ 1427.5 Eligible Cotton.

Cotton produced by eligible producers is eligible cotton if it meets the following requirements:

(a) Such cotton must have been produced on a farm by a producer who has complied with the price support eligibility requirements, if any, specified in Parts 713, 718, 791, and 792 of this title. The cotton in any bale may have been produced by two or more producers on one or more farms if the bale is not a repacked bale.

(b) Such cotton must be tendered for a loan within the availability period provided for in § 1427.6(d).

* * * * *

(n) Such cotton must not have been sold, nor any sales option on such cotton granted, to a buyer under a contract which provide that the buyer may direct the producer to pledge the cotton to CCC as collateral for a price support loan.

5. Section 1427.6 is revised to read as follows:

§ 1427.6 Program Availability and Disbursement of Price Support Loans.

(a) Where to request a loan. (1) A producer may request price support: (i) at the local country ASCS office, or (ii) from an authorized LSA.

(2) An authorized agent which has an agreement with CCC and which is designated by producers to obtain loans on their behalf may obtain such loans through a central county ASCS office designated by CCC.

(3) An approved cooperative marketing association must request loans: (i) At a servicing bank approved by CCC, or (ii) at the county ASCS office for the county in which the principal office of the coopertive is located unless the State ASC committee designates some other county ASCS office as the office where such association must request price support.

(b) *Disbursement of loans.* Disbursement of loans to individual producers may be made by: (1) local county ASCS offices, (2) authorized LSA's or by (3) central county ASCS offices (when designated by CCC to provide centralized service to a person or firm which has been designated as a producer's agent and which has entered into a written agreement with CCC). Loans may by disbursed be approved servicing banks to approved cooperative marketing associations. Service charges and cotton research and promotion fees, when required by the provisions of 7 CFR 1205.500 *et seq.* will be deducted from the loan proceeds. If the producer so elects, loan clerk fees may be deducted from the loan proceeds instead of the loan clerk being paid in cash. The

loan documents shall not be presented for disbursement unless the commodity covered by the mortgage or pledge is in existence and in good condition. If the commodity was not in existence and in good condition at the time of disbursement, the total amount disbursed under the loan shall be refunded promptly.

(c) *Program availability.* Loans will be available to eligible producers on cotton represented by warehouse receipts which is stored at CCC approved warehouses.

(d) *Period of availability of loans.* Producers may request loans on a crop of cotton from the beginning of harvest of the crop through May 31 following the calendar year in which such crop is grown. Form CCC Cotton A must be signed by the producer or the producer's agent and mailed or delivered to the county office or an authorized LSA within 15 days after the producer signs the Form CCC Cottom A and within the period of loan availability. Whenever the final date of availability falls on a nonworkday for county ASCS office, the applicable final availability date shall be extended to include the next workday.

6. Section 1427.14 is revised to read as follows:

§ 1427.14 Service Charges.

(a) A producer shall pay a non-refundable service charge to CCC for such loan disbursed at the rate of $1.50 per loan plus 25 cents for each bale of cotton pledged as loan collateral. The service charge to be paid to CCC by the producer shall be in addition to any clerk fee paid to a loan clerk as authorized in § 1427.15.

(b) An authorized LSA may charge producers a service charge for each loan disbursed at a rate not ro exceed $1.50 per loan plus 25 cents for each bale of cotton pledged as loan collateral.

§ 1427.19 [Amended]

7. Section 1427.19 is amended by adding in the third, fourth, and fifth sentences in § 1427.19(a) and in the fourth sentence of § 1427.19(b) the words "or authorized LSA" immediately following the words "county office".

8. Section 1427.20 is revised to read as follows:

§ 1427.20 Custodial Offices.

Forms A and A–1, collateral warehouse receipts, cotton classification memoranda, and related documents will be maintained in custody of the local county ASCS office, authorized LSA, central county ASCS office, or any financial institution (defined in § 1427.2 and approved by CCC), whichever disbursed the loan evidenced by such documents.

9. Section 1427.22 is revised to read as follows:

§ 1427.22 Repayment of Loans.

(a)(1) In order to redeem one or more bales of cotton pledged to CCC as collateral for a loan, the producer must pay to the local county ASCS office or an authorized LSA, whichever disbursed the loan, or to the bank as provided in paragraph (a)(3) of this section, the loan principal, together with any interest and other charges which may be applicable to the bale of cotton being redeemed. An authorized agent which has an agreement with CCC and which is designated by producers to repay such loans on their behalf may repay such loans through a central county ASCS office designated by CCC.

(2) Upon payment of the amounts specified in paragraph (a)(1) of this section, the local county ASCS office or the authorized LSA (whichever disbursed the loan) shall transmit the warehouse receipts applicable to the cotton pledged as loan collateral which has been redeemed (and, if requested, the classification memoranda applicable to such cotton) to the producer or authorized agent.

(3) The producer may request that the warehouse receipts (and classification memoranda) be forwarded to a bank for payment, in which case the principal amount of the loan, together with any applicable interest and other charges, must be paid after the documents are received by the bank. All charges assessed by the bank to which the receipts are sent must be paid by the producer.

(4) Repayment of loans will not be accepted after CCC acquires title to the cotton.

(b)(1) A producer who desires to appoint an attorney-in-fact to act for the producer for the purpose of: (i) Redeeming the producer's cotton which is pledged as collateral, (ii) selling the producer's equities in the cotton pledged as loan collateral, or (iii) executing Forms CCC–813, release of Warehouse Receipts (referred to in this subpart as "Form 813"), shall use Form 211, except that power of attorney on another form will be accepted if it is determined by CCC to be sufficient.

(2) In order to redeem cotton or to execute Form 813, the attorney-in-fact must: (i) File with the local county ASCS office, authorized LSA, or central county ASCS office designated by CCC, whichever disbursed the loan, the original or facsimile of the power of attorney or a copy certified by a notary public as a true and correct copy; and (ii) execute and file with the local county ASCS office, authorized LSA or central county ASCS office designated by CCC, whichever disbursed the loan, an agreement of attorney-in fact, Form CCC–815 (referred to in this subpart as "Form 815"): *Provided*, That if the attorney-in-fact is an authorized LSA, such authorized LSA must file the original or facsimile of the power of attorney, or a certified copy of the power of attorney, with the local county ASCS office and must execute and file the Form 815 with the local county ASCS office.

(3) The attorney-in-fact redeeming a producer's cotton under authority of power of attorney or signing the Form 813 under authority of a power of attorney shall not: (i) Purchase any such cotton redeemed from a CCC cotton loan or purchase the producer's equity in such cotton for the attorney-in-fact's own account or as agent for others; or (ii) sell any such cotton or equities in such cotton to any person by whom the attorney-in-fact is employed or who has the right to control or direct the attorney-in-fact's sale of such redeemed cotton or the equities in such cotton.

(4) The attorney-in-fact shall not adopt any scheme or device which tends to defeat the purpose of these regulations or the cotton program.

(5) If the attorney-in-fact holds power of attorney from more than one producer, the attorney-in-fact may not: (i) Pool the producer's cotton or the proceeds therefrom or (ii) make settlement with such producers on a pool basis upon sale of the cotton or the equities therein. The attorney-in-fact will, however, make an accounting to each producer for the proceeds of each bale of the producer's cotton which the attorney-in-fact redeems and sells and each equity which the attorney-in-fact transfers, unless the attorney-in-fact has a valid annual marketing agreement with such producers authorizing the attorney-in-fact to pool the cotton or the proceeds therefrom.

(c)(1) A producer or the producer's authorized agent may enter into an agreement with a person or persons to redeem the producer's cotton and may authorize the release of the applicable warehouse receipts to such person(s) or transferee (hereinafter called the "buyer") on Form 813. If the buyer executes and files the Form 813 with the loan originating office the buyer shall be obligated to redeem the cotton specified on such form on or before the maturity date of the loan which is applicable to such cotton. CCC will use its best efforts to make certain that the cotton is not redeemed by anyone other than the

buyer and to provide for the delivery to the buyer of the warehouse receipts (and, if requested, the classification memoranda,) covering the cotton upon the repayment of the loan principal together with any applicable interest and other charges, to the loan originating office.

(2) If the loan documents are sent to a bank for collection, repayment of the loan, together with any applicable interest and other charges, must be made within 5 business days after the documents are received by the bank. All charges assessed by the bank to which the documents are sent must be paid by the buyer. Redemptions will not be permitted after the maturity date of the loan. Upon the failure of the buyer to redeem all such cotton pledged as loan collateral:

(i) Title to the cotton shall, at CCC's election and without a sale thereof, immediately vest in CCC, and there shall be no obligation on the part of CCC to pay for any market value which such cotton may have in excess of the principal amount of the loan thereon, together with any applicable interest and other charges. The buyer shall be personnally liable for any amount by which the amount due on the loan on such cotton exceeds the market value of the cotton as of the date title to the cotton vests in CCC, as determined by CCC.

(ii) CCC may, at CCC's election and without notice to the buyer, sell, transfer and deliver the cotton or documents evidencing title thereto, at such time, and in such manner, and upon such terms and conditions as CCC may determine, at any cotton exchange or elsewhere, or through any agency, at public or private sale, for immediate or future delivery, and without demand advertisement, or notice of the time and place of sale or adjournment thereof or otherwise. Upon such sale, CCC may become the purchaser of the whole or any part of such cotton at its market value, as determined by CCC. Any overage remaining from the proceeds received therefrom shall, after deducting from such proceeds the principal amount of the loan on such cotton, together with any applicable interest and other charges, be paid to the buyer or the buyer's personal representative without right of assignment to, or substitution of, any other person. If the proceeds from the sale do not cover the principal amount of the loan on such cotton, together with any applicable interest and other charges, the buyer shall be liable to CCC for any difference.

(d) Warehouse receipts will not be released except as provided in paragraphs (a), (b), and (c) of this section.

9. Section 1427.25 is amended by revising paragraph (b) as follows:

§ 1427.25 Kansas City Commodity Office and Kansas City Management Office.

* * * * *

(b) Accounting, recording, and reporting for all States will be handled through Kansas City Management Office, P.O. Box 205, Kansas City, Missouri 64141.

Signed at Washington, D.C., on September 16, 1985.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 85-22423 Filed 9-18-85; 8:45 am]

BILLING CODE 3410-05-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

Certification of Industrial Radiographers

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance Notice of Proposed Rulemaking; Withdrawal.

SUMMARY: The Nuclear Regulatory Commission is withdrawing an advance notice of proposed rulemaking that requested comments on a suggested requirement that all industrial radiographers be certified by a third party that has been approved by the NRC.

The staff received written and oral comments. Most commenters believed that a certification program would probably not result in an improvement in safety, but that it would be expensive and time-consuming.

Based upon the comments and its own analysis, the Commission has determined that it should terminate the rulemaking proceeding. This action does not affect any person because it is not an action that adds, amends, or rescinds and NRC regulation.

EFFECTIVE DATE: The advance notice of proposed rulemaking is withdrawn as of September 19, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Nathan Bassin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone: (301) 427-9027.

SUPPLEMENTARY INFORMATION: The NRC licenses persons to use multicurie gammaemitting sealed sources in industrial radiography for nondestructive examination of materials for defects. Licensees must train radiographers in radiation safety measures before allowing them to use the sources. Despite this training and other safety requirements, overexposure incidents are occasionally reported.

Investigations of these incidents by inspectors appear to indicate that some exposure incidents may have been caused in part by inadequate training. Under current regulations, the NRC reviews the radiographer training program that the licensee proposes to use. However, NRC does not have an effective means of verifying the adequacy of training of each individual radiographer.

On August 4, 1978, the NRC published in the **Federal Register** (43 FR 54563) a notice that it had received a petition for rulemaking from the Nondestructive Testing Management Association (NDTMA); public comment was requested. The Petitioner requested that the NRC amend its regulations to provide for registration, licensing, and control of individual radiographers. Most of the individuals who commented on the NDTMA proposal felt that the suggested licensing program would be costly and would not reduce the number of overexposures in industrial radiography.

On May 4, 1982, the NRC published in the **Federal Register** (47 FR 19152) an advance notice of proposed rulemaking. The NRC noted that the present system would be improved if the final determination of radiographer safety competence were made by an independent body. It was felt that, given limited NRC staff resources, and third-party certification requirement for individual radiographers would be the most feasible means of assuring radiographer safety competence. The NRC invited written comments on the proposal and also received oral comments at five public meetings held in strategic locations throughout the United States. On May 10, 1982, NDTMA withdrew its petition (47 FR 31887; July 23, 1982).

The NRC received 89 written comments and 42 oral comments. Of the written comments received, 76 opposed certification and 13 favored the concept. In the public meetings, 23 commenters opposed certification, 8 favored the concept, and 11 offered comments but did not make a recommendation.

Most commenters believed that the present training system is adequate and that overexposures are not caused by poor training but rather by failure to follow well-established procedures.

Commenters were divided on whether a certification program would motivate radiographers to work more safely. Most commenters felt that the cost of a certification program would be unwarranted. Five commenters said they would be interested in serving as third-party certifiers. (The written comments, transcripts of the public meetings, and the analysis of comments are available for the public inspection in the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. 20555.)

As a result of further consideration and the analysis of the public comments, the Commission has concluded that there is no consensus that a certification program for radiographers would reduce the number of overexposures, but that the implementation of a program would be expensive and time-consuming. Therefore, the advance notice of proposed rulemaking is withdrawn. The Commission will reconsider the need for rulemaking in the future if improvements are not forthcoming.

Dated at Washington, D.C., the 16th day of September, 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-22454 Filed 9-18-85; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 84-AEA-11]

Proposed Designation of Transition Area, College, Park, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate a transition area at College Park, MD. A new RNAV instrument approach procedure has been developed to the College Park, MD, Airport. The transition area is to provide protected airspace for aircraft departing/arriving under instrument flight rules (IFR).

DATE: Comments must be received on or before October 28, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Joseph Kelley, Acting Manager, Airspace and Procedures Branch, AEA-530, Federal Aviation Administration, Docket 84-AEA-11, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

The official dockets may be examined in the Office of Regional Counsel, Federal Aviation Administration, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

FOR FURTHER INFORMATION CONTACT: Joseph Kelley, Airspace and Procedures Branch, AEA-530, Air Traffic Division, Federal Aviation Administration, Fitzgerald Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Telephone: (718) 917-1228.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-AEA-11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in the notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of Regional Counsel, AEA-7, Federal Aviation Administration, Fitzgerald Federal Building (formerly Federal Building), John F. Kennedy International Airport, Jamaica, New York 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area at College Park, MD, to provide controlled airspace from 700 feet above the surface for IFR arrival/departure aircraft at College Park, MD, Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7460.6 dated January 3, 1984.

The FAA has determined that this amendment only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

College Park, MD [New]

That airspace extending upward from 700 feet above the surface within a five statute mile radius of the College Park Airport (lat. 38°58'50" N., long 76°55'50" W.); and within two miles each side of a 330° bearing from the airport extending from the five mile radius to seven miles northwest of the airport, excluding that portion which overlaps the Washington, DC, and Baltimore, MD, transition area.

Issued in Jamaica, New York, on September 5, 1985.

Edmund Spring,

Acting Director, Eastern Region.

[FR Doc. 85-22367 Filed 9-18-85; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 80

[CGD 84-091]

International Regulations for Preventing Collisions at Sea, 1972 Colregs Demarcation Lines

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Under 33 U.S.C. 151 (a), the Coast Guard is authorized to establish identifiable lines to delineate waters upon which International Regulations for Preventing Collisions at Sea, 1972 (COLREGS) apply and waters upon which Inland Navigation Rules apply. Regulations establishing these lines were promulgated July 11, 1977. Since the establishment of these lines, geographic and marking changes have outdated descriptions contained in the regulations. The Coast Guard is proposing to update these regulations to provide accurate and current location descriptions and identification of these lines as shown on nautical charts.

DATE: Comments must be received on or before November 4, 1985.

FOR FURTHER INFORMATION CONTACT: LCDR Charles K. Bell, Marine Information and Rules Branch, Office of Navigation, (202) 245-0108.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/21), (CGD 84-091), U.S. Coast Guard, Washington, D.C. 20593. Comments may be delivered to and will be available for inspection and copying at the Marine Safety Council, room 2110, between the hours of 8 a.m. and 4 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: The regulations establishing Demarcation Lines are found under Part 80 of Title 33 Code of Federal Regulations. The U.S. Coast Guard has become aware of Demarcation Line reference locations which have been destroyed, names or numbers changed, aids repositioned, and positions redefined or corrected on charts. It is therefore necessary for the Coast Guard to update the description of the COLREGS Demarcation Lines to reflect these changes. Most of the changes are insignificant; however, any changes which would extend the demarcation lines further offshore may require further Coast Guard evaluation. Interested persons are invited to participate in this proposed rulemaking by submitting written data or comments regarding this rulemaking. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

Regulatory Evaluation:

These proposed regulations are considered to be non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034): February 26, 1979). The economic impact of this proposal has been found to be so minimal, that further evaluation is unnecessary. This proposal is updating the COLREG Demarcation Lines to account for alteration and destruction of the existing reference points. This proposal does not impose any new economic burdens upon the public. This proposed rulemaking contains no information collection or recordkeeping requirements. This agency certifies that this proposal will not have a significant economic impact on a substantial number of small entities because there are no new costs associatied with this proposal.

List of Subjects in 33 CFR Part 80

Navigation, Navigable waters.

For the reasons stated above, the Coast Guard proposes to amend Title 33 CFR Part 80 to read as set forth below.

PART 80—COLREGS DEMARCATION LINES

General

1. The authority citation for Part l:80 is revised to read as follows:

Authority: 14 U.S.C. 2; 33 U.S.C. 151(a); 49 CFR 1.46(b).

2. In § 80.115, paragraph (b) is revised to read as folows:

§ 80.115

Portland Head, ME to Cape Ann, MA.

* * * * *

(b) A line drawn form the southernmost tower on Gerrish Island charted in approximate position latitude 43°04.0' N. longitude 70°41.2' W. to Whaleback Light; thence to Jaffrey Point Light 2A; thence to the northeasternmost extremity of Frost Point.

* * * * *

3. In§ 80.145, paragraph (c) is revised to read as folows:

§ 80.145 Race Point, MA to Watch Hill, RI.

* * * * *

(c) A line drawn from Sakonnet Breakwater Light 2 tangent to the southernmost part of Sachuest Point charted in approximate position latitude 41°28.5' N. longitude 71°14.8' W.

* * * * *

4. In§ 80.305, paragraph (h) is revised to read as follows:

§ 80.305 Watch Hill, RI to Montauk Point, NY.

* * * * *

(h) A line drawn from Threemile Harbor West Breakwater Light to Threemile Harbor East Breakwater Light.

* * * * *

5. In § 80.310, paragraph (a) is revised to read as follows:

§ 80.310 Montauk Point, NY to Atlantic Beach, NY.

(a) A line drawn from the Skinnecock Inlet East Breakwater Light to Shinnecock Inlet West Breakwater Light 1.

* * * * *

6. In § 80.320, paragraphs (b) and (c) are revised to read as follows:

§ 80.320 Sandy Hook, NJ to Cape May, NY.

* * * * *

(b) A line drawn from Manasquan Inlet North Breakwater Light 4 to Manasquan Inlet South Breakwater Light 3.

(c) A line drawn from Barnegat Inlet North Breakwater Light 4A to the seaward extremity of the submerged Barnegat Inlet South Breakwater; thence along the submerged breakwater to the shoreline.

* * * * *

7. In § 80.505, paragraphs (a) and (b) are revised to read as follows:

§ 80.505 Cape Henlopen, DE to Cape Charles, VA.

(a) A line drawn from the seaward extremity of Indian River Inlet North Jetty to Indian River Inlet South Jetty Light.

(b) A line drawn from Ocean City Inlet Light 6, 225° true across Ocean City Inlet to the submerged south breakwater.

* * * * *

8. In § 80.520, paragraph (a) is revised to read as follows:

§ 80.520 Cape Hatteras, NC to Cape Lookout, NC.

(a) A line drawn from Hatteras Inlet Lookout Tower 255° true to the eastern end of Ocracoke Island.

* * * * *

9. In § 80.525, paragraphs (d) and (f) are revised to read as follows:

§ 80.525 Cape Lookout, NC to Cape Fear, NC.

* * * * *

(d) A line drawn from the southeasternmost extremity on the southwest side of New River Inlet at latitude 34°31.5′ N. longitude 77°20.6′ W. to the seaward tangent of the shoreline on the northeast side on New River Inlet.

* * * * *

(f) A line drawn from the seaward extremity of the jetty on the northeast side of Masonboro Inlet to the seaward extremity of the jetty on the southeast side of the Inlet.

* * * * *

10. In § 80.712, paragraphs (a) and (f) are revised to read as follows:

§ 80.712 Morris Island, SC to Hilton Head Island, SC.

(a) A line drawn from the easternmost tip of Folley Island to the abandoned lighthouse tower on the northside of Lighthouse Inlet; thence west to the shoreline of Morris Island.

* * * * *

(f) A line drawn from the westernmost extremity of Bull Point on Capers Island to Port Royal Sound Channel Range Rear Light, latitude 32°13.7′ N. longitude 80°36.0′ W.; thence 259° true to the easternmost extremity of Hilton Head at latitude 32°13.0′ N. longitude 80°40.1′ W.

11. In § 80.727, paragraphs (d) and (g) are revised to read as follows:

§ 80.727 Cape Canaveral, FL to Miami Beach, FL.

* * * * *

(d) A north-south line (longitude 80°09.7′ W.) drawn across St. Lucie Inlet.

* * * * *

(g) A line drawn across the seaward extremity of the Boynton Inlet Jetties.

* * * * *

12. In § 80.735, paragraph (a) is revised to read as follows:

§ 80.735 Miami, FL to Long Key, FL.

(a) A line drawn from the southernmost extremity of Fisher Island 212° true to the point latitude 25°45.2′ N. longitude 80°08.6′ W. on Virginia key.

* * * * *

13. Section 80.740 is revised to read as follows:

§ 80.740 Long Key, FL to Cape Sable, FL.

A line drawn from radar dome charted on Long Key at approximate position latitude 24°48.8′ N. longitude 80°49.6′ W. to Long Key Light 1; thence to Arsenic Bank Light 1; thence to Arsenic Bank Light 2; thence to Sprigger Bank Light 5; thence to Schooner Bank Light 6; thence to Oxfoot Bank Light 10; thence to East Cape Light 2; thence through East Cape Daybeacon 1A to the shoreline at East Cape.

14. In § 80.745, paragraph (a) is revised to read as follows:

§ 80.745 Cape Sable, FL to Cape Romano, FL.

(a) A line drawn following the general trend of the mainland, highwater shoreline from Cape Sable at East Cape to Little Shark River Light 1; thence to westernmost extremity of Shark Point; thence following the general trend of the Mainland, highwater shoreline crossing the entrances of Harney River, Broad Creek, Broad River, Rodgers River, First Bay, Chatham River, Houston River, to the shoreline at coordinate latitude 25°41.8′ N. longitude 81°17.9′ W.

* * * * *

15. In § 80.748, paragraph (d) is revised to read as follows:

§ 80.748 Cape Romano, FL to Sanibel Island, FL.

* * * * *

(d) A line from the seaward extremity of Gordon Pass South Jetty 014° true to the shoreline at approximate coordinate latitude 26°05.7′ N. longitude 81°48.1′ W.

* * * * *

16. In § 80.750, paragraph (k) is revised to read as follows:

§ 80.750 Sanibel Island, FL to St. Petersburg, FL.

* * * * *

(k) A line drawn from the northernmost extremity of Mullet Key across Bunces Pass and South Channel to Pass-a-Grille Channel Light 8; thence to Pass-a-Grille Channel Daybeacon 9; thence to the southwesternmost extremity of Long Key.

17. In § 80.753, paragraph (d) is revised to read as follows:

§80.753 St. Petersburg, FL to the Anclote, FL.

* * * * *

(d) A line drawn from the northernmost extremity of Honeymoon Island to Anclote Anchorage South Entrance Light 7; thence a straight line through Anclote River Cut B Range Rear Light to the shoreline.

18. In § 80.757, paragraphs (d) and (h) are revised to read as follows:

§ 80.757 Suncoast Keys, FL to Horseshoe Point, FL.

* * * * *

(d) A north-south line drawn through the Cross Florida Barge Canal Daybeacon 48 across the canal.

* * * * *

(h) A north-south line drawn through Suwannee River Wadley Pass Channel Daybeacons 30 and 31 across the Suwannee River.

19. In § 80.805, paragraph (c) is revised to read as follows:

§ 80.805 Rock Island, FL to Cape San Blas, FL.

* * * * *

(c) A line drawn from St. Mark's (Range Rear) Light to St. Mark's Channel Light 11; thence to the southernmost extremity of Live Oak Point; thence in a straight line through Shell Point Light to the southernmost extremity of Ochlockonee Point; thence to Bald Point along longitude 84°20.5′ W.

* * * * *

20. In § 80.810, paragraphs (a), (b) and (g) are revised to read as follows:

§ 80.810 Cape San Blas, FL to Perdido Bay, FL.

(a) A line drawn from St. Joseph Bay Entrance Range A Rear Light through St. Joseph Bay Entrance Ranger B Front Light to St. Joseph Point.

(b) A line drawn across the mouth of Salt Creek as an extension of the general trend of the shoreline to continue across the inlet to St. Andrews Sound in the middle of Crooked Island.

* * * * *

(g) An east-west line drawn from Fort McRee Leading Light across the Pensacola Bay Entrance along latitude 30°19.5′ N.

* * * * *

21. In § 80.815, paragraph (b) is revised to read as follows:

§ 80.815 Mobile Bay, AL to the Chandeleur Island, LA.

* * * * *

(b) A line drawn from Mobile Point Light to Dauphin Island Channel Light No. 1 to the eastern corner of Fort Gaines at Pelican Point.

* * * * *

22. In § 80.825, paragraphs (b) and (c) are revised to read as follows:

§ 80.825 Mississippi Passes, LA.

* * * * *

(b) A line drawn from coordinate latitude 29°21.5′ N. longitude 89°11.7′ W. following the general trend of the

seaward, highwater shoreline in a southeasterly direction to coordinate latitude 29°15.3′ N. longitude 89°06.5′ W.; thence to coordinate latitude 29°13.3′ N. longitude 89°01.7′ W. located on the northwest bank of North Pass.

(c) A line drawn from coordinate latitude 29°13.0′ N. longitude 89°01.3′ W., to coordinate latitude 29°12.7′ N. longitude 89°00.9′ W.; thence to coordinate latitude 29°10.6′ N. longitude 88°59.8′ W.; thence to coordinate latitude 29°03.5′ N. longitude 89°03.7′ W.; thence to Mississippi River South Pass East Jetty Light 4.

* * * * *

23. In § 80.830, paragraphs (c) and (e) are revised to read as follows:

§ 80.830 Mississippi Passes, LA to Point Au Fer, LA.

* * * * *

(c) An east-west line drawn from the westernmost extremity of Grand Terre Islands in the direction of 194° true to the Grand Isle Fishing Jetty Light.

* * * * *

(e) A liner drawn from the westernmost extremity of the Timbalier Island to the easternmost extremity of Isles Dernieres.

* * * * *

24. In § 80.835, paragraph (a), (b), (c), (d), (e), and (f) are revised to read as follows:

§ 80.835 Point Au Fer, LA to Calcasieu Pass, LA.

(a) A line drawn from Point Au Fer to Atchafalaya Channel Light 34, to Point Au Fer Reef Light 33; thence to Atchafalaya Bay Pipeline Light D latitude 29°25.0′ N. longitude 91°31.7′ W.; thence to Atchafalaya Bay Light 1 latitude 29°25.3′ N. longitude 91°35.8′ W.; thence to South Point.

(b) Lines following the general trend of the highwater shoreline drawn across the bayou and canal inlets from the Gulf of Mexico between South Point and Calcasieu Pass except as otherwise described in this section.

(c) A line drawn on an axis of 140° true through Southwest Pass Vermillion Bay Light 4 across Southwest Pass.

(d) A line drawn across the seaward extremity of the Freshwater Bayou Canal Entrance Jetties.

(e) A line drawn from Mermentau Channel Light 6 to Mermentau River Channel Light 7.

(f) A line drawn from the radio tower charted in approximate position latitude 29°45.7′ N. longitude 93°06.3′ W. 115° true across Mermentau Pass.

* * * * *

25. In § 80.850, paragraph (c) is revised to read as follows:

§ 80.850 Brazos River,TX to the Rio Grande, TX.

* * * * *

(c) A line drawn from the seaward tangent of Matagorda Peninsula at Decros Point to Matagorda Light.

* * * * *

26. Section § 80.1110 is revised to read as follows:

§ 80.1110 San Diego Harbor, CA.

A line drawn from Zuniga Jetty Light "V" to Zuniga Jetty Light "Z"; thence to Point Loma Light.

27. In § 80.1135, paragraph (a) is revised to read as follows:

§ 80.1135 San Pedro Bay—Anaheim Bay, CA.

(a) A line drawn across the seaward extremities of the Anaheim Bay Entrance Jetties; thence to Longbeach Breakwater East End Light 1.

* * * * *

28. Section 80.1225 is revised to read as follows:

§80.1225 Santa Cruz Harbor, CA.

A line drawn from the seaward extremity of the Santa Cruz Harbor East Breakwater to Santa Cruz Harbor West Breakwater Light.

29. Section 80.1230 is revised to read as follows:

§80.1230 Pillar Point Harbor, CA.

A line drawn from Pillar Point Harbor Light 6 to Pillar Point Harbor Entrance Light.

30. Section 80.1275 is revised to read as follows:

§ 80.1275 Crescent City Harbor, CA.

A line drawn from Crescent City Entrance Light to the southeasternmost extremity of Whaler Island.

31. Section 80.1305 is revised to read as follows:

§ 80.1305 Chetco River, OR.

A line drawn across the seaward extremities of the Chetco River Entrance Jetties.

32. Section 80.1310 is revised to read as follows:

§ 80.1310 Rogue River, OR.

A line drawn across the seaward extremities of the Rogue River Entrance Jetties.

33. Section 80.1315 is revised to read as follows:

§ 80.1315 Coquille River, OR.

A line drawn across the seaward extremities of the Coquille River Entrance Jetties.

34. Section 80.1320 is revised to read as follows:

§ 80.1320 Coos Bay, OR.

A line drawn across the seaward extremities of the Coos Bay Entrance Jetties.

35. Section 80.1325 is revised to read as follows:

§ 80.1325 Umpqua River, OR.

A line drawn across the seaward extremities of the Umpqua River Entrance Jetties.

36. Section 80.1330 is revised to read as follows:

§ 80.1330 Siuslaw River, OR.

A line drawn across the seaward extremities of the Siuslaw River Entrance Jetties.

37. Section 80.1340 is revised to read as follows:

§ 80.1340 Yaquina Bay, OR.

A line drawn across the seaward extremities of the Yaquina Bay Entrance Jetties.

38. Section 80.1355 is revised to read as follows:

§ 80.1355 Tillamook Bay, OR.

A line drawn across the seaward extremities of the Tillamook Bay Entrance Jetties.

39. Section 80.1375 is revised to read as follows:

§80.1375 Grays Harbor, WA.

A line drawn across the seaward extremities (above water) of the Grays Harbor Entrance Jetties.

40. Section 80.1460 is revised to read as follows:

§ 80.1460 Kahului Harbor, Maui, HI.

A line drawn from Kahului Harbor Entrance Breakwater Light 1 to Kahului Harbor Entrance Breakwater Light 2.

Dated: September 16, 1985.

T.J. Wojnar,

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation.

[FR Doc. 22466 Filed 9–18–85; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 4E3125/P374; FRL–2890–6]

Pesticide Tolerance of N,N-Diethyl-2-(1-Naphthalenyloxy) Propionamide

Correction

In FR Doc. 85–20923 beginning on page 35844 in the issue of Wednesday, September 4, 1985, on page 35845, in the third column, in §180.328 the fourth line

of paragraph (b) is corrected to read "napthalenyloxy) propionamide in or on".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 63, 76 and 78

[MM Docket No. 84-1296]

Television Broadcasting; Implementing the Provisions of the Cable Communications Policy Act of 1984

AGENCY: Federal Communications Commission.

ACTION: Order requesting Comments.

SUMMARY: In its decision in *Quincy Cable TV, Inc. v. FCC*, No. 83-1283 (DC Cir. July 19, 1985), the United States Court of Appeals held that the Commission's mandatory signal carriage rules violated cable operator's rights, under the First Amendment to the Constitution of the United States.

The Commission is, therefore, reopening the period for filing comments in MM Docket No. 84-1296 (May 2, 1985, 50 FR 18637) to enable parties to consider and to comment upon any potential impact that the Court's decision has on the issues discussed in the *Report and Order*. Comments are limited to how the decision affects the definition of basic cable service in § 76.5(pp) of the Commission's Rules.

DATE: The period for filing comments is reopened to and including October 17, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Bruce Franca, Policy Analysis Branch, Mass Media Bureau, (202) 632-6302.

Order Reopening the Period for Filing Comments

In the matter of amendments of Parts 1, 63, and 76 of the Commission's rules to implement the provisions of the Cable Communications Policy Act of 1984; MM Docket No. 84-1296

Adopted: September 10, 1985.
Released: September 10, 1985.

By the Chief, Mass Media Bureau.

1. On April 11, 1985, the Commission adopted a *Report and Order* in MM Docket No. 84-1296, 58 RR 2d 1 (1985), amending its rules in order to implement certain provisions of the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, section 1 *et seq.*, 98 Stat. 2779 (1984). Various parties have filed petitions for reconsideration of the *Report and Order*, and responsive pleadings.

2. In its decision in *Quincy Cable TV, Inc. v. FCC*, No. 83-1283 (DC Cir. July 19, 1985), the United States Court of Appeals held that the Commission's regulations requiring that cable television systems carry certain local television broadcast stations violate cable operators' rights under the First Amendment to the Constitution of the United States.

3. In view of this decision, the record in MM Docket No. 84-1296 will be reopened to enable parties to comment upon the impact that the Court's decision has on the issues discussed in that *Report and Order*. Comments should be limited to how the decision affects the definition of basic cable service in § 76.5(pp) of the Commission's Rules.

4. Accordingly, it is ordered, pursuant to § 1.415(d) of the Commission's Rules, that the period for filing comments in the above captioned proceeding is reopened to and including October 17, 1985.

5. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the *Report and Order*.

6. In accordance with the provisions of § 1.419 of the Commission's Rules, an original and 5 copies of all comments filed in this proceeding shall be furnished to the Commission. Participants filing the required copies who also wish each Commissioner to have a personal copy of the comments may file an additional 6 copies. Members of the general public who wish to express their interest by participating informally in the rule making proceeding may do so by submitting one copy of the comments, without regard to form, provided only that the Docket Number is specified in the heading. Responses will be available for public inspection during regular business hours in the Commission's Dockets Reference Room (Room 239) at its headquarters in Washington, DC (1919 M Street, Northwest).

7. This action is taken pursuant to authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and § 0.283 of the Commission's Rules.

8. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the time a public notice is issued stating that substantial disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communications (other than formal written comments, pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission's official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by Docket Number the proceeding to which its relates. See generally, § 1.201 of the Commission's Rules.

9. For further information concerning this proceeding, contact Bruce A. Franca, Policy Analysis Branch, Mass Media Bureau, (202) 632-6302.

Federal Communications Commission.

James C. McKinney,
Chief, Mass Media Bureau.

[FR Doc. 85-22186 Filed 9-18-85; 8:45 am]

BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Part 514

[GSAR Notice No. 5-119]

Prompt Payment Discounts and Payment Terms

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to § 514.201-2 of the General Services Administration Acquisition Regulation (GSAR), which would prescribe a

cautionary notice to be included in sealed bid solicitations that contain the Standard Form 33, Solicitation, Offer and Award. The proposed notice cautions offerors against inserting any statement in block 13 of the SF–33 which would indicate that payment is required within a shorter period of time than that stipulated in the Payment Due Date clause of the solicitation. Some offerors are inadvertently rendering their offers nonresponsive by inserting NET terms for a lesser period than that provided for in the Payment Due Date clause of the solicitation. The intended effect is to improve the regulatory coverage.

DATE: Comments are due in writing not later than October 21, 1985.

ADDRESS: Requests for a copy of the proposal and comments should be addressed to Marjorie Ashby, Office of GSA Acquisition Policy and Regulations, 18th and F Streets, NW, Room 4026, Washington, D.C. 20405, (202) 523–4754.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Loeb, Office of GSA Acquisition Policy and Regulations, 18th and F Streets, NW, Washington, D.C. 20405, (202) 535–7791.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this proposed rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.). The proposed regulation will benefit prospective contractors by cautioning them against preparing their offer in a fashion that would cause the offer to be rejected as nonresponsive. Therefore, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Part 514

Government procurement.

Dated: September 6, 1985.

Richard H. Hopf III,

Director, Office of GSA Acquisition, Policy and Regulations.

[FR Doc. 85–22440 Filed 9–18–85; 8:45 am]

BILLING CODE 6820–61–M

Notices

Federal Register
Vol. 50, No. 182
Thursday, September 19, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Draft Illinois Wild and Scenic River Management Plan; Siskiyou and Curry Counties, OR; Notice of Availability

The Department of Agriculture, Forest Service, has prepared a draft Illinois Wild and Scenic River Management Plan. As a result of comments received, some modifications were made in a preliminary draft. A new draft Plan is available for public review and comment. Copies are available at the: Forest Supervisors Office, 200 NE Greenfield Road (P.O. Box 440), Grants Pass, Oregon 97526; Gold Beach Ranger Station, 1225 So. Ellensburg—Box 7, Gold Beach, Oregon 97444; and the Illinois Valley Ranger Station, 26568 Redwood Highway, Cave Junction, Oregon 97523. Written comments and suggestions concerning the Plan will be received during the next 30 days by Siskiyou National Forest Supervisor Ronald J. McCormick, 200 NE Greenfield Road (P.O. Box 440), Grants Pass, Oregon 97526. A final management plan will then be prepared and made available to the public.

Dated: September 13, 1985.

James C. Space,

Acting Regional Forester.

[FR Doc. 85–22449 Filed 9–18–85; 8:45 am]

BILLING CODE 3410–11–M

Okanogan National Forest Grazing Advisory Board; Meeting

The Okanogan National Forest Grazing Advisory Board will meet at 7:00 p.m., October 15, 1985 at the Supervisor's offices, 1240 South Second Avenue, Okanogan, WA 98840. The agenda for the meeting is to hear and discuss reports from the Ranger Districts about plans for range improvement expenditure in Fiscal Year 1986.

The meeting will be open to the public. Persons who wish to attend should notify Don Pridmore at the above address or call 509–422–2704. Issues to present to the Board must be in writing and may be filed with the board before or after the meeting.

The committee has established the following rules for public participation: Public comments will be heard during the first 30 minutes of the meeting.

September 13, 1985.

John R. Hook,

Acting Forest Supervisor.

[FR Doc. 85–22448 Filed 9–18–85; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Illinois Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m. on October 4, 1985, at the U.S. Commission on Civil Rights, Midwestern Regional Office, 230 South Dearborn Street, Room 3280, Chicago, Illinois. The purpose of the meeting will be to discuss the status of minorities in Illinois as well as the advisory committee's work on the topic of Industrial Revenue Bonds.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Hugh Schwartzburg, or Clark Roberts, Director of the Midwestern Regional Office at (312) 353–7371, (TDD 312/886–2188).

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C. September 16, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–22452 Filed 9–18–85; 8:45 am]

BILLING CODE 6335–01–M

New Jersey Advisory Committee; Rescheduled Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the New Advisory Committee to the Commission originally scheduled for October 15, 1985, at the Nassau Inn, Palmer Square in Princeston, New Jersey at 7:00 p.m. to 11:00 p.m., has a new convening time.

The meeting place, date and adjouring time will remain the same. The convening time will change to 5:00 p.m.

Dated at Washington, D.C. May 24, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–22453 Filed 9–18–85; 8:45 am]

BILLING CODE 6335–01–M

North Carolina Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory Committee to the Commission will convene at 12:00 noon and adjourn at 4:30 p.m. on October 11, 1985, at the Greensboro-High Point Marriott, 350 Regional Road North, Salon F, Greensboro, North Carolina. The purpose of the meeting is to plan programs for fiscal year 1986.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Donald Horowitz, or Bobby Doctor, Director of the Southern Regional Office, at (404) 221–4391, (TDD 404/221–4391).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., September 16, 1985

Bert Silver,

Assistant Staff Director for Regional Program.

[FR Doc. 85–22450 Filed 9–18–85; 8:45 am]

BILLLING CODE 6335–01–M

Wisconsin Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wisconsin Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m. on October 2, 1985, at the Pfister Hotel, 424 East Wisconsin.

Executive Room, Milwaukee, Wisconsin. The purpose of the meeting is to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Kwame Salter, or Clark Roberts, Director of the Midwestern Regional Office at (312) 353–7371, (TDD 312/886–2188).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., September 16, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–2245, Filed 9–18–85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collections of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis
Title: Ocean Flight Revenues and Expenses of U.S. Carriers; and U.S. Airline Operators' Foreign Revenues and Expenses
Form No.: Agency—BE–30 and BE–37; OMB—0608–0011 and 0608–0014
Type of request: Revision of a currently approved collection
Burden: 54 respondents; 912 reporting hours
Needs and uses: These collections are used to obtain data required for preparing the international transportation accounts of the U.S. balance of payments
Affected public: Businesses or other for-profit institutions
Frequency: Quarterly
Respondent's obligation: Mandatory
OMB desk officer: Timothy Sprehe, 395–4814

Agency: Bureau of Economic Analysis
Title: Foreign Ocean Carriers' Expenses in the United States; and Foreign Airline Operator's Revenues and Expenses in the United States
Form No.: Agency—BE–29 and BE–30; OMB—0608–0012 and 0608–0013
Type of Request: Revision of a currently approved collection
Burden: 190 respondents; 380 reporting hours
Needs and uses: These collections are used to obtain data required for preparing the international transportation accounts of the U.S. balance of payments
Affected public: Businesses or other for-profit institutions
Frequency: Annually
Respondent's obligation: Mandatory
OMB desk officer: Timothy Sprehe, 395–4814

Agency: Bureau of Economic Analysis
Title: Survey of U.S. Travelers Visiting Canada; Expenditures of U.S. Travelers in Mexico
Form No.: Agency—BE–536, BE–575; OMB—0608–0001
Type of request: Extension of a currently approved collection
Burden: 35,000 respondents; 2,500 reporting hours
Needs and uses: Data collected are used to estimate international travel transactions for inclusion in U.S. international accounts
Affected public: Individuals or households
Frequency: Daily
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395–4814

Agency: Bureau of Economic Analysis
Title: Survey of Visitor's Travel Expenses in the United States; Travel Questionnaires for U.S. Residents Returned from Trips Abroad
Form No.: Agency—BE–572, BE–574; OMB—0608–0001
Type of request: Extension of a currently approved collection
Burden: 25,000 respondents; 2,083 reporting hours
Needs and uses: Data collected are used to estimate international travel transactions for inclusion in the U.S. international accounts.
Affected public: Individuals or households
Frequency: One week each quarter
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395–4814

Agency: Economic Development Administration
Title: Outlay Report for Reimbursement for Construction Programs
Form No.: Agency—ED–113; OMB—0610–0076
Type of Request: Extension of a currently approved collection
Burden: 200 respondents; 1,600 reporting hours
Needs and uses: Grantees will use this report to summarize expenditures made and Federal funds unexpended for each award, report of status of Federal cash advanced, and to request advances and reimbursement.
Affected public: State and local governments and non-profit institutions
Frequency: Other
Respondent's obligation: Required to obtain or retain a benefit
OMB desk officer: Timothy Sprehe, 395–4814

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: September 16, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–22457 Filed 9–18–85; 8:45 am]

BILLING CODE 3510-CW-M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collections of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Special Survey—1982 Census of Construction Industries
Form No.: Agency—CC–1985 OMB—N/A
Type of request: New Collection
Burden: 50 respondents; 50 reporting hours
Needs and uses: This survey will be used to examine the content of specific items collected in the 1982 Census of Construction Industries and to evaluate the feasibility of requesting certain information for the 1987 census.
Affected public: Business or other for-profit institutions and small businesses or organizations
Frequency: One time
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395–4814

Agency: Bureau of the Census
Title: 1987 Census of Agriculture Content Test
Form No.: Agency—85A1, 85A2; OMB—N/A
Type of request: New collection
Burden: 42,500 respondents; 26,351 reporting hours
Needs and uses: This survey will provide a means of measuring response burden and the acceptability

of the booklet form versus the 1982 sample form. It will also provide a means of testing and refining data collection methods and proposed procedures for processing data for the 1987 Census of Agriculture.
Affected public: Farms
Frequency: Nonrecurring
Respondent's obligation: Mandatory
OMB desk officer: Timothy Sprehe, 395–4814

Agency: Bureau of the Census
Title: Survey of Building and Zoning Permit Systems
Form No.: Agency—C411; OMB—0607–0350
Type of request: Revision of a currently approved collection
Burden: 400 respondents; 1,100 reporting hours
Needs and uses: This survey is needed to update the universe of permit-issuing jurisdictions, to determine their geographical coverage, and to obtain their annual data on construction authorized by building permits for the most recent year. The collection effort will provide a more comprehensive list of jurisdictions that will be used to select reliable samples for estimating monthly building permit authorizations.
Affected public: State and local governments
Frequency: On occasion
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395–4814

Agency: Bureau of the Census
Title: 1986 Test Census-Precensus Local Review; Postcensus Local Review
Form No.: Agency—DC–104A–U, DC–104A–R; OMB—N/A
Type of request: New collection
Burden: 3,200 respondents; 107 reporting hours
Needs and uses: As a means to improve coverage, the Census Bureau will present lists of housing units counts to local government officials in both test sites to obtain feedback. Census will then act to resolve differences during separate operations conducted prior to and after the actual enumeration.
Affected public: Individuals or households
Frequency: One time
Respondent's obligation: Mandatory
OMB desk officer: Timothy Sprehe, 395–4814

Agency: Bureau of the Census
Title: Survey of Housing Starts, Sales, and Completions
Form No.: Agency—SOC–900/900.1/900A/900A.1; OMB—0607–0110
Type of request: Revision of a currently approved collection
Burden: 8,925 respondents; 4,650 reporting hours
Needs and uses: The collected information is needed to determine the number and type of new residential buildings being built and/or sold. Housing starts and sales data, in particular, are important economic indicators used by businesses and government agencies.
Affected public: Individuals or households, businesses or other for-profit institutions
Frequency: Monthly
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395–4814

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: September 16, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–22456 Filed 9–18–85; 8:45 am]

BILLING CODE 3510–07–M

Foreign-Trade Zones Board

[Order No. 310]

Resolution and Order Approving the Application of the Port of Corpus Christi Authority for a General-Purpose Foreign-Trade Zone and Subzones in the Corpus Christi Customs Port of Entry Area

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the applications of the Port of Corpus Christi Authority, a Texas public corporation, filed with the Foreign-Trade Zones Board (the Board) on May 7, 1984 (49 FR 20748, 5/16/84), requesting a grant of authority for a general-purpose foreign-trade zone and subzones within the Corpus Christi Customs port of entry area, the Board adopts the recommendations of the examiners committee report of June 12, 1985, including Table I, and finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied with regard to the sites listed in Table I if subject to certain special conditions, approves the sites listed in Table I subject to the following conditions:

1. The FTZ Board's Executive Secretary shall be notified for approval prior to the commencement of any manufacturing operations not approved as part of the application, including blending, and when activity is changed to include foreign items subject to inverted tariffs.

2. Manufacturing operations at the non-oil refinery subzone sites are restricted to articles produced for export.

3. The non-oil refinery subzones sites (C–1, C–3, C–4, D–1, and D–2) are approved for a five-year period, subject to Board renewal after a review by Customs and the Board.

4. The non-oil refinery sites shall be operated under a central control system approved by the District Director of Customs, whose approval is required prior to the activation of all sites.

5. The approval given by the Board does not include any non-export blending activity involving ethanol or which is not inherently part of an on-site crude oil refining operation.

6. The area of approval for Site C–3 is limited to that presently operated by Baker Marine Corporation.

7. Offshore drilling rigs produced at Site C–3 which are classified as vessels by Customs shall be subject to the special conditions enumerated in board Order 297 (50 FR 13283, 4/3/85) concerning steel mill products for shipbuilding.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone and Subzones in the Corpus Christi Port of Entry Area

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Port of Corpus Christi Authority (the Grantee) has made applications (filed May 7, 1984, Docket Nos. 22, 23, and 24–84, 49 FR 20748) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone and subzones at sites in Nueces County, Texas, within the Corpus Christi Customs port of entry;

Whereas, notice of said applications has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) would be satisfied if approval is given subject to the conditions stated in the resolution accompanying this action;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone and subzones, designated on the records of the Board as Zone No. 122 and Subzone Nos. 122A through 122H at the locations referred to in Exhibits IX and X of the applications and as described in Table I of the examiners' report dated June 12, 1985, subject to the provisions, conditions, and restrictions of the Act and the regulations, and those stated in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the foreign-trade zone and subzones shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone and subzone sites in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any new manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 5th day of September 1985, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Malcolm Baldrige,

Chairman and Executive Officer.

Attest: John J. Da Ponte, Jr., *Executive Secretary.*

[FR Doc. 85-22433 Filed 9-18-85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Export Trade Certificate of Review; Wrangell Forest Products Ltd.

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to Wrangell Forest Products Ltd. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trade Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

(a) Alaskan timber products (round logs, lumber, wood chips, sawdust, shavings, cants, flitches, milled timber, pulp, pulpwood, and sawlogs, in all grades and all sizes) (the "Products").

(b) Services (consulting; international market research; advertising; marketing; product research and design for export markets; transportation, including trade documentation and freight forwarding; communication and processing of foreign orders; warehousing; foreign exchange; financing; and taking title to goods) in connection with the export of the Products (the "Export Services").

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets, Wrangell Forest Products may:

(1) Enter into agreements with an individual or multiple Supplier(s) (except any Supplier that owns or operates, or is under common control with a person that owns or operates a sawmill or sawmills in Southeastern Alaska having a capacity in excess of 50,000 board feet per eight-hour shift) to provide Export Services as an Export Intermediary wherein:

(a) Wrangell Forest Products may agree not to represent any competitor of the Supplier(s) in the Export Markets; and

(b) The Supplier(s) remains free to sell the Products, directly or through other channels, in the Export Markets.

These agreements may also give Wrangell Forest Products the exclusive right to choose, on behalf of the Supplier(s), whether to respond to bids, invitations or requests for bids, or other sales opportunities in the Export Markets.

In the performance of these agreements, Wrangell Forest Products may discuss with the Supplier(s) its activities in the Export Markets on behalf of the Supplier(s), including customer complaints and quality problems, visits by customers from the Export Markets, reports by and the selection of Export Intermediaries, and matters concerning the agreement between Wrangell Forest Products and the Supplier(s).

(2) Enter into exclusive agreements with other Export Intermediaries whereby each Export Intermediary agrees (a) not to represent Wrangell Forest Products' competitors in the sale

of Products in any Export Market and (b) not to buy Products from Wrangell Forest Products' competitors for resale in any Export Market.

(3) Enter into agreements with customers in the Export Markets whereby each customer agrees not to purchase Products from Wrangell Forest Products' competitors.

(4) Purchase sawlogs on a spot sale basis from other Suppliers.

(5) For each bid, invitation or request for bids, or other sales opportunity in any Export Market, negotiate and agree with one or more Suppliers individually on the terms of the respective Supplier's participation in the bid or sale, including the amount of Products such Supplier will commit to the sale and the price to be bid, and in order to negotiate those terms, exchange with such Suppliers individually:

(a) Information (other than information about each other's costs, production, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies or methods) that is already generally available to the trade or public;

(b) Information (such as selling strategies, prices, projected demand, and customary terms of sale) solely about the Export Markets, including reports and forecasts of sales, prices, terms, needs and product specifications by customer or geographic area in the Export Markets;

(c) Information on expenses specific to exporting to the Export Markets (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage and handling charges, insurance, agents' commissions, export sales documentation and service, and export sales financing); and

(d) Information on U.S. and foreign legislation and regulations affecting sales to the Export Markets.

(6) Enter into agreements with Alaska Pulp Corporation to harvest, purchase and process sawlogs for export and to provide Export Services as an exclusive Export Intermediary wherein:

(a) Wrangell Forest Products may agree not to represent any competitor of Alaska Pulp Corporation in Export Market; and

(b) Alaska Pulp Corporation may agree not to sell, directly or through any other Export Intermediary, into any Export Market in which Wrangell Forest Products represents Alaska Pulp Corporation.

Definitions

(1) "Export intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including responding to bids, invitations or requests for bids, or other sales opportunities in the Export Markets and/or providing or arranging for the provision of Export Services.

(2) "Supplier" means a person who produces, provides or sells a Product.

(3) "Spot sale" means a sale of a specified amount of sawlogs that have already been cut or will be cut within six months of the sale, and does not include any sale made pursuant to a long-term contract, agreement, or understanding to make such spot sales.

Terms and Conditions of Certificate

Wrangell Forest Products shall not purchase sawlogs from Ketchikan Pulp Company (or any other firm that acquires or controls its rights to Forest Service timber) except on a spot sale basis and shall not enter into timber harvesting or processing agreements with Ketchikan Pulp Company having a duration in excess of six months.

Wrangell Forest Products shall notify the Department of Commerce within 30 days each time it enters into an agreement to provide Export Services as an Export Intermediary with any Supplier that owns or operates, or is under common control with a person that owns or operates a sawmill or sawmills in operation in Southeastern Alaska having a capacity of 50,000 board feet per eight-hour shift or less.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: September 16, 1985.

James V. Lacy,

Director, Office of Export Trading Company Affairs.

[FR Doc. 85-22438 Filed 9-18-85; 8:45 am]

BILLING CODE 3510-DR-M

National Aeronautics and Space Administration; Decision on Application for Duty-Free Entry of Scientific Instrument

Correction

In FR Doc. 85-21855 appearing on page 37261, in the issue of Thursday, September 12, 1985, in the second paragraph, first line, the Docket No. should be corrected to read, "Docket No. 83-270R".

BILLING CODE 1505-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Controls on Certain Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

September 16, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 20, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 24, 1982, as amended, the Governments of the United States and the Republic of the Philippines have agreed to increase the consultation level for other man-made fiber manufactures in Category 669 from 117,138 pounds to 197,838 pounds for goods produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985. In the letter which follows this notice the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to control imports of man-made fibler textile products in Category 669 for the first time in 1985 at the adjusted level. The level has not been adjusted to reflect any imports exported during the twelve-month period which began on January 1, 1985. As the data become available these charges will be made.

A description of the textile categories in terms of T.S.U.S.A. number was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff

Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

September 16, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs
Department of the Treasury
Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 21, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines and exported during 1985.

Effective on September 20, 1985, paragraph 1 of the directive of December 21, 1984 is hereby amended to include a level of 197,838 pounds [1] for man-made fiber textile products in Category 669.

Textile products in Category 669 which have been exported to the United States prior to January 1, 1985 shall not be subject to this directive.

Textile products in Category 669 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-22429 Filed 9-18-85; 8:45 am]

BILLING CODE 3510-DC-M

Request for Public Comment on Bilateral Textile Consultations on Certain Cotton Textile Products in Category 614pt. Produced or Manufactured in Taiwan

September 16, 1985.

On August 21, 1985, the American Institute in Taiwan (AIT), under the agreement of November 18, 1982, as amended, concerning cotton, wool and man-made fiber textile products from Taiwan requested the Coordination Council for North American Affairs (CCNAA) to enter into consultations concerning exports to the United States of spun filament combination fabrics in Category 614pt. (only T.S.U.S.A. numbers 338.5040, 338.5045, 338.5051, 338.5056, 338.5061, 338.5065, 338.5069, 338.5072, 338.5075, 338.5079, 338.5084, 338.5087, 338.5092, 338.5095, and 338.5098), produced or manufactured in Taiwan.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of man-made fiber textile products in Category 614pt., produced or manufactured in Taiwan and exported to the United States during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985.

Anyone wishing to comment or provide data or information regarding the treatment of this category is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-22430 Filed 9-18-85; 8:45 am]

BILLING CODE 3510-DR-M

Announcing Import Restraint Limit for Certain Cotton and Wool Textile Products Exported from Yugoslavia

September 13, 1985.

On July 19, 1985, a notice was published in the **Federal Register** (50 FR 29467) announcing that, on June 28, 1985, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, had requested the Government of the Socialist Republic of Yugoslavia to enter into consultations concerning exports to the United States of men's and boys' woven cotton shirts in Category 340 and women's, girls' and infants' wool trousers in Category 448, produced or manufactured in Yugoslavia.

The United States Government had decided, inasmuch as consultations have not been held with the Government of the Socialist Republic of Yugoslavia, to control imports of textile products in Categories 340 and 448, produced or manufactured in Yugoslavia and exported during the twelve-month period which began on June 28, 1985 and extends through June 27, 1986 at levels of 147,576 dozen and 22,933 dozen, respectively. If a different level is agreed in consultations scheduled September 23–25, 1985, further notice will be published in the **Federal Register.**

For further information contact: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC (202/377–4212).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 13, 1985.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 20, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and wool textile products in Categories 340 and 448 produced or manufactured in Yugoslavia and exported during the twelve-month period which began on June 28, 1985 and extends through June 26, 1986, in excess of the following levels of restraint:

Category	12-month restraint level [1] (dozen)
340	147,576
448	22,933

[1] The levels have not been adjusted to reflect any imports exported after June 27, 1985.

[1] The level has not been adjusted to account for any imports exported after December 31, 1984. Charges during the January–June 1985 period have mounted to 104,882 pounds.

Textile products in Categories 340 and 448 which have been exported to the United States prior to June 28, 1985 shall not be subject to this directive.

Textile products in Categories 340 and 448 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-22431 Filed 9-18-85; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

September 10, 1985.

The USAF Scientific Advisory Board Aeronautical Systems Division (ASD) Advisory Group will hold meetings on October 17, 1985, from 8:00 a.m. to 4:30 p.m. and on October 18 from 8:00 a.m. to 3:00 p.m., at Wright-Patterson Air Force Base, Ohio.

The purpose of this meeting is to review the Avionics Intergrity Program (AVIP).

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-22390 Filed 9-18-85; 8:45 am]

BILLING CODE 3910-01-M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Tuesday, September 24, 1985 beginning at 9:30 a.m. in the Banquet Room of The Harmony Manor, Route 519, Phillipsburg, New Jersey. The hearing will be part of the Commission's regular business meeting which is open to the public.

Applications for Approval of the Following Projects Under Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Pennsylvania Department of Environmental Resources (PADER) (formerly Department of Forests and Waters) D-64-15 CP.* PADER has requested approval by the Delaware River Basin Commission to temporarily suspend the operation of Paragraph 1.b of DRBC Docket No. D-64-15 CP (January 26, 1966), relating to flow augmentation releases from the Marsh Creek Dam and Reservoir, Chester County, Pennsylvania and in place thereof, proposes that the conservation release schedule contained in Condition 1.a of the Docket be followed whenever flow in the Brandywine at the Chadds Ford stream gage is less than 140 cfs.

2. *Schuylkill County Commissioners D-82-42 CP.* A project to construct an earthen dike and drainage structures to protect property along the East Branch Little Schuylkill River in West Penn Township, Schuylkill County, Pennsylvania, from flood damage. The project dam is identified as PA 426 and is part of the Little Schuylkill River Watershed Project in the DRBC's Comprehensive Plan.

3. *Board of Water and Light Commissioners, New Castle, Delaware D-84-25 CP.* An interconnection between the applicant's water supply system and the Artesian Water Company system for transfer of finished water to either party as needed. Transfers from the applicant's water system to Artesian's system will be limited to 1.0 million gallons (mg) during any 24-hour period. Transfers from Artesian's to the applicant's system will be limited by the hydraulic capacity of the interconnection, but may not result in violation of existing water supply source allocation limits established by the Department of Natural Resources and Environmental Control or the Delaware River Basin Commission. The interconnection will be located on School Lane between U.S. Route 13 and Delaware State Route 273 in New Castle County, Delaware.

4. *Crompton and Knowles Corporation D-85-42.* An industrial waste treatment plant modification at the applicant's dye manufacturing facility in Robeson Township, Berks County, Pennsylvania. The treatment plant will be modified for improved color removal. Additionally, approximately 3,500 gallons per day (gpd) of high salinity wastes will be rerouted from an evaporator, where the majority of brines will continue to be treated, to the treatment plant, increasing the total dissolved solids (TDS) concentration in the effluent. An average waste flow of 180,000 gpd is presently discharged to an unnamed tributary of the Sckuylkill River in Robeson Township. The applicant has requested relief from the Commission's normal limits for color and TDS. A color limit of 875 units and seasonal TDS limits of 5,000 milligrams (mg)/1 average monthly and 10,000 mg/1 daily maximum from July 1 through September 30; and 9,000 mg/1 average monthly and 10,000 mg/1 daily maximum from October 1 through June 30 have been requested.

5. *Borough of Norristown D-85-48 CP.* Modification of the applicant's sewage treatment plant serving the Borough of Norristown and West Norriton Township in Montgomery County, Pennsylvania. Construction of new screening facilities and a new primary clarifier, for relief of overloading at the existing clarifiers, is proposed. This is Phase I of a three-phase plant rehabilitation program to continue through 1987. The design capacity of the plant will remain at the PADER-approved rate of 9.75 million gallons per day (mgd). Treated effluent from the secondary, activated sludge plant will continue to discharge to the Schuylkill River in the Borough of Norristown.

6. *Joseph Wick Nurseries, Ltd., D-85-49.* A ground water withdrawal project to supply approximately 46.1 mg/30 days of irrigation water to the applicant's nursery operations from three wells. The project is located in Kent County, Delaware.

7. *Ashland Chemical Company D-85-50.* A ground water withdrawal project to supply approximately 0.14 mgd of water to the applicant's manufacturing plant from new Well No. 3. Existing Well Nos. 1 and 2 will be used for standby purposes and the total withdrawal from all wells will be 0.14 mgd. The project is located in the Borough of Glendon, Northampton County, Pennsylvania.

8. *Lehigh County Authority D-85-51 CP.* A ground water withdrawal project

to supply approximately 0.87 mgd of water to the applicant's Central Division distribution system from Well Nos. 8 and 16. The total withdrawal from all wells in the Central Division will be 5.13 mgd. The project is located in Lower Macungie Township, Lehigh County, Pennsylvania.

9. *Hamilton Water Company D–85–55 CP.* A ground water withdrawal project to replace water from Well No. 2, and from surface water sources which have become unreliable sources of supply. The proposed withdrawal from existing Well No. 1 and new Well No. 4 will be limited to 3.75 mg/30 days. The project is located in Ross Township, Monroe County, Pennsylvania.

10. *Pre Finished Metals, Inc. D–85–59.* Facilities previously owned and operated by Prior Coated Metals Company have been acquired by Pre Finish Metals, Inc. The new owner has proposed modifications to the process and treatment system and requests approval to eliminate the batch processing and operate on a continuous basis. The modified system is designed to treat up to 0.216 mgd and meet the current NPDES limitations. Discharge will continue to Biles Creek in Falls Township, Bucks County, Pennsylvania.

Documents relating to these applications may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett. Persons wishing to testify at these hearings are requested to register with the Secretary prior to the hearing.

Susan M. Weisman,

Secretary.

September 10, 1985.

[FR Doc. 85–22392 Filed 9–18–85; 8:45 am]

BILLING CODE 6560–01–M

DEPARTMENT OF ENERGY

National Petroleum Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Petroleum Council.

Date: October 15, 1985—2:30 p.m.

Place: Madison Hotel, Dolley Madison Ballroom, Fifteenth and M Streets, NW, Washington, DC

Contact: Carolyn B. Klym, U.S. Department of Energy, Office of Oil, Gas, Shale and Coal Liquids, Mail Stop—FE–30, GTN, Washington, D.C. 20545, Telephone: 301–353–2709.

Purpose: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Tentative Agenda

—Call to Order by Ralph E. Bailey, Chairman, National Petroleum Council.
—Remarks by the Honorable John S. Herrington, Secretary of Energy.
—Progress Report of the Committee on U.S. Petroleum Refining. John K. McKinley, Chairman.
—Consideration of Administrative Matters.
—Discussion of Any Other Business Properly Brought Before the National Petroleum Council.
—Public Comment—10 minute rule
—Adjournment.

Public Participation

The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Carolyn B. Klym at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays.

Issued at Washington, DC, on September 12, 1985.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 85–22459 Filed 9–18–85; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER85–735–000, et al.]

Electric Rate and Corporate Regulation Filings; Montaup Electric Co., et al.

Take notice that the following filings have been made with the Commission:

1. Montaup Electric Company

[Docket No. ER85–735–000]

September 10, 1985.

Please take notice that on August 30, 1985 Montaup Electric Company filed an amendment of a contract between Montaup and Pascoag Fire District ("Pascoag") (FERC Rate Schedule No. 64). The amendment relates to the sale of capacity and energy from Canal Unit No. 2 and Somerset No. J1.

As to Canal No. 2, amendment was negotiated in two stages. In February 1983 Montaup agreed to extend the contract from October 31, 1985 through October 31, 1986 at a charge of $4.267 per kw month, the current cost at the time of Montaup's commitment. In August 1983 Montaup agreed to extend the contract for another two years from October 31, 1986 through October 31, 1988 at the then current cost of $4.57 per kw/month. Montaup's commitments in February and August of 1983 were then incorporated into the enclosed amendment. Both the $4.267 and $4.57 figures are below the current cost of $4.78 per kw/month supported in Appendix A.

With regard to Somerset No. J1, the contract is extended for three years through October 31, 1988. Pascoag will purchase 1,650 KW (7.021%). The capacity charge is $1.83 per kw/month. below the current cost of $139 per kw/month supported in Appendix B.

The filing was served on the affected customer and the Rhode Island Public Utilities Commission.

Comment date: September 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Pacific Gas and Electric Company

[Docket No. ER85–738–000]

September 10, 1985.

Take notice that on September 3, 1985, Pacific Gas and Electric Company (PGandE), tendered for filing, as an initial rate schedule, tariff provisions and charges which are applicable to the City of Oakland, California, acting by and through its Board of Port Commissioners (the "Port") for resale service at the Metropolitan Oakland International Airport (the "Airport").

This filing is made in compliance with a FERC order issued on June 18, 1985 in Docket No. EL82–3–002. The FERC order is predicated on the March 5, 1985 decision of the United States Court of Appeals for the Ninth Circuit, which held that the City of Oakland, acting through its Board of Port Commissioners, is entitled to purchase electricity from PGandE at a wholesale rate for resale to the Ports's tenants at the Airport.

This proposed effective date for the rate schedule in question is October 1, 1985. PGandE has requested a Waiver of the 60 day notice requirement as set forth in Section 35.3 of the Commission's regulations so as to permit the proposed effective date.

Comment date: September 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Northern States Power Company

[Docket No. ER85–725–000]

September 10, 1985.

Take notice that on August 30, 1985, Northern States Power Company, Eau Claire, Wisconsin (NSPW) tendered for filing a proposed change in its currently effective Firm Power Sale For Resale Service (W–1) Rate Schedule for full requirements service. NSPW states that the proposed change is intended to increase rates for W–1 service to its existing thirteen wholesale customers and to two new wholesale customers, the City of Medford (Medford), Wisconsin and the City of Wakefield (Wakefield,) Michigan. Take further notice that NSPW filed, on the same date:

(1) A new Firm Power Sale for Resale Service-north Central Power (NCP–1) Rate schedule providing for a change in rates for service to North Central Power Company, Inc. (North Central) another new NSPW wholesale customer; and

(2) Copies of assignments executed by Lake Superior District Power Company (LSDP) which assign LSDP's wholesale service agreements with North Central, Medford and Wakefield to NSPW, effective as of the first meter reading date after September 1, 1985; and

(3) Copies of amendments to the North Central, Wakefield and Medford wholesale service agreements providing for the rate increases proposed by NSPW.

NSPW states that the proposed rate schedule changes will increase revenues from sales to these customers by $587,681 based on sales for the January 1, 1986 to December 31, 1986 test year.

NSPW requests an effective date of October 30, 1985 in order to start the running of the maximum five-month suspension period. NSPW states that if the Commission determines that the maximum suspension is not required it requests an effective date of January 1, 1986 in accordance with the settlement agreement filed with the Commission on July 26, 1985 in Docket No. ER85–398–000.

Copies of the filing were served upon each affected customer, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: September 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Idaho Power Company

[Docket No. ER85–687–000]

September 11, 1985.

Take notice that on August 15, 1985, the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes original Volume No. 1) during July 1985, along with cost justification for the rate charged. The filing includes the following supplements:

Utah Power & Light Company—Supplement 44
Sierra Pacific Power Company—Supplement 40
Portland General Electric Company—Supplement 36
Southern California Edison Company—Supplement 30
San Diego Gas & Electric Company—Supplement 25
Washington Water Power Company—Supplement 30
Pacific Gas & Electric Company—Supplement 11
Western Area Power Administration—Supplement 5
Montana Power Company—Supplement B6
Los Angeles Water & Power—Supplement 27
Puget Sound Power & Light Company—Supplement 17
City of Glendale—Supplement 25
City of Pasadena—Supplement 23
California Department of Water Resources—Supplement 1

Comment date: September 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Central Vermont Public Service

[Docket No. ER85–732–000]

September 12, 1985.

Take notice that Central Vermont Public Service Corporation (Central Vermont) on August 30, 1985 tendered for filing proposed changes in its Electric Service Rate Schedule FERC No. 96. The proposed changes would increase revenues from jurisdictional sales and service by $39,744 for the twelve month period ending October 31, 1985.

Central Vermont states that the change is proposed in accordance with Aritcle V of Central Vermont's Power purchase Contract with Village of Ludlow Electric Light Department which provides that charges will be updated annually to incorporate Central Vermont's purchased power cost experience for the preceding twelve months ending October and Central Vermont's capacity cost associated with Company-owned generating facilities for the preceding calendar year. Central Vermont proposes an effective date of November 1, 1985.

Copies of this filing were served upon the Village of Ludlow Electric Light Department and the Vermont Public Service Board.

Comment date: September 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Central Vermont Public Service Corporation

[Docket No. ER85–733–000]

September 12, 1985.

Take notice that Central Vermont Public Service Corporation (Central Vermont) on August 30, 1985 tendered for filing proposed changes in its Electric Service Rate Schedule FERC N. 92. The proposed changes would increase revenues from jurisdictional sales and service by $14,904 for the twelve month period ending October 31, 1985.

Central Vermont states that the change is proposed in accordance with Article V of Central Vermont's Power Purchase Contract with Lyndonville Electric Department which provides that charges will be updated annually to incorporate Central Vermont's purchase power cost experience for the preceding twelve months ending October and Central Vermont's capacity cost associated with company-owned generating facilities for the preceding calendar year. Central Vermont proposes an effective date of November 1, 1985.

Copies of this filing were served upon the Lyndonville Electric Departments and the Vermont Public Service Board.

Comment date: September 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Missouri Public Service Company

[Docket No. ER85–746–000]

September 12, 1985.

Take notice that on September 5, 1985, Missouri Public Service Company tendered for filing a request for waiver of the provision in section 35.16 of Commission's regulations to file a notice of succession within 30 days and request that five contracts be approved for name change.

Enclosed are separate filings listing the schedules and supplements of Missouri Public Service Company to be adopted by UtiliCorp United Inc. these additional rate schedules adopted are FERC rate schedules numbered: 8, 20, 33, 43 and 44.

Comment date: September 21, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. NYPP–PJM Interconnection Agreement

[Docket No. ER85–747–000]

September 12, 1985.

Central Hudson Gas & Electric Corporation
Consolidated Edison Company of New York, Incorporated
Long Island Lighting Company
New York State Electric & Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities, Incorporated
Rochester Gas and Electric Corporation
(Above referred to collectively as the NYPP Group)
Public Service Electric and Gas Company
Philadelphia Electric Company
Pennsylvania Power & Light Company
Baltimore Gas and Electric Company
Jersey Central Power & Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
Potomac Electric Power Company
Atlantic City Electric Company
Delmarva Power & Light Company
(Above referred to collectively as the PJM Group)

Take notice that on September 5, 1985 the Office of the Pennsylvania-New Jersey-Maryland Interconnection tendered for filing on behalf of the above listed utilities a proposed Schedule 6.02 to the Interconnection Agreement between the NYPP Group and the PJM Group dated April 9, 1974. The new Scheduled 6.02 sets forth a procedure for determining when unscheduled use of a transmission system occurs and a procedure to provide appropriate compensation.

The filing party has requested a waiver of any otherwise applicable Rules and Regulations not already complied with and has requested an effective date of May 1, 1984.

Comment date: September 21, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Pennsylvania-New Jersey-Maryland Interconnection (PJM) Agreement

[Docket No. ER85–784–000]

September 12, 1985.

Take notice that on September 5, 1985, the Office of the Pennsylvania-New Jersey-Maryland (PJM) Interconnection filed on behalf of the above listed parties to the PJM Agreement proposed Schedule 5.06 to that Agreement dated September 26, 1956, as heretofore supplemented.

Proposed Schedule 5.06 sets forth the allocation among the PJM parties of compensation paid of received for Unscheduled Transmission Service, as defined in a supplement to the agreement between the PJM parties and the members of the New York Power Pool, such allocation being in proportion to each party's share of the PJM capability to import from west of PJM, as filed under Docket No. ER83–736–000.

No new facilities will be installed nor will existing facilities be modified in connection with the proposed schedule. In view of the fact that dollar compensation for Unscheduled Transmission Service provided by PJM to the New York Power Pool will commence on July 1, 1985 under the said supplement to the NYPP-PJM Agreement, The PJM parties have requested that proposed Schedule 5.06 become effective on that date.

Comment date: September 21, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Portland General Electric Company

[Docket No. ER85–738–000]

September 12, 1985.

Take notice that on September 3, 1985, Portland General Electric Company (PGE) tendered for filing a Summary of Sales made under the Company's first revised Electric Service Tariff, Volume No. 1, during July of 1985, along with a cost justification for the rates charged.

Portland General Electric Company requests an effective date of August 31, 1985 and therefore requests a waiver of the Commission's notice requirements.

Copies of this filing were served upon parties having service agreements with PGE, parties to the Intercompany Pool Agreement (revised), intervenors in Docket No. ER77–131 and the Oregon Public Utility Commissioner.

Comment date: September 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–21542 Filed 9–18–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF85–670–000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, Etc.; Quality Dinette, Inc., et al.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Quality Dinette, Inc.

[Docket No. QF85–670–000]

September 11, 1985.

On August 29, 1985, Quality Dinette, Inc. (Applicant), P.O. Box 197, Arley, Alabama 35541 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Arley, Alabama. The primary energy source will be woodwaste. The electric power production capacity will be 275 kilowatts. The facility will consist of one steam boiler, one steam turbine, an electrical induction generator and appurtenances. The system is a condensing cycle in which electrical energy is used in the manufacture of furniture. Date of installation will be November 15, 1985.

2. Howden Wind Park I, Inc.

[Docket No. QF85–668–000]

September 11, 1985.

On August 28, 1985, Howden Wind Park I, Inc. (Applicant), of 1330 Lincoln Avenue, San Rafael, California 94901 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located on the Souza-Vaquero Ranch, in the Altamont Pass, approximately 50 miles east of San Francisco, California. The primary energy source will be wind. The electric power production capacity will be 29.47

megawatts consisting of up to 84 HWP–330/31 wind turbine generators and one HWP–750/45 wind turbine generator.

3. Delaware County Memorial Hospital

[Docket No. QF85–677–000]

September 13, 1985.

On August 29, 1985, Delaware County Memorial Hospital (Applicant), of West Main Street, Manchester, Iowa 52057, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Delaware County Memorial Hospital at Manchester, Iowa. It will consist of two TECOGEN cogeneration modules. The facility will produce and supply hot water to the hospital for domestic uses, laundry, food service, and space heating. The electric power production capacity of the facility will be 120 kW. The primary energy source will be natural gas. The installation of the facility began on June 10, 1985.

4. Energy Partners

[Docket No. QF85–679–000]

September 13, 1985.

On September 4, 1985, Energy Partners (Applicant), of 1247 Seventh Street, Suite 201, Santa Monica, California 90401 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 130 kilowatt hydroelectric facility (P. 9261–000) will be located in San Luis Obispo, California.

A separate application is required for hydroelectric project license, preliminary permit or exemption for licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

5. Genstar Gas Recovery Systems

[Docket No. QF85–675–000]

September 13, 1985

On September 3, 1985, Genstar Recovery Systems (Applicant), of 177 Bovet Road, Suite 550, San Mateo, California 94402 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located at the American Canyon Sanitary Landfill, in Napa County, California. The primary energy source will be biomass in the form of landfill gas from the adjacent sanitary landfill. The electric power production capacity will be 1,421 kilowatts. There are no plans or provisions for usage of natural gas, oil or coal.

6. Santa Barbara Cottage Hospital

[Docket No. QF85–671–000]

September 13, 1985.

On August 29, 1985, Santa Barbara Cottage Hospital (Applicant), of Pueblo at Bath Street, Santa Barbara, California 93105, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Santa Barbara Cottage Hospital at Santa Barbara, California. It will consist of a combustion turbine/generator set with a waste heat recovery boiler, and a back pressure steam turbine generating unit. Steam produced by the facility will be used to supply the plant process steam loads. The electric power production capacity of the facility will be 6.4 MW. The primary energy source will be natural gas. The installation of the facility will begin in December 1985.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–22426 Filed 9–18–85; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–140068; FRL 2900–7]

Access to Confidential Business Information by Molecular Design, Ltd.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will authorize its contractor, Molecular Design, Ltd. (MDL), for access to information which has been submitted to the Agency under the reporting provisions of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATE: Access to CBI under this contract will take place no sooner than September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, D.C. 20460, Toll-free: (800–424–9065). In Washington, D.C.: (554–1404). Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or to the environment. The Agency uses several automated information systems to aid in that determination process. Two of those systems, the Molecular Access System (MACCS) and the Data Access System (DATACCS) were developed to support the existing chemical review program and the Premanufacture Notice review program by providing the capacity to retrieve information about chemical substructures similar to those under review.

Under contract number 68–01–6973, MDL, of 1122 B Street, Hayward, CA, will perform needed modifications and improvements to the MACCS and DATACCS software programs. MDL will also train Office of Toxic Substances employees in the proper use of the software for the two systems.

MDL personnel will not conduct substantive review of any TSCA CBI under this contract; however, execution of its provisions will require that these personnel be given access to TSCA CBI contained on MACCS and DATACCS in order to evaluate their technical aspects and to effect the needed modifications and improvements. Therefore, in accordance with 40 CFR 2.306(j), EPA has determined that access to information submitted to the Agency under TSCA that may be claimed or determined to be confidential is necessary for the satisfactory performance by the contractor of the contract noted above. EPA is issuing this notice to inform submitters of information under TSCA that MDL has been authorized for access to CBI submitted under all reporting provisions of TSCA pursuant to the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" manual. CBI access will be permitted only on EPA premises and will expire on September 5, 1986.

MDL personnel will be briefed on TSCA CBI security procedures and will be required to sign non-disclosure agreements before being permitted access to confidential information, in accordance with the "TSCA Confidential Business Information Security Manual" and the Contractor Requirements Manual.

Dated: September 12, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85-22419 Filed 9-18-85; 8:45 am]

BILLING CODE 6560-50-M

[OW-9-FRL-2900-6]

Draft General NPDES Permits for Offshore Oil and Gas Operations Off Southern California; Rescheduling of Public Hearing and Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice of rescheduling of public hearing and extension of comment period.

SUMMARY: The Regional Administrator of Region 9 is today giving notice that the public hearing previously scheduled for September 26, 1985 (50 FR 34036, August 22, 1985) for the draft general National Pollutant Discharge Elimination System (NPDES) permits for offshore oil and gas exploration, development and production operations off Southern California has been rescheduled for October 22, 1985. The public comment period has been extended until November 15, 1985.

DATES: Interested persons may submit comments on the draft general permits to EPA, Region 9, at the address below no later than November 15, 1985. The public hearing will be held as follows:

Date: October 22, 1985

Time: 10:00 A.M. Session, 2:00 P.M. Session, 7:30 P.M. Session

Place Sheraton Santa Barbara Hotel, El Cabrillo Room (2nd Floor), 1111 E. Cabrillo Boulevard, Santa Barbara, CA 93103.

FOR FURTHER INFORMATION CONTACT: Eugene Bromley, Region 9, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105, (Telephone Number (415) 974-8330).

Judith E. Ayres,

Regional Administrator.

[FR Doc. 85-22416 Filed 9-18-85; 8:45 am]

BILLING CODE 6560-50-M

[A-5-FRL-2900-5]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of final action.

SUMMARY: The purpose of this notice is to announce that between May 1, 1985, and August 2, 1985, the United States Environmental Protection Agency (EPA), Region II Office, issued two final determinations, the New York State Department of Environmental Conservation (NYSDEC) issued two final determinations, and New Jersey Department of Environmental Protection (NJDEP) issued one final determination pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21.

DATES: The effective dates for the above determinations are delineated in the following chart (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Eng, Chief, Air and Environmental Applications Section, Permits Administration Branch, Office of Policy and Management, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 432, New York, New York 10278, (212) 264-4711.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the EPA Region II Office, the NYSDEC, and the NJDEP have made final determinations relative to the sources listed below:

This notice lists only the sources that have received final PSD determinations. Copies of these determinations and related materials may be available for public inspection at the following offices:

EPA Actions

U.S. Environmental Protection Agency, Permits Administration Branch, 26 Federal Plaza, Room 432, New York, New York 10278

NYSDEC Actions

New York State Department of Environmental Conservation, Division of Air Resources, Source Review and Regional Support Section, 50 Wolf Road, Albany, New York 12233-0001

NJDEP Actions

New Jersey Department of Environmental Protection, Division of Environmental Quality, Bureau of Engineering and Technology, John Fitch Plaza, CN 027, Trenton, New Jersey 08625

If available pursuant to the Consolidated Permit Regulations (40 CFR 124), judicial review of these determinations under Section 307(b)(1) of the Clean Air Act (the Act) may be sought *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the **Federal Register**. Under section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: September 6, 1985.

Christopher J. Daggett,

Regional Administrator.

Name of applicant	Location	Project proposal	Receiving agency	Final action	Date of final action
Virgin Islands Water and Power Authority.	St. John, U.S. Virgin Islands	Replacement of an existing 1.75 MW diesel generator (Green Hornet) with a new 2.5 MW diesel generator.	EPA Region II	PSD Non-applicability Determination.	6/14/85
Newton Faller Paper Mill, Inc.	Newton Falls, New York	Replacement of existing oil fired boilers (#1, #2, and, #3) with a new wood/coal/oil fired boiler.	NYSDEC	PSD Non-applicability Determination	[illegible]

Name of applicant	Location	Project proposal	Receiving agency	Final action	Date of final action
Texas Eastern Gas Pipeline Company.	Mt. Airy, New Jersey	Installation of 2 natural gas fired turbines and a natural gas compressor station	NJDEP	PSD Permit Approval	7/1/85
The New York City Department of Corrections.	Rikers Island New York, New York.	Replacement of existing boilers with a diesel engine cogeneration facility.	NYSDEC	PSD Non-applicability Determination.	7/17/85
Tishman Speyer Crown Equities (375 Hudson Street Cogeneration Project).	New York, New York	Modification of PSD permit to increase the permitted stack height (by an additional 5 meters) to 275 feet above ground-level.	EPA Region II	PSD Permit Modification Approval	8/2/85

[FR Doc. 85-22417 Filed 9-18-85; 8:45 am]

BILLING CODE [illegible]

[OPPE-FRL 2896-6]

Intent To Form an Advisory Committee To Negotiate Proposed Farmworker Protection Standards for Agricultural Pesticides

SUMMARY: EPA announces its intent to establish an Advisory Committee under the Federal Advisory Committee Act (FACA). The Committee's purpose will be to negotiate issues leading to a Notice of Proposed Rulemaking on Farmworker Protection Standards for Agricultural Pesticides, 40 CFR Part 170, under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA).

The Committee will consist of representatives of the parties interested in or affected by the outcome of the proposed rule.

DATE: EPA must receive comments and suggestions by October 9, 1985.

ADDRESS: The public may inspect comments in Room 415 West Tower, EPA Headquarters Building, 401 "M" Street, SW., Washington, D.C., from 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays. Mail two copies of comments or suggestions clearly marked "Farmworker Protection Standards Regulatory Negotiation" to:

Chris Kirtz, Director, Regulatory Negotiation Project, U.S. Environmental Protection Agency (PM-223), 401 "M" Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Chris Kirtz, Director, Regulatory Negotiation Project, U.S. E.P.A. (PM-223), 401 "M" Street, SW., Washington, D.C. 20460, (202) 382-7565.

SUPPLEMENTARY INFORMATION: Outline of Notice:

I. Project Background

A. The Concept of Regulatory Negotiation
B. Negotiations to Date
C. Farmworker Protection Standards as a Negotiation Item
D. Utility of Revising Existing Farmworker Standards
E. Key issues for Negotiation

II. Negotiation Procedures

A. *Formal Negotiation Procedures*
1. Notice of Intent to Establish Advisory Committee and Request for Comment
2. Participants
3. Request for Representation
4. Final Notice
5. Agency Action
6. Tentative Schedule
7. Failure of Advisory Committee to Reach Consensus

B. *Internal Negotiation Procedures*
1. Facilitator
2. Good Faith Negotiation
3. Administrative Support and Meetings
4. Defining Consensus
5. Record of Meetings
6. Committee Procedures
7. Interests Involved
8. Potential Participants

I. Project Background

A. The Concept of Regulatory Negotiation

The increasing complexity of government regulations, compounded by what some see as an increased formalization of the rulemaking process, can make it difficult for an agency to develop sound regulatory solutions to the problems that it is mandated to address. The traditional rulemaking process can often lead to adversarial relationships among participants. They may take extreme positions, withhold information, or attack the legitimacy of opposing positions. In addition, the traditional rulemaking process of comment and reply may fail to foster the exchange of information and ideas conducive to developing workable solutions. Public comments often focus on finding fault with the proposals of others rather than on helping to develop creative solutions. Further, the views or comments of one party are not subject to open discussion with other parties, where each has an opportunity to probe and understand the other.

On February 22, 1983, EPA announced in the **Federal Register** that it was beginning a "Negotiated Rulemaking" project to explore the extent to which negotiations among interested parties could serve as a useful supplement to its current rulemaking process.

The project's stated purposes are to test:

- The value of developing regulations by negotiation;
- The types of regulations which are most appropriate for negotiated rulemakings; and
- The procedures and circumstances which best foster negotiations.

The project involves bringing a balanced mix of parties and interests together face-to-face to negotiate at the preproposal stage. The goal of each negotiation is to reach a consensus on which to base a Notice of Proposed Rulemaking (NPRM). EPA intends to use any consensus that is justified and within its statutory authority as the basis of the proposal. Negotiations are conducted through Advisory Committees chartered under FACA. All relevant Administrative Procedure Act and other applicable statutory procedural requirements continue to apply.

A senior official selected by the EPA office responsible for developing the rule acts as chief negotiator and party-at-interest for EPA. Individuals representing definable interests in the regulated community, enforcement officials, and the affected stakeholders negotiate on behalf of their constituencies. A neutral third-party facilitator chairs the negotiations, keeps the process moving smoothly, and assists in resolving disputes.

EPA is optimistic that this process can produce better regulations, use all parties' time and resources more wisely, and reduce litigation and uncertainty.

B. Negotiations to Date

EPA has already successfully conducted two such regulatory negotiations. The first involved Nonconformance Penalties under 206(g) of the Clean Air Act, as amended. In the time allowed, the group achieved consensus on the core conceptual issues. This consensus was used as the basis of the proposed rulemaking. The proposal drew only thirteen comments, all from participants supporting the consensus. Six specifically requested that EPA conduct additional negotiations on other proposed regulations.

The second involved Emergency Pesticide Exemptions under section 18 of FIFRA. Again within the time allowed, the group reached full consensus on the exact wording for the proposal and preamble. EPA received nineteen comments on the proposal. Three were from participants supporting the proposal; the others raised relatively narrow points of interpretation or concern.

C. Farmworker Protection Standards as a Negotiations Item

EPA's Office of Pesticide Programs determined that regulatory negotiation might be a desirable way to develop a proposed revision of its Farmworkers Protection Standards for Agricultural Pesticides. The Office based that determination both on the success of EPA's prior negotiations and on the need for first-hand information from those with real-world experience.

EPA, aided by its outside expert, made a preliminary inquiry among potential parties and representatives of identified interests to determine if there is:

- A proper balance and mix of individuals to represent affected interests with a good faith interest in achieving consensus, and
- Alignment on key issues to address, a negotiation schedule, and operational groundrules.

On the basis of this preliminary inquiry, and after careful deliberation, EPA believes that negotiation on this rule can be successful and that its selection criteria have been met.

To qualify under EPA's selection criteria, an item must:

- Be at the pre-proposal stage of development;
- Have a relatively small number of identifiable parties who will negotiate in good faith;
- Present a limited number of specific issues for which sufficient information is at hand for resolution; and
- Have a time factor which lends some urgency to issuing the regulation.

This item is at the pre-proposal phase of development; affected interests are limited in number, and groups representing these interests identifiable; EPA has contacted them and believes they are interested in negotiating this item in good faith; EPA's lead program office has identified a number of basic issues for which sufficient information is in hand for resolution; and EPA is publicly committed to revising the existing 1974 regualtions (40 CFR Part 170) expeditiously.

We have therefore tentatively decided to use regulatory negotiation to develop a proposed revision of the Farmworker Protection Standards for Agricultrual Pesticides. We explicitly request comments on our tentative decision to use regulatory negotiation for this purpose.

D. Utility of Revising Existing Farmworker Protection Standards

EPA originally promulgated standards to protect Farmworkers from Agricultrual Pesticides in 1974 (40 CFR Part 170). They dealt with the occupational health and safety of farmworkers performing hand labor operations in field during and after the application of pesticides. The current regulations: (1) Prohibit spraying workers in fields. (2) specify how long after spraying workers may reenter the fields, (3) describe required protective clothing for early reentry workers, (4) set warning requirements, and (5) exclude certain activities.

Notwithstanding a variety of past and current actions to improve worker safety with regard to individual pesticides, EPA feels that revisions may be useful to:

- Provide consistent and complete coverage for worker protection by including measures such as protective clothing and reentry levels;
- Reflect the latest assessment of worker hazards; and
- Improve compliance and enforcement.

E. Key Issues for Negotiation

We anticipate the key issues to be addressed will include the following:

- What standards are necessary for agricultural pesticide handlers (*e.g.*, mixers, loaders, and applicators), and field workers (e.g. harvesters, and weeders)?
- Which toxicity category agricultural pesticides need protective clothing standards for pesticide handlers and early reentry workers—only toxicity Category I, or others? How should EPA specify and define these protective clothing requirements?
- Should EPA require decontamination and change facilities for workers who use protective clothing and equipment?
- Should EPA training in pesticide safety be required for agricultural pesticide handlers? Who else should be trained, who should do the training, and what instructions should be provided?
- Should the general reentry interval for Toxicity I agricultural pesticides be 24 hours or longer? Should other agricultural pesticide levels have "general" reentry intervals?
- Should EPA require mandatory oral reentry warnings?
- Should sites sprayed with pesticides be posted, which pesticides uses require posting, what posting should EPA require, in which locations, and for how long?
- Should the standards cover greenhouse and nursery operations, and if so, how should they deal with the different problems these uses pose?
- Should EPA require emergency medical response information or transportation?
- How should the standards provide for enforcement via Federal labeling and State programs?

II. Negotiation Procedures

This Notice announces EPA's intent to:

- Establish a Federal advisory Committee;
- Identify interests it believes are affected by the key issues listed above;
- Identify participants who will adequately represent the interests affected by the negotiations;
- Ask for public comment on the use of regulatory negotiation for this rulemaking, and the extent to which the issues, parties, and procedures are adequate and appropriate;
- Announce the time, location, and purpose of the informal organizational meeting; and
- Announce the date, time, location, and what will be covered at the first negotiation meeting.

The following procedures and guidelines will apply unless they are modified as a result of comments received on this Notice or during the negotiating process.

A. Formal Negotiation Procedures

1. *Notice of Intent To Establish Advisory Committee and Request for Comment.* As a general rule, an agency of the federal government is required to comply with the requirements of FACA when it establishes or uses a group which includes non-federal members as a source of advice. This document indicates EPA's intent to establish an advisory Committee. When EPA establishes the Committee, it will publish a separate notice announcing that fact.

2. *Participants.* The negotiating group should not exceed 25 participants. A number larger than this could make it difficult to conduct effective negotiations. One purpose of this notice is to help determine whether the revision that EPA is developing would substantially affect interests not adequately represented by the proposed participants (listed later in this Notice). We do not believe that each potentially affected organization or individual must necessarily have its own representative.

However, we firmly believe that each interest must be adequately represented. Moreover, we must be satisfied that the group as a whole reflects a proper overall balance and mix of affected interests.

3. *Requests for Representation.* If, in response to this Notice, an additional person or interest requests membership or representation on the negotiating group, the Agency, in consultation with the facilitator, will determine whether that person or interest:

- Would be substantially affected by the rule;
- Is already adequately represented in the negotiating group; or
- Should be added to the group.

4. *Final Notice.* After evaluating the comments on this announcement and requests for representation, EPA will issue a final notice. That notice will announce the establishment of a Federal Advisory Committee unless, after reviewing the comments, and weighing any other relevant considerations, EPA determines that such action is inappropriate. The negotiation process will begin once the Committee is appropriately chartered and notice is published in the **Federal Register.**

5. *Agency Action.* As noted earlier, EPA intends to use the Committee's consensus as the basis of the NPRM unless that consensus is unjustified or outside its statutory authority. In that event, the Agency will explain the reasons for its decision.

6. *Tentative schedule.* EPA will hold an organizational meeting on October 9, 1985 from 9:00 a.m. until completion, at The National Institute for Dispute Resolution, 1901 L St. NW., Suite 600, Washington, D.C. This meeting is open, and potential parties and affected interest sectors are especially encouraged to attend. (Anyone interested in attending this or other meetings, please contact Chris Kirtz at (202) 382–7565.)

The purpose of this meeting is to discuss informally with potential participants how the negotiations and Committee should function, what should and should not be covered, to answer questions, and to address any other procedural issues which may arise.

EPA intends to have the first meeting of the Advisory Committee, if established, on November 6, 1985 at the National Institute for Dispute Resolution. At this first negotiation meeting, participants will complete procedural matters which might be outstanding from the organizational meeting, determine how best to address the principal issues, and begin to address them.

To ensure timely issuance of the proposal, we intend to terminate the Committee's activities if it does not reach consensus within four months of the first meeting. The process may end earlier if the facilitator so recommends.

7. *Failure of Advisory Committee to Reach Consensus.* In the event the committee is unable to reach consensus, EPA will proceed to develop its own proposal.

B. Internal Negotiation Procedures

1. *Facilitator.* EPA will use a facilitator. The facilitator will not be involved with the substantive development or enforcement of the regulation. The facilitator's role is to:

- Chair negotiating sessions,
- Help the negotiation process run smoothly; and
- Help participants define and reach consensus.

2. *Good Faith Negotiation.* Since participants must be willing to negotiate in good faith and have authority to do so, each organization must designate a senior official to represent its interests. This applies to EPA as well, and the Agency has designated the Director of the Office of Pesticide Programs, or his alternate, as its representative.

3. *Administrative Support and Meetings.* EPA's Regulation Management Branch will supply logistical, administrative and management support. Meetings, at least initially, will be held in the Washington area. To support the negotiations, EPA has pledged funds to a resource pool which the National Institute for Dispute Resolution would administer. EPA expects that funds from private foundations would also be available. These funds may be used by the parties for such activities as training, technical support, computer simulations, and other assistance which the parties deem useful. To give committee members maximum freedom, subject to any applicable legal constraints, they will determine the procedures under which requests for funds will be made and approved.

4. *Defining Consensus.* The goal of the negotiating process is consensus. Traditionally, consensus has meant that each interest concurs in the result. We expect the participants to fashion their own working definition of this term.

5. *Record of Meetings.* In accordance with FACA's requirements, EPA will keep a record of all Advisory Committee meetings. This record will be placed in the public docket for this rulemaking. EPA will announce Committee meetings in the **Federal Register** that will be open to the public, unless closed under FACA.

6. *Committee Procedures.* Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the detailed procedures for Committee meetings which they consider most appropriate.

7. *Interests Involved.* EPA has tentatively determined that the following interests should be represented in these negotiations:

- Farmworkers,
- Growers and related Pesticide Users/Producers,
- Public Interest Groups,
- State and Federal Agencies.

EPA invites comments and suggestions on this list of interests.

8. *Potential Participants.* The following is a list of the possible interests and parties which we have tentatively identified:

Farmworkers and Public Interest Groups:

Farmworkers will be represented from seven diverse farmworker groups, including health, legal, union, and other related groups.

Growers and Related Pesticide Users/Producers:

American Farm Bureau,
National Council of Agricultural Employers,
United Fruit and Vegetable Association,
National Cotton Council/National Association of Wheat Growers,
Representative of Greenhouse and Nursery Interests,
National Agricultural Chemicals Association,
National Agricultural Aviation Association,
Application Representative.

State Officials:

Association of Pesticide Control Officials,
States FIFRA Issues Research Evaluation Group,
Texas Department of Agriculture,
National Association of State Departments of Agriculture,
Extension, Certification and Training Representative,
Association of State and Territorial Health Officials.

Federal Government:

Environmental Protection Agency,
Department of Agriculture.

Comments and suggestions on this tentative list of representatives are invited. Anyone wishing to be included should explain the interest they represent and why that interest is not already represented. The listing of a potential group does not necessarily

mean that the group has agreed to participate.

Dated: September 17, 1985.

A. James Barnes,

Deputy Administrator.

[FR Doc. 85–22545 Filed 9–18–85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Applications To Engage de Novo in Permissible Nonbanking Activities; Allied Bancshares, Inc., et al.

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons for a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 9, 1985.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Allied Bancshares, Inc.*, Houston, Texas; to engage *de novo* through its subsidiary, Allied Brokerage Services, Inc., Houston, Texas, in permissible nonbanking activities such as would be performed by securities brokerage companies, pursuant to section 225.25(b)(15) of Regulation Y.

2. *T N Bancshares, Inc.*, El Paso, Texas; to engage *de novo* through its subsidiary, T N Services, Inc., El Paso, Texas, in providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases or access to such services, facilities, or data bases by technological means.

Board of Governors of the Federal Reserve System, September 13, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–22398 Filed 9–18–85; 8:45 am]

BILLING CODE 6210-01-M

Applications To Engage de Novo in Permissible Nonbanking Activities; American Bankshares, Inc. et al.

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 7, 1985.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *American Bankshares, Inc.*, War, West Virginia; to engage *de novo* directly in making mortgage loans, consumer loans, and commercial loans, for the company's account or for the account of others. These activities would be conducted in the State of West Virginia.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *The Indiana National Corporation*, Indianapolis, Indiana; to engage *de novo* through its subsidiary, Indiana National Brokerage Services, Inc., Indianapolis, Indiana, in securities brokerage services including purchase and sale of securities for the account of a customer; related securities credit activities pursuant to Regulation T; custodial services; IRA's; Keogh accounts; cash management accounts; and other activities incidental to general securities brokerage, but not including securities underwriting, investment advice or research activities.

Board of Governors of the Federal Reserve System, September 13, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–22399 Filed 9–18–85; 8:45 am]

BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; First Virginia Banks, Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any Comment on

an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 11, 1985.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Virginia Banks, Inc.*, Falls Church, Virginia; to acquire 100 percent of the voting shares of First Virginia Bank-Southside, Farmville, Virginia, the successor by merger to The First National Bank of Farmville, Farmville, Virginia.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois [illegible]

1. *First of America Bank Corporation*, Kalamazoo, Michigan; to acquire 100 percent of the voting shares of the successor by merger to Alpena Savings Bank, Alpena, Michigan.

2. *Lincoln Financial Corporation*, Fort Wayne, Indiana; to merge with CB Bancorp, Huntington, Indiana, thereby indirectly acquiring Community State Bank in Huntington, Huntington, Indiana.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Lynxx Banking Corporation*, Little Rock, Arkansas; to become a bank holding company by acquiring 99.4 percent of the voting shares of Farmers and Merchants Bank, Rogers, Arkansas and 88.3 percent of the voting shares of First National Bank, Bentonville, Arkansas.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *JDOB, Inc.*, Naples, Florida; to acquire 88 percent of the voting shares of Sandstone State Bank, Sandstone, Minnesota.

E. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Harrisburg Bancshares, Inc.*, Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Harrisburg Bank, Houston, Texas.

Board of Governors of the Fedeal Reserve System, September 13, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-22400 Filed 9-18-85; 8:45 am]

BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Fourth Financial Corp., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 9, 1985.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Fourht Financial Corporation*, Wichita, Kansas; to acquire the successor by merger of IV Topeka Acquisition, Inc., Wichita, Kansas and First Topeka Bankshares, Inc., Topeka, Kansas, and thereby acquire The First National Bank of Topeka, Topeka, Kansas.

In connection with this application, IV Topeka Acquisition, Inc., Wichita, Kansas, has applied to become a bank holding company by merging with First Topeka Bankshares, Inc., Topeka, Kansas.

Board of Governors of the Federal Reserve System, September 13, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-22401 Filed 9-18-85; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting Period Terminated Effective
(1) 85-0973—First Southern Federal Savings and Loan Association's proposed acquisition of voting securities of Equity Investors, Inc., (Douglas Kruppe, UPE).	Aug. 28, 1985.
(2) 85-0974—First Southern Federal Savings and Loan Association's proposed acquisition of voting securities of Equity Investors, Inc., (George Kruppe, UPE)	Aug. 28, 1985
(3) 85-0988—South Jersey Industries, Inc.'s proposed acquisition of voting securities of Ottawa Silica Company.	Aug. 28, 1985
(4) 85-0982—Proposed Consolidation of The Toledo Edison Company and the Cleveland Electric Illumination Company into North Holding Company	Aug. 29, 1985.
(5) 85-0983—Proposed Consolidation of . The Toledo Edison Company and the Cleveland Electric Illumination Company into North Holding Company	Aug. 29, 1985.
(6) 85-1000—J.P. Industries, Inc.'s proposed acquisition of voting securities of D.A.B. Industries, Inc.	Aug. 29, 1985.
(7) 85-1019—Dunlop Olympic Limited's proposed acquisition of voting securities of Chloride Incorporated, (Chloride Incorporated, (Chloride Group, plc, UPE).	Aug. 28, 1985
(8) 85-1028—Quaker State Oil Refining Corporation's proposed acquisition of voting securities of Arctic Circle, Inc.	Aug 28, 1985
(9) 85-1064—Burling Northern Inc.'s proposed acquisition of assets of Vulcan Power Company, (Magma Power Company, UPE).	Aug. 29, 1985
(10) 85-1071—Georgetown Industries, Inc.'s proposed acquisition of voting securities of AGI Industries, Inc.	Aug. 29, 1985
(11) 85-0977—Royal Dutch Petroleum Company's proposed acquisition of assets of Atlantic Richfield Company.	Aug 30, 1985
(12) 85-0997—American General Corporation's proposed acquisition of assets and voting securities of Commercial Credit Company, (Control Data Corporation, UPE)	Aug. 30, 1985

Transaction	Waiting Period Terminated Effective
(13) 85-1048—L.E.M. Associates, Inc.'s proposed acquisition of voting securities of the L.E. Meyers Co. Group	Aug. 30, 1985
(14) 85-1063—Hanson Trust PLC's proposed acquisition of voting securities of SCM Corporation.	Sept. 3, 1985
(15) 85-0963—Orbanco Financial Services Corporation's proposed acquisition of assets of Northwest Acceptance Corporation, (PacifiCorp, UPE)	Sept. 4, 1985
(16) 85-0984—Turner Broadcasting System, Inc.'s (R.E. Turner, UPE) proposed acquisition of voting securities of MGM/UA Entertainment Co., (Kirk Kerkorian, UPE).	Sept. 4 1985
(17) 85-1027—Schlumberger Limited's proposed acquisition of assets of Measurement Systems Division of Gould, (Gould, Inc., UPE)	Sept. 4, 1985
(18) 85-1010—DEI Diversified Energies, Inc.'s proposed acquisition of voting securities of Dyco Petroleum Corporation.	Sept. 5, 1985
(19) 85-1014—DEI Diversified Energies, Inc.'s proposed acquisition of voting securities of Dyco Petroleum Corporation.	Sept. 5, 1985
(20) 85-1035—Alfred Hoffman, Jr.'s proposed acquisition of voting securities of BEK V Inc., (Beatrice Companies, Inc., UPE).	Sept. 5, 1985
(21) 85-1037—Norfolk, Inc.'s proposed acquisition of voting securities of Transway International Corporation.	Sept. 5, 1985
(22) 85-1046—Pantry Pride, Inc.'s proposed acquisition of voting securities of Revlon, Inc.	Sept. 5, 1985
(23) 85-1053—The Northwestern Memorial Group's proposed acquisition of assets of Henrotin Health Systems Corporation.	Sept. 5, 1985
(24) 85-1059—Welsh, Carson, Anderson & Stowe, III's proposed acquisition of voting securities of First Trust Corp. and First Retirement Marketing, Inc., (Genro Corporation, UPE).	Sept. 5, 1985
(25) 85-1079—Unity Mutual Life Insurance Company's proposed acquisition of assets of Empire State Mutual Life Insurance Company	Sept. 5, 1985.
(26) 85-1039—W.H. Smith & Son (Holdings) PLC proposed acquisition of assets of Edward E. Elson and voting securities of 18 companies, (Edward E. Elson, UPE).	Sept. 6, 1985.
(27) 85-1040—International Business Machines Corporation's proposed acquisition of voting securities of Aetna Diversified Technologies, Inc., (Aetna Life & Casualty Company, UPE)	Sept. 6, 1985
(28) 85-1072—Tri Valley Growers' proposed acquisition of assets of California Canners and Growers.	Sept. 9, 1985
(29) 85-1089—ITM International S.A.'s proposed acquisition of assets of Repcorparts USA Inc., (Repco Corporation Limited, UPE)	Sept. 9, 1985
(30) 85-1091—Amoco Corporation's proposed acquisition of assets of Phillips Petroleum Company.	Sept. 9, 1985

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580 (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-22393 Filed 9-18-85; 8:45 am]

BILLING CODE 6750-01-M

COMMISSION OF FINE ARTS

The Commission of Fine Arts; Meeting

The Commission of Fine Arts will next meet in open session on Wednesday, October 9, 1985 at 10:00 a.m. in the Commission's offices at 708 Jackson Place, NW., Washington, D.C. 20006, (202) 566-1066 to discuss various projects affecting the appearance of Washington including buildings, memorials, parks, etc., also matters of design referred by other agencies of the government. Access for handicapped persons will be through the main entrance to the New Executive Office Building on 17th Street between Pennsylvania Avenue and H Street, NW.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, D.C. September 13, 1985.

Charles H. Atherton,

Secretary.

[FR Doc. 85-22447 Filed 9-18-85; 8:45 am]

BILLING CODE 6330-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Rape Prevention and Control Advisory Committee, NIMH, Reestablishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (5 U.S.C. Appendix), the Alcohol, Drug Abuse, and Mental Health Administration announces approval and certification by the Secretary of Health and Human Services, with the concurrence of the General Service Administration Committee Management Secretariat, of the following advisory committee:

Designation: Rape Prevention and Control Advisory Committee.

Purpose: The Committee shall advise and make recommendations to the Secretary, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health, on implementing the functions of the National Center for the Prevention and Control of Rape. The Center supports research studies into the causes of rape, laws dealing with rape, the treatment of victims, and the effectiveness of existing programs to prevent and control rape. The Center also supports research projects to plan, develop, implement, and evaluate models of prevention and treatment programs for victims of rape and their families, and efforts to rehabilitate offenders. An information clearinghouse provides information and education materials with regard to prevention, treatment, and rehabilitation efforts.

Expiration Date: Authority for the Rape Prevention and Control Advisory Committee will expire May 7, 1986, unless the Secretary formally determines that continuance is in the public interest.

Dated: September 13, 1985.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85-22391 Filed 9-18-85; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 85F-0400]

Chevron Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Chevron Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a mixture of substituted polyethylene glycol succinates in the manufacture of paper and paperboard used in contact with dry food.

FOR FURTHER INFORMATION CONTACT: Leonard C. Gosule, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St., SW., Washington, D.C. 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3878) has been filed by Chevron Chemical Co., 575 Market St., P.O. Box 3744, San Francisco, CA 94119, proposing that § 176.180 *Components of paper and paperboard in contact with dry food* (21 CFR 176.180) be amended to provide for the safe use of a mixture of substituted polyethylene glycol succinates in the manufacture of paper and paperboard used in contact with dry food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the

notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c), as published in the **Federal Register** of April 26, 1985 (50 FR 16636).

Dated: September 6, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-22380 Filed 9-18-85; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Notice of Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meetings:

Orlando District Office, chaired by Carl C. Reynolds, Director, Investigations Branch. The topic to be discussed is Health Fraud.

Date: Monday, September 30, 1985, 1:30 p.m. to 3:30 p.m

Address: Food and Drug Administration, Orlando District Office, Conference Room, Orlando Central Park, 7200 Lake Ellenor Dr., Suite 120, Orlando, FL 32809.

For further information contact: Lynne Isaacs, Consumer Affairs Officer, Food and Drug Administration, 7200 Lake Ellenor Dr., Suite 120, Orlando, FL 32809, 305-855-0900.

Seattle District Office, chaired by Kenneth A. Hansen, District Director. The topic to be discussed is Health Claims on Food Labels.

Date: Thursday, October 24, 1985, 1:30 p.m. to 3:30 p.m.

Address: Federal Bldg./U.S. Courthouse, Rm. 589, 550 West Fort St., Bosie, ID.

For further information contact: Ellen M. Miller, Consumer Affairs Officer, Food and Drug Administration, 5009 Federal Office Bldg., Seattle, WA 98174, 206-442-1311.

Seattle District Office, chaired by Kenneth A. Hansen, District Director. The topic to be discussed is Health Claims on Food Labels.

Date: Thursday, November 14, 1985, 1:30 p.m. to 3:30 p.m.

Address: Old Church, 1422 11th Ave. SW., Portland, OR 97205.

For further information contact: Ellen M. Miller, Consumer Affairs Officer, Food and Drug Administration, 5009 Federal Office Bldg., Seattle, WA 98174, 206-442-1311.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: September 13, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-22374 Filed 9-18-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85C-0377]

Wesley-Jessen Division of Schering Corp; Filing of Color Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Wesley-Jessen Division of Schering Corp. has filed a petition proposing that the color additive regulations be amended to provide for the safe use of [phthalocyaninato(2-)] copper as a color additive in coloring contact lenses.

FOR FURTHER INFORMATION CONTACT: Mary J. Stephens, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1), 74 Stat. 402-403 (21 U.S.C. 376(d)(1)), notice is given that a petition (CAP 5C0196) has been filed by Wesley-Jessen Division of Schering Corp., 37 South Wabash Ave., Chicago, IL 60603, proposing that Part 74 (21 CFR Part 74) of the color additive regulations be amended to provide for the safe use of [phthalocyaninato(2-)] copper as a color additive in coloring contact lenses.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c), as published in the **Federal Register** of April 26, 1985 (50 FR 16636).

Dated: September 6, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-22379 Filed 9-18-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84F-0245]

Morton Thiokol, Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal without prejudice of a petition (FAP 4B3795) proposing that the food additive regulations be amendd to provide for the safe use of hydrogen peroxide as a sterilizing agent for an adhesive used on a heat-sealable container lid.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for food Safety and Applied Nutrition (HFF-355), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 9, 1984 (49 FR 31952), FDA published a notice that it had filed a petition (FAP 4B3795) from Morton Thiokol, Inc., Two North Riverside Plaza, Chicago, IL 60606, that proposed to amend the food additive regulations for the safe use of hydrogen peroxide as a sterilizing agent for an adhesive used on a heat-sealable container lid. Morton Thiohol, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: September 6, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-22376 Filed 9-18-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85F-0374]

Polaroid Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Polaroid Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of trimethyleneglycol di(*p*-aminobenzoate) in articles intended to contact dry food.

FOR FURTHER INFORMATION CONTACT: Julus Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3765) has been filed by Polaroid Corp., 238 South Main St., Assonet, MA 02702, proposing that § 177.1680 *Polyurethane resins* (21 CFR 177.1680) be amended to provide for the

safe use of trimethyleneglycol di(*p*-aminobenzoate) in the manufacture of polyurethane resines intended to contact dry food.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an evironmental assessment, may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25) that was published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(2).

Dated: September 6, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutruition.

[FR Doc. 85–22375 Filed 9–18–85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Alaska; Areas of Critical Environmental Concern (ACECs) for the Central Yukon Planning Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposal to Designate Areas of Critical Environmental Concern within the Central Yukon Planning Area.

SUMMARY: The Draft Resource Management Plan for the Central Yukon Area, prepared by the BLM Fairbanks District Office, proposed a number of areas to be designated as Areas of Critical Environmental Concern. This draft document divides the 9.5 million-acre planning area into five subunits. The proposed ACECs for the Central Yukon Draft plan area are grouped by the following subunits:

Subunit 1: Nulato Hills

In order to maintain high quality anadromous fish-spawning habitat, the preferred alternative in this plan would close crucial spawning beds of streams in this subunit to mineral entry and location. All tributaries of these rivers or streams which lie upstream from these spawning areas would be placed under ACEC designation. The river or stream ACEC designation would consist of a narrow corridor of 300 feet each side of the high-water mark of each tributary. These ACECs would be open to mineral leasing and mineral entry and location. The primary focus of these ACECs would be the protection of crucial fisheries habitat. All surface disturbing uses within these areas will be limited so as to protect this crucial habitat from siltation, or other forms of physical or chemical pollution.

The following are propsed for ACEC designation within this subunit:

1. Shaktoolik River tributaries.
2. Gisasa River tributaries.
3. Ungalik River tributaries.
4. Kateel River tributaries.

In addition, the entire upper watershed of the Unalakleet River, contained within the planning area, is proposed as an ACEC with the same limitations on surface disturbing uses mentioned above.

Subunit 2: Dulbi-Kaiyuh Mountains

Approximately 17,000 acres of crucial caribou habitat within this subunit is proposed as an ACEC due to its importance as a caribou calving area. The primary reason for the ACEC is the protection of this wildlife resource. Potentially damaging resource uses will be limited to protect the areas value for caribou calving. The specific location of this area can be found on the maps obtainable from the Fairbanks District Office.

Subunit 4: Tozitna

All tributaries of the Tozitna River, upstream of anadromous fish spawning areas, are proposed as ACECs (300 ft. from mean high-water mark on each side of the stream) to protect downstream habitat. The same limitations will be placed on uses within these ACECs as described for those in the Nulato Hills subunit.

The Ray Mountain and Tanana Ridge ACECs in this subunit are proposed to protect crucial caribou calving areas. Damaging uses will be limited within these areas to protect the habitat for its caribou calving values.

Subunit 6: Hughes

The tributaries upstream of the Indian and Little Indian Rivers spawning areas are also proposed as ACECs to protect crucial fisheries habitat. These ACECs would follow the 300-feet rule for other streams mentioned above.

In addition, an ACEC surrounding Caribou and Clear Creeks (tributaries of the Hogatza River) would be designated. This ACEC would extend one mile on each side of these creeks.

DATE: Comments on these proposed ACECs will be accepted at the following address for 60 days following the publication of this notice. Maps indicating the location of these proposed ACECs are available in the Draft RMP/EIS for the Central Yukon; also available at the following address.

ADDRESS: Fairbanks District Office, Bureau of Land Management, 1541 Gaffney Road, Fairbanks, AK 99703. Telephone: (907) 356–5381.

FOR FURTHER INFORMATION CONTACT: Roger Bolstad, Northwest Resource Area Manager, address listed above. Telephone: (907) 356–5384.

Mike Penfold,

State Director.

[FR Doc. 85–22405 Filed 9–18–85; 8:45 am]

BILLING CODE 4310-JA-M

[W–82736]

Coal Lease Offering by Sealed Bid; Wyoming

Department of the Interior, Bureau of Land Management, Wyoming State Office, 2513 Warren Avenue, Cheyenne, Wyoming 82001. Notice is hereby given that certain coal resources in the lands hereinafter described, located in Carbon County, Wyoming will be offered for competitive lease by sealed bid. This offering is being made as a result of an emergency by-pass coal lease application and a reoffering request filed by Medicine Bow Coal Company in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.). The sale will be held at 2:00 p.m. October 16, 1985, in the third floor conference from at the above address.

Processing of the Medicine Bow Emergency lease application and the related amendment to the Hanna Basin Management Framework Plan have been completed. This included an environmental assessment (EA) of the proposed coal development and plan amendment. The results of these activities were a finding of no significant environmental impacts from the proposed coal development, the amended planning decision that the Federal coal lands involved are acceptable for further leasing consideration and the decision to offer the Federal coal resources for lease. The emergency lease/plan amendment EA and Record of Decision, including mitigation requirements, are on file in the Wyoming State Office.

This tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value determination of the tract. The minimum bid is $100 per acre. No bid less than $100 per acre will be considered. The minimum bid is not intented to represent fair market value. The fair market value will be determined by the Authorized Officer after the sale. Sealed bids must be submitted on or before 1:00 p.m., October 16, 1985, to the Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001. Bids received after that time will not be considered.

Coal Offered

The coal resource to be offered consists of all the recoverable coal in the following described lands located in Carbon County, Wyoming:

T. 23 N., R. 83 W., 6th P. M., Wyoming.
Sec. 30: Lots 1, 2, E½NW¼.
T. 24 N., R. 83 W., 6th P. M.,
Sec 28: W½NW¼, S½;
Sec. 29: N½NE¼, NE¼NW¼, NE¼SE¼.
T. 23 N., R. 84 W., 6th P. M.,
Sec. 1: Lot 2, SW¼NE¼, SW¼NW¼, SW¼;
Sec. 2: SE¼SE¼;
Sec. 11: NW¼NE¼, SE¼NW¼, E½SW¼, SW¼SW¼;
Sec. 13: SW¼SW¼;
Sec. 14: E½, N½NW¼, SE¼NW¼;
Sec. 24: W½NE¼NE¼, NW¼NE¼, S½NE¼, E½W½, SE¼;
Sec. 25: E½NE¼, N½NW¼;
Sec. 26: E½, E½SW¼;
Sec. 35: E½NW¼.
T. 24 N., R. 84 W., 6th P. M.,
Sec. 36: E½SW¼, W½SE¼.

The 2,973.86-acre tract contains an estimated 12.78 million tons of recoverable coal with the following estimated coal quality: BTU—10,468/lb; Sulfur—.479 percent; Ash—8.10 percent; Moisture—12.19 percent. The coal classifies as subbituminous.

Rental And Royalty

The lease issued as a result of this offering will provide for payment of an annual rental of $3.00 per acre and a royalty payable to the United States of 12.5 percent of the value of coal producted by strips of auger mining methods and 8.0 percent of the value of coal produced by underground methods.

Deferred bonus

Payment of the bonus bid for this lease shall be on a deferred basis. One-fifth of the bonus will be payable on the day of the sale. The balance shall be paid in equal annual installments due and payable on the first four anniversary dates of the lease.

Notice of Availability

Bidding instructions for the offered tract are included in the Detailed Statement of Lease Sale. Copies of the statement and of the proposed coal lease are available at the Wyoming State Office. Case file documents are also available at that office for public inspection. Coal resource information pertaining to this tract is also available for public inspection in the Rawlins District Office, 1300 Third Street, P.O. Box. 670, Rawlins, Wyoming 82301.

Hillary A. Oden,

State Director.

[FR Doc. 85-22432 Filed 9-18-85; 8:45 am]

BILLING CODE 4310-22-M

Management Framework Plan, Bakersfield District, CA.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of the Availability of Planning Criteria for the Amendment of the Sierra Management Framework Plan, Bakersfield District, California.

SUMMARY: In accordance with 43 CFR 1610.2 notice is hereby given of the availability of the Planning Criteria to direct the Amendment of the Sierra Management Framework Plan in the Folsom Resource Area.

FOR FURTHER INFORMATION CONTACT: The Bakersfield District of the Bureau of Land Management has prepared the initial Planning Criteria to direct the planning effort in the Folsom Resource Area. The Plan will involve the public lands located in Yuba, Nevada, Placer, El Dorado, Amador, Calaveras, Tuolumne and Mariposa Counties and will carry out the requirements of the Federal Land Policy and Management Act (FLPMA) of 1976.

As new information surfaces during the planning process, and/or from public input, additional planning criteria may be developed.

This initial planning criteria is available for review at the following locations: Bakersfield District Office, 800 Truxtun Avenue, Room 302, Bakersfield, California 93301, (805) 861-4191; and Folsom Resource Area Office, 63 Natoma Street, Folsom, California 95630, (916) 985-4474.

For further information contact Deane Swickard, Folsom Resource Area Manager, at the Folsom address listed above.

Robert D. Rheiner, Jr.,

District Manager.

[FR Doc. 85-22445 Filed 9-18-85; 8:45 am]

BILLING CODE 4310-40-M

[N-42415]

Proposed Withdrawal and Opportunity for Public Meeting; Nevada

September 11, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration proposes to withdraw 80 acres of public land for the installation and operation of a VHS direction finder in support of air traffic operations for the McCarran International Airport in Las Vegas. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and requests for a public meeting should be received by December 18, 1985.

ADDRESS: Comments and meetings requests should be sent to: State Director, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM, Nevada State Office, (702) 784-5703.

On July 2, 1985, the Federal Aviation Administration filed an application to withdraw the following described public land, subject to valid existing rights, from settlement, sale, location or entry under the nondiscretionary public land laws, including the mining laws:

Mount Diablo Meridian

T. 13 S., R. 69 E.,
Sec. 27, NW¼SW¼;
Sec. 28, NE¼SE¼.

The area described contains 80 acres in Clark County, Nevada.

The purpose of the withdrawal is for the use of the land by the Federal Aviation Administration for a VHS direction finder in support of air traffic operations for the McCarran International Airport in Las Vegas. The withdrawal is necessary to provide and secure a clear zone with a 1000 foot radius extending from the direction finder.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the

proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled, or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are recreational and visitor use activities, wildlife habitat management, and development of oil and gas reserves without surface occupancy. No licenses, permits, cooperative agreements or discretionary land use authorizations of a temporary nature will be allowed on the lands without the approval of an authorized officer of the Bureau of Land Management.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 85-22446 Filed 9-18-85; 8:45 am]

BILLING CODE 4310-HC-M

[CA-17302]

Sale of Public Land; San Diego County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Direct Sale of Public Land in San Diego County, California—Change of Sale Date.

SUMMARY: This notice changes the sale date specified in Bureau's Notice of Realty Action published in the **Federal Register** on August 1, 1985, in Vol. 50, No 148, Page 31254. The aforementioned publication gave a sale date of September 24, 1985, for direct sales identified under Serial Numbers CA-17297 through CA-17303. This notice changes the sale date for the public land described under Serial Number CA-17302 to October 30, 1985. The land description for the subject direct sale can be found in the July 2, 1985 **Federal Register** in Vol. 50, No. 127, Page 27366.

Background Information

The action was deemed necessary to ensure adequate public notice in the general vicinity of the direct sale parcel. The purchaser, The Nature Conservancy, was late in publishing word of the direct sale in the local newspaper. The sale date was changed to allow at least 60 days of public notice prior to the sale.

Dated: September 13, 1985.

Gerald E. Hillier,

District Manager.

[FR Doc. 85-22444 Filed 9-18-85; 8:45 am]

BILLING CODE 4310-40-M

Idaho; Filing of Plat of Survey

September 10, 1985.

The plat of survey of the following land was officially filed in the Idaho State Office, Bureau of Land Management, Boise Idaho, on the date hereinafter stated:

Boise Meridian, Idaho

T. 7 N., R. 27 E., Section 16, Accepted February 4, 1985, Officially filed February 27, 1985

Title to section 16 vested in the State of Idaho upon acceptance of the survey.

Inquiries regarding this survey should be addressed to Chief, Branch of Cadastral Survey, Idaho State Office, 3380 Americana Terrace, Boise, Idaho, 83706.

Sharron Deroin,

Chief, Land Services Section.

[FR Doc. 85-22395 Filed 9-18-85; 8:45 am]

BILLING CODE 4310-GG-M

[NM-52385]

New Mexico; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior proposes that a 720.00-acre withdrawal for the Bureau of Reclamation continue for an additional 50 years. The lands will remain closed to surface entry and mining and will remain open to mineral leasing.

DATE: Comments should be received by December 18, 1985.

FOR FURTHER INFORMATION CONTACT: Pauline T. Brown, BLM, New Mexico, State Office, P.O. Box 1449, Santa Fe, New Mexico 87504-1449, 505-988-6326.

The Department of the Interior proposes that the existing land withdrawal made by Secretary's Order of October 19, 1912, be continued for a period of 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

T. 18 S., R. 26 E.,
Sec. 36, All.
T. 19 S., R. 26 E.,
Sec. 12, E½NW¼.

The area described aggregate 720.00 acres in Eddy County, New Mexico.

The purpose of the withdrawal is for use in connection with the Brantley and Carlsbad Projects.

The withdrawal segeregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: September 9, 1985.

Monte G. Jordan,

State Director.

[FR Doc. 85-22396 Filed 9-18-85; 8:45 am]

BILLING CODE 4310-FB-M

Land Resource Management

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of filing of plat of survey.

SUMMARY: Plat of survey of the lands described below accepted August 19, 1985, was officially filed in the Montana State Office effective 10 a.m. on September 4, 1985.

Principal Meridian, Montana

T. 13 S., R. 5 E.

The supplemental plat showing Tract 38, Township 13 South, Range 5 East, is based upon plats approved June 30, 1902; November 29, 1920; January 8, 1921; and December 20, 1966. The area described is in Gallatin County.

This plat was prepared to accommodate a patent application request by the City of West Yellowstone, Montana.

EFFECTIVE DATE: September 4, 1985.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: September 5, 1985.

Peggy J. Davidson,

Chief, Branch of Records.

[FR Doc. 85-22373 Filed 9-18-85; 8:45 am]

BILLING CODE 4310-DN-M

Realty Action; Public Land Sale; Wisconsin and Minnesota

AGENCY: Bureau of Land Management, Interior.

ACTION: Competitive Sale of Federal Lands.

SUMMARY: The previous **Federal Register** Notice announcing the availability for sale of Federal land in Minnesota and Wisconsin published in Vol. 49, No. 150 on Thursday, August 2, 1984, is amended to extend the deadline for acceptance of sealed bids from September 25, 1985, to September 25, 1986.

The following parcel numbers have been sold and are deleted from the original notice: ES-33030, ES-33032, and ES-33193.

The notice is also amended as follows: The successful high bidder will be required to submit full payment for the balance of the bid within 180 days from the date of the decision to accept the bid.

FOR FURTHER INFORMATION CONTACT: General inquiries or additional information requests concerning the sales may be directed to Larry Johnson at the Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201-0631 or by calling (414) 291-4400.

Bert Rodgers,

Acting District Manager.

[FR Doc. 85-22443 Filed 9-18-85; 8:45 am]

BILLING CODE 4310-DN-M

Minerals Management Service

Development Operations Coordination Document; Exon Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is here by given that Exxon Company, U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 3091 and 4139, Blocks 632 and 657, respectively, Matagorda Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore based located at Flour Bluff, Texas.

DATE: The subject DOCD was deemed submitted on September 9, 1985.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd. Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Developement Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 10, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-22394 Filed 9-18-85; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Conoco, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document.

SUMMARY: This Notice announces that Conoco Inc., Unit Operator of the Grand Isle-CATCO Federal Unit Agreement No. 14-08-001-2021, submitted on August 30, 1985, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the Grand Isle-CATCO Federal unit.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: September 12, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-22441 Filed 9-18-85; 8:45 am]

BILLING CODE 4310-MR-M

Bureau of Reclamation

[INT-DES 85-40]

Green Mountain Reservoir Water Marketing Program, Colorado-Big Thompson, Windy Gap Projects, CO; Public Hearings on Draft Supplement to the Final Environmental Statement

Public hearings will be held by the Bureau of Reclamation to receive comments on the draft supplement (INT-DES 85-40), to the final environmental statement for the Colorado-Big Thompson, Windy Gap Projects, Colorado. The draft supplement was filed with the Environmental Protection Agency on September 6, 1985.

The final environmental statement (INT-FES 81-20) was filed in April 1981, in compliance with the National Environmental Policy Act of 1969, as amended. The draft supplement displays the environmental consequences of proposed water sales that would

provide for future water demands that include industrial use (oil shale and snowmaking), municipal use, recreation, fish and wildlife, and power generation.

Two public hearings will be held. The first hearing will be at the Inn at Glenwood in Glenwood Springs, Colorado, on October 9, 1985, beginning at 10 a.m. The second hearing will be at the Best Western Lake Dillon Lodge in Frisco, Colorado, on October 10, 1985, beginning at 10 a.m. Both hearings will continue until all oral comments are heard. Hearing witnesses will be allowed 10 minutes to present their oral comments.

Speakers will not be allowed to trade or consolidate the time in order to obtain a longer oral presentation; however, the Hearing Officer may allow a speaker to provide additional oral comments after scheduled witnesses have been heard. Additional comments will be limited to 10 minutes.

Persons wishing to make oral statements will be scheduled in the order that written or telephone requests are received unless a specific time period is requested. If a speaker requests a specific time period, the speaker will be scheduled to speak as close to the requested time as possible. Scheduled speakers not present when called will lose their privilege in the scheduled order, and their names will be recalled after all other scheduled speakers have been heard.

Individuals and organizations wishing to make oral statements should contact the Lower Missouri Regional Office, Bureau of Reclamation, Building 20, Denver Federal Center, Denver, Colorado 80225, telephone (303) 236–0684, by letter or telephone. Requests for scheduled presentations will be accepted until 4 p.m. on October 8, 1985. Speaking requests received subsequent to that time will be handled on a first-come, first-serve basis following the scheduled presentations. Written comments from those unable to attend and those wishing to supplement their oral presentations will be accepted for the record until 4 p.m., November 15, 1985. Written comments should be addressed to the Regional Director at the address listed above and should specify that they are to be included in the hearing record.

Dated: September 13, 1985.

William C. Klostermeyer,

Acting Commissioner.

[FR Doc. 85–22424 Filed 9–18–85; 8:45 am]

BILLING CODE 4310–09–M

Upper Gila Water Supply Study, Central Arizona Project, Arizona/New Mexico; Intent To Prepare an Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior intends to prepare an environmental impact statement (EIS) on the construction and operation of the Upper Gila Water Supply Project. This feature of the Central Arizona Project (CAP) was authorized for construction in 1968 as part of the Colorado River Basin Project Act, Pub. L. 90–537.

The primary purpose of the Upper Gila Water Supply Project is to provide New Mexico water users with an average annual consumptive use, including evaporation, of up to 18,000 acre-feet of CAP water. In addition, the project could include flood control on the Gila River, and provide additional recreation opportunities. To provide for those purposes, a number of alternative actions have been evaluated through the planning process in order to determine those reasonable alternatives to be studied in detail.

Based on the development and ranking of preliminary plans, five candidate plans have been identified, including a "No Federal Action" alternative, which will be carried forward for more detailed analysis and evaluation in the EIS. The viable alternatives are as follows:

Plan 1: Large Conner Dam and Reservoir

Under the plan, Conner Dam would be located on the Gila River about 7 miles upstream of Redrock, New Mexico. At normal water surface elevation the reservoir pool would provide about 110,000 acre-feet of storage. Conner Dam would be constructed to provide the authorized depletion of 18,000 acre-feet (12,000 acre-feet after evaporation) of water annually through the life of the project to meet CAP-New Mexico water supply objectives. Incidental flood control and recreation benefits of the Gila River and additional recreational opportunities also would be available.

Plan 2: Small Conner Dam

This alternative involves storng water in a smaller Conner Dam and Reservoir with construction delayed approximately 10 years to coincide with development of local needs. The structure would provide about 100,000 acre-feet of storage. Rather than developing the authorized depletion and consequent 12,000 acre-feet annually (after evaporation), the structure would supply 10,000 acre-feet annually, thereby meeting central Grant County's current projection of water needs over the life of the project. As in Plan 1, the smaller Conner Dam would be constructed to provide a water supply for New Mexico with incidental flood control and recreation generated as a consequence.

Plan 3: Direct Pumping and Offstream Storage

Under this plan, water would be diverted from the Gila River via a pumping plant and pipeland and stored in an 85,000 acre-foot offstream storage site presently envisioned to be Mangas Creek Dam and Reservoir. The pumping plan would be located along the Gila River stream channel just upstream of the confluence of the Gila River and Mangas Creek. A small diverison dam would be required to provide a forebay for the pumping plant. This alternative would provide adequage water supplies to meet the authorized CAP-New Mexico water supply objectives of 18,000 acre-feet annually.

Plan 4: Hooker Dam and Offstream Storage

Under this plan, a small dam and reservior (32,000 acre-feet of storage) would be constructed on the Gila River about 7 miles northeast of Cliff and Gila, New Mexico. This small dam would provide temporary storage until the water could be pumped into an offstream storage site, tentatively identified as Mangas Creek Dam. The offstream storage site would have a storage capacity of about 85,000 acre-feet, and would allow the authorized CAP-New Mexico water supply of 18,000 acre-feet annually to be developed.

Plan 5: No Federal Action

With this option, the Upper Gila Water Supply Project would not be constructed.

The agency proposed action is not identified at this time, because planning studies and public invovlement activities are still ongoing. The proposed action, however, is scheduled to be publicly announced by June 1986.

Public meetings on the Upper Gila Water Supply Project will be scheduled in the near future. These meetings will serve primarily as scoping sessions to identify significant environmental impacts and issues that should be studied and addressed in the environmental impact statement. The times and locations of those public meetings will be announced later in the **Federal Register** and local newspapers, as well as in mailed notices to those individuals, groups, and agencies that have expressed an interest in the project.

To insure that the full range of alternatives and issues related to the project are identified and addressed, comments and suggestions are invited from all interested parties. For further information of the Environmental Impact Statement contact Mr. Bruce Ellis, Chief, Environmental Division, Arizona Projects Office, Bureau of Reclamation, P.O. Box 9980, Phoenix, Arizona 85024, telephone (602) 870–6767.

Dated: September 13, 1985.

William C. Kostenmeyer,

Acting Commissioner.

FR Doc. 85–22425 Filed 9–18–85; 8:45 am]

BILLING CODE 4310–09–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–19 (Sub-No. 103)]

Rail Carriers; The Baltimore and Ohio Railroad Company—Abandonment—in Baltimore, MD; Notice of Findings

The Commission has found that the public convenience and necessity permit the Baltimore and Ohio Railroad Company to abandon a 0.39 mile portion of its rail line between Valuation Station 0+00 and Valuation Station 9+53 located in the bed of Fell Street and between Valuation Station 0+00 and Valuation Station 11+05 located in the bed of Wolfe Street, in Baltimore, MD.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Kathleen M. King,

Acting Secretary

[FR Doc. 85–22497 Filed 9–18–85; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30707]

C&J Railroad Investment Co., Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts the C&J Railroad Investment Company, Inc., from the requirements of 49 U.S.C. 10901 with respect to (1) the operation of a previously abandoned 8.48-mile line of railroad in Christian County, KY, (2) the operation of a previously abandoned 1.98-mile line segment in Christian County, KY, and (3) the acquisition of trackage rights from the Cadiz Railorad over 21.5 miles of line in Caldwell, Trigg, and Christian Counties, KY.

DATES: This exemption is effective on the date of service, September 18, 1985. Petitions to reopen must be filed by October 9, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30707 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
(2) Petitioner's Representative: Patti S. Howell, 1814 Hopper Court, Hopkinsville, KY 42240.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: September 11, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Sterenio. Commissioner Sterrett did not participate in the disposition of this proceeding.

Kathleen M. King,

Acting Secretary.

[FR Doc. 85–22409 Filed 9–18–85; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–10 (Sub-No. 32)]

Norfolk and Western Railway Co.; Abandonment in Pulaski, Wythe, Carroll, and Grayson Counties, VA; Findings

The Commission has issued a certificate authorizing Norfolk and Western Railway Company to abandon its 56.80-mile rail line (a) between Dora Junction (milepost P 1.72) and Galax, VA (milepost 53.25), and (b) between Fries Junction (milepost P 39.8) and Fries, VA (milepost P 45.36), in Pulaski, Wythe, Carroll, and Grayson Counties, VA. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially respoinsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Kathleen M. King,

Acting Secretary.

[FR Doc. 85–22407 Filed 9–18–85; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-No. 141)]

Seaboard System Railroad, Inc.; Abandonment in Lake County, FL; Findings

The Commission has found that the public convenience and necessity permit Seaboard System Railroad, Inc. to abandon its 14.54 mile rail line between Leesburg and Howey, in Lake County, FL, from milepost AS 802.16 to AS 808.60 and from milepost ASF–803.3 to milepost ASF–816.4.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail

service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Kathleen M. King,

Acting Secretary.

[FR Doc. 85-22408 Filed 9-18-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

September 16, 1985.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available;

(2) The office of the Agency issuing the form;

(3) The title of the form;

(4) The agency form number, if applicable;

(5) How often the form must be filled out;

(6) Who will be required or asked to report;

(7) An estimate of the number of responses;

(8) An estimate of the total number of hours needed to fill out the form;

(9) An indication of whether section 3504(h) of Pub. L. 96-511 applies; and,

(10) The name and telephone number of the person or office responsible for the OMB review.

Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the item(s) contained in this list should be directed to the reviewer listed at the end of each entry and to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

Department of Justice Agency Clearance Officer: Larry E. Miesse, 202-633-4312.

.Δ *Revision of a Currently Approved Collection*

(1) Larry E. Miesse, 202-633-4312;

(2) Office of Justice Programs, Department of Justice;

(3) Crime Victim Assistance Grant Guidelines;

(4) None;

(5) Semi-annually;

(6) State and local governments. Information requested is necessary to submit a statutorily required report to the Congress;

(7) 112 respondents;

(8) 11,200 burden hours;

(9) Not applicable under 3504(h);

(10) Robert Veeder—395-4814.

.Δ *Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection*

(1) Larry E. Miesse, 202-633-4312;

(2) Federal Bureau of Investigation, Department of Justice

(3) Nationwide Law Enforcement Training Needs Assessment;

(4) None;

(5) Annually;

(6) State and local governments. Survey approximately 5,000 state and local law enforcement agencies to determine specific areas where Federal training assistance is most needed;

(7) 5,000 respondents;

(8) 5,050 burden hours;

(9) Not applicable under 3504(h);

(10) Robert Veeder—395-4814.

Larry E. Miesse,

Departmental Clearance Officer, Department of Justice.

[FR Doc. 85-22412 Filed 9-18-85; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act; Hilmar Schmidt

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 26, 1985 a proposed consent decree in *United States* v. *Hilmar Schmidt*, Civil Action No. N-84-135, was lodged with the United States District Court for the District of Connecticut. The proposed consent decree concerns use of an unleaded gasoline tank nozzle on a leaded gasoline pump. The proposed consent decree requires the defendant to pay a penalty of $500.00.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Hilmar Schmidt*, Civil Action No. N-84-1135, DJ Ref. 90-5-2-1-661.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Connecticut, 139 Orange Street, New Haven, Connecticut 06508, and at the United States Environmental Protection Agency, Region I, John F. Kennedy Federal Building, 22nd Floor, Boston, Massachusetts 02203. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-22414 Filed 9-18-85; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act; American Recovery Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 3, 1985, a proposed consent decree in *United States* v. *American Recovery Co.*, Civil Action No. HAR 84-225, was lodged with the United States District Court for the District of Maryland. The proposed decree imposes a civil penalty of fifty thousand ($50,000) dollars and requires American Recovery Company to certify to the date that it has ceased all operations and discharges at its Curtis Bay facility and to certify that there will be no future discharges.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *American Recovery Co.*, D.J. Ref. 90-5-2-1-659.

The proposed consent decree may be examined at the Office of the United States Attorney, 8th Floor, U.S. Courthouse, 101 W. Lombard Street, Baltimore, MD. 21201, and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA. 19107, and at the Environmental Enforcement Section.

Land and Natural Resources Division, Department of Justice, Room 1515. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-22384 Filed 9-18-85; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; ARCO Oil and Gas Co.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on August 21, 1985, 1985, a proposed consent decree in *United States* v. *ARCO Oil and Gas Company*, Civil Action No. 3-85-1621 H, was lodged with the United States District Court for the Northern District of Texas, Dallas Division. This consent decree settles a lawsuit filed August 21, 1985, pursuant to section 309 of the Clean Water Act ("the Act"), 33 U.S.C. 1319, for injunctive relief and for assessment of a civil penalty against ARCO Oil and Gas Company ("ARCO"), a division of Atlantic Richfield Company. The complaint alleged discharges of pollutants from certain of ARCO's offshore platforms, which are located in the Gulf of Mexico, in violation of section 301 of the Act, 33 U.S.C. 1311, and the National Pollutant Discharge Elimination System ("NPDES") permits governing ARCO that were issued pursuant to section 402 of the Act, 33 U.S.C. 1342.

Under the terms of the proposed consent decree, ARCO is to construct facilities and adopt operations, maintenance, and monitoring procedures at its offshore platforms located in the Gulf of Mexico to attain and maintain compliance with the Act and the NPDES permits. The proposed consent decree also calls for stipulated penalties against ARCO for failure to meet any of the deadlines set by the Decree. Also, the proposed consent decree calls for ARCO to pay a civil penalty of $340,000 with respect to the violations of the Clean Water Act alleged in the Complaint.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530. All comments should refer to *United States* v. *ARCO Oil and Gas Company*, D.J. Ref. 90-5-1-1-2370.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI, Contact: B. Ralph Corley, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1201 Elm Street, Dallas, Texas 75270 (214) 767-9971;

United States Attorney's Office, Contact: Mary Ann Moore, Assistant United States Attorney, Northern District of Texas, U.S. Federal Building and Courthouse, 1100 Commerce Street, Room 16G28, Dallas, Texas 75270.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-22385 Filed 9-18-85; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Departmental policy, 28, CFR 50.7, notice is hereby given that on September 5, 1985, a proposed Consent Decree in *United States v. Continental Group, U.S.A., d/b/a/ Continental Can Company, U.S.A.*, Civil Action No. 84-C-0886 was lodged with the United States District Court for the Eastern District of Wisconsin. The proposed Consent Decree concerns the Defendant's coating operations at its can manufacturing plants in Milwaukee and Racine, Wisconsin. During the manufacturing process, volatile organic compounds (VOCs) are emitted into the atmosphere. The proposed Consent Decree required the Defendant to bring all its coating lines into compliance with the VOC emission limits of the Wisconsin State Implementation Plan by replacing all high solvent coatings with low solvent coatings by December 31, 1985. The proposed Decree also requires the Defendant to pay a civil penalty of $229,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *U.S. v. Continental Group, U.S.A. d/b/a/ Continental Can Company, U.S.A.*, D.J. Ref. No. 90-5-2-1-693.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Eastern District of Wisconsin, 330 Federal Building, 517, E. Wisconsin Ave., Milwaukee, WI, 53703, and at the Region V Office of the Environmental Protection Agency, 230 South Dearborn, Chicago, Illinois 60604. Copies of the Consent Decree may be examined in person at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Washington, D.C. 20530. In requesting a copy, please attach a check in the amount of $4.00, payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-22386 Filed 9-18-85; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Water Act; Marlette Plating Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Marlette Plating Company*, Civil Action No. CV85-1061E, has been lodged in the United States Court for the Western District of New York.

The proposed consent decree concerns discharges of effluent from the defendant's non-integrated metal plating facility in Buffalo, New York. The proposed decree requires the defendant by July 1, 1985 to comply with the Clean Water Act and controlling regulations. Marlette also is required to pay a civil penalty of $10,000. In addition, the defendant is required to pay stipulated penalties in the event that it fails to comply the terms of the proposed decree.

The Department of Justice will receive for a period of thirty (30) days from the

date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Marlette Plating Company*, D.J. Ref. No. 90–5–1–1–2328.

The proposed consent decree may be examined at the Office of the United States Attorney, 502 U.S. Courthouse, Court and Franklin Streets, Buffalo, New York and at the Region 2 Office of the Environmental Protection Agency, 26 Federal Plaza, Room 900, New York, New York. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $2.00 (10 cents per page reproduction cost) made payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resource Division, Department of Justice.

[FR Doc. 85–22387 Filed 9–18–85; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act; National Finishing Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. National Finishing Corporation*, Civil Action No. CV85–1060E, has been lodged in the United States Court for the Western District of New York.

The proposed consent decree concerns discharges of effluent from the defendant's non-integrated metal plating facility in Buffalo, New York. The proposed decree requries the defendant by November 1, 1985 to comply with the Clean Water Act and controlling regulations. National Finishing also is required to pay a civil penalty of $64,000. In addition, the defendant is required to pay stipulated penalties in the event that it fails to comply the terms of the proposed decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. National Finishing Corporation*, D.J. Ref. No. 90–5–1–1–2321.

The proposed consent decreè may be examined at the Office of the United States Attorney, 502 U.S. Courthouse, Court and Franklin Streets, Buffalo, New York and at the Region 2 Office of the Environmental Protection Agency, 26 Federal Plaza, Room 900, New York, New York. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $1.70 (10 cents per page reproduction cost) made payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resoruces Division, Department of Justice.

[FR Doc. 85–22388 Filed 9–18–85; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Judgment Pursuant to the Clean Air Act; Triple A Muffler

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 29, 1985, a proposed Consent Judgment in *United States v. Robert Taylor d/b/a Triple A Muffler*, Civil Action No. 3–85 1703 F, was lodged with the United States District Court for the Northern District of Texas. The proposed Consent Judgment requires Robert Taylor d/b/a Triple A Muffler ("Triple A Muffler") to fully comply with section 203 of the Clean Air Act, 42 U.S.C. 7522. The Judgment also requires Triple A Muffler to pay civil penalties for past violations and permanently enjoins them from removing or rendering inoperative any device or element of design of any motor vehicle that is designed to control exhaust emissions from the vehicle.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Judgment. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Robert Taylor d/b/a Triple A Muffler*, D.J. Ref. 90–5–2–1–857.

The proposed Consent Judgment may be examined at the office of the United States Attorney, Northern District of Texas, United States Federal Building & Courthouse, Room 16G28, 1100 Commerce Street, Dallas, Texas 75242 and at the Region VI Office of the Environmental Protection Agency, InterFirst Two Building, 1201 Elm Street, Dallas, Texas 75270. Copies of the Consent Judgment may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 10th Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Consent Judgment may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Division of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85–22389 Filed 9–18–85; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated May 31, 1985, and published in the **Federal Register** on June 19, 1985; (50 FR 25479), Mallinckrodt, Inc., Department C.B., Mallinckrodt and Second Streets, St. Louis, Missouri 63147, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Etorphine hydrochloride (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane (9254)	II
Dextroptropoxyphene (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Nalmefene (9341)	II
Opium extracts (9610)	II
Opium fluid extracts (9620)	II
Tincture of opium (9630)	II
Powdered opium (9639)	II
Granulated opium (9640)	II
Oxymorphone (9652)	II

Drug	Schedule
Noroxymorphone (9668)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Reglations, § 1301.54(e), the Deputy Assistant Administration hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: September 10, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-22434 Filed 9-18-85; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated February 11, 1985, and published in the **Federal Register** on February 19, 1985; (50 FR 7007), Johnson Matthey, Inc., 1401 King Road, West Chester, Pennsylvania 19380, made application to the Drug Enforcement Administration to be registered as bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Sufentanil (9740)	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: September 10, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-22435 Filed 9-18-85; 8:45 am]

BILLING CODE 4410-09-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-289(CH); [ASLBP No. 85-514-02-OT]

General Public Utilities Nuclear; Three-Mile Island Nuclear Station, Unit No. 1; Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972) and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a presiding officer is designated in the following proceeding: General Public Utilities Nuclear, Three-Mile Island Nuclear Station, Unit No. 1.

The presiding officer is being designated pursuant to the provisions of a Notice of Hearing issued by the Commission on September 5, 1985 concerning Mr. Charles Husted's request for a hearing pursuant to the Commission's decision in CLI-85-2, 21 NRC 282, 317 (1985).

The presiding officer in this proceeding is The Honorable Morton B. Marqulies, Administrative Law Judge.

All correspondence, documents and other materials shall be filed with Judge Marqulies in accordance with 10 CFR 2.701. His address is: Administrative Law Judge Morton B. Margulies, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Bethesda, Maryland, this 12th day of September 1985.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 85-22458 Filed 9-18-85; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Arbitration of Disputes in Multiemployer Plans; PBGC-Approved Arbitration Procedure

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of approval.

SUMMARY: This notice advises employers, multiemployer pension plan sponsors and other interested parties that the Pension Benefit Guaranty Corporation has approved an alternative procedure for the arbitration of withdrawal liability disputes arising between employers and multiemployer pension plan sponsors.

EFFECTIVE DATE: This approval is effective September 26, 1985.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 611, 2020 K Street, NW., Washington, DC 20006, 202-254-4856 (202-254-8010 for TTY and TDD). These are not toll free numbers.

SUPPLEMENTARY INFORMATION: On August 27, 1985, at 50 FR 34679, the Pension Benefit Guaranty Corporation ("PBGC") published a final rule on Arbitration of Disputes in Multiemployer Plans, 29 CFR Part 2641. This final rule, which becomes effective on September 26, 1985, sets forth procedures for the arbitration of withdrawal liability disputes between employers and the sponsors of multiemployer pension plans. Section 2641.13 of the rule provides that, in lieu of the procedures therein prescribed, an arbitration may be conducted in accordance with an alternative arbitration procedure approved by the PBGC. Paragraph (c) of § 2641.13 provides that the PBGC may approve alternative arbitration procedures on its own initiative by publishing an appropriate notice in the **Federal Register.**

This notice advises employers, plan sponsors of multiemployer pension plans and other interested parties that the PBGC has, on its own initiative, determined that the Multiemployer Pension Plan Arbitration Rules effective June 1, 1981, sponsored by the International Foundation of Employee Benefit Plans and administered by the American Arbitration Association will be substantially fair to all parties involved in the arbitration of a withdrawal liability dispute and that the American Arbitration Association is neutral and able to carry out its role under the procedures. Accordingly, the PBGC hereby approves the AAA/IFEBP Multiemployer Pension Plan Arbitration Rules. This approval is effective as of September 26, 1985, and will remain effective until revoked by the PBGC through a **Federal Register** notice.

Issued at Washington, D.C., this 13th day of September 1985.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85-22415 Filed 9-18-85; 8:45 am]

BILLING CODE 7708-01-M

POSTAL RATE COMMISSION

[Docket No. A85–27; Order No. 633]

Wishon, CA 93669 (Charles Bianco, Petitioner); Notice and Order Acceptance Appeal and Establishing Procedural Schedule

Issued September 12, 1985.

Before Commissioners: Janet D.Steiger, Chairman; Henry R. Folsom, Vice Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

Docket No. A85–27
Name of affected post office: Wishon, California 93669
Name(s) of petitioner(s): Charles Bianco
Type of determination: Closing
Date of filing of appeal papers: August 28, 1985
Categories of issues apparently raised:

1. Effect on postal services (39 U.S.C. 404(b)(2)(C)).
2. Effect on the community (39 U.S.C. 404(b)(2)(A)).

Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule (39 U.S.C. 404(b)(5)) the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before September 18, 1985.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission,

Charles L. Clapp,

Secretary.

Wishon, California 93669

[Docket No. A85–27]

Aug. 28, 1985	Filing of Petition
Sept. 12, 1985	Notice and Order of Filing of Appeal.
Sept. 30, 1985	Last day of filing of petitions to intervene (*see* 39 CFR 3001.111(b))
Oct. 9, 1985	Petitioner's Participant Statement or Initial Brief (*see* 39 CFR 3001.115(a) and (b))
Oct. 29, 1985	Postal Service Answering Brief (*see* 39 CFR 3001.115(c)).
Nov. 13, 1985	(1) Petitioner's Reply Brief should petitioner choose to file one (*see* 39 CFR 3001.115(d))
Nov. 20, 1985	(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument (*see* 39 CFR 3001.116).
Dec. 26, 1985	Expiration of 120-day decisional schedule (*see* 39 U.S.C. 404(b)(5))

[FR Doc. 22442 Filed 9–18–85; 8:45 am]

BILLING CODE 7715–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Portland International Airport Portland, OR; FAA Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: The Federal Aviation Administration (FAA) announced its findings on the noise compatibility program submitted by the Port of Portland under the provisions of Title I of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96–52 (1980). On January 18, 1985, the FAA determined that the noise exposure maps submitted by the Port of Portland under Part 150 were in compliance with applicable requirements. On July 10, 1985, the Administrator approved the Portland International Airport noise compatibility program.

EFFECTIVE DATE: The effective date of the FAA's approval of the Portland International Airport noise compatibility program is July 10, 1985.

FOR FURTHER INFORMATION CONTACT: Dennis G. Ossenkop; Federal Aviation Administration; Northwest Mountain Region; Airports Division, ANM–611; 17900 Pacific Highway South; C–68966; Seattle, Washington 98168. Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Portland International Airport, effective July 10, 1985.

Under section 104(a) of the Aviation Safety and Noise Abatement Act (ASNA) of 1979, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such program to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with FAR Part 150 is a local program, not a Federal program. The FAA does not substitute its judgement for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Aviation Safety and Noise Abatement Act of 1979, and is limited to the following determinations:

The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

Program measures are reasonably consistent with achieving the goals of reducing existing noncompatiable land uses around the airport and preventing the introduction of additional noncompatible land uses;

Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government.

Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the Navigable Airspace and Air Traffic Control Systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the

program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Seattle, Washington.

The Port of Portland submitted to the FAA on April 3, 1984, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from August 1982 through June 1983. The Portland International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on January 18, 1985. Notice of this determination was published in the **Federal Register** on February 8, 1985 (50 FR 5464).

The Portland International Airport noise compatibility study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1990. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on January 18, 1985, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 32 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective July 10, 1985.

Outright approval was granted for 31 of the specific program elements. Program Element A2b was not approved or disapproved at this time as it relates to the installation of microwave landing system and associated new flight procedures both of which are undefined.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on July 10, 1985. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Portland International airport.

Issued in Seattle, Washington, on August 27, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-22366 Filed 9-18-85; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

[FHWA Docket No. 85-22]

Report on Bridge Formula Development for Regulating Vehicle Weight Limitations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice announces a study approach undertaken to review the existing bridge formula for vehicle weight limitations appearing in 23 U.S.C. 127 and establishes a public docket for public comment regarding the study. The purpose of the study was to review the existing bridge formula to determine if, through modifications, we could more fully utilize the capacity of existing bridges and highways without significantly shortening their service life.

DATE: Comments must be received on or before November 18, 1985.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 85-25, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, DC 20509. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., ET, Monday, through Friday, except for legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Frank D. Sears, Review and Analysis Branch, (202) 472-7680, or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 425-0762, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

Federal size and weight laws were enacted in 1956 when the Interstate System program was first financed at significant levels. (The Federal-Aid Highway Act of 1956, Pub. L. 84-627, 70 Stat. 374). Prior to that time, vehicle dimensions were regulated by each State. In 1932, the American Association of State Highway Officials (AASHO, now AASHTO) attempted to coordinate State laws by recommending size and weight policies for State consideration. Revised AASHO policies were issued in 1946 and 1964,[1] revised in 1968, 1973 and 1974, and a new policy guide is currently being prepared.

The large financial interest in the Interstate System was the expressed reason for Federal involvement in vehicle size and weight regulation. In House Report No. 2022 of the 1956 Federal-Aid Highway Act, it was noted that Congress "* * * recognizes that maximum weight limitations * * * are fundamentally a problem of State regulation, but feels that if the Federal Government is to pay 90 percent of the cost of the Interstate System improvements, it is entitled to protection of the investment against damage caused by heavy loads on the highway * * *."[2]

Federal size and weight provisions in the 1956 Federal-Aid Highway Act were limited to weight and width restrictions on the Interstate System. The weight limits (18,000 pounds on a single axle, 32,000 pounds on a tandem axle, and 73,280 pounds gross vehicle weight) were those recommended in the 1946 AASHO policy. An exception to these provisions, referred to as a "grandfather clause," was included that allowed States to continue to permit vehicle weights if their laws on July 1, 1956, allowed such vehicles. The law was permissive in that States could adopt lower weight than those established by the Federal Government. The controversial issue of vehicle length was avoided by specifying a gross weight limit that was consistent with the longest vehicles permitted at the time.

In 1964, House Document No. 354,[3] *Maximum Desirable Dimensions and Weights of Vehicles Operated on the Federal-Aid Systems*, was published. That report, which was based on studies conducted by the FHWA's predecessor, the Bureau of Public Roads in the Department of Commerce, recommended that larger vehicles be permitted on Federal-Aid highways over a period of years. Specifically, it was recommended that the vehicle width limit be increased to 102 inches and that weight limits be raised to 20,000 pounds for single axles, 34,000 pounds for

[1] AASHTO publication "Recommended Policy on Maximum Dimensions and Weights of the Vehicles to be operated over the Highways of the United States" December 7, 1964, Revised January 15, 1968 February 23, 1973, and February 18, 1974, is available for inspection in docket files.

[2] H.R Rep. No. 2022, 84th Cong., 2d Sess, 10 (1956)

[3] H.R. Doc. No. 354, 88th Cong., 2d Sess. 5, recommendation No. 5 (1964).

tandem axles, with gross vehicle weights to be determined by a formula (Bridge Formula B) that was believed to prevent bridge overstress. Relationship between vehicle dimensions and highway damage, highway improvement needs, and highway cost allocation were explicitly noted, and size and weight increases were to be predicated on States instituting adequate construction, reconstruction, and maintenance programs.

Congress did not implement any recommendations from that 1964 report until 1974 when the trucking industry was hurt by fuel shortage and programs to reduce fuel consumption, such as the 55 m.p.h. speed limit. In the Federal-Aid Highway Amendments of 1974 (section 106 of Pub. L. 93–643, 88 Stat. 2283) the maximum allowable single and tandem weights were raised to 20,000 and 34,000 pounds respectively, and gross vehicle weights were controlled by Bridge Formula B to a maximum of 80,000 pounds. A second Grandfather Clause was added to 23 U.S.C. 127 allowing States to continue to use bridge formulas different from AASHTO's Bridge Formula B for determining maximum gross vehicle weights. The Federal Highway Administration had recommended in testimony in 1974 that Bridge Formula B be adopted without a limit on gross vehicle weight, that the higher weight limits be mandatory, and that double trailers up to 70 feet in length be permitted.[4] However, these recommendations were not enacted into law.

The Surface Transportation Assistance Act of 1982[5] significantly increased the Federal role in regulating vehicle sizes and weights. First, it required the Secretary of Transportation to establish a National Network of Interstate and Designated Primary Highways on which States were required to permit certain vehicle configurations. Second, it stipulated that no State could adopt weight limits on the Interstate System that were lower, in addition to the prohibition against higher weights, than the maximum weight specified in 23 U.S.C. 127. Third, it required the Secretary of Transportation to conduct a study of the feasibility network for the operation of combination vehicles up to 110 feet in length. One of the primary goals of this legislation was to promote more efficient interstate commerce by increasing the uniformity of size and weight laws. As recommended in the 1964 report, increases in vehicle dimensions were coupled with changes in highway user charges to more closely relate fees paid by heavy vehicles to their cost responsibility. Throughout the period 1974 and 1982, the States adopted the higher weights limits and began to implement bridge Table B. Increasing emphasis on enforcement, publicized in part through the requirements of 23 U.S.C. 141, revealed a difficulty some vehicles have of complying with the bridge formula. Entire segments of certain industries, i.e., the construction industry, and other vehicles, i.e., short-wheel base tanker-trailers cannot utilize full capacity efficiency within the requirements of Table B.

Congressional and public interest stimulated a desire on the part of the FHWA to reexamine the premise of Table B.

Note.— Modification of Bridge Table B is dependent upon Congressional action. This Notice is intended to serve as a vehicle for dialogue in assuring study completeness only.

Study Summary

The study has resulted in the recommendation that a new formula, independent of the number of included axles on the vehicle, replace the current formula, as follows:

$W = (34 + L)$ 1000 lb 8 ft. $< L <$ 56 ft
$W = (62 + L/2)$ 1000 lb 56 ft. $> L$

Although the new formula will satisfactorily protect the bridge structures, there is real concern as to its effect on pavements. Pavement impact is one of the factors which must be carefully evaluated prior to the finalization of any recommendations based on this study.

The Scope of the Study

The scope of the study is covered under the Executive Summary—Bridge Formula Development which is reprinted herein in its entirety.

The Final Report is available to the public and will be in the docket files of the Division and Regional Offices of FHWA for inspection.

Comments Requested

Comments are requested with regard to the need for, or desirability of, modification to the current formula (Table B). At the same time, FHWA will consider comments on the methodology, findings or conclusions of the study in assessing whether to pursue legislative changes.

Issued on: September 11, 1985.

L.P. Lamm,

Deputy Federal Highway Administrator, Federal Highway Administration.

Bridge Formula Development: Executive Summary

Introduction

This report describes a study of the bridge formula currently prescribed in the Surface Transportation Assistance Act (STAA) of 1982 for regulating truck weights on certain federally funded roadways. This bridge formula, often referred to as Table B (or Formula B), has received criticism from both users and transportation officials as being basically unfair in terms of the stress levels generated in various bridge spans and types by different axle combinations. But the most compelling criticism concerns its applicability to very long, many axled vehicles, also being studied under the STAA of 1982, where the formula would allow unreasonably high loads should the current 80,000 lb (355.7 kN) maximum gross weight be increased.

The problem is complicated by the variability in bridge carrying capacities. This results primarily from the facts that they were originally designed to different strength levels. Two of the most common of these strength levels are termed H15 and HS20 by the AASHTO Bridge Specifications, where the HS20 where the HS20 is significantly stronger than the H15. This notation for strength levels actually refers to the hypothetical truck loading used for the bridge design. The HS20 design truck, which has a semitrailer, actually weighs more than twice the weight of the H15. About 95% of the bridges on the Interstate System are rated as HS20 or better. In general, none are classified as less than H15. The percentage of HS20 bridges on the primary and secondary highway systems, however, is significantly lower.

Historical

The first significant federal legislation concerning truck weights was contained in the Federal Aid Highway Act of 1956 which initially provided for the planning, financing and construction of the National System of Interstate and Defense Highways. This bill provided that no funds would be used for the Interstate System in any state allowing vehicles having a single axle weighing more than 18,000 lb (80.06 kN), a tandem axle of 32,000 lb (142.3 kN) and a gross weight of 73,280 lb (325.9 kN). However, a "grandfather clause" provided that any vehicle that operated legally within

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[4] Transportation and the New Energy Policies (Truck Sizes and Weights): Hearings before the Subcommittee on Transportation of the Committee on Public Works, 93d Cong., 2d Sess. 18–22 (1974) (Statement of Norbert Tiermann, Administrator, Federal Highway Administration).

[5] Pub. L. 97–327, 96 Stat. 1611.

a state before the passage of the law could continue to operate legally afterwards.

In 1964, the Highway Research Board prepared and submitted to Congress, via the Secretary of Commerce, House Document No. 354. This Document contained a detailed review of the trucking industry and of the regulations governing the operation of heavy vehicles. Further, it recognized the large capital investment the Nation has in these heavy vehicles, their importance to the Nation's commerce, and their wear and tear on the Nation's highway system. Findings of the Document were partially based on results of AASHO Road Tests performed in the late 1950's. Probably the most important recommendation made in that Document was that Table B, a tabulation of permissible weights of axle groups, depending on the number of axles and the overall length of the group, be adopted for the Interstate System. In addition, it suggested that the single axle limit be increased to 20,000 lb (88.96 kN) and the tandem axle limit to 34,000 lb (151.2 kN).

It is important to note that a footnote under Table B flatly prohibited the operation of certain short wheelbase, multiaxle trucks over H15 bridges. The point was clearly made in the Document that such vehicles would overstress the H15 bridges by more than 30%, a situation the authors of the Document clearly viewed as intolerable.

Little happended in response to these recommendations, however, until 1975, at which time the U.S. Congress enacted legislation allowing the states to increase the weight limits on the Interstate System to those of Table B. The allowable single axle weight was increased to 20,000 lb (88.96 kN) and the tandem axle weights increased as recommended in the Document. Further, the allowable gross vehicle weight was increased to a maximum not to exceed 80,000 lb (355.8 kN) from 73,280 lb (325.9 kN). It is generally believed that this legislation was passed in an attempt to restore to the industry the productivity lost due to the imposition of the 55 mph (88.50 km/hr) speed limit in December, 1973.

The most recent legislation is referred to as the Surface Transportation Assistance Act of 1982. The Vehicle Weight Limitations section of the Act is reproduced verbatim below.

Vehicle Weight, Length, and Width Limitations

Sec. 133. (a) Section 127 of title 23 of the United States Code is amended to read:

127. Vehicle weight limitations-Interstate System

(a) No funds authorized to be appropriated for any fiscal year under provisions of the Federal-Aid Highway Act of 1956 shall be apportioned to any State which does not permit the use of the National System of Interstate and Defense Highways within its boundaries by vehicles and a weight of twenty thousand pounds carried on any one axle, including enforcement tolerances, or with a tandem axle weight of thirty-four thousand pounds, including enforcement tolerances, or a gross weight of at least eighty thousand pounds for vehicle combinations of five axles or more. However, the maximum gross weight to be allowed by any State for vehicles using the National System of Interstate and Defense Highways shall be twenty thousand pounds carried on one axle, including enforcement tolerances, and a tandem axle weight of thirty-four thousand pounds, including enforcement tolerances and with an overall maximum gross weight, including enforcement tolerances, on a group of two or more consecutive axles produced by application of the following formula:

$$W = 500\left(\frac{LN}{N-1} + 12N + 36\right)$$

Where W equals overall gross weight on any group of two or more consecutive axles to the nearest five hundred pounds, L equals distance in feet between the extreme of any group of two or more consecutive axles, and N equals number of axles in group under consideration, except that two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each providing the overall distance between the first and last axles of such consecutive sets of tandem axles is thirty-six feet or more: Provided, that such overall gross weight may not exceed eighty thousand pounds, including all enforcement tolerances, except for those vehicles and loads which cannot be easily dismantled or divided and which have been issued special permits in accordance with applicable State laws, or the corresponding maximum weights permitted for vehicles using the public highways of such State under laws or regulations established by appropriate State authority in effect on July 1, 1956, except in the case of the overall gross weight of any group of two or more consecutive axles, on the date of enactment of the Federal-Aid Highway Amendments of 1974, whichever is the greater. Any amount which is withheld from apportionment to any State pursuant to the foregoing provisions shall lapse. This section shall not be construed to deny apportionment to any State allowing the operation within such State of any vehicles or combinations thereof which the State determines could be lawfully operated within such States on July 1, 1956, except in the case of the overall gross weight of any group of two or more consecutive axles, on the date of enactment of the Federal-Aid Highway Amendments of 1974. With respect to the State of Hawaii, laws or regulations in effect on February 1, 1960, shall be applicable for the purposes of this section in lieu of those in effect on July 1, 1956. With respect to the State of Michigan, laws or regulations in effect on May 1, 1982, shall be applicable for the purposes of this subsection.

(b) No State may enact or enforce any law denying reasonable access to motor vehicles subject to this title to and from the Interstate Highway System to terminals and facilities for food, fuel, repairs, and rest.

The equation is Formula B from which the weights of Table B are calculated. These limitations are the same as those in Table B, with the 80,000 lb (355.8 kN) gross weight cap. An exception to the bridge Formula B was instituted in the 1974 Act and this permitted the maximum weight of tandems spaced 36 ft. (10.97 m) to 68,000 lbs. (302.06 kN).

Formula Development

An important first step in deriving a new bridge formula to assure specified stress ratios are not exceeded in any H15 or HS20 bridge is to identify the lightest and therefore critical bridges. This means finding, for each span, the bridge type that has the least dead load moment and shear. Data was collected from the files of the Federal Highway Administration and from standard designs of state highway departments to find these minimum weight bridge types. Once these lightest weight bridges were found, it was then possible to define the loads that would cause specific stress levels in each span length. This procedure was followed for bridges of both H15 and HS20 design.

For example, uniformly distributed loads of every length between 8 and 120 ft (36.58 m) were placed on the lightest weight bridges of every span to evaluate what total load would cause 1.3 times the design stress in H15 bridges and 1.05 times the design stress HS20 bridges. This multitude of calculations was expeditiously completed with a micro-computer and resulted in a unique weight for each uninform load length and each bridge design. These maximum loads were then plotted versus length. It was determined that the H15 bridges with the 1.3 factor dictated the lesser loads up to lengths of about 70 ft (21.34 m). For longer lengths, the HS20 bridges with the 1.05 factor controlled.

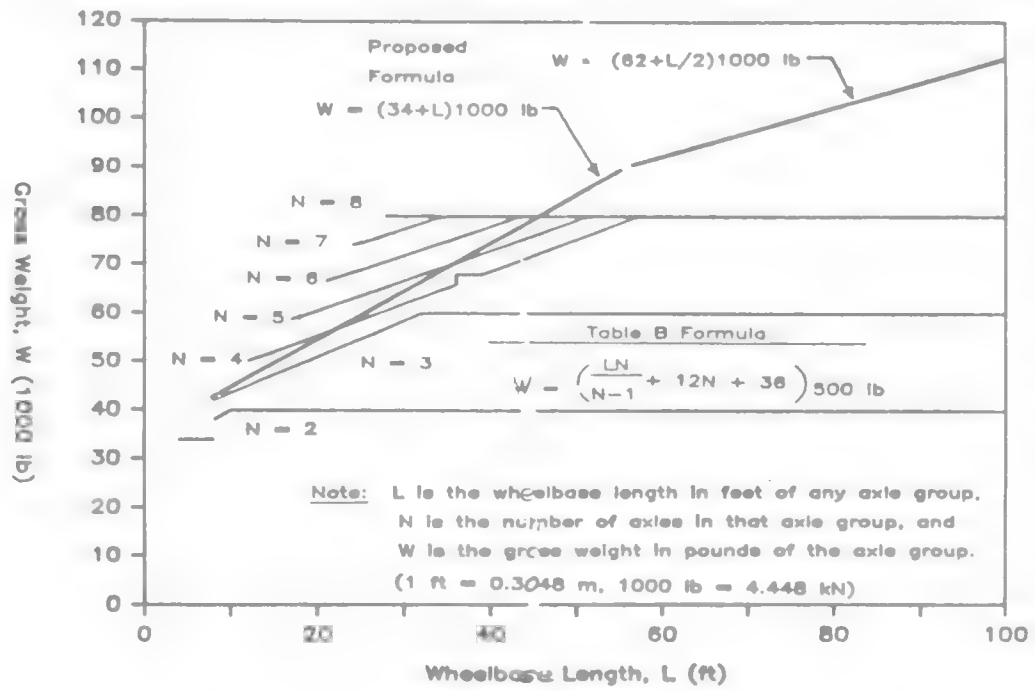


Figure 1. Proposed Formula Shown Superimposed on the Current Table B Formula

Two straight lines were drawn near these results and yielded the formula as shown in figure 1. These two straight lines are shown superimposed over a plot of Table B as modified by the Surface Transportation Assistance Act of 1982. The equations of the two lines are

$W = (34 + L)\ 1000$ lb $8\ \text{ft} < L < 56\ \text{ft}$
$W = (62 + L/2)\ 1000$ lb $56\ \text{FR} < L$

Figure 1 shows that the suggested formula would reduce the loads allowed on the shorter axle groupings just as was originally recommended by the footnote of Table B in House Document No. 354.

Application of the proposed formula is to all contiguous subsets of axles in the vehicle. When calculating the allowable weight of such a subset of axles, the wheelbase L is the extreme axle spacing in that subset.

Additionally, the current limits for single axles 20,000 lb (88.96 kN) and tandem axles spaced 4 ft (1.219 m), 34,000 lb (151.2 kN), are retained. While a rigorous economic study of the costs of pavement damage compared to the increased transportation productivity was beyond the scope of this study, a brief review of the AASHTO Road Test results led to the conclusion that if these limits were retained and the proposed formula were adopted, some additional pavement fatigue damage to pavements would result.

Assumptions

The assumptions used to make the calculations described above are in general those made by the analyst during the design of a bridge. For example, the impact formula used in the current AASHTO Standard Specifications for Highway Bridges was assumed to be valid. Similarly, the number and weight of trucks on the bridge in the direction of travel and in adjacent lanes were all as dictated by the design specifications. Finally, the detailed distribution of the load to the several types of members supporting the deck was assumed to follow the design rules.

It is recognized that there is continuing debate concerning the validity of each of these assumptions, but it is doubtful that the resolution of any one of them would alter the results of this study.

One other assumption worth noting is that all bridge design ratings were assumed to be as new. No allowance was made for deterioration due to age or prior service.

Stress Levels Caused by Practical Vehicles

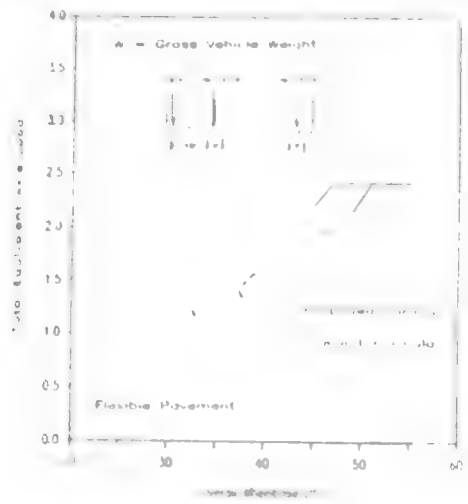
The effectiveness of the proposed formula for limiting weights of practical vehicles for specified overstress ratios 1.05 for HS20 bridges and 1.30 for H15 bridges is evaluated by comparing the calculated critical weights of selected practical vehicles with the curve defined by the proposed formula. The proposed formula is effective in allowing significantly more weight than the present formula for many practical vehicles. This is done without exceeding the design total stress, dead load plus live load plus impact, (DL + LL + I) more than a specified percentage, 30% in the case of H15 bridges and 5% in the case of HS20 brdiges.

Fatigue Considerations

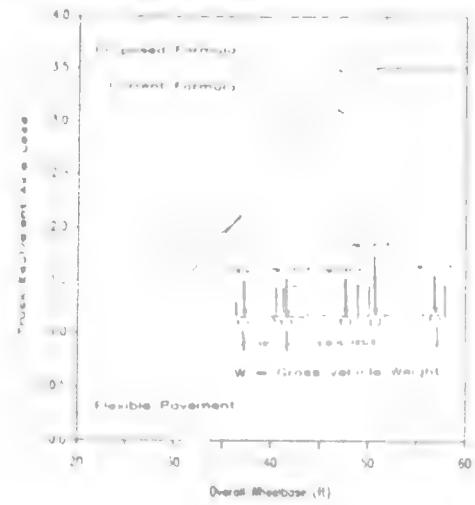
The fatigue behavior of highway bridges is influenced primarily by stress range. The stress range is equal to the (LL + I) stresses, therefore any changes in truck weights will result in increased fatigue loading on highway bridges and a corresponding increase in maintenance costs if the increased fatigue loading causes stresses that are above the fatigue endurance limits. To evaluate the significance of the proposed formula on the fatigue lives of highway bridges, it is necessary to make several simplifying assumptions. It is assumed that existing bridges are loaded in flexure to design allowable stresses by design vehicles. Design allowable stresses are a function of the design lifetime in loading cycles and the weld detail category. It is assumed that flexure governs, and shear is not checked. Since existing single, tandem, and triple axle bogies are not changes, shear stresses are not expected to increase as significantly as flexure stresses. Further, only simple spans were evaluated.

For each span checked, the maximum moment caused by the maximum legal weight vehicles and the maximum moment due to the design live load were calculated. With the assumption that the stress range due to the design loading equals the allowable stress range, the stress range due to the maximum weight vehicles is calculated by multiplying the appropriate moment ratio.

The calculated stress ranges are compared to the allowable fatigue stress ranges. The ratio of the calculated stress range to the allowable stress range does not exceed 1.05 except for a small range of spans for all the practical vehicles considered for commonly used structural steels. For most spans and details, the increased stress range is still



(a) 3S2 Vehicle



(b) 2S1—2 Vehicle

(1 ft = 0.3048 m)

Figure 2. Equivalent Axle Loads per Vehicle for Proposed Formula and Existing Formula

well below the allowable stress range. Span-detail combinations which are most affected by the proposed formula are the more critical details in maximum moment regions of longer, 120 to 160 ft (36.57 to 48.77 m), spans.

Pavement Considerations

Recognizing that the passage of heavy vehicles causes fatigue damage to pavement as well as to bridges and that the country's investment in pavement is several times larger than that of bridges, no change should be made in the bridge formula without considering the consequences of the change to the pavements. The analytical assessment of the impact of such a change on pavement life is not so straightforward as it is for bridges. It is generally accepted that heavy axles, and very short groupings of axles, are more damaging to pavements while gross vehicles weights, or the longer groupings of axles, are more damaging to bridges.

One measure of the fatigue damage heavy vehicles exert on pavements is termed the "equivalent axle load". The equivalent axle load compares the fatigue damage done by a single axle, or grouping of axles, with the damage done by an 18,000 lb (80.06 kN) axle. So an 18,000 (80.06 kN) single axle is arbitrarily assigned an equivalent axle load value of 1.0. A single axle, or grouping of axles, that causes twice as much damage as an 18,000 lb (80.06 kN) axle is given as equivalent axle load value of 2.0. Tables of equivalent axle loads for single and tandem axles, on different types of pavement surfaces, have been tabulated and published. These tables are based primarily on the results of the AASHO Road Test completed in the late 1950's where the deterioration of various pavement surfaces under repeated heavy truck loadings was observed.

These tables make it possible to estimate the number of equivalent axle loads resulting from the passage of any given heavy truck. If a truck has two widely spaced axles weighing 18,000 lb (80.06 kN) each, for example, it could be said that the passage of that truck generated 2.0 equivalent axle loads. Another truck with three 18,000 lb (80.06 kN) axles would generate 3.0 equivalent axle loads and would be considered 50 percent more damaging to the pavement. Closely spaced axles have an interactive effect, but equivalent axle loads for closely spaced tandem axles (groups of two axles) are also tabulated. This makes it possible to calculate the number of equivalent axle loads generated by most of the heavy truck configurations currently in use.

These calculations were made for trucks conforming to the current bridge formula and for trucks conforming to the proposed bridge formula and the results compared. These comparisons for two common truck configurations are shown in figures 2(a) and (b). Figure 2(a) is for the 3S–2, a semi-trailer truck with a steering axle and two tandems (commonly referred to as the eighteen wheeler). Figure 2(b) is for the 2S–1–2, a semitrailer truck with a full trailer on two axles; so it has a steering axle with four widely spaced single axles.

For very short and very long vehicles, figure 2 shows the equivalent axle loads per truck to be about the same. In fact, for the short ones, those with wheelbases less than about 36 ft (10.97 m), the proposed formula would lead to smaller equivalent axle loads per truck. If the 80,000 lb (355.8 kN) maximum

gross weight per vehicle is maintained, the proposed and current formula come together at wheelbases just over 50 ft (15.24 m) and are identical for all longer lengths. However, in the intermediate lengths, the equivalent axle loads per truck are significantly greater, in some instances by as much as 20 percent. These intermediate truck lengths, 36 to 50 ft (10.97 to 15.24 m), are very common, and the increase in equivalent axle loads would certainly have a detrimental effect on the wearout rate of our pavements.

The calculations and comparisions of the equivalent axle loads per truck, as shown above, are evidence that the new bridge formula, as stated and without further modification, would indeed be detrimental to pavements. Currently, pavement deterioration rates are higher than ever, and a change in the bridge formula should not be allowed to magnify that problem. As a result, it is recommended that a detailed study of the influence of a bridge formula change on pavements be initiated with the goal of suggesting additional modifications that would permit the formula to be used without causing unacceptable pavement deterioration. One alternative such a study could consider would be to shave some weight from the maximum single- and tandem-axle loads to coincide with the adoption of the new formula.

Conclusions

The adoption of the proposed bridge formula would bring some changes to the geometry and distribution of truck loads to the axles and bogies. In many cases, higher payloads would result without bringing excessively higher stresses to structural bridge members. If overall length limits or maximum gross weights should ever be increased, the formula would continue to be effective for protecting the bridges against damaging overstresses, not necessarily a feature of the current formula.

The proposed formula is independent of the number of included axles and as such should be simpler to understand and easier to enforce than the present formula.

The proposed formula is based on engineering rationale, albeit several controversial assumptions.

If the proposed bridge formula is not enforced, irrespective of what form of the formula is being used, the bridges are apt to have foreshortened service lives due to fatigue.

The indiscriminate issuing of overweight truck permits, expecially those on a periodic or annual basis, are equally apt to result in foreshortened bridge service lives.

Adoption of the proposed bridge formula, without any change in the maximum single and tandem axle loads, will cause an increase in the average equivalent axle load per truck. This is often considered the primary measure of the fatigue damage a vehicle causes to pavement. So, while the proposed formula will satisfactorily protect the bridge structures, there is real concern about its effect on pavements, a consequence that should be carefully evaluated before any changes are made.

[FR Doc. 85–22253 Filed 9–18–85; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 29–85]

Treasury Notes of September 30, 1987, Series Z-1987

Washington, September 12, 1985.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,250,000,000 of United States securities, designated Treasury Notes of September 30, 1987, Series Z–1987 (CUSIP No. 912827 SS 2), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Govenment accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated September 30, 1985, and will accrue interest from that date, payable on a semiannual basis on March 31, 1986, and each subsequent 6 months on September 30 and March 31 through the date that the principal becomes payable. They will mature September 30, 1987, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, September 18, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, September 17, 1985, and received no later than Monday, September 30, 1985.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foregin central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all other must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes alloted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, September 30, 1985. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submnitted, which must be received from institutional investors no later than Thursay, September 26, 1985. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, September 30, 1985. When payment has been submitted with the tender and the purchase price of the Notes alloted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes alloted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the

Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 85-22381 Filed 9-16-85; 11:03 am]

BILLING CODE 4810-40-M

Customs Service

Rescheduling of October 1985 Customs Broker Examination

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: Pursuant to § 111.13(b), Customs Regulations (19 CFR 111.13(b)), October 1985 examination for a Customs broker's license would normally be scheduled to be given at each district office on October 7, 1985, the first Monday in October. Because of the observance of the Jewish holiday of Succoth on October 7, 1985, the October 1985 examination normally would be rescheduled to the following Monday, October 14, 1985. However, because of the observance of Columbus Day, on this date, the October 1985 examination is rescheduled to Tuesday, October 15, 1985. All Customs districts will be notified to reschedule the examination accordingly.

FOR FURTHER INFORMATION CONTACT: Fred Burn-O'Brien, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

Dated: September 2, 1985.

William von Raab,

Commissioner of Customs.

[FR Doc. 85-22421 Filed 9-18-85; 8:45 am]

BILLING CODE 4820-02-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 182
Thursday, September 19, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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FARM CREDIT ADMINISTRATION

Federal Farm Credit Board; Special Meeting

AGENCY: Farm Credit Administration.

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(1)), of a special meeting of the Federal Farm Credit Board ("Federal Board").

DATES AND TIMES: The special meeting of the Federal Board is scheduled as follows: Friday, September 27–8:30 a.m. to 4:30 p.m.

ADDRESS: Federal Farm Credit Board Special Meeting, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Auberger, Secretary to the Federal Farm Credit Board, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703–883–4010).

SUPPLEMENTARY INFORMATION: A special meeting of the Federal Board has been called and will be held on September 27, 1985. The matters to be considered at the special meeting are:

*1. Executive Session.

**2. System Financial Update and Contingency Planning Progress Report.

*This session of the meeting will be closed to the public pursuant to the exemptions set forth in 5 U.S.C. 552b(c)(2) and (8).

**This session of the meeting will be closed to the public pursuant to the exemptions set forth in 5 U.S.C. 552b(c)(8) and (9).

Dated: September 17, 1985.

Larry W. Edwards,

Acting Governor.

[FR Doc. 85–22551 Filed 9–17–85; 2:08 pm]

BILLING CODE 6705–01–M

2

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, September 24, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW, Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

DATE AND TIME: Thursday, September 26, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW, Washington, DC (Fifth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Draft AO 1985–25: James R. Staff, treasurer; Steve Bartlett Congressional Campaign Committee
Statement of basis and purpose for Sunshine Act Regulations
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, information Officer, 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85–22552 Filed 9–17–85 2:08 pm]

BILLING CODE 6715–01–M

Federal Register

Thursday
September 19, 1985

Part II

Environmental Protection Agency

40 CFR Part 191

Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 191

[AH-FRL 2870-3]

Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating generally applicable environmental standards for the management and disposal of spent nuclear fuel and high-level and transuranic radioactive wastes. The standards apply to management and disposal of such materials generated by activities regulated by the Nuclear Regulatory Commission (NRC) and to disposal of similar materials generated by atomic energy defense activities under the jurisdiction of the Department of Energy (DOE). These standards have been developed pursuant to the Agency's authorities and responsibilities under the Atomic Energy Act of 1954, as amended; Reorganization Plan No. 3 of 1970; and the Nuclear Waste Policy Act of 1982.

Subpart A of these standards limits the radiation exposure of members of the public from the management and storage of spent fuel or high-level or transuranic wastes prior to disposal at waste management and disposal facilities regulated by the NRC. Subpart A also limits the radiation exposures to members of the public from waste emplacement and storage operations at DOE disposal facilities that are not regulated by the NRC.

Subpart B establishes several different types of requirements for disposal of these materials. The primary standards for disposal are long-term containment requirements that limit projected releases of radioactivity to the accessible environment for 10,000 years after disposal. These release limits should insure that risks to future generations from disposal of these wastes will be no greater than the risks that would have existed if the uranium ore used to create the wastes had not been mined to begin with. A set of six qualitative assurance requirements is an equally important element of Subpart B designed to provide adequate confidence that the containment requirements will be met. The third set of requirements are limitations on exposures to individual members of the public for 1,000 years after disposal. Finally, a set of ground water protection requirements limits radionuclide concentrations for 1,000 years after disposal in water withdrawn from most Class I ground waters to the concentrations allowed by the Agency's interim drinking water standards (unless concentrations in the Class I ground waters already exceed the limits in 40 CFR Part 141, in which case this set of requirements would limit the increases in the radionuclide concentrations to those specified in 40 CFR Part 141). Subpart B also contains informational guidance for implementation of the disposal standards to clarify the Agency's intended application of these standards, which address a time frame without precedent in environmental regulations. Although disposal of these materials in mined geologic repositories has received the most attention, the disposal standards apply to disposal by any method, except disposal directly into the oceans or ocean sediments.

This notice describes the final rule that the Agency developed after considering the public comments received on the proposed rule published on December 29, 1982, and the recommendations of a technical review conducted by the Agency's Science Advisory Board (SAB). The major comments received on the proposed standards are summarized together with the Agency's responses to them. Detailed responses to all the comments received are discussed in the Response to Comments Document prepared for this final rule.

DATE: These standards shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time on October 3, 1985. These standards shall become effective on November 18, 1985.

ADDRESSES: *Background Information*—The technical information considered in developing this rule, including risk assessments of disposal of these wastes in mined geologic repositories, is summarized in the Background Information Document (BID) for 40 CFR Part 191, EPA 520/1-85-023. Single copies of both the BID and the Response to Comments Document, as available, may be obtained from the Program Management Office (ANR-458), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460; telephone number (703) 557-9351.

Docket—Docket Number R-82-3 contains the rulemaking record for 40 CFR Part 191. The docket is available for inspection between 8 a.m. and 4 p.m. on weekdays in the West Tower Lobby, Gallery 1, Central Docket Section, 401 M Street, SW., Washington, DC. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dan Egan or Ray Clark, Criteria and Standards Division (ANR-460), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460; telephone number (703) 557-8610.

SUPPLEMENTARY INFORMATION:

Fissioning of nuclear fuel in nuclear reactors creates a small quantity of highly radioactive materials. Virtually all of these materials are retained in the "spent" fuel elements when they are removed from the reactor. If the fuel is then reprocessed to recover unfissioned uranium and plutonium, most of the radioactivity goes into acidic liquid wastes that will later be converted into various types of solid materials. These highly radioactive liquid or solid wastes from reprocessing spent nuclear fuel have traditionally been called "high-level wastes." If it is not to be reprocessed, the spent fuel itself becomes a waste. The nuclear reactors operated by the nation's electrical utilities currently generate about 2,000 metric tons of spent fuel per year. The relatively small physical quantity of these wastes is apparent when compared to the chemically hazardous wastes regulated under the Resource Conservation and Recovery Act, which are produced at a rate of about 150,000,000 metric tons per year.

Although they are produced in small quantities, proper management and disposal of high-level wastes and spent nuclear fuel are essential because of the inherent hazard of the large amounts of radioactivity they contain. Spent fuel from commercial nuclear power reactors contains about 1.6 billion curies of radionuclides with half-lives greater than 20 years. Over the next decade, this inventory is projected to grow at a rate of about 300 million curies per year from reactors currently licensed to operate. Most of this spent fuel is currently stored at reactor sites. Reprocessing reactor fuel used for national defense activities has produced about 700 million curies of radionuclides with half-lives greater than 20 years. Most of these wastes are stored in various liquid and solid forms on three Federal reservations in Idaho, Washington, and South Carolina.

In addition, a wide variety of wastes contaminated with man-made radionuclides heavier than uranium have been created by various processes, mostly from the atomic energy defense activities conducted by the DOE and its predecessor agencies (the Atomic Energy Commission and the Energy

Research and Development Administration). These wastes are usually called "transuranic" wastes. Most of them are stored at Federal reservations in Idaho, Washington, New Mexico, and South Carolina.

National Programs for Disposal of These Wastes

Since the inception of the nuclear age in the 1940's, the Federal government has assumed ultimate responsibility for the care and disposal of these wastes regardless of whether they are produced by commercial or national defense activities. In October 1976, President Ford ordered a major expansion of the Federal program to demonstrate a permanent disposal method for high-level wastes. The Agency was directed to develop generally applicable environmental standards to govern the management and disposal of these wastes as part of this initiative. Among EPA's first activities in response to this directive were a series of public workshops conducted in 1977 and 1978 to better understand the various public concerns and technical issues associated with radioactive waste disposal.

In 1981, the DOE, after completing a comprehensive programmatic environmental impact statement, decided to focus the national program on disposal in mined geologic repositories (46 FR 26677). In 1982, Congress passed the Nuclear Waste Policy Act (henceforth designated "NWPA"), which President Reagan signed into law on January 7, 1983. The NWPA contains several provisions that are relevant to this rulemaking. First, it affirmed the DOE's 1981 decision that mined repositories should receive primary emphasis in the national program, although research on some other technologies would be continued. Second, it established formal procedures regarding the evaluation and selection of sites for geologic repositories, including steps for the interaction of affected States and Indian tribes with the Federal Government regarding site selection decisions. Third, the NWPA levied a fee on utilities that generate electrical power with nuclear reactors in order to pay for Federal management and disposal of their spent fuel or high-level wastes. Fourth, the NWPA reiterated the existing responsibilities of the Federal agencies involved in the national program to develop mined geologic repositories, and it assigned some additional tasks regarding site evaluation. Finally, the Act provided a timetable for several key milestones that the Federal agencies were to meet in carrying out the program.

Section 121 of the NWPA reiterated the Agency's responsibility for developing the overall framework of requirements needed to assure protection of public health and the environment, in accordance with the Agency's authorities under the Atomic Energy Act of 1954 and Reorganization Plan Number 3 of 1970. Section 121 also called for the Agency to promulgate these standards by January 7, 1984. The Agency did not meet this deadline. On February 8, 1985, the Natural Resources Defense Council and four other environmental interest groups filed suit to bring about compliance with the NWPA mandate. This litigation was settled by the Agency and the plantiffs agreeing to a consent order requiring promulgation not later than August 15, 1985. The generally applicable environmental standards promulgated by this notice satisfy the terms of this consent order. However, they also represent the culmination of an effort that began almost nine years ago and that has included frequent interactions with the public to help formulate standards responsive to the concerns about disposal of these dangerous materials.

Objective and Implementation of the Standards

In developing the standards for disposal of spent nuclear fuel and high-level and transuranic radioactive wastes, the Agency has carefully evaluated the capabilities of mined geologic repositories to isolate the wastes from the environment. Because such repositories are capable of performing so well, it has been possible to choose containment requirements that will provide exceptionally good protection to current and future populations for at least 10,000 years after disposal. In fact, EPA's analyses indicate that the small residual risks allowed by the disposal standards would be comparable to the risks that future populations would have been exposed to if the uranium ore used to produce the high-level wastes had not been mined to begin with.[1] The Agency believes that achieving this protection should not significantly increase the cost or difficulty of carrying out the national program for disposing of the wastes from commercial nuclear power plants. In addition, the containment requirements in the final rule are complemented by six qualitative assurance requirements designed to provide confidence that the containment requirements will be met, given the substantial uncertainties inherent in predictions of systems performance over 10,000 years. Because of this comprehensive framework, the Agency is confident that the national program to dispose of these wastes will be carried out with exceptional protection of public health and the environment.

The Nuclear Regulatory Commission (NRC) and the DOE are responsible for implementing these standards. The NRC has already promulgated procedural and technical requirements in 10 CFR Part 60 for disposal of high-level wastes in mined geologic repositories (46 FR 13971, 48 FR 28194). The NRC will obtain compliance with 40 CFR Part 191 for disposal of all high-level wastes by issuing licenses to the DOE, in accordance with 10 CFR Part 60, at various steps in the construction and operation of a repository. The NWPA directs the DOE to select a number of potential sites for geologic repositories, successively reducing this set of alternatives from five to three to one, in consultation with affected States and Indian Tribes and with participation by the public in key steps in the selection process. The DOE will accomplish this through use of site selection guidelines (10 CFR Part 960) that it has developed in accordance with section 112 of the NWPA. Both NRC's 10 CFR Part 60 and DOE's 10 CFR Part 960 incorporate the standards the Agency is promulgating today as the overall performance requirements for a geologic repository. Both of these other rules were designed in concert with EPA's ongoing development of 40 CFR Part 191. However, both the NRC and DOE must now review these regulations to determine what specific changes will be needed to properly implement the final version of 40 CFR Part 191.

Review of the Proposed Standards

On December 29, 1982, shortly before the NWPA was enacted, the Agency published 40 CFR Part 191 for public review (47 FR 58196) and asked that comments be received by May 2, 1983. Eighty-three substantive replies were received from a broad spectrum of private citizens, public interest groups, members of the scientific community,

[1] Specifically, the Agency estimates that compliance with the disposal standards would allow no more than 1,000 premature deaths from cancer in the first 10,000 years after disposal of the high-level wastes from 100,000 metric tons of reactor fuel, an average of no more than one premature death every ten years. As this residual risk level is referred to in the following discussion, it should be remembered that it is a speculative calculation that is primarily intended as a tool for comparing risk levels; it should not be considered a reliable projection of the "real" number of health effects resulting from compliance with the disposal standards.

representatives of industry, and State and Federal agencies. These responses contained information and recommendations regarding seven issues on which the Agency sought further public comment (48 FR 21666). Questions concerning these issues were directed to all of the witnesses at two public hearings held during May 1983 in Washington, D.C. and in Denver (48 FR 13444). Copies of these questions were also sent to all those who responded to the initial request for comment, and the availability of these questions was announced in the **Federal Register** (48 FR 21666). The comment period was then held open until June 20, 1983, to receive responses to these additional questions. Responses to major comments—including all those specifically highlighted for public review—are summarized below. Detailed responses to the full range of comments received is described in the Response to Comments Document prepared for the final rule.

Review of the Technical Basis of the Standards

In parallel with this public review and comment, the Agency conducted an independent scientific review of the technical basis for the proposed 40 CFR Part 191 through a special Subcommittee of the Agency's Science Advisory Board (SAB) (48 FR 509). This Subcommittee held nine public meetings from January 18, 1983, through September 21, 1983, and prepared a final report that was transmitted on February 17, 1984. While finding that the Agency had generally prepared comprehensive and scientifically competent technical analyses to support the proposed standards, the SAB review developed 46 findings and recommendations regarding specific improvements in the technical analyses and in the standards themselves. Since many of the SAB recommendations were to be considered in developing the final rule, the Agency sought public comment on the information and recommendations presented in the final SAB report (49 FR 19604).

Most of the SAB recommendations involve specific details of the technical assessments and judgments the Agency made in developing these standards. After evaluating the public comments received on the SAB report, the Agency agrees with almost all of the SAB's technical recommendations and has made corresponding changes in the technical basis of the final rule. A few of the Subcommittee's recommendations have implications that involve broader policy judgments. These recommendations have been treated as part of the public comment record and are described below as the major comments on the proposed 40 CFR Part 191 are discussed. A complete itemization of the Agency's responses to each of the findings and recommendations of the SAB is contained in the Response to Comments Document, together with a synopsis of the public comments on the SAB report.

Summary of the Final Rule

The rule being promulgated today establishes generally applicable environmental standards for the management and disposal of spent nuclear fuel, high-level radioactive wastes, and transuranic radioactive wastes. The final rule differs in a number of ways from the proposed rule because of changes the Agency has made in response to public comments and in response to the recommendations of the technical review by the Agency's Science Advisory Board. This section provides an overview of the major provisions of the final rule, and changes from the proposed rule are noted. More detail on many of these provisions is provided later as part of the discussion of the comments considered in development of 40 CFR Part 191. The final rule:

(1) Applies to management and disposal of spent nuclear fuel, high-level radioactive wastes as defined by the NWPA, and transuranic wastes containing more than 100 nanocuries per gram of alpha-emitting transuranic isotopes, except for wastes that either the NRC or the Administrator determines do not need the degree of isolation required by this rule. (The proposed rule applied to spent nuclear fuel, high-level wastes exceeding a specific set of concentration limits, and to transuranic wastes containing more than 100 nanocuries per gram.)

(2) Through Subpart A, "Standards for Management and Storage," establishes limits on annual doses to members of the public of 25 millirems to the whole body, 75 millirems to the thyroid, and 25 millirems to any other organ from exposures associated with management, storage, and preparation for disposal of any of these materials at facilities regulated by the NRC. These limits apply to the combined exposures from all NRC-licensed facilities covered by this Part or 40 CFR Part 190, the Agency's standards for the commercial uranium fuel cycle. Subpart A also limits annual doses to members of the public from management and storage operations at DOE disposal facilities that are not regulated by the NRC to 25 millirems to the whole body and 75 millirems to any other organ. (The proposed rule applied to the combined exposures from operations regulated by 40 CFR Part 190, waste management and storage operations regulated by the NRC or Agreement States, *and* waste management and storage operations conducted at all DOE facilities.) Subpart A also contains a provision that allows the Administrator to issue alternative standards for waste management and storage operations at DOE disposal facilities that are not regulated by the NRC. (The proposed rule contained a provision to allow the implementing agency, either the NRC or the DOE, to grant variances for unusual operating conditions.)

(3) Establishes several sets of requirements for disposal of these wastes through Subpart B, "Standards for Disposal." The primary standards are *containment requirements* that limit projected releases of radioactivity to the accessible environment for 10,000 years after disposal. Equally important is a set of six *assurance requirements* chosen to provide adequate confidence that the containment requirements will be met. In addition, Subpart B of the final rule includes *individual protection requirements* that limit annual exposures from the disposal facility to members of the public in the accessible environment to 25 millirems to the whole body and 75 millirems to any organ for 1,000 years after disposal. The Subpart also contains *ground water protection requirements* that limit radioactivity concentrations in water withdrawn from most Class I ground waters near a disposal system (as defined in conjunction with the Agency's Ground Water Protection Strategy published in August 1984) for 1,000 years after disposal. Finally, Subpart B provides *guidance for implementation* that indicates how the Agency intends the various numerical standards to be applied. (The proposed rule contained only containment requirements, assurance requirements, and procedural requirements; this last category provided some of the basis for the "guidance for implementation" in the final rule.) Major provisions of each of these sets of requirements include the following:

(a) The containment requirements (Section 191.13) limit the total projected release of specific radionuclides over the entire 10,000-year period after disposal. Releases from all expected and accidental causes are included, except for releases from conceivable events that are judged to have an incredibly small likelihood of occurrence. Quantitative terms are used to identify the probabilities of the releases to which

the containment requirements apply; however, the final rule acknowledges that determination of compliance will have to tolerate much larger uncertainties than would be appropriate for short-term estimates and that judgments may have to be substituted for quantitative predictions in certain situations. Disposal in compliance with the containment requirements is projected to cause no more than 1,000 premature cancer deaths over the entire 10,000-year period from disposal of all existing high-level wastes and most of the wastes yet to be produced by currently operating reactors—an average of 0.1 fatality per year. This level of residual risk to future generations would be comparable to the risks that those generations would have faced from the uranium ore used to create the wastes if the ore had never been mined. Actual risks will probably be significantly less because of the conservative approach called for by the other parts of Subpart B. (The quantitative probabilities in the proposed rule were an order of magnitude smaller than those incorporated into the final rule. The release limits in the final rule are different than those in the proposed rule due to changes in EPA's technical analyses that were recommended by the SAB Subcommittee; however, the level of residual risk is the same as for the proposed rule.)

(b) The assurance requirements (Section 191.14) call for cautious steps to be taken in disposing of these wastes because of the inherent uncertainties in selecting and designing disposal systems that must be very effective for more than 10,000 years. The assurance requirements incorporate the following principles:

(i) Although active institutional controls, such as guarding and maintaining a disposal site, should be encouraged, they cannot be relied upon to isolate these wastes from the environment for more than 100 years after disposal. (The proposed rule limited reliance to "a few hundred years" after disposal.)

(ii) Disposal systems must be monitored to detect substantial changes from their expected performance until the implementing agency determines that there are no significant concerns to be addressed by further monitoring. (This requirement was not included in the proposed rule.)

(iii) The sites where disposal systems are located must be identified by permanent markers, widespread records, and other passive institutional controls to warn future generations of the dangers and location of the wastes.

(iv) Disposal systems must use several different types of barriers, including both engineered and natural ones, to isolate the wastes from the environment to help guard against unexpectedly poor performance from one type of barrier.

(v) Sites for disposal systems should be selected to avoid places where resources have previously been mined, where there is a reasonable expectation of exploration for scarce or easily accessible resources, or where there is a significant concentration of any material which is not otherwise available. (The wording in the proposed rule would have ruled out sites with a significant possibility of being considered for resource exploration in the future. The final rule revises this requirement to allow use of sites with some resource potential if they have other significant advantages compared to potential alternative sites.)

(vi) Recovery of most of the wastes must not be precluded for a reasonable period after disposal if unforeseen events require this in the future.

(c) The individual protection requirements (Section 191.15) limit annual exposures to members of the public in the accessible environment from the disposal system to 25 millirems to the whole body and 75 millirems to any organ. These requirements apply to undisturbed performance of the disposal system for 1,000 years after disposal. All potential pathways of radiation exposure from the disposal system to people must be considered, including the assumption that individuals consume all of their drinking water (2 liters per day) from any "significant source of ground water" located outside the "controlled area" established around a disposal system. A "significant source" is identified by several parameters intended to describe an aquifer sufficient to meet the needs of a "community water system" as defined in the Agency's National Interim Primary Drinking Water Regulations (40 CFR Part 141). (No explicit individual protection requirements were included in the proposed rule.)

(d) The ground water protection requirements (Section 191.16) limit the concentrations of radioactivity (or the *increases* in concentrations, if preexisting concentrations already exceed these limits) in waters withdrawn from most Class I sources of ground water near a disposal system to no more than 15 picocuries per liter of alpha-emitting radionuclides (including no more than 5 picocuries per liter of radium-226 and radium-228 but excluding radon) and to no more than the combined concentrations of radionuclides that emit either beta or gamma radiation that would produce an annual dose equivalent to the total body or any internal organ greater than 4 millirems if individuals consumed all of their drinking water from that source of ground water. These concentration limits are similar to those set in 40 CFR Part 141 for community water systems. Like the individual protection requirements, the ground water protection requirements apply to undisturbed behavior of the disposal system for a period of 1,000 years after disposal. (No explicit ground water protection requirements were included in the proposed rule.)

(e) Section 191.17 of the final rule establishes minimum procedural requirements that the Administrator must follow if additional information considered in the future indicates that it would be appropriate to modify any portion of the disposal standards through further rulemaking. (No similar provision was included in the proposed rule.)

(f) The "guidance for implementation" included as Appendix B to the final rule describes certain analytical approaches and assumptions through which the Agency intends the various long-term numerical standards of Subpart B to be applied. This guidance is particularly important because there are no precedents for the implementation of such long-term environmental standards, which will require consideration of extensive analytical projections of disposal system performance. (The proposed rule contained a corresponding, but less extensive, section entitled "procedural requirements.")

Overall Approach of the Final Rule

In general, the Agency developed the various elements of this rule by balancing several perspectives. One set of considerations was the expected capabilities of the waste management and disposal technologies to reduce both short- and long-term risks to public health and the environment. These capabilities were examined through a number of performance assessments of the waste management, storage, and disposal facilities planned for the wastes generated by commercial nuclear power plants. Since detailed plans have not yet been determined for disposition of the wastes generated by atomic energy defense activities, similar assessments were generally not performed for these materials. A second consideration, where applicable, was consistency with related environmental standards for radiation exposure. A third factor was evaluation of various

benchmarks to assess the acceptability of the residual risks that might be allowed by the rule. This was particularly important for the disposal standards, where there were few precedents to guide the Agency's judgments. Finally, the Agency placed considerable emphasis on the public concerns expressed during the various phases of this rulemaking, particularly where these concerns involved addressing the substantial uncertainties inherent in the unprecedented time periods of interest.

The final rule reflects a combination of all these perspectives—no single factor predominated. For instance, no portion of this rule is based solely on projections of the "best" protection that technology might provide. If this had been the case, the rule would have been significantly different. On the other hand, the rule cannot be interpreted as setting precedents for "acceptable risk" levels to future generations that should not be exceeded regardless of the circumstances. Instead, because of a number of unique circumstances, the Agency has been able to develop standards for the management and disposal of these wastes that are both reasonably achievable—with little, if any, effort beyond that already planned for commercial wastes—and that limit risks to levels that the Agency believes are clearly acceptably small. The following paragraphs describe how these various perspectives were used in developing the final rule.

Standards for Management and Storage (Subpart A)

Upon surveying the expected performance of the technologies planned for the management, storage, and preparation of these wastes for disposal, the Agency found that the likely exposures to members of the public would generally be very small. Therefore, compatibility with related radiation protection standards became a more important perspective for Subpart A.

For waste management and storage operations to be regulated by the NRC, the most relevant existing standards are those provisions of 40 CFR Part 190 that limit annual exposures of members of the public to 25 millirems to the whole body, 75 millirems to the thyroid, and 25 millirems to any other organ from uranium fuel cycle facilities. Accordingly, the Agency has decided to extend this coverage to include such waste management and storage operations so that the *combined* exposure from all of the NRC-licensed facilities covered under Part 190 and Subpart A of Part 191 shall not exceed these limits. This will include all operations prior to final closure at high-level waste disposal facilities, since these are to be regulated by the NRC.

For waste management and storage operations conducted at atomic energy defense facilities operated for the Department of Energy (which are not regulated by the NRC), the most relevant existing standards are the 40 CFR Part 61 limitations on air emissions of radionuclides that were recently promulgated under the Agency's Clean Air Act authorities (50 FR 5190). These standards limit annual exposures to members of the public to 25 millirems to the whole body and 75 millirems to any organ, with less stringent alternative standards available if it can be shown that no member of the public will receive a continuous exposure of more than 100 millirems per year or an infreqent exposure of more than 500 millirems per year from all sources (excluding natural background and medical exposures.) These Clean Air Act standards are applicable to those facilities *not* covered by 40 CFR Parts 190, 191 or 192. For DOE waste disposal facilities covered by this rule but not regulated by NRC (i.e., those for defense transuranic wastes), the Agency has included standards in Subpart A similar to those included in the Clean Air Act rule.

For other DOE waste management and storage operations, which are usually conducted on large facilities with many other potential sources of radionuclide emissions, the Agency believes that continued regulation under the broader scope of 40 CFR Part 61 is the most effective and practical approach. Otherwise, similar types of emissions from adjoining operations would have to be assessed and regulated through separate rules developed under different authorities; this would cause complex implementation practices without providing any additional protection.

Standards for Disposal (Subpart B)

Developing the standards for disposal of spent fuel and high-level and transuranic wastes involved much more unusual circumstances than those for waste management and storage. Because these materials are dangerous for so long, very long time frames are of interest. Standards must be implemented in the design phase for these disposal systems because active surveillance cannot be relied upon over such periods. At the same time, the standards must accommodate large uncertainties, including uncertainties in our current knowledge about disposal system behavior and the inherent uncertainties regarding the distant future. Subpart B addresses these issues by combining several different types of standards. The primary objective of these standards is to isolate most of the wastes from man's environment by limiting long-term releases and the associated risks to populations. In addition, Subpart B limits risks to individuals in ways compatible with this primary objective.

Although developed primarily through consideration of mined geologic repositories, these disposal standards apply to disposal of spent fuel and high-level and transuranic radioactive wastes by any method—with one exception. The standards do not apply to ocean disposal or disposal in ocean sediments because such disposal of high-level waste is prohibited by the Marine Protection, Research, and Sanctuaries Act of 1972. If this law is ever changed to allow such disposal (DOE continues to study the feasibility of this technology, consistent with the NWPA), the Agency will develop appropriate regulations in accordance with the different authorities that would apply.

Also, these disposal standards do not apply to wastes that have already been disposed of. The various provisions of Subpart B are intended to be met through a combination of steps involving disposal system site selection, design, and operational techniques (i.e., engineered barriers). Therefore, the Agency believes it appropriate that these disposal standards only apply to disposal occuring after the standards have been promulgated—so that they can be taken into consideration in devising the proper selection of controls. Some transuranic wastes produced in support of national defense programs were disposed of before the current DOE procedures for transuranic waste management were adopted in 1970. The exclusion of wastes already disposed of applies to these transuranic wastes, for which selection of disposal system sites, designs, and operational techniques are no longer options.

Containment Requirements (Section 191.13)

To develop the containment requirements, the Agency assumed that some aspects of the future can be predicted well enough to guide the selection and development of disposal systems for these wastes. A period of 10,000 years was considered because that appears to be long enough to distinguish geologic repositories with relatively good capabilities to isolate wastes from those with relatively poor capabilities. On the other hand, this

period is short enough so that major geologic changes are unlikely and repository performance might be reasonably projected.

The Agency assessed the performance of a number of model geologic repositories similar to those systems now being considered by DOE. Potential radionuclide releases over 10,000 years were evaluated, and very general models of environmental transport and a linear, non-threshold dose-effect relationship were used to relate these releases to the incidence of premature cancer deaths they might cause. For the various repository types, these assessments indicate that disposal of the wastes from 100,000 metric tons of reactor fuel would cause a population risk ranging from no more than about ten to a little more than one hundred premature deaths over the entire 10,000-year period, assuming that the existing provisions of 10 CFR Part 60 regarding engineered barriers are met.

The Agency also evaluated the health risks that future generations would be exposed to from the amount of uranium ore needed to produce 100,000 metric tons of reactor fuel, if this ore had not been mined to begin with. Population risks ranging between 10 and 100,000 premature cancer deaths over 10,000 years were associated with this much unmined uranium ore, depending upon the analytical assumptions made.

These analyses, which have been updated from those prepared for the proposed standards, reinforce the Agency's conclusion that limiting radionuclide releases to levels associated with no more than 1,000 premature cancer deaths over 10,000 years from disposal of the wastes from 100,000 metric tons of reactor fuel satisfies two important objectives. First, it provides a level of protection that appears reasonably achievable by the various options being considered within the national program for commercial wastes. Second, the Agency believes that such a limitation would clearly keep risks to future populations at acceptably small levels, particularly because it appears to limit risks to no more than the midpoint of the range of estimated risks that future generations would have been exposed to if the uranium ore used to create the wastes had never been mined. Thus, because mined geologic repositories appear capable of providing such good protection, the Agency has decided to establish containment requirements that meet these two objectives.

The specific release limits for different radionuclides in Table 1 of the final rule were developed by estimating how many curies of each radionuclide would cause 1,000 premature deaths over 10,000 years if released to the environment. The limits were then stated in terms of the allowable release from 1,000 metric tons of reactor fuel (so that the actual curie values in Table 1 correspond to a risk level of 10 premature deaths over 10,000 years). All of these limits have been rounded to the nearest order of magnitude because of the approximate nature of these calculations. For particular disposal systems, release limits based upon the amount of waste in the system will be developed and will be used in a formula that insures that the desired risk level will not be exceeded if releases of more than one type of radionuclide are predicted. For some of the wastes covered by this rule, 1,000 metric tons of reactor fuel is not an appropriate unit of waste. In these situations, the various Notes to Table 1 provide instructions on how to calculate the proper release limits. In particular, the final rule includes provisions for high-level wastes from reactor fuels that have received substantially different uses in national defense applications (and contain much different amounts of radioactivity) than is typical of most reactor fuel used to generate electricity. The proposed rule would have allowed releases for these different types of fuels to occur in much different proportions to their total radioactivity than the Agency intended.

The release limits apply to radionuclides that are projected to move into the "accessible environment" during the first 10,000 years after disposal. The accessible environment includes all of the atmosphere, land surface, surface waters, and oceans. However, it does not include the lithosphere (and the ground water within it) that is below the "controlled area" surrounding a disposal system. The standards are formulated this way because the properties of the geologic media around a mined repository are expected to provide much of the disposal system's capability to isolate these wastes over these long time periods. Thus, a certain area of the natural environment is envisioned to be dedicated to keeping these dangerous materials away from future generations and may not be suitable for certain other uses. In the final rule, this "controlled area" is not to exceed 100 square kilometers and is not to extend more than five kilometers in any direction from the original emplacement of the wastes in the disposal system. The implementing agencies may choose a smaller area whenever appropriate.

The containment requirements apply to accidental disruptions of a disposal system as well as to any expected releases. Accordingly, they are stated in terms of the probability of releases occurring. This is done in two steps.

First, the release limits calculated in accordance with Notes 1 through 5 to Table 1 apply to those release levels that are projected to occur with a cumulative probability greater than 0.1 for the entire 10,000-year period over which these disposal standards apply. This includes the total releases from those processes that are expected to occur as well as relatively likely disruptions (which the Agency assumes will primarily include predictions of inadvertent human intrusion).

Second, these release limits multiplied by ten apply to all of the releases projected to occur with a cumulative probability greater than 0.001 over the 10,000-year period. The Agency expects that this will include releases that might occur from the more likely natural disruptive events, such as fault movement and breccia pipe formation (near soluble media such as salt formations). This range of probabilities was selected to include the anticipated uncertainties in predicting the likelihood of these natural phenomena. Greater releases are allowed for these circumstances because they are so unlikely to occur.

Finally, the containment requirements place no limits on releases projected to occur with a cumulative probability of less than 0.001 over 10,000 years. Probabilities this small would tend to be limited to phenomena such as the appearance of new volcanos outside of known areas of volcanic activity, and the Agency believes there is no benefit to public health or the environment from trying to regulate the consequences of such very unlikely events.

The containment requirements call for a "reasonable expectation" that their various quantitative tests be met. This phrase reflects the fact that unequivocal numerical proof of compliance is neither necessary nor likely to be obtained. A similar qualitative test, that of "reasonable assurance," has been used with NRC regulations for many years. Although the Agency's intent is similar, the NRC phrase has not been used in 40 CFR Part 191 because "reasonable assurance" has come to be associated with a level of confidence that may not be appropriate for the very long-term analytical projections that are called for by 191.13. The use of a different test of judgment is meant to acknowledge the unique considerations likely to be encountered upon implementation of these disposal standards.

Assurance Requirements (Section 191.14)

In contrast to the containment requirements, the assurance requirements were developed from that point of view that there may be major uncertainties and gaps in our knowledge of the expected behavior of disposal systems over many thousands of years. Therefore, no matter how promising the analytical projections of disposal system performance appear to be, these materials should be disposed in a cautious manner that reduces the likelihood of unanticipated types of releases. Because of the inherent uncertainties associated with these long time periods, the Agency believes that the principles embodied in the assurance requirements are important complements to the containment requirements that should insure that the level of protection desired is likely to be achieved.

Each of the assurance requirements was chosen to reduce the potential harm from some aspect of our uncertainty about the future. Designing disposal systems with limited reliance on active institutional controls reduces the risks if future generations do not maintain surveillance of disposal sites. On the other hand, planning for long-term monitoring helps reduce the chances that unexpectedly poor performance of a disposal system would go unnoticed. Using extensive markers and records and avoiding resources when selecting disposal sites both serve to reduce the chances that people may inadvertently disrupt a disposal system because of incomplete understanding of its location, design, or hazards. Designing disposal systems to include multiple types of barriers, both engineered and natural, reduces the risks if one type of barrier performs more poorly than current knowledge indicates. Finally, designing disposal systems so that it is feasible for the wastes to be located and recovered gives future generations an opportunity to rectify the situation if new discoveries indicate compelling reasons (which would not be foreseeable now) to change the way these wastes are disposed of.

The proposed standards contained two other assurance requirements intended to reduce the risks of uncertainty. One of them called for these wastes to be disposed of promptly to reduce the uncertainties associated with storing these materials for indefinitely long times with methods that require active human involvement. However—after this rule was published for public comment—the NWPA was enacted, setting up mandates and procedures intended to insure development of the necessary disposal systems for spent fuel and high-level wastes. Furthermore, the Department has made substantial progress towards developing a repository for disposal of the transuranic wastes from atomic energy defense activities. Because of these steps, the Agency decided that the call for prompt disposal was no longer needed, and this assurance requirement has not been included in the final rule.

The other proposed assurance requirement deleted from the final rule is the provision that called for releases to be kept as small as reasonably achievable even when the numerical containment requirements have been complied with. This would have increased the confidence of achieving the desired level of protection even if there were major uncertainties in analytical projections of long-term isolation. However, the Agency does not believe that it is necessary to retain this assurance requirement in the final standards because of two aspects of the related rules subsequently promulgated by the NRC and DOE for disposal of spent fuel and high-level wastes.

First, NRC's 10 CFR Part 60 implemented the multiple barrier principle by requiring very good performance from two types of engineered components: A 300- to 1,000-year lifetime for waste packages during which there would be essentially no expected release of waste, and a subsequent long-term release rate from the waste form of no more than one part in 100,000 per year. The Agency fully endorses this approach and believes that it represents the best performance reasonably achievable for currently foreseeable engineered components. Second, the DOE has included a provision in its site selection guidelines (10 CFR Part 960) that calls for significant emphasis to be placed on selecting sites that demonstrate the lowest releases over 100,000 years compared to the other alternatives available. Particularly because of the longer time frame involved in this comparison, the Agency believes that this provides adequate encouragement to choose sites that provide the best isolation capabilities available. Therefore, the concept of keeping long-term releases as small as reasonably achievable has been embodied by other agencies' regulations for both the engineered and natural components of disposal systems.

The final rule incorporates the five remaining assurance requirements plus the requirement for long-term monitoring, but it makes them applicable only to disposal facilities that are not regulated by the NRC. In its comments on the proposed rule, the NRC objected to inclusion of the assurance requirements, asserting that they were not properly part of the Agency's authorities assigned by Reorganization Plan No. 3 of 1970. The Agency continues to believe that provisions such as the assurance requirements are an appropriate part of generally applicable standards where they are necessary to establish the regulatory context for numerical standards—as they are in these circumstances because of the major uncertainties involved. However, the two agencies have agreed to resolve this issue by having the Commission modify 10 CFR Part 60 where necessary to incorporate the intent of the assurance requirements, rather than have them included in 40 CFR Part 191 for NRC-licensed disposal facilities. Thus, 10 CFR Part 60 will establish the context needed for appropriate implementation of 40 CFR Part 191.

The NRC staff is preparing the appropriate revisions to Part 60 and has told the Agency that they will be published in the Federal Register for public review and comment within approximately 120 days of today's promulgation of 40 CFR Part 191. EPA has provided NRC with all of the comments received on the assurance requirements during the 40 CFR Part 191 rulemaking, and the Agency will participate in the NRC rulemaking to facilitate our objective of having the intent of all of the assurance requirements embodied in Federal regulation. Finally, the Agency will review the record and outcome of the Part 60 rulemaking to determine if any subsequent modifications to 40 CFR Part 191 are needed.

Individual and Ground Water Protection Requirements (Sections 191.15 and 191.16)

While the primary objective of both the proposed and final disposal standards has been to limit potential long-term releases from disposal systems (and the population risks associated with such releases), these two sections have been added to the final rule to provide protection for those individuals in the vicinity of a disposal system. There are a number of difficult issues involved in formulating standards for individual protection in this situation, as discussed later in the "Release Limits vs. Individual Dose Limits" section. However, after evaluating the various comments received on this topic, the Agency

believes that there are also important advantages in providing for individual protection in ways compatible with the containment and assurance requirements. In discussing this issue, the SAB Subcommittee stated that: "We support the use of a population risk criteria. We believe it is impractical to provide absolute protection to every individual for all postulated events or for very long periods. On the other hand, in our view it is important that, for the first several hundred years, residents of the region immediately outside the accessible environment have very great assurance that they will suffer no, or negligible, ill effects from the repository."

The individual protection requirements in the final rule limit the annual exposure from the disposal system to a member of the public in the accessible environment, for the first 1,000 years after disposal, to no more than 25 millirems to the whole body or 75 millirems to any organs. These limitations apply to the predicted behavior of the disposal system, including consideration of the uncertainties in predicted behavior, assuming that the disposal system is not disrupted by human intrusion or the occurrence of unlikely natural events. The Agency chose the limits of 25 millirem/year to the whole body and 75 millirem/year to any organ because it believes that they represent a sufficiently stringent level of protection for situations where no more than a few individuals are likely to receive this exposure. If such an individual were exposed to this level over a lifetime (which seems particularly unlikely given the localized pathways through which waste might escape from a geologic repository), the Agency estimates this would cause a 5×10^{-4} chance of incurring a premature fatal cancer.

In choosing a time period for these requirements to protect individuals nearby disposal systems, the Agency took into account concerns such as those expressed by the SAB by examining the effects of choosing different time frames. As 10,000 years was chosen for the containment requirements because it is long enough to encourage use of disposal sites with natural characteristics that enhance long-term isolation, 1,000 years was chosen for the individual protection provisions because the Agency's assessments indicate it is long enough to insure that particularly good engineered barriers would need to be used at potential sites where some ground water would be expected to flow through a mined geologic repository. Use of a time much shorter than 1,000 years would not call for substantial engineered barriers even at disposal sites with a lot of ground water flow.

On the other hand, demonstrating compliance with individual exposure limits for times much longer than 1,000 years appears to be quite difficult because of the analytical uncertainties involved. It would require predicting radionuclide concentrations—even from releases of tiny portions of the waste—in all the possible ground water pathways flowing in all directions from the disposal system, at all depths down to 2,500 feet, as a function of time over many thousands of years. At some of the sites being considered (and possibly all of them, depending upon what is discovered during site characterization) the only certain way to comply with such requirements for periods on the order of 10,000 years appears to be to use very expensive engineered barriers that would rule out any potential releases over most of this period. While such barriers could provide longer-term protection for individuals, they would not provide substantial benefits to populations because the containment and assurance requirements already reduce population risks to very small levels.

Based on all of these considerations, the Agency has decided that a 1,000-year duration is adequate for quantitative limits on individual exposures after disposal. For longer time periods, several of the qualitative assurance requirements should help to reduce the chances that individuals will receive serious radiation exposures. In addition, 40 CFR Part 191 in no way limits the future applicability of the Agency's drinking water standards (40 CFR Part 141)—which protect community water supply systems through institutional controls—or of similar standards that future generations may choose to adopt.

In assessing the performance of a disposal system with regard to individual exposures, all pathways of radioactive material or radiation from the disposal system to people shall be considered. In particular, the assessments must assume that individuals consume all of their drinking water (2 liters per day) from any portion of a "significant source of ground water" anywhere outside of the "controlled area" surrounding the disposal system. Significant sources of ground water are defined to include underground formations that are likely to be able to provide enough water for a community water system as defined in 40 CFR Part 141. (More information regarding this definition is provided later in the "Release Limits vs. Individual Dose Limits" discussion.) Formations that could only provide smaller amounts of potable water have not been included because the Agency wants to avoid discriminating against the use of low-productivity geologic formations that might provide very good long-term isolation as disposal sites. The Agency believes this is reasonable for these standards because of the very small number of such disposal facilities that are contemplated (no more than three or four over the next 100 years.) However, the Agency has no plans to use this classification for other ground water related standards, which usually affect a far greater number of situations.

The Agency has not required these individual protection provisions to assume ground water use within the controlled area because geologic media within the controlled area are an integral part of the disposal system's capability to provide long-term isolation. (But if the implementing agency plans to allow individuals to use ground water within the controlled area, such planned use would have to be considered within the pathways evaluated to determine compliance with § 191.15.) The potential loss of ground water resources is very small because of the small number of such disposal facilities contemplated. Nevertheless, the Agency has also added ground water protection requirements to the final rule (Section 191.16) that protect certain sources of ground water even within the controlled area. These ground water protection requirements are similar to the individual protection requirements because they apply to undisturbed performance for 1,000 years after disposal. However, the ground water protection requirements apply only to those Class I ground waters, as they are identified in accordance with the Agency's Ground-Water Protection Strategy published in August 1984, that meet the following three conditions: (1) They are within the controlled area or near (less than five kilometers beyond) the controlled area; (2) they are supplying drinking water for thousands of persons as of the date that the Department selects the site for extensive exploration as a potential location of a disposal system; and (3) they are irreplaceable in that no reasonable alternative source of drinking water is available to that population.

For such Class I ground waters, § 191.16 limits the radionuclide concentrations in water withdrawn from any portion of them to no more than concentration limits similar to those

established for the output of community water systems in 40 CFR Part 141. However, if the preexisting concentrations of radioactivity in the Class I aquifer already exceed any of these limits at a particular site, § 191.16 then limits any *increases* in the preexisting concentrations to these same concentration limits. The Agency believes these provisions are necessary and adequate to avoid any significant degradation of the important drinking water resources provided by these Class I ground waters.

Alternative Provisions for Disposal (Section 191.17)

In developing the disposal standards, the Agency has had to make many assumptions about the characteristics of disposal systems that have not been built, about plans for disposal that are only now being formulated, and about the probable adequacy of technical information that will not be collected for many years. Thus, although the Agency believes that the disposal standards being promulgated today are appropriate based upon current knowledge, we cannot rule out the possibility that future information may indicate needs to modify the standards.

In recognition of this possibility, § 191.17 of the final rule sets forth procedures under which the Administrator may develop modifications to Subpart B, should the need arise. Any such changes would have to proceed through the usual notice-and-comment rulemaking process, and § 191.17 stipulates that such a rulemaking would require a public comment period of at least 90 days, to include public hearings in affected areas of the country. Although such procedures are common practice in rulemakings of this type, they are not required by the statutes relevant to this rule (Administrative Procedures Act mandates can be satisfied by a comment period as short as 14 days). Thus, § 191.17 insures an opportunity for significant public interaction regarding any proposed changes to the disposal standards.

There are several areas of uncertainty the Agency is aware of that might cause suggested modifications of the standards in the future. One of these concerns implementation of the containment requirements for mined geologic repositories. This will require collection of a great deal of data during site characterization, resolution of the inevitable uncertainties in such information, and adaptation of this information into probabilistic risk assessments. Although the Agency is currently confident that this will be successfully accomplished, such projections over thousands of years to determine compliance with an environmental regulation are unprecedented. If—after substantial experience with these analyses is acquired—disposal systems that clearly provide good isolation cannot reasonably be shown to comply with the containment requirements, the Agency would consider whether modifications to Subpart B were appropriate.

Another situation that might lead to suggested revisions would be if additional information were developed regarding the disposal of certain wastes that appeared to make it inappropriate to retain generally applicable standards addressing all of the wastes covered by this rule. For example, the DOE is considering disposal of some defense wastes by stabilizing them in their current storage tanks, rather than relocating them to a mined repository. The Agency has not assessed the ramifications of such disposal yet, and it is certainly possible that it could be carried out in compliance with all the provisions of Subpart B being promulgated today. However, it is also possible that there may be benefits associated with such disposal that would warrant changes in Subpart B for these types of waste. If so, § 191.17 would govern the consideration of any such revisions.

Other examples of developments that might offer reasons to consider alternative provisions in the future include: The use of reactor fuel cycles or utilizations substantially different than today's; new models of the environmental transport and biological effects of radionuclides that indicate major changes (i.e., approaching an order of magnitude) in the relative risks associated with different radionuclides and the level of protection sought by the disposal standards; or information that indicates that particular assurance requirements might not be needed in certain situations to insure adequate confidence of long-term environmental protection.

Guidance for Implementation (Appendix B)

This supplement to the final rule is based upon some of the analytical assumptions that the Agency made in developing the technical basis used for formulating the numerical disposal standards. These analytical assumptions incorporate information assembled as part of the technical basis used to develop the proposed rule. In particular, Appendix B discusses: (1) The consideration of all barriers of a disposal system in performance assessments; (2) reasonable limitations on the scope of performance assessments; (3) the use of average or "mean" values in expressing the results of performance assessments; (4) the types of assumptions regarding the effectiveness of institutional controls; and (5) limiting assumptions regarding the frequency and severity of inadvertent human intrusion into geologic repositories.

The implementing agencies are responsible for selecting the specific information to be used in these and other aspects of performance assessments to determine compliance with 40 CFR Part 191. However, the Agency believes it is important that the assumptions used by the implementing agencies are compatible with those used by EPA in developing this rule. Otherwise, implementation of the disposal standards may have effects quite different than those anticipated by EPA. The final rule to be published in the Code of Federal Regulations will include this informational appendix as guidance to the implementing agencies. Although the other agencies are not bound to follow this guidance, EPA recommends that it be carefully considered in planning for the application of 40 CFR Part 191. The Agency will monitor implementation of the disposal standards as it develops over the next several years to determine whether any changes to the rule are called for to meet the Agency's objectives for these standards.

Comments on Issues Highlighted for Public Review

The Agency particularly requested public comment on six issues associated with the proposed rule (47 FR 58196). After these comments were received, additional comments and information were requested on seven issues raised by the initial comments (48 FR 21666). Two of these seven issues (the definition of high-level waste and the use of individual dose limitations in the disposal standards) had been included among the first six issues that were highlighted. Thus, a total of eleven questions received particular attention during the public review and comment process. The following paragraphs summarize the comments received on each of these issues and the Agency's responses to them, including descriptions of any resulting changes made in the final rule.

Definition of "High-Level Waste"

Traditionally, the term "high-level waste" has meant the highly radioactive liquid wastes remaining from the

recovery or uranium and plutonium in a nuclear fuel reprocessing plant, and other liquid or solid forms into which such liquid wastes are converted to facilitate managing them. This traditional use of the term has not included radioactive materials from other sources, no matter how radioactive they are. However, somewhat different definitions of high-level waste have appeared in certain laws and regulations affecting specific aspects of radioactive waste management. Most notably, some of these definitions have included unreprocessed spent fuel as the prospects for a commercial fuel reprocessing industry became more uncertain.

In the proposed rule, high-level waste was defined in the traditional sense, including spent fuel if disposed of without reprocessing. But the proposed definition also included minimum radioactivity concentrations below which such materials would not be subject to the stringent isolation requirements of 40 CFR Part 191. To identify these minimum concentrations, the maximum concentrations that the NRC determined that it would generally accept in near-surface disposal facilities under 10 CFR Part 61 (47 FR 57446) were adapted. Since this represented a modification of the traditional meaning of high-level waste, the Agency particularly sought comment on this aspect of the proposed rule.

Shortly after 40 CFR Part 191 was published for public review, the NWPA was enacted. The NWPA distinguished between spent nuclear fuel and high-level waste, and it defined high-level waste to include both: "(A) The highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and (B) other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation." This definition allow for inclusion of highly radioactive material not related to reprocessing of spent nuclear fuel, and it reflects the concept that some derivatives of nuclear fuel reprocessing may not contain sufficient radioactivity to warrant exceptional isolation.

Many of the comments regarding the proposed definition suggested that EPA adopt the definition in the NWPA, although in response to the specific questions distributed in conjunction with the Agency's public hearings, many responders thought that the Agency should define the phrase "sufficient concentrations" contained in part A of the NWPA definition. However, several commenters argued that the proposed lower limits for high-level waste concentrations had been improperly taken out of the context of 10 CFR Part 61 and could require expensive disposal of wastes with relatively small hazards.

After considering these comments and other information currently available, the Agency decided to incorporate the NWPA definition of high-level waste in the final 40 CFR Part 191 without further elaboration of the phrase "sufficient concentrations." The Agency recognizes that this introduces some uncertainty regarding the applicability of this rule. However, the Commission is now beginning a rulemaking that should assemble the technical information needed to develop a more specific definition of high-level wastes. Since the NRC definition would not necessarily apply to all the situations covered by 40 CFR Part 191 (e.g., management and storage of defense high-level wastes prior to disposal is not regulated by NRC), the Agency will follow the Commission's rulemaking to determine what appropriate elaborations of the NWPA definition should be incorporated into 40 CFR Part 191. Upon completion of the NRC rulemaking, the Agency will initiate steps to appropriately modify this rule. In addition, EPA will address disposal of any radioactive wastes that are not covered by 40 CFR Part 191 or 40 CFR Part 192 (the Agency's standards for disposal of uranium mill tailings) as it considers standards for disposal of low-level radioactive wastes (48 FR 39563).

Finally, incorporating the NWPA definition of high-level waste also includes the phrase "consistent with existing law" when describing the NRC's responsibilities to identify materials as high-level waste. Promulgation of 40 CFR Part 191 with this definition does not signify Agency acceptance or endorsement of any particular interpretation of the phrase "consistent with existing law." The Agency presumes that the Commission will specify the applicability of its existing authorities as it conducts the relevant rulemaking efforts.

The Level of Protection

In the proposed rule, the containment requirements for disposal systems limited the residual risks to no more than an estimated 1,000 premature cancer deaths over the first 10,000 years after disposal of the wastes from 100,000 metric tons of heavy metal (MTHM) used as fuel in a nuclear reactor. The Agency pointed out that a variety of mined repository designs using different combinations of geologic media and engineered controls were expected to meet these requirements. It was also estimated that the residual risks to future generations appeared to be no greater than if the uranium ore used to create the wastes had not been mined. EPA particularly asked for comment on whether it had taken an appropriate and reasonable approach in choosing this level of protection based upon these considerations.

Most of the public comments found this approach satisfactory. However, some commenters argued that the risks from unmined uranium ore did not necessarily define an acceptably low level of residual risks. They pointed out that such risks may vary from place to place (and a high-level waste repository could "redistribute" them) and that society sometimes does take measures to clean-up naturally-occurring radioactivity, implying that such natural risks are not always "acceptable."

On the other hand, some commenters felt that the level of protection sought in the proposed rule was far too stringent when compared to risks allowed and accepted by society from other activities. For example, the SAB Subcommittee recommended that the desired level of protection be relaxed by at least a factor of ten for this reason, coupled with the Subcommittee's concern that the uncertainties in analytical projections over thousands of years could make it difficult to demonstrate compliance with the proposed containment requirements.

After evaluating the public comments and updated performance assessments of geologic repositories, the Agency has retained the proposed level of protection as the basis for the long-term containment requirements in the final rule—even though it is true that long-term assessments of repository performance will encounter substantial uncertainties, as the SAB Subcommittee pointed out. Three reasons support this decision.

First, revising the performance assessments in accordance with many of the technical recommendations of the SAB has reinforced the Agency's conclusion that the proposed level of protection can reasonably be achieved by a variety of combinations of repository sites and designs—and EPA's regulatory impact analyses indicate that this level of protection can be achieved without significant effects on the cost of disposing of these wastes.

Second, comparing this level of protection with the comparable risks

from equivalent amounts of unmined uranium ore continues to reinforce the Agency's belief that this is an acceptably small residual risk for future generations. Therefore, the Agency believes that this level of protection represents a reasonable basis for these disposal standards.

Third, rather than relax the level of protection, the Agency has chosen to address the uncertainties that concerned the SAB Subcommittee by adding § 191.13(b) and by providing a more detailed "Guidance for Implementation" section to replace the proposed "Procedural Requirements." For example, this guidance points out that the entire range of possible projections of releases need not meet the containment requirements. Rather, compliance should be based upon the projections that the implementing agencies believe are more realistic. Furthermore, these revisions acknowledge that the quantitative calculations needed may have to be supplemented by reasonable qualitative judgments in order to appropriately determine compliance with the disposal standards.

In retaining the proposed level of protection, the Agency emphasizes that it is making a decision applicable only to the circumstances involving disposal of spent nuclear fuel and high-level and transuranic wastes. This rule cannot be used to establish precedents such as "no incremental risk to future generations" for extrapolation to other disposal problems. For other situations, evaluations of technological feasibility and cost-effectiveness must be considered for the particular set of circumstances. If mined geologic repositories were not capable of providing such good protection, the Agency might have chosen considerably different standards.

Time Period for Containment Requirements

Many commenters addressed the 10,000-year period used for the proposed containment requirements. A few argued that this period was too long and that EPA should only be concerned with a few hundred to a thousand years. A number of commenters supported the focus on 10,000 years. However, many commenters felt that it was inappropriate for the standards to ignore the period after 10,000 years. Some suggested that the containment requirements should address periods ranging from 50,000 to 500,000 years.

In the proposed rule, the Agency indicated that 10,000 years was chosen, in part, because compliance with quantitative standards for a substantially longer period would have entailed considerably more uncertain calculations. There was no intention to indicate that times beyond 10,000 years were unimportant, but the Agency felt that a disposal system capable of meeting the proposed containment requirements for 10,000 years would continue to protect people and the environment well beyond 10,000 years. The SAB Subcommittee reviewed and supported these technical arguments for limiting the containment requirements to a 10,000-year period. Those commenters who argued for longer periods did not suggest effective ways that might compensate for the substantially greater uncertainties inherent in longer projections of disposal system performance.

However, many of the commenters and the SAB Subcommittee suggested that more qualitative or comparative assessments beyond 10,000 years might be appropriate. The Agency agreed with these comments and worked with the DOE to formulate comparative assessment provisions that have been incorporated into the final version of the Department's site selection guidelines (10 CFR Part 960). These provisions call for comparisons of the projected releases from undisturbed performance of alternative repository sites over 100,000 years to be a significant consideration in site selection. Since natural barriers are expected to provide the primary protection for such long time frames, this provision should allow for appropriate consideration of longer time periods without requiring the absolute values of these very uncertain calculations to meet a specific quantitative test. With the inclusion of this comparative test in 10 CFR Part 960, the Agency believes that no modification is needed in 40 CFR Part 191.

Use of Quantitative Probabilities in the Containment Requirements

The containment requirements in the proposed rule applied to two categories of potential releases ("reasonably foreseeable" and "very unlikely") based upon their projected probabilities of occurrence over the first 10,000 years after disposal. In its comments on the proposed rule, the NRC objected to the proposed quantitative definitions of these probabilities on the basis that calculation of such probabilities could be so uncertain that it would be impractical to determine whether the standards had been complied with. Instead, the NRC suggested substitution of qualitative terms to identify the two categories of potential releases. The wording proposed by the NRC was formulated in terms of releases that might be caused by geologic processes and events.

In the second round of comment, the Agency sought information on whether to adopt the NRC's recommended wording or to retain definitions based on quantitative probabilities. Although a number of commenters agreed with the NRC position, the preponderance of comments supported retention of the quantitative probabilities. The SAB Subcommittee strongly supported retention of the probabilistic structure, but with substantially less restrictive probabilities and with the proviso that the Agency be sure that such conditions would be ". . . practical to meet and [would] not lead to serious impediments, legal or otherwise, to the licensing of high-level waste repositories." After considering all of this information, the Agency has revised the structure of the containment requirements in several ways that will retain quantitative objectives for long-term containment while allowing the implementing agencies enough flexibility to make qualitative judgments when necessary.

First, the final rule does not use the terms "reasonably foreseeable" and "very unlikely" releases. Instead, the permissible probabilities for two different levels of cumulative releases (over 10,000 years after disposal) are now incorporated directly into the containment requirements.

Second, the numerical probabilities associated with the two release categories have been increased by an order of magnitude to reflect further assessments of the uncertainties associated with projecting the probabilities of geologic events such as fault movement.

Third, the final rule clearly indicates that comprehensive performance assessments, including estimates of the probabilities of various potential releases whenever meaningful estimates are practicable, are needed to determine compliance with the containment requirements.

Fourth, a paragraph has been added to the final containment requirements (Section 191.13) to emphasize that unequivocal proof of compliance is neither expected nor required because of the substantial uncertainties inherent in such long-term projections. Instead, the appropriate test is a reasonable expectation of compliance based upon practically obtainable information and analysis. This paragraph was patterned after a paragraph that considered similar issues in NRC's 10 CFR Part 60.

Finally, the "Guidance for Implementation" section has been

added (Appendix B). This part of the rule describes the Agency's assumptions regarding performance assessments and uncertainties and should discourage overly restrictive or inappropriate implementation of the containment requirements.

The Agency believes that these revisions to the proposed rule preserve an objective framework for application of the containment requirements that requires very stringent isolation while allowing the implementing agencies adequate flexibility to handle specific uncertainties that may be encountered.

Within this framework, the possibility of inadvertent human intrusion into or nearby a repository requires special attention. Such intrusion can significantly disrupt the containment afforded by a geologic repository (as well as being dangerous for the intruders), and repositories should be selected and designed to reduce the risks from such potential disruptions. However, assessing the ways and the reasons that people might explore underground in the future—and evaluating the effectiveness of passive controls to deter such exploration near a repository—will entail informed judgment and speculation. It will not be possible to develop a "correct" estimate of the probability of such intrusion. The Agency believes that performance assessments should consider the possibilities of such intrusion, but that limits should be placed on the severity of the assumptions used to make the assessments. Appendix B to the final rule describes a set of parameters about the likelihood and consequences of inadvertent intrusion that the Agency assumed were the most pessimistic that would be reasonable in making performance assessments. The implementing agencies may adopt these assumptions or develop similar ones of their own. However, as indicated under the discussion of institutional controls, the Agency does not believe that institutional controls can be relied upon to completely eliminate the possibility of inadvertent intrusion.

Definition of "Accessible Environment"

The containment requirements limit releases to the "accessible environment" for 10,000 years after disposal. In the proposed rule, ground water within 10 kilometers of a disposal system was excluded from the definition of accessible environment. This definition was intended to reflect the concept that the geologic media surrounding a mined repository are part of the long-term containment system, with disposal sites being selected so that the surrounding media prevent or retard transport of radionuclides through ground water. Such surrounding media would be dedicated for this purpose, with the intention to prohibit incompatible activities (either those that might disrupt the disposal system or those that could cause significant radiation exposures) in perpetuity. Applying standards to the ground water contained within these geologic media surrounding a repository would ignore the role of this natural barrier, and it could reduce the incentive to search for sites with characteristics that would enhance long-term containment of these wastes. (At the same time, the Agency recognized that the institutional controls designed to reserve this area around a disposal system cannot be considered infallible, and other provisions of the rule are designed to reduce the consequences of potential failures.)

Many commenters objected to the definition of accessible environment incorporated in the proposed rule. Some recommended that all ground water, or all "potable" ground water, should be included. Others agreed that it was appropriate to exclude some ground water in the immediate vicinity of a repository, but argued that the proposed 10-kilometer distance was too long—particularly for ground water sources that were likely to be used in the future. A few commenters thought that the proposed definition was too restrictive by including all ground water beyond 10 kilometers; they suggested that poor quality ground water sources unlikely to be used in the future should not be part of the accessible environment at all.

After considering these comments, the Agency has decided to make several changes in the definition of the "accessible environment." First, the concept of a "controlled area" has been adopted from NRC's 10 CFR Part 60. This establishes an area around a disposal system that is to be identified by markers, records, and other passive institutional controls intended to prohibit incompatible activities from the area. Consistent with the proposed 40 CFR Part 191, the current NRC definition of "controlled area" limits its distance from the edge of a repository to no more than 10 kilometers. The final 40 CFR Part 191 defines "accessible environment" to include: (1) The atmosphere, land surfaces, surface waters, and the oceans, wherever they are located; and (2) portions of the lithosphere—and the ground water within it—that are beyond the controlled area.

Second, the Agency has made the definition of the "controlled area" more restrictive than that currently incorporated in 10 CFR Part 60. This revised definition limits the controlled area to a distance no greater than five kilometers from the original emplacement of wastes in a disposal system, rather than 10 kilometers. Furthermore, the revised definition limits the area encompassed by the controlled area to no more than 100 square kilometers, which is approximately the area that would be encompassed by a controlled area at a distance of three kilometers from all sides of a typical repository configuration. (A distance of five kilometers from all sides of a typical repository would correspond to an area of about 200 square kilometers, whereas a distance of ten kilometers from all sides corresponds to an area of almost 500 square kilometers.) This revised definition substantially reduces the area of the lithosphere that would have been removed from the "accessible environment" defined in the proposed rule, and it somewhat reduces the distance used in the proposed rule. The five-kilometer distance was chosen to retain reasonable compatibility with the NRC's requirement for a preemplacement ground water travel time of 1,000 years to the accessible environment (one of the 10 CFR Part 60 requirements developed in concert with the proposed rule), while still providing for greater isolation than called for by the proposed rule. This definition of the accessible environment will allow a controlled area to be established asymmetrically around a repository based upon the particular characteristics of a site.

Release Limits vs. Individual Dose Limits

The Agency believes that the containment requirements in § 191.13 will insure that the overall population risks to future generations from disposal of these wastes will be acceptably small. However, the situation with regard to potential individual doses is more complicated. Even with good engineering controls, some waste may eventually (i.e., several hundreds or thousands of years after disposal) be released into any ground water that might be in the immediate vicinity of a geologic repository. Since ground water generally provides relatively little dilution, anyone using such contaminated ground water in the future may receive a substantial radiation exposure (e.g., several rems per year or more). This possibility is inherent in collecting a very large amount of radioactivity in a small area.

The proposed rule did not contain any numerical restrictions on such potential individual doses after disposal. Rather, the proposal relied on several of the qualitative assurance requirements to greatly reduce the likelihood of such exposures. In particular, the assurance requirement calling for extensive permanent markers and records was intended to perpetuate information to future generations about the dangers of intruding into the vicinity of a repository. The assurance requirement to avoid sites with significant resources was intended to reduce the incentive to explore around a repository even if the information passed on was ignored or misunderstood. And the assurance requirements to use multiple barriers, both engineered and natural, and to keep releases as small as reasonably achievable were intended to encourage reduction of releases to ground water beyond that needed to meet the containment requirements—further reducing the potential for harmful individual exposures.

This approach to potential individual exposures was highlighted for comment when 40 CFR Part 191 was proposed. After receiving many recommendations to incorporate a limitation on individual doses after disposal, the Agency sought comment on further details of such a limitation in the second round of comments. For example, EPA asked whether such a limitation should apply to ground water use, whether it should apply only for ground water at some distance from a geologic repository or for any ground water source, and whether reliance on existing individual dose limitations (such as 40 CFR Part 141 or 10 CFR Part 20) for protection regarding ground water would be adequate.

The responses resulting from these questions offered a wide range of suggestions. A number of commenters opposed inclusion of an individual dose limitation for disposal on the grounds that calculations to judge compliance with such a standard would be highly speculative and not an appropriate basis upon which to judge the adequacy of a disposal system. In contrast, some other commenters argued that an individual dose standard in the 5 to 25 millirems per year range should apply to use of ground water in the accessible environment for an indefinitely long period into the future. Another group of commenters supported inclusion of some limitation on individual exposure, but only to the extent that it would not compromise the primary intent of long-term isolation and containment of the wastes.

These comments did not offer information that changed the Agency's perception of some of the problems associated with individual dose limitations for disposal. First, relying *only* upon an individual dose standard for disposal could encourage disposal methods that would enhance dilution of any wastes released. Thus, disposal sites near bodies of surface water or large sources of ground water might be preferred—which the Agency believes is an inappropriate policy that would usually increase overall population exposures.

This concern could be met by *adding* an individual dose limitation to the proposed containment requirements, rather than replacing them. However, the Agency's performance assessments of geologic repositories indicate that doses from using ground water close to a repository can become substantial (e.g., several rems per year) after a few hundred or thousand years, because the geological and geochemical characteristics of appropriate sites tend to concentrate eventual releases of wastes in any ground water that is close to the site. A study published by the National Academy of Sciences in April 1983 confirms this potential for large individual doses if flowing ground water can contact the wastes after the waste canisters are presumed to start leaking. Although it might be possible to find certain geologic settings that avoid this problem, such restrictive siting prerequisites could substantially delay development of disposal systems without providing significantly more protection to populations. Furthermore, even if reasonable limitations on individual exposure might be met at certain sites for very long times, demonstrating compliance with such limitations could be very difficult because of the additional complexities involved in estimating individual exposures rather than amounts of radioactivity released. The SAB Subcommittee report generally agreed with the technical aspects of these conclusions.

On the other hand, analyses of repository systems with good engineering controls show that they should be able to prevent significant doses from ground water use for at least a thousand years after disposal. Such protection would be compatible with both the proposed containment and assurance requirements. Accordingly, the SAB Subcommittee recommended that the Agency include a requirement limiting individual doses for the first 500 years after disposal, and one of the States that commented on the proposed rule suggested an individual dose limit for 1,000 years after disposal.

After considering all of this information, the Agency has decided to include two new sections in the final rule. The first (Section 191.15) limits exposures to members of the public after disposal, while the second (Section 191.16) limits concentrations in water withdrawn from certain important sources of ground water after disposal.

The individual protection requirements in § 191.15 limit exposures from a disposal system to individuals in the accessible environment to 25 millirems per year to the whole body and 75 millirems per year to any organ. These limits apply only to undisturbed performance of the disposal system (i.e., without any consideration of human intrusion or disruption by unlikely natural events), and they apply for the first 1,000 years after disposal. All potential pathways of radiation or radioactive material from the disposal system to people (associated with undisturbed performance) shall be considered, including the assumption that an individual drinks two liters per day of water from any "significant source of ground water" outside of the "controlled area" surrounding a disposal system. If the implementing agency plans to allow individuals to use ground water within the controlled area, such planned use would also have to be considered within the pathways evaluated to determine compliance with § 191.15.

"Significant sources of ground water" are defined to include any aquifer currently providing the primary source of water for a community water system or any aquifer that satisfies all of the following five conditions: (1) It is saturated with water containing less than 10,000 milligrams per liter of total dissolved solids; (2) it is within 2,500 feet of the land surface; (3) it has a transmissivity of a least 200 gallons per day per foot, provided that (4) each of the underground formations or parts of underground formations included within the aquifer must have an individual hydraulic conductivity greater than 2 gallons per day per square foot; and (5) it must be capable of providing a sustained yield of 10,000 gallons per day of water to a pumped or flowing well.

Although such quantitative distinctions are inevitably somewhat arbitrary, the Agency believes that they provide reasonable demarcations to identify underground formations that could meet the needs of community water systems in the future. The selected transmissivity of 200 gallons per day per foot and the sustained yield

of 10,000 gallons per day roughly correspond to the size of a ground water source required to support the needs of about 20 households; this is similar to the size of the community water system considered in 40 CFR Part 141. The water quality criterion of 10,000 milligrams per liter of total dissolved solids has been used in several previous Agency regulations and is based upon congressional guidance in the legislative history of the Safe Drinking Water Act. The maximum depth criterion of 2,500 feet was chosen because almost all of the wells used to provide water to significant numbers of people do not extend below this depth. The minimum hydraulic conductivity criterion of 2 gallons per day per square foot was chosen to insure that only reasonably permeable formations are considered, rather than including unproductive formations that might be in the vicinity of a "significant source of ground water."

The ground water protection requirements in § 191.16(a) limit the concentrations in water withdrawn from any "special source of ground water" in the vicinity of a disposal system to concentrations similar to those established for the output of community water systems by 40 CFR Part 141: (1) 5 picocuries per liter of radium-226 and radium-228; (2) 15 picocuries per liter of alpha-emitting radionuclides (including radium-226 and radium-228 but excluding radon); or (3) the combined concentrations of radionuclides that emit either beta or gamma radiation that would produce an annual dose equivalent to the total body or any internal organ greater than 4 millirems per year if an individual continuously consumed 2 liters per day of drinking water from that source of water. However, if the preexisting radionuclide concentrations in the special source of ground water already exceed any of these limits, then § 191.16(b) limits any *increases* in the preexisting concentrations to the concentration limits set in § 191.16(a). Like the individual protection requirements, the ground water protection requirements apply only for undisturbed performance of the disposal system and apply for the first 1,000 years after disposal. Unlike the individual protection requirements, the ground water requirements would apply to a "special source" if it was within the controlled area.

"Special sources" are defined to include only those Class I ground waters—to be identified in accordance with the Agency's Ground-Water Protection Strategy published in August 1984—that meet the following three conditions: (1) They are within the controlled area or near (less than five kilometers beyond) the controlled area; (2) they are supplying drinking water for thousands of persons as of the date that the Department selects the site for extensive exploration as a potential location of a disposal system; and (3) they are irreplaceable in that no reasonable alternative source of drinking water is available to that population.

Need for the Assurance Requirements

The preceding issues dealt with the quantitative requirements of the disposal standards. While numerical standards are important to bring about appropriate selection and design of disposal systems, the Agency has long recognized that the numerical standards chosen for Subpart B, by themselves, do not provide either an adequate context for environmental protection or a sufficient basis to foster public confidence in the national program. There are too many uncertainties in projecting the behavior of natural and engineered components for many thousands of years—and too many opportunities for mistakes or poor judgments in such calculations—for the numerical requirements on overall system performance in Subpart B to be the sole basis to determine the acceptability of disposal systems for these very hazardous wastes. These uncertainties and potential errors in quantitative analysis could ultimately prevent the degree of protection sought by the Agency from being achieved. (Theoretically, it might be possible to develop adequate confidence in achieving this level of protection by choosing much more stringent numerical standards, but this could lead to substantial difficulties in implementation.) Therefore, the proposed standards also included qualitative assurance requirements chosen to ensure that cautious steps are taken to reduce the problems caused by these uncertainties. The proposed rule emphasized that the assurance requirements were an essential complement to the quantitative containment requirements that were selected.

In its comments on the proposed rule, the NRC argued that the assurance requirements were not properly part of the Agency's generally applicable standards. The Commission agreed that the overall numerical performance standards were not sufficient, but suggested that its regulations and procedures were the appropriate vehicle to provide the necessary confidence that the inherent uncertainties would not compromise environmental protection. The Agency believes that it does have the authority to give regulatory expression to the context within which it has chosen to establish one set of numerical standards rather than another. However, because it might not be appropriate to exercise this authority, the Agency sought public comment on the need for the assurance requirements in the second round of comments.

The preponderance of comments received on this question strongly supported retention of the assurance requirements in 40 CFR Part 191. In particular, virtually all of the various State governments that commented on the rule described the assurance requirements as an essential part of the regulations governing disposal of these wastes. Subsequently, two of these States, Nevada and Minnesota, petitioned the Commission to incorporate the assurance requirements proposed as part of 40 CFR Part 191 into its own rules (50 FR 18267).

Based upon these comments, the Agency and the NRC have reached an agreement that should accomplish the desired regulatory goals while avoiding the jurisdictional issue. EPA has included the assurance requirements in the final rule, modified as appropriate in response to other comments. However, these requirements will not be applicable to disposal facilities to be licensed by the Commission. Instead, as discussed previously, the NRC staff plans to propose modifications to 10 CFR Part 60, developed in consultation with EPA, for public review and comment within approximately 120 days to insure that the objectives of all of the assurance requirements in 40 CFR Part 191 will be accomplished through compliance with 10 CFR Part 60. The Agency has provided the Commission with all of the comments received by EPA regarding the assurance requirements, so that the NRC can use them in its rulemaking. In addition, the Agency will participate in the NRC rulemaking to facilitate incorporation of the principles of all of the assurance requirements in Federal regulation. Finally, the Agency will review the record and outcome of the Part 60 rulemaking to determine if any subsequent modifications to 40 CFR Part 191 are needed.

Approach Toward Institutional Controls

The Agency particularly sought comment on its proposed approach to reliance on institutional controls. The proposed rule limited reliance on "active institutional controls" (such as controlling access to a disposal site,

performing maintenance operations, or cleaning up releases) to a reasonable period of time after disposal, described as on the order of a "few hundred years." On the other hand, "passive institutional controls" (such as permanent markers, records, archives, and other methods of preserving knowledge) were considered to be at least partially effective for a longer period of time.

Few commenters argued with the distinction between active and passive institutional controls, or with the amount of reliance the proposed rule envisioned for passive controls. However, many commenters felt that "a few hundred years" was too long a period to count on active controls. Accordingly, the final rule limits reliance on active institutional controls to no more than 100 years after disposal. This was the time period the Agency considered in criteria for radioactive waste disposal that were proposed for public comment in 1978 (43 FR 53262), a period that was generally supported by the commenters on that proposal. After this time, no contribution from any of the active institutional controls can be projected to prevent or limit potential releases of waste from a disposal system.

The concept of passive institutional controls has now been incorporated into the definition of "controlled area" that is used to establish one of the boundaries for applicability of the containment requirements and the individual protection requirements in the final rule. Because the assumptions made about the effectiveness of passive institutional controls can strongly affect implementation of the containment requirements, the Agency's intent has been elaborated in the "guidance for implementation" section. The Federal Government is committed to retaining control over disposal sites for these wastes as long as possible. Accordingly (and in compliance with one of the assurance requirements), an extensive system of explanatory markers and records will be instituted to warn future generations about the location and dangers of these wastes. These passive controls have not been assumed to prevent all possibilities of inadvertent human intrusion, because there will always be a realistic chance that some individuals will overlook or misunderstand the markers and records. (For example, exploratory drilling operations occasionally intrude into areas that clearly would have been avoided if existing information had been obtained and properly evaluated.) However, the Agency assumed that society in general will retain knowledge about these wastes and that future societies should be able to deter systematic or persistent exploitation of a disposal site.

The Agency also assumed that passive institutional controls should reduce the chance of inadvertent intrusion compared to the likelihood if no markers and records were in place. Specific judgments about the chances and consequences of intrusion should be made by the implementing agencies when more information about particular disposal sites and passive control systems is available. The parameters described in the "guidance for implementation" represent the most severe assumptions that the Agency believed were reasonable to use in its analyses to evaluate the feasibility of compliance with this rule (analyses that are summarized in the BID). The implementing agencies are free to use other assumption if they develop information considered adequate to support those judgments.

The role envisioned for institutional controls in this rulemaking has been adapted from the general approach the Agency has followed in its activities involving disposal of radioactive wastes since the initial public workshops conducted in 1977 and 1978. The Agency's overall objective has been to protect public health and the environment from disposal of radioactive wastes without relying upon institutional controls for extended periods of time—because such controls do not appear to be reliable enough over the very long periods that these wastes remain dangerous. Instead, the Agency has pursued standards that call for isolation of the wastes through the physical characteristics of disposal system siting and design, rather than through continuing maintenance and surveillance. This principle was enunciated in the general criteria published for public comment in 1978 (43 FR 53262), and it has been incorporated into the Agency's standards for disposal of uranium mill tailings (48 FR 590, 48 FR 45926).

This approach has been tailored to fit two circumstances associated with mined geologic repositories. First, 40 CFR Part 191 places containment requirements on a broad range of potential unplanned releases as well as the expected behavior of the disposal system. Therefore, determining compliance with the standards involves performance assessments that consider the probabilities and consequences of a variety of disruptive events, including potential human intrusion. Not allowing passive institutional controls to be taken into account to some degree when estimating the consequences of inadvertent human intrusion could lead to less protective geologic media being selected for repository sites. The Agency's analyses indicate that repositories in salt formations have particularly good capabilities to isolate the wastes from flowing ground water and, hence, the accessible environment. However, salt formations are also relatively easy to mine and are often associated with other types of resources. If performance assessments had to assume that future societies will have no way to ever recognize and limit the consequences of inadvertent intrusion (from solution mining of salt, for example), the scenarios that would have to be studied would be more likely to eliminate salt media from consideration than other rock types. Yet, this could rule out repositories that may provide the best isolation, compared to other alternatives, if less pessimistic assumptions about survival of knowledge were made.

The second circumstance that the Agency considered in evaluating the approach towards institutional controls taken in this rule is the fact that the mined geologic repositories planned for disposal of the materials covered by 40 CFR Part 191 are different from the disposal systems evisioned for any other types of waste. The types of inadvertent human activities that could lead to significant radiation exposures or releases of material from geologic repositories appear to call for much more intensive and organized effort than those which could cause problems at, for example, an unattended surface disposal site. It appears reasonable to assume that information regarding the disposal system is more likely to reach (and presumably deter) people undertaking such organized efforts than it is to inform individuals involved in mundane activities.

These considerations led the Agency to conclude that a limited role for passive institutional controls would be appropriate when projecting the long-term performance of mined geologic repositories to judge compliance with these standards. However, such assumptions would not necessarily be applicable to other Agency actions where different issues are involved.

Avoiding Sites With Natural Resources

The proposed rule contained an assurance requirement that would have prohibited use of sites where there is a reasonable expectation that future exploration for scarce or easily

accessible resources might occur. The comments received on this issue generally agreed that sites with resources should be avoided. However, some commenters suggested that the requirement should be more restrictive, to include "potentially accessible" resources. Other commenters argued that the Agency should be less restrictive regarding sites with possible resource potential—discouraging but not prohibiting their use—because other attributes of the site might overcome the relative disadvantages presented by resource potential.

After considering these comments, the Agency agreed with the latter viewpoint. This judgment was reinforced by the belief that disposal sites should be chosen after comparative evaluation of a variety of alternatives, and the proposed assurance requirement could have inhibited this process. Therefore, this assurance requirement has been revised in the final rule to identify resource potential as a disincentive but not as an outright prohibition for site selection. Instead, the revised assurance requirement states that places with resource potential shall not be used "unless the favorable characteristics of such places compensate for their greater likelihood of being disturbed in the future."

This wording implies a qualitative comparison, because the Agency is not aware of quantitative formulas comprehensive enough to provide adequate comparisons to govern site selection. However, the Agency does not intend that sites with resource potential can be used merely upon identification of a few features that might be more favorable than at a site without significant resources. Rather, sites with resources should only be used if it is reasonably certain that they would provide better *overall* protection than the practical alternatives that are available.

The following example illustrates the effect of the change in this assurance requirement. When discussing the proposed assurance requirement, the Agency implied that disposal in salt domes might not be acceptable because such formations seemed more likely than others to attract exploration in the future. The modification of this assurance requirement in the final rule means that salt domes should not be peremptorily removed from consideration, but should be compared against all of the characteristics of alternative sites in terms of the overall environmental protection expected.

Long-Term Monitoring

The proposed rule addressed active institutional controls over a disposal site only in a negative sense—to prohibit reliance upon them for more than a few hundred years after disposal. The Agency's intent was to be sure that long-term protection of the environment did not depend upon positive actions by future generations. Almost all commenters agreed with this intent, although many suggested a shorter period of reliance was appropriate (see the preceding discussion under "Approach Towards Institutional Controls").

However, several commenters (including most of the States) also urged addition of a requirement for long-term monitoring of a repository after disposal. This view did not deny the need to select and design disposal systems without depending upon active controls in the future. However, it broadened this perspective by arguing that a disposal system so designed should still be monitored for a long time after disposal to guard against unexpected failures.

The Agency had not considered this viewpoint in developing the proposed rule. Accordingly, further information on this idea was sought during the "second round" of public comment, and the Agency surveyed the capabilities and expectations of long-term monitoring approaches. Evaluating this information led the Agency to several conclusions:

(1) Perhaps most importantly, the techniques used for monitoring after disposal must not jeopardize the long-term isolation capabilities of the disposal system. Furthermore, plans to conduct monitoring after disposal should never become an excuse to relax the care with which systems to isolate these wastes must be selected, designed, constructed, and operated.

(2) Monitoring for radionuclide releases to the accessible environment is not likely to be productive. Even a poorly performing geologic repository is very unlikely to allow measurable releases to the accessible environment for several hundreds of years of more, particularly in view of the engineered controls needed to comply with 10 CFR Part 60. A monitoring system based only on detecting radionuclide releases—a system which would almost certainly not be detecting anything for several times the history of the United States—is not likely to be maintained for long enough to be of much use.

(3) Within the above constraints, however, there are likely to be monitoring approaches which may, in a relatively short time, significantly improve confidence that a repository is performing as intended. Two examples are of particular interest. One involves the concept of monitoring ground water sources at a variety of distances for benign tracers intentionally released to the ground water in the repository; this approach can evaluate the delay involved in ground water movement from the repository to the environment and can serve to validate expectations of the performance expected from the system's natural barriers. Another concept involves monitoring the small uplift of the land surface over the repository in order to validate predictions of the system's thermal behavior. Both of these approaches can be carried out without enhancing pathways for the wastes to escape from the repository.

Based on these conclusions and the public comments on this question, the Agency has included a provision for long-term monitoring after disposal in the assurance requirements of the final rule: "Disposal systems shall be monitored after disposal to detect substantial and detrimental deviations from expected performance. This monitoring shall be done with techniques that do not jeopardize the isolation of the wastes and shall be conducted until there are no significant concerns to be addressed by further monitoring." This new provision is consistent with the overall intent of the assurance requirements: To take prudent and cautious steps necessary to minimize the risks posed by the inherent uncertainties in expectations of the future. Beyond this broad mandate, however, the Agency has not specified the details of a monitoring program. That is properly left to the implementing agencies. Furthermore, the precise objectives of an appropriate monitoring program probably should not be spelled out until much more information is gathered about the characteristics and expected behavior of specific sites and designs.

Ability To Recover Wastes After Disposal

The proposed rule included an assurance requirement that recovery of these wastes be feasible for "a reasonable period of time" after disposal. The Agency specifically sought comment on whether this was a desirable provision, since it would rule out certain disposal concepts, such as deep-well injection of liquid wastes. The comments received were split about evenly between those who thought the provision should be retained and those who thought it was detrimental to the overall rule. Many of those who opposed

the requirement argued that it would encourage designing a geologic repository to make retrieving waste relatively easy—which might compromise the isolation capabilities of the repository or which might encourage recovery of the waste to make use of some intrinsic value it might retain (the potential energy content of spent nuclear fuel, for example).

The intent of this provision was not to make recovery of waste easy or cheap, but merely possible in case some future discovery or insight made it clear that the wastes needed to be relocated. EPA reiterates the statement in the preamble to the proposal that *any* current concept for a mined geologic repository meets this requirement *without* any additional procedures or design features. For example, there is no intent to require that a repository shaft be kept open to allow future recovery. To meet this assurance requirement, it only need be technologically feasible (assuming current technology levels) to be able to mine the sealed repository and recover the waste—albeit at substantial cost and occupational risk. The Commission's requirements for multiple engineered barriers within a repository (10 CFR Part 60) adequately address any concerns about the feasibility of recovering wastes from a repository.

Therefore, this provision should not have any effect upon plans for mined geologic repositories. Rather, it is intended to call into question any other disposal concept that might not be so reversible—because the Agency believes that future generations should have options to correct any mistakes that this generation might unintentionally make. Almost all of the commenters agreed with the validity of this objective. Accordingly, the Agency has decided to retain this assurance requirement in the final rule as proposed.

Health Impacts of 40 CFR Part 191

Waste Management and Storage. Waste management and storage activities conducted in accordance with Subpart A would limit the maximum risk to a member of the public in the general environment to a 5×10^{-4} chance of incurring a premature fatal cancer over a lifetime. Of course, a risk this large would exist only for an individual continuously exposed to the full amount of the dose limits over his or her lifetime. Because the Agency believes that such continuous exposure is very unlikely, the actual risks to individuals are expected to be much lower. It is theoretically possible under the final rule that an individual could be exposed to 25 millirems per year (to the whole body) from *both* an NRC-licensed facility and a DOE facility not licensed by NRC, for a total of 50 millirem/year. However, the Agency believes that this is particularly improbable and does not foresee a significant public health impact from this possibility.

Waste Disposal. A disposal system complying with Subpart B would confine almost all of the radioactive wastes to the immediate vicinity of the repository for a very long time. Because the wastes would be so well isolated from the environment, the Agency is confident that any risks to future populations would be very small. Similarly, risks to most future individuals would also be very small (and effectively zero in almost all cases)—except for the possibility that an individual in the distant future might use ground water from the vicinity of a repository. In this case, there is a chance that such an individual might receive a substantial exposure. The following paragraphs describe the possible health impacts of the residual risks from a disposal system that would be in compliance with 40 CFR Part 191.

Population Risks: With regard to exposure of populations, the Agency has estimated the potential long-term health risks to future generations from various types of mined geologic repositories using very general models of environmental transport and a linear, nonthreshold dose-effect relationship between radiation exposures and premature deaths from cancer. Food chains, ways of life, and the size and geographical distributions of populations will undoubtedly change over a 10,000-year period. Unlike geological processes, factors such as these cannot be usefully predicted over such long periods of time. Thus, in making these health effects projections, the Agency found it necessary to depend upon very general models of environmental pathways and to assume current population distributions and death rates. The SAB Subcommittee evaluated these models carefully, and, although a number of specific changes were recommended for particular parameters, the Subcommittee endorsed the general approach. As a consequence of using these generalized models, EPA's projections are intended to be used primarily as a tool for comparing the performance of one waste disposal system to another and for comparison of the risks of waste disposal with those of undisturbed ore bodies. The results of these analyses should not be considered a reliable projection of the "real" or absolute number of health effects resulting from compliance with the disposal standards.

These health risk models were used to assess the long-term health risks from several different model repositories containing the wastes from 100,000 MTHM—which could include all existing wastes and the future wastes from all currently operating reactors. The Agency estimates that this quantity of waste, when disposed of in accordance with the proposed standards, would cause no more than 1,000 premature deaths from cancer in the first 10,000 years after disposal: an average of no more than one premature death every 10 years. Most of the model repositories considered had projected population risks at least a factor of ten below this, or about 100 deaths over 10,000 years. The projections for the actual repositories that are constructed are expected to be closer to this lower figure. Any such increase in the number of cancer deaths would be very small compared to today's incidence of cancer, which kills about 350,000 people per year in the United States. Similarly, any such increase would be much less than the approximately 6,000 premature cancer deaths per year that the same linear, non-threshold dose-effect relationship predicts for the nation due to natural background radiation.

Individual Risks: With regard to exposures of individuals, the Agency examined the potential doses to persons who might use ground water from the immediate vicinity of a repository at various times in the future. For these analyses, only the expected undisturbed performance of a repository was considered (e.g, there was no evaluation of exposures that might occur if a repository was disrupted by movement of a fault). In most of the cases studied, no exposures occurred for more than one thousand years after disposal. After that, these analyses predict that significant exposures (on the order of a few rems per year in the vicinity of the repository over the next several thousands of years) may appear for some of the geologic media considered. These projections are similar to those contained in the April 1983 report published by the National Academy of Sciences. The BID contains more detailed descriptions of the Agency's individual dose calculations.

Intergenerational Risk: As described earlier, the Agency has chosen to rely on provisions that limit risks to populations as the primary standards for the long-term performance of disposal systems. Although the projections of the residual population risk are clearly very small, the discontinuity between when the

wastes are generated and when the projected health effects manifest themselves made it difficult to determine what level of residual risk should be allowed by these disposal standards. The difficulty arose because most of the benefits derived in the process of waste production fall upon the current generation, while most of the risks fall upon future generations. Thus, a potential problem of intergenerational equity with respect to the distribution of risks and benefits became apparent. This problem is sometimes referred to as the intergenerational risk issue, and it is not unique to the disposal of high-level radioactive wastes. If the Agency tried to insure that these standards fully satisfied a criterion of intergenerational equity with respect to the distribution of risks and benefits, it might appear that no risk should be passed on to future generations. This is a condition which the Agency believes cannot be met by disposal technologies foreseeable within this century. However, there is one particular factor which has reinforced EPA's decision about the reasonableness of the risks permitted under the disposal standards. This is the following evaluation of the risks associated with undisturbed uranium ore bodies. Additionally, for the purpose of comparing the risks permitted under the standards to other radiation risks which people are currently exposed to, a brief discussion of the risks from other natural sources of radiation is also included.

Uranium Ore: Most uranium ore in the United States occurs in permeable geologic strata containing flowing ground water. Radionuclides in the ore, particularly uranium and radium, continuously enter this ground water. EPA estimated the potential risks from these undisturbed ore bodies using the same generalized environmental models that were used for releases from a waste repository. The effects associated with the amount of ore needed to produce the high-level wastes that would fill the model geologic repository can vary considerably. Part of this variation corresponds to actual differences from one ore body to another; part can be attributed to uncertainties in the assessment. After revising the population risk models in accordance with the recommendations of the SAB Subcommittee, these estimates of the risks from unmined ore bodies ranged from about 10 to more than 100,000 excess cancer deaths over 10,000 years. Thus, leaving the ore unmined appears to present a risk to future generations comparable to the risks from disposal of wastes covered by these standards.

Variations in Natural Background: Radionuclides occur naturally in the earth in very large amounts, and are produced in the atmosphere by cosmic radiation. Everyone is exposed to natural background radiation from these natural radionuclides and from direct exposure to cosmic radiation. Individual exposures average about 100 millirems per year, with a range of about 60 to 200 millirem/year. These natural background radiation levels have remained relatively constant for a very long time. According to the same linear, nonthreshold dose effect relationship used in EPA's other analyses, an increase of one millirem per year (about one percent) in natural background in the United States would result in about 60 additional deaths per year, or 600,000 over a 10,000-year period.

Natural Radionuclide Concentrations in Ground Water: One source of this exposure to natural background radiation comes from naturally occurring radionuclides found in ground water. Radium is the most important of the naturally occurring radioactive materials likely to occur in public water supply systems, but uranium is also found in ground waters due to its natural occurrence. Surveys of radionuclides in ground water systems indicate: a United States range of 0.1 to 50 picocuries (pCi) per liter for radium-226 (with isolated sources exceeding 100 pCi/liter); up to 74 pCi/liter for all alpha-emitting radionuclides other than uranium (although most of the alpha-emitting concentrations are below 3 pCi/liter); and up to 650 pCi/liter for total uranium concentrations. Elevated radium-226 concentrations are found along the Atlantic coastal region and the Midwest; low levels are usually found in the treated water supplies in the western States. Elevated uranium and alpha-emitting radionuclide concentrations are generally limited to the Rocky Mountain region and Maine and Pennsylvania in the east.

The Agency's primary drinking water regulations (40 CFR Part 141) limit the contamination levels for radium-226 and radium-228 to 5 pCi/liter and the levels for total alpha-emitting contamination (excluding radon and uranium) to 15 pCi/liter. Elevated concentrations of radium in drinking water are generally a problem associated with smaller community water systems, with an estimated 500 systems exceeding 5 pCi/liter. The Agency's risk assessments indicate that continuous consumption of water containing the maximum amount of radium allowed may cause between 0.7 and 3 cancers per year per million exposed persons.

Environmental Impacts

A Draft Environmental Impact Statement (EIS) was prepared for the proposed rule, in accordance with the Agency's procedures for the voluntary preparation of EIS's (30 FR 37419). However, section 121(c) of the NWPA subsequently exempted this action from preparation of an EIS under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) and from any environmental review under subparagraph (E) or (F) of section 102(2) of the NEPA. Accordingly, a Final EIS has not been prepared for promulgation of this rule. The potential health impacts of this action are summarized above, and much of the information that would have been contained in a Final EIS is documented in the Background Information Document that accompanies this final version of 40 CFR Part 191.

Regulatory Impacts

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. The final rule has not been classified as a "major rule" in accordance with the guidelines provided by the Executive Order. Any comments received from OMB and EPA's responses to those comments are available for public inspection in the docket cited above under the heading "ADDRESSES."

The Agency has had to take an unusual approach in considering the regulatory impacts of this proposed action—as required by Executive Order 12291. In most cases, a regulation concerns an ongoing activity and may be considered a burden whose costs should be judged against the regulatory benefits. Here, it was not possible to quantify the costs and benefits of this action compared to the consequences of no regulation because there is no specific "baseline" program to consider. The appropriate regulations must be established before the regulated activity can even begin. Thus, the typical perspectives on costs and benefits are altered. Instead, the Agency evaluated how the costs of commercial waste management and disposal might change in response to different levels of protection from the containment requirements. Similar evaluations were not performed for the wastes from atomic energy defense activities because sufficient information was not available.

To evaluate the effects of different levels of protection, EPA considered the performance of different repository designs in several different geologic

media. The costs of the various engineering controls that might be needed to meet different levels of protection were estimated. In addition, allowances were made for the increased research and development costs that might be needed to demonstrate compliance with the standards if projected performance for a particular disposal system indicated releases less than an order of magnitude below the long-term radionuclide release limits in § 191.13.

Since the regulatory impact analyses that supported the proposed rule were performed, the NRC has promulgated minimum requirements for the engineered barriers of a disposal system (in 10 CFR Part 60), more data concerning disposal sites being considered by the Department have become available, and the Agency has reviewed its performance assessments to reduce overestimates of long-term risks in accordance with the SAB review. After evaluating all of this new information, the Agency believes that there need not be any significant additional costs to the national program for disposal of commercial wastes caused by retaining the proposed level of protection in the final rule, compared to the costs of choosing levels considerably less stringent. In other words, all of the disposal sites being evaluated by the Department, assuming compliance with the existing requirements of 10 CFR Part 60, are expected to be able to meet these disposal standards without additional precautions beyond those already planned.

List of Subjects in 40 CFR Part 191

Environmental protection, Nuclear energy, Radiation protection, Uranium, Waste treatment and disposal.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Administrator hereby certifies that this rule will not have any significant impact on small businesses or other entitites, and that a Regulatory Flexibility Analysis is not required. This rule will affect only a small number of facilities, most of which are or will be operated by the United States Government.

Dated: August 15, 1985.

Lee M. Thomas,

Administrator.

A new Part 191 is hereby added to Title 40, Code of Federal Regulations, as follows:

SUBCHAPTER F—RADIATION PROTECTION PROGRAMS

PART 191—ENVIRONMENTAL RADIATION PROTECTION STANDARDS FOR MANAGEMENT AND DISPOSAL OF SPENT NUCLEAR FUEL, HIGH-LEVEL AND TRANSURANIC RADIOACTIVE WASTES

Subpart A—Environmental Standards for Management and Storage

Sec.
191.01 Applicability.
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191.03 Standards.
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Subpart B—Environmental Standards for Disposal

191.11 Applicability.
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191.16 Ground water protection requirements.
191.17 Alternative provisions for disposal.
191.18 Effective date.

Appendix A Table for Subpart B
Appendix B Guidance for Implementation of Subpart B

Authority: The Atomic Energy Act of 1954, as amended; Reorganization Plan No. 3 of 1970; and the Nuclear Waste Policy Act of 1982.

Subpart A—Environmental Standards for Management and Storage

§ 191.01 Applicability.

This Subpart applies to:

(a) Radiation doses received by members of the public as a result of the management (except for transportation) and storage of spent nuclear fuel or high-level or transuranic radioactive wastes at any facility regulated by the Nuclear Regulatory Commission or by Agreement States, to the extent that such management and storage operations are not subject to the provisions of Part 190 of title 40; and

(b) Radiation doses received by members of the public as a result of the management and storage of spent nuclear fuel or high-level or transuranic wastes at any disposal facility that is operated by the Department of Energy and that is not regulated by the Commission or by Agreement States.

§ 191.02 Definitions.

Unless otherwise indicated in this Subpart, all terms shall have the same meaning as in Subpart A of Part 190.

(a) "Agency" means the Environmental Protection Agency.

(b) "Administrator" means the Administrator of the Environmental Protection Agency.

(c) "Commission" means the Nuclear Regulatory Commission.

(d) "Department" means the Department of Energy.

(e) "NWPA" means the Nuclear Waste Policy Act of 1982 (Pub. L. 97–425).

(f) "Agreement State" means any State with which the Commission or the Atomic Energy Commission has entered into an effective agreement under subsection 274b of the Atomic Energy Act of 1954, as amended (68 Stat. 919).

(g) "Spent nuclear fuel" means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

(h) "High-level radioactive waste," as used in this Part, means high-level radioactive waste as defined in the Nuclear Waste Policy Act of 1982 (Pub. L. 97–425).

(i) "Transuranic radioactive waste," as used in this Part, means waste containing more than 100 nanocuries of alpha-emitting transuranic isotopes, with half-lives greater than twenty years, per gram of waste, except for: (1) High-level radioactive wastes; (2) wastes that the Department has determined, with the concurrence of the Administrator, do not need the degree of isolation required by this Part; or (3) wastes that the Commission has approved for disposal on a case-by-case basis in accordance with 10 CFR Part 61.

(j) "Radioactive waste," as used in this Part, means the high-level and transuranic radioactive waste covered by this Part.

(k) "Storage" means retention of spent nuclear fuel or radioactive wastes with the intent and capability to readily retrieve such fuel or waste for subsequent use, processing, or disposal.

(l) "Disposal" means permanent isolation of spent nuclear fuel or radioactive waste from the accessible environment with no intent of recovery, whether or not such isolation permits the recovery of such fuel or waste. For example, disposal of waste in a mined geologic repository occurs when all of the shafts to the repository are backfilled and sealed.

(m) "Management" means any activity, operation, or process (except for transportation) conducted to prepare spent nuclear fuel or radioactive waste for storage or disposal, or the activities associated with placing such fuel or waste in a disposal system.

(n) "Site" means an area contained within the boundary of a location under the effective control of persons possessing or using spent nuclear fuel or radioactive waste that are involved in

any activity, operation, or process covered by this Subpart.

(o) "General environment" means the total terrestrial, atmospheric, and aquatic environments outside sites within which any activity, operation, or process associated with the management and storage of spent nuclear fuel or radioactive waste is conducted.

(p) "Member of the public" means any individual except during the time when that individual is a worker engaged in any activity, operation, or process that is covered by the Atomic Energy Act of 1954, as amended.

(q) "Critical organ" means the most exposed human organ or tissue exclusive of the integumentary system (skin) and the cornea.

§ 191.03 Standards.

(a) Management and storage of spent nuclear fuel or high-level or transuranic radioactive wastes at all facilities regulated by the Commission or by Agreement States shall be conducted in such a manner as to provide reasonable assurance that the combined annual dose equivalent to any member of the public in the general environment resulting from: (1) Discharges of radioactive material and direct radiation from such management and storage and (2) all operations covered by Part 190; shall not exceed 25 millirems to the whole body, 75 millirems to the thyroid, and 25 millirems to any other critical organ.

(b) Management and storage of spent nuclear fuel or high-level or transuranic radioactive wastes at all facilities for the disposal of such fuel or waste that are operated by the Department and that are not regulated by the Commission or Agreement States shall be conducted in such a manner as to provide reasonable assurance that the combined annual dose equivalent to any member of the public in the general environment resulting from discharges of radioactive material and direct radiation from such management and storage shall not exceed 25 millirems to the whole body and 75 millirems to any critical organ.

§ 191.04 Alternative standards.

(a) The Administrator may issue alternative standards from those standards established in 191.03(b) for waste management and storage activities at facilities that are not regulated by the Commission or Agreement States if, upon review of an application for such alternative standards:

(1) The Administrator determines that such alternative standards will prevent any member of the public from receiving a continuous exposure of more than 100 millirems per year dose equivalent and an infrequent exposure of more than 500 millirems dose equivalent in a year from all sources, excluding natural background and medical procedures; and

(2) The Administrator promptly makes a matter of public record the degree to which continued operation of the facility is expected to result in levels in excess of the standards specified in 191.03(b).

(b) An application for alternative standards shall be submitted as soon as possible after the Department determines that continued operation of a facility will exceed the levels specified in 191.03(b) and shall include all information necessary for the Administrator to make the determinations called for in 191.04(a).

(c) Requests for alternative standards shall be submitted to the Administrator, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

§ 191.05 Effective date.

The standards in this Subpart shall be effective on November 18, 1985.

Subpart B—Environmental Standards for Disposal

§ 191.11 Applicability.

(a) This Subpart applies to:

(1) Radioactive materials released into the accessible environment as a result of the disposal of spent nuclear fuel or high-level or transuranic radioactive wastes;

(2) Radiation doses received by members of the public as a result of such disposal; and

(3) Radioactive contamination of certain sources of ground water in the vicinity of disposal systems for such fuel or wastes.

(b) However, this Subpart does not apply to disposal directly into the oceans or ocean sediments. This Subpart also does not apply to wastes disposed of before the effective date of this rule.

§ 191.12 Definitions.

Unless otherwise indicated in this Subpart, all terms shall have the same meaning as in Subpart A of this Part.

(a) "Disposal system" means any combination of engineered and natural barriers that isolate spent nuclear fuel or radioactive waste after disposal.

(b) "Waste," as used in this Subpart, means any spent nuclear fuel or radioactive waste isolated in a disposal system.

(c) "Waste form" means the materials comprising the radioactive components of waste and any encapsulating or stabilizing matrix.

(d) "Barrier" means any material or structure that prevents or substantially delays movement of water or radionuclides toward the accessible environment. For example, a barrier may be a geologic structure, a canister, a waste form with physical and chemical characteristics that significantly decrease the mobility of radionuclides, or a material placed over and around waste, provided that the material or structure substantially delays movement of water or radionuclides.

(e) "Passive institutional control" means: (1) Permanent markers placed at a disposal site, (2) public records and archives, (3) government ownership and regulations regarding land or resource use, and (4) other methods of preserving knowledge about the location, design, and contents of a disposal system.

(f) "Active institutional control" means: (1) Controlling access to a disposal site by any means other than passive institutional controls; (2) performing maintenance operations or remedial actions at a site, (3) controlling or cleaning up releases from a site, or (4) monitoring parameters related to disposal system performance.

(g) "Controlled area" means: (1) A surface location, to be identified by passive institutional controls, that encompasses no more than 100 square kilometers and extends horizontally no more than five kilometers in any direction from the outer boundary of the original location of the radioactive wastes in a disposal system; and (2) the subsurface underlying such a surface location.

(h) "Ground water" means water below the land surface in a zone of saturation.

(i) "Aquifer" means an underground geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

(j) "Lithosphere" means the solid part of the Earth below the surface, including any ground water contained within it.

(k) "Accessible environment" means: (1) The atmosphere; (2) land surfaces; (3) surface waters; (4) oceans; and (5) all of the lithosphere that is beyond the controlled area.

(l) "Transmissivity" means the hydraulic conductivity integrated over the saturated thickness of an underground formation. The transmissivity of a series of formations is the sum of the individual

transmissivities of each formation comprising the series.

(m) "Community water system" means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

(n) "Significant source of ground water," as used in this Part, means: (1) An aquifer that: (i) Is saturated with water having less than 10,000 milligrams per liter of total dissolved solids; (ii) is within 2,500 feet of the land surface; (iii) has a transmissivity greater than 200 gallons per day per foot, provided that any formation or part of a formation included within the source of ground water has a hydraulic conductivity greater than 2 gallons per day per square foot; and (iv) is capable of continuously yielding at least 10,000 gallons per day to a pumped or flowing well for a period of at least a year; or (2) an aquifer that provides the primary source of water for a community water system as of the effective date of this Subpart.

(o) "Special source of ground water," as used in this Part, means those Class I ground waters identified in accordance with the Agency's Ground-Water Protection Strategy published in August 1984 that: (1) Are within the controlled area encompassing a disposal system or are less than five kilometers beyond the controlled area; (2) are supplying drinking water for thousands of persons as of the date that the Department chooses a location within that area for detailed characterization as a potential site for a disposal system (e.g., in accordance with Section 112(b)(1)(B) of the NWPA); and (3) are irreplaceable in that no reasonable alternative source of drinking water is available to that population.

(p) "Undisturbed performance" means the predicted behavior of a disposal system, including consideration of the uncertainties in predicted behavior, if the disposal system is not disrupted by human intrusion or the occurrence of unlikely natural events.

(q) "Performance assessment" means an analysis that: (1) Identifies the processes and events that might affect the disposal system; (2) examines the effects of these processes and events on the performance of the disposal system; and (3) estimates the cumulative releases of radionuclides, considering the associated uncertainties, caused by all significant processes and events. These estimates shall be incorporated into an overall probability distribution of cumulative release to the extent practicable.

(r) "Heavy metal" means all uranium, plutonium, or thorium placed into a nuclear reactor.

(s) "Implementing agency," as used in this Subpart, means the Commission for spent nuclear fuel or high-level or transuranic wastes to be disposed of in facilities licensed by the Commission in accordance with the Energy Reorganization Act of 1974 and the Nuclear Waste Policy Act of 1982, and it means the Department for all other radioactive wastes covered by this Part.

§ 191.13 Containment requirements.

(a) Disposal systems for spent nuclear fuel or high-level or transuranic radioactive wastes shall be designed to provide a reasonable expectation, based upon performance assessments, that the cumulative releases of radionuclides to the accessible environment for 10,000 years after disposal from all significant processes and events that may affect the disposal system shall:

(1) Have a likelihood of less than one chance in 10 of exceeding the quantities calculated according to Table 1 (Appendix A); and

(2) Have a likelihood of less than one chance in 1,000 of exceeding ten times the quantities calculated according to Table 1 (Appendix A).

(b) Performance assessments need not provide complete assurance that the requirements of 191.13(a) will be met. Because of the long time period involved and the nature of the events and processes of interest, there will inevitably be substantial uncertainties in projecting disposal system performance. Proof of the future performance of a disposal system is not to be had in the ordinary sense of the word in situations that deal with much shorter time frames. Instead, what is required is a reasonable expectation, on the basis of the record before the implementing agency, that compliance with 191.13 (a) will be achieved.

§ 191.14 Assurance requirements.

To provide the confidence needed for long-term compliance with the requirements of 191.13, disposal of spent nuclear fuel or high-level or transuranic wastes shall be conducted in accordance with the following provisions, except that these provisions do not apply to facilities regulated by the Commission (see 10 CFR Part 60 for comparable provisions applicable to facilities regulated by the Commission):

(a) Active institutional controls over disposal sites should be maintained for as long a period of time as is practicable after disposal; however, performance assessments that assess isolation of the wastes from the accessible environment shall not consider any contributions from active institutional controls for more than 100 years after disposal.

(b) Disposal systems shall be monitored after disposal to detect substantial and detrimental deviations from expected performance. This monitoring shall be done with techniques that do not jeopardize the isolation of the wastes and shall be conducted until there are no significant concerns to be addressed by further monitoring.

(c) Disposal sites shall be designated by the most permanent markers, records, and other passive institutional controls practicable to indicate the dangers of the wastes and their location.

(d) Disposal systems shall use different types of barriers to isolate the wastes from the accessible environment. Both engineered and natural barriers shall be included.

(e) Places where there has been mining for resources, or where there is a reasonable expectation of exploration for scarce or easily accessible resources, or where there is a significant concentration of any material that is not widely available from other sources, should be avoided in selecting disposal sites. Resources to be considered shall include minerals, petroleum or natural gas, valuable geologic formations, and ground waters that are either irreplaceable because there is no reasonable alternative source of drinking water available for substantial populations or that are vital to the preservation of unique and sensitive ecosystems. Such places shall not be used for disposal of the wastes covered by this Part unless the favorable characteristics of such places compensate for their greater likelihood of being disturbed in the future.

(f) Disposal systems shall be selected so that removal of most of the wastes is not precluded for a reasonable period of time after disposal.

§ 191.15 Individual protection requirements.

Disposal systems for spent nuclear fuel or high-level or transuranic radioactive wastes shall be designed to provide a reasonable expectation that, for 1,000 years after disposal, undisturbed performance of the disposal system shall not cause the annual dose equivalent from the disposal system to any member of the public in the accessible environment to exceed 25 millirems to the whole body or 75 millirems to any critical organ. All potential pathways (associated with undisturbed performance) from the disposal system to people shall be

considered, including the assumption that individuals consume 2 liters per day of drinking water from any significant source of ground water outside of the controlled area.

§ 191.16 Ground water protection requirements.

(a) Disposal systems for spent nuclear fuel or high-level or transuranic radioactive wastes shall be designed to provide a reasonable expectation that, for 1,000 years after disposal, undisturbed performance of the disposal system shall not cause the radionuclide concentrations averaged over any year in water withdrawn from any portion of a special source of ground water to exceed:

(1) 5 picocuries per liter of radium-226 and radium-228;

(2) 15 picocuries per liter of alpha-emitting radionuclides (including radium-226 and radium-228 but excluding radon); or

(3) The combined concentrations of radionuclides that emit either beta or gamma radiation that would produce an annual dose equivalent to the total body or any internal organ greater than 4 millirems per year if an individual consumed 2 liters per day of drinking water from such a source of ground water.

(b) If any of the average annual radionuclide concentrations existing in a special source of ground water before construction of the disposal system already exceed the limits in 191.16(a), the disposal system shall be designed to provide a reasonable expectation that, for 1,000 years after disposal, undisturbed performance of the disposal system shall not increase the existing average annual radionuclide concentrations in water withdrawn from that special source of ground water by more than the limits established in 191.16(a).

§ 191.17 Alternative provisions for disposal.

The Administrator may, by rule, substitute for any of the provisions of Subpart B alternative provisions chosen after:

(a) The alternative provisions have been proposed for public comment in the **Federal Register** together with information describing the costs, risks, and benefits of disposal in accordance with the alternative provisions and the reasons why compliance with the existing provisions of Subpart B appears inappropriate;

(b) A public comment period of at least 90 days has been completed, during which an opportunity for public hearings in affected areas of the country has been provided; and

(c) The public comments received have been fully considered in developing the final version of such alternative provisions.

§ 191.18 Effective date.

The standards in this Subpart shall be effective on September 19, 1985.

Appendix A—Table for Subpart B

TABLE 1.—RELEASE LIMITS FOR CONTAINMENT REQUIREMENTS

[Cumulative releases to the accessible environment for 10,000 years after disposal]

Radionuclide	Release limit per 1,000 MTHM or other unit of waste (see notes) (curies)
Americium-241 or -243	100
Carbon-14	100
Cesium-135 or -137	1,000
Iodine-129	100
Neptunium-237	100
Plutonium-238, -239, -240, or -242	100
Radium-226	100
Strontium-90	1,000
Technetium-99	10,000
Thorium-230 or -232	10
Tin-126	1,000
Uranium-233, -234, -235, -236, or -238	100
Any other alpha-emitting radionuclide with a half-life greater than 20 years	100
Any other radionuclide with a half-life greater than 20 years that does not emit alpha particles	1,000

Application of Table 1

Note 1: *Units of Waste.* The Release Limits in Table 1 apply to the amount of wastes in any one of the following:

(a) An amount of spent nuclear fuel containing 1,000 metric tons of heavy metal (MTHM) exposed to a burnup between 25,000 megawatt-days per metric ton of heavy metal (MWd/MTHM) and 40,000 MWd/MTHM;

(b) The high-level radioactive wastes generated from reprocessing each 1,000 MTHM exposed to a burnup between 25,000 MWd/MTHM and 40,000 MWd/MTHM;

(c) Each 100,000,000 curies of gamma or beta-emitting radionuclides with half-lives greater than 20 years but less than 100 years (for use as discussed in Note 5 or with materials that are identified by the Commission as high-level radioactive waste in accordance with part B of the definition of high-level waste in the NWPA);

(d) Each 1,000,000 curies of other radionuclides (i.e., gamma or beta-emitters with half-lives greater than 100 years or any alpha-emitters with half-lives greater than 20 years) (for use as discussed in Note 5 or with materials that are identified by the Commission as high-level radioactive waste in accordance with part B of the definition of high-level waste in the NWPA); or

(e) An amount of transuranic (TRU) wastes containing one million curies of alpha-emitting transuranic radionuclides with half-lives greater than 20 years.

Note 2: *Release Limits for Specific Disposal Systems.* To develop Release Limits for a particular disposal system, the quantities in Table 1 shall be adjusted for the amount of waste included in the disposal system compared to the various units of waste defined in Note 1. For example:

(a) If a particular disposal system contained the high-level wastes from 50,000 MTHM, the Release Limits for that system would be the quantities in Table 1 multiplied by 50 (50,000 MTHM divided by 1,000 MTHM).

(b) If a particular disposal system contained three million curies of alpha-emitting transuranic wastes, the Release Limits for that system would be the quantities in Table 1 multiplied by three (three million curies divided by one million curies).

(c) If a particular disposal system contained both the high-level wastes from 50,000 MTHM *and* 5 million curies of alpha-emitting transuranic wastes, the Release Limits for that system would be the quantities in Table 1 multiplied by 55:

$$\frac{50{,}000\ \text{MTHM}}{1{,}000\ \text{MTHM}} + \frac{5{,}000{,}000\ \text{curies TRU}}{1{,}000{,}000\ \text{curies TRU}} = 55$$

Note 3: *Adjustments for Reactor Fuels with Different Burnup.* For disposal systems containing reactor fuels (or the high-level wastes from reactor fuels) exposed to an average burnup of less than 25,000 MWd/MTHM or greater than 40,000 MWd/MTHM, the units of waste defined in (a) and (b) of Note 1 shall be adjusted. The unit shall be multiplied by the ratio of 30,000 MWd/MTHM divided by the fuel's actual average burnup, except that a value of 5,000 MWd/MTHM may be used when the average fuel burnup is below 5,000 MWd/MTHM and a value of 100,000 MWd/MTHM shall be used when the average fuel burnup is above 100,000 MWd/MTHM. This adjusted unit of waste shall then be used in determining the Release Limits for the disposal system.

For example, if a particular disposal system contained only high-level wastes with an average burnup of 3,000 MWd/MTHM, the unit of waste for that disposal system would be:

$$1{,}000\ \text{MTHM} \times \frac{(30{,}000)}{(5{,}000)} = 6{,}000\ \text{MTHM}$$

If that disposal system contained the high-level wastes from 60,000 MTHM (with an average burnup of 3,000 MWd/MTHM), then

the Release Limits for that system would be the quantities in Table 1 multiplied by ten:

$$\frac{60{,}000\ \text{MTHM}}{6{,}000\ \text{MTHM}} = 10$$

which is the same as:

$$\frac{60{,}000\ \text{MTHM}}{1{,}000\ \text{MTHM}} \times \frac{(5{,}000\ \text{MWd/MTHM})}{(30{,}000\ \text{MWd/MTHM})} = 10$$

Note 4: *Treatment of Fractionated High-Level Wastes.* In some cases, a high-level waste stream from reprocessing spent nuclear fuel may have been (or will be) separated into two or more high-level waste components destined for different disposal systems. In such cases, the implementing agency may allocate the Release Limit multiplier (based upon the original MTHM and the average fuel burnup of the high-level waste stream) among the various disposal systems as it chooses, provided that the total Release Limit multiplier used for that waste stream at all of its disposal systems may not exceed the Release Limit multiplier that would be used if the entire waste stream were disposed of in one disposal system.

Note 5: *Treatment of Wastes with Poorly Known Burnups or Original MTHM.* In some cases, the records associated with particular high-level waste streams may not be adequate to accurately determine the original metric tons of heavy metal in the reactor fuel that created the waste, or to determine the average burnup that the fuel was exposed to. If the uncertainties are such that the original amount of heavy metal or the average fuel burnup for particular high-level waste streams cannot be quantified, the units of waste derived from (a) and (b) of Note 1 shall no longer be used. Instead, the units of waste defined in (c) and (d) of Note 1 shall be used for such high-level waste streams. If the uncertainties in such information allow a range of values to be associated with the original amount of heavy metal or the average fuel burnup, then the calculations described in previous Notes will be conducted using the values that result in the smallest Release Limits, except that the Release Limits need not be smaller than those that would be calculated using the units of waste defined in (c) and (d) of Note 1.

Note 6: *Uses of Release Limits to Determine Compliance with 191.13* Once release limits for a particular disposal system have been determined in accordance with Notes 1 through 5, these release limits shall be used to determine compliance with the requirements of 191.13 as follows. In cases where a mixture of radionuclides is projected to be released to the accessible environment, the limiting values shall be determined as follows: For each radionuclide in the mixture, determine the ratio between the cumulative release quantity projected over 10,000 years and the limit for that radionuclide as determined from Table 1 and Notes 1 through 5. The sum of such ratios for all the radionuclides in the mixture may not exceed one with regard to 191.13(a)(1) and may not exceed ten with regard to 191.13(a)(2).

For example, if radionuclides A, B, and C are projected to be released in amounts Q_a, Q_b, and Q_c, and if the applicable Release Limits are RL_a, RL_b, and RL_c, then the cumulative releases over 10,000 years shall be limited so that the following relationship exists:

$$\frac{Q_a}{RL_a} + \frac{Q_b}{RL_b} + \frac{Q_c}{RL_c} < 1$$

Appendix B—Guidance for Implementation of Subpart B

[Note: The supplemental information in this appendix is not an integral part of 40 CFR Part 191. Therefore, the implementing agencies are not bound to follow this guidance. However, it is included because it describes the Agency's assumptions regarding the implementation of Subpart B. This appendix will appear in the Code of Federal Regulations.]

The Agency believes that the implementing agencies must determine compliance with §§ 191.13, 191.15, and 191.16 of Subpart B by evaluating long-term predictions of disposal system performance. Determining compliance with § 191.13 will also involve predicting the likelihood of events and processes that may disturb the disposal system. In making these various predictions, it will be appropriate for the implementing agencies to make use of rather complex computational models, analytical theories, and prevalent expert judgment relevant to the numerical predictions. Substantial uncertainties are likely to be encountered in making these predictions. In fact, sole reliance on these numerical predictions to determine compliance may not be appropriate; the implementing agencies may choose to supplement such predictions with qualitative judgments as well. Because the procedures for determining compliance with Subpart B have not been formulated and tested yet, this appendix to the rule indicates the Agency's assumptions regarding certain issues that may arise when implementing §§ 191.13, 191.15, and 191.16. Most of this guidance applies to any type of disposal system for the wastes covered by this rule. However, several sections apply only to disposal in mined geologic repositories and would be inappropriate for other types of disposal systems.

Consideration of Total Disposal System. When predicting disposal system performance, the Agency assumes that reasonable projections of the protection expected from all of the engineered and natural barriers of a disposal system will be considered. Portions of the disposal system should not be disregarded, even if projected performance is uncertain, except for portions of the system that make negligible contributions to the overall isolation provided by the disposal system.

Scope of Performance Assessments. Section 191.13 requires the implementing agencies to evaluate compliance through performance assessments as defined in § 191.12(q). The Agency assumes that such performance assessments need not consider categories of events or processes that are estimated to have less than one chance in 10,000 of occurring over 10,000 years. Furthermore, the performance assessments need not evaluate in detail the releases from all events and processes estimated to have a greater likelihood of occurrence. Some of these events and processes may be omitted from the performance assessments if there is a reasonable expectation that the remaining probability distribution of cumulative releases would not be significantly changed by such omissions.

Compliance with Section 191.13. The Agency assumes that, whenever practicable, the implementing agency will assemble all of the results of the performance assessments to determine compliance with § 191.13 into a "complementary cumulative distribution function" that indicates the probability of exceeding various levels of cumulative release. When the uncertainties in parameters are considered in a performance assessment, the effects of the uncertainties considered can be incorporated into a single such distribution function for each disposal system considered. The Agency assumes that a disposal system can be considered to be in compliance with § 191.13 if this single distribution function meets the requirements of § 191.13(a).

Compliance with Sections 191.15 and 191.16. When the uncertainties in undisturbed performance of a disposal system are considered, the implementing agencies need not require that a very large percentage of the range of estimated radiation exposures or radionuclide concentrations fall below limits established in §§ 191.15 and 191.16, respectively. The Agency assumes that compliance can be determined based upon "best estimate" predictions (e.g., the mean or the median of the appropriate distribution, whichever is higher).

Institutional Controls. To comply with § 191.14(a), the implementing agency will assume that none of the active institutional controls prevent or reduce radionuclide releases for more than 100 years after disposal. However, the Federal Government is committed to retaining ownership of all disposal sites for spent nuclear fuel and high-level and transuranic radioactive wastes and will establish appropriate markers and records, consistent with § 191.14(c). The Agency assumes that, as long as such passive institutional controls endure and are understood, they: (1) can be effective in deterring systematic or persistent exploitation of these disposal sites; and (2) can reduce the likelihood of inadvertent, intermittent human intrusion to a degree to be determined by the implementing agency. However, the Agency believes that passive institutional controls can never be assumed to eliminate the chance of inadvertent and intermittent human intrusion into these disposal sites.

Consideration of Inadvertent Human Intrusion into Geologic Repositories. The most speculative potential disruptions of a mined geologic repository are those associated with inadvertent human intrusion. Some types of intrusion would have virtually no effect on a repository's containment of

waste. On the other hand, it is possible to conceive of intrusions (involving widespread societal loss of knowledge regarding radioactive wastes) that could result in major disruptions that no reasonable repository selection or design precautions could alleviate. The Agency believes that the most productive consideration of inadvertent intrusion concerns those realistic possibilities that may be usefully mitigated by repository design, site selection, or use of passive controls (although passive institutional controls should not be assumed to completely rule out the possibility of intrusion). Therefore, inadvertent and intermittent intrusion by exploratory drilling for resources (other than any provided by the disposal system itself) can be the most severe intrusion scenario assumed by the implementing agencies. Furthermore, the implementing agencies can assume that passive institutional controls or the intruders' own exploratory procedures are adequate for the intruders to soon detect, or be warned of, the incompatibility of the area with their activities.

Frequency and Severity of Inadvertent Human Intrusion into Geologic Repositories. The implementing agencies should consider the effects of each particular disposal system's site, design, and passive institutional controls in judging the likelihood and consequences of such inadvertent exploratory drilling. However, the Agency assumes that the likelihood of such inadvertent and intermittent drilling need not be taken to be greater than 30 boreholes per square kilometer of repository area per 10,000 years for geologic repositories in proximity to sedimentary rock formations, or more than 3 boreholes per square kilometer per 10,000 years for repositories in other geologic formations. Furthermore, the Agency assumes that the consequences of such inadvertent drilling need not be assumed to be more severe than: (1) Direct release to the land surface of all the ground water in the repository horizon that would promptly flow through the newly created borehole to the surface due to natural lithostatic pressure—or (if pumping would be required to raise water to the surface) release of 200 cubic meters of ground water pumped to the surface if that much water is readily available to be pumped; and (2) creation of a ground water flow path with a permeability typical of a borehole filled by the soil or gravel that would normally settle into an open hole over time—not the permeability of a carefully sealed borehole.

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Part III

Environmental Protection Agency

Regulatory Status of Grain Fumigants; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30097; FRL-2901-1]

Regulatory Status of Grain Fumigants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice summarizes the current regulatory status of chemical substitutes for ethylene dibromide (EDB) for insect control in stored grains, including alternative grain fumigants and grain protectants. Liquid grain fumigant products containing carbon tetrachloride, carbon disulfide, or ethylene dichloride may not be sold or distributed in commerce after December 31, 1985. Use of existing stocks of these products may continue through June 30, 1986. All of the registrations of carbon tetrachloride, carbon disulfide, and ethylene dichloride grain fumigant products are being voluntarily cancelled, or have been suspended. After December 31, 1985, the grain fumigants methyl bromide, chloropicrin, aluminum phosphide, and magnesium phosphide will continue to be available; several grain protectants will also be available for preventive treatments.

FOR FURTHER INFORMATION CONTACT:
By mail:
Linda K. Vlier, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 711, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–7451).

SUPPLEMENTARY INFORMATION:

I. Background

Prior to cancellation and suspension actions by the Environmental Protection Agency, the pesticide ethylene dibromide (EDB) was used to fumigate stored grains and grain milling machinery to control insect infestations that could damage grain quality and reduce marketable quantities. In September 1983, EPA issued a decision to cancel the use of EDB on harvested grains and grain and flour milling equipment. Because this decision was appealed by registrants, the cancellation did not take effect immediately. When EDB residues were subsequently detected in consumer grain products, EPA issued, in February 1984, a suspension order stopping all further sale, distribution, and use of EDB for grain fumigation.

Many EDB grain fumigant products, now cancelled, also contained one or more of several other active ingredients registered for use as grain fumigants. Two of these chemicals, chloroform and methylene chloride, were used as grain fumigants only in formulations that also contained EDB. All existing product registrations of these grain fumigant formulations were cancelled together with other EDB registrations. However, carbon tetrachloride, carbon disulfide (also named carbon bisulfide), and ethylene dichloride have continued in use as active ingredients in liquid grain fumigant products. In addition, methyl bromide, formulated as a liquified gas, is currently registered for fumigation of stored grains. Chloropicrin is also registered and used mainly in combination with methyl bromide. Aluminum phosphide and magnesium phosphide, in solid formulations that release phosphine gas, are also registered for grain fumigation.

On taking action to eliminate the use of EDB on grains, EPA began a comprehensive review of EDB substitutes to ensure that continued and, in some cases, expanded use of these chemicals would not present unreasonable risks from either occupational or dietary exposures. The chemical fumigants as a group are known to be acutely toxic, and overexposure to fumigant vapors can cause serious acute illness or death. The chronic toxicity of some of the grain fumigants has not been fully evaluated, since definitive data are not available in all areas for all chemicals.

However, aluminum phosphide, magnesium phosphide, and chloropicrin have been reviewed under EPA's Registration Standards program to assure that they meet current standards for registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Agency issued Registration Standards on aluminum phosphide in 1981, on magnesium phosphide in 1982, and on chloropicrin in 1982. Based on additional residue data submitted to meet requirements set in these Registration Standards, EPA has concluded that residues of concern will not result from the use of aluminum or magnesium phosphide as grain fumigants. Chloropicrin is currently exempt from the requirement of a tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA) when used as a post-harvest fumigant. These tolerance exemptions were originally established in the 1950's, on the grounds that residues of chloropicrin did not appear to persist in ready-to-eat grain products. However, the data supporting these exemptions do not meet present-day standards. In accordance with the Registration Standard on chloropicrin, EPA will be reevaluating these tolerance exemptions, in light of additional data required from registrants, to determine whether the exemptions should be retained, or replaced with specific tolerances. Additional residue data on chloropicrin are due for submission to EPA by October 31, 1985.

For carbon tetrachloride, carbon disulfide, ethylene dichloride, and methyl bromide, significant data needed to fully assess their effects were not available. Moreover, in the case of carbon tetrachloride, concerns had previously been raised about its oncogenicity, or tumor-causing potential. It has been shown to cause cancer in test animals. Concerns were also raised about potential liver and kidney effects from long-term exposure to carbon tetrachloride. Prior to the cancellation of EDB, EPA had started a Special Review to evaluate the effects of carbon tetrachloride. However, the Special Review on carbon tetrachloride will not be formally concluded until the completion of additional regulatory actions described in Units II.B and C below. EPA expects to conclude this Special Review for remaining uses of carbon tetrachloride in 1986.

Because of these concerns and data deficiencies, EPA developed two regulatory initiatives designed to address the potential health risks both from long-term consumer exposure to residues of these grain fumigants and from occupational exposure: (1) A special "Data Call-In" for the grain fumigants and (2) a Label Improvement Program.

II. Results of Data Call-In Program

A. Data Requirements

Under sec. 3(c)(2)(B) of FIFRA, EPA is authorized to require the submission of additional data to maintain an existing registration of a pesticide. Registrants who receive FIFRA sec. 3(c)(2)(B) notifications are required to respond to EPA within 90 days after receipt of such notification. If a registrant does not respond within 90 days, or otherwise fails to demonstrate that his company is taking appropriate steps to secure the data required, EPA may suspend the registration of the pesticide, and may specify provisions concerning the continued sale and use of existing stocks of the pesticide.

Because data were lacking in key areas for carbon tetrachloride, carbon disulfide, ethylene dichloride, and methyl bromide, EPA required submission of certain data under sec. 3(c)(2)(B) as a condition of continued registration of fumigant products

containing these active ingredients. These data included product chemistry data and residue studies, and any chronic (long-term) toxicity studies not previously required through EPA's Data Call-In program for existing pesticides. For methyl bromide, the Agency has also required further studies including additional applicator and other occupational exposure data. The data required by EPA are listed in the following Table 1:

TABLE 1.—FUMIGANT DATA CALL-IN REQUIREMENTS AND REGISTRATION STATUS

Chemical	Data required	Status
[illegible]	Product chemistry, Analytical methodology, Residue studies, teratogenicity study, Reproduction study	All grain fumigant registrations being voluntarily canceled, or have been suspended by EPA.
Carbon disulfide	Product chemistry, Analytical methodology, Residue studies, Chronic feeding study, Oncogenicity study, Reproductive study	All grain fumigant registration being voluntarily canceled, or have been suspended by EPA.
Ethylene dichloride	Product chemistry, Analytical methodology, Residue studies, Teratogenicity study, Reproduction study	All grain fumigant registrations being voluntarily canceled, or have been suspended by EPA.
Methyl bromide	Product chemistry	Received March 1985.
	Residue studies	Partial data submissions and waiver requests received March 1985, review due for completion October 1985
	Analytical methodology	Received March 1985.
	Oncogenicity studies	Due Jan. 1987.
	Reproduction study	Due Jan. 1986.
	Applicator exposure studies (dermal & respiratory)	Due 6 mos. from protocol approval. Respiratory protocol submitted July 1985; review due for completion October 1985. Waiver requested for dermal protocol denied August 1985; protocol due September 1985
	Post-fumigation studies (dermal and respiratory)	Due 6 mos. from protocol approval. Respiratory protocol submitted July 1985; review due for completion October 1985.
	Efficacy study	Due 6 months from protocol approval. Waiver request denied August 1985. Protocol due September 1985
	Environmental fate studies	Waiver requests for some studies denied August 1985 and these studies are due September 1, 1987, remainder due in February and June 1986

B. Suspensions and Voluntary Cancellations

As indicated in Table 1, registrants of methyl bromide have made commitments to EPA to secure and submit the data required by EPA for continued registration. Registrations of methyl bromide products will therefore continue, based on the registrants' compliance with FIFRA requirements. EPA is evaluating additional health and safety studies on methyl bromide as they are submitted. The Agency expects to issue a Registration Standard on methyl bromide in May 1986.

However, none of the registrants of carbon tetrachloride, carbon disulfide, or ethylene dichloride agreed to supply the data required by EPA under sec. 3(c)(2)(B) of FIFRA. All of these registrants have either requested voluntary cancellation in lieu of complying with additional data requirements, or failed to respond to EPA's Data Call-In notices. Thus, all these registrations are being voluntarily cancelled, or are suspended under sec. 3(c)(2)(B) of FIFRA.

C. Cancellation of Suspended Registrations

Suspension of registration under FIFRA sec. 3(c)(2)(B) may continue indefinitely until EPA determines that the registrant has complied fully with the requirements that served as the basis for suspension. To clear the Agency's records, and close off the possibility of reinstatement at an unspecified future date, EPA is taking steps to cancel those suspended registrations of products containing carbon tetrachloride, carbon disulfide, and ethylene dichloride.

For suspended registrations where voluntary cancellations are not obtained, EPA expects to issue notices of intent to cancel under sec. 6(b) of FIFRA. Section 6(b) cancellations are based on a finding of unreasonable adverse effects on the environment when both risks and benefits are considered. Where registrants and users are unwilling to sponsor testing required for continued registration and have not exercised their section 3(c)(2)(B) hearing rights, the Agency concludes that there are not substantial benefits to offset potential risks.

D. Use of Existing Stocks

According to information provided to EPA, production of carbon tetrachloride, carbon disulfide, and ethylene dichloride technical products for use as a pesticide on stored grain stopped as of December 31, 1984. However, existing stocks of these products do remain. For registrants who have elected the option of voluntary cancellation, EPA will permit continued sale, distribution, and use of these grain fumigant products provided the following terms and conditions concerning the sale, distribution, and use of existing stocks are met. Grain fumigant products containing carbon tetrachloride, carbon disulfide, or ethylene dichloride may not be sold or distributed after December 31, 1985. To avoid potential disposal problems for users holding small quantities after December 31, 1985, use of these products may continue through June 30, 1986. However, the Agency believes that most existing stocks will have been used by December 31, 1985. There will be no disposal or indemnification program for stocks of carbon tetrachloride, carbon disulfide, or ethylene dichloride grain fumigants.

E. Stop Sale, Use or Removal Orders

In the case of registrants whose grain fumigant products have been suspended under sec. 3(c)(2)(B) of FIFRA, EPA is issuing "stop sale, use or removal" orders under sec. 13(a) of FIFRA. These orders become effective immediately upon receipt, and EPA may also invoke civil and criminal penalties for failure to comply with the provisions of such an order.

For registrants of suspended grain fumigant products who elect to cancel voluntarily their registrations, EPA will vacate the stop sale order, and permit the sale and distribution of existing stocks through December 31, 1985.

EPA will also be issuing stop sale orders to all registrants and other identified holders of products subject to voluntary cancellation. These orders will be effective January 1, 1986.

Receipt of stop sale, use, or removal orders does not entitle holders of grain fumigant products to either indemnification for the value of the product, or Federal disposal of the pesticide.

F. Revocation of Exemptions from Tolerances

Chloroform, methylene chloride, carbon tetrachloride, carbon disulfide, and ethylene dichloride currently are exempt from tolerance requirements

under the Federal Food, Drug, and Cosmetic Act (FFDCA) when used to fumigate stored grains. These exemptions from the requirement of a tolerance were established in the 1950's, based on analytical capabilities then available. The exemptions were granted because testing with available analytical methodologies indicated that detectable residues would not occur in grain-based consumer products when these fumigants were applied according to label directions.

After the cancellation of all registrations of carbon tetrachloride, carbon disulfide, and ethylene dichloride grain fumigant products, EPA will be taking steps to revoke these exemptions from tolerances as well as the exemptions for chloroform and methylene chloride. (As stated earlier in this Notice, all grain fumigant products containing chloroform and methylene chloride also contained EDB and were previously cancelled together with other EDB registrations.) Revocation of exemptions from tolerances for these chemicals will be consistent with EPA's Policy Statement on Revocation of Tolerances for Cancelled Pesticides, as published in the **Federal Register** of September 29, 1982 (47 FR 42956). In the near future, a **Federal Register** notice will be published proposing revocation of exemptions from tolerances for chloroform, methylene chloride, carbon tetrachloride, carbon disulfide, and ethylene dichloride. Public comment will be solicited on the proposed revocations from tolerance exemptions announced in this initial **Federal Register** notice. A second **Federal Register** notice will then be published to accomplish the final action concerning the exemptions.

In the meantime, EPA believes that the phase-out period for sale, distribution, and use of fumigant products containing carbon tetrachloride, carbon disulfide, and ethylene dichloride on stored grains will not compromise protection of public health. Because the registrants have not submitted the residue studies required by the Data Call-In on grain fumigants, EPA does not have adequate data to make reliable quantitative estimates of residue levels of these chemicals in consumer products derived from treated grains. However, the limited data available to the Agency suggest that residues of carbon tetrachloride in ready-to-eat grain-based products are now verylow (averaging less than 10 parts per billion (ppb)). The Agency does not have comparable data on carbon disulfide and ethylene dichloride, but believes that residue levels are similarly low. Within the next 2 to 3 years, all residues of the liquid grain fumigants are expected to disappear from grain-based consumer products.

III. Label Improvement Program

In addition to the Data Call-In program, EPA also developed a Label Improvement Program (LIP) to help minimize occupational exposure to fumigants, including the EDB substitutes. On November 15, 1984, the Agency issued PR Notice 84–5, Label Improvement Program for Fumigants, which provided for label changes including upgraded precautionary statements, use of detector devices, inclusion of reentry threshold levels above which respirators are required, placarding of fumigated spaces in English and Spanish, and safe handling and disposal instructions.

Based on comments received after the notice was issued, and other developments pertinent to fumigant products, the Agency has now issued PR Notice 85–6 on August, 30, 1985, to clarify and revise PR Notice 84–5. PR Notice 85–6 will be mailed to manufacturers, formulators, producers, and registrants of fumigant products within the next 6 weeks. The dates by which registrants are expected to comply with the Label Improvement Program by making label changes are March 31, 1986, for all products released for shipment and September 30, 1986, for all products in channels of trade.

Because all legal sale and distribution of existing stocks of carbon tetrachloride, carbon disulfide, and ethylene dichloride will cease by December 31, 1985, prior to the September 30, 1986, compliance date specified by PR Notice 85–6 for fumigant products in channels of trade, the LIP will not, as a practical matter, affect products containing these active ingredients.

With regard to aluminum and magnesium phosphide, the Agency has now completed the review of new data submitted in response to the Registration Standards issued in 1981 and 1982 for these active ingredients. This review may result in labeling provisions in addition to or different from those specified in PR-Notices 84–5 and 85–6. The Agency intends to consolidate all these label changes into one document and prescribe them at one time. Accordingly, registrants of aluminum and magnesium phosphide products need not comply with the LIP until notified by the Agency of specific labeling requirements and new compliance deadlines.

However, the provisions of the LIP will apply to methyl bromide and chloropicrin as sole or combined active ingredients. All methyl bromide and chloropicrin products released for shipment must bear the revised labeling as of March 31, 1986. All methyl bromide and chloropicrin products in channels of trade must bear the revised labeling as of September 30, 1986.

IV. Pending Proposals for Restricted Use Classification

EPA previously had proposed to classify grain fumigant uses of carbon disulfide for restricted use by certified pesticide applicators or persons under their direct supervision, as published in the **Federal Register** of August 1, 1979 (44 FR 45219). The Agency subsequently proposed similarly to classify grain fumigant uses of carbon tetrachloride, chloroform, ethylene dichloride, and sulfur dioxide for restricted use, as published in the **Federal Register** of October 12, 1983 (48 FR 46397). EPA was ready to complete these rulemakings. However, because of the various cancellations and suspensions of these grain fumigants described earlier, the Agency has held these final actions in abeyance. As soon as all cancellation actions on these grain fumigants are completed, the Agency will withdraw these proposals. All grain fumigant registrations of sulfur dioxide have been suspended or are being cancelled voluntarily because the products also contain carbon tetrachloride, carbon disulfide, or ethylene dichloride; sulfur dioxide has been used in liquid grain fumigant mixtures primarily to provide a warning order.

V. Summary of Existing and New Registrations for Insect Control on Stored Grains

Effective January 1, 1986, there may be no further sale or distribution of any grain fumigant products containing carbon tetrachloride, carbon disulfide, or ethylene dichloride. Effective July 1, 1986, there may be no further use of any existing stocks of these products. This will eliminate the use of liquid grain fumigant products, except for some liquid formulations of chloropicrin as a sole active ingredient.

After December 31, 1985, the major grain fumigants available in commerce will be solid formulations containing aluminum phosphide and magnesium phosphide, and liquified gas formulations containing methyl bromide or combinations of methyl bromide and chloropicrin. Methyl bromide will continue to be the subject of review under EPA's Registration Standards program. In the event that additional data submissions raise concerns about

the potential long-term effects of methyl bromide, an in-depth risk assessment may be necessary. Because of their acute toxicity, aluminum phosphide, magnesium phosphide, methyl bromide, and chloropicrin are restricted for use only by or under the direct supervision of certified pesticide applicators.

In addition to these grain fumigants for remedial treatment of insect infestations, several grain protectants are available for preventive treatment of grains. Registered grain protectants include malathion, which has been the most widely used protectant, synergized pyrethrins, silicon dioxide, diatomaceous earth, and *Bacillus thuringiensis*. Recently, in June 1985, EPA also registered a new grain protectant, chlorpyrifos-methyl (Reldan) for use on wheat, oats, barley, and rice. The registration of chlorpyrifos-methyl is supported by the full complement of test data needed to satisfy current registration requirements under FIFRA. Chlorpyrifos-methyl is applied to grain entering storage or transport containers, using mechanically assisted application methods. These application methods serve to minimize potential exposure during the application process. Under certain conditions, a single application of chlorpyrifos-methyl is expected to provide extended residual protection against insect infestations for approximately 12 months.

Another grain protectant, pirimiphos-methyl (Actellic), is currently registrered by EPA to treat certain grains only for export to countries which have approved the import of these treated grains. However, the manufacturer has also applied for the registration of pirimiphos-methyl for use on corn, sorghum, rice, and wheat grown for domestic U.S. consumption. After submission and review of additional residue chemistry and metabolism studies required for registration, EPA will be in a position to reach a decision on the use of pirimiphos-methyl on grains grown for consumption in this country.

In addition to registered grain protectants and fumigants, a variety of other practices are available for insect control on harvested grains. These include modified atmospheres in sealed bins of silos, using carbon dioxide, nitrogen, and combustion gases to diplace atmospheric oxygen and kill insect pests. Non-chemical measures include hermetic sealing of bins to limit penetration by insects and create an environment without sufficient oxygen to support insect life, and drying and heating or cooling of grains to temperatures high or low enough to repress insect activity. Rigorous cleaning practices also serve to remove food and harborage for insect propagation. Many of these preventive and remedial, non-chemical and chemical practices can be combined as appropriate in integrated pest management (IPM) strategies. Also, gamma radiation is approved for use on wheat and wheat flour and may find more extensive practical application in the future.

Because several insecticides as well as non-chemical means of pest control are currently available for use on stored grains, the Agency believes that the phase-out of carbon tetrachloride, carbon disulfide, and ethylene dichloride grain fumigants, according to the timetable prescribed in this Notice, will not result in significant impacts on the grain industry. The recent registration of chlorpyrifos-methyl provides a new option for preventive treatment of grains, and further advances in technologies for pest control on stored grains can be expected in the coming years. By cancelling grain registrations of carbon tetrachloride, carbon disulfide, and ethylene dichloride, EPA is eliminating from commerce a group of fumigants that do not have adequate test data bases to meet current scientific and regulatory standards under FIFRA. The registration of those chemical alternatives that will remain available are based on the registrants' compliance with FIFRA requirements. Grain uses of these pesticides according to label directions approved by EPA are not expected to present unreasonable risks from dietary or occupational exposures.

Dated: September 13, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85-22546 Filed 9-18-85; 8:45 am]

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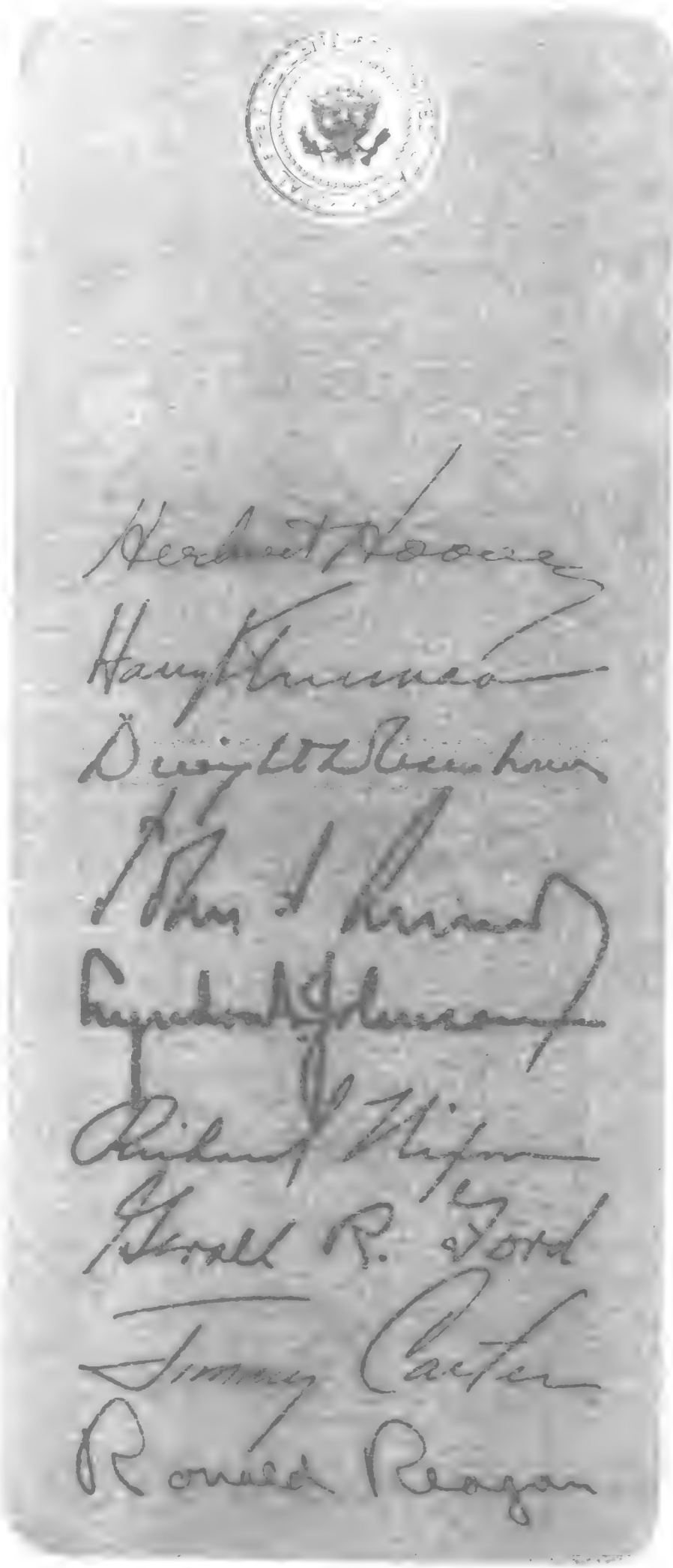
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Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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Nuclear Regulatory Commission

Oil Pollution
Coast Guard

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: November 15; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Call JoAnn Harte, Workshop Coordinator, 202–523–5239.

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. The January 1986 Washington, D.C. workshop will include facilities for the hearing impaired. Dates and locations will be announced later.

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Rules and Regulations

Federal Register
Vol. 50, No. 183
Friday, September 20, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 83-007F]

New Turkey Inspection System

Correction

In FR Doc. 85-22062, beginning on page 37508 in the issue of Monday, September 16, 1985, making the following correction:

On page 37513, first column, the section number in the section heading, which reads "§ 318.76", should read "§ 381.76".

BILLING CODE 1505-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 50

Revision of Backfitting Process for Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is revising its regulations to establish standards and an agency discipline for future management of backfitting for power reactors. Backfitting is a process which can include both plant-specific changes and generic changes as applied to one or more classes of power reactors. As described in the rule, backfitting is defined as the modification of or addition to systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of new or different regulatory staff position interpreting the Commission rules after (i) the date of issuance of the construction permit (CP) for the facility for facilities having construction permits issued after October 21, 1985; or (ii) six months before the date of docketing of the operating license (OL) application for the facility for facilities having construction permits issued before October 21, 1985; or (iii) the date of issuance of the operating license for the facility for facilities having operating licenses; or (iv) the date of issuance of the design approval under Appendix M, N, or O of 10 CFR Part 50.

EFFECTIVE DATE: October 21, 1985.

FOR FURTHER INFORMATION CONTACT: James R. Tourtellotte, Chairman, Regulatory Reform Task Force, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Phone: (202) 634-3300.

SUPPLEMENTARY INFORMATION:

Background

The Commission initiated this rulemaking proceeding for the purpose of establishing requirements for the future management of backfitting for power reactors. Backfitting can include both plant-specific changes and generic changes applicable to one or more classes of power reactors.

Section 50.109 of the Commission's current power reactor regulations provides the following standard for backfitting decisions: Backfitting may be required where the Commission finds "that such action will provide substantial, additional protection which is required for the public health and safety or the common defense and security." On its face, this appears to be a relatively high standard. In practice, however, § 50.109 has rarely been formally invoked, and it is therefore difficult to tell the extent to which this standard has actually been applied to previous backfitting decisions. The Commission has decided that a new, more specific standard and related procedures should be applied by rule to backfitting decisions.

The Commission published an advance notice of proposed rulemaking and policy statement on this subject at 48 FR 44217 (September 28, 1983) and more recently, a notice of proposed rulemaking at 49 FR 47034 (November 30, 1984). The complete record of this proceeding is available for review in the Commission's Public Document Room at 1717 H Street, NW., Washington, DC.

Public Comments

The comment period officially closed January 29, 1985. A number of comments were received after that time, the last of which was filed on March 12, 1985, by the Advisory Committee on Reactor Safeguards. All comments were considered in formulation of the final rule.

Fifty-seven comments were filed as follows: utilities, 30; vendors, 3; architect engineers and service companies, 5; industry groups and trade associations, 3; consulting engineering firms, 3; various individuals and groups, 10; federal agency, 1 (DOE); states, 1 (Illinois); Advisory Committee on Reactor Safeguards, 1.

As a result of the responses to the advance notice of proposed rulemaking, the Commission posed six numbered questions and other unnumbered questions in the notice of proposed rulemaking. The responses to these questions have assisted the Commission in reaching its determination on the content of the final rule.

Question 1. Should § 50.109 also apply to backfitting imposed through rulemaking? When a modification is imposed by rule or regulation, should the affected licensee be afforded an appeal to the EDO? What is the basis for this position?

The Union of Concerned Scientists (UCS) stated that § 50.109 should not apply to rulemaking. They assert that the Atomic Energy Act and prevailing case law do not permit the consideration of cost in determining minimum safety standards. (See UCS 1983 comments, pages 4-7.) An appeal to the EDO from a requirement imposed by rule cannot be legally permitted, according to UCS, and the Commission may not circumvent the legal requirements of the Administrative Procedure Act, 5 USC Section 553, by permitting appeals outside of the public forum to the Executive Director for Operations.

The Ohio Citizens For Responsible Energy (OCRE) also oppose application of § 50.109 to rulemaking because they say "licensees are afforded enough opportunities in the rulemaking and administrative process to contest the

rules." They suggest that a petition for waiver of a rule under 10 CFR 2.758 or an exemption under 10 CFR 50.12 provides sufficient remedies for licensees.

The Nuclear Utility Backfitting and Reform Group (NUBARG) believes that backfitting controls should apply to facility modifications imposed by rulemaking. They state four reasons for their position. First, in terms of public health and safety, they state the practical impacts of backfitting by rulemaking or backfitting on a plant specific basis are the same. Therefore, NRC regulations should require a documented analysis of a backfit regardless of the source of the requirement. Second, there is no apparent justification for excluding backfit modifications imposed by rulemaking. They suggest that the NRC should satisfy itself of the need for and efficacy of any backfit required. Third, if the backfitting rule did not apply to rulemaking, there may be a natural temptation by the staff to avoid the effects of the backfitting rule by imposing requirements through rulemaking. Fourth, there would be no additional burden because much of what the rule would require already takes place during the CRGR review of proposed rules. NUBARG states that it does not advocate the preparation of a plant-specific backfitting analysis for backfits proposed in the context of a rulemaking.

NUBARG also believes that an opportunity for an appeal to the Executive Director for Operations should exist. The licensee, they say, should be given the opportunity to demonstrate that the modification established by rule or regulation should not be required for its facility because that facility is substantially different from the type, design, or vintage of facilities evaluated in the modification analysis and as a result, findings made pursuant to § 50.109 are not applicable. They go on to cite the need for flexibility in the rulemaking process as a basis for their position. The Atomic Industrial Forum (AIF) and other industry commenters appear to be in general agreement with the positions taken by NUBARG.

DOE also states that § 50.109 should apply to rulemaking since rulemaking and orders are "the only two avenues through which a backfit should be imposed by the Commission." They oppose appeal to the EDO, however, and suggest use of a waiver request under 10 CFR 2.758.

Question 2. Should § 50.109 limit backfitting to backfits imposed by rule, regulation or order? If the imposition of backfits is not limited to rules, regulations or orders, what other mechanisms should be employed?

UCS opposes such a limitation, stating that the effect would "undoubtedly be to eliminate the condition which the Supreme Court found legally necessary to justify two-stage licensing," citing *Power Reactor Development Company* v. *Union*, 367 U.S. 396, 414 (1961).

OCRE takes a somewhat different position. They state that the Atomic Energy Act "clearly states that the Commission's safety standards are to be imposed by rule or order . . . However, the NRC is in the habit of imposing regulatory requirements through non-enforceable means (e.g., Reg. Guides, SRP). OCRE states that because legally binding requirements are those reached through rulemaking or adjudication and because these processes inherently involve weighing pros and cons of adverse parties, they are reasoned, open deliberated processes subject to judicial review and therefore need no further analytical requirements. OCRE continues, "While it would be preferable if all regulatory requirements resulted from rules or orders, it is a fact of life that the staff imposes regulatory requirements on its own." OCRE appears to not take a position either way on the question but is willing to accept current staff practice as a "fact of life."

NUBARG takes a strong position that § 50.109 should limit backfitting to those modifications imposed by rules, regulations or order. They state that current and past staff practice of requiring licensees to backfit facilities on the basis of non-binding guidance requirements is illegal. Regarding the second part of the question, NUBARG states that there are no means other than rules, regulations or orders by which the Commission may lawfully require a licensee to modify its facility. In short, it is NUBARG's position that Section 50.109 would violate the statute if it permitted imposition of backfits by any means other than rules, regulations or order. The AIF and other industry commenters appear to be in general agreement with NUBARG's position.

DOE states that backfitting should only be imposed by rule, regulation or order and that all analyses, reviews and decisions required by the proposed rule should apply to all methods of backfitting.

Question 3. Should a documented analysis of a proposed backfit come before the backfit is issued or only after an affected licensee lodges an appeal?

USC urges that there be no requirement for a detailed analysis unless the licensee appeals because such analyses in absence of an appeal would, in their words, "be an utter waste of time and resources."

OCRE suggests that to require analysis of every proposed backfit would create too great a burden on the staff. OCRE appears to reserve the term "backfit" for "non-enforceable regulatory requirements" and therefore, "licensees should feel free to contest a proposed backfit."

NUBARG takes the position that there should be a documented analysis by the NRC whenever its proposes to require licensees to modify their facilities. They state, "a plant modification has the same impact regardless of who initiates it. Therefore, just as the licensee must always develop a sound technical basis in support of a proposed facility modification, so should the staff." Such an analysis is necessary, they argue, so that the NRC can be assured that the backfit it wishes to impose is truly needed to enhance safe reactor operations and that it will have the intended effects.

AIF suggests that such evaluations are needed to determine whether the proposed backfit does increase safety, to what extent, and at what costs. Further, it is needed "to impose discipline into the backfit process." AIF also suggests that licensees should not be placed in a position of having to invoke procedure in order to initiate backfit analysis. To do so, they say, places the licensee in a position of having to jeopardize its relationship with the staff by opposing a change that the staff is requiring.

AIF also suggests that, in addition to the seven factors proposed in the Federal Register notice, the following factors should be considered in making an analysis of a proposed backfit.

1. A precise statement of the specific objectives that the proposed modification is designed to achieve.

2. A general description of the activity that would be required by the licensees or applicants in order to complete the modification.

3. Alternatives to the proposed backfit and how these alternatives (including the recommended alternative) will affect other proposed or imposed facility backfits; and

4. A priority ranking by safety significance of each proposed backfit relative to other proposed or imposed backfits.

5. Whether, after balancing of all appropriate factors (including those in this paragraph) the demonstrations required in § 50.109(a) have been made.

DOE states that the burden of proof for demonstrating that an increase in

safety is needed should rest with the staff rather than requiring the licensee to prove that such an increase is unnecessary. Their reasoning is that, "requiring a written basis and analysis of a proposed backfit before it is imposed will increase the likelihood of improved safety and increase confidence that its effects are understood."

Question 4. Should backfitting be defined as "the imposition of new regulatory requirements or the modification of previous requirements" (the cause) or defined as a "modification or addition required by the Commission to the facility or to the structure, systems or components of such facility, the design thereof, or the procedures or organization required to construct or operate such facility" (the effect)? What is the basis for this position?

UCS believes that neither definition is appropriate, citing its 1983 comments, pages 10–30, in support of its position. UCS further suggests that exclusion of rules, regulations and orders from the definition of regulatory requirements raises questions about what is meant.

OCRE states that backfitting should be defined as "the imposition of new requirements; i.e., the cause, not the effect." Its reasoning is that "Since we interpret backfit to apply *only* to the non-enforceable requirements, licensees are free to use alternative methods to comply. This, again, is a difficult point which should be resolved by bringing the NRC's practices into line with the Atomic Energy Act (AEA); i.e., all requirements imposed by rule or order."

AIF suggest that the definition should be stated in terms of the effect which they suggest should read:

> As used in this section, "backfitting" of a production or utilization facility means a modification; or addition required by the Commission to the design approval, manufacturing license, or facility or to the structures, systems or components of such facility, the design thereof, or the procedures or organization required to construct or operate such facility, after . . . (times specified in proposed rule).

They also suggest that backfits should include requirements to perform extensive analytical efforts or tests, regardless of whether modifications or additions to the structures, systems or components of a facility or design result from such analytical efforts or tests. The basis for rejecting regulatory requirements as a part of the definition is directly related to their previous argument that backfits may only be legally imposed by rule, regulations or order. AIF's position is generally supported by other industry comments.

DOE would recommend the following in lieu of either the "cause" or "effect" definition:

1. A "modification," means a change required by the Commission to a site permit; a design approval; a production or utilization facility, or the structures, systems, or components of a facility; to the procedures pursuant to which a facility is to be constructed or operated; or to the organization required to construct or operate such a facility.

2. A "backfit" means "a modification not imposed by the Commission for achieving compliance with a construction permit or operating license, at the time of issuance or as amended, or contained in the requirements incorporated by reference in the permit or license."

The State of Illinois rejects the use of "regulatory requirements" as too ambiguous and suggests the definition be more precise for clarity and scope.

Question 5. The industry's proposed standard for justification of a backfit is "substantial improvement in the overalll safety of the plant considered over its remaining life." Is it appropriate to include the concept of "over its remaining life"? What other standard could be used?

UCS suggest that it is not appropriate to consider the concept of "over its remaining life" for the following reasons:

1. Such analysis can only be based on probabilistic risk assessment and that methodology is not appropriate.

2. The concept creates an incentive for delay and obstructionism and rewarded those who delay the most.

3. "Benefits" are currently expressed by NRC in terms of annual average dose "avoided" and this is inconsistent with the concept of "remaining life".

4. The concept does not account for problems cause by aging and deterioration of equipment which are likely to increase as a plant ages.

5. There is no justification in law or policy for subjecting people around older plants to a greater risk than those who live around newer plants.

OCRE also objects to the use of the standard because of what they perceive to be implication of required use of probabilistic risk assessments.

NUBARG suggests that use of the concept is appropriate as being one factor among many that should be considered when a backfit is required. Industry commenters generally support this position.

Question 6. To what extent may the Commission consider cost, including the economic costs in backfitting decisions under standards and processes proposed in § 50.109?

USC cites its previous 1983 comments in support of its position that costs may not be considered under the Atomic Energy Act and established case law. OCRE also opposes cost consideration as a part of the decision process.

AIF takes the position that cost may be considered and that such costs should include:

1. Costs of evaluation, engineering, construction, material procurement, Allowance for Funds Used During Construction, (AFUDC) and investigations;

2. An attributable portion of replacement power costs during down time for implementation;

3. Operating costs due to changes in specifications, procedures, operator retraining and training manuals, increases in manpower requirements and net generation losses;

4. Impact on preoperational startup, operator training, procedure development and system turnover during plant construction; and

5. Any incremental increase in man rem exposure as a result of installation and subsequent operation of the modification.

As a basis for the position stated, AIF attaches to their comment a legal memorandum entitled, "Consideration of Cost and Benefits in Connection with Backfitting." This memorandum takes the position that the Atomic Energy Act and its legislative history, court decisions, Commission regulations and documents, the Energy Reorganization Act and Executive Order 12291 and the NRC's General Counsel memorandum dated May 4, 1984, all support the conclusion that costs may be considered in connection with backfitting. Industry comment generally supported the AIF position.

DOE also conducted a legal analysis of the cost question. They stated:

> The legal conclusion which emerges from the foregoing is that, except for deciding the narrow question of whether a backfit should be required for construction permittees to eliminate or reduce to a threshold level a particular risk in order to meet the "adequate protection" test, the NRC has broad discretion to consider the relationship between benefits and costs in deciding whether to impose a backfit.

The Commission also requested comments on whether reliance upon probabilistic risk assessments is prohibited by the Atomic Energy Act as suggested by UCS. OCRE agreed with the UCS position.

AIF takes the position that UCS mischaracterizes the industry position on the use and value of probabilistic risk assessment (PRA). They point out that

PRAs should support, not supplant, determinative requirements. NUBARG points out that neither the industry nor the proposed backfitting rule mandates the use of PRAs. They point to the fact that the proposed industry rule would require the use of PRAs only "where appropriate and where pertinent data is available." They also suggest that the Atomic Energy Act does not prohibit the use of PRAs.

The Commission requested comments on the correctness of the UCS position that "the Commission exercises its rulemaking authority to establish nuclear reactor safety standards, and licenses may avoid those standards only by obtaining a waiver under 10 CFR 2.758." NUBARG states that UCS misunderstands § 2.758 and the operation of the backfit rule. They further suggest that neither of the proposed backfitting rules can reasonably be read as permitting licensees to avoid requirements applicable to their facilities. Those rules, they state, would simply require the staff to document the basis for its conclusion that a backfit is required.

The Commission requested comments on whether the elements of the proposed backfitting rule are too prescriptive and are truly needed to ensure that the staff considers all factors that are appropriate before it imposes a backfit. NUBARG points out that virtually all of the elements of the analysis have been used by NRC before and are sufficiently broad to be applied in most, if not all, by backfitting situations. The State of Illinois remarked: "The Department [State] believes that the seven factors contained in the proposal provide an appropriate means for balancing all factors in determining whether backfitting should apply." AIF agreed with the seven factors but suggested the addition of five more.

The Commission also expressed a concern over whether preparation of a backfitting analysis should be required as a condition precedent to the issuance of a license amendment. NUBARG stated that "unless requested by a licensee, the staff should not be requested to prepare a backfitting analysis as a condition precedent to issuance of a license amendment if the licensee requests an amendment pursuant to 10 CFR § 50.90." NUBARG points out that application for significant amendments requries a description of the proposed modification and the preparation of a safety analysis report by the licensee. Since the licensee presumably will have subjected the amendment to an internal cost effectiveness review, a backfitting analysis by the NRC would appear to be neither necessary nor appropriate. AIF was in general agreement with this position and stated further that the option to allow a licensee to request a backfitting analysis should be retained. AIF suggested that there are instances when licensees are under informal but intense regulatory pressure to submit an amendment request. In this circumstance, backfitting analysis should precede the issuance of a license amendment according to AIF. General comments from other members of the industry tend to support the NUBARG and AIF positions.

Comments on the Additional Views of Commissioner Asselstine

Commissioner Asselstine's additional views were generally supported by Ecology/Alert, Federal Conservationist of Westchester County, Inc., Ohio Citizens for Responsible Energy, and UCS. Industry comment generally opposed Commissioner Asselstine's approach. Similarly, the Department of Energy did not support Commissioner Asselstine's alternative backfit rule, and the State of Illinois had a mixed response.

Although UCS endorses Commissioner Asselstine's position, it suggests two changes. First, it takes exception to Commissioner Asselstine's rule to the extent that it prohibits consideration of monetary costs at the operating license stage only for backfits related to safety matters that were left unresolved at the time of issuance of the construction permit. UCS believes that so long as construction permits are to be granted on the basis of preliminary design concepts, it is not legitimate to consider as backfits, changes required between the construction permit and operating license, or to consider costs at that stage. Second, USC objects because Commissioner Asselstine's proposal does not provide for formal public participation in backfitting decisions. USC believes that the decisionmaking process should be open and accessible to all persons who might be affected.

OCRE also suggested two changes to Commissioner Asselstine's proposal. First, they would remove review by CRGR because, they say, CRGR does not further the mission of the Commission but serves only to discourage new safety improvements. Second, they, like UCS, would provide an opportunity for public comment for both generic and plant specific backfits.

In its discussion rejecting the proposed use of "regulatory requirements" in the definition of backfitting, the State of Illinois endorses "the more precise definitions of backfitting proposed by Commissioner Asselstine and the industry" and to that extent, could be considered as endorsing Commissioner Asselstine's approach. However, the State of Illinois also stated that they did not agree with Commissioner Asselstine's proposals to specify in the regulations a presumption in favor of the backfit. They believe that seven factors contained in the proposal provide an appropriate means for balancing all factors in determining whether backfitting should apply.

The thrust of the industry position appears to be that many of the terms used by Commissioner Asselstine in his proposed rule are ambiguous and undefined and in other instances, where the standard is well understood, it is simply misconceived. For example, NUBARG points to Commissioner Asselstine's proposal to define backfits in terms of changes to facility design, construction or operation "imposed by the staff to . . . satisfy a regulatory staff position" developed after a specified period. NUBARG complains that "regulatory staff position" is not defined. AIF states that the word "satisfy" in this context cannot be anchored to any applicable statutory standard, not to any prevailing doctrine of administrative jurisprudence. NUBARG questions the ultimate effectiveness of such an alternative rule because, they argue, backfits may not be legally imposed on the basis of such documents.

Industry takes a different tack with regard to the position espoused by Commissioner Asselstine that the basic premise of nuclear regulation should be to "reduce the risk to the public caused by these facilities to a level that is as low as reasonably achievable." NUBARG suggests that this approach reverses the presumption of regularity associated with past NRC licensing decisions. Those who have already been granted licenses and thus have been deemed "safe enough" by the NRC could, according to NUBARG, find themselves having to justify routinely why their licenses should not be modified. This, NUBARG states, raises serious legal questions of fundamental fairness and due processs, and appears to be at odds with the Administrative Procedure Act. NUBARG also complains that the standard suggested by Commissioner Asselstine is potentially open-ended.

AIF further suggested that the Atomic Energy Act requires "reasonable assurance of the public health and safety" and reasonable assurance is not equated with "as low as reasonably achievable." AIF further states that this

standard is at odds with section 103(b) of the Atomic Energy Act, which provides, in part, that "The Commission shall issue such licenses . . . to persons applying therefor . . . (to) who are equipped to observe and who agree to observe such safety standards to protect health and to minimize danger to life or property as the Commission may, by rule, establish: . . ." AIF suggests that this language has been interpreted by the Commission in its regulations to require "reasonable assurance"that licensed activities of the Commission can be conducted without endangering the health and safety of the public, citing, for example, 10 CFR 50.57(a)(3). They also cite *Citizens for Safe Power, Inc.* v. *Nuclear Regulatory Commission,* 524 Fed. Second 1291, 1297 (D.C. Circuit 1975) for the proposition that "absolute or perfect assurances are not required by AEA and neither present technology or public policy admit of such a standard."

The Department of Energy also does not support Commissioner Asselstine's alternative proposed backfit rule. This proposed rule, DOE states, "detracts from the basic purpose for instituting a new backfit rule and, if adopted, would perpetuate the significant deficiencies of backfitting practices of the past." DOE further suggests that Commissioner Asselstine's definition of backfitting is too narrow; that the "as low as is reasonably achievable" standard is inappropriate, and would probably be inconsistent with safety goals should those be established; that the limitations on the use of quantitative cost benefit balancing would be "overly restrictive" and would be "a regressive step for modern analysis techniques"; that the decision criteria are not identified in Commissioner Asselstine's rule; and that the implementation procedures have several deficiencies.

Commission Position

The Commission is appreciative of the time and effort expended by those who submitted comments. Backfitting is a matter of considerable importance and the views expressed in the comments have been very helpful to the Commission in its deliberation. To some extent, the final rule will be modified from the proposed rule to reflect the views expressed.

Since there is no practical difference between a backfit that is imposed pursuant to a rule or a staff position interpreting a rule, the Commission will alter the final rule to require a documented analysis of required backfits regardless of the source. A plant-specific backfit analysis will not be required in rulemaking and the factors specified in the rule will be reviewed only on a generic basis for rulemaking purposes. Because there must be safety reasons for the agency to impose any changes to a regulatory requirement or a staff position, applicable to the licensee, because the safe consequences are unknown until analyzed, and because the Commission should fully understand the effects of a proposed backfit before its imposition, it is of little consequence how a backfit is imposed. Safety and sound management require that analysis precede imposition of a new or modified regulatory requirement or staff position. It follows that those backfits imposed by rulemaking should undergo the same scrutiny as proposed by other means. It also follows that changes in regulatory requirements or staff positions for procedures and organization should also be analyzed before implementation to determine, *inter alia,* the safety significance of any such proposed change. The final rule reflects this position.

Many of the most important changes in plant design, construction, operation, organization, and training have been put in place at a level of detail that is expressed in staff guidance documents which interpret the intent of broad, generally worked regulations. The NRC has determined that the correct focus for backfit regulation is the establishment of effective management controls on existing staff processes for the interpretation of regulations that are known to result in valuable upgrades in industry safety performance. Thus, the Commission opts to adopt a management process not only for the promulgation of regulations as backfit instruments, but also for the lower tier staff review and inspection processes known to result in reactor plant changes.

The Commission agrees with those who suggest that the Staff should not be required to prepare a backfitting analysis as a condition precedent to issuance of a license amendment if the licensee requested the amendment pursuant to 10 CFR 50.90. If a licensee believes that the amendment process is being used by the staff to impose a backfit, the licensee may invoke the rule under § 50.109. It is unnecessary to amend the rule in this regard since mention of the point here provides adequate direction to the Staff and licensees.

Considerable attention was given to the question of whether backfitting should be defined in terms of its cause or its effects. After due consideration, the Commission believes that the definition for backfitting should take into account both the cause and the effects. Therefore, the definition is modified accordingly.

Question 5 concerned the industry's proposed standard for justification of a backfit and the suggestion that the "substantial improvement in overall safety of the plant considered over its remaining life" should be incorporated into the rule. In our view, the concept of "over its remaining life" is already incorporated in the rule under § 50.109(d)(8). There is no need to place that concept in the rule at another place.

The additional factors suggested by the industry for inclusion under § 50.109(c) generally appear to be reasonable and not unduly burdensome. Therefore, the thrust of the additional factors will be included as appropriate in the final rule.

As the accountable manager for backfitting, the Commission has directed the EDO to establish backfit procedures and to ensure appropriate rights of appeal. The Commission believes it is unnecessary to include in the rule a section establishing appeal rights to the Executive Director for Operations.

Consideration of Costs in Backfit Decisions

In the current rulemaking, comments were filed by UCS and AIF stating strongly contrasting legal views concerning the Commission's authority to consider the costs of new safety requirements which the Commission would impose if costs were not a factor in the decision. (See Question 6, *supra.*) In view of the importance of the cost issue and the strongly divergent views stated in the comments, it is important to set forth the Commission's legal and policy views on this matter.

The costs associated with proposed new safety requirements may be considered by the Commission provided that the Atomic Energy Act finding "no undue risk" to the public health and safety can be made. There may be any number of ways by which the Commission can arrive at such a conclusion. Each approach could have different costs associated with it and it cannot be seriously argued that in such circumstances the Commission is statutorily prevented from choosing the most cost effective means of protecting public health and safety.

Similarly, it may be presumed that the current body of NRC safety regulations provides adequate protection. Where new information indicates that improvements are needed to ensure there is "no undue risk" on either a plant-specific or generic basis which the Commission believes to be the minimum

necessary, such requirements must be imposed. However, where there are alternatives for achieving the improvements which have different associated costs, such costs may be considered.

Cost considerations have been a part of the Commission's regulatory approach in many other instances. For example, the ALARA principle requires Commission licensees to meet an absolute set of radiation exposure standards but also requires further reductions in exposure where the cost of the exposure avoided outweighs the cost of implementing controls to avoid the exposure. Commenters who addressed the proposed backfit rule and opposed the use of costs did not address this point. It would appear that the only situation where the consideration of costs may be seriously challenged is where a new requirement is necessary to provide an absolutely minimum level of protection to the public health and safety and no alternative means of achieving such protection are apparent.

In general, the consideration of costs associated with incremental safety improvements is within the NRC's statutory mandate. However, the cost of new safety requirements will not be considered where such requirements are necessary to ensure there is no undue risk to the public health and safety and no alternatives are available.

After reviewing all of the comments and positions stated, the Commission believes that there is sufficient authority in the statutes, case law, and Commission practice to justify making cost considerations in backfitting decisions. Since consideration of costs was a part of the proposed rule, the rule will remain unchanged in this regard. The Commission also rejects as without merit the suggestion that probabilistic risk assessments are precluded by law.

Description of Final Rule

The proposed amendment of § 50.54(f) ensures that except for information sought to verify licensee compliance with the current licensing basis for that facility, the reason or reasons for each information request must be prepared prior to its issuance to determine whether the request is for information already in the possession of the applicant or licensee or instead will require the institution of studies, procedures, or other extensive effort to generate the necessary data to respond. If extensive effort is reasonably anticipated, the request will be evaluated to determine whether the burden imposed by the information request is justified in view of the potential safety significance of the issue to be addressed.

It should be noted that § 50.54(f) does not by its terms apply to the review of applications for licenses or amendments. Consequently, if the staff seeks information of a type routinely sought as a part of the standard procedures applicable to the review of applications, no analysis will be necessary. If the request is not part of routine licensing review and falls within the purview of § 50.109, however, a full analysis is most likely indicated. Requests for information to determine compliance with existing facility requirements or for fact-finding reviews, inspections and investigations of accidents or incidents, however, usually are not made pursuant to § 50.54(f) nor are such requests normally considered within the scope of the backfit rule. Amendment of this section also provides for management control and accountability for backfits by requiring that staff evaluations be reviewed by the Executive Director for Operations or his designees prior to the issuance of the request.

The amendment of § 50.54(f) should be read as indicating a strong concern on the part of the Commission that extensive information requests be carefully scrutinized by staff management prior to initiating such requests. The Commission recognizes that there may be instances where it is not clear whether a backfit will follow an information request. Those cases should be resolved in favor of analysis. In short, staff management should develop an internal review process to ensure that there is a rational basis for all information requests, even where it is not clear that a backfit will result.

Section 50.109(a) sets out the definition of backfitting, the analysis requirement, the standard to be used in determining whether a backfit should be imposed and the exceptions to the rule. The definition focuses on modifications to systems, structures, components, designs, procedures or organization which may be caused by new or modified Commission rules or orders or staff interpretations of Commission rules or orders.[1] Thus, this definition includes both cause and effect of backfitting. It may also be noted that "cause" includes not only Commission rules and orders, but staff interpretations of those rules and orders. This is not to say that staff interpretations of rules are viewed by the Commission as being legal requirements. Clearly, they are not. Nevertheless, staff interpretations of broadly stated rules are often necessary to give a rule effect and in some instances may be a causal factor in initiating a backfit.

Section 50.109(a)(2) requires a systematic and documented analysis as a condition precedent to the imposition of a backfit. This will ensure that the safety significance of any modification and its relation to other relevant factors is well understood before changes are required.

The standard against which proposed backfits would be measured is stated in § 50.109(a)(3) as "substantial increase in the overall protection of the public health and safety or the common defense and security." Substantial means "important or significant in a large amount, extent, or degree." Under such a standard, the Commission would not ordinarily expect that safety improvements would be required as backfits which result in an insignificant or small benefit to public health and safety or the common defense and security, regardless of the implementation costs. On the other hand, the standard is not intended to be interpreted in a manner that would result in disapprovals of worthwhile safety or security improvements having costs that are justified in view of the increased protection that would be provided.

The phrase "overall protection of the public health and safety or the common defense and security" in the proposed backfit standard also deserves some discussion. The principal purpose of requiring consideration of the overall protection that would be provided by a proposed backfit is to ensure that both its negative and positive effects are taken into account in deciding whether the backfit is justified. A backfit for a part of a plant should be evaluated in light of the net increase in overall protection that the entire plant would provide as a result of the backfit, taking into account the effects it would have on other aspects of the plant. Thus, the net benefit of a backfit to the protection provided by the plant as a whole is the overriding consideration, not just the benefit to the part of the plant being backfitted.

However, the Commission does not intend use of the phrase "overall protection" in the backfit standard to signal a departure from its traditional reliance on defense in depth and diversity for protection of public health and safety. Therefore, safety improvements in one line of defense against undue risk should not be disapproved or approved based solely

[1] The term "regulations" is not in the text because that term is synonymous with "rule."

on the presence or absence of another line of defense to cope with the failure of the first. For example, safety improvements in the integrity of the reactor coolant system should not be dismissed merely because an emergency core cooling system has been provided to protect public health and safety with high confidence in the event that the integrity of the reactor coolant system is lost. On the other hand, such a suggested improvement may be precluded because it does not meet the substantial test, or does not increase overall protection provided by the plant due to, for example, the negative impacts on other aspects of the plant. The proposed requirement that the costs of backfits be considered and justified in view of the increased protection to public health and safety or security is based on the Commission's view that it should, in these circumstances, consider the direct and indirect costs of implementation in making safety decisions under the Atomic Energy Act.

The consideration and weighing of costs contemplated by the rule applies to backfits that are intended to result in incremental safety improvements for a plant that already provides an acceptable level of protection. In this area the Commission believes that direct and indirect implementation costs are especially relevant. Without cost as a competing consideration in these circumstances, the regulatory process takes on the characteristics of a quest for a risk-free plant, an unattainable objective as recognized by Congress in establishing the standard of no undue risk in the Atomic Energy Act.

Section 50.109(a)(4) creates exceptions for modifications necessary to bring a facility into compliance or to ensure through immediately effective regulatory action that a licensee meets a standard of no undue risk to public health and safety. In cases involving the compliance exception, backfit analysis is not required and the standard does not apply. The compliance exception is intended to address situations in which the licensee has failed to meet known and established standards of the Commission because of omission or mistake of fact. It should be noted that new or modified interpretations of what constitutes compliance would not fall within the exception and would require a backfit analysis and application of the standard.

The exception for immediately effective regulatory actions that are necessary to ensure that a licensee meets the standard of no undue risk to the public health and safety permits the Commission to act in emergency situations to ensure that operation of the backfit rule will not preclude the Commission from ensuring that minimum standards are met to protect public health and safety. The exception anticipates the existence of significant new information or the occurrence of an event which clearly demonstrates that the standard of no undue risk to the public health and safety cannot be maintained without the designated modification. Moreover, the presumption of safety which ordinarily accompanies the issuance of any license must be overcome in order for the exception to be used. As with the compliance exception, there is no intent on the part of the Commission to include within the scope of the exception new or modified interpretations of what constitutes no undue risk to the public health and safety. In such a case, the rule applies. The rule also provides that a backfit imposed by immediately effective regulatory action shall not relieve the Commission of performing an analysis after the fact to document the safety significance and appropriateness of the action taken.

For those modifications which are to ensure that the facility poses no undue risk to the public health and safety and which are not deemed to require immediately effective regulatory action, analyses are required; these analyses, however, should not involve cost considerations except only insofar as cost contributes to selecting the solution among various acceptable alternatives to ensuring no undue risk to public health and safety.

To ensure that the discipline is maintained in the process and that the exceptions do not become the rule, the Commission directs the staff to document each exception. Documentation shall include a precise statement of the specific objectives of and reasons for the modification and the basis for the exception. It may also serve useful regulatory purposes to include such matters as a general description of the activity that would be required by the licensees or applicants in order to complete the modification and the identification by type, design and vintage of the design approvals, manufacturing licenses for production or utilization facilities to which the modification would apply.

Section 50.109(b) "grandfathers" backfits imposed prior to the effective date of this rule.

Section 50.109(c) sets out nine factors to be used by the staff in its backfit analysis. Finally, § 50.109(d) explicitly recognizes the responsibility of the Executive Director for Operations to manage the Commission's backfitting program in general and requires approval of backfit analyses by the Executive Director for Operations or his or her designee.

As a matter of information, it may be noted that the nine factors in § 50.109(c) have precedent in existing NRC practices as seen in the Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission, NUREG/BR-0058, the approved CRGR Charter and the Commission's approved plan for the management of plant-specific backfitting, SECY-83-321.[2]

The nine factors to be used by the Staff for a systematic and documented analysis are listed under § 50.109(c) and read as follows: "(1) Statement of the specific objectives that the proposed backfit is designed to achieve; (2) general description of the activity that would be required by the licensee or applicant in order to complete the backfit; (3) potential change in risk to the public from the accidental offsite release of radioactive materials; (4) potential impact on radiological exposure of facility employees; (5) installation and continuing costs associated with backfit, including the cost of facility down time for the cost of construction delay; (6) the potential safety impact of changes in plant or operational complexity including the effect on other proposed and existing regulatory requirements; (7) the estimated resource burden on the NRC associated with the proposed backfit, and the availability of such resources; (8) the potential impact of differences in facility type, design or age on the relevancy and practicality of the proposed backfit; (9) whether the proposed backfit is interim or final and, if interim, the justification for imposing the proposed backfit on an interim basis. These nine factors are to be used as balancing mechanisms in the decisionmaking process for backfitting.

During internal review of the rule, a question was raised as to whether licensing action should be withheld during backfit review. The answer is that the rule never contemplated such a withholding. To the contrary, until a backfit analysis is complete, licensing action should continue along a course

[2] The Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission, NUREG/BR-0058, is available for inspection or copying for a fee in the NRC Public Document Room, 1717 H Street, NW., Washington, D.C. This report may be purchased from the U.S. Government Printing Office (GPO) by calling 202-275-2060 or by writing the GPO, P.O Box 37082, Washington, DC 20013-7082. It may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

consistent with normal practice. For clarification of the point, § 50.109(d) was added to the final rule.

Section 50.109(e) emphasizes and codifies the Commission's intent that backfit management is of paramount importance to responsible regulatory practice. Accordingly, the Executive Director for Operations is responsible for implementation of the backfit rule.

It may be noted that the resolution of any backfit case can be by Commission rule or order, or by written commitment of a licensee. Recognition of this point completes the design of the backfit management process and establishes that licensee compliance with approved backfits may be accomplished by voluntary commitment, but that the legal instrument of a rule or order can and will be used if necessary.

The proposal to amend 10 CFR Part 50, Appendix O is necessary to conform Appendix O to the final rule. The amendment provides that information requests to the approval holder regarding an approved design shall be evaluated prior to issuance to ensure that the burden to be imposed on respondents is justified in view of the potential safety significance of the issue to be addressed in the requested information. Each such evaluation performed by the NRC staff shall be in accordance with 10 CFR 50.54(f) and shall be approved by the Executive Director for Operations or his designees prior to issuance of the request.

Section 2.204 is amended to ensure that any order for modification of a license involving a backfit is subject to the provisions of the new § 50.109.

Commissioner Asselstine and Commissioner Bernthal disapprove this final rule. The separate views and comments of Commissioners follow.

Separate Statement of Chairman Palladino

During my tenure as Chairman, I have sought a new system of backfit controls for NRC that would ensure that a backfit is analyzed and that an explicit judgment of its safety and cost consequences is made. This new rule does just that.

Although a previous version of an NRC backfit rule has been on the books, it has rarely been followed. In addition, documentation in too many cases has been non-existent or inadequate to identify and justify the safety and cost consequences of past NRC-imposed backfits.

The steps to this new backfit rule have been deliberate and, I believe, thorough. In 1983 we issued a policy statement announcing interim backfit controls and our intent to conduct rulemaking to establish a new backfit rule. 48 FR 44173 (1983). At the same time, we published an advanced notice of rulemaking soliciting public comments on various proposals for the long-term management of the backfitting process, both plant-specific and generic. 48 FR 44217 (1983). In November 1984, we published a notice of proposed rulemaking, seeking public comment on an NRC proposal and on a number of specific questions designed to elicit public views on significant issues and alternatives. The Commission held a number of public meetings on backfitting, and received the advice of the Regulatory Reform Task Force and senior agency officials.

The rule that emerged is a good one. Contrary to the claim of Commissioner Asselstine, the rule is not designed to stymie regulation. What the rule requires is an analysis and an explicit judgment that a proposed safety requirement is justified. A Commission concerned about the protection of public health and safety—which this Commission is, Commissioner Asselstine's comments notwithstanding—will find ample freedom to make sound safety decisions based on analysis. Further, the rule provides that its requirements do not apply if a proposed safety measure is needed to assure compliance with NRC requirements or protection against imminent public risk.

It seems somewhat late in the day for a Commissioner now to argue for the first time that this backfit rulemaking, which we initiated almost two years ago, is unnecessary. To my knowledge, when we started, all Commissioners agreed that our experience under the existing NRC backfit rule had not been satisfactory and that backfit controls of some sort were needed. The decision to incorporate controls into a rule will mean that the Commission can be held accountable in the future for how it implements those controls. Further, the decision to adopt a rule also means that modifications of the controls will involve public participation.

Similarly unfounded is Commissioner Asselstine's criticism of the backfit standard in this rule. The Commission gave considerable attention to the standard during the rulemaking and adopted the following explanation of "substantial increase" in protection of health and safety:

> Substantial means "important or significant in a large amount, extent, or degree." Under such a standard, the Commission would not ordinarily expect that safety improvements would be required as backfits which result in an insignificant or small benefit to public health and safety or the common defense and security, regardless of the implementation costs. On the other hand, the standard is not intended to be interpreted in a manner that would result in disapprovals of worthwhile safety or security improvements having costs that are justified in view of the increased protection that would be provided.

I do not believe that this standard can reasonably be criticized as "intended to block new safety requirements."

Commissioner Asselstine simply ignores the words of the rule when he contends that it requires a backfit analysis that is skewed against new safety requirements. Section 50.109(c) provides that "any . . . information relevant and material to the proposed backfit" may be considered in the analysis and, thus, taken into account in the safety decision. This language provides, in my judgement, ample room for Commission reliance on, among other things, the expertise of its staff to supplement other analytical tools in order to provide an adequate basis for a particular backfit decision.

In response to Commissioner Bernthal's statement, I am disappointed that we could not agree on how to apply backfit controls to future rulemakings. I believe that our differences are really very small.

Modifications to plants or plant procedures can result from new or modified NRC requirements adopted by rulemaking. Therefore, future rulemakings should be covered in principle by backfit controls. The alternative would be a system where plant specific backfits are analyzed and documented but generic rule backfits are not. Such an alternative would leave a significant area of backfitting formally uncontrolled without apparent reason.

Moreover, I believe that the Commission would be creating questions without apparent answers if it chose to control plant specific backfits by a backfit rule and generic rule backfits by internal agency management and guidance. By subordinating generic rule backfits to internal agency management for the stated reason of preserving "flexibility," the Commission could be seen as sending the message that it does not wish to be held accountable for the application of backfitting controls to future rulemakings. This outcome could well serve to undermine the agency's efforts to manage backfitting.

Application of the backfit rule will not result in the Commission making unsound safety or backfit decisions in future rulemakings. The main thrust of the backfit rule is to apply analysis, including analysis of costs, before a backfit is imposed. The rule only

requires analysis of "such . . . factors as may be appropriate . . ." The decisional standard is only that the costs of the backfit be "justified in view of the protection to public health and safety afforded by the backfit." Further, as noted earlier, the rule provides that its requirements do not apply if a proposed safety measure is needed to assure compliance with NRC requirements or protection against imminent public risk. Thus, the backfit rule provides sufficient flexibility for the Commission in future rulemakings.

Finally, the Commission can suspend the backfit rule in a future rulemaking if there is good reason. Thus, while it is our intent that this rule apply to backfitting that arises from future rulemaking, the final judgment on this issue will rest with the Commission. If it believes that there is good cause, the Commission could state, in the notice of proposed rulemaking for a future rule, that it was proposing not to apply some or all of the provisions of this backfit rule and request public comment on the underlying reasons. If, after considering public comments, the Commission finds good cause, it can so state in the notice of final rulemaking.

I concur in the views of Commissioners Roberts and Zech.

Comments of Commissioner Roberts and Commissioner Zech

Safety is paramount to the execution of our mission. We believe that the backfit rule is entirely compatible with and supportive of this principle. Unmanaged, uncoordinated and inadequately analyzed backfits, on the other hand, are not. There is nothing in the backfit rule which would stand in the way of a Commission action which is needed to protect the public health and safety or in the way of the adoption of policy changes which a majority of the Commission believes are warranted in the circumstances.

We believe that in the execution of our mission to provide reasonable assurance that the public health and safety are protected, we must have in place criteria and a system for the timely application of justified changes in regulatory requirements. The so-called backfitting regulation which has been in place for many years has not completely satisfied this need. Although it established a broad standard, it did not also provide for a system to assure that backfitting decisionmaking to apply the standard is done in a disciplined, systematic manner. The regulatory system needs a backfitting rule which is complementary to our overall regulatory mission and which is practical to implement. Our chief reason for voting to adopt this backfit rule is that it provides for a disciplined and formalized review of regulatory requirements to assure that there is a rational basis for modifications to a nuclear power plant. The rule, along with its explanatory statement, also provides guidance and direction to the staff regarding backfit management and control. This disciplined approach to backfitting will, in our judgment, improve the overall effectiveness and certainty in the regulatory process, thus enhancing our regulatory mission.

Discipline and management of backfitting do not mean that safety actions which are justified will be obstructed, or that the Commission will not continue to have the discretion to adopt policies and rules which it believes will serve to enhance the protection of the public health and safety. Instead, they mean that attention and priorities will be focused on areas where action is justified to carry out our regulatory responsibilities. Inadequately managed and controlled backfitting, on the other hand, provide no assurance that modifications, individually and collectively, are in the best overall interest of protecting the public health and safety.

We have carefully considered the views of our dissenting colleagues, and although we respect them, we see the matter quite differently. As we have noted, we believe that this backfitting rule serves a vital regulatory need. We see no reason why the important subject of rulemaking which may involve generic backfitting should be excluded from coverage. It is true, as one of our colleagues points out, that rulemaking is subject to the procedures in the Administrative Procedure Act. It is also correct that we have in place a Committee to Review Generic Requirements (CRGR) and have informal practices which, in their totality may, in an individual case, serve the purpose of the rule if everything falls into place properly in a rulemaking proceeding. The chance of this happening, however, is not to us an acceptable substitute for the system which is being put in place as a matter of overall Commission policy in the backfitting rule. And even assuming that, under its present charter and under its incumbent chairman, the CRGR did cover all of the elements of the backfitting rule, this is not the equivalent of published Commission policy which states the applicable criteria and procedures. The policy and system which are set forth in the backfit rule provide a much sounder foundation for Commission control over future rulemaking requirements than relying exclusively on existing procedures.

We believe that the procedural requirements of the Administrative Procedure Act and the functions of the CRGR are compatible with the objectives of the backfit rule. However, we also believe that application of the rule to rulemaking is necessary to assure consistent application of the backfitting policy under a prescribed uniform system, regardless of whether a proposed change is generic or plant specific.

The APA does not provide such a system, but does, of course, provide for the important procedural requirement of assuring that there is adequate public notice and opportunity to comment. This does not provide the assurance needed that the substantive matters covered in the backfit rule will be considered either by the staff or the Commission in the Commission's rulemaking decision. There is no requirement for anyone to participate in a rulemaking proceeding, and even for those who choose to participate, there is no provision to assure that there will be systematic and comprehensive coverage of backfitting issues. Indeed, it appears unusual for either the staff's recommendation to the Commission or for the final rulemaking decision to address in any detail, if at all, the application of new requirements to existing licenses and applications. A rulemaking proceeding which meets all of the procedural requirements of the APA would not necessarily assure that the subject matter in the backfit rule is indeed covered. This is not surprising because the objectives of the APA and the backfit rule are, as noted, fundamentally different. Furthermore, we are not able to distinguish, for purposes of the objectives of this backfitting rule, between backfitting modifications which are imposed by individuals in specific plant-by-plant situations and modifications which are imposed by a change in a regulation in a rulemaking proceeding. In each instance a disciplined system should be followed to assure that the backfit is fully understood and justified in terms of its safety relationship and its related costs.

If the backfitting policy and system are sound and are needed, as we believe they are, the straightforward way to go about dealing with the backfit problem is to publish a Commission policy. This is what the backfitting rule does.

We do not share the concern of our dissenting colleague regarding the litigative risks because rulemaking is covered. We are informed that that risk should be minimal. But regardless of whether it is or it isn't, if the rule is

needed, if it makes sense, and if it is a responsible regulatory action on our part, we should be prepared to defend our decisions in its application.

In summary, we support fully the backfit rule, including its coverage of rulemaking. The rule will bring discipline and accountability to the imposition of plant modifications by the Commission by establishing criteria and a system for rational decisionmaking. Without any question, we believe this approach will enhance the quality of our mission to assure that the public health and safety are protected in our licensing and regulatory requirements decisions.

Separate Views of Commissioner Asselstine

In adopting this backfitting rule, the Commission continues its inexorable march down the path toward non-regulation of the nuclear industry. In two previous decisions the Commission found acceptable the present level of risk of a severe accident at the most highly populated site for an operating nuclear plant in this country. See, *Consolidated-Edison Company of New York* (Indian Point, Unit No. 2), CLI 85–6, 21 NRC 1043 (1985). The Commission's decision was made without an adequate explanation or rationale; it was made without an adequate analysis of the issues; and it was made by ignoring the enormous uncertainties in our methods for estimating risks. The Commission then extended that decision to all nuclear plants through its Severe Accident Policy Statement. See, "Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants," 50 FR 32138 (August 8, 1985). This backfitting rule is another part of the Commission's withdrawal from active regulation of the industry.

The Commission's rule in effect says that nuclear reactor risks are so acceptable and so well understood that the burden of proof for lowering the risk to the public must be placed on the proponent of improved safety even if that proponent is the Commission itself. This optimistic view of the risks posed by nuclear power plants is unjustified. The Commission's adoption of this rule is truly an unprecedented step in the annals of regulation. I can think of no other instance in which a regulatory agency has been so eager to stymie its own ability to carry out its responsibilities. Indeed, the adoption of this rule is the most compelling evidence to date of the Commission majority's open hostility to the regulatory mission of this agency.

I do not believe that there is a need for a formal Commission regulation restricting the Commission's ability to require safety improvements for nuclear power reactors. My opinion is shared by our reactor safety technical staff, including the Commission's chief safety officer. The Commission's purported reason for promulgating this rule is to add "discipline" to the backfitting process. The Commission can add discipline to the backfitting process without at the same time unnecessarily limiting its own discretion to impose new safety requirements by fettering itself with this rule. Further, by adding layer upon layer of procedures to the backfitting process the Commission has created a lawyer's paradise in which litigation over procedural irregularities may hamper the Commission's ability to impose needed safety requirements.

Even if I felt that a backfit rule were appropriate, I would not support a rule as poorly thought out as is this one. This rule sets a threshold standard for improvements to safety which is much too high given our present understanding of risk and the uncertainties associated with our methods of estimating risk. Further, the factors to be considered in determining whether a backfit should be imposed are skewed against imposing new requirements. In addition, the Commission's determination of risk in the cost-benefit balance is to be based on unreliable risk analyses.

The consequence of this rule is to limit the NRC staff's and even the Commission's ability to identify and correct safety weaknesses at the nuclear power plants in operation and under construction in this country. As a result, these weaknesses are likely to persist until they cause serious operating events or accidents which pose a direct threat to the health and safety of the public. This rule, then, further ensures a continuation of the piecemeal, reactive approach to safety which has been responsible for many of the failures of the past. By this step, the Commission is moving in the wrong direction—a direction that will likely result in further serious operating events, more accidents, and a lower level of safety than that achieved in many more forward-thinking countries in the world. I discuss each of my reasons for opposing this rule in more detail below.

The Nature of the Backfitting Problem

When asked to describe the backfitting problem, most of our licensees point to the substantial number of hardware modifications, procedural changes and human factors improvements which have been required by the NRC in recent years. The bulk of these new requirements can be traced to three sources: the Commission's fire protection rule; its rule requiring the environmental qualification of electrical equipment; and the Commission's response to the Three Mile Island accident. It is worth noting that each of these broad safety initiatives was adopted by the Commission itself in response to the identification of significant areas of safety vulnerability within the industry.

Typically, the industry does not challenge the need for improvements in fire protection or the need to assure that safety-related electrical equipment will be able to function under serious accident conditions. Nor does the industry deny the need to address the numerous safety weaknesses brought to light by the Three Mile Island accident. Rather, the industry largely focuses its criticisms on the process used to translate those broad areas of needed improvement into specific modification to plant hardware, procedures and operations.

The industry raises five specific complaints. First, our licensees argue that new requirements often fail to define clearly what is expected of the industry. Second, they contend that the implementation of these requirements—the process by which more general directives are translated into specific modifications—is not well managed. In support of this argument, the industry points to some past failures in documenting proposed modifications, in ensuring consistency in making plant-specific implementation decisions, in providing effective management oversight of plant-specific decisions, and in providing a fair opportunity to appeal objectionable staff-proposed modifications. Third, our licensees assert that specific plant modifications are proposed by staff members who have a single narrow area of interest, and little consideration is given to the overall safety impact of the proposed change. Fourth, the industry argues that the staff's implementation process all too often fails to provide a final decision from the staff on the adequacy of the licensee's efforts to comply with a requirement until *after* the licensee has made the modification to its plant. This process, they contend, exposes the industry to second-guessing by the NRC staff and sometimes leads to making repeated modifications to address the same problem. Finally, the licensees argue that the Commission sometimes adopts arbitrary and unrealistic deadlines for the implementation of new requirements. More than anything else, these complaints focus on the management of the backfitting process.

In the literally thousands of backfitting decisions made by the NRC over the past several years I am sure that some examples can be found to support each of these complaints. However, I believe that each of the industry's valid concerns is addressed by the administrative backfitting management improvements already adopted by the Commission.

Why A Rule?

The Commission claims that this rule is necessary to provide a "management process" for the adoption of Commission regulations and staff interpretations of those regulations. Implicit in the Commission's explanation of this rule is a feeling on the part of the Commission that it is necessary to add discipline to the backfitting process. The Commission never clearly explains why if added discipline is necessary they must embed that discipline or management process in a formal agency rule. The Commission also refuses to explain the connection between discipline and the necessity for a substantial threshold that must be surmounted before safety can be improved. Further, the Commission never adequately explains why it cannot accomplish improved management of the backfitting process without at the same time limiting its own discretion to require safety improvements by requiring that Commission rules comply not only with the Administrative Procedure Act, but also with this rule.

By choosing to adopt this rule the Commission admits failure. The Commission admits that it has been incapable of solving administratively whatever problems it sees with the management of the backfitting process. By adopting this rule, the Commission says to the world that it so mistrusts its own ability to act in a sensible manner and it so mistrusts its ability to control the NRC staff that it must have a formal rule which limits the Commission's discretion and which can be used as a bludgeon to control the staff.

The irony of this all is that the administrative actions taken by the Commission to formalize the backfitting process have already been successful in adding discipline to the process and in addressing the valid concerns of the industry. A senior official of one of the utilities involved most actively in the backfit debate recently told me that when his company first expressed its concerns about backfitting all it wanted was to get NRC management to pay attention to backfitting problems. The company simply wanted a brief written statement for each proposed backfit describing the proposed change and the NRC staff's reasons for requiring the change, together with the right to appeal to upper NRC management the decisions being made at the lower levels of the NRC staff. Their objective, this official said, is already being achieved by the Commission's internal management directions to the NRC staff.

Whatever "backfitting problem" exists is really a management problem. The Commission's statement of considerations acknowledges that. And, the problem is being corrected independently of this rule. Why then must this rule be promulgated without delay? Apparently it is because the movement to put in place a backfit rule is much like an avalanch—once it starts rolling it cannot be slowed down or changed in course.

Lawyer's Paradise

By embedding the Commission's backfit management process in the form of a rule, the Commission has chosen to formalize a process which ought to be a purely internal management tool. In doing so, the Commission has imposed upon itself a particular management process as a legal requirement which cannot be ignored, adapted to circumstances, or changed without once again going through formal rulemaking procedures. The rule provides a myriad of opportunities for licensees to invoke procedural irregularities in challenging the Commission's rules and its backfitting decisions. The rule lends itself readily to being used as a delaying tactic by uncooperative licensees, and it has the potential for hamstringing the Commission's ability to impose needed safety improvements while the legal wrangling goes on and on and on.

The Commission's decision to include Commission rulemaking within the coverage of the backfit rule is an excellent example of the overproceduralization of the backfit process. The Administrative Procedure Act and cases interpreting it set out requirements for rulemaking. Interested parties are given an opportunity to comment on the proposed agency action before it goes into effect. The Commission must then take those comments into account before promulgating a final rule. The courts can then review Commission action and test it for reasonableness and rationality. The Commission wishes to add on to these legal requirements a very high standard or threshold the Commission must meet before it can institute safety improvements. Further, the rule requires a strict cost-benefit balance, something the courts have not found is required by the Atomic Energy Act or the Administrative Procedure Act. Contrary to Chairman Palladino's assertion, the Commission cannot decide whether to follow these new, more stringent requirements in individual rulemaking proceedings on a case-by-case basis. This regulation now becomes binding on the Commission, and must be followed in all future rulemakings.

In addition to this, the backfit rule applies to staff interpretations of Commission rules. By the rule's literal terms, any staff interpretation of a Commission rule would also have to meet the requirements of the backfit rule. Thus, the Commission would be required to meet a high threshold and perform a cost-benefit balance for any rule it issues, and the staff would then have to again meet the same high threshold and perform a new cost-benefit balance before it could interpret that rule. That is absurd, but that is what the rule appears to require.

Even if rulemaking were not to be included within the scope of this rule, staff interpretations of Commission rules would be. This presents an interesting dilemma. The Commission's 1985 Policy and Planning Guidance states: "The Commission intends to shift its regulatory emphasis away from detailed, prescriptive requirements toward performance criteria." See, NUREG–0885 Issue 4, "U.S. Nuclear Regulatory Commission Policy and Planning Guidance 1985." This means that new rules will tend to be general in nature. It is difficult for safety reviewers and inspectors to review and inspect generalities. They need to develop positions on acceptance criteria, hardware requirements, applicable quality assurance provisions, technical specifications, etc. The rule would require that these interpretations meet the requirements of the backfit rule. Thus, if rulemakings are outside the scope of the backfit rule, but interpretations of those rules are not, it may create a situation where the staff cannot adequately interpret the rule because the interpretations would not meet the backfitting requirements, even though the Commission's rule has been otherwise legally promulgated.

If these are the results the Commission intended, then the Commission's backfit rule makes no sense whatsoever. If this is not what the Commission intended, then the Commission should make that absolutely clear. Such ambiguities do nothing but provide fodder for litigation. These problems illustrate further how poorly written and how poorly explained is this rule. These are the kinds of issues one should not have to make guesses about.

It is interesting to note that my colleagues constantly complain about the length and over-legalization of the licensing process, often arguing that there are too many procedures and that the process is too formal. Yet, those same Commissioners who want to make the licensing process as simple and informal as possible have here added layer upon layer of procedures to the backfitting process. In fact, they have added procedures far beyond those which are legally required, and in the process have added new opportunities for litigation.

Barrier to Improved Safety

The Commission's rule sets up a threshold standard that the Commission must meet before it can adopt new safety requirements. Under this rule, the Commission cannot reduce the radiological risks to the public unless it first determines that a proposed safety improvement provides a "substantial increase in the overall protection of the public health and safety or the common defense and security." Section 50.109(a)(3). Thus, the Commission creates a significant barrier to reactor safety improvements.

The Commission's explanaton in the statement of considerations of what it means by "substantial increase" is so unclear as to be useless. However, an indication of what the Commission really intends can be found in the Commission's recent Indian Point decision. 21 NRC 1043. In that proceeding, the Commission's technical staff and Licensing Board urged the Commission to require a set of safety improvements for the reactors sited at the most highly populated locations in this country. Upon learning that those improvements only cut the risks to the public in half, the Commission rejected them as not providing a "substantial" increase in protection. 21 NRC 1043.

I would prefer a standard which does not set such a high threshold for the imposition of safety improvements. In fact, I proposed such a standard. Under my proposed standard the Agency would require improved safety upon a determination that a proposed measure provides a net increase in the protection of the public health and safety and that the costs of this improvement are not incommensurate with the increased protection. This standard would allow more improvements in safety than would the Commission's standard but would still exclude proposed changes which would result in only trivial safety improvements. The Commission rejected this standard because it does not present a high enough barrier to block new safety requirements. Apparently, the Commission is interested in more than simply bringing discipline to the backfitting process. Rather, it is really interested in tying its own and the staff's hands to restrict the number of safety improvements. If the Commission really only wanted discipline and sound thinking to be brought to the backfitting process, it would not feel the need to propose such a stringent threshold for safety improvements.

Tipping the Scale Against Safety

The rule specifies nine factors that "are to be used as balancing mechanisms in the decisionmaking process for backfitting". See, § 50.109(c) for list of factors. If one cuts through the extraneous matter in that section of the rule, one finds that the Commission requires cost-benefit analyses to be performed on all proposals for backfits. Of course, in cost-benefit analyses the bottom line depends on what factors one chooses to put on the scale.

Not satisfied that a high threshold standard will sufficiently limit the number of backfits, the Commission has also decided to stack the cost-benefit balance. The only benefit the Commission is able to identify as being appropriately considered in decisions on whether safety should be improved is the "potential change in the risk to the public from the accidental off-site release of radioactive material." Section 50.109(c)(3). Risk is typically defined as the probability of an accident multiplied by the consequences, with the latter expressed as the collective dose to the public (person-rem). However, even here the Agency's typical practice is to ignore societal doses beyond a 50-mile radius. As calculations of accident consequences indicate, this procedure captures less than half of the health consequences of core meltdown accidents.

The Commission refuses to include among the "balancing factors" the averted costs of off-site property damage resulting from radiological releases. The Commission does not seem to realize that core meltdown accidents can contaminate off-site property to hazardous radiation levels and that there is a real benefit in preventing that from occurring. Averting the necessity to decontaminate such property is a real benefit of backfits which lessen the likelihood of off-site releases of radioactive materials. Since these costs in some instances substantially exceed the monetized value of averted health effects resulting from accidents, the Commission has no defensible basis for omitting from the "balancing factors" off-site property decontamination costs.

The Commission also rejects the inclusion of the benefits derived from averting damage to the plant itself. The TMI–2 accident, which apparently did not result in extensive melting of the reactor core or substantial offsite releases of radioactivity, resulted in billions of dollars in plant damage, plant clean-up and power replacement costs. The Commission's rule fails to recognize that preventing such costs has a public benefit. The Commission chooses to ignore averted replacement power costs associated with safety improvements that prevent accidents. However, in order to inflate the costs side of the equation which weighs against backfitting, the rule requires consideration of the replacement power costs for the facility downtime associated with implementing a backfit.

At the same time the Commission ignores the benefits of backfits, the Commission tries to include every conceivable "cost" of the backfit in the balance. The rule includes costs such as installation and other costs associated with physically changing the plant; the cost of facility downtime, e.g. replacement power costs, etc; the cost of construction delay; and, radiological impact on facility employees. The Commission has even thrown the cost to the NRC (resource burden on the NRC) into the balance. Obviously this stacking of the deck against safety improvements indicates once again that the Commission is interested in more than just adding discipline to the backfitting process.

The Commission majority tries to argue that the balance of costs and benefits is not slanted because other benefits beyond those enumerated in the rule can be considered. Their own actions contradict this argument. In adopting this rule, the Commission majority expressly rejected proposals to include additional health and safety and economic benefits of proposed backfits that would have resulted in a fair and even-handed consideration of *all* relevant costs and benefits. Given its own actions, the true intent of the Commission majority is beyond doubt.

Reliance on Indefensible Analyses

The Commission's rule places great reliance on Probabilistic Risk Analyses (PRA's). In determining the "change in risk" as required by this rule, the Commission intends to rely on the bottom-line results of PRA's. Unfortunately, numbers produced by these analyses amount really to only estimated guesses; yet, the Commission intends to rely heavily on these numbers, which nearly all PRA

practitioners agree are unreliable, in determining whether to require improvements in safety.

Preparation of a PRA requires that the analyst calculate the core meltdown probability. Given a particular core meltdown scenario, the analyst must then calculate the containment failure mode, the quantity of radioactive fission products released from the containment (the "source term"), the dispersion of the fission products in the atmosphere and finally the radiation doses to the public. The calculated probabilities from all of the above are multiplied by the aggregate doses to the public. This is the risk to the public.

To calculate the change in risk, as required by this rule, the analyst must first calculate the risk to the public before a proposed safety improvement is implemented, and then calculate the risk assuming the improvement is made. Unfortunately the necessary calculations cannot be made based on data, and scientifically accepted principles and methodologies. Because of major inadequacies in the data base, because of the vast complexity of nuclear plants, because a tremendous number of assumptions must be made, because all contributors to risk cannot be quantified and because core meltdown phenomena are poorly understood, no one calculation of risk yields a remotely meaningful value of risk. I discussed the meaningless nature of these risk estimates in more detail in my separate views on the Severe Accident Policy Statement.

Our experience with the Davis Besse plant provides an excellent example of the inadequacies of PRA's for truely predicting risk. It also illustrates the shortcomings of a system which relies heavily on strict cost-benefit balances for making decisions on safety improvements. The Davis Besse plant has one of the most (if not the most) unreliable emergency feedwater systems (EFS) of any nuclear plant in this country. The NRC staff has been trying to require Davis Besse to upgrade its EFS reliability. However, for the last several years, the licensee has been using reliability and cost-benefit analyses to argue that substantial upgrades should not be required. Two independent reliability analyses (one by the utility and one by the NRC staff) were performed on the EFS at Davis Besse. The results of these two studies differed by a factor of 100 in their estimate of the reliability of the systems. The studies also differed on what was the most cost-effective way to upgrade the system. The utility argued that its cost-benefit analyses showed that only some low-cost minor changes were justifiable while the staff argued that its cost-benefit analyses supported more significant modifications. Because the Commission-required cost-benefit analyses could not demonstrate the necessity of a particular way to upgrade the EFS reliability, the staff could not require a substantial upgrade of that system even though the plant continued to operate with an unreliable but crucial safety system during the several years of the PRA debate between the staff and the utility.

The June 9, 1985 Davis Besse event demonstrated that the PRA analyses were wrong. Davis Besse had a loss of all feedwater that involved the failure of 14 separate pieces of equipment. (See, NUREG–1154, "Loss of Main and Auxiliary Feedwater Event at the Davis-Besse Plant on June 9, 1985"). The event led the Agency's chief safety officer to observe: "I believe that the recent Davis-Besse event illustrates that, in the real world, system and component reliabilities can degrade below those we and the industry routinely assume in estimating core melt frequencies." (See memorandum from Harold R. Denton to William J. Dircks, dated June 27, 1985). Further, it appears that the steam and feedwater rupture control system had a significant role in causing the loss of emergency feedwater. Yet that system was not even included as a possible contributor to the unreliability of the emergency feedwater system in either of the independent reliability studies. Despite this clear evidence of the weaknesses in PRA studies and their potential for manipulation and distortion, the Commission persists in using them and in requiring their use by the staff in this rule as the basis for deciding on safety improvements.

Although this rule will have a negative impact on all aspects of the Commission's reactor safety activities, its effects are likely to be greatest in the area of improving human performance. Recent operating experience indicates that roughly half of all significant operating events can be traced to inadequate human performance in such areas as reactor operations, surveillance testing and maintenance. A number of the Commission's post-TMI requirements have focused on human performance, but recent operating experience demonstrates the need for further improvements in this area. Indeed, virtually all members of the Commission have advocated further measures to improve the qualifications, experience and training of plant personnel. Specifically, members of the Commission have spoken in favor of increasing the engineering knowledge and skills of plant operators and requiring the use of plant-reference simulators for operator training and testing. Common sense and sound engineering judgment tell us that such measures will have a positive effect in improving plant performance. Yet, it will be especially difficult to assess how such proposed requirements will reduce the risk of a core melt accident which might result in harm to the public. Thus, the practical effect of this rule will be to thwart the efforts of the NRC staff to develop new safety requirements in the area of human performance where such requirements could be of the greatest safety benefit.

Ignoring Uncertainties

The Commission also fails to deal with the huge uncertainties associated with the risks of nuclear reactors. The actual risks could be up to 100 times the value frequently picked by the Commission. One would think that the uncertainties about the level of safety achieved at the operating reactors would have a bearing on whether reactor safety should be improved. I proposed that the Commission articulate its expectations on the handling of uncertainties in the backfitting decisionmaking process before allowing this rule to become effective. The Commission rejected my proposal. There is no reference in this rule to uncertainties in reactor risks or to how uncertainties are to be factored into safety decisions. The Commission's silence simply reaffirms its practice of ignoring the enormous uncertainties in nuclear risks when deciding whether to improve the protection of the public health and safety.

Selective Application of the Rule

The Commission's stated manner of applying this rule is also troubling. First, according to the statement of Considerations, a licensee may request an amendment to its license and the NRC staff is not required to consider whether the amendment represents a "substantial increase in the overall protection of the public health and safety." However, if the NRC staff wants to amend a license to establish a more stringent standard, the staff must first demonstrate that the amendment meets that backfitting standard. Thus, the rule stacks the deck in favor of the industry and against the NRC staff.

But more troubling is the Commission's apparent intent to apply this backfit rule with its high threshold and cost-benefit analysis only to those new Commission requirements which

are intended to improve safety. If one reads the Commission's rule literally, it applies to *any* change in Commission requirements, both a change to make requirements more stringent and one to relax requirements. Further, the Commission states in its statement of considerations: "(T)here is no intent on the part of the Commission to include within the scope of the exceptions (to the rule) new or modified interpretations of what constitutes no undue risk to the public health and safety. In such a case, the rule applies." All of this seems to indicate that the backfit rule applies across the board to new Commission regulations and interpretations.

However, the Commission's actions and rhetoric would seem to indicate otherwise. The Commission has been devoting and continues to devote considerable agency resources to relaxing the current emergency core cooling regulations and the emergency planning regulations. For example, the staff is developing new and relaxed (relative to the current staff position) acceptance criteria for emergency core cooling systems that would effectively allow the licensees to increase the power level of the operating reactors. Likewise, the Commission assigns resources to work on a rule that would allow less comprehensive evacuation planning. Both activities involve new or modified interpretations of what constitutes compliance, involve a modified interpretation of what constitutes "no undue risk," and do not fall within any of the exemptions to the backfit rule. Thus, if one reads the backfit rule literally, the Commission must determine that increasing the power level of reactors and diminishing the level of emergency preparedness result in a "substantial increase in the overall protection of the public health and safety or common defense and security." It would take quite a bit of convoluted argument to find that relaxing safety standards meets the rule's substantial increase requirement. One can only conclude that either the Commission is wasting resources on these activities or that it does not intend to apply the backfit rule to actions which *relax* existing safety standards.

This problem of interpretation is another example of how poorly thought out and how poorly written is this rule. The Commission should make clear exactly what is the scope of this rule, and should revise the rule accordingly. Otherwise, this apparent ambiguity once again produces nothing but fuel for litigation.

Conclusion

I might be as sanguine as is the Commission about the current state of reactor safety, and I might be willing to restrict the Commission's ability to require safety improvements if there were a clear understanding of the level of safety already achieved at plants and if that understanding demonstrated that the potential for severe accidents is indeed very remote. Unfortunately, the Commission does not have a clear understanding of the level of safety of current reactors.

The Commission does not know where we are on the learning curve for reactor performance, and there is a distinct possibility of one or more severe accidents in the foreseeable future. Operating experience indicates that a total loss of a safety system is not a rare event, that multiple independent failures do occur, that there are component and reliability problems, that operating practices are frequently deficient, and that there are a wide range of adverse systems interactions. The Commission is reluctant to face these facts and to demand improved safety because that might suggest to the public that the existing reactors are unsafe and might hinder the further development of the nuclear industry.

In my view, another severe accident may well bring to a halt further development of the nuclear industry and, if people are injured, may jeopardize continued operation of existing reactors. The Commission has said there is about a 50–50 chance of another severe accident in the next twenty years. The Commission finds that risk so acceptable that it can now, through this rule, put roadblocks in the way of further safety improvements. I find the Commission's actions to be not only unwise but harmful to the public interest and potentially hazardous to the public health and safety.

The Commission will next turn its attention to the forth and final action that will complete the framework for deciding whether the NRC and the industry will pursue safety issues before accidents occur, i.e. the Safety Goal Policy Statement. That will be the final opportunity to come to grips with the pivotal issues the Commission has steadfastly avoided over the last several years. As I wrote in my separate views on the Severe Accident Policy Statement, it is encouraging that there appears to be an emerging consensus within the NRC senior technical staff and within the ACRS in favor of safety improvements to reduce severe accident risks. However, it is dismaying that the Commission, having lost all sight of the broadest lessons learned from the TMI–2 accident, has chosen to hinder enhancing the protection of the public health and safety through this backfit rule.

Views of Commissioner Bernthal

I had fully expected to support the Commission's final rule on backfitting Unfortunately, an eleventh-hour decision by the majority has added a destructive provision that at best can only confuse the public and our licensees by its misrepresentation of the role and options of the Commission in rulemaking; at worst it contains the seeds for rulemaking chaos, with litigative risks, unpredictability, and lengthened timetables that will result in more, rather than less uncertainty in the Commission's entire licensing and regulatory process. Such a backfitting rule is surely not in the public interest or in the interest of our licensees.

In a word, my principal quarrel with the rule adopted by the Commission is its inclusion of rulemaking in the definition of backfitting. Indeed, the mere idea of imposing its own rule on the statutory procedures for rulemaking as set forth in the Administrative Procedures Act should have given the Commission majority long pause, to say the least.

But in its apparent desire to appear to have voluntarily circumscribed its own authority and flexibility for rulemaking (when it cannot, of course, ultimately do so), the Commission has instead chosen to run the risk of creating new, legally binding requirements for rulemaking, requirements which will only widen the target for anyone seeking to challenge a final rule.

It is not even clear just who it is the Commission believes will be served by this action. Far from lending discipline and order to the rulemaking process, what the Commission majority has done will help insure that our often long and tortured consideration of rules will become even longer, more tortured, and more confusing. More ominously, should a future Commission find common-sense public health and safety measures unduly confused and obstructed by the backfit rule, it may in frustration choose simply to begin issuing by order "rules" that today would be subjected to the careful, disciplined process set forth in the Administrative Procedures Act.

The only rationale the majority has offered for wanting to include rulemaking under the backfit rule is to "discipline" the Commission (i.e., to protect the Commission from itself). If the Commission is incapable of disciplining itself in the rulemaking

process as it stands (what with the existing Committee to Review Generic Requirements and the Commission's incontestable authority and ineluctable responsibility to instruct the staff), then I doubt that rule laid upon rule will do much to teach the Commission the virtue of self-discipline.

More specifically, the Commission majority presumably knows that the backfit threshold criteria applied to rulemaking would apply not just on a plant-specific basis (which it should be recalled was the intent of the original backfitting initiative), but to *generic* decisions that may affect dozens of plants, and in fact to rulemaking on *all* but procedural matters, rulemaking that may or may not have the remotest connection to what the public and our licensees normally consider a plant "backfit". The scope of Commission rulemaking responsibilities thus often involves broad public policy considerations, and those considerations can rise above elements as simple as cost-benefit analysis to reach issues as fundamental as fairness and individual rights. The Commission's backfit rule, if applied to rulemaking itself, will thus serve only to trivialize in appearance and confuse in practice the many factors to be weighed in rulemaking.

As one small example of the morass into which the Commission majority has wandered, consider (as the Commission currently is considering) whether there should be a requirement that radiation workers be provided their dose records annually. The "benefit" of this "backfit" of Commission rules may seem clear, but it might very well never pass the cost-benefit test. Indeed, it is difficult to imagine a rule that would involve the human-factors element of plant operations, and that would also be amenable to straightforward cost-benefit analysis.

Rulemaking as it exists involves numerous inherent procedural checks and balances to insure that each proposal is carefully considered prior to adoption. Indeed, rulemaking is the forum which provides the greatest number of checks against arbitrary action by the Staff or Commission. Much of the analysis (*including* cost-benefit) which the new backfitting rule would require is already done informally throughout the process of considering and adopting new regulations.

If the Commission wishes to insure still more structure in the rulemaking process, structure which could take into account every single factor set forth in the backfit rule and more, there are ample means of doing so by simple internal agency management. Such methods would reaffirm existing Commission guidelines to the Staff without opening the door to additional needless litigation as a consequence of vague new, legally enforceable, Commission-created rights added to those already available to all parties under the APA.

The entire backfit rulemaking was undertaken to bring order and accountability to plant modifications heretofore sometimes imposed without the benefit of systematic evaluation and justification. In rulemaking per se, that objective has always been well within the Commission's grasp—it is, after all, the Commission that makes rules. For good measure, the Commission also has the Administrative Procedures Act as a matter of law, and its own Committee to Review Generic Requirements as a matter of internal administrative policy to assist it in carrying out such considered decision-making. Casting the net of the new backfit rule over Commission rule-making (almost as an afterthought, as it happened in this case) is thus at best an exercise in pointless symbolism, and at worst potentially destructive of the Commission's entire rule-making process.

Unneeded law is bad law, and unneeded regulation is bad regulation. The Commission majority has imposed on this agency new regulatory obligations in rulemaking that are not only unneeded, but which the Commission majority itself hopes and trusts will be of little practical (i.e. legally enforceable) consequence. To the extent that this rule will affect rulemaking, it will therefore be a bad rule. In sum, the Commission majority has inexplicably insisted on fixing not only what is, but what ain't broke. I will not be a party to such poor judgment.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0011.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this final rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The affected facilities are licensed under the provisions of 10 CFR 50.21(b) and 10 CFR 50.22. The companies that own these facilities do not fall within the scope of "small entities" as set forth in the Regulatory Flexibility Act or the Small Business Size Standards set forth in regulations issued by the Small Business Administration in 13 CFR Part 121.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Nuclear power plants and reactors, hazardous waste.

10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 2 and 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Sec. 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.57(d), 40.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2071, 2073 (42 U.S.C. 2133, 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100–50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68

Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.54, paragraph (f) is revised to read as follows:

§ 50.54 Conditions of licenses.

* * * * *

(f) The licensee shall at any time before expiration of the license, upon request of the Commission submit written statements, signed under oath or affirmation, to enable the Commission to determine whether or not the license should be modified, suspended or revoked. Except for information sought to verify licensee compliance with the current licensing basis for that facility, the NRC must prepare the reason or reasons for each information request prior to issuance to ensure that the burden to be imposed on respondents is justified in view of the potential safety significance of the issue to be addressed in the requested information. Each such justification provided for an evaluation performed by the NRC staff must be approved by the Executive Director for Operations or his or her designee prior to issuance of the request.

* * * * *

3. In § 50.109, paragraph (a) is revised, paragraph (b) is removed, paragraph (c) is revised and redesignated as (b), and new paragraphs (c), (d) and (e) are added to read as follows:

§ 50.109 Backfitting.

(a)(1) Backfitting is defined as the modification of or addition to systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previously applicable staff position after:

(i) The date of issuance of the construction permit for the facility for facilities having construction permits issued after October 21, 1985; or

(ii) Six months before the date of docketing of the operating license application for the facility for facilities having construction permits issued before October 21, 1985; or

(iii) The data of issuance of the operating license for the facility for facilities having operating licenses; or

(iv) The date of issuance of the design approval under Appendix M, N or O of this part.

(2) The Commission shall require a systematic and documented analysis pursuant to paragraph (c) of this section for backfits which it seeks to impose. Imposition of a backfit pursuant to paragraph (a)(4)(ii) of this section shall not relieve the Commission of performing an analysis after the fact to document the safety significance and appropriateness of the action taken.

(3) The Commission shall require the backfitting of a facility only when it determines, based on the analysis described in paragraph (c) of this section, that there is a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from the backfit and that the direct and indirect costs of implementation for that facility are justified in view of this increased protection.

(4) The provisions of paragraphs (a)(2) and (a)(3) of this section are inapplicable and, therefore, backfit analysis is not required and the standard does not apply where the staff finds and declares, with appropriate documented evaluation for its finding, either:

(i) That a modification is necessary to bring a facility into compliance with a license or the rules or orders of the Commission, or into conformance with written commitments by the licensee; or

(ii) That an immediately effective regulatory action is necessary to ensure that the facility poses no undue risk to the public health and safety.[3]

Such documented evaluation shall include a statement of the objectives of and reasons for the modification and the basis for invoking the exception.

(b) Paragraph (a) of this section shall not apply to backfits imposed prior to October 21, 1985.

(c) In reaching the determination required by paragraph (a) of this section, the Commission will consider how the backfit should be prioritized and scheduled in light of other regulatory activities ongoing at the facility and, in addition, will consider information available concerning any of the following factors as may be appropriate and any other information relevant and material to the proposed backfit:

(1) Statement of the specific objectives that the proposed backfit is designed to achieve;

(2) General description of the activity that would be required by the licensee or applicant in order to complete the backfit;

(3) Potential change in the risk to the public from the accidental off-site release of radioactive material;

(4) Potential impact on radiological exposure of facility employees;

(5) Installation and continuing costs associated with the backfit, including the cost of facility downtime or the cost of construction delay;

(6) The potential safety impact of changes in plant or operational complexity, including the relationship to proposed and existing regulatory requirements;

(7) The estimated resource burden on the NRC associated with the proposed backfit and the availability of such resources;

(8) The potential impact of differences in facility type, design or age on the relevancy and practicality of the proposed backfit;

(9) Whether the proposed backfit is interim or final and, if interim, the justification for imposing the proposed backfit on an interim basis.

(d) No licensing action will be withheld during the pendency of backfit analyses required by the Commission's rules.

(e) The Executive Director for Operations shall be responsible for implementation of this section and all analyses required by this section shall be approved by the Executive Director for Operations or his designee.

4. In Appendix 0 to 10 CFR Part 50, a new section (8) is added to read as follows:

Appendix 0—Standardization of Design; Staff Review of Standard Designs

* * * * *

8. Information requests to the approval holder regarding an approved design shall be evaluated prior to issuance to ensure that the burden to be imposed on respondents is justified in view of the potential safety significance of the issue to be addressed in the requested information. Each such evaluation performed by the NRC staff shall be in accordance with 10 CFR 50.54(f) and shall be approved by the Executive Director for Operations or his or her designee prior to issuance of the request.

PART 2—[AMENDED]

5. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 84–615, 76 Stat. 408 (42

[3] For those modifications which are to ensure that the facility poses no undue risk to the public health and safety and which are not deemed to require immediately effective regulatory action, analyses are required; these analyses, however, should not involve cost considerations except only insofar as cost contributes to selecting the solution among various acceptable alternatives to ensuring no undue risk to public health and safety.

U.S.C. 2241); sec. 201, 88 Stat. 1342, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Sec. 2.101 as issued under secs. 52.62, 63.81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.300–2.309 also issued under Pub. L. 97–415, 96 Stat. 2071 (42 U.S.C. 2133). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 as amended (42 U.S.C. 4332). Sections 2.700a, 2.781 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Appendix A also issued under sec. 6, Pub. L. 91–580, 84 Stat. 1473 (42 U.S.C. 2135).

6. Section 2.204 is revised to read as follows:

§ 2.204 Order for modification of license.

The Commission may modify a license by issuing an amendment on notice to the licensee that the licensee may demand a hearing with respect to all or any part of the amendment within twenty (20) days from the date of the notice or such longer period as the notice may provide. The amendment will become effective on the expiration of the 20-day period during which the licensee may demand a hearing. If the licensee requests a hearing during this 20-day period, the amendment will become effective on the date specified in an order made following the hearing. When the Commission finds that the public health, safety, or interest so requires, the order may be made immediately effective. If the amendment involves a backfit, the provisions of § 50.109 of this chapter shall be followed.

Dated at Washington, D.C., this 17th day of September, 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85–22572 Filed 9–19–85; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulation No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Listing of Impairments—Mental Disorders

Correction

In FR Doc. 85–20552 beginning on page 35038 in the issue of Wednesday, August 28, 1985, make the following corrections:

1. On page 35040, third column seventh line from the bottom, "of" should read "or".

2. On page 35044, first column, in the fourth *Comment*, sixth line, insert the word "only" between "if" and "one".

3. On page 35045, third column, in the third *Comment*, sixth line, "by" should read "be".

4. On page 35046, first column, in the fourth *Comment*, second line from the bottom, "patient's" should read "patients".

5. On page 35048, first column, in the second *Comment*, first line, "larger" should read "large".

6. On page 35049, first column, in the first *Response*, twelfth line, "necessary" should read "necessarily".

7. On the same page, second column, in the first *Response*, second line from the bottom, "individual" should read "individuals". Also, in the third column, "*12.04 Mental Retardation*" should read "*12.05 Mental Retardation*".

8. On page 35066, third column, first complete paragraph, "including" should read "include".

BILLING CODE 1505–01–M

20 CFR Part 404

Social Security Benefits; Coverage of Employees of Private Nonprofit Organizations, Work Outside United States, Etc.

Correction

In FR Doc. 85–21321, beginning page 36571 in the issue of Monday, September 9, 1985, make the following corrections:

On page 36572, first column, in the **DATES** paragraph:

1. In the first and second lines, "(insert date of publication)" should have read "September 9, 1985":

2. In the eleventh line "received" should have read "receive".

BILLING CODE 1505–01–M

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject To Certification; Flunixin Meglumine Paste

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Schering Corp., providing for flunixin meglumine paste. The paste is for oral use in horses to alleviate inflammation and pain from musculoskeletal disorders.

EFFECTIVE DATE: September 20, 1985.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: The Schering Corp., Galloping Hill Rd., Kenilworth, NJ 07033, has filed NADA 137–409 for Banamine® Paste (flunixin meglumine). Flunixin meglumine paste is for the alleviation of inflammation and pain associated with musculoskeletal disorders in horses. The NADA is approved and the regulations are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(iii) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs, oral use.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.970 [Redesignated as § 520.970a]

2. Part 520 is amended by redesignating § 520.970 as § 520.970a and by adding new § 520.970 and § 520.970b, to read as follows:

§ 520.970 Flunixin oral dosage forms.

§ 520.970a Flunixin meglumine granules.

* * * * *

§ 520.970b Flunixin meglumine paste.

(a) *Specifications.* Each 30-gram syringe contains flunixin meglumine equivalent to 1,500 milligrams of flunixin.

(b) *Sponsor.* No. 000085 in § 510.600(c) of this chapter.

(c) *Conditions of use. Horses*—(1) *Amount.* 0.5 milligram of flunixin per pound of body weight daily.

(2) *Indications for use.* For alleviation of inflammation and pain associated with musculoskeletal disorders.

(3) *Limitations.* For oral use only. Treatment should not exceed 5 consecutive days. The effect of this drug on pregnancy has not been determined. Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: September 12, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85-22474 Filed 9-19-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject To Certification; Stanozolol Chewable Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Sterling Drug, Inc., providing for use of a 2 milligram (mg) stanozolol chewable tablet as an anabolic steroid treatment in dogs.

EFFECTIVE DATE: September 20, 1985.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Sterling Drug, Inc., 90 Park Ave., New York, NY 10016, is the sponsor of NADA 135-544 providing for the use of a 2 mg chewable tablet containing stanozolol as an anabolic steroid treatment in dogs. The drug is presently approved for such use as a 2 mg nonchewable tablet.

The NADA is approved and the regulations are amended to reflect this approval. The basis of approval is discussed in the freedom of information summary referred to below.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 21.24(d)(1)(iii) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs, oral use.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.2150 [Redesignated as § 520.2150a]

2. Part 520 is amended by redesignating § 520.2150 as § 520.2150a and by adding new § 520.2150 and § 520.2150b to read as follows:

§ 520.2150 Stanozolol oral dosage forms.

§ 520.2150a Stanozolol tablets.

* * * * *

§ 520.2150b Stanozolol chewable tablets.

(a) *Specifications.* Each chewable tablet contains 2 milligrams of stanozolol.

(b) *Sponsor.* No. 000934 in § 510.600(c) of this chapter.

(c) *Conditions of use.* (1) Used as an anabolic steroid treatment in dogs.

(2) Administered orally to small breeds of dogs, ½ to 1 tablet twice daily for several weeks; to large breeds of dogs, 1 to 2 tablets twice daily for several weeks.

(3) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: September 13, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85-22476 Filed 9-19-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 606 and 640

[Docket No. 80N-0120]

Current Good Manufacturing Practice for Blood and Blood Components; Uniform Blood Labeling

Correction

In FR Doc. 85-20739 beginning on page 35458 in the issue of Friday, August 30, 1985, make the following corrections:

1. On page 35460, in the third column, in the fourth complete paragraph, in the second line, "§ 606121(c)(6)" should read "§ 606.121(c)(6)".

2. On page 35463, in the third column, in the second paragraph, in the last line, "(e)(1)(ii)" should read "(e)(1)(iii)".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 590

[Docket No. R-85-1177; FR-1624]

Urban Homesteading Program; Deregulation and Implementation of 1983 Statutory Amendments; Correction

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published in the Federal Register on June 24, 1985 (50 FR 25941), that revised certain procedures governing the Urban Homesteading Program. Section 590.11(b) of that final rule, "Annual Request for Program

Participation," set out notification requirements for applicants that had been previously approved to participate in the Urban Homesteading Program and that wished to continue participating. The reapplication requirement was intended to reduce the burden of the application process for continuing participants. The purpose of this document is to adjust the language of § 590.11(b) to make it clear that the reduced reapplication requirements would only be available in years following the year that the initial application for a local urban homesteading program was filed under the revised regulations, *i.e.*, every applicant, regardless of previous participation in the program, must at least once, after the effective date of this rulemaking (August 2, 1985), complete an application containing the material described in § 590.11(a).

FOR FURTHER INFORMATION CONTACT: Richard Burk, Director, Urban Homesteading Program, Department of Housing and Urban Development, Room 7168, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 755–5324. (This is not a toll-free number.)

Accordingly, the following correction is being made to FR Doc. 85–15072 appearing in the **Federal Register** of June 24, 1985 on page 25941:

PART 590 [CORRECTED]

On page 25946, § 590.11(b) is corrected to read as follows:

§ 590.11 Applications.

* * * * *

(b) *Annual Request for Program Participation.* To participate in the Urban Homesteading Program in fiscal year 1987 or thereafter, an applicant that has been approved by HUD under paragraph (a) of this section after August 2, 1985 to participate in the Urban Homesteading Program shall notify the HUD Field Office in writing on or before August 1, 1986 and on or before August 1 of each succeeding year if it wishes to continue in the program. At the same time, the applicant shall notify HUD of its estimate of the section 810 funds to be used during the upcoming Federal fiscal year, along with an explanation of the basis for the estimate.

Authority: Sec. 810 of the Housing and Community Development Act of 1974 (12 U.S.C. 1706e); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: September 16, 1985.

Alfred C. Moran,

Assistant Secretary for Community Planning and Development.

[FR Doc. 85–22496 Filed 9–19–85; 8:45 am]

BILLING CODE 4210–29–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

706 Agencies; Handling of Employment Discrimination Charges

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations designating certain State and local fair employment practices agencies (706 Agencies) so that they may handle employment discrimination charges, within their jurisdictions, filed with the Commission. Publication of this amendment effectuates the designation of the Tampa, Florida Office of Community Relations as a 706 Agency.

EFFECTIVE DATE: September 20, 1985.

FOR FURTHER INFORMATION CONTACT: Hollis Larkins, Equal Employment Opportunity Commission, Office of Program Operations, Systemic Investigations and Individual Compliance Programs, 2401 E Street, NW., Washington, D.C. 20507, telephone 202/634–6806.

SUPPLEMENTARY INFORMATION:

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal employment opportunity, Intergovermental relations.

PART 1601—PROCEDURAL REGULATIONS

Accordingly, Title 29, Chapter XIV of the Code of Federal Regulations, 29 CFR 1601. 74(a) is amended by adding in alphabetical order the following agency:

§ 1601.74 Designated and notice agencies.

(a) * * * Tampa, Florida Office of Community Relations

* * * * *

(Sec. 713(a) 78 Stat. 265 (42 U.S.C. 2000e 12(a))

Signed at Washington, D.C. this 12th day of September, 1985.

For the Commission.

James H. Troy,

Director, Office of Program Operations

[FR Doc. 85–22571 Filed 9–19–85; 8:45 am]

BILLING CODE 6570–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 153

[OPP–60010; PH FRL–2799–4]

Reporting Requirements for Risk/Benefit Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Interpretive Rule and Statement of Policy.

SUMMARY: This rule is issued under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. This rule codifies EPA's existing interpretation of what information FIFRA section 6(a)(2) requires to be reported to EPA. The reasoning supporting this interpretation appears in full in the **Federal Register** of August 23, 1978 (43 FR 37611). This rule also amends and codifies a statement of EPA enforcement policy regarding which failures to report information, or delays in reporting, will be regarded by EPA as actionable violations of FIFRA section 6(a)(2). The statement of policy originally appeared in the **Federal Register** of July 12, 1979 (44 FR 40716). The amendments provide that failures to submit certain information concerning pesticide residues in food, feed, water, or the environment will now be regarded as actionable violations, and shorten the period to 15 working days within which most information must be reported to EPA by the registrant.

To facilitate prompt review of information indicating potential for significant consequences to health and the environment this rule will incorporate criteria developed to specify studies which must be flagged by registrants for EPA's attention when submitted. A new 40 CFR Part 153 is established to contain this rule and other interpretive rules or statements of policy concerning FIFRA which EPA may desire to codify.

DATE: This rule becomes effective at the end of 60 days of continuous session of Congress subsequent to the date of promulgation. After that period has elapsed EPA will issue for publication in the **Federal Register** a notice announcing the effective date of this rule. Comments on the flagging provisions should be submitted on or before November 19, 1985.

ADDRESS: Submit three copies of comments, identified with the document control number OPP 60010—

By mail, to: Information Services Section, Program Management and

Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, deliver comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: David Alexander, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1114C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–3942).

SUPPLEMENTARY INFORMATION:

I. History

Section 6(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 138d(a)(2), states: "If at any time after the registration of a pesticide the registrant has additional factual information regarding unreasonable adverse effects on the environment of the pesticide he shall submit such information to the Administrator."

Section 6(a)(2) requires each registrant to submit any item of information in his possession which pertains to a pesticide product for which he holds a registration and which, if true, would be relevant to an evaluation of the risks and benefits of the pesticide product. Information consisting solely of unsolicited lay opinion or which has been previously submitted is an exception to this policy.

EPA issued a memorandum prepared by the EPA General Counsel and adopted by the Administrator as the Agency's "Interpretation of Requirements Imposed on Registrants by Section 6(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act." The interpretation was published in the **Federal Register** on August 23, 1978 (43 FR 37611) and explained in detail the Agency's views concerning proper interpretation of the statutory reporting requirement established by section 6(a)(2).

The conclusions in the August 1978 interpretation were based on the pertinent legislative history and on the principle that the language of section 6(a)(2) should be construed consistently with the overall regulatory approach established by Congress. The Agency concluded that section 6(a)(2) requires each registrant to submit any item of information in his possession which pertains to a pesticide product for which he holds a registration and which, if true, would be relevant to an evaluation of the risks and benefits of the pesticide product unless such information consists solely of unsolicited lay opinion or has been previously submitted. These conclusions now appears in § 153.66 of this rule.

The August 1978 interpretation rejected the notion that Congress intended that section 6(a)(2) be given a narrow or restrictive reading. The Agency's broad interpretation was upheld by the U.S. District Court for the District of Columbia in a challenge brought by the Chemical Specialties Manufacturers Association (CSMA) and National Agricultural Chemicals Association (NACA). *Chemical Specialties Manufacturers Association (CSMA) v. EPA*, 484 F. Supp. 513 (D.D.C. 1980).

Although the court agreed with EPA in most respects, it disagreed on two points: it said that information which was expert opinion was not "factual" in nature within the meaning of section 6(a)(2), and that information concerning benefits was not covered. Because the court's actual order held without qualification in favor of EPA, EPA could not appeal these two points. (EPA submitted a motion for reconsideration on these two issues but the motion was denied without opinion.) Accordingly, EPA and the Department of Justice believe that EPA is free to take the position that expert opinion evidence and benefits data are covered by section 6(a)(2) despite the *dicta* in *CSMA*, and EPA continues to take this position.

The August 1978 interpretation did note that:

> The Agency might conclude that although information of a certain kind is subject to the section 6(a)(2) reporting requirement (as interpreted by this memorandum), registrant reporting of that kind of information is not essential to the Agency's functions • • • In such a case, it woud be appropriate for the Agency to announce publicly (by **Federal Register** notice or otherwise) that it will not consider a registrant's failure to submit that kind of information to be an actionable violation of section 6(a)(2).

On July 12, 1979, before the *CSMA* decision was issued, EPA issued its first statement of enforcement policy regarding particular types of information which, though arguably pertinent to evaluation of risks and benefits and otherwise reportable under section 6(a)(2), were not needed by EPA in order to discharge properly its statutory responsibilities under FIFRA, and thus need not be submitted by registrants (44 FR 40716). This rule revises that statement and, as revised, constitutes a statement of all information EPA now wants submitted under section 6(a)(2). EPA does not intend to alter or amend in any way its existing interpretation of the requirements imposed on registrants by section 6(a)(2), but rather to specify, until further notice, certain instances in which a registrant's failure to submit information to EPA will not be treated as an actionable violation of section 6(a)(2).

II. Summary of the Rule

FIFRA Section 6(a)(2) was enacted to ensure that EPA promptly receives any data indicating that might lead EPA to conclude use of a pesticide may pose unreasonable adverse effects. The amounts of data to which Section 6(a)(2) may apply is increasing rapidly, because vast quantities of data are being generated in response to the Agency Data Call-in and Registration Standards programs. The Agency thus believes that it would be useful, by this notice, to reiterate and clarify for registrants the scope of their 6(a)(2) responsibilities, and to include the Agency's interpretation in the Code of Federal Regulations for easier access.

Section 6(a)(2) requires submission only of existing data or information known to the registrant. Much of the information required to be submitted under section 6(a)(2) eventually might be submitted under the Data Call-in and Registration Standards programs. However, the Agency believes that early receipt of information under section 6(a)(2), even preliminary data from toxicological studies, is important. For example, receipt of such data permits EPA to determine whether additional information, such as exposure data, needs to be generated in order to accurately assess the risks of the pesticide once the final study is submitted. Similarly, early receipt permits early generation of benefits data so that EPA can conduct a risk/benefit analysis and take appropriate regulatory action as soon as the final toxicological data is received. Prompt reporting of

other types of information not normally required under the data call-in or registration programs (such as human exposure incidents) permits EPA to promptly investigate such incidents and take further action as needed.

In addition to clarifying in this rule what information must be submitted under section 6(a)(2), the Agency believes that there are classes of studies which should receive prompt attention by the Agency, whenever they are submitted to EPA. To facilitate identification of these classes of studies, the Agency has developed scientific criteria for use by registrants to flag certain studies for EPA's immediate attention. It is important to note that, because of the nature of the criteria outlined later in this preamble, not all data required to be submitted pursuant to section 6(a)(2) would meet these criteria nor would all studies meeting these criteria need to be submitted under section 6(a)(2). Through a companion proposed bill (to be issued in the **Federal Register** shortly), the Agency will require registrants to apply these criteria to all data submitted pursuant to the Data Call-in and Registration Standards programs. Through this notice, EPA is encouraging registrants to apply the flagging criteria to submissions under section 6(a)(2) so that the most significant adverse effects data can be addressed expeditiously.

In summary, to ensure receipt of the data the Agency needs and to facilitate prompt review of that data, EPA is in this notice:

1. Emphasizing to the regulated community the seriousness with which the Agency views the provisions of FIFRA section 6(a)(2) by reissuing the 1978 interpretation and 1979 statement of enforcement policy and fostering their use by consolidating and codifying them into a new Part 153 of Title 40 of the Code of Federal Regulations.

2. Modifying the 1979 enforcement policy to provide for submission of information on pesticide residues in the environment.

3. Modifying the 1979 enforcement policy to provide for receipt of most information by EPA within 15 working days of receipt by the registrant.

4. Providing practical guidance to registrants on how information should be submitted to the Agency.

A summary of the provisions of the rule follows. Although the summary of most sections is brief, revisions of existing policy are noted and discussed in greater detail.

Section 153.61 simply provides a direct quotation of FIFRA section 6(a)(2).

Section 153.62 cross-references the definitions found in FIFRA and 40 CFR Part 162. A definition is specifically provided for the term "registrant."

Section 153.63 explains who must submit information to EPA. Although FIFRA section 6(a)(2) imposes that responsibility on the registrant, FIFRA section 14(b)(4) makes it clear that an act or omission of any employee or agent of a registrant, or of any person acting for a registrant, is to be regarded as the act or omission of the registrant.

Section 153.64 explains when information must be submitted to EPA. The Agency has consistently interpreted FIFRA section 6(a)(2) to require submission of information when the registrant first comes into possession of or knows of such information. However, in the exercise of its enforcement discretion, the Agency provided additional time frames for the submission of certain information in its July 1979 policy notice. EPA is now revising that policy to provide for a maximum delay of 15 working days for the submission of all types of reportable information, with one exception. The exception relates to certain information from incomplete toxicological studies. These studies are covered in § 153.70(a)(1) and (2) and must be submitted in accordance with the time limits which appeared in the July 1979 policy notice, which were designed to encourage completion of studies. As to all other information, if the registrant wants to conduct an investigation to confirm the factual nature of a report, he may do so, but the report still must be received by EPA not later than the 15th working day after the date the registrant obtained the information.

EPA is changing the time limits regarding submission of information, other than incomplete toxicological information, to 15 working days so as to be consistent with EPA policy regarding submission of similar information under section 8(e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2607; see also the statement of the Agency's section 8(e) interpretation and enforcement policy published in the **Federal Register** of March 16, 1978 (43 FR 11110).

Consistent with the TSCA section 8(e) statement and the provisions of FIFRA section 14(b)(4), a registrant is considered to have obtained or received information at the time any officer, employee or agent capable of appreciating the significance of that information first possesses or knows of it. By linking the reporting period to possession or knowledge of pertinent information by an individual "capable of appreciating [its] significance", the Agency recognizes that there may be situations where, through inadvertence, pertinent information is delayed in reaching the appropriate individual within a registrant's organization. However, the Agency will not tolerate abuse of this provision. In monitoring a registrant's compliance, EPA will look behind any delays that do occur in order to determine whether the registrant has established and followed procedures for expeditiously processing pertinent information, and will take this into account when making enforcement decisions. In this same regard, the Agency will hold the registrant responsible for reporting information which a prudent person similarly situated could reasonably be expected to possess or have knowledge of. Registrants must recognize and accept responsibility for becoming cognizant of pertinent information which their officers, employees or agents possess or know of, and for ensuring that such information is submitted to EPA within the prescribed reporting periods.

The Agency believes 15 working days are sufficient to accomplish the investigations permitted before information of the type covered by this rule is submitted. Even where a 15-day period is insufficient to complete an investigation, EPA believes it is important that registrants provide early notification to EPA so the Agency is apprised of a potential problem while its scope is being defined.

Section 153.65 contains practical guidance for registrants on how information should be submitted to the Agency. Consistent with Agency policy for TSCA section 8(e), § 153.65(c) states that submissions should contain the name of the submitter, the company name and number, the date of transmittal to EPA, and a statement that the information is being submitted in accordance with FIFRA section 6(a)(2). Section 153.65(e) provides a cross reference to so-called "flagging" requirements which EPA intends to apply to the submission of data under FIFRA sections 3(c)(1)(D) and 3(c)(2)(B). To facilitate prompt review of the information with the most significant consequences to health and the environment, EPA has developed criteria to specify studies which must be flagged for EPA's attention when submitted with registration applications and data call-in notices under FIFRA section 3. EPA intends to impose these requirements on material submitted under section 3 through promulgation of regulations and modification of current and future data call-in notices. Section 153.65(e) requires that information

submitted under this rule, comply, to the extent applicable, with those requirements when promulgated. Because the flagging criteria were developed for submissions made under FIFRA section 3, they may cover information which is not reportable under this rule. For example, a study demonstrating "solubility in water greater than 30 ppm" (Reporting Code 13) arguably may not have to be reported in some cases under section 6(a)(2); although where such a study was reported under section 6(a)(2), it should be flagged. Registrants are urged to follow these criteria immediately with respect to section 6(a)(2) submissions by alerting the Agency to any 6(a)(2) submissions which demonstrate possible adverse effects as specified in the chart below.

FLAGGING CRITERIA

Type of study (with section and reference numbers from 40 CFR 158)	Criteria	Reporting code
Oncogenicity (83-2) (or combined oncongenicity/chronic feeding or Subchronic feeding study (82-1) (§ 158.135)	When compared with controls, treated animals show any of the following effects:	
	Incidence of neoplasms which increase with dose, or	1
	Substantially increased incidence of neoplasms, or	2
	Marginal increases in neoplasms of several organs/tissues, or.	3
	Increase in uncommon neoplasms, or	4
	Decreased time to tumor development	5
Teratology (83-3) (§ 158.135)	An association between treatment and an increase, compared with controls, in malformations (or death) on a fetus or litter basis in the absence of significant maternal toxicity at the same dose levels.	6
Neurotoxicity (81-7) (§ 158.135)	A positive effect when compared with controls	7
Chronic feeding study (83-1) or combined chronic feeding/oncogenicity study (§ 158.135)	Cholinesterase inhibition NOEL less than 10 times the current ADI	8
	General toxicity NOEL less than 100 times the current ADI	9
Reproduction study (83-4) (§ 158.135)	Reproductive effects NOEL less than 100 times the current ADI	10
Subchronic feeding study (82-1) (§ 158.135)	Cholinesterase inhibition NOEL less than 200 times the current ADI	11
	General toxicity NOEL less than 2,000 times the current ADI	12
Solubility (63-8) (§ 158.130)	Solubility in water greater than 30 ppm	13
Leaching and adsorption/desorption (163-1) (§ 158.130)	K_d (soil-water partition coefficient) less than 5	14
Hydrolysis (161-1) (§ 158.130)	Half-life greater than 25 weeks	15
Aerobic soil metabolism (162-1) (§ 158.130)	Half-life greater than 3 weeks	16
Anaerobic soil metabolism (162.2) (§ 158.130)	Half life greater than 3 weeks	17
Field dissipation (164-1) (§ 158.130)	Half-life greater than 3 weeks	18
Octanol/water partition (63-11) (§ 158.120)	Coefficient greater than 1,000	19
Fish accumulation (165-4) (§ 158.130)	Ratio (ppm of substance in fish tissue to ppm in ambient water) greater than 1,000.	20
Avian oral Toxicity (71-1) (§ 158.145)	LD_{50} less than 100 mg/kg	21
Avian dietary toxicity (71-2) (§ 158.145)	LD_{50} less than 500 ppm	22
Acute fish and invertebrate toxicity (freshwater fish, 72-1; invertebrates (72-2) (§ 158.145)).	LC_{50} less than 1 ppm	23

Note.—Items with reporting codes 8, 9, 10, 11, and 12 require the submitter to compare (A) a no-observed effect level for the substance as derived from the study ("NOEL"), expressed in mg/kg bw/day, with (B) the acceptable daily intake for the substance currently established by EPA ("current ADI") also expressed in mg/kg bw/day, which if not known by the submitter may be obtained by the submitter from the appropriate EPA Product Manager.

The flagging criteria require scientific judgment. If there is doubt or scientific disagreement about whether a study meets or exceeds a given criterion, the criterion should be interpreted to include rather than exclude the study, which should be flagged accordingly. For some guidance on criteria numbered 1 through 6, refer to the hazard evaluation identification sections of the Agency's Proposed Guidelines for Carcinogen Risk Assessment, 44 FR 46294, and Proposed Guidelines for Health Assessment of Suspect Developmental Toxicants, 49 FR 46325, both published in the **Federal Register** of November 23, 1984 (44 FR 46294 and 46325 respectively). Additional guidance may be found in "Standard Procedures for Teratology Studies" (Chitlik, L.D., Bui, Q.Q., Burin, G.J., and S.D. Dapson, Office of Pesticide Programs, EPA, 1984), and "Oncogenic Potential: Guidance for Analysis and Evaluation of Long Term Rodent Studies" (O.E. Paynter, Office of Pesticides and Toxic Substances, EPA, 1984). These documents are available from the Toxicology Branch, Hazard Evaluation Divison, Office of Pesticide Programs, EPA, 1921 Jefferson Davis Highway, Arlington, VA, Rm. 816.

Section 153.66 sets forth EPA's interpretation of the requirements of FIFRA section 6(a)(2). This interpretation originally appeared in the **Federal Register** of August 23, 1978 (43 FR 37611), together with a full discussion of the reasoning which supported it. In summary, under the Agency's interpretation, section 6(a)(2) requires the submission of any information on either the risks or benefits of a registered pesticide which, if true, would be relevant, either by itself or in conjunction with other information, to the terms and conditions of registration of the pesticide or to the question of whether the pesticide should be registered at all. EPA recognizes that, unless a complete investigation of certain reports has been conducted by the registrant, the information submitted, although relevant, may be regarded as preliminary.

It should be noted that § 153.66 represents EPA's interpretation of information required to be submitted by FIFRA, in contrast to information that must be submitted in order to avoid enforcement action under the policy set forth in §§ 153.67 through 153.78.

Section 153.67 explains what EPA will consider to be an "actionable violation" of FIFRA section 6(a)(2) in the exercise of its enforcement discretion, and discusses the consequences which may be faced by those registrants who violate section 6(a)(2). A registrant who violates FIFRA section 6(a)(2) commits an unlawful act under FIFRA section 12(a)(2)(N), 7 U.S.C. 136j(a)(2)(N), and may be subject to civil or criminal penalties including fines of up to $25,000 and imprisonment up to 1 year under FIFRA section 14 (7 U.S.C. 136(l)), whether or not the registrant directed that an employee or agent submit required information. Whenever this rule provides that a given failure to submit information will not be treated by EPA as an actionable violation of section 6(a)(2), it means that EPA will not recommend or seek to impose a civil or criminal penalty under section 14 or otherwise on the grounds that such a failure to submit information violates section 6(a)(2). This section of the rule also outlines the consequences of a violation of 18 U.S.C. 1001, which makes it illegal to submit false or misleading information to a Federal agency.

Sections 153.69 through 153.78 set forth EPA's enforcement policy regarding which failures to submit information will be regarded as actionable violations of FIFRA section 6(a)(2). Failure to submit, on time, information of the type described in §§ 153.69 through 153.78, and otherwise reportable under § 153.66, may result in the imposition of civil or criminal penalties, or both.

Sections 153.69 through 153.78 are designed to give clear and explicit guidance to registrants on those items of information which must be submitted in order to avoid enforcement action by EPA. These items include:

1. Toxicological studies (both completed and incomplete).
2. Epidemiological studies.
3. Efficacy studies.
4. Studies of dietary or environmental pesticide residue.
5. Toxic or adverse effect incident reports.
6. Failure of efficacy incident reports.
7. Dietary or environmental pesticide residue incident reports.

The provisions dealing with efficacy studies in § 153.72 have been revised to indicate that efficacy studies must be submitted where the information concerns any deficiency or reduction in the claimed efficacy of any use of a registered pesticide and such use is subject, among other things, to a Registration Standard (reregistration) proceeding.

Sections 153.73 and 153.77 contain new provisions requiring the submission of information from studies or reports or residues exceeding established levels on food or feed, or concerning any active ingredients, metabolities, or degradates or pesticides in ground water or elsewhere in the environment other than treated areas. The July 1979 policy did not specifically require submission of such information, but such data are now deemed important to EPA efforts to learn about and control pesticides in ground water and to verify or modify EPA's calculations of levels of exposure of the population to pesticides and assumptions about the ways in which pesticides are used. As noted in the example in § 153.73(d), the presence of pesticides or their metabolites or degradates in excess of "established levels" includes those situations where such residues were originally not anticipated, but are later detected.

The provisions which cover toxic effect incident reports in § 153.75(a)(1) have been revised to make it clear that the Agency is generally not interested in receiving reports concerning eye irritation when the pesticide label provides adequate notice of such a hazard.

Section 153.79 references the approval by the Office of Management and Budget of the information collection requests contained in this rule.

III. Submission of Public Comment

Because this rule consists of a general statement of policy and an interpretation of the statute, it is exempted from the notice and comment provisions of the Administrative Procedure Act by 5 U.S.C. 553(b)(3)(A). Nevertheless, interested parties may submit comments on this rule. EPA is especially interested in receiving comments on the flagging criteria specified in this preamble, and may revise them on the basis of the comments received.

Comments will be most helpful if they are received on or before September 15, 1985. EPA will evaluate the comments received and consider appropriate modifications to this rule.

IV. Public Comment Received

A draft version of this rule was made public in preparation for the review of the rule by the FIFRA Scientific Advisory Panel (SAP). The Panel, and all members of the public who requested it, received copies.

EPA received comments from the SAP and the National Agricultural Chemicals Association (NACA). Unit VI of this Notice addresses the comments received from the SAP. EPA's summary of and response to NACA's comments follows:

NACA requested that EPA clarify its intent regarding whether this rule "should be correctly characterized as an interpretive rule or regulation."

This rule does not impose any requirements in addition to those imposed by FIFRA section 6(a)(2); it consists of a general statement of policy and an interpretation of a federal statute of the type exempted from the notice and comment provisions of the Administrative Procedure Act (APA) by section 4(b)(3)(A) of the statute (5 U.S.C. 553(b)(3)(A)). This issue was decided in the Agency's favor by the court in *CSMA* v. *EPA*, 484 F. Supp. 513, 518. EPA notes that FIFRA, Executive Order 12291 and the Paperwork Reduction Act contain procedural requirements for actions such as this. Accordingly, EPA has complied with those requirements (see unit VI.) However, compliance with those requirements does not in any way give this action characteristics of a substantive rule that would require public comment under the APA.

NACA also suggested "that public comment . . . would benefit . . . a rule or regulation." As previously noted, this does not alter or amend in any way EPA's existing interpretation of the requirements imposed by section 6(a)(2). As regards the revisions to the Agency's enforcement policy incorporated in this rule, the Agency believes that review, prior to issuance, by the U.S. Department of Agriculture and FIFRA Science Advisory Panel provided an adequate opportunity for review of those revisions in a public forum. In addition, the Agency has reviewed and addressed the comments submitted by NACA and encourages NACA and all other interested parties to submit comments on this final rule (see Unit III above).

NACA's next comment expressed concern over possible confusion arising as a result of EPA's attempt to encourage registrants to comply with the flagging criteria included in Section III of this preamble when making submissions under FIFRA section 6(a)(2). NACA said—

> The flagging proposal only introduces confusion whether certain information is or is not the kind of information to be submitted under EPA's interpretation of section 6(a)(2).

In response to this concern EPA has revised the preamble discussion to make it clear that the flagging criteria are separate and distinct from a determination of whether the data must be submitted under FIFRA section 6(a)(2) or any other authority. The controlling language for 6(a)(2) submissions is the language of the statute and this rule, not the flagging criteria. There is a great deal of information which must be submitted under section 6(a)(2) to which the flagging criteria do not apply. There may also be certain studies which should be flagged when submitted under FIFRA section 3 for which no submission under section 6(a)(2) would be required. When issued in the form of a substantive rule, compliance with the flagging criteria would be mandatory. In this preamble, EPA urges that section 6(a)(2) submissions also be flagged as appropriate. Flagging would simply entail submission of an appropriate cover sheet with each study. All parties will have an opportunity to comment again on the flagging criteria when they are formally proposed in the Federal Register.

NACA also voiced concern that 15 days is too short or inflexible a period for "registrants to receive, verify and forward to the Agency the quantity of information received by registrants. . . . The requirement to contact every author of an erroneous study and receive written acknowledgement of error . . . is also virtually impossible."

EPA wishes to reemphasize that this rule imposes no blanket requirements for verification of reports received by registrants nor requirements that every author of a study be contacted. EPA has simply put registrants on a firm time schedule for submitting whatever information was received, so that EPA could determine its import. EPA has provided guidance on what registrants must show if they elect to discredit reports themselves. However, registrants cannot be permitted to elect to extend their own time schedules. Prompt notification of EPA will provide the Agency early notice and allow both

EPA and the registrant the opportunity to discuss how best to investigate the findings.

NACA stated that the longer time frames provided by the EPA 1979 enforcement policy for FIFRA section 6(a)(2) have been eliminated. In most cases, the 15-day period was substituted for the previous 30-day period so as to be consistent with similar procedures under the Toxic Substances Control Act which have been in effect since 1978, and to allow the earliest reasonable notification of EPA. Section 6(a)(2) requires submission of relevant information "at any time after the registration of a pesticide." The Agency interprets this as a requirement for immediate reporting of covered information, but has provided a 15-day grace period as an exercise of its enforcement discretion. Longer time frames of up to 1 year were provided in the 1979 rule for incomplete toxicological studies so that there would be enough time for completion of the studies, while ensuring that submission of undesirable information could not be avoided by leaving studies incomplete. These longer time frames of up to 1 year remain in this rule for the same types of studies.

NACA expressed concern over the "apparent retroactive effect for submitting information, for example, when a product enters registration standard, special review, suspension or cancellation proceedings without the exceptions that EPA has read into the statute under other circumstances."

The comment refers to § 153.69(a)(7) which requires submission of tests indicating any toxic or adverse effect associated with substances which are the subject of one of the named proceedings even if the tests are only corroborative of effects already known to the Agency. There is no requirement for retroactive submission. Submission is required 15 days after notice of such a proceeding is published in the **Federal Register.**

NACA urged the Agency to make it clear that the 15-day time limit is 15 working days and begins only ". . . when an employee capable of appreciating the significance of the pertinent information and FIFRA requirements has possession of the information."

Consistent with the TSCA section 8(e) policy and the provisions of FIFRA section 14(b)(4), this rule requires receipt of information by the Agency within 15 working days of the date that any officer, employee, agent, or other person acting for or employed by the registrant and capable of appreciating the significance of such information first comes into possession of or knows of such information. This includes information which a prudent person similarly situated could reasonably be expected to possess or have knowledge of.

FIFRA section 14(b)(4), quoted in § 153.63, states that "When construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed." For these reasons, the Agency believes it is incumbent upon registrants to establish procedures for expeditiously processing pertinent information in order to comply with the prescribed reporting periods.

Finally, NACA criticized the Agency's determination that "information regarding any amount of any active indredient or related chemicals in ground water or elsewhere, where unexpected, must be reported to EPA" as being in conflict with section 6(a)(2) because "not all residue detections present an unreasonable adverse effect."

EPA agrees that not every discovery of residues will necessarily constitute an unreasonable adverse effect *per se.* However, section 6(a)(2) requires submission of any information "regarding unreasonable adverse effects on the environment of the pesticide." Knowledge of the existence of active ingredients or related chemicals in unexpected places is relevant to an evaluation of the exposure to these chemicals, which, in conjunction with other information, is necessary to the complete evaluation of risks and benefits of the chemicals. Consequently such information is both properly reportable under section 6(a)(2) and of the type which EPA does, in fact, want submitted.

V. Procedural Matters

Once 60 days of continuous Congressional session after the date of promulgation have elapsed EPA will issue for publication in the **Federal Register** notice of the effective date of this rule.

In the exercise of its enforcement discretion, if EPA changes this rule in the future, EPA will refrain from commencing any civil or criminal penalty action based on FIFRA section 6(a)(2), with regard to any failure by a registrant to submit any information which this rule says need not be submitted, until at least 30 days after modification or revocation of this rule. This rule will be modified or revoked only by publication in the **Federal Register** of a notice which clearly states which failures to submit information which were previously permitted will subsequently be treated as actionable violations of section 6(a)(2). Any modification of this rule will be applied prospectively only.

Because the Agency is placing greater emphasis on its FIFRA section 6(a)(2) policy and will be paying strict attention to compliance with the submission requirements, this document consolidates and codifies all relevant requirements in the Code of Federal Regulations for ease of reference by registrants, the public, and EPA personnel. Except as already noted, all sections are drawn, with minor editorial change, from the July 1979 policy and the August 1978 interpretive rule.

In the future EPA intends to issue for publication in the **Federal Register,** on a quarterly basis, lists of information received in accordance with this rule, some of which may be preliminary or as yet unverified by EPA or registrants. The public can review the conclusions EPA has drawn as a result of reviewing that information by looking for chemical-specific notices published in the **Federal Register** or, where no notice appears, by contacting the Product Manager for that chemical. Information will be made available to the public subject to applicable claims of confidentiality made by the registant.

VI. Statutory Review Requirements

In accordance with section 25 of FIFRA, this rule was provided to the U.S. Department of Agriculture (USDA) and the FIFRA Science Advisory Panel (SAP) for comment prior to publication.

USDA had no objection to the rule and assumed "that while certain data are flagged, the review of that data will be kept in the context of the proposed use and in relationship to other data." USDA's assumption accurately reflects EPA's intent.

The Scientific Advisory Panel, while generally supportive of the rule, wished to register its concern over the announcement in the preamble that EPA plans to issue for publication in the **Federal Register** lists of information received in accordance with the rule. The Panel "does not believe publicizing such unverified scientific data to be advisable until the adverse information can be evaluated by Agency scientists."

EPA believes publication of lists of receipts is merited specifically to assist the public in holding EPA accountable for review of the data once received. EPA believes that because some data submitted under the rule will be

unverified it should take steps to avoid alarming the public, but it believes that can be done without depriving the public of important information. EPA also notes that since information submitted under this rule will receive priority review, and publication of lists will occur only quarterly, much of the information submitted will have had some review by the time publication occurs. Any registrant concerned about an inability to verify data prior to submission under this rule may submit, with the data, a statement describing the registrant's reservations concerning the validity or significance of the data (see 43 FR 37614). The Agency would take that statement into account in assessing the data and the statement would, absent any claim of confidentiality, be available to interested persons outside the Agency. In addition, before publication occurs, registrants may have provided more analysis of the information than they did when submitting it initially. The results of such analyses would, absent any claim of confidentiality, also be available to interested persons outside EPA.

SAP also said that "the 15-day requirement for submission of adverse data on efficacy appears to be too short, given the problem of evaluating efficacy data."

Information regarding efficacy is reportable under this rule only if it pertains to deficiencies in performance of pesticides intended to control organisms which may pose a risk to human health or deficiencies in performance of pesticides subject to Registration Standard, special review, suspension or cancellation proceedings. EPA believes it undesirable to have to wait longer than 15 working days to receive notice of such important information even if a registrant's evaluation takes longer. As noted previously, registrants are free to submit statements describing their reservations concerning the data and are expected to submit additional information for EPA's consideration as it becomes available.

Finally the SAP requested a definition of "several" animals in the example provided in § 153.70(c)(3) where EPA has said "Six months after the study commences several of the exposed animals die," and a definition of "highly toxic" in the example provided in § 153.73(c).

In response to the SAP's comments, EPA has revised the examples to more accurately reflect the Agency's true concerns. Section 153.70(c)(3) now discusses an example which is not dependent upon a definition of the word "several"; § 153.73(c) now refers to residues of a metabolite of a soil insecticide without characterizing the toxicity of the metabolite.

VII. Regulatory Review Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement that a regulatory analysis be performed. A "major" rule is one which has an annual effect of $100 million or more, or results in a major increase in costs or prices, or has significant adverse effects on economic activities. The Agency concludes that this rule does not meet the criteria for "major" because it imposes no requirements for data generation and will result in submission of certain existing information an estimated total of 30 times per year. This will result in an estimated total burden to all registrants of 2,000 man hours excluding voluntary investigations performed by registrants. This rule has been submitted to the Office of Management and Budget for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

As required by the Regulatory Flexibility Act (5 U.S.C. 605(b)), I hereby certify that this rule will not have a significant economic impact on a substantial number of small businesses.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and has assigned OMB Control Number 2070–0039. Comments on regulatory review requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 153

Pesticides and pests, Recordkeeping and reporting requirements, Policy statements.

Dated: September 11, 1985.

Lee M. Thomas,

Administrator.

Therefore, Chapter I of 40 CFR is amended as follows:

1. The authority citation for Part 153 is:

Authority: 7 U.S.C. 136d, 136w.

2. Part 153, consisting at this time of Subpart D, is added to read as follows:

PART 153—STATEMENTS OF POLICIES AND INTERPRETATIONS

Subparts A—C [Reserved]

Subpart D—Reporting Requirements for Risk Benefit Information

Sec

153.61 What the law requires.
153.62 Definitions.
153.63 Who must submit information.
153.64 When information must be submitted.
153.65 How information should be submitted.
153.66 What information must be submitted.
153.67 What are the consequences of a failure to submit required information.
153.69 Completed toxicological studies.
153.70 Incomplete toxicological studies.
153.71 Epidemiological studies.
153.72 Efficacy studies.
153.73 Studies of dietary or environmental pesticide residues.
153.74 Incident reports: general policy.
153.75 Toxic or adverse effect incident reports.
153.76 Failure of performance incident reports.
153.77 Dietary or environmental pesticide residue incident reports.
153.78 Reporting of other information.
153.79 Office of Management and Budget approval under the Paperwork Reduction Act.

Authority: 7 U.S.C. 136d, 136w.

Subparts A—C [Reserved]

Subpart D—Reporting Requirements for Risk Benefit Data

§ 153.61 What the law requires.

Section 6(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) states: "If at any time after the registration of a pesticide the registrant has additional factual information regarding unreasonable adverse effects on the environment of the pesticide, he shall submit such information to the Administrator."

§ 153.62 Definitions.

(a) The definitions set forth in FIFRA sections 2 and 162 of this chapter apply to this Part.

(b) The term "registrant" includes any person who holds a registration for a pesticide product issued under FIFRA section 3 or 24(c).

§ 153.63 Who must submit information.

. FIFRA section 6(a)(2) imposes a reporting duty on the "registrant." However, FIFRA section 14(b)(4) states: "When construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed." Thus an act or

omission (such as a failure to report information) of any employee or agent of a registrant, or of any person acting for a registrant, is to be regarded as the act or omission of the registrant.

§ 153.64 When information must be submitted.

(a) Information which is otherwise reported under this Part must be submitted to EPA when the registrant first comes into possession of or knows of such information. However, except as provided under § 153.70(a)(1) and (2), EPA will consider such information to be submitted on time if it is received by EPA not later than the 15th working day after the registrant first possesses or knows of the apparently reportable information. Submission of such information after the 15th working day will be considered to be an actionable violation of FIFRA section 6(a)(2).

(b) A registrant possesses or knows of information at the time any officer, employee, agent, or other person acting for or employed by the registrant and capable of appreciating the significance of such information first comes into possession of or knows of such information. This includes information which a prudent person similarly situated could reasonably be expected to possess or have knowledge of.

(c) In monitoring a registrant's compliance with the prescribed reporting periods, EPA will determine whether the registrant has established and followed procedures for expeditiously processing pertinent information, and will take this into account when making enforcement decisions. Registrants must recognize and accept responsibility for becoming cognizant of pertinent information which their officers, employees or agents possess or know of, and for ensuring that such information is submitted to EPA within the prescribed reporting periods.

§ 153.65 How information should be submitted.

A submission should:

(a) Be sent by certified mail, or in any other way permitting verification of its receipt by the Agency;

(b) Be addressed to: Registration Division (TS–767C), U.S. Environmental Protection Agency, Washington D.C. 20460;

(c) Contain the name of the submitter, the company name and number, the date of transmittal to EPA, and a statement that the information is being submitted in accordance with FIFRA section 6(a)(2);

(d) Identify the substance tested or otherwise covered by the information (including, if known, the CAS Registry Number);

(e) Comply, to the extent applicable, with any requirements issued by the Agency under FIFRA section 3(c)(2)(B) and/or section 3(c)(1)(D) for the flagging of data demonstrating possible adverse effects;

(f) Summarize the information being submitted;

(g) Assert any claims of confidentiality for information contained in the submission;

(h) If submitted under another provision of FIFRA (e.g., section 3(c)(2)(B)), comply with all applicable requirements for the submission of data under such provision.

§ 153.66 What information must be submitted.

This section sets forth EPA's interpretation of the requirements of FIFRA section 6(a)(2). Note also that §§ 153.69 through 153.78 of this Part set forth EPA's enforcement policy regarding which failures to submit information EPA will regard as actionable violations of FIFRA section 6(a)(2).

(a) *Requirement* EPA interprets FIFRA section 6(a)(2) to require a registrant to submit information to EPA if:

(1) The registrant "has" the information, i.e., the registrant (or any officer, employee, agent, or other person acting for or employed by the registrant) possesses or knows of the information;

(2) The information pertains to a pesticide for which that registrant holds a registration under FIFRA;

(3) The information, if true, would be relevant, either by itself or in conjunction with other information, to an Agency decision regarding the risks and benefits of the pesticide, i.e., an Agency decision regarding the registerability of the pesticide or regarding the proper terms and conditions of the registration of the pesticide; and

(4) The exclusions in paragraph (b) of this section do no apply to the information.

(b) *Exceptions* Notwithstanding paragraphs (a)(1), (2) and (3) of this section, EPA does not interpret FIFRA section 6(a)(2) to require the submission to the Agency of information:

(1) *Non-expert opinion.* If it consists solely of opinion(s) or conclusion(s), unless expressed by a person:

(i) Who was employed or retained (directly or indirectly) by the registrant to express an opinion or conclusion which relates in any way to the pesticide's properties, effects, risks, or benefits; or

(ii) From whom the registrant requested the opinion(s) or conclusion(s) in question; or

(iii) Who by virtue of his knowledge, skill, experience, training, or education would be permitted to testify to the opinion(s) or conclusion(s) in a court under Rule 702 of the Federal Rules of Evidence; or

(2) *Previously submitted information* If it has previously been submitted to the Agency.

(i) *Information considered to have been previously submitted* Information shall be considered to have been previously submitted to EPA for purposes of this Part if such information is contained completely in:

(A) Documents previously submitted to EPA by the registrant;

(B) Any scientific article or publication which has been abstracted in Biological Abstracts, Chemical Abstracts, Index Medicus, or Pesticides Abstracts, if the abstract in question clearly identified the active ingredient or the registered pesticide(s) to which the information pertains (information received by or known to the registrant prior to publication of an abstract concerning the information must be reported and may not be withheld pending such publication);

(C) EPA publications, EPA hearing records, or publications cited in EPA Federal Register notices.

(D) Reports or publications which have been made available to the public by any of the following Federal agencies: Center for Disease Control, Consumer Products Safety Commission, Department of Agriculture, Department of the Interior, Food and Drug Administration, National Institutes of Health, or Occupational Safety and Health Administration (otherwise reportable information concerning research which was performed, sponsored, or funded by the registrant which may also appear in a forthcoming Government report or publication must be reported and may not be withheld pending publication); or

(E) Any other documents which are contained in the official files and records of the EPA Office of Pesticide Programs.

(ii) *Discussion.* Section 6(a)(2) applies only to "additional" information. Thus, if a registrant has previously submitted information concerning a given study, document, or incident, the same information need not be submitted again. In addition, EPA does not believe that it would serve any useful purpose to insist that registrants submit information which is already in EPA files or is otherwise readily accessible to

EPA. Accordingly, EPA has specified a number of objectively defined categories of information which need not be submitted. Failure to submit information in any of these categories will not be treated as an actionable violation of section 6(a)(2). While the specified categories are not intended to encompass all information which could conceivably come to the attention of Agency personnel, they do indicate which types of information are most likely to be routinely examined or reviewed by EPA.

§ 153.67 What are the consequences of a failure to submit required information.

(a) Failure to submit, on time, information of the type described in §§ 153.69 through 153.78 and otherwise reportable under § 153.66 of this Part, will be treated as an actionable violation of FIFRA section 6(a)(2).

(b) An actionable violation of FIFRA section 6(a)(2) means that EPA may recommend or seek to impose a civil and/or criminal penalty on the grounds that such a failure to submit information violates FIFRA section 6(a)(2).

(c) In the exercise of its enforcement discretion, EPA will not commence any civil penalty action or seek criminal prosecution of any registrant with regard to any failure to submit information under FIFRA section 6(a)(2) which is not treated as an actionable violation under this Part. Sections 153.69 through 153.78 identify the types of information which must be submitted in order to avoid enforcement action by EPA.

(d) A registrant who violates FIFRA section 6(a)(2) commits an unlawful act under FIFRA section 12(a)(2)(N), 7 U.S.C. 136j(a)(2)(N), and may be subject to civil and/or criminal penalties under FIFRA section 14, 7 U.S.C. 136(l), including imprisonment up to 1 year and fines up to $25,000. The submission of false or misleading information is a violation of 18 U.S.C. 1001, and may result in the imposition of a fine up to $10,000 or imprisonment up to 5 years, or both.

(e) EPA will not automatically recommend or seek a civil or criminal penalty whenever it discovers an apparent violation of FIFRA section 6(a)(2) of a type which is considered actionable under this Part. Decisions in such cases will be based on a careful evaluation of all pertinent information, including any explanation offered by the registrant.

§ 153.69 Completed toxicological studies.

(a) *Policy: data that must be submitted.* The results of a completed study of the toxicity to any organism of a registered pesticide product or any of its ingredients, impurities, metabolites, or degradation products which is otherwise reportable under § 153.66 must be submitted if:

(1) The substance tested had a kind of toxic or adverse effect, or an effect on an organ or tissue type, not observed in any study concerning the substance previously reported to EPA; or

(2) The substance tested had any toxic or adverse effect at a lower dosage, after a shorter exposure period, or after a shorter latency period, than in any study concerning that effect of the substance previously reported to EPA; or

(3) The substance tested had a more severe toxic or adverse effect, or a toxic or adverse effect which occurred at a higher incidence or frequency, than in any study concerning that effect of the substance previously reported to EPA; or

(4) The substance tested had a toxic or adverse effect in any species, strain, sex, or generation of test organism different from that in any study concerning that effect of the substance previously reported to EPA; or

(5) The substance tested had a toxic or adverse effect involving a route or medium of exposure not associated with such an effect in any study concerning the substance previously reported to EPA, if humans or other non-target organisms could conceivably be exposed to the substance by that route or medium; or

(6) The substance tested produced a toxic or adverse effect by means of a pharmacokinetic, metabolic, or biological mechanism different from any mechanism proposed for that effect in any study concerning the substance previously reported to EPA; or

(7) The substance tested had any toxic or adverse effect (even if corroborative of information already known to the Agency), if the substance is a pesticide, or an ingredient, impurity, metabolite, or degradation product of a pesticide which is the subject of a Registration Standard (reregistration) proceeding, Special Review (or Rebuttable Presumption Against Registration (RPAR)) proceeding, suspension proceeding, or cancellation proceeding. For the purposes of this section a pesticide is subject to a proceeding when notice of commencement of such a proceeding has been published in the **Federal Register** and no notice of completion of the proceeding has been published. Upon publication of notice of commencement of any such proceeding each registrant must immediately submit all data in his possession required to be submitted by virtue of commencement of the proceeding and must submit any other such information within 15 working days from his receipt of it until announcement in the **Federal Register** of the completion of the proceeding.

(b) *Policy: information found to be erroneous.* Information which is otherwise reportable under § 153.66 and paragraph (a) of this section need not be submitted if, within 15 working days of the date the registrant first has the apparently reportable information:

(1) The registrant discovers that any analysis, conclusion, or opinion which would have caused the information to be reportable was predicated on data that were erroneously generated, recorded, or transmitted, or on computational errors;

(2) Every author of each such analysis, conclusion, or opinion has acknowledged in writing that the analysis, conclusion, or opinion was improper because of the use of the erroneous data, and has corrected the original analysis, conclusion, or opinion accordingly; and

(3) After such corrections, the information is no longer required to be reported under any provision of this Part.

(c) *Discussion of basis for policy.* (1) The result of any study in which exposure to a pesticidal substance is associated with a toxic or adverse effect is clearly pertinent to evaluation of risk and is thus legally reportable under section 6(a)(2). However, unless an item of toxicological information is the first of its category to be received by EPA, or unless it suggests that reliance on material previously submitted to EPA may have resulted in underestimation of risk, or was otherwise inaccurate, misleading, or incomplete, submission of such new information is not likely materially to affect the registration status of products containing the substance tested. EPA thus ordinarily will not treat failure to submit toxicological information which is essentially corroborative as an actionable violation of section 6(a)(2), but will insist on submission of any toxicological data which indicate that a pesticide may present different or greater hazards than previously identified.

(2) However, when a particular pesticide product is involved in a Special Review (RPAR) proceeding under § 162.11 of this chapter, or in suspension or cancellation proceedings under FIFRA section 6 (b) or (c), or where reregistration is underway, EPA's need for information is considerably greater. In such circumstances, the ultimate status of the pesticide depends

on a comprehensive Agency reevaluation of the pesticide's risks and benefits, including an assessment of the reliability of previously submitted material and the extent to which it has been corroborated. Thus, if a particular substance is the subject of a reregistration, Special Review (RPAR), suspension, or cancellation proceeding, EPA will treat failure to submit any toxicologial information linking that substance with any toxic or adverse effect as an actionable violation of section 6(a)(2), regardless of whether or not such information merely confirms or corroborates prior data.

(3) By the time a study is "completed," checking and validation of data should normally also be complete. The Agency will nonetheless allow the registrant a reasonable period, not to exceed 15 working days, to check for data errors which the registrant believes may have formed the basis for an opinion about what the data signify, and to seek a corresponding modification of the opinion. On the other hand, if it is not the data, but the expert analysis, conclusion, or opinion itself with which the registrant disagrees, the registrant's remedy is not to withhold the information from EPA, but to submit with the section 6(a)(2) report his own analysis of the information's significance.

§ 153.70 Incomplete toxicological studies.

(a) *Policy.* Information from an incomplete study of the toxicity to any organism of a registered pesticide product or any of its ingredients, impurities, metabolites, or degradation products which is otherwise reportable under § 153.66 must be submitted if the information is from:

(1) *Short-term studies.* A study utilizing a testing regimen lasting 90 calendar days or less, and:

(i) All testing has been completed;

(ii) A preliminary data analysis or gross pathological analysis has been conducted;

(iii) Final analysis has not been completed;

(iv) A reasonable period for completion of the final analysis not longer than 90 calendar days following completion of testing has elapsed;

(v) comparable information concerning the results of a completed study would be reportable under § 153.69; or

(2) *Long-term studies.* A study utilizing a testing regimen lasting more than 90 calendar days, and:

(i) All testing has been completed;

(ii) A preliminary data analysis or gross pathological analysis has been conducted;

(iii) Final analysis has not been completed;

(iv) A reasonable period for completion of final analysis (not longer than 1 year following completion of testing) has elapsed;

(v) Comparable information concerning the results of a completed study would be reportable under § 153.69; or

(3) *Serious adverse effects.* Any study in which testing or analysis of results is not yet complete but in which serious adverse effects have already been observed which may reasonably be attributed to exposure to the substances tested, because the effects observed in exposed organisms differ from effects observed in control organisms, are atypical in view of historical experience with the organism tested, or otherwise support a reasonable inference of causation and 15 working days have passed from the date the registrant first has the information.

(b) *Discussion of basis for policy* (1) In developing a policy regarding which failures to submit otherwise reportable information from incomplete toxicological studies should be treated as actionable violations of section 6(a)(2), EPA has determined that it is not necessary at this time to require submission of preliminary or incomplete toxicological information, except in certain specific circumstances. The criteria selected are designed to accomplish two fundamental regulatory objectives. The first objective is to provide an incentive to registrants to complete analysis of toxicological data within a reasonable time, especially if a preliminary appraisal suggests that a pesticide may present different or greater hazards than those previously identified. The second objective is to ensure that any preliminary findings are reported to EPA as soon as there is a reasonable basis for concern, even though further testing or analysis may be necessary before the observed hazard can be defined or quantified.

(2) EPA does not currently believe that it would be useful to insist on submission of preliminary or inconclusive data on a routine basis. On the other hand, no registrant who fears immediate modifications of or additions to the study protocol or fears that submission of a completed study might jeopardize any of his registrations should be permitted indefinitely to defer or postpone completion of analysis of potentially significant data. Accordingly, the Agency has designated an appropriate period—up to 90 calendar days for short-term studies, up to 1 year for long-term studies—during which the registrant may engage in further analysis designed to complete the analysis of the data prior to submission.

(3) Certain types of preliminary experimental observations and findings are sufficiently serious that they should be reported to EPA within 15 working days. In general, the Agency will not treat failure to submit information concerning any incomplete study in which testing is still underway, or for which the prescribed period for analysis of results has not yet expired, as an actionable violation of section 6(a)(2) unless serious adverse effects have been observed which are sufficiently different from effects observed in control organisms or in prior experience with the test system that the registrant may reasonably assume that the adverse effects are associated with the pesticidal substance being tested. Even though preliminary information may not always be sufficiently complete or definitive to warrant immediate regulatory action, preliminary data may indicate a need for immediate modifications of or additions to the study protocol, provide a basis for requests for further information under FIFRA section 3(c)(2)(B), or convince EPA to conduct or sponsor additional research.

(c) *Examples of how policy will be applied.* (1) A registrant conducts the first study of the acute effects of ingestion of a certain pesticide on rabbits. A prior acute study of the same pesticide using mice found that exposed mice experienced increased mortality due to liver damage. The registrant notes increased mortality of unknown origin in the exposed rabbits. Following completion of the test regimen, the registrant may take a reasonable period, not exceeding an additional 90 calendar days, for investigation of the significance and cause of the increased mortality. After that period has elapsed, failure to submit information concerning the study to EPA will be treated as an actionable violation of section 6(a)(2), regardless of whether or not the analysis is yet complete, because information concerning a completed study in which toxic effects have been observed in a different species than previously reported would be reportable. Of course, the registrant will always be entitled to supplement any initial submission with the results of subsequent analysis.

(2) A registrant conducts a 2-year study of the effects of chronic exposure to a certain pesticide on rats. Nine months after the study commences, study personnel observe that a large percentage of the exposed rats have developed ocular opacity of the type associated with formation of cataracts. None of the control rats exhibits a

comparable abnormality. Though the test is incomplete and the evidence that the pesticide is inducing cataracts is not yet definitive, the registrant may reasonably conclude that the ocular abnormalities are attributable to exposure to the pesticide, and the observed effects must be reported to EPA within 15 working days of the observation.

(3) A registrant conducts a 2-year study of the effects of chronic exposure to a certain pesticide on mice. Six months after the study commences, incidence of death of exposed animals reaches a level such that significant doubt could arise that an inadequate number of animals would be at risk from the toxicological effects of the compound at the scheduled completion date. Though a substantial portion of the test regimen has not been completed, a reasonable inference arises that the unexpected effects are attributable to exposure to the pesticide, and the observed effects must be reported to EPA within 15 working days of the observation for the reasons specified in § 153.70(b)(3).

§ 153.71 Epidemiological studies.

(a) *Policy.* Information which concerns any epidemiological study (or portion thereof) involving correlation or association between exposure to a registered pesticide (or any of its ingredients, impurities, metabolites, or degradation products) and adverse effects in humans, and which is otherwise reportable under § 153.66, must be submitted regardless of whether or not the registrant considers any observed correlation or association to be significant.

(b) *Discussion of basis for policy.* Unlike most studies, which can be designed and controlled in advance, epidemiological studies are generally retrospective in character. As a consequence, it is often difficult to assess the impact of various uncontrolled variables on the magnitude of any observed correlation, and competent experts can reasonably disagree regarding the practical significance of epidemiological findings. On the other hand, epidemiological studies can be indespensible sources of information on the critical issue of the risks associated with human exposure. Thus, it is important that EPA be able to examine independently for relevance any epidemiological information concerning pesticide exposure, and the Agency will consider any failure to provide such information within 15 working days of receipt by the registrant to be an actionable violation of section 6(a)(2). Registrants may supplement any submission of epidemiological information with a statement describing any reservations they might have concerning the information's validity or significance.

§ 153.72 Efficacy studies.

(a) *Policy: information that must be submitted.* Information which concerns any study of the efficacy of a registered pesticide product and which is otherwise reportable under § 153.66 must be submitted if:

(1) The information demonstrates that the pesticide may not perform in accordance with any claim by the registrant regarding uses intended for control of organisms which may pose a risk to human health, including any of the uses identified in § 162.163(b)(2) of this chapter; or

(2) The information concerns any deficiency or reduction in the claimed efficacy of any use of a registered pesticide, is such use is subject to a Registration Standard proceeding, Special Review (RPAR) proceeding, suspension proceeding, or cancellation proceeding as defined in § 153.69(a)(7).

(b) *Policy: information found to be erroneous.* Information which is otherwise reportable under § 153.66 and paragraph (a) of this section need not be submitted if, within 15 working days of the date the registrant first receives the apparently reportable information:

(1) The registrant discovers that any analysis, conclusion, or opinion which would have caused the information to be reportable was predicated on data that were erroneously generated, recorded, or transmitted, or on computational errors;

(2) Every author of each such analysis, conclusion, or opinion has acknowledged in writing that the analysis, conclusion, or opinion was improper because of the use of the erroneous data, and has corrected the original analysis, conclusion, or opinion accordingly; and

(3) After such corrections, the information is no longer required to be reported under any provision of this Part.

(c) *Discussion of basis for policy.* (1) In most instances, EPA will not treat the failure to submit information concerning the efficacy of a registered pesticide product as an actionable violation of section 6(a)(2) unless such information indicates that the pesticide may not perform as claimed when used to control organisms which pose a potential threat to human health. The Agency has taken the position that the utility and efficacy of many pesticide products can best be verified by the mechanism of the marketplace.

(2) However, in instances where use of a particular pesticide appears to involve substantial hazards, EPA must evaluate the efficacy of the pesticide, in addition to the magnitude and value of its use and the feasibility of substitutes, before determining whether or not the risks associated with use of the pesticide are acceptable. Accordingly, whenever any use of a registered pesticide is the subject of a Registration Standard, Special Review (RPAR), suspension, or cancellation proceeding, as defined in § 153.69(a)(7), EPA will treat failure to submit within 15 working days any study which concerns any deficiency or reduction in the efficacy of the product for the use in question as an actionable violation of section 6(a)(2).

§ 153.73 Studies of dietary or environmental pesticide residues.

(a) *Policy.* Information which is otherwise reportable under § 153.66 from studies which show that levels of any active ingredients, metabolites, or degradates of pesticides may exceed established levels on food or feed, or which show any active ingredients, metabolites, or degradates of pesticides in ground water or elsewhere in the environment other than legally treated sites, must be submitted.

(b) *Policy: information found to be erroneous.* Information which is otherwise reportable under § 153.66 and paragraph (a) of this section need not be submitted if, within 15 working days of the date the registrant first receives the apparently reportable information:

(1) The registrant discovers that any analysis, conclusion, or opinion which would have caused the information to be reportable was predicated on data that were erroneously generated, recorded, or transmitted, or on computational errors;

(2) Every author of each such analysis, conclusion, or opinion has acknowledged in writing that the analysis, conclusion, or opinion was improper because of the use of the erroneous data, and has corrected the original analysis, conclusion, or opinion accordingly; and

(3) After such corrections, the information is no longer required to be reported under any provision of this Part.

(c) *Discussion of basis for policy.* Such data are important to EPA efforts to learn about the existence and gauge the risk of pesticides in ground water and to verify or modify EPA's calculations of levels of exposure of the population to pesticides or their degradates or metabolites. Information on exposure is as important as data

which indicate the toxicological effects of pesticidal chemicals to assessment of the potential risk associated with use of a chemical. If field monitoring studies or other information is available which might allow EPA better to protect public health or assess environmental fate by refining exposure calculations, it is imperative that EPA receive it. EPA establishes permissible levels of pesticides by setting tolerances and promulgating food additive regulations under the Federal Food, Drug, and Cosmetic Act (FFDCA).

(d) *Example.* The registrant knows that the original EPA decision to register his product for use as a soil insecticide in corn fields (the only registered use) was based on the belief that no detectable residues of a particular metabolite of the product would appear in corn planted in fields treated with the product or in ground or surface waters. In January the registrant learns of a study conducted by a university scientist showing that residues of the metabolite in question have appeared in corn grown in fields which were properly treated with the product. The information must be reported to EPA, unless during a reasonable period, not to exceed 15 working days for investigation or verification, the registrant learns of facts establishing it is untrue. One means of verification would be to conduct independent field trials during the coming growing season. However, waiting for the results of field trials would require a delay of at least 9 to 10 months in reporting. Given the potentially serious import of the information already available, a 9-month delay would be unreasonably long. Alternatively, the registrant could contact the scientist who conducted the study and review the raw data for errors. A registrant should be able to complete such a review within the 15 day timeframe for submission of information to EPA.

§ 153.74 Incident reports: general policy.

Registrants may receive information from incidents, rather than from studies, which is reportable under § 153.66. This information concerns specific incidents in which (a) Toxic or adverse effects have been attributed to exposure to the registrant's pesticide product;

(b) Residues in excess of established or expected levels have been reported; or

(c) It has been asserted that the registrant's pesticide product has failed to perform as claimed against designated target organisms. This information may come to the registrant's attention through a variety of sources, including but not limited to: Product liability claims and complaints; information obtained directly, or through field representatives, from dealers, growers and pesticide users; unpublicized reports from agricultural extension agents and Federal and State regulatory agencies; information received from the general public; information received from a poison control center; and information reported by plant managers and employees. Failure to submit information of this type will be considered an actionable violation of FIFRA section 6(a)(2) only to the extent set forth in §§ 153.75 through 153.78.

§ 153.75 Toxic or adverse effect incident reports.

(a) *Policy.* Information which is otherwise reportable under § 153.66 and which is described by paragraph (a) (1), (2), or (3) of this section must be submitted.

(1) *Human incidents.* The information concerns an incident in which:

(i) The registrant has been informed that some person suffered an adverse physiological or behavioral effect (other than local damage to or irritation of the skin or eye of the type commonly associated with dermal or ocular exposure, when the label provides adequate notice of such a hazard);

(ii) The registrant has been informed that the affected person may have been exposed to the pesticide, or to one or more of its ingredients;

(iii) Either:

(A) The registrant has verified that the person did suffer an adverse effect and was exposed to the pesticide; or

(B) The registrant has received sufficient information to enable investigation of whether or not the reported adverse effect and exposure occurred; 15 working days have elapsed; and the registrant is not aware of facts which establish that the reported adverse effect or reported exposure did not occur; and

(iv) Either:

(A) The registrant has concluded that the effect resulted or may have resulted from the exposure; or

(B) The registrant has been advised by any person described by § 153.66(b)(1) (i) through (iii) that the effect may have resulted from the exposure, and is not aware of facts which conclusively establish that the reported adverse effect and reported exposure were unrelated.

(2) *Incidents involving other non-target organisms.* The information concerns an incident in which:

(i) The registrant has been informed of an adverse effect on non-target fish or wildlife, domestic animals, or plants;

(ii) The registrant had been informed that the affected fish, wildlife, domestic animals, or plants may have been exposed to the pesticide, or to one or more of its ingredients;

(iii) Either:

(A) The registrant has verified that the reported adverse effect and exposure did occur; or

(B) The registrant has received sufficient information to enable investigation of whether or not the reported adverse effect and exposure occurred; 15 working days have elapsed, and the registrant is not aware of facts which establish that the reported adverse effect or reported exposure did not occur; and

(iv) Either:

(A) The registrant has concluded that the effect resulted or may have resulted from the exposure; or

(B) The registrant has been advised by any person described by § 153.66(b)(1) (i) through (iii) that the effect may have resulted from the exposure, and is not aware of facts which conclusively establish that the reported adverse effect and reported exposure were unrelated.

(3) *Series of incidents.* The information concerns any series or pattern of individual incidents as to which:

(i) The registrant has been informed of the same kind of adverse effect on humans, non-target fish or wildlife, domestic animals, or plants; and

(ii) The registrant has been informed that the affected organisms may have been exposed to the same pesticide or to one or more of its ingredients; and

(iii) For each individual incident, either:

(A) The registrant has verified that the reported adverse effect and reported exposure did occur; or

(B) The registrant has received sufficient information to enable investigation of whether or not the reported adverse effect and exposure occurred, 15 working days have elapsed, and the registrant is not aware of facts which establish that the reported adverse effect or reported exposure did not occur; and

(iv) For each individual incident, the registrant is not aware of facts which conclusively establish that the reported adverse effect and reported exposure were unrelated; and

(v) The series or pattern of incidents would not be expected unless the reported adverse effects were caused by the reported exposures.

(b) *Discussion of basis for policy.* (1) Information concerning incidents in which toxic or adverse effects are

attributed to pesticide exposure varies considerably in specificity and accuracy. Some reports received by registrants are so vague or implausible that they would be unlikely to provide a basis for administrative action. On the other hand, some incident reports may contain unique and valuable information on the hazards and environmental impacts associated with actual use and practice, information which cannot be readily derived from laboratory data alone. Thus, the Agency has endeavored to select sets of criteria which will give practical assistance to each registrant in identifying those types of incident information which are currently needed by EPA in order to discharge properly its statutory responsibilities. Each set of criteria contains the following elements: a report of a toxic or adverse effect; a report of pesticide exposure; an opportunity for investigation of the accuracy of the reports; and a basis for an inference that the toxic effect and the pesticide exposure were related.

(2) Demonstrably inaccurate incident information need not be submitted to EPA under section 6(a)(2). If a registrant can clearly demonstrate that a reported toxic effect or pesticide exposure did not occur, or that the effect and exposure were unrelated, the Agency will not treat any failure to report an alleged incident as an actionable violation of section 6(a)(2). However, failure to investigate the accuracy of any report or allegation which could be investigated will not be considered to excuse non-compliance with section 6(a)(2). By maintaining this policy, EPA does not intend to attempt to impose any sort of duty or obligation on the registrant to investigate incident reports, but rather to accord the registrant an opportunity to investigate incident information. In any event, the responsibility for determining the significance of any potentially useful incident information which has not been either verified or conclusively rebutted must ultimately reside from with EPA.

(3) Information concerning incidents in which humans exposed to a pesticide have experienced toxic or adverse effects is extremely useful in evaluating the occupational risks associated with pesticide use, deciding whether a method of applying the pesticide should be prohibited or that labeling should be changed. Receipt of incident information regarding adverse effects in humans is particularly important because of the ethical unacceptability of deliberate clinical exposure and the difficulties associated with predicting human toxicity on the basis of animal data. Thus, EPA may consider any failure to submit incident information concerning any toxic or adverse effect in humans (except for local damage or irritation of the skin or eye warned against on the label) which includes the basic elements previously identified and which is otherwise reportable under section 6(a)(2) to be an actionable violation of FIFRA, regardless of the circumstances which resulted in the pesticide exposure.

(4) In contrast, EPA will not treat failure to submit information on any single incident involving toxic or adverse effects on other non-target organisms as an actionable violation of section 6(a)(2) if the registrant can demonstrate that the pesticide was used improperly and that the label provides reasonable notice of the risk of adverse effects of the kind reported.

(5) Incident information concerning toxic or adverse effects has little current utility for regulatory purposes and need not be submitted to EPA under section 6(a)(2) unless the information is predicated on a conclusion, opinion, or reasonable inference that the reported effects were related to pesticide exposure. Failure to submit information regarding any single incident of this type will not be treated as a violation of section 6(a)(2) unless the registrant has concluded that the reported effect may have been caused by the reported pesticide exposure, or has been advised by any person described by § 153.66(b)(1)(i), (ii), or (iii) that a causal relationship may have existed.

(6) In contrast to paragraph (b)(5) of this section, if a registrant has been informed of a series or pattern of incidents in which the same kind of toxic or adverse effects has followed exposure to the same pesticide, a reasonable inference of a causal relationship may arise from the existence of the series or pattern itself, even in the absence of a specific conclusion or expert opinion to that effect. In such circumstances, any requirement that the registrant specifically concludes or is advised that a causal relationship exists is superfluous, and registrants will be held legally accountable under section 6(a)(2) for failure to submit information reporting any series or pattern of incidents involving the same kind of toxic or adverse effects from the same pesticidal substance. Moreover, even if a series or pattern consists of incidents which would otherwise not be reportable under this policy, because each incident involves predictable effects on non-target organisms resulting from improper use, EPA will likely treat failure to report such information in an aggregate form as an actionable violation of section 6(a)(2). EPA needs this type of incident information because the existence of widespread or routine misuse of pesticide products may be a basis for changes in labeling, additional restrictions on use, or other regulatory action.

(c) *Examples of how policy will be applied.* (1) A registrant receives a report from an unidentified source indicating that an agricultural employee experienced respiratory difficulties after working in a field where a pesticide manufactured by the registrant had recently been applied. The report is sufficiently detailed to enable investigation of its accuracy. A few days later, the registrant discusses the alleged incident with a toxicologist, who states that, in his opinion, the reported respiratory symptoms could have been caused by exposure to the registrant's pesticide. The registrant will be given a reasonable period of time after that discussion, not to exceed 15 working days, to investigate the incident. If the registrant discovers within that time facts which establish that the reported adverse effects or reported exposure did not occur, or which conclusively establish that the respiratory difficulties experienced by the exposed individual were caused exclusively by some factor other than pesticide exposure, the incident need not be reported. Otherwise, information concerning the incident must be submitted to EPA because the toxicologist is a qualified expert whose opinion is reportable under FIFRA section 6(a)(2).

(2) A registrant receives a report from an agricultural extension agent indicating that fish were killed in a creek adjacent to a field where a pesticide manufactured by the registrant had recently been applied. After investigation, not exceeding 15 working days, the registrant concludes that the reported fish kill probably resulted from exposure to the registrant's pesticide. However, the registrant also discovers facts which establish that the pesticide was improperly applied by an individual who disregarded a statement on the label expressly warning against use in circumstances where contamination of surface waters might result. Any single incident of this sort need not be reported under this section.

(3) The registrant has received reports of unusually high mortality in birds feeding in or near fields where the registrant's pesticide has been applied. Though some of these reports were not specific enough to enable investigation of their acccracy, the registrant has identified a series of three or more

specific investigable incidents in which it appears that an unusual number of birds died following use of the registrant's pesticide. However, the registrant has not determined whether or not the pesticide was responsible for the observed increase in bird mortality, and no employee, consultant, or qualified expert has indicated that a causal relationship may exist. Nevertheless, the existence of the series of unexplained incidents is sufficient to support a reasonable inference of a causal relationship and excess residues, and failure to submit information concerning the incidents will be considered an actionable violation of section 6(a)(2).

§ 153.76 Failure of performance incident reports.

(a) *Policy.* Information which is otherwise reportable under § 153.66 and which is described by paragraph (a)(1) or (2) of this section must be submitted.

(1) *Immediate hazard to life.* The information concerns an incident in which:

(i) The registrant has been informed that a pesticide product did not perform as claimed against target organisms;

(ii) (A) The registrant has verified that the reported failure of performance did occur; or

(B) The registrant has received sufficient information to enable investigation of whether or not the reported failure of performance occurred, a period of 15 working days has elapsed, and the registrant is not aware of facts which establish that the reported failure of performance did not occur; and

(iii) The failure of the pesticide to perform as claimed involved any use against organisms which, unless controlled, may pose an immediate hazard to human life.

(2) *Health risk.* The information concerns a series or pattern of three or more individual incidents as to which:

(i) The registrant has been informed of the same type of failure to perform as claimed against target organisms;

(ii) For each individual incident, either:

(A) The registrant has verified that the reported failure of performance did occur; or

(B) The registrant has received sufficient information to enable investigation of whether or not the reported failure of performance occurred, a reasonable period of time, not exceeding 15 working days, for investigation has elapsed, and the registrant is not aware of facts which establish that the reported failure of performance did not occur; and

(iii) The failure of the pesticide to perform as claimed involved any use meant to control organisms which may pose a risk to human health, including any of the uses identified in § 162.163(a)(2) of this chapter.

(b) *Discussion of basis for policy.* EPA will not treat any failure to submit, within 15 working days, information concerning incidents in which a pesticide did not perform as claimed against target organisms as an actionable violation of section 6(a)(2) unless the reported failure of performance involved organisms which pose a potential threat to human health. This policy reflects a judgment by EPA that the performance of pesticide products which are not used to protect public health can usually be adequately tested by the dictates of a competitive marketplace. Moreover, except in those instances where a reported failure of performance involved use against organisms which may pose an immediate hazard to human life, it is not likely that EPA would consider any single reported incident of failure of performance to be a proper basis for regulatory action. Therefore, the Agency will not treat any failure to submit, on time, incident information concerning failure of performance against organisms which may pose a risk to public health, but do not pose an immediate hazard to human life, as an actionable violation of section 6(a)(2) unless such information concerns a series or pattern of three or more comparable failures of performance. As in the case of incident information involving toxic or adverse effects, registrants will be afforded a reasonable opportunity to investigate any reported failure of performance before such information will be considered reportable.

§ 153.77 Dietary or environmental pesticide residue incident reports.

(a) *Policy.* Information which is otherwise reportable under § 153.66 from a report of one single incident which shows that levels of any active ingredient, metabolite, or degradate of a pesticide exceeds established levels on food or feed, or which show any active ingredient, metabolite, or degradate of a pesticide in ground water or elsewhere in the environment other than legally treated sites, must be submitted.

(b) *Discussion of basis for policy.* Such data are important to EPA efforts to learn about the existence of, and gauge the risk of, pesticides in ground water and to verify or to modify EPA's calculations of levels of exposure to pesticides or their degradates or metabolites. Information on exposure is as important as toxicological data to the assessment of the potential risk associated with use of a chemical. EPA establishes permissible levels of pesticides by setting tolerances and promulgating food additive regulations under the Federal Food, Drug, and Cosmetic Act (FFDCA). Unlike the information required in § 153.73, EPA is requiring information regarding incidents to be submitted only if it shows, rather than may show, existence of excess levels of residues. Information from a single incident, or several reports of single incidents, may allow EPA to define assessments to how a pesticide is actually used in practice. It is to be noted that this section complements § 153.75 in that incidents involving improperly applied pesticides, while sometimes not reportable under § 153.75(b)(4), will be reportable under ths section if the specified excess residues result. Information showing excess residues resulting from performance studies conducted by, or on behalf of, a registrant is not considered information from an incident reportable under this section.

§ 153.78 Reporting of other information.

(a) *Policy.* Infomation of any kind other than those kinds of information described in §§ 153.69 through 153.77 must be submitted if:

(1) After a reasonable period of time for verification or investigation of the information has elapsed, not exceeding 15 working days, the registrant is not aware of facts which establish that the information is incorrect; and

(2) The registrant knows, or reasonably should know, that if the information should prove to be correct, EPA would regard the imformation alone or in conjunction with other information about the pesticide, as raising serious questions about the continued registerability of one or more uses of any of the registrant's pesticide products, or about the proper terms and conditions of registration of any such procuct.

(b) *Discussion of basis for policy.* (1) Sections 153.69 through 153.77 establish policies concerning the types of information which, insofar as EPA is aware, have been the subject of most of the inquiries made and concern expressed with regard to FIFRA section 6(a)(2). There are, however, many other categories of information which may be reportable under FIFRA section 6(a)(2) and § 153.66, including additional information concerning: the identity and amount of impurities and degradates of pesticide products in the product as sold; soil, plant, and animal metabolism;

bioaccumulation by various life forms; levels of exposure to applicators, farm workers, bystanders, food consumers, and other persons above established levels, such as those established by the American Conference of Governmental Hygienists; drift of pesticides to non-target areas; and a variety of other information which might affect EPA decisions concerning the continued registerability of a product or the appropriate terms and conditions of registration.

(2) EPA has not attempted to establish with specificity, for each category of such additional information, which failures to report information EPA will or will not treat as actionable violations of FIFRA section 6(a)(2). This Part may be modified in the future to announce a more specific section 6(a)(2) enforcement policy concerning some or all of these types of information.

(3) However, in order to provide some guidance to registrants, this Part sets forth a general policy covering all information not described by §§ 153.69 through 153.77. It allows registrants a reasonable period, not exceeding 15 working days, to verify or investigate apparently reportable information. If, during this period, the registrant learns of facts showing that the information is incorrect, the information need not be submitted and failure to report will not be considered an actionable violation of section 6(a)(2).

(4) In addition, EPA will not treat a failure to report such additional information as an actionable violation of FIFRA section 6(a)(2) unless the registrant knew, or reasonably should have known, that EPA would regard the information as pertinent to the question of whether the product's registrations should be cancelled, suspended, or modified in some respect.

§ 153.79 Office of Management and Budget approval under the Paperwork Reduction Act.

The Office of Management and Budget has approved the information collection requests in §§ 153.61 through 153.78 and assigned the control number 2070–0039.

[FR Doc. 85–22658 Filed 9–18–85; 4:09 pm]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

Amendment of Part 90 of the Commission's Rules and Regulations To Authorize Narrowband Technologies for Base and Mobile Communications in the Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects errors in the Appendix of the Report and Order in Docket No. 84–279.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Herb Zeiler, Private Radio Bureau, Rules Branch, Washington, D.C. 20554 (202) 634–2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Private land mobile radio, Radio.

Erratum

In the matter of amendment of Part 90 of the Commission's rules and regulations to authorize narrowband technologies for base and mobile communications in the private land mobile radio services; PR Docket No. 84–279.

Released: September 12, 1985.

A *Report and Order* in the above captioned matter was released by the Commission on March 29, 1985 and published in the **Federal Register** (50 FR 13596) on April 5, 1985. This Erratum corrects errors in the Appendix of that item.

1. In § 90.63(c) the frequency 150.980 MHz is corrected to read 153.410 MHz.

2. In § 90.75(b) the limitation on the 150–170 MHz band is corrected to read 24 instead of 41.

3. In § 90.75(c) the new limitation is numbered (24) instead of (41).

4. In § 90.213(a) the limitation is numbered 17 instead of 16 in both the Table and the footnotes.

Federal Communications Commission.

William J. Tricarico,

Secretary

[FR Doc. 85–22587 Filed 9–19–85; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 50, No. 183
Friday, September 20, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 480

[FHWA Docket No. 85-26]

Use and Disposition of Property Previously Acquired by Status for Non-Interstate and Withdrawn Interstate Segments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA proposes to amend its regulation concerning the use and disposition of property acquired by States, with the participation of Federal-aid highway funds, in connection with highway projects which are subsequently modified or terminated. This notice of proposed rulemaking (NPRM) supersedes an NPRM published on November 20, 1980 (45 FR 76705), but incorporates most of that NPRM's proposed changes. The 1980 NPRM proposed to amend 23 CFR Part 480 to implement the provisions of Pub. L. 96-106 which limited those situations in which States could avoid creating Federal funds (payback) where FHWA had participated in the acquisition of property for Interstate highway segments that were subsequently withdrawn. This NPRM proposes to further narrow the scope of Part 480 by eliminating situations other than Interstate withdrawals from the coverage.

DATE: Comments must be received on or before November 19, 1985.

ADDRESS: Submit written comments (preferably in triplicate) to FHWA Docket No. 85-26, Federal Highway Administration, HCC-10, Room 4205, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. e.t., Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard. Commenters are advised that only general comments on this NPRM are requested. Specific case-by-case requests for waiver of payback should not be submitted to the docket as this is a general rulemaking proceeding.

FOR FURTHER INFORMATION CONTACT: Curtis L. Shufflebarger, Chief, Interstate Management Branch, Office of Engineering, (202) 426-0404; or S. Reid Alsop, Office of Chief Counsel, (202) 426-0800. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA published its regulation on the use and disposition of highway property acquired by the States on November 17, 1978 (43 FR 54077). The regulation provided that a State need not make a credit to Federal funds if property acquired for highway purposes were reused for another public purpose, when the highway project for which the property was acquired was modified or terminated.

Subsequently, in section 2 of Pub. L. 96-106 (93 Stat. 796), Congress amended section 103(e) of Title 23, United States Code, to clarify its intent, as previously set forth in section 107(f) of the STAA of 1978 (Pub. L. 95-599, 92 Stat. 2689), with regard to repayment for Interstate segments that are withdrawn pursuant to 23 U.S.C. 103(e)(2) or 103(e)(4). Section 2(c) of Pub. L. 96-106 requires payback of the costs of construction items, materials, or right-of-way (all of which are referred to herein as property) acquired for highway projects on segments withdrawn from the Interstate System on or after November 6, 1978 (the effective date of the STAA), unless the following three conditions are satisfied: (1) The property was acquired before November 6, 1978, (2) the Secretary of Transportation had not approved the environmental impact statement for the withdrawn segment prior to the date of withdrawal, and (3) the property is used for a public purpose within ten years after the date of withdrawal. Although payback is required for properties not meeting these conditions, section 2(c) of Pub. L. 96-106 provides that the amount of payback can be reduced significantly where the State uses the property for certain other transportation projects. In these cases, the amount that must be repaid would be the difference between the amount of Federal funds actually received by the State and the amount that would have been received based on the Federal share presently applicable to the transportation project (or type of project) for which the property is used.

An NPRM published on November 20, 1980 (45 FR 76705), as Docket No. 80-7, proposed to implement these statutory changes, while leaving the policy for situations other than Interstate withdrawal unchanged. Pursuant to the President's memorandum of January 29, 1981, which, among other things, directed executive agencies to review outstanding proposals, further action was postponed on the NPRM.

While the FHWA still proposes to incorporate most of that NPRM's proposed changes into this new NPRM, the FHWA also proposes a return to its traditional policy concerning payback for situations other than Interstate withdrawals. This policy would generally require a credit to Federal funds for property previously acquired on projects, other than Interstate withdrawals, that are terminated. House Report No. 288 [1] which accompanied Pub. L. 96-106 stated that, "It is the intent of the Committee that the Department generally continue to follow the traditional ad hoc policy of the Federal Highway Administration to require the repayment of the Federal share of certain costs so as to provide for sound fiscal management and responsible stewardship of Federal funds." The FHWA position is consistent with legislation that established the Highway Trust Fund. The Highway Trust Fund is comprised of receipts from certain highway user taxes (e.g., excise taxes on motor fuel, rubber, and heavy vehicles) and is reserved for use for highway construction and related programs. This proposed change would reduce the cost of the Federal-aid highway program by preventing the diversion of these funds from transportation related improvements into other nontransportation uses.

It is proposed that payback determinations in situations other than Interstate withdrawals would no longer be covered by this regulation. Other FHWA regulations already cover certain kinds of property disposition such as excess right-of-way resulting from plan changes (23 CFR 713, Subpart C),

[1] H.R. Rep. No. 288, 96th Cong., 1st Sess. 3 (1979).

deletions of open-to-traffic segments (23 CFR 470, Subpart A), and individual project phases which do not advance to the next phase within certain time limits for reasons other than termination of the entire segment (23 CFR 630, Subpart C).

The FHWA would consider any remaining payback questions for situations other than Interstate withdrawals bassed on the traditional payback policy. These situations are expected to occur primarily where decisions are made not to complete a highway segment not yet open-to-traffic, or where a segment, not yet open to traffic, is terminated because of a major realignment. In making these payback determinations, the FHWA would take into consideration such factors as the cause for the termination, whether FHWA had agreed to the termination, and the current value of the acquired property. In any case, where property is reused for another transportation project under 23 U.S.C., the amount of funds obligated could be deobligated and replaced by other Federal-aid funds at the appropriate participation ratio.

In order to facilitate project administration in these situations, it is expected that all outstanding payback questions for situations other than Interstate withdrawals be settled, credits to Federal funds be made, and the projects be closed out as soon as possible after the effective date of the final revised rule. Any future termination would be closed out with a credit to Federal funds as soon as possible after termination. Comments are specifically requested on the proposal to handle situations other than Interstate withdrawals administratively, rather than through regulation.

Besides the fundamental change proposed in the applicability of these regulations, other significant proposed changes include the following: (1) The reuse of the previously acquired property would actually have to begin within 10 years of the date of withdrawal, (2) transfer of property to a private party without making payback would be further limited, and (3) the FHWA would expect to receive a pro rata share of the proceeds from any leasing and/or sale of the property to the public or private sector.

Comments Received on Previous NPRM

The FHWA received nine comments on the earlier NPRM (FHWA Docket No. 80–7). The most prevalent comment concerned the transfer of property back to previous owners at less than current fair market value where required by State law. No change was considered necessary in this NPRM since § 480.109(b)(2) continues to permit States to propose that the credit to Federal funds be based on such a sale.

One commenter asked for more examples of what were considered "intangible items." Additional examples have been added to the definition in § 480.105. Another commenter requested a change in that section of the current regulation (§ 480.109(a)) that calls for the Administrator to provide property disposition instructions. The proposed regulation now provides that the State rather than the FHWA would establish a disposition method.

Another commenter felt that the FHWA exceeded the authority of the statute by calling for payback to be based on current fair market value or sales proceeds, rather than on original costs. The FHWA believes the proposed method (which is unchanged from the existing) is fair to both the State and the FHWA since it does not penalize the State when property values go down, nor does it allow the State to reap a windfall when property values go up.

Another commenter hoped that the FHWA would encourage the State to reuse the property in such a way as to compensate for other environmental losses (e.g., reuse as parklands). While a park reuse of property originally acquired for an Interstate highway would, under certain circumstances, meet the requirements of the currently proposed regulation for waiver of payback, the FHWA will not attempt to intefere with a State decision concerning reuse of property originally acquired for Interstate highway purposes.

Section-by-Section Analysis

This analysis discusses the proposed revisions to 23 CFR 480. In general, all references to situtations other than Interstate withdrawals would be eliminated. Also, real property and tangible personal property would generally be covered under the term "property" since the statute treats them the same for purposes of payback. This latter change would simplify existing procedures. Unless otherwise noted, all references below are to the sections of this NPRM rather than the existing regulation.

Section 480.101 Purpose.

This section narrows the scope of the proposed regulation to cover only Interstate withdrawals and emphasizes that FHWA's role is one of determining if a payback is required rather than approving or disapproving reuse of property which the State owns.

Section 480.103 Applicability.

This proposed regulation would apply only to that property in cases of Interstate withdrawal where the FHWA has not yet made a payback determination under the existing regulation (§§ 480.107, 480.109, or 480.111) as of the effective date of the new rule. Accordingly, all outstanding Interstate withdrawals would be covered by the payback regulation in existence at the time a payback determination is made by FHWA rather than by the regulation existing at the time of withdrawal. Similarly, for situations other than Interstate withdrawals, the existing regulation will govern only if the final payback determination is made by FHWA before the effective date of this rule. Subsequent determinations will be based on the traditional FHWA policy. The payback determination by FHWA is an important decision point and it is proposed that FHWA not reopen these closed cases. It is proposed that a sentence be added to clarify that the proposed regulation covers both individual submissions for each piece of property and comprehensive plans covering most or all of the property to be reused.

It is proposed that paragraph (b) of the existing regulation be eliminated as no longer necessary. Proposed paragraph (a) would make this regulation applicable only to Interstate withdrawals under 23 U.S.C. 103(e)(2) or (4).

The FHWA proposes to add a sentence to new paragraph (b) (paragraph (c) of the existing regulation) explaining what action the FHWA will take if property is not put to a reuse within 10 years of the withdrawal date, or if the State does not make a proposal for waiver of payback within that same period. The remaining part of this paragraph is unchanged except as affected by the redefinition discussed below.

Section 480.105 Definitions.

It is proposed that a definition of "Acquired" be added. This regulation only covers property actually acquired by the State as a result of project activities up through the withdrawal date, since the FHWA would not reimburse the State for any acquisition made after the withdrawal date regardless of the authorization date of the project.

It is proposed that the definition of "Applied to a reuse under this part" be changed. The 10-year deadline contained in § 480.103 of this proposed

rule is important in determining applicability of the regulation. Currently, only a "proposal" for reuse has to be submitted within 10 years of withdrawal. The actual reuse then has to be made "expeditiously" in a time period agreed to by the State and FHWA. Under the proposed definition, actual reuse would have to begin within 10 years. No additional intermediate time limit would be placed on the submission of the proposal. The 10-year time limit would be met if physical construction for an individual reuse is undertaken or a reuse (not involving construction) is actually begun. For example, grading is started for a park project, or excavation is started for a hospital building foundation, or ground is broken for a structure which will use previously acquired reinforcing steel. The FHWA believes this is consistent with congressional intent. The 10-year deadline is similar to the 10-year deadline used in 23 U.S.C. 108, which calls for the start of actual highway construction within 10 years of right-of-way acquisition. This proposed change should result in land now vacant being put back into productive use at an earlier date. As proposed, the project status could be checked at the 10-year deadline, and the final settling of accounts could take place. Currently, the waiting period for reuse to begin can be delayed indefinitely and can impose administrative burdens on FHWA and the State.

The proposed definition of "Intangible items" would provide additional examples to clarify what is meant by this term.

It is proposed that a definition of "Property" be added, consolidating the existing definitions of real property and tangible personal property, and emphasizing that once construction items are incorporated into the job, they lose their identity and become part of the real property. This definition encompasses the terms "construction items," "materials," and "rights-of-way" used in the statute.

Section 480.107 Reuse of property.

The title of this section is proposed to be changed by replacing the term "real property" with the more general term "property." This section would then encompass both real property (currently covered under existing § 480.107) and tangible personal property (currently covered under existing § 480.111).

The most important change proposed for this section would be the addition of paragraph (a) identifying the property to which this section would apply.

In paragraph (b) the language of the statute (section 2(c) of Pub. L. 96–106) would be substituted for the language of existing paragraph (a) to describe those reuses to which property could be applied without a credit to Federal funds.

The information to be submitted by the State to justify a request for payback waiver is proposed to be changed. A distribution table is provided to aid in following the proposed changes:

Existing Section	Proposed Section
480.107(b)(1)	Deleted
480.107(b)(2)	Deleted
480.107(b)(3)	Deleted
480.107(b)(4)	480.107(c)(1)
480.107(b)(5)	Deleted
480.107(b)(6)	480.107(c)(2)
480.107(b)(7)	Deleted
480.107(b)(8)	480.107(c)(3)
480.107(b)(9)	480.107(d)(5)
None	480.107(d)(1)
None	480.107(d)(2)
None	480.107(d)(3)
None	480.107(d)(4)
480.115 (part)	480.107(c)(4)

Also, although not mandated, States would be encouraged to submit, to the extent possible, a comprehensive reuse plan covering all property to be reused, rather than individual submissions for each piece of property. This would allow individual reuses to be seen in relation to proposed uses of other property.

Existing paragraph (b)(1) would be eliminated. Under the Federal-aid highway program, property may only be acquired for highway related purposes. Accordingly, requiring a State certification to that effect, at this stage, is considered unnecessary.

It is proposed that existing paragraphs (b)(2) and (b)(3) relating to the future need of property for highway purposes be eliminated. They are no longer considered necessary since the circumstances surrounding the withdrawal will already be known to FHWA.

Proposed paragraph (c)(1) would be reworded to make it compatible with proposed paragraph (b). Also, a sentence has been added to emphasize that only property actually needed for a proposed reuse should be covered in the submission. Land banking or the simple transfer or swap of the property to another agency for unspecified uses is not in itself a "reuse" as envisioned by the proposed regulation.

The FHWA can waive payback in situations where property is applied to a "public purpose . . . in the public interest." Proposed paragraph (c)(1) would indicate how FHWA believes this condition is best met. Since it is conceivable that some reuses by private parties could meet this criteria, a payback waiver based on such a reuse would not be prohibited. However, some of the factors that FHWA proposes to take into account in determining payback in a particular situation would be: Does a property value estimate establish that the property has little or no value? Does the property generate little development interest by the private sector based on open competition? In such cases, as a last resort, FHWA may consider the transfer of property to private parties without monetary consideration and without a credit to Federal funds. However, FHWA proposes that normally transfers to private parties occur under market conditions, and Federal funds be credited.

It is proposed that existing paragraph (b)(5) concerning approvals by local officials and (b)(7) concerning consistency with State law be eliminated. They serve no purpose since State or local laws applicable to reuse of the property would contain their own enforcement mechanism. It is also proposed that the FHWA add no requirements or prescriptive details beyond those already required by the State or local governments. Once a highway segment is withdrawn, subsequent reuse is not considered a Federal undertaking merely because the land, when originally acquired, was purchased with Federal-aid highway funds. It is up to the State, acting within the limits of State or local law, to propose a reuse that can be implemented within the 10-year period required for a waiver of payback.

Proposed paragraph (c)(3) would no longer include an assurance that the reuse will be made expeditiously, since the proposed 10-year requirement for actual reuse to begin in § 480.103(b) would establish a specific time limit. Proposed paragraph (c)(3) retains the requirement that a change in reuse, after the initial payback determination by the FHWA, will necessitate a resubmission of the information required in paragraph (c) insofar as it applies to the new reuse. The FHWA is concerned about the problems inherent in monitoring changes in reuse occurring after the initial payback determination. FHWA will hold the State ultimately responsible for any changes in reuse that may cause payback to be required. When the property is transferred by the State to another political subdivision, reverter clauses, title restrictions, etc., could be included in the deed to ensure that the reuses which formed the basis of payback waiver are carried out.

Proposed paragraph (c)(4) would create no new requirements. Rather, it would clarify an assurance already required under the existing § 480.113

and would move it to a more appropriate section of the regulation. This obligation would apply only to those who could have qualified as "displaced persons" as a result of the original acquisition for highway purposes.

It is proposed that paragraphs (d) (1), (2), and (3) be added requesting the acquisition date, withdrawal date, and final environmental impact statement approval date (if any), to ensure that the property, for which payback forgiveness is being requested, meets the applicability requirements.

It is also proposed that a statement of the original amount of Federal funds expended for the property (excluding costs for intangible items) be submitted in future proposals under paragraph (d)(4). This additional information would ensure that the FHWA would have all pertinent information in determining if a credit to Federal funds is required.

Proposed paragraph (f)(1) (formerly paragraph (d)(1)) would be reworded to clarify that the determination requiring consistency of a proposed reuse with Federal statutes is only necessary with regard to Federal statutes applicable to State and local federally assisted undertakings.

Paragraph (h) is proposed to be added to require a credit to Federal funds in those cases where property is kept in public or quasi-public ownership but payment is received in transferring title, or rent is generated via leases to private developers, etc. The FHWA does not require a credit to Federal funds for some reuses in order that the savings may be passed along to assist the State in reusing the property. However, it is proposed that the FHWA share in any income that is received by the State or political subdivision. The FHWA proposes that the State should not profit at the expense of the Federal interest.

Intergovernmental credits for property transfers between State governmental agencies are generally not considered to constitute "Payment" or "income". Further, local governments are often considred to be creatures of State law and subdivisions of the State, even though such local governments usually have separate budgets and revenue. Comments are specifically requested as to whether this proposed section should apply to payments that may be received for transfers between State agencies or from a State to a local government.

Section 480.109 Requirement of credit to Federal funds.

Proposed paragraph (a) identifies the property to which this section would apply. This section would incorporate the provisions of section 2(c) of Pub. L. 96–106 which identify property for which payback would always be required. Proposed paragraph (a)(4) would cover those cases where the State, whatever reasons, simply chooses to credit Federal funds.

It is proposed that paragraph (b) be reworded to reflect the State-Federal relationship in the highway program, where the State rather than the FHWA would determine a disposition method. It is also proposed that paragraph (b)(2) include a sentence clarifying what the FHWA considers to be "reasonable" fix-up expenses.

This proposed section would include new paragrpah (b)(3) which would implement an important provision of section 2(c) of Pub. L. 96–106. That provision provides an incentive for States to reuse property for transportation projects permissible under 23 U.S.C. by reducing the credit to Federal funds that would otherwise be required. If property were reused for such a purpose, instead of requiring a pro rata share of the current fair market value or of the sales proceeds received for a property, the FHWA would require payback only for the difference betweeen the Federal share applicable to the original acquisition and the Federal share applicable to the proposed transportation project. For example, if property originally acquired for a Federal-aid Interstate project costs $1 million, 90 percent of the cost or $900,000 would normally have been the amount of Federal funds provided. If the propertyb instead is used for a Federal-aid primary highway project, then the Federal funds would normally be 75 percent of the cost or $750,000. In such a case, only $150,000 ($900,000–$750,000) would have to be credited to Federal funds. (If the property applied to a project which will not involve Federal highway funds, then the Federal share, for the purpose of this calculation, will be the lowest participation rate that could have been applied to the project.)

The State will be required to provide much of the same information noted in § 480.107 to take advantage of this provision.

Existing § 480.111 Disposition and use of tangible personal property.

It is proposed that existing § 480.111 which applies to the disposition of tangible personal property be deleted from the proposed rule since both real and tangible property are now covered by § 480.107. At the same time, it is proposed that the exemption and deduction provisions in existing paragraph § 480.111(b) not be continued, but that normal Federal-aid billing procedures, which account for all project credits and changes, be used to simplify handling of these cases.

Section 480.111 Credit to original class of fund.

It is proposed that minor changes in wording be made to better indicate the mechanism involved in increasing the State's unobligated balance of Federal-aid funds after a credit to Federal funds is made.

Section 480.113 Relocation assistance.

It is proposed that the assurance previously required by the section be revised slightly and shifted to § 480.107(c)(4) for purposes of clarity. In addition, a two year period after the effective date of the regulation or after approval of a withdrawal (whichever is later) is established as a reasonable time limitation for Federal-aid participation in relocation assistance payments. This would replace the previous provision which permitted the FHWA to establish a date "considered equitable," prior to the time a State sells or disposes of the property, when the FHWA's relocation obligation would end. The Federal Highway Administrator could approve an extension beyond two years if such an extension was demonstrated to be in the public interest. In any case, Federal participation in relocation assistance would not extend beyond the time a payback waiver is granted, or the time a State sells or disposes of the property, whichever occurs first.

Section 480.115 Property management.

It is proposed that this section be modified to emphasize that generally the FHWA will not participate in costs unrelated to the original highway project. In addition, a maximum two year Federal participation period is proposed; identical to that described in § 480.113 above. Comments are specifically requested on the proposals in this section and in § 480.113 to establish a maximum two year participation period.

Section 480.117 Intangible Items.

No substantive changes.

The FHWA has determined that this document contains neither a major proposal under Executive Order 12291 nor a significant proposal under DOT regulatory procedures. The impact of this proposal would fall primarily on State Highway agencies. For this reason and under the criteria of the Regulatory Flexibility Act, it is certified that this action, if promulgated, would not have a significant economic impact on a

substantial number of small entities. The FHWA has prepared a draft regulatory evaluation which is available for inspection in the rulemaking docket (No. 85–26, Room 4205). Copies of the regulatory evaluation may be obtained by contacting Mr. Curtis L. Shufflebarger, at the address provided above under the heading "For Further Information Contact."

(Catalog of Federal Domestic Assistance Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation and Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 480

Grant programs—transportation, Highway projects—withdrawal, Highways and roads, Intergovernmental relations, Mass transportation, Rights-of-way.

Issued on: September 13, 1985.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

In consideration of the foregoing, the FHWA proposes to revise 23 CFR Part 480 to read as follows:

PART 480—USE AND DISPOSITION OF PROPERTY PREVIOUSLY ACQUIRED BY STATES FOR WITHDRAWN INTERSTATE SEGMENTS

Sec.

480.101 Purpose.
480.103 Applicability.
480.105 Definitions.
480.107 Reuse of property.
480.109 Requirement of credit to Federal funds.
480.111 Credit to original class of fund.
480.113 Relocation assistance.
480.115 Property management.
480.117 Intangible items.

Authority: Sec. 2, Pub. L. 96–106, 93 Stat. 796 (23 U.S.C. 103(e)(5), (6), (7)); section 107(f), Pub. L. 95–599, 92 Stat. 2689 (23 U.S.C. 103(e)(5), (8)); 23 U.S.C. 315; 49 CFR 1.48(b).

§ 480.101 Purpose.

This part addresses the extent to which a credit to Federal funds (payback) will be required for property acquired by States with the participation of Federal-aid highway funds when an Interstate segment for which the property was acquired is subsequently withdrawn under section 103(e)(2) or (e)(4) of Title 23, United States Code.

§ 480.103 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to property acquired with the participation of Federal-aid highway funds for any project on a Federal-aid Interstate segment which is subsequently withdrawn and where the Federal Highway Administration (FHWA) has not previously determined if a credit to Federal funds would be required for such property prior to the effective date of this part. This part applies to both individual submissions for specific pieces of property and comprehensive reuse plans for all property, depending on the extent of the State's submission.

(b) The provisions of § 480.107 concerning payback waiver and § 480.109(b)(3) concerning payback reduction apply only to property which has been or will be applied to a reuse under this part, as determined by the FHWA, within 10 years of the withdrawal of the Interstate segment in connection with which it was acquired. Lacking a submission by the State for waiver of payback within 10 years of withdrawal and actual reuse within 10 years of withdrawal, the FHWA will require that the pro rata share of the current fair market value of the property be credited to Federal funds.

(c) Nothing in this part shall be considered to affect or conflict with the obligations of States with respect to the right-of-way (ROW) revolving fund pursuant to 23 U.S.C. 108(c).

§ 480.105 Definitions.

For purposes of this part:

"Acquired" in the case of real property means that title has been passed to the acquiring agency, or a legal obligation to complete the purchase of such real property has been established; or, in the case of construction, that work has been performed, or materials obtained, and payment is due under the contract provision.

"Applied to a reuse under this part" means that construction leading to the reuse, or the reuse itself, has begun on the real property or that construction leading to the reuse, or the reuse iteslf, has begun on the site where the construction items and materials will be incorporated into another project.

"Intangible items" means items having no physical existence or recoverable value, e.g., preliminary engineering, construction engineering, appraisals, relocation payments, etc.

"Property" means land, and/or interests therein, including improvements, structures and appurtenances thereto, and any other acquired items having a physical existence but not yet physically incorporated into the project (such as construction items, materials, movable equipment and machinery).

§ 480.107 Reuse of property.

(a) This section applies to:

(1) Property acquired in connection with an Interstate highway segment withdrawn before November 6, 1978; or

(2) Property acquired before November 6, 1978, in connection with an Interstate highway segment withdrawn on or after November 6, 1978, if the final environmental impact statement for the segment had not been approved prior to the date of withdrawal.

(b) When property to which this section applies is no longer needed for the Interstae highway project for which it was acquired because of withdrawal of such Interstate segment, the State may, subject to the provisions of this section, reuse the property without being required to make payback, for:

(1) A transportation project permissible under Title 23, United States Code;

(2) A public conservation or public recreation purpose; or

(3) Any other public purpose determined by the FHWA to be in the public interest.

(c) In order to request a waiver of payback for reuse of the property without being required to make a credit to Federal funds, the State shall submit to the FHWA the following information (States are encouraged to submit a comprehensive reuse plan, covering all property, rather than individual submissions for each piece of property):

(1) a description of how the State, or political subdivision thereof, or any of their agencies or instrumentalities, has reused or proposes to reuse the property and how such use satisfies paragraph (b) of this section. Only that property actually needed for a known reuse will be considered for waiver of payback. The intent if the property is reused for publicly owned and operated facilities providing government services. To this end, the State shall indicate if any of the property involves was or will be transferred directly or indirectly to any private party in connection with the reuse. The State shall justify to the FHWA why reuse by a private party, without a requirement for credit to Federal funds, is considered a public purpose in the public interest. As a minimum, justification for such a transfer would have to show that property value estimates indicate the property has nominal value, and/or that proposals to competitvely dispose of the property have generated little market interest.

(2) A certification that the current rights under State law of persons owning the real property immediately

prior to such property being obtained by the State have been observed;

(3) An assurance that no major alteration in the reuse will be made without resubmitting the particulars of the individual case to the FHWA for another payback determination; and

(4) An assurance that the State will assume all obligations within respect to providing relocation assistance benefits to those persons described in § 480.113 after the FHWA's obligations are terminated in accordance with § 480.113.

(d) The State should also make the following information available in order to facilitate processing of a payback determination:

(1) The date the property was acquired;

(2) The withdrawal date of the Interstate segment for which the property was acquired;

(3) The approval date of any final environmental impact statement for the Interstate segment for which the property was acquired;

(4) The amount of Federal funds expended for the property to be reused; and

(5) Any additional related information requested by the FHWA.

(e) Based on the submission, the FHWA will determine if the State is required to make a credit to Federal funds.

(f) Besides making the basic determination of whether or not the reuse satisfies paragraph (b) of this section, the FHWA will require a credit to Federal funds with respect to property if:

(1) The reuse is inconsistent with any Federal statute applicable to State/local undertakings not federally assisted;

(2) The certifications and assurances required by paragraph (c) of this section are not made;

(3) The property is to form, or its value is to form, part of the State or local matching share with respect to any Federal program; or

(4) The property is transferred to any private party, unless the FHWA determines that such a reuse, without a requirement for a credit to Federal funds, is for a public purpose in the public interest.

(g) If the FHWA determines that the assurances required by paragraph (c) of this section have not been observed, the FHWA will require that a credit to Federal funds be made as provided in § 480.109.

(h) While the FHWA does not require that the State be compensated for property reused by others under this section, should there be a payment to the State for sales, leases, rents, intergovernmental credits, etc., the State shall credit Federal funds at the same pro rate share as Federal funds participated in the original acquisition. The credit to Federal funds shall be made as soon as practicable after money or credit is received.

§ 480.109 Requirement of credit to Federal funds.

(a) This section applies to:

(1) Property for which the FHWA, under § 480.107, has determined that a credit to Federal funds must be made;

(2) Property acquired before November 6, 1978, in connection with an Interstate highway segment withdrawn on or after November 6, 1978, if the final environmental impact statement for the segment had been approved prior to the date of withdrawal;

(3) Property acquired on or after November 6, 1978, in connection with a segment withdrawn from the Interstate System; or

(4) Property described in § 480.107(a) for which the State elects not to request a waiver of payback.

(b) With respect to property to which this section applies, the State shall credit Federal funds, as soon as practicable, in the following manner:

(1) If the property is retained or transferred without cost, in an amount computed by applying the Federal percentage of participation in the cost of the original acquisition to the current fair market value of the property.

(2) If the property is sold, in an amount computed by applying the Federal percentage of participation in the cost of the original acquisition to the sale proceeds (after deducting actual and reasonable selling or fix-up expenses). Fix-up expenses are limited to the extent that they are reasonably expected to increase the value of the property by at least the amount of the fix-up expenses. The credit to Federal funds shall be based on sales procedures which, unless otherwise agreed to by the FHWA, provide for competition to the maximum extent practicable and are designed to result in the highest possible return.

(3) If the property described in paragraphs (a)(2) or (a)(3) of this section has been or will be reused for another transportation project permissible under 23 U.S.C., in an amount equal to the difference between the funds the FHWA actually reimbursed the State for the property and the funds that would have been reimbursed in accordance with the current Federal share applicable to the transportation project to which the property will be applied. If the amount that would have been reimbursed is greater than the amount that was actually reimbursed, the difference will be considered zero. States shall provide to the FHWA the information required by § 480.107(c) and should provide the information requested by § 480.107(d) as soon as practicable after State has determined how the property will be reused.

§ 480.111 Credit to original class of fund.

An amount equivalent to the Federal funds paid back pursuant to this part will then be credited to the unobligated balance of the same class of funds to which the original acquisition of the property was attributable in the manner set forth in 23 U.S.C. 118(b).

§ 480.113 Relocation assistance.

With respect to owner-occupants, tenants, business owners, and farm operators whose property had been acquired in connection with a federally assisted highway project, who are still in occupancy, and who could have qualified as displaced persons if they had moved prior to the date of withdrawal, the obligations of the FHWA under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4601 *et. seq.*) will not extend beyond two years after the effective date of this regulation or two years after a withdrawal approval (whichever occurs later) unless the Federal Highway Administrator determines that an extension beyond two years is in the public interest. In any case, Federal participation will not extend beyond the date the FHWA determines that no credit to Federal funds is necessary for a reuse of the property or the date the State sells or otherwise disposes of the property.

§ 480.115 Property management.

Rules or standards of property management normally applicable to property obtained with the participation of Federal-aid highway funds shall continue to apply to the management of property acquired by States in connection with the project after withdrawal of the Interstate segment. These rules or standards shall cease to apply to the property two years after the effective date of this regulation or two years after a withdrawal approval (whichever occurs later) unless the Federal Highway Administrator determines that an extension beyond two years is in the public interest. The FHWA may, at its discretion, participate in the net costs of property management and in other costs related to the acquisition of the property or withdrawal of the highway project that are incurred. Costs associated with the

design and development of the property for other uses (such as developing a reuse plan or site development costs) are not considered property management costs. In any case, Federal participation will not extend beyond the date of a determination by the FHWA that no credit to Federal funds is necessary for a reuse of the property or the date the State sells or otherwise disposes of the property.

§ 480.117 Intangible items.

States are not requird to make a credit to Federal funds for intangible items for which the State had expended Federal-aid highway funds in connection with an Interstate segment which is later withdrawn.

[FR Doc. 85-22549 Filed 9-19-85; 8:45 am]
BILLING CODE 4910-22-M

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23 CFR Part 637

[FHWA Docket No. 85-6]

Sampling and Testing of Materials and Construction

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA is requesting comments on proposed revisions to its regulation which establishes general requirements for the sampling and testing of materials and construction on Federal-aid highway projects. The proposed revisions will clarify existing policy and procedures and provide additional guidance in the areas of acceptance sampling and testing, laboratory inspection program and materials certifications.

DATE: Comments must be received on or before November 4, 1985.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 85-6, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., ET., Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. P.E. Cunningham, Chief, Construction and Maintenance Division, (202) 426-0392, or Mr. Hugh T. O'Reilly, Office of the Chief Counsel, (202) 426-0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: Subpart B of 23 CFR Part 637 establishes general requirements and procedures related to sampling and testing of materials and construction of Federal-aid highway projects. The sampling and testing programs to provide assurance that all materials and construction on Federal-aid highway projects comply with the specifications. The proposed revisions will clarify and further delineate policy and procedural requirements which are already in effect.

Reviews conducted by the FHWA from 1981 through 1984 have identified several points of misinterpretation of requirements, particularly in the independent assurance sampling and testing requirements. The proposed revisions will clarify these requirements and provide additional guidance in the areas of acceptance sampling and testing, laboratory inspection programs and material certifications. The proposed revisions will not result in any significant additional actions or procedural changes in the standard operating procedures currently being used by the State and local highway agencies.

The proposed revised regulation will include the following changes:

1. Section 637.203 will be revised to include the provision that acceptance sampling and testing be performed by State personnel or its representatives. The current definition does not specifically state who is to do the sampling and testing. This change will clarify that the State is the responsible party.

2. Section 637.205 will be revised to emphasize that all State highway agencies are required to participate in the regular laboratory inspection and comparative sample testing program provided by the National Reference Laboratories or another provided equally nationally recognized authority. This is to provide assurance that the State's sampling and testing equipment and procedures are reliable and repeatable. Currently, all State highway agencies voluntarily participate in this program, however, due to recent budget constraints, several have considered discontinuing this service. We believe participation in this type program is essential to assure State laboratory capability.

3. Section 637.207(d) will be revised to emphasize the requirement for comparison, including documentation, of acceptance test results with independent assurance test results. In order for the independent assurance program to be effective, comparisons to acceptance test results must be made and in a timely manner. Recent investigations have shown that those comparisons were not actually made in some cases. This requirement for comparison documentation would assure the proper comparisons.

4. New § 637.209 will be added which provides for a Laboratories Inspection Program. Each State shall have its own headquarters laboratory included in a regular inspection and comparative sample testing program by a nationally recognized authority as described in § 637.205. Each State shall authorize the inspecting authority to submit copies of all inspection reports to the FHWA. This will allow monitoring of the program described in § 637.205. The inspection reports are developed by the inspecting authority so no additional effort is required by the State highway agencies.

5. Appendix A, Guide Letter of Certification By State Engineer, will be revised to provide for the explanation of exceptions to the certification on the back of the letter. Identification of these exceptions to the specifications will facilitate their review and judgment of their acceptability.

The FHWA has determined that this action does not contain a major proposal under Executive Order 12291 or a significant proposal under the regulatory policies and procedures of the Department of Transportation. The proposed revisions do not impose any new mandatory standards on State and local governments, but would provide general program direction and recommended criteria. The anticipated economic impact of this proposal is so minimal as not to require preparation of a full regulatory evaluation. For the foregoing reasons and under the criteria of the Regulatory Flexibility Act, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing, and under the authority of 23 U.S.C. 109, 114, and 315; 49 CFR 1.48(b), the FHWA hereby proposes to amend Chapter I of Title 23, Code of Federal Regulations, by revising part 637, Subpart B to read as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 637

Construction project—sampling and testing, Grant program—transportation, Highways and roads, Materials testing.

Issued on: September 13, 1985.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

Part 637 is amended by revising Subpart B to read as follows:

PART 637—CONSTRUCTION INSPECTION AND APPROVAL

Subpart B—Sampling and Testing of Materials and Construction

Sec.

637.201 Purpose.
637.203 Definitions.
637.205 Policy.
637.207 Sampling and testing program.
637.209 Laboratory inspection program.

Appendix A—Guide Letter of Certification by State Engineer.

Authority: 23 U.S.C. 109, 114, and 315; 49 CFR 1.48(b).

Subpart B—Sampling and Testing of Materials and Construction

§ 637.201 Purpose.

The purpose of this regulation is to prescribe policies, procedures, and guidelines relating to sampling and testing of materials and construction in Federal-aid highway projects.

§ 637.203 Definitions.

(a) The term "acceptance samples and tests" means all of the samples and tests performed by a State's personnel or its representatives used for determining the quality and acceptability of the materials and workmanship which have been or are being incorporated in the project.

(b) The term "independent assurance samples and tests" means independent samples and tests or other procedures performed by State personnel who do not normally have direct responsibility for process control and acceptance sampling and testing. They are used for the purpose of making inddependent checks on the reliability of the results obtained in acceptance sampling and testing and not for determining the quality and acceptability of the materials and workmanship.

(c) The term "national reference laboratories" means the American Association of State Highway and Transportation Officials (AASHTO) Materials Reference Laboratory (AMRL) and the Cement and Concrete Reference Laboratory (CCRL).

§ 637.205 Policy.

(a) *Sampling and testing program.* It is the policy of Federal Highway Administration (FHWA) that each State highway agency shall develop a sampling and testing program which will provide assurance that the materials and workmanship incorporated in each Federal-aid highway construction project are in reasonably close conformity with the requirements of the approved plans and specifications, including approved changes. The program must meet the criteria in § 637.207, and be approved by the FHWA.

(b) *Laboratory inspection program.* It is the policy of FHWA that all State highway agencies participate in the regular laboratory inspection and comparative sample testing program provided by the National Reference Laboratories as described under § 637.203(c) or an approved equal.

§ 637.207 Sampling and testing program.

Each State's acceptance and independent assurance sampling and testing program shall provide for the following:

(a) The specific location in the construction or production operation at which sampling and testing is to be done.

(b) Frequency guide schedules for acceptance and independent assurance sampling and testing which will give general guidance to personnel responsible for the program, yet give them reasonable latitude for adaption to specific project needs.

(c) Independent assurance sampling and testing shall be performed by personnel who have no direct responsibility for acceptance sampling and testing using test equipment other than that assigned to the project. The program may permit a reasonable portion of the independent samples and tests to be accomplished by independent observation of the acceptance sampling and testing.

(d) A prompt comparison of acceptance test results with independent assurance test results and documentation of that comparison.

(e) The preparation and submission of a material certification, conforming in substance to Appendix A of this regulation, to the FHWA Division Administrator for each construction project.

§ 637.209 Laboratory inspection program.

(a) Each State shall have its central laboratory included in a regular laboratory inspection and comparative sample testing program such as that provided by the National Reference Laboratories.

(b) Each State is required to authorize the National Reference Laboratories, or the other laboratory used in its laboratory inspection program, to submit copies of all laboratory inspection reports to the appropriate regional and division offices of FHWA.

Appendix A

Guide Letter of Certification by State Engineer

Date _____
Project No. _____

This is to certify that:

The results of the tests on acceptance samples indicate that the materials incorporated in the construction work, and the construction operations controlled by sampling and testing, were in reasonably close conformity with the approved plans and specifications; and such results compare favorably with the results of the independent assurance sampling and testing.

Exceptions to this certification are explained on the back hereof (or on attached sheet).

_____

Director of Laboratory or other Appropriate State Official.

[FR Doc. 85–22550 Filed 9–19–85; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Proposed Public Comment Period and Opportunity for Public Hearing on Amendment to the Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for requesting a public hearing on the substantive adequacy of a proposed amendment submitted by the Commonwealth of Virginia as a modification to its permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of two new State regulatorty definitions necessary to allow Virginia to require that all coal processing activities associated with surface coal mining and reclamation operations be permitted without regard to geographic proximity or whether the processing activity

involves the separation of coal from its impurities.

This notice sets forth the times and locations that the Virginia program and proposed amendment will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing.

DATES: Written comments from the public not received by 4:00 p.m. on October 21, 1985, will not necessarily be considered in the decision process. A public hearing on the proposed amendment has been scheduled for 1:00 p.m. on October 10, 1985 in the conference room of the Lebanon Area Office of the Office of Surface Mining, Flannagan and Carroll Streets, Lebanon, Virginia. Any person interested in making an oral or written presentation at the hearing should contact Mr. William Thomas at the OSM Big Stone Gap Field Office by 4:00 p.m. on October 7, 1985. If no one expresses an interest in participating in the hearing by this date, the hearing will not be held. If only one person has so contacted Mr. Thomas, a public meeting, rather than a hearing, may be held; the results of the meeting will be included in the administrative record.

ADDRESSES: Written comments and requests for a hearing should be mailed or hand-delivered to: Mr. William Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Big Stone Gap, Virginia 24219.

Copies of the Virginia program, the proposed modifications to the program, and the administrative record of the Virginia program are available for public review and copying at the OSM offices and the State regulatory authority office listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting the OSM Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 626, Big Stone Gap, Virginia 24219, Telephone: (708) 523–4303

Office of Surface Mining Reclamation and Enforcement, Lebanon Area Office, Flannagan and Carroll Streets, P.O. Box 487, Lebanon, Virginia 24266, Telephone: (703) 889–4032

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, N.W., Room 5124, Washington, D.C. 20240, Telephone: (202) 343–4855

Virginia Division of Mined Land Reclamation, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone: (703) 523–2925

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Virginia program on December 15, 1981. Information pertinent to the general background, revisions, modifications and amendments to the permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Virginia program can be found in the December 15, 1981 **Federal Register** (46 FR 61088–61115). The program has been amended several times since approval; information concerning the amendments may be obtained from the agency offices listed under "**ADDRESSES**".

II. Submission of Amendment

On July 10, 1985, OSM published an interim final rule to clarify the effects of a judicial decision concerning the applicability of SMCRA to facilities that leach or chemically or physically process coal, or that result from or are incident to a surface or underground coal mining operation but are not located proximate to that operation (50 FR 28186–28188). In the July 6, 1984 (Round I) ruling in *In Re: Permanent Surface Mining Regulation Litigation II*, Civil Action No. 79–1144, the District Court for the District of Columbia held that facilities which in any way leach, chemically process, or physically process coal should be regulated as coal preparation plants even if they do not separate coal from its impurities. The Court also held that SMCRA's applicability to support facilities must be based on a functional test rather than a geographic proximity test.

OSM's interim final rule provided that all such facilities must comply with regulatory performance standards as of September 9, 1985. The rule also required each State to determine if any State statutory or regulatory provisions prohibit the permitting or regulation of these facilities under the approved State program, and to so notify OSM no later than November 7, 1985. By letter of August 19, 1985, Virginia notified OSM that it could not legally permit or regulate these facilities.

By letter dated September 4, 1985, Virginia submitted a proposed amendment adding definitions for "'coal preparation' or 'coal processing'" and "coal preparation plant" to the Virginia Coal Surface Mining Regulations at V700.5 (Administrative Record No. VA 560). The proposed definitions are identical to the Federal definitions of "coal preparation" and "coal preparation plant" at 30 CFR 701.5. According to the letter, approval of these amendments would provide Virginia the authority it needs to permit currently unpermitted and unregulated coal preparation and support facilities.

In accordance with the provisions of 30 CFR 731.17, OSM is now seeking comment on whether the proposed definitions satisfy the criteria for approval of State program amendments set forth at 30 CFR 732.15 and 732.17. If approved, the proposed amendment will become part of the Virginia program.

III. Procedural Requirements

1. *Compliance with the National Environmental Policy Act*: The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSM is exempted from the requirement to prepare a Regulatory Impact Analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 16, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

[FR Doc. 85-22561 Filed 9-19-85; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 153

[CGD 84-067]

Oil and Hazardous Substance Discharge Reporting Requirements

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the procedures for reporting discharges of oil and hazardous substances as required by section 311 of the Federal Water Pollution Control Act, as amended (FWPCA), to revise or delete outdated language, and to clarify the criteria for direct payment from the Pollution Fund. These revisions are necessary to reflect amendments to the FWPCA and the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan), and to remain consistent with related Environmental Protection Agency regulations.

DATE: Comments must be received on or before November 19, 1985.

ADDRESSES: Comments should be submitted to Commandant(G-CMC/21)(CGD 84-067) U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593. The comments and other materials referenced in this notice will be available at the Marine Safety Council (G-CMC/21), Room 2110, USCG Headquarters, 2100 Second Street, SW., Washington, D.C. 20593. Normal office hours are between 7:30 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT G.A. Wiltshire; 202-426-9568.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 84-067), the specific section of the proposal to which their comments apply, and give reasons for each comment.

The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in the drafting of this proposal are Lieutenant G.A. Wiltshire, Project Officer, Office of Marine Environment and Systems, and Lieutenant S. Sylvester, Project Attorney, Office of the Chief Counsel.

Discussion of Proposed Rulemaking

The regulations in Part 153 of Title 33 of the Code of Federal Regulations concerning notice of discharges of oil or hazardous substances, oil discharge removal, and administration of the Pollution Fund established by section 311(k) of the Federal Water Pollution Control Act, as amended (FWPCA) (33 U.S.C. 1321) were published in 1976. Since that time, both the FWPCA and the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan) (40 CFR Part 300) have been amended. As a result, some of the definitions, procedures, and references in the regulations are outdated. The purpose of the proposed revisions is to delete outdated materials and to update language to correspond to the FWPCA and National Contingency Plan revisions that have occurred or been proposed since the regulations were last updated. In addition, the criteria for direct payment from the Pollution Fund will be clarified. The following section discusses the proposed revisions within each section of Part 153.

1. Section 153.101 is revised to add a specific reference to the FWPCA. This revision clarifies that the regulations within this part apply only to the discharge reporting and removal requirements of the FWPCA. This clarification is necessary because the list of hazardous substances designated by EPA pursuant to FWPCA section 311(b)(2) is also covered by reporting requirements under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 U.S.C. 9601 et seq.). EPA has proposed requirements for reporting hazardous substance releases as required by CERCLA in 40 CFR Part 302 (48 FR 23552).

2. Section 153.103 is revised to add the definition of two terms, delete two terms, and revise the definitions of eight terms. The definition of "CERCLA" is added since this term is used within the regulations but not previously defined. The first term proposed for deletion is "agency coordinator." This term is deleted since it is no longer used to describe the EPA or USCG official that retains FWPCA section 311(d) response authority. Actions under this authority are normally carried out by the On-Scene Coordinator (OSC) as authorized by the appropriate EPA or USCG official. The term "harmful quantity" is also proposed for deletion, and the term "such quantities as may be harmful" added in its place. This revision will incorporate changes to the language in FWPCA section 311(b)(3) made by the 1978 FWPCA amendments. Reference is also added to the EPA regulations where these quantities are established and published.

Eight terms are proposed for revised definitions under the section. The definition of "Act" is revised by adding " as amended" after "Federal Water Pollution Control Act" to reflect the common usage of this term. The definition of "discharge" is revised to reflect the modifications made to this term in the 1978 FWPCA amendments. These amendments excluded from section 311 coverage three types of discharges that are subject to the FWPCA section 402 National Pollutant Discharge Elimination System (NPDES) provisions. The definition of "On-Scene Coordinator" is revised to update the reference to the National Contingency Plan. The definitions of "coastal waters" and "inland waters" are revised to reflect geographical changes to the EPA/USCG boundaries for providing OSC's under the National Contingency Plan. The "coastal waters" definition is also modified to reflect the 1977 amendments to the FWPCA that expanded the geographic scope of FWPCA coverage beyond the contiguous zone to include discharges in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act). The definition of "offshore facility" is revised to reflect the 1977 amendments to the FWPCA that expanded this term to include facilities subject to U.S. jurisdiction located outside the navigable waters of the U.S. Finally, the definition of "chemical agents" is revised to reflect 1984 revisions in Subpart H of the National Contingency Plan (49 FR 29192).

In addition to the above revisions, the definition of "United States" is revised to delete reference to the Canal Zone. Although the statutory definition of this

term in FWPCA section 311(a)(5) includes this reference, by memorandum of 17 March 1981 the Acting Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice, concluded that the FWPCA does not apply to any part of the former Canal Zone. This conclusion was based on the changes resulting from the Panama Canal Treaty of 1977 and the Panama Canal Act of 1979 (22 U.S.C. 3601 et seq.). A copy of this memorandum is available in the docket for this rulemaking at the above address.

3. Section 153.105 is amended in paragraph (d)(4) to reflect 1980 amendments to the FWPCA, when the citation of the "Fishery Conservation and Management Act of 1976" was changed to the "Magnuson Fishery Conservation and Management Act."

4. Section 153.203 is revised to delete outdated procedures for the reporting of oil and hazardous substance discharges, and to make slight modifications to the discharge reporting procedures. Existing regulations provide detailed reporting instructions, listing the priorities for reporting oil and hazardous substances discharges. The proposed revision deletes this prioritization. In addition, for the reasons discussed in paragraph 2, all references to reporting discharges in the Panama Canal Zone are deleted.

The proposed revision would retain the requirement for direct reporting to the National Response Center (NRC) unless direct reporting is impractical. In such cases, reports may be made to the predesignated USCG or EPA OSC, or the nearest Coast Guard unit. The Coast Guard believes that direct reporting to the NRC is the best means for ensuring the appropriate USCG or EPA OSC is rapidly notified of a discharge. Reports to any other locations may result in delays in relaying the information to the appropriate OSC. Also, in some cases, parties unnecessarily report to both the NRC and to the OSC. This makes it difficult for the Coast Guard and EPA to determine the actual number of discharges that occur.

In addition, it is the intent of the Coast Guard that the proposed revisions result in consistency between the reporting requirements under CERCLA and the FWPCA. All hazardous substance discharges which are subject to the FWPCA section 311(b)(5) reporting requirement are also subject, as hazardous substance releases, to the reporting requirements in CERCLA section 103(a). It would be highly desirable, both from the perspectives of efficiency and in minimizing regulatory burden, to allow a single report to meet the requirements of both statutes.

CERCLA section 103(a) requires reports of all hazardous substances releases to be made to the NRC. With this in view, EPA proposed a rule on May 25, 1983 (48 FR 23602), which would have required such reports to be made *only* to the NRC. However, EPA has reevaluated this requirement, and in proposing revisions to §§ 300.51 and 300.63 of the National Contingency Plan on February 12, 1985 (50 FR 5862), would authorize reports to certain Coast Guard or EPA offices, and require that such reports be promptly relayed to the NRC. This will assure that even when hazardous substances discharges/releases are reported to those offices, it will constitute the statutorily required notice to the NRC. With this in view, it is expected that EPA will amend the rule implementing the CERCLA notification provisions to parallel the reporting procedure that is adopted as a result of the revisions proposed in the National Contingency Plan and this proposal. Consequently, in cases where both statutes apply, one report will meet the reporting requirements of both statutes.

5. Table 1 in Subpart B is revised to reflect changes in addresses and telephone numbers of EPA Region and Coast Guard District offices since these regulations were last updated.

6. In § 153.305, paragraph (d) is revised to reflect changes in the National Contingency Plan. Requirements for use of chemical agents which were previously in Annex X were moved to Subpart H in the 1982 revisions to the National Contingency Plan.

7. In § 153.407, paragraph (a) is revised to reflect revisions to response phases in the National Contingency Plan, to delete reference to the "agency coordinator" for FWPCA section 311(d) actions, and to add reference to actions under the Intervention on the High Seas Act. As a result of the 1982 revisions to the National Contingency Plan, phase III—Containment and Countermeasures, and phase IV—Cleanup, Mitigation, and Disposal, response actions were combined into phase III—Containment, Countermeasures, Clean-up, and Disposal, for oil removals in Subpart E, and into phase III—Immediate removals, for hazardous substance removals in Subpart F. EPA has recently proposed further revisions to Subpart F (February 12, 1985; 50 FR 5863) that would delete the response phases and replace the term "immediate removals" with "removals." The revisions to this section reflect this latest proposal.

The term "agency coordinator" would be replaced by "the EPA or Coast Guard official" since this term is no longer used to describe the EPA or Coast Guard official with the authority to act under FWPCA section 311(d) whenever a marine disaster in or upon the navigable waters of the U.S. has created a substantial threat of a pollution hazard to the public or welfare of the U.S. because of a discharge, or imminent discharge, of large quantities of oil, or of a hazardous substance from a vessel. Within the Coast Guard, the Commandant has reserved the authority to act under 311(d), but would normally authorize the Coast Guard District Commander to act under this authority on a case-by-case basis. The District Commander would in turn authorize the Coast Guard OSC to act under this authority.

Finally, reference to reimbursement for actions under the Intervention on the High Seas Act (IHSA) (33 U.S.C. 1471 et seq.) is added. This is based on section 17 of the IHSA (33 U.S.C. 1486) which authorizes use of the FWPCA section 311(k) Pollution Fund for Federal response actions under the IHSA.

1. In § 153.407, paragraph (b) is revised to clarify the conditions under which the Coast Guard District Commander may authorize direct payment from the Pollution Fund. Only contractors or suppliers that are acting pursuant to a valid Federal contract can be paid directly from the Pollution Fund. Thus, contractors or suppliers of State or local governments involved in response actions are not eligible for direct payment. A State may be reimbursed for their expenses in obtaining goods and services from contractors and suppliers. However, this is reimbursement to the State, not direct payment to the contractors or suppliers.

9. In § 153.415, the title and first sentence of the section are revised to delete reference to the agency coordinator, to add reference to the Intervention on the High Seas Act, and to rename the required report as the "Cost Summary Report." This change is necessary to avoid any confusion between the report required by this section, and the OSC's Report required by the National Contingency Plan, 40 CFR 300.56 (300.40 in proposed revision, 50 FR 5878), for all major oil discharges (as defined in 40 CFR 300.6). The report referred to in this section is required for any incident where FWPCA section 311(k) Pollution Fund monies are spent during a response action.

10. In § 153.417, paragraph (b) is revised to delete the reference to Phase IV in oil removal actions under subpart F of the National Contingency Plan, and to add reference to hazardous substance removal actions under subpart F of the

National Contingency Plan. The reasons for these changes are discussed in paragraph 7 above.

11. In § 153.419, the title and paragraph (a) are revised to include reference to the Intervention on the High Seas Act; all references to the "AC" (agency coordinator) are replaced with "OSC," and reference to hazardous substance removal actions is added. The reasons for these changes are discussed in paragraphs 2 and 7 above.

Reporting and Recordkeeping Requirements

The requirement for reporting oil and hazardous substance discharges is an existing requirement. The proposed revisions affect only the procedures for making the required notifications. These revisions do not create any increase in the reporting or recordkeeping requirements. The existing information collection requirements have previously been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and have been approved by OMB. The section number and corresponding OMB approval number is 33 CFR 153.203, OMB No. 2115–0137.

EO 12291 and DOT Regulatory Policies and Procedures

These proposed regulations are considered to be non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. The revisions proposed will not establish any new reporting requirements, and only reflect statutory or regulatory changes that have occurred since the regulations were last revised or clarify existing policies or procedures.

Regulatory Flexibility Act

Since the impact of this proposed rule is expected to be minimal, the agency certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 153

Hazardous substances, Oil pollution.

PART 153—[AMENDED]

For the reasons set out in the preamble, Part 153 of Subchapter O, Chapter I of Title 33 of the Code of Federal Regulations is revised to read as set forth below:

1. The authority citation for Part 153 continues to read as follows:

Authority: Secs. 311(j)(1)(A) and (m), 86 Stat. 862 (33 U.S.C. 1321(j)(1)(A) and (m)); secs. 2, 5, and 7, E.O. 11735 (38 FR 21243) as amended by E.O. 12418 (48 FR 20891); 49 CFR 1.45(b) and 1.46 (l) and (m), unless otherwise noted.

2. Section 153.101 is revised to read as follows:

§ 153.101 Purpose.

The purpose of this part is to prescribe regulations concerning notification to the Coast Guard of the discharge of oil or hazardous substances as required by the Federal Water Pollution Control Act, as amended (FWPCA); the procedures for the removal of a discharge of oil; and the costs that may be imposed or reimbursed for the removal of a discharge of oil or hazardous substances under the FWPCA.

3. In § 152.103, paragraphs (a), (d), (g), (j), (l), (m), (n), (o), (p), and (r) are revised to read as follows:

§ 153.103 Definitions.

As used in this part:

(a) "Act" means the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.).

* * * * *

(d) "Discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping, but excludes (A) discharges in compliance with a permit under section 402 of the Act, (B) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Act, which are caused by events occurring within the scope of relevant operating or treatment systems.

* * * * *

(g) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

* * * * *

(j) "Offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.

* * * * *

(l) "On-Scene Coordinator" or "OSC" is the Federal official predesignated by the Environmental Protection Agency (EPA) or Coast Guard to coordinate and direct Federal removal efforts at the scene of an oil or hazardous substance discharge as prescribed in the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan) as published in 40 CFR Part 300.

(m) "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(n) "Such quantities as may be harmful" means those quantities of oil and any hazardous substances determined in accordance with the provisions of section 311(b)(4) of the Act.

Note.—Regulations that relate to such quantities as may be harmful of oil are published in 40 CFR Part 110. Regulations that relate to such quantities as may be harmful (reportable quantities) of hazardous substances are published in 40 CFR Part 117 and also listed in 40 CFR Part 302.

(o) "Coastal waters" means all U.S. waters subject to the tide, U.S. waters of the Great Lakes, specified ports and harbors on the inland rivers, waters of the contiguous zone, or other waters of the high seas subject to discharges in connection with activities under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) or the Deepwater Port Act of 1974 (33 U.S.C. 1501 et seq.), or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)).

Note.—Coastal waters are those waters where the Coast Guard has the responsibility for providing OSCs under the National Contingency Plan. Specific dividing lines between coastal and inland waters are contained in Regional Contingency Plans prepared pursuant to the National Contingency Plan.

(p) "Inland waters" means all other waters of the U.S. not included in the definition of coastal waters.

Note.—Inland waters are those waters where the Environmental Protection Agency has the responsibility for providing OSCs under the National Contingency Plan. Specific dividing lines between coastal and inland waters are contained in Regional Contingency Plans prepared pursuant to the National Contingency Plan.

* * * * *

(r) "Chemical agents" means those elements, compounds, or mixtures that coagulate, disperse, dissolve, emulsify, foam, neutralize, precipitate, reduce,

solubilize, oxidize, concentrate, congeal, entrap, fix, make the pollutant mass more rigid or viscous, or otherwise facilitate the mitigation of deleterious effects or removal of the pollutant from the water. The term "chemical agents" as used in this part includes dispersants, surface collecting agents, biological additives, burning agents, and sinking agents as defined in Subpart H of the National Contingency Plan.

* * * * *

4. In § 153.105, paragraph (d)(4) is revised to read as follows:

§ 153.105 Delegations.

* * * * *

(d) * * *

(4) Which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States, including resources under Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

* * * * *

5. Section 153.203 is revised to read as follows:

§ 153.203 Procedure for the notice of discharge.

Any person in charge of a vessel or of an onshore or offshore facility shall, as soon as they have knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of section 311(b)(3) of the Act, immediately notify the Duty Officer, National Response Center (NRC), U.S. Coast Guard, 2100 Second Street, SW., Washington, D.C. 20593, toll free telephone number 800–424–8802 (in Washington, D.C. metropolitan area, 426–2675). If direct reporting to the NRC is not practicable, reports may be made to the Coast Guard or EPA predesignated OSC for the geographic area where the discharge occurs, or to the nearest Coast Guard unit.

Note.—Geographical jurisdiction of Coast Guard and EPA OSC's are specified in the applicable Regional Contingency Plan. Regional Contingency Plans are available at Coast Guard District Offices and EPA Regional Offices as indicated in Table 2. Addresses and telephone numbers for these offices are listed in Table 1.

6. In § 153.305, paragraph (d) is revised as follows:

§ 153.305 Methods and procedures for the removal of discharged oil.

* * * * *

(d) Use chemical agents only in accordance with the provisions of Subpart H of the National Contingency Plan and with prior approval of the Federal OSC; and

* * * * *

7. Table 1 of Subpart B is revised as follows:

TABLE 1.—ADDRESSES AND TELEPHONE NUMBERS OF COAST GUARD DISTRICT OFFICES AND EPA REGIONAL OFFICES

	Address	Telephone
EPA Regional Offices		
Region:		
I	John F. Kennedy Federal Bldg., Boston, MA 02203.	617–861–6700
II	26 Federal Plaza, New York, NY 10007.	201–548–8730
III	Curtis Bldg., 6th and Walnut Sts., Philadelphia, PA [illegible]	215–597–9896
IV	345 Courtland Street, NE, Atlanta, GA 30365.	404–881–4062
V	230 S. Dearborn Street, 13th Floor, Chicago, IL 60604.	312–353–2316
VI	First International Building, 1201 Elm Street, Dallas, TX 75270	214–767–2666
VII	324 East 11th Street, Kansas City, MO 64106.	816–236–3778
VIII	1860 Lincoln Street, Denver, CO 80294	303–236–5060
IX	215 Fremont Street, San Francisco, CA 94105.	415–781–0822
X	1200 6th Avenue, Seattle, WA 98101.	206–442–1263
Coast Guard District Offices		
District:		
1st	150 Causeway St., Boston, MA 02114.	617–223–6915
2nd	430 Olive St., St. Louis, MO 63103.	314–425–4655
3rd	Governors Island, New York, NY 10004.	212–668–7152
5th	Federal Bldg., 431 Crawford St., Portsmouth, VA 23705.	804–398–6638
7th	Federal Bldg., Room 1221, 51 S.W. 1st Ave., Miami, FL 33130.	305–350–5276
8th	Hale Boggs Federal Bldg, 500 Camp St., New Orleans, LA 70130.	504–589–6296
9th	1240 East 9th St., Cleveland, OH 44199.	216–522–3919
11th	Union Bank Bldg., 400 Oceangate, Long Beach, CA 90822	213–590–2301
12th	Government Island, Alameda, CA 94501	415–437–3465
13th	Federal Bldg., 915 Second Ave., Seattle, WA 98174.	206–442–5850
14th	Prince Kalanianaole Federal Bldg., 300 Ala Moana Blvd., 9th Floor Honolulu, HI [illegible]	808–546–7510
17th	P.O. Box 3–5000, Juneau, AK 99802.	907–586–7195

8. In § 153.407, paragraphs (a) introductory text and (b) are revised as follows:

§ 153.407 Payments or reimbursements from the pollution fund.

(a) The following costs incurred during performance of a Phase III activity as defined in Subpart E of the National Contingency Plan, or a removal action as defined in Subpart F of the National Contingency Plan, are reimbursable to Federal and State agencies when authorized by the appropriate OSC under the authority of section 311(c) of the Act, and are reimbursable to Federal agencies when authorized by the appropriate Coast Guard or EPA official in the case of the summary removal or destruction of a vessel, other "intervention" (as defined in section 153.105(e) of this Part), or any other action under the authority of section 311(d) of the Act or the Intervention on the High Seas Act (33 U.S.C. 1471 et seq.):

* * * * *

(b) The District Commander may authorize the direct payment of the costs found to be reasonable under paragraph (a)(3) of this section. Direct payment may only be made to Federal or State agencies, or to Federal contractors or suppliers. Direct payments to State or local agency contractors or suppliers will not be authorized.

* * * * *

9. In § 153.415, the section heading and introductory paragraph are revised as follows:

§ 153.415 Cost summary reports.

As soon as practicable after completion of an action authorized under section 311 (c) or (d) of the Act or the Intervention on the High Seas Act, the OSC submits a cost summary report to the cognizant district commander that includes:

* * * * *

10. In § 153.417, paragraph (b) is revised as follows:

§ 153.417 Reimbursement for actions under section 311(c) of the Act.

* * * * *

(b) Requests for reimbursement submitted by Federal and State agencies are reviewed by the OSC to ensure that the costs for which reimbursement is being sought were authorized as Phase III removal actions for oil discharges, or removal actions as defined in Subpart F for hazardous substance discharges, and must have one of the following certifications by the OSC, as appropriate:

(1) I certify that the actions for which reimbursement is being requested in the attached statements were authorized by me as [(Phase III oil removal actions) or (hazardous substance removal actions)], and reasonable costs related thereto are proper for payment from the Pollution Fund.

(OSC Signature) _____
(Incident title) _____
(Pollution incident project number)_____

(2) I certify that, except as noted below, the actions for which reimbursement is being requested in the attached statements were authorized by me as [(Phase III oil removal actions) or (hazardous substance removal actions)], and reasonable costs related thereto are

proper for payment from the Pollution Fund. The following actions were not authorized by me and are not subject to reimbursement from the Pollution Fund.

(OSC Signature) _____
(Incident title) _____
(Pollution incident project number)_____

11. Section § 153.419 is revised to read as follows:

§ 153.419 Reimbursement for actions under section 311(d) of the act or the Intervention on the High Seas Act.

(a) Each Federal agency requesting reimbursement for an action authorized under section 311(d) of the Act or under the Intervention on the High Seas Act must, within 60 days after completion of the action, submit to the cognizant district commander, through the OSC for review and certification required in paragraph (b) of this section, lists, accompanied by supporting accounting data, itemizing actual costs incurred.

(b) Requests for reimbursement submitted by Federal agencies are reviewed by the OSC to ensure that the costs for which reimbursement is being sought were authorized under section 311(d) of the Act or the Intervention on the High Seas Act, and must have one of the following certifications by the OSC, as appropriate:

(1) I certify that the actions for which reimbursement is being requested in the attached statements were authorized by me as removal actions under section 311(d) of the Act or the Intervention on the High Seas Act, and reasonable costs related thereto are proper for payment from the Pollution Fund.

(OSC Signature) _____
(Incident title) _____
(Pollution incident project number)_____

(2) I certify that, except as noted below, the actions for which reimbursement is being requested in the attached statements were authorized by me as removal actions under section 311(d) of the Act or the Intervention on the High Seas Act, and reasonable costs related thereto are proper for payment from the Pollution Fund. The following actions were not authorized by me and are not subject to reimbursement from the Pollution Fund.

(OSC Signature) _____
(Incident title) _____
(Pollution incident project number)_____

Dated: April 4, 1985.

J.W. Kime,

Commodore, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 85-22461 Filed 9-19-85; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

43 CFR Part 17

Enforcement of Nondiscrimination on the Basis of Handicap in Department of the Interior Programs

Correction

In FR Doc. 85-21667, beginning on page 37006 in the issue of Wednesday, September 11, 1985, make the following corrections:

1. On page 37007:

a. In the second column, third complete paragraph, sixth line, "constituency" should read "consistency".

b. In the third column, first complete paragraph, nineteenth line, "rules" should read "ruled".

2. On page 37009, second column, twelfth line from the bottom of the page, "povision" should read "provision".

3. On page 37011:

a. In the first column, second complete paragraph, third line, "invovled" should read "involved".

b. In the second column, fifth paragraph, sixth line, add "not" between "may" and "be".

4. On page 37012, third column, § 17.510(a), eighth line, add "or" between "not" and "may".

5. On page 37014, second column, § 17.560, remove the asterisks directly beneath the section heading.

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. 1

[CC Docket No. 80-53; FCC 85-496]

Bell System Procurement Practices

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: The Commission terminated its inquiry into Bell System procurement practices. In light of divestiture and other significant developments in the telecommunications industry since this docket was initiated, further proceedings are no longer warranted.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Gene E. Dougherty (202) 632-7500.

SUPPLEMENTARY INFORMATION: The original Notice of Inquiry was published in the **Federal Register**, Volume 46, No. 156, August 13, 1981, pp. 40902-40904.

Federal Communications Commission

In the matter of Bell System Procurement Practices, Report and Order.

Adopted: September 9, 1985.
Released: September 13, 1985.

By the Commission: Commissioner Rivera not participating.

I. Background

1. By *Report and Order and Notice of Inquiry* (NOI) (FCC 80-699, released July 28, 1981), the Commission initiated an inquiry into the procurement practices of the Bell Operating Companies (BOCs). The purpose of the inquiry was to determine how the Commission could best ensure that the BOCs comply with the directives contained in *Phase II Final Decision and Order*, 64 FCC 2d 1 (1977), *reconsideration*, 67 FCC 2d 1429 (1978). In that decision, the Commission stated that rapid, efficient service at the lowest possible cost could best be provided by establishing a more competitive telecommunications equipment market and by encouraging the BOCs to exert more autonomy in their procurement decisions. The principal issues raised in the NOI concerned the appropriate means to: (1) Encourage the BOCs to buy telecommunications equipment on a more competitive basis; and (2) promote autonomy in their purchasing practices. Our objective was to obtain sufficient information so as to form a policy that would work toward the ratepayer obtaining efficient service in terms of both price and quality (NOI at 14). Accordingly, we called for comments on a broad range of questions, such as the role of Bell Labs and AT&T Long Lines in our procurement policy, certain functions of Western Electric which might be inconsistent with a competitive environment, the negotiating process within the Bell System, and publication of information.

2. Following the receipt of the comments and reply comments in this docket, but before the staff analysis of them was completed, the Government settled its antitrust suit against AT&T. This major development had a significant impact on the proceeding herein. Largely for that reason, therefore, we are terminating our inquiry into this matter.

II. The Modification of Final Judgment

3. On January 8, 1982, the Department of Justice and AT&T reached agreement on a proposed Consent Decree to settle the antitrust suit brought by the Justice Department against AT&T in 1974. On August 11, 1982, the Court issued a Modification of Final Judgment (MFJ).

approving the proposed decree.[1] The MFJ mandated the largest corporate reorganization in U.S. history by requiring the divestiture of AT&T. The MFJ addressed its concerns *inter alia*, in the area of telecommunications equipment procurement. Specifically, Section I (A) (3), called for the termination of the standard supply contract between Western Electric and the operating companies. Additionally, Section II (B) (1) stated that:

> No BOC shall discriminate between AT&T and its affiliates and their products and services and other persons and their products and services in the: . . . procurement of products and services.

To ensure compliance with Section II (B) (1), Section II (C) of the MFJ required that within six months of the reorganization of AT&T, each BOC was to submit to the Department of Justice procedures explaining how it planned to carry out its procurement obligations.

III. The AT&T Consolidated 214 (Divestiture) Proceeding

4. On March 1, 1983, AT&T and the BOCs filed a consolidated application for various transfers of facilities in order to implement the provisions of the MFJ. On December 2, 1983, the Commission adopted a *Memorandum Opinion, Order and Authorization* in response to the above application.[2] In paras. 92–94 of the Order, the Commission found that the two sections of the MFJ addressing equipment procurement procedures contained provisions that would likely increase competition in the telecommunications equipment market. The Commission reasoned that the divested BOCs would no longer have a structural incentive to buy Western products when the products of other manufacturers were superior or identical in quality, but offered at lower prices. The Commission concluded that telecommunication users should benefit from increased competition in equipment procurement by the BOCs through a wider choice of equipment and services in terms of quality and cost to meet their telecommunications needs. Moreover, the Commission found that increased competition in equipment markets brought about by the MFJ should help satisfy the goals of Section 1 of the Communications Act of ensuring rapid, efficient service with adequate facilities at reasonable cost, and that such competition is consistent with long-standing Commission policy.

5. The Commission held that even if there were a lingering prejudice by the BOCs' personnel in favor of Western Electric products, it was likely that this problem would be transitory, and the provision of the MFJ's prohibition against discriminatory practices among equipment suppliers would keep such problems to a minimum. The Commission further stated that it recognized the importance of monitoring developments in this area, and ordered the BOCs to file their procurement plans with the Commission at the same time they filed the plans with the Department of Justice. Subsequently, all of these plans were filed by July 2, 1984.

IV. Discussion

6. In light of the divestiture of AT&T and other significant developments in the telecommunications industry during the past two years, the concerns which led the Commission to open the inquiry herein have since been substantially diminished, if not eliminated.[3] We have no reason to believe that it is necessary for the Commission to address the BOC procurement practices, and in fact, there have been no post divestiture complaints or other allegations indicating that further proceedings are warranted.[4] Thus, we find there is no longer a need to continue this proceeding.

V. Conclusion and Ordering Clause

7. Accordingly, IT IS ORDERED, that Stromberg-Carlson Corporation's Petition for Expedited Consideration is dismissed.

8. It is further ordered, that this proceeding is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–22588 Filed 9–19–85; 8:45 am]

BILLING CODE 6712-01-M

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[1] United States v. American Telephone and Telegraph Co., 552 F.Supp. 131 (D.D.C. 1982), *aff'd sub. nom.* Maryland v. United States, 460 U.S. 1001 (1983).

[2] 98 FCC 2d 18 (1983), *reconsideration*, 98 FCC 2d 141 (1984), *appeal pending sub nom.* US West v. FCC, No. 84–148 (D.C. Cir. filed August 28, 1984).

[3] While it was proposed in the NOI that Long Lines be included in any of the final rules which may be adopted, comments were sought on this point. NOI at 19–20. The Commission acknowledged that "different considerations" apply to Long Lines in this regard because the BOCs, unlike Long Lines, might have incentives distinct from those of AT&T. When the BOCs were separated from AT&T as a result of diverstiture, Long Lines (now AT&T Communications) was not, of course, divested. We now believe that any earlier concerns about the procurement practices of Long Lines have since been substantially diminished by competition in the telecommunications interexchange market. Thus, there is no need to continue this proceeding to review the procurement practices of Long Lines.

[4] On December 15, 1982, Stromberg-Carlson Corporation (Stromberg) filed a "Petition for Expedited Consideration" in this proceeding asking that the Commission adopt procedures to open the BOC equipment market to competition and to limit Western Electric equipment sales to independent telephone companies for a transitional period following divestiture. This petition was not acted upon pending final action by the court on the MFJ. As discussed herein, we now believe that divestiture and other developments in the telecommunications industry have opened the BOC equipment market to competition. Moreover, we do not believe the public interest would be served by imposing restrictive policies on Western's sales to independent telephone companies because such policies would deny the independents, and thus their customers, the benefits of having access to a full range of telecommunications equipment, and would impose unrealistic regulations on Western Electric at a time when the telecommunications market is now open to competition. For these reasons, we are herein dismissing Stromberg's petition.

DEPARTMENT OF DEFENSE

48 CFR Parts 227 and 252

Federal Acquisition Regulation Supplement; Technical Data

AGENCY: Department of Defense (DoD).

ACTION: Notice of public meeting with representatives of the Defense Acquisition Regulatory Council.

SUMMARY: Preliminary industry comments in response to the proposed rule published on September 10, 1985 (50 FR 36887), have indicated that, due to the length, complexity and importance of the technical data coverage, the time provided for receipt and evaluation of public comments is insufficient. It was also suggested that an alternate iterim rule be issued. The DAR Council is considering publishing an interim rule before the statutory implementation date and the concurrent extension of the public comment period. The DAR Council will therefore conduct a public meeting to obtain comments on this approach. The Council also solicits suggestions as to specific changes to the proposed rule that will allow it to be issued as an interim rule.

DATE: The public meeting will be held from 9:00 a.m. until 12 noon on Tuesday, October 1, 1985.

ADDRESS: The meeting will be held in Room 3S11, National Center #3, 2531 Jefferson Davis Highway, Arlington, Va.

FOR FURTHER INFORMATION CONTACT: Charles W. Lloyd, Executive Secretary, DAR Council, DASD(P)DARS, c/o OUSDRE(M&RS), Room 3D139, Pentagon, Washington, D.C. 20301–3062, telephone (202) 697–7268.

Owen L. Green,

Acting Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 85–22462 Filed 9–19–85; 8:45 am]

BILLING CODE 3810-01-M

Notices

Federal Register
Vol. 50, No. 183
Friday, September 20, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Designation Renewal of Los Angeles Grain Inspection Service, Inc. (CA) and Peoria Grain Inspection Service, Inc. (IL)

AGENCY: Federal Grain Inspection (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Los Angeles Grain Inspection Service, Inc. (Los Angeles), and Peoria Grain Inspection Service, Inc. (Peoria), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: November 1, 1985.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building; Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS announced that Los Angeles' and Peoria's designations terminate on October 31, 1985, and requested applications for official agency designation to provide official services within specified geographic areas in the May 1, 1985, **Federal Register** (50 FR 18542). Applications were to be postmarked by May 31, 1985. Los Angeles and Peoria were the only applicants for their respective designations and each applied for designation renewal.

FGIS announced the applicant names and requested comments on same in the July 1, 1985, **Federal Register** (50 FR 27033). Comments were to be postmarked by August 15, 1985; no comments were received.

FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), determined that Los Angeles and Peoria are able to provide official services in the geographic area for which FGIS is renewing their designation. Effective November 1, 1985, and terminating October 31, 1988, Los Angeles and Peoria will provide official inspection services in their specified geographic areas, which are the entire areas previously described in the May 1 **Federal Register**.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may contact the Review Branch, specified in the address section of this notice, to obtain a list of an agency's specified service points. Interested persons also may obtain a list of the specified service points by contacting the agency at the following address:

Los Angeles Grain Inspection Service, Inc., 1625 Bluff Road, Montebello, CA 90640

Peoria Grain Inspection Service, Inc., 330 S.W. Washington Street, 2nd Floor, Peoria, IL 61602.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: September 17, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85–22581 Filed 9–19–85; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Designation Applicants in the Geographic Areas Currently Assigned to Lima Grain Inspection Service, Inc. (OH) and Virginia Department of Agriculture and Consumer Services (VA)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to Lima Grain Inspection Service, Inc. (Lima) and the Virginia Department of Agriculture and Consumer Services (Virginia).

DATE: Comments to be postmarked on or before November 4, 1985.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Management Branch, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS requested applications for official agency designation to provide official services within specified geographic areas in the August 1, 1985, **Federal Register** (50 FR 31208). Applications were to be postmarked by September 3, 1985. Lima and Virginia were the only applicants, and each applied for designation renewal in the areas currently assigned to those agencies.

This notice provides interested persons the opportunity to present their comments concerning the designation applicants. All comments must be submitted to the Information Resources

Management Branch, Resources Management Division, specified in the address section of this notice.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*))

Dated: September 17, 1985.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 85–22580 Filed 9–19–85; 8:45 am]

BILLING CODE 3410–EN–M

Request for Designation Applicants to Provide Official Services in the Geographic Areas Currently Assigned to Ohio Valley Grain Inspection (IN) and Quincy Grain Inspection & Weighing Service (IL)

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to provide official services in the geographic area currently assigned to each specified agency. The official agencies are Ohio Valley Grain Inspection, and Quincy Grain Inspection & Weighing Service.

DATE: Applications to be postmarked on or before October 21, 1985.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of FGIS is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Ohio Valley Grain Inspection (Ohio Valley), P.O. Box 601, Newburgh, IN 47630, and Quincy Grain Inspection & Weighing Service (Quincy), 902 South 6th Street, P.O. Box 755, Quincy, IL 62301, were each designated under the Act as an official agency to provide inspection functions on April 1, 1983.

Each official agency's designation terminates on March 31, 1986. Section 7(g)(1) of the Act states, generally, that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic are presently assigned to Ohio Valley, in the States of Indiana, Kentucky, and Tennessee, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

In Indiana: Daviess, Dubois, Gibson, Knox (except the area west of U.S. Route 41 (150) from Sullivan County south to U.S. Route 50), Pike, Posey, Vanderburgh, and Warrick Counties;

In Kentucky: Caldwell, Christian, Crittenden, Henderson, Hopkins (west of State Route 109 south of the Western Kentucky Parkway), Logan, Todd, Union, and Webster (west of Alternate U.S. Route 41 and State Route 814) Counties; and

In Tennessee: Cheatham, Davidson, and Robertson Counties.

Exceptions to the described geographic area are the following locations situated inside Ohio Valley's are which have been and will continue to be serviced by Cairo Grain Inspection Agency: Hopkinsville Elevator Company, Inc., Hopkinsville; and the L&N Railroad Siding on Alternate U.S. Route 41, 5 miles south of Hopkinsville, both in Christian County, Kentucky.

The geographic area presently assigned to Quincy, in the State of Illinois, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

Adams, Brown, Greene, Macoupin (southwest of a straight line from the junction of State Route 111 and the northern Macoupin County line southeast to the junction of Interstate 55 and State Route 16), and Pike Counties.

Exceptions to the described geographic area are the following locations situated inside Quincy's area which have been and will continue to be serviced by the following official agencies:

1. Keokuk Grain Inspection Service, Inc., will service Ursa Farmers Coop, Meyer and Ursa, Adams County; and

2. Springfield Grain Inspection Department will service Pillsbury Co., Florence, Pike County.

Interested parties, including Ohio Valley and Quincy are hereby given opportunity to apply for offical agency designation to provide the official services in the geographic areas, as specified above, under the provisions of section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning April 1, 1986, and ending March 31, 1989. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 17, 1985.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 85–22579 Filed 9–19–85; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Designation Applicants in Northwest Texas

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the northwestern portion of the State of Texas.

DATE: Comments to be postmarked on or before October 21, 1985.

ADDRESS: Comments must be submitted, in writing, to Lewis Lebakken, Jr., Information Resources Management Branch, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250. All comments

received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

FGIS requested applications for official agency designation to provide official services in the northwestern portion of the State of Texas in the August 1, 1985, **Federal Register** (50 FR 31209). Applications were to be postmarked by September 3, 1985. There were two applicants: Amarillo Grain Exchange, Inc., Amarillo, Texas, and Plainview Grain Inspection and Weighing Service, Inc., Plainview, Texas. The agency currently designated, Mr. Raymond Anthis, doing business as Lubbock Grain Inspection and Weighing, will continue to provide official inspection service in the area until a replacement agency can be designated.

This notice provides interested persons the opportunity to present their comments concerning the designation applicants. All comments must be submitted to the Information Resources Management Branch, Resources Management Division, specified in the address section of this notice.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 17, 1985.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 85–22578 Filed 9–19–85; 8:45 am]

BILLING CODE 3410–EN–M

Request for Designation Applicants to Provide Official Services in a Portion of Iroquois County, IL

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: This notice announces that Schneider Inspection Service, Inc., requested amendment of its designation, effective September 1, 1985, to delete a portion of its assigned geographic area. Champaign-Danvile Grain Inspection Departments, Inc., will provide official inspection services on an interim basis, in the geographic area specified below, starting September 1, until a decision can be made in this matter. A request for designation applicants is also included in this notice.

DATE: Applications to be postmarked on or before October 21, 1985.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 1512–1; therefore, the Executive Order and Department Regulation and Departmental Regulation do not apply to this action.

This notice announces that Schneider Inspection Service, Inc., requested amendment of its designation, effective September 1, 1985, to delete a portion of its assigned geographic area. Champaign-Danville Grain Inspection Departments, Inc., will provide official inspection services on an interim basis, in the geographic area specified below, starting September 1, until a decision can be made in this matter.

The Administrator of FGIS has determined that interim assignment of this geographic area to Champaign-Danville is consistent with the provisions and objectives of the U.S. Grain Standards Act, as amended (Act) and that this action will facilitate providing official inspection services in the specified geographic area.

Section 7(f)(1) of the Act specifies that the Administrator of FGIS is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

The geographic area, in Illinois, to be provided service by Champaign-Danville, on an interim basis, and which is available for assignment to the applicant selected for designation, is as follows: the northeast portion of Iroquois County, bounded by Illinois State Route 1 and U.S. Route 24.

The following locations are outside of the foregoing contiguous geographic area but also are part of this geographic area asssignment: Cargill Grain Company, Ford Iroquois Supply and Service, and Summer Elevator, all in Sheldon, Iroquois County.

An exception to the geographic area available for assignment is the following location inside the contiguous northeast portion of Iroquois County, which has been and will continue to be serviced by Champaign-Danville Grain Inspection Departments, Inc.: Pittwood Grain Company, Pittwood, Iroquois County.

Interested parties, including Champaign-Danville, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area will not exceed a 3-year period. Parties wishing to apply for designation should contact the Regulatory Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considerd in determining which applicant will be designated to provide official services in a geographic area.

(Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: September 17, 1985.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 85–22404 Filed 9–19–85; 8:45 am]

BILLING CODE 3410–EN–M

Forest Service

Inyo National Forest, Mono Basin National Forest Scenic Area Advisory Board; Meeting

The Mono Basin National Forest Scenic Area Advisory Board will meet at 8:30 a.m. on October 9, 1985, at the Lee Vining Presbyterian Church, Lee Vining, California. The agenda of the meeting will include: Minor Boundary Revisions, Interim Management Plan, and Update by the District Ranger.

The meeting will be open to the public. Persons who wish to attend and make oral presentations should notify Eugene E. Murphy, Forest Supervisor, Inyo National Forest, 873 N. Main Street, Bishop, California, 93514. Telephone: (619) 873–5841. Written statements may

be filed with the Committee before or after the meeting.

The Committee has established the following rules for public participation: After the Board has completed discussion of each topic, the public will be allowed time for questions or comments.

Dated: September 9, 1985.

Eugene E. Murphy,

Forest Supervisor and Chairman.

[FR Doc. 85-22472 Filed 9-19-85; 8:45 am]

BILLING CODE 3410-11-M

New Meadows Draft Supplement EIS, Payette National Forest, Adams County, Idaho; Supplement Draft Environmental Impact Statement; Cancellation Notice

The draft supplment EIS to the New Meadows Land Use Plan, which was approved April 29, 1976, considering a change to existing management direction within a small portion of Unit 3.3 within the Goose Creek drainage has been withdrawn due to the release of the draft Forest Plan and EIS for the Payette National Forest.

The request for comments on the supplement, published in the **Federal Register** of March 8, 1985, is hereby rescinded.

For further information contact: Pete Walker, District Ranger, New Meadows Ranger District, P.O. Box J, New Meadwos, ID 83654; telephone 208-347-2141.

Dated: September 12, 1985.

Kenneth D. Weyers,

Forest Supervisor

[FR Doc. 85-22494 Filed 9-19-85; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Basin Electric Power Cooperative; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the provisions of the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500), and REA Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact with respect to the Charlie Creek to Williston 230 kV transmission line and related substation facilities in western North Dakota. Basin will jointly construct the project with Montana-Dakota Utilities, an investor-owned utility headquartered in Bismarck, North Dakota.

FOR FURTHER INFORMATION CONTACT: REA's Finding of No Significant Impact and Environmental Assessment, and Basin's Environmental Analysis and Macro-Corridor Study and Alternative Evaluation may be reviewed and copies obtained from the Office of the Director, North Central Area-Electric, REA, Room 0230, South Agriculture Building, Washington, D.C. 20250, telephone (202) 382-1400, or the offices of Basin Electric Power Cooperative, 1717 East Interstate Avenue, Bismarck, North Dakota 58501, telephone (701) 223-0441, during normal business hours.

SUPPLEMENTARY INFORMATION: REA reviewed the Environmental Analysis and Macro-Corridor Study and Alternative Evaluation submitted by Basin and determined that it represents an accurate assessment of the environmental impacts of the 116 kilometer (72 mile) 230 kV transmission line and related substation facilities known as the Charlie Creek to Williston transmission line.

Based upon the Environmental Analysis, the Macro-Corridor Study and Alternative Evaluation, and information gathered at the interagency and public scoping meetings, REA prepared an Environmental Assessment. REA independently concluded that the proposed financing assistance would not result in a major Federal action significantly affecting the quality of the human environment.

The Environmental Analysis, Macro-Corridor and Alternative Evaluation, and Environmental Assessment adequately consider potential impacts of the proposed transmission project on prime farmlands, wetlands, floodplains, cultural resources, Federally listed threatened or endangered species or those proposed for listing or their critical habitat, scenic rivers, air quality, water quality, and aesthetics.

Various alternatives to the proposed 230 kV transmission line were considered, including no action, alternative voltage, direct current transmission, alternate sources, local generation, upgrading existing facilities, load management, and alternate transmission corridors. Basin evaluated two alternate transmission corridors in its corridor analysis. Although both corridors are similar and contain viable transmission routes, the corridor which minimizes potential environmental impacts because of its shorter length has been suggested as the proposed corridor. REA determined that the proposed project is an acceptable alternative that meets Basin's needs with a minimum of adverse environmental impact.

(This program is listed in the Catalog of Federal Domestic Assistance as 10.850-Rural Electrification Loans and Loan Guarantees.)

Dated: September 16, 1985.

Harold V. Hunter,

Administrator.

[FR Doc. 85-22582 Filed 9-19-85; 8:45 am]

BILLING CODE 3410-15-M

Oglethorpe Power Corp.; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Part 1500-1508) and REA's Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact with respect to a proposed project by Oglethorpe Power Corporation (OPC). The project consists of construction of 26 miles of 115 kV transmission line from Burnswick Paper in Randolph County, Georgia, through a new 115/46 kV Substation at Lumpkin, in Stewart County, Georgia, to Louvale Substation, also in Stewart County, Georgia.

FOR INFORMATION CONTACT: REA's Finding of No Significant Impact and Environmental Assessment (EA) and OPC's Borrower's Environmental Report (BER) may be reviewed in the Office of the Chief, Distribution and Transmission Engineering Branch, Southeast Area-Electric, Room 0262, South Agriculture Building, REA, Washington, D.C. 20250, telephone (202) 382-8436, or at the Office of OPC (Mr. F.F. Stacy, Jr., Manager), 2100 East Exchange Place, Tucker, Georgia 30085-1349, telephone (404) 496-7600.

SUPPLEMENTAL INFORMATION: REA has reviewed OPC's BER and has determined that it represents an accurate assessment of the environmental impacts of the proposed project. The proposed project will consist of approximately 42 kilometers (27 miles) of 115 kV line, a 115/46 kV in-line substation on approximately 3 acres of land at Lumpkin, and modification of the Brunswick Paper and Louvale substations to accommodate this line. REA determined that the proposed project is not likely to affect any threatened or endangered species or

critical habitat; it is not a critical action facility and it will not occur in a 100-year floodplain; it will have no effect upon any river section in the Nationwide Inventory of Wild and Scenic Rivers; it will not occur in a coastal barrier and will not directly affect the coastal zone. The proposed transmission line will cross a small amount of wetlands. The right-of-way will be constructed on an abandoned road right-of-way which spans the wetland. There is no practicable alternative to locating in the wetland and all practicable means to minimize harm will be taken. The proposed line will be single, wood pole construction and all maintenance activities will use the abandoned roadway.

The proposed transmission line will cross approximately 4,380 meters (14,600 feet) of prime farmland and 3,120 meters (10,400 feet) of prime forestland. Almost all of the prime farmland can be crossed adjacent to a road or railroad right-of-way. Forestland in the right-of-way will be taken out of production for the life of the project. The proposed project will convert prime forestland and a small amount of prime farmland to other uses, but there is a demonstrated significant need for and no practicable alternative to the proposed action.

The proposed transmission line will cross three sites which are eligible for listing on the National Register of Historic Places. One site is the remains of a chimney anf the other two are subsurface archaeological sites. The chimney site and one archeological site will be spanned. Three poles will be placed in the remaining site. A mitigation and data recovery plan has been prepared for these three sites. Based on this plan, REA, the State Historic Preservation Office and the Advisory Council on Historic Preservation have reached a determination that there will be no adverse effect upon properties listed or eligible for listing on the National Register of Historic Places.

Alternatives to the proposed 115 kV transmission line and substation were considered, such as no action, electrical alternatives, alternative sites and alternative routes.

Based upon OPC's BER and supporting documents, REA prepared an EA concerning the proposed project and its impacts. In accordance with REA's 7 CFR Part 1794, OPC advertised and requested comments on the environmental aspects of the proposed project. No comments were received. REA concluded that approval of financing assistance for the project would not constitute a major Federal action significantly affecting the quality of the human environment.

An environmental impact statement is not necessary. This program is listed in the Catalog of Federal Domestic Assistance as 18.850-Rural Electrification Loans and Loan Guarantees.

Dated: September 16, 1985.

Harold V. Hunter,

Administrator.

[FR Doc. 85-22583 Filed 9-19-85; 8:45 am]

BILLING CODE 3410-15-M

Soil Conservation Service

Coast Guard Park Critical Area Treatment RC&D Measure, Michigan

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Coast Guard Park RC&D Measure, Alger County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Homer R. Hilner, State Conservationist, Soil Conservation Service, 1405 South Harrison Road, East Lansing, Michigan 48823, telephone 517-337-6702.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. A contact has been made with the State Historical Preservation Officer and concludes that it will have no effect on any cultural resources either eligible for or listed on the National Register of Historic Places. The State Archaeologist will be contacted if any land disturbance associated with this project and archaeological sites, features, or materials are encountered during actual construction. As a result of these findings, Mr. Homer R. Hilner, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This measure concerns a plan for the installation of measures for critical area treatment. The planned works of improvement include adding topsoil, mulch, fertilizer, seeding adapted grasses and installing barrier posts to limit access from vehicles. Total construction cost is estimated to be $9,500, $6,000 RC&D funds and $3,500 local funds.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Homer R. Hilner. The FONSI has been sent to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the Federal Register

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: August 26, 1985.

Jerry L. Keller,

Deputy State Conservationist.

[FR Doc. 85-22568 Filed 9-19-85; 8:45 am]

BILLING CODE 3410-16-M

Lower Sand Creek Watershed, Idaho; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lower Sand Creek Watershed, Bonneville County, Idaho.

FOR FURTHER INFORMATION CONTACT: Stanley N. Hobson, State Conservationist, Soil Conservation Service, 304 North Eighth Street, Room 345, Boise, Idaho 83702, telephone (208) 334-1601.

SUPPLEMENTARY INFORMATION: The environmental assessment of this

federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Stanley N. Hobson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for land treatment to protect the quality of the land resource, reduce severe erosion both on irrigated and non-irrigated cropland and reduce sediment damages. The planned works of improvement include conservation practices such as conservation tillage systems, no-till farming, permanent vegetation and terraces.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address on the previous page. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Stanley N. Hobson.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: September 11, 1985.

Michael Somerville,

Acting State Conservationist.

[FR Doc. 85–22491 Filed 9–19–85; 8:45 am]

BILLING CODE 3410–17–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–010]

Carbon Steel Wire Rod From Brazil; Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order.

SUMMARY: On June 14, 1985, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on carbon steel wire rod from Brazil and announced its tentative determination to revoke the order. The review covers the period from October 1, 1984.

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received comments from Atlantic Steel Co., Continental Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Co., the petitioners. After our analysis of those comments, we determine that domestic interested parties are no longer interested in continuation of the order. Therefore, we are revoking the order. In accordance with petitioners' notification the revocation will apply to all carbon steel wire rod exported on or after October 1, 1984.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Chip Hayes or G. Leon McNeill, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 24923–24) the preliminary results of its changed circumstances administrative review of the antidumping duty order on carbon steel wire rod from Brazil (48 FR 52110–11, November 16, 1983). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of carbon steel wire rod. Such merchandise is currently classifiable under item 607.1700 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received written comments from Atlantic Steel Co., Continental Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Co., the petitioners in this proceeding.

Comment 1: The petitioners claim that our notice of preliminary results does not adequately describe the conditions of their support for the revocation of the antidumping duty order. In that notice, we stated that the petitioners had advised the Department that they (the petitioners) were "no longer interested in" the antidumping duty order. However, petitioners maintain they have no objection to the initiation of proceedings to review and revoke the antidumping duty order only so long as the conditions in their May 9, 1985, letter are satisfied.

Department's Position: Our understanding is that the petitioners are no longer interested i.e., have no objection to our review and revocation of the antidumping duty order as long as the conditions of their letter are met. We are meeting the conditions of the letter.

Comment 2: The petitioners claim that there is a discrepancy in the wording between our notice of preliminary results and the Arrangement Concerning Trade in Steel Products between Brazil and the United States ("the Arrangement"). The Arrangement provides that *shipments* of Brazilian carbon steel wire rod on or after October 1, 1984, will be subject to export ceilings. Our notice provided that "the revocation will apply to all carbon steel wire rod *entered, or withdrawn from warehouse,* for consumption on or after October 1, 1984."

The petitioners argue that we should adhere to the Arrangement by making the revocation applicable only to shipments made on or after October 1, 1984.

Department's Position: Since the petitioners' lack of interest in continuation of the antidumping duty order is the basis of the revocation, and since the petitioners have unambiguously stated that their lack of interest in continuation applies only to shipments made on or after October 1, 1984, we are revoking this order with respect to shipments of Brazilian wire rod exported on or after October 1, 1984. Exports prior to October 1, 1984, that are entered, or withdrawn from warehouse, for consumption after that date continue to be subject to the antidumping duty order.

If any interested party chooses to request, in accordance with the Interim Final/Final Rule (50 FR 32556, August 13, 1985), an administrative review for the period immediately preceding October 1, 1984, we will consider arguments that the revocation should affect exports (shipments) prior to October 1 that were entered after October 1.

Final Results of the Review and Revocation

After review of the comments received, we determine that the domestic interested parties are no longer

interested in continuation of the antidumping duty order on carbon steel wire rod from Brazil and that the order should be revoked on this basis.

Therefore, we are revoking the order on carbon steel wire rod from Brazil effective October 1, 1984. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise exported prior on or after October 1, 1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries.

This notice does not cover unliquidated entries of carbon steel wire rod from Brazil which were exported prior to October 1, 1984. The Department will cover any entries for merchandise exported to October 1, 1984, not covered in a prior administrative review, in a separate review, if one is requested.

This administrative review, revocation and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: September 12, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–22480 Filed 9–19–85; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–003]

Stainless Clad Steel Plate From Japan; Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order.

SUMMARY: On July 30, 1985, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on stainless clad steel plate from Japan and announced its tentative determination to revoke the order. The review covers the period from October 1, 1984.

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received no comments. We therefore determine that domestic interested parties are no longer interested in continuation of the order and we are revoking the order. In accordance with the petitioner's notification, the revocation will apply to all stainless clad steel plate entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Chip Hayes or G. Leon McNeill, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On July 20, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 30867) the preliminary results of its changed circumstances administrative review of the antidumping duty order on stainless clad steel plate from Japan (47 FR 34178–79, August 6, 1982). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of stainless clad steel plate. Such merchandise is currently classifiable under item 607.9400 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Final Results of the Review and Revocation

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received no comments.

As a result of this review, we determine that the domestic interested parties are no longer interested in continuation of the antidumping duty order on stainless clad steel plate from Japan and that the order should be revoked on this basis.

Therefore, we are revoking the order on stainless clad steel plate from Japan effective October 1, 1984. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries.

This notice does not cover unliquidated entries of stainless clad steel plate from Japan which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any entries not covered in a prior administrative review and entered, or withdrawn from warehouse, for consumption prior to October 1, 1984, in a separate review, if one is requested.

This administrative review, revocation and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 353.53 and 353.45 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: September 12, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–22481 Filed 9–19–85; 8:45 am]

BILLING CODE 3510–DS–M

President's Export Council; Change of Time for Full Council Meeting

On September 18, 1985 a notice dated September 16, 1985 was published in the **Federal Register** (50 FR 37892), announcing a full Council Meeting of the President's Export Council on September 23, 1985 at 10:00 a.m. in Room 4830 of the Department of Commerce, Herbert C. Hoover Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The purpose of this notice is to announce that the time for the meeting has been rescheduled for 2:30 p.m.–3:30 p.m. in the same location.

For further information, contact Laureen Daly at (202) 377–1125.

Dated: September 18, 1985.

Henry P. Misisco,

Acting Director, Office of Planning and Coordination.

[FR Doc. 85–22702 Filed 9–19–85; 8:45 am]

BILLING CODE 3510–DR–M

National Oceanic and Atmospheric Administration

Gulf of Mexico/South Atlantic Fishery Management Councils; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico and South Atlantic Fishery Management Councils will convene a joint public meeting of their Coastal Migratory Pelagic (Mackerel) Advisory Panels at the Ramada Inn, 5303 West Kennedy Boulevard, Tampa, FL, October 2, 1985, from 8:30 a.m. to approximately 3:30 p.m., to review the report of the Council's Stock Assessment Group with respect to king and Spanish mackerel and make recommendations to the Councils. For further information

contact the Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609; telephone: (813) 228–2815.

Dated: September 17, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation National Marine Fisheries Service.

[FR Doc. 85–22603 Filed 9–19–85; 8:45 am]

BILLING CODE 3510–22–M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting, September 24, 1985, at 9 a.m., and will adjourn September 25, at approximately noon at the Ocean Gate Motor Inn, Southport, ME, to discuss reports of the scallop, foreign fishing, surf clam, gear conflict, and ad hoc priorities committees; to discuss Atlantic salmon plan development, and other fishery management and administrative matters. For further information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route One), Saugus, MA 01906; telephone: (617) 231–0422.

Dated: September 17, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–22602 Filed 9–19–85; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

A subcommittee of the North Pacific Fishery Management Council will convene a public meeting to begin revision of the Gulf of Alaska Fishery Management Plan on October 3–4, 1985, at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, 7600 Sand Point Way, Room 2079, Seattle, WA. For further information contact Steve Davis, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274–4563.

Dated: September 17, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation National Marine Fisheries Service.

[FR Doc. 85–22601 Filed 9–19–85; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Requesting Public Comment on Bilateral Consultations With the Government of the People's Republic of China Concening Categories 369pt. (Luggage), 605pt. (Thread), and 651 (Pajamas)

September 17, 1985.

The Chairman of the Committee for the Inplementation to Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 23, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On August 15, 1985, pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, the Governments of the United States requested consultations concerning imports into the United States of cotton and man-made fiber textile products in Categories 369pt (only T.S.U.S.A. numbers 706.3200, 706.3650, and 706.4111), 605pt. (only T.S.U.S.A. number 310.9140) and 651, produced or manufactured in China and exported to the United States.

Summary market statements concerning each of these categories follow this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Anyone wishing to comment or provide data or information regarding the treatment of these categories under the agreement with the People's Republic of China, or on any other aspect thereof, or the comment on domestic production or availability of textile products included in the categories, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation ot Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The People's Republic of China is obligated under the consultation provision of the bilateral agreement, to limit its exports to the United States of these products during the ninety-day period which began on August 15, 1985 and extends through November 12, 1985 to the following levels:

Category	90 Day level
369 pt.	1,034,257 pounds.
605 pt.	106,461 pounds.
651	106,455 dozen.

The People's Republic of China is also obligated under the bilateral agreement, if no mutually satisfactory solution is reached during consultations, to limit its exports to the United States during the twelve-months following the ninety-day consultation period to the following:

Category	12 mon levels [1]
369 pt.	3,320,320 pounds.
605 pt.	246,117 pounds.
651	[illegible] dozen.

[1] Nov. 13, 1985 to Nov. 2, 1986.

The United States Government has decided, pending a mutually satisfactory solution, to control imports of textile products in Categories 369 pt, 605 pt. and 651, exported during the ninety-day period at the levels described above.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register**.

In the event the limits established for the ninety-day period are exceeded, such excess amounts, if allowed to enter at the end of the restraint period, shall be charged to the levels (described above), defined in the agreement for the subsequent twelve-month period.

SUPPLEMENTARY INFORMATION: On December 28, 1984 a letter to the Commissioner of Customs was published in the **Federal Register** (49 FR 50432) from the Chairman of the Committee for the Implementation of Textile Agreements which established restraint limits for certain categories of cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1985. The notice document which preceded that letter referred to the consultation mechanism which applies to categories of textile products under the bilateral agreement, such as Categories 369 pt., 605 pt., and 651, which are not subject to specific ceilings and for which levels may be established during the year. In the letter published below, pursuant to the bilateral agreement, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in Categories 369 pt., 605 pt., and 651, manufactured in the People's Republic of China and exported during the indicated ninety-day period, in excess of the designated levels.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

August 1985.

China—Market Statement

Category 369—Luggage, Cotton

Summary and Conclusions

U.S. imports of Category 369-Luggage (TSUSA Numbers 706.3200, 706.3650 and 706.4111) from China were 1.48 million pounds during January-June 1985, a 53 percent increase over the 968,000 pounds imported a year earlier. China was the largest supplier of Category 369–L during the first 6 months of 1985 and accounted for 43 percent of the total imports in that category. Imports from China reached 2.4 million pounds in 1984 an increase of 30 percent over the 1.9 million pounds imported in 1983.

The market for Category 369-Luggage is disrupted by imports and the high volume imports from China have contributed to the disruption.

Production and Imports

U.S. consumption of cotton fabric in luggage declined from 6.9 million pounds in 1981 to 5.2 million in 1984. Contrasting this 26 percent reduction was an increase in imports of 173 percent from 1.1 million pounds of fabric in 1981 to 2.9 million in 1984. Imports continued the sharp increase in 1985, reaching 2.2 million pounds of fabric during the first six months.

Import Penetration and Market Share

The ratio of imports to domestic production in 1984 was 56.6 percent compared with 15.4 percent in 1981. The domestic producers share of the market for domestically produced and imported cotton luggage declined from 87 percent in 1981 to 64 percent in 1984.

Wholesale Prices, Chinese and U.S. Producers

Imports of cotton luggage from China entered at low duty-paid values, resulting in wholesale prices well below those of comparable U.S. produced luggage.

August 1985.

China—Market Statement

Category 605 Pt.—Man-Made Fiber Sewing Thread

Summary and Conclusions

U.S. imports of man-made fiber sewing thread, TSUSA No. 310.9140 from China amounted to 259,313 pounds during the first six months of 1985. This was equal to four times the total imports from China during the full year of 1984. China, duing January-June 1985, was the third largest supplier of TSUSA No. 310.9140, accounting for 13 percent of the total imports.

The U.S. market for man-made fiber sewing thread is being disrupted by imports and China is contributing to that disruption.

U.S. Market Share

The U.S. producers' share of the market for domestically produced and imported man-made fiber thread declined from 95 percent in 1981 to 82 percent in 1984.

Imports and Import Penetration

U.S imports of thread under TSUSA No. 310.9140 during January-June 1985 at 1,999,000 pounds were 14 percent higher than the imports during the same period a year earlier. Import growth was especially sharp in April-June 1985 when two-thirds of the first half's total was imported. Imports for the year ending June 1985 were 3,537,000 pounds, up 25 percent from the 2,822,000 imported a year earlier.

The ratio of imports to domestic production increased from 5.1 percent in 1981 to 22.4 percent in 1984. Although there was a decline in the ratio during the first quarter of 1985 due to the smaller imports, imports by the end of June had exceeded the 1984 level and the 1985 ratio will resume the upward trend.

Import Values and Domestic Prices

The man-made fiber thread imports from China are landed in the U.S. at duty-paid values well below the U.S. producer prices for such thread.

August 1985.

China—Market Statement

Category 651—Man-made Fiber Pajamas and Other Nightwear

Summary and Conclusions

United States imports of Category 651 from China totaled 304,156 dozens during the year ending June 1985, up 92 percent from the 158,438 dozens imported a year earlier. Imports from China nearly doubled from 1983 to 1984, increasing from 121,000 dozens to 234,000 dozens. China is the largest supplier of Category 651; it accounted for 24 percent of the year ending June 1985 total imports.

This increase is sharp and substantial and creates a real risk of market disruption.

U.S. Production and Imports

U.S. production of Category 651 declined from 19,055,000 dozens in 1983 to 17,980,000 dozens in 1984. The market for domestically produced and imported Category 651 declined from 18,737,000 dozens in 1983 to 19,006,000 dozens in 1984. In spite of the downturn in the market, imports continued their upward trend, increasing by 50 percent from 682,000 dozens in 1983 to 1,026,000 dozens in 1984. The ratio of imports to domestic production doubled from 1981 to 1983 and increased by 58 percent from 1983 to 1984.

September 17, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1985, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 23, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 369 pt.[1], 605 pt.[2], and 651, produced or manufactured in the People's Republic of China and exported during the ninety-day period which began on August 15, 1985 and extends through November 12, 1985, in excess of the following levels of restraint:

Category	90-Day Level [3]
369 pt.[1]	1,034,257 pounds.
605 pt.[2]	106,461 pounds.
651	[illegible] dozen.

[1] In Category 369, only T.S.U.S.A. numbers 706.3200, 706.3650 and 706.4111.
[2] In Category 605, only T.S.U.S.A. number 310.9140
[3] The levels have not been adjusted to reflect any imports exported after August 14, 1985

Textile products in Categories 369 pt.[1], 605 pt.[2] and 651 which have been exported to the United States prior to the first day of the indicated ninety-day period shall not be subject to this directive.

Textile products in Categories 369 pt.[1], 605 pt.[2] and 651 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 12, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 28622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-22478 Filed 9-19-85; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Consultations With the Government of Thailand To Review Trade in Categories 301 Pt. and 434

September 17, 1985.

On August 30, 1985, the Government of the United States requested consultations with the Government of Thailand with respect to Categories 301 pt. (cotton/polyester yarns in T.S.U.S.A. numbers 300.6026 and 300.6028) and 434 (men's and boys' other wool coats). This request was made on the basis of the bilateral agreement of July 27 and August 8, 1983 between the Governments of the United States and Thailand relating to trade in cotton, wool and man-made fiber textiles and textile products. The agreement provides for consultations when the orderly development of trade between the two countries may be impeded by market disruption, or the threat thereof, due to imports.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations, the Committee for the Implementation of Textile Agreements, pursuant to the terms of the bilateral agreement, may establish prorated specific limits of 1,531,279 pounds (Category 301 pt.) and 2,546 dozen (Category 434) for the entry and withdrawal from warehouse for consumption of textile products in Categories 301 pt. and 434, produced or manufactured in Thailand and exported to the United States during the twelve-month period which began on August 30, 1985 and extends through December 31, 1985.

Summary market statements concerning these categories follow this notice.

The Government of the United States, pending agreement in consultations on a mutually satisfactory solution, has decided to control imports in these categories during the ninety-day consultation period which began on August 30, 1985 and extends through November 27, 1985 at 1,314,657 pounds (Category 301 pt.) and 2,475 dozen (Category 434). In the event the levels established for the ninety-day periods are exceeded, such excess amounts, if they are allowed to enter, shall be charged to the pforated twelve-month period described above.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the Federal Register.

Anyone wishing to comment or provide data or information regarding the treatment of these categories under the bilateral agreement with the Government of Thailand, or on any aspect thereof, or to comment on domestic production or availability of textile products in these categories is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

August 1985.

Thailand—Market Statement

Category 301 Pt.—Cotton/Ployester Sales Yarn

Summary and Conclusions

U.S. imports of cotton/polyester sales yarn, TSUSA Nos. 300.6026 and 300.6028 from Thailand increased sharply in 1984, rising from 123,000 pounds in 1983 to 2.5 million in 1984. During the first of 1985 imports of these yarns totalled 2.3 million pounds 140 percent more than was imported a year earlier. Thailand supplied 47 percent of the total imports of these yarns during the year ending June 1985. The cotton/polyester sales yarn market has been severely disrupted by imports and imports from Thailand have contributed to the market disruption.

U.S. Production and Market Share

U.S. production of cotton/polyester sales yarn, TSUSA Nos. 300.6026 and 300.6028 declined from 30,975,000 pounds in 1983 to 25,831,000 in 1984. There was a further sharp reduction in early 1985 when January-April production dropped to 5,596,000 pounds, 59.5 percent below that of a year earlier. Production had slowed appreciably during the last half of 1984.

The U.S. producer's share of the market for domestically produced and imported cotton/polyester sales yarn declined drom 91 percent in 1983 to 68 percent during the first four months of 1985.

U.S. Imports and Import Penetration

Imports of this yarn from all sources were not commercially important prior to 1983. Imports in 1984 were 8.8 million pounds from all sources, up 174 percent from 1983. There was sharp decline during early 1985 of imports due to a reduction in imports from Korea because of import restraints. The January-June 1985 imports from all sources were 4,789,000 pounds, down 1,108,000 pounds from the 5,897,000 pounds imported a year earlier. Imports from Korea were down 2,325,000 pounds. Imports during May and June 1985 were 2,143,000 pounds compared with 692,000 pounds a year earlier. This resurgance in imports, if continued, will soon bring 1985 above the 1984 level.

The ratio of imports to domestic production for cotton/polyester blend sales yarn, 31's and finer, was 10.4 percent in 1983 and 34.1 percent in 1984. The ratio for the first four months of 1985 was 44.4 percent.

Duty-Paid Values and U.S. Producers Price

All of the imports of cotton/polyester sales yarn during the first half of 1985 was entered under TSUSA No. 300.6026—singles. The cotton/polyester yarn imported from Thailand is landed at a duty-paid value well below the U.S. producer price for comparable yarn.

August 1985.

Thailand—Market Statement

Category 4343—Men's and Boys' (MB) Other Wool Coats

Summary and Conclusions

Category 434 improts from Thailand were 9,335 dozens during the year ending June 1985 thirty-one times greater than the imports a year earlier. In 1984, Category 434 coat imports from Thailand were 5,868 dozens There were no imports in 1983.

The U.S. Category 434 market has been disrupted by imports. Imports from Thailand have contributed to this disruption and additional increases would add to a real risk of further disruption.

U.S. Production and Market Share

U.S production in 1984 continued the prevailing downward trend, declining to 292,000 dozens in 1984 from 314,000 dozens in 1983. Production in 1980 was 421,000 dozens. Imports almost tripled from 1980 to 1984 and the U.S. producer's share of the market for domestically produced and imported Category 434 dropped from 91 percent to 71 percent over the period.

U.S. Imports and Imports Penetration

In just one year, U.S. imports of Category 434 doubled from 59,502 dozens in 1983 to 119,309 dozens in 1984. Imports for the first six months of 1985 were up 74 percent from January-June 1984. The ratio of imports to domestic production increased from 9.7 percent in 1981 to 19.1 percent in 1983 to 40.8 percent in 1984. The sharp increase in imports into a soft market indicates a higher import penetration in 1985.

Duty-Paid Values and U.S. Producer's Prices

Approximately 85 percent of the year ending June 1985 imports from Thailand entered under TSUSA No. 379.8318—woven other coats over 4 dollars per pound. Thailand was the major foreign supplier of these coats, accounting for 24 percent of the total imports from all sources. The imports from Thailand are entered at duty-paid values below the U.S. producer prices for comparable coats.

September 17, 1985

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 21, 1984, by the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Thailand.

Effective on September 23, 1985, the directive of December 21, 1984 is hereby amended to include the following levels for textile products in Categories 301 pt.[1] and 434, produced or manufactured in Thailand and exported during the ninety-day period which began on August 30, 1985 and extends through November 27, 1985.

Category	90-Day level [2]
301 pt.[1]	1,314,857 pounds.
434	2,475 dozen.

[2] The levels have not been adjusted to reflect any imports exported after August 29, 1985.

Textile products in Categories 301 pt.[1] and 434 which have been exported to the United States prior to August 30, 1985 shall not be subject to this directive.

Textile products in Categories 301 pt.[1] and 434 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry or consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-22479 Filed 9-19-85; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 301 only T.S.U.S.A. numbers 300.6026 and 300.6028.

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD-University Forum Advisory Committee; Meeting

SUMMARY: The DOD-University Forum will meet in open session on October 7, 1985, from 9:00 a.m. until noon at the Sheration Grand Hotel, 525 New Jersey Avenue NW., Washington, DC 20001-1527.

The meeting is one of two formal meetings held annually as called for by the the charter. Agenda items will include the DOD's proposed University Research Initiative, and reports from the Forum Working Groups on Export Control and Foreign Languages and Area Studies.

Public attendees are requested to telephone Edward Blake in the DOD Office of Research and Laboratory Management, (202) 694-0205, before COB October 2, 1985, to be advised of the meeting room number and seating accomodations.

Dated: September 16, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Washington Headquarters Service, Department of Defense.

[FR Doc. 85-22517 Filed 9-19-85; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) anounces a closed session meeting.

DATE: Thursday, October 3, 1985.

ADDRESS: The meeting wil be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The AGED meeting will be limited to review of research and development programs with the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Laser. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. 92-463, as amended, (5 U.S.C. App. II section 10(d) (1982)), it has been detemined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: September 17, 1985.

Patricia H. Means,

OSD Federal REgister Liaison Officer, Department of Defense.

[FR Doc. 85-22518 Filed 9-19-85; 8:45 am]

BILLING CODE 3810-01-M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group B (Microelectronics) of the DOD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Tuesday, October 8, 1985.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2001 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Becky Terry, AGED Secretariat, 2011 Crystal Drive, Arlington,VA 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. II section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: September 17, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85–22519 Filed 9–19–85; 8:45 am]

BILLING CODE 3810–01–M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group A (Mainly Microwave Devices) of the DOD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900 Wednesday and 0830 Thursday, October 16 & 17, 1985.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Harold Summer, AGED Secretariat, 201 Varick Street, New York, NY 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended (5 U.S.C. App. II, section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: September 17, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85–22520 Filed 9–19–85; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board; Meeting

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board will meet in closed session on October 30–31, 1985 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Board will discuss interim findings and tentative recommendations resulting from ongoing Task Force activities associated with Strategic, Tactical, Intelligence/Command, Control and Communications, and Technology Issues. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Dated: September 16, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85–22521 Filed 9–19–85; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on On-Site Inspection

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on On-Site Inspection will meet in closed session on October 15, 1985 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will continue to examine concepts for on-site inspection technical sensor systems which could verify possible arms control limits.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: September 16, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85–22522 Filed 9–19–85; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Small ICBMs; Meetings.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Follow-on Forces Attack will meet in closed session on October 10–11, November 14–15, and December 16–17, 1985 in the Pentagon, Arlington, Virgina.

This mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will continue its examination of the technical and programmatic aspects as well as conceptual applications of the capabilities and systems to accomplish attacking follow-on forces.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly this meeting will be closed to the public.

Dated: September 16, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85–22523 Filed 9–19–85; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Small ICBMs; Change in Dates of Advisory Committee Meeting.

The meeting of the Defense Science Board Task Force on Small ICBMs scheduled for September 20, 1985 in the Pentagon, Washington, D.C. as published in the **Federal Register** (Vol. 50, No. 146, Tuesday, July 30, 1985, FR Doc. 85–17994) has been cancelled. The Task Force will now meet in the Pentagon on the following dates: October 14, 1985, October 28, 1985, and November 18, 1985. In all other respects the original notice remains the same.

Dated: September 16, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85–22524 Filed 9–19–85; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on FOFA (Defensive Systems Subgroup); Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on FOFA (Defensive Systems Subgroup) will meet in closed session on October 22–23, 1985 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting on October 22–23, 1985 the Subgroup will discuss the application of technology to systems designed to improve future U.S. air defense capabilities.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly this meeting will be closed to the public.

Dated: September 16, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85–22525 Filed 9–19–85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

September 13, 1985.

The USAF Scientific Advisory Board's Airspace Medical Division Advisory Group will meet at Brooks Air Force Base, Texas on November 20 and 21, 1985. The meeting will convene from 8:00 a.m. to 5:00 p.m. on November 20 and from 8:00 to 3:00 p.m. on November 21.

The purpose of the meeting will be to discuss long range plans and selected projects/programs relating to the missions of the Aerospace Medical Division.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8404.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 85–22569 Filed 9–19–85; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Tuesday & Wednesday, Thursday, 8–10 Oct 1985.

Times of meeting: 0800–1500 hours.

Places: Huntsville BMD Command, AL (8–9 Oct); Lincoln Lab, M.I.T. Boston, MA. (10 Oct).

Agenda: A special panel of the Army Science Board Ad Hoc Subgroup on Ballistic Missile Defense Follow-On will meet to discuss KMR Instrumentation Requirements. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) therefore, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–22562 Filed 9–19–85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Wednesday & Thursday, 16–17 October 1985.

Times of meeting: 0830–1630 hours.

Places: US Army Air Defense Center, Fort Bliss, TX (16 Oct); US Army TRADOC Systems Analysis Activity, White Sands Missile Range, NM (17 Oct).

Agenda: The Army Science Board Ad Hoc Subgroup on TRADOC Operations Research Activity (TORA) will meet for briefings by analytic agencies. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) therefore, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85–22563 Filed 9–19–85; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Certification for Unrestricted Use of the Sodium Reactor Experiment (SRE) Complex and the Hot Cave Facility (Bldg. 003)

AGENCY: San Francisco Operations Office, DOE.

ACTION: Notice of Certification of Decommissioned Facilities for Unrestricted Use.

SUMMARY: The Department of Energy has completed the radiological surveys and has taken remedial actions to decontaminate and decommission DOE contaminated areas that were found in the SRE complex and Bldg. 003. The Department, through the San Francisco Operations Office, has issued the following statement:

Statement of Certification for Unrestricted Use of the SRE Complex and Bldg. 003 at Rockwell International's Santa Susana Field Laboratory, Chatsworth, California

The Department of Energy, Office of Nuclear Energy, Office of Terminal Waste and Remedial Action, Division of Remedial Action Projects and the Department of Energy San Francisco Operations Office have reviewed the remedial actions and the radiological survey reports of the SRE complex and Bldg. 003. Based on this review, DOE certifies that there is no evidence the facilities pose a radiological threat to either personnel or the environment. Therefore, the SRE complex and Bldg. 003 are removed from the DOE radiologically contaminated Surplus Facilities Program and are suitable for unrestricted use.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard Lanni, Project Manager, Magnetic Fusion and Nuclear Division, U.S. Department of Energy, 1333 Broadway, Oakland, California 94612. Telephone: (415) 273–6444 or FTS: 536–6444.

SUPPLEMENTARY INFORMATION: The Department of Energy has established a program to characterize and when necessary, correct the radiological conditions of DOE contaminated surplus facilities. The objective of the program is to insure that these surplus facilities and any associated properties in their vicinity are within or below the radiological guidelines established by the ANSI Standard N13.12 and the NRC Regulatory Guide 1.86.

The SRE Complex, located at the Rockwell's Santa Susana Field Laboratory, Chatsworth, California, consists of a series of buildings used to support the Department of Energy (formerly Atomic Energy Commission) activities to demonstrate the feasibility of a high temperature sodium-cooled graphite-moderated reactor as the heat source for a central power station.

The Hot Cave Facility, Bldg. 003, located at the Rockwell's Santa Susana Field Laboratory, was used to analyze fuel burn-up samples for the System for Nuclear Auxillary Power (SNAP) Program and the evaluation of various irradiation experiments.

Radiological surveys conducted before the decontamination and decommissioning activities for the SRE complex and Bldg. 003 showed gross contamination of mixed fission products and beta-gamma emitters.

The remedial actions, including decontamination and decommissioning for both the SRE and Bldg. 003 were completed in 1982.

Based on the review of the final remedial action project report, the San Francisco Operations Office has concluded that the SRE complex and Bldg. 003 are radiologically acceptable and suitable for release for unrestricted use and are therefore removed from the Surplus Facilities Program.

These findings are supported by the Department of Energy's Certification Dockets for the SRE complex and Bldg. 003. The dockets are available for review between the hours of 8:00 a.m. to 4:00 p.m. Monday through Friday (except Federal holidays) at the following locations:

1. U.S. Department of Energy, San Francisco Operations Office, Technical Information Center, 1333 Broadway, Oakland, California 94612.

2. U.S. Department of Energy, Public Document Room, Forrestal Bldg. Room 1E–190, Washington, D.C. 20545.

Dated: July 23, 1985.

William R. Voigt, Jr.,

Acting Director, Office of Terminal Waste Disposal and Remedial Action, DOE/HQ.

[FR Doc. 85–22543 Filed 9–19–85; 8:45 am]

BILLING CODE 6450–01–M

Bonneville Power Administration

Long-Term Power Sales Contracts Environmental Impact Statement Notice of Scoping Meetings

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Scoping Meetings and Request for Comment on the Long-Term Power Sales Contracts Environmental Impact Statement (EIS) *BPA File No:* PSC–1

SUMMARY: BPA hereby gives public notice of its intent to hold scoping meetings on the EIS for the Long-Term Power Sales Contracts offered under 5(g) of the Pacific Northwest Electric Power Planning and Conservation Act 16 U.S.C 839–839h (1982).

BPA was required by the Pacific Northwest Power Act to offer new long-term power sales contracts to its customers in August 1981. BPA prepared an Environmental Report to accompany the initial offer of contracts but did not prepare an EIS. BPA has been ordered by the United States Court of Appeals for the Ninth Circuit to prepare an EIS at this time. *Forelaws on Board v. Johnson,* 743 F. 2d 677, 21 ERC 1850, NO. 82–7319 (9th Cir. Sept. 25, 1984), petition for rehearing denied January 21, 1985.

The EIS will analyze major policy choices made for the initial contracts, particularly for terms affecting energy conservation, renewable resources, and the protection of fish and wildlife. Alternatives to contract terms adopted by BPA that were proposed in the initial negotiations and analyzed in the Environmental Report will be considered. Additional alternative contract terms may be developed in the scoping process. The EIS will provide information on the environmental consequences of contract terms as they now exist and of alternative contract terms as they are developed in the scoping process.

Earlier, BPA published in the **Federal Register** (50 FR 9116) its formal Notice of Intent to prepare the EIS on March 5, 1985. By the close of the comment period on April 5, 1985, BPA had received comments from 16 parties.

Consistent with the requirements of the National Environmental Policy Act, BPA is soliciting additional suggestions and comments to identify the actions, alternatives, and impacts to be considered in the preparation of the EIS.

BPA will hold five scoping meetings to invite suggestions to assist in defining the scope of the EIS. At each meeting a short presentation on potential environmental implications of the long-term power sales contracts will be given by BPA. This will be followed by an opportunity to voice your opinion in a group session. DATES: All meetings will begin at 7:30 p.m., except the Burley, Idaho, meeting which begins at 1:30 p.m. Dates and locations are:

October 2, 1985: 7:30 p.m., Mercer Forum, Seattle Center, Mercer Street at approximately 3rd Avenue North, Seattle, Washington.

October 3, 1985: 7:30 p.m., Jantzen Beach, Thunderbird Motor Inn, 1401 North Hayden Island Drive, Portland, Oregon.

October 7, 1985: 1:30 p.m., Burley Inn, Burley, Idaho.

Ocober 7, 1985: 7:30 p.m., Hanford House, Thunderbird Motor Inn, 802 George Washington Way, Richland, Washington.

October 8, 1985: 7:30 p.m., Varsity Room, Quality Inn, Highway 10 West-East Mullin Road, Missoula, Montana.

Responsible Official: Mr. Roy B. Fox, Environmental Coordinator for the Office of Power and Resources Management, is the official responsible

for the development of the EIS on long-term power contracts.

ADDRESS: Written recommendations and comments should be submitted to Mr. Fox at P.O. Box 12999, Portland, Oregon 97212.

DATE: Comments must be submitted by November 1, 1985.

FOR FURTHER INFORMATION CONTACT: Questions regarding the EIS should be directed to Mr. Fox at 503–230–4261 in Portland, or Ms. Lynn Baker, Public Involvement Office, 503–230–3478 in Portland. Toll-free lines: Oregon callers outside of Portland may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048.

Information may also be obtained from:

Mr. Reginald Kaiser, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seattle, Washington, 98109; 206–442–4130.

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–525–6226.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Issued in Portland, Oregon, on September 6, 1985.

Peter T. Johnson,

Administrator.

[FR Doc. 85–22605 Filed 9–19–85; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[Docket No. ERA–FC–85–025]
[OFP Case No. 61050–9254–22–22]

Acceptance of Petition for Exemption and Availability of Certification From the Alaska Electric Generation and Transmission Cooperative, Inc., for an Exemption From the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

SUMMARY: On July 31, 1985, Alaska Electric General and Transmission Cooperative, Inc. (AEG&T), Palmer, Alaska, filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent reliability of service exemption for a proposed new electric powerplant from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"). Title II of FUA prohibits the use of petroleum and natural gas as a primary energy source in any electric powerplant and the construction of such a powerplant without the capability to use an alternate fuel as a primary energy source. Final rules setting forth the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Part 500, 501, and 503. The final rules governing the reliability of service exemption, 10 CFR 503.40, were published at 46 FR 59872 (December 7, 1981).

The unit for which AEG&T seeks an exemption is a natural gas-fired combustion turbine with a nameplate rating of 39 MW that will operate as a single-cycle combustion turbine unit to produce electrical power at AEG&T's plant at Soldotna, Alaska. The new unit, identified as Soldotna powerplant Unit No. 2 is expected to commence operation to meet load forecast electrical demands commencing in the winter 1987–88.

After receipt of information from AEG&T, ERA has now determined that the petition includes sufficient evidence to support a determination on the exemption request, and it is, therefore, accepted pursuant to 10 CFR 501.3. ERA retains the right, however, to request additional relevant information from AEG&T at any time during the proceeding should circumstances or procedural requirements so require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in Sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a pubic hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials relating to the proceeding, is available upon request through DOF, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of the reasons therefore, will be published in the **Federal Register**.

DATES: Written comments are due on or before November 4, 1985. A request for a public hearing must be within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA–007, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585. Docket No. ERA–FC–85–025 should be printed on the outside of the envelope and the documents contained therein.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–045, Washington, D.C. 20585. Telephone (202) 252–8233.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW., Washington, D.C. 20585. Telephone (202) 252–6947.

SUPPLEMENTARY INFORMATION: AEG&T proposes to install a new combustion turbine powerplant unit at Soldotna, Alaska. The new unit will operate as a baseload integrated system producing electricity to meet forecast demands commencing with the winter of 1987–88.

Section 212(f) of FUA and 10 CFR 503.40 provide for a permanent exemption for powerplants necessary to maintain reliability of service. In addition, Section 317 of Pub. L. 97–394 (42 U.S.C. 8322) provides that:

> In the case of any new electric powerplant located in Alaska for which a petition is accepted after the date of enactment of this Act, but before December 31, 1985, pursuant to Section 212(f) of the Powerplant and Industrial Fuel Use Act of 1978, to use natural gas . . . the petitioner shall be deemed to have made the demonstrations required by clauses (1) and (2) of such section and such exemption, subject to the other applicable provisions of such Act, shall be granted . . . Nothing in this section shall apply to any new electric powerplant using natural gas produced from the Prudhoe Bay unit of Alaska.

In accordance with the requirements of 10 CFR 503.40(a) and (c), AEG&T's petition for a permanent exemption for Soldotna powerplant unit No. 2 includes evidence and supporting information demonstrating that Soldotna powerplant unit No. 2 is a qualifying powerplant under Section 317 of Pub. L. 97–394; that

no alternate power supply exists; and that the use of mixtures in the unit is not feasible. In addition, AEG&T submitted an environmetal impact analysis, as required by 10 CFR 503.13.

NEPA Compliance

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 *et seq.;* and DOE's guidelines implementing those regulations, published at FR 45 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

Pursuant to 10 CFR 501.3, ERA hereby accepts AEG&T's petition for a permanent Reliability of Service exemption for the proposed new electric powerplant. The acceptance of the petition by ERA does not constitute a determination that AEG&T is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C., September 11, 1985.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-22506 Filed 9-19-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-024]
[OFP Case No. 61055-9285-20-24]

Acceptance of Petition for Exemption and Availability of Certification From ARCO Petroleum Products Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

SUMMARY: On July 30, 1985, ARCO Petroleum Products Company, a division of the Atlantic Richfield Company (ARCO), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed cogeneration project to be constructed within the property boundaries of the ARCO Watson Refinery located at 1801 Sepulveda Boulevard, Carson, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as primary energy sources in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The proposed cogeneration project would use a combined cycle process consisting of four parallel General Electric combustion gas turbine driven power generator (GT-G)/heat recovery steam generator (HRSG) trains, two parallel steam turbine driven power generator (ST-G) trains, associated auxiliaries and utilities, a control room, electrical substations, a power transmission line, and a natural gas fuel line. Steam produced in the cogeneration facility is required for the refinery's steam needs. Normal requirements are 820,000 lb/hr ±200,000 lb/hr with a maximum rate of 1,200,000 lb/hr.

Oil and gas consumed by the facility will be less than that which would otherwise be consumed in the absence of the cogeneration project. It is expected that more than 50 percent of the net annual electrical power produced by the facility will be sold to Southern California Edison Company (SCE), causing the new cogeneration facility to be classified as a powerplant under FUA.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in §§ 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding are available upon request at: Department of Energy, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefore, would be published in the **Federal Register**.

DATES: Written comments are due on or before November 4, 1985. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-007, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Docket No. ERA-FC-85-024 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, D.C. 20585.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-111, 1000 Independence Avenue, SW., Washington, D.C. 20585. Telephone: (202) 52-6947.

SUPPLEMENTARY INFORMATION: ARCO proposes to construct and operate a cogeneration facility within the property boundaries of its Watson Refinery at 1801 Sepulveda Boulevard, Carson, California. The facility will be wholly owned by the ARCO Petroleum Products Company, a division of the Atlantic Richfield Company. The facility will generate electrical power for sale to SCE and generate steam to satisfy the refinery's steam needs. The cogeneration project will use a combined cycle process and will consist of four parallel combustion gas turbine driven power generator (GT-S)/heat recovery steam generator trains and associated equipment.

The cogeneration facility is classified as an electric power-plant under FUA

because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent congeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), ARCO has certified to ERA that:

1. The oil or gas to be consumed by this congeneration project would be less than that which would be otherwise consumed in the absence of the project.

2. It is not technically feasible to use mixtures of natural gas and coal (or oil and coal) in the General Electric turbines, the fuel burning unit of the cogeneration project.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certification discussed above) ARCO has included as part of the petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that ARCO is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C., September 11, 1985.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-22507 Filed 9-19-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-027]
[OFP Case No. 55338-9288-20-24]

Acceptance of Petition for Exemption and Availability of Certification by Willamette Industries, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

SUMMARY: On August 2, 1985, Willamette Industries, Inc. (Willamette), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for their proposed Port Hueneme cogeneration facility located in Oxnard, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1985 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination, and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the SUPPLEMENTARY INFORMATION section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The hearing file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such periods. Notice of any extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before November 4, 1985. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Office of Fuels Programs, Room GA-073, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585 (Attn: Frank Duchaine).

Docket No. ERA-FC-85-012 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, D.C. 20585. Telephone (202) 252-8233.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW. Washington, D.C. 20585 Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: The proposed cogeneration project for the Port Hueneme site will supply 100% of the steam required for the paper machine and the other mill systems. It will also supply all of the mill's electrical needs with surplus electrical generation being sold to the utility grid.

The Port Hueneme paper mill located in Oxnard, California, is one of four mills in Willamette that produce paper.

The project site will be within the confines of the Port Hueneme mill plant site which is located at the southwest edge of the city along the ocean coast.

The installation proposed will be a simple topping cycle cogeneration facility, incorporating a fuel pressure waste heat boiler to gain maximum heat recovery efficiency. The flu gasses will be treated with ammonia gas in a selective catalytic reduction unit to remove NO_x generated in the turbine. The waste heat boiler exhaust gases are then further utilized to heat process water and displace the need for the hot air generated in the present vapor absorption system, thereby eliminating the need for natural gas in these areas.

Power will be produced in a simple topping cycle facility with a gas turbine directly driving the electrical generator. No secondary generation through a combined cycle steam turbine is planned at this time. The permit to operate is based on the gas turbine being operated at is full ISO load rating of 21.8 MW. However, the project will be orignially operated at a lessor rate to

be in balance with the mill's current steam and electrical constraints.

The gas turbine is designed for a duel fuel capability (natural gas and No. 2 distillate). However, for air qulaity and economic reasons the special fuel burning nozzles and other equipment required to burn distillate fuel were not purchased and the system will burn only natural gas. At full ISO rating the amount of gas consumed will be 230.1 MMBtu/hr. At the initial startup load of 18.0 MW the turbine will consume 190.9 MMBtu/hr.

Section 212(c) of the Act and 10 CFR § 503.37 provide for a permanent congeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), Willamette has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the congeneration facility, where the calculation of savings is in accordance with 10 CFR § 503.37(b); and

2. The use of a mixture of oil or natural gas and an alternate fuel form the cogeneration facility, for which an exemption under 10 CFR § 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), Willamette has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR § 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR 1500 *et seq.;* and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as possible. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Willamette is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C., on September 11, 1985.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-22509 Filed 9-19-85; 8:45 am]

BILLING CODE [illegible]

[Docket No. ERA-FC-84-014; OFP Case No. 67047-9250-21-24]

Order Granting to Sunlaw Energy Corp. Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to Sunlaw Energy Corporation (Sunlaw or "the petitioner"). The permanent cogeneration exemption permits the use of natural gas as the primary energy source for a proposed 52.5 MW (net, approximate) combined cycle cogeneration facility at the Sunlaw/U.S. Growers II Cold Storage (USG II) facility located in Vernon, California. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: The order shall take effect on November 19, 1985.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, D.C. 20585. Telephone (202) 252-8233.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, D.C. 20585. Telephone (202) 252-8947.

SUPPLEMENTARY INFORMATION: On June 4, 1984, Sunlaw petitioned ERA under section 212(c) of FUA and 10 CFR 503.37 for a permanent cogeneration exemption to permit the use of natural gas in a proposed 54.6 MW (net, approximate) combined cycle cogeneration facility consisting of (1) two aircraft derivative gas turbines, (2) two unfired heat recovery steam generators (HRSG), an extraction steam turbine, an ammonia absortion chiller, and ancillary equipment.

On May 22, 1985, Sunlaw modified their original petition to use a single industrial gas turbine, instead of two aircraft derivative gas turbines as the system's prime mover. Also, a single, unfired three-pressure HRSG will be used instead of the two, two-pressure HRSG's originally proposed. This modification changed the size of the overall facility electric output from 54.6 MW to 52.5 MW (net, approximate). The process steam load for the cogeneration project will be 35,000 pounds per hour to produce 1,000 tons of −40°F ammonia for the USG II storage warehouse No. 5.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including Sunlaw's certification to ERA, in accordance with 10 CFR 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility will not be technically feasible, in accordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on July 13, 1984 (49 FR 28599), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by Section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on August 27, 1984. Comments were

received from the U.S. Environmental Protection Agency (EPA) on August 27, 1984 and Sunlaw has since satisfied the objections to their project set forth in the letter from the EPA.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(c)(C) of the National Environmental Policy Act.

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that Sunlaw has satisified the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to Sunlaw to permit the use of natural gas as the primary energy source for its cogeneration facility in Vernon, California.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register.**

Issued in Washington, D.C., on September 11, 1985.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-22508 Filed 9-19-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Tuesday, October 8, 1985, 9:00 am-6:00 pm; Wednesday, October 9, 1985, 9:00 am-4:00 pm.

Place: Brookhaven National Laboratory, Berkner Hall, Room B, Upton, NY 11973.

Contact: Dr. P. K. Williams, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER-221, Washington, DC 20545. Telephone: 301/353-4829.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda

Tuesday, October 8, 1985

—Discussion of Department of Energy/High Energy Physics and National Science Foundation/Elementary Particle Physics FY 1986 Budgets
—Status of and discussion on superconducting Super Collider (SSC) R&D activities
—Discussion on status of the HEPAP Subpanel on Non-Accelerator Physics (SNAP) and the Subpanel on Advanced Accelerator R&D and the SSC
—Discussion of initiation of a new Subpanel on SSC Detector R&D
—HEPAP Review of the Brookhaven National Laboratory (BNL) High Energy Physics Program
—Public Comment (10 minute rule)

Wednesday, October 9, 1985

—Status of Stanford Linear Collider (SLC) construction and Positron-Electron Project (PEP) upgrade plans at Stanford Linear Accelerator Center
—Status of Tevatron I construction and Tevatron II construction and operations at Fermi National Accelerator Laboratory
—Status of the Cornell Electron Storage Ring (CESR) upgrade
—Report on activities of the International Committee on Future Accelerators (ICFA)
—Public Comment (10 minute rule)

Public Participation

The meeting is open to the public. The Chairperson of the panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes

Available for public review and copying at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on September 17, 1985.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 85-22604 Filed 9-19-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER84-705-004, et al.]

Boston Edison Company, et al.; Electric Rate and Corporate Regulation Filings

September 13, 1985.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. ER84-705-004]

Take notice that on September 4, 1985, Boston Edison Company tendered for filing, pursuant to Commission letter order dated July 22, 1985, a report of its refund to the Town of Reading, Massachusetts. The refund, delivered to the Town on August 19th, covers the period from November 28, 1984 through May 31, 1985.

Comment date: September 25, 1985, in accordance with Standard Paragraph H at the end of this notice.

2. Florida Power Corporation

[Docket No. ER85-723-000]

Take notice that on August 30, 1985, Florida Power Corporation (Florida Power) tendered for filing a Contract for Interchange Service dated August 20, 1985 providing for interchange service between Florida Power and the City of Starke, Florida. Florida Power states that Florida Power and the City of Starke did not have a previous contract for interchange service.

Florida Power requests that the Contract for Interchange Service be permitted to become effective September 1, 1985 and therefore, requests waiver of the sixty day notice requirement. Copies of this filing have been served upon the City of Starke, Florida and the Florida Public Service Commission.

Comment date: September 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Connecticut Power and Light Company

[Docket No. ER85-749-000]

Take notice that on September 6, 1985, Connecticut Power and Light Company (CL&P) tendered for filing for itself and as successor by merger with the Hartford Electric Company (HELCO) and on behalf of Western Massachusetts Electric Company (WMECO) notices of termination of the following rate schedules:

CL&P's Rate Schedule:
FERC No. 327
FPC No. 48

FERC No. 158
FPC No. 136
FPC No. 49
FPC No. 125
FPC No. 124
FERC No. 149
FPC No. 115
FPC No. 45
FPC No. 145
FPC No. 127
FERC No. 160
HELCO's Rate Schedule FPC No. 101
WMECO's Rate Schedule:
FERC No. 144
FERC No. 203
FPC No. 211
FERC No. 163
FERC No. 167

Comment date: September 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Connecticut Power and Light Company

[Docket No. ER85–750–000]

Take notice that on September 6, 1985, Connecticut Power and Light Company tendered for filing for itself and as successor by merger with the Hartford Electric Light Company (HELCO) and on behalf of Western Massachusetts Electric Company (WMECO) notices of termination of the following rate schedules:

CL&P's Rate Schedule:
FPC No. 119
FPC No. 149
FPC No. 135
FPC No. 118
FPC No. 144
FERC No. 169
FERC No. 184
FPC No. 47
FERC No. 199
FPC No. 102
FERC No. 157
FPC No. 100
FPC No. 138
FPC No. 137
FPC No. 134
FPC No. 95
FPC No. 100
FPC No. 92
FPC No. 99
HELCO's Rate Schedule:
FPC No. 99
FPC No. 119

Comment date: September 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Gulf States Utilities Company

[Docket No. ER85–753–000]

Take notice that Gulf States Utilities Company (Gulf States), on September 10, 1985, tendered for filing an Amendment, executed as of August 19, 1985, to the Agreement for Wholesale Electric Service dated January 15, 1975, between Gulf States and the City of Caldwell (Caldwell). The Amendment does not provide for a rate increase.

The Amendment permits Caldwell to cease to take service under Rate Schedule WSD (Wholesale Power at Distribution Voltage) and start to take service under Rate Schedule WST (Wholesale Power at Transmission Voltage). To qualify for the WST rate, Caldwell agreed to pay a facilities charge of 2 percent per month of the allocated cost of the existing Gulf States substation and associated equipment. With such change, Caldwell will pay less for electric service.

The Amendment also provides that a portion of Caldwell's load that would otherwise be supplied by purchases of wholesale electric service from Gulf States shall instead be served by power purchased from others and delivered to Caldwell by transmission service provided by Gulf States. The power Caldwell will purchase from others will be power Gulf States has contracted for or will contract for with other utilities and will share, by assignment, with Caldwell.

The Amendment would remain in effect for ten years unless terminated earlier pursuant to rights reserved in the Amendment.

Gulf States requests that any necessary waivers be granted so that the change from WSD to WST can become effective on September 1, 1985, and so the purchased power provisions can become effective on January 15, 1986.

Copies of the filing have been served upon Caldwell, and upon the Louisiana Public Service Commission and the Public Utility Commission of Texas.

Comment date: September 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Company

[Docket No. ER85–751–000]

Take notice that Northern States Power Company, on September 9, 1985, tendered for filing a Notice of Cancellation, dated September 6, 1985, terminating the Equivalent Seasonal Participation Power Transaction, effective November 19, 1970, with Montana-Dakota Utilities Company.

Comment date: September 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Northern States Power Company

[Docket No. ER85–752–000]

Take notice that Northern States Power Company (NSP), on September 9, 1985, tendered for filing Supplement No. 1 to the Firm Power Service Resale Agreement Between Northern States Power Company and City of Anoka (Supplement).

The Supplement, dated June 24, 1985, recognizes changes due to retirement and new construction of interconnection facilities between NSP and the City of Anoka described in Exhibit 1 of the Firm Power Service Resale Agreement dated August 29, 1983. The Firm Power Service Resale Agreement is on file with the Commission and is designated as Rate Schedule FERC No. 420.

NSP requests an effective date of June 24, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: September 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Pennsylvania Power and Light Company

[Docket No. ER85–719–000]

Take notice that on September 4, 1984, Pennsylvania Power and Light Company tendered for filing notice, pursuant to section 205(d) of the Federal Power Act, 16 U.S.C. 824(d), and § 35.13 of the Commission's Regulations under the Federal Power Act, of a proposed change in the rate and levels of certain electric resale schedules presently on file with the Commission. The proposed changes would increase from jurisdictional sales and service by $5,690,728 or 19.8%, based on the 12-month period ending April 30, 1986.

PP&L tenders herewith six (6) copies of the proposed changes for filing and respectfully requests an effective date of October 30, 1985 for the following:

FERC rate schedule No.	Applicable to
28	Watsontown.
32	Duncannon.
45	Blakely.
50	Weatherly.
51	Schuylkill Haven.
54	Perkasie.
56	St. Clair.
57	Catawissa.
58	Ephrata.
61	Citizens' Electric Co.
63	Lehighton.
69	Hatfield.

Comment date: September 25, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Southern California Edison Company

[Docket Nos. ER82–427–004 and ER84–075–005]

Take notice that on September 9, 1985, Southern California Edison Company (Edison) pursuant to the Commission's Order of July 9, 1985 tendered for filing a report of refunds made to its resale customers amounting to $3,551,238.57, including interest.

Appendices I and II show billing periods, revenue receipt dates, revenues under the prior, present, and settlement rates, amount of revenue refunded, interest, and total refund for Step I and Step II rates, respectively, in Docket No. ER82–427–000. Appendix III shows similar information for rates in Docket No. ER84–075–000.

Appendix IV includes refund notification letters from Edison to the individual resale customers transmitting the refund checks. Refund checks were hand-delivered to each customer on August 8, 1985.

Appendix V contains new settlement rate schedules applicable to the locked-in period in Docket No. ER82–427–000, which reflect the effect of the settlement agreement of April 19, 1985. These rate schedules are accompanied by cost of service work papers which support the revised rates.

Appendix VI contains rate schedules for Arizona Public Service Company (APS), Rate Schedule FERC No. 180, which were filed with the Commission by letter dated June 29, 1984, and included a service agreement providing for the sale of electric energy to APS at three new delivery points. The Commission accepted this rate schedule for filing with the provision that inasmuch as this filing contains rates which were subject to refund in Docket No. ER84–075–000, revenues collected under this filing were subject to refund and subject to the outcome of the proceedings in that docket. Therefore, rate schedules are being provided at this time to reflect rates approved in the July 9, 1985, Commission Order. Refunds for this rate schedule have been made in conjunction with the Settlement refunds and all Commission—requested information regarding these refunds is included in the aforementioned Appendix III.

Comment date: September 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. South Carolina Electric & Gas Company

[Docket No. ER85–721–000]

Take notice that South Carolina Electric & Gas Company on August 30, 1985 tendered for filing a proposed change in its August 13, 1973 service agreement with Little River Electric Cooperative, Inc.

Under the proposed change, South Carolina Electric and Gas Company proposes to add an additional Exhibit A for a second point of delivery to Little River near Plum Branch, South Carolina. This is in addition to the existing delivery point for Little River near McCormick, South Carolina. The purpose of the new delivery point is to provide the capacity necessary to meet the Customer's expanding requirements.

Copies of this filing were served upon Little River Electric Cooperative, Inc.

Comment date: September 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

11. Portland General Electric Company

[Docket No. ER85–743–000]

Take notice that Portland General Electric Company (PGE) on September 4, 1985 tendered for filing a Sales Agreement with the Southern California Edison Company which provides for the sale of 100 MW of firm energy surplus to PGE for a time period of 5 months. The contract rate for energy to be sold is based upon its incremental cost of production plus an additional amount for fixed charges (not exceeding fully distributed fixed charges) plus the costs of transmission.

PGE states the reason for the proposed Sales Agreement is to allow it to recover a portion of its fixed charges applicable to certain of its thermal generating resources during a short period of time when such thermal resources are not required for its systems loads.

PGE requests an effective date of August 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served upon the Southern California Edison Company, and the Oregon Public Utility Commissioner.

Comment date: September 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

12. John J. Byrne, Petitioner

[Docket No. EL85–47–000]

Take notice that on September 3, 1985, John J. Byrne (Petitioner) submitted for filing its petition for a declaratory order pursuant to Rules 207(a)(2), 212 and 2009 of the Commission's Rules of Pactice and Procedure.

Petitioner requests that the Commission issue a declaratory order declaring that he may hold the positions of Director of Potomac Electric Power Company (PEPCO) and Chairman and Chief Executive Officer of Fireman's Fund Corporation (FFC) without becoming subject to the Commission's jurisdiction under section 305(b) of the Federal Power Act ("Act"), 16 U.S.C. 828(b) (1982).

In the event the Commission denies the petition for disclaimer of jurisdiction, Petitioner requests a forty-five day extension of time from the date of the Commission's order in this matter, to file an application to hold interlocking positions under section 305(b) of the Federal Power Act.

Comment date: September 25, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–22591 Filed 9–19–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85–824–000, et al.]

Colorado Interstate Gas Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Co.

[Docket No. CP85–824–000]

September 13, 1985.

Take notice that on August 26, 1985, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85–824–000 an application purusant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of gas for the City of Colorado Springs (CCS), and for

permission and approval to abandon such transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, CIG seeks authorization to transport up to 27,000 Mcf of natural gas per day for CCS for its general system supply. It is stated that the transportation service would be provided on an interruptible basis and would use existing facilities. The proposed transportation volumes would be delivered to CIG for CCS's account by Williston Basin Interstate Pipeline Company at an existing interconnections in Park and Fremont Counties, Wyoming. CIG states that it would redeliver thermally equivalent volumes, less fuel gas and unaccounted-for volumes, at two of its existing delivery points with CCS, the North City Gate and South City Gate meter stations in El Paso County, Colorado.

CIG proposes to charge CCS 57.54 cents per Mcf of gas transported and redelivered. CIG states that the proposed transportation rate is equivalent to the non-gas component of CIG's Rate Schedule G–1 and P–1 commodity sales rate as settled upon in Docket No. RP82–54 (56.29 cents per Mcf of gas) plus 1.25 cents per Mcf of gas for the Gas Research Institute Funding Fee.

CIG further requests authority to physically add and delete delivery poits to the from its system and to file on or about January 31 of each year tariff revisions as necessary to keep the Commission informed on any delivery point changes. Also, CIG seeks authorization to abandon this transportation at the conclusion of the 15-month term of its agreement with CCS.

Comment date: October 4, 1985, in accordance with Standard Paragraph F at the end of this notice.

2. Columbia Gas Transmission Corp.

Columbia Gulf Transmission Co.

[Docket No. CP85–832–000]

September 13, 1985.

Take notice that on August 28, 1985, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, hereinafter referred to jointly as Applicants, filed in Docket No. CP85–832–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to transport natural gas on behalf of Sharp Canning Company (Sharp) under the certificates issued in Docket Nos. CP83–76–000 and CP83–496–000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicants propose to transport up to 500 million Btu of natural gas per day on behalf of Sharp. Applicants state that Sharp has entered into a gas sales agreement to purchase natural gas from Entrade Corporation (Entrade) and that such gas was not committed or dedicated to interstate commerce on November 8, 1978. It is stated that gas purchased from Entrade would be transported by United Gas Pipe Line Company and delivered to Columbia Gulf at Erath, Lafayette Parish, Louisiana, and Olla, Rapides Parish, Louisiana. It is further stated that Columbia Gulf would redeliver the gas to Columbia Gas which would redeliver to West Ohio Gas Company (West Ohio) for ultimate delivery to Sharp. Applicants state that should they add receipt points for additional sources of gas, as provided for in the gas transportation agreement, such additional sources of gas would only be obtained to constitute the quantities to be transported hereunder and not to increase those quantities.

Columbia Gulf states that it would charge one of the rates in its Rate Schedule T–2 for its transportation service offshore to Kentucky—23.92 cents per dt equivalent of gas and retain 1.69 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas; lateral onshore to Kentucky—14.28 cents per dt and 1.50 percent retainage; Rayne, Louisiana, to Kentucky—12.76 cents per dt and 1.50 percent retainage; and Corinith, Mississippi, to Kentucky—6.38 cents per dt and 0.75 percent retainage.

Columbia Gas states that it would charge one of the rates set forth in its Rate Schedule TS–1. It is stated that current rates for TS–1, within West Ohio's total daily entitlement, are as follows: received from Columbia Gulf at Leach, Kentucky—21.16 cents per dt equivalent; and received from points other than current rates for TS–1, in excess of West Ohio's total daily entitlement, are as follows: received from Columbia Gulf at Leach, Kentucky—32.50 cents per dt equivalent and received from points other than Leach 41.27 cents per dt. Columbia Gas states that it would retain 2.43 percent of the total quantity delivered for company-use and unaccounted-for gas. It is further stated that Columbia Gas would charge the General R&D Funding Unit of the Gas Research Institute for all quantities transported.

Comment date: October 28, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. National Fuel Gas Supply Corp.

[Docket No. CP85–826–000]

September 13, 1985.

Take notice that on August 26, 1985, National Fuel Gas Supply Corporation (Applicant), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP85–826–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Elizabethtown Gas Company (Elizabethtown) and New Jersey Natural Gas Company (New Jersey Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 10,000 Mcf per day of natural gas on behalf of Elizabethtown and New Jersey Natural. It is stated that this transportation service would be for volumes of gas delivered to Applicant at various points of interconnection between Applicant and Consolidated Gas Transmission Corporation, Transcontinental Gas Pipe Line Corporation, Texas Eastern Transmission Corporation, and/or Tennessee Gas Pipeline Company, a Division of Tenneco Inc., and that redelivery of said volumes of gas would be at various points of interconnection between those pipelines and Elizabethtown and New Jersey Natural and/or redelivery of said volumes would be to Penn-York Energy Corporation for the account of Elizabethtown.

Applicant also requests authority to add and/or delete points of delivery and receipt so long as the total volume of natural gas transported does not exceed the requested amount and provided that facilities are not required. Applicant proposes to provide the transportation service through use of existing facilities. Applicant proposes to charge its Rate Schedule T–1 rate which it states is on file with and approved by the Commission.

The proposed service is for an initial term ending January 22, 1995.

Comment date: October 4, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Northwest Pipeline Corp.

[Docket No. CP85–843–000]

September 13, 1985.

Take notice that on August 30, 1985, Northwest Pipeline Corporation

(Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP85–843–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Northwest to add a delivery point and to reallocate natural gas service to the new delivery point for a sale to Cascade Natural Gas Corporation (Cascade) for resale, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is explained that the proposed delivery point would be located in Umatilla County, Oregon, and would be for the sale of natural gas to Cascade for resale to Kosmos Farms, an essential agricultural gas user. Northwest proposes to reallocate a portion of its service to Cascade under Northwest's Rate Schedule ODL–1 from the Portland Cement, Lime, Oregon, delivery point to the proposed delivery point. Northwest indicates that maximum daily demand for the new delivery point would be 3,000 therms and that deliveries to the Portland Cement delivery point would be reduced accordingly.

Northwest states that Pacific Gas Transmission Company (PGT) would deliver gas to the new delivery point for Northwest. PGT has filed in Docket No. CP85–844–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing PGT to construct and operate facilities for the new delivery point and to reallocate natural gas service to the new delivery point.

To effect this service, Northwest seeks permission to add a sales tap and a metering and regulating station with appurtenances. PGT would construct the facilities at an estimated total cost of $55,000. Northwest states it would reimburse PGT for the total cost incurred by PGT and that Cascade would reimburse Northwest for all out-of-pocket costs incurred by Northwest and would install any additional downstream facilities necessary to effect the service.

Comment date: October 4, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Pacific Gas Transmission Co.

[Docket No. CP85–844–000]

September 13, 1985.

Take notice that on August 28, 1985, Pacific Gas Transmission Company (PGT), 245 Market Street, San Francisco, California 94105, filed in Docket No. CP85–844–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing PGT to construct and operate facilities for a new delivery point and to reallocate natural gas service to the new delivery point deliveries to Northwest Pipeline Corporation (Northwest) for sale to Cascade Natural Gas Corporation (Cascade) for resale, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

PGT states that the requested authorization would revise Exhibit A of its service agreement with Northwest under PGT's Rate Schedule T–1. PGT proposes to construct and operate facilities for a new delivery point near Hermiston in Umatilla County, Oregon, and to reallocate a portion of the volumes of natural gas currently delivered to Northwest at the Spokane, Washington, delivery point to the new delivery point. The new delivery point would be used for the sale of natural gas by Northwest to Cascade for resale by Cascade to Kosmos Farms, an essential argicultural gas user, it is explained. Northwest has filed in Docket No. CP85–843–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Northwest to add the new delivery point and to reallocate natural gas service to the new delivery point for the sale to Cascade for resale to Kosmos Farms.

In order to effect this service, PGT proposes to install a new mainline tap and meter station at an estimated total cost of $55,000. PGT states that Northwest would reimburse PGT for the total cost.

PGT states that the maximum daily demand for the new delivery point would be 300 Mcf of gas and that deliveries to the Spokane delivery point would be reduced accordingly.

Comment date: October 4, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. Tennessee Gas Pipeline Co., a Division of Tenneco Inc.

[Docket No. CP85–835–000]

September 13, 1985.

Take notice that on August 28, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP85–835–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) for authorization to transport up to 15,000 Mcf of natural gas per day for Northern Gas Marketing, Inc., (NGM), as agent on behalf of Bethlehem Steel Corporation (Bethlehem), under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to section 7 of the NGA, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that the gas to be transported is purchased by Bethlehem from NGM from reserves located in DeSoto and Natchitoches Parishes, Louisiana, and Panola County, Texas, where Tennessee would recive the gas at existing interconnections. Tennessee states that it would transport and redeliver a thermally equivalent quantity of gas to Columbia Gulf Transmission Company (Columbia Gulf) at an existing interconnection near Egan in Acadia Parish, Louisiana. Tennessee states that under separate agreements with Bethlehem, Columbia Gulf would transport and deliver the gas to Columbia Gas Transmission Corporation which would transport and deliver the gas either to Columbia Gas of Pennsylvania, Inc. (CPA), or to UGI Corporation (UGI), the local distribution companies serving Bethlehem's Hanover Quarry, Steelton and Bethlehem, Pennsylvania, plants. It is stated that the gas would be used for boilers, reheating furnaces and lime kilns.

Tennessee states that it would charge NGM 7.02 cents per Mcf for gas received in Desoto and Natchitoches Parishes and 17.14 cents per Mcf for gas received in Panola County in accordance with its Rate Schedule ITEU, less 1.2 percent of the gas received in Desoto Parish and Panola County and less 0.5 percent of the gas received in Natchitoches Parish for system fuel and lost and unaccounted-for gas.

Tennessee also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Tennessee will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: October 28, 1985, in accordance with Standard Paragraph G at the end of this notice.

7. Texas Gas Transmission Corp.

[Docket No. CP85–830–000]

September 13, 1985.

Take notice that on August 28, 1985, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No.

CP85–830–000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a new measurement station in Morgan County, Indiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas proposes to construct and operate a measurement station and appurtenant facilities on its 6-inch pipeline near Martinsville, Indiana, as a new interconnection and delivery point to Citizens Gas & Coke Utility (Citizens). Texas Gas states that the proposed facilities would cost $94,770.00 to construct and would be utilized for transportation services already being rendered under § 157.209(a) of the Commission's Regulations for two high-priority end-users, Diamond-Bathurst, Inc. (Diamond-Bathurst), and The Kroger Company (Kroger). Texas Gas states that the cost would be financed from funds on hand.

Texas Gas explained that deliveries to both end-users are currently accomplished through an existing interconnection between Texas Gas and Citizens near Worthington in Greene County, Indiana (Worthington Station). Citizens ultimately delivers these volumes to Diamond-Bathurst and Kroger in Indianapolis, Indiana. Texas Gas asserts that operational limitations near the Worthington Station would interrupt future deliveries for Diamond-Bathurst and Kroger during peak winter periods and peak summer storage-injection periods.

Texas Gas asserts that the proposed Worthington Station is already included as a delivery point in both of its transportation agreements with Diamond-Bathurst and Kroger. Texas Gas further states that the term of such agreements, both dated July 3, 1985, is five years from the date of initial deliveries.

Comment date: October 4, 1985, in accordance with Standard Paragraph F at the end of this notice.

8. Transcontinental Gas Pipe Line Corp.

United Gas Pipe Line Co.

[Docket No. CP85–822–000

September 13, 1985.

Take notice that on August 23, 1985, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, and United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket CP85–822–000 a joint application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an existing exchange service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that in 1980 they were involved in a dispute concerning the right to purchase certain quantities of natural gas from the Sunrise field, Terrebonne Parish, Louisiana, and on May 8, 1980, petitioned the Commission in Docket No. CI80–305 for the issuance of a declaratory order with regard to their respective rights to purchase such gas.

Further, in connection with such petition, Applicants state that they entered into a gas exchange agreement, dated April 7, 1980, to govern the purchase and exchange of the disputed production pending a resolution of the respective rights of the parties and that such agreement was certificated by the Commission in Docket No. CP80–338 by order issued September 29, 1980, 12 FERC ¶ 61,317. It is further stated that under the exchange, United receives into its Sunrise field lateral daily up to 50 billion Btu of gas from Transco and returns an equivalent quantity without charge at existing delivery points at Inez, Victorica County, Texas, Johnsons Bayou, Cameron Parish, Louisiana, and the Mobile Corporation Cameron plant, Cameron Parish, Louisiana.

It is averred that Applicants have now entered into an agreement of settlement, compromise and release dated effective as of December 31, 1984, which is being filed for approval of the Commission in Docket No. CI80–305 and that as a part of the overall settlement the Applicants have agreed that the exchange service authorized in Docket No. CP80–338 would be abandoned. Such service, it is stated, would be replaced by a new transportation service rendered by United for Transco.

Comment date: October 4, 1985, in accordance with Standard Paragraph F at the end of this notice.

9. United Gas Pipe Line Co.

[Docket No. CP85–821–000]

September 13, 1985.

Take notice that on August 23, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85–821–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for the account Transcontinental Gas Pipe Line Corporation (Transco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United proposes to transport, on an interruptible basis, on behalf of Transco, up to 5,000 Mcf of natural gas per day (Mcfd) under a gas transportation agreement (agreement) between Transco and United, dated August 15, 1985. United States that Transco would cause its transportation gas to be delivered to United through existing facilities located on United's Sunrise field lateral in Terrebonne Parish, Louisiana. United would then transport and redeliver equivalent quantities of natural gas received, up to 5,000 Mcfd, to Transco at the outlet side of Mobil Corporation's processing plant in Cameron Parish, Louisiana, and/or at an existing point of interconnection between Transco's and United's facilities located in Gibson, Terrebonne Parish, Louisiana.

For each Mcf of natural gas United redelivers to Transco, United would charge Transco the currently effective rate contined in United's Rate Schedule IT, Type I Rate, which excludes a charge for company-used gas. United states that effective July 1, 1985, such rate is 7.72 cents per Mcf as provided on First Revised Sheet No. 4–E of United's FERC Gas Tariff, First Revised Volume No. 1.

Comment date: October 4, 1985, in accordance with Standard Paragraph F at the end of this notice.

10. United Gas Pipe Line Co.

[Docket No. CP85–823–000]

September 13, 1985.

Take notice that on August 26, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85–823–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to transport natural gas on behalf of International Permalite (Permalite), Verhoff Alfalfa Mills (Verhoff), Federal Mogul Corporation (Federal), and Sharp Canning Company (Sharp), through their agent, EnTrade Corporation (EnTrade), under the certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United proposes to transport up to 4,000 Mcf of natural gas per day on an interruptible basis for EnTrade on behalf of Permalite, Verhoff, Federal and Sharp. United would render the transportation service until the earlier date of the final rule by the Commission in Docket No. RM85–1–000 or October 31, 1985, or until terminated by either party. It is stated that United would receive from Davis Oil Company up to

4,000 Mcf on natural gas per day for the account of EnTrade at an interconnection of facilities in Lafayette Parish, Louisiana, and would transport and redeliver such gas to existing points of interconnection between United's and Columbia Gulf Transmission Company's (Columbia Gulf) facilities near (1) Barron, Rapides Parish, Louisiana, and/or (2) Erath, Vermilion Parish, Louisiana, at the interconnection of Columbia Gulf's and Sea Robin Pipeline Company's facilities. United further states that Columbia Gulf, under a separate agreement, would deliver such gas to Columbia Gas Company, Union Heat Power & Light Company, and/or West Ohio Gas Company for ultimate redelivery to Sharp, Verhoff, Permalite and Federal. It is explained that the gas would be used for fuel oil displacement at the end-user locations.

United further requests flexible authority to add or delete sources of supply or receipt/delivery points. United States that any changes made under the flexible authority would be on behalf of the same end-user at the same end-use location and would remain within the proposed maximum daily and annual volumes.

United states that the rate applicable to this service is an amount equal to United's Type I Rate (Rate Schedule IT) which includes a component for gas consumed in the operation of United's pipeline system. It is stated that currently such rate is 11.02 cents per Mcf.

Comment date: October 28, 1985, in accordance with Standard Paragraph G at the end of this notice.

11. United Gas Pipe Line Co.

[Docket No. CP85–833–000

September 13, 1985.

Take notice that on August 28, 1985, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP51–833–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport fuel oil displacement gas on behalf of Jeannette Sheet Glass Corporation (Jeannette) under the certificate issued United in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request of filed with the Commission and open to public inspection.

It is stated that Jeannette, a low-priority end user, has purchased gas from The Resource Group. It is stated that United would receive from The Resource Group up to 4,000 Mcf of gas per day for the account of Jeannette at United's facilities in the Cotton Plant field, Caldwell Parish, Louisiana. It is explained that United would then transport and redeliver said gas on behalf of Jeannette to existing points of interconnection between United's and Columbia Gulf Transmission Company's (Columbia Gulf) facilities located near (i) Barron, Rapides Parish, Louisiana, and/or (ii) Erath, Vermilion Parish, Louisiana, at the interconnection of Columbia Gulf's and Sea Robin Pipeline Company's facilities. United further states that Columbia Gulf, under a separate agreement, would deliver the gas to Columbia Gas Transmission Corporation (Columbia Gas) and Columbia Gas of Pennsylvania, Inc. for future transportation to Jeannette, Pennsylvania. It is explained that the transported gas would be used for fuel oil displacement at the end-use location.

United states that the rate applicable to this transportation service is an amount equal the United's Type I Rate (Rate Schedule IT) which excludes a component for gas consumed in the operation of United's pipeline system. It is further stated that currently such rate is 7.72 cents per Mcf of gas.

It is explained that the transportation agreement would be effective of April 10, 1985, and would remain in full force and effect from the date of initial deliveries until the earlier date of the final rule by the Commission in Docket No. RM85–1–000 for low-priority end-use transportation on October 31, 1985, or the term set forth in the gas transportation agreement between the parties dated April 1, 1985.

Applicant also request flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Applicant will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: October 28, 1985, in accordance with Standard Paragraph G at the end of this notice.

12. United Gas Pipe Line Co.

[Docket No. CP85–840–000]

September 16, 1985.

Take notice that on August 30, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85–849–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport fuel oil displacement gas for an eligible end-user under the certificate issued in Docket No. CP85–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that Newport Steel Corporation (Newport) has purchased gas from EnTrade Corporation (EnTrade) in Louisiana. It is explained that United would receive up to 2,000 Mcf of gas per day from EnTrade for the account of Newport at United's facilities in Lafayette Parish, Louisiana. It is explained the United would then transport and deliver said gas for the account of Newport, to an existing point of interconnection between the facilities of Columbia Gulf Transmission Company (Columbia Gulf) and Sea Robin Pipeline Company in Vermilion Parish, Louisiana. It is further explained that Columbia Gulf would transport and deliver the gas to Columbia Gas Transmission Corporation (Columbia Gas) which, in turn, would redeliver the gas to Union Heat, Light and Power Company for further transportation to Newport's Wilder, Kentucky, plant. It is stated that 23 percent of the gas would be used for boiler fuel, 15.2 percent for building heat and miscellaneous and 61.8 percent for processing steel.

United states that it would charge Newport, in accordance to its Rate Schedule IT, a transportation rate of 11.02 cent per Mcf, which includes the cost attributable to gas consumed in the operation of United's pipeline system. It is also stated that there is not added incentive charge for this service.

It is explained that the transportation agreement would be effective on June 17, 1985, and would remain in full force and effect from the date of initial deliveries until the earlier date of the final rule by the Commission in Docket No. RM85–1–000 for low-priority end-use transportation of October 31, 1985. In the event of an imbalance the transportation term would be extended for a period not to exceed 30 days.

In addition, it is stated that United requests flexible authority to add or delete sources of supply or receipt/delivery points, if such altered services are on behalf of the same end-user, at the same end-user location, within the maximum daily and annual volumes authorized in this docket, and under the same terms and conditions authorized for the basic service.

Comment date: October 31, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, and hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's may, within 456 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22592 Filed 9-19-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-665-000, et al.]

Charles Vail, et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Charles Vail

[Docket No. QF85-665-000]

September 13, 1985.

On August 26, 1985, Charles Vail, (Applicant), of 6227 North Twenty-sixth Road, Arlington, Virginia 22207, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Portsmouth, New Hampshire. The facility will consist of a circulating fluidized bed boiler, condensing steam turbine generator, and related auxiliary equipment. The primary energy source for the facility will be anthracite silt refuse. The net electric power production capacity of the facility will be 35,000 kilowatts.

2. Electrodyne Research Corp.—Gilberton, PA

[Docket No. QF83-425-004]

September 13, 1985.

On August 30, 1985, Electrodyne Research Corporation, (Applicant), of 1617 Sweetbriar Road, Gladwyne, Pennsylvania, 19035, submitted for filing an application for amendment of Commission certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The cogeneration facility will be located in Gilberton, Pennsylvania. The facility will consist of a fluidized bed boiler, extraction steam turbine generator, and related axuiliary equipment. The primary energy source for the facility will be anthracite culm. The useful thermal output, which will be in the form of process steam will be delivered through a pipeline to the Gilberton Coal Company. The Gilberton Coal Company will utilize the process steam in an anthracite culm drying process. The net electric power production capacity of the facility will be 79.5 megawatts. The facility was originally certified as a qualifying cogeneration facility on December 7, 1984, based on the thermal output attributed to the sale of dried anthracite culm to non-affiliated consumers. Applicant's application for amendment of Commission certification is requesting qualification of the thermal output attributed to the drying of anthracite culm for affiliated used.

3. Interpro International Inc.

[Docket No. QF85-667-000]

September 13, 1985.

On August 27, 1985, Interpro International Inc. (Applicant), of 3120 So. 1300 East, Salt Lake City, Utah 84106, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located at the manufacturing site of J. R. Wood Associates, 7916 West Belevue Road, Atwater, California, 95301. The facility is a combined cycle-topping cycle cogeneration plant. It will consist of a gas turbine, a refired heat recovery steam generator, a back pressure steam turbine generator and a condensing steam turbine generator. Steam from the back pressure turbine will be used to supply the J. R. Wood Associated Plant with process steam as a heat source for an Ammonia Absorption Refrigeration System. The power production capacity of the facility is 8,526 kilowatts. Operation of the facility is scheduled for the end of October 1986.

4. Northeastern Power Co.—Kline Township, PA

[Docket No. QF85-678-000]

September 13, 1985.

On September 3, 1985, Northeastern Power Company, (Applicant) of 1101 Market Street, Philadelphia, Pennsylvania 19107, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submital constitutes a complete filing.

The small power production facility will be located one mile south of the

Borough of McAdoo in Kline Township, Schuylkill County, Pennsylvania. The facility will consist of a circulating fluidized bed boiler, condensing steam turbine generator, and related auxiliary equipment. The primary energy source for the facility will be anthracite refuse and anthracite coal. The net electric power production capacity of the facility will be 45,400 kilowatts.

5. Mohasco Upholstered Furniture Corp.

[Docket No. QF85-663-000]

September 16, 1985.

On August 26, 1985, Mohasco Upholstered Furniture Corporation (Applicant), of 57 Lyon Street, Amsterdam, New York 12010, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping cycle cogeneration facility will be located in Eupora, Mississippi and will consist of a boiler, a steam turbine/generator, a turbine by-pass pressure reducing station, piping, controls and appurtenances. The total electric power production capacity will be 275 kW. The primary source of energy will be wood, a by-product of the furniture manufacturing process.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22593 Filed 9-19-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP79-467-007, et al.]

Natural Gas Certificate Filings; ANR Pipeline Co., et al.

Tank notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP79-467-007]

September 12, 1985.

Take notice that on August 30, 1985, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP79-467-007 a petition to amend the Commission's order, issued June 10, 1981 in Docket No. CP79-467-000, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize a modification in the transportation service provided by ANR for Texas Eastern Transmission Corporation (TETCO), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner requests authority to modify its level of transportation for TETCO pursuant to the third amendment, dated August 15, 1985, to the transportation agreement between the parties dated July 6, 1979, as amended January 15, 1981, and November 21, 1984.

The third amendment, it is stated, extends for an additional contract year (November 1, 1985, through November 1, 1986) the full transportation volumes of 75,000 McF of gas per day and is consistent with regulatory authority TETCO had obtained, regarding the importation of the natural gas subject to transportation herein, which TETCO is purchasing from ProGas Limited [National Energy Board of Canada License GL-56, as modified, Economic Regulatory Administration Docket No. 79-15-NG and Commission authority in Docket No. CP79-332.]

Petitioner requests authority to extend for an additional contract year, through November 1, 1986, the transportation of 75,000 McF per day of natural gas on behalf of TETCO. The volumes subject to transportation would be adjusted for the seventh through ninth contract years as set forth in the third amendment, it is explained.

Petitioner states that its transportation service is provided in conjunction with service provided by Great Lakes Gas Transmission Company (Great Lakes). Great Lakes, it is stated, has filed with the Commission in Docket No. CP79-462-005 a petition seeking companion authority to modify its level of transportation through November 1, 1986.

Comment date: October 4, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Columbia Gas Transmission Corporation

[Docket No. CP85-820-000]

September 11, 1985.

Take notice that on August 23, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85-820-000 as request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authority to transport natural gas on behalf of Jackson Corporation, a subsidiary of Lancaster Colony Corporation (Jackson) under the certificate issued in Docket No. CP83-76-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 400 million Btu equivalent of natural gas per day for Jackson through October 31, 1985. Columbia states that the gas to be transported would be purchased from Yankee Resources, Inc. (Yankee), and would be used as boiler fuel in Jackson's Jackson, Ohio plant. It is indicated that Jackson has made arrangements to purchase this gas from Yankee. Columbia states that it would receive the gas from Yankee and redeliver the gas to Columbia Gas of Ohio, Inc. (COH), the distribution company serving Jackson, near Jackson, Ohio.

Columbia states that it would charge one of the rates in its Rate Schedule TS-1 for its transportation service: gas received from receipt points other than Leach, Kentucky—29.93 cents per Btu provided the volumes are within COH's total daily entitlements (TDE). However, Columbia states it would charge 41.27 cents per million Btu for gas received from receipt points other than Leach, Kentucky, if the volumes are in excess of COH's TDE. Columbia further states it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. In addition, Columbia states it would collect the General R&D Funding Unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

Columbia also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested would apply only to points related to sources of gas supply, not to delivery points in the market area. Columbia would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities

herein and not to increase those quantities.

Comment date: October 28, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Kentucky West Virginia Gas Company

[Docket No. CP85–814–000]

September 12, 1985.

Take notice that on August 22, 1985, Kentucky West Virginia Gas Company (Kentucky West), 809 Plaza Building, Ashland, Kentucky 41101, filed in Docket No. CP85–814–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Kentucky West to reclassify certain of its facilities from production and gathering to transmission plant accounts, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Kentucky West states that it has recently undergone a corporate realignment and that it no longer produces natural gas but functions as a purchaser, gather and transporter of natural gas in interstate commerce. As a result of this realignment, Kentucky requests the Commission authorize the reclassification of five of its compressor stations, with a total installed horsepower of 9,470, and approximately 79.8 miles of various sized pipelines, from production and gathering facilities to transmission facilities to reflect more properly their use in the new corporate structure. Kentucky West contends the proposed facilities transfer is proper as it alleges that no gas is delivered into the system from well lines downstream of any of the compressor stations.

Kentucky West states that the net book value of the subject facilities to be transferred is $2,413,453.82 as of December 31, 1984.

Comment date: October 4, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Natural Gas Pipeline Company of America

[Docket No. CP85–767–000]

September 11, 1985.

Take notice that on August 9, 1985, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CO85–767–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Firestone Tire and Rubber Company (Firestone), an industrial end-user, under the certificate issued in Docket No. CP82–402–000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant proposes to receive gas for the account of Firestone at two existing interconnections in Caddo County, Oklahoma, between Applicant and Reliance Pipeline Company (Reliance, a gathering company. Applicant states that redeliveries of gas would be made to the outlet flange of the meter station located at Applicant's existing interconnection with Illinois Power Company (Illionis Power), near Hammond in Piatt County, Illinois. It is explained that pursuant to the gas transportation agreement dated June 26, 1985, Applicant would transport, on a best-efforts basis, a maximum of 4 billion Btu's of natural gas and would redeliver thermally equivalent volumes, less 9.4 percent, initially, for fuel usage and unaccounted-for volumes. The volumes to be transported would average 3 billion Btu's per day and total 1.46 trillion annually, it is stated.

Applicant proposes to charge a transportation fee of 21.9 cents per million Btu's of gas received. Applicant states that this transportation rate is based on its currently effective cost of onshore transmission authorized in Docket No. RP83–68 and is consistent with its Rate Schedule EUT–1 on file with the Commission. It is stated that the construction of facilities is not required to provide the service requested.

Applicant advises that service commenced on June 28, 1985, and would continue until October 26, 1985, 120 days from the date of first deliveries. Applicant proposes to continue this service from October 26, 1985, until the earlier of (1) an effective date of a final rule in Docket No. RM85–1–000, or (2) until October 31, 1985, under the notice procedures authorization herein requested. The agreement provides for service through two years from June 28, 1985, the date of initial deliveries, until June 28, 1987, in the event that the Commission's Regulations are amended to allow service past October 31, 1985, it is stated.

Applicant also requests flexibile authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply not to delivery points in the market are. Applicant would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: October 28, 1985, in accordance with Standard Paragraph G. at the end of this notice.

5. Northwest Central Pipeline Corporation

[Docket No. CP85–827–000]

September 13, 1985.

Take notice that on August 27, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85–827–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act for authorization of add an additional point of delivery of natural gas to The Gas Service Company (Gas Service) under the certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in request on file with the Commission and open to public inspection.

Northwest Central proposes to construct and operate a tap and other appurtenant facilities on its 8-inch pipeline in Harvey County, Kansas, for the purpose establishing a new delivery point to serve Gas Service. Northwest Central states that Gas Service requested this additional delivery point to serve existing customers and to make retail sales to a new asphalt plant to be operated by Rhodes Construction Company. Northwest Central states that the estimated peak day and annual gas deliveries for these facilities in the fifth year of operation would be 747 Mcf and 17,929 Mcf, respectively. Northwest Central estimated that the cost to construct the proposed facilities would be $30,120.00.

Comment date: October 28, 1985, in accordance with Standard Paragraph G at the end of this notice.

6. Northwest Central Pipeline Corporation

[Docket No. CP85–847–000]

September 13, 1985.

Take notice that on September 3, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No CP85–847–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission to abandon, by reclaiming certain measuring facilities, and for authorization to construct and operate certain measuring facilities serving The Gas Service Company (Gas Service) under the authorizations issued in

Docket No. CP82–479–000 pursuant to section 7 of the Natural GAS Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest Central states that Gas Service has requested that the capacity of an existing town border station be increased to deliver natural gas to Gas Service for resale through a distribution system to be installed by Gas Service to serve Seltzer School and new domestic customers in Sedgwick County, Kansas. The projected volumes through the proposed new measuring and regulating facilities is 11,674 Mcf of gas during the first year of operation increasing to 81,674 Mcf of gas by the fifth year. Northwest Central states the cost to reclaim the existing facilities is $535. Northwest Central estimates the cost of constructing the new facilities is $27,890, which would be paid from treasury cash.

Northwest Central states that the change-out of the measuring facilities is not prohibited by an existing tariff and that it has sufficient pipeline capacity to make the deliveries of gas proposed without detriment to existing customers.

Comment date: October 28, 1985, in accordance with Standard Paragraph G at the end of this notice.

7. Northern Natural Gas Company Division of InterNorth, Inc.

[Docket No. CP85–817–000]

September 11, 1985.

Take notice that on August 22, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85–817–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate one small volume sales tap to accommodate natural gas deliveries to St. Mary's Catholic Church in Roseville, Iowa, through Peoples Natural Gas Company (Peoples), the local distributor, under the certificate issued in docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that the tap would be located in Floyd County and volumes are estimated to be 1,050 Mcf for the fifth year. The end-use is space heating, it is explained. Northern also indicates that the volumes proposed to be delivered to Peoples would have no adverse impact on Northern's existing deliveries, as such volumes would be served from Peoples current firm entitlement under Northern's Rate Schedule CD–1. Cost to install the tap is estimated to be $2,424 and the cost would be paid for by Peoples, but Northern would retain ownership and operation thereof, it is explained.

Comment date: October 28, 1985, in accordance with Standard Paragraph G at the end of this notice.

8. Panhandle Eastern Pipe Line Company and Trunkline Gas Company

[Docket No. CP85–789–000]

September 11, 1985.

Take notice that on August 16, 1985, Panhandle Eastern Pipe Line Company and Trunkline Gas Company (Applicants), P.O. Box 1642, Houston, Texas, 77001, filed in Docket No. CP85–789–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Armour Dial, Inc. (Armour Dial), under their certificates issues in Docket Nos. CP83–83–000 and CP83–84–000, respectively, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicants propose to transport up to 5,000 Mcf of natural gas per day, less a fuel reduction percentage, on an interruptible basis for Armour Dial. It is stated that the gas to be transported would be purchased from Northern Gas Marketing, Inc., and would be used as boiler fuel in Armour Dial's plant in Montgomery, Illinois. It is explained that the gas is not released by either Applicant. Panhandle would receive the gas from Northern Natural Gas Company, a Division of InterNorth, Inc., at existing receipt points in Moore County, Texas; Kiowa County, Kansas; and Beckham County, Oklahoma, and would redeliver such gas, less retainage for fuel, to Trunkline in Douglas County, Illinois. Trunkline would redeliver the gas to Midwestern Gas Transmission Company in Vermillion County, Illinois, which in turn would transport said gas for ultimate delivery to Armour Dial's Montgomery plant, it is asserted. Applicants have indicated that they would retain four and one-tenth percent reduction for fuel from volumes received from Moore County and three and one-tenth percent from Kiowa and Beckham Counties. Applicants state that the service would be until the earlier of 18 months from July 12, 1985, or the termination of authorization provided by Subpart F of Part 157 of the Commission's Regulations, or the termination of the transportation agreement by the parties thereto.

It is indicated that Applicants would charge amount based upon the rate currently effective in their respective IT Rate Schedules.

Applicants also requests flexible authority to ad or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Applicants will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: October 28, 1985, in accordance with Standard Paragraph G at the end of this notice.

9. Southern Natural Gas Company

[Docket No. CP85–769–001]

September 13, 1985.

Take notice that on August 9, 1985, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP85–769–000, as amended in Docket No. CP85–769–001 on August 30, 1985, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a new delivery point for the delivery of natural gas to Atlanta Gas Light Company (Atlanta), an existing customer, for resale under the certificate issued in Docket No. CP82–406–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that the proposed delivery point would be designated as Station No. 4 within the Savannah area delivery point and would be located at Mile Post 95.1(±) on Southern's Wrens-Savannah line in Effingham County, Georgia. Southern states that the gas would be delivered at line pressure (but not less than 400 psig) with a maximum daily delivery capability of 28,800 Mcf with Atlanta providing regulation as needed for its system. Southern also states that the new delivery point would enable Atlanta to sell gas to school and industrial customers which currently are not being supplied with natural gas. Southern asserts that there is no proposed change in Atlanta's demand under the service agreement as a result of adding said point of delivery. Further, Southern states that (1) it has sufficient capacity to accomplish deliveries

through the new facilities without detriment or disadvantage to its other customers' (2) the new delivery point would not impact Southern's peak day and annual deliveries; and (3) the addition is not prohibied by any existing tariff of Southern. Southern proposed to construct, own and operate the new delivery point with actual costs and expenses, estimated at $233,859, to be reimbursed by Atlanta.

Comment date: October 28, 1985, in accordance with Standard Paragraph G at the end of this notice.

10. Transcontinental Gas Pipe Line Corporation

[Docket No. CP85–836–000]

September 11, 1985.

Take notice that on August 29, 1985, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP85–836–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Scott Paper Company (Scott Paper) under the certificate issued in Docket No. CP82–426–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that Scott Paper would purchase natural gas from Transco Energy Marketing Company. Applicant indicates that it would receive up to 10,500 dt equivalent of natural gas per day at the tailgate of the Katy Exxon Gas Plant in Waller County, Texas, and would redeliver on an interruptible basis, equivalent quantities, less volumes retained for compressor fuel and line loss make-up, to existing points of delivery with Philadelphia Electric Company (Philadelphia Electric). It is explained that Philadelphia Electric would redeliver such gas to Scott Paper's Chester, Pennsylvania, plant.

Applicant proposes to charge Scott Paper the effective rate in accordance with Rate Schedule T–II of Applicant's FERC Gas Tariff which is currently 44.81 cents per dt equivalent.

It is indicated that Applicant began transporting this gas pursuant to § 157.209(e)(1) of the Commission's Regulations on June 28, 1985. Applicant proposes to transport such gas through October 31, 1985.

Applicant also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Applicant will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: October 28, 1985, in accordance with Standard Paragraph G the end of this notice.

11. United Gas Pipe Line Company

[Docket No. CP85–802–000]

September 12, 1985.

Take notice that on August 20, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85–802–000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Standard Products Company, Inc. (Standard), to Jackson County, Mississippi, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that it continues to experience an erosion of its markets, and the proposed transportation of sales volumes, on an interruptible basis, to Standard would alleviate this condition to some extent. It is stated that the deliveries to Standard would be 1,800 Mcf of gas on a peak day. It is indicated that the gas would be used by Standard in the operation of its fish meal and fish oil processing facility in Mass Point, Mississippi.

United states that the rate to be charged for such proposed gas deliveries is provided for in United's Rate Schedule No. IRS–85–47. It is stated that the price Standard would pay United for all gas delivered between April 6, 1985 and January 1, 1986 would be $4.00 per million Btu. The price Standard would pay United for all gas sold and delivered during any billing month in 1986 would be $4.00 per million Btu plus the difference between United's weighted average cost of gas and a base adjustment cost computed by dividing the sum of United's WACOG for every billing month during 1985 by 12, it is explained.

Comment date: October 4, 1985, in accordance with Standard Paragraph F at the end of this notice.

12. United Gas Pipe Line Company

[Docket No. CP85–818–000]

September 9, 1985.

Take notice that on August 23, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85–818–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Art Machin and Associates, Inc. (Machin), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United proposes to receive for transportation, in the aggregate, a maximum daily quantity of natural gas up to 500 Mcf per day on behalf of Machin, under a gas transportation agreement (agreement) dated May 1, 1985. United states it would render the proposed transportation service for a primary term beginning on the date of first delivery and ending on May 1, 1987, and from year to year thereafter.

United indicates that Machin would cause its transportation volumes to be delivered to United through United's existing facilities located in the Carthage Field, Panola County, Texas. United further indicates that an equivalent quantity of natural gas would be redelivered by United to or for the account of Machin at the existing tailgate of Texas Gas Transmission Corporation's gas processing plant located in Panola County, Texas.

United states that for each Mcf of natural gas redelivered by United, it would charge Machin the currently effective rates as provided in United's Type I Rate (Rate Schedule IT), as set forth on Sheet 4–E of United's FERC Gas Tariff Revised Volume No. I. United further states that the transportation rate it proposes to charge would be either the Type I rate in Rate Schedule IT including the cost of company-used gas and the GRI surcharge, which rate is, effective July 1, 1985, 12.27 cents per Mcf, or if United elects, under the agreement to take gas in kind from Machin for company-used gas, the rate would be the Type I rate in Rate Schedule IT excluding the cost of company-used gas and including GRI, which rate is, effective July 1, 1985, 8.97 cents per Mcf.

Comment date: September 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

13. United Gas Pipe Line Company

[Docket No. CP85–857–000]

September 13, 1985.

Take notice that on September 4, 1985, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP85–857–000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas

Act (18 CFR 157.205) for authorization to transport fuel oil displacement gas on behalf of Babcock & Wilcox Company (B & W) under the certificate issued United in Docket No. CP82–430–000 pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that B & W, a low-priority end user, has purchased gas from The Resource Group. It is stated that United would receive from The Resource Group up to 3,500 Mcf of gas per day for the account of B & W at United's facilities in the Cotton Plant field, Caldwell Parish, Louisiana. It is explained that United would then transport and redeliver said gas on behalf of B & W to existing points of interconnection between United's and Columbia Gulf Transmission Company's (Columbia Gulf) facilities located near (i) Barron, Rapides Parish, Louisiana, and/or (ii) Erath, Vermilion Parish, Louisiana, at the interconnection of Columbia Gulf's and Sea Robin Pipeline Company's facilities. United further states that Columbia Gulf, under a separate agreement, would deliver the gas to Columbia Gas Transmission Corporation (Columbia Gas) and Columbia Gas of Pennsylvania, Inc., for transportation to Ambridge, Beaver Falls, and Koppel, Pennsylvania. It is explanied that the gas would be used for fuel oil displacement at the end-use locations herein described.

United states that the rate applicable to this transportation service is an amount equal to United's Type I Rate (Rate Schedule IT) which excludes a component for gas consumed in the operation of United's pipeline system. United states that currently such rate is 7.72 cents per Mcf and that this rate is in accordance with United's FERC Gas Tariff, First Revised Volume No. 1, effective July 1, 1985. There is no added incentive charge for this service, it is stated.

It is explained that the transportation agreement would be effective on May 1, 1985, and would remain in full force and effect from the date of initial deliveries until the earlier date of the final rule by the Commission in Docket No. RM85–1–000 for low-priority end-use transportation or October 31, 1985, or the term set forth in the gas transportation agreement between the parties dated March 31, 1985.

United also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. United will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: October 28, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragrephs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a-grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–22564 Filed 9–19–85; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $30,000 obtained as a result of a consent order which the DOE entered into with Northeastern Oil Company, Inc., a reseller-retailer of motor gasoline located in Gillette, Wyoming. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF–0139.

FOR FURTHER INFORMATION CONTACT: Sharon Dennis, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 § 205.282(c), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $30,000 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Northeastern Oil Company, Inc. The funds were provided to the DOE by Northeastern to settle all

claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of motor gasoline during the period December 18, 1978, through April 30, 1980.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals who purchased motor gasoline from Northeastern. In order to obtain a refund, a claimant will be required to submit a schedule of its monthly purchases from Northeastern and to demonstrate that it was injured by Northeastern's pricing practices. Applicants must submit specific documentation regarding the date, place, and volume of product purchased, whether the increased costs were absorbed by the claimant or passed through to other purchasers, and the extent of any injury alleged to have been suffered. An applicant claiming $5,000 or less, however, will be required to document only its purchase volumes.

Application for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in these proceedings will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: September 12, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

September 12, 1985.

Name of Firm: Northeastern Oil Company, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0139.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Northeastern Oil Company, Inc. (NOCI).

I. Background

NOCI is a "reseller-retailer" of motor gasoline as that term was defined in 10 CFR 212.31 and is located in Gillette, Wyoming. A DOE audit of NOCI's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. The audit alleged that during the period December 18, 1978, through April 30, 1980, the prices received for certain volumes of motor gasoline sold by NOCI were in excess of the allowable prices under 10 CFR 212.93.

In order to settle all claims and disputes between NOCI and the DOE regarding the firm's sales of motor gasoline during the period covered by the audit, NOCI and the DOE entered into a consent order on September 29, 1980. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. Additionally, the consent order states that NOCI does not admit that it violated the regulations.

Under the terms of the consent order, NOCI was required to deposit $30,000.00 into an interest-bearing escrow account for ultimate distribution by the DOE. NOCI remitted this sum on March 16, 1981.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement,* 9 DOE ¶ 82,508 (1981), *and Office of Enforcement,* 8 DOE ¶ 82, 597 (1981) (*Vickers).*

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will accept claims from identifiable purchasers of refined petroleum products who may have been injured by NOCI's pricing practices during the period December 18, 1978, through April 30, 1980. If any funds remain after al meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel,* 10 DOE ¶ 85,048 (1982) (Amoco).

A. *Refunds to Identifiable Purchasers.* In the first stage of the NOCI refund proceeding, we propose to distribute the funds currently in escrow to claimants who demonstrate that they were injured by NOCI's alleged overcharges. As we have done in many prior refund cases, we propose to adopt certain presumptions, which will be used to help determine the level of a purchaser's injury.

The use of presumptions in refund cases in specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations State that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficiently way possible in view of the limited resources available. First, we plan to adopt a presumption that the alleged overcharges were dispersed evently in all sales of products made during the consent order period. In the past, we have referred to a refund process that uses this presumption as a volumetric system. Second, we propose to adopt a presumption of injury with respect to small claims. Third, we plan to adopt a presumption that spot purchasers were not injured by the alleged overcharges.

[1] As of July 31, 1985, the NOCI escrow account contained $49,729.29, including accrued interest.

As a separate matter, we are making a proposed finding that end users of NOCI products were injured by NOCI's pricing practices.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it incurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

Under the volumetric system we plan to adopt, a claimant will be eligible to receive a refund equal to the number of gallons purchased from NOCI times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $.014769 per gallon.[2] In addition, successful claimants will receive a proportionate share of the accrued interest.

The second presumption we plan to use is that claimants seeking small refunds were injured by NOCI's pricing practices. There are a variety of reasons for adopting this presumption. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive. With small claims, the cost to the firm of gathering the necessary information and the cost to OHA of analyzing it could exceed the expected refund. Failure to allow simplified procedures could therefore deprive injured parties of the opportunity to receive a refund. This presumption eliminates the need for a claimant to submit and OHA to analyze detailed proof of what happened downstream of the initial impact.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Several factors determine the value of the threshold below which a claimant is not required to submit any further evidence of injury beyond volumes purchased. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low and the early months of the consent order period are many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.; Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and to show that market conditions would not permit it to pass through those increased costs.[3]

If a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have been injured. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. We believe the same rationale holds true in the present case. Therefore, we propose that firms which made only spot purchases from NOCI not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they were injured as a result of their purchases of motor gasoline from NOCI during the consent order period.

As noted above, we are making a proposed finding that end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. Because of this, an analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (PVM); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein.[4]

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the alleged overcharges. In the case of regulated firms *e.g.*, public utilities, any overcharges incurred as a result of NOCI's alleged violations of the DOE regulations would routinely be passed through to the firm's customers. Similarly, any reunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we proposed adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See e.g., Office of Special Counsel*, 9 DOE ¶ 82,539 (1982) (*Tenneco*), and *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers,

[2] This figure has been calculated from information contained in ERA's audit workpapers. The audit examined sales made between September 1, 1979, and November 30, 1979, which amounted to 369,301 gallons. From this number, we estimated that NOCI's sales for the entire consent order period were 2,031,155 gallons. We then divided the consent order funds ($30,000) by our estimate of NOCI's total sales (2,031,155 gallons) to obtain the volumetric factor of $.014769.

[3] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000 in order to avoid having to submit detailed proof of their injury. *See* Vickers, 8 DOE at 85,398. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,125 (1982) (Ada).

[4] If a firm is both a spot purchaser and an end user, it will be treated as an end user and will not be required to make any showing of injury beyond that required of other end users.

however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

B. *Applications for Refund.* Any purchaser claiming a portion of the consent order funds should file an Application for Refund pursuant to 10 CFR 205.283. In its application, a claimant must include a schedule of its monthly purchases from NOCI. Applicants should also provide all relevant information necessary to support their claim in accordance with the presumptions stated above. A claimant must also state whether it has previously received a refund, from any source, with respect to the alleged overcharges underlying these proceedings. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private, § 210, actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any changes in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

C. *Distribution of remaining Consent Order Funds.* In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Northeastern Oil Company, Ltd. pursuant to the consent order executed on September 29, 1980, will be distributed in accordance with the foregoing decision.

[FR Doc. 85-22513 Filed 9-19-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $33,199.83 obtained as a result of a consent order which the DOE entered into with Peterson Petroleum, Inc., a reseller-retailer of petroleum products located in Hudson, New York. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of the Peterson consent order funds must be filed in duplicate and must be received within 90 days of publication of this notice in the **Federal Register.** All applications should refer to Case Number HEF-0149 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Walter J. Marullo, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The decision relates to a consent order entered into by the DOE and Peterson Petroleum, Inc., which settled all claims and disputes betwen Peterson and the DOE regarding the manner in which Peterson applied the federal price and allocation regulations with respect to its sales of motor gasoline during the period May 1, 1979, through June 31, 1979. A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Peterson consent order funds was issued on July 9, 1985. 50 FR 29257 (July 18, 1985).

The Decision sets forth procedures and standards that the DOE has formulated to distribute the contents of an escrow account funded by Peterson pursuant to the consent order. The DOE has decided to accept Applications for Refund from firms and individuals who purchased motor gasoline from Peterson. In order to receive a refund, a claimant must furnish the DOE with evidence which demonstrates that it was injured by Peterson's pricing practices. Applicants must submit specific documentation regarding the date, place, and volume of product purchased, whether the increased costs were absorbed by the claimant or passed through to other purchasers, and the extent of any injury alleged to have been suffered. An applicant claiming $5,000 or less, however, will be required to document only its purchase volumes.

As the Decision and Order published with this Notice indicates, applications for refunds may now be filed by customers who purchased motor gasoline from Peterson during the consent order period. Applications will be accepted provided they are received no later than 90 days after publication of this Decision and Order in the **Federal Register.** The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: September 12, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order

Implementation of Special Refund Procedures

September 12, 1985.

Name of Firm: Peterson Petroleum, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0149.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the DOE Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of enforcement proceedings in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the extent of such persons' injuries. For a more detailed discussion of Subpart V, *see Office of Enforcement,* 9 DOE ¶ 82,508 (1981) (*Coline*), *and Office of Enforcement,* 8 DOE ¶ 82,597 (1981) (*Vickers*).

I. Background

In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order which it entered into with Peterson Petroleum, Inc. (Peterson). Peterson is a "reseller-retailer" of "covered" products as those terms were defined in 10 CFR 212.31, and is located in Hudson, N.Y. A DOE audit of the firm's records revealed possible violations of the Mandatory Petroleum Price and Allocation Regulations with respect to sales of motor gasoline during the period May 1, 1979 through June 30, 1979 (audit period). In order to settle all claims and disputes between Peterson and the DOE regarding the firm's sales of motor gasoline during the audit period, Peterson and the DOE entered into a consent order on October 27, 1980. The consent order refers to ERA's allegations of overcharges, but notes that no findings of violation were made. Additionally, the consent order states that Peterson does not admit that it committed any such violations. Finally, according to the Peterson consent order, the firm agreed to deposit $32,816.16, plus interest, into an interest-bearing escrow account for ultimate distribution by DOE.[1]

On July 9, 1985, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of refunds to parties who were injured by Peterson's alleged violations in the sale of motor gasoline. 50 FR 29,257 (July 18, 1985). In the PD&O, we described a two-stage process for distributing the Peterson consent order funds. We proposed to disburse funds in the first stage to claimants who could demonstrate that they were adversely affected by Peterson's alleged overcharges in the sale of motor gasoline during the audit period. We also solicited comments regarding the disbursement of any funds remaining after all meritorious claimants had received appropriate refunds.

The purpose of this decision is the establishment of procedures to be used for filing claims in the first stage of the Peterson refund process. Since no comments were received concerning first-stage procedures, we will employ the procedures suggested in the PD&O. Since our determination concerning the final disposition of any remaining funds will necessarily depend on the amount of money remaining in the escrow account, it would be premature for us to address the issues raised by commenters concerning a second-stage proceeding.[2] *See Coline*, 9 DOE at 85,046.

II. Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds. *See Coline*, 9 DOE at 95,046–49, *and Vickers*, 8 DOE at 85,393–99.

The Petition consent order funds will be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by Peterson's alleged pricing violations. The information available to us at this time regarding the firm's operations provides the names and addresses of a few of Peterson's customers during the audit period. However, our information does not include sales figures for any of the firm's customers.[3] Our experience with Subpart V proceedings indicates that the likely claimants in this proceeding, when more fully identified, will fall into two categories: (1) Resellers (including retailers) of Peterson motor gasoline and (2) firms, individuals, or organizations that were consumers (end-users) of gasoline purchased from Peterson. The products purchased by these claimants were purchased either directly from Peterson or from other firms in a chain of distribution leading back to the firm.

As in many prior special refund cases, we are adopting certain presumptions in order to determine a purchaser's level of injury and thereby distribute the escrow account in this case. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we will adopt a presumption that the alleged overcharges were dispersed evenly in all sales of products made during the consent order period. In the past, we have referred to a refund process that uses this presumption as a volumetric system. Second, we will adopt a presumption of injury with respect to small claims. Third, we will adopt a presumption that spot purchasers were not injured by the alleged overcharges. As a separate matter, we find that end users of Peterson products were injured by Peterson's pricing practices.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it incurred a disporportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984), and cases cited therein.

Under the volumetric system we are adopting, a claimant will be eligible to receive a refund equal to the number of gallons purchased from Peterson times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $0.007235 per

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[1] Due to the accumulated interest on late deposits, however, Peterson paid $33,199.83 into the escrow account. This amount represents the principal which will form the basis for refund calculations. The amount of money in the Peterson escrow account was $51,447.04 as of August 31, 1985.

[2] Comments concerning the second stage were filed on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia.

[3] The names and addresses of some customers who may have purchased gasoline from Peterson during the audit period appear in the Appendix to this Decision. In addition to publishing this Decision in the **Federal Register**, we will attempt to contact these customers directly. We will also accept information regarding the identity and present locations of other purchasers for a period of 90 days following publication of this Decision and Order.

gallon.[4] In addition, successful claimants will receive a proportionate share of the accrued interest.

The second presumption we will use is that claimants seeking small refunds were injured by the Peterson's pricing practices. There are a variety of reasons for adopting this presumption. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive. With small claims, the cost to the firm of gathering the necessary information and the cost to OHA of analyzing it could exceed the expected refund. Failure to allow simplified procedures could therefore deprive injured parties of the opportunity to receive a refund. This presumption eliminates the need for claimant to submit and OHA to analyze detailed proof of what happened downstream of the initial impact.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Several factors determine the value of this threshold. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low and the early months of the consent order period are many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984); *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate that it maintained a "bank" or unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and to show that market conditions would not permit it to pass through those increased costs.[5]

If a reseller or retailer made only spot purchases, we believe that it should not receive a refund since it is unlikely to have been injured. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of the [the firm's product] at increased prices unless thay were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. We believe the same rational holds true in the present case. Therefore, firms which made only spot purchases from Peterson will not receive refunds unless they present evidence with rebuts the spot purchaser presumption and establishes the extent to which they were injured as a result of their purchashes of motor gasoline from Peterson during the consent order period.

As noted above, we find that end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. Because of this, an analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein.[6]

In addition, firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement will not be required to demonstrate that they absorbed the alleged overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of Peterson's alleged violations of the DOE regulations would routinely be passed through to the firms' customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we will add such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,539 (1982) (*Tenneco*), *and Office of Special Counsel*, 9 DOE ¶ 82,244 (1982) (*Pennzoil*). Instead, those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweights the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

III. Applications for Refund

We have determined that by using the procedures described above, we can distribute the Peterson consent order funds as equitably and efficiently as possible. Accordingly, we will now accept applications for refund from individuals and firms who purchased motor gasoline from Peterson between May 1, 1979, and June 31, 1979.

There is no specific application form which must be used. In order to receive a refund, each claimant must submit the following information:

(1) A schedule of monthly purchases from Peterson;

(2) whether the applicant has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding;

(3) whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement

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[4] This figure is derived by dividing the $33,199.83 settlement amount by the 4,588,620 gallons of motor gasoline sold by Peterson during the consent order period.

[5] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See Vickers*, 8 DOE at 85,396. *See also Office of Enforcement*, 10 DOE ¶ 85,029 at 88,125 (1982) (Ada).

[6] If a firm is both a spot purchaser and an end user, it will be treated as an end user and will not be required to make any showing of injury beyond that required of other end users.

from the other owners indicating that they do not claim a refund;

(4) whether the applicant is or has been involved as a party in DOE enforcement or private, section 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d); and

(5) the name and telephone number of a person who may be contacted by this Office for additional information.

Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the information has been deleted. All applications should refer to Case No. HEF–0149 and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585.

It Is Therefore Ordered That:

(1) Applications for refunds from the funds remitted to Department of Energy for Peterson Petroleum, Inc. pursuant to the consent order executed on October 27, 1980, may not be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: September 12, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals

Appendix

Golub Service Stations, Inc., 501 Duanesburg Road, Schenectady, New York 12301
Stewarts Ice Cream, 210 Broadway, Saratoga Springs, New York 12866
Good Hope Industries, Post Office Box 3190, Springfield, Massachusetts 01101
Highway Oil Company, 12th Floor, First National Bank Tower, Topeka, Kansas [illegible]
Johnson Products, Post Office Box 851, Boston, Massachusetts 02130
Lehigh Oil Company, One Terminal Way, Norwich, Connecticut 06360
Midway Oil Company, Post Office Box 8, Rutland, Vermont 05701

[FR Doc. 85–22511 Filed 9–19–85; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $61,889.83 obtained as a result of a consent order which the DOE entered into with Malco Industries, Inc., a reseller-retailer of petroleum products located in Cleveland, Ohio. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. All comments should conspicuously display a reference to case number HEF–0121.

FOR FURTHER INFORMATION CONTACT: Walter J. Marullo, Office of Hearings and Appeals, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $61,889.83 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Malco Industries, Inc. The funds were provided to the DOE by Malco to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the Federal price regulations with respect to its sales of motor gasoline during the period April 1, 1979, through January 31, 1980.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to 16 first purchasers who may have been overcharged. In order to obtain a refund, each claimant will be required either to submit a schedule of its monthly purchases from Malco or to submit a statement verifying that it purchased motor gasoline from Malco and is willing to rely on the data in the audit files. In addition, applications for refund will be accepted from purchasers not identified by the DOE audit. Unidentified customers who purchased direotly from Malco will only be required to provide schedules of their monthly purchase volumes. However, an indirect purchaser will also be required to provide name of the firm from which the purchase was made as well as the reason why it believes the product was initially sold by Malco. Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in these proceedings will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except Federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW Washington, DC 20585.

Dated: September 11, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

September 11, 1985.

Name of Firm: Malco Industries, Inc.
Date of Filing: October 13, 1983.
Case Number: HEF–0121.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to

distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Malco Industries, Inc., (Malco).

I. Background

Malco is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and is located in Cleveland, Ohio. A DOE audit of Malco's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. The audit alleged that between April 1, 1979, and January 31, 1980, Malco committed possible pricing violations amounting to $162,867.97 with respect to its sales of motor gasoline.

In order to settle all claims and disputes between Malco and the DOE regarding the firm's sales of motor gasoline during the period covered by the audit, Malco and the DOE entered into a consent order on November 10, 1981. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. Additionally, the consent order states that Malco does not admit that it violated the regulations.

Under the terms of the consent order, Malco agreed to deposit $61,889.83 an interest-bearing escrow account for ultimate distribution by the DOE. Malco remitted this sum on November 24, 1981. This decision concerns the distribution of the funds in the escrow account, including accrued interest.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

[1] As of July 31, 1985, the Malco escrow account contained $89,267.97, including accrued interest.

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of refined petroleum products who may have been injured by Malco's pricing practices between April 1, 1979, and January 31, 1980. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of the Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identified Purchasers

The basic purpose of a special refund proceeding is to recompense parties who were injured as a result of alleged or actual violations of the DOE regulations. In order to effect restitution in this proceeding, we have decided to rely in part on the information contained in the DOE's audit files. Our experience with similar cases supports the use of this approach in Subpart V cases where many of the purchasers of a firm's products are identified in the audit file. *See e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). Under these circumstances, a reasonably precise determination can be made regarding the identity of the allegedly overcharged parties and the amount of alleged overcharges each party suffered.

During the DOE's audit of Malco, 21 first purchasers were identified as having been allegedly overcharged in the first instance. ERA also alleged overcharges to customers who were not identified. We recognize that the DOE audit files do not necessarily provide conclusive evidence regarding the identity of all possible refund recipients or the appropriate refund for a particular firm. However, the information contained in those audit files may reasonably be used for guidance. *See Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 80,050 at 88,259 (1983). In *Marion*, we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." 12 DOE at 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the customers identified by the audit, other customers who can show injury, and downstream customers of either type of firm. *See e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Richards Oil Company*, 12 DOE ¶ 85,150 (1984). The first purchasers identified by the audit, with the share of the settlement allotted to each by ERA, are listed in Appendices 1 and 2.

Identification of first purchasers is only the first step in the distribution process. We must also determine whether the first purchasers were injured or were able to pass through the alleged overcharges. Besides considering the information which the audit file provides, we also propose the adoption of presumptions to be used in determining the level of a purchaser's injury. We propose to use these two methods to distribute the funds in the escrow account. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [I]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund proceedings, we intend to adopt a presumption that claimants seeking small refunds were injured by the pricing practices of the company from which they purchased products. In addition, we plan to use a volumetric presumption for certain applicants. As a separate matter, we are making a proposed finding that end users suffered injury. The volumetric presumption and the end-user finding will be discussed below in Section B.

There are a variety of reasons for adopting the presumption that claimants seeking small refunds were injured. *See, e.g. Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at lease initially. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive. With small claims, the cost to the firm of

gathering the necessary information and the cost to OHA of analyzing it could exceed the expected refund. Failure to allow simplified procedures could therefore deprive injured parties of the opportunity to recieve a refund. This presumption eliminates the need for a claimant to submit and OHA to analyze detailed proof of what happened downstream of the initial impact.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Several factors determine the value of this threshold. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amounts of the refund to be gained. In this case, where the refund amount is fairly low and the early months of the consent order period are many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.* 12 DOE ¶ 85,069 at 88,210 (1984); *Office of Special Counsel,* 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein. The record in this proceeding indicates that all of the 21 identified customers made small purchases.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and to show that market conditions would not permit it to pass through those increased costs.[2]

As in previous cases, only claims for at least $15 plus interest will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for smaller amounts outweighs the benefits of restitution. *See, e.g., Uban Oil Co.,* 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

On the basis of the information in the record at this time, we propose to distribute a portion of the escrow funds to eligible firms listed in Appendices 1 and 2. Refunds will be authorized for those firms in the amounts indicated, plus accrued interest to the date they receive refunds.[3] However, no addresses are available for the firms listed in Appendix 2 and we therefore are unable to contact these firms directly. In an attempt to locate these firms, we will provide Malco and various petroleum dealers associations with copies of this Proposed Decision and will publish a notice in the **Federal Register.** Information regarding the identity and location of each of these firms will be accepted for a period of 90 days following the date of publication of notice of a final Decision and Order in this proceeding in the **Federal Register.**[4]

B. Refunds to Other Purchasers

As noted above, this Decision concerns the distribution of the entire $61,889.83 that Malco deposited into the escrow account, plus accrued interest to date. Since the refunds tentatively allotted to identified purchasers total only $3,047.13, the remaining portion of the Malco consent order funds may be distributed among first purchasers other than those identified by the ERA audit, and downstream purchasers, who may have been injured by the alleged overcharges. To assist potential claimants in deciding whether to apply for refund, we propose to use the small-claims presumption discussed above. In addition, we will adopt a presumption that the alleged overcharges were dispersed equally among all sales of motor gasoline made by Malco during the consent order period. In the past, OHA has referred to a proceeding which uses this latter presumption as a volumetric system. In the absence of better information, this presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser could have been greater, and any purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See, e.g., Sid Richardson Carbon & Gasoline, Co., and Richardson Products Co./Siouxland Propane Co.,* 12 DOE ¶ 85,054 at 88,164 (1984), and cases cited herein.

Using a volumetric approach in this proceeding means that a portion of the Malco consent order amount would be allocated to each gallon of product which a successful claimant purchased from Malco. The average per gallon refund, or volumetric refund amount, in this proceeding is $0.001323 per gallon.[5] Potential applicants that were not identified by the ERA audit of Malco may use this volumetric figure to estimate the refund to which they may be entitled.

As noted above, we are making a proposed finding that end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. Because of this, an analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would be beyond the scope of a special refund proceeding. *See Office of Enforcement,* 10 DOE ¶ 85,072 (1983) (*PVM*); *See also Texas Oil & Gas Corp,* 12 DOE at 88,209, and cases cited therein. We therefore propose that end users of motor gasoline sold by Malco be required to document only their purchase volumes from Malco to make a sufficient showing that they were injured by the alleged overcharges.

In addition, we proposed that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the alleged overcharges. In the case of regulated firms, *e.g.,* public utilities, any overcharges incurred as a result of Malco's alleged violations of the DOE regulations would routinely be passed through to their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from

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[2] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See Vickers,* 8 DOE at 85,398. *See also Office of Enforcement,* 10 DOE ¶ 85,029 at 88,125 (1982) (*Ada*).

[3] The share of the Malco escrow fund allocated to each firm listed in Appendices 1 and 2 represents 38 percent of the amount each was allegedly overcharged. This figure is consistent with the terms of the Malco consent order which settled for 38 percent of the total amount of alleged overcharges. However, purchasers identified in the ERA audit as having allegedly been overcharged may attempt to show that they should receive refunds larger than those indicated.

[4] If we are unable to locate any firm listed in Appendix 2, we will reserve any funds allocated to that firm for distribution in a subsequent proceeding.

[5] This per gallon factor is computed by dividing the $58,842.70 available for distribution to unidentified purchasers under the Malco consent order by the 44,468,071 gallons which Malco sold to those purchasers during the consent order period.

alleged overcharges. *See, e.g., Office of Special Counsel,* 9 DOE ¶ 82,539 (1982) (*Tenneco*), *and Office of Special Counsel,* 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their applications a full explanation of the manner in which refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

If valid claims exceed the funds available in the escrow account, all refunds will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

C Applications for Refund

In order to receive a refund, each claimant identified by ERA will be required to submit either a schedule of its monthly purchases of motor gasoline from Malco or a statement verifying that it purchased motor gasoline from Malco and is willing to rely on the data in the audit file. A claimant must also indicate whether it has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding. Purchasers not identified by the ERA audit will be required to provide schedules of their monthly purchases of motor gasoline from Malco. If they claim injury at a level greater than the volumetric level, they must document this injury. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private, § 210, actions. If these actions have been included the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its application for Refund is pending. *See* 10 CFR 205.9(d).

D. Distribution of Remaining Consent Order Funds

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any funds remaining in the escrow account until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Malco Industries, Inc. pursuant to the consent order executed on November 10, 1981, will be distributed in accordance with the foregoing decision.

Appendix 1

First Purchasers

First purchaser	Share of settlements [1]
Adams Sewer, 18100 Lanken Avenue, Cleveland, Ohio 44113	$47.79
Bosell Cheese, 17212 Miles Avenue, Cleveland, Ohio 44128	28.23
Bumper & Auto, 1661 E. 81st Street, Cleveland, Ohio 44103	[2] 9.38
Campbell Oil and Supply, 5445 Dunham Road, Maple Heights, Ohio 44137	21.26
CSC, c/o D&F Associates, 8 Progress Parkway, Maryland Heights, Missouri 63042	2,116.63
Cuyahoga Valley Railroad, 315 Clark Avenue, Cleveland, Ohio 44113	21.15
Erie Distributors, 2020 Center Street, Cleveland, Ohio 44110	101.25
Empire Glass, 7230 Northfield Road, Bedford, Ohio 44146	[2] 8.85
Gillota Industries, 300 Central Viaduct, Cleveland, Ohio 44115	106.56
Honeywell-Morse, 6707 Carnegie Avenue, Cleveland, Ohio 44103	[2] 8.85
Klausner Barrel, 2816 E 51st Street, Cleveland, Ohio 44104	20.62
Morgan Linen, 2013 Columbus Street, Cleveland, Ohio 44146	135.76
O'Brien Cut Stone, 19100 Miles Avenue, Cleveland, Ohio 44128	141.34
Sachs Brothers Metal, 2696 E 48th Street, Cleveland, Ohio 44104	[2] 2.92
St. Clair Auto Body, 13606 St. Clair Street, Cleveland, Ohio 44110	28.23
A. Shaw Company, 940 E. 67th Street, Cleveland, Ohio 44103	79.48
State Fish, 1600 Merwin Avenue, Cleveland, Ohio 44113	52.13
Union Sheet Metal, 16722 Miles Avenue, Cleveland, Ohio 44128	19.38
Willoughby Iron & Waste, 3955 Church Street, Willoughby, Ohio 44094	[2] 10.62

[1] Not including accrued interest.
[2] As noted in the body of the Proposed Decision, we do not intend to process claims for less than $15.

Appendix 2

FIRST PURCHASERS, NO ADDRESS AVAILABLE

First purchaser	Share of settlement [1]
Adams Ale	$24.22
Midwest Manne	[illegible]

[1] Not including accrued interest.

[FR Doc. 85-22512 Filed 9-19-85; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of August 12 Through August 16, 1985

During the week of August 12 through August 16, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Requests for Exception

Bale Oil Company, 8/16/85, *HEE-0140*

Bale Oil Company filed an Application for Exception from an Energy Information Administration reporting requirement. In its application, the firm sought to be relieved of the requirement to submit Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm had failed to demonstrate that it was unduly burdened by the reporting requirement. Accordingly, exception relief was denied.

Wakeland Oil Company, 8/16/85, *HEE-0115*

Wakeland Oil Company filed an Application for Exception from the Form EIA-782B reporting requirement in which the firm sought immediate relief from its obligation to file the report, which Wakeland considered to be unduly burdensome. In considering the request, the DOE found that the firm deserved partial exception relief to alleviate the burden of its spending 25 hours per month filing the report. Accordingly, partial relief was granted wherein the firm will be allowed to file its monthly reports using data from the months of April, June, October and December of 1984 to construct estimated data for the reports filed after April 1985 and through the remainder of the calendar year.

Motion for Evidentiary Hearing

Murphy Oil Corporation/Economic Regulatory Administration, 8/15/85, *BRH-0984; HRZ-0265; HRZ-0266; HRZ-0264*

Murphy Oil Corporation and the Economic Regulatory Administration filed a number of motions relating to a Proposed Order of Disallowance (POD) issued to Murphy by ERA on January 9, 1980. In the POD, ERA alleged that for certain months during the period October 1973 through May 1975, Murphy overstated its costs for imported crude oil that it purchased from its foreign affiliates. In connection with the POD proceeding, ERA filed a motion to dismiss Murphy's defenses which relate to ERA's alleged delay in issuing the POD, and in response, Murphy filed a motion to strike. Murphy also filed a motion to strike portions of ERA's response to Murphy's Supplemental Statement of Objections. Finally, Murphy filed a motion for evidentiary hearing. In

considering the motion to dismiss, the DOE determined that the motion should be denied because it attempted to engage the OHA in a piecemeal resolution of substantive challenges to the POD. It denied Murphy's motion to strike ERA's motion to dismiss and Murphy's motion to strike portions of ERA's response to Murphy's Supplemental Statement of Objections because Murphy failed to establish that it would be prejudiced by the retention of the materials in the record. With regard to Murphy's motion for evidentiary hearing, the OHA determined that it should be granted in part. The OHA found that a factural dispute existed regarding Murphy's claim that it adopted an "articially low" interaffiliate transfer price for Venezuelan crude oil in 1975 and should be permitted to offset the proposed disallowance of landed costs by an amount representing lost profit opportunity attributable to its 1975 pricing decisions. The OHA therefore ordered the convening of an evidentiary hearing for the purpose of receiving testimony from Murphy's Assistant Controller concerning this issue.

Implementation of Special Refund Procedures

Appalachian Flying Service, Inc., 8/13/85, *HEF–0028*

On August 13, 1985, the Office of Hearings and Appeals of the Department of Energy issued a final Decision and Order establishing procedures for the disbursement of $82,900 (plus accured interest) obtained as a result of a Consent Order entered into by the DOE and Appalachian Flying Service, Inc. (Appalachian). The funds will be available to customers who purchased aviation gasoline or aviation jet fuel from Appalachian during the period November 1, 1973 through April 30, 1977. Successful applicants will receive refunds proportionate to the volume of aviation gasoline and/or aviation jet fuel they purchased from Appalachian during the consent order period.

Refund Applications

Adolph Coors Company/Action Supply Company, 8/14/85, *RF87–3*

The DOE issued a Decision and Order concerning an Application for Refund filed by Action Supply Company, a reseller of Coors NGLs. Although the firm's purchases of Coors NGLs during the consent order period exceeded the threshold level established in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984) (*TOGCO*), Action Supply elected to file its refund application in accordance with the presumption of injury and procedures for filing small claims outlined in the *TOGCO* decision. After examining the evidence and supporting data submitted by the firm, the DOE concluded that Action Supply should receive a refund of $5,000 in principal and $2,666.07 of accrued interest for a total refund of $7,666.07.

Consolidated Gas Supply Corporation/ Pargas, Inc., 8/14/85, *RF77–1*

Pargas, Inc. filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Consolidated Gas Supply Corporation. The firm claimed a refund on the basis of its purchase of 4,724,000 gallons of propane from Consolidated Gas during the consent order period. The DOE determined that Pargas' claim was below the presumption of injury level of $5,000. The DOE therefore granted Pargas a refund of $529.09 plus accrued interest of $339.83, for a total refund of $868.92.

Gulf Oil Corporation/D'Amico's Fuel Oil Company et al., 8/13/85, *RF40–00604 et al.*

The DOE issued a Decision and Order concerning 36 Applications for Refund filed by retailers and resellers of Gulf petroleum products. The claimants applied for refunds based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund claimed. The applicants also indicated that they had purchased products directly from Gulf. After examining the evidence and supporting documentation submitted by the applicants, the DOE concluded that they should receive a total of $112,618 ($99,560 principal plus $13,058 interest) based upon a total volume of 81,607,316 gallons of Gulf purchases.

Gulf Oil Corporation/Defense Logistics Agency, 8/13/85, RF40–1404

The Office of Hearings and Appeals granted a refund of $508,566 (including interest) to the Defense Logistics Agency (DLA) from the settlement fund obtained as a result of a 1978 consent order between Gulf Oil Corporation and DOE. After analyzing DLA's claim, OHA found that the agency qualified for a refund under the procedures for consumers set forth in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984).

The Hertz Corp./American Bar Association, 8/16/85, RF78–150

The DOE issued a Decision and Order concerning an Application for Refund filed by the American Bar Association (ABA) which claimed to represent ABA members in connection with their rentals of Hertz motor vehicles and subsequent refueling charges. In considering the Application, the DOE concluded that the submission was not appropriate for the first stage of the Hertz special refund proceeding since the ABA failed to provide information on the individuals who would receive restitution. Accordingly, the DOE dismissed the ABA's Application, but permitted the ABA to file an application in the second stage of the Hertz proceeding.

Ropet, Inc./Duquesne Light Company, 8/13/ 85, RF149–0001

Duquesne Light Company (Duquesne) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into by the agency and Ropet, Inc. (Ropet). The DOE determined that Duquesne's allocable share of the consent order funds was equal to $17,879. The DOE also determined that although the utility purchases on a spot basis from Ropet, it had submitted information sufficient to overcome the rebuttable presumption that, as a spot purchase, it was not injured. Accordingly, the DOE determined that as an end-user, the firm would receive principal equal to its allocable share of $17,879. In addition, Duquesne received $7,491 in interest accrued on that principal.

Standard Oil Company (Indiana)/ Duponty Brothers, 8/16/85, *RF21–12397*

Duponty Brothers, a retailer of Amoco motor gasoline, had duplicate Applications for Refund filed on its behalf and thus received duplicate refunds in the Amoco special refund proceeding. The DOE determined that $1,232, the sum of the first refund, plus accrued interest, should be immediately remitted to the DOE. The DOE also directed Duponty Brothers to explain its failure to notify the DOE of its receipt of two refunds. The DOE stated that failure to provide this information within 30 days of the issuance of the Decision and Order would result in the rescission of the second refund.

Standard Oil Co. (Indiana)/ Kansas, 8/13/85, *RQ21–204*

The Office of Hearings and Appeals (OHA) approved Kansas' revised restitutionary plan for the portion of its second-stage refund which was withheld in a prior decision. Kansas plans to use the $368,185 remaining in the Standard Oil Co. (Indiana) escrow account to provide low cost energy kits to low-income residents for home energy conservation improvements. The state also plans to establish and promote "comfort zones" within residences throughout the state and to conduct energy conservation audits of small businesses.

Standard Oil Co. (Indiana)/Montana et al., 8/ 13/85, *RQ21–203 et al.*

The Office of Hearings and Appeals issued a Decision and Order approving Montana's proposed restitutionary plan and partially approving Wisconsin's plan for using their allotted shares of the Standard Oil Co. (Indiana) (Amoco), Belridge Oil Co. (Belridge) and Palo Pinto Oil and Gas (Palo Pinto) second-stage refunds. Montana plans to use $134,052 from Amoco, $706 from Belridge and $291 from Palo Pinto to implement a statewide education program on fuel conservation for motor vehicles and to establish a resource of educational materials on energy efficient housing within the state's library system. Wisconsin was granted $499,603 of the Amoco and Palo Pinto refunds for implementation of the following programs: (1) A low-income oil furnace retrofit program; (2) a homeowners furnace adjustment and weatherization program; and (3) a meter measurement program for motor fuel and heating oil. The OHA denied Wisconsin's proposal to purchase a gas chromatograph and to perform conservation work within its schools. We requested additonal information from Wisconsin concerning a proposed demonstration weatherization program for apartment dwellers.

Stinnes Interoil, Inc./Exxon Company, U.S.A., Scallop Petroleum Company, 8/ 15/85, RF125–0006; *RF125–0007*

Exxon Company, U.S.A. and Scallop Petroleum Company filed Applications for

Refund in which they sought portions of the fund obtained by the DOE through a consent order entered into by the agency and Stinnes Interoil, Inc. The DOE determined that Exxon and Scallop had been spot purchasers of Stinnes' product. Neither firm attempted to prove that the spot purchases from Stinnes injured it. Instead, each firm argued that as a small claims applicant, the fact that it was a spot purchaser was irrelevant to a determination of the firm's eligibility for a refund. The DOE found that the spot purchaser presumption should not be subordinated to the small claims presumption. In addition, the DOE found that the fact that the consent order firm made a large number of spot sales was irrelevant to a determination of an applicant's eligibility for a refund. Accordingly, the firms' Applications were denied.

Union Texas Petroleum Corporation/ Campbell Oil Company et al., 8/13/85, RF140–27, et al.

The DOE issued a Decision and Order concerning four Applications for Refund filed by resellers of petroleum products purchased from Union Texas Petroleum Corporation (UTP). The applications were filed in the UTP special refund proceeding (Case No. HEF–0009) established by the Office of Hearings and Appeals pursuant to 10 CFR Part 205, Subpart V, in connection with a 1982 global consent order entered into by UTP and the DOE.

All of the applicants in this proceeding elected to apply under both the volumetric and threshold presumptions set forth in the Decision establishing the UTP special refund proceeding. *See Union Texas Petroleum Corp.*, 12 DOE ¶85,166 (1985). In considering the applications, the DOE concluded that the applicants should receive a refund based upon the total volume of their eligible UTP purchases. The refunds granted in this proceeding total $10,237.

Dismissals

The following submissions were dismissed.

Name and Case No.

ERA/DOMA, HRR–0111

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: September 9, 1985.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

[FR Doc. 85–22510 Filed 9–19–85; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals; DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $39,114.54 obtained as a result of a consent order which the DOE entered into with Pacer Oil Company of Florida, Inc. (Pacer), a reseller-retailer of motor gasoline located in Ococee, Florida. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspiciously display a reference to case number HEF–0143.

FOR FURTHER INFORMATION CONTACT: Sharon Dennis, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $39,114.54 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Pacer Oil Company of Florida. Inc. The funds were provided to the DOE by Pacer to settle all claims and disputes between the firm and the DOE regarding the manner in which the firms applied the federal price regulations with respect to its sales of motor gasoline during the period July 1, 1979, through December 31, 1979.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals who purchased motor gasoline from Pacer. In order to obtain a refund, a claimant will be required to submit a schedule of its monthly purchases from Pacer and to demonstrate that it was injured by Pacer's pricing practices. Applicants must submit specific documentation regarding the date, place, and volume of product purchased, whether the increased costs were absorbed by the claimant or passed through to other purchasers, and the extent of any injury alleged to have been suffered. An applicant claiming $5,000 or less, however, will be required to document only its purchase volumes.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in these proceedings will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: September 10, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

September 10, 1985.

Name of Firm: Pacer Oil Company of Florida, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF–0143.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent

order entered into with Pacer Oil Company of Florida, Inc. (Pacer).

I. Background

Pacer is a "reseller-retailer" of motor gasoline as that term was defined in 10 CFR 212.31 and is located in Ococee, Florida. A DOE audit of Pacer's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. The audit alleged that between July 1, 1979, and December 31, 1979, Pacer committed possible pricing violations amounting to $185,274.48 with respect to its sales of motor gasoline.

In order to settle all claims and disputes between Pacer and the DOE regarding the firm's sales of motor gasoline during the period covered by the audit, Pacer and the DOE entered into a consent order on October 7, 1981. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. Additionally, the consent order states that Pacer does not admit that it violated the regulations.

The consent order required that Pacer deposit $34,127 into an interest-bearing escrow account for ultimate distribution by the DOE. Pacer paid this amount, plus interest which had accrued on the unpaid portion, over a two-year period ending September 7, 1983. The firm paid a total of $39,114.54, including interest into the escrow account. We have treated this letter figure as the principal in this Proposed Decision.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will accept claims from identifiable purchasers of refined petroleum products who may have been injured by Pacer's pricing practices during the period July 1, 1979, through December 31, 1979. If any funds remain after all metitorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. *Refunds to Identifiable Purchasers.* In the first stage of the Pacer refund proceeding, we propose to distribute the funds currently in escrow to claimants who demonstrate that they were injured by Pacer's alleged overcharges. As we have done in many prior refund cases, we propose to adopt certain presumptions, which will be used to help determine the level of a purchaser's injury.

The use of presumptions in refund cases is specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumption we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we propose adoption of a presumption that the alleged overcharges were dispersed evenly in all sales of products made during the consent order period. In the past, we have referred to a refund process that uses this presumption as a volumetric system. Second, we propose to adopt a presumption of injury with respect to small claims. Third, we plan to adopt a presumption that spot purchasers were not injured by the alleged overcharges. As a separate matter, we are making a proposed finding that end users of Pacer products were injured by Pacer's pricing practices.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it incurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a large refund. *See* e.g., *Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

Under the volumetric system we plan to adopt, a claimant will be eligible to receive a refund equal to the number of gallons purchased from Pacer times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $.003435 per gallons.[2] In addition, successful claimants will receive a proportionate share of the accrued interest.

The second presumption we plan to use is that claimants seeking small refunds were injured by Pacer's pricing practices. There are a variety of reasons for adopting this presumption. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive. With small claims, the cost to the firm of gathering the necessary information and the cost to OHA of analyzing it could exceed the expected refund. Failure to allow simplified procedures could therefore deprive injured parties of the opportunity to receive a refund. This presumption eliminates the need for a claimant to submit and OHA to analyze detailed proof of what happened downstream of the initial impact.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Several factors determined the value of this threshold. One of these factors determine the value of ths threshold. One of these factors is the concern that

[1] As of July 31, 1985, the Pacer escrow account contained $39,114.54 in principal (including installment interest), and $11,958.33 in accrued interest, bringing the total amount in the account to $51,072.87.

[2] This figure is derived by dividing the $39,114.54 principal amount by the 11,387,105 gallons of motor gasoline sold by Pacer during the consent order period.

the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low and the early months of the consent order period are many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.; Office of Special Counsel,* 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and to show that market conditions would not permit it to pass through those increased costs.[3]

If a reseller or retailer made only spot purshases, we propose that it should not receive a refund since it is unlikely to have been injured. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. We believe the same rationale holds true in the present case. Therefore, we propose that firms which made only spot purchases from Pacer not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they were injured as a result of their purchases of motor gasoline from Pacer during the consent order period.

As noted above, we are making a proposed finding that end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. Because of this, an analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would be beyond the scope of a special refund proceeding. *See Office of Enforcement,* 10 DOE ¶ 85,702 (1983) (*PVM*); *see also Texas Oil & Gas Corp.,* 12 DOE at 88,209, and cases cited therein.[4]

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the alleged overcharges. In the case of regulated firms, *e.g.,* public utilities, any overcharges incurred as a result of Pacer's alleged violations of the DOE regulations would routinely be passed through to the firms' customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel,* 9 DOE ¶ 82,539 (1982) (*Tenneco*); *and Office of Special Counsel,* 9 DOE ¶ 82.545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.,* 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

B. *Applications for Refund.* Any purchaser claiming a portion of the consent order funds will be required to file an application for Refund pursuant to 10 CFR 205.283. In its application, a claimant must include a schedule of its monthly purchases from Pacer. Applicants should also provide all relevant information necessary to support their claim in accordance with the presumptions stated above. A claimant must also state whether it has previously received a refund, from any source, with respect to the alleged overcharges underlying these proceedings. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private, § 210, actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

C. *Distribution of Remaining Consent Order Funds.* In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Pacer Oil Company of Florida, Inc. pursuant to the consent order executed on October 7, 1981, will be distributed in accordance with the foregoing decision.

[FR Doc. 85–22514 Filed 9–19–85; 8:45 am]

BILLING CODE 6450–01–M

[3] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000 in order to avoid having to submit detailed proof of injury. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 COE P 85.029 at 88,125 (1982) (Ada).

[4] If a firm is both a spot purchaser and an end user, it will be treated as an end user and will not be required to make any showing of injury beyone that required of other end users.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy

solicits comments concerning the appropriate procedures to be followed in refunding $12,386.57 in consent order funds to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving Post Petroleum Company, a reseller-retailer of petroleum products located in Sacramento, California.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF–0154.

FOR FURTHER INFORMATION CONTACT: Walter Marullo, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to a consent order entered into by Post Petroleum Company (Post). The Post consent order settled alleged pricing violations in the firm's sales of motor gasoline to customers during the period April 1, 1979 through September 30, 1979.

The Proposed Decision sets forth the procedures and standards that the DOE has tenatively formulated to distribute the contents of the escrow account funded by Post pursuant to the consent order. The DOE has tentatively decided that the consent order funds should be distributed in two stages. In the first stage, funds should be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by Post's alleged pricing violations. The information available to us at this time regarding the firm's operations provides the names and addresses of some potential claimants. However, we will also accept additional information regarding the identity and present locations of purchasers for a period of 90 days following publication of a final Decision and Order in this proceeding. In the event that money remains in the Post escrow account after all first-stage claims have been disposed of, the DOE will determine an alternative plan for distributing these funds. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: September 10, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

September 10, 1985.

Name of Firm: Post Petroleum Co.
Date of Filing: October 13, 1983.
Case Number: HEF–0154.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the DOE Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of enforcement proceedings in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where DOE is unable to readily identify those persons who likely were injured by alleged overcharges or to ascertain readily the extent of such persons' injuries. For a more detailed discussion of Subpart V, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1982), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

I. Background

In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order which it entered into with Post Petroleum Co. (Post). Post is a "reseller-retailer" of "covered" products as those terms were defined in 10 CFR 212.31, and is located in Sacramento, California. A DOE audit of the firm's records revealed possible violations of the Mandatory Petroleum Price and Allocation Regulations with respect to sales of motor gasoline during the period April 1, 1979 through September 30, 1979 (audit period). In order to settle all claims and disputes between Post and the DOE regarding the firm's sales of motor gasoline during the audit period, Post and the DOE entered into a consent order on September 29, 1981. The consent order refers to ERA's allegations of overcharges, but notes that no findings of violation were made. Additionally, the consent order states that Post does not admit that it committed any such violations. Finally, according to the Post consent order, the firm agreed to deposit $10,680.00, plus interest, into and interest-bearing escrow account for ultimate distribution by DOE.[1] This decision concerns the distribution of the consent order amount plus accrued interest to date.

II. Proposed Refund Procedures

We have considered ERA's Petition for the Implementation of Special Refund Procedures and have determined that it is appropriate to establish such a proceeding with respect to the Post consent order fund. Since the ERA indicated in its petition that it is unable to readily identify persons who were injured or to ascertain the degree of their injury, we find the use of Subpart V procedures appropriate. Therefore, we will grant ERA's petition and assume jurisdiction over the distribution of the Post consent order funds.

As we have stated in previous decisions, refunding moneys obtained through DOE enforcement proceedings is the focus of Subpart V proceedings. *See generally Office of Enforcement*, 8 DOE ¶ 82,597 (1981). Based upon our experience with Subpart V cases, we believe that the distribution of refunds in the present case should take place in two stages. The first stage will attempt to provide refunds to identifiable purchasers of motor gasoline who may have been injured by Post's pricing practices during the audit period. After meritorious claims are paid in the first stage, a second stage refund procedure may become necessary if any funds remain. *See generally Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed).

[1] Due to the accumulated interest on late deposits, however, Post paid $12,486.57 into the escrow account. This amount represents the principal which will form the basis for refund calculations. The total value of the Post account stood at $16,104.28 as of July 31, 1985.

A. *Refunds to Injured Purchasers.* We propose that the Post consent order funds be distributed to claimants who satisfactorily demonstrate that they have been adversely affected by Post's alleged pricing violations. The information available to us at this time regarding the firm's operations does provide some names of customers. However, we have no exact sales figures for these customers during the audit period.[2] Our experience with Subpart V proceedings indicates that the likely claimants in this proceeding, when more fully identified, will fall into two categories: (1) Resellers (including retailers) of Post motor gasoline and (2) firms, individuals, or organizations that were consumers (end-users) of gasoline purchased from Post. The products purchased by these claimants were purchased either directly from Post or from other firms in a chain of distribution leading back to the firm.

As in many prior special refund cases, we propose to adopt certain presumptions in order to determine a purchaser's level of injury and thereby distribute the escrow account in this case. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we propose to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we propose to adopt a presumption that the alleged overcharges were dispersed equally in all sales of motor gasoline made by Post during the consent order period. OHA has referred to this presumption in the past as a volumetric refund amount. Second, we propose to adopt a presumption of injury with respect to small claims. Third, we plan to adopt a presumption that spot purchasers were not injured by the alleged overcharges. Finally, we are making a proposed finding that end users of Post motor gasoline were injured by Post's pricing practices.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact on an individual purchaser may have been greater than the pro rata amount determined by the volumetric presumption. Certain purchasers may believe that they suffered disproportionate injury as a result of Post's pricing practices during the consent order period. Any purchaser may file a refund application for an amount greater than that calculated using the volumetric presumption, provided that the claimant documents the disproportionate impact of the alleged overcharges. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxland Propane Co.,* 12 DOE ¶ 85,054 at 88,164 (1984), and cases cited therein.

Under the method we are proposing, a successful refund applicant will receive a refund amount which is calculated by dividing the settlement amount by the total gallonage of the products covered by the consent order. In the present case, based on the information available to us at this time, the volumetric refund amount is $.01753 per gallon ($12,486.57 received from Post divided by 727,934 gallons of motor gasoline estimated to have been sold by the firm during the audit period).[3]

Successful claimants will receive refunds based on their eligible purchase volumes multiplied by the volumetric refund amount, plus a proportionate share of the interest accrued on the escrowed funds. Consequently, a successful claimant who purchased, for example, 40,000 gallons of motor gasoline from Post during each of the months of the consent order period will be eligible to receive a refund of $4,116.72 (40,000 gallons times 6 months times $0.017153), plus interest.

The presumption that claimants seeking small refunds were injured by the pricing practices settled in the Post consent order is based on a number of considerations. *See, e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expense involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure can be time-consuming and expensive. In the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may exceed the expected refund amount. Failure to allow simplified application procedures for small claims could therefore deprive injured parties of the opportunity to obtain a refund. The use of presumptions is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and to use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Post and were in the chain of distribution where the alleged overcharges occurred. Therefore, they were affected by the alleged overcharges, at least initially. The presumption eliminates the need for a claimant to submit, and the OHA to analyze, detailed proof of what happened downstream of that initial impact.

Under the small-claims presumption, a claimant who is a reseller or retailer would not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain threshold. Several factors determine the threshold value below which a claimant is not required to submit any further evidence of injury beyond volumes purchased. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the consent order fund is small, and the time period of the consent order is many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.,* 12 DOE ¶ 85,069 at 88,210 (1984); *Office of Special Counsel: In the Matter*

[2] We do have the names and locations of some customers who may have purchased gasoline from Post during the audit period. Their names appear in the three Appendices to this Decision. Appendix A lists customers for which we have complete addresses. Customers for which we have city or town locations but are lacking street addresses are contained in Appendix B. Finally, Appendix C lists customers for which we have no addresses at all. In addition to publishing this Proposed Decision in the **Federal Register**, we will attempt to contact these customers directly. We will also accept information regarding the identity and present locations of these purchasers for a period of 90 days following publication of a final Decision and Order in this proceeding.

[3] The estimated volume of motor gasoline sold by Post during the six month consent order period was extrapolated from the sales of the four months for which we have actual data.

of Conoco, Inc., 11 DOE ¶ 85,226 (1984), and cases cited therein.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and to show that market conditions would not permit it to pass through those increased costs.[4]

If a reseller or retailer made only spot purchases from Post, however, we propose that it should not receive a refund because it presumably suffered no injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [The firm's] quoted selling price at the time of purchase to their own customers.

Vickers at 85,396–97. We believe the same rational holds true in the present case. Accordingly, a spot purchaser that files a claim should submit additional evidence to establish that it was unable to recover the increased prices it paid for Post motor gasoline. *See Amoco* at 88,200.

As noted above, we are making a proposed finding that end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. Because of this, an analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. We therefore propose that end users of motor gasoline sold by Post be required to document only their purchase volumes from Post to make a sufficient showing that they were injured by the alleged overcharges.

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the alleged overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of Post's alleged violations of the DOE regulations would routinely be passed through to their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their members customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,539 (1982) (*Tenneco*), *and Office of Special Counsel*, 9 DOE 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their applications a full explanation of the manner in which refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 plus interest will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for smaller amounts outweigh the benefits of restitution. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* CFR 205.286(b). The same principle applies here.

If valid claims exceed the funds available in the escrow account, all refunds will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

B. *Applications for Refund.* Any purchaser claiming a portion of the consent order funds should file an Application for Refund pursuant to 10 CFR 205.283. In its application, a claimant must include a schedule of its monthly purchases of motor gasoline from Post. Applicants should also provide all relevant information necessary to support their claim in accordance with the presumptions stated above. A claimant must also state whether it has previously received a refund, from any source, with respect to the alleged overcharges underlying these proceedings. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private, section 210 actions. If these actions have been concluded, the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

C. *Distribution of the Remainder of the Consent Order Funds.* In the event that money remains in the Post escrow account after all first stage claims have been disposed of, undistributed funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining refunds.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Post Petroleum Company pursuant to the consent order executed on September 29, 1981, will be distributed in accordance with the foregoing decision.

Appendix A—Post Petroleum Company First Purchasers

Mr. Peter Amourso, 3460 Amourso Way Roseville, CA 956878
Mr. Lowell, Burnet & Sons, Post Office Box 1646, Sacramento, CA 95806
Mr. Ralph Martson, C&R News, Post Office Box 2401, Sacramento, CA 95811
Ms. Nancy Cox, Calvada Sales, Post Office Box 13159, 444 Richards Boulevard, Sacramento, CA 95813
Mr. Bill Christophel, 2400 Orchard Lane, Sacramento, CA 95833
Mr. S. R. Dewsnup, Route Box 2255, Davis, CA 95616
Mr. Michael Dutra, 8000 Pocket Road, Sacramento, CA 95831
Mr. Tony Dutra, 8000 Pocket Road, Sacramento, CA 95831
Mr. Austin Carroll, 6200 Green Back Lane, Citrus Heights, CA 95610

[4] Resellers who claim a refund in excess of $5,000, but who cannot establish that they did not pass through the price increases, or who limit their claims to the threshold amount, will be eligible for a refund for up to the $5,000 threshold without being required to submit evidence of injury. *See Vickers* at 85,398; *see also Office of Enforcement*, 10 DOE ¶ 85,029 at 88,122 (1982).

Mr. Jack Garrison, Garrison Apiaries, Post Office Box 839, Sacramento, CA [illegible]
Mr. John Gill, John Gill Livestock, 4315 Rand Lane, Sacramento, CA 95825
Mr. Roger Griess, 8022 Pocket Road, Sacramento, CA 95822
Mr. Charlie Haight, Haight Nursery, Route Box 990, Roseville, CA 95678
Ms. Lynn Admunson, Insulation Professionals, 1560 Juliesse Avenue Sacramento, CA 95815
Ms. Karon Gutierrez, La Fiesta Mexican Foods, 910 X Street, Sacramento, CA [illegible]
Mr. Munger, El Macero, Post Office Box 2005, El Macero, CA 95811
Mr. Gabe Machado, 2651 El Centro Road, Sacramento, CA 95833
Mr. Ben McIntyre, McIntyre Turkey Farm, 9150 Sierra College Boulevard, Roseville, CA 95895
Mr. C. R. Mortensen, 2390 Elverta Road, Elverta, CA 95626
Swallows Nest, 2245 Orchard Lane, Sacramento, CA 95833
Mr. Roger Mikalesky, Sunset Development, 8232 Joe Rodgers Road, Roseville, CA 95678
Mr. Joe Valine, Joe Valine—Farmer, 5985 Riverside Boulevard, Sacramento, CA 95831
Mr. Floyd Gentle, Wood Products, 2225 Evergreen, Sacramento, CA 95815
Howard & Son Automotive Repair, 1900 L Street, Sacramento, CA 95814
Coffee Break Service, 6316 27th Street, Sacramento, CA 95822
Rainbow Liquor Co., Inc., 3840 Pell Circle, Sacramento, CA 95838
Camellia Carpet Co., Inc., 6300 27th Street, Sacramento, CA 95824
Eastman Building Products, 8191 Elder Creek Road, Sacramento, CA 95824
Weatherite Insulation, 7364 LaTour Drive, Sacramento, CA 95842
O'Neal Plumbing, 1804 Eldridge Avenue, Sacramento, CA 95815
AAA Crane Inc., 2445 Harvard, Sacramento, CA 95815
Modern Construction, Inc., 1345 Silica Avenue, Sacramento, CA 95815
Warren Electric Company, 6390 Freeport B1, Sacramento, CA 95822
Labrie's Waterbeds, 1908 El Camino Avenue, Sacramento, CA 95815
BZ Service Station Maintanance, 1700 South River Road, West Sacramento, CA 95691
Capital City Automotive, 1770 36th Street, Sacramento, CA 95816
Backyard Pools of California, 5700 Garfield Avenue, Sacramento, CA [illegible]
Pete's Mobile Home Sales, 1101 El Camino Avenue, Sacramento, CA 95815
AAA Tile Contractors Inc., 2635 47th Avenue, Sacramento, CA 95822
Steve Anderson's Plumbing, 5930 Stanley Avenue, Carmichael, CA [illegible]
Curtis Roofing, 7475 14th Avenue, Sacramento, CA 95820
California Builders Supply, 1201 Blumenfeld Drive, Sacramento, CA 95815
O'Dell's Pump & Motor Service, 796 Del Paso Boulevard, Sacramento, CA 95815
Davison Iron Works, 7500 14th Avenue Sacramento, CA 95820
Zenith Construction, 4801 24th Street, Sacramento, CA 95822
Bob Frink Chevrolet, 4811 Madison Avenue, Sacramento, CA 95841
New Roma Bakery, 1800 E Street, Sacramento, CA 95814
Mario's Landscaping, 6140 Marysville Boulevard, Rio Linda,, CA 95673
Cultured Marble Products, 1630 Kathleen Avenue, Sacramento, CA 95815
Wing Lee Meats Inc., 3075 West Capitol Avenue, West Sacramento, CA 95691
Cahill Fiberglass Co., Inc., Post Office Box 20038 Sacramento, CA 95820
Golsong W. B. Plumbing & Heating, Post Office Box 947 Carmichael, CA 95608
Delta Pest Control, Post Office Box 22689, Sacramento, CA 95822
Sacramento Construction, 2635 47th Avenue, Sacramento, CA 95822
Allen's Drilling & Pump Service, 2329 Elkhorn Boulevard, Rio Linda, CA 95673
Best Pipe & Steel Inc. 4049 Channel Drive, West Sacramento, CA 95691
General Roofers, 2451 26th Avenue, Sacramento, CA 95822
G.B.C. Realtors, 6001 Folsom Boulevard, Sacramento, CA 95819
Ray Cook, 5800 Warehouse Way, Sacramento, CA 95826
Bill Rusher, 2200 Garden Highway, Sacramento, CA 95833
Lloyd Lee, 112 Q Street, Rio Linda, CA 95673
John F. Otto, 1717 2d Street, Sacramento, CA 95814
Glen Emmerton, 3100 Ozzie Court Carmichael, CA 95608

Appendix B—Post Petroleum Company First Purchasers, No Street Address Available

Firm and City

Anderson's Plumbing, Carmichael, CA
Golsong Plumbing, Carmichael, CA
Oleta Wendall, Citrus Heights, CA
Passmore & Arrister, Citrus Heights, CA
B. K. Howard Ranch, Davis, CA
Davis Rental Center, Davis, CA
S.R. Dewnup, Davis, CA
West-Pak, Inc., Emeryville, CA
Jack Matney Ranch, Elk Grove, CA
L & M Liquor, El Macero, CA
Jerrold Dairby, Elverta, CA
Naumann Construction, Fair Oaks, CA
Sierra View Chapel, Fair Oaks, CA
Agate Sales, Grass Valley, CA
Jum Nurmera, Latrobe, CA
Lloyd Hodge, Orangevale, CA
Art Lund, Orangevale, CA
J-Bar-A Ranch, Pleasant Grove, CA
Jake Hanford, Pleasant Grove, CA
Jerold Dailey, Pleasant Grove, CA
Joe Glover, Pleasant Grove, CA
R. W. Lutz, Pleasant Grove, CA
Arnold Varti, Rio Linda, CA
Bill Hackett, Rio Linda, CA
Comerine Concrete, Rio Linda, CA
Dick Hendrix, Rio Linda, CA
Ottis Happer, Rio Linda, CA
Parchal and Tanaka, Rio Linda, CA
Wayne McCammand, Rio Linda, CA
Gene Backhoe, Rocklin, CA
Sunset-Whitney, Rocklin, CA
Bill Harke, Roseville, CA
Crabtree Painting, Roseville, CA
Dan Riolo, Roseville, CA
Dennis Marling, Roseville, CA
Dorman's Backhoe, Roseville, CA
Frank Riolo, Roseville, CA
Jack Brezendine, Roseville, CA
Marling Window Treatments, Roseville, CA
Richard Riola, Roseville, CA
Ron Riolo, Roseville, CA
Shiloh Ranch, Roseville, CA
Terry Taylor, Roseville, CA
V. W. Zymalt, Roseville, CA
Virgil Zumwalt, Roseville, CA
Woody Wilson, Roseville, CA
California Concrete, Roseville, CA
Terry Taylor, Roseville, CA
ABC Service, Sacramento, CA
Amos J. Walker Electrical, Sacramento, CA
Arlin Damion, Sacramento, CA
Art Hatton, Sacramento, CA
B & D Industries, Sacramento, CA
Barberian Bros., Sacramento, CA
Belmont Bob's, Sacramento, CA
Beneto, Inc., Sacramento, CA
Betty Palmeroy, Sacramento, CA
Bob Fray, Sacramento, CA
Bob Ray, Sacramento, CA
Building Improvement, Sacramento, CA
Bunch, Johnson & Guilory, Sacramento, CA
Capital City Automotive, Sacramento, CA
Carmichael Honda, Sacramento, CA
D & L Enterprises, Sacramento, CA
Diamond Concrete, Sacramento, CA
Dynamic Research, Sacramento, CA
Ed Bianchi, Sacramento, CA
Ed Hada, Sacramento, CA
Ed Kozloski, Sacramento, CA
Elvin Christophle, Sacramento, CA
Farm Air Inc., Sacramento, CA
Flint Equipment, Sacramento, CA
Frank Machado, Sacramento, CA
George Farr, Sacramento, CA

George S. Enterprise, Sacramento, CA
Gocham Excavating, Sacramento, CA
Hapsco Company, Sacramento, CA
Harrison Mechanic, Sacramento, CA
Hickey & Sons, Sacramento, CA
Howard & Sons, Sacramento, CA
I.T.C. Thermadyne, Sacramento, CA
J. H. Phillips Company, Sacramento, CA
J L. Sharkley, Sacramento, CA
J. Morris & Son, Sacramento, CA
Jack Bary, Sacramento, CA
Jimmy Johnson, Sacramento, CA
Joe Eufrazia, Sacramento, CA
John Costello, Sacramento, CA
John Goodrun, Sacramento, CA
John Sing, Sacramento, CA
Land Park Kiddie Land, Sacramento, CA
Larry Raposa, Sacramento, CA
Lawrence Hickory & Son, Sacramento, CA
Lucchesi Enterprises, Sacramento, CA
M. D. Silva, Sacramento, CA
Manchei Firewood Sales, Sacramento, CA
Manual Ferreria, Sacramento, CA
Marrtler Firewood, Sacramento, CA
Marty Shiro Ranch, Sacramento, CA
Mary Cufrazia, Sacramento, CA
Nielsen Nickler, Sacramento, CA
Northwestern Glass, Sacramento, CA
P.E. O'Hair, Sacramento, CA
Pete's Trailers, Sacramento, CA
R. K. Service, Sacramento, CA
RJM Enterprises, Sacramento, CA
Raschal & Tarralia Inc., Sacramento, CA
Richard Pierce, Sacramento, CA
Rix Langley, Sacramento, CA
Robert Walker Mechanical, Sacramento, CA
Rodney Bovia, Sacramento, CA
Ron Kitcherside, Sacramento, CA
Roofer, Inc., Sacramento, CA
Sacramento Construction, Sacramento, CA
Sal Gomez, Sacramento, CA
Schroeder Refrigeration, Sacramento, CA
Sierra Landworks, Sacramento, CA
Taylor Manufacturing, Sacramento, CA
Ted Latuna, Sacramento, CA
Thomas F. Scollan Company, Sacramento, CA
Tortia, Inc., Sacramento, CA
Valley Automatic Sprinkler, Sacramento, CA
Village Auto Mart, Sacramento, CA
West Dwyer, Sacramento, CA
William F. Gormley & Sons, Sacramento, CA
Juarze Concrete, San Jose, CA
Fred Long, Shingle Springs, CA
Jim Nurmgore, Shingle Springs, CA
John Gill Ranch, Sloughouse, CA
Lawrence Hickey & Son, Tucson, Arizona
BZ Service Station Maintenance, West Sacramento, CA
Camellia Mechanical, West Sacramento, CA
Dan-Mar, West Sacramento, CA
Earl Handy, West Sacramento, CA
McLaughlin Drailine, West Sacramento, CA
Wing Lee, West Sacramento, CA
Roy Theep, Wilton, CA
Schaffer Ranch, Wilton, CA
John Perry, Woodland, CA

Appendix C—Post Petroleum Company First Purchasers, No Address Available

West Dwyer
John Goodwin
Rodnye Bovia
Nancy Cox
Chuck Mueller
Nancy Moran
Mitch Clark
Frank Bamchini
Sacramento Fireplace

[FR Doc. 85–22515 Filed 9–19–85; 8:45 am]
BILLING CODE 6450–01–M

Southeastern Power Administration

Proposed Short-term Rate Adjustment and Opportunity for Public Review and Comment

AGENCY: Southeastern Power Administration (Southeastern), DOE.

ACTION: Notice for Proposed Short-term rate adjustment for Duke Power Company for the sale of power from the Georgia-Alabama System of Projects, and opportunity for review and comment.

SUMMARY: Southeastern proposes to implement an additional schedule of the rates and charges applicable to the sale of power to Duke Power Company from the Georgia-Alabama System of Projects effective for a period not to exceed one year beginning October 1, 1985.

Opportunities will be made available for interested persons to submit written comments. Southeastern will evaluate all comments received in this process.

DATES: Written comments are due on or before October 25, 1985.

ADDRESSES: Five copies or written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635.

FOR FURTHER INFORMATION CONTACT:
Leon Jourolmon, Jr., Director, Division of Fiscal Operations, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635, (404) 283–3261.

Discussion

The need for the development of this additional rate schedule for power sold to Duke Power Company from the Georgia-Alabama System of Projects results from the temporary extension of prior contractual arrangements caused by the delay in operation of the generating units at the Richard B. Russell Projects. When all the generating units are in operation, contractual arrangements will be implemented which will market all power to preference customers as provided in the Georgia-Alabama Power Marketing Policy. In the interim, a rate schedule must be established for the power which existing contracts market to Duke Power Company.

Southeastern plans to establish a new Rate Schedule CAR–2–E which will provide a rate for the temporary sale of power for the intermin period before the units at the Richard B. Russell Project become operational. The Department of Energy Delegation Order Number 0204–108 delegates to the Administrator the authority to develop and place into effect on a final basis rates for short-term sales of capacity, energy or transmission service. Short-term sales are those sales that last no longer than one year. Unless there are persuasive comments to the contrary, Southeastern plans to use this authority to establish short-term Rate Schedule CAR–2–E.

If there are no substantive comments created by this notice of proposed short term rate adjustment concerning the proposed rate schedule, there will be no further notification in the Federal Register when the rates are approved on a final basis.

A copy of Rate Schedule CAR–2–E is available for examination at the Samuel Elbert Building, Elberton, Georgia 30635.

Issued at Elberton, Georgia, September 11, 1985.

Harry C. Geisinger,
Administrator.

Proposed Wholesale Power Rate Schedule CAR–2–E

Availability: This rate schedule shall be available to Duke Power Company (hereinafter called the Company).

Applicability: This rate schedule shall be applicable to electric capacity generated at the Hartwell Project (hereinafter called the Project) and sold under contract between the Government and the Company.

Character of Service: Electric capacity delivered to the Company will be three-phase alternating current at a nominal frequency of 60 cycles per second and will be delivered at approximately 230,000 volts where the Company's transmission line is connected to the bus at Hartwell.

Monthly Rate: The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge: $1.59 per kilowatt per billing month for dependable capacity made available to the Company for its own use.

Billing Month: The billing month for power sold under this schedule shall end at 12:00 midnight on the 20th day of each calendar month.

Power Factor: The Company shall take capacity and energy from the Government at such power factor as will best serve the Company's system from time to time, provided that the Company shall not impose a power factor of less than .85 lagging on the Government's facilities which requires operation contrary to good operating practice or results in overload or impairment of such facilities or unreasonably interferes with the delivery of capacity and energy by the Government to the Company and to its other Customers.

Service Interruption: When delivery to the Company is interrupted or reduced due to conditions on the Government's system which have not been arranged for and agreed to in advance, the charge for dependable capacity will be reduced as the kilowatts of such capacity which have been interrupted or reduced in the proportion that the number of declaration hours during such period of interruption or reduction bears to the total number of declaration hours during the period covered by such charge.

[FR Doc. 85-22544 Filed 9-19-85; 8:45 am]

BILLING CODE 6450-01-M

October 1, 1985.

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59731; FRL-2897-8]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of five such PMNs and provides a summary of each.

DATES: Close of Review Period.

Y 85-145 and 85-146—September 17, 1985.

Y 85-147 and 85-148—September 24, 1985.

Y 85-149—September 25, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 85-145

Manufacturer. C.J. Osborn Chemicals, Inc.

Chemical. Further clarification needed before information can be released to the public files.

Use/Production. (S) Clear and pigmented finishes. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 4 workers, up to 1½ hrs/da, up to 6 da/yr.

Environmental Release/Disposal. No release.

Y 85-146

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Acrylate-styrene modified oil.

Use/Production. (S) Industrial coasting vehicle. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. Less than 100 kg/yr released to air and water.

Y 85-147

Importer. Nuodex Inc.

Chemical. (G) Saturated polyester resin from dibasic acids and diols.

Use/Import. (S) Industrial coating and adhesives. Import range: Confidential.

Toxicity Data. Acute oral: Male/female—>10,000 mg/kg; Irritation: Skin-Non-irritant, Eye—Slight; Ames test: Non-mutagenic

Exposure. Processing: dermal.

Environmental Release/Disposal. No release.

Y 85-148

Importer. Nuodex Inc.

Chemical. (G) Aromatic-aliphatic ketone/formaldehyde resin modified with a cycloaliphatic diisocyanate.

Use/Import. (S) Industrial coatings and printing inks. Import range: 50,000-150,000 kg/yr.

Toxicity Data. Acute oral: Male/female—>10,000 mg/kg; Irritation: Skin—Slight, Eye—Slight; Ames test: Non-mutagenic.

Exposure. Processing: dermal.

Environmental Release/Disposal. No release.

Y 85-149

Manufacturer. Confidential.

Chemical. (G) Styrenated vegetable oil.

Use/Production. (S) Industrial and commercial air dry coatings for general metals. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Dated: September 6, 1985.

Linda A. **Travers,**

Acting Director, Information Management Division.

[FR Doc. 85-22086 Filed 9-19-85; 8:45 am]

BILLING CODE [illegible]

[OPTS-51588; FRL 2897-2]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a permanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of fifteen PMNs and provides a summary of each.

DATES: Close of Review Period:
P 85–1407, 85–1408, 85–1409, 85–1410, 85–1411 and 85–1412—November 27, 1985.
P 85–1413, 85–1414, 85–1415 and 85–1416—December 1, 1985.
P 85–1417, 85–1418, 85–1419 85–1420 and 85–1421—December 2, 1985.

Written comments by:
P 85–1407, 85–1408, 85–1409, 85–1410, 85–1411 and 85–1412—October 28, 1985.
P 85–1413, 85–1414, 85–1415 and 85–1416—November 1, 1985.
P 85–1417, 85–1418, 85–1419, 85–1420 and 85–1421—November 2, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS–51588]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M St., SW, Washington, DC. 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St., SW, Washington, DC (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

PMN 85–1407

Manufacturer. Confidential.
Chemical. (G) Phosphorodithoic acid, di-alkyl ester, alkylammonium salt.
Use/Production. (S) Industrial gear oil additive. Prod. range: Confidential.
Toxicity Data. Acute oral: Males—4.57 g/kg, Females—3.77 g/kg; Acute dermal: >2.0 g/kg; Irritation; Skin—Slight to moderate; Ames test: Not mutagenic; Skin sensitization: Non-sensitizer.
Exposure. Manufacture and processing: dermal and inhalation, a total of 3 to 9 workers per day.
Environmental Release/Disposal. Disposal by approved offsite landfill.

PMN 85–1408

Manufacturer. Confidential.
Chemical. (G) Substituted alkyl, alkyl oxazolidine.
Use/Production. (G) Intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 85–1409

Manufacturer. Confidential.
Chemical. (G) Unsaturated polyester.
Use/Production. (S) Casting resin. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 85–1410

Manufacturer. Reichhold Chemicals, Inc.
Chemical. Further clarification needed before information can be released to the public files.
Use/Production. (G) Dispersive use-as a component in various industrial coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 10 workers.
Environmental Release/Disposal. 20 kg/batch released.

PMN 85–1411

Manufacturer. Confidential.
Chemical. (G) Alkyl aluminoxanes.
Use/Production. (G) Catalyst, contained use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 85–1412

Manufacturer. Boeheme Filatex Inc.
Chemical. (GP) N-(beta-substituted propyl) benzenesulfonamide.
Use/Production. (S) Industrial plasticizer for polyamides and polyurethanes and vehicles for liquid colours. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 2 workers, up to 2 hrs/da, up to 3 da/yr.
Environmental Release/Disposal. 171.19 kg released to water. Disposal by publicly owned treatment works (POTW).

PMN 85–1413

Manufacturer. Confidential.
Chemical. Further clarification needed before information can be released to the public files.
Use/Production. (G) Industrial paint binder. Prod. range: 6,000–36,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 14 workers, up to 8 hrs/da, up to 12 da/yr.
Environmental Release/Disposal. 20 kg/batch released to land. Disposal by landfill.

PMN 85–1414

Manufacturer. Confidential.
Chemical. (G) Substituted aromatic polymer.
Use/Production. (G) Resin for non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 42 workers, up to 3 hrs/da, up to 140 da/yr.
Environmental Release/Disposal. 1.5 kg/batch released to land.

PMN 85–1415

Manufacturer. American Cyanamid Company.
Chemical. (G) Modified acrylic copolymer.
Use/Production. (G) Resin for non-dispersive use. Prod. range: Confidential.
Toxicity Data. Acute oral: >15.0 g/kg; Acute dermal: >2.0 g/kg; Irritation: Eye—Non-irritant; LC_{50} 95 hr (Bluegill sunfish): >1,000 mg/l; LC_{50} 96 hr (Rainbow trout): >1,000 mg/l; LC_{50} 48 hr (Daphnia magna): >1,000 mg/l; Ames test: Negative; BOD: <1 mg/l; COD: 161,000 mg/kg.
Exposure: Manufacture: dermal, a total of 17 workers, up to 3 hrs/da, up to 40 da/yr.
Environmental Release/Disposal. ~0.3 kg/da of operation released with ~2 kg/batch. Dispoal by POTW.

PMN 85–1416

Manufacturer. Dresser Industries, Inc.
Chemical. (G) Oligomeric hydroxy amido-ester resin.
Use/Production. (G) Oil well drilling fluid additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 2 workers, up to 2.0 hrs/da, up to 37 da/yr.
Environmental Release/Disposal. Confidential. Disposal by private sewage treatment facility.

PMN 85–1417

Importer. Ashland Chemical Company.
Chemical. (G) Phenolic polyester.
Use/Production. (G) Coating resin. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW and incineration.

PMN 85–1418

Manufacturer. Confidential.
Chemical. (G) Unsaturated polyester.
Use/Production. (G) Coating resin. Prod. range: Confidential.

Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

PMN 85–1419

Manufacturer. Confidential.
Chemical. (S) Polymer of glycerol, phthalic, anhydride, phenol-formaldehyde, resin CK–1634, roin; tall oil fatty acids and trimethylol propane.
Use/Production. (G) Polymeric binder for pigmented finishes. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 5 workers.
Environmental Release/Disposal. Confidential.

PMN 85–1420

Manufacturer. Confidential.
Chemical. (G) Substituted allyl aniline.
Use/Production. (G) Destructive end-use intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 5 workers.
Environmental Release/Disposal. 4 oz. of process sample released. Disposal by Resource Conservation and Recovery Act (RCRA) approved disposal site and private waste water treatment system.

PMN 85–1421

Importer. Confidential.
Chemical. (S) 1,4-benzenedipentanoic acid, 2,5-dihydroxy-d,d,d'd'-tetramethyl-, dihexyl ester.
Use/Import. (G) Stabilizer for photographic dyes. Import range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Minimal; Eye—Non-irritant.
Exposure. Processing: dermal and inhalation, a total of 8 workers, up to 1–2 hrs/da, up to 200 da/yr.
Environmental Release/Disposal. Release to air. Disposal by POTW and incineration.

Dated: September 9, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85–22091 Filed 9–19–85; 8:45 am]
BILLING CODE 6560–50–M

[ER–FRL–2900–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 3, 1985 through September 6, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D–FHW–E40686–TN, Rating EC2, TN–20 Corridor Improvements, I–40 in Jackson to the West End of Dyersburg Bypass, TN. SUMMARY: EPA raised concerns regarding the potential for water quality, wetland, and noise impacts and requested that the FEIS contain a more detailed discussion in these areas. In addition, EPA requested that the FEIS include additional mitigation measures to reduce the impacts.

Final EISs

ERP No. F–COE–C32027–NY, Newtown Creek Federal Navigation Channel Maintenance Project, Dredging and Ocean Disposal, NY. SUMMARY: EPA is concerned that the preferred alternative may result in significant environmental impacts. EPA believes that the bioassay and bioaccumulation testing results show significant levels of toxicity in dredged sediments which could result in unacceptable levels of contamination at the Mud Dump site. EPA is not assured that the proposed mitigation of capping the sediments will be successful and has recommended that the COE give further consideration tot he subaqueous borrow pits alternative.

ERP No. F–COE–L36088–AK, Dillingham Smal Boat Harbor Improvement, Bristol Bay, AK. SUMMARY: EPA made no formal comments. EPA reviewed the FEIS and the project was found to be satisfactory.

ERP No. F–FHW–G40110–OK, OK–74 Expressway Construction, NW 63rd St. to Memorial Rd., Memorial Rd. to NW 178th St., Improvement, 404 Permit, OK. SUMMARY: EPA has no objection to the proposed action as described.

ERP No. FS–NOA–G91000–00, Coastal Migratory Pelagic Resources (Mackerel) Fishery Mgmt. Plan, Gulf of Mexico and S. Atlantic. SUMMARY: EPA expressed no objection to the proposed action as described.

ERP No. F–UAF–K11025–CA, 146th Tactical Airlift Wing of the Calif. Air Nat'l Guard, Relocation, Van Nuys Airport to Pt. Mugn Naval Air Station, Continued Operations, CA. SUMMARY: The FEIS adequately addressed EPA's concerns on the DEIS.

Dated: September 17, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85–22484 Filed 9–19–85; 8:45 am]
BILLING CODE 6560–50–M

[ER–FRL–2900–7]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements filed September 9, 1985 Through September 13, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850383, Draft, SCS, OK, North Deer Creek Watershed Multipurpose Plan, Cleveland, Pottawatomie, and Oklahoma Cos., Due: November 5, 1985, Contact: Roland Willis (405) 624–4360.

EIS No. 850384, Draft, FHW, CA, Laguna Canyon Road/CA–133 Upgrading, between El Toro Road and Canyon Acres Drive, Orange County, Due: November 4, 1985, Contact: Glenn Clinton (916) 440–3578.

EIS No. 850385, Draft, FWS AK, Yukon Flats National Wildlife Refuge Comprehensive Conservation Plan and Wilderness Designation, Due: December 6, 1985, Contact: William Knauer (907) 786–3399.

EIS No. 850386, Final, EPA, FL, North Pinellas County Wastewater Management Facilities Development, Grant, North Pinellas County, Due: October 21, 1985, Contact: Robert Howard (404) 881–3776.

EIS No. 850387, Final, BLM, NM, White Sands Resource Management Plan, Otero and Sierra Cos., Due: October 21, 1985, Contact: Larry Nunez (505) 525–8228.

EIS No. 850388, Final, AFS, CA, North Fork Kern River, Wild and Scenic Rivers Study, Designation, Tulare and Kern Cos., Due: October 21, 1985, Contact: James Crates (209) 784–1500.

EIS No. 850389, Final, FHW, OR, Oakland-Shady Highway/OR–99/ Stephens Street Widening, NW Hooker Avenue to NE Alameda Avenue, Douglas County, Due: October 21, 1985, Contact: Campbell Gilmour (503) 378–8486.

EIS No. 850390, Draft, AFS, ID, Payette National Forest, Land and Resource Management Plan, Due: December 20, 1985, Contact: Kenneth Weyers (208) 634–8151.

EIS No. 850391, Draft, HUD, IL, Near Loop Residential Development,

Areawide Study, Cook County, Due: November 4, 1985, Contact: Harry Blus (312) 353–2977.

EIS No. 850392, Draft, IBR, CA, State Water and Federal Central Valley Projects, Coordinated Operation Agreement, Approval, Due: November 13, 1985, Contact: Bob Schoeder (916) 978–4923.

EIS No. 850393, Final, COE, NY, VT, Narrows of Lake Champlain Federal Channel, Maintenance Dredging, Whitehall, NY to Benson Landing, VT, Due: October 21, 1985, Contact: Karen Gustina (212) 264–4662.

EIS No. 850394, Draft, FHW, CA, D Street Extension, Myrtle Street/Soto Road to Second Street, Alameda County, Due: November 4, 1985, Contact: David Eyres (916) 440–3541.

Dated: September 17, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85–22485 Filed 9–19–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59732; FRL–2900–9]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of seven such PMNs and provides a summary of each.

DATES: Close of Review Period:
Y 85–150—September 30, 1985.
Y 85–151—October 1, 1985.
Y 85–152, 85–153, 85–154, 85–155 and 85–156—October 2, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St., SW., Washington, DC 20460, (202–382–3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 85–150

Manufacturer. Confidential.
Chemical. (G) Styrene maleimide.
Use/Production. (S) Industrial and intermediate in chemical process. Prod. range. Confidential.
Toxicity Data. Acute oral: 5 gms/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant; Eye—Slight.
Exposure. Manufacture: dermal, a total of 7 workers, up to 8 hrs/da, up to 200 ds/yr.
Environmental Release/Disposal. 1 liter/batch released to chemical waste. Disposal by certified waste remover.

Y 85–151

Manufacturer. Confidential.
Chemical. (G) Sulfonated polystyrene imide.
Use/Production. (S) Commercial dispersant—oil well drilling fluids and scale inhibitor in chemical/refining operations. Prod. range. 226,000–500,000 kg/yr.
Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Nonirritant; Eye—Non-irritant; Inhalation: Sister chromatid exchange test: Negative; CHO/HGPRT mutation assay test: Negative; Ames test: Non-mutagenic.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Y 85–152

Manufacturer. Confidential.
Chemical. (G) Oil free alkyd resin.
Use/Production. (G) Open, non-dispersive use. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–153

Manufacturer. Confidential.
Chemical. (G) Oil free alkyd resin.
Use/Production. (G) Open, non-dispersive use. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85–154

Manufacturer. Confidential.
Chemical. (G) N–PMI styrenic terpolymer.
Use/Production. (S) Industrial injection molding processes. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Y 85–155

Manufacturer. Confidential.
Chemical. (G) Mixed alkyl phosphate ester.
Use/Production. (G) An additive used in the energy production industry. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 1 worker, up to 3–4 hrs/da.
Environmental Release/Disposal. 25 kg/day released to water.

Y 85–156

Manufacturer. Confidential.
Chemical. (G) Polyurethane dispersion.
Use/Production. (G) Polyurethane to be used in the plastic industry. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 1 worker, up to 3–4 hrs/da.
Environmental Release/Disposal. 25 kg/day released to water.

Dated: September 16, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85–22547 Filed 9–19–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51589; FRL–2900–8]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice .

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statement of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice

announces receipt of seventeen PMNs and provides a summary of each.

DATES: Close of Review Period:

P 85–1422, P 85–1423 and 85–1424—December 4, 1985.

P 85–1425, 85–1426 and 85–1427—December 7, 1985.

P 85–1428, 85–1429, 85–1430, 85–1431, 85–1432, 85–1433 and 85–1434—December 8, 1985.

P 85–1435, 85–1436, 85–1437 and 85–1438—December 10, 1985.

Written comments by:

P 85–1422, 85–1423 and 85–1424—November 4, 1985.

P 85–1425, 85–1426 and 85–1427—November 7, 1985.

P 85–1428, 85–1429, 85–1430, 85–1431, 85–1432, 85–1433 and 85–1434—November 8, 1985.

P 85–1435, 85–1436, 85–1437 and 85–1438—November 10, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS–51588]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M St., SW, Washington, DC 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St., SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manfacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

P 85–1422

Manufacturer. Wilmington Chemical Corporation.

Chemical. (G) Aliphatic polyester reacted with aromatic diisocyanate and diol acid, amine salt.

Use/Production. (G) Coating open, non-dispersive use. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Release to air. Disposal in accordance with Resource Conservation and Recovery Act (RCRA) regulations.

P 85–1423

Manufacturer. Wilmington Chemical Corporation.

Chemical. (G) Aliphatic polyester reacted with aromatic diisocyanate and diol acid, amine salt.

Use/Production. (G) Coating open, non-dispersive use. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Release to air. Disposal in accordance with RCRA regulations.

P 85–1424

Manufacturer. Rohm and Haas Company.

Chemical. Further clarification needed before information can be released to the public files.

Use/Production. (G) Coating. Prod. range. Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, a total of 8 workers.

Environmental Release/Disposal. Release by process equipment.

P 85–1425

Manufacturer. Confidential.

Chemical. (G) Unsaturated acid and heterocyclic modified epoxy resin.

Use/Production. (G) Polymer having an open non-dispersive use. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 32 workers, up to 8 hrs/da, up to 8 da/yr.

Environmental Release/Disposal. 8 to 95 kg/batch released to land. Disposal by incineration and landfill.

P 85–1426

Importer. Confidential.

Chemical. (G) Mixture of aliphatic alcohols.

Use/Production. (G) Highly dispersive use. Prod. range. Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by publicly owned treatment works (POTW).

P 85–1427

Importer. Confidential.

Chemical. (G) Substituted naphthalene.

Use/Production. (G) Highly dispersive use. Prod. range. Confidential.

Toxicity Data. Acute oral—Male/female: 1581 mg/kg; Irritation: Skin—Very weak; Eye—Minimal/moderate; Phototoxicity test: Non-phototoxic; Ames test: Non-mutagenic; Skin sensitization: Non-allergenic.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by publicly owned treatment works (POTW).

P 85–1428

Manufacturer. Confidential.

Chemical. (G) Oxime capped polyurethane.

Use/Production. (G) Open, non-dispersive use. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1429

Manufacturer. Confidential.

Chemical. (S) Polymer of soya fatty acid, pentaerythritol, benzoic acid, isophthalic acid, styrene, and methyl methacrylate.

Use/Production. (G) Substance will be used in an open system. Prod. range. 20,000–36,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 6 workers, up to 2 hrs/da, up to 3 da/yr.

Environmental Release/Disposal. Minimal release to air. Disposal by licensed landfill and biological treatment lagoons.

P 85–1430

Manufacturer. Confidential.

Chemical. (G) Isocyanate-terminated polyester polyurethane.

Use/Production. (G) Adhesive. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. 5 kg/batch incinerated.

P 85–1431

Manufacturer. Confidential.

Chemical. (G) Isocyanate-terminated polyurethane.

Use/Production. (G) Site limited intermediate. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: 1 worker.

Environmental Release/Disposal. Confidential, 5 kg/batch incinerated.

P 85–1432

Manufacturer. Confidential.

Chemical. (G) Substituted N,N-dialkyl-m-anisidine.

Use/Production. (G) Site limited dye intermediate. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 3 workers.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85–1433

Manufacturer. Confidential.
Chemical. (G) Alkoxylate coconut glyceride.
Use/Production. (G) Fiber lubricant, softening agent and emulsifier. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

P 85–1434

Manufacturer. Confidential.
Chemical. (G) Halogenated peroxide; organic peroxide.
Use/Production. (G) Contained use; reaction component. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture; dermal, a total of 2 workers.
Environmental Release/Disposal. No data submitted.

P 85–1435

Manufacturer. Confidential.
Chemical. (G) Polyester diol.
Use/Production. (G) Open, non-dispersive use. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacturer: dermal, a total of 9 workers, up to 2 hrs/da, up to 18 da/yr.
Environmental Release/Disposal. 1 to 10 kg/batch released to control technology. Disposal by incineration and industrial acqueous waste treatment facility.

P 85–1436

Manufacturer. Ethyl Corporation.
Chemical. (G) Amine-boronhalide complex.
Use/Production. (G) Catalyst in a closed process. Prod. range. Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1437

Manufacturer. Confidential.
Chemical. (G) Ethylene-vinyl fatty ester copolymer.
Use/Production. (G) Consumptive use. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1438

Manufacturer. Confidential.
Chemical. (G) Modified acrylate terpolymer.
Use/Production. (G) Open, non-dispersive use. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

Dated: September 16, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85–22548 Filed 9–19–85; 8:45 am]

BILLING CODE [illegible]

[OPTS–51587; FRL–2894–7]

Certain Chemicals Premanufacture Notices

Correction

In FR Doc. 85–21437, beginning on page 36669 in the issue of Monday, September 9, 1985, make the following corrections:

1. On page 36670, first column, under **P 85–1392**, the eighth line should read as follows: "$>$5.0 g/kg, female-$<$5.0 g/kg; Skin:".

2. On page 36671, first column, third line from the bottom of the page, under P85–1406, "$<$100" should read "$>$100".

BILLING CODE 1505–01–M

[OPTS–42053A TSH–FRL 2884–3]

Alkyl Epoxides; Decision Not to Test

Correction

In FR Doc. 85–21304, beginning on page 36476 in the issue of Friday, September 6, 1985, make the following corrections:

On page 36478:

1. In the second column:

a. In the ninth line, "balancing" should read "blanching".

b. In the fourteenth line, "rates" should read "rats".

2. In the third column, seventh line, "1.08" should read "1.8".

BILLING CODE 1505–01–M

[OPTS–140069; TSH–FRL 2901–7]

Access to Confidential Business Information by Contractors and Subcontractors

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA has authorized the contractors and subcontractors named in the notice for access to information which has been submitted to EPA under various sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, D.C. 20460, Toll-Free: (800–424–9065), In Washington, D.C.: (554–1404), Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Inventory of Chemical Substances, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, 7, and 8 of TSCA. Section 12 requires a person to report his or her intent to export certain chemical substances to foreign countries.

EPA has selected the contractors and subcontractors named below to perform work under contract in support of the Agency's activities under TSCA. In accordance with 40 CFR 2.306(j), EPA has determined that those contractors and subcontractors will require access to CBI submitted to EPA under TSCA to perform work successfully under TSCA. EPA is issuing this notice to inform submitters of information under TSCA that EPA may provide access to TSCA CBI to these contractors on a need-to-know basis.

Under Contract No. 68–02–4215, Jellinek, Schwartz, Connolly & Freshman (JSCF), 1350 New York Ave. NW, Washington, D.C., is analyzing policy issues, formulating regulatory and non-regulatory options and strategies, providing support for negotiations, evaluating section 5 exemption application, reviewing and integrating technical, economic, and scientific documents, and analyzing international issues relating to the regulation of toxic chemicals. As previously announced in the **Federal Register** of June 13, 1985 (50 FR 24831), JSCF has been authorized under this contract for access to confidential data submitted under sections 4, 5, 6, and 8 of TSCA. The Agency has determined that JSCF will also require access to data submitted

under section 12 of TSCA to analyze issues relating to the export of chemical substances to foreign countries. JSCF personnel will review these confidential data at its facilities at the address given above. CBI access authorization under this contract is scheduled to expire on September 30, 1986.

Under Contract No. 68–02–4232, MITRE Corp., 1820 Dolley Madison Blvd., McLean, VA, will support the Office of Toxic Substances (OTS) Industrial Chemistry Branch by performing chemistry evaluations of new and existing chemicals, including their manufacture, processing, intended uses, and potential uses. Under this contract, MITRE will have access at its facilities at the address given above to CBI collected under all reporting provisions of TSCA. Contractor personnel will also have access to confidential chemical computer data bases on EPA premises.

This contract replaces Contract No. 68–01–6610, under which MITRE was previously authorized for access to TSCA CBI, as announced in the **Federal Register** of September 23, 1982 (47 FR 42024), for the same type of work. CBI access authorization under the new contract is scheduled to expire on September 30, 1987.

Under Contract No. 68–02–4235, ICF, Inc., 1850 K St. NW, Washington, D.C. and its subcontractors, Putnam, Hays & Bartlett (PHB), 1200 Eton Court NW, Washington, D.C., SRI International, 333 Ravenswood Ave, Menlo Park, CA, PEI Associates, Inc. (formerly PEDCO Environmental, Inc.), 11499 Chester Road, Cincinnati, OH, Sobotka & Company, Inc., 2501 M St. NW, Suite 550, Washington, D.C., and Muthtech, Inc., 517 Leesburg Pike, Suite 702, Falls Church, VA, will perform analyses of the costs, benefits, and economic impacts of EPA actions and proposed actions taken under TSCA. To perform such analyses, contractor and subcontractor personnel will develop such data as chemical intermediate and end uses, substitutes, and projected market growth. Under this contract, ICF, PHB, SRI, PEI, Sobotka, and Mathtech personnel will have access at the facilities given above to CBI collected under all reporting provisions of TSCA and will have access to confidential chemical data bases on EPA premises.

ICF, PHB, and Sobotka were previously authorized for access to TSCA CBI under Contract No. 68–02–4055, announced in the **Federal Register** of December 30, 1983 (48 FR 57620). PEI and SRI were previously authorized for access to TSCA CBI under Contract No. 68–02–3976, announced in the **Federal Register** on October 11, 1984 (49 FR 39912). Mathtech was previously authorized for access to TSCA CBI under Contract No. 68–01–6630, announced in the **Federal Register** of March 6, 1984 (49 FR 8282). The new contract continues the work performed under these previous contracts. CBI access authority under the new contract is scheduled to expire on September 30, 1987.

Under Contract No. 68–02–4242, Tracor Jitco, Inc., 1601 Research Blvd., Rockville, MD, will perform substructure searches of Premanufacture Notification (PMN) substances and will perform literature searches on PMN substances and analogs to identify health and environmental effects data. Tracor Jitco will have access at its facilities at the above address to CBI collected under sections 5 and 8 of TSCA.

This contract replaces Contract No. 68–01–6651, under which Tracor Jitco was previously authorized for access to section 5 TSCA CBI, as announced in the **Federal Register** of November 8, 1982 (47 FR 50555), for the same type of work. TSCA CBI access authorization under the new contract is scheduled to expire on September 30, 1986.

Under Contract No. 68–02–4236, Maxima Corp., 7315 Wisconsin Ave., Suite 900N, Bethesda, MD, will provide typing, editing, proofreading, and photocopying support to OTS. Maxima personnel will be authorized for access to CBI collected under all TSCA reporting provisions on EPA premises only. This contract replaces Contract No. 68–01–6466, under which Maxima was previously authorized for access to TSCA CBI, as announced in the **Federal Register** of February 18, 1982 (47 FR 7312), for the same type of work. CBI access authorization under the new contract will expire on September 30, 1985.

Under Contract No. 68–02–4240, contractor Mathtech and subcontractor PEI, SRI, and ICF of the addresses given above, will provide market, economic, and financial information to support EPA's regulatory activities under sections 4, 5, 6, and 8 of TSCA. The types of information to be supplied include possible substitutes for PMN substances, potential uses of PMN and existing substances, and conditions within markets associated with PMN substances. The contractor and subcontractors under this contract will have access at their facilities to CBI collected under all reporting provisions of TSCA. Mathtech was previously authorized for access to TSCA CBI under Contract No. 68–01–6630, announced in the **Federal Register** of March 6, 1984 (49 FR 8282). ICF, SRI, and PEI were previously authorized for access to TSCA CBI under Contract No. 68–02–3976, announced in the **Federal Register** of October 11, 1984 (49 FR 39912). The new contract continues the work performed under these previous contracts. CBI access authorization under the new contract is scheduled to expire on September 30, 1986.

All contractors and subcontractors named above have been authorized for access to TSCA CBI under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved contractors' and subcontractors' security plans and has performed the required inspections of their facilities and has found them to be in compliance with the requirements of the manual. Contractor and subcontractor personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI. Contractors and subcontractors that review confidential materials at their facilities under these contracts will return them to EPA upon completion of their review.

Dated: September 18, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85–22726 Filed 9–19–85; 10:07 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 83–1145, Phase I]

Investigation of Access and Divestiture Related Tariffs; Allocation Plan Waivers and Tariffs; Memorandum Opinion and Order

Adopted: August 19, 1985.
Released: August 20, 1985.
By the Chief, Common Carrier Bureau:

I. Background

1. In its *Allocation Order*[1] the Commission found the routing of all default traffic [2] to the American Telephone and Telegraph Company (AT&T) to be an unreasonable and discriminatory practice and prescribed instead a uniform allocation plan

[1] Investigation of Access and Divestiture Related Tariffs CC Docket No. 83–1145, Memorandum Opinion and Order, FCC 85–293 (released June 12, 1985).

[2] Default traffic refers to the interexchange telephone calls of any customer who, by the time equal access is available, has failed to make a selection of an interexchange carrier (IXC). *See Allocation Order* at para. 1 n.3.

effective May 31, 1985. *Allocation Order* at paras. 18, 22. Local exchange carriers (LECs) required to implement the allocation plan include the Bell Operating Companies (BOCs), GTE Corporation (GTE), the Independent Telephone Companies and any local exchange company that provides equal access on a voluntary basis. *Id.* at para. 32. These carriers were ordered to file revisions to their interstate tariffs to reflect the allocation plan. *Id.* at para. 40. The Commission also directed that any carrier that found itself unable to comply with the plan or believed that a modified approach could achieve the goals of the Order must file a petition for waiver with the Commission. *Id.* at para. 31.

2. On June 27, 1985, the LECs filed the requisite tariff revisions. The Bell Atlantic telephone companies (Bell Atlantic),[3] the BellSouth Corporation (BellSouth), the NYNEX telephone companies (NYNEX), Pacific Bell, the Mountain States Telephone and Telegraph Company (Mountain Bell) and the Pacific Northwest Bell Telephone Company (PNB) also filed petitions for waiver of the *Allocation Order*. The Southwestern Bell Telephone Company (Southwestern) filed an attachment to its tariff revisions which, according to the company, "identifies any deviations" between its plan and the plan ordered by the Commission. We will treat Southwestern's "Attachment A" as a waiver petition. AT&T, the Ameritech Operating Companies (Ameritech),[4] and Southwestern filed Petitions for Clarification of certain sections of the *Allocation Order*.[5]

II. Petitions for Clarification

A. Ameritech's Petition

3. Ameritech asks that the Commission clarify two aspects of the prescribed allocation plan: (1) whether interexchange carriers (IXCs) should be permitted to participate in the allocation process if they decline to serve allocated customers who will not consent to minimum monthly charges; and (2) whether non-presubscribing customers should be allocated randomly on a per customer basis or on a per line basis.

4. No clarification should be required in regard to the service requirements imposed on IXCs by the Order. The Commission rejected proposals to permit interLATA carriers "to reject certain assigned customers for any reason." *Allocation Order* at para. 9. The Commission stated that:

> Limiting the IXC acceptance of allocated customers would allow some carriers to choose only attractive customers while other carriers would be allocated a greater proportion of less attractive customers. In addition, IXCs who have agreed to participate in the allocation process have an obligation as common carriers to serve all customers allocated to them.

Id. at para. 25.

5. In the face of this clear language, we are concerned by Ameritech's report that at least one interLATA carrier interprets the Order's prohibition against imposing "any fixed monthly or nonrecurring charges to assigned customers without their consent," [6] to permit the IXC to contact all the customers allocated to it, explain that it has a fixed monthly charge, and decline to serve any customers not willing to pay the monthly minimum.[7] As Ameritech aptly observes, this interpretation contradicts the Commission's explicit prohibition against carriers picking and choosing among customers allocated to them and its consequent intent that all IXCs participating in the plan provide at least one payment plan with no monthly minimum. IXCs which do not provide a plan with no monthly minimum may not participate in the allocation process.

6. In regard to its second request for clarification, Ameritech explains that its allocation process has two steps. Ameritech Petition at 5. Percentages are first calculated for the interLATA carriers based on ballot responses, and non-presubscribing customers are then distributed among the carriers participating in the allocation process. However, while Ameritech calculates interLATA carrier percentages on a per-line basis, it proposes to allocate non-presubscribing customers on a per-customer basis. The company argues that, because IXCs direct their marketing efforts to different markets which have different average numbers of lines per customers, the number of customers (as opposed to the number of lines) is a fairer measure of a carrier's market success. Ameritech argues that distributing non-presubscribed customers presents a different situation and that allocating such customers on a per-line basis might distribute multi-line customers to more than one carrier, causing confusion and expense.

7. We conclude that it is not unreasonable for Ameritech to allocate the traffic of non-presubscribing customers on a per customer basis. Allocating on a per line basis might result in assigning the lines of a single customer to two IXCs. The Commission did not contemplate distributing the traffic of multi-line end users to more than one carrier. Moreover, the Order provides that the LECs may contact major accounts, encourage such customers to select a carrier, and thus avoid the necessity of allocating their traffic. *Allocation Order*, Appendix B at para. 24. In addition, the identities of end users likely to have substantial numbers of lines are readily available to the IXCs. Permissible LEC contacts with major accounts and the IXCs' own marketing efforts should serve to reduce the number of multi-line customers assigned to the allocation pool and limit the potential for distortions in distribution.

B. AT&T's Petition

8. AT&T request interpretation:[8] (1) that a voice recording or other form of electronic signature can satisfy the requirement that IXCs maintain letters of agency signed by their customers;[9] (2) that multi-line customers may submit orders for service using billed telephone numbers of some other unambiguous description of the customer's designation of a primary IXC; and (3) that LECs can lawfully process presubscription orders placed by customers with authorization dates on or prior to June 12, 1985.

9. The Commission's requirement that IXCs maintain letters of agency is designed to facilitate dispute resolution, to minimize consumer confusion, and to protect the LECs from processing change orders for which no party is clearly responsible. The consumer who must sign a document can be presumed to have read its contents and to understand the nature and extent of the service relationshp with the IXC. The IXC which has such signed letters of agency is protected from the effects of customer misundrstanding and from

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[3] The Bell Atlantic companies include the Bell Telephone Company of Pennsylvania, the four Chesapeake and Potomac Telephone Companies, the Diamond State Telephone Company and the New Jersey Bell Telephone Company.

[4] The Ameritech Operating Companies include Illinois Bell Telephone Company, Indiana Bell Telephone Company, Inc., Michigan Bell Telephone Company, The Ohio Bell Telephone Company and Wisconsin Bell, Inc.

[5] US Telecom, Inc., GTE Sprint Communications Corporation, MCI Telecommunications Corporation, and Satellite Business Systems have filed Petitions for Partial Reconsideration of the *Allocation Order*. These petitions will be considered in a later Order. In addition, a number of parties filed comments in regard to both the waiver petitions and the tariffs. A list of parties filing comments and reply comments in this matter is provided at Appendix A.

[6] *Allocation Order*, Appendix B at par. 30.3.

[7] The Ameritech Operating Companies' Petition for Clarification (Ameritech Petition), filed July 5, 1985, at 3.

[8] AT&T Petition for Clarification (AT&T Petition), filed July 12, 1985.

[9] *Allocation Order*, Appendix B at para. 10.

potential responsibility for unauthorized changes. The LEC has available for review an easily authenticated document in resolving customer disputes. Any of the foregoing parties would bear a heavy burden it obliged to review electronic recordings to verify customer orders.[10] IXCs are free to continue their telemarketing efforts but should take steps designed to obtain signed letters of agency or confirmation of choice from their customer pursuant to the guidelines outlined in para. 21. below.

10. In regard to its second request for clarification, AT&T states that customers presently place presubscription orders on a billed telephone number (BTN) basis. AT&T states that a BTN may have associated with it one or more additional lines or numbers and thus may represent hundreds or even thouhsands of lines. AT&T Petition a 11. AT&T argues that it is cumbersome and unnecessary for customers to provide individual line detail. AT&T states that use of BTN ordering would be consistent with the practice of many LECs to accept notification of primary IXC selections from IXCs on a BTN basis. Further, AT&T asserts that customers may want to designate a single primary IXC for multiple BTNs at a given location, at multiple locations throughout the country, or to include their corporate subsidiaries in the designation and that such customer should be allowed to do so "with a minimum of complication." *Id.* at 13. AT&T argues that such customers should be enabled to list either billed telephone numbers or "other specific customer description which indicates unambiguously the scope of the customer's designation of a primary IXC." *Id.*

11. AT&T's request is limited to the detail which must be included in letters or agency authorizing an interexchange carrier to act as agent.[11] AT&T states that its clarification petition does not address the nature of the information that the IXCs must use in submitting presubscription orders to the LECs. The Commission did not intend to impose unreasonable burdens on multi-line customers in their selection of an interexchange carrier. We conclude that the requirements set out a para. 10.4 of Appendix B may be fulfilled either by provision of BTNs or by other unambiguous customer description indicating the scope of the customer's designation of a primary IXC.

12. We agree that AT&T's third interpretation, regarding the status of customer orders placed with an IXC with authorization dates of June 12, 1985 or earlier, is a reasonable one. LECs may, in compliance with our Order, process presubscription orders placed by IXCs between May 31 and June 12 1985.

C. Southwestern's Petition

13. Southwestern asks that the Commission "clarify" that the *Allocation Order* did not find a violation of the Communications Act in the BOCs' procedures prior to May 31, 1985 or "actions taken after that date consistent with the Order and necessary to the implementation of the ballot and allocation plan." Southwestern Petition for Clarification at 7. In its *Allocation Order*, the Commission found that the default of all non-presubscribed traffic to a single carrier was unreasonable and discriminatory under the Communications Act.[12] *Allocation Order* at para. 22. The Order was propective, effective May 31, 1985, and was not based upon findings of carrier liability for violations of the Act. BOCs which, prior to May 31, 1985, followed procedures conforming to previous Commission decisions and policies cannot be considered to have been in violation of the Act. Actions taken after the effective date of the Order must conform to the requirements of the Order.

III. Waiver Petitions

A. Procedures for Determining IXC Order on Equal Access Ballots

14. Bell Atlantic, BellSouth, and NYNEX request approval of their procedures for determining the order of IXCs on the the Equal Access Ballot. The LECs are required to devise methods to give IXCs an equal opportunity to appear first on the ballot. *Allocation Order*, Appendix B at para. 7. Bell Atlantic proposes to conduct a random drawing once every six months. Ballots for Bell Atlantic end offices converting during the the six-month period after each drawing would list IXCs in the order determined by the drawing. BellSouth and NYNEX propose to conduct a separate drawing to determine IXC sequence for each end office conversion. IXCs would be listed in the same order on all ballots for that end office throughout the presubscription process. The BellSouth and NYNEX procedures for determining IXC sequence are within the spirit of para. 7 and have, in general, received the support of the IXCs. *See, e.g.*, Comments of MCI, July 12, 1985 at 8. We therefore grant their waiver requests. Bell Atlantic's plan, however, does not provide sufficient opportunity for IXCs to appear first on the ballot, and is opposed by the parties. MCI agues that

> the consquence of Bell Atlantic's proposal—in light of the fact that a substantial majority of end offices will be converted to equal access in the next six months—is that ICXs would not, in fact, have an equal opportunity to appear first on Bell Atlantic ballots. *Id.*

GTE/Sprint asserts that Bell Atlantic's plan "would represent a significant departure from the Commission's goal of giving all carriers an equal opportunity to appear first on the ballot as each end office is converted." GTE/Sprint Reply Comments, July 19, 1985 at 15. Provision of more frequent opportunities to appear first on the ballot is not unduly burdensome, as the BellSouth and NYNEX procedures demonstrate. We therefore conclude that Bell Atlantic's proposal to conduct a random drawing every six months does not comply with the Commission's requirement that each LEC devise methods to give IXCs an equal opportunity to appear first on the ballot.

B. Customer Choice Discrepancy and Letters of Agency

15. Bell Atlantic, Pacific Bell, Mountain Bell Telephone and Telegraph Company (Mountain Bell) and NYNEX have requested waivers to permit implementation of modified approaches in disposing of disputes arising from an end user's identification of more than one primary IXC. Since the resolution of such disputes is closely related to the availability and use of letters of agency, we will discuss these aspects of the Order in tandem.

16. The Commission's Order provides that:

> when customers indicate more than one carrier choice per line on the ballot, or return an illegible ballot, the LEC must contact the customer for clarification. When both a ballot and Letter of Agency are received for one customer and the designated primary IXC does not match on both documents, the ballot takes precedence and the LEC must process the customer's choice shown on the ballot. In the event that two or more IXCs provide to the LEC a customer list indicating that a particular customer has designated them as the primary IXC, the customer in question must be allocated along with the non-respondents to the initial ballot. In this instance, the letter accompanying the second ballot for that particular customer must mention that the customer is involved in a

[10] Commission enforcement activities would also so hampered if staff were obliged to review electronic records rather than written ones.

[11] AT&T's petition refers only to para. 10 of Appendix B, which covers only the conditions which must be recognized in letters of agency designating a carrier as a customer's primary IXC.

[12] 47 U.S.C. 201(b) and 202(A).

conflict between two or more IXCs and that a selection must be made by the specified deadline unless the assigned carrier indicated on the ballot is the customer's choice. A list of these customers in conflict must be sent to the affected IXCs by the LEC. Those IXCs not involved in any customer conflicts should receive a zero conflict report from the LEC. *Allocation Order,* Appendix B at para. 23.

17. Bell Atlantic proposes to continue its current procedure, whereby IXCs indicate on their orders whether a presubscribed customer has been informed of the charge to change IXCs and has agreed to the change. If Bell Atlantic receives an order containing this notation from an IXC for a customer already presubscribed to another IXC, it processes the order and charges the customer for the change. If the notation is missing on the order, it is returned to the IXC, with a notice that the customer is already presubscribed. Bell Atlantic states that, consistent with the Order, the ballot controls if Bell Atlantic receives a presubscription order from one IXC and subsequently receives a ballot from the same customer designating a different IXC. Bell Atlantic argues that this procedure is preferable to the procedure prescribed in Appendix B because it allows IXCs to market freely their services.

18. NYNEX also asks to continue to use its current conflict resolution procedures. NYNEX gives all presubscription orders an equal weight and resolves conflicts on the basis of authorization dates: the order with the later date prevails. If two or more orders are received with the same authorization date, or order received first by the LEC prevails. NYNEX argues that its procedures recognize that a customer has the right to change his or her primary carrier selection at any time in the process and therefore is preferable both to giving automatic priority to the ballot and to allocating customers involved in a conflict.

19. Pacific Bell proposes similar treatment of conflicting orders. When both a ballot and letter of agency are received for one customer and the designated primary IXC does not match on both documents, or when two or more IXCs provide lists to the LEC indicating the customer has selected them, Pacific Bell proposes to process the order with the later authorization date. If the dates are the same on the ballot and the letter of agency, the ballot takes precedence. If the dates are the same on two or more IXC lists, the list processed first by Pacific Bell takes precedence. Pacific Bell argues that these procedures reflect affirmative customer choice more accurately than do those prescribed in the Order.

20. Mountain Bell requests a waiver to permit it, upon discovery that an end user appears in more than one IXC's customer list, to contact immediately the end user to resolve the discrepancy. Mountain Bell argues that its approach avoids allocation of customers who have made a positive choice of IXCs.

21. The concept of "authorization date" is either explicitly (NYNEX and Pacific Bell) or implicitly (Bell Atlantic) central to three of these proposed modifications to our prescribed customer choice discrepancy procedures. At least one commenting party has objected to the use of a "later authorization date" to identify a primary IXC, on the grounds that an IXC, through error or abuse might assign a later authorization date to a customer's order. *See e.g.,* Reply of Allnet Communications Services, Inc., filed July 19, 1985 at 5. The potential for such error or abuse is diminished when an IXC obtains letters of agency. Such documents, together with prompt notification to all affected parties, should facilitate dispute resolution. We recognize, however, that end users who make a verbal commitment to use a carrier's services may not return signed authorizations promptly. Therefore, we will grant the requested waivers (discussed in paras. 17–20, *supra*) of the plan prescribed in Appendix B of the *Allocation Order* subject to the following guidelines: [13]

(1) The IXCs are required to certify at the time they submit end user lists to the LECs that they have on file, or have instituted steps designed to obtain signed letters of agency or confirmations of choice from the end user. The IXCs are not required to submit letters of agency when submitting end user lists to the LECs, but should maintain the confirmations or letters on file for use in dispute resolution. IXCs should request written confirmations of choice from their customers no later than the date of submission of their first bill to the customer.

(2) When the LEC identifies a conflict between a ballot and an IXC list, or between lists submitted by two or more IXCs, the LEC must notify, within 10 days, all affected IXCs via a conflict report.

(3) If, upon receipt of a conflict report, the IXC certifies to the LEC that it has on file a signed letter of agency with a date subsequent to that on the ballot, that IXC becomes the primary IXC for that end user and no change charge is assessed to either the IXC or the end user.

(4) In a conflict, if the IXC is unable to obtain a letter of agency signed by the end user, the ballot controls.

22. The conflict reports and the regular reports mandated by the Order [14] are also essential elements in prompt, equitable dispute resolution. Several IXCs have complained that they have not received timely notice from the LECs regarding either customer conflicts of interconnection schedules. Carriers should direct additional attention to the reports to ensure that all required information is provided to the IXCs within the time frames specified in this Order and in the allocation plan.

23. We conclude that, subject to the institution of procedures conforming to the above guidelines, that the petitions filed by Bell Atlantic, NYNEX and Pacific Bell in regard to disposition of customer disputes should be granted.

24. Mountain Bell's waiver request can also be accommodated within the parameters of the guidelines detailed above at para. 21. Mountain Bell's proposal for immediate contact to resolve discrepancies renders timely assistance to consumers any may assist the carrier in identifying procedural or mechanical causes of duplicate listings. We therefore grant the requested waiver on condition that Mountain Bell also immediately notifies all IXCs involved in the selection dispute, using the sames means of notification for all parties.

C. Multi-line Accounts

25. The Order requires that on the initial Equal Access Ballot end users be furnished the option of selecting a different IXC for each of their lines. *Allocation Order,* Appendix B at para. 8.5. Bell Atlantic, Pacific Bell and PNB request waivers of this requirement. Bell Atlantic proposes to provide a special box on its ballot which multi-line customers can check if they wish to presubscribe lines within a single account to different IXCs. When customers indicate such an interest, Bell Atlantic will send end users with 20 lines or less a special ballot listing all lines on the account, permitting the end user to make a line-by-line designation of IXCs. If a customer has more than 20 lines, Bell Atlantic will call the customer to take its designation of IXCs. Pacific Bell will provide a similar box on its ballot, but proposes to contact all customers who indicate a wish to presubscribe lines to different primary IXCs. Both Bell Atlantic and Pacific

[13] This action is of course subject to Commission action on the pending petitions for reconsideration of the *Allocation Order.*

[14] See *Allocation Order,* Appendix B at paras. 23 and 28

assert that their proposed procedures will reduce customer confusion and administrative burdens. PNB proposes to continue its current practice of listing only a customer's main billing number, with a ballot notation that customers who wish to split their service among different carriers should contact either the IXC or PNB. In addition to the preceding waiver requests, Southwestern in its tariff at Appendix A states that its residential customers are not allowed to select more than one IXC.

26. MCI, Allnet and GTE/Sprint oppose these proposals. They argue that the LECs may influence the customer's choice of a carrier if they are permitted to contact customers directly during the presubscription process.[15] Both Pacific Bell and Bell Atlantic deny any interest in influencing customer choice. Parties opposing the waivers fail to identify any interest that the LECs would serve by directing customers to one IXC in preference to another. While the *Allocation Order* requires that the ballot provide for the selection of different IXCs for each line, it did not require that each such line be listed on the ballot. In the case of end users with substantial numbers of lines, such listings would prove unduly burdensome on the LEC. Bell Atlantic's proposal in effect provides special handling for major accounts and represents a reasonable accommodation with the requirements of the Order and we therefore grant its waiver request. Pacific Bell's plans to combine ballot notification with follow-up calls also comports with the intent of the Order. PNB's proposal, however, to merely continue its present procedures, which require customers to initiate an additional contact with an IXC, does not comport with the Commission's intent to provide the end user with an efficient method of notifying the LEC of its choice. We therefore deny PNB's waiver request. Finally, Southwestern has filed no waiver request in regard to its plan to deny choice to residential multi-line users, in violation of the *Allocation Order*. We reject its allocation plan insofar as it fails to provide for that choice.

D. Additional Waiver Requests

27. *Processing IXC submitted customer lists.* LECs must process all customer ballots and carrier lists that are received 20 days prior to the date of conversion. *Allocation Order,* Appendix B at para. 16. Mountain Bell states that it does not accept customer lists between the deadline for the return of the first ballot and the equal access conversion date. Mountain Bell argues that its procedure greatly reduces the potential for confusion caused by conflicts between second ballots returned by end users and IXC/generated customer lists. MCI opposes Mountain Bell's request, challenging Mountain Bell's representation that no IXC has complained about its procedure.[16] MCI asserts that under Mountain Bell's proposal, customers who select a primary carrier and register their selection with an IXC between the intial ballot deadline and the date of end office conversion would be allocated solely because Mountain Bell refuses to process their presubscription orders. While reduction in confusion is a desirable goal, it should not be achieved at the expense of consumer choice. We therefore deny Mountain Bell's waiver request and direct it to comply with the Commission's Order to process all ballots and IXC lists received 20 days prior to conversion.

28. *Reports to IXCs.* LECs are required to provide the IXCs with a minimum of three reports during the balloting process. *Allocation Order,* Appendix B at para. 28.6. Mountain Bell seeks permission to eliminate the first report which "must be made available to the IXC halfway between the initial ballot mailing date and the initial ballot deadline." *Id.* Mountain Bell states that generating this report would cause additional expense and place a burden on its Customer Records Information System (CRIS), which is also used by Mountain Bell for normal service order activity and billing. The initial report assists the IXCs in identifying discrepancies between their records and those of the LEC. Early identification of such problems serves to facilitate dispute resolution and to reduce confusion. The IXC's have complained to the Bureau staff and to the Department of Justice [17] regarding their difficulties in obtaining timely information from the Bell Operating Companies. The orderly implementation of presubscription might be impeded by reducing the amount of information transmitted to the IXCs and we therefore deny Mountain Bell's waiver request.

29. *Reduction of period for ballot return.* The Commission's Order provides that "[c]ustomers should be asked to return the intial ballots within 30 days of their receipt." *Allocation Order,* Appendix B at para. 8. PNB seeks a waiver to require end users to return ballots within approximately three weeks.[18] PNB states, however, that its allocation process will take place approximately 30 days after the mailing date of the initial ballot and that end users who return their ballots later than 23 days therefore may have their ballot choices processed. The *Allocation Order* also requires that LECs process all ballots and IXC-submitted lists that are received 20 days prior to conversion. In view of this additional insurance that customer choices will be processed, we conclude that PNB may request end users to return their ballots within 23 days.

30. *IXC access order cutoff.* In order to be considered eligible for inclusion on an Equal Access Ballot, an IXC must order Feature Group D Switched Access Service (FGD) from the LEC. An IXC must place a firm order for this service no later than 120 days prior to the central office conversion date. *Allocation Order,* Appendix B at para. 29. Bell Atlantic seeks to extend this deadline to require IXCs to submit their orders 135 days prior to conversion. Bell Atlantic states that the extension is necessary to ensure completion of preconversion work, such as facilities installation and testing and programming switches. In addition, Pacific Bell and NYNEX each filed tariffs requiring IXCs to order FGD earlier than 120 days prior to conversion, though neither filed waiver requests. Pacific Bell requires orders to be placed 180 days prior to the plant test date, which may be several weeks in advance of an end office conversion date; NYNEX requires that FGD orders be placed 180 days prior to conversion. Pacific Bell states that early ordering is required to accommodate its procedure of clustering end offices by geographic areas. It interprets para. 29 of Appendix B to require that IXCs provide notice to the LECs 120 days prior to conversion that they wish to participate in allocation. Pacific Bell Reply Comments, July 19, 1985 at 8. NYNEX argues that the Commission permitted exchange carriers to retain existing ordering guidelines and that the IXCs must abide by them. NYNEX Reply Comments, July 19, 1985 at 7. US Telecom objects to the foregoing ordering provisions, and asserts that they do not conform to the

[15] MCI Comments, July 12, 1935 at 6; GTE/Sprint Comments, July 12, 1985 at 17; Allnet Reply Comments, July 19, 1985 at 8.

[16] Opposition of MCI to Petitions for Waiver of the Commission's Allocation Order (MCI Opposition), filed July 17, 1985 at 6.

[17] *See* letters to the Bell System Holding Companies from Acting Assistant Attorney General, dated June 25, 1985.

[18] PNB's waiver petition states that ballots are subject to the schedule provided in the following example: "July 1: Date on which PNB mails ballot; July 23: Date by which end users are asked to return ballot; July 31: Date that the allocation report is prepared." PNB Petition for Waiver at 3.

Commission's intent to allow the LEC sufficient time to plan facilities while giving the IXC the maximum time during which to market and accurately forecast its facility needs. US Telecom Opposition to Requests for Waiver, July 19, 1985 at 8.

31. Para. 29 of Appendix B prescribes the conditions for IXC participation in allocation. The Order does not permit the LECs to impose additional allocation requirements on the IXCs. By establishing the earlier ordering deadlines for FGD, Pacific Bell and NYNEX have, in effect, imposed such an additional condition. We recognize, however, that the LECs may require more than 120 days notice of FGD orders to complete preconversion work. The IXCs, however, also require sufficient time in which to market and forecast their facility needs. The LECs are required to give notice of end office conversions six months prior to the date of such conversions.[19] The prescription of a 120-day ordering deadline was predicated on that six-month notice requirement. In order to accommodate the needs of both the LECs and the IXCs, we will permit earlier ordering deadlines for FGD provided the LEC also increases its notice of end office conversions by an equivalent period. Thus, Bell Atlantic is granted a waiver to extend its ordering deadline to 135 days, but must give notice to the IXCs 195 days prior to end office conversions. We will also treat the NYNEX and Pacific Bell tariff provisions in this matter as waiver requests. Each of these LECs may extend the deadline for FGD orders to 180 days provided they give IXCs 240 days' notice of end office conversions.

32. *Inclusion of certain IXCs in BellSouth Allocation.* IXCs choosing to participate in the allocation process must appear on the initial ballot. *Allocation Order,* Appendix B at para. 30.1. BellSouth states that BellSouth had implemented, prior to June 1, 1985, a three-ballot procedure for end offices converting to equal access during and after September 1985. BellSouth reports that some IXCs had already responded to the BellSouth companies concerning September and October conversions. The companies are concerned that some IXCs which did not elect to participate in some or all of the September and October conversions would have done so if they had known when they made their decisions that allocation would take place. BellSouth proposes to permit those IXCs, which do not appear on the first ballot for the September and October conversions only, a chance to appear on the second ballot and participate in allocation. We agree that such a procedure would increase the number of IXCs presented for public choice, and that, since the waiver is limited in time and effect, it does not appear to result in any unfair treatment of other IXCs. BellSouth's waiver request in this matter is therefore granted.

IV. Tariff Revisions

33. The Commission directed that LECs required to implement the allocation plan [20] file revised interstate access tariffs to reflect the prescribed allocation plan within 15 days of the release date of the Order. *Allocation Order* at para. 40. The Commission directed that the revisions include language providing for (1) end user notification and non-exclusive balloting procedure, (2) allocation process, (3) interexchange carrier customer lists, (4) customer choice discrepancy, (5) retroactive balloting procedure, and (6) presubscription charge application.

34. On June 27, 1985, the requisite tariff revisions were filed by the BOCs, GTE, the National Exchange Carriers Association (NECA), and Central Telephone (Centel) of Nevada. Rochester Telephone Corporation (Rochester), pursuant to special permission, filed revisions on July 10, 1985. In general, the revised tariffs provide for presubscription and allocation procedures in compliance with the prescribed plan. In those instances where procedures required clarification, the Bureau staff has worked with the carriers to develop revisions which comport with the Order. A number of the objections raised by the parties in comments on these tariffs (*e.g.,* treatment of customer choice discrepancies, calculation of the allocation percentages, letters of agency) have been disposed of in our treatment of waiver petitions, *supra.* For the most part, therefore, this Order will not discuss each of these tariffs in detail. They will be permitted to become effective August 20, 1985.[21] Several commenters have objected that the LECs' tariffs do not contain sufficient detail regarding their allocation plans.[22] The LECs were not required by the Order to provide extensive detail in their tariffs regarding their procedures. We are requiring, however, that they file revisions concerning their arrangements for assessing change charges. Those revisions, and major objections raised by the parties, are discussed below.

A. Retroactive Allocation

35. The Commission Order directed LECs to provide another opportunity for non-presubscribed customers to select a primary IXC where end offices were converted to equal access prior to May 31, 1985. *Allocation Order,* Appendix B at para. 25. No second balloting or allocation was required, however, for such customers. *Id.* Southwestern's tariff provides for retroactive allocation for customers served by an end office converted prior to May 31, 1985.[23] AT&T argues that Southwestern's retroactive plan "contravenes the express and mandatory provisions set forth in Appendix B of the Order" [24] and requests that the Commission direct Southwestern to delete this provision from its tariff revisions. Southwestern asserts that its retroactive allocation plan "is consistent with the principles enunciated in the Commission's Order" and, in this instance, "exceed the Commission's requirement that customer choice is fully effectuated."[25]

36. The language of the Order in respect to retroactive allocation, alleged by AT&T to forbid such allocation, is permissive, not mandatory. The Commission states that "retroactive allocation *will not be ordered* for coversions prior to the effective date of this Order. . . . *[O]rdering* retroactive allocation would be unfair and disruptive." *Allocation Order* at para. 28 (emphasis added). Para. 25 of Appendix B reflects the same permissive approach: "no second balloting or allocation *is required* for those customers that were subject to equal access conversion dates prior to May 31, 1985. . . ." (emphasis added).

37. We concur in Southwestern's conclusion that its plan for retroactive allocation is consistent with the principles expressed in the *Allocation Order* and we deny AT&T's request to reject Southwestern's tariff insofar as it

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[19] *See* MTS and WATS Market Structure, CC Docket No. 78–72, Phase I, Second Reconsideration Order, 97 FCC 2d 834, 860; § 69.205(a) of the Commission's Rules, 47 CFR 69.205(a) (1984).

[20] *See* para. 1, *supra.*

[21] The tariffs were filed with an original effective date of July 27, 1985. In order to allow the Commission staff sufficient time to analyze the complex issues raised by the filings and the various waiver requests and related comments, the effective date of the tariffs was deferred to August 20, 1985.

[22] *See, e.g.,* U.S. Telecom Inc. (U.S. Telecom) Opposition to Requests for Waiver; Comments of GTE Sprint Communications Corporation (GTE/Sprint), filed July 12, 1985.

[23] Southwestern Bell Telephone Company, Tariff F.C.C. No. 68, section 13.3.3(c)(5).

[24] Comments of the American Telephone and Telegraph Company, filed July 12, 1985 at 2. AT&T raised no objections to any of the other tariff revisions.

[25] Reply Comments of the Southwestern Bell Telephone Company filed July 19, 1985 at 2, 3.

provides for such allocation. We wish to clarify, however, that Southwestern's retroactive allocation procedures must include sending allocated end users a second ballot providing the customer with another opportunity to make a carrier selection.[26]

B. "No PIC" Option

38. Satellite Business Systems (SBS) requests rejection of Bell Atlantic's and Southwestern's tariffs insofar as they provide a "No PIC" option.[27] "No PIC", an acronym for "no primary interexchange carrier," would indicate that the customer is opting to make all long distance calls by using a 10XXX access code. The Commission rejected as too burdensome a proposal that such an option be provided on the ballot. *Allocation Order* at para. 25 n.37. SBS interprets that decision to prohibit a customer from ever selecting such an option. The Commission did not intend such a result. Tariffs filed by the Bell Atlantic companies and Southwestern provide that a customer can request the "No PIC" option only by contacting the local exchange carrier's business office. Such a provision comports with the Commission's Order and we therefore deny SBS's request that we reject the applicable tariff subsections.[28]

C. Balloting Procedures for New Customers

39. MCI requests that the Commission suspend and investigate the provisions regarding new customer presubscription orders in the LECs' tariffs.[29] MCI asserts that the *Allocation Order* requires that LECs obtain new customers' signatures on presubscription ballots, but that the LECs' allocation tariffs are ambiguous with respect to obtaining signed ballots or orders from new customers. MCI argues that LECs should not be permitted to accept orders under less stringent procedures than IXCs.

40. The Order provides that new customers are to be handled by the Business Office according to the LEC's new customer presubscription procedures. *Allocation Order* at para. 22. Such procedures should provide new customers with an opportunity to obtain a ballot. *Id.* We recognize that the LECs' service order processing procedures might be unnecessarily delayed if they were obligated to await the return of the ballot before processing a new interconnection order. We conclude that the requirements of para. 22 are met when the LEC takes a verbal order for service and subsequently sends a confirmation notice to the customer. LEC personnel taking the verbal order should provide new customers with the names and, if requested, the telephone numbers of the IXCs and should devise procedures to ensure that the names of IXCs are provided in random order. New end users who return confirmation notices identifying an IXC different from that given verbally to the LEC should have such selections processed without a change charge.

D. Change Charge Provisions

41. Each of the allocation tariffs filed by the LECs contains subsections describing the LEC's proposals for billing for the charge to change IXCs. These sections, in general, fail to provide the public with sufficient information regarding billing for such charges. The tariffs typically state that responsibility for change charges is "as set forth in the Commission's Allocation Plan." *See, e.g.,* Southern Bell, Transmittal Nos. 1319, 1322 and 1323, section 13.4(c). Such cross-references fail to provide adequate notice to the public regarding responsibility for change charges. The LECs are therefore directed to file revisions to their allocation tariffs containing the following provisions: (1) The amount of the change charge; (2) no change charge will apply to end users who select a primary IXC as part of the retroactive balloting process; (3) new end users will be asked to select a primary IXC at the time they place an order for service; new end users will be sent a confirmation notice and will not be charged for this initial selection; (4) after the conversion date, end users will be charged for any change; (5) if an IXC elects to discontinue Feature Group D service in the converting end office prior to the conversion date or within two years after the introduction of Feature Group D in the converting end office, the IXC is obligated to contact in writing all end users who have selected, or been allocated to, the cancelling IXC as their designated IXC, inform these end users of the cancellation, request the end users to select a new IXC and state that the cancelling IXC will pay for the change charge; and (6) for a period of two years from the discontinuance of FGD service the LEC will bill a cancelling IXC the change charge for each end user that this IXC currently has designated to it.

V. Conclusion and Ordering Clauses

42. We find the tariffs filed by the affected LECs to be, in general, responsive to the allocation plan prescribed in the Commission's Order. We believe that implementation of this plan enables consumers better to understand and exercise their rights in selection of a primary interexchange carrier. We will not delay the effective dates of those tariffs but will require the LECs to file modifications to their tariffs to comport with this Order within 10 days of the release date of this Order, to be effective on not less than seven days notice.

43. Accordingly, it is ordered pursuant to § 0.291 of the Commission's Rules, 47 CFR 0.291, that all local exchange carriers as defined herein put into effect immediately the modifications described herein to the allocation plan prescribed in the *Allocation Order. Investigation of Access and Divestiture Related Tariffs.* CC Docket No. 83–1145, Phase I, Memorandum Opinion and Order, FCC 85–293 (released June 12, 1985).

44. It is further ordered that the waiver petitions filed in this matter, are granted to the extent described herein and are otherwise denied.

45. It is further ordered that to the extent that denial of a waiver to a local exchange carrier affects provisions appearing in that carrier's tariff, those provisions are rejected and the affected carriers must revise their tariffs in accordance with this Order.

46. It is further ordered that the petitions to reject filed by Satellite Business Systems and MCI Telecommunications Corporation are denied.

47. It is further ordered that the interstate access tariffs of all local exchange carriers be revised to reflect the guidelines set out in this Order regarding the responsibility for change charges.

48. It is further ordered that §§ 61.58, 61.59 and 61.74 of the Commission's rules, 47 CFR 61.58, 61.59, 61.74, are waived for the purposes of implementing this Order.

49. It is further ordered that this Order is effective upon adoption.

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[26] *See* Allocation Order, Appendix B at para. 14.

[27] Satellite Business Systems Petition to Reject and Opposition to Petitions for Waiver, filed July 12, 1985 at 2. The NYNEX companies also provide this option to consumers.

[28] C&P Telephone Companies, Tariff F.C.C. No. 3, section 13.3.3(B)(5)(a); Bell Telephone Company of Pennsylvania, Tariff F.C.C. No. 41, section 13.3.3(B)(5)(a); New Jersey Bell Telephone Company, Tariff F.C.C. No. 38, section 13.3.3(B)(5); Southwestern Bell Telephone Company, Tariff F.C.C. No. 68, section 13.3.3(E).

[29] MCI Petition to Suspend and Investigate, or Alternatively for Clarification, and for Partial Rejection, Petition filed July 15, 1985 at 8.

Federal Communications Commission.
Albert Halprin,
Chief, Common Carrier Bureau.

Appendix A

Petitions for Waiver

Bell Atlantic Telephone Companies, June 27, 1985
NYNEX Telephone Companies, June 27, 1985 and July 19, 1985
Pacific Bell, June 27, 1985 and July 29, 1985
United Telephone Systems, Inc., June 20, 1985
Rochester Telephone Corporation, June 24, 1985
Mountain States Telephone and Telegraph Company, July 7, 1985
Pacific Northwest Bell Telephone Company, July 7, 1985

Petitions for Clarification

Ameritech Operating Companies, July 5, 1985
American Telephone and Telegraph Company, July 12, 1985
Southwestern Bell Corporation, July 25, 1985

Comments

American Telephone and Telegraph Company, July 12, 1985
U.S. Telecom, Inc., July 29, 1985
Allnet Communications Services, Inc., July 12 and July 15, 1985
United States Transmission Systems, Inc., July 13, 1985

Reply Comments

Allnet Communications Services, Inc., July 19, 1985
BellSouth Corporation, July 19, 1985
MCI Telecommunications Corporation, July 19, 1985
NYNEX Telephone Companies, July 19, 1985
Pacific Bell, July 19, 1985
Bell Atlantic Companies, July 22, 1985
Southwestern Bell Telephone Company, July 24, 1985
U S West Telephone Companies, August 2, 1985

Additional Filings

Petition to Reject and Opposition to Petitions for Waiver, Satellite Business Systems, July 12, 1985
Petition to Suspend and Investigate, or Alternatively for Clarification, and for Partial Rejection, MCI Telecommunications Corporation, July 15, 1985
Opposition of MCI to Petitions for Waiver, MCI Telecommunications Corporation, July 17, 1985
Opposition to Petition for Clarification and Petition for Partial Reconsideration, Teltec Saving Communications Co., July 25, 1985
Letter from H. Richard Schumacher, June 25, 1985

[FR Doc. 85-22495 Filed 9-19-85; 8:45 am]
BILLING CODE 6712-01-M

[Report No. 1536]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

September 13, 1985.

The following listings of petitions for reconsideration and clarification filed in Commision rulemaking proceedings is published pursuant to 47 CFR 1.429(e). Oppositions to such petitions for reconsideration and clarification must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Revision and Update of Part 22 of the Public Mobile Radio Service Rules. (CC Docket No. 80-57)
Filed by:
Harold Mordkofsky, Ellen S. Mandell & John A. Prendergast, Attorneys for Blooston and Mordkofsky on 9-6-85.
R. Michael Senkowski & David E. Hilliard, Attorneys for The Radio Common Carrier Division of Telocator Network of America on 9-9-85.

Subject: Implementation of BC Docket 80-90 to Increase the Availability of FM Broadcast Assignments. (MM Docket No. 84-231)
Filed by: George R. Borsari, Jr., Attorney for Marion County Broadcasting Service, Inc., on 8-30-85.

Subject: Amendment of Part 62 of the Commission's Rules. (CC Docket No. 84-1330)
Filed by:
Thomas J. Dougherty & Gene P. Belardi, Attorneys for Metromedia, Inc., on 8-28-85.
Thomas J. Reiman & John Gibson Mullan, Attorneys for American Information Technologies Corporation on 9-3-85.
Jonathan D. Blake & Jonathan L. Wiener, Attorneys for Cellular Telecommunications Division of Telocator Network of America, Inc., on 9-3-85.
Richard E. Wiley, R. Michael Senkowski & Howard D. Polsky, Attorneys for Radio Common Carrier Division of Telocator Network of America on 9-3-85.
Dennis J. Helfman & Alfred Winchell Whittaker, Attorneys for General Motors Corporation on 9-3-85.

Subject: Amendment of § 73.606(b), Table of Assignments, TV Stations (Tuscumbia and Selma, Alabama; and Fayetteville, Tennessee. (MM Docket No. 85-46, RM-4891)
Filed by: William J. Potts, Jr., Attorney for TV Muscle Shoals, Inc., on 8-26-85.

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 85-22609 Filed 9-19-85; 8:45 am]
BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

September 16, 1985.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of the submission are available from Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-7231.

OMB Number: 3060-0173
Title: Section 73.1207, Rebroadcasts
Action: Revision
Respondents: Broadcast stations
Estimated Annual Burden: 100 Recordkeepers; 50 Hours

Federal Communications Commission.
William J. Tricarico
Secretary.
[FR Doc. 85-22599 Filed 9-19-85; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 15 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the

Commission regarding a pending agreement.

Agreement No.: 202–010829.

Title: Eurocorde Discussion Agreement.

Parties:

North Europe-U.S. Atlantic Conference

U.S. Atlantic-North Europe Conference

Evergreen Marine Corp. (Taiwan) Ltd.

SYNOPSIS: The proposed agreement would permit the parties to discuss and agree upon rates, rules, tariffs, service contracts and service items in the trade between U.S. Atlantic Ports and inland and coastal points via such ports, and ports and points in the United Kingdom, the Republic of Ireland, Denmark, Sweden, Norway, Finland, Poland, West Germany, East Germany, Belgium, France (in the Bayonne-Dunkirk Range) and U.S.S.R. Baltic ports and inland European Ports via such ports.

By Order of the Federal Maritime Commission.

Dated: September 17, 1985.

Bruce A. Dombrowski,

Acting Secretary.

FR Doc. 85–22590 Filed 9–19–85; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–003695–001.

Title: Port Everglades Terminal Agreement.

Parties:

Port Everglades Authority (Port)

Sea-Land Service, Inc. (Sea-Land)

Synopsis: Agreement No. 224–003695–001 amends the basic agreement which provides for a preferential berthing and crane agreement at Port Everglades, Florida. The amendment provides for the renegotiation of the tonnage levels required for wharfage reduction. The parties have agreed upon the schedule of rates and tonnage levels provided for in the agreement. The amendment also provides for scheduled rental rates applicable to the use of the container crane by Sea-Land at the Port's docks. The tonnage levels, wharfage charges and crane rentals are effective for one year from October 9, 1985 through October 9, 1986. Thereafter, they will be modified for successive periods during the term of the agreement, subject to the negotiations of the parties. The parties have requested a shortened review period for the agreement.

Agreement No.: 202–006400–022.

Title: Pacific Coast River Plate Brazil Conference.

Parties:

Companhia de Navegacao Lloyd Brasilerio

Empresa Lineas Maritimas Argentinas Sociedad Anonima.

Synopsis: The proposed amendment would restate the agreement to conform to the Commission's regulations conerning form and format. The amendment would also change the agreeement's name to the Inter-American Freight Conference Pacific Coast Area, reorganize the conference's existing sections into new sections A through D, increase the admission fee from $5,000 to $25,000 and bring its provisions into conformity with those of other conferences in the trades to and from the South American countries served by the agreement.

Agreement No.: 213–010494–001.

Title: SITRAM/BWAL Westbound Space Charter Agreement.

Parties:

Barber West Africa Line.

Societe Ivoirienne de Transport Maritime.

Synopsis: The proposed amendment would restate the agreement to conform with the Commission's format, organization and content requirements. It would also make certain nonsubstantive changes to the language of the agreement.

Agreement No.: 224–010644–001.

Title: Los Angeles Terminal Agreement.

Parties:

The City of Los Angeles (City)

Indies Terminal Company (ITC)

Synopsis: This amendment modifies the basic agreement in which the City granted to ITC the use of the container terminal located at Berths 216–225 in the Port of Los Angeles. The basic agreement requires ITC to submit documentation to the Port showing all tariff charges accrued within fifteen days from the date of departure from the Port. The Port of Los Angeles Tariff No. 3 requires that documentation in such a situation be submitted within twenty-one days. In order to maintain consistency between the tariff and the agreement, this amendment will modify the basic agreement by revising the time period to submit documentation to the Port so that the agreement provides the same number of days as the Port's tariff.

Agreement No.: 217–010630.

Title: Canadian Transport Company/Convoy Intercontinental Container Transport Space Charter Agreement.

Parties:

Canadian Transport Company (CTCO)

Convoy Intercontinental Container Transport GmbH & Co. KG. (Convoy)

Synopsis: The proposed agreement would permit CTCO to charter vessel space to Convoy for the carriage of containers in the trade between ports in the United Kingdom and North Europe (Bordeaux-Hamburg range) on the one hand and ports on the West Coast of the United States and Canada on the other.

Agreement No.: 224–010831.

Title: Oakland Terminal Agreement.

Parties:

Matson Terminals, Inc. (Matson)

South Seas Steamship Company (South Seas)

Synopsis: Agreement No. 224–010831 provides that Matson will provide terminal services at the Port of Oakland to vessels owned, chartered or operated by South Seas. The agreement will become effective on the date determined by the Commission. The agreement contains the rates under which Matson will perform the terminal services.

By Order of the Federal Maritime Commission.

Dated: September 17, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–22589 Filed 9–19–85; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of

the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217–010420–002
Title: American-Flag Common Carrier Charter Agreement
Parties:
American President Lines, Ltd.
Lykes Bros. Steamship Co., Inc.
Sea-Land Service, Inc.
United States Lines, Inc.
Waterman Steamship Corporation

Synopsis: The proposed amendment would restate the agreement to conform with the Commission's format, organization and content requirements. It would also make certain nonsubstantive changes to the language of the agreement.

Agreement No.: 207–010602–001
Title: Westwood Transpacific Service Agreement
Parties:
Partrederiet Hoegh Minerva
Partrederiet Hoegh Miranda
Westwood Shipping Lines, Inc.

Synopsis: The proposed amendment would modify the agreement to provide that the parties may charter into the service up to two additional vessels at any one time. The parties have requested a shortened review period.

Agreement No.: 217–010823–001
Title: Canadian Transport Company/ C.M.B. n.v. Space Charter Agreement
Parties:
Canadian Transport Company (CTCO)
C.M.B. n.v. (CMB)

Synopsis: The proposed amendment would modify the agreement to add a sentence to Article 5.6 to allow the parties to agree on lump sum or percentage fees to be paid to CMB from revenues from container carriage, and to treat such fees as costs of the Container Service. The parties have requested a shortened review period.

Agreement No.: 224–010824
Title: Los Angeles Terminal Agreement
Parties:
The City of Los Angeles (City)
Marine Terminals Corporation (MTC)

Synopsis: Agreement No. 224–010824 provides that MTC will sell the remaining term of its permit to lease Berths 230–231 within the Port of Los Angeles back to the City. The agreement provides that the City will pay $2,318,000 to MTC for the buy-back. The City has agreed to pay the purchase price primarily in the form of a credit which MTC would be entitled to take against the charges which will accrue at its relocated facilities at Berths 153–155. The additional space acquired will be leased by the City to Evergreen Marine Corporation, Ltd.

Agreement No.: 224–010825
Title: Los Angeles Terminal Agreement
Parties:
The City of Los Angeles (City)
Evergreen Marine Corporation, (Taiwan) Ltd. (Evergreen)

Synopsis: Agreement No. 224–010825 provides for the granting by the City to Evergreen premises within Berths 231 and 236, 44.57 acres of backlands adjacent ot the berths and 4.9 acres of land for container storage at an area noncontiguous to the berths, all located within the Port of Los Angeles. The City agrees to increase the area of the backlands to 51 acres following completion of certain improvements at the adjacent Overseas Terminal and ultimately increase the area to 60 acres. The term of the agreement is for 18 years. The premises shall be used for the docking and mooring of Evergreen's vessels and for various terminal activities. The City will share revenue with Evergreen depending on the amount of tonnage generated at the premises.

Agreement No.: 224–010826
Title: Los Angeles Terminal Agreement
Parties:
The City of Los Angeles (City)
Yang Ming Marine Transport, Ltd. (Yang Ming)

Synopsis: Agreement No. 224–010826 permits Yang Ming to use an area within the Overseas Terminal premises located at Berths 228 to 236 within the Port of Los Angeles. The area will be large enough to allow Yang Ming to handle 60,000 containers moves annually. The term of the agreement will be for three years. Yang Ming will pay to the City a minimum annual guarantee of one million dollars and will share revenue with the City on a 50/50 basis when tariff charges accruing are $1,200,000.

Agreement No.: 224–010827
Title: Los Angeles Terminal Agreement
Parties:
The City of Los Angeles (City)
Marine Terminals Corporation (MTC)

Synopsis: Agreement No. 224–010827 provides for the nonexclusive berth assignment by the City to MTC of pemises at Berths 153–155 within the Port of Los Angeles. The premises will be used for the docking and mooring of vessels owned, operated, serviced, or represented by MTC, and for various terminal activities. The agreement will become effective on the first day after the Commission has determined its effective dae, and it will teminate on March 31, 1995. The agreement contains a revenue sharing provision, and a provision that MTC will guarantee the City a minimum annual payment of $500,000.

Agreement No.: 224–010828
Title: Los Angeles Terminal Agreement
Parties:
The City of Los Angeles (City)
Overseas Terminal Company, Inc. (Overseas)

Synopsis: Overseas is presently a tenant a the Port of Los Angeles at Berths 225 through 230 pursuant to FMC Agreement No. T–3450. Agreement No. 224–010828 will supercede Agreement No. T–3450 when it becomes effective. Overseas is provided the use of various berths between Berths 228 and 232 as the schedule of construction required by the agreement allows. The premises initially will comprise 47.4 acres of land and eventually 104.23 acres of which 15.74 will be deleted and given to Evergreen Marine Corporation, Ltd. The premises shall be used for the docking and mooring of vessels owned, serviced or represented by Overseas, and for terminal activities relative thereto. Also in the agreement, Overseas recognizes that for three years Yang Ming Marine Transport, Ltd., will be operating within the Overseas terminal boundaries until the City can develop a separate area for Yang Ming. The term of the agreement is for nine years. The compensation, as set forth in the agreement, provides for a minimum annual guarantee to be met by Overseas. Overseas will share revenues obtained from tariff charges on a sliding scale, as provided in the agreement.

Dated: September 16, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–22470 Filed 9–19–85; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Community Bankshares, Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications

are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immeidate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 11, 1985.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Community Bankshares, Inc.*, Concord, New Hampshire; to become a bank holding company by acquiring 100 percent of the voting shares of Concord Savings Bank, Concord, New Hampshire.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Virginia Banks, Inc.*, Falls Church, Virginia; to acquire 100 percent of the voting shares of The Bank of Middlesex, Urbanna, Virginia. Comments on this application must be received not later than October 14, 1985.

2. *NCNB Corporation*, Charlotte, North Carolina; to acquire 100 percent of the voting shares of Bankers Trust of South Carolina, Columbia, South Carolina.

3. *NCNB Corporation*, Charlotte, North Carolina; to acquire up to 100 percent of the voting shares of Pan American Banks, Inc., Miami, Florida, thereby indirectly acquiring Pan American Bank, N.A., Miami; Pan American Bank of Miami, N.A., Miami; Pan American Bank of Dade County, N.A., Hialeah; Pan American Bank of Miami Shores, N.A., Miami Shores; Pan American Bank of Jacksonville, Jacksonville; Pan American Bank of Orlando, N.A., Orlando; Pan American Bank of Tampa, N.A., Tampa; and 14.39 percent of the voting shares of Eastern National Bank, Hialeah, all located in Florida.

4. *NCNB Corporation*, Charlotte, North Carolina; to acquire up to 100 percent of the voting shares of Southern National Bankshares, Inc., Atlanta, Georgia, thereby indirectly acquiring Southern National Bank, Atlanta, Georgia.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta Georgia 30303:

1. *SunTrust Banks, Inc.*, Atlanta, Georgia; to acquire 100 percent of the voting shares of Bank of Worth County, Sylvester, Georgia.

D. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Mid-Illinois Bancshares, Inc.*, Mattoon, Illinois; to acquire 100 percent of the voting shares of Cumberland County National Bank in Neoga, Neoga, Illinois.

2. *Knisley Financial Corp.*, Butler, Indiana; to become a bank holding company by acquiring 80 percent of the voting shares of The Knisely National Bank of Butler, Butler, Indiana.

E. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *First Interstate Hawaii, Inc.*, Honolulu, Hawaii; to become a bank holding company by acquiring 99.77 percent of the voting shares of First Interstate Bank of Hawaii, Honolulu, Hawaii.

F. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Attica Financial Corporation*, Wichita, Kansas; to become a bank holding company by acquiring 96.7 percent of the voting shares of First National Bank of Attica, Attica, Kansas. Comments on this application must be received not later than October 14, 1985.

Board of Governors of the Federal Reserve System, September 16, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-22573 Filed 9-19-85; 8:45 am]

BILLING CODE 6210-01-M

Middlebury National Corp.; Correction

This notice corrects a previous **Federal Register** document (FR Doc. No. 85-20176), published at page 34195 of the issue of Friday, August 23, 1985. The name of the Applicant should be changed to Middlebury National Corporation.

Board of Governors of the Federal Reserve System, September 17, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-22574 Filed 9-19-85; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on September 13, 1985.

Public Health Service

National Institutes of Health

Subject: International Research Fellowship Application—Extension (0925-0010)
Respondents: Individuals or households, state/local governments, non-profit institutions
OMB Desk Officer: Bruce Artim

Health Care Financing Administration

Subject: Information Collection Requirements Contained in 442.307, 442.308, 442.309, 442.313, 442.314, 442.318, 442.319, 442.320, and 442.311—Conditions of Participation for Intermediate Care Facilities—HCFA-R-45—Extension (0938-0370)
Respondents: Businesses or other for profit institutions, small businesses or organizations
Subject: Claims Processing Assessment Review Schedule—HCFA-331—New
Respondents: State/local governments
Subject: BERC-260F, Final Rules to Correct and Conform Medicare and Medicaid Regulations—HCFA-R-5—Existing Collection
Respondents: Individuals or households, state/local governments, businesses or other for-profit institutions
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Statement for Determining Continuing Eligibility for Supplemental Security Income Payments—SSA 8203—New
Respondents: Individuals

Subject: Medical Report—Individual with a Childhood Impairment—SSA 3827—Extension (0960–0102)
Respondents: Physicians
Subject: Quarterly Report of Expenditures and Prior Quarter Expenditures Adjustments—OCSE-41—Extension (0960–0235)
Respondents: States
OMB Desk Officer: Judy A. McIntosh

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: (name of OMB Desk Officer).

Dated: September 16, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85–22500 Filed 9–19–85; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

Neurotoxicity From Exposure to Heavy Metals; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: September 30, 1985.
Time: 9:30 a.m.-4:00 p.m.
Place: Room B–85, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Purpose: To review and discuss research directed toward field neurotoxicity evaluations of workers exposed to selected heavy metals. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: W. Kent Anger, Ph.D., Division of Biomedical and Behavioral Science, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226. Telephones: FTS: 684–8383; Commercial: 513/533–8383.

Dated: September 12, 1985.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 85–22567 Filed 9–19–85; 8:45 am]

BILLING CODE 4150-19-M

Food and Drug Administration

[Docket No. 80N–0120]

Guideline for the Uniform Labeling of Blood and Blood Components; Availability of Guideline; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the document that announced the availability of a revised guideline for the uniform labeling of blood and blood components. This document corrects the address of the American Blood Commission.

FOR FURTHER INFORMATION CONTACT: Steven F. Falter, Center for Drugs and Biologics (HFN–364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In FR Doc. 85–20734 appearing on page 35472 in the issue for Friday, August 30, 1985, the following correction is made: In the third column, second full paragraph, the address of the American Blood Commission is corrected to read "1117 North 19th St., Suite 501, Arlington, VA 22209."

Dated: September 16, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–22475 Filed 9–19–85; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Application Announcement for Special Initiative Grants for Area Health Education Center Programs

The Bureau of Health Professions, Health Resources and Services Administration, announces that applications for Fiscal Year 1986 Special Initiative Grants for Area Health Education Center Programs are being accepted under the authority of section 781(a)(2) of the Public Health Service Act, as amended by Pub. L. 97–414 dated January 4, 1983.

Applicants should be advised that this application announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent wtih the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year. The Administration's budget request for Fiscal Year 1986 does not include funding for this program. This notice regarding applications does not reflect any change in this policy.

In addition, programmatic changes may result from currently pending legislative action. Should such changes be necessary, all applicants will be notified at a later date.

Section 781(a)(2) authorizes Federal assistance to medical and osteopathic schools which have previously received Federal financial assistance for the area health education centers (AHEC) program under either Section 802 of Pub. L. 94–484 in 1979 or under Section 781. In addition, legislation is pending in Congress which would authorize medical and osteopathic schools currently receiving Federal support for an AHEC program to apply for project aid on behalf of an area health education center that is not longer federally funded as a part of that program. (The Orphan Drug Amendments of 1985 (Pub. L. 99–91) made such entities eligible for Fiscal Year 1985.) Applications are being invited from both currently eligible and potentially eligible entities.

Section 781(a)(2) applications will be for the purposes of improving the distribution, supply, quality, utilization and efficiency of health personnel in the health services delivery system; to encourage regionalization of responsibility of the health professions schools; or to prepare, through preceptorships and other programs, individuals subject to a service obligation under the National Health Service Corps scholarship program to provide effective health services in health manpower shortage areas.

To be eligible to receive support for a special initiative area health education center program grant, the applicant must be a public or nonprofit private accredited school of medicine or osteopathy, or consortium of such schools, or the parent institution on behalf of such school(s).

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR Part 57, Subpart MM.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (U–76), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C–22, Rockville, Maryland 20857, Telephone: (301) 443–6857.

Questions regarding programmatic information should be directed to: Division of Medicine, Area Health Education Center Branch, Bureau of Health Professions, Health Resources and Services Administration, 5600

Fishers Lane, Room 4C–05, Rockville, Maryland 20857, Telephone: (301) 443–6950.

The application deadline date is October 18, 1985. Applications shall be considered as meeting the deadline if they are either:

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

This program is listed at 13.824 in the *Catalog of Federal Domestic Assistance*. Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, or 45 CFR Part 100.

Dated: September 16, 1985.

John H. Kelso,

Acting Administrator.

[FR Doc. 85–22473 Filed 9–19–85; 8:45 am]

BILLING CODE 4160–16–M

Public Health Service

Privacy Act of 1974; System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of establishment of a new Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of the Assistant Secretary for Health (OASH) is publishing a notice of intent to establish a new Privacy Act system of records, 09–37–0018, "Disaster Health Services Information System, HHS/OASH/OEP." This system will be used to identify, mobilize, and allocate health care professionals to serve the national needs when State resources have been overwhelmed by a disaster or other emergencies and requests have been made for Federal assistance, or in the event of a conventional military conflict outside the United States. We are also proposing routine uses for this new system of records.

DATES: PHS invites persons to submit comments on the proposed routine uses on or before October 21, 1985. PHS has sent a report of new system of records to the Congress and to the Office of Management and Budget (OMB) on September 11, 1985. The system of records will become effective 60 days from the date submitted to OMB unless PHS receives comments on the routine uses which would result in a contrary determination.

ADDRESS: Comments should be addressed to the National Disaster Medical System (NDMS) Privacy Act Coordinator at the address listed below. Comments received will be available for inspection from 9:30 a.m. to 3:00 p.m., Monday through Friday, except for Federal holidays, in Room 4–61, Parklawn Building, at that address.

FOR FURTHER INFORMATION CONTACT: Charles A. Wells, Ph.D., NDMS Privacy Act Coordinator, Parklawn Building, Room 17A–55, 5600 Fishers Lane, Rockville, Maryland 20857, or call (301) 443–4273. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The OASH proposes to establish a new system of records: 09–37–0018, "Disaster Health Services Information System, HHS/OASH/OEP." The purpose of this proposed system of records is to provide NDMS with an organized and systematic computerized resources file of health care personnel who have agreed to serve in an emergency. During any disaster, short of a declared national emergency, the responsibility for implementing restorative actions will rest with local authorities. These authorities will have access to certain classes of resources for the provision of essential health services, including local and State health facilities and personnel, paramedical units of these agencies, volunteers, and others. Depending upon the magnitude of the disaster, these resources available may not be sufficient. In such instances, local authorities may require extra jurisdictional support, and more importantly, the ability to identify the location of that support. Therefore, this new information system will offer invaluable assistance by: (1) Providing geographically-based inventories of health professionals, health facilities, health equipment and supplies; (2) identifying the contiguous geo-political areas most able to offer assistance; and (3) providing precise and timely information concerning health resources. Currently, this information exists neither at the local nor at the Federal level in any organized or computerized form. No Federal agency currently has the ability to identify, mobilize, and allocate health care personnel to treat casualties of a national security emergency or major peacetime national disaster.

The proposed system will contain: (1) A comprehensive index of NDMS volunteers in the private sector which can be sorted by name, Social Security Number (SSN), expertise, geographic location, and experience in emergency health services; (2) an index of PHS civilian and commissioned personnel who are NDMS volunteers; (3) a directory of DHHS officials who serve as contact points for NDMS; and (4) a directory of State and local government and private organization officials who will either serve in NDMS or serve as contact points. The collection of SSNs is mandatory because NDMS will reimburse volunteers for expenses incurred during a period of disaster service.

NDMS may disclose information from this system to the Office of Refugee Health/PHS to identify health and medical resources to provide services for a mass influx of undocumented aliens.

The computerized system of records will be maintained in a secure manner to minimize the risk of unauthorized disclosures from the system of records. Individually identifiable records will be kept in locked file cabinets or rooms under the direct control of the system manager and other NDMS officials at local sites. Hard copy directories will be kept in secured areas and in locked file cabinets.

Employees who maintained these records will be instructed to grant regular access only to authorized personnel whose duties require the use of such information. All employees with access to the records will be required, as a condition of employment, to sign an affidavit binding them to non-disclosure of identifiable individual information. All computer terminals will be in secured areas. Electronic safeguards to block unauthorized access to these records will also be implemented.

Information stored in computers will be accessed through the use of keywords/passwords known only to the authorized personnel. These secret codes will be changed frequently.

The routine uses proposed for this system are compatible with the stated purpose of the system of identifying, mobilizing, and allocating health care professionals when States request Federal assistance in an emergency or disaster, as follows:

Routine use #1 permits NDMS to disclose information to a congressional office when an individual who is the subject of the record request congressional assistance. Such disclosure would be made only pursuant to a request of the individual.

Routine use #2 permits NDMS to disclose information to the Department of Justice to defend the Federal Government, the Department, or

employees of the Department in the case of a lawsuit in which an individual claims to have been harmed mentally, physically, or financially by activities supported by this system of records. NDMS needs this routine use, because the very nature of the NDMS activities carry the potential for injury to members of the NDMS teams as well as to those individuals to whom they provide assistance.

Routine use #3 permits NDMS to carry out its function of nationwide disaster assistance by making available its information resoiurces to other Federal agencies, State and local governments, and private organizations who are involved in emergency/disaster management to assist them in their efforts.

OASH has submitted Standard Form 115 for approval to the National Archives and Records Administration to obtain authority to schedule the disposal of the records as stated in the system notice.

The proposed system will not become effective until 60 days after the date it was reported to OMB, as discussed above. However, the following notice is written in the present rather than future tense, to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

Dated: September 13, 1985.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations, and Director, Office of Management.

09-37-0018

SYSTEM NAME:

Disaster Health Services Information System. HHS/OASH/OEP.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Room 4-81, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Records may also be located at local, designated disaster medical assistance team sites. Locations of sites are available upon request from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Volunteer health care personnel in the private sector who have agreed to contribute their expertise in emergency health services; Public Health Service (PHS) civilian employees and commissioned officers who have volunteered their services; the Department of Health and Human Services (DHHS) officials who serve as contact points for the National Disaster Medical System (NDMS); State and local government and private organization officials who will either serve in the NDMS or who will serve as contact points for the mobilization of NDMS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, business and home addresses, and business and home telephone numbers of all individuals covered by the system; personal qualifications data of those individuals who provide services for NDMS, including date and place of birth, position and organization, education and professional and technical training, type of license or certificate, military status, professional and/or technical experience, references; SSN; payment vouchers and financial documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 311(c)(1), 42 U.S.C. 243(c)(1), authorizing the development and implementation of a plan to meet health emergencies resulting from disasters; Executive Order 11490, Assigning Emergency Preparedness to Federal Departments and Agencies; and Executive Order 9397, Numbering System for Federal Accounts Relating to Individuals.

PURPOSE(S)

The purposes are:

1. To create a comprehensive index which will allow NDMS to identify, mobilize, and allocate health care personnel in the private sector to provide emergency services for NDMS when a disaster has depleted State resources and a request has been made for Federal assistance or in the event of a conventional military conflict outside of the United States or a mass immigration emergency.

2. To identify, mobilize, and allocate PHS civilian and commissioned personnel who are NDMS volunteers.

3. To identify DHHS officials who are NDMS volunteers.

4. To identify State and local government and private organization officials to serve as NDMS contact points.

5. To prepare financial reimbursement documents.

6. To assist the Office of Refugee Health with data to identify health and medical resources to provide services for a mass influx of undocumented aliens.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

3. Disclosure may be made to Federal agencies, such as the Federal Emergency Management Agency, the Veterans Administration, the Department of Defense, State and local governments, and private organizations such as the American Red Cross and professional organizations, in the event of a national emergency to assist in the identification and/or mobilization and allocation of NDMS personnel.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and hard copy directories are maintained in secured areas and locked file cabinets; automated records in electronic storage are maintained on magnetic tapes or a magnetic disk unit.

RETRIEVABILITY:

Information is retrieved by name, address, expertise, Social Security number or other characteristics as needed.

SAFEGUARDS:

1. *Authorized users:* System manager, NDMS project officer, designated NDMS officials who administer the program at disaster medical assistance team sites.

NDMS officials from the American Red Cross, American Hospital Association, American Medical Association, American Nurses Association.

2. *Physical Safeguards:* Paper records and directories are stored in locked files in a limited access area and are accessible only to NDMS authorized personnel. All computer terminals are in secured areas. The building is patrolled by 24-hour security guards.

3. *Procedural Safeguards:* Employees who maintain records in this system are instructed to grant regular access only to authorized personnel whose duties require the use of such information. All employees with access to the hard copy directories and automated records are required, as a condition of employment, to sign an affidavit binding them to non-disclosure of identifiable individual information. One time and special access to the information is controlled by the System Manager and NDMS Project Officer. Information stored in computers is accessed through the use of keywords/passwords known only to the authorized personnel. Computer access is via dedicated data circuits which prevent access from standard dial-up telephone. These secret codes are changed frequently.

Computerized records maintained at designated disaster medical assistance team sites are subject to the safeguards listed above.

The particular safeguards described are implemented in accordance with the requirements of chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS hf. 45–13; and with Part 6, "ADP Systems Security," of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Information on individuals who desire to be removed from the program is deleted from both hard copy and computer files upon request. Records will be destroyed five (5) years after discontinuation of the NDMS inventory or when the system manager determines that they are no longer needed. Disposal methods include burning or shredding hard copy and erasing computer tapes and disks.

SYSTEM MANAGER AND ADDRESS:

Director, National Disaster Medical System, Room 4–81, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the above address and provide your name and address.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requestors should also reasonably specify the record contents being sought. Positive identification (SSN) is required from anyone seeking access. Requestors may also request an accounting of disclosures that have been made of their record, if any.

CONTESTING RECORD PROCEDURES:

Write to the official at the address specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information is obtained from (1) the individual's themselves; (2) professional organizations and associations; (3) mailing lists of health professionals; (4) State Board of Examiners; (5) author information in books and journals; (6) National Registers of Health Professionals; (7) individual employers; and (8) other Federal agencies such as Federal Emergency Management Agency, the Veterans Administration, and the Department of Defense.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 85–22477 Filed 9–19–85; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Alaska AA–48228–AN]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (P.L. 97–451), a petition for reinstatement of oil and gas lease AA–48228–AN has been received covering the following lands:

Fairbanks Meridian, Alaska

T. 18 S., R. 2 W.,
Sec. 36, N½SW¼.
(80 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16 ⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from November 1, 1984, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48228–AN, as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective November 1, 1984, subject to the terms and conditions cited above.

Dated: September 12, 1985.

Robert E. Sorenson,

Chief, Branch of Mineral Adjudication.

[FR Doc. 85–22540 Filed 9–19–85; 8:45 am]

BILLING CODE 4310–JA–M

[A–18968]

Public Lands Exchange; Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action Exchange, Public Lands Mohave County, Arizona.

SUMMARY: The following described lands and interests therein have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian

T. 20 N., R. 21. W.,
Sec. 20, NE¼NW¼SW¼, S½N½NW¼NW¼SW¼, S½NW¼NW¼SW¼, S½NW¼SW¼, SW¼SW¼,E¼SW½, and SE¼;
Sec. 32. N½.
T. 19 N., R. 21 W.,
Sec. 31, lots 2, 4, 7, and 9.
Containing 741.30 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from R. Gordon Bell of Scottsdale, Arizona.

Gila and Salt River Meridian

T. 16½ N., R. 11 W.,
Sec. 33, E½, S½NW¼, and SW¼.
T. 16 N. R 11 W.,
Sec. 1, lots 1–4,inclusive, S½N½, and S½;
Sec. 3, lots 1–4, inclusive, S½N½, and S½;
Sec. 4, lots 1 and 2, S½NE¼, and SE¼;
Secs. 9 thru 14, inclusive;
Sec. 17, N½, N½SW¼, and SE¼;
Sec. 21, N½NE¼, W½, and SE¼;
Sec. 24, All;
Sec. 25, All;
Sec. 29, All;
Sec. 31, lots 1–4, inclusive, E½W½, and E½.
T. 16 N., R. 12 W.,

Sec. 21, W½NE¼, W½, and SE¼;
Sec. 23, N½, NW¼SW¼, E½SW¼, and SE¼;
Sec. 25, E½, E½NW¼; and SW¼;
Sec. 27, NE¼, NE¼NW¼, and S½NW¼;
Sec. 29, SW¼NE¼, W½SE¼, NE¼NW¼, S½NW¼, and SW¼;
Sec. 33, NE¼NE¼, S½NE¼, N½S½, and SE¼SE¼.

Containing 12,393.0 acres, more or less.

The public lands to be transferred are subject to the following terms and conditions:

1. Reservations to the United States—(a) right-of-way for ditches and canals pursuant to the Act of August 30, 1890; (b) all the oil and gas and with it, the right to prospect for, mine and remove same; (c) electric transmission rights-of-way A–1876, A–14908, PHX–085193, and A–8891.

2. Subject to—(a) prior valid rights existing as of the date of this action; (b) any restrictions that may be imposed by the Mohave County Board of Supervisors in accordance with county floodplain regulations established under Resolution No. 84–10 of July 16, 1984; (c) road rights-of-way A–10781, AR–01868, A–14908, and A–20912; (d) flood control dike right-of-way A–18889; and (e) all minerals to the Santa Fe Pacific Railroad Company within section 31, T. 19 N., R. 21 W.

Private lands to be acquired by the United States will be subject to the following reservations:

1. All minerals in the subject are reserved to the Santa Fe Pacific Railroad Company as set forth in Book 72 of Deeds, page 480, and in Book 104 of Deeds, page 381, Mohave County, Arizona.

2. Subject to a road easement as recorded in Book 686 of Official Records, page 500.

Publication of this Notice will segregate the subject lands from all appropriations under the public land laws, including the mining laws, but not the mineral leasing laws. This segregation will terminate upon the issuance of a patent or two years from the date of this Notice, or upon publication of a Notice of Termination.

Detailed information concerning this exchange can be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401. For a period of forty-five (45) days from the date of this Notice, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Any adverse comments will be evaluated by the District Manager who may vacate or modify this Realty Action, and issue a final determination. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Department of the Interior.

Dated: September 13, 1985.

Marlyn V. Jones,

District Manager.

[FR Doc. 85–22538 Filed 9–19–85; 8:45 am]

BILLING CODE 4310–32–M

[A–17600, A–20347]

Realty Action; Designation of Public Lands To Be Included in State Exchange in Cochise, Graham, Greenlee, Pima and Pinal Counties, AZ and Cancellation of Public Land Sale

AGENCY: Bureau of Land Management, Interior.

ACTION: Designation of public lands for transfer out of Federal ownership in exchange for lands owned by the State of Arizona and cancellation of a public land sale.

SUMMARY: BLM proposes to exchange public land with the State of Arizona in order to achieve more efficient management of the public land through consolidation of ownership.

All of the public land in the following described sections and subdivisions is being considered for disposal by exchange pursuant to Section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian

T. 5 S., R. 15 E.
Sec. 25.
T. 6 S., R. 15 E.
Sec. 25, 31.
T. 6 S., R. 16 E.
Secs. 13, 23, 24 South of the San Carlos Indian Reservation boundary;
Secs. 18–21, 28–31, 25, 36;
Sec. 17: W½NW¼;
Sec. 25: E½.
T. 7 S., R. 16 E.
Secs. 1, 15, 23–26;
Sec. 12: SE¼;
Sec. 13: E½, SW¼;
Sec. 14: W½SW¼, SE¼SW¼, S½SE¼, E½NE¼SE¼.
T. 8 S., R. 16 E.
Secs. 12–14, 24;
Sec. 23: N½.
T. 11 S., R. 16 E.
Sec. 13.
T. 6 S., R. 17 E.
Secs. 7, 8 South of the San Carlos Indian Reservation boundary;
Secs. 31, 33;
Sec. 34: NW¼SW¼.
T. 7 S., R. 17 E.
Secs. 4–8, 17–21, 28–30.
T. 8 S., R. 17 E.
Secs. 5, 7, 31;
Sec. 29: SW¼.
T. 9 S., R. 17 E.
Secs. 3, 10, 11, 12.
T. 12 S., R. 17 E.
Secs. 1, 12.
T. 8 S., R. 18 E.
Sec. 25.
T. 9 S., R. 18 E.
Secs. 1, 3–15, 21–28, 33–35;
Sec. 17: E½, NW¼;
Sec. 20: Lots 6, 7, N½SE¼;
Sec. 29: Lots 1, 2, 7, 8, SE¼.
T. 10 S., R. 18 E.
Secs. 22, 24.
T. 12 S., R. 18 E.
Secs. 4, 5.
T. 7 S., R. 19 E.
Sec. 13.
T. 10 S., R. 19 E.
Secs. 19–22.
T. 12 S., R. 19 E.
Secs. 1, 12–14, 20, 21, 23–25, 28, 29.
T. 13 S., R. 19 E.
Sec. 25.
T. 14 S., R. 19 E.
Secs. 3, 10, 13, 24, 25, 29, 30, 33.
T. 15 S., R. 19 E.
Secs. 21, 23, 24, 26, 28, 33, 35.
T. 17 S., R. 19 E.
Sec. 5.
T. 20 S., R. 19 E.
Sec. 29.
T. 6 S., R. 20 E.
Secs. 5–7;
Sec. 29: Lots 2, 3.
T. 7 S., R. 20 E.
Secs. 3, 6, 10–15, 19, 29–31.
T. 12 S., R. 20 E.
Secs. 5, 7–9.
T. 13 S., R. 20 E.
Secs. 3, 10, 11, 34, 35.
T. 14 S., R. 20 E.
Secs. 6, 7, 19, 20, 30.
T. 15 S., R. 20 E.
Sec. 22.
T. 16 S., R. 20 E.
Secs. 1, 3–5, 8, 9, 11–15, 22, 24, 25, 27, 30.
T. 17 S., R. 20 E.
Sec. 7.
T. 18 S., R. 20 E.
Sec. 2.
T. 15 S., R. 21 E.
Secs. 21, 28.
T. 16 S., R. 21 E.
Secs. 7, 8, 12, 17–21, 29–31, 33.
T. 15 S., R. 22 E.
Sec. 15, 30, 31.
T. 16 S., R. 22 E.
Secs. 5, 7;
Sec. 6: Lots 1, 2, S½NE¼, SE¼.
T. 13 S., R. 23 E.
Sec. 18.
T. 15 S., R. 23 E.
Sec. 29.
T. 21 S., R. 23 E.
Sec. 28–30, 33;
Secs. 23: W½SE¼.
T. 22 S., R. 23 E.
Secs. 4–6.
T. 23 S., R. 23 E.
Secs. 4, 8, 9, 15, 18, 19, 22, 28.
T. 19 S., R. 24 E.
Sec. 4.
T. 21 S., R. 25 E.
Sec. 33: NE¼SW¼.
T. 9 S., R. 26 E.
Secs. 22, 25–27, 35.

T. 10 S., R. 26 E.
Secs. 1, 3, 4, 9–12.
T. 11 S., R. 27 E.
Secs. 24–29.
T. 11 S., R. 28 E.
Sec. 30: Lots 1–4, E½W½;
Sec. 31: Lots 1, 2, E½NW¼.
T. 20 S., R. 28 E.
Sec. 30: NE¼NW¼.
T. 6 S., R. 30 E.
Sec. 1: Lots 1, 13, 15–17, 20, 21, 23–25, S½NE¼, SE¼NW¼.
T. 4 S., R. 31 E.
Secs. 27, 28, 32, 33, 35.
T. 5 S., R. 31 E.
Secs. 4, 6, 7, 10, 11, 14, 15, 24, 27, 28, 31, 33, 34.
T. 6 S., R. 31 E.
Secs. 3–6, 8, 20–26.
T. 7 S., R. 31 E.
Secs. 10, 15, 26, 27;
Sec. 22: NW¼NW¼;
Sec. 34: Lots 5–7, W½NE¼SE¼, SE¼NE¼;
Sec. 35: N½, NE¼SW¼, NE¼NW¼SW¼, S½NW¼SW¼, S½SW¼, SE¼.
T. 8 S., R 31 E.
Secs. 2, 12, 13, 23, 25;
Sec. 14: SW¼NE¼, E½SW¼, SW¼SW¼, SE¼;
Sec. 15: SE¼SE¼;
Sec. 22: E½, E½W½
Sec. 27: E½W½, SE¼;
Sec. 33: E½SE¼, SW¼SE¼;
Sec. 34: NE¼,E½W½, W½SW¼.
T. 9 S., R. 31 E.
Sec. 8, 12, 13, 17
Sec. 7: E½, E½W½;
Sec. 18: E½;
Sec. 19: E½NE¼, NE¼SE¼;
Sec. 20: N½, N½S½.
T. 10 S., R. 31 E.
Sec. 1, 12–14, 24, 25, 36;
Sec. 2: S½SE¼;
Sec. 11: E½SE¼SW¼;
Sec. 23: E½;
Sec. 26: E½E½, SW¼SE¼;
Sec. 35: NE¼, N½SE¼.
T. 16 S., R. 31 E.
Sec. 1: S½N½;
Sec. 30: Lots 5,7,8.
T. 6 S., R. 32 E.
Secs. 18–20, 30;
Sec. 29: W½.
T. 7 S., R. 32 E.
Secs. 7, 8, 17–22, 27–31, 33, 34;
Sec. 9: W½NW¼, SW¼.
T. 8 S., R. 32 E.
Secs. 3–8,17;
Sec. 9: NE¼, E½W½.
T. 9 S., R. 32 E.
Secs., 3–10, 15, 17, 18, 28, 33, 34.
T. 10 S., R. 32 E.
Secs. 5–8, 17–21, 28–33.
T. 11 S., R. 32 E.
Sec. 4: Lots 1–4, S½NW¼;
Sec. 5: Lots 1–4, S½NE¼;
Sec. 6: Lots 1–4.
T. 15 S., R. 32 E.
Sec. 9: SE¼NE¼.

The lands described above comprise 143,197.66 acres, more or less.

The above described lands will be segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register.** The segregative effect will terminate upon issuance of patent to the State of Arizona or upon expiration of two years from the effective date, or by publication of a Notice of Termination by the Authorized Officer, whichever comes first.

Publication of this notice will cancel Public Sale A–17600 published in the **Federal Register** January 11, 1983.

Final determination of disposal will await completion of environmental analyses.

DATE: For a period of 45 days from date of publication in the **Federal Register** interested parties may submit comments to the Safford District Manager, 425 E. 4th Street, Safford, Arizona 85546.

SUPPLEMENTAL INFORMATION: Detailed information concerning the exchange is available at the Safford District Office.

Dated: September 12, 1985.

Lester K. Rosenkrance,

District Manager.

[FR DOC. 85–22537 Filed 9–19–85; 8:45 am]

BILLING CODE 4310–32–M

[I–21548, I–21549, I–21550]

Sale of Public Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Noncompetitive Sale of Public Lands in Blaine County, Idaho.

SUMMARY: The following described land has been examined, and through the development of land use decisions based on public input, it has been determined that the sale of these parcels is consistent with section 203(a) of the Federal Land Policy and Management Act of 1976. The lands will be offered for sale for no less than the appraised value.

Boise Meridian

Serial No. I–21548, T. 2 N., R. 18 E., Section 35: Lot 16, 1.99 acres
Serial No. I–21549, T. 2 N., R. 18 E., Section 35: Lot 15, 1.31 acres
Serial No. I–21550, T. 2 N., R. 18 E., Section 35: Lot 14, 0.92 acres

The land will be offered for direct sale as follows:

I–21548
John Taylor Borton and Jaimie Boline Borton, P.O. Box 1275, Hailey, Idaho 83333
I–21549
Dianne E. Huxford and Alex Keisch, 12012 Sunrise Road, Richmond, Virginia 23233
I–21550
Cal-Pacifico of California, Route 1, Box 40, Bellevue, Idaho 83313

The determination to offer the land under the direct sale procedures is based on historic use and value of added improvements.

Failure or refusal of the above named parties to submit the required amount by November 22, 1985 will result in cancellation of the sale. The lands will then be offered for competitive sale on December 13, 1985.

All lots will be subject to the following reservations, when patented;

1. Ditches and canals.
2. All minerals.
3. Road right-of-way I–22080.

The lands are hereby segregated from appropriation under the public land laws, including the mining laws are provided by 43 CFR 2711.1–2(d).

DATES: The land will be offered for sale on November 22, 1985. Bids must be received in this office no later than 1:00 p.m. on November 22, 1985. Bids for less than the appraised fair market value will not be accepted. The appraised fair market value information will be available about November 1, 1985. Acceptable payment at time of bid must be no less than thirty (30) percent of the total appraised fair market value.

ADDRESS: The sale offering will be held at the Shoshone District Office, 400 West F. Street, P.O. Box 2–B, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Ervin Cowley, Monument Resource Area Manager, at the above address or by calling (208) 886–2206.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager regarding the proposed action. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

Dated: September 11, 1985.

Charles J. Haszier,

District Manager.

[FR Doc. 85–22541 Filed 9–19–85; 8:45 am]

BILLING CODE 4310–DQ

[NM–52398]

Proposed Continuation of Withdrawal, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice..

SUMMARY: The Department of the Interior proposes that a 6.5-acre withdrawal for the Bureau of Reclamation continue for an additional 20 years. The lands will remain closed to surface entry and mining and will remain open to mineral leasing.

DATE: Comments should be received by December 19, 1985.

FOR FURTHER INFORMATION CONTACT: Pauline T. Brown, BLM, New Mexico State Office, P. O. Box 1449, Sante Fe, New Mexico 87504–1449, 505–988–6326.

SUPPLEMENTARY INFORMATION: The Department of the Interior proposes that the existing land withdrawal made by Secretary's Order of August 11, 1944, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

T. 12 N., R. 29 E.,
A 300' strip across Lot 2 in Section 22 more particularly described as follows:

One hundred and seventy five (175) feet left (northerly side) and one hundred and twenty-five (125) feet right (southerly side) of the centerline of the Conchas Canal;

Beginning at a point eight hundred and seventy nine (879.4) and four tenths feet N. 74°57' E. of the east quarter corner of Sec. 21, T. 12 N., R. 29 E., N.M.P.M., at Conchas Canal Station 2058+50.4, a point on the county line between San Miguel and Quay County. The centerline described as follows:

Backing upstream along the Conchas Canal from the above-described point, S. 56°42'00" E. to the PI Station 2056+24.7 of a six hundred (600) foot radius curve of 2°31'30" L. with curve length of 26.4 feet, then S. 54°10'30" E. of the tangent to the PI Station 2051+13.0 of a two hundred (200) foot radius curve of 51°30'00" L. with a curve length of 179.8 feet then N. 77°26'00" E. of the tangent to the PI Station 2049+27.0 of a two hundred (200) foot radius curve of 48°23'30" R. to the section line between sections 21 and 22, consisting of 6.5 acres more or less.

The purpose of the withdrawal is for use in connection with the Tucumcari Project, Conchas Canal right-of-way.

The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: September 11, 1985.

Monte G. Jordan,

Associate State Director.

[FR Doc. 85–22542 Filed 9–19–85; 8:45 am]

BILLING CODE 4310–FB–M

Rock Springs District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Field Tour and Meeting of the Rock Springs District Advisory Council.

DATE: October 16, 17, 1985.

ADDRESS: Rock Springs District Office, Bureau of Land Management, U.S. Highway 191 North, Rock Springs, Wyoming.

FOR FURTHER INFORMATION CONTACT: Donald H. Sweep, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, U.S. Highway 191 North, Rock Springs, Wyoming 82902–1869, (307–382–5350).

SUPPLEMENTARY INFORMATION: There will be a field tour of the Riley Ridge area on October 16. The tour will leave the USFS Big Piney Ranger District Office in Big Piney at 9:00 A.M. and return about 5:00 P.M. the same day. The tour and meeting is open to the public, but transportation will not be provided, four wheel drive may be needed, lunch and sturdy clothing is necessary.

The meeting on October 17 will begin at 8:30 A.M. in the conference room at the BLM Pinedale Resource Area.

The Agenda will include:

Review of Field Tour
Review of Wilderness Study Area Status
Review of Oregon-Mormon-Pioneer Trail Plan
Review of Pinedale and Kemmerer Resource Management Plans
District Reorganization
Update on Land Exchanges
Public Comment Period
Arrangements for the Next Meeting

Donald H. Sweep,

District Manager.

[FR Doc. 85–22539 Filed 9–19–85; 8:45 am]

BILLING CODE 4310–22–M

[CA 7783 WR]

California; Proposed Continuation of Withdrawal

September 12, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Navy proposes that a land withdrawal aggregating 1,662.58 acres of public land and 124.83 acres of mineral estate for Camp Pendleton Training Base, continue for an additional 25 years. The lands will remain closed to surface entry and mining but would be opened to mineral leasing subject to the consent of the Department of the Navy.

DATE: Comments should be received by December 19, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lnads and Minerals Operations, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E–2841), Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Sonia Santillan, California State Office, (916) 978–4815.

SUPPLEMENTARY INFORMATION: The Department of the Navy proposes that the existing land withdrawal made by Public Land Order No. 293 of August 8, 1945, be continued for a period of 25 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The withdrawal is described as follows:

San Bernardino Meridian

T. 9 S., R. 4 W.,
Sec. 5, W½SW¼;
Sec. 6, Lots 2, 3, 4, and 5, S½SE¼;
Sec. 7, Lot 2, N½NE¼, SW¼NE¼, SE¼NW¼, NE¼SW¼, W½SE¼, SE¼SE¼;
Sec. 8, SE¼NE¼, W½NE¼NW¼, NW¼NW¼.
T. 9 S., R. 5 W.,
Sec. 1, lots 1 thru 4 inclusive, S½NE¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 2, lots 1 thru 9 inclusive, SE¼NW¼, NW¼SE¼;
Sec. 11, lot 1;
Sec. 12, lot 4;
Sec. 13, lot 2.

Mineral Estate Only

T. 9 N., R. 4 W.,
Sec. 5, lot 1, SE¼NE¼, and NE¼SE¼.

The areas described aggregate 1,787.41 acres in San Diego County.

The purpose of the withdrawal is to protect the lands in support of various military training functions. The withdrawal segregates the lands from operation of the public land laws generally, including the mining and mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal except that the lands will be opened to mineral leasing subject to the provisions of section 6 of the Defense Withdrawals Act of February 28, 1958 (72 Stat. 30; 43 U.S.C. 158), which provides that consultation shall be made with the Secretary of Defense regarding the disposition of or exploration for any minerals in the land.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, California State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necesary to determine the existing and potential demand for the land and its resouces. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Sharon N. Janis,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 85-22527 Filed 9-19-85; 8:45 am]

BILLING CODE 4310-40-M

[CA 7778 WR]

California; Proposed Continuation of Withdrawal

September 12, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Navy proposes that two land withdrawals aggregating approximately 9,537 acres affecting San Miguel and Prince Islands continue for an additional 25 years for military testing purposes. The land will remain closed to surface entry and mining. The islands are part of the Channel Islands National Park and, therefore, are closed to mineral leasing.

DATE: Comments should be received by December 19, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E-2841), Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Sonia Santillan, California State Office, (916) 978-4815.

SUPPLEMENTARY INFORMATION: The Department of the Navy proposes that the two existing land withdrawals made by Executive Order No. 1066 of April 23, 1909, and Executive Order No. 2750 of November 5, 1917, as modified by Executive Order No. 6896 of November 7, 1934, continue for a period of 25 years, pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714.

San Miguel and Prince Islands, aggregating about 9,537 acres, are located approximately 25 miles south of Point Conception off the southern coast of California in Santa Barbara County, affecting the following unsurveyed townships and ranges:

Mount Diablo Meridian

Twps. 1 and 2 S., R. 33 W.;
Twps. 1 and 2 S., R. 34 W.

The purpose of the withdrawals is to provide protection for weaponry testing functions around the islands. The withdrawals segregate the land from operation of the public land laws generally, including the mining but not the mineral leasing laws. The islands are part of the Channel Islands National Park established by the Act of March 5, 1980, 94 Stat. 67. The lands, therefore, are not subject to lease under the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, California State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as ar enecessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in **Federal Register**. The existing withdrawal will continue until such final determination is made.

Sharon N. Janis,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 85-22528 Filed 9-19-85; 8:45 am]

BILLING CODE 4310-40-M

[CA 7777 WR]

California; Proposed Continuation of Withdrawal

September 12, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Navy proposes that two land withdrawals aggregating approximately 36,206 acres affecting San Clemente Island and the rocky island at the west entrance, continue for an additional 25 years for military support functions. The land will remain closed to surface entry and mining, but has been and will remain open to mineral leasing subject to the consent of the Department of the Navy.

DATE: Comments should be received by December 19, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E-2841), Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Sonia Santillan, California State Office, (916) 978-4815.

SUPPLEMENTARY INFORMATION: The Department of the Navy proposes that the existing land withdrawal made by Executive Order of September 11, 1854, as modified by Executive Order No. 6897 of November 7, 1934, continue for a period of 25 years, pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714.

San Clemente Island and the rocky island at the west entrance, aggregating about 36,206 acres, are located approximately 64 miles west-northwest of San Diego and 50 miles south-southwest of San Pedro off the southern coast of California in Los Angeles County, affecting the following unsurveyed townships and ranges:

San Bernardion Meridian

Twps. 15 and 16 S., R. 14 W.;
Twps. 14, 15, and 16 S., R. 15 W.;
Twps. 13, 14, and 15 S., R. 16 W.;
Twps. 13 and 14 S., R. 17 W.

The purpose of the withdrawal is to provide protection for various research,

development, testing, evaluation and fleet support functions on the island. The withdrawal segregates the land from operation of the public land laws generally, including the mining, but not the mineral leasing laws. No change is proposed in the purpose of segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, California State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as ar enecessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in **Federal Register**. The existing withdrawal will continue until such final determination is made.

Sharon N. Janis,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 85-22529k Filed 9-19-85; 8:45 am]

BILLING CODE 4310-40-M

[CA 7776 WR]

California; Proposed Continuation of Withdrawal

September 12, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Navy proposes that the land withdrawal containing approximately 14,513 acres affecting San Nicholas Island continues for an additional 25 years for military testing purposes. The land will remain closed to surface entry and mining, but has been and will remain open to mineral leasing subject to the consent of the Department of the Navy.

DATE: Comments should be received by December 19, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E-2841), Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Sonia Santillan, California State Office, (916) 978-4815.

SUPPLEMENTARY INFORMATION: The Department of the Navy proposes that the existing land withdrawal made by Executive Order No. 6009 of January 31, 1933, continue for a period of 25 years, pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714.

San Nicholas Island, containing about 14,513 acres, is located approximately 65 statute miles south-southwest of Point Mugu off the southern coast of California in Ventura County, affecting the following unsurveyed townships and ranges:

San Bernardino Meridian

Twps. 10 and 11 S., R. 25 W.;
Twps. 10 and 11 S., R. 26 W.

The purpose of the withdrawal is to provide protection for various military testing facilities on the island. The withdrawal segregates the land from operation of the public land laws generally, including the mining but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, California State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Sharon N. Janis,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 85-22530 Filed 9-19-85; 8:45 am]

BILLING CODE 4310-40-M

[CA 7779 WR and R 06454 WR]

California; Proposed Continuation of Withdrawals

September 12, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Navy proposes that two land withdrawals affecting 1,714.86 acres at the Naval Air Station, Miramar continue for an additional 25 years. The lands will remain closed to surface entry and mining but have been and will remain open to mineral leasing subject to the consent of the Department of the Navy.

DATE: Comments should be received by December 19, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E-2841), Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Sonia Santillan, California State Office, (916) 978-4815.

SUPPLEMENTARY INFORMATION: The Department of the Navy proposes that two existing land withdrawals be continued for periods of 25 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The withdrawals are described as follows:

San Bernardino Meridian

CA 7779 WR

Executive Order No. 8791 of June 14, 1941

T. 15 S., R. 2 W.,
Sec. 11, NE¼SW¼.

The area described contains 40 acres in San Diego County.

R 06454 WR

Executive Order Nos. 8790 and 8791 of June 14, 1941, as modified by Public Land Order (PLO) No. 2748 of August 8, 1962, PLO No. 3749 of July 26, 1965, and PLO No. 5341 of March 16, 1973

T. 14 S., R. 1 W.,
Sec. 31, N½NE¼;
Sec. 32, NW¼NW¼, N½SW¼, SE¼SW¼, and S½SE¼;
Sec. 33, W½W½.
T. 15 S., R. 1 W.,
Sec. 4, lots 4, 5, and 10;
Sec. 5, lots 1, 2, 3, and 5, S½NE¼, SE¼NW¼, E½SW¼, NE¼SE¼, and W½SE¼;
Sec. 6, lots 1, 6, and 7, E½SW¼, and W½SE¼;
Sec. 7, lot 1, NW¼NE¼, and SE¼NE¼.
T. 15 S., R. 2 W.,
Sec. 11, lot 1;
Sec. 12, N½NE¼ and NE¼NW¼.

The areas described aggregate 1,674.86 acres in San Diego County.

The purpose of the withdrawals is to protect the lands in support of the Navy's carrier-base mission. The withdrawals segregate the lands from operation of the public land laws generally, including the mining but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, California State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and, if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Sharon N. Janis,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 85-22531 Filed 9-19-85; 8:45 am]

BILLING CODE [illegible]

[LA 0135132 WR]

California; Proposed Continuation of Withdrawal

September 12, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Navy proposes that a land withdrawal containing 80.87 acres of public land for Camp Pendelton Training Base be continued for an additional 25 years. The land will remain closed to surface entry and mining but would be opened to mineral leasing and disposal of materials subject to consent of the Department of the Navy.

DATE: Comments should be received by December 19, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E-2841), Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Sonia Santillan, California State Office, (916) 978-4815.

SUPPLEMENTARY INFORMATION: The Department of the Navy proposes that the existing land withdrawal made by Public Land Order No. 1914 of July 22, 1959, be continued for a period of 25 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The withdrawal is described as follows:

San Bernardino Meridian

T. 9 S., R. 5 W.,
Sec. 3, lots 1, 2, and 3.

The area described contains 80.87 acres in San Diego County.

The purpose of the withdrawal is to protect the land in support of various military training functions. The withdrawal segregates the land from operation of the public land laws generally, including the mining, mineral leasing and disposal of materials laws. No change is proposed in the purpose or segregation effect of the withdrawal except that the land would be opened to mineral leasing and disposal of materials subject to the provisions of section 6 of the Defense Withdrawals Act of February 28, 1985 (72 Stat. 30; 43 U.S.C. 158), which provides that consultation shall be made with the Secretary of Defense regarding the disposition of or exploration for any minerals in the land.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit commentsin connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branck of Lands and Minerals Operations, California State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determinatin is made.

Sharon N. Janis,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 85-22532 Filed 9-9-85; 8:45 am]

BILLING CODE 4310-40-M

[CA 7045 WR, R 05240 WR]

California; Proposed Continuation of Withdrawals

September 12, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Navy proposes that two land withdrawals affecting 610 acres at the Marine Corps Logistics Base at Barstow continue for an additional period of 25 years. The lands will remain closed to surface entry and mining but have been and will remain open to mineral leasing subject to the consent of the Department of the Navy.

DATE: Comments should be received by December 19, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E-2841), Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Sonia Santillan, California State Office, (916) 978-4815.

SUPPLEMENTARY INFORMATION: The Department of the Navy proposes that two existing land withdrawals be continued for a period of 25 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The withdrawals are described as follows:

San Bernardino Meridian

CA 7045 WR

Public Land Order No. 14 of July 21, 1942

T. 9 N., R. 1 W.,
Sec. 11, SE¼SW¼;
Sec. 14, N½.

The area described contains 360 acres in San Bernardino County.

R 05240 WR

Public Land Order No. 4478 of July 2, 1968

T. 9 N., R. 1 W.,
Sec. 22, E½E½ and E½E½W½E½;
Sec. 27, NE¼NE¼ and E½E½NW¼NE¼.

The area described contains 250 acres in San Bernardino County.

The purpose of the withdrawals is to protect the lands for naval supply depot and rifle range purposes. The withdrawals segregate the lands from operation of the public land laws generally, including the mining laws but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, California State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential

demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and, if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Sharon N. Janis,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 85-22533 Filed 9-19-85; 8:45 am]

BILLING CODE 4310-84-M

[CA 7040 WR, CA 7041 WR, CA 7043 WR, LA 0119534 WR, R 03517 WR]

California; Proposed Continuation of Withdrawals

September 12, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Navy proposes that five land withdrawals affecting approximately 3,073 acres at the Marine Corps Logistics Base at Barstow continue for an additional period of 25 years. The lands will remain closed to surface entry and mining but would be opened to mineral leasing subject to the consent of the Department of the Navy.

DATE: Comments should be received by December 19, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E-2841), Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Sonia Santillan, California State Office, (916) 978-4815.

SUPPLEMENTARY INFORMATION: The Department of the Navy proposes that five existing land withdrawals be continued for a period of 25 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The withdrawals are described as follows:

San Bernardino Meridian

CA 7040 WR

Public Land Order No. 99 of March 17, 1963

T. 9 N., R. 1 W.,
Sec. 14, 2½;
Sec. 15, E½NE¼NE¼.

The areas described aggregate 340 acres in San Bernardino County.

CA 7041 WR

Public Land Order No. 706 of March 15, 1951

T. 9 N., R. 1 W.,
Sec. 15, S¼NE¼ excepting therefrom an irregular portion described in metes and bounds revoked by Public Land Order No. 2762 of August 28, 1962, and SE¼.

The area described contains 229.984 acres in San Bernardino County.

CA 7043 WR

Public Land Order No. 1064 of February 3, 1955

T. 9 N., R. 1 E.,
Sec. 10, that part of the S½ lying north and west of the Union Pacific Railroad right-of-way;
Sec. 15, that part of the NW¼ lying north and west of the Union Pacific Railroad right-of-way.

The area described contains 315 acres in San Bernardino County.

LA 0119534 WR

Public Land Order No. 1090 of March 10, 1955

T. 9 N., R. 1 E.,
Sec. 19, lots 1 and 2 of SW¼, and SE¼;
Sec. 30, lots 1 and 2 of NW¼, and NE¼.

The area described contains 642.72 acres in San Bernardino County.

LA 03517 WR

Public Land Order No. 3368 of April 7, 1964

T. 9 N., R. 1 E.,
Sec. 19, S½S½ of lot 1 in NW¼, S½ of lot 2 in NW¼, S½SW¼NE¼, SW¼NW¼SW¼NE¼, S½S½SW¼NE¼, and NW¼SW¼SE¼NE¼.

T. 9 N., R. 1 W.,
Secs. 23 and 24;
Sec. 26, N½N½.

The areas described aggregate 1,535.49 acres in the San Bernardino County. Public Land Order No. 3446 of September 23, 1964.

T. 9 N., R. 1 E.,
Sec. 19, S½N½S½ of lot 1 in NW¼, that portion of the W½W½N½N½S½ of lot 1 in NW¼ lying south of the southerly right-of-way line of the frontage road adjacent to Highway No. 66.

The area described contains approximately 10 acres in San Bernardino County.

The purpose of the withdrawals is to protect the lands for various naval supply, storage, and repair depots and rifle range purposes. The withdrawals segregate the lands from operation of the public land laws generally, including the mining and mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals except that the lands would be opened to mineral leasing subject to the provisions of section 6 of the Defense Withdrawals Act of February 28, 1958 (72 Stat. 30; 43 U.S.C. 158), which provides that consultation shall be made with the Secretary of Defense regarding the disposition of or exploration for minerals in the land.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawals continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, California State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and, if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Sharon N. Janis,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 85-22534 Filed 9-19-85; 8:45 am]

BILLING CODE 4310-84-M

[M 65461(ND)]

Notice of Invitation; Coal Exploration License Application; North Dakota; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: On August 30, 1985, the Bureau of Land Management published notice FR Doc. 85-20779, Vol. 50, page 35332, in which the legal description was incorrectly stated. The correct description is as follows:

T. 146 N., R. 83 W., 5th P.M.
Sec. 24: SE¼
160 acres.

Dated: September 12, 1985.

Dean E. Stepanek,

State Director.

[FR Doc. 85-22471 Filed 9-19-85; 8:45 am]

BILLING CODE 4310-84-M

[A 20633]

Attachment "A" Classification Decision

Pinal County Board of Supervisors proposes to develop a county regional park on public land in the Santan

Mountains area of Pinal county. The land being considered is legally described as;

Gila and Salt River Meridian, Arizona

Township 3 S., Range 7 E.,
Sec. 4, S½SW¼, W½SW¼SE¼;
Sec. 8, E½, E½SW¼;
Sec. 9, S½NE¼, W½, SE¼;
Sec. 10, W½NE¼, W½;
Sec. 16, N½;
Sec. 17, E½, E½NW¼;
Sec. 18, SE¼SE¼;
Sec. 19, Lots 2, 3, 4, E½, SE¼NW¼, E½SW¼;
Sec. 20, E½E½, S½SW¼;
Sec. 21, All;
Sec. 22, SW¼, W½SE¼;
Sec. 27, W½NW¼;
Sec. 28, All;
Sec. 29, All;
Sec. 30, All;
Sec. 31, All;
Sec. 32, All;
Sec. 33, N½NE¼, NW¼NW¼, W½SW¼, SE¼SW¼;
Sec. 34, NE¼, N½NW¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 35, All;
Sec. 36, Lots 7–12, SW¼.
Aggregating 8878.98 acres, more or less.

The land has been examined and found suitable for recreation and public purposes under the provisions of the Recreation and Public Purposes (R&PP) Act of June 14, 1926, as amended (44 Stat. 741; 43 U.S.C. 869; 869–4) and the regulations contained in 43 CFR 2740 and 43 CFR 2912. The land is properly classified for lease or patent for these purposes under the R&PP Act as stated in 43 CFR 2430.4(a)(c).

This classification is consistent with the criteria of 43 CFR 2410.1 (a–d) which requires that (a) the lands are physically suitable for the purposes for which they are classified; (b) all present and potential uses and users of the land were taken into consideration in the classification; (c) the land classification is consistent with state and local government programs; and (d) the land classification is consistent with current federal programs and policies.

Classification of this land under the provisions of the above cited Recreation and Public Purposes Act segregates them from appropriations under the public lands laws, including location under the mining laws, but not from applications under the mineral leasing laws or the Recreation and Public Purposes Act from March 22, 1985, the date the proposed classification was published in the **Federal Register** (43 CFR 2462.4).

This classification decision relates only to land classification. The merits of Pinal County's proposed plans for a county regional park and any other R&PP applications will be evaluated and a determination to approve or disapprove the applications will be made at a later date.

Dated: September 9, 1985.

Beaumont C. McClure,

Acting Associate State Director.

[FR Doc. 85–22535 Filed 9–19–85; 8:45 am]

BILLING CODE 4310–32–M

Salt Wells Planning Unit, Notice of Intent, Sweetwater County, WY; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: The **Federal Register** notice of February 28, 1985 (FR Vol. 50, No. 31; FR Doc. 85–4849), on page 8198 provides a Notice of Intent to amend the land use plan for the Salt Wells planning unit and to prepare an environmental assessment. Several parcels of land were identified for sale. Public comment was sought on the preliminary issues and planning criteria

Upon further review of the Salt Wells Management Framework Plan (MFP), we have determined that the lands identified in the notice are within the boundaries of a "fringe area" identified in the Salt Wells MFP. The disposal of lands within this area would be in conformance with the MFP and, therefore, no plan amendment is needed. For this reason, the Notice of Intent to initiate a plan amendment is rescinded.

FOR FURTHER INFORMATION CONTACT: Renee Dana, Planning Coordinator, Rock Springs District Office, BLM, P.O. Box 1869, Rock Springs, Wyoming 82902–1869.

Donald H. Sweep,

District Manager.

[FR Doc. 85–22536 Filed 9–19–85; 8:45 am]

BILLING CODE 4310–22–M

[N–29840]

Nevada; Proposed Continuation of Withdrawal; Correction

September 11, 1985.

In FR Doc. 85–18306 appearing on page 31256 in the issue of Thursday, August 1, 1985, the following corrections are made:

1. In the first line under Mount Diablo Meridian the word "unsurveyed" should be deleted.

2. In the third column of the page, in the seventh line the word "Esmeralda" should be "Nye".

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 85–22570 Filed 9–19–85; 8:45 am]

BILLING CODE 4310–HC–M

Minerals Management Service

Development Operations Coordination Document; Southland Royalty Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Southland Royalty Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 6670, Block 172, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on September 11, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 12, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–22490 Filed 9–19–85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Advisory Board; Gulf of Mexico Regional Technical Working Group; Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92–463. A meeting of the Outer Continental Shelf Advisory Board's Gulf of Mexico Regional Technical Working Group will be held on October 21–24, 1985, in New Orleans, Louisiana. The agenda of the meeting is as follows:

Agenda

October 21

1:30 p.m.–5:00 p.m.: Regional Technical Working Group Business Meeting
- A. Environmental Studies Program Reports
- B. Ocean Incineration Proposals in the Gulf of Mexico
- C. Gulf of Mexico Regional Issues

October 22

8:00 a.m.–4:30 p.m.: Gulf of Mexico Information Transfer Meeting

October 23

8:30 a.m.–4:30 p.m.: Continuation of the Information Transfer Meeting

October 24

8:30 a.m.–11:30 a.m.: Closing Plenary Session of the Information Transfer Meeting

The meeting will be held in the International Hotel, 300 Canal Street, New Orleans, Louisiana. All sessions are open to the public, and interested persons may make oral or written presentations at the Business Meeting upon request. Such requests, or general questions about the meeting, should be made not later than October 16, 1985, to Mr. Sydney H. Verinder, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Boulevard, P.O. Box 7944, Metairie, Louisiana 70010, or telephone (504) 838–0627.

A taped cassette transcript and complete summary minutes of the Business Meeting will be available for public inspection in the Office of the Regional Director at the above address not later than 60 days after the meeting.

Dated: September 13, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region, Minerals Management Service.

[FR Doc. 85–22493 Filed 9–19–85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Golden Gate National Recreation Area Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 7:30 p.m. (p.s.t.) on Thursday, September 26, 1985 at Building 201, Fort Mason, San Francisco, California.

The Advisory Commission was established by Pub. L. 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Frank Boerger, Chairman
Mr. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Mr. Richard Bartke
Mr. Fred Blumberg
Ms. Margot Patterson Doss
Mr. Jerry Friedman
Mr. Charles Gould
Ms. Daphne Greene
Mr. Peter Haas, Sr.
Mr. Burr Heneman
Mr. John Mitchell
Ms. Gimmy Park Li
Mr. Merritt Robinson
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

The main agenda items are a report from the Marin Committee on the Coast Guard's proposed move to East Fort Baker and a status report on the feral pigs problem.

The meeting is open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact General Superintendent John H. Davis, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, CA 94123.

Minutes for the meeting will be available for public inspection by October 25, 1985, in the office of the General Superintendent, Golden Gate National Recreation Area, Fort Mason, San Francisco, CA 94123.

Dated: August 26, 1985.

John D. Cherry,

Acting Regional Director, Western Region.

[FR Doc. 85–22483 Filed 9–19–85; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Reclamation

[INT–FES 85–36]

Lake Andes-Wagner Unit, South Dakota Pumping Division, Pick-Sloan Missouri Basin Program, South Dakota; Availability Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a planning report/final environmental statement on the development of the Lake Andes-Wagner Unit. This unit includes irrigation development of 45,000 acres and a fish rearing pond for enhancement of the fishery in Lake Francis Case. Copies are available for inspection at the following locations:

Director, Office of Environmental Affairs, Room 7425, Bureau of Reclamation, Washington, D.C. 20240. Telephone: (202) 343–4991.

Bureau of Reclamation Library, Code 962, Engineering and Research Center, Denver Federal Center, Denver, Colorado 80225. Telephone: (303) 236–[illegible].

Regional Director, Bureau of Reclamation, Upper Missouri Region, P.O. Box 2553, Billings, Montana 59103. Telephone: (406) 657–6214.

Single copies of the statement may be obtained on request to the Director, Office of Environmental Affairs, or the

Regional Director, at the above addresses. Copies will also be available for inspection in libraries in the project vicinity.

Dated: September 17, 1985.

Clifford I. Barrett,

Acting Commissioner.

[FR Doc. 85-22575 Filed 9-19-85; 8:45 am]

BILLING CODE 4319-09-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-240 (Final)]

Oil Country Tubular Goods From Austria

AGENCY: International Trade Commission.

ACTION: Scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby announces that a public hearing in connection with the subject investigation will be held beginning at 10:00 a.m. on November 4, 1985.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and C (19 CFR Part 207), and part 201, Subparts A through E (19 CFR part 201).

EFFECTIVE DATE: September 13, 1985.

FOR FURTHER INFORMATION CONTACT: Judith Zeck (202-523-0339), Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 1985, the Commission instituted the subject investigation and announced that the time and place of the hearing to be held in connection with the investigation would be announced at a later date (50 FR 27499, July 3, 1985). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from August 7, 1985, to October 21, 1985 (50 FR 29457, July 19, 1985). The Commission therefore is setting its schedule for the conduct of this investigation to conform with Commerce's new schedule. As provided in section 705(b)(2)(B) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(2)(B), the Commission will make its final determination in countervailing duty investigations within 45 days of Commerce's final determination, or in this case by December 4, 1985.

Staff Report

A public version of the prehearing staff report in this investigation will be placed in the public record on October 18, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on November 4, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on October 17, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on October 22, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is October 29, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

The hearing in connection with this investigation will be held concurrently with the hearing to be held in connection with the Commission's final antidumping investigation No. 731-TA-249 (Final) concerning oil country tubular goods from Austria.

Written Submission

All legal arguments, economic analyses, and factual materials revelvant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 8, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before November 8, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with section 201.8 of the Commission's rules (19 CFR 201.8). All written submission except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: September 17, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-22466 Filed 9-19-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-249 (Final)]

Oil Country Tubular Goods From Austria

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-249 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Austria of oil country tubular goods,[1] provided for in

[1] For purposes of this investigation, "oil country tubular goods" includes drill pipe, casing, and tubing for drilling oil or gas wells, of carbon or alloy steel, whether such articles are welded or seamless.

Continued

items 610.32, 610.37, 610.39, 610.40, 610.42, 610.43, 610.49, and 610.52 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before October 21, 1985, and the Commission will make its final injury determination by December 4, 1985 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: August 14, 1985.

FOR FURTHER INFORMATION CONTACT: Judith Zeck (202–523–0339), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of oil country tubular goods from Austria are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on February 28, 1985, by the United States Steel Corp., Pittsburgh, Pa. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (50 FR 16173, April 24, 1985).

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the prehearing staff report in this investigation will be placed in the public record on October 18, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on November 4, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on October 17, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on October 22, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is October 29, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

The hearing in connection with this investigation will be held concurrently with the hearing to be held in connection with the Commission's final countervailing duty investigation No. 701–TA–240 (Final) concerning oil country tubular goods from Austria.

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 8, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before November 8, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: September 17, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–22487 Filed 9–19–85; 8:45 am]

BILLING CODE 7020–02–M

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whether finished or unfinished, and whether or not meeting American Petroleum Institute (API) specifications.

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or to use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Denny's Inc., 16700 Valley View Ave., P.O. Box 605, La Mirada, CA 90637

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Proficient Food Company, 17872 Cartwright Road, Irvine, CA 92714, A California Corporation

(b) DFC Trucking Co., 17872 Cartwright Road, Irvine, CA 92714, A Texas Corporation

(c) Portion Trol Foods, Inc., 812 S. 5th Avenue, Mansfield, TX 76063, A Texas Corporation

3. Divisions:

Winchell's Donut House, 16424 Valley View, La Mirada, CA 90637

El Pollo Loco, 14111 Freeway Drive, Suite 101, Santa Fe Springs, CA 90670

1. Parent corporation and address of principal office: Halliburton Company, 2600 Southland Center, 400 N. Olive, L.B. 263, Dallas, TX 75201–0990.

2. Wholly-owned subsidiaries and divisions which will participate in the operations, and state(s) of incorporation:

A. Divisions of Halliburton Company:

a. Halliburton Services Division.

b. Halliburton Resource Management Division.

c. IMCO Services Division.

d. FreightMaster Division.

e. Welex Division.

f. Horn Construction Division.

B. Wholly-owned subsidiaries of Halliburton Company:

a. Alaska Constructors, Inc.—Alaska.

b. Brown & Root, Inc.—Texas.

i. Allied Industries, Inc.—Texas.

ii. Brown & Root Development, Inc.—Texas.

iii. Brown & Root Engineering and Construction Corporation—Texas.

iv. Brown & Root Middle East, Inc.—Texas.

v. Brown & Root Overseas, Inc.—Texas.

vi. Brown & Root, U.S.A., Inc.—Texas.

(y) Southwestern Contracting Company—Texas.

vii. Fargo Engineering Company—Michigan.

viii. Flo-Tronics, Inc.—Texas.

ix. Houston Executive Air Service, Inc.—Texas.

x. Mid-Valley, Inc.—Delaware.

xi. Missouri Resource Services, Inc.—Missouri.

xii. Petrochemicals Procurement, Inc.—Texas.

xiii. Raintree Resource Recovery, Inc.—Texas.

(z) Raintree Energy Corporation—California.

c. Chemtronics, Inc.—North Carolina.

d. Concourse Property Corporation—Texas.

e. DHS Corporation—Texas.

f. Halliburton Delaware Corporation—Delaware.

g. Halliburton Domestic International Sales Company—Delaware.

h. Halliburton International, Inc.—Texas.

i. Tecnicos-Palitos, Inc.—Texas.

j. Halliburton Industrial Services, Inc.—Delaware.

j. Halliburton Telecommunications, Inc.—Delaware.

k. Nova Pressure Services, Inc.—Delaware.

l. Highlands Insurance Company—Texas.

i. Aberdeen Insurance Company—Texas.

ii. Highlands Casualty Company—Texas.

iii. Highlands Underwriters Insurance Company—Texas.

m. GLM Mechanical Associates, Inc.—New York.

n. Howard Smith Screen Company—Texas.

o. Avon Services, Inc.—Delaware.

p. Federal Ore & Chemicals, Inc.—Delaware.

q. Jet Research Center, Inc.—Texas.

r. Joe D. Hughes, Inc.—Texas.

i. Greens Bayou Terminal, Inc.—Texas.

s. Life Insurance Company of the Southwest—Texas.

i. Cybek, Inc.—Texas.

t. Otis Engineering Corporation—Delaware.

i. Otis Latin-American, Inc.—Delaware.

u. Southern California Bonding Service, Inc.—California.

v. Taylor Diving and Salvage Co., Inc.—Louisiana.

i. Taylor Diving International Company, Inc.—Texas.

w. Underwriters Special Risks, Inc.—Texas.

i. Highlands Claims and Safety Services, Inc.—Texas.

ii. Highlands Lloyds—Texas.

iii. Transportation Recovery Services, Inc.—New York.

x. Vernon Graphics, Inc.—Delaware.

y. Wm. A. Smith Construction Co., Inc.—Texas.

i. Sharp & Fellows Construction Co., Inc.—California.

ii. Longwill-Scott, Inc.—Missouri.

1. *Parent Corporation and Address of Principal Office:*

Leviton Manufacturing Co., Inc., 59–25 Little Neck Parkway, Little Neck, New York 11362.

2. *Wholly-Owned Subsidiaries Which Will Participate in the Operations and State(s) of Incorporation.*

(i) American Insulated Wire Corp. (a Rhode Island corporation).

(ii) Pacific Electricord Co., Inc. (a California corporation).

(iii) Cable Electric Products (a Rhode Island corporation).

(iv) Northeast Cable (a Rhode Island corporation).

(v) Rhode Island Insulated Wire Co. (a Rhode Island corporation).

(vi) Southern Devices Co. (a North Carolina corporation).

(vii) Leviton of Canada, Ltd. (a Quebec, Canada corporation).

(viii) Electric Porcelain (an Ontaria, Canada corporation).

(ix) B.H.J. Trucking (a New York corporation).

1. Parent corporation and address of principal office: Verna Corporation, One 1800 Bering Drive, Suite 300, Houston, Texas 77057. State of Incorporation—Delaware.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

i. T.T. Carriers, Inc. (ICC Permit #MC177204), State of Incorporation—Texas.

ii. Permian Speciality Services, Inc. State of Incorporation—Texas.

iii. Verna Petroleum Company, State of Incorporation—Texas.

Kathleen M. King,

Acting Secretary.

[FR Doc. 85–22498 Filed 9–19–85; 8:45 am]

BILLING CODE [illegible]

[Finance Docket No. 30684]

Illinois Central Gulf Railroad Co.; Exemption From 49 U.S.C. 11342

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts Illinois Central Gulf Railroad Company from the prior approval requirements of 49 U.S.C. 11342 for its pooling arrangement with the

Missouri Pacific Railroad Company in Franklin and Williamson Counties, IL.

DATES: This exemption will be effective on October 18, 1985. Petitions for reconsideration must be filed by October 8, 1985. Petitions for stay must be filed by September 30, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30684 to:

(1) Office of the Secretery, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: John H. Doeringer, 233 N. Michigan Ave., Chicago, IL 60601

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: September 5, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Sterrett did not participate in the disposition of this proceeding. Chairman Taylor was absent and did not participate in this proceeding.

Kathleen M. King,

Acting Secretary.

[FR Doc. 85–22499 Filed 9–19–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: October 8, 1985, 9:30 a.m., Rm. S4215 A&B Frances Perkins, Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act. The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

FOR FURTHER INFORMATION, CONTACT: Fernand Lavallee, Executive Secretary, Labor Advisory Committee. Phone: (202) 523–6565.

Signed at Washington, D.C., this 12 day of September.

Robert W. Searby,

Deputy Under Secretary, International Affairs.

[FR Doc. 85–22606 Filed 9–19–85; 8:45 am]

BILLING CODE 4510–28–M

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extension, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identiification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small business or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments And Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202–523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–1301, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202–395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, D.C. 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Departmental Management
Supplemental Experience Statement
DL 1–2034
On occasion
Individuals or households; Federal agencies or employees 15,525 responses; 1.5 hours; 1 form

The form is a supplement to the basic Federal employment application form (SF–171) to elicit specific job-related information from applicants to assure that their qualifications are accurately, completely, and efficiently evaluated.

Revision

Employment and Training Administration
National Longitudinal Survey of Work Experience of Youth
Questionnaire
1205–0044; ETA RC 84
Annually
Individuals or households
10,700 respondents; 10,700 hours; no forms

The information provided in this survey will be used by the Department of Labor and other government agencies to help develop programs and policies to ease the employment, unemployment and related problems faced by young men and women in this age group.

Extension

Mine Safety and Health Administration
Examinations and Tests of Electrical Equipment
1219–0067
Weekly; monthly, and semi-annually
Businesses and other for profit; small businesses or organizations
4,925 respondents; 1,815,605 hours

Requires coal mine operators to frequently examine, test, and properly maintain all electric equipment and to keep a record of the tests, examinations, and maintenance.

State Transmittal for Application for Alien Employment Certification 1205–0182; ETA 7147

On Occasion

State or local governments

50,000; 10,000 hours; 1 form

The ETA 7147 is a description of recruitment efforts of the State agency. This form is the method for transmitting the application and supporting documentation to the Regional Certifying Officers.

Reinstatement

Employment and Training Administration

Targeted Jobs Tax Credit (TJTC) Report Forms

1205–0058; ETA 8468, 8469, 8471, 8472, 8473, 8588

On occasion; Quarterly

State or local governments; Businesses or other for profit;

Federal agencies or employees; Non-profit institutions;

Small businesses or organizations

1,552; 523,335; 6 forms

Provides data on vouchers, wage rates, target group membership, certification and eligibility verification activities as mandated by the Tax Equity and Fiscal Responsibility Act of 1982 (PL 87–248)

Collection of information in current rules

Mine Safety and Health Administration

Torque Tests of Roof Bolts

(Underground Coal Mines) Daily

Businesses and other for profit; small businesses or organizations

2,100 respondents; 124,950 hours

Requires underground coal mine operators to spot-check, on a daily basis, torques on at least 10 percent of the roof bolts from the last outby corner of the last open crosscut to the face and to keep a record of the results of the tests.

Signed at Washington, D.C. this 17th day of September, 1985.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 85–22598 Filed 9–19–85; 8:45 am]

BILLING CODE 4510–30–M; 4510–43–M

Employment and Training Administration

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letter No. 36–85

Unemployment Insurance Program Letter No. 35–85 establishes September 30, 1985 as the due date for the payment of interest due on interest-bearing Title XII advances at the end of FY 85. It also provides references and interpretive guidelines relating to sections 303(c)(3), 1202(b)(3)(A), 1202(b)(5), and 1202(b)(9) of the Social Security Act, and Section 3304(a)(17) of the Federal Unemployment Tax Act on this subject.

These interpretations clarify the establishment of due dates for any interest owed, current or future, in accordance with the amendment made by Public Law 98–21 to Section 1202(b)(3)(A) of the Act. When such due date falls on either a weekend or Federal holiday any interest due and payable must be paid on or before the next *preceding* business day.

UIPL No. 36–85 is published below.

Dated: September 13, 1985.

Roberts T. Jones,

Acting Deputy Assistant Secretary of Labor.

Date: September 12, 1985.

Directive: Unemployment Insurance Program Letter No. 36–85.

To: All State Employment Security Agencies.

From: Barbara Ann Farmer, *Acting Administrator for Regional Management.*

Subject: Payment of Interest on Title XII Loans.

1. *Purpose.* To advise States of the 1985 due date for the payment of interest on Title XII advances, and to transmit instructions for use by SESAs to calculate interest amounts due and reduction of interest due through September 30, 1985.

2. *References.* Social Security Act, section 1202(b)(3)(A), UIPL 31–83 and UIPL 30–84.

3. *Background.* Public Law 98–21 amended section 1202(b)(3)(A) of the Social Security Act to require that the payment of interest due on Title XII advances must be made before the first day of the next fiscal year. The due date for deferred interest on May through September loans remains unchanged (before December 31 of the following year) as does the date for interest due by reason of a later advance; i.e., cash flow loans repaid in full by September 30, followed by subsequent borrowings during the calendar year. All interest payment due dates (including 1202(b)(9)) are either prior to or on or before a given date, so that if interest cannot be paid on the last day it is due because that day falls on a weekend or a Federal holiday, the interest must be paid on the next preceding business day. This rule is applicable at all times, to all interest payment due dates.

The Department of Labor and the Trust/Funds Branch in the U.S. Treasury have determined and agreed that since the last day of Fiscal year 1985 falls on a Monday, any interest due and payable prior to October 1, *must be paid on or before* September 30, 1985. The rate of interest to be charged on Title XII advances during Calendar Year 1985 is 10 percent; the rate of interest for Calendar Year 1984 is 9.78 percent.

4. *Procedure.* To expedite the interest calculation and billing process at Treasury and to provide SESAs with more time at the end to transmit interest amounts due, the following procedure was initiated last year and is continued this year:

a. *Treasury Calculation and Billing of Interest Due.* September 20, 1985, has been designated as the cut-off date for the calculation of interest due. Interest will be calculated by Treasury on the outstanding balance of interest-bearing Title XII advances as of the close of business on that day and projected through September 30, 1985. This amount will be billed to the States as the amount of interest due and payable on or before September 30, 1985. Projection of interest at this point assumes no further advances or repayments after the cut-off date and through September 30, 1985. If a State receives additional advances or makes any voluntary repayments after the September 20 cut-off date, the amount billed by the Treasury must be adjusted by the SESA in accordance with the procedure in (b) and (c) below.

b. *Increased Interest Due to Advances Received After September 20, 1985.* The formula SESAs are to follow to calculate the daily interest accrual on Title XII advances received during the period September 23 through September 30, 1985, is as follows:

Interest Rate (10 percent) times 1 day divided by 365 times the advance amounts received from September 23 through September 30, 1985, and outstanding on that day equals the amount of interest due for that day (rounded to the nearest cent). This procedure must be repeated for each day such advance amounts are outstanding *from the day of receipt until and including September 30, 1985.*

The increased amount of interest due will be the sum of the daily interest

accruals resulting from the above calculations and is to be added by the SESA to the amount billed by Treasury.

c. *Reduction of Interest Amount Billed Due to Voluntary Repayments Made After September 20, 1985.* To determine the amount of interest to be *subtracted* from the amount billed by Treasury in the event a repayment(s) is made subsequent to September 20, and on or before September 30, 1985, the following procedure should be used: Perform the calculation as explained in (b) above to determine the daily interest accrual for *each repayment from the date made until and including September 30, 1985* (rounded to the nearest cent). The amount to be *subtracted* from the amount billed by Treasury will be the sum of the daily interest accruals from each day's repayment(s) as explained above. Any adjustment to the amount billed by Treasury must be documented and substantiated in a letter to the Trust/Funds Branch which must follow the interest payment immediately. Treasury will verify the transactions and adjustments and advise the State if further action is required. Accuracy in the calculation of adjustments by SESAs is essential.

d. *Important Notice.* If a discrepancy occurs which results in a late payment, the sanctions provided in section 3304(a)(17) of the Federal Unemployment Tax Act and sections 303(c)(3) and 1202(b)(5) of the Social Security Act would apply.

5 *Treasury Contacts.*

a. The billing notice to the States will include the name and telephone number of a contact person in the Trust/Funds Branch in the U.S. Treasury. Exact detailed instructions for SESAs to follow to pay the interest amount due and payable on or before September 30, 1985, will also be included in the billing letters prepared by Treasury.

b. Treasury Staff are available for consultation with SESAs at any time to verify loans, repayments, and interest charges. Correspondence to the Treasury should be mailed to: Mr. Ron Iroff, Acting Manager, Trust/Funds Branch, U.S. Treasury Department, Treasury Annex #1 Room 326, Washington, D.C. 20226.

6. *Action Required.* Agency Administrators should assure that the responsible individuals are advised of this directive; and assure that any interest due and payable on or before September 30, 1985, (or at any later time) is paid timely and in accordance with instructions provided by the U.S. Treasury Department and Federal law requirements.

7. *Inquiries.* Direct questions to the appropriate regional office.

[FR Doc. 85-22806 Filed 9-19-85; 8:45 am]
BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program: Certification of Interest Relief: Certification of States Qualifying for Partial Relief of Interest Due on Advances Under Title XII of the Social Security Act

Title XII of the Social Security Act provides for several forms of deferral of interest and a discounted rate of interest payable by States on advances received by them from the Federal unemployment account in the Unemployment Trust Fund if the States meet criteria set forth in the statute. The certification to the Secretary of the Treasury of specified States that meet the respective criteria with respect to interest due prior to October 1, 1985, is published below.

Dated: September 13, 1985.

Roberts T. Jones,

Acting Deputy Assistant Secretary of Labor.

September 10, 1985

The Honorable James A. Baker III
Secretary of the Treasury
Washington, D.C. 20220

Dear Secretary Baker: The Department of Labor has reviewed States' applications for relief from itnerest payments which are due prior to October 1, 1985. The interest relief options available to States are:

(1) *High Unemployment Deferral:* Section 1202(b)(3)(C) of the Social Security Act (SSA) allows a State to defer 75 percent of interest otherwise due if the rate of insured unemployment under the State law for the period consisting of the first six months of the preceding calendar year equaled or exceeded 7.5 percent. The State must pay 75 percent of interest otherwise due in three annual installments of at least 25 percent beginning with the year after the year in which it was due. The interest deferred does not accrue interest.

(2) *Legislative-Action Deferral:* Section 1202(b)(8) of the SSA allows a State to defer 80 percent of interest otherwise due if the State has taken no action since October 1, 1982, to reduce the State's tax effort or unemployment fund solvency and has taken action after March 31, 1982, which increases revenues to the State's unemployment fund and decreases benefits by at least 25 percent in the calendar year for which the first deferral is requested; deferrals for the second and third years immediately following the year in which the first year change is effective are available if the State produces a solvency effort of at least 35 and 50 percent, respectively. The State must pay 80 percent of interest otherwise due in four annual installments of at least 20 percent beginning with the year after the year in which it was due. Interest does not accrue on deferred interest. Once a legislative-action deferral is approved, a State must continue to maintain its solvency effort. Failure to do so will result in the State being required to make immediate payment of all deferred interest. This type of deferral remains available for 1985 payments only.

(3) *Average Tax Rate Deferral:* Section 1202(b)(8) of the SSA allows a State to defer 80 percent of interest otherwise due if the State has taken no action since October 1, 1982, to reduce the State's tax effort or unemployment fund solvency and for taxable year 1982, total State unemployment compensation revenues to the unemployment fund equaled at least two percent of total wages paid by employers covered under the State unemployment compensation law. The State must pay 80 percent of interest otherwise due in four annual installments of at least 20 percent beginning with the year after the year in which it was due. Interest does not accrue on deferred interest. This type of deferral remains available for 1985 payments only.

(4) *High Unemployment Delay of Payment Due:* Section 1202(b)(9) of the SSA allows a State to delay up to nine months the payment of interest due September 30 of any calendar year after 1982 during which the average total unemployment rate (TUR) in the State was 13.5 percent or higher for the most recent 12-month period for which data are available. The State must meet the 13.5 percent TUR requirement each succeeding year in order to delay payments nine months in such succeeding years.

(5) *Discounted Interest Rate:* Section 1202(b)(8)(D) of the SSA allows a State to receive a discounted interest rate that would be one percentage point below the interest rate that would otherwise apply. The discounted rate for interest due prior to October 1, 1985, would be 8.78 percent for interest accrued October through December 1984 and 9.00 percent for interest accrued January through September 1985. This discounted interest rate is available to a State which has taken no action since October 1, 1982, to reduce the State's tax effort or unemployment fund solvency and has taken action since March 31, 1982, which produces a solvency effort of at least 50, 80, and 90 percent rather than 25, 35, and 50 percent, respectively, as specified under the legislative-action deferral. A discounted interest rate remains available for 1985 payments only.

Regarding 1985 interest payment relief, I hereby certify that the States shown on the accompanying table meet all the criteria specified by law to qualify for the interest relief shown.

Colorado and Kentucky have qualified for deferral of interest in previous years, have taken no action to reduce solvency, and thus meet the requirements to continue the installment payment of interest. The District of Columbia and North Dakota have failed to maintain their respective levels of solvency effort and accordingly, all deferred interest payments are due prior to October 1, 1985.

Sincerely,
Carolyn M. Golding,
Director, Unemployment Insurance Service.

State	Interest relief
Illinois	Legislative-Action Deferral.
Michigan	Legislative-Action Deferral, Discounted Rate
Montana	Discounted Rate
Ohio	Legislative-Action Deferral
Pennsylvania	Legislative-Action Deferral
West Virginia	Average Tax Rate Deferral, High Unemployment Delay
Wisconsin	Legislative-Action Deferral, Discounted Rate

[FR Doc. 85-22607 Filed 9-19-85; 8:45 am]
BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Conformity/Compliance Notice of Hearing and Rules of Procedure—California

Letters have been sent by the Secretary of Labor to the Governor and the head of the employment security agency of the State of California announcing the commencement of conformity and compliance proceedings under the Federal Unemployment Tax Act (Chapter 23 of the Internal Revenue Code of 1954) and Title III of the Social Security Act. The notice of hearing to California, and the rules of procedure to govern those conformity/compliance proceedings, are published below.

Dated: September 16, 1985.
Roberts T. Jones,
Acting Deputy Assistant Secretary of Labor.

DEPARTMENT OF LABOR

Office of the Secretary

State of California Department of Employment Development

Notice of Hearing

This notice announces an opportunity for a hearing for the State of California Department of Employment Development pursuant to section 303(b) of the Social Security Act, 42 U.S.C. 503(b), sections 3303(b) and 3304(c) of the Internal revenue Code of 1954, 26 U.S.C. 3303(b), 3304(c), and 20 CFR 601.5, to be held at 9:00 o'clock on the morning of October 2, 1985, in Courtroom A in the Vanguard Building, 1111 20th Street, NW., Washington, DC. The State agency will have an opportunity to make a record.

Issues

The hearing will be on the following issues:

Issue 1: Whether, with respect to certification of State laws on October 31, 1985, under section 3303(b) of the Internal Revenue Code of 1954, 26 U.S.C. 3303(b), the law of the State of California has been amended so that it no longer contains the provisions specified in section 3303(a) of the Internal Revenue Code of 1954, 26 U.S.C. 3303(a), or the State has, with respect to the 12-month period ending on such October 31, failed to comply substantially with any such provision.

Basis of Issue: Section 3303(a)(1) of the Internal Revenue Code of 1954 provides:

(a) STATE STANDARDS.—A taxpayer shall be allowed respect to any reduced rate of contributions permitted by a State law, only if the Secretary of Labor finds that under such law—

(1) no reduced rate of contributions to a pooled fund or to a partially pooled account is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the 3 consecutive years immediately preceding the computation date . . . .

This provision has been consistently interpreted to require that a State law must rate all employers entitled to reduced rates on the basis of their experience during the same specified period with the same single factor (or combination of factors which taken together constitute a single factor) bearing a direct relation to unemployment risk.

Section 978.1 of the California Unemployment Insurance Code provides:

In lieu of contributions required by Section 977 or 978, an employer, except an employer as defined by Sections 676, 684, or 685, whose average base payroll has increased on a computation date 25 percent or more above the employer's average base payroll on the preceding computation date, shall pay into the Unemployment Fund contributions with respect to wages paid for employment at the next lower rate than the rate applicable to other employers for the calendar year but not less than the lowest rate on the applicable schedule in subdivision (a) of Section 977. This section does not apply to any employer who has a negative reserve account balance on the computation date.

Under section 978.1, a reduction in rates for some employers would be based on a factor (an increase in payroll) different from the factor otherwise used in California to measure an employer's experience with the risk of unemployment. An increase in payroll is not a factor bearing a direct relation to unemployment risk in the context of California's reserve ratio experience rating system which uses a ratio between an employer's reserve (the difference between contributions paid and benefits charged) and the employer's payroll. Since the same factor (or combination of factors constituting a single factor) would not be used to rate all employers during the same period, it would be possible for two employers with identical reserve ratios to be assessed two different rates due simply to one employer having had a 25 percent expansion in payroll in the past year.

Issue 2: Whether, with respect to certification of States on October 31, 1985, under section 3304(c) of the Internal Revenue Code of 1954, 26 U.S.C. 3304(c) the law of the State of California has been amended so that it no longer contains the provisions specified in section 3304(a)(6)(A) of the Internal Revenue Code of 1954, 26 U.S.C. 3304(a)(6)(A), or the State has, with respect to the 12-month period ending on such October 31, failed to comply substantially with any such provision.

Basis of issue: Section 3304(a)(6)(A) of the Internal Revenue Code of 1954 requires State laws to provide, in pertinent part, that individuals performing services in a non-professional capacity for a State, local government or non-profit educational institution, or performing such services in such an educational institution while in the employ of an educational service agency, are to be denied unemployment compensation for weeks commencing during any period between two successive academic years or terms or during any established and customary vacation period or holiday recess, if there is a reasonable assurance that the individuals will perform such services in the second of those academic years or terms or immediately following that vacation period or holiday recess.

Section 1253.4(i) [prior to January 1, 1985, section 1253.4(g)] of the California Unemployment Insurance Code provides:

Subdivisions (b), (c), (d), and (f) [which incorporate in the California law the within and between terms disqualifications for benefits required by section 3304(a)(6)(A) of the Federal statute] do not apply to nonprofessional workers employed by the Fremont or Riverside campus of the California School for the Deaf, the Fremont campus of the California School for the Blind, or the diagnostic schools for the neurologically handicapped located in Los Angeles, San Francisco, and Fresno. These nonprofessional workers are not defined as school employees.

Therefore, the California law fails to apply fully the disqualifications for benefits required by section 3304(a)(6)(A), since the schools mentioned in the California provision are clearly "educational institutions" within the meaning of the Federal law.

Issue 3: Whether, with respect to certification for payment of grant moneys under section 302(a) of the Social Security Act, 42 U.S.C. 502(a), and with respect to certification of States on October 31, 1985, under section 3304(c) of the Internal Revenue Code of 1954, 26 U.S.C. 3304(c), the law of the State of California has been amended so that it no longer includes the provisions specified in section 303(a)(5) of the Social Security Act, 42 U.S.C. 503(a)(5), and section 3304(a)(4) of the Internal Revenue Code of 1954, 26 U.S.C. 3304(a)(4), or the State has failed to comply substantially with any such provision.

Basis of issue: Section 303(a)(5) of the Social Security Act requires State laws to provide, in pertinent part, for "[e]xpenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation. . . ." Similarly, section 3304(a)(4) of the Internal Revenue Code of 1954 requires State laws to provide, in pertinent part, that "all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation. . . ." The term "compensation" is defined in section 3306(h) of the latter statute as "cash benefits payable to individuals with respect to their unemployment." The legislative history of the

Social Security Act and the interpretation of these provisions since their enactment make it clear that they require the unemployment compensation to be paid only to individuals who are available for work and are unemployed due to lack of work.

However, section 1253.9 of the California Unemployment Insurance Code provides:

An unemployed individual otherwise eligible for unemployment compensation benefits under this part shall not be denied these benefits in any week because of the application of any provisions of the law of this state relating to availability for work, active search for work, or refusal to accept suitable work, if the director finds that the individual is actively participating in a good-faith effort to form an employee-owned corporation as defined in Section 91502.1 of the Government Code, in order to return to his or her most recent employment. The individual shall be eligible pursuant to this section until the individual returns to work in the employee-owned corporation which has begun operation, or the good-faith effort fails, or until 26 weeks of benefits have been paid, whichever occurs first.

This provision appears to permit the payment of unemployment compensation to individuals even if they fail to apply for suitable work or refuse such work, and thus permits benefits to be paid to those who are not available for work or unemployed due to lack of work.

These Proceedings

Following the hearing a decision will made which will have a bearing on whether California and the California law are certifiable on October 31, 1985, with respect to normal and additional tax credits allowable to the State's employers pursuant to subsections (a) and (b) of section 3302 of the Internal Revenue Code of 1954, 26 U.S.C. 3302 (a) and (b), for the taxable year 1985, and will also have a bearing on whether further payments of grants funds may be made to the State under section 302(a) of the Social Security Act, 42 U.S.C. 502(a), and section 5(b) of the Wagner-Peyser Act, 29 U.S.C. 49d(b).

The proceedings in this matter shall be in accordance with the Rules of Procedure accompanying this notice.

For purposes of this hearing, all motions, briefs, and other papers shall be filed, pursuant to the above-referenced Rules of Procedure, with the presiding Administrative Law Judge, U.S. Department of Labor, Suite 700, Vanguard Building, 1111 20th Street, NW., Washington, DC 20036, who will be designated in accordance with the Rules of Procedure.

Counsel for the California Department of Employment Development shall enter an appearance with the presiding Administrative Law Judge not later than September 17, 1985; a copy shall be provided to William H. DuRoss III, Associate Solicitor for Employment and Training, 200 Constitution Avenue, NW., Washington, DC 20210, as expeditiously as possible.

Counsel for the U.S. Department of Labor shall enter an appearance with the presiding Administrative Law Judge no later than September 17, 1985; a copy shall be provided to the California Department of Employment Development as expeditiously as possible.

Signed at Washington, DC, on September 10, 1985.

William E. Brock,

Secretary of Labor.

DEPARTMENT OF LABOR

Office of the Secretary

Federal-State Unemployment Compensation Program

Rules of Procedure for Conformity/ Compliance Proceedings

1. An Administrative Law Judge will be designated by the Chief Administrative Law Judge, United States Department of Labor, to preside over the hearing and perform the functions required by these Rules.

2. The parties of record shall be the State agency (or agencies) (as defined in 26 U.S.C. 3306(e)) named in the Notice of Hearing and the U.S. Department of Labor.

3. Any non-party State agency, individual worker, employer, or organization, association of workers or employers, or member of the public, asserting an interest in the proceedings, may be permitted by the presiding Administrative Law Judge, upon motion granted, to participate in the hearing as amicus curiae only. Participation by any amicus curiae shall be limited to the submittal of such briefs as may be directed by the presiding Administrative Law Judge. All motions contemplated by this Rule shall be filed with the presiding Administrative Law Judge no later than two (2) days prior to the scheduled hearing, and shall be served upon and received by each party prior to the hearing. The presiding Administrative Law Judge shall rule on all such motions and inform the applicants and the parties of the rulings prior to the hearing or at the beginning of the hearing.

4. The presiding Administrative Law Judge may issue an appropriate prehearing order governing all issues to be raised in the proceedings, and designation of evidence to be offered at the hearing.

5. The hearing will be conducted in an informal but orderly and expeditious manner. The presiding Administrative Law Judge will regulate all matters pertaining to the course and conduct of the proceedings, and may grant extensions of time regarding the submission of briefs and other papers, and may reschedule the hearing for another time or date for good cause shown.

6. Upon the commencement of the hearing, the U.S. Department of Labor will be offered an opportunity to make an opening statement as to the nature of the hearing and the matter(s) in issue. The State agency shall then be offered a similar opportunity to make an opening statement.

7. The order of the presentation of evidence will be as follows:

(a) The U.S. Department of Labor will proceed first by presenting any evidence it may wish to offer which is relevant to the issue(s) specified in the Notice of Hearing.

(b) The State agency will proceed next to present any evidence it may wish to offer which is relevant to the issue(s) referred to in Rule 7(a) above, followed by any evidence relevant to any additional issue, except that evidence regarding any issue other than the issue(s) referred to in the Notice of Hearing may be admitted only if the party offering such evidence has provided notice of such issue and a summary of such evidence, including a copy of any document to be offered, to each opposing party of record, at least three business days prior to the hearing.

(c) The U.S. Department of Labor may next present relevant evidence in rebuttal on any issue, and the trial record shall thereafter be closed, except as provided for by Rule 9 below.

8. Technical rules of evidence shall not apply to the hearing. The presiding Administrative Law Judge will rule upon offers of proof and the admissibility of evidence, and may exclude irrelevant, immaterial, or unduly repetitious evidence or any other evidence excludable under these Rules, and may examine witnesses. All writings, charts, tabulations, and similar data offered in evidence at the hearing shall, upon a satisfactory showing of their authenticity, relevancy, materiality,and admissibility under these Rules, be received in evidence.

9. During the hearing, the presiding Administrative Law Judge may require the production and introduction of further evidence upon any relevant matter, and may provide for the later receipt of such evidence or any other evidence for the record.

10. The proceedings at the hearing shall be recorded verbatim. The original and one copy of the transcript of the record of the hearing shall be furnished to the presiding Administrative Law Judge. The parties of record and any amicus curiae shall be entitled to secure a copy of the transcript from the reporter upon such terms as the party or amicus may arrange.

11. When any document is offered in evidence, one additional copy thereof shall be furnished to the presiding Administrative Law Judge and, unless previously provided, a copy shall be furnished to each opposing party of record.

12. (a) At the conclusion of the receipt of evidence, the presiding Administrative Law Judge shall hear oral arguments presented by the parties of record.

(b) Oral arguments shall be in the following order: Opening argument for the U.S. Department of Labor, unless waived; argument for the State agency, unless waived; and closing argument for the U.S. Department of Labor, unless waived.

13. The parties of record and any amicus curiae authorized to participate in the proceedings shall be permitted to file briefs. The parties of record may also file reply briefs and proposed findings of fact and conclusions of law on the matters in issue. All such briefs and other papers shall be filed with the presiding Administrative Law Judge, with proof of service, within such time periods as are established by the presiding Administrative Law Judge.

14. As soon as possible, but in no event later than October 11, 1985 (unless the hearing is rescheduled or the proceedigs are otherwise delayed pursuant to Rule 5 above), the presiding Administrative Law Judge shall: (1) Prepare a recommended decision on the

basis of the record containing recommended findings of fact and conclusions of law on all issues raised by the parties; (2) certify to the Secretary of Labor such recommended decision and the entire record of the proceedings; and (3) forward a copy of the recommended decision to each party of record and amicus curiae. No conclusions of law regarding either the constitutionality of any Federal or State statute or the constitutionality of interpretation thereof shall be made.

15. The parties of record may file with the Secretary of Labor a Statement of Exceptions, with proof of service, setting forth any exceptions they may have to the recommended decision, within seven (7) days after service by mail of the recommended decision. In the absence of timely filing and sufficient proof of service on other parties, a Statement of Exceptions filed by a party shall not be considered by the Secretary of Labor in making his decision.

16. (a) Any briefs or other papers intended to be filed of record in the proceedings shall be mailed or otherwise delivered to the presiding Administrative Law Judge or the Secretary of Labor, as specified in their Rules. Unless otherwise ordered, such documents shall be deemed to be filed on the date they are post-marked if transmitted by the United States Postal Service, and shall be deemed to be filed on the date received if transmitted by any other means.

(b) An original and one copy of any brief or other paper shall be filed with the presiding Administrative Law Judge and shall be accepted subject to timely filing with proof of sufficient service upon the opposing parties.

(c) If the last day of a time limit prescribed by these Rules or established by the presiding Administrative Law Judge falls on a Saturday, Sunday, or a federal holiday, the time limit shall be extended to the next official business day.

17. Following the certification in accordance with Rule 14 above, and consideration of any Statement of Exceptions filed and served in accordance with Rules 15 and 16, the Secretary of Labor shall render a decision in the matter, in writing, and shall forward the decision together with the record to the Chief Administrative Law Judge, and shall forward copies of his decision to the Governor of the State, to each party of record, and to any amicus curiae authorized to participate in the proceedings.

[FR Doc. 85-22800 Filed 9-19-85; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Ethics and Values in Science and Technology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Ethics and Values in Science and Technology.

Date and time: October 10-11, 1985. Room 628—National Science Foundation. October 10: 2 p.m.-5 p.m. October 11: 8:30 a.m.-4 p.m.

Type of meeting: Open.

Summary minutes: Contact Rachelle Hollander, Ethics and Values Program, National Science Foundation, Washington, D.C. 20550.

Purpose of meeting: To provide advice and recommendations concerning research and related activities in this field.

Agenda: Discussion of current status and future plans to encourage research on ethical or value issues in science or technology.

M. Rebecca Winkler,

Committee Management Officer.

September 17, 1985.

[FR Doc. 85-22556 Filed 9-19-85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Metabolic Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Metabolic Biology.

Date and time: October 10, 11 and 12, 1985 9:00 am-5:00 pm.

Place: Marine Biological Laboratories, Wood Hole, MA.

Type of meeting: Closed.

Contact person: Dr. William van B. Robertson, Metabolic Biology Program, Room 325, National Science Foundation, Wash., DC 20050, Telephone (202) 357-7987.

Purpose of advisory panel: To provide advice and recommendations concerning support for research in metabolic biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to closed meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

September 17, 1985.

[FR Doc. 85-22557 Filed 9-19-85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Population Biology and Physiological Ecology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Population Biology and Physiological Ecology.

Date and time: October 10 and 11, 1985—8:30 a.m. to 5:00 p.m. each day.

Place: Room 1141, National Science Foundation, 1800 G St., NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. James P. Collins, Program Director, Population Biology and Physiological Ecology (202) 357-9728, Room 1140, National Science Foundation, Washington, D.C. 20550.

Purpose of panel: To provide advice and recommendations concerning support for research in population biology and physiological ecology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process of awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Governmnet in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

September 17, 1985.

[FR Doc. 85-22558 Filed 9-19-85; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Regulatory Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Regulatory Biology.

Date and time: October 9, 10, and 11, 1985 8:30 a.m. to 6:00 p.m.

Place: National Science Foundation, Room 1242B.

Type of meeting: Closed.

Contact person: Dr. Lewis Greenwald, Program Director, Regulatory Biology Program, Room 332, National Science Foundation, Washington, D.C. 20550. Telephone 202/357-7975.

Purpose of advisory panel: To provide advice and recommendations concerning support for research in regulatory biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

September 17, 1985.

[FR Doc. 85–22559 Filed 9–19–85; 8:45 am]

BILLING CODE 7555-0-M

Advisory Panel for Systematic Biology; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Systematic Biology.

Date and time: October 7 & 8, 1985–8:30 a.m. to 5:00 p.m. each day.

Place: Room 1141, National Science Foundation, 1800 G St., NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. James E. Rodman, Program Director, Systematic Biology (202) 357–9588, Room 1140, National Science Foundation, Washington, D.C. 20550.

Purpose of panel: To provide advice and recommendations concerning support for research in systematic biology.

Agenda: Review and evaluation of research proposals and projects as part of the selection process or awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

September 17, 1985.

[FR Doc. 85–22560 Filed 9–19–85; 8:45 am]

BILLING CODE 7555-01-M

Cell Biology Program; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting.

Name: Advisory Panel for Cell Biology.

Date and time: October 9, 10, 11, 1985, starting at 8:30 A.M.

Place: Room 523, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Arnold Kaplan, Program Director, Cell Biology Program, Room 332–G, National Science Foundation, Washington, D.C., 20550, telephone 202/357–7474.

Purpose of advisory panel: To provide advice and recommendations concerning suport of research in cell biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government is the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, July 6, 1979.

September 17, 1985.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 85–22555 Filed 9–19–85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–528 and 50–529]

Arizona Public Service Co., et al. (Palo Verde Nuclear Generating Station, Units 1 and 2); Issuance of Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has denied a Petition filed under 10 CFR 2.206 by Myron L. Scott on behalf of the Coalition for Responsible Energy Education regarding the Palo Verde Nuclear Generating Station (PVNGS), Units 1 and 2. The Petitioner requested that (1) an order be issued to the Arizona Public Service Company to show why the Operating License for PVNGS Unit 1 and the Construction Permit for PVNGS Unit 2 should not be suspended and (2) future licensing activities for PVNGS Units 1 and 2 be deferred, pending completion of certain actions relating to spray pond piping corrosion at PVNGS Units 1 and 2. As a basis for the Petition, the Petitioner alleged that the corrosion will reduce the margin of safety for the spray pond system to below acceptable levels and may have adversely affected other safety-related systems.

The Staff has considered the Petitioner's allegations and has determined that they do not provide an adequate basis for the relief requested. The reasons are fully described in a "Director's Decision Under 10 CFR 2.206," (DD–85–15), which is available for public inspection at the Commission's Public Document Room located at 1717 H street, N.W., Washington, DC 20555, and at the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c)

Dated at Bethesda, Maryland, this 16th day of September 1985.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85–22565 Filed 9–19–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–440 OL & 50–441 OL]

Cleveland Electric Illuminating Co., et al. (Perry Nuclear Power Plant, Units 1 & 2); Reconstitution of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has reconstituted the Atomic Safety and Licensing Appeal Board for this operating license proceeding. As reconstituted, the Appeal Board for this operating license proceeding will consist of the following members:

Alan S. Rosenthal, Chairman,
Dr. W. Reed Johnson,
Howard A. Wilber

Dated: September 16, 1985.

Barbara A. Tompkins,

Secretary to the Appeal Board.

[FR Doc. 85-22594 Filed 9-19-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos.: STN 50-491, STN 50-492 and STN 50-493

Duke Power Co. (Cherokee Nuclear Station, Units 1, 2 & 3); Order Revoking Construction Permits and Terminating Proceedings

I

On December 30, 1977, The United States Nuclear Regulatory Commission (Commission) issued Construction Permits Nos. CPPR-167, CPPR-168 and CPPR-169 to Duke Power Company, authorizing construction of three nuclear power reactors at a site in eastern Cherokee County, South Carolina. A Limited Work Authorization had been issued by the Commission on July 28, 1977.

II

On September 21, 1983, Duke Power Company surrendered the construction permits and requested that the dockets be deleted. The letter indicated that Cherokee 2 and 3 were cancelled November 2, 1982, and Duke Power Company's Board of Directors announced cancellation of Cherokee Unit 1 on April 29, 1983. A stabilization plan was also transmitted by the September 21 letter. Duke Power Company also filed a motion to the Atomic Safety and Licensing Appeal Board on October 4, 1983, requesting termination of its appellate jurisdiction.

III

Duke Power Company stated that the site stabilization plan transmitted by its September 21, 1983 letter "provided for stabilization of the site for the short term and control of unauthorized access and prevention of unauthorized use. The plan will remain in effect until the most appropriate long-term use of the site is determined, at which time it will be incorporated into that use." Based on its review of the site stabilization plan, responses to a request by the staff for additional information, staff inspection of the site, and a commitment by Duke Power Company to regrade and reseed two areas along the transmission corridor right-of-way, the staff concludes that there will be no significant detrimental environmental impact to offsite areas. For further details concerning the staff's review, see the report of the review of the Site Stabilization Plan attached to the letter to Duke Power Company dated September 12, 1985.

By Memorandum and Order dated October 12, 1983 (ALAB-745), the Atomic Safety and Licensing Appeal Board granted the motion by Duke Power Company.

IV

For the reasons set forth above, it is hereby ordered that Construction Permits Nos. CPPR-167, CPPR-168 and CPPR-169 are revoked.

This Order is effective upon issuance.

Dated at Bethesda, Mayland, this 12th day of September, 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Division of Licensing.

[FR Doc. 85-22566 Filed 9-19-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320]

General Public Utilities Nuclear Corp., Environmental Assessment and Notice of Finding of No Significant Environmental Impact

The U.S. Nuclear Regulatory Commission (the Commission) is planning to issue an Exemption from certain regulations relative to the Facility Operating License No. DPR-73, issued to General Public Utilities Nuclear Corporation (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 2 (TMI-2), located in Londonderry Township, Dauphin County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action: The action being considered by the Commission is the granting of exemptions from the inventory, record keeping and reporting requirements of 10 CFR 30.51, 40.61, 70.51(d), and 70.53 for core special nuclear, source and byproduct materials. Specifically, 10 CFR 30.51 and 40.61 require the maintenance of records showing the receipt, transfer and disposal of source or byproduct material. 10 CFR 70.51(d) specifies the requirements for the periodic conduct of a physical inventory of all special nuclear material in a licensee's possession. 10 CFR 70.53 specifies the requirements for the periodic submittal of a Material Balance Report and a Physical Inventory Listing for special nuclear material (SNM).

The Need for the Action: Given the severely damaged condition of the TMI-2 core fuel, the dislocation of fuel material from its original location in the reactor pressure vessel, and the nonhomogeneity of the dislocated material which has settled into plies of rubble at the bottom of the containment vessel, the licensee is unable to determine the bulk quantity of material in the vessel or the obtain representative samples for determination of source, byproduct, and SNM content in compliance with the core accountability requirements of 10 CFR 30.51, 40.61, 70.51(d) and 70.53. Accordingly, some relief from the Commission's regulatory requirements related to core accountability is warranted.

Environmental Impacts of the Proposed Actions: The staff has evaluated the exemptions and concluded that, as the exemptions are related to record keeping and reporting requirements, there are no significant radiological or nonradiological impacts to the environment as a result of this action.

Alternate of This Action: Since we have concluded that there is no significant environmental impact associated with the exemptions, any alternatives will have either no significant environmental impact or greater environmental impact. Alternatives to the exemptions would not reduce present environmental impacts of plant operations and would result in the application of overly restrictive regulatory requirements when considering the unique conditions of TMI-2.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Alternate Use of Resources: This action does not involve the use of resources not previously considered in connection with the Final Programmatic Impact Statement for TMI-2 dated March 1981.

Finding of No Significant Impact: The Commission has determined not to prepare an environmental impact statement for the subject Exemption. Based upon the foregoing environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action see: (1) Letter from F.R. Standerfer, GPUNC, to B.J. Snyder, USNRC, Core Accountability Exemption Request, dated April 18, 1985.

The above documents are available for inspection at the Commission's Local Public Document Room, 1717 H Street, NW., Washington, DC, and the Commission's Local Public Document Room at the State Library of Pennsylvania, Government Publications Section, Education Building,

Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

For the Nuclear Regulatory Commission.

Bernard J. Snyder,

Program Director, Three Mile Island Program Office, Office of Nuclear Reactor Regulation.

[FR Doc. 85-22585 Filed 9-19-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14721; File No. 811-4046]

Federated Mortgage Securities Income Fund; Application for an Order Declaring That Applicant Has Ceased To Be an Investment Company

September 13, 1985.

Notice is hereby given that Federated Mortgage Securities Income Fund ("Applicant"), 421 Seventh Avenue, Pittsburgh, PA 15219, registered as an open/end, diversified, management investment company under the Investment Company Act of 1940 (the "Act"), filed an application on August 29, 1985, requesting an order of the Commission, pursuant to section 8(f) of the Act, declaring that it has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the applicable provisions thereof.

According to the application, Applicant was organized on May 10, 1984, and registered under the Act by filing a Form N-8A Notification of Registration on June 6, 1984. Applicant states that it filed a registration statement pursuant to section 8(b) of the Act of June 7, 1984, but that it has never made a public offering, has no securityholders and has retained no assets. Applicant further represents that it is not a party to any litigation or administrative proceeding and does not intend to engage in any business activities other than those necessary to effectuate the winding up of its business and affairs. Applicant states that, pursuant to the approval of its Trustees, and in accordance with the laws of the Commonwealth of Massachusetts, it was dissolved and ceased to exist on June 14, 1985.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 8, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of the interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-22501 Filed 9-19-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-5731]

Issuer Delisting; Application To Withdraw From Listing and Registration; Willcox & Gibbs, Inc.

September 13, 1985.

The above name issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the Common Stock, $1.00 Par Value, of Willcox & Gibbs, Inc. ("Company") from listing and registration on the American Stock Exchange, Inc.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the New York Stock Exchange and the American Stock Exchange. Willcox & Gibbs, Inc. does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before September 27, 1985 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-22502 Filed 9-19-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22404; File Nos. SR-NASD-85-5, 85-10 and 85-21]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Changes and Granting Accelerated Approval to Proposed Rule Change Relating to Index Options

I. Background

On June 28 and December 1, 1982, the National Association of Securities Dealers, Inc. ("NASD") submitted to the Commission copies of Amendments Nos. 1 and 2 to a proposed rule change (File No. SR-NASD-80-10) [1] pursuant to section 19(b)(2) of the Securities Exchange Act of 1934 [2] and Rule 19b-4 thereunder [3] to trade standardized put and call options on certain indexes composed of OTC stocks.[4] On March 19, 1985, the NASD submitted to the Commission copies of Amendment No. 3 to File No. SR-NASD-80-10 to adopt various rules that would govern the trading in NASDAQ of stock index options.[5] On March 20, 1985, the NASD submitted to the Commission a new proposed rule change (File No. SR-NASD-85-5) pursuant to section 19(b)(2) of the Act and Rule 19b-4 thereunder to trade through NASDAQ facilities options on the "NASDAQ 100-Index," [6] an index composed of the 100 largest non-financial National Market System ("NMS") Securities.[7]

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[1] The original proposed rule change, contained in File No. SR-NASD-80-10, related to options on individual over-the-counter ("OTC") stocks. The original filing was noticed in Securities Exchange Act Release No. 16979 (July 15, 1980), 45 FR 53295.

[2] 15 U.S.C. 78s(b)(1)(1982).

[3] 17 CFR 240.19b-4 (1985).

[4] Amendments Nos. 1 and 2 were noticed in Securities Exchange Act Release Nos. 19317 and 19330, (July 28 and December 31, 1982), 47 FR 33575 and 57812.

[5] Amendment No. 3 was noticed in Securities Exchange Act Release No. 21691 (March 25, 1985), 50 FR 12673. Prior to filing Amendment No. 3 the NASD also had indicated its intent to make certain changes to its index option filing. *See* letter from Gordon S. Macklin, President, NASD, to George A. Fitzsimmons, Secretary, SEC, dated June 15, 1984.

[6] File No. SR-NASD-85-5, noticed in Securities Exchange Act Release No. 21690 (March 25, 1985), 50 FR 12672.

[7] *See* Rule 11Aa2-1 under the Act, 17 CFR 240.11Aa2-1 (1984) regarding the designation of OTC stocks as NMS Securities.

On May 8, 1985, the Commission issued a release in which the Commission, among other things, indicated approval in concept of the NASD's index options proposal, including the NASDAQ–100 Index.[8] In the OTC Options Release, the Commission also indicated that the NASD would need to submit certain additional rules relating to index options as well as an adequate surveillance plan before the Commission could approve the NASD's index options proposal.[9]

On May 6, 1985, the NASD submitted to the Commission another proposed rule change (File No. SR–NASD–85–10) pursuant to section 19(b)(2) of the Act and Rule 19b–4 thereunder to trade through NASDAQ facilities options on the "NASDAQ Financial Index," and index composed of Securities of 100 of the largest operating NMS financial companies.[10] Finally, on August 2, 1985, the NASD submitted to the Commission pursuant to section 19(b)(2) of the Act and Rule 19b–4 thereunder a proposed rule change (File No. SR–NASD–85–21) incorporating the index options rules and procedures previously contained File No. SR–NASD–80–10 and making certain changes and additions to those rules and procedures.[11] The NASD requested accelerated approval of this filing in order to permit the NASD to commence trading the NASDAQ–100 and Financial Index options contracts by early September.

For the reasons discussed below, the Commission is approving the two specific contracts proposed in File Nos. SR–NASD–85–5 and 85–10 and granting accelerated approval to the proposal contained in File No. SR–NASD–85–21.[12]

II. Description of the Proposals

A. The Two Contracts

The NASDAQ 100-Index is composed of the 100 largest non-financial NMS Securities with an minimum market value of $100 million. The Index would be limited to one issue per company and would include both domestic and foreign NMS Securities. Any security included in the index which is deleted from NASDAQ or NMS status would be replaced by the next largest non-financial NMS security not in the index.

The index would be weighted by capitalization. Thus, the representation of each security in the index is proportional to its market capitalization (*i.e.*, last sale price times the total number of publicly held shares outstanding) in relation to the total market value of the index. Adjustments to the index for securities being added or deleted or for capitalization changes would be handled so that they will not, in and of themselves, alter the level of the Index. The Index's base value was calculated as of February 1, 1985, and was set at 250. A multiplier of $100 would be used for the index option [13] and the options would expire in three consecutive months.

The most highly capitalized stock in the index, as of March 29, 1985, accounted for 5.74% of the total capitalization of the index. The five most highly capitalized issues in the index together accounted for 17.18% of the total index capitalization.[14] In addition, more than 20 industry groups are represented in the index.[15]

The NASD Financial Index is composed of 100 securities of the largest domestic and foreign operating financial companies included in the NMS as of February 1, 1985. No more than one issue of a particular company will be included in the Index, and the minimum market value of the public float of the issue must be $100 million. The Index would be capitalization weighted, with adjustments to the Index value made in the same manner and circumstances as described above for the NASDAQ 100 Index. The Index's base value was calculated as of February 1, 1985, and was set at 250. A multiplier of 100 would be used, and options on the Index would trade in three consecutive months.

The most highly capitalized stock in the Index as of March 29, 1981, accounted for 4.56% of the total capitalization of Index. The five most highly capitalized issues in the Index together accounted for 15.9% of the total Index capitalization.[16]

B. Proposed Index Options Rules

Trading in NASDAQ Index options in general would be governed by the same rules and procedures as currently apply to OTC stock trading, with certain enhancements. Thus, these Index options will trade in a multiple market maker system, with quotations entered into NASDAQ by market makers, the best bid and offer publicly disseminated, and executions negotiated over the phone. Quotations would be firm for one contract.[17]

Trades in NASDAQ Index options, unlike those in OTC stocks, would be subject to reporting and clearing via the NASD's proposed Order Confirmation Transactions ("OCT") and Internalized Trade Transactions ("ITT") procedures. All NASDAQ Index options transactions will be required to be reported through these systems. Under the OCT procedures, after the trade is negotiated over the phone the order entry firm enters the trade detail into its NASDAQ terminal and the message is routed to the market makers. The market maker then has two minutes to confirm the trade. If it does so, the trade is reported automatically to the Options Price Reporting Authority ("OPRA"), and is locked-in for clearing purposes. If the market maker fails to confirm the trade within two minutes, the trade "times out," or is broken.[18] Whether the market maker confirms within two minutes or not, the system will capture the messages for surveillance purposes. The ITT procedures are used for internalized trades.

The NASD also proposes to require that there be at least five market makers in an index class before trading in the option can commence, and that no new series could be authorized unless there are at least three market makers. The NASD also would impose on index options market makers quote commitment rules which would require index options market makers to quote continuously all index options in which they make markets through the completion of all expiration cycles which are open for trading in such markets at the time the market maker's registration becomes effective. This

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[8] Securities Exchange Act Release No. 22026 (May 8, 1985), 50 FR 20310 ("OTC Options Release").

[9] *Id.*, 50 FR at 20328.

[10] File No. SR–NASD–85–10, noticed in Securities Exchange Release No. 22065 (May 22, 1985), 50 FR 21678.

[11] File No. SR–NASD–85–21, noticed in Securities Exchange Act Release No 22292 (August 6, 1985), 50 FR 32936 (August 15, 1985).

[12] While comments have been received regarding the NASD's index options proposal, as discussed below (*see* note 33, *infra*), the NASD has either addressed these comments or avoided raising the concern expressed by the commentators by seeking to trade options only on board-based indexes composed of NMS Securities .

[13] The multiplier is the amount by which the index value is multiplied to obtain the aggregate contract value; thus, if the index value is 250 and the multiplier is 100, the contract is worth $25,000.

[14] Telephone conversation between Peter Canada, NASD, and Alden Adkins, Attorney, Division of Market Regulation, August 9, 1985.

[15] Exhibit 2 to File No. SR–NASD–85–5. The Commission notes that the Chicago Board of Trade, pursuant to an agreement with the NASD, has applied for contract market designation for futures on this index and the Commission has commented favorably upon this application under the provisions of section 2(a)(1)(B) of the Commodity Exchange Act, 5 U.S.C. 2a(1)(B) (1982). That application is currently pending before the Commodity Futures Trading Commission.

[16] Telephone conversation between Peter Canada, NASD, and Alden Adkins, Attorney, Division of Market Regulation, August 9, 1985.

[17] Under the original NASD proposal, quotations would have been firm for three contracts.

[18] These systems also allow for cancellation of trades by mutual agreement in the event an incorrect message is inadvertently accepted.

obligation also would apply to any new series added in the expiration cycles during the term of the market maker's commitment.[19] If the market maker elects to commence quotations in options series in a subsequent expiration cycle, the market maker's commitment to quote index options continuously would extend through the expiration of such index options. Violation of these rules would result in revocation of the member's market maker registration and a bar against re-registration until the expiration of both the near term expiration month and the expiration month that follows.[20] The NASD also proposes to impose on NASDAQ index options market makers quote spread and price continuity parameters comparable to those of the options exchange.[21]

In all other respects, the rules applicable to NASDAQ index options will be substantially identical to the index options rules of the options exchanges. Thus, the NASD's margin and position and exercise limit rules are identical to those of the exchanges.[22] The NASD's proposed rules governing the introduction and addition of new series of index options would be identical to the rules of the options exchanges; [23] the NASD's existing customer protection requirements (*e.g.*, suitability and account approval rules) would apply; the NASD's generalized antifraud and manipulation rules will apply; [24] the NASD would apply its existing rule regarding the allocation of exercise notices to these index options contracts; [25] the NASD proposes special exercise notice procedures for these contracts similar to those of the options exchanges; [26] as well as "cabinet transaction" rule similar to those of the options exchanges.[27] The operating hours of NASDAQ Index Options Service would be 10:00 a.m. to 4:10 p.m., E.S.T.[28]

C. Surveillance

The NASD's Surveliance is based upon the data that will be automatically captured through the OTC and ITT procedures, as well as upon the NASD's equity data capture systems. The NASD will untertake to surveil for the same types of index options trading abuses as do the options exchanges, including mini-manipulation, capping, pegging, fictituous trading, marking the close and frontrunning.

[19] Thus, a member becoming a market maker in an index option at the expiration of the October options would be required to quote continuously all series then open for trading or subsequently added through the expiration of the November, December and January options.

[20] For example, a market maker withdrawing quotes prior to the expiration of a December option would have its market maker registration revoked and would not be permitted to register until the end of the expiration of the January options. The NASD also states that a market maker whose quotations are withdrawn during the fifteen days preceding an expiration could be found in violation of Article III, Section I of the NASD's Rules of Fair Practice, which obligates members to act in accordance with high standards of commercial honor and just and equitable principles of trade.

[21] *See, e.g.*, CBOE Rule 8.7 (CCH).

[22] Under these rules, margin for the two NASD broad-based index options contract would equal the current market value of the premium, plus 10% of the contract value minus amounts by which the contract is out of the money, with a minimum margin of current market value of the premium plus 2% of contract value. The NASD in conjunction with the five options exchanges has proposed to amend its rules to establish a uniform premium-based customer margin system for "short" options positions. Under the proposed system, initial and maintenance margin levels for index options would equal 100% of the current option premium value plus 5% of the product of the current index group value and the index multiple applicable to the contract, with a minimum margin requirement of 100% of the current market value of the option contract plus 2%. *See* File No. SR–NASD–85–15, noticed in Securities Exchange Act Release No. 22235 (July 12, 1985), 50 FR 29291 Position and exercise limits would be $300 million dollars.

[23] Proposed section 12(b)(2) of Part IV Schedule D. For exchange rules, *see* the American and Pacific Stock and the Chicago Board Options Exchanges' proposals approved in Securities Exchange Act Release No. 21929 (April 10, 1985), 50 FR 15258.

[24] In this connection, the Commission notes that while the NASD has not yet formally issued a frontrunning circular, the NASD always has taken the position that its rule against conduct inconsistent with just and equitable principles of trade (Article III, section 1 of NASD's Rules of Fair Practices) prohibits frontrunning to the same extent as do the frontrunning circulars of the options exchanges. The Intermarket Surveillance Group, which includes the NASD, recently has discussed amending the frontrunning circulars to make it clear that they apply to index options and the NASD has agreed to issue a frontrunning circular that adopts this approach. The NASD also has specific surveillance systems designed to detect frontrunning of its two index options contracts, *infra*.

[25] Proposed section 23(a)-(d), Appendix E to section 33 of NASD's Rules of Fair Practice.

[26] Proposed Rule 23(e), Appendix E to section 33 of NASD's Rules of Fair Practices.

[27] Proposed section 1(ss) Part IV of Schedule D. The Commission notes that the NASD proposes to define the term "security" in its rules by reference to the Securities Act of 1933. Proposed section 33 (d), Article III, Exhibit E, NASD Rules of Fair Practice. Because the NASD is a National Securities Association registered pursuant to section 15 of the Exchange Act, whose rules must comply section 15A of the Exchange Act, the Commission believes that this definition would more appropriately refer to the Exchange Act. The NASD staff has agreed to submit such an amended definition of the term "security" to its membership as soon as practicable.

[28] The Commission notes that, while the NASD proposal by its term provides the NASD discretion to change these hours (proposed section 7(d) Schedule D, Part IV of NASD By-Laws), if the NASD' desires to change these hours it will have to make a rule filing with the Commission pursuant to Rule 19b–4 under the Act.

III. Discussion

A. Index Options Rules

As described above, in the OTC Options Release, the Commission indicated that the NASD's index options proposal appeared to be consistent with the Act, but also indicated that the NASD's index options rules were incomplete and that the NASD needed to submit an adequate surveillance plan for trading in these options.[29]

While the NASD's revised proposal no longer contains certain of the rules and procedures the Commission considered in April, we do not believe that these changes render approval of the NASD's index options proposal inappropriate. The principal deletions defer implementation of the NASD's automatic execution system and reduce from three to one the number of contracts for which index options quotations must be firm. While both of these provisions are desirable, the Commission has concluded that neither is required by sections 15A(b)(6) [30] or 11A [31] of the Act to commence trading in the proposed index options contracts.

Furthermore, as described above, the NASD has now submitted additional rules which, for the most part, are identical to comparable rules of the options exchanges. The Commission finds that, with the addition of these rules, the NASD index options proposal as now contained in File No. SR–NASD–85–21 is consistent with the Act. In this regard, the NASD also has submitted a surveillance plan that is comparable to those of the options exchanges, and the Commission finds that this plan is adequate for the surveliance of trading in the two NASDAQ index options contracts the NASD proposes to commence trading. For these reasons, and for the reasons stated in the OTC Options Release,[32] the Commisison finds that the proposed rule change contained in File No. SR–NASD–85–21 is consistent with the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, sections 11A and 15A(b)(6).[33]

[29] OTC Options Release, *supra*, note 8, 50 FR [illegible]

[30] 15 U.S.C. 78o–3(b)(6) (1982).

[31] 15 U.S.C. 78k–1 (1982).

[32] *See* OTC Option Release, *supra* note 8, 50 FR 20318–20, 20327–28 and 20333.

[33] The Commission notes that previous comments on the NASD's index options proposal either suggested that the proposal was incomplete (*see, e.g.*, letter from Robert Birnbaum, President, Amex, to George A. Fitzsimmons, Secretary, SEC, dated August 2, 1982) or focused on concerns raised either by the NASD's proposed industry index options or indexes that contained stocks for which last sale

Continued

The Commission finds good cause for approving the proposed rule change contained in File No. SR–NASD–85–21 prior to the thirtieth day after the date of publication of the notice of filing thereof in that the issues presented by index options trading in the NASDAQ market and most of the NASD's proposed rules, regulations, and procedures addressing those issues previously have been exposed for public comment and were the subject of careful deliberation by the Commission at a meeting on April 16, 1985 and in the OTC Options Release. In that release, the Commission approved, in concept, as being consistent with the Act, the index option elements of the NASDAQ Options Plan previously submitted to the Commission in File No. SR–NASD–80–10, subject to the NASD's completion of its rules and submission of an adequate surveillance plan. Moreover, the proposed rules added by File No. SR–NASD–85–21 to those previously proposed by the NASD are substantially the same as those approved by the Commission for other self-regulatory organizations presently trading options or are purely technical in nature. Furthermore, File No. SR–NASD–85–21 has been published for comment for over 21 days, and no comments were received. Finally, the NASD desires and has made operational preparations to commence trading in the NASDAQ–100 Index on September 27, 1985. Accelerated approval at this time is required to permit publication of these rule changes in the *NASD Manual* prior to the commencement of trading, and to allow the NASD to complete the steps necessary for trading to commerce.

B. The Two Specific Contracts

As indicated above, in the OTC Options Release, the Commission approved in concept the NASD's proposed NASDAQ–100 Index option contract, subject to the completion of the NASD's index options rules and the submission of an adequate surveillance plan. The Commission also indicated in the OTC Options Release that it appeared appropriate to deem the NASDAQ–100 Index to be a broad-based index.[34]

As discussed above, the NASD has now adequately completed its index options rules and submitted an adequate surveillance plan. For these reasons, and the reasons discussed in the OTC Options Release,[35] the Commission finds that the NASDAQ–100 Index option proposal, as contained in File No. SR–NASD–85–5, is consistent with the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, Sections 11A and 15A of the Act.

The NASD's proposed NASDAQ Financial Index Option contract does not differ in any material regulatory respect from the NASDAQ 100 Index. While the NASDAQ Financial Index contains stocks representing fewer industry groups than the NASDAQ 100-Index, the index is not dominated by one stock or a small group of stocks and its total capitalization is $41.9 billion. The Commission finds therefore, the NASDAQ Financial Index is a broad-based index.[36] For these reasons, the Commission finds the NASD's proposed NASDAQ Financial Index options contract, as contained in File No. SR–NASD–85–10, is consistent with the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, Sections 11A and 15(A)(b)(6).[37]

IV. Conclusions

For the reasons discussed above, it is ordered that the proposed rule changes contained in File Nos. SR–NASD–85–5, 10 and 21 are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Dated: September 13, 1985.

John Wheeler,

Secretary.

[FR Doc. 22503 Filed 9–19–85; 8:45 am]

BILLING CODE 8010–01–M

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reports are unavailable. *Id.* As discussed above, the NASD rules are now complete, and the two specific contracts on which the NASD now seeks to trade options are broad-based and contain only stocks for which last sale reports are available.

[34] OTC Options Release, *supra* note 8, 50 FR at [illegible]

[35] *Id.*

[36] *See* Securities Exchange Act Release No. 31032 (June 8, 1984), 49 FR 24964 (approving the designation of Pacific Stock Exchange's High Technology Index Option as broad-based).

[37] The Commission notes that it continues to monitor the market effects of certain arbitrage and related trading strategies that involve index options, and believes that remedial measures may be necessary to address these effects, such as reducing position and exercise limits as contracts approach expiration. The NASD's index options, as well as existing exchange traded index options will be a part of the Commission's continuing review of these concerns.

[38] On June 17, 1985, the NASD filed with the Commission a "Petition for Reconsideration and Statement of Comments" on the OTC Options Release ("Petition"). In this Petition, the NASD, among other things, requests that the Commission either rescind or clarify its policy allowing the multiple trading of index options. Because no one is currently seeking to trade an option on an index identical to either of the NASD's proposed indexes, it is not necessary at this time to address this comment. The Commission will address the NASD's Petition in its entirety in the near future.

[Release No. 34–22407; File No. SR–NASD–85–23]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to NASD Assessments and Fees

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 9, 1985, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change to section 1(d) of Schedule A of the Corporation's By-Laws establishes a credit during fiscal year 1985–86 of forty (40) percent toward certain annual assessment fees set forth in sections 1(b) and 1 (c) of Schedule A the Corporation's By-Laws.

The proposed rule change to section 2(a) increases the branch office fee to fifty (50) dollars from thirty (30) dollars.

The proposed rule change to section 2(c) increases to fifty (50) dollars from thirty (30) dollars the examination fee for each individual who is required to take an examination for registration as a registered representative.

The proposed rule change to section 2(d) increases to one-hundred (100) dollars from eighty (80) dollars the examination fee for each individual taking the general securities sales supervisor examination.

The proposed rule change adding section 2(g)(i) establishes a fee of fifteen (15) dollars for each notice of termination of a registered representative or registered principal.

The proposed rule change to sections 2(g)(ii) and 2(g)(iii) restates existing Sections 8(a) and 8(c). Existing Section 8 is being deleted and subsequent sections renumbered accordingly.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule amendment to section 1(d) of Schedule A establishes a special credit during fiscal year 1985–86 of 40% toward certain annual assessment fees for each member firm. After preparing manpower projections to determine the number of persons required to perform the Corporation's regulatory functions during the coming fiscal year and forecasting required expenditures for operations and for new projects, the Board of Governors concluded that a fiscal year 1986 operating budget increase of approximately $10 million and a capital budget of $23.4 million were required. Since the current assessment rates, combined with the other changes in Schedule A discussed below, would yield greater income than necessary to fund such a budget, the Board of Governors believes it appropriate to permit a temporary, proportionate reduction for fiscal year 1985–86 in the rate of certain assessments previously approved by the Commission as being fair and equitable.

Several of the fee changes presented in the proposed rule change represent the transfer of the cost of providing certain services from general membership assessments to user fees charged members utilizing the specific service. The Board of Governors, therefore, eliminated the discount on the basic membership fee, increased the assessment on branch offices and instituted a new fee for filing a notice of termination of registration (Form U–5). These measures are expected to shift approximately $2.7 million in revenue from general assessments to specific charges.

The increase in the examination fee reflects anticipated increases in charges to the Corporation for administration of the PLATO System on which the examinations are operated.

For reasons stated above, these proposed fees are consistent with and in furtherance of section 15A(b)(5) of the Act which requires that the rules of the Corporation provide for the equitable allocation of reasonable dues, fees and other charges among members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not anticipate that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received with respect to the proposed rule changes contained in this filing.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective on filing pursuant to section 19(b)(3)(A)(ii) of the Act in that it affects assessments and fees imposed by the Corporation exclusively upon its members. Imposition of the fees will, however, be delayed until the start of the Corporation's fiscal year on October 1, 1985.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 11, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 13, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–22504 Filed 9–19–85; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

September 13, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following security:

Home Group, Inc.

Common Stock, $1.00 Par Value (File No. 7–8506)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 4, 1985, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–22505 Filed 9–19–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Agreements Filed With the Department of Transportation Under Sections 408, 409, 412 and 414 During the Week Ending September 13, 1985

Answers may be filed within 21 days from the date of filing.

Date filed	Docket No.	Parties	Subject	Proposed effective date
Sept. 9, 1985....	43387, R-1.	Members of International Air Transport Association.....	Add fares from Switzerland to Germany and between Switzerland and Austria, TC2 MV/P 0295(M.V. 952).	Nov. 1, 1985.
Sept. 12, 1985	43393, R-1..	Members of International Air Transport Association.....	Adding SCR rate for Item No. 9993 from Papeete to Los Angeles, COMP SCRB 0373, Status Report No. 1050.	Sept. 5, 1985.

Phyllis T. Kaylor,
Chief, Documentary Service Division.
[FR Doc. 85-22554 Filed 9-19-85; 8:45 am]
BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.); Week Ended September 13, 1985

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application, following the answer period dot may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Sept. 9, 1985. ...	43385	Servicio Aereo Leo Lopez, S.A. De C.V., c/o Francisco Santos, 1820 American Drive, El Paso, Texas 79925. Application of Servicio Aereo Leo Lopez, S.A. De C.V. pursuant to Section 402 of the Act and Subpart Q of the Regulations for authority to perform non-scheduled, including charter flights between El Paso, Texas, U.S.A. and Chichuahua, Chihuahua, Mexico, to transport property and mail. Answers may be filed by October 7, 1985.
Sept. 13, 1985	43396	Pan American World Airways, Inc., c/o David M. O'Connor 1660 L Street, N.W.,—Suite 901, Washington, D.C. 20036 Application of Pan American World Airways, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations for renewal of authority granted by its certificates of public convenience and necessity for Routes 132 and 133 which is presently scheduled to expire on March 26, 1986, Conforming Applications, Motions to Modify Scope and Answers may be filed October 11, 1985.
Do.	43397	Southern International Airways, Inc., c/o Richard O. Wheeler, 1120 19th Street, N.W., #700, Washington, D.C. 20036. Application of Southern International Airways, Inc. pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations requests authority to engage in interstate and overseas scheduled charter air transportation of persons property, and mail: Scheduled Service—Gulfport, Mississippi and Washington, D.C. Gulfport, Mississippi and Jackson, Mississippi. A. Charter Service between any point in any State in the United States or the District of Columbia, or any territory or possession of the United States and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States. B. Any point of Mexico: D. C. Any point in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Trinidad, Aruba, the Leeward and Windward Islands, and any other foreign place located in the Gulf of Mexico or the Caribbean Sea, D. Any point in Central or South America. Conforming Applications, Motions to Modify Scope and Answers may be filed by October 11, 1985.

Phyllis T. Kaylor,
Chief, Documentary Service Division.
[FR Doc. 85-22553 Filed 9-19-85; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

Airway Science Grants; Solicitation for Proposals

Correction

In FR Doc. 85-22035 beginning on page 37612 in the issue of Monday, September 16, 1985, make the following correction:

On page 37615, second column, second paragraph, sixth line, the first "$1,000,000" should read "$100,000".

Federal Highway Administration

Environmental Impact Statement; Hennepin County, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public of their intent to prepare an environmental impact statement for proposed highway improvements on STH 77 and I-494 in Hennepin County, Minnesota.

FOR FURTHER INFORMATION CONTACT:
Mr. Stephen Bahler, Area Engineer, Federal Highway Administration, Suite 490, Metro Square Building, Seventh and Robert Streets, St. Paul, Minnesota 55101 (612) 349-5237;

or

Mr. Duane Brown, Assistant District Engineer, Minnesota Department of Transportation, District 5 Office, 2055 North Lilac Drive, Golden Valley, Minnesota 55422 (612) 593-8404.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the

Minnesota Department of Transportation, is planning to prepare an environmental impact statement (EIS) on a proposal to improve: (1) State Trunk Highway 77 (STH 77) from approximately 76th Street East in the City of Richfield to approximately 86th Street East in the City of Bloomington, including but not limited to the intersections of STH 77 and 76th Street, STH 77 and I–494, STH 77 and 79th Street, and STH 77 and 86th Street, and (2) interstate Highway 494 (I–494) from approximately 12th Avenue South to approximately 24th Avenue South, including but not limited to, the intersections of I–494 and 12th Avenue, I–494 and STH 77, and I–494 and 24th Avenue. All of these roadways are in Hennepin County, Minnesota.

The proposed roadway improvements will be more precisely defined by a transportation plan to be prepared in conjunction with this EIS.

Improvements to these roadways may be necessary to provide for the additional expected traffic demand resulting from the development in the Airport South Area of Bloomington, Minnesota, including the Mall of America and Fantasyworld, which is proposed to be built on a site east of STH 77, north of Killebrew Driveand Old Shakopee Road, and south of I–494 (the former Metropolitan Stadium site). Possible roadway improvements may include the following: widening 24th Avenue/I–494 to Killebrew Drive; modifying the design of the 24th Avenue/I–494 interchange; modifying the design of the intersection of STH 77/ Killebrew Drive to better accommodate the characteristics of the proposed Mall of America and Fantasyworld; adding through and turn lanes to the intersections and/or roadways serving the proposed land development as needed; modifying the design of the STH 77/I–494 interchange; and providing a half-diamond interchange at STH 77 and 76th Street with a connection to 24th Avenue. Improvements to I–494 and STH 77 between the stated termini may also be considered.

Alternatives under consideration include: (1) Taking no action; (2) improving the above-mentioned roodways and instituting certain traffic system management measures; (3) improving the above-mentioned roadways but not instituting any traffic system management measures; and (4) only instituting traffic system management measures.

A location/design public meeting will be held to receive comments on the issues to be addressed in the EIS and the proposed alternatives. That meeting will be held September 26 from 2:00 p.m. to approximately 4:00 p.m. and from 7:30 p.m. to approximately 9:30 p.m. The location of the meeting will be the Bloomington Armory, 3300 West 98th Street, Bloomington, Minnesota.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies and to private organizations and citizens who express an interest in this proposal. A public hearing will be held on the draft EIS in the first quarter of 1986. Public notice of the time and place of the hearing will be given. The draft EIS will be available for public and agency review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions will be invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Minnesota state law requires that an EIS be prepared for the Mall of America/Fantasyworld development proposal. That EIS is being prepared separately from this EIS, but will be closely coordinated. That site specific EIS will be based on work previously completed in the Airport South Generic EIS approved by the Minnesota Environmental Quality Board on November 15, 1984. At this time, it is expected that an EIS will be required for certain roadway improvements to STH 77 and I–494. However, further analysis may indicate that an Environmental Assessment is the appropriate federal environmental document. If such a decision is made, this Notice of Intent will be formally withdrawn.

(Catalog of Federal Domestic Assistance Program Number 20.205, (Highway Research, Planning and Construction). The provisions of OMB Circular A–95 regarding State and local clearinghouse review of Federal and Federally assisted programs and projects apply to this program)

Issued on: September 11, 1985.

Alan Friesen,

District Engineer.

[FR Doc. 85–22492 Filed 9–19–85; 8:45 am]

BILLING CODE 4910-22-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 183
Friday, September 20, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Thursday, September 26, 1985.

LOCATION: Room 456, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Compliance Status Report.

The staff will brief the Commission on various Compliance matters.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

September 17, 1985.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85–22597 Filed 9–17–85; 4:38 pm]

BILLING CODE 6355–01–M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:07 p.m. on Friday, September 13, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to (1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in First Security Bank of Dickson, Dickson, Tennessee, which was closed by the Commissioner of Financial Institutions for the State of Tennessee on Thursday, September 12, 1985; (2) accept the bid for the transaction submitted by Peoples Bank, Vanleer, Tennessee, an insured State nonmember bank; (3) approve the application of Peoples Bank, Vanleer, Tennessee, for consent to purchase certain assets of and assume the liability to pay deposits made in First Security Bank of Dickson, Dickson, Tennessee, and for consent to establish the two offices of First Security Bank of Dickson as branches of Peoples Bank; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

At that same meeting, the Board of Directors also adopted a resolution (1) making funds available for the payment of insured deposits in Peoples National Bank of Rockland County, Ramapo (P.O. Monsey), New York, which had been closed by the Deputy Comptroller of the Currency on Friday, September 13, 1985; and (2) accepting the bid of and appointing The First National Bank of Highland, Highland, New York, as the transfer agent for the Corporation for the payment of insured and fully secured deposits of the closed bank.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b)(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 16, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–22632 Filed 9–18–85; 11:28 am]

BILLING CODE 6714–01–M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, September 16, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. John F. Downey, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Evansville Morris Plan Co., Inc., an operating noninsured industrial bank located at 222 Main Street, Evansville, Indiana, for Federal deposit insurance.

Application of Thrift, Incorporated, an operating noninsured industrial bank located at 4601 Lincoln Avenue, Evansville, Indiana, for Federal deposit insurance.

Application of Fidelity Investment, Inc., an operating noninsured industrial bank located at 714 North Michigan Street, South Bend, Indiana, for Federal deposit insurance.

The Board further determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. John F. Downey, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at this meeting, on less than seven days' notice to the public, of the following matters:

Memorandum regarding the buildout and furnishings requirements of the New York Regional Office.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,313—Continental Illinois National Bank and Trust Company of Chicago, Chicago, Illinois

By the same majority vote, the Board further determined that no earlier notice

of these changes in the subject matter of the meeting was practicable.

Dated: September 17, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–22833 Filed 9–18–85; 11:26 am]

BILLING CODE 6714–01–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, September 16, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. John F. Downey, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency,) that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the Corporation's assistance agreement with an insured bank pursuant to section 13 of the Federal Deposit Insurance Act.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(8), and (c)(9)(A)(ii)).

Dated: September 17, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–22834 Filed 9–18–85; 11:26 am]

BILLING CODE 6714–01–M

5

FEDERAL RESERVE SYSTEM

(Board of Governors of the Federal Reserve System)

TIME AND DATE: 10:00 a.m., Wednesday, September 25, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 17, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–22855 Filed 9–18–85; 8:45 am]

BILLING CODE 6210–01–M

6

MARINE MAMMAL COMMISSION

TIME AND DATE: The Marine Mammal Commission will meet in Executive Session from 8:30 a.m. to 10:00 a.m., Thursday, October 24 and from 8:00 p.m. to 10:00 p.m. on Friday, October 25. The public sessions of the 23rd meeting of the Marine Mammal Commission and the 19th meeting of the Committee of Scientific Advisors on Marine Mammals will commence at 10:00 a.m. on Thursday, October 24 and will adjourn at 6:00 p.m. Public sessions also will be held from 8:30 a.m. to 5:15 p.m. on Friday, October 25 and from 8:30 a.m. to 3:30 p.m. on Saturday, October 26.

PLACE: Auditorium, Douglas F. Manchester Executive Conference Center, University of San Diego, Alcala Park, San Diego, California 92110.

STATUS: The executive sessions will be closed. All other portions of the meeting will be open to public observation. Public participation will be allowed if time permits and it is determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: October 24—Introduction and general matters; report on Alaskan marine mammals, marine mammal working groups, Federal and State plans; Hawaiian monk seal; permit procedures; marine mammal/fishery interactions in California.

October 25—Sea otters: population status, incidental take, translocation plan, effects on fishermen, oil spill risks, recovery plans, Alaskan sea otters.

October 26—Tuna-porpoise; net entanglement; North Pacific fur seals; report of the working group on endangered and threatened species; US/USSR Agreement; Antarctic matters; International Whaling Commission; Summary.

CONTACT PERSON FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 1625 I Street, NW Washington, DC 20006, 202/653–6237.

Dated: September 17, 1985.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 85–22614 Filed 9–18–85; 9:52 am]

BILLING CODE 6820–31–M

7

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting

TIME AND DATE: 2:30 p.m. Monday, September 16, 1985.

PLACE: Hyatt Orlando, 6375 West Space Coast Parkway, Kissimmee, Florida 32741.

STATUS: Closed.

MATTERS CONSIDERED

1. Conservatorship.
2. Purchase and Assumption.

The Board unanimously voted that the Agency business required that a meeting be held with less than the usual seven days advance notice.

The Board unanimously voted to close the meeting under exemptions (8) and (9)(A)(ii). The Acting General Counsel certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board. Telephone (202) 357–1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 85–22654 Filed 9–18–85; 1:47 pm]

BILLING CODE 7535–01–M

8

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of September 23, 1985.

A closed meeting will be held on Tuesday, September 24, 1985, at 2:30 p.m. An open meeting will be held on Thursday, September 26, 1985, at 10:00 a.m., in Room 1C30

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain

staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, September 24, 1985, at 2:30 p.m., will be:

Settlement of administrative proceedings of and enforcement nature.

Institution of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Consideration of *amicus* participation.

Regulatory matter regarding financial institution.

The subject matter of the open meeting scheduled for Thursday, September 26, 1985, at 10:00 a.m., will be:

1. Consideration of whether to issue a release announcing the adoption of revisions to Form BD and related technical changes and amendments to the broker-dealer successor rules, to remove duplicative information requirements of the disciplinary question on Form BD, to clarify the information requested in Rule 17a–3 under the Securities Exchange Act of 1934 to that required by the revised Form U–4, and to provide that in the event of a succession, an amendment to Form BD be filed rather than a new complete Form BD. For further information, please contact Lynne G. Masters at (202) 272–2848.

2. Consideration of whether to publish for comment proposals which would expand the number of issuers relieved from the registration and reporting requirements of the Securities Exchange Act of 1934 by increasing the total assets reporting threshold from $3 million to $5 million. For further information, please contact Mary M. Jackley or Michael T. Cronin at (202) 272–2644.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kathryn Natale at (202) 272–3195.

John Wheeler,

Secretary.

September 17, 1985.

[FR Doc. 85–22576 Filed 9–17–85; 4:11 pm]

BILLING CODE 8010-01-M

9

SECURITIES AND EXCHANGE COMMISSION

AGENCY MEETINGS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [50 FR 37110 9/11/85].

STATUS: Closed/Open meetings.

PLACE: 450 Fifth Street, NW, Washington, DC.

DATES PREVIOUSLY ANNOUNCED: Friday, September 6, 1985.

CHANGE IN THE MEETING: Additional items.

The following additional item will be considered at a closed meeting scheduled for Tuesday, September 17, 1985, at 2:30 p.m.

Settlement of injunctive action.

The following additional item will be considered at an open meeting scheduled for Thursday, September 19, 1985, at 10:00 a.m.:

Consideration of whether to authorize issuance of a release approving the American Stock Exchange's ("AMEX") proposed rule change to establish an electronic linkage with the Toronto Stock Exchange ("TSE"). The proposed linkage would allow orders in securities dually listed on the Amex and TSE to be routed between the two exchanges and would be the first to link a primary market in the United States with a primary market in a foreign jurisdiction. For further information, please contact Judith Levy at (202) 272–7345.

Commissioners Cox, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Powers at (202) 272–2091.

John Wheeler,

Secretary.

September 17, 1985.

[FR Doc. 85–22577 Filed 9–17–85; 4:11 pm]

BILLING CODE 8010-01-M

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SYNTHETIC FUELS CORPORATION

Meeting of the Board of Directors

ENTITY: United States Synthetic Fuels Corporation.

ACTION: Notice of Meeting.

SUMMARY: Interested members of the public are advised that a meeting of the Board of Directors of the United States Synthetic Fuels Corporation will be held at the time, date and place specified below. This public announcement is made pursuant to the open meeting requirements of section 116(f)(1) of the Energy Security Act (94 Stat. 611, 637; 42 U.S.C. 8701, 8712(f)(1)) and section 4 of the Corporation's Statement of Policy on Public Access to Board meetings. During the meeting, the Board of Directors will consider a resolution to close the meeting pursuant to Article II, section 4 of the Corporation's By-laws, section 116(f) of the said Act and Section 4 and 5 of the said policy.

Open Session

I. Call to Order—Chairman's Opening Remarks
II. Approval of Board Minutes
III. Approval of Financial Assistance Award for the Forest Hill Project
IV. Seep Ridge Project
  A. Approval of Environmental Monitoring Plan Outline
  B. Approval of Financial Assistance Award
V. Approval of an Amendment to the Cool Water Contract
VI. Status Report on the Tar Sands Solicitation
VII. Status Report on the Eastern Coal Solicitation
VIII. Union Oil Parachute Creek Project
  A. Approval of Environmental Monitoring Plan Outline
  B. Status Report on Negotiations
IX. Resolution to Close Meeting

Closed Session

X. Consideration of Negotiation Strategies for the Union Oil Parachute Creek Project

TIME AND DATE: 9:30 a.m., September 24, 1985.

PLACE: 2121 K Street, NW., Rooms 503 and 403, Washington, D.C. 20586.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, please contact Ms. Karen Hutchinson, Director-Media Relations, at (202) 822–6455.

United States Synthetic Fuels Corporation.

March Coleman,

Assistant General Counsel-Corporate and Litigation.

September 19, 1985.

[FR Doc. 85–22759 Filed 9–19–85; 11:45 am]

BILLING CODE 0000-00-M

Federal Register

Friday
September 20, 1985

Part II

Environmental Protection Agency

40 CFR Part 421

Nonferrous Metals Manufacturing Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 421

[FRL-2872-1]

Nonferrous Metals Manufacturing Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes effluent limitations guidelines and standards limiting the discharge of pollutants into navigable waters and into publicly owned treatment works (POTW) by existing and new sources that conduct particular nonferrous metals manufacturing operations. The Clean Water Act and a consent decree require EPA to issue this regulation.

This regulation establishes effluent limitations guidelines based on "best practicable technology" (BPT) and "best available technology" (BAT), new source performance standards (NSPS) based on "best demonstrated technology", and pretreatment standards for existing and new indirect dischargers (PSES and PSNS, respectively).

DATES: In accordance with 40 CFR Part 23 (50 FR 7268), this regulation shall be considered issued for purposes of judicial review at 1:00 p.m. Eastern time on October 4, 1985. This regulation shall become effective November 4, 1985.

The compliance date for new source performance standards (NSPS) and pretreatment standards for new sources (PSNS) is the date the new source begins operations. The compliance date for pretreatment standards for existing sources (PSES) is September 20, 1988.

Under section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be made only by filing a petition for review in the United States Court of Appeals within 90 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: Address questions on the final rule to: Ms. Maria M. Irizarry, Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Attention: Nonferrous Metals Manufacturing Rules. The basis for this regulation is detailed in four major documents. See Supplementary Information (under "XIV. Availability of Technical Information") for a description of each document. Copies of the technical and economic documents may be obtained from the National Technical Information Service, Springfield, Virginia 22161 (703/487-6000). Technical information may be obtained by writing Ms. Maria M. Irizarry, Industrial Technology Division, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 or by calling 202/382-7126. Additional economic information may be obtained by writing Mr. Mark Kohorst, Economic Analysis Branch (WH-586), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or by calling 202/382-5397.

The record for the final rule will be available for public review not later than November 25, 1985, at the EPA Public Information Reference Unit, Room 2402 (Rear) (EPA Library). The EPA public information regulation (40 CFR part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ernst P. Hall, 202/382-7126.

SUPPLEMENTARY INFORMATION:

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II. Scope of this Rulemaking.
  A. Overview of the Category
  B. Prior EPA Regulations
III. Summary of Legal Background.
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  2. Best Available Technology (BAT)
  3. Best Conventional Pollutant Control Technology (BCT)
  4. New Source Performance Standards (NSPS)
  5. Pretreatment Standards for Existing Sources (PSES)
  6. Pretreatment Standards for New Sources (PSNS)
IV. Methodology and Data Gathering Efforts
V. Control Treatment Options and Technology Basis for Final Regulation
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  B. Control and Treatment Technologies and Treatment Effectiveness
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  A. Analysis and Reports
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  D. Regulatory Flexibility Analysis
  E. SBA Loans
VII. Non-Water Quality Environmental Impacts
  A. Air Pollution
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VIII. Pollutants and Subcategories Not Regulated
  A. Exclusion of Pollutants
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IX. Public Participation and Response to Major Comments
X. Best Management Practices (BMPs)
XI. Upset and Bypass Provisions
XII. Variances and Modifications
XIII. Implementation of Limitations and Standards
  A. Relationship to NPDES Permits
  B. Indirect Dischargers
XIV. Availability of Technical Information
XV. List of Subjects in 40 CFR Part 421
XVI. Appendices:
  A. Abbreviations, Acronyms, and Other Terms Used in this Notice
  B. Pollutants Selected for Regulation by Subcategory
  C. Toxic Pollutants Not Detected
  D. Pollutants Detected Below the Analytical Quantification Limit
  E. Toxic Pollutants Detected in Amounts Too Small to be Effectively Reduced by Technologies Considered in Preparing this Guideline
  F. Toxic Pollutants Detected in the Effluent from Only a Small Numbe of Sources

I. Legal Authority

This regulation is being promulgated under the authority of sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972. 33 U.S.C. 1251 et seq., as amended by the Clean Water Act of 1977, Pub. L. 95-217) ("the Act"). This regulation is also being promulgated in response to the Settlement Agreement in Natural Resources Defense Council, Inc. v. Train, 8 ERC 2120 (D.D.C. 1976), modified, 12 ERC 1833 (D.D.C. 1979), modified by additional orders of October 26, 1982, August 2, 1983, and January 6, 1984.

II. Scope of this Rulemaking

This final regulation, which was proposed on June 27, 1984 (49 FR 26352), establishes effluent limitations guidelines and standards for existing and new nonferrous metals manufacturing facilities.

This preamble describes the legal authority and background, the technical and economic bases, and other aspects of the final regulations. The abbreviations, acronyms, and other terms used in the Supplementary Information section are defined in Appendix A to this notice.

These final regulations are supported by three major documents available on

a limited basis from EPA and the National Technical Information Service. Analytical methods are discussed in Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants. EPA's technical conclusions are detailed in the General Development Document for Effluent Limitations Guidelines and Standards for the Nonferrous Metals Manufacturing Phase II Point Source Category and the subcategory supplements. The Agency's economic analysis is found in Economic Impact Analysis of Effluent Limitations Guidelines and Standards for the Nonferrous Metals Manufacturing Point Source Category.

A. Overview of the Category

The nonferrous metals manufacturing category is comprised of plants that process ore concentrates and scrap metals to recover and increase the metal purity contained in these materials. Depending on the metal and the desired purity, hydrometallurgical, pyrometallurgical, or liquid ion exchange operations may be used to purify and upgrade metal values.

The production of nonferrous metals sometimes occurs at plants that also have processes that are regulated as part of other point source categories. Many of the production operations characterizing the nonferrous metals manufacturing category follow mining and milling operations. The ore mining and dressing category includes the extraction of the ore from the ground and the subsequent beneficiation of the ore including gravity concentration, magnetic separation, electrostatic separation, froth flotation, and leaching to produce ore concentrates. The ore concentrates and scrap materials form the raw materials in the nonferrous metals manufacturing subcategories.

Following smelting, refining, or extraction of metal values included in the nonferrous metals manufacturing category, the metal or metal salt products are used as raw materials for such operations as forming, alloying, and the manufacture of inorganic chemicals. Operations such as these, where the metal purity is not increased, are covered by other point source categories. In many of the nonferrous metals manufacturing subcategories, the production operations cease with the casting of the smelted or refined metal. Recasting of the metal without refining for use in subsequent forming or alloying operations is covered by the point source category in which the metal is being used as a raw material such as Aluminum Forming, Nonferrous Metals Forming, or Metal Molding and Casting.

EPA has divided the nonferrous metals category into separate segments, nonferrous metals manufacturing phase I and nonferrous metals manufacturing phase II. In keeping with Agency priorities to regulate initially those plants which generate the largest quantities of toxic pollutants, EPA promulgated regulations for nonferrous metals manufacturing phase I (49 FR 8742) on March 8, 1984. Twelve subcategories were addressed: primary aluminum, copper smelting, copper electrolytic refining, lead, zinc, columbium-tantalum, tungsten, secondary aluminum, silver, copper, lead, and metallurgical acid plants.

EPA also has separately studied the forming or casting of nonferrous metals. EPA promulgated regulations for aluminum forming (48 FR 49126) in October, 1983, for copper forming (48 FR 36942) in August, 1983, and for forming of nonferrous metals other than aluminum and copper in August, 1985. Proposed regulations for metal molding and casting (47 FR 51512) were published in November, 1982.

Today's rulemaking focuses on the remaining segment of nonferrous metals manufacturing. The regulatory strategy for nonferrous metals manufacturing phase II addresses the following 25 subcategories:

Primary antimony,
Bauxite refining,
Primary beryllium,
Primary boron,
Primary cesium and rubidium,
Primary and secondary germanium and gallium,
Secondary Indium,
Primary lithium,
Primary magnesium,
Secondary mercury,
Metallurgical acid plants
Primary molybdenum and rhenium,
Secondary molybdenum and vanadium,
Primary nickel and cobalt,
Secondary nickel,
Primary precious metals and mercury,
Secondary precious metals,
Primary rare earth metals,
Secondary tantalum,
Secondary tin,
Primary and secondary titanium,
Secondary tungsten and cobalt,
Secondary uranium,
Secondary zinc, and
Primary zirconium and hafnium.

EPA is completely excluding five of these subcategories from national regulation. Primary lithium and secondary zinc are excluded because the repoduction of these metals does not require process water. Primary magnesium is excluded because the production of magnesium does not produce wastewater with treatable concentrations of pollutants. Primary boron is excluded from regulation because there are no existing dischargers and we do not believe new discharging plants are likely to be built. Primary cesium and rubidium plants are excluded from national regulation because the amount and toxicity of discharges are so small that they do not justify national regulations. The remaining 20 subcategories in nonferrous metals manufacturing phase II contain 31 primary metals and metal groups, 20 secondary metals and metal groups, and bauxite refining.

At proposal, phase II metallurgical acid plants were included within the primary molybdenum and rhenium subcategory because they are associated with molybdenum roasting operations. However, as indicated at proposal, these plants will not be regulated as part of the primary molybdenum and rhenium subcategory but rather as part of the pre-existing metallurgical acid plant subcategory (49 FR 26418). To clarify this distinction, the metallurgical acid plants are included in a separate subcategory for purposes of this final rulemaking. The limits and supporting analysis presented for these facilities at proposal and the notice of availability continue to aply.

As explained in more detail at proposal, EPA stated on May 10, 1979 that it did not intend to establish national regulations for four of the remaining 20 subcategories covered by this rule: primary antimony, primary tin, secondary molybdenum, and secondary tantalum. This decision has been reconsidered and effluent limitations guidelines and standards for these subcategories were included in this rulemaking at proposal. A complete explanation of the subcategories covered and excluded from this rulemaking is provided in Section VIII of this preamble.

With respect to the primary and secondary tin subcategory, the Agency has determined since proposal that primary tin is presently not being produced in this country. EPA has, therefore changed the title of the tin subcategory from primary and secondary tin to secondary tin.

B. Prior EPA Regulations

EPA already has promulgated effluent limitations guidelines and standards for certain nonferrous metals manufacturing subcategories. These regulations and the technological basis for them are summarized below.

Bauxite Refining Subcategory. EPA has promulgated BPT, BAT, NSPS, and PSNS in this subcategory. 39 FR 12825 (April 8, 1974). BPT, BAT, NSPS, and

PSNS are based on zero discharge of process wastewater, but do allow for a monthly net precipitation discharge from red mud impoundments.

Metallurgical Acid Plants. This subcategory was initially established in 1980, and at that time included only acid plants (i.e., plants recovering by-product sulfuric acid from sulfur dioxide smelter air emissions) associated with primary copper smelting operations. See 45 FR 44926. Primary lead and zinc plants also have associated acid plants, and consequently the applicability of the metallurgical acid plant subcategory was expanded to include these sources in the phase I regulation finalized on March 8, 1984 (49 FR 8742). Today we are amending the existing regulation for metallurgical acid plants by modifying the applicability of the metallurgical acid plant subcategory to include molybdenum acid plants as well.

Nonferrous Metals Manufacturing Phase I. As discussed above, EPA promulgated rules for nonferrous metals manufacturing Phase I on March 8, 1984 (49 FR 8742), which established BPT, BAT, NSPS, PSES, and PSNS for twelve subcategories.

Nonferrous Metals Forming. As also discussed above, EPA promulgated rules for the forming of nonferrous metals other than aluminum and copper in August, 1985. EPA promulgated related regulations for aluminum forming (48 FR 49126) in October, 1983 and for copper forming (48 FR 36942) is August 1983.

III. Summary of Legal Background

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," Section 101(a). To implement the Act, EPA was to issue effluent limitations guidelines, pretreatment standards and new source performance standards for industrial dischargers.

The Act included a timetable for issuing these standards. However, EPA was unable to meet many of the deadlines and, as a result in 1976, it was sued by several environmental groups. In settling this lawsuit, EPA and the plaintiffs executed a "Settlement Agreement" which was approved by the District Court. This Agreement required EPA to develop a program and adhere to a schedule in promulgating effluent limitations guidelines, pretreatment standards, and new source performance standards for 65 "priority" pollutants and classes of pollutants for 21 major industries. See *Natural Resources Defense Council, Inc.* v. *Train,* 8 ERC 2120 (D.D.C. 1976), modified, 12 ERC 1833 (D.D.C. 1979), modified by additional orders of October 26, 1982, August 2, 1983, January 6, 1984, July 5, 1984 and January 7, 1985.

Many of the basic elements of the Settlement Agreement were incorporated into the Clean Water Act of 1977. Like the agreement, the Act stressed control of toxic pollutants, including the 65 priority pollutants. In addition, to strengthen the toxics control program, Section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" ("BMP") to prevent the release of toxic and hazardous pollutants from plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage associated with, or ancillary to, the manufacturing or treatment process.

Under the Act, the EPA is to set a number of different kinds of effluent limitations. These are discussed in detail in the preamble to the proposed regulations and in the Development Document. They are summarized briefly below:

1. Best Practicable Control Technology (BPT)

BPT limitations are generally based on the average of the best existing performance by plants of various sizes, ages, and unit processes within the category or subcategory.

In establishing BPT limitations, EPA considers the total cost in relation to the age of equipment and facilities involved, the processes employed, process changes required, engineering aspects of the control technologies, and nonwater quality environmental impacts (including energy requirements). The total cost of applying the technology is balanced against the effluent reduction.

2. Best Available Technology (BAT)

BAT limitations, in general, represent the best existing performance in the industrial subcategory or category. The Act establishes BAT as the principal national means of controlling the direct discharge of toxic and nonconventional pollutants to navigable waters.

In arriving at BAT, the Agency considers the age of the equipment and facilities involved, the process employed, the engineering aspects of the control technologies, process changes, the cost of achieving such effluent reduction, and nonwater quality environmental impacts. The Agency retains considerable discretion in assigning the weight to be accorded these factors.

3. Best Conventional Pollutant Control Technology (BCT)

The 1977 Amendments added Section 301(b)(2)(E) to the Act establishing "best conventional pollutant control technology" (BCT) for discharges of conventional pollutants from existing industrial point sources. Section 304(a)(4) designated the following as conventional pollutants: biochemical oxygen demanding pollutants (BOD_5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease, an additional conventional pollutant on July 30, 1979 (44 FR 44501).

BCT is not an additional limitation but replaces BAT for the control of conventional pollutants. In addition to other factors specified in Section 304(b)(4)(B), the Act requires that BCT limitations be established in light of a two part "cost-reasonableness" test, American Paper Institute v. EPA, 660 F.2d 954 (4th Cir. 1981). The first test compares the cost for private industry to reduce its conventional pollutants with the costs to publicly owned treatment works to achieve similar reduction of these pollutants. The second test examines the cost-effectiveness of additional industrial treatment beyond BPT. EPA must find that limitations are "reasonable" under both tests before establishing them as BCT. In no case may BCT be less stringent than BPT.

EPA published its methodology for carrying out the BCT analysis on August 29, 1979 (44 FR 50372). In the case mentioned above, the Court of Appeals ordered EPA to correct data errors underlying EPA's calculation of the first test, and to apply the second cost test. (EPA had argued that a second cost test was not required.)

A revised methodology for the general development of BCT limitations was proposed on Octover 29, 1982 (47 FR 49176), but has not been promulgated as a final rule. We accordingly are not promulgating BCT limits for plants in the nonferrous metals manufacturing phase II category at this time. We will await establishing nationally applicable BCT limits for this industry until promulgation of the final methodology for BCT.

4. New Source Performance Standards (NSPS)

NSPS are based on the best available demonstrated technology (BDT). New plants have the opportunity to install the best and most efficient production

processes and wastewater treatment technologies.

5. Pretreatment Standards for Existing Sources (PSES)

PSES are designed to prevent discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly owned treatment works (POTW). They must be achieved within three years of promulgation. The Clean Water Act of 1977 requires pretreatment for toxic pollutants that pass through the POTW in amounts that would violate direct discharger effluent limitations or interfere with the POTW's treatment process or chosen sludge disposal method. The legislative history of the 1977 Act indicates that pretreatment standards are to be technology-based, analogous to the best available technology for removal of toxic pollutants. EPA has generally determined that pollutants pass through a POTW if the nationwide average percentage of pollutants removed by a well operated POTW achieving secondary treatment is less than the percent removed by the BAT model treatment system. The General Pretreatment Regulations, which serve as the framework for the pretreatment regulations, are found at 40 CFR Part 403. These regulations were recently upheld substantially in *NAMF et al.* v. *EPA*, Nos. 79–2256 et al. (3rd Cir., September 20, 1983).

6. Pretreatment Standards for New Sources (PSNS)

Like PSES, PSNS are designed to prevent the discharge of pollutants which pass through, interfere with, or are otherwise incompatible with the operation of a POTW. PSNS are to be issued at the same time as NSPS. New indirect dischargers, like new direct dischargers, have the opportunity to incorporate in their plant the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating PSES.

IV. Methodology and Data Gathering Efforts

The methodology and data gathering efforts used in developing this final regulation were summarized in the "Preamble to the Proposed Nonferrous Metals Manufacturing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards" (49 FR 26352, June 27, 1984), and described in detail in the Development Document for Effluent Limitations Guidelines and Standards for the Nonferrous Metals Manufacturing Point Source Category.

After proposal, the Agency gathered additional data to clarify comments and to provide further support for the regulation. The Agency performed additional analysis of new and existing data. These additional data and analyses are described in a "Notice of Data Availability and Request for Comment" (50 FR 10918, March 18, 1985) and are discussed briefly below. The data are also described in substantial detail in the appropriate sections of the General Development Document and the supplements. The supporting information and additional data are in the record supporting this final rule.

In addition, since proposal, the Agency made engineering visits to three nonferrous metals manufacturing plants. Analytical data gathered at these plants were used to further characterize wastewaters generated in secondary tin, secondary molybdenum, and vanadium, and secondary uranium subcategories. We also used the analytical data to revise compliance costs and pollutant removal estimates.

EPA is also using data gathered from engineering and sampling visits to nine nonferrous metals forming plants to collect process, flow and chemical analysis data. The nine plants are involved in the metal powder (iron, copper and aluminum), nickel-cobalt, titanium, zirconium-hafnium, refractory metals, precious metals or uranium subcategories. Trip reports from these plant visits that were claimed confidential by the companies are in the confidential record; the rest are in the public record. The Agency also gathered data collection portfolios (dcp's) from plants not in the Agency's data base at the time we issued the proposed regulation.

New data obtained by the Agency since proposal have been carefully analyzed and, where appropriate, changes have been made to the regulation. Flow allowances for a number of waste streams have been revised. Mass limitations have also been provided for several waste streams not receiving allowances at proposal. In addition there have been a number of modifications in pollutants regulated and in the selected technology basis for various subcategories.

These changes are identified in Section V and discussed in greater detail in the accompanying development documents for the subcategories affected.

The costing methodology used in estimating compliance costs is discussed in detail in the Preamble to the proposed regulation (49 FR 26377). Generally, segregation and separate treatment has been used as the basis for estimating compliance costs for this rulemaking; however, for five plants there are manufacturing operations from more than one subcategory subject to this rulemaking. For four of these plants the technology basis of the subcategories is the same and in the fifth, the more costly technology was costed for the entire wastewater flow.

Under the authority of Section 308 of the Clean Water Act, the Agency requested specific additional information from 14 subcategories both to clarify and support individual comments and to gather additional data primarily concerning specific wastewater sources, flows, pollutant concentrations, production levels, treatment effectiveness, and costs. A brief description of additional data solicited for each subcategory is presented below. All information and data received has been placed in the public record unless it has been claimed confidential.

Primary Antimony

We requested additional information through Section 308 information requests in the primary antimony subcategory concerning the wastewater characteristics of fouled anolyte and an additional wastestream not considered at proposal, cathode antimony wash water.

Primary Beryllium

We requested additional information through Section 308 information requests in the primary beryllium subcategory concerning the effectiveness of the wastewater treatment systems for metals removal and the range of pollutant concentrations in the untreated wastewaters from this subcategory.

Primary Cesium and Rubidium

We requested additional information through Section 308 information requests in the primary cesium and rubidium subcategory concerning the wastewater characteristics of spent acid and crystallizer rinse water from cesium production, spent acid and crystallizer rinse water from rubidium production.

Primary and Secondary Germanium & Gallium

We requested additional information through Section 308 information requests in the primary and secondary germanium and gallium subcategory concerning the wastewater characteristics of still liquor, chlorinator

wet air pollution control, germanium hydrolysis filtrate and acid wash and rinse water.

Primary Molybdenum and Rhenium

We requested additional information through Section 308 information requests in the primary molybdenum and rhenium subcategory concerning the wastewater characteristics of molybdic oxide leachate. We also requested production information on certain products.

Secondary Molybdenum and Vanadium

We requested additional information through Section 308 information requests in the secondary molybdenum and vanadium subcategory concerning iron coprecipitation tests, cost estimates for solvent extraction, segregation, ammonia steam stripping, iron coprecipitation, and performance of two stage solvent extraction system for molybdenum removal.

Primary Precious Metals and Mercury

We requested additional information through Section 308 information requests in the primary precious metals and mercury subcategory concerning the wastewater characteristics of electrolyte preparation wet air pollution control, silver crystals wash water, gold slimes acid wash and water rinse, and silver chloride reduction spent solution.

Secondary Precious Metals

We requested additional information through Section 308 information requests in the secondary precious metals subcategory concerning the wastewater characteristics of platinum precipitation and filtration, other platinum group metals precipitation and filtration, gold spent electrolyte, raw material granulation, and gold solvent extraction raffinate and wash water. We also requested clarification of test results submitted in comments, supporting data for cost estimates for ion exchange submitted in comments, and further data on the formation of metal amine complexes in secondary precious metals wastewaters.

Primary Rare Earth Metals

We requested additional information through Section 308 information requests in the primary earth metals subcategory concerning the wastewater characteristics of the sodium hypochlorite filter backwash.

Secondary Tantalum

We requested additional information through Section 308 information requests in the secondary tantalum subcategory concerning the wastewater characteristics of tantalum sludge leach and rinse, and leaching wet air pollution control. We also requested production data on certain products.

Secondary Tin

We requested additional information through Section 308 information requests in the secondary tin subcategory concerning the wastewater characteristics of tin mud acid neutralization filtrate and dealuminizing rinse. We also requested additional economic information from five of the plants, and clarification of cost estimates provided by commenters on lime, settle and filter, and analytical results from commenters of samples replicating EPA's analyses.

Primary and Secondary Titanium

We requested additional information through Section 308 information requests in the primary and secondary titanium subcategory concerning the wastewater characteristics of casting crucible wash water cathode gas wet air pollution control, chlorination off-gas wet air pollution control, chlorination area-vent wet air pollution control, titanium tetrachloride handling wet air pollution control, sodium reduction container reconditioning wash water, chip crushing wet air pollution control and sponge crushing and screening wet air pollution control.

Secondary Tungsten and Cobalt

We requested additional information through Section 308 information requests in the secondary tungsten and cobalt subcategory concerning the wastewater characteristics of synthetic scheelite filtrate, tungsten carbide leaching wet air pollution control, tungsten carbide wash water, reduction area wet air pollution control. We also requested production data on certain products and sent dcp's to seven secondary tungsten and cobalt plants. Responses to four of these requests have been received.

Primary Zirconium and Hafnium

We requested additional information through Section 308 information requests in the primary zirconium and hafnium subcategory concerning the wastewater characteristics of sand drying wet air pollution control, sand chlorination off-gas wet air pollution control, sand chlorination area-vent wet air pollution control, silicon tetrachloride ($SiCl_4$) purification waste acid, feed makeup, wet air pollution control, zirconium filtrate, hafnium filtrate, calcining caustic wet air pollution control, pure chlorination wet air pollution control, reduction area-vent wet air pollution control, magnesium recovery off-gas wet air pollution control, and magnesium recovery area-vent wet air pollution control.

We also requested additional information on operation of ammonia steam strippers, analytical tests for cyanide, and recycle rates for several scrubbers.

V. Control Treatment Options and Technology Basis for Final Regulation

A. Summary of Category

There are 143 plants in the 20 regulated phase II subcategories which EPA estimates employ 13,500 people and annually generate raw wastes containing approximately 489,800 kilograms of toxic pollutants. There are 34 direct discharges which currently discharge 341,400 kg/yr of toxic pollutants and there are 39 indirect discharges which currently discharge an additional 77,980 kg/yr of toxics. There are 70 plants in this category that do not discharge process wastewater. In the five subcategories that we are excluding from national regulation there is one direct discharger, one that discharges through another plant, and 15 plants that do not discharge wastewater

In developing this regulation, it was necessary to determine whether effluent limitations and standards were appropriate for different segments (subcategories) of the category. The major factors considered in assessing the need for subcategorization and in identifying subcategories included: waste characteristics, raw materials, manufacturing processes, products manufactured, water use, water pollution control technology, treatment costs, solid waste generation, size of plant, age of plant, number of employees, total energy requirements, nonwater quality characteristics, and unique plant characteristics. Section IV of the Development Document and its supplements contain a detailed discussion of these factors and the rationale for subcategorization.

A brief description of each of the 20 subcategories is provided below, with particular emphasis on the sources of wastewater and the types of pollutants present. Also noted below are changes in flows and building blocks that the Agency has made as a result of comments, information and further analysis following proposal. For a more detailed explanation of the manufacturing processes see the preamble discussion for each subcategory in the proposal. Section V of the subcategory supplement Development Documents provides

specific characterization data on each of the wastewater sources.

We are promulgating discharge limitations for each of the wastewater sources identified below except for bauxite. The effluent limtations for an individual plant would then be the sum of all limitations for those wastewater sources actually present at the plant.

Primary Antimony

Seven of the eight primary antimony plants in the United States are zero dischargers. One primary antimony plant is a direct discharger. The eight plants are geographically scattered, located in seven states across the country. The oldest plant was built in the 1880's, and three other are more than 30 years old. Two plants have been built within the last 10 years. EPA data show that average plant production is approximately 500 kkg per year of antimony and antimony compounds.

The processes used at a primary antimony production facility depend largely on the raw material used and the final product desired. Pyrometallurgical processing, practiced at five of the eight primary antimony plants, generates no process wastewater. Hydrometallurgical processing, practiced at the remaining three plants, generates wastewater.

The sources of process wastewater receiving an allowance in the primary antimony subcategory are listed below, along with the pollutants typically found in each:

(1) Sodium antimonate autoclave wastewater is generated when the clarified solution from leaching is autoclaved. Dissolved antimony is converted to sodium antimonate as a final product. This stream is similar to fouled anolyte and contains suspended solids and toxic metals.

The BPT, BAT, NSPS and PSNS wastewater discharge allowance proposed for sodium antimonate autoclave wastewater was 7,093 l/kkg (1,700 gal/ton) of antimony contained in the sodium antimonate product.

The BPT, BAT, NSPS, and PSNS wastewater discharge allowance promulgated for sodium antimonate autoclave wastewater is 15,624 l/kkg (3,744 gal/ton) of antimony contained in sodium antimonate product. This rate is allocated to any plant which produces sodium antimonate from a caustic leaching solution by autoclaving. No allowance is given when sodium antimonate is recovered by autoclaving fouled anolyte because in that case, autoclaving is considered to be a wastewater treatment step for product recovery.

No recycle or reuse of this wastewater is reported at the one plant that generates this stream. Because that plant did not provide flow rate information in the dcp, the discharge allowance for sodium antimonate autoclave wastewater is assumed to be equivalent to the promulgated discharge allowance for fouled anolyte, using the antimony content of the product as the production normalizing parameter. Industry comments on the proposed rulemaking which included new flow and production data for the fouled anolyte waste stream resulted in a change from the proposed value. For this reason and those stated above, the promulgated discharge allowance for sodium antimonate autoclave wastewater is 15,624 1/kkg.

(2) Fouled anolyte is generated when a portion of the barren electrowinning solution is discharged. This waste stream contains suspended solids and toxic metals.

The BPT, BAT, NSPS, and PSNS wastewater discharge allowance proposed for fouled anolyte was 7,093 l/kkg (1,700 gal/ton) of antimony metal produced by electrowinning. The BPT allowance was based on the discharge rate at the only plant reporting this stream. That plant recovers and recycles sodium antimonate from the fouled anolyte before discharging the waste stream. Since proposal, industry comments which included flow and production information enabled EPA to recalculate production normalized flows. Based on this data, a new regulatory flow was chosen for the fouled anolyte waste stream.

The BPT, BAT, NSPS, and PSNS wastewater discharge allowance promulgated for fouled anolyte is 15,624 l/kkg (3,744 gal/ton) of antimony metal produced by electrowinning. This rate is allowed to any plant which recovers antimony from a pregnant leaching solution by electrowinning. The promulgated BPT allowance is based on the wastewater discharge rate at the only plant reporting this waste stream.

(3) Cathode antimony wash water is generated by washing the pure antimony product which has collected on a host cathode with water. This waste stream contains treatable concentrations of toxic metals such as antimony, arsenic, lead and copper.

A BPT discharge rate for cathode antimony wash water was not proposed because dcp information used at proposal did not quantify the wastewater discharge from this operation, leading EPA to believe that it was insignificant.

Comments received from industry after proposal requesting an allowance for cathode antimony wash water supplied information which allowed water use and discharge rates to be calculated. The Agency has added this new building block to the subcategory.

The promulated BPT wastewater discharge rate for cathode antimony wash water is 31,248 l/kkg (7,488 gal/ton) of antimony metal produced by electrowinning. This rate is allocated to those plants which wash antimony metal produced by electrowinning prior to final packaging. the promulgated BPT flow is based on the discharge from one plant reporting this stream.

Bauxite Refining

Of the eight bauxite refining plants in the United States, four are direct dischargers and four are zero dischargers. Eight of the plants are located in the states of Louisiana, Texas, Arkansas, and Alabama. The other plant is located in the U.S. Virgin Islands. Plant age ranges from 15 to 44 years with an average of about 30 years. EPA data show that plant production ranges from 37,000 to 570,000 kkg per year; one of the plants is closed but continues to discharge and four of the remaining eight plants produce between 200,000 and 300,000 kkg per year, measured as aluminum contained in refined bauxite.

The processes used at a bauxite refinery depend largely on the raw material used and the final product desired. In general, plants use the Bayer process or a variation known as the combination process.

The source of process wastewater in the bauxite refining subcategory is mud impoundment effluent discharged from the mud disposal lake in areas of net precipitation. The effluent is characterized by high pH and the presence of phenolic compounds. We solicited comments at proposal on the need for limitations which would control phenols in the net precipitation discharge. We specifically requested data on the presents of phenols as well as other toxic and nonconventional pollutants in discharges from bauxite plants. Commenters provided recently collected data from their red mud lakes showing levels below the limit of detection for all phenolic compounds except phenol. Moreover, the new data submitted indicates that we may have overestimated the amounts of phenols in the net precipitation discharge from bauxite red mud lakes. As a result the Agency has decided not to establish additional national effluent limitations guidelines and standards for this subcategory.

Primary Beryllium

The primary beryllium industry in the United States currently consists of three plants, two of which are owned by the same company. One of the plants is located in Utah near the beryllium ore mining operations. This facility processes the raw materials to an intermediate product, beryllium hydroxide. The beryllium hydroxide is shipped to the second facility, located in Ohio, where it is further processed to final product forms. The plant which produces beryllium hydroxide in Utah began operations in 1979 and achieves zero discharge through the use of evaporation ponds. The facility in Ohio which produces beryllium metal and other products including beryllium oxide and beryllium copper alloy is a direct discharger which began operations in 1957. The third plant purchases beryllium hydroxide from the Utah plant to produce beryllium oxide and beryllium copper alloys. This facility does not generate wastewaters subject to this rulemaking.

The production of beryllium products can be divided into three distinct operations—production of beryllium hydroxide from beryllium ores, production of beryllium oxide from beryllium hydroxide, and production of beryllium metal from beryllium hydroxide. Most domestic beryllium is extracted from bertrandite ore mined in Utah. Imported and domestically produced beryl ore is another potential raw material for the primary beryllium industry.

The sources of process wastewater receiving an allowance in the primary beryllium subcategory are listed below, along with pollutants typicaly found in each:

(1) Solvent extraction raffinate from bertrandite ore processing is generated when bertrandite ore is leached with sulfuric acid and beryllium is extracted from the resultant solution with an organic solvent. This stream is characterized by a low pH and the presence of toxic metals.

Commenters also requested an increase in the PNF for solvent extraction raffinate from bertrandite ore. However, the Agency determined that the difference between the industry's PNF and the proposed one was essentially nil. We are promulgating the PNF for this subdivision as proposed.

(2) Solvent extraction raffinate from beryl ore processing is generated when beryl ore is leached with sulfuric acid and beryllium is extracted from the resultant solution with an organic solvent. This wastewater has an acid pH and contains toxic metals.

The BPT, BAT, NSPS, and PSNS wastewater discharge rate proposed for solvent extraction raffinate from beryl ore was 200,000 l/kkg (47,900 gal/ton) of beryllium carbonate precipitated (as beryllium). This rate was allocated only for those plants which extract beryllium from an acid solution generated by leaching beryl ore. After proposal, EPA received comments from industry which provided new flow and production for this waste stream. The Agency evaluated the data and is promulgating a new discharge rate.

The BPT, BAT, NSPS, and PSNS wastewater discharge rate promulgated for solvent extraction raffinate from beryl ore is 220,000 l/kkg (52,720 gal/ton) of beryllium carbonate precipitated (as beryllium). This rate is allocated only for those plants which extract beryllium from an acid solution generated by leaching beryl ore.

(3) Beryllium carbonate filtrate results from the precipitation of beryllium carbonate which is separated from the aqueous phase by filtration. This wastewater stream is characterized by the presence of toxic metals.

(4) Beryllium hydroxide filtrate is generated when beryllium carbonate is redissolved in water and beryllium is reprecipitated as beryllium hydroxide. The resultant filtrate stream contains toxic metals.

(5) Beryllium oxide calcining furnace wet air pollution control wastewater results from the use of wet scrubbing to control sulfur dioxide emissions from beryllium oxide calcining furnaces. This wastewater is characterized by the presence of toxic metals.

The proposed and promulgated BPT wastewater discharge rate for beryllium oxide calcining furance wet air pollution control is 263,700 l/kkg (63,190 gal/ton) of beryllium oxide produced. This rate is allocated only for those plants which use wet air pollution control devices to control emissions from beryllium oxide calcining furnaces. There is currently only one plant which practices this operation.

The proposed BAT, NSPS, and PSNS discharge rate for beryllium oxide calcining furance wet air pollution control water was based on 90 percent recycle of the scrubber effluent (refer to Section VII of the General Development Document). Consequently, the proposed BAT, NSPS, and PSNS production normalized discharge flow for beryllium oxide calcining furnace wet air pollution control was 26,373 l/kkg (6,320 gal/ton) of beryllium oxide produced.

Since proposal, industry comments to EPA have indicated that recycle is presently practiced for the beryllium oxide calcining furnace scrubber at a rate greater than 90 percent, and to require additional recycle at BAT would be unachievable. Upon evaluation of the data, the Agency decided not to base its standards on recycle beyond what is presently practiced. The promulgated BAT, NSPS, and PSNS discharge allowance for beryllium oxide calcining furnace wet air pollution control is 263,700 l/kkg (63,190 gal/ton) of beryllium oxide produced. This discharge rate is equivalent to that promulgated at BPT.

(6) Beryllium hydroxide supernatant from beryllium recovery is generated when beryllium is recovered from waste materials by dissolution in sulfuric acid and precipitation as beryllium hydroxide. The resultant supernatant stream is characterized by the presence of toxic metals.

The BPT, BAT, NSPS, and PSNS wastewater discharge rate proposed for beryllium hydroxide supernatant was 104,324 l/kkg (25,000 gal/ton) of beryllium hydroxide produced from scrap and residues (as beryllium). This rate was allocated only for those plants which recover beryllium from residues and scrap by dissolution in sulfuric acid and precipitation of beryllium as beryllium hydroxide. After proposal, EPA received comments from the industry which presented new flow and production data for this waste stream. The Agency evaluated the data and is promulgating a new discharge rate.

The BPT, BAT, NSPS and PSNS wastewater discharge rate promulgated for beryllium hydroxide supernatant is 230,000 l/kkg (55,120 gal/ton) of beryllium hydroxide produced from scrap and residues (as beryllium). This rate is allocated only for those plants which recover beryllium from residues and scrap by dissolution in sulfuric acid and precipitation of beryllium as beryllium hydroxide.

(7) Process water (formerly process condensates at proposal) are generated by crystallizers and evaporators used in the production of beryllium metal. These condensate streams are characterized by the presence of fluoride.

At proposal, no wastewater discharge allowance for process condensates was provided. Only one plant generates process condensates from the manufacture of beryllium metal. Based on the available data, EPA believed that this facility reuses all of this water in fume scrubbing systems and other plant uses.

Industry comments after proposal clarified the process condensates collection and reuse system, and indicate that periodic discharges of process water have to be made in order

to prevent dissolved solids buildup. Information was supplied to the Agency so that a discharge rate for process water could be calculated.

The BPT wastewater discharge rate promulgated for process water is 174,800 l/kkg (41,890 gal/ton) of beryllium pebbles produced. This rate is allocated only for those plants which collect process condensates generated from the manufacture of beryllium metal and discharge this process water after extensive recycle in various plant applications.

(8) Fluoride furnace scrubber wastewater results from the use of wet scrubbers to recover ammonium fluoride from the exhaust gases from the beryllium fluoride furnace. This wastewater contains toxic metals and fluoride.

The BPT, BAT, NSPS, and PSNS wastewater discharge rate proposed for fluoride furnace scrubber water was 2,205 l/kkg (530 gal/ton) of beryllium metal pebbles produced. This rate was allocated only for those plants which produce beryllium fluoride (BeF_2) intermediate by heating ammonium beryllium fluoride in a furnace. There is currently only one plant which practices this operation.

The BPT, BAT, NSPS, and PSNS wastewater discharge rate promulgated for fluoride furnance scrubber wastewater is zero. Presently, one plant operates a scrubber which obtains makeup water from the process water pit, and recycles a scrubber liquor bleed stream back to the process. Because a separate discharge allowance is being promulgated for process water discharge, the Agency did not believe it necessary to give an additional discharge allowance for fluoride furnace scrubber wastewater. The BPT wastewater discharge rate for beryllium pebble plant area vent scrubber wastewater is based on information supplied by the only plant presently operating such a scrubber.

(9) Chip treatment (formerly chip leaching at proposal) wastewater is generated when pure beryllium metal in the form of chips is leached with nitric acid and rinsed prior to being vacuum cast. This wastewater stream is characterized by a low pH and the presence of toxic metals.

The BPT, BAT, NSPS and PSNS wastewater discharge rate for chip treatment wastewater was 4,742 l/kkg of beryllium chips leached. After proposal, EPA received comments from the industry which presented new flow and production data for this waste stream. The Agency evaluated the new data and is promulgating a new discharge rate.

The BPT, BAT, NSPS and PSNS wastewater discharge rate for chip treatment wastewater was 7,750 l/kkg of beryllium chips treated. This rate is allocated only to those plants which treat pure beryllium chips by acid leaching prior to vaccum casting.

(10) Beryllium pebble plant area-vent wet air pollution control wastewater results from the use of wet scrubbing to control particulate emissions from the beryllium pebble plant. This wastewater stream is slightly acidic and contains treatable concentrations of beryllium and fluoride.

At proposal there was no wastewater discharge allowance proposed for this subdivision because the Agency was not aware that this building block existed at any primary beryllium facilities. The Agency has added this new subdivision because we received new information since proposal which indicates that this operation exists at one facility. The scrubber utilizes recirculating process water and does not have a discrete discharge. The water which circulates through the scrubber is discharged as part of the process water building block. Therefore, the promulgated BPT, BAT, NSPS, and PSNS wastewater discharge allowance for beryllium pebble plant area vent wet air pollution control is 0 l/kkg of beryllium metal produced.

Primary and Secondary Germanium and Gallium

Of the five primary and secondary germanium and gallium plants in the United States, one is an indirect discharger and four are zero dischargers. There are no direct dischargers. One plant is located in Pennsylvania, two are in the Oklahoma-Texas region, and two are in the far western part of the country. Germanium and gallium plants are located near sources of raw materials, either zinc ore deposits or major electronics firms. All five plants were built within the last 25 years, with two built within the last three years. The average plant age is 12 years.

The processes used at a germanium or gallium production facility depend largely on the raw material used and the final product desired. Germanium and gallium are produced from both primary and secondary raw materials, however the processing steps are essentially the same, hydrometallurgical.

The sources of process wastewater receiving an allowance in the germanium and gallium subcategory are listed below, along with the pollutants typically found in each:

(1) Still liquor wastewater results from the excess hydrochloric acid used to chlorinate germanium raw material, and the impurities in the germanium raw material. This wastewater contains toxic metals, low pH, and suspended solids.

(2) Chlorinator wet air pollution control wastewater results from wet scrubbers used to control acid and chlorine fumes generated during the reduction of germanium tetrachloride. Chlorinator wet air pollution control wastewater contains toxic metals and suspended solids.

(3) Germanium hydrolysis filtrate wastewater results from the depleted solution after germanium tetrachloride is reacted with water to produce germanium dioxide solids. This wastewater is characterized by toxic metals and suspended solids.

(4) Acid wash and rinse water wastewater is produced by the hydrofluoric acid-nitric acid wash, followed by water rinse, or germanium bars prior to zone refining. This wastewater contains germanium, and has a low pH and high fluoride content.

(5) Gallium hydrolysis filtrate wastewater results from the depleted solution after gallium trichloride is reacted to produce hydrated gallium solids. This wastewater is characterized by toxic metals and suspended solids.

(6) Solvent extraction raffinate wastewater results from the acid solution in which gallium scrap is dissolved prior to being extracted into an organic phase, from which pure metal is recovered. This wastewater is expected to contain toxic organics, metals, and suspended solids.

Secondary Indium

There is one facility currently producing secondary indium in the United States. This facility is an indirect discharger located in the northeastern United States. Plant operations began approximately 50 years ago.

The principal raw materials used for secondary indium production are scrap indium metal and spent electrolyte solutions from secondary silver refining operations.

Leaching and precipitation are the principal operations in the production of secondary indium. Indium scrap is leached with hydrochloric acid to dissolve the indium and produce an indium-laden solution.

The sources of process wastewater receiving an allowance in the secondary indium subcategory are listed below, along with pollutants typically found in each:

(1) Displacement tank effluent is generated when indium sponge is produced by displacing indium ions from solution with zinc. This

wastewater is characterized by the presence of toxic metals and suspended solids.

(2) Spent electrolyte wastewater results from discharging contaminated electrolyte solution from electrolytic refining operations. This wastewater is characterized by an acid pH and the presence of toxic metals and suspended solids.

Secondary Mercury

All four of the secondary mercury plants in the United States are zero dischargers. One plant achieves this discharge status by contractor disposal of process wastewater, one by complete recycle, and two plants operate dry processes. Two of the four plants are located near the industrial centers of the Northeast, one is in Illinois, and one in California. All four secondary mercury plants were built after World War II. The average plant age is 30 years. EPA data show that plant production ranges from less than 25 tons to mercury per year to 100 tons per year, with mean production approximately 55 tons per year.

The processes used at a secondary mercury production facility depend largely on the raw material used and the purity of final product desired.

The sources of process wastewater receiving an allowance in the secondary mercury subcategory are listed below, along with the pollutants typically found in each:

(1) Spent battery electrolyte wastewater results from draining spent electrolyte from mercuric oxide batteries prior to recovering mercury by distillation. This wastewater is characterized by toxic metals, suspended solids, and a low pH.

(2) Acid wash and rinse water wastewater is generated by washing distilled mercury with dilute nitric acid and rinsing it with water in order to further purify the mercury product. This wastewater contains toxic metals and suspended solids.

(3) Furnance wet air pollution control wastewater results from controlling air emissions from the furnace used to separate mercury from gross impurities. Particulates and fumes not condensed with the mercury product are scrubbed prior to venting to the atmosphere. The scrubber liquor should contain mercury and other toxic metals, and suspended solids.

Primary Molybdenum and Rhenium

There are 13 plants in the United States which engage in primary molybdenum or rhenium production. Three plants are located in the western United States near copper and molybdenite mining operations. The remaining 10 plants are located east of the Mississippi River with five of them in the northeastern and east central United States. Four of the plants are direct dischargers (including two of the the three metallurgical acid plants discussed below) and the remaining nine plants discharge no process wastewater. There are no indirect dischargers in the primary molybdenum and rhenium subcategory. The average plant age is between 25 and 35 years with a fairly even distribution of ages ranging from eight to 67 years.

Molybdenum is produced primarily as technical grade molybdic oxide which is consumed principally by the steel industry. Approximately 35,000 metric tons of molybdic oxide were produced domestically in 1982 by seven plants with an average plant production rate of 5,000 metric tons per year. Approximately 2,000 metric tons of pure molybdenum metal were produced in the United States in 1982 at six plants with an average plant production of 300 metric tons per year. Less than four metric tons per year of rhenium are produced in the United States. The production of molybdenum products can be divided into four general processes—roasting of molybdenum sulfide concentrates, production of pure molybdic oxide by sublimation, production of ammonium molybdate, and reduction of pure molybdic oxide or ammonium molybdate to produce molybdenum metal powder.

Rhenium is recovered from molybdenum roaster flue gases as crude ammonium perrhenate which can subsequently be purified and reduced to rhenium metal.

The primary source of molybdenum is a molybdenum sulfide (MoS_2) ore called molybdenite. Most domestic molybdenite is mined and concentrated at two large mines in Colorado and a smaller amount comes from a mine in New Mexico. Molybdenite is also recovered as a byproduct from concentrating porphyry copper ores. Rhenium is produced only from Molybdenite which is associated with copper mining operations.

At proposal the production normalizing parameter (PNP) for molybdic oxide leachate was the amount of ammonium molybdate produced. Since proposal we have changed the PNP to the amount of molybdenum contained in the molybdic oxide leached. Also, new flow and production data were obtained from on additional plant with this operation. The promulgated BPT, BAT, NSPS and PSNS flow rate for molybdic oxide leachate is 11,584 l/kkg of molybdenum contained in the molybdic oxide leached.

The promulgated rate is applicable only to those plants which leach molybdic oxide in order to increase its purity. This practice is often associated with the production of ammonium molybdate compounds.

The sources of process wastewater receiving an allowance in the primary molybdenum and rhenium subcategory are listed below, along with the pollutants typically found in each:

(1) Molybdenum sulfide leachate and rinse water is generated when molybdenite concentrates are leached with nitric acid and rinsed with water prior to roasting. This stream is characterized by low pH as well as the presence of toxic metals and suspended solids.

(2) Roaster wet air pollution control wastewater results from the use of alkaline wet scrubbing systems to control sulfur dioxide emissions from molybdenite roasting operations. This stream is characterized by high alkalinity and the presence of toxic metals and suspended solids.

(3) Hydrogen reduction furnace scrubber wastewater results from scrubbing hydrogen gas with water to cool and quench the gas prior to recycling the hydrogen to the reduction furnace. This wastewater stream is characterized by the presence of toxic metals and suspended solids.

(4) Molybdic oxide leachate wastewater results from the leaching of technical grade molybdic oxide with nityric acid, water or ammonium hydroxide prior to dissolving, purification and crystallization of ammonium molybdate. This leachate and rinse wastewater is characterized by the presence of toxic metals and ammonia.

(5) Rhenium scrubber solution results from scrubbing rhenium heptoxide from molybdenite roaster off-gases with water and recovering the rhenium from aqueous solution by solvent extraction or ion exchange. This wastewater stream is characterized by the presence of toxic metals.

Metallurgical Acid Plants

Metallurgical acid plants produce sulfuric acid from sulfur dioxide air emissions at primary molybdenum facilities. There are 3 metallurgical sulfuric acid plants associated with primary molybdenum plants in the United States. Of these two are direct dischargers, and one achieves zero discharge. One of the direct discharging facilities is in Iowa and the other two facilities are located in Pennsylvania.

There are insufficient data to ascertain the age of acid plants independently of the molybdenum plants associated with them. The average production capacity for metallurgical acid plants associated with primary molybdenum operations is 50,000 to 100,000 tons per year of 100 percent sulfuric acid.

Metallurgical acid plants produce sulfuric acid from the sulfur dioxide emissions of pyrometallurigical operations. By producing acid, the acid plants not only clean the smelter emissions of many tons per day of sulfur oxides, but they also produce a marketable sulfuric acid product.

As explained earlier in the preamble, the three plants covered in this subcategory will be included and regulated under the existing metallurgical acid plants subcategory.

Outlined briefly here, the sources of process wastewater in metallurgical acid plant subcategory are as follows:

—Sintering wet air pollution control,
—Roasting wet air pollution control,
—Conversion wet air pollution control,
—Acid plant wet air pollution control,
—Mist precipitator,
—Box cooler, and
—Mist eliminator.

These wastewater sources are usually combined into a single wastewater stream—acid plant blowdown—which is treated and then recycled or discharged. The acid plant blowdown stream contains the toxic metals arsenic, cadmium, copper, lead, and zinc, and total suspended solids. In addition to the existing pollutant limitations established under the metallurgical acid plant subcategory, the three molybdenum acid plants will also be subject to limitations for fluoride and molybdenum as well.

Secondary Molybdenum and Vanadium

The one secondary molybdenum and vanadium facility in the United States is a direct discharger. It is located in Southern Texas, and was built in 1973. This industry involves the recovery of molybdenum and vanadium from secondary sources using hydrometallurgical processes.

The sources of process wastewater receiving an allowance in the secondary molybdenum and vanadium subcategory are listed below, along with the pollutants typically found in each:

(1) Leach tailings wastewater results from the water leaching process used to remove inerts and other impurities from the raw material, and is characterized by toxic metals and suspended solids.

(2) Molybdenum filtrate solvent extraction raffinate (formerly molybdenum filtrate at proposal) wastewater is generated by the reovery of molybdenum with solvent extraction of the filtrate from the precipitation of molybdenum-rich liquid produced by the vanadium recovery process. This wastewater is characterized by toxic metals, ammonia, and suspended solids.

The BPT, BAT, NSPS, and PSNS wastewater discharge rate promulgated for molybdenum filtrate solvent extraction raffinate is 60,548 l/kkg (14,544 gal/ton) of molybdenum and vanadium produced. This rate is different than the proposed BPT discharge rate for molybdenum filtrate of 77,600 l/kkg of molybdenum produced. This rate is allocated only to those plants recovering molybdenum and vanadium from spent catalysts by a dissolution and precipitation process. The rate is based on data gathered during a post-proposal sampling visit to the one facility in the secondary molybdenum and vanadium subcategory.

(3) Vanadium decomposition wet air pollution control wastewater results from air emissions control on the furnace used to produce vanadium oxide from vanadium solids. This wastewater contains ammonia, toxic metals, and suspended solids.

(4) Molybdenum drying wet air pollution control wastewater results from air emissions control on the furnace used to dry molybdic acid and to produce molybdenum trioxide from the molybdic acid. This wastewater contains molybdenum, toxic metals, and suspended solids.

Primary Nickel and Cobalt

The one primary nickel and cobalt plant in the United States is a direct discharger. It is located in southern Louisiana and was built in 1959. The processes used at a primary nickel and cobalt production facility depend largely on the raw material used and the final product desired.

The sources of process wastewater receiving an allowance in the primary nickel and cobalt subcategory are listed below, along with the pollutants typically found in each:

(1) Raw material dust control wastewater results from slurrying the baghouse dust generated by crushing and grinding ore concentrate in the mill. This wastewater is characterized by toxic metals (mainly copper and nickel), and suspended solids.

(2) Nickel wash water wastewater is generated by washing the nickel powder product produced by hydrogen reduction. This wastewater contains toxic metals and suspended solids.

(3) Nickel reduction decant wastewater is generated by reducing the nickel-rich solution to metal powder in an autoclave. This waste stream is characterized by a neutral pH, several toxic metals, and a high ammonia (as ammonium sulfate) content.

(4) Cobalt reduction decant wastewater is generated by reducing the cobalt-rich solution to metal powder in an autoclave. This waste stream has similar characteristics to the nickel reduction decant waste stream.

Secondary Nickel

Of the two secondary nickel plants in the United States, one is an indirect discharger and one is a zero discharger. Both plants are located near the industrial centers of Western Pennsylvania. One plant was built in 1923, and the other plant was built in 1976.

The processes used at a secondary nickel production facility depend largely upon the raw material used and the final product desired. Secondary nickel production processes can be discussed in the context of three sources of raw materials: nickel melt furnace slag, nickel carbonate produced from acidic waste streams and sludges generated during forming operations, and solid scrap. Nickel alloy scrap generated at steel mills may also be recycled within the mill, however, no refining of the nickel scrap takes place prior to recycle. The objective of slag reclamation is to recover the nickel values from the dross or slag produced in the nickel melt furnaces of a nickel forming plant. When nickel ingots are melted in the presence of fluxing agents, oxidized metals and impurities rise to the surface of the liquid metal and are removed from the furnace. This slag is approximately 10 percent metallics.

The NSPS, PSES, and PSNS wastewater discharge allowance proposed for slag reclaim tailings was 85,600 l/kkg (20,513 gal/ton) of slag reclaim nickel produced. This allowance was based on the discharge rate at the only plant reporting this stream. Since proposal, industry comments, which included flow and production information, enabled EPA to recalculate the production normalized flow. In addition, industry comment prompted EPA to reconsider the production normalizing parameter for this stream. EPA decided that the generation of slag reclaim tailings wastewater is related more closely to raw material input to the reclaim process than to the quantity of nickel produced from the process.

The NSPS, PSES, and PSNS wastewater discharge allowance promulgated for slag reclaim tailings is 12,848 l/kkg (3,079 gal/ton) of slag input to the reclaim process. This rate is

allocated only for those plants that reclaim nickel from slag generated in melt furnaces with a wet granulation process.

The sources of process wastewater receiving an allowance in the secondary nickel subcategory are listed below, along with pollutants typically found in each.

(1) Slag reclaim tailings wastewater results from the wet operation used to reclaim nickel from melt furnace slags, and contains toxic metals and suspended solids.

(2) Acid reclaim leaching filtrate wastewater results from the water leaching process where nickel oxide, produced by roasting nickel carbonate, is purified by leaching away impurities. Toxic metals and suspended solids are found in this waste stream.

(3) Acid reclaim leaching belt filter backwash wastewater is produced by backwashing the belt filter used to recover purified nickel oxide, and contains toxic metals and suspended solids.

Primary Precious Metals and Mercury

Seven of the eight primary precious metals and mercury plants in the United States are zero dischargers. One primary precious metals plant is a direct discharger. Six of the plants achieve zero discharge via permanent lagooning and reuse of process wastewater, and one plant does not generate process wastewater. All eight plants are located west of the Mississippi River, with four plants in Nevada, one in South Dakota, one in Montana, one in Idaho, and one in Colorado. Seven primary precious metals and mercury plants began operations within the last 20 years, and one plant began operations more than 75 years ago. EPA data show that plant production of gold ranges from less than 10,000 troy ounces per year to 200,000 troy ounces per year, with average production approximately 70,000 troy ounces per year; plant production of silver ranges from less than 10,000 troy ounces per year to more than 500,000 troy ounces per year, with average production approximately 220,000 troy ounces per year. The production of mercury is not presented to protect confidential data supplied to the Agency.

The processes used at a primary precious metals and mercury production facility depend largely on the raw material used and the final product desired.

The sources of process wastewater receiving an allowance in the primary precious metals and mercury subcategory are listed below, along with the pollutants typically found in each.

(1) Smelter wet air pollution control wastewater results from control of air emissions from the precious metals dore' smelter using a wet scrubber. This waste stream is characterized by toxic metals and suspended solids.

(2) Silver chloride reduction spent solution wastewater results from the reduction of silver chloride to silver metal by dissolution and displacement with iron. This wastewater contains toxic metals, chloride, suspended solids, oil and grease, and a low pH.

(3) Electrolytic cells wet air pollution control wastewater results from control of air emissions from the electrolytic cells used to further purify gold, which has already been separated from silver, using a wet scrubberr. This wastewater has similar characteristics to the smelter scrubber wastewater.

(4) Electrolyte preparation wet air pollution control results from air emissions control on the reaction vessel used to produce silver nitrate electrolyte from pure silver and nitric acid, using a wet scrubber. This wastewater should have characteristics similar to smelter wet air pollution control wastewater.

(5) Calciner wet air pollution control wastewater results from control of air emissions from the calcining furnace where mercury-containing raw material is roasted. Fumes and particulates passing through the mercury condenser are controlled with a wet scrubber, or series of scrubbers. This wastewater contains high concentrations of mercury, plus some toxic metals and suspended solids.

(6) Calciner quench water wastewater is generated by the water quench used to cool the calcined ore from the mercury roasting furnace. This wastewater contains toxic metals and suspended solids.

(7) Calciner stack gas cooling water wastewater results from the contact cooling water used to cool the gas emissions from the mercury roasting furnace. This wastewater contains mercury and suspended solids.

(8) Mercury calcining condensate wastewater results from the blowdown of water from the condenser where vaporized mercury is collected. This wastewater is characterized by mercury and suspended solids.

(9) Mercury cleaning bath wastewater is generated by the water cleaning bath through which condensed mercury is passed prior to being sold as a product. This wastewater contains mercury, some other toxic metals, and suspended solids.

Two building blocks, gold slimes acid wash and water rinse and silver crystals wash water, have been deleted based on information obtained as a result of a post-proposal request for data under authority of Section 308 of the Clean Water Act. The one facility which was believed to discharge these streams reported that these waters are totally recycled to other plant processes.

Secondary Precious Metals

There are 48 plants in the United States that recover gold, platinum, palladium, iridium, rhodium, osmium, or ruthenium from recycled materials. The plants are concentrated in the Northeast and California, with plants also located in Arizona, Florida, Illinois, Ohio, Virginia, Minnesota, and Washington. EPA data show that a small minority (three) of secondary precious metals plants are direct dischargers. Of the remainder, 29 are indirect dischargers, and 16 are zero dischargers. Most of the plants began operating within the last 15 years.

One-third of the 48 secondary precious metals plants that reported data produce less than 10,000 troy ounces of total precious metals per year; all three of the direct dischargers produce in excess of 50,000 troy ounces per year, as well as 10 of the indirect dischargers.

The processes used at a secondary precious metals production facility depend largely upon the raw materials used and the plant's final products. Secondary precious metals production processes can be divided into two stages: raw material preparation and refining steps.

Depending on the raw material being processed, a plant may use one or more raw material preparation steps to prepare the raw material for the refinery. Plants which process dental scrap, optical scrap, electrical scrap, or spent catalysts may use a pyrometallurgical process.

Some plants do not use any of the raw material preparation steps described above on their raw materials, and proceed directly with the refining steps. Other plants may only melt and granulate their raw material prior to refining. Granulation is a common practice with jewelry scrap.

Refining steps are taken to produce high-purity precious metals (generally 99.9–99.99 percent) from lower purity raw materials, which may have undergone raw material preparation steps via a hydrometallurgical refining process.

Based on comments received following the proposal, the Agency determined that a discharge is necessary for raw material granulation water which had a zero allowance at proposal. The BPT wastewater discharge rate

promulgated for raw material granulation is 6.34 liters per troy ounce of precious metals in the granulated raw material. This rate is based on dcp information.

The BAT, NSPS, PSES, and PSNS wastewater discharge rate promulgated for raw material granulation is 0.64 liters per troy ounce of precious metals in the granulated raw material. This rate is based on 90 percent recycle of the promulgated BPT rate, 6.34 liters per troy ounce.

We also changed the production normalized flow for Spent Cyanide Stripping Solutions. The BPT wastewater discharge rate promulgated for spent cyanide stripping solutions is 3.7 liters per troy ounce of gold recovered by cyanide stripping. This rate applies to plants which recover gold by stripping with a cyanide-based solution, and recovering the gold from this solution. This rate is based on the average of the lower five of six water use rates reported for this stream. EPA proposed 1.1 liters per troy ounce for this waste stream, but stated that it was considering 3.7 liters per troy ounce and would select between the two based on a variety of factors, including public comment. EPA decided to revise the rate from 1.1 to 3.7 liters per troy ounce for promulgation based on comments received following proposal.

The sources of process wastewater receiving an allowance in the secondary precious metals subcategory are listed below, along with pollutants typically found in each.

(1) Furnace wet air pollution control wastewater results from the scrubbing of incinerator and smelting furnace off-gases. This wastewater contains toxic organics, toxic metals, cyanide, and suspended solids.

The NSPS and PSNS wastewater discharge rate proposed for furnace wet air pollution control was 0 liters per troy ounce of precious metals, including silver, incinerated or smelted, based on dry scrubbing. The Agency has evaluated industry comments concerning the need for wet scrubbing on furnace operations and has decided to promulgate an NSPS and PSNS wastewater discharge allowance for this subdivision equal to the proposed and promulgated BAT wastewater discharge rate of 4.5 l/kkg of precious metals, including silver, incinerated or smelted.

(2) Raw material granulation wastewater is produced by granulating melted raw material with water in a manner similar to shot casting. The wastewater is characterized by toxic metals and suspended solids.

(3) Spent plating solutions wastewater is a result of recovering gold, palladium or rhodium from spent or contaminated electroplater's solutions, and is characterized by toxic metals, free and complexed cyanide, and suspended solids.

(4) Spent cyanide stripping solution wastewater is produced by stripping gold away from electronic scrap and then recovering the gold from solution. This wastewater consists of free and complexed cyanide, toxic metals, and suspended solids.

(5) Refinery wet air pollution control wastewater is a result of air emissions from basic and acid dissolution and precipitation reactions in the refinery. Pollutants found in this wastewater include toxic organics and metals, cyanide, ammonia, and suspended solids.

(6) Gold solvent extraction raffinate and wash water wastewater is produced by dissolving raw material in acid, and then recovering it by extraction into an organic solvent. After recovering pure gold, the product is washed with water. This wastewater is characterized by toxic organics and metals, and suspended solids.

(7) Gold spent electrolyte wastewater results from the electrolytic recovery of gold from raw material cast as an anode. This wastewater consists of toxic metals and suspended solids.

(8) Gold precipitation and filtration wastewater results from the dissolution of raw material in aqua regia, filtering away silver chloride, precipitating gold, and recovering gold by filtration. The gold product is washed with water, which is included in this effluent. This watewater contains toxic metals, ammonia, and suspended solids.

(9) Platinum precipitation and filtration wastewater results from dissolution of platinum-bearing raw material, precipitation of platinum, and a water wash of the product. This wastewater contains toxic metals, ammonia, and suspended solids.

(10) Palladium precipitation and filtration wastewater results from dissolution of palladium bearing raw material, precipitation of palladium, and a water wash of the product. This wastewater contains toxic metals, ammonia, and suspended solids.

(11) Other platinum group metals precipitation and filtration wastewater results from dissolution of platinum group metals (PGM) bearing raw material, precipitation of the PGM, and a water wash of the product. This wastewater contains toxic metals, ammonia, and suspended solids.

(12) Spent solutions from potassium gold cyanide (PGC) salt manufacturing wastewater is a result of adding excess potassium cyanide solution to pure gold in order to produce PGC salt. The excess, or spent solution contains toxic metals, free and complexed cyanide, and suspended solids.

(13) Equipment and floor wash wastewater results from the need for plants to recover product which would normally be lost in spills and leaks, and is characterized by toxic metals, ammonia, and suspended solids.

Primary Rare Earth Metals

The primary rare earth metals industry consists of four plants; one is located in southwest United States and the remaining three are in the northeast United States. Of these four facilities, two were built in the past 20 years, while two were built nearly 70 years ago. The average production of rare earth metals from these plants is 270 tons per year. One of the plants is a direct discharger, one is an indirect discharger, and two are zero dischargers.

Rare earth metal production can be divided into two types of metals produced: pure rare earth metals, and mischmetal, an alloy of various rare earth metals and iron. There are two types of rare earth metals production processing steps which an individual plant may utilize. Pure rare earth metals are produced through reduction processes. Calcium reduction is used for rare earth fluoride raw materials and mischmetal reduction is used for rare earth oxide raw materials.

The sources of process wastewater receiving an allowance in the primary rare earth metals industry are listed below, along with the pollutants typically found in each:

(1) Dryer vent water quench and scrubber wastewater results from air pollution control systems on the wet rare earth chloride drying furnaces. This wastewater contains suspended solids and toxic metals.

(2) Dryer vent caustic wet air pollution control wastewater is generated by wet scrubbing to remove acid vapors from the vent gases. This stream is characterized by a high pH, and treatable concentrations of toxic metals and suspended solids.

At proposal subdivisions one and two were combined into a single subdivision entitled dehydration furnace quench and wet air pollution control. The proposed BPT wastewater discharge rate for the combined subdivision was 14,800 l/kkg of mischmetal produced from wet rare earth chlorides. This discharge rate was based on the average water use at the two facilities reporting this waste stream. Of the two plants, one uses 11,600 l/kkg and the other 17,900 l/kkg.

Since proposal, new flow and production information from one plant prompted a study of the combined subdivision. EPA then decided to create two separate subdivisions to better address the differences between the processes at the two discharging plants in this subcategory.

The promulgated BPT wastewater discharge rate for dryer vent water quench and scrubber is 10,563 l/kkg (2,531 gal/ton) of mischmetal produced from wet rare earth chlorides. This rate is allocated only for those plants which use a furnace to dehydrate rare earth chloride raw material prior to electrolytic refining, and treat the off-gases with a continuous water quench or with a water scrubber. Both rare earth metals plants producing mischmetal in the United States incorporate this operation. The promulgated BPT wastewater discharge rate is based on the water use at the plant reporting no recycle of wastewater. This plant uses 10,563 l/kkg. Because the second plant presently operates at 97 percent recycle, it is more appropriately used as a basis for the BAT discharge allowance.

The BAT, NSPS, PSES, and PSNS wastewater discharge allowance for dryer vent water quench and scrubber wastewater is 4,173 l/kkg (1,000 gal/ton) of mischmetal produced from wet rare earth chlorides. Both of the rare earth metal plants producing mischmetal incorporate this operation. One plant presently recycles the scrubber liquor achieving 97 percent recycle. The other plant does not presently practice recycle. The BAT wastewater discharge rate is based on the discharge rate of the plant practicing recycle. Information submitted after proposal indicates that two building blocks are necessary because not all plants incorporate both building blocks in their process operations.

A separate discharge rate for dryer vent caustic wet air pollution control is being promulgated for BPT. The BPT wastewater discharge rate for dryer vent caustic wet air pollution control wastewater is 734 l/kkg (176 gal/ton) of mischmetal produced from wet rare earth chlorides. This rate is allocated only for those plants which use a caustic scrubber, in addition to a water quench or water scrubber, to treat vent gases from a wet rare earth chlorides dehydration furnace. Only one of the plants in this subcategory reported having this operation. The promulgated BPT wastewater discharge rate is based on the discharge flow at this one plant.

(3) Electrolytic cell water quench and scrubber wastewater results from cooling gas emissions from electrolytic reduction of rare earth chlorides. This wastewater contains some toxic metals, hexachlorobenzene, and has a low pH.

The BPT wastewater discharge rate proposed for electrolytic cell water quench and scrubber wastewater was 16,400 l/kkg (3,930 gal/ton) of total mischmetal produced. This rate was based on the average water use of two plants with this waste stream. One reported a water use of 20,100 l/kkg and the second 12,700. At proposal, EPA understood that neither plant recycled this waste stream based on dcp information. Post-proposal comments and information from one plant indicated otherwise; therefore, a new BPT rate was chosen for promulgation.

The promulgated BPT wastewater discharge rate for electrolytic cell water quench and scrubber is 12,682 l/kkg (3,039 gal/ton) of total mischmetal produced. This rate is allocated only for those plants which electrolytically reduce rare earth chlorides to mischmetal and treat the off-gases with a continuous water quench or a water scrubbber system before any further treatment of the exhaust gases. The promulgated BPT wastewater discharge rate is based on the water use at the plant reporting no recycle of scrubber or quench water. This plant uses 12,682 l/kkg. Because the second plant presently operates at 96 percent recycle it is more appropriately used as a basis for the BAT discharge allowance.

The BAT, NSPS, PSES, and PSNS wastewater discharge allowance for electrolytic cell water quench and wet air pollution control is 9,390 l/kkg (2,250 gal/ton) of total mischmetal produced. Both of the rare earth metal plants producing mischmetal incorporate this operation. One plant presently practices 96 percent recycle while the other plant has no recycle. The BAT wastewater discharge rate is based on the discharge rate of the plant practicing recycle.

(4) Electrolytic cell caustic wet air pollution control wastewater is presently used for by-product recovery involving sodium hypochlorite produced from sodium hydroxide and chlorine gas from the electrolytic reduction cell. Because of the recovery operation, no wastewater is discharged.

(5) Sodium hypochlorite filter backwash results from filtering of the sodium hypochlorite solution generated in the electrolytic cell caustic scrubber to produce a marketable product. Backwashing is necessary to ensure efficient operation of the filter. This wastestream may be expected to contain high chlorides and other dissolved solids, suspended solids and has a high pH. This wastestream has been added in response to comments on the proposed regulation.

A discharge allowance for sodium hypochlorite filter backwash was not proposed because dcp information used for proposal did not quantify any wastewater discharge from this operation. Comments received from industry after proposal requested an allowance for the filter backwash and supplied information so that water use and discharge rates could be calculated.

The promulgated BPT, BAT, NSPS, PSES, and PSNS wastewater discharge rate for sodium hypochlorite filter backwash is 362 l/kkg (87 gal/ton) of total mischmetal produced. This rate is allocated only for those plants which operate a filter for filtering sodium hypochlorite which requires periodic backwashing. The promulgated discharge rate is based on the water use at the only plant reporting this waste stream.

Secondary Tantalum

There are three plants in the United States that recover tantalum from secondary sources. The plants are located in the northeastern part of the United States. EPA data show that all of the plants are direct dischargers. The average age of the plants is 60 years; the oldest plant was built in 1900 while the newest plant was constructed just prior to World War II. Secondary tantalum is produced in the form of tantalum metal powder. Average tantalum powder production for the three plants is 12 tons per year. The processes used at a secondary tantalum production facility depend upon the raw materials used. Secondary tantalum production can be discussed in the context of three raw materials: scrap tantalum alloy metal, electrical components such as capacitors, and tantalum-bearing sludge.

The sources of process wastewater receiving an allowance in the secondary tantalum subcategory are listed below, along with the pollutants typically found in each:

(1) Tantalum alloy leach and rinse wastewater results from leaching tantalum alloy scrap metal, contains dissolved toxic metals such as copper and nickel, suspended solids, and has a low pH.

(2) Capacitor leach and rinse wastewater results from leaching of scrap electrical components which are predominantly capacitors. This wastewater has a low pH and contains suspended solids and toxic metals.

(3) Tantalum sludge leach and rinse wastewater results from leaching and rinsing tantalum-bearing sludge during tantalum upgrading operations. It

contains toxic metals such as copper and lead, suspended solids, and has a low pH.

(4) Tantalum powder acid wash and rinse wastewater results from final purification of tantalum powder to remove surface oxides. This wastewater contains toxic metals, suspended solids, and has a low pH.

(5) Leaching wet air pollution control wastewater is the scrubber liquor resulting from acid leaching of raw materials for tantalum recovery. This wastewater contains total suspended solids and toxic metals.

Secondary Tin

At proposal, this subcategory was named primary and secondary tin. We have renamed this subcategory as secondary tin only because there are no facilities processing tin ores in the United States. There is one facility capable of processing ore but it is currently processing secondary materials.

There are 12 plants in the United States which produce or recover tin from secondary sources such as detinners mud, tin plated steel scrap and tin plating solutions and sludges using either pyrometallurgically or hydrometallurgical process. Five of the 12 plants which produce secondary tin are located in the west or southwestern United States. Five of the remaining seven plants are located in the east central United States. One plant is located in Indiana and one plant is located in Florida. The average plant age is between 16 and 25 years. All of the plants have been built since 1940. The one plant which produces secondary tin pyrometallurgically has a production level between 1,000 and 5,000 metric tons per year. This facility is a direct discharger. Approximately 1,700 metric tons of secondary tin were produced in 1982 at 12 plants with an average plant production of approximately 150 metric tons per year. Eight of the 12 secondary tin plants achieve zero discharge; three are direct dischargers and one discharges to a POTW.

Primary tin is produced by smelting tin concentrates with limestone and coke. The crude tin is then electrolytically refined and cast. Secondary tin may also be produced by smelting tin residues, particularly detinners mud from alkaline detinning operations. Most secondary tin, however, is produced by dissolving tin from tin plated steel scrap, and recovering the tin by electrowinning. Tin may also be recovered from solution by precipitation of tin as tin hydroxide. A smaller amount of secondary tin is recovered from tin plating sludges which are generated by tin plated steel production operations.

The sources of process wastewater receiving an allowance in the primary and secondary tin subcategory are listed below along with the pollutants typically found in each.

(1) Tin smelter sulfur dioxide (SO_2) scrubber (formerly tin smelter wet air pollution control at proposal) wastewater results from the use of wet scrubbing systems to control sulfur dioxide emissions from tin smelting operations. This wastewater is characterized by the presence of toxic metals and suspended solids.

The proposed wastewater discharge rate for this building block was 21,600 l/kkg of tin metal produced. The BPT, BAT, NSPS, and PSNS wastewater discharge promulgated for tin smelter sulfur dioxide (SO_2) scrubber water is 9,198 l/kkg (2,204 gal/ton) of crude tapped tin produced, based on greater than 90 percent recycle. This rate is allocated only to those plants which use wet air pollution control to control SO_2 emissions from tin smelting operations. One facility reported tin smelting operations and the use of wet scrubbing. This facility has a scrubber liquor recycle rate of greater than 90 percent. The revised BPT, BAT, NSPS, and PSNS flow allowance is based on data obtained as a result of field sampling conducted after proposal.

(2) Dealuminizing rinse wastewater results from dissolving aluminum from minicipal solid waste derived scrap prior to alkaline detinning. This stream is characterized by an alkaline pH and the presence of cyanide, toxic metals, aluminum, and suspended solids.

(3) Tin hydroxide wash wastewater is generated when tin hydroxide is used as a raw material in the elecrowinning operations and is washed with water to remove impurities prior to dissolving and electrowinning. This waste stream contains toxic metals and suspended solids.

(4) Tin mud acid neutralization filtrate is generated when tin mud is upgraded by acid addition and dewatering prior to sale to tin smelters. This wastewater contains cyanide and toxic metals.

(5) Spent electrowinning solution from new scrap results from discharging water from the electrowinning circuit to control the buildup of impurities when new tin plated steel scrap is processed. This stream has a very alkaline pH and contains cynide, toxic metals and suspended solids.

(6) Spent electrowinning solution from municipal solid waste is required to account for the larger volume of spent electrowinning solution which must be discharged when municipal solid waste is used as a raw material in alkaline detinning and electrowinning. This extra discharge is necessitated by impurities which are introduced into the electrowinning solution by the municipal solid waste. This wastewater is characterized by an alkaline pH and the presence of cyanide, toxic metals and suspended solids.

(7) Tin hydroxide supernatant from scrap is generated when tin hydroxide is precipitated from alkaline detinning solution and separated from the aqueous phase by gravity separation. This wastewater contains toxic metals, cyanide, and suspended solids.

(8) Tin hydroxide supernatant from plating solutions and sludges is generated when the redissolved tin hydroxide is precipitated as a hydroxide from solution and separated from the aqueous phase by gravity separation. This wastewater is characterized by the presence of toxic metals, cyanide, suspended solids, and high concentrations of fluoride.

We proposed two separate subdivisions, tin hydroxide supernatant from spent plating solutions and tin hydroxide supernatant from sludge. These have been combined into one building block. This change will simplify the regulation, but will not cause the limitations with which any plant must comply to change. At proposal, a plant generating both wastewater from plating solutions and from sludges would have calculated separate mg/kg limits for each operation and summed them for a plant limitation. The promulgated BPT, BAT, NSPS, PSES, and PSNS wastewater discharge rate for tin hydroxide supernatant from plating solutions and sludges is 115,000 l/kkg (17,600 gal/ton) of tin metal recovered from plating solutions and sludges. This rate is allocated only to those facilities which recover tin from plating solutions and sludges by precipitation of tin hydroxide. One facility reports this practice.

(9) Tin hydroxide filtrate results from dewatering tin hydroxide slurry in a filter press. The resultant filtrate stream contains toxic metals, cyanide, fluoride, and suspended solids.

Primary and Secondary Titanium

Of the eight primary and secondary titanium plants in the United States, four are direct dischargers, two are indirect dischargers, and two are zero dischargers. The plants are located mostly in the eastern and northwestern states. There plants were built around 1940, three were built between 1956 and 1958, and two have been built since

1975. EPA data show that five of the eight plants produce less than 500 kkg per year while, of the remining three plants, two produce more than 5,000 kkg per year.

The processes used at a primary and secondary titanium production facility depend largely on the raw material used and the final product desired.

One building block, cathode gas wet air pollution control, has been deleted based on information obtained as a result of a post-proposal request for data under authority of section 308 of the Clean Water Act. Two facilities reported this waste stream at proposal. One facility which reported this stream (plant 1044) no longer produces titanium. The other facility which reported this stream (plant 1085) has changed their magnesium recovery operations and no longer generates this wastewater. Because there are no plants in the primary and secondary titanium subcategory which practice cathode gas scrubbing, this subdivision has been deleted.

The sources of process wastewater receiving an allowance in the primary and secondary titanium subcategory are listed below, along with the pollutants tyipically found in each:

(1) Chlorination off-gas wet air pollution control wastewater resutls from wet scrubbers on the fluidized bed reactors used to convert rutile ore to the titanium tetrachloride. This waste stream may contain chlorine, suspended solids, and toxic metals.

(2) Chlorination area vent wet air pollution control wastewater results from wet scrubbers used to control fumes from the ore chlorination operation. This waste stream contains chlorine, suspended solids, and toxic metals.

(3) Titanium tetrachloride handling wet air pollution control wastewater results from wet scrubbers used to control fumes from the handling and storage of titanium tetrachloride. The characteristics of this stream are similar to those of the reduction area scrubber water, which contains suspended solids and toxic metals.

(4) Reduction area wet air pollution control wastewater resulting from wet scrubbers used to control fumes generated from the reduction furnace when titanium tetrachloride is reduced to the metal sponge by magnesium. No wet air pollution control is reported to be associated with reduction by sodium or calcium hydride (CaH_2). This wastewater is characterized by the presence of magnesium chloride, and toxic metals.

(5) Melt cell wet air pollution control wastewater results from wet scrubbers used to control fumes from molten magnesium chloride which is stored in a melt cell prior to electrolytic recovery. This stream is characterized by low pH and low concentrations of toxic metals.

(6) Chlorine liquefaction wet air pollution control wastewater results from wet scrubbers used to control vapors which escape during the liquefaction of the chlorine gas generated by the electrolytic recovery of magnesium. This stream is characterized by a low pH and the presence of toxic metals.

(7) Sodium reduction container reconditioning wash water is generated when water is used to rinse the containers used for the reduction of titantium tetrachloride by sodium. This stream contains chlorides, suspended solids, and toxic metals.

(8) Chip crushing wet air pollution control wastewater results from wet scrubbers used to control dust when titanium sponge chips are crushed prior to purification. This stream contains titanium and suspended solids.

(9) Acid leachate and rinse water is generated when titanium sponge is purified by leaching. Purification by vacuum distillation does not generate a wastewater. This waste stream is characterized by the presence of suspended solids and toxic metals.

(10) Sponge crushing and screening wet air pollution control wastewater results from wet scrubbers used to control dust from the crushing, screening, and storage of leached titanium. This waste stream contains suspended solids and toxic metals.

(11) Acid pickle and wash water is generated when large surface area titanium scrap is pickled and rinsed before alloying and casting. This low pH waste stream contains fluoride and toxic metals.

(12) Scrap milling wet air pollution control wastewater results from wet scrubbers used to control dust from the milling of titanium scrap and turnings. This waste stream contains suspended solids and toxic metals.

(13) Scrap detergent wash water is generated when scrap titanium is washed to remove oil and dirt before alloying and casting. This waste stream contains suspended solids, oil and grease, and toxic metals.

(14) Casting crucible wash water is generated when water is used to clean the crucibles used in casting operations. This stream is similar to casting contact cooling water and should contain oil and grease and toxic metals.

(15) Casting contact cooling water is generated during the casting operations. This stream is characterized by the presence of oil and grease, suspended solids, and toxic metals.

Secondary Tungsten and Cobalt

Of the six secondary tungsten and cobalt plants in the United States, four are direct dischargers, one is an indirect discharger and one is a zero discharger. All six plants are located in the northeastern part of the country, near industrial centers, and all are in areas of net precipitation. One secondary tungsten and cobalt plant was built prior to World War I, two were built during World War II, and two plants were built in the last 20 years. EPA data show that average plant production of tungsten products is about 100 tons per year. Average plant production of cobalt products is also about 100 tons per year.

The processes used at a secondary tungsten and cobalt production facility depend largely on the raw material used and the final product desired. The basic hydrometallurgical processing steps which an individual plant may use to recover tungsten, tungsten carbide, cobalt, and synthetic scheelite ($CaWO_4$) were discussed in the preamble to the proposed regulation.

The sources of process wastewater receiving an allowance in the secondary tungsten and cobalt subcategory are listed below, along with the pollutants typically found in each.

(1) Tungsten detergent wash and rinse wastewater is a result of washing oil and grease off the surface of tungsten scrap prior to leaching, and this stream contains toxic metals, oil and grease, and suspended solids.

(2) Tungsten leaching acid wastewater is generated when tungsten scrap is leached with an acid solution in order to remove impurities from the scrap. This stream is characterized by toxic metals, suspended solids, and a low pH.

(3) Tungsten post-leaching wash and rinse wastewater is a result of washing residual leaching acid and impurities away from the tungsten powder product. This stream consists of toxic metals and suspended solids.

(4) Synthetic scheelite filtrate wastewater is produced by the dissolution process where tungsten oxide produced from scrap is converted to synthetic scheelite. This waste stream is characterized by toxic metals and suspended solids.

(5) Tungsten carbide leaching wet air pollution control wastewater results from the wet scrubbers used to control acid fumes generated during tungsten carbide leaching. This scrubber liquor contains toxic metals, ammonia and suspended solids.

The proposed BPT flow allowance for tungsten carbide leaching wet air pollution control was 1,751 l/kkg of tungsten carbide scrap leached. The proposed BAT, NSPS, and PSNS allowance was 175 l/kkg of tungsten carbide scrap leached based on 90 percent recycle of the BPT rate. Based on comments on the proposed rulemaking, the Agency reexamined the dcp data for the one facility with this operation and found that recycle of scrubber liquor is already practiced at a rate greater than 90 percent. Therefore, the promulgated BAT, PSES, NSPS and PSNS flow rates for tungsten carbide leaching wet air pollution control are equal to the proposed and promulgated BPT rate, 1,751 l/kkg of tungsten carbide scrap leached.

(6) Tungsten carbide wash water is generated when tungsten carbide powder is washed with dilute acid and rinsed with water in order to remove residual leaching acid and impurities. This waste stream is similar to tungsten post-leaching wash and rinse wastewater, and has similar characteristics.

(7) Cobalt sludge leaching wet air pollution control wastewater results from the wet scrubber used to control acid fumes generated during cobalt sludge leaching. This waste stream and tungsten carbide leaching wet air pollution control should have similar characteristics.

The proposed BPT flow allowance for cobalt sludge leaching air pollution control was 35,781 l/kkg of cobalt produced from cobalt sludges. The proposed BAT, NSPS, and PSNS flow allowance was 3,578 l/kkg of cobalt produced from cobalt sludges based on 90 percent recycle of the proposed BPT rate. In response to comments on the proposed rulemaking, the Agency reexamined the dcp data for the one facility with this operation and found that recycle of scrubber liquor is already practiced at a rate greater than 90 percent. Therefore, the promulgated BAT, NSPS, PSES and PSNS flow rates for cobalt sludge leaching wet air pollution control are equal to the proposed and promulgated BPT rate, 35,781 l/kkg of cobalt produced from cobalt sludges.

(8) Crystallization decant wastewater is produced by plants which recover cobalt from tungsten carbide leaching acid by crystallization. This waste stream is characterized by toxic metals and suspended solids.

(9) Acid wash decant wastewater results from the purification steps used on the cobalt crystals, and contains toxic metals and suspended solids.

(10) Cobalt hydroxide filtrate wastewater is generated by the alkaline dissolution and precipitation process used to produce cobalt hydroxide. This waste stream is characterized by toxic metals and suspended solids.

(11) Cobalt hydroxide filter cake wash water is produced by washing the cobalt hydroxide filter cake with water in order to remove any traces of caustic or other impurities. This stream contains toxic metals.

Secondary Uranium

There are three plants in the United States that produce secondary uranium including depleted uranium metal. Of these three, one plant is a zero discharger and two plants are direct dischargers. The plants are all located east of the Mississippi River. Two plants were built in the 1950s when the uranium industry first began large scale production. The third plant was built nearly 15 years ago to supplement the growing need for uranium for commercial projects.

The uranium production process can be divided into three phases. The first phase is processing of uranium ore to generate uranium hexafluoride (UF_6) (not depleted). This primary production of uranium is not covered by this regulation and may be the subject of future regulation. The second phase is processing uranium scrap materials into uranium tetrafluoride (UF_4). The third phase is reduction of uranium tetrafluoride to uranium metal.

Raw materials available to uranium producers include scrap from forming operations, material that does not meet specifications for quality or purity, tailings from machining operations, and residuals present in magnesium fluoride slag from the final uranium tetrafluoride reduction processes.

The sources of process wastewater receiving an allowance in the secondary uranium subcategory are listed below, along with the pollutants typically found in each:

(1) Refinery sump filtrate (formerly, refinery filtrate at proposal) wastewater results from floor wash pump leakage, pump peal water spills from the digestion, solvent extraction, evaporation and denitration areas where uranium scrap is being processed. This wastestream contains toxic metals and suspended solids.

The proposed BPT, BAT, NSPS, and PSNS wastewater discharge rate for refinery sump filtrate was 34,800 l/kkg 8,340 gal/ton) of uranium trioxide produced. This rate was allocated for those plants that acid leach scrap uranium materials to recover uranium. One plant in this subcategory employs this operation and the discharge rate was based on flow information provided by this plant. Post-proposal comments which included new data and information from the plant showed that the proposed flow was not accurate and that the production normalizing parameter was not appropriate. EPA studied the data and decided to promulgate a revised flow allowance and, in addition, change the PNP for this subdivision.

The promulgated BPT, BAT, NSPS, and PSNS wastewater discharge rate for refinery sump filtrate is 73,340 l/kkg (17,580 gal/ton) of uranium processed in the refinery. This rate is allocated only for those plants that employ acid leaching and dissolution operations to recover uranium from secondary sources. The flow from the one plant in this subcategory having this operation was used to determine the promulgated regulatory flow.

(2) Slag leach reslurry (formerly, slag leach slurry at proposal) wastewater is generated by adding water to the filtered solids from acid leaching of recycled magnesium fluoride slag. The waste stream contains suspended solids and has a low pH.

The proposed BPT, BAT, NSPS, and PSNS wastewater discharge rate for slag leach reslurry was 3,800 l/kkg (910 gal/ton) of uranium trioxide produced. This rate was allocated only for those plants which leach magnesium fluoride slag, recycled from the magnesium reduction operation, to recover the residual uranium in the slag. Post-proposal comments from the industry indicated a difficulty with the PNP chosen for this subdivision. If a plant operates leaching on a campaign basis, it must have a way to determine its regulatory allowances without waiting for the next process step to be completed. EPA acknowledged this difficulty and chose a new PNP for promulgation. However, the wastewater flow (l/yr) used to calculate the regulatory flow (l/kkg) was not altered.

The promulgated BPT, BAT, NSPS, and PSNS wastewater discharge rate for slag leach reslurry is 4,566 l/kkg (1,094 gal/ton) of uranium processed in the refinery. This rate is allocated only for those plants which recover uranium by leaching magnesium fluoride slag. One plant in this subcategory has this operation, and the promulgated BPT discharge rate is based on the water use at this plant.

(3) Solvent extraction raffinate filtrate (formerly, solvent extraction raffinate at proposal) wastewater results from purification of an intermediate uranium compound by extraction into an organic

phase. The discharged aqueous solution contains toxic metals, and suspended solids.

The proposed BPT, BAT, NSPS, and PSNS wastewater discharge rate for solvent extraction raffinate filtrate was 5,300 l/kkg (1,270 gal/ton) of uranium trioxide produced. This rate was allocated for those plants which purify the uranium by extraction into an organic solvent, leaving behind all impurities that were leached along with the uranium. One plant in this subcategory employs such a purification process. Post-proposal comments from industry indicated a difficulty with the PNP chosen for this subdivision. If a plant operates solvent extraction on a campaign basis, it must have a method to determine its regulatory allowance without waiting for the next process step to be completed. EPA acknowledged this difficulty and chose a new PNP for promulgation. However, the wastewater flow (l/yr) used to calculate the regulatory flow (l/kkg) was not altered.

The promulgated BPT, BAT, NSPS, and PSNS wastewater discharge rate for solvent extraction raffinate filtrate is 6,369 l/kkg (1,526 gal/ton) of uranium processed in solvent extraction. This rate is allocated only for those plants using solvent extraction procedures to purify uranium compounds dissolved in solution as a result of acid leaching and dissolution. The promulgated BPT discharge rate is based on the water use at the one plant in the subcategory having this operation.

(4) Digestion wet air pollution control produces no wastewater discharge. At proposal we believed that wastewater resulted from wet scrubbing of process emissions. However, after proposal, we received information that there is no discharge generated because scrubber liquors resulting from control of the process emissions from acid leaching are entirely recycled to the digestion operations.

The proposed BPT, BAT, NSPS, and PSNS wastewater discharge rate for digestion wet air pollution control was 30 l/kkg (7.2 gal/ton) of uranium trioxide produced. This rate was allocated only for those plants that incorporate a water scrubber on the acid leaching and dissolution operation. Post-proposal comments from the industry clarified the Agency's understanding of the digestion scrubber's operation. The comments indicated that scrubber blowdown is totally reused in the leaching and dissolution operation because it contains nitric acid and uranium. No discharge occurs from this scrubber, and EPA decided to change the discharge rate for this subdivision at promulgation.

The promulgated BPT, BAT, NSPS, and PSNS wastewater discharge rate for digestion wet air pollution control is zero. The promulgated discharge rate is based upon water use information supplied by the only plant in this subcategory having a digestion operation scrubber. Existing practice at this plant is such that 100 percent of the scrubber liquor is recycled or reused; therefore, it is appropriate that the promulgated regulatory flow should be zero.

(5) Evaporation and denitration wet air pollution control (formerly, evaporation and calcination wet air pollution control at proposal) produces no wastewater discharge. Scrubber liquors resulting from control of emissions in the evaporation and calcination operations were reported to be 100 percent reused in the digestion operation.

(6) Hydrofluorination alkaline scrubber (formerly, hydrogen reduction and hydrofluorination KOH wet air pollution control at proposal) wastewater results from wet scrubbers that control vent gases from the hydrofluorination water scrubber which controls acid fumes from the hydrofluorination operations. The wastewater contains suspended solids, fluorides and has an acidic pH.

(7) Hydrofluorination water scrubber (formerly, hydrofluorination wet air pollution control at proposal) produces no wastewater discharge. Scrubber liquor that absorbs unreacted hydrofluoric acid gases is recycled to concentrate the acid content. The acid scrubber liquor is drawn off and sold for its hydrofluoric acid content.

(8) Magnesium reduction and casting floor wash water results from washing the floors in the reduction and casting area. This wastestream contains toxic metals, suspended solids, fluorides and has as acidic pH.

The promulgated BPT, BAT, NSPS, and PSNS wastewater discharge rate for magnesium reduction and casting floor wash water is 30.1 l/kkg of uranium metal produced. This rate is based on the lower of the two values reported by two facilities in this subcategory and is achievable through the use of a floor washing machine. No wastewater discharge allowance was proposed for this building block because the Agency had insufficient data to quantify the flow associated with this operation. Data obtained during post-proposal sampling visits to two facilities has enabled the Agency to promulgate a discharge allowance for this building block.

(9) Laundry wastewaters are generated from washing of employee uniforms. This wastestream contains suspended solids and toxic metals.

The promulgated BPT wastewater discharge allowance for laundry wastewater is 192 l/kkg of uranium produced by magnesium reduction. The promulgated BAT, NSPS, and PSNS wastewater discharge allowance for laundry wastewater is 96 l/kkg of uranium produced by magnesium reduction based on 50 percent recycle of the promulgated BPT flow rate. No wastewater discharge was proposed for this building block because the Agency had insufficient data to quantify the flow associated with this operation. Data obtained during a post-proposal sampling visit have enabled the Agency to promulgate discharge allowances for this building block.

The last two building blocks were added after proposal to account for additional wastestreams requested by the plants in their comments. Changes to building blocks were made after proposal as a result of additional information collected in sampling two of the plants. A detailed explanation of these changes is provided in the accompanying development document.

Primary Zirconium and Hafnium

Of the three primary zirconium and hafnium plants in the United States, one is a direct discharger, one is an indirect discharger, and one is a zero discharger. The plants are located in the states of Massachusetts, Utah, and Washington. Plant age covers a 42-year span, the oldest plant having been built in 1937.

The processes used at a primary zirconium and hafnium production facility depend largely on the raw material used.

One subdivision, silicon tetrachloride ($SiCl_4$) purification waste acid, has been deleted based on new information which the Agency received since proposal which indicates that this is not a wastewater stream at all but is actually an impure mixture of waste titanium tetrachloride, which should not be given a discharge allowance.

The sources of process wastewater receiving an allowance in the primary zirconium and hafnium subcategory are listed below, along with the pollutants typically found in each:

(1) Sand drying wet air pollution control wastewater results from wet scrubbers used in the zircon sand drying operation. This stream is characterized by the presence of suspended solids and toxic metals.

The BPT, BAT, NSPS, PSES, and PSNS wastewater discharge allowance for sand drying wet air pollution control at proposal was 379 l/kkg (91 gal/ton) of

zircon sand dried. Based on comments which the Agency received on the proposed rulemaking, it was decided that the mass of zirconium dioxide and hafnium dioxide produced is a more appropriate production normalizing parameter for this wastewater stream. The Agency also evaluated new flow and production data submitted after proposal with industry comments. The promulgated wastewater discharge rate for this subdivision is 568 l/kkg (136 gal/ton) of zirconium dioxide and hafnium dioxide produced. This rate is based on the rate reported by the only plant which generates this stream. The one facility reporting this stream currently practices recycle of scrubber water prior to discharge.

(2) Sand chlorination off-gas wet air pollution control wastewater results from wet scrubbers used to control off-gases from the chlorinators. This wastewater is characterized by the presence of solids and chlorine.

The BPT wastewater discharge allowance for sand chlorination off-gas wet air pollution control at proposal was 14,712 l/kkg (3,529 gal/ton) of crude zirconium tetrachloride ($ZrCl_4$) produced. The proposed BAT, NSPS, PSES, and PSNS wastewater discharge allowance was 1,471 l/kkg of crude zirconium tetrachloride ($ZrCl_4$) produced. This rate was based on 90 percent recycle of the proposed BPT flow rate. Based on comments which the Agency received on the proposed rulemaking, it was decided that the mass of zirconium dioxide and hafnium dioxide produced is a more appropriate production normalizing parameter for this wastewater stream. The Agency also evaluated new flow and production data submitted after proposal with industry comments. The promulgated BPT, BAT, NSPS, PSES, and PSNS wastewater discharge rate for this subdivision is 43,470 l/kkg (10,418 gal/ton) of zirconium dioxide and hafnium dioxide produced. Of the two plants which generate this stream, only one reported sufficient information, including rate of recycle, to determine water use and discharge rates. The BPT rate is based on the rate reported by this one facility, which currently practices 93 percent recycle.

(3) Sand chlorination area-vent wet air pollution control wastewater results from wet scrubbers used to control fumes in the sand chlorination area. This wastewater is characterized by the presence of solids and chlorine.

The BPT wastewater discharge allowance for sand chlorination area vent wet air pollution control at proposal was 19,616 l/kkg (94,706 gal/ton) of crude zirconium tetrachloride ($ZrCl_4$) produced. The proposed BAT, NSPS, PSES, and PSNS wastewater discharge allowance was 1,962 l/kkg of crude $ZrCl_4$ produced. This rate was based on 90 percent recycle of the proposed BPT flow rate. Based on comments which the Agency received on the proposed rulemaking, it was decided that the mass of zirconium dioxide and hafnium dioxide produced is a more appropriate production normalizing parameter for this wastewater stream. The Agency also evaluated new flow and production data submitted after proposal with industry comments. The promulgated BPT, BAT, NSPS, PSES, and PSNS wastewater discharge rate for this subdivision is 8,524 l/kkg (2,043 gal/ton) of zirconium dioxide and hafnium dioxide produced. Only one plant reported generating this stream. The BPT flow rate is based on the rate reported by this one facility, which currently practices 96 percent recycle.

(4) Silicon tetrachloride purification wet air pollution control wastewater is generated when wet scrubbers are used to control fumes from the purification of the silicon tetrachloride formed during sand chlorination. This stream contains suspended solids and cyanide.

The BPT wastewater discharge allowance for silicon tetrachloride ($SiCl_4$) purification wet air pollution control at proposal was 8,650 l/kkg (2,075 gal/ton) of $SiCl_4$ purified. The proposed BAT, NSPS, PSES, and PSNS wastewater discharge rate was 865 l/kkg of $SiCl_4$ purified. This rate based on 90 percent recycle of the proposed BPT flow rate. Based on comments which the Agency received on the proposed rulemaking, it was decided that the mass of zirconium dioxide and hafnium dioxide produced is a more appropriate production normalizing parameter for this wastewater stream. The Agency also evaluated new flow and production data submitted after proposal with industry comments. The promulgated BPT, BAT, NSPS, PSES, PSNS wastewater discharge rate for this subdivision is 7,498 l/kkg (1,797 gal/ton) of zirconium dioxide and hafnium dioxide produced. Only one plant reported generating this stream. The BPT flow rate is based on the rate reported by this one facility, which currently practices 96 percent recycle of scrubber liquor prior to discharge.

(5) Feed makeup wet air pollution control wastewater results from wet scrubbers used to control fumes generated when crude zirconium-hafnium tetrachloride is dissolved in water and filtered to remove solids. This stream is characterized by the presence of suspended solids and cyanide.

The BPT wastewater discharge allowance for feed makeup wet air pollution control at proposal was 6,334 l/kkg (1,519 gal/ton) of crude $ZrCl_4$ produced. The proposed BAT, NSPS, PSES, and PSNS wastewater discharge rate was 633 l/kkg of crude $ZrCl_4$ produced. This rate was based on 90 percent recycle of the proposed BPT flow rate. Based on comments which the Agency received on the proposed rulemaking, it was decided that the mass of zirconium dioxide and hafnium dioxide produced is a more appropriate production normalizing parameter for this wastewater stream. The Agency also evaluated new flow and production data submitted after proposal with industry comments. The promulgated BPT, BAT, NSPS, PSES, and PSNS wastewater discharge rate for this subdivision is 5,682 l/kkg (1,263 gal/ton) of zirconium dioxide and hafnium dioxide produced. One plant practices total reuse of this water in other plant processes. One other facility discharges this water after 92 percent recycle. The BPT flow rate is based on the rate reported by the one plant which discharges this water after recycle.

(6) Iron extraction (MIBK) steam stripper bottoms are generated during the steam stripping process which removes iron from hafnium, following the liquid-liquid extraction process which separates zirconium from hafnium. This waste stream contains ammonia, solids, and toxic metals.

The BPT, BAT, NSPS, PSES, and PSNS wastewater discharge allowance for iron extraction (MIBK) steam stripper bottoms at proposal was 2,077 l/kkg (498 gal/ton) of zirconium and hafnium produced. Based on comments which the Agency received on the proposed rulemaking, it was decided that the mass of zirconium dioxide and hafnium dioxide produced is a more appropriate production normalizing parameter for this wastewater stream. The Agency also evaluated new flow and production data submitted after proposal with industry comments. The promulgated wastewater discharge rate for this subdivision is 2,244 l/kkg (538 gal/ton) of zirconium dioxide and hafnium dioxide produced. This rate is based on the average of the rates reported by the two facilities which generate this wastewater stream.

(7) Zirconium filtrate wastewater results from the precipitation and filtration of zirconium hydroxide during the separation process. This waste stream contains cyanide, MIBK, solids, and toxic metals.

The BPT, BAT, NSPS, PSES, and PSNS wastewater discharge allowance for

zirconium filtrate at proposal was 71,190 l/kkg (17,078 gal/ton) of zirconium produced. Based on comments which the Agency received on the proposed rulemaking, it was decided that the mass of zirconium dioxide and hafnium dioxide produced is a more appropriate production normalizing parameter for this wastewater stream. The Agency also evaluated new flow and production data submitted after proposal with industry comments. The promulgated wastewater discharge rate for this subdivision is 38,790 l/kkg (9,297 gal/ton) of zirconium dioxide and hafnium dioxide produced. This rate is based on the average of the rates reported by the two facilities which generate this stream. No reuse or recycle of this wastewater is reported at either plant.

(8) Hafnium filtrate wastewater results from the precipitation and filtration of hafnium hydroxide during the separation process. This waste stream contains suspended solids and cyanide.

(9) Calcining caustic wet air pollution control wastewater results from wet scrubbers on the zirconium and hafnium calcining kilns. This stream is characterized by the presence of sodium sulfite.

The BPT wastewater discharge allowance for calcining caustic wet air pollution control at proposal was 17,856 l/kkg (4,284 gal/ton) of zirconium and hafnium produced. The proposed BAT, NSPS, PSES, and PSNS wastewater discharge rate was 1,786 l/kkg of zirconium and hafnium produced. This rate was based on 90 percent recycle of the proposed BPT flow rate. Based on comments which the Agency received on the proposed rulemaking, it was decided that the mass of zirconium dioxide and hafnium dioxide produced is a more appropriate production normalizing parameter for this wastewater stream. The Agency also evaluated new flow and production data submitted after proposal with industry comments. The promulgated BPT, BAT, NSPS, PSES, and PSNS wastewater discharge rate for this subdivision is 8,997 l/kkg (2,156 gal/ton) of zirconium dioxide and hafnium dioxide produced. While two plants generate this stream, only one plant reported sufficient information, including rate of recycle, to determine water use and discharge rates. The promulgated discharge allowance is based on the rate reported by this one facility, which currently practices 90 percent recycle. The discharge from the water scrubbers is reused in the separations operation and is therefore considered to be a process stream, not a wastewater. Discharge from the caustic scrubber is sent to evaporation ponds at one plant and to wastewater treatment at the other plant.

(10) Pure chlorination wet air pollution control wastewater results from wet scrubbers used to control fumes from the chlorination of calcined zirconium oxide or hafnium oxide. This waste stream is similar to the sand chlorination off-gas scrubber wastewater and contains solids and chlorine.

The BPT wastewater discharge allowance for pure chlorination wet air pollution control at proposal was 26,322 l/kkg (6,314 gal/ton) of zirconium and hafnium produced. The proposed BAT, NSPS PSES, and PSNS wastewater discharge allowance was 2,632 l/kkg of zirconium and hafnium produced. This rate was based on 90 percent recycle of the proposed BPT flow rate. The Agency has evaluated new flow and production data submitted after proposal with industry comments. The promulgated BPT, BAT, NSPS, PSES, and PSNS wastewater discharge rate for this subdivision is 38,317 l/kkg of zirconium and hafnium. The BPT rate is based on the rate reported by the one plant generating this waste stream. This facility currently practices 97 percent recycle of scrubber liquor prior to discharge.

(11) Reduction area-vent wet air pollution control wastewater results from water scrubbers on the reduction furnaces used for the magnesium reduction of zirconium and hafnium tetrachlorides. This stream contains solids and metals.

The BPT, BAT, NSPS, PSES, and PSNS wastewater discharge allowance for reduction area vent wet air pollution control at proposal was 658 l/kkg (158 gal/ton) of zirconium and hafnium produced. The Agency has evaluated new flow and production data submitted after proposal with industry comments. The promulgated wastewater discharge rate for this subdivision is 3,686 l/kkg of zirconium and hafnium. The BPT rate is based on the rate reported by the one plant which generates this stream. This facility currently practices 97 percent recycle of scrubber liquor prior to discharge.

(12) Magnesium recovery off-gas wet air pollution control wastewater results from wet scrubbers used to control fumes from the recovery of magnesium for the reduction process. This stream is characterized by low pH and the presence of magnesium and solids.

The BPT wastewater discharge allowance for magnesium recovery off-gas wet air pollution control at proposal was 13,161 l/kkg (3,157 gal/ton) of zirconium and hafnium produced. The proposed BAT, NSPS, PSES, and PSNS wastewater discharge rate was 1,316 l/kkg of zirconium and hafnium produced. This rate was based on 90 percent recycle of the proposed BPT flow rate. The Agency has evaluated new flow and production data submitted after proposal with industry comments. The promulgated wastewater discharge rate for this subdivision is 20,733 l/kkg of zirconium and hafnium. This rate is based on the rate reported by the one plant which generates this waste stream. This facility currently practices 96 percent recycle of scrubber liquor prior to discharge.

(13) Magnesium recovery area-vent wet air pollution control wastewater results from wet scrubbers used to control emissions from the reduction area. This stream is characterized by low pH and the presence of magnesium and solids.

The promulgated BPT, BAT, NSPS, PSES, and PSNS wastewater discharge allowance for magnesium recovery area vent wet air pollution control is 11,518 l/kkg of zirconium and hafnium produced. This flow is based on the discharge flow reported by the only plant generating this waste stream. This plant currently practices 96 percent recycle of the scrubber liquor prior to discharge. No allowance was given for this subdivision at proposal because no facilities had reported it. Industry comments on the proposed rulemaking indicated that one facility practiced wet scrubbing of magnesium recovery area ventilation fumes and included flow and production data which were used to calculate the production normalized flow.

(14) Zirconium chip crushing wet air pollution control wastewater is generated by wet scrubbers used for dust control when zirconium metal sponge is chipped out of the reduction container and crushed prior to purification. This stream contains solids and metals.

At proposal subdivisions 13 and 14 were combined into a single subdivision entitled magnesium recovery area wet air pollution control. We have determined that two subdivisions are appropriate to account for plant differences.

B. Control and Treatment Technologies and Treatment Effectiveness

1. Control and Treatment Technologies

Before proposing the nonferrous metals manufacturing regulation, EPA considered a wide range of control and treatment options including both in-process changes and end-of-pipe

treatment. These options are discussed in detail in the preamble to the proposed nonferrous metals manufacturing regulation (49 FR 26352, June 27, 1984) and in the Notice of Availability (50 FR 10918, March 18, 1985). For the most part, the end-of-pipe model treatment technology proposed for each subcategory has been selected as the basis for the final rule. This technology is hydroxide precipitation (with additions of iron or polyelectrolyte coagulant aids as necessary) and sedimentation ("lime and settle") followed by multimedia filtration, activated carbon, and ion exchange where appropriate as polishing step, with flow reductions and pretreatment consisting of sulfide precipitation, iron coprecipitation, cyanide precipitation and ammonia steam or air stripping where appropriate.

2. Treatment Effectiveness

The treatment effectiveness of these technologies has been evaluated by observing their performance on nonferrous metals manufacturing and other similar wastewaters. Each technology is discussed below.

a. Lime and Settle Technology. Lime and settle is part of the model technology in the primary antimony, primary beryllium, primary and secondary germanium and gallium, metallurgical acid plants, primary molybdenum and rhenium, secondary molybdenum and vanadium, primary nickel and cobalt, primary precious metals and mercury, secondary precious metals, primary rate earth metals, secondary tantalum, secondary tin, primary and secondary titanium, secondary tungsten and cobalt, secondary uranium and primary zirconium and hafnium subcategories.

The data base for the performance and variability of hydroxide precipitation-sedimentation technology is a composite of data drawn from EPA protocol sampling and analysis of aluminum forming, copper forming, battery manufacturing, porcelain enameling, and coil coating wastewaters. These data, collectively called the combined metals data base ("CMDB"), include influent and effluent concentrations for the nine pollutants. The wastewaters from each of the five categories have been found to be statistically similar in all material respects. A separate study of statistical homogeneity of these wastewaters is part of the record for this rulemaking.

Two analyses were performed to evaluate these data. First, the mean wastewater pollutant concentrations of categories in the CMDB were compared statistically with the mean wastewater pollutant concentrations in the nonferrous data base. The technique used to compare these data is referred to as analysis of variance. The analysis of variance methodology is well known to statisticians and is sometimes referred to as a homogeneity analysis. The primary result of the analysis is that, except for lead (Pb), no significant statistical difference was detected between the mean effluent pollutant concentrations from categories in the CMDB and the mean effluent pollutant concentrations from the nonferrous phrase II category. The treatment effectiveness concentrations for Pb have been determined by using the treatment effectiveness concentrations developed from a data base which includes over 200 Pb concentration measurements from the effluent wastewaters of several lead battery manufacturing and secondary lead plants that employ lime precipitation and sedimentation treatment. The treatment effectiveness concentrations that were developed from this 200 data point set are substantially larger than those estimated from the CMDB. The procedures used to develop these Pb treatment effectiveness concentrations are described in a memorandum which is included in the record to this rulemaking.

The second analysis that the Agency conducted to support the nonferrous phase II rule also employed analysis of variance. The analysis of variance in this second analysis compares the mean wastewater pollutant concentrations among the nonferrous phase II subcategories. The results indicate that the mean pollutant concentrations measured in the subcategories of the nonferrous phase II category are generally similar across subcategories. A report which describes the methodology and results of the analysis of variance comparisons that have been performed to support the nonferrous phase II rulemaking is also included in the record.

We view the use of the combined metals data base as appropriate for setting effluent limitations for the following six pollutants in nonferrous metals manufacturing plants: cadmium, copper, lead, nickel, zinc, and TSS. There are several reasons for this conclusion:

(1) *Process Chemistry:* We believe that properly operated hydroxide precipitation and sedimentation will result in effluent concentrations that are directly related to pollutant solubilities. Since the nonferrous metals manufacturing raw wastewater matrix contains the same toxic pollutants in the same order of magnitude (for the most part) as the combined metals data base raw wastewater and the technology is solubility based, we believe the mean treatment process effluent and variability will be identical.

(2) *Homogeneity:* Homogeneity is the absence of statistically discernible differences among mean pollutant concentrations observed in a set of data. To determine homogeneity for this category, EPA examined the statistical similarity among wastewater pollutant concentrations in the nonferrous subcategories, as well as between the pooled nonferrous subcategories and the CMDB. The purpose of these analyses was to test the Agency's engineering judgment that the untreated wastewater characteristics observed in phase II of the nonferrous category were similar to those observed in the CMDB. In general, the results of the analysis showed that the nonferrous subcategories are statistically similar with respect to mean pollutant concentrations across subcategories. The results also show that the nonferrous metals manufacturing pollutant concentration data combined across subcategories are comparable to the CMDB pollutant concentration data. The similarity of nonferrous and CMDB untreated and treated wastewater pollutant concentrations was established through a statistical assessment. The results of the statistical analysis provide further support to EPA's engineering evaluation that lime precipitation and sedimentation treatment reduces the toxic metal pollutant concentrations in untreated nonferrous metals manufacturing phase II wastewaters to concentrations achieved by the same technology applied to the wastewater from the categories in the CMDB.

In general, the results of the analysis showed that the nonferrous subcategories are homogeneous with respect to mean pollutant concentrations across subcategories. Comparison of the untreated nonferrous metals manufacturing data combined across subcategories and the CMDB also showed good agreement.

(3) Nonferrous Metals Manufacturing Data Base. EPA collected and analyzed wastewater samples from 32 nonferrous metals manufacturing phase II operations to characterize untreated process wastewater and determine treatment system performance; 16 of which had lime and settle treatment in place. The samples were collected and analyzed using standard EPA sampling and analytical protocols. EPA evaluated each of the treatment systems and determined that existing lime and settle treatment was not adequately designed

or properly operated and therefore did not represent proper lime and settle treatment. A data base comprised of 23 pollutants from ten (10) of the phase II subcategories was compiled to provide representative untreated wastewater characterization data. This data was compared with untreated wastewaters in the CMDB and found to be within the range of values considered in that study.

For the nonferrous metals manufacturing phase I regulation, EPA sampled nine nonferrous metals manufacturing plants with lime precipitation and sedimentation. For the six plants with well-operated systems, we combined the EPA short-term sampling data with any available plant self-monitoring data and compared their long-term mean performance with the long-term mean performance calculated from the combined metals data base performance. These nonferrous metals manufacturing plants (phase I) are achieving a long-term mean performance that equals or betters the combined metals data base for five of six metals and TSS. These nonferrous metals plants exceed the 0.12 mg/l mean for lead by only 0.01 mg/l. (Additional discussion regarding revised variabilities for lead is found later in this section.) Because of process simularity between phase I and phase II plants the Agency believes this is added confirmation of the applicability of the CMDB treatment effectiveness values to nonferrous metals manufacturing phase II effluents.

(4) Commenters failed to present any data showing that they were unable to achieve in phase II limits based on the CMDB. As part of this phase II rulemaking, the Agency has received information including the same information previously submitted and evaluated for phase I and the phase I litigation of the nonferrous metals regulation. In the phase I rulemaking certain values within the CMDB were reevaluated and changed. These values were used in phase II of the nonferrous metals manufacturing regulation.

As explained in the nonferrous phase I final rulemaking, the Agency reviewed the variability of lime and settle technology for the pollutant lead. The Agency collected an additional two useable effluent samples from an integrated secondary lead and battery manufacturing plant which the Agency judges to have a state-of-the-art lime and settle treatment system. These data verified plant supplied data containing 199 days of daily lead concentration measured in the raw and treated wastewater for their lime and settle treatment system. When the 201 data points were combined with the three data points previously used in the CMDB and analyzed statistically, the long-term mean 0.12 mg/l as proposed was verified, but the one-day maximum and monthly average increased.

In the phase I rulemaking commenters from the primary lead, primary zinc, primary copper, and metallurgical acid plant subcategories submitted extensive self-monitoring which was resubmitted for this rulemaking. In addition, the Agency solicited design and operating parameters for the treatment systems from which the data were collected. Of the seven plants submitting data, the Agency determined that data from three of the plants should not be used to established treatment effectiveness because of design or operational deficiencies. Another phase I plant that submitted data was from the primary copper subcategory and was found to be operating its treatment system at pH 12 to optimize arsenic removal. At pH 12, metals removal for pollutants other than arsenic decreases due to the increased solubility of metals at higher pH levels. Therefore, the Agency believes effluent data from this plant are not appropriate to determine treatment performance for other plants in the category without this problem. After examining the arsenic values of the raw materials used by plants in the copper smelting subcategory, the Agency believes this one plant is the only discharger experiencing arsenic concentrations frequently over 100 mg/l in the raw wastewater. However, three of the remaining plants may be properly designed and, of these, the two primary zinc plants appear to have problems complying with the proposed zinc limitations (possibly due to extremely high influent zinc concentrations or to ammonia interferences) while another plant, from the primary lead subcategory, appears to have difficulty meeting the proposed limit for cadmium and lead. Although there were indications that these plants might not be operating optimally, the coefficient of variation for treated effluent was higher than for influent. The Agency, as a conservative measure, assumed that additional treatment with sulfide precipitation would be necessary for plants in these subcategories to meet the limitations which are based on the treatment effectiveness of lime and settle technology.

We are also promulgating limits based on chemical precipitation and sedimentation technology for certain pollutants not included in the combined metals data-base. Treatment performance concentrations for these pollutants are calculated either from nonferrous metals manufacturing data (for arsenic, selenium, silver, antimony, gold, platinum, palladium and molybdenum), or from categories with wastewaters similar to nonferrous metals manufacturing (fluoride and tin from electrical components manufacturing data, cobalt from porcelain enameling data, and tantalum, titanium, and tungsten from nonferrous metals forming). No treatment effectiveness concentrations are available for indium which is regulated in one subcategory. For this pollutant we have selected treatment effectiveness concentrations by comparing its theoretical solubility to pollutants in the CMDB at comparable pH levels. See 47 FR 26375, of proposed preamble. As we have discussed above, hydroxide precipitation and sedimentation technology is to a degree solubility related. As such, we believe that this additional pollutant will be reduced to the same effluent concentrations as the corresponding pollutant in the CMDB. The treatment performance concentrations for those pollutants not covered by the CMDB are discussed in detail in Section VII of the General Development Document.

b. *Filtration.* Filtration is part of the model technology for the primary antimony, primary beryllium, metallurgical acid plants, primary molybdenum and rhenium, secondary molybdenum and vanadium, primary nickel and cobalt, primary precious metals, secondary precious metals, primary rare earth metals, secondary tantalum, secondary tin, primary and secondary titanium, secondary tungsten and cobalt, secondary uranium and primary zirconium and hafnium subcategories. For cadmium, chromium, copper, nickel, zinc, iron and TSS, EPA established the pollutant concentrations achievable with lime precipitation, sedimentation, and polishing filtration with data from three plants with the technology in-place: one (phase I) nonferrous metals manufacturing plant and two porcelain enameling plants whose wastewater is similar (as determined by statistical analysis for homogeneity) to wastewater generated by nonferrous metals manufacturing plants. In generating long-term average standards, EPA applied variability factors based on the pooled variances from the combined metals data base because the combined data base provided a broader statistical basis for computing variability than the data from the three plants sampled. The use of lime and settle combined data base variability factors is probably a

conservative assumption because filtration is a less variable technology than lime and settle, since it is less operator-dependent.

For pollutants for which there were no data technology than lime and settle, since it is less operator-dependent.

For pollutants for which there were no data relating to filtration effectiveness from these three plants, long-term concentrations were developed assuming that removal by filtration would remove 33 percent more pollutants than lime precipitation and sedimentation. This assumption was based upon a comparison of removals of several pollutants by lime precipitation, sedimentation, and filtration which showed 33 percent incremental removal attributable to filtration.

EPA selected this approach because of the extensive long-term data available from these three plants. We believe that the use of polishing filtration data from porcelain enameling plants is justified because porcelain enameling was included in the combined metals data base. Since we have determined that lime precipitation and sedimentation will produce identical results on both nonferrous metals manufacturing and porcelain enameling wastewater, it is reasonable for the Agency to assume that polishing filters treating these identical intermediate waste streams will produce an identical final effluent.

BAT limitations for all subcategories employing filtration are based on the data base for polishing filtration discussed above.

c. *Ammonia steam stripping.* Ammonia steam stripping is part of the model technology for the primary beryllium, primary molybdenum and rhenium, primary nickel and cobalt, secondary precious metals, secondary tungsten and cobalt, and primary zirconium and hafnium subcategories. This technology is used routinely to reduce ammonia concentrations. To evaluate treatment effectiveness, EPA collected chemical analysis data of raw waste (treatment influent) and treated waste (treatment effluent) from one plant in the iron and steel manufacturing category. These data form the data base for determining the effectiveness of ammonia steam stripping technology in this category and are contained within the administrative record supporting this regulation. We believe this treatment performance can be transferred to nonferrous subcategories because the technology is solubility related and the nonferrous subcategories considered here do not contain interfering agents that would reduce ammonia removal effectiveness.

An arithmetic mean of the treatment effluent data (from iron and steel) produced an ammonia long-term mean value of 32.2 mg/l. The one-day maximum, 10-day, and 30-day average concentrations attainable by ammonia steam stripping were calculated using the long-term mean of the 32.2 mg/l and the variability factors that express an overall pooled variance estimate developed from the combined metals data base. This produced ammonia concentrations of 133.3, 58.6, and 52.1 mg/l ammonia for the one-day maximum, 10-day, and 30-day averages, respectively.

The Agency has verified the proposed steam stripping performance values using steam stripping data collected at a zirconium-hafnium plant, a plant in the nonferrous phase II category, which has raw ammonia concentrations comparable to those in the iron and steel manufacturing data. Data collected by the plant represent almost two years of daily operations, and support the long-term mean used to establish treatment effectiveness.

Several comments were received stating that ammonia steam stripping performance data transferred from the iron and steel category are not appropriate for the nonferrous metals manufacturing category. Many of the commenters believe plugging of the column due to precipitates will adversely affect their ability to achieve the promulgated steam stripping performance values. In developing compliance costs, the Agency designed the steam stripping module to allow for a weekly acid cleaning to reduce plugging problems. Through Section 308 information requests, the Agency attempted to gather data at plants which stated they could not achieve the proposed limits. However, very little data were submitted to support their claims or document column performance. Therefore, the Agency has retained the proposed performance, which has been validated with steam stripping data from a zirconium-hafnium facility.

The Agency requested information on the effects of sulfates on the performance of an ammonia steam stripper. Commenters had argued that sulfate levels above one gram per liter interfered with the performance of the column, and consequently, the Agency should revise the limits for those subcategories with high sulfate streams.

After proposal and under Section 308 authority, we collected additional information from a plant manufacturing aluminum and columbium and forming various metals. This plant is able to achieve an average effluent ammonia concentration of 25 milligrams per liter with sulfate levels far in excess of 1 gram per liter. This plant which belongs to the Phase I portion of the category and to the nonferrous metals forming category, has wastewater streams similar to those encountered on the Phase II subcategories. Therefore, we have concluded that the proposed ammonia steam stripping limits are achievable by plants with high sulfates. We are promulgating these limits as proposed.

d. *Ammonia air stripping.* Ammonia air stripping is part of the model technology for the secondary molybdenum and vanadium subcategory.

This technology is used routinely to reduce ammonia concentrations. To evaluate treatment effectiveness, EPA used information submitted in the comments to the proposed regulation. The information consisted of raw waste (treatment influent) and treated waste (treatment effluent) from one plant in the primary beryllium subcategory. These data form the basis for determining the effectiveness of ammonia air stripping technology in this category and are contained in the administrative record supporting this regulation. We believe this treatment performance can be transferred to other nonferrous subcategories because the wastestreams are similar and the technology is solubility related.

A primary beryllium manufacturing plant was able to achieve an ammonia long-term mean value of 100 mg/l. The one-day maximum, 10-day, and 30-day average concentrations attainable by ammonia air stripping were calculated using the long-term mean of 100 mg/l and the variability factors that express an overall pooled variance estimate developed from the combined metals data base. This produced concentrations of 414, 182 and 162 mg/l of ammonia for the one-day maximum, 10-day, and 30-day averages respectively.

e. *Flow reduction.* Flow reduction is part of the model technology in the primary beryllium, primary molybdenum and rhenium, molybdenum metallurgical acid plants, primary precious metals and mercury, secondary precious metals, primary rare earth metals, primary and secondary titanium, secondary tungsten and cobalt, secondary uranium and primary zirconium and hafnium subcategories.

Flow reduction is a significant part of the overall pollutant reduction technology. Because of this, the Agency is promulgating mass-based limitations and standards which take into account the significant pollutant removal

achieved by flow reduction model technology. Mass-based limits ensure reduction of the total quantity of pollutant discharge. The mass-based limitations and standards established for this category are derived as the product of the regulatory flow and the overall treatment effectiveness. The regulatory flows are based on flow data, normalized to production, supplied by the industry. Generally, we have relied on flow reduction as part of the BAT, NSPS, PSNS regulations. In those instances where flow reduction is demonstrated in the subcategory, we have also relied on it for the BPT regulations. The basis for flow reduction in each subcategory is discussed in detail in the development document.

There is one exception to this discussion. In those subcategories where we are not altering existing BPT requirements—bauxite refining and metallurgical acid plants—those limitations necessarily continue to be based on subcategory specific data.

f. *Iron coprecipitation technology.* Iron coprecipitation is part of the model technology for removing the pollutant molybdenum in the primary molybdenum and rhenium, molybdenum metallurgical acid plants and secondary molybdenum and vanadium subcategories. In the Agency's post-proposal sampling effort, we sampled a uranium manufacturing and forming plant that had treatable concentrations of molybdenum in the raw wastewater. This plant treats its wastewater through iron addition, lime, and settle; the iron coprecipitates molybdenum. This plant achieved treated effluent concentrations for molybdenum which were published in the notice of new data of March 18. Therefore, EPA is basing the molybdenum limitations and standards on the basis of the data collected from this uranium manufacturing and forming facility which includes iron coprecipitation in its treatment system. The long-term average concentration for molybdenum from the uranium manufacturing and forming facility is 1.83 mg/l for iron coprecipitation.

Iron coprecipitation is a widely used treatment technology and frequently occurs unintentionally in industrial wastewater treatment situations. Whenever iron is present at a high concentration in raw wastewater, it will act as a coprecipitant in a lime and settle treatment system and aid in the removal of other metal pollutants present in the wastewater. Iron coprecipitation is demonstrated at a uranium manufacturing and forming plant, as described above, and is equally applicable to other nonferrous metals manufacturing subcategories because the process wastewaters have similar characteristics. Further, the addition of iron for coprecipitation to aid in metals removals is considered a routine part of state-of-the-art lime and settle technology which should be implemented as required to achieve optimum removal of metals. Iron coprecipitation is discussed in more detail in Section VII of the Development Document.

g. *Cyanide precipitation.* The model technology for removing cyanide from process wastewaters in the primary beryllium, secondary precious metals, secondary tin and primary zirconium-hafnium is cyanide precipitation. This technology is frequently used in industrial applications. One nonferrous metals manufacturing Phase II plant in the secondary precious metals subcategory reported its use. The treatment performance for cyanide precipitation technology is transferred from the coil coating category. The Agency believes that cyanide precipitation should be equally effective at removing cyanide from nonferrous metals manufacturing Phase II wastewaters because the analysis of homogeneity has demonstrated similarity between the nonferrous metals manufacturing Phase II data base and the CMDB, which includes data on coil coating wastewaters.

h. *Sulfide precipitation.* Sulfide precipitation is part of the model technology for removing the pollutants arsenic and selenium in the primary antimony and metallurgical acid plant subcategories. It is widely used in the industry to improve metals removals. Most metal sulfides are less soluble than hydroxides, and the precipitates are frequently more dependably removed from water.

Sulfide precipitation is used in many process and wastewater treatment applications in nonferrous metals manufacturing. This technology is used to treat process wastewater discharges from cadmium recovery and to recover metals from zinc baghouse dusts at a U.S. nonferrous metals manufacturing plant. Another plant achieves complete recycle of electrolyte from copper refining through removal of metal impurities via sulfide precipitation. Primary tungsten is frequently separated from molybdenum via sulfide precipitation. In secondary tin production, lead is recovered from alkaline detinning solutions with sulfide precipitation just prior to electrowinning. In the production of beryllium hydroxide, sulfide precipitation is used to remove metal impurities prior to precipitating beryllium hydroxide. These demonstrations show that sulfide precipitation is in use in the nonferrous metals manufacturing category.

Sulfide precipitation also is used as a preliminary or polishing treatment technology for nonferrous metals manufacturing wastewater. A U.S. nonferrous metals manufacturing facility specifically uses sulfide precipitation operated at a low pH to recover specific toxic metals from the acid plant blowdown prior to discharging the wastewater to a lime and settle treatment system. Hydrogen sulfide is used to precipitate selenium. Arsenic is also precipitated as arsenic sulfide. The arsenic and selenium sulfides are removed in a plate and frame filter. EPA sampling at this plant found three-day averages of arsenic and selenium in the untreated acid plant blowdown of 4.74 mg/l and 21.5 mg/l, respectively. Composite samples of treated (sulfide precipitation and filtration) acid plant blowdown collected during the EPA sampling visit showed arsenic concentrations at 0.066, 0.348 and 0.472 mg/l. Likewise, the treated acid plant blowdown samples contained selenium concentrations at 0.015, 0.05, and 0.132 mg/l.

Sulfide precipitation may also be applied following or in conjunction with hydroxide precipitation (two-stage treatment-lime followed by sulfide). In these applications sulfide precipitation acts to further reduce toxic metal concentrations. Responses to Section 308 data collection portfolios indicate that there are five nonferrous metals manufacturing plants using sulfide precipitation as a polishing step—two primary zinc, one secondary silver plant, one secondary precious metals plant, and one plant which processes both secondary silver and secondary precious metals.

i. *Ion exchange.* Ion exchange is part of the model technology for removing the pollutants gold, platinum and palladium in the primary precious metals and mercury and secondary precious metals subcategories. It is demonstrated in the secondary precious metals subcategory.

Ion exchange is a process in which ions, held by electrostatic forces to charged functional groups on the surface of the ion exchange resin, are exchanged for ions of similar charge from the solution in which the resin is immersed. This is classified as a sorption process because the exchange occurs on the surface of the resin, and the exchanging ion must undergo a phase transfer from solution phase to solid phase. Thus,

ionic contaminants in a waste stream can be exchanged for the harmless ions of the resin.

The list of pollutants for which the ion exchange system has proved effective includes aluminum, arsenic, cadmium, chromium (hexavalent and trivalent), copper, cyanide, gold, iron, lead, manganese, nickel, selenium, silver, tin, zinc, and more. Thus, it can be applied to a wide variety of industrial concerns. Because of the heavy concentrations of metals in their wastewater, the metal finishing industries utilize ion exchange in several ways. As an end-of-pipe treatment, ion exchange is certainly feasible, but its greatest value is in recovery applications. It is commonly used as an integrated treatment to recover rinse water and process chemicals. Some electroplating facilities use ion exchange to concentrate and purify plating baths. Also, many industrial concerns, including a number of nonferrous metals manufacturing plants, use ion exchange to reduce salt concentrations in incoming water sources.

Ion exchange is a versatile technology applicable to a great many situations. This flexibility, along with its compact nature and performance, makes ion exchange a very effective method of wastewater treatment.

C. Technology Basis for Final Regulations

A brief summary of the technology basis for the regulation is presented below. The selected technology basis is presented in the "Preamble to the Proposed Nonferrous Metals Manufacturing Point Source Category Effluent Limitations Guidelines Pretreatment Standards, and New Source Performance Standards" (49 FR 26352, June 27, 1984), the Notice of Data Availability and Request for comment (50 FR 10918, March 18, 1985), the general Development Document and its supplements.

BPT

The basic end-of-pipe treatment for BPT in this rulemaking consists of flow normalization, and lime and settle with preliminary treatment of ammonia steam stripping, air stripping, cyanide precipitation, iron coprecipitation, sulfide precipitation and ion exchange. We are transferring lime and settle treatment technology and performance for the primary antimony, primary beryllium, primary and secondary germanium and gallium, secondary indium, secondary mercury, metallurgical acid plants, primary molybdenum and rhenium, secondary molybdenum and vanadium, primary nickel and cobalt, secondary nickel, primary precious metals and mercury, secondary precious metals, primary rare earth metals, secondary tantalum, secondary tin, primary and secondary titanium, secondary tungsten and cobalt, secondary uranium, and primary zirconium and hafnium subcategories from aluminum forming, copper forming, battery manufacturing, porcelain enameling and coil coating plants. As discussed above, the data base for the performance of lime and settle is a composite of data from the industrial categories listed known as the combined metals data base (CMDB). This data base was selected because lime and settle treatment applied to nonferrous metals manufacturing wastewater in each of the subcategories listed above will result in effluent concentrations identical to those achieved by the plants in the CMDB. This is based on the fact that the raw wastewater matrix in each of these subcategories contains the same pollutants in the same order of magnitude as the combined metals data base raw wastewater. The CMDB was also selected because it was determined to be homogeneous with the raw wastewaters in these subcategories.

We are transferring steam stripping technology and performance for ammonia removal in the primary berylium, primary molybdenum and rhenium, primary nickel and cobalt, secondary precious metals, secondary tungsten and cobalt, and primary zirconium and hafnium subcategories of the nonferrous metals manufacturing phase II from one iron and steel manufacturing plant.

We are transferring air stripping performance for ammonia removal in the secondary molybdenum and vanadium subcategory of the nonferrous metals manufacturing phase II category from the primary beryllium subcategory. As discussed above, we believe that steam and air stripping performance can be transferred to these subcategories because the technology is solubility related, and because the raw wastewater concentrations of ammonia in these subcategories and in iron and steel manufacturing and primary beryllium are similar. We believes that plants in these subcategories will achieve effluent concentrations identical to those achieved by the one iron and steel plant and the primary beryllium plant.

One plant in the secondary precious metals subcategory currently uses cyanide precipitation to treat process wastewater. We are transferring cyanide precipitation performance for secondary precious metals and both technology and performance for the primary beryllium, primary and secondary tin, and the primary zirconium and hafnium subcategories in nonferrous metals manufacturing phase II from coil coating plants. We believe that the technology is transferrable to these subcategories because the raw wastewater concentrations are of the same order of magnitude as those observed in coil coating wastewater. In that cyanide precipitation converts all cyanide species to complex cyanides and that precipitation of the complexed cyanides is solubility related, we believe that the technology will achieve identical effluent concentrations in the nonferrous phase II categories noted above.

We are transferring sulfide precipitation technology for the primary antimony subcategory from the molybdenum metallurgical acid plants subcategory. We believe that the technology is transferrable because the raw wastewater concentrations are of the same order of magnitude as those observed in metallurgical acid plants. Full scale commercial sulfide precipitation units are in operation at numerous installations, including several plants in the nonferrous metals manufacturing category both in the U.S. and abroad.

We are transferring iron coprecipitation technology and performance for the primary molybdenum and rhenium, metallurgical acid plants and secondary molybdenum and vanadium subcategories from one uranium manufacturing and forming plant. We believe that the technology is transferrable because the process wastewaters have similar characteristics.

Ion exchange is demonstrated in the secondary precious metals and secondary silver subcategories. We are transferring ion exchange technology and performance for the primary precious metals from the secondary precious metals subcategory. We believe that the technology is transferrable because the raw wastewater concentrations are similar.

To fulfill our statutory obligation, we did propose BPT in those subcategories not addressed previously, namely primary antimony, primary beryllium, primary and secondary germanium and gallium, primary molybdenum and rhenium, secondary molybdenum and vanadium, primary nickel and cobalt, primary precious metals and mercury, secondary precious metals, primary rare earth metals, secondary tantalum, secondary tin, primary and secondary titanium, secondary tungsten and cobalt, secondary uranium, and primary

zirconium and hafnium. We also proposed that molybdenum metallurgical acid plants be subject to existing limits already promulgated for copper, lead, and zinc metallurgical acid plants. We are now promulgating these BPT limitations as final regulations. We are not promulgating final BPT regulations for three subcategories that do not have any direct discharging plants: secondary indium, secondary mercury, and secondary nickel.

In developing BPT limitations, the Agency considered the amount of water used per unit of production (liters per kkg or metric ton) for each wastewater stream in each subcategory. In general, the regulatory flows for BPT were based on the average of the reported water use or discharge values. The Agency has used BPT regulatory flows based on flow reduction only in those unusual cases where water flow reduction is commonly practiced throughout the subcategory. Based on its reevaluation of existing data and additional data it collected since proposal, the Agency has revised some of the proposed regulatory flow allowances for the category. These changes are the result of post proposal sampling and clarification of information provided in comments on the proposal and Notice of Availability.

As noted above, these BPT mass limitations are based on end-of-pipe treatment consisting of lime precipitation and settling, and where necessary, preliminary treatment consisting of ammonia steam or air stripping, cyanide precipitation, sulfide precipitation, and iron coprecipitation where appropriate, activated carbon and ion exchange as a polishing step where appropriate. Thirty-four nonferrous metals manufacturing plants are direct dischargers. The Agency estimates that BPT will result in the removal of an estimated 339,247 kg of priority pollutants and 21,872,686 kg of total pollutants per year from estimated current discharge levels. The estimated capital investment cost of BPT is $4.0 million and the estimated annual cost is $5.6 million, in 1982 dollars. Unless otherwise noted below, all costs represent wastewater treatment equipment not in place. For each subcategory, it is our judgement that the benefits of effluent reduction justify the associated costs of compliance. The promulgated BPT limitations and technology basis for each subcategory are discussed in detail below.

Primary Antimony

We are promulgating BPT limitations for the primary antimony subcategory, based on lime precipitation and sedimentation technology with sulfide precipitation pretreatment to remove toxic metals and solids from combined wastewaters and to control pH. As discussed in the March 18, 1985, Notice of Availability on this rulemaking, EPA is adding sulfide precipitation technology in those situations where wastestreams contain high levels of multiple metallic pollutants. This additional treatment is added in case the facility has problems with the lime and settle system to assure that the promulgated limits are met. Lime and settle technology is in-place at the one discharger in this subcategory. The pollutants specifically regulated at BPT are antimony, arsenic, mercury, TSS, and pH. Lead had been proposed for regulation but after careful consideration, the Agency determined that it will be removed by the model treatment technology. Therefore, although a particular permit writer may require its limitation on a case-by-case basis, we will not promulgate national standards for that pollutant.

Implementation of the BPT limitations will remove annually an estimated 17,522 kg of toxic metals and 26,156 kg of pollutants including TSS over estimated current discharge. We project a capital cost of approximately $196,350 and an annualized cost of approximately $554,180 for achieving BPT limitations.

Bauxite Refining

EPA promulgated BPT effluent limitations for the bauxite refining subcategory on April 8, 1974, Subpart A of 40 CFR Part 421. The promulgated BPT is based on zero discharge of process wastewater except for an allowance for net precipitation that falls within process wastewater impoundments. EPA is not altering the promulgated bauxite refining regulation because it adequately characterizes BPT. We are making minor technical amendments to delete or correct reference to FDF considerations under Part 125 and pretreatment reference to Part 128. These changes do not reopen promulgated BPT regulations for purposes of review. The technology basis of the existing BPT is impoundment and recycle.

Primary Beryllium

We are promulating BPT limitations for the primary beryllium subcategory, based on lime precipitation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH and fluoride, with the addition of in-process wastewater reduction, ammonia steam stripping to remove ammonia, and cyanide precipitation to remove cyanide. As discussed in the March 18, 1985, Notice of Availability on this rulemaking, EPA is adding cyanide precipitation and ammonia steam stripping to the BPT model treatment technology for this subcategory. This is necessary because the Agency has new information indicating that cyanide and ammonia are present in the wastestreams from this subcategory at treatable levels. Flow reduction is part of the BPT model technology because the only direct discharger in the subcategory already practices extensive recycle. The one discharger in the subcategory has lime and settle technology, cyanide distruction and ammonia air stripping in place.

The pollutants specifically regulated at BPT are beryllium, chromium, copper, cyanide, ammonia, fluoride, TSS, and pH. These pollutants were selected because they are present in the largest quantities in the raw wastewater.

Implementation of BPT limitations will remove 534 kg of toxic metals and cyanide from current discharge rates; it will remove 69,943 kg/yr of ammonia and 70,477 kg/yr of pollutants over estimated current discharge. Removals from raw wastewater are as estimated 2,698 kg/yr of toxic metals and cyanide, 69,943 kg/yr of ammonia, and 131,734 kg/yr of pollutants including TSS. We project $226,462 in capital costs and $211,151 in annual costs for achieving the promulgated BPT. These costs represent wastewaters treatment equipment not in place.

Primary and Secondary Germanium and Gallium

We are promulgating BPT requirements for the primary and secondary germanium and gallium subcategory. At proposal we had a two tier approach for regulating this subcategory. Level A provisions were applicable to facilities which only reduce germanium dioxide in a hydrogen furnace and wash and rinse the germanium product in conjunction with zone refining. Level B provisions were applicable to all other facilities in the subcategory. At proposal the technology basis for both Levels A and B for the BPT limitations was lime precipitation and sedimentation technology to remove metals, fluoride, and solids from combined wastewaters and to control pH. The promulgated BPT model technology is the same as was proposed but we no longer have two regulatory levels. The pollutants specifically regulated at BPT are arsenic, lead, zinc, fluoride, TSS, and pH. Germanium and gallium were proposed for regulation but the Agency has decided not to regulate these

pollutants because they are expected to be controlled by the BPT technology. However, it is possible that these pollutants may be present in large concentrations at an individual plant. Therefore, the permitting or control authority may establish specific limitations for these metals on a case-by-case basis.

Although there are no existing direct dischargers in this subcategory, BPT is promulgated for any existing zero discharger that may elect to discharge at some point in the future. This action is deemed necessary because wastewaters from germaniumn and gallium operations which contain significant loadings of toxic pollutants are currently being disposed of in a RCRA permitted surface impoundment.

The cost and specific removal data for this subcategory were determined using a model plant. However they are not presented here because the data on which they are based have been claimed confidential. The Agency has determined that the pollutant reduction benefits associated with this regulation justify the costs for this subcategory.

Secondary Indium

We are not promulgating BPT limitations for the secondary indium subcategory since there are no existing direct dischargers.

Secondary Mercury

We are not promulgating BPT limitations for the secondary mercury subcategory since there are no existing direct dischargers.

Primary Molybdenum and Rhenium

We are promulgating BPT limitations for the primary molybdenum and rhenium subcategory, based on lime precipitation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH, ammonia steam stripping and iron coprecipitation preliminary treatment. As discussed in the March 18, 1985 Notice of Availability on this rulemaking, EPA is added iron coprecipitation to the BPT model treatment technology for this subcategory. This technology is being added for the removal of molybdenum. Except for iron coprecipitation these technologies are already in-place at one of the two direct dischargers in the subcategory. The pollutants specifically regulated at BPT are arsenic, lead, nickel, selenium, molybdenum, ammonia, fluoride, TSS, and pH.

Implementation of the final BPT limitations will remove annually from current discharge an estimated 73,644 kg of toxic metals and cyanide, 737 kg of molybdenum, 63,443 kg of ammonia, and 51,529 kg of TSS. The total pollutant removal from current discharge annually is estimated to be 204,242 kg. While one of the discharging plants has the basic equipment components in-place to comply with BPT, we do not believe that either plant is currently achieving the BPT mass limitations.

The cost data for this subcategory are not presented here because the data on which they are based have been claimed to be confidential. The Agency has determined that the pollutant reduction benefits associated with this regulation justify the costs for this subcategory.

Metallurgical Acid plants

We are expanding the applicability of the existing BPT requirements established for the metallurgical acid plants subcategory to include the acid plants associated with primary molybdenum roasting operations. The technology basis for the existing BPT limitations is lime precipitation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH, and sulfide precipitation and iron coprecipitation preliminary treatment. Some of these technologies are already in-place at both of the dischargers · include under the expanded applicability. The pollutants specifically regulated at BPT are arsenic, cadmium, copper, lead, zinc, fluoride, molybdenum, TSS, and pH. Fluoride and molybdenum are being added in this regulation and are only applicable to molybdenum acid plants.

Compliance with the existing BPT limitations for metallurgical acid plants by the two direct discharging primary molybdenum facilities which operate sulfuric acid plants will result in the removal from current discharges of an estimated 4,432 kg of toxic metals, and 64,325 kg of pollutants including TSS. While both plants have the equipment in-place to comply the BPT, we do not believe that the plants are currently achieving the promulgated BPT limitations.

The cost data for this subcategory are not presented here because the data on which they are based have been claimed to be confidential. The Agency has determined that the pollutant reduction benefits associated with this regulation justify the costs for this subcategory.

Secondary Molybdenum and Vanadium

We are promulgating BPT requirements for the secondary molybdenum and vanadium subcategory based on lime precipitation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH, iron coprecipitation to control molybdenum and ammonia air stripping to remove ammonia. We had proposed ammonia steam stripping preliminary treatment for this subcategory. However, our analysis showed that the costs of this technology may have caused the only facility in the subcategory to close. Therefore, we concluded that this technology is not practicable for this subcategory and decided to rely on air stripping of ammonia instead which is already in place at the one direct discharger in the subcategory. This change in technology mitigates the impact on the industry while still achieving removal of ammonia from the wastewaters. This is the only subcategory in phase II which will be subject to an ammonia limitation based on air stripping. As discussed in the March 18, 1985 Notice of Availability on this rulemaking, EPA is adding iron coprecipitation to the BPT model treatment technology for this subcategory. This technology is being added for the removal of molybdenum. Although some of these technologies are already in-place at the one discharger in the subcategory, we do not believe that it is meeting BPT mass limitations. The pollutants specifically selected for regulation at BPT are arsenic, chromium, lead, nickel, iron, molybdenum, ammonia, TSS, and pH. Implementation of these BPT limitations will remove annually from raw discharges an estimated 319 kg of toxic metals and cyanide, 18,477 of molybdenum, 563,160 of ammonia, 28,136 kg of TSS, and 641,666 kg total pollutants.

After proposal, the Agency sampled the only plant in this subcategory to obtain raw wastewater characteristics as well as production information. These new data were used to revise the subdivisions receiving allowances in the promulgated regulation. All the PNF's and PNP's have been revised to reflect the new information. The PNP for molybdenum filtrate solvent extraction raffinate was changed from amount of molybdenum produced to amount of both molybdenum and vanadium produced. The revisions to the PNF are discussed in detail in section IX of the subcategory supplemental development document. These changes reflect the data gathered in a post proposal sampling visit.

The cost data for this subcategory are not presented here because the data on which they are based have been claimed to be confidential. The Agency has determined that the pollutant reduction benefits associated with this regulation justify the costs for this subcategory.

Primary Nickel and Cobalt

We are promulgating BPT limitations for the primary nickel and cobalt subcategory, based on lime precipitation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH, and ammonia steam stripping to remove ammonia. This is the same technology basis as was proposed. Lime precipitation and sedimentation technology is already in-place at the one discharger in the subcategory. The pollutants specifically regulated at BPT are copper, nickel, cobalt, amonia, TSS, and pH.

Implementation of the BPT limitations will remove from current discharges annually an estimated 241 kg of toxic metals and 252 kg of total pollutants.

The cost data for this subcategory are not presented here because the data on which they are based have been claimed to be confidential. The Agency has determined that the pollutant reduction benefits associated with this regulation justify the costs for this subcategory.

Secondary Nickel

We are not promulgating BPT limitations for the secondary nickel subcategory, since there are no existing direct dischargers.

Primary Precious Metals and Mercury

We are promulgating BPT requirements for the primary precious metals and mercury subcategory, based on lime precipitation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH, and oil skimming to remove oil and grease and ion exchange as a polishing step. As discussed in the March 18, 1985 Notice of Availability on this rulemaking, we are adding ion exchange to the BPT model treatment technology for this subcategory. This technology is being added for the removal of gold. Some of these technologies are in-place at the one discharger in this subcategory. The pollutants specifically regulated at BPT are lead, mercury, silver, zinc, gold, oil and grease, TSS, and pH.

Implementation of the BPT limitations will remove annually from raw discharge an estimated 50,442 kg of toxic metals and 53,768 kg of toxic pollutants including TSS. We project a capital cost of $2,200 and an annualized cost of $26,814 for achieving BPT limitations.

Secondary Precious Metals

We are promulgating BPT limitations for the secondary precious metals subcategory, based on lime precipitation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH, ammonia steam stripping to remove ammonia, cyanide precipitation to remove free and complexed cyanide and ion exchange as a polishing step.

Some of the plants in this subcategory have unusually high zinc levels. For those plants we have estimated costs of two stage precipitation using sulfide polishing as the second stage to control zinc to the desired levels and to overcome complexing problems. These costs have been considered in the economic impact analysis.

Chemical precipitation and sedimentation technology is already in-place at 20 of the plants in the subcategory including all three direct dischargers. One plant has cyanide precipitation in-place. The pollutants specifically regulated at BPT are copper, cyanide, zinc, gold, platinum, palladium, ammonia, TSS, and pH.

Implementation of the BPT limitations will remove annually from current discharges and estimated 94 kg of toxic pollutants (which include 63 kg of cyanide), and 4,677 kg of pollutants including 494 kg of ammonia, and 2,946 kg of TSS.

The cost data for this subcategory are not presented here because the data on which they are based have been claimed to be confidential. As discussed below, EPA's economic impact analysis shows that one secondary precious metals plant may close as a result of incurring the costs of this regulation. After evaluating these costs and, in particular, the closure of this facility, the Agency has determined that the pollutant reduction benefits associated with this regulation justify the costs for this subcategory.

Primary Rare Earth Metals

We are promulgating BPT limitations for the primary rare earth metals subcategory, based on lime precipitation and sedimentation technology to remove metals and solids from combined wastewasters and to control pH. This is the same technology basis as was proposed. These technologies are already in-place at the one direct discharger in the subcategory. The pollutants specifically regulated at BPT are chromium, lead, nickel, TSS, and pH.

Compliance with the BPT limitations will remove annually from raw an estimated 3.93 kg of toxic metals and 969 kg of total pollutants including TSS (no toxic organics would be removed). The existing discharger is currently meeting BPT requirements. We project no capital cost for achieving BPT because the technology to be installed is already in-place at the one direct discharging facility in this subcategory. Annual operating costs, however, are estimated to be $28,744.

Secondary Tantalum

We are promulgating BPT limitations for the secondary tantalum subcategory, based on lime precipitation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH. This is the same technology basis as was proposed. These technologies are already in-place at all three of the dischargers in the subcategory. The pollutants specifically regulated at BPT are copper, lead, nickel, zinc, tantalum, TSS, and pH.

Implementation of the BPT limitations will remove annually from current discharges an estimated 26,268 kg of toxic metals, 1,490 kg of tantalum and 51,392 kg of pollutants including TSS.

The cost data for this subcategory are not presented here because the data on which they are based have been claimed to be confidential. The Agency has determined that the pollutant reduction benefits associated with this regulation justify the costs for this subcategory.

Secondary Tin

We are promulgating BPT requirements for the secondary tin subcategory, based on lime precipitation and sedimentation technology to remove metals, fluoride, and solids from combined wastewaters and to control pH, with preliminary treatment consisting of cyanide precipitation for certain building blocks. The model treatment technology for the proposed BPT effluent limitations guidelines also include ammonia steam stripping. However, data collected after proposal under section 308 of the Act indicate that ammonia is not necessarily essential in the hydrometallurgical recovery of tin. Therefore, EPA is not establishing an allowance for ammonia because none of the discharging plants currently use it. Moreover, permit writers should not provide any allowance for ammonia in secondary tin processing because there are demonstrated processes in use by the industry that do not require the use of ammonia. Chemical precipitation and sedimentation technology is already in-place at two of the three direct dischargers in the subcategory.

The pollutants specifically regulated at BPT in building blocks related to hydrometallurgical tin recovery are cyanide, lead, tin, fluoride, TSS, and pH. The pollutants specifically regulated at BPT in building blocks related to recovery of tin with pyrometallurgical

processes are arsenic, lead, iron, tin, TSS and pH.

After proposal we sampled a secondary tin plant using pyrometallurgical processes to recover tin. The new data collected was used to revise the pollutants selected for regulation and the PNF for one building block in the subcategory, tin smelter SO_2 scrubber.

Implementation of the BPT limitations will remove annually from raw discharge an estimated 688 kg of toxic metals, 144 kg of cyanide, 237,220 kg of fluoride, and 506,900 kg of TSS, for a total pollutant removal of 800,967 kg. Projected capital costs are estimated to be approximately $841,285 while annual costs are estimated to be $692,625. The Agency has determined that the pollutant reduction benefits associated with compliance justify the costs for this subcategory.

Primary and Secondary Titanium

We are promulgating BPT limitations for the primary and secondary titanium subcategory, based on lime precipitation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH, and oil skimming preliminary treatment for streams with treatable concentrations of oil and grease. This is the same technology basis as was proposed. These technologies are already in-place at two of the four direct dischargers in the subcategory. As discussed in the March 18, 1985 Notice of Availability on this rulemaking we are modifying the treatment effectiveness numbers used in determining the limitations for the pollutant titanium. At proposal the Agency did not have treatment effectiveness data for titanium. Since proposal, we have collected treatment effectiveness data for lime and precipitation systems from 9 nonferrous metals forming plants. Because the pollutant concentrations and flows at the forming plants are similar to those in this subcategory, we believe the forming treatment effectiveness data is applicable here. EPA proposed a two tier regulatory scheme for this subcategory, with the same technologies applying to both tiers at BPT. The pollutants specifically regulated at BPT are chromium, lead, nickel, titanium, oil and grease, TSS, and pH. We are now exempting from national regulation facilities in the second tier, those which do not practice electrolytic recovery of magnesium and which use vacuum distillation instead of leaching to purify titanium sponge because the amounts and toxicity of the discharges are very small and do not justify national regulations.

Implementation of the BPT limitations will remove annually from raw discharges an estimated 217 kg of toxic metals and cyanide, 5,791 kg of titanium, 64,446 kg of TSS and 99,409 kg of total pollutants. While two plants have the equipment in-place to comply with BPT, we do not believe that the plants are currently achieving the final BPT limitations. We project a capital cost of $644,489 and an annualized cost of $505,309 for achieving BPT in all plants.

As discussed below, EPA's economic impact analysis shows that two facilities in this subcategory will close regardless of this regulation. Data submitted by the plants to EPA after proposal indicate the plants have been operating at a loss. All other discharging facilities in this subcategory are expected to remain viable after incurring the costs of this regulation.

Secondary Tungsten and Cobalt

We are promulgating BPT limitations for the secondary tungsten and cobalt subcategory, based on lime precipitation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH, oil skimming and ammonia steam stripping to remove ammonia. This is the same technology basis as was proposed. Lime precipitation and sedimentation technology is already in place at three direct dischargers in the subcategory. As discussed in the March 18, 1985 Notice of Availability on this rulemaking. We are adding the pollutant tungsten for this subcategory because it is the principal metal being manufactured in the subcategory. We have collected treatment effectiveness data for the pollutant tungsten from post proposal sampling of a nonferrous metals forming plant. Because the pollutant concentrations and flows of that plant are similar to this subcategory, we believe the performance data is applicable here. The pollutants specifically regulated at BPT are copper, nickel, cobalt, tungsten, ammonia, oil and grease, TSS, and pH.

Implementation of the BPT limitations will remove annually from current discharge an estimated 150,600 kg of toxic metals, 9,456 kg of cobalt, 9,417 kg of tungsten, 108,700 kg of TSS and 420,200 total pollutants.

The cost data for this subcategory are not presented here because the data on which they are based have been claimed to be confidential. The Agency has determined that the pollutant reduction benefits associated with this regulation justify the costs for this subcategory.

Secondary Uranium

We are promulgating BPT limitations for the secondary uranium subcategory, based on lime precipitation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH. The proposed BPT was also based on ammonia steam stripping. However, data collected after proposal indicated that ammonia is no longer used in the secondary uranium processing. Therefore, EPA is not promulgating limitations for ammonia and ammonia steam stripping is not part of the model technology. These technologies are already in-place at the two dischargers in the subcategory. The pollutants specifically regulated at BPT are chromium, copper, nickel, fluoride, TSS, and pH. Effluent limitations for uranium have not been established in this subcategory. Pursuant to the Supreme Court's ruling in *Train* v. *Colorado Public Interest Research Group*, 426 U.S. 1 (1976), EPA lacks the authority under the Clean Water Act to regulate this pollutant since it is a "source", material as defined by the Nuclear Regulatory Commission under the Atomic Energy Act.

Implementation of the BPT limitations will remove annually from raw discharges an estimated 99.78 kg of toxic metals, 5,034 pollutants including 651 kg of TSS. While one discharging plant has the equipment in-place to comply with BPT, we do not believe that this plant is currently achieving the final BPT limitations. We project capital and annual costs of $54,821 and $90,422 (1982 dollars) repectively for modifications to technology presently in-place at the discharging facilities to achieve BPT regulations.

Primary Zirconium and Hafnium

We are promulgating BPT limitations for the primary zirconium and hafnium subcategory, based on lime precipitation and sedimentation technology to remove metals and solids from combined wastewaters and to control pH plus ammonia steam stripping and cyanide precipitation preliminary treatment of streams containing ammonia, or cyanide. EPA proposed a two tier regulatory scheme for this subcategory, with the same technologies applying to both tiers at BPT. The Agency has decided to exclude from national regulations plants which only produce zirconium or zirconium—nickel alloys by magnesium reduction of zirconium dioxide because currently there are no such discharging plants in existence. Therefore, the promulgated regulation

will not have two tiers. The proposed BPT was also based on barium coprecipitation for removal of radium 226 from the wastewaters of this subcategory. We have deleted from this regulation the pollutant radium 226 because the Agency data collected after proposal indicates that it is not present at treatable levels in the raw wastewaters of this subcategory. However, if this pollutant is present in discharges from this subcategory, a permit writer should regulate it on a case by case basis. The subcategory supplemental development document will provide guidance on the treatment technology and its effectiveness for radium 226 removal. Lime precipitation and sedimentation technology and ammonia steam stripping is already in-place at one discharger in the subcategory. The pollutants specifically regulated at BPT are chromium, cyanide, lead, nickel, ammonia, TSS, and pH.

Implementation of the BPT limitations will remove annually from estimated current discharge an estimated 14,110 of toxic metals and cyanide, and 19.4 million kg of pollutants including 38,240 kg of TSS.

The cost data for this subcategory are not presented here because the data on which they are based have been claimed to be confidential. The Agency has determined that the pollutant reduction benefits associated with compliance justify the costs for this subcategory.

BAT

The general end-of-pipe technology basis for the promulgated BAT mass limitations is based on the model BPT technology plus in-process flow reduction and multimedia filtration following lime and settle treatment. Preliminary treatment technology includes ammonia steam stripping, sulfide precipitation, iron coprecipitation, cyanide precipitation, ammonia air stripping where required and ion exchange as a polishing step.

End-of-pipe filtration is demonstrated at 23 nonferrous metals plants in subcategories covered under nonferrous metals manufacturing phase I, and two plants covered under phase II in the primary nickel and cobalt and secondary precious metals subcategories. We are transferring end-of-pipe filtration technology in all subcategories where it is not demonstrated and filtration performance for the Primary Antimony, Primary Beryllium, Primary Molybdenum and Rhemium, Secondary Molybdenum and Vanadium, Primary Nickel and Cobalt, Primary Precious Metals and Mercury, Secondary Precious Metals, Primary Rare Earth Metals, Secondary Tantalum, Secondary Tin, Primary and Secondary Titanium, Secondary Tungsten and Cobalt, Secondary Uranium, and Primary Zirconium and Hafnium subcategories of this final rulemaking from one nonferrous metals manufacturing plant and two porcelain enameling plants. As discussed in section V of this preamble, this data base was selected because the raw wastewater among plants in nonferrous metals manufacturing phase II and in categories in the CMDB is similar. We believe that filtration will achieve the same effluent concentrations for nonferrous metals manufacturing wastewater as for the one nonferrous metals manufacturing and two porcelain enameling plants. In addition, filtration adds reliability to the treatment system by making it less susceptible to operator error and to sudden changes in raw wastewater flows and concentrations.

The technolgy and performance, basis, for cyanide precipitation and ammonia steam or air stripping is the same as that discussed for BPT above.

We are transferring sulfide precipitation technology and performance for the primary antimony subcategory from the molybdenum metallurgical acid plants subcategory. We believe that the technology is transferrable because the raw wastewater concentrations are of the same order of magnitude as those observed in metallurgical acid plants. Full scale commercial suldite precipitation units are in operation at numerous installations, including several plants in the nonferrous metals manufacturing category both in the U.S. and abroad.

We are transferring iron coprecipitation technology and performance for the primary molybdenum and rhenium, metallurgical acid plants and secondary molybdenum and vanadium subcategories from one uranium manufacturing and forming plant. We believe that the technology is transferrable because the process wastewaters have similar characteristics.

Ion exchange is demonstrated in the secondary precious metals and secondary silver subcategories. We are transferring ion exchange technology and performance for the primary precious metals from the secondary precious metals subcategory. We believe that the technology is transferrable because the raw concentrations are similar.

In developing BAT limitations, the Agency considered the amount of water used per unit of production (liters per kilogram) for each wastewater stream. In-process flow reduction is an integral part of the promulgated BAT in the primary beryllium, primary molybdenum and rhenium, primary precious metals and mercury, secondary precious metals, primary rare earths, primary and secondary titanium, secondary uranium, and primary zirconium and hafnium subcategories. Flow reduction is demonstrated in the category for wet air pollution control wastewater, contact cooling water and floor wash wastewater. The demonstration status of in-process flow reduction and the level of recycle considered for this final rulemaking are discussed more fully in the preamble to the proposed regulation and in the development documents for individual subcategories. Flow reduction measures result in concentrating the pollutants present in wastewater. Treatment of a more concentrated stream allows a greater net removal of pollutants and a reduced flow may reduce the size of the treatment equipment and hence the cost of treatment. EPA estimates investment costs of $4.6 million and annual costs of $5.9 million above equipment in place to comply with the BAT limitations. Implementation of the BAT limitations will remove from current discharges an estimated 340,800 kg/yr of toxic pollutants annually. As explained in Section VI below, we have concluded that the costs of achieving limitations based on the model technologies for each subcategory are reasonable and for limitations are economically achievable for each subcategory.

The complexity and cost of analyses for toxic pollutants found in the nonferrous metals manufacturing category wastewaters has prompted EPA to develop an alternative method of controlling toxic pollutants. Instead of establishing specific effluent limitations for each of the toxic metals found in the category's raw wastewaters above treatable concentrations, the Agency is establishing effluent limitations for certain toxic and nonconventional metals as "indicator" pollutants. The data available to EPA show that control of the selected "indicator" pollutants will result in the substantial removal of other toxic pollutants found in the wastewaters but not specifically limited. By establishing specific limitations and standards for only the "indicator" pollutants, the Agency will reduce the difficulty, cost, and delays of pollutant monitoring and analyses that would result if pollutant limitations are established for each toxic pollutant. However, permit writers are free to write limits for indicated pollutants, in addition to the guideline limitations on indicator pollutants, in appropriate

situations such as when indicated pollutants are present at a particular plant in higher concentrations than indicator pollutants. (Permit writers may consult the development documents for a list of all pollutants present in order to determine whether such additional limitations are necessary.)

The selected technology basis and regulated pollutant parameters are discussed below for each subcategory.

Primary Antimony

EPA is promulgating BAT limitations for this subcategory based on lime precipitation and sedimentation with the addition of filtration and sulfide precipitation preliminary treatment. This technology is more stringent than for the regulations proposed. As explained in the Notice of Availability (50 FR 10918, March 18, 1985), sulfide precipitation has been added to the technology basis for this subcategory since proposal. The additional treatment is necessary to remove large amounts of arsenic present in the raw wastes from this subcategory.

The pollutants specifically limited under BAT are antimony, arsenic, lead, and mercury.

Implementation of the BAT limitations would remove annually an estimated 17,540 kg of toxic pollutants, which is 18 kg of toxic metals over the estimated BPT discharge. Estimated capital cost for achieving final BAT is $208,312; annualized cost is $560,418.

Bauxite Refining

We are promulgating the proposed minor technical amendments to delete or correct references to FDF considerations under Part 125 and pretreatment references to Part 128. We are not altering the existing BAT (promulgated on April 8, 1974 under Subpart A of 40 CFR Part 421) which prohibits the discharge of process wastewater except for an allowance for net precipitation that falls within process wastewater impoundments.

The Agency indicated at proposal that it was considering establishing limits for phenols. As explained above, the EPA has determined that national regulations are not warranted. Information collected by the Agency as a result of comments regarding the treatment of the red mud impoundment effluent to remove toxic organic pollutants will be published as guidance to permit writers for control of phenolics on the net precipitation discharge from red-mud ponds based on activated carbon treatment.

Primary Beryllium

EPA is promulgating BAT limitations for this subcategory based on lime precipitation and sedimentation with the addition of in-process wastewater flow reduction, and filtration preceded by ammonia steam stripping and cyanide precipitation. For the reasons discussed above cyanide precipitation and ammonia steam stripping have been added to the BAT model treatment technology. Flow reduction is based on data received after proposal showing that the existing discharger uses greater than 90 percent recycle of beryllium oxide calcining furnace wet air pollution control. The one beryllium plant currently generating beryllium oxide calcining furnace wet air pollution control wastewater currently practices recycle. See Section VA for a detailed discussion of the PNF for this subcategory.

The pollutants specifically limited under BAT are beryllium, chromium, copper, cyanide, ammonia and fluoride.

For the same reasons discussed under BPT above, EPA is adding ammonia and cyanide for this subcategory. Implementation of these final BAT limitations would remove annually an estimated 542 kg of toxic pollutants including cyanide, which is 8 kg of toxic pollutants over the amount removed at BPT.

The costs data for this subcategory are not presented here because the data on which they are based has been claimed to be confidential. The Agency has determined that BAT limitations for this subcategory are technically feasible and economically achievable.

Primary and Secondary Germanium and Gallium

EPA is promulgating BAT limitations for this subcategory based on lime precipitation and sedimentation (BPT technology) for all facilities in this subcategory. We had proposed a two tier approach for regulating this subcategory. Level A limitations based on lime precipitation and sedimentation were to apply to plants that only reduce germanium oxide in a hydrogen furnace and then wash and rinse the germanium product in conjunction with zone refining. Level B BAT limitations based on lime precipitation and sedimentation with the addition of filters were proposed for all other facilities in this subcategory. EPA has decided, however, not to include filtration as part of the model technology for the Level B plants. Therefore, we no longer have two regulatory levels for this subcategory.

The Agency has decided to apply the same technology levels to this entire subcategory because the addition of filters would only remove an estimated 9.2 kg of toxic pollutants annually. The Agency believes that the costs involved do not warrant selection of filtration as part of the BAT model technology.

The pollutants specifically limited under BAT are arsenic, lead, zinc, and fluoride. For the same reasons discussed at BPT germanium is not being regulated in this subcategory.

Although there are no existing direct dischargers in this subcategory, BAT is promulgated for any existing zero discharger who elects to discharge at some point in the future. This action was deemed necessary because wastewaters from germanium and gallium operations which contain significant loadings of toxic pollutants are currently being disposed of in a RCRA permitted surface impoundment.

Using a model plant, it is estimated that plants in this subcategory would remove from raw wastewaters 584 kg of toxic pollutants and 36,980 kg of pollutants annually.

The model plant costs data for this subcategory are not presented here because the data on which they are based has been claimed to be confidential. The Agency has determined that BAT limitations for this subcategory are technically feasible and economically achievable.

Secondary Indium

EPA is not promulgating BAT limitations for the secondary indium subcategory since there are no existing direct dischargers.

Secondary Mercury

EPA is not promulgating BAT limitations for the secondary mercury subcategory since there are no existing direct dischargers.

Primary Molybdenum and Rhenium

EPA is promulgating BAT limitations for this subcategory based on preliminary treatment of ammonia steam stripping, iron coprecipitation and filtration, end-of-pipe treatment consisting of lime precipitation and sedimentation, with the addition of inprocess wastewater reduction, and filtration. Flow reductions are based on 90 percent recycle of scrubber liquor, a rate demonstrated by one of the two direct discharger plants. For the reasons discussed at BPT above, we have added iron coprecipitation to the BAT model treatment technology.

The pollutants specifically limited under BAT are arsenic, lead, nickel, selenium, molybdenum, ammonia, and fluoride. Molybdenum and the regulated toxic metals are considered as indicator pollutants to ensure proper operations of the technology and adequate removal of the unregulated toxic metal pollutants.

Implementation of the BAT limitations would remove annually from current discharges an estimated 73,655 kg of toxic pollutants, which is 11 kg of toxic pollutants greater than the estimated BPT removal. No additional ammonia is removed at BAT.

Metallurgical Acid Plants

As indicated above, we are expanding the applicability of the existing BAT limitations for metallurgical acid plants to include acid plants associated with primary molybdenum roasting operations. The existing BAT limitations are based on the BPT technology (lime precipitation and sedimentation, sulfide precipitation, iron coprecipitation preliminary treatment) with the addition of in-process wastewater reduction, and filtration. Flow reductions are based on 90 percent recycle of scrubber liquor. For the reasons discussed at BPT above, iron coprecipitation is being added to the BAT model technology.

Compliance with the BAT limitations for the existing metallurgical acid plants subcategory by the two direct discharging primary molybdenum facilities which operate sulfuric acid plants will result in the annual removal from current discharges of an estimated 4,651 kg of toxic pollutants which is 219 kg of toxic pollutants greater than the estimated BPT removal and 67,539 kg of total pollutants including molybdenum.

The costs data for this subcategory are not presented here because the data on which they are based has been claimed to be confidential. The Agency has determined that BAT limitations for this subcategory are technically feasible and economically achievable.

Secondary Molybdenum and Vanadium

EPA is promulgating BAT limitations for this subcategory based on preliminary treatment consisting of ammonia air stripping followed by end-of-pipe treatment consisting of iron coprecipitation, lime precipitation and sedimentation and filtration. At proposal, BAT was based on steam stripping, lime precipitation and sedimentation, and filtration. For the reasons discussed at BPT above, we are adding ammonia air stripping and iron coprecipitation to the BAT model technology.

The pollutants specifically limited under BAT are arsenic, chromium, lead, nickel, iron, molybdenum and ammonia. Molybdenum and the regulated toxic metals are considered as indicator pollutants to ensure proper operations of the technology and adequate removal of the unregulated toxic metal pollutants.

Implementation of the BAT limitations would remove annually from raw discharge an estimated 395 kg of toxic pollutants, which is 76 kg of toxic metals greater than the estimated BPT removal and 642,722 kg of total pollutants including molybdenum and ammonia.

The costs data for this subcategory are not presented here because the data on which they are based have been claimed to be confidential. The Agency has determined that BAT limitations for this subcategory are technically feasible and economically achievable.

Primary Nickel and Cobalt

EPA is promulgating BAT limitations for this subcategory based on preliminary treatment of ammonia steam stripping followed by end-of-pipe treatment consisting of lime precipitation and sedimentation and filtration. This is the same technology basis as was proposed. Filters are presently utilized by the one plant in this subcategory.

We are promulgating filtration as part of the BAT technology because this technology is demonstrated in the primary nickel and cobalt subcategory (the one discharger in this subcategory presently has a filter, and a total of 25 facilities in eight nonferrous metals manufacturing subcategories currently have filters), and results in additional removals of toxic metals. In addition, filtration adds reliability to the treatment system by making it less susceptible to operator error and to sudden changes in raw wastewater flows and concentrations.

The pollutants specifically limited under BAT are cobalt, copper, nickel, and ammonia.

Implementation of the BAT limitations would remove from current discharges annually an estimated 246 kg of toxic metals, which is 5 kg of toxic metals greater than the estimated BPT removal, and 263 kg of total pollutants. Cobalt and the regulated toxic metals are considered as indicator pollutants to ensure proper operations of the technology and adequate removal of the unregulated toxic metal pollutants.

The costs data for this subcategory are not presented here because the data on which they are based has been claimed to be confidential. The Agency has determined that BAT limitations for this subcategory are demonstrated, technically feasible and economically achievable.

Secondary Nickel

EPA is not promulgating BAT for the secondary nickel subcategory since there are no existing direct dischargers.

Primary Precious Metals and Mercury

EPA is promulgating BAT limitations for this subcategory based on preliminary treatment consisting of oil skimming and end-of-pipe treatment consisting of lime precipitation and sedimentation with filtration and ion exchange as a polishing step. BAT also includes flow reduction. This is the same as at proposal. For the reasons discussed at BPT above ion exchange is included as part of the BAT model treatment technology for this subcategory.

The pollutants specifically limited under BAT are lead, mercury, silver, zinc and gold. The pollutant gold is being added to the BAT regulated pollutants for reasons explained at BPT above. Gold and the regulated toxic metals are considered as indicator pollutants to ensure proper operations of the technology and adequate removal of the unregulated toxic metal pollutants.

Implementation of the BAT limitations would remove from raw wastes annually an estimated 50,443 kg of toxic pollutants, which is 1.0 kg of toxic metals greater than the estimated BPT removal. No additional oil and grease is removed at BAT. The estimated capital cost required to achieve BAT is $3,025; annualized cost is $27,268.

The Agency has determined that BAT limitations for this subcategory are technically feasible and economically achievable.

Secondary Precious Metals

EPA is promulgating BAT limitations for this subcategory based on preliminary treatment of cyanide precipitation and ammonia steam stripping and end-of-pipe treatment consisting of chemical precipitation and sedimentation with the addition of in-process wastewater flow reduction, filtration and ion exchange. This is the same technology basis as for proposal except that ion exchange is being added to the BAT model treatment technology for the reasons discussed at BPT above. Flow reductions are based on recycle of scrubber effluent. Twenty-one of the 29 existing plants currently have scrubber liquor recycle rates of 90 percent or greater. Filters also are presently utilized by one plant in the subcategory.

The pollutants specifically limited under BAT are copper, cyanide, zinc, ammonia, gold, platinum and palladium. Gold, platinum and palladium and the regulated toxic metals are considered as indicator pollutants to ensure proper operations of the technology and adequate removal of the unregulated toxic metal pollutants.

Implementation of the BAT limitations would remove annually from raw discharges an estimated 34,580 kg of toxic pollutants, which is 10 kg of toxic pollutants greater than the estimated BPT removal. No additional ammonia or cyanide is removed at BAT.

The costs data for this subcategory are not presented here because the data on which they are based has been claimed to be confidential. The Agency has determined that BAT limitations for this subcategory are technically feasible and economically achievable.

Primary Rare Earth Metals

EPA is promulgating BAT limitations for this subcategory based on lime precipitation and sedimentation with the addition of in-process flow reduction, filtration and activated carbon. This is the same technology basis as was proposed. Flow reduction is based on 90 percent recycle of scrubber effluent.

As discussed in greater detail below, activated carbon adsorption technology is promulgated to control the discharge of hexachlorobenzene which is not effectively removed by existing treatment in the subcategory. Activated carbon technology is transferred from the iron and steel category where it is a demonstrated technology for removal of toxic organics. The use of activated carbon to remove dissolved organics from water and wastewater is a long demonstrated technology. It is one of the most efficient organic removal processes available. This sorption process is reversible, allowing activated carbon to be regenerated for reuse by the application of heat and steam or sovent. Activated carbon has also proved to be an effective adsorbent for many toxic metals, including mercury. Regeneration of carbon which has adsorbed significant metals, however, may be difficult.

Activated carbon removes contaminants from water by the process of adsorption, or the attraction and accumulation of one substance on the surface of another. Activated carbon preferentially adsorbs organic compounds and, because of this selectivity, is particularly effective in removing organic compounds from aqueous solution.

Isotherm tests have indicated that activated carbon is very effective in adsorbing 85 percent of the organic priority pollutants and is reasonbly effective for another 22 percent. Specifically, for the organics of particular interest, activated carbon was very effective in removing 2,4-dimethylphenol, fluoranthene, isophorone, naphthalene, all phthalates, and phenanthrene. It was reasonably effective on 1,1,1-trichloroethane, 1,1-dichloroethane, phenol, and toluene. Section VII of the general development document summarizes the treatment effectiveness for most of the organic priority pollutants by activated carbon as compiled by EPA. In the aggregate these data indicate that very low effluent levels could be attained from any raw waste by use of multiple adsorption stages. This is characteristic of adsorption processes.

As noted above, activated carbon adsorption preliminary treatment is relied upon for control of hexachlorobenzene in the primary rare earth metals subcategory. This treatment technology was selected because discharges from that subcategory do not appear to be effectively controlled by existing treatment. It is not demonstrated in this or any other application within the primary rare earth metals subcategory. Activated carbon technology and performance is, therefore transferred from the iron and steel manufacturing category because the raw wastewaters in this category are similar to those of the iron and steel category. Because the performance of an activated carbon is determined by the amount of carbon present, in practice it is applicable to wastewaters of various characteristics.

The treatment performance used for activated carbon to calculate mass limitations for hexachlorobenzene is based on the quantification limit of 0.010 mg/l. This concentration is achievable, assuming sufficient carbon is used in the column. In an activated carbon column effluent concentration is determined only by the amount of carbon present and a suitable contact time. Therefore, the 0.010 mg/l is achievable by assuming a conservative ratio for carbon exhaustion (usage). The exhaustion rate used by the Agency was based on laboratory carbon adsorption tests using wastewater from the nonferrous metals manufacturing category.

Carbon adsorption systems have been demonstrated to be practical and economical in reducing COD, BOD, and related parameters in secondary municipal and industrial wastewaters; in removing toxic or refractory organics from isolated industrial wastewaters; in removing and recovering certain organics from wastewaters; and in removing and some times recovering selected inorganic chemicals from aqueous wastes. Carbon adsorption is a viable and economic process for organic waste streams containing up to 1 to 5 percent of refractory or toxic organics. Its applicability for removal of inorganics such as metals has been demonstrated.

The pollutants specifically limited under BAT are hexachlorobenzene, chromium, lead, and nickel.

Implementation of the BAT limitations will remove from current discharges annually an estimated 33.3 kg of toxic pollutants (32.5 kg of toxic organics and 0.8 kg of toxic metals) and 207 kg of total pollutants including 171 kg of suspended solids.

The costs data for this subcategory are not presented here because the data on which they are based has been claimed to be confidential. The Agency has determined that BAT limitations for this subcategory are technically feasible and economically achievable.

Secondary Tantalum

EPA is promulgating BAT limitations for this subcategory based on lime precipitation and sedimentation with the addition of filtration. This is the same technology basis as was proposed.

The pollutants specifically limited under BAT are copper, lead, nickel, zinc and tantalum. Tantalum and the regulated toxic metals are considered as indicator pollutants to ensure proper operations of the technology and adequate removal of the unregulated toxic metal pollutants.

Implementation of the BAT limitations will remove annually from current discharges an estimated 26,273 kg of toxic metals, which is 4.8 kg of toxic metals more than the estimated BPT removal and 51,433 kg of total pollutants.

The costs for this subcategory are not presented here because the data on which they are based has been claimed to be confidential. The Agency has determined that BAT limitations for this subcategory are technically feasible and economically achievable.

Secondary Tin

EPA is promulgating BAT limitations for this subcategory based on preliminary treatment consisting of cyanide precipitation when required, and end-of-pipe treatment consisting of chemical precipitation and sedimentation, and polishing filtration. For the reasons discussed above at BPT, ammonia steam stripping which was included at proposal is not included in the final model treatment technology for BAT.

As discussed in BPT above, the pollutants specifically limited under BAT in building blocks related to hydrometallurgical tin recovery are cyanide, lead, tin, and fluoride. Tin and the regulated toxic metals are considered as indicator pollutants to ensure proper operations of the

technology and adequate removel of the unregulated toxic metal pollutants. The pollutants specifically regulated in building blocks related to recovery of tin with pyrometallurgical processes are arsenic, lead, iron, and tin.

Implementation of the BAT limitations would remove annually from current discharges an estimated 713 kg of toxic metals and cyanide, which is 26 kg of toxic pollutants over the estimated BPT discharge. An additional 128 kg of fluoride is removed annually at BAT. The costs data for this subcategory are not presented here because the data on which they are based has been claimed to be confidential. The Agency has determined that BAT limitations for this subcategory are technically feasible and economically achievable.

Primary and Secondary Titanium

EPA proposed Level A BAT limitations for titanium plants which do not practice electrolytic recovery of magnesium and which use vacuum distillation instead of leaching to purify titanium sponge as the final product based on lime precipitation, sedimentation, and oil skimming plus in-process wastewater flow reduction. Level B BAT limitations, proposed for all other titanium plants, were based on lime precipitation, sedimentation, and oil skimming pretreatment where required, plus flow reduction, and filtration. Flow reduction is based on 90 percent recycle of scrubber effluent through holding tanks and 90 percent recycle of casting contact cooling water through cooling towers. However, the Agency has decided to exclude from national regulations those facilities which do not practice electrolytic recovery of magnesium and which use vacuum distillation instead of leaching to purify titanium sponge as the final product because the amounts and toxicity of the pollutants in their discharge are very small and do not justify national regulations. Therefore, we no longer have two regulatory levels. Level B limitations are promulgated for all other facilities.

The pollutants specifically limited under BAT are chromium, lead, nickel, and titanium. Titanium and the regulated toxic metals are considered as indicator pollutants to ensure proper operations of the technology and adequate removal of the unregulated toxic metal pollutants.

Implementation of the BAT limitations would remove annually from current discharges an estimated 299 kg of toxic pollutants. Estimated capital cost for achieving proposed BAT is approximately $1,030,000, and annualized cost is approximately $585,000. The Agency has determined that BAT limitations for this subcategory are technically feasible and economically achievable.

Secondary Tungsten and Cobalt

EPA is promulgating BAT limitations for this subcategory based on lime precipitation and sedimentation, flow reduction, ammonia steam stripping plus filtration. In process wastewater reduction is part of the promulgated model technology for both BPT and BAT. Flow reductions are based on 90 percent recycle of scrubber effluent, which is the rate reported by the only existing plant with a scrubber. Since proposal information shows that this plant already practices extensive recycle the Agency has incorporated flow reduction into the technology basis for BPT and has decided not to require at BAT any additional flow reduction beyond that already practiced.

The pollutants specifically limited under BAT are copper, nickel, cobalt, tungsten and ammonia. Cobalt, tungsten and the regulated toxic metals are considered as indicator pollutants to ensure proper operations of the technology and adequate removal of the unregulated toxic metal pollutants.

Implementation of the BAT limitations will remove from current discharges annually an estimated 150,700 kg of toxic pollutants and 483,500 kg of total pollutants.

The costs for this subcategory are not presented here because the data on which they are based has been claimed to be confidential. The Agency has determined that BAT limitations for this subcategory are technically feasible and economically achievable.

Secondary Uranium

EPA is promulgating BAT limitations for this subcategory based on lime precipitation and sedimentation plus in-process wastewater reduction and filtration. This is the same as at proposal. Flow reductions are based on 50 percent recycle of laundry wastewater and 90 percent recycle of floor wash. As discussed in the March 18, 1985 Notice of Availability and this Preamble, EPA is making changes to building blocks and flows in this subcategory as a result of post proposal sampling of two plants in the subcategory. For the reasons discussed at BPT above, ammonia steam stripping which was included at proposal is not part of the final model treatment technology for BAT.

The pollutants specifically limited under BAT are chromium, copper, nickel, and fluoride. Uranium and ammonia are not specifically limited in this final rule for the reasons discussed at BPT above.

Implementation of the BAT limitations will remove from current discharges annually an estimated 126 kg of toxic metals and 5,408 kg of total pollutants. Estimated capital cost for achieving the final BAT is $87,972, and annualized cost is $106,678 (1982 dollars). The Agency has determined that BAT limitations for this subcategory are technically feasible and economically achievable.

Primary Zirconium and Hafnium

EPA proposed Level A BAT limitations for plants which only produce zirconium or zirconium-nickel alloys by magnesium reduction of zirconium dioxide (ZrO_2) based on barium chloride coprecipitation, cyanide precipitation, ammonia steam stripping and chemical precipitation and sedimentation plus in-process wastewater flow reduction. Proposed Level B limitations were to apply to all other plants in the subcategory. The proposed Level B BAT limitations were based on barium chloride coprecipitation, cyanide precipitation, ammonia steam stripping and chemical precipitation and sedimentation plus flow reduction, and filtration.

The Agency has decided to exclude plants which only produce zirconium or zirconium-nickel alloys by magnesium reduction of zirconium dioxide from national regulations because there currently are no Level A discharging plants and the amounts and toxicity of discharges is so small that it does not justify developing national regulations. Therefore, we are no longer promulgating a two tier regulation. The Agency is promulgating regulations based on the Level B model technology.

The achievable concentration for ammonia steam stripping is based on iron and steel manufacturing category data. Flow reductions are based on 90 percent recycle of scrubber effluent. For the reasons discussed at BPT above, barium chloride coprecipitation for removal of radium 226 is not included in the final BAT model treatment technology. Also for the reasons discussed at BPT above, the pollutants radium 226, zirconium, and hafnium are not specifically regulated under BAT. However, a permit writer may choose to regulate the pollutants on a case by case basis. The technology and its effectiveness is discussed in Section VII of the General Development Document.

The pollutants specifically limited under BAT are chromium, cyanide, lead, nickel, and ammonia.

The costs and specific removal data for this subcategory are not presented here because the data on which they are based has been claimed to be confidential. The Agency has determined that BAT limitations for this subcategory are technically feasible and economically achievable.

NSPS

EPA is promulgating NSPS for the nonferrous metals manufacturing category based in part on flow reduction and end-of-pipe treatment which consists of lime precipitation, settling and filtration. Also included in the technology basis, where necessary, is preliminary treatment consisting of oil skimming, ammonia steam or air stripping, cyanide precipitation, iron coprecipitation, and sulfide precipitation, and polishing treatment consisting of activated carbon adsorption, and ion exchange.

NSPS for all except two subcategories are equivalent to the BAT requirements, therefore the Agency has determined that there will be no barrier to entry for new sources in those subcategories. In fact, the new sources can design for efficient process water use and maximize wastewater reduction, thereby reducing the size (and in turn the cost) of pollution control equipment. Therefore, such equipment may actually be less costly to install and operate in comparison to retrofit at existing plants.

The two subcategories for which NSPS are more stringent than BAT requirements are primary and secondary titanium and secondary mercury. We have evaluated the costs associated with NSPS in each of these subcategories. These costs will not pose a barrier to entry by new sources.

The promulgated NSPS for each subcategory is discussed below. Where NSPS equals BAT, we are transferring the technology basis and treatment effectiveness for the same reasons discussed above under BAT.

We are transferring lime precipitation and sedimentation technology and performance for the secondary indium, secondary mercury and secondary nickel subcategories from aluminum forming, copper forming, coil coating, battery manufacturing and porcelain enameling plants. This technology is not demonstrated on nonferrous metals manufacturing phase II process wastewater discharges in these subcategories. While lime precipitation and sedimentation is not demonstrated in these subcategories, we believe that it is transferable because of its widespread demonstration in this (the nonferrous metals manufacturing) category and by the categories considered in the CMDB. The raw wastewater characteristics of the secondary indium, secondary mercury and secondary nickel subcategories are similar to those found in this category. Likewise, the raw wastewater characteristics of these phase II subcategories are similar to those for the plants in the combined metals data base. We believe that the technology when applied to wastewater in these phase II subcategories will achieve the same effluent concentration as plants in the CMDB.

We are transferring filtration technology for the secondary mercury subcategory from one nonferrous metals manufacturing phase I plant and two porcelain enameling plants. While filtration is not demonstrated in this subcategory, we believe that it is transferrable because of its demonstration in this category. The raw wastewater characteristics of the secondary mercury subcategory are similar to those found in the other subcategories in the nonferrous metals manufacturing category. Likewise, the raw wastewater characteristics of this phase II subcategory are similar to those for plants in the data base used for filtration performance (see Section V A of this preamble). We believe that this technology when applied to wastewaters in this phase II subcategory will achieve the same effluent concentrations as the plants used to establish filtration performance.

In developing NSPS, the Agency considered the amount of water used per unit of production for each wastewater stream. Most of the new source regulatory flow allowances are equivalent to BAT allowances. The exception is in the primary and secondary titanium subcategory. In this subcategory the NSPS flows for four subdivisions is zero. As discussed above, the BAT requirements for existing sources in the primary and secondary titanium subcategory do not include additional in-process controls above BPT requirements. However, opportunities to achieve further flow reduction of process wastewater do currently exist for some process waste steams. Therefore, the new source standards for this subcategory are based on the application of additional flow reduction technologies on a number of process wastewater streams. New sources would not incur expenses associated with retrofitting these additional flow reduction technologies and would have the opportunity to install a treatment system which is designed to handle the reduced flow. The Agency therefore concludes that the primary and secondary titanium subcategory new source standards will not pose a barrier to entry.

NSPS model technology for secondary mercury is based on lime, settle and filter. A new source is able to design the treatment system to handle the new source flow without the expense of retrofitting flow reduction and treatment equipment into the facility. The cost of a filter for new sources is expected to be less than one percent of estimated revenues for a new source. Therefore, the Agency does not expect NSPS to pose a barrier to entry for new sources.

EPA is promulgating NSPS in the primary and secondary germanium and gallium, secondary indium and secondary nickel subcategories based on lime and settle treatment. These NSPS are equivalent to the BAT limitations. As discussed below, the Agency has decided not to include filters as part of the NSPS model technology for these subcategories as had been proposed. For each subcategory addressed below, the technology relied upon represents the best demonstrated technology for that subcategory.

The pollutants selected for regulation are the same as have been selected for regulation at BAT plus oil and grease, TSS, and pH for all subcategories.

Primary Antimony

EPA is promulgating NSPS equal to BAT. The technology basis for NSPS is more stringent than proposed for reasons discussed above. Our review of the subcategory indicates that no new demonstrated technologies that improve on BAT technology exist. We do not believe that new plants could achieve any flow reduction beyond the allowances for BAT. Because NSPS is equal to BAT we believe that the NSPS will not pose a barrier to the entry of new plants into this subcategory.

Bauxite Refining

EPA is not altering the promulgated NSPS for this subcategory for the same reasons discussed above.

Primary Berylium

EPA is promulgating NSPS equal to BAT. The technology-basis for NSPS is more stringent than proposed for reasons discussed above. Our review of the subcategory indicates that no new demonstrated technologies that improve on BAT technology exist. We do not believe that new plants could achieve any flow reduction beyond the allowances for BAT. Because NSPS is equal to BAT we believe that the NSPS will not have a detrimental impact on

the entry of new plants into this subcategory.

Primary Boron

EPA is not promulgating NSPS effluent limitations guidelines and standards for this subcategory. We had proposed NSPS based on lime precipitation and sedimentation.

As discussed above, EPA does not believe that any new boron plants will be built except in arid areas and therefore there will not be any new discharging plants. For this reason we are excluding from national regulations this subcategory.

Primary Cesium and Rubidium

EPA is not promulgating NSPS effluent limitations guidelines and standards for this subcategory. We had proposed NSPS based on lime precipitation, sedimentation and filtration. This technology was estimated to remove 0.35 kg/yr of pollutants from raw wastewater discharges estimated using a model plant, including 0.025 kg/yr of toxic pollutants. The cost data for this subcategory are not presented here because the data on which they are based has been claimed to be confidential. The Agency believes that the costs involved do not warrant national regulations of this subcategory.

Primary and Secondary Germanium and Gallium

The proposed NSPS model technology was lime precipitation, sedimentation and filtration. This technology was estimated to remove 35,030 kg/yr of pollutants from raw wastewater discharges, including 573 kg/yr of toxic pollutants. The cost data for this subcategory are not presented here because the data on which they are based has been claimed confidential. EPA is promulgating NSPS equal to BAT. For the reasons discussed at BAT, the Agency is not including filtrations in the technology basis for this level of regulations in this subcategory. We do not believe that new plants could achieve any flow reduction beyond the allowances for BAT. Because NSPS is equal to BAT we believe that the NSPS will not have a detrimental impact on the entry of new plants into this subcategory.

Secondary Indium

EPA is promulgating NSPS for the secondary indium subcategory based on lime precipitation and sedimentation, the same model technology as PSES. The proposed NSPS model technology was lime precipitation, sedimentation and filtration. This technology was estimated to remove 5,190 kg/yr of pollutants from raw wastewater discharges, including 586 kg/yr of toxic pollutants. The addition of a filter to the lime and settle treatment would only remove an additional 0.2 kg/yr of toxic pollutants. The Agency believes that the costs involved do not warrant selection of filtration as part of the BAT model technology. The pollutants and pollutant parameters specifically limited under NSPS are cadmium, lead, zinc, indium, total suspended solids and pH.

The costs for this subcategory are not presented here because the data on which they are based has been claimed to be confidential. We believe the NSPS is economically achievable, and will not pose a barrier to entry of new plants into this subcategory.

Secondary Mercury

EPA is promulgating NSPS for this subcategory based on lime precipitation, sedimentation, and filtration. This is the same technology basis as was proposed. This technology is fully demonstrated in many nonferrous metals manufacturing subcategories and is expected to perform at the same level in this subcategory.

The pollutants specifically limited under NSPS are lead, mercury, TSS, and pH.

We believe the NSPS is economically achievable, and will not pose a barrier to entry of new plants into this subcategory.

Primary Molybdenum and Rhenium

EPA is promulgating NSPS limitations equal to BAT. This technology is different than that relied upon at proposal for reasons discussed above. Our review of the subcategory indicates that no new demonstrated technologies that improve on BAT technology exist. We do not believe that new plants could achieve any flow reduction beyond the allowances for BAT. Because NSPS is equal to BAT we believe that the NSPS will not have a detrimental impact on the entry of new plants into this subcategory.

Metallurgical Acid Plants

As discussed above, EPA is expanding the applicability of the existing NSPS regulation for the metallurgical acid plants subcategory to include acid plants associated with primary molybdenum roasting operations. We are promulgating NSPS limitations equal to BAT. This technology is different than that relied upon at proposal for reasons discussed above. We do not believe that this expanded applicability will have a detrimental impact on the entry of new plants into this subcategory.

Secondary Molybdenum and Vanadium

EPA is promulgating NSPS limitations equal to BAT. This technology is less stringent than proposed for reasons discussed above. We do not believe that new plants could acheive any flow reduction beyond the allowances for BAT. Because NSPS is equal to BAT we believe that the NSPS will not pose a barrier to the entry of new plants into this subcategory.

Primary Nickel and Cobalt

EPA is promulgating NSPS limitations equal to BAT. This is the same technology basis as was proposed. Our review of the subcategory indicates that no new demonstrated technologies that improve on BAT technology exist. We do not believe that new plants could achieve any flow reduction beyond the allowances for BAT. Because NSPS is equal to BAT we believe that the NSPS will not pose a barrier to the entry of new plants into this subcategory.

Secondary Nickel

EPA is promulgating NSPS limitations based on lime precipitation and sedimentation, the same model technology as PSES. The proposed NSPS model technology was lime precipitation, sedimentation, and filtration. This technology was 747 kg/yr of pollutants from raw discharges, including 81 kg/yr of toxic pollutants. The installation of this technology was estimated to cost $1,925,000 in capital investment and $690,000 annually above equipment in place (1982 dollars). The addition of a filter to the lime and settle treatment would cost $300,000 in capital investment and $277 annually but would only remove 1 kg of toxic pollutants annually. The Agency believes that given all these factors, the costs involved do not warrant selection of filtration as part of the BAT model technology. We do not believe that new plants could achieve any flow reduction beyond the allowances for BAT. Because NSPS is equal to PSES we believe that the NSPS will not pose a barrier to the entry of new plants into this subcategory.

Primary Precious Metals and Mercury

EPA is promulgating NSPS limitations equal to BAT. This is the same technology basis as relied upon at proposal. Our review of the subcategory indicates that no new demonstrated technologies that improve on BAT technology exist. We do not believe that new plants could achieve any flow reduction beyond the allowances for BAT. Because NSPS is equal to BAT we believe that the NSPS will not have a

detrimental impact on the entry of new plants into this subcategory.

Secondary Precious Metals

EPA is promulgating NSPS limitations equal to BAT. Ion exchange is being added to the model technology for reasons discussed above. We had proposed zero discharge for furnace air pollution control based on dry scrubbing. However, information submitted in comments indicated that dry scrubbing may not be feasible for this subcategory. Therefore, we have decided to provide an allowance for furnance air pollution control equivalent to the BAT allowance. We believe that the NSPS is economically achievable, and will not pose a barrier to entry of new plants into this subcategory.

Primary Rare Earth Metals

EPA is promulgating NSPS limitations equal to BAT. This is the same technology basis as relied upon at proposal. Our review of the subcategory indicates that no new demonstrated technologies that improve on BAT technology exist. We do not believe that new plants could achieve any flow reduction beyond the allowances for BAT. Because NSPS is equal to BAT we believe that the NSPS will not have a detrimental impact on the entry of new plants into this subcategory.

Secondary Tantalum

EPA is promulgating NSPS limitations equal to BAT. This is the same technology basis as was proposed. Our review of the subcategory indicates that no new demonstrated technologies that improve on BAT technology exist. We do not believe that new plants could achieve any flow reduction beyond the allowances for BAT. Because NSPS is equal to BAT we believe that the NSPS will not pose a barrier to the entry of new plants into this subcategory.

Secondary Tin

EPA is promulgating NSPS limitations equal to BAT. This technology is less stringent than proposed for reasons discussed above. Because NSPS is equal to BAT we believe that the NSPS will not pose a barrier to the entry of new plants into this subcategory.

Primary and Secondary Titanium

EPA is promulgating NSPS limitations equal to BAT with the addition of flow reduction for four streams. Zero discharge is promulgated for chip crushing, sponge crushing snd screening, and scrap milling wet air pollution control wastewater based on dry scrubbing. Zero discharge is also promulgated for chlorine liquefaction wet air pollution control based on by-product recovery of scrubber liquor as hypochlorous acid. Cost for dry scrubbing air pollution control in a new facility is no greater than the cost for wet scrubbing which was the basis for BAT cost estimates. This is the same technology basis as proposed. We believe that the NSPS is economically achievable and will not pose a barrier to the entry of new plants into this subcategory.

Secondary Tungsten and Cobalt

EPA is promulgating NSPS limitations equal to BAT. This is the same technology basis as proposed. Our review of the subcategory indicates that no new demonstrated technologies that improve on BAT technology exist. We do not believe that new plants could achieve any flow reduction beyond the allowances for BAT. Because NSPS is equal to BAT we believe that the NSPS will not pose a barrier to the entry of new plants into this subcategory.

Secondary Uranium

EPA is promulgating NSPS limitations equal to BAT. This technology is less stringent than proposed for reasons discussed above. Our review of the subcategory indicates that no new demonstrated technologies that improve on BAT technology exist. We do not believe that new plants could achieve any flow reduction beyond the allowances for BAT. Because NSPS is equal to BAT we believe that the NSPS will not pose a barrier to the entry of new plants into this subcategory.

Primary Zirconium and Hafnium

EPA is promulgating NSPS limitations equal to BAT. The same exclusions discussed under BAT apply to NSPS. Our review of the subcategory indicates that no new demonstrated technologies that improve on BAT technology exist. We do not believe that new plants could achieve any flow reduction beyond the allowances for BAT. Because NSPS is equal to BAT we believe that the NSPS will not pose a barrier to the entry of new plants into this subcategory.

PSES

Section 307(b) of the Act requires EPA to promulgate pretreatment standards for existing sources (PSES) to prevent the discharge of pollutants which pass through, interfere with, or are otherwise incompatible with the operation of POTW. These standards must be achieved within three years of promulgation. The legislative history of the 1977 Act indicates that pretreatment standards are to be technology based, generally analogous to BAT for direct dischargers. (Conference Report 95–830 at 87; Reprinted in Comm. on Environmental and Public Works, 95th Cong. 2d Sess., A Legislative History of the Clean Water Act of 1977, Vol. 3 at 272.)

Before promulgating pretreatment standards, the Agency examined whether the pollutants discharged by the industry pass through the POTW or interfere with the POTW operation or its chosen sludge disposal practices. In determining whether pollutants pass through, the Agency compares the percentage of a pollutant removed by a well operated POTW, achieving secondary treatment, with the percentage removed by direct dischargers applying the best available technology economically achievable. A pollutant is deemed to pass through the POTW when the average percentage removed nationwide by a well-operated POTW meeting secondary treatment requirements, is less than the percentage removed by direct dischargers complying with BAT level effluent limitations guidelines for that pollutant. (See generally, 46 FR 9415–16 (January 28, 1981) and 49 FR 26388 (June 27, 1984.)

The Agency is promulgating PSES for the nonferrous metals manufacturing phase II category on the same technology basis as BAT. The Agency has concluded that the metallic pollutants cobalt, gold, indium, iron, molybdenum, palladium, platinum, tantalum, tin, titanium, and tungsten, as well as the pollutants ammonia, and fluoride pass through the POTW. A study of 40 well-operated POTW with biological treatment that are meeting secondary treatment criteria showed that regulated metals are typically removed at rates varying from 20 to 70 percent. POTWs with only primary treatment have even lower rates of removal. In contrast, BAT level treatment by nonferrous metals manufacturing phase II industrial facilities can achieve removals of these pollutants of approximately 90 percent. Thus it is evident that metals from this category do pass through POTWs. Section XII of the Development Document compares the percent of pollutant remaining after treatment by a well-operated POTW with the percent removed by BAT level treatment for each pollutant regulated in this category. Many of the pollutant regulated in this category. Many of the pollutants present in nonferrous metals manufacturing waste streams, at sufficiently high concentrations, can also inhibit biodegradation in POTW operations. In addition, a high concentration of toxic pollutants in the sludge can limit POTW

use of sludge management alternatives, including the beneficial use of sludges on agricultural lands.

EPA is promulgating mass-based PSES for eight of the 19 discharging subcategories to assure that the effluent reduction benefits associated with flow reductions in those subcategories are realized.

The PSES promulgated today are equivalent to the BAT effluent limitations guidelines in all subcategories where PSES is being promulgated. PSES for the primary and secondary germanium and gallium, secondary indium and secondary nickel subcategories is promulgated based on the model end-of-pipe treatment technology of lime, and settle. The Agency has decided not to include a filter in the model PSES technology for these subcategories for the same reasons discussed at NSPS above. We are transferring lime precipitation and sedimentation technology and its performance for the secondary indium and secondary nickel subcategories from aluminum forming, copper forming, coil coating, battery manufacturing and porcelain enameling plants. This technology is not demonstrated in existing plants in these subcategories. While lime precipitation and sedimentation is not demonstrated in these subcategories, we believe that it is transferrable because of its widespread demonstration in this category. The raw wastewater characteristics of primary and secondary germanium and gallium, secondary indium and secondary nickel subcategories are similar to those found in category. Likewise, the raw wastewater characteristics of these phase II subcategories are similar to those for plants in the CMDB. We believe that the technology when applied to wastewater in this phase II subcategories will achieve the same effluent concentrations as plants in the CMDB.

We are transferring other technologies as discussed in BAT above. The Agency has considered the time for compliance for PSES. Few of the indirect discharge nonferrous metals phase II plants have installed and are properly operating the treatment technology for PSES. Many plants in this and other industries will be installing the treatment equipment suggested as model technologies for this regulation and this may result in delays in engineering, ordering, installing, and operating this equipment. For these reasons, the Agency has decided to establish the PSES compliance date for all facilities at three years after promulgation of this regulation.

For each of the subcategories where PSES is being promulgated, the Agency has determined that PSES is economically achievable and will not result in adverse economic impacts.

Primary Antimony

EPA is not promulgating PSES limitations for the primary antimony subcategory because there are no existing indirect dischargers.

Bauxite Refining.

EPA is not promulgating PSES limitations for the bauxite refining subcategory because there are no existing indirect dischargers.

Primary Beryllium

EPA is not promulgating pretreatment standards for existing sources for the primary beryllium subcategory since there are no indirect dischargers.

Primary and Secondary Germanium and Gallium

EPA proposed two levels of PSES for this subcategory. Level A, based on lime precipitation and sedimentation applied to plants which only reduce germanium dioxide to metal and practice zone refining and acid washing and rinsing. These plants only have one waste stream—acid wash and rinse water. Level B, based on lime precipitation, sedimentation, and filtration applied to all other plants in the subcategory. As discussed above EPA has reevaluated this two tier approach and concluded that filtration removes only a very small amount of pollutants and is not warranted for this subcategory. Therefore, we are promulgating PSES limitations for all plants in the subcategory based on lime and settle treatment for the same reasons discussed above.

The pollutants controlled at PSES are the same as those controlled at BAT.

We are promulgating PSES to prevent pass-through of arsenic, lead, zinc and fluoride. These pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 33 percent while the BAT technology removes approximately 87 percent.

Implementation of the PSES limitations would remove annually from raw discharge estimated using a model plant an estimated 34,930 kg of pollutants including 564 kg of toxic pollutants.

The costs for this subcategory not presented here because the data on which they are based has been claimed to be confidential. The Agency has determined that PSES are economically achievable and will not result in adverse economic impacts.

Secondary Indium

EPA is promulgating PSES limitations for this subcategory based on lime precipitation and sedimentation technology. This is the same technology basis as was proposed. The pollutants specifically regulated under PSES are cadmium, lead, zinc, and indium. It is necessary to promulgate PSES to prevent pass-through of cadmium, lead, zinc and indium. The toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 38 percent while this BAT level technology removes approximately 99 percent.

Implementation of the PSES limitations would remove annually from current discharges an estimated 586 kg of toxic metals and 288 kg of indium. Estimated capital and annual costs required to achieve these limitations are $17,325 and $25,380, respectively. The Agency has determined that PSES is economically achievable and will not result in adverse economic impacts.

Secondary Mercury

EPA is not promulgating pretreatment standards for existing sources for the secondary mercury subcategory since there are no existing indirect dischargers.

Primary Molybdenum and Rhenium

EPA is not promulgating pretreatment standards for existing sources for the primary molybdenum and rhenium subcategory since there are no existing indirect dischargers.

Metallurgical Acid Plants

EPA is not expanding the applicability of the existing pretreatment standards for this subcategory to molybdenum acid plants because there are no existing indirect dischargers.

Secondary Molybdenum and Vanadium

EPA is not promulgating pretreatment standards for existing sources for the secondary molybdenum and vanadium subcategory since there are no existing indirect dischargers.

Primary Nickel and Cobalt

EPA is not promulgating pretreatment standards for existing sources for the primary nickel and cobalt subcategory since there are no existing indirect dischargers.

Secondary Nickel

EPA is promulgating PSES for this subcategory based on chemical precipitation and sedimentation. Filtration has been proposed as part of the model treatment technology for acid

reclaim leaching filtrate and acid reclaim leaching filter backwash, but not for slag reclaim tailings. EPA has now decided not to rely on filters because filtration would only remove an additional 1 kg/yr of toxic pollutants. As discussed above, the Agency has determined that filtration is not warranted. The pollutants specifically regulated under PSES are chromium, copper and nickel. We are promulgating PSES to prevent pass-through of chromium, copper, and nickel. These toxic pollutants are removed by a well operated POTW at an average of 32 percent while PSES technology removes approximately 84 percent.

Implementation of the PSES limitations would remove annually an estimated 1,624 kg of toxic metals. We estimate a capital cost of $320,000 and an annualized cost of $161,233 to achieve PSES. The Agency has determined that PSES are economically achievable and will not result in adverse economic impacts.

Primary Precious Metals and Mercury

EPA is not promulgating pretreatment standards for existing sources for the primary precious metals and mercury subcategory because there are no existing indirect dischargers.

Secondary Precious Metals

EPA is promulgating PSES equal to BAT for this subcategory. For the reasons discussed above, this technology is different than that relied upon at proposal. It is necessary to promulgate this PSES to prevent pass-through of copper, cyanide, zinc, ammonia, gold, platinum and palladium. The toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 32 percent while BAT level technology removes approximately 99 percent.

The technology basis for PSES thus is hydroxide precipitation and sedimentation, ammonia steam stripping, cyanide precipitation, wastewater flow reduction, and filtration plus ion exchange polishing. The achievable concentration for ammonia steam stripping is based on iron and steel manufacturing category data, as explained in the discussion of BPT and BAT for this subcategory. Flow reduction is based on the same recycle of scrubber effluent that is the flow basis of BAT. Recycle is practiced by 21 of the 29 existing plants in the subcategory.

Implementation of the PSES limitations would remove annually from raw discharges an estimated 110,300 kg of toxic pollutants including 866 kg of cyanide, and an estimated 10,530 kg of ammonia. Capital cost for achieving PSES is $1,734,265 and annualized cost of $1,059,367. The Agency has determined that PSES are economically achievable and will not result in adverse economic impacts.

Primary Rare Earth Metals

EPA is promulgating PSES equal to BAT for this subcategory. It is necessary to promulgate PSES to prevent pass-through of hexachlorobenzene, chromium, lead, and nickel. These toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 28 percent while BAT technology removes approximately 74 percent.

The technology basis for PSES is lime precipitation and sedimentation, wastewater flow reduction, filtration, and activated carbon. Flow reduction is based on 90 percent recycle of scrubber effluent that is the flow basis of BAT. Filtration is an effluent polishing step that removes additional pollutants. This is the same technology basis as was proposed.

Implementation of the PSES limitations would remove annually an estimated 10.9 kg toxic pollutants.

The costs for this subcategory are not presented here because the data on which they are based has been claimed to be confidential. The Agency has determined that the PSES is economically achievable and is not expected to result in adverse economic impacts.

Secondary Tantalum

EPA is not promulgating pretreatment standards for existing sources for the secondary tantalum subcategory since there are no existing indirect dischargers.

Secondary Tin

EPA is promulgating PSES equal to BAT for this subcategory. It is necessary to promulgate PSES to prevent pass-through of arsenic, cyanide, lead, iron, tin, and fluoride. The three toxic pollutants and fluoride are removed by a well-operated POTW achieving secondary treatment at an average of 17 percent while BAT technology removes approximately 97 percent.

The technology basis for PSES is chemical precipitation and sedimentation, followed by filtration with preliminary treatment consisting of cyanide precipitation. For the reasons discussed above this technology is less stringent than proposed.

Implementation of the promulgated PSES limitations would remove annually an estimated 167 kg of toxic pollutants, 6,227 kg of tin, 20 kg of cyanide and 25,105 kg fluoride over estimated current discharge. Capital costs to achieve PSES limitations are estimated to be $160,187 while annual costs are expected to be $50,044. The Agency has determined that PSES are economically achievable and will not result in adverse economic impacts.

Primary and Secondary Titanium

EPA is promulgating PSES equal to BAT for this subcategory. The exclusions discussed under BAT apply to PSES. It is necessary to establish PSES to avoid pass-through of chromium, lead, nickel, and titanium. The three toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 14 percent while BAT technology removes approximately 76 percent. This technology is the same as that proposed.

Implementation of the promulgated PSES limitations would remove annually from current discharges an estimated 1.7 kg of toxic pollutants and 147 kg of titanium.

The costs for this subcategory are not presented here because the data on which they are based has been claimed to be confidential. The Agency has determined that PSES are economically achievable and will not result in adverse economic impacts.

Secondary Tungsten and Cobalt

EPA is promulgating PSES equal to BAT for this subcategory. At proposal this subcategory had been excluded from PSES because we believed that there were no existing indirect dischargers. However, after proposal we learned of the existence of one indirect discharging facility in the subcategory. We sent a dcp to the facility in question and considered the flow production and technology in place information it provided in establishing these standards. It is necessary to propose PSES to avoid pass-through of copper, nickel, cobalt, tungsten and ammonia. The two toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 28 percent while BAT technology removes approximately 97 percent.

Implementation of the PSES limitations would remove annually an estimated 13 kg of toxic pollutants. Capital and annual costs expected to be incurred by this plant to achieve PSES are $16,293 and $8,765, respectively. The Agency has determined that PSES are economically achievable and will not result in advance economic impacts.

Secondary Uranium

EPA is not promulgating pretreatment standards for existing sources for the secondary uranium subcategory since there are no existing indirect dischargers.

Primary Zirconium and Hafnium

EPA is not promulgating pretreatment standards for existing sources for the primary zirconium and hafnium subcategory. We had proposed PSES for this subcategory in a two tier regulatory approach. However, we are excluding from PSES limitations plants which only reduce zirconium or zirconium-nickel alloys from zirconium dioxide with magnesium or hydrogen. Since the only indirect discharger in the subcategory complies with this requirement, we have decided not to establish PSES for this subcategory. However, this facility will still be subject to general pretreatment standards under 40 CFR 403.

PSNS

The Agency is promulgating PSNS for 20 subcategories to assure that the identified flow reduction and end-of-pipe technologies are considered in new plant designs. For the following subcategories primary antimony, primary beryllium, primary molybdenum and rhenium, metallurgical acid plants, secondary molybdenum and vanadium, primary nickel and cobalt, primary precious metals and mercury, secondary tantalum, and secondary uranium subcategories for which BAT and NSPS are established, we are basing PSNS on BAT and NSPS. For the remainder, we are basing PSNS on PSES.

The technology basis for the PSNS is identical to NSPS and is being established on the basis discussed above for NSPS. The flow allowances are the same as NSPS and toxic and nonconventional pollutants regulated for PSNS are the same as those for PSES. As discussed under PSES, pass through of the regulated pollutants will occur without adequate pretreatment and, therefore, pretreatment standards are required. We know of no economically feasible, demonstrated technology that removes significantly more pollutants than the technologies selected. The only subcategory which has more stringent requirements for new sources than for existing sources is secondary mercury. We have evaluated the cost associated with PSNS for the secondary mercury subcategory as discussed above, and find that these costs will not pose a barrier to entry by new sources in this subcategory.

Primary Antimony

EPA is promulgating PSNS equivalent to NSPS and BAT. The technology basis proposal is more stringent than for reasons discussed above. It is necessary to propose PSNS to prevent pass-through of toxic metals. These metals are removed by a well operated POTW achieving secondary treatment at an average of 61 percent. PSNS technology removes these pollutants at an average of 98 percent. We know of no economically feasible, demonstrated technology that is better than BAT level technology. No additional flow reduction for new sources is feasible beyond the allowances for BAT. We believe that the PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Bauxite Refining

EPA is not altering the promulgated PSNS limitations since it is unlikely that any new bauxite sources will be constructed as indirect dischargers.

Primary Beryllium

The technology basis for promulgated PSNS is identical to NSPS and BAT. The changes from proposal are discussed above. It is necessary to promulgate PSNS to prevent pass-through of beryllium, chromium, copper, cyanide and fluoride. These toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 41 percent while BAT technology removes approximately 93 percent. We know of no economically feasible, demonstrated technology that is better than BAT technology. The PSNS flow allowances are based on minimization of process wastewater wherever possible through the use of holding tanks for wet scrubbing wastewater. The discharges are based on 90 percent recycle of this waste stream (see Section IX—Recycle of Wet Scrubber and Contact Cooling Water). No additional flow reduction for new sources is feasible. Because PSNS does not include any additional costs compared to NSPS and BAT, we do not believe it will prevent entry of new plants into this subcategory.

Primary Boron

EPA is not promulgating PSNS for this subcategory for the same reasons discussed for NSPS above.

Primary Cesium and Rubidium

EPA is not promulgating PSNS for this subcategory for the same reasons discussed for NSPS above.

Primary and Secondary Germanium and Gallium

EPA is promulgating PSNS equivalent to PSES, NSPS and BAT. The same changes discussed under BAT and NSPS apply to PSNS. The technology basis for promulgated PSNS is identical to NSPS, PSES and BAT. The same pollutants pass through as at PSES, for the same reasons.

We believe that the promulgated PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Secondary Indium

EPA is promulgating PSNS equal to NSPS. The technology basis for promulgated PSNS is identical to NSPS and is less stringent than proposed for the same reasons. The same pollutants pass through as at PSES, for the same reasons.

We believe that the promulgated PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory. Analysis of the approximate compliance costs expected to be incurred by a new plant was performed on a model basis and indicates minimal impact.

Secondary Mercury

EPA is promulgating PSNS equivalent to NSPS for this subcategory. This technology basis is the same as proposed. It is necessary to promulgate PSNS to prevent pass-through of lead and mercury. These toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 59 percent, while PSNS level technology removes approximately 99 percent.

We believe that the promulgated PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory. Analysis of the approximate compliance costs expected to be incurred by a new plant was performed on a model basis and indicates minimal impact.

Primary Molybdenum and Rhenium

EPA is promulgating PSNS equal to NSPS and BAT for this subcategory. The technology basis is more stringnent than proposed for the same reasons discussed above. It is necessary to promulgate PSNS to prevent pass-through of arsenic, lead, nickel, selenium, molybdenum and ammonia. The toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 13 percent, while the NSPS and BAT level technology removes approximately 79 percent.

We believe that the promulgated PSNS are achievable and that they are not a barrier to entry of new plants into this subcategory.

Metallurgical Acid Plants

We are expanding the applicability of the existing PSNS for metallurgical acid plants to include metallurgical acid plants associated with primary molybdenum roasters. The technology basis more stringent than proposed for reasons discussed above. It is necessary to promulgate PSNS to prevent pass-through of arsenic, cadmium, copper, lead, and zinc. These toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 42 percent, while BAT level technology removes approximately 83 percent.

We believe that the promulgated PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Secondary Molybdenum and Vanadium

EPA is promulgating PSNS equal to NSPS and BAT for this subcategory. The technology basis differs from proposal for the same reasons discussed for BAT alone. It is necessary to promulgate PSNS to prevent pass-through of arsenic, lead, nickel, molybdenum and ammonia. The toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 23 percent, while the NSPS and BAT level technology removes approximately 98 percent.

We believe that the promulgated PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Primary Nickel and Cobalt

EPA is promulgating PSNS equal to BAT and NSPS for this subcategory. This is the same technology basis as proposed. It is necessary to promulgate PSNS to prevent pass-through of copper, nickel, cobalt, and ammonia. The toxic pollutants are removed by a well-operated POTW at an average of 26 percent, while BAT technology removes approximately 58 percent. The technology basis for PSNS thus is lime precipitation and sedimentation, ammonia steam stripping, and filtration. The achievable concentration for ammonia steam stripping is based on iron and steel manufacturing category data, as explained in the discussion of BPT and BAT for this subcategory.

We believe that the promulgated PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Secondary Nickel

EPA is promulgating PSNS equivalent to NSPS and PSES. The technology basis is less stringent than proposed for the same reasons discussed above. The same pollutants pass through at PSNS as at PSES, for the same reasons. We know of no economically feasible, demonstrated technology that is better than PSES technology. The PSES flow allowances are based on minimization of process wastewater wherever possible.

We believe that the promulgated PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Primary Precious Metals and Mercury

EPA is promulgating PSNS equal to NSPS and BAT for this subcategory. The technology basis is more stringent than proposed for the same reasons discussed above. It is necessary to promulgate PSNS to prevent pass-through of lead, mercury, silver, and zinc. These toxic pollutants are removed by a well-operated POTW at an average of 62 percent, while the NSPS and BAT technology removes approximately 93 percent.

The technology basis for PSNS thus is lime precipitation and sedimentation, oil skimming, wastewater flow reduction and filtration. Flow reduction is based on 90 percent recycle of scrubber effluent that is the flow basis of BAT.

We believe that the promulgated PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Secondary Precious Metals

EPA is promulgating PSNS equivalent to NSPS, PSES and BAT. The technology basis for promulgated PSNS is identical to NSPS. This technology is more stringent than proposed for the same reasons discussed above. The same pollutants pass through at PSNS as at PSES, for the same reasons. We know of no economically feasible, demonstrated technology that is better than NSPS technology. The NSPS flow allowances are based on minimization of process wastewater wherever possible through the use of holding tanks to recycle wet scrubbing wastewater. The discharges are based on recycle of these waste streams.

We believe that the promulgated PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Primary Rare Earth Metals

EPA is promulgating PSNS equivalent to PSES, NSPS and BAT. The technology basis for PSNS is the same as was proposed and is identical to NSPS, PSES, and BAT. The same pollutants pass through at PSNS as at PSES, for the same reasons. We know of no economically feasible, demonstrated technology that is better than PSES technology. The PSNS flow allowances are equal to the BAT, NSPS and PSES flow allowances.

We believe that the PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Secondary Tantalum

EPA is promulgating PSNS equal to NSPS and BAT. This is the same technology basis as proposed. It is necessary to promulgate PSNS to prevent pass-through of copper, lead, nickel, zinc and tantalum. The four toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 48 percent while BAT level technology removes approximately 99 percent.

We believe that the PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Secondary Tin

EPA is promulgating PSNS equivalent to PSES, NSPS and BAT. The technology basis for PSNS is identical to NSPS, PSES, and BAT and it is less stringent than proposed for reasons discussed above. The same pollutants pass through at PSNS as at PSES, for the same reasons. We know of no economically feasible, demonstrated technology that is better than PSES technology. The PSNS flow allowances are identical to the flow allowances for BAT, NSPS, and PSES.

We believe that the PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Primary and Secondary Titanium

EPA is promulgating PSNS equivalent to NSPS. The technology basis for PSNS is identical to NSPS for reasons discussed there. The same pollutants are regulated at PSNS as at PSES and they pass through at PSNS, for the same reasons as at PSES. The PSNS and NSPS flow allowances are based on minimization of process wastewater wherever possible through the use of cooling towers to recycle contact cooling water and holding tanks for wet scrubbing wastewater. The discharge allowance for pollutants is the same at PSES and NSPS. The discharges are based on 90 percent recycle of these

waste streams. As in NSPS, flow reduction beyond BAT is for sponge crushing and screening wet air pollution control wastewater based on dry scrubbing.

We believe that the PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Secondary Tungsten and Cobalt

EPA is promulgating PSNS equal to NSPS and BAT for this subcategory. This is the same technology basis as proposed. It is necessary to promulgate PSNS to prevent pass-through of copper, nickel, cobalt, tungsten, and ammonia. The three toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 26 percent, while the NSPS and BAT level technology removes approximately 97 percent.

The technology basis for PSNS thus is lime precipitation and sedimentation, ammonia steam stripping, and filtration. The achievable concentration for ammonia steam stripping is based on iron and steel manufacturing category data, as explained in the discussion of BPT and BAT for this subcategory.

We believe that the PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Secondary Uranium

EPA is promulgating PSNS equal to NSPS and BAT for this subcategory. This technology basis is less stringent than proposed for the same reasons discussed above. It is necessary to promulgate PSNS to prevent pass-through of chromium, copper, nickel, and fluoride. The toxic pollutants are removed by a well-operated POTW achieving secondary treatment at an average of 40 percent, while the NSPS and BAT level technology removes approximately 88 percent.

We believe that the PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

Primary Zirconium and Hafnium

EPA is promulgating PSNS equivalent to NSPS and BAT. The technology basis for PSNS is identical to NSPS and is less stringent than proposed for the same reasons. The same pollutants pass through as at PSES, for the same reasons. We know of no economically feasible, demonstrated technology that is better than PSES technology.

We believe that the PSNS are achievable, and that they are not a barrier to entry of new plants into this subcategory.

BCT. The Agency is not promulgating BCT effluent limitations guidelines at this time. EPA will issue BCT effluent limitations guidelines after the BCT methodology has been finalized. In the interim, permit writers should establish BCT discharge allowances for the conventional pollutants on the basis of best professional judgment.

VI. Economic Considerations

A. Analysis and Reports

The economic assessment of the regulation is presented in the "Economic Impact Analysis of Effluent Standards and Limitations for the Nonferrous Smelting and Refining Industry, Phase II," EPA. This report details the investment and annual costs for the industry and for each metal subcategory covered by the regulation. Compliance costs are based on engineering estimates of incremental capital requirements above the water pollution control equipment already in place. The report assesses the impact of effluent control costs associated with each regulatory option in terms of price changes, cost of production changes, plant closures and associated loss of employment, financial impacts and balance of trade effects.

In addition, EPA has conducted an analysis of the incremental removal cost per pound equivalent for each of the final technology based options. A pound equivalent is calculated by multiplying the number of pounds of pollutant discharged by a weighting factor for that pollutant. The weighting factor is equal to the water quality criterion for a standard pollutant (copper) divided by the water quality criterion for the pollutant being evaluated. The use of "pound equivalent" gives relatively more weight to removal of pollutants that are more toxic. Thus, for a given expenditure, the cost per pound equivalent removed would be lower when a highly toxic pollutant is removed than if a less toxic pollutant is removed. This analysis, which includes detailed descriptions of how all weighting factors were determined, is entitled "Cost Effectiveness Analysis of Proposed Effluent Standards and Limitations for the Nonferrous Metals Manufacturing Industry (Phase II)" and is included in the record for this rulemaking.

B. Costs and Economic Impacts

The Agency projects 73 "wet-process" manufacturing plants or production lines are covered by this regulation. Thirty four of these facilities discharge their wastewater directly into navigable waters, and 39 discharge into publicly owned treatment works (POTW). In addition, there are 70 other facilities which do not produce any wastewater, and therefore do not incur costs as a result of the regulation.

Total capital costs for the discharging plants as a result of this regulation are estimated to be $7.0 million, while total annual costs, including depreciation and interest, are estimated to be $7.3 million. These costs are expressed in 1982 dollars. The projected economic effect associated with these costs is one production line closure at the BPT level of control with an accompanying employment loss of 19 people. This is a small gold recovery operation in an integrated facility also covered by the recently promulgated Nonferrous Metals, Phase I Effluent Guidelines. Closure of this operation will have a negligible effect on aggregate secondary precious metals production. It has also been determined that two of the four discharging plants in the tin subcategory have incurred losses for the last two or three years of operation. Based on this information, the Agency believes it is likely the plants will cease production in the near future and thus considers them baseline closures. All other existing tin recovery operations are expected to remain viable after compliance with this regulation.

No further significant impacts are projected as a result of the regulation. Potential price increases (that is, in the event manufacturers are able to pass costs on to their customers) are expected to exceed 3.0 percent for only one subcategory, and balance of trade effects are minimal, notwithstanding the persistent overvaluation of the American dollar on foreign exchange markets. Effective annual compliance costs (i.e.: after-tax) are quite low for many plants. Other plants incur substantially higher costs, but compete in markets characterized by projections of strong demand and little reliance on imports. Thus it is believed these plants will be able to absorb these costs with little adverse impact. The analysis does indicate that some intermediate production processes in large integrated facilities may become unprofitable as a result of treatment costs incurred under this rulemaking. However, the Agency does not believe these production lines will be discontinued, since they are generally intermediate steps in larger operations that appear profitable overall. Hence, no significant production loss beyond that described above is expected to occur.

For purposes of this regulation, the Agency created 25 separate subcategories based on metal products produced. The economic analysis

focuses on 19 of these subcategories. Five of the remaining six subcategories were excluded from national regulation under Paragraph 8 of the NRDC Consent Decree while the sixth, Bauxite Refining, is incurring no additional costs as a result of this regulation. The 19 subcategories are discussed in detail in the economic impact analysis document. Plant descriptions are provided along with market analyses of the metals products produced in each subcategory.

The methodology employed to determine economic impacts begins with a screening analysis to identify plants that will be significantly affected by the regulation. This consists of a comparison of a plant's estimated annual compliance costs to its projected revenues. If this ratio is found to exceed 1 percent, the plant is then subjected to a 2-step closure analysis: a net present value test and a liquidity test.

The net present value test is designed to assess the firm's long-term profitability. The viability of the plant is judged by a comparison of its cash flows over the entire compliance period to its current liquidation value. The liquidity test, on the other hand, assesses the firm's short-term solvency during the first five years of compliance. If estimated cash-flows over the five years are negative, the plant is cited as potentially insolvent and in danger of closure. Both tests require the estimation of plant revenues in future years in order to determine income and cash flows for those years. For some plants, this income is taken to be the average of income between 1978–82, a period which spanned a complete business cycle. Average product price over the period was used in conjunction with the average capacity utilization rate over the period to arrive at an estimate of total sales for the plant in a "normal" year. This figure was then used as the basis for the determination of average income which, minus compliance costs, served as the estimate of cash flow for the specific plant. This procedure was employed for plants whose performance has or is soon projected to recover significantly from the depressed conditions of 1982, the year for which data is available. The market for some metals has strengthened since then and domestic manufacturers have experienced increased production and earnings.

In most cases, however, the rapid recovery from the 81–82 recession projected at proposal has not occurred. Plants have continued to operate at levels well below capacity, earnings have suffered and market shares have been lost to overseas competitors aided by the strong U.S. dollar. For all but one of these plants, the total sales reported for the 1982 operating year were assumed to be "normal" and were employed to determine average income and cash flow. The only exception is a large, integrated facility with production lines included in three subcategories. EPA requested and received data from this plant concerning their production and earnings in 1984. The information was solicited primarily to assist EPA in its analysis of comments submitted by the plant after proposal. The Agency has employed these 1984 figures in its analysis of impacts for this facility.

Details concerning specific plants are available in the record of this final rulemaking. See also the Economic Impact Analysis document for subcategory discussions.

BPT: New BPT limitations are promulgated for 15 subcategories, with 63 plants incurring compliance costs. Investment costs are estimated to be $4.2 million and total annualized costs are $5.8 million. Closures projected to result from these costs include a secondary gold production process line in a secondary precious metals plant. This plant also produces secondary silver and therefore is integrated with the secondary silver subcategory in the Nonferrous Metals Phase I regulation. It was projected that compliance costs associated with the Phase I regulation would result in the closure of the secondary silver process line as well. The combined effects of the two regulations therefore is the closure of the entire facility and the associated loss of approximately 19 jobs. However, the loss of secondary gold/silver production capacity is minimal. The plant represents less than one-half of one percent of industry capacity for both metals. As noted in the economic impact report where applicable, several intermediate production lines within large, integrated facilities appeared unprofitable at BPT when analyzed independently. That is, the value of products produced by the operation is low relative to the estimated wastewater treatment cost implied by this regulation. EPA believes however that, in each case, the *overall* value of the plant's production justifies the continued operation of the intermediate production line. The products of these lines are vital to the facility's overall output. Hence, EPA does not project their closure. The overall impacts on all subcategories are small, with potential price changes (i.e., if manufacturers could pass compliance costs through to customers) ranging from less than 0.01 to 2.9 percent. No balance of trade effects are expected.

BAT: New BAT limitations are promulgated for 14 subcategories. Total investment costs to meet BPT and BAT are estimated to be $4.8 million and total annualized costs are $6.1 million. No additional closures or production loss beyond those expected at BPT are expected to result from these limitations. The price increases potentially associated with these costs are small, ranging from 0.01 to 3.0 percent and the limitations are considered economically achievable.

PSES: PSES is issued for 8 subcategories. The costs for this regulation are expected to be $2.4 million investment and $1.4 million total annualized costs. Impacts of PSES on the nonferrous metals manufacturing industry are small overall. The range of potential price increases is 0.08 to 2.7 percent and no further production loss is expected to occur. These standards have been found to be economically achievable for all subcategories.

NSPS/PSNS: New source limitation are promulgated for 19 of the 25 subcategories. The technology basis for NSPS and PSNS is the same as for BAT for all subcategories where BAT and PSES are promulgated. One subcategory, Secondary Mercury, is subject only to new source limitations because it contains no existing discharging plants. New plants in this subcategory will not be at a serious cost disadvantage as a result of these limitations. Hence this regulation is not expected to discourage entry into the industry.

The Agency believes this regulation is economically achievable and imposes no significant impacts on any subcategory within the industry.

C. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analysis of major regulations. Major rules impose an annual cost to the economy of $100 million or more or meet other economic impact criteria. This regulation for nonferrous metals manufacturing, Phase II, is not a major rule. The costs expected to be incurred by this industry will be significantly less than $100 million. Therefore a formal Regulatory Impact Analysis is not required. This rulemaking satisfies the requirements of the Executive Order for a nonmajor rule. The Agency's regulatory strategy considered both the cost and economic impacts of the regulation.

D. Regulatory Flexibility Analysis

Pub. L. 96–354 requires that EPA prepare a Regulatory Flexibility Analysis for regulations that have a significant impact on a substantial number of small entities. This analysis may be conducted in conjunction with or as part of other Agency analyses. A small business analysis is included in the economic impact analysis for this regulation.

For each metal subcategory, small entities were defined on the plant level, using annual plant capacity as an indicator of size. A total of 14 plants were identified in 5 subcategories as small, representing 19 percent of all discharging plants. For these 5 subcategories, the Agency evaluated (1) annual compliance costs as a percentage of revenues for small facilities and (2) annual compliance costs as a percent of the cost of production for small entities. Based on this analysis, EPA has determined that there will not be a significant impact on small entities within this category. Therefore the Agency is not required to perform a formal Regulatory Flexibility Analysis. I hereby certify pursuant to 50 U.S.C. 605(b) that this regulation will not have a significant impact on a substantial number of small entities.

E. SBA Loans

The Agency is continuing to encourage small plants to use Small Business Administration (SBA) financing as needed for pollution control equipment. The three basic programs are (1) the Pollution Control Bond Program, (2) the Section 503 Program, and (3) the Regular Business Loan Program. Eligibility for SBA programs varies by industry. Generally, a company must be independently owned, not dominant in its field, with maximum employee size ranges from 250 to 1500 employees (dependent upon industry), and maximum annual sales revenues ranges from $275,000 to $22 million (varies by industry).

For further information and specifics on the Pollution Control Bond Program, contact: U.S. Small Business Administration, Office of Pollution Control Financing, 4040 North Fairfax Drive, Rosslyn, Virginia 22203, (703) 235–2902.

The Section 503 Program, as amended in July 1980, allows long-term loans to small-and medium-sized businesses. These loans are made by SBA approved local development companies. These companies are authorized to issue Government-backed debentures that are bought by the Federal Financing Bank, an arm of the U.S. Treasury.

Through SBA's Regular Business Loan Program, loans are made available by commercial banks and are guaranteed by SBA. This program has interest rates equivalent to market rates.

For additional information on the Regular Business Loan and Section 503 Programs, contact your district or local SBA office. The coordinator at EPA headquarters is Ms. Frances Dessell, who may be reached at (200) 382–5373.

VII. Nonwater Quality Aspects of Pollution Control

The elimination or reduction of one form of pollution may cause other environmental problems. Therefore, sections 304(b) and 306 of the Act require EPA to consider the nonwater quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, EPA has considered the effect of this regulation on air pollution, solid waste generation, water scarcity, and energy consumption. While it is difficult to balance pollution problems against each other and against energy utilization, EPA is promulgating regulations which it believes best serve often competing national goals.

The following nonwater quality environmental impacts (including energy requirements) are associated with the final regulation. The Administrator has determined that the impacts identified below are justified by the benefits associated with compliance with the limitations and standards.

A. Air Pollution

Imposition of BPT may increase slightly emissions of ammonia from air stripping technology recommended for one plant in one subcategory, secondary molybdenum and vanadium. These emissions are not expected to create a substantial air pollution problem. BAT, NSPS, PSES, and PSNS will result in a slight increase in air pollution. The Agency does not consider any of these impacts to be significant.

B. Solid Waste

EPA estimates that the promulgated BAT regulation for nonferrous metals manufacturing phase II facilities will generate 14,000 kkg (15,400 tons) of solid wastes (wet basis—1982 production levels) as a result of wastewater treatment. These wastes will be comprised of treatment system sludges containing cyanide and toxic metals, including arsenic, antimony, beryllium, cadmium, chromium, copper, lead, mercury, nickel, selenium, silver, thallium, and zinc.

EPA estimates that promulgated PSES will approximate 2400 kkg (2,640 tons) per year. These sludges will be similar to those generated by BAT treatment technology. NSPS and PSNS will increase the amount of solid waste by less than 5 percent of the BAT and PSES quantities.

Wastes generated by primary smelters and refiners are currently exempt from regulation by Act of Congress [Resource Conservation and Recovery Act (RCRA), Section 3001(b)]. Consequently, sludges generated from treating primary industries' wastewater are not presently subject to regulation as hazardous wastes.

Wastes generated by secondary metal industries can be regulated as hazardous. However, the Agency examined the solid wastes that would be generated at secondary nonferrous metals manufacturing plants by the suggested treatment technologies and believes they are not hazardous wastes under the Agency's regulations implel menting Section 3001 of the Resource Conservation and Recovery Act. None of these wastes are listed specifically as hazardous. Nor are they likely to exhibit a characteristic of hazardous waste. This judgment is made based on the recommended technology of lime precipitation and filtration. By the addition of a small excess of lime during treatment, similar sludges, specifically toxic metal bearing sludges, generated by other industries such as the iron and steel industry passed the Extraction Procedure (EP) toxicity test. See 40 CFR 261.24. Thus, the Agency believes that the wastewater sludges will similarly not be EP toxic if the recommended technology is applied.

Although it is the Agency's view that solid wastes generated as a result of these guidelines are not expected to be hazardous, generators of these wastes must test the waste to determine if the wastes meet any of the characteristics of hazardous waste (see 40 CFR 262.11).

If these wastes identified should be or are listed as hazardous, they will come within the scope of RCRA's "cradle to grave" hazardous waste management program, requiring regulation from the point of generation to point of final disposition. EPA's generator standards would require generators of hazardous nonferrous metals manufacturing wastes to meet containerization, labeling, recordkeeping, and reporting requirements. In addition, if plants dispose of hazardous wastes off-site, they must prepare a manifest which tracks the movement of the wastes from the generator's premises to a permitted off-site treatment, storage, or disposal facility. See 40 CFR 262.20 [45 FR 33142 (May 19, 1980), as amended at 45 FR

86973 (December 31, 1980)]. The transporter regulations require transporters of hazardous wastes to comply with the manifest system to assure that the wastes are delivered to a permitted facility. See 40 CFR 263.20 [45 FR 33151 (May 19, 1980), as amended at 45 FR 86973 (December 31, 1980)]. Finally, RCRA regulations establish standards for hazardous waste treatment, storage, and disposal facilities allowed to receive such wastes. See 40 CFR Parts 264 and 265.

Even if these wastes are not identified as hazardous, they still must be disposed of in a manner that will not violate the open dumping prohibition in section 4005 of RCRA. The Agency has calculated as part of the costs for wastewater treatment the cost of hauling and disposing of additional waste generated assuming 19% was hazardous. We also conducted a sensitivity analysis which considered the economic impact on the industry if all their sludges were to become hazardous. The analysis indicated that, under this assumption, one additional plant closure could be expected. This plant is in the secondary molybdenum and vanadium subcategory. For more details, see Section VIII of the General Development Document and Chapter 25 of the economic impact assessment.

C. Energy Requirements

EPA estimates that the achievement of BPT effluent limitations will result in electrical energy consumption of approximately 18.5 million kilowatt-hours per year. The BAT technology should increase the energy requirements above BPT by 0.3 million kilowatt-hours per year. PSES will add 5.8 million kilowatt-hours per year. To achieve the BPT and BAT efffluent limitations, a typical direct discharger will increase total energy consumption by less than 1 percent of the energy consumed for production purposes.

The Agency estimates that the NSPS and PSNS technology will, in general, require as much energy as the existing source limitations.

D. Consumptive Water Loss

Treatment and control technologies that require extensive recycling and reuse of water may require cooling mechanisms. Evaporative cooling mechanisms can cause water loss and contribute to water scarcity problems—a primary concern in arid and semi-arid regions. While this regulation assumes water reuse, the overall amount of reuse through evaporative cooling mechanisms is low and the quantity of water involved is not significant. In addition, most nonferrous metals manufacturing plants are located in areas where water scarcity is not a problem. We conclude that the consumptive water loss is insignificant and that the pollution reduction benefits of recycle technologies outweigh their impact on consumptive water loss.

VIII. Pollutants and Subcategories Not Regulated

The Settlement Agreement In NRDC v. Train, supra contains provisions authorizing the exclusion from regulation, in certain instances, of toxic pollutants and industry subcategories. These provisions have been rewritten in a Revised Settlement Agreement which was approved by the District Court for the District of Columbia on March 9, 1979. See NRDC v. Costle, 12 ERC 1833 (D.D.C. 1979). The pollutants selected for regulation are listed by subcategory in Appendix B.

A. Exclusion of Pollutants

The Agency has deleted the following three pollutants from the toxic pollutant list. These are dichlorofluoromethane, and trichlorofluoromethane, (46 FR 2266 (January 8, 1981)) and bis(chloromethyl ether (46 FR 10723 (February 4, 1981)).

Paragraph 8(a)(iii) of the Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants not detectable by Section 304(h) analytical methods or other state-of-the-art methods. The toxic pollutants not detected or otherwise determined not to be present and, therefore, excluded from regulation are listed in Appendix C of this notice by subcategory.

Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation toxic pollutants detected in amounts too small to be effectively reduced by technologies known to the Administrator. Appendix D to this notice lists the toxic pollutants in each subcategory which were detected in the effluent in amounts at or below the nominal limit of analytical quantification. Appendix E to this notice lists the toxic pollutants in each subcategory present in amounts which are too small to be effectively reduced by technologies considered applicable to the category and which, therefore, are excluded from regulation.

Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation toxic pollutants detectable in the effluent from only a small number of sources wiith in the subcategory because they are uniquely related to those sources. Appendix F to this notice lists for each subcategory the toxic pollutants which were detected in the effluents of only one plant, are uniquely related to that plant, and are not related to the manufacturing processes under study.

Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation toxic pollutants which will be effectively controlled by the technologies upon which are based other effluent limitations and guidelines or pretreatment standards. Appendix G lists those toxic pollutants which will be effectively controlled by the BAT limitations, NSPS, and pretreatment standards, even though they are not specifically regulated.

B. Exclusion of Subcategories

Additionally, Paragraph 8(a)(iv) of the Settlement Agreement authorizes the exclusion of subcategories in which the amount and toxicity of each pollutant in the discharge do not justify developing national regulations.

EPA executed an affidavit on May 10, 1979 excluding six primary and five secondary metal subcategories from regulation under Paragraph 8(a)(iv) of the Settlement Agreement. The subcategories were:

Primary Arsenic
Primary Antimony
Primary Barium
Primary Bismuth
Primary Calcium
Primary Tin
Secondary Beryllium
Secondary Cadmium
Secondary Molybdenum
Secondary Tantalum
Secondary Babbitt

Four of these excluded subcategories—antimony, primary tin, secondary molybdenum, and secondary tantalum, have been reconsidered for regulation in nonferrous phase II. This is due to data received by EPA since May 10, 1979, showing a need for effluent guidelines to be established for these four subcategories. Today's notice promulgates effluent limitations and guidelines which include these four subcategories.

In addition to the subcategories already excluded under Paragraph 8(a)(iv) of the Settlement Agreement, EPA is excluding four additional primary and one additional secondary metal subcategory from regulation. EPA is excluding these subcategories because no existing primary lithium, primary boron, or secondary zinc plants discharge wastewater to surface waters or POTWs, because there are no pollutants at treatable concentrations in primary magnesium discharges and because the amount and toxicity of discharges in primary cesium and rubidium is small. The subcategories are:

Primary Boron
Primary Cesium and Rubidium
Primary Lithium
Primary Magnesium
Secondary Zinc

The Agency is excluding the following subcategory from BAT effluent guidelines and pretreatment standards for existing sources under provisions of Paragraph 8(a)(iv) because there are no facilities discharging wastewater to surface waters or POTW. It is:

Secondary Mercury

The Agency is excluding the following subcategories from BAT effluent guidelines under provisions of Paragraph 8(a)(iv) because there are no facilities discharging wastewater to surface waters. They are:

Secondary Indium
Secondary Nickel

EPA is also excluding 10 subcategories from pretreatment standards for existing sources because there are no facilities discharging wastewater to POTWs. They are:

Primary Antimony
Bauxite Refining
Primary Beryllium
Molybdenum Metallurgical Acid Plants
Primary Molybdenum and Rhenium
Secondary Molybdenum and Vanadium
Primary Nickel and Cobalt
Primary Precious Metals and Mercury
Secondary Tantalum
Secondary Uranium

PSES regulations are being promulgted for the secondary tungsten and cobalt subcategory because after proposal EPA learned of the existence of one discharging plant.

The Agency is excluding the following subcategory from pretreatment standards for existing sources under the provisions of Paragraph 8 because the amount and toxicity of the discharges are small.

IX. Public Participation and Response to Major Comments

Industry, government, individual citizens, and environmental groups have participated during the development of these effluent limitations guidelines and standards. These regulations were proposed on June 27, 1984 (49 FR 26352). The comment period ended on October 2, 1984. Two permit writers workshops open to the public were held on this rulemaking on August 14, 1984, in Providence, Rhode Island and on August 28, 1984 in San Francisco, California. On August 21, 1984 in Washington, D.C., a public hearing was held on the proposed pretreatment standards at which only one person presented testimony. A notice of data availability and a request for comment on data obtained after proposal was published in the Federal Register on March 18, 1985. The comment period ended April 17, 1985.

Since proposal, the following 36 commenters submitted approximately 883 individual comments on the proposed regulation: National Association of Recycling Industries, Inc., U.S. Department of the Interior, County Sanitation Districts of Los Angeles County, Breed, Abbott and Morgan for American Chemical and Refining Co. Inc., Eagle-Picher Industries, Dow Chemical U.S.A., Department of Energy, American Chemical and Refining Company, Inc., Teledyne Wah Chang Albany, Inco Alloys International, Inc., United States Department of the Interior, Sunshine Mining Company, KBI a Division of Cabot Corporation, Timet a Division of Titanium Metals Corporation of America, Reynolds Metals Company, Englehard Corporation, Robinson & McElwee for Kaiser Aluminum and Chemical Corporation, The Aluminum Association, GTE Service Corporation, Resource Consultants for Tex Tin Corporation, Brush Wellman Inc., American Mining Congress, Energy, Amax Nickel, Inc., Amax Environmental Services Inc., Climax Molybdenum Company, Aluminum Company of America, Proler International Corp., Johnson Matthey, Inc., Gulf Chemical and Metallurgical Company, United States Borax and Chemical Corporation, Indium Corporation of America, U.S. Department of Commerce, Handy and Harmon Company, Tex Tin Corporation, Holland and Hart for GTE Products Corporation. We considered all comments carefully and made appropriate changes in the regulation whenever data and information warranted modifications. Eleven major issues raised in comments are addressed in this section of the preamble. Other major comments are discussed briefly in Section V, Control Treatment Options and Technology Basis for Final Regulations. All comments received and our detailed responses to these comments are included in a document entitled Response to Public Comments, Proposed Nonferrous Metals Manufacturing Phase II Effluent Limitations and Standards which has been placed in the public record for this regulation. The following is a discussion of the Agency's responses to the principal comments:

1. Treatment Effectiveness and Technology Basis

i. Combined Metals Data Base and Other Pollutants

Comment: Commenters objected to the use of the combined metals data base to generate treatment effectiveness numbers for the nonferrous metals manufacturing industry. The commenters claim that the proposed levels for aluminum, arsenic, barium, boron, cadmium, copper, iron, lead, manganese, selenium, tin and zinc cannot be met because the data base from which they were developed is small and unrepresentative of typical nonferrous plants. Commenters argued that industry data should be used to establish nonferrous phase II treatment effectiveness levels and that homogeneity with the combined metals data base had not been established for nonferrous phase II wastewaters because an insufficient percentage of nonferrous phase II plants had been sampled to establish homogeneity.

Response: We have evaluated the data submitted by the commenters. We feel that the data are not appropriate for a number of reasons including inadequate treatment system operation and design, lack of pH and TSS data, and lack of paired influent-effluent data sets. In one particular case more than 99 percent of the flow through the treatment plant is non-scope or storm water rather than process water, and therefore, it is not representative of nonferrous metals manufacturing.

Secondary precious metals producers do have high zinc values. We have considered typical zinc concentrations for that industry and have determined that two stage precipitation may be necessary to meet CMDB based limits. The additional cost of two stage precipitaton is estimated to add only about 5 percent to the annual cost and has been considered in the economic impact assessment.

Between proposal and promulgation we sampled nine nonferrous metals forming plants to measure lime and settle treatment effectiveness levels for barium, boron, molybdenum, titanium, vanadium, zirconium, uranium, tungsten and tantalum and published those numbers in the notice of new data. We developed values for tin based on information from two metal finishing plants which show removals of tin across the lime and settle treatment system. We requested additional treatment effectiveness data for all the pollutants being considered for regulation and only received inadequate information for molybdenum, vanadium, and ammonia; we received no information for gold, platinum, and palladium.

ii. Molybdenum Treatment Effectiveness

Comment: Commenters objected to effluent limits based on lime and settle

treatment claiming that this technology is ineffective and also claiming that iron coprecipitation is not widely used throughout the industry and therefore should not form the technical basis for regulation.

Response: The molybdenum treatment effectiveness numbers used for proposal (1.4 mg/l) were based on measurements taken at a primary molybdenum plant. At that time we did not have any reason to suspect the validity of those numbers specially since our data show removal across the treatment system. However, after proposal the company complained that this treatment effectiveness level was not the result of lime and settle treatment.

Since proposal we have obtained data from two other planes on molybdenum through lime and settle, single stage solvent extraction and iron coprecipitation showing removal of molybdenum across the system. The lime and settle system sampled at the secondary molybdenum facility, even though poorly operated, achieves an average of 40 mg/l and 85 percent removal, contradicting the claim that molybdenum cannot be removed in lime and settle. However, we relied on data obtained at a uranium forming plant using iron coprecipitation for molybdenum removal, which achieves 1.8 mg/l in the effluent. These values are equivalent to those used for proposal.

Iron coprecipitation is a technology widely used in industry, and it is discussed in both the proposed and final development document for this rulemaking. Therefore, we disagree with the industry contention that the proposed technology is experimental.

One commenter, in addressing this issue, neglected to discuss the quality and nature of the bench scale test for iron coprecipitation. On further request for clarification it proved to be a single analysis. Although this is scarcely adequate to make any conclusions about iron coprecipitation effectiveness, examining the data at the iron dosage used shows reduction of vanadium to the detection limit of nickel to 1.2 ppm and slight reductions in cobalt, molybdenum and boron. Molybdenum is shown as being removed to 65 mg/l. Therefore, our data and the data submitted support lower numbers for molybdenum.

iii. Sulfide Precipitation

Comment: Commenters claim that sulfide precipitation is not a commercially demonstrated or proven technology for nonferrous metals manufacturing plants.

Response: Sulfide precipitation is demonstrated in the primary tungsten subcategory where it is used to remove molybdenum as a sulfide from the processing of tungsten ore. It has been discussed earlier in this preamble.

iv. Ammonia Steam Stripping

Comment: Commenters claim that the proposed limits for ammonia cannot be met and that levels should be 200–1500 ppm.

Response: We have sampled ammonia steam strippers and air strippers. We received bench scale data showing that steam stripping can achieve the levels proposed in secondary precious metals.

v. Cyanide Precipitation

Comment: Precious metals manufacturers advocate the use of cyanide destruction methods for cyanide removal because this technology allows them to recycle metals easily in their process. They object to our technology, cyanide precipitation, because they claim it creates a hazardous sludge.

Response: We based our cyanide limits on cyanide precipitation because it is easier to use and cheaper than cyanide destruction. In estimating the cost of this technology we considered the cyanide bearing sludge as hazardous and costed it appropriately. However, any plant is free to use the technology of its choice so long as it meets the limitations.

2. Strategic Metals

Comment: Commenters were concerned about a possible detrimental impact of these regulations on the U.S. mineral industry, and subsequently, on U.S. national security. Commenters argue that disruption of imported mineral and energy supplies could affect U.S. economic and military strength because of the national dependence on unreliable foreign sources of strategic and critical minerals and claim that faulty assumptions about the economic situation of the minerals industry underestimate the economic impact of the regulation.

Response: The Agency has evaluated the potential impact of this regulation on the U.S. mineral industry and on the strategic stockpiles of the metals in question. With regard to individual facilities, the Agency's economic analysis as discussed in more detail in the economic development document indicates that this regulation will not cause closing of any plants in the minerals industry affected by this rulemaking. With regard to strategic stockpiles for particular metals, the stockpiles are in excess and/or reserves are maintained in final product form. One possible exception is tungsten, reserves of which are maintained primarily in ore and concentration form. Domestic tungsten manufacturers have experienced continued poor performance in the past several years primarily as a result of the overvalued U.S. dollar. This situation has allowed overseas manufacturers, particularly the Chinese, to capture increasingly larger shares of the domestic tungsten market. Curent market conditions, if they persist, may force several U.S. tungsten facilities to discontinue operations. EPA believes, however, that treatment costs incurred as a result of this regulation for the tungsten cobalt subcategory will be extremely low (less than $15,000 annually) for most plants which process tungsten ore concentrates. Those which incur higher costs are large, integrated facilities with ample resources available to either continue production during depressed conditions, or at least maintain their facilities for later use if market pressures force them to cease operations temporarily.

3. Costing

Comment: Commenters stated that the cost estimates for sludge disposal, cyanide precipitation, ammonia steam stripping, and ion exchange were underestimated.

Response: EPA estimates sludge generation by using a computerized mass balance procedure which takes into account raw wastewater characteristics, reagent addition, and wastewater flow rates. While we do not generate individual engineering design estimates, the methodology used results in a reasonably good estimate of the national average cost for disposal of toxic or hazardous sludge. This analysis cannot take into account the restrictions or pricing that individual landfill operations impose when accepting waste materials.

The effluent limitations for cyanide were based on cyanide precipitation instead of cyanide destruction because lower treatment effectiveness levels can be achieved at a lower cost. We assumed that cyanide bearing sludges would be hazardous and estimated hazardous sludges disposal costs for any subcategory where we relied on this technology.

We have evaluated the ammonia removal equipment in place at each facility in the category. Where the steam stripper is considered to be adequately designed, we have not assigned any costs for it. Where the existing equipment is not adequately designed, we have included costs for new equipment. Our ammonia steam stripping cost estimates take into account cleaning of the columns due to

solids buildup. Excess capacity is incorporated into the column design to account for downtime resulting from cleaning and other reasons. The assumptions used for steam rate and maintenance were based on vendor recommendations and are general guidelines which can be applied broadly. Also, the costs associated with operating an ammonia steam stripper are dominated by the cost of energy associated with steam production which constitutes 50 percent of operating costs, chemical costs constitute 45 percent. Routine maintenance costs are small in comparison, constituting approximately 1 percent of the operating costs.

Although steam stripping is demonstrated in the category, we have developed costs for new steam stripping equipment. Also, our cost estimates assume that the recovered ammonia stream can be recycled back to the process. If this is not the case, the dilute ammonia can be sold to other companies or used in agriculture.

With respect to ion exchange, we followed the manufacturer's recommendations on the maximum capacity of precious metals that the resin will retain (per cubic foot), which show that the amount of precious metal value to be recovered, very substantially exceeds the cost of the resin. Therefore, we believe that our costing assumptions are correct for ion exchange costs for secondary precious metals.

4. Economic Impact

Comment: Commenters objected to the economic impact analysis because of methodological limitations and the allegedly incorrect assumption that forthcoming conditions will be similar to 1978–82. They point out that since 1979–80 mineral prices have declined and capacity utilization, sales and profits have changed little or decreased since 1982. Other commenters echoed these concerns and submitted various newspaper articles on the depressed condition of the domestic minerals industry.

Three companies stated that the economic impacts would be more severe than the Agency estimates because EPA did not properly consider the economic environment in which these plants operate. A producer of primary tungsten, cobalt, tantalum and molybdenum, complained that EPA discounted the effect of imports when in fact, imports of metals and metallic products have caused them to lose 25 percent of the upgraded tungsten market. They claim foreign competitors undersell them by several dollars and provided data to substantiate their claim. They experienced losses also in cobalt and tantalum. They argue that the market is very sensitive to fluctuations and they are barely managing to stay in business.

Molybdenum producers claim that the price of molybdenum will fluctuate between $4 and $5 per pound for the next five to 10 years whereas the economic analysis was based on $8.36 per pound. If the lower price is used, they believe the results of the economic analysis will be different, indicating a severe impact on the regulated industry.

The secondary molybdenum and vanadium producer objects to being grouped with the primary molybdenum and rhenium subcategory for the economic analysis because of their relative size, different processes, and their need to underprice to compete with the primary producers. They also complained that the methodology used failed to take into account the value of one facility as a resource recovery operation in reducing the need to dispose of waste, nor has EPA considered the effect of a closure of the plant on the petrochemical industry.

The secondary molybdenum and vanadium and the secondary tin subcategories claim that they are small businesses under the SBA criteria of having less than 500 employees for secondary producers and 2,500 employees for primary producers. As such, they contend that the Agency should have conducted a small business impact analysis for these two subcategories to evaluate alternatives that would ameliorate the impacts.

Response: EPA believes a number of the commenters' claims are valid and has therefore revised its economic impact assessment accordingly. In general, all projections on prices, production, earnings and cash flow employed in the analysis at proposal have been reviewed to determine if the impact of foreign competition has rendered them overoptimistic. EPA had, in earlier analysis, predicted the nonferrous metals manufacturing industry would recover from the 1982 recession such that earnings and output levels would approach their "average" values from the 1978–82 business cycle by the time of compliance with the regulation. Examination of current conditions in the industry reveals that, for the most part, this recovery has not occurred. Although a number of factors can be cited as contributors to the continued poor performance, the primary consideration has been the persistently strong U.S. dollar on international exchange markets.

In most cases, domestic metals manufacturers compete actively for market shares with foreign producers. The strong U.S. dollar creates a distinct disadvantage for these domestic manufacturers in that it makes their products more expensive abroad at the same time it makes imports cheaper. The combined result is that production, sales and profits may be lower than they would be in the absence of an overvalued currency. We have reviewed the economic analysis and, where applicable, revised our compliance period projections of prices, production and earnings downward to reflect the impact of cheaper imports and the associated loss of sales.

EPA has also adjusted its forecast of molybdenum prices employed in the analysis of impacts of molybdenum refiners. Previously, the Agency had projected a return to the 1978–82 period average market value of $8.36 per pound. However continued oversupply of molybdenum has resulted in persistently lower prices with little expectation of significant increase. Hence the price employed in the analysis has been changed to $5.44 per pound, the average real price over the last thirteen years. After this adjustment, EPA still predicts minimal economic impacts on the primary molybdenum rhenium facilities. However the secondary molybdenum and vanadium plant appeared unprofitable under the initially proposed BPT technology. This technology basis has since been revised (i.e. ammonia air stripping instead of ammonia steam stripping) and is now considered economically achievable (see below).

In summary, EPA's economic reevaluation of the nonferrous metals manufacturing industry has led to the following projections:

Significant economic impacts (ie, reduced profitability) is projected for the only secondary molybdenum vanadium facility and baseline closures are expected in the secondary tin subcategory. The former is Gulf Chemical, the only plant in the subcategory. This plant recovers molybdenum and vanadium by processing large volumes of spent hydrodesulfurization catalyst, a waste product of the petroleum manufacturing industry. Gulf currently accepts this waste product free of charge, thus providing petroleum refiners with a relatively safe and inexpensive method of disposal. It is believed the Gulf facility will be able to recover a large percentage of the compliance costs incurred under this regulation by charging the refiners on a bulk or per ton basis for the service it provides. In the event this is not possible and the current "zero price" is maintained, EPA projects the plant will remain marginally

profitable nonetheless. Hence, the Agency does not believe this plant is likely to cease operation as a result of this regulation. In the tin subcategory, two of the four discharging plants are believed to be baseline closures, although they are still operating while incurring losses. We also project one production line closure in the large secondary precious metals subcategory, occurring at the BPT option. Several other production lines, one each in primary antimony and secondary nickel (both single discharger subcategories), and secondary tungsten and cobalt appear to be unprofitable at the BPT option. It is doubtful these lines will shut-down as a result of this regulation however, since they are intermediate operations in large, integrated facilities which appear healthy overall.

Regarding the small business comment, EPA has some flexibility in defining the small business criteria.

In the nonferrous smelting and refining industry, the SBA defines as small those firms whose employment is fewer than 2500 for primary producers and fewer than 500 for secondary producers. This definition is, however, inappropriate because this analysis is concerned with plants operating as distinct units rather than with firms composed of several plants. Many of the plants are, in fact, owned by firms that produce metals not covered by this regulation. In order to avoid confusion and maintain consistency, annual plant capacity in multiple-discharger subcategories was used as an indicator of size.

5. Subcategorization

Comment: One commenter argued that primary and secondary tin should be further subcategorized. The commenter stated that there are significant differences in manufacturing processes and raw wastewater characteristics between primary and secondary tin operations, and that the decision to include both in a single subcategory was based on a lack of data relating to primary tin smelting and associated wastewater generation.

Another commenter argued that primary and secondary titanium should be regulated as separate subcategories. The commenter claimed that there are no similarities between primary and secondary titanium processing or wastewater characteristics.

Response: A post-proposal sampling visit was conducted on a primary tin facility to obtain wastewater characteristics data on primary tin raw wastewaters. These samplings revealed that the existing smelter is processing secondary materials mostly and in fact it is a secondary tin manufacturer using a pyrometallurgical process. Therefore, we have concluded that there are no promary tin manufacturers in the U.S. at this time and therefore there is no need to regulate primary tin. Differences in wastewater have been considered by sampling all building blocks and making adjustments in pollutants regulated and allowable limitations.

The information on primary and secondary titanium plants contained in dcp's and trip reports shows that at least one titanium plant processes both primary and secondary materials. Therefore, we do not believe that it is necessary to separate them into two subcategories.

6. Confidentiality

Comment: Half of the supplemental development documents in this category are confidential. Commenters argued that reliance on confidential information in developing the final regulations in effect denies public participation and defeats the purpose of the Administrative Procedures Act. That issue was raised as regards to the primary molybdenum and rhenium, secondary tantalum, secondary tungsten and cobalt, and primary and secondary tin subcategories.

Response: The first three subcategories are confidential whereas the last one is not. All data available on primary and secondary tin, has been supplied to the affected facility. Individual facilities in the other three subcategories had access to their own data but the aggregate of all the facilities was not supplied to anyone individually.

Although the confidential development documents have not been publicly released, the limitations and the treatment effectiveness concentrations have been. Each plant also knows its building blocks, processes and flows, is able to calculate their individual mass allowances, compare results against the limitations and determine the EPA flow basis. This is the most important information the plant needs to comment effectively on the proposed regulation.

We were only required to hold so much information confidential because the companies claimed it confidential. In addition, we did not receive this comment as part of the original proposal. Commenters only raised this issue 5½ months after close of the proposal comment period as part of tjeor response to the notice of new data.

7. Need for National Standards

Comment: Commenters asked for exemptions from national standards in the following subcategories primary beryllium, secondary molybdenum and vanadium, primary nickel and cobalt, primary and secondary tin. The reasons for requesting exemptions were: that there is only one plant in the subcategory; that there are only a small number of plants in the subcategory; that the existing permit effectively controls their discharges; and, that there is previous precedent set by EPA in the Printing and Publishing Category for excluding certain subcategories because the discharge of toxic pollutants was de minimum (48 FR 44783, September 30, 1983).

Response: Under the authority of the Clean Water Act it is within the Agency's discretion to establish national regulations for subcategories with few or single discharging facilities. EPA has carefully condsidered the issue raised by the commenters and under the terms of paragraph 8 of the Settlement Agreement (N.R.D.C. v Train) has excluded five subcategories entirely from national regulation and where warranted, portions of other subcategories at certain levels of regulation. This is discussed in more detail in section VIII of this preamble.

Two subgroups of the subcategories have single plant issues: those having only one discharger but a greater number of plants who do not discharge wastewater (primary Antimony, primary Beryllium, primary and secondary Germanium and Gallium, secondary Nickel, primary Precious Metals and Mercury, primary Rare Earth Metals, secondary Uranium, primary Zirconium and Hafnium), and those who are literally single manufacturing facilities: (primary cesium and rubidium, secondary indium, secondary molybdenum and vanadium and primary nickel and cobalt). We considered these two groups and are issuing limitations and standards to control all discharging plants. For primary and secondary Germanium and Gallium, we are issuing a regulation to guard against the possibility of any existing zero discharger electing to discharge at some point in the future and because the existing plant discharges to a RCRA permitted impoundment.

For subcategories with no existing dischargers, we had proposed new source standards for almost all because of the potential for discharges arising from new plants if the subcategory is exempt from regulation. In the case of primary boron we have not promulgated a new source standard because the Agency believes the construction of a new source in a non arid area which would result in a discharge is very unlikely.

The data and information available to the Agency clearly indicate that the existing permits do not require the same level of pollutant control as the regulation being promulgated here. As an example, a large secondary molybdenum vanadium plant discharges high levels (600 million kg per year of pollutants after partial treatment) even with the existing permit. Moreover, the Agency believes that since all the studies necessary for developing the regulations have been completed uniform regulation will be more efficiently achieved using the specific knowledge gained through the effluent guidelines development process than for the permit writer to be forced to deal with these specific complex facilities.

The nature of the nonferrous metals industry is very unique because we are dealing with highly specialized metallurgical processes for fairly uncommon metals that command high prices. Almost every plant in the subcategory can be claimed as unique either by virtue of its processes or the materials produced. The Agency has addressed the specialized nature of manufacturing operations involved in this category by establishing a large number of subcategories. This has allowed the Agency to establish regulations that take into account a large number of the distinguishing factors raised by commenters. However, the consequence of this subcategorization has led to many subcategories with a small number of facilities. The Agency does not believe that its efforts to take into account many of the distinguishing factors raised by industry commenters should lead to the conclusion that there then should be no national regulation.

8. Specific Pollutants

Comment: Commenters questioned the Agency's authority to regulate the pollutant uranium. Various commenters claim that it is inappropriate to regulate the nonconventional pollutants tin, germanium, gold, platinum, palladium, molybdenum, and tungsten because they are not toxic and are not listed in the NRDC consent decree; and that molybdenum cannot be used as a surrogate for other pollutants because of its different chemical behavior.

Another issue raised was that secondary molybdenum and vanadium and primary tin manufacturing have a disproportionately high number of regulated parameters (19) compared with other subcategories which could lead to significant analytical and monitoring costs. They claim that since LSF removes all metals down to their solubility, only a few metals need to be selected for regulation to verify treatment performance. Regulation of addition parameters would be redundant, unduly burdensome and expensive.

Others objected to the rationale of regulating the principal metal being produced at a facility arguing that only the environmentally significant metals (Cr, Zn, Cd, Pb, etc.) should be regulated.

Response: The Agency has considered these comments and the fact that the Nuclear Regulatory Commission presently classifies uranium in any form, including depleted uranium, as a "source material" under the Atomic Energy Act. In light of the Supreme Court's holding in *Train* v. *Colorado Public Interest Research Group*, 426 U.S. 1 (1976) that "source," "special nuclear," and "by-product" materials are not pollutants within the meaning of the Clean Water Act, EPA has decided not to finalize effluent limitations guidelines for uranium under the Clean Water Act at this time. Since proposal, EPA has sampled two uranium manufacturing and forming plants and collected additional data on the raw wastewaster characteristics of uranium manufacturing and forming waste streams and the effectiveness of lime and settle treatment for removal of the pollutant uranium. Revised treatment effectiveness concentrations for the pollutant uranium were published in the **Federal Register** notice of new data (50 FR 1018, March 18, 1985). Discharge allowances for uranium based on all the available data are included in the development document as guidance.

The Agency is specifically directed under the Clean Water Act to regulate all pollutants whenever the regulation of such pollutants is appropriate to the wastewaters being regulated. In the case of some of the wastewaters subject to this rulemaking, the Agency deemed it appropriate to regulate the listed non-conventional pollutants in some subcategories.

The Agency believes that the regulation of molybdenum to the levels established in this regulation will usually require the installation and proper operation of the technology basis for the limitations or other technology which will achieve a similar removal of other pollutants. Since molybdenum is the principal metal being manufactured at most of the facilities where it is regulated, it is the metal most likely to be present in the wastewater consistently. Therefore it is the most likely candidate metal for use as an indicator for the removal of other unregulated toxic metals.

For the notice of new data all pollutants present in the raw discharge at treatable levels were considered for regulation for the secondary molybdenum and vanadium, and secondary tin subcategories. In developing the final regulation the Agency took into account the probability that many of the toxic pollutants would be removed by the model technology when certain key indicator pollutants were regulated. The final regulation only regulates seven pollutants in the secondary molybdenum and secondary vanadium subcategory and six pollutants in the secondary tin subcategory.

9. Production Normalizing Parameters

Comment: Several commenters claimed that raw material input would be a more appropriate production normalizing parameter for certain wastewater streams.

Response: The Agency has carefully considered all comments submitted on the appropriateness of production normalizing parameters (PNP). In a number of cases discussed in section V above we have modified the PNP for particular waste streams where justified by information and data supplied by commenters. With respect to raw material input, it appears that while the product metal content in raw materials may vary from batch to batch, there is an average ratio of product metal produced to raw material input over a period of time such as days and weeks. Each facility has the ability to influence this ratio by scheduling, selection and blending of raw materials selected for use in production. Moreover, the permit may take into account a variety of production variations which may bear on this problem.

10. pH Limits

Comment: Four commenters objected to the proposed pH limits arguing that since they do not discharge any toxic metals, controlling the pH in the range proposed is unnecessary and could cause additional environmental impacts. Others claim that the proposed pH range was incompatible with most existing water quality standards. They believe that industry will be subjected to a more restrictive range, depending on the state, leaving industry a range of 1.5 pH units in the case of a permit pH range of 7.5 to 9.0. They claim that it is difficult to maintain a pH range of less than 3 standard units with the current technology. They request that EPA establish a pH range of 6.0 to 9.0, allowing excursions up to 10.0 if the

elevated pH results from treatment with alkali to precipitate selected metals.

Response: The proposed pH range stems from the fact that most toxic metals precipitate and have minimum solubilities at an alkaline pH. Therefore, to ensure that the toxic limits for the metals are achieved, the pH must be controlled within this range. While the Agency believes that most lime and settle treatment systems can be operated well within 1.5 pH units, there are other remedies available to the operator such as post treatment pH adjustment, the use of stream mixing zones where permitted as a part of water quality compliance and the mixing of treated effluent with nonprocess waters where both are to be discharged to the same water body.

11. Permit Writer Guidance

Comment: Commenters asked EPA to provide guidance to permit writers including language in the regulations to account for "non-scope" flows including stormwater.

Response: The Agency believes the development of storm water and other site-specific wastewater source mass limitations are inappropriate on a national basis because the volume of wastewater is not constant from plant to plant and is not production related. Because of this, mass limitations on a national basis cannot be developed due to the variability of wastewater flow from plant to plant. Therefore the Agency believes site-specific wastewater is best handled on a case by case basis in the NPDES permitting process. This is the agency's consistent approach to this issue, reflected not only in other categorical effluent limitations guidelines and standards (eg. aluminum forming category), but in general implementing regulations for these limitations and standards as well (see 40 CFR 401.11(q), definition of process wastewater).

X. Best Management Practices (BMP)

Section 304(e) of the Clean Water Act authorizes the Administrator to prescribe "best management practices" (BMP) described under Legal Authority and Background. EPA is not promulgating specific BMP for nonferrous metals manufacturing category discussed in today's preamble.

XI. Upset and Bypass Provisions

A recurring issue of concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an 'excursion,"is unintentional noncompliance beyond the reasonable control of the permittee. It has been argued that an upset provision in EPA's effluent limitations is necessary because such upsets will inevitably occur even in properly operated control equipment. Because technology-based limitations require only what technology can achieve, many claim that liability for upsets is improper. When confronted with this issue, courts have been divided on whether an explicit upset or excursion exemption is necessary, or whether upset or excursion incidents may be handled through exercise of EPA's enforcement discretion. Compare *Marathon Oil Co.* v. *EPA*, 564 F.2d 1253 (9th Cir. 1977) with *Weyerhauser* v. *Costle, supra*, and *Corn Refiners Association, et al.* v. *Costle*, No. 78–1069 (8th Cir., April 2, 1979). See also *American Petroleum Institute* v. *EPA*, 540 F.2d 1023 (10th Cir. 1976); *CPC International, Inc.* v. *Train*, 540 F.2d 1320 (8th Cir. 1976); *FMC Corp.* v. *Train*, 539 F.2d 973 (4th Cir. 1976).

An upset is an unintentional episode during which effluent limits are exceeded; a bypass, however, is an act of intentional noncompliance during which waste treatment facilities are circumvented in emergency situations. We have, in the past, included bypass provisions in NPDES permits.

EPA has determined that both upset and bypass provisions should be included in NPDES permits and has promulgated permit regulations that included upset and bypass permit provisions (see 40 CFR 122.41 (m) and (n), 48 FR 14146 (April 1, 1983)). The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage. Consequently, although permittees in the nonferrous metals manufacturing industry will be entitled to upset and bypass provisions in NPDES permits, this regulation does not address these issues. Upset provisions are also contained in the General Pretreatment regulations, 40 CFR Part 403.

XII. Variances and Modifications

Upon promulgation of this final regulation, the appropriate effluent limitations must be applied in all Federal and State NPDES permits thereafter issued to direct dischargers in the nonferrous metals manufacturing category. In addition, upon promulgation, the pretreatment standards are directly applicable to indirect dischargers.

For BPT effluent limitations, the only exception to the binding limitations is EPA's "fundamentally different factors" variance. See *E.I. duPont deNemours Co.* v. *Train*, 430 U.S. 112 (1977); *Weyerhauser Co.* v. *Costle, supra*. This variance recognizes factors concerning a particular discharger that are fundamentally different from the factors considered in this rulemaking. However, the economic ability of the individual operator to meet the compliance cost for BPT standards is not a consideration for granting a variance. See *National Crushed Stone Association* v. *EPA*, 449 U.S. 64 (1980). Although this variance clause was originally set forth in EPA's 1973 to 1976 industry regulations it is now included in the general NPDES regulations and is cross-referenced in this regulation as well as other specific industry regulations. See the general NPDES regulation at 40 CFR Part 125, Subpart D.

The BAT limitations in this regulation also are subject to EPA's "fundamentally different factors" variance. In addition, BAT limitations for nonconventional pollutants are subject to modifications under sections 301(c) and 301(g) of the Act. These statutory modifications do not apply to toxic or conventional pollutants. According to section 301(j)(1)(B), applications for these modifications must be filed within 270 days after promulgation of final effluent limitations guidelines. See 40 CFR 122.21(1)(2).

The economic modification section of the Act (section 301(c)) gives the Administrator authority to modify BAT requirements for nonconventional pollutants for dischargers who file a permit application after July 1, 1978, upon a showing that such modified requirements will (1) represent the maximum use of technology within the economic capability of the owner or operator and (2) result in reasonable further progress toward the elimination of the discharge of pollutants. The environmental modification section (301(g)) allows the Administrator, with the concurrence of the State, to modify BAT limitations for nonconventional pollutants from any point source upon a showing by the owner or operator of such point source satisfactory to the Administrator that:

(a) Such modified requirements will result at a minimum in compliance with BPT limitations or any more stringent limitations necessary to meet water quality standards,

(b) Such modified requirements will not result in any additional requirements on any other point or nonpoint source, and

(c) Such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water, and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, or teratogenicity), or synergistic propensities.

Section 301(j)(1)(B) of the Act requires that application for modifications under section 301 (c) or (g) must be filed within 270 days after the promulgation of an applicable effluent limitations guideline regulation. Initial applications must be filed with the Regional Administrator and, in States with approved NPDES programs, a copy must be sent to the Director of the State program. Initial applications to comply with 301(j) must include the name of the permittee, the permit and outfall number, the applicable effluent guideline regulation, and whether the permittee is applying for a 301(c) or 301(g) modification or both.

Indirect dischargers subject to PSES and PSNS may be eligible for removal credits for pollutants removed by POTW See 40 CFR 403.7.

New sources subject to NSPS and PSNS are not eligible for any other statutory or regulatory modifications. See, *E.I. duPont deNemours & Co. v. Train, supra.*

Indirect dischargers subject to PSES are eligible for the "fundamentally different factors" variance. See 40 CFR 403.13. On September 20, 1983, the United States Court of Appeals for the Third Circuit held that "FDF variances for toxic pollutants regulated under PSES are forbidden by the Act." and remanded § 403.13 to EPA. *NAMF et al. v. EPA*, 719 2.d 624. (3rd Cir., September 20, 1983).

In response to this decision, EPA amended § 403.13(b)(2) to suspend the availability of FDF variances for toxic pollutants covered by categorical pretreatment standards. See 49 FR 5131 (February 10, 1984). In addition, EPA sought review of this portion of the Third Circuit's decision. On February 27, 1985, the Supreme Court reversed the Third Court of Appeals and held that FDF variances for toxic pollutants are not prohibited by the Clean Water Act. *Chemical Manufacturers Assoc. v. Natural Resources Defense Council, 105* S. Ct. 1102 (1985). Accordingly, indirect dischargers covered by categorical pretreatment standards for existing sources may be eligible for an FDF variance. Any interested person should refer to 40 CFR 403.13 for the procedures and deadline for applying for this variance.

XIII. Implementation of Limitations and Standards

A. Relationship to NPDES Permits

The BPT and BAT limitations and NSPS in this regulation will be applied to individual nonferrous metals manufacturing plants through NPDES permits issued by EPA or approved state agencies, under section 402 of the Act. As discussed in the preceding section of this preamble, these limitations must be applied in all Federal and State NPDES permits excepts to the extent that variances and modifications are expressly authorized. Other aspects of the interaction between these limitations and NPDES permits are discussed below.

One issue that warrants consideration is the effect of this regulation on the powers of NPDES permit issuing authorities. EPA has developed the limitations and standards in this regulation to cover the typical facility in each subcategory of this point source category. However the promulgation of this regulation will not restrict the power of any permitting authority to act in any manner consistent with law or these or any other EPA regulations, guidelines, or policy. For example, even if this regulation does not control a particular pollutant, the permit issuer may still limit the pollutant on a case-by-case basis when such actions are necessary to carry out the purpose of the Act. In addition, to the extent that State water quality standards or other provisions of State or Federal law require limitation of pollutants not covered by this regulation (or require more stringent limitations on covered pollutants), the permit issuing authority must apply those limitations.

A second topic that warrants discussion is the operation of EPA's NPDES enforcement program, many aspects of which were considered in developing this regulation. The Agency emphasizes that although the Clean Water Act is a strict liability statute, the Agency may elect to use any of the enforcement responses available under the CWA. *Sierra Club v. Train*, 557 F.2d 485 (5th Cir. 1977).

B. Indirect Dischargers

For indirect dischargers, PSES and PSNS are implemented under National Pretreatment Program procedures outlined in 40 CFR 403. The table below may be of assistance in resolving questions about the operation of that program. A brief explanation of some of the submissions indicated on the table follows:

A "request for category determination" is a written request, submitted by an indirect discharger or its POTW, for a determination of which categorical pretreatment standard applies to the indirect discharger. This assists the indirect discharger in knowing which PSES or PSNS limits it will be required to meet. See 40 CFR 403.6(a).

INDIRECT DISCHARGERS SCHEDULE FOR SUBMITTAL AND COMPLIANCE

Item	Applicable Source	Date or Time Period	Measured From	Submitted To
Request for Category Determination	Existing	60 days	From effective date of standard	Director(1)
		60 days	From Federal Register Development Document Availability	
	New	Prior to commencement of discharge to POTW		
Request for Fundamentally Different Factors Variance	Existing	180 days	From effective date of standard	Director(1)
		Or 30 days	From final decision on category determination	
Baseline Monitoring	All	180 days	From effective date of standard or final decision on category determination	Control Authority(2)
Report on Compliance	Existing	90 days	From date for final compliance	Control Authority(2)
	New	90 days	From commencement of discharge to POTW	
Periodic Compliance Reports	All	June and December		Control Authority(2)

(1) Director = a) Chief Administrative Officer of a state water pollution control agency with an approved pretreatment program, or b) EPA Regional Water Division Director, if state does not have an approved pretreatment program

(2) Control Authority = a) POTW if its pretreatment program has been approved, or b) Director of state water pollution control agency with an approved pretreatment program, or c) EPA Regional Administrator, if state does not have an approved pretreatment program.

A "request for fundamentally different factors variance" is a mechanism by which a categorical pretreatment standard may be adjusted, making it more or less stringent, on a case-by-case basis. If an indirect discharger, a POTW, or any interested person believes that factors relating to a specific indirect discharger are fundamentally different from those factors considered during development of the relevant categorical pretreatment standard and that the existence of those factors justifies a different discharge limit from that specified in the categorical standard, then it may submit a request to EPA for such a variance (See 40 CFR 403.13).

A "baseline monitoring report" is the first report an indirect discharger must file following promulgation of an applicable standard. The baseline report includes: an identification of the indirect discharger; a description of its operations; a report on the flows of regulated streams and the results of sampling analyses to determine levels of regulated pollutants in those streams; a statement of the discharger's compliance or noncompliance with the standard; and a description of any additional steps required to achieve compliance. See 40 CFR 403.12(b).

A "report on compliance" is required of each indirect discharger within 90 days following the date for compliance with an applicable categorical pretreatment standard. The report must indicate the concentration of all regulated pollutants in the facility's regulated process waste streams; the average maximum daily flows of the regulated streams; and a statement of whether compliance is consistently being achieved, and if not, what additional operation and maintenance or pretreatment is necessary to achieve compliance. See 40 CFR 403.12(d).

A "periodic compliance report" is a report on continuing compliance with all applicable categorical pretreatment standards. It is submitted twice per year (June and December) by indirect dischargers subject to the standards. The report must provide the concentrations of the regulated pollutants in its discharge to the POTW; the average and maximum daily flow rates of the facility; the methods used by the indirect discharger to sample and analyze data, and a certification that these methods conform to the methods outlined in the regulations. See 40 CFR 403.12(e).

XIV. Availability of Technical Information

The basis for this regulation is detailed in four major documents. Analytical methods are discussed in "Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants." EPA's technical conclusions are detailed in the "Development Document for Effluent Guidelines, New Source Performance Standards, and Pretreatment Standards for the Nonferrous Metals Manufacturing Phase II Point Source Category." The Agency's economic analysis is presented in "Economic Impact Analysis of Effluent Limitations and Standards for the Nonferrous Metals Manufacturing Phase II Industry." A detailed response to the public comments received on the proposed regulation is presented in a report "Responses to Public Comments on the Proposed Nonferrous Metals Manufacturing Phase II Effluent Limitations Guidelines and Standards," which is a part of the public record for this regulation. Copies of the technical and economic documents may be obtained from the National Technical Information Service, Springfield, Virginia 22161, (703) 487–4600. Additional information concerning the economic impact analysis may be obtained from Mr. Mark Kahorst, Economic Analysis Staff (WH–586), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460 or by calling (202) 382–5834. Technical information may be obtained from Ms. Maria M. Irizarry, Industrial Technology Division (WH–552), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460 or by calling (202) 382–7126.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980. 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 421

Metals, Nonferrous metals manufacturing, Water pollution control, Waste treatment and disposal.

Dated: August 27, 1985.

Lee M. Thomas,

Administrator.

XV. APPENDICES

Appendix A—Abbreviations, Acronyms, and Other Terms Used in This Notice

Act—The Clean Water Act.

Agency—The U.S. Environmental Protection Agency.

BAT—The best available technology economically achievable under 4(b)(2)(B) of the Act.

BCT—The best conventional pollutant control technology under Section 304(b)(4) of the Act.

BMP—Best management practices under Section 304(e) of the Act.

BPT—The best practicable control technology currently available on 304(b)(1) of the Act.

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.), as amended by the Clean Water Act of 1977 (Public Law 95–217).

Direct Discharger—A facility which discharges or may discharge pollutants into waters of the United States.

Indirect Discharger—A facility which discharges or may discharge pollutants into a publicly owned treatment works.

NPDES Permits—A National Pollutant Discharge Elimination System permit issued under Section 402 of the Act.

NSPS—New source performance standards under Section 306 of the Act.

POTW—Publicly owned treatment works.

PSES—Pretreatment standards for existing sources of indirect discharges under Section 307(b) of the Act.

PSNS—Pretreatment standards for new sources of indirect dischargers under Sections 307(b) and (c) of the Act.

RCRA—Resource Conservation and Recovery Act (Public Law 94–580) of 1976, Amendments to Solid Waste Disposal Act.

Appendix B— Pollutants Selected for Regulation by Subcategory

(a) Subpart N—Primary Antimony Subcategory

114. antimony
115. arsenic
123. mercury
total suspended solids (TSS)
pH

(b) Subpart O—Primary Beryllium Subcategory

117. beryllium
119. chromium
120. copper
121. cyanide (total)
ammonia
fluoride
total suspended solids (TSS)
pH

(c) Subpart P—Primary and Secondary Germanium and Gallium Subcategory

115. arsenic
122. lead
128. zinc
fluoride
total suspended solids (TSS)
pH

(d) Subpart Q—Secondary Indium Subcategory

118. cadmium
122. lead
128. zinc
indium
total suspended solids (TSS)
pH

(e) Subpart R—Secondary Mercury Subcategory

122. lead
123. mercury
total suspended solids (TSS)
pH

(f) Subpart S—Primary Molybdenum and Rhenium Subcategory

115. arsenic
122. lead
124. nickel
125. selenium
molybdenum
ammonia (as N)
fluoride
total suspended solids (TSS)
pH

(g) Subpart T—Secondary Molybdenum and Vanadium Subcategory

115. arsenic
119. chromium
122. lead
124. nickel
iron
molybdenum
ammonia (as N)
total suspended solids (TSS)
pH

(h) Subpart U—Primary Nickel and Cobalt Subcategory

120. copper
124. nickel
cobalt
ammonia (as N)
total suspended solids (TSS)
pH

(i) Subpart V—Secondary Nickel Subcategory

119. chromium
120. copper
124. nickel
total suspended solids (TSS)
pH

(j) Subpart W—Primary Precious Metals and Mercury Subcategory

122. lead
123. mercury
126. silver
128. zinc
gold
oil and grease
total suspended solids (TSS)
pH

(k) Subpart X—Secondary Precious Metals Subcategory

120. copper
121. cyanide
128. zinc
gold
palladium
platinum
ammonia (as N)
total suspended solids (TSS)
pH

(l) Subpart Y—Primary Rare Earth Metals Subcategory

9. hexachlorobenzene
119. chromium (total)
122. lead
124. nickel
total suspended solids (TSS)
pH

(m) Subpart Z—Secondary Tantalum Subcategory

120. copper
122. lead
124. nickel
128. zinc
tantalum
total suspended solids (TSS)
pH

(n) Subpart AA—Secondary Tin Subcategory

115. arsenic
121. cyanide
122. lead
iron
tin
fluoride
total suspended solids (TSS)
pH

(o) Subpart AB—Primary and Secondary Titanium Subcategory

119. chromium (total)
122. lead
124. nickel
titanium
oil and grease
total suspended solids (TSS)
pH

(p) Subpart AC—Secondary Tungsten and Cobalt Subcategory

120. copper
124. nickel
cobalt
ammonia (as N)
tungsten
oil and grease
total suspended solids (TSS)
pH

(q) Subpart AD—Secondary Uranium Subcategory

119. chromium (total)
120. copper
124. nickel
fluoride
total suspended solids (TSS)
pH

(r) Subpart AE—Primary Zirconium and Hafnium Subcategory

119. chromium (total)
121. cyanide (total)
122. lead
124. nickel
ammonia
total suspended solids (TSS)
pH

Appendix C—Toxic Pollutants Not Detected

(a) Subpart N—Primary Antimony Subcategory

1. acenaphthene*
2. acrolein*
3. acrylonitrile*
4. benzene*
5. benzidene*
6. carbon tetrachloride (tetrachloromethane)*
7. chlorobenzene*
8. 1,2,4-trichlorobenzene*
9. hexachlorobenzene*
10. 1,2-dichloroethane*
11. 1,1,1-trichloroethane*
12. hexachloroethane*
13. 1,1-dichloroethane*
14. 1,1,2-trichloroethane*
15. 1,1,2,2,-tetrachloroethane*
16. chloroethane*
17. bis(2-chloromethyl)ether (Deleted)*
18. bis(2-chloroethyl)ether*
19. 2-chloroethyl vinyl ether (mixed)*
20. 2-chloronaphthalene*
21. 2,4,6-trichlorophenol*
22. para-chloro meta-cresol*
23. chloroform (trichloromethane)*
24. a-chlorophenol*
25. 1,2-dichlorobenzene*
26. 1,3-dichlorobenzene*
27. 1,4-dichlorobenzene*
28. 3,3'-dichlorobenzidene*
29. 1,1-dichloroethylene*
30. 1,2-trans-dichloroethylene*
31. 2,4-dichlorophenol*
32. 1,2-dichloropropane*
33. 1,3-dichloropropylene (1,3-dichloropropene)*
34. 2,4-dimethylphenol*
35. 2,4-dinitrotoluene*
36. 2,6-dinitrotoluene*
37. 1,2-diphenylhydrazine*
38. ethylbenzene*
39. fluoranthene*
40. 4-chlorophyenyl phenyl ether*
41. 4-bromophenyl phenyl ether*
42. bis(2-chloroisopropyl)ether*
43. bis(2-chloroethoxy)methane*
44. methylene chloride (dichloromethane)*
45. methyl chloride (chloromethane)*
46. methyl bromide (bromomethane)*
47. bromoform (tribromomethane)*
48. dichlorobromomethane*
49. trichlorofluoromethane (Deleted)*
50. dichlorodifluoromethane (Deleted)*
51. chlorodibromomethane*
52. hexachlorobutadiene*
53. hexachlorocyclopentadiene*
54. isophorone*
55. naphthalene*
56. nitrobenzene*
57. 2-nitrophenol*
58. 4-nitrophenol*
59. 2,4-dinitrophenol*
60. 4,6-dinitro-o-cresol*
61. N-nitrosodimethylamine*
62. N-nitrosodiphenylamine*
63. N-nitrosodi-n-propylamine*
64. pentachlorophenol*
65. phenol*
66. bis(2-ethylhexyl) phthalate*
67. butyl benzyl phthalate*
68. di-n-butyl phthalate*
69. di-n-octyl phthalate*
70. diethyl phthalate*
71. dimethyl phthalate*
72. benzo(a)anthracene (1,2-benzanthracene)*
73. benzo(a)pyrene (3,4-benzopyrene)*
74. 3,4-benzofluoranthene*
75. benzo (k) fluoranthene (11,12-benzofluoranthene)*
76. chrysene*
77. acenaphthylene*
78. anthracene*
79. benzo(ghi)perylene (1,12-benzoperylene)*
80. fluorene*
81. phenanthrene*
82. dibenazo (a,h)anthracene (1,2,5,6-dibenzanthracene)*
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)*
84. pyrene*
85. tetrachloroethylene*
86. toluene*
87. trichloroethylene*
88. vinyl chloride (chloroethylene)*
89. aldrin*
90. dieldrin*
91. chlordane (technical mixture and metabolites)*
92. 4,4'-DDT*
93. 4,4'-DDE (p,p'DDX)*
94. 4,4'-DDD (p,p'TDE)*
95. a-endosulfan-Alpha*
96. b-endosulfan-Beta*
97. endosulfan sulfate*
98. endrin*
99. endrin aldehyde*
100. heptachlor*
101. heptachlor epoxide*
102. a-BHC-Alpha*
103. b-BHC-Beta*
104. r-BHC (lindane)-Gamma*
105. g-BHC-Delta*
106. PCB–1242 (Arochlor 1242)*
107. PCB–1254 (Arochlor 1254)*
108. PCB–1221 (Arochlor 1221)*
109. PCB–1232 (Arochlor 1232)*
110. PCB–1248 (Arochlor 1248)*
111. PCB–1260 (Arochlor 1260)*
112. PCB–1016 (Arochlor 1016)*
113. toxaphene*
116. asbestos (fibrous)
117. beryllium*
119. chromium (total)*
121. cyanide (total)*
124. nickel*
125. selenium*
126. silver*
127. thallium*
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

*We did not anaylze for these pollutants in samples of raw wastewater from this subcategory. These pollutants are not believed to be present based on the Agency's best engineering judgment which includes consideration of raw materials and process operations.

(b) Subpart O—Primary Beryllium Subcategory

1. acenaphthene*
2. acrolein*
3. acrylonitrile*
4. benzene*
5. benzidene*
6. carbon tetrachloride (tetrachloromethane)*
7. chlorobenzene*
8. 1,2,4-trichlorobenzene*
9. hexachlorobenzene*
10. 1,2-dichloroethane*
11. 1,1,1-trichloroethane*
12. hexachloroethane*
13. 1,1-dichloroethane*
14. 1,1,2-trichloroethane*
15. 1,1,2,2-tetrachloroethane*
16. chloroethane*
17. bis(2-chloromethyl)ether (Deleted)*
18. bis(2-chloroethyl)ether*
19. 2-chloroethyl vinyl ether (mixed)*
20. 2/chloronaphthalene*
21. 2,4,6-trichlorophenol*
22. para-chloro meta-cresol*
23. chloroform (trichloromethane)*
24. 2-chlorophenol*
25. 1,2-dichlorobenzene*
26. 1,3-dichlorobenzene*
27. 1,4-dichlorobenzene*
28. 3,3'-dichlorobenzidene*
29. 1,1-dichloroethylene*
30. 1,2-trans-dichloroethylene*
31. 2,4-dichlorophenol*
32. 1,2-dichloropropane*
33. 1,3-dichloropropylene (1,3-dichloropropene)*
34. 2,4-dimethylphenol*
35. 2,4-dinitrotoluene*
36. 2,6-dinitrotoluene*
37. 1,2-diphenylhydrazine*
38. ethylbenzene*

39. fluoranthene*
40. 4-chlorophenyl phenyl ether*
41. 4-bromophenyl phenyl ether*
42. bis(2-chloroisopropyl)ether*
43. bis(2-chloroethoxy)methane*
44. methylene chloride (dichloromethane)*
45. methyl chloride (chloromethane)*
46. methyl bromide (bromomethane)*
47. bromoform (tribromomethane)*
48. dichlorobromomethane)*
49. trichlorofluoromethane (Deleted)*
50. dichlorodifluoromethane (Deleted)*
51. chlorodibromomethane*
52. hexachlorobutadiene*
53. hexachlorocyclopentadiene*
54. isophorone*
55. naphthalene*
56. nitrobenzene*
57. 2-nitrophenol*
58. 4-nitrophenol*
59. 2,4-dinitrophenol*
60. 4,6-dinitro-o-cresol*
61. N-nitrosodimethylamine*
62. N-nitrosodiphenylamine*
63. N-nitrosodi-n-propylamine*
64. pentachlorophenol*
65. phenol*
66. bis(2-ethylhexyl) phthalate*
67. butyl benzyl phthalate*
68. di-n-butyl phthalate*
69. di-n-octyl phthalate*
70. diethyl phthalate*
71. dimethyl phthalate*
72. benzo(a)anthracene (1,2-benzanthracene)*
73. benzo(a)pyrene (3,4-benzopyrene)*
74. 3,4-benzofluoranthene*
75. benzo(k)fluoranthene (11,12-benzofluoranthene)*
76. chrysene*
77. acenaphthylene*
78. anthracene*
79. benzo(ghi)perylene (1,12-benzoperylene)*
80. fluorene*
81. phenanthrene*
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)*
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)*
84. pyrene*
85. tetrachloroethylene*
86. toluene*
87. trichloroethylene*
88. vinyl chloride (chloroethylene)*
89. aldrin*
90. dieldrin*
91. chlordane (technical mixture and metabolites)*
92. 4,4'-DDT*
93. 4,4'-DDE (p,p'DDX)*
94. 4,4'-DDD (p,p'TDE)*
95. a-endosulfan-Alpha*
96. b-endosulfan-Beta*
97. endosulfan sulfate*
98. endrin*
99. endrin aldehyde*
100. heptachlor*
101. heptachlor epoxide*
102. a-BHC-Alpha*
103. b-BHC-Beta*
104. r-BHC (lindane)-Gamma*
105. g-BHC-Delta*
106. PCB-1242 (Arochlor 1242)*
107. PCB-1254 (Arochlor 1254)*
108. PCB-1221 (Arochlor 1221)*
109. PCB-1232 (Arochlor 1232)*
110. PCB-1248 (Arochlor 1248)*
111. PCB-1260 (Arochlor 1260)*
112. PCB-1016 (Arochlor 1016)*
113. toxaphene*
116. asbestos (fibrous)
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

*We did not analyze for these pollutants in samples of raw wastewater from this subcategory. These pollutants are not believed to be present based on the Agency's best engineering judgment which includes consideration of raw materials and process operations.

(c) Subpart P—Primary and Secondary Germanium and Gallium Subcategory

1. acenaphthene
2. acrolein
3. acrylonitrile
5. benzidene
6. carbon tetrachloride (tetrachloromethane)
7. chlorobenzene
8. 1,2,4-trichlorobenzene
10. 1,2-dichloroethane
11. 1,1,1-trichloroethane
12. hexachloroethane
13. 1,1-dichloroethane
14. 1,1,2-trichloroethane
15. 1,1,2,2-tetrachloroethane
16. chloroethane
17. bis(2-chloromethyl)ether (Deleted)
18. bis(2-chloroethyl)ether
19. 2-chloroethyl vinyl ether (mixed)
20. 2-chloronaphthalene
22. para-chloro meta-cresol
24. 2-chlorophenol
25. 1,2-dichlorobenzene
26. 1,3-dichlorobenzene
27. 1,4-dichlorobenzene
28. 3,3'-dichlorobenzidene
29. 1,1-dichloroethylene
30. 1,2-trans-dichloroethylene
31. 2,4-dichlorophenol
32. 1,2-dichloropropane
33. 1,3-dichloropropylene (1,3-dichloropropene)
34. 2,4-dimethylphenol
35. 2,4-dinitrotoluene
36. 2,6-dinitrotoluene
37. 1,2-diphenylhydrazine
38. ethylbenzene
39. fluoranthene
40. 4-chlorophenyl phenyl ether
41. 4-bromophenyl phenyl ether
42. bis(2-chloroisopropyl)ether
43. bis(2-chloroethoxy)methane
45. methyl chloride (chloromethane)
46. methyl bromide (bromomethane)
47. bromoform (tribromomethane)
48. dichlorobromomethane
49. trichlorofluoromethane (Deleted)
50. dichlorodifluoromethane (Deleted)
51. chlorodibromomethane
52. hexachlorobutadiene
53. hexachlorocylopentadiene
54. isophorone
55. naphthalene
56. nitrobenzene
57. 2-nitrophenol
58. 4-nitrophenol
59. 2,4-dinitrophenol
60. 4,6-dinitro-o-cresol
61. N-nitrosodimethylamine
62. N-nitrosodiphenylamine
63. N-nitrosodi-n-propylamine
65. phenol
67. butyl benzyl phthalate
69. di-n-octyl phthalate
70. diethyl phthalate
71. dimethyl phthalate
72. benzo(a)anthracene (1,2-benzanthracene)
73. benzo(a)pyrene (3,4-benzopyrene)
74. 3,4-benzofluoranthene
75. benzo (k) fluoranthene (11,12-benzofluoranthene)
76. chrysene
77. acenaphthylene
78. anthracene
79. benzo (ghi)perylene (1,12-benzoperylene)
80. flourene
81. phenanthrene
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)
84. pyrene
85. tetrachloroethylene
86. toluene
88. vinyl chloride (chloroethylene)
89. aldrin
90. dieldrin
91. chlordane (technical mixture and metabolites)
92. 4,4'-DDT
93. 4,4'-DDE (p,p'DDX)
94. 4,4'-DDD (p,p'TDE)
95. a-endosulfan-Alpha
96. b-endosulfan-Beta
97. endosulfan sulfate
98. endrin
99. endrin aldehyde
100. heptachlor
101. heptachlor epoxide
102. a-BHC-Alpha
103. b-BHC-Beta
104. r-BHC (lindane)-Gamma
105. g-BHC-Delta
106. PCB-1242 (Arochlor 1242)
107. PCB-1254 (Arochlor 1254)
108. PCB-1221 (Arochlor 1221)
109. PCB-1232 (Arochlor 1232)
110. PCB-1248 (Arochlor 1248)
111. PCB-1260 (Arochlor 1260)
112. PCB-1016 (Arochlor 1016)

113. toxaphene
116. asbestos (fibrous)
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

(d) Subpart Q—Secondary Indium Subcategory

1. acenaphthene
2. acrolein
3. acrylonitrile
4. benzene
5. benzidene
6. carbon tetrachloride (tetrachloromethane)
7. chlorobenzene
8. 1,2,4-trichlorobenzene
9. hexachlorobenzene
10. 1,2-dichloroethane
11. 1,1,1-trichloroethane
12. hexachloroethane
13. 1,1-dichloroethane
14. 1,1,2-trichloroethane
15. 1,1,2,2-tetrachloroethane
16. chloroethane
17. bis(2-chloromethyl)ether (Deleted)
18. bis(2-chloroethyl)ether
19. 2-chloroethyl vinyl ether (mixed)
20. 2-chloronaphthalene
21. 2,4,6-trichlorophenol
22. para-chloro meta-cresol
23. chloroform (trichloromethane)
24. 2-chlorophenol
25. 1,2-dichlorobenzene
26. 1,3-dichlorobenzene
27. 1,4-dichlorobenzene
28. 3,3'-dichlorobenzidene
29. 1,1-dichloroethylene
30. 1,2-trans-dichloroethylene
31. 2,4-dichlorophenol
32. 1,2-dichloropropane
33. 1,3-dichloropropylene (1,3-dichloropropene)
34. 2,4-dimethylphenol
35. 2,4-dinitrotoluene
36. 2,6-dinitrotoluene
37. 1,2-diphenylhydrazine
38. ethylbenzene
39. fluoranthene
40. 4-chlorophenyl phenyl ether
41. 4-bromophenyl phenyl ether
42. bis(2-chloroisopropyl)ether
43. bis(2-chloroethoxy)methane
45. methyl chloride (chloromethane)
46. methyl bromide (bromomethane)
47. bromoform (tribromomethane)
48. dichlorobromomethane
49. trichlorofluoromethane (Deleted)
50. dichlorodifluoromethane (Deleted)
51. chlorodibromomethane
52. hexachlorobutadiene
53. hexachlorocyclopentadiene
54. isophorone
55. naphthalene
56. nitrobenzene
57. 2-nitrophenol
58. 4-nitrophenol
59. 2,4-dinitrophenol
60. 4,6-dinitro-o-cresol
61. N-nitrosodimethylamine
62. N-nitrosodiphenylamine
63. N-nitrosodi-n-propylamine
66. bis(2-ethylhexyl) phthalate
67. butyl benzyl phthalate
69. di-n-octyl phthalate
72. benzo(a)anthracene (1,2-benzanthracene)
73. benzo(a)pyrene (3,4-benzopyrene)
74. 3,4-benzofluoranthene
75. benzo(k)fluoranthene (11,12-benzofluoranthene)
76. chrysene
77. acenaphthylene
78. anthracene
79. benzo(ghi)perylene (1,12-benzoperylene)
80. fluorene
81. phenanthrene
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)
84. pyrene
85. tetrachloroethylene
86. toluene
87. trichloroethylene
88. vinyl chloride (chloroethylene)
89. aldrin
90. dieldrin
91. chlordane (technical mixture and metabolites)
92. 4,4'-DDT
93. 4,4'-DDE (p,p'DDX)
94. 4,4'-DDD (p,p'TDE)
95. a-endosulfan-Alpha
96. b-endosulfan-Beta
97. endosulfan sulfate
98. endrin
99. endrin aldehyde
100. heptachlor
101. heptachlor epoxide
102. a-BHC-Alpha
104. r-BHC (lindane)-Gamma
105. g-BHC-Delta
106. PCB–1242 (Arochlor 1242)
107. PCB–1254 (Arochlor 1254)
108. PCB–1221 (Arochlor 1221)
109. PCB–1232 (Arochlor 1232)
110. PCB–1248 (Arochlor 1248)
111. PCB–1260 (Arochlor 1260)
112. PCB–1016 (Arochlor 1016)
113. toxaphene
116. asbestos (fibrous)
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

(e) Subpart R—Secondary Mercury Subcategory

1. acenaphthene*
2. acrolein*
3. acrylonitrile*
4. benzene*
5. benzidene*
6. carbon tetrachloride (tetrachloromethane)*
7. chlorobenzene*
8. 1,2,4-trichlorobenzene*
9. hexachlorobenzene*
10. 1,2-dichloroethane*
11. 1,1,1-trichloroethane*
12. hexachloroethane*
13. 1,1-dichloroethane*
14. 1,1,2-trichloroethane*
15. 1,1,2,2-tetrachloroethane*
16. chloroethane*
17. bis(2-chloromethyl)ether (Deleted)*
18. bis(2-chloroethyl)ether*
19. 2-chloroethyl vinyl ether (mixed)*
20. 2-chloronaphthalene*
21. 2,4,6-trichlorophenol*
22. para-chloro meta-cresol*
23. chloroform (trichloromethane)*
24. 2-chlorophenol*
25. 1,2-dichlorobenzene*
26. 1,3-dichlorobenzene*
27. 1,4-dichlorobenzene*
28. 3,3'-dichlorobenzidene*
29. 1,1-dichloroethylene*
30. 1,2-trans-dichloroethylene*
31. 2,4-dichlorophenol*
32. 1,2-dichloropropane*
33. 1,3-dichloropropylene (1,3-dichloropropene)*
34. 2,4-dimethylphenol*
35. 2,4-dinitrotoluene*
36. 2,6-dinitrotoluene*
37. 1,2-diphenylhydrazine*
38. ethylbenzene*
39. fluoranthene*
40. 4-chlorophenyl phenyl ether*
41. 4-bromophenyl phenyl ether*
42. bis(2-chloroisopropyl)ether*
43. bis(2-chloroethoxy)methane*
44. methylene chloride (dichloromethane)*
45. methyl chloride (chloromethane)*
46. methyl bromide (bromomethane)*
47. bromoform (tribromomethane)*
48. dichlorobromomethane*
49. trichlorofluoromethane (Deleted)*
50. dichlorodifluoromethane (Deleted)*
51. chlorodibromomethane*
52. hexachlorobutadiene*
53. hexachlorocyclopentadiene*
54. isophorone*
55. naphthalene*
56. nitrobenzene*
57. 2-nitrophenol*
58. 4-nitrophenol*
59. 2,4-dinitrophenol*
60. 4,6-dinitro-o-cresol*
61. N-nitrosodimethylamine*
62. N-nitrosodiphenylamine*
63. N-nitrosodi-n-propylamine*
64. pentachlorophenol*
65. phenol*
66. bis(2-ethylhexyl) phthalate*
67. butyl benzyl phthalate*
68. di-n-butyl phthalate*
69. di-n-octyl phthalate*
70. diethyl phthalate*
71. dimethyl phthalate*
72. benzo(a)anthracene (1,2-benzanthracene)*
73. benzo(a)pyrene (3,4-benzopyrene)*
74. 3,4-benzofluoranthene*

75. benzo(k)fluoranthene (11,12-benzofluoranthene)*
76. chrysene*
77. acenaphthylene*
78. anthracene*
79. benzo(ghi)perylene (1,12-benzoperylene)*
80. fluorene*
81. phenanthrene*
82. dibenzo(a,h)anthracene (1,2,5,6-dibenzanthracene)*
83. ideno(1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)*
84. pyrene*
85. tetrachloroethylene*
86. toluene*
87. trichloroethylene*
88. vinyl chloride (chloroethylene)*
89. aldrin*
90. dieldrin*
91. chlordane (technical mixture and metabolites)*
92. 4,4'-DDT*
93. 4,4'-DDE (p,p'DDX)*
94. 4,4'-DDD (pp'TDE)*
95. a-endosulfan-Alpha*
96. b-endosulfan-Beta*
97. endosulfan sulfate*
98. endrin*
99. endrin aldehyde*
100. heptachlor*
101. heptachlor epoxide*
102. a-BHC-Alpha*
103. b-BHC-Beta*
104. r-BHC (lindane)-Gamma*
105. g-BHC-Delta*
106. PCB-1242 (Arochlor 1242)*
107. PCB–1254 (Arochlor 1254)*
108. PCB–1221 (Arochlor 1221)*
109. PCB–1232 (Arochlor 1232)*
110. PCB–1248 (Arochlor 1248)*
111. PCB–1260 (Arochlor 1260)*
112. PCB–1016 (Arochlor 1016)*
113. toxaphene*
116. asbestos (fibrous)
121. cyanide (total)*
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

*We did not analyze for these pollutants in samples of raw wastewater from this subcategory. These pollutants are not believed to be present based on the Agency's best engineering judgment which includes consideration of raw materials and process operations.

(f) Subpart S—Primary Molybdenum and Rhenium Subcategory

1. acenaphthene
2. acrolein
3. acrylonitrile
4. benzene
5. benzidene
6. carbon tetrachloride (tetrachloromethane)
7. chlorobenzene
8. 1,2,4-trichlorobenzene
9. hexachlorobenzene
10. 1,2-dichloroethane
11. 1,1,1-trichloroethane
12. hexachloroethane
13. 1,1-dichloroethane
14. 1,1,2-trichloroethane
15. 1,1,2,2-tetrachloroethane
16. chloroethane
17. bis(2-chloromethyl)ether (Deleted)
18. bis(2-chloroethyl)ether
19. 2-chloroethyl vinyl ether (mixed)
20. 2-chloronaphthalene
21. 2,4,6-trichlorophenol
22. para-chloro meta-cresol
23. chloroform (trichloromethane)
24. 2-chlorophenol
25. 1,2-dichlorobenzene
26. 1,3-dichlorobenzene
27. 1,4-dichlorobenzene
28. 3,3'-dichlorobenzidene
29. 1,1-dichloroethylene
30. 1,2-trans-dichloroethylene
31. 2,4-dichloroprophenol
32. 1,2-dichloroprophenol
33. 1,3-dichloropropylene (1,3-dichloropropene)
34. 2,4-dimethylphenol
35. 2,4-dinitrotoluene
36. 2,6-dinitrotoluene
37. 1,2-diphenylhydrazine
38. ethylbenzene
39. fluoranthene
40. 4-chlorophenyl phenyl ether
41. 4-bromophenyl phenyl ether
42. bis(2-chloroisopropyl)ether
43. bis(2-chloroethoxy)methane
45. methyl chloride (chloromethane)
46. methyl bromide (bromomethane)
47. bromoform (tribromomethane)
48. dichlorobromomethane
49. trichlorofluoromethane (Deleted)
50. dichlorodifluoromethane (Deleted)
51. chlorodibromomethane
52. hexachlorobutadiene
53. hexachlorocyclopentadiene
54. isophorone
55. naphthalene
56. nitrobenzene
57. 2-nitrophenol
58. 4-nitrophenol
59. 2,4-dinitrophenol
60. 4,6-dinitro-o-cresol
61. N-nitrosodimethylamine
62. N-nitrosodiphenylamine
63. N-nitrosodi-n-propylamine
64. pentachlorophenol
65. phenol
66. bis(2-ethylhexyl) phthalate
67. butyl benzyl phthalate
68. di-n-butyl phthalate
69. di-n-octyl phthalate
70. diethyl phthalate
71. dimethyl phthalate
72. benzo(a)anthracene (1,2-benzanthracene)
73. benzo(a)pyrene (3,4-benzopyrene)
74. 3,4-benzofluoranthene
75. benzo(k)fluoranthene (11,12-benzofluoranthene)
76. chrysene
77. acenaphthylene
78. anthracene
79. benzo(ghi)perylene (1,12-benzoperylene)
80. fluorene
81. phenanthrene
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)
84. pyrene
85. tetrachloroethylene
86. toluene
87. trichloroethylene
88. vinyl chloride (chloroethylene)
89. aldrin
90. dieldrin
91. chlordane (technical mixture and metabolites)
92. 4,4'-DDT
93. 4,4'-DDE (p,p'DDX)
94. 4,4'-DDD (p,p'TDE)
95. a-endosulfan-Alpha
96. b-endosulfan-Beta
97. endosulfan sulfate
98. endrin
99. endrin aldehyde
100. heptachlor
101. heptachlor epoxide
102. a-BHC-Alpha
103. b-BHC-Beta
105. g-BHC-Delta
106. PCB-1242 (Arochlor 1242)
107. PCB-1254 (Arochlor 1254)
108. PCB-1221 (Arochlor 1221)
109. PCB-1232 (Arochlor 1232)
110. PCB-1248 (Arochlor 1248)
111. PCB-1260 (Arochlor 1260)
112. PCB-1016 (Arochlor 1016)
113. toxaphene
116. asbestos (fibrous)
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

(g) Subpart T—Secondary Molybdenum and Vanadium Subcategory

1. acenaphthene
2. acrolein
3. acrylonitrile
4. benzene
5. benzidene
6. carbon tetrachloride (tetrachloromethane)
7. chlorobenzene
8. 1,2,4-trichlorobenzene
9. hexachlorobenzene
10. 1,2-dichloroethane
11. 1,1,1-trichloroethane
12. hexachloroethane
13. 1,1-dichloroethane
14. 1,1,2-trichloroethane
15. 1,1,2,2-tetrachloroethane
16. chloroethane
17. bis(2-chloromethyl)ether (Deleted)
18. bis(2-chloroethyl)ether
19. 2-chloroethyl vinyl ether (mixed)
20. 2-chloronaphthalene
21. 2,4,6-trichlorophenol
22. para-chloro meta-cresol

24. 2-chlorophenol
25. 1,2-dichlorobenzene
26. 1,3-dichlorobenzene
27. 1,4-dichlorobenzene
28. 3,3'-dichlorobenzidene
29. 1,1-dichloroethylene
30. 1,2-trans-dichloroethylene
31. 2,4-dichlorophenol
32. 1,2-dichloropropane
33. 1,3-dichloropropylene (1,3-dichloropropene)
34. 2,4-dimethylphenol
35. 2,4-dinitrotoluene
36. 2,6-dinitrotoluene
37. 1,2-diphenylhydrazine
38. ethylbenzene
39. fluoranthene
40. 4-chlorophenyl phenyl ether
41. 4-bromophenyl phenyl ether
42. bis(2-chloroisopropyl)ether
43. bis(2-chloroethoxy)methane
46. methyl bromide (bromomethane)
47. bromoform (tribromomethane)
48. dichlorobromomethane
49. trichlorofluoromethane (Deleted)
50. dichlorodifluoromethane (Deleted)
51. chlorodibromomethane
52. hexachlorobutadiene
53. hexachlorocyclopentadiene
54. isophorone
56. nitrobenzene
57. 2-nitrophenol
58. 4-nitrophenol
59. 2,4-dinitrophenol
60. 4,6-dinitro-o-cresol
61. N-nitrosodimethylamine
62. N-nitrosodiphenylamine
63. N-nitrosodi-n-propylamine
64. pentachlorophenol
65. phenol
66. bis(2-ethylhexyl)phthalate
67. butyl benzyl phthalate
68. di-n-butyl phthalate
69. di-n-octyl phthalate
71. dimethyl phthalate
72. benzo(a)anthracene (1,2-benzanthracene)
73. benzo(a)pyrene (3,4-benzopyrene)
74. 3,4-benzofluoranthene
75. benzo(k)fluoranthene (11,12-benzofluoranthene)
76. chrysene
77. acenaphthylene
78. anthracene
79. benzo(ghi)perylene (1,12-benzoperylene)
80. fluorene
81. phenanthrene
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)
84. pyrene
85. tetrachloroethylene
86. toluene
87. trichloroethylene
88. vinyl chloride (chloroethylene)
89. aldrin
90. dieldrin
91. chlordane (technical mixture and metabolites)
92. 4,4'-DDT
93. 4,4'-DDE (p,p'DDX)
94. 4,4'-DDD (p,p'TDE)
95. a-endosulfan-Alpha
96. b-endosulfan-Beta
97. endosulfan sulfate
98. endrin
99. endrin aldehyde
100. heptachlor
101. heptachlor epoxide
102. a-BHC-Alpha
103. b-BHC-Beta
116. asbestos (fibrous)

(h) Subpart U—Primary Nickel and Cobalt Subcategory

1. acenaphthene
2. acrolein
3. acrylonitrile
5. benzidene
6. carbon tetrachloride (tetrachloromethane)
7. chlorobenzene
8. 1,2,4-trichlorobenzene
9. hexachlorobenzene
10. 1,2-dichloroethane
11. 1,1,1-trichloroethane
12. hexachloroethane
13. 1,1-dichloroethane
14. 1,1,2-trichloroethane
15. 1,1,2,2-tetrachloroethane
16. chloroethane
17. bis(2-chloromethyl)ether (Deleted)
18. bis(2-chloroethyl)ether
19. 2-chloroethyl vinyl ether (mixed)
20. 2-chloronaphthalene
21. 2,4,6-trichlorophenol
22. para-chloro meta-cresol
23. chloroform (trichloromethane)
24. 2-chlorophenol
25. 1,2-dichlorobenzene
26. 1,3-dichlorobenzene
27. 1,4-dichlorobenzene
28. 3,3'-dichlorobenzidene
29. 1,1-dichloroethylene
30. 1,2-trans-dichloroethylene
31. 2,4-dichlorophenol
32. 1,2-dichloropropane
33. 1,3-dichloropropylene (1,3-dichloropropene)
34. 2,4-dimethylphenol
35. 2,4-dinitrotoluene
36. 2,6-dinitrotoluene
37. 1,2-diphenylhydrazine
38. ethylbenzene
39. fluoranthene
40. 4-chlorophenyl phenyl ether
41. 4-bromophenyl phenyl ether
42. bis(2-chloroisopropyl)ether
43. bis(2-chloroethoxy)methane
44. methylene chloride (dichloromethane)
45. methyl chloride (chloromethane)
46. methyl bromide (bromomethane)
47. bromoform (tribromomethane)
48. dichlorobromomethane
49. trichlorofluoromethane (Deleted)
50. dichlorodifluoromethane (Deleted)
51. chlorodibromomethane
52. hexachlorobutadiene
53. hexachlorocyclopentadiene
54. isophorone
55. naphthalene
56. nitrobenzene
57. 2-nitrophenol
58. 4-nitrophenol
59. 2,4-dinitrophenol
60. 4,6-dinitro-o-cresol
61. N-nitrosodimethylamine
62. N-nitrosodiphenylamine
63. N-nitrosodi-n-propylamine
64. pentachlorophenol
65. phenol
67. butyl benzyl phthalate
68. di-n-butyl phthalate
69. di-n-octyl phthalate
70. diethyl phthalate
71. dimethyl phthalate
72. benzo(a)anthracene (1,2-benzanthracene)
73. benzo(a)pyrene (3,4-benzopyrene)
74. 3,4-benzofluoranthene
75. benzo(k)fluoranthene (11,12-benzofluoranthene)
76. chrysene
77. acenaphthylene
78. anthracene
79. benzo(ghi)perylene (1,12-benzoperylene)
80. fluorene
81. phenanthrene
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)
84. pyrene
85. tetrachloroethylene
87. trichloroethylene
88. vinyl chloride (chloroethylene)
89. aldrin
90. dieldrin
91. chlordane (technical mixture and metabolites)
92. 4,4'-DDT
93. 4,4'-DDE (p,p'DDX)
94. 4,4'-DDD (p,p'DDX)
95. a-endosulfan-Alpha
96. b-endosulfan-Beta
97. endosulfan sulfate
98. endrin
99. endrin aldehyde
100. heptachlor
101. heptachlor epoxide
102. a-BHC-Alpha
103. b-BHC-Beta

104. r-BHC (lindane)-Gamma
105. g-BHC-Delta
106. PCB–1242 (Arochlor 1242)
107. PCB–1254 (Arochlor 1254)
108. PCB–1221 (Arochlor 1221)
109. PCB–1232 (Arochlor 1232)
110. PCB–1248 (Arochlor 1248)
111. PCB–1260 (Arochlor 1260)
112. PCB–1216 (Arochlor 1216)
113. toxaphene
116. asbestos (fibrous)
121. cyanide*
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

*We did not analyze for this pollutant in samples of raw wastewater from this subcategory. This pollutant is not believed to be present based on the Agency's best engineering judgment which includes consideration of raw materials and process operations.

(i) Subpart V—Secondary Nickel Subcategory

1. acenaphthene*
2. acrolein*
3. acryolonitrile*
4. benzene*
5. benzidene*
6. carbon tetrachloride (tetrachloromethane)*
7. chlorobenzene*
8. 1,2,4-trichlorobenzene*
9. hexachlorobenzene*
10. 1,2-dichloroethane*
11. 1,1,1-trichloroethane*
12. hexachloroethane*
13. 1,1-dichloroethane*
14. 1,1,2-trichloroethane*
15. 1,1,2,2-tetrachloroethane*
16. chloroethane*
17. bis(2-chloromethyl)ether (Deleted)*
18. bis(2-chloroethyl)ether*
19. 2-chloroethyl vinyl either (mixed)*
20. 2-chloronaphthalene*
21. 2,4,6-trichlorophenol*
22. para-chloro meta-cresol*
23. chloroform (trichloromethane)*
24. 2-chlorophenol*
25. 1,2-dichlorobenzene*
26. 1,3-dichlorobenzene*
27. 1,4-dichlorobenzene*
28. 3,3'-dichlorobenzidene*
29. 1,1-dichloroethylene*
30. 1,2-trans-dichloroethylene*
31. 2,4-dichlorophenol*
32. 1,2-dichloropropane*
33. 1,3-dichloropropylene (1,3-dichloropropene)*
34. 2,4-dimethylphenol*
35. 2,4-dinitrotoluene*
36. 2,6-dinitrotoluene*
37. 1,2-diphenylhydrazine*
38. ethylbenzene*
39. fluoranthene*
40. 4-chlorophenyl phenyl ether*
41. 4-bromophenyl phenyl ether*
42. bis(2-chloroisopropyl) ether*
43. bis(2-chloroethoxy) methane*
44. methylene chloride (dichloromethane)*
45. methyl chloride (chloromethane)*
46. methyl bromide (bromomethane)*
47. bromoform (tribromomethane)*
48. dichlorobromomethane*
49. trichlorofluoromethane (Deleted)*
50. dichlorodifluoromethane (Deleted)*
51. chlorodibromomethane*
52. hexachlorobutadiene*
53. hexachlorocyclopentadiene*
54. isophorone*
55. naphthalene*
56. nitrobenzene*
57. 2-nitrophenol*
58. 4-nitrophenol*
59. 2,4-dinitrophenol*
60. 4,6-dinitro-o-cresol*
61. N-nitrosodimethylamine*
62. N-nitrosodiphenylamine*
63. N-nitrosodi-n-propylamine*
64. pentachlorophenol*
65. phenol*
66. bis(2-ethylhexyl) phthalate*
67. butyl benzyl phthalate*
68. di-n-butyl phthalate*
69. di-n-octyl phthalate*
70. diethyl phthalate*
71. dimethyl phthalate*
72. benzo(a)anthracene (1,2-benzanthracene)*
73. benzo(a)pyrene (3,4-benzopyrene)*
74. 3,4-benzofluoranthene*
75. benzo(k)fluoranthene (11,12-benzofluoranthene)*
76. chrysene*
77. acenaphthylene*
78. anthracene*
79. benzo(ghi)perylene (1,12-benzoperylene)*
80. fluorene*
81. phenanthrene*
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)*
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)*
84. pyrene*
85. tetrachloroethylene*
86. toluene*
87. trichloroethylene*
88. vinyl chloride (chloroethylene)*
89. aldrin*
90. dieldrin*
91. chlordane (technical mixture and metabolites)*
92. 4,4'-DDT*
93. 4,4'-DDE (p,p'DDX)*
94. 4,4'-DDD (p,p'TDE)*
95. a-endosulfan-Alpha*
96. b-endosulfan-Beta*
97. endosulfan sulfate*
98. endrin*
99. endrin aldehyde*
100. heptachlor*
101. heptachlor epoxide*
102. a-BHC-Alpha*
103. b-BHC-Beta*
104. r-BHC (lindane)-Gamma*
105. g-BHC-Delta*
106. PCB–1242 (Arochlor 1242)*
107. PCB–1254 (Arochlor 1254)*
108. PCB–1221 (Arochlor 1221)*
109. PCB–1232 (Arochlor 1232)*
110. PCB–1248 (Arochlor 1248)*
111. PCB–1260 (Arochlor 1260)*
112. PCB–1016 (Arochlor 1016)*
113. toxaphene*
116. asbestos (fibrous)
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

*We did not analyze for these pollutants in samples of raw wastewater from this subcategory. These pollutants are not believed to be present based on the Agency's best engineering judgment which includes consideration of raw materials and process operations.

(j) Subpart W—Primary Precious Metals and Mercury Subcategory

1. acenaphthene
2. acrolein
3. acrylonitrile
5. benzidene
6. carbon tetrachloride (tetrachloromethane)
7. chlorobenzene
8. 1,2,4-trichlorobenzene
9. hexachlorobenzene
10. 1,2-dichloroethane
11. 1,1,1-trichloroethane
12. hexachloroethane
13. 1,1-dichloroethane
14. 1,1,2-trichloroethane
15. 1,1,2,2-tetrachloroethane
16. chloroethane
17. bis(2-chloromethyl)ether (Deleted)
18. bis(2-chloroethyl)ether
19. 2-chloroethyl vinyl ether (mixed)
20. 2-chloronaphthalene
21. 2,4,6-trichlorophenol
22. para-chloro meta-cresol
23. chloroform
24. 2-chlorophenol
25. 1,2-dichlorobenzene
26. 1,3-dichlorobenzene
27. 1,4-dichlorobenzene
28. 3,3'-dichlorobenzidene
29. 1,1-dichloroethylene
30. 1,2-trans-dichloroethylene
31. 2,4-dichlorophenol
32. 1,2-dichloropropane
33. 1,3-dichloropropylene (1,3-dichloropropene)
34. 2,4-dimethylphenol
35. 2,4-dinitrotoluene
36. 2,6-dinitrotoluene
37. 1,2-diphenylhydrazine
38. ethylbenzene
39. fluoranthene
40. 4-chlorophenyl phenyl ether
41. 4-bromophenyl phenyl ether
42. bis(2-chloroisopropyl)ether
43. bis(2-chloroethoxy)methane
45. methyl chloride (chloromethane)
46. methyl bromide (bromomethane)
47. bromoform (tribromomethane)

48. dichlorobromomethane
49. trichlorofluoromethane (Deleted)
50. dichlorodifluoromethane (Deleted)
51. chlorodibromomethane
52. hexachlorobutadiene
53. hexachlorocyclopentadiene
54. isophorone
55. naphthalene
56. nitrobenzene
57. 2-nitrophenol
58. 4-nitrophenol
59. 2,4-dinitrophenol
60. 4,6-dinitro-o-cresol
61. N-nitrosodimethylamine
62. N-nitrosodiphenylamine
63. N-nitrosodi-n-propylamine
64. pentachlorophenol
67. butyl benzyl phthalate
69. di-n-octyl phthalate
71. dimethyl phthalate
72. benzo(a)anthracene (1,2-benzanthracene)
73. benzo(a)pyrene (3,4-benzopyrene)
74. 3,4-benzofluoranthene
75. benzo(k)fluoranthene (11,12-benzofluoranthene)
76. chrysene
77. acenaphthylene
79. benzo(ghi)perylene (1,12-benzoperylene)
80. fluorene
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)
83. ideno (1,2,3-cd)pyrene (2,3-o-phenylenepyrene)
84. pyrene
85. tetrachloroethylene
87. trichloroethylene
88. vinyl chloride (chloroethylene)
89. aldrin
90. dieldrin
91. chlordane (technical mixture and metabolites)
92. 4,4'-DDT
93. 4,4'-DDE (p,p'DDX)
94. 4,4'-DDD (p,p'TDE)
95. a-endosulfan-Alpha
96. b-endosulfan-Beta
97. endosulfan sulfate
98. endrin
99. endrin aldehyde
100. heptachlor
101. heptachlor epoxide
102. a-BHC-Alpha
103. b-BHC-Beta
104. r-BHC (lindane)-Gamma
105. g-BHC-Delta
106. PCB-1242 (Arochlor 1242)
107. PCB-1254 (Arochlor 1254)
108. PCB-1221 (Arochlor 1221)
109. PCB-1232 (Arochlor 1232)
110. PCB-1248 (Arochlor 1248)
111. PCB-1260 (Arochlor 1260)
112. PCB-1016 (Arochlor 1016)
113. toxaphene
116. asbestos (fibrous)
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

(k) Subpart X—Secondary Precious Metals Subcategory

1. acenaphthene
2. acrolein
3. acrylonitrile
5. benzidene
8. 1,2,4-trichlorobenzene
9. hexachlorobenzene
12. hexachloroethane
13. 1,1-dichloroethane
14. 1,1,2-trichloroethane
15. 1,1,2,2-tetrachloroethane
16. chloroethane
17. bis(2-chloromethyl)ether (Deleted)
18. bis(2-chloroethyl)ether
19. 2-chloroethyl vinyl ether (mixed)
20. 2-chloronaphthalene
22. para-chloro meta-cresol
25. 1,2-dichlorobenzene
26. 1,3-dichlorobenzene
27. 1,4-dichlorobenzene
28. 3,3'-dichlorobenzidene
29. 1,1-dichloroethylene
30. 1,2-trans-dichloroethylene
31. 2,4-dichlorophenol
32. 1,2-dichloropropane
33. 1,3-dichloropropylene (1,3-dichloropropene)
35. 2,4-dinitrotoluene
36. 2,6-dinitrotoluene
37. 1,2-diphenylhydrazine
38. ethylbenzene
39. fluoranthene
40. 4-chlorophenyl phenyl ether
41. 4-bromophenyl phenyl ether
42. bis(2-chloroisopropyl)ether
43. bis(2-chloroethoxy)methane
45. methyl chloride (chloromethane)
46. methyl bromide (bromomethane)
49. trichlorofluoromethane (Deleted)
50. dichlorodifluoromethane (Deleted)
52. hexachlorobutadiene
53. hexachlorocyclopentadiene
55. naphthalene
56. nitrobenzene
58. 4-nitrophenol
59. 2,4-dinitrophenol
60. 4,6-dinitro-o-cresol
61. N-nitrosodimethylamine
63. N-nitrosodi-n-propylamine
64. pentachlorophenol
67. butyl benzyl phthalate
72. benzo(a)anthracene (1,2-benzanthracene)
73. benzo(a)pyrene (3,4-benzopyrene)
74. 3,4-benzofluoranthene
75. benzo(k)fluoranthene (11,12-benzofluoranthene)
76. chrysene
77. acenaphthylene
78. anthracene
79. benzo(ghi)perylene (1,12-benzoperylene)
80. fluorene
81. phenanthrene
82. dibenzo(a,h)anthracene (1,2,5,6-dibenzanthracene)
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenlyenepyrene)
84. pyrene
85. tetrachloroethylene
87. trichloroethylene
88. vinly chloride (chloroethylene)
89. aldrin*
90. dieldrin*
91. chlordane (technical mixture and metabolites)*
92. 4,4'-DDT*
93. 4,4'-DDE (p,p'DDX)*
94. 4,4'-DDD (p,p'TDE)*
95. a-endosulfan-Alpha*
96. b-endosulfan-Beta*
97. endosulfan sulfate*
98. endrin*
99. endrin aldehyde*
100. heptachlor*
101. heptachlor epoxide*
102. a-BHC-Alpha*
103. b-BHC-Beta*
104. r-BHC (lindane)-Gamma*
105. g-BHC-Delta*
106. PCB–1242 (Arochlor 1242)*
107. PCB–1254 (Arochlor 1254)*
108. PCB–1221 (Arochlor 1221)*
109. PCB–1232 (Arochlor 1232)*
110. PCB–1248 (Arochlor 1248)*
111. PCB–1260 (Arochlor 1260)*
112. PCB–1016 (Arochlor 1016)*
113. toxaphene*
116. asbestos (fibrous)
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

*We did not analyze for these pollutants in samples of raw wastewater from this subcategory. These pollutants are not believed to be present based on the Agency's best engineering judgment which includes consideration of raw materials and process operations.

(l) Subpart Y—Primary Rare Earth Metals Subcategory

1. acenaphthene
2. acrolein
3. acrylonitrile
5. benzidene
8. 1,2,4-trichlorobenzene
10. 1,2-dichloroethane
11. 1,1,1-trichloroethane
12. hexachloroethane
13. 1,1-dichloroethane
14. 1,1,2-trichloroethane
15. 1,1,2,2-tetrachloroethane
16. chloroethane
17. bis(2-chloromethyl)ether (Deleted)
18. bis(2-chloroethyl)ether
19. 2-chloroethyl vinyl ether (mixed)
20. 2-chloronaphthalene
22. para-chloro meta-cresol
24. 2-chlorophenol
25. 1,2-dichlorobenzene
26. 1,3-dichlorobenzene
27. 1,4-dichlorobenzene
28. 3,3'-dichlorobenzidene
29. 1,1-dichloroethylene
30. 1,2-trans-dichloroethylene
31. 2,4-dichlorophenol

32. 1,2-dichloropropane
33. 1,3-dichloropropylene (1,3-dichloropropene)
34. 2,4-dimethylphenol
35. 2,4-dinitrotoluene
36. 2,6-dinitrotoluene
37. 1,2-diphenylhydrazine
38. ethylbenzene
39. fluoranthene
40. 4-chlorophenyl phenyl ether
41. 4-bromophenyl phenyl ether
42. bis(2-chloroisopropyl)ether
43. bis(2-chloroethoxy)methane
45. methyl chloride (chloromethane)
46. methyl bromide (bromomethane)
50. dichlorodifluoromethane (Deleted)
52. hexachlorobutadiene
53. hexachlorocyclopentadiene
54. isophorone
55. naphthalene
56. nitrobenzene
57. 2-nitrophenol
58. 4-nitrophenol
59. 2,4-dinitrophenol
60. 4,6-dinitro-o-cresol
61. N-nitrosodimethylamine
62. N-nitrosodiphenylamine
63. N-nitrosodi-n-propylamine
64. pentachlorophenol
67. butyl benzyl phthalate
68. di-n-butyl phthalate
69. di-n-octyl phthalate
70. diethyl phthalate
71. dimethyl phthalate
72. benzo(a)anthracene (1,2-benzanthracene)
73. benzo(a)pyrene (3,4-benzopyrene)
74. 3,4-benzofluoranthene
75. benzo(k)fluoranthene (11,12-benzofluoranthene)
76. chrysene
77. acenaphthylene
78. anthracene
79. benzo(ghi)perylene (1,12-benzoperylene)
80. fluorene
81. phenanthrene
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)
84. pyrene
85. tetrachloroethylene
87. trichloroethylene
88. vinyl chloride (chloroethylene)
89. aldrin
90. dieldrin
91. chlordane (technical mixture and metabolites)
92. 4,4'-DDT
93. 4,4'-DDE (p,p'DDX)
94. 4,4'-DDD (p,p'TDE)
95. a-endosulfan-Alpha
96. b-endosulfan-Beta
97. endosulfan sulfate
98. endrin
99. endrin aldehyde
100. heptachlor
101. heptachlor expoxide
102. a-BHC-Alpha
103. b-BHC-Beta
104. r-BHC (lindane)-Gamma
105. g-BHC-Delta
106. PCB–1242 (Arochlor 1242)
107. PCB–1254 (Arochlor 1254)
108. PCB–1221 (Arochlor 1221)
109. PCB–1232 (Arochlor 1232)
110. PCB–1248 (Arochlor 1248)
111. PCB–1260 (Arochlor 1260)
112. PCB–1016 (Arochlor 1016)
113. toxaphene
116. asbestos (fibrous)
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

(m) Subpart Z—Secondary Tantalum Subcategory

1. acenaphthene*
2. acrolein*
3. acrylonitrile*
4. benzene*
5. benzidene*
6. carbon tetrachloride (tetrachloromethane)*
7. chlorobenzene*
8. 1,2,4-trichlorobenzene*
9. hexachlorobenzene*
10. 1,2-dichloroethane*
11. 1,1,1-trichloroethane*
12. hexachloroethane*
13. 1,1-dichloroethane*
14. 1,1,2-trichloroethane*
15. 1,1,2,2-tetrachloroethane*
16. chloroethane*
17. bis(2-chloromethyl)ether (Deleted)*
18. bis(2-chloroethyl)ether*
19. 2-chloroethyl vinyl ether (mixed)*
20. 2-chloronaphthalene*
21. 2,4,6-trichlorophenol*
22. para-chloro meta-cresol*
23. chloroform (trichloromethane)*
24. 2-chlorophenol*
25. 1,2-dichlorobenzene*
26. 1,3-dichlorobenzene*
27. 1,4-dichlorobenzene*
28. 3,3'-dichlorobenzidene*
29. 1,1-dichloroethylene*
30. 1,2-trans-dichloroethylene*
31. 2,4-dichlorophenol*
32. 1,2-dichloropropane*
33. 1,3-dichloropropylene (1,3-dichloropropene)*
34. 2,4-dimethylphenol*
35. 2,4-dinitrotoluene*
36. 2,6-dinitrotoluene*
37. 1,2-diphenylhydrazine*
38. ethylbenzene*
39. fluoranthene*
40. 4-chlorophenyl phenyl ether*
41. 4-bromophenyl phenyl ether*
42. bis(2-chloroisopropyl)ether*
43. bis(2-chloroethoxy)methane*
44. methylene chloride (dichloromethane)*
45. methyl chloride (chloromethane)*
46. methyl bromide (bromomethane)*
47. bromoform (tribromomethane)*
48. dichlorobromomethane*
49. trichlorofluoromethane (Deleted)*
50. dichlorodifluoromethane (Deleted)*
51. chlorodibromomethane*
52. hexachlorobutadiene*
53. hexachlorocyclopentadiene*
54. isophorone*
55. naphthalene*
56. nitrobenzene*
57. 2-nitrophenol*
58. 4-nitrophenol*
59. 2,4-dinitrophenol*
60. 4,6-dinitro-o-cresol*
61. N-nitrosodimethylamine*
62. N-nitrosodiphenylamine*
63. N-nitrosodi-n-propylamine*
64. pentachlorophenol*
65. phenol*
66. bis(2-ethylhexyl) phthalate*
67. butyl benzyl phthalate*
68. di-n-butyl phthalate*
69. di-n-octyl phthalate*
70. diethyl phthalate*
71. dimethyl phthalate*
72. benzo(a)anthracene (1,2-benzanthracene)*
73. benzo(a)pyrene (3,4-benzopyrene)*
74. 3,4-benzofluoranthene*
75. benzo(k)fluoranthene (11,12-benzofluoranthene)*
76. chrysene*
77. acenaphthylene*
78. anthracene*
79. benzo(ghi)perylene (1,12-beuozopnerylene)*
80. flourene*
81. phenanthrene*
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)*
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)*
84. pyrene*
85. tetrachloroethylene*
86. toluene*
87. trichloroethylene*
88. vinyl chloride (chloroethylene)*
89. aldrin*
90. dieldrin*
91. chlordane (technical mixture and metabolites)*
92. 4,4'-DDT*
93. 4,4'-DDE (p,p'DDX)*
94. 4,4'-DDD (p,p'TDE)*
95. a-endosulfane-Alpha*
96. b-endosulfane-Beta*
97. endosulfan sulfate*
98. endrin*
99. endrin aldehyde*
100. heptachlor*
101. heptachlor epoxide*
102. a-BHC-Alpha*
103. b-BHC-Beta*
104. r-BHC (lindane)-Gamma*
105. g-BHC-Delta*
106. PCB–1242 (Arochlor 1242)*
107. PCB–1254 (Arochlor 1254)*
108. PCB–1221 (Arochlor 1221)*
109. PCB–1232 (Arochlor 1232)*
110. PCB–1248 (Arochlor 1248)*

111. PCB–1260 (Arochlor 1260)*
112. PCB–1016 (Arochlor 1016)*
113. toxaphene*
116. asbestos (fibrous)
121. cyanide (total)*
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCCD)

*We did not analyze for these pollutants in samples of raw wastewater from this subcategory. These pollutants are not believed to be present based on the Agency's best engineering judgment which includes consideration of raw materials and process operations.

(n) Subpart AA—Secondary Tin Subcategory

1. acenaphthene
2. acrolein
3. acrylonitrile
5. benzidene
6. carbon tetrachloride (tetrachloromethane)
7. chlorobenzene
8. 1,2,4-trichlorobenzene
10. 1,2-dichloroethane
12. hexachloroethane
13. 1,1-dichloroethane
14. 1,1,2-trichloroethane
15. 1,1,2,2-tetrachloroethane
16. chloroethane
17. bis(2-chloromethyl)ether (Deleted)
18. bis(2-chloroethyl)ether
19. 2-chloroethyl vinyl ether (mixed)
20. 2-chloronaphthalene
21. 2,4,6-trichlorophenol
22. para-chloro meta-cresol
24. 2-chlorophenol
25. 1,2-dichlorobenzene
26. 1,3-dichlorobenzene
27. 1,4-dichlorobenzene
28. 3,3'-dichlorobenzidene
30. 1,2-trans-dichloroethylene
31. 2,4-dichlorophenol
32. 1,2-dichloropropane
33. 1,3-dichloropropylene (1,3-dichloropropene)
35. 2,4-dinitrotoluene
36. 2,6-dinitrotoluene
40. 4-chlorophenyl phenyl ether
41. 4-bromophenyl phenyl ether
42. bis(2-chloroisopropyl)ether
43. bis(2-chloroethoxy)methane
45. methyl chloride (chloromethane)
46. methyl bromide (bromomethane)
47. bromoform (tribromomethane)
48. dichlorobromomethane
49. trichlorofluoromethane (Deleted)
50. dichlorodifluoromethane (Deleted)
51. chlorodibromomethane
52. hexachlorobutadiene
53. hexachlorocyclopentadiene
54. isophorone
56. nitrobenzene
60. 4,6-dinitro-o-cresol
61. N-nitrosodimethylamine
63. N-nitrosodi-n-propylamine
64. pentachlorophenol
69. di-n-octyl phthalate
70. diethyl phthalate
71. dimethyl phthalate
72. benzo(a)anthracene (1,2-benzanthracene)
73. benzo(a)pyrene (3,4-benzopyrene)
74. 3,4-benzofluoranthene
75. benzo(k)fluoranthene (11,12-benzofluoranthene)
76. chrysene
77. acenaphthylene
79. benzo(ghi)perylene (1,12-benzoperylene)
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)
85. tetrachloroethylene
89. aldrin
90. dieldrin
91. chlordane (technical mixture and metabolites)
92. 4,4'-DDT
93. 4,4'-DDE (p,p'DDX)
94. 4,4'-DDD (p,p'TDE)
95. a-endosulfan-Alpha
96. b-endosulfan-Beta
97. endosulfan sulfate
98. endrin
99. endrin aldehyde
100. heptachlor
101. heptachlor epoxide
102. a-BHC-Alpha
103. b-BHC-Beta
104. r-BHC (lindane)-Gamma
105. g-BHC-Delta
106. PCB–1242 (Arochlor 1242)
107. PCB–1254 (Arochlor 1254)
108. PCB–1221 (Arochlor 1221)
109. PCB–1232 (Arochlor 1232)
110. PCB–1248 (Arochlor 1248)
111. PCB–1260 (Arochlor 1260)
112. PCB–1016 (Arochlor 1016)
113. toxaphene
116. asbestos (fibrous)
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

(o) Subpart AB—Primary and Secondary Titanium Subcategory

1. acenaphthene
2. acrolein
3. acrylonitrile
5. benzidene
6. carbon tetrachloride (tetrachloromethane)
7. chlorobenzene
8. 1,2,4-trichlorobenzene
9. hexachlorobenzene
10. 1,2-dichloroethane
12. hexachloroethane
14. 1,1,2-trichloroethane
15. 1,1,2,2-tetrachlorethane
16. chloroethane
17. bis(2-chloromethyl)ether (Deleted)
18. bis(2-chloroethyl)ether
19. 2-chloroethyl vinyl ether (mixed)
20. 2-chloronaphthalene
22. para-chloro meta-cresol
24. 2-chlorophenol
25. 1,2-dichlorobenzene
26. 1,3-dichlorobenzene
27. 1,4-dichlorobenzene
28. 3,3'-dichlorobenzidene
29. 1,1-dichloroethylene
30. 1,2-trans-dichloroethylene
32. 1,2-dichloropropane
33. 1,3-dichloropropylene (1,3-dichloropropene)
34. 2,4-dimethylphenol
35. 2,4-dinitrotoluene
37. 1,2-diphenylhydrazine
38. ethylbenzene
39. fluoranthene
40. 4-chlorophenyl phenyl ether
41. 4-bromophenyl phenyl ether
42. bis(2-chloroisopropyl)ether
43. bis(2-chloroethoxy)methane
45. methyl chloride (chloromethane)
46. methyl bromide (bromomethane)
47. bromoform (tribromomethane)
49. trichlorofluoromethane (Deleted)
50. dichlorodifluoromethane (Deleted)
52. hexachlorobutadiene
53. hexachlorocyclopentadiene
54. isophorone
55. naphthalene
56. nitrobenzene
58. 4-nitrophenol
59. 2,4-dinitrophenol
60. 4,6-dinitro-o-cresol
61. N-nitrosodimethylamine
62. N-nitrosodiphenylamine
63. N-nitrosodi-n-propylamine
72. benzo(a)anthracene (1,2-benzanthracene)
73. benzo(a)pyrene (3,4-benzopyrene)
74. 3,4-benzofluoranthene
76. chrysene
77. acenaphthylene
78. anthracene
79. benzo(ghi)perylene (1,12-benzoperylene)
80. fluorene
81. phenanthrene
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)
84. pyrene
85. tetrachloroethylene
89. aldrin
90. dieldrin
91. chlordane (technical mixture and metabolites)
92. 4,4'-DDT
93. 4,4'-DDE (p,p'DDX)
96. b-endosulfan-Beta
97. endosulfan sulfate
98. endrin
99. endrin aldehyde
100. heptachlor
101. heptachlor epoxide
104. r-BHC (lindane)-Gamma
105. g-BHC-Delta
106. PCB–1242 (Arochlor 1242)
108. PCB–1221 (Arochlor 1221)
109. PCB–1232 (Arochlor 1232)

110. PCB–1248 (Arochlor 1248)
111. PCB–1260 (Arochlor 1260)
112. PCB–1016 (Arochlor 1016)
113. toxaphene
116. asbestos (fibrous)
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

(p) Subpart AC—Secondary Tungsten and Cobalt Subcategory

1. acenaphthene*
2. acrolein*
3. acrylonitrile*
4. benzene*
5. benzidene*
6. carbon tetrachloride (tetrachloromethane)*
7. chlorobenzene*
8. 1,2,4-trichlorobenzene*
9. hexachlorobenzene*
10. 1,2-dichloroethane*
11. 1,1,1-trichloroethane*
12. hexachloroethane*
13. 1,1-dichloroethane*
14. 1,1,2-trichloroethane*
15. 1,1,2,2-tetrachloroethane*
16. chloroethane*
17. bis(2-chloromethyl)ether (Deleted)*
18. bis(2-chloroethyl)ether*
19. 2-chloroethyl vinyl either (mixed)*
20. 2-chloronaphthalene*
21. 2,4,6-trichlorophenol*
22. para-chloro meta-cresol*
23. chloroform (trichloromethane)*
24. 2-chlorophenol*
25. 1,2-dichlorobenzene*
26. 1,3-dichlorobenzene*
27. 1,4-dichlorobenzene*
28. 3,3'-dichlorobenzene*
29. 1,1-dichloroethylene*
30. 1,2-trans-dichloroethylene*
31. 2,4-dichlorophenol*
32. 1,2-dichloropropane*
33. 1,3-dichloropropylene (1,3-dichloropropene)*
34. 2,4-dimethylphenol*
35. 2,4-dinitrotoluene*
36. 2,6-dinitrotoluene*
37. 1,2-diphenylhydrazine*
38. ethylbenzene*
39. fluoranthene*
40. 4-chlorophenyl phenyl ether*
41. 4-bromophenyl phenyl ether*
42. bis(2-chloroisopropyl)ether*
43. bis(2-chloroethoxy)methane*
44. methylene chloride (dichloromethane)*
45. methyl chloride (chloromethane)*
46. methyl bromide (bromomethane)*
47. bromoform (tribromomethane)*
48. dichlorobromomethane*
49. trichlorofluoromethane (Deleted)*
50. dichlorodifluoromethane (Deleted)*
51. chlorodibromomethane*
52. hexachlorobutadiene*
53. hexachlorocyclopentadiene*
54. isophorone*
55. naphthalene*
56. nitrober zene*
57. 2-nitrophenol*
58. 4-nitrophenol*
59. 2,4-dinitrophenol*
60. 4,6-dinitro-o-cresol*
61. N-nitrosodimethylamine*
62. N-nitrosodiphenylamine*
63. N-nitrosodi-n-propylamine*
64. pentachlorophenol*
65. phenol*
66. bis(2-ethylhexyl) phthalate*
67. butyl benzyl phthalate*
68. di-n-butyl phthalate*
69. di-n-octyl phthalate*
70. diethyl phthalate*
71. dimethyl phthalate*
72. benzo(a)anthracene (1,2-benzanthracene)*
73. benzo(a)pyrene (3,4-benzopyrene)*
74. 3,4-benzofluoranthene*
75. benzo(k)fluoranthene (11,12-benzofluoranthene)*
76. chrysene*
77. acenaphthylene*
78. anthracene*
79. benzo(ghi)perylene (1,12-benzoperylene)*
80. fluorene*
81. phenanthrene*
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)*
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)*
84. pyrene*
85. tetrachloroethylene*
86. toluene*
87. trichloroethylene*
88. vinyl chloride (chloroethylene)*
89. aldrin*
90. dieldrin*
91. chlordane (technical mixture and metabolites)*
92. 4,4'-DDT*
93. 4,4'-DDE (p,p'DDX)*
94. 4,4'-DDD (p,p'TDE)*
95. a-endosulfan-Alpha*
96. b-endosulfan-Beta*
97. endosulfan sulfate*
98. endrin*
99. endrin aldehyde*
100. heptachlor*
101. heptachlor epoxide*
102. a-BHC-Alpha*
103. b-BHC-Beta*
104. r-BHC (lindane)-Gamma*
105. g-BHC-Delta*
106. PCB–1242 (Arochlor 1242)*
107. PCB–1254 (Arochlor 1254)*
108. PCB–1221 (Arochlor 1221)*
109. PCB–1232 (Arochlor 1232)*
110. PCB–1248 (Arochlor 1248)*
111. PCB–1260 (Arochlor 1260)*
112. PCB–1016 (Arochlor 1016)*
113. toxaphene*
116. asbestos (fibrous)
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

*We did not analyze for these pollutants in samples of raw wastewater from this subcategory. These pollutants are not believed to be present based on the Agency's best engineering judgment which includes consideration of raw materials and process operations.

(q) Subpart AD—Secondary Uranium Subcategory

1. acenaphthene*
2. acrolein*
3. acrylonitrile*
4. benzene*
5. benzidene*
6. carbon tetrachloride (tetrachloromethane)*
7. chlorobenzene*
8. 1,2,4-trichlorobenzene*
9. hexachlorobenzene*
10. 1,2-dichloroethane*
11. 1,1,1-trichloroethane*
12. hexachloroethane*
13. 1,1-dichloroethane*
14. 1,1,2-trichloroethane*
15. 1,1,2,2-tetrachloroethane*
16. chloroethane*
17. bis(2-chloromethyl)ether (Deleted)*
18. bis(2-chloroethyl)ether*
19. 2-chloroethyl vinyl ether (mixed)*
20. 2-chloronaphthalene*
21. 2,4,6-trichlorophenol*
22. para-chloro meta-cresol*
23. chloroform (trichloromethane)*
24. 2-chlorophenol*
25. 1,2-dichlorobenzene*
26. 1,3-dichlorobenzene*
27. 1,4-dichlorobenzene*
28. 3,3'-dichlorobenzidene*
29. 1,1-dichloroethylene*
30. 1,2-trans-dichloroethylene*
31. 2,4-dichlorophenol*
32. 1,2-dichloropropane*
33. 1,3-dichloropropylene (1,3-dichloropropene)*
34. 2,4-dimethylphenol*
35. 2,4-dinitrotoluene*
36. 2,6-dinitrotoluene*
37. 1,2-diphenylhydrazine*
38. ethylbenzene*
39. fluoranthene*
40. 4-chlorophenyl phenyl ether*
41. 4-bromophenyl phenyl ether*
42. bis(2-chloroisopropyl)ether*
43. bis(2-chloroethoxy)methane*
44. methylene chloride (dichloromethane)*
45. methyl chloride (chloromethane)*
46. methyl bromide (bromomethane)*
47. bromoform (tribromomethane)*
48. dichlorobromomethane*
49. trichlorofluoromethane (Deleted)*
50. dichlorodifluoromethane (Deleted)*
51. chlorodibromomethane*
52. hexachlorobutadiene*
53. hexachlorocyclopentadiene*
54. isophorone*
55. naphthalene*
56. nitrobenzene*
57. 2-nitrophenol*

58. 4-nitrophenol*
59. 2,4-dinitrophenol*
60. 4,6-dinitro-o-cresol*
61. N-nitrosodimethylamine*
62. N-nitrosodiphenylamine*
63. N-nitrosodi-n-propylamine*
64. pentachlorophenol*
65. phenol*
66. bis(2-ethylhexyl) phthalate*
67. butyl benzyl phthalate*
68. di-n-butyl phthalate*
69. di-n-octyl phthalate*
70. diethyl phthalate*
71. dimethyl phthalate*
72. benzo(a)anthracene (1,2-benzanthracene)*
73. benzo(a)pyrene (3,4-benzopyrene)*
74. 3,4-benzofluoranthene*
75. benzo (k)fluoranthene (11,12-benzofluoranthene)*
76. chrysene*
77. acenaphthylene*
78. anthracene*
79. benzo(ghi)perylene (1,12-benzoperylene)*
80. fluorene*
81. phenanthrene*
82. dibernzo (a,h)anthracene (1,2,5,6-dibenzathracene)*
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)*
84. pyrene*
85. tetrachloroethylene*
86. toluene*
87. trichloroethylene*
88. vinyl chloride (chloroethylene)*
89. aldrin*
90. dieldrin*
91. chlordane (technical mixture and metabolites)*
92. 4,4'-DDT*
93. 4,4'-DDE (p,p'DDX)*
94. 4,4'-DDD (p,p'TDE)*
95. a-endosulfan-Alpha*
96. b-endosulfan-Beta*
97. endosulfan sulfate*
98. endrin*
99. endrin aldehyde*
100. heptachlor*
101. heptachlor epoxide*
102. a-BHC-Alpha*
103. b-BHC-Beta*
104. r-BHC (lindane)-Gamma*
105. g-BHC-Delta*
106. PCB-1242 (Arochlor 1242)*
107. PCB-1254 (Arochlor 1254)*
108. PCB-1221 (Arochlor 1221)*
109. PCB-1232 (Arochlor 1232)*
110. PCB-1248 (Arochlor 1248)*
111. PCB-1260 (Arochlor 1260)*
112. PCB-1016 (Arochlor 1016)*
113. toxaphene*
116. asbestos (fibrous)
121. cyanide (total)*
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

* We did not analyze for these pollutants in samples of raw wastewater from this subcategory. These pollutants are not believed to be present based on the Agency's best engineering judgment which includes consideration of raw materials and process operations.

(r) Subpart AE—Primary Zirconium and Hafnium Subcategory

1. acenaphthene
2. acrolein
3. acrylonitrile
4. benzene
5. benzidene
6. carbon tetrachloride (tetrachloromethane)
7. chlorobenzene
8. 1,2,4-trichlorobenzene
9. hexachlorobenzene
10. 1,2-dichloroethane
11. 1,1,1-trichloroethane
12. hexachloroethane
13. 1,1-dichloroethane
14. 1,1,2-trichloroethane
15. 1,1,2,2-tetrachloroethane
16. chloroethane
17. bis(2-chloromethyl)ether (Deleted)
18. bis(2-chloroethyl)ether
19. 2-chloroethyl vinyl ether (mixed)
20. 2-chloronaphthalene
21. 2,4,6-trichlorophenol
22. para-chloro meta-cresol
24. 2-chlorophenol
25. 1,2-dichlorobenzene
26. 1,3-dichlorobenzene
27. 1,4-dichlorobenzene
28. 3,3'-dichlorobenzidene
29. 1,1-dichloroethylene
30. 1,2-trans-dichloroethylene
31. 2,4-dichlorophenol
32. 1,2-dichloropropane
33. 1,3-dichloropropylene (1,3-dichloropropene)
34. 2,4-dimethylphenol
35. 2,4-dinitrotoluene
36. 2,6-dinitrotoluene
37. 1,2-diphenylhydrazine
38. ethylbenzene
39. fluoranthene
40. 4-chlorophenyl phenyl ether
41. 4-bromophenyl phenyl ether
42. bis(2-chloroisopropyl)ether
43. bis(2-chloroethoxy)methane
45. methyl chloride (chloromethane)
46. methyl bromide (bromomethane)
47. bromoform (tribromomethane)
49. trichlorofluoromethane (Deleted)
50. dichlorodifluoromethane (Deleted)
52. hexachlorobutadiene
53. hexachlorocyclopentadiene
54. isophorone
56. nitrobenzene
57. 2-nitrophenol
58. 4-nitrophenol
59. 2,4-dinitrophenol
60. 4,6-dinitro-o-cresol
61. N-nitrosodimethylamine
62. N-nitrosodiphenylame
63. N-nitrosodi-n-propylamine
64. pentachlorophenol
65. phenol
71. dimethyl phthalate
72. benzo(a)anthracene (1,2-benzanthracene)
73. benzo(a)pyrene (3,4-benzopyrene)
74. 3,4-benzofluoranthene
75. benzo(k)fluoranthene (11,12-benzofluoranthene)
76. chrysene
77. acenaphthylene
78. anthracene
79. benzo(ghi)perylene (1,12-benzoperylene)
80. fluorene
81. phenanthrene
82. dibenzo (a,h)anthracene (1,2,5,6-dibenzanthracene)
83. ideno (1,2,3-cd)pyrene (2,3,-o-phenylenepyrene)
84. pyrene
85. tetrachloroethylene
86. toluene
87. trichloroethylene
88. vinyl chloride (chloroethylene)
89. aldrin
90. dieldrin
91. chlordane (technical mixture and metabolites)
92. 4,4'-DDT
93. 4,4'-DDE (p,p'DDX)
94. 4,4'-DDD (p,p'TDE)
95. a-endosulfan-Alpha
96. b-endosulfan-Beta
97. endosulfan sulfate
98. endrin
99. endrin aldehyde
100. heptachlor
101. heptachlor epoxide
102. a-BHC-Alpha
103. b-BHC-Beta
104. r-BHC (lindane)-Gamma
105. g-BHC-Delta
106. PCB-1242 (Arochlor 1242)
107. PCB-1254 (Arochlor 1254)
108. PCB-1221 (Arochlor 1221)
109. PCB-1232 (Arochlor 1232)
110. PCB-1248 (Arochlor 1248)
111. PCB-1260 (Arochlor 1260)
112. PCB-1016 (Arochlor 1016)
113. toxaphene
116. asbestos (fibrous)
129. 2,3,7,8-tetra chlorodibenzo-p-dioxin (TCDD)

Appendix D—Toxic Pollutants Detected Below the Analytical Quantification Limit

(a) Subpart O—Primary Beryllium Subcategory

114. antimony
125. selenium
127. thallium

(b) Subpart P—Primary and Secondary Germanium and Gallium Subcategory

21. 2,4,6-trichlorophenol
23. chloroform

64. pentachlorophenol
66. bis(2-ethylhexyl)phthalate
68. di-n-butyl phthalate
87. trichloroethylene
123. mercury

(c) Subpart Q—Secondary Indium Subcategory

68. di-n-butyl phthalate
70. diethyl phthalate
71. dimethyl phthalate
103. beta-BHC
114. antimony
115. arsenic
123. mercury

(d) Subpart R—Secondary Mercury Subcategory

114. antimony
117. beryllium
119. chromium (total)
120. copper
124. nickel
125. selenium
126. silver

(e) Subpart S—Primary Molybdenum and Rhenium Subcategory

44. methylene chloride
104. gamma-BHC
114. antimony
127. thallium

(f) Subpart T—Secondary Molybdenum and Vanadium Subcategory

23. chloroform
126. silver
127. thallium

(g) Subpart U—Primary Nickel and Cobalt Subcategory

4. benzene
86. toluene
114. antimony
115. arsenic
117. beryllium
119. chromium
122. lead
126. silver
127 thallium

(h) Subpart V—Secondary Nickel Subcategory

114. antimony
117. beryllium
118. cadmium
121. cyanide
122. lead
123. mercury
125. selenium
126. silver
127. thallium

(i) Subpart W—Primary Precious Metals and Mercury Subcategory

65. phenol
66. bis(2-ethylhexyl)phthalate
68. di-n-butyl phthalate
78. anthracene
81. phenanthrene
114. antimony

(j) Subpart X—Secondary Precious Metals Subcategory

4. benzene
7. chlorobenzene
10. 1,2-dichloroethane
21. 2,4,6-trichlorophenol
24. 2-chlorophenol
34. 2,4-dimethylphenol
44. methylene chloride (dichloromethane)
47. bromoform (tribromomethane)
48. dichlorobromomethane
51. chlorodibromomethane
54. isophorone
62. N-nitrosodiphenylamine
68. di-n-butyl phthalate
69. di-n-octyl phthalate
70. diethyl phthalate
71. dimethyl phthalate
86. toluene

(k) Subpart Y—Primary Rare Earth Metals Subcategory

7. chlorobenzene
21. 2,4,6-trichlorophenol
47. bromoform (tribromomethane)
65. phenol
86. toluene
114. antimony
117. beryllium

(l) Subpart Z—Secondary Tantalum Subcategory

117. beryllium
118. cadmium
119. chromium
125. selenium
127. thallium

(m) Subpart AA—Secondary Tin Subcategory

9. hexachlorobenzene
11. 1,1,1-trichloroethane
23. chloroform
29. 1,1-dichloroethylene
34. 2,4-dimethylphenol
37. 1,2-diphenylhydrazine
39. fluoranthene
55. naphthalene
62. n-nitrosodimethylamine
68. di-n-butyl phthalate
78. anthracene
80. fluorene
81. phenanthrene
87. trichloroethylene

(n) Subpart AB—Primary and Secondary Titanium Subcategory

13. 1,1-dichloroethane
21. 2,4,6-trichlorophenol
23. chloroform (trichloromethane)
31. 2,4-dichlorophenol
36. 2,6-dinitrotoluene
48. dichlorobromomethane
51. chlorodibromomethane
57. 2-nitrophenol
70. diethyl phthalate
71. dimethyl phthalate
75. benzo(k)fluoranthene (11, 12-benzofluoranthene)
88. vinyl chloride (chloroethylene)
107. PCB-1254 (Arochlor 1254)
117. beryllium

(o) Subpart AD—Secondary Uranium Subcategory

114. antimony
123. mercury
126. silver
127. thallium

(p) Subpart AE—Primary Zirconium and Hafnium Subcategory

55. naphthalene
66. bis(2-ethylhexyl)phthalate
68. di-n-butyl phatalate
69. di-n-octyl phthalate
70. diethyl phthalate
114. antimony
126. silver

Appendix E—Toxic Pollutants Detected in Amounts Too Small To Be Effectively Reduced by Technologies Considered in Preparing This Guideline

(a) Subpart O—Primary Beryllium Subcategory

115. arsenic
123. mercury

(b) Subpart P—Primary and Secondary Germanium and Gallium Subcategory

117. beryllium

(c) Subpart Q—Secondary Indium Subcategory

117. beryllium
120. copper

(d) Subpart R—Secondary Mercury Subcategory

115. arsenic
118. cadmium

(e) Subpart S—Primary Molybdenum and Rhenium Subcategory

117. beryllium
118. cadmium
121. cyanide
123. mercury

(f) Subpart T—Secondary Molybdenum and Vanadium Subcategory

114. antimony
117. beryllium
118. cadmium
121. cyanide
123. mercury
125. selenium

(g) Subpart U—Primary Nickel and Cobalt Subcategory

66. bis(2-ethylhexyl)phthalate
118. cadmium

123. mercury
125. selenium

(h) Subpart W—Primdry Precious Metals and Mercury Subcategory

117. beryllium
125. selenium

(i) Subpart X—Secondary Precious Metals Subcategory

57. 2-nitrophenol
123. mercury

(j) Subpart Y—Primary Rare Earth Metals Subcategory

121. cyanide (total)
123. mercury

(k) Subpart Z—Secondary Tantalum Subcategory

115. arsenic
123. mercury

(l) Subpart AA—Secondary Tin Subcategory

117. beryllium
123. mercury

(m) Subpart AB—Primary and Secondary Titanium Subcategory

123. mercury

(n) Subpart AC—Secondary Tungsten and Cobalt Subcategory

117. beryllium
125. selenium

(o) Subpart AD—Secondary Uranium Subcategory

117. beryllium

(p) Subpart AE—Primary Zirconium and Hafnium Subcategory

115. arsenic
117. beryllium
120. copper
123. mercury
125. selenium

Appendix F—Toxic Pollutants Detected in the Effluent From Only a Small Number of Sources

(a) Subpart O—Primary Beryllium Subcategory

118. cadmium
122. lead
124. nickel
126. silver
128. zinc

(b) Subpart P—Primary and Secondary Germanium and Gallium Subcategory

4. benzene
9. hexachlorobenzene
44. methylene chloride
121. cyanide

(c) Subpart Q—Secondary Indium Subcategory

44. methylene chloride
64. pentachlorophenol
65. phenol
121. cyanide

(d) Subpart S—Primary Molybdenum and Rhenium Subcategory

126. silver

(e) Subpart T—Secondary Molybdenum and Vanadium Subcategory

44. methylene chloride
45. methyl chloride
55. naphthalene
70. diethyl phthalate

(f) Subpart W—Primary Precious Metals and Mercury Subcategory

4. benzene
44. methylene chloride
70. diethyl phthalate
86. toluene
121. cyanide

(g) Subpart X—Secondary Precious Metals Subcategory

6. carbon tetrachloride
11. 1,1,1-trichloroethane
23. chloroform
65. phenol
66. bis(2-ethylhexyl)phthalate
117. beryllium

(h) Subpart Y—Primary Rare Earth Metals Subcategory

6. carbon tetrachloride (tetrachloromethane)
23. chloroform (trichloromethane)
44. methylene chloride (dichloromethane)
48. dichlorobromomethane
49. trichlorofluoromethane (Deleted)
51. chlorodibromomethane
66. bis(2-ethylhexyl)phthalate

(i) Subpart AA—Secondary Tin Subcategory

4. benzene
38. ethylbenzene
44. methylene chloride
57. 2-nitrophenol
58. 4-nitrophenol
59. 2,4-dinitrophenol
65. phenol
66. bis(2-ethylhexyl)phthalate
67. butyl benzyl phthalate
84. pyrene
86. toluene
88. vinyl chloride

(j) Subpart AB—Primary and Secondary Titanium Subcategory

4. benzene
11. 1,1,1-trichloroethane
44. mehtylene chloride
64. pentachlorophenol
65. phenol
66. bis(2-ethylhexyl)phthalate
67. butyl benzyl phthalate
68. di-n-butyl phthalate
69. di-n-octyl phthalate
86. toluene
87. trichloroethylene
94. 4,4'-DDD(p,p' TDE)
95. a-endosulfan-alpha
102. a-BHC-alpha
103. b-BHC-beta
115. arsenic
121. cyanide
125. selenium
126. silver

(k) Subpart AC—Secondary Tungsten and Cobalt Subcategory

114. antimony
121. cyanide
123. mercury
127. thallium

(l) Subpart AE—Primary Zirconium and Hafnium Subcategory

23. chloroform (trichloroethane)
44. methylene chloride (dichloromethane)
48. dichlorobromomethane
51. chlorodibromomethane
67. butyl benzyl phthalate

Appendix G—Toxic Pollutants Effectively Controlled by Technologies Which Other Effluent Limitations and Guidelines Are Based Upon

(a) Subpart N—Primary Antimony Subcategory

118. cadmium
120. copper
122. lead
128. zinc

(b) Subpart P—Primary and Secondary Germanium and Gallium

114. antimony
118. cadmium
119. chromium
120. copper
124. nickel
125. selenium
126. silver
127. thallium

(c) Subpart Q—Secondary Indium Subcategory

119. chromium
124. nickel
125. selenium
126. silver
127. thallium

(d) Subpart R—Secondary Mercury Subcategory

127. thallium
128. zinc

(e) Subpart S—Primary Molybdenum and Rhenium Subcategory

119. chromium (total)
120. copper
128. zinc

(f) Subpart V—Secondary Molybdenum and Vanadium Subcategory

120. copper
128. zinc

(g) Subpart U—Primary Nickel and Cobalt Subcategory

128. zinc

(h) Subpart V—Secondary Nickel Subcategory

115. arsenic
128. zinc

(i) Subpart W—Primary Precious Metals and Mercury Subcategory

115. arsenic
118. cadmium
119. chromium
120. copper
124. nickel
127. thallium

(j) Subpart X—Secondary Precious Metals Subcategory

114. antimony
115. arsenic
118. cadmium
119. chromium
122. lead
124. nickel
125. selenium
126. silver
127. thallium

(k) Subpart Y—Primary Rare Earth Metals Subcategory

4. benzene
115. arsenic
118. cadmium
120. copper
125. selenium
126. silver
127. thallium
128. zinc

(l) Subpart Z—Secondary Tantalum Subcategory

114. antimony
126. silver

(m) Subpart AA—Secondary Tin Subcategory

114. antimony
118. cadmium
119. chromium
120. copper
124. nickel
125. selenium
126. silver
127. thallium
128. zinc

(n) Subpart AB—Primary and Secondary Titanium Subcategory

114. antimony
118. cadmium
120. copper
127. thallium
128. zinc

(o) Subpart AC—Secondary Tungsten and Cobalt Subcategory

115. arsenic
118. cadmium
119. chromium
122. lead
126. silver
128. zinc

(p) Subpart AD—Secondary Uranium Subcategory

115. arsenic
118. cadmium
122. lead
125. selenium
128. zinc

(q) Subpart AE—Primary Zirconium and Hafnium Subcategory

118. cadmium
127. thallium
128. zinc

For the reasons discussed above, EPA is amending 40 CFR Part 421 as follows:

PART 421—NONFERROUS METALS MANUFACTURING POINT SOURCE CATEGORY

1. The authority citation for Part 421 is revised to read as follows:

Authority: Secs. 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), 308, and 501 of the Federal Water Pollution Control Act as amended (the Act); 33 U.S.C. 1251, 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

§ 421.4 Compliance date for PSES.

The PSES compliance date in subparts A through I is March 8, 1987. The PSES compliance date for plants in subpart J through subpart AE is September 20, 1988.

3. Section 421.12 is amended by revising the introductory paragraph to read as follows:

§ 421.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart, shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available:

* * * * *

4. Section 421.13 is amended by adding an introductory paragraph to read as follows:

§ 421.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

* * * * *

5. Section 421.16 is revised to read as follows:

§ 421.16 Pretreatment standards for new sources.

Any new sources subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403.

Subpart I—Metallurgical Acid Plants Subcategory

§ 421.90 [Amended]

6. Section 421.90 is amended by removing the word "and" following "primary zinc facilities" and by inserting the phrase, "and primary molybdenum facilities", before the word "including."

7. Section 421.92 is revised to make technical changes required in converting kg/kkg units to mg/kg units. The text of § 421.91 and §§ 421.93–421.96, is not amended, but set out for the convenience of the reader.

§ 421.91 Specialized definitions.

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 apply to this subpart.

(b) The term "product" means 100 percent equivalent sulfuric acid, H_2SO_4 capacity.

§ 421.92 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

SUBPART I—METALLURGICAL ACID PLANT—BPT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of 100 percent sulfuric acid capacity	
Cadmium	0.180	0.090
Copper	5.000	2.000
Lead	1.800	0.790
Zinc	3.600	0.900
Total suspended solids	304.000	152.000
pH	(1)	(1)

(1) Within the range of 6.0 to 9.0 at all times

§ 421.93 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30–.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

SUBPART I—METALLURGICAL ACID PLANT—BAT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per/million pounds) of 100 pct sulfuric acid capacity	
Arsenic	3.550	1.584
Cadmium	0.511	0.204
Copper	3.269	1.558
Lead	0.715	0.332
Zinc	2.605	1.073
Fluoride (1)	89.390	50.820
Molybdenum (1)	12.850	5.695

(1) For Molybdenum Acid Plants Only.

§ 421.94 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

SUBPART I—METALLURGICAL ACID PLANT—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per/million pounds) of 100 pct sulfuric acid capacity	
Arsenic	3.550	1.584
Cadmium	0.511	0.204
Copper	3.269	1.558
Lead	0.715	0.332
Zinc	2.605	1.073
Fluoride (1)	89.390	50.820
Molybdenum (1)	12.850	5.695
Total suspended solids	38.310	30.650
pH	(2)	(2)

(1) For Molybdenum acid plants only
(2) Within the range of 7.5 to 10.0 at all times

§ 421.95 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The mass of wastewater pollutants in metallurgical acid plant blowdown introduced into a POTW shall not exceed the following values:

SUBPART I—METALLURGICAL ACID PLANT—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pound per/million pounds) of 100 pct sulfuric acid capacity	
Cadmium	0.511	0.204
Zinc	2.605	1.073

§ 421.96 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in metallurgical acid plant blowdown introduced into a POTW shall not exceed the following values:

SUBPART I—METALLURGICAL ACID PLANT—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of 100 pct sulfuric acid capacity	
Arsenic	3.550	1.584
Cadmium	0.511	0.204
Copper	3.269	1.558
Lead	0.715	0.332
Zinc	2.605	1.073
Fluoride (1)	89.390	50.820
Molybdenum (1)	12.850	5.695

(1) For Molybdenum Acid Plants Only

8. Subparts N through AE are added to read as follows:

Subpart N—Primary Antimony Subcategory

Sec.
421.140 Applicability: description of the primary antimony subcategory.
421.141 Specialized definitions.
421.142 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.143 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
421.144 Standards of performance for new sources.
421.145 [Reserved].
421.146 Pretreatment standards for new sources.
421.147 [Reserved].

Subpart O—Primary Beryllium Subcategory

Sec.
421.150 Applicability: description of the primary beryllium subcategory.
421.151 Specialized definitions.
421.152 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.153 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
421.154 Standards of performance for new sources.
421.155 [Reserved].
421.156 Pretreatment standards for new sources.
421.157 [Reserved].

Subpart P—Primary and Secondary Germanium and Gallium Subcategory

Sec.
421.180 Applicability: description of the primary and secondary germanium and gallium subcategory.
421.181 Specialized definitions.
421.182 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.183 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
421.184 Standards of performance for new sources.
421.185 Pretreatment standards for existing sources.
421.186 Pretreatment standards for new sources.
421.187 [Reserved].

Subpart Q—Secondary Indium Subcategory

Sec.
421.190 Applicability: description of the secondary indium subcategory.
421.191 Specialized definitions.
421.192 [Reserved].
421.193 [Reserved].
421.194 Standards of performance for new sources.
421.195 Pretreatment standards for existing sources.
421.196 Pretreatment standards for new sources.
421.197 [Reserved].

Subpart R—Secondary Mercury Subcategory

Sec.
421.200 Applicability: description of the secondary mercury subcategory.
421.201 Specialized definitions.
421.202 [Reserved].
421.203 [Reserved].
421.204 Standards of performance for new sources.
421.205 [Reserved].
421.206 Pretreatment standards for new sources.
421.207 [Reserved].

Subpart S—Primary Molybdenum and Rhenium Subcategory

Sec.
421.210 Applicability: description of the primary molybdenum and rhenium subcategory.
421.211 Specialized definitions.
421.212 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.213 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
421.214 Standards of performance for new sources.
421.215 [Reserved].
421.216 Pretreatment standards for new sources.
421.217 [Reserved].

Subpart T—Secondary Molybdenum and Vanadium Subcategory

Sec.
421.220 Applicability: description of the secondary molybdenum and vanadium subcategory.
421.221 Specialized definitions.
421.222 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.223 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically available.
421.224 Standards of performance for new sources.
421.225 [Reserved].
421.226 Pretreatment standards for new sources.
421.227 [Reserved].

Subpart U—Primary Nickel and Cobalt Subcategory

Sec.
421.230 Applicability: description of the primary nickel and cobalt subcategory.
421.231 Specialized definitions.
421.232 Effuent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.233 Effuent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically available.
421.234 Standards of performance for new sources.
421.235 [Reserved].
421.236 Pretreatment standards for new sources.
421.237 [Reserved].

Subpart V—Secondary Nickel Subcategory

Sec.
421.240 Applicability: description of the secondary nickel subcategory.
421.241 Specialized definitions.
421.242 [Reserved].
421.243 [Reserved].
421.244 Standards of performance for new sources.
421.245 Pretreatment standards for existing sources.
421.246 Pretreatment standards for new sources.
421.247 [Reserved].

Subpart W—Primary Precious Metals and Mercury Subcategory

421.250 Applicability: description of the primary precious metals and mercury subcategory.
421.251 Specialized definitions.
421.252 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.253 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
421.254 Standards of performance for new sources.
421.255 [Reserved].
421.256 Pretreatment standards for new sources.
421.257 [Reserved].

Subpart X—Secondary Precious Metals Subcategory

421.260 Applicability: description of the secondary precious metals subcategory.
421.261 Specialized definitions.
421.262 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.263 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
421.264 Standards of performance for new sources.
421.265 Pretreatment standards for existing sources.
421.266 Pretreatment standards for new sources.
421.267 [Reserved].

Subpart Y—Primary Rare Earth Metals Subcategory

421.270 Applicability: description of the primary rare earth metals subcategory.
421.271 Specialized definitions.
421.272 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.273 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
421.274 Standards of performance for new sources.
421.275 Pretreatment standards for existing sources.
421.276 Pretreatment standards for new sources.
421.277 [Reserved].

Subpart Z—Secondary Tantalum Subcategory

421.280 Applicability: description of the secondary tantalum subcategory.
421.281 Specialized definitions.
421.282 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.283 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
421.284 Standards of performance for new sources.
421.285 [Reserved].
421.286 Pretreatment standards for new sources.
421.287 [Reserved].

Subpart AA—Secondary Tin Subcategory

421.290 Applicability: description of the secondary tin subcategory
421.291 Specialized definitions.
421.292 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.293 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
421.294 Standards of performance for new sources.
421.295 Pretreatment standards for existing sources.
421.296 Pretreatment standards for new sources.
421.297 [Reserved].

Subpart AB—Primary and Secondary Titanium Subcategory

Sec.
421.300 Applicability: description of the primary and secondary titanium subcategory.
421.301 Specialized definitions.

Sec.
421.302 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.303 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
421.304 Standards of performance for new sources.
421.305 Pretreatment standards for existing sources.
421.306 Pretreatment standards for new sources.
421.307 [Reserved].

Subpart AC—Secondary Tungsten and Cobalt Subcategory

Sec.
421.310 Applicability: description of the secondary tungsten and cobalt subcategory.
421.311 Specialized definitions.
421.312 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.313 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
421.314 Standards of performance for new sources.
421.315 Pretreatment standards for existing sources.
421.316 Pretreatment standards for new sources.
421.317 [Reserved].

Subpart AD—Secondary Uranium Subcategory

Sec.
421.320 Applicability: description of the secondary uranium subcategory.
421.321 Specialized definitions.
421.322 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.323 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
421.324 Standards of performance for new sources.
421.325 [Reserved].
421.326 Pretreatment standards for new sources.
421.327 [Reserved].

Subpart AE—Primary Zirconium and Hafnium Subcategory

Sec.
421.330 Applicability: description of the primary zirconium and hafnium subcategory.
421.331 Specialized definitions.
421.332 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.
421.333 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.
421.334 Standards of performance for new sources.
421.335 [Reserved].
421.336 Pretreatment standards for new sources.
421.337 [Reserved].

Subpart N—Primary Antimony Subcategory

§ 421.140 Applicability: description of the primary antimony subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of antimony at primary antimony facilities.

§ 421.141 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

§ 421.142 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available:

(a) Sodium Antimonate Autoclave Wastewater.

BPT LIMITATIONS FOR THE PRIMARY ANTIMONY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of antimony contained in sodium antimonate product	
Antimony	44.840	[illegible]
Arsenic	[illegible]	14.530
Mercury	[illegible]	1.562
Total suspended solids	[illegible]	304.700
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(b) Fouled anolyte.

BPT LIMITATIONS FOR THE PRIMARY ANTIMONY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of antimony metal produced by electrowinning	
Antimony	[illegible]	[illegible]
Arsenic	[illegible]	[illegible]
Mercury	7.812	3.125
Total suspended solids	1,281.000	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(c) Cathode Antimony Wash Water.

BPT LIMITATIONS FOR THE PRIMARY ANTIMONY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of antimony metal [illegible] by electrowinning	
Antimony	[illegible]	[illegible]
Arsenic	[illegible]	14.530
Mercury	[illegible]	1.562
Total suspended solids	[illegible]	304.700
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

§ 421.143 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) Sodium Antimonate Autoclave Wastewater.

BAT LIMITATIONS FOR THE PRIMARY ANTIMONY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of antimony contained in sodium antimonate product	
Antimony	30.150	13.440
Arsenic	21.720	9.687
Mercury	2.344	0.937

(b) Fouled Anolyte.

BAT LIMITATIONS FOR THE PRIMARY ANTIMONY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg pounds per million pounds of antimony metal produced by electrownning	
Antimony	30 150	13 440
Arsenic	21 720	9 687
Mercury	2 344	0 937

(c) Cathode Antimony Wash Water

BAT LIMITATIONS FOR THE PRIMARY ANTIMONY SUBCATEGORY

Pollutant of pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of antimony metal produced by electrownnning	
Antimony	60 310	26 870
Arsenic	43 430	19.370
Mercury	4 687	1 875

§ 421.144 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) Sodium Antimonate Autoclave Wastewater.

NSPS FOR THE PRIMARY ANTIMONY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of antimony contained in sodium antimonate product	
Antimony	30 150	13 440
Arsenic	21 720	9 687
Mercury	2 344	0 937
Total suspended solids	234 400	187 500
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(b) Fouled Anolyte.

NSPS FOR THE PRIMARY ANTIMONY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of antimony metal produced by electrownnning	
Antimony	30 150	13 440
Arsenic	21 720	9 687
Mercury	2 344	0 937
Total suspended solids	234 400	187 500
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Cathode Antimony Wash Water.

NSPS FOR THE PRIMARY ANTIMONY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of antimony metal produced by electrownnning	
Antimony	60 310	26 870
Arsenic	43 430	19 370
Mercury	4 687	1 875
Total suspended solids	468 700	375 000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

§ 421.145 [Reserved].

§ 421.146 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in primary antimony process wastewater introduced into a POTW shall not exceed the following values:

(a) Sodium Antimonate Autoclave Wastewater.

PSNS FOR THE PRIMARY ANTIMONY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of antimony contained in sodium antimonate product	
Antimony	30 150	13.440
Arsenic	21 720	9 687
Mercury	2 344	0 937

(b) Fouled Anolyte.

PSNS FOR THE PRIMARY ANTIMONY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of antimony metal produced by electrownnning	
Antimony	30 150	13 440
Arsenic	21 720	9 687
Mercury	2 344	0 937

(c) Cathode Antimony Washwater.

PSNS FOR THE PRIMARY ANTIMONY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of antimony metal produced by electrownnning	
Antimony	60 310	26.870
Arsenic	43 430	19 370
Mercury	4 687	1 875

§ 421.147 [Reserved].

Subpart O—Primary Beryllium Subcategory

§ 421.150 Applicability: description of the primary beryllium subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of beryllium by primary beryllium facilities processing beryllium ore concentrates or beryllium hydroxide raw materials.

§ 421.151 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

§ 421.152 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available:

(a) Solvent Extraction Raffinate from Bertrandite Ore.

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium carbonate produced from bertrandite ore as beryllium	
Beryllium	2,763 000	1,235 000
Chromium (total)	988 200	404 300
Copper	4,267 000	2,246 000
Cyanide (total)	651 300	[illegible]
Ammonia (as N)	299,400 000	131,600 000
Fluoride	78,610 000	44,700 000
Total suspended solids	92,090 000	43,800 000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(b) Solvent Extraction Raffinate from Beryl Ore.

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium carbonate produced from beryl ore as beryllium	
Beryllium	270.6	121.0
Chromium (total)	[illegible]	39.6
Copper	418.0	220.0
Cyanide (total)	[illegible]	26.4
Ammonia (as N)	29,330.0	12,890.0
Fluoride	7,700.0	4,378.0
Total suspended solids	9,020.0	4,290.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Beryllium Carbonate Filtrate.

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium carbonate produced as beryllium	
Beryllium	263.800	118.000
Chromium (total)	[illegible]	38.610
Copper	407.600	214.500
Cyanide (total)	62.210	25.740
Ammonia (as N)	28,590.000	12,570.000
Fluoride	7,508.000	4,269.000
Total suspended	8,795.000	4,183.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) Beryllium Hydroxide Filtrate.

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide produced as beryllium	
Beryllium	64.770	28.960
Chromium (total)	23.170	9.479
Copper	100.100	52.660
Cyanide (total)	15.270	6.319
Ammonia (as N)	7,020.000	3,086.000
Fluoride	1,843.000	1,048.000
Total suspended solids	2,159.000	1,027.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) Beryllium Oxide Calcining Furnace Wet Air Pollution Control.

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium oxide produced	
Beryllium	324.000	145.000
Chromium (total)	116.000	47.470
Copper	501.000	263.700

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Cyanide (total)	76.470	31.640
Ammonia (as N)	35,150.000	15,450.000
Fluoride	9,230.000	5,248.000
Total suspended solids	10,810.000	5,142.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(f) Beryllium hydroxide supernatant.

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide produced from scrap and residues as beryllium	
Beryllium	282.9	126.5
Chromium (total)	101.2	41.4
Copper	437.0	230.0
Cyanide (total)	66.7	27.6
Ammonia (as N)	30,660.0	13,480.0
Fluoride	8,050.0	4,577.0
Total suspended solids	9,430.0	4,485.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) Process water.

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium pebbles produced	
Beryllium	215.00	96.14
Chromium (total)	76.91	31.46
Copper	332.10	174.80
Cyanide (total)	[illegible]	[illegible]
Ammonia (as N)	23,300.00	10,240.00
Fluoride	6,118.00	3,479.00
Total suspended solids	7,167.00	3,409.00
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) Fluoride furnace scrubber.

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium pebbles produced	
Beryllium	0.000	0.000
Chromium (total)	0.000	0.000
Copper	0.000	0.000
Cyanide (total)	[illegible]	0.000
Ammonia (as N)	0.000	0.000
Fluoride	0.000	[illegible]
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) Chip treatment wastewater.

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium scrap chips treated	
Beryllium	9.533	4.263
Chromium (total)	3.410	1.395
Copper	14.730	7.750
Cyanide (total)	2.248	0.930
Ammonia (as N)	1,033.000	454.200
Fluoride	271.300	154.200
Total suspended solids	317.800	151.100
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(j) Beryllium Pebble Plant Area Vent Wet Air Pollution Control.

BPT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium pebbles produced	
Beryllium	0.000	[illegible]
Chromium (total)	0.000	0.000
Copper	0.000	0.000
Cyanide (total)	[illegible]	0.000
Ammonia (as N)	[illegible]	0.000
Fluoride	[illegible]	[illegible]
Total suspended solids	0.000	0.000
pH	[illegible]	[illegible]

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.153 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) Solvent extraction raffinate from bertrandite ore.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium carbonate produced from bertrandite ore as beryllium	
Beryllium	1,842.000	[illegible]
Chromium (total)	831.000	[illegible]
Copper	2,875.000	1,370.000
Cyanide (total)	449.200	[illegible]
Ammonia (as N)	299,400.000	[illegible]
Fluoride	78,610.000	44,700.000

(b) Solvent extraction raffinate from beryl ore.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium carbonate produced from beryl ore as beryllium	
Beryllium	180.4	81.4
Chromium (total)	81.4	33.0
Copper	281.6	134.2
Cyanide (total)	44.0	17.6
Ammonia (as N)	29,330.0	12,890.0
Fluoride	7,700.0	4,378.0

(c) Beryllium carbonate filtrate.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium carbonate produced as beryllium	
Beryllium	175 900	79 370
Chromium (total)	79 370	32 180
Copper	274 600	130 800
Cyanide (total)	42 900	17 160
Ammonia (as N)	28,590 000	12,570 000
Fluoride	7,508 000	4,269 000

(d) Beryllium hydroxide filtrate.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide produced as beryllium	
Beryllium	43 180	19 480
Chromium (total)	19 480	7 899
Copper	67 400	32 120
Cyanide (total)	10 530	4 213
Ammonia (as N)	7,020 000	3,086 000
Fluoride	1,843 000	1,048 000

(e) Beryllium oxide calcining furnace wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium oxide produced	
Beryllium	216.20	97.57
Chromium (total)	97.57	39.56
Copper	337.50	160.90
Cyanide (total)	52.74	21.10
Ammonia (as N)	35,150.00	15,450.00
Fluoride	9,230.00	5,248.00

(f) Beryllium hydroxide supernatant.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide produced from scrap and residues as beryllium	
Beryllium	188.6	85.1
Chromium (total)	85.1	34.5
Copper	294.4	140.3
Cyanide (total)	46.0	18.4
Ammonia (as N)	30,660.0	13,480.0
Fluoride	8,050.0	4,577.0

(g) Process water.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium pebbles produced	
Beryllium	143.30	64.68
Chromium (total)	64.68	26.22
Copper	223.70	106.60
Cyanide (total)	34.96	13.98
Ammonia (as N)	23,300.00	10,240.00
Fluoride	6,118.00	3,479.00

(h) Fluoride furnace scrubber.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium pebbles produced	
Beryllium	0.000	0.000
Chromium (total)	0.000	0.000
Copper	0.000	0.000
Cyanide (total)	0.000	0.000
Ammonia (as N)	0.000	0.000
Fluoride	0.000	0.000

(i) Chip treatment wastewater.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium scrap chips treated	
Beryllium	6.355	2.868
Chromium (total)	2.868	1.163
Copper	9.920	4.728
Cyanide (total)	1.550	0.620
Ammonia (as N)	1,033.000	454.200
Fluoride	271.300	154.200

(j) Beryllium pebble plant area vent wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium pebbles produced	
Beryllium	0.000	0.000
Chromium (total)	0.000	0.000
Copper	0.000	0.000
Cyanide (total)	0.000	0.000
Ammonia (as N)	0.000	0.000
Fluoride	0.000	0.000

§ 421.154 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) Solvent extraction raffinate from bertrandite ore.

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds million pounds) of beryllium carbonate produced from bertrandite ore as beryllium	
Beryllium	1,842 000	831 000
Chromium (total)	831 000	336 900
Copper	2,875 000	1,370 000
Cyanide (total)	449 200	179 700
Ammonia (as N)	299,400.000	131,600 000
Fluoride	78,610 000	44,700 000
Total Suspended solids	33,690 000	26,950 000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) Solvent extraction raffinate from beryl ore.

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium carbonate produced from beryl ore as beryllium	
Beryllium	180.4	81.4
Chromium (total)	81.4	33.0
Copper	281.6	134.2
Cyanide (total)	44.0	17.6
Ammonia (as N)	29,330.0	12,890.0
Fluoride	7,700.0	4,378.0
Total Suspended solids	3,300.0	2,640.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Beryllium carbonate filtrate.

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium carbonate produced as beryllium	
Beryllium	175.900	79.370
Chromium (total)	79.370	32.180
Copper	274.600	130.800
Cyanide (total)	42.900	17.160
Ammonia (as N)	28,590.000	12,579.000
Fluoride	7,508.000	4,269.000
Total Suspended solids	3,218.000	2,574.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) Beryllium hydroxide filtrate.

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide produced as beryllium	
Beryllium	43.180	19.480
Chromium (total)	19.480	7.899
Copper	67.400	32.120
Cyanide (total)	10.530	4.213
Ammonia (as N)	7,020.000	3,086.000
Fluoride	1,843.000	1,048.000
Total Suspended solids	789.900	631.900
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) Beryllium oxide calcining furnace wet air pollution control.

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium oxide produced	
Beryllium	216.20	97.57
Chromium (total)	95.57	39.56
Copper	337.50	160.90
Cyanide (total)	52.74	21.10
Ammonia (as N)	35,150.00	15,450.00
Fluoride	9,230.00	5,248.00
Total suspended solids	3,956.00	3,164.00
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) Beryllium hydroxide supernatant.

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide produced from scrap and residues as beryllium	
Beryllium	188.6	85.1
Chromium (total)	85.1	34.5

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Copper	294.4	140.3
Cyanide (total)	46.0	18.4
Ammonia (as N)	30,660.0	13,480.0
Fluoride	8,050.0	4,577.0
Total Suspended solids	3,450.0	2,760.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) Process water.

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium pebbles produced	
Beryllium	143.30	64.60
Chromium (total)	64.58	26.22
Copper	223.70	106.60
Cyanide (total)	34.96	13.98
Ammonia (as N)	23,300.00	10,240.00
Fluoride	6,118.00	3,479.00
Total suspended solids	2,622.00	2,098.00
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) Fluoride furnance scrubber.

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium pebbles produced	
Beryllium	0.000	0.000
Chromium (total)	0.000	0.000
Copper	0.000	0.000
Cyanide (total)	0.000	0.000
Ammonia (as N)	0.000	0.000
Fluoride	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) Chip treatment wastewater.

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium scrap chips treated	
Beryllium	6.355	2.668
Chromium (total)	2.868	1.163
Copper	9.920	4.728
Cyanide (total)	1.550	0.620
Ammonia (as N)	1,033.000	454.200
Fluoride	271.300	154.200
Total suspended solids	116.300	81.700
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) Beryllium pebble plant area vent wet air pollution control.

NSPS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium pebbles produced	
Beryllium	0.000	0.000
Chromium (total)	0.000	0.000
Copper	0.000	0.000
Cyanide (total)	0.000	0.000
Ammonia (as N)	0.000	0.000
Fluoride	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.155 [Reserved].

§ 421.156 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in primary beryllium process wastewater introduced into a POTW shall not exceed the following values:

(a) Solvent extraction raffinate from bertrandite ore.

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium carbonate produced from bertrandite ore as beryllium	
Beryllium	1,842.000	831.000
Chromium (total)	831.000	336.900
Copper	2,875.000	1,370.000
Cyanide (total)	449.200	179.700
Ammonia (as N)	299,400.000	131,600.000
Fluoride	78,610.000	44,700.000

(b) Solvent extraction raffinate from beryl ore.

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium carbonate produced from beryl ore as beryllium	
Beryllium	180.4	81.4
Chromium (total)	81.4	33.0
Copper	281.6	134.2
Cyanide (total)	44.0	17.6
Ammonia (as N)	29,330.0	12,890.0
Fluoride	7,700.0	4,378.0

(c) Beryllium carbonate filtrate.

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium carbonate produced as beryllium	
Beryllium	175.900	79.370
Chromium (total)	79.370	[illegible]
Copper	274.600	130.800
Cyanide (total)	[illegible]	17.160
Ammonia (as N)	28,590.000	12,570.000
Fluoride	7,508.000	4,269.000

(d) Beryllium hydroxide filtrate.

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide produced as beryllium	
Beryllium	43.160	19.480
Chromium (total)	[illegible]	[illegible]
Copper	67.400	32.120
Cyanide (total)	10.530	4.213
Ammonia (as N)	7,020.000	3,086.000
Fluoride	1,843.000	1,048.000

(e) Beryllium oxide calcining furnace wet air pollution control.

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium oxide produced	
Beryllium	216.20	97.57
Chromium (total)	97.57	[illegible]
Copper	337.50	160.90
Cyanide (total)	52.74	21.10
Ammonia (as N)	35,150.00	15,450.00
Fluoride	9,230.00	5,248.00

(f) Beryllium hydroxide supernatant

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of beryllium hydroxide produced from scrap and residues as beryllium	
Beryllium	188.6	85.1
Chromium (total)	85.1	34.5
Copper	294.4	140.3
Cyanide (total)	46.0	18.4
Ammonia (as N)	30,680.0	13,480.0
Fluoride	8,050.0	4,577.0

(g) Process water.

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg pounds per million pounds of beryllium pebbles produced	
Beryllium	143.30	64.68
Chromium (total)	[illegible]	26.22
Copper	223.70	106.60
Cyanide (total)	34.96	13.98
Ammonia (as N)	23,300.00	10,240.00
Fluoride	6,118.00	3,479.00

(h) Fluoride furnace scrubber.

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg pounds per million pounds of beryllium pebbles produced	
Beryllium	0.000	0.000
Chromium (total)	0.000	0.000
Copper	0.000	0.000
Cyanide (total)	0.000	0.000
Ammonia (as N)	0.000	0.000
Fluoride	0.000	0.000

(i) Chip treatment wastewater.

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg pounds per million pounds of beryllium scrap chips treated	
Beryllium	6.355	2.868
Chromium (total)	2.868	1.163
Copper	9.920	4.728
Cyanide (total)	1.550	[illegible]
Ammonia (as N)	1,033.000	454.200
Fluoride	271.300	154.200

(j) Beryllium pebble plant area vent wet air pollution control

PSNS FOR THE PRIMARY BERYLLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg pounds per million pounds of beryllium pebbles produced	
Beryllium	0.000	0.000
Chromium (total)	0.000	0.000
Copper	0.000	0.000
Cyanide (total)	0.000	0.000
Ammonia (as N)	0.000	0.000
Fluoride	0.000	0.000

§ 421.157 [Reserved]

Subpart P—Primary and Secondary Germanium and Gallium Subcategory

§ 421.160 Applicability: description of the primary and secondary germanium and gallium subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of germanium or gallium from primary and secondary germanium and gallium facilities.

§ 421.161 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

§ 421.162 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available:

(a) Still liquor.

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium chlorinated	
Arsenic	131.700	58.590
Lead	26.460	12.600
Zinc	91.980	38.430
Fluoride	2,205.000	1,254.000
Total suspended solids	2,583.000	1,229.000
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(b) Chlorinator wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium [illegible]	
Arsenic	27.530	12.250
Lead	5.531	2.634
Zinc	19.230	8.034
Fluoride	461.000	262.100
Total suspended solids	540.000	256.800
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times

(c) Germanium hydrolysis filtrate.

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium hydrolyzed	
Arsenic	39 440	17 550
Lead	7 925	3 774
Zinc	27 550	11 510
Fluoride	660 500	375 500
Total suspended solids	773 700	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(d) Acid wash and rinse water.

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium washed	
Arsenic	325 500	144 800
Lead	65 400	31 140
Zinc	227 400	[illegible]
Fluoride	5,450 000	3,099 000
Total suspended solids	6,385 000	3,037 000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) Gallium hydrolysis filtrate.

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of gallium hydrolyzed	
Arsenic	70 450	31 350
Lead	14 160	6 742
Zinc	49 220	20 560
Fluoride	1,180 000	670 800
Total suspended solids	1,382 000	657 300
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(f) Solvent extraction raffinate.

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of gallium produced by solvent extraction	
Arsenic	39 330	17 500
Lead	7 904	3 764
Zinc	27 480	11 480
Fluoride	658 700	374 500

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Total suspended solids	771 600	367 000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.183 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) Still liquor.

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium [illegible]	
Arsenic	131 700	58 590
Lead	[illegible]	12 600
Zinc	91 960	38 430
Fluoride	2,205 000	1,254 000

(b) Chlorinator wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium [illegible]	
Arsenic	27 530	12 250
Lead	5 531	2 634
Zinc	19 230	8 034
Fluoride	461 000	262 100

(c) Germanium hydrolysis filtrate.

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium hydrolyzed	
Arsenic	39 440	17 550

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Lead	7 925	3 774
Zinc	27 550	11 510
Fluoride	[illegible]	375 500

(d) Acid wash and rinse water.

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium washed	
Arsenic	325 50	144 80
Lead	[illegible]	31 14
Zinc	227 40	[illegible]
Fluoride	5,450 00	3,099 00

(e) Gallium hydrolysis filtrate.

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium hydrolyzed	
Arsenic	70 450	31 350
Lead	14 160	6 742
Zinc	49 220	20 560
Fluoride	1,180 000	670 800

(f) Solvent extraction raffinate.

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of gallium produced by solvent extraction	
Arsenic	[illegible]	17 500
Lead	7 904	3 764
Zinc	27 480	11 480
Fluoride	658 700	374 500

§ 421.184 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) Still liquor.

NSPS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium chlorinated	
Arsenic	131.70	58.59
Lead	26.46	12.60
Zinc	91.98	38.43
Fluoride	2,205.00	1,254.00
Total suspended solids	2,583.00	1,229.00
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(b) Chlorinator wet air pollution control.

NSPS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium chlorinated	
Arsenic	27.530	12.250
Lead	5.531	2.634
Zinc	19.230	8.034
Fluoride	461.000	262.100
Total suspended solids	540.000	256.800
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(c) Germanium hydrolysis filtrate.

NSPS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for 1 one day	Maximum for monthly average
	mg/kg pounds per million pounds) of germanium hydrolyzed	
Arsenic	39.440	17.550
Lead	7.925	3.774
Zinc	27.550	11.510
Fluoride	660.500	375.500
Total suspended solids	773.700	368.000
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(d) Acid wash and rinse water.

NSPS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium washed	
Arsenic	325.50	144.80
Lead	65.40	31.14
Zinc	227.40	94.99
Fluoride	5,450.00	3,099.00
Total suspended solids	6,385.00	3,037.00
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(e) Gallium hydrolysis filtrate.

NSPS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of gallium hydrolyzed	
Arsenic	70.450	31.350
Lead	14.160	6.742
Zinc	49.220	20.560
Fluoride	1,180.000	[illegible]
Total suspended solids	1,382.000	657.300
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(f) Solvent extraction raffinate.

NSPS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of gallium produced by solvent extraction	
Arsenic	39.330	17.500
Lead	7.904	3.764
Zinc	27.480	11.480
Fluoride	658.700	374.500
Total suspended solids	771.600	367.000
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

§ 421.185 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The mass of wastewater pollutants in primary and secondary germanium and gallium process wastewater introduced into a POTW must not exceed the following values:

(a) Still liquor.

PSES FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium chlorinated	
Arsenic	131.70	58.59
Lead	26.46	12.60
Zinc	91.98	38.43
Fluoride	2,205.00	1,254.00

(b) Chlorinator wet air pollution control.

PSES FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium chlorinated	
Arsenic	27.530	12.250
Lead	5.531	2.634
Zinc	19.230	8.034
Fluoride	461.000	262.100

(c) Germanium hydrolysis filtrate.

PSES FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium hydrolyzed	
Arsenic	39.440	17.550
Lead	7.925	3.774
Zinc	27.550	11.510
Fluoride	660.500	375.500

(d) Acid wash and rinse water.

PSES FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of germanium washed	
Arsenic	325.50	144.80
Lead	65.40	31.14
Zinc	227.40	94.99
Fluoride	5,450.00	3,099.00

(e) Gallium hydrolysis filtrate.

PSES FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of gallium hydrolyzed	
Arsenic	70.450	31.350
Lead	14.160	6.742
Zinc	49.220	20.560
Fluoride	1,180.000	670.800

(f) Solvent extraction raffinate.

PSES FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of gallium produced by solvent extraction	
Arsenic	[illegible]	17.500
Lead	7 904	3 764
Zinc	27 480	11 480
Fluoride	[illegible]	374 500

§ 421.186 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in primary and secondary germanium and gallium process wastewater introduced into a POTW shall not exceed the following values:

(a) Still Liquor.

PSNS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per/million pounds of germanium chlorinated	
Arsenic	131.70	[illegible]
Lead	26 46	12 60
Zinc	91 98	38 43
Fluoride	2,205 00	1,254 00

(b) Chlorinator Wet Air Pollution Control.

PSNS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per/million pounds of germanium chlorinated	
Arsenic	27.530	12.250
Lead	5 531	2 634
Zinc	19.230	8 034
Fluoride	461 000	262 100

(c) Germanium Hydrolysis Filtrate.

PSNS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per/million pounds of germanium hydrolyzed	
Arsenic	39 440	17 550
Lead	7.925	3.774
Zinc	27 550	11.510
Fluoride	[illegible]	[illegible]

(d) Acid Wash and Rinse Water.

PSNS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per/million pounds of germanium washed	
Arsenic	325.50	144 80
Lead	65.40	31.14
Zinc	[illegible]	[illegible]
Fluoride	5,450.00	[illegible]

(e) Gallium Hydrolysis Filtrate.

PSNS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of gallium hydrolyzed	
Arsenic	70 450	31 350
Lead	14.160	6 742
Zinc	49.220	20 560
Fluoride	1,180 000	670 800

(f) Solvent Extraction Raffinate.

PSNS FOR THE PRIMARY AND SECONDARY GERMANIUM AND GALLIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of gallium produced by solvent extraction	
Arsenic	[illegible]	17.500
Lead	7.904	3 764
Zinc	27.480	11 480
Fluoride	658 700	374 500

§ 421.187 [Reserved].

Subpart Q—Secondary Indium Subcategory

Sec.

§ 421.190 Applicability: description of the secondary indium subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of indium at secondary indium facilities processing spent electrolyte solutions and scrap indium metal raw materials.

§ 421.191 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

§ 421.192 [Reserved].

§ 421.193 [Reserved].

§ 421.194 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) Displacement Supernatant.

NSPS FOR THE SECONDARY INDIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of indium metal produced	
Cadmium	2 105	0 929
Lead	2 600	1 238
Zinc	8 037	3 776
Indium	2 724	1 114
Total suspended solids	253 800	120 700
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) Spent Electrolyte.

NSPS FOR THE SECONDARY INDIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cathode indium produced	
Cadmium	12.170	5 370
Lead	15 040	7 160
Zinc	52 270	[illegible]
Indium	15 750	6 444
Total suspended solids	1,468 000	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.195 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40

CFR Part 403 and achieve the following pretreatment standards for existing sources. The mass of wastewater pollutants in secondary indium process wastewater introduced into a POTW must not exceed the following values:

(a) Displacement Supernatant.

PSES FOR THE SECONDARY INDIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of indium metal produced	
Cadmium	2.105	0.929
Lead	2.600	1.238
Zinc	9.037	3.776
Indium	2.724	1.114

(b) Spent Electrolyte.

PSES FOR THE SECONDARY INDIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cathode indium produced	
Cadmium	12.170	5.370
Lead	15.040	7.160
Zinc	52.270	21.840
Indium	15.750	6.444

§ 421.196 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in secondary indium process wastewater introduced into a POTW should not exceed the following values:

(a) Displacement Supernatant.

PSNS FOR THE SECONDARY INDIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of indium metal produced	
Cadmium	2.105	0.929
Lead	2.600	1.238
Zinc	9.037	3.776
Indium	2.724	1.114

(b) Spent Electrolyte.

PSNS FOR THE SECONDARY INDIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cathode indium produced	
Cadmium	12.170	5.370
Lead	15.040	7.160
Zinc	52.270	21.840
Indium	15.750	6.444

§ 421.197 [Reserved]

Subpart R—Secondary Mercury Subcategory

§ 421.200 Applicability: description of the secondary mercury subcategory.

The provision of this subpart are applicable to discharges resulting from the production of mercury from secondary mercury facilities processing recycled mercuric oxide batteries and other mercury containing scrap raw materials.

§ 421.201 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

§ 421.202 [Reserved].

§ 421.203 [Reserved].

§ 421.204 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) Spent battery electrolyte.

NSPS FOR THE SECONDARY MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury produced from batteries	
Lead	0.030	0.014
Mercury	0.016	0.006
Total suspended solids	1.590	1.272
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(b) Acid wash and rinse water.

NSPS FOR THE SECONDARY MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury washed and rinsed	
Lead	0.00056	0.00026
Mercury	0.00030	0.00012

NSPS FOR THE SECONDARY MERCURY SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Total suspended solids	0.03000	0.02400
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Furnace wet air pollution control.

NSPS FOR THE SECONDARY MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury processed through furnace	
Lead	0.000	0.000
Mercury	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.205 [Reserved].

§ 421.206 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in secondary mercury process wastewater introduced into a POTW shall not exceed the following values:

(a) Spent battery electrolyte.

PSNS FOR THE SECONDARY MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury produced from batteries	
Lead	0.030	0.014
Mercury	0.016	0.006

(b) Acid wash and rinse water.

PSNS FOR THE SECONDARY MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury washed and rinsed	
Lead	0.00056	0.00026
Mercury	0.00030	0.00012

(c) Furnance wet air pollution control.

PSNS FOR THE SECONDARY MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds of mercury processed through furnace	
Lead	0.000	0.000
Mercury	0.000	0.000

§ 421.207 [Reserved].

Subpart S—Primary Molybdenum and Rhenium Subcategory

§ 421.210 Applicability: description of the primary molybdenum and rhenium subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of molybdenum and rhenium facilities.

§ 421.211 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

§ 421.212 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitation representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available:

(a) Molybdenum sulfide leachate.

BPT LIMITATIONS FOR THE PRIMARY MOLYBDENUM RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum monthly average
	mg/kg (pounds per million pounds) of molybdenum sulfide leached	
Arsenic	0.968	0.431
Lead	0.195	0.093
Nickle	0.889	0.588
Selenium	0.570	0.255
Molybdenum	3.060	1.583
Ammonia (as N)	61.720	27.130
Fluoride	16.210	9.214
Total suspended solids	18.980	9.029
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) Roaster SO_2 scrubber.

BPT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum sulfide roasted	
Arsenic	3.509	1.561
Lead	0.705	0.336
Nickel	3.224	2.133
Selenium	2.065	0.924
Molybdenum	1.100	5.742
Ammonia (as N)	223.800	98.390
Fluoride	58.770	33.410
Total suspended solids	68.840	32.740
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Molybdic oxide leachate.

BPT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum contained in molybdic oxide leached	
Arsenic	24.210	10.770
Lead	4.865	2.317
Nickel	22.240	14.710
Selenium	14.250	6.371
Molybdenum	76.570	39.620
Ammonia (as N)	1,544.000	678.800
Flounde	405.400	230.500
Total suspended solids	474.900	225.900
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(d) Hydrogen reduction furnace scrubber.

BPT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum metal powder produced	
Arsenic	47.860	21.300
Lead	9.617	4.580
Nickel	43.970	[illegible]
Selenium	28.170	12.600
Molybdenum	151.400	78.310
Ammonia (as N)	3,052.000	1,342.000
Fluoride	801.400	455.700
Total suspended solids	[illegible]	446.500
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(e) Depleted rhenium scrubbing solution.

BPT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum sulfide roasted	
Arsenic	1.497	0.666

BPT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Lead	0.301	0.143
Nickel	1.375	0.909
Selenium	0.881	0.394
Molybdenum	4.733	2.449
Ammonia (as N)	95.440	41.960
Fluoride	25.050	14.250
Total suspended solids	29.360	13.960
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

§ 421.213 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) Molybdenum sulfide leachate.

BAT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds million pounds) of molybdenum sulfide leached	
Arsenic	0.644	0.287
Lead	0.130	0.060
Nickel	0.255	0.171
Selenium	0.380	0.171
Molybdenum	2.329	1.032
Ammonia (as N)	61.720	27.130
Fluoride	16.210	9.214

(b) Roaster SO_2 scrubber.

BAT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum sulfide roasted	
Arsenic	2.334	1.041
Lead	0.470	0.218
Nickel	0.924	0.621
Selenium	1.377	0.621
Molybdenum	8.445	3.744
Ammonia (as N)	223.800	[illegible]
Fluoride	58.770	33.410

(c) Molybdic oxide leachate.

BAT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum contained in molybdic oxide leached	
Arsenic	16 100	7 182
Lead	3 244	1 506
Nickel	6 371	4 286
Selenium	9 499	4 286
Molybdenum	58 270	25 830
Ammonia (as N)	1 544 000	678 800
Fluoride	405 400	230 500

(d) Hydrogen reduction furnace scrubber.

BAT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum metal powder produced	
Arsenic	3 183	1 420
Lead	0 641	0 298
Nickel	1 260	0 847
Selenium	1 878	0 847
Molybdenum	11 520	5 107
Ammonia (as N)	305 300	134 200
Fluoride	80 150	45 570

(e) Depleted rhenium scrubbing solution.

BAT LIMITATIONS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum sulfide roasted	
Arsenic	0 995	0 444
Lead	0 201	0 093
Nickel	0 394	0 265
Selenium	0 587	0 265
Molybdenum	3 601	1 597
Ammonia (as N)	95 440	41 960
Fluoride	25 060	14 250

§ 421.214 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) Molybdenum sulfide leachate.

NSPS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum sulfide leached	
Arsenic	0 644	0.287

NSPS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Lead	0 130	0 060
Nickel	0 255	0 171
Selenium	0 380	0 171
Molybdenum	2 329	1 032
Ammonia (as N)	61 720	27 130
Fluoride	16 210	9 214
Total suspended solids	6 945	5 556
pH	(1)	(1)

[1] Within the range of 7 5 to 10 0 at all times

(b) Roaster SO_2 scrubber.

NSPS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum sulfide roasted	
Arsenic	2 334	1 041
Lead	0 470	0 218
Nickel	0 924	0 621
Selenium	1 377	0 621
Molybdenum	8 445	3 744
Ammonia (as N)	223 800	[illegible]
Fluoride	58 770	33 410
Total suspended solids	25 190	20 150
pH	(1)	(1)

[1] Within the range of 7 5 to 10.0 at all times

(c) Molybdic oxide leachate.

NSPS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum contained in molybdic oxide leached	
Arsenic	16 100	7 182
Lead	3 244	1 506
Nickel	6 371	4 286
Selenium	9 499	4 286
Molybdenum	58 270	25 830
Ammonia (as N)	1,544 000	678 800
Fluoride	405 400	230 500
Total suspended solids	173 800	139 000
pH	(1)	(1)

[1] Within the range of 7.5 to 10 0 at all times

(d) Hydrogen reduction furnace scrubber.

NSPS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum metal powder produced	
Arsenic	3 183	1 420
Lead	0 641	0 298
Nickel	1 260	0 847
Selenium	1 878	0 847
Molybdenum	11 520	5 107
Ammonia (as N)	305 300	134 200
Fluoride	80 150	45 570

NSPS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Total suspended solids	34 350	27 480
pH	(1)	(1)

[1] Within the range of 7 5 to 10.0 at all times

(e) Depleted rhenium scrubbing solution.

NSPS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum sulfide roasted	
Arsenic	0 995	0 444
Lead	0 201	0 093
Nickel	0 394	0 265
Selenium	0 587	0 265
Molybdenum	3 601	1 597
Ammonia (as N)	95 440	41 960
Fluoride	25 060	14 250
Total suspended solids	10 740	8 592
pH	(1)	(1)

[1] Within the range of 7.5 to 10 0 at all times.

§ 421.215 [Reserved].

§ 421.216 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in primary molybdenum and rhenium process wastewater introduced into a POTW shall not exceed the following values:

(a) Molybdenum sulfide leachate.

PSNS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum sulfide leached	
Arsenic	0 644	0.287
Lead	0 130	0 060
Nickel	0 255	0.171
Selenium	0 380	0 171
Molybdenum	2 329	1 032
Ammonia (as N)	61 720	27 130
Fluoride	16 210	9.214

(b) Roaster SO_2 scrubber.

PSNS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum sulfide roasted	
Arsenic	2.334	1.041
Lead	0.470	0.218
Nickel	0.924	0.621
Selenium	1.377	0.621
Molybdenum	8.445	3.744
Ammonia (as N)	223.800	[illegible]
Fluoride	58.770	33.410

(c) Molybdic oxide leachate.

PSNS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly [illegible]
	mg/kg (pounds per million pounds) of molybdenum contained in molybdic oxide leached	
Arsenic	16.100	7.182
Lead	3.244	1.506
Nickel	6.371	4.286
Selenium	9.499	4.286
Molybdenum	58.270	25.830
Ammonia (as N)	1,544.000	678.800
Fluoride	405.400	230.500

(d) Hydrogen reduction furnace scrubber.

PSNS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum metal powder produced	
Arsenic	3.183	1.420
Lead	0.641	0.298
Nickel	1.260	0.847
Selenium	1.878	0.847
Molybdenum	11.520	5.107
Ammonia (as N)	305.300	134.200
Fluoride	80.150	45.570

(e) Depleted rhenium scrubbing solution.

PSNS FOR THE PRIMARY MOLYBDENUM AND RHENIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum sulfide roasted	
Arsenic	0.995	0.444
Lead	0.201	0.093
Nickel	0.394	0.265
Selenium	0.587	0.265
Molybdenum	3.601	1.597
Ammonia (as N)	95.440	41.960
Fluoride	25.060	14.250

§ 421.217 [Reserved].

Subpart T—Secondary Molybdenum and Vanadium Subcategory

§ 421.220 Applicability: description of the secondary molybdenum and vanadium subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of molybdenum or vanadium by secondary molybdenum and vanadium facilities.

§ 421.221 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

§ 421.222 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available:

(a) Leach tailings.

BPT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum and vanadium produced	
Arsenic	26.210	11.660
Chromium	5.518	2.257
Lead	5.267	2.508
Nickel	24.080	15.930
Iron	15.050	7.649
Molybdenum	[illegible]	[illegible]
Ammonia (as N)	5,192.000	2,282.000
Total suspended solids	514.100	244.500
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) Molybdenum filtrate solvent extraction raffinate.

BPT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum and vanadium produced	
Arsenic	126.50	56.31
Chromium	26.64	10.90
Lead	25.43	12.11
Nickel	116.30	76.90
Iron	72.66	36.93
Molybdenum	400.20	207.10
Ammonia (as N)	25,070.00	11,020.00
Total suspended solids	2,482.00	1,181.00

BPT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(c) Vanadium decomposition wet air pollution control.

BPT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of vanadium produced by decomposition	
Arsenic	[illegible]	0.000
Chromium	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Iron	0.000	0.000
Molybdenum	0.000	0.000
Ammonia (as N)	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(d) Molybdenum drying wet air pollution control.

BPT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum produced	
Arsenic	0.000	0.000
Chromium	0.000	0.000
Lead	0.000	[illegible]
Nickel	0.000	0.000
Iron	0.000	0.000
Molybdenum	0.000	0.000
Ammonia (as N)	0.000	0.000
Total suspended solids	0.000	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

§ 421.223 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) Leach tailings.

BAT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum and vanadium produced	
Arsenic	17.430	7.775
Chromium	4.640	1.881
Lead	3.511	1.630
Nickel	6.897	4.640
Iron	15.050	7.649
Molybdenum	63.080	27.960
Ammonia (as N)	5.192.000	2.282.000

(b) Molybdenum filtrate solvent extraction raffinate.

BAT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum and vanadium produced	
Arsenic	84.160	37.540
Chromium	22.400	9.082
Lead	16.950	7.871
Nickel	33.300	22.400
Iron	72.660	36.930
Molybdenum	304.600	135.000
Ammonia (as N)	25,070.000	11,020.00

(c) Vanadium decomposition wet air pollution control.

BAT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of vanadium produced by decomposition	
Arsenic	0.000	0.000
Chromium	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Iron	0.000	0.000
Molybdenum	0.000	0.000
Ammonia (as N)	0.000	0.000

(d) Molybdenum drying wet air pollution control.

BAT LIMITATIONS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum produced	
Arsenic	0.000	0.000
Chromium	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Iron	0.000	0.000
Molybdenum	0.000	0.000
Ammonia (as N)	0.000	0.000

§ 421.224 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) Leach tailings.

NSPS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum and vanadium produced	
Arsenic	17.430	7.775
Chromium	4.640	1.881
Lead	3.511	1.630
Nickel	6.897	4.640
Iron	15.050	7.649
Molybdenum	63.080	27.960
Ammonia (as N)	5.192.000	2.282.000
Total suspended solids	188.100	150.500
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) Molybdenum filtrate solvent extraction raffinate.

NSPS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum and vanadium produced	
Arsenic	84.160	37.540
Chromium	22.400	9.082
Lead	16.950	7.871
Nickel	33.300	22.400
Iron	72.660	36.930
Molybdenum	304.600	135.000
Ammonia (as N)	25,070.000	11,020.000
Total suspended solids	908.200	726.600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(c) Vanadium decomposition wet air pollution control.

NSPS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum and vanadium produced	
Arsenic	0.000	0.000
Chromium	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Iron	0.000	0.000
Molybdenum	0.000	0.000
Ammonia (as N)	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(d) Molybdenum drying wet air pollution control.

NSPS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum and vanadium produced	
Arsenic	0.000	0.000
Chromium	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Iron	0.000	0.000
Molybdenum	0.000	0.000
Ammonia (as N)	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

§ 421.225 [Reserved].

§ 421.226 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in secondary molybdenum and vanadium process wastewater introduced into a POTW shall not exceed the following values:

(a) Leach tailings.

PSNS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum and vanadium produced	
Arsenic	17.430	7.775
Chromium	4.640	1.881
Lead	3.511	1.630
Nickel	6.897	4.640
Iron	15.050	7.649
Molybdenum	63.080	27.960
Ammonia (as N)	5.192.000	2.282.000

(b) Molybdenum filtrate solvent extraction raffinate.

PSNS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum and vanadium produced	
Arsenic	84.160	37.540
Chromium	22.400	9.082
Lead	16.950	7.871
Nickel	33.300	22.400
Iron	72.660	[illegible]
Molybdenum	[illegible]	[illegible]
Ammonia (as N)	25,070.000	11,020.000

(c) Vanadium decomposition wet air pollution control.

PSNS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) vanadium produced by decomposition	
Arsenic	0.000	0.000
Chromium	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Iron	0.000	0.000
Molybdenum	0.000	0.000
Ammonia (as N)	0.000	0.000

(d) Molybdenum drying wet air pollution control.

PSNS FOR THE SECONDARY MOLYBDENUM AND VANADIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of molybdenum produced	
Arsenic	0.000	0.000
Chromium	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Iron	0.000	0.000
Molybdenum	0.000	0.000
Ammonia (as N)	0.000	0.000

§ 421.227 [Reserved].

Subpart U—Primary Nickel and Cobalt Subcategory

§ 421.230 Applicability: description of the primary nickel and cobalt subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of nickel or cobalt by primary nickel and cobalt facilities processing ore concentrate raw materials.

§ 421.231 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

§421.232 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available:

(a) Raw Material dust control.

BPT LIMITATIONS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of copper, nickel, and cobalt in the crushed raw material	
Copper	0.146	0.077
Nickel	0.148	0.098
Ammonia (as N)	10.260	4.512
Cobalt	0.016	0.007
Total suspended solids	3.157	1.502
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(b) Nickel wash water.

BPT LIMITATIONS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of nickel powder washed	
Copper	0.064	0.034
Nickel	0.065	0.043
Ammonia (as N)	4.515	1.985
Cobalt	0.007	0.003
Total suspended solids	1.389	0.660
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(c) Nickel reduction decant.

BPT LIMITATIONS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of nickel produced	
Copper	24.120	12.700
Nickel	24.370	16.120
Ammonia (as N)	1,692.000	743.900
Cobalt	2.664	1.143
Total suspended solids	329.500	247.600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) Cobalt reduction decant.

BPT LIMITATIONS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	40.660	21.400
Nickel	41.080	27.180
Ammonia (as N)	2,852.000	1,254.000
Cobalt	4.494	1.926
Total suspended solids	877.300	417.300
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

§ 421.233 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) Raw material dust control.

BAT LIMITATIONS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of copper, nickel, and cobalt in the crushed raw material	
Copper	0.089	0.047
Nickel	0.104	0.075
Ammonia (as N)	10.260	4.512
Cobalt	0.011	0.008

(d) Nickel wash water.

BAT LIMITATIONS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of nickel powder washed	
Copper	0.043	0.021
Nickel	0.019	0.013
Ammonia (as N)	4.515	1.985
Cobalt	0.005	0.002

(c) Nickel reduction decant.

BAT LIMITATIONS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of nickel produced	
Copper	16.250	7.744
Nickel	6.982	4.697
Ammonia (as N)	1,692.000	743.900
Cobalt	1.777	0.889

(d) Cobalt reduction decant.

BAT LIMITATIONS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	27.390	13.050

BAT LIMITATIONS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Nickel	11 770	7 917
Ammonia (as N)	2,852 000	1,254 000
Cobalt	2 996	1 498

§ 421.234 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) Raw Material Dust Control.

NSPS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of copper, nickel, and cobalt in the crushed raw material	
Copper	0 099	0 047
Nickel	0 042	0 028
Ammonia (as N)	10 260	4 512
Cobalt	0 011	0 005
Total suspended solids	1 155	0 924
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times

(b) Nickel wash water.

NSPS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of nickel powder washed	
Copper	0 043	0 021
Nickel	0 019	0 013
Ammonia (as N)	4 515	1 985
Cobalt	0 005	0 002
Total suspended solids	0 508	0 406
pH	(1)	(1)

(1) Within the range of 7 5 to 10 0 at all times

(c) Nickel reduction decant.

NSPS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of nickel produced	
Copper	16 250	7 744
Nickel	6 982	4 697
Ammonia (as N)	1,692 000	743 900
Cobalt	1 777	0 889
Total suspended solids	190 400	152 300
pH	(1)	(1)

(1) Within the range of 7 5 to 10 0 at all times

(d) Cobalt reduction decant.

NSPS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	27 390	13 050
Nickel	11 770	7 917
Ammonia (as N)	2,852 000	1,254 000
Cobalt	2 996	1 498
Total suspended solids	321 000	256 800
pH	(1)	(1)

(1) Within the range of 7 5 to 10 0 at all times

§ 421.235 [Reserved].

§ 421.236 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with a 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in primary nickel and cobalt process wastewater introduced into a POTW shall not exceed the following values:

(a) Raw material dust control.

PSNS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of copper, nickel, and cobalt in the crushed raw material	
Copper	0 099	0 047
Nickel	0 042	0 028
Ammonia (as N)	10 260	4 512
Cobalt	0 011	0 005

(b) Nickel wash water.

PSNS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of nickel powder washed	
Copper	0 043	0 021
Nickel	0 019	0 013
Ammonia (as N)	4 515	1 985
Cobalt	0 005	0 002

(c) Nickel reduction decant.

PSNS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) nickel produced	
Copper	16.250	7 744
Nickel	6 982	4 697
Ammonia (as N)	1.692 000	743 900
Cobalt	1 777	0 889

(d) Cobalt reduction decant.

PSNS FOR THE PRIMARY NICKEL AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	27 390	13 050
Nickel	11 770	7 917
Ammonia (as N)	2 852 000	1,254 000
Cobalt	2 996	1 498

§ 421.237 [Reserved].

Subpart V—Secondary Nickel Subcategory

§ 421.240 Applicability: description of the secondary nickel subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of nickel by secondary nickel facilities processing slag, spent acids, or scrap metal raw materials.

§ 421.241 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

§ 421.242 [Reserved].

§ 421.243 [Reserved].

§ 421.244 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) Slag reclaim tailings.

NSPS FOR THE SECONDARY NICKEL SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of slag input to reclaim process	
Chromium (total)	5 653	2 313
Copper	24 410	12 850
Nickel	24 670	16 320
Total suspended solids	526 800	250 500
pH	(1)	(1)

(1) Within the range of 7 5 to 10 0 at all times

(b) Acid reclaim leaching filtrate.

NSPS FOR THE SECONDARY NICKEL SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of acid reclaim nickel produced	
Chromium (total)	2.198	0.899
Copper	9.491	4.995
Nickel	9.590	6.344
Total suspended solids	204.800	97.400
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(c) Acid reclaim leaching belt filter backwash.

NSPS FOR THE SECONDARY NICKEL SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of acid reclaim nickel produced	
Chromium (total)	0.528	0.216
Copper	2.278	1.199
Nickel	2.302	1.523
Total suspended solids	49.160	23.380
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

§ 421.245 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The mass of wastewater pollutants in secondary nickel process wastewater introduced into a POTW must not exceed the following values:

(a) Slag reclaim tailings.

PSES FOR THE SECONDARY NICKEL SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of slag input to reclaim process	
Chromium (total)	5.653	2.313
Copper	24.410	12.850
Nickel	24.670	16.320

(b) Acid reclaim leaching filtrate.

PSES FOR THE SECONDARY NICKEL SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of acid reclaim nickel produced	
Chromium (total)	2.198	0.899
Copper	9.491	4.995
Nickel	9.590	6.344

(c) Acid reclaim leaching belt filter backwash

PSES FOR THE SECONDARY NICKEL SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of acid reclaim nickel produced	
Chromium (total)	0.528	0.216
Copper	2.278	1.199
Nickel	2.392	1.523

§ 421.246 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in secondary nickel process wastewater introduced into a POTW shall not exceed the following values:

(a) Slag reclaim tailings.

PSNS FOR THE SECONDARY NICKEL SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of slag input to reclaim process	
Chromium (total)	5.653	2.313
Copper	24.410	12.850
Nickel	24.670	16.320

(b) Acid reclaim leaching filtrate.

PSNS FOR THE SECONDARY NICKEL SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of acid reclaim nickel produced	
Chromium (total)	2.198	0.899
Copper	9.491	4.995
Nickel	9.590	6.344

(c) Acid reclaim leaching belt filter backwash.

PSNS FOR THE SECONDARY NICKEL SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of acid reclaim nickel produced	
Chromium (total)	0.528	0.216
Copper	2.278	1.199
Nickel	2.392	1.523

§ 421.247 [Reserved].

Subpart W—Primary Precious Metals and Mercury Subcategory

§ 421.250 Applicability; description of the primary precious metals and mercury subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of gold, silver, or mercury by primary precious metals and mercury facilities.

§ 421.251 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

§ 421.252 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available:

(a) Smelter wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold and silver smelted	
Lead	0.148	0.059
Mercury	0.325	0.130
Silver	0.533	0.221
Zinc	1.896	0.793
Gold	0.130	
Oil and grease	26.000	15.600
Total suspended solids	53.300	25.350
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(b) Silver chloride reduction spent solution.

BPT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of silver reduced in solution	
Lead	0.168	0.080
Mercury	0.100	0.040
Silver	0.164	0.068
Zinc	0.584	0.244
Gold	0.040	
Oil and grease	8.000	4.800
Total suspended solids	16.400	7.800
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(c) Electrolytic cells wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold refined electrolytically	
Lead	83.160	39.600
Mercury	49.500	19.800
Silver	81.180	33.660
Zinc	289.100	120.800
Gold	19.800	
Oil and grease	3.960.000	2.376.000
Total suspended solids	8.118.000	3.861.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(d) Electrolyte preparation wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of silver in electrolyte produced	
Lead	0.021	0.010
Mercury	0.013	0.005
Silver	0.021	0.009
Zinc	0.073	0.031
Gold	0.005	
Oil and Grease	1.000	0.600
Total suspended solids	2.050	0.975
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(e) Calciner wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Lead	78.200	37.240
Mercury	46.550	18.620
Silver	76.340	31.650
Zinc	271.900	113.600
Gold	18.600	
Oil and Grease	3.724.000	2.234.000
Total suspended solids	7.634.000	3.631.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

BPT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(f) Calcine quench water.

BPT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Lead	7.392	3.520
Mercury	4.400	1.760
Silver	7.216	2.992
Zinc	25.700	10.740
Gold	1.760	
Oil and Grease	352.000	211.200
Total suspended solids	721.600	343.200
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) Calciner stack gas contact cooling water.

BPT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Lead	1.743	0.830
Mercury	1.038	0.415
Silver	1.702	0.706
Zinc	6.059	2.532
Gold	0.415	
Oil and Grease	83.000	49.800
Total suspended solids	170.200	80.930
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(h) Condenser blowdown.

BPT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Lead	5.796	2.760
Mercury	3.450	1.380
Silver	5.658	2.346
Zinc	20.150	8.418
Gold	1.380	
Oil and Grease	276.000	165.600
Total suspended solids	565.800	269.100
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(i) Mercury cleaning bath water.

BPT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Lead	0.588	0.280
Mercury	0.350	0.140
Silver	0.574	0.238
Zinc	2.044	0.854
Gold	0.140	
Oil and Grease	28.000	16.800
Total suspended solids	57.400	27.300
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

§ 421.253 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) Smelter wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold and silver smelted	
Lead	0.364	0.169
Mercury	0.195	0.078
Silver	0.377	0.156
Zinc	1.326	0.546
Gold	0.130	

(b) Silver chloride reduction spent solution.

BAT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of silver reduced in solution	
Lead	0.112	0.052
Mercury	0.060	0.024
Silver	0.116	0.048
Zinc	0.408	0.168
Gold	0.040	

(c) Electrolytic cells wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold refined electrolytically	
Lead	5.544	2.574
Mercury	2.970	1.188
Silver	5.742	2.376
Zinc	20.200	8.316
Gold	1.980	

(d) Electrolyte preparation wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of silver in electrolyte produced	
Lead	0.014	0.007
Mercury	0.008	0.003
Silver	0.015	0.006
Zinc	0.051	0.021
Gold	0.005	

(e) Calciner Wet Air Pollution Control.

BAT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Lead	6.160	2.866
Mercury	3.300	1.320
Silver	6.380	2.640
Zinc	22.440	9.240
Gold	2.200	

(f) Calcine quench water.

BAT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Lead	4.928	2.288
Mercury	2.640	1.056
Silver	5.104	2.112
Zinc	17.950	7.392
gold	1.760	

(g) Calciner stack gas contact cooling water.

BAT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Lead	1.162	0.540
Mercury	0.623	0.289
Silver	1.204	0.499
Zinc	4.233	1.743
gold	0.415	

(h) Condenser blowdown.

BAT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Lead	3.864	1.794
Mercury	2.070	0.828
Silver	4.002	1.656
Zinc	14.080	5.796
gold	1.380	

(i) Mercury cleaning bath water.

BAT LIMITATIONS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Lead	0.392	0.182
Mercury	0.210	0.084
Silver	0.406	0.168
Zinc	1.428	0.588
Gold	0.140	

§ 421.254 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) Smelter wet air pollution control.

NSPS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold and silver smelted	
Lead	0.364	0.169
Mercury	0.195	0.078
Silver	0.377	0.156
Zinc	1.326	0.546
Gold	0.130	
Oil and Grease	13.000	13.000
Total suspended solids	19.500	15.600
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times

(b) Silver chloride reduction spent solution.

NSPS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of silver reduced in solution	
Lead	0.112	0.056
Mercury	0.060	0.024
Silver	0.116	0.046
Zinc	0.408	0.168
Gold	0.020	
Oil and Grease	4.000	4.000
Total suspended solids	6.800	4.800
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(c) Electrolytic cells wet air pollution control.

NSPS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold refined electrolytically	
Lead	5.544	2.574
Mercury	2.970	1.188
Silver	5.742	2.376
Zinc	20.200	8.316
Gold	1.980	
Oil and Grease	130.000	130.000
Total suspended solids	297.000	297.000
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(d) Electrolyte preparation wet air pollution control.

NSPS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of silver in electrolyte produced	
Lead	0.014	0.007
Mercury	0.008	0.003
Silver	0.015	0.006
Zinc	0.051	0.021
Gold	0.005	
Oil and Grease	0.500	0.500
Total suspended solids	0.750	0.600
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(e) Calciner wet air pollution control.

NSPS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Lead	6.160	2.866
Mercury	3.300	1.320
Silver	6.380	2.640
Zinc	22.440	9.240

NSPS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Gold	2 200	
Oil and Grease	220 000	220 000
Total suspended solids	330 000	264 000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) Calcine quench water.

NSPS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Lead	4.928	2.288
Mercury	2.640	1.056
Silver	5.104	2.112
Zinc	17.950	7.392
Gold	1.760	
Oil and Grease	176.000	176.000
Total suspended solids	264.000	211.200
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) Calciner stack gas contract cooling water.

NSPS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Lead	1.162	0.540
Mercury	0.623	0.249
Silver	1.204	0.498
Zinc	4.233	1.743
Gold	0.415	
Oil and Grease	41.500	41.500
Total suspended solids	62.250	49.800
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) Condenser blowdown.

NSPS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Lead	3.864	1.794
Mercury	2.070	0.828
Silver	4.002	1.656
Zinc	14.080	5.796
Gold	1.380	
Oil and Grease	138.000	138.000
Total suspended solids	207.000	165.600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) Mercury cleaning bath water.

NSPS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of Mercury condensed	
Lead	0.392	0.182
Mercury	0.210	0.084
Silver	0.406	0.168
Zinc	1.428	0.588
Gold	0.140	
Oil and Grease	14.000	14.000
Total suspended solids	21.000	16.800
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.255 [Reserved].

§ 421.256 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in primary precious metals and mercury process wastewater introduced into a POTW shall not exceed the following values:

(a) Smelter wet air pollution control.

PSNS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold and silver smelted	
Lead	0.364	0.169
Mercury	0.195	0.078
Silver	0.377	0.156
Zinc	1.326	0.546
Gold	0.130	

(b) Silver chloride reduction spent solution.

PSNS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of silver reduced in solution	
Lead	0.112	0.052
Mercury	0.060	0.024
Silver	0.116	0.048
Zinc	0.408	0.168
Gold	0.040	

(c) Electrolytic cells wet air pollution control.

PSNS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold refined electrolytically	
Lead	5.544	2.574
Mercury	2.970	1.188
Silver	5.742	2.376
Zinc	20.200	8.316
Gold	1.980	

(d) Electrolyte preparation wet air pollution control.

PSNS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of silver in electrolyte produced	
Lead	0.014	0.007
Mercury	0.008	0.003
Silver	0.015	0.006
Zinc	0.051	0.021
Gold	0.005	

(e) Calciner wet air pollution control.

PSNS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Lead	6.160	2.860
Mercury	3.300	1.320
Silver	6.380	2.640
Zinc	22.440	9.240
Gold	2.200	

(f) Calcine quench water.

PSNS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Lead	4.928	2.288
Mercury	2.640	1.056
Silver	5.104	2.112
Zinc	17.950	7.392
Gold	1.760	

(g) Calciner stack gas contact cooling water.

PSNS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Lead	1.162	0.540
Mercury	0.623	0.249
Silver	1.204	0.498
Zinc	4.233	1.743
Gold	0.415	

(h) Condenser blowdown.

PSNS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Lead	3.864	1.794
Mercury	2.070	0.828
Silver	4.002	1.656
Zinc	14.080	5.656
Gold	1.380	

(i) Mercury cleaning bath water.

PSNS FOR THE PRIMARY PRECIOUS METALS AND MERCURY SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mercury condensed	
Lead	0.392	0.182
Mercury	0.210	0.084
Silver	0.406	0.168
Zinc	1.428	0.588
Gold	0.140	

§ 421.257 [Reserved].

Subpart X—Secondary Precious Metals Subcategory

§ 421.260 Applicability: description of the secondary precious metals subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of precious metals at secondary precious metals facilities.

§ 421.261 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

(b) The term "precious metals" shall mean gold, platinum, palladium, rhodium, iridium, osmium, and ruthenium.

§ 421.262 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available:

(a) Furnace wet air pollution control.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, incinerated or smelted	
Copper	136.400	71.800
Cyanide (total)	20.820	8.616
Zinc	104.800	43.800
Ammonia (as N)	9,571.000	4,207.000
Gold	7.180	
Platinum	7.180	
Palladium	7.180	
Total suspended solids	2,944.000	1,400.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) Raw material granulation.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metal in the granulated raw material	
Copper	12.050	6.340
Cyanide (total)	1.839	0.761
Zinc	9.256	3.867
Ammonia (as N)	845.100	371.500
Gold	0.634	
Platinum	0.634	
Palladium	0.634	
Total suspended solids	259.900	123.600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Spent plating solutions.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/liter of spent plating solution used as a raw material	
Copper	1.900	1.000
Cyanide (total)	0.290	0.120
Zinc	1.460	0.610
Ammonia (as N)	133.300	56.500
Gold	0.100	
Platinum	0.100	
Palladium	0.100	
Total suspended solids	41.000	19.500
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) Spent cyanide stripping solutions.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold produced by cyanide stripping	
Copper	7.030	3.700
Cyanide (total)	1.073	0.444
Zinc	5.402	2.257
Ammonia (as N)	493.200	216.800
Gold	0.370	
Platinum	0.370	
Palladium	0.370	
Total suspended solids	151.700	72.150
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) Refinery wet air pollution control.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, produced in refinery	
Copper	49.900	21.000
Cyanide (total)	6.780	2.520
Zinc	30.660	12.810
Ammonia (as N)	2,799.000	1,231.000
Gold	2.100	
Platinum	2.100	
Palladium	2.100	
Total suspended solids	857.000	357.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) Gold solvent extraction raffinate and wash water.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold produced by solvent extraction	
Copper	1.197	0.630
Cyanide (total)	0.183	0.076
Zinc	0.920	0.384
Ammonia (as N)	83.980	36.920
Gold	0.063	
Platinum	0.063	
Palladium	0.063	
Total suspended solids	25.830	12.290
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) Gold spent electrolyte.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold produced by electrolysis	
Copper	0.017	0.009
Cyanide (total)	0.003	0.001

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Zinc	0.103	0.005
Ammonia (as N)	1.160	0.510
Gold	0.001	
Platinum	0.001	
Palladium	0.001	
Total suspended solids	0.357	0.170
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) Gold precipitation and filtration.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold precipitated	
Copper	[illegible]	4.400
Cyanide (total)	1.276	0.528
Zinc	6.424	[illegible]
Ammonia (as N)	[illegible]	257.800
Gold	0.440	
Platinum	0.440	
Palladium	0.440	
Total suspended solids	180.400	85.800
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) Platinum precipitation and filtration.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of platinum precipitated	
Copper	[illegible]	5.200
Cyanide (total)	1.508	0.624
Zinc	7.592	3.172
Ammonia (as N)	[illegible]	304.700
Gold	0.520	
Platinum	0.520	
Palladium	0.520	
Total suspended solids	213.200	101.400
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) Palladium precipitation and filtration.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of palladium precipitated	
Copper	6.650	3.500
Cyanide (total)	1.015	0.420
Zinc	5.110	2.135
Ammonia (as N)	[illegible]	205.100
Gold	0.350	
Platinum	0.350	
Palladium	0.350	
Total suspended solids	143.500	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) Other platinum group metals precipitation and filtration.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of other platinum group metals precipitated	
Copper	[illegible]	5.200
Cyanide (total)	1.508	0.624
Zinc	7.592	3.172
Ammonia (as N)	693.200	304.700
Gold	0.520	
Platinum	0.520	
Palladium	0.520	
Total suspended solids	213.200	101.400
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) Spent solution from PGC salt production.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold contained in PGC product	
Copper	1.710	0.900
Cyanide (total)	0.261	0.108
Zinc	1.314	0.549
Ammonia (as N)	120.000	52.740
Gold	[illegible]	
Platinum	[illegible]	
Palladium	[illegible]	
Total suspended solids	36.900	17.550
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) Equipment and floor wash.

BPT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, produced in refinery	
Copper	[illegible]	[illegible]
Cyanide (total)	0.000	0.000
Zinc	0.000	[illegible]
Ammonia (as N)	0.000	0.000
Gold	0.000	0.000
Platinum	0.000	0.000
Palladium	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.263 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) Furnace wet air pollution control.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, incinerated or smelted	
Copper	5.760	2.745
Cyanide (total)	0.900	0.360
Zinc	4.590	1.890
Gold	0.450	
Palladium	0.450	
Platinum	0.450	
Ammonia (as N)	[illegible]	263.700

(b) Raw material granulation.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals in the granulated feed	
Copper	0.819	0.390
Cyanide (total)	0.128	0.051
Zinc	0.653	0.269
Gold	[illegible]	
Palladium	0.064	
Platinum	[illegible]	
Ammonia (as N)	85.310	37.500

(c) Spent plating solutions.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/liter of spent plating solution used as a raw material	
Copper	1.280	0.610
Cyanide (total)	0.200	0.080
Zinc	1.020	0.420
Gold	0.100	
Palladium	0.100	
Platinum	0.100	
Ammonia (as N)	133.300	[illegible]

(d) Spent cyanide stripping solutions.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold produced by cyanide stripping	
Copper	4.736	2.257
Cyanide (total)	0.740	0.296
Zinc	3.774	1.554
Gold	0.370	
Palladium	0.370	
Platinum	0.370	
Ammonia (as N)	493.200	216.800

(e) Refinery wet air pollution control.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, produced in refinery	
Copper	1.280	0 610
Cyanide (total)	0 200	0 080
Zinc	1 020	0 420
Gold	0 100	
Palladium	0 100	
Platinum	0 100	
Ammonia (as N)	133.300	58 600

(f) Gold solvent extraction raffinate and wash water.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold produced by solvent extraction	
Copper	0 806	0 384
Cyanide (total)	0 126	0.050
Zinc	0 643	0 265
Gold	0 063	
Palladium	0 063	
Platinum	0 063	
Ammonia (as N)	83 980	36 920

(g) Gold spent electrolyte.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold produced by electrolysis	
Copper	0.0111	0 0053
Cyanide (total)	0.0017	0.0007
Zinc	0 0089	0 0037
Gold	0 0010	
Palladium	0.0010	
Platinum	0 0010	
Ammonia (as N)	1.1600	0 5100

(h) Gold precipitation and filtration.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold precipitated	
Copper	5.632	2 684
Cyanide (total)	[illegible]	0.352
Zinc	4 488	1 848
Gold	0 440	
Palladium	0 440	
Platinum	0 440	
Ammonia (as N)	586 500	257 800

(i) Platinum precipitation and filtration.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of platinum precipitated	
Copper	5 [illegible]	3 172
Cyanide (total)	1 040	0 416
Zinc	5 304	2 184
Gold	0 520	
Palladium	0.520	
Platinum	0.520	
Ammonia (as N)	693 200	304 700

(j) Palladium precipitation and filtration.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of palladium precipitated	
Copper	4 480	2 135
Cyanide (total)	0 700	0 280
Zinc	3 570	1 470
Gold	0.350	
Palladium	0.350	
Platinum	0 350	
Ammonia (as N)	466 600	205 100

(k) Other platinum group metals precipitation and filtration.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of other platinum group metals precipitated	
Copper	6.656	3 172
Cyanide (total)	1.040	0 416
Zinc	5.304	2 184
Gold	0 520	
Palladium	0 520	
Platinum	0 520	0 520
Ammonia (as N)	693.200	304.700

(l) Spent solutions from PGC salt production.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold contained in PGC product	
Copper	1.152	0 549
Cyanide (total)	0 180	0.072
Zinc	0.918	0 378
Gold	0 090	
Palladium	0.090	
Platinum	0 090	
Ammonia (as N)	120.000	52 740

(m) Equipment and floor wash.

BAT LIMITATIONS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals including silver produced in refinery	
Copper	[illegible]	[illegible]
Cyanide (total)	[illegible]	[illegible]
Zinc	[illegible]	0 000
Gold	[illegible]	
Palladium	[illegible]	
Platinum	[illegible]	
Ammonia (as N)	0 000	[illegible]

§ 421.264 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) Furnace wet air pollution control.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver incinerated or smelted	
Copper	[illegible]	2 745
Cyanide (total)	[illegible]	[illegible]
Zinc	4 590	1 890
Gold	0 450	
Palladium	0 450	
Platinum	0 450	
Ammonia (as N)	[illegible]	263 700
Total suspended solids	[illegible]	54 000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) Raw material granulation.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals in the granulated [illegible]	
Copper	0.819	[illegible]
Cyanide (total)	[illegible]	0 051
Zinc	0 653	[illegible]
Gold	0.064	
Palladium	[illegible]	
Platinum	[illegible]	
Ammonia (as N)	85.310	37 500
Total suspended solids	[illegible]	7 680
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Spent plating solutions.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/liter of spent plating solution used as a raw material	
Copper	1 280	0 610
Cyanide (total)	0 200	[illegible]
Zinc	1 020	0 420
Gold	0 100	
Palladium	0 100	
Platinum	0 100	
Ammonia (as N)	133 300	[illegible]
Total suspended solids	15 000	12 000
pH	(1)	(1)

[1] Within the range of 7 5 to 10 0 at all times.

(d) Spent cyanide stripping solutions.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold produced by cyanide stripping	
Copper	4 736	2 257
Cyanide (total)	0 740	[illegible]
Zinc	3 774	1 554
Gold	0 370	
Palladium	0 370	
Platinum	0 370	
Ammonia (as N)	493 200	216 800
Total suspended solids	55 500	44 400
pH	(1)	(1)

[1] Within the range of 7 5 to 10 0 at all times

(e) Refinery wet air pollution control.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, produced in refinery	
Copper	1 280	0 610
Cyanide (total)	0 200	0 080
Zinc	1 020	0 420
Gold	0 100	
Palladium	0 100	
Platinum	0 100	
Ammonia (as N)	133 300	58 600
Total suspended solids	15 000	12 000
pH	(1)	(1)

[1] Within the range of 7 5 to 10 0 at all times

(f) Gold solvent extraction raffinate and wash water.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold produced by solvent extraction	
Copper	[illegible]	0 364
Cyanide (total)	0 126	0 050
Zinc	0 643	0 265

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Gold	0 063	
Palladium	0 063	
Platinum	0 063	
Ammonia (as N)	[illegible]	36 920
Total suspended solids	9 450	7 560
pH	(1)	(1)

[1] Within the range of 7 5 to 10 0 at all times.

(g) Gold spent electrolyte.

NSPS FOR THE SECONDARY PRECIUOS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold produced by electrolysis	
Copper	0 011	0 005
Cyanide (total)	0 002	0 001
Gold	0 001	
Palladium	0 001	
Platinum	0 001	
Zinc	0 009	0 004
Ammonia (as N)	1 160	0 510
Total suspended solids	0 131	0 104
pH	(1)	(1)

[1] Within the range of 7 5 to 10.0 at all times.

(h) Gold precipitation and filtration.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold [illegible]	
Copper	5 632	2 684
Cyanide (total)	0 880	0 352
Zinc	4 488	1 848
Gold	0 440	
Palladium	0 440	
Platinum	0 440	
Ammonia (as N)	586 500	257 800
Total suspended solids	66 00	52 800
pH	(1)	(1)

[1] Within the range of 7 5 to 10.0 at all times

(i) Platinum precipitation and filtration.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of platinum precipitated	
Copper	6 656	3 172
Cyanide (total)	1 040	0 416
Zinc	5 304	2 184
Gold	0 520	
Palladium	0 520	
Platinum	0 520	
Ammonia (as N)	693 200	304 700
Total suspended solids	78 000	62 400
pH	(1)	(1)

[1] Within the range of 7.5 to 10 0 at all times.

(j) Palladium precipitation and filtration.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of palladium precipitated	
Copper	4 480	2 135
Cyanide (total)	0 700	0 280
Zinc	3 570	1 470
Gold	0 350	
Palladium	0 350	
Platinum	0 350	
Ammonia (as N)	[illegible]	205 100
Total suspended solids	52 500	42 000
pH	(1)	(1)

[1] Within the range of 7 5 to 10 0 at all times

(k) Other platinum group metals precipitation and filtration.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of other platinum group metals precipitated	
Copper	6 656	3.172
Cyanide (total)	1 040	0.416
Zinc	5 304	2 184
Gold	0 520	
Palladium	0 520	
Platinum	0 520	
Ammonia (as N)	[illegible]	304 700
Total suspended solids	78 000	62 400
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) Spent solution from PGC salt production.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold contained in PGC product	
Copper	1 152	0 549
Cyanide (total)	0 180	0.072
Zinc	0 918	0 378
Gold	0 090	
Palladium	0 090	
Platinum	0 090	
Ammonia (as N)	120 000	52 740
Total suspended solids	13.500	10 800
pH	(1)	(1)

[1] Within the range of 7 5 to 10.0 at all times.

(m) Equipment and floor wash.

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, produced in refinery	
Copper	0 000	0 000
Cyanide (total)	0 000	0 000
Zinc	0 000	[illegible]
Gold	0 000	

NSPS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Palladium	0 000	
Platinum	0 000	
Ammonia (as N)	0 000	0 000
Total suspended solids	0 000	0 000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

§ 421.265 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The mass of wastewater pollutants in secondary precious metals process wastewater introduced into a POTW must not exceed the following values:

(a) Furnace wet air pollution control.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY [1]

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, incinerated or smelted	
Copper	5.760	2.745
Cyanide (total)	0 900	0 360
Zinc	4.590	1 890
Gold	0.450	
Palladium	0 450	
Platinum	0 450	
Ammonia (as N)	599 900	263 700

(b) Raw material granulation.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals in the granulated raw material	
Copper	0 819	0 390
Cyanide (total)	0 126	0 051
Zinc	0.653	0.269
Gold	0 064	
Palladium	0 064	
Platinum	0 064	
Ammonia (as N)	85 310	37 500

(c) Spent plating solutions.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/liter of spent plating solution used as a raw material	
Copper	1 280	0.610
Cyanide (total)	0 200	[illegible]
Zinc	1 020	0 420
Gold	0 100	
Palladium	0 100	
Platinum	0 100	
Ammonia (as N)	133 300	[illegible]

(d) Spent Cyanide stripping solutions.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold produced by cyanide stripping	
Copper	4 736	2 257
Cyanide (total)	0 740	0 296
Zinc	3.774	1 554
Gold	0.370	
Palladium	0 370	
Platinum	0.370	
Ammonia (as N)	493.200	216 800

(e) Refinery wet air pollution control.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, produced in refinery	
Copper	1 280	0 610
Cyanide (total)	0 200	[illegible]
Zinc	1 020	0.420
Gold	0 100	
Palladium	0 100	
Platinum	0 100	
Ammonia (as N)	133 300	[illegible]

(f) Gold solvent extraction raffinate and wash water.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold produced by solvent extraction	
Copper	0 806	0 384
Cyanide (total)	0.126	0.050
Zinc	0 643	0 265
Gold	0 063	
Palladium	0 063	
Platinum	0 063	
Ammonia (as N)	83 980	36 920

(g) Gold spent electrolyte.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold produced by electrolysis	
Copper	0 011	0 005
Cyanide (total)	[illegible]	0 001
Zinc	[illegible]	[illegible]
Gold	0.001	
Palladium	0 001	
Platinum	0 001	
Ammonia (as N)	1 160	[illegible]

(h) Gold precipitation and filtration.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold precipitated	
Copper	5 632	[illegible]
Cyanide (total)	[illegible]	0 352
Zinc	[illegible]	[illegible]
Gold	[illegible]	
Palladium	[illegible]	
Platinum	[illegible]	
Ammonia (as N)	586 500	[illegible]

(i) Platinum precipitation and filtration.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of platinum precipitated	
Copper	6 656	3 172
Cyanide (total)	1 040	0 416
Zinc	5 304	2 184
Gold	0 520	
Palladium	0 520	
Platinum	0 520	
Ammonia (as N)	[illegible]	[illegible]

(j) Palladium precipitation and filtration.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of palladium precipitated	
Copper	4 480	2 135
Cyanide (total)	0 700	0 280
Zinc	3 570	1 470
Gold	0 350	
Palladium	0 350	
Platinum	0 350	
Ammonia (as N)	466 600	205 100

(k) Other platinum group metals precipitation and filtration.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of other platinum group metals precipitated	
Copper	6.656	3.172
Cyanide (total)	1.040	0.416
Zinc	5.304	2.184
Gold	0.520	
Palladium	0.520	
Platinum	0.520	
Ammonia (as N)	693.200	304.700

(l) Spent solution from PGC salt production.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold contained in PGC product	
Copper	1.152	0.549
Cyanide (total)	0.180	0.072
Zinc	0.918	0.378
Gold	0.090	
Palladium	0.090	
Platinum	0.090	
Ammonia (as N)	120.000	52.740

(m) Equipment and floor wash.

PSES FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver produced in refinery	
Copper	0.000	0.000
Cyanide (total)	0.000	0.000
Zinc	0.000	0.000
Gold	0.000	
Palladium	0.000	
Platinum	0.000	
Ammonia (as N)	0.000	0.000

§ 421.266 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in secondary precious metals process wastewater introduced into a POTW shall not exceed the following values:

(a) Furnace wet air pollution control.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, incinerated or smelted	
Copper	5.760	2.745
Cyanide (total)	0.900	0.360
Zinc	4.590	1.890
Gold	0.450	
Palladium	0.450	
Platinum	0.450	
Ammonia (as N)	599.900	263.700

(b) Raw material granulation.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, in the granulated raw material	
Copper	0.819	0.390
Cyanide (total)	0.128	0.051
Zinc	0.653	0.269
Gold	0.064	
Palladium	0.064	
Platinum	0.064	
Ammonia	85.310	37.500

(c) Spent plating solutions.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/liter of spent plating solution used as a raw material	
Copper	1.280	0.610
Cyanide (total)	0.200	0.080
Zinc	1.020	0.420
Gold	0.100	
Palladium	0.100	
Platinum	0.100	
Ammonia (as N)	133.300	58.600

(d) Spent cyanide stripping solutions.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold produced by cyanide stripping	
Copper	4.736	2.257
Cyanide (total)	0.740	0.296
Zinc	3.774	1.554
Gold	0.370	
Palladium	0.370	
Platinum	0.370	
Ammonia (as N)	493.200	216.800

(e) Refinery wet air pollution control.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, produced in refinery	
Copper	1.280	0.610
Cyanide (total)	0.200	0.080
Zinc	1.020	0.420
Gold	0.100	
Palladium	0.100	
Platinum	0.100	
Ammonia (as N)	133.300	58.600

(f) Gold solvent extraction raffinate and wash water.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold produced by solvent extraction	
Copper	0.806	0.384
Cyanide (total)	0.126	0.050
Zinc	0.643	0.265
Gold	0.063	
Palladium	0.063	
Platinum	0.063	
Ammonia (as N)	[illegible]	36.920

(g) Gold spent electrolyte.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold produced by electrolysis	
Copper	0.011	0.005
Cyanide (total)	0.002	0.001
Zinc	0.009	0.004
Gold	0.001	
Palladium	0.001	
Platinum	0.001	
Ammonia (as N)	1.160	0.510

(h) Gold precipitation and filtration.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold precipitated	
Copper	5.632	2.684
Cyanide (total)	0.880	0.352
Zinc	4.488	1.848
Gold	0.440	
Palladium	0.440	
Platinum	0.440	
Ammonia (as N)	[illegible]	257.800

(i) Platinum precipitation and filtration.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of platinum precipitated	
Copper	6.656	3.172
Cyanide (total)	1.040	0.416
Zinc	5.304	2.184
Gold	0.520	
Palladium	0.520	
Platinum	0.520	
Ammonia (as N)	[illegible]	304.700

(j) Palladium precipitation and filtration.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of platinum precipitated	
Copper	4.480	2.135
Cyanide (total)	0.700	0.280
Zinc	3.570	1.470
Gold	0.350	
Palladium	0.350	
Platinum	0.350	
Ammonia (as N)	[illegible]	205.100

(k) Other platinum group metals precipitation and filtration.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of other platinum group metals precipitated	
Copper	6.656	3.172
Cyanide (total)	1.040	0.416
Zinc	5.304	2.184
Gold	0.520	
Palladium	0.520	
Platinum	0.520	
Ammonia (as N)	693.200	304.700

(l) Spent solution from PGC salt production.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of gold contained in PGC product	
Copper	1.152	0.549
Cyanide (total)	0.180	0.072
Zinc	0.918	0.378
Gold	0.090	
Palladium	0.090	
Platinum	[illegible]	
Ammonia (as N)	120.000	52.740

(m) Equipment and floor wash.

PSNS FOR THE SECONDARY PRECIOUS METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/troy ounce of precious metals, including silver, produced in refinery	
Copper	[illegible]	[illegible]
Cyanide (total)	0.000	0.000
Zinc	0.000	0.000
Gold	0.000	
Palladium	0.000	
Platinum	0.000	
Ammonia (as N)	0.000	0.000

§ 421.267 [Reserved].

Subpart Y—Primary Rare Earth Metals Subcategory

§ 421.270 Applicability: description of the primary rare earth metals subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of rare earth metals and mischmetal by primary rare earth metals facilities processing rare earth metal oxides, chlorides, and fluorides.

§ 421.271 Specialized definitions.

In addition to what is provided below: (a) The general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart. (b) The term "rare earth metals" refers to the elements scandium, yttrium, and lanthanum to lutetium, inclusive. (c) The term "mischmetal" refers to a rare earth metal alloy comprised of the natural mixture of rare earths to about 94–99 percent. The balance of tha alloy includes traces of other elements and one to two percent iron.

§ 421.272 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available:

(a) Dryer vent water quench and scrubber.

BPT LIMITATIONS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced from wet rare earth chlorides	
Chromium (total)	4.648	1.961
Lead	4.436	2.113
Nickel	20.280	13.420
Total suspended	433.100	206.000
PH solids	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) Dryer vent caustic wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced from wet rare earth chlorides	
Chromium (total)	0.323	0.132
Lead	0.308	0.147
Nickel	1.409	0.932
Total suspended solids	30.090	14.310
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Electrolytic cell water quench and scrubber.

BPT LIMITATIONS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced	
Chromium (total)	5.580	2.283
Lead	5.326	2.536
Nickel	24.350	16.110
Total suspended solids	520.000	247.300
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) Electrolytic cell caustic wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of total mischmetal produced	
Chromium (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) Sodium Hypochlorite Filter Backwash.

BPT LIMITATIONS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced	
Chromium (total)	0.159	0.065
Lead	0.152	0.072
Nickel	0.695	0.460
Total suspended solids	14.840	7.059
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

§ 421.273 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) Dryer vent quench and scrubber.

BAT LIMITATIONS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced from wet rare earth chlorides	
Hexachlorobenzene	0.042	0.042
Chromium (total)	1.544	0.626
Lead	1.168	0.542
Nickel	2.295	1.544

(b) Dryer Vent Caustic Wet Air Pollution Control.

BAT LIMITATIONS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced from wet rare earth chlorides	
Hexachlorobenzene	0.007	0.007
Chromium (total)	0.272	0.110
Lead	0.206	0.095
Nickel	0.404	0.272

(c) Electrolytic Cell Water Quench and Scrubber.

BAT LIMITATIONS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of total mischmetal produced	
Hexachlorobenzene	0.094	0.094
Chromium (total)	3.474	1.409
Lead	2.629	1.221
Nickel	5.165	3.474

(d) Electrolytic Cell Caustic Wet Air Pollution Control.

BAT LIMITATIONS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of total mischmetal produced	
Hexachlorobenzene	0.000	0.000
Chromium (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Nickel	0.000	0.000

(e) Sodium Hypochlorite Filter Backwash.

BAT LIMITATIONS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of total mischmetal produced	
Hexachlorobenzene	0.004	0.004
Chromium (total)	0.134	0.054
Lead	0.101	0.047
Nickel	0.199	0.134

§ 421.274 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) Dryer Vent Water Quench and Scrubber.

NSPS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced from wet rare earth chlorides	
Hexachlorobenzene	0.042	0.042
Chromium (total)	1.544	0.626
Lead	1.168	0.542
Nickel	2.295	1.544
Total suspended solids	62.600	50.080
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(b) Dryer vent caustic wet air pollution control.

NSPS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced from wet rare earth chlorides	
Hexachlorobenzene	0.007	0.007
Chromium (total)	0.272	0.110
Lead	0.206	0.095
Nickel	0.404	0.272
Total suspended solids	11.010	4.707
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Electrolytic cell water quench and scrubber.

NSPS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of total mischmetal produced	
Hexachlorobenzene	0.094	0.094
Chromium (total)	3.474	1.409
Lead	2.629	1.221
Nickel	5.165	3.474
Total suspended solids	140.900	112.700
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) Electrolytic cell caustic wet air pollution control.

NSPS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of total mischmetal produced	
Hexachlorobenzene	0.000	0.000
Chromium (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(e) Sodium hypochlorite filter backwash.

NSPS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of total mischmetal produced	
Hexachlorobenzene	0.004	0.004
Chromium (total)	0.134	0.054
Lead	0.101	0.047
Nickel	0.199	0.134

NSPS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Total suspended solids	5 430	4 334
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

§ 421.275 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The mass of wastewater pollutants in primary rare earth metals process wastewater introduced into a POTW must not exceed the following values:

(a) Dryer vent water quench scrubber.

PSES FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced from wet rare earth chlorides	
Hexachlorobenzene	0 042	0 042
Chromium (total)	1 544	0 626
Lead	1 168	0 542
Nickel	2 295	1 544

(b) Dryer Vent Caustic Wet Air Pollution Control.

PSES FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced from wet rare earth chlorides	
Hexachlorobenzene	0 007	0 007
Chromium (total)	0 272	0 110
Lead	0 206	0 095
Nickel	0 404	0 272

(c) Electrolytic cell water quench and scrubber.

PSES FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of total mischmetal produced	
Hexachlorobenzene	0 094	0 094
Chromium (total)	3.474	1 409

PSES FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Lead	2 629	1 221
Nickel	5 165	3 474

(d) Electrolytic cell caustic wet air pollution control.

PSES FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of total mischmetal produced	
Hexachlorobenzene	0 000	0 000
Chromium (total)	0 000	0 000
Lead	0 000	0 000
Nickel	0 000	0 000

(e) Sodium hypochlorite filter backwash.

PSES FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of total mischmetal produced	
Hexachlorobenzene	0 004	0 004
Chromium (total)	0 134	0 054
Lead	0 101	0 047
Nickel	0 199	0 134

§ 421.276 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in primary rare earth metals process wastewater introduced into a POTW shall not exceed the following values:

(a) Dryer vent water quench and scrubber.

PSNS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced from wet rare earth chlorides	
Hexachlorobenzene	0 042	0 042
Chromium (total)	1 544	0 626
Lead	1.168	0 542

PSNS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Nickel	2 295	1 544

(b) Dryer vent caustic wet air pollution control.

PSNS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of mischmetal produced from wet rare earth chlorides	
Hexachlorobenzene	0 007	0 007
Chromium (total)	0 272	0 110
Lead	0 206	0 095
Nickel	0 404	0 272

(c) Electrolytic cell water quench and scrubber.

PSNS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of total mischmetal produced	
Hexachlorobenzene	0 094	0 094
Chromium (total)	3 474	1 409
Lead	2 629	1 221
Nickel	5 165	3 474

(d) Electrolytic cell caustic wet air pollution control.

PSNS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of total mischmetal produced	
Hexachlorobenzene	0 000	0 000
Chromium (total)	0 000	0 000
Lead	0 000	0 000
Nickel	0 000	0 000

(e) Sodium hypochlorite filter backwash.

PSNS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of total mischmetal produced	
Hexachlorobenzene	0 004	0 004
Chromium (total)	0 134	0 054

PSNS FOR THE PRIMARY RARE EARTH METALS SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Lead	0.101	0.047
Nickel	0.199	0.134

§ 421.277 [Reserved].

Subpart Z—Secondary Tantalum Subcategory

§ 421.280 Applicability: description of the secondary Tantalum subcategory

The provisions of this subpart are applicable to discharges resulting from the production of tantalum at secondary tantalum facilities.

§ 421.281 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR 401 shall apply to this subpart.

§ 421.282 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available:

(a) Tantalum alloy leach and rinse.

BPT LIMITATIONS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tantalum powder produced	
Copper	438.100	230.600
Lead	96.850	46.120
Nickel	442.800	292.900
Zinc	336.700	140.700
Tantalum	103.800	
Total suspended solids	9,455.000	4,497.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) Capacitor leach and rinse.

BPT LIMITATIONS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tantalum powder produced from leaching	
Copper	[illegible]	[illegible]
Lead	8.484	4.040

BPT LIMITATIONS FOR THE SECONDARY TANTALUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Nickel	[illegible]	[illegible]
Zinc	29.490	12.320
Tantalum	[illegible]	
Total suspended solids	[illegible]	393.900
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Tantalum sludge leach and rinse.

BPT LIMITATIONS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of equivalent pure tantalum powder produced	
Copper	390.100	205.300
Lead	[illegible]	41.060
Nickel	394.200	260.700
Zinc	299.700	125.200
Tantalum	92.390	
Total suspended solids	8,417.000	4,003.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) Tantalum powder acid wash and rinse.

BPT LIMITATIONS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tantalum powder produced	
Copper	[illegible]	0.350
Lead	0.147	0.070
Nickel	0.672	0.445
Zinc	0.511	0.214
Tantalum	0.158	
Total suspended solids	14.350	6.825
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) Leaching wet air pollution control.

BPT LIMITATIONS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of equivalent pure tantalum powder produced	
Copper	9.272	4.880
Lead	2.050	0.976
Nickel	9.370	6.198
Zinc	7.125	2.977
Tantalum	2.196	
Total suspended solids	200.100	95.160
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.283 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) Tantalum alloy leach and rinse.

BAT LIMITATIONS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tantalum powder produced	
Copper	[illegible]	140.700
Lead	[illegible]	[illegible]
Nickel	126.900	[illegible]
Zinc	235.200	[illegible]
Tantalum	100.800	

(b) Capacitor leach and rinse.

BAT LIMITATIONS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tantalum powder produced from leaching	
Copper	[illegible]	12.320
Lead	[illegible]	[illegible]
Nickel	11.110	7.474
Zinc	[illegible]	[illegible]
Tantalum	[illegible]	

(c) Tantalum sludge leach and rinse.

BAT LIMITATIONS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of equivalent pure tantalum powder produced	
Copper	[illegible]	125.200
Lead	57.480	26.690
Nickel	112.900	75.960
Zinc	209.400	86.230
Tantalum	92.390	

(d) Tantalum powder acid wash and rinse.

BAT LIMITATIONS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tantalum powder produced	
Copper	0.448	0.214
Lead	0.098	0.046
Nickel	0.193	0.130
Zinc	0.357	0.147
Tantalum	0.158	

(e) Leaching wet air pollution control.

BAT LIMITATIONS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of equivalent pure tantalum powder produced	
Copper	6.246	2.977
Lead	1.366	0.634
Nickel	2.684	1.806
Zinc	4.978	2.050
Tantalum	2.196	

§ 421.284 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) Tantalum alloy leach and rinse.

NSPS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tantalum powder produced	
Copper	295.200	140.700
Lead	64.570	29.980
Nickel	126.800	85.320
Zinc	235.200	96.850
Tantalum	103.800	
Total suspended solids	3,459.000	2,767.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(b) Capacitor leach and rinse.

NSPS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tantalum powder produced from leaching	
Copper	25.860	12.320
Lead	5.656	2.626
Nickel	11.110	7.474
Zinc	20.600	8.484
Tantalum	9.090	
Total suspended solids	303.000	242.400

NSPS FOR THE SECONDARY TANTALUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(c) Tantalum sludge leach and rinse.

NSPS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of equivalent pure tantalum powder produced	
Copper	262.800	125.200
Lead	57.480	26.690
Nickel	112.900	75.960
Zinc	209.400	86.230
Tantalum	92.390	
Total suspended solids	3,080.000	2,464.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(d) Tantalum powder acid wash and rinse.

NSPS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tantalum powder produced	
Copper	0.448	0.214
Lead	0.098	0.046
Nickel	0.193	0.130
Zinc	0.357	0.147
Tantalum	0.158	
Total suspended solids	5.250	4.200
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(e) Leaching wet air pollution control.

NSPS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of equivalent pure tantalum powder produced	
Copper	6.246	2.977
Lead	1.366	0.634
Nickel	2.684	1.806
Zinc	4.978	2.050
Tantalum	2.196	
Total suspended solids	73.200	58.560
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

§ 421.285 [Reserved]

§ 421.286 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in secondary tantalum process wastewater introduced into a POTW shall not exceed the following values:

(a) Tantalum alloy leach and rinse.

PSNS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tantalum powder produced	
Copper	295.200	140.700
Lead	64.570	[illegible]
Nickel	126.800	85.320
Zinc	235.200	96.850
Tantalum	103.800	

(b) Capacitor leach and rinse.

PSNS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tantalum powder produced from leaching	
Copper	25.860	12.320
Lead	5.656	2.626
Nickel	11.110	7.474
Zinc	20.600	8.484
Tantalum	9.090	

(c) Tantalum sludge leach and rinse.

PSNS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of equivalent pure tantalum powder produced	
Copper	262.800	125.200
Lead	57.480	26.690
Nickel	112.900	75.960
Zinc	209.400	[illegible]
Tantalum	92.390	

(d) Tantalum powder acid wash and rinse.

PSNS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tantalum powder produced	
Copper	0.448	0.214
Lead	[illegible]	0.046
Nickel	0.193	0.130
Zinc	0.357	0.147
Tantalum	0.158	

(e) Leaching wet air pollution control.

PSNS FOR THE SECONDARY TANTALUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of equivalent pure tantalum powder produced	
Copper	6.246	2.977
Lead	1.366	0.634
Nickel	2.684	1.806
Zinc	4.978	2.050
Tantalum	2.196	

§ 421.287 [Reserved]

Subpart AA—Secondary Tin Subcategory

§ 421.290 Applicability: Description of the secondary tin subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of tin at secondary tin facilities utilizing either pyrometallurgical or hydrometallurgical processes to recover tin from secondary materials.

§ 421.291 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§ 421.292 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available:

(a) Tin smelter SO_2 scrubber.

BPT LIMITATIONS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of crude tapped tin metal produced	
Arsenic	19.220	8.554
Lead	3.863	1.840
Iron	11.040	5.611
Tin	3.495	2.024
Total suspended solids	377.100	179.400
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(b) Dealuminizing rinse.

BPT LIMITATIONS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of dealuminized scrap produced	
Lead	0.015	0.007
Cyanide (total)	0.010	0.004
Fluoride	1.225	0.700
Tin	0.013	0.008
Total suspended solids	1.435	0.683
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Tin mud acid neutralization filtrate.

BPT LIMITATIONS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Minimum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of neutralized, dewatered tin mud produced	
Lead	2.120	1.009
Cyanide (total)	1.464	0.606
Fluoride	176.600	100.400
Tin	1.918	1.110
Total suspended solids	206.900	98.420
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(d) Tin hydroxide wash.

BPT LIMITATIONS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Minimum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin hydroxide washed	
Lead	5.020	2.391
Cyanide (total)	3.466	1.434
Fluoride	418.400	237.900
Tin	4.542	2.630
Total suspended solids	490.100	233.100
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) Spent electrowinning solution from new scrap.

BPT LIMITATIONS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Minimum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cathode tin produced	
Lead	7.056	3.360
Cyanide (total)	4.872	2.016
Fluoride	588.000	334.300
Tin	[illegible]	[illegible]
Total suspended solids	[illegible]	327.600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) Spent electrowinning solution from municipal solid waste.

BPT LIMITATIONS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Minimum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of MSW scrap used as raw material	
Lead	0.050	0.024
Cyanide (total)	0.035	0.014
Fluoride	4.165	2.368
Tin	0.045	0.026
Total suspended solids	4.879	2.321
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(g) Tin hydroxide supernatant from scrap.

BPT LIMITATIONS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal recovered from scrap	
Lead	23.370	11.130
Cyanide (total)	16.140	6.677
Fluoride	1,947.000	1,107.000
Tin	21.140	12.240
Total suspended solids	2,281.000	1,085.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) Tin hydroxide supernatant from plating solutions and sludges.

BPT LIMITATIONS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal recovered from plating solutions and sludges	
Lead	48.30	23.00
Cyanide (total)	33.35	13.80
Fluoride	4,025.00	2,289.00
Tin	43.70	25.30
Total suspended solids	4,715.00	2,243.00
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) Tin hydroxide filtrate.

BPT LIMITATIONS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Lead	[illegible]	[illegible]
Cyanide (total)	7.263	3.005
Fluoride	[illegible]	[illegible]
Tin	9.517	5.510
Total suspended solids	1.027.000	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.293 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) Tin smelter SO_2 scrubber.

BAT LIMITATIONS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of crude tapped tin produced	
Arsenic	12.790	5.703
Lead	2.575	1.196
Iron	11.040	5.611
Tin	3.495	2.024

(b) Dealuminizing rinse.

BAT LIMITATIONS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of dealuminized scrap produced	
Lead	0.010	0.005
Cyanide (total)	0.007	0.003
Fluoride	1.225	0.697
Tin	0.013	0.008

(c) Tin mud acid neutralization filtrate.

BAT LIMITATIONS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of neutralized dewatered tin mud produced	
Lead	1.413	[illegible]
Cyanide (total)	1.009	[illegible]
Fluoride	176.600	[illegible]
Tin	1.918	1.110

(d) Tin hydroxide wash.

BAT LIMITATIONS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin hydroxide washed	
Lead	3.347	1.554
Cyanide (total)	2.391	0.956
Fluoride	418.400	237.900
Tin	4.542	2.630

(e) Spent electrowinning solution from new scrap.

BAT LIMITATIONS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cathode tin produced	
Lead	4.704	2.184
Cyanide (total)	3.360	1.344
Fluoride	[illegible]	334.300
Tin	[illegible]	[illegible]

(f) Spent electrowinning solution from municipal solid waste.

BAT LIMITATIONS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of MSW scrap used as raw material	
Lead	0.033	0.015
Cyanide (total)	0.024	0.010
Fluoride	4.165	2.368
Tin	0.045	0.026

(g) Tin hydroxide supernatant from scrap.

BAT LIMITATIONS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal recovered from scrap	
Lead	15.580	7.233
Cyanide (total)	11.130	4.451
Fluoride	1.947.000	1.107.000
Tin	21.140	21.240

(h) Tin hydroxide supernatant from plating solutions and sludges.

BAT LIMITATIONS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal recovered from plating solutions and sludges	
Lead	[illegible]	14.95
Cyanide (total)	[illegible]	[illegible]
Fluoride	4.025.00	[illegible]
Tin	43.70	[illegible]

(i) Tin hydroxide filtrate.

BAT LIMITATIONS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Lead	7.012	3.256
Cyanide (total)	5.009	[illegible]
Fluoride	876.500	[illegible]
Tin	9.517	5.510

§ 421.294 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) Tin smelter SO_2 scrubber.

NSPS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of crude tapped tin produced	
Arsenic	12.790	5.703
Lead	2.575	1.196
Iron	11.040	5.611
Tin	3.495	2.024
Total suspended solids	[illegible]	110.400
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) Dealuminizing rinse

NSPS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of dealuminized scrap produced	
Lead	0.010	0.005
Cyanide (total)	0.007	0.003
Fluoride	1.225	0.697
Tin	0.013	0.008
Total suspended solids	0.525	0.420
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Tin mud acid neutralization filtrate.

NSPS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of neutralized dewatered tin mud produced	
Lead	1.413	0.656
Cyanide (total)	1.009	0.404
Fluoride	176.600	100.400
Tin	1.918	1.110
Total suspended solids	75.710	60.560
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) Tin hydroxide wash.

NSPS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin hydroxide washed	
Lead	3.347	1.554
Cyanide (total)	2.391	0.956
Fluoride	418.400	237.900
Tin	4.542	2.630
Total suspended solids	179.300	143.400
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) Spent electrowinning solution from new scrap.

NSPS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cathode tin produced	
Lead	4.704	2.184
Cyanide (total)	3.360	1.344
Fluoride	588.000	334.300
Tin	6.384	3.696
Total suspended solids	252.000	201.600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) Spent electrowinning solution from municipal solid waste.

NSPS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of MSW scrap used as raw material	
Lead	0.033	0.015
Cyanide (total)	0.024	0.010
Fluoride	4.165	2.368
Tin	0.045	0.026
Total suspended solids	1.785	1.428
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) Tin hydroxide supernatant from scrap.

NSPS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal recovered from scrap	
Lead	15.580	7.233
Cyanide (total)	11.130	4.451
Fluoride	1,947.000	1,107.000
Tin	21.140	12.240
Total suspended solids	834.600	667.700
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) Tin hydroxide supernatant from plating solutions and sludges.

NSPS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal recovered from plating solutions and sludges	
Lead	32.20	14.95
Cyanide (total)	23.00	9.20
Fluoride	4,025.00	2,289.00
Tin	43.70	25.30
Total suspended solids	1,725.00	1,380.00
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) Tin hydroxide filtrate.

NSPS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Lead	7.012	3.256
Cyanide (total)	5.009	2.004
Fluoride	876.500	498.400
Tin	9.517	5.510
Total suspended solids	375.700	300.500
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.295 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The mass of wastewater pollutants in secondary tin process wastewater introduced into a POTW must not exceed the following values:

(a) Tin smelter SO_2 scrubber.

PSES FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of crude tapped tin produced	
Arsenic	12.790	5.703
Lead	2.575	1.196
Iron	11.040	5.611
Tin	3.495	2.024

(b) Dealuminizing rinse.

PSES FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of dealuminized scrap produced	
Lead	0.010	0.005
Cyanide (total)	0.007	0.003
Fluoride	1.225	0.697
Tin	0.013	0.008

(c) Tin mud acid neutralization filtrate.

PSES FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of neutralized dewatered tin mud produced	
Lead	1.413	0.656
Cyanide (total)	1.009	0.404
Fluoride	176.600	100.400
Tin	1.918	1.110

(d) Tin hydroxide wash.

PSES FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin hydroxide washed	
Lead	3.347	1.554
Cyanide (total)	2.391	0.956
Fluoride	418.400	237.900
Tin	4.542	2.630

(e) Spent electrowinning solution from new scrap.

PSES FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cathode tin produced	
Lead	4.704	2.184
Cyanide (total)	3.360	1.344
Fluoride	588.000	334.300
Tin	6.384	3.696

(f) Spent electrowinning solution from municipal solid waste.

PSES FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of MSW scrap used as raw material	
Lead	0.033	0.015
Cyanide (total)	0.024	0.010
Fluoride	4.165	2.368
Tin	0.045	0.026

(g) Tin hydroxide supernatant from scrap.

PSES FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal recovered from scrap	
Lead	15.580	7.233
Cyanide (total)	11.130	4.451
Fluoride	1.947.000	1.107.000
Tin	21.140	12.240

(h) Tin hydroxide supernatant from plating solutions and sludges.

PSES FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal recovered from plating solutions and sludges	
Lead	32.20	14.95
Cyanide (total)	23.00	9.20
Fluoride	4,025.00	2,289.00
Tin	43.70	25.30

(i) Tin hydroxide filtrate.

PSES FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Lead	7.012	3.256
Cyanide (total)	5.009	2.004
Fluoride	876.500	[illegible]

PSES FOR THE SECONDARY TIN SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Tin	9.517	5.510

§ 421.296 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in secondary tin process wastewater introduced into a POTW shall not exceed the following values:

(a) Tin smelter SO_2 scrubber.

PSNS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of crude tapped tin produced	
Arsenic	12.790	5.703
Lead	2.575	1.196
Iron	11.040	5.611
Tin	3.495	2.024

(b) Dealuminizing Rinse.

PSNS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of dealuminized scrap produced	
Lead	0.010	0.005
Cyanide (total)	0.007	0.003
Fluoride	1.225	0.697
Tin	0.013	0.008

(c) Tin mud acid neutralization filtrate.

PSNS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million of pounds) of neutralized dewatered tin mud produced	
Lead	1.413	0.656
Cyanide (total)	1.009	0.404
Fluoride	176.600	100.400
Tin	1.918	1.110

(d) Tin hydroxide wash.

PSNS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin hydroxide washed	
Lead	3.347	1.554
Cyanide (total)	2.391	0.956
Fluoride	[illegible]	237.900
Tin	4.542	2.630

(e) Spent electrowinning solution from new scrap.

PSNS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cathode tin produced	
Lead	4.704	2.184
Cyanide (total)	3.360	1.344
Fluoride	588.000	334.300
Tin	6.384	3.696

(f) Spent electrowinning solution from municipal solid waste.

PSNS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of MSW scrap used as raw material	
Lead	0.033	0.015
Cyanide (total)	0.024	0.010
Fluoride	4.165	2.368
Tin	0.045	0.026

(g) Tin hydroxide supernatant from scrap.

PSNS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal recovered from scrap	
Lead	15.580	7.233
Cyanide (total)	11.130	4.451
Fluoride	1.947.000	1.107.000
Tin	21.140	12.240

(h) Tin hydroxide supernatant from plating solutions and ludges.

PSNS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal recovered from plating solutions and sludges	
Lead	32.20	14.95
Cyanide (total)	23.00	9.20

PSNS FOR THE SECONDARY TIN SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	4,025.00	2,289.00
Tin	43.70	[illegible]

(i) Tin hydroxide filtrate.

PSNS FOR THE SECONDARY TIN SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tin metal produced	
Lead	7.012	3.256
Cyanide (total)	5.009	2.004
Fluoride	876.500	498.400
Tin	9.517	5.510

§ 421.297 [Reserved]

Subpart AB—Primary and Secondary Titanium Subcategory

§ 421.300 Applicability: Description of the primary and secondary titanium subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of titanium at primary and secondary titanium facilities. Facilities which only practice vacuum distillation for sponge purification and which do not practice electrolytic recovery of magnesium are exempt from regulations. All other primary and secondary titanium facilities are covered by these regulations.

§ 421.301 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§ 421.302 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available:

(a) Chlorination off-gas wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.412	0.168
Lead	0.393	0.187
Nickel	1.797	1.189
Titanium	[illegible]	0.384
Oil and Grease	18.720	11.230
Total suspended solids	[illegible]	18.250
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(b) Chlorination area-vent wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.412	0.168
Chromium (total)	0.458	0.187
Lead	0.437	0.208
Nickel	1.997	1.321
Titanium	0.978	0.426
Oil and Grease	20.800	12.480
Total suspended solids	42.640	20.280
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) $TiCl_4$ handling wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ handled	
Chromium (total)	0.082	0.034
Lead	0.079	0.037
Nickel	0.359	0.237
Titanium	0.176	0.077
Oil and Grease	3.740	2.244
Total suspended solids	7.667	3.647
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) Reduction area wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	18.170	7.435
Lead	17.350	8.261
Nickel	79.300	52.450
Titanium	38.820	16.930
Oil and Grease	826.100	495.600
Total suspended solids	1,693.000	805.400
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) Melt cell wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	9.352	3.826
Lead	8.927	4.251
Nickel	40.810	26.990
Titanium	19.980	8.714
Oil and Grease	425.100	255.000
Total suspended solids	871.400	414.500
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) Chlorine liquefaction wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	130.900	53.560
Lead	125.000	59.510
Nickel	571.300	377.900
Titanium	279.700	122.000
Oil and Grease	5,951.000	3,571.000
Total suspended solids	12,200.000	5,702.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(g) Sodium reduction container reconditioning wash water.

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.564	0.231
Lead	0.538	0.256
Nickel	2.461	1.628
Titanium	1.205	0.526
Oil and Grease	25.640	15.380
Total suspended solids	52.560	25.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(h) Chip crushing wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	10.090	4.126
Lead	9.627	4.584
Nickel	44.010	29.110
Titanium	21.550	[illegible]

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Oil and Grease	458.400	275.100
Total suspended solids	939.800	447.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(i) Acid leachate and rinse water.

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	5.210	2.131
Lead	4.973	2.368
Nickel	22.730	15.040
Titanium	11.130	4.854
Oil and Grease	236.800	142.100
Total suspended solids	485.400	230.900
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) Sponge crushing and screening wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	2.847	1.165
Lead	2.717	1.294
Nickel	12.420	8.217
Titanium	6.082	2.653
Oil and Grease	129.400	77.640
Total suspended solids	265.300	126.200
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) Acid pickle and wash water.

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium pickled	
Chromium (total)	0.027	0.011
Lead	0.026	0.012
Nickel	0.117	0.077
Titanium	0.057	0.025
Oil and Grease	1.220	0.732
Total suspended solids	2.501	1.190
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(l) Scrap milling wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of scrap milled	
Chromium (total)	0.995	0.407
Lead	0.950	0.452
Nickel	4.341	2.871
Titanium	2.125	0.927
Oil and Grease	45.220	27.130
Total suspended solids	92.700	44.090
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(m) Scrap detergent wash water.

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of scrap washed	
Chromium (total)	7.948	3.252
Lead	7.587	3.613
Nickel	34.680	22.940
Titanium	16.980	7.406
Oil and Grease	361.300	216.800
Total suspended solids	740.600	352.300
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) Casting crucible wash water.

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium cast	
Chromium (total)	0.210	0.100
Lead	0.200	0.095
Nickel	0.916	0.606
Titanium	0.448	0.196
Oil and Grease	9.540	5.724
Total suspended solids	19.560	9.302
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) Casting contact cooling water.

BPT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium cast	
Chromium (total)	321.100	131.400
Lead	306.500	145.900
Nickel	1,401.000	926.800
Titanium	687.900	299.200
Oil and Grease	14,590.000	8,757.000
Total suspended solids	29,920.000	14,230.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

§ 421.303 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) Chlorination off-gas wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.346	0.140
Lead	0.262	0.122
Nickel	0.515	0.240
Titanium	0.496	0.215

(b) Chlorination area-vent wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.337	0.156
Lead	0.291	0.135
Nickel	0.572	0.266
Titanium	0.551	0.256

(c) $TiCl_4$ handling wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ handled	
Chromium (total)	0.069	0.032
Lead	0.052	0.024
Nickel	0.103	0.048
Titanium	0.093	0.043

(d) Reduction area wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	1.528	0.620
Lead	1.156	0.537
Nickel	2.272	1.528
Titanium	2.189	0.950

(e) Melt cell wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.787	0.319
Lead	0.595	0.276
Nickel	1.169	0.787
Titanium	1.127	0.489

(f) Chlorine liquefaction wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	11.010	4.463
Lead	8.332	3.377
Nickel	16.370	11.010
Titanium	15.770	6.844

(g) Sodium reduction container reconditioning wash water.

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.474	0.192
Lead	0.359	0.167
Nickel	0.705	0.474
Titanium	0.679	0.295

(h) Chip crushing wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.848	0.344
Lead	0.642	0.298
Nickel	1.261	0.848
Titanium	1.215	0.527

(i) Acid leachate and rinse water.

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	4.381	1.776
Lead	3.315	1.539
Nickel	6.512	4.381
Titanium	6.275	2.723

(j) Sponge crushing and screening wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.239	0.097
Lead	0.181	0.084
Nickel	0.356	0.239
Titanium	0.343	0.149

(k) Acid pickle and wash water.

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium pickled	
Chromium (total)	0.023	0.009
Lead	0.017	0.008
Nickel	0.034	0.023
Titanium	0.032	0.014

(l) Scrap milling wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of scrap milled	
Chromium (total)	0.084	0.034
Lead	0.064	0.030
Nickel	0.125	0.084
Titanium	0.120	0.052

(m) Scrap detergent wash water.

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of scrap washed	
Chromium (total)	6.684	2.710
Lead	5.058	2.348
Nickel	9.935	6.684
Titanium	9.574	4.155

(n) Casting crucible wash water.

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium cast	
Chromium (total)	0.176	0.072
Lead	0.134	0.062
Nickel	0.262	0.176
Titanium	0.253	0.110

(o) Casting contact cooling water.

BAT LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium cast	
Chromium (total)	27.000	10.950
Lead	20.430	9.486
Nickel	40.140	27.000
Titanium	38.68	16.78

§ 421.304 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) Chlorination off-gas wet air pollution control.

NSPS LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.346	0.140
Lead	0.262	0.122
Nickel	0.515	0.346
Titanium	0.496	0.215
Oil and Grease	9.360	9.360
Total suspended solids	14.040	11.230
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) Chlorination area-vent wet air pollution control.

NSPS LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.385	0.156
Lead	0.291	0.135
Nickel	0.572	0.385
Titanium	0.551	0.239
Oil and Grease	10.400	10.400
Total suspended solids	15.600	12.480
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

(c) $TiCl_4$ handling wet air pollution control.

NSPS LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ handled	
Chromium (total)	0.069	0.028
Lead	0.052	0.024
Nickel	0.103	0.069
Titanium	0.099	0.043
Oil and Grease	1.870	1.870
Total suspended solids	2.805	2.244
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) Reduction area wet air pollution control.

NSPS LIMITATIONS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	1.528	0.620
Lead	1.156	0.537
Nickel	2.272	1.528
Titanium	2.189	0.950
Oil and Grease	41.300	41.300
Total suspended solids	61.950	49.560
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) Melt cell wet air pollution control.

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.787	0.319
Lead	0.595	0.276
Nickel	1.169	0.787
Titanium	1.127	0.489
Oil and Grease	21.260	21.260
Total suspended solids	31.890	25.510
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) Chlorine liquefaction wet air pollution control.

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pound per million pounds) of titanium produced	
Chromium (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Titanium	0.000	0.000
Oil and Grease	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) Sodium reduction container reconditioning wash.

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pound per million pounds) of titanium produced	
Chromium (total)	0.474	0.192
Lead	0.359	0.167
Nickel	0.705	0.474
Titanium	0.679	0.295
Oil and Grease	12.820	12.820
Total suspended solids	19.230	15.380
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) Chip Crushing wet air pollution control.

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pound per million pounds) of titanium produced	
Chromium (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Titanium	0.000	0.000

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Oil and Grease	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) Acid leachate and rinse water.

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pound per million pounds) of titanium produced	
Chromium (total)	4.381	1.776
Lead	3.315	1.539
Nickel	6.512	4.381
Titanium	6.275	2.723
Oil and Grease	118.400	118.400
Total suspended solids	177.600	142.100
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) Sponge crushing and screening wet air pollution control.

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Titanium	0.000	0.000
Oil and Grease	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) Acid pickle and wash water.

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium pickled	
Chromium (total)	0.023	0.009
Lead	0.017	0.008
Nickel	0.034	0.023
Titanium	0.032	0.014
Oil and Grease	0.610	0.610
Total suspended solids	0.915	0.732
pH	(1)	(1)

Within the range of 7.5 to 10.0 at all times.

(l) Scrap milling wet air pollution control.

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of scrap milled	
Chromium (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Titanium	0.000	0.000
Oil and Grease	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(m) Scrap detergent wash water.

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of scrap washed	
Chromium (total)	6.684	2.710
Lead	5.058	2.348
Nickel	9.935	6.684
Titanium	9.574	4.155
Oil and Grease	180.600	180.600
Total suspended solids	271.000	216.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(n) Casting crucible wash water.

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium cast	
Chromium (total)	0.176	0.072
Lead	0.134	0.062
Nickel	0.262	0.176
Titanium	0.253	0.110
Oil and Grease	4.770	4.770
Total suspended solids	7.155	5.724
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(o) Casting contact cooling water.

NSPS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium cast	
Chromium (total)	27.000	10.950
Lead	20.430	9.486
Nickel	40.140	27.000
Titanium	38.680	16.780
Oil and Grease	729.700	729.700
Total suspended solids	1,095.000	875.700
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

§ 421.305 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The mass of wastewater pollutants in primary and secondary titanium process wastewater introduced into a POTW must not exceed the following values:

(a) Chlorination off-gas wet air pollution control.

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.346	0.140
Lead	0.262	0.122
Nickel	0.515	0.346
Titanium	0.496	0.215

(b) Chlorination Area-vent wet air pollution control.

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.385	0.156
Lead	0.291	0.135
Nickel	0.572	0.385
Titanium	0.551	0.239

(c) $TiCl_4$ handling wet air pollution control.

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ handled	
Chromium (total)	0.069	0.028
Lead	0.052	0.024
Nickel	0.103	0.069
Titanium	0.099	0.043

(d) Reduction area wet air pollution control.

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	1.528	0.620
Lead	1.156	0.537
Nickel	2.272	1.528
Titanium	2.189	0.950

(e) Melt cell wet air pollution control.

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.787	0.319
Lead	0.595	0.276
Nickel	1.169	0.787
Titanium	1.127	0.489

(f) Chlorine liquefaction wet air pollution control.

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	11.010	4.463
Lead	8.332	3.868
Nickel	16.370	11.010
Titanium	15.770	6.844

(g) Sodium reduction container reconditioning wash water.

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.474	0.192
Lead	0.359	0.167
Nickel	0.705	0.474
Titanium	0.679	0.295

(h) Chip crushing wet air pollution control.

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	[illegible]	0.344
Lead	[illegible]	[illegible]
Nickel	1.261	[illegible]
Titanium	1.215	0.527

(i) Acid leachate and rinse water.

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	4.381	1.776
Lead	3.315	1.539
Nickel	6.512	4.381
Titanium	6.275	2.723

(j) Sponge crushing and screening wet air pollution control.

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.239	0.097
Lead	0.181	0.084
Nickel	0.356	0.239
Titanium	0.343	0.149

(k) Acid pickle and wash water.

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium pickled	
Chromium (total)	0.023	[illegible]
Lead	0.017	[illegible]
Nickel	0.034	0.023
Titanium	0.032	0.014

(l) Scrap milling wet air pollution control.

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of scrap milled	
Chromium (total)	0.084	0.034
Lead	[illegible]	0.030
Nickel	0.125	[illegible]
Titanium	0.120	0.052

(m) Scrap detergent wash water.

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of scrap washed	
Chromium (total)	[illegible]	2.710
Lead	[illegible]	[illegible]
Nickel	[illegible]	[illegible]
Titanium	9.574	[illegible]

(n) Casting crucible wash water.

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium cast	
Chromium (total)	0.176	0.072
Lead	0.134	0.062
Nickel	0.262	0.176
Titanium	0.253	0.110

(o) Casting contact cooling water.

PSES FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium cast	
Chromium (total)	27.000	10.950
Lead	20.430	9.486
Nickel	40.140	27.000
Titanium	[illegible]	16.780

§ 421.306 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in primary and secondary titanium process wastewater introduced into a POTW shall not exceed the following values:

(a) Chlorination off-gas wet air pollution control.

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	0.346	0.140
Lead	0.262	0.122
Nickel	0.515	0.346
Titanium	0.486	0.215

(b) Chlorination area-vent wet air pollution control.

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ produced	
Chromium (total)	[illegible]	[illegible]
Lead	0.291	[illegible]
Nickel	0.572	0.385
Titanium	0.551	[illegible]

(c) $TiCl_4$ handling wet air pollution control.

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of $TiCl_4$ handled	
Chromium (total)	[illegible]	[illegible]
Lead	0.052	0.024
Nickel	0.103	[illegible]
Titanium	[illegible]	0.043

(d) Reduction area wet air pollution control.

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	1.528	0.628
Lead	1.156	[illegible]
Nickel	2.272	1.528
Titanium	2.189	0.950

(e) Melt cell wet air pollution control.

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.787	0.319
Lead	0.595	0.276
Nickel	1.169	0.787
Titanium	1.127	0.489

(f) Chlorine liquefaction wet air pollution control.

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Titanium	0.000	0.000

(g) Sodium reduction container reconditioning wash water.

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.474	0.192
Lead	0.359	0.167
Nickel	0.705	0.474
Titanium	0.679	0.295

(h) Chip crushing wet air pollution control.

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Titanium	0.000	0.000

(i) Acid leachate and rinse water

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	4.381	1.776
Lead	3.315	1.539
Nickel	6.512	4.381
Titanium	6.275	2.723

(j) Sponge crushing and screening wet air pollution control.

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium produced	
Chromium (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Titanium	0.000	0.000

(k) Acid pickle and wash water.

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium pickled	
Chromium (total)	0.023	0.009
Lead	0.017	0.008
Nickel	0.034	0.023
Titanium	0.032	0.014

(l) Scrap milling wet air pollution control.

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of scrap milled	
Chromium (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Titanium	0.000	0.000

(m) Scrap detergent wash water.

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of scrap washed	
Chromium (total)	6.684	2.710

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Lead	5.058	2.348
Nickel	9.935	6.684
Titanium	9.574	4.155

(n) Casting crucible wash water.

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium cast	
Chromium (total)	0.176	0.072
Lead	0.134	0.062
Nickel	0.262	0.176
Titanium	0.253	0.112

(o) Casting contact cooling water.

PSNS FOR THE PRIMARY AND SECONDARY TITANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of titanium cast	
Chromium (total)	27.000	10.950
Lead	20.430	9.486
Nickel	40.140	27.000
Titanium	38.680	16.780

§ 421.307 [Reserved]

Subpart AC—Secondary Tungsten and Cobalt Subcategory

§ 421.310 Applicability: Description of the secondary tungsten and cobalt subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of tungsten or cobalt at secondary tungsten and cobalt facilities processing tungsten or tungsten carbide scrap raw materials.

§ 421.311 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§ 421.312 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application

of the best practicable technology currently available:

(a) Tungsten detergent wash and rinse.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten scrap washed	
Copper	0.371	0.195
Nickel	0.374	0.248
Ammonia (as N)	25.990	11.430
Cobalt	0.041	0.018
Tungsten	1.357	0.542
Oil and grease	3.900	2.340
Total suspended solids	7.995	3.803
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(b) Tungsten leaching acid.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten produced	
Copper	4.886	2.571
Nickel	4.937	3.265
Ammonia (as N)	342.700	150.700
Cobalt	0.540	0.231
Tungsten	17.890	7.147
Oil and grease	51.420	30.850
Total suspended solids	105.400	50.140
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(c) Tungsten post-leaching wash and rinse.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten produced	
Copper	9.772	5.143
Nickel	9.875	6.532
Ammonia (as N)	685.600	301.400
Cobalt	1.080	0.463
Tungsten	35.800	14.300
Oil and grease	102.900	61.720
Total suspended solids	210.900	100.300
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(d) Synthetic scheelite filtrate.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of synthetic scheelite produced	
Copper	31.660	18.680
Nickel	31.990	21.160
Ammonia (as N)	2,221.000	976.300
Cobalt	3.499	1.509
Tungsten	116.000	46.320
Oil and grease	333.200	207.900
Total suspended solids	683.100	324.900
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(e) Tungsten carbide leaching wet air pollution control.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten carbide scrap leached	
Copper	3.327	1.751
Nickel	3.362	2.224
Ammonia (as N)	233.400	102.600
Cobalt	1.466	0.158
Tungsten	12.190	4.363
Oil and grease	97.120	21.010
Total suspended solids	71.790	34.150
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(f) Tungsten carbide wash water.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten carbide produced	
Copper	15.830	8.333
Nickel	16.000	10.580
Ammonia (as N)	1,111.000	464.700
Cobalt	1.750	0.750
Tungsten	58.000	23.170
Oil and grease	166.700	100.000
Total suspended solids	341.700	162.500
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(g) Cobalt sludge leaching wet air pollution control.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced from cobalt sludge	
Copper	67.990	35.780
Nickel	68.700	45.440
Ammonia (as N)	4,770.000	2,097.000
Cobalt	7.514	3.220

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Tungsten	249.000	99.670
Oil and grease	715.600	429.400
Total suspended solids	1,467.000	698.700
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(h) Crystallization decant.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	79.140	41.650
Nickel	79.970	52.900
Ammonia (as N)	5,552.000	2,441.000
Cobalt	8.747	3.748
Tungsten	289.900	115.600
Oil and grease	833.900	499.800
Total suspended solids	1,706.000	812.200
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(i) Acid wash decant.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	36.220	19.060
Nickel	36.580	24.210
Ammonia (as N)	2,541.000	1,117.000
Cobalt	4.003	1.716
Tungsten	132.700	52.990
Oil and grease	381.300	228.900
Total suspended solids	781.600	371.900
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(j) Cobalt hydroxide filtrate.

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	107.600	50.650
Nickel	108.300	71.940
Ammonia (as N)	7,551.000	3,320.000
Cobalt	11.900	5.096
Tungsten	394.300	157.500
Oil and grease	1,133.000	679.800
Total suspended solids	2,323.000	1,105.000
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(k) Cobalt hydroxide filter cake wash

BPT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	207 200	109 100
Nickel	209 400	138 500
Ammonia (as N)	14,530 000	6,389 000
Cobalt	22 900	9,813
Tungsten	758 900	303 100
Oil and grease	2,181 000	1,309 000
Total suspended solids	4,471 000	2,126 000
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times

§ 421.313 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) Tungsten detergent wash and rinse.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten scrap washed	
Copper	0.250	0.119
Nickel	0.107	0.072
Ammonia (as N)	25.990	11.430
Cobalt	0.027	0.014
Tungsten	0.679	0.302

(b) Tungsten leaching acid.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten produced	
Copper	3.291	1.569
Nickel	1.414	0.951
Ammonia (as N)	342.700	150.700
Cobalt	0.360	0.180
Tungsten	8.947	3.985

(c) Tungsten post-leaching wash and rinse.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten produced	
Copper	6.583	3.137
Nickel	2.829	1.903
Ammonia (as N)	685.600	301.400
Cobalt	0.720	0.360
Tungsten	17.900	7.972

(d) Synthetic scheelite filtrate.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of synthetic scheelite produced	
Copper	21.330	10.170
Nickel	9.164	6.165
Ammonia (as N)	2,221 000	976 300
Cobalt	2.333	1.166
Tungsten	57.980	25.820

(e) Tungsten carbide leaching wet air pollution control.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten carbide scrap leached	
Copper	2.241	1.068
Nickel	0.963	0.648
Ammonia (as N)	233.400	102.600
Cobalt	0.245	0.123
Tungsten	6.093	2.714

(f) Tungsten carbide wash water.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten carbide produced	
Copper	10.670	5.083
Nickel	4.583	3.083
Ammonia (as N)	1,111.000	488.300
Cobalt	1.167	0.583
Tungsten	29.000	12.920

(g) Cobalt sludge leaching wet air pollution control.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt sludge	
Copper	45.80	21.83
Nickel	19.68	13.24
Ammonia (as N)	4,770.00	2,097.00
Cobalt	5.01	2.51
Tungsten	124.50	55.46

(h) Crystallization decant.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	53.310	25.410
Nickel	22.910	15.410
Ammonia (as N)	5,552 000	2,441 000
Cobalt	5.831	2.916
Tungsten	144.900	64.560

(i) Acid wash decant.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	24.400	11.630
Nickel	10.490	7.053
Ammonia (as N)	2,541 000	1,117 000
Cobalt	2.669	1.335
Tungsten	66.340	29.550

(j) Cobalt hydroxide filtrate.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	72.510	34.560
Nickel	31.160	20.960
Ammonia (as N)	7,551 000	3,320 000
Cobalt	7.931	3.965
Tungsten	197.100	87.800

(k) Cobalt hydroxide filter cake wash.

BAT LIMITATIONS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	139 600	66 510
Nickel	59 970	40 340
Ammonia (as N)	14,530 000	6,389 000
Cobalt	15 270	7 633
Tungsten	379 400	169 000

§ 421.314 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) Tungsten detergent wash and rinse.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten scrap washed	
Copper	0.250	0 119
Nickel	0 107	0.072
Ammonia (as N)	25 990	11 430
Cobalt	0 027	0 014
Tungsten	0.679	0 302
Oil and Grease	1.950	1 950
Total suspended solids	2 925	2 340
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(b) Tungsten leaching acid.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten produced	
Copper	3 291	1 569
Nickel	1 414	0 951
Ammonia (as N)	342 700	150.700
Cobalt	0 360	0 180
Tungsten	8 947	3 985
Oil and Grease	25 710	25 710
Total suspended solids	38.570	30 850
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(c) Tungsten post-leaching wash and rinse.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten produced	
Copper	6 583	3 137
Nickel	2 829	1 903
Ammonia (as N)	685 600	301 400
Tungsten	17 900	7 972
Cobalt	0 720	0 360
Oil and Grease	51 430	51 430
Total suspended solids	77 150	61 720
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(d) Synthetic scheelite filtrate.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of synthetic scheelite produced	
Copper	21 330	10 170
Nickel	9 164	6 165
Ammonia (as N)	2.221 000	976 300
Cobalt	2 333	1 166
Tungsten	57 980	25 820
Oil and Grease	166 600	166 600
Total suspended solids	249 900	199 900
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) Tungsten carbide leaching wet air pollution control.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten carbide scrap leached	
Copper	2 241	1 068
Nickel	0 963	0 648
Ammonia (as N)	233 400	102 600
Cobalt	0 245	0 123
Tungsten	6 093	2 714
Oil and Grease	17 510	17 510
Total suspended solids	26 270	21 010
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(f) Tungsten carbide wash water.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten carbide produced	
Copper	10 670	5 083
Nickel	4 583	3 083
Ammonia (as N)	1,111 000	488 300
Cobalt	1 167	0 583
Tungsten	29 000	12 920
Oil and Grease	83 330	83 330

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Total suspended solids	125 000	100 000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(g) Cobalt sludge leaching wet air pollution control.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced from cobalt sludge	
Copper	45 80	21 83
Nickel	19 68	13.24
Ammonia (as N)	4,770 00	2,097 00
Cobalt	5 01	2 51
Tungsten	124 50	[illegible]
Oil and Grease	357 80	[illegible]
Total suspended solids	536 70	429 40
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(h) Crystallization decant.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	53 310	25 410
Nickel	22 910	15 410
Ammonia (as N)	5,552 000	2,441 000
Cobalt	5 831	2 916
Tungsten	144 900	[illegible]
Oil and Grease	416 500	416 500
Total suspended solids	[illegible]	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(i) Acid wash decant.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	24 400	11 630
Nickel	10 490	7 053
Ammonia (as N)	2,541 000	1,117 000
Cobalt	2 669	1 335
Tungsten	[illegible]	[illegible]
Oil and Grease	190 600	[illegible]
Total suspended solids	[illegible]	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(j) Cobalt hydroxide filtrate.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	72.510	34.560
Nickel	31.160	20.960
Ammonia (as N)	7,551.000	3,320.000
Cobalt	7.931	3.965
Tungsten	197.100	87.800
Oil and Grease	566.500	566.500
Total suspended solids	849.700	679.800
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(k) Cobalt hydroxide filter cake wash.

NSPS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	139.600	66.510
Nickel	59.970	40.340
Ammonia (as N)	14,530.000	6,389.000
Cobalt	15.270	7.633
Tungsten	379.400	169.000
Oil and Grease	1,090.000	1,090.000
Total suspended solids	1,636.000	1,308.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

§ 421.315 Pretreatment standards for existing sources.

Except as provided in 40 CFR 403.7, any existing source subject to this subpart which introduces polutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for existing sources. The mass of wastewater pollutants in secondary tungsten and cobalt process wastewater introduced into a POTW shall not exceed the following values:

(a) Tungsten detergent wash and rinse.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten scrap washed	
Copper	0.250	0.119
Nickel	0.107	0.072
Ammonia (as N)	25.990	11.430
Cobalt	0.027	0.014
Tungsten	0.679	0.302

(b) Tungsten leaching acid.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten produced	
Copper	3.291	1.569
Nickel	1.414	0.951
Ammonia (as N)	342.700	150.700
Cobalt	0.360	0.180
Tungsten	8.947	3.985

(c) Tungsten post-leaching wash and rinse.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten produced	
Copper	6.583	3.137
Nickel	2.829	1.903
Ammonia (as N)	685.600	301.400
Cobalt	0.720	0.360
Tungsten	17.900	7.972

(d) Synthetic scheelite filtrate.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of synthetic scheelite produced	
Copper	21.330	10.170
Nickel	9.164	6.165
Ammonia (as N)	2,221.000	976.300
Cobalt	2.333	1.166
Tungsten	57.980	25.820

(e) Tungsten carbide leaching wet air pollution control.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten carbide scrap	
Copper	2.241	1.068
Nickel	0.963	0.648
Ammonia (as N)	233.400	102.600
Cobalt	0.245	0.123
Tungsten	6.093	2.714

(f) Tungsten carbide wash water.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten carbide produced	
Copper	10.670	5.083
Nickel	4.583	3.083
Ammonia (as N)	1,111.000	488.300
Cobalt	1.167	0.583
Tungsten	29.000	12.920

(g) Cobalt sludge leaching wet air pollution control.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced from cobalt sludge	
Copper	45.800	21.830
Nickel	19.680	13.240
Ammonia (as N)	4,770.000	2,097.000
Cobalt	5.010	2.510
Tungsten	124.500	55.460

(h) Crystallization decant.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	53.310	25.410
Nickel	22.910	15.410
Ammonia (as N)	5,552.000	2,441.000
Cobalt	5.831	2.916
Tungsten	144.9	64.56

(i) Acid wash decant.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	24.400	11.630
Nickel	10.490	7.053
Ammonia (as N)	2,541.000	1,117.000
Cobalt	2.669	1.335
Tungsten	66.34	29.55

(j) Cobalt hydroxide filtrate.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	72 510	34 560
Nickel	31 160	[illegible]
Ammonia (as N)	7,551.000	3.320 000
Cobalt	7 931	3 965
Tungsten	197 1	[illegible]

(k) Cobalt hydroxide filter cake wash.

PSES FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	139 600	66 510
Nickel	59 970	40 340
Ammonia (as N)	14.530 000	6.389 000
Cobalt	15 270	7 633
Tungsten	379 400	169 000

§ 421.316 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in secondary tungsten and cobalt process wastewater introduced into a POTW shall not exceed the following values:

(a) Tungsten detergent wash and rinse.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten scrap washed	
Copper	0 250	0.119
Nickel	0.107	0.072
Ammonia (as N)	25.990	11 430
Cobalt	0 027	0.014
Tungsten	0.679	0 302

(b) Tungsten leaching acid.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten produced	
Copper	3.291	1 569
Nickel	1.414	0 951
Ammonia (as N)	342 700	150 700
Cobalt	[illegible]	[illegible]
Tungsten	8.947	3 985

(c) Tungsten post-leaching wash and rinse.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten produced	
Copper	[illegible]	3.137
Nickel	2.829	1 903
Ammonia (as N)	685 600	301 400
Cobalt	0.720	[illegible]
Tungsten	17.900	7 792

(d) Synthetic scheelite filtrate.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of synthetic scheelite produced	
Copper	21.330	10.170
Nickel	9.164	6.165
Ammonia (as N)	2,221.000	[illegible]
Cobalt	2 333	1.166
Tungsten	57 980	25.820

(e) Tungsten carbide leaching wet air pollution control.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten carbide scrap leached	
Copper	2.241	1 068
Nickel	[illegible]	[illegible]
Ammonia (as N)	233.400	102 600
Cobalt	[illegible]	0.123
Tungsten	[illegible]	2.714

(f) Tungsten carbide wash water.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of tungsten carbide produced	
Copper	10 670	5 083
Nickel	4 563	3 083
Ammonia (as N)	1 111 000	488 300
Cobalt	1 167	0 583
Tungsten	29 000	12 920

(g) Cobalt sludge leaching wet air pollution control.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced from cobalt sludge	
Copper	45 800	21 830
Nickel	19 680	13 240
Ammonia (as N)	4,770 000	2.097 000
Cobalt	5 010	2 510
Tungsten	124 500	55 480

(h) Crystallization decant.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	[illegible]	[illegible]
Nickel	[illegible]	[illegible]
Ammonia (as N)	[illegible]	[illegible]
Cobalt	[illegible]	[illegible]
Tungsten	144 900	64 580

(i) Acid wash decant.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	24 400	11 630
Nickel	10 490	7 053
Ammonia (as N)	2,541 000	1,117 000
Cobalt	2 669	1 335
Tungsten	66 340	29 550

(j) Cobalt hydroxide filtrate.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	72 510	34 560
Nickel	31 160	20 960
Ammonia (as N)	7,551 000	3 320 000
Cobalt	7 931	3 965
Tungsten	197 100	87 800

(k) Cobalt hydroxide filter cake wash.

PSNS FOR THE SECONDARY TUNGSTEN AND COBALT SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cobalt produced	
Copper	139 600	66 510
Nickel	59 970	40 430
Ammonia (as N)	14,530 000	6 389 000
Cobalt	15 270	7 633
Tungsten	379 400	169 000

§ 421.317 [Reserved]

Subpart AD—Secondary Uranium Subcategory

§ 421.320 Applicability: Description of the secondary uranium subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of uranium (including depleted uranium) by secondary uranium facilities.

§ 421.321 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§ 421.322 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practiacable technology currently available:

(a) Refinery sump filtrate.

BPT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium processed in the refinery	
Chromium	32 270	13 200
Copper	139 500	73 340
Nickel	140 800	92 140
Fluoride	2,567 000	1,459 000
Total suspended solids	3,000 000	1 430 000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(b) Slag leach reslurry.

BPT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium processed in the refinery	
Chromium (total)	2 009	0 822
Copper	8 675	4 566
Nickel	8 767	5 799
Fluoride	159 800	90 860
Total suspended solids	187 200	89 040
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(c) Solvent extraction raffinate filtrate.

BPT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium processed in the refinery	
Chromium (total)	2 802	1 146
Copper	12 100	6 369
Nickel	12 230	[illegible]
Fluoride	222 900	126 700
Total suspended solids	261 100	124 200
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(d) Digestion wet air pollution control.

BPT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium processed in the refinery	
Chromium (total)	0 000	0 000
Copper	0 000	0 000
Nickel	0 000	0 000
Fluoride	0 000	0 000
Total suspended solids	0 000	0 000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(e) Evaporation and denitration wet air pollution control.

BPT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium trioxide produced	
Chromium (total)	0 000	0 000
Copper	0 000	0 000
Nickel	0 000	0 000
Fluoride	0 000	0 000
Total suspended solids	0 000	0 000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(f) Hydrofluorination alkaline scrubber.

BPT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium tetrafluoride produced	
Chromium (total)	0 009	0 004
Copper	0 038	0 020
Nickel	0 036	0 025
Fluoride	0 700	0 398
Total suspended solids	0 820	0 390
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(g) Hydrofluorination water scrubber.

BPT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium tetrafluoride produced	
Chromium (total)	0 000	0 000
Copper	0 000	0 000
Nickel	0 000	0 000
Fluoride	0 000	0 000
Total suspended solids	0 000	0 000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(h) Magnesium reduction and casting floor wash.

BPT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium produced by magnesium reduction	
Chromium (total)	0 013	0 005
Copper	0 057	0 030
Nickel	0 058	0 036
Fluoride	1 054	0 599
Total suspended solids	1 234	0 587
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(i) Laundry wastewater.

BPT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium produced by magnesium reduction	
Chromium (total)	0.084	0.035
Copper	0.365	0.192
Nickel	[illegible]	0.244
Fluoride	6.720	3.821
Total suspended solids	7.872	3.744
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

§ 421.323 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) Refinery sump filtrate.

BAT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium processed in the refinery	
Chromium (total)	27.14	11.00
Copper	[illegible]	44.74
Nickel	40.34	27.14
Fluoride	2,567.00	1,459.00

(b) Slag leach reslurry.

BAT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium processed in the refinery	
Chromium (total)	1.689	0.685
Copper	5.844	2.786
Nickel	2.511	1.689
Fluoride	159.800	90.860

(c) Solvent extraction raffinate filtrate.

BAT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium processed in the refinery	
Chromium (total)	2.357	0.955
Copper	9.152	3.885
Nickel	3.503	2.357
Fluoride	[illegible]	126.700

(d) Digestion wet air pollution control.

BAT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium processed in the refinery	
Chromium (total)	0.000	0.000
Copper	0.000	0.000
Nickel	0.000	[illegible]
Fluoride	0.000	0.000

(e) Evaporation and denitration wet air pollution control.

BAT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium trioxide produced	
Chromium (total)	0.000	0.000
Copper	0.000	0.000
Nickel	0.000	0.000
Fluoride	0.000	0.000

(f) Hydrofluorination alkaline scrubber.

BAT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium tetrafluoride produced	
Chromium (total)	0.007	0.003
Copper	0.026	0.012
Nickel	0.011	0.007
Fluoride	0.700	0.398

(g) Hydrofluorination water scrubber.

BAT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium tetrafluoride produced	
Chromium (total)	0.000	0.000
Copper	0.000	0.000
Nickel	0.000	0.000
Fluoride	0.000	0.000

(h) Magnesium reduction and casting floor wash.

BAT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium produced by magnesium reduction	
Chromium (total)	0.011	0.005
Copper	[illegible]	[illegible]
Nickel	0.017	0.011
Fluoride	1.054	[illegible]

(i) Laundry wastewater.

BAT LIMITATIONS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium produced by magnesium reduction	
Chromium (total)	0.036	0.014
Copper	0.123	0.058
[illegible]	0.053	0.036
Fluoride	3.360	1.940

§ 421.324 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) Refinery sump filtrate.

NSPS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium processed in the refinery	
Chromium (total)	27.14	11.00
Copper	93.88	44.74
Nickel	40.34	27.14
Fluoride	2,567.00	1,459.00
Total suspended solids	1,100.00	680.10
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) Slag leach reslurry.

NSPS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium processed in the refinery	
Chromium (total)	1 689	0 685
Copper	5.844	2 785
Nickel	2 511	1 689
Fluoride	159 800	90 860
Total suspended solids	68 490	54 790
pH	(1)	(1)

[1] Within the range of 7 5 to 10 0 at all times.

(c) Solvent extraction raffinate filtrate.

NSPS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium processed in the refinery	
Chromium (total)	2 357	0 955
Copper	8.152	3 885
Nickel	3 503	2 357
Fluoride	222 900	126 700
Total suspended solids	95 540	76 430
pH	(1)	(1)

[1] Within the range of 7 5 to 10.0 at all times.

(d) Digestion wet air pollution control.

NSPS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium processed in the refinery	
Chromium (total)	0 000	0 000
Copper	0 000	0 000
Nickel	0 000	0 000
Fluoride	0 000	0 000
Total suspended solids	0 000	0 000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) Evaporation and denitration wet air pollution control

NSPS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium tri-oxide produced	
Chromium (total)	0 000	0 000
Copper	0 000	0 000
Nickel	0 000	0 000
Fluoride	0 000	0 000
Total suspended solids	0 000	0 000
pH	(1)	(1)

[1] Within the range of 7 5 to 10 0 at all times.

(f) Hydrofluorination alkaline scrubber.

NSPS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium tetrafluoride produced	
Chromium (total)	0 007	0 003
Copper	0 026	0 012
Nickel	0 011	0 007
Fluoride	0 700	0 398
Total suspended solids	0 300	0 240
pH	(1)	(1)

[1] Within the range of 7 5 to 10.0 at all times

(g) Hydrofluorination water scrubber.

NSPS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium tetrafluoride produced	
Chromium (total)	0 000	0 000
Copper	0 000	0 000
Nickel	0 000	0 000
Fluoride	0 000	0 000
Total suspended solids	0 000	0 000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) magnesium reduction and casting floor wash.

NSPS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium produced by magnesium reduction	
Chromium (total)	0.011	0 005
Copper	0 039	0 018
Nickel	0 017	0.011
Fluoride	1 054	0.599
Total suspended solids	0 452	0.361
pH	(1)	(1)

[1] Within the range of 7 5 to 10.0 at all times.

(i) Laundry wastewater.

NSPS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium produced by magnesium reduction	
Chromium (total)	0 036	0 014
Copper	0 123	0 059
Nickel	0 053	0 036
Fluoride	3 360	1 910
Total suspended solids	1 440	1.152
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.325 [Reserved]

§ 421.326 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in secondary uranium process wastewater introduced into a POTW shall not exceed the following values:

(a) Refinery sump filtrate.

PSNS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium processed in the refinery	
Chromium (total)	27 14	11 00
Copper	93 88	44 74
Nickel	40 34	27 14
Fluoride	2,567 00	1,459 00

(b) Slag leach reslurry.

PSNS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium processed in the refinery	
Chromium (total)	1 689	0 685
Copper	5 844	2 785
Nickel	2 511	1 689
Fluoride	159 800	90 860

(c) Solvent extraction raffinate filtrate.

PSNS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutast or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium processed in the refinery	
Chromium (total)	2 357	0 955
Copper	8 152	3 885
Nickel	3 503	2 357
Fluoride	222 900	126.700

(d) Digestion wet air pollution control.

PSNS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium processed in the refinery	
Chromium (total)	0.000	0.000
Copper	0.000	0.000
Nickel	0.000	0.000
Fluoride	0.000	0.000

(e) Evaporation and denitration wet air pollution control.

PSNS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium trioxide produced	
Chromium (total)	0.000	0.000
Copper	0.000	0.000
Nickel	0.000	0.000
Fluoride	0.000	0.000

(f) Hydrofluorination alkaline scrubber.

PSNS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium tetrafluoride produced	
Chromium (total)	0.007	0.003
Copper	0.026	0.012
Nickel	0.011	0.007
Fluoride	0.700	0.398

(g) Hydrofluorination water scrubber.

PSNS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium tetrafluoride produced	
Chromium (total)	0.000	0.000
Copper	0.000	0.000
Nickel	0.000	0.000
Fluoride	0.000	0.000

(h) Magnesium reduction and casting floor wash.

PSNS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium trioxide produced	
Chromium (total)	0.011	0.005
Copper	0.039	0.018
Nickel	0.017	0.011
Fluoride	1.054	0.599

(i) Laundry wastewater.

PSNS FOR THE SECONDARY URANIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of uranium produced by magnesium reduction	
Chromium (total)	0.036	0.014
Copper	0.123	0.059
Nickel	0.053	0.036
Fluoride	3.360	1.910

§ 421.327 [Reserved]

Subpart AE—Primary Zirconium and Hafnium Subcategory

§421.330 Applicability: Description of the primary zirconium and hafnium subcategory.

The provisions of this subpart are applicable to discharges resulting from the production of zirconium or hafnium at primary zirconium and hafnium facilities. There are two levels of BPT, BAT, NSPS, PSES and PSNS provisions for this subpart. Facilities which only produce zirconium or zirconium/nickel alloys by magnesium reduction of zirconium dioxide are exempt from regulations. All other facilities are subject to these regulations.

§ 421.331 Specialized definitions.

For the purpose of this subpart the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

§ 421.332 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable technology currently available:

(a) Sand drying wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	0.250	0.102
Cyanide (total)	0.165	0.068
Lead	0.239	0.114
Nickel	1.091	0.721
Ammonia (as N)	75.710	[illegible]
Total suspended solids	23.290	11.080
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) Sand chlorination off-gas wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	19.130	7.825
Cyanide (total)	12.640	5.216
Lead	18.260	8.694
Nickel	83.460	55.210
Ammonia (as N)	5,795.000	2,547.000
Total suspended solids	1,782.000	847.700
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Sand chlorination area-vent wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	3.751	1.534
Cyanide (total)	2.472	1.023
Lead	3.580	1.705
Nickel	16.370	[illegible]
Ammonia (as N)	1,136.000	[illegible]
Total suspended solids	[illegible]	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) $SiCl_4$ purification wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	3 299	1 350
Cyanide (total)	2 174	0 900
Lead	3 149	1 500
Nickel	14 400	9 522
Ammonia (as N)	999 500	439 400
Total suspended solids	307 400	146 200
pH	(1)	(1)

[1] Within the range of 7 5 to 10 0 at all times

(e) Feed makeup wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	2 501	1 023
Cyanide (total)	1 648	0 682
Lead	2 387	1 137
Nickel	10 910	7 217
Ammonia (as N)	757 500	333 000
Total suspended solids	233 000	110 800
pH	(1)	(1)

[1] Within the range of 7 5 to 10 0 at all times

(f) Iron extraction (MIBK) steam stripper bottoms.

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	0 987	0 404
Cyanide (total)	0 651	0 269
Lead	0 942	0 449
Nickel	4 308	2 850
Ammonia (as N)	299 100	131 500
Total suspended solids	92 000	43 760
pH	(1)	(1)

[1] Within the range of 7 5 to 10 0 at all times

(g) Zirconium filtrate.

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	17 070	6 982
Cyanide (total)	11 250	4 655
Lead	16 290	7 758
Nickel	74 480	49 260

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Ammonia (as N)	5,171 000	2,273 000
Total suspended solids	1,590 000	756 400
pH	(1)	(1)

[1] Within the range of 7 5 to 10 0 at all times

(h) Hafnium filtrate.

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	0 000	0 000
Cyanide (total)	0 000	0 000
Lead	0 000	0 000
Nickel	0 000	0 000
Ammonia (as N)	0 000	0 000
Total suspended solids	0 000	0 000
pH	(1)	(1)

[1] Within the range of 7 5 to 10 0 at all times

(i) Calcining caustic wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	3 959	1 619
Cyanide (total)	2 909	1 080
Lead	3 779	1 799
Nickel	17 270	11 430
Ammonia (as N)	1 199 000	527 200
Total suspended solids	368 900	175 400
pH	(1)	(1)

[1] Within the range of 7 5 to 10 0 at all times

(j) Pure chlorination wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	16 860	6 897
Cyanide (total)	11 110	4 598
Lead	16 090	7 663
Nickel	73 570	48 660
Ammonia (as N)	5,108 000	2,245 000
Total suspended solids	1,571 000	747 200
pH	(1)	(1)

[1] Within the range of 7 5 to 10 0 at all times.

(k) Reduction area-vent wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	1 622	0 663
Cyanide (total)	1 069	0 442
Lead	1 548	0 737
Nickel	7 077	4 681
Ammonia (as N)	491 300	216 000
Total suspended solids	151 100	71 880
pH	(1)	(1)

[1] Within the range of 7 5 to 10 0 at all times

(l) Magnesium recovery off-gas wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	9 123	3 732
Cyanide (total)	6 013	2 488
Lead	8 708	4 147
Nickel	39 810	26 330
Ammonia (as N)	2,764 000	1,215 000
Total suspended solids	850 100	404 300
pH	(1)	(1)

[1] Within the range of 7 5 to 10 0 at all times.

(m) Magnesium recovery area-vent wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	5 068	2 073
Cyanide (total)	3 340	1 382
Lead	4 838	2 304
Nickel	22 110	14 630
Ammonia (as N)	1,535 000	675 000
Total suspended solids	472 200	224 600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0

(n) Zirconium chip crushing wet air pollution control.

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	0 000	0 000
Cyanide (total)	0 000	0 000
Lead	0 000	0 000
Nickel	0 000	0 000
Ammonia (as N)	0 000	0 000
Total suspended solids	0 000	0 000

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times

(o) Acid leachate from zirconium metal production.

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure zirconium produced	
Chromium (total)	12.970	5.304
Cyanide (total)	8.545	3.536
Lead	12.380	5.893
Nickel	56.570	37.420
Ammonia (as N)	3,928.000	1,727.000
Total suspended solids	1,208.000	574.600
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times

(p) Acid leachate from zirconium alloy production.

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys produced	
Chromium (total)	6.939	2.839
Cyanide (total)	4.574	1.893
Lead	6.624	3.154
Nickel	30.280	20.030
Ammonia (as N)	2,102.000	924.200
Total suspended solids	646.600	307.600
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times

(q) Leaching rinse water from zirconium metal production.

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY [1]

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium produced	
Chromium (total)	25.930	10.610
Cyanide (total)	17.090	7.072
Lead	24.750	11.790
Nickel	113.200	74.840
Ammonia (as N)	7,856.000	3,453.000
Total suspended solids	2,416.000	1,149.000
pH	(1)	(1)

1 Within the range of 7.5 to 10.0.

(r) Leaching rinse water from zirconium alloy production.

BPT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium in alloys produced	
Chromium (total)	0.347	0.142
Cyanide (total)	0.229	0.095
Lead	0.331	0.158
Nickel	1.515	1.002
Ammonia (as N)	105.200	46.240
Total suspended solids	32.350	15.390
pH	(1)	(1)

1 Within the range of 7.5 to 10.0 at all times

§ 421.333 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable:

(a) Sand drying wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	0.210	0.085
Cyanide (total)	0.114	0.045
Lead	0.159	0.074
Nickel	0.312	0.210
Ammonia (as N)	75.710	33.280

(b) Sand chlorination off-gas wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	16.080	6.521
Cyanide (total)	8.694	3.478
Lead	12.170	5.651
Nickel	23.910	16.080
Ammonia (as N)	5,795.000	2,547.000

(c) Sand chlorination area-vent wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	3.154	1.279
Cyanide (total)	1.705	[illegible]
Lead	2.387	1.198
Nickel	[illegible]	3.154
Ammonia (as N)	1,136.000	[illegible]

(d) $SiCl_4$ purification wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	2.774	1.125
Cyanide (total)	1.580	0.600
Lead	2.099	0.975
Nickel	4.124	2.774
Ammonia (as N)	[illegible]	[illegible]

(e) Feed makeup wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	2.103	0.852
Cyanide (total)	1.137	0.455
Lead	1.591	0.739
Nickel	3.126	2.103
Ammonia (as N)	757.500	333.000

(f) Iron extraction (MIBK) steam stripper bottoms.

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	0.830	0.337
Cyanide (total)	0.449	0.180
Lead	0.628	0.292
Nickel	1.234	0.830
Ammonia (as N)	299.100	131.500

(g) Zirconium filtrate.

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	14.350	5.819
Cyanide (total)	7.758	3.103
Lead	10.860	5.043
Nickel	21.330	14.350
Ammonia (as N)	5,171.000	2,273.00

(h) Hafnium filtrate.

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	0.000	0.000
Cyanide (total)	0.000	0.000
Lead	0.000	[illegible]
Nickel	0.000	0.000
Ammonia (as N)	0.000	[illegible]

(i) Calcining caustic wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	3.329	1.350
Cyanide (total)	1.799	0.720
Lead	2.519	1.170
Nickel	4.948	3.329
Ammonia (as N)	1,199.000	527.200

(j) Pure chlorination wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	14.180	5.748
Cyanide (total)	7.663	3.065
Lead	10.730	4.981
Nickel	21.070	14.180
Ammonia (as N)	5,108.000	2,245.000

(k) Reduction area-vent wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY ZIROCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	1.364	0.553
Cyanide (total)	0.737	[illegible]
Lead	1.032	0.479
Nickel	2.027	1.364
Ammonia (as N)	491.300	216.000

(l) Magnesium recovery off-gas wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	7.671	3.110
Cyanide (total)	4.147	1.659
Lead	5.805	2.695
Nickel	11.400	7.671
Ammonia (as N)	2,764.000	1,215.000

(m) Magnesium recovery area-vent wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	4.262	1.728
Cyanide (total)	2.304	0.921
Lead	3.225	1.497
Nickel	6.335	4.262
Ammonia (as N)	1,535.000	675.000

(n) Zirconium chip crushing wet air pollution control.

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	0.000	0.000
Cyanide (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Ammonia (as N)	0.000	0.000

(o) Acid leachate from zirconium metal production.

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure zirconium produced	
Chromium (total)	[illegible]	4.420
Cyanide (total)	[illegible]	2.357
Lead	8.250	3.831
Nickel	16.210	10.900
Ammonia (as N)	3,928.000	1,674.000

(p) Acid leachate from zirconium alloy production.

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys produced	
Chromium (total)	5.835	2.366
Cyanide (total)	3.154	1.262
Lead	4.416	2.050
Nickel	8.674	[illegible]
Ammonia (as N)	2,102.000	895.000

(q) Leaching rinse water from zirconium metal production.

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure zirconium produced	
Chromium (total)	21.810	[illegible]
Cyanide (total)	11.790	4.715
Lead	16.500	7.661
Nickel	32.410	21.810
Ammonia (as N)	7,856.000	3,453.000

(r) Leaching rinse water from zirconium alloy production.

BAT LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys produced	
Chromium (total)	0.292	0.118
Cyanide (total)	0.158	0.063
Lead	0.221	0.103
Nickel	0.434	0.292
Ammonia (as N)	105.200	46.240

§ 421.334 Standards of performance for new sources.

Any new source subject to this subpart shall achieve the following new source performance standards:

(a) Sand drying wet air pollution control.

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	0.210	0.085
Cyanide (total)	0.114	0.045
Lead	0.159	0.074
Nickel	0.312	0.210
Ammonia (as N)	75.710	33.280
Total suspended solids	8.520	6.816
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) Sand chlorination off-gas wet air pollution control.

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	16.080	6.521
Cyanide (total)	8.694	3.478
Lead	12.170	5.651
Nickel	23.910	16.080
Ammonia (as N)	5,795.000	2,547.000
Total suspended solids	652.100	521.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) Sand chlorination area-vent wet air pollution control.

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	3.154	1.279
Cyanide (total)	1.705	0.682
Lead	2.387	1.108
Nickel	4.688	3.154
Ammonia (as N)	1,136.000	499.500
Total suspended solids	127.900	102.300
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(d) SiC_{14} purification wet air pollution control.

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	2.774	1.125
Cyanide (total)	1.500	0.600
Lead	2.099	0.975
Nickel	4.124	2.774
Ammonia (as N)	999.500	439.400
Total suspended solids	112.500	89.980
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) Feed makeup wet air pollution control.

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	2.103	0.852
Cyanide (total)	1.137	0.455
Lead	1.591	0.739
Nickel	3.126	2.103
Ammonia (as N)	757.500	333.000
Total suspended solids	85.250	68.200
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) Iron extraction (MIBK) steam stripper bottoms.

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	0.830	0.337
Cyanide (total)	0.449	0.180
Lead	0.628	0.292
Nickel	1.234	0.830
Ammonia (as N)	299.100	131.500
Total suspended solids	33.660	26.930
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(g) Zirconium filtrate.

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	14.350	5.819
Cyanide (total)	7.758	3.103
Lead	10.860	5.043
Nickel	21.330	14.350

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Ammonia (as N)	5,171.000	2,273.000
Total suspended solids	581.900	465.500
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(h) Hafnium filtrate.

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	[illegible]	0.000
Cyanide (total)	0.000	[illegible]
Lead	0.000	0.000
Nickel	0.000	[illegible]
Ammonia (as N)	0.000	0.000
Total suspended solids	0.000	0.000
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(i) Calcining caustic wet air pollution control.

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	3.329	1.350
Cyanide (total)	1.799	0.720
Lead	2.519	1.170
Nickel	4.948	3.329
Ammonia (as N)	1,199.000	527.200
Total suspended solids	135.000	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(j) Pure chlorination wet air pollution control.

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	14.180	5.748
Cyanide (total)	7.663	3.065
Lead	10.730	[illegible]
Nickel	21.070	14.180
Ammonia (as N)	5,108.000	2,245.000
Total suspended solids	574.800	459.800
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(k) Reduction area-vent wet air pollution control.

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	1.364	0.553
Cyanide (total)	0.737	0.295
Lead	1.032	0.479
Nickel	2.027	1.364
Ammonia (as N)	491.300	216.000
Total suspended solids	55.290	44.230
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) Magnesium recovery off-gas wet air pollution control.

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	7.671	3.110
Cyanide (total)	4.147	1.659
Lead	5.805	2.695
Nickel	11.400	7.671
Ammonia (as N)	2.764.000	1.215.000
Total suspended solids	404.300	248.800
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) Magnesium recovery area-vent wet air pollution control.

NSPS LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	4.262	1.728
Cyanide (total)	2.304	0.921
Lead	3.225	1.497
Nickel	6.335	4.262
Ammonia (as N)	1.535.000	675.000
Total suspended solids	172.800	138.200
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) Zirconium chip crushing west air pollution control.

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	0.000	0.000
Cyanide (total)	0.000	0.000
Lead	0.000	0.000
Nickel	0.000	0.000
Ammonia (as N)	[illegible]	[illegible]
Total suspended solids	0.000	0.000

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(o) Acid leachate from zirconium metal production.

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure zirconium produced	
Chromium (total)	10.900	4.420
Cyanide (total)	5.893	2.357
Lead	8.250	3.831
Nickel	16.210	[illegible]
Ammonia (as N)	3.928.000	1.674.000
Total suspended solids	442.000	353.600
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(p) Acid leachate from zirconium alloy production.

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys produced	
Chromium (total)	5.835	2.366
Cyanide (total)	3.154	1.262
Lead	4.416	2.050
Nickel	8.674	5.835
Ammonia (as N)	2.102.000	895.800
Total suspended solids	236.600	189.300
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(q) Leaching rinse water from zirconium metal production.

NSPS LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure zirconium produced	
Chromium (total)	21.810	8.840
Cyanide (total)	11.790	4.715
Lead	16.500	7.661
Nickel	32.410	21.810
Ammonia (as N)	7.856.000	3.453.000
Total suspended solids	884.000	707.200
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(r) Leaching rinse water from zirconium alloy production.

NSPS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys produced	
Chromium (total)	[illegible]	0.118
Cyanide (total)	0.158	0.063
Lead	0.221	0.103
Nickel	0.434	0.292
Ammonia (as N)	105.200	46.240
Total suspended solids	11.840	[illegible]
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 421.335 [Reserved]

§ 421.336 Pretreatment standards for new sources.

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in primary zirconium and hafnium process wastewater introduced into a POTW shall not exceed the following values:

(a) Sand drying wet air pollution control.

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	0.210	0.085
Cyanide (total)	0.114	0.045
Lead	0.159	0.074
Nickel	0.312	0.210
Ammonia (as N)	75.710	33.280

(b) Sand chlorination off-gas wet air pollution control

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	[illegible]	6.521
Cyanide (total)	[illegible]	3.478
Lead	12.170	5.651
Nickel	23.910	[illegible]
Ammonia (as N)	5.795.000	2.547.000

(c) Sand chlorination area vent wet air pollution control

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	3 154	1 279
Cyanide (total)	1 705	0 682
Lead	2 387	1 108
Nickel	4 688	3 154
Ammonia (as N)	1,136 000	499 500

(d) $SiCl_4$ purification wet air pollution control.

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	2 774	1 125
Cyanide (total)	1 500	0 600
Lead	2 099	0 975
Nickel	4 124	2.774
Ammonia (as N)	999 500	439 400

(e) Feed makeup wet air pollution control.

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	2 103	0 852
Cyanide (total)	1.137	0 455
Lead	1 591	0.739
Nickel	3 126	2.103
Ammonia (as N)	757 500	333 000

(f) Iron extraction (MIBK) steam stripper bottoms.

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	0 830	0.337
Cyanide (total)	0.449	0 180
Lead	0 628	0 292
Nickel	1 234	0 830
Ammonia (as N)	299 100	131.500

(g) Zirconium filtrate.

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	14 350	5.819
Cyanide (total)	7 758	3 103
Lead	10 860	5.043
Nickel	21 340	14.350
Ammonia (as N)	5,171 000	2,273 000

(h) Hafnium filtrate

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	0 000	0 000
Cyanide (total)	0 000	0 000
Lead	0 000	0 000
Nickel	0 000	0 000
Ammonia (as N)	0 000	0 000

(i) Calcining caustic wet air pollution control.

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium dioxide and hafnium dioxide produced	
Chromium (total)	3 329	1 350
Cyanide (total)	1 799	0 720
Lead	2 519	1 170
Nickel	4 948	3 329
Ammonia (as N)	1,199 000	527 200

(j) Pure chlorination wet air pollution control.

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	14 180	5 748
Cyanide (total)	7 663	3 065
Lead	10 730	4 981
Nickel	21 007	14 180
Ammonia (as N)	5,108 000	2,245,000

(k) Reduction area-vent wet air pollution control.

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of Zirconium and hafnium produced	
Chromium (total)	1 364	0 553
Cyanide (total)	0 737	0 295
Lead	1 032	0 479
Nickel	2 027	1 364
Ammonia (as N)	491 300	216 000

(l) Magnesium recovery off-gas wet air pollution control.

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	7 671	3 110
Cyanide (total)	4 147	1 659
Lead	5 805	2 695
Nickel	11 400	7 671
Ammonia (as N)	2,764 000	1,215 000

(m) Magnesium recovery area-vent wet air pollution control.

PSNS LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	4 262	1 728
Cyanide (total)	2 304	0 921
Lead	3 225	1 497
Nickel	6 335	4 262
Ammonia (as N)	1,535 000	675 00

(m) Zirconium chip crushing wet air pollution control.

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium and hafnium produced	
Chromium (total)	0 000	0 000
Cyanide (total)	0 000	0 000
Lead	0 000	0 000
Nickel	0 000	0 000
Ammonia (as N)	0 000	0 000

(o) Acid leachate from zirconium metal production.

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure zirconium produced	
Chromium (total)	10.900	4 420
Cyanide (total)	5 893	2 357
Lead	8 250	3 831
Nickel	16 210	10 900
Ammonia (as N)	3.928 000	1 674 00

(p) Acid leachate from zirconium alloy production.

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys produced	
Chromium (total)	5 835	2 366
Cyanide (total)	3 154	1 262
Lead	4 416	2 050
Nickel	8 674	5 835
Ammonia (as N)	2,102 000	[illegible]

(q) Leaching rinse water from zirconium metal production.

PSNS LIMITATIONS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of pure zirconium produced	
Chromium (total)	21 810	8 840
Cyanide (total)	11 790	4.715
Lead	16 500	7 661
Nickel	32 410	21 810
Ammonia (as N)	7.856 000	3.453 000

(r) Leaching rinse water from zirconium alloy production.

PSNS FOR THE PRIMARY ZIRCONIUM AND HAFNIUM SUBCATEGORY

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of zirconium contained in alloys produced	
Chromium (total)	0 292	0 118
Cyanide (total)	0 158	0 063
Lead	0 221	0 103
Nickel	0 434	0 292
Ammonia (as N)	105 200	46 240

§ 421.337 [Reserved]

[FR Doc. 85-21288 Filed 9-19-85; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
September 20, 1985

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations. Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination Decision

Washington: WA85–5037.

Modification to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

California: CA85–5034	Aug 23, 1985.
Iowa: IA84–4042	June 15, 1984.
Michigan: MI85–5022	June 7, 1985.
Nevada: NV84–5014	June 8, 1984.
Pennsylvania: PA85–3030	June 21, 1985.
Utah: UT83–5120	Sept. 30, 1983.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

California: (CA85–5036).	CA84–5022	Oct. 5, 1984.
Missouri: (MO85–4031).	MO84–4110	Dec. 21, 1984.
New York:		
NY81–3061 (NY85–3042)		Sept. 11, 1981.
NY81–3046 (NY85–3042)		July 17, 1981.
Texas: TX84–4104 (TX85–4039).		Nov. 30, 1984.

Signed at Washington, D.C. this 13th day of September 1985.

James L. Valin,

Assistant Administrator.

[illegible] CODE 4510-27-M

NEW DECISION

STATE: WASHINGTON
DECISION NUMBER: WA85-5037
DESCRIPTION OF WORK: Building Projects (Does not include single-family homes and apartments up to and including four stories)

COUNTIES: Chelan, Clallam, *Douglas, Grays Harbor, Jefferson, King, Kitsap, Kittitas, Lewis, Mason, *Okanogan, *Pacific, Pierce, Snohomish, and Thurston

*Includes the areas of Douglas and Okanogan Counties which lie West of the 120th Meridian, and Pacific County North of the Wahkiakum County northern boundary extended Westward to the Pacific Ocean

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$1[illegible]	$2.10
BOILERMAKERS	1[illegible].62	3.64
BRICKLAYERS:		
Area 1	17.84	2.29
Area 2	18.45	3.18
Area 3:		
Masonry contracts under $100,000	13.31	3.40
Masonry contracts over $100,000	16.64	3.40
Area 4	18.18	3.50
CARPENTERS:		
Area 1:		
Buildings under $500,000 and Bridges under $350,000 (Except King County): All Classifications	15.00	2.96
All other work:		
Carpenters & Drywall Applicator	17.32	2.96
Carpenter on creosoted material	17.42	2.96
Sawfilers, stationary power saw, floor finisher, floor layer, shingler, floor sander and other stationary power woodworking tools	17.45	2.96
Millwright & Machine Erector	17.82	2.96
Piledriver, bridge, dock and wharf builder	17.52	2.96
Acoustical worker	17.48	2.96
Area 2:		
Carpenters, Lathers, Sawfiler Stationary power saw, floorlayer, floor finisher, floorsander, and stationary wood working tools	14.00	2.96
Piledriver, Bridge, Dock, and Wharf builder	17.52	2.96
Acoustical Workers	14.16	2.96
CEMENT MASONS:		
Area 1:		
Group 1	15.62	3.80
Group 2	16.12	3.80
Group 3	16.62	3.80

	Basic Hourly Rates	Fringe Benefits
CEMENT MASONS (Cont'd):		
Area 2:		
Cement Masons	17.86	3.45
Composition, Color, Mastic, Trowel Machine, Grinder, Power Tool, Gunnite nozzle	18.11	3.45
Area 3:		
Cement Masons	16.95	3.00
Composition, color, mastic, trowel machine, grinder, power tool, gunnite nozzle	17.20	3.00
ELECTRICIANS:		
Area 1:		
Electricians	18.76	3%+3.61
Cable Splicers	19.70	3%+3.61
Area 2:		
Electricians	20.03	3%+2.56
Cable Splicers	22.03	3%+2.56
Area 3:		
Electricians	17.62	3%+3.385
Cable Splicers	19.38	3%+3.385
Area 4:		
Electricians	18.70	3%+3.20
Cable Splicers	20.57	3%+3.20
Area 5:		
Electricians	21.00	3%+3.20
Cable Splicers	23.10	3%+3.20
ELECTRONIC TECHNICIANS:		
Area 1	13.66	2.63
Area 2	14.00	7.4%
ELEVATOR MECHANICS:		
Area 1	19.855	a+3.29
Area 2	20.76	a+3.00
Elevator Helpers Areas 1 & 2: 70% of journeyman rate plus full fringes. Probationary Helpers 50% no fringe.		
GLAZIERS:		
Area 1	10.91	2.51
Area 2	16.84	b+2.68
Area 3	13.06	2.03
INSULATION APPLICATORS	14.22	2.66
IRONWORKERS:	18.26	4.71
LATHERS:		
Area 1	17.27	3.05

(2)

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Area 1:		
Brush	15.97	2.59
Drywall Taper	14.67	2.59
Steel, Spray, Steam Cleaning	16.47	2.59
Swing Stage or high work over 30 ft	16.67	2.59
Bitumastic, Sandblasting, Bridge, tanks on legs, Tower, Stacks, Steeples	16.77	2.59
TV, Radio and Electrical Transmission Towers	17.47	2.59
Area 2:		
General Painter	17.24	2.72
Drywall Taper	18.32	2.72
Industrial Painter	17.64	2.72
PLASTERERS:		
Area 1	15.88	3.20
Area 2	17.31	3.62
PLUMBERS:		
Area 1	17.25	6.82
Area 2	19.43	7.23
Area 3	19.89	6.76
Area 4	19.00	6.82
ROOFERS:		
Area 1	14.56	4.10
Area 2	16.48	2.55
Area 3:		
Roofers, waterproofers	18.85	2.57
Slate & Tile Roofers	19.10	2.57
Area 4:		
Roofers, Waterproofers	16.75	3.04
Slate & tile roofers	17.00	3.04
SHEET METAL WORKERS:		
Area 1	17.46	3%+3.08
Area 2	21.54	3%+2.24
Area 3	19.65	3%+2.33
Area 4	20.71	3%+3.07
SOFT FLOOR LAYERS:		
Area 1	15.00	2.34
Area 2	17.30	2.34
Area 3	14.454	2.65+c
Area 4	15.98	2.82
SPRINKLER FITTERS:		
Area 1	20.99	6.91
Area 2	19.17	3.23

	Basic Hourly Rates	Fringe Benefits
TERRAZZO WORKERS;TILE SETTERS:		
Area 1	17.04	2.29
Area 2	17.69	3.12
Area 3	16.64	3.40
Area 4	17.44	3.43
TILE, MARBLE, & TERRAZZO FINISHERS:	14.77	2.22
LANDSCAPE CONSTRUCTION:		
Laborers	8.46	3.30
Plumbers	10.62	2.31
Power Equipment Operators	11.18	3.80
LABORERS:		
Area 1:		
Chelan, Douglas, Kittitas, & Okanogan Counties. (See Footnote "d")		
Group 1	8.46	3.43
Group 2	9.60	3.43
Group 3	9.60	3.43
Group 4	9.98	3.43
Group 5	10.27	3.43
All other work not covered by Footnote "d"		
Group 1	8.46	3.43
Group 2	10.78	3.43
Group 3	12.00	3.43
Group 4	12.48	3.43
Group 5	12.84	3.43
Area 2:		
Remaining Counties (See Footnote "c"		
Group 1	8.46	3.43
Group 2	10.78	3.43
Group 3	12.69	3.43
Group 4	13.20	3.43
Group 5	13.40	3.43
All other work not covered by Footnote "c"		
Group 1	8.46	3.43
Group 2	10.78	3.43
Group 3	14.96	3.43
Group 4	15.44	3.43
Group 5	15.80	3.43

(3)

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Area 1:		
Chelan, Douglas, Kittitas & Okanogan Counties.		
On projects as described in Footnote "d", the rate for each group shall be 65% of the base rate plus full fringe benefits. On all other work, the following rates apply:		
Group 1	16.73	4.16
Group 2	16.23	4.16
Group 3	15.74	4.16
Group 4	15.43	4.16
Group 5	15.11	4.16
Group 6	13.33	4.16
Area 2:		
Remaining Counties:		
On projects as described in Footnote "d", the rate for each group shall be 85% of the base rate plus full fringe benefits.		
On all other work, the following rates apply:		
Group 1	18.73	4.16
Group 2	18.23	4.16
Group 3	17.79	4.16
Group 4	17.43	4.16
Group 5	17.13	4.16
Group 6	15.33	4.16

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
On projects as described in Footnote "d", the rate for each group shall be 85% of the base rate plus full fringe benefits. On all other work, the following rates apply:		
Group 1	17.06	3.64
Group 2	17.11	3.64
Group 3	17.16	3.64
Group 4	17.27	3.64
Group 5	17.33	3.64
Group 6	17.37	3.64
Group 7	17.38	3.64
Group 8	17.44	3.64
Group 9	17.49	3.64
Group 10	17.51	3.64
Group 11	17.54	3.64
Group 12	17.64	3.64
Group 13	17.66	3.64
Group 14	17.70	3.64
Group 15	17.82	3.64
Group 16	17.86	3.64
Group 17	17.98	3.64
Group 18	18.03	3.64
Group 19	18.19	3.64
Group 20	18.35	3.64
Group 21	18.51	3.64
Group 22	12.00	3.64
Group 23	15.25	3.64

WELDERS receive rate prescribed for craft performing operation to which welding is incidental

FOOTNOTES:

a. Employer contributes 8% of basic hourly rate for over 5 years service and 6% for 6 months to 5 years service as vacation pay credit. Paid holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving, Christmas Day

b. Two weeks vacation with pay after 1 year employment. Paid holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day

c. Reduced rates as indicated in the wage decision may be paid on projects which have a total value of less than $3 million excluding the cost of electrical, mechanical, and utilities. Utilities include sanitary and storm sewerage and facilities for the delivery of water, elecity, gas, and communications.

d. Reduced rates as indicated in the wage decision may be paid on the following:
   1. Projects involving work on structures such as buildings & bridges whose total value is less than $1.5 million excluding mechanical, electrical, and utility portions of the contract. Utilities include sanitary & storm sewerage and facilities for the delivery of water, gas, electricity, and communications.
   2. Projects of less than $1 million where no building is involved. Surfacing & paving included, but utilities excluded.
   3. Marine projects (docks, wharfs etc) less than $150,000

AREA DESCRIPTIONS

BRICKLAYERS; MARBLE SETTERS:
Area 1: Chelan, Douglas, and Okanogan Counties
Area 2: Clallam, Jefferson, King, Kitsap, and Snohomish Counties
Area 3: Kittitas County
Area 4: Grays Harbor, Lewis, Mason, Pacific, Pierce, and Thurston Counties

CARPENTERS:
Area 1: Clallam, Grays Harbor, Jefferson, King, Kitsap, Lewis, Mason, Pacific & Pierce
Area 2: Chelan, Kittitas, Okanogan, and Douglas Counties

CEMENT MASONS:
Area 1: Chelan, Douglas, Kittitas (except area lying one mile west of Easton), and Okanogan Counties
Area 2: Clallam, Grays Harbor, Jefferson, King (Southern portion), Kitsap, Kittitas (Western portion lying one mile West of the City of Easton), Lewis, Mason, Pacific, Pierce, and Thurston Counties
Area 3: Island, San Juan, Skagit, Snohomish, King,(Northern portion) & Whatcom Cos.

ELECTRICIANS:
Area 1: Kittitas County
Area 2: Chelan, Douglas, and Okanogan Counties
Area 3: Clallam, Jefferson, King, and Kitsap Counties
Area 4: Grays Harbor, Lewis, Mason, Pierce, Pacific, and Thurston Counties
Area 5: Snohomish County

ELECTRONIC TECHNICIANS: Installation and repair of low-voltage communication and alarm systems, excluding any work under the jurisdiction of journeyman electricians
Area 1: Clallam, Jefferson, King, and Kitsap Counties
Area 2: Grays Harbor, Lewis, Mason, Pacific, Pierce, and Thurston

ELEVATOR MECHANICS:
Area 1: Douglas, Okanogan Counties
Area 2: Chelan, Clallam, Grays Harbor, Jefferson, King, Kitsap, Kittitas, Lewis, Mason, Pacific, Pierce, Snohomish, and Thurston Counties

GLAZIERS:
Area 1: Chelan, Douglas, and Okanogan County
Area 2: Clallam, Jefferson, Grays Harbor, King, Kitsap, Lewis, Mason, Pacific, Pierce Snohomish, Thurston Counties
Area 3: Kittitas County

LATHERS:
Area 1: Clallam, Jefferson, King, Kitsap, Lewis, Pacific, and Pierce Counties

PAINTERS:
Area 1: Chelan, Douglas, Kittitas, Okanogan Counties
Area 2: Clallam, Grays Harbor, Jefferson, King, Kitsap, Lewis, Mason, Pierce, Pacific, Snohomish, and Thurston Counties

PLASTERERS:
Area 1: Chelan, Douglas, Kittitas, Okanogan Counties
Area 2: Clallam, Grays Harbor, Jefferson, King, Kitsap, Lewis, Mason & Pacific Cos.

PLUMBERS:
Area 1: Chelan, Kittitas (North of 47° 15' Latitude), Douglas, Okanogan Counties
Area 2: Kittitas County (South of 47° 15' Latitude)
Area 3: Grays Harbor, Kitsap, Lewis, Mason, Pierce, Snohomish, and Thurston Counties
Area 4: Clallam, King, and Jefferson Counties

ROOFERS:
Area 1: Chelan, Douglas & Okanogan Counties
Area 2: Kittitas County
Area 3: Clallam, Jefferson, King, Kitsap, Mason, and Snohomish Counties
Area 4: Cowlitz, Grays Harbor, Lewis, Pacific, Pierce and Thurston Counties

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AREA DESCRIPTIONS

SHEET METAL WORKERS:
Area 1: Chelan, Douglas, Okanogan Counties
Area 2: Clallam, Jefferson, Kitsap, and Mason Counties
Area 3: Grays Harbor, Lewis, Pacific, Pierce, and Thurston Counties
Area 4: King, Kittitas, and Snohomish Counties

SOFT FLOOR LAYERS:
Area 1: Chelan, Douglas, and Okanogan County
Area 2: King, Kitsap, and Snohomish Counties
Area 3: Grays Harbor, Lewis, Mason, Pierce, and Thurston Counties
Area 4: Kittitas County

SPRINKLER FITTERS:
Area 1: Snohomish, King, Kitsap, Pierce, and Thurston Counties
Area 2: Remaining Counties

TERRAZZO WORKERS; TILE SETTERS:
Area 1: Chelan, Douglas, and Okanogan Counties
Area 2: Clallam, Jefferson, King, Kitsap, and Snohomish
Area 3: Kittitas County
Area 4: Grays Harbor, Lewis, Mason, Pierce, and Thurston Counties

GROUP DESCRIPTIONS

CEMENT MASONS (AREA 1)

Group 1: Journeyman cement mason includes but not limited to: Rodding, tamping, Floating, Troweling, Patching, Stoning, rubbing, sack rubbing, all exposed aggregate finishing, setting of screeds, screed forms, curb and gutter and sidewalk forms, preparation of all concrete for caulking of the joints and the caulking of expansion joints, preparation of concrete for the application of hardeners, sealers and curing compounds and their application; grouting and dry packing of machine base, removal of snap ties and she-bolts prior to patching of concrete

Group 2: Power troweling machine operator, troweling of magnesite, toroyanal or material with epoxy base or oxychloride base, all power grinders, brushing hammer, chipping gun, gunnite nozzleman, all sandblasting for architectural finishes and exposing of aggregate for finish, concrete sawing and cutting for expansion joints and scoring for decorative patterns, operating of clary-type floats, longitudinal floats, rodding machines and belting machines, scarifiers

Group 3: Grinding, brushing or chipping of toxic materials or high density concrete, operating power tools on a scaffold

LABORERS (AREAS 1 and 2)

Group 1: Fence laborer, window washer

Group 2: Batch weighman, crusher feeder, pilot car, tool room man at job site,

Group 3 General laborer,; air, gas, or electric vibrating screed; Ballast regulator machine; carpenter tender; chipping gun; chuck tender; concrete form stripper; cement finisher tender; curing labor; demolition, wrecking, and moving including charred material, epoxy technician; gabian basket builders; grinders; pot tender; powderman's tender; stake hopper; topman-tailman; tugger operator

GROUP DESCRIPTIONS (CONT'D)

LABORERS AREAS 1 and 2 (CONT'D)

Group 4: Cement dumper-paving; Clary power spreader; concrete saw operator; faller and bucker chain saw; grade checker; high scaler; jackhammer; manhole builder; mortarman and hodcarrier; nozzleman (concrete pump, green cutter when using combination of high pressure air & water on concrete and rock, sandblast, gunnite, shotcrete) water blaster; pavement breaker; pipe layer & caulker; Pipe reliner (not insert type); Railroad spike puller (power); raker-asphalt; spreader (concrete); timberman-sewer (lagger, shorer & cribber); track liner (power); tamper (multiple and self-propelled); tamper & similar electric, air & gas operated tools; vibrator; wagon driller & air track operator; well point laborer

Group 5: Caisson worker; miner; powderman; re-timberman

POWER EQUIPMENT OPERATORS (AREAS 1 and 2)

Group 1: Cranes, 100 tons and over or 200ft of boom including jib and over; Loaders, 8 yards and over; shovels and attachments 6 yds and over

Group 2: Cableways; cranes, over 45 tons up to 100 tons or over 150 ft including jib; rollagon; tower crane; helicopter, winch; remote control operator; loader, overhead, 6 yds up to 8 yds; shovels, backhoes over 3 yds to 6 yds; slipform pavers; scrapers, self-propelled, 45 yds and over; Quad 9, HD 41, D-10

Group 3: Concrete batch plant operator; bump cutter; cranes 20 tons to 45 tons; Hydralifts; chipper; crushers; derricks; drilling machine; finishing machine; loaders, overhead, under 6 yds; mechanics; mixers, asphalt plant; motor patrol graders, finishing; pump truck mounted concrete pump with boom attachment; piledriver operator; screed man; shovels, backhoes 3 yds and under; sidegrader, trimmer; tractors, backhoes over 60 hp; scrapers, self-propelled, under 45 yds

Group 4: Broom; dozers, D-9 and under; paydozers; A-frame crane;cranes up to 20 tons; conveyors; hoists, air tugger; loaders, elevating type; fork lifts; motor patrol grader, non-finishing; mucking machine; concrete pumps; roller, plant mix or multi-lift materials; saws, concrete; scrapers, carryall; spreaders, blaw knox; trenching machines; equipment service engineer; oiler driver on truck cranes over 45 tons; tractor, backhoe 60 hp and under

Group 5: Oiler driver on truck cranes, 45 tones and under; oil distributors, blower; assistant engineer; ;abement breaker; posthole digger, mechanical; power plant; wheel tractors, farmall type; pumps, water; rollers other than plant mix

Group 6: Gradechecker and stakeman

[redacted]

Group 1: Leverman and Loaders at Bunkers and Batch Plants; Swampers; and Checkers

Group 2: Team Drivers

Group 3: Bull Lifts and similar equipment used in loading and unloading trucks, transporting materials on job site (warehousing); Dumpsters and similar equipment (including Tournarockers, Tournawagon, Turnatrailer, Cat DW series, Terra Cobra, LeTourneau, Westinghouse, Athey Wagon, Euclid, two and four-wheeled power tractor with trailer and similar top-loaded equipment transporting material: Dump Trucks, side, end and bottom dump, including Semi-trucks and Trains or combinations thereof) - up to and including 5 yds.; Flatbed, single rear axle; Fuel Truck; Grease Truck; Greaser, Battery Service Man and/or Tire Service Man; Scissor Truck; Spreader, Flaherty; Tractor (small, rubber-tired); Vacuum Truck; Water Wagon and Tank Trucks, up to 1,600 gallons; Winch Truck, single rear axle; Wrecker, Tow Truck and similar equipment

Group 4: Flatbed, dual rear axle

Group 5: Buggymobile; Hyster Operators; Straddle Carrier (Roos, Hyster, and similar equipment); Water Wagon and Tank Trucks, 1,6000 gallons to 3,000 gallons

Group 6: Transit-mix, 0 to and including 4½ yards

Group 7: Dumpsters and similar equipment (as listed in Group 3) - over 5 yds. to and including 12 yds.; Explosive Truck (field mix) ammilar equipment; Lowbed and Heavy Duty Trailer, under 50 tons gross; Road Oil Distributor Driver; Slurry Truck; Sno-go and similar equipment; Winch Truck, dual rear axle

Group 8: Dumpster and similar equipment (as listed in Group 3) - over 12 yards to and including 16 yards

Group 9: Bulk Cement Tankers; Dumpsters and similar equipment (as listed in Group 3) - over 16 yds. to and including 20 yds.; Water Wagon and Trank Truck, over 3,000 gallons

Group 10: Bull Lifts or similar equipment used in loading or unloading trucks transporting materials on job site, other than warehousing

Group 11: Transit-mix, over 4 yds. to and including 6 yds.

Group 12: "A" Frame or Hydralift Trucks or similar equipment

TRUCK DRIVERS (Cont'd)

Group 13: Dumpster and similar equipment (as listed in Group 3) - over 20 yds. to and including 30 yds.; Lowbed and Heavy Duty Trailer, over 50 tons gross to and including 100 tons gross

Group 14: Transit-mix, over 6 yds. to and including 8 yds.

Group 15: Dumpsters and similar equipment (as listed in Group 3) - over 30 yds. to and including 40 yds.; Lowbed and Heavy Duty Trailer, over 100 tons gross

Group 16: Transit-mix, over 8 yds. to and including 10 yds.

Group 17: Dumpsters and similar equipment (as listed in Group 3) - over 40 yds. to and including 55 yds.

Group 18: Transit-mix, over 10 yds. to and including 12 yds.

Group 19: Transit-mix, over 12 yds. to and including 16 yds.

Group 20: Transit-mix, over 16 yds. to and including 20 yds.

Group 21: Transit-mix, over 20 yds.

Group 22: Escort or Pilot Car

Group 23: Flat bed (single rear axle); pickup truck

	Basic Hourly Rates	Fringe Benefits
DECISION NO. IA84-4042 - MOD. #4 (49 FR 24855 - 6/15/84) Woodbury County, Iowa		
Change:		
Carpenters:		
All other construction:		
On projects $750,000 & under:		
Carpenters, drywall hangers & lathers	$10.8[illegible]	2.36
Millwrights & pile-drivermen	11.30	2.36
On projects over $750,000:		
Carpenters, drywall hangers & lathers	12.30	2.36
Millwrights & pile-drivermen	12.80	2.36
Electricians	15.34	2.07+ 3.75%
Ironworkers	12.89	1.795
Plumbers & pipefitters	13.59	3.25
Sprinkler Fitters	17.00	3.40

	Basic Hourly Rates	Fringe Benefits
DECISION NO. CA85-5034 - Mod. #1 (50 FR 34341 - August 23, 1985) San Diego County, CA		
Change:		
Footnotes:		
Change Footnote b to read: 5 years but less than 10 years $1.48 per hour to Vacation Fund.		

	Basic Hourly Rates	Fringe Benefits
DECISION NO. MI85-5022 - Mod. #1 (50 FR 24116 - June 7, 1985) Macomb, Monroe, Oakland, Washtenaw and Wayne Counties, Michigan		
Change:		
Carpenters:		
Area 2:		
Building construction	$16.69	$1.7[illegible] +22[illegible]
Residential construction	12.51	2.4[illegible] +11[illegible]

	Basic Hourly Rates	Fringe Benefits
DECISION NO. NV84-5014 - Mod. #13 (49 FR 23988 - June 8, 1984) Statewide (does not include the Test Range, or Building construction in Churchill, Lyon and Mineral Counties, or Highway construction in Douglas County), Nevada		
Change:		
Bricklayers; Stonemason Area 1	$16.59	
Mason Tenders: Area 1	13.87	

	Basic Hourly Rates	Fringe Benefits
DECISION NO. PA85-3030 MOD. NO. 2 (50 FR 25852 - June 21, 1985) Cumberland, Dauphin, Perry, Juniata, New Cumberland Depot in York County, Pennsylvania		
CHANGE:		
Asbestos Workers	$18.26	2.04
Electricians	15.91	1.83+ 3 1/4%
Elevator Constructors	16.38	3.58+ a+b
Elevator Constructors Helpers	11.47	3.58+ a+b
Elevator Constructors Helpers (Prob.)	8.19	
Glaziers	13.91	1.96
Line Construction:		
Linemen & Cable Splicers	15.56	.80+ 3 3/8%
Groundman	9.34	.80+ 3 3/8%
Winch truck operator	10.89	.80+ 3 3/8%
Roofers:		
Composition	14.06	2.53
Sprinkler Fitters	17.75	3.40
Terrazzo Workers & Tile Setters	15.02	2.15
Truck Drivers:		
Truck drivers, pick-ups, dump, service trucks, flat trucks, to and including 5 license plates	12.69	f+g
Transit mix, winch trucks, tracter all types euclids, ross lumber and over 5 plates	12.95	f+g

FOOTNOTES:

f. $145.60 per month for employee who have worked sixty hours or more during the month to a Health and Welfare Fund.

g. $96.31 per month for employee who have worked sixty hours or more during the month to a pension fund.

DECISION NO. UT83-5120-MOD. #13 (48 FR 44992 - Sept. 30, 1983 Statewide, Utah	Basic Hourly Rates	Fringe Benefits
Change:		
BRICKLAYERS:		
Industrial(power plants, Refineries, Smelters and Industrial Refractory Projects)	$15.00	1.57
All other work	11.75	1.57
CARPENTERS:		
Building Construction:		
Carpenters	13.75	2.35
Saw Operators	14.00	2.35
Scaffold Builder	14.25	2.35
Millwrights	15.05	2.35
Piledrivermen	20.09	2.35
Heavy and Highway Construction:		
Zone 1:		
Carpenters	15.63	2.35
Saw Operators; Carpenters handling creosote materials	15.88	2.35
Piledrivermen	20.09	2.35
Zone 2:		
Carpenters	18.13	2.35
Saw operators; Carpenters handling creosote materials	18.38	2.35
Piledrivermen	20.09	2.35
DRYWALL INSTALLERS:		
Taping, finishing and texturing (hand or machine)	12.00	1.44
ELEVATOR CONSTRUCTORS:		
Mechanics	15.82	3.58+a
Helpers	11.07	3.58+a
Probationary Helpers	7.91	

POWER EQUIPMENT OPERATORS	Basic Hourly Rates AREA 1	Basic Hourly Rates AREA 2
HEAVY AND HIGHWAY CONSTRUCTION:		
GROUP 1	$16.22	$19.22
GROUP 2	16.57	19.57
GROUP 3	16.75	19.75
GROUP 4	16.86	19.86
GROUP 5	17.32	20.32
GROUP 6	17.47	20.47
GROUP 6A	17.58	20.58
GROUP 7	17.88	20.88
GROUP 7A	17.94	20.94
GROUP 8	18.00	21.00
GROUP 9	18.16	21.16
GROUP 10	18.60	21.60
GROUP 10A	19.56	22.56
GROUP 10B	20.01	23.01
GROUP 11	20.17	23.17
STEEL ERECTION:		
GROUP 1	16.36	
GROUP 2	16.94	
GROUP 3	18.58	
GROUP 4	18.79	
GROUP 4A	19.30	
GROUP 5	20.09	
GROUP 6	20.77	
GROUP 7	21.25	
GROUP 8	21.71	
GROUP 9	23.37	
PILEDRIVING:		
GROUP 1	15.61	
GROUP 1A	16.16	
GROUP 1B	16.47	
GROUP 2A	16.47	
GROUP 2B	17.33	
GROUP 2C	17.67	
GROUP 2D	17.91	
GROUP 3	18.14	
GROUP 3A	18.83	
GROUP 4	19.70	
GROUP 5	19.98	
GROUP 6	21.77	
FRINGE BENEFITS: $6.26		

DECISION NO. UT83-5120 Mod. #13 Cont'd	Basic Hourly Rates	Fringe Benefits
Omit:		
PAINTERS:		
Area's - 1 and 2		
Add:		
PAINTERS:		
STATEWIDE:		
Commercial Construction		
Brush and Roller	$13.50	$1.62
Wallcovering Hanger	13.75	1.62
Spray; Sandblast; Swing Stage and Steeplejack; Open Steel	13.80	1.62
Industrial and Bridge Construction:		
Brush and Roller	13.80	1.62
Spray; Sandblast and Swing Stage	14.05	1.62
Special Coatings applicator, Appicator of Creosote and all chemical coatings such as Coal Tars; Bitumistics; Epoxies; Curing Agents; Catalysis Base Materials; Open Steel (walked or Cooned)	14.30	1.62

Basic Hourly Rates	Fringe Benefits

STATE: California
COUNTIES: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo and Yuba
DECISION NUMBER: CA85-5036 DATE: Date of Publication
Supersedes Decision No. CA84-5022, dated October5, 1984, in 49 FR 39416.
DESCRIPTION OF WORK: Building construction (excluding Amador and Tulare Counties); Heavy construction (excluding Water Well Drilling); Highway construction; and Residential construction (excluding Alpine, Amador, Butte, Colusa, Fresno, Glenn, Kings, Lake, Lassen, Madera, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Stanislaus, Tehama, Trinity and Tulare Counties). This decision does not include the installation of solar energy systems.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$23.85	$5.61
BOILERMAKERS:		
Boilermakers	21.60	4.25
Boilermaker-Blacksmith (storage tank erection)	17.25	4.00
Boilermaker-Blacksmith (storage tank repair)	16.05	4.00
BRICKLAYERS; STONEMASONS:		
Area 1	19.75	7.25
Area 2	20.05	4.95
Area 3	17.85	3.30
Area 4	16.53	2.82
Area 5	19.57	3.53
Area 6	20.10	3.87
Area 7	17.57	4.04
BRICK TENDERS:		
Area 1	13.80	3.46
Area 2	15.49	6.18
Area 3	16.24	4.91
Area 4	16.99	5.46
Area 5	17.99	5.46
Area 6	14.19	6.10
Area 7	15.55	4.45
Area 8	16.05	4.45
Area 9 (Residential construction 2 stories or less)	14.30	5.46
CARPENTERS:		
Area 1:		
Carpenters	21.21	6.455
Hardwood Floorlayers; Power Saw Operators; Saw Filers; Shinglers; Steel Scaffold Erector and Steel Shoring	21.36	6.455
Millwrights	22.11	7.855
CARPENTERS (Cont'd):		
Area 1 (Cont'd):		
Piledriver, Bridge, Wharf and Dock Builders	$19.36	$9.715
Area 2:		
Carpenters	18.58	6.455
Hardwood Floorlayers; Power Saw Operator; Saw Filer; Shinglers; Steel Scaffold Erectors and Steel Shoring	18.71	6.455
Millwrights	19.48	7.855
Piledrivers, Bridge, Wharf and Dock Builders	19.36	9.715
Area 3 (Residential)	11.80	6.205
Area 4 (Residential)	12.00	6.205
Area 5 (Residential):		
Carpenters	19.67	6.455
Hardwood Floorlayers; Power Saw Operator; Saw Filers; Shinglers; Steel Scaffold Erector and Steel Shoring	19.82	6.455
CEMENT MASONS:		
Cement Masons	16.91	6.18
Swing or slip form scaffolds; Mastic, Magnesite, gypsum, epoxy, polyester, resin and all composition	17.16	6.18
DIVERS:		
Divers	31.63	8.485
Diver Tender	20.38	8.485
Assistant Tender	19.38	8.485

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	Basic Hourly Rates	Fringe Benefits
DRYWALL INSTALLER/LATHER:		
Area 1:		
Drywall Installer/Lather	$20.30	$6.485
Drywall Stocker, Scrapper & Clean-up	10.15	3.335
Area 2:		
Drywall Installer/Lather	18.14	6.485
Drywall Stocker, Scrapper & Clean-up	9.07	3.335
ELECTRICIANS:		
Area 1	23.06	7.798 +3%
Area 2:		
Electricians	16.30	3.38 +3%
Cable Splicers	17.93	3.38 +3%
Residential Electrician	12.50	3.30
Sound and Signal Technician	15.15	1.50
Area 3	16.36	4.41 +3%
Area 4:		
Building contracts over $100,000:		
Electricians	20.03	5.15 +3%
Cable Splicers	22.53	5.15 +3%
Building contracts $100,000 or less:		
Electricians	16.03	3.65 +3%
Cable Splicers	18.03	3.65 +3%
Area 5:		
Electricians	25.16	6.45 +3%
Cable Splicers	27.16	6.45 +3%
Area 6:		
Electricians	17.00	5.44 +3%
Cable Splicers	18.36	5.44 +3%
ELECTRICIANS (Cont'd):		
Area 7:		
Contracts over $100,000:		
Electricians	$18.20	$4.51 +3%
Cable Splicers	20.02	4.51 +3%
Contracts $100,000 or less:		
Electricians	16.20	4.51 +3%
Cable Splicers	17.82	4.51 +3%
Sound Technician	11.00	.50
Residential Electrician	10.00	3%
Area 8:		
Electricians	22.85	8.74 +3%
Cable Splicers	25.14	8.74 +3%
Area 9:		
Zone 1:		
Electricians	19.37	4.45 +3.25%
Cable Splicers	21.31	4.45 +3.25%
Zone 2:		
Electricians	21.12	4.45 +3.25%
Cable Splicers	23.06	4.45 +3.25%
Zone 3:		
Electricians	22.37	4.45 +3.25%
Cable Splicers	24.31	4.45 +3.25%
Area 10:		
Electrician	15.00	6.71 +3%
Cable Splicers	16.88	6.71 +3%
Residential Electrician	7.50	4.64 +4%

(15)

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS (Cont'd):		
Area 11:		
Building contracts over $100,000:		
Electricians	$23.34	$5.05 +3%
Cable Splicers	26.26	5.05 +3%
Building contracts $100,000 or less; and residential construction:		
Electricians	17.57	5.05 +3%
Area 12:		
Electricians	25.20	7.55 +3%
Cable Splicers	28.35	7.55 +3%
Area 13:		
Electrician	25.965	7.26 +3%
Cable Splicers	29.21	7.26 +3%
Area 14	25.00	5.42 +3%
Area 15	21.69	4.41 +3%
ELEVATOR CONSTRUCTORS:		
Mechanics	29.39	3.29 +a
Helpers	20.57	3.29 +a
Probationary Helpers	14.695	
GLAZIERS:		
Area 1	21.38	5.88
Area 2	15.75	6.44
Area 3 (Residential)	10.00	2.72
Area 4 (Residential)	9.82	1.70
Area 5	19.36	4.17
Area 6	13.58	3.04
IRONWORKERS:		
Fence Erectors	18.01	8.93
Ornamental, Reinforcing, and Structural	18.90	8.93
LINE CONSTRUCTION:		
Area 1:		
Ground	18.87	5.45 +3% (16)
Line Equipment Operator	$22.64	$5.45 +3%
Line worker	25.16	5.45 +3%
Cable Splicers	27.16	5.45 +3%
Area 2:		
Zone 1:		
Group 1	20.03	3.25 +3.5%
Group 2	18.11	3.25 +3.5%
Group 3	16.35	3.25 +3.5%
Group 4	16.61	2.55 +3.5%
Group 5	13.66	2.55 +3.5%
Group 6	13.66	2.55 +3.5%
Group 7	12.84	2.55 +3.5%
Zone Differential: Add to Zone 1 rate: Zone 2 - $2.40 Zone 3 - $3.15 Zone 4 - $3.90 Zone 5 - $5.15		
Area 3:		
Ground	17.38	4.21 +3%
Line worker	18.20	4.21 +3%
Area 4:		
Ground	14.86	4.24 +3.5%
Line Equipment Operators	17.83	4.24 +3.5%
Line worker	19.81	4.24 +3.5%
Cable Splicers	22.29	4.24 +3.5%

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS (Cont'd):		
Area 5:		
Ground	$11.60	$2.75 +3.25%
Line worker	15.47	2.75 +3.25%
Cable Splicers	17.02	2.75 +3.25%
Area 6	23.34	5.05 +3%
Area 7:		
Ground	12.57	4.41 +3%
Line worker; Equipment Operators	15.71	4.41 +3%
Cable Splicers	17.28	4.41 +3%
Area 8	23.06	7.798 +3%
Area 9:		
Ground	16.54	5.00 +3.5%
Equipment Operators	18.61	5.00 +3.5%
Line worker	20.68	5.00 +3.5%
Cable Splicers	22.75	5.00 +3.5%
Area 10:		
Ground	21.25	5.42 +3%
Line Equipment Operators	22.50	5.42 +3%
Line worker	25.00	5.42 +3%
Area 11:		
Ground	13.60	4.66 +3%
Heavy Equipment Operators	15.30	5.04 +3%
Line worker	17.00	5.41 +3%
Cable Splicers	18.36	5.41 +3%
Area 12:		
Ground	22.07	7.26 +3%
ELECTRICIANS (Cont'd):		
Area 12 (Cont'd):		
Line worker; Technicians	$25.965	$7.26 +3%
Cable Splicers	29.21	7.26 +3%
Area 13:		
Ground	21.42	7.42 +3%
Line worker; Line Equipment Operators	25.20	7.42 +3%
Cable Splicers	28.35	7.42 +3%
Area 14:		
Ground	18.28	4.74 +3%
Heavy Equipment Operator	20.57	4.74 +3%
Line worker	22.85	4.74 +3%
Cable Splicers	25.14	4.74 +3%
MARBLE FINISHERS:		
Area 1	13.92	3.67
MARBLE SETTERS AND TERRAZZO WORKERS:		
Area 1	20.75	7.19
Area 2	17.57	4.04
MARBLE, TERRAZZO AND TILE SETTERS:		
Area 1	20.51	3.69
PAINTERS:		
Area 1:		
Brush	13.39	4.60
Spray	14.14	4.60
Sandblaster; Scaffold; Sheetrock; Structural Steel; Swing Stage; Taper	13.79	4.60
Area 2:		
Brush; Roller; Taper	15.22	1.59
Bazooka Operators; Paperhangers; Sandblasters; Spray; Structural Steel	15.72	1.59

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	Basic Hourly Rates	Fringe Benefits
PAINTERS (Cont'd):		
Area 3:		
Brush	$16.20	$2.57
Hazardous Coating	17.20	2.57
Sandblasting; Spray; Taping	16.70	2.57
Area 4:		
Brush	21.23	4.70
Tapers	22.03	4.70
Residential Painter	17.32	4.70
Area 5:		
Brush	21.23	4.70
Tapers	22.03	4.70
Residential Painter	17.32	4.70
Area 6:		
Brush and Roller	17.45	1.95
Paperhanger; Sandblaster; Spray; Taper	17.95	1.95
Brush - steel; Brush - swing stage up to 40 ft.	17.70	1.95
Spray - steel; Spray - swing stage up to 40 ft.	18.20	1.95
Area 7:		
Brush	20.78	4.68
Drywall Finisher	21.78	4.68
Paperhangers	21.78	4.68
Sandblasting; Spray; Steam Cleaning	21.28	4.68
Area 8:		
Brush; Pot Tenders; Rollers	9.80	1.35
Sandblaster; Spray; Structural Steel; Swing Stage; Tapers	10.30	1.35
Area 9-A:		
Brush	19.29	6.23
Spray	19.79	6.23
Paperhangers and Spray Coatings	20.04	6.23
Tapers	20.83	6.23
Area 9-B:		
Brush and Paperhangers	14.66	6.23
Spray	15.66	6.23
Tapers	20.83	6.23
Area 10:		
Brush and Roller	12.24	2.41+

	Basic Hourly Rates	Fringe Benefits
PAINTERS (Cont'd):		
Area 10 (Cont'd):		
Paperhangers; Sandblasters; Spray; Structural Steel; Swing Stage; Taper	$12.49	$2.41
PARKING LOT STRIPING WORK AND/OR HIGHWAY MARKERS:		
Area 1:		
Traffic Delineating Device Applicator	14.83	2.00+b
Striper; Traffic Surface Sandblaster; Wheel Stop Installer	14.30	2.00+b
Slurry Seal Operation:		
Mixer Operator	13.95	2.00+b
Applicator Operator; Shuttle and Squeegee	12.37	2.00+b
Top	10.39	2.00+b
Area 2:		
Traffic Delineating Device Applicator	14.83	2.00+b
Sandblaster; Striper; Wheel Stop Installer	14.30	2.00+b
Slurry Seal Operation:		
Applicator Operator; Shuttle; Squeegee	12.37	2.00+b
Compactor, Top, Traffic Control, Service and Spreader	10.39	2.00+b
Mixer operator	13.95	2.00+b
Traffic Surface Protective Coating Applicator	14.48	2.00+b

	Basic Hourly Rates	Fringe Benefits
PLASTERERS:		
Area 1	$19.63	$5.88
Area 2	20.83	8.40
Area 3	17.36	6.35
Area 4	16.63	5.44
Area 5	18.25	8.95
Area 6	16.55	6.94
Area 7	19.43	7.01
Area 8	14.30	7.45
PLASTERERS' TENDERS:		
Area 1	18.25	8.04
Area 2	16.85	5.01
Area 3	19.09	4.93
Area 4	17.50	4.05
Area 5	14.95	1.40
PLUMBERS:		
Area 1	26.50	5.88
Area 2	25.86	7.34
PLUMBERS; STEAMFITTERS:		
Area 1	19.72	6.71
Area 2	20.34	2.43
Area 3:		
Plumber	31.00	9.405
Plumber on single family homes and apartments up to and including 2 stories	30.00	9.405
Area 4	22.03	6.35
Area 5	26.40	5.84
Area 6	16.47	9.45
Area 7	24.97	11.00
Area 8:		
Work on single family homes and duplexes	18.85	5.64
All other construction	23.36	7.08
Air Conditioning and Refrigeration	24.91	7.08
Landscape and Irrigation work	20.56	7.08
ROOFERS:		
Area 1:		
Roofers	17.37	6.75
Mastic Workers; Kettle tender (2 kettles without pumps)	17.62	6.75
Bitumastic; Coal Tar Build-up; Enameler; Pipewrappers	19.37	6.75

	Basic Hourly Rates	Fringe Benefits
ROOFERS (Cont'd):		
Area 2	$16.94	$3.15
Area 3:		
Roofers (slate, tile and composition)	14.75	3.64
Enameler and Pitch	16.25	3.64
Area 4	15.80	3.85
Area 5	19.10	4.00
Area 6:		
Roofers	17.00	7.09
Mastic Workers; Kettle tender (2 kettles without pumps)	17.25	7.09
Bitumastic; Coal Tar; Enamelers; Pipewrappers	19.00	7.09
Area 7:		
Roofers (slate, tile and composition)	14.90	7.64
Enameler and Pitch	17.65	7.64
Area 8:		
Roofer; Kettle tender (1 kettle)	16.23	6.22
Kettle tender (2 kettles)	17.23	6.22
Bitumastic; Coal Tar; Enamelers; Mastic and Pitch	18.23	6.22
SHEET METAL WORKERS:		
Area 1	26.87	6.76
Area 2	18.03	4.55
Area 3	18.37	5.06*
Area 4	21.46	7.50
Area 5	18.65	4.42
Area 6	27.17	6.48
Area 7	18.38	4.22
Area 8	26.70	7.16
Area 9	27.05	6.70
Area 10	22.92	6.86
Area 11	25.64	9.21
SOFT FLOOR LAYERS:		
Area 1	16.01	3.00
Area 2	16.74	1.58
Area 3	18.19	6.16
Area 4	12.94	3.27 +8%
Area 5	17.85	6.50

*plus 12%.

	Basic Hourly Rates	Fringe Benefits
SPRINKLER FITTERS:		
Area 1	$26.72	$7.29
Area 2	21.87	3.23
TERRAZZO FINISHERS:		
Area 1:		
Base Machine Operator	16.72	3.95
Terrazzo Finishers	16.02	3.95
TERRAZZO WORKERS AND TILE [illegible]		
Area 1	16.45	2.90
TILE FINISHERS:		
Area 1	15.49	3.34 +10%
Area 2	10.68	1.65
Area 3	13.00	1.65
TILE SETTERS:		
Area 1	22.00	4.23
Area 2	18.92	3.29
Area 3	16.45	4.55
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.		

FOOTNOTES:

a. Employer contributes 8% of basic hourly rate for over 5 years' service, and 6% of basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Six Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day

b. Employer contributes $.80 per hour to Vacation Fund for the first year of employment; 1 year but less than 5 years 1.13 per hour to Vacation Fund; 5 years but less than 10 years 1.48 per hour to Vacation Fund; over 10 years 1.83 per hour to Vacation Fund

	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
LABORERS:			
TUNNEL & SHAFT LABORERS:			
Group 1	$19.53		
Group 2	19.05		
Group 3	18.78		
Group 4	18.60		
LABORERS:	AREA 1	AREA 2	AREA 3
Group 1	16.31	15.31	12.11
Group 1-a	16.535	15.535	12.31
Group 1-b	*	*	*
Group 1-c	16.36	15.36	12.16
Group 1-d	16.56	15.56	12.36
Group 1-e	16.86	15.86	12.59
Group 1-f	16.895	15.895	12.62
Group 1-g **			
Group 2	16.16	15.16	11.98
Group 3	16.06	15.06	11.88
Group 8	9.75	9.75	8.46
Gunnite Laborers:			
Group 1	16.77	15.77	12.52
Group 2	16.18	15.18	12.00
Group 3	16.06	15.06	11.88
Wrecking Work:			
Group 1	16.31	15.31	12.11
Group 2	16.16	15.16	11.98
Group 3	16.06	15.06	11.88

*See Group 1-b under the group descriptions.

**(Contra Costa County only).....$16.51

FRINGE BENEFITS: $5.36.

LABORERS:			
Work on single family homes and apartments not exceeding 2 stories:			
Group 1	$8.00		
Group 2	10.00		
Mod Carriers	11.00		

Basic Hourly Rates	Fringe Benefits

POWER EQUIPMENT OPERATORS*:	AREA 1 Basic Hourly Rates	AREA 2 Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Group 1-A	$11.76	$13.76			
Group 1	15.54	17.54			
Group 2	16.09	18.09			
Group 3	16.42	18.42			
Group 4	17.27	19.27			
Group 5	17.60	19.60			
Group 6	17.83	19.83			
Group 7	18.08	20.08			
Group 8	18.76	20.76			
Group 9	19.10	21.10			
Group 10	19.45	21.45			
Group 10-A	19.64	21.64			
Group 11	19.91	21.91			
Group 11-A	21.71	23.71			
Group 11-B	22.14	24.14			
Group 11-C	22.65	24.65			

FRINGE BENEFITS:
$9.60

*Residential Construction 3 stories and under to be paid the Area 1 rate.

POWER EQUIPMENT OPERATORS: Clamshell and Dipper Dredging; Hydraulic Suction Dredging:	AREA 1	AREA 2	AREA 3	AREA 4
Group 1	$15.79	$17.26	$17.69	$18.13
Group 2	17.28	18.75	19.18	19.62
Group 3:				
Clamshell and Dipper Dredging - new construction	18.78	20.24	20.67	21.11
All other clamshell and dipper dredging, and Hydraulic Suction Dredging	18.33	19.79	20.22	20.66
Group 4:				
Clamshell and Dipper Dredging - new construction	21.72	23.19	23.62	24.06
All other clamshell and dipper dredging, and Hydraulic Suction Dredging	19.94	21.41	21.84	22.28
Group 5	24.84	25.98	26.41	27.03

FRINGE BENEFITS:
$9.41

	Basic Hourly Rates	Fringe Benefits
FLOORLAYING:		
Group 1	$15.61	$9.60
Group 1A	16.16	9.60
Group 1B	16.47	9.60
Group 2A	16.47	9.60
Group 2B	17.33	9.60
Group 2C	17.67	9.60
Group 2D	17.91	9.60
Group 3	18.14	9.60
Group 3A	18.83	9.60
Group 4	19.70	9.60
Group 5	19.98	9.60
Group 6	21.77	9.60
STEEL ERECTION:		
Group 1	16.36	9.60
Group 2	16.94	9.60
Group 3	18.56	9.60
Group 4	18.79	9.60
Group 4A	19.30	9.60
Group 5	20.09	9.60
Group 6	20.77	9.60
Group 7	21.25	9.60
Group 8	21.71	9.60
Group 9	23.37	9.60

TRUCK DRIVERS:	D.H.R. Area 1	D.H.R. Area 2
Group 1	$14.28	$16.80
Group 2	14.35	16.88
Group 3	14.37	16.90
Group 4	14.37	16.91
Group 5	14.38	16.92
Group 6	14.39	16.93
Group 7	14.41	16.95
Group 8	14.42	16.97
Group 9	14.43	16.98
Group 10	14.45	17.00
Group 11	14.46	17.01
Group 12	14.49	17.05
Group 13	14.50	17.06
Group 14	14.51	17.07
Group 15	14.54	17.10
Group 16	14.56	17.11
Group 17	14.55	17.12
Group 18	14.57	17.14
Group 19	14.58	17.15
Group 20	14.59	17.16
Group 21	14.63	17.21
Group 22	14.65	17.24
Group 23	14.66	17.25
Group 24	14.74	17.34
Group 25	14.75	17.35
Group 26	14.77	17.38
Group 27	14.79	17.40
Group 28	14.82	17.44
Group 29	14.83	17.45
Group 30	14.86	17.48
Group 31	14.91	17.54
Group 32	14.95	17.47
Group 33	15.04	17.69
Group 34	15.12	17.79
Group 35	15.16	17.84
Group 36	15.29	17.99
Group 37	15.42	18.14
Group 38		

FRINGE BENEFITS:
$7.04

AREA DESCRIPTIONS

BRICKLAYERS; STONEMASONS:
Area 1: Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, Siskiyou, Solano, Sonoma, and Trinity Cos.
Area 2: Alameda and Contra Costa Counties
Area 3: Fresno, Kings, Madera, Mariposa, and Merced Counties
Area 4: Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Sutter, Tehama, Yolo, and Yuba Counties
Area 5: Monterey and Santa Cruz Counties
Area 6: San Benito and Santa Clara Counties
Area 7: Alpine, Amador, Calaveras, San Joaquin, Stanislaus, and Tuolumne Counties

BRICK TENDERS:
Area 1: Alpine, Amador, Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Yolo and Yuba Counties
Area 2: San Francisco and San Mateo Counties
Area 3: Fresno, Kings, Madera, and Tulare Counties
Area 4: Calaveras, Del Norte, Humboldt, Lake, Mariposa, Mendocino, Merced, Monterey, Napa, San Joaquin, Solano, Sonoma, Stanislaus and Tuolumne Counties
Area 5: Marin County
Area 6: Alameda and Contra Costa Counties
Area 7: Santa Cruz County
Area 8: San Benito and Santa Clara Counties
Area 9: (Residential construction of 2 stories or less) Lake, Monterey and Napa Counties

CARPENTERS:
Area 1: Alameda, Contra Costa, Marin, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Solano and Sonoma Counties
Area 2: Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Mariposa, Mendocino, Merced, Modoc, Monterey, Nevada, Placer, Plumas, Sacramento, San Joaquin, Santa Cruz, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo and Yuba Counties
Area 3: (Residential) Calaveras, Mariposa and Merced Counties
Area 4: (Residential) Del Norte and Humboldt Counties
Area 5: (Residential) Alameda, Contra Costa, Marin, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Solano and Sonoma Counties

DRYWALL INSTALLERS LATHERS:
Area 1: Alameda, Contra Costa, Marin, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma Counties
Area 2: Remainder of Counties

AREA DESCRIPTIONS

ELECTRICIANS:
Area 1: Alameda County
Area 2: Alpine, Amador, Colusa, El Dorado, Nevada, Placer, Sacramento, Sierra, Sutter, Yolo and Yuba Counties
Area 3: Butte County, Glenn County, Lassen County (excluding the Sierra Army Depot/Herlong), Modoc County, Plumas County, Shasta County, Siskiyou County, Tehama County and Trinity County
Area 4: Calaveras and San Joaquin Counties
Area 5: Contra Costa County
Area 6: Del Norte and Humboldt Counties
Area 7: Fresno, Kings, Madera and Tulare Counties
Area 8: Lake, Marin, Mendocino and Sonoma Counties
Area 9: Mariposa, Merced, Stanislaus and Tuolumne Counties
Definition of Zones:
Zone 1: Eight (8) road miles from the City Halls of Merced, Modesto, and Turlock; 0-2 air miles from the intersection of Washington St. and Stockton Rd., Sonora; all of Merced and Stanislaus Counties to that point 200 yds. west of and parallel to Highway I-5.
Zone 2: 2-4 air miles from the intersection of Washington St. and Stockton Rd., Sonora.
Zone 3: All of Mariposa, Merced, Stanislaus and Tuolumne Counties not in Zones 1 or 2.
Area 10: Monterey, San Benito and Santa Cruz Counties
Area 11: Napa and Solano Counties
Area 12: Santa Clara County
Area 13: San Francisco County
Area 14: San Mateo County
Area 15: Sierra Army Depot (Herlong) in Lassen County

GLAZIERS:
Area 1: Alameda, Contra Costa, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz and Sonoma Counties
Area 2: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Stanislaus, Sutter, Tehama, Tuolumne, Yolo and Yuba Counties
Area 3: (Residential) Sutter and Yuba Counties
Area 4: (Residential) Amador, Calaveras, El Dorado, Nevada, Placer, Sacramento, San Joaquin, Solano, Tuolumne and Yolo Counties
Area 5: Fresno, Kings, Madera, Merced, and Tulare Counties
Area 6: Del Norte and Humboldt Counties

AREA DESCRIPTIONS (Cont'd)

LINE CONSTRUCTION:
Area 1: Contra Costa County
Area 2: Del Norte County
Group 1: Cable Splicer, Lead Pole Sprayer
Group 2: Line worker, Pole Sprayer, Heavy Line Equipment operator, Certified Line Welder
*Group 3: Tree Trimmer
Group 4: Line Equipment operator
Group 5: Head Ground, Powder, Jackhammer operator
*Group 6: Head Ground (Chipper)
Group 7: Ground
*Groups 3 and 6 receive BASE RATE (ZONE 1) ONLY (no Zone Differential)
Zone Definitions:
Zone 1: 0-3 miles radius from the geographical center of Alturos and Yreka, California
Zone 2: 3 to 20 miles radius
Zone 3: 20 to 35 miles radius
Zone 4: 35 to 50 miles radius
Zone 5: Over 50 miles radius
BASE RATE (Zone 1) is paid when working out of employer's permanent shop.
Area 3: Fresno, Kings, Madera and Tulare Counties
Area 4: Calaveras and San Joaquin Counties
Area 5: Mariposa, Merced, Stanislaus and Tuolumne Counties
Area 6: Napa and Solano Counties
Area 7: Butte, Glenn, Lassen, Plumas, Shasta, Tehama, and Trinity Counties
Area 8: Alameda County
Area 9: Amador, Colusa, Sacramento, Sutter, Yolo and Yuba Counties; Alpine, El Dorado, Nevada, Placer, and Sierra Counties (those portions west of the Main Sierra Mountain Watershed)
Area 10: San Mateo County
Area 11: Humboldt County
Area 12: San Francisco County
Area 13: Santa Clara County
Area 14: Lake, Marin, Mendocino and Sonoma Counties

MARBLE FINISHERS:
Area 1: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo and Yuba Counties

MARBLE SETTERS AND TERRAZZO WORKERS:
Area 1: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, Siskiyou, Solano, Sonoma and Trinity Counties
Area 2: Amador, Alpine, Calaveras, San Joaquin, Stanislaus and Tuolumne Counties

MARBLE, TERRAZZO AND TILE SETTERS:
Area 1: Monterey and Santa Cruz Counties

AREA DESCRIPTIONS (Cont'd)

PAINTERS:
Area 1: Alpine, Amador, Calaveras and San Joaquin Counties
Area 2: Fresno, Kings, Madera and Tulare Counties
Area 3: Mariposa, Merced, Stanislaus, and Tuolumne Counties
Area 4: San Benito, San Mateo and Santa Clara Counties
Area 5: Monterey and Santa Cruz Counties
Area 6: Lassen County (that portion that lies eastward of Highway #395, northward to and including Honey Lake); Lake Tahoe Area
Area 7: Lake, Marin, Mendocino, San Francisco and Sonoma Counties
Area 8: Butte, Colusa, and Glenn Counties; Lassen County (excluding the extreme SE corner); Modoc, Plumas, Shasta, Siskiyou, Sutter, Tehama, Trinity and Yuba Counties
Area 9-A: Alameda, Contra Costa, Napa and Solano Counties
Area 9-B: El Dorado, Nevada, Placer, Sacramento, Sierra and Yolo Counties
Area 10: Del Norte and Humboldt Counties

PARKING LOT STRIPING WORK AND/OR HIGHWAY MARKERS:
Area 1: Fresno, Kings and Tulare Counties
Area 2: Remaining Counties

PLASTERERS:
Area 1: Alameda and Contra Costa Counties
Area 2: San Francisco and San Mateo Counties
Area 3: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Yolo and Yuba Cos.
Area 4: Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, Solano, and Sonoma Counties
Area 5: San Benito, Santa Clara, and Santa Cruz Counties
Area 6: Fresno, Kings, Madera, and Tulare Counties
Area 7: Monterey County
Area 8: Mariposa, Merced, Stanislaus, and Tuolumne Counties

PLASTERERS' TENDERS:
Area 1: Alameda and Contra Costa Counties
Area 2: Fresno, Kings, Madera, and Tulare Counties
Area 3: San Francisco and San Mateo Counties
Area 4: Monterey County
Area 5: Napa County

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AREA DESCRIPTIONS (Cont'd)

PLUMBERS:
Area 1: Alameda County
Area 2: Contra Costa County

PLUMBERS; STEAMFITTERS:
Area 1: Amador County (northern half); El Dorado, Nevada, Sacramento, and Yolo Counties (excluding Lake Tahoe Area), Sierra County
Area 2: Lake Tahoe Area
Area 3: Marin, Mendocino, San Francisco, and Sonoma Counties
Area 4: Alpine County; Amador County (southern portion); Butte, Calaveras, Colusa, Fresno, Glenn, Kings, Lassen, Madera, Mariposa, Merced, Modoc, Monterey, Plumas, San Joaquin, Santa Cruz, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, and Yuba Counties
Area 5: Napa, and Solano Counties
Area 6: Del Norte and Humboldt Counties
Area 7: San Benito and Santa Clara Counties
Area 8: San Mateo County

ROOFERS:
Area 1: Alameda, Contra Costa, Lake, Marin, Mendocino, Napa, Solano and Sonoma Counties
Area 2: Alpine, Calaveras, Mariposa, Merced, San Joaquin, Stanislaus, and Tuolumne Counties
Area 3: Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Placer, Plumas, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity and Yuba Counties
Area 4: Fresno, Kings, Madera and Tulare Counties
Area 5: Monterey and Santa Cruz Counties
Area 6: San Francisco and San Mateo Counties
Area 7: Amador, Sacramento and Yolo Counties
Area 8: San Benito and Santa Clara Counties

SHEET METAL WORKERS:
Area 1: Alameda and Contra Costa Counties
Area 2: Alpine, Calaveras, and San Joaquin Counties
Area 3: Amador, Butte, Colusa, El Dorado, Glenn, Modoc, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Sutter, Tehama, Yolo, and Yuba Counties
Area 4: Monterey and San Benito Counties
Area 5: Del Norte, Humboldt and Trinity Counties
Area 6: San Mateo County
Area 7: Fresno, Kings and Madera Counties
Area 8: San Francisco County
Area 9: Lake, Marin, Mendocino, Napa, Solano and Sonoma Counties
Area 10: Santa Cruz County
Area 11: Santa Clara County

AREA DESCRIPTIONS (Cont'd)

SOFT FLOOR LAYERS:
Area 1: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, and Lassen Counties (excluding Honey Lake Area); Merced County (east of San Joaquin River); Plumas, Sacramento, San Joaquin, Shasta, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, and Yuba Counties; El Dorado, Nevada, Placer, and Sierra Counties (those portions excluding Lake Tahoe Area)
Area 2: Honey Lake Area and Lake Tahoe Area
Area 3: Lake, Marin, Mendocino, Merced, Monterey, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano and Sonoma Counties
Area 4: Del Norte and Humboldt Counties
Area 5: Alameda, Contra Costa, Napa and Solano Counties

SPRINKLER FITTERS:
Area 1: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma Counties
Area 2: Remaining Counties

TERRAZZO FINISHERS:
Area 1: Alameda, Alpine, Amador, Butte, Calaveras, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo and Yuba Counties

TERRAZZO WORKERS AND TILE SETTERS:
Area 1: Fresno, Kings, Madera, Mariposa, Merced and Tulare Counties

TILE FINISHERS:
Area 1: Alameda, Alpine, Amador, Butte, Calaveras, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo and Yuba Counties
Area 2: Alpine, Amador, Calaveras, Fresno, Kings, Madera, Mariposa, Merced, San Joaquin, Stanislaus, Tulare and Tuolumne Counties
Area 3: Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Nevada, Placer, Sutter, Tehama, Yolo and Yuba Counties

TILE SETTERS:
Area 1: Alameda, Butte, Colusa, Contra Costa, Del Norte, El Dorado,

AREA DESCRIPTIONS (Cont'd)

TILE SETTERS (Cont'd):
Area 1 (Cont'd): Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Mateo, Santa Clara, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo and Yuba Counties
Area 2: Alpine, Amador, Calaveras, San Joaquin, Stanislaus, and Tuolumne Counties
Area 3: Fresno, Kings, Madera, Mariposa, Merced and Tulare Counties

LABORERS

LABORERS: Work on single family homes and apartments not exceeding 2 stories:
Area 1: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Kings, Lake, Madera, Mariposa, Merced, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, Sierra, Stanislaus, Sutter, Tulare, Tuolumne, Yolo and Yuba Counties

LABORERS:
Area 1: Alameda, Contra Costa, Marin, San Francisco, San Mateo and Santa Clara Counties
Area 2: Del Norte, El Dorado, Fresno, Humboldt, Kings, Lake, Madera, Mendocino, Monterey, Napa, Nevada, Placer, Sacramento, San Benito, San Joaquin, Santa Cruz, Solano, Sonoma and Yolo Counties
Area 3: Alpine, Amador, Butte, Calaveras, Colusa, Glenn, Lassen, Mariposa, Merced, Modoc, Plumas, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tuolumne and Yuba Counties

DESCRIPTION OF GROUPS

LABORERS - TUNNEL AND SHAFT WORK:

Group 1: Diamond Driller; Ground; Gunite and Shotcrete Nozzle operator; Shaft work and raise (below actual or excavated ground level)

Group 2: Bit Grinder; Blaster; Drillers, Powder - heading; Cherry Picker - where car is lifted; Concrete Finisher in Tunnel; Concrete Screed; Grout Pump and Pot; Gunite and Shotcrete Gun and Pot; Header; High Pressure Nozzle operator; Miners - Tunnel, including Top and Bottom on Shaft and raise work; Nipper Nozzle operator on slick line; Sandblaster - Pot (work assignment interchangeable); Steel form Setters and setters; Timber, Retimber - wood or steel or substitute materials therefore; Tugger

Group 3: Cable tender; Chucktender; Powder - Primer House; Vibrator, Pavement Breakers

Group 4: Bull gang - muckers, track; Concrete crew - includes rodding and spreading; Dump (any method); Grout crew rebound; Swamper

LABORERS - DESCRIPTION OF GROUPS (Cont'd)

LABORERS

Group 1: Asphalt Ironers and Rakers; Asphalt Spreader Boxes (all types); Barko, Wacker and similar type Tampers; Buggymobile; Chainsaw, Faller, Logloader and Bucker; Compactors of all types; Concrete and Magnesite Mixer, 1/2 yd. and under; Concrete Pan Work; Concrete Saw; Concrete Sander; Cribber and/or Shoring; Cut Granite Curb Setter; Form Raisers; Slip Forms; Green Cutters, Headerboardmen, Rubsetters, Aligners; Jackhammer Operators; Jacking of Pipe over 12 inches; Jackson and similar type Compactors; Kettle tender, Pot and workers applying asphalt, lay-kold, creosote, lime, caustic and similar type materials; Lagging, Sheeting, Whaling, Bracing, Trenchjacking, hand-guided Lagging Hammer; Magnesite, Epoxyresin, Fiberglass, Mastic Workers (wet or dry); Perma Curbs; Precast-manhole Setters; Cast-in-place Manhole Form Setters; Pressure Pipe Tester; Pavement Breakers and Spaders, including Tool Grinder; Pipelayers, Caulkers, Banders, Pipewrappers, Conduit Layers, Plastic Pipelayers; Post Hole Diggers, air, gas, and electric; Power Broom Sweepers; Power Tampers of all types (except as shown in Group 2); Ram Set Gun and Stud Gun; Riprap-stonepaver and Rock-slinger, including placing of sacked concrete and/or sand (wet or dry); Rotary Scarifier, Multiple Head Concrete Chipper; Davis Trencher, 300 or similar type (and all small Trenchers); Roto and Ditch Witch; Roto-tiller; Sandblasters, Pot, Gun, Nozzle operators; Signalling and Rigging; Tank Cleaners; Tree Climbers; Vibra-screed, Bull Float in connection with Laborers' work; Vibrators; Dri-pak-it Machine; High Pressure Blow Pipe (1½" or over, 100 lbs. pressure and over); Hydro Seeder and similar type; Laser Beam in connection with Laborers' work

LABORERS (Cont'd)

Group 1(a): Joy Drill Model TMH-2A; Gardener-Denver Model DH143 and similar type drills; Track Drillers; Jack Leg Drillers; Diamond Drillers; Wagon Drillers; Mechanical Drillers, all types regardless of type or method of power; Multiple Unit Drills; Blasters and Powder All work of loading, placing and blasting of all power and explosives of whatever type regardless of method used for such loading and placing; High Scalers (including drilling of same); Tree Topper; Bit Grinder

Group 1(b): Sewer Cleaners receive an additional $4.00 per day, $5.00 per day on recently active large diameter sewers or sewer manholes

Group 1(c): Burning and Welding in connection with Laborers' work

Group 1(d): Repair Track and Road Beds (cut and cover work of subway after the temporary cover has been placed)

Group 1(e): Laborers on general construction work on or in Bell Hole Footings and Shaft

Group 1(f): Wire Winding Machine in Connection with Guniting or Shotcrete - Aligner

Group 1(g): Pipelayers; Caulkers; Banders; Pipewrappers; Conduit Layers and Plastic Pipelayers; Pressure Pipe Tester, no joint pipe and stripping of same, including repair of voids; Precast Manhole Setters; Cast-in-Place Manhole Form Setters

Group 2: Asphalt Shovelers; Cement Dumpers and handling dry cement or gypsum; Choke-setter and Digger (clearing work); Concrete Bucket Dumper and Chute; Concrete chipping and grinding; Concrete Laborers (wet or dry); Chuck tender; High Pressure Nozzle operator, Adductors; Grout-crew; Hydraulic Monitor (over 100 lbs. pressure); Loading and unloading, carrying and hauling of all rods and materials for use in reinforcing concrete construction; Pittsburgh Chipper and similar type Brush Shredders; Sloper; Singlefoot, hand held, Pneumatic Tamper; All pneumatic, air, gas and electric tools not listed in Groups 1 through 1(f); Jacking of Pipe under 12 inches

Group 3: All Cleanup work of debris, grounds and buildings including but not limited to street Cleaners; Cleaning and washing windows; Construction Laborers including Bridge and General Laborers; Dump; Load Spotter; Fire Watcher; Street Cleaners; Gardeners, Horicultural and Landscape Laborers; Jetting; Limbers; Brush Loaders; Pilers, Maintenance Landscape Laborers on new construction; Maintenance, Repair Trackmen and Road beds; Streetcar and Railroad Construction Track Laborers; Temporary air and water lines, Victaulic or similar; Tool Room Attendent; Fence Erectors; Guardrail Erectors; Pavement Markers (button setters)

Group 4: Brick Cleaners; Lumber Cleaners

LABORERS (Cont'd)

GUNNITE

Group 1: Nozzle operator (including Gun, Pot); Ground

Group 2: Rebound

Group 3: General Laborers

WRECKING WORK

Group 1: Skilled Wrecker (removing and salvaging of sash, windows, doors, plumbing and electric fixtures)

Group 2: Semi-skilled Wrecker (salvaging of other building materials)

Group 3: General Laborer (includes all cleanup work, loading lumber, loading and burning of debris)

POWER EQUIPMENT OPERATORS

AREAS 1 AND 2

Group 1-A: Landscape Irrigation Trenchers, Davis Trencher (300 or similar and all small trenchers including all trenching equipment with gears) capacity up to 3 ft. in depth

Group 1: Assistants to Engineers (Brake; Fire fighter; Heavy Duty Repair Tender; Oiler; Deckhand; Signal; Switch; Tar Pot Fire fighter; Parts (heavy duty repair shop parts room)

Group 2: Compressor Operator; Concrete Mixer (up to and including 1 yd.); Conveyor Belt Operator (tunnel); Fire fighter hot plant; Hydraulic; Monitor; Mechanical Conveyor (handling building materials); Mixer Box Operator (concrete plant); Pump Operator; Spreader Box (with screeds); Tar Pot Fire fighter (power agitated)

POWER EQUIPMENT OPERATORS (Cont'd)
AREAS I and II (Cont'd)

Group 3: Box Operator (bunker); Helicopter Radio operator (Signal); Motor operator; Locomotive (30 tons or under); Oiler; Ross Carrier (construction job site); Rotomist Operator; Screed ' (except asphaltic concrete paving); Self-propelled, automatically applied concrete curing machine (on streets, highways, airports and canals); Trenching Machine (maximum digging capacity 5 ft. depth); Tugger Hoist, single drum; Truck Crane Oiler; Boiler Tender

Group 4: Ballast Jack Tamper; Ballast Regulation; Ballast Tamper Multi-purpose; Box (asphalt plant); Elevator Operator (inside); Fork Lift or Lumber Stacker (construction job site); Line Master; Material Hoist (1 drum); Shuttlecar; Tie Spacer; Towermobile

Group 5: Compressor Operator (over 2); Concrete Mixers (over 1 yd.); Concrete Pumps or Pumpcrete Guns; Generators; Grouting Machine; Presseweld (air operated); Pumps (over 1); Welding Machines (powered other than by electricity)

Group 6: BLH Lima Road Pactor or similar; Boom Truck or Dual Purpose A-Frame Truck; Concrete Batch Plants (wet or dry); Concrete Saws (self-propelled unit) on streets, highways, airports and canals; Drilling and Boring Machinery, vertical and horizontal (not to apply to Waterliners, Wagon Drills or Jackhammers); Gradesetter, Grade Checker (mechanical or otherwise); Highline Cableway Signal; Locomotives (steam of over 30 tons); Maginnis Internal Full Slab Vibrator (on airports, highways, canals and warehouses); Mechanical Finishers (concrete) (Clary, Johnson, Bidwell Bridge Deck or similar types); Mechanical Burm, Curb and/or Curb and Gutter Machine, concrete or asphalt; Portable Crusher; Post Driver (M-1500 and similar); Power Jumbo Operator (setting slip forms, etc. in tunnels); Roller (except asphalt); Screed (Barber-Greene and similar) (asphaltic concrete paving); Self-propelled Compactor (single engine); Self-propelled Pipeline Wrapping Machine, Perault, CMC, or similar types; Slip Forms Pumps (lifting device for concrete forms); Small Rubber Tired Tractor; Surface Heater; Self-propelled Power Sweeper; Self-propelled Tape Machine; Auger-type drilling equipment, up to and including 30 ft. depth digging capacity M.R.C.

Group 7: Concrete Conveyor or Concrete Pump, Truck or equipment mounted (boom length to apply); Concrete Conveyor, building site; Deck Engineers; Dual Drum Mixer; Fuller Kenyon Pump and similar types; Gantry Rider (or similar); Hydra-hammer (or similar); Material Hoist (2 or more drums); Mechanical Finishers or Spreader Machine (asphalt, Barber-Greene and similar); Mine or Shaft Hoist; Mixermobile; Pavement Breaker with or without Compressor Combination; Pipe Bending Machine (pipelines only); Pipe Cleaning Machine (tractor propelled and supported); Pipe Wrapping Machine (tractor propelled and supported); Refrigeration Plant; Roller Operator (finish asphalt); Self-propelled boom type lifting device (center mount) (10 tons or less M.R.C.); Self-propelled Elevating Grader Plane; Slusher Operator; Small Tractor (with boom); Soil Tester; Truck type Loader; Welding Machines (gasoline or diesel)

POWER EQUIPMENT OPERATORS (Cont'd)
AREAS I and II (Cont'd)

Group 8: Armor-Coater (or similar); Asphalt Plant Engineer; Cast-in-place Pipe Laying Machine; Combination Slusher and Motor Operator; Concrete Batch Plant (multiple units); Dozer; Heading Shield Operator; Heavy Duty Repair and/or Welder; Ken Seal Machine (or similar); Kolman Loader; Loader (up to 2 yds.); Mechanical Trench Shield; Portable Crushing and Screening Plants; Push Cat; Rubber Tired Earth-moving Equipment (up to and including 45 cu. yds. "struck" M.R.C) (Euclids, T-Pulls, DW-10, 20, 21, and similar); Rubber Tired Dozer; Self-propelled Compactor with Dozer; Sheepfoot; Timber Skidder (rubber tired or similar equipment); Tractor drawn Scraper; Tractor; Trenching Machine; Tri-batch Paver; Tunnel Mole Boring Machine; Welder; Woods-mixer (and other similar Pugmill equipment)

Group 9: Canal Finger Drain Digger; Chicago Boom; Combination Mixer and Compressor (Gunite); Combination Slurry Mixer and/or Cleaner; Highline Cableway (5 tons and under); Lull Hi-lift or similar (20 ft. or over); Mucking Machine (rubber tired, rail or track type); Tractor (with boom) (D-6 or larger and similar)

Group 10: Boom-type Backfilling Machine; Bridge Crane; Cary-lift (or similar); Chemical Grouting Machine, truck mounted; Combination Backhoe and Loader (up to and including 1/2 cu. yd. M.R.C.); Derrick (2 operators required when swing engine remote from Hoist); Derrick Barges (except excavation work); Do-mor Loader; Adams Elegrader; Elevating Grader; Heavy Duty Rotary Drill Rig (including Caisson Foundation work and Euclid Loader and similar type; Robbins type drills; Koehring Skooper (or similar); Lift Slab Machine; (Vagtborg and similar types); Loader (2 yds. up to and including 4 yds.); Locomotive, 100 tons (single or multiple units); Multiple Engine Earthmoving Machine (Euclids, Dozers, etc.)(no tandem Scraper); Pre-stress Wire Wrapping Machine; Reservoir-debris Tug (self-propelled floating); Rubber-tired Scraper, Self-loading (paddle wheels, etc.); Shuttle Car (reclaim station); Single engine Scraper over 45 yds.; Soil Stabilizer (P & H or equal); Sub-grader (Gurrier or other automatic type); Tractor, Compressor Drill Combination; Track Laying type Earth Moving Machine (single engine with Tandem Scrapers); Train Loading Station; Trenching Machine, multi-engine with sloping attachment, Jeffco or similar; Vacuum Cooling Plant; Whirley Crane (up to and including 25 tons)

Group 10-A: Backhoe (Hydraulic)(up to and including 1 cu. yd. M.R.C.); Backhoe (cable)(up to and including 1 cu. yd. M.R.C.); Combination Backhoe and Loader (over 3/4 cu. yd. M.R.C.); Continuous Flight Tie Back Auger (Crane attached/separate controls); Cranes not over 25 tons, Hammerhead and Gantry; Gradalls (up to and including 1 cu. yd.); Power Blade Operator (single engine); Power Shovels, Clamshells, Draglines (up to and including 1 cu. yd. M.R.C.)(Long Boom Pay); Rubber-tired Scraper, self-loading (Paddle Wheel, twin engine); Self-propelled Boom-type lifting device (center mount)(over 10 tons up to and including 25 tons); CMI Dual Lane Auto Grader SP-30 or similar

POWER EQUIPMENT OPERATORS (Cont'd)
AREAS I and II (Cont'd)

Group 11: Automatic Concrete Slip-form Paver (Gradesetter, Screed); Automatic Railroad Car Dumper; Canal Trimmer with ditching attachments; Cary Lift, Campbell or similar, Continuous Flight Tie Back Auger (Crane attached, single controls); Cranes (over 25 tons up to and including 125 tons); Drott Travelift 650-A-1 or similar (45 ton or over); Euclid Loader when controlled from the Pullcat; Highline Cableway (over 5 tons); Loader (over 4 cu. yds., up to and including 12 cu. yds.); Miller Formless M-900 Slope Paver or similar (Grade Setter required); Multiple Engine Scraper (when used as Push Pull); Power Blade Operator (multi-engine); Power Shovels, Clamshells, Draglines, Backhoes, Gradalls (over 1 cu. yd. and up to and including 7 cu. yds. M.R.C., Long Boom Pay); Rubber-tired Earthmoving Machines (multiple propulsion power units and two or more Scrapers) (up to and including 75 cu. yds. Struck M.R.C.); Self-propelled Compactor Boom-type lifting device (center mount) (over 25 tons M.R.C.); Single engine Rubber-tired Earthmoving Machines (with Tandem Scrapers); Slip-form Paver (concrete or asphalt) (Screed required); Tandem Cats; Tower Cranes Mobile (including rail mounted); Trencher (pulling attached shield); Tower Cranes, Universal Liebher and similar types (in the erection, dismantling and moving of equipment); Wheel Excavator (up to and including 750 cu. yds. per hour); Whirley Crane (over 25 tons); Multi-earthmoving Equipment (up to and including 75 cu. yds. "struck" M.R.C.); Truck mounted Hydraulic Crane when remote control equipped (over 10 tons up to and including 25 tons)

Group 11-A: Band Wagons (in conjunction with wheel excavator); Cranes (over 125 tons); Loader (over 12 cu. yds., up to and including 18 cu. yds.); Power Shovels, Clamshells, Backhoes, Gradalls, and Draglines (over 7 cu. yds. M.R.C.); Rubber-tired Multi-purpose Earth Moving Machines (2 units over 75 cu. yds. "struck" M.R.C.); Wheel Excavator (over 750 cu. yds. per hour)

Group 11-B: Loader (over 18 yards)

Group 11-C: Operator of Helicopter (when used in erection work); Remote controlled Earthmoving equipment

POWER EQUIPMENT OPERATORS (CONT'D)

DREDGING

Clamshell and Dipper Dredging; Hydraulic Suction Dredging:

Area Descriptions:
Area 1: Area up to 20 road miles from centers listed below
Area 2: Area more than 20 road miles up to and including 30 road miles from centers listed below
Area 3: Area over 30 road miles from centers listed below
Area 4: Area extending 25 miles from the shoreline of Lake Tahoe and up to and including 30 road miles from the centers listed below

City Halls of Bodega Bay, Crescent City, Eureka, Fort Bragg and Moss Landing.

Definition of Groups:
Group 1: Bargehand; Deckhand; Fire fighter; Leveehand; Oiler
Group 2: Winch (stern winches on dredge)
Group 3: Booster pump operator; Deck engineer; Deckmate; Welder and/or mechanic on new construction; Watch engineer; Welder
Group 4: Lever; Clamshell operator (up to and including 7 cu. yds. m.r.c.) (long boom pay); Clamshell operator (over 7 cu. yds. m.r.c.) (long boom pay) (on new construction only)
Group 5: Chief Engineer

[redacted]

Group 1: Assistant to Engineer (Fire fighter, Oiler, Deckhand)

Group 1A: Compressor Operator

Group 1B: Assistant to Engineer (Truck Crane Oiler)

Group 2A: Tugger Hoist Operator (hoisting material only)

Group 2B: Forklift Operator

POWER EQUIPMENT OPERATORS (Cont'd)
PILEDRIVING (Cont'd)

Group 2C: Compressor Operator (over 2); Generators; Pumps (over 4); Welding Machines (powered by other than electricity)

Group 2D: A-Frames

Group 3: Deck Engineer (Deck Engineer Operator required when deck engine is used); Self-propelled Boom-type lifting device (center mount) (10 ton capacity or less M.R.C.)

Group 3A: Heavy Duty Repair and/or Welder

Group 4: Operating Engineer in lieu of Assistant to Engineer tending boiler or compressor attached to Crane Piledriver; Operator of Piledriving Rigs, Skid or Floating and Derrick Barges (Assistant to Engineer required); Operator of diesel or gasoline power Crane Piledriver (without boiler) up to and including 1 cu. yd. rating (Assistant to Engineer required); Self-propelled Boom-type lifting device (center mount) (over 10 tons up to and including 25 tons); Truck Crane Operator (up to and including 25 tons) (hoisting material only) (Assistant to Engineer required)

Group 5: Operator of diesel or gasoline powered Crane Piledriver (with boiler) over 1 cu. yd. rating (Assistant to Engineer required); Operator of Crane (with steam, flash boiler, pump or compressor attached) (Group 4 Engineer required); Operator of steam powered Crawler or Universal type Driver (Raymond or similar) (Assistant to Engineer required) Truck Crane Operator (over 25 tons) (hoisting material or performing Piledriving work) (Assistant to Engineer required); Self-propelled Boom-type lifting device (center mount) (over 25 tons) (Assistant to Engineer required)

Group 6: Cranes (over 125 tons) (Assistant to Engineer required)

STEEL ERECTION

Group 1: Assistant to Engineer (Oiler)

Group 2: Compressor Operator, Generator, gasoline or diesel driven (100 K.W. or over) (structural steel or tank construction only)

Group 3: Compressors, Generators and/or Welding Machines or combination (2 to 6) (Over 6 additional Engineers required) (structural steel or tank erection only)

Group 4: Heavy Duty Repair, Tractor Operator

Group 4A: Combination Heavy Duty Repair and/or Welder

POWER EQUIPMENT OPERATORS (Cont'd)
STEEL ERECTION (Cont'd)

Group 5: Boom Truck or Dual Purpose A-Frame Truck; Boom Cat; Chicago Boom; Crawler Cranes and Truck Cranes (15 tons M.R.C. or less) (Assistant to Engineer required); Self-propelled Boom type lifting device (center mount) (10 ton capacity or less M.R.C.); Single drum Hoist; Tugger Hoist

Group 6: Cary Lift, Campbell or similar; Crawler Cranes and Truck Cranes (over 15 tons M.R.C.) (Assistant to Engineer required); Derricks (2 Operators when swing engine remote from hoist); Gantry Rider (or similar equipment); Highline Cableway (Signal re-quired); Self-propelled Boom-type lifting device (center mount) (over 10 tons up to and including 25 tons); Tower Cranes Mobile including rail mounted (Assistant to Engineer required); Tower Cranes, Universal Liebher and similar types (in the erection, dismantling and moving of equipment there shall be an additional Operating Engineer)

Group 7: Self-propelled Boom-type lifting device (center mount) (over 25 tons) (Assistant to Engineer required)

Group 8: Cranes (over 125 tons) (Assistant to Engineer required)

Group 9: Helicopter Operator

TRUCK DRIVERS

Group 1: Bulk Cement Spreader (w/wo Auger, under 4 yds. water level); Bus Driver; Concrete Pump Machine; Concrete Pump Truck (when Flat Rack Truck is used appropriate Flat Rack rate shall apply); Dump (under 4 yds. water level); Dumpcrete Truck (under 4 yds. water level); Dumpster (under 4 yds. water level); Escort or Pilot Car Driver; Nipper Truck (when Flat Rack Truck is used appropriate Flat Rack rate shall apply); Pickups; Skids (Debris Box, under 4 yds. water level); Team Drivers; Trucks (Dry Pre-batch Concrete Mix, under 4 yds. water level)

Group 2: Teamster Oiler and/or Greaser and/or Service

Group 3: Bulk Cement Spreader (w/wo Auger, 4 yd. and under 6 yds. water level); Dump (4 yds. and under 6 yds. water level); Dumpcrete (4 yds. and under 6 yds. water level); Dumpster (4 yds. and under 6 yds. water level); Skids (Debris Box, 4 yds. and under 6 yds. water level); Single Unit Flat Rack (2 axle unit); Industrial Lift Truck (mechanical Tailgate); Trucks (Dry Pre-batch Concrete Mix, 4 yds. and under 6 yds. water level)

Group 4: Jetting Truck and Water Truck (under 2,500 gallons)

Group 5: Road Oil Trucks or Boot

TRUCK DRIVERS (Cont'd)

Group 6: Lift Jitneys, Fork Lift

Group 7: Transit Mix, Agitator (under 6 yds.)

Group 8: Fuel and/or Grease Truck Driver or Fuel

Group 9: Vacuum Truck, under 3,500 gallons

Group 10: Scissor Truck; Single unit Flat Rack (2 axle unit); Industrial Lift Truck (mechanical tailgate); Small rubber tired tractor (when used within Teamsters' jurisdiction)

Group 11: Jetting Truck and Water Trucks, 2,500 gallons and under 4,000 gallons

Group 12: Combination Winch Truck with Hoist; Transit Mix Agitator (6 yds. and under 8 yds.)

Group 13: Vacuum Truck, 3,500 gallons and under 5,500 gallons

Group 14: Rubber-tired Muck Car (not self-loaded)

Group 15: Bulk Cement Spreader (w/wo Auger, 6 yds. and under 8 yds. water level); Dump (6 yds. and under 8 yds. water level); Dumpcrete (6 yds. and under 8 yds. water level); Dumpster (6 yds. and under 8 yds. water level); Skids (Debris Box, 6 yds. and under 8 yds. water level); Trucks (Dry Pre-batch Concrete Mix 6 yds. and under 8 yds. water level)

Group 16: A-Frame, Winch Truck; Buggymobile; Jetting and Water Truck (4,000 gallons and under 5,000 gallons); Rubber tired Jumbo

Group 17: Heavy Duty Transport (high bed)

Group 18: Ross Hyster and similar Straddle Carrier

Group 19: Transit Mix Agitator (8 yds. through 10 yds.)

Group 20: Vacuum Truck (5,500 gallons and under 7,500 gallons)

Group 21: Jetting Truck and Water Truck (5,000 gallons and under 7,000 gallons)

Group 22: Combination Boot and Road Oiler

Group 23: Transit Mix Agitator (over 10 yds. through 12 yds.)

Group 24: Bulk Cement Spreader (w/wo Auger, 8 yds. and including 12 yds. water level); Dump (8 yds. and including 12 yds. water level); Dumpcrete (8 yds. and including 12 yds. water level); Self-propelled Street Sweeper with self-contained refuse bin; Skids (Debris Box, 8 yds. and including 12 yds. water level); Snow Go and/or Snow Plow; Truck (Dry Pre-batch Concrete Mix, 8 yds. and including 12 yds. water level)

TRUCK DRIVERS (Cont'd)

Group 25: Heavy Duty Transport (Gooseneck Lowbed)

Group 26: Transit Mix Agitator (over 12 yds. through 17 yds.)

Group 27: Ammonia Nitrate Distributor Driver and Mixer; Bulk Cement Spreader (w/wo Auger, over 12 yds. and including 18 yds. water level); Dump (over 12 yds., and including 18 yds. water level); Dumpcrete over 12 yds. and including 18 yds. water level); Dumpster (over 12 yds. and including 18 yds. water level); Truck (Dry Pre-batch Concrete Mix, over 12 yds. and including 18 yds. water level)

Group 28: Double Gooseneck (7 or more axles); Heavy Duty Transport Tiller Man

Group 29: P.B. or similar type self-loading Truck

Group 30: Transit Mix Agitator (over 14 yds. through 16 yds.)

Group 31: Bulk Cement Spreader (w/wo Auger, over 18 yds. and including 24 yds. water level); Combination Dump and Dump Trailer; Dump (over 18 yds. and including 24 yds. water level); Dumpcrete (over 18 yds. and including 24 yds. water level); Dumpster (over 18 yds. and including 24 yds. water level); Skid (Debris Box, over 18 yds. and including 24 yds. water level); Transit Mix Agitator (over 12 yds. through 16 yds.); Trucks (Dry Pre-batch Concrete Mix, over 18 yds. and including 24 yds. water level)

Group 32: Bulk Cement Spreader (w/wo Auger, over 24 yds. and including 35 yds. water level); Dump (over 24 yds. and including 35 yds. water level); Dumpcrete (over 24 yds. and including 35 yds. water level); Dumpster (over 24 yds. and including 35 yds. water level); DW 10's, 20's, 21's and other similar Cat type, Terra Cobra, LeTournapulls, Tournarocker, Euclid and similar type equipment when pulling Fuel and/or Grease Tank Trailers or other misc. Trailers; Skids (Debris Box, over 24 yds. and including 35 yds. water level); Trucks (Dry Pre-batch Concrete Mix, over 24 yds. and including 35 yds water level)

Group 33: Truck Repair

Group 34: Bulk Cement Spreader (w/wo Auger, over 35 yds. and including 50 yds. water level); Dump (over 35 yds. and including 40 yds. water level); Dumpcrete (over 35 yds. and including 50 yds. water level); Dumpster (over 35 yds. and including 50 yds. water level); Skids (Debris Box, over 35 yds. and including 50 yds. water level); Trucks (Dry Pre-batch Concrete Mix, over 35 yds. and including 50 yds. water level)

Group 35: DW 10's 20's, 21's and other similar Cat type, Terra Cobra, LeTournapulls, Tournarocker, Euclid and similar type equipment when pulling Aqua/Pak or Water Tank Trailers

TRUCK DRIVERS (Cont'd)

Group 36: Bulk Cement Spreader (w/wo Auger, over 50 yds. and under 65 yds. water level); Dump (over 50 yds. and under 65 yds. water level); Dumpcrete (over 50 yds. and under 65 yds. water level); Dumpster (over 50 yds. and under 65 yds. water level); Helicopter Pilot (when transporting workers or materials); Skids (Debris Box, over 50 yds. and under 65 yds. water level); Trucks (Dry Pre-batch Concrete Mix, over 50 yds. and under 65 yds. water level)

Group 37: Bulk Cement Spreader (w/wo Auger, over 65 yds. and including 80 yds. water level); Dump (65 yds. and including 80 yds. water level); Dumpcrete (over 65 yds. and including 80 yds. water level); Dumpster (over 65 yds. and including 80 yds. water level) Skids (Debris Box, 65 yds. and including 80 yds. water level); Trucks (Dry Pre-batch Concrete Mix, 65 yds. and including 80 yds. water level)

Group 38: Bulk Cement Spreader (w/wo Auger, over 80 yds. and including 95 yds. water level); Dump (over 80 yds. and including 95 yds. water level); Dumpcrete (over 80 yds. and including 95 yds. water level); Dumpster (over 80 yds. and including 95 yds. water level); Skids (Debris Box, over 80 yds. and including 95 yds. water level); Trucks (Dry Pre-batch Concrete Mix, over 80 yds. and including 95 yds. water level)

AREA DESCRIPTIONS

P.E.

POWER EQUIPMENT OPERATORS
AREAS I and II

**AREA I: All areas included in the description defined below which is based upon Township and Range Lines of AREAS I and II.

Commencing in the Pacific Ocean on the extension of the Southerly line of Township 19S.
Thence Easterly along the Southerly line to Township 19S, crossing the Mt. Diablo Meridian to the S.W. corner of Township 19S, range 6E, Mt. Diablo Base Line and Meridian,
Thence Southerly to the S.W. corner of township 20S, range 6E,
Thence Easterly to the S.W. corner of township 20S, range 13E,
Thense Southerly to the S.W. corner of township 21S, range 13E.
Thence Easterly to the S.W. corner of township 21S, range 17E,
Thence Southerly to the S.W. corner of township 22S, range 17E
Thence Easterly to the S.E. corner of township 22S, range 17E,
Thence Southerly to the S.W. corner of township 23S, range 18E,
Thence Easterly to the S.E. corner of township 23S, range 18E,
Thence Southerly to the S.W. corner of township 24S, range 19E, falling on the Southerly Line of Kings County, thence Easterly along the Southerly Boundary of Kings County and the Southerly Boundary of Tulare County, to the S.E. corner of township 24S, range 29E,

AREA DESCRIPTIONS (Cont'd)

P.E.

POWER EQUIPMENT OPERATORS
AREAS I and II

Thence Northerly to the N.E. corner of township 21S, range 29E,
Thence Westerly to the N.W. corner of township 21S, range 29E,
Thence Northerly to the N.E. corner of township 13S, range 28E,
Thence Westerly to the N.W. corner of township 13S, range 28E.
Thence Northerly to the N.E. corner of township 11S, range 27E,
Thence Westerly to the N.W. corner of township 11S, range 27E,
Thence Northerly to the N.E. corner of township 10S, range 26E,
Thence Westerly to the N.W. corner of township 10S, range 26E,
Thence Northerly to the N.E. corner of township 9S, range 25E,
Thence Westerly to the N.W. corner of township 9S, range 25E,
Thence Northerly to the N.E. corner of township 8S, range 24E,
Thence Westerly to the N.W. corner of township 8S, range 24E,
Thence Northerly to the N.E. corner of township 6S, range 23E,
Thence Westerly to the S.E. corner of township 5S, range 19E,
Thence Northerly to the S.E. corner of township 5S, range 19E,
Thence Westerly to the N.W. corner of township 5S, range 19E,
Thence Northerly to the N.E. corner of township 3S, range 18E,
Thence Westerly to the N.W. corner of township 3S, range 18E,
Thence Northerly to the N.E. corner of township 2S, range 17E,
Thence Westerly to the N.W. corner of township 2S, range 17E,
Thence Northerly crossing the Mt. Diablo Baseline to the N.E. corner of township 2N, range 16E,
Thence Westerly to the N.W. corner of township 2N, range 16E,
Thence Northerly to the N.E. corner of township 3N, range 15E,
Thence Westerly to the N.E. corner of township 3N, range 15E,
Thence Northerly to the N.E. corner of township 4N, range 14E,
Thence Westerly to the N.W. corner of township 4N, range 14E,
Thence Northerly to the N.E. corner of township 5N, range 13E,
Thence Westerly to the N.E. corner of township 5N, range 13E,
Thence Northerly to the N.E. corner of township 10N, range 12E,
Thence Easterly to the S.E. corner of township 11N, range 14E,
Thence Northerly to the N.E. corner of township 11N, range 14E,
Thence Westerly to the N.E. corner of township 11N, range 10E,
Thence Northerly to the N.E. corner of township 15N, range 10E,
Thence Easterly to the S.E. corner of township 16N, range 11E,
Thence Northerly to the N.E. corner of township 16N, range 11E,
Thence Easterly to the S.E. corner of township 17N, range 14E,
Thence Southerly to the S.W. corner of township 14N, range 14E,
Thence Easterly to the S.E. corner of township 14N, range 15E,
Thence Southerly to the S.W. corner of township 13N, range 16E,
Thence Easterly to the S.E. corner of township 13N, range 16E,
Thence Southerly to the S.W. corner of township 12N, range 17E,
Thence Easterly along the Southern Line to township 12N to the Eastern Boundary of the State of California, to the State of California to the N.E. corner of township 17N, range 18E,
Thence Westerly to the N.W. corner of township 17N, range 11E,
Thence Northerly to the N.E. corner of township 20N, range 10E,

AREA DESCRIPTIONS (Cont'd)
FOR
POWER EQUIPMENT OPERATORS
AREAS I and II

Thence Westerly to the N.W. corner of township 20N, range 20E,
Thence Northerly to the N.E. corner of township 21N, range 9E,
Thence Westerly to the N.W. corner of township 21N, range 9E,
Thence Northerly to the N.E. corner of township 22N, range 8E,
Thence Westerly to the N.W. corner of township 27N, range 8E,
Thence Northerly to the S.W. corner of township 27N, range 8E,
Thence Easterly to the S.E. corner of township 27N, range 8E,
Thence Northerly to the N.E. corner of township 28N, range 8E,
Thence Westerly to the N.W. corner of township 28N, range 7E,
Thence Northerly to the N.E. corner of township 30N, range 6E,
Thence Westerly to the N.W. corner of township 30N, range 1E,
Thence Northerly along the Mt. Diablo Meridian to the N.E. corner of Township 34N, range 1W,
Thence Westerly to the N.W. corner of township 34N, range 6W,
Thence Southerly to the N.E. corner of township 32N, range 7W,
Thence Westerly to the N.W. corner of township 32N, range 7W,
Thence Southerly to the S.W. corner of township 30N, range 7W,
Thence Easterly to the S.E. corner of township 30N, range 7W,
Thence Southerly to the S.W. corner of township 16N, range 6W,
Thence Easterly to the S.E. corner of township 16N, range 6W,
Thence Southerly to the S.W. corner of township 14N, range 5W,
Thence Westerly to the S.E. corner of township 14N, range 7W,
Thence Northerly to the N.E. corner of township 14N, range 7W,
Thence Westerly to the N.W. corner of township 14N, range 7W,
Thence Northerly to theN.E. corner of township 15N, range 8W,
Thence Westerly to the S.E. corner of township 16N, range 12W,
Thence Northerly to the N.E. corner of township 16N, range 12W,
Thence Westerly to the N.W. corner of township 16N, range 12W,
Thence Northerly to the N.E. corner of township 18N, range 12W,
Thence Westerly to the N.W. corner of township 18N, range 14W,
Thence Southerly to the S.W. corner of township 18N, range 14W,
Thence Easterly to the S.E. corner of township 18N, range 14W,
Thence Southerly to the S.W. corner of township 16N, range 13W,
Thence Westerly to the N.W. corner of township 15N, range 14W,
Thence Southerly to the S.W. corner of township 14N, range 14W,
Thence Easterly to the S.E. corner of township 17N, range 14W,
Thence Southerly to the S.W. corner of township 13N, range 13W,
Thence Easterly to the S.E. corner of township 13N, range 13W,
Thence Southerly to the S.W. corner of township 11N, range 12W,
Thence Easterly to the S.E. corner of township 11N, range 12W,
Thence Southerly along the Eastern Line to range 12W, to the Pacific Ocean excluding that portion of Northern California within Santa Clara County included within the following line:
Commencing at the N.W. corner of township 6S, range 3E,
Mt. Diablo Baseline and Meridian:
Thence in a Southerly direction to the S.W. corner of township 7S, range 3E,
Thence in a Easterly direction to the S.E. corner of township 7S, range 4E,
Thence in a Northerly direction to the N.E. corner of township 6S, range 4E,

AREA DESCRIPTIONS (Cont'd)
For
POWER EQUIPMENT OPERATORS
AREAS I and II

Thence in a Westerly direction to the N.W. corner of township 6S, range 3E, to the point of beginning which portion is a part of Area 2.

AREA 1: also includes that portion of Northern California within the following lines:
Commencing in the Pacific Ocean on a extension of the Southerly line to township 2N, Humboldt Baseline and Meridian:
Thence Easterly along the Southerly line to Township 2N, to the S.W. corner of Township 2N, range 1W,
Thence Southerly to the S.W. corner of township 1N, range 1W,
Thence Easterly along the Humboldt Baseline to the S.W. corner of township 1N, range 2E,
Thence Southerly to the S.W. corner of township 2S, range 2E,
Thence Easterly to the S.E. corner of township 2S, range 2E,
Thence Southerly to the S.W. corner of township 4S, range 3E,
Thence Easterly to the S.E. corner of township 4S, range 3E,
Thence Northerly to the N.E. corner of township 2S, range 3E,
Thence Westerly to the N.W. corner of township 2S, range 3E,
Thence Northerly crossing the Humboldt Baseline to the S.W. corner of township 1N, range 3E,
Thence Easterly along the Humboldt Baseline to the S.E. corner of township 1N, range 3E,
Thence Northerly to the N.E. corner of township 9N, range 3E,
Thence Westerly to the N.W. corner of township 9N, range 2E,
Thence Northerly to the N.E. corner of township 10N, range 1E,
Thence Westerly along the Northerly line to township 10N, into the Pacific Ocean.

AREA I: also includes that portion of Northern California included within the following lines:
Commencing at the Northerly boundary of the State of California at the N.W. corner of township 48N, range 7W, Mt. Diablo Baseline and Meridian:
Thence Southerly to the S.W. cornér of township 44N, range 7W,
Thence Easterly to the S.E. corner of township 44N, range 7W,
Thence Southerly to the S.W. corner of township 43N, range 6W,
Thence Easterly to the S.E. corner of township 43N, range 5W,
Thence Northerly to the N.E. corner of township 48N, range 5W, on the Northerly boundary of the State of California,
Thence Westerly along the Northerly boundary of the State of California to the point of beginning.

AREA II: All areas not inlcuded within AREA I as defined.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii))

SUPERSEDEAS DECISION

STATE: Missouri

COUNTIES: Franklin, Jefferson, Lincoln, St. Charles, Warren, and City and County of St. Louis

DECISION NUMBER: MO85-4031

DATE: Date of Publication

Supersedes Decision No. MO84-4110, dated December 21, 1984, in 49 FR 49822.

DESCRIPTION OF WORK: Building projects, excluding single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
Asbestos Workers	$20.57	$ 3.48
Swing Stage of Boson's Chair	21.23	3.48
BOILERMAKERS	17.495	3.25
BRICKLAYERS, STONEMASONS	16.45	3.77
CARPENTERS, MILLWRIGHTS, PILEDRIVERMEN:		
Zone 1	17.81	3.17
CARPENTERS:		
Zone 2:		
Contracts $500,000.00 and under	16.11	3.17
Contracts over $500,000.00	17.81	3.17
Zone 3:		
Contracts $500,000.00 and under	16.11	3.17
Contracts over $500,000.00	17.81	3.17
CEMENT MASONS:		
Zone 1	15.35	2.60
Zone 2:		
Projects less than $700,000.00	14.65	2.60
Projects over $700,000.00	15.35	2.60
ELECTRICIANS:		
Zone 1	18.20	2.20 + 28½%
Zone 2	18.20	2.20 + 28½%
Zone 3	14.78	2.20 + 28½%
ELEVATOR CONSTRUCTORS	18.47	3.29+a
ELEVATOR CONSTRUCTORS' HELPERS	70%FR	3.29+a
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR	
GLAZIERS	17.20	7.15 +13.2%
IRONWORKERS	17.225	2.99
LABORERS:		
Zone 1:		
General Laborers	15.275	2.58
Wrecking Laborers	15.15	2.58
Plasterers' Tenders	15.675	2.50
Mason Tenders, Brick	14.40	2.50
Plumber, Labor	15.65	2.50
Site Improvement labor	14.425	2.50
Zone 2:		
Contracts $500,000.00 or less:		
General Laborers	14.00	2.10
Mason Tenders, Plumbers' Laborers, Plaster Tender	14.20	2.10
Contracts over $500,000.00:		
General Laborers	15.50	2.10
Mason Tenders, Plumbers' Laborers, Plaster Tender	15.70	2.10
Zone 3:		
Contracts less than $500,000.00:		
General Laborer	13.60	2.30
Powderman	14.35	2.30
Mason Tenders; Plaster Tenders; Grade Checker; Pipelayers	14.10	2.30
Contracts $500,000.00 or over:		
General Laborer	14.95	2.50
Powderman	15.70	2.50
Mason Tenders; Plaster Tenders; Grade Checker; Pipelayers	15.45	2.50
Zone 4:		
General Laborer	16.02	2.80
Plumber Laborer	13.57	2.55

	Basic Hourly Rates	Fringe Benefits
LABORERS (CONT'D):		
Zone 5:		
General Laborer projects under $1.5 Million	15.02	2.80
General Laborer projects $1.5 Million to 15 Million	15.52	2.80
General Laborer projects over $15 Million	16.02	2.80
Plumber Laborer	13.07	2.55
MARBLE SETTERS	15.96	3.145
MARBLE FINISHERS	17.50	
PAINTERS:		
Brush	16.00	2.53
Spray & Sandblasting	18.00	2.53
PIPEFITTERS:		
Zone 1	19.85	6.08
PIPEFITTERS AND PLUMBERS:		
Zone 1	19.85	6.08
PLASTERERS	17.195	3.03
PLUMBERS:		
Zone 1	17.105	4.55
POWER EQUIPMENT OPERATORS:		
Group I	16.32	4.04
Group II	16.32	4.04
Group III	15.02	4.04
Group III (a)	13.95	4.04
Group IV	14.57	4.04
Group IV (a)	13.49	4.04
Group V:		
(a)	17.02	4.04
(b)	17.87	4.04
(c)	18.32	4.04
(d)	19.07	4.04
ROOFERS:		
Composition, Slate & Tile	16.75	2.35
SHEET METAL WORKERS	18.44	3.10+ 3%
SPRINKLER FITTERS	21.11	3.42
TERRAZZO WORKERS	20.55	
TILE SETTERS	15.93	3.145
TILE WORKERS' FINISHERS	14.12	2.605
TRUCK DRIVERS:		
Group 1 - Trucks or trailers of a water level capacity of 11.99 cu. yds. or less	15.17	.80 per hr. + 55.00 per wk +b
Group 2 - Fork lift trucks (single axle), job site ambulances & pick-up trucks and flat bed trucks	14.00	.80 per hr. + 55.00 per/wk +b
Group 3 - Trucks or trailers of a water level capacity of 12.0 cu. yds. up to 22.0 cu. yds. including euclids, speedace and similar equipment of same capacity and compressors	15.37	.80 per hr. + 55.00 per/wk +b
Group 4 - Trucks or trailers of a water level capacity of 22.0 cu. yds. & over including euclids, speedace & all floats, flat bed trailers, boom trucks, winch trucks, including small trailers, farm wagons, tilt-top trailers, tool trailers, concrete pumps, concrete conveyors & gasoline tank trailers	15.47	.80 per hr. + 55.00 per/wk +b

FOOTNOTES

ELEVATOR CONSTRUCTORS:
a. Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit, also (7) Paid Holidays A thru G.

TRUCK DRIVERS:
b. Paid vacation of 3 days for 600 hours of service in any one contract year; 4 days paid vacation for 800 hours of service in any one contract year; 5 days paid vacation for 1,000 hours of service in any one contract year. Also 7 paid holidays A thru G.
A-Christmas Day, B-New Year's Day, C-Independence Day, D-Memorial Day, E-Labor Day, F-Thanksgiving Day, G-Friday After Thanksgiving.

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

ZONE DESCRIPTIONS

CARPENTERS, MILLWRIGHTS, PILEDRIVERMEN:
Zone 1: St. Louis City and County, and St. Charles County
Zone 2: Franklin, Lincoln, and Warren Counties
Zone 3: Jefferson County

CEMENT MASONS:
Zone 1: St. Louis City and County, Jefferson and St. Charles Counties
Zone 2: Franklin, Lincoln, and Warren Counties

ELECTRICIANS:
Zone 1: City and County of St. Louis, andSt. Charles County
Zone 2: Franklin, Jefferson, Lincoln, and Warren Counties where the electrical contracts exceeds $15,000.00
Zone 3: Franklin, Jefferson, Lincoln, and Warren Counties where the electrical contract does not exceed $15,000.00

[illegible]:
Zone 1: City and County of St. Louis
Zone 2: Franklin County
Zone 3: Jefferson County
Zone 4: St. Charles County
Zone 5: Lincoln and Warren Counties

[illegible]:
Zone 1: Franklin, Jefferson, St. Charles, St. Louis City and County and Warren Counties

PIPEFITTERS AND PLUMBERS:
Zone 1: Lincoln County

[illegible]:
Zone 1: Franklin, Jefferson, St. Charles, St. Louis City and County and Warren Counties

Power Equipment Operators Zone 2
Group I - Backhoe; cableway; crane, crawler or truck; crane, hydraulic-truck or cruiser mounted - 16 tons & over; crane locomotive; derrick, steam; derrick car & derrick boat; dragline; dredge; gradall, crawler or tire mounted; locomotive, gas, steam & other powers; pile driver, land or floating; scoop, skimmer; shovel, power (steam, gas, electric, or other powers); switch boat; whirley
Group II - air tuggerv/air compressor; anchor-placing barge; asphalt spreader; athey force feeder loader (self-propelled); backfilling machine; boat operator-push boat or tow boat (jobsite); boiler, high pressure breaking in period; boom truck, placing or erecting; boring machine, footing foundation; bullfloat; cherry picker; combination concrete hoist & mixer (such as mixermobile); compressors, two, not more than 50 ft. apart; compressor (when operator runs throttle); compressor-generator combination, compressor-pump combination; generators, two 30 KW or over, or any number developing over 30 KW; generator-pump combination; compressor-welder combination; concrete breaker (truck or tractor mounted); concrete pump, such as pump-crete machine; concrete spreader; conveyor, large (not self-propelled), hoisting or moving brick and concrete into, or into and on floor level, one or both; crane, hydraulic-rough terrain, self-propelled; crane hydraulic-truck or cruiser mounted-under 16 tons; drilling machines,self-powered, used for earth or rock drilling or boring (wagon drills and any hand drills obtaining power from other sources including concrete breakers,jackhammers and barco equipment - no engineer required); elevating grader; engineman, dredge; excavator or sewerbelt machine; finishing machine, self-propelled oscillating screed; forklift; grader, road with power blade; highlift; hoist; concrete and brick (brick cages or concrete skips operating in or on tower, towermobile, or similar equipment); hoist; stack; hydro-hammer; lad-a-vator, hoisting brick or concrete; loading machine (such as barber-greene); mechanic, on job site; mixer, paving; mixer-mobile; mucking machine; pipe cleaning machine; pipe wrapping machines; plant asphalt; plant, concrete producing or ready-mix job site; plant heating-job site; plant mixing-job site; plant power, generating-job site; pumps, two self-powered over 2" through 6"; pumps, electric submersible, one through three, over 4"; quad-track; roller, asphalt, top or sub-grade; scoop, tractor drawn; spreader box; sub-grader; tie tamper; tractor-crawler, or wheel type with or without power unit, power take-offs, and attachments regardless of size; trenching machine; tunnel boring machine; vibrating machine automatic, automatic propelled; welding machines (gasoline or diesel) more than one but not over four (regardless of size); well drilling machine
Group III - Conveyor, large (not self-propelled); conveyor, large (not self-propelled) moving brick and concrete (distributing) on floor level; mixer two or more mixers of one bag capacityor less, air tugger w/plant air; boiler, for power or heating on construction projects; boiler, temporary; compressor, air-one; compressor air (mounted on truck; concrete saw, self-propelled;curb finishing machine; ditch paving machine; elevator (building construction or alteration); endless chain hoist; form grader; generator, one over 30 KW or any number developing over 30 KW; greaser; hoist; one drum regardless of size (except brick or concrete); lad-a-vator, other hoisting; manlift; mixer, asphalt, over 8 cu. ft. capacity, mixer, if two or more mixers of one bag capacity or less are

Group III - (Cont'd):
used by one employer on job an operator is required; mixer, with outside loader, 2 bag capacity or more; mixer, with side loader,regardless of size, not paver; oiler on dredge; oiler on truck crane pug mill operator; pump, sump-self-powered, automatic controlled over 2" during use in connection with construction work; sweeper, street; welding machine, one over 400 amp.; winch operating from truck; scissor lift (used for hoisting); tractor, small wheel type 50 h.p. & under with grader blade & similar equipment
Group III(a) - Truck crane and dredge
Group IV - Boat operator-outboard motor (job site); conveyor (such as con-vay-it) regardlessof how used; oiler; sweeper, floor
Group IV(a) - Crawler type
Group V - (a) Air pressure, oiler engineer, operating under ten pounds (b) air pressure, oiler engineer operating over ten pounds (c) air pressure engineer operating under ten pounds (d) air pressure engineer operating over ten pounds (e) crane-piledriving and extracting; crane using rock socket tool; dragline - 7 cu. yds. & over; shovel, power - 7 cu. yds. and over; crane, climbing such as Linden)); derrick, diesel, gas or electric hoisting material and erecting steel - 150' or more above ground; hoists, three or more drums; scoop,tandem; tractor, tandem crawler

Crane with boom (including jib), over 100' from pin to pin (add 1¢ per foot to maximum of $2.00) above basic rate for crane

Work in tunnel or tunnel shaft, .50¢ above base rate

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: NEW YORK COUNTIES: CLINTON & ESSEX
DECISION NO. NY85-3042 DATE: Date of Publication
Supersedes Decision No. NY81-3061 dated September 11, 1981 in 46 FR 45525 and Decision No. NY81-3046 dated July 17, 1981 in 46 FR 37199.
DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including 4 stories), Heavy Construction (except water well drilling) & Highway Constructions Projects.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	17.60	2.86
BOILERMAKERS	18.93	1.875 +10%
BRICKLAYERS; STONE MASONS; CEMENT MASONS (BUILDING); PLASTERERS; MARBLE, TILE & TERRAZZO WORKERS	13.48	2.50+a
CARPENTERS (Building):		
Carpenters & Soft Floor Layers	13.25	2.255
Millwrights	13.50	2.255
Piledrivermen	13.40	2.255
CARPENTERS (Heavy & Highway)	15.17	2.525 +c
CEMENT MASONS (Heavy & Highway)	15.01	2.40+d
ELECTRICIANS		
Area 1	16.90	3.20%
Area 2:		
Electricians	16.30	3.97+ 3%
Towers & Smokestacks Over 100'	16.95	3.97+ 3%
Over 30' above floor on toothpicks, structural steel, boatswain chair, and swing scaffold	16.45	3.97+ 3%
Shafts over 25' deep & tunnels over 50' long	19.14	3.97+ 3%
Area 3		
Electricians	14.70	2.70+ 4%+f
Cable Splicers	15.00	2.70+ 4%+f
Area 4:		
Electricians	15.50	2.70+ 4%+f
Cable Splicers	15.80	2.70+ 4%+f
Area 5:		
Electricians	16.30	2.70+ 4%+f
Cable Splicers	16.60	2.70+ 4%+f
GLAZIERS:		
Area 2	12.78	1.01+g
IRONWORKERS:		
Structural, ornamental, reinforcing, rodman, machinery mover, rigger, fence erectors and stone derrickman	15.45	2.49
Sheeter	14.95	2.49
Sheeter, bucker-up	14.825	2.49
LABORERS (BUILDING):		
Class 1	11.37	2.15
Class 2	11.52	2.15
Class 3	11.67	2.15
Class 4	11.82	2.15
LABORERS (HEAVY & HIGHWAY):		
Class 1	12.74	2.15+h
Class 2	12.94	2.15+h
Class 3	13.14	2.15+h
Class 4	13.34	2.15+h
LINE CONSTRUCTION:		
Substations and switching structures; Pipe-type cable installation and maintenance jobs or projects; Railroad Catenary installation and maintenance; Bonding of rails:		
Lineman; Technician	17.75	4.35+i +6.25%

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	Basic Hourly Rates	Fringe Benefits
Cable Splicer	19.525	4.35+i +6.25%
Groundman digging machine operator; dynamite man	15.975	4.35+i +6.25%
Groundman truck driver (tractor trailer unit)	15.088	4.35+i +6.25%
Mobile equipment operator; groundman truck driver: mechanic	13.464	4.35+i +6.25%
Groundman	10.098	4.35+i +6.25%
Overhead transmission line work (where no other work is or has been involved; Overhead & underground distribution work: Lineman; Technician	16.83	4.35+i +6.25%
Groundman digging machine operator; groundman dynamine man	15.147	4.35+i +6.25%
Groundman truck driver (tractor trailer unit)	14.306	4.35+i +6.25%
Groundman mobile equipment operator; groundman truck driver: mechanic	13.464	4.35+i +6.25%
Groundman	10.098	4.35+i +6.25%
Overhead transmission line work (where other work is or has been involved); Lineman; Technician	19.61	4.35+i +6.25%
Groundman digging machine operator; dynamite man	17.649	4.35+i +6.25%
Groundman truck driver (tractor trailer unit)	16.665	4.35+i +6.25%
Mobile equipment operator; groundman truck driver; mechanic	15.688	4.35+i +6.25%
[illegible]	10.098	4.35+i +6.25%

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Area 1:		
Brush	12.00	2.00
Drywall taping; roller (handle extension over 6 ft.) vinyl wall-covering	12.25	2.00
Spray; power roller; sandblasting; water-blasting	12.90	2.00
Swing scaffold; bosun chair; window jacks; structural steel and iron; water towers; tanks; flag poles; bridges	12.40	2.00
Area 2:		
Brush	12.78	1.01+g
Taping; paperhanging; spray cup and continuous spray machine	13.83	1.01+g
Swinging scaffold; boatswain chair; hanging scaffold; sandblasting	14.08	1.01+g
Seamless floor material	13.83	1.01+g
PLUMBERS & STEAMFITTERS: Plumbing in connection with sewers and water mains on highways and roadways up to 5 ft. of any building	11.36	2.60
POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION):		
Class 1	14.91	4.75+h
Class 2	15.80	4.75+h
Class 3	16.31	4.75+h
Class 4	16.50	4.75+h
Rehabilitation work on residential structures over 4 stories defined to include demolition, alteration, and repair on any existing structure which is intended for predominantly residential use:		
Class 1	11.18	4.75+h
Class 2	11.85	4.75+h
Class 3	12.23	5.75+h
Class 4	12.38	5.75+h

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	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY):		
Class 1	17.12	4.00+h
Class 2	16.55	4.00+h
Class 3	14.94	4.00+h
Class 4	13.52	4.00+h
Painting		
Area 1:		
Roofers	14.50	3.58
Pitch & Asbestos	15.00	3.58
SHEET METAL WORKERS	16.87	3.24+j
Light commercial (40 tons or less of air conditioning and/or heating; shoping centers - 20 tons or less of air conditioning per store; ventilation for kitchen hoods)	10.97	.30+k
Multiple family housing units where each individual family apartment is individually conditioned by a separate and independent unit or system	10.97	.30+k
SPRINKLER FITTERS	17.75	3.40
TRUCK DRIVERS (HEAVY & HIGHWAY CONSTRUCTION):		
Class 1	13.49	2.45+h
Class 2	13.54	2.45+h
Class 3	13.59	2.45+h
Class 4	13.74	2.45+h
Class 5	13.69	2.45+h

WELDERS - Rate for craft to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii).

FOOTNOTES:

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

a. Paid Holidays: B, C, and D, provided the employee has been on the payroll 5 days prior to the holiday and reports to work the day following the holiday.

b. Paid Holidays: B, D and E, provided the employee was on the payroll the calendar week preceeding the holiday or any of the holiday week preceeding the holiday.

c. Paid Holidays: C and D, provided the employee works his scheduled day before and his scheduled day after the holiday and is on the payroll in the payroll week in which the holiday falls.

d. Paid Holidays: B, C and D, provided the employee has been on the payroll the week before the holiday and works the day following the holiday.

e. Paid Holiday: E.

f. Paid Holidays: B, C, D, E and F.

g. Paid Holidays: B, C, D and F, provided the employee has worked the last working day prior to and the first working day following such holiday; and an employee shall have 2 consecutive hours off in which to vote on Election Day.

h. Paid Holidays: A through F, provided the employee has worked the day before and the day after the holiday.

i. Paid Holidays: A through F, plus Washington's Birthday, Good Friday, and Election Day for the President of the United States and the Election Day for the Governor of New York State, provided the employee works the day before or the day after the holiday.

j. The last 2 hours off with pay on the first Tuesday after the first Monday in November, provided the employees are working on a job beyond 50 miles from the shop.

k. Blue-Cross or Blue Shield, Plan B, or equal.

AREA DESCRIPTIONS

ELECTRICIANS:

AREA 1: ESSEX (Portion east of State highway 28N and south of a line drawn from Tahawas east to U.S. highway 9, south on 9 to State highway 74, east on 74 to State highway 22 near Ticonderoga, north on 22 to and including Crown Point).

AREA 2: ESSEX (Newcomb and Minerva Twps. south and west of State highway 28N, excluding Tahawas).

AREA 3: CLINTON (City of Plattsburgh).

AREA 4: CLINTON (Beekmantown, Peru, Plattsburgh and Schuyler Falls Twps.).

AREA 5: CLINTON (Remainder of County); ESSEX (Remainder of County).

GLAZIERS: See "Painters & Glaziers," below.

LABORERS:

AREA 1: CLINTON.

AREA 2: ESSEX.

PAINTERS & GLAZIERS:

AREA 1: ESSEX (Ticonderoga, North Hudson, Schroon, Minerva, Newcomb and Tahawas Twps).

AREA 2: CLINTON; ESSEX (Remainder of County).

CLASSIFICATION DESCRIPTIONS

LABORERS (BUILDING):

CLASS 1: Common laborers; self-propelled equipment operator.

CLASS 2: Concrete or plaster pump operator; all men working on building demolition or wrecking.

CLASS 3: Sandblasters on construction clean-up; drillers, wagon jack or wagon drill operator; metal form and curb setter; asphalt raker; tail or screw man on paving machine.

CLASS 4: Acetylene torch operator on demolition work and cutting of pipes; blasters.

LABORERS (HEAVY & HIGHWAY):

CLASS 1: Laborers; drill helpers; flagmen; outboard and hand boats.

CLASS 2: Bull float; chain saw; concrete aggregate; bin concrete bootman; gin buggy; hand or machine vibrator; jackhammer; mason tender; mortar mixer; pavement breaker; handlers of all steel mesh; small generators for laborers' tools; installation of bridge drainage pipe; pipelayers; vibrator type rollers; tamper; drill doctor; tail or screw operator on asphalt paver; water pump operator (1.5" and single diaphram); nozzle (asphalt, gunnite, seeding and sandblasting); laborers on chain link fence erection; rock splitter and power unit; pusher type concrete saw and all other gas, electric, oil and air tool laborers; wrecking laborers.

CLASS 3: All rock or drill machine operators (except quarry master and similar type); acetylene torch operator; asphalt raker; powder-[illegible].

CLASS 4: Blasters; form setters; stone or granite curb setters.

POWER EQUIPMENT OPERATORS (BUILDING):

CLASS 1: Oiler fireman and heavy-duty greaser, boilers, and steam generators, pump, vibrator, mortar mixer, air compressor, dust collector, welding machine, well point, mechanical heater, generators, temporary light plants, concrete pumps, electric submersible pump 4" and over, Murphy type diesel generator, conveyor, elevators, concrete mixer and beltcrete power pack (belcrete system).

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POWER EQUIPMENT OPERATORS (BUILDING) (CONTINUED)

CLASS 2: Bulldozer, push cat, tractor, traxcavator scraper, LeTourneau grader, form fine grader, road roller, blacktop roller, blacktop spreader, power brooms, sweepers, trenching machine, Barber Green loader, side booms, hydro hammer, concrete spreader, concrete finishing machine, high lift, fork lift, one drum hoist, power hoisting (single drum), hoist - two drum or more, three drum engine power hoisting (two drum and over), two drum and swinging engine, three drum swinging engine, hod hoist, A-L frame winches, core and well drillers (one drum), post hole digger, model CSB vibro-tamp or similar machine, batch bin and plant operator, dinkey locomotive, seeding and mulching machines.

CLASS 3: Crane, hydraulic cranes, tower crane, locomotive crane, piledriver, cableway, derricks, whirlies, dragline, shovel, backhoe, gradalls, power road grader, all CMI equipment, front-end rubber tire loader, tractor-mounted drill (quarry master), mucking machine, concrete central mix plant, concrete pump, belcrete system, automated asphalt concrete plant and tractor road paver.

CLASS 4: Maintenance engineer.

POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY):

CLASS 1: Automated concrete spreader (CMI), Automatic fine grader, backhoe (except tractor mounted, rubber tired), belt placer (CMI type), blacktop plant (automated), cableway, caisson auger, central mix concrete plant (automated), cherry picker (over 5 tons capacity), concrete pump (8" or over), crane, cranes & derricks (steel erection), dragline, dredge, dual drum paver, excavator (all purpose-hydraulically operated) (gradall or similar), fork lift (factory rated 15 ft. and over) front end loader (4 c.y. and over), head tower (sauerman or equal), hoist (2 or 3 drum), Holland loader mine hoist, mucking machine or mole, over-head crane (gantry or straddle type), piledriver, power grader, quad 9, quarry master (or equivalent), scraper, shovel, side boom, slip form paver, tractor drawn belt-type loader, truck crane, truck or trailer mounted log chipper (self feeder), tug operator (except manned rented equipment); tunnel shovel.

CLASS 2: Backhoe (tractor mounted, rubber tire), bituminous spreader and mixer, blacktop plant (non-automated), blast or rotary drill truck or tractor mounted), boring machine, cage-hoist, central mix plant (non-automated) and all concrete batching plants, cherry picker (5 tons capacity and under), compressors (4 or less) exceeding 2000 C.F.M. combined capacity, concrete paver (over 16S), concrete pump (under 8"), crusher, diesel power unit, drill rigs (tractor mounted), front end loader (under 4 c.y.), hi-pressure - boiler (15 lbs. and over), hoist (one drum) Kolman plant loader and similar type loaders, L.C.M. work boat operator, locomotive, maintenance engineer/greaseman/welder, mixer (for stabilized base self-propelled),

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POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY) (CONTINUED)

monrail machine, plant engineer, pump crete, ready mix concrete plant, refrigeration equipment (for soil stabilization), road widener, roller (all above subgrade), sea mule tractor with dozer and/or pusher, trencher, tugger-hoist, winch, winch cat.

CLASS 3: A-frame truck, ballast regulator (ride-on), compressors (4 not to exceed 2000 C.F.M. combined capacity; or 3 or less with more than 1200 C.F.M. but not to exceed 2000 C.F.M.), dust collectors, generators, pumps, welding machines, light plants (4 of any type of combination), concrete pavement spreaders and finishers, conveyor, drill-core, electric pump used in conjunction with well point system, farm tractor with accessories, fine grade machine, fork lift (under 15 ft.), grout pump gunite machine, hammers (hydraulic-self-propelled), hydra-spiker (ride-on), hydro-blaster water, post hole digger and post driver, power sweeper, roller (grade and fill), scarifier (ride-on), span-saw (ride-on), submersible electric pump (when used in lieu of well point system), tamper (ride-on), tie extractor (ride-on), tie handler, tie inserter (ride-on), tie spacer (ride-on), track liner, tractor with towed accessories, vibratory compactor, vibro tamp, well point.

CLASS 4: Aggregate plant, boiler (used in conjunction with production), cement and bin operator, compressors (3 or less not to exceed 1200 C.F.M. combined capacity), dust collectors, generators, pumps, welding machines, light plants (3 or less of any type or combination), concrete paver or mixer (16S and under), concrete saw (self-propelled), fireman, form tamper, hydraulic pump (jacking system), light plants, mulching machine, oiler, parapet concrete or pavement grinder, power broom (towed), power heaterman, Revinius widener, shell winder, steam cleaner, tractor.

TRUCK DRIVERS (HEAVY & HIGHWAY CONSTRUCTION):

CLASS 1: Pick-ups, panel trucks, flatboy materials trucks (straight jobs), single axle dump trucks, dumpsters and receivers, greasers, truck fireman.

CLASS 2: Tandems, batch truck, mechanics.

CLASS 3: Semi-trailers, low-boy trucks, asphalt distributor trucks, agitator, mixer trucks and dumpcrete type vehicles, truck mechanic and fuel truck.

CLASS 4: Specialized earth moving equipment - euclid type or similar off-highway equipment; where not self-loaded, straddle (ross) carrier, and self-contained concrete unit.

CLASS 5: Off-highway tandem back dump, twin engine equipment and double hitched equipment where not self-loaded.

SUPERSEDEAS DECISION

STATE: Texas
DECISION NO.: TX85-4039
Supersedes Decision No. TX84-4104, dated November 30, 1984, in 49 FR 47164.
DESCRIPTION OF WORK: See "Area Covered by Various Zones"

COUNTIES: Statewide
DATE: Date of Publication

	ZONES 1 & 2	ZONES 3 & 4	ZONES 5 & 6	ZONES 7 & 8	ZONES 9 & 10
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Air Tool Operator	6.00	-	-	-	6.50
Asphalt Heater Operator	-	5.50	5.50	6.05	-
Asphalt Raker	6.85	6.00	6.20	6.10	6.20
Asphalt Shoveler	6.35	-	-	-	5.20
Batching Plant Scale Operator	7.10	6.30	6.00	-	6.50
Batterboard Setter	-	-	-	-	-
Carpenter	7.80	7.30	7.30	7.25	6.75
Carpenter Helper	6.35	6.00	6.35	5.60	5.55
Concrete Finisher (Paving)	8.95	7.40	-	6.50	6.75
Concrete Finisher Helper (Paving)	-	-	-	5.50	6.00
Concrete Finisher (Structures)	7.35	7.45	7.10	5.50	6.40
Concrete Finisher Helper (Structures)	6.65	6.35	6.20	5.15	5.45
Concrete Rubber	-	-	-	-	-
Electrician	-	-	11.70	12.30	11.45
Electrician Helper	-	-	-	-	6.40
Form Builder (Structures)	6.25	-	6.75	5.35	6.85
Form Builder Helper (Structures)	-	-	5.50	4.65	5.30
Form Liner (Paving & Curb)	-	-	-	-	-
Form Setter (Paving & Curb)	-	7.10	7.00	-	7.00
Form Setter Helper (Paving & Curb)	-	-	5.75	-	4.80
Form Setter (Structures)	7.80	7.50	7.20	6.40	6.75
Form Setter Helper (Structures)	6.35	6.40	6.00	5.55	5.50
Laborer, Common	5.30	5.10	5.25	4.65	4.80
Laborer, Utility	5.85	5.95	6.35	5.50	5.25
Manhole Builder, Brick	-	-	-	-	-
Mechanic	9.25	9.15	7.65	7.85	7.65
Mechanic Helper	7.35	6.20	6.75	-	6.00
Oiler	6.65	6.00	6.00	6.35	6.60
Servicer	7.30	7.00	6.15	5.80	6.05
Painter (Structures)	-	-	-	-	-
Painter Helper (Structures)	-	-	-	-	-
Piledriver Person	-	-	-	-	-
Pipelayer	-	-	-	5.50	5.90
Pipelayer Helper	-	-	-	-	4.95
Blaster	7.25	-	7.25	-	6.50

	ZONES 1 & 2	ZONES 3 & 4	ZONES 5 & 6	ZONES 7 & 8	ZONES 9 & 10
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Reinforcing Steel Setter (Paving)	-	-	-	5.85	6.45
Reinforcing Steel Setter (Structures)	6.25	6.50	7.20	6.20	6.25
Reinforcing Steel Setter Helper	5.70	-	5.75	4.65	5.35
Steel Worker (Structural)	-	-	-	-	6.60
Steel Worker Helper (Structural)	-	-	-	-	5.90
Sign Erector	6.55	-	-	-	-
Spreader Box Man	7.10	6.60	6.90	6.95	5.60
Swamper	-	5.10	-	-	-
Power Equipment Operators:					
Asphalt Distributor	7.55	7.50	7.30	6.50	6.45
Asphalt Paving Machine	7.50	-	6.90	6.45	6.75
Broom or Sweeper Operator	6.75	5.10	6.35	5.80	5.80
Bulldozer 150 HP & Less	7.00	6.50	6.80	6.00	6.85
Bulldozer over 150 HP	7.85	7.25	7.15	6.95	7.35
Concrete Paving Curing Machine	-	-	-	-	-
Concrete Paving Finishing Machine	7.00	-	-	-	-
Concrete Paving Joint Machine	-	-	-	-	-
Concrete Paving Joint Sealer	-	-	-	-	-
Concrete Paving Saw	-	-	-	-	-
Concrete Paving Spreader	-	-	-	-	7.00
Paving Sub Grader	-	-	-	-	-
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (less than 1¼ CY)	7.40	7.30	7.00	6.85	7.00
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1¼ CY & Over)	8.90	9.15	7.85	7.55	7.95
Crusher or Screening Plant Operator	7.60	-	6.45	7.50	-
Foundation Drill Operator (Crawler Mounted)	-	-	-	-	12.50
Foundation Drill Operator (Truck Mounted)	-	-	-	-	12.00
Foundation Drill Operator Helper	-	-	-	-	8.00
Front End Loader (2¼ CY & less)	6.90	6.45	6.60	5.45	6.15
Front End Loader (Over 2¼ CY)	7.50	7.20	7.75	7.00	6.95
Mixer (Over 16 CF)	-	8.00	-	-	-
Mixer (16 CF & Less)		6.00			

	ZONES 1 & 2	ZONES 3 & 4	ZONES 5 & 6	ZONES 7 & 8	ZONES 9 & 10
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Motor Grader Operator, Fine Grade	9.25	9.35	9.15	8.70	8.30
Motor Grader Operator	8.45	8.15	8.60	7.75	7.20
Roller, Steel Wheel (Plant-Mix Pavements)	6.15	6.85	6.00	5.45	5.15
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	6.75	5.85	5.55	5.35	5.45
Roller, Pneumatic (Self-Propelled)	5.85	5.50	5.55	5.50	5.15
Scrapers (17 CY & Less)	6.75	6.15	6.00	6.10	5.75
Scrapers (Over 17 CY)	7.70	7.05	6.50	6.45	6.45
Self-Propelled Hammer	-	5.40	-	-	-
Side Boom	-	-	-	-	-
Tractor (Crawler Type) 150 HP & Less	5.30	-	-	5.50	-
Tractor (Crawler Type) over 150 HP	7.70	7.50	6.75	6.35	6.25
Tractor (Pneumatic) 80 HP & Less	6.50	5.75	-	5.50	5.50
Tractor (Pneumatic) over 80 HP	6.65	6.50	6.50	6.25	6.00
Traveling Mixer	-	-	-	-	-
Trenching Machine, Light	-	-	-	-	5.85
Trenching Machine, Heavy	-	-	-	5.95	-
Wagon Drill, Boring Machine or Post Hole Driller Operator	6.30	-	6.95	-	5.95
Truck Drivers:					
Single Axle, Light	5.95	5.70	5.85	5.70	5.15
Single Axle, Heavy	6.45	6.65	6.00	6.35	5.85
Tandem Axle or Semitrailer	6.35	6.70	6.15	6.30	5.50
Lowboy-Float	-	-	-	6.30	5.70
Transit-Mix	-	-	-	-	-
Winch	-	-	-	-	-
Welder	8.50	8.00	7.60	6.80	7.50
Welder Helper	-	-	6.75	5.65	6.10

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

	ZONES 11 & 12	ZONES 13 & 14	ZONES 15 & 16	ZONES 17 & 18	ZONES 19 & 20
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Air Tool Operator	-	-	-	-	-
Asphalt Heater Operator	5.50	-	5.25	6.25	5.90
Asphalt Raker	5.35	5.05	6.10	6.30	7.70
Asphalt Shoveler	5.55	-	-	-	6.40
Batching Plant Scale Operator	5.75	6.50	-	-	7.50
Batterboard Setter	-	-	-	-	-
Carpenter	6.40	7.60	7.00	8.05	7.65
Carpenter Helper	5.10	5.85	5.90	6.30	5.95
Concrete Finisher (Paving)	5.90	-	8.00	-	8.05
Concrete Finisher Helper (Paving)	4.90	-	6.65	-	6.60
Concrete Finisher (Structures)	6.00	6.95	6.80	7.20	7.75
Concrete Finisher Helper (Structures)	-	5.90	5.25	6.20	6.05
Concrete Rubber	4.95	-	6.50	-	6.45
Electrician	-	-	9.90	-	9.45
Electrician Helper	-	-	-	-	7.50
Form Builder (Structures)	6.25	7.55	7.00	6.75	7.90
Form Builder Helper (Structures)	-	5.50	6.25	6.05	6.55
Form Liner (Paving & Curb)	-	-	-	-	-
Form Setter (Paving & Curb)	6.00	-	-	5.50	7.65
Form Setter Helper (Paving & Curb)	4.95	-	-	-	6.05
Form Setter (Structures)	6.35	7.75	6.85	6.80	7.60
Form Setter Helper (Structures)	5.55	5.85	6.05	5.25	6.30
Laborer, Common	4.60	5.00	5.25	5.05	5.25
Laborer, Utility	5.45	5.55	5.95	5.55	5.80
Manhole Builder, Brick	-	-	-	-	-
Mechanic	7.50	7.65	7.80	8.20	8.95
Mechanic Helper	5.75	5.70	6.20	6.50	-
Oiler	-	6.15	-	-	7.20
Servicer	6.20	6.30	6.10	6.25	7.00
Painter (Structures)	-	-	8.00	-	-
Painter Helper (Structures)	-	-	-	-	-
Piledriver Person	-	-	-	-	8.25
Pipelayer	5.25	6.00	-	-	-
Pipelayer Helper	4.95	5.00	-	-	-
Blaster	-	-	-	-	-
Reinforcing Steel Setter (Paving)	-	-	7.00	-	-
Reinforcing Steel Setter (Structures)	6.30	6.90	7.25	6.40	6.85
Reinforcing Steel Setter Helper	-	5.55	5.65	5.35	6.00
Steel Worker (Structural)	-	-	-	5.75	6.50
Steel Worker Helper (Structural)	-	-	-	-	5.25
Sign Erector	-	6.00	-	-	7.10

	ZONES 11 & 12	ZONES 13 & 14	ZONES 15 & 16	ZONES 17 & 18	ZONES 19 & 20
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Spreader Box Operator	5.95	6.25	6.65	6.45	6.60
Swamper	-	-	-	5.80	-
Power Equipment Operators:					
Asphalt Distributor	6.50	6.45	6.75	6.40	7.00
Asphalt Paving Machine	5.30	6.95	7.05	6.40	7.40
Broom or Sweeper Operator	5.50	5.20	5.40	5.45	6.00
Bulldozer 150 HP & Less	5.80	6.80	7.05	6.65	7.40
Bulldozer Over 150 HP	6.60	7.40	7.95	7.35	8.05
Concrete Paving Curing Machine	-	-	-	-	-
Concrete Paving Finishing Machine	-	-	-	-	7.50
Concrete Paving Joint Machine	-	-	-	-	6.50
Concrete Paving Joint Sealer	-	-	-	-	5.50
Concrete Paving Saw	-	-	-	-	7.50
Concrete Paving Spreader	-	-	-	-	-
Paving Sub Grader	-	-	-	-	-
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (Less than 1½ CY)	6.10	7.10	7.60	7.70	7.85
Crane, Clamshell, Backhoe, Derrick, Dragline, Shovel (1½ CY & Over)	7.00	8.45	8.00	8.75	8.65
Crusher or Screening Plant Operator	-	-	-	-	-
Foundation Drill Operator (Crawler Mounted)	-	-	-	-	-
Foundation Drill Operator (Truck Mounted)	-	-	-	-	10.20
Foundation Drill Operator Helper	-	-	-	-	7.50
Front End Loader (2½ CY & Less)	5.70	5.65	6.60	6.10	7.20
Front End Loader (Over 2½ CY)	6.65	6.50	7.50	7.75	7.95
Mixer (Over 16 CF)	-	-	-	-	-
Mixer (16 CF & Less)	-	-	-	-	-
Motor Grader Operator, Fine Grade	7.35	8.35	8.75	8.50	8.90
Motor Grader Operator	6.75	7.80	7.95	7.95	8.35
Roller, Steel Wheel (Plant-Mix Pavement)	5.00	6.50	6.10	5.95	6.85
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	4.90	5.50	5.70	5.45	6.55
Roller, Pneumatic (Self-Propelled)	4.85	5.00	5.90	5.20	6.40
Scrapers (17 CY & Less)	5.40	6.20	6.35	6.05	7.25
Scrapers (Over 17 CY)	6.45	7.30	6.80	6.85	8.00
Self-Propelled Hammer	-	-	-	-	-
Side Boom	-	-	5.80	-	5.25

	ZONES 11 & 12	ZONES 13 & 14	ZONES 15 & 16	ZONES 17 & 18	ZONES 19 & 20
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Tractor (Crawler Type) 150 HP & Less	5.10	6.00	6.35	-	6.50
Tractor (Crawler Type) Over 150 HP	6.75	6.25	7.35	-	8.00
Tractor (Pneumatic) 80 HP & Less	4.90	6.05	-	5.05	6.50
Tractor (Pneumatic) Over 80 HP	5.55	6.50	6.35	6.00	7.60
Traveling Mixer	5.10	6.00	-	-	-
Trenching Machine, Light	6.15	-	-	-	-
Trenching Machine, Heavy	-	-	-	-	-
Wagon Drill, Boring Machine or Post Hole Driller Operator	-	-	5.25	-	-
Truck Drivers:					
Single Axle, Light	4.65	5.60	5.45	5.60	6.10
Single Axle, Heavy	4.95	5.70	6.30	5.80	6.85
Tandem Axle or Semi-Trailer	5.35	5.95	5.95	5.70	6.50
Lowboy-Float	-	-	6.25	-	-
Transit-Mix	-	-	-	-	-
Winch	-	-	-	-	-
Welder	7.50	7.95	-	-	7.70
Welder Helper	5.80	6.50	-	-	-

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

	[illegible] 21	[illegible] 22 & 23	[illegible] 24	ZONES 25 & 26	ZONES 27 & 28
	Basic Hourly [illegible]	Basic Hourly [illegible]	[illegible] Hourly [illegible]	Basic Hourly [illegible]	Basic Hourly [illegible]
Air Tool Operator	-	-	5.50	-	7.50
Asphalt Heater Operator	-	6.00	-	5.15	-
Asphalt Raker	8.00	7.00	5.65	5.55	-
Asphalt Shoveler	-	-	-	-	-
Batching Plant Scale Operator	7.75	7.90	-	-	8.00
Batterboard Setter	-	-	-	5.50	-
Carpenter	7.75	7.30	8.00	8.30	9.50
Carpenter Helper	6.05	6.00	6.70	-	7.30
Concrete Finisher (Paving)	8.35	7.75	7.75	6.75	8.20
Concrete Finisher Helper (Paving)	6.80	6.15	-	6.00	6.90
Concrete Finisher (Structures)	7.65	7.00	7.90	7.90	8.05
Concrete Finisher Helper (Structures)	6.70	6.15	6.15	7.00	6.95
Concrete Rubber	6.25	-	6.10	-	7.00
Electrician	11.05	-	-	14.00	13.40
Electrician Helper	6.50	-	-	9.25	9.20
Form Builder (Structures)	7.75	7.05	7.05	6.85	8.10
Form Builder Helper (Structures)	6.40	5.95	5.85	6.00	5.70
Form Liner (Paving & Curb)	8.00	7.30	-	-	8.30
Form Setter (Paving & Curb)	7.50	7.75	-	6.75	8.15
Form Setter Helper (Paving & Curb)	6.70	6.00	-	6.35	6.35
Form Setter (Structures)	7.70	7.45	6.75	8.05	7.90
Form Setter Helper (Structures)	6.00	5.95	5.50	6.05	5.85
Laborer, Common	5.30	5.10	5.35	4.95	5.60
Laborer, Utility	5.70	6.00	5.95	5.75	6.45
Manhole Builder, Brick	6.30	-	-	-	6.55
Mechanic	8.30	7.90	8.35	8.50	9.65
Mechanic Helper	6.50	-	6.85	7.00	7.60
Oiler	7.00	6.50	-	6.35	7.40
Servicer	7.15	6.30	6.60	7.00	7.25
Painter (Structures)	-	7.00	-	10.00	-
Painter Helper (Structures)	-	6.00	-	-	-
Piledriver Person	-	-	-	-	8.95
Pipelayer	6.70	5.50	-	5.50	6.40
Pipelayer Helper	5.70	-	-	-	5.60
Blaster	-	-	-	-	-
Reinforcing Steel Setter (Paving)	6.30	6.95	-	6.60	6.95
Reinforcing Steel Setter (Structures)	7.85	7.50	8.00	7.25	8.60
Reinforcing Steel Setter Helper	6.05	6.10	6.00	5.75	6.30
Steel Worker (Structural)	-	7.70	-	-	9.30
Steel Worker Helper (Structural)	-	-	-	-	6.25
Sign Erector	7.15	-	-	-	6.55

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	ZONE 21	ZONES 22 & 23	ZONE 24	ZONES 25 & 26	ZONES 27 & 28
	[illegible] Hourly [illegible]	[illegible] Hourly [illegible]	Basic Hourly Rates	Basic Hourly [illegible]	[illegible] Hourly Rates
Spreader Box Man	-	6.25	-	6.15	7.50
Swamper	-	-	-	-	-
Power Equipment Operators:					
Asphalt Distributor	7.35	7.65	7.00	6.80	-
Asphalt Paving Machine	7.95	7.75	7.20	6.70	-
Broom or Sweeper Operator	-	5.25	6.00	4.95	-
Bulldozer 150 HP & Less	7.25	7.10	7.45	6.75	7.85
Bulldozer over 150 HP	7.80	7.75	7.95	7.85	9.15
Concrete Paving Curing Machine	7.50	7.00	-	-	7.00
Concrete Paving Finishing Machine	7.25	5.50	-	-	8.15
Concrete Paving Joint Machine	-	-	-	-	8.30
Concrete Paving Joint Sealer	-	-	-	6.50	-
Concrete Paving Saw	7.50	7.00	-	-	7.90
Concrete Paving Spreader	7.50	-	-	-	8.25
Paving Sub Grader	-	8.00	-	-	-
Crane,Clamshell,Backhoe,Derrick, Dragline,Shovel(less than 1½ CY)	7.95	7.60	7.55	7.00	8.75
Crane,Clamshell,Backhoe,Derrick, Dragline,Shovel(1½ CY & Over)	8.40	7.95	8.00	9.50	9.60
Crusher or Screening Plant Op.	6.00	-	-	-	-
Form Loader	-	-	-	-	-
Foundation Drill Operator (Crawler Mounted)	8.00	-	-	-	-
Foundation Drill Operator (Truck Mounted)	8.95	10.00	10.50	-	9.00
Foundation Drill Operator Helper	7.75	8.00	7.50	-	-
Front End Loader (2½ CY & Less)	6.85	6.80	6.85	6.35	7.30
Front End Loader (Over 2½ CT)	7.70	8.00	7.05	7.45	8.00
Mixer (Over 16 CF)	-	-	-	-	-
Mixer (16 CF & Less)	-	-	-	-	5.75
Motor Grader Operator, Fine Grade	8.90	8.65	8.00	8.90	9.10
Motor Grader Operator	8.00	7.70	7.85	7.70	8.55
Roller, Steel Wheel (Plant-Mix Pavement)	7.75	6.20	6.10	5.40	6.75
Roller, Steel Wheel (other-Flat Wheel or Tamping)	7.50	6.55	6.55	5.95	6.40
Roller, Pneumatic (Self-Propelled)	6.55	6.25	6.40	5.50	6.50
Scrapers (17 CY & Less)	7.10	6.60	6.35	6.40	6.70
Scrapers (Over 17 CY)	7.40	7.00	7.25	7.45	7.95
Self Propelled Hammer	-	7.00	-	-	-
Side Boom	-	6.25	-	-	-
Tractor (Crawler Type) 150 HP & [illegible]	6.75	6.25	-	-	-

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	ZONE 21	ZONES 22 & 23	ZONE 24	ZONES 25 & 26	ZONES 27 & 28
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Tractor (Crawler Type) Over 150 HP	7.90	7.50	-	-	8.00
Tractor (Pneumatic) 80 HP & Less	6.00	6.00	-	-	6.25
Tractor (Pneumatic) Over 80 HP	6.80	6.60	-	-	-
Traveling Mixer	6.00	6.50	6.50	5.25	-
Trenching Machine, Light	-	-	-	-	-
Trenching Machine, Heavy	-	7.50	-	-	-
Wagon Drill, Boring Machine or Post Hole Driller Operator	-	-	-	-	-
Truck Drivers:					
Single Axle, Light	6.35	5.85	6.30	5.75	6.70
Single Axle, Heavy	6.45	6.65	6.30	6.25	6.90
Tandem Axle or Semi-trailer	6.40	6.30	6.55	6.45	7.05
Lowboy-Float	7.45	6.50	7.20	-	7.00
Transit-Mix	6.65	-	-	-	7.15
Winch	7.00	-	-	-	-
Welder	-	7.50	-	-	8.70
Welder Helper	-	-	-	-	7.00

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

	ZONES 29 & 30				
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Air Tool Operator	-				
Asphalt Heater Operator	-				
Asphalt Raker	8.00				
Asphalt Shoveler	-				
Batching Plant Scale Operator	-				
Batterboard Setter	-				
Carpenter	9.20				
Carpenter Helper	7.00				
Concrete Finisher (Paving)	8.85				
Concrete Finisher Helper (Paving)	7.75				
Concrete Finisher (Structures)	8.70				
Concrete Finisher Helper (Structures)	-				
Concrete Rubber	-				
Electrician	-				
Electrician Helper	-				
Form Builder (Structures)	8.65				
Form Builder Helper (Structures)	7.75				
Form Lines (Paving & Curb)	-				
Form Setter (Paving & Curb)	8.50				
Form Setter Helper (Paving & Curb)	-				
Form Setter (Structures)	8.00				
Form Setter Helper (Structures)	6.20				
Laborer, Common	6.20				
Laborer, Utility	6.45				
Manhole Builder, Brick	-				
Mechanic	10.90				
Mechanic Helper	8.20				
Oiler	-				
Servicer	9.00				
Painter (Structures)	-				
Painter Helper (Structures)	-				
Piledriver Person	8.45				
Pipelayer	-				
Pipelayer Helper	-				
Pneumatic Mortar Operator	-				
Blaster	-				
Blaster Helper	-				
Reinforcing Steel Setter (Paving)	7.25				
Reinforcing Steel Setter (Structures)	8.40				
Reinforcing Steel Setter Helper	6.10				
Steel Worker (Structural)	-				
Steel Worker Helper (Structural)	-				

	ZONES 29 & 30				
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Sign Erector	-				
Spreader Box Operator	8.00				
Swamper					
Power Equipment Operators:					
Asphalt Distributor	8.00				
Asphalt Paving Machine	-				
Broom or Sweeper Operator	7.75				
Bulldozer 150 HP & Less	8.55				
Bulldozer Over 150 HP	10.00				
Concrete Paving Curing Machine	-				
Concrete Paving Finishing Machine	-				
Concrete Paving Joint Machine	-				
Concrete Paving Joint Sealer	-				
Concrete Paving Spreader	-				
Paving Sub Grader	-				
Crane,Clamshell,Backhoe,Derrick, Dragline,Shovel (Less than 1½ CY)	8.90				
Crane,Clamshell,Backhor,Derrick, Dragline,Shovel(1½ CY & Over)	9.80				
Crusher or Screening Plant Op.	-				
Foundation Drill Operator(Crawler Mounted)	-				
Foundation Drill Operator (Truck Mounted)	-				
Foundation Drill Operator Helper	-				
Front End Loader (2½ CT & Less)	7.00				
Front End Loader (Over 2½ CY)	9.00				
Mixer (Over 16 CF)	-				
Mixer (16 CF & Less)	-				
Motor Grader Operator, Fine Grade	10.00				
Motor Grader Operator	8.30				
Roller, Steel Wheel (Plant-Mix Pavements)	-				
Roller, Steel Wheel (Other-Flat Wheel or Tamping)	-				
Roller, Pneumatic (self-Propelled)	6.50				
Scrapers (17 CY & Less)	-				
Scrapers (Over 17 CY)	-				
Side Boom	-				
Tractor (Crawler Type) 150 HP & Less	-				
Tractor (Crawler Type) Over 150 HP	-				

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	ZONES 29 & 30				
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Tractor (Pneumatic) 80 HP & Less	-				
Tractor (Pneumatic) Over 80 HP	-				
Traveling Mixer	-				
Trenching Machine, Light	-				
Trenching Machine, Heavy					
Wagon Drill, Boring Machine or Post Hole Driller Operator	-				
Truck Driver:					
Single Axle, Light	7.00				
Single Axle, Heavy	7.50				
Tandem Axle or Semitrailer	-				
Lowboy-Float	10.90				
Transit-Mix	-				
Winch	-				
Welder	8.85				
Welder Helper	-				

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

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AREA COVERED BY VARIOUS ZONES

ZONE 1 - Archer, Armstrong, Baylor, Briscoe, Carson, Castro, Childress, Clay, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, Lipscomb, Montague, Moore, Ochiltree, Oldham, Parmer, Roberts, Sherman, Swisher, Wheeler & Wilbarger Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 2 - Potter, Randall & Wichita Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 3 - Bailey, Borden, Cochran, Cottle, Crosby, Dawson, Dickens, Fisher, Floyd, Foard, Gaines, Garza, Hale, Haskell, Hockley, Jones, Kent, King, Knox, Lamb, Lynn, Motley, Scurry, Shackelford, Stephens, Stonewall, Terry, Throckmorton, Yoakum & Young Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 4 - Lubbock County

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 5 - Andrews, Brown, Callahan, Coke, Coleman, Comanche, Concho, Crane, Crockett, Eastland, Erath, Glasscock, Howard, Irion, Kimble, Loving, Martin, McCulloch, Menard, Mills*, Mitchell, Nolan, Reagan, Runnels, San Saba, Schleicher, Sterling, Sutton, Upton, Ward & Winkler Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)
*Not to be used for work on water or sewage treatment plants or lift/pump stations in Mills County

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ZONE 6 - Ector, Midland, Taylor & Tom Green Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects, does not include building structures in rest area projects)

ZONE 7 - Brewster, Culberson, Hudspeth, Jeff Davis, Pecos, Presidio, Reeves & Terrell Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 8 - El Paso County

DESCRIPTION OF WORK: Water & Sewer Lines and Highway Projects (does not include building structures in rest area projects)

ZONE 9 - Atascosa, Bandera, Dimmit, Edwards, Frio, Kendall, Kerr, Kinney, LaSalle, Maverick, McMullen, Medina, Real, Uvalde, Val Verde, Wilson & Zavala Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 10 - Bexar, Comal & Guadalupe Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 11 - Brooks, Duval, Jim Hogg, Kenedy, Starr, Willacy & Zapata Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects) and Incidental Shore Work

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ZONE 12 - Cameron, Hidalgo & Webb Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects) and Incidental Shore Work

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ZONE 13 - Aransas, Bee, Calhoun, DeWitt, Goliad, Jackson, Jim Wells, Karnes, Kleberg, Lavaca, Live Oak and Refugio Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects) and Incidental Shore Work

ZONE 14 - Nueces, San Patricio & Victoria Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects) & Incidental Shore Work

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ZONE 15 - Austin, Bastrop, Blanco, Burnet, Caldwell, Colorado, Fayette, Gillespie, Gonzales, Lee, Llano & Mason Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

Zone 16 - Hays, Travis & Williamson* Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

*Not to be used on work on sewage or water treatment plants or lift/pump stations in Williamson County

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ZONE 17 - Bosque, Falls, Freestone, Hamilton, Hill, Lampasas, Limestone & Navarro Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels, dams & work on water or sewage treatment plants or lift/pump stations) and Highway Projects (does not include building structures in rest area projects)

ZONE 18 - Bell, Coryell & McLennan Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels, dams & work on water or sewage treatment plants or lift/pump stations) and Highway Projects (does not include building structures in rest area projects)

ZONE 19 - Cooke, Hood, Jack, Palo Pinto, Sommervell & Wise Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 20 - Denton, Johnson, Parker & Tarrant* Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams), Water & Sewer Lines and Highway Projects (does not include building structures in rest area projects)

*Not to be used for Heavy Projects in Tarrant County

ZONE 21 - Collin, Dallas, Ellis, Grayson & Rockwall Counties

DESCRIPTION OF WORK: Water & Sewer Lines and Highway Projects Only

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ZONE 22 - Camp, Cass, Delta, Fannin, Franklin, Hopkins, Hunt, Lamar, Marion, Morris, Rains, Red River, Rusk, Titus, Upshur, Van Zandt & Wood Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 23 - Bowie, Gregg, Harrison, Kaufman & Smith Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 24 - Anderson, Angelina, Cherokee, Henderson, Houston, Jasper, Nacogdoches, Newton, Panola, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity & Tyler Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects) & Incidental Shore Work

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ZONE 25 - Burleson, Grimes, Leon*, Madison, Milam*, Robertson*, Walker & Washington Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

*Not to be used for work on water or sewage treatment plants or lift/pump stations in Leon, Milam & Robertson Counties

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ZONE 26 - Brazos County

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects)

ZONE 27 - Matagorda & Wharton Counties

DESCRIPTION OF WORK: Highway Construction Projects Only

ZONE 28 - Brazoria, Fort Bend, Galveston, Harris, Montgomery & Waller Cos.

DESCRIPTION OF WORK: Highway Construction Projects Only

ZONE 29 - Chambers County

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects) & Incidental Shore Work

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ZONE 30 - Hardin, Jefferson*, Liberty & Orange* Counties

DESCRIPTION OF WORK: Heavy (excluding tunnels & dams) and Highway Projects (does not include building structures in rest area projects) & Incidental Shore Work

*Not to be used for Heavy Projects & Incidental Shore Work in Jefferson & Orange Counties

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federal register

Friday
September 20, 1985

Part IV

Department of Health and Human Services

Health Resources and Services Administration

List of Designated Primary Care Health Manpower Shortage Areas (HMSAs); List of Withdrawals From Primary Care HMSA Designation; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

List of Designated Primary Care Health Manpower Shortage Areas (HMSAs); List of Withdrawals From Primary Care HMSA Designation

SUMMARY: This notice provides two lists. This first is a list of all areas, population groups or facilities designated as primary care health manpower shortage areas (HMSAs) as of June 30, 1985. Second is a list of previously-designated primary care HMSAs that have been found to no longer meet the HMSA criteria and are therefore being withdrawn from the HMSA list. HMSAs are designated or withdrawn by the Secretary of HHS under the authority of section 332 of the Public Health Service Act.

FOR FURTHER INFORMATION CONTACT: Richard. C. Lee, Chief, Distribution and Shortage Analysis Branch, Office of Data Analysis and Management, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–57, 5600 Fishers Lane, Rockville, Maryland 20857 (301–443–6932).

SUPPLEMENTARY INFORMATION:

1. Background

Section 332 of the Public Health Service Act provides that the Secretary of Health and Human Services shall designate health manpower shortage areas based on criteria established by regulation. Health manpower shortage areas (HMSAs) are defined in section 332 to include (1) urban and rural geographic areas, (2) population groups, and (3) facilities with shortages of health manpower. Section 332 further requires that the Secretary publish a list of the designated geographic areas, population groups and facilities. The list of areas is to be reviewed at least annually and revised as necessary. The Health Resources and Services Administration's Bureau of Health Professions has been assigned the responsibility for designating these areas.

Public or nonprofit entities in (or with a demonstrated interest in) these areas are eligible to apply for assignment of National Health Service Corps (NHSC) personnel to provide health services in, or to, the areas. These areas are also eligible obligated service areas for certain Public Health Service scholarship, loan repayment and nurse practitioner traineeship programs, and entities located in the areas are eligible to apply for (or receive preference for) certain Public Health Service grant programs.

2. Development of the Designation and Withdrawal Lists

Criteria for designating HMSAs were first published by the Department of Health, Education, and Welfare as Interim-Final regulations (42 CFR Part 5) in the **Federal Register** of January 10, 1978. Final regulations, revised as warranted by public comments received, were published in the **Federal Register** on November 17, 1980. Criteria are defined for each of seven health manpower types (primary medical care, dental, psychiatric, vision care, podiatric, pharmacy, and veterinary manpower).

The first list of HMSAs developed under these criteria by the Bureau of Health Professions, with the review and recommendations of the appropriate Health Systems Agencies (HSAs), State Health Planning and Development Agencies (SHPDAs) and Governors, was published in 1978. Since then, updated lists have been published approximately annually to reflect changes which occur as a result of the continuous shortage area designation process. Individual requests received for designation or withdrawal of particular areas, population groups or facilities are routinely submitted to the appropriate HSAs, where active, and to SHPDAs, Governors and other interested organizations or individuals for their review and recommendations. Requests regarding primary medical care manpower are also provided to the appropriate State medical society for comment.

Annually, the Bureau of Health Professions also provides data listings to all SHPDAs, HSAs, State medical societies and others showing the latest data contained in the HMSA data base for each county and designated HMSA within their State, requesting their review and update of the data, and seeking their recommendations regarding new additions to, continuations of, and/or withdrawals from the HMSA list.

The Bureau of Health Professions reviews each designation or withdrawal request, together with any recommendations received on individual requests or on the annual review data listings, and determines whether or not each area involved meets the shortage criteria. The results of these reviews are provided by letter to the agency or individual requesting action or providing data; copies are sent to the other commenting agencies as well as to other interested organizations and individuals. These letters constitute the official notice of designation as a HMSA or rejection of recommendations for such a designation, and/or constitute advance notice of pending withdrawals from the list. Designations (or revisions of designations) are effective as of the date of the letter making (or revising) the designation; withdrawals are effective when published in the **Federal Register**.

The first list below ("List of Designated Primary Care HMSAs") includes all those areas, population groups and facilities which were designated as primary care HMSAs by the Bureau of Health Professions as of June 30, 1985. This list incorporates our recent review of all HMSAs designated or most recently updated in 1981 and supersedes the primary care HMSA list which appeared in the **Federal Register** on February 15, 1985. (The February list was the result of the previous review of all primary care HMSAs designated in 1978, 1979 and 1980.)

The second list below ("List of Withdrawals from Primary Care HMSA Designation") includes those areas, population groups and facilities which had previously been designated as primary care HMSAs but were found, between April 15, 1984 and June 30, 1985, to no longer meet the HMSA criteria and therefore were indicated as scheduled for withdrawal from the HMSA list in letters from the Bureau of Health Professions. This list does not include any former HMSAs which were already listed in the withdrawal notice previously published in the **Federal Register** on May 17, 1984.

Some service area definitions have been modified in such a way that portions of some areas have effectively been withdrawn. The list of withdrawals below does not include such technical withdrawals, but rather consists of those whole counties, service areas, population groups, and facilities that have been completely withdrawn. However, the list of designated HMSAs below includes the current definitions for each designated service area, excluding any portions withdrawn.

3. Format of Lists

a. List of Designated Primary Care HMSAs

The list of primary care HMSAs is arranged by State. Within each State, the list is first presented by county. If only a portion (or portions) of a county has been designated, or if the county is part of a larger designated service area, or if a population group residing in the county or a facility located in the county

has been designated, the name of the service area, population group, or facility involved is listed under the county name.

Following the county listing, a list of any designated service areas is presented identifying their component parts in terms of counties, towns, townships, census tracts (CTs), minor civil divisions (MCDs), census county divisions (CCDs), enumeration districts (EDs), magisterial districts, or other definable geographic divisions recognized by the Bureau of the Census. Following the service area listing, a list of any designated population groups is presented identifying each such group and the geographic area wherein it resides. Following the population group listing, a list by name and location of any separately designated facilities (including prisons, correctional institutions, health centers, or hospitals) is presented.

Beside each designated area, population group or facility the appropriate "degree-of-shortage" group is indicated, corresponding to the criteria for these groupings contained in the regulations. (Group 1 represents areas with the highest degree of shortage, Group 2 with next highest degree of shortage, etc.) These groups have been defined for use in determining relative priorities for placement of NHSC personnel; however, these groupings represent only part of the process of making placement decisions, which includes other considerations relating to need, demand, and attractiveness of the various designated areas.

In addition to the specific listings included in this notice, all Indian tribes which meet the definition of such tribes referenced in section 4(d) of Pub. L. 94–437, the Indian Health Care Improvement Act of 1976, are automatically designated as population groups with primary medical care and dental manpower shortages. Such Indian tribes are automatically considered assigned to degree-of-shortage Group 4 (unless otherwise indicated in this listing based on specific data provided for this purpose).

b. List of Withdrawals From Primary Care HMSA Designation

Withdrawals from the list of primary care HMSAs are arranged by State. Within each State whole counties being withdrawn are presented first. Following the county listing, a list of service areas, population groups, and facilities withdrawn is presented identifying their component parts in terms of counties and subparts of counties.

4. Future Updates of List of Designated Areas

The list of primary care HMSAs below consists of all those which were designated as of June 30, 1985. It should be noted that additional areas have been designated by letter since June 30, 1985, and the appropriate agencies and individuals notified of the action. Although official, these actions are not included in the list below, because they had not yet been added to the computerized data base at the time this list was generated.

Any designated area listed below is subject to possible future withdrawal from designation if new information is received by the Bureau of Health Professions indicating that the situation in the area has changed or that erroneous or incomplete data were used in making the original designation. Interested parties will be notified by mail of any such pending withdrawal, which will become effective only upon publication in a future Federal Register listing of withdrawals (or upon publication of a future Federal Register listing of primary care HMSAs which does not include the area).

For further information on the HMSA designations and withdrawals listed below, or to request additional designations or withdrawals or reinstatement of a withdrawn HMSA, please contact Richard C. Lee, Chief, Distribution and Shortage Analysis Branch, Office of Data Analysis and Management, at the address listed above. All requests for designations or withdrawals should be based on the criteria in the regulations as published on November 17, 1980.

Dated: July 29, 1985.

John H. Kelso,

Acting Administrator.

LIST OF DESIGNATED HEALTH MANPOWER STORAGE AREAS

PRIMARY CARE: Alabama

County Name	Degree of shortage
Autauga	01
Baldwin:	
Service Area: Bay Minette	03
Barbour Service Area: Clayton	01
Bibb	01
Blount	02
Bullock	02
Chambers	
Service Area: La Fayette	01
Chilton	03
Choctaw	02
Clarke:	
Service Area: Thomasville	03
Cleburne	03
Colbert:	
Service Area: Cherokee	01
Conecuh	01
Coosa	01

PRIMARY CARE: Alabama—Continued

County Name	Degree of shortage
Crenshaw	02
Dale	02
Elmore	02
Etowah	
Population Group: Poverty Population	01
Geneva	[illegible]
Greene	[illegible]
Hale	02
Henry	02
Houston	
Service Area: Gordon	01
Jackson	
Service Area: Paint Rock Valley	01
Service Area: Sand Mountain	01
Lamar	03
Lauderdale	
Service Area: Waterloo	01
Service Area: West Limestone	03
Limestone	
Service Area: West Limestone	03
Lowndes	01
Macon	03
Marengo	
Service Area: Thomasville	03
Marion	[illegible]
Mobile	
Service Area: Bayou La Batre	02
Population Group:	
E. Mobile/Proverty Pop	01
Facility:	
Univ. S. Ala. Childrens MC	01
Montgomery:	
Population Group: Medically Indigent Pop	[illegible]
Pickens	[illegible]
Pike	[illegible]
Russell	[illegible]
Service Area: Cottonton/Hurtsboro	01
St Clair	02
Shelby:	
Service Area: Westover	01
Sumter	
Service Area: Black Belt Community	01
Talladega	04
Tallapoosa	
Service Area: Camp Hill	01
Tuscaloosa:	
Service Area: West Tuscaloosa	01
Washington	01
Wilcox:	
Service Area: Camden	02
Service Area: Thomasville	03
Winston	[illegible]

PRIMARY CARE: Alabama

Service Area Listing

Service area name	Degree of shortage
Bay Minette	03
County—Baldwin:	
Parts: Bay Minette Div.	
Bayou La Batre	02
County—Mobile	
Parts	
C.T. 66 (parts)	
C.T. 67 (parts)	
C.T. 72 (parts)	
C.T. 73 (parts)	
Black Belt Community	01
County—Sumter:	
Parts:	
Gainsville Div.	
Livingston Div. (Epps Twn)	
Panola/Geiger Div.	
Camden	02
County—Wilcox	
Parts	
Camden	
Coy—Fatama	
Pine Apple	
Camp Hill	01
County—Tallapoosa	
Parts	
Camp Hill	

PRIMARY CARE: Alabama—Continued

Service Area Listing

Service area name	Degree of shortage
[illegible]	
[illegible]	
Cherokee	01
County—Colbert:	
Parts: Cherokee CCD	
Clayton	01
County—Barbour:	
Parts:	
Clayton	
Clio	
[illegible]	
Cottonton/Hurtsboro	01
County—Russell	
Parts:	
Cottonton-Seale	
Hurtsboro	
Gordon	01
County—Houston:	
Parts: Gordon	
La Fayette	01
County—Chambers	
Parts:	
Five points	
Lafayette Div	
Milltown	
Paint Rock Valley	01
County—Jackson:	
Parts	
Paint Rock	
Princeton	
Sand Mountain	01
County—Jackson	
Parts:	
Long Island	
Pisgah	
Section	
Thomasville	03
County—Clarke:	
Parts: Thomasville	
County—Marengo	
Parts:	
Dixons Mill	
Sweetwater	
County—Wilcox	
Parts:	
Alberta	
Pine Hill	
Waterloo	01
County—Lauderdale	
Parts: Waterloo CCD	
West Limestone	03
County—Lauderdale	
Parts: C.T. 117–118	
County—Limestone	
Parts: C.T. 202–203	
West Tuscaloosa	01
County—Tuscaloosa	
Parts: C.T. 116–119	
Westover	01
County—Shelby	
Parts: C.T. 301–303	

PRIMARY CARE: Alabama

Population Group Listing

Population group	Degree of shortage group
E. Mobile/Poverty Pop	01
County—Mobile	
Parts	
C.T. 1–3	
C.T. 4.01–4.02	
C.T. 5–6	
C.T. 7.01–7.02	
C.T. 8	
C.T. 10.01–10.02	
C.T. 11	
C.T. 12.01	
C.T. 13.01–13.02	
C.T. 14	
C.T. 15.01–15.02	
C.T. 23.01–23.02	
C.T. 26	

PRIMARY CARE: Alabama—Continued

Population Group Listing

Population group	Degree of shortage
C.T. 38.01	
C.T. 39.01–39.02	
C.T. 40–50	
Medically Indigent Pop.	[illegible]
County—Montgomery	
Poverty Population	01
County—Etowah:	
Parts: C.T. 1–17	

PRIMARY CARE: Alabama

Facility Listing

Facility	Degree of shortage group
Univ. S. Ala. Childrens MC	01
County—Mobile	

PRIMARY CARE: Alaska

County name	Degree of shortage group
Aleutian Island Area	
Service Area: Peninsula	01
Anchorage Borough	
Population group: Medicaid Eligibles/Anch. City	03
Facility:	
Hiland Mtn/Meadow Crk Corr Ctr	02
3rd Ave/6th Ave Annex/Ridgeview	02
Bethel Area	
Bristol Bay Borough	
Service Area: Bristol Bay	01
Dillingham Area:	
Service Area:	
Bristol Bay	01
Peninsula	01
Kenai Peninsula Borough	
Facility: Cook Inlet Pre-Trial Facil.	02
Kobuk Area	01
Matanuska-Susitna Borough:	
Facility: Palmer Correctional Ctr.	02
Nome Area	01
North Slope Borough	01
Prince of Wales-Outer Ket	02
Southeast-Fairbanks Area	01
Wade Hampton Area	01
Yukon-Koyukuk Area	01

PRIMARY CARE: Alaska

Service Area Listing

Service area name	Degree of shortage group
Bristol Bay	01
County:	
Bristol Bay Borough	
Dillingham Area	
Peninsula	01
County:	
Aleutian Island Area	
Dillingham Area	
Parts: Peninsula	

PRIMARY CARE: Alaska

Population group Listing

Population group	Degree of shortage
Medicaid Eligibles/Anchorage City	03
County—Anchorage Borough:	
Parts: Anchorage City	

PRIMARY CARE: Alaska

Facility Listing

Facility	Degree of shortage group
Cook Inlet Pre-Trial Facil	02
County—Kenai Peninsula Borough	
Hiland Mtn/Meadow Crk Corr Ctr	02
County—Anchorage Borough	
Palmer Correctional Ctr	02
County—Matanuska-Susitna Borough	
3rd Ave/6th Ave Annex/Ridgeview	02
County—Anchorage Borough	

PRIMARY CARE: Arizona

County name	Degree of shortage
Apache:	
Service Area	
Kayenta	01
Puerco Valley	01
St. Johns	01
Population Group:	
Indian Pop.—Grando/Rough Rock	01
Indian Pop. of Jsaile	01
White Mountain Indian Reservation	01
Cochise	
Service Area	
Benson	04
Bisbee	04
Bowie	01
Douglas	03
Elfdreida	01
Tombstone City Area	01
Coconino	
Population Group: Hopi Indian Reservation	01
Mancopa	
Population Group	
Gila River Indian Community	01
Med. Ind. Pop.—Guadalupe	01
Pov./Migr. Pop.—El Mirage	01
Facility: Mancopa Co. Jails	02
Mohave	
Service Area: Dolan Springs	01
Navajo	
Service Area	
Heber/Overgaard	01
Kayenta	01
Population Group:	
Hopi Indian Reservation	01
Indian Pop.—Ganado/Rough Rock	01
White Mountain Indian Reservation	01
Pima	
Service Area	
Arivaca	01
Continental	01
Marana	01
Population Group: Med. Ind. Pop./South Tucson	02
Pinal	
Service Area:	
San Pedro Valley	02
Superior	01
Population Group:	
Gila River Indian Community	01
Med. Ind. Pop.—Cent./W. Pinal	02
Santa Cruz	04
Yavapai	
Service Area: Seligman	02
Yuma	
Service Area	
Northern Yuma County	02
Wellton	02

PRIMARY CARE: Arizona—Continued

County name	Degree of shortage group
Population Group: Pov. Pop./Somerton Area	01

PRIMARY CARE: Arizona

Service Area Listing

Service area name	Degree of shortage group
Arivaca	01
County—Pima:	
Parts: C.T. 43.05 (E.D. 257–262)	
Benson	04
County—Cochise:	
Parts: Benson CCD	
Bisbee	04
County—Cochise:	
Parts: Bisbee CCD	
Bowie	01
County—Cochise:	
Parts: Bowie CCD	
Continental	01
County—Pima:	
Parts: C.T. 41.02 (E.D. 238–243)	
Dolan Springs	01
County—Mohave:	
Parts:	
E.D. 23 (N. Part)	
E.D. 24–25	
E.D. 33–35	
E.D. 37	
Douglas	03
County—Cochise:	
Parts:	
E.D. 86	
E.D. 90–93	
Elfrieda	01
County—Cochise:	
Parts:	
E.D. 87–89	
Heber/Overgaard	01
County—Navajo:	
Parts: Snowflake CCD (E.D. 418–423)	
Kayenta	01
County—Apache:	
Parts: Dennehotso CCD	
County—Navajo:	
Parts: Western CCD	
Marana	01
County—Pima:	
Parts: C.T. 44.05 (N. Part)	
Northern Yuma County	02
County—Yuma:	
Parts: Parker Division	
Puerco Valley	01
County—Apache:	
Parts: Puerco Div	
San Pedro Valley	[illegible]
County—Pinal:	
Parts:	
E.D. 76–82 (San Manuel Div)	
E.D. 86–88 (San Manuel Div)	
E.D. 90 (San Manuel Div)	
Seligman	[illegible]
County—Yavapai:	
Parts: Ashfork Div	
St. Johns	01
County—Apache:	
Parts: St. Johns Div.	
Superior	01
County—Pinal:	
Parts: E.D. 1–6	
Tombstone City Area	01
County—Cochise:	
Parts: Tombstone Pl. (Pt. Tombstone Div)	[illegible]
Wellton	
County—Yuma:	
Parts:	
E.D. 228–229	
E.D. 239–240	

PRIMARY CARE: Arizona

Population group Listing

Population group	Degree of shortage group
Gila River Indian Community	01
County:	
Maricopa	
Pinal	
Hopi Indian Reservation	01
County—Coconino	
Parts: Hopi Div.	
County—Navajo:	
Parts: Hopi Div.	
Indian Pop—Ganado/Rough Rock	01
County—Apache:	
Parts:	
Chinle CCD (S&W Parts)	
Ft. Defiance CCD (W. Part)	
County—Navajo	
Parts:	
Indian Wells CCD (E. Part)	
Pinon CCD (S.E. Part)	
Indian Pop. of Jesile	01
County—Apache:	
Med. Ind. Pop—Cent/W Pinal	[illegible]
County—Pinal:	
Parts:	
Casa Grande	
Coolidge	
Eloy	
Maricopa/Stanfield	
Sacaton	
Med. Ind./Pop.—Guadalupe	01
County—Maricopa:	
Parts: C.T. 3200.02	
Med. Ind. Pop/South Tucson	[illegible]
County—Pima:	
Parts:	
C.T. 1–5	
C.T. 8–12	
C.T. 13.01–13.02	
C.T. 14	
C.T. 20–24	
C.T. 25.01–25.02	
C.T. 37.01–37.03	
C.T. 38–39	
C.T. 41.03–41.04	
C.T. 43.01	
Pov. Pop./Somerton Area	01
County—Yuma:	
Parts: C.T. 114–116	
Pov./Migr. Pop.—El Mirage	01
County—Maricopa:	
Parts:	
C.T. 405.01	
C.T. 608–609	
C.T. 610.01	
White Mountain Indian Reservation	01
County:	
Apache	
Navajo	

PRIMARY CARE: Arizona

Facility Listing

Facility	Degree of shortage group
Maricopa, Co. Jails	[illegible]
County—Maricopa	

PRIMARY CARE: Arkansas

County name	Degree of shortage group
Arkansas:	
Service Area: Arkansas County	01
Ashley:	
Service Area: Portland-Wilmot	02

PRIMARY CARE: Arkansas—Continued

County name	Degree of shortage group
Service Area: Lead Hill	01
Bradley:	
Service Area: Hermitage	01
Calhoun	03
Clay	02
Cleburne:	
Service Area: Greer's Ferry	01
Cleveland	04
Conway	04
Crawford	03
Crittenden:	
Service Area: Parkin	01
Cross:	
Service Area: Parkin	01
Service Area: Sparkman	01
Service Area: Dumas	03
Faulker:	
Service Area: Vilonia	01
Franklin	03
Fulton:	
Service Area: Horseshoe Bend	01
Grant	03
Izard:	
Service Area: Horseshoe Bend	01
Jefferson:	
Service Area:	
Altheimer	01
North Pine Bluff	02
Redfield	01
Lafayette	02
Lawrence	04
Lee	04
Lincoln:	
Service Area:	
Dumas	03
Starr	02
Manon	
Service Area: Lead Hill	01
Mississippi	
Service Area: Osceola/Wilson	03
Monroe:	
Service Area: Clarendon	02
Montgomery	03
Nevada:	
Service Area: Rosston	01
Newton	01
Quachita:	
Service Area:	
Horseshoe Bend	01
Stephens	01
Perry	02
Phillips:	
Service Area: Elaine	01
Poinsett	04
Polk:	
Service Area: Wickes	02
Pope:	
Service Area: Atkins & Hector	02
Prairie	01
Pulaski:	
Service Area: College Station	01
Scott	04
Searcy	02
Sebastian:	
Service Area: Diamond	03
Sevier:	
Service Area: Wickes	02
Sharp:	
Service Area: Cave	[illegible]
Union:	
Service Area: Strong	[illegible]
Van Buren	[illegible]
Washington:	
Service Area: West Washington	02
Woodruff:	
Service Area: Cotton Plant	01
Yell:	
Service Area: Southern Yell	03

PRIMARY CARE: Arkansas

Service Area Listing

Service area name	Degree of shortage group
Altheimer	01
County—Jefferson:	
Parts:	
C.T. 1	
C.T. 7	
Arkansas County	01
County—Arkansas:	
Parts:	
Arkansas Township	
Barton Township	
Bayou Meto Township	
Brewer Township	
Chester Township	
Crockett Township	
Garland Township	
Keaton Township	
La Grue Township	
Point De Luce Township	
Prairie Township	
Stanley Township	
Atkins & Hector	02
County—Pope:	
Parts:	
Burnett	
Center	
Convenience	
Griffin	
Gum Logg	
Jackson	
Liberty	
Mitchell	
Phoenix	
Smyrna	
Valley	
Wilson	
Cave	03
County—Sharp:	
Parts:	
Big Creek	
Cave	
East Sullivan	
Johnson	
Scott	
South Big Rock	
Washington	
West Sullivan	
Clarendon	02
County—Monroe:	
Parts:	
Cache	
Cypress Ridge	
Hindman	
Pine Ridge	
Roc Roe	
College Station	01
County—Pulaski:	
Parts:	
C.T. 2	
C.T. 4	
C.T. 40.01	
C.T. 40.03	
C.T. 40.04	
C.T. 40.05	
C.T. 5	
Cotton Plant	01
County—Woodruff:	
Parts:	
Cache	
Caney	
Cotton Plant	
Franks	
Freeman	
Garden	
Point	
Diamond	03
County—Sebastian:	
Parts:	
Diamond Twp	
Hartford Twp	
Jim Fork Twp	
Mississippi Twp	
Sugarloaf Twp	
Dumas	01
County—Desha:	
Parts:	
Franklin Twp	
Randolph Twp	
Red Fork Twp	

PRIMARY CARE: Arkansas—Continued

Service Area Listing

Service area name	Degree of shortage group
Silver Lake Twp	
Walnut Lake Twp	
½ Jefferson (Northern)	
½ Richland (Northern)	
County—Lincoln:	
Parts:	
Auburn Twp	
Gould Twp	
Wells Bayou Twp	
Elaine	01
County—Phillips:	
Parts:	
Jamesbush	
Lake	
Mooney	
Searcy	
Tappan	
Greer's Ferry	01
County—Cleburne:	
Parts:	
California Twp	
Center Post Twp	
Francis Twp	
Giles Twp	
Morgan Twp	
Poff Twp	
Saline Twp	
Sugar Camp Twp	
Hermitage	01
County—Bradley:	
Parts:	
Eagle Twn	
Manon Twn	
Palestine Twn	
Quachita Twp	
River Twp	
Sumpter Twn	
Washington Twn	
Horseshoe Bend	01
County—Fulton:	
Parts:	
Union	
County—Izard:	
Parts:	
Baker	
Franklin	
Jefferson	02
New Hope	
Violet Hill	
County—Quachita:	
Parts:	
Liberty	
Lead Hill	01
County—Boone:	
Parts:	
Sugarloaf Twp	
County—Marion:	
Parts:	
Crockett	
Franklin	
Pleasant	
Sugarloaf	
North Pine Bluff	02
County—Jefferson:	
Parts:	
C.T. 10.00	
C.T. 11.00	
C.T. 12.00	
C.T. 5.01	
C.T. 5.02	
C.T. 6.00	
C.T. 6.99	
C.T. 9.00	
Osceola/Wilson	03
County—Mississippi:	
Parts:	
Carson Lake	
Dyess	
Fletcher	
Golden Lake	
Little River	
McGarock	
Monroe	03
Pecan	
Scott	
Swayne	
Troy	
Whitton	

PRIMARY CARE: Arkansas—Continued

Service Area Listing

Service area name	Degree of shortage group
Parkin	01
County—Crittenden:	
Parts:	
Tyronza Twp.	
County—Cross:	
Parts:	
Tyronza Twp	
Portland-Willmot	02
County—Ashley:	
Parts:	
Banner Twp	
Bayou Twp	
Beachcreek Twp	
Bearhouse Twp	
De Bastrop Twp	
Montrose Twp	
Portland Twp	
Union Twp	
Willmot Twp	
Redfield	01
County—Jefferson:	
Parts:	
C.T. 2	
C.T. 3.01-3.03	
C.T. 4	
Rosston	01
County—Nevada:	
Parts:	
Alabama Twp	
Caney Twp	
Jackson Twp	
Leake Twp	
Parker Twp	
Taylor Twp	
Southern Yell	03
County—Yell:	
Parts:	
Bluffton Twp	
Briggsville Twp	
Compton Twp	
Crawford Twp	
Danville Twp	
Dutch Creek Twp	
Ferguson Twp	
Gilkey Twp	
Gravely Hill Twp	
Herring Twp	
Ions Creek Twp	
Lamar Twp	
Mason Twp	
Praire Twp	
Reed Keathly Twp	
Richland Twp	01
Riley Twp	
Rover Twp	
Ward Twp	
Waveland Twp	
Sparkman	01
County—Dallas:	
Parts:	
Bunn Twp.	
Chester Twp.	
Holly Springs Twp	02
Manchester Twp.	
Nix Twp.	
Owen Twp.	
Princeton Twp	
Smith Twp.	
Willow Twp.	
Starr	02
County—Lincoln:	
Parts:	
Bartholomew Twp	
Cane Creek Twp	03
Choctaw Twp.	
Kimbrough Twp.	
Lone Pine Twp.	
Mill Creek Twp	
Owen Twp.	
Smith Twp.	
Spring Twp.	
Stephens	01
County—Quachita:	
Parts:	
Bragg	
Bridge Creek	
Jefferson	
Lafayette	

PRIMARY CARE: Arkansas—Continued

Service Area Listing

Service area name	Degree of shortage group
Manon	
Smackover	
Strong	
County—Union:	
Parts:	
Harrison Twp.	
Lapile Twp.	
Vilonia	01
County—Faulker:	
Parts:	
Bristol Twp.	
Cypress Twp.	
Eagle Twp.	
Harve Twp.	
Newton Twp.	
Palarm Twp.	
West Washington	02
County—Washington:	
Parts.	
Boston Tw.p	
Cane Hill Twp.	
Cove Creek Twp.	
Dutch Mills Twp.	
Illinois Twp.	
Mars Hill Twp.	
Morrow Twp.	
Prairie Grove Twp.	
Price Twp.	
Rheas Hill Twp.	
Starr Hill Twp.	
Valley Twp.	
Vineyard Twp.	
Weddington Twp.	
Wickes	
County—Polk:	
Parts:	
Ozark	
[illegible]	
County—Sevier:	
Parts:	
Jefferson Township	

PRIMARY CARE: California

County name	Degree of shortage group
Alameda:	
Service Area:	
Central Oakland	
South Oakland	02
West Berkeley	01
Alpine:	
Service Area: Markleeville	01
Population Group: Washoe Indian Reservation	01
Butte:	
Service Area: Feather Falls	02
Calaveras:	
Service Area: West Point/Wilseyville	02
Contra Costa:	
Service Area:	
East Contra Costa	
Pittsburg	03
Del Norte:	
Population Group: Indian pop. (Trinidad)	01
Fresno:	
Service Area:	
Firebaugh/Mendota	01
Huron	01
Riverdale/Caruthers	02
San Joaquin-Tranquility	01
Sierra	
Glenn:	
Service Area: Orland	
Humboldt:	
Service Area: Trinidad	01
Population Group: Indian pop. (Trinidad)	01
Imperial:	
Service Area:	
Calexico	01
Calipatria/Westmorland	02
Inyo:	
Service Area: Southern Inyo	02
Kern:	
Service Area:	
Arvin/Lamont	01
Buttonwillow	01
Frazier Park	
Lake Isabella	
Southeast Kern	
Wasco/Shafter	
Lassen:	
Service Area:	
Honey Lake	01
North Lassen	
Los Angeles:	
Service Area:	
Avalon/Goodyear/Main	
East Compton, Compton City	
East LA/City Terrace/Maravilla	
El Monte	
Figueroa/Firestone/Green Meadows/Watts	
Florence/Huntington Park	
Highland Pk/Linc. Hts/Mt. Wash./El Sereno	
Maywood Bell	
Santa Catalina Island	03
Venice	02
West Compton, Compton City	
Mendocino:	
Service Area:	
Covelo	
Northwest Mendocino	02
Point Arena	
Potter Valley	
Merced:	
Service Area: North Central Merced	
Population Group: Indochinese Population	
Modoc:	
Service Area:	
Adin-Lookout	
Surprise Valley	
Tule Lake-Butte Valley	
Monterey:	
Service Area: Soledad	
Orange:	
Facility: Juvenile Detention Facilities	
Riverside:	
Service Area: Lower Coachella Valley	
Population Group:	
Morongo Indian Pop.	
Soboba Indian Pop.	
Sacramento:	
Population Group: Indochinese Pop. Sacramento area	
San Bernardino:	
Service Area:	
Arrowhead	
29 Palms/Morongo Valley	
Population group:	
Morongo Indian Pop.	
San Manuel Indian Pop.	
San Diego:	
Service Area:	
Anza	
Mountain Empire	
Palomar-Laguna	
Pauma	
Ramona	
San Ysidro	
Southwest San Diego	
Population Group: Indochinese Pov. Pop. (Linda Vista)	
San Francisco:	
Service Area: Tenderloin	
San Mateo:	
Service Area: East Palo Alto	
Santa Barbara:	
Service Area: Cuyama Valley	
Shasta:	
Service Area:	
Burney Basin	
Shingletown	
Sierra	
Siskiyou:	
Service Area:	
Happy Camp	
Siskiyou	
Tule Lake-Butte Valley	
Solano:	
Service Area:	
Dixon	
Vacaville	
Sonoma:	
Service Area:	
Russian River	02
Stewarts Point	01
Trinity:	
Service Area.	
Hayfork	04
Mad River	01
Tulare:	
Service Area:	
Springville	
Tipton	
Woodlake	04
Population group: Spanish speaking pop. Porterville	
Tuolumne:	
Service Area:	
Groveland	
Stanislaus/Yosemite	
Yolo:	
Service Area: Esparto/Knights Landing	
Population group: Indochinese pop. Sacramento Area	

PRIMARY CARE: California

Service Area Listing

Service area name	Degree of shortage group
Adin-Lookout	01
County—Modoc:	
Parts: Adin-Lookout	
Anza	02
County—San Diego:	
Parts: C.T. 210 (Anza Div.)	
Arrowhead	
County—San Bernardino:	
Parts: C.T. 101	
Arvin/Lamont	
County—Kern:	
Parts: C.T. 62–64	
Avalon/Goodyear/Main	01
County—Los Angeles:	
Parts:	
C.T. 2281–2289	
C.T. 2291–2294	
C.T. 2311	
C.T. 2318–2319	
C.T. 2328	
C.T. 2391–2396	
Burney Basin	04
County—Shasta	
Parts	
E.D. 326–327	
E.D. 329	
E.D. 332–333	
E.D. 335–337	
E.D. 340–341	
Buttonwillow	01
County—Kern:	
Parts: Button Willow	
Calexico	01
County—Imperial:	
Parts: Calexico CCD	
Calipatria/Westmorland	
County—Imperial:	
Parts: Calipatria/Westmorland CCD	
Central Oakland	03
County—Alameda:	
Parts	
C.T. 4053–4063	
C.T. 4065	
C.T. 4070–4072	
Covelo	04
County—Mendocino:	
Parts: Covelo	
Cuyama Valley	01
County—Santa Barbara:	
Parts: Cuyama Division	
Dixon	01
County—Solano:	
Parts: C.T. 2533–2534	
East Compton, Compton City	01
County—Los Angeles:	

PRIMARY CARE: California—Continued

Service Area Listing

Service area name	Degree of shortage
Parts:	
C.T. 5416.01–5416.02	
C.T. 5420	
C.T. 5421.01–5421.02	
C.T. 5422	
C.T. 5424.01–5424.02	
East Contra Costa	02
County—Contra Costa:	
Parts: East Contra Costa CCD	
East LA/City Terrace/Maravilla	02
County—Los Angeles:	
Parts:	
C.T. 5303–5306	
C.T. 5308–5319	
East Palo Alto	02
County—San Mateo:	
Parts: C.T. 6117–6120	
El Monte	03
County—Los Angeles:	
Parts:	
C.T. 4324	
C.T. 4327–4328	
C.T. 4331–4335	
C.T. 4337–4340	
Esparto/Knights Landing	01
County—Yolo:	
Parts: C.T. 114–115	
Feather Falls	02
County—Butte:	
Parts: Feather Falls Div.	
Figueroa/Firestone/Green Meadows/Watts	03
County—Los Angeles:	
Parts:	
C.T. 2397–2399	
C.T. 2401–2409	
C.T. 2411–2418	
C.T. 2421–2429	
C.T. 2431	
C.T. 5349–5350	
C.T. 5351.01–5351.02	
C.T. 5352–5354	
C.T. 5404	
Firebaugh/Mendota	
County—Fresno:	
Parts:	
Firebaugh Div.	
Mendota Div.	
Florence/Huntington Park	
County—Los Angeles:	
Parts:	
C.T. 5325–5332	
C.T. 5335	
C.T. 5345–5348	
Frazier Park	
County—Kern:	
Parts:	
C.T. 33.02	
C.T. 60 (W. ½)	
Groveland	
County—Tuolumne:	
Parts: Groveland	
Happy Camp	
County—Siskiyou:	
Parts: Happy Camp CCD	
Hayfork	
County—Trinity:	
Parts: Hayfork Div.	
Highland Pk/Linc. Hts/Mt Wash./El Sereno	
County—Los Angeles:	
Parts:	
C.T. 1831–1833	
C.T. 1835–1838	
C.T. 1851–1853	
C.T. 1991–1999	
C.T. 2011–2017	
C.T. 5307	
Honey Lake	
County—Lassen:	
Parts: Honey Lake Div.	
Huron	
County—Fresno:	
Parts: Huron CCD	
Lake Isabella	
County—Kern:	
Parts:	
C.T. 51.01	
C.T. 52	
Lower Coachella Valley	

Service area name	Degree of shortage
County—Riverside:	
Parts: C.T. 456.02	
Mad River	01
County—Trinity:	
Parts: Mad River Div.	
Markleeville	01
County—Alpine:	
Parts: Markleeville	
Maywood Bell	01
County—Los Angeles:	
Parts:	
C.T. 5333–5337	
C.T. 5338.01–5338.02	
C.T. 5339–5343	
C.T. 5344.01–5344.02	
Mountain Empire	01
County—San Diego:	
Parts: Mountain Empire Div.	
North Central Merced	02
County—Merced:	
Parts:	
Hilmar Irwin Division	
Livingston-Delhi	
North Lassen	02
County—Lassen:	
Parts:	
Big Valley	
Madeline Plains	
Northwest Mendocino	
County—Mendocino:	
Parts: Laytonville-Leggett	
Orland	03
County—Glenn:	
Parts: Orland CCD	
Palomar-Laguna	
County—San Diego:	
Parts:	
Laguna/Pine Valley CCD	
Palomar/Julian CCD	
Pauma	01
County—San Diego:	
Parts: C.T. 191.01	
Pittsburg	01
County—Contra Costa:	
Parts	
C.T. 3090	
C.T. 3100	
C.T. 3110	01
C.T. 3120	
C.T. 3131–3132	
C.T. 3141–3142	
C.T. 3552	
Point Arena	
County—Mendocino:	02
Parts: Point Arena	
Potter Valley	
County—Mendocino:	
Parts: E.D. 200–202	01
Ramona	
County—San Diego:	
Parts: Ramona CCD	
Riverdale/Caruthers	
County—Fresno:	
Parts: C.T. 75–77	04
Russian River	
County—Sonoma:	
Parts:	02
C.T. 1537	
C.T. 1543 (South Portion)	
San Joaquin-Tranquility	
County—Fresno:	
Parts: San Joaquin-Tranquility CCD	
San Ysidro	
County—San Diego:	
Parts:	
C.T. 100.01–100.07	
C.T. 101.03–101.07	01
C.T. 102–105	
Santa Catalina Island	
County—Los Angeles:	01
Parts: C.T. 5990 (Santa Catalina Isl.)	
Shingletown	
County—Shasta:	02
Parts: E.D. 343–347 (Central)	
Sierra	
County—Sierra	
Parts: Sierra Div.	
Siskiyou	01

Service area name	Degree of shortage
County—Siskiyou	
Parts:	
Etna	
Ft. Jones	
Soledad	03
County—Monterey:	
Parts: Soledad CCD	
South Oakland	02
County—Alameda:	
Parts:	
C.T. 4073–4075	
C.T. 4084–4097	
C.T. 4102–4104	
Southeast Kern	02
County—Kern:	
Parts:	
C.T. 55.02	
C.T. 58–59	
Southern Inyo	
County—Inyo:	
Parts:	
Death Valley Div.	
Independence Div. (Pt)	
Lone Pine Div.	
Southwest San Diego	02
County—San Diego:	
Parts:	
C.T. 38	
C.T. 45–54	
Springville	01
County—Tulare:	
Parts: C.T. 27 (Springville)	
Stanislaus/Yosemite	01
County—Tuolumne:	
Parts: Stanislaus/Yosemite	
Stewarts Point	01
County—Sonoma:	
Parts: C.T. 1543 (N. Portion)	
Surprise Valley	01
County—Modoc:	
Parts: Surprise Valley CCD	
Tenderloin	
County—San Francisco:	
Parts: C.T. 122–125	
Tipton	01
County—Tulare:	
Parts:	
C.T. 32	
C.T. 42–44	
Trinidad	01
County—Humboldt:	
Parts: N. Coastal CCD	
Tule Lake-Butte Valley	03
County—Modoc:	
Parts: Tule Lake	
County—Siskiyou:	
Parts:	
Butte Valley CCD	
Tule Lake CCD	
Vacaville	
County—Solano:	
Parts: Vacaville CCD	
Venice	02
County—Los Angeles:	
Parts: C.T. 2731–2739	
Wasco/Shafter	02
County—Kern:	
Parts:	
Shafter CCD	
Wasco CCD	
West Berkeley	01
County—Alameda	
Parts:	
C.T. 4218–4223	
C.T. 4230–4234	
C.T. 4240	
West Compton, Compton City	01
County—Los Angeles:	
Parts:	
C.T. 5411–5413	
C.T. 5425–5432	
West Point/Wilseyville	02
County—Calaveras:	
Parts: West Point/Wilseyville	
Woodlake	04
County—Tulare:	
Parts: Woodlake—Three Rivers CCD	
29 Palms/Morongo Valley	

PRIMARY CARE: California—Continued

Service Area Listing

Service area name	Degree of shortage
County—San Bernardino:	
Parts:	
C.T. 104.01	
C.T. 104.03–104.04	

PRIMARY CARE: California

Population Group Listing

Population group	Degree of shortage
Indian pop. (Trinidad)	01
County:	
Del Norte	
Humboldt	
Indochinese Pop. Sacramento Area	01
County—Sacramento:	
Parts:	
Elk Grove CCD	
Folsom CCD	
Mather CCD	
N. Highlands CCD	
Natomas CCD	
Rio Linda CCD	
Sacramento CCD	
San Juan CCD	
Sloughouse CCD	
County—Yolo:	
Parts: East Yolo CCD	
Indochinese population	02
County—Merced:	
Parts:	
Atwater CCD	
Merced CCD	
Indochinese pov. pop. (Linda Vista)	
County—San Diego:	
Parts:	
C.T. 86 (Linda Vista Hlth Care Ctr)	
C.T. 87.01	
C.T. 88	
C.T. 89.01	
C.T. 90	
C.T. 91.05	
Morongo Indian Pop	01
County:	
Riverside	
San Bernardino	
San Manuel Indian Pop.	01
County—San Bernardino	
Soboba Indian Pop.	01
County—Riverside	
Spanish Speaking Pop. Porterville	01
County—Tulare:	
Parts: C.T. 33–41	
Washoe Indian Reservation	01
County—Alpine	

PRIMARY CARE: California

Facility Listing

Facility	Degree of shortage
Juvenile Detention Facilities	
County—Orange	

PRIMARY CARE: Colorado

County name	Degree of shortage group
Adams:	
Service Area:	
Bennett/Strasburg	02
Commerce City	04

PRIMARY CARE: Colorado—Continued

County name	Degree of shortage
Arapahoe:	
Service Area: Bennett/Strasburg	
Baca	01
Bent:	
Service Area: Lamar	
Boulder:	
Population Group: Med Ind of Lafayette/Louisville	
Cheyenne:	
Service Area: Kit Carson	01
Conejos:	
Service Area: San Luis Valley	
Costilla:	
Service Area: San Luis Valley	
Crowley:	
Service Area: Rock Ford/Ordway	
Custer	
Dolores	
Elbert	
El Paso:	
Service Area: Calhan-Yoder	02
Population group: Colorado Springs (Med Indigent)	
Gilpin	01
Hinsdale	
Huerfano:	
Service Area: Gardner	01
Kiowa	
Kit Carson:	
Service Area: Flagler	01
Las Animas	
Lincoln	
Montrose:	
Service Area: Nucla	
Otero:	
Service Area: Rocky Ford/Ordway	
Prowers:	
Service Area: Lamar	
Pueblo:	
Service Area: Avondale/Boone	01
Rio Blanco:	
Service Area: Rangely	
Routt:	
Service Area: Oak Creek/Yampa	01
Saguache	02
Sedgwick:	
Service Area: Julesburg	02
Weld:	
Population Group: Mig./Seas. Farmworkers	
Yuma	

PRIMARY CARE: Colorado

Service Area Listing

Service area name	Degree of shortage
Avondale/Boone	01
County—Pueblo:	
Parts: C.T. 32–34 (Avondale)	
Bennett/Strasburg	02
County—Adams:	
Parts: East Adams Div.	
County—Arapahoe:	
Parts: East Arapahoe Div.	
Calhan-Yoder	02
County—El Paso:	
Parts:	
C.T. 39.01	
C.T. 46	
Commerce City	
County—Adams:	
Parts:	
C.T. 87.03	
C.T. 77.05	
C.T. 77.06	
C.T. 88.01 (Irondale City)	
C.T. 88.02 (Adams City)	
C.T. 89.01 (Commerce City)	
C.T. 89.52 (South Welby)	
Flagler	01
County—Kit Carson:	
Parts: Flagler Div.	
Gardner	01
County—Huerfano:	

PRIMARY CARE: Colorado—Continued

Service Area Listing

Service area name	Degree of shortage group
Parts: Gardner Div.	
Julesburg	
County—Sedgwick	
Kit Carson	01
County—Cheyenne:	
Parts: Kit Carson Div. (N ¼)	
Lamar	
County—Bent:	
Parts: McClave Div.	
County—Prowers	
Nucla	03
County—Montrose:	
Parts: Nucla Division	
Oak Creek/Yampa	01
County—Routt:	
Parts:	
Oak Creek Div.	
Yampa Div.	
Rangely	01
County—Rio Blanco:	
Parts: Rangely Div.	
Rocky Ford/Ordway	03
County:	
Crowley	
Otero	
Parts	
Flower Div.	
Manzanola Div.	
Rocky Ford Div.	
San Luis Valley	
County:	
Conejos	
Costilla	

PRIMARY CARE: Colorado

Population Group Listing

Population group	Degree of shortage group
Colorado Springs (Med Indigent)	
County—El Paso:	
Parts:	
C.T. 13.01	
C.T. 14–17	
C.T. 22–23	
C.T. 26–29	
Med. Ind. of Lafayette/Louisville	01
County—Boulder:	
Parts:	
C.T. 129	
C.T. 129.01	
C.T. 129.02	
C.T. 130	
C.T. 131.02–131.05	
Mig./Seas. Farmworkers	
County—Weld	

PRIMARY CARE: Connecticut

County name	Degree of shortage
Fairfield:	
Service Area: South West Bridgeport	
Population Group:	
Poverty pop/Central—East Bridgeport	
Poverty pop/S.W. Stamford	01
Hartford:	
Service Area:	
Charter Oak/Rice Hts	01
N.-N. Central Hartford	
Middlesex:	
Population Group: Poverty pop./Middletown	
New Haven:	
Service Area: Fair Haven	01
Population Group: Poverty pop/Central Waterbury	02
New London:	
Population Group: Poverty pop/New London	01

PRIMARY CARE: Connecticut—Continued

County name	Degree of shortage group
Windham	
Population Group: Poverty pop/N.E. Windham	01

PRIMARY CARE: Connecticut

Population Group Listing

Population group	Degree of shortage group
Charter Oak/Rice Hts	01
County—Hartford:	
Parts:	
C.T. 5046	
C.T. 5049	
Fair Haven	01
County—New Haven:	
Parts: C.T. 1421-1426	
N.—N. Central Hartford	01
County—Hartford:	
Parts:	
C.T. 5008-5015	
C.T. 5017-5018	
C.T. 5035	
C.T. 5037	
South West Bridgeport	04
County—Fairfield:	
Parts: C.T. 702-710	

PRIMARY CARE: Connecticut

Population Group Listing

Population group	Degree of shortage group
Poverty pop/Central Waterbury	02
County—New Haven:	
Parts:	
C.T. 3501-3505	
C.T. 3508	
C.T. 3512	
C.T. 3514	
Poverty pop/Central-East Bridgeport	01
County—Fairfield:	
Parts:	
C.T. 713-717	
C.T. 735-742	
Poverty pop/Middletown	04
County—Middlesex:	
Parts:	
C.T. 5411-5422	
Poverty pop/N.E. Windham	01
County—Windham:	
Parts:	
Brooklyn Twn	
Canterbury Twn	
Eastford Twn	
Killingly Twn	
Plainfield Twn	
Pomfret Twn	
Putnam Twn	
Sterling Twn	
Thompson Twn	
Woodstock Twn	
Poverty pop/New London	01
County—New London:	
Parts:	
C.T. 6901-6907	
Poverty pop/S.W. Stamford	01
County—Fairfield:	
Parts:	
C.T. 201	
C.T. 214-215	
C.T. 217	
C.T. 222-223	

PRIMARY CARE: Delaware

County name	Degree of shortage group
New Castle:	
Service Area:	
Middletown-Odessa	03
Wilmington-Southbridge	01
Sussex:	
Service area: Mid-Sussex (Indian River)	04

PRIMARY CARE: Delaware

Service Area Listing

Service area name	Degree of shortage group
Mid-Sussex (Indian River)	04
County—Sussex:	
Parts:	
Georgetown Div	
Millsboro CCD	
Selbyville-Frankford CCD	
Middletown—Odessa	03
County—New Castle:	
Parts: Middletown/Odessa Div	
Wilmington—Southbridge	01
County—New Castle:	
Parts:	
C.T. 6.01-6.02	
C.T. 9	
C.T. 17	
C.T. 19-20	
C.T. 154-156	

PRIMARY CARE: District of Columbia

County name	Degree of shortage group
District of Columbia	
Service Area: Anacostia	01
Population Group: Adams-Morgan (Sp. speaking)	01
Facility: D.C. Detention Facility	03

PRIMARY CARE: District of Columbia

Service Area Listing

Service area name	Degree of shortage group
Anacostia	01
Parts:	
C.T. 77.03	
C.T. 77.07-77.09	
C.T. 78.03-78.05	
C.T. 78.07-78.08	
C.T. 96.01-96.04	
C.T. 99.01-99.07	

PRIMARY CARE: District of Columbia

Population Group Listing

Population group	Degree of shortage group
Adams-Morgan (Sp. Speaking)	01
County—Dist of Columbia:	
Parts:	
C.T. 27.2	
C.T. 28.0	
C.T. 37-40	
C.T. 42.1	
C.T. 43.0	

PRIMARY CARE: District of Columbia

Facility Listing

Facility	Degree of shortage group
D.C. Detention Facility	03
County—District of Columbia	

PRIMARY CARE: Florida

County name	Degree of shortage group
Bradford	04
Broward:	
Population Group: Poverty and Migrant Population	01
Clay:	
Service Area: Keystone Heights	01
Collier:	
Service Area:	
Everglades	01
Immokalee	01
Columbia	04
Dade:	
Service Area:	
Model City	01
Southern Dade	01
Population Group: Medically Indigent	02
Facility: Jackson Memorial Hospital	01
Dixie	01
Duval:	
Population Group: Low Income Pop. of Duval	02
Escambia:	
Service Area: Northwestern Escambia	01
Gadsden	01
Gilchrist	02
Glades:	
Service Area: Glades/Hendry	02
Hardee:	
Population Group: Pov. Pop.	01
Hendry:	
Service Area: Glades/Hendry	02
Hernando	03
Highlands:	
Population Group: Pov. Pop.	01
Hillsborough:	
Population Group: Poverty/Migrant Pop.	01
Holmes	01
Jackson:	
Service Area: Sneads	01
Jefferson	02
Lafayette	01
Lake:	
Population Group: Pov./Migr. Pop.	03
Lee:	
Population Group: Migrant Population	01
Levy	04
Liberty	02
Madison	01
Manatee:	
Population Group: Poverty/Migrant Pop.	04
Nassau:	
Service Area: Callahan/Hilliard	02
Okeechobee:	
Population Group: Poverty/Migrant	01
Orange:	
Population Group: Pov. Pop.	01
Osceola	03
Palm Beach:	
Service Area:	
Glades	02
West Palm Beach	01
Pasco:	
Population Group: Pov./Migrant Pop.	02
Pinellas:	
Population Group: Pov. Pop. of St. Petersburg	01
Polk:	
Population Group: Pov. Pop.	01
Putnam	02
St. Lucie:	
Population Group: Poverty/Migrant Pop.	01
Santa Rosa:	
Service Area: Northern Santa Rosa	03
Seminole:	
Population Group: Pov. Pop.	02
Sumter	02
Suwannee	02
Union	02

PRIMARY CARE: Florida—Continued

County name	Degree of shortage group
Facility: RMC Correctional Inst	02
Wakulla	
Walton	02
Washington	03

PRIMARY CARE: Florida

Service Area Listing

Service area name	Degree of shortage group
Callahan/Hilliard	02
County—Nassau:	
Parts:	
C.T. 504-505	
Everglades	01
County—Collier:	
Parts:	
C.T. 111	
Glades	02
County—Palm Beach	
Parts:	
C.T. 80-83	
Glades/Hendry	02
County	
Glades	
Hendry	
Immokalee	01
County—Collier:	
Parts:	
C.T. 112-114	
Keystone Heights	01
County—Clay:	
Parts:	
Keystone Heights	
Model City	01
County—Dade	
Parts	
C.T. 9.03	
C.T. 10.04	
C.T. 14	
C.T. 15.01-15.02	
C.T. 17.01-17.02	
C.T. 18.01-18.03	
C.T. 19.01-19.02	
C.T. 20.01-20.02	
C.T. 22.01-22.02	
C.T. 23	
Northern Santa Rosa	03
County—Santa Rosa	
Parts:	
Jay	
Munson-McLellan	
Northwestern Escambia	01
County—Escambia	
Parts:	
Century	
Northwestern Escambia	
Sneads	01
County—Jackson:	
Parts	
Sneads CCD	
Southern Dade	01
County—Dade:	
Parts	
C.T. 103-105	
C.T. 106.02	
C.T. 107.01	
C.T. 108-114	
West Palm Beach	01
County—Palm Beach:	
Parts	
C.T. 21-26	

PRIMARY CARE: Florida

Population Group Listing

Population group	Degree of shortage group
Lee Co. Migrant Population	01
County—Lee	
Low Income Pop. of Duval	02
County—Duval:	
Parts:	
C.T. 1-5	
C.T. 9-19	
C.T. 26-29	
C.T. 107-109	
C.T. 112-116	
C.T. 118	
C.T. 121	
Medically Indigent	02
County—Dade:	
Parts	
C.T. 42-45	
Pov. Pop. of Hardee	01
County—Hardee	
Pov. Pop. of Highlands	01
County—Highlands	
Pov. Pop. of Polk	01
County—Polk	
Pov. Pop. of St. Petersburg	01
County—Pinellas:	
Parts:	
C.T. 201.01	
C.T. 203.01	
C.T. 204-208	
C.T. 209.95	
C.T. 210.95	
C.T. 212-215	
C.T. 216.95	
C.T. 218.95	
C.T. 219.95	
C.T. 220	
C.T. 234-235	
Pov. Pop. Orange	01
County—Orange	
Pov. Pop./Seminole	02
County—Seminole	
Pov./Migrant Pop. (Pasco)	02
County—Pasco:	
Parts:	
C.T. 319-331	
Pov/Migr Pop. of Lake	03
County—Lake	
Poverty and Migrant Population	01
County—Broward:	
Parts	
C.T. 103.01-103.02	
C.T. 104	
C.T. 107	
C.T. 302-306	
C.T. 307.01-307.02	
C.T. 308.01-308.02	
Poverty/Migrant	01
County—Okeechobee	
Poverty/Migrant Pop. (Hillsborough)	01
County—Hillsborough:	
Parts:	
C.T. 121-141	
Poverty/Migrant Pop. (Mantee)	04
County—Mantee	
Poverty/Migrant Pop (St Lucie)	01
County—St Lucie	

PRIMARY CARE: Florida

Facility Listing

Facility	Degree of shortage group
Jackson Memorial Hospital	01
County—Dade	
RMC Correctional Inst	02
County—Union	

PRIMARY CARE: Georgia

County name	Degree of shortage group
Atkinson	01
Baker	01
Banks	01
Bartow	
Brantley	
Brooks	
Bryan	
Burke	
Camden:	
Service Area: Woodbine	01
Charlton	03
Chatham:	
Population Group: Medically Indigent	
Chattooga	02
Cherokee	02
Clarke:	
Service Area: Athens NHC Target Area	01
Colquitt	02
Crawford	
Dade	
Dawson	
Dekalb:	
Service Area: Dekalb-Grady Clinic	01
Dodge	
Dooley	
Dougherty:	
Service area:	
East Albany	
South Albany	01
Early	
Effingham	
Elbert	
Fayette:	
Service Area: Palmetto	02
Forsyth	
Franklin:	
Service Area: Franklin/Hart	
Fulton:	
Service Area:	
Atlanta (Southside)	01
Midwest Atlanta	01
Northwest Atlanta	02
Palmetto	
West End	
Population Group: Poverty Population	
Glascock	01
Hall:	
Population Group: Med. Ind. Pop.	
Hancock	01
Hart:	
Service Area: Franklin/Hart	
Henry	04
Irwin	02
Jackson:	
Population Group: Med. Ind. Pop.	02
Jasper	02
Jefferson	04
Johnson	01
Jones	02
Lee	01
Liberty	02
Lincoln	01
Long	01
McDuffie	
McIntosh	02
Macon	02
Madison	02
Meriwether	03
Mitchell	03
Montgomery:	
Service Area: Montgomery/Wheeler	01
Murray	03
Oglethorpe	01
Paulding	02
Pike	01
Putnam	03
Quitman:	
Service Area: Randolph/Quitman	02
Randolph:	
Service Area: Randolph/Quitman	02
Schley	01
Screven	03
Stewart	
Service Area: Stewart-Webster	02
Sumter:	
Population Group: Medical Ind. Pop.	01
Talbot	01
Taliaferro	01
Tattnall	02

PRIMARY CARE: Georgia—Continued

County name	Degree of shortage group
Taylor	04
Terrell	02
Towns	03
Union:	
Service Area: Suches	01
Walker:	
Service Area: South Walker	02
Walton	01
Warren	02
Webster:	
Service Area: Stewart-Webster	02
Wheeler:	
Service Area: Montgomery/Wheeler	01
White	02
Wilkinson	02
Worth	04

PRIMARY CARE: Georgia

Service Area Listing

Service area name	Degree of shortage group
Athens NHC Target Area	01
County—Clarke:	
Parts:	
C.T. 2-3	
C.T. 6	
C.T. 9	
Atlanta (Southside)	01
County—Fulton:	
Parts:	
C.T. 44	
C.T. 46.95	
C.T. 48	
C.T. 49.95	
C.T. 50	
C.T. 52-53	
C.T. 55.01-55.02	
C.T. 56-58	
C.T. 63-64	
C.T. 67	
C.T. 68.01-68.02	
C.T. 69-73	
De Kalb-Grady Clinic	
County—De Kalb:	
Parts:	
C.T. 205-209	
C.T. 227	
C.T. 231.01	
C.T. 235.01-235.02	
C.T. 236-237	
C.T. 238.01-238.03	
East Albany	01
County—Dougherty:	
Parts:	
C.T. 1-2	
C.T. 101-102	
C.T. 103.01-103.02	
C.T. 107-110	
Franklin/Hart	04
County:	
Franklin	
Hart	
Midwest Atlanta	01
County—Fulton:	
Parts:	
C.T. 66.02	
C.T. 78.03-78.04	
C.T. 79-80	
C.T. 81.01-81.02	
C.T. 83.02	
Montgomery/Wheeler	01
County:	
Montgomery	
Wheeler	
Northwest Atlanta	02
County—Fulton:	
Parts:	
C.T. 7-8	
C.T. 82.01-82.02	
C.T. 83.01-83.02	
C.T. 84-85	
C.T. 86.01-86.02	
C.T. 87.01-87.02	
C.T. 88	
Palmetto	02
County—Fayette:	
Parts:	
C.T. 1402	
County—Fulton:	
Parts:	
C.T. 104	
C.T. 105.04-105.06	
Randolph/Quitman	02
County:	
Quitman	
Randolph	
South Albany	01
County—Dougherty:	
Parts:	
C.T. 12	
C.T. 14.01-14.02	
C.T. 15	
C.T. 106.01-106.02	
South Walker	02
County—Walker:	
Parts:	
Kensington	
Lafayette	
Rock Springs	
Villanow	
Stewart-Webster	02
County:	
Stewart	
Webster	
Suches	01
County—Union:	
Parts:	
Suches	
West End	02
County—Fulton:	
Parts:	
C.T. 22-26	
C.T. 36-41	
C.T. 42.95	
C.T. 43	
C.T. 60-62	
Woodbine	01
County—Camden:	
Parts:	
Woodbine	

PRIMARY CARE: Georgia

Population Group Listing

Population group	Degree of shortage group
Med. Ind. Pop. of Hall	02
County—Hall	
Med. Ind. Pop. of Jackson	02
County—Jackson	
Med. Ind. Pop. of Sumter	01
County—Sumter	
Medically Indigent	02
County—Chatham:	
Parts:	
C.T. 1	
C.T. 3	
C.T. 6.01-6.02	
C.T. 8-13	
C.T. 15	
C.T. 17	
C.T. 18-28	
C.T. 32	
C.T. 33.01-33.02	
C.T. 36.01	
C.T. 37	
C.T. 45	
C.T. 101.01	
C.T. 105	
C.T. 106.01	
C.T. 106.03	
C.T. 106.04	
C.T. 106.05	
C.T. 107	
C.T. 108.01-108.02	
Poverty Population	02

PRIMARY CARE: Georgia—Continued

Population Group Listing

Population group	Degree of shortage group
County—Fulton:	
Parts:	
C.T. 65	
C.T. 66.01	
C.T. 74-75	
C.T. 76.01-76.02	
C.T. 77.01-77.02	
C.T. 78.02	
C.T. 106.01-106.02	
C.T. 107-111	
C.T. 112.01-112.02	
C.T. 113.01-113.02	

PRIMARY CARE: Hawaii

County name	Degree of shortage group
Honolulu	
Service Area: Kalihi Valley	01
Facility: Oahu Comm. Corr. Ctr.	02

PRIMARY CARE: Hawaii

Service Area Listing

Service area name	Degree of shortage group
Kalihi Valley	01
County—Honolulu:	
Parts:	
C.T. 63-66	

PRIMARY CARE: Hawaii

Facility Listing

Facility	Degree of shortage group
Oahu Comm. Corr. Ctr.	02
County—Honolulu	

PRIMARY CARE: Idaho

County name	Degree of shortage group
Ada	
Facility: Idaho State Penitentiary	02
Bannock:	
Service Area: Downey/Lava Hot Springs	04
Benewah:	
Service Area: St. Manes	02
Bingham:	
Service Area: Amencan Falls	03
Population Group: MSFW E. Snake River Valley	01
Boise	01
Butte:	
Service Area: Arco/MacKay	02
Camas	01
Canyon:	
Service Area: Nyssa	01
Population Group: MSFW S. Treasure Valley	01
Cassia:	
Service Area: Albion/Malta	01
Oakley	01
Population Group: MSFW E. Magic Valley	01
Clark	01
Custer:	
Service Area:	
Arco/MacKay	02
Challis	01

PRIMARY CARE: Idaho—Continued

County name	Degree of shortage group
Stanley	01
Elmore:	
Service Area: Glenns Ferry	01
Gem:	
Population Group: MSFW N. Treasure Valley	01
Gooding:	
Population Group: MSFW W. Magic Valley	01
Jefferson:	
Service Area: Mud Lake	01
Population Group: MSFW E. Snake River Valley	01
Jerome	[illegible]
Population Group: MSFW W. Magic Valley	01
Kootenai:	
Service Area: St. Maries	02
Lewis	02
Lincoln	01
Minidoka:	
Population Group: MSFW E. Magic Valley	01
Oneida	01
Owyhee:	
Service Area: N.W. Owyhee	01
Population Group: MSFW S. Treasure Valley	01
Payette:	
Service Area: New Plymouth	[illegible]
Population Group: MSFW N. Treasure Valley	01
Power:	
Service Area: American Falls	03
Population Group: MSFW E. Magic Valley	01
Twin Falls:	
Service Area: Buhl	02
Population Group: MSFW W. Magic Valley	01
Washington	[illegible]
Population Group: MSFW N. Treasure Valley	01

PRIMARY CARE: Idaho

Service Area Listing

Service area name	Degree of shortage group
Albion/Malta	01
County—Cassia:	
Parts: Albion Division	
American Falls	03
County—Bingham:	
Parts: Aberdeen Div.	
County—Power:	
Parts:	
American Falls Div.	
Rockland Div.	
Arco/MacKay	02
County:	
[illegible]	
Custer:	
Parts: MacKay Div	
Buhl	02
County—Twin Falls:	
Parts:	
Buhl Div.	
W. Salmon Falls Div.	
Challis	01
County—Custer:	
Parts: Challis Div.	
Downey/Lava Hot Springs	04
County—Bannock:	
Parts: S. Bannock Div (S. ¾)	
Glenns Ferry	01
County—Elmore:	
Parts: Glenns Ferry	
Mud Lake	01
County—Jefferson:	
Parts: Hammer Div.	
N.W. Owyhee	01
County—Owyhee:	
Parts:	
Homedale Div	
Marsing Div.	
Murphy Div.	
New Plymouth	02
County—Payette:	
Parts: New Plymouth Div	
Nyssa	01
County—Canyon:	
Parts:	
Parma Div	

PRIMARY CARE: Idaho—Continued

Service Area Listing

Service area name	Degree of shortage [illegible]
Wilder Div.	
Oakley	01
County—Cassia:	
Parts: Oakley Division	
St. Maries	[illegible]
County	
Benewah	
Kootenai:	
Parts:	
Harrison Div. (E.D. 44, 46–48)	
Worley Div. (S. ½)	
Stanley	01
County—Custer:	
Parts:	
Stanley Div.	

PRIMARY CARE: Idaho

Population Group Listing

Population group	Degree of shortage [illegible]
MSFW E. Magic Valley	01
County:	
[illegible]	
[illegible]	
Power	
MSFW E. Snake River Valley	01
County:	
Bingham	
Jefferson	
MSFW. N. Treasure Valley	01
County:	
Gem	
Payette	
Washington	
MSFW. S. Treasure Valley	01
County:	
Canyon	
Owyhee	
MSFW. W. Magic Valley	01
County:	
Gooding	
Jerome	
Twin Falls	

PRIMARY CARE: Idaho

Facility Listing

Facility	Degree of shortage [illegible]
Idaho State Penitentiary	[illegible]
County—Ada	

PRIMARY CARE: Illinois

County name	Degree of shortage [illegible]
Brown	02
Calhoun:	
Service Area: Hardin	[illegible]
Champaign:	
Service Area: Northend-Champaign Urbana	01
Clay	[illegible]
Cook:	
Service Area:	
Austin/Garfield	01
Cabrini-Green/Near North Side	02
Chatham (Near Southeast)	02
Douglas	02
E. Chicago Heights	01
Humboldt/West Town	[illegible]
New City/W. Englewood/Englewood	01
Riverdale	01

PRIMARY CARE: Illinois—Continued

County name	Degree of shortage group
Robbins Village	02
Roseland	01
S. Lawndale/Lower W. Side	01
South Chicago	01
South Deering	01
South Shore	[illegible]
Southeast Chicago	01
Uptown	01
Facility:	
Cook Co. Dept. of Correction Complex	02
Cook County Hospital	01
Cumberland	04
Edwards	02
Gallatin	04
Greene:	
Service Area: Hardin	03
Henderson	02
Jackson:	
Service Area: Western Jackson	03
Jasper	02
Jersey:	
Service Area: Hardin	03
Jo Daviess:	
Service Area: Stockton/Warren	02
Johnson	01
[illegible]	
Service Area: Pembroke	01
Macon:	
Service Area: Decatur Inner City	02
[illegible]	
Service Area: Salem	[illegible]
Mason	01
Massac	02
Mercer	[illegible]
Peoria:	
Service Area: S.E. Peoria	[illegible]
Pope	01
Rock Island:	
Population Group: Medicaid Elig. Pop. of Quad-Cities	03
St. Clair:	
Service Area: E. St. Louis Hlth Dist	02
Scott	03
Union	02
Wayne	02
Will:	
Service Area: Eastside Joliet	04
Facility:	
Joliet Correctional Inst	02
Statesville Correctional Inst	03
Winnebago:	
Service Area: Rockford Inner city	01

PRIMARY CARE: [illegible]

Service Area Listing

Service area name	Degree of shortage group
Austin/Garfield	01
County—Cook:	
Parts.	
C.T. 2506–2510	
C.T. 2514–2523	
C.T. 2601–2610	
C.T. 2701–2719	
C.T. 2801–2828	
C.T. 2838–2843	
C.T. 2901–2927	
Cabrini-Green/Near North Side	02
County—Cook.	
Parts:	
C.T. 803–810	
C.T. 817–819	
Chatham (Near Southeast)	02
County—Cook:	
Parts:	
C.T. 4401–4409	
C.T. 4501–4503	
C.T. 4701	
C.T. 6901–6915	
C.T. 7101–7115	
Decatur Inner City	02
County—Macon:	
Parts.	

PRIMARY CARE: Illinois—Continued

Service Area Listing

Service area name	Degree of shortage group
C.T. 1	
C.T. 6–9	
Douglas	02
County—Cook:	
Parts:	
C.T. 3301–3305	
C.T. 3401–3406	
C.T. 3501–3515	
E. Chicago Heights	01
County—Cook:	
Parts: C.T. 8297 (E. Chicago Heights)	
E. St. Louis Hlth Dist	02
County—St. Clair:	
Parts:	
C.T. 5004–5014	
C.T. 5021–5023	
C.T. 5024.01	
C.T. 5024.03–5024.04	
C.T. 5025	
C.T. 5026.01–5026.03	
C.T. 5027–5030	
C.T. 5041	
C.T. 5042.01–5042.02	
Eastside Joliet	04
County—Will:	
Parts:	
C.T. 8807	
C.T. 8812–8813	
C.T. 8820–8825	
C.T. 8830–8831	
Hardin	03
County:	
Calhoun	
[illegible]	
Parts: Woodville Twp (West 1/2)	
Jersey	
Parts:	
Quarry Twp	
Richwood Twp	
Rosedale Twp	
Humboldt/West Town	02
County—Cook	
Parts:	
C.T. 2301–2318	
C.T. 2401–2436	
New City/W. Englewood/Englewood	01
County—Cook:	
Parts:	
C.T. 6101–6122	
C.T. 6701–6720	
C.T. 6801–6814	
Northend-Champaign Urbana	01
County—Champaign:	
Parts:	
C.T. 2	
C.T. 53 (BLKGRPS 2 & 3)	
C.T. 7 (BLKGRPS 1 & 2)	
Pembroke	01
County—Kankakee:	
Parts:	
Pembroke Twp	
St. Anne Twp. (E ½)	
Riverdale	01
County—Cook:	
Parts: C.T. 5401	
Robbins Village	02
County—Cook:	
Parts: Robbins Village	
Rockford Inner City	01
County—Winnebago:	
Parts:	
C.T. 10	
C.T. 21	
C.T. 24–29	
Roseland	01
County—Cook:	
Parts	
C.T. 4901–4914	
S. Lawndale/Lower W. Side	01
County—Cook:	
Parts	
C.T. 3001–3020	
C.T. 3101–3115	
S.E. Peoria	03
County—Peoria:	
Parts: C.T. 1–15	
Salem	04
County—Marion:	
Parts	
Alma Twp	
Beacham Twp	
Foster Twp	
Haines Twp	
Iuka Twp	
Kinmundy Twp	
Omega Twp	
Romine Twp	
Salem Twp	
Stevenson Twp	
Tonti Twp	
South Chicago	01
County—Cook:	
Parts:	
C.T. 4601–4610	
South Deering	01
County—Cook:	
Parts:	
C.T. 5101–5104	
C.T. 5104.99	
C.T. 5105	
South Shore	04
County—Cook	
Parts:	
C.T. 4301–4314	
Southeast Chicago	01
County—Cook:	
Parts:	
C.T. 3601–3615	
C.T. 3701–3704	
C.T. 3801–3820	
C.T. 3901–3903	
C.T. 4001–4008	
Stockton/Warren	02
County—Jo Daviess:	
Parts	
Apple River Twp	
Berreman Twp	
Derinda Twp	
Nora Twp	
Pleasant Valley Twp	
Rush Twp	
Stockton Twp	
Thompson Twp	
Wards Grove Twp	
Warren Twp	
Woodbine Twp	
Uptown	01
County—Cook:	
Parts:	
C.T. 310–312	
C.T. 315–321	
Western Jackson	03
County—Jackson:	
Parts:	
Bradley Twp	
Degognia Twp	
Fountain Bluff Twp	
Grand Tower Twp	
Kinkaid Twp	
Levan Twp	
Murphysboro Twp	
Ora Twp	
Pomona Twp	
Sand Ridge Twp	
Somerset Twp	
Vergennes Twp	

PRIMARY CARE: Illinois

Population Group Listing

Population group	Degree of shortage
Medicaid Elig. Pop. of Quad-Cities	03
County—Rock Island	

PRIMARY CARE: Illinois

Facility Listing

Facility	Degree of shortage group
Cook Co. Dept. of Correction Complex	02
County—Cook	
Cook County Hospital	01
County—Cook	
Joliet Correctional Inst.	02
County—Will	
Statesville Correctional Inst	03
County—Will	

PRIMARY CARE: Indiana

County name	Degree of shortage group
Adams	[illegible]
Brown	02
Clay	03
Crawford:	
Service Area:	
English	01
Fredricksburg	02
Decatur	04
Fayette	03
Franklin	01
Fulton	03
Harrison	
Service Area:	
Elizabeth	01
Fredricksburg	02
Howard:	
Population Group: Med. Indigent Pop. (Kokomo)	02
Jennings	02
Knox:	
Service Area: Bicknell	02
Lake	
Service Area: Gary	02
La Porte:	
Facility: Indiana State Prison	02
Marion:	
Service Area:	
Highland-Brookside	01
Near North Side (Indianapolis)	01
South Central Indianapolis	01
Martin	02
Ohio	02
Owen	02
Perry	04
Pike	04
Ripley	03
Scott	03
Spencer	02
Starke	03
Steuben	04
Switzerland	04
Vermillion:	
Service Area: Northern Vermillion	01
Warren	03
Washington:	
Service Area: Fredricksburg	02

PRIMARY CARE: Indiana

Service Area Listing

Service area name	Degree of shortage group
Bicknell	02
County—Knox:	
Parts:	
Vigo Twp	
Washington Twp (E. ½)	
Widner Twp	
[illegible]	01
County—Harrison	
Parts:	
Boone Twp	
Posey Twp	
Taylor Twp	
English	01
County—Crawford:	

PRIMARY CARE: Indiana—Continued

Service Area Listing

Service area name	Degree of shortage group
Parts:	
Boone Twp	
Jennings Twp	
Johnson Twp	
Ohio Twp	
Patoka Twp	
Sterling Twp	
Union Twp	
Fredricksburg	[illegible]
County—Crawford:	
Parts:	
Liberty Twp	
Whiskey Run Twp	
County—Harrison:	
Parts:	
Blue River Twp	
Morgan Twp	
County—Washington:	
Parts: Posey Twp	
Gary	[illegible]
County—Lake:	
Parts: C.T. 101-129	
Highland-Brookside	01
County—Marion:	
Parts:	
C.T. 3526-3527	
C.T. 3544-3545	
C.T. 3547-3551	
Near North Side (Indianapolis)	01
County—Marion:	
Parts:	
C.T. 3517-3522	
C.T. 3528-3532	
Northern Vermillion	01
County—Vermillion:	
Parts:	
Eugene Twp	
Highland Twp	
Vermillion Twp	
South Central Indianapolis	01
County—Marion:	
Parts:	
C.T. 3556-3557	
C.T. 3559	
C.T. 3562	
C.T. 3569	
C.T. 3570-3572	
C.T. 3578-3580	

PRIMARY CARE: Indiana

Population Group Listing

Population group	Degree of shortage group
Med. Indigent Pop (Kokomo)	[illegible]
County—Howard	

PRIMARY CARE: Indiana

Facility Listing

Facility	Degree of shortage group
Indiana State Prison	02
County—La Porte	

PRIMARY CARE: Iowa

County name	Degree of shortage group
Benton:	
Service Area: North Benton	02
Black Hawk:	
Population Group: Poverty Pop	04

PRIMARY CARE: Iowa—Continued

County name	Degree of shortage group
[illegible]	
Service Area: Dayton-Gowrie	[illegible]
Buchanan	[illegible]
Butler	[illegible]
Calhoun:	
Service Area: Dayton-Gowrie	[illegible]
Cedar:	
Service Area: Lowden/Lost Nation	[illegible]
Cerro Gordo:	
Service Area: Sheffield	02
Cherokee Service Area: Kingsley/Anthon/Mapleton	[illegible]
Clinton:	
Service Area: Lowden/Lost Nation	[illegible]
[illegible]	
Service Area: Center Pt./Central City	[illegible]
Franklin:	
Service Area: Sheffield	[illegible]
[illegible]	
Service Area: Dayton-Gowrie	[illegible]
Hamilton:	
Service Area:	
Dayton-Gowrie	02
Hubbart/Eldora	[illegible]
Hardin:	
Service Area: Hubbart/Eldora	[illegible]
[illegible]	
Service Area:	
Onawa (Iowa/Neb)	[illegible]
Woodbine	[illegible]
Howard:	
Service Area: Cresco	02
Humboldt	[illegible]
Jackson:	
Service Area: Lowden/Lost Nation	02
Jasper:	
Service Area: Monroe	01
Jones:	
Service Area: Lowden/Lost Nation	[illegible]
[illegible]	
Service Area: North Kossuth	[illegible]
Linn:	
Service Area: Center Pt./Central City	[illegible]
Louisa:	
Service Area: Columbus/Wapello	[illegible]
Lucas:	
Service Area: Chariton	[illegible]
Lyon:	
Service Area:	
Canton	[illegible]
Rock Rapids	[illegible]
[illegible]	
Service Area: Monroe	[illegible]
[illegible]	
Service Area: Oakland	[illegible]
[illegible]	
Service Area:	
Kingsley/Anthon/Mapleton	[illegible]
Onawa (Iowa/Neb)	[illegible]
[illegible]	
Service Area: Columbus/Wapello	[illegible]
Plymouth:	
Service Area: Kingsley/Anthon/Mapleton	[illegible]
[illegible]	
Service Area: Oakland	[illegible]
Scott:	
Service Area: Lowden/Lost Nation	[illegible]
Population Group: Medicaid Elig Pop of Quad-Cities	[illegible]
Sioux:	
Service Area: Canton	[illegible]
Story:	
Service Area: Hubbart/Eldora	[illegible]
Tama	[illegible]
Taylor:	
Service Area: South Taylor	[illegible]
Warren:	
Service Area: Chariton	[illegible]
Wayne:	
Service Area: Chariton	[illegible]
[illegible]	
Service Area: Dayton-Gowrie	[illegible]
Winneshiek:	
Service Area: Cresco	[illegible]
Woodbury:	
Service Area:	
Kingsley/Anthon/Mapleton	[illegible]
Onawa (Iowa/Neb)	[illegible]

PRIMARY CARE: Iowa

Service Area Listing

Service area name	Degree of shortage group
Canton	[illegible]
County—Lyon:	
Parts	
Centennial Twp	
Logan Twp	
Lyon Twp	
Richland Twp	
County—Sioux:	
Parts: Settlers Twp	
Center Pt./Central City	[illegible]
County—Delaware:	
Parts: Ryan	
County—Linn:	
Parts:	
[illegible]	
Center Pt	
Central City	
Coggon	
Marion	
Prairieburg	
Robins	
Walker	
Chariton	04
County—Lucas:	
Parts:	
Benton	
Cedar	
Chariton City	
English	
Jackson (N.E. Parts)	
Liberty	
Lincoln	
Otter Creek	
Pleasant	
Warren (N.E. Parts)	
Washington	
Whitebreast	
County—Warren:	
Parts:	
Liberty (Parts)	
Whitebreast (Part)	
County—Wayne:	
Parts:	
Union (N. Part)	
Washington (S.E. Part)	
Wright (N.W. Part)	
Columbus/Wapello	[illegible]
County—Louisa:	
Parts:	
Columbus City Twp	
Concord Twp	
Elm Grove Twp	
Grandview Twp	
Jefferson Twp	
Marshall Twp	
Oakland Twp	
Port Louisa Twp	
Union Twp	
Wapello Twp	
County—Muscatine:	
Parts:	
Cedar Twp	
Orono Twp	
Cresco	[illegible]
County—Howard:	
Parts:	
Albion Twp (Cresco)	
Chester Twp	
Forest City Twp	
Howard Center Twp	
Jamestown Twp	
New Oregon Twp	
Oakdale Twp	
Paris Twp	
Saratoga Twp	
Vernon Spngs Twp	
County—Winneshiek:	
Parts:	
Fremont Twp	
Orleans Twp	
Dayton-Gowrie	02
County—Boone:	
Parts:	
Dodge Twp	
Grant Twp	
Pilot Mound Twp	
County—Calhoun:	
Parts. Reading Twp	

PRIMARY CARE: Iowa—Continued

Service Area Listing

Service area name	Degree of shortage group
County—Greene:	
Parts:	
Dawson Twp	
Paton Twp	
County—Hamilton:	
Parts:	
Marion Twp	
Webster Twp	
County—Webster:	
Parts:	
Burnside Twp	
Clay Twp	
Dayton Twp	
Gowrie Twp	
Hardin Twp	
Lost Grove Twp	
Roland Twp	
Sumner Twp	
Webster Twp	
Yell	
Hubbard/Eldora	[illegible]
County—Hamilton:	
Parts:	
[illegible]	
Lincoln Twp	
Lyon Twp	
Scott Twp	
County—Hardin:	
Parts:	
Concord Twp	
Eldora Twp	
Grant Twp	
Pleasant	
Providence Twp	
Sherman Twp	
Tipton Twp	
Union Twp (W. ½)	
County—Story:	
Parts:	
Lincoln Twp	
Warren Twp (E. ½)	
Kingsley/Anthon/Mapleton	
County—Cherokee:	
Parts: Grand Meadow Twp	
County—Monona:	
Parts:	
Cooper Twp	
Grant Twp	
Maple Twp	
County—Plymouth:	
Parts:	
Elkhorn Twp	
Garfield Twp	
County—Woodbury:	
Parts:	
Arlington Twp	
Banner Twp	
Floyd Twp	
Orange Twp	
Grant Twp	
Kedron Twp	
Liston Twp	
Little Sioux Twp	
Miller Twp	
Morgan Twp	
Moville Twp	
Oto Twp	
Rock Twp	
Rutland Twp	
Union Twp	
West Fork Twp	
Willow Twp (½ pt)	
Wolf Creek Twp	
Lowden/Lost Nation	02
County—Cedar:	
Parts:	
Inland Twp	
Massillon Twp	
Springfield Twp	
County—Clinton:	
Parts:	
Liberty Twp	
Sharon Twp	
Spring Rock Twp	
County—Jackson:	
Parts: Monmouth Twp	
County—Jones:	
Parts:	

PRIMARY CARE: Iowa—Continued

Service Area Listing

Service area name	Degree of shortage group
Oxford Twp	
Wyoming Twp	
County—Scott:	
Parts: Liberty Twp	
Monroe	01
County—Jasper:	
Parts:	
Fairview Twp	
Palo Alto Twp	
County—Marion:	
Parts:	
[illegible]	
Summit Twp	
North Benton	02
County—Benton:	
Parts:	
Benton Twp	
Big Grove Twp	
Bruce Twp	
Canton Twp	
Cedar Twp	
Eden Twp	
Eldorado Twp	
Fremont (Part)	
Harrison Twp	
Homer Twp	
Jackson Twp	
Monroe Twp	
Polk Twp	
Shellsburg Twp	
Taylor Twp	
Union Twp	
Vinton Twp	
North Kossuth	01
County—Kossuth:	
Parts:	
Buffalo Twp	
Burt Twp	
Eagle Twp	
Fenton Twp	
German Twp	
Grant Twp	
Greenwood Twp	
Harrison Twp	
Hebron Twp	
Ledyard Twp	
Lincoln Twp	
Portland Twp	
Ramsey Twp	
Seneca Twp	
Springfield Twp	
Swea Twp	
Oakland	[illegible]
County—Mills:	
Parts:	
Anderson Twp	
Henderson Twn	
County—Pottawattamie:	
Parts:	
Avoca Twn	
Belknap Twp	
Carson Twn	
Carson Twp	
Center Twp	
Grove Twp	
Hancock Twn	
James Twp	
Knox Twp	
Layton Twp	
Lincoln Twp	
Macedonia Twn	
Macedonia Twp	
Oakland Twn	
Pleasant Twp	02
Silver Creek Twp	
Valley Twp	
Walnut Twn	
Washington Twp	
Waveland Twp	
Wright Twp	
Onawa (Iowa/Neb)	
County—Harrison:	
Parts:	
Jackson Twp	
Little Sioux Twp	
County—Monona:	
Parts:	
Ashton Twp	

PRIMARY CARE: Iowa—Continued

Service Area Listing

Service area name	Degree of shortage group
Belvidere Twp	
Center Twp	
Fairview Twp	
Franklin Twp	
Jordan Twp	01
Kennebec Twp	
Lincoln Twp	
Onawa Twp	
Sherman Twp	
Sioux Twp	
Soldier Twp	
Spring Valley Twp	
St. Clair Twp	
West Fork Twp	02
Willow Twp	
County—Woodbury:	
Parts:	
Lakeport Twp	
Liberty Twp (Pt)	
Sloan Twp	
Willow Twp (Pt)	
Rock Rapids	[illegible]
County—Lyon:	
Parts:	
Allison Twp	
Cleveland Twp	
Dale Twp	
Doon Twp	
Elgin Twp	
Garfield Twp	
Grant Twp	
Larchwood Twp	
Liberal Twp	
Midland Twp	01
Riverside Twp	
Rock Twp	
Sioux Twp	
Wheeler Twp	
Sheffield	02
County—Cerro Gordo:	
Parts:	
Dougherty Twn	
Dougherty Twp	
Geneseo Twp	
Pleasant Valley Twp	
[illegible]	
Thornton Twn	
County—Franklin:	
Parts:	
Richland Twp	
Ross Twp	
Sheffield Twn	
West Fork Twp	03
Wisner Twp	
South Taylor	01
County—Taylor:	
Parts:	
Bedford Twp	
Benton Twp	
Clayton Twp	
Dallas Twp	
Gay Twp	
Jackson Twp	
Jefferson Twp	
Mason Twp	
Polk Twp	
Ross Twp	
Woodbine	04
County—Harrison:	
Parts:	
Allen Twp	
Bayer Twp	
Calhoun Twp	
Cass Twp	
Cincinnati Twp	
Clay Twp	
Douglas Twp	
Dunlap City	
Harrison Twp	
Jefferson Twp	
La Grange Twp	03
Lincoln Twp	
Logan City	
Magnolia City	
Magnolia Twp	
Missouri Valley City	
Modale City	
Mondamin City	

PRIMARY CARE: Iowa—Continued

Service Area Listing

Service area name	Degree of shortage group
Morgan Twp	
Raglan Twp	
St. Johns Twp	
Taylor Twp	
Union Twp	
Woodbine City	

PRIMARY CARE: Iowa

Population Group Listing

Population group	Degree of shortage group
Medicaid Elig. Pop. of Quad-Cities	03
County—Scott	
Poverty Pop. of Black Hawk	04
County—Black Hawk	

PRIMARY CARE: Kansas

County name	Degree of shortage group
Coffey	
Dickinson:	
Service Area: Herrington	02
Ellsworth	04
Geary	04
Jackson	04
Jefferson	02
Lincoln	03
Linn	03
McPherson:	
Service Area: Smokey Hills	04
Marion:	
Service Area: Herrington	02
Nemaha:	
Service Area: Southwest Nemaha	01
Morris:	
Service Area: Herrington	02
Nemaha:	
Service Area: Southwest Nemaha	01
Osage	04
Rawlings	03
Saline:	
Service Area: Smokey Hills	04
Wabaunsee	02
Washington	02
Woodson	02

PRIMARY CARE: Kansas

Service Area Listing

Service area name	Degree of shortage group
Herrington	
County—Dickinson:	
Parts:	
Herrington City	
Hope	
Liberty	
Lyon	
Ridge	
Union	
County—Marion:	
Parts:	
Clear Creek	
Colfax	
Lost Spring	
County—Morris:	
Parts:	
Highland	
Overland	
Townships 4–9	

PRIMARY CARE: Kansas—Continued

Service Area Listing

Service area name	Degree of shortage group
Smokey Hills	
County—McPherson:	
Parts:	
Bonaville Twp	
Gypsum Twp	
Lindsborg City	
Marquette Twp	
Smokey Hill Twp	
Union Twp	
County—Saline:	
Parts:	
Eureka	
Gypsum Twp	
Liberty Twp	
Smokey View Twp	
Smolam Twp	
Walnut Twp	
Southwest Nemaha	01
County—Marshall:	
Parts:	
Cleveland Twp	
Lincoln Twp	
Noble Twp	
County—Nemaha:	
Parts:	
Center Twp	
Harrison Twp	
Home Twp	
Illinois Twp	
Neuchatel Twp	
Red Vermillion Twp	
Reilly Twp	
Wetmore Twp	

PRIMARY CARE: Kentucky

County name	Degree of shortage group
Adair	04
Bath	04
Bell:	
Service Area:	
Southeast Whitley	01
Western Harlan	01
Bracken	04
Breathitt	02
Breckinridge	02
Bullitt	03
Carlisle	03
Carter	01
Casey	03
Clay	02
Clinton	03
Edmonson	04
Elliott	04
Estill	02
Fayette:	
Population Group: Poverty Pop. of Lexington	04
Fleming:	
Service Area: Flemingsburg	03
Floyd:	
Service Area: Mud Creek	01
Hancock	01
Harlan:	
Service Area: Western Harlan	02
Jackson	01
Jefferson:	
Service Area: West End	03
Knott	01
Knox	03
Laurel	01
Lee	03
Leslie	02
Letcher:	
Service Area: Western Letcher	01
Lewis:	
Service Area:	
Flemingsburg	04
Vanceburg	02
Lincoln:	
Service Area: Crab Orchard	01
Lyon	04
Facility: KY State Penitentiary	02

PRIMARY CARE: Kentucky—Continued

County name	Degree of shortage group
McCreary	04
Magoffin	01
Marion	03
Meade	02
Menifee	01
Monroe	04
Muhlenberg:	
Facility: KY State Reformatory	03
Owen	01
Owsley	01
Pendleton	03
Perry:	
Service Area:	
Buckhorn	01
Western Letcher	01
Pike:	
Service Area:	
Mud Creek	01
Phelps	01
Powell	02
Robertson	01
Rockcastle	04
Spencer	03
Todd	02
Whitley:	
Service Area: Southeast Whitley	01
Wolfe	04

PRIMARY CARE: Kentucky

Service Area Listing

Service area name	Degree of shortage group
Buckhorn	01
County—Perry:	
Parts:	
Buckhorn CCD	
Krypton CCD E.D. 302	
Crab Orchard	01
County—Lincoln:	
Parts: Crab Orchard	
Flemingsburg	03
County:	
Fleming	
Lewis:	
Parts:	
Tollesboro Div.	
Mud Creek	01
County—Floyd:	
Parts:	
McDowell CCD	
Mud Creek CCD	
Weeksbury CCD	
Wheelwright CCD	
County—Pike:	
Parts: Long Fork CCD	
Phelps	01
County—Pike:	
Parts:	
Feds Creek CCD	
Phelps CCD	
Southeast Whitley	01
County—Bell:	
Parts: Pruden-Fonde CCD	
County—Whitley:	
Parts:	
Pleasant CCD	
Saxton CCD	
Silerville CCD	
Vanceburg	02
County—Lewis	
Parts:	
Garrison Div.	
Laurel/Petersville Div.	
Vanceburg Div.	
West End	01
County—Jefferson:	
Parts:	
C.T. 1–35	
Western Harlan	01
County—Bell:	
Parts: Tejay CCD	
County—Harlan:	
Parts:	

PRIMARY CARE: Kentucky—Continued

Service Area Listing

Service area name	Degree of shortage group
Alva CCD	
Wallins Creek CCD	
Western Letcher	01
County—Letcher:	
Parts: Blackey Div	
County—Perry:	
Parts: Darsy Div.	

PRIMARY CARE: Kentucky

Population Group Listing

Population group	Degree of shortage group
Poverty Population of Lexington	[illegible]
County—Fayette:	
Parts:	
C.T. 1–5	
C.T. 6–14	
C.T. 16–19	
C.T. 38.01	

PRIMARY CARE: Kentucky

Facility Listing

Facility	Degree of shortage group
KY. State Penitentary	[illegible]
County—Lyon	
KY. State Reformatory	02
County—Oldnam	

PRIMARY CARE: Louisiana

County name	Degree of shortage group
Allen:	
Service Area: Kinder	01
Ascension	[illegible]
Assumption	01
Avoyelles	[illegible]
Beauregard:	
Service Area: Dequincy	[illegible]
Bienville	02
Bossier	[illegible]
Calcasieu:	
Service Area:	
DeQuincy	[illegible]
North Lake Charles	01
Caldwell	01
Catahoula	[illegible]
Claiborne	[illegible]
De Soto	01
East Baton Rouge:	
Service Area: Eden Park	[illegible]
East Carroll	01
East Feliciana	[illegible]
Franklin	02
Grant	01
Iberia:	
Service Area: Teche	[illegible]
Jackson	[illegible]
Jefferson:	
Service Area: Lafitte	01
Jefferson Davis:	
Service Area: Kinder	01
Lafourche:	
Service Area: S.E. Lafourche	02
Lasalle	[illegible]
Livingston	02
Madison	04
Natchitoches	04
Orleans:	
Service Area:	

PRIMARY CARE: Louisiana—Continued

County name	Degree of shortage group
Desire/Florida	01
Lower 9th Ward	01
Ouachita:	
Facility: E.A. Conway Mem. Hosp	[illegible]
Plaquemines	02
Pointe Coupee	03
Rapides:	
Facility: Huey P. Long Hosp	[illegible]
Sabine:	
Service Area: Zwolle	01
St Bernard	[illegible]
St Charles	[illegible]
St Helena	02
St John The Baptist	02
St Landry:	
Service Area: Palmetto	01
St Martin	01
St Mary:	
Service Area: Teche	[illegible]
St Tammany:	
Service Area: Northeastern St Tammany	02
Terrebonne:	
Service Area: Dulac	[illegible]
Union:	
Service Area: West Union	01
Vernon	01
Webster	02
West Baton Rouge	[illegible]
West Carroll	[illegible]
Winn	[illegible]

PRIMARY CARE: Louisiana

Service Area Listing

Service area name	Degree of shortage group
Dequincy	[illegible]
County:	
Beauregard:	
Parts:	
Ward 1	
Ward 6	
Calcasieu:	
Parts:	
Ward 1	
Ward 6	
Desire/Florida	
County—Orleans:	
Parts:	
C.T. 11 (N. of Derbigny St.)	
C.T. 14.01–14.02	
C.T. 15 (N. of Derbigny St.)	
C.T. 16	
C.T. 17.03	
C.T. 17.14	
Dulac	
County—Terrebonne:	
Parts:	
Ward 4	
Ward 7	
Eden Park	
County—East Baton Rouge	
Parts:	
C.T. 8–10	
C.T. 12–13	
Kinder	
County—Allen:	
Parts:	
Ward 1–4	
County—Jefferson Davis:	
Parts: Wards 4–5	
Lafitte	
County—Jefferson:	
Parts: C.T. 277–279	
Lower 9th Ward	
County—Orleans:	
Parts:	
C.T. 7.01–7.02	
C.T. 8	
C.T. 9.01–9.04	
North Lake Charles	
County—Calcasieu:	
Parts:	
C.T. 2–4	

PRIMARY CARE: Louisiana—Continued

Service Area Listing

Service area name	Degree of shortage group
C.T. 14–15	
Northeastern St Tammany	02
County—St Tammany:	
Parts:	
C.T. 401	
C.T. 407	
Palmetto	01
County—St Landry:	
Parts:	
E.D. 725–727	
E.D. 730–738	
S.E. Lafourche	02
County—Lafourche:	
Parts:	
S.E. Ward 4	
S.E. Wards 9–10	
Teche	03
County:	
Iberia:	
Parts:	
Ward 1	
Ward 8	
St Mary:	
Parts:	
Wards 1–5	
Wards 7–10	
West Union	01
County—Union:	
Parts:	
Wards 3–4	
Ward 9	
Zwolle	01
County—Sabine:	
Parts:	
Wards 5–6	
Ward 8	

PRIMARY CARE: Louisiana

Facility Listing

Facility	Degree of shortage group
E.A. Conway Mem Hosp	03
County—Ouachita	
Huey B Long Hosp	02
County—Rapides	

PRIMARY CARE: Maine

County name	Degree of shortage group
Androscoggin:	
Service Area: Leeds	01
Aroostook:	
Service Area:	
Ashland	02
Danforth	01
Eagle Lake	01
Mars Hill	02
St. Francis	01
Cumberland:	
Service Area: Casco Bay Islands	02
Franklin:	
Service Area: Rangeley	01
Hancock:	
Service Area: Bucksport	02
Kennebec:	
Service Area:	
Leeds	01
Richmond	02
Knox:	
Service Area: Penobscot Bay	01
Lincoln:	
Service Area: Richmond	02
Oxford:	
Service Area	
Bethel	01
Rangeley	01

PRIMARY CARE: Maine—Continued

County name	Degree of shortage group
Penobscot:	
Service Area:	
Connth	01
Danforth	01
Dexter	02
Howland	02
Piscataquis:	
Service Area:	
Bingham	02
Dexter	02
Milo	02
Sagadahoc:	
Service Area: Richmond	02
Somerset:	
Service Area:	
Bingham	02
Dexter	02
Jackman	01
Waldo:	
Service Area: Bucksport	02
Washington:	
Service Area:	
Danforth	01
Eastport	02
Jonesport	01
Lubec	01
Milbridge	02
Vanceboro	01

PRIMARY CARE: Maine

Service Area Listing

Service area name	Degree of shortage group
Ashland	02
County—Aroostook:	
Parts:	
Ashland Twn	
Garfield Plantation	
Masardis Twn	
Nashville Plantation	
Oxbow Plantation	
Portage Lake Twn	
Bethel	
County—Oxford:	
Parts	
Bethel Twn	
Gilead Twn	
Greenwood	
Newry Twn	
Unorg. Terr. (Oxford)	
Upton Twn	
Woodstock Twn	
Bingham	
County—Piscataquis:	
Parts: Kingsbury Plt.	
County—Somerset:	
Parts:	
Bingham	
Brighton Plt.	
Caratunk Plt.	
Moscow	
Pleasant Ridge Plt.	
Solon	
The Forks Plt.	
Unorg. Terr. (Somerset)	
West Forks Plt.	
Bucksport	
County—Hancock:	
Parts	
Bucksport Town	
Orland Town	
Verona Town	
County—Waldo:	
Parts:	
Frankfort	
Prospect	
Casco Bay Islands	
County—Cumberland:	
Parts	
Cliff Island	
Cushing Island	
Great Chebeague Island	
Great Diamond Island	

PRIMARY CARE: Maine—Continued

Service Area Listing

Service area name	Degree of shortage group
Little Chebeague Island	
Little Diamond Island	
Long Island	
Peak's Island	
Connth	01
County—Penobscot:	
Parts	
Bradford	
Charleston	
Connth	
Exeter	
Hudson	
Danforth	01
County—Aroostook:	
Parts	
Bancroft	
Orient	
Weston	
County—Penobscot:	
Parts	
Drew	
Kingman Unorg.	
Prentiss	
County—Washington:	
Parts	
Danforth	
Whitney Unorg.	
Dexter Area	02
County—Penobscot:	
Parts:	
Corinna	
Dexter	
Garland	
County—Piscataquis:	
Parts: Wellington	
County—Somerset:	
Parts:	
Athens	
Harmony	
Ripley	
St. Albans	
Eagle Lake	
County—Aroostook:	
Parts:	
Eagle Lake Twn	
Wallagrass Plantation	
Winterville Plantation	
Eastport	01
County—Washington:	
Parts:	
Eastport	
Pembroke	
Perry	
Pleasant Point	
Howland	
County—Penobscot:	
Parts:	
Burlington	02
Edinburg	
Enfield	
Grand Falls Plt.	
Howland	
LaGrange	
Lowell	
Maxfield	
Passadumkeag	
Seboeis Plt.	
Jackman	
County—Somerset:	
Parts:	
Dennistown Plant	
Jackman Town	02
Moose River Town	
Jonesport	
County—Washington:	
Parts:	
Addison Twn	
Beals Twn	
Centerville Twn	
Columbia Falls Twn	
Jonesboro Twn	
Jonesport Twn	02
Leeds	
County—Androscoggin:	
Parts:	
Greene Town	
Leeds Town	
Turner Town	

PRIMARY CARE: Maine—Continued

Service Area Listing

Service area name	Degree of shortage group
County—Kennebec:	
Parts	
Monmouth Town	
Wayne Town	
Lubec	01
County—Washington:	
Parts:	
Dennysville Twn	
Edmunds (Unorg.)	
Lubec Twn	
Plantation #14	
Trescott (Unorg.)	
Whiting Twn	
Mars Hill	02
County—Aroostook:	
Parts:	
Blaine	
Bridgewater	
E. Plt.	
Mars Hill	
Westfield	
Milbridge	02
County—Washington:	
Parts:	
Beddington	
Cherryfield Twp	
Columbia Twp	
Deblois Twp	02
Harrington Twp	
Milbridge Twp	
Steuben Twn	
Milo	03
County—Piscataquis:	
Parts	
Atkinson	
Barnard Plt.	
Brownville	
Lakeview Plt.	
Medford	
Milo	
Sebec	
Unorganized Terr. of S.E. Piscataquis	01
Penobscot Bay	
County—Knox:	
Parts	
Matinicus Island	
Vinalhaven Island	
Rangeley	02
County—Franklin:	
Parts:	
Coplin Plantation	
Dallas Plantation	
Eustis Twn	
Madrid Twn	
N. Franklin (Unorg.)	02
Rangeley Plantation	
Rangeley Twn	
Sandy River Plantation	
County—Oxford:	
Parts	
Lincoln Plantation	
Magalloway Plantation	
N. Oxford (Unorg.)	
Richmond	
County—Kennebec:	
Parts: Litchfield Twp	
County—Lincoln:	
Parts: Dresden Twp	01
County—Sagadahoc:	
Parts:	
Bowdoinham Twp	
Richmond Twp	
St. Francis	
County—Aroostook:	01
Parts:	
Allagash Twn	
St. Francis Plantation	
St. John Plantation	
Vanceboro	
County—Washington:	01
Parts:	
Codyville Plt.	
Dyer Twp	
Fowler Twp	
Grand Lake Stream	
Indian Twp	
Kossuth Twp	
Lambert Lake Twp	

PRIMARY CARE: Maine—Continued

Service Area Listing

Service area name	Degree of shortage group
Talmadge	
Topsfield	
Vanceboro	
Waite	

PRIMARY CARE: Maryland

County name	Degree of shortage group
Allegany:	
Service Area: Hancock	[illegible]
Anne Arundel:	
Service Area: Owensville	02
Caroline	02
Cecil:	
Service Area: Cecil/Kent	02
Charles	[illegible]
Dorchester:	
Service Area: Northeast Dorchester County	02
Kent:	
Service Area: Cecil/Kent	02
Queen Annes	02
Somerset	02
Washington:	
Service Area:	
Hancock	02
Keedysville	02
Worcester:	
Service Area: Snow Hill/Pokomoke	[illegible]
Baltimore City:	
Service Area:	
Cherry Hill	01
Hampden/Woodberry/Remington	[illegible]
North Central Baltimore	01
Northwest Baltimore	01
O'Donnell Heights	01
Orleans Square	02
West Baltimore	01
Facility:	
Mercy Hosptal	01

PRIMARY CARE: Maryland

Service Area Listing

Service area name	Degree of shortage group
Cecil/Kent	02
County—Cecil:	
Parts: Dist. 1 (Cecilton)	
County—Kent:	
Parts: Dist. 1 (Massey)	
Cherry Hill	01
County—Baltimore City:	
Parts:	
C.T. 2502.01-2502.05	
C.T. 2503.01-2503.03	
Hampden/Woodberry/Remington	04
County—Baltimore City:	
Parts:	
C.T. 1203	
C.T. 1206-1207	
C.T. 1305-1306	
C.T. 1308.03-1308.04	
Hancock Service Area	02
County—Allegany:	
Parts: Dist. 1 (Orleans)	
County—Washington:	
Parts:	
Dist. 15 (Indian Springs)	
Dist. 4 (Clear Spring)	
Dist. 5 (Hancock)	
Keedysville	02
County—Washington:	
Parts:	
Election Distnct 1	
Election Distnct 6	
Election Distnct 8	
Election Distnct 11	

PRIMARY CARE: Maryland—Continued

Service Area Listing

Service area name	Degree of shortage group
Election Distnct 19	
North Central Baltimore	01
County—Baltimore City:	
Parts:	
C.T. 802	
C.T. 803.01-803.02	
C.T. 804-805	
C.T. 901-908	
C.T. 1204	
Northwest Dorchester County	02
County—Dorchester:	
Parts:	
Dist 1-3	
Dist 12	
Dist 15	
Northeast Baltimore	01
County—Baltimore City:	
Parts:	
C.T. 1512-1513	
C.T. 2716-2717	
C.T. 2718.01-2718.02	
O'Donnell Heights	01
County—Baltimore City:	
Parts: C.T. 2606.01-2606.02	
Orleans Square	[illegible]
County—Baltimore City:	
Parts:	
C.T. 103	
C.T. 105	
C.T. 201	
C.T. 601-602	
C.T. 701-703	
Owensville Service Area	02
County—Anne Arundel:	
Parts:	
C.T. 7012-7014	
C.T. 7070	
C.T. 7080	
Snow Hill/Pocomoke	[illegible]
County—Worcester:	
Parts:	
Dist 1-2	
Dist 7-8	
West Baltimore	01
County—Baltimore City:	
Parts:	
C.T. 1801-1803	
C.T. 1901-1903	
C.T. 2001-2005	

PRIMARY CARE: Maryland

Facility Listing

Facility	Degree of shortage group
Mercy Hosptal	01
County—Baltimore City	

PRIMARY CARE: Massachusetts

County name	Degree of shortage group
Barnstable:	
Service Area: Provincetown	03
Bristol:	
Service Area:	
Fall River	01
New Bedford	01
Taunton	02
Dukes:	
Service Area: New Bedford	01
Essex:	
Service Area:	
Lynn	02
North Lawrence	[illegible]
Peabody	02
Middlesex	
Service Area:	

PRIMARY CARE: Massachusetts—Continued

County name	Degree of shortage group
East Cambridge	01
Lowell	04
Population Group:	
Portuguese Pop (Hudson)	01
Portuguese Pop/Somerville	01
Norfolk	
Service Area:	
Quincy	02
So. Blackstone Valley	03
Facility: Norfolk-Walpole Correct Inst	03
Plymouth:	
Service Area: Hull	02
Suffolk:	
Service Area:	
Dorchester	01
Jamaica Plain	03
North End Boston	03
Roxbury	02
South Boston	02
Population Group:	
Chinese Pop. (Bnghton/Allston)	01
Chinese Pop. (South End Boston)	02
Pov. Pop.—Bnghton/Allston	04
Worcester:	
Service Area: So. Blackstone Valley	03

PRIMARY CARE: Massachusetts

Service area Listing

Service Area name	Degree of shortage group
Dorchester	01
County—Suffolk:	
Parts:	
C.T. 1001-1005	
C.T. 901-924	
East Cambridge	01
County—Middlesex:	
Parts:	
C.T. 3521-3522	
C.T. 3524	
C.T. 3527	
C.T. 3530-3531	
C.T. 3535	
C.T. 3539	
Fall River	01
County—Bristol:	
Parts:	
C.T. 6408-6411	
C.T. 6413	
C.T. 6420	
Hull	02
County—Plymouth:	
Parts: Hull Town	
Jamaica Plain	03
County—Suffolk:	
Parts:	
C.T. 1202-1207	
Lowell	04
County—Middlesex:	
Parts:	
C.T. 3101	
C.T. 3104	
C.T. 3107-3112	
C.T. 3118-3122	
C.T. 3124	
Lynn	02
County—Essex:	
Parts:	
C.T. 2061-2063	
C.T. 2068-2070	
C.T. 2072	
New Bedford	01
County—Bristol:	
Parts:	
C.T. 6507-6509	
C.T. 6511-6513	
C.T. 6517-6519	
C.T. 6526-6527	
County—Dukes	
Parts: Gosnold Town	
North End Boston	03
County—Suffolk:	
Parts:	

PRIMARY CARE: Massachusetts—Continued

Service area Listing

Service Area name	Degree of shortage group
C.T. 301-302	
C.T. 304-305	
North Lawrence	03
County—Essex:	
Parts:	
C.T. 2501	
C.T. 2503-2507	
C.T. 2509-2514	
Peabody	02
County—Essex:	
Parts:	
C.T. 2106-2109	
Provincetown	03
County—Barnstable	
Parts: Provincetown	
Quincy	02
County—Norfolk:	
Parts	
C.T. 4178	
Roxbury	02
County—Suffolk	
Parts	
C.T. 801-821	
So. Blackstone Valley	03
County:	
Norfolk	
Parts	
Bellingham Town	
Worcester:	
Parts:	
Blackstone Town	
Douglas Town	
Mendon Town	
Millville Town	
Northbridge Town	
Sutton Town	
Uxbridge Town	
South Boston	02
County—Suffolk:	
Parts	
C.T. 605-611	
Taunton	02
County—Bristol	
Parts	
Berkley Town	
Dighton Town	
Raynham Town	
Rehoboth Town	
Taunton City	

PRIMARY CARE: Massachusetts

Population Group Listing

Population group	Degree of shortage group
Chinese Pop (Brighton/Allston)	01
County—Suffolk:	
Parts: C.T. 1-8	
Chinese Pop (South End Boston)	02
County—Suffolk:	
Parts: C.T. 701-712	
Portuguese Pop (Hudson)	01
County—Middlesex	
Portuguese Pop/Somerville	01
County—Middlesex	
Parts: Somerville	
Pov Pop—Brighton/Allston	04
County—Suffolk	
Parts:	
C.T. 1	
C.T. 2.01-2.02	
C.T. 3-5	
C.T. 6.01-6.02	
C.T. 7.01-7.02	
C.T. 8	

PRIMARY CARE: Massachusetts

Facility Listing

Facility	Degree of shortage group
Norfolk—Walpole Correct. Inst.	03
County—Norfolk	

PRIMARY CARE: Michigan

County name	Degree of shortage group
Alcona	02
Allegan:	
Service Area: Allegan	[illegible]
Antrim	
Service Area:	
East Jordan	02
Mancelona	02
Arenac	
Service Area: Sterling	03
Baraga:	
Service Area: L'Anse	01
Bay:	
Service Area: Sterling	03
Cass	
Service Area:	
Dowagiac	03
Three Rivers	04
Charlevoix	
Service Area: East Jordan	02
Chippewa:	
Service Area	
De Tour	02
Kinross/Rudyard	01
Clare	
Service Area	
Harrison	02
Manon	01
Clinton	
Service Area: Laingsburg	02
Drehinson:	
Service Area: Iron River/Crystal Falls	04
Genesee	
Service Area	
North Central Flint	01
Otter Lake	03
Gladwin	
Service Area: Sterling	03
Gogebic:	
Service Area	
Ewen	01
Ironwood/Hurley	03
Hillsdale	03
Houghton:	
Service Area: L'Anse	01
Huron:	
Service Area: Port Austin	02
Iron:	
Service Area: Iron River/Crystal Falls	04
Jackson:	
Facility: State Prison of South Michigan	02
Kalkaska	
Service Area: Mancelona	02
Kent	
Service Area: Northern Kent	02
Population Group: Grand Rapids (Med. Ind.)	01
Keweenaw	02
Lake	
Service Area: Lake/Newaygo	02
Lapeer	
Service Area	
Brown City	03
Marlette-Kingston	02
Otter Lake	03
Leelanau:	
Service Area: Northport/Suttons Bay	03
Mackinac	02
Manistee	
Service Area: Kaleva	02
Marquette:	
Service Area:	
Gwinn	01
Iron River/Crystal Falls	04
Facility: Marquette Branch Prison	02
Menominee	
Service Area: Northern Menominee	02

PRIMARY CARE: Michigan—Continued

County name	Degree of shortage group
Missaukee	
Service Area	
Houghton Lake	01
Manon	01
[illegible]	
Service Area: Sumpter	02
Population Group: Medicaid Eligible—South	
Monroe	01
Montmorency	04
Muskegon	
Service Area: Northern Kent	02
Newaygo:	
Service Area: Lake/Newaygo	02
Ogeman:	
Service Area: Rose City/Lupton	01
Ontanogan:	
Service Area: Ewen	01
Osceola	
Service Area: Manon	01
Ottawa	
Service Area: Northern Kent	[illegible]
Roscommon	
Service Area: Houghton Lake	01
Saginaw	
Service Area: East Side Saginaw	[illegible]
St Clair	
Service Area: Algonac	[illegible]
St Joseph	
Service Area: Three Rivers	[illegible]
Sanilac	
Service Area	
Brown City	[illegible]
Lexington-Croswell	04
Marlette-Kingston	02
Shiawassee	
Service Area	
Laingsburg	[illegible]
Perry/Morrice	[illegible]
Tuscola	
Service Area	
Marlette-Kingston	02
Otter Lake	03
Van Buren	
Service Area: Dowagiac	03
Washtenaw	
Service Area: Sumpter	02
Wayne	
Service Area	
Airport	01
Brooks (W Detroit)	01
Eastside Detroit	[illegible]
Nolan/State Fair (N Detroit)	[illegible]
Sumpter	[illegible]
Tireman/Chadsey (SW Detroit)	[illegible]
Wyoming Ave/Mackenzie (W Detroit)	01

PRIMARY CARE: Michigan

Service Area Listing

Service area name	Degree of shortage group
Airport	01
County—Wayne	
Parts	
C.T. 5045-5048	
C.T. 5101	
C.T. 5107-5110	
Algonac	03
County—St. Clair	
Parts	
Algonac City	
Casco Township	
China Township	
Clay Township	
Columbus Township	
Cotterville Township	
East China Township	
Ida Township	
Marine City	
St. Clair City	
St. Clair Township	
Allegan	[illegible]
County—Allegan	
Parts	

PRIMARY CARE: Michigan—Continued

Service Area Listing

Service area name	Degree of shortage group
Allegan City	
Allegan Twp	
Cheshire Twp	
Clyde Twp	
Hopkins Twp	
Lee Twp	
Martin Twp	
Monterey Twp	
Trowbridge Twp	
Valley Twp	
Watson Twp	
Wayland City	
Wayland Twp	
Brooks (W Detroit)	01
County—Wayne:	
Parts:	
C.T. 5353-5354	
C.T. 5451-5454	
Brown City	
County—Lapeer:	
Parts: Burnside	
County—Sanilac:	
Parts:	
Brown City	
Elk Twp	
Flynn Twp	
Maple Valley Twp	
Speaker Twp	
De Tour	
County—Chippewa:	
Parts:	
De Tour Twp	
De Tour Village	
Drummond Twp	
Raber Twp	
Dowagiac	03
County—Cass:	
Parts:	
Dowagiac City	
Lagrange Twp	
Marcellus Twp	
Newberg Twp	
Penn Twp	
Pokhagen Twp	
Silver Creek Twp	
Volinia Twp	
Wayne Twp	
County—Van Buren:	
Parts:	
Decatur Twp	
Hamilton Twp	
Keeler Twp	
Porter Twp	
East Jordan	
County—Antrim:	
Parts:	
Echo Twp	
Jordan Twp (N ½)	
County—Charlevoix:	
Parts:	
Banks Twp	
East Jordan City	
South Arm Twp	
Wilson Twp (S ½)	
East Side Saginaw	
County—Saginaw:	
Parts:	
C.T. 1-11	
C.T. 110	
Eastside Detroit	
County—Wayne:	
Parts: C.T. 5121-5156	
Ewen	
County—Gogebic:	
Parts:	
Marenisco Twp	
Watersmeet Twp	
County—Ontanogan:	
Parts:	
Bergland Twp	
Haight Twp	
Interior Twp	
Matchwood Twp	
McMillan Twp	
Rockland Twp	
Stannard Twp	
Gwinn	
County—Marquette:	
Parts:	
Ewing	
Forsyth Twp	
Turin Twp	
Wells Twp	
Harrison	01
County—Clare:	
Parts:	
Arthur Township	
City of Harrison	
Franklin Township	
Freeman Township	
Frost Township	
Greenwood Township	
Hamilton Township	
Hatton Township	
Hayes Township	
Lincoln Township	
Summerfield Township	
Houghton Lake	01
County—Missaukee:	
Parts:	
Butterfield Township	
Enterprise Township	
Holland Township	
County—Roscommon:	
Parts:	
Denton Township	
Lake Township	
Markey Township	
Roscommon Township	
Iron River/Crystal Falls	04
County—Dickinson:	
Parts: Sagola Twp	
County:	
Iron	
Marquette	
Parts: Republic Drv	
Ironwood/Hurley	03
County—Gogebic:	
Parts:	
Bessemer City	
Bessemer Twp	
Erwin Twp	
Ironwood City	
Ironwood Twp	
Wakefield City	
Wakefield Twp	
Kaleva	
County—Manistee:	
Parts:	
Dickson Twp	
Maple Grove Twp	
Manila Twp	02
Norman Twp	
Springdale Twp	
Kinross/Rudyard	
County—Chippewa:	
Parts:	
Bay Mills Twp	
Chippewa	
Hulbert Twp	
Kinoss Twp	
Rudyard Twp	
Superior Twp	02
Trout Lake Twp	
Whitefish Twp	
L'Anse	
County:	
Baraga	03
Houghton	
Parts: Laird Twp	
Laingsburg	01
County—Clinton:	
Parts: Victor Twp	
County—Shiawassee:	
Parts: Sciota Twp	
Lake/Newaygo	
County—Lake:	
Parts.	
Chase Twp	
Cherry Valley Twp	
Dover Twp	
Eden Twp	
Elk Twp	
Ellsworth Twp	
Lake Twp	01
Newkirk Twp	
Peacock Twp	
Pinora Twp	
Pleasant Plains Twp	
Sauble Twp	
Sweetwater Twp	
Webber Twp	
Yates Twp	
County—Newaygo:	
Parts:	
Beaver Twp	
Home Twp	
Lilly Twp	
Merrill Twp	
Monroe Twp	
Troy Twp	
Lexington-Croswell	04
County—Sanilac:	
Parts	
Croswell City	
Fremont Twp	
Lexington	
Worth Twp	
Mancelona	02
County—Antrim:	
Parts:	
Chestonia Twp	
Custer Twp	
Helena Twp	
Jordan Twp (Part)	
Kearney Twp	
Mancelona Twp	
Star Twp	
County—Kalkaska:	
Parts:	
Blue Lake Twp	
Cold Springs Twp	
Rapid River Twp	
Marion	01
County—Clare:	
Parts:	
Redding Twp	
Winterfield Twp	
County—Missaukee:	
Parts:	
Clam Union Twp	
Riverside Twp	
County—Osceola:	02
Parts:	
Hartwick Twp	
Highland Twp	
Marion Twp	
Middle Branch Twp	
Marlette-Kingston	02
County—Lapeer:	
Parts: Burlington Twp (N ½)	01
County—Sanilac:	
Parts:	
La Motte Township	
Marlette Township	
County—Tuscola:	
Parts:	
Dayton Township	
Freemont Twp (E ½)	
Kingston Township	
Koylton Township	
Nolan/State Fair (N Detroit)	01
County—Wayne:	
Parts: C.T. 5071-5080	
North Central Flint	01
County—Genesee:	
Parts.	
C.T. 4-7	02
C.T. 19-26	
Northern Kent	02
County—Kent:	
Parts:	
Algoma Twp	
Cedar Springs City	
Nelson Twp	
Salon Twp	
Sparta Twp	
Tyrone Twp	
County—Muskegon:	
Parts: Casnovia Twp	
County—Ottawa:	
Parts: Chester Twp	
Northern Menominee	02

PRIMARY CARE: Michigan—Continued

Service Area Listing

Service area name	Degree of shortage group
County—Menominee	
Parts:	
Cedarville Twp	
Daggett Twp	
Fairhorn Twp	
Gourley Twp	
Harris Twp	
Holmes Twp	
Lake Twp	
Meyer Twp	
Nadeau Twp	
Spalding Twp	
Stevenson City	
Stevenson Twp	
Northport/Suttons Bay	03
County—Leelanau:	
Parts:	
Centerville Twp	
Cleveland Twp	
Leelanau Twp	
Leeland Twp	
Suttons Bay Twp	
Otter Lake	03
County—Genesee:	
Parts: Forest Township	
County—Lapeer	
Parts:	
Deerfield Township	
Marathon Township	
Rich Township	
County—Tuscola	
Parts	
Arbela Township	
Millington Township	
Watertown Township	
Perry/Morrice	02
County—Shiawassee	
Parts:	
Antrim Township	
Burns Township	
Perry City	
Perry Township	
Port Austin	
County—Huron	
Parts:	
Dwight Twp	
Gore Twp	
Hume Twp	
Huron Twp	
Lake Twp	
Port Austin Twp	
Pte. Au Barques Twp	
Rose City/Lupton	
County—Ogemaw:	
Parts:	
Cumming Twp	
Goodar Twp	
Hill Twp	
Rose City	
Rose Twp	
Sterling	
County:	
Arenac	
Bay	
Parts: Gibson Township	
County—Gladwin:	
Parts:	
Bourret Township	
Grim Township	
Sumpter	
County—Monroe:	
Parts:	
C.T. 303 (Ash Twp)	
C.T. 305 (Exeter Twp)	
C.T. 306 (London Twp)	
County—Washtenaw:	
Parts: C.T. 34 (Augusta Twp)	
County—Wayne:	
Parts:	
C.T. 940 (Sumpter Twp)	
C.T. 941 (Huron Twp)	
Three Rivers	
County—Cass:	
Parts: Porter Twp	
County—St. Joseph:	
Parts:	
Constantine Twp	
Fabius Twp	

PRIMARY CARE: Michigan—Continued

Service Area Listing

Service area name	Degree of shortage group
Florence Twp	
Flowerfield Twp	
Leonidas Twp	
Lockport Twp	
Mendon Twp	
Nottawa Twp	
Park Twp	
Three Rivers City	
Tireman/Chadsey (SW Detroit)	02
County—Wayne:	
Parts:	
C.T. 5251-5260	
C.T. 5262-5264	
C.T. 5335-5337	
C.T. 5345-5346	
C.T. 5665-5666	
Wyoming Ave/Mackenzie (W Detroit)	01
County—Wayne:	
Parts:	
C.T. 5342-5343	
C.T. 5352	
C.T. 5364	
C.T. 5366-5367	
C.T. 5370-5374	

PRIMARY CARE: Michigan

Population Group Listing

Population group	Degree of shortage group
Grand Rapids (Med. Ind.)	01
County—Kent:	
Parts: Grand Rapids City	
Medicaid Eligible—South Monroe	01
County—Monroe:	
Parts:	
Bedford	
Erie	
[illegible]	
La Salle	
Summerfield	
Whiteford	

PRIMARY CARE: Michigan

Facility Listing

Facility	Degree of shortage group
Marquette Branch Prison	02
County—Marquette	
State Prison of South Michigan	02
County—Jackson	

PRIMARY CARE: Minnesota

County name	Degree of shortage group
Artkin	
Service Area:	
Floodwood	02
Mille Lacs	[illegible]
Moose Lake	[illegible]
Sandstone/Hinckley	[illegible]
Beltrami:	
Service Area: Baudette	[illegible]
Blue Earth:	
Service Area: Wells	01
Calton:	
Service Area: Moose Lake	[illegible]
Cass	[illegible]
Clay:	
Service Area: Barnesville	[illegible]

PRIMARY CARE: Minnesota—Continued

County name	Degree of shortage group
Cook	
Service Area: Silver Bay	[illegible]
Crow Wing	
Service Area: Mille Lacs	[illegible]
Faribault	
Service Area: Wells	01
Grant	02
Hennepin	
Service Area: Near North—Minneapolis	03
Population Group: Am. Ind. in Minneapolis	01
Itasca	
Service Area	
Bigfork	01
Floodwood	02
Kanabec	
Service Area	
Mille Lacs	04
Sandstone/Hinckley	04
Koochiching:	
Service Area: Baudette	04
Lac Qui Parle	02
Lake	
Service Area: Silver Bay	02
Lake of the Woods	
Service Area	
Baudette	04
Warroad	01
Lincoln	
Service Area: Tyler/Lake Benton	01
Lyon:	
Service Area: Tyler/Lake Benton	01
Mahnomen	03
Marshall:	
Service Area: Warren	03
[illegible] Lacs	
Service Area: Mille Lacs	04
Morrison:	
Service Area: Mille Lacs	04
Murray	04
Norman	04
Pine	
Service Area	
Moose Lake	03
Sandstone/Hinckley	04
Pipestone:	
Service Area: Tyler/Lake Benton	01
Polk:	
Service Area:	
Fosston	04
Warren	03
Ramsey:	
Service Area: Summit/Dale	01
Red Lake	03
Roseau	
Service Area:	
Roseau	03
Warroad	01
St. Louis	
Service Area	
Cook/Orr	04
Floodwood	02
Sibley	04
Wabasha	
Service Area: Plainview	01
Waseca	
Service Area: Wells	01
[illegible]	
Service Area: Barnesville	02
[illegible]	
Service Area: Plainview	01

PRIMARY CARE: Minnesota

Service area name	Degree of shortage group
Barnesville	02
County:	
Clay:	
Parts:	
Alliance Twp	
Barnesville City	
Barnesville Township	
Comstock City	
Elkton Township	
Holy Cross Township	

PRIMARY CARE: Minnesota—Continued

Service area name	Degree of shortage
Humboldt Township	
Parke Township	
Skree Township	
Tansem Township	
Wilkin:	
Parts:	
Atherton Township	
Dearhorn Township	
Manston Township	
Mitchell Township	
Prairie View Township	
Rothsay City	
Tanberg Township	
Wolverton Township	
Baudette	04
County:	
Beltrami:	
Parts:	
Shotley Brook Unorg	
Shotley Twp	
Upper Red Lake Unorg. (N ½)	
Washkish Twp.	
Koochiching:	
Parts: Northwest Koochiching Unorg (W ⅓)	
Lake of the Woods	
Parts:	
Baudette City	
Beltrami Forest Unorg. (E ⅗)	
Rainy River Unorg. (E ¾)	
Williams City	
Bigfork	01
County—Itasca:	
Parts:	
Balsam Twp	
Bearville Twp	
Bigfork Twp	
Bigfork Village	
Bowstring Twp	
Carpenter Twp	
Effie Village	
Good Hope Twp	
Grattan Twn	
Kinghurst Twp	
Lake Jessie Twp	
Liberty Twp	
Marcell Twp	
Max Twp	
Pomroy Twp	
Sand Lake Twp	
Squaw Lake Village	
Stokes Twp	
Unorg. Terr. N.E. Itasca	
Wirt Twp	
Cook/Orr	04
County—St. Louis:	
Parts:	
Alango Twp	
Angora Twp	
Beatty Twp	
Cook City	
Field Twp	
Lake:	
Lake Vermillian Unorg.	
Leiding Twp	
Linden Grove Twp	
Morcom Twp	
N.E. St. Louis Unorg (W ½)	
N.W. St. Louis Unorg	
Nett Lake Unorg	
Orr City	
Owens Twp	
Portage Twp	
Sturgeon Twp	
Willow Valley Twp	
Floodwood	02
County:	
Aitkin:	
Parts:	
Ball Bluff Twp	
Balsam Twp	
Cornish Twp	
Turner Twp	
Unorg. Terr. (Ne Aitkin)	
Itasca:	
Parts: Wawina Twp	
St. Louis:	
Parts:	
Arrowhead Twp	
Cedar Valley Twp	
Cotton Twp	
Fine Lakes Twp	
Floodwood City	
Floodwood Twp	
Halden Twp	
Kelsey Twp	
Meadowlands City	
Meadowlands Twp	
Ness Twp	
Northland Twp	
Payne Twp	
Praine View Twp	
Tiovola Twp	
Unorg. Terr. (Pot Shot Lake)	
Van Buren Twp	
Fosston	04
County—Polk:	
Parts:	
Badger Township	
Brandsvold Twp	
Chester Twp	
Columbia Twp	
Eden Twp	
Erskine City	
Fosston City	
Garden Township	
Gully City	
Gully Twp	
Hill River Twp	
Johnson Twp	
King Twp	
Knute Twp	
Lengby City	
Lessor Twp	
McIntosh City	
Queen Twp	
Rosebud Twp	
Slaten Twp	
Trail City	
Winger City	
Winger Twp	
Woodside Twp	
Mille Lacs	04
County:	
Aitkin:	
Parts:	
Hazelton Twp	
Idum Twp	
Jewett Twp	
Lakeside Twp	
Malmo Twp	
McGrath City	
Seavy Twp	
Wealthwood Twp	
Williams Twp	
Crow Wing:	
Parts	
Garrison City	
Garrison Twp	
Roosevelt Twp	
Kanabec:	
Parts:	
Ford	
Hay Brook Twp	
Hillman Twp.	
Mille Lacs:	
Parts:	
Bradbury Twp	
Dailey Twp	
East Side Twp	
Isle City	
Isle Harbor Twp	
Kathio Twp	
Lewis Twp	
Mudgett Twp	
Onamia City	
Onamia Twp	
South Harbor Twp	
Wahkon Twp	
Morrison:	
Parts:	
Hillman City	
Leigh Twp	
Mount Morris Twp	
Richardson Twp	
Moose Lake	04
County:	
Aitkin:	
Parts:	
Beaver Twp	
Clark Twp	
Salo Twp	
Tamarack Village	
Carlton:	
Parts:	
Automba Twp	
Barnum City	
Barnum Twp	
Blackhoof Twp (S ½)	
Cromevell City	
Holyoke Twp	
Kalevia Twp	
Kettle River City	
Lakeview Twp	
Mahtowa Twp	
Moose Lake City	
Moose Lake Twp	
Silver Twp	
Skelton Twp	
Split Rock Twp	
Unorg. Terr. Clear Lake	
Unorg. Terr. N.E. Carlton (S ⅛)	
Wright City	
Pine:	
Parts:	
Birch Creek Twp	
Denham City	
Ferrick Twp	
Kerrick City	
Nickerson Twp	
Sturgeon Lake Twp	
Willow River City	
Near North—Minneapolis	03
County—Hennepin:	
Parts:	
C.T. 13–16	
C.T. 20–23	
C.T. 27–29	
C.T. 32–35	
C.T. 41–42	
Plainview	01
County:	
Wabasha:	
Parts:	
Elgin City	
Elgin Twp	
Highland Twp	
Millville Twp	
Oakwood Twp	
Plainview City	
Plainview Twp	
Watopa Twp	
Winona:	
Parts:	
Whitewater Twp	
Roseau	03
County—Roseau:	
Parts:	
Blooming Valley Twp	
Dieter Twp	
Gnamstad Twp	
Jadis Twp	
Malung Twp	
Mickinock Twp	
Moose Twp	
Nereson Twp	
Pohlitz Twp	
Roseau City	
Ross Twp	
Soler Twp	
Spruce Twp	
Stafford Twp	
Stokes Twp	
Unorg Terr of N. Roseau	
Unorg Terr of N.W. Roseau	
Unorg Terr of S.E. Roseau	
Sandstone Hinckley	04
County:	
Aitkin:	
Parts: Wagner Twp	
Hennepin:	
Parts:	
Kroschel Twp	
Pomroy Twp	
Pine:	
Parts:	
Arlone Twp	
Arna Twp	

PRIMARY CARE: Minnesota—Continued

Service area name	Degree of shortage group
Askov City	
Barry Twp	
Bremen Twp	
Bruno Twp	
Danforth Twp	
Dell Grove Twp	
Finlayson City	
Finlayson Twp	
Fleming Twp	
Glover Twp	
Hinckley City	
Hinckley Twp	
Kettle River Twp	
New Dorsey Twp	
Norman Twp	
Ogema Twp	
Park Twp	
Partridge Twp	
Pine Lake Twp	
Sandstone City	
Sandstone Twp	
Wilma City	
Silver Bay	
County:	
Cook:	
Parts:	
Schroeder Twp	
Tofte Twp	
Lake:	
Parts:	
Beaver Bay City	
Beaver Bay Twp (Part)	
Crystal Bay Twp	
Silver Bay City	
Silver Creek Twp	
Summit/Dale	01
County—Ramsey:	
Parts	
C.T. 326–327	
C.T. 335–340	
C.T. 354–355	
Tyler/Lake Benton	01
County:	
Lincoln:	
Parts	
Arco City	
Diamond Lake Twp	
Hope Twp	
Lake Benton City	
Lake Benton Twp	
Lake Stay Twp	
Marshfield Twp	
Tyler City	
Lyon:	
Parts:	
Coon Creek Twp	
Florence City	
Shelburne Twp	
Pipestone:	
Parts:	
Aetna Twp	
Fountain Prairie Twp	
Ruthton City	
Warren	03
County:	
Marshall:	
Parts:	
Alma Twp	
Alvarado City	
Argyle City	
Big Woods Twp	
Bloomer Twp	
Boxville	
Comstock Twp	
Foldahl Twp	
McCrea Twp	
Middle River Twp	
Oak Park Twp	
Oslo City	
Parker Twp	
Sinnott Twp	
Stephen City	
Tamarac Twp	
Vega Twp	
Wanger Twp	
Warren City	
Warrenton Twp	
Polk	
Parts:	
Angus	
Bristlet	
Farley	
Warroad	01
County:	
Lake of the Woods:	
Parts:	
Beltrami Forest Unorg. (W ½)	
Northwest Angle Unorg	
Rainy River Unorg (W ¼)	
[illegible]	
Parts:	
Beaver Twp	
Cedar Bend Twp	
Enstrom Twp	
Falun Twp	
Lake Twp	
Laona Twp	
Moranville Twp	
Reine Twp	
Roosevelt City	
Southeast Roseau Unorg.	
Warroad City	
Wells	01
County:	
[illegible]	
Parts:	
Danville Twp	
[illegible]	
Parts:	
Bricelyn City	
Brush Creek Twp	
Clark Twp	
Dunbar Twp	
Easton City	
Foster Twp	
Kiester City	
Kiester Twp	
Lura Twp	
Minnesota Lake City	
Minnesota Lake Twp	
Seely Twp	
Walnut Lake Twp	
Walters City	
Wells City	
Waseca:	
Parts:	
Vivian Twp	
Waldorf City	

PRIMARY CARE: Minnesota

Population Group Listing

Population group	Degree of shortage group
Am Ind. in Minneapolis	01
County—Hennepin	
Parts: Am. Ind. Pop. In Minneapolis	

PRIMARY CARE: Mississippi

County name	Degree of shortage group
Amite	01
[illegible]	[illegible]
Benton	01
Bolivar	02
Calhoun	[illegible]
Carroll	01
Claiborne	[illegible]
Clarke	[illegible]
Clay	[illegible]
Coahoma	[illegible]
Copiah	[illegible]
Covington	[illegible]
De Soto:	
Service Area: De Soto/Tate	[illegible]
Greene	[illegible]
Grenada:	
Service Area: Grenada/Yalobusha	03
Hancock	01
Harrison:	
Population Group: Medically Indigent Pop	01
Hinds	
Service Area:	
Jackson Inner-City	01
South West Rural Hinds	01
Holmes	02
Humphreys	02
Issaquena:	
Service Area: Issaquena/Sharkey	01
Itawamba	01
Jackson	
Service Area: Wade-Hurley	01
Jasper	03
Jefferson	03
Jefferson Davis	02
Jones:	
Population Group: Pov. Pop.	01
Kemper	02
Lafayette	03
Lamar	01
Lauderdale:	
Population Group: Pov. Pop.	04
Lawrence	03
Leake	03
Madison	03
Marion	02
Marshall	03
Montgomery	04
Neshoba	04
Noxubee	04
Perry	03
Pontotoc	03
Quitman	02
Scott	03
Sharkey:	
Service Area: Issaquena/Sharkey	01
Simpson	04
Smith	04
Stone	04
[illegible]	
Facility: Mississippi State Penitentiary	02
Tallahatchie	01
Tate:	
Service Area: De Soto/Tate	03
Warren:	
Population Group: Pov. Pop	02
Wayne	04
Webster	01
Winston	04
Yalobusha	
Service Area: Grenada/Yalobusha	03
Yazoo	02

PRIMARY CARE: Mississippi

Service Area Listing

Service area name	Degree of shortage group
De Soto/Tate	03
County:	
De Soto	
Tate	
Grenada/Yalobusha	03
County:	
Grenada	
Yalobusha	
Issaquena/Sharkey	01
County:	
Issaquena	
Sharkey	
Jackson Inner-City	01
County—Hinds:	
Parts:	
C.T. 5–12	
C.T. 16–21	
C.T. 24–32	
C.T. 102.01	
C.T. 102.03	
C.T. 103.01	
South West Rural Hinds	01

PRIMARY CARE: Mississippi—Continued

Service Area Listing

Service area name	Degree of shortage group
County—Hinds:	
Parts:	
C.T. 105–107	
C.T. 112–113	
Wade-Hurley	01
County—Jackson:	
Parts: C.T. 401–402	

PRIMARY CARE: Mississippi

Population Group Listing

Population group	Degree of shortage group
Medically Indigent Pop..	01
County—Harrison	
Pov. Pop.	01
County—Jones	
Pov. Pop.	
County—Lauderdale	
Pov. Pop.	
County—Warren	

PRIMARY CARE: Mississippi

Facility Listing

Facility	Degree of shortage group
Mississippi State Penitentiary	
County—Sunflower	

PRIMARY CARE: Missouri

County name	Degree of shortage group
Andrew	
Service Area: Lincoln	02
Bollinger	01
Caldwell	
Callaway	
Facility: Renz Correction Center	02
Carter	01
Clark	02
Cole:	
Facility:	
Algoa Correctional Center	02
Central Missouri Corr. Ctr	02
Missouri State Penitentiary	02
Crawford	
Dade	04
Dallas	02
Daviess	
De Kalb	02
Douglas	01
Franklin	
Facility: Missouri Eastern Corr. Ctr	02
Gasconade:	
Service Area: Southern Gasconade	02
Hickory	01
Holt	04
Jackson:	
Service Area: Richard Cabot	
Population Group: Poverty Pop. Central K.C..	01
Jefferson:	
Service Area: Hillsboro	02
Johnson	04
Laclede	03
Lewis	02
McDonald	04
Maries	02
Mercer	01
Miller	03

PRIMARY CARE: Missouri—Continued

County name	Degree of shortage group
Monroe	03
Montgomery	03
New Madrid	01
Nodaway	04
Oregon	
Ozark	01
Pemiscot:	
Service Area: Steele	01
Pulaski	02
Putnam	01
Ralls	01
Randolph:	
Facility: Missouri Training Ctr. For Men	02
Reynolds	01
Ripley	02
St. Clair	04
St. Louis:	
Population Group:	
Kinlock/Berkeley Pov. Pop.	01
Poverty Pop. of West St. Louis	01
Shannon	01
Shelby	
Stone	02
Texas	02
Warren	03
Washington	01
Wayne	
Webster	
Worth	
St. Louis City:	
Service Area:	
East Central St. Louis	02
Grace Hill/Cochran	01
Southeast St. Louis	02
Population Group:	
Poverty Pop. of North St. Louis	
Poverty Pop. of West St. Louis	01
Poverty Pop. of Yeatman/Union-Sarah	01

PRIMARY CARE: Missouri

Service Area Listing

Service area name	Degree of shortage group
East Central St. Louis	
County—St. Louis City:	
Parts:	
C.T. 1161–1165	
C.T. 1171–1174	
C.T. 1181	
C.T. 1221–1222	
C.T. 1224	
C.T. 1231–1235	
C.T. 1241–1246	
C.T. 1255–1256	
Grace Hill/Cochran	01
County—St Louis City:	
Parts:	
C.T. 1097	
C.T. 1202–1203	
C.T. 1213–1214	
C.T. 1257	
C.T. 1266–1267	
Hillsboro	02
County—Jefferson:	
Parts:	
Big River	
Central	
Plattin	
Rose	
Lincoln	
County—Benton:	
Parts:	
Cole Twp	
White twp	
William Twp	
Richard Cabot	02
County—Jackson:	
Parts.	
C.T. 1–4	
C.T. 6–20	
C.T. 22–27	
C.T. 28.01–28.02	
C.T. 29–34	

PRIMARY CARE: Missouri—Continued

Service Area Listing

Service area name	Degree of shortage group
C.T. 35.01–35.02	
C.T. 36.01–36.02	
C.T. 37–45	
C.T. 50.01	
Southeast St. Louis	02
County—St. Louis City:	
Parts:	
C.T. 1011–1015	
C.T. 1018	
C.T. 1153–1157	
Southern Gasconade	02
County—Gasconade:	
Parts:	
Boeuf Twp	
Boulware Twp	
Bourbois Twp	
Brush Creek Twp	
Canaan Twp	
Clay Twp	
Third Creek Twp	
	01
County—Pemiscot:	
Parts:	
Cooter Twp	
Holland Twp	
Pemiscot Twp	
Virginia Twp	

PRIMARY CARE: Missouri

Population Group Listing

Population group	Degree of shortage group
Kinlock/Berkeley Pov. Pop	01
County—St. Louis:	
Parts:	
C.T 2127–2129	
Poverty Pop. of North St. Louis	02
County—St. Louis City:	
Parts:	
C.T 1061–1067	
C.T 1071–1075	
C.T. 2139–2140	
Poverty Pop. of West St. Louis	01
County—St. Louis:	
Parts:	
C.T 2159–2164	
County—St. Louis City:	
Parts:	
C.T. 1051–1055	
C.T 1121	
Poverty Pop. of Yeatman/Union-Sarah	01
County—St. Louis City:	
Parts:	
C.T. 1101–1105	
C.T 1111–1115	
C.T. 1122–1124	
C.T. 1184	
C.T. 1186	
C.T. 1191–1193	
C.T 1201	
C.T 1211–1212	
Poverty Pop. Central K.C	01
County—Jackson:	
Parts:	
C.T 49–55	
C.T 56.01–56.02	
C.T 57	
C.T 58.01–58.02	
C.T 59.02	
C.T 60–67	
C.T 74–81	
C.T 83	
C.T 87–97	
C.T. 104.01	

PRIMARY CARE: Missouri

Facility Listing

Facility	Degree of shortage group
Algoa Correctional Center	02
County—Cole	
Central Missouri Corr. Ctr	02
County—Cole	
Missouri Eastern Corr. Ctr	02
County—Franklin	
Missouri State Penitentiary	02
County—Cole	
Missouri Training Ctr. for Men	02
County—Randolph	
Renz Correction Center	02
County—Callaway	

PRIMARY CARE: Montana

County name	Degree of shortage group
Big Horn	01
Blaine	03
Chouteau	
Service Area: Fort Benton	03
Daniels	03
Gallatin:	
Service Area: Ennis/W. Yellowstone	02
Garfield	01
Glacier	01
Golden:	
Valley Service Area: Harlowton	02
Jefferson:	
Service Area: Boulder	01
Judith Basin	01
Lewis & Clark:	
Service Area: Lincoln	01
Madison:	
Service Area: Ennis/W. Yellowstone	02
Meagher	01
Petroleum	01
Phillips	02
Powder River	04
Powell	
Service Area: Lincoln	01
Prairie	01
Roosevelt	
Service Area: Poplar/Wolf Point	01
Rosebud:	
Service Area: Forsyth-Colstrip	01
Sheridan	01
Sweet Grass	01
Toole	
Service Area: Shelby	04
Treasure:	
Service Area: Forsyth-Colstrip	01
Wheatland:	
Service Area: Harlowton	02
Wibaux	01

PRIMARY CARE: Montana

Service Area Listing

Service area name	Degree of shortage group
Boulder	01
County—Jefferson:	
Parts. Boulder Div.	
Ennis/W. Yellowstone	02
County—Gallatin:	
Parts. West Yellowstone	
County—Madison:	
Parts	
Harrison Div	
Madison Valley Div.	
Virginia City Div.	
Forsyth-Colstrip	01
County:	
Rosebud	
Treasure	
Fort Benton	03
County—Chouteau:	
Parts:	
Fort Benton Div	
Geraldine Div.	
Harlowton	02
County:	
Golden Valley	
Wheatland	
Lincoln	01
County—Lewis & Clark:	
Parts: Lincoln Div.	
County—Powell:	
Parts: Helmville Div.	
Poplar/Wolf Point	01
County—Roosevelt:	
Parts: Ft. Peck Reservation Div.	
Shelby	04
County—Toole:	
Parts:	
S. Toole Div. (West 2/3)	
Shelby Div.	

PRIMARY CARE: Nebraska

County name	Degree of shortage group
Boone:	
Service Area: Albion	01
Burt:	
Service Area: Onawa (Iowa/Neb)	03
Butler	04
Cass	04
Cedar:	
Service Area: Cedar-Dixon	02
Chase	03
Cherry:	
Service Area: Mullen	04
Clay	04
Custer:	
Service Area: Arnold	04
Dawson:	
Service Area: Crawford	04
Dixon:	
Service Area: Julesburg	02
Dixon:	
Service Area: Cedar-Dixon	02
Douglas:	
Service Area: Northeast Omaha	01
Facility: St. Joseph Hospital	01
Fillmore	04
Franklin	02
Grant:	
Service Area: Mullen	04
Greeley:	
Service Area: Albion	01
Service Area: Howard/St. Paul	03
Hayes:	
Service Area: Hayes-Hitchcock	01
Hitchcock:	
Service Area: Hayes-Hitchcock	01
Hooker:	
Service Area: Mullen	04
Howard:	
Service Area: Howard/St. Paul	03
Johnson	04
Lancaster:	
Facility: State Correctional Facilities	02
Lincoln:	
Service Area: Arnold	04
Logan:	
Service Area: Arnold	04
Platte:	
Service Area: Albion	01
Saunders	02
Sioux:	
Service Area: Crawford	04
Stanton	01
Thayer	02
Thomas:	
Service Area: Mullen	04
Thurston:	
Population Group: Winnebago Indian Population	01

Primary Care: Nebraska

Service Area Listing

Service area name	Degree of shortage group
Albion	01
County:	
Boone	
Greeley	
Parts: Spalding Precincts #1-2	
County—Platte:	
Parts:	
St. Bernard	
Wallace	
Arnold	04
County—Custer:	
Parts:	
Arnold	
Ord	
Owego	
Elm	
Grant	
Hayes	
Triumph	
Wayne	
County—Lincoln	
Parts	
Antelope	
Garfield	
County—Logan	
Parts	
Gandy	
Logan	
Cedar-Dixon	02
County:	
Cedar	
Dixon	
Crawford	04
County—Dawes	
Parts:	
Leonard	
North Crawford	
South Crawford	
Whitney	
County—Sioux:	
Parts	
Bordeaux	
Box Creek	
Warbonnet	
Whistler Creek	
Hayes-Hitchcock	01
County:	
Hayes	
Hitchcock	
Howard/St. Paul	03
County—Greeley	
Parts	
Greeley Prec.	
Scotia #1 Prec	
Wolbach Prec	
County—Howard	
Julesburg	02
County—Deuel	
Mullen	04
County—Cherry	
Parts	
Cody Creek	
Goose Creek	
King	
Lackey	
Loup	
Mother Lake	
Wells	
County:	
Grant	
Hooker	
Thomas	
Northeast Omaha	01
County—Douglas	
Parts	
C.T. 6-7	
C.T. 9-12	
C.T. 13.01-13.02	
C.T. 14-15	
C.T. 52	
C.T. 60	
Onawa (Iowa/Neb)	03
County—Burt:	
Parts	
Decatur Twp	
Quinnebaugh Twp	
Riverside Twp	

Primary Care: Nebraska—Continued

Service Area Listing

Service area name	Degree of shortage group
Silver Creek Twp	

PRIMARY CARE: Nebraska

Population Group Listing

Population group	Degree of shortage
Winnebago Indian Population..	01
County—Thurston	

PRIMARY CARE: Nebraska

Facility Listing

Facility	Degree of shortage group
St Joseph Hospital	01
County—Douglas:	
State Correctional Facilities	02
County—Lancaster:	
Parts:	
Diagnostic & Evaluation Center	
Lincoln Correctional Center	
Nebraska State Penitentiary	

PRIMARY CARE: Nevada

County name	Degree of shortage group
Clark:	
Service Area:	
Blue Diamond	01
Cent./N. Cent. Las Vegas	01
Indian Springs	01
Jean-Goodspring	01
Moapa Valley	01
Searchlight/Davis Dam	01
Virgin Valley	01
Facility: Nev. St. Corr. Fac. (South)	02
Douglas:	
Population Group: Washoe Indian Reservation	01
Elko:	
Service Area: Wendover (Utah/Nevada)	01
Esmeralda	01
Eureka	01
Humboldt	01
Lander	01
Lincoln	01
Lyon:	
Service Area: Fernley/Silver Springs/Longshot	01
Mineral	02
Nye:	
Service Area:	
Beatty	01
Pahrump	01
Tonopah	01
Storey	01
Washoe:	
Service Area:	
Gerlach	01
Wadsworth	01
White Pine:	
Service Area: Wendover (Utah/Nevada)	01
Carson City:	
Population Group: Washoe Indian Reservation	01
Facility: Nev. St. Corr. Fac. (North)	01

PRIMARY CARE: Nevada

Service Area Listing

Service area name	Degree of shortage group
Beatty	01
County—Nye:	
Parts: Beatty Twp.	
Blue Diamond	01
County—Clark:	
Parts: C.T. 58 (Central)	
Cent./N. Cent. Las Vegas	01
County—Clark:	
Parts:	
C.T. 3.01-3.02	
C.T. 7	
C.T. 9	
C.T. 11	
C.T. 35-38	
C.T. 46	
Fernley/Silver Springs/Longshot	02
County—Lyon:	
Parts:	
Canal Div.	
Dayton Div. (N. Pt.)	
Gerlach	01
County—Washoe:	
Parts: Gerlach Twp. (C.T. 34)	
Indian Springs	01
County—Clark	
Parts:	
C.T. 58 (North)	
C.T. 59 (Southwest)	
Jean-Goodspring	01
County—Clark	
Parts: Goodsprings Div.	
Moapa Valley	01
County—Clark	
Parts: C.T. 56 (Cent./W. Cent.)	
Pahrump	01
County—Nye	
Parts: Pahrump Twp.	
Searchlight/Davis Dam	01
County—Clark	
Parts: Searchlight Div.	
Tonopah	01
County—Nye	
Parts: Tonopah Twp.	
Virgin Valley	01
County—Clark	
Parts: C.T. 56 (North)	
Wadsworth	01
County—Washoe	
Parts: Wadsworth Twp. (C.T. 31)	
Wendover (Utah/Nevada)	01
County:	
Elko	
Parts:	
East Line Twp.	
Tecoma Twp.	
White Pine	
Parts: Ely Twp. (E. Pt)	

PRIMARY CARE: Nevada

Population Group Listing

Population group	Degree of shortage group
Washoe Indian Reservation	01
County:	
Douglas	
Carson City	

PRIMARY CARE: Nevada

Facility Listing

Facility	Degree of shortage
Nev. St. Corr. Fac. (South)	02
County—Clark:	
Parts:	
S. Desert Corr. Ctr.	

PRIMARY CARE: Nevada—Continued

Facility Listing

Facility	Degree of shortage group
S. Nev. Corr. Ctr.	
Nev. St. Corr. Fac. (North)	01
County—Carson City:	
Parts:	
N. Nev. Med. Security Prison	
Nev. Max. Security Prison	
Nev. Women's Corr. Ctr.	

PRIMARY CARE: New Hampshire

County name	Degree of shortage group
Coos:	
Service Area: Upper Connecticut Valley	04
Grafton:	
Service Area: Baker River Valley	01
Hillsboro:	
Service Area:	
Hillsborough	02
Witton/Milford	03
Merrimack:	
Service Area: Hillsborough	02
Rockingham:	
Service Area: North West Rockingham County	02
Sullivan:	
Service Area: Hillsborough	02

PRIMARY CARE: New Hampshire

Service Area Listing

Service area name	Degree of shortage group
Baker River Valley	01
County—Grafton:	
Parts:	
Rumney Twn	
Warren Twn	
Wentworth Twn	
Hillsborough	02
County—Hillsboro	
Parts:	
Deering Twn	
Hillsborough Twn	
Weare Twn (Western Part)	
Windsor Twn	
County—Merrimack:	
Parts: Henniker Twn	
County—Sullivan:	
Parts: Washington Twn	
North West Rockingham County	02
County—Rockingham:	
Parts:	
Deerfield	
Epping	
Fremont	
Nottingham Town	
Raymond	
Upper Connecticut Valley	04
County—Coos:	
Parts:	
Atkinson-Gilman Academy Grant	
Canaan	
Colebrook Twn	
Columbia Twn	
Dixs Grant	
Dixville Twn	
Errol Twn	
Millsfield	
Odell Twn	
Pittsburg Twn	
Second College Grant	
Stewartown Twn	
Stratford Twn	
Wentsworth Location	
Witton/Milford	03
County—Hillsboro:	
Parts:	
Amherst Twp (W ½)	

PRIMARY CARE: New Hampshire—Continued

Service Area Listing

Service area name	Degree of shortage
Lyndeborough Twn	
Milford Twp	
Mt. Vernon Twp	
Wilton Twp	

PRIMARY CARE: New Jersey

County name	Degree of shortage
Atlantic	
Service Area: Atlantic City	02
Camden.	
Service Area: Camden City	02
Cape May:	
Service Area: Lower Cape May	03
Cumberland:	
Service Area: Bridgeton	04
Facility: Leesburg State Prison	02
Essex.	
Service Area:	
Central Newark	01
North Newark	03
South Newark	01
Mercer	
Population Group: Low Income Pop. of Trenton	02
Passaic.	
Service Area: Northside—Peterson	01
Sussex:	
Service Area: South Sussex	04

PRIMARY CARE: New Jersey

Service Area Listing

Service area name	Degree of shortage group
Atlantic City	02
County—Atlantic:	
Parts: Atlantic City	
Bridgeton	04
County—Cumberland:	
Parts: Bridgeton Township	
Camden City	02
County—Camden	
Parts: C.T. 6001-6020	
Central Newark	01
County—Essex.	
Parts	
C.T. 13-14	
C.T. 18	
C.T. 26-32	
C.T. 34	
C.T. 38-40	
C.T. 55-60	
C.T. 62-68	
C.T. 80-83	
Lower Cape May	03
County—Cape May	
Parts.	
Cape May City	
Cape May Point	
Lower Twp	
West Cape May	
North Newark	03
County—Essex.	
Parts	
C.T. 1-11	
C.T. 15-17	
C.T. 84-97	
Northside—Peterson	01
County—Passaic:	
Parts.	
C.T. 1803-1807	
South Newark	01
County—Essex:	
Parts: C.T. 41-47	
C.T. 48.01-48.02	
C.T. 49-54	

PRIMARY CARE: New Jersey—Continued

Service Area Listing

Service area name	Degree of shortage
South Sussex	
County—Sussex:	
Parts.	
Andover	
Branchville	
Byram	
Frankford	
Franklin	
Fredon	
Green	
Hamburg	
Hampton	
Hardyston	
Hoowtcong	
Lafayette	
Newton	
Ogdensburg	
Sparta	
Stanhope	
Stillwater	
Sussex	
Vernon	
Wantage	

PRIMARY CARE: New Jersey

Population Group Listing

Population group	Degree of shortage
Low Income Pop. of Trenton	02
County—Mercer:	
Parts: C.T. 1-22	

PRIMARY CARE: New Jersey

Facility Listing

Facility	Degree of shortage group
Leesburg State Prison	02
County—Cumberland	

PRIMARY CARE: New Mexico

County name	Degree of shortage group
Bernalillo:	
Service Area Southwest Valley	01
Catron	
Service Area Quemado/Magdalena	01
Chaves	
Service Area	
Cloudcroft	01
Dexter—Hagerman	01
Cibola	02
Curry	03
De Baca	01
Dona Ana:	
Service Area	
Hatch	01
Southern Dona Ana	01
Guadalupe	
Service Area Pecos	01
Harding:	
Service Area.	
North Harding/Wagon Mound	01
Quay	04
Hidalgo	01
Lea	
Service Area. Southern Lea	04
Lincoln	
Service Area. Torrance/Claunch/Corona	01
Luna	02

PRIMARY CARE: New Mexico—Continued

County name	Degree of shortage group
McKinley	
Service Area	
Cuba	02
Northern Gallup	01
Population Group: Navajo Reservation	01
Mora.	
Service Area	
Mora Division	03
North Harding/Wagon Mound	01
Otero	
Service Area. Cloudcroft	01
Quay:	
Service Area: Quay	04
Rio Arriba.	
Service Area.	
South Rio Arriba/Taos	01
Tierra Amarilla	01
Roosevelt	
Service Area	
Cuba	
Southern Sandoval	01
San Juan.	
Service Area: Cuba	02
Population Group: Navajo Reservation	01
San Miguel:	
Service Area	
Pecos	01
Quay	
Santa Fe	
Service Area. Santa Fe/La Familia	01
Facility: N.M. State Pen. Cerrillos	03
Sierra	03
Socorro:	
Service Area.	
Quemado/Magdalena	01
Torrence/Claunch/Corona	01
Taos:	
Service Area	
Questo/Arroyo Hondo	02
South Rio Amba/Taos	01
Tierra Amarilla	01
Torrance	
Service Area: Torrance/Claunch/Corona	01
Valencia	
Service Area. Los Lunas	

PRIMARY CARE: New Mexico

Service Area Listing

Service area name	Degree of shortage group
Cloudcroft	01
County—Chaves	
Parts. S.W. Chaves CCD (West Portion)	
County—Otero	
Parts	
E.D. 715	
E.D. 717-720	
E.D. 722-723	
Cuba	02
County—McKinley	
Parts	
E.D. 1179A-D	
E.D. 1180A-C	
E.D. 1188	
E.D. 1204B	
County—Sandoval	
Parts. Cuba CCD	
County—San Juan	
Parts.	
E.D. 881B	
E.D. 906B	
E.D. 907A	
E.D. 908A	
E.D. 909A-D	
E.D. 910A-C	
Dexter—Hagerman	01
County—Chaves	
Parts	
Dexter CCD	
Hagerman CCD	
Hatch	01
County—Dona Ana	

PRIMARY CARE: New Mexico—Continued

Service Area Listing

Service area name	Degree of shortage group
Parts:	
Hatch CCD	
N Dona-Ana Hill	
Los Lunas	02
County—Valencia.	
Parts: Los Lunas CCD	
Mora Division	03
County—Mora:	
Parts. Mora CCD	
North Harding/Wagon Mound	01
County—Harding	
Parts: North Harding	
County—Mora:	
Parts: Wagon Mound CCD	
Northern Gallup	01
County—McKinley:	
Parts: E.D. 99.03–99.05	
Pecos	01
County—Guadalupe:	
Parts. Dilia CCD	
County—San Miguel:	
Parts:	
Pecos	
Villanueva	
Quay	04
County—Harding.	
Parts: South Harding CCD	
County:	
Quay	
San Miguel	
Parts: Conchos CCD	
Quemado/Magdalena	01
County—Catron:	
Parts: Quemado CCD	
County—Socorro:	
Parts: Magdalena CCD	
Questo/Arroyo Hondo	02
County—Taos:	
Parts:	
Arroyo Hondo CCD	
Questo CCD	
Santa Fe/La Familia	01
County—Santa Fe	
Parts:	
C.T. 3	
C.T. 7–9	
C.T. 12	
South Rio Arriba/Taos	01
County—Rio Arriba:	
Parts:	
Dixon CCD	
South Rio Arriba	
County—Taos	
Parts: Penasco CCD	
Southern Dona Ana	
County—Dona Ana:	
Parts:	
E.D. 76–77	
E.D. 79	
E.D. 80 (La Mesa)	
E.D. 81	
E.D. 84 (La Union)	
Southern Lea	04
County—Lea:	
Parts.	
Eunice CCD	
Jal CCD	
Southern Sandoval	01
County—Sandoval:	
Parts:	
Bernalillo Div. (Part)	
Jemez Div.	
Santo Domingo Div.	
Southwest Valley	01
County—Bernalillo:	
Parts:	
C.T. 23	
C.T. 24.01–24.02	
C.T. 40	
C.T. 43	
C.T. 44.01–44.02	
C.T. 45.01–45.02	
C.T. 46.01–46.02	
Tierra Amarilla	01
County—Rio Arriba:	
Parts:	
Coyote CCD	
Jicarilla CCD	

PRIMARY CARE: New Mexico—Continued

Service Area Listing

Service area name	Degree of shortage group
Rio Chama CCD	
Tierra Amarilla CCD	
Vallecitos CCD	
Western Rio Arriba	
County—Taos	
Parts: Tres Piedras CCD	
Torrance/Claunch/Corona	01
County—Lincoln:	
Parts. Corona	
County—Socorro:	
Parts: Clauch	
County—Torrance	

PRIMARY CARE: New Mexico

Population Group Listing

Population group	Degree of shortage
Navajo Reservation	01
County:	
McKinley	
San Juan	

PRIMARY CARE: New Mexico

Facility Listing

Facility	Degree of shortage group
N.M. State Pen. Cerrillos	03
County—Santa Fe	

PRIMARY CARE: New York

County name	Degree of shortage group
Albany:	
Service Area.	
Northeast Albany	04
Southeast Albany City	01
Allegany.	
Service Area:	
Arcade	02
Letchworth	02
Bronx:	
Service Area.	
East Bronx	04
Morris Heights	02
Soundview Area	01
Facility: NYC Corr. Fac /Riker's Island	02
Broome:	
Service Area	
Deposit	02
Cattaraugus:	
Service Area.	
Arcade	02
Randolph-Ellicottville	03
Population Group: Seneca Nation—Allegany Reservation	02
Cayuga	
Service Area.	
Cato	01
Groton-Moravia	03
Chautauqua:	
Service Area: Westfield	02
Chenango:	
Service Area:	
Cortland/Chenango	01
Greene	02
Hamilton/Sherburne	03
Clinton:	
Service Area.	
Chateaugay	02
Dannemora	01

PRIMARY CARE: New York—Continued

County name	Degree of shortage group
Columbia	
Service Area: Southeast Columbia	02
Cortland:	
Service Area. Cortland/Chenango	01
Delaware	
Service Area	
Deposit	02
Southern Delaware	01
Erie:	
Service Area:	
Black Rock/Riverside	02
Population Group:	
Poverty Pop. (Lower West Side)	03
Poverty Pop. (P.S. 84 Area)	01
Poverty Pop.—Ellicott Neighborhood	03
Tonawanda Indian Pop.	01
Essex:	
Service Area:	
Central Adirondack	02
E. Cent. Essex	03
Essex-Warren	04
Franklin:	
Service Area:	
Chateaugay	02
Tupper Lake	02
Fulton:	
Service Area: Barkersville	02
Genesee:	
Population Group: Tonawanda Indian Pop	01
Greene:	
Service Area	
Cairo	02
Western Greene Co	02
Hamilton:	
Service Area: Central Adirondack	02
Herkimer:	
Service Area	
Central Adirondack	02
Remsen	03
Jefferson:	
Service Area:	
Alexandria Bay	02
Gouverneur	02
Kings.	
Service Area:	
Bedford/Stuyvesant	[illegible]
Brownsville	04
Coney Isl/Brighton Beach/W. Brighton	02
Lewis	
Service Area.	
Boonville	03
Camden	02
Livingston:	
Service Area: Letchworth	02
Madison:	
Service Area:	
Cortland/Chenango	01
Hamilton/Sherburne	03
Monroe:	
Service Area.	
Jordan (Rochester)	04
Westside (Rochester)	02
Montgomery:	
Service Area: Western Montgomery Co	02
New York:	
Service Area	
East Harlem	04
Lower East Side	03
Washington Heights—Inwood	04
West Central Harlem	04
Population Group: Chelsea Outreach Trgt Pop	01
Facility: Gouverneur Diag. & Treatment Ctr	03
Niagara:	
Population Group:	
Tonawanda Indian Pop	01
Tuscarora Indian Pop	01
Oneida	
Service Area.	
Boonville	03
Camden	02
Hamilton/Sherburne	03
Remsen	03
Onondaga.	
Service Area: Southern Onondaga Co	02
Population Group: Poverty Pop.—Central Syracuse	04
Ontario.	
Service Area. Naples/South Bristol	04

PRIMARY CARE: New York—Continued

County name	Degree of shortage group
Orleans	
Service Area: Oak Orchard	02
Otsego	
Service Area	
Cherry Valley	03
Southeast Otsego	03
Southwest Otsego	02
Western Otsego	01
Queens:	
Service Area	
Central South Jamaica	01
Rockaway Section of Queens	02
Rensselaer	
Service Area: Eastern Rensselaer	02
St. Lawrence	
Service Area	
Alexander Bay	02
Gouverneur	02
Starlake	02
Tupper Lake	02
Saratoga:	
Service Area: Barkersville	02
Schenectady	
Service Area: Hamilton Hill/Mt. Pleasant	01
Schohane	
Service Area	
Cherry Valley	03
Southern Schohane	03
Seneca	
Service Area: South Seneca	02
Steuben:	
Service Area: Elkland (NY/PA)	02
Tompkins:	
Service Area: Groton-Moravia	03
Warren:	
Service Area: Essex-Warren	04
Wayne:	
Service Area: Sodus	04
Westchester:	
Service Area: Peekskill	04
Population Group: Med. Ind. (Mt. Vernon)	04
Wyoming	
Service Area.	
Arcade	02
Letchworth	02
Facility: Attica Correctional Facility	02
Yates	04

PRIMARY CARE: New York

Service Area Listing

Service area name	Degree of shortage group
Alexandria Bay	02
County—Jefferson:	
Parts:	
Alexandria Twn	
Cape Vincent Twn	
Clayton Twn	
Lyme Twn	
Orleans Twn	
Philadelphia Twn	
Teresa Twn	
County—St. Lawrence:	
Parts: Hammond Twn	
Arcade	02
County—Allegany:	
Parts:	
Centerville	
Rushford	
County—Cattaraugus:	
Parts:	
Farmersville	
Franklinville	
Freedom	
[illegible]	
Yorkshire	
County—Wyoming	
Parts:	
Arcade	
Eagle	
Java	
Orangeville	
Sheldon	
Wethersfield	
Barkersville	02
County—Fulton.	
Parts: Broadalbin Twp	
County—Saratoga	
Parts	
Galway Twp	
Providence Twp	
Bedford/Stuyvesant	04
County—Kings	
Parts	
C.T. 201	
C.T. 227	
C.T. 229	
C.T. 231	
C.T. 233	
C.T. 235	
C.T. 237	
C.T. 239	
C.T. 241	
C.T. 243	
C.T. 245	
C.T. 247	
C.T. 249	
C.T. 251	
C.T. 253	
C.T. 255	
C.T. 257	
C.T. 259.01-259.02	
C.T. 261	
C.T. 263	
C.T. 265	
C.T. 267	
C.T. 269	
C.T. 271.01-271.02	
C.T. 273	
C.T. 275	
C.T. 277	
C.T. 279	
C.T. 281	
C.T. 283	
C.T. 285.01-285.02	
C.T. 287	
C.T. 289	
C.T. 291	
C.T. 293	
C.T. 295	
C.T. 297	
C.T. 299	
C.T. 301	
C.T. 303	
C.T. 307	
C.T. 309	
C.T. 311	
C.T. 365.01-365.02	
C.T. 367	
C.T. 369	
C.T. 371	
C.T. 373	
C.T. 375	
C.T. 377	
C.T. 379	
C.T. 381	
C.T. 383	
C.T. 385	
C.T. 387	
Black Rock/Riverside	02
County—Erie:	
Parts:	
C.T. 55-59	
Boonville	03
County—Lewis.	
Parts	
Lewis	
Leyden	
Lyonsdale	
West Turin	
County—Oneida.	
Parts.	
Ava	
Boonville	
Forestport	
Brownsville	04
County—Kings:	
Parts	
C.T. 347	
C.T. 349	
C.T. 357	
C.T. 359	
C.T. 361	
C.T. 363	
C.T. 882	
C.T. 884	
C.T. 886	
C.T. 888	
C.T. 890	
C.T. 892	
C.T. 894	
C.T. 896	
C.T. 898	
C.T. 900	
C.T. 902	
C.T. 904	
C.T. 906	
C.T. 908	
C.T. 910	
C.T. 912	
C.T. 914	
C.T. 916	
C.T. 918	
C.T. 920	
C.T. 1134	
C.T. 1136	
C.T. 1138	
Cairo	02
County—Greene	
Parts	
Cairo	
Durham	
Greenville	
Camden	02
County—Lewis	
Parts: Osceola	
County—Oneida	
Parts	
Annsville	
Camden	
Florence	
Vienna	
Cato	01
County—Cayuga	
Parts	
Cato	
Conquest	
Ira	
Victory	
Central Adirondack	02
County—Essex:	
Parts: Newcomb Twp	
County—Hamilton	
Parts	
Indian Lake Twp	
Inlet	
Long Lake Twp	
County—Herkimer:	
Parts: Webb	
Central South Jamaica	01
County—Queens.	
Parts	
C.T. 152	
C.T. 154	
C.T. 190	
C.T. 196	
C.T. 198	
C.T. 202	
C.T. 204	
C.T. 206	
C.T. 208	
C.T. 212	
C.T. 236	
C.T. 238	
C.T. 240	
C.T. 244	
C.T. 246	
C.T. 248	
C.T. 250	
C.T. 252	
C.T. 258	
C.T. 260	
C.T. 262	
C.T. 266	
C.T. 270	
C.T. 272	
C.T. 274	
C.T. 276	
C.T. 278	

PRIMARY CARE: New York—Continued

Service Area Listing

Service area name	Degree of shortage
C.T. 260	
C.T. 264	
C.T. 268	
C.T. 410	
C.T. 414	
C.T. 440	
C.T. 446.01–446.02	
C.T. 460	
Chateaugay	02
County—Clinton:	
Parts: Clinton	
County—Franklin:	
Parts	
Belmont	
Burke	
Chateaugay	
Cherry Valley	03
County—Otsego:	
Parts	
Cherry Valley	
Roseboom	
Springfield	
County—Schoharie:	
Parts: Sharon	
Coney Isl/Brighton Beach/W. Brighton	02
County—Kings:	
Parts	
C.T. 326	
C.T. 328	
C.T. 330	
C.T. 336	
C.T. 340	
C.T. 342	
C.T. 348.01–348.02	
C.T. 350	
C.T. 352	
C.T. 360.01–360.02	
C.T. 362	
C.T. 364	
Cortland/Chenango	
County—Chenango:	
Parts	
Lincklaen	
Pitcher	
County—Cortland:	
Parts	
Cincinnatus Town	
Cuyler Town	
Freetown Town	
Lapeer Town	
Marathon Town	
Taylor Town	
Willet Town	
County—Madison:	
Parts: De Ruyter	
Dannemora	
County—Clinton:	
Parts	
Dannemora	
Saranac	
Deposit	
County—Broome:	
Parts	
Colesville	
Sanford	
Windsor	
County—Delaware:	
Parts	
Deposit	
Tompkins	
E. Cent. Essex	
County—Essex:	
Parts:	
Elizabeth Twn	
Essex	
Keene	
Lewis	
Moriah	
North Hudson	
Westport	
Willsboro	
East Bronx	
County—Bronx:	
Parts:	
C.T. 44	
C.T. 48	
C.T. 50	
C.T. 52	

PRIMARY CARE: New York—Continued

Service Area Listing

Service area name	Degree of shortage
C.T. 54	
C.T. 56	
C.T. 62	
C.T. 64	
C.T. 66	
C.T. 68	
C.T. 70	
C.T. 214	
East Harlem	04
County—New York:	
Parts:	
C.T. 156.01–156.02	
C.T. 158.02	
C.T. 162	
C.T. 164	
C.T. 166	
C.T. 168	
C.T. 170	
C.T. 172.01–172.02	
C.T. 174.01–174.02	
C.T. 178	
C.T. 180	
C.T. 182	
C.T. 184	
C.T. 188	
C.T. 192	
C.T. 194	
C.T. 196	
C.T. 198	
C.T. 202	
C.T. 204	
C.T. 206	
C.T. 210	
Eastern Rensselaer	02
County—Rensselaer:	
Parts:	
Berlin Twn	
Hoosick Twn	
Petersburg Twn	
Stephentown Twn	
Elkland (NY/PA)	
County—Steuben:	
Parts:	
Tuscarora Twn	
Woodhill Twn	
Essex-Warren	
County—Essex:	
Parts: Minerva	
County—Warren:	
Parts:	
Chester	
Horicon	
Johnsburg	
Thurman	
Warrensburg	
Gouverneur	
County—Jefferson:	
Parts: Antwerp Twn	
County—St. Lawrence:	
Parts:	
Canton	
Depeyster (S. ½)	
Edwards	
Fowler	
Gouverneur	
Hermon	
Macomb (S. ½)	
Rossie	
Greene	
County—Chenango:	
Parts:	
German Twn	
Greene Twn	
McDonough Twn	
Smithville Twn	
Groton-Moravia	
County—Cayuga:	
Parts:	
Locke	
Moravia	
Semprorius	
Summerhill	
County—Tompkins:	
Parts: Groton	
Hamilton Hill/Mt. Pleasant	
County—Schenectady:	
Parts:	
C.T. 209	

PRIMARY CARE: New York—Continued

Service Area Listing

Service area name	Degree of shortage
C.T. 210.02	
C.T. 211.03	
C.T. 214–217	
Hamilton/Sherburne	
County—Chenango:	
Parts	
Columbus Twn	
Otselic Twn	
Sherburne Twn	
Smyra Twn	
County—Madison:	
Parts	
Brookfield	
Eaton	
Georgetown	
Hamilton	
Lebanon	
Madison	
County—Oneida:	
Parts: Sangerfield	
Jordan (Rochester)	
County—Monroe:	
Parts:	
C.T. 7	
C.T. 13–15	
C.T. 39	
C.T. 43	
C.T. 48–53	
C.T. 55–56	
C.T. 80	
C.T. 91–92	
C.T. 93.01	
Letchworth	
County—Allegany:	
Parts:	
Alma	
Amity	
Granger	
Hume	
County—Livingston:	
Parts:	
Portage:	
County—Wyoming:	
Parts:	
Castile	
Covington	
Genesee Falls	
Pike	
Lower East Side:	03
County—New York:	
Parts:	
C.T. 2.01–2.02	
C.T. 6	
C.T. 8	
C.T. 10.01–10.02	
C.T. 12	
C.T. 14.01–14.02	
C.T. 16	
C.T. 18	
C.T. 20	
C.T. 22.01–22.02	
C.T. 24–25	
C.T. 26.01–26.02	
C.T. 27–29	
C.T. 30.01–30.02	
C.T. 31–32	
C.T. 34	
C.T. 36.01–36.02	
C.T. 38	
C.T. 40–41	
C.T. 43	
C.T. 45	
Morris Heights	
County—Bronx:	
Parts:	
C.T. 205	
C.T. 215.01–215.02	
C.T. 239	
C.T. 243	
C.T. 245	
C.T. 247	
C.T. 249	
C.T. 251	
C.T. 253	
C.T. 255	
C.T. 257	
Naples/South Bristol	
County—Ontario:	

PRIMARY CARE: New York—Continued

Service Area Listing

Service area name	Degree of shortage group
Parts:	
Naples	
South Bristol	
Northeast Albany	[illegible]
County—Albany:	
Parts:	
C.T. 1-2	
C.T. 7-8	
C.T. 11	
Oak Orchard	[illegible]
County—Orleans:	
Parts	
Albion	
Barre	
Carlton	
Clarendon	
Gaines	
Kendall	
Murray	
Peekskill	[illegible]
County—Westchester:	
Parts:	
C.T. 141-145	
Randolph-Ellicottville	03
County—Cattaraugus:	
Parts:	
Cold Spring Twn	
Conewango Twn	
Ellicottville Twn	
Little Valley Twn	
Mansfield Twn	
Napoli Twn	
New Albion Twn	
Randolph Twn	
South Valley Twn	
Remsen	03
County—Herkimer:	
Parts:	
Ohio	
Russia	
County—Oneida:	
Parts:	
Remsen	
Steuben	
Trenton	
Rockaway Section of Queens	[illegible]
County—Queens:	
Parts	
C.T. 916.01-916.02	
C.T. 916.99	
C.T. 918	
C.T. [illegible]	
C.T. [illegible]	
C.T. [illegible]	
C.T. [illegible]	
C.T. 942.01-942.03	
C.T. [illegible]	
C.T. [illegible]	
C.T. [illegible]	
C.T. 972	
C.T. [illegible]	
C.T. [illegible]	
C.T. [illegible]	
C.T. 1010	
C.T. 1032	
Sodus	[illegible]
County—Wayne:	
Parts:	
C.T. 201 (Ontario)	
C.T. 204 (Williamson)	
C.T. 205 (Marion)	
C.T. 208-209 (Sodus)	
C.T. 215—(Huron-Wolcott)	
C.T. 216 (Rose-Butler)	
Soundview Area	[illegible]
County—Bronx:	
Parts:	
C.T. 2	
C.T. 4	
C.T. 16	
C.T. 20	
C.T. 24	
C.T. [illegible]	
C.T. 36	
C.T. [illegible]	
C.T. 40.02	
C.T. [illegible]	
C.T. 74	

PRIMARY CARE: New York—Continued

Service Area Listing

Service area name	Degree of shortage group
C.T. 84	
C.T. 86	
C.T. 88	
C.T. 98	
C.T. 102	
South Seneca	[illegible]
County—Seneca:	
Parts	
Covert	
Lodi	
Ovid	
Southeast Albany City	[illegible]
County—Albany:	
Parts:	
C.T. 23-26	
Southeast Columbia	[illegible]
County—Columbia:	
Parts:	
Ancram Tn.	
Copake Tn.	
Gallatin Tn.	
Hillsdale Tn.	
Taghkanic Tn.	
Southeast Otsego	[illegible]
County—Otsego:	
Parts	
Decatur	
Maryland	
Westford	
Worcester	
Southern Delaware	01
County—Delaware:	
Parts:	
Colchester Twp	
Hancock Twp	
Southern Onondaga Co	[illegible]
County—Onondaga:	
Parts:	
Fabius	
Lafayette	
Otisco	
Pompey	
Tully	
Southern Schoharie	[illegible]
County—Schoharie:	
Parts:	
Blenheim	
Broome	
Conesville	
Fulton	
Gilboa	
Middleburgh	
Southwest Otsego Co.	[illegible]
County—Otsego:	
Parts:	
Butternuts Twp	
Morris Twp	
Starlake	[illegible]
County—St. Lawrence:	
Parts:	
Clare Twn	
Clifton Twn	
Colton (S. ½)	
Fine Twn	
Pitcairn Twn	
Russell Twn	
Tupper Lake	[illegible]
County—Franklin:	
Parts: Altamont Town	
County—St. Lawrence:	
Parts: Piercefield Town	
Washington Heights-Inwood	[illegible]
County—New York:	
Parts:	
C.T. 243.01	01
C.T. 245	
C.T. 247	
C.T. 249	
C.T. 251	
C.T. 253	
C.T. 255	
C.T. 261	
C.T. 263	
C.T. 265	
C.T. 267	
C.T. 269	
C.T. 271	
C.T. 277	

PRIMARY CARE: New York—Continued

Service Area Listing

Service area name	Degree of shortage group
C.T. 279	
C.T. 283	
C.T. 285	
C.T. 287	
C.T. 289	
C.T. 291	
C.T. 293	
C.T. 303	
C.T. 311	
West Central Harlem	04
County—New York:	
Parts:	
C.T. 186	
C.T. 190	
C.T. 197.02	
C.T. 200	
C.T. 201.02	
C.T. 207.02	
C.T. 208	
C.T. 209.01-209.02	
C.T. 211-212	
C.T. 213.01-213.02	
C.T. 214	
C.T. 216	
C.T. 217.01-217.02	
C.T. 218-220	
C.T. 221.01-221.02	
C.T. 222-226	
C.T. 227.01-227.02	
C.T. 228-230	
C.T. 231.01-231.02	
C.T. 232-234	
C.T. 235.01-235.02	
C.T. 236-237	
C.T. 239	
C.T. 241	
C.T. 243.02	
Western Greene Co	02
County—Greene:	
Parts:	
Northfield	
Palmer	
Jewett	
Lexington	
Prattsville	
Windham	
Western Montgomery Co	02
County—Montgomery:	
Parts:	
Canajoharie	
Minden	
Palatine	
Root	
St. Johnsville	
Western Otsego	[illegible]
County—Otsego:	
Parts:	
Burlington	
Edmeston	
New Lisbon	
Pittsfield	
Plainfield	
Westfield	02
County—Chautauqua:	
Parts	
Chautauqua Twp	
Ripley Twp	
Sherman Twp	
Westfield Twp	
Westside (Rochester)	02
County—Monroe:	
Parts	
C.T. 2	
C.T. 16-17	
C.T. 23	
C.T. 27	
C.T. 32	
C.T. 41	
C.T. 64-66	
C.T. 69	
C.T. 95	
C.T. 96.01-96.04	

PRIMARY CARE: New York

Population Group Listing

Population group	Degree of shortage
Chelsea Outreach Trgt. Pop	01
County—New York	
Med. Ind. (Mt. Vernon)	04
County—Westchester	
Parts:	
C.T. 25–36	
C.T. 40–41	
Poverty Pop. (Lower West Side)	03
County—Erie:	
Parts:	
C.T. 68	
C.T. 71.01–71.02	
C.T. 72.01	
Poverty Pop. (P.S. 84 Area)	01
County—Erie:	
Parts:	
C.T. 27.02	
C.T. 32.01	
C.T. 32.02	
C.T. 33.01–33.02	
C.T. 34–36	
C.T. 39–41	
C.T. 44.02	
Poverty Pop.—Central Syracuse	[illegible]
County—Onondaga:	
Parts:	
C.T. 5	
C.T. 13	
C.T. 16	
C.T. 22–24	
C.T. 30–35	
C.T. 39–45	
C.T. 51–55	
C.T. 56.01–56.02	
C.T. 57–59	
C.T. 61.01	
Poverty Pop.—Ellicott Neighborhood	03
County—Erie:	
Parts:	
C.T. 12	
C.T. 13.01–13.02	
C.T. 14.01–14.02	
C.T. 15	
C.T. 25.01–25.02	
C.T. 26	
C.T. 27.01	
C.T. 31	
Seneca Nation—Allegany Reservation	02
County—Cattaraugus	
Tonawanda Indian Pop	01
County:	
Erie	
[illegible]	
[illegible]	
Tuscarora Indian Pop	01
County—Niagara	

PRIMARY CARE: New York

Facility Listing

Facility	Degree of shortage group
Attica Correctional Facility	02
County—Wyoming	
Gouverneur Diag. and Treatment Ctr	03
County—New York	
NYC Corr. Fac./Rikers Island	02
County—Bronx:	
Parts	
Adolescent Rcpt/Det Ctr.	
Anna M. Kross Corr. Fac.	
Corr. Inst.—Men	
Corr. Inst.—Women	
House of Detention—Men	

PRIMARY CARE: North Carolina

County name	Degree of shortage
Anson	[illegible]
Ashe	03
Beaufort.	
Service Area: Richland	03
Bertie	01
Bladen	01
Brunswick	02
Buncombe	
Service Area: Bat Cave	01
Caldwell Service Area: Western Caldwell	01
Caswell	01
Chatham	03
Clay	01
Cleveland:	
Population Group: Medically Indigent Population	02
Columbus	02
Cumberland:	
Service Area: S.E. Cumberland	02
Currituck	02
Dare	
Service Area.	
Hatteras	02
Manns Harbor	03
Duplin	02
Durham	
Service Area: Lincoln Comm. H. Center	02
Edgecombe	02
Franklin	02
Gates	02
Graham	04
Granville	03
Greene	01
Halifax	
Service Area: Littleton	01
Harnett:	
Service Area: Western Harnett	01
Henderson	
Service Area: Bat Cave	01
Hoke	01
Hyde	01
Johnston	
Service Area: Benson	02
Population Group: Migrant & Seasonal Farmworkers	01
Mecklenburg:	
Service Area: Central Charlotte	01
Mitchell	
Service Area: Tipton Hill	01
Montgomery	04
Northampton	01
Onslow:	
Service Area:	
Holly Ridge	01
Onslow	04
Orange:	
Service Area: Orange (N. Portion)	03
Pender:	
Service Area:	
Holly Ridge	01
Western Pender	02
Perquimans	01
Person	03
Richmond	03
Robeson:	
Population Group. Poverty Pop	03
Sampson:	
Population Group: Migrant & Seasonal Farmworkers	01
Stokes	02
Tyrrell	01
Warren:	
Service Area.	
Littleton	01
Warrenton	01
Washington	04
Yancey:	
Service Area: Tipton Hill	01

PRIMARY CARE: North Carolina

Service Area Listing

Service area name	Degree of shortage group
Bat Cave	01
County—Buncombe	
Parts.	
Broad River Twp	
Fairview Twp	
County—Henderson	
Parts	
Clear Creek Twp	
Edneyville Twp	
Benson	02
County—Johnston	
Parts.	
Banner Twp	
Elevation Twp	
Meadow Twp	
Pleasant Grove Twp	
Central Charlotte	01
County—Mecklenburg	
Parts	
C.T. 1	
C.T. 4–8	
C.T. 36–37	
C.T. 38.02	
C.T. 39	
C.T. 40–42	
C.T. 43.01–43.02	
C.T. 44–52	
Hatteras	02
County—Dare	
Parts.	
Hatteras Twp	
Kennekeet Twp	
Holly Ridge	01
County—Onslow	
Part: C.T. 4	
County—Pender	
Parts	
Holly Twp	
Topsail Twp	
Lincoln Comm. H. Center	02
County—Durham	
Parts	
C.T. 8.01–8.02	
C.T. 9	
C.T. 10.01	
C.T. 11	
C.T. 12.01–12.02	
C.T. 13.01–13.02	
C.T. 14	
Littleton	01
County—Halifax	
Parts	
Brinkleyville Twp	
Butterworth Twp	
Littleton Twp	
County—Warren	
Parts.	
Fishing Creek Twp	
Judkins Twp	
Manns Harbor	03
County—Dare.	
Parts	
Croatan Twp	
East Lake Twp	
Nags Head Twp	
Onslow	04
County—Onslow	
Parts	
C.T. 1–3	
C.T. 5–25	
Orange (N. Portion)	03
County—Orange	
Parts	
Cedar Grove Twp	
Cheeks Twp	
End Twp	
Hillsborough Twp	
Little River Twp	
Richland	03
County—Beaufort:	
Parts: Richland Twp	
S.E. Cumberland	02
County—Cumberland	
Parts:	
Cedar Creek	
Eastover Twp	
Grays Creek Twp	
Tipton Hill	01

PRIMARY CARE: North Carolina—Continued

Service Area Listing

Service area name	Degree of shortage group
County—Mitchell:	
Parts:	
Bradshaw	
Harrell	
Popular	
Red Hill	
County—Yancey:	
Parts:	
Brush Creek	
Green Mountain	
Jack's Creek	
Ramsey Town	
Warrenton	01
County—Warren:	
Parts:	
Fork Twp	
Hawtree Twp	
Nutbush Twp	
River Twp	
Roanoke Twp	
Sandy Creek Twp	
Shocco Twp	
Sixpound Twp	
Smith Creek Twp	
Warrenton Twp	
Western Caldwell	01
County—Caldwell:	
Parts:	
Globe	
Johns River	
Mulberry	
Patterson	
Wilson Creek	
Western Harnett	01
County—Harnett:	
Parts:	
Anderson Creek	
Barbecue	
Johnsonville	
Lillington	
Stewarts Creek	
Upper Little River	
Western Pender	02
County—Pender:	
Parts:	
Bergan Twp	
Canetuck Twp	
Caswell Twp	
Columbia Twp	
Grady Twp	
Long Creek Twp	
Rocky Point Twp	
Union Twp	

PRIMARY CARE: North Carolina

Population Group Listing

Population group	Degree of shortage group
Medically Indigent Population	02
County—Cleveland	
Migrant and Seasonal Farmworkers	01
County:	
Johnston	
Sampson	
Poverty Pop./Robeson	[illegible]
County—Robeson:	
Parts:	
Alfordsville Twp	
Back Swamp Twp	
Burnt Swamp Twp	
Fairmont Twp	
Gaddy Twp	
Lumber Bridge Twp	
Marietta Twp	
Maxton Twp	
Orrum Twp	
Parkton Twp	
Pembroke Twp	
Philadelphus Twp	
Raft Swamp Twp	
Redsprings Twp	
Rennert Twp	

PRIMARY CARE: North Carolina—Continued

Population Group Listing

Population group	Degree of shortage group
Rowland Twp	
Saddletree Twp	
Shannon Twp	
Smiths Twp	
St. Paul Twp	
Sterlings Twp	
Thompson Twp	
Union Twp	
West Howellsville Twp	

PRIMARY CARE: North Dakota

County name	Degree of shortage group
Adams	
Service Area: Lemmon	[illegible]
Benson	02
Billings:	
Service Area: Belfield/Medora	01
Burke	01
Cavalier	[illegible]
Dickey:	
Service Area: Ellendale/Edgely	02
Dunn	01
Eddy	[illegible]
Foster:	
Service Area: Carrington	[illegible]
Golden Valley	[illegible]
Grand Forks:	
Service Area: Northwood	[illegible]
Grant	01
Griggs	[illegible]
Hettinger	01
Foster:	
Service Area: Carrington	[illegible]
La Moure:	
Service Area: Ellendale/Edgely	02
Logan	01
McHenry	04
McKenzie	[illegible]
Mercer:	
Service Area: Mercer/Oliver	01
Morton	[illegible]
Mountrail	01
Nelson:	
Service Area: Northwood	[illegible]
Oliver:	
Service Area: Mercer/Oliver	[illegible]
Richland:	
Service Area: Hankinson-Lidgerwood	01
Rolette	[illegible]
Sargent	01
Sheridan	01
Sioux	01
Slope	01
Stark:	
Service Area: Belfield/Medora	01
Steele:	
Service Area: Northwood	[illegible]
Stutsman:	
Service Area: Carrington	04
Wells	
Service Area: Carrington	[illegible]

PRIMARY CARE: North Dakota

Service Area Listing

Service area name	Degree of shortage [illegible]
Belfield/Medora	01
County:	
Billings	
Stark	
Parts:	
Belfield City	
West Stark Unorg. (W. ½)	

PRIMARY CARE: North Dakota—Continued

Service Area Listing

Service area name	Degree of shortage group
Carrington	04
County—Foster	
Parts:	
Fretburn Twp	
Lake Williams Twp	
Petersville Twp	
Pettibone City	
Pettibone Twp	
Rexone Twp	
Wallace Twp	
County—Stutsman	
Parts:	
Conklin Twp	
Corinne Twp	
Edmunds Twp	
Gerber Twp	
Glacier Twp	
Kensal City	
Kensal Twp	
Lowery Twp	
Marston Moor Twp	
Nogosek Twp	
Pingree City	
Pingree Twp	
Pipestream Valley Twp	
Strong Twp	
Wadsworth Twp	
Walters Twp	
Woodworth Twp	
County—Wells	
Parts	
Berlin Twp	
Bilodeau Twp	
Cathay City	
Cathay Twp	
Haaland Twp	
Hawksnest Twp	
Johnson Twp	
Progress	
South Cottonwood Twp	
Speedwell Twp	
Sykeston City	
Sykeston Twp	
West Ontario Twp	
Woodward Twp	
Ellendale/Edgely	02
County—Dickey:	
Parts:	
Ada Twp	
Albertha Twp	
Albion Twp	
Elden Twp	
Ellendale City	
Ellendale Twp	
Elm Twp	
Forbes City	
Fullerton City	
German Twp	
Grand Valley Twp	
Hamburg Twp	
Kent Twp	
Kentner Twp	
Keystone Twp	
Lorraine Twp	
Maple Twp	
Monango City	
Murricourt City	
Northwest Twp	
Porter Twp	
Potsdam Twp	
Spring Valley Twp	
Valley Twp	
Van Meter Twp	
Whitestone Twp	
Wright Twp	
Yorktown Twp	
Young Twp	
County—La Moure:	
Parts:	
Edgely City	
Golden Glen Twp	
Nora Twp	
Pomona View Twp	
Ray Twp	
Wano Twp	
Willowbank Twp	
Hankinson-Lidgerwood	01
County—Richland:	

PRIMARY CARE: North Dakota—Continued

Service Area Listing

Service area name	Degree of shortage group
Parts	
Bellford Twp	
Brightwood Twp	
Dexter Twp	
Duen Twp	
Elma Twp	
Grant Twp	
Greendale Twp	
Hankinson City	
La Mars Twp	
Liberty Grove Twp	
Lidgerwood City	
Mantador City	
Morgan Twp	
Waldo Twp	
Lemmon	03
County—Adams:	
Parts:	
East Adams (Unorg.) S ½	
Gilstrap Twp	
North Lemmon Twp	
Orange Twp	
South Fork Twp	
Mercer/Oliver	01
County:	
Mercer	
Oliver	
Northwood	03
County—Grand Forks:	
Parts:	
Arvilla Township	
Avon Township	
Elm Grove Township	
Grace Township	
Janmore City	
Janmore Township	
Linds Township	
Logan Center Township	
Loretta Township	
Moraine Township	
Niagra City	
Niagra Township	
Northwood City	
Northwood Twp	
Pleasant View Twp	
Washington Twp	
County—Nelson:	
Parts:	
Aneta City	
Ora Township	
Rugh Township	
County—Steele	
Parts:	
Beaver Creek Twp	
Newburgh Twp	
Sharm City	
Sharon Township	
Westfield Twp	

PRIMARY CARE: Ohio

County name	Degree of shortage group
Adams	02
Allen:	
Service Area: South Side Lima	01
Ashtabula:	
Service Area: Geneva—Madison	04
Brown	04
Butler:	
Service Area: Hamilton	01
Carroll	04
Clark:	
Population Group: Poverty Pop: Springfield	01
Clermont:	
Service Area: Eastern Clermont Co	02
Columbiana:	
Service Area: East Liverpool	03
Coshocton	02
Crawford:	
Service Area: Willard	03
Cuyahoga:	
Service Area:	
Central/Fairfax/Kinsman	01
Clark Fulton/Denison/Tremont	01
Glenville	01
Hough/Norwood	01
Near West/West Side	02
South Broadway	04
Population Group Poverty Pop —Collinwood	01
Darke	03
Franklin:	
Service Area: Lower Linden	04
Geauga:	
Service Area: Geneva-Madison	04
Hamilton:	
Service Area:	
East End (Cincinnati)	02
East/Lower Price Hill	01
Millvale	01
Winton Hills (Cincinnati)	01
Hancock:	
Service Area: Tiffin/Fostoria	03
Hardin	03
Harrison	03
Henry	03
Highland:	
Service Area: Greenfield	02
Hocking	02
Holmes	03
Huron:	
Service Area: Willard	03
Jackson	03
Jefferson:	
Service Area: East Liverpool	03
Lake:	
Service Area: Geneva-Madison	04
Lawrence	02
Lucas:	
Service Area:	
Center City/Dorr-Toledo	04
Near:	
South Side-Toledo	03
Mahoning:	
Service Area: Eastside Youngstown	01
Meigs	02
Monroe:	
Service Area:	
New Matamoras	03
Woodsfield	02
Montgomery:	
Service Area: West Dayton	02
Morgan	02
Morrow	02
Paulding	03
Perry	02
Pike	02
Putnam	03
Richland:	
Service Area: Willard	03
Ross:	
Service Area: Greenfield	02
Population Group: Medicaid Eligible Pop	02
Sandusky	03
Seneca:	
Service Area:	
Tiffin/Fostoria	03
Willard	03
Tuscarawas	03
Vinton	03
Warren	03
Washington:	
Service Area: New Matamoras	03
Wood:	
Service Area: Tiffin-Fostoria	03

PRIMARY CARE: Ohio

Service Area Listing

Service area name	Degree of shortage group
Center City/Dorr-Toledo	04
County—Lucas:	
Parts:	
C.T. 27-28	
C.T. 31-37	
C.T. 39	

PRIMARY CARE: Ohio—Continued

Service Area Listing

Service area name	Degree of shortage group
Central/Fairfax/Kinsman	01
County—Cuyahoga:	
Parts:	
C.T. 1079	
C.T. 1087-1089	
C.T. 1091-1093	
C.T. 1096-1099	
C.T. 1101-1103	
C.T. 1129	
C.T. 1131-1139	
C.T. 1141-1145	
C.T. 1147-1148	
Clark Fulton/Denison/Tremont	01
County—Cayahoga:	
Parts:	
C.T. 1027-1029	
C.T. 1041-1049	
C.T. 1051-1056	
East End (Cincinnati)	02
County—Hamilton:	
Parts:	
C.T. 43-44	
C.T. 47.02	
East Liverpool	03
County—Columbiana:	
Parts:	
Center Twp	
East Liverpool City	
Elk Run Twp	
Franklin Twp	
Hanover Twp (S ½)	
Liverpool Twp	
Madison Twp	
Middleton Twp	
St. Clair Twp	
Washington Twp	
Wayne Twp	
Wellsville City	
Yellow Creek Twp	
County—Jefferson:	
Parts:	
Brush Creek Twp	
Saline Twp	
East/Lower Price Hill	01
County—Hamilton:	
Parts:	
C.T. 87 (Fairmont-South)	
C.T. 89 (Fairmont-South)	
C.T. 91 (Price Hill-Tower)	
C.T. 92	
C.T. 93 (Price Hill-East)	
C.T. 94-95	
C.T. 96 (Price Hill-East)	
C.T. 103 (Riverside-Selamsville)	
Eastern Clermont Co	02
County—Clermont:	
Parts:	
C.T. 401 (Batavia)	
C.T. 402 (Franklin)	
C.T. 408 (Goshen)	
C.T. 409 (Jackson)	
C.T. 410 (Monroe)	
C.T. 411 (Ohio)	
C.T. 415 (Pierce)	
C.T. 416 (Stonelick)	
C.T. 417 (Tate)	
C.T. 418 (Washington)	
C.T. 419 (Wayne)	
C.T. 420 (Williamsburg)	
Eastside Youngstown	01
County—Mahoning:	
Parts: C.T. 8001-8008 (Youngstown)	
Geneva-Madison	04
County—Ashtabula:	
Parts:	
Geneva Twp	
Harpersfield Twp	
County—Geauga:	
Parts: Thompson Twp	
County—Lake:	
Parts: Madison	
Glenville	01
County—Cuyahoga:	
Parts:	
C.T. 1114	
C.T. 1161-1168	
C.T. 1181-1185	
Greenfield	02

PRIMARY CARE: Ohio—Continued

Service Area Listing

Service area name	Degree of shortage group
County—Highland:	
Parts:	
Fairfield Twp	
Madison Twp	
Paint Twp	
County—Ross:	
Parts:	
Buckskin Twp	
Paint Twp	
Hamilton	01
County—Butler:	
Parts: C.T. 2–4	
Hough/Norwood	01
County—Cuyahoga:	
Parts:	
C.T. 1112–1113	
C.T. 1115–1119	
C.T. 1121	
C.T. 1123–1128	
C.T. 1186	
C.T. 1189	
Lower Linden	04
County—Franklin:	
Parts:	
C.T. 7.1–7.3	
C.T. 9.1–9.2	
C.T. 14–15	
C.T. 75.11	
C.T. 75.20	
Milfvale	01
County—Hamilton:	
Parts:	
C.T. 28	
C.T. 77	
C.T. 85.02	
C.T. 86.01	
Near South Side-Toledo	03
County—Lucas:	
Parts:	
C.T. 38	
C.T. 40–42	
C.T. 54	
Near West/West Side	02
County—Cuyahoga:	
Parts:	
C.T. 1012	
C.T. 1014–1019	
C.T. 1021–1026	
C.T. 1031–1039	
New Matamoras	
County—Monroe:	
Parts:	
Benton Twp	
Jackson Twp	
County—Washington:	
Parts:	
Grandview Twp	
Independence Twp	
Liberty Twp	
Ludlow Twp	
South Broadway	
County—Cuyahoga:	
Parts:	
C.T. 1109	
C.T. 1151–1155	
C.T. 1157–1159	
South Side Lima	01
County—Allen:	
Parts:	
C.T. 117	
C.T. 135–138	
Tiffin/Fostoria	03
County—Hancock:	
Parts: Washington Twp	
County—Seneca:	
Parts:	
Adams	
Big Spring Twp	
Bloom Twp	
Clinton	
Eden Twp	
Fostoria City	
Green Springs Vil (Part)	
Hopewell Twp	
Jackson Twp	
Liberty	
Louden Twp	
Pleasant Twp	
Scipio Twp	
Seneca Twp	
Thompson Twp	
Tiffin City	
County—Wood:	
Parts: Perry Twp	
West Dayton	
County—Montgomery:	
Parts:	
C.T. 5	
C.T. 14.01–14.02	
C.T. 15–17	
C.T. 19–23	
C.T. 25–26	
C.T. 28–33	
Willard	03
County—Crawford:	
Parts: Auburn Twp (N ½)	
County—Huron:	
Parts:	
Fairfield Twp	
Greenfield Twp	
Greenwich Twp	
New Haven Twp	
Norwich Twp	
Richmond Twp	
Ripley Twp	
Willard City	
County—Richland:	
Parts:	
Blooming Grove Twp	
Butler Twp	
Cass Twp (N ½)	
Plymouth Twp (N ½)	
County—Seneca:	
Parts:	
Reed Twp	
Venice Twp	
Winton Hills (Cincinnati)	01
County—Hamilton:	
Parts: C.T. 80 (Winton Hills)	
Providence	
County—Monroe:	
Parts:	
Adams Twp	
Bethel Twp	
Center Twp	
Franklin Twp	
Green Twp	
Lee Twp	
Malaga Twp	
Ohio Twp	
Perry Twp	
Salem Twp	
Seneca Twp	
Summit Twp	
Sunsburg Twp	
Switzerland Twp	
Washington Twp	
Wayne Twp	

PRIMARY CARE: Ohio

Population Group Listing

Population group	Degree of shortage group
Medicaid Eligible Pop of Ross	
County—Ross	
Poverty Pop—Collinwood	01
County—Cuyahoga:	
Parts:	
C.T. 1169	
C.T. 1171–1179	
C.T. 1261	
Poverty Pop. Springfield	01
County—Clark:	
Parts:	
C.T. 1–3	
C.T. 8	
C.T. 9.01–9.02	
C.T. 10	
C.T. 11.01–11.02	

PRIMARY CARE: Ohio—Continued

Population Group Listing

Population group	Degree of shortage group
C.T. 12	

PRIMARY CARE: Oklahoma

County name	Degree of shortage group
Adair	04
Atoka	04
Choctaw	03
Cotton	03
Delaware	04
Greer:	
Facility: OK. State Pen (Granite)	02
Harmon	04
Le Flore:	
Service Area: South Le Flore	01
McClain	04
Mayes:	
Service Area: Chelsa/New Alluwe	
Murray	04
Nowata	
Service Area: Chelsa/New Alluwe	
Oklahoma:	
Service Area: S.E. Oklahoma City	01
Osage	
Pushmataha	
Service Area: Clayton	01
Rogers:	
Service Area: Chelsa/New Alluwe	01
Seminole	
Texas:	
Service Area: Texhoma	01
Tillman	03
Tulsa:	
Service Area: North Central Tulsa	02
Population Group: Indian Pop.	01
Washita	

PRIMARY CARE: Oklahoma

Service Area Listing

Service area name	Degree of shortage group
Chelsa/New Alluwe	01
County—Mayes:	
Parts: Adair E.D. 12	
County—Nowata:	
Parts: New Alluwe E.D. 14	
County—Rogers:	
Parts: E.D. 1–4	
Clayton	01
County—Pushmataha:	
Parts: No. Pushmataha Division	
North Central Tulsa	02
County—Tulsa:	
Parts:	
C.T. 2–10	
C.T. 12–14	
C.T. 57	
C.T. 62	
C.T. 79	
C.T. 80.01–80.02	
C.T. 91.01	
S.E. Oklahoma City	01
County—Oklahoma:	
Parts:	
C.T. 1037–1040	
C.T. 1047–1049	
C.T. 1053–1054	
C.T. 1072.09	
C.T. 1073.02	
South Le Flore	01
County—Le Flore:	
Parts:	
South Le Flore	
Talihina	
Texhoma	01
County—Texas:	

PRIMARY CARE: Oklahoma—Continued

Service Area Listing

Service area name	Degree of shortage group
Parts West Texas CCD	

PRIMARY CARE: Oklahoma

Population Group Listing

Population group	Degree of shortage group
Indian Pop. of Tulsa County—Tulsa	01

PRIMARY CARE: Oklahoma

Facility Listing

Facility	Degree of shortage group
OK., State Pen. (Granite) County—Greer	02

PRIMARY CARE: Oregon

County name	Degree of shortage group
Baker:	
Service Area: Halfway	01
Benton:	
Service Area:	
Alsea	01
Blodgett/Eddyville	01
Junction City/Harrisburg/Monroe	02
Clackamas:	
Service Area:	
Estacada	02
Mt. Hood	01
Population Group: Migr/Seas Frmwkr Pop	03
Columbia:	
Service Area: Vernonia	01
Coos:	
Service Area: Powers	01
Curry:	
Service Area: Port Orford	02
Deschutes:	
Service Area:	
Arlington	01
Condon	01
Grant:	
Service Area: Long Creek	01
Harney:	
Service Area: South Harney	01
Jackson:	
Service Area:	
Applegate-Williams	01
Shady Cove	01
Jefferson:	
Population Group: Am. Indian Pop—Warm Springs Res	01
Josephi:	
Service Area: Applegate-Williams	01
Klamath:	
Service Area	
Bly	01
Chiloquin	01
Lake:	
Service Area: Silver Lake	01
Lane:	
Service Area	
Junction City/Harrisburg/Monroe	02
Lowell	01
McKenzie	01
Oakridge	03
Triangle Lake/Swisshome	02
Veneta	02
Lincoln:	
Service Area: Bloddgett/Edyville	01

PRIMARY CARE: Oregon—Continued

County name	Degree of shortage group
Linn:	
Service Area:	
Brownville	04
Junction City/Harrisburg/Monroe	02
Malheur:	
Service Area:	
Jordan Valley	01
Nyssa	01
Vale	02
Population Group: MSFW N. Treasure Valley	01
Marion:	
Service Area: Detroit	01
Population Group: Migr Seas Frmwkr/Marion-Polk	01
Facility:	
St. Penitentiary/Womens Corr. Ctr	02
State Correctional Inst	02
Morrow:	
Service Area: Boardman	02
Multnomah:	
Facility: Rocky Butte Jail	02
Polk:	
Service Area:	
West Salem	03
Willamina	01
Population Group: Migr Seas Frmwkr/Marion-Polk	01
Sherman:	
Service Area: Moro/Grass Valley	01
Tillamook:	
Service Area: Pacific City/Cloverdale	02
Umatilla:	
Population Group:	
Am. Indian Pop—Umatilla	01
Migr/Seas Farmwkr Pop—W. Umatilla	01
Walla Walla—Migrant & Seasonal Farmwor	01
Union:	
Service Area: Cove/Union	01
Wasco:	
Service Area: Maupin	01
Population Group: Am. Indian Pop—Warm Springs Res	01
Washington:	
Population Group: Migr/Seas Farmwkr Pop	01
Wheeler:	
Service Area:	
Fossil	01
Mitchell	01
Yamhill:	
Service Area: Willamina	01
Population Group: Migr/Seas Frmwkr Pop	01

PRIMARY CARE: Oregon

Service Area Listing

Service area name	Degree of shortage group
Alsea	01
County—Benton:	
Parts: S.W. Benton Div (W ½)	
Applegate-Williams	01
County—Jackson:	
Parts: Southwest Jackson Div (SW Pt)	
County—Josephi:	
Parts: Williams	
Arlington	01
County—Gilliam:	
Parts: Arlington Div.	
Bloddgett/Eddyville	01
County—Benton:	
Parts: North Benton Div (W ½)	
County—Lincoln:	
Parts: Eddyville Div (E ½)	
Bly	01
County—Klamath:	
Parts: Langell CCD	
Boardman	02
County—Morrow:	
Parts: Boardman Div.	
Brownville	04
County—Linn:	
Parts: Brownville CCD	
Chiloquin	01
County—Klamath:	
Parts	
Chiloquin Div.	
Cresent Lake Div (S Part)	
Keno Div. (N Part)	
Condon	01
County—Gilliam:	
Parts: Condon Div	
Cove/Union	01
County—Union:	
Parts.	
Cove Div.	
Union Div	
Detroit	01
County—Marion:	
Parts: Mill City (E ½)	
Estacada	02
County—Clackamas:	
Parts: Estacada CCD	
Fossil	01
County—Wheeler:	
Parts: Fossil Div.	
Halfway	01
County—Baker:	
Parts:	
Eagle Valley CCD	
Halfway CCD	
Jordan Valley	01
County—Malheur:	
Parts: Jordan CCD	
Junction City/Harrisburg/Monroe	02
County—Benton:	
Parts: SE Benton Div (S ½)	
County—Lane:	
Parts: Junction City Div.	
County—Linn:	
Parts: Harrisburg Div (S ½)	
Long Creek	01
County—Grant:	
Parts: Long Creek Div.	
Lowell	01
County—Lane:	
Parts: Lowell Div.	
Maupin	01
County—Wasco:	
Parts: Dufur Div (S ½)	
McKenzie	01
County—Lane:	
Parts: C.T. 1 (McKenzie)	
Mitchell	01
County—Wheeler:	
Parts: Mitchell Div	
Monro/Grass Valley	01
County—Sherman:	
Parts: Moro Div.	
Mt. Hood	01
County—Clackamas Div.:	
Parts: Mt. Hood Div.	
Nyssa	01
County—Malheur:	
Parts:	
Adrian Div.	
Nyssa Div.	
Owyhee Div.	
Oakridge	03
County—Lane:	
Parts: Oakridge Div.	
Pacific City/Cloverdale	02
County—Tillamook:	
Parts:	
Beaver CCD (S ½)	
Neskowin CCD	
Port Orford	02
County—Curry:	
Parts: Port Orford Div.	
Powers	01
County—Coos:	
Parts. Powers Div	
Shady Cove	01
County—Jackson:	
Parts	
Butte Falls-Prospect Div (N ½)	
Shady Cove Div.	
Silver Lake	01
County—Lake:	
Parts: Silver Lake-Ft Rock CCD	
South Harney	01
County—Harney:	
Parts: Diamond Div.	

PRIMARY CARE: Oregon—Continued

Service Area Listing

Service area name	Degree of shortage group
Tnangle Lake/Swisshome	02
County—Lane:	
Parts: Mid. Siuslaw/Tn Lake Div.	
Vale	02
County—Malheur:	
Parts:	
Brogan Div.	
Juntunra Div	
Vale Div.	
West Vale Div.	
Veneta	02
County—Lane:	
Parts:	
C.T. 8 (W ½)	
C.T. 9.02	
Veneta City	
Vernonia	01
County—Columbia:	
Parts: Vernonia CCD	
West Salem	03
County—Polk:	
Parts: C.T. 51-52	
Willamina	01
County—Polk:	
Parts: Willamina Div.	
County—Yamhill:	
Parts: Sheridan Div (W ⅔)	

PRIMARY CARE: Oregon

Population Group Listing

Population group	Degree of shortage group
Am. Indian Pop—Umatilla	01
County—Umatilla:	
Parts: Reservation Div.	
Am. Indian Pop—Warm Springs Res	01
County—Jefferson:	
Parts: Warm Spring Div	
County—Wasco:	
Parts: Warm Springs Div.	
Migr. Seas. Fmwkr/Marion—Polk	01
County:	
Marion	
Polk	
Migr./Seas. Farmwkr. Pop	01
County—Washington	
Migr/Seas. Farmwkr. Pop—W Umatilla	01
County—Umatilla:	
Parts:	
Northwest Umatilla Div	
Pendleton Div.	
Pilot Rock Div.	
Migr/Seas Fmwkr. Pop	03
County:	
Clackamas	
Yamhill	
Msfw. N. Treasure Valley	01
County—Malheur	
Walla Walla—Migrant & Seasonal Farmwor	01
County—Umatilla:	
Parts:	
Athena Division	
Northeast Umatilla Division	
Umapine Division	
Weston Division	

PRIMARY CARE: Oregon

Facility Listing

Facility	Degree of shortage group
Rocky Butte Jail	02
County—Multnomah	
St. Penitentiary/Womens Corr. Ctr	02
County—Marion	
State Correctional Inst	02

PRIMARY CARE: Oregon—Continued

Facility Listing

Facility	Degree of shortage group
County—Marion	

PRIMARY CARE: Pennsylvania

County name	Degree of shortage group
Adams:	
Service Area: North Adams	02
Allegheny:	
Service Area:	
Arlington Heights/St. Clair	01
Beltzhoover/Knoxville	02
Hill Dist./Terrace Village	01
Homestead	02
Homewood-Brushton	02
Manchester	01
McKees Rocks-Stowe	02
North Braddock	02
Southwest Pittsburgh	02
Population Group: Medicaid Elig. Pop. of E. Liberty	01
Armstrong:	
Service Area:	
Armstrong-Clarion	02
Butler—NE Portion	02
Dayton Rural Valley	04
Kiski Valley	02
Punxsutawney	04
Beaver:	
Service Area: East Liverpool	02
Bedford:	
Service Area:	
Broad Top (Area 22)	01
Hyndman	02
Butler:	
Service Area: Butler—NE Portion	02
Cambria:	
Service Area: Cent. Cambria (Area 2)	04
Cameron:	
Service Area: Austin-Emporium	04
Carbon:	
Service Area: Kidder	04
Centre:	
Service Area:	
Lamar	02
Penns Valley	02
Snow Shoe	04
Clarion:	
Service Area:	
Armstrong-Clarion	02
Forest-Clarion	02
Clearfield:	
Service Area:	
Mahaffey	01
S. Central Clearfield	03
Snow Shoe	04
Clinton:	
Service Area:	
Austin-Emporium	04
Lamar	02
Renovo	02
Columbia:	
Service Area:	
Benton-Millville	02
Shamokin	03
Crawford:	
Service Area:	
Conneautville	02
East Crawford	02
Population Group: Medicaid Eligible Pop. Meadville	04
Dauphin:	
Service Area:	
Millersburg	03
Williamstown	04
Delaware:	
Service Area: City of Chester	02
Elk:	
Service Area: Forest-Clarion	02
Erie:	
Service Area: Southern Erie	02
Population Group: Medicaid—Elig Pop. of Erie City	02

PRIMARY CARE: Pennsylvania—Continued

County name	Degree of shortage group
Fayette:	
Service Area:	
Connellsville	02
Greensboro	02
Markleysburg	02
Forest:	
Service Area: Forest-Clarion	02
Franklin:	
Service Area: Valleys Community	01
Fulton:	
Service Area: Hancock	02
Greene:	
Service Area:	
Clay/Battelle	02
Greensboro	02
Huntingdon:	
Service Area:	
Big Valley	02
Broad Top (Area 22)	02
Cromwell (Pinng Area 25)	01
Indiana:	
Service Area:	
Indiana—N Portion	02
Mahaffey	01
Punxsutawney	04
Southern Indiana	03
Jefferson:	
Service Area:	
Punxsutawney	04
Reynoldsville	02
Juniata:	
Service Area: Mt. Pleasant Mills-Middleburg	02
Lackawanna:	
Service Area:	
Carbondale	02
Moscow	02
Lancaster:	
Service Area: Welsh Mountain	02
Population Group: Span. Spk. Pop. of S.E. Lancaster City	01
Lebanon:	
Service Area: Northern Lebanon Co.	02
Luzerne:	
Service Area:	
Benton-Millville	02
Exeter	04
Freeland	04
Kidder	04
Monroe/Noxen	04
McKean:	
Service Area:	
Central McKean	02
Shinglehouse	04
Mercer:	
Population Group: Medicaid Eligible Pop.	02
Mifflin:	
Service Area: Big Valley	02
Monroe:	
Service Area: Kidder	04
Northumberland:	
Service Area:	
Herndon-Mandata	02
Millersburg	03
Shamokin	02
Philadelphia:	
Service Area:	
Lower N. Philadelphia	02
Mantua/Belmont	02
South Philadelphia	04
Upper N. Philadelphia	01
West Philadelphia	01
Potter:	
Service Area:	
Austin-Emporium	04
Galeton	01
Shinglehouse	02
Westfield	04
Schuylkill:	
Service Area:	
Herndon-Mandata	02
Williamstown	04
Snyder:	
Service Area: Mt. Pleasant Mills-Middleburg	02
Somerset:	
Service Area:	
Boswell Area	02
Confluence (Area 7)	02
Hyndman	02
Sullivan	02

PRIMARY CARE: Pennsylvania—Continued

County name	Degree of shortage group
Susquehanna:	
Service Area:	
Carbondale	04
Montrose (Area 14)	03
Tioga:	
Service Area:	
Blossburg	02
Elkland (NY/PA)	02
Mansfield	03
Westfield	02
Washington:	
Service Area: Burgettstown	02
Wayne:	
Service Area:	
Carbondale	04
Mt. Pleasant	02
Westmoreland:	
Service Area:	
Connellsville	03
Kiski Valley	02
Wyoming:	
Service Area:	
Exeter	04
Monroe/Noxen	04
York:	
Service Area:	
Delta	02
York	01

PRIMARY CARE: Pennsylvania

Service Area Listing

Service area name	Degree of shortage group
Arlington Heights/St. Clair	01
County—Allegheny:	
Parts:	
C.T. 1603–1604	
C.T. 1606	
Armstrong-Clarion	02
County—Armstrong:	
Parts:	
Brady's Bend Township	
Madison Township	
Perry Township	
Pine Township	
Sugarcreek Township	
Washington Township	
County—Clarion:	
Parts:	
Brady Township	
East Brady Township	
Madison Township	
Austin-Emporium	02
County:	
Cameron	
Clinton	
Parts: West Keating Twp	
County—Potter:	
Parts:	
Austin Twp	
Keating Twp	
Portage Twp	
Sylvania Twp	
Wharton Twp	
Beltzhoover/Knoxville	03
County—Allegheny:	
Part: C.T. 3001	
Benton-Millville	02
County—Columbia:	
Parts	
Benton Borough	
Benton Twnship	
Fishing Creek Twnship	
Greenwood Twp	
Jackson Twp	
Madison Twnship (Northern ⅔)	
Millville Borough	
Mt. Pleasant Twnship	
Orange Twnship (Northern ⅓)	
Pine Twnship	
Stillwater Borough	
Sugarloaf Twnship	
County—Luzerne:	

PRIMARY CARE: Pennsylvania—Continued

Service Area Listing

Service area name	Degree of shortage group
Parts:	
Fairmont Twnship	
Huntington Twnship	
New Columbus Borough	
Big Valley	02
County—Huntingdon:	
Parts:	
Barree Twp	
Brady Twp (N ¼)	
Jackson Twp	
Miller Twp	
County—Mifflin:	
Parts:	
Armagh Twp	
Brown Twp	
Menno Twp	
Union Twp	
Blossburg	02
County—Tioga:	
Parts:	
Bloss Twp	
Blossburg Boro.	
Covington Twp	
Duncan Twp	
Hamilton Twp	
Liberty Boro.	
Liberty Twp (Eastern ⅛)	
Putnam Boro.	
Union Twp	
Ward Twp	
Boswell Area	02
County—Somerset:	
Parts:	
Boswell Boro.	
Hooversville Boro.	
Jenner Twp	
Jennerstown Boro.	
Quemahoning Twp	
Stoystown Boro.	
Broad Top (Area 22)	02
County—Bedford:	
Parts—	
Broad Top Twp	
Coaldale Boro	
Hopewell Boro.	
Liberty Twp	
Saxton Boro.	
County—Huntingdon:	
Parts:	
Broad Top City Boro.	
Carbon Twp	
Cass Twp	
Cassville Boro.	
Coalmont Boro.	
Dudley Boro.	
Hopewell Twp	
Todd Twp	
Wood Twp	
Burgettstown	03
County—Washington:	
Parts:	
Burgettstown Borough	
Cross Creek Twp	
Hanover Twp	
Hopewell Twp	
Independence Twp	
Jefferson Twp	
McDonald Borough	
Midway Borough	
Mt. Pleasant Twp	
Robinson Twp	
Smith Twp	
West Middletown Borough	
Butler—NE Portion	02
County—Armstrong:	
Parts:	
Hovey Twp	
Parker City	
County—Butler:	
Parts:	
Allegheny Twp	
Brain Borough	
Cherry Valley Borough	
Chicora Borough	
Concord Twp	
Donegal Twp	
Eau Clare Borough	
Fairview Borough	

PRIMARY CARE: Pennsylvania—Continued

Service Area Listing

Service area name	Degree of shortage group
Fairview Twp	
Karns City Borough	
Oakland Twp	
Parker Twp	
Petrolia Borough	
Venango Twp	
Washington Twp	
Carbondale	04
County—Lackawanna:	
Parts:	
Archbald Boro.	
Carbondale City	
Carbondale Twp	
Fell Twp	
Greenfield Twp	
Jermyn Boro.	
Mayfield Boro.	
Scott Twp	
Vandling Boro.	
County—Susquehanna:	
Parts:	
Clifford Twp	
Forest City Boro.	
Union Dale Boro.	
County—Wayne:	
Parts:	
Canaan Twp	
Clinton Twp	
Lake Twp	
South Canaan Twp	
Waymart Boro.	
Cent. Cambria-Area 2	04
County—Cambria:	
Parts:	
Blacklick Twp	
Cambria Twp	
Ebensburg Boro.	
Jackson Twp	
Nanty-Glo Boro.	
Vinmont Boro.	
Central McKean	03
County—McKean:	
Parts:	
Annin Twp	
Eldred Boro.	
Eldred Township	
Hamlin Twp (E ½)	
Keating Twp	
Liberty Twp	
Mt. Jewett Twp (E ½)	
Norwich Township	
Otto Township	
Port Allegany Boro.	
Sergeant Township	
Smethport Boro.	
City of Chester	02
County—Delaware:	
Parts:	
C.T. 4048	
C.T. 4049.01–4049.02	
C.T. 4050–4057	
C.T. 4058.01–4058.02	
C.T. 4059–4060	
Clay/Batelle	02
County—Greene:	
Parts:	
Aleppo Twp	
Freeport Township	
Gilmore Township	
Jackson Township	
Springhill	
Confluence (Area 7)	02
County—Somerset:	
Parts:	
Addison Boro.	
Addison Twp	
Casselman Boro.	
Confluence Boro.	
Lower Turkeyfoot Twp	
Upper Turkeyfoot Twp	
Conneautville	02
County—Crawford:	
Parts:	
Beaver Twp	
Conneaut Twp	
Conneautville Boro.	
Cussewago Twp	
Hayfield Twp (W ½)	

PRIMARY CARE: Pennsylvania—Continued

Service Area Listing

Service area name	Degree of shortage group
Spring Twp	
Springboro Boro.	
Summerhill Twp	
Connellsville	03
County—Fayette:	
Parts:	
Bullskin Twp	
Connellsville City	
Connellsville Twp	
Dawson Boro.	
Dunbar Boro.	
Dunbar Twp	
Everson Boro.	
Lower Tyrone Twp	
S. Connellsville Boro.	
Saltlick Twp	
Springfield Twp	
Upper Tyrone Twp	
Vanderbuilt Boro.	
County—Westmoreland:	
Parts:	
E. Huntingdon Twp	
Mt. Pleasant Boro.	
Mt. Pleasant Twp	
New Stanton Boro.	
S. Huntingdon Twp	
Scottdale Boro.	
Smithton Boro.	
Cromwell (Plnng. Area 25)	01
County—Huntingdon:	
Parts:	
Clay Twp	
Cromwell Twp	
Dublin Twp	
Orbisonia Boro.	
Rockhill Boro.	
Saltillo Boro.	
Shade Gap Boro.	
Springfield Twp	
Tell Twp	
Three Springs Boro.	
Dayton Rural Valley	[illegible]
County—Armstrong:	
Parts:	
Atwood Borough	
Cowanshannock Township	
Dayton Borough	
Redbank Twp (5% Western Portion)	
Rural Valley Borough	
Wayne Township	
Delta	
County—York:	
Parts:	
Chanceford Twp	
Cross Road Boro.	
Delta Boro.	
East Hopewell Twp	
Fawn Grove Boro.	
Fawn Twp	
Felton Boro.	
Lower Chanceford Twp	
Peachbottom Twp	
East Crawford	
County—Crawford:	
Parts:	
Athens Twnship	
Bloomfield Twnship	
Centerville Borough	
Richmond Twp	
Rockdale Twnship	
Rome Twnship	
Sparta Twnship	
Spartansburg Borough	
Steuben Twnship	
Townville Borough	
East Liverpool	
County—Beaver:	
Parts:	
Georgetown Boro.	
Glasgow Boro.	
Greene Twp (W ½)	
Hookstown Boro.	
Ohioville Boro. (W ½)	
Elkland (NY/PA)	
County—Tioga:	
Parts:	
Deerfield Twp	
Elkland Boro.	

PRIMARY CARE: Pennsylvania—Continued

Service Area Listing

Service area name	Degree of shortage group
Elkland Twp	
Farmington Twp	
Knoxville Boro.	
Nelson Twp	
Osceola Twp	
Exeter	[illegible]
County—Luzerne:	
Parts:	
Exeter Borough	
Exeter Township	
Franklin Township	
West Wyoming	
County—Wyoming:	
Parts	
Exeter Township	
Falls Twnship	
Forest-Clarion	[illegible]
County—Clarion:	
Parts	
Farmington Twp	
Knox Twp	
Washington Twp	
County—Elk:	
Parts: Millstone Twp	
County—Forest:	
Parts:	
Barnett Twp	
Green Twp	
Howe Twp	
Jenks Twp	
Kingsley Twp	
Freeland	[illegible]
County—Luzerne:	
Parts	
Butler Twp (E Portion)	
Foster Twp (W Portion)	
Freeland Boro.	
Hazel Twp	
Jeddo Boro.	
Galeton	01
County—Potter:	
Parts:	
Abbott Township	
Galeton Borough	
Pike Township	
Stewardson Township	
Ulysses Township	
West Branch Township	
Greensboro	
County—Fayette:	
Parts:	
German Township	
Masontown Boro.	
Nicholson Township	
Point Marion Borough	
Springhill Township	
County—Greene:	
Parts:	
Dunkard Township	
Greene Township	
Greensboro Borough	
Monogahela Township	
Hellcock Service Area	02
County—Fulton:	
Parts:	
Bethel	
Thompson	
Union	
Herndon-Mandata	
County—Northumberland:	
Parts:	
Herndon Borough	
Jackson Township	
Jordon Township	
Little Mahanoy Township	
Lower Mahannoy Twp (N ½)	
Upper Mahanoy Township	
Washington Township	
West Cameron Township	
County—Schuylkill:	
Parts:	
Eldred Township	
Upper Mahantango Township	
Hill Dist./Terrace Village	
County—Allegheny:	
Parts:	
C.T. 304–305	
C.T. 401	

PRIMARY CARE: Pennsylvania—Continued

Service Area Listing

Service area name	Degree of shortage group
C.T. 501–504	
C.T. 506–509	
Homestead	02
County—Allegheny:	
Parts:	
C.T. 4823–4824 W. Homestead	
C.T. 4831 Homestead	
C.T. 4836–4837 Homestead	
C.T. 4841–4842 Munhall	
C.T. 4845–4846 Munhall	
C.T. 4850 Whitaker	
C.T. 4867–4869 Duquesne	
C.T. 4881–4884 W. Mifflin	
Homewood-Brushton	02
County—Allegheny	
Parts:	
C.T. 1207	
C.T. 1301–1306	
Hyndman	[illegible]
County—Bedford	
Parts	
Harrison Twp	
Hyndman Boro.	
Juniata Twp	
Londonderry Twp	
County—Somerset:	
Parts	
Allegheny Twp	
Fairhope Twp	
New Baltimore Boro.	
Indiana—N Portion	02
County—Indiana:	
Parts:	
Cherry Tree Borough	
Clymer Boro.	
East Mahoning Twp	
Glen Campbell Borough	
Grant Twp	
Green Twp	
Marion Center Borough	
Montgomery Twp	
Pine Twp	
Plumville Borough	
Rayne Twp	
South Mahoning Twp	
Washington Twp	
Kidder	02
County—Carbon:	
Parts:	
East Side Boro.	
Kidder Twp	
Lausanne Twp	
Lehigh Twp	
Penn Forest Twp	
County—Luzerne:	
Parts:	
Buck Twp	
Foster Twp (E Portion)	
White Haven Borough	
County—Monroe:	
Parts	
Coolbough Township	
Tobyhanna Township	
Tunkhannock Township	
Kiski Valley	02
County—Armstrong:	
Parts	
Apollo Borough	
Bethel Township	
Burrel Township	
Gilpin Township	
Kiskiminetas Township	
Leechburg Borough	
North Apollo Borough	
Parks Township	
South Bend Township	
County—Westmoreland:	
Parts:	
Allegheny Township	
Avonmore Borough	
Bell Township	
East Vandergrift Borough	
Hyde Park Borough	
Oklahoma Borough	
Vandergrift Borough	
Washington Township	
West Leechburg Borough	
Lamar	[illegible]

PRIMARY CARE: Pennsylvania—Continued

Service Area Listing

Service area name	Degree of shortage group
County—Centre:	
Parts: Walker Twp (E ¼)	
County—Clinton:	
Parts:	
Green Twp	
Lamar Twp (W ¾)	
Logan Twp	
Loganton Boro.	
Porter Twp	
Lower N. Philadelphia	02
County—Philadelphia:	
Parts:	
C.T. 125–142	
C.T. 144–157	
C.T. 162–169	
Mahaffey	01
County—Clearfield:	
Parts:	
Bell Twp	
Burnside Boro	
Burnside Twp	
Ferguson Twp (W ¾)	
Greenwood Twp	
Mahaffey Boro.	
New Washington Boro	
Newburg Boro.	
County—Indiana:	
Parts:	
Banks Twp (E ¼)	
Glen Campbell Boro.	
Manchester	01
County—Allegheny:	
Parts:	
C.T. 2101–2103	
C.T. 2106	
C.T. 2201–2202	
C.T. 2502	
Mansfield	03
County—Tioga:	
Parts:	
Jackson Twp	
Lawrence Twp	
Lawrenceville Boro	
Mansfield Boro	
Richmond Twp	
Roseville Boro	
Rutland Twp	
Sullivan Twp	
Tioga Boro.	
Tioga Twp	
Mantua/Belmont	02
County—Philadelphia:	
Parts:	
C.T. 90–91	
C.T. 106–110	
Markleysburg	02
County—Fayette:	
Parts:	
Henry Clay Twp	
Markleysburg Boro	
Ohiopyle Boro.	
Steward Twp	
Wharton Twp	
McKees Rocks-Stowe	02
County—Allegheny:	
Parts:	
C.T. 4621 (Stowe Twp)	
C.T. 4626 (Stowe Twp)	
C.T. 4637–4639 (McKees Rocks Boro)	
Millersburg	03
County—Dauphin:	
Parts:	
Berrysburg Borough	
Elizabethville Borough	
Gratz Borough	
Halifax Borough	
Halifax Township	
Jackson Township	
Jefferson Township	
Lykens Township	
Mifflin Township	
Millersburg Borough	
Reed Township	
Upper Paxton Township	
Washington Township	
Wayne Township	
County—Northumberland:	
Parts: Lower Mahanoy (S ½)	

PRIMARY CARE: Pennsylvania—Continued

Service Area Listing

Service area name	Degree of shortage group
Monroe/Noxen	03
County—Luzerne:	
Parts: Harvey's Lake Boro	
County—Wyoming:	
Parts:	
Forkston Twp (S ¾)	
Monroe Twp	
Northmoreland Twp	
Noxen Twp	
Montrose (Area 14)	03
County—Susquehanna:	
Parts	
Auburn Twp	
Bridgewater Twp	
Brooklyn Twp	
Dimock Twp	
Forest Lake Twp	
Franklin Twp	
Harford Twp	
Hop Bottom Boro	
Jessup Twp	
Lathrop Twp	
Lenox Twp	
Liberty Twp	
Montrose Boro	
Rush Twp	
Silver Lake Twp	
Springville Twp	
Moscow	02
County—Lackawanna:	
Parts	
C.T. 118	
C.T. 129	
Mt. Pleasant	02
County—Wayne	
Parts:	
Buckingham Twp	
Damascus Twp	
Lebanon Twp	
Manchester Twp	
Mt. Pleasant Twp	
Preston Twp	
Scott Twp	
Starrucca Boro	
Mt. Pleasant Mills-Middleburg	02
County—Juniata	
Parts	
Monroe Township	
Susquehanna Twp	
County—Snyder	
Parts	
Beaver Township	
Beavertown Borough	
Centre Township	
Chapman Township	
Franklin Township	
Freeburg Township	
Middleburg Township	
Perry Township	
Union Township	
Washington Township	
West Perry Township	
North Braddock	03
County—Allegheny	
Parts	
C.T. 5041–5043 N. Versailles	
C.T. 5060 Wall	
C.T. 5070 E. McKeesport	
C.T. 5080 Wilmerding	
C.T. 5091–5093 Turtle Creek	
C.T. 5100 E. Pittsburgh	
C.T. 5110 Chalfant	
C.T. 5120 N. Braddock	
C.T. 5128–5129 N. Braddock	
North Adams	02
County—Adams	
Parts	
Arendtsville Borough	
Bendersville Borough	
Biglerville Borough	
Butler Township	
Huntington Township	
Menallen Township	
Tyrone Township	
York Springs Borough	
Northern Lebanon Co	02
County—Lebanon:	
Parts	

PRIMARY CARE: Pennsylvania—Continued

Service Area Listing

Service area name	Degree of shortage group
Bethel Twp	
Cold Spring Twp	
East Hanover Twp	
Jonestown Boro	
Swatara Twp	
Union Twp	
Penns Valley	03
County—Centre:	
Parts	
Center Hall Borough	
Greg Township	
Haines Township	
Miles Township	
Millheim Borough	
Penn Township	
Potter Township	
Punxsutawney	04
County—Armstrong:	
Parts: Redbank Township (Eastern ½)	
County—Indiana:	
Parts	
Banks Township (Western ¾)	
Canoe Township	
Northern Mahoning (Northern ½)	
Smicksburg Borough	
West Mahoning (E ¼)	
County—Jefferson:	
Parts	
Beaver Township (Sourthern ½)	
Bell Township	
Big Run Borough	
Gaskill Township	
Henderson Township	
McCalmont Twp	
Oliver Township	
Perry Township	
Porter Township	
Punxsutawney Borough	
Riggold Township	
Timblin Borough	
Worthville Borough	
Young Township	
Renovo	02
County—Clinton	
Parts	
Chapman Township	
East Keating Twnship	
Grugan Twp	
Leidy Township	
Noyes Township	
Renovo Borough	
South Renovo Borough	
Reynoldsville	02
County—Jefferson:	
Parts	
Knox Twp (E ¼)	
Pine Creek Twp (E ⅛)	
Reynoldsville	
Washington Twp (S ⅛)	
Winslon Twp	
S. Central Clearfield	03
County—Clearfield:	
Parts	
Beccaria Twp	
Bigler Twp	
Chest Twp	
Coalport Boro	
Glen Hope Boro	
Gulich Twp	
Irvona Boro	
Jordan Twp	
Ramey Boro.	
Westover Boro	
Shamokin	03
County—Columbia:	
Parts: Cleveland Twp (S ¼)	
County—Northumberland	
Parts:	
Coal Twp	
Kulpmont Boro	
Manon Heights Boro.	
Mt. Carmel Twp	
Ralpho Twp	
Shamokin City	
Zerbe Twp	
Shinglehouse	03
County—McKean	
Parts	

PRIMARY CARE: Pennsylvania—Continued

Service Area Listing

Service area name	Degree of shortage group
Ceres Township	
Eldred Twp	
County—Potter:	
Parts:	
Clara Township	
Genesee Township	
Oswayo Borough	
Oswayo Township	
Pleasant Valley Township	
Sharon Township	
Shinglehouse Borough	
Snow Shoe	02
County—Centre:	
Parts:	
Boggs Township (Southern ⅓)	
Burnside Township	
Curtin Twp (Eastern ⅓)	
Snow Shoe Borough	
Snow Shoe Township	
Union Township (Southern ⅓) -	
Unionville Borough	
County—Clearfield:	
Parts:	
Cooper Township (Northern ⅘)	
Covington Township	
Karthaus Township	
South Philadelphia	[illegible]
County—Philadelphia:	
Parts:	
C.T. 13-14	
C.T. 19-22	
C.T. 33	
Southern Erie	03
County—Erie:	
Parts:	
Albion Borough	
Conneaut Township	
Cranesville Borough	
Elk Creek Township	
Franklin Township	
Platea Borough	
Springfield Township	
Southern Indiana	[illegible]
County—Indiana:	
Parts:	
Armagh Boro.	
Black Lick Twp	
Blairsville Boro.	
Burrell Twp	
Conemaugh Twp	
East Wheatfield Twp	
Jacksonville Boro.	
Saltsburg Boro.	
West Wheatfield Twp	
Young Twp	
Southwest Pittsburgh	02
County—Allegheny:	
Parts:	
C.T. 2001	
C.T. 2004-2008	
C.T. 2013-2016	
C.T. 2805	
C.T. 2807-2812	
Upper N. Philadelphia	01
County—Philadelphia:	
Parts:	
C.T. 170-176	
C.T. 194-205	
Valleys Community	01
County—Franklin:	
Parts:	
Fannet Twnship	
Metal Twnship	
Welsh Mountain	02
County—Lancaster:	
Parts:	
Caernarvon Twp	
Earl Twp	
East Earl Twp	
Salisbury Twp	
West Philadelphia	01
County—Philadelphia:	
Parts:	
C.T. 92-96	
C.T. 100-105	
C.T. 111-113	
Westfield	02
County—Potter:	

PRIMARY CARE: Pennsylvania—Continued

Service Area Listing

Service area name	Degree of shortage group
Parts:	
Harrison Twp (½)	
Hector Twp (½)	
County—Tioga:	
Parts:	
Brookfield Twp	
Chatham Twp (½)	
Clymer Twp (½)	
Westfield Boro.	
Westfield Twp	
Williamstown	[illegible]
County—Dauphin:	
Parts:	
Jackson Twp (E ½)	
Jefferson Twp (E ½)	
Lykens Boro.	
Rush Twp	
Wiconisco Twp	
Williams Twp	
Williamstown Boro.	
County—Schuylkill:	
Parts:	
Porter Twp	
Tower City	
York	01
County—York:	
Parts:	
C.T. 1-3	
C.T. 5	
C.T. 7	
C.T. 10	
C.T. 15-16	

PRIMARY CARE: Pennsylvania

Population Group Listing

Population group	Degree of shortage group
[illegible]	[illegible]
Medicaid—Elig. Pop. of Erie City	03
County—Erie	
Medicaid Elig. Pop. E. Liberty	01
County—Allegheny:	
Parts:	
C.T. 808	
C.T. 1006-1007	
C.T. 1104	
C.T. 1109-1110	
C.T. 1201-1204	
C.T. 1208	
Medicaid Eligible Pop. Meadville	[illegible]
County—Crawford:	
Parts: [illegible]	
County—Mercer:	
Parts:	
Farrell City	
Sharon City	
Span. Spk. Pop. of SE. Lancaster City	01
County—Lancaster:	
Parts:	
C.T. 8-9	
C.T. 15-16	

PRIMARY CARE: Rhode Island

County name	Degree of shortage group
[illegible]	
Population Group: Poverty Pop.—Bristol/E. Providence	01
Providence:	
Service Area:	
Central Falls/Central Pawtucket	03
Northwest Providence	[illegible]
Northwest Woonsocket	01
Population Group:	
Poverty Pop.—Bristol/E. Providence	01
Poverty Population/Central Providence	[illegible]
Facility: Med/Max Securities Inst.	[illegible]

PRIMARY CARE: Rhode Island—Continued

County name	Degree of shortage group
Washington	
Population group:	
Poverty Pop./East Washington 14	01
Poverty Pop./W. Washington	[illegible]

PRIMARY CARE: Rhode Island

Service Area Listing

Service area name	Degree of shortage group
Central Falls/Central Pawtucket	03
County—Providence:	
Parts:	
C.T. 108-111	
C.T. 149	
C.T. 151-154	
C.T. 161	
C.T. 164	
Northwest Providence	03
County—Providence:	
Parts:	
Burrillville Twn	
Foster Twn	
Glocester Twn	
Northwest Woonsocket	01
County—Providence:	
Parts:	
C.T. 172	
C.T. 174	
C.T. 176	
C.T. 178-179	
C.T. 180-183	

PRIMARY CARE: Rhode Island

Population Group Listing

Population group	Degree of shortage group
Poverty Pop.—Bristol/E. Providence	01
County:	
Bristol	
Providence:	
Parts:	
C.T. 101.01	
C.T. 101.02	
C.T. 102-104	
C.T. 105.01	
C.T. 105.02	
C.T. 106	
C.T. 107.01	
C.T. 107.02	
Poverty Pop./East Washington 14	[illegible]
County—Washington:	
Parts:	
Jamestown	
Narragansett	
North Kingstown	
South Kingstown	
Poverty Pop./W. Washington	02
County—Washington:	
Parts:	
Charlestown	
[illegible]	
Hopkinton	
Richmond	
Westerly	
Poverty Population/Central Providence	04
County—Providence:	
Parts:	
C.T. 2-14	
C.T. 16-20	
C.T. 22	
C.T. 25-27	
C.T. 30-31	
C.T. 36	

PRIMARY CARE: Rhode Island

Facility Listing

Facility	Degree of shortage group
Med/Max Securities Inst (Cranston)	03
County—Providence	

PRIMARY CARE: South Carolina

County name	Degree of shortage group
Abbeville	
Service Area: Hodges/Princeton	02
Service Area: Isla	02
Allendale	02
Anderson	
Service Area: Isla	02
Facility: Perry Correctional Inst.	03
Beaufort	
Service Area	
Sheldon	02
St. Helena	02
Berkeley	02
Calhoun	02
Charleston:	
Service Area:	
McClellanville	02
Poverty Population of Charleston	03
Sea Island	02
Chesterfield:	
Service Area	
Sandhills	01
Society Hill	01
Clarendon	02
Darlington:	
Service Area: Society Hill	01
Dillon	03
Dorchester:	
Service Area: St. George	02
Edgefield:	
Service Area: Johnston/Merwether	03
Fairfield	04
Florence:	
Service Area: Brittons Neck	01
Greenwood:	
Service Area: Hodges/Princeton	02
Horry:	
Service Area	
Little River	01
Loris	02
Jasper	02
Kershaw:	
Service Area	
Bethune/Mt. Pisgah	01
Heath Springs	03
Lancaster:	
Service Area: Heath Springs	03
Laurens:	
Service Area: Hodges/Princeton	02
Lee	02
Lexington:	
Service Area:	
Batesburg	03
Chapin	03
McCormick	02
Marion:	
Service Area: Brittons Neck	01
Marlboro	02
Orangeburg:	
Service Area: Orangeburg	02
Richland:	
Service Area: Richland	02
Facility	
Central Correctional Inst.	02
Kirkland Correctional Inst	03
Manning Correctional Inst	02
Women's Correctional Inst	02
Saluda	01
Union	03
Williamsburg	02
York:	
Service Area: Western York Co.	04

PRIMARY CARE: South Carolina

Service Area Listing

Service area name	Degree of shortage group
Batesburg	03
County—Lexington	
Parts	
Batesburg-Leesville CCD	
Gilbert CCD	
Bethune/Mt. Pisgah	01
County—Kershaw	
Parts	
Bethune	
Mt. Pisgah	
Brittons Neck	01
County—Florence	
Parts: Johnsonville	
County—Marion	
Parts	
Brittons Neck	
Centenary	
Chapin	03
County—Lexington	
Parts: Chapin	
Heath Springs	03
County—Kershaw	
Parts: Westville	
County—Lancaster	
Parts	
Heath Springs Div	
Kershaw Div	
Hodges/Princeton	02
County—Abbeville	
Parts: Donalds	
County—Greenwood:	
Parts: Ware/Shoals/Hodges	
County—Laurens	
Parts: Princeton	
Isla	02
County—Abbeville	
Parts	
Antreville-Lowndesville	
Calhoun Falls	
County—Anderson	
Parts	
Iva	
Starr	
Johnston/Merwether	03
County—Edgefield:	
Parts:	
Johnston	
Stevens Creek	
Trenton	
Little River	01
County—Horry	
Parts: E.D 680–684 (Little River Div)	
E.D 689 (Longs Div)	
E.D. 693 (Longs Div)	
E.D. 775 (Conway East)	
E.D. 790 (Myrtle Beach)	
Loris	02
County—Horry:	
Parts	
E.D. 690–692 (Longs Div.)	
E.D. 694–695 (Longs Div.)	
E.D. 726–727 (Aynor Div.)	
E.D. 730–731 (Aynor Div.)	
Floyds Div	
Loris Div	
McClellanville	02
County—Charleston:	
Parts	
C.T. 46.01	
C.T. 50	
Orangeburg	02
County—Orangeburg	
Parts	
Bowman Division	
Elloree Division	
Eutaville Division	
Holly Hill Division	
Vance Division	
Poverty Population of Charleston	03
County—Charleston	
Parts	
C.T. 1–18	
C.T. 33–37	
C.T. 41–45	
Richland	02
County—Richland:	
Parts	
Eastover CCD	
Hopkins CCD	
Horrell Hill CCD	
Sandhills	01
County—Chesterfield	
Parts	
Jefferson	
Mcbee	
Pageland	
Sea Island	02
County—Charleston	
Parts	
Edisto Island	
James Island	
Johns Island	
Wadualaw Island	
Sheldon	02
County—Beaufort	
Parts: Sheldon	
Society Hill	01
County—Chesterfield	
Parts	
E.D. 0463	
E.D. 1233	
County—Darlington	
Parts: E.D 0550–0554	
St. George	02
County—Dorchester	
Parts	
Harleyville CCD	
Reevesville CCD	
Ridgeville CCD	
St. George CCD	
St. Helena	02
County—Beaufort:	
Parts: St. Helena	
Western York Co	04
County—York	
Parts	
Hickory	
Cloner	
McConnell	
York	

PRIMARY CARE: South Carolina

Facility Listing

Facility	Degree of shortage group
Central Correctional Inst.	02
County—Richland	
Kirkland Correctional Inst.	03
County—Richland	
Manning Correctional Inst	02
County—Richland	
Perry Correctional Inst.	03
County—Anderson	
Women's Correctional Inst	02
County—Richland	

PRIMARY CARE: South Dakota

County name	Degree of shortage group
Aurora	
Service Area: Wessington Springs	03
Bennett	
Service Area: Martin	02
Bon Homme	02
Brown:	
Service Area	
Britton	01
Ellendale/Edgely	02
Buffalo	
Service Area: Wessington Springs	03
Campbell	01
Charles Mix:	
Service Area: Wagner/Lake Andes	03
Clark	01

PRIMARY CARE: South Dakota—Continued

County name	Degree of shortage
Clay:	
Service Area: Beresford/Alcester	02
Corson:	
Service Area:	
Isabel	01
Lemmon	[illegible]
McLaughlin	01
Custer	[illegible]
Day	[illegible]
Dewey:	
Service Area:	
Eagle Butte	01
Isabel	01
Edmunds:	
Service Area: Bowdle	03
Fall River:	
Service Area: Edgemont	01
Faulk	[illegible]
Grant	[illegible]
Gregory:	
Service Area: Wagner/Lake Andes	[illegible]
Haakon:	
Service Area: Philip	[illegible]
Hamlin	01
Hanson:	
Service Area: Salem	03
Harding	01
Hyde:	
Service Area:	
Gettysburg	02
Highmore	01
Jackson:	
Service Area:	
Martin	[illegible]
Philip	[illegible]
Jerauld:	
Service Area: Wessington Springs	[illegible]
Jones	[illegible]
Lincoln:	
Service Area:	
Beresford/Alcester	[illegible]
Canton	[illegible]
Lyman	03
McCook:	
Service Area: Salem	03
Marshall:	
Service Area: Britton	01
Meade:	
Service Area: Faith	01
Mellette:	
Service Area: Winner/White River	[illegible]
Miner	01
Moody	[illegible]
Pennington:	
Service Area: Philip	[illegible]
Perkins:	
Service Area:	
Faith	01
Lemmon	[illegible]
Potter:	
Service Area: Gettysburg	02
Sanborn:	
Service Area: Wessington Springs	03
Shannon	01
Sully:	
Service Area: Gettysburg	02
Todd	01
Tripp:	
Service Area: Winner/White River	[illegible]
Union:	
Service Area: Beresford/Alcester	[illegible]
Walworth:	
Service Area: Bowdle	03
Ziebach:	
Service Area:	
Eagle Butte	[illegible]
Faith	[illegible]
Isabel	01

PRIMARY CARE: South Dakota

Service Area Listing

Service area name	Degree of shortage group
Beresford/Alcester	[illegible]
County: Clay:	
Parts: Glenwood Twp	
Lincoln:	
Parts:	
Beresford City	
Brooklyn Twp	
Pleasant Twp	
Union:	
Parts:	
Alcester City	
Alcester Twp	
Beresford City	
Big Springs Twp	
Emmet Twp	
Prairie Twp	
Virginia Twp	
Bowdle	[illegible]
County:	
Edmunds:	
Parts:	
Bowdle City	
Bowdle Twp	
Cloud Valley Twp	
Cottonwood Twp	
Glere Twp	
Glover Twp	
Hosmer City	
Hosmer Twp	
Modena Twp	
Odessa Twp	
Roscoe City	
Sangamon	
Walworth:	
Parts:	
E. Walworth Unorg. (N. 3/4)	
Java City	
Selby City	
Britton	01
County:	
Brown:	
Parts:	
Hecla City	
Hecla Twp	
Lansing Twp	
N. Detroit Twp	
Portage Twp	
S. Detroit Twp	
[illegible]	
Canton	[illegible]
County—Lincoln:	
Parts:	
Canton	
Canton Twp	
Dayton Twp	
Delaware Twp	
Eden Twp	
Fairview Town	
Fairview Twp	
Grant Twp	
Highland Twp	
Hudson Town	
Lincoln Twp	
Lynn Twp	
Norway Twp	
Worthing Town	
Eagle Butte	01
County:	
Dewey:	
Parts:	
Eagle Butte City	
North Dewey (Unorg.) S. ½	
North Eagle Butte	
South Dewey (Unorg.) S. ½	
Ziebach:	
Parts: South Ziebach (Unorg.) E. ½	
Edgemont	01
County:	
Fall River:	
Parts:	
Ardmore Town	
Argentine Twp	
Cottonwood Twp	
Edgemont City	
Provo Twp	
Unorganized Terr.	
Ellendale/Edgely	[illegible]
County—Brown:	

PRIMARY CARE: South Dakota—Continued

Service Area Listing

Service area name	Degree of shortage group
Parts:	
Alkson Twp	
Frederick Town	
Frederick Twp	
Greenfield Twp	
Liberty Twp	
Osceola Twp	
Palmyra Twp	
Richland Twp	
Savo Twp	
Faith	01
County:	
Meade	
Parts:	
Eagle Twp	
Faith City	
Howard Twp	
North Meade (Unorg.)	
Union Twp	
Upper Red Owl	
Perkins:	
Parts:	
Ada Twp	
Antelope Twp	
Beck Twp	
Brushy Twp	
Chance Twp	
Chandoin Twp	
Duell Twp	
Englewood Twp	
Foster Twp	
Hall Twp	
Highland Twp	
Lane Tree Twp	
Maltby Twp	
Martin Twp	
Moreau Twp	
S.W. Perkins (Unorg.)	
South Perkins (Unorg.)	01
Vickers Twp	
Vroomen Twp	
Wells Twp	
West Central Perkins (Unorg.)	
West Perkins (Unorg.)	
Wynadotte Twp	
[illegible]	
Parts:	
Dupree (Unorg.)	
Dupree City	
North Ziebach (Unorg.) W. ½	[illegible]
South Ziebach (Unorg.) W. ½	
Gettysburg	02
County:	
Hyde:	
Parts: North Hyde Unorg.	
Potter:	
Parts:	
Central Potter Unorg (S ½)	
East Potter Unorg (S ½)	
Gettysburg City	
Lebanon Town	
Sully:	
Parts:	
Agar Town	
East Sully Unorg (N ½)	
Onida City	
West Sully Unorg (N ½)	01
Highmore	01
County—Hyde:	
Parts:	
Central Hyde (Unorg)	
Crow Creek (Unorg)	
Dewey Twp	
Highmore City	
Valley Twp	
Washington Twp	
William Hamilton Twp	01
Isabel	[illegible]
County:	
Corson:	
Parts:	
Fairview Twp	
Pleasant Ridge Twp	
Dewey:	
Parts:	
Isabel City	
North Dewey (Unorg.) N. ½	02
South Dewey (Unorg.) N. ½	

PRIMARY CARE: South Dakota—Continued

Service Area Listing

Service area name	Degree of shortage group
Timber Lake City	
Ziebach	
Parts: North Ziebach (Unorg.) E. ½	
Lemmon	03
County:	
Corson:	
Parts:	
Custer Twp	
Delaney Twp	
Grand Valley Twp	
Lake Twp	
McIntosh City	
Mornstown Town	
Pioneer Twp	
Prairie View Twp	
Riverside Twp	
Rolling Green Twp	
Sherman Twp	
Thunder Hawk Twp	
Twin Butte Twp	
Wautaga Twp	
West Corson (Unorg.)	
Perkins:	
Parts:	
Anderson Twp	
Barrett Twp	
Bison Town	
Bison Township	
Burdick Twp	
Cash Twp	
Castle Butte Twp	
Clark Twp	
Dewitt Twp	
Duck Creek (Unorg.)	
East Perkins (Unorg.)	
Flat Creek Twp	
Fredlund Twp	
Gleno Twp	
Grand River Twp	
Horde Creek Twp	
Hudgins (Unorg.)	
Independence Twp	
Lemmon City	
Liberty Twp	
Lincoln Twp	
Lodgepole Twp	
Marshfield Twp	
Meadow Twp	
Pleasant Valley Twp	
Pleateau Twp	
Rainbow Twp	
Rockford Twp	
Scotch Cap Twp	
Seim Twp	
Sidney Twp	
Strool Twp	
Trail Twp	
Vail Twp	
Viking Twp	
White Butte Twp	
White Hill Twp	
Whitney Twp	
Wilson Twp	
Martin	02
County:	
Bennett	
Jackson	
Parts:	
E. Washabaugh Unorg Terr	
W. Washabaugh Unorg Terr	
McLaughlin	01
County:	
Corson:	
Parts:	
Cadillac Twp	
Central Corson (Unorg)	
Lincoln Twp	
Mahto Twp	
McLunghlin City	
McLunghlin Twp	
N.E. Corson (Unorg)	
Walker Twp	
Philip	[illegible]
County:	
Haakon	
Jackson	
Parts:	
Cottonwood Town	

PRIMARY CARE: South Dakota—Continued

Service Area Listing

Service area name	Degree of shortage group
E. Jackson Unorg. (N. ½)	
Grandview Twp	
Interior Town	
Interior Twp	
Jewett Twp	
Little Buffalo Twp	
N.W. Jackson Unorg	
Pennington	
Parts:	
Ash Twp	
Badlands Unorg.	
Castle Butte Twp	
Cedar Butte Twp	
Cheyenne Twp	
Conata Twp	
Crooked Creek Twp	
Dazell Canyon Unorg	
Fairview Twp	
Flat Butte Twp	
Huron Twp	
Inlay Twp	
Lake Creek Unorg.	
Lake Flat Twp	
Lake Hill Twp	
N.E. Pennington Unorg	
Owanka Twp	
Peno Twp	
Quinn Town	
Quinn Twp	
Rainey Creek Twp	
Scenic Twp	
Shyne Twp	
Sunnyside Twp	
Wall Town	
Wasta Town	
Wasta Twp	
Salem	03
County:	
Hanson	
Parts:	
Edeerton Twp	
Emery Twp	
Farmer Town	
Spring Lake Twp	
Taylor Twp	
Mc Cook	
Wagner/Lake Andes	[illegible]
County:	
Charles Mix	
Parts:	
Bryan Twp	
Choteau Creek Twp	
Dante Twp	
Geddes City	
Goose Lake Twp	
Highland Twp	
Howard Twp	
Jackson Twp	
Kennedy Twp	
Lake Andes City	
Lawrence Twp	
Lone Tree Twp	
Moore Twp	
Plain Center Twp	
Ravinia Twp	
Ree Twp	
Rouse Twp	
Wagner City	
Wahehe Twp	
White Swan Twp	
Gregory:	
Parts:	
S.E Gregory	
Star Valley Twp	
Wessington Springs	[illegible]
County:	
Aurosa	
Parts:	
Belford Twp	
Bristol Twp	
Cooper Twp	
Crystal Lake Twp	
Eureka Twp	
Firesteel Twp	
Gales Twp	
Hooper Twp	
Lake Twp	
Palatine Twp	

PRIMARY CARE: South Dakota—Continued

Service Area Listing

Service area name	Degree of shortage group
Patten Twp	
Plankinton City	
Plankinton Twp	
Pleasant Lake Twp	
Pleasant Valley Twp	
White Lake City	
White Lake Twp	
Buffalo	
Parts	
Elvira Twp	
S.E. Buffalo Unorg	
Hanson	
Sanborn:	
Parts:	
Floyd Twp	
Jackson Twp	
Logan Twp	
Oneida Twp	
Silver Creek Twp	
Twin Lake Twp	
Union Twp	
Warren Twp	
Woonsocket City	
Woonsocket Twp	
Winner/White River	02
County:	
Mellettee	
Tripp	

PRIMARY CARE: Tennessee

County name	Degree of shortage group
Benton	04
Bledsoe	01
Campbell	02
Carter:	
Service Area: Roam Mountain	01
Cheatham	02
Claiborne	04
Cocke	01
Crockett	[illegible]
Davidson:	
Population Group: Poverty pop.	02
Decatur	02
Fayette	01
Grainger	01
Grundy	[illegible]
Hamilton:	
Population Group: Poverty Pop. of Chattanooga	01
Hardeman	02
Hardin	[illegible]
Hawkins	03
Haywood	03
Henderson	03
Hickman	02
Jackson	01
Lake	03
Lauderdale	02
Lewis	01
Loudon	[illegible]
McNairy	[illegible]
Macon	04
Meigs	01
Monroe:	
Service Area: Madisonville	01
Morgan	01
Overton	04
Pickett	02
Polk:	03
Service Area: West Polk	01
Rhea	03
Roane	03
Robertson:	
Service Area: Highland Ridge	02
Scott	01
Sevier	03
Stewart	02
Sumner:	
Service Area: Highland Ridge	02
Union	01
Van Buren	02
Warren	04

PRIMARY CARE: Tennessee—Continued

County name	Degree of shortage group
Wayne	

PRIMARY CARE: Tennessee

Service Area Listing

Service area name	Degree of shortage group
Highland Ridge	02
County—Robertson:	
Parts: Orlinda Div.	
County—Sumner:	
Parts:	
Portland Div.	
Westmoreland Div.	
White House Div. (N ½)	
Madisonville	01
County—Monroe:	
Parts:	
Madisonville	
Tellico Plains	
Vonore	
Roam Mountain	01
County—Carter	
Parts:	
Laurel Fork	
Roam Mountain	
Tiger Valley	
West Polk	01
County—Polk:	
Parts:	
Benton CCD	
Parksville CCD	

PRIMARY CARE: Tennessee

Population Group Listing

Population group	Degree of shortage group
Poverty Pop—Davidson County	
County—Davidson	
Poverty Pop of Chattanooga	01
County—Hamilton:	
Parts:	
C.T. 1-27	
C.T. 31-32	
C.T. 115	

PRIMARY CARE: Texas

County name	Degree of shortage group
Anderson	
Facility:	
Beto Prison	02
Coffield Prison	03
Archer	
Armstrong	02
Atascosa	03
Bandera	01
Bexar:	
Service Area:	
East Side (San Antonio)	01
South Side (San Antonio)	01
Southern Rural Bexar (San Antonio)	01
West Side (San Antonio)	02
Blanco	04
Borden	01
Brazoria:	
Facility:	
Clemons Prison	01
Damington Prison	02
Ramsey I Prison	03
Ramsey II Prison	01
Ramsey III Prison	01

PRIMARY CARE: Texas—Continued

County name	Degree of shortage group
Retreve Prison	01
Briscoe	
Cameron	
Carson	
Castro	01
Chambers	04
Coryell:	
Facility: Hilltop Prison	
Crosby	
Service Area:	
Fair Park/White Rock Creek Industrial	
Lisbon	01
Simpson Stuart	01
South Dallas	
Trinity	
West Dallas	
Population Group:	
Indian Pop of Dallas/Ft. Worth	01
Facility:	
Parkland Memorial Hospital	01
Deaf Smith	
Delta	02
Dickens:	
Service Area: Dickens-King	01
Duval	
El Paso:	
Service Area:	
South El Paso	01
Southeast El Paso	
Fort Bend:	
Facility:	
Jester II Prison	
Jester III Prison	01
Frio	
Gaines	
Galveston:	
Service Area: Bolivar Penninsula	01
Glasscock	01
Goliad	04
Gonzales:	
Service Area: Nixon	
Grimes:	
Facility:	
Pack I Prison	
Pack II Prison	
Hale:	
Population Group: Migrant Pop.	
Hardin	
Hidalgo	
Houston:	
Facility: Eastham Prison	
Hudspeth	
Jackson	
Jeff Davis:	
Service Area: Marfa/Fort Davis	
Jefferson:	
Service Area:	
Beaumont Inner City	
Port Arthur Inner City	
Kimble	
King:	
Service Area: Dickens-King	
Lampasas	
La Salle	
Live Oak	
Loving	
Lubbock:	
Service Area: East Lubbock	
Lynn	
Madison:	
Facility: Ferguson Prison	
Mason	
Maverick	
Medina	
Mills:	
Service Area: San Saba-Mills	
Montgomery	
Newton	
Oldham	
Presidio	
Service Area:	
Marfa/Fort Davis	
Presidio	
Rains	
Reeves	
Sabine	
San Jacinto	

PRIMARY CARE: Texas—Continued

County name	Degree of shortage group
San Saba:	
Service Area: San Saba Mills	01
Sherman:	
Service Area: Texhoma	01
Starr	
Swisher	04
Tarrant:	
Service Area:	
Poly	01
Stop Six	04
Population Group:	
Indian Pop. of Dallas/Ft. Worth	01
Terrell	01
Trinity	
Val Verde	
Van Zandt	
Walker:	
Facility:	
Diagnostic Prison	
Ellis Prison	
Goree Prison	
Huntsville Prison	
Wynne Prison	02
Waller	04
Ward	04
Webb	03
Willacy	01
Wilson	
Yoakum	01
Zapata	01

PRIMARY CARE: Texas

Service Area Listing

Service area name	Degree of shortage group
Beaumont Inner City	04
County—Jefferson:	
Parts:	
C.T. 7-8	
C.T. 10	
C.T. 15-19	
Bolivar Penninsula	01
County—Galveston:	
Parts: C.T. 1254	
Dickens-King	01
County:	
Dickens	
King	
East Lubbock	01
County—Lubbock:	
Parts:	
C.T. 8-11	
C.T. 12.01-12.02	
East Side (San Antonio)	
County—Bexar	
Parts: C.T. 1301-1313	
Fair Park/White Rock Creek Industrial	01
County—Dallas	
Parts:	
C.T. 23	
C.T. 25-26	
C.T. 27.01-27.02	
C.T. 28	
C.T. 93.03-93.04	
C.T. 115	
Lisbon	01
County—Dallas	
Parts:	
C.T. 56-57	
C.T. 59.01-59.02	
C.T. 87.01	
C.T. 87.03-87.05	
C.T. 88.01-88.02	
Marfa/Fort Davis	
County:	
Jeff Davis	
Presidio	
Parts: Marfa Div	
Nixon	
County—Gonzales:	
Parts:	
CCD 020	
CCD 025	

PRIMARY CARE: Texas—Continued

Service Area Listing

Service area name	Degree of shortage group
Poly	01
County—Tarrant:	
Parts:	
C.T. 1014.02	
C.T. 1015	
C.T. 1035	
C.T. 1037.01–1037.02	
C.T. 1046.04	
Port Aurthur Inner City	02
County—Jefferson:	
Parts:	
C.T. 51–53	
C.T. 57–62	
Presidio	02
County—Presidio:	
Parts: Presidio Div	
San Saba-Mills	01
County:	
Mills	
San Saba	
Simpson Stuart	01
County—Dallas:	
Parts:	
C.T. 112–113	
C.T. 114.01–114.02	
C.T. 167.01–167.02	
C.T. 169.01–169.02	
South Dallas	[illegible]
County—Dallas:	
Parts:	
C.T. 29–30	
C.T. 31.02	
C.T. 32.02	
C.T. 33–38	
C.T. 39.01–39.02	
C.T. 40	
South El Paso	01
County—El Paso	
Parts: C.T. 17–21	
South Side (San Antonio)	01
County—Bexar:	
Parts:	
C.T. 1501	
C.T. 1503–1507	
C.T. 1510	
C.T. 1601–1605	
Southeast El Paso	01
County—El Paso:	
Parts:	
C.T. 39–40	
C.T. 104–105	
Southern Rural Bexar (San Antonio)	01
County—Bexar	
Parts:	
C.T. 1314–1315	
C.T. 1316.01–1316.02	
C.T. 1318	
C.T. 1416–1419	
C.T. 1519–1522	
C.T. 1610–1612	
C.T. 1619–1620	
Stop Six	[illegible]
County—Tarrant:	
Parts:	
C.T. 1036.01–1036.02	
C.T. 1046.01–1046.03	
C.T. 1061.01–1061.02	
C.T. 1062.01–1062.02	
C.T. 1063–1064	
Texhoma	01
County—Sherman:	
Parts: Stratford East CCD	
Trinity	02
County—Dallas	
Parts:	
C.T. 41	
C.T. 49	
C.T. 54–55	
C.T. 86.01–86.02	
C.T. 89	
West Dallas	01
County—Dallas:	
Parts:	
C.T. 43	
C.T. 101–106	
West Side (San Antonio)	02
County—Bexar:	
Parts:	

PRIMARY CARE: Texas—Continued

Service Area Listing

Service area name	Degree of shortage group
C.T. 1606–1607	
C.T. 1701	
C.T. 1703–1704	
C.T. 1707–1712	
C.T. 1715–1716	

PRIMARY CARE: Texas

Population Group Listing

Population group	Degree of shortage group
Indian Pop. of Dallas/Ft. Worth	01
County—Dallas	
County—Tarrant	
Migrant Pop. Hale Co.	01
County—Hale	

PRIMARY CARE: Texas

Facility Listing

Facility	Degree of shortage group
Beto Prison	02
County—Anderson	
Clemons Prison	01
County—Brazoria	
Coffield Prison	03
County—Anderson	
Darrington Prison	[illegible]
County—Brazoria	
Diagnostic Prison	03
County—Walker	
Eastham Prison	02
County—Houston	
Ellis Prison	[illegible]
County—Walker	
Ferguson Prison	02
County—Madison	
Goree Prison	01
County—Walker	
Hilltop Prison	01
County—Coryell	
Huntsville Prison	01
County—Walker	
Jester II Prison	02
County—Fort Bend	
Jester III Prison	01
County—Fort Bend	
Pack I Prison	01
County—Grimes	
Pack II Prison	01
County—Grimes	
Parkland Memorial Hospital	01
County—Dallas	
Ramsey I Prison	03
County—Brazoria	
Ramsey II Prison	01
County—Brazoria	
Ramsey III Prison	01
County—Brazoria	
Retrieve Prison	01
County—Brazoria	
Wynne Prison	[illegible]
County—Walker	

PRIMARY CARE: Utah

County name	Degree of shortage group
Daggett	01
Duchesne	02
Emery:	
Service Area:	

PRIMARY CARE: Utah—Continued

County name	Degree of shortage group
Castle Dale	01
Green River	01
Grand:	
Service Area: Green River	01
Iron:	
Service Area: Enterprise	01
Juab:	
Service Area: Wendover (Utah/Nevada)	01
Millard:	
Service Area:	
Delta	[illegible]
Fillmore	03
Piute:	
Service Area: Richfield	03
Rich	01
Salt Lake:	
Population Group: Pov Pop–N.W. Salt Lake	04
San Juan:	
Service Area:	
Blanding/Monticello	02
Montezuma Creek	01
Sevier:	
Service Area: Richfield	03
Tooele:	
Service Area:	
Tooele	02
Wendover (Utah/Nevada)	01
Uintah	02
Washington:	
Service Area:	
Enterprise	01
Hurricane	01
Wayne	01
Weber:	
Service Area: Central and West Ogden	01

PRIMARY CARE: Utah

Service Area Listing

Service area name	Degree of shortage group
Blanding/Monticello	02
County—San Juan:	
Parts:	
Blanding Div.	
Monticello Div.	
Castle Dale	01
County—Emery	
Parts:	
Castle Dale-Huntington Div	
Emery-Ferron Div. (N. 1/2)	
Central and West Ogden	01
County—Weber:	
Parts:	
C.T. 3–4	
C.T. 10–12	
C.T. 18–19	
Delta	[illegible]
County—Millard:	
Parts:	
Delta Division	
Oak City (Scipio Div)	
Enterprise	01
County:	
Tron:	
Parts:	
Beryl-Newcastle Div	
Washington	
Parts:	
Enterprise Div	
Fillmore	03
County—Millard:	
Parts:	
Fillmore City	
Holden Twn	
Scipio Twn	
Usicorp Area (Scipio Div)	
Green River	01
County:	
Emery:	
Parts: Green River Division	
Grand:	
Parts: Thompson Div. (N.W. Pt)	
Hurricane	01

PRIMARY CARE: Utah—Continued

Service Area Listing

Service area name	Degree of shortage group
County—Washington	
Parts: Hurricane Div.	
Montezuma Creek	01
County—San Juan	
Parts.	
Oljato Div.	
Red Mesa Div.	
Richfield	03
County:	
Piute	
Parts: Marysvail Div.	
Sevier	
Tooele	02
County—Tooele	
Parts.	
Onaqui Div	
Tooele-Grantsville Div.	
Wendover (Utah/Nevada)	01
County:	
Juab	
Parts: West Juab Div. (W. Pt)	
Tooele	
Parts: Dugway-Wendover Div. (W. Pt)	

PRIMARY CARE: Utah

Population Group Listing

Population group	Degree of shortage group
Pov Pop—N.W. Salt Lake	04
County—Salt Lake:	
Parts	
C.T. 1001	
C.T. 1003.03	
C.T. 1003.04	
C.T. 1004–1006	

PRIMARY CARE: Vermont

County name	Degree of shortage group
Addison:	
Service Area:	
Otter Creek Valley	02
Route 100	04
Bennington:	
Service Area: Londonderry	03
Caledonia:	
Service Area.	
Hardwick	01
Northeast Kingdom	04
Essex	
Service Area:	
Island Pond	01
Upper Connecticut Valley	04
Franklin:	
Service Area: Richford-Enosburg	02
Grand Isle	03
Lamoille	
Service Area:	
Hardwick	01
Northeast Kingdom	04
Orleans:	
Service Area:	
Hardwick	01
Northeast Kingdom	04
Rutland:	
Service Area:	
Black River Valley	03
Otter Creek Valley	02
Route 100	03
Washington:	
Service Area:	
Hardwick	01
Mad River Valley	02
Windham:	
Service Area:	
Londonderry	03
West River Valley	04
Windsor	
Service Area.	
Black River Valley	03
Londonderry	03
Route 100	02

PRIMARY CARE: Vermont

Service Area Listing

Service area name	Degree of shortage group
Black River Valley	03
County:	
Rutland:	
Parts: Mt Holly Town	
Windsor:	
Parts	
Cavendish Twn	
Ludlow Twn	
Reading Town	
Weathersfield Twn	
Hardwick	01
County:	
Caledonia:	
Parts:	
Hardwick Twn	
Walden Twn	
Lamoille	
Parts: Wolcott Twn	
Orleans:	
Parts.	
Craftbury Twn	
Greensboro Twn	
Washington:	
Parts. Woodbury Twn	
Island Pond	01
County—Essex:	
Parts:	
Averys Gore	
Brighton Twn	
Ferdinand Twp	
Lewis Twp	
Norton Twn	
Warners Grant	
Warrens Gore	
Londonderry	03
County:	
Bennington:	
Parts	
Landgrove Town	
Peru Town	
Winhall Town	
Windham:	
Parts	
Londonderry Town	
Windham Twn	
Windsor	
Parts: Weston Town	
Mad River Valley	02
County—Washington:	
Parts:	
Fayston Twp	
Movetown Twp	
Waitsfield Twp	
Werven Twp	
Northeast Kingdom	04
County:	
Caledonia:	
Parts: Newark Twp	
Lamoille	
Parts:	
Belvidere Twp	
Eden Twp	
Orleans:	
Parts	
Albany Twp	
Barton Twp	
Brownington Twp	
Charlestown Twp	
Coventry Twp	
Derby Twp	
Glover Twp	
Holland Twp	

PRIMARY CARE: Vermont—Continued

Service Area Listing

Service area name	Degree of shortage group
Irasburg Twp	
Jay Twp	
Lowell Twp	
Morgan Twp	
Newport City	
Newport Twp	
Troy Twp	
Westfield Twp	
Westmore Twp	
Otter Creek Valley	02
County:	
Addison	
Parts	
Goshen Twn	
Leicester Twn	
Orwell Twn	
Shoreham Twn	
Whiting Twn	
Rutland:	
Parts	
Brandon Twn	
Hubbardton Twn	
Pittsford Twn	
Sudbury Twn	
Richford-Enosburg	02
County—Franklin:	
Parts	
Bakersfield Twn	
Berkshire Twn	
Enosburg Twn	
Fairfield Twn	
Franklin Twn	
Montgomery Twn	
Richford Twn	
Sheldon Twn	
Route 100	02
County:	
Addison:	
Parts	
Granville	
Hancock Twn	
Rutland:	
Parts	
Pittsford Twn	
Windsor:	
Parts	
Rochester Twn	
Stockbridge Twn	
Upper Connecticut Valley	04
County—Essex:	
Parts	
Avery Twn	
Bloomfield Twn	
Brunswick Twn	
Canaan Twn	
Lexington Twn	
West River Valley	04
County—Windham:	
Parts	
Jamaica Twn	
Newfane Twn	
Stratton Twn	
Townshend Twn	
Wardsboro Twn	

PRIMARY CARE: Virginia

County name	Degree of shortage group
Accomack	02
Albemarle:	
Service Area: Southern Albemarle	01
Augusta:	
Service Area:	
Craigsville	02
South River	02
Bath	04
Bedford:	
Service Area: Big Island	02
Bland	01
Buchanan:	
Service Area. South Hill	04

PRIMARY CARE: Virginia—Continued

County name	Degree of shortage group
Buckingham:	
Service Area: Tri-County (Buck/Fluv/Cumb)	01
Caroline	01
Charles City	03
Charlotte:	
Service Area: Drakes Branch	04
Craig	01
Cumberland:	
Service Area: Tri-County (Buck/Fluv/Cumb)	01
Dinwiddie:	
Service Area: McKenney	02
Fluvanna:	
Service Area: Tri-County (Buck/Fluv/Cumb)	01
Franklin	04
Grayson:	
Service Area: Trout Dale/Independence	03
Greene	04
Halifax:	
Service Area: Nathalie	01
Isle of Wight	01
King and Queen:	
Service Area:	
Northern King William	02
West Point	02
King George	02
King William:	
Service Area:	
Northern King William	02
West Point	02
Lee	01
Lunenburg	01
Mecklenburg:	
Service Area: South Hill	04
Nelson	01
Kent:	
Service Area: West Point	02
Northampton	03
Page	02
Patrick	02
Pittsylvania	01
Richmond	02
Rockbridge:	
Service Area:	
Craigsville	02
South River	02
Russell	03
Scott:	
Service Area: Dungannon	01
Smyth:	
Service Area: Saltville Medical	02
Southampton:	
Service Area: Berlin-Ivor	01
Sussex	03
Washington:	
Service Area: Saltville Medical	[illegible]
Westmoreland	03
Chesapeake:	
Service Area: Southeast Chesapeake	01
Newport News:	
Service Area: East End	02
Norfolk:	
Service Area:	
Norfolk Area 1	04
Norfolk Area 2	01
Norfolk Area 3	01
Virginia Beach:	
Service Area: Pungo	04

PRIMARY CARE: Virginia

Service Area Listing

Service area name	Degree of shortage [illegible]
Berlin-Ivor	01
County—Southampton:	
Parts: Berlin-Ivor	
Big Island	02
County—Bedford:	
Parts	
Center Dist. (N. ½)	
Jefferson Dist. (N. ½)	
Peaks Dist. (N. ½)	
Craigsville	[illegible]
County—Augusta:	
Parts	
Craigsville Twn	
Pastures Dist	
Riverhead Dist. (Portion)	
County—Rockbridge:	
Parts	
Goshen Twn	
Kerrs Creek Dist	
Walkers Creek Dist (W Portion)	
Drakes Branch	04
County—Charlotte:	
Parts	
Bacon Dist.	
Central Dist.	
Roanoke Dist.	
Dungannon	01
County—Scott:	
Parts:	
Dekalb	
Floyd Dist.	
Johnson Dist	
East End	02
County—Newport News:	
Parts:	
C.T. 302-309	
C.T. 313	
McKenney	02
County—Dinwiddie:	
Parts:	
Darvills Dist.	
Rowanty Dist.	
Nathalie	01
County—Halifax:	
Parts:	
Meadville Dist	
Staunton Dist	
Norfolk Area 1	04
County—Norfolk:	
Parts:	
C.T. 32-33	
C.T. 60-61	
Norfolk Area 2	01
County—Norfolk:	
Parts:	
C.T. 34	
C.T. 35.01-35.02	
Norfolk Area 3	01
County—Norfolk:	
Parts:	
C.T. 50	
C.T. 52-53	
Northern King William	02
County—King and Queen:	
Parts:	
Newtown Dist.	
Stevensville Dist. (W. ½)	
County—King William:	
Parts:	
Acquiton Dist. (W. ½)	
Mongohick Dist.	
Pungo	04
County—Virginia Beach:	
Parts:	
C.T. 464 (Pungo)	
C.T. 466 (Blackwater)	
Saltville Medical	02
County—Smyth:	
Parts:	
North Fork Dist.	
Saltville Dist.	
County—Washington:	
Parts: Jefferson Dist	
South Hill	04
County—Brunswick:	
Mecklenburg	
South River	02
County—Augusta:	
Parts: Riverhead Dist (E ½)	
County—Rockbridge:	
Parts:	
South River Dist	
Walkers Creek Dist. (E ½)	
Southeast Chesapeake	01
County—Chesapeake:	
Parts:	
C.T. 211.02	
C.T. 212	
Southern Albemarle	01

PRIMARY CARE: Virginia—Continued

Service Area Listing

Service area name	Degree of shortage group
County—Albemarle:	
Parts: Scottsville Dist	
Tri-County (Buck/Fluv/Cumb)	01
County:	
Buckingham	
Cumberland	
Fluvanna	
Trout Dale/Independence	03
County—Grayson:	
Parts:	
Elk Creek Dist	
Wilson Creek Dist	
West Point	02
County—King and Queen:	
Parts:	
Buena Vista Dist.	
Stevensville Dist. (E. ½)	
County—King William:	
Parts.	
Acquiton Dist. (E. ½)	
West Point Dist.	
County—New Kent	

PRIMARY CARE: Washington

County name	Degree of shortage group
Adams:	
Service Area:	
Othello	04
Ritzville	01
Benton:	
Population Group:	
Migrant Pop. Benton/Franklin	02
Migrant Pop. Toppenish/Grandview	01
Chelan:	
Population Group: Migr. Seas. Farmworkers Chelan/Douglas	01
Clallam:	
Service Area: Forks	02
Columbia:	
Population Group: Walla Walla—Migrant & Seasonal Farmwork	01
Douglas:	
Service Area: Grand Coulee	03
Population Group: Migr. Seas. Farmworkers Chelan/Douglas	01
Ferry:	
Service Area: Republic	02
Population Group: Am. Indian Pop. (Colville Res.)	01
Franklin:	
Service Area: Othello	04
Population Group: Migrant Pop. Benton/Franklin	02
Grant:	
Service Area:	
Grand Coulee	03
Othello	04
Population Group: Migrants/Seasonal Farmwork	02
Grays Harbor:	
Service Area:	
Copalis Beach	02
McCleary-Elma	02
Jefferson:	
Service Area: Forks	02
King:	
Facility: Seattle and King Co. Jails	01
Lewis:	
Service Area: Pearl	01
Lincoln:	
Service Area:	
Grand Coulee	03
Odessa	01
Ritzville	01
Okanogan:	
Service Area: Grand Coulee	03
Population Group: Am. Indian Pop. (Colville Res.)	01
Pacific:	
Service Area: Naselle/Grays River	01
Pierce:	
Service Area: Long branch	01
Population Group: Med. Ind. Pop. (Pierce)	01

PRIMARY CARE: Washington—Continued

County name	Degree of shortage group
Facility:	
McNeil Island Corr. Ctr.	[illegible]
Pierce County Jail	02
Skagit:	
Population Group: Migr./Seas. Frmwrk—Skagit	01
Snohomish:	
Service Area: Darrington	01
Spokane:	
Service Area: Deer Park	[illegible]
Population Group: Am. Indian Pop. (Spokane)	01
Stevens:	
Service Area: Deer Park	03
Wahkiakum:	
Service Area: Naselle/Grays River	01
Walla Walla:	
Population Group: Walla Walla—Migrant and Seasonal Farmwork	01
Whatcom:	
Population Group: Migr./Seas. Frmwrk—Whatcom	02
Whitman:	
Service Area: Northeast Whitman	02
Yakima:	
Population Group: Migrant Pop.—Toppenish/Grandview	01

PRIMARY CARE: Washington

Service Area Listing

Service area name	Degree of shortge group
Copalis Beach	02
County—Grays Harbor:	
Parts: North Beach Div.	
Darrington	01
County—Snohomish:	
Parts: Cascade Div.	
Deer Park	03
County—Spokane:	
Parts:	
Deer Park Div. (E.D. 103.01-103.02)	
Deer Park Div. (N.½ E.D. 102)	
County—Stevens:	
Parts: Loon Lake Div. (E.D. 203-204)	
Forks	02
County—Clallam:	
Parts:	
Callam Bay-Neah Bay Div.	
Forks Div.	
County—Jefferson:	
Parts: West End Div.	
Grand Coulee	03
County—Douglas:	
Parts:	
Bridgeport Div.	
Coulee Dam Town—257	
E.D. 256—(Mansfield Tn.)	
E.D. 265 (Wateville Div.)	
County—Grant:	
Parts:	
Coulee City Div. (N. ⅗)	
Grand Coulee Div.	
County—Lincoln:	
Parts: Wilbur Div. (W. ⅘)	
County—Okanogan:	
Parts:	
Colville Res. Div. (Pt)	
Coulee Dam Town	
E.D. 751 (Nespelem Tn) 112	
E.D. 760-761 (Nespelem Tn)	
Elmer City Town	
Longbranch	01
County—Pierce:	
Parts: Lower Peninsula Div.	
McCleary-Elma	02
County—Grays Harbor:	
Parts:	
Elma Div.	
Malone Porter Div.	
McCleary Div.	
Naselle/Grays River	01
County—Pacific:	
Parts: Naselle Div.	
County—Wahkiakum:	

PRIMARY CARE: Washington—Continued

Service Area Listing

Service area name	Degree of shortge group
Parts: Grays River	
Northeast Whitman	02
County—Whitman:	
Parts:	
Pleasant Div.	
Steptoe Div.	
Tekoa Div.	
Odessa	01
County—Lincoln:	
Parts: Odessa Census Div. (pt)	
Othello	04
County—Adams:	
Parts:	
Hatton Town	
Othello Div.	
County—Franklin:	
Parts:	
Cornell Div.	
Kahlotus Div. (N. ½)	
County—Grant:	
Parts:	
Southern Slopes Div.	
Warden Div.	
Peell	01
County—Lewis:	
Parts:	
E.D. 71 of Bunker C.C.D.	
E.D. 76 of Boise FT C.C.D.	
Republic	[illegible]
County—Ferry:	
Parts:	
Div. 1 (Orient-Sherman)	
Div. 2 (Curlew)	
Div. 3 (Republic)	
Ritzville	01
County—Adams:	
Parts:	
Lind-Washtucna CCD	
Ritzville CCD	
County—Lincoln:	
Parts: E.D. 551 of Odessa CCD	

PRIMARY CARE: Washington

Population Group Listing

Population group	Degree of shortage group
Am. Indian Pop. (Spokane)	01
County—Spokane	
Am. Indian Pop. (Colville Res.)	01
County:	
Ferry	
Okanogan	
Med. Ind. Pop. (Pierce)	01
County—Pierce	
Migr./Seas. Frmwrk—Skagit	01
County—Skagit	
Migr./Seas. Frmwrk—Whatcom	[illegible]
County—Whatcom	
Migr./Seas. Farmworkers Chelan/Douglas	01
County:	
Chelan	
Douglas	
Migrant Pop. Benton/Franklin	[illegible]
County:	
Benton	
Franklin	
Migrant Pop.—Toppenish/Grandview	01
County—Benton:	
Parts: N.W. Benton Div. (W. ½)	
County—Yakima:	
Parts:	
Mabton Div.	
S. Yakima Div.	
Sunnyside Div.	
Toppenish-Wapato Div.	
Migrants/Seasonal Farmwrk	[illegible]
County—Grant	
Walla Walla—Migrant and Seasonal Farmwor	01
County—Columbia	
County—Walla Walla:	
Parts:	
Eureka Flat Division	

PRIMARY CARE: Washington—Continued

Population Group Listing

Population group	Degree of shortage group
Tewchet Division	
Wartsburg Division	
Walla Walla—College Place Division	

PRIMARY CARE: Washington

Facility Listing

Facility	Degree of shortage group
McNeil Island Corr. Ctr.	02
County—Pierce	
Pierce County Jail	02
County—Pierce	
Seattle and King Co. Jails	01
County—King	

PRIMARY CARE: West Virginia

County name	Degree of shortage group
Barbour	[illegible]
Braxton	[illegible]
Cabell:	
Service Area:	
Ceredo	[illegible]
Guyandotte	[illegible]
Calhoun	[illegible]
Clay	[illegible]
Doddridge:	
Service Area: Doddridge/Salem	[illegible]
Fayette:	
Service Area:	
New Haven	[illegible]
Oak Hill	[illegible]
Gilmer	[illegible]
Grant:	
Service Area:	
Moorefield	[illegible]
Mt. Storm	[illegible]
Greenbrier:	
Service Area: Greenbrier/Pocahontas	[illegible]
Hampshire:	
Service Area: Capon Bridge	[illegible]
Hancock:	
Service Area: East Liverpool	[illegible]
Hardy:	
Service Area:	
Beaver	[illegible]
Moorefield	[illegible]
Harrison:	
Service Area:	
Doddridge/Salem	[illegible]
Shinnston—Fairmont	[illegible]
Jefferson	[illegible]
Kanawha:	
Service Area:	
Cabin Creek	[illegible]
Cedar Grove	[illegible]
Clendenin	[illegible]
Pocatalico	[illegible]
Lewis	[illegible]
Lincoln	[illegible]
McDowell	[illegible]
Marion:	
Service Area: Shinnston—Fairmont	[illegible]
Marshall:	
Service Area: Cameron	[illegible]
Mason:	
Service Area: Graham/Waggener	[illegible]
Mineral:	
Service Area: Cabin Run	[illegible]
Mingo:	
Service Area:	
Gilbert	01
Matewan	01
Mingo	01
Monongalia:	
Service Area: Clay/Battelle	[illegible]

PRIMARY CARE: West Virginia—Continued

County name	Degree of shortage group
Monroe	[illegible]
Morgan:	
Service Area: Hancock	[illegible]
Nicholas:	
Service Area: Summersville	[illegible]
Pendleton	[illegible]
Pleasants	[illegible]
Pocahontas:	
Service Area: Greenbriar/Pocahontas	01
Preston:	
Service Area: Rowlesburg	[illegible]
Putnam:	
Service Area: Teays Valley	[illegible]
Raleigh:	
Service Area:	
Gulf	[illegible]
Northwest Raleigh	[illegible]
Shady Spring	01
Ritchie:	
Service Area: Harrisville	[illegible]
Roane	[illegible]
Summers:	
Service Area: Shady Spring	01
Taylor	01
Upshur:	
Service Area: Rock Cave	01
Wayne	[illegible]
Webster	02
Wetzel:	
Service Area: Clay/Battelle	[illegible]
Wirt	[illegible]
Wyoming	[illegible]

PRIMARY CARE: West Virginia

Service Area Listing

Service area name	Degree of shortage group
Baker	[illegible]
County—Hardy:	
Part:	
Capon Dist.	
Lost River Dist.	
Cabin Creek	[illegible]
County—Kanawha:	
Part: C.T. 121–123	
Cabin Run	02
County—Mineral:	
Part:	
Cabin Run	
Frankfurt	
Cameron	01
County—Marshall:	
Part: Cameron	
Capon Bridge	[illegible]
County—Hampshire:	
Part:	
Bloomery	
Capon	
Cedar Grove	02
County—Kanawha:	
Part: C.T. 116–120	
Clay/Battelle	[illegible]
County—Monongalia:	
Part: C.T. 114	
County—Wetzel:	
Part:	
Center	
Church	
Clay	
Clendenin	[illegible]
County—Kanawha:	
Part: C.T. 112	
Doddridge/Salem	01
County:	
Doddridge	
Harrison	
Part: Salem City	
East Liverpool	03
County—Hancock:	
Part: Grant District	
Gilbert	01
County—Mingo:	
Part: Stafford Dist.	

PRIMARY CARE: West Virginia—Continued

Service Area Listing

Service area name	Degree of shortage group
Graham/Waggener	01
County—Mason:	
Part:	
Graham	
Waggener	
Grant	02
County—Cabell:	
Part: Grant Dist.	
Greenbriar/Pocahontas	01
County—Greenbrier:	
Part:	
Anthony Creek	
Falling Springs	
Frankford	
Williamsburg	
County—Pocahontas:	
Part: Little Levels	
Gulf	03
County—Raleigh:	
Part:	
C.T. 111	
Dist. 1 (Trap Hill)	
Guyandotte	01
County—Cabell:	
Part: C.T. 2	
Hancock	[illegible]
County—Morgan:	
Part:	
Allen	
Bath	
Rock Gap	
Sleepy Creek	
Harrisville	[illegible]
County—Ritchie:	
Part:	
Grant Dist.	
Murphy Dist.	
Union Dist.	
Matewan	01
County—Mingo:	
Part: Magnolia Dist.	
Mingo	[illegible]
County—Mingo:	
Part:	
Harvey	
Kermit	
Moorefield	[illegible]
County—Grant:	
Part:	
Grant Dist.	
Milroy Dist.	
Petersburg Twn	
County—Hardy:	
Part:	
Moorefield Dist.	
Moorefield Twn	
South Fork Dist.	
Mt. Storm	[illegible]
County—Grant:	
Part: Union	
New Haven	[illegible]
County—Fayette:	
Part: C.T. 210–211	
Northwest Raleigh	[illegible]
County—Raleigh:	
Part:	
C.T. 112	
Dist. 2	
Oak Hill	[illegible]
County—Fayette:	
Part: C.T. 201–206	
Pocatalico	[illegible]
County—Kanawha:	
Part: C.T. 108	
Rock Cave	[illegible]
County—Upshur:	
Part:	
Banks	
Meade	
Washington	
Rowlesburg	[illegible]
County—Preston:	
Part:	
Reno Dist.	
Union Dist.	
Shady Spring	01
County—Raleigh:	
Part:	

PRIMARY CARE: West Virginia—Continued

Service Area Listing

Service area name	Degree of shortage group
Richmond Dist.	
Shady Spring Dist.	
County—Summers:	
Part: Jumping Branch Dist.	
Shinnston—Fairmont	03
County—Harrison:	
Part: Northern District	
County—Marion	
Summersville	04
County—Nicholas:	
Part:	
Grant	
Hamilton	
Jefferson	
Kentucky (W½)	
Summersville	
Wilderness	
Teays Valley	02
County—Putnam:	
Part:	
Curry Dist.	
Scott District	
Teays Valley District	

PRIMARY CARE: Wisconsin

County name	Degree of shortage group
Adams	02
Ashland:	
Service Area: Park Falls/Phillips	03
Bayfield:	
Service Area: Cable/Hayward	02
Brown Facility: Wisconsin State Reformatory	02
Buffalo:	
Service Area:	
Arcadia	02
Mondovi	02
Burnett	[illegible]
Clark	03
Dodge:	
Facility:	
Wisconsin Correctional Inst	03
Wisconsin State Prison	02
Door:	
Service Area: Sister Bay-Wash Island	02
Douglas:	
Service Area: Minong/Solon Springs	01
Dunn:	
Service Area: Mondovi	02
Eau Claire:	
Service Area: Osseo	03
Forest:	
Service Area: Laona	01
Grant:	
Service Area: Platteville/Cuba City	04
Iowa:	
Service Area: Platteville/Cuba City	04
Iron:	
Service Area:	
Ironwood/Hurley	03
Park Falls/Phillips	03
Jackson:	
Service Area: Osseo	03
Juneau:	
Service Area: Hillsboro	04
Kewaunee:	
Service Area: Kewaunee City	02
La Crosse:	
Service Area: Coon Valley/Chaseburg	01
Lafayette:	
Service Area: Platteville/Cuba City	04
Langlade:	
Service Area:	
Elcho	02
Mountain	02
Lincoln:	
Facility: Lincoln Hills School	02
Service Area:	
Athens/Edgar	[illegible]
Tigerton/Birnamwood	[illegible]
Manitowoc:	
Service Area: W. Marinette	[illegible]

PRIMARY CARE: Wisconsin—Continued

County name	Degree of shortage group
Marquette	
Service Area: Wautoma/Montello	02
Menominee	04
Milwaukee	
Service Area	
Capitol Drive	02
East Silver Spring	02
Inner City North (Milwaukee)	01
Inner City South (Milwaukee)	02
Inner City West	02
Juneautown	01
Population Group: American Indian Pop —Milwaukee	01
Monroe	
Service Area	
Hillsboro	04
Sparta	02
Oconto	
Service Area	
Mountain	02
Oconto Falls	03
Oneida	
Service Area: Elcho	02
Pepin	
Service Area: Mondovi	02
Pierce	
Service Area	
Baldwin	02
Mondovi	02
Portage	
Service Area: Amherst/Iola	02
Price	
Service Area: Park Falls/Phillips	03
Richland	
Service Area: Hillsboro	04
St. Croix	
Service Area: Baldwin	02
Sauk	
Service Area: Hillsboro	04
Sawyer	
Service Area	
Cable/Hayward	02
Park Falls/Phillips	03
Shawano	
Service Area: Tigerton/Birnamwood	02
Sheboygan:	
Facility: Kettle Moraine Correctional Inst	02
Taylor	04
Trempealeau:	
Service Area	
Arcadia	02
Galesville Trempealeau	02
Osseo	03
Vernon	
Service Area	
Coon Valley/Chaseburg	01
Genoa	01
Hillsboro	04
Vilas	
Service Area: Land O'Lakes/Presque Isle	01
Washburn	
Service Area	
Cable/Hayward	02
Minong/Solon Springs	01
Waupaca	
Service Area	
Amherst/Iola	02
Tigerton/Birnamwood	02
Waushara	
Service Area: Wautoma/Montello	02

PRIMARY CARE: Wisconsin

Service Area Listing

Service area name	Degree of shortage group
Amherst/Iola	02
County—Portage	
Parts	
Amherst Junction Vil.	
Amherst Twn	
Amherst Vil.	
Nelsonville Vil.	
County—Waupaca:	
Parts	
Helvetia Twn	
Iola Twn	
Iola Vil.	
Scandinavia Twn (Pt)	
St. Lawrence Twn (Pt)	
Arcadia	02
County—Buffalo	
Parts:	
Buffalo Town	
Cross	
Fountain City	
Glencoe	
Milton	
Montana	
Waumandee	
County—Trempealeau	
Parts:	
Arcadia (City)	
Arcadia (Twn)	
Dodge	
Athens/Edgar	02
County—Marathon:	
Parts:	
Athens Village	
Bern	
Edgar Village	
Fenwood Village	
Frankfort Twn	
Halsey Twn	
Johnson Twn	
Rietbrock Twn	
Wein Town	
Baldwin	02
County—Pierce:	
Parts:	
Elmwood Village	
Gilman Town	
Spring Lake Town	
Spring Valley Village	
County—St. Croix:	
Parts	
Baldwin Town	
Baldwin Village	
Cady Town	
Eau Galle Town	
Emerald Town	
Glenwood City	
Glenwood Town	
Hammond Town	
Hammond Village	
Pleasant Valley Town	
Rush River Town	
Springfield Town	
Wilson Village	
Woodville Village	
Cable/Hayward	02
County—Bayfield:	
Parts	
Barnes Twn (S. ½)	
Cable Twn	
Cable Vil.	
Drummond Twn (S. ½)	
Grandview Twn	
Namakagon Twn	
County—Sawyer:	
Parts:	
Bass Lake Twn	
Couderay Twn	
Couderay Vil.	
Hayward City	
Hayward Twn	
Hunter Twn	
Lenroot Twn	
Ojibwa Twn	
Radisson Twn	
Radisson Vil.	
Round Lake Twn	
Sand Lake Twn	
Spider Lake Twn	
County—Washburn:	
Parts:	
Bass Lake Twn	
Stinnett Twn	
Stone Lake Twn	
Capitol Drive	02
County—Milwaukee:	
Parts	
C.T. 26	
C.T. 39	
C.T. 41–43	
C.T. 45–48	
C.T. 63–65	
Coon Valley/Chaseburg	01
County—La Crosse	
Parts: Washington Town	
County—Vernon	
Parts	
Chaseburg Vil.	
Coon Town	
Coon Valley Vil.	
Hamburg Town	
East Silver Spring	02
County—Milwaukee:	
Parts	
C.T. 10–12	
C.T. 18–21	
Elcho	02
County—Langlade	
Parts	
Ainsworth Twn	
Elcho Twn	
Parrish Twn	
Summit Twn	
Upham Twn	
County—Oneida:	
Parts:	
Enterprise Twn	
Monico Twn (Pt)	
Schoepke Twn	
Galesville/Trempealeau	02
County—Trempealeau	
Parts	
Caledonia Town	
Ettrick City	
Ettrick Town	
Gale Town	
Galesville City	
Trempealeau Town	
Trempealeau Village	
Genoa	01
County—Vernon:	
Parts:	
Bergen	
[illegible]	
Genoa Tn	
Genoa Village	
Harmony	
Sterling	
[illegible]	
Hillsboro	04
County—Juneau	
Parts	
Union Center	
Wonewoc Twn	
Wonewoc Vil.	
County—Monroe:	
Parts	
Glendale Twn	
Kendall Village	
Sheldon Twn	
Wellington Twn	
County—Richland:	
Parts	
Bloom Twn	
Cazenovia Village	
Hennetta Twn	
Westford Twn	
Yuba Village	
County—Sauk:	
Parts: Woodland Twn	
County—Vernon:	
Parts:	
Forest Twn	
Greenwood Twn	
Hillsboro City	
Hillsboro Twn	
Ontario Village	
Union Twn	
Whitestown Twn	
Inner City North (Milwaukee)	01
County—Milwaukee:	
Parts	
C.T. 44	
C.T. 66–72	
C.T. 79–86	

PRIMARY CARE: Wisconsin—Continued

Service Area Listing

Service area name	Degree of shortage group
C.T. 101–107	
C.T. 114–118	
C.T. 139–142	
C.T. 146–147	
Inner City South (Milwaukee)	[illegible]
County—Milwaukee:	
Parts:	
C.T. 155–171	
C.T. 174–180	
Inner City West	02
County—Milwaukee:	
Parts:	
C.T. 62	
C.T. 87–90	
C.T. 96–100	
C.T. 119–125	
C.T. 133–138	
C.T. 148–149	
Ironwood/Hurley	[illegible]
County—Iron:	
Parts:	
Anderson Town	
Carey Town	
Gurney Town	
Hurley City	
Kimball Town	
Knight Town	
Mercer Town	
Montreal City	
Oma Town	
Pence Town	
Saxon Town	
Juneautown	01
County—Milwaukee:	
Parts:	
C.T. 108	
C.T. 110–113	
Kewaunee City	[illegible]
County—Kewaunee:	
Parts:	
Carlton Twp	
Casco Twp (East ½)	
Casco Village (East ½)	
Franklin Twp (East ½)	
Kewaunee City	
Kewaunee Twp	
Montpelier Twp (East ½)	
Pierce Twp (South ½)	
Land O'Lakes/Presque Isle	01
County—Vilas:	
Parts:	
Land O'Lake Twn	
Presque Isle Twn	
Winchester Twn	
Laona	01
County—Forest:	
Parts:	
Armstrong Creek Town	
Blackwell Town	
Caswell	
Freedom Town	
Laona	
Ross Town	
Wabeno Town	
Minong/Solon Springs	[illegible]
County—Douglas:	
Parts:	
Bennett Town	
Dairyland Twn	
Gordon Twn	
Highland Town	
Oakland Twn (S ½)	
Solon Springs Twn	
Solon Springs Village	
Wascott Twn	
County—Washburn:	
Parts:	
Brooklyn Town	
Chicog Town	
Frog Creek Twn	
Gull Lake Town	
Minong Twn	
Minong Village	
Mondovi	[illegible]
County—Buffalo:	
Parts:	
Alma City	
Alma Town	

PRIMARY CARE: Wisconsin—Continued

Service Area Listing

Service area name	Degree of shortage group
Belvidere Town	
Buffalo City	
Canton Town	
Cochrane Village	
Dover Town	
Gilmanton Town	
Lincoln Town	
Modena Town	
Mondovi City	
Mondovi Town	
Naples Town	
County—Dunn:	
Parts: Eau Galle Town	
County—Pepin:	
Parts: Albany Town	
County—Pierce:	
Parts:	
Bay City Village	
Isabelle Town	
Maiden Rock Village	
Maiden Rock Town	
Plum City Village	
Union Town	
Mountain	02
County—Langlade:	
Parts:	
Evergreen	
Langlade	
White River	
Wolf River	
County—Oconto:	
Parts:	
Armstrong	
Bagley	
Brazeau	
Breed	
Doty	
Lakewood	
Riverview	
Townsend	
Oconto Falls	[illegible]
County—Oconto:	
Parts:	
Abrams Twn (Western ½)	
Gillett City	
Gillett Twn	
Green Valley Town	
How Twn	
Lena Twn	
Lena Village	
Maple Valley Twn	
Morgan Twn	
Oconto Falls City	
Oconto Falls Twn	
Shawanmo	
Spruce Twn	
Stiles Twn (Western ½)	
Suring Village	
Underhill Twn	
Osseo	[illegible]
County—Eau Claire:	
Parts:	
Augusta Twn	
Bridge Creek Twn	
Clear Creek Twn	
Fairchild Twn	
Fairchild Village	
Otter Creek Twn	
County—Jackson:	
Parts:	
Cleveland Twn	
Garfield Twn	
Northfield Twn	
County—Trempealeau:	
Parts:	
Hale	
Osseo City	
Strum Twn	
Sumner Twn	
Unity Twn	
Park Falls/Phillips	03
County—Ashland:	
Parts:	
Agenda Twn	
Butternut Village	
Chippewa Twn	
Gordon Twn	
Jacobs Twn	

PRIMARY CARE: Wisconsin—Continued

Service Area Listing

Service area name	Degree of shortage group
Peeksville Twn	
Shamagolden Twn	
County—Iron:	
Part: Sherman Twn	
County—Price:	
Parts:	
Catawba Twn and Village	
Eisenstein Twn	
Elk Twn	
Emery Twn	
Fifield Twn	
Flambeau Twn	
Georgetown Twn	
Hackett Twn	
Harmony Twn	
Kennan Twn	
Kennan Vil.	
Lake Twn	
Ogema Twn	
Park Falls City	
Phillips City	
Prentice Twn (West ½)	
Prentice Vil.	
Worchester Twn	02
County—Sawyer:	
Parts	
Draper Twn	
Winter Twn	
Winter Village	
Platteville/Cuba City	[illegible]
County—Grant:	
Parts:	
Clifton Twn	
Cuba City	
Dickeysville Village	
Ellenborough Town (E ½)	
Harrison Town	
Hazel Green Town	
Hazel Green Village	
Lima Town	
Livington Village	
Pana Town	
Platteville City	
Platteville Town	
Smelser Town	
County—Iowa:	
Parts:	
Mifflin Town	
Rewey Town	
County—Lafayette:	
Parts:	
Belmont Town	
Belmont Village	
Benton Town	
Benton Village	
Elk Grove Town	
New Diggins Town	
Sister Bay-Wash Island	02
County—Door:	
Parts:	
Baileys Harbor Twn	
Ephriam Village	
Gibraltar Twn	
Liberty Grove Twn	
Sister Bay Vil.	
Washington, Twn	
Sparta	[illegible]
County—Monroe:	
Parts:	
Angelo Town	
Cashton Vil.	
Jefferson Town	
Lafayette Town	
Leon Town	
Little Falls Town	
Melvina, Vil.	
New Lyme Town	
Norwalk Village	
Portland Town	
Ridgeville Town	
Sparta City	
Sparta Town	
Wells Town	
Tigerton/Birnamwood	[illegible]
County—Marathon:	
Parts:	
Elderon Town	
Elderon Village	

PRIMARY CARE: Wisconsin—Continued

Service Area Listing

Service area name	Degree of shortage group
Franzen Town	
County-Shawano:	
Parts:	
Almon Town	
Birnamwood Town	
Birnamwood Village	
Bowler Village	
Eland Village	
Fairbanks Town	
Germania Town	
Morris Town	
Tigerton Village	
Wittenberg Town	
Wittenberg Village	
County—Waupaca:	
Parts:	
Big Falls Village	
Harrison Town	
Wyoming Town	
W Marinette	02
County—Marinette:	
Parts:	
Amberg Twn	
Athelstane Twn	
Beaver Twn	
Coleman Village	
Crivitz Village	
Lake Twn	
Middle River Twn	
Pound Twn	
Pound Village	
Silver Creek Twn	
Stephenson Twn	
Wausaukee Twn	
Wausaukee Village	
Wautoma/Montello	02
County—Marquette:	
Parts:	
Coloma Town	
Coloma Village	
Dakota Town	
Deerfield Twn (S.⅔)	
Handcock Twn (S.⅔)	
Manon Town	
Richford Town	
Wautoma City	
Wautoma Town (S ⅔)	
County—Waushara:	
Parts:	
Crystal Lake Town	
Hanis Town	
Mecan Town	
Montello City	
Montello Town	
Neshkoro Town	
Neshkoro Village	
Newton Town	
Oxford Town	
Oxford Village	
Packwaukee Town	
Shields Town	
Springfield Town	
Westfield Town	
Westfield Village	

PRIMARY CARE: Wisconsin

Population Group Listing

Population group	Degree of shortage group
American Indian Pop.—Milwaukee	01
County—Milwaukee	

PRIMARY CARE: Wisconsin

Facility Listing

Facility	Degree of shortage group
Kettle Morain Correctional Inst	02
County—Sheboygan	
Lincoln Hills School	02
County—Lincoln	
Wisconsin Correctional Inst	03
County—Dodge	
Wisconsin State Prison	02
County—Dodge	
Wisconsin State Reformatory	02
County—Brown	

PRIMARY CARE: Wyoming

County name	Degree of shortage group
Albany:	
Service Area: Medicine Bow/Rock River	01
Big Horn:	
Service Area: Grey Bull	04
Campbell:	
Service Area: Wnght	01
Carbon:	
Service area:	
Medicine Bow/Rock River	01
Saratoga	03
Crook:	
Service area:	
Hulett	01
Moorcroft	01
Freemont:	
Service area: Jeffrey City	01
Population Group: Wind River Indian Reservation	01
Hot Springs:	
Population Group: Wind River Indian Reservation	01
Lincoln:	
Service area:	
Afton	04
Kemmerer	02
Natrona:	
Service Area: Midwest/Edgerton	01
Niobrara	04
Platte	03
Uinta:	
Service Area: Lyman	01
Weston	02

PRIMARY CARE: Wyoming

Service Area Listing

Service area name	Degree of shortage group
Afton	04
County—Lincoln:	
Parts: Afton Div.	
Grey Bull	04
County—Big Horn	
Parts:	
Big Horn (Central Div)	
Big Horn (South Div)	
Hulett	01
County—Crook:	
Parts: Hulett Div	
Jeffrey City	01
County—Fremont:	
Parts: Sweetwater Div	
Kemmerer	02
County—Lincoln:	
Parts:	
Kemmerer West	
Kemmerer East	
Lyman	01
County—Uinta:	
Parts: Bridger Valley Div.	
Medicine Bow/Rock River	01
County:	
Albany:	

PRIMARY CARE: Wyoming—Continued

Service Area Listing

Service area name	Degree of shortage group
Parts: Rock River Div	
Parts: Hanna CCD	
Midwest/Edgerton	01
County—Natrona:	
Parts: Casper North Div. (N. ½)	
Moorcroft	01
County—Crook:	
Parts: Moorcroft Div	
Saratoga	03
County—Carbon:	
Parts: Saratoga CCD	
Wnght	01
County—Campbell:	
Parts: Gillette South CCD	

PRIMARY CARE: Wyoming

Population Group Listing

Population group	Degree of shortage group
Wind River Indian Reservation	01
County:	
Fremont	
Hot Springs	

PRIMARY CARE: Guam

District name	Degree of shortage group
Agat:	
Service Area: Southern Guam	01
Inarajan:	
Service Area: Southern Guam	01
Merizo:	
Service Area: Southern Guam	01
Santa Rita:	
Service Area: Southern Guam	01
Talofofo:	
Service Area: Southern Guam	01
Umatac:	
Service Area: Southern Guam	01
Yona:	
Service Area: Southern Guam	01

PRIMARY CARE: Guam

Service Area Listing

Service area name	Degree of shortage group
Southern Guam	01
County:	
Agat	
Inarajan	
Merizo	
Santa Rita	
Talofofo	
Umatac	
Yona	

PRIMARY CARE: Puerto Rico

Municipio name	Degree of shortage group
Adjuntas:	
Population Group: Poverty Pop	01
Aguas Buenas:	
Population Group: Poverty Pop	01

PRIMARY CARE: Puerto Rico—Continued

Municipio name	Degree of shortage
Aneaco	01
Arecibo:	
Population Group: Poverty Pop	01
Arroyo:	
Population Group: Poverty Pop	01
Barceloneta	01
Barranquitas	[illegible]
Cabo Rojo:	
Population Group: Poverty Pop	[illegible]
Camuy	01
Catano:	
Population Group: Poverty Pop	[illegible]
Cayey:	
Population Group: Poverty Pop	[illegible]
Ceiba:	
Population Group: Poverty Pop	[illegible]
Ciales	01
Cidra	01
Coamo:	
Population Group: Poverty Pop	01
Comerio	01
Corozal	01
Dorado:	
Population Group: Poverty Pop	[illegible]
Fajardo:	
Population Group: Poverty Pop	01
Florida	01
Guanica:	
Population Group: Poverty Pop	[illegible]
Guayama:	
Population Group: Poverty Pop	01
Guayanilla:	
Population Group: Poverty Pop	01
Guaynabo:	
Population Group: Poverty Pop	[illegible]
Gurabo:	
Population Group: Poverty Pop	01
Hatillo	01
Hormigueros	01
Humacao:	
Population Group: Poverty Pop	02
Isabela:	
Population Group: Poverty Pop	01
Jayuya:	
Population Group: Poverty Pop	[illegible]
Juana Diaz:	
Population Group: Poverty Pop	01
Juncos	03
Lajas	[illegible]
Lares	[illegible]
Las Marias:	
Population Group: Poverty Pop	[illegible]
Las Piedras	[illegible]
Loiza:	
Population Group: Poverty Pop	01
Luquillo	[illegible]
Manati:	
Population Group: Poverty Pop	01
Maricao:	
Population Group: Poverty Pop	01
Maunabo:	
Population Group: Poverty Pop	[illegible]
Mayaguez:	
Population Group: Poverty Pop	01
Moca:	
Population Group: Poverty Pop	01
Morovis	01
Naguabo:	
Population Group: Poverty Pop	01
Naranjito	[illegible]
Orocovis	01
Patillas	01
Ponce:	
Population Group: Poverty Pop	[illegible]
Quebradillas:	
Population Group: Poverty Pop	[illegible]
Rincon	01
Rio Grande:	
Population Group: Poverty Pop	[illegible]
Sabana Grande	01
Salinas:	
Population Group: Poverty Pop	01
San German:	
Population Group: Poverty Pop	[illegible]
San Juan:	
Service Area: Barrio Obrero	[illegible]
San Lorenzo:	
Population Group: Poverty Pop	[illegible]
San Sebastian:	
Population Group: Poverty Pop	01
Santa Isabel:	
Population Group: Poverty Pop	[illegible]
Toa Alta:	
Population Group: Poverty Pop	[illegible]
Trujillo Alto:	
Population Group: Poverty Pop	[illegible]
Utuado:	
Population Group: Poverty Pop	01
Vega Alta:	
Population Group: Poverty Pop	01
Vega Baja:	
Population Group: Poverty Pop	01
Yabucoa:	
Population Group: Poverty Pop	01
Yauco:	
Population Group: Poverty Pop	01

PRIMARY CARE: Puerto Rico

Service Area Listing

Service area name	Degree of shortage group
Barrio Obrero	[illegible]
County—San Juan:	
Parts:	
C.T. 29-39	
C.T. 44-45	

PRIMARY CARE: Puerto Rico

Population Group Listing

Population group	Degree of shortage
Poverty Pop/Adjuntas	[illegible]
County—Adjuntas	
Poverty Pop/Aguas Buenas	01
County—Aguas Buenas	
Poverty Pop/Arecibo	01
County—Arecibo	
Poverty Pop/Arroyo	01
County—Arroyo	
Poverty Pop/Cabo Rojo	03
County—Cabo Rojo	
Poverty Pop/Catano	01
County—Catano	
Poverty Pop/Cayey	01
County—Cayey	
Poverty Pop/Ceiba	03
County—Ceiba	
Poverty Pop/Coamo	01
County—Coamo	
Poverty Pop/Dorado	[illegible]
County—Dorado	
Poverty Pop/Fajardo	01
County—Fajardo	
Poverty Pop/Guanica	01
County—Guanica	
Poverty Pop/Guayama	01
County—Guayama	
Poverty Pop/Guayanilla	01
County—Guayanilla	
Poverty Pop/Guaynabo	04
County—Guaynabo	
Poverty Pop/Gurabo	[illegible]
Poverty—Gurabo	
Poverty Pop/Humacao	[illegible]
County—Humacao	
Poverty Pop/Isabela	01
County—Isabela	
Poverty Pop/Jayuya	01
County—Jayuya	
Poverty Pop/Juana Diaz	01
County—Juana Diaz	
Poverty Pop/Las Marias	[illegible]
County—Las Marias	
Poverty Pop/Loiza	[illegible]
County—Loiza	

PRIMARY CARE: Puerto Rico—Continued

Population Group Listing

Population group	Degree of shortage group
Poverty Pop/Manati	01
County—Manati	
Poverty Pop/Mancao	01
County—Mancao	
Poverty Pop/Maunabo	[illegible]
County—Maunabo	
Poverty Pop/Mayaguez	01
County—Mayaguez	
Poverty Pop/Moca	01
County—Moca	
Poverty Pop/Naguabo	01
County—Naguabo	
Poverty Pop/Ponce	04
County—Ponce	
Poverty Pop/Quebradillas	02
County—Quebradillas	
Poverty Pop/Rio Grande	02
County—Rio Grande	
Poverty Pop/Salinas	01
County—Salinas	
Poverty Pop/San German	02
County—San German	
Poverty Pop/San Lorenzo	01
County—San Lorenzo	
Poverty Pop/San Sebastian	01
County—San Sebastian	
Poverty Pop/Santa Isabel	01
County—Santa Isabel	
Poverty Pop/Toa Alta	01
County—Toa Alta	
Poverty Pop/Trujillo Alto	02
County—Trujillo Alto	
Poverty Pop/Utuado	01
County—Utuado	
Poverty Pop/Vega Alta	01
County—Vega Alta	
Poverty Pop/Vega Baja	01
County—Vega Baja	
Poverty Pop/Yabucoa	01
County—Yabucoa	
Poverty Pop/Yauco	01
County—Yauco	

PRIMARY CARE: Trust Terr-PAC

District name	Degree of shortage
Kosrae District	01
Marshall District	01
Palau District	03
Ponape District	01
Truk District	01
Yap District	01

PRIMARY CARE: N. Mariana Is.

District name	Degree of shortage
Mariana Island Dist	01

PRIMARY CARE: Virgin Islands

Island name	Degree of shortage
St. Croix:	
Service Area: Fredencksted	01
St. Thomas:	
Service Area: East End St. Thomas	01

PRIMARY CARE: Virgin Islands

Service Area Listing

Service area name	Degree of shortage
East End St. Thomas Island—St. Thomas.	01
Parts:	
East End	
Southside	
Tutu	
Fredericksted Island—St. Croix:	01
Parts:	
Fredericksted	
Northwest	
Southwest	

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE MANPOWER SHORTAGE AREAS

Service area	County	Parts
Alabama		
	Butler	All
	Cherokee	All
	Fayette	All
	Lawrence	All
	Marengo	All
	Perry	All
	Wilcox	All.
Childersburg CCD	Talladega	Childersburg Div.
Coffee/Jackson	Clarke	Coffeeville Div., Jackson N.W., Jackson S.E.
Etowah	Calhoun	Ohatchee Div., Piedmont Div.,
	Etowah	All
Grant	Marshall	Arab, Grant, Guntersville, Town Creek, Union Grove.
Lincoln-Estaboga CCD.	Talladega	Lincoln-Estaboga
Oxford-S. Anniston	Calhoun	City of Oxford, E.D. 66, 84, 86-90, 92-98
Pratt City	Jefferson	C.T. 10-12, 14
Roosevelt City	Jefferson	C.T. 105, 131, 133, 136-137
South Montgomery	Montgomery	Hope Hill Div., Pine Level Div., Ramer Div.
Warrior-Morris	Jefferson	C.T. 113-114.
Weaver/N Anniston	Calhoun	City of Weaver, E.D. 58-65, 69-77, 80-81.
Webster Chapel/ Alexandria	Calhoun	Webster Chapel/ Alexandria Div
Arizona		
Bullhead City	Mohave	Kingman North (Pt), Kingman South (Pt).
Payson	Gila	Christopher Creek, Gisela, Jakes Corner, Kahls Ranch, Payson, Pine, Rye, Strawberry, Tonto Div., Tonto Village
South Phoenix	Maricopa	C.T. 1152-1161, 1162.01-1162.02, 1163-1167.
Arkansas		
	Ashley	All
	Howard	All
McAlmont	Pulaski	C.T. 38-90

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE MANPOWER SHORTAGE AREAS—Continued

Service area	County	Parts
Perryville	Perry	Aplin, Casa, Cherry Hill, Fourche Lafave, Houston, Kenny, Lake, Maumelle, Perry, Petit Jean, Ramon Rose Creek, Union, Union Valley, Wye Twps.
Stephens	Newton	Jackson, Leake Twps.
	Union	Boone, Van Buren Twps.
California		
Cloverdale/ Geyserville	Sonoma	C.T. 1541-1542.
Lucerne Valley	San Bernardino	E.D. 1181-1188, 1246 (W. ½).
Malibu/Santa Barbara	Los Angeles	C.T. 2214.01-2214.02, 2215.01-2215.02, 2216.01-2216.02, 2217.01-2217.02, 2218-2219, 2221-2227, 2244-2247, 2284-2267.
Mission/Ocean/ Pacific Beach	San Diego	C.T. 73-78, 79.01-79.02, 80.01-80.02
N. Central/E. Salinas	Monterey	C.T. 13, 17, 5-9, 18.
Tri-Community	San Bernardino	E.D. 1246 (E. ½), 1247-1257
Population Group		
Mig./Sp. Spkg. (Greater Merced).	Merced	Merced, Merced Rural, Planada-La Grand Divs
Mig./Sp. Spkg. (SW Stanislaus).	Stanislaus	Newman, Patterson
Pov. Pop. (San Marcos).	San Diego	C.T. 199, 200.04, 200.05, 200.06, 200.07, 200.08.
Colorado		
	Bent	All
	Ouray	All
	Rio Blanco	All.
Las Animas	Bent	Las Animas Div., Purgatoire Valley Div
D.C.		
N. Capital Service Area.	Dist of Columbia	C.T. 33.20, 46, 47 (⅗), 86 (½), 87 (½)
Florida		
	Hardee	All
	Orange	All
	St Lucie	All
	Seminole	All
	Taylor	All.
Wynwood	Dade	C.T. 26, 27.01-27.02, 28
Population Group		
Med. Ind. Pop. of Bay.	Bay	All
Facility		
Sunshine Family Health Center.	Broward	Sunshine Family Health Center.
Georgia		
	Butts	All.

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE MANPOWER SHORTAGE AREAS—Continued

Service area	County	Parts
	Grady	All
	Heard	All
	Newton	All
	Peach	All
	Troup	All
Marion Extended	Chattahoochee, Marion	All
Population Group		
Med. Ind. Pop. of Crisp.	Crisp	All
Illinois		
	Carroll	All
	Jo Daviess	All
Northeast Springfield	Sangamon	C.T. 7-8, 15-17
Princeville	Peoria	Akron Twp., Brimfield Twp., Hallock Twp., Jubilee Twp., Millbrook Twp., Princeville Twp.
Indiana		
	Parke	All
Linton-Jasonville	Greene	Stockton Twp., Wright Twp.
Iowa		
	Audubon	All
	Monona	All
	Wayne	All
	Worth	All
Adair/Casey	Adair	All
	Guthrie	Beaver Twp., Grant Twp., Thompson Twp.
Akron	Plymouth	Grant (⅓), Hancock, Johnson, Liberty, Perry, Plymouth (½), Portland, Preston, Sioux, Washington (⅓), Westfield.
	Sioux	Logan (½), Washington (⅓)
Guthrie Center	Guthrie	Baker Twp., Bear Grove Twp., Cass Twp., Dodge Twp., Highland Twp., Jackson Twp., Orange Twp., Seely Twp., Union Twp., Valley Twp., Victory Twp.
Keokuk	Keokuk	Adams Twp., Benton Twp. (Pt.), Clear Creek Twp., East Lancaster Twp., English River Twp., Jackson Twp., Lafayette Twp., Liberty Twp. (Pt.), Plano Twp., Prairie Twp. (Pt.), Richland Twp. (Pt.), Sigourney Twp., Steady Run Twp., Van Buren Twp., Warren Twp., Washington Twp., West Lancaster Twp.
Marcus-Ramsen	Cherokee	Cherokee Twp., Marcus Twp., Tilden Twp.

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE MANPOWER SHORTAGE AREAS—Continued

Service area	County	Parts
	Plymouth	Henry Twp., Meadow Twp., Ramsen Twp
Mormon Trail	Clarke	Franklin Twp (Pt)
	Decatur	Center Twp (Pt), Franklin Twp. (Pt), Garden Grove Twp., High Point Twp (Pt), Woodland Twp. (Pt).
	Lucas	Jackson Twp (Pt) Union Twp., Warren Twp (Pt).
	Wayne	Clay Twp. (Pt), Richman Twp Washington Twp. (Pt)
Morningside/Sgt. Bluff (IO/NE-Rep S. Sioux).	Woodbury	C.T. 1 (Pt), C.T 18-21, Concord Twp., Liberty Twp. (Pt), Woodburg Twp (Pt)
Seymour	Appanoose	Franklin Twp., Independence Twp. (Pt), Johns Twp. (Pt), Lincoln Twp (Pt), Pleasant Twp. (Cincinnati)
	Wayne	Howard Twp., Jackson Twp (Pt), Monroe Twp., South Fork Twp., Walnut Twp Wright Twp (Pt).
Tama	Black Hawk	Eagle Twp., Lincoln Twp
	Grundy	Black Hawk Twp
Facility		
Peoples Comm. Health Center	Black Hawk	Peoples Comm Health Center
Kansas		
	Miami	All
	Scott	All.
	Smith	All
	Wichita	All
Clinicare	Wyandotte	C.T. 400.02, 425.01-425.02, 426-428, 429.01-429.02, 430, 431.02, 433.02.
Garden Plain	Kingman	Allen Twp., Bennett Twp., Dale Twp., Eagle Twp (Pt.), Evan Twp., Galesburg Twp., Vinita Twp., White Twp (Pt.)
	Sedgwick	Afton Twp., Attica Twp., Delano Twp., Eagle Twp., Erie Twp., Garden Plain Twp., Grand River Twp., Illinois Twp., Morton Twp., Ninnescah Twp., Ohio Twp (Pt.), Park Twp, Sherman Twp Union, Valley Center (Pt.), Viola Twp., Waco Twp

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE MANPOWER SHORTAGE AREAS—Continued

Service area	County	Parts
	Sumer	Conway Twp., Eden Twp (Pt.), Illinois Twp (Pt.), London Twp (Pt.), Springdale Twp (Pt.).
Gridley	Coffey	Leroy, Liberty Twp., Neosho Twp., Pleasant Twp., Spring Creek Twp.
	Greenwood	Lane Twp., Shell Rock Twp.
	Lyon	Elmerado Twp
	Woodson	Everett Twp., Liberty Twp., Neosho Falls Twp., North Twp.
Northeast Topeka	Shawnee	C.T 2-3, 7-8, 11-12, 14, 31.
Northwest Shawnee	Shawnee	Dover Twp., Grove Twp., Rossville Twp., Silver Lake Twp.
Southern Manon	Manon	Catlin Twp., Doyle Twp., Fairplay Twp., Florence City, Milton Twp., Peabody City, Summitt Twp.
Yates Center	Woodson	Belmont Center Twp., Center Twp., Emerizce Twp., Owl Creek Twp., Perry Twp., Toronto Twp., Yates Center City
Kentucky		
	Lewis	All
Population Group		
Poverty Pop. of Scott.	Scott	All
Louisiana		
Gueydan	Vermilion	Ward 8
Population Group		
Shreveport low income	Caddo	Shreveport (Low Income Pop.).
Massachusetts		
Mattapan	Suffolk	C.T. 1010-1011.
N. Waymouth	Norfolk	C.T. 4226-4228
Naponset	Suffolk	C.T. 1006-1007
Michigan		
	Alger	All
Facility		
Deaconess Hosp.	Wayne	Deaconess Hosp.
Herman Kiefer Health Complex.	Wayne	Herman Kiefer Health Complex
Mr Carmel Mercy Hosp.	Wayne	Mt. Carmel Mercy Hosp.
Mississippi		
	Chickasaw	All
	Choctaw	All
	Lowndes	All.
	Newton	All
	Prentiss	All
	Tunica	All.
	Washington	All
East Biloxi	Harrison	C.T. 1-3
N. Gulfport	Harrison	C.T. 18, C.T. 24

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE MANPOWER SHORTAGE AREAS—Continued

Service area	County	Parts
Missouri		
	Benton	All.
	Cedar	All
	Jefferson	All
	Schuyler	All
Arcadia Valley	Iron	All
	Reynolds	Black River, Carroll Twp., Lesterville Twp
	Washington	Belgrade Twp., Belleview Twp Concorde Twp., Harmony Twp
Big Springs	Reynolds	Jackson Twp., Logan Twp., Webb Twp.
Garden City	Cass	C.T. 607-612
Potosi	Washington	Johnson, Kingston, Liberty, Preton, Richwoods, Union, Walton
Shannon	[illegible]	Chapel Twp., Goldsberry Twp., Hutton Valley Twp.
Warrensburg	Johnson	Centerview, Chilhowee, Columbus, Hazel Hill, Jackson, Jefferson, Kingsville, Madison, Montserrat, Post Oak, Rose Hill, Simpson, Warrensburg, Washington
Montana		
Chester	Valley	All
	Hill	Gildford Div., Rudyard Div.
	Liberty	All.
	Toole	South Toole CCD (E ½).
Nebraska		
	Gosper	All.
	Merrick	All.
Colfax/Dodge	Colfax	Adams Precinct, Colfax Precinct, Lincoln Precinct, Maple Creek Precinct, [illegible] Precinct, Rogers Precinct, Schuyler City, Schuyler Precinct.
	Dodge	Cotterell Twp., Cuming Twp., North Bend City, Pebble Twp., Pleasant Valley Twp., Ridgeley Twp., Scribner City, Union Twp., Webster Twp
Morningside/Sgt. Bluff (IO/NE-Rep S. Sioux).	Dakota	All
Oakland	Burt	Arizona Twp., Bell Creek Twp., Craig Twp., Everett Twp., Logan Twp., Oakland City, Oakland Twp., Pershing Twp., Summit Twp Tekamah City

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE MANPOWER SHORTAGE AREAS—Continued

Service area	County	Parts
Western Holt	Holt	Atkinson Twp., Cleveland Twp., Dustin Twp., Fairview Twp., Francis Twp., Green Valley Twp., Holt Creek Twp., Josie Twp., Sand Creek Twp., Sheridan Twp., Stuart Twp., Swan Twp., Wyoming Twp.
	Keya Paha	All
	Rock	All
New Jersey		
Westside of Plainfield	Union	C.T. 389–390, 393–395
New Mexico		
	Guadalupe	All
	Mora	All
	Sandoval	All
New York		
	Hamilton	All
	Schuyler	All
Blue Stores	Columbia	Clermont Twp., Germantown Twp., Livingston Twp.
Brooklyn (Health Area 60)	Kings	C.T.s 916, 918, [illegible]
Central S.W Bronx (ZIP Code: 10455)	Bronx	C.T.s 31, 35, 71, 73, 75, 77, 79, 83, 85
Cochecton	Sullivan	Cochecton, Delaware, Fremont, Highland, Tusten.
Cornhill (Utica)	Oneida	C.T.s 204, 207.01, 208.03, 210, 212.01, 215
Luzerne	Saratoga	Corinth, Day, Edinburg, Hadley.
	Warren	Lake Luzerne, Stony Creek, C.T. 87, C.T. 89
Martin Luther King Service Area	Bronx	C.T.s 119, 121.01–121.02, 123, 125, 127.01–127.02, 129.01–129.02, 131, 133, 135, 137, 139, 145, 147, 149, 151, 153, 175, 177, 179, 187, 189, 193, 197, 199, 201, 211, 213.01–213.02, 221.
Modena	Ulster	Gardiner, Lloyd, Marlborough, Plattekill, Shawangunk.
Mott Haven	Bronx	C.T.s 11, 17, 23, 25, 27.01, 27.02, 33, 39, 41, 43.
S.W. Bronx (ZIP Code: 10451)	Bronx	C.T. 47, 49, 53, 57, 59.01–59.02, 61, 65, 67, 69, 141, 143, 173, 181, 183, 195
South Bronx-Fort Apache	Bronx	C.T.s 155, 161, 359, 361, 363, 365.01, 365.02, 367, 369.01, 369.02, 371, 373

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE MANPOWER SHORTAGE AREAS—Continued

Service area	County	Parts
South Hamilton	Hamilton	Anetta, Benson, Hope, Lake Pleasant, Morehouse, Wells
Sunset Park	Kings	C.T.s 2, 18, 20, 22, 76, 78, 80, 82, 84, 86, 88, 90, 92, 94, 96, 98, 100–101, 145.
Tremont	Bronx	C.T.s 163, 165, 167, 169, 171, 217.01–217.02, 223, 225, 227.01–227.02, 227.03, 229.01–229.02, 231, 233.01–233.02, 235.01, 237.01–237.02, 241, 334, 375.01–375.03, 377, 379, 381, 389, 391, 393, 397
Upper West Side	New York	C.T.s 177, 179, 181, 183, 185, 187, 189, 191, 193, 195.
West Central Bronx	Bronx	C.T.s 253, 263, 265, 267, 269, 273, 277, 279, 281, 383, 385, 387, 391, 393, 399.01–399.02, 401, 403.01–403.02, 405, 407.01–407.02, 411, 413, 415.
Facility		
Bellevue Hosp. Center	New York	Bellevue Hosp Center
North Carolina		
	Dare	All
	[illegible]	All
	Onslow	All
	Pender	All
	Yadkin	All
Balsam Grove	Transylvania	Gloucester, Hog Back.
Danbory	Stokes	Beaver Island, Big Creek, Danbory, Meadows, Peters Creek, Sauratown, Snow Creek, Yadkin
North Dakota		
	Divide	All
Park River	[illegible]	All
Ohio		
	Monroe	All
Oklahoma		
	Latimer	All
Oregon		
	Gilliam	All
	Morrow	All
	Wheeler	All
Pennsylvania		
	Pike	All
	Wayne	All

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE MANPOWER SHORTAGE AREAS—Continued

Service area	County	Parts
Central Cambria (Area 9)	Cambria	Cassandra Boro., Cresson Boro., Cresson Twp., Lilly Boro., Munster Twp., Portage Boro., Portage Twp., Sankertown Boro., Washington Twp.
Terrace Village II	Allegheny	C.T.s 304.01 [illegible]
Rhode Island		
Olneyville	Providence	C.T. 16–22
Woodlawn	Providence	C.T.s 151, 161, 164
Population Group		
Poverty Pop./Kent Co.	Kent	All
South Carolina		
	Horry	All
Lake City	Florence	Coward Div., Lake City Div., Olanta Div., Scranton Div.
South Dakota		
	Aurora	All
	Clay	All
	Corson	All
	Dewey	All
	Hyde	All
	Meade	All
	Perkins	All
	Sanborn	All
	Sully	All
	Ziebach	All
Chamberlain	Brule	All
Deuel	Deuel	Altamont Town, Altamont Twp., Antelope Valley Twp., Astoria Town, Blom Twp., Brandt Town, Brandt Twp., Clear Lake City, Clear Lake Twp., Glenwood Twp., Goodwin Town, Goodwin Twp., Grange Twp., Havana Twp., Hidewood Twp., Lowe Twp., Portland Twp., Rome Twp., Scandinavia Twp., Toronto Twp.
Facility		
[illegible] State Penitentiary	Lincoln	State Penitentiary
Tennessee		
	Clay	All
	Perry	All
	Tipton	All
	Trousdale	All
	White	All
	Wilson	All
Texas		
	Collin	All
	Cooke	All
	Hockley	All
	Liberty	All

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE MANPOWER SHORTAGE AREAS—Continued

Service area	County	Parts
	Presidio	All.
	Sherman	All.
	Wise	All.
Highland Bayou	Galveston	C.T. 1225–1226
Western Oklahoma.	Lipscomb	Higgins CCD
Utah		
	Tooele	All
N.W./Westside Salt Lake.	Salt Lake	C.T. 1005–1006
Virginia		
	Amelia	All.
	Buchanan	All.
	Louisa	All.
	Madison	All.
	Scott	All.
Hillsville	Carroll	All.
	Floyd	Bucks Fork Dist., Indian Valley Dist.
Population Group		
Low Income Pop. (Lynchburg).	Lynchburg	Low Income Pop.
Washington		
	Columbia	All.
	San Juan	All.
	Skamania	All.
Concrete	Skagit	Div. 1–2.
Raymond/South Bend.	Pacific	Division 1–4, Raymond Div.

WITHDRAWALS FROM LIST OF PRIMARY MEDICAL CARE MANPOWER SHORTAGE AREAS—Continued

Service area	County	Parts
West Virginia		
	Nicholas	All.
	Preston	All
	Ritchie	All.
	Wetzel	All.
Cabell	Cabell	All
Mercer	Mercer	Jumping Branch, Plymouth, Rock.
Upper Tygart Valley.	Randolph	Huttonsville Dist., Mingo Dist.
Wisconsin		
	Lafayette	All.
	Pepin	All.
Ethan Allen School.	Washake	Ethan Allen School.
Wyoming		
	Lincoln	All
	Uinta	All.

WITHDRAWALS FROM PRIMARY LIST OF MEDICAL CARE MANPOWER SHORTAGE AREAS

Service area	Municipio	Parts
Puerto Rico		
	Adjuntas	All
	Juana Diaz	All.
	Las Marias	All.
	Mancao	All.
	Maunabo	All.
	Mayaguez	All

WITHDRAWALS FROM PRIMARY LIST OF MEDICAL CARE MANPOWER SHORTAGE AREAS—Continued

Service area	Municipio	Parts
	San Sebastian	All.
Florida	Barceloneta	Florida Adentico, Florida Afuero
Guaynabo	Adjuntas	Portuguez.
	Penuelas	Rucio.
	Ponce	Guarguao.
Llorens Torres	San Juan	Llorens Torres
Mayaguez	Cabo Rojo	All.
Playa De Ponce	Ponce	Playa.
Population Group		
Med Ind. of Catano Health Area.	Toa Baja	All.
Med. Ind. of Arecibo Service Area.	Camuy	All.
	Ciales	All.
	Hatillo	All.
	Lares	All.
	Morovis	All.
	Barranquitas	All.
Med. Ind. of Barranq. Service Area.		
	Comerio	All.
	Corozal	All.
	Naranjito	All.
	Orocovis	All.
Med. Ind. of San German Service Area.	Lajas	All.
	Sabana Grande	All.
Med. Ind. Pop. of Cidra.	Cidra	All.
Pov. Pop. of Barceloneta.	Barceloneta	All.

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DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Fees for Supervision of Official Services

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is reducing fees by approximately 40 percent for the supervision of inspection and weighing services performed by agencies. The fee reduction will reduce the level of applicable operating reserves. FGIS also is establishing fees to recover the costs incurred for supervision of agencies performing Class Y weighing services and clarifying the fee schedule by consolidating the fees for protein and oil analyses under the category "official criteria." These change clarify and update the fee schedule.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Management Branch, RM, USDA, FGIS, Room 0667 South Building, 1400 Independence Avenue, SW., Washington, D.C. 20250, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Dr. Kenneth A. Gilles, Administrator, FGIS, has determined that this final rule does not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities. FGIS is required by statute to make services available and to cover the estimated costs of providing such services. Moreover, this action, in part, would reduce applicable fees.

Pursuant to the Administrative Procedures Act, good cause is found to make this final rule effective October 1, 1985, which is less than 30 days after publication because this final rule will provide a reduction in the level of fees for services provided by FGIS as well as promote program stability by providing for an orderly reduction of current operating revenues. Therefore, this reduction should be implemented as soon as practicable. Also, other changes in this final rule will further update the fee schedule.

Final Action

The United States Grain Standards Act, as amended, (7 U.S.C. 71 *et seq.*) requires that delegated States and designated agencies pay fair and reasonable fees to cover the estimated costs to FGIS to supervise these agencies.

In the July 10, 1985 **Federal Register** (50 FR 28104) FGIS proposed specific changes to the fees for supervision of agencies performed under the United States Grain Standards Act (USGSA). A correction docket was published on July 23, 1985, (50 FR 29985). The comment period ended August 9, 1985. Thirteen comments were received on the proposed rule. Ten commenters supported the proposed decrease in FGIS fees assessment for supervision of official agencies. Two commenters suggested that FGIS refund to the agencies all applicable operating reserves in excess of cost of supervising agencies for a six-month period, or that the reserves be reduced by expending a portion in a manner that would be of significant benefit to all agencies. FGIS believes it is in the best interest of all parties concerned to reduce the operating reserves on a planned gradual basis through lower fees. This is consistent with FGIS' long standing policy of increasing or decreasing fees, as appropriate, to match revenues and operating costs. This approach is also consistent with, and supports a fee schedule that will maintain a 6-month reserve. FGIS also feels that agencies have already received substantial benefits from the 1984 fee reduction and will continue to receive these benefits with the proposed reduction in supervision fees. The reduction in operating reserves on a planned gradual basis would avoid any potential sharp increase in fees as may be required beause of unanticipated or accelerated program losses.

One commenter suggested that the proposed reduction in supervision fees represented a rebate to agencies and suggested that FGIS' plan to reduce the operating reserve discriminates against States currently under an expanded delegation of authority with FGIS because in the past such States in effect contributed to the operating reserves and presently are assessed fees determined on an annual basis pursuant to their expanded delegations of authority. The FGIS fees assessed to these States would not be affected by the 40% reduction in supervision fees. This reduction in user fees is part of FGIS' continuing effort to match future revenues with future costs of operating each FGIS program, including supervision of agencies. The expanded delegation of authority with specific States represents an added effort to match FGIS revenues and costs while reducing overall expenses and strengthening program operations. As stated above, FGIS increases or decreases fees, as appropriate, to match revenues and operating costs. Presently, States operating under an expanded delegation of authority voluntarily participate in a program that has reduced FGIS costs and, in turn, the supervision fees assessed to these States. The combination of these savings, along with improved program effectiveness, benefits both FGIS and the States participating in the expanded delegation of authority program. FGIS will continue to monitor its fiscal position to provide cost-effective services.

A final rule was made effective August 1, 1984 (49 FR 26560) which, in part, reduced the fees for FGIS supervision of inspection and weighing of delegated States and designated agencies by approximately 35%. This reduction in fees was intended to bring

revenues more in line with FGIS costs while, at the same time, gradually reducing the level of operating reserves for these two programs. Since that time, FGIS has carefully monitored the level of these fees in light of current program costs and revenues, including applicable operating reserves.

The 1984 reduction in fees slowed the rate of growth in the operating reserves by approximately 64%. However, the operating reserves continue to grow, but at a slower rate. As of April 30, 1985, for both supervision programs, FY 1985 revenues were $1.8 million with costs of $1.2 million. As of that date, the level of the applicable operating reserves was $4.5 million. In the 1984 reduction, some factors used in projections were affected by an unanticipated increase in grain exports during the first few months of fiscal year 1985. Further, FGIS has and continues to adopt costs saving measures to provide the grain trade with the most cost effective programs practicable. Additionally effective August 1, 1984, FGIS implemented a new program in which additional supervisory authorities have been delegated to the States of California and Washington in their delegated capacities under the Act. This action permitted the closing of two field offices. The action will not change the level of fees assessed to the delegated States because the fees charged are assessed separately as set forth in the States' delegation of authority documents.

A comparison of FY 1984 actual costs with comparable FY 1985 actual costs indicates that FGIS costs have been reduced by approximately 9%. Presently, grain exports are at levels approximately 19% below the first quarter of FY 85 levels. Recent trends indicate that exports are running approximately 4.5% behind comparable 1984 figures. The trend is expected to continue. A comparison of FY 84 actual revenues with comparable FY 85 actual revenues indicates that FGIS revenues have been reduced approximately 41%.

Nevertheless, based upon present operating reserve levels, FGIS is reducing the fees for supervision of official services by approximately 40%.

This reduction will operate the programs at net losses to reduce the operating reserves on a planned gradual basis; thereby avoiding any potential sharp increase in fees as may be required because of unanticipated or accelerated program losses. The reduction when added to the 1984 reduction will reduce applicable fees by approximately 61% over early FY 1984 levels.

FGIS will continue to monitor its cost and revenues in this area so that appropriate action may be taken to further revise these fees, if deemed necessary.

FGIS is establishing fees to cover costs incurred for the supervision of agencies performing official Class Y weighing services. The fees have been set at a level which is anticipated not to increase applicable operating reserves.

The Administrator is authorized to perform permissive inspections under official standards or, upon request, under other approved criteria. Protein testing is one such other criteria and supervision fees for protein analysis performed by agencies are listed separately in the supervision fee schedule. In order to clarify the fee schedule and provide supervision fees for any and all official criteria, FGIS will assess $.20 supervision fees for protein, oil or any other analyses under the heading "official criteria." A conforming change is reflected in footnote 6.

Miscellaneous nonsubstantive changes, including redesignating and revising footnotes, are being made to clarify and facilitate the use of the fee schedule.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Export, Grain.

PART 800—GENERAL REGULATIONS

Accordingly, 7 CFR Part 800 of the regulations is amended as follows:

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.)*

2. In § 800.71(a), Schedule C, Tables 1 and 2 are revised to read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

SCHEDULE C—FEES FOR FGIS SUPERVISION OF OFFICIAL INSPECTION AND WEIGHING SERVICES PERFORMED BY DELEGATED STATES AND/OR DESIGNATED AGENCIES IN THE UNITED STATES[1]

TABLE 1

Inspection services (bulk or sacked grain)	Offical inspection or reinspection services
(1) Official sample-lot inspection service (white certificate)	
(i) For official grade and official factor determinations:	
(A) Truck or trailer (per inspection [2]	$0.30
(B) Boxcar or hopper car (per inspection [2]	0.95
(C) Barge (per inspection) [3]	6.15
(D) Ship (per ship) [3]	49.20
(E) All other lots (per inspection) [3] [4]	0.30
(ii) For official factor or official criteria determinations:	
(A) Factor determination (per inspection) (maximum 2 factors) [5]	0.20
(B) Official criteria [3] [6]	0.20
(2) Stowage examination services:	
(i) Ship (per stowage certificate)	3.00
(ii) Other carriers (per stowage certificate)	0.20
(3) Warehouseman's sample-lot inspection service (yellow certificate) or submitted sample inspection service (pink certificate)	
(i) For official grade and official factor determinations (per inspection)	0.30
(ii) For official factor or official criteria determinations:	
(A) Factor determination (per inspection) (maximum 2 factors) [5]	0.20
(B) Official criteria [3] [6]	0.20
(4) Reinspection services:	
(i) Truck, boxcar, hopper car, barge, ship, warehouseman's sample-lot, submitted sample, factor determination, and all other lots (per sample inspected)	0.30
(ii) Official criteria [3] [4]	0.20

NOTE: The footnotes for Table 1 are shown at the end of Table 2.

TABLE 2

Official services (bulk or sacked grain)	Official weighing services	
	(Class X)	(Class Y)
(1) Official weighing services:		
(i) Truck or trailer (per carrier)	$0.30	$0.20
(ii) Boxcar or hopper car (per carrier)	0.95	0.25
(iii) Barge (per carrier)	6.15	1.56
(iv) Ship (per carrier) [3]	49.20	N/A
(v) All other lots (per lot or part lot) [4]	0.30	0.20

[1] The fees include the cost of supervision functions performed by the Service for official inspection and weighing services performed by delegated States and/or designated agencies.

[2] A fee shall be assessed for each carrier or sample inspected if a combined lot certificate is issued or a uniform loading plan is used to determine grade.

[3] A fee shall be assessed per ship regardless of the number of lots or sublots loaded at a specific service point. A fee shall not be assessed for divided-lot certificates.

[4] Inspection services for all other lots include, but are not limited to, sampling service, condition examinations, and examination of grain in bins and containers. For weighing services, all other lots include, but are not limited to, seavans and inhouse bin transfers.

[5] Fees shall be assessed for a maximum of two factors. If more than two factors are determined, fees are assessed at rates in Table 1 (1)(i) or (3)(i) above, as applicable, based on carrier or type sample represented.

[6] Official criteria includes, but is not limited to, protein and oil analyses. A fee shall be assessed for each sample tested.

* * * * *

Dated: September 13, 1985.

D.R. Galliart,

Acting Administrator.

[FR Doc. 85–22717 Filed 9–20–85; 8:45 am]

BILLING CODE 3410–EN–M

Animal and Plant Health Inspection Service

9 CFR Part 72

[Docket No. 85-083]

Texas (Splenetic) Fever in Cattle; Areas Quarantined

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of Interim Rules.

SUMMARY: An interim rule amended the "Texas (Splenetic) Fever in Cattle" regulations by deleting from quarantined area status all of the previously quarantined portions of Dimmit and Zavala Counties in Texas, and by adding to and deleting from the quarantined area (the quarantined area is a strip of land along the Rio Grande River) portions of Cameron, Hidalgo, Kinney, Maverick, Starr, Val Verde, Webb, and Zapata Counties in Texas. Another interim rule further amended the regulations by adding to the quarantined area additional portions of Kinney, Maverick, and Val Verde Counties. This document affirms the changes made by the interim rules. The regulations, among other things, restrict the interstate movement from the quarantined area of certain cattle because of ticks which are vectors of splenetic or tick fever. Such ticks have been found to occur in the area added to the quarantined area. It is necessary to add such areas to the quarantined area in order to impose restrictions on the interstate movement of certain cattle from such areas and thereby help prevent the interstate spread of such ticks. Such ticks no longer occur in the areas deleted from quarantined area status. It is necessary to delete such areas from quarantined area status in order to delete unnecessary restrictions on the interstate movement of certain cattle.

EFFECTIVE DATE: September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. C.A. Gipson, Special Diseases Staff, VS, APHIS, USDA, Room 826, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8321.

SUPPLEMENTARY INFORMATION:

Background

An interim rule published in the **Federal Register** on December 21, 1984 (49 FR 49610-49614), amended the "Texas (Splenetic) Fever in Cattle" regulations in 9 CFR Part 72 by deleting from quarantined area status all of the previously quarantined portions of Dimmit and Zavala Counties in Texas, and by adding to and deleting from the quarantined area (the quarantined area is a strip of land along the Rio Grande River) portions of Cameron, Hidalgo, Kinney, Maverick, Starr, Val Verde, Webb, and Zapata Counties in Texas. The amendment became effective on the date of publication. Comments were solicited for 60 days following publication. No comments were received.

An interim rule published in the **Federal Register** on May 29, 1985 (50 FR 21795-21798), further amended the regulations by adding to the quarantined area additional portions of Kinney, Maverick, and Val Verde Counties. The amendment became effective on the date of publication. Comments were solicited for 60 days after publication. No comments were received.

The factual situations which were set forth in the documents of December 21, 1984, and May 29, 1985, still provide a basis for the changes made by the interim rules.

Executive Order and Regulatory Flexibility Act

This rule has been reviewed in accordance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

It is anticipated that the number of cattle moved interstate annually from Texas which will be affected by this rule will be significantly less than 1 percent of the number of cattle moved interstate annually within the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985.)

List of Subjects in 9 CFR Part 72

Animal diseases, Animal pests, Cattle, Quarantine, Transportation, Texas Fever, Splenetic Fever, Ticks.

PART 72—TEXAS (SPLENETIC) FEVER IN CATTLE

§ 72.5 [Amended]

Accordingly, the changes to 9 CFR 72.5 made by the interim rules published in the **Federal Register** at 49 FR 49610-49614 on December 21, 1984, and at 50 FR 21795-21798 on May 29, 1985, are adopted as final.

Authority: 21 U.S.C. 111-113, 115, 117, 120, 121-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 17th day of September 1985.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-22716 Filed 9-20-85; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-100-AD; Amdt. 39-5141]

Airworthiness Directives; Boeing Model 737-100, -200, and -300 Airplanes

AGENCY: Federal Aviation Administration (FAA), Dot.

ACTION: Final Rule, Request for Comments.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to Boeing Model 737-100, -200, and -300 airplanes. This AD requires replacement of escape slide pack release cable assembles with assemblies using a longer length cable. The current cable length could cause premature release of the slide pack during aggressive opening of floor level exits. If released early, the slide pack could drop out of its container inside the airplane; this causes the slide container to open before clearing the door sill thereby inhibiting further door opening. This situation, if not corrected, could

jeopardize successful evacuation of the airplane.

DATES: Effective October 15, 1985. Comments must be received by October 15, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124, or may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Gardlin, Airframe Branch, ANM-120S; telephone (206) 431-2932. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: During the emergency evacuation of a Boeing Model 737 airplane on August 22, 1985, at Manchester, England, the forward right hand door became jammed during a crewmember's initial attempt to open the exit; the exit was subsequently unjammed by the crewmember and was used during the evacuation. Investigation and interviews with the crew revealed that the slide had detached from the door while inside the airplane causing the slide pack container to open and jam in the doorway preventing outward motion of the door. The cause of the premature slide detachment has been traced to the length of the slide pack release cable. This cable is designed to release the slide pack during outward motion of the door after the door has cleared its cutout. If the door is opened aggressively, the cable can release the slide pack early, causing potential jamming of the exit and rendering it unusable for evacuation. The design resulting in this situation exists on aft doors and the forward right-hand door on Models 737-100 and -200, and only on the aft doors of Model 737-300.

Since this condition is likely to exist or develop on other airplanes of this model, the FAA has determined that an AD is necessary which requires replacement of slide pack release cable assemblies with assemblies using longer cables.

Further, since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Although this action is in the form of a final rule, which involves an emergency and, thus, was not preceded by notice and public procedure, interested persons are invited to submit such written data, views, or arguments as they may desire regarding this AD. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Directives Rules Docket No. 84-NM-100-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. All communications received before the closing date will be considered by the Administator, and the AD may be changed in light of the comments received.

The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Boeing Model 737-100, -200, and -300 airplanes, certificated in any category. Compliance required within 45 days after the effective date of this amendment, unless already accomplished.

To ensure proper door opening and escape slide deployment accomplish the following:

A. Replace slide pack release cable assemblies in accordance with Boeing Service Bulletin 737-25A1182, Original Issue, or later FAA-approved revisions.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this AD who have not already received copies of the service bulletin cited herein may obtain copies upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective October 15, 1985.

Issued in Seattle, Washington, on September 12, 1985.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-22813 Filed 9-20-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-ASW-17; Amdt. 39-5129]

Airworthiness Directives; Sikorsky Model S-61L, S-61N, S-61NM, S-61R, S-61A, and S-61V Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires an initial and repetitive visual inspection to detect cracking of the main rotor blade spar of Sikorsky S-61L, S-61N, S-61NM, and S-61R series helicopters, certificated in all categories, and S-61A helicopters (serial numbers (S/N) 61083, 61087, 61094, and 61161) and S-61V (S/N 61271) helicopters, certificated in the restricted category which are operating under Part 133 of the Federal Aviation Regulations (FAR), Rotorcraft External-Load Operations, Class B, rotorcraft-load combination (as defined by Part 1 of the FAR). This AD is needed to provide a supplemental inspection system to AD 74-20-07, Rev. 5, to maintain the service lives of the main rotor blades specified in AD 75-26-10 and in the S-61A and S-61V Type Certificate (TC) Data Sheet H2EA, Note 6, for helicopters operating in external load operations, and to prevent helicopter operations with a cracked main rotor blade spar which could result

in the loss of the main rotor blade and probable loss of the helicopter.

DATES: Effective date: September 20, 1985.

The incorporation by reference of certain publications in the regulations is approved by the Director of the Federal Register as of September 20, 1985.

Compliance: As indicated in the body of the AD.

ADDRESSES: A copy of the applicable service bulletins (SB) and rotorcraft flight manuals (RFM) may be obtained from Sikorsky Aircraft, Division of United Technologies, North Main Street, Stratford, Connecticut 06601, Attn: S–61 Commercial Product Support Department.

A copy of the pertinent sections of the above documents is contained in the Rules Docket, Office of the Regional Counsel, Southwest Region, FAA, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Donald F. Thompson, Airframe Branch, ANE–152, Boston Aircraft Certification Office, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273–7113.

SUPPLEMENTARY INFORMATION: Main rotor blade spar cracking incidents detected by the blade inspection method (BIM) system on S–61 series helicopters have been reported by the manufacturer. The S–61 series helicopters operating under Part 133 external load operations such as logging have been determined as being subjected to a more severe service life spectrum than envisioned in the original certification program.

In order to maintain the service life of the main rotor blades specified in AD 75–26–10 and S–61A and S–61V TC Data Sheet H2EA, Note 6, this amendment takes into consideration the S–61 series fatigue spectrum pertaining to logging operations (or other operations with a high number of power cycles per hour) under Part 133, Rotorcraft External Load Operations. For helicopters equipped only with the visual blade inspection system (or a nonoperational in-cockpit blade inspection system), the visual blade indicators must be inspected every 1½ hours' time in service. If a positive indication of a pressure loss in the blade spar is obtained by either the visual blade inspection method (VBIM) or optional in cock-pit blade inspection method (CBIM) indicators, the suspect main rotor blade(s) must be removed prior to further flight and replaced with an approved airworthy blade. For S–61 series helicopters equipped with an in-cockpit blade inspection system which supplements the visual blade inspection system, inspection of the visual blade pressure indicators and transducers is conducted prior to the first flight of the day. Subsequent functional checks of the in-cockpit inspection system electrical circuit are conducted each 1 hour time in service and the inspection of the visual blade pressure indicators is conducted every 8 hours' time in service.

The VBIM system and the optional in-cockpit CBIM system instructions contained in this amendment may be found in Sikorsky S–61 Alert Service Bulletin (ASB) ASB61B15–20 or later revision approved by the Boston Aircraft Certification Office, New England Region.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exits for making this amendment effective in less than 30 days.

The FAA has determined that this regulation involves a fleet of approximately 12 aircraft with an estimated additional fleet cost of $3,500 for each 50 hours' time in service. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal, and (4) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Sikorsky Aircraft: Applies to Model S–61L, S–61N, S–61NM, and S–61R series helicopters, certificated in all categories, and S–61A (S/N's 61083, 61087, 61094, and 61161) and S–61V (S/N 61271) helicopters, certificated in the restricted category, which are operating under Part 133, Class B, Rotorcraft-external load combination operations.

Compliance is required as indicated (unless already accomplished).

To prevent operation with a main rotor spar crack and possible loss of the helicopter, accomplish the following:

(a) Within the next 25 hours' time in service after the effective date of this AD, unless already accomplished, remove main rotor blades from the rotorcraft that are not approved for use in Part 133 (Class B, Rotorcraft-external load combination operations), and replace with approved blades. The approved main rotor blades are as follows:

(1) The following blades are approved for Model S–61L, transport category helicopters operating up to a combined vehicle and cargo gross weight of 22,000 lbs, provided the main rotor blades have been altered and maintained in accordance with Service Bulletin (SB) 61B15–6, Rev. P, or later FAA-approved revisions, excluding Section 2, Part II:

(i) P/N's S6115–20501–041 and –042.

(ii) P/N's S6115–20601–042, –047, and –048.

(iii) P/N's 61170–20201–060, –061, and –062.

(2) The following blades are approved for Model S–61N, transport category helicopters operating up to a combined vehicle and cargo gross weight of 22,000 lbs, or Model S–61NM, transport category helicopters operating up to a combined vehicle and cargo gross weight of 20,500 lbs, provided the main rotor blades have been altered and maintained in accordance with SB No. 61B15–6, Rev. P, or later FAA-approved revisions, excluding Section 2, Part II.

(i) P/N's S6115–20501–041 and –042.

(ii) P/N's S6115–20601–041, –045, and –046.

(iii) P/N's S6188–15001–041 through –045.

(iv) P/N's 61170–20201–055, –056, –058, –059, –060, –061, –062, –065, and –067.

(3) P/N 61170–20201–062 blades are approved for the Model S–61A (S/N's 61083 and 61094), restricted category helicopters, operating up to a combined vehicle and cargo gross weight of 22,000 lbs.

(4) P/N's S6115–20201–2 and –3 blades are approved for the Model S–61A (S/N's 61087 and 61161), restricted category helicopter, operating up to a combined vehicle cargo gross weight of 19,000 lbs.

(5) P/N 61170–20201–060 blades are approved for the Model S–61V (S/N 61271), restricted category helicopter, operating up to a combined vehicle and cargo gross weight of 19,100 lbs.

(6) P/N's S6117–20101–041, –051, –054, –056, and –058 blades are approved for Model S–61R transport category helicopters operating up to a combined vehicle and cargo gross weight of 19,500 pounds.

(b) Within the next 1½ hours' time in service after the effective date of this AD, unless already accomplished, inspect main rotor blades equipped with approved visual

blade pressure indicators (VBIM) but not equipped with an in-cockpit blade inspection system (CBIM) in accordance with paragraph (c). After the initial inspection, conduct further inspections in accordance with paragraph (c) prior to the first flight of each day and conduct subsequent visual inspections of the VBIM indicators in accordance with Section 2, Part IV, paragraph 1a of Sikorsky Service Bulletin No. 61B15–6, Revision P, or later FAA-approved revisions, at intervals not to exceed 1½ hours' time in service from the last inspection.

(c) Inspect the VBIM indicators of the main rotor blades in accordance with procedures set forth in Section 2, Part IV, of Sikorsky SB No. 61B15–6 Rev. P, or later FAA-approved revisions.

(1) Conduct visual inspections of blade-mounted VBIM indicators from the transmission work platform of the helicopter or equivalent to ensure that an accurate visual check is conducted.

(2) The visual inspections of blade-mounted VBIM indicators shall be conducted by either an individual who holds a pilot certificate with approrpiate rating, or a mechanic certificate with airframe rating, or by an appropriately certificated maintenance entity. The person performing this inspection or check shall make entries of the results in the aircraft maintenance record including a description and date of the inspection and the name of the individual performing the inspection along with the certificate number, kind of certificate, and signature.

(d) For helicopters equipped with in-cockpit CBIM (reference Sikorsky SB No. 61B15–20E).

(1) Prior to the first flight of the day, after the effective date of this AD, unless already accomplished, and every 8 hours' time in service thereafter.

(i) Visually inspect the main rotor blade VBIM pressure indicators in accordance with paragraph (c).

(ii) Test the VBIM pressure indicators and the in-cockpit CBIM transducers in accordance with the procedures set forth in Section 2, Part IV, of Sikorsky SB No. 61B15–6, Rev. P, or later FAA-approved revisions.

(2) Check the in-cockpit blade inspection system electrical circuit and CBIM warning light in flight by activating the (cockpit) BIM test switch located on the left overhead quarter panel at least once each (1) hour time in service during flight operations in accordance with the rotorcraft flight manual (RFM).

(i) If the (cockpit) BIM warning light illuminates, continue operations in a normal manner.

(ii) If the (cockpit) BIM warning light does not illuminate, immediately check the BIM circuit breaker and reset if tripped.

(A) Repeat check of (cockpit) BIM test switch to verify if warning light illuminates. Continue with normal operations if BIM warning light functions properly.

(B) If the (cockpit) BIM warning light fails to illuminate, discontinue external load operations and land as soon as practical. Investigate and correct malfunction prior to further flight.

(3) If the (cockpit) BIM warning light illuminates during flight—

(i) Discontinue external load operations;

(ii) Reduce airspeed to 90 knots IAS;

(iii) Establish and continue operation at 104 percent N_r; and

(iv) Land at nearest suitable landing area.

Note.—For model S–61 helicopters not engaged in Part 133 external load operations, AD 74–20–07, Rev. 5, main rotor blade inspection requirements are applicable.

(e) Each blade with any black or red indication visible in the blade VBIM pressure indicator (or whose transducer activates the cockpit BIM warning light) is restricted from further flight until the cause of the indication is determined and corrected in accordance with procedures given in Sikorsky SB 61B15–6, Rev. P, or later FAA-approved revisions.

(f) Alternate inspections, repairs, modifications, or other means of compliance which provided an equivalent level of safety may be approved by the Manager, Boston Aircraft Certification Office, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

(g) Rotorcraft may be flown in accordance with the provisions of FAR §§ 21.197 and 21.199 to a base where the AD can be accomplished, except when a VBIM or CBIM indication exists.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Sikorsky Aircraft, Division of United Technologies, North Main Street, Stratford, Connecticut 06601, Attn: S–61 Commercial Product Support Department. These documents also may be examined at the Office of the Regional Counsel, Southwest Region, FAA, Bldg. 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106.

This amendment becomes effective September 20, 1985.

Issued in Forth Worth, Texas, on August 23, 1985.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 85–22689 Filed 9–20–85; 8:45 am]

BILLING CODE 4910–13–M

Office of the Secretary

14 CFR Part 399

[Docket No. 42199; Amdt. No. 399–90]

Statements of General Policy; Shared Airline Designator Codes

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation is adopting a policy statement indicating that the Department will regard it as an unfair and deceptive practice for two or more airlines to share a single carrier designator code without giving reasonable and timely notice to consumers of the existence of any cooperative arrangement between the carriers and the identity of the carrier(s) actually providing service on each segment of the trip. To achieve reasonable and timely notice to consumers, carriers also will have to provide certain information concerning code-sharing relationships to the Official Airline Guide (OAG) and computer reservations system (CRS) vendors. This action is taken in response to a petition filed by a group of regional carriers.

DATES: The rule shall become effective on December 23, 1985. The policy statement also will require that carriers sharing codes provide additional information to the OAG and to CRS vendors then that already provided. Carriers may need additional time to comply with this aspect of the policy statement and, therefore, reasonable and timely notice concerning the submission of information to the OAG and to CRS vendors shall be effective on February 20, 1986. This should give all carriers adequate time to determine how to provide reasonable and timely notice, and to supply information to the OAG and CRS vendors.

FOR FURTHER INFORMATION CONTACT: Robert D. Young, Office of the Assistant General Counsel for Litigation, at (202) 426–4731; or Samuel E. Whitehorn, Office of the Assistant General Counsel for Regulations and Enforcement, at (202) 472–5577, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

Background

Airlines use two-letter codes (designator codes) in the Official Airline Guide (OAG), in computer reservations systems (CRS's), and on tickets to identify the carrier providing the service. For the most part, each carrier has its own code, and each code is assigned exclusively to one carrier.

By agreement, some carriers integrate their schedules and operations with other carriers. As a part of that integration, these carriers sometimes share their designator codes. In the typical case, some or all of the flights operated by a commuter carrier are identified with the two-letter designator code of the large carrier with which it has a special relationship. Code-sharing cooperative arrangements have become much more prevalent in the industry during the past several years. With United Airlines' recent adoption of the practice, virtually all major U.S. carriers now share their codes with one or more smaller carriers.

While code-sharing is now widely used, a group of twelve regional carriers ("the Independent Regional Carriers") petitioned the Civil Aeronautics Board (Board) on May 14, 1984 to prohibit all carriers from sharing designator codes unless carriers had entered into a *bona fide* franchise agreement approved by the Board. Comments and reply comments to the petition were filed.

On October 23, 1984, the Board issued a notice of proposed rulemaking (NPRM) (49 FR 43709, October 31, 1984) concerning the use of designator codes. The Board instituted the rulemaking under section 411 of the Federal Aviation Act of 1958 (49 U.S.C. 1381). Under section 411, the Board had the authority to issue rules and regulations, or cease and desist orders, to prevent "unfair or deceptive trade practices or unfair methods of competition in air transportation or the sale thereof." *See United Airlines* vs. *Civil Aeronautics Board*, 7th Cir. No. 84–18/7, decided July 3, 1985. Comments and reply comments to the NPRM were filed. On January 1, 1985, the Board went out of existence without having taken final action on the NPRM. Under the Civil Aeronautics Board Sunset Act of 1984, 98 Stat. 1703, authority under section 411 of the Federal Aviation Act, and hence this rulemaking proceeding, transferred to this Department.

Summary

The Board proposed a policy statement that declared that the sharing of a single airline designator code by two or more carriers would be considered an unfair and deceptive practice unless consumers were given reasonable and timely notice of the existence of the arrangement and the identity of the carrier actually providing service on any given flight. Comments on two other alternatives also were requested. The first alternative would require direct, continuous disclosure in the same medium in which the shared airline designator code appears (e.g., OAG and CRS). The second alternative would involve proceeding instead by individual enforcement complaints in specific instances where a carrier's conduct appeared to violate section 411.

Comments and reply comments were filed with the Board by numerous parties. Some supported the proposed policy statement, some opposed it, and others suggested instead that the Board should prohibit the practice. Continental Airlines, American Airlines, Business Express, and Pocono Airlines favored the adoption of a general policy statement because it would allow participating carriers leeway to fashion their cooperative arrangements and disclosure policies according to individual circumstances. They pointed out that such a non-interventionist policy appropriately guided the Board throughout its CRS rulemaking (Docket 41686), and should be applied in this context as well. In addition, they argued that detailed rules would stifle the creation of innovative arrangements by effectively standardizing coordination requirements.

American, however, also argued that the proposed policy statement should not be applied to true "franchises" such as the Allegheny Commuter system and its own American Eagle network. It contended that such arrangements do not pose a deception problem because the major or sponsoring airline exerts the necessary quality control over all material aspects of the "franchisee's" operations, and the franchisees do not offer flights in their own names.

Finally, these commenters argued against requiring disclosure in CRS displays (direct disclosure). American, a CRS vendor, contended that compliance with this alternative would be expensive and time-consuming for CRS vendors. By contrast, others argued that a direct disclosure requirement could enable CRS vendors to frustrate cooperative arrangements by refusing to display the requisite information or by imposing additional fees on other carriers for this service.

The Independent Regional Carriers, Enterprise Airlines, KLM, British Airways, and United Airlines urged an outright ban on the sharing of airline designator codes as a deceptive and unfair trade practice. Alternatively, they urged adoption of a direct disclosure requirement, as did Trans World Airlines and the American Society of Travel Agents (ASTA). The vagueness of the policy statement, in their view, would render it ineffective. ASTA emphasized the importance of CRS's as the major information source for agents and, therefore, concluded that any notice must be made at least through CRS's.

United reported that its CRS displays a particular symbol to identify coordinated services, that the costs of such a CRS display are minimal, and that it also offered another existing service whereby more detailed disclosure of each arrangement's specific features could easily be arranged through its APPOLLO CRS system for a monthly fee. American, in a subsequent reply, claimed that it could adopt United's system of displaying code sharing arrangements at little cost but that the manual nature of United's "asterisk" system rendered its accuracy unreliable.

Several of the parties favoring the direct display alternative also argued that the regulation must, in conjunction with the requirement, require CRS vendors to indicate coordinated services on their displays. Absent this requirement, these parties contended compliance with the direct disclosure alternative would be left solely in the hands of CRS system owners. ASTA and the Independent Regional Carriers also argued that code-sharing carriers should disclose the relationship through telephone responses by airline reservation personnel, signs at airport gate and baggage claim areas, written inserts in ticket jackets that specify conditions of carriage, and in all advertising of participating carriers. ASTA further asserted that the regulation should establish a prerequisite for code-sharing: a guarantee by the carrier allowing its codes to be used that it will compensate passengers if the other carrier fails to fulfill its service obligations. ASTA believed that this requirement would only clarify, and not increase, existing legal obligations.

At the other extreme, Delta, Northwest, USAir, the Delta Connection (Atlantic Southeast Airlines, Comair, Rio Airways, and Ransome Airlines), Alaska Airlines, Frontier, and Frontier Commuter opposed any policy statement on the subject. As a threshold matter, they questioned the significance of the problem, for they considered the number of consumer complaints on file inadequate to support a rule. They also stated that coordinated services arrangements vary widely, making industrywide pronouncements inappropriate, stifling, or too vague to be helpful. Market forces are in their view adequate to correct abusive practices and are more efficient than regulation. Commenters argued that specific enforcement proceeding can and should address individual practices which may be inherently deceptive or the source of continuing problems.

Delta objected to any requirement that CRS vendors identify cooperative services on CRS display screens. It considered disclosure the responsibility solely of the participating carriers and it estimated that its programming and other costs for displaying this information in its CRS would be significant, although it provided no specific cost estimates.

Since the sunset of the CAB, the Independent Regional Carriers, American, Delta, USAir and its affiliates, and United have filed

additional comments, essentially restating their positions as outlined above. In addition, American recently submitted a letter, addressed to the Assistant Secretary for Policy and International Affairs, informing DOT that it has embarked on a project to develop the capability to identify shared-code flights in its SABRE CRS system. American indicated that the project should be completed by April, 1986, but noted that the accuracy of shared-code information in SABRE will depend on whether carriers sharing codes distinguish such flights in their schedule information submitted to the OAG which is the central source of data for CRSs. In addition, the OAG, recently notified all carriers that it intended to place an asterisk in the airline guide for all shared code flights, and asked carriers to provide accurate information concerning such flights to the airline guide. Copies of these letters have been placed in the docket.

Discussion

The Department believes that carriers sharing codes have an affirmative obligation to the public to advise ticket purchasers at the time of the transaction of the existence of any code-sharing relationship. The Department has decided that carriers sharing designator codes must provide reasonable and timely notice to travel agents and consumers of the existence of a code-sharing relationship as well as the identity of the airline actually providing service on any given flight segment. At a minimum, reasonable and timely notice consists of two elements. First, carriers must provide frequent, periodic notice in carrier advertising and in direct carrier contact with consumers so as to inform them of the existence of a code-sharing relationship and the identity of the airlines involved. Second, carriers must provide this information to the OAG and to CRS vendors (whenever carriers provide flight information directly to CRS vendors) in a format suitable to the computerized nature of those services.

This policy statement will prevent practices that may be deceptive or unfair to the public without extensively regulation code-sharing arrangements. The policy also gives carriers the freedom to create or modify their agreements to meet individual marketing objectives. At the same time, this approach provides guidance to carriers that desire to enter into or expand their use of code-sharing arrangements.

The Department also agrees with the Board's tentative conclusion that, from a consumer protection standpoint, code-sharing does have the capacity to confuse and deceive the public, but that the basic issue with code-sharing is one of disclosure and not one of inherent deception and unfairness. The bases for this conclusion, as stated in the NPRM, are that code-sharing appears similar to commercial franchising; that while some coordinated service arrangements may not truly offer the "on-line" connection quality implied or promised, many others appear to produce service akin to on-line connections; and that the few consumer complaints that have been filed do not indicate that code-sharing is inherently deceptive.

Several questions have been raised as to what constitutes adequate disclosure. The principal requirement is that the carrier make reasonable and timely efforts to insure that consumers are given a basis to inquire about the details of the prospective air transportation at the point of sale. At a minimum this means that, for transactions in which the carriers deal directly with consumers, the existence of the shared-code arrangement should be made clear. For example, when a consumer calls a particular carrier that engages in code-sharing, the sales clerk should indicate that the service offered is on a commuter affiliate, e.g., "Allegheny Commuter". As long as the name clearly conveys the information that the service will be provided on an airline different from the large carrier, the actual name need not be volunteered. This information should be sufficient to enable consumers to request additional information should it be desired.

For transactions involving travel agents, carriers must take reasonable steps to make sure that agents are also aware of the existence of the cooperative arrangement and the actual identity of the carrier providing the service when they make reservations and issue tickets. This includes a requirement that airlines must identify shared-code flights in schedule information provided to the OAG and/or CRS vendors in a manner that permits this information to appear in schedule listings of individual flights in those media. If carriers have doubts as to whether, in particular situations, their methods of disclosure satisfy the rule, they may obtain interpretative guidance from the Department.

Alternatives

The Department has decided not to require, at this time, that CRS vendors provide disclosure in their displays of shared-code flights, since it appears that the major vendors—particularly United and American, whose systems account for approximately 80 percent of the value of tickets sold through CRS's—already offer, or has indicated it will provide, this information in their respective systems. In addition, another CRS vendor, TWA (whose system represents approximately 12 percent of the value of tickets sold through CRS's), noted that altering the CRS's to provide information on code sharing should not be difficult. Requiring carriers sharing codes to provide the necessary information to the OAG and to CRS vendors will allow the vendors to adapt each of their respective systems to display the information. There appears to be little need to impose further legal requirements on airline CRS vendors when the major vendors apparently perceive this information to be valuable to consumers and have indicated a willingness to provide code sharing information voluntarily.

The Department also has decided not to impose a complete ban on the practice of code-sharing because of its potential benefits, and because those that urged such action have not presented new facts or considerations to persuade the Department that the Board was incorrect in its conclusion that code-sharing is not inherently deceptive. We are not prepared at this time, however, to conclude that the practice is not injuring competition, as the Board did in the NPRM. Instead, this aspect of the problem is the subject of a study that has been commissioned by the Department. The study, which is expected to be completed by the end of 1985, will be available for public comment, and will be placed in a separate docket.

The Department has decided that it will not prescribe the precise form of disclosure or the precise elements that render a code-sharing arrangement acceptable, as some have urged. Concerning the form of disclosure, as described above, a detailed notice requirement would hamper carrier flexibility that is necessary to achieve marketing objectives and fashion mutually acceptable arrangements. In addition, such a regulation would limit each carrier's ability to determine how to publicize its coordinated services, especially in light of the wide variety of arrangements. Some may choose to emphasize that the services offered are superior to services offered by others because they involve a higher degree of coordination. Each carrier can make that choice under the policy statement adopted.

Defining which agreements are acceptable also would require detailed regulations which would only serve to standardize a product that need not fit into a single mold. Obviously, the

numerous arrangements have different and distinct features, and the degree of coordination between the carriers varies. Regulating the arrangements or the precise form of disclosure, therefore, becomes an extremely difficult task. In addition, since both the details of cooperative arrangements and the consumer expectations that arise from a shared code may vary widely, the best way to close the gap between expectation and reality is a general, reasonable notice requirement.

The Department also declines to establish service or financial prerequisites for code-sharing, as ASTA proposes. The problem, as stated earlier, is one of disclosure rather than inherently deceptive practices. In the unlikely event that there are practices evidencing blatant disregard for the rights of consumers to make informed decisions, such practices can be dealt with through enforcement. Moreover, enforcement proceedings also may be available to respond to complaints that an airline whose code appears on a ticket is denying responsibility for failure to provide the service and refusing to make passengers whole.

Further, the Department rejects American's proposal that the policy statement be limited to apply only to those arrangements in which the smaller carrier operates both under its own name and under the name of the larger carrier. The Department does not believe that this single criterion would be an adequate measure of whether a code-sharing relationship is deceptive.

In addition, there is no justification for exempting operation in any State from this policy statement, as Alaska Airlines requested. Disclosure is no more or less a problem because of the particular points on one's route system.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act, Pub. L. 96–354, is designed to ensure that agencies consider flexible approaches to the regulation of small businesses and other small entities. It requires regulatory flexibility analyses for rules that, if adopted, will have a significant economic impact on a substantial number of small entities.

In PSDR–85, the Civil Aeronautics Board undertook an initial regulatory flexibility analysis, and tentatively concluded that the rule if adopted would not have a significant economic impact on a substantial number of small entities.

The final rule adopted here does not differ from that originally proposed in any substantial manner. Therefore, the initial regulatory flexibility analysis remains valid. I therefore certify that this rule will not have a significant economic impact on a substantial number of small entities.

Regulatory Impact Review

This rule has been evaluated under Executive Order 12291, dated February 17, 1981, which requires every executive agency to prepare a Regulatory Impact Analysis for every "major rule," as defined in the Executive Order. The final rule is not considered major under E.O. 12291. The requirements impose only minor changes to current industry practices governing notice of services offered, and submission of minor additional information to the OAG and CRS vendors. Thus, the costs of compliance to all affected groups should be minimal. In addition, because the anticipated impact of this policy statement is so minimal, the Department has not prepared a full Regulatory Evaluation, as provided for under the Department's Regulatory Policies and Procedures. Under those Policies and Procedures, this rulemaking is considered to be significant.

Paperwork Reduction Act

The collection-of-information requirements in this proposal are subject to the Paperwork Reduction Act, Pub. L. 96–511, 44 U.S.C. Chapter 35. Those requirements will be submitted to the Office of Management and Budget (OMB) for review and approval. The policy statement will become effective upon approval of the collection of information request by OMB, and a notice and approval number will be published in the **Federal Register**.

List of Subjects in 14 CFR Part 399

Advertising, Air carriers, Air transportation, Antitrust, Consumer protection, Essential air service, Travel agents.

PART 399—[AMENDED]

In consideration of the foregoing 14 CFR Part 399 is amended as follows:

1. The authority citation for 14 CFR Part 399 is revised to read as follows:

Authority: Secs. 102, 204, 404, 406, 411, 412, 419, 1102; Pub. L. 85–726 as amended; 72 Stat. 740, 743, 760, 769; 92 Stat. 1732; (49 U.S.C. 1302, 1324, 1374, 1378, 1381, 1382, 1389, 1502.)

2. A new § 399.88 is added to read as follows:

§ 399.88 Policy on airline designator code-sharing.

It is the policy of the Department of Transportation to consider the use of a single air carrier designator code by two or more air carriers to be unfair and deceptive and in violation of § 411 of the Act unless, in conjunction with the use of such codes, the air carriers give reasonable and timely notice of the existence of such code-sharing arrangements. Reasonable notice shall as a minimum require code-sharing air carriers to:

(1) Identify, with an asterisk or other means, each flight in which the airline code is different from the code of the carrier actually providing the service, in written or electronic schedule information provided by the air carrier to the public, the Official Airline Guide and, where applicable, computer reservations system vendors;

(2) Provide information in any direct oral communication with a consumer concerning a code-sharing flight sufficient to alert the consumer that the flight will occur on an airline different from the carrier whose code is used and identify the carrier(s) actually providing the service; and

(3) Provide frequent, periodic notice in advertising media that can reasonably be expected to convey to potential passengers and travel agents the existence of a code-sharing relationship and the identities of the carriers actually providing the service.

Issued in Washington, D.C. on September 17, 1985.

Elizabeth Hanford Dole,

Secretary of Transportation.

[FR Doc. 85–22851, Filed 9–18–85; 1:00 pm]

BILLING CODE 4910-62-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 371, 374, 386 and 399

[Docket No. 50944–5144]

Exports to COCOM Countries

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Amendments Act of 1985 (Pub. L. 99–64) amended section 5(b), "Policy Toward Individual Countries," of the Export Administration Act of 1979. In section 5(b)(2), the validated license requirement for certain exports to countries participating in the multilateral export control organization known as the Coordinating Committee (COCOM) was removed. This rule amends the Export Administration Regulations (15 CFR Parts 368–399) to implement this change.

EFFECTIVE DATE: September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Joan Szivos, Exporter Assistance Division, Office of Export Administration, Department of Commerce, Washington, D.C. 20230 (Telephone: (202) 377–4479).

SUPPLEMENTARY INFORMATION:

Regulatory Changes

A new section 5(b)(2) of the Export Administration Act requires that validated license controls be removed from exports to countries participating in COCOM (a multilateral control coordinating committee participated in by Belgium, Canada, Denmark, France, the Federal Republic of Germany, Greece, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Turkey, the United Kingdom, and the United States), when the performance characteristics of the commodities would permit approval of exports to controlled countries with only notification to the COCOM governments. The potential for removing the validated license requirement for exports to non-COCOM countries is contained within section 5(k). To facilitate implementation of section 5(b)(2), a new General License G–COM is established to allow exports of qualifying commodites to COCOM countries without need for a validated export license.

The Office of Export Administration maintains the Commodity Control List (CCL), which lists those items subject to Department of Commerce export controls. Certain entries on the CCL are amended to indicate that commodities indentified in selected "Advisory Notes" within those entries may be shipped to COCOM participating countries under the new General License G–COM. The reexport requirements contained in 15 CFR Part 374 are amended for consistency with this new procedure, and the regulations in 15 CFR Part 386 are amended to apply the destination control statement requirement to exports under General License G–COM.

Rulemaking Requirements

1. This rule is exempted from the provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, an opportunity for public participation, and a delay in effective date (5 U.S.C. 553) pursuant to section 13(a) of the Export Administration Act of 1979, as amended. This regulation also involves a military and foreign affairs function of the United States.

2. This rule removes a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, because certain commodities formerly requiring a validated export license can now be shipped under new General License G–COM.

3. Because a notice of proposed rulemaking is not required to be published for this rule, it is not a rule within the meaning of section 601(2) of the Regulatory Flexibility Act and is not subject to the requirements of that Act. Accordingly, no initial or final Regulatory Flexibility Analysis has been or will be prepared.

4. Because this rule concerns a military and foreign affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291 and, accordingly, is not subject to the requirements of that Order. Therefore, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects in 15 CFR Parts 371, 374, 386 and 399

Exports.

Accordingly, Parts 371, 374, 386 and 399 of the Export Administration Regulations are amended as follows:

1. The authority citation for 15 CFR Part 399 continues to read and the authority citations for 15 CFR Parts 371, 374 and 386 are revised to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

PART 371—[AMENDED]

2. Section 371.8 is added to read as follows:

§ 371.8 General License G–COM: Certain shipments to COCOM countries.

(a) *Scope.* A general license designated G–COM is established, authorizing exports to countries participating in the multilateral control mechanism known as the Coordinating Committee (COCOM) of commodities having performance characteristics that permit the United States to approve exports to controlled countries with only notification to the COCOM governments.

(b) *Eligible countries.* The countries participating in COCOM that are eligible to receive exports under this general license are Belgium, Denmark, France, the Federal Republic of Germany, Greece, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Turkey, and the United Kingdom. Exports to these countries may be made under G–COM *only* when intended for consumption within an eligible country or for reexport among these countries.

(c) *Eligible commodities.* The commodities eligible for export under this general license are described in Advisory Notes in certain entries on the Commodity Control List. When G–COM is applicable, the "Control for ECCN" section of the CCL entry will include a "G–COM Eligibility" paragraph indicating which Advisory Notes apply. Only those commodities whose technical performance characteristics are specifically described in a designated Advisory Note may be exported to an eligible country under General License G–COM. Eligibility for G–COM is based on the technical performance characteristics of a given commodity, not its intended end-use. Consequently, end-use restrictions in the Advisory Notes may be disregarded in determining whether G–COM may be used. However, shipments of such eligible commodities are subject to the prohibitions contained in § 371.2(c).

PART 374—[AMENDED]

§ 374.2 [Amended]

3. In § 374.2, paragraph (a)(1) is amended by inserting "*G–COM*," between "*GTE*," and "*G–NNR*,"

PART 386—[AMENDED]

§ 386.6 [Amended]

4. In § 386.6, paragraph (a)(1)(ii) is amended by revising "or GLR" to read "GLR, or G–COM".

PART 399—[AMENDED]

5. In § 399.1, a sentence is added to the end of paragraph (f)(3)(i) to read as follows:

§ 399.1 The Commodity Control List and how to use it.

* * * * *

(f) * * *

(3) * * *

(i) * * * However, if the shipment is to COCOM participating country and the commodity meets the technical performance characteristics described in an Advisory Note that is listed in the paragraph titled "G–COM Eligibility," you may ship under General License G–COM (see § 371.8). The countries eligible for this procedure are Belgium, Denmark, France, the Federal Republic of Germany, Greece, Italy, Japan,

Luxembourg, the Netherlands, Norway, Portugal, Turkey, and the United Kingdom.

* * * * *

6. In Supplement No. 1 to § 399.1 (the Commodity Control List), in entries listed below, add a new paragraph after the *Special License Available* paragraph of each entry to read as follows: *"G–COM Eligibility*: Commodities that meet technical specifications described in Advisory Note 1 under this entry regardless of end-use, subject to the prohibitions contained in § 371.2(c)."

A. In Commodity Group 0, Metal-Working Machinery: ECCN 1091A; and

B. In Commodity Group 5, Electronics and Precision Instruments: ECCNs 1545A and 1586A.

7. In Supplement No. 1 to § 399.1 (the Commodity Control List), in entries listed below, add a new paragraph after the *Special Licenses Available* paragraph of each entry to read as follows:

"G–COM Eligibility: Commodities that meet technical specifications described in the Advisory Note under this entry regardless of end-use, subject to the prohibitions contained in § 371.2(c)."

A. In Commodity Group 1, Chemical and Petroleum Equipment: ECCN 1133A;

B. In Commodity Group 3, General Industrial Equipment: ECCNs 1312A, 1353A, and 1355A;

C. In Commodity Group 5, Electronics and Precision Instruments: ECCNs 1531A, 1532A, 1541A, 1549A, 1559A, 1568A, and 1588A;

D. In Commodity Group 6, Metals, Minerals, and their Manufacturers: ECCNs 3604A and 3605A; and

E. In Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials: ECCN 1767A.

8. In Supplement No. 1 to § 339.1 (the Commodity Control List), Commodity Group 3, General Industrial Equipment, in ECCN 1391A, add a new paragraph after the *Special License Available* paragraph to read as follows: *"G–COM Eligibility*: (commodities that meet technical specifications described in Advisory Note 2 under this entry regardless of the end-use, subject to the prohibitions contained in § 371.2(c)."

9. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5, Electronics and Precision Instruments, in ECCN 1501A, add a new paragraph after the *Special Licenses Available* paragraph to read as follows: *"G–COM Eligibility*: Commodities that meet technical specifications described in Advisory Notes 1, 2, 3, 4, and 6 under this entry regardless of end-use, subject to the prohibitions contained in §371.2(c)."

10. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5, Electronics and Precision Instruments, in ECCN 1510A, add a new paragraph after *Special Licenses Available* paragraph to read as follows: *"G–COM Eligibility*: Commodities that meet technical specifications described in Advisory Notes 6 and 7 under this entry regardless of end-use, subject to the prohibitions contained in § 371.2(c)."

11. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5, Electronics and Precision Instruments, in ECCNs 1519A, add a new paragraph after *Special Licenses Available* paragraph to read as follows: *"G–COM Eligibility*: Commodities that meet technical specifications described in Advisory Notes 1, 3, and 4 under this entry regardless of end-use, subject to the prohibitions contained in § 371.2(c)."

12. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5, Electronics and Precision Instruments, in ECCNs 1520A and 1537A, add a new paragraph after *Special Licenses Available* paragraph of each entry to read as follows: *"G–COM Eligibility*: Commodities that meet technical specifications described in Advisory Notes 1 through 5 under this entry regardless of end-use, subject to the prohibitions contained in § 371.2(c)."

13. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5, Electronics and Precision Instruments, in ECCN 1522A, add a new paragraph after *Special Licenses Available* paragraph to read as follows: *"G–COM Eligibility*: Commodities that meet technical specifications described in Advisory Notes 4 and 6 under this entry regardless of end-use, subject to the prohibitions contained in § 371.2(c)."

14. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5, Electronics and Precision Instruments, in ECCN 1526A, add a new paragraph after *Special Licenses Available* paragraph to read as follows: *"G–COM Eligibility*: Commodities that meet technical specifications described in Advisory Notes 4 and 5 under this entry regardless of end-use, subject to the prohibitions contained in § 371.2(c)."

15. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5, Electronics and Precision Instruments, in ECCNs 1529A and 1564A, add a new paragraph after the *Special Licenses Available* paragraph of each entry to read as follows: *"G–COM Eligibility:* Commodities that meet technical specifications described in Advisory Notes 2 and 3 under this entry regardless of end-use, subject to the prohibitions contained in § 371.2(c)."

16. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5, Electronics and Precision Instruments, in ECCN 1533A, add a new paragraph after the *Special Licenses Available* paragraph to read as follows: *"G–COM Eligibility:* Commodities that meet technical specifications described in Advisory Note 5 under this entry regardless of end-use, subject to the prohibitions contained in § 371.2(c)."

17. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5, Electronics and Precision Instruments, in ECCNs 1544A, 1558A and 1567A, add a new paragraph after the *Special Licenses Available* paragraph of each entry to read as follows: *"G–COM Eligibliity:* Commodities that meet technical specifications described in Advisory Note 2 under this entry regardless of end-use, subject to the prohibitions contained in § 371.2(c)."

18. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5, Electronics and Precision Instruments, in ECCN 1548A, add a new paragraph after the *Special Licenses Available* paragraph to read as follows: *"G–COM Eligibility:* Commodities that meet technical specifications described in Advisory Note 3 under this entry regardless of end-use, subject to the prohibitions contained in § 371.2(c)."

19. In Supplement No. 1 to § 399.1 (the Commodity Control List) Commodity Group 5, Electronics and Precision Instruments, in ECCN 1555A, add a new paragraph after the *Special Licenses Available* paragraph to read as follows: *"G–COM Eligibility:* Commodities that meet technical specifications described in Advisory Notes 2 and 4 under this entry regardless of end-use, subject to the prohibitions contained in § 371.2(c)."

20. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5, Electronics and Precision Instruments, in ECCN 1565A, add a new paragraph after the *Special Licenses Available* paragraph to read as follows: *"G–COM Eligibility:* Commodities that meet technical specifications described in Advisory Notes 3, 5, 7, and 9 (a) and (b) under this entry regardless of end-use, subject to the prohibitions contained in § 371.2(c). However, with regard to Advisory Note 9 (a) and (b), the limitations imposed by paragraph (b)(5) (i), (iii), and (vi), (b)(6)(iii), (b)(7) (iv), (v), and (vi), (b)(8)(i), and (b)(9)(iii) are waived."

21. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5, Electronics and Precision Instruments, in ECCN 1572A, add a new paragraph after the *Special Licenses*

Available paragraph to read as follows: *"G–COM Eligibility:* Commodities that meet technical specifications described in Advisory Notes 5, 6, and 7 under this entry regardless of end-use, subject to the prohibitions contained in § 371.2(c)."

22. In Supplement No. 1 to § 399.1 (the Commodity Control List), in Commodity Group 7, Chemicals, Metalloids, Petroleum Products and Related Materials, in ECCNs 1754A and 1755A; add a new paragraph after the *Special Licenses Available* paragraph of each entry to read as follows: *"G–COM Eligibility:* Commodities that meet technical specifications described in Advisory Notes 1 and 2 under this entry regardless of end-use, subject to the prohibitions contained in § 371.2(c)."

Dated: September 18, 1985.

James K. Pont,

Deputy Director, Office of Export Administration, International Trade Administration.

[FR Doc. 85–22650 Filed 9–19–85; 9:40 am]

BILLING CODE 3510–DT–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9188]

Louisiana State Board of Dentistry; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires the Louisiana State Board of Dentistry (the Board), the sole licensing authority for dentists in Louisiana, among other things, to cease adopting or maintaining any rule, regulation, policy, or course of conduct that would tend to prevent or hinder the advertising or publishing of pricing discounts for dental products and services. The Board is also barred from prohibiting any dentist or dental organization from advertising the availability of a discounted price; taking or threatening to take disciplinary action against advertisers of such prices; declaring the publication of discounted prices to be illegal, unethical, unprofessional, or otherwise improper; and including or encouraging any individual or organization to take any actions prohibited by the order. The Board is additionally required to distribute a copy of the order and an explanatory announcement to all dentists licensed to practice in Louisiana; and provide such material to all those applying for a license for a period of two years.

DATE: Complaint issued Oct. 29, 1984. Decision issued Aug. 26, 1985.[1]

FOR FURTHER INFORMATION CONTACT: Arthur Lerner, FTC/B–823, Washington, D.C. 20580, (202) 724–1341.

SUPPLEMENTARY INFORMATION: On Monday, June 10, 1985, there was published in the **Federal Register,** 50 FR 24200, a proposed consent agreement with analysis In the Matter of Louisiana State Board of Dentistry for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments have been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreeement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing and Intimidating: § 13.370 Suppliers and sellers; § 13.367 Members. Subpart—Combining or Conspiring: § 13.384 Combining or conspiring; § 13.395 To control marketing practices and conditions; § 13.475 To restrict competition in buying; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; 13.533–45 Maintain records. Subpart—Cutting Off Supplies or Service: § 13.655 Threatening disciplinary action or otherwise.

List of Subjects in 16 CFR Part 13

Advertising, Dentists, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 85–22629 Filed 9–20–85; 8:45 am]

BILLING CODE 6750–01–M

16 CFR Part 13

[Docket No. C–3161]

Montana Board of Optometrists; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires the Montana Board of Optometrists (the Board), among other things, to cease adopting or maintaining any rule, regulation, policy or course of conduct that has the effect of prohibiting, restricting, or discouraging any qualified person from advertising price-related terms or claims of professional superiority; and declaring such advertising to be illegal, unethical, or unprofessional. The Board is barred from taking or threatening disciplinary action against any individual or organization that advertises price-related terms and claims of professional superiority; and from inducing or assisting others to take any of the prohibited actions. The Board is additonally required to distribute a copy of the order and an explanatory announcement to all optometrists licensed to practice in Montana; and provide such material to all those applying for a license for period of five years.

DATE: Complaint and Order issued Aug. 29, 1985.[1]

FOR FURTHER INFORMATION CONTACT: Cynthia Wicker, FTC/H–292, Washington, D.C. 20580. (202) 423–5607.

SUPPLEMENTARY INFORMATION: On Monday, June 10, 1985, there was published in the **Federal Register,** 50 FR 24203, a proposed consent agreement with analysis In the Matter of Montana Board of Optometrists for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Coercing and Intimidating: § 13.370 Suppliers and sellers. Subpart—Combining or Conspiring: § 13.384 Combining or conspiring; § 13.395 To control marketing practices and conditions; § 13.475 To restrict

[1] Copies of the Complaint and the Decision and Order are filed with the original document.

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competition in buying; § 13.497 To terminate or threaten to terminate contracts, dealing, franchises, etc. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective action and/or requirements; § 13.533–20 Disclosures; § 13–533–45 Maintain records. Subpart—Cutting Off Supplies or Service: § 13–855 Threatening disciplinary action or otherwise.

List of Subjects in 16 CFR Part 13

Advertising, Optometrists, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 85–22837 Filed 9–20–85; 8:45 am]

BILLING CODE 6750–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–22413; File No. S7–787]

National Market System Securities

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendments.

SUMMARY: To permit increased competition between market centers, the Commission is amending its transaction reporting rule and its rule governing the designation of securities qualified for trading in a national market system to permit, in certain circumstances, a security to be concurrently designated as a national market system security and traded on an exchange.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: William W. Uchimoto, Esq., (202) 272–2409, Room 5193, Division of Market Regulations, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Summary

The Securities and Exchange Commission ("Commission") is adopting amendments to its transaction reporting rule, Rule 11Aa3–1 [1] under the Securities and Exchange Act of 1934 ("Act"),[2] and its rule governing the designation of securities qualified for trading in a national market system ("NMS"), Rule 11Aa2–1 ("NMS Securities Rule") [3] under the Act.

The NMS Securities Rule currently permits a security to be designated as an NMS Security only if it is traded solely in the over-the-counter ("OTC") market, and terminates a security's NMS designation if it becomes listed or admitted to unlisted trading privileges ("UTP") on an exchange. The amendments to the rule will permit stocks that are not reported pursuant to the Consolidated Tape Association ("CTA") Plan [4] to be traded on an exchange and concurrently designated as NMS Securities.

The amendments direct the NASD and the exchanges that trade NMS Securities to file a joint plan for consolidating exchange and OTC quotation and transaction reporting of these securities. The Commission, in another release issued today announcing the Commission's policy on granting UTP on OTC securities,[5] similarly directs that the exchanges and the NASD develop a plan to provide procedures and a mechanism for consolidating OTC and exchange quotation reporting in NMS Securities upon which UTP is granted. That plan, which will cover both listed NMS Securities and NMS Securities traded on an exchange pursuant to UTP, is to be submitted to the Commission by December 1, 1985 and implemented by January 1, 1986.

II. Background and Summary of Comments

As a result of concerns voiced by the Boston Stock Exchange, Inc. ("BSE") and the Midwest Stock Exchange, Inc. ("MSE") [6] that the structure of the NMS Securities Rule is causing them to lose listings, the Commission issued a release on February 1, 1985 [7] soliciting comment on proposed rule amendments that would permit, in certain circumstances, a security to be concurrently designated as an NMS Security and traded on an exchange ("OTC/Exchange-Traded NMS Security"). In response to the release the Commission received comment letters from the NASD, the BSE, Milton Cohen, the Philadelphia Stock Exchange, Inc. ("Phlx"), the Amex, and the Federal Regulation of Securities Committee of the American Bar Association ("ABA").[8]

The Phlx stated that it had lost "at least 30% of its volume in primary listed securities" due to the provision in the NMS Securities Rule which requires the termination of a security's NMS designation "[i]f such security becomes listed and registered, or admitted to unlisted trading privileges, on an exchange."[9] The Phlx also stated that it was "impossible to estimate the number of listings which we have not received because of [the Limiting Provison]."[10] The Phlx advocated that the Commission grant exchanges UTP on OTC securities so that the Phlx could continue to trade those securities which delisted from the exchange.[11]

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[1] 17 CFR 240.11Aa3–1.

[2] 15 U.S.C. 78a *et seq.*, as amended by the Securities Acts Amendments of 1975 ("1975 Amendments"), Pub. L. No. 94–29 (June 4, 1975), 89 Stat. 97, [1975] U.S. Code Cong. & Ad. News 97.

[3] 17 CFR 240.11Aa2–1.

[4] The CTA Plan is a joint industry plan governing the collection and dissemination of transaction reports in listed securities that substantially meet the original listing standards of either the American ("Amex") or New York ("NYSE") Stock Exchange. The National Association of Securities Dealers, Inc. ("NASD") and seven national securities exchanges are CTA participants.

[5] *See* Securities Exchange Act Release No. 22412 (September 16, 1985) ("OTC/UTP Policy Release"). The Commission solicited comment on whether the Commission should commence granting UTP applications on OTC securities in Securities Exchange Release No. 21489 (November 16, 1984), 49 FR 46156.

[6] *See* Letter from Charles J. Mohr, Chairman and Chief Executive Officer, BSE, to Senator William Proxmire, dated November 23, 1983; and Letter from Kenneth I. Rosenblum, President, MSE, to George A. Fitzsimmons, Secretary, SEC, dated August 8, 1984.

[7] *See* Securities Exchange Act Release No. 21708 (February 1, 1985), 50 FR 7085 ("Proposal Release").

[8] *See* Letter from William H. Cohen, to John P. Wheeler III, Secretary, SEC, dated April 2, 1985; Letter from James M. Cangiano, Secretary, NASD, to John Wheeler, Secretary, SEC, dated April 11, 1985; Letter from Brian Riddell, Executive Vice President, BSE, to John P. Wheeler, Secretary, SEC, dated April 11, 1985; Letter from Richard M. Phillips, Chairman, Federal Regulation of Securities Committee, ABA, John M Liftin, Chairman, Subcommittee on Securities Markets and Market Structure, ABA, and Andrew M. Klein, Drafting Committee, ABA, to John P. Wheeler III, Secretary, SEC, dated April 12, 1985; Letter from Nicholas A. Giordano, President, Phlx, to John P. Wheeler III, Secretary, SEC, dated March 22, 1985 (commenting on the Commission's OTC/UTP Release, but also commenting on OTC/Exchange-Traded NMS Securities); and Letter from Richard O. Scribner, Executive Vice President, Amex, to John Wheeler, Secretary, SEC, dated May 2, 1985.

[9] 17 CFR 240.11Aa2–1(b) ("Limiting Provision").

[10] The BSE also indicated that it was in the process of losing some long-time BSE listed companies even after publication of the Proposal Release. *See e.g.*, Letter from Joseph P. Raferty, Vice President and Corporate Secretary, BSE, to John Wheeler, Secretary, SEC, dated May 22, 1985.

[11] The Commission has granted UTP on stocks which were delisted and subject to last sale reporting. *See e.g.*, Order Approving Pacific Stock Exchange, Inc. ("PSE") UTP Application in the common stock of Pacific Resources, Inc., Securities Exchange Act Release No. 17584 (February 27, 1981). The Commission has denied granting UTP on stocks that were delisted and not subject to last sale reporting. *See e.g.*, Denial of PSE UTP Application in the common stock of Xonics, Inc., Securities Exchange Act Release No. 19889 (March 17, 1983).

The Phlx did not believe that restricting the Limiting Provision to stocks ineligible for CTA reporting "sufficiently resolves the unduly anticompetitive effects of this rule" as some CTA eligible securities have been required to delist to become NMS Securities. While the Amex did not object to non-CTA reported listed securities being designated as NMS Securities, the Amex saw no benefits in extending the amendments' coverage to include listed CTA reported securities. At a minimum, Amex felt it was inappropriate to seek to address the question of whether CTA-eligible securities shall be reported through NASDAQ in the context of a proceeding intended to focus on what it viewed as a far narrower issue.[12]

The Amex and the BSE believed that the issue of UTP on OTC securities and the creation of a mechanism for concurrent transaction and quotation reporting of these securities should precede the resolution of such a mechanism for OTC/Exchange-Traded NMS Securities. Pending a resolution of the latter mater, the BSE urged a moratorium on further delisting resulting from the Limiting Provision. While the ABA believed that the proposed amendments "may prove workable as an interim measure," the ABA recommended that the permanent approach would be to define "all OTC stocks that become listed or admitted to UTP on an exchange" as "qualified securities" and compel them to be reported pursuant to the CTA Plan (the ABA believed that the CTA was more established than the NASD's transaction reporting plan for NMS Securities).

Similarly, Milton Cohen questioned the amendments' effect on consolidating reporting through NASD facilities as opposed to exchange facilities, *i.e.*, the CTA. Mr. Cohen did not view NASDAQ as a "true NMS facility" and had reservations with respect to whether the OTC market would receive the bulk of trading volume in OTC/Exchange-Traded NMS Securities.[13]

The Amex recommended a revision to the NMS Securities Rule so that a security's "NMS designation will terminate when a security which is listed or subject to unlisted trading privileges becomes CTA-reported." Without such a revision, the Amex stated that

> a NASDAQ/NMS security could retain its NMS designation and would continue to be reported through NASDAQ, even after becoming CTA eligible by listing on the Amex or the New York Stock Exchange or meeting CTA eligibility requirements while traded or a regional exchange. It may even permit an existing listed, CTA-reported security to the designated NMS, substituting NASDAQ reporting for CTA reporting for these securities.[14]

The NASD did not oppose the concept of OTC/Exchange-Traded NMS Securities but desired that the amendments make clear that the regional exchanges cannot frustrate issuers from seeking NMS designation by unilaterally causing these issuers' securities to be CTA-reported or by refusing to remove off-board trading restrictions.[15]

The NASD also argued that the Commission should reaffirm that specialists executing transactions in securities other than on the floor of an exchange must become members of the NASD because their off-board dealings are "over-the-counter transactions," and that the exchanges should waive their access fees to permit OTC market makers to effect transactions on the exchange floor.

The NASD offered to consolidate quotation and transaction reporting in OTC/Exchange-Traded NMS Securities through NASD facilities. The NASD also noted each NASDAQ market maker has a unique symbol identifying the market maker and suggested that exchange specialists be similarly identified. Finally, the NASD requested that its exemption from having to identify OTC market makers who compose the best bid and offer display ("BBO") of NASDAQ Level 1 service[16] and from having to identify OTC market makers with respect to transaction reporting in NMS Securities be extended to reporting in OTC/Exchange-Traded NMS Securities.[17]

III. Discussion

After considering the comments, and in light of the Commission's decision to grant exchanges UTP on certain NMS Securities, the Commission has determined to adopt revised amendments that permit non-CTA reported securities to be designated as NMS Securities and concurrently listed on an exchange. The amendments would only permit those securities that are not subject to exchange off-board trading restrictions to receive this dual status. The amendments also allow NMS

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[12] Indeed, the Commission has issued a release soliciting comment on whether NMS Securities should be included in further NMS initiatives and whether exchange listed securities should be designated as NMS Securities. *See* Securities Exchange Act Release No. 22127 (June 21, 1985), 50 FR 26584.

[13] The central thrust of Mr. Cohen's comment letter, however, was that the Commission should designate listed and OTC securities that exhibited a multiple trading interest as NMS Securities and require that those securities trade in NMS facilities such as intermarket trading linkages.

[14] The Amex and ABA argued that the proposed definition of "NASDAQ security" contained in proposed paragraph (a)(3)(ii)(B) of the NMS Securities Rule is problematic because by definition a "NASDAQ security" could not be subject to a consolidated transaction reporting plan whereas NMS Securities are subject to such a plan. Accordingly, these commentators argued that no securities could be designated as NMS Securities. The Commission disagrees with these commentators' analysis; the definition's sole use is to indicate the group of securities that are eligible for designation as NMS Securities. In this regard, prior to being designated an NMS Security, a "NASDAQ security" is not subject to the NASD's NMS Securities reporting plan. Nevertheless, to remove any misunderstandings, the Commission has revised the definition to make clear the intention to limit the group of eligible securities to non-CTA reported stocks.

[15] Off-board trading restrictions limit or condition the ability of exchange members to effect transactions otherwise than on an exchange in securites which are traded on the exchange. The Commission has abrogated off-board agency restrictions (except agency cross transactions) (*see* 17 CFR 240.19c-1, Securities Exchange Act Release No. 11942 (December 19, 1975), 41 FR 4507; and abrogated off-board principal restrictions with respect to new exchange listings (*see* 17 CFR 240.19c-3,) (Securities Exchange Act Release No. 16888 (June 11, 1980), 45 FR 41125).

[16] NASDAQ Level 1 service provides the inside market for each NASDAQ security; pursuant to the exemption it does not identify market makers reflected in those quotations. The NASD was exempted from paragraph (b)(1) of Rule 11Ac1–1 ("Quote Rule") under the Act, 17 CFR 240.11Ac1–1, which requires the NASD to provide specific market maker identifiers with quotations disseminated to vendors. In exempting the NASD from having to display OTC market maker identifiers in the BBO, the Commission stated that "the present dealer nature of the OTC market makes the need for such identifiers substantially less than for exchange-traded securities. [footnote omitted] Specifically, customers who purchase OTC securities often deal directly with a market maker in those securities and are therefore less concerned over whether their orders are executed on an agency or principal basis than they are that that execution is at a price at least as good as the best bid or offer (as the case may be)." *See* Securities Exchange Act Release No. 18585 (March 23, 1982), 47 FR 13265. NASDAQ Level 2 and Level 3 services provide the quotations of each market maker in a particular NASDAQ security and identifies the market maker by symbol.

[17] The NASD was exempted from paragraph (b)(2)(i)(C) of Rule 11Ac1–2 ("Vendor Display Rule") under the Act, 17 CFR 240.11Ac1–2, which requires vendors that disseminate transaction information for reported securities to provide an identifier indicating the market center associated with the consolidated last sale display. Specifically, the Commission exempted NASDAQ, the NASD's wholly owned subsidiary from having to display specifific market maker identifiers with respect to transaction reports in NMS Securities because the Transaction Reporting Rule does not require the NASD to provide such identifiers to vendors. Accordingly, the NASD only shows that transaction reports in NMS Securities have originated from the OTC market. *See* Letter from Richard G. Ketchum, Associate Director, Division of Market Regulation, SEC, to Gordon S. Macklin, President, NASD, dated March 31, 1982.

Securities that become traded by an exchange pursuant to UTP to retain their NMS designation.

The Commission believes that a grant of UTP on NMS Securities has essentially the same market structure effects as permitting listed non-reported securities to be simultaneously designated as NMS Securities. In both cases exchanges and OTC market makers would each be able to trade the affected securities. There are differences, however, with respect to competition between exchanges and the NASD for the listing and registration of securities. In the case of UTP, the issuer's consent to exchange trading is unnecessary and the exchange derives no listing or other type of registration fees; in the case of a listed security which is also an NMS Security an issuer remains listed and it continues to pay listing-related fees. Under the OTC/Exchange-Traded NMS Securities amendments, the Rule no longer will require issuers of non-reported exchange-listed securities to delist, depriving the exchange of listing fees, in order to achieve NMS designation.

By limiting OTC/Exchange-Traded NMS Securities to non-CTA reported securities, the Commission is avoiding problems of conflicting reporting plans and at the same time ensuring that a category of listed stocks that previously would not have had the benefit of consolidated last sale reporting will now receive such reporting.[18]

In this regard, the Commission believes that OTC and exchange quotation and transaction reporting in OTC/Exchange-Traded NMS Securities should be consolidated in the NASDAQ system, because these securities would be CTA ineligible under the rule, and the OTC market generally has received the predominant share of the trading volume in those non-reported listed stocks that seek NMS designation.[19] Therefore, the Commission believes that the development of a separate system for these securities would engender unnecessary costs and investor confusion.

The amendments require the NASD and exchanges to submit a joint transaction reporting plan, the product of negotiation and mutual agreement, covering the specifics of consolidated reporting for these securities. Because this process is identical to integrating reporting in OTC securities upon which UTP is granted, the Commission in the OTC/UTP Policy Release also has directed the NASD and exchange participants to submit a plan which provides for consolidating reporting in NMS Securities that are listed as well as OTC/UTP securities.[20] As noted in that release, the Commission expects the parties to submit this plan by December 1, 1985 so that it can be implemented in full by January 1, 1986.

The NASD's comment letter raises a number of significant issues that must be discussed and resolved by the NASD and the exchange participants in formulating the joint reporting plan. The Commission has preliminary views on a number of the issues raised by the NASD. In general, the Commission believes that the approach to these issues outlined below should serve to maximize competition between markets in OTC/Exchange-Traded NMS Securities.

First, the NASD was concerned about the ability of a regional exchange to veto an issuer's choice of having its security designated as an NMS Security by causing the security to be CTA-reported. The Commission notes that to be eligible to be CTA-reported, a security listed on a regional exchange must substantially meet the Amex or NYSE listing standards, and that under the CTA Plan the regional exchanges must apply to have their securities CTA-reported.[21] The Commission agrees that a regional exchange has some flexibility in interpreting and applying the CTA eligibility standards; as a practical matter, however, these standards are not the totally elective process suggested in the NASD's comment letter. Moreover, a regional exchange would appear to have no incentive to make such an improper designation since if a listed stock becomes CTA-reported, an issuer could delist its security and seek NMS Securities designation. Nonetheless, the Commission believes that in cases of conflict the exchange should consult with the issuer before designating the security as eligible for CTA reporting so that the issuer's security can retain its NMS Securities designation if the issuer so desires. With respect to OTC/UTP securities, the Commission is conditioning the grant of OTC/UTP so that an exchange could not trade an OTC stock on a UTP basis if the stock becomes CTA-reported.[22]

Second, with respect to specialist membership in the NASD, the Commission does not believe that an exchange specialist must become an NASD member to trade OTC/Exchange-Traded NMS Securities in the OTC market so long as it is exempt from such registration pursuant to Rule 15b9–1 of the Act.[23] That Rule provides an exemption for exchange market makers who carry no customer accounts and effect trades for their own account with or through another registered broker or dealer.[24]

Third, the Commission does not believe competition between market makers would be fostered by the NASD's suggestion that exchange specialists be identified individually; such identification ignores the fact that those quotations could reflect agency orders held by the specialist or interest of the floor participants. Rather, the Commission believes that quotations of exchange specialists must be identified as those of the exchange on which they make markets.[25] In addition, the Commission believes that it is important to require the NASD to identify exchange quotations when these quotations are reflected in the BBO and to identify the exchange which disseminated transaction reports in OTC/Exchange-Traded NMS Securities. The Commission notes that this is consistent with the reporting of exchange-traded securities through CTA. Moreover, the Commission believes that exchange identifiers with respect to quotations and transaction reports will facilitate increased competition between OTC and exchange markets, to the ultimate benefit of the investing public. The Commission will modify the NASD's exemption accordingly.[26]

Fourth, similar to the position taken by the Commission in the OTC/UTP Policy Release, the Commission believes that OTC and exchange market makers trading OTC/Exchange-Traded NMS Securities must have access, at a

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[18] The Commission shares the Phlx's concern that by limiting the amendments to non-CTA reported securities, forced delistings could continue to occur where an issuer of a CTA reported security applied for designation as an NMS Security. The Commission believes that this problem can best be solved through an amendment to the CTA Plan or an interpretation of that plan permitting withdrawal of a security's eligibility for CTA reporting simultaneous with its designation as an NMS Security.

[19] *See* OTC/UTP Policy Release, *supra* note 5.

[20] Exchanges that are presently trading OTC securities pursuant to a grant of UTP would be directly subject to the amended Transaction Reporting Rule requirement to develop a reporting plan.

[21] *See* Section VI(d) of the CTA Plan.

[22] *See* OTC/UTP Policy Release, *supra* note 5.

[23] 17 CFR 240.15b9–1.

[24] The Commission notes that several regional exchanges permit broker-dealer firms, which do retail business and accordingly hold customer accounts, to become specialists. The Commission understands that most, if not all, of these specialists are already registered as NASD members.

[25] *See* OTC/UTP Policy Release, *supra* note 5.

[26] In this regard, the Commission believes that the justification for granting the exemptions from identifying quotations and trades with respect to OTC market maker identifiers still exists. *See* discussion, *supra* notes 16 and 17.

minimum, to one another's market via telephone. Accordingly, the Commission has amended the NMS Securities Rule so that exchanges trading OTC/Exchange-Traded NMS Securities are required to provide NASDAQ market makers telephone access to their markets just as the NASD permits exchange specialists to effect trades with NASDAQ market makers. The Commission believes that a more sophisticated intermarket trading linkage and trade-through rules should be extended to OTC/Exchange-Traded NMS Securities at the time these facilities and rules are made applicable to OTC/UTP securities.

Finally, to ensure equal regulation with respect to short sales, the Commission has issued a release proposing amendments that would exempt exchange and OTC market makers, and other broker-dealers, from Rule 10a–1,[27] the Commission's short sale rule with respect to transactions in OTC/Exchange-Traded NMS Securities.[28]

IV. Effects on Competition

Section 23(a)(2) [29] of the Act requires the Commission, in adopting rules under the Act, to consider the anticompetitive effects of such rules, if any, and to balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Act. In adopting the amendments, the Commission believes that permitting exchanges to trade certain NMS Securities on a listed basis will be procompetitive, adding exchange specialists' capital and participation to an existing multiple dealer environment. The Commission believes that consolidated last sale reporting of OTC/Exchange-Traded NMS Securities will facilitate increased competition between OTC and exchange markets to the ultimate benefit of the investing public.

V. Regulatory Flexibility Act Consideration

Section 603(a) [30] of the Administrative Procedure Act,[31] as amended by the Regulatory Flexibility Act ("RFA"),[32] generally requires the Commission to undertake a regulatory flexibility analysis of the impact of a rule or amendment on "small entities," unless exempted under Section 605(b) on the basis that the rule or rule amendments would not have a significant impact on a substantial number of small entities. The Commission believes that the amendments are exempt from the RFA. The amendments would affect those national securities exchanges that seek to trade OTC/Exchange-Traded NMS Securities and these entities are not considered small entities for purposes of ther RFA. [33] The Commission also believes that the amendments would not have a significant economic impact on small issuers. The amendments' primary effect on issuers would be to give issuers the option of having another market maker, an exchange specialist, in their securities. This alternative may result in some lowering of the costs of raising capital for small issuers but would not be of a magnitude that would have a significant economic impact on small issuers. Currently, NMS Securities are required to have at minimum two market makers. The Commission believes that the addition of another market maker will not significantly affect trading in these securities, and will not have a significant adverse effect on the OTC market makers that trade those securities. Accordingly, the Chairman of the Commission has certified that the Rule amendments will not have a significant impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VI. Statutory Basis and Text of the Amendments

Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read as follows:

Authority: Sec. 23, 48 stat. 901, as amended, 15 U.S.C. 78w. * * * § 240.11Aa2–1 and § 240.11Aa3–1 issued under secs. 11A and 23(a), 15 U.S.C. 78k–1, 78w(a).

2. Section 240.11Aa2–1 is amended by revising paragraphs (a)(3) and (b)(3) as follows:

§ 240.11Aa2–1 Designation of national market system securities.

(a) *Definitions.* For purposes of this section:

* * * * *

(3) The term "NASDAQ security" shall mean any registered equity security for which quotation information is disseminated in the NASDAQ electronic inter-dealer quotation system ("NASDAQ"):

(i) Which is not listed or admitted to unlisted trading privileges on a national securities exchange ("exchange"); or

(ii) Which is listed or admitted to unlisted trading privileges on an exchange, provided that:

(A) No rule, stated policy or practice of such exchange shall prohibit or condition, or be construed to prohibit, condition or otherwise limit, directly or indirectly the ability of any member to effect any transaction in such security otherwise than on such exchange, and

(B) Such exchange shall permit NASDAQ market makers telephone access to exchange trading facilities with respect to transactions in NMS Securities to the same extent that exchange market makers are permitted access to NASDAQ market makers, and

(C) Transaction reports in such security are not collected, processed and made available pursuant to the plan submitted to the Securities and Exchange Commission pursuant to Rule 17a–15 (subsequently amended and redesignated as Rule 11Aa3–1) under the Securities Exchange Act of 1934, as amended, (the "CTA Plan"), which plan was declared effective as of May 17, 1974.

* * * * *

(b) *Designation criteria.* * * *

(3) Any security designated as a national market system security pursuant to this section shall be deemed qualified for trading in a national market system (or any facility or subsystem thereof) so long as its designation remains effective.

The effectiveness of any designation pursuant to paragraphs (b)(1) or (b)(2) of this section with respect to a security shall terminate if such security is reported pursuant to the CTA Plan, or designation of such security is revoked, or during any period the designation of such security has been suspended, by the NASD in accordance with the terms of an effective designation plan.

* * * * *

3. Section 240.11Aa3–1 is amended by revising paragraphs (a)(4), (a)(5), (a)(6), (b)(1), and (b)(2)(i) as follows:

§ 240.11Aa3–1 Dissemination of transaction reports and last sale data with respect to transactions in reported securities.

(a) *Definitions.* For purposes of this section.

* * * * *

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[27] 17 CFR 240.10a–1.

[28] *See* Securities Exchange Act Release No. 22414 (September 16, 1985). In that release, the Commission also seeks comment on whether the short sale rule should apply to all NMS Securities.

[29] 15 U.S.C. 78 w(a)(2).

[30] 5 U.S.C. 603(a).

[31] 5 U.S.C. 551 *et seq.*

[32] Pub. L. No. 96–354, 94 Stat. 1164. (September 19, 1980).

[33] 17 CFR 240.0–10(e).

(4) The term "reported security" shall mean any listed equity security or national market system security for which a transaction reporting plan with respect to transactions in such security is required to be filed pursuant to this section.

(5) The term "listed equity security" shall mean any equity security listed and registered, or admitted to unlisted trading privileges, on a national securities exchange ("exchange") that is not a national market system security.

(6) The term "national market system security" shall mean any security or class of securities which is designated as qualified for trading in a national market system pursuant to Section 11A(a)(2) of the Act and the procedures established thereunder.

* * * * *

(b) *Filing and effectiveness of transaction reporting plans.*

(1) Every exchange shall, with respect to

(i) Transactions in listed equity securities executed through its facilities and

(ii) Transactions in national market system securities executed through its facilities, and every association shall, with respect to

(A) Transactions in listed equity security executed by its members otherwise than on an exchange and

(B) Transactions in national market system securities executed otherwise than on an exchange, file with the Commission a transaction reporting plan.

(2) * * *

(i) Reporting requirements with respect to transactions in listed equity securities or national market system securities, for any broker or dealer subject to the plan;

* * * * *

By the Commission.

John Wheeler,

Secretary.

September 16, 1985.

[FR Doc. 85-22700 Filed 9-20-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 158 and 178

[T.D. 85-159]

Customs Regulations Amendment Relating to Entry Summary Filing

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to allow importers to file entry summaries and pay duty for less than the invoiced and manifested number of packages in a "permitted" shipment, provided the importer submits both a discrepancy report and, in lieu of the carrier's declaration on the report (attesting to the shortage), copies of the dock receipt or other documents evidencing nonreceipt of the lost or missing packages. This amendment is necessary because the carrier is often reluctant to provide the declaration requested, thus forcing the importer to pay unnecessary duties on lost or missing packages and later claim a refund. The purpose of the amendment is to relieve importers of the burden of requiring them to obtain the carrier's declaration on the discrepancy report.

EFFECTIVE DATE: October 23, 1985.

FOR FURTHER INFORMATION CONTACT: Legal Aspects: Jerry C. Laderberg, Entry Procedures and Penalties Division (202-566-5765). Operational Aspects: Thomas Davis, Office of Cargo Enforcement and Facilitation (202-566-5354), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Section 158.2, Customs Regulations (19 CFR 158.2), provides that an importer may file an entry summary for consumption or an entry summary for warehouse for less than the invoiced and manifested number of packages in a "permitted" shipment if he files with the entry summary a Customs Form 5931, in triplicate. Section 158.1, Customs Regulations (19 CFR 158.1), defines a permitted shipment as one in which Customs authorizes the carrier bringing the shipment to the port to make delivery to the consignee or the next carrier and:

(a) These parties in interest, or their agents, make a joint determination of the quantities being delivered, or,

(b) The carrier bringing the shipment to the port, at its option, independently declares the quantities available for delivery by filing with the district director, no later than the close of business on the next working day after a determination of quantities is made, a signed statement that:

(1) An independent determination of quantities of merchandise available for delivery has been made, within the date of the determination shown;

(2) At least 4 days have elapsed since the consignee or his agent was notified that Customs has authorized delivery; and,

(3) The merchandise was and is available for delivery.

The Customs Form 5931, titled "Discrepancy Report and Declaration," must be completed by both the importer and the importing or bonded carrier, as appropriate, and must contain a declaration by the carrier that the missing packages were not available for delivery within the provisions of section 448(a), Tariff Act of 1930, as amended (19 U.S.C. 1448(a)).

Section 158.3, Customs Regulations (19 CFR 158.3), provides that a refund shall be allowed for duties paid for lost or missing packages in a shipment included in an entry summary whenever it is established to the satisfaction of the district director, before liquidation of the entry summary becomes final, that the packages claimed to be lost or missing were not delivered to the consignee or another carrier. A claim for this allowance must be made on Customs Form 5931 completed by both the importer and the importing or bonded carrier. If the carrier refuses to complete Customs Form 5931, the claim may nevertheless be allowed if the importer completes Customs Form 5931 and attaches copies of the dock receipt or other documents evidencing nonreceipt of the lost or missing packages.

Under these regulations, an importer who cannot obtain the immediate cooperation of the carrier in completing the Customs Form 5931, upon entry or presentation of the entry summary must pay the duty on the lost or missing packages and later seek a refund of the duty under § 158.3. Importers are thus forced to pay unnecessary duties because of the carrier's refusal to cooperate or its delay in completing the form.

To relieve importers of the burden of obtaining the carrier's attestation to the shortage on Customs Form 5931 (in order to file an entry summary for the actual number of packages in a shipment), by notice published in the **Federal Register** on October 23, 1984 (49 FR 42576), it was proposed to allow importers to file an entry summary for the actual number of packages released, provided that they submit both Customs Form 5931 completed by them and, in lieu of the carrier's declaration of the form, copies of the dock receipt or other documents evidencing nonreceipt of the lost or missing packages. Importers would thereby be allowed to avail themselves of the relief offered in § 158.3 at the time the entry summary is filed, rather than at some later date before liquidation of the entry summary becomes final.

As explained in the notice, the proposed change is currently operative in all Customs field offices, by virtue of

a telex from Customs Headquarters dated June 6, 1983, instructing them to make the change pending its incorporation into § 158.2.

A discussion of the three comments received in response to the notice follows.

Discussion of Comments

Comment: The first commenter appears to support the amendment, but suggests that the final rule put into effect a simplified system for handling short shipments of containers, i.e., when shipments are not included in the container load forwarded on one vessel but instead are forwarded on a later vessel. The commenter complains that the current method for accounting for this type of shortage is not uniform.

Response: The suggestion is beyond the scope of the proposal. We will, however, review this matter to determine what, if any, action should be taken.

Comment: The second commenter supports the proposal but suggests that the new procedure for allowing importers to file entry summaries for less than the invoiced and manifested number of packages in a shipment should include heavily damaged cargo which will be abandoned by the importer, as well as short shipments, as described above.The commenter also assumes that there will be no time deadline for filing Customs Form 5931 and that the existing procedures for filing entry summaries will apply to merchandise released under a "live" entry, *i.e.*, an entry in which the entry summary and estimated duties are filed at the time the merchandise is released.

Response: There are provisions in § 158.21, Customs Regulations, for allowance in duties upon satisfactory proof of the loss or theft of merchandise, or the injury or destruction of merchandise in a number of situations, some of which would cover the situation of damaged cargo. Section 158.22, Customs Regulations, however, provides that the provisions of § 158.21 do not apply in cases where allowances in duties are made under Subpart A or B of Part 158, Customs Regulations (as they will be by the amendment to § 158.2 in this document). Also, section 563, Tariff Act of 1930, as amended (19 U.S.C. 1563(a)), significantly limits the situations in which Customs can make an allowance in duties to those where the merchandise was in Customs custody. Given the large number of situations involving claims filed under 19 U.S.C. 1563(a) and § 158.21 *et seq.*, Customs Regulations, it would be unwise to extend the less onerous procedure contained in the amendment to § 158.2 to other cases.

With regard to the commenter's assumption that there is no time deadline in which to file Customs Form 5931, we note that the purpose of the amendment is to allow the importer to make an adjustment in the invoiced and manifested number of packages in the shipment at the time the entry summary is filed, rather than at some later date before liquidation of the entry summary becomes final. As long as Customs Form 5931 is submitted before, or at the time, the entry summary is filed, an allowance in duties will be granted before liquidation.

With regard to the application of existing entry procedures for merchandise released under a "live" entry, we note that this would continue. In this situation the entry summary has been filed before the importer realizes that he has not received all the invoiced merchandise. Thus, the entry summary will not reflect less than the invoiced or manifested amount of packages in the shipment and the importer cannot avail himself of the new procedures under the amendment to § 158.2.

Comment: The last commenter objects to the limited coverage of the proposal. He views it as only correcting problems with traditional break-bulk cargo where imports are unloaded on a pier and the importer picks up loose freight on a piece count. He also offers a number of observations on the problems involved with containerized freight and submits proposed regulatory amendments on this subject.

Response: The suggestions of this commenter do not relate to the proposed amendment. They represent an overhaul of the quantity control manual procedures which we will review separately for appropriate action.

Upon consideration of the comments received, and further review of the matter, it has been determined advisable to adopt the amendment as proposed.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is certified that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 or 604.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Paperwork Reduction Act

The collection of information requirements contained in § 158.2 are subject to the provisions of the Paperwork Reduction Act (44 U.S.C. 3504(h)) and have been cleared by the Office of Management and Budget (OMB). Accordingly, Part 178, Customs Regulations (19 CFR Part 178), which lists the information collections contained in the regulations and the control numbers assigned by OMB, is being amended to include OMB Control Number 1515–0037.

List of Subjects in 19 CFR Parts 158 and 178

Customs duties and inspections, Imports, Freight, Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

Amendments to the Regulations

PART 158—RELIEF FROM DUTIES ON MERCHANDISE LOST, DAMAGED, ABANDONED, OR EXPORTED

Section 158.2, Customs Regulations (19 CFR 158.2), is revised to read as follows:

§ 158.2 Shortages in packages released under immediate delivery or entry.

An importer may file an entry summary for consumption or an entry summary for warehouse for less than the invoiced and mainfested number of packages in a shipment "permitted" and delivered to him or deposited in a bonded warehouse under the immediate delivery procedure in § 142.21 of this chapter, or under the entry documentation in § 142.3(a), if he files with the entry summary a Customs Form 5931 in triplicate. The Customs Form 5931 shall be completed by the importer with attached copies of the dock receipt or other documents evidencing nonreceipt of the lost or missing packages.

(R.S. 251, as amended, sec. 1, 19 Stat. 247, 249, sec. 1, 36 Stat. 965, sec. 624, 46 Stat. 759, sec. 641, 46 Stat. 759, as amended, sec. 648, 46 Stat. 762 (19 U.S.C. 66, 197, 198, 1624, 1641, 1648))

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

Section 178.2, Customs Regulations (19 CFR 178.2), is amended by inserting the

following in the appropriate numerical sequence according to the section number under the columns indicated:

§ 178.2 Listing of OMB Control Numbers.

* * * * *

19 CFR Section	Description	OMB Control No.
§ 158.2	Filing of entry summary and payment of duty for less than invoiced number of packages in shipment.	1515-0037

(R.S. 251, as amended, sec. 624, 46 Stat. 759, 77A Stat. 14, Pub. L. 96-511, 94 Stat. 2812, 44 U.S.C. 3501 *et seq.*, (19 U.S.C. 1624))

William von Raab,

Commissioner of Customs.

Approved: August 28, 1985.

David D. Queen,

Acting Assistant Secretary of the Treasury.

[FR Doc. 85-22667 Filed 9-20-85; 8:45 am]

BILLING CODE 4820-02-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 213

Collection of Claims

AGENCY: Agency for International Development.

ACTION: Final rule.

SUMMARY: The Agency for International Development proposes to amend part 213 to implement the Federal Claims Collection Standards of the Department of Justice and the General Accounting Office.

EFFECTIVE DATE: September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Jan W. Miller, Office of the General Counsel, Room 6943 NW., Agency for International Development, Washington, D.C., Telephone (202) 632-9434.

SUPPLEMENTARY INFORMATION: On June 21, 1985, the proposed revisions to 22 CFR Part 213 were published in the Federal Register for comment (50 FR 25720). No comments were received. The only substantive change from the proposed rule is the deletion of § 213.8 which dealt with delegations of authority. Because they are found in other agency directives, it was felt that it was unnecessarily duplicative to have them in Part 213.

List of Subjects in 22 CFR Part 213

Claims.

Accordingly, 22 CFR Part 213 is revised to read as follows:

PART 213—COLLECTION OF CLAIMS

Sec.

213.1 Purpose.
213.2 Scope.
213.3 Subdivision of Claims.
213.4 Late Payment, Penalty and Administrative Charges.
213.5 Demand for Payment.
213.6 Collection by Offset.
213.7 Disclosure to Consumer Reporting Agencies and Contracts with Collection Agencies.

Authority: Sec. 621, Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2381.

§ 213.1 Purpose.

These regulations prescribe the procedures to be used by the Agency for International Development ("AID") in the collection of claims owed to AID and to the United States.

§ 213.2 Scope.

(a) *Applicability of Federal Claims Collection Standards.* Except as set forth in this part or otherwise provided by law, AID will conduct administrative actions to collect claims (including offset, compromise, suspension, termination, disclosure and referral) in accordance with the Federal Claim Collection Standards ("FCCS") of the General Accounting Office and Department of Justice, 4 CFR Parts 101-105.

(b) This part is not applicable to:

(1) Claims arising out of loans for which compromise and collection authority is conferred by section 635(g)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2395(g)(2).

(2) Claims arising from investment guaranty operations for which settlement and arbitration authority is conferred by section 635(i) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2395(i).

(3) Claims against any foreign country or any political subdivision thereof, or any public international organization.

(4) Claims where the A.I.D. Administrator or his designee determines that the achievement of the purposes of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2151 *et seq.*, or any other provision of law administered by A.I.D. require a different course of action.

§ 213.3 Subdivision of claims.

A debtor's liability arising from a particular contract or transaction (for example, each individual Supplier's Certificate and Agreement, Form AID 282) shall be considered a single claim for purposes of the monetary ceilings of the FCCS.

§ 213.4 Late payment, penalty and administrative charges.

(a) Except as otherwise provided by statute, loan agreement or contract, A.I.D. will assess:

(1) *Late payment charges* (interest) on unpaid claims at the higher of the Treasury tax and loan account rate or the prompt payment interest rate established under section 12 of the Contract Disputes Act of 1978.

(2) *Penalty charges* at 6 percent a year on any portion of a claim that is delinquent for more than 90 days.

(3) *Administrative charges* to cover the costs of processing and calculating delinquent claims.

(b) Late payment charges shall be computed from the date of *mailing* or *hand delivery* of the notice of the claim and interest requirements.

(c) *Waiver.* (1) Late payment charges are waived on any claim or any portion of a claim which is paid within 30 days after the date on which late payment charges begin to accrue.

(2) The 30 day period may be extended on a case-by-case basis if it is determined that an extension is appropriate.

(3) AID may waive late payment, penalty and administrative charges under the FCCS criteria for the compromise of claims (41 CFR Part 103) or upon a determination that collection of the charges would be against equity and good conscience or not in the best interests of the United States, including for example:

(i) Pending consideration of a request for reconsideration, administrative review or waiver under a permissive statute,

(ii) If repayment of the full amount of the debt is made after the date upon which interest and other charges become payable and the estimated costs of recovering the residual balance exceed the amount owed, or

(iii) If collection of interest or other charges would jeopardize collection of the principal of the claim.

§ 213.5 Demand for payment.

(a) A total of three progressively stronger written demands at approximately 30-day intervals will normally be made, unless a response or other information indicates that additional written demands would either be unnecessary or futile. When necessary to protect the Government's interest, written demand may be preceded by other appropriate actions under the Federal Claims Collection Standards, including immediate referral for litigation and/or offset.

(b) The initial written demand for payment (usually a Bill for Collection, Form AID 7–129) shall inform the debtor of:

(1) The basis for the claim;

(2) The amount of the claim;

(3) The date when payment is due 30 days from date of mailing or hand delivery of the initial demand for payment;

(4) The provision for late payment (interest), penalty and administrative charges, if payment is not received by the due date.

§ 213.6 Collection by offset.

(a) Collection by administrative offset will be undertaken only on claims which are liquidated or certain in amount. Offset will be used whenever feasible and not otherwise prohibited. Offset is not required to be used in every instance and consideration should be given to the debtor's financial condition and the impact of offset on Agency programs or projects.

(b) The procedures for offset in this part do not apply to the offset of Federal salaries under 5 U.S.C. 5514 or offset under section 640A of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2399.

(c) Before offset is made, the agency will provide the debtor with written notice informing the debtor of:

(1) The nature and amount of the claim;

(2) The intent of the agency to collect by administrative offset, including asking the assistance of other Federal agencies to help in the offset whenever possible, if the debtor has not made payment by the payment due date or has not made an arrangement for payment by the payment due date;

(3) The right of the debtor to inspect and copy the records of the agency related to the claim;

(4) The right of the debtor to a review of the claim within the agency. If the claim is disputed in full or part, the debtor shall respond to the demand in writing by making a request to the billing office for a review of the claim within the agency by the payment due date stated in the notice. The debtor's written response shall state the basis for the dispute. If only part of the claim is disputed, the undisputed portion must be paid by the date stated in the notice to avoid late payment, penalty and administrative charges. If A.I.D. either sustains or amends its determination, it shall notify the debtor of its intent to collect the claim, with any adjustments based on the debtor's response by administrative offset unless payment is received within 30 days of the mailing of the notification of its decision following a review of the claim.

(5) The right of the debtor to offer to make a written agreement to repay the amount of the claim.

(6) The notice of offset need not include the requirements of paragraphs (c) (3), (4) or (5) of this section if the debtor has been informed of the requirements at an earlier stage in the administrative proceedings, e.g., if they were included in a final contracting officer's decision.

(d) A.I.D. will promptly make requests for offset to other agencies known to be holding funds payable to a debtor and, when appropriate, place the name of the debtor on the "List of Contractors Indebted to the United States." A.I.D. will provide instructions for the transfer of funds.

(e) A.I.D. will promptly process requests for offset from other agencies and transfer funds to the requesting agency upon receipt of the written certification required by § 102.3 of the FCCS.

§ 213.7 Disclosure to consumer reporting agencies and contracts with collection agencies.

(a) A.I.D. may disclose delinquent debts, other than delinquent debts of current Federal employees, to consumer reporting agencies in accordance with 31 U.S.C. 3711(f) and the FCCS.

(b) A.I.D. may enter into contracts with collection agencies in accordance with 31 U.S.C. 3718 and the FCCS.

Dated: August 5, 1985.

Ain H. Kivimae,

Acting Assistant to the Administrator for Management.

[FR Doc. 22672 Filed 9–20–85; 8:45 am]

BILLING CODE 6116-02-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD Regulation 6010.8–R, Amdt. No. 33]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Medical Benefits for Former Spouses of Uniformed Services Members and Former Members

AGENCY: Office of the Secretary, DOD.

ACTION: Amendment to Final rule.

SUMMARY: This amendment revises the comprehensive CHAMPUS Regulation, DOD 6010.8–R (32 CFR 199), to implement section 645 of Pub. L. 98–525, the Department of Defense Authorization Act, 1985. This section relaxes the requirements for CHAMPUS eligibility for former spouses of Uniformed Services members or former members.

EFFECTIVE DATE: This amendment is effective for health care furnished on or after January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Policy Branch, CHAMPUS, Aurora, Colorado 80045, telephone (303) 361–4005.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977, (42 FR 17972), the Office of the Secretary of Defense published its Regulation, DOD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title.

Currently a spouse of a member or former member of the Uniformed Services loses CHAMPUS eligibility as of 12:01 a.m. of the day following the date of a final decree of divorce, dissolution, or annulment of the marriage, except where the spouse qualifies as an eligible former spouse under the provisions of sections 1004 and 1006 of Pub. L. 97–252. To be eligible, the former spouse must: (1) Be unremarried; (2) have been married to the member or former member for at least twenty (20) years during which time the member or former member performed at least twenty (20) years of creditable service; and (3) not be covered under an employer-sponsored health plan. In addition, the final decree of divorce, dissolution, or annulment of the marriage must be dated on or after February 1, 1983.

Section 645 of Pub. L. 98–525 relaxes the requirements for CHAMPUS eligibility for former spouses. Section 645(b) eliminates the February 1, 1983, limitation imposed by Pub. L. 97–252 so that any former spouse who meets the requirements of Pub. L. 97–252 is eligible for CHAMPUS, regardless of the date of the divorce, dissolution, or annulment.

Section 645(a) extends CHAMPUS eligibility to former spouses of members or former members who performed at least 20 years of creditable service if the former spouse: (1) Is unremarried; (2) was married to the member or former member for a period of at least 20 years, at least 15, but less than 20, of which were during the period the member or former member performed creditable service; and (3) is not covered under an employer-sponsored health plan. Moreover, the date of the final decree of divorce, dissolution, or annulment must be before April 1, 1985.

Under section 645(c) those former spouses who meet the requirements of section 645(a), except the date of the final decree of divorce, dissolution, or annulment is on or after April 1, 1985, are eligible for CHAMPUS for only two years beginning on the date of such final decree.

The provisions of section 645 are effective for health care services furnished on or after January 1, 1985.

As authorized under 32 CFR 296.2(d)(4), the final regulation is being published and no previous public comment has been requested. Since this change is authorized through Pub. L. 98–525 which was effective October 1, 1984, we do not believe it is in the public interest to delay implementation through the publication of a proposed rule. However, for a period of 30 days following the date of the publication of this amendment in the **Federal Register**, we will accept public comments and, where appropriate, will revise the amendment. A notice advising of any revisions prompted by public comments will be published in the **Federal Register** no later than 90 days following the end of the comment period. Written public comments must be received on or before October 23, 1985.

Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities. The Secretary certifies, pursuant to section 605(b) of Title 5, United States Code, enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation amendment will not have a significant economic impact on a substantial number of small businesses, organizations or government jurisdictions.

We have determined that this Regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is not, therefore, a "major rule" under Executive Order 12291.

List of Subjects in 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

PART 199—[AMENDED]

Accordingly, 32 CFR Part 199 is amended as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.9 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 199.9 Eligibility.

* * * * *

(b) * * *

(2) * * *

(ii) *Former spouse.* To be eligible, a former spouse:

(*a*) Must be unremarried;

(*b*) Must not be covered by an employer-sponsored health plan;

(*c*) Must have been married to a member of former member who performed at least twenty (20 years of service which can be credited in determining the member's or former member's eligibility for retired or retainer pay; and

(*d*) Must meet the requirements of either paragraph (b)(2)(ii)(*d*) (*1*) or paragraph (*2*) of this section.

(1) The former spouse must have been married to the same member or former member for at least 20 years, at least 20 of which were creditable in determining the member's or former member's eligiblity for retired or retainer pay.

(i) If the date of the final decree of divorce, dissolution, or annulment was on or after February 1, 1983, the former spouse is eligible for health care furnished on or after February 1, 1983.

(ii) If the date of the final decree of divorce, dissolution, or annulment is before February 1, 1983, the former spouse is eligible only for health care furnished on or after January 1, 1985.

(2) The former spouse must have been married to the same member or former member for at least 20 years, at least 15, but less than 20, of which were creditable in determining the member's or former member's eligibility for retired or retainer pay.

(i) If the date of the final decree of divorce, dissolution, or annulment is before April 1, 1985, the former spouse is eligible only for care received on or after January 1, 1985.

(ii) If the date of the final decree of divorce, dissolution, or annulment is on or after April 1, 1985, the former spouse is eligible for only two years beginning on the date of such final decree.

Note.—A former spouse cannot be a dependent of a NATO member.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 18, 1985.

[FR Doc. 85–22658 Filed 9–20–85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 12–85–07]

Drawbridge Operation Requirements; Rio Vista, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: At the request of California Department of Transportation, the Coast Guard is establishing a temporary drawbridge operation regulation for the Highway 12 drawbridge across the Sacramento River at Rio Vista, California, to require fifteen minutes advance notice for the passage of vessels. This temporary regulation is being established to allow a painting contractor to complete cleaning and painting operations begun two years ago. Since this action will accommodate all the needs of marine traffic expected to pass the bridge, its impact is expected to be minimal.

EFFECTIVE DATE: This rule becomes effective on September 9, 1985 and terminates on March 1, 1986.

FOR FURTHER INFORMATION CONTACT: Rose. E. Guerra, Assistant Chief, Bridge Section, Aids to Navigation Branch (telephone: (415) 437–3514).

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for this regulation and it is being made effective in less than 30 days from the date of publication. Following normal rulemaking procedure would have been contrary to the public interest. Immediate action is needed to prevent further deterioration of the steel bridge structure. A comment period has not been provided because all the needs of navigation are provided for. A Broadcast Notice to Mariners has been issued, and the information has been published in the Local Notice to Mariners. This temporary regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary. This temporary regulation will have no appreciable consequences as it will not prohibit any vessels from using the waterway. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant impact on a substantial number of small entities.

Drafting Information

The drafters of this rule are Mrs. Rose E. Guerra, project officer, and Lieutenant Wayne C. Raabe, project attorney, Twelfth Coast Guard District Legal Office.

Discussion of Regulation

Cleaning and painting operations started two years ago. Shortly after the operations started the bridge was struck by a ship. The cleaning and painting was terminated so that repairs to the structure could be done. The repairs have been completed and it is necessary to immediately resume cleaning and painting prior to the onset of the rainy season.

Current regulations require the bridge to open on call. The temporary regulations will require fifteen minutes advance notice from 7:00 A.M. to 5:00 P.M. Monday thru Friday, excluding holidays.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REQUIREMENTS

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended as follows:

Supart B—Specific Requirements

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.189 is amended by adding paragraph (d) to read as follows:

§ 117.189 Sacramento River.

* * * * *

(d) The draw of the Rio Vista Bridge, mile 12.8, requires fifteen minutes advance notice from 7:00 A.M. to 5:00 P.M. Monday thru Friday, excluding holidays, between the dates of 9 September 1985 and March 1, 1986. The advance notice is to be given to the Rio Vista bridge via radiotelephone or by land line to (707) 374–2134.

Dated: September 11, 1985.

John D. Costello,

Vice Admiral, U.S. Coast Guard, Commander Twelfth Coast Guard District.

[FR Doc. 85–22660 Filed 9–20–85; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–9–FRL–2858–3]

Approval and Promulgation of Implementation Plans; North Coast Air Basin Air Pollution Control Regulations, State of California

Correction

In FR Doc. 85–15922, beginning on page 30941 in the issue of Wednesday, July 31, 1985, make the following correction:

§ 52.220 [Corrected]

On page 30943, second column, § 52.220 (c) (124) (ix) (B), the second line should have read:

(b1, n1, p5, and s2), 200, 210, 220(c), 230, and

BILLING CODE 1505–01–M

40 CFR Part 228 [FRL–2901–2]

Ocean Dumping; Final Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates the existing dredged material site located adjacent to the San Francisco main ship channel as an EPA approved ocean dumping site for the dumping of dredged material. This action is necessary to provide an acceptable ocean dumping site for the current and future disposal of dredged material resulting from the annual dredging of the San Francisco main ship channel.

DATE: This rule shall become effective on October 23, 1985.

ADDRESS: Paul Pan, Chief, Environmental Analysis Branch (WH–556M), EPA, Washington, DC 20460, 202/755–9231.

FOR FURTHER INFORMATION CONTACT: Paul Pan, 755–9231.

SUPPLEMENTARY INFORMATION: In FR Doc. 85–5949 appearing at page 10009 et seq. in the **Federal Register** of March 13, 1985, EPA published an interim final rule designating the existing dredged material disposal site located adjacent to the San Francisco main ship channel as an EPA approved ocean dumping site in order to provide an acceptable ocean dumping site for the current and future disposal of dredged material resulting from the annual dredging of the San Francisco main ship channel. EPA promulgated this designation as an interim final rule to give the public an opportunity to comment on a change to the site restriction made after the close of the comment period. This change deleted the specific restriction on grain sizes since the U.S. Army Corps of Engineers and EPA agreed that the general requirement for a case-by-case evaluation would adequately protect the site because it would prohibit disposal of materials found to be incompatible with natural sediments or to result in unacceptable impact on the marine environment.

Following the publication of the interim final rule, it was brought to EPA's attention that the correct coordinates for the San Francisco Channel Bar Dredged Material Site are: 37d 44'55" N, 122d 37'18" W; 37d 45'45" N, 122d 34'24" W; 37d 44'24" N, 122d 37'06" W; 37d 45'15" N, 122d 34'12" W. EPA is making this technical correction to the coordinates in today's final action. No other comments were received on the interim final rule.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: September 16, 1985.

Henry L. Longest II,

Acting Assistant Administrator for Water.

In consideration of the foregoing, Subchapter H of Chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.12 is amended by revising paragraph (b)(22) as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

* * * * *

(b) * * *

(22) San Francisco Channel Bar Dredged Material Site—Region IX.
Location: 37d 44'55" N, 122d 37'18" W; 37d 45'45" N, 122d 34'24" W; 37d 44'24" N, 122d 37'06" W; 37d 45'15" N, 122d 34'12" W.
Size: 4,572x914 meters.
Depth: Ranges from 11 to 14.3 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.
Restriction: Disposal shall be limited to material from required dredging operations at the entrance of the San Francisco main ship channel which is composed primarily of sand having grain sizes compatible with naturally occurring sediments at the disposal site and containing approximately 5 percent of particles having grain sizes finer than that normally attributed to very fine sand (.075 millimeters). Other dredged materials meeting the requirements of 40 CFR 227.13 but having smaller grain sizes may be dumped at this site only upon completion of an appropriate case-by-case

evaluation of the impact of such material on the site which demonstrates that such impact will be acceptable.

[FR Doc. 85-22859 Filed 9-20-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 205

[Docket No. 205N]

Disaster Assistance; Implementation of Coastal Barrier Resources Act

AGENCY: Federal Emergency Management Agency.

ACTION: Final Rule.

SUMMARY: This final rule implements the Coastal Barrier Resources Act (CBRA) (Pub. L. 97-348) as the act applies to disaster assistance granted to individuals and State and local governments under the Disaster Relief Act of 1974 (Pub. L. 93-288). CBRA prohibits new expenditures and new financial assistance for any purpose within the Coastal Barrier Resources System (CBRS) except for certain activities expressly permitted by the CBRA. This rule specifies which disaster assistance actions may or may not be carried out within the CBRS. It establishes procedures for compliance with CBRA in the administration of disaster assistance by the Federal Emergency Management Agency (FEMA).

EFFECTIVE DATE: October 23, 1985.

FOR FURTHER INFORMATION CONTACT: Charles Stuart, Office of Disaster Assistance Programs, Federal Emergency Management Agency, Room 714, 500 C Street, SW., Washington, D.C. 20472, Telephone (202) 646-3691.

SUPPLEMENTARY INFORMATION: On May 10, 1985, FEMA published for comment in the **Federal Register** (50 FR 19870—19877) a proposed rule to implement the Coastal Barrier Resources Act (CBRA) (Pub. L. 97-348) in the administration of disaster assistance under the Disaster Act of 1974, as amended, (Pub. L. 93-288). The Supplementary Information section of the proposed rule explained the basic provisions of the regulations and the procedures to be used in processing disaster assistance actions within the Coastal Barrier Resources System (CBRS). There are only two changes to the proposed rule. Therefore, except for those two changes, the reader is referred to the Supplementary Information section of the proposed ruie for background on the regulation.

It should be explained that at the same time FEMA was circulating the proposed disaster assistance rule, the Department of the Interior (DOI) was circulating its Draft Report to Congress which discusses various alternatives for the CBRS. The discussion included possible areas to be added to the CBRS.

Only two comment letters were received by FEMA. One letter expressed opposition to the proposed changes to the Coastal Barrier Resources Act (CBRA) which relates to the DOI action and not FEMA's proposed rule. The second letter expressed opposition to the FEMA rule because of the effect it might have on areas not yet within the CBRS but which might be added by amendments to CBRA.

The concerns of this second letter will be addressed. The first item of concern to the writer was the San Luis Pass—Vacek bridge at the western end of Galveston Island. Neither end of the bridge is currently in a unit of the CBRS. However, one of the new units (TX-08) discussed as a posssible addition in the Draft Report to Congress would include the bridge. The writer states that disaster assistance may not be available for the existing bridge and would not be available for a substantially improved bridge. The concern relates to the provision in the regulation that publicly owned or operated facilities that are not essential links in a larger network or system must have been built or under construction prior to October 18, 1982, and not substantially improved after that date, to be eligible for disaster assistance. For the bridge to be affected at all, Congress must pass legislation adding unit TX-08 to the CBRS. If that happens, the enactment date of the new legislation would be the effective date for the provision mentioned above. As a result of this comment, a change was made to the definition of "existing facility" and "new financial assistance" to make it clear that this restriction for facilities on any new units of CBRS would only begin on the date the units were added to the CBRS. Thus, the existing bridge and any substantial improvement started before the inclusion of unit TX-08 in the CBRS would not be automatically prohibited from receiving FEMA assistance. The bridge repair would be reviewed for consistency with the purposes of CBRA as part of the consultation process, and could be found eligible for FEMA disaster assistance.

There is another situation which would decrease the likelihood that the repair or replacement of the bridge would be ineligible for assistance. If the bridge is determined by FEMA to be an essential link in a larger network or system, then it does not have to be reviewed for consistency with the purposes of CBRA. The date of the facility's initial construction or substantial improvement has no bearing on eligibility of an "essential link" for assistance.

The letter also stated that a local government would be unable to take over new subdivision roads because disaster assistance would not be available for new facilities built on units of the current CBRS. However, the eligibility for assistance of any new roads on future CBRS units would depend on when the roads were built and when the new legislation was passed. The lack of availability of disaster assistance should not prevent local governments from building or accepting new facilities. It simply means that the local government and its citizens, rather than the Federal government, will have to accept the risks and consequences of building on these unstable coastal barriers.

The last point of the letter concerns proposed development which may have been in the planning stages for several years. It is true that facilities in these developments would not be eligible for disaster assistance if they were built after October 18, 1982, for the current CBRS or the enactment date of new legislation for any new CBRS units. Essential links in a larger network or system of course, are exempt from this restriction. FEMA believes that it would not be consistent with the intent of CBRA to encourage developement after the date that Congress determined an area should be within CBRS. Therefore, disaster assistance has been restricted as noted above.

A comment was also made concerning the maps which would be used to determine whether a facility was in the CBRS. Although the FEMA Flood Insurance Rate Maps (FIRM's) have the CBRS noted on them, the official designation of the CBRS is on the maps published and distributed by the Department of Interior. A change to the regulation was made to reflect this difference.

Environmental Considerations

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and the implementing regulations of the Council on Environmental Quality (40 CFR Parts 1500-1508), FEMA has prepared an environmental assessment of the issuance by FEMA of the regulations for the implementation of the Coastal Barrier Resources Act.

It has been determined that there will be no significant impact on the

environment caused by FEMA's issuance of this regulation to implement the Coastal Barrier Resources Act (44 CFR Part 205, Subpart N). On this basis an environmental impact statement will not be prepared.

Copies of the environmental assessment are available for inspection at: Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, D.C. 20472, Telephone (202) 287–0395.

Executive Order 12291, Federal Regulations

This rule is not a "major rule" within the context of Executive Order 12291. It will not have an annual effect on the economy of $100 million or more.

The rule will not have a significant economic impact on a substantial number of small entities, within the meaning of 5 USC 605 (the Regulatory Flexibility Act). Therefore, no regulatory analysis will be prepared.

This rule does not call for the collection of any information.

List of Subjects: 44 CFR Part 205:

Disaster assistance, Grant programs, Housing and community development.

PART 205—[AMENDED]

Accordingly, Chapter I of Title 44, Code of Federal Regulations is amended by adding a new Subpart N to Part 205 as follows:

Subpart N—Implementation of Coastal Barrier Resources Act

§ 205.501 Purpose of Subpart.
§ 205.502 Policy.
§ 205.503 Definitions.
§ 205.504 Scope.
§ 205.505 Limitations on Federal Expenditures.
§ 205.506 Exceptions.
§ 205.507 Applicability to Disaster Assistance.
§ 205.508 Requirements.
§ 205.509 Consultation.
§ 205.510 Consistency Determination.

Authority: 16 USC 3501, 3505; 42 USC 5201.

§ 205.501 Purpose of subpart.

This subpart implements the Coastal Barrier Resources Act (CBRA) (Pub. L. 97–348) as the Act applies to disaster relief granted to individuals and State and local governments under the Disaster Relief Act of 1974 (Pub. L. 93–288). CBRA prohibits new expenditures and new financial assistance within the Coastal Barrier Resources System (CBRS) for all but a few types of activities identified in CBRA. This subpart specifies what actions may and may not be carried out within the CBRS. It establishes procedures for compliance with CBRA in the administration of disaster assistance by FEMA.

§ 205.502 Policy.

It shall be the policy of FEMA to achieve the goals of CBRA in carrying out disaster relief on units of the Coastal Barrier Resources System. It is FEMA's intent that such actions be consistent with the purpose of CBRA to minimize the loss of human life, the wasteful expenditure of Federal revenues, and the damage to fish, wildlife and other natural resources associated with coastal barriers along the Altantic and Gulf coasts and to consider the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved under Pub. L. 93–288.

§ 205.503 Definitions.

Except as otherwise provided in this subpart, the definitions set forth in Part 205 of Subchapter D are applicable to this subject.

(a) "Consultation" means that process by which FEMA informs the Secretary of the Interior through his/her designated agent of FEMA proposed disaster assistance actions on a designated unit of the Coastal Barrier Resources System and by which the Secretary makes comments to FEMA about the appropriateness of that action. Approval by the Secretary is not required in order that an action be carried out.

(b) "Essential link" means that portion of a road, utility, or other facility originating outside of the system unit but providing access or service through the unit and for which no alterative route is reasonably available.

(c) "Existing facility" on a unit of the CBRS established by Pub. L. 97–348 means a publicly owned or operated facility on which the start of construction took place prior to October 18, 1982, and for which this fact can be adequately documented. In addition, a legally valid building permit or equivalent documentation, if required, must have been obtained for the construction prior to October 18, 1982. If a facility has been substantially improved or expanded since October 18, 1982, it is not an existing facility. For any other unit added to the CBRS by amendment to Pub. L. 97–348, the enactment date of such amendment is substituted for October 18, 1982, in this definition.

(d) "Expansion" means changing a facility to increase its capacity or size.

(e) "Facility" means "public facility" as defined in § 205.2(a)(16). This includes any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; and non-Federal-aid street, road, or highway; and any other public building, structure, or system, including those used for educational or recreational purposes or any park.

(f) "Financial assistance" means any form of Federal loan, grant guaranty, insurance, payment rebate, subsidy or any other form of direct or indirect Federal assistance.

(g) "New financial assistance" on a unit of the CBRS established by Pub. L. 97–348 means an approval by FEMA of a project application or other disaster assistance after October 18, 1982. For any other unit added to the CBRS by amendment to Pub. L. 97–348, the enactment date of such amendment is substituted for October 18, 1982, in this definition.

(h) "Start of construction" for a structure means the first placement of permanent construction such as the pouring of slabs or footings or any work beyond the stage of excavation. Permanent construction for a structure does not include land preparation such as clearing, grading, and filling, nor does it include excavation for a basement, footings, or piers. For a facility which is not a structure, start of construction means the first activity for permanent construction of a substantial part of the facility. Permanent construction for a facility does not include land preparation such as clearing and grubbing but would include grading and filling such as for a road.

(i) "Structure" means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a mobile home.

(j) "Substantial improvement" means any repair, reconstruction or other improvement of a structure or facility, that has been damaged in excess of, or the cost of which equals or exceeds, 50 percent of the market value of the structure or replacement cost of the facility (including all "public facilities" as defined in the Disaster Relief Act of 1974) either:

(1) Before the repair or improvement is started, or

(2) If the structure or facility has been damaged and is proposed to be restored, before the damage occurred. If a facility is a link in a larger system, the percentage of damage will be based on the relative cost of repairing the damaged facility to the replacement cost of that portion of the system which is operationally dependent on the facility. The term "substantial improvement" does not include any alteration of a structure or facility listed on the

National Register of Historic Places or a State Inventory of Historic Places.

(k) "System Unit" means any undeveloped coastal barrier, or combination of closely related undeveloped coastal barriers included within the Coastal Barrier Resources System as established by section 4 of the CBRA, or as modified by the Secretary in accordance with the Act.

§ 205.504 Scope.

(a) The limitations on disaster assistance as set forth in this subpart apply only to FEMA actions taken on a unit of the Coastal Barrier Resources System or any conduit to such unit, including but not limited to a bridge, causeway, utility, or similar facility.

(b) FEMA assistance having a social program orientation which is unrelated to development is not subject to the requirements of these regulations. This assistance includes:

(1) Individual and Family Grants that are not for acquisition or construction purposes;

(2) Crisis counseling;

(3) Legal assistance; and

(4) Disaster unemployment assistance.

§ 205.505 Limitations on Federal Expenditures.

Except as provided in §§ 205.506 and 205.507, no new expenditures or financial assistance may be made available under authority of Pub. L. 93–288 for any purpose within the Coastal Barrier Resources System, including but not limited to:

(a) Construction, reconstruction, replacement, repair or purchase of any structure, appurtenance, facility or related infrastructure;

(b) Construction, reconstruction, replacement, repair or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway to, any System unit; and

(c) Carrying out of any project to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area, except that such assistance and expenditures may be made available on units designated pursuant to section 4 on maps numbered S01 through S08 for purposes other than encouraging development and, in all units, in cases where an emergency threatens life, land, and property immediately adjacent to that unit.

§ 205.506 Exceptions.

The following types of disaster assistance actions are exceptions to the prohibitions of § 205.505.

(a) After consultation with the Secretary of the Interior, the FEMA Regional Director may make disaster assistance available within the CBRS for:

(1) Maintenance replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system;

(2) Repair of any facility necessary for the exploration, extraction, or transportation of energy resources which activity can be carried out only on, in, or adjacent to coastal water areas because the use or facility requires access to the coastal water body; and

(3) Maintenance of existing channel improvements and related structures, such as jetties, and including the disposal of dredge materials related to such improvements.

(b) After consultation with the Secretary of the Interior, the FEMA Regional Director may make disaster assistance available within the CBRS for the following types of actions, provided such assistance is consistent with the purposes of CBRA:

(1) Emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 305 and 306 of the Disaster Relief Act of 1974 and are limited to actions that are necessary to alleviate the emergency;

(2) Maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, strucutres, or facilities, except as provided below at § 205.508(c)(5);

(3) Repair and maintenance of air and water navigation aids and devices, and of access thereto;

(4) Repair of facilities for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications;

(5) Repair of facilities for the study, management, protection and enhancement of fish and wildlife resources and habitats, including but not limited to, acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects; and

(6) Repair of nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.

§ 205.507 Applicability to disaster assistance.

(a) *Emergency Assistance.* The Regional Director may approve assistance pursuant to sections 305 or 306 of Pub. L. 93–288 for emergency actions which are essential to the saving of lives and the protection of property and the public health and safety, are necessary to alleviate the emergency, and are in the public interest. Such actions include but are not limited to:

(1) Removal of debris from public property;

(2) Emergency protective measures to prevent loss of life, prevent damage to improved property and protect public health and safety;

(3) Emergency restoration of essential community services such as electricity, water or sewer;

(4) Restoration of access to private property;

(5) Provision of emergency shelter by means of providing emergency repair of utilities, provision of heat in the season requiring heat, provision of safe water supply, provision of minimal cooking facilities, or provision of access to a private residence;

(6) Relocation of individuals or property out of danger, such as moving a mobile home to an area outside of the CBRS (but disaster assistance funds may not be used to relocate facilities back into the CBRS);

(7) Minimal repairs to private owner-occupied primary residences to make them habitable;

(8) Housing eligible families in existing resources in the CBRS; and

(9) Mortgage and rental payment assistance.

(b) Permanent restoration assistance. Subject to the limitations set out below, the Regional Director may approve assistance for the repair, reconstruction, or replacement but not the expansion of publicly owned or operated facilities and certain private nonprofit facilities. Such actions, which are subject to these regulations, include but are not limited to the repair, reconstruction, or replacement of:

(1) Roads and bridges;

(2) Drainage structures, dams, levees;

(3) Buildings and equipment;

(4) Utilities (gas, electricity, water, etc.); and

(5) Park and recreational facilities.

§ 205.508 Requirements.

(a) *Location Determination.* For each disaster assistance action which is proposed on the Atlantic or Gulf Coasts the Regional Director shall:

(1) Review a proposed action's location to determine if the action is on or connected to the CBRS unit and thereby subject to these regulations. The appropriate Department of Interior map identifying units of the CBRS will be the

basis of such determination. The CBRS units are also identified on FEMA Flood Insurance Rate Maps (FIRM's) for the convenience of field personnel.

(2) If an action is determined *not* to be on or connected to a unit of the CBRS, no further requirements of these regulations need to be met, and the action may be processed under other applicable disaster assistance regulations.

(3) If an action is determined to be on or connected to a unit of the CBRS, it is subject to the consultation and consistency requirements of CBRA as prescribed in §§ 205.509 and 205.510.

(b) Emergency Disaster Assistance. For each emergency disaster assistance action listed in § 205.507(a), the Regional Director shall perform the required consultation. CBRA requires that the Agency consult with the Secretary of the Interior before taking any action on a System unit. The purpose of such consultation is to solicit advice on whether the action is or is not one which is permitted by Sec. 6 of CBRA and whether the action is or is not consistent with the purposes of the Act as defined in sec. 1 of CBRA.

(1) FEMA has conducted advance consultation with the Department of the Interior concerning such emergency actions. The result of the consultation is that the Secretary of the Interior through the Assistant Secretary for Fish and Wildlife and Parks has concurred that the emergency work listed in § 205.507(a) is consistent with the purposes of CBRA and may be approved by FEMA without additional consultation.

(2) *Notification.* As soon as practicable, the Regional Director will notify the designated Department of the Interior representative at the regional level of emergency projects that have been approved. Upon request from the Secretary of the Interior, the Associate Director, SLPS, or his or her designee will supply reports of all current emergency actions approved on CBRS units. Notification will contain the following information:

(i) Identification of the unit in the CBRS;

(ii) Description of work approved;

(iii) Amount of Federal funding; and

(iv) Additional measures required.

(c) *Permanent Restoration Assistance.* For each permanent restoration assistance action including but not limited to those listed in § 205.507(b), the Regional Director shall meet the requirements set out below.

(1) *Essential links.* For the repair or replacement of publicly owned or operated roads, structures or facilities which are essential links in a larger network or system:

(i) No facility may be expanded beyond its predisaster design.

(ii) Consultation in accordance with § 205.509 shall be accomplished.

(2) *Channel improvements.* For the repair of existing channels, related structures and the disposal of dredged materials:

(i) No channel or related structure may be repaired, reconstructed, or replaced unless funds were appropriated for the construction of such channel or structure before October 18, 1982;

(ii) Expansion of the channel or related structures beyond predisaster design is not permitted;

(ii) Consultation in accordance with § 205.509 shall be accomplished.

(3) *Energy Facilities.* For the repair of facilities necessary for the exploration, extraction or transportation of energy resources:

(i) No such facility may be repaired, reconstructed, or replaced unless such function can be carried out only in, on, or adjacent to a coastal water area because the use or facility requires access to the coastal water body;

(ii) Consultation in accordance with § 205.509 shall be accomplished.

(4) *Special-purpose facilities.* For the repair of facilities used for the study, management, protection or enhancement of fish and wildlife resources and habitats and related recreational projects; air and water navigation aids and devices and access thereto; and facilities used for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications; and, nonstructural facilities that are designed to mimic, enhance, or restore natural shoreline stabilization systems:

(i) Consultation in accordance with § 205.509 shall be accomplished;

(ii) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 205.510.

(5) *Other public facilities.* For the repair, reconstruction, or replacement of publicly owned or operated roads, structures, or facilities that do not fall within the categories identified in paragraphs (c) (1), (2), (3), or (4) of this section:

(i) No facility may be repaired, reconstructed, or replaced unless it is an "existing facility";

(ii) Expansion of the facility beyond its predisaster design is not permitted;

(iii) Consultation in accordance with § 205.509 shall be accomplished;

(iv) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 205.510.

(6) *Private nonprofit facilities.* For eligible private nonprofit facilities as defined in these regulations (44 CFR 205.70 et seq.) and of the type described in paragraphs (c) (1), (2), (3), or (4) of this section:

(i) Consultation in accordance with § 205.509 shall be accomplished.

(ii) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 205.510.

(7) *Grant-in-lieu.* A grant-in-lieu may not be made for a facility in the CBRS if such grant is to be combined with other funding, resulting in an expansion of the facility beyond the predisaster design. If a facility is exempt from the expansion prohibitions of CBRA by virtue of falling into one of the categories identified in paragraph (c) (1), (2), (3), or (4) of this section, then a grant-in-lieu for such facilities is not precluded.

(8) *Flexible funding.* A new or enlarged facility may not be constructed on a unit of the CBRS under the flexible funding provisions of section 402(f) or section 419 of Pub. L. 93–288 unless the facility is exempt from the expansion prohibition of CBRA by virtue of falling into one of the categories identified in paragraph (c) (1), (2), (3), or (4) of this section.

§ 205.509 Consultation.

As required by section 6 of CBRA, the FEMA Regional Director will consult with the designated representative of the Department of the Interior (DOI) at the regional level before approving any action involving permanent restoration of a facility or structure on or attached to a unit of the CBRS.

(a) The consultation shall be by written memorandum to the DOI representative and shall contain the following:

(1) Identification of the unit within the CBRS;

(2) Description of the facility and the proposed repair or replacement work; including identification of the facility as an exception under section 6 of CBRA; and full justification of its status as an exception;

(3) Amount of proposed Federal funding;

(4) Additional mitigation measures required; and

(5) A determination of the action's consistency with the purposes of CBRA, if required by these regulations, in accordance with § 205.510.

(b) Pursuant to FEMA understanding with DOI, the DOI representative will provide technical information and provide an opinion on whether or not the action meets the criteria for an exception, and on the consistency of the action with the purposes of CBRA when such consistency is required. DOI is expected to respond within 12 working days from the date of the FEMA request for consultation. If a response is not received within the time limit, the FEMA Regional Director shall contact the DOI representative to determine if the request for consultation was received in a timely manner. If it was not, an appropriate extension for response will be given. Otherwise, he or she may assume DOI concurrence and proceed with approval of the proposed action.

(c) For those cases in which the regional DOI representative believes that the proposed action should not be taken and the matter cannot be resolved at the regional level, the FEMA Regional Director will submit the issue to the FEMA Assistant Associate Director for Disaster Assistance Programs (DAP). In coordination with the Office of General Counsel (OGC), consultation will be accomplished at the FEMA National Office with the DOI consultation officer. The comments of the DOI consultation officer will be carefully considered before the Assistant Associate Director, DAP, determines whether or not to approve the proposed action.

§ 205.510 Consistency determinations.

Section 6(a)(6) requires that certain actions be consistent with the purposes of CBRA if they are to be carried out on a unit of the CBRS. The purpose of CBRA as stated in section 2(b) is to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with the coastal barriers along the Atlantic and Gulf coasts. For those actions where a consistency determination is required the FEMA Regional Director shall evaluate the action according to the following procedure, and it shall be included in the written request for consultation with DOI.

(a) *Impact Identification.* FEMA shall identify impacts of the following types that would result from the proposed action:

(1) Risks to human life;

(2) Risks of damage to the facility being repaired or replaced;

(3) Risks of damage to other facilities;

(4) Risks of damage to fish, wildlife, and other natural resources;

(5) Condition of existing development served by the facility and the degree to which its redevelopment would be encouraged; and

(6) Encouragement of new development.

(b) *Mitigation.* FEMA shall modify actions by means of practicable mitigation measures to minimize adverse effects of the types listed in paragraph (a) of this section.

(c) *Conservation.* FEMA shall identify practicable measures that can be incorporated into the proposed action and will conserve natural and wild life resources. The Regional Director may require such measures at the expense of the applicant if they are not otherwise eligible for FEMA funding.

(d) *Finding.* For those actions required to be consistent with the purposes of CBRA, the above evaluation must result in a finding of consistency with CBRA by the Regional Director before funding may be approved for that action.

Dated: August 30, 1985.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-22626 Filed 9-20-85; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 150

[CGD 83-047]

Compatibility of Cargoes

Correction

In FR Doc. 85-19441 beginning on page 33037 in the issue of Friday, August 16, 1985, make the following corrections:

1. On page 33040, in TABLE I, first column, under "Chemical name", eighth line, remove the "l" before the word "citrate".

2. On the same page, second column, under "Chemical name", third and fourth lines from the bottom, remove the words "Dichlorophenoxyacetic acid".

3. On page 33042, third column, in TABLE II, under *"Unassigned Cargoes"*, eighth line, insert the word "oxide" after "Ethylene".

4. On page 33044, third column, under "34. *Esters*", twenty-third line, remove the asterisk (*) after "Dimethyl polysiloxane".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73, 74, 76 and 78

Oversight of the Radio and TV Broadcast Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order updates and corrects the alphabetical indexes in 47 CFR Parts 73, 74, 76 and 78.

EFFECTIVE DATE: September 23, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Steve Crane, Policy and Rules Division, Mass Media Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 73

Radio broadcasting, Television.

47 CFR Part 74

Radio, Television.

47 CFR Part 76

Cable television.

47 CFR Part 78

Cable television.

Order

In the matter of oversight of the Radio and TV Broadcast Rules.

Adopted: September 11, 1985.
Released: September 18, 1985.

By the Chief, Mass Media Bureau.

1. In this Order, the Commission corrects, updates and adds listings to the Alphabetical Indices to Parts 73, 74, 76 and 78 of its rules. 47 CFR Parts 73, 74, 76 and 78.

2. Our experience in alphabetically indexing the broadcast rules clearly indicates that this data makes possible the location of regulations quickly and easily. This fast access has brought about a better understanding of our rules by broadcasters and practitioners as a result of the rules' ready availability. We also perceive that providing easy access to the rules has reduced considerably the number of letters and phone calls to the FCC requesting help in rule location, thereby minimizing paperwork and administrative workload on the FCC staff, broadcasters and their legal and engineering advisors.

3. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by

licensees or the public. We conclude, for the reasons set forth above, that these revisions to Parts 73, 74, 76 and 78 will serve the public interest.

4. These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B).

5. Since general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

6. Therefore, it is ordered, that pursuant to sections 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and §§ 0.61 and 0.283 of the Commission's Rules, Parts 73, 74, 76 and 78 of the FCC Rules and Regulations are Amended as set forth in the attached appendices, effective on the date of publication in the **Federal Register**.

7. For further information on this Order, contact Steve Crane, Mass Media Bureau, (202) 632-5414.

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

PART 73—[AMENDED]

Appendix A

47 CFR Part 73 is amended as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. The alphabetical index for Part 73 is revised and updated and placed at the end of Part 73 to read as follows:

Alphabetical Index—Part 73

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Appendix B

PART 74—[AMENDED]

47 CFR Part 74 is amended as follows:

1. The authority citation for Part 74 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. The alphabetical index in 47 CFR Part 74 is revised and updated and located at the end of Part 74 to read as follows:

Alphabetical Index—Part 74

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Appendix C

PART 76—[AMENDED]

47 CFR Part 76 is amended as follows:

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. The alphabetical index for Part 76 is revised and updated and placed at the end of Part 76 to read as follows:

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Appendix D

PART 78—[AMENDED]

47 CFR Part 78 is amended as follows:

1. The authority citation for Part 78 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. The alphabetical index in 47 CFR Part 78 is revised and updated and located at the end of Part 78 to read as follows:

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[FR Doc. 85-22692 Filed 9-20-85; 8:45 am]
BILLING CODE 4712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 31012-199]

Atlantic Tuna Fisheries; General Category Closure

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of General category closure.

SUMMARY: NOAA issues this notice to close the fishery for Atlantic bluefin tuna conducted by vessels permitted in the General category in the regulatory area. Closure of this fishery is necessary because the adjusted annual catch quota of 689 short tons (st) will be attained by the effective date. Vessels permitted in the General category may continue to fish for a special 50 st quota in the special regulatory area west of a straight line originating on the southern shore of Long Island at 72°50′ W. longitude and running SSE 150° true. The intent of this action is to insure that the overall U.S. quota for Atlantic bluefin tuna in the Western Atlantic Ocean will not be exceeded.

EFFECTIVE DATES: The General category fishery is closed 0001 hours Eastern Daylight Time (EDT) September 23, 1985, through December 31, 1985, except that vessels in the General category may continue to fish for the 50 st allocation for that area west of a straight line originating at a point on the southern shore of Long Island at 72°50′ W. longtitude and running SSE 150° true.

FOR FURTHER INFORMATION CONTACT: William C. Jerome, Jr. 617-281-3600, extension 325, or David S. Crestin, 617-281-3600, extension 253.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971-971h) regulating the take of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisidiction were published in the **Federal Register** on June 17, 1983 (48 FR 27745). They were amended by rules published in the **Federal Register** on July 24, 1984 (49 FR 29796).

The Assistant Administrator is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the total catch of Atlantic bluefin tuna will equal any quota under § 285.22. The Assistant Administrator, further, is authorized under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by the type of vessels subject to the quotas.

The Assistant Administrator has determined, based on the reported catch of giant Atlantic bluefin tuna, that the annual quota of 689 st, as adjusted on September 23, 1985, of giant Atlantic bluefin tuna available to vessels permitted in the General category has been attained. Therefore, fishing for, and retention of, giant Atlantic bluefin tuna by vessels in the General category must cease at 0001 hours EDT on the effective date given above: Except that vessels in the General category may continue to fish for the 50 st allocation for that area west of a straight line originating on the southern shore of Long Island at 72°50′ W. longitude (approximately the town of Moriches) and running SSE 150° true.

Notice of these actions has been mailed to all Atlantic bluefin tuna dealers and vessel owners holding a valid vessel permit for this fishery.

Other Matters

This action is taken under the authority spcified at 50 CFR 285.20(b)(1) and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 285

Administrative practice and procedure, Fish, Fisheries, Fishing, Imports, International operations, Penalties, Reporting and recordkeeping requirements.

(16 U.S.C. 971 *et seq.*)

Dated: September 18, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-22653 Filed 9-18-85; 1:02 pm]
BILLING CODE 3510-22-M

50 CFR Part 642

[Docket No. 21021-216]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic

AGENCY: National Marine Fisheries Services (NMFS), NOAA, Commerce.

ACTION: Final rule, technical amendment.

SUMMARY: NOAA issues this final rule implementing a technical amendment to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic (FMP). In § 642.25, the terms "field order" and "order" are replaced by "notice in the **Federal Register**" and "notice", respectively. The intent is to remove inappropriate language from the implementing regulations.

EFFECTIVE DATE: September 13, 1985.

FOR FURTHER INFORMATION CONTACT: William B. Jackson, Fisheries Management Office, 202-634-7432.

SUPPLEMENTARY INFORMATION: NOAA published a final rule on February 4, 1983 (48 FR 5270) implementing the FMP for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and the South Atlantic. NOAA has determined that the use of the terms "field order" and "order" at § 642.26 are not appropriate descriptors of how preseason and inseason actions are reported to the public through notice in the **Federal Register.** Therefore, "notice in the **Federal Register.**" and "notice" are inserted in § 642.26 wherever "field order" and "order" appear, respectively.

List of Subject in 50 CFR Part 642

Fisheries.

Dated: September 13, 1985.

William G. Gordon,

Assistant Administrator For Fisheries, National Marine Fisheries Service.

PART 642—[AMENDED]

For the reasons set forth in the preamble, 50 CFR Part 642 is amended as follows:

1. The authority for Part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 642.26 [Amended]

2. Section 642.26 is amended by removing the term "field order" and inserting the term "notice in the **Federal Register**" in the titles of paragraphs (a) and (c) and within paragraphs (a), (b), (c) (1) and (2), (3)(ii) (A) and (B), (4) and (5) and removing the term "order" and inserting the term "notice" in paragraph (c)(3).

[FR Doc. 85-22649 Filed 9-20-85; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 184
Monday, September 23, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 323 and 399

[Docket No. 43403; Notice No. 85-12]

Limited-Entry Markets; Certificate Duration, Notice Requirements for Carriers Leaving During a Selection Case, and Procedures and Criteria for Selecting Carriers

AGENCY: Department of Transportation.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The Department of Transportation is proposing that all certificates awarded to U.S. air carriers on limited-entry routes be issued for five-year periods and be experimental certificates issued under section 401(d)(8) of the Federal Aviation Act. This proposal would not affect existing permanent certificates. This proposal would establish by rule what has been the practice for the past five years. The Department also is proposing to require any air carrier operating under an exemption in a limited-entry market which is the subject of a carrier selection proceeding to file a notice with the Department at least 90 days before it terminates service in that market. The purpose of this proposed rule is to prevent or minimize service gaps in those international markets where the exemption carrier loses the selection case and wants to leave the market before the selected carrier enters that market. Finally, the Department is requesting comments on the criteria used by the Civil Aeronautics Board (Board or CAB) in carrier selection cases as well as on its practice of varying the weight accorded each criterion depending on each case's particular circumstances. The Department has adopted these Board practices but would like interested persons to have the opportunity to comment on them. Any changes from the existing criteria will be implemented on a case-by-case, rather then rulemaking, basis.

DATE: Comments on the proposal must be received on or before November 7, 1985.

ADDRESS: Comments on the proposal may be mailed in duplicate to Docket Clerk, Room 4107, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, or delivered in duplicate to Room 4107, 400 Seventh Street, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter M. Bloch, Office of the Assistant General Counsel for International Law (202) 472-5621, or Robert Goldner, Office of the Assistant Secretary for Policy and International Affairs, Proceedings Division (202) 426-2912.

SUPPLEMENTARY INFORMATION:

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act of 1980

This action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, this rule will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, a regulatory impact analysis is not required.

These regulations would primarily adopt former CAB practices on carrier selection and certification which the Department has reviewed and tentatively decided to adopt. The notice requirement should impose little additional cost to the carriers. The situation which this rule is meant to address occurs very infrequently and the amount of time that a carrier would be involuntarily kept in the market would be minimal. Consequently, we believe it to be very unlikely that this rule will impose an economic hardship on any carrier. This regulation is significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it involves important Departmental policies and is of unusual public interest. Because its economic impact should be minimal, however, a full regulatory evaluation is not required.

I certify that this rule will not have a significant economic impact on a substantial number of small entities. Most international air transportation is provided by large air carriers and, as noted above, there will be little economic impact on any carrier.

This regulation does not significantly affect the environment. An environmental impact statement is not required under the National Environmental Policy Act of 1969.

The collection of information requirements in this notice are being submitted to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980. A notice will be published in the Federal Register when those requirements are approved by OMB. The notice will incorporate the OMB approval numbers into the regulations.

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on the two proposed rules and on carrier selection criteria. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. The comments should carry the docket number and be submitted in duplicate to the address above. Requests for comments on specific matters are discussed below.

Comments on the proposed notice requirement also should be submitted to Sam Fairchild, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

All comments received as well as a report summarizing any substantive public contact with Department of Transportation personnel on this rulemaking will be filed in the docket. The docket will be available for public inspection in Room 4107 on weekdays between 9:00 a.m. and 5:00 p.m. both before and after the closing date for making comments.

Before taking any final action on this proposal, the Assistant Secretary for Policy and International Affairs will consider the comments made on or before November 7, 1985, and the proposal may be changed in light of the comments received. The Department is allowing only 45 days for comments on this NPRM because air carriers must begin filing renewal applications for a large number of international routes on September 26, 1985. A large number of renewal applications are due on various dates between September 26, 1985 and April 1, 1986. This shortened comment period followed by the expeditious issuance of a final rule will allow the rule to issue before most of these applications must be filed. The results of this rulemaking will assist incumbents in structuring their renewal applications and other carriers in deciding whether they wish to file competing applications.

The Department will acknowledge receipt of a comment if the commenter includes a self-addressed, stamped postcard with the comment. The postcard should be marked "Comments to Docket No. 43403." When the comment is received by the Department, the postcard will be dated, time stamped, and returned to the commenter.

Availability of the NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Department of Transportation, Office of the Secretary, Documentary Services Division [C–55], 400 Seventh Street, SW., Washington, DC 20590, or by calling (202) 426–7634. Communications must identify the docket number of the NPRM wanted.

I. Certificate Duration

The United States' bilateral aviation arrangements with a foreign country govern whether the air routes between the U.S. and that country are open to any number of U.S. carriers or only to a limited number. In open-entry routes, there are no governmentally-established limits on the number of U.S. carriers that may operate. In limited-entry routes, which are the subject of this rulemaking, the bilateral arrangements typically permit only one or two U.S. carriers to operate.

Before the passage of the Airline Deregulation Act of 1978, Pub. L. 95–504 (ADA), carriers were generally awarded permanent certificates for international routes. However, in certain limited-entry markets, including most of the transatlantic markets, carriers received temporary certificates; The Civil Aeronautics Board (Board) chose not to grant much permanent transatlantic authority because it wanted to retain the ability to respond to changes in market conditions or the international situation. *See, Transatlantic Route Proceeding,* Order 78–1–118.

Before the ADA, certificates for scheduled authority could be awarded only under sections 401(d)(1) and (d)(2) of the Federal Aviation Act, governing permanent and temporary certificates, respecitvely. A carrier would be issued a certificate if the proposed transportation was found to be required by the public convenience and necessity.[1]

The ADA gave the Board a significant new option for limited-entry routes. It added a new section 401(d)(8) to the Federal Aviation Act. The provision empowered the Board—and empowers the Department—to grant an experimental certificate under sections 401(d)(1) and (d)(2) upon determining that a test period is desirable, either to see if projected results will materialize and remain over time or to evaluate or assess the effects of new services.

Section 401(d)(8) also provides that an experimental certificate may later be revoked if the carrier fails to provide the innovative or low-priced air transportation it was selected to provide. This supplements provisions already in section 401(g) for deleting or suspending a certificate if the public convenience and necessity so require and for revoking a certificate for violating the Act or the Board's—and now the Department's—rules or orders. Section 401(g) was amended by IATCA to add section 401(g)(3), permitting suspension or revocation of an incumbent's authority without a hearing for failure to provide regularly scheduled service to the point at issue for 90 days.

After the ADA, although the Board continued to award permanent authority under subsection 401(d)(1) for open-entry markets, it began to grant three-year temporary, experimental certificates in limited-entry markets. *See Spokane-Vancouver Route Proceeding,* Order 80–3–170. The Board anticipated deciding *de novo* what carriers should serve the routes when these certificates expired. It would not entertain replacement applications before an incumbent had had a reasonable opportunity to inaugurate service and establish itself in the market. In late 1981, beginning with the *New Gateways to Brazil Case,* Order 81–11–137, the Board began granting five-year experimental awards for limited-entry routes. The Board was concerned that three years might not be enough time for a carrier to establish itself on a route and realize a return on its investment. The Board continued to award five-year experimental certificates for the balance of its existence.

On September 3, 1982, Congress extended for two years the terms of all temporary certificates issued under section 401(d)(8), as well as those of certificates awarded in the *Transatlantic Route Proceeding* and the *California/Southwest—Western Mexico Route Proceeding.*[2] Finally, in anticipation of the Board's sunset, the Department asked the Board to extend the expiration dates of most international route certificates scheduled to expire between January 1, 1985, and January 15, 1986. The Board responded by issuing Order 84–8–107, served August 27, 1984, directing all intersted persons to show cause why these certificates should not be extended for 12 to 14 months. Order 84–8–107's tentative conclusions were finalized by Order 85–1–1. By this action, the Board sought to facilitate the orderly transfer of its carrier selection function to the Department and to allow us to establish our own procedures for carrier selection before beginning to process applications.

Summary of Comments on Certificate Duration

The issue of certificate duration has been examined twice in the past three years. First, in July 1982, the Civil Aeronautics Board issued an Advance Notice of Proposed Rulemaking (PSDR–78, Docket 40832) on the duration of the experimental certificates awarded to US. carriers for limited-designation international markets.[3] The Board asked for comments on whether it should continue to award five-year temporary, experimental certificates; whether there should be a rebuttable presumption of renewal for temporary certificates issued under sections 401(d)(2) or (d)(8) of the Federal Aviation Act; whether the Board should issue indefinite experimental certificates and adopt an effective mechanism for repacing ("bumping") incumbents whose

[1] The ADA Changed "required by" to "consistent with" for domestic route authority; the International Air Transportation Competition Act of 1979; Pub. L. 96–192 (IATCA) applied the new language to international route authority.

[2] Airport and Airway Improvement Act of 1982, section 531, Pub. L. 97–248, 96 Stat. 671, 701 (1982) (Title V, Tax Equity and Fiscal Responsibility Act of 1982, 96 Stat. 324).

[3] The Board noted a letter it had received from Senators Kassebaum and Cannon advocating that all temporary certificates be converted to indefinite certificates.

performance is unsatisfactory; what criteria should be used to develop either a rebuttable presumption or a replacement mechanism; and whether any changes the Board might adopt should be made retroactive to existing certificates.

The Board's ANPRM elicited responses from eleven air carriers and two communities. Republic, USAir, Trans World Airways, and United endorsed changing to a policy of awarding indefinite experimental certificates; Transamerica also endorsed such a change provided that an effective bumping mechanism were implemented contemporaneously. Frontier, Pan American, Houston, and Puerto Rico supported the existing practice of awarding five-year certificates. In two other responses, Northwest proposed changing to permanent certificates issued under section 401(d)(1), and Delta suggested that five-year experimental certificates be granted initially but that permanent authority be granted to an incumbent if its temporary certificate was renewed.

Certificate duration was also the subject of hearings held on May 31, 1984, by the Aviation Subcommittee of the House Committee on Public Works and Transportation. Legislation had been proposed to convert all temporary certificates to certificates of indefinite duration which could be altered or revoked only if required by the public convenience and necessity. Six carriers testified in support of the legislation: Trans World, Pan American, Northwest, World, Delta, and Eastern. Testifying in opposition were People Express, American, Transamerica, Federal Express, Northeastern International, the Aviation Consumer Action Project, and the Civil Aeronautics Board. The Department of Transportation opposed the legislation on procedural grounds, arguing that this question should instead be addressed in a rulemaking proceeding.

The views expressed in these two proceedings have served as the bases for the tentative conclusions set forth in this rulemaking and are summarized below.

1. Comments Supporting Indefinite Experimental Certificates

First, the proponents argue, indefinite certificates would both encourage and enable carriers to expend sufficient resources to develop their routes properly. Freed of the imminent burden of renewal proceedings and the attendant risk to their authority, some carriers claim, they would find it easier to attract capital, recoup their high start-up costs, gain footholds in their markets, and thereby succeed over the long term. Second, the renewal proceedings that temporary certificates make necessary even when an incumbent has performed satisfactorily consume much valuable time and money while accomplishing an affirmative good. Although routes have not been lost in these proceedings, these routes have been costly to defend—TWA claims, for example, that it spent $500,000 in legal fees on the last transatlantic route case at the Board, a case in which no carrier lost authority. Moreover, not only are these expenses grossly excessive, but, proponents argue, they put U.S. carriers at a disadvantage vis-a-vis their foreign flag competitors, since the latter enjoy permanent authority. Finally, it is argued, renewal proceedings unduly protect inefficient incumbents because there is little chance that a selection proceeding will be instituted prior to the expiration of a temporary certificate, regardless of how poorly the incumbent is serving the market.

Temporary certificates also hurt incumbents, it is claimed, by constraining them from rasing their fares while renewal procedures are pending, even when economic circumstances would warrant such action. They also result in an unfair anomaly: sometimes, in the same market, one carrier holds permanent authority while another carrier holds authority that is temporary. The latter has the burden and expense of having to defend its authority periodically, while the former does not.

In defense of indefinite experimental certificates, carriers claim that they would not harm new entrants unduly because most international routes are open to entry by all comers. Moreover, such indefinite certificates would not prevent the government from replacing an incumbent that was performing unsatisfactorily—the Federal Aviation Act makes ample provision for revocation of route authority and for suspension of fares.

This last point notwithstanding, proponents of indefinite experimental certificates did make suggestions for a bumping mechanism to replace ineffective incumbents. Some support a full oral evidentiary proceeding in which the challenger bears the burden of showing good cause and the incumbent has ample opportunity to explain how the lower level of service of higher fares it is offering actually serve the market's needs. One favors selecting the procedures *ad hoc* as each particular case arises. The challenger's burden would be to show not only defects in the incumbent's performance but also how it would make a significant improvement and, specifically, how it would overcome the problems the incumbent faced. One carrier suggested that a challenge be allowed only when the incumbent has suspended service or is not offering the fares or service it initially proposed. Failure to maintain proposed capacity might also be grounds for revocation if capactiy was a basis for the incumbent's original selection. All agree that a challenge should be denied if the incumbent has been offering fares and service reasonably consistent with its proposal or has given valid reasons why it has not.

2. Comments Supporting Temporary Experimental Certificates

The case for temporary experimental certificates rests largely on the public interest in simulating free market competition in limited-designation routes to as great a degree as possible. Proponents claim that the threat of losing authority for the route in a renewal proceeding works to keep an incumbent's fare and service offerings competitive in much the same way that the threat of potential entry works in domestic markets. As a corollary, the certainty of renewal procedures also preserves opportunities for potential new entrants, many of whom will not have existed when temporary authority for any particular market was first granted. Some proponents of temporary experimental certificates do not trust replacement procedures, which the Civil Aeronautics Board never used. They maintain that changing to policy of awarding indefinite experimental certificates would create tremendous barriers to entry into limited-designation markets, an undesirable result because new carrier entry has greatly stimulated pricing and service innovations. Other temporary experimental certificate proponents have different apprehensions: that with indefinite experimental certificates, the constant threat of replacement proceedings at any given time would create instability and uncertainty, and that the need to guard against carriers' improper exploitation of their monopoly positions could well mean increased governmental interference.

They further argue that temporary certificates make it easier to replace a carrier that is no longer the best choice for the route due to subsequent events, for example, a significant change in its domestic route structure. These temporary certificates also limit carrier's ability to traffic in route authority. At least one proponent of temporary certificates believes that foreign governments would interpret a change

to indefinite certificates as tacit U.S. acceptance of the principle of limited designation, a result contrary to U.S. policies favoring open-entry competition in international markets.

Proponents deny that temporary experimental certificates discourage or hinder incumbents from investing the resources necessary to develop limited-designation markets or that they dampen carrier's enthusiasm in seeking authority for these routes. To the contrary—temporary certificates provide a greater developmental incentive than indefinite or permanent certificates could, because carriers with temporary authority know that they will have to perform well in order to retain their authority. Proponents also deny that renewal proceedings are necessarily costly or otherwise burdensome. Contrary to TWA's claim, former CAB Chairman Dan McKinnon testified at the House Aviation Subcommittee hearings that a carrier's cost for a constested renewal proceeding now ranges from $40,000 to $50,000. Nor need renewal proceedings be protracted or complicated: simplified, non-oral, show-cause proceedings can be used in the majority of cases. If anything, it is the incumbent that is most likely to ask for a hearing, not a challenger.

Also in defense of temporary certificates, proponents argue that incumbents' reduction of fares and expansion of service as expiration and renewal approach is an advantage, not a liability. It shows that the intended simulation of competitive market forces is actually succeeding. Finally, they assert that no convincing evidence that temporary certificates limit U.S. carriers' ability to compete with foreign flag carriers has been produced.

The issue of whether replacement proceedings should be allowed during a temporary certificate's term has also been addressed. One commenter suggested that replacement be allowed after one year if the incumbent's service level falls to or below half of what it proposed in its application, or if its fares rise by 25 percent or more. In any replacement proceeding, the incumbent's performance, the circumstances surrounding its service, and all challengers' proposals should be considered. Another commenter proposed that replacement proceedings not be allowed for the first two years of a route award unless the incumbent fails to adhere to its proposal, that bumping procedures be triggered when a challenger files a proposal, and that show-cause procedures be used.

Carrier proponents of temporary experimental certificates favor a strong rebuttable presumption of renewal: the incumbent should receive authority again unless its performance has been significantly inferior to what another willing operator might realistically be expected to provide. In one carrier's view, once a carrier has performed well under a temporary certificate, the rationale behind experimental certificates will have been served—*i.e.*, its actual performance will have matched its proposal. Such merit having been demonstrated once, there would be no need to test that carrier further. The community proponents of temporary certificates have different views on presumptions from those of the carriers. One submits that there should be no presumption in favor of an incumbent that has failed to adhere to its fare or service proposal unless such failure has been due to foreign government disapproval; in no case should the presumption be so strong that the incumbent does not have to show that it can and will offer the best fares and service in the future. Another opposes rebuttable presumptions altogether on the grounds that conflicts over their meanings would be inevitable.

DOT Proposal

On the basis of both the comments summarized above and our own analysis, we have tentatively decided to adopt the Board's practice of awarding five-year temporary experimental certificates under section 401(d)(8) of the Act for limited-entry routes. We request comments on this proposal as well as on any of the other options. To assist in the drafting of comments, we shall set forth our views of the pros and cons of each of the four options presented thus far; we also invite commenters to suggest (and substantiate) other options.

Five-Year Temporary Experimental Certificates

We tentatively believe that this option strikes the best balance between the incumbent's need for time to develop its market and recoup its investment, on the one hand, and the public interest in the incumbent's continued responsiveness to the market's needs, on the other. It also preserves opportunities for new entrants that otherwise would probably not exist, and it gives the Department the greatest flexibility available under the Act to respond to changed circumstances, when necessary. Finally, we consider it highly unlikely that this option will result in protracted or costly renewal proceedings when the incumbent is performing well.

We believe that temporary certificates work to keep incumbents responsive to market needs in much the same way that potential competition works for open-entry routes. The certainty of renewal proceedings acts as both a carrot and a stick: it encourages carriers to adhere to their fare and service proposals; it discourages complacency and exploitation of monopoly power.

In light of the evidence at hand, we also find merit in the suggestion that five years is enough time for a carrier to develop a route and realize a return on its investment. The Board's ANPRM expressly directed carriers to document their developmental costs and the time it had taken to recover them. We find it telling that no carrier provided any such data. Indeed, according to Delta, "5-years duration for a fixed-term certificate (when temporary certificates are employed) is a suitable benchmark for both market development and recovery of costs for that development." Comments at 5 and 6. The use of temporary certificates does not appear to have kept carriers from competing for route authority, and we have not yet seen any evidence that carriers have failed to expend the resources necessary to develop their new routes. While opponents argue that fixed-term certificates reduce a carrier's incentive to develop a market, it is at least as logical that five-year experimental certificates would increase development incentives by raising the spectre that the route will otherwise be lost.

Another critical advantage we see in awarding five-year temporary experimental certificates is that new entrants then have recurring opportunities to vie for limited-entry routes. We believe that these opportunities would be much less frequent were we to issue certificates of indefinite duration; new entrants would, as a practical matter, be virtually foreclosed if permanent certificates became the norm. Temporary certificates are thus more consistent with IATCA's pro-competitive policies than are any of the other available options.

Similarly, with regular review, the Department will have a clear opportunity to appraise each market's changing needs periodically and, with each appraisal, to pick the applicant best situated to meet those needs. This flexibility would be sacrificed were we to issue indefinite experimental certificates under section 401(d)(8) or permanent certificates under section 401(d)(1). With permanent certificates, the Department could replace an operating incumbent only under section 401(g)(1), which allows the Department to delete or suspend a certificate only if

such action is required by the public convenience and necessity.[4]

We would also lose much flexibility if we were to begin awarding experimental certificates of indefinite duration under section 401(d)(8). In addition to the section 401(g) standard described above, section 401(d)(8) empowers us to revoke the certificate of a carrier that has not performed according to its original proposal. While this would give us some additional flexibility, it would not allow us to replace a carrier in response to changing market conditions or the emergence of a more efficient carrier, unless the incumbent had deviated significantly from its proposal. With temporary certificates, in contrast, we have the opportunity to review a market every five years, determine how its needs have changed over that period, and select the applicant that can best meet those needs. Fare and service proposals cannot unfailingly anticipate events over which carriers have no control, and we believe that the public interest is better served by ensuring that each market's evolving needs will be reevaluated periodically.

As for claimed disadvantages to five-year certificates, we think that the carriers' fears of unnecessary, cumbersome, protracted, and costly renewal proceedings are overblown. We anticipate handling uncontested renewal applications through expedited paper proceedings. Even when an incumbent is challenged, oral evidentiary hearings need not necessarily follow; the Department is free in renewal cases to conduct paper proceedings under the simplified procedures of section 401(p) when circumstances warrant and there are no material facts in dispute. Also, in a proceeding heard by Administrative Law Judge, the judge may dispense with a hearing if he believes the written record sufficient to support a decision.

If a renewal case does go the hearing, it can be processed at a lower cost and in a shorter time than cases that were conducted before deregulation. Then, as there were no statutory deadlines, route cases could last years and often did. Now, as a result of the expedition imposed by statutory deadlines, route cases cost less to conduct. Former Chairman McKinnon contends that litigating a renewal case should cost no more than $40,000 to $50,000. People Express claims to have spent less than $50,000 to obtain its Newark-London route even with full oral evidentiary hearing procedures. Our own review of the Board's carrier selection decisions in the past six years reveals that route case hearing rarely go beyond two or three days and that issues are far more narrow than before deregulation. The *Transatlantic Route Proceeding*, in which TWA claims to have incurred legal costs of $500,000, had 60 days of hearings. Under the statutory deadlines for decision imposed by the ADA, such a case would be extremely unlikely.

In continuing to issue five-year temporary experimental certificates, we do not intend to automatically apply a rebuttable presumption in favor of the incumbent, regardless of the carrier's performance in the market. Rather, we intend to continue the Board's practice of using incumbency as a positive carrier selection criterion in those cases where the incumbent has performed satisfactorily. Where it has not, it will be accorded no incumbency advantage, and the case will be decided based on a *de novo* review of the applicants' proposals.

In such instances, we see no need to engage in a determination of fault, *i.e.*, attempting to determine why a carrier failed to provide the fares and service it orginally proposed and whether its actions were "justified" by the presence of factors over which it had no control. Such issues are very difficult, if not impossible, to resolve, and their inclusion would greatly increase the time and effort required to complete a renewal proceeding. The Board believed that a review which rewarded good service and penalized poor service would be an incentive to incumbents to serve their markets properly because their service would have a direct bearing on their chances for renewal. However, according an advantage to incumbents that perform well should provide sufficient incentive for incumbents to provide the service and fares required by the market without also having to examine why carriers failed to provide satisfactory service. While we might, where relevant, use an incumbent's past performance to evaluate the credibility of its renewal proposal, we do not anticipate using it as an independent factor to be weighed against it in a renewal proceeding. Its proposal will simply be compared on an equal footing with those of the other applicants, and the better proposal will be selected.

Indefinite Experimental Certificates

The primary advantage we see in indefinite experimental certificates is that renewal proceedings would not be conducted for any route where the incumbent had consistently met the market's needs and the route was not contested. With five-year temporary experimental certificates, however, there is not much practical difference: in such cases, the incumbent's authority can be renewed quickly and at little public or private cost.

A second advantage to indefinite experimental certificates is that they will allow the Department to take action against an incumbent when needed. It may thus offer a more expeditious means of replacing a poorly performing carrier. Another advantage advocated by the proponents of indefinite experimental certificaters is that carriers will be encouraged to expend greater resources to develop their markets because incumbents would not face the prospect of automatic review of their certificate authority every five years.

The critical disadvantage we perceive in indefinite certificates is that our ability to replace incumbents who are no longer best serving the public interest could be curtailed, because the legal standard for removing an operating incumbent is higher than for declining to renew an incumbent's temporary authority. Furthermore, incumbents would be freed from the simulated potential competition that fixed-term certificates now provide, and opportunities for new entrants would be foreclosed. (Even if many international routes are open to unlimited entry, still, many of the more lucrative routes are not.) Finally, notwithstanding the higher standard for removal of an incumbent, incumbents would be vulnerable to challenge and removal at any time, thereby creating far more potential instability and uncertainty than exist with five-year certificates.[5] This in turn would require far more regulatory oversight than the current approach does. Thus, while indefinite experimental certificate might obviate the need for some automatic renewal proceedings, we believe, on balance, that the public interest would be best served through a regular review of an incumbent carrier's performance in a limited-entry market.

Five-Year Temporary Experimental Certificate Converting To Permanent Certificates Upon Renewal

This option has all the disadvantages of indefinite experimental certificates after the incumbent's first five years: upon renewal, it would remove all the

[4] It also allows certificate revocation as a punitive measure for violations of the Act or Department rules or orders.

[5] Although a five-year temporary experimental certificate is subject to challenge at any time, challengers are more likely to make such a bid in the context of a renewal proceeding because the evidentiary burdern that they must meet is lower in a renewal case than in a mid-term challenge.

performance incentives temporary certificates provide. As we have already stated, we believe that continuing to simulate the threat of potential competition in limited-entry routes serves the public interest far better. Also, as with indefinite experimental certificates, we think that the carriers' interests in having route security and avoiding the costs of renewal proceedings are heavily outweighted by the public's interest in both competitive fare and service offerings and preserved opportunities for new entry.

Permanent Certificates

In permanent certificates, we see all the disadvantages that we noted above in connection with indefinite experimental certificates. We also see a further disadvantage: Unlike indefinite certificates, they do not allow for removal even for fully unjustified and unexplained failure to adhere to fare and service proposals or because of changed circumstances. They would thus give carriers much more freedom than they have now to provide inferior service, charge excessive fares, or otherwise exploit their positions as monopolists or oligopolists. We believe that these disadvantages to the public far outweight the advantages permanent certificates would bring to carriers: the highest available degree of route security, the freedom to fully develop routes, and no expenses for renewal or bumping proceedings.

II. Withdrawal From a Route by a Carrier With Exemption Authority Before the Replacement Carrier's Entry

The Department also solicits comments on a proposed rule to minimize service gaps in limited-entry international routes. A number of carrier selection cases involve routes in which no U.S. carrier is providing service. Often, one of the applicants will be authorized to serve the route by a *pendente lite* exemption, following a determination that interim U.S.-carrier service is in the public interest. If the exempted carrier is not subsequently selected for certificate authority, it is likely to leave the market before the selected carrier is in a position to inaugurate service. If it is the only U.S. carrier in the market, the disruption in service to the communities involved can be significant.

We are proposing a rule to require any carrier providing service under a *pendente lite* exemption on a route that is at issue in a carrier selection proceeding to notify the Department at least 90 days before it ceases to serve that route. The rule would allow the exempted carrier to terminate service earlier if the replacement carrier initiates service before the 90-day period expires. At present all carriers have an exemption under 14 CFR 323.8 relieving them of their section 401(j) obligation to file notice when terminating, reducing or suspending service in foreign air transportation.[6] This rulemaking will scale back that exemption only to the extent necessary to address this problem.

Even with this rule, gaps in service may still occur if the replacement carrier needs more than 90 days to initiate service or if the exempted carrier decides to leave the market after an adverse recommended decision of an Administrative Law Judge but before the Department's final decision. Nevertheless, we do not believe that imposing any greater constraint on exemption carriers is consistent with the Act. Our solution represents a compromise between that concern and the public interest in minimizing service disruptions.

III. Carrier Selection Procedures

Summary of Comments

In 1983, the Department examined the issue of carrier selection procedures in preparation for our succession to the Board's international aviation responsibilities. We conducted a seminar on March 2 and 3 on the future administration of these responsibilities; we also opened a docket on November 30 to receive public comment on this issue. In both, we sought to explore not only the Board's procedures but also possible alternatives, such as auctions or lotteries. We have summarized below the views on lotteries and auctions submitted to the docket and expressed at the seminar. (Docket and seminar comments on traditional carrier selection procedures are summarized in the Carrier Selection Criteria section below.)

On record as opposing both lotteries and auctions as means of awarding route authority are the following: the National Air Carrier Association, the Committee of Practitioners (a group of six aviation lawyers and one law professor), the Calgary Transportation Authority, the Edmonton Air Service Authority, the Air Transport Association (ATA), the Aviation Consumer Action Project (ACAP), the Air Line Pilots Association (ALPA), John Flynn (President of Flynn Air Transport Advisors), and George Martin, Jr.

The basic argument made by commenters against both lotteries and auctions is that the distribution of important international route rights should not be left either to the luck of the draw or to interested carriers' financial wherewithal. Moreover, the commenters argue that these routes should not be distributed without any regard to the traveling public's needs, to the benefits of new entry, to the applicants' existing route structures, to their relative strengths and abilities to provide the best service, to their safety records, to the effects of each applicant's selection on U.S.-flag interests, to the preferences of affected civic groups, or to the public interest generally—none of which could readily be considered if route authority were distributed by lotteries or auctions. Rather, say these commenters, the public interest demands that international route authority be distributed on the basis of reasoned decisions: each market's needs must be assessed, the applicants' relative strengths determined, and the advantages of the competing proposals ranked in light of all relevant circumstances.

The perceived advantages of lotteries are that they would achieve political insulation, lower the public and private cost of route authority distribution, and facilitate participation by new entrants and small carriers. Commenters argue that the inevitable randomness of lotteries, however, would frustrate the goal of having international routes served by the carriers that are the most effective competitors and the most responsive to consumers. To offset such randomness, it has been suggested, the Department could impose threshold fitness standards or other qualifying criteria. However, those opposing lotteries contend that this solution would greatly reduce any saving in cost because the application of threshold standards would require keeping much of the existing machinery. Moreover, any threshold standard might well be subject to varying interpretations and possible court challenge.

Distributing international route authority for any particular market by auction would, it is argued, also pose problems. First, competition both in the market at issue and in other, related markets might well suffer, depending on what other route authority the winner had already. Second, the richest carrier

[6] Although the Board issued a NPRM in 1982 (47 FR 35433) to limit this exemption by requiring an air carrier to give notice when it intends to terminate or suspend service to a foreign point, the Board terminated that rulemaking at the end of 1984 (50 FR 481), on the grounds that such notice was not necessary and discouraged carrier flexibility. The rule we are now proposing is for more narrow than the one terminated in 1984 and is directed at those few situations where there is a greater likelihood that a service disruption could occur.

would usually win. Third, either the winner would pass its cost on to the public via higher fares or, if it absorbed the cost itself, it would be weakened.

Two variations on the auction theme were proposed at the Department's seminar. Professor Ramchandran Jaikumar of Harvard University proposed that carriers be required to "bid" an average fare for a government-established level of service. The low bidder would win. It would retain its authority as long as it provided the prescribed level of service and did not increase its fares above those of the next lowest bidder. Three challenges would be allowed each year. Professor Jaikumar claimed that this method is fair, objective, economically efficient, and relatively inexpensive. It would provide political insulation, and it would allow carriers some flexibility to vary service and fares.

In a second proposal, Professor Charles R. Plott of the California Institute of Technology suggested that the Department measure each applicant's proposal in any particular case by weights assigned to the proposal's service and fare characteristics. It would then compare all the proposals using a benefit/service index. The winning carrier would be required to perform at the fare and service level proposed by the next lowest bidder. If the winner failed, then another round of bidding would ensue.

The seminar participants, including TWA, Air Florida, and Northwest among others, responded negatively to both proposals. Both were perceived as fostering too much turnover and providing too little assurance that the winner would have adequate time to develop any route. Carriers would have little incentive to invest; short-term profits would be emphasized unduly. Any profit, short-term or long, would be unlikely, as carriers would probably bid too low in order to win the routes. Frequent turnover, in turn, would cause consumers to lose confidence in U.S. carriers and thereby disadvantage the overall U.S.-flag position. Both proposals were also criticized for making no allowance for events outside a carrier's control that might force it to violate the terms of its award. They were further criticized as impracticable: even if service and fares could be reduced to formulas, which carriers doubt, weighing the different price and fare factors would prove unduly difficult, costly, and time-consuming.

DOT Proposal

Having reviewed the comments summarized above, we have decided against using lotteries or auctions to distribute authority for limited-entry routes. To insure that these valuable aviation rights, which the U.S. government has secured through bilateral negotiations, are utilized with the maximum benefit to the public, we must assign them in the most reasoned and rational way possible. Sections 401 and 102 of the Act direct us to select the carrier that will best serve the public interest. Historically, the carrier selection process has often entailed a complex analysis of a market's current characteristics, including consideration of developments in related markets, our bilateral relationships, and the U.S. government's own procompetitive policies. The Board developed a set of criteria for evaluating competing proposals in order to discharge the same responsibility that we now bear. We believe that to distribute these valuable aviation rights by chance or to the highest bidder would violate the Congressional directive that we consider specified public interest factors in determining the public convenience and necessity.

The possibility of establishing threshold standards does not render the general use of lotteries or auctions acceptable. What would be a fitting threshold for one particular market might not make sense for another; thus, establishing thresholds would entail much of the effort for each case that lotteries or auctions purport to eliminate. So, too, would applying these thresholds. In addition, both the creation and the application of threshold standards would inevitably foster confusion.

We also believe that the public interest would not be well served were we to adopt either Professor Jaikumar's proposal or that of Professor Plott. We agree with the carriers that both would probably foster excessive turnover and uncertainty; we also doubt that fares and services can be reduced to a formula. An additional problem we have with both proposals lies in their omission of factors other than proposed services and fares: the public interest rarely boils down to just these two concerns.

IV. Carrier Selection Criteria

The Department will continue the Board's practice of awarding limited-entry route authority by determining which of the applicants in any particular case will provide the maximum public benefits. We have decided to adhere for the most part to the Board's carrier selection procedures; we also propose to adopt both its selection criteria, which are enumerated below, and its practice of varying the weight accorded each criterion from case to case depending on each case's peculiar circumstances. The Board's *ad hoc* approach recognizes the inherently dynamic nature of international aviation and allows the decisionmaker the flexibility to respond to whatever conditions pertain at the time of any particular proceeding. We believe that the public interest requires that this flexibility be retained. For this reasons, we do not intend to adopt any rule or policy that would abstractly assign weights or rankings to any of the criteria without regard to the circumstances surrounding any particular route case.

We are aware, however, that the Board's method of selecting carriers has not met with universal approval. We have already received some comments on carrier selection criteria at our March, 1983 seminar, noted above. While several seminar participants voiced general support, others criticized the Board's decisions on such grounds as unpredictability and inconsistent application of standards.

We invite comments on our proposal to continue the Board's practice of using carrier selection criteria on an *ad hoc* basis. We also invite comments on the criteria themselves, both on the validity of existing criteria and on whether or not the public interest would be well served by using other criteria as well. Those who object to our proposal to continue the Board's practice should submit their alternative suggestions and explain how they would serve the public interest better than the Board's approach has done.

The Board's Carrier Selection Criteria

For open-entry markets, where there are no artificial constraints on entry, the market has been deemed to be the best judge of the carriers' proposals, and permissive authority of unlimited duration has been awarded to all fit applicants. For limited-entry markets, however, the Board had to select the applicant it judged likely to provide the most public benefits. It developed a number of criteria by which to evaluate and compare competing applications, according these criteria different weight depending on the circumstances of each individual case.

1. Market Structure

Consideration of *market structure*, a primary criterion, enhances our analysis of which carrier would be most likely to enhance competition either in the primary route or in a broader international market. This criterion derives from Congressional directives in the Act's policy statement to place

"maximum reliance on market forces" and to encourage the development of an air transportation system that relies on competition to "provide efficiency, innovation, and low prices."

A principal way that the Board sought to enhance structrual competit on on routes between the United States and any foreign nation was through *intergateway competition.* In limited-entry markets, there is no threat of potential competition to discipline pricing behavior, because the U.S. cannot add another carrier at will. As a substitute for the threat of potential entry, the Board attempted to foster fare and service competition among carriers serving the same foreign destination from different U.S. gateway cities. Thus, the Board attempted to choose a different carrier for each of those gateways that could draw on a common pool of behind-gateway traffic. These carriers would then have to compete among themselves for the common traffic pool; optimally, they might even compete for traffic originating at each other's gateways. If, on the other hand, one carrier held exclusive authority to serve two such gateways, it would be under far less pressure to offer competitive fares and services and would have little incentive to maintain nonstop service at both gateways.

Intergateway competition was a major factor in the Board's selection of American in the *Dallas/Fort Worth-London Case,* Order 83–3–42, and in its selection of Air Florida to serve Newark in the *U.S.-London Case (1982),* Order 82–4–64. This criterion also figured prominently in the Department's decision in the *Houston-London Case,* which rested on the traditional carrier selection criteria because the case had been tried before the Board's sunset and under traditional assumptions.

A second way that the Board attempted to enhance competition is through *intragateway competition,* or competition in routes where two or more U.S. carriers may operate. In selecting a second or third carrier, the Board often chose the applicant that it believed could be a strong competitor in the market. For example, it chose Air Florida in the *Miami-London (Gatwick) Case,* Order 81–1–15, because of its perceived ability to meet strenuous competition from the three carriers (Pan American, British Airways, and Laker) already serving the Miami-London market. Similarly, the Board's selection of People Express in the *Newark-London Back-Up Case,* Order 83–5–60, rested partly on the carrier's perceived ability to compete effectively with the carriers serving London from Kennedy Airport.

The Board also sought to promote *destination competition—i.e.,* competition between carriers operating from the same U.S. point to different resort markets that attract the same pool of travelers. In the *Chicago/Texas/Southeast-Western Mexico Route Proceeding,* Order 81–6–65, the Board picked Republic over United for the Chicago-Western Mexico route because United already served the Chicago-Yucatan (Mexico's east coast) market. The Board reasoned that a Chicago traveler's decision whether to go to a seaside resort in Western Mexico or one in the Yucatan would depend largely on how the price and service options for both compared. Selection of United would have created a monopoly on Chicago traffic to both Mexican coasts and would have therefore foreclosed competition between the two destinations. Similarly, in the *Dallas/Ft. Worth-Yucatan Service Proceeding,* Order 81–1–83, the Board selected TXI largely because it had no Dallas-Mexican resort area route authority and American, the other applicant, was the dominant carrier in the Dallas/Ft. Worth-Western Mexican resort markets.

Another way the Board sought to increase competition was through increasing the number of U.S. carriers operating to a particular country or region. Thus, one reason for Continental's selection in the *Central Zone-Caracas/Maracaibo, Venezuela Service Case,* Order 83–4–49, was that it was the only viable applicant not already providing certificated service in the U.S.-South America market. Injecting a new carrier was deemed most likely to enhance competition in this broader market.

2. Route Integration

The *route integration* criterion entails assessment of each applicant's ability to flow traffic over the primary route to and from points behind the U.S. gateway or beyond the foreign gateway. This ability has figured significantly in carrier selection because it bears on both the economic viability of a carrier's proposal and the benefits it might bring passengers outside of the primary market. It can also bear on the extent to which selection of a particular carrier will foster intergateway competition.

In the *Miami-London Service Case (Gatwick Phase),* Order 81–1–15, a principal reason for selecting Air Florida was its extensive on-line connecting service, which the Board concluded would offer far greater consumer benefits than World's limited single-plane service to three U.S. points. Route integration also figured prominently in some of the carrier selections made in the *Texas/Great Lakes-Eastern Canada Service Case,* Order 80–5–91. The Board considered Braniff and American to be the leading candidates for the Houston-Dallas/Ft. Worth-Toronto/Montreal route because their route strengths would give them a significant advantage in developing the thin Texas-Canada primary markets and in competing with Air Canada, which had superior beyond strength and identity on the Canadian side of the route. The Board selected Braniff because it would provide more single-plane service and more connecting opportunities. Route integration also played a significant role in the *Dallas/Ft. Worth-London Case,* Order 83–3–42. Most recently, in the *Miami-London Competitive Service Case* (another DOT case decided under the traditional criteria), the Department selected Eastern over World on the grounds that Eastern's feed strength at Miami would make it a stronger competitor in this traditionally feed-heavy route. In the already mentioned *Houston-London Case,* Continental's extensive feed at Houston weighed in its favor in terms of intergateway competition: the Department concluded that Continental was in a better position than Pan Am to develop Houston as a competitor to other London gateways such as Dallas or St. Louis.

Route integration has assumed great significance in cases when fare or service proposals are deemed unreliable or cannot satisfactorily be reconstructed and analyzed. (Fare and service proposals are themselves a selection criterion, as discussed below.) In the *Central Zone-Caracas/Maracaibo, Venezuela Service Case,* Order 81–3–29, the Board disregarded the applicants' fare proposals, which the Administrative Law Judge had characterized as based "upon virtually unsupported judgment guesses," and selected Braniff over American and Republic, in part because its route structure provided the best promise for eventual success. In the *Chicago/Texas/Southeast-Western Mexico Route Proceeding,* Order 81–6–65, the Board deemed all five applicants' fare and service proposals suspect because they rested on questionable traffic forecasts: the markets at issue had not had nonstop service before, so the forecasts were constructed from such data as hotel occupancy rates in other markets. The Board looked beyond the paper proposals to the applicants' relative abilities to compete effectively at Chicago, among other things. It selected Republic, in part because its route strength equaled United's in the relevant midwestern areas.

Route integration has also figured prominently in cases where fares and service are subject to external constraints. Where fares and primary market frequencies are for practical purposes predetermined, service benefits in beyond markets may nonetheless be achieved. Moreover, to the extent that primary market load factors are maximized, the likelihood of obtaining additional frequencies is enhanced. In the *Central Zone-Caracas/Maracaibo, Venezuela Service Case,* Order 81–3–29, the Board gave extra weight to route integration because it was uncertain whether the Venezuelan government would accept any of the carriers' proposals. It selected Braniff, in part because it has substantial on-line traffic support beyond all three principal Central Zone destinations, large connecting complexes at both Dallas/Ft. Worth and Houston, and a significant pattern of service at New Orleans. On the other hand, route integration has been less important for routes whose traffic is largely local. In case such as the *U.S.-London Case (1982),* Order 82–4–64, in which Air Florida was selected for the Newark-London Market, the carrier selected has had little or no behind or beyond feed.

3. Fare and Service Proposals

Applicants' fare and service proposals, to the extent they are credible, provide basic evidence on the public benefits to be had in selecting them—benefits such as low or innovative fares, high frequency and capacity, and a variety of service options, among others. How the applicants' proposals compare with one another can bear directly on which carrier will provide the greatest public benefits, again depending on their credibility. In some cases, this criterion has been decisional. In the *Seattle/Portland-Japan Service Investigation,* Order 78–10–42, for example, the Board chose United over four other carriers solely on the basis of its low fares and its service proposal. Similarly, in the *Yucatan Service Case,* Order 80–9–52, United received Chicago-Yucatan authority primarily because it proposed a lower and more comprehensive package of fare options and because its service proposal was superior.

As suggested above, a carriers' fare and service proposal can provide some basis for determining its commitment to serve the route and to offer low and innovative fares, especially if the proposal appears to be consistent with that carrier's previous performance and general marketing philosophy. (Conversely, a carrier's previous performance can bear negatively on its proposal's credibility.) The proposals and their underlying forecasts also indicate how the new route would integrate with each carrier's existing system and how much behind and beyond traffic each one might attract. (As noted above, route integration is itself a carrier selection criterion.)

Fare and service proposals, however, do pose certain problems. Comparing them can be difficult because carriers use different methodologies and assumptions in developing their traffic and financial forecasts. Also, depending on the validity of these methodologies and assumptions, the proposals themselves might be suspect. The Board addressed both problems by scrutinizing these forecasts carefully and, when necessary, adjusting them to conform to historically valid forecasting practices. It could then analyze each proposal's credibility and attempt to compare all of them on a common basis.

4. Incumbency

This criterion has come into play only in the context of renewal applications. The Board gave an incumbent's favorable performance positive weight in deciding whether or not to renew its authority; if the carrier had not performed favorably, incumbency conferred no advantage. Thus, in the *Yucatan Service Case,* Order 80–12–18, in renewing Eastern's New Orleans-Yucatan authority, the Board accorded its incumbency an advantage because it had adhered to the proposal for which it had initially been selected. As for Texas International's Houston-Yucatan authority, however, the carrier's incumbency did not weight in its favor, because its performance had fallen short of its proposal. The Board did consider whether Texas International had performed so unreasonably that its incumbency should be held against it, but it concluded that the carrier's actions did have some justification. It therefore accorded Texas International's incumbency no weight, positive or negative.[7]

5. Ability To Enter Quickly

The ability to enter a route quickly has occasionally played a role in carrier selection. Thus, in the *Dallas/Ft. Worth-Yucatan Service Proceeding,* Order 81–1–83, Texas International's ability to enter the Yucatan resort markets in time to exploit what remained of the peak season was given great weight.

[7] As noted on pp. 24–25, the Department intends to modify this approach.

6. Criteria Not Considered

In the era of deregulation, the Board expressly declined to consider certain factors in selecting carriers for limited-entry routes. These include a foreign government's possible response to particular fare or service proposals,[8] domestic hub dominance (unless excessive market poweer could be shown),[9] the diversionary effect a new entrant would have on the traffic and revenues of an incumbent,[10] the extent to which addition of the authority at issue would strengthen any applicant,[11] and applicants' relative economic efficiency.[12]

List of Subjects in 14 CFR Parts 323 and [illegible]

Administrative practice and procedure, Advertising, Air carriers, Antitrust, Archives and records, Consumer protection, Essential air service, Freight forwarders, Grant programs-Transportation, Hawaii, Motor carriers, Puerto Rico, Railroads, Reporting requirements, Travel agents, Virgin Islands.

Issued in Washington, D.C., on September 17, 1985.

Elizabeth Hanford Dole,

Secretary of Transportation.

In consideration of the foregoing, the Department of Transportation proposes to amend Parts 323 and 399 of its Regulations (14 CFR Parts 323 and 399) as follows:

PART 323—[AMENDED]

1. The authority citation for 14 CFR Part 323 would continue to read as follows.

Authority: 49 U.S.C. 1324, 1371, 1381 and 1389, unless otherwise noted.

2. By adding a new § 323.19 to read as follows:

[8] *See Central Zone-Caracas/Maracaibo, Venezuela Case,* Order 81–3–29; *Newark-London Back-up Case,* Order 83–5–60; and *Texas/Great Lakes-Eastern Canada Service Case,* Order 80–5–81. The Board preferred to address such issues in its instituting orders by giving less weight, in these cases, to fare and service proposals. *See, e.g., Central Zone-Caracas/Maracaibo, Venezuela Service Case,* Order 82–7–31.

[9] *See Dallas/Ft. Worth-London Case,* Order 83–3–42.

[10] *See U.S.-People's Republic of China Service Proceeding,* Order 83–4–42; *Alaska Bush Points Show-Cause Proceeding,* Order 80–6–148; and *Northeast Points-Puerto Rico/Virgin Islands Service Investigation,* Order 78–12–105.

[11] *See Spokane-Alberta Service Case,* Docket 41638 (Order sent to the President October 1, 1984, but later withdrawn because selected carrier chose not to serve).

[12] *See Transatlantic Route Proceeding,* Order 77–1–98, Appendix II, at 12. *See also* Orders 77–4–148 and 78–11–32.

§ 323.19 Withdrawal notice of exemption Carriers in Certain limited-entry markets.

An air carrier operating under exemption authority in a market which is the subject of a carrier selection proceeding shall file a notice with the Department at least ninety days before it terminates service in that market; provided, however, that such an air carrier may terminate its service on less than ninety days' notice once the air carrier chosen in the selection proceeding enters the market.

PART 399—[AMENDED]

3. The authority citation for 14 CFR Part 399 would continue to read as follows:

Authority: 49 U.S.C. 1301, 1302, 1305, 1324, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1381, 1382, 1384, 1386, 1461, 1482, 1502 and 1504, unless otherwise noted.

4. By amending Part 399 to add a new Subpart K consisting of § 399.120 to read as follows:

Subpart K—Policies Relating to Certificate Duration

§ 399.120 Duration of certificate in limited-entry markets.

All certificate authority that the Department grants to U.S. air carriers in carrier selection proceedings will be awarded in the form of experimental certificates of five years' duration pursuant to section 401(d)(8) of the Federal Aviation Act. This provision does not a later or amend permanent certificates issued prior to January 1, 1985.

[FR Doc. 85-22852 Filed 9-18-85; 1:00 p.m.]

BILLING CODE 4910-62-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9080]

Kaiser Aluminum & Chemical Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Dismissal Order.

SUMMARY: The Federal Trade Commission has dismissed a complaint that charged Kaiser Aluminum & Chemical Corp. substantially lessened competition in the basic refractories industry by acquiring two basic refractories plants from International Mineral and Chemical Corp.'s Lavino Division. After the Commission placed a consent agreement with respondent that would settle the charges on the public record for comment (50 FR 19697), Kaiser sold all of its basic refractories plants to other companies and indicated that it has no indication of remaining in the business. As a result, the Commission has determined that it is in the public interest to reject the consent agreement and dismiss the complaint.

DATE: Dismissal Order Issued August 27, 1985.

FOR FURTHER INFORMATION CONTACT: John V. Lacci, FTC/L-501-7, Washington, D.C. 20580. (202) 254-8644.

SUPPLEMENTARY INFORMATION: In the Matter of Kaiser Aluminum & Chemical Corporation, a corporation.

List of Subjects in 16 CFR Part 13

Basic refractories, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46, Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

In the matter of Kaiser Aluminum & Chemical Corporation, a corporation; Docket No. 9080.

Final Order Returning Matter To Adjudication and Dismissing Complaint

Commissioners: James C. Miller III, Chairman, Patricia P. Bailey, George W. Douglas, Terry Calvani, Mary L. Azcuenaga.

On September 25, 1984, this matter was withdrawn from adjudication for consideration by the Commission of a proposed consent agreement. The Commission accepted the proposed consent and placed it on the public record on May 8, 1985, for comment pursuant to § 3.25(f) of the Commission's Rules of Practice and Procedures.

Having considered the views of the parties to the consent and the comment received from the public, the Commission has determined that the public interest would best be served by rejecting the consent agreement and dismissing the complaint. In this instance, the respondent has transferred control of all of its operating refractories facilities in the United States to other entities and has stated that it has no intention of engaging in the refractories business. Such being the case, the public interest no longer requires that respondent be subject to a Commission order. Therefore

It is ordered, that this matter be returned to adjudication and

It is further ordered, that the complaint issued in the matter be, and it hereby is, dismissed.

By the Commission.

Issued: August 27, 1985.

Emily H. Rock,

Secretary.

[FR Doc. 85-22627 Filed 9-20-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. 84N-0375]

Obstetrical—Gynecological Devices; Premarket Approval of the Contraceptive Intrauterine Device (IUD) and Introducer

Correction

In FR Doc. 85-19725 beginning on page 33500 in the issue of Monday, August 19, 1985, make the following corrections:

1. On page 33504, in the first column, in the second complete paragraph, in the third line, "the in" should read "in the".

2. On page 33504, in the second column, in paragraph 13, in the second line, "with the IUCD" should read "with an IUCD".

3. Also on page 33504, in the third column, in paragraph 28, in the second line, "Infections" should read "Infection",

4. On page 33505, in the first column, in paragraph 45, in the first line, "Schnidt" should read "Schmidt".

5. On page 33505, in the second column, in paragraph 52, in the second line, "and" should read "an".

6. On page 33505, in the third column, in paragraph 2, "§ 84.5360" should read "§ 884.5360".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-85-16]

Drawbridge Operation Regulation; Teche Bayou, LA

AGENCY: U.S. Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD) and St. Mary Parish (SMP), the Coast Guard is considering a change to the regulations governing the operation of two state owned drawbridges and two parish owned drawbridges over Teche Bayou, St. Mary Parish, Louisiana, as follows:

(1) The swing span bridge, mile 27.0, at Baldwin (parish owned).

(2) The swing span bridge, mile 32.5, on LA324 at Charenton.

(3) The swing span bridge, mile 37.0 on LA670 at Adeline.

(4) The swing span bridge, mile 38.9 at Sorrel (parish owned).

The proposed change would require the draw of each bridge to open on at least four hours advance notice from 6 p.m. to 10 a.m. and to open on signal outside these hours. Presently, the draws are required to open on at least four hours advance notice from 9 p.m. to 5 a.m. and to open on signal at all other times.

This proposal to extend the advance notice period from eight to 16 hours (6 p.m. to 10 a.m.) is being made because of infrequent requests to open the draws during that period. This action should relieve the bridge owners of the burden of having persons constantly available at the four bridges in the period from 6 p.m. to 10 a.m., while still providing for the reasonable needs of navigation. The draws would continue to open on signal between 10 a.m. and 6 a.m.

DATE: Comments must be received on or before November 7, 1985.

ADDRESS: Comments should be mailed to Commander (obr), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130–3396. The comments and other material referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information

The drafters of this notice are Perry Haynes, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Proposed Regulation

Vertical clearances of the bridges in the closed position range from 4.0 to 7.0 feet above high water and 7.0 to 12.0 feet above low water. Navigation through the bridges consists of commercial and pleasure boats. Data submitted by the LDOTD and the SMP show that this traffic has steadily declined over the past three years for all four bridges, as reviewed below:

(1) *Baldwin bridge (mile 27.0).* For 1982, 83 and 84, total openings were 449, 411 and 299, respectively. During the proposed advance notice period of 6 p.m. to 10 a.m., for these same years, there were 215, 184 and 139 openings, respectively. The 139 openings in 1984 averaged 11.6 openings per month or one opening about every three days.

(2) *Charenton bridge (mile 32.5).* For 1982, 83 and 84, total opening were 543, 487 and 410, respectively. During the proposed advance notice period of 6 p.m. to 10 a.m., for these same years, there were 250, 218 and 215 openings, respectively. The 215 opeing in 1984 averaged 17.9 openings per month or three openings about every five days.

(3) *Adeline bridge (mile 37.0.* For 1982, 83 and 84, total openings were 507, 490 and 363, respectively. During the proposed advance notice period of 6 p.m. to 10 a.m., for these same years, there were 213, 202 and 169 openings, respectively. The 169 openings in 1984 averaged 14.1 openings per month or one opening about every two days.

(4) *Sorrel bridge (mile 38.9).* For 1982, 83 and 84, total openings were 550, 481 and 350 respectively. During the proposed advance notice period of 6 p.m. to 10 a.m., for these same years, there were 225, 205 and 164 openings, respectively. The 164 openings in 1984 averaged 13.7 openings per month or one opening about every two days.

Considering the few openings involved, the Coast Guard feels that the current on site attendence at the four bridges can be discontinued, during the proposed advance notice period from 6 p.m. to 10 a.m., and that the bridges can be placed on four hours advance notice for an opening during that period. This will provide relief to the bridge owners, while still providing for the reasonable needs of navigation. Outside this 16 hour period, the bridges would continue to open on signal.

The advance notice for opening the draws would be given by placing a collect call at any time to the LDOTD District Office at Lafayette, Louisiana, telephone (318) 233–7304, for state bridges; and to the SMP at Franklin, Louisiana, (318) 828–1960, for parish bridges. From afloat, this contact may be made by radiotelephone through a public coast station.

Both the LDOTD and SMP recognize that there may be an annual occasion to open the bridges on less than four hours notice for a bona fide emerency or to operate the bridges on demand for an isolated but temporary surge in waterway traffic, and have committed to doing so if such an event should occur.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that few vessels pass the bridges during the proposed advance notice period from 6 p.m. to 10 a.m., as evidenced by the 1982, 83 and 84 bridge openings which show a steady decline and average well below one opening per day for the period. These vessels can reasonably give four hours advance notice for a bridge opening by placing a collect call to the bridge owner at any time. The mariners requiring the bridge openings are repeat users of the waterway and scheduling their arrival at the bridge at the appointed time during the proposed advance notice period should involve little or no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 1.46(c)(5) and 33 CFR 1.05–1(g).

2. Section 117.501 is amended by revising paragraph (a) and paragraph (e) to read as follows:

§ 117.501 Teche Bayou.

(a) The draws of the following bridges shall open on signal; except that, from 6 p.m. to 10 a.m. the draws shall open on signal if at least four hours notice is given:

(1) St. Mary Parish bridge, mile 27.0 at Baldwin.

(2) S324 bridge, mile 32.5 at Charenton.

(3) S670 bridge, mile 37.0 at Adeline.

(4) St. Mary Parish bridge, mile 38.9 at Sorrel.

* * * * *

(d) The draws of the bridges listed in paragraphs (a) and (b) shall open on less than four hours notice for an emergency during the advance notice period, and shall open on signal should a temporary surge in waterway traffic occur.

Dated: September 4, 1985.

L.B. Acklin,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard District, Acting.

[FR Doc. 85-22661 Filed 9-20-85; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Insurance Administration

44 CFR Part 67

[Docket No. FEMA-6676]

Proposed Flood Elevation Determinations; Arizona, et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under Section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
ARIZONA	
Paradise Valley (Town), Maricopa County	
Indian Bend Wash:	
3 feet upstream from center of Invergordon Road	*1319
38 feet upstream from center of Double Tree Ranch Road	*1330
Bernel Channel: 9 feet upstream from center of Double Tree Ranch Road	*1325
Echo Canyon Wash: 50 feet upstream from center of Tatum Road	*1324
Maps available for inspection at Office of the Town Engineer, 6401 East Lincoln Drive, Paradise Valley, Arizona.	
Send comments to the Honorable Joan R. Lincoln, 6401 East Lincoln Drive, Paradise Valley, Arizona.	
CALIFORNIA	
Capitola (City), Santa Cruz County	
Pacific Ocean: 100 feet south of intersection of Esplande with San Jose Avenue	*17
Maps available for inspection at the City Planning Department, 420 Capitola Avenue, Capitola, California.	
Send comments to the Honorable Michael Routh, 420 Capitola Avenue, Capitola, California.	
Chula Vista (City), San Diego County	
Sweetwater River: On the downstream side of Willow Road as it crosses stream	*64
Telegraph Canyon: 80 feet downstream of the centerline of Second Avenue as it crosses stream	*105
Telegraph Shallow Flooding:	
At the intersection of Colorado Avenue and J Street	*21
At the intersection of Colorado Avenue and K Street	#1
Otay River: 200 feet west of the centerline of Interstate 805 at a point 1200 feet south of its crossing of Main Street	[illegible]
Poggi Canyon Creek: At the centerline of Otay Valley Road as it crosses stream	*128
San Diego Bay: 400 feet southwest of the intersection of Bay Boulevard and J Street	*5
Maps available for inspection at Engineering Department, 276 4th Avenue, Chula Vista, California	
Send comments to the Honorable Greg Cox, 276 4th Avenue, Chula Vista, California 92010.	
Crescent City (City), Del Norte County	
Pacific Ocean. Intersection of Front Street and K Street	*13
Maps available for inspection at the Public Works Department, 450 H Street, Crescent City, California.	
Send comments to the Honorable C. Ray Smith, 450 H Street, Crescent City, California 95531.	
Del Mar (City), San Diego County	
Pacific Ocean:	
200 feet west from the center of the intersection of 27th Street and Ocean Front	*8
300 feet west from the center of the intersection of Ocean Avenue and Atchison, Topeka & Santa Fe Railroad	*9
450 feet west from the center of the intersection of Ocean Avenue and 13th Street	*10
375 feet west from the center of the intersection of Grand Avenue and Carmel Valley Road	*11

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
580 feet west from the center of the intersection of 7th Street and Stratford Court	*12
Soledad Canyon: 600 feet southwest from the center of the intersection of Carmel Valley Road and Grand Avenue	*11
San Dieguito River: 50 feet upstream from the center of Jimmy Durante Boulevard	*18
Maps available for inspection at City Hall, 1050 Camino Del Mar, Del Mar, California.	
Send comments to the Honorable Arlene Carstern, 1050 Camino Del Mar, Del Mar, California 92014.	
Del Norte County (Unincorporated Areas)	
Pacific Ocean: At the shoreline east of Crescent City's eastern boundary	*13
Maps available for inspection at Planning Department, 700 5th Street, Crescent City, California.	
Send comments to the Honorable Glenn Smedley, 450 H Street, Crescent City, California 95531.	
Escondido (City), San Diego County	
Citrus Wash:	
At the intersection of Obsidian Glen and Diamond Glen	#1
Just downstream of the intersection of Valley Parkway and Midway Drive	*[illegible]
South Midway Wash: At the intersection of Kingston Drive and Midway Drive	#1
Maywood and Midway Wash:	
At the intersection of Fern Street and Lincoln Avenue	#1
At the intersection of Tennyson Street and La Honda Drive	#1
100 feet southwest from the intersection of Midway Drive and Washington Avenue	*691
Country Club Creek:	
200 feet southwest from the intersection of Gary Lane and County Club Lane	#1
500 feet northwest from the intersection of Bernie Place and Cheshire Way	*702
Unnamed Tributary: At the intersection of El Norte Parkway and Country Club Lane	*702
Maps available for inspection at Public Works Department, 620 North Ash Street, Escondido, California.	
Send comments to the Honorable Ernie Cowan, 100 Valley Boulevard, Escondido, California 92025.	
Eureka (City), Humboldt County	
Humboldt Bay: At the western terminus of Del Norte Street	*6
Maps available for inspection at Department of Community Development, 531 K Street, Eureka, California.	
Send comments to the Honorable Fred J. Moore, 531 K Street, Eureka, California 95501-1165.	
Half Moon Bay (City), San Mateo County	
Pacific Ocean: Intersection of Santa Rosa Avenue and Balboa Boulevard	*27
Maps available for inspection at City Hall, Half Moon Bay, California.	
Send comments to the Honorable Helen Bedesen, P.O. Box 67, Half Moon Bay, California 94019.	
Humboldt County (Unincorporated Areas)	
Humboldt Bay: At the southeastern terminus of Perch Street at King Salmon	*6
Maps available for inspection at Department of Planning, 3015 H Street, Eureka, California.	
Send comments to Honorable Wesley Chesbro, 825 5th Street, Eureka, California 95501.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Marin County (Unincorporated Area)	
Bolinas Lagoon: 350 feet northwest of the western intersection of Dipsea and Seadrift Roads	*[illegible]
Pacific Ocean: At the southern terminus of Calle Del Sierra	*23
Maps available for inspection at Department of Public Works, Marin County Courthouse, 3rd Floor, San Rafael, California.	
Send comments to the Honorable Bob Stockwell, Marin County Courthouse, Room 315, San Rafael, California 94903.	
Mendocino County, (Unincorporated Areas)	
Gualala River: At State Route 1	*17
Maps available for inspection at Department of Planning and Building Services, Mendocino County Courthouse, Ukiah, California.	
Send comments to the Honorable John Cimolino, Mendocino County Courthouse, Room 113, Ukiah, California 95482.	
Monterey (City), Monterey County	
Pacific Ocean: 400 feet north of the intersection of Cortes Street and Del Monte Avenue	*19
Maps available for inspection at Public Works Department, City Hall, Monterey, California.	
Send comments to the Honorable Clyde Roberson, City Hall, Monterey, California 93940.	
Monterey County (Unincorporated Areas)	
Pacific Ocean: 500 feet south of Elkhorn Slough along the Pacific shoreline	*17
Maps available for inspection at Monterey Flood Control and Water Conservation District, 855 E. Laurel Drive, Salinas, California.	
Send comments to the Honorable Dusan Petrovic, P.O. Box 1728, Salinas, California 93902.	
Pacifica (City), San Mateo County	
Pacific Ocean: 500 feet west of intersection of Beach Boulevard and Montecito Avenue	*27
Maps available for inspection at Engineering Department, 170 Santa Maria Avenue, Pacifica, California.	
Send comments to the Honorable Ginny Silva Jaquith, 170 Santa Maria Avenue, Pacifica, California 94044.	
Point Arena (City), Mendocino County	
Pacific Ocean: At the mouth of Point Arena Creek	*20
Maps available for inspection at City Hall, Point Arena, California.	
Send comments to the Honorable Kay Stack, P.O. Box 67, Point Arena, California 95468.	
Sand City (City), Monterey County	
Pacific Ocean: Intersection of Bay Avenue and Vista Del Mar Street	*24
Maps available for inspection at Planning Department, 1 Sylvan Park Street, Sand City, California.	
Send comments to the Honorable David Pendergrass, 1 Sylvan Park Street, Sand City, California 93955	
San Mateo County (Unincorporated Areas)	
Pacific Ocean: Intersection of Magellan Avenue and Miranda Road	*27
Maps available for inspection at Department of Public Works, 401 Marshall Street, Redwood City, California.	
Send comments to the Honorable William Schumacher, 401 Marshall Street, Redwood City, California 94063.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Santa Cruz (City), Santa Cruz County	
Pacific Ocean: 300 feet south of the intersection of Beach Street and Riverside Avenue	*15
Maps available for inspection at City Planning Department, 809 Center Street, Room 10, Santa Cruz, California.	
Send comments to the Honorable John Laird, 809 Center Street Room 10, Santa Cruz, California [illegible]	
[illegible] (City), Monterey County	
Pacific Ocean: 200 feet south of the intersection of [illegible] Street and Sand Dunes Drive	*21
Maps available for inspection at City Hall, Seaside, California.	
Send comments to the Honorable Lancelot C. McClair, P.O. Box 810, Seaside, California 93955.	
Sonoma County (Unincorporated Areas)	
Bodega Harbor: At Spud Point	*11
Salmon Creek: At State Highway 1 crossing over Salmon Creek	*11
Maps available for inspection at Sonoma County Water Agency, 2425 Cleveland Avenue, Santa Rosa, California.	
Send comments to the Honorable Helen Rudee, 575 Administration Drive, Room 100A, Santa Rosa, California 95401.	
Vista (City), San Diego County	
Buena Vista Creek: 100 feet upstream from the center of Indian Avenue crossing	*334
Shallow Flooding:	
100 feet northeast from the center of the intersection of West Broadway and Atchison, Topeka & Santa Fe Railroad	*321
200 feet northwest from the center of the intersection of Mesa Avenue and Vista Way	#1
Buena Vista Creek Tributary 1: 50 feet upstream from the center of Chelsea Court crossing	433
Shallow Flooding: 80 feet southeast from the center of the intersection of Alta Calle and South Santa Fe Avenue	#1
Buena Vista Creek Tributary 3: At the intersection of East Drive and Santa Fe Avenue	*[illegible]
Maps available for inspection at Public Works Department, 600 Eucalyptus Avenue, Vista, California.	
Send comments to the Honorable Mike Flick, P.O. Box 1988, Vista, California 92083.	
CONNECTICUT	
Avon (Town), Hartford County	
Farmington River (Eastern Segment):	
At Avon-Simsbury corporate limits	*[illegible]
Approximately 200 feet upstream of U.S. Route 44	*186
At Old Farms Road	*168
At Avon-Farmington corporate limits	*160
Farmington River (Western Segment):	
At Farmington-Avon corporate limits	*208
At confluence of Hawley Brook	*232
Approximately 2.5 miles upstream of Farmington-Avon corporate limits	*280
Upstream side of Lower Collins Dam	*275
At most upstream corporate limits	*[illegible]
Roaring Brook:	
At downstream corporate limits	*240
At upstream side of Hollister Drive West	*[illegible]
Approximately 50 feet upstream of Country Club Road	*274
At upstream corporate limits	*285
Nod Brook:	
At confluence with Farmington River	*163
Upstream side of State Route 10	*174
Upstream side of Ensign Drive	*[illegible]
Upstream side of U.S. Route 44 (1st upstream crossing)	*215

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At Darling Drive	*238
Downstream side of U.S. Route 44 (2nd upstream crossing)	*254
Upstream corporate limits	*255
Thompson Brook:	
At confluence with Farmington River	[illegible]
Downstream side of Old Farms Road (2nd upstream crossing)	*202
At confluence with Big Brook and Chidsey Brook	[illegible]
Chidsey Brook:	
At confluence with Thompson Brook	*258
Downstream side of State Route 167	*287
Approximately 25 feet upstream of Country Club Road	[illegible]
Hawley Brook:	
At confluence with Farmington River	*232
At Bottonwood Hill Road	*300
Approximately 650 feet upstream Edwards Road	*378
Big Brook:	
At confluence with Thompson Brook	[illegible]
Approximately 30 feet upstream of West Avon Road	*274
Approximately 60 feet upstream of Haynes Road (1st upstream crossing)	[illegible]
At Haynes Road (2nd upstream crossing)	*342
Lake Erie Brook:	
At confluence with Farmington River	*163
Approximately 0.3 mile upstream of confluence with Farmington River	*168

Maps available for inspection at the Town Clerk's Office, Avon, Connecticut.

Send comments to Honorable Philip K. Schenk, Jr., Town Manager of the Town of Avon, 16 West Main, Town Hall, Avon, Connecticut 06001.

Fairfield (Town), Fairfield County

Long Island Sound:	
6 shoreline of Sasco Creek at Connecticut Turnpike	*11
6 shoreline approximately 1,400 feet east of Sasco Creek	*17
6 shoreline at Willow Street (extended)	*15
6 shoreline of Mill River at Harbor Road	*11
6 shoreline at Pine Creek	*17
7 shoreline at Birch Road (extended)	*17
7 shoreline at Ash Creek at Black Rock Turnpike	*11
Grasmere Brook:	
Upstream side of Old Post Road	*11
Downstream side of dam	*33
Upstream side of Jennings Road	*48
Upstream side of Osborn Hill Road	*65
Approximately 100 feet upstream of Stony Brook Road	*96
Rooster River:	
Downstream side of Black Rock Turnpike	*11
Upstream side of Interstate 95	*17
Approximately 100 feet upstream of Strathfield Road	*45
Approximately 1,300 feet upstream of Cornell Road	*78
Horse Tavern Brook:	
At confluence with Rooster River	*79
Upstream side of Merritt Street	*104
At upstream corporate limits	*133
Londons Brook:	
At confluence with Rooster River	*78
Upstream side of dam	*97
Approximately 850 feet upstream of Fairfield Woods Road	*107
Brown's Brook:	
Confluence with Mill River	*21
Upstream side of Wayside Court	*53
Approximately 550 feet upstream of Governor's Lane	[illegible]

Maps available for inspection at the Town Planning and Zoning Department, Independence Hall, Fairfield, Connecticut.

Send comments to Honorable Jacquelyn Durrell, First Selectman of the Town of Fairfield, Fairfield County, Independence Hall, Fairfield, Connecticut 06430.

Simsbury (Town), Hartford County

Hop Brook:	
At confluence with the Farmington River	*158
At upstream side of Hopmeadow Road	*162
At downstream side of dam	*185
At upstream side of West Street	[illegible]
At upstream side of Cedar Glen Road	[illegible]
At upstream side of Hop Brook Road	*249
At upstream side of Old Farms Road	[illegible]
Approximately 250 feet upstream of West Ledge Road	*320
Stratton Brook:	
At confluence with Hop Brook	*209
At upstream side of Stratton Brook Road	[illegible]
At upstream side of Town Forest Road	*256
At upstream side of dam above John Peal Road	[illegible]
At upstream side of dam above West Mountain Road	*324
At upstream side of Shingle Mill Road	[illegible]
At downstream side of Woodchuck Hill Road	*469
Nod Brook:	
At downstream corporate limits	*255
At upstream side of Fernwood Drive (west)	*279
At upstream side of Notch Road	[illegible]
Approximately 50 feet upstream of Rocklyn Drive	*329
Minister Brook:	
At confluence with Farmington River	*161
At upstream side of Conrail	*173
At upstream side of Red Stone Drive	[illegible]
Approximately 1,200 feet downstream of Pine Glen Road	*306
Approximately 60 feet downstream of Park Road	*387
Munnisunk Brook:	
At confluence with Farmington River	*154
At upstream side of dam above Conrail	*169
At downstream side of County Road	*279

Maps available at the Town Clerk's Office, Town Hall

Send comments to Mr. Leonard Tolleano, Town Hall, P.O. Box 495, Simsbury, Connecticut 06070.

FLORIDA

Bay County (Unincorporated Areas)

Econfina Creek:	
At downstream county boundary	*81
About 3.4 miles upstream of Scott Road	*147
Sweetwater Creek:	
At confluence with Econfina Creek	*106
About 3.2 miles upstream of confluence with Econfina Creek	*172
Juniper Creek:	
At downstream county boundary	*139
About 300 feet upstream of Atlanta and St. Andrews Bay Railroad	*158
Bear Creek:	
Just downstream of County Highway 2301	[illegible]
Just downstream of Atlanta and St. Andrews Bay Railroad	*127
Just upstream of Atlanta and St. Andrews Bay Railroad	*132
About 1.1 miles upstream of Atlanta and St. Andrews Bay Railroad	*137
Little Bear Creek:	
At confluence with Bear Creek	*26
About 400 feet upstream of confluence of Double Branch	*57
Little Bear Creek Tributary:	
At confluence with Little Bear Creek	*51
About 500 feet upstream of U.S. Route 231	[illegible]
Deer Point Lake:	
Along entire shoreline	*8
Double Branch:	
At confluence with Little Bear Creek	*56
About 2300 feet upstream of confluence with Little Bear Creek	[illegible]
Clear Creek:	
At confluence with Bear Creek	*10
About 2.8 miles upstream of Camp Flowers Road	*49
Bayou George:	
Just upstream of U.S. Route 231	[illegible]
Just downstream of John Pitz Road	*16
Mill Bayou:	
Just upstream of County Highway 390	*7
About 0.7 mile upstream of confluence of Mill Bayou Tributary	[illegible]
Mill Bayou Tributary:	
At confluence with Mill Bayou	[illegible]
About 1080 feet upstream of Avon Road	*34
Callaway Bayou Tributary:	
About 1390 feet downstream of County Highway 22	[illegible]
Just downstream of County Highway 22	[illegible]
Callaway Creek:	
About 0.6 mile upstream of County Highway 22	*4
About 3.1 miles upstream of County Highway 22	[illegible]
Choctawatchee River:	
About 1.1 miles downstream of Walton County-Washington County Boundary	*16
About 8 miles upstream of Washington County-Walton County boundary	[illegible]
Martin Lake: Entire shoreline	*10
West Bay:	
Along shoreline from Hathaway Bridge to about 700 feet south of Shell Point	*4
At the mouth of Burnt Mill Creek	*11
Along shoreline from the mouth of Intracoastal Waterway near the Town of West Bay to the mouth of Big Crooked Creek	*12
North Bay:	
Along shoreline from Pretty Bayou to Postern Bayou	*4
At mouth of Alligator Bayou	*7
At north end of the west side of North Bay Bridge	[illegible]
Along shoreline from Garner Bayou to Beatty Bayou	*11
St. Andrew Bay:	
Along shoreline from Dupont Bridge to Davis Point	*4
Along shoreline from Beacon Beach to Davis Point	[illegible]
Along shoreline just southeast of Beacon Beach	*7
East Bay:	
Along shoreline from Dupont Bridge to Strange Bayou	*4
Along the shoreline from Murray Bayou to Allanton	*7
Along shoreline from mouth of Horseshoe Bayou to the mouth of Watappo Creek	*10
Gulf of Mexico.	
Along shoreline beginnng about 8500 feet southeast of St. Andrew Bay inlet to a point about 9000 feet southeast of Crooked Island Point	*7
Along shoreline in the vicinity of Laguana Beach	[illegible]

Maps available for inspection at the Bay County Building Department, 517 East 9th Street, Panama City, Florida.

Send comments to Honorable Helen Ingram, Chairman, Bay County Commission, P.O. Box 1818, Panama City, Florida 32401.

Bunnell (Town), Flagler County

Black Branch:	
About 0.8 mile downstream of Old Haw Creek Road	*15
About 3000 feet upstream of Old Haw Creek Road	*17

Maps available for inspection at the Town Hall, Bunnell, Florida.

Send comments to Honorable John Brice Hosford, Mayor, Town of Bunnell, P.O. Box 756, Bunnell, Florida 32010.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Callaway (City), Bay County	
East Bay:	
Along shoreline of Callaway Bayou from about 0.5 mile south of Boat Race Road to State Road 22	*4
Along shoreline from about 0.25 mile west of South Gay Avenue to mouth of Dotys Cove	*6
St. Andrew Bay: Along shoreline of Pitts Bayou within corporate limits	*4
Martin Lake: Within corporate limits	*10
Callaway Bayou Tributary:	
Just upstream of Berthe Avenue	*4
Just downstream of Old Dam at Sudduth Pond	*10
Just upstream of Old Dam at Sudduth Pond	*17
Just downstream of Cherry Street	*17
Just upstream of Cherry Street	*22
About 0.5 mile upstream of Cherry Street	*26
Maps available for inspection at the City Building, Callaway, Florida.	
Send comments to Honorable Ted Czupryk, Mayor, City of Callaway, City Building, 5708 Cherry Street, Callaway, Florida 32401.	
Freeport (City), Walton County	
Choctawhatchee Bay: Along Lafayette and Four-mile Creeks downstream of State Road 20	*8
Maps available for inspection at the City Building, Freeport, Florida.	
Send comments to Honorable Wray Caswell, Mayor City of Freeport, P.O. Box 339, Freeport, Florida 32439	
Lynn Haven (City), Bay County	
North Bay:	
Just south of the intersection of 5th Street and Virginia Avenue	*6
Just east of Haven Point	*9
Maps available for inspection at the City Building, 825 Ohio Avenue, Lynn Haven, Florida.	
Send comments to Honorable Pat Mercer, Acting City Manager, City of Lynn Haven, City Building, 825 Ohio Avenue, Lynn Haven, Florida 32444.	
Mexico Beach (Town), Bay County	
Gulf of Mexico:	
Along entire shoreline of inland canal system	*6
Along entire shoreline within community	*9
Maps available for inspection at the Town Hall, Mexico Beach, Florida.	
Send comments to Honorable James Heathcock, Mayor, Town of Mexico Beach, P.O. Box 13425, Mexico Beach, Florida 32410.	
Panama City (City), Bay County	
St. Andrew Bay:	
Entire shoreline of Lake Huntington	*4
Along shoreline from Hannah Avenue to one block west of Michigan Avenue	*6
North Bay:	
Along shoreline from about 950 feet southwest of mouth of Robinson Bayou to southwestern corporate limits	*4
Along shoreline from mouth of Robinson Bayou to Goose Bayou	*7
Maps available for inspection at City Hall, Panama City, Florida.	
Send comments to Honorable Girard Clemons, Mayor, City of Panama City, P.O. Box 1880, Panama City, Florida 32402.	
Panama City Beach (City), Bay County	
Gulf of Mexico:	
Just west of intersection of Seventh Street and Georgia Avenue	*5
Along shoreline from De Luna Place to about 1000 feet northwest of Gulf Resort Beach	*9
St. Andrew Bay: Just west of State Route 392 near Grand Lagoon	*4

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at City Hall, 110 South Arnold Road, Panama City Beach, Florida.	
Send comments to Honorable Richard Jackson, City Manager, City of Panama City Beach, City Hall, 110 South Arnold Road, Panama City Beach, Florida 32407.	
Parker (City), Bay County	
Along shoreline of Parker Bayou	*4
Along shoreline from Martin Lake to Parker Bayou	*5
East Bay:	
Along shoreline from Long Point to about 1.2 miles northeast of Long Point	*4
Along shoreline from about 1.2 miles northeast of Long Point to about 1.25 miles northeast of Long Point	*6
Martin Lake: *Within Community*	*10
Maps available for inspection at City Hall, Parker, Florida.	
Send Comments to Honorable Earl Gilbert, Mayor, City of Parker, P.O. Box 10745, Parker, Florida 32404	
Walton County (Unincorporated Areas)	
Choctawhatchee:	
About 500 feet upstream River of mouth	*8
At upstream county boundary	*52
Alaqua Creek:	
At mouth	*5
About 2000 feet upstream of State Road 20	*7
Choctawhatchee Bay:	
At shoreline about 0.8 mile north of Stewart Lake	*2
Northern shoreline at eastern county boundary	*4
At Little Bayou	*6
At Motes Point	*8
At mouth of Choctawhatchee River	*10
Gulf of Mexico:	
At Oyster Lake	*5
At shoreline about 1500 feet south of Morrison Lake	*9
Maps available for inspection at the Building Official's Office, County Courthouse, Defuniak Springs, Florida.	
Send comments to Honorable W.F. Miles, Chairman, Walton County Commission, P.O. Box 260, Defuniak Springs, Florida 32433.	
ILLINOIS	
Hancock County (Unincorporated Areas)	
Mississippi River:	
About 16.5 miles downstream of Toledo, Peoria and Western Railroad	*495
About 6 miles upstream of Atchison, Topeka, and Santa Fe Railway	*528
Maps available for inspection at the Supervisor of Assessments Office, Hancock County Courthouse, Carthage, Illinois.	
Send comments to Honorable Robert Mapes, Chairman, Hancock County Board, Hancock County Courthouse, Carthage, Illinois 62321.	
MASSACHUSETTS	
Gosnold (Town), Dukes County	
Vineyard Sound:	
Approximately 0.5 mile west of Jobs Neck	*11
Shoreline at Fox Point	*16
Shoreline of Nashawena Island south of Middle Pond	*28
Shoreline of Cuttyhunk Island south of intersection of Bayberry Hill Road and Bayview Drive	*30
Buzzards Bay:	
Shoreline at Knox Point	*11
Shoreline of Western Pond	*12
Shoreline at Timmy Point	*13
Entire shoreline of Weepecket Islands	*14
Shoreline of Nashawena Island east of North Point	*16

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Town Hall, Cuttyhunk, Massachusetts	
Send comments to Honorable William Monset, Chairman of the Board of Selectmen for the Town of Gosnold, Gosnold Town Hall, Cuttyhunk, Massachusetts 02713	
Marshfield (Town), Plymouth County	
Hannah Eames Brook:	
Upstream side of Damons Point Road	*21
Approximately 1,300 feet upstream of New Main Street (State Route 3A)	*48
Massachusetts Bay:	
Shoreline at southern corporate limits	*16
Shoreline at Careswell Street (extended)	*24
Shoreline at Satucket Avenue (extended)	*30
At the intersection of Surf Avenue and Monitor Road	*7
Shoreline at Parker Street (extended)	*15
Massachusetts Bay Shallow Flooding:	
Area along Bay Avenue	#2
Area between Plymouth Avenue and Foster Avenue, and between Surf Avenue and seawall	#2
Area approximately 200 feet east of Rawlegh Road	*12
Area along East Street	*15
North River:	
Confluence with South River	*13
Shoreline at Main Street bridge	*16
Upstream corporate limits	*18
South River:	
Northeast shoreline of Troyant's Island	*16
Confluence of Littles Creek	*12
Shoreline at Bayberry Road bridge	*20
Shoreline at Bourne Park Avenue (extended)	*8
At downstream side of Main Street	*8
Green Harbor River:	
Shoreline at Beach Street (extended)	*13
At intersection of South and Ireland Streets	*10
Shoreline at Webster Street crossing	*4
Pine Point River:	
Shoreline at Ellmore Avenue	*9
Downstream corporate limits	*12
Little Wood Island River: Shoreline at Perry Way (extended)	*11
Bourne Mill River:	
Upstream side of Colby Hewitt Lane	*9
Downstream corporate limits	*11
Maps available for inspection at Marshfield Planning Board, Marshfield, Massachusetts.	
Send comments to Honorable James Robinson, Chairman of the Board Selectmen of the Town of Marshfield, Town Hall, Marshfield, Massachusetts 02050	
Scituate (Town) Plymouth County	
Massachusetts Bay:	
At intersection of Spaulding Avenue and Otis Street	*10
At intersection of Egypt Avenue and Priscilla Lane	*13
Shoreline at Cavar Avenue (extended)	*18
Shoreline at east end of Prospect Avenue (extended)	*25
Shoreline east of intersection of Parker Avenue and Cotter Road	*35
Some areas along Massachusetts Bay Shoreline	#1 & #2
500 feet south of Ocean Side Drive between 5th and 11th Avenues	*13
North River:	
Shoreline 100 feet east of State Route 3A	*10
Approximately 0.5 mile south of intersection of Collier Road and Brown Road	*10
South River:	
Approximately 1,500 west of intersection of Silver Road and Central Avenue	*12
At intersection of Central Avenue and Cliff Road	*10
Herring River:	
Approximately 1,000 feet south of intersection of The Driftway and Old Driftway	12

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 900 feet southwest of intersection of Cliff Avenue and Moorland Road	*16
Musquashcut Brook:	
Shoreline approximately 500 feet upstream of Hollet Street	*8
Shoreline approximately 1,000 feet downstream of Hollet Street	*12
Musquashcut Pond:	
At Old Farm Road	*13
At Seagate Circle	*12
Branch of Musquashcut Brook:	
At Gannet Road	*8
Approximately 1,000 feet upstream of Hollet Street	*9
The Gulf:	
Approximately 750 feet north of intersection of Wood Island Road and Gardner Road	*11
Approximately 500 feet downstream of Mordecai Lincoln Road	*8
Bound Brook.	
Upstream side of Mordecai Lincoln Road	*15
Upstream side of Country Way	*19
At upstream corporate limits	*31
Satuit Brook:	
Approximately 1,000 feet upstream of Front Street	*10
At downstream side of Stockbridge Road	*21
At downstream side of Beaver Dam Road	*25
At upstream side of Abandoned Railroad Culvert	*34
First Herring Brook:	
Approximately 50 feet upstream of The Driftway	*11
Approximately 50 feet downstream of State Route 3A	*43
Approximately 150 feet upstream of Grove Street	*65
At upstream corporate limits	*67
Maps available for inspection at the Town Engineering Department, Town Hall, Route 3A, Scituate, Massachusetts.	
Send comments to Honorable Joseph Norton, Chairman of the Board of Selectmen for the Town of Scituate, Town Hall, Route 3A, Scituate, Massachusetts 02066.	

MISSOURI

Fulton (City), Callaway County

Stinson Creek:	
About 1,800 feet downstream of the confluence of Smith Branch	*692
About 1,000 feet upstream of U.S. Highway 54	*770
Smith Branch:	
At mouth	*696
Just downstream of County Highway 0	*721
About 0.7 mile upstream of Westminster Avenue	*820
Whitlow Branch:	
At mouth	*712
Just downstream of Mokane Road	*724
Just upstream of Mokane Road	*730
About 900 feet upstream of East Reed Street	*794
Big Hollow Creek:	
About 700 feet downstream of Cote Sans Dessein Road	*780
About 270 feet downstream of U.S. Highway 54	*792
Just upstream of U.S. Highway 54	*799
About 500 feet upstream of U.S. Highway 54	*801
Westminster Branch:	
At mouth	*735
About 1,200 feet upstream of West Seventh Street	*782
Dunlap Creek:	
Just upstream of Old Herring Mill Road	*772
About 1.4 miles upstream of Old Herring Mill Road	*833
Maps available for inspection at the City Hall, Corner of 4th & Market Streets, Fulton, Missouri.	
Send comments to Honorable George L. Oestreich, Mayor, City of Fulton, City Hall, Corner of 4th & Market Streets, Fulton, Missouri 65251.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
NEW JERSEY	
Fairfield (Township), Essex County	
Passaic River:	
Downstream corporate limits	*171
Upstream corporate limits	*174
Deepavaal Brook:	
At confluence with Passaic River	*172
Approximately 200 feet downstream of Clinton Road	*173
Green Brook:	
At confluence with Deepavaal Brook	*172
Downstream side of Passaic Avenue	*180
At upstream corporate limits	*227
Maps available for inspection at the Municipal Building, 230 Fairfield Road, Fairfield, New Jersey	
Send comments to Honorable Theodore Malesnik, Mayor of the Township of Fairfield, 230 Fairfield Road, Fairfield, New Jersey 07006	
Oradell (Borough), Bergen County	
Hackensack River:	
Downstream corporate limits	*12
Upstream side of New Milford Avenue Dam	*16
Upstream side of Oradell Reservoir Dam	*25
Upstream corporate limits	*25
Hackensack River By-pass.	
At downstream confluence with Hackensack River	*12
Upstream side of Elm Street	*14
At upstream confluence with Hackensack River	*16
Maps available for inspection at the Oradell Borough Hall, Oradell, New Jersey	
Send comments to Honorable Carl Marggraff, Mayor of the Borough of Oradell, 355 Kinder Kamack Road, Oradell, New Jersey 07649.	
NEW YORK	
Attica (Village), Genesee and Wyoming Counties	
Tonawanda Creek.	
Approximately 450 feet downstream of corporate limits	*954
Upstream side of Main Street	*969
Approximately 350 feet upstream of corporate limits	*975
Maps available for inspection at the Village Hall, 9 Water Street, Attica, New York.	
Send comments to Honorable Dale L. Slocum, Mayor of the Village of Attica, Genesee and Wyoming Counties, 9 Water Street, Attica, New York 14011.	
Attica (Town), Wyoming County	
Tonawanda Creek	
Downstream corporate limits	*975
Approximately 200 feet downstream of Dunbar Road bridge	*984
Approximately 100 feet upstream of Dunbar Road bridge	*990
Approximately 3,800 feet downstream of State Route 98 bridge	*997
Approximately 2,500 feet downstream of State Route 98 bridge	*1003
Approximately 200 feet downstream of State Route 98 bridge	*1008
Maps available for inspection at the Town Clerk's Office, 106 West Avenue, Attica, New York 14001.	
Send Comments to Honorable August C. Petri, Supervisor of the Town of Attica, Wyoming County, 1278 Golf Road, Attica, New York 14001.	
Lake George (Town), Warren County	
Schroon River	
At downstream corporate limits	*687
Upstream side of U.S. Route 9	*688
At upstream corporate limits	*689

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Town Center, Old Post Road, Lake George, New York.	
Send comments to Honorable Louis E. Tessier, Supervisor of the Town of Lake George, Town Center, Old Post Road, Lake George, New York 12845.	
Mount Kisco (Village), Westchester County	
Kisco River:	
At downstream corporate limits	*275
At confluence with Branch Brook	*281
At confluence with Kisco River Tributary	*283
Upstream side of Lexington Avenue	*294
Upstream side of NY Route 117	*326
Approximately 60 feet upstream of Byram Lake Road	*344
Kisco River Tributary 1:	
At confluence with Kisco River	*283
At upstream corporate limits	*285
Branch Brook	
At confluence with Kisco River	*281
Upstream side of NY Route 133 and West Main Street	*285
At upstream corporate limits	*293
Maps available for inspection at the Village Engineer's Office, Village Hall, 104 Main, Mount Kisco, New York.	
Send comments to Honorable Richard A. Flynn, Mayor of the Village of Mount Kisco, 104 Main, Mount Kisco, New York 10549	
Southeast (Town), Putnam County	
Middle Branch Croton River	
At confluence with Middle Branch Reservoir	*375
Upstream side of Barrett Road	*436
At upstream corporate limits	*495
East Branch Croton River:	
At confluence with Diverting Reservoir	*312
At Interstate 84	*341
Approximately 450 feet upstream of Interstate Route 684 and NY Route 22	*405
At confluence with East Branch Reservoir	*419
At upstream corporate limits	*429
Tonetta Brook:	
At downstream corporate limits	*411
Upstream side of Brewster North Station Road	*433
Approximately 400 feet upstream of Pumphouse Road	*448
Holly Stream:	
At confluence with East Branch Croton River	*273
Upstream side of NY Routes 22 & 202	*285
Upstream side of Guinea Road	*295
Upstream side of Interstate Route 684	*309
Approximately 650 feet upstream of Interstate Route 684	*313
Maps available for inspection at the Southeast Town Hall, Main Street, Brewster, New York.	
Send comments to Honorable Douglas Scolpino, Supervisor of the Town of Southeast, Putnam County, Southeast Town Hall, Main Street, Brewster, New York 10509	
Wallkill (Town), Orange County	
Wallkill River	
At downstream corporate limits	*360
At confluence with Wallkill River Tributary I	*362
At confluence with Wallkill River Tributary II	*365
At confluence with Masonic Creek	*365
At upstream corporate limits	*366
Wallkill River Tributary I:	
At confluence with Wallkill River	*362
Upstream side of Route 84	*383
At upstream corporate limits	*395
Wallkill River Tributary II	
At confluence with Wallkill River	*365
Upstream side of NY Route 17	*437
Upstream side of Route 84	*449
Upstream side of Ballard Road	*463
Upstream side of CONRAIL	*503
Upstream side of NY Route 211	*544

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	# Depth in feet above ground. *Elevation in feet (NGVD)
Masonic Creek:	
At confluence with Wallkill River	*365
Upstream side of Route 84	*404
Upstream side of Main Street	*443
1st upstream side of CONRAIL	*473
Upstream side of NY Route 211	*520
2nd upstream side of CONRAIL	*535
Upstream side of dam just upstream of Bisch Road	*579
Upstream side of NY Route 302	*597
Upstream side of Bowser Road	*631
Mannayunk Kill:	
At downstream corporate limits	*357
Upstream side of second crossing of Vanamburgh Road	*386
At most upstream corporate limits	*409
Shawabgunk Kill:	
At downstream corporate limits	*420
At confluence with Shawangunk Kill Tributary I	*448
Upstream side of Hubbard Road	*482
At confluence with Little Shawangunk Kill	*515
Upstream side of Meyer Road	*541
At upstream corporate limits 585	*565
Shawangunk Kill Tributary I:	
At confluence with Shawangunk Kill	*448
Upstream side of York Road	*509
Upstream side of dam just upstream of Prosperous Valley Road	[illegible]
Approximately 50 feet upstream of Doesn Road	*604
Shawangunk Kill Tributary II:	
At downstream corporate limits	*448
Upstream side of 1st upstream NY Route 17K crossing	*493
Upstream side of second upstream NY Route 17K crossing	*549
Upstream side of third upstream NY Route 17K crossing	*574
Little Shawangunk Kill:	
At confluence with Shawangunk Kill	*515
Upstream side of Brola Road	*554
At upstream corporate limits	*592

Maps available for inspection at the Town Hall, 600 Route 211 East, Middletown, New York.
Send comments to Honorable Dennis C. Cosgrove, Supervisor of the Town of Wallkill, Orange County, P.O. Box 398, Middletown, New York 10940.

NORTH CAROLINA

Brunswick County (Unincorporated Areas)

Atlantic Ocean:	
About 1 mile south of the mouth of New Inlet at Cape Fear River	*9
At Bowen Point	*14
At confluence of Lockwoods Folly River	*15
Along southern shoreline at Fort Caswell	*17
State Boundary line at southernmost tip of County	*19
Indian Creek:	
At mouth	[illegible]
At 0.5 mile upstream of State Route 1453	*12
Cherry Tree Prong:	
About 2300 feet downstream of State Route 1426	*12
Just downstream of State Route 1426	*13
About 0.9 mile upstream of State Route 1426	*27
Jackeys Creek:	
At mouth	*10
About 2100 feet upstream of U.S. abandoned railroad	*22
Lookout Creek:	
At mouth	*11
About 1700 feet upstream of NC 130	*37
Mallory Creek:	
At mouth	*10
Just upstream of Wire Spur Road	[illegible]
Mallory Creek Tributary:	
At mouth	*10
Just upstream of Wire Road	[illegible]
Mulberry Branch:	
At mouth	*11
About 1550 feet upstream of SR 1348	*20
Calabash Creek: Within community	*13
Lockwoods Folly River:	
About 3,000 feet upstream of NC 211	*9
About 400 feet downstream of SR 1401	*32
Pinch Gut Creek:	
About 400 feet downstream of SR 1401	*32
Just upstream of Rourk Road	*49
Sharron Creek: Along shoreline from the mouth to about 2.3 miles upstream	*11
[illegible]	
About 0.6 mile downstream of U.S. Route 17	*11
About 2400 feet upstream of U.S. Route 17	*13
At mouth	*14
[illegible]	
At mouth	*12
Just downstream of NC 130	*20
Just upstream of NC 130	*25
About 0.9 mile upstream of NC 130	*33
Shallotte Creek Tributary:	
At mouth	*12
Just downstream of NC 130	*18
Just upstream of NC 130	*22
About 1.0 mile upstream of NC 130	[illegible]
Sturgeon Creek:	
At mouth	*9
Just upstream of State Route 1439	*29
Town Creek: Within community	*10
Mill Creek	
About 1.0 mile upstream of State Route 1112	*12
At mouth	*14
Cape Fear River:	
At confluence with Indian Creek	*8
At Campbell Island	*10

Maps available for inspection at the Brunswick County Governmental Center, Bolivia, North Carolina
Send comments to Honorable William D. Carter, Brunswick County Manager, Brunswick County Governmental Center, P.O. Box 249, Bolivia, North Carolina 28422.

Caswell Beach (Town), Brunswick County

Atlantic Ocean:	
About 0.8 mile West of Oak Island Coast Guard Station along NC 133	*11
At confluence of Intracoastal Waterway with Elizabeth River	*14
Along shoreline from eastern corporate limits to about 1.8 miles west	*17
Along shoreline from western corporate limits to about 1 mile east	*19

Maps available for inspection at the Town Hall, Caswell Beach, North Carolina.
Send comments to Honorable Jack B. Cook, Mayor, Town of Caswell Beach, 122 Caswell Beach Road, Caswell Beach, North Carolina 28461.

Unincorporated Areas of New Hanover County

Atlantic Ocean.	
Along Snows Cut shoreline from U.S. Route 421 crossing to about 2000 feet east	*10
Along eastern shoreline of Intracoastal Waterway from Nixon Channel to Carolina Beach Inlet	*12
Along shoreline from about 4.4 miles northeast of Carolina Beach Inlet to the Southern County boundary	*16
Along shoreline from about 3.5 miles southwest of Masonboro Inlet to about 1.2 miles northeast of Bridge Road	*17
Northeast Cape Fear River:	
Along shoreline from the confluence of Island Creek to the confluence of Prince George Creek	*8
At mouth	*10
Cape Fear River:	
At confluence of Catfish Creek	*8
At confluence of Northeast Cape Fear River	*10
Bradley Creek.	
Just downstream of U.S. Route 76	*11
About 2800 feet upstream of Mallard Street	*21
Bradley Creek Tributary	
At mouth	*11
Just upstream of Eastwood Road	*19
Island Creek:	
At confluence with Northeast Cape Fear River	*8
Just downstream of Sidbury River	*18
Kings Grant Tributary:	
At mouth	*10
Just downstream of Gordon Road	*32
Murrayville Tributary:	
At mouth	*20
About 1,100 feet upstream of Murrayville Road	*27
Ness Creek:	
At confluence with Northeast Cape Fear River	*9
About 200 feet upstream of Castle Hayne Road	*26
Prince George Creek:	
At mouth	[illegible]
Just downstream of Sidbury Road	[illegible]
Prince George Creek Tributary:	
At mouth	*15
Just upstream of Parmele Road	*23
Smith Creek:	
At mouth	*9
About 1.75 miles upstream of confluence of Murrayville Tributary	*36
Spring Branch:	
At mouth	*9
Just downstream of College Road	*21
Mott Creek:	
At mouth	*10
Just upstream of South College Road	*21

Maps available for inspection at the New Hanover County Administration Building, 320 Chestnut Street, Wilmington, North Carolina.
Send comments to Honorable G. Felix Cooper, County Manager, New Hanover County, New Hanover County Administration Building, 320 Chestnut Street, Wilmington, North Carolina 28401.

OHIO

Cuyahoga County (Unincorporated Areas)

West Branch Rocky River:	
About 1,500 feet downstream of Lewis Road	[illegible]
About 2.5 miles upstream of Lewis Road	*696
Plum Creek:	
About 1.3 miles downstream of Interstate 80	*759
Just downstream of Sprague Road	*779
Chagrin River:	
Just downstream of downstream Village of Moreland Hills corporate limits	*792
At upstream Village of Moreland Hills corporate limits	*798

Maps available for inspection at the Regional Planning Commission, 415 The Arcade, Cleveland, Ohio.
Send comments to Honorable Carl S. Bohm, Director of the Regional Planning Commission for Cuyahoga County, 415 The Arcade, Cleveland, Ohio 44144.

Seville (Village), Medina County

Chippewa Creek:	
About 1,600 feet downstream of Main Street	*982
About 0.9 mile upstream of Greenwich Road	*990
[illegible]	
At mouth	*986
About 2,650 feet upstream of Liberty Street	*994
Unnamed Tributary:	
At mouth	*988
Just upstream of Greenwich Road	*1026

Maps available for inspection at the Village Hall, 6 Spring Street, Seville, Ohio.
Send comments to Honorable David Cooper, Mayor, Village of Seville, Village Hall, 6 Spring Street, Seville, Ohio 44273.

PENNSYLVANIA

Conewago (Township), Dauphin County

Conewago Creek East:	
Downstream corporate limits	*388

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 150 feet upstream of Mill Road	*395
At State Route 283	*417
Maps available for inspection at Conewago Township Building, Conewago, Pennsylvania.	
Send comments to Honorable John Graybill, Chairman of the Board of Supervisors of the Township of Conewago, RD 1, Box 151, Hershey, Pennsylvania 17033.	
Fountain Hill (Borough), Lehigh County	
Lehigh River:	
Upstream corporate limits	*239
Downstream corporate limits	*238
Maps available for inspection at the Office of Ralph Hutchison, Borough Manager, Fountain Hill, Pennsylvania.	
Send comments to Honorable George Laughlin, Mayor of the Borough of Fountain Hills, 843 North Clewell Street, Fountain Hill, Pennsylvania 18085.	
New Berlin (Borough), Union County	
Penns Creek:	
At upstream corporate limits	*495
At downstream corporate limits	*493
Maps available for inspection at the Community Center, 318 Vine Street, New Berlin, Pennsylvania.	
Send comments to Honorable Robert L. Wert, Mayor of the Borough of New Berlin, 506 Market Street, New Berlin, Pennsylvania 17855.	
Roaring Creek (Township), Columbia County	
Roaring Creek:	
At Legislative Route 19009	*874
Approximately 0.5 mile downstream of Legislative Route 190085	
Approximately 80 feet downstream of Legislative Route 190085	*921
Maps available for inspection at the Office of Township Secretary, Chatawissa, Pennsylvania.	
Send Comments to Honorable Earl Hoffman, Chairman of the Board of Supervisors for the Township of Roaring Creek, RD 1, Box 123, Chatawissa, Pennsylvania 17820.	
Southampton (Township), Franklin County	
Conodoguinet Creek:	
Downstream corporate limits	*545
Approximately 0.7 mile downstream of McClays Mill Road (Legislative Route 28010)	*548
At upstream side of McClays Mill Road (Legislative Route 28010)	*555
Approximately 1.3 miles downstream of Roxbury Road (Legislative Route 28009)	*559
Approximately 100 feet upstream of Roxbury Road (Legislative Route 28009)	*568
Approximately 1,200 feet upstream of confluence of Muddy Run	*577
Approximately 0.6 mile downstream of Tan Yard Hill Road (State Route 433)	*585
Approximately 400 feet upstream of Tan Yard Hill Road (State Route 433)	*591
Approximately 0.7 mile downstream of upstream corporate limits	*597
Upstream corporate limits	*603
Middle Spring Creek	
At confluence with Conodoguinet Creek	*545
Approximately 0.9 mile upstream of confluence with Conodoguinet Creek	*551
Approximately 1.9 miles upstream of confluence with Conodoguinet Creek	*561
Approximately 0.7 mile downstream of McClays Mill Road (Legislative Route 28010)	*566
Upstream side of McClays Mill Road (Legislative Route 28010)	*575
Upstream side of dam just upstream of Stonewall Road (Township Route 626)	*586
Approximately 1.5 miles downstream of Bard Road	*592
Approximately 0.7 mile downstream of Bard Road	*595
At downstream side of Bard Road	*618
Approximately 150 feet upstream of upstream corporate limits	*630
Approximately 1,300 feet downstream of Olde Scotland Road (State Route 696)	*657
Downstream side of Olde Scotland Road (State Route 696)	*666
At confluence of Gum Run	*668
At most upstream corporate limits	*671
Gum Run:	
Confluence with Middle Spring Creek	*568
Downstream side of Mainsville Road (Legislative Route 28018)	*676
Approximately 0.4 mile upstream of Mainsville Road (Legislative Route 28018)	*695
Upstream side of Access Road approximately 0.6 mile upstream of Mainsville Road (Legislative Route 28018)	*704
Approximately 125 feet downstream of Interstate 81	*711
Muddy Run:	
Confluence with Conodoguinet Creek	*575
Upstream side of Ornstown Road (State Route 533)	*580
At confluence of Rowe Run	*585
Approximately 100 feet upstream of Rowe Run Road (State Route 433)	*593
Approximately 500 feet upstream of Muddy Run Road (Township Route 604)	*602
Rowe Run:	
Confluence with Muddy Run	*585
Approximately 0.9 mile upstream of confluence with Muddy Run	*595
Approximately 700 feet downstream of Pinola Road (Legislative Route 28015)	*598
Approximately 1,500 feet upstream of Pinola Road (Legislative Route 28015)	*608
Approximately 0.5 mile downstream of upstream corporate limits	*618
Upstream corporate limits	*625
Maps available for inspection at the Municipal Building, Shippensburg, Pennsylvania.	
Send Comments to Honorable Raymond A. Mowery, Jr., Chairman of the Board of Supervisors of the Township of Southampton, Municipal Building, 705 Municipal Drive, P.O. Box 352, Shippensburg, Pennsylvania 17257.	
Washington (Township), Franklin County	
Middle Creek	
Downstream corporate limits	*441
Upstream side of State Route 35	*446
Upstream side of Creek Route	*456
Upstream corporate limits	*458
Maps available for inspection at the Municipal Building, Waynesboro, Pennsylvania.	
Send Comments to Honorable T. R. Null, Chairman of the Board of Supervisors of the Township of Washington, 13013 Welty Road, Waynesboro, Pennsylvania.	
Washington (Township), Snyder County	
Middle Creek.	
Downstream corporate limits	*441
Upstream side of State Route 35	*446
Upstream side of Creek Road	*456
Upstream corporate limits	*458
Maps available for inspection at R.D. 3, Middleburg, Pennsylvania.	
Send Comments to Honorable Darren Moyer, Chairman of the Board of Supervisors of the Township of Washington, R.D. 3, Middleburg, Pennsylvania 17842.	
RHODE ISLAND	
Providence (City), Providence County	
Providence River:	
Upstream side of Fox Point Hurricane Barrier	*5
At confluence of Moshassuck River	*6
Shoreline 1,000 feet west of southernmost tip of Fields Point	*21
Shoreline at Sassafras Point	*17
Intersection of Allens Street and Henderson Street	*16
Woonasquatucket River:	
Approximately 500 feet downstream of Francis Street	*6
Upstream side of Acorn Street	*9
Downstream side of Paragon Dam	*24
Upstream side of Glenbridge Avenue	*49
At upstream corporate limits	*60
Moshassuck River	
At confluence with Woonasquatucket River	*6
Upstream side of Randall Street	*27
Upstream side of Interstate Route 95 entrance ramp	*30
Upstream side of Cemetery Street	*33
At upstream corporate limits	*34
Weed River:	
Downstream side of Interstate Route 95	*30
Upstream side of Charles Street	*33
Downstream side of Hawkins Street	*35
Approximately 100 feet downstream of Branch Avenue	*41
Downstream side of Veazie Street	*51
Downstream side of Whipples Pond Dam	*60
At upstream corporate limits	*78
Upper Canada Pond:	
At confluence with West River	[illegible]
Upstream side of Upper Canada Pond Dam	[illegible]
Processe River:	
At upstream corporate limits	*75
At downstream corporate limits	*75
Seekonk River:	
Shoreline at Goose Point	*20
Shoreline at east end of George H. Henderson Memorial Bridge	*19
Intersection of Gano Street and Wickenden Street	*16
Ponding Area: 100 feet northeast of intersection of Derry Street and Oregon Street	*25
Sheet flow: Along Amtrak from 900 feet north of Charles Street to 50 feet south of Smith Street	#2
Maps available for inspection at the Department of Inspection and Standards, 60 Eddy Street, Providence, Rhode Island.	
Send comments to Honorable Joseph Paolino, Mayor of the City of Providence, Executive Office Building, 25 Dorrance Street, Providence, Rhode Island 02903.	
West Warwick (Town), Kent County	
Pawtuxet River:	
At downstream corporate limits	*38
Crest of Natick Dam	*55
Confluence with North and South Branch Pawtuxet River	*56
North Branch Pawtuxet River:	
Confluence with Pawtuxet River	*56
Upstream side of Main Street bridge	*63
At upstream corporate limits	*102
South Branch Pawtuxet River:	
Confluence with Pawtuxet River	*56
Crest of Dam Number 147	*84
Upstream side of Dam Number 149	*130
Upstream corporate limits	*148
Lippitt Brook.	
Approximately 35 feet downstream of the downstream face of the Main Street culvert	*65
Upstream side of Packard Street bridge	*87
Downstream face of Bettez Street culvert	*109
Lippitt Brook: Sheet Flow:	
Along Main Street	#1
Between Main Street and Dam No. 155	#1
Hardig Brook:	
Upstream face of Quaker Lane culvert	*122
Upstream face of Glen Drive culvert	*123
Downstream side of Revere Avenue bridge	*163
Hardig Brook Sheet Flow: on top of Colt Avenue culvert	#1
Hawkinson Brook:	
Confluence with South Branch Pawtuxet River	*147
Crest of Dam Number 195	*157

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Crest of dam located approximately 700 feet upstream of Turner Drive	*197
Approximately 550 feet downstream of Green Bush Road	*199
Tributary to Maskerchugg River:	
Upstream side of Quaker Lane culvert	*227
Downstream face of eastbound Interstate 95 culvert	*235
Upstream face of westbound Interstate 95 culvert	*244
Baker Street Brook:	
Confluence with South Branch Pawtuxet River	*130
Downstream face of Conrail culvert	*136
Upstream face of Conrail culvert	*148
Maps available for inspection at the Building Inspector's Office, Town Hall, West Warwick, Rhode Island (c/o John J. O'Hare, Town Planner).	
Send comments to Honorable George J. McKenna, President of the West Warwick Town Council, Town Hall, 1170 Main Street, West Warwick, Rhode Island 02893.	
TEXAS	
Garden Ridge (City), Comal County	
Garden Ridge Tributary:	
Approximately 250 feet downstream of corporate limits	*834
At Sundew Lane	*861
Approximately .4 mile upstream of Sundew Lane	*884
Maps available for inspection at the City Hall, Garden Ridge, Texas.	
Send comments to Honorable Paul A. Davis, Mayor of the City of Garden Ridge, Comal County, Route 3, Box 1047, San Antonio, Texas 78218.	

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	Elevation in meters (NGVD)
Commonwealth of Puerto Rico, Rio Majada Basin	
Rio Algus: Intersection of Palmer and Miguel Streets	10.0 m.
Caribbean Sea: Intersection of Puerto Rico Highway 1 and Rio Jueyes	2.3 m.
Maps available for inspection at Planning Board, P.O. Box 41119, Minillas Station, D-Diego Avenue, Santurce, Puerto Rico.	
Send comments to Honorable Rafael Hernandez Colon, La Fortaleza, San Juan, Puerto Rico.	

Issued: August 16, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85–22624 Filed 9–20–85; 8:45 am]

BILLING CODE 6718–03–M

44 CFR Part 67

[Docket No. FEMA–6640]

Proposed Flood Elevation Determinations; Missouri; Correction

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Chillicothe, Livingston County, Missouri, previously published at 50 FR 3553 on January 25, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Chillicothe, Livingston County, Missouri, previously published at 50 FR 3553 on January 25, 1985, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a)). Accordingly, on page 3553, in the Federal Register on January 25, 1985, under the entry for the City of Chillicothe, Missouri, the correct address for the map repository is corrected to read: City Hall, 715 Washington, Chillicothe, Missouri.

Issued: September 12, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85–22625 Filed 9–20–85; 8:45 am]

BILLING CODE 6718–03–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 157

[Docket No. CGD 84–060]

Licensing of Pilots; Manning of Vessels-Pilots

AGENCY: Coast Guard, Dot.

ACTION: Notice of extension of comment period.

SUMMARY: On June 24, 1985, the Coast Guard published a Notice of Proposed Rulemaking regarding the licensing of pilots and the manning of vessels-pilots (50 FR 26117). The comment period was scheduled to end September 23, 1985. Several requests have been received requesting additional time in which to submit comments. The notice of proposed rulemaking was published simultaneously with a final rule on the same subject and the provisions of the final rule may have detracted from the content of the NPRM. This notice extends the comment period for an additional 90 days in order to give interested persons an opportunity to submit comments.

DATE: Comments must be received on or before December 22, 1985.

ADDRESSES: Comments should be mailed to Commandant (G–CMC/21) [CGD 84–060] U.S. Coast Guard, Washington, D.C. 20593. Between 7:30 a.m. and 3:30 p.m., Monday through Friday, comments may be delivered to and will be available for inspection or copying at the Marine Safety Council (G–CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593, (202) 426–1477.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Hartke, Office of Merchant Marine Safety (G–MVP/12), Room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593, (202) 426–2985.

September 18, 1984.

W.J. Ecker,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 85–22662 Filed 9–20–85; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of Petition for rulemaking.

SUMMARY: This notice denies the petition for rulemaking submitted by Horst Leitner of Tustin, California, for rulemaking to improve handling characteristics of motorcycles. The petition was denied, as was a previous petition of Mr. Leitner's for a defect

investigation of the same subject matter, because there is no evidence that the phenomenon described by the petitioner is a significant factor in motorcycle accident causation or occurs under ordinary conditions of operation.

FOR FURTHER INFORMATION CONTACT: Scott Shadle, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202) 426–2720.

SUPPLEMENTARY INFORMATION: On May 31, 1985 (50 FR 23221), the National Highway Traffic Safety Administration published a notice of its denial of a defect petition submitted by Horst Leitner. Mr. Leitner had called the agency's attention to an alleged motorcycle problem caused by ". . . the drive input or torque reaction input and the suspension, which loads and unloads suspension and brings a motorcycle out of control in critical situations." The agency could not discern that the rear suspension torque reaction effect was a causative factor in accidents, and denied the petition. However, it suggested to Mr. Leitner that he might wish to petition for rulemaking, and Mr. Leitner replied in the affirmative.

The agency has re-reviewed the petition. The alleged problem is that during hard cornering, if the rider applies significant power in an attempt to accelerate quickly, a torque reaction effect inherent in either shaft driven or chain-driven motorcycles will result in an effective stiffening of the motorcycle's rear suspension, making it more difficult for the motorcycle to negotiate bumps, etc. and for the rider to control a slide if the machine should lose traction due to the combined hard cornering and hard acceleration. To compensate for these effects, Mr. Leitner had developed a device designed to minimize this torque reaction effect during acceleration for chain-driven motorcycles. The device appears to be effective in improving handling characteristics at the extreme limit of torque output, and would find most effective application in competition events such as motorcross, enduro, flattrack, shorttrack, desert racing, and hillclimbing. The benefits derived by street motorcycles in normal operation are limited at best as the phenomenon does not occur except at extremely rapid accelerations or at high torque outputs.

No specific accident data on this problem had been uncovered. However, the agency has reviewed data covering 900 motorcycle accidents ("Motorcycle Accident Cause Factors and Identification of Countermeasures, Volume I: Technical Report (1981)). Those data indicate that acceleration while cornering does not appear to be a significant factor in motorcycle accident causation.

At the conclusion of the technical review, the agency determined that there was no reasonable possibility that at the end of a rulemaking proceeding a Federal motor vehicle safety standard would be issued of the nature requested by Mr. Leitner, and his petition was denied.

The program official and attorney principally responsible for the development of this agency position are Scott Shadle and Taylor Vinson respectively.

(Secs. 103, 119, and 124 Pub. L. 89–563, 80 Stat. 718 (15 U.S.C. 1392, 1407, and 1410); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: September 17, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85–22647 Filed 9–20–85; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies petition for rulemaking submitted by the Blue Bird Body Company concerning the assembly of school buses utilizing new and used components.

Title 49 of the Code of Federal Regulations, § 571.7, *Applicability*, provides that the motor vehicle safety standards apply to newly manufactured motor vehicles or items of motor vehicle equipment manufactured on or after the effective date of the safety standards. Section 571.7(e) states that when a new cab is utilized in the assembly of a truck, the vehicle is considered newly manufactured unless the engine, transmission, and drive axle(s), as a minimum, of the assembled vehicle are not new and at least two of these components were taken from the same vehicle. When an old chassis retains the above-listed component, the placing of a new body on the chassis does not amount to the manufacture of a new motor vehicle. In the past, NHTSA has applied § 571.7(e) to school buses that are assembled combining new and used components, because truck chassis are typically utilized in the manufacture of school buses.

Blue Bird petitioned for a change in the way the motor vehicle safety standards apply to reassembled school buses under § 571.7. The petitioner was particularly concerned about reassembled school buses incorporating a chassis manufactured before the April 1, 1977 effective date of the Federal safety standards applicable to school buses. Blue Bird requested that the agency consider a school bus consisting of a new body and an old chassis as newly manufacured.

This notice denies Blue Bird's petition because NHTSA is not aware of data indicating a need to change its requirements in the manner suggested by Blue Bird. The agency has concluded that the number of school buses manufactured by installing a new body on an old chassis is extremely small, and estimates that by 1995, the supply of used chassis manufactured before April 1977 will disappear entirely.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Williams, Crashworthiness Division, Room 5320, National Highway Trafic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590. Telephone (202) 426–2264.

SUPPLEMENTARY INFORMATION: This notice denies a petition for rulemaking submitted by the Blue Bird Body Company (hereinafter referred to as "Blue Bird") requesting a change in the applicability of the motor vehicle safety standards to school buses that are assembled with new and used components.

Background

Title 49 of the Code of Federal Regulations, § 571.7, *Applicability*, provides that the motor vehicle safety standards apply to newly manufactured motor vehicles or items of motor vehicle equipment manufactured on or after the effective date of the safety standards. Section 571.7(e) specifies that when a new cab is utilized in the assembly of a truck, the vehicle is considered newly manufactured unless the engine, transmission, and drive axle(s), as a minimum, of the assembled vehicle are not new. In addition, at least two of those components must be taken from the same vehicle. When an old chassis retains the above-listed components, the placing of a new body on the chassis does not amount to the manufacture of a new motor vehicle. In the past, NHTSA has applied § 571.7(e) to school buses that are assembled combining new and used components, because truck-like chassis are utilized in the manufacture

of school buses. Since a school bus that consists of a new body and an old chassis retaining the components listed in § 571.7(e) is considered by the agency to be used, the person installing the body on the old chassis does not have to recertify the bus as complying with any Federal safety standards.

The Petition

Blue Bird requested that the agency consider a school bus that had a new body installed on an old chasis a newly manufactured. If such a vehicle were considered new, manufacturers who combined the new body with the old chassis would have to certify that the bus complied with all applicable safety standards in effect on the date that the new body was installed on the old chassis.

Blue Bird's petition was based on its concern with the current inapplicability of the motor vehicle safety standards regulating school bus safety, *viz.* FMVSS Nos. 220, 221 and 222, to reassembled school buses using chassis manufactured before the April 1, 1977 effective date of these standards. In its petition, Blue Bird correctly stated that a bus manufactured by installing a new bus body on a 1975 chassis would not be considered a newly manufactured bus and therefore would not have to meet the requirements of the safety standards on school bus joint strength (No. 221) and seating systems (No. 222). Further, since the date of manufacture of the original vehicle was 1975, before the effective date of the school bus safety standards, the original vehicle did not have to comply with those standards. The petitioner argued that this situation is not acceptable in terms of school bus safety and urged that the agency changed the way in which the safety standards apply to school buses consisting of new bodies and old chassis.

The only information available to NHTSA indicates that although there are approximately 160,000 pre-April 1, 1977 school buses from which chassis could be taken to reassemble buses, few school buses are assembled using new bodies on pre-April 1, 1977 chassis. To determine the number of school buses assembled annually in that manner, and the duration of an average school bus chassis, the agency contacted the Truck Body and Equipment Association, Inc., (TBEA). TBEA was unable to supply those data. According to Blue Bird estimates, however, the number of school buses assembled industry-wide using new bodies on pre-1977 chassis is less than 10 per year. The agency does not have any figures or estimates for the number of assemblies using chassis manufactured on or after April 1, 1977.

Since the lifespan of chassis is limited, the practice of assembling school buses using pre-1977 chassis will diminish and eventually cease. Data available to the agency indicate that over the next 10 years, the number of school buses with pre-1977 chassis will be reduced to nearly zero. There are approximately 400,000 school buses registered, and approximately 25,000 new school buses sold annually. At that rate of sales, a complete turnover of the fleet will take at least 16 years. The agency estimates that by 1995, 18 years after the production of pre-April 1, 1977 buses ceased, virtually all large school buses of that vintage would be replaced by school buses manufactured after that date, and therefore subject to the school bus safety standards.

While people could continue to reassemble school buses with new bodies and used chassis manufactured on or after April 1, 1977, the agency notes that manufacturers who combine a new bus body with such a chassis are in effect required to complete the school bus to meet the school bus safety standards. This is the case even though the assembled school bus is not considered new. The reason for this is the prohibition found in section 108(a)(2)(A) of the Vehicle Safety Act against rendering inoperative components or elements of design installed in compliance with the minor vehicle safety standards. The reassembled school bus incorporating the new body must continue to meet the safety standards that it met before the reassembly, which would include FMVSS Nos. 220, 221 and 222.

For the reasons given above, the agency has concluded that there is no need to make the changes requested by the petitioner. However, NHTSA emphasizes that crash tests and accident data show that buses meeting the Federal school bus safety standards are one of the safest means of transportation for school children. NHTSA encourages operators of school buses to consider using post-1977 bus bodies meeting the school bus safety standards on their pre-1977 chassis when worn school bus bodies are replaced.

NHTSA intends to monitor the manufacture of school buses to determine whether the number of school buses manufactured by combining new bodies on old chassis significantly increases, and to ensure that a pattern of conscious avoidance of the school bus safety standards does not develop. In the event the agency discovers evidence of such developments, NHTSA will take appropriate actions to deal with those practices.

(Secs. 103, 119, and 124, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407 and 1410a); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: September 17, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-22846 Filed 9-20-85; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1206 and 1249

[Docket No. 39953]

Elimination of Accounting and Reporting Requirements for Motor Carriers of Passengers

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments to notice of proposed rulemaking.

SUMMARY: At 50 FR 26594, June 27, 1985, the Commission proposed to eliminate the Uniform System of Accounts and revise the periodic reporting requirements for Class I common and contract motor carriers of passengers. This notice was served on June 26, 1985. In those notices, the due date for comments was specified as October 8, 1985. In response to requests, this notice extends the time for filing comments for 60 days.

DATE: Comments must be received by December 9, 1985.

ADDRESS: Send comments (original and 15 copies) to: Docket No 39953, Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

SUPPLEMENTARY INFORMATION: The National Bus Traffic Association, Inc. (NBTA) and the United Bus Owners of America (UBOA), on behalf of their motor carrier members, have separately requested that the time for filing comments in this proceeding be extended 60 days. NBTA and UBOA state, among other reasons, that they need the extension to provide adequate time to assess the burdens and costs that the proposed reporting requirements will have on carriers.

The 60-day extension is warranted. The additional time will give all interested parties an opportunity to provide informed comments on this action while not unduly delaying the

Commission's consideration of the proposal.

It is ordered

The date for filing comments is extended to December 9, 1985.

By the Commission, Reese H. Taylor, Jr., Chairman.

Dated: September 11, 1985.

James H. Bayne,

Secretary.

FR Doc. 85-22722 Filed 9-20-85; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 50, No. 184
Monday, September 23, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Feed Grain Donations for the Pine Ridge Reservation Indian Tribe in South Dakota

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427) and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Pine Ridge Reservation in South Dakota has been materially increased and become acute because of severe and prolonged drought, thereby creating a serious shortage of feed and causing increased economic distress. This reservation is designated for Indian use and is utilized by members of the Oglala Sioux Tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock feed for such needy members of the tribe will not displace or interfere with normal marketing of agricultural commodities.

3. Based on the above determinations, I hereby declare the reservation and grazing lands of the tribe to be acute distress areas and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestock owners who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the Commodity Credit Corporation may commence upon signature of this notice and shall be made available through May 15, 1986, or to such other time as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, D.C., on Sept 17, 1985.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 85-22639 Filed 9-20-85; 8:45 am]

BILLING CODE 3410-05-M

Animal and Plant Health Inspection Service

[Docket No. 85-406]

Policy Statement on the Protection of Privileged or Confidential Business Information

This notice sets forth in full a document establishing the policy of the Animal and Plant Health Inspection Service for protecting certain privileged or confidential business information. This document reads as follows:

APHIS POLICY STATEMENT ON THE PROTECTION OF PRIVILEGED OR CONFIDENTIAL BUSINESS INFORMATION

I. Purpose

The purpose of this policy statement is to establish minimum requirements to control and protect documents received by the Animal and Plant Health Inspection Service (APHIS) that in its judgement contain privileged or confidential business information (CBI), as defined in section IV–E. of this policy statement, concerning biotechnology and the Veterinary Biologics Program.

II. Policy

Title 7, Code of Federal Regulations, sections 1.1–1.16 contain the regulations of the United States Department of Agriculture (USDA) implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552). The FOIA generally provides that federal agencies must make available to the public all records not specifically exempt from disclosure. Section (b)(4) of the FOIA exempts from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. 552(b)(4). This policy statement applies to the disclosure of CBI concerning biotechnology and the Veterinary Biologics Program. APHIS will release such CBI ony if disclosure is otherwise required by law, such as a specific statute or court order, by the source of the information, or as provided herein. In addition, APHIS employees shall take whatever measures are necessary to preclude unauthorized disclosure.

APHIS employees who make unauthorized disclosures of information classified as CBI can be subject to prosecution under the Trade Secrets Act, 18 U.S.C. 1905. Under this staute, a federal employee who discloses trade secrets and certain confidential data without authorization shall be fined up to $1,000 and/or imprisoned for up to one year.

III. Applicable Statutes

A. Freedom of Information Act Section (b)(4), 5 U.S.C. 552(b)(4)

B. Trade Secrets Act, 18 U.S.C. 1905

IV. Definitions

A. Access

The ability and opportunity to gain knowledge of Confidential business Information in any manner.

B. Administrator

The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any other official of the Animal and Plant Health Inspection Service to whom the Administrator has delegated authority to act.

C. Authorized User

An APHIS employee or other person whom the Administrator has certified as requiring access to Confidential Business Information.

D. Biotechnology

Any technique that uses living biological systems to make or modify products, to improve plants or animals, or to develop microorganisms for specific uses.

E. Confidential Business Information (CBI)

Information that would be protected from disclosure under section (b)(4) of the Freedom of Information Act (5 U.S.C. 552(b)(4)) will be classified as Confidential Business Information (CBI). This includes trade secrets and commercial or financial information found to the confidential.

1. Trade Secrets

Documents containing trade secrets and which the person submitting asserts

are trade secrets will be deemed CBI. "Trade secrets" means information relating to the production process. This includes production data, formulas, and processes, and quality control tests and data, as well as research methodology and data generated in the development of the production process. Such information must be (1) commercially valuable, (2) used in one's business and (3) maintained in secrecy.

2. Commercial or Financial Information

Documents containing commercial or financial information will be deemed confidential if review establishes that substantial competitive harm would result from disclosure. Information such as safety data, efficacy or potency data, and environmental data may be such confidential information. Persons desiring protection for confidential information must submit a detailed statement containing facts to show that the person faces active competition in the area to which the information relates, and that substantial competitive harm would result form disclosure.

F. Destruction

Pulverization by a paper shredder, burning, or other approved method.

G. Information

Knowledge that can be communicated by any means.

H. Secured Storage Area

A room or equipment that is locked.

I. Staff Office

A staff administering a particular program within the Animal and Plant Health Inspection Service.

J. Unique Identification Number

The number permanently assisgned to a document containing CBI when the document is logged in, and which enables the document to be tracked. Each document containing CBI will be assigned a separate number.

V. Identification of Confidential Business Information

A. The applicable staff office shall review documents it receives to determine whether they contain Confidential Business Information.

B. The applicable staff office shall log in Confidential Business Information it receives, and shall assign unique identification numbers to allow for tracking.

C. A red cover sheet printed with the unique identification number shall be attached to the original and each copy of a CBI doucment.

D. In addition to the cover sheet, each page of each copy of a CBI document shall be stamped "CONFIDENTIAL".

E. A record of each copy of a CBI document and its disposition shall be maintained.

VI. Physical Security of Confidential Business Information

A. Storage of CBI Documents

1. CBI documents are to be stored in secured storage areas when not in use.

2. At the close of a business day, doors in secured work areas shall be locked, alarms activated if appropriate, and documents containing CBI in unsecured work areas shall be placed in secured storage.

B. Access To CBI Documents By Authorized Users

1. The APHIS Administrator's office will maintain a list of persons authorized to have access to Confidential Business Information, and will furnish this list to staff office supervisors.

2. Persons will receive training on safeguarding CBI before obtaining authorized user status.

3. Authorized users shall obtain CBI documents through a person in each applicable staff office designated to be responsible for document control.

4. Requestors must present identification when obtaining CBI material from the applicable staff office. The requestor's name must appear on the authorized user list.

5. For each person on the authorized user list, a charge-out record will be kept. Requestors shall sign the record when receiving and returning CBI documents.

6. Person who terminates USDA employment will not receive exit clearance until all CBI documents that were charged out to the employee have been returned.

7. When an authorized user no longer requires access to CBI, the locks to which the person has had access must be changed.

C. Safeguards During Individual Use of CBI Documents

1. All CBI documents must be handled by authorized personnel only.

2. Authorized users shall not in any manner disclose Confidential Business Information to unauthorized persons. Authorized users shall determine whether persons are authorized to have access to CBI before discussing CBI with them.

3. When unauthorized persons are present, CBI documents must be covered, turned face down, removed from the area, or otherwise protected.

4. All persons are individually responsible for securing any CBI documents in their possession. When persons are reviewing or processing documents containing CBI, the documents are their responsibility until they are returned to the staff person responsible for document control. Persons handling CBI documents must secure them before leaving their work area.

5. Where working areas cannot provide privacy, private meeting areas will be provided for review of CBI documents.

6. Each person must safeguard keys to files, safes, rooms, etc. Keys to CBI files must be kept in a secured place. Lost keys or suspected breaches of security must be reported immediately to the person responsible for document control, so that changes can be immediately effected.

D. Meetings

Precautions shall be taken so that unauthorized persons are not present at meetings where CBI is discussed.

VII. Copying and Destruction

A. Photocopying

1. Reproduction of documents containing Confidential Business Information shall be kept to a minimum.

2. A record of each copy of a CBI document and its disposition shall be maintained.

3. Bad copies shall be destroyed.

B. Destruction

1. The person responsible for document control in each applfcable staff office shall keep records of copies of CBI documents and their disposition.

2. The person responsible for document control shall perform any destruction of documents containing CBI.

3. When users of CBI documents have no further need for them, they shall return CBI documents to the staff office from which they obtained them. Unneeded copes will be destroyed in the staff office.

VIII. Transfer of Confidential Business Information

A. Within APHIS

1. The applicable staff office shall assign unique identification numbers to CBI documents it receives. Copies to be sent to field offices or laboratories shall also be marked with the unique identification number.

2. All transfers of CBI materials within APHIS shall be recorded by the person responsible for document control in each applicable staff office.

3. All CBI documents transferred to field offices, laboratories, or other parts of APHIS must be logged in and out by a person responsible for document control in that office.

(a) Incoming CBI documents will be entered in the log, using the previously assigned unique identification number printed on the cover sheet. The date of receipt will be recorded.

(b) Documents will then be filed in secured file cabinets.

4. Field offices and laboratories shall maintain security procedures equivalent to those described in this document. Field offices and laboratories shall be responsible for tracking and disposition of the CBI documents in their files.

B. From APHIS to Other Parts of USDA, Other Federal Agencies, and Other Persons

1. Persons from outside of APHIS must show that they need Confidential Business Information for a proper official purpose.

2. Persons from outside of APHIS must maintain security procedures equivalent to those of APHIS before they may receive Confidential Business Information.

3. The person submitting the CBI will be notified of any requests by the public for disclosure and the scope of information to be disclosed, if any.

C. Mail

CBI documents shall be transmitted by registered mail, return receipt requested.

Effective date: September 18, 1985.

Dated: September 18, 1985.

Bert W. Hawkins,

Administrator Animal and Plant Health Inspection Service.

[FR Doc. 85-22715 Filed 9-20-85; 8:45 am]

BILLING CODE 3410-34-M

Foreign Agricultural Service

White or Irish Potato Production; 1985 Estimates

AGENCY: Foreign Agricultural Services, USDA.

ACTION: Notice of estimates with respect to 1985 white or Irish potato production.

SUMMARY: Headnote 2 of Subpart A of Part 8 Schedule 1 of the Tariff Schedules of the United States (TSUS) provides that, if for any calendar year the production in the United States of white or Irish potatoes, including seed potatoes, according to the estimate of the Department of Agriculture made as of September 1, is less than 21 billion pounds, an additional quantity of potatoes equal to the amount by which estimated production is less than 21 billion pounds shall be added to the 45 million pounds provided for TSUS item 137.25 for the 12-month period beginning September 15.

Notice

The estimate of the Department of Agriculture, made as of September 1, 1985, is that for the calendar year 1985 the production in the United States of white or Irish potatoes, including seed potatoes, will exceed 21 billion pounds.

Issued at Washington, D.C. this 6th day of September, 1985.

Richard A. Smith,

Administrator, Foreign Agricultural Service.

[FR Doc. 85-22718 Filed 9-20-85; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-357-405]

Barbed Wire and Barbless Fencing Wire From Argentina: Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that barbed wire and barbless fencing wire from Argentina are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to continue to suspend the liquidation of all entries of barbed wire and barbless fencing wire from Argentina that are entered, or withdrawn from warehouse, for consumption, on or after May 3, 1985, and to require a cash deposit or bond for each entry in an amount equal to 69.02 percent *ad valorem*.

EFFECTIVE DATE: September 23, 1985.

FOR FURTHER INFORAMATION CONTACT: John J. Kenkel, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (20) 377-4929.

Final Determination

Based upon our investigation, we have determined that barbed wire and barbless fencing wire ("barbed wire") from Argentina are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act).

We made fair value comparisons for all sales of merchandise to the United States during the period of investigation. Comparisons were based on the United States price and foreign market value. The weighted-adverse margin for barbed wire is 69.02 percent *ad valorem* and our final determination with regard to barbed wire is affirmative. We also found that critical circumstances do not exist with respect to imports of barbed wire from Argentina.

Case History

On November 19, 1984, we received a petition from the Forbes Steel & Wire Corporation on behalf of the domestic barbed wire industry. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petitioners alleged that imports of barbed wire from Argentina are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports ar materially injuring or are threatening material injury to a United States industry. We notified the ITC of our action and initiated an investigation on December 10, 1984 (49 FR 49128). On January 3, 1985, the ITC determined that there is a reasonable indication that imports of barbed wire from Argentina are materially injuring a U.S. industry.

We presented an antidumping duty questionnaire on February 19, 1985, to counsel for Acindar, the sole Argentine producer of the products under investigation for export to the United States.

On April 29, 1985, we made an affirmative preliminary determination (50 FR 23339).

On May 24, 1985, we extended the date for the final determination until not later than September 16, 1985.

We verified Acindar's questionnaire response in May, July and August. A hearing was held on August 1, 1985.

Products Under Investigation

The products under investigation are barbed wire and barbless fencing wire, currently provided for in items 642.0200 and 62.1105 of the *Tariff schedules of the United States, Annotated*.

According to the petition, Acindar accounted for substantially all of the

exports of this merchandise to the United States. We investigated all sales by Acindar of barbed wire during the period June 1 through November 30, 1984.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

We used the purchase price of the subject merchandise, as provided in section 772(b) of the Act, to represent the United States price because the merchandise was sold to unrelated U.S. purchasers prior to its importation into the United States. We calculated the purchase price based on the C&F price to U.S. unrelated purchasers. We deducted foreign brokerage and handling charges and ocean freight. We added a portion of the amount of indirect taxes which were later rebated by reason of exportation of the merchandise under investigation to the United States Act in accordance with section 772(d)(1)(C) of the Act.

Foreigh Market Value

In accordance with section 773(a)(1), we used home market prices for calculating foreign market value. We made comparisons of "such or similar" merchandise based on tensile grade as determined by the Department's expert on steel product classifications.

We deducted inland freight and discounts, and added in export packing. We made adjustments for differences in circumstances of sale related to commissions and credit expense pursuant to § 353.15 of our regulations. We also made adjustments for differences in the physical characteristics of the merchandise, pursuant to § 353.16 of the regulations. Where there were commissions in one market and not in the other, we offset the commissions with indirect selling expenses in the other market.

In calculating foreign market value, we made currency conversions from Argentine pesos to United States dollars in accordance with § 353.56(a)(1) of our regulations, using the certified daily exchange rates.

Negative Determination of Critical Circumstances

The petitioner alleged that imports of barded wire from Argentina present "critical circumstances." Under section 735(a)(3) of the Act, critical circumstances exist if we have a reasonable basis to believe or suspect that (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there have been massive imports over a relatively short time period, we considered the following factors: (1) Whether imports have surged recently, (2) recent trends in import penetration levels, (3) whether the recent imports are significantly above the average calculated over the last three years, and (4) whether the pattern of imports over that three year period may be explained by seasonal swings.

In considering this question, we analyzed recent trade statistics on import levels and import penetration ratios for barbed wire from Argentina for the periods immediately preceding and subsequent to the filing of the petition. Based on our analysis of recent trade data, we find that imports of barbed wire from Argentina do not appear massive over a relatively short period.

We, therefore, did not need to consider whether there is a history of dumping of barbed wire from Argentina or whether the person by whom or for whose account these products were imported knew or should have known that the exporters were selling these products at less than fair value.

For the reasons described above, we determine that "critical circumstances" do not exist with respect to barbed wire from Argentina.

Verification

In accordance with section 776(a) of the Act, we verified the information provided by the respondent by using standard verification procedures, including examination of relevant sales and accounting records of the company.

Petitioner's Comments

Comment 1

Petitioner suggests that in order to obtain comparable fair value comparisons only those home market sales that occurred within a relatively brief span of time prior to or subsequent to the date of sale to the United States should be considered as the basis for determining foreign market value.

DOC Position

We agree. We have compared sales to the United States with a monthly weighted-average home market price in order to take into account the effects of inflation.

Comment 2

Petitioner requests that we examine carefully the payment terms of Acindar's home market sales to determine whether accounts receivable are indexed to account for the effects of inflation.

DOC Position

We found that the respondent added the cost of credit to the base price of its barbed wire sales in the home market to account for the effects of inflation. We have treated this added revenue as an increase in the home market price. No other indexation occurs.

Comment 3

Second quality sales listed in respondent's original response should not be considered for the purpose of determining home market sales price and making fair value comparisons.

DOC Position

We agree. All second quality sales were removed from the respondent's revised response, and were not included in the Department's calculations.

Comment 4

The use of averaging techniques by the respondent to calculate the cost of inland freight is inappropriate. In addition, the cost of inland freight should be calculated monthly and not for the entire period of investigation due to the high rate of inflation in Argentina.

DOC Position

The cost use for inland freight was calculated using monthly data. The averaging technique employed by the respondent pertained only to shipments of barbed wire to customers. We checked freight invoices and found that the average used by the respondent was appropriate.

Comment 5

The respondent claims several types of deduction from the list price of the merchandise: Standard discount, supplemental discount, cash discount and deferred discounts in the form of credit notes. The Department should ascertain that these deductions are real, meet the criteria of the regulations and are applicable to the sales in question and not to future purchases.

DOC Position

We have allowed all of the above-mentioned deductions because they were granted on the sales under investigation and resulted on a reduction of the net return to the respondent.

Comment 6

The respondent appears to have used averaging techniques and not actual data in calculating credit costs in the home market.

DOC Position

The respondent submitted actual data on interest rates and days payment was outstanding for home market sales in its revised response. These data were used to compute average monthly credit costs.

Comment 7

The Department should not allow an offset for commissions paid in the United States. Respondent's payment of a commission to its own salesmen in the home market is simply an intra-company transfer of funds which does not qualify as an offset to the commission paid in the United States.

DOC Position

We disagree. When commissions are paid to unrelated parties in one market but not in the other, the Department's regulations allow an offset for other selling expenses, in this case in the home market. Therefore, we have allowed an adjustment for all indirect selling expenses, including salaries and commissions paid to the respondent's salesmen in the home market.

Comment 8

The Department should not allow an adjustment for bad debt losses because they are simply one of the general costs incurred by being in business and are indirect selling expenses which do not qualify as a circumstance of sale adjustment of foreign market value.

DOC Position

We agree. We did not allow this adjustment.

Comment 9

If the Department allows an adjustment to the U.S. price based on the "reembolso" (the rebate upon export of indirect prior and final stage taxes) it should limit the adjustment to that amount of the rebate that covers taxes directly imposed on inputs which are physically incorporated into the export product.

DOC Position

For the reasons set forth in our "Final Determination of Sales at Less Than Fair Value: Carbon Steel Wire Rod from Argentina" (49 FR 38170), we determine that the intent of Congress generally was to provide comparable treatment of indirect tax rebates in both antidumping and countervailing duty investigations. Unlike the wire rod investigation, there is no companion countervailing duty investigation covering barbed wire. For this reason, we do not know whether the amount of indirect taxes rebated upon export constitutes an over-rebate. However, the respondent in the current investigation was also the respondent in the wire rod investigation, and the respondent uses the wire rod it produces in manufacturing barbed wire. In the countervailing duty investigation of wire rod we determined that while the wire rod producer received a rebate of 10 percent of the FOB export price, the actual tax incidence on components physically incorporated in the exported product amounted to 7.6 percent of the FOB export price. Because the respondent in the current investigation is an integrated producer of barbed wire, it is reasonable to assume that the same tax incidence applying to wire rod also applies to barbed wire. Therefore, for purposes of this investigation, we have limited the addition to United States price to the amount established in the wire rod investigation as representing the tax incidence on components physically incorporated in the exported product.

Comment 10

If the respondent has insufficient short-term dollar loans to finance its exports and must borrow pesos to make up the shortfall, then the peso interest rate is the appropriate rate to use in making adjustments for differences in credit costs.

DOC Position

We disagree. It is the Department's practice that when a respondent borrows dollars in the short-term which are used to finance exports, it is not necessary to determine whether other short-term borrowings of other currencies also finance exports. Thus, in this investigation we have used the short-term interest rate for dollars to calculate the cost of credit for U.S. sales.

Comment 11

The Department erred in the preliminary determination in not finding that critical circumstances exist.

DOC Position

See the section above on our determination of critical circumstances.

Respondent's Comment

The Department should make an adjustment for bad debt.

DOC Position

We disagree. Bad debt could not be shown to be directly related to the sales under investigation. Therefore, we did not adjust for it.

ITC Determination

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether imports of barbed wire materially injure, or threaten material injury to, a U.S. industry within 45 days after we make our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of barbed wire from Argentina that are entered, or withdrawn from warehouse, for consumption, on or after May 3, 1985. The United States Customs Service shall require a cash deposit equal to the weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Acindar	[illegible]
All others	[illegible]

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

William T. Archey,

Acting Assistant Secretary for Trade Administration.

September 16, 1985.

[FR Doc. 85-22703 Filed 9-20-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-471-501]

Carbon Steel Wire Rod From Portugal; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that carbon steel wire rod (wire rod) from Portugal is being, or is likely to be, sold in the United States at less than fair value, and that "critical circumstances" do not exist with respect to imports of the merchandise under investigation. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of the notice. If this investigation proceeds normally, we will make a final determination by December 2, 1985.

EFFECTIVE DATE: September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Karen L. Sackett, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1273.

SUPPLEMENTARY INFORMATION

Preliminary Information

Based upon our investigation, we preliminarily determine that wire rod from Portugal is being, or, is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). We have preliminarily determined the weighted-average margin of sales at less than fair value to be 24.80 percent. We also found that critical circumstances do not exist with respect to imports of wire rod from Portugal.

If this investigation proceeds normally, we will make a final determination by December 2, 1985.

Case History

On April 8, 1985, we received a petition from Atlantic Steel Company, Continental Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Company, filed on behalf of the domestic producers of wire rod. In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petitioners alleged that imports of wire rod from Portugal are being, or are likely to be, sold in the United States at less than fair value within the meaning of the Act, and that these imports materially injure, or threaten marterial injury to, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on April 29, 1985 (50 FR 18900). On May 30, 1985, the ITC determined that there is a reasonable indication that imports of wire rod are materially injuring, or threatening material injury to, a U.S. industry (50 FR 23084).

On May 22, 1985, a questionnaire was presented to counsel for respondent. On June 11, 1985, petitioners further alleged that critical circumstance exist, as defined in section 733(e) of the Act. Siderurgia Nacional (SN) responded to our questionnaire on July 19, 1985.

Scope of Investigation

The merchandise covered by this investigation is carbon steel wire rod, a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, not tempered, not treated, not partly manufactured, and valued over 4 cents per pound, as currently provided for in item 607.17 of the Tariff Schedules of the United States (TSUS).

Because SN accounted for at least 60 percent of exports of this merchandise to the United States, we limited our investigation to that firm. We investigated virtually all sales by SN of wire rod for the period November 1, 1984, through April 30, 1985.

Fair Value Comparison

To determine-whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

A provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the F.O.B. port of export, packed price to unrelated customers in the United States. We made deductions for Portuguese inland freight, loading and lashing costs, and Portuguese customs clearance.

Foreign Market Value

In accordance with section 773 of the Act, we calculated foreign market value based on home market sales. We made comparisons of "such or similar" merchandise based on grade and dimension categories provided by respondent and approved by Commerce Department industry experts.

We calculated the home market prices for each product on the basis of the ex-factory F.O.B. or C.&.F., packed prices for each product to unrelated purchasers. From these prices we deducted, where appropriate, Portuguese inland freight. We made adjustments, where appropriate, for differences in credit expenses between the two markets in accordance with § 353.15 of our Regulations (19 CFR 353.15). Since wire rod sold in both the United States and the home market was sold in the identical packed condition, no adjustments were made for packing. We made difference in merchandise adjustments based on differences in costs of producing the merchandise under consideration, in accordance with § 353.16 of the Regulations. Pursuant to § 353.56 of the Regulations, we made currency conversions at the rates certified by the Federal Reserve Bank.

Preliminary Negative Determination of Critical Circumstances

Counsel for the petitioners alleged that imports of wire rod from Portugal present "critical circumstances." Under section 733(e) of the Act, critical circumstances exist if we have a reasonable basis to believe or suspect that (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether imports of wire rod from Portugal in the United States have been massive, we generally

consider the following: (1) Recent trends in import penetration levels, (2) whether imports have surged recently, (3) whether the recent imports are significantly above the average calculated over the last three years; and (4) whether the pattern of imports over that three year period may be explained by seasonal swings.

In considering this question, we analyzed recent trade statistics on import levels and import penetration ratios for wire rod from Portugal for the periods immediately preceding and subsequent to the filing of the petition. Based on our analysis of recent trade data, we find that imports of wire rod from Portugal during the period subsequent to the receipt of the petition have not been massive when compared to recent import levels and import penetration ratios.

Since we do not find massive imports, the Department does not need to review history or importer's knowledge of dumping in order to make its negative critical circumstances determination. Therefore, we preliminary determine that critical circumstances do not exist with respect to imports of wire rod from Portugal.

Verification

As provided in section 776(a) of the Act, we will verify all data used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of wire rod from Portugal that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price, which was 24.80 percent of the ex-factory value. The suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 2:00 p.m. on November 4, 1985, at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The Party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by October 28, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

September 16, 1985.

[FR Doc. 85-22704 Filed 9-20-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-791-502]

Low-Fuming Brazing Copper Rod and Wire From South Africa; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that low-fuming brazing copper rod and wire from South Africa is being, or is likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend the liquidation of all entries of low-fuming brazing copper rod and wire from South Africa that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by December 2, 1985.

EFFECTIVE DATE: September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Michael Ready, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-2613.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that low-fuming brazing copper rod and wire from South Africa is being, or is likely to be, sold in the United States at less than fair value as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). For low-fuming brazing copper rod and wire sold by McKechnie Brothers S.A. (Pty.) Limited, the only known exporter of the subject merchandise, we have found that the foreign market value exceeded the United States price on 100 percent of the sales compared. The margin of dumping ranged from 0.6 percent to 28.8 percent. The weighted-average margin was 12.48 percent.

Case History

On February 19, 1985, we received a petition filed proper form by American Brass, Century Brass, and Cerro Metal Products on behalf of the U.S. industry producing low-fuming brazing copper rod and wire. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from South Africa are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673), and that these imports are materially injuring, or threatening material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated

the investigation on March 11, 1985 (50 FR 10524), and notified the ITC of our action.

On April 5, 1985, the ITC found that there is a reasonable indication that imports of low-fuming brazing copper rod and wire from South Africa are materially injuring, or threatening material injury to, a U.S. industry (U.S. ITC Pub. No. 1673, April 1985).

On March 22, 1985, we presented a questionnaire to counsel for the manufacturer, McKechnie Brothers S.A. (Pty.) Limited (McKechnie), who accounts for all South African exports of the subject merchandise to the United States. On may 28, 1985, we received a reply to the questionnaire.

Pursuant to a request made by the petitioners, on July 9, 1985, we extended the period for making the preliminary determination until September 17, 1985 (50 FR 28826).

Also on July 9, 1985, the petitioners alleged that the respondent's home market sales were at prices below the cost of production and requested that the Department conduct a cost investigation. We therefore requested that McKechnie respond to a cost questionnaire. We received a reply to the cost questionnaire on August 21, 1985. We examined 100 percent of the sales made by McKechnie during the period of investigation. We made fair value comparisons between sales of such or similar merchandise which was sold by McKechnie in both the United States and South African markets. Such merchandise comprised 88 percent of McKechnie's sales to the United States.

Standing

On March 20, 1985, Aufhauser Brothers Corporation, ("Aufhauser") requested that we rescind our initiation of this investigation, alleging that the petitioners had not filed "on behalf of" the domestic industry, as required by section 732 of the Act. This allegation was also raised in the context of our countervailing duty investigation of low-fuming brazing copper rod and wire from South Africa. We investigated and found in the preliminary countervailing duty determination that there is no reason to conclude that petitioners do not have standing (50 FR 21328). We have received no further evidence to change that determination, as stated in our final countervailing duty determination (50 FR 31642).

Scope of Investigation

The products covered by this investigation are low-fuming brazing copper rod and wire, principally of copper and zinc alloy ("brass"), of varied dimension in terms of diameter, whether cut-to-length or coiled, whether bare or flux-coated, currently classified in the *Tariff Schedules of the United States Annotated* (TSUSA) under items 612.6205, 612.7220 and 653.1500. The chemical composition of the products under investigation is defined by Copper Development Association (CDA) standards 680 and 681.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price based on the CIF packed price to unrelated customers in the United States. We made deductions, where appropriate, for brokerage, handling, inland freight and inland insurance charges in South Africa, ocean freight, marine insurance, credit insurance and rebates.

Foreign Market Value

Petitioners have alleged that if the Department does not determine foreign market value on the basis of constructed value, it should determine foreign market value pursuant to section 773(d) of the Act. The Department preliminarily has determined that section 773(d) is not applicable to sales by McKechnie. Section 773(d) was designed to address the situation in which a multinational corporation effectively subsidizes low-priced sales to the United States from one country with high-priced sales by affiliated factories in the home market of a third country. S. Rep. No. 1298, 93d Cong., 2d Sess. 174–175 (1974). We have determined that while some portion of McKechnie's stock is owned by a corporation which owns other facilities for the production of such or similar merchandise, this ownership interest is not controlling and is far too tenuous to meet the requirements of section 773(d)(1).

In addition, we note that petitioner's allegation that reference should be made to section 773(d) only if the Department does not base foreign market value on constructed value is incorrect. For those sizes where we did not use constructed value (*i.e.*, where we found sufficient sales at or above the cost of production of comparable merchandise), the home market sales are adequate and therefore the Department would not be authorized to apply section 773(d), because the condition imposed by section 773(d)(2) has not been met. In accordance with section 773(a) of the Act, we calculated foreign market value based on either home market sales or constructed value.

McKechnie's reply to our cost questionnaire provided only one average cost for all sizes of brazing rod rather than a separate production cost for each size. It also provided insufficient information explaining and supporting the use of various bases employed in allocating costs. We therefore used the cost of production provided by the petitioners as the best information available, pursuant to section 776(b) of the Act, to represent McKechnie's cost of production. We compared the cost of production provided by the petitioners with the home market selling prices provided by McKechnie and found that for two sizes of brazing rod, sales were made at less than cost over an extended period of time, in substantial quantities, and at prices not permitting recovery of all costs within a reasonable period of time. We therefore used constructed value for these sizes to determine foreign market value. For two other sizes, we found there were sufficient sales at or above cost of comparable merchandise. Therefore, for these sizes we used home market sales prices to determine foreign market value.

We calculated constructed value based on the cost of production provided by the petitioners, who included the statutory minimum of 10 percent for general expenses. We added the statutory minimum of eight percent for profit and McKechnie's packing cost for sales to the United States. We made an adjustment for differences between McKechnie's home market and U.S. credit costs.

We calculated foreign market value based on home market prices on the basis of delivered prices to unrelated purchasers. From these prices, we deducted, where appropriate, inland freight, rebates, and cash settlement discounts. We made adjustments, where appropriate, for differences in credit expenses in accordance with §353.15 of our Regulations (19 CFR 353.15), and differences in physical characteristics in accordance with § 353.16 of our Regulations (19 CFR 353.16). We deducted home market packing costs and added U.S. packing.

We disallowed claimed adjustments for selling, warehouse labor, and inventory financing costs because these costs did not bear a direct relationship

to the sales which are under consideration as required by § 353.15.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of low-fuming brazing copper rod and wire from South Africa that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
McKechnie Brothers S.A. (Pty.) Ltd.	12.48
All Others	12.48

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivieged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, eiher publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination or 45 days after we make our final affirmative determination.

Public Comment

In accordance with § 353.47 of our Regularions (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on October 22, 1985, at the United States Department of Commerce, Room B–841, 14th Street and Constitution Avenue, NW., Washington, D.C. 29230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B–099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by October 15, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

September 17, 1985.

[FR Doc. 85–22705 Filed 9–20–85; 8:45 am]

BILLING CODE [illegible]

Applications for Duty-Free Entry of Scientific Instruments; U.S. Geological Survey et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No. 85–275. Applicant: U.S. Geological Survey, 450 Main Street, Room 525, Hartford, CT 06103. Instrument: VLF Resistivity Meter. Manufacturer: Geonics, Limited, Canada. Intended use: The instrument is intended to be used for the rapid quantitative or qualitative description of subsurface aquifers and the chemistry of the fluids (ground water) in them. This includes the approximate grain size of aquifer material (which can be related to the electrical resistivity) and the water chemistry of the ground water in the aquifer. Application received by Commissioner of Customs: August 15, 1985.

Docket No. 85–277. Applicant: Texas A&M University, Mechanical Engineering Department, College Station, TX 77843. Instrument: Closed Loop Crystal Driver. Manufacturer: Solid State Equipment, New Zealand. Intended use: The instrument will form the essential component of the piezoelectric ultrasonic composite oscillator technique that is being set up. Measurements of elastic modulus and internal friction in a variety of materials under environmental conditions will be conducted. Application received by Commissioner of Customs: August 15, 1985.

Docket No. 85–278. Applicant: University of Hawaii, 1993 East-West Road, Honolulu, HI 96822. Instrument: Microforge. Manufacturer: Narishige Scientific Instrument Laboratory, Japan. Intended use: Studies of ionic channels through the surface membrane of nerve cells. These studies will be conducted to obtain a biophysical description of the membrane channels responsible for the ability of peptidergic neurosecretory terminals to produce regenerative electrical responses and to release hormones under control of electrical activity. Application received by Commissioner of Customs: August 22, 1985.

Docket No. 85–279. Applicant: University of New Mexico, School of Medicine, Department of Pathology, 915 Standford Drive, N.E., Albuquerque, NM 87131. Instrument: Electron Microscope, Model EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: Examination of diseased and normal human tissues, tissues of a variety of animals employed in experimental designs, as well as tissue cultures of human or animal origin. The following are to be investigated:

(1) the ultrastructural changes in cells and extracellular compartment in human diseases and experimentally induced conditions in animals;

(2) morphometric changes (changes in size and number of cells, their processes and various cytoplasmic organelles);

(3) ultrastructural localization of antigens, transport of antigenantibody complexes;

(4) identification of special cellular markers (such as lysosomes in Chediak Higashi disease); and

(5) changes in blood vessel permeability.

Application received by Commissioner of Customs: September 6, 1985.

Docket No. 85–280. Applicant: The Connecticut Agricultural Experiment Station, 123 Huntington Street, P.O. Box 1106, New Haven, CT 06504. Instrument: Electron Microscope, Model EM 10CA/C/CR. Manufacturer: Carl Zeiss, West Germany. Intended use: Studies of microbial pathogens of humans and domestic animals (spirochetes, rickettsiae, viruses, protozoa); microbial pathogens of mosquitoes and other biting flies and also vegetable and forest insect pests (protozoa, viruses, fungi, bacteria); pathogens of trees and annual crops (microplasma, viruses, bacteria, fungi). The ultrastructure of microbes will be determined so that they may be accurately described and identified. Interactions of infectious microbes in their arthropod and vertebrate tissues will be determined with the aid of the EM. Application received by Commissioner of Customs: September 6, 1985.

Docket No. 85–282. Applicant: Naval Research Laboratory, 4555 Overlook Avenue, Washington, DC 20375–5000. Instrument: Electron Microscope, Model EM 10CA with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: Studies to be conducted in support of research designed to elucidate the structure and function of polymerizable lecithin and other novel lipids. These materials form fine structural detail in monolayers and bilayers as well as liposomes and other novel structures. Experiments to be conducted will include:

(a) Fine structural sterology of TEM images of lipid materials.

(b) Diffraction studies of novel lipid materials.

(c) Freeze fracture of bilayer membranes formed from polymerizable lecithins.

(d) Freeze fracture of encapsulated materials.

Application received by Commissioner of Customs: September 9, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85–22706 Filed 9–20–85; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Bilateral Textile Consultations With the Government of Japan To Review Trade in Categories 310/318 and 646

September 18, 1985.

On August 29, 1985 the Government of the United States requested consultations with the Government of Japan with respect to cotton yarn-dyed fabrics in Category 310/318 and to women's, girls' and infants' man-made fiber sweaters in Category 646. This request was made on the basis of the Agreement, effected by exchange on notes dated August 17, 1979, as amended and extended, between the Governments of the United States and Japan, relating to trade in cotton wool and man-made fiber textiles.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the two governments, the Committee for the implementation of Textile Agreements may request the Government of Japan to limit exports in Categories 310/318 and 646, produced or manufactured in Japan and exported to the Untied States during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985, to levels of 18,422,890 square yards equivalent (Category 310/318) and 149,777 dozen (Category 646).

Summary market statements concerning these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of these Categories under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement with the Government of Japan, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the categories, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted prompty. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreement considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect to the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Japan—Market Statement

Categories 310/318—Yarn-Dyed Fabric

August 1985.

Summary and Conclusions

United States imports of cotton yarn-dyed fabric, Categories 310/318 from Japan were 16.8 million square yards during the year ending June 1985, up 31 percent from the 12.8 million square yards imported a year earlier. Japan was the largest supplier of this fabric, accounting for one-third of the total imports.

The sharp and substantial increases of imports from Japan which are being offered at reduced prices are severely disrupting the U.S. markets for cotton yarn-dyed fabrics.

The U.S. industry producing yarn-dyed cotton and cotton/polyester blended fabrics has been adversely affected by imports. Recently two yarn-dyed mills closed and another sharply reduced production. Unfilled orders are down and profits have declined or disappeared.

Production and Market Share

U.S. production of cotton and cotton/polyester yarn-dyed fabrics fell sharply during the third quarter of 1984 and has continued at the depressed level. First quarter 1985 production was 32.5 million square yards, down 28.4 percent from the first quarter of 1984. Production in 1984, largely due to the drop during the last half of the year, was 152.0 million square yards, down 17.1 percent from 1983.

The domestic producers share of the market for domestically produced and imported fabric declined drastically from 86 percent in 1983 to 70 percent in 1984. In addition, the domestic producers experienced a declining market for fabric since imports of yarn-dyed apparel rapidly increased in 1984.

Imports and Import Penetration

Japan ships a wide variety of fabrics in both categories. Shipments include 100 percent cotton and blend fabrics such as 55 percent cotton/45 percent polyester. They also cover a wide range of yarn counts from the teens to the eighties. Most of the shipments are of thirties and forties yarn counts. The duty-paid landed values are below those of comparable U.S. produced fabrics. Representative examples of these differences are provided below.

Japan—Market Statement

Category 646—Women's Girls and Infants' (WGI) Man-Made Fiber Sweaters

August 1985.

Summary and Conclusion

Category 646 imports from Japan increased 72 percent during the year ending June 1985 to 143,493 dozens. WGI man-made fiber sweater imports from Japan totaled 117,123 dozens in 1984 compared with 72,895 dozens in 1983, a 61 percent increase. The U.S. market for Category 646 sweaters is being disrupted by imports. The sharp and substantial increase in imports from Japan is contributing to this disruption.

U.S. Production

Domestic Category 646 production was 4,950,000 dozens in 1984, two percent below the 1980–1984 annual average of 5,068,000 dozens. Production has actually been trending downward for more than a decade. For example the five year average prior to 1980 was 6,440,000 dozens. The high level of imports contributed to the decline in domestic production.

Imports

Category 646 sweater imports have increased by 800,000 dozens since 1980. Import levels have been significantly higher since 1982. Domestic production, on the other hand, has trended downward since the latter year. The import-to-production ratio was 175 percent in 1984 compared with 163 percent in 1980.

In addition to the Category 646 imports, U.S. man-made fiber sweater producers are being adversely affected by sweater imports of polyester and acrylic blended with chief weight and chief value non-MFA fibers such as ramie. In 1984, these imports equaled domestic Category 646 production and during January-June 1985 alone, non-MFA fiber WGI sweater imports reached 3,330,507 dozens.

U.S. Market and Domestic Producers Share

Despite a 1 million dozen increase in the domestic market for Category 646 sweaters, the U.S. producers share eroded to 36 percent in 1984 compared with 38 percent in 1980. If non-MFA fiber blended sweater imports are included, the U.S. producers' share of the market would be less than 30 percent.

Import Values and Domestic Producers' Price

Half of the Category 646 imports from Japan entered under TSUSA No. 383.8073—women's and girls non-ornamented sweaters and a third under 383.8071—infant girls non-ornamented sweaters. These sweaters are imported at landed, duty-paid values below the domestic producers' price for comparable garments.

[FR Doc. 85–22707 Filed 9–20–85; 8:45 am]

BILLING CODE 3510-DR-M

Import Control Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea

September 18, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 24, 1985. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On May 7, 1985, the Government of the United States requested consultations with the Government of the Republic of Korea concerning man-made fiber yarn, other than cordage, in Category 605–O (all T.S.U.S.A. numbers in the category except 316.5500 and 316.5800) and man-made fiber woven fabrics in Category 611. This request was made on the basis of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea.

The purpose of this notice is to announce that agreement was reached in consultations to establish levels of 700,00 pounds for Category 605–O and 2,250,000 square yards for Category 611, produced or manufactured in Korea and exported during 1985. The United States Government has decided to control imports in these categories, not previously controlled in 1985, at the newly agreed levels. In addition, agreement was reached to further amend the bilateral agreement to increase the specific limit for man-made fiber swimwear in Category 659–S (only T.S.U.S.A. number 379.2340, 3769.3170, 383.1920, 383.2239, 383.8300, 393.8400, and 393.9255) from 273,684 pounds to 290,000 pounds for goods exported during 1985.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

SUPPLEMENTARY INFORMATION: On December 27, 1984, a letter from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the **Federal Register** (49 FR 50237) which established import restraint limits for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea and exported during the twelve month period which began on January 1, 1985. The letter which follows this notice further amends the directives of December 21, 1984 and January 29, 1985 to establish new levels for Categories 605–O and 611 and to increase the existing specific limit for Category 659–S. The limits for Categories 605–O and 611 have not been adjusted to account for any imports exported during 1985. These changes will be made as the data become available.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 18, 1985.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directives of December 21, 1984 and January 29, 1985 concerning cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Korea and exported during 1985.

Effective on September 24, 1985 paragraph one of the directive of December 21, 1984 is hereby further amended to establish the following restraint limits for man-made fiber textile products in Categories 605pt.[1] and 611:

Category	12-Mo. restraint limit [2]
605pt.[1]	700,000 pounds.
611	2,250,000 square yards.

Effective on September 24, 1985, the directive of January 29, 1985 is hereby amended to include an adjusted limit of 290,000 pound [2] for man-made fiber textile products in Category 659pt.[3]

[1] In Category 605, all T.S.U.S.A. numbers in the category except 316.5500 and 316.5800.

[2] The limits have not been adjusted to reflect any improts exported after December 31, 1984. Imports in Category 605pt. [1] have not amounted to 228,662 pounds during the January 1–July 31, 1985 period. Imports during the same period have amounted to 1,675,548 square yards in Category 611.

[3] In Category 659, only T.S.U.S.A. numbers 379.2340, 379.3170, 379.9100, 379.9570, 383.1920, 383.2239, 383.8300, 383.8400, and 383.9253.

Textile products in the foregoing categories which have been exported to the United States prior to January 1, 1985 shall not be subject to this directive.

Textile products in Categories 605pt. and 611 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-22708 Filed 9-20-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, October 1, 1985; Tuesday, October 8, 1985; Tuesday, October 15, 1985; Tuesday, October 22, 1985; Tuesday, October 29, 1985 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy & Requirements) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b.(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, D.C. 20301.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 18, 1985.

[FR Doc. 85-22638 Filed 9-20-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

September 16, 1985.

The USAF Scientific Advisory Board Armament Division Advisory Group will meet October 10, 1985, from 8:00 A.M. to 5:45 P.M. and October 11, 1985, from 8:00 A.M. to 3:00 P.M. at Eglin AFB, FL, Building 1, Room 118.

The purpose of this meeting is to review the Sensor Fuzed Weapon and Boosted Kinetic Energy Penetrator programs and results of the SALTY DEMO exercise.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Sceintific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-22621 Filed 9-20-85; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Publication of Alternative Fuel Price Ceiling and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95-621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective October 1, 1985. These prices are based on the prices of alternative fuels.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, Jr., Energy Informaion Administration, 1000 Independence Avenue, SW., Room BE-034, Washington, DC 20585, Telephone: (202) 252-6077.

Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on April 2, 1981, in Docket No. RM79-21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the continguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in section III.

[Dollars per million]

State	BTU's
Alabama	$3 15
Arizona [1]	3 53
Arkansas [1]	3 20
California [1]	3.53
Colorado [2]	3 37
Connecticut [1]	3.44
Delaware [1]	3 66
Florida	3 29
Georgia [1]	3 37
Idaho [2]	3 37
Illinois	3 19
Indiana [1]	3 27
Iowa [1]	3 23
Kansas	2 97
Kentucky [1]	3 27
Louisiana	3 13
Maine [1]	3.44
Maryland	3 54
Massachusetts	3.40
Michigan [1]	3.27
Minnesota [1]	3 23
Mississippi [1]	3.37
Missouri [1]	3 23
Montana [2]	3.37
Nebraska [1]	3.23
Nevada [1]	3 53
New Hampshire	3 43
New Jersey	3 61
New Mexico	3.07
New York [1]	3 66
North Carolina [1]	3.37
North Dakota [1]	3.23
Ohio	3.15
Oklahoma [1]	3 20
Oregon [1]	3 53
Pennsylvania	3 57
Rhode Island [1]	3 44
South Carolina	3 28
South Dakota [1]	3 23
Tennessee [1]	3.37
Texas [1]	3.20
Utah [2]	3.37
Vermont [1]	3 44
Virginia [1]	3.37
Washington	3 53
West Virginia [1]	3.27
Wisconsin [1]	3.27
Wyoming [2]	3.37

[1] Region based price as required by FERC Interim Rule, issued on April 2, 1981, in Docket No. RM–79–21.
[2] Region based price computed as the weighted average price of Regions E, F, G, and H

Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during July 1985 was $29.56 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective October 1, 1985, is $6.63 per million BTU's.

Section III. Method Used to Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79–21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81–27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on October 6, 1981, in Docket No. RM81–28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

A. Date Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of May 1985, June 1985, and July 1985.[1] All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used to Determine Alternative Price Ceilings

(1) Calculation of Volume-Weighted Average Price

The prices which will become effective October 1, 1985, (shown in section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, May 1985, June 1985, and July 1985. Reported prices for sales in May 1985 were adjusted by the percent change in the nationwide volume-weighted average price from May 1985 to July 1985. Prices for June 1985 were similarly adjusted by the percent change in the nationwide volume-weighted average price from June 1985 to July 1985. The volume-weighted 3-month average of the adjusted May 1985 and June 1985, and the reported July 1985 prices were then computed for each State.

(2) Adjustment for Price Variation

States were grouped into the regions identified by the FERC (see section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

[1] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

(3) Calculation of Ceiling Price

The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in section III.B(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

There were insufficient sales reported in Region G for the months of May 1985, June 1985, and July 1985. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, Region G, and Region H.

(4) Lag Adjustment

The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 20 cities throughout the United States. The low

posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending September 16, 1985, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of July 1985. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in section III.B.(3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A

Connecticut	New Hampshire
Maine	Rhode Island
Massachusetts	Vermont

Region B

Delaware	New York
Maryland	Pennsylvania
New Jersey	

Region C

Alabama	North Carolina
Florida	South Carolina
Georgia	Tennessee
Mississippi	Virginia

Region D

Illinois	Ohio
Indiana	West Virginia
Kentucky	Wisconsin
Michigan	

Region E

Iowa	Nebraska
Kansas	North Dakota
Missouri	South Dakota
Minnesota	

Region F

Arkansas	Oklahoma
Louisiana	Texas
New Mexico	

Region G

Colorado	Utah
Idaho	Wyoming
Montana	

Region H

Arizona	Oregon
California	Washington
Nevada	

Issued in Washington, D.C., September 18, 1985.

Dr. H.A. Merklein,

Administrator, Energy Information Administration.

[FR Doc. 85-22756 Filed 9-20-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Hydroelectric Application Filed With the Commission

September 18, 1985.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. Type of application: Transfer of License.

b. Project No.: 2609-006.

c. Date filed: August 19, 1985.

d. Applicant: International Paper Company and Curtis/Palmer Hydroelectric Company.

e. Name of project: Curtis/Palmer Falls Project.

f. Location: On the Hudson River near the Towns of Corinth, Hadley, and Lake Luzerne, Warren and Saratoga Counties, New York.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact person: McNeil Watkins II, Bishop, Liberman, Cook, Purcell & Reynolds, 1200 17th Street NW., Washington, DC 20036.

i. Comment date: October 7, 1985.

j. Description of Proposed Transfer: On May 22, 1980, a license was issued to International Paper Company to construct, operate, and maintain the Curtis/Palmer Falls Project No. 2609. The Licensee intends to add Curtis/Palmer Hydroelectric Company to the license in order to obtain the necessary continued financing, and assistance in the operation of the project. For that reason the Licensee and Curtis/Palmer Hydroelectric Company have filed a request to transfer the license to International Paper Company and Curtis/Palmer Hydroelectric Company (Transferees).

k. This notice also consists of the following standard paragraphs: B.

1. Filing and Service of Responsive Documents: Any filing must bear in all capital letters to the title "COMMENTS", "PROTESTS" or "MOTION TO INTERVENE", as applicable, and the Project Number of this application. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Director, Division of Project Management, Office of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E Springer, Director, Division of Project Management, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 203 RB at the above address. A copy of any motion to intervene must also be served upon the representative of the Applicant specified herein.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-22645 Filed 9-20-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-5173-000 et al.]

Natural Gas Companies; Sun Exploration and Production Co. et al.; Applications for Abandonments of Service and a Petition To Amend a Certificate[1]

September 13, 1985.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendment which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 25, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft ³	Pressure base
G-5173-000, D, Sept. 5, 1985	Sun Exploration and Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Northern Natural Gas Company, Guymon-Hugoton Field, Texas County, Oklahoma.	(1)	
CI68-88-000, D, Sept. 9, 1985	Texaco Producing Inc., P.O. Box 52332, Houston, Texas 77052.	Arkansas Louisiana Gas Company, Southwest Lacy Field, Blaine County, Oklahoma.	(2)	
CI68-749-000, D, Sept. 9, 1985	Texaco Inc. P.O. box 52332 Houston, Texas 77052	Mountain Fuel Supply Company, South Baggs Area, Carbon County, Wyoming.	(3)	
CI73-427-001, D, Sept. 9, 1985	Sun Exploration & Production Co.	Northern Natural Gas Company, Tiger Ridge Field, Hill and Blaine Counties, Montana.	(4)	
CI75-680-001, D, Sept. 9, 1985	Texaco Inc.	Texas Gas Transmission Corporation, Eugene Island Block 342, Offshore Louisiana.	(5)	
CI77-438-001, D, Sept. 9, 1985	Texaco Producing Inc.	United Gas Pipe Line Company, High Island Area (E/2 of Block 110, W/2 of Block 111, Block 137 and N/2 of Block 138, Offshore Texas.	(6)	
CI78-1026-001, D, Sept. 9, 1985	Sun Exploration & Production Co.	Arkansas-Louisiana Gas Company, Stage Stand, S.E. Field, Stephens County, Oklahoma.	(7)	
CI85-650-000, B, Sept. 6, 1985	Cummins & Walker Oil Company, Inc. P.O. Box 718 Corpus Christi, Texas 78403.	Transcontinental Gas Pipe Line Corporation, Washburn Ranch Area, La Salle County, Texas	(8)	
CI85-653-000, B, Sept. 9, 1985	Cummins & Walker Oil Company, Inc. P.O. Box 718 Corpus Christi, Texas 78403.	Transcontinental Gas Pipe Line Corporation, Washburn Ranch Area, LaSalle County, Texas.	(8)	
CI85-654-000, B, Sept. 9, 1985	Darrell Goe,	Consolidated Gas Supply Corporation, Conneaut Township, Erie County, Pennsylvania.	(8)	
CI85-655-000, B, Sept. 9, 1985	Dodds, *et al* Darrell Goe Agent	Consolidated Gas Supply Corporation, Cherry Hill Field, Conneaut Township, Erie County, Pennsylvania	(8)	
CI85-656-000, B, Sept. 9, 1985	J & J Enterprises, Inc.	Consolidated Natural Gas, Sandy Field, Clearfield County, Pennsylvania.	(10)	
CI85-657-000, B, Sept. 9, 1985	do	Consolidated Natural Gas, Brady Field, Clearfield County, Pennsylvania.	(10)	
CI85-658-000, B, Sept. 9, 1985	Cecil Meadows	Consolidated Gas Transmission Corporation, Nicut Field, Calhoun County, West Virginia	(11)	
CI85-659-000, B, Sept. 9, 1985	The Bentre' Company, 423 Second Street, Marietta, Ohio 45750.	Consolidated Gas Transmission Corporation Erie County, Pennsylvania.	(9)	
CI85-660-000, B, Sept. 9, 1985	do	do	(9)	
CI85-661-000, B, Sept. 9, 1985	do	do	(9)	
CI85-662-000, B, Sept. 9, 1985	do	do	(9)	
CI85-663-000, B, Sept. 9, 1985	do	do	(9)	
CI85-664-000, B, Sept. 9, 1985	do	do	(9)	
CI85-665-000, B, Sept. 9, 1985	do	do	(9)	
CI85-666-000, B, Sept. 9, 1985	do	do	(9)	
CI85-667-000, B, Sept. 9, 1985	do	do	(9)	
CI85-668-000, B, Sept. 9, 1985	Kenn-Co Services, Inc., 2431 East 51st Street—Suite 701 Tulsa, Okla 74105.	Cities Service, SW/4 SW/4 Sec. 15-T22N-R9W, Major County, Oklahoma.	(12)	
CI85-669-000, B, Sept. 9, 1985	do	Cities Service, NE Sec. 32-T17N-R9W, Kingfisher County, Oklahoma.	(13)	
CI85-670-000, B, Sept. 9, 1985	do	Cities Service NE/4 Sec. 32-T17N-R9W, Kingfisher County, Oklahoma.	(14)	
CI85-671-000, B, Sept. 10, 1985	Agarita Oil Company, P.O. Box 333, Corpus Christi, Texas 78403	Valley Gas Transmission, Inc. Live Oak County, Texas	(15)	
CI85-672-000, B, Sept. 9, 1985	Service Drilling Co., 1800 Fourth Natl. Bank Bldg., Tulsa, Okla. 74119.	Transwestern Pipeline Company, Como SE Field, Beaver County, Oklahoma.	(16)	
CI73-443-000, D, Sept. 11, 1985	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880	Northern Natural Gas Company, Sherard Field, Chouteau County, Montana.	(17)	
CI84-396-003, C, Sept. 11, 1985	Sohio Petroleum Company, P.O. Box 4587, Houston, Texas 77210.	Texas Eastern Transmission Corporation, Eugene Island Block 330, Offshore Louisiana.	(18)	14.73
G7193-005, D, Sept. 6, 1985	Union Oil Company of California, P.O. Box 7600, Los Angeles, Calif. 90051.	Williston Basin Interstate Pipeline Company, Worland Field, Big Horn and Washakie Counties, Wyoming.	(19)	

[1] Property No. 843020, Interstate "E" Gas Unit, sold to Cities Service Oil and Gas Corporation.
[2] On 5-21-85, Texaco Producing Inc. assigned to Bogert Oil Company all of its remaining interest in leases under the 6-26-67 contract.
[3] Assignment of a part of Texaco's interest under Docket No. CI68-749 to Shakespeare Oil Company.
[4] Sale of Tiger Ridge Gas Unit to Kenneth W. Cory.
[5] Assignment of a part of Texaco's interest under Docket No. CI75-680 to Huffco.
[6] Federal Lease OCS-G-3234 (High Island Block 137) was released on 11-2-82.
[7] J.K. Callaway Unit (18.75% W.I.) sold to Bill Bowers and Associates.
[8] South Texas Snydicate wells # 1-41 and 1-88 stopped producing and have been plugged. Well #1-67 is still producing and Applicant desires to retain the ability to sell gas from the well
[9] Non-economic at current rate.
[10] Insufficient production.
[11] This well is barely making a sufficient amount of gas production to pay the meter charge. Therefore, it is not feasible to continue to produce this well.
[12] This lease was P&A due to the total depletion of production. Kenn-Co purchased this lease for salvage from Petro Lewis in May, 1983. The landowner would like to have his land cleared of all gas lines and meter loop. Applicant has been told, after talking with many people, that the only way this can be done is with an abandonment approval by FERC.
[13] This well was purchased from Petro Lewis for salvage. It had been shut in for P&A on 12-12-83. The surface owner justfiably wants his land cleared of all oil and gas related equipment now that the well bore has been plugged and abandoned. The one remaining problem is the gas lines and meter loop still on his property. Kenn-Co purchased this lease from Petro Lewis for salvage only—it was not produced by Kenn-Co.
[14] Well was depleted by Petro Lewis in August, 1982. Kenn-Co purchased this lease for salvage. The well has been properly plugged in compliance with the laws of Oklahoma. The landowner has, for two years, accused Kenn-Co of not fulfilling its contractual obligations of clearing said lease. All that remain are the gas lines and meter loop.
[15] Only well on dedicated lease watered out. Well plugged and abandoned.
[16] Inasmuch as neither Buyer nor Seller desires to compress the gas they have agreed that the production attributable to the Walton Lease located in Sec. 81-1N-25E, Beaver County, Oklahoma be released.
[17] Sale of USA #9-8 Well and equipment to Robert Klabzuba.
[18] Applicant is filing for an additional acquired working interest.
[19] The Phosphoria Formation which underlines the lands dedicated to the Worland Unit contains oil wells which produce associated sour gas. No facilities have existed to process the sour gas since July 1971. Consequently the gas is extracted from the oil via the oil processing system and flared, a practice which has continued to the present. Union has received an offer from the operator of a sour gas treating plant which has recently become operational and who will purchase, process and sweeten the gas for resale in intrastate markets.

Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

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Cliffs Electric Service Co. et al.; Order Granting Rehearing in Part, Granting in Part and Denying in Part Requests for Waivers, Denying Requests for Disclaimer of Jurisdiction, and Accepting Rate for Filing

Issued: September 17, 1985.

In the matter of: Cliffs Electric Service Company, Upper Peninsula Generating Company; Docket No. EL83–19–001; Elkem Metals Company, Docket No. EL83–30–000; Colockum Transmission Company, Inc., Docket No. EL83–28–000; Stonington and Deer Isle Power Company, Docket No. EL83–18–000.

Four petitioners have submitted requests for waivers of various Commission regulations. The petitioners are: Cliffs Electric Service Company (Cliffs Electric or Cliffs) and its 93 percent-owned affiliate, Upper Peninsula Generating Company (Generating Company); Elkem Metals Company (Elkem); Colockum Transmission Company (Colockum); and Stonington and Deer isle Power Company (Stonington).[1] Cliffs Electric and Generating Company have filed a joint request for rehearing of an earlier Commission order denying the requested waivers. 24 FERC ¶ 61,024 (1983). The petitioners have based their requests on similar waivers granted in whole or in part in *St. Joe Minerals Corp.*, Docket No. EL82–19–000, 21 FERC ¶ 61,323 (1982), *modified on reh'g*, 22 FERC ¶ 61,211 (1983) (*St. Joe*).[2]

In *St. Joe*, the Commission granted waivers of the Uniform System of Accounts, various reporting requirements, annual charges and our regulations respecting issues of securities and assumptions of liability. In addition, the Commission granted partial waivers of the regulations respecting property dispositions and consolidations and the holding of interlocking positions. The waivers were granted to St. Joe primarily because St. Joe was an industrial company selling incidental and interruptible power as a very small portion of its primary business to customers who were not dependent upon that power and because the sales of power were temporary and were to be reduced and eventually eliminated as St. Joe's business operations expanded. In addition, we found that the power sales appeared to be in the public interest because they promoted St. Joe's business operations and thereby benefited the depressed local economy and because coal-fired generating units may well have displaced oil-fired units.

The petitioners (with the exception of Stonington) are industrial companies which have entered into power transactions with traditional public utilities. Cliffs Electric and Elkem are selling excess capacity that is no longer required by their industrial parents. Colockum has entered into an energy/capacity exchange agreement to better regulate the delivery of electricity to its industrial parent. Stonington, a small electric distributor, sells power to a small island previously served by aged diesel generators. Because of the nature of the requests and the similar circumstances presented, the petitions have been considered together. As set forth below, with the exception of Generating Company, we shall grant the waivers requested.

Discussion

As noted, these petitions fall into two separate categories. Three involve industrial concerns; one involves a traditional but small public utility. We shall discuss these categories separately. With respect to the industrial firms, the waivers of our regulations are granted primarily to foster an efficient market for the sale of power and energy. At present, the cost to utilities of constructing additional capacity to meet increases in customer load is extremely high. According to the petitioners the proposed transactions may be hindered if certain of our regulations (particularly the Uniform System of Accounts) are not waived. Therefore, to the extent that waivers of certain of our regulations alleviate a regulatory burden on the petitioners, an efficient use of existing generation facilities may be promoted.

As discussed more fully below, each of these petitions presents circumstances in which sales of electricity by industrial firms may promote the public interest and foster an efficient market in different ways.

With the exception of Stonington, the waivers granted in this order, however, are not intended to apply to traditional public utilities under our jurisdiction. Companies whose primary business involves the sale of electricity at wholesale will remain subject to the Commission's regulations including the Uniform System of Accounts. In order to qualify in the future for the same waivers of our regulations accorded St. Joe Minerals Corporation, a petitioning company must be generally engaged in a non-utility business. That is, the proposed power transactions of a petitioning company must be incidental to the company's or its parent's primary industrial operations.

To accomplish this objective, we shall apply a two-part test for determining whether a petitioner qualifies for the *St. Joe* waivers. A threshold determination will be made as to whether the petitioner's generation, transmission or distribution facilities were built and are used primarily for a non-public utility purpose. If a petitioner can establish by clear and convincing evidence that its jurisdictional facilities were constructed solely for and are used primarily for its own internal industrial requirements, the *St. Joe* waivers will be granted provided that the jurisdictional transactions at issue meet the criteria discussed below. A rebuttable presumption will exist that power plant facilities were built solely for industrial needs if such facilities are owned, operated and constructed prior to the date of this order, by a company not engaged in a business having a public utility nature.

Factors relating to the transactions at issue will be examined in order to determine whether the facilities are used primarily for a non-public utility purpose and whether there are sufficient differences from traditional public utilities to warrant granting waivers from our regulations. Of necessity, waivers will be considered in a case-by-case analysis. Among the factors in *St. Joe* which warranted waivers of the Commission's regulations were: the small amount of revenues derived from the jurisdictional transactions relative to the total revenues of St. Joe; the temporary nature of the contractural obligation undertaken by St. Joe; and the interruptible nature of the transactions which were made on a convenience basis to customers not dependent upon the service. These factors, though not determinative, will continue to be scrutinized to assure that the jurisdictional transactions are in the

[1] Colockum and Stonington also request that the Commission disclaim jurisdiction over their proposed transactions.

[2] Stonington does not rely on *St. Joe* in its waiver requests. Stonington has requested, however, the same waivers that St. Joe requested.

public interest and justify the grant of waivers. The farther a set of facts departs from the facts in *St. Joe*, the greater the scrutiny that will be given the request for waivers. Finally, we will look at any other relevant factors to determine whether the proposed sales will generally accomplish the policy objectives set forth above of promoting a more efficient market for the sale of energy and power.

Stonington presents a somewhat different case from the other petitioners involved here because it is a traditional public utility rather than an industrial firm or a subsidiary of an industrial firm. For the reasons stated below, we shall grant its waiver request in part.

Consistent with *St. Joe*, waivers of our regulations shall be predicated upon requesting entities being able to provide evidence to show that their jurisdictional rates are just and reasonable. Therefore, cost support data must be filed by each entity. Furthermore, inasmuch as we continue to retain jurisdiction over all requesting entities, we shall also reserve the right to modify any order granting waivers should the underlying factual situations change. We shall reserve the right to require a further showing that neigther public nor private interests will be adversely affected by the grant of the requested waivers.

Cliffs Electric Service Company and Upper Peninsula Generating Company

On August 10, 1983, Cliffs Electric and Generating Company filed a joint request for rehearing of the Commission's order denying their request for waiver of certain regulations. 24 FERC ¶61,024 (1983). They specifically requested waiver of: the Commission's Uniform System of Accounts; the statements and reports required by Parts 41, 50, and 141 of the Commission's regulations; and the requirements of parts 45 and 46 of the Commission's regulations relating to interlocking directorates.

Cliffs Electric and Generating Company argue that their sales of excess energy are indistinguishable from those which the Commission found to be temporary in *St. Joe*. They also argue that compliance with the Commission's accounting and reporting requirements is burdensome, and leads to an unwarranted intrusion by the Commission in the internal affairs of their parent, Cleveland-Cliffs Iron Company.[3] In addition, Cliffs Electric and Generating Company contend that the Commission improperly considered the requests for exemption by lumping them together for consideration without distinguishing between the various regulations and, in particular, did not adequately justify its reason not to exempt them from the interlocking directorate requirements. Finally, they contend that the earlier order runs contrary to the Commission's goal of removing unnecessary regulatory burdens.

By order issued on August 30, 1983, the Commission granted rehearing solely to permit additional time in which to further consider the request for rehearing.

Elkem Metals Company

On July 7, 1983, Elkem, an industrial manufacturer of ferrorallys, filed a petition asking that the Commission waive certain of its regulations. Elkem specifically requests waiver of: the Commission's Uniform System of Accounts (Subchapter C of the regulations); the statements and reports governed by Parts 41, 50 and 141 of the Commission's regulations; and the annual charges required by section 36.1 of the regulations. Elkem requests, in lieu of full waiver, that the Commission apply minimum of abbreviated filing requirements with respect to prior Commission approval of property dispositions and consolidations and the holding of interlocking positions under Parts 33, 45, and 46 of the regulations and that the Commission grant blanket prior approval of security issuances and assumptions of liability under Part 34 of the regulations.[4]

In support of its request for waiver, Elkem states that it owns and operates a 200 MW coal-fired electric generating plant which provides the electric requirements for its Marietta, Ohio manufacturing facilities. Due to the depressed market for ferroalloys, Elkem has approximately 30 MW of excess capacity and associated energy at its Marietta plant which is sells to Monongahela Power Company (Monongahela) for resale to Atlantic City Electric Company (Atlantic City) pursuant to an agreement between Elkem and Monongahela. The agreement, *inter alia*, obligates Elkem to provide 30 MW for resale during the contract year beginning January 1, 1983, with amounts in any succeeding year to be determined by August 1 to the prior year.[5] By letter dated February 16, 1983, in Docket No. ER83–220–000, the Director of the Office of Electric Power Regulations accepted for filing Elkem's agreement with Monongahela and the corresponding resale agreement between Allegheny Power System (parent company of Monongahela) and Atlantic City effective January 1, 1983. In that docket, Elkem noted that it intended to file the instant request for waivers. Elkem contends that the surplus power will be made available on only a temporary convenience basis until the market for ferroalloys improves.[6] Elkem further contends that full compliance with the Commission's regulations would be so burdensome as to make the excess power sales impracticable and would be inconsistent with its status as an industrial manufacturer.

Colockum Transmission Company

On June 29, 1983, Colockum, a wholly owned subsidiary of the Aluminum Company of America (Alcoa), submitted an Exchange Agreement, date June 2, 1983, under which Colockum will assign 7.5%, or approximately 22 MW, of its entitlement in the Rocky Reach Hydroelectric Project, P–2145 (Rocky Reach), to Pacific Power & Light Company (PP&L) in exchange for uniform deliveries of firm energy from PP&L.[7] The agreement provides that the energy returned by PP&L will be at a rate of 1,947 kilowatt-hours per kw of capacity, which equates to approximately 43 million kilowatt-hours annually. The proposed agreement contains provisions for energy banking, subject to certain limitations, conditions, and banking charges, applicable whenever deliveries scheduled by PP&L are in excess of Colockum's immediate requirements. The proposed Exchange Agreement is to be effective for the five year period beginning June 30, 1983, and ending June 30, 1988. The same agreement was also filed by Pacific Power & Light Company in Docket No. ER83–770–000 and was accepted for filing by letter order dated December 21, 1983. Colockum requests a finding that it

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[3] According to Cliffs Electric, several accounting changes recommended by the Commission Staff following an audit would impose upon Cleveland-Cliffs nearly five million dollars of additional expenses in the year such changes are made.

[4] Notices of the petitions of Elkem, Colockum, and Stonington were published in the **Federal Register**. No comments, protests, or interventions have been received.

[5] The agreement also provides for energy interchange and facilities coordination for the two year period beginning January 1, 1983, and for additional two year periods thereafter.

[6] Elkem states that Atlantic City is on notice that sales can be terminated upon one-year's notice.

[7] Rocky Reach has a capability of approximately 1284 MW. Colockum is entitled to purchase 23% of the output in accordance with a Power Sales Contract dated November 11, 1957, between Alcoa and the Public Utility District No. 1 of Chelan County which was assigned to Colockum under an Agreement dated August 10, 1964.

is not a public utility subject to the jurisdiction of the Commission. Alternatively,[8] Colockum requests that it be granted waivers similar to those afforded St. Joe, specifically abbreviated filing requirements under Parts 33, 45, and 46 of our regulations, and blanket approval under Part 34. Like Elkem, Colockum also requests waiver of §§ 35.15 and 36.1 and Part 35 of the regulations, and requests waiver of the Commission's Uniform System of Accounts (Subchapter C) and of Parts 41, 50, 131, and 141 of the regulations.

In support of its contention that it is not jurisdictional Colockum states that its facilities are not being used for purposes of sales for resale but instead are being used only for the limited purpose of local distribution to its sole retail customer, Alcoa. Colockum further states that the transactions proposed in the Exchange Agreement would involve no form of income for Colockum but merely the payment of firm energy in exchange for hydroelectric capacity and energy. Accordingly, Colockum contends that there would be little reason for requiring it to go through the detailed regulatory steps incumbent upon a jurisdictional entity. In support of its alternative request for waivers, Colockum contends that subjecting it to the Commission's regulations would create a burden on Colockum inconsistent with its primary function as a retail supplier of electric power to a single customer, a manufacturer which is its corporate parent.

Stonington and Deer Isle Power Company

On March 31, 1983, Stonington filed a request that the Commission disclaim jurisdiction with respect to Stonington's proposed sale of power to the Isle au Haut Electric Power Company (IaH) in favor of the Maine Public Utility Commission (Marine Commission). Subsequent to the filing, an underwater cable was built to interconnect Stonington and Iah and was energized on July 25, 1983. Stonington also attached to its request an advisory ruling from the Maine Commission which states that the Maine Commission would assert jurisdiction over the proposed sale if this Commission elected not to exercise its preemptive jurisdiction. The Maine Commission, on May 13, 1983, filed a request that this Commission either decline to exercise jurisdiction or, alternatively, reduce the regulatory requirements on Stonington.

On June 23, 1983, Stonington filed a petition for a declaratory order which repeats the request made in its March 31, 1983 petition. Alternatively, Stonington requests that the Commission waive all reporting, filing, accounting, notice and approval regulations under the Federal Power Act. Specifically, Stonington requests waiver of Parts 2.2 through 2.17 (General Policy and Interpretations), Part 32 (Interconnection of Facilities; Emergencies; Transmission to a Foreign Country), and Parts 33, 34, 45, and 46, Subchapter C, and Parts 41, 50, 131 and 141 of the regulations. Stonington is a small investor-owned electric distribution company serving approximately 2,000 (mostly residential) retail customers on Deer Isle, located off the Maine coast. Stonington owns no generation facilities and purchases full requirements wholesale service from Bangor Hydro-Electric Company.

Stonington, while not denying that it qualifies as a public utility under the Federal Power Act, argues that the Commission should decline to assert jurisdiction or, alternatively, waive the regulations noted above. In support of its request, Stonington argues that the expense of compliance with Commission procedures could endanger the proposed transaction because its current service area encompasses only two towns on the island and the proposed sale to IaH reflects the equivalent of only one percent of Stonington's annual sales. Stonington further states that the sale would provide IaH's customers with a cheaper, more reliable source of power.[9] In addition, Stonington contends that the sale is in the public interest because it tends to reduce dependence on foreign oil sources.

Discussion of Cliffs Electric and Generating Company Rehearing

Under the presumption established above in this order, we find that the generating units supplying the output required by Cliffs Electric were not constructed for a public utility purpose; we also find that they are not primarily used for a public utility purpose. From the representations made by Cliffs Electric, it appears that until the late 1970's the generating capacity required by Cliffs Electric closely matched the power requirements of Cleveland Cliff's mining operations. Since the late 1970's the sales of power by Cliffs Electric appear to be wholly incidental to the principal business of its parent. Sales of power have averaged less than five percent of Cliffs Electric's total generating capability and revenues from the excess power sales have been less than one percent of Cleveland-Cliff's total revenues.[10]

Notwithstanding our earlier findings to the contrary, upon further analysis, we are persuaded that the sales of Cliffs Electric also appear to be temporary in the same sense the sales in *St. Joe* were temporary. The sales are intended to dispose of excess energy until Cleveland-Cliffs ultimately requires all of the energy to which Cliffs Electric is entitled. The sales of excess energy are also opportunity sales—subject to termination on short-term notice. Under the circumstances presented by Cliffs Electric, there is not the same need for compliance with the Commission's accounting and reporting regulations as would be the case with more traditional public utilities. We also find these sales are in the public interest because they will promote the use of coal-fired generation that might otherwise be idled and provide power to utilities that might otherwise have to add expensive new capacity; these sales will also help Cleveland-Cliffs in a period in which its mining operations have not expanded as rapidly as anticipated. Accordingly, we find, upon further consideration, that the sales of excess energy are similar to the sales made by St. Joe and, therefore, we shall grant rehearing and modify our earlier order. We shall grant Cliffs' request for waivers as discussed below.

We shall, however, deny the request of Generating Company for waivers of the accounting and reporting requirements of our regulations. As noted in our earlier order, Upper Peninsula Power Company (UPPCO), an investor-owned utility, is entitled to 100 percent of the output of two generating units owned by Generating Company having a combined net tested capability of 94 MW. These two units provide most of UPPCO's generation requirement. Thus, a large portion of generating company's facilities clearly serve a public utility purpose; moreover, Generating Company has not argued that there facilities were ever used for any other purpose. Since the early

[8] In the event it is found to be a jurisdictional public utility, Colockum requests that its exchange agreement be treated as an initial rate schedule and further requests waiver of the notice requirements.

[9] Service was provided by several aged diesel generators.

[10] We note that this case involves a subsidiary of an industrial parent, unlike St. Joe's. We think it is relevant, in the parent-subsidiary context, to examine the subsidiary's revenues from utility sales as a percentage of the parent's revenues. However, if the subsidiary is large enough, it may be inappropriate to grant waivers from our regulations, regardless of the level of revenues in relation to its parents. Therefore, it may also be relevant, depending on the circumstances, to examine the absolute level of the assets and revenues of the subsidiary to determine whether the subsidiary's utility business is merely incidential to the industrial activities of the firm.

1970's, the company has been regulated as a public utility under the Federal Power Act. Therefore, there is no basis in Generating Company's pleadings on which we could conclude that these facilities were constructed for and are used primarily for a non-public utility purpose. Furthermore, the situation presented by Generating Company is distinguishable from the situation presented in *St. Joe*. Unlike the sales made by *St. Joe*, the sales made by Generating Company to UPPCO are not intended to be temporary, incidental sales of excess energy. In addition, Generating Company has derived a significant share of its revenue from its sales to UPPCO.[11] These facts do not warrant granting waivers of the Uniform System to Accounts and Parts 41, 50, and 141 of our regulations to Generating Company.[12]

Other Waiver Requests

We find that Elkem's jurisdictional facilities were built and are primarily used for a non-public utility purpose. The sales of excess power by Elkem appear to be wholly incidental to its principal manufacturing business; revenues from such sales are expected to comprise only a small portion of Elkem's total revenues; and the sales of excess power to Monongahela are temporary, convenience sales. We further find that the sales are in the public interest, because they will promote the use of coal fired generation, increase the utilization of existing generation facilities, lower the operating costs associated with ferroalloy production at Marietta during a period of depression in the ferroalloy market, as well as improve the employment opportunities in the area.[13] Therefore, on the basis of the facts presented, and consistent with the order in *St. Joe*, we shall grant Elkem's requests for waiver of our regulations, in part, as ordered below.

Colocum's request for disclaimer of jurisdiction is based on its assertion that its transmission facilities are being used not for purposes of sales for resale but for the limited purpose of local distribution to its sole retail customer, Alcoa. While Colockum's deliveries of power for direct, ultimate use by Alcoa constitute retail transactions, Colockum's assignment of a percentage of its Rocky Reach hydroelectric entitlement to PP&L, in exchange for comspensation in the form of firm energy, constitutes a sale of energy to PP&L for resale by PP&L.[14] Pursuant to Section 201(b) of the FPA, the Commission has jurisdiction over such sales. Accordingly, we shall deny Colockum's request for a disclaimer of jurisdiction.

We find, however, under the presumption set forth herein, that the jurisdictional transmission facilities were constructed and are primarily used for a nonpublic utility purpose. The only transmission facilities which Colockum owns are those interconnecting Alcoa's switchyard with Public Utility District No. 1 of Chelan County and Bonneville Power Administration. Those facilities are used exclusively for delivering power to Alcoa, and Colockum provides no transmission services to others over those facilities. In addition, we find that the purpose of the Exchange Agreement is to regulate the delivery of electricity to Colockum's parent, Alcoa. Presumably, PP&L will use its entitlement to Rocky Reach capacity to displace high cost generation during peak hours. Alcoa's smelting operations, supplied by Colockum, would benefit by Uniform deliveries of energy, as opposed to deliveries of hydroelectric energy subject to stream flow conditions. Accordingly, we find that the public interest part of our test has been met and we shall grant, in part, Colcokum's request for waivers of the Commission's regulations.

Given the fact that Colockum's facilities consist only of 2,100 feet of 13.8 KV transmission lines, we find that compliance with the reporting and accounting requirements of Parts 41, 50, 141 and Subchapter C (Uniform System of Accounts) of the regulations may be unnecessarily burdensome and may impede Colockum's and Alcoa's normal business operations, and we shall grant waivers as ordered below.

We find, on the basis of the facts presented, that Stonington's transaction with IaH constitutes a transmission and sale of electric power at wholesale in interstate commerce and, therefore, is jurisdictional. While not reaching the question of the limits of the Commission's authority to decline jurisdiction, we find that Stonington's sale to IaH is not *de minimis*.[15] Consequently, the request for the Commission to decline to assume jurisdiction is denied.

We recognize that Stonington's request is different from the other cases we are considering in this order. Stonington is a traditional public utility rather than an industrial concern such as Cleveland-Cliffs, Elkem, or Alcoa. The policy concern are different here. However, we have concluded it is appropriate to grant Stonington's requests in part because of the small size of both Stonington and the proposed sale, and the fact that the sale will replace expensive diesel generation. Furthermore, we note that under a final rulemaking issued on August 3, 1984, to become effective as of January 1, 1984, electric utilities have been reclassified for purposes of applying the Uniform System of Accounts. Revisions to Public Utility and Natural Gas Company Classification Criteria, Order No. 390, 28 FERC § 61,187 (1984); FERC Statutes and Regulations, § 30.586 (1984). Under Order 390, companies that have total sales, in each of three previous years, below 10,000 mWh and that do not otherwise qualify as major utilities are exempted from compliance with the Uniform System of Accounts. Under these criteria, it appears that Stonington is exempt from the Uniform System.[16]

With respect to the specific requests for waivers, our dispositions are as follows:

In view of the financial burdens, as discussed above, which may result from full compliance with the regulations, we shall grant waiver of our Uniform System of Accounts and Parts 41, 50 and 141 of our regulations as requested by Cliffs, Elkem, Colockum and Stonington. However, this waiver assumes that these entitles will be able to provide evidence that their rates are just and reasonable.[17]

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[11] According to the FERC Form 1, filed with the Commission in 1982, Generating Company collected almost $92 million in total revenues of which over $14 million was collected from UPPCO. In 1983, almost $100 million of total revenues was collected, of which $13.5 million was collected from UPPCO.

[12] The claim that we are unduly involving ourselves in the internal affairs of Cleveland-Cliffs is not compelling. Any time that this Commission exercises any authority over a jurisdictional company, there will be some effect on nonjurisdictional affiliates. The statutory mandate embodied in the Federal Power Act is to assure that jurisdictioal rates and services are just, reasonable and not unduly discriminatory. The fact that such regulations affect non-jurisdictional companies is no justification for refusing to carry out that responsibility.

[13] We note that Elkem produces alloys (in particular manganese alloys) that are to be stockpiled for immediate use in case of national emergency pursuant to the Strategic and Critical Materials Stockpiling Revision Act of 1979.

[14] *See Tapoco, Inc.*, 13 FERC ¶ 61,193 (1980)

[15] *See Connecticut Light & Power Co.*, 324 U.S. 515, 536 (1945).

[16] By letter dated August 2, 1982 (attached to the March 24, 1983 petition), Stonington states that its annual sales are in the 8,000,000KWH range.

[17] We find it unnecessary to act on the requests of Elkem, Colokum, and Stonington for waivers of annual charges under § 36.1 of the regulations. The Commission has issued an order deferring billing for

Continued

As noted, Stonington requests waiver of the regulations which establish requirements for requesting Commission orders: (1) directing the interconnection of facilities; (2) establishing emergency connections; (3) authorizing the export of electric energy to a foreign country; and (4) approving construction of facilities at an international boundary. We note that these regulations are unlikely to apply to Stonington, because it serves only a small island off the coast of Maine and is a full requirements customer of Bangor. In any event, waiver cannot be granted as to any outstanding regulations concerning emergency interconnections under section 202(c) of the Federal Power Act, export authorization, or construction at international borders since the Commission no longer has jurisdiction with respect to these matters.[18] In the unlikely event that Part 32 were to apply to Stonington, we believe that the requirements concerning interconnection contained therein are not unduly burdensome. Therefore, we shall deny this request for waiver.

We shall deny Stonington's request for waiver of Parts 2.2 through 2.17 (the Commission's General Policy and Interpretations) and Stonington's and Colockum's requests for waiver of Part 131 of the regulations which lists the approval forms to be used in filings. These regulations delineate the general administrative framework for submissions to the Commission and would apply to Stonington only to the extent that the Commission regulates Stonington. These regulations do not appear to be burdensome, and Stonington and Colockum have not indicated what burden would be imposed by compliance with them.

With respect to Elkem's, Colockum's, and Stonington's requests that they be afforded an abbreviated filing requirement in lieu of the full requirements of Part 33 of having to satisfy the Commission's regulations requiring the submittal of reports by public utilities before obtaining Commission approval of any property disposition and consolidation, as we noted in *St. Joe*, the requirements set out in section 203 of the FPA (the statute implemented by Part 33 of the Commission's regulations) cannot be waived. However, we find that it is not necessary to impose the full filing requirements of Part 33 on the three petitioners. Thus, consistent with our treatment of St. Joe, we shall require Elkem, Colockum and Stonington to file only such information as will satisfy the minimum requirements of section 203 of the FPA. Further, we note that this section would not apply to any of their facilities which are not involved in the transmission or sale for resale of electric energy in interstate commerce.

Additionally, Elkem, Colockum and Stonington request blanket prior approval by the Commission of issuances of securities and assumptions of liability in lieu of having to satisfy Part 34 of the regulations requiring the filing by public utilities of applications for such Commission approval. As we noted in *St. Joe*, the purpose of section 204 of the EPA (the statute implemented by Part 34 of the regulations) in mandating Commission approval of issuances of securities and assumptions of liability only after making specific findings was to ensure the financial viability of public utilities obligated to serve consumers of electricity. Most, if not all, of Elkem's Alcoa's (Colockum's parent) and Stonington's securities issuances or assumptions of liability will be undertaken for purposes unrelated to the nominal electric sales subject to the Commission's jurisdiction. Accordingly, we shall grant a blanket prior approval for all future issuances of securities and assumptions of liability as ordered below, provided that no interventions or protests regarding such blanket approval are filed within 30 days of the issuance of this order.

With respect to all four petitioners' requests for waiver of Parts 45 and 46 of our regulations (applicable to interlocking directorates), we note that the Commission cannot waive the statutory requirement that an appropriate showing be made under section 305. However, we believe that an abbreviated filing should protect both public and private interests without discouraging the proposed sales. Accordingly, we shall waive the full requirements of Parts 45 and 46 of our regulations and shall instead require only the filing of an abbreviated statement identifying the interlock. We do not believe that authorizing the holding of these otherwise proscribed interlocks based upon the filing of an abbreviated application will adversely affect public or private interests. In order to protect against any potential harm, however, we shall reserve the right to require at any time a further showing that Commission authorization should continue and that neither public or private interests will be adversely affected by the holding of such interlocks.

Elkem and Colockum request waiver of § 35.15 of the regulations, which requires filing a notice of termination of any rate schedules required to be on file with the Commission. Section 205(d) of the FPA requires notice of changes in service or contracts filed with the Commission. This statutory requirement cannot be waived. Accordingly, we shall deny these requests for waiver. However, if termination of a rate schedule becomes necessary, the Commission will, upon good cause shown, waive the time restrictions for filing such notice of termination.

We shall also waive the cost support requirement of Part 35 for Stonington, Stonington proposes to recover only a very small amount (approximately $3,600 a year) from IaH above Stonington's pass-through of purchased power costs form Bangor to cover administrative costs and facilities additions. Under these circumstances, we believe that there is little need to require Stonington to further justify its rates. Accordingly, we shall accept Stonington's rates as an intitial rate schedule for filing to be effective as of the date of the interconnection between Stonington and IaH, which was July 23, 1983.

We shall grant Colockum's request to treat its filing as an initial rate filing under § 35.12 of the regulations and accept the agreement for filing. We also find that the cost support submitted by PP&L for the same agreement in Docket No. ER83–770–000 is adequate to support Colockum's filing. Therefore we do not need to consider its request to waive the cost support requirement of Part 35 of the regulatons. Colockum's request for waiver of the notice requirement so the agreement could go into effect on July 1, 1983 is now moot.

The Commission orders

(A) The joint request for rehearing is hereby granted with respect to Cliffs but denied with respect to Generating Company, as discussed in the body of this order.

(B) Stonington's and Colockum's requests for declaratory orders stating that the Commission will not assume jurisdiction over them as utilities under the Federal Power Act are hereby denied.

(C) The requests of Cliffs, Elkem, Colockum, and Stonington for waiver of the Commission's accounting regulations, specifically Parts 41, 50, and

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annual charges due to a Supreme Court ruling. See 38 *Fed. Reg.* 3401, Feb. 6, 1973; see also *FPC* v. *NEPCO, et al.* 415 U.S. 345 (1974). We also find it inappropriate to act on Stonington's request for waiver of § 36.2 of the regulations, relating to fees, since that section is subject to a pending rulemaking. *Fees Applicable to Electric Utilities, Cogenerators, and Small Power Producers*, Docket No. RM82–38–000.

[18] There functions were transferred to the Department of Energy on 1977.

141 of Subchapter B and of Subchapter C, are hereby granted.

(D) The requests of Elkem, Colockum and Stonington for waiver of Part 33 of our regulations regarding property dispositions and consolidations are hereby granted; *Provided that* Elkem, Colockum and Stonington shall provide notice to and seek approval of the Commission prior to undertaking any such actions with respect to jurisdictional property.

(E) Within thirty (30) days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuance of securities and assumptions of liability by Cliffs, Elkem, Colockum, or Stonington should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

(F) Absent a request for hearing within the period specified in paragraph (E) above, Elkem, Colockum, and Stonington are authorized, from the date of this order, to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; *Provide* that such issue or assumption is for some lawful object, within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order and to require a further showing that neither public nor private interests will be adversely affected by the continued Commission approval of Elkem's, Colockum's or Stonington's issuance of securities and assumptions of liability.

(H) Until further order of this Commission, any person now holding or who may hold an otherwise proscribed interlock involving Cliffs, Elkem, Colockum or Stonington is authorized to hold such positions; *Provided that* such person files the application required in paragraph (I) below.

(I) Until further order of this Commission, the full requirements of Parts 46 and 48 of the Commission's regulations, except as noted below, are hereby waived with respect to those persons subject to paragraph (H) above, and those persons instead shall file a sworn application providing only the following informaton:

(1) full name and business address; and

(2) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

(J) The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by the continued holding of the interlocks addressed above.

(K) Stonington's request for waiver of Part 2 of our regulations regarding General Policy and Interpretations is hereby denied.

(L) Stonington's request for waiver of Part 32 of our regulations regarding interconnections is hereby denied.

(M) Stonington's and Colockum's requests for wavier of Part 131 of our regulations regarding forms are hereby denied.

(N) Elkem's and Colockum's request for waiver of Section 35.15 of our regulations are hereby denied.

(O) Colockum's request that its filing be treated as an intiial rate filing under Section 35.12 of the regulations is hereby granted.

(P) Stonington's request for waiver of the cost support requirements of Part 35 is hereby granted.

(Q) Stonington's proposed rate is hereby accepted for filing to become effective as of July 23, 1983. The rate schedule designation is *Stonington and Deer Isle Power Company*, Rate Schedule FERC No. 1.

(R) Colockum's proposed rate is hereby accepted for filing, to become effective on June 2, 1983, the date of the Exchange Agreement between Colockum and PP&L. The rate schedule designation is *Colockum Transmission Company, Inc.*, Rate schedule FERC No. 1.

(S) Docket Nos. EL83–18–000, EL83–19–001, EL83–83–28–000 and EL83–30–000 are hereby terminated.

(T) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85–22641 Filed 9–20–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER85–596–000]

New England Power Company; Order Accepting for Filing and Suspending Rates, Noting Interventions, Granting Summary Disposition, and Establishing Hearing Procedures

Issued: September 17, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa and Charles G. Stalon.

On June 28, 1985, New England Power Company (NEP) tendered for filing an unexcuted Agreement for Transmission of Firm Power between NEP and the Massachusetts Municipal Wholesale Electric Company (MMWEC), on behalf of various Massachusetts utilities.[1] The Agreement provides for transmission of power that the municipals have agreed to purchase from the New York Power Authority (NYPA) for the period July 1, 1985 through June 30, 1995. NEP proposes a formula rate for transmission services under the Agreement, with the rate for 1985 estimated at $11.24 per kW/year, subject to adjustment to actual costs. The proposed effective date is July 1, 1985, coincident with the commencement of the NYPA power flow, and NEP therefore requests a waiver of the notice requirements. NEP characterizes its filing as an initial rate.

On July 26, 1985, NEP filed a motion to amend its June 28 rate filing with testimony and cost support for the rate of return on equity component of its proposed rates, and renewed its request for waiver of the Commission's notice requirements so that the Agreement may be made effective July 1, 1985. The amendment was filed in view of a June 28, 1985 order in *New England Power Co.*, Docket No. ER85–475–000, *et al.*, in which the Commission declared its intent to reject all future rate filings containing a formula rate which automatically adjusts the rate of return on common equity. 31 FERC ¶ 61,378. NEP amended the original filing to replace the equity component of its formula rate with a fixed equity return.

Notice of NEP's filing was published in the Federal Register,[2] with responses due on or before July 23, 1985. Timely motions to intervene were filed by MMWEC and the Towns of Norwood, Concord, and Wellesley, Massachusetts (Towns).

MMWEC claims that the filed rate is not an initial rate, but is a changed rate subject to suspension, and requests a one-day suspension. It also seeks summary disposition with respect to NEP's treatment of investment tax credits (ITC's), opposes NEP's requested rate of return on equity, its method of allocating administrative and general (A&G) expenses, and the inclusion of transmission support payments for jointly-owned facilities. The Towns adopt the objections and arguments of MMWEC.

On August 6, 1985, NEP filed a response to the motions to intervene. NEP does not oppose either of the

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[1] *See* Attachment for rate schedule designations

[2] 50 FR 29472 (1985).

motions to intervene. However, NEP disagrees that the proposed Agreement is not an initial rate, opposes the motion for summary disposition concerning ITC's, and opposes the arguments concerning rate of return, A&G expenses, and transmission support payments.

Discussion

Pursuant to 18 CFR 385.214(c)(1), the timely interventions of MMWEC and the Towns serve to make them parties to this proceeding.

In support of its argument that NEP's filing is a changed rather than an initial rate, MMWEC states that some of its members currently are transmission customers of NEP, and that many of its members in the past were either all requirements or contract demand customers. Citing *Florida Power & Light Co.* v. *FERC*, 617 F.2d 809 (D.C. Cir., 1980) (*FP&L*), it claims that as to NEP's prior customers, the present rate filing constitutes supplemental service and therefore is a rate change subject to suspension. MMWEC concedes that a minority of the customers have not had a comparable relationship with NEP, but submits that the absence of such a relationship is not reason to deny the protections of section 205 of the Federal Power Act to the many NEP customers who have paid to use the NEP transmission system in the past.

NEP responds that its filing does not supersede, supplement, cancel, or otherwise amend a presently effective rate schedule.

It argues that the *FP&L* case clearly contemplated a situation where the proposed service was sufficiently similar to existing services provided to existing customers so as to constitute a supplemental service, whereas here NEP's proposed rate is a fundamentally different service never before offered to any previous or existing customers. NEP further claims that the two wheeling services that will be provided to MMWEC are not similar because: (1) the proposed service is available only to MMWEC for transmission of the NYPA allocation, while the current traffic service generally is available to any party for transmission of non-firm power from any source, and (2) under the present filing, the rates are calculated on the basis of load, as opposed to the tariff service, for which rates are calculated on the basis of generating capacity.

We reject NEP's argument that its filing constitutes an initial rate. The fact that the existing non-firm and proposed firm transmission services have different qualities and applicability is irrelevant to determining whether the present filing constitutes a change in rates. For those MMWEC members who take non-firm transmission service under NEP's current tariff, the proposed service is a supplemental or additional service to the non-firm transmission service they already receive.[3] Additionally, since NEP currently provides unit power service to MMWEC, any additional transmission service to MMWEC members is supplemental, and thus a change in rate, regardless of whether MMWEC's internal composition changes.

Next, we address MMWEC's request for summary disposition concerning NEP's treatment of ITC's. MMWEC objects to NEP flowing all ITC benefits through to its shareholders (retained earnings), rather than sharing them with customers by amortizing the credits against Federal income taxes. MMWEC recognizes that the Commission denied a similar request for summary judgment in the June 28, 1985, order in *New England Power Co.*, Docket No. ER85-475-000, *et al.*, *supra*, but argues that this case is distinguishable because it involves firm service as opposed to the non-firm service at issue in the June 28 order.

NEP responds that the grounds on which the June 28 order denied summary disposition, *i.e.*, that failure to flow through a ratable portion of ITC benefits was not uncommon in the pricing of non-firm services, is equally applicable to this proceeding. NEP argues that MMWEC has confused the transmission of firm power with firm transmission service, and that the proposed NYPA transmission service is *non-firm* transmission of firm power, and thus subject to the same rationale contained in the June 28 order.

We conclude that MMWEC's request for summary disposition should be granted. As discussed below, NEP has failed to credit the income tax allowance with a ratable portion of ITC's, contrary to the Commission's consistent rulings that ITC benefits must be shared with a company's firm customers.

We note that, in its answer, NEP puts forward conflicting characterizations as to the nature of the service being provided under the Agreement, to suit its particular purposes. In arguing that the proposed service is an initial rate, NEP highlights the differences in the service provided to MMWEC under the new argeement and that provided under its current tariff (*i.e.*., transmitting firm power vs. transmitting non-firm power), and emphasizes the resultant need to develop a different rate to reflect those differences. Then, in arguing that its ITC treatment is appropriate, NEP argues that the services provided are the same, *i.e.*., that they are both non-firm transmission services. To reconcile this inconsistency, NEP fashions the strained hypothesis that the tariff provides for non-firm transmission of non-firm power, while the proposed agreement with MMWEC provides for non-firm transmission of firm power. NEP cannot have it both ways. Either the services are the same or they are different

A comparison of the transmission tariff to the proposed agreement with MMWEC indicates that both agreements specify that service is subordinant to NEP's native load, and both services have a lower priority than service under agreements executed at an earlier time. The agreement with MMWEC, however, provides for a ten-year term. Accordingly, it will always have priority over all agreements under the tariff since service under the tariff is of an intermittent and short-term nature (weekly, monthly, etc.). NEP itself recognizes the difference in the firmness of the service when it argues in the initial rate segments of its answer that the proposed rate must be calculated on the basis of load since NEP will be transmitting firm power to be credited toward the municipals' firm load requirements.

The proposed rate assesses MMWEC for the cost of reserves—a clear reflection of the fact that, by its own terms, the service has priority over the tariff service. In short, the service provided to MMWEC is firmer than that Under the tariff, is of longer duration, and is priced differently to reflect these facts. It is clear that, in spite of the interruptibility provision in the proposed agreement, the service to be provided will have clear priority over that under NEP's tariff and will exhibit a firmness approaching that of NEP's native load. For this type of service, the Commission has consistently adopted a ratable flow through of ITC's.[4] This is certainly note

[3] See 18 CFR 35.1(c): "A rate schedule . . . which proposes to supersede, supplement, cancel or otherwise change . . . a rate schedule required to be on file . . . (such as providing for *other* or *additional* . . . services . . .) . . . shall be filed as a change in rate . . ." (emphasis supplied.)

[4] *See, e.g., Carolina Power & Light Co.*, Opinion No. 19 4 *FERC*, 653 F.3d 681 (D.C. Cir. 1981). In *Southwestern Public Service Co.*, Opinion No. 162, 22 FERC ¶ 61.341 (1983), We required the company to normalize its ITC benefits based on Commission percedent, but stated that we would reevaluate our policy on ITC's with respect to electric utilities and would issue a general policy statement on the matter. A new policy has not been issued.

a by-product service comparable to that under NEP's tariff, and NEP's reliance on the Comission's June 28 ruling in the tariff case is inapplicable.

Citing *New England Power Co.*, Docket Nos. ER83–647–000, *et al.*, 24 FERC ¶ 61,339 at 61,723 (1983), Nep contends that the Commission has refused to grant summary disposition on this issue in the past. In the case cited, we did not summarily dispose of the issue since we were then considering possibly imminent changes in our ITC policy. We have not adopted such policy changes, and we think it appropriate here to summarily follow our policy of adopting ratable flow through for firm services. Within thirty days, NEP shall file revised rates reflecting our ruling on this issue.

Our preliminary review of NEP's filings and the pleadings indicates that NEP's proposed formula rate, as amended by summary disposition, has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the Agreement, as amended by summary disposition, for filing and suspend it as ordered below.

In *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982), we noted that rate filings ordinarily would be suspended for one day were preliminary review indicates that the proposed rates may be unjust and unreasonable, but may not generate substantially excessive revenues, as defined in *West Texas*. Our preliminary revenues suggest that NEP's prposed formula rate, as amended by summary disposition, may not result in excessive revenues.

NEP requests waiver of the notice requirements to permit a July 1, 1985, effective date, which is the date MMWEC's NYPA entitlement became available. MMWEC and the Towns do not object to the request for waiver. In the circumstances, we find that NEP has shown good cause for waiver. Accordingly, we shall accept NEP's rates as modified, for filing and suspend them, to become effective on July 1, 1985, subject to refund.

Finally, we note that although NEP's July 26, 1985, amendment to its proposed rate filing was intended to fix NEP's requested return on equity at 15.24%, NEP failed to submit revised rate schedules to incorporate that change. NEP shall therefore submit to the Commission a revised rate sheet incorporating a 15.24% fixed rate of return on common equity.

The Commission Orders:

(A) MMWEC's motion for summary disposition of NEP's treatment of ITC's is granted. NEP shall submit revised rate sheets incorporating this change within 30 days of the date of this order.

(B) NEP shall submit a revised rate sheet incorporating its fixed rate of return on equity of 15.24% within 30 days of the date of this order.

(C) NEP's request for waiver of the notice requirements is granted.

(D) NEP's proposed rates, as amended by summary disposition, are herby accepted for filing and suspended to become effective on July 1, 1985, subject to refund.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 there of, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of NEP's rates.

(F) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(G) Docket No. ER85–596–000 hereby is terminated, and Docket No. ER85–596–001 is assigned to the evidentiary proceedings ordered herein.

(H) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission. Commissioner Sousa dissented in part with a separate statement attached.

Lois D. Cashell,

Acting Secretary.

Attachment

NEW ENGLAND POWER COMPANY, RATE SCHEDULE DESIGNATION, DOCKET NO. ER85–596–000

Designation	Description
(1) Rate Schedule FERC No. 323.	Transmission Agreement.

NEW ENGLAND POWER COMPANY, RATE SCHEDULE DESIGNATION, DOCKET NO. ER85–596–000—Continued

Designation	Description
(2) Supplement No. 1 to Rate Schedule FERC No. 323.	Exhibit A
(3) Supplement No. 2 to Rate Schedule FERC No. 323	Exhibit B
(4) Supplement No. 3 to Rate Schedule FERC No. 323	PTF Rate
(5) Supplement No. 4 to Rate Schedule FERC No. 323	Non-PTF Rate

Sousa, A.G., Commissioner, *dissenting in part*:

Consistent with my dissents in *Arizona Public Service Co.*, Opinion No. 193, 25 FERC ¶ 61,092 (1983), rehearing denied, Opinion No. 193–A, 25 FERC ¶ 61,393 (1983), and RM83–8–000, 30 FERC ¶ 61,195 (1985), I respectfully disagree with my colleagues' grant of Massachusetts Municipal Wholesale Electric Company's (MMWEC) motion for summary dispositon of New England Power Company's (NEPCO) proposed treatment of investment tax credits (ITC).

NEPCO opposed MMWEC's motion citing *New England Power Co.*, 24 FERC ¶ 61,339 (1983) where the Commission refused to grant summary disposition on the ITC issue. In that case, the Commission found summary disposition inappropriate because it was then considering undertaking a re-evaluation of its ITC policy for electric utilities. (*See Southwestern Public Service Co.* Opinion No. 162, 22 FERC ¶ 61,341 (1983) at p. 61,587). The majority responded to NEPCO's opposition stating, "we have not adopted such policy changes, and we think it appropriate here to summarily follow our policy of adopting retable flow through for firm services."

The position taken by my colleagues places another "nail in the coffin" to a long overdue re-evaluation of ITC policy for electric utilities.

A.G. Sousa,

Commissioner.

[FR Doc. 85–22642 Filed 9–20 85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. G–7004–035]

Pennzoil Co.; Twenty-First Amendment to Application for Immediate Clarification or Abandonment Authorization

September 17, 1985.

Take notice that on September 12, 1985, Pennzoil Company (Pennzoil), P.O. Box 2967, Houston, Texas 77001, filed in Docket No. G–7004–035 an application for immediate clarification of Order dated November 24, 1980, in the above-

referenced docket or abandonment authorization for as much gas as is required to allow sales of gas to fourteen new applicants for residential service in West Virginia in addition to those applicants specified in Pennzoil's original application filed on October 25, 1982. In filing this Twenty-first Amendment to its original application, Pennzoil incorporates herein and renews each of the requests for clarification or abandonment authorization set forth in that application. Service to these applicants and existing customers would be provided from gas supplies that would otherwise be sold to Consolidated Gas Transmission Corporation (Consolidated), an interstate pipeline.

Pennzoil states the immediate action is necessary to protect the health, welfare and property of the applicants and customers in West Virginia who depend upon Pennzoil for their gas supply needs. Pennzoil also states that immediate action also is required because, by order dated October 21, 1982, the Public Service Commission of West Virginia directed Pennzoil "to show cause, if any it can, why it should not be found to be in violation of its duty . . . to provide adequate gas service to all applicants . . . and why it should not be required to provide serice to domestic customers in West Virginia when requests are received for same."

Consolidated has indicated that it has no objection to the requested authorization.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Theefore, any person desiring to be heard or to make any protest with reference to said amendment to the original application should on or before, September 24, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but well not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Any person previously granted intervention in connection with Pennzoil's original application in Docket No. G–7004–006 need not seek intervention herein. Each such person will be treated as having also intervened in Docket No. G–7004–035.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85–22643 Filed 9–20–85; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[SAB–FRL–2901–6]

Science Advisory Board, Executive Committee; Open Meeting

Under Public Law 92–463, notice is hereby given of a meeting of the Science Advisory Board's Executive Committee on October 17–18, 1985, in the Administrator's Conference Room 1101, West Tower, of the Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. The meeting will begin at 12:00 noon on October 17 and will adjourn at approximately 12:00 noon on October 18.

The agenda for the meeting includes a review of the final report of the SAB Study Group on Biotechnology; a summary of the Clean Air Scientific Advisory Committee's review of nitrogen dioxide related health effects issues for the Consumer Product Safety Commission; and other issues of member interest.

The meeting is open to the public. Any member of the public wishing to attend, obtain information, or submit written comments should contact Dr. Terry F. Yosie, Director, Science Advisory Board or Mrs. Joanna Foellmer located at 401 M Street, SW, Washington, D.C. 20460 or call (202) 382–4126 by close of business October 11, 1985.

Dated: September 13, 1985.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 85–22663 Filed 9–20–85; 8:45 am]

BILLING CODE 6560–50–M

[SAB–FRL–2901–5]

Science Advisory Board's Environmental Effects, Transport and Fate Committee—Subcommittee on Water Quality Criteria; Open Meeting

Under Public Law 92–463, notice is hereby given that a meeting of the Science Advisory Board's Water Quality Criteria Subcommittee will meet October 10–11, 1985, in the Conference Room of the Environmental Protection Agency's Environmental Research Laboratory, 6201 Congdon Boulevard, Duluth, MN. The meeting will begin at 9:00 a.m. on October 10 and adjourn at approximately 5:00 p.m. on October 11.

The purpose of the meeting is to enable the Subcommittee to provide its independent technical evaluation of the scientific adequacy of the Office of Water Regulations and Standards' proposed Ambient Water Quality Criteria Document for Dissolved Oxygen. An announcement of the availability of the proposed criteria document was previously published in the **Federal Register** on April 19, 1985 (V.50 p.15634).

The meeting is open to the public. Any member of the public wishing to attend, obtain information, or submit written comments to the Subcommittee should notify Dr. Terry F. Yosie, Director, Science Advisory Board at (202) 382–4126 or Ms. Patti Howard, Staff Secretary, (A–101F), 401 M Street, SW, Washington, D.C. 20460 or call (202) 382–2552 by close of business October 4, 1985.

Dated: September 13, 1985.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 85–22664 Filed 9–20–85; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00217; PH–FRL 2902–4]

State-FIFRA Issues Research and Evaluation Group (SFIREG) Working Committees; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Working Committee on Enforcement and Certification of the State FIFRA Issues Research and Evaluation Group (SFIREG) and a 2-day meeting of the SFIREG Working Committee on Registration and Classification to discuss various aspects of pesticides. The meetings will be open to the public.

DATES: The Working Committee on Enforcement and Certification will meet on Tuesday and Wednesday, October 8 and 9, 1985. The Working Committee on Registration and Classification will meet on Thursday and Friday, October 10 and 11, 1985. The meetings of both committees will start at 8:30 a.m. each day.

ADDRESS: The meeting will be held at: Lord Camden Inn, 24 Main St., Camden, Maine 04843 (207–236–4325).

FOR FURTHER INFORMATION CONTACT:
By mail, Philip H. Gray, Jr., Office of Pesticide Programs (TS–766C), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.
Office location and telephone number: Rm. 1115, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA (703–557–7096).

SUPPLEMENTARY INFORMATION: The meeting of the Working Committee on Enforcement and Certification will be concerned with the following topics:

1. Status of transfer of authority over feed-through pesticides to FDA.
2. Status of action levels on cancelled products.
3. Certification and training task force report.
4. Farm worker safety negotiated rule making.
5. Federal facilities policy.
6. Enforcement grant negotiation.
7. New restricted uses.
8. Uniform reporting format.
9. Office of Compliance Monitoring (OCM) strategy for enforcing registration standards.
10. OCM policy statement regarding tamper proof bait boxes.
11. Section 3(c)(2)(B) enforcement strategy.
12. Other topics as appropriate.

The meeting of the Working Committee on Registration and Classification will be concerned with the following topics:

1. Section 24(c) audit.
2. Labeling utility project.
3. Imprecise and unenforceable label language.
4. Status of termiticides.
5. Status of wood preservatives.
6. Chemigation policy.
7. Endangered species cluster project.
8. Availability of final printed labeling.
9. Advertising policy.
10. Other topics as appropriate.

Dated: September 17, 1985.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

[FR Doc. 85–22775 Filed 9–20–85; 8:45 am]

BILLING CODE [illegible]

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–743–DR]

Major Disaster and Related Determinations; Florida

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–743–DR), dated September 12, 1985, and related determinations.

DATED: September 12, 1985.

FOR FURTHER INFORMATION CONTACT:
Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 646–3616.

Notice

Notice is hereby given that, in a letter of September 12, 1985, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the State of Florida resulting from Hurricane Elena and flooding beginning on or about August 28, 1985, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide necessary Individual Assistance in the affected areas. You are also authorized to provide necessary Public Assistance in the affected areas based on known requirements and an acceptable State commitment. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

Pursuant to section 408(b) of Pub. L. 93–288, you are authorized to advance to the State its 25-percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Ms. Joan F. Hodgins of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster:

Franklin, Levy, Pinellas, and Manatee Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85–22630 Filed 9–20–85; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–741–DR]

Amendment To a Major Disaster Declaration; Mississippi

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA–741–DR), dated September 4, 1985, and related determinations.

DATED: September 13, 1985.

FOR FURTHER INFORMATION CONTACT:
Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646–3616.

Notice

The notice of a major disaster for the State of Mississippi, dated September 4, 1985, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 4, 1985:

Hancock County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85–22831 Filed 9–20–85; 8:45 am]

BILLING CODE [illegible]

FEDERAL RESERVE SYSTEM

Citizens & Southern Georgia Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of

regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 10, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW, Atlanta, Georgia 30303:

1. *Citizens & Southern Georgia Corporation,* Atlanta, Georgia; to engage *de novo* through its subsidiary, Citizens & Southern Agency, Inc., Tucker, Georgia, in general insurance activities pursuant to 4(c)(8)(G) of the Act. Citizens & Southern Georgia Corporation is a registered bank holding company and prior to January 1, 1971, was engaged directly or indirectly, in insurance agency activities as a consequence of Board approval prior to that date.

2. *First State Bancshares, Inc.,* Pensacola, Florida; to engage *de novo* through its subsidiary, First State Leasing Corporation, Pensacola, Florida, in leasing real or personal property activities.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mid-America Bancorp,* Louisville, Kentucky; to engage *de novo* through its subsidiary, Eton Life Insurance Company, Louisville, Kentucky, in acting as underwriter for credit life insurance and credit accident and credit health insurance with respect to insurance limited to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiary in the event of the death or disability of the debtor, pursuant to section 4(c)(8)(A) of the Act. These activities would be conducted in the company's offices or its subsidiaries' offices located in Kentucky. Comments on this application must be received not later than October 4, 1985.

Board of Governors of the Federal Reserve Systems, September 17, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-22618 Filed 9-20-85; 8:45 am]

BILLING CODE 6210-01-M

Finest Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank of bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank Indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 14, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Finest Financial Corp.,* Pelham, New Hampshire; to become a bank holding company by acquiring 100 percent of the voting shares of Pelham Bank and Trust Company, Pelham, New Hampshire.

2. *Independent Bank Corp.,* Rockland Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Rockland Trust Company, Rockland, Massachusetts and Middleborough Trust Company, Middleboro, Massachusetts.

B. **Federal Reserve Bank of New York** William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Ljubljanska banka—Associated Bank,* Slovenia, Yugoslavia; to become a bank holding company by acquiring 100 percent of the voting shares of LSB Bank—New York, New York, New York, a proposed *de novo* bank.

C. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Center Bankshares, Inc.,* Mount Hope, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of H & R Bankshares, Inc., Danville, West Virginia, thereby indirectly acquiring The Bank of Danville, Danville, West Virginia.

D. **Federal Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *F.W.S.F. Corporation,* Milwaulkee, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Security Financial Services, Inc., Sheboygan, Wisconsin, thereby indirectly acquiring Security First National Bank of Sheboygan, Sheboygan; South West State Bank, Sheboygan; Eldorado State Bank, Eldorado; Security Bank, Menasha; Manitowoc County Bank, Manitowoc; and Farmers-Merchants National Bank in Princeton, Princeton; all located in Wisconsin.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Arsebco, Inc.,* Falls City, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Richardson County Bank and Trust Company, Falls City, Nebraska.

2. *First National Financial Corporation,* Albuquerque, New Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank in Albuquerque, Albuquerque, New Mexico. Comments on this application must be received not later than October 16, 1985.

Board of Governors of the Federal Reserve System, September 17, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-22619 Filed 9-20-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Commission on the Evaluation of Pain; Meeting

AGENCY: Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: This notice announces the schedule and proposed agenda of the forthcoming meeting of the Commission on the Evaluation of Pain (the Commission). This notice also describes the purpose, structure, and termination date of the Commission.

DATES:

General session—October 24, 1985, 8:30 a.m. to 5:00 p.m.

General session—October 25, 1985, 8:30 a.m. to 5:00 p.m.

ADDRESS: National Academy of Sciences, Room 351, 2122 Pennsylvania Avenue, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Nancy Dapper, Executive Director, Commission on the Evaluation of Pain, Room 118, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 597-1597.

SUPPLEMENTARY INFORMATION: The Commission is established and governed by the provisions of section 3(b) (1) through (6) of the Social Security Disability Benefits Reform Act of 1984 (Pub. L. 98-460). The purpose of the Commission is to conduct a study concerning the evaluation of pain in determining under titles II and XVI of the Social Security Act whether an individual is under a disability. The study is to be conducted in consultation with the National Academy of Sciences.

The study will consist of expert testimony and a review of research data regarding how pain should be considered in making disability determinations under titles II and XVI. The Commission may engage technical assistance in order to carry out its function.

The Commission is to submit a report, consisting of the findings of the study and any recommendations, to the Secretary of Health and Human Services (the Secretary) who in turn is to submit the report to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate.

The statute provides that the Commission terminate on December 31, 1985. This is also the deadline for the Secretary to submit the report.

The Secretary has appointed the members of the Commission in accordance with the provisions of the statute. This notice announces the fourth working meeting of the Commission. The Commission is chaired by Kathleen M. Foley, M.D.

This meeting is open to the public. Anyone wishing to submit his or her views for consideration by the Commission should send them to the Executive Director of the Commission at the address shown above.

A transcript of the Commission meeting will be made available to the public on an at-cost-of-duplication basis. The transcript can be ordered from the Executive Director of the Commission.

Agenda

October 24, 1985

8:30 a.m.—General session of expert testimony and research data presentations.

5:00 p.m.—Adjourn general session.

October 25, 1985

8:30 a.m.—General session of (1) continued expert testimony and research data presentations, (2) summation of prior meetings, and (3) discussion of written assignments.

5:00 p.m.—Adjourn the meeting.

Dated: September 17, 1985.

Nancy J. Dapper,

Executive Director, Commission on the Evaluation of Pain.

[FR Doc. 85-22648 Filed 9-20-85; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

[Docket No. 83N-0308]

International Drug Scheduling; Convention on Psychotropic Substances; Stimulant and/or Hallucinogenic Drugs; Notice of Public Meeting

Correction

In FR Doc. 85-21372, beginning on page 36486 in the issue of Friday, September 6, 1985, make the following corrections:

1. On page 36487, first column, the second line should read "3,4 Methylenedioxymethamphetamine".

2. On page 36488, in the first column, in the sixth and seventh lines, the chemical name should read "*1-alpha*-methylphenethylamine".

3. On the same page and in the same column, in the second and third lines from the bottom of the third complete paragraph, the chemical name should read "*1-N, alpha*-dimethyphenethylaine".

4. On the same page, in the second column, in the second and third lines from the bottom of the third complete paragraph, the chemical name should read "*dl*-1-cyclohexyl-2-methylaminopropane".

5. On the same page, in the third column, in the next to last line F the fifth paragraph, "of" should read "or".

6. On page 36489, in the fifth line from the bottom of the first column, "plan" should read "plant".

7. On the same page, in the third column, in the first paragraph, the first word in the seventh line should read "amphetamine".

8. On page 36490, in the first column, in heading number 8, and in the following line, the chemical name should read "Levamphetamine".

BILLING CODE 1505-01-M

[Docket No. 85M-0420]

Bausch & Lomb Optics Center; Premarket Approval of Bausch & Lomb® B&L 58™ (Etafilcon A) Contact Lenses

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Bausch & Lomb Optics Center, Rochester, NY, for premarket approval, under the Medical Device Amendments of 1976, of the Bausch & Lomb® B&L 58™ (etafilcon A) Contact Lenses. The lenses are to be manufactured under an agreement with Vistakon, Inc., Jacksonville, FL, which has authorized Bausch & Lomb Optics Center to incorporate by reference information contained in its approved premarket approval application for the spherical VISTAMARC™ (etafilcon A) Hydrophilic Contact Lens for aphakic and not-aphakic daily wear and not-aphakic extended wear. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by October 23, 1985.

ADDRESS: Written requests for copies of the summary of the safety and effectiveness data and petitions for administrative review to the Dockets

Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Lippman, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 3757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

SUPPLEMENTARY INFORMATION: On June 6, 1985, Bausch & Lomb Optic Center, Rochester, NY 14692, submitted to CDRH an application for premarket approval of the BAUSCH & LOMB B&L 58™ (etafilcon A) Contact Lenses. The daily wear lenses range in powers from −20.00 dioptors (D) to +20.00 D and are indicated for the correction of visual acuity in aphakic and not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The lenses may be worn by persons who may exhibit astigmatism of 1.00 D or less that does not interfere with visual acuity. The extended wear lenses range in powers from −20.00 D to +14.00 D and are indicated for the correction of visual acuity in non-aphakic persons with nondiseased eyes who are myopic or hyperopic. The lenses may be worn by persons who may exhibit astigmatism of 1.00 D or less that does not interfere with visual acuity. The extended wear lenses may be worn from 1 to 30 days between removals for cleaning and disinfection or as recommended by the eye care practitioner. The lenses are to be disinfected by either heat or chemical lens care systems. The application includes authorization from Vistakon, Inc., Jacksonville, FL, to incorporate by reference the information contained in its approved premarket approval application for the spherical VISTAMARC™ (etafilcon A) Hydrophilic Contact Lenses for aphakic and non-aphakic daily wear and non-aphakic extended wear (Docket No. 84M–0288). On July 15, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed the application and recommended approval of it. On August 16, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

Before enactment of the Medical Device Admendments of 1976 (the amendments) (Pub. L. 94–295, 90 Stat. 539–583), contact lenses made of polymers other than polymethylmethacrylate (PMMA) and solutions for use with such lenses were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), contact lenses made of polymers other than PMMA and solutions for use with such lenses are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of contact lenses made of polymers other than PMMA or solutions for use with such lenses comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310) unitil these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the hearing of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Richard E. Lippman (HFZ–460), address above.

The labeling of the approved contact lenses states that the lenses are to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than PMMA. A manufacturer who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41–58), as amended by the Mangnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93–637). Furthermore, failure to update restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)). Accordingly, whenever CDRH publishes a notice in the **Federal Register** of CDRH's approval of a new solution for use with an approved lens, the applicant of the lens shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall idenify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Fedeal Register.** if FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 23, 1985, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 16, 1985.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 85–22616 Filed 9–20–85; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Veterinary Medicine Advisory Committee

Date, time, and place. October 23 and 24, 8:15 a.m., Parklawn Bldg., Conference Rm. E, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, October 23, 8:45 a.m. to 9:30 a.m.; open public hearing, 9:30 a.m. to 10 a.m. (propylene glycol in semi-moist pet foods); open committee discussion, 10 a.m. to 1:30 p.m.; open public hearing, 1:30 p.m. to 2 p.m. (effectiveness and labeling requirements for antimicrobials); open committee discussion, 2 p.m. to 4:30 p.m.; October 24, open public hearing, 8:30 a.m. to 9 a.m.; open committee discussion, 9 a.m. to 11:30 a.m.; Max L. Crandall, Center for Veterinary Medicine (HFV–400), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4557.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal diseases and increased animal production.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss the following: (1) Propylene glycol in semi-moist pet foods, (2) effectiveness and labeling requirements for antimicrobial drugs, (3) prescription (Rx) versus over-the-counter (OTC) drugs—standards of approval, (4) credibility of Rx legend, and (5) bulk drug proposal.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures to expedite electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: September 17, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–22617 Filed 9–20–85; 8.45 am]

BILLING CODE 4160–01–M

[Docket No. 85N–0131]

Globe Blood Plasma Center, Inc.; Opportunity for Hearing on Denial of Licensure

Correction

In FR Doc. 85–19674, beginning on page 33415 in the issue of Monday, August 19, 1985, make the following corrections:

On page 33415:

1. In the first column:

a. In the **SUMMARY**, seventh line, "manufacturer" should read "manufacture".

b. In the **DATES** paragraph, fourth line, "October 19, 1985" should read "October 18, 1985".

2. In the second column:

a. In the **FOR FURTHER INFORMATION CONTACT** paragraph, fourth line, the phone number should read "301–443–3640".

b. Under **SUPPLEMENTARY INFORMATION**, fourth line, "Plalsma" should read "Plasma".

c. In the sixth line of that paragraph, "manfacutre" should read "manufacture".

d. In the eighth line of that paragraph, "insepction" should read "inspection".

3. On page 33416, second column fourteenth line, insert "is" between "FDA" and "issuing".

Billing Code 1505–01–M

[Docket No. 85N–0131]

Globe Blood Plasma Center, Inc.; Opportunity for Hearing on Denial of Licensure

Correction

In FR. Doc. 85–19674 beginning on page 33415 in the issue of Monday, August 19, 1985, make the following correction: On page 33416, in the third column, in the second complete paragraph, in the eighth line, "CFR" should read "U.S.C.".

BILLING CODE 1505–01–M

INTER-AMERICAN FOUNDATION

Privacy Act of 1974; Additional Routine Uses

Congress enacted the Privacy Act of 1974 (Pub. L. 93–579; 88 Stat. 1896, 5 U.S.C. 552A) which required each agency to inventory its Systems of Records and list routine uses for these systems. The Inter-American Foundation proposes to amend its existing routine uses consistent with guidance issued by the Office of Management and Budget to make clear that information contained in the Inter-American Foundation's Systems of Records may be disclosed as a routine use to the Department of Justice for use in litigation.

Written comments on this proposal to amend the existing routine uses of Inter-American Foundation Systems of Records, IAF–1 through IAF–5, should be directed to the General Counsel, Inter-American Foundation, 5th Floor, 1515 Wilson Blvd., Rosslyn, VA. 22209 on or before October 18, 1985. The above noted additional routine uses of Inter-American Foundation Systems of Records will become effective on October 18, 1985, unless the Foundation publishes notice to the contrary.

The Inter-American Foundation Notice of Systems of Records is amended by adding the following routine uses to the Inter-American Foundation Systems of Records, IAF–1 through IAF–5:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

* * * * *

(d) It shall be a routine use of the records in this system of records to disclose them to the Department of Justice when

(1) The agency, or any component thereof; or

(2) Any employee of the agency in his or her official capacity; or

(3) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(4) The United States, where the agency determines that litigation is likely to affect the agency or any of its components.

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(e) It shall be a routine use of records maintained by this agency to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when

(1) The agency, or any component thereof; or

(2) Any employee of the agency in his or her official capacity; or

(3) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(4) The United States, where the agency determines that litigation is likely to affect the agency or any of its components.

is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

* * * * *

Deborah Szekely,

President.

[FR Doc. 85–22719 Filed 9–20–85; 8:45 am]

BILLING CODE 7025–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Realty Action; Competitive Sales of Public Land in San Bernardino County, CA; Partial Cancellation of Sale

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—withdrawal of sale parcels B80, B82 through B91 and B93 from the October 8, 1985 sale.

SUMMARY: This action withdraws the following land from the public land sale offering published in Vol. 50, No. 159, pages 33113 and 33114 of the **Federal Register** on August 16, 1985.

Parcel No	Serial No	Legal description	Acres
		T. 14 N., R. 9 E., SBM	
		Sec. 30	
B80	CA–17733	NE¼NE¼SE¼SW¼, S½NE¼SE¼SW¼	7.5
B82	CA–17735	S½SW¼SE¼SW¼	5.0
B83	CA–17736	NE¼NE¼NE¼SE¼	2.5
B84	CA–17737	W½NE¼NE¼SE¼	5.0
B85	CA–17738	SE¼NE¼NE¼SE¼	2.5
B86	CA–17739	W½NW¼NE¼SE¼, NW¼SW¼NE¼SE¼	7.5
B87	CA–17740	NE¼SW¼NE¼SE¼	2.5
B88	CA–17741	SW¼SW¼NE¼SE¼	2.5
B89	CA–17742	SE¼SW¼NE¼SE¼	2.5
B90	CA–17743	NW¼SE¼NE¼SE¼	2.5
B91	CA–17744	SW¼SE¼NE¼SE¼	2.5
B93	CA–17745	SE¼SW¼NW¼SE¼, W½SE¼NW¼SE¼	7.5

Except for the cancellation of sale of the above parcels, all other portions of the August 16, 1985 Notice of Realty Action remain unchanged.

This action was deemed necessary to allow for full public review of recently proposed amendments to the California Desert Plan, which involve retention-disposal issues for the public lands described above. The above public lands withdrawn from sale will not be considered for disposal until final decisions are made on the 1985 California Desert Plan Amendment proposals.

Dated: September 13, 1985.

Gerald E. Hillier,

District Manager.

[FR Doc. 85–22636 Filed 9–20–85; 8:45 am]

BILLING CODE 4310–40–M

[CA 16934]

Realty Action; Exchange of Public and Private Lands in San Diego County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Exchange of Public and Private lands.

SUMMARY: The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1717):

San Bernardino Meridian, California

T. 11S. R. 2 W., SBM:
- Sec. 22: NE¼SE¼
- Sec. 23: NW¼SE¼
- Sec. 25: lots 1–16
- Sec. 26: W½NE¼, E½NW¼

containing 311.2 acres, more or less.

In exchange for these lands the United States will acquire the following described non-Federal lands in San Diego County from Mr. Roque de la Fuente, 8398 Vickers Street, San Diego, California 92111:

San Bernardino Meridian, California

T 18S., R. 1 E., SBM:
- Sec. 18: NE¼SW¼
- Sec. 20: SW¼NW¼
- Sec. 21: N½NE¼
- Sec. 35: lots 2, 3 and 4, SE¼NW¼

containing 276.90 acres, more or less.

In addition to the above described lands, the Federal Government will obtain a road right-of-way to allow public access through Mr. de la Fuente's property to public land.

Purpose

The purpose of this exchange is to obtain non-Federal lands for use in Federal programs. This exchange conforms with the Southern California Metropolitan Project's Escondido Management Framework Plan/ Management Action Summary. The public interest will be served by completing the exchange.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved either by payment to the United States by Mr. de la Fuente of funds in an amount not to exceed 25% of the total value of the Federal lands, or the acreages will be adjusted.

Lands to be transferred from the United States will be subject to:

Those rights for access road purposes across lots 13, 14, 15, and 16 in said sec. 25, as have been granted to the Sager Management Corporation, its successors or assigns, Serial No. CA 8914, under the Act of October 21, 1976, 90 Stat. 2776, 43 U.S.C. 1761.

There will be reserved to the United States a right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

There will also be reserved to the United States that right-of-way for a water tank and helicopter pads, and all appurtenances thereto, constructed by the United States, through, over, or upon the SW¼NW¼SE¼ said sec. 23, and the SW¼SE¼NW¼ said sec. 26, under Serial No. R490, and the right of the United States, its agents or employees, to maintain, operate, repair, or improve the same so long as needed or used for or by the United States.

The Federal lands described in this notice have been segregated from all forms of appropriation under the public land laws, including the general mining laws and mineral leasing laws, for a period of two years from August 1, 1985, (See **Federal Register** published August 1, 1985, in Vol. 50 No. 148, on page 31254).

Detailed information concerning this exchange, including the planning documents, environmental assessment and the land report is available for review at the Bureau of Land Management's California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

For a period of 45 days from date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507. Objections will be reviewed by the State Director, who may sustain, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: September 17, 1985.

Wes Chambers,

Acting District Manager.

[FR Doc. 85-22635 Filed 9-20-85; 8:45 am]

BILLING CODE 4310-40-M

[F-19155-4]

Alaska Native Claims Selection; Doyon, Ltd.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(e), will be issued to Doyon, Limited for approximately 160 acres. The lands involved are within the vicinity of Birch Creek, Alaska, within T. 18 N., R. 10 E., Fairbanks Meridian.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the Tundra Times. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until October 23, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-22685 Filed 9-20-85; 8:45 am]

BILLING CODE 4310-JA-M

[Group 835]

California; Filing of Plat of Survey

September 12, 1985.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, San Diego County

T. 16 S., R. 7 E.

2. This plat, representing the dependent resurvey of a portion of the subdivisional lines, and a portion of the subdivision of section 7, and the survey of the subdivision of section 7, Township 16 South, Range 7 East, San Bernardino Meridian, under Group No. 835, California, was accepted August 2, 1985.

3. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

4. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85-22673 Filed 9-20-85; 8:45 am]

BILLING CODE 4310-40-M

[Group 898]

California; Filing of Plat of Survey

September 12, 1985.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Tehama County

T. 27 N., R. 2 E.

2. This plat, representing the dependent resurvey of the north boundary and a portion of the east boundary, Township 27 North, Range 2 East, Mount Diablo Meridian, under Group No. 898, California, was accepted August 7, 1985.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management and the Department of Agriculture, U.S. Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage

Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85–22674 Filed 9–20–85; 8:45 am]

BILLING CODE 4310–40–M

[C–9–84]

California; Filing of Plat of Survey

September 12, 1985.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Madera County

T. 7 S., R. 21 E.

2. This supplemental plat of SE¼, sec. 31, Township 7 South, Range 21 East, Mount Diablo Meridian, California, showing amended lottings created by the cancellation of the Texas Flat Mill Site No. 3, M.S. 4024D and the Texas Flat Mill Site No. 4, M.S. 4024E, is based upon the plats approved September 7, 1918 and May 25, 1923, the plat accepted April 13, 1936, the diagram dated August 4, 1903, and the mineral survey record, was accepted August 13, 1985.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This supplemental plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85–22675 Filed 9–20–85; 8:45 am]

BILLING CODE 4310–40–M

[Group 880]

California; Filing of Plat of Survey

September 11, 1985.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Mendocino & Lake Counties

T. 18 N., R. 11 W.
T. 11 N., R. 11 W.

2. This plat, representing the dependent resurvey of a portion of the south boundary, T. 19 N., R. 11 W. (north boundary of section 3), and a portion of the subdivisional lines, and the survey of the subdivision of section 3, T. 18 N., R. 11 W., Mount Diablo Meridian, under Group No. 880, California, was accepted August 2, 1985.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management and the Department of Agriculture, U.S. Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85–22676 Filed 9–20–85; 8:45 am]

BILLING CODE 4310–40–M

[Group 832]

California; Filing of Plat of Survey

September 12, 1985.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, Riverside County

T. 2 S., R. 3 E.
T. 3 S., R. 3 E.

2. These plats, representing the dependent resurvey of a portion of the west boundary of section 33, of Township 2 South, Range 3 East, and the dependent resurvey of the east and west boundaries of section 4, and the metes-and-bounds survey of certain rights-of-way boundaries in section 4, Township 3 South, Range 3 East, San Bernardino Meridian, under Group No. 832, California, were accepted August 1, 1985.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85–22677 Filed 9–20–85; 8:45 am]

BILLING CODE 4310–40–M

[Group 833]

California; Filing of Plat of Survey

September 11, 1985.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, San Diego County

T. 14 S., R. 6 E.

2. This plat, representing the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines, and the survey of the subdivision of section 10, Township 14 South, Range 6 East, San Bernardino Meridian, under Group No. 833, California, was accepted August 1, 1985.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 85–22678 Filed 9–20–85; 8:45 am]

BILLING CODE 4310–40–M

[Group 791]

California; Filing of Plat of Survey

September 11, 1985.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Trinity County

T. 34 N., R. 9 W.
T. 35 N., R. 9 W.

2. These plats representing:

a. The dependent resurvey of a portion of the subdivisional lines and the survey of the subdivision of section 16, Township 34 North, Range 9 West, Mount Diablo Meridian, in one sheet,

b. The dependent resurvey of portions of the east and west boundaries and subdivisional lines, and the survey of the subdivision of sections 15, 17, 19 and 28, Township 35 North, Range 9 West, Mount Diablo Meridian, in two sheets.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative need of the Bureau of Land Management and the Department of Agriculture, U.S. Forest Service.

5. All inquiries relating to this land should be sent to the California State Office. Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records and Information Section.

[FR Doc. 85–22679 Filed 9–20–85; 8:45 am]

BILLING CODE 4310–40–M

[Group 835]

California; Filing of Plat of Survey

September 11, 1985.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately: 74 San Bernardino Meridian, San Diego County T. 15 S., R. 6 E.

2. This plat, representing the dependent resurvey of a portion of the South, west, and north boundaries, and a portion of the subdivisional lines, and the survey of the subdivision of sections 6, 31, 32, Township 15 South, Range 6 East, San Bernardino Meridian, under Group No. 835, California, was accepted August 2, 1985.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 85–22680 Filed 9–20–85; 8:45 am]

BILLING CODE 4310–40–M

[NM–0554897]

New Mexico; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior proposed that a 480-acre withdrawal for the Bureau of Reclamation continue for an additional 20 years. The lands will remain closed to surface entry. The mineral estate is reserved to and controlled by the State of New Mexico.

DATE: Comments should be received by December 23, 1985.

FOR FURTHER INFORMATION CONTACT: Pauline T. Brown, BLM New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504–1449, 505–988–6326.

The Department of the Interior proposes that the existing land withdrawal made by Public Land Order 3526 of January 13, 1965, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

T. 10 N., R. 31 E.,
Sec. 16, W½, W½E½.

The area described contains 480.00 acres in Quay County, New Mexico.

The purpose of the withdrawal is for use in connection with the Tucumcari Reclamation Project, Regulator Reservoir No. 2

The withdrawal segregates the land from operation of the public land laws generally. Minerals are not owned by the United States.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the New Mexico State Office.

The authorized offcer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideraion by the Secretary of the Interior, the President, and Congress, who will detemine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The Existing withdrawal will continue until such final determination is made.

Dated: September 11, 1985.

Monte G. Jordan,

State Director, Associate.

[FR Doc. 85–22682 Filed 9–20–85; 8:45 am]

BILLING CODE 4310–40–M

Bureau of Reclamation

Coordinated Operation Agreement Central Valley Project/State Water Project, California; Public Hearings on Draft Environmental Impact Statement-Environmental Impact Report

The U.S. Bureau of Reclamation and the California Department of Water Resources have scheduled two public hearings on the draft joint environmental impact statement-environmental impact report (EIS-EIR) for the new Coordinated Operation Agreement (COA). A notice of availability of ther draft EIS-EIR was published in the **Federal Register** on Wednesday, September 18, 1985. The EIS-EIR assesses the impacts of executing the new COA for the State Water Project and Federal Central Valley Project.

Public meeting will be held at:

October 22, 1985—7:30 p.m.–10:00 p.m.

Sacramento Inn (Comstock II Room), 1401 Arden Way, Sacremento, California

November 7, 1985—7:30 p.m.–10:00 p.m.

Contra Costa Water District (Board Room), 1331 Concord Avenue, Concord, California

Individuals and representatives of interested organizations will have an opportunity to make oral presentations on the draft EIS-EIR at the hearing. Those persons intending to testify should limit their oral presentation to ten minutes. More extensive comments should be presented in writing by Wednesday, November 13, 1985 to either of the following:

Regional Environmental Quality Officer, U.S. Bureau of Reclamation, 2800 Cottage Way, Room W–1102, Sacramento, California 95825–1898. Telephone: (916) 978–5130

Mr. James U. McDaniel, California Department of Water Resources, 3251 S Street, P.O. Box 160088, Sacramento, California 95816. Telephone: (916) 445–5631

Comments may also be sumarrized orally and filed with the presiding officer at each hearing. A sign-up sheet will be provided at the hearings.

Dated: September 17, 1985.

Clifford I. Barrett,

Acting Commissioner

[FR Doc. 85-22612 Filed 9-20 85; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

Date: September 18, 1985.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) East & West Transport Systems, Inc.

(2) 482 #C West Arrow Hwy., San Dimas, CA 91773.

(3) 482 #C West Arrow Hwy., San Dimas, CA 91772.

(4) Sharon Sharp, 482 #C West Arrow Hwy., San Dimas, CA 91773.

(1) Farmers Union Central Exchange, Inc. (CENEX)

(2) P.O. Box 64089, St. Paul, MN 55164.

(3) 5500 CENEX Drive, Inver Grove Heights, MN 55075.

(4) Clarence N. Anderson, P.O. Box 64089, St. Paul, MN 55164.

James H. Bayne,

Secretary.

[FR Doc. 85-22720 Filed 9-20-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-260 (Sub-1X)]

Rarus Railway Corp.—Discontinuance of Service; State of Montana—Abandonment Near Anaconda, MT; Exemption

Rarus Railway Corporation (Rarus) and the State of Montana jointly have filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* for Rarus to discontinue service over, and for Montana to abandon, a segment of the line Rarus operates between mileposts 0.0 and 7.06, a distance of 7.06 miles, near Anaconda, MT.

The 7.06 mile line segment is part of the line over which Rarus recently instituted operations under a lease from Montana, pursuant to authority granted by the Commission in Finance Docket No. 30640, *Rarus Ry. Corp.—Exemption from 49 U.S.C. 10901 and 11301* (not printed), served April 26, 1985. Because the issue of whether Montana should have been subject to the Commission's section 10901 jurisdiction in Finance Docket No. 30640 is being considered on appeal, Montana has joined in this notice as the owner of the line.

Rarus and the State have certified (1) that no local traffic has moved over the line for at least 2 years and there is no overhead traffic on the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period preceding the notice. The Public Service Commission of the State of Montana was notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employees affected by the discontinuance and abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

This exemption will be effective on October 24, 1985 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by October 4, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns must be filed by October 14, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission must be sent to applicant's representative: R. Lawrence McCaffrey, Jr., Suite 800, 1350 New York Ave., NW., Washington, DC 20005-4797.

If the notice of exemption contains false or misleading information, the use of the exemption is void *ab initio.*

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided September 13, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-22723 Filed 9-20-85; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 328]

Rail Carriers; Investigation of Tank Car Allowance System

AGENCY: Interstate Commerce Commission.

ACTION: Notice of (a) proposed final modification of tank car allowance formula, and (b) intent to establish new service list.

SUMMARY: The Interstate Commerce Commission under of 49 U.S.C. 11122, 10747, and 10324(b) proposes to adopt and prescribe an agreement superseding the Tank Car Allowance Agreement, approved in the decision served June 15, 1979, generally relating to the formula for the computation of tank car allowances. The Commission also intends to establish a new service list comprised of only those persons who have a desire to continue to receive copies of Commission issuances and all documents filed.

DATES:

(1) Responses to the notice of intent to establish a new service list are due by October 3, 1985.

(2) Comments to the proposed agreement must be filed October 23, 1985, or 7 days from after service of revised service list, whichever is later. Reply comments must be filed November 11, 1985, or 27 days after service of a revised service list, whichever is later.

(3) Comments and reply comments must be served on all parties.

Initial Regulation Flexibility Analysis: This proposal may significantly affect a substantial number of small entitles within the meaning of the Regulatory Flexibility Act, Pub. L. 91-354, including tank car lessors, class III railroads and possibly others. Revision of the tank car allowance formula is necessary because of serious flaws in the existing formula, particularly its inability to relate the level of allowance to conditions of tank car supply. The revised rules represent a

joint proposal by railroads and tank car suppliers to correct these flaws. We are unable at this time to estimate the number of small entities to which the proposal would apply. The proposal does not impose any reporting record keeping, or compliance requirements of any individudals carrier, shipper, or tank car lessor. Such functions will be performed by a committee of the AAR, clearly not a small entity under the statute. We are not aware of any duplicative or overlapping Federal rules.

ADDRESSES: Send an original and 15 copies of comments referring to Ex Parte No. 328 to: Commission Service Section, Rm. 2203, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTAL INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc. Room 2229, Interstate Commerce Commission, Washington Building, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

This action will not have a significant economic impact on a substantial number of small entities, or a significant impact on the quality of the human environment or energy conservation.

Authority: 49 U.S.C. 10321, 10324(b), 10747, and 11122 and 5 U.S.C. 553.

Decided: August 23, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Chairman Taylor was absent and did not participate in the disposition of this proceeding.

Kathleen King,

Acting Secretary.

[FR Doc. 85–22721 Filed 9–20–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree in Action To Enjoin Emission of Air Pollutants; Masonry Products, Inc.

In accordance with departmental policy, 28 CFR 50.7, 38 Fed. Reg. 19019, notice is hereby given that a consent decree in *United States* v. *Masonry Products, Inc.* Civil Action No. 1984/107, was lodged with the United States District Court for the District of the Virgin Islands on August 26, 1985. The consent decree establishes a compliance program for the St. Croix, Virgin Islands plant owned and operated by Masonry Products, Inc. to bring the plant into compliance with the Clean Air Act, 42 U.S.C. 7401 *et seq.* and the Virgin Islands State Implementation Plan ("VISIP"), relating to the emission of visible and particulate emissions, and requires payment of a civil penalty.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530 and should refer to *United States* v. *Masonry Products, Inc.*, D.J. Ref. No. 90–5–2–1–632.

The consent decree may be examined at the office of the United States Attorney, District of the Virgin Islands, P.O. Box 3239, St. Croix, Virgin Islands 00820; at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.30 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85–22669 Filed 9–20–85; 8:45 am]

BILLING CODE 4410–01–M

Lodging of a Proposed Consent Decree Pursuant to the Clean Air Act; N–Ren Corp.

In accordance with Departmental Policy, 28 CFR 50.7 notice is hereby given that on September 10, 1985, a proposed Consent Decree in *United States* v *N–Ren Corporation,* Civil Action No. 84–0675 JB (D.N.M.), was lodged with the United States District Court for the District of New Mexico. The proposed Consent Decree requires N–Ren Corporation to attain and maintain compliance with the New Source Performance Standards ("NSPS") for Nitric Acid Plants promulgated under the Clean Air Act, and civil penalties for past violations. The decree sets forth compliance provisions regarding excess emissions, continuous montioring system, conversion factors, reporting and record keeping, and maintenance requirements.

The Department of Justice will receive for a period of thirth (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to the *United States* v *N-Ren Corporation,* Civil Action No. 84–0675 JB (D.N.M.), D.J. Ref. 90–5–2–1–686.

The proposed Consent Decree may be examined at Office of the United States Attorney, United States courthouse, Room 12020, 500 Gold Avenue, Albuquerque, New Mexico 87103 and at the Region VI Office of the Environmental Protection Agency, Interfirst Two Building, 1201 Elm Street, Dallas, Texas 75270. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.00 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht, II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85–22670 Filed 9–20–85; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Preservation; Meeting

Notice is hereby given that the Executive Committee and the Subcommittee on Current Holdings of the Advisory Committee on Preservation will meet on Wednesday, November 13, 1985 from 10 a.m. to 4 p.m. in Room 150 of the National Academy of Sciences Building, 2101 Constitution Avenue, NW., Washington, DC.

The agenda for the meeting will be:

1. Status report on the Academy's Committee on the Preservation of Historical Records.

2. Plans for future meetings.

The meeting will be open to the public. For further information, call Alan Calmes on 202–523–1546.

Dated: September 16, 1985.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 85-22668 Filed 9-20-85; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL COMMISSION ON AGRICULTURAL TRADE AND EXPORT POLICY

Meeting

September 18, 1985.

The National Commission on Agricultural Trade and Export Policy will hold its next meeting on October 21 and 22, 1985, at The Boar's Head Inn, Charlottesville, Virginia. The meeting will begin at 11 a.m. on October 21 and conclude at 3:00 p.m. on October 22.

The focus of the meeting is U.S.-E.C. Agricultural Trade Issues. The meeting is open to the public.

Kenneth L. Bader,

Chairman.

[FR Doc. 85-22620 Filed 9-20-85; 8:45 am]

BILLING CODE 3410-06-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

Date: October 8, 1985.

Time: 9:00 a.m. to 5:00 p.m.

Room: 415.

Program: This meeting will review applications to the projects supported by Humanities Projects in Museums and Historical Organizations Program, Division of General Programs.

The proposed meeting is for the purpose of review and discussion of applications for support under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. The panel will assess the grant category for interpretive skills workshops. Because the proposed meeting will consider applications which were not supported it is likely to disclose information which is not available to the public, including: (1) Trade secrets and financial information obtained from a person as privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that this meeting will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 85-22657 Filed 9-20-85; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-440 and 50-441]

Cleveland Electric Illuminating Co. et al. (Perry Nuclear Power Plant, Units 1 and 2); Issuance of a Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulations, has issued a Decision pursuant to 10 CFR 2.206 concerning a petition filed by Ms. Susan L. Hiatt, on behalf of the Ohio Citizens for Responsible Energy (OCRE Petition). The OCRE Petition requested, among other things, that the Commission initiate an investigation and show-cause proceeding with respect to the financial qualifications of the licensees for the Perry Nuclear Power Plant (Perry), Units 1 and 2, for the completion of construction of the Perry plant. The Petitioner alleges that the licensees' financial condition is precarious and may result in the unsafe construction or sabotage of the plant and its nuclear fuel.

Upon consideration of the OCRE Petition, the Director has concluded that, for the reasons more fully stated in the "Director's Decision Under 10 CFR 2.206 (DD-85-14), the five utilities (licensees), sharing ownership in the Perry plant have demonstrated reasonable assurance that they can obtain the funds necessary to cover estimated construction completion costs for Perry Unit 1 and common facilities, and that any financial burdens which the licensees may currently be under do not appear to have resulted nor are likely to result in unsafe construction of the Perry Unit 1. The Director declines to initiate any proceeding with respect to Perry Unit 2 owing to the uncertain future of the plant and the fact that no hazard is posed to public health and safety by the licensees' limited activities at Unit 2.

The "Director's Decision Under 10 CFR 2.206" (DD-85-14), issued today, is available for public inspection in the Commission's Public Document Room at 1717 H Street N.W., Washington, D.C., and in the Perry Public Library located at 3735 Main Street, Perry, Ohio.

A copy of the Director's Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the Director's Decision will become the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, takes review of the Decision within that time.

Dated at Bethesda, Maryland, this 13th day of September 1985.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85-22684 Filed 9-20-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-462]

Illinois Power Co. (Clinton Power Station, Unit No. 2), Order Revoking Construction Permit

I.

Illinois Power Company (IPC) is the holder of Construction Permit No. CPPR-138 which authorizes the construction of the Clinton Power Station, Unit No. 2 in Dewitt County, Illinois. The permit, as issued, expired on October 1, 1981.

II.

On October 14, 1983, IPC announced by a news release that it was cancelling the Clinton Power Station, Unit 2. By letter, dated April 9, 1985, IPC formally advised the U.S. Nuclear Regulatory Commission of the cancellation of the second unit of its Clinton plant and requested that Construction Permit No. CPPR-138 be rescinded.

On May 17, 1985, IPC filed a Motion to Terminate Proceeding (Motion) with the Atomic Safety and Licensing Board (ASLB) on grounds of mootness and

requested the Board to authorize the Director, Office of Nuclear Reactor Regulation (NRR), to rescind the construction permit, CPPR–138, issued for Clinton Power Station (CPS) Unit 2. On May 29, 1985, the People of the State of Illinois (State) filed an answer to IPC's Motion (State Response), stating that it did not object to the termination of the proceeding, *per se*, but requested the Board to order an environmental, safety, and cost assessment of IPC's proposed method for remediation of the Unit 2 excavation area. On June 6, 1985, the NRC Staff (Staff) responded to IPC's Motion (Staff Response) stating that it had concluded, that IPC need not fill the Unit 2 excavation at this time. However, the Staff set forth certain actions for environmental protection that it proposed to require of IPC as a condition to the licensing of CPS Unit 1.

On June 11, 1985, the ASLB issued a Memorandum and Order (Requesting Additional Information on Unit 2 Excavation) indicating that it wanted additional information about the Unit 2 excavation before rendering a decision on IPC's Motion and that it believed the information needed could be obtained from certain photographs discussed in the Staff Response. The ASLB had concerns about possible safety matters associated with the unfilled excavation and noted that the Staff Response did not address safety matters. Therefore, the ASLB ordered the Staff to provide it with copies of the photographs and indicated that copies should be made available also to any party that wished to examine them. On June 13, 1985, the Licensing Board issued a Memorandum and Order (Concerning Request for Photographs), stating that it would make the photographs available for inspection by the parties upon request, provided that such requests were filed with the ASLB by July 1, 1985. No request to inspect the photographs having been received, the ASLB rendered its decision on IPC's Motion on July 11, 1985.

III.

The Unit 2 site lies entirely within the CPS Unit 1 exclusion area on property owned by IPC and is not visible to persons located outside the exclusion area. The excavation is approximately 40 feet deep, 350 feet wide, and 1350 feet long at the top, and approximately 280 feet wide and 900 feet long at the bottom. One side of the excavation abuts the radwaste, control and diesel buildings for Unit 1. Portions of the north and south sides of the excavation are covered by a revetment composed of a grout intrusion blanket. The remaining portions of the north and south sides, and the east side of the excavation, are sloped and are stabilized by herbaceous vegetation.

The ASLB was concerned that a person might be injured by accidentally falling into the excavation. However, this concern was satisfied by the photographs provided by the Staff, which showed that the slope of the excavation's sides is everywhere less than 45° and hence, not steep enough to constitute a significant hazard. Also, while there is a road running along the east rim of the excavation, IPC has committed in the FSAR to construct a berm on the three exposed sides of the excavation which should prevent a vehicular accident, and the ASLB concluded that the excavation, if left unfilled, will present no significant hazard to the health and safety of the public or of plant personnel.

Because of the Cancellation of Unit 2, the ASLB agreed with the Staff that the Unit 2 excavation will be considered as part of the Unit 1 site. The ASLB Order noted that, as a licensing condition of Unit 1, IPC will be required to submit an Environmental Protection Plan (EPP) which, upon approval, will be appended as Appendix B to the Unit 1 operating license. The EPP will require IPC to provide the Staff with a detailed analysis of data and a proposed course of corrective action should harmful effects or evidence of trends toward irreversible damage to the environment be observed. Additionally, the EPP will require IPC to prepare an environmental be evaluation before engaging in any additional construction or operational activities which may have measureable environmental effects that are not confined to on-site areas previously disturbed during site preparation and plant construction. If the evaluation indicates that the activity involves an unreviewed environmental question, prior approval of the activity must be obtained from the Director of Nuclear Reactor Regulation. If the activity involves a change in the EPP, the activity and change in the EPP will require an appropriate license amendment.

The Staff has determined that the Unit 2 site is presently stabilized and presents no significant environmental impact and the construction of the berm around the excavation will provide a satisfactory means of ensuring continued environmental acceptability and also will provide protection against a vehicular accident at the excavation. There does not appear to be any immediate need to fill the excavation, and the ultimate disposition of the excavation can be deferred for future consideration. Should be excavation later require further redress, such action be required pursuant to the EPP for Unit 1.

IV.

For the reasons set forth above, and pursuant to the directive of the ASLB to the Director of Nuclear Reactor Regulation in its July 11, 1985 Memorandum and Order, Construction Permit CPPR–138 held by Illinois Power Company is hereby revoked.

This Order is effective upon issuance.

Dated at Bethesda, Maryland, this 11th day of September 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85–22683 Filed 9–20–85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, October 3, 1985
Thursday, October 10, 1985
Thursday, October 17, 1985
Thursday, October 24, 1985
Thursday, October 31, 1985

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW, Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and

formulate postions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)((9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW, Washington, D.C. 20415 (202) 632–9710.

William B. Davidson, Jr.,

Chairman, Federal Prevailing Rate Advisory Committee.

September 11, 1985.

[FR Doc. 85–22724 Filed 9–20–85; 8:45 am]

BILLING CODE [illegible]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Written Comments on the Possible Negotiation of a Trade and Investment Framework Agreement With Mexico

SUMMARY: Notice is hereby given that the Trade Policy Staff Committee (TPSC) is requesting public comments on the discussion of a trade and investment framework agreement with Mexico. These comments will be considered by the Executive Branch in developing objectives for discussions. The Committee is particularly interested in views on basic principles and procedures which should govern the bilateral trade and investment relationship, specific issues or problems which should be addressed, as well as the merits of considering possible sectoral arrangements and what such arrangements should include. Comments should be filed by October 28, 1985.

SUPPLEMENTARY INFORMATION:

1. Background

In April 1985 the United States and Mexico announced their intention to enter into discussions of a framework of principles and procedures regarding their trade and investment relations. The two governments have also announced the establishment of a working group to consult on the agreement. Mexico is not a member of the General Agreement on Tariffs and Trade (GATT) and we do not have a bilateral agreement covering these matters. Consequently, there is no agreed upon set of rules to govern what is becoming an increasingly large flow of goods, services and capital across the common border. These considerations led to the agreement to begin consultations. Topics for discussion would include, *inter alia,* reduction of tariff and non-tariff barriers and other distortions of trade; non-discriminatory and national treatment for current and prospective foreign investment, and other investment matters; ways and means to foster transparency of administrative actions of each party, when they relate to trade and investment between both nations; and improved consultation and dispute settlement procedures.

2. Public Comments

Public comments are requested on the issues to be covered in such consultations, including procedural elements (e.g., dispute settlement, consultations), principles (e.g. non-discriminatory and national treatment), barriers to trade and investment to be addressed (tariffs, licensing, property rights protection), and whether the Executive Branch should also consider arrangements covering particular industrial sectors. Comments are especially invited on particular problems and experiences in trading or investing in Mexico, improvements to be sought in the relationship, as well as the benefits or disadvantages of negotiating such an agreement with Mexico.

Parties wishing to submit comments should provide a written statement, in twenty copies, by October 28, 1985, to Carolyn Frank, TPSC Secretary (Office of the U.S. Trade Representative, Room 521, 600 17th Street, NW., Washington, D.C. 20506).

(Opportunities to present further views will be provided through public hearings and more requests for public comments as discussions progress and warrant. These opportunities will be announced in the **Federal Register.**)

3. Additional Information

Any questions with regard to the discussion of a framework agreement with Mexico should be directed to Jon Rosenbaum, Assistant U.S. Trade Representative for Latin America, Caribbean, and Africa, Office of the U.S. Trade Representative, Room 307, 600 17th Street, NW., Washington, D.C. 20506; telephone (202–395–6135).

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 85–22640 Filed 9–20–85; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–14726; File No. 812–6179]

Greater Washington Investors, Inc.; Application for an Order Granting Exemption and Permitting Proposed Affiliated Transaction

September 17, 1985.

Notice is hereby given that Greater Washington Investors, Inc., ("Applicant"), 5454 Wisconsin Avenue, Chevy Chase, Maryland 20815, registered under the Investment Company Act of 1940 ("Act") as a closed-end, non-diversified management investment company, filed an application on August 13, 1985, and an amendment thereto on August 30, 1985, for an order of the Commission, pursuant to section 17(b) of the Act, exempting Applicant's proposed investment in a portfolio affiliate from the provisions of section 17(a)(3) of the Act, and pursuant to section 17(d) of the Act and rule 17d–1 thereunder, permitting the concurrent participation in such investment by Applicant and an "up-stream" affiliate. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the pertinent statutory provisions.

Applicant is a small business investment company licensed under the Small Business Investment Act of 1958. Research Industries Incorporated ("Research Industries") is a privately-held company that owns approximately 12.1 percent of the outstanding common stock of Applicant. Voice Computer Technologies Corporation ("VCT") is a development-stage company engaged in developing microprocessor-based, voice

response computer systems for distributors of goods and merchandise for use in remote order entry. Applicant and Research Industries have been investors in VCT since June, 1982, and presently own securities representing 11.6 percent (613,094 shares of VCT's Series B convertible preferred stock) and 11.3 percent (596,619 shares of the Series B convertible preferred stock), respectively, equity interests in VCT. Both Applicant and Research Industries have a representative on the board of directors of VCT.

It is further stated that in May, 1985, VCT offered up to $1.25 million of its 12 percent subordinated debentures due May 31, 1987 ("Debentures"), together with warrants to purchase five shares of its Series B convertible preferred stock for each dollar of principal amount of the Debentures at a price of $0.20 per share. Each share of Series B preferred stock is convertible into one share (subject to adjustment upon the occurrence of certain events) of VCT common stock. The May, 1985 offering was made exclusively to VCT's Series B preferred shareholders, including Applicant and Research Industries, to two holders of VCT's common stock who have preemptive rights, and to the two holders of VCT's five-year, 12.5 percent subordinated convertible debentures issued in 1984. Payment of principal and interest on the Debentures is subordinated upon any distribution of assets of VCT or other dissolution, winding up, liquidation, or reorganization of (including bankruptcy) VCT, to the payment in full of loans which VCT may obtain in the future from banks or certain other financial institutions. The warrants will expire on the earlier of May 31, 1990, or the closing of a public offering by VCT at a price per share greater than $4.99 that produces at least $5 million of proceeds for VCT. VCT has granted to the holders of the Debentures a security interest in substantially all of its assets, subject to the prior security interest of the debentures issued in 1984, the aggregate principal amount of which is presently $550,000. Interest on the Debentures is payable semi-annually, but VCT may, at its option, defer making one or more interest payments to a date not later than the due date of the principal amount of the Debentures. Deferred interest is to earn further interest at the rate of 12 percent, and VCT shall issue additional warrants for each dollar of interest deferred, on the same terms as the warrants originally issued with the Debentures. Pursuant to this recent offering, VCT raised an additional $865,440, of which GWI and Research Industries each invested $100,000. GWI's participation in this transaction concurrently with Research Industries was the subject of an application to the Commission granted by order dated July 17, 1985 (Investment Company Act Release No. 14638).

Applicant now states that VCT has experienced many delays and difficulties in bringing its product to market, and that as a result its business has not yet stabilized. VCT is, therefore, again in urgent need of additional capital in order to continue operations. To raise these funds, VCT is making a further offering of Debentures and warrants to buy shares of its Series B convertible preferred stock. The contemplated offering is designed to raise a minimum of $500,000, and a maximum of $1,000,000, and will be made on terms substantially the same as those provided for in VCT's May, 1985 offering to be sold in the proposed offering are to cover 3.3 shares of the Series B preferred, at a price of $0.30 per share for each dollar of principal amount of Debentures, whereas in the May, 1985 offering the warrants covered 5 shares of Series B preferred at $0.20 per share.

Applicant represents that it anticipates investing, subject to approval by its board of directors and the issuance of the order requested herein, as much as $100,000 in the proposed offering. Research Industries, it is stated, has indicated that it will participate in the financing in a like amount. It is stated further that the financing may be completed in two phases, with most of the funds, including those of Research Industries, invested in early September, 1985, with Applicant's investment to be received soon after such time as this application is granted. Applicant represents that, if necessary, it will make an advance commitment to invest, subject only to favorable action by the Commission upon this application. Moreover, Applicant will participate only on the basis that its investment is otherwise being made on the same terms and conditions as those of all other investors in the offering. It is asserted that the foregoing procedure is necessary because Applicant's interest in and commitment to further investment in VCT, as an expression of confidence in VCT, is an important factor in enlisting the participation of other investors in VCT. Additionally, it is stated that Applicant wishes to preserve its opportunity to participate in this financing, as the exercise price of the warrants has intentionally been made very attractive in order to induce investors to provide VCT with capital funds at this critical juncture. In the absence of a commitment by Applicant, VCT might have no reason to want Applicant to purchase its securities in the future, given the dilutive effective of the warrants on the other shareholders. That result could in turn cause Applicant to suffer a significant dilution of its present position in VCT securities.

Applicant states that as a result of the financial interest it holds in VCT, the Debenture purchase it now proposes to make would violate Section 17(a)(3) of the Act. In addition, Applicant's proposed investment, in conjunction with the investment to be made by Research Industries in VCT, may be deemed to be a joint enterprise within the meaning of Section 17(d) of the Act, and Rule 17d–1 thereunder.

Applicant asserts that the requested relief meets the statutory standards of Sections 17(b) and 17(d) of the Act, and Rule 17d–1 thereunder. It is asserted that the terms of the VCT offering will have been negotiated at arms' length between VCT and its investors, taking into consideration the problems and delays experienced by VCT to date, the difficult climate for raising additional venture capital, and the critical need of VCT for cash. Under these circumstances, it is further asserted that the terms of the contemplated financing are reasonable and fair and do not involve overreaching. Moreover, Applicant asserts that the terms of the offering will be the same for each participant, except as to such interim procedures as may be needed to meet VCT's urgent need for additional funds. It is further stated that each investor in the company, including Applicant and Research Industries, has made or is in the process of making an independent decision as to whether to invest further in VCT and, if so, how much. Applicant states that the offering will not likely be fully subscribed and that Applicant and Research Industries will be able to invest any amount they wish on exactly the same terms, if this application is approved.

Applicant asserts that the proposed investment is consistent with its policies as recited in its registration statement and reports filed under the Act. It is asserted that an important part of Applicant's support of its securityholders is its participation in supplementary financings. And while it would be preferable if the proposed supplemental financing of VCT were being done on more favorable terms, it is nonetheless consistent with Applicant's policy of making follow-on investments in its portfolio companies. Applicant further states that to deny this

application would cause Applicant's existing investment in VCT to be significantly diluted.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 15, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-22709 Filed 9-20-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-5599]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; International Controls Corp.

September 17, 1985.

The above name issuer has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the Common Stock, $0.10 Par Value, or International Controls Corp. from listing and registration on the American Stock Exchange, Inc.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

International Controls Corporation considered the direct and indirect costs and expenses attendant to maintaining the dual listing of the Common Stock on the New York Stock Exchange and the American Stock Exchange. The registrant does not see any particular advantage in the dual trading of the Common Stock and believes that dual listing would fragment the market.

Any interested person may, on or before October 4, 1985 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to its, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-22710 Filed 9-20-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22415; File No. 4-284]

Order Approving Plan by the New York Stock Exchange, Inc.

The New York Stock Exchange, Inc. ("NYSE") submitted on June 18, 1985, copies of a proposed plan pursuant to Rule 19d-1(c)(2) under the Securities Exchange Act of 1934 ("Act").[1] The proposed plan specifies those uncontested minor rule violations with sanctions not exceeding $2,500 which would not be subject to the provisions of Rule 19d-1(c)(1) under the Act requiring that an SRO promptly file notice with the Commission of any final disciplinary action taken regarding any person or organization.[2] In accordance with paragraph (c)(2) of Rule 19d-1, the NYSE proposed to designate certain specified rule violations as minor rule violations, and requested that it be relieved of the current reporting requirement regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis. The NYSE proposed to include under its plan those rule violations that are currently included in its minor disciplinary fine system under NYSE Rule 476A.[3] According to the NYSE, the quarterly report of actions taken on minor rule violations under Rule 476A would list for each violation: the NYSE's internal file number for the case, the SEC's file number, the name(s) of the individual and/or member organization, the nature of the violation, the specific rule provision violated, the date of the violation, the fine imposed on each individual and/or member organization, an indication of whether the fine is joint and several, the number of times the rule violation has occurred, and the date of disposition.

The following NYSE rule violations currently are included in the Exchange's minor disciplinary fine system under Rule 476A: (1) Rule 15(c) (requirement to issue Intermarket Trading System ("ITS") pre-opening notifications); (2) Rule 15A (requirement to comply with ITS block-trade policy); (3) Rule 79A.30 (requirement to obtain floor official approval for trades at wide variations from the last sale); (4) Rule 123A.40 (requirement to obtain floor official approval for election of stop orders); (5) Rule 104.12 (specialist investment account rule violations); (6) Rule 112(d) (competitive trader stabilization requirement violations); (7) Rules 117, 121, 123, 123A.20, 410 (record retention rule violations; (8) Rules 97.40, 104A.50, 107.30, 112A.10; (reporting rule violations); (9) violations of Exchange policies regarding procedures to be followed in delayed opening situations; (10) Rule 134(c) and (e) (requirement to

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[1] In Securities Exchange Act Release No. 21013 (June 1, 1984) 49 FR 23828 the Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow self-regulatory organizations ("SROs") to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. Under the amendments, any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to a plan filed with the Commission shall not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

The Commission has approved a minor disciplinary rule plan by the American Stock Exchange, Inc. (Securities Exchange Act Release No. 21918 (April 3, 1985) 50 FR 14068 (File No. 4-260).

[2] On July 19, 1985, the Commission received a letter from the NYSE amending Exhibit C (List of Exchange Rule Violations and Fine Applicable Thereto Pursuant to Rule 476A) and Exhibit D (Sample Report) of its June 18, 1985 filing. *See* letter from James E. Buck, Secretary, NYSE, to Michael Cavalier, Branch Chief, Division of Market Regulation, dated August 16, 1985, making a minor revision to Exhibit D.

[3] *See* Securities Exchange Act Release No. 21688 (January 25, 1985) 50 FR 5025 (SR-NYSE-84-27) wherein the Commission approved new NYSE Rule 476A ("Imposition of Fines for Minor Violations of Rules") which authorizes the Exchange, in lieu of commencing a disciplinary proceeding before a Hearing Panel, to impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person or registered or non-registered employee of a member organization for any violation of an Exchange rule which the Exchange determines to be minor in nature. Pursuant to Rule 476A, the Exchange shall serve the person against whom a fine is imposed a written notice setting forth the rule or rules alleged to have been violated, the act or omission constituting each such violation, the fine imposed for each violation and the date, not less than 25 days after the date of service of the written statement by which such determination becomes final and such fine due and payable or such determination must be contested.

comply with specified questioned trade procedures and time periods); (11) Rule 440B (short sale rule violations); (12) Rule 107.10 (registered competitive market maker stabilization requirement violations); (13) requirement to participate in the pilot program to test revisions to the Specialist Performance Evaluation Questionnaire ("SPEQ") and its associated processes by the completion and return of "screening" and SPEQ questionnaires within specified time periods;[4] and (14) Rule 132 (failure to collect and/or submit all audit trail data specified in Rule 132). The NYSE has stated that it may periodically include additional minor disciplinary rule violations within its proposed minor rule violation plan.

The fines applicable to violations under Rule 476A are as follows: (1) For the first offense under the minor disciplinary system, the fine if $500 for an individual and $1,000 for a member organization; (2) for the second offense, the fine is $1,000 for an individual and $2,500 for a member organization; (3) subsequent fines are $2,500 for an individual and $5,000 for a member organization. The minor rule violation plan, however, would not cover fines imposed pursuant to Rule 476A which exceed $2,500, nor would it cover any fine sought to be imposed under the rule which is contested. Such violations and fines would be reported as they occur pursuant to Rule 19d–1(c)(1).

Notice of the proposed plan, together with the terms of substance of the proposed plan was given by the issuance of a Commission release (Securities Exchange Act Release No. 22300, August 8, 1985) and by publication in the **Federal Register** (50 FR 32818, August 14, 1985). No comments were received with respect to the proposed plan.

The Commission finds that the proposed plan is consistent with the requirements of section 6 and section 19 of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Rule 19d–1(c)(2) under the Act, that the proposed plan be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 17, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–22712 Filed 9–20–85; 8:45 am]

BILLING CODE 8010–01–M

[4] Failure to participate in the revised SPEQ program is subject to the new procedures under Rule 476A on the basis of recent Commission approval of two rule changes filed in SR–NYSE–85–14 and SR–NYSE–85–15. In SR–NYSE–85–14, the NYSE proposed the implementation of a pilot program to test proposed revisions to SPEQ. *See* Securities Exchange Act Release No. 22036 (May 14, 1985) 50 FR 21007. The request to amend the "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A" to include failure to participate in the "SPEQ pilot program as a minor rule violation subject to Rule 476A procedures was set forth in SR–NYSE–85–15. *See* Securities Exchange Act Release No. 22037 (May 14, 1985) 50 FR 21008.

[Release No. 34–22409; File No. SR–DTC–85–2]

Self-Regulatory Organizations; Depository Trust Company; Filing and Immediate Effectiveness of Proposed Rule Change

On August 14, 1985, the Depository Trust Company ("DTC") filed with the Commission a proposed rule change under section 19(b)(1) of the Securities Exchange Act of 1934. The Commission is publishing this notice to solicit public comment on the proposal.

DTC's proposed rule change enables participants to use the Participant Terminal System ("PTS") to pledge securities to the Options Clearing Corporation ("OCC"). Present DTC rules require that pledges used to meet OCC's option collateralization requirements be submitted in paper form. The proposed rule change permits participants to submit pledge and release of pledge instructions to OCC over PTS. Participants may also pledge securities to OCC over PTS for the benefit of an OCC member, if that OCC member is also a DTC participant. The procedures to pledge securities to OCC are based upon DTC's Collateral Loan Program procedures for pledging securities over PTS.

The rule change has become effective, pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4 thereunder. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropiate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You can submit written comment within 21 days after notice is published in the **Federal Register.** Please file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing also will be available for inspection and copying at DTC's principal office. All submissions should refer to the proposal's file number and should be submitted by October 14, 1985.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: September 16, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–22711 Filed 9–20–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22398; File No. SR–NYSE–85–33]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc. Relating to the Automated Submission of Trading Data by Specialists

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 9, 1985, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of the required submission by specialists of reports of their proprietary equity and options trading data to the Exchange in automated format.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(1) Purpose

The purpose of the proposed rule change is to enhance the Exchange's ability to surveil and regulate specialists' trading activity on a more comprehensive, timely and cost-effective basis. Therefore, the Exchange is proposing to require that specialists submit, in an automated format prescribed by the Exchange, reports on their proprietary trading in their specialty stocks and in any options to hedge their specialty stock positions. It is anticipated that such submissions may be required on a daily basis, rather than on a "periodic call" basis (under current Exchange policy, this is a spot check of 8 weekly periods) during the year, as is currently required. (Specialists engaging in options hedging activity pursuant to Exchange Rule 105, however, are required to submit reports of their proprietary stock and options trading activity on a daily basis). The Exchange's proposal does not contain new requirements as to the information to be submitted, but simply changes the format in which, and frequency with which, information is to be submitted. At present, most specialist firms submit required data in an automated format, but they will have to make programming modifications to accommodate the Exchange's prescribed format. While the specialist community will incur some expense in making these programming changes (or, in the case of those few firms that still submit data manually, in automating in this regard) and in making daily submissions, specialist firms in general have begun their programming efforts to be ready by our projected January 1986 implementation date.

(2) Statutory Basis for the Proposed Rule Change

By enhancing automated surveillance, the proposed rule change will help ensure that the Exchange's regulatory and surveillance capabilities keep pace with the complexity of trading in today's sophisticated market environment, and therefore the proposed rule change is expected to remove impediments to and perfect the mechanism of a free and open market and a national market system, and is consistent with protecting investors and the public interest, as called for in section 6(b)(5) of the Act. The proposed rule change meets other requirements of section 6(b)(5) in that it will help prevent fraudulent and manipulative acts and practices, and promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 14, 1985.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 11, 1985.

John Wheeler,

Secretary.

[FR Doc. 22713 Filed 9–20–85; 8:45 am]

[illegible]

[Release No. 34–22408; File No. SR–PSDTC–85–6]

Self-Regulatory Organizations; Pacific Securities Depository Trust Company; Proposed Rule Change

On August 19, 1985, the Pacific Securities Depository Trust Company ("PSDTC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The proposed rule change would automate PSDTC's participant transfer requests. The Commission is publishing this notice to solicit public comment on the proposal.

The proposed rule change would automate PSDTC's system that processes participant requests for securities certificates. The new system, the Automated Transfer Service ("ATS"), would enable participants to submit requests for certificates, on a daily basis, by computer tape or automated transmission. Participants also may continue to submit paper instructions. If participants elect to submit paper instructions, however, PSDTC, would enter those instructions into its automated system for processing. At the end of each day, PSDTC would make available to each participant a list of items transferred, a list of items ready for pick-up and a list of items rejected. ATS would not affect withdrawals for trades settling outside the depository.

PSDTC believes that the proposal is consistent with section 17A(b)(3)(F) of the Act because it would simplify the processing of transfer requests and, therefore, would facilitate the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.

Copies of all documents relating to the proposal, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. and at PSDTC's principal offices.

To assist the Commission in determining whether to approve the proposal or to institute disapproval proceedings, the Commission invites

public comment on the proposal. Please refer to File No. SR–PSDTC–85–6 and file six copies of comments with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, by October 14, 1985.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Dated: September 16, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–22714 Filed 9–20–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 85–068]

Houston/Galveston Navigation Safety Advisory Committee; Inshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Inshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, October 31, 1985 at the Houston Yacht Club, 3620 Miramar Drive, LaPorte, Texas. The meeting is scheduled to begin at 10 a.m. and end at 12 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Inshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration to the Subcommittee.
4. Adjournment.

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Prior to presentation of their oral statements, but not later than the day before the meeting, members of the public shall submit, in writing, to the Executive Secretary of the Houston/Galveston Navigation Safety Advisory Committee, the subject of their comments, a general outline signed by the presenter, and the estimated time required for presentation. The individual making the presentation shall also provide his/her name, address, and, if applicable, the organization he/she is representing. Any member of the public may present a written statement to the Advisory Committee at any time.

Additional information may be obtained from Commander D.F. Withee, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130, telephone number (504) 589–6901.

Dated: September 18, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 85–22687 Filed 9–20–85; 8:45 am]

BILLING CODE 4910–14–M

[CGD 85–069]

Houston/Galveston Navigation Safety Advisory Committee; Offshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Offshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Wednesday, October 23, 1985, in the conference room at the office of West Gulf Maritime Association, 2616 South Loop West, Suite 600, Houston, Texas. The meeting is scheduled to begin at 10 a.m. and end at 12 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Offshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration to the Subcommittee.
4. Adjournment.

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Prior to presentation of their oral statements, but no later than the day before the meeting, members of the public shall submit, in writing, to the Executive Secretary of the Houston/Galveston Navigation Safety Advisory Committee, the subject of their comments, a general outline signed by the presenter, and the estimated time required for presentation. The individual making the presentation shall also provide his/her name, address, and, if applicable, the organization he/she is representing. Any member of the public may present a written statement to the Advisory Committee at any time.

Additional information may be obtained from Commander D. F. Withee, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130, telephone number (504) 589–6901.

Dated: September 18, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 85–22686 Filed 9–20–85; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Establishment of Office; District Counsel, Helena, MT

AGENCY: Chief Counsel, Internal Revenue Service, Treasury.

ACTION: Establishment of office.

SUMMARY: As a result of the increasing legal casework in the State of Montana, the Chief Counsel of the Internal Revenue Service will open a new office in Helena, to be known as the District Counsel, Helena, effective September 16, 1985.

Jean Owens,

Deputy Chief Counsel.

[FR Doc. 85–22685 Filed 9–20–85; 8:45 a.m.]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

Support of International Educational and Cultural Activities; a Grants Program for Private Not-For-Profit Organizations

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The primary purpose of the program is to enchance the achievement of the Agency's international public diplomacy goals and objectives by stimulating and encouraging increased private sector commitment, activity, and resources. The information collection involved in this solicitation is covered by OMB Clearance Number 3116–0175, entitled "A Grants Program for Private

Organizations," expiration date January 31, 1987.

The United States Information Agency is interested in working cooperatively with private sector organizations and is requesting proposals (deadline October 23, 1985) for the following program:

U.S. Legislative Study Program (Republic of the Philippines)

Summary

The Office of Private Sector Programs (E/P) of the United States Information Ageny (USIA) proposes an 18-to-21 day study program in the United States for legislative staff and research assistants of the National Assembly (Batasan Pambansa) of the Republic of the Philippines (R.P.), beginning in late November, 1985. The purpose of this program is to provide an overview of the American legislative process and to enhance the technical and research skills of the specialized support staff of the Batasan. This program will begin with a state assembly orientation program to observe state legislative and electoral processes. The second phase will include an informal transition seminar in Wisconsin comparing state and federal legislative and executive systems, followed by 10 days of presentations and meetings on these issues in Washington, D.C.

Background and Program Rationale

Since the inauguration of the Republic in 1946, the Philippine National Assembly (Batasan Pambansa) has undergone numerous constitutional revisions. A new constitution to replace the US-inspired constituion of 1935 was completed during a constitutional convention in 1972 and took effect the following year. President Ferdinand E. Marcos governed from 1973 to mid-1981 under its transitory provisions. Those provisions, amended in 1976, called for the incumbent president to exercise full executive authority pending the convening of a National Assembly at the president's direction. Martial law, declared in 1972, was formally terminated in 1981. Major amendments adopted in 1981 revised the British-style parliamentary system to a French-style one, making the president head of government.

In the context of constitutional revisions which have altered the structure and influence of the Philippine National Assembly, that body has not fully developed its democratic, self-sustaining potential. While newly (1984) elected parliamentarians struggle to exert their influence on affairs of state, they are often frustrated by inadequate access to information and research materials. Many Filipino parliamentarians and their staff regard the U.S. congressional system as a truly viable and exemplary democratic apparatus.

Despite their familiarity with American democratic values and political traditions, few Filipino legislative leaders fully understand the function and inter-relationship of the U.S. Executive, legislative and judicial branches.

Exposing Filipino parliamentary staff to the mechanics of legislation-building and the relationship for the legislative branch with the Executive would help lessen misunderstandings, while promoting democratic instituion building and providing opportunities for Filipinos and Americans to exchange information and establish institutional ties.

Inexperience and limited technological and economic resources have restricted the ability of parliamentarians and research staff to access information. Consequently, parliamentary legislative and research assistants exhaust enormous amounts of time and energy in this pursuit.

Members of Congress, Congressional staff, U.S. scholars, and information science specialists can suggest alternative procedural and structural legislative approaches. They can also assist Filipino parliamentarians—through their support staffs—in enhancing office management procedures, skills, and research techniques.

Program Highlights (Suggested)

Since provincial/local elections are scheduled to take place during 1986 in the Philippines, participants in the legislative study program may welcome an opportunity to begin their U.S. visit with a structured four-or-five-day internship/briefing program at a state assembly. During the last week of November 1985, the USIS-Manila-selected delegation will observe the dynamics of the state legislative process, the state electoral process, and the extent to which the federal government directly or indirectly regulates individual state activities.

A three-day informal seminar program (December 1–3, 1985) will serve as a bridge between discussions on state and local government structure and processes, and the U.S. federal system. Comparisons of the Philippine and U.S. provincial/state and parliamentary/congressional systems are also envisioned through a series of presentations and roundtables. The Johnson Foundation has agreed to host this transition seminar at its Wingspread conference center (Racine, Wisconsin).

A ten-day follow-on program in Washington, D.C. will further enhance the transition seminar with a series of briefings, meetings and presentations from American practitioners and scholars. Besides meeting with congressmen and congressional staff members on the foreign affairs, defense, budget and banking committees, the delegates will participate in roundtable discussions. Participants will also devote considerable time observing the structure and resources of the Library of Congress and, in particular, that body's Congressional Research Service.

In addition, the delegates will participate in a roundtable discussion on campaign funding and the mechanics for monitoring fair elections. A panel discussion with faculty from Georgetown University's School of Foreign Service is also contemplated.

Washington programs may also include separate meetings based on the specific interests of individual delegates and meetings with representatives from various foreign affairs agencies of the U.S. Governments, World Bank (Philippines Desk), foundations or research institutions (e.g., Heritage Foundation, Carnegie Endowment for Peace, Brookings Institution), and other private sector groups which promote democratic-institution-building and processes.

Project Proposal Evaluation

The Office of Private Sector Programs (E/P) and the USIA Intra-Agency Grant Review Panel will rank proposals according to the way they satisfy program criteria, as well as on their substantive merit, program variety, thematic continuity, and cost effectiveness. In addition, organizations submitting proposals will be rated according to their ability to develop a bilingual international exchange program, to provide in-kind contributions in support of the project, and to keep overhead costs at a minimum.

Funding

This program is designed for up to 13 participants selected by the United States Information Service (USIS) in Manila according to professional criteria. Maximum geographical representation will also be sought. Costs wil include international/domestic travel (for up to 13 Philippine participants on U.S. carrier/coach class, and U.S. travel for 3 U.S. escort/interpreters to include travel from their homes prior to and after the program),

per diem (for each international participant and the escort/interpreters at $100.00 per day), a single-payment cultural allotment ($120.00) to enable the purchase and/or duplication of materials, travel and modest honoraria for U.S. speakers, direct administrative expenditures, and minimal (if any) indirect costs. Salaries for escort/interpreters are covered separately by USIA and need not be part of your proposal.)

Applications Procedures

Applicants must submit 10 copies of the proposal to the adress below. To be eligible for review, proposals must include:

an abstract of approximately two pages; a narrative, not exceeding 10 pages, outlining the proposed program; a list of the participating institutions and participating departments; a detailed line-item three-column budget defining specific expenditures—with information on in-kind and cash contributions to the program by the institution; and vitae on project managers.

Timing

To be eligible for consideration, organizations *must* forward their proposals for receipt at USIA by COB October 23, 1985. Organizations planning to compete must also inform USIA of this intention in writing by October 7, 1985.

Guidance

Because of the competitive nature of this soliticitation, guidance in proposal development from the Office of Private Sector Programs (E/P) will be restricted to technical issues (202–485–7319).

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, (ATTN: Initiative Programs), United States Information Agency, 301 4th Street, SW., Washington, D.C. 20547

Dated: September 12, 1985.

Albert Ball,

Deputy Director, Office of Private Sector Programs.

[FR Doc. 85–22688 Filed 9–20–85; 8:45 am]

BILLING CODE 8230–01–M

VETERANS ADMINISTRATION

Career Development Committee; Meeting

The Veterans Administration gives notice under the provisions of Pub. L. 92–463 that a meeting of the Career Development Committee, authorized by 38 U.S.C. 4101, will be held in the French Room of the Georgetown Hotel, 2121 P Street NW., Washington, DC 20037, October 10 through 11, 1985 at 8:30 a.m. The meeting will be for the purpose of scientific review of applications for appointment to the Career Development Program in the Veterans Administration. The committee advises the Director, Medical Research Service on selection and appointment of Associate Investigators, Research Associates, Clinical Investigators, Medical Investigators, Senior Medical Investigators and William S. Middleton Award Nominees.

The meeting will be open to the public up to the seating capacity of the room from 8:30 a.m. to 9 a.m. to discuss the general status of the program. Because of the limited seating capacity of the room, those who plan to attend should contact Mr. David D. Thomas, Executive Secretary of the Career Development Committee (151J), Veterans Administration Central Office, Washington, DC 20420 (Phone 202–389–2317) prior to October 4, 1985.

The meeting will be closed from 9 a.m. to 5 p.m. on October 10 through 11 for consideration of individual applications for positions in the Career Development Program. This necessarily requires examination of personnel files and discussion and evaluation of the qualifications, competence, and potential of the several candidates, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, closure of the portion of the meeting is permitted by section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463 as amended, in accordance with subsection (c)(6), 5 U.S.C. 552b.

Minutes of the meeting and rosters of the committee members may be obtained from Mr. David D. Thomas, Chief, Career Development Program, Medical Research Service (151J), Veterans Administration, Washington, DC 20420 (Phone 202–389–2317).

Dated: September 16, 1985.

By direction of the Administration.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85–22622 Filed 9–20–85; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Structural Safety of Veterans Administration Facilities; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Advisory Committee on Structural Safety of Veterans Administration facilities will be held in Room 442, of the Lafayette Building, 811 Vermont Avenue, NW., Washington, DC on October 25, 1985, at 10 a.m. The committee members will review Veterans Administration construction standards and criteria relating to fire, earthquake and other disaster resistant construction.

The meeting will be open to the public up to the seating capacity of the room. Because of the limited seating capacity, it will be necessary for those wishing to attend to contact Mr. Richard D. McConnell, Director, Civil Engineering Service, Office of Construction, Veterans Administration Central Office (phone 202–389–2864) prior to October 18, 1985.

Dated: September 13, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85–22623 Filed 9–20–85; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 184
Monday, September 23, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), September 17, 1985.

CHANGE IN THE MEETING: The following matter has been postponed and will be rescheduled at a later date.

"Proposed Amendment to the Department of Education's Title IX Regulations"

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634-6748.

This Notice Issued September 18, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 85-22734 Filed 9-19-85; 10:37 am]

BILLING CODE 6750-06-M

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), September 17, 1985.

CHANGE IN THE MEETING: The following matter was postponed and rescheduled for 9:30 AM (Eastern Time), September 24, 1985.

"Proposed Ninety-Day Notice: TWA v. Thurston"

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634-6748.

This Notice Issued September 18, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 85-22735 Filed 9-19-85; 10:37 am]

BILLING CODE 6750-06-M

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, September 30, 1985, 11:00 a.m. (eastern time).

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Management Directive: Providing Reading, Interpreting, and Personal Assistance as a Reasonable Accommodation for Handicapped Individuals
4. Revisons to the Commission's Regulations Implementing Section 4(g) of the ADEA, 29 U.S.C. Section 623(g)
5. Proposed Modifications to the Recordkeeping Provisions of the Uniform Guidelines on Employee Selection Procedures, (UGESP) 29 C.F.R. Part 1607

Closed

Litigation Authorization; General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634-6748.

Dated: September 18, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 85-22736 Filed 9-19-85; 10:37 am]

BILLING CODE 6750-06-M

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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

September 18, 1985.

TIME AND DATE: 10:00 a.m., Tuesday, September 17, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: In addition to the previously announced tiems, the Commission considered and acted upon the following:

3. The NACCO Mining Company, Docket No. LAKE 85-87-R. (Issues include consideration of Petition for Interlocatory Review.)

It was determined by a unanimous vote of Commissioners that this item be added to the agenda and that no earlier announcement of the addition was possible. 5 U.S.C. § 552b(e)(1).

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR § 2706.150(a)(3) and §2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 85-22778 Filed 9-19-85; 3:10 pm]

BILLING CODE 6735-01-M

Federal Register

Monday
September 23, 1985

Part II

Department of Transportation

Coast Guard

46 CFR Parts 52, 56, 58, 61, 62, 110, 111, 113

Vital System Automation; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 52, 56, 58, 61, 62, 110, 111, 113

[CGD 81-030]

Vital System Automation

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to add regulations for automated vital systems on commercial vessels to the Marine Engineering Regulations contained in various subchapters of Title 46 of the Code of Federal Regulations, Shipping. Since the early 1960's, technological advances have caused an ever-growing dependence on automation to provide for the safe operation of vessels while reducing operating costs through reductions in manning and increased equipment efficiency. Domestically, the Coast Guard has published a series of Navigation and Vessel Inspection Circulars (NVICs) to promulgate its policy and guidance regarding the safe design, testing, maintenance, and manning of automated vessels. These circulars are now considered by all parties to be inadequate and outdated. Internationally, the need for safe automation on vessels has resulted in the inclusion of automation regulations in the first set of amendments to the International Convention on the Safety of Life at Sea, 1974 (SOLAS '74). These amendments entered into force internationally on September 1, 1984. To ensure that safety is not compromised by automation or reduced manning, the Coast Guard considers it necessary to publish uniform safety regulations that replace the circulars currently in effect, conform to and interpret the provisions of the SOLAS amendments, and have the benefit of public comment in accordance with the Administrative Procedure Act. The Coast Guard intends this proposal to provide minimum performance and testing standards that do not restrict use of technological developments or alternative arrangements that provide an equivalent degree of safety. Additionally, this proposal details the configuration and degree of automation the Coast Guard deems necessary when authorization for minimally attended or periodically unattended machinery plant operation is requested by the owner or operator of a vessel.

DATES: Comments must be received on or before December 23, 1985.

ADDRESSES: Comments referencing CGD 81-030 should be submitted to Commandant (G-CMC/21), U.S. Coast Guard, Washington, D.C. 20593. Comments may be delivered to, and will be available for inspection and copying at, the Marine Safety Council, U.S. Coast Guard Headquarters, Room 2110, 2100 Second St., S.W., Washington, D.C., between the hours of 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Peter L. Randall, Office of Merchant Marine Safety (202) 426-2266.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each person submitting a comment should include their name and address, identify this notice as CGD 81-030, identify the specific section of the proposal to which the comment applies, and give the reason for the comment.

All comments received before the expiration date of the comment period will be considered before final action is taken on this proposal. No public hearing is planned. One may be held if requested by anyone raising a genuine issue.

Drafting Information

The principal persons involved in drafting this rulemaking are: LT Peter L. Randall, Office of Merchant Marine Safety, and Michael N. Mervin, Office of the Chief Counsel.

Discussion of Proposed Regulations

a. Background

(1) The vital machinery and engineering spaces of commercial vessels are automated for a variety of reasons, including operator convenience, increased efficiency, the reduction or elimination of the need for operators to be continuously present, and the detection and control of unsafe conditions. Most automation is provided at the option of the owner of the vessel to reduce necessary manning and increase operating efficiency, thereby reducing operating costs. Over the life of a vessel, the savings resulting from these reduced operating costs usually exceed the capital investment cost of the automation.

(2) The Code of Federal Regulations does not address technical criteria for the safe and reliable automation of vital systems on commercial vessels. For the last 20 years, the Coast Guard has issued a series of Navigation and Vessel Inspection Circulars (NVICs) to express its policy and provide guidance for the cognizant Officer in Charge, Marine Inspection in an effort to ensure a general level of safety on automated vessels at least equal to that experienced on vessels that are not automated. Currently, the primary circular for self-propelled vessels other than small passenger vessels and offshore supply vessels is NVIC 1-69, "Automated Main and Auxiliary Machinery." This NVIC was issued in January 1969 as a result of Coast Guard and industry experience with the automation technology and steam propulsion systems prevalent in the 1960's. Worded as the "judgement of the Coast Guard" in the context of 46 U.S.C. 222 (now 46 U.S.C. 8101), it provides guidelines for equipment design, maintenance, and testing. It also specifies the equipment and procedures deemed necessary to qualify for reduced engineroom manning and emphasizes that safety must not be compromised as a result of either automation or associated reductions in manning. While many of the underlying concepts of the NVIC have stood the test of time and are consistent with the international views on safe and reliable automation, it lacks guidance and flexibility applicable to new technologies, configurations, and propulsion systems, particularly diesel engines and electronics. The Coast Guard has used internal policy statements and interpretations to address these deficiencies. The existence of these numerous guidelines in nonregulatory form has at times caused confusion in the marine industry and resulted in nonuniform application, misinterpretation, and unnecessary additional costs to the industry.

(3) In 1974, the United States participated in the development of the International Convention for the Safety of Life at Sea (SOLAS '74), which was developed under the auspices of the Inter-governmental Maritime Consultative Organization (IMCO). (In 1982, IMCO changed its name to International Maritime Organization, IMO), SOLAS '74 was ratified by the United States on September 7, 1978, and entered into force internationally on May 25, 1980. The first set of amendments to SOLAS '74, including automation regulations, were adopted at the Forty-fifth session of the Maritime Safety Committee (MSC) of IMCO in November, 1981. Under the amendment procedures of SOLAS '74, the contracting governments, including the United States, accepted the amendments on March 1, 1984. These amendments entered into force internationally on September 1, 1984. The United States actively participated at all levels of development of the SOLAS '74,

amendments and the document that comprised the automation requirements, Resolution A.325 (IX). Public comment was invited and the marine industry participated in all aspects of the development of the United States' position . The SOLAS '74, amendments are generally consistent with that position; however, they require substantial interpretation and augmentation by the Coast Guard if they are to be applied in a uniform and fair manner to the U.S. commercial fleet.

(4) In 1981, the Coast Guard initiated a regulatory project, CGD 81-030, to update and replace NVIC 1-69, to incorporate IMCO Resolution A.325(IX), and to solicit public comment before publishing regulations. In 1983, difficulties in the evaluation of foreign flag vessels being brought under the U.S. flag further accentuated the need for revised Coast Guard automation requirements. As a result, NVIC 6-84, "Automated Main and Auxiliary Machinery, Interim Guidance On," was published on June 25, 1984, to provide immediate interim guidance on the application of the SOLAS amendments and NVIC 1-69 until final rules are promulgated.

b. Issues Addressed

(1) *Safety.* The marine industry, the Coast Guard, and the member nations of IMO recognize that automated vital system failures are a hazard to navigation and personnel. As an example, Coast Guard casualty records include several cases where remote propulsion throttle controls have failed, resulting in loss of control of the vessel and ensuing damage. In at least two cases on tankers, major disasters have been narrowly averted. In another case involving a tanker, throttle runaway resulted in over $600,000 in damages. As a second example, the Marine Board of Investigation concluded after the loss of the mobile offshore drilling unit (MODU) OCEAN RANGER and the associated loss of 84 lives in 1982 that inadequate or failed remote control and monitoring systems, *i.e.*, automation, were contributing factors in the casualty. In both of these examples, adequate safety regulations that might have been prevented the casualties did not exist.

(2) *Vessel Manning.* Automation is an issue of safe vessel manning as much as it is an issue of safe and reliable equipment. The Coast Guard is charged by 46 U.S.C. 8101 with determining the complement of licensed officers and crew necessary for safe operation of a vessel. While 46 CFR Part 157.20-35 states the degree of automation that must be taken into account in determining the minimum number of licensed engineers required for the safe operation of a vessel, the technical criteria for making this determination is contained in NVICs 1-69 and 6-84, which are inadequate and nonregulatory.

(3) *Lack of Regulatory Requirements.* One of the reasons most commonly cited by all interested parties as the need for automation safety regulations are the lack of clear regulations and the inadequacy of NVICs 1-69 and 6-84.

(4) *SOLAS.* The SOLAS amendments leave certain detailed requirements and interpretations to the discretion or satisfaction of the "Administration," *i.e.*, the Coast Guard. Certain SOLAS provisions are also more stringent than previous requirements for U.S. flag vessels. An example of this is SOLAS Regulation II-1/31.2.7, which requires propulsion throttle systems to fail to a preset speed and direction.

(5) *Technological Advances.* The state of the art of marine automation has advanced from steam plants and elementary controls and instrumentation to the diesel and hybrid plants, distributed automatic controls, and the microprocessor control and monitoring technologies prevalent today. This developmental trend is expected to continue and should be taken into account by automation regulations.

(6) *Safety Evaluation Complexity.* The details of an automated machinery plant depend upon the design of the machinery, its arrangement, and the automation technology (electronic, electric relay, pneumatic, hydraulic, mechanical, etc.) employed. The combination of these factors often makes the details of an automation system unique to a given vessel or class of vessels. This uniqueness and complexity in turn make it difficult to evaluate the safety and reliability of automated vessels.

(7) *Applicability.* The increasing use of automation and casualties such as OCEAN RANGER indicate a need for automation standards for all vessels. SOLAS '74 and NVIC 1-69 were not developed to address certain systems or classes of vessels, such as mobile offshore drilling units (MODU's), non-self propelled vessels, dynamically-supported craft, or tanker overflow control systems. The applicability of standards derived from SOLAS and the NVIC to these vessels must be considered.

c. Alternatives Considered

The Coast Guard has considered the issues and the alternatives available and has chosen to propose safety performance standards that, to the greatest extent practicable, state the desired operation or function without addressing detailed design criteria. Presently, detail-intensive plan review and inspection of wiring, piping, and materials is conducted by the Coast Guard. The Coast Guard has found these techniques to be difficult, time consuming, and inadequate to evaluate the safety of modern automation. Parties involved in ship construction have incurred unnecessary costs because of misinterpretation of requirements and delays resulting from the complexity of the evaluation. Reflagging foreign flag vessels to the U.S. flag may be further complicated by a lack of necessary plans. Detailed plan review and inspection also requires significant expertise and familiarity with the technology used if evaluation of the safe and reliable operation of the automation is to be meaningful. As an example, detailed review of microprocessor-based systems is meaningless without review of the programming. As an alternative to detail evaluation, the Coast Guard proposes to "black box" certain major automation system components such as central control consoles. Rather than submit detailed plans and bills of materials, a failure analysis of the design and a self-certification of design compliance to certain marine environmental standards would be submitted to the Coast Guard for review. After Coast Guard approval and following installation, the performance of the automation would be confirmed by tests witnessed by the Coast Guard. This would allow initial evaluation of the system before completion of final design details, permit construction and installation to proceed, and allow evaluation of existing vessels that are modified or brought under initial inspection for certification. It also emphasizes the responsibility of the parties most familiar with any automation system, *i.e.*, the designer and manufacturer, to evaluate and certify the safety of the system. Finally, it provides a generic means of evaluation for the Coast Guard and industry that is particularly suited to performance standards and technological changes. This approach should reduce or eliminate time delays, misinterpretation, and associated costs.

d. Intent of Proposal

(1) *General.* As a result of the issues and alternatives considered, the Coast Guard intends the proposed rules to—

(i) provide flexible, performance-oriented standards to ensure acceptable minimum levels of safety, regardless of an automated vessel's degree of automation, the type of automation

technology, or the configuration employed;

(ii) ensure compliance of automated U.S. flag vessels with the international standards of safety promulgated by the SOLAS convention and the applicable IMO resolutions; and

(iii) emphasize the role of the marine industry, particularly in the areas of design, construction, and maintenance, in providing safe and reliable vessels.

(2) *Structure.* (i) A single set of automation regulations applicable to all vessels to which the Marine Engineering regulations apply should promote a uniform set of standards that can be easily understood and simplify the process of revision when necessary. It should also facilitate Coast Guard plans concerning future transfers of functions associated with the regulations to the American Bureau of Shipping or other non-government agencies.

(ii) The proposal can be broken into four major segments:

(A) An equivalency provision.

(B) General performance, reliability, and safety criteria for all automated systems.

(C) Specific criteria for specific types of systems, where provided.

(D) The minimum equipment and systems deemed necessary for various degrees of reduced manning.

Each of these segments is intended to build up the prior segment, *i.e.*, systems listed under the specific provisions must also meet the general criteria, and systems required for reduced manning must also meet applicable specific and general criteria.

(3) *Assumptions and Objectives.* (i) In developing the safety performance standards in this proposed rulemaking, the Coast Guard used several assumptions and basic objectives. These were derived from the Coast Guard's experience with automated vessels over the last 20 years.They are considered to be fundamental concepts that, in various degrees, are reflected in past and present Coast Guard, IMO/IMCO, and SOLAS policies and regulations for vessel safety. These basic assumptions are listed below.

Assumption (A) Regardless of how well designed, constructed, or operated any automated equipment is, it can fail castastrophically. While extensive and detailed design, quality control, and maintenance regulations may reduce the likelihood of a failure, a finite probability remains that a failure can occur. Regulations that attempt to completely prevent failure might in fact be counterproductive to safety, expensive, and burdensome to all parties. Therefore, it is prudent to assume that failures will occur and consider necessary safety contingencies.

Assumption (B) Localized flooding or fire can occur regardless of the precautions taken to prevent them. Such emergencies can disable vital system automation, make them inaccessible, and pose an immediate threat to the safety of the vessel and its crew. Therefore, it is prudent to provide alternative means of operation.

Assumption (C) The evaluaton of the safety of any automated vessel in light of the events described in Assumptions (A) and (B) should be limited to any single, non-concurrent failure or event and its logical effects. In light of the large number of concurrent combinations possible and the relatively low probability of their occurrence, it is impractical and burdensome to consider such combinations. It is, however, prudent and reasonable to consider the logical chain of events that could occur as a result of a single failure or event and to consider conditions that contribute to unsafe conditions.

Assumption (D) The safety of vessels with automated vital systems should be at least equal to that of a vessel with its vital systems under direct manual supervision.

(ii) Based on these assumptions, the proposed regulations are intended to meet the following objectives:

Objective (A) To the greatest extent practicable, the failure of automation or automated equipment should be safe (failsafe) and the foreseeable unsafe effects minimized by design. In a similar manner, the effects of a localized fire or flooding of safe control and operation should be minimized and localized.

Objective (B) A responsible member of the crew must promptly become aware of a failure, fire, or flooding, either directly from personal observation or indirectly from reliable instrumentation or alarms.

Objective (C) Upon becoming aware of a failure, fire, or flooding, the crew must have an alternate, effective means available to operate the vessel safely and to counteract the effects of failure, fire, or flooding.

Objective (D) The crew must know how to operate the automated system. Similarly, the operation of the system must be clear and obvious to the crew.

Objective (E) There must be indication at operator control locations of the safe, or unsafe, state of operation of the equipment controlled from that location.

(iii) A failure scenario was developed that describes the intended sequence of events deemed desirable to attain the primary goal of this proposed rulemaking, i.e. safety. The scenario includes options that depend upon the nature of the automation, manning of the vessel, and its operation. It is a development upon the aforementioned assumptions and objectives, and includes the following sequence of events:

Event (A) The vessel is underway in normal operation, with spaces and machinery status monitored by crewmembers or automation.

Event (B) A single vital system or vital system component fails, or localized fire or flooding occurs.

Event (C) In the case of a vital system failure, it fails to a pre-determined safe state and the effects of the failure are minimized.

Event (D) A crewmember on duty promptly becomes aware of the failure, fire, or flooding.

Event (E) In the case of a vital system failure, either—

(i) the failed unit is automatically removed from service and replaced with a reliable, effective backup; or

(ii) a crewmember manually removes the failed unit from service and manually transfers to a reliable and effective alternate means of operation.

In the case of localized fire or flooding, either—

(i) the crew takes action locally to counteract the effects of the hazard, if the space and equipment are accessible and operable; or

(ii) the crew takes action from an alternate, remote location to counteract the effects of the hazard, if the space or equipment are not accessible or operable.

Event (F) The failure scenario ends with the vessel in continued or restored safe operation, even if at a reduced operational capacity.

(4) *Specific Regulations.*

Section 58.01–35 Main propulsion auxiliary machinery. This proposed rule is an interpretation of the SOLAS requirements referenced in Table I and is more stringent than existing Coast Guard guidelines that only address duplication of auxiliaries in unattended machinery spaces. It has been included in this proposal because it is fundamental to compliance with the performance standards of the proposed Part 62.

Section 61.40 Periodic Tests and Inspections. These tests are intended to make sure that automated systems initially operate in a safe and reliable manner and continue to do so during the service life of the vessel. They are similar to those currently described in NVIC 1–69. The Design Verification Tests in § 61.40–1 are intended to be more detailed and intensive than the

Periodic Safety Tests of § 61.40–6, in that they must confirm that all systems, when initially installed, function as required by the performance standards of Part 62 and as analyzed in the design failure analysis. The Periodic Tests then confirm continued operation of major safety systems and features on an annual or biennial schedule. On vessels where the Coast Guard has authorized reduced manning, the Periodic Tests are also intended to determine, in part, the adequacy of the required planned maintenance program and the adequacy of the manning levels under which the vessel has operated. Section 61.40–10(b) expands upon the present NVIC requirement in that it permits equivalent means of testing equipment.

Section 62.01–5(c) Applicability, Central Control Rooms. This paragraph is an interpretation of the SOLAS requirements referenced in Table I and is generally more stringent than past Coast Guard guidelines. Implicit in this interpretation is the assumption that a control room partially or completely isolates the operator from the machinery space environment. Certain essential monitoring and control functions, therefore, should be extended from the machinery space to the control room to provide a level of safety equivalent to that of an operator located in the machinery space itself.

Section 62.20 Plan Submittal. This subpart proposes several changes from past standards. Significant among these are a new requirement for a qualitative failure analysis of automated systems, the deletion of any implied or specified requirements for detailed circuit or piping plans for automation review purposes, the deletion of the requirement for a maintenance program approved by the Coast Guard, and provision for the self-certification of compliance with environmental design standards in lieu of plan review and laboratory testing.

Section 62.20–1 Plans for Approval. The submission of a qualitative failure analysis is intended to replace submission of detailed wiring and piping diagrams presently reviewed for safe system function and operation. Information necessary to confirm general compliance with the Marine Engineering and Electrical Engineering regulations will continue to be required by those subchapters, such as overcurrent protection, wiring and connection materials, and fluid power piping.

Section 62.20–3 Plans for Information. The approval of a planned maintenance program would no longer be a prerequisite for reduced manning. Its specific content would be up to the vessel's operator. The maintenance program will initially be used by the Coast Guard to aid in evaluation of requests for reduced manning. Once the vessel is in service, it is intended that re-inspection and the Periodic Safety Tests proposed by § 61.40 and witnessed by the Coast Guard will determine the adequacy of the maintenance program.

Section 62.25 General Requirements for All Automated Vital Systems. This proposed subpart is intended to provide a general performance and arrangement standard applicable to control and monitoring of any vital shipboard system.

Section 62.25 Programable Systems and Devices. These requirements are intended to prevent either the intentional or unintentional modification of required safety parameters on systems or equipment that readily lend themselves to adjustment or loss of function, such as process sensors and programable controllers. They are not intended to prohibit routine adjustments and calibration necessary for the normal and efficient operation of automatic controls or instrumentation.

Section 62.25–30 Environmental Design Standards. NVIC 1–69 states that specific component design standards for the marine environment would be developed as experience is gained. The proposed standards are considered by the Coast Guard to be the minimum environmental conditions for which equipment should be designed and constructed. These standards generally correspond to those of international technical bodies. Rather than require detailed and costly testing to these standards in an effort to confirm component suitability, the Coast Guard proposes to emphasize the reliable and safe function of the overall system, testing after installation, and manufacturer and designer certification of component suitability under §§ 62.20–5 and 62.25–30 of the proposal.

Section 62.30 Reliability and Safety Criteria, All Automated Vital System. Like proposed § 62.25, this subpart is intended to provide general performance standards applicable to any automated vital system.

Section 62.30–1 Failsafe. The failsafe operation of vital systems has long been a Coast Guard policy. In some cases, such as failure of propulsion controls to a preset speed and direction, the failsafe state is internationally definable and recognizable. In other cases, such as a microprocessor based system, the complexity or nature of the system may preclude the statement of a single preferred failsafe state. It is the intent of the proposal that each control and alarm system fail in a manner consistent with the overall safety of the vessel and personnel in light of the assumptions and failure scenario discussed in this notice. In most cases, the failure analysis proposed by § 62.30–10 will identify a preferred failsafe state.

Section 62.30–5 Independence. Independence of systems or equipment normally implies separate and discrete components. Complete duplication in this manner to provide reliability is costly, may not be necessary, or may be impractical. As the term independent is intended and used in this proposal, however, common reliable components could be used provided the performance criteria are met. An example is a system that provides for disconnection of a failed subsystem while allowing continued operation of the required function. This definition is proposed to allow arrangements that do not provide complete duplication but do provide a level of safety and reliability equivalent to complete duplication.

Certain types of systems would be required to be independent to conform to the assumptions and failure scenario discussed in this notice. Control system independence would be required to ensure availability of at least two means of control and to ensure availability of safety controls to prevent catastrophic failures. Alarms and instruments would be required to be independent of controls to ensure integrity of controls in the event of alarm or instrumentation failure and to make sure that monitoring systems indicate failure of a control system. Alarms and instrumentation for a system would not be required to be duplicated or independent of each other because they both serve the same purpose of monitoring the system, their failure would be indicated by their failsafe operation, and their failure would not preclude continued control of the system. Independence of primary and alternate control system sensors from monitoring sensors would be required to preclude the failure of a single component exposed to the harshest environment, i.e. the sensor, from causing loss of both control and monitoring functions.

Section 62.30–10 Failure Analysis. As the marine industry has incorporated advanced automation technologies such as electronics and microprocessors, it has become increasingly difficult, at times impossible, for the Coast Guard, ship owners/operators, and classification societies to evaluate safety by detailed plan review. To correct this problem, the proposed regulations would require that a failure analysis of each design be prepared and submitted by designers/manufacturers/

shipyards for evaluation in lieu of detailed design plans. A failure analysis is a tabular summary of the performance of a system under anticipated failure conditions, and is particularly suited for use with performance standards like the proposed rules. It requires evaluation of the safety of an automated system, in addition to the proper function of the system. It is estimated that for 70% of the vessels affected, a less extensive analysis would normally be prepared for classification society review, or a more extensive one would be prepared as part of the manufacturer's general design and engineering of the automation.

The failure analysis is intended to serve several purposes. First, it would provide a uniform procedure for the determination of equivalent safety in conjunction with the proposed § 62.15. Second, it would replace detailed Coast Guard plan review and inspection of circuitry designs and the associated delays in the delivery of vessels. In effect, the failure analysis submitted to the Coast Guard would be a self-certification that the system is designed and constructed to function in a specified safe manner. The Coast Guard would then evaluate the analysis and its assumptions and, if acceptable, confirm it during the Design Verification Tests of the proposed § 61.40. Third, it would provide all parties a generic evaluation of the safety and reliability of a system or vessel without requiring an in-depth knowledge of disciplines such as electrical or mechanical engineering. In conjuction with the proposed requirement for failsafe automation, it should anticipate problems with new designs and technologies and permit safe alternatives to be selected. Finally, failure analysis is an evaluation tool that can be used regardless of the automation techology employed, be it microprocessors, electromechanical relays, or pneumatics.

The Coast Guard does not intend numeric failure analysis to be conducted because of the lack of data and the cost of such analysis. Additionally, it is not intended that the failure analysis be performed to the extremely detailed level. Normally, the level of analysis would be to the major subsystem or major replaceable component level, such as a remote control subsystem, power supply, printed circuit card, or actuator.

Because failure analysis is performance oriented and not design detail oriented, industry designs can be changed with little or no change in safety, performance, or the failure analysis. As a result, the failure analysis developed for a previous similar or identical design could be re-used, and the cost estimated will decrease as the industry as a whole becomes more familiar with failure analysis techniques.

Section 62.35 Additional Requirements for Specific Types of Automated Vital Systems. This subpart is intended to augment the general performance and configuration requirements of proposed § 62.25 and § 62.30. It addresses safety criteria peculiar to specific systems or equipment that might be automated on a vessel.

Section 62.35–20 Oil-Fired Main Boilers. These proposed rules have drawn heavily from the existing guidelines of NVIC 1–69, Coast Guard casualty files, and ANSI/NFPA Standard 85D–1978, "Prevention of Furnace Explosions In Fuel Oil-Fired Multiple Burned Boiler-Furnaces." (The latter is a consensus industry standard that can be obtained from the National Fire Protection Association, Inc., Batterymarch Park, Quincy, MA 02269). Proposed changes from NVIC 1–69 include automatic safety trip controls for all main boilers to prevent major boiler failures, greater emphasis on boiler air flow to prevent explosive conditions, a reduction in allowable trial for ignition time to prevent explosive conditions, and prohibition of certain automatic functions following boiler safety shutdowns.

Table 62.35–50 Minimum System Monitoring and Safety Control Requirements for Specific Systems. This table is intended to summarize in a single location the minimum instrumentation, alarms and safety controls deemed necessary by the Coast Guard for specific types and categories of automated equipment. Every effort has been made to reflect present industry practice, particularly in the area of diesel engines. Certain services listed have been generalized, such as listing diesel engine coolant as a generic service instead of listing piston coolant, cylinder cooling water, and fuel valve coolant separately. This action has been taken to eliminate listing system requirements that might not be applicable to a given installation while retaining the intent of the requirement. A number of status indicators have been eliminated from the corresponding Table 1 of NVIC 1–69. If, for example, monitoring of cooling system pressure is listed, there is no listing for cooling system pump status, as operation of the pump will be evident from the system pressure instrumentation.

Section 62.50 Automated Self-propelled Vessel Manning. This subpart is intended to address the minimum systems, configurations, and maintenance necessary for a vessel to be eligible for reduced manning. The requirements of this subpart would be in addition to the rest of the technical requirements of the proposed Part 62. The references to specific levels of manning and watchstanders presently in NVIC 1–69 have been deleted, as they have resulted in misinterpretation and confusion. The proposed rules are intended to establish technical criteria to be used by the Officer in Charge, Marine Inspection in determining the minimum complement of licensed officers and crew necessary for the safe operation of vessels. Actual manning levels usually exceed the Coast Guard's minimum required complement and are usually subject to agreement between a vessel's labor and management interests. Failure of the automated equipment to perform in accordance with the provisions of the proposal would result in the Coast Guard adjusting the minimum complement.

Section 62.50–20 Additional Requirements for Minimally Attended Machinery Plants. These requirements are intended to address vessel machinery plants and spaces that are automated, but not to a degree where the plant could safely be left unattended. Emphasis is placed on the centralized remote control and monitoring of the machinery plant and machinery spaces and the assumptions and failure scenario discussed in this notice.

Section 62.50–20(1) Maintenance Program. Where automation is provided to reduce manning, there is a greater need for planned maintenance. This occurs because of a potential reduction in the maintenance work force, an increase in the sophistication and quantity of equipment to be maintained, and the reliance of the crew upon the automated equipment.

The Coast Guard therefore considers it necessary to require automated vessels to have a planned maintenance program. As the content of such a program varies with vessel type, trade, route, manning, and similar factors, the proposed rules leave program content and implementation up to vessel management. The Coast Guard would evaluate the actual effectiveness of the program during the trial period and reinspections and would then determine the adequacy of the program and manning.

Section 62.50–30 Additional Requirements for Periodically Unattended Machinery Plants. These requirements are intended to address

machinery plants and spaces that are automated to the degree that they are self-regulating and self-monitoring and could safely be left periodically unattended. Emphasis is placed on providing systems that act automatically until the crew can take action in the event of a failure or emergency. As presently required by the Coast Guard, the proposed requirements for a periodically unattended machinery plant would be in addition to those of a minimally attended machinery plant. This permits the crew to operate the plant directly should the arrangements for unattended operations prove unsatisfactory, for whatever reason.

Section 62.50–30(h) Fire Control Station. The proposed rule would change the guidance of NVIC 1–69 that the bilge system should be controlled from the fire control station. This change was considered in light of the SOLAS amendments and the Title 46 regulations for machinery space fire fighting and bilge system arrangements. The Coast Guard does not consider it reasonable to expect a bilge pump located in a space damaged by fire and firefighting water to operate, nor is it considered necessary to require remote control of pumps that are independent of the space in which there has been a fire. The proposed rule is not intended to preclude control of the bilge system from the engineering control center (ECC).

Section 62.50–30(i) Continuity of Electrical Power. The proposed rule, in consideration of SOLAS II–1/53.2, which requires automatic standby power for the main switchboard, and 46 CFR 111.1–05–3, which prohibits automatic feedback by the main-emergency bus-tie, would no longer permit use of the emergency generator as the automatic standby source of electrical power.

Reference Tables. (1) Table I is provided for convenience in comparing the proposed regulations to existing regulations and guidelines. It lists the proposed regulations and the corresponding provisions in NVIC 1–69, SOLAS, and Title 46 of the Code of Federal Regulations. Similarly, Table II lists the existing provisions of NVIC 1–69 and the proposed regulations that correspond to them. These tables include certain abbreviations:

NVIC—Navigation and Vessel Inspection Circular 1–69 and its enclosure.

SOLAS—1981 Amendments to the International Convention for the Safety of Life at Sea, 1974.

(2) Some proposed regulations have more than one reference. For example, the references for proposed § 62.25–10 are NVIC C.2.(a); SOLAS II/1/31.4. These notations indicate that the proposal is comparable or has been derived in part from both sources, *i.e.*, that part of the proposal is similar to NVIC 1–69 paragraph C.2.(a) and that part of it is based upon SOLAS Regulation II/1/31.4.

TABLE I

Proposed regulation	Reference
52.01–10(a)	Old § 52.01–10(a).
56.50–80(l)	NVIC E.2.(d).
58.01–35	SOLAS II–1/26.2, 26.3, 26.4; NVIC E.2., E.5.
61.40–1	SOLAS II–1/31.3, 46.2.
61.40–1(a)	NVIC J.1.
61.40–1(b)	NVIC J.4.
61.40–1(c)	NVIC J.3.
61.40–3(a)–(b)	NVIC J.1., J.2.c.
61.40–6(a)	NVIC J.1.
61.40–6(b)	NVIC J.1.
61.40–10(a)	NVIC J.2.a.
61.40–10(b)	NVIC J.2.b
61.01–1	NVIC Purpose; SOLAS II–1/31.3, 46.1.
62.01–3(a)	NVIC; SOLAS II–1/31.2, 46.1.
62.01–5(a)–(b)	New
62.01–5(c)	SOLAS II–1/31.3, II–2/11.8.2.
62.05–1(a)–(b)	New.
62.10–1(a)	New.
62.15–1(a)	New.
62.20–1	NVIC
62.20–1(a)	NVIC B.1.
62.20–1(a)(1)	NVIC B.1.(b).
62.20–1(a)(2)	NVIC B.1.(a).
62.20–1(a)(3)	NVIC B.1.(c), C.5.(1).
62.20–1(a)(4)	New.
62.20–1(a)(5)	NVIC B.1.(a), B.1.(d).
62.20–1(a)(6)	NVIC B.1.(a), B.1.(c)
62.20–1(a)(7)	NVIC B.1.(a), B.1.(c), B.1.(g), C.5.(2).
62.20–1(a)(8)	NVIC B.1.(g), C.5.(2), J; SOLAS II–1/31.3, 46.2.
62.20–1(a)(9)	NVIC B.1.(g), C.5.(1).
62.20–3	NVIC B., J; SOLAS II–1/31.3, 46.2.
62.20–3(a)(1)	NVIC B.1.(a).
62.20–3(a)(2)	NVIC B.1.(g), C.5.(3), I SOLAS II–1/31.3, 46.
62.20–5	NVIC B.1.(d), C.4; SOLAS II–1/26.
62.25–1(a)(1)	NVIC D.1.; SOLAS II–1/31.1.
62.25–1(a)(2)	NVIC C.2.(a); SOLAS II–1/31.4
62.25–1(a)(3)	NVIC D.2.(a), D.2., D.4., E.7., F.3.(a), F.7.(a); SOLAS II–1/27.1, 27.5, 32.2, 52.
62.25–1(a)(4)	NVIC E.1(a), E.7.
62.25–1(a)(5)(i)	NVIC Discussion E.7.(i); SOLAS II–1/31, 53.
62.25–1(a)(5)(ii)	NVIC E.7.(i).
62.25–1(b)	NVIC C.5.(1).
62.25–1(c)	New.
62.25–1(d)	SOLAS II–1/26.2, 26.3
62.25–5(a)	SOLAS II–1/31.2.5.
62.25–5(b)	NVIC Table 1.
62.25–5(c)	NVIC D.1.; SOLAS II–1/31.1.
62.25–5(d)	NVIC F.1.(b).
62.25–10	NVIC C.2.(a); SOLAS II–1/31.4.
62.25–10(a)(1)	NVIC C.2.(a); SOLAS II–1/31.4.
62.25–10(a)(2)	New
62.25–10(a)(3)	NVIC C.2.(c)
62.25–10(a)(4)	NVIC C.2.; SOLAS II–1/31.4.
62.25–10(b)	New
62.25–15	SOLAS II–1/27.5.
62.25–15(a)	NVIC F.7.(a), Table 1.
62.25–15(b)	New.
62.25–15(c)	NVIC E.7., F.8.(b); SOLAS II–1/52.
62.25–15(d)	New.
62.25–15(e)(1)	SOLAS II–1/27.5, 52.
62.25–15(e)(2)	NVIC D.2.(e), F.5.(b).
62.25–15(f)	SOLAS II–1/27.1
62.25–20(a)	NVIC C.3.(a), C.3.(d), E.7.(l), Table 1.
62.25–20(b)(1)	NVIC E.7.(a), SOLAS II–1/53.4.4.
62.25–20(b)(2)	NVIC E.7.(i).
62.25–20(b)(3)	E.7.(a).
62.25–20(b)(4)	NVIC E.7.(a); SOLAS II–1/53.4.4.
62.25–20(b)(5)	E.7.(b).
62.25–20(c)	E.7.(b).
62.25–20(d)(1)	NVIC E.7.(c), (h).
62.25–20(d)(2)	New.
62.25–20(d)(3)	SOLAS II–1/53.4.2.

TABLE I—Continued

Proposed regulation	Reference
62.25–20(d)(4)	New.
62.25–20(d)(5)	New
62.25–20(d)(6)	NVIC E.7.(d), D.2.(d), SOLAS II–1/31.2.7, 49.5
62.25–20(e)(1)(i)	NVIC E.7.(c)
62.25–20(e)(1)(ii)	SOLAS II–1/51.2.1.
62.25–20(e)(1)(iii)	NVIC E.7.(e)
62.25–20(e)(1)(iv)	New
62.25–20(e)(1)(v)	NVIC E.7.(c); SOLAS II–1/51.31.1
62.25–20(e)(1)(vi)	NVIC E.7.(c); SOLAS II–1/51.31.2
62.25–20(e)(1)(vii)	NVIC E.7.(c).
62.25–20(e)(1)(viii)–(ix)	NVIC E .7.(c).
62.25–20(e)(2)	New.
62.25–20(e)(3)	New.
62.25–20(f)(1)	NVIC E.7.(a).
62.25–20(f)(2)	NVIC E.7.(a), E.7.(b), SOLAS II–1/51.1.1.
62.25–20(g)(1)–(g)(3)	New
62.25–25(a)	New.
62.25–25(b)	New.
62.25–25(c)	New
62.25–25(d)	NVIC C.5., J.3.
62.25–30	NVIC C.4.; SOLAS II–1/26.1.
62.25–30(a)(1)	SOLAS II–1/26.6.
62.25–30(a)(2)–(a)(5)	New
62.25–30(b)	NVIC C.4.
62.30–1	New
62.30–1(b)	NVIC F.1.(a), F.5.(c), D.2.(d), F.5.(f), E.7.(d); SOLAS II–1/31.2.7, 49.5, 51.4.
62.30–5(a)	NVIC C.2, E.7(f); SOLAS II–1/26.4.
62.30–5(b)	NVIC C.2.(a), C.2.(b), SOLAS II–1/27.5, 31.4.
62.30–5(c)	NVIC E.1.(a); SOLAS II–1/26.2, 26.3, 26.4, 51.2.1, 51.2.2
62.30–5(c)(1)	New.
62.30–5(c)(2)	New
62.30–5(c)(3)	NVIC E.1.(a).
62.30–5(d)	NVIC E.3.(b); SOLAS II–1/21.2.3.; SOLAS II–1/3.8, 4.3.3, 44.3, 4.8, 5.1.7, 8.2.
62.30–10(a)–(b)	New.
62.30–15(a)	NVIC J.1.; SOLAS II–1/31.3, 46.2.
62.30–15(b)	New.
62.30–1(a)	NVIC Table 1.
62.35–1(b)	NVIC D.1., F.1.(a).
62.35–5	NVIC D.
62.35–5(a)	SOLAS II–1/31.2.6.
62.25–5(b)	NVIC C.2.(a); SOLAS II–1/31.2.6.
62.35–5(c)(1)(i)	NVIC D.2.(a); SOLAS II–1/31.2.1
62.35–5(c)(1)(ii)	NVIC D.3.; SOLAS II–1/31.2.3.
62.35–5(c)(1)(iii)	NVIC D.2.(a); SOLAS II–1/31.2.6.
62.35–5(c)(1)(iv)	NVIC D.5.; SOLAS 31.2.4, 37
62.35–5(c)(1)(v)	NVIC D.2.(c).
62.35–5(c)(2)	NVIC D.2.(c); SOLAS II–1/31.2.5.
62.35–5(c)(3)	NVIC Table 1.
62.35–5(d)(1)	NVIC D.1., D.2.(a); SOLAS II–1/31.2.2.
62.35–5(d)(2)	NVIC D.4., Table 1.
62.35–5(d)(3)	NVIC Table 1; SOLAS II–1/31.2.7.6
62.35–5(e)(1)	NVIC D.2.(b), C.2.; SOLAS II–1/31.2.5.
62.35–5(e)(2)	NVIC D.2.(c); SOLAS 31.2.5, 31.4.
62.35–5(e)(3)	SOLAS II–1/31.2.5.
62.35–5(f)(1)	NVIC D.2.(f).
62.35–5(f)(2)	SOLAS II–1/27.5.
62.35–5(f)(3)	NVIC D.2.(e); SOLAS II–1/27.5, 52
62.35–5(f)(4)	SOLAS II–1/31.2.7.
62.35–10(a)	NVIC E.4.; SOLAS II–1/31.3, 46.2.
62.35–10(b)	NVIC E.4.(e); SOLAS II–1/31.3, 46.2.
62.35–10(c)	NVIC E.4.; SOLAS II–1/31.3, 46.2.
62.35–15(a)	NVIC E.3.(a); Table 1
62.35–20	NVIC F.
62.35–20(a)(1)	New.
62.35–20(a)(2)	NVIC C.2., F.8.(g).
62.35–20(a)(3)	NVIC F.1.(a).
62.35–20(a)(4)	NVIC F.1.
62.35–20(a)(5)	NVIC F.1.(a), F.1.(c), F.6.(a), F.6.(b).
62.35–20(a)(6)	NVIC F.6.(h).
62.35–20(b)	NVIC F.3.
62.35–20(c)	NVIC F.2.
62.35–20(d)	NVIC F.1.(a), F.5., F.8.
62.35–20(d)(1)	NVIC F.6.(c)
62.35–20(d)(2)(i)	NVIC F.6.(f).
62.35–20(d)(2)(ii)	New
62.35–20(d)(2)(iii)	NVIC F.6.(e)
62.35–20(d)(2)(iv)	New
62.35–20(d)(2)(v)	NVIC F.6.(g).

TABLE I—Continued

Proposed regulation	Reference
62.35–20(d)(3)(i)	NVIC F.6.(b).
62.35–20(d)(3)(ii)	New.
62.35–20(e)	NVIC F.4., F.5.(a).
62.35–20(f)	NVIC F.4.(a).
62.35–20(g)	NVIC F.5.(a).
62.35–20(h)(1)	NVIC F.5.(a); SOLAS II–1/32.2.
62.35–20(h)(2)(i)	NVIC F.5.(a); SOLAS II–1/32.2.
62.35–20(h)(2)(ii)	NVIC F.7.(a); SOLAS II–1/32.2.
62.35–20(h)(2)(iii)	NVIC F.4.(b).
62.35–20(h)(2)(iv)	NVIC F.5.
62.35–20(i)(1)	NVIC F.7.(a).
62.35–20(i)(1)(i)	NVIC F.4.(b); SOLAS II–1/32.2.
62.35–20(i)(1)(ii)	NVIC F.7.(c); SOLAS II–1/32.2.
62.35–20(i)(1)(iii)	NVIC F.5.(c).
62.35–20(i)(1)(iv)	New.
62.35–20(i)(1)(v)	NVIC F.5.(a); F.4.(a)(1); SOLAS II–1/32.2.
62.35–20(i)(2)	NVIC F.7.(b).
62.35–35(a)	New.
62.35–35(b)	NVIC F.7.(i), E.1.(a).
62.35–40(a)	New.
62.35–40(b)	New
62.35–40(c)	SOLAS II–2/15.5.3.
62.35–40(d)	SOLAS II–2/15.5.2.
62.35–50(a)	NVIC Table 1.
62.50–1(a)	NVIC Discussion; SOLAS II–1/31.3, 46.1.
62.50–1(b)	NVIC Discussion, I.
62.50–1(c)	New.
62.50–20	NVIC Discussion; SOLAS II–1/31.3.
62.50–20(a)(1)	NVIC A.1.(b); SOLAS II–1/31.3, [illegible]
62.50–20(a)(2)	NVIC Discussion; E.1.(a), A.1.(b), F.1.(c), E.7.(a); SOLAS 31.3, 53.4.
62.50–20(a)(3)	NVIC Discussion, A.1.(b), E., F.
62.50–20(a)(3)(i)	NVIC A.1.(b), E.1.(a); SOLAS II–1/31, 31.3, 49.
62.50–20(a)(3)(ii)	NVIC G.2.; SOLAS II–1/53.4.
62.50–20(a)(3)(iii)	SOLAS 31.3.
62.50–20(a)(3)(iv)	NVIC E.4.(a), E.6.(a); SOLAS II–1/31.3, 48.
62.50–20(a)(4)	NVIC A.1.(b), E.1.(a), E.2.(b), G.1.
62.50–20(b)(1)	NVIC C.3.(g)
62.50–20(b)(2)	NVIC E.7, C.3.; SOLAS II–1/51, [illegible]
62.50–20(b)(3)	New
62.50–20(c)	SOLAS II–2/2.2.4, 14.2, 11.8, 14, 13; SOLAS II–1/31.3.
62.50–20(d)(1)	NVIC E.3.(a); SOLAS II–1/31.3; SOLAS II–2/11.7.
62.50–20(d)(2)	NVIC E.3.(c); SOLAS II–1/31.3; SOLAS II–2/4.3.4.3, 4.
62.50–20(e)	NVIC E.1.(c); SOLAS II–1/31.3; SOLAS II–2/5.1.7, 8.2.
62.50–20(f)(1)	NVIC E.4.(a), E.4.(b); SOLAS II–1/31.3, 48.1.
62.50–20(f)(2)	NVIC E.4.(a).
62.50–20(f)(3)	NVIC E.6.(a).
62.50–20(g)(1)	NVIC C.3.(a), C.3(f)
62.50–20(g)(2)	SOLAS II–1/31.3, 50.
62.50–20(h)(1)	NVIC G.1.
62.50–20(h)(2)	NVIC E.1.(a), G.2.
62.50–20(h)(3)	New.
62.50–20(i)(1)–(i)(2)	SOLAS II–1/31.3, 46.2.
62.50–20(i) (3)	New.
62.50–30(a)	NVIC Discussion, A.1.(c); SOLAS II–1/53.
62.50–30(b)	NVIC E.5.(a), A.1.(c); SOLAS II–1/5.2.1. 53.3.
62.50–30(c)	NVIC Table 1; SOLAS II–1/53.4.
62.50–30(d)	SOLAS II–1/53.5, 53.4.
62.50–30(e)	NVIC C.3.(c); SOLAS II–1/51.1.5.
62.50–30(f)	NVIC C.3.(e); SOLAS II–1/51.1.2. 51.1.3, 53.4.3.
62.50–30(g)	NVIC Discussion, E.7.; SOLAS II–1/51.1.1, 53.4.3.
62.50–30(h)	NVIC H.1.(b); SOLAS II–2/3.22, 11.7, 11.5, 11.8.
62.50–30(i)	SOLAS II–2/15.5.1.
62.50–30(j)	NVIC E.4.(a).
62.50–30(k)	NVIC I; SOLAS II–1/46.2, .3.
62.50–30(l)	NVIC G.3.; SOLAS II–1/53.2, 53.4.
110.25–1(i).(n)	Old 110.25–1(k)—(p).
111.01–9(a)	Old § 111.01–9.
111.01–9(b)	New
111.12–11(j)	New.
111.54–3	NVIC C.2.(a).
113.35–3(f)	New

TABLE II

NVIC 1–69	Proposed regulation, 46 CFR
A.1–A.2	[illegible]
B.1	62.20–1(a).
B.1.(a)	62.20–1(a), 62.20–3(a)(i).
B.1.(b)	62.20–1(a)(1).
B.1.(c)	62.20–1(a)(3), (4), (7), (10).
B.1.(d)	62.20–1(a)(6); 62.20–5
B.1.(e)	62.20–1(a)(2)
B.1.(f)	Deleted.
B.1.(g)	62.20–1(a)(8), (9); 62.20–p3(a)(2).
C.1	62.01–5.
C.2.(a)	62.25–1(a)(2); 62.25–10(a); 62.30–1; 62.30–5(a), (b), (c); 62.30–10(a); 62.35–5(b); 62.35–20(a)(2)
C.2.(b)	62.25–1(a)(1), 62.25–10; 62.25–20(b); 62.30–1(a), (b); 62.30–5(a), (b), (c), (e); 62.30–10; 62.35–5(b); 62.35–20(a)(2).
C.2.(c)	62.25–10(a)(1), (3), (5).
C.3.(a)	62.25–1(a)(5); 25–20; 62.35–50; 62.50–20(g).
C.3.(b)	113.27; 62.25–20(d)(1).
C.3.(c)	62.50–30(e)
C.3.(d)	62.25–1(a)(5); 62.25–20(a), (d), (e), (f), (g); 62.35–50.
C.3.(e)	62.50–30(f).
C.3.(f)	62.50–20(g).
C.3.(g)	62.50–20(b)
C.4	62.20–5; 62.25–30
C.5	62.20–1(a)(8), (9); 62.50–20(i); 62.30–15.
D.1	62.25–1(a)(1); 62.25–5(c); 62.35–1(b); 62.35–5(d)(1).
D.2.(a)	62.35–5(c)(1)(i).
D.2.(b)	62.35–5(e)(1).
D.2.(c)	62.35–5(e)(2); 62.35–5(c)(2); 62.25–5(a).
D.2.(d)	62.25–5(d); 62.20–1; 62.30–10; 62.35–5(f)(4).
D.2.(e)	62.25–1(a)(3); 62.25–15; 62.35–5(f)(3)
D.2.(f)	62.35–5(f)(1).
D.2.(g)	62.35–5(c)(1)(iii)
D.3	62.35–1(a)(3); 62.25–5(a); 62.25–15; 62.35–5(c)(ii); 62.30.
D.4	62.35–5(d)(2).
D.5	62.25–10(b); 62.35–5(c)(iv); 113.35–3(f)
E.1.(a)	62.25–1(a); 62.25–20(a), (b), (f), (g); 62.35–5(c); 62.50–20(a), (b); 62.50–30(a); 62.30–5(c).
E.1.(b)	Deleted
E.1.(c)(1)	62.50–20(e).
E.1.(c)(2)	[illegible]
E.1.(c)(3)	[illegible]
E.1.(c)(4)	Deleted.
E.1.(c)(5)	62.50–20(e).
E.1.(c)(6)	62.50–20(e).
E.2	[illegible]
E.2.(a)	58.01–35
E.2.(b)	62.50–20(a).
E.2.(c)	62.50–20(a); 62.50–30(b)
E.2.(d)	56.50–80(h).
E.3.(a)	62.30–5(e); 62.35–15; 62.50–20(d).
E.3.(b)	62.30–5(e); 62.50–20(d).
E.3.(c)	62.35–15; 63.50–20(d).
E.4.(a)	62.50–20(f); 62.50–30(j).
E.4.(b)	62.35–10(a); 62.30–1; 62.30–5(a), (b), (c), (e).
E.4.(c)	62.35–10(a).
E.4.(d)	62.35–10(a).
E.4.(e)	62.35–10(b).
E.5.(a)	58.01–35; 62.30; 62.50–20(a), (h); 62.50–30(b).
E.6.(a)	62.50–20(f)(3).
E.7.(a)	62.25–1(a)(4), (5); 62.25–20; 62.35–50; 62.50–20(a), (b); 62.50–30(a).
E.7.(b)	62.25–20(b)(5), (c); 62.25–11(a)(4), (5); 62.25–20(a)
E.7.(c)	62.10–1; 62.35–20(e).
E.7.(d)	62.30–1.
E.7.(e)	62.25–20(e)(iv).
E.7.(f)	62.25–20(d).
E.7.(g)	Deleted
E.7.(h)	62.25–20(d)
E.7.(i)	62.35–50; 62.15; 62.50–20(a), (b).
Table 1	Table 62.35–50.
F.1.(a)	62.35–1(b); 62.35–20(a)(3), (4); 62.25–1(a); 62.25–15(a), (b), (c), (d), (e); 62.30–1; 62.30–5(a), (b), (c); 62.30–10.

TABLE II—Continued

NVIC 1–69	Proposed regulation, 46 CFR
F.1.(b)	62.25–5(d), 62.30.
F.1.(c)	62.35–20(a); 62.50–20(a)
F.2	62.35–20(a), (c); 62.35–50
F.3.(a)	62.35–20(b)
F.4.(a)	62.35–20(f), (i)
F.4.(b)	62.35–20(h)(2)(iii).
F.5.(a)	62.35–20(g), (h).
F.5.(b)	62.25–15; 62.35–20(h).
F.5.(c)	62.30–1; 62.30–10
F.5.(d)	62.25–15(e); 62.25–10(a)(5); 62.35–20(a), (d).
F.5.(e)	62.25–15(e); 62.25–10; 62.35–20(h).
F.5.(f)	62.30–1.
F.6.(a)	62.35–20(a)(5).
F.6.(b)	62.35–20(a)(1), (5); 62.35–20(d)
F.6.(c)	62.35–20(d)(1).
F.6.(d)	Deleted
F.6.(e)	62.35–20(d)(2)
F.6.(f)	62.35–20(d)(2); 62.50–20(a)(4)
F.6.(g)	62.35–20(d)(2)
F.6.(h)	62.35–20(a)(6).
F.6.(i)	62.35–20(c)(ii); 62.25–15(a), (b); 62.25–5(c)
F.7.(a)	62.25–15; 62.35–20(a), (d), (h), (i).
F.7.(b)	62.35–20(a); 62.30–5(a), (b).
F.7.(c)	62.35–20(i); 62.30–5(a), (b).
F.7.(d)	Deleted
F.7.(e)	62.15.
F.8.(a)	62.25–20
F.8.(b)	62.25–15(c), (e)(2).
F.8.(c)	62.30–5(b); 62.10–1(a); 62.25–20(a).
F.8.(d)	62.35–20(h); 62.25–15(e)(1); 62.35–20(a)
F.8.(e)	62.35–20(i); 62.30–5(a), (c); 62.35–50
F.8.(f)	62.35–50
F.8.(g)	62.25–20; 62.35–20(a)(2)
G.1	62.50–20(a)(2), (a)(3), (a)(4), (h)(1).
G.2	62.50–20(a)(2), (a)(3), (a)(4), (h); 62.25–20(g).
G.3	62.50–30(1).
G.3.(a)	62.50–30(1).
G.3.(b)	58.01–35; 62.30.
G.3.(c)	62.50–30(1).
H.1	62.01–5(b)(5), (c); 62.25–20(d), 62.30–5(d); 62.25–5(a); 62.30–10; 62.35–15; 62.35–50; 62.50–20(a), (c), (d), (e).
H.1.(a)	61.40; 62.00–5(b)(5), (c); 62.25–20(d)95); 62.35–50; 62.50–20(a), (c); 62.50–30(a); 62.30–15
H.1.(b)	62.50–30(h); 62.10–1(a)
I	62.20–3(a); 62.50–20(i); 62.50–30(k).
J.1	62.30–15(a); 61.40–1(a); 61.40–6(a), (b).
J.2.(a)	61.40–10(a).
J.2.(b)	61.40–10(b).
J.3	61.40–1(c).
J.4	61.40–1(b)

Evaluation and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A draft regulatory evaluation has been prepared and placed in the rulemaking docket established for this proposal. As explained in the evaluation, the economic impact of this proposal can only be stated as an estimate at this time. The Coast Guard does not have specific information on cost, nor does it have specific information on the type of automation or the number of vessels that would apply for inspection under

the proposed rules. The evaluation is based on certain assumptions and rough data that attempts to characterize current industry practice and trends relating to automation.

The primary benefit of the proposed rules would be increased safety for crewmembers and property. It is also estimated that the proposed rules would result in a net savings to the marine industry of $415,000 per year, as compared to voluntary compliance with present requirements and guidelines. The primary beneficiaries of these savings would be self propelled vessel owners and operators, shipyards, and designers and manufacturers of automation systems. The savings will result from the elimination of the requirement of certain equipment that is of questionable safety value (see discussion § 62.50–30(h)), more efficient and consistent technical evaluation of automation, and the reduction of costs associated with uncertainty and misinterpretation of technical requirements.

The proposal should also produce an estimated annual cost savings for the Coast Guard of $88,000. These savings would result from less detail intensive technical evaluations and further Coast Guard delegations of plan review and inspection functions to the ABS, which could reduce certain duplications of effort.

This proposed rulemaking contains information collection and recordkeeping requirements in sections 61.40–1(a), 61.40–1(c), 61.40–10(a), 62.20, 62.25–1(b), 62.50–20(i) and 62.50–30(k). They have been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980. (P. L. 96–511, 44 USC 3501 *et seq.*). Persons desiring to comment on these recordkeeping and information collection requirements should submit their comments to: Office of Regulation Policy, Office of Management and Budget, 726 Jackson Place N.W., Washington, D.C. 20503, ATTN: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under "ADDRESSES".

The Coast Guard has determined that this proposed rulemaking, if promulgated, does not significantly affect the environment. Therefore, no environmental assessment or environmental impact statement was prepared. As the proposal involves the design, construction, and operation of large vessels and MODUs, the Coast Guard certifies that this proposal will not have a significant economic impact on a substantial number of small entities.

List of Subjects

46 CFR Part 52

Marine safety, Vessels.

46 CFR Part 56

Marine safety, Vessels.

46 CFR Part 58

Oil and gas exploration, Marine safety, Vessels.

46 CFR Part 61

Marine safety, Vessels.

46 CFR Part 62

Electric power, Fire prevention, Marine safety, Vessels.

46 CFR Part 110

Administrative practice and procedure, Electric power, Vessels.

46 CFR Part 111

Electric power, Marine safety, Vessels. In consideration of the foregoing, Chapter I of Title 46, Code of Federal Regulations is proposed to be amended as follows.

PART 52—POWER BOILERS

1. The authority citation for Part 52 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703, 49 CFR 1.46(b).

2. In § 52.01–10, by revising paragraph (a) to read as follows:

§ 52.01–10 Automatic controls.

(a) Each main boiler must meet the special requirements for automatic safety controls of Part 62 of this chapter.

* * * * *

PART 56—PIPING SYSTEMS AND APPURTENANCES

3. The authority citation for Part 56 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46(b).

4. In § 56.50–80, by adding a new paragraph (i) to read as follows:

§ 56.50–80 Lubricating oil system.

* * * * *

(i) Propulsion turbine and reduction gears must be provided with an emergency supply of lubricating oil that must operate automatically upon failure of the lubricating oil system. The emergency oil supply must be adequate to provide lubrication until the equipment comes to rest.

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

5. The authority citation for Part 58 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.46(b).

6. Subpart 58.01, a new § 58.01–35 is added to read as follows:

§ 58.01–35 Main propulsion auxiliary machinery.

Auxiliary machinery vital to the main propulsion system must be provided in duplicate unless the system served is provided in independent duplicate, or otherwise provides for continued or restored propulsion capability in the event of a failure or malfunction of any single auxiliary component.

Note.—Partial reduction of normal propulsion capability as a result of malfunction or failure is acceptable if the reduced capability is not below that necessary for the vessel to run ahead at 7 knots or half speed, whichever is greater, and is adequate to maintain control of the ship.

PART 61—PERIODIC TESTS AND INSPECTIONS

7. The authority citation for Part 61 reads as follows:

Authority: 46 U.S.C. 2104, 3301, 3306, 3308, 3316; 49 CFR 1.46(b).

8. In Part 61, the table of contents is amended and a new Subpart 61.40 is added to read as follows:

Subpart 61.40—Design Verification and Periodic Testing of Vital System Automation

Sec.

61.40–1 General.
61.40–3 Design verification testing.
61.40–6 Periodic safety tests.
61.40–10 Test procedure details.

* * * * *

Subpart 61.40—Design Verification and Periodic Testing of Vital System Automation

§ 61.40–1 General.

(a) All automatically or remotely controlled or monitored vital systems addressed by Part 62 of this subchapter must be subjected to tests and inspections to evaluate the operation and reliability of controls, alarms, safe features, and interlocks. Test procedures must be submitted to the Coast Guard for approval.

(b) Persons designated by the owner of the vessel shall conduct all tests and the Design Verification and Periodic Safety tests shall be witnessed by the Coast Guard.

(c) Design Verification and Periodic Safety test procedure documents approved by the Coast Guard must be retained aboard the vessel.

§ 61.40–3 Design verification testing

(a) Tests must verify that automated vital systems are designed, constructed, and operate in accordance with all applicable requirements of Part 62 of this subchapter. The tests must be be based upon the failure analysis (see § 62.32–10 of this subchapter, Failure Analysis), functional performance requirements, and the Periodic Safety tests of § 61.40–6.

(b) Tests must be performed immediately after the installation of the automated equipment or before the issuance of the initial Certificate of Inspection.

§ 61.40–6 Periodic safety tests.

(a) Periodic safety tests must demonstrate the proper operation of the primary and alternate control systems, auxiliary systems and power sources, transfer override arrangements, interlocks, and the operation and alarming of safety control systems. Systems addressed must include fire detection and extinguishing, flooding safety, propulsion, maneuvering, electric power generation and distribution, and emergency internal comunications.

(b) Tests must be conducted at periodic intervals specified by the Coast Guard to confirm that vital systems and safety features continue to operate in a safe, reliable manner.

Note.—Normally, these tests are conducted during each inspection for certification.

§ 61.40–10 Test procedure details.

(a) Test procedure documents must be in a step-by-step or checkoff list format. Each test instruction must specify equipment status, apparatus necessary to perform the tests, safety precautions, safety control and alarm setpoints, the procedure to be followed, and the expected test result.

(b) Test techniques must not simulate monitored system conditions by mis-adjustment, artificial signals, improper wiring, tampering, or revision of the system tested unless the test would damage equipment or endanger personnel. In the latter case, the use of a synthesized signal or condition applied to the sensor is acceptable if test equipment required for the test is maintained in good working order and is periodically calibrated to the satisfaction of the Office in Charge, Marine Inspection. Other test techniques must be apporoved by the Commandant (G–MTH).

9. Part 62 is added to 46 CFR Subchapter F to read as follows:

PART 62—VITAL SYSTEM AUTOMATION

Subpart 62.01—General Provisions

Sec.
62.01–1 Purpose.
62.01–3 Scope.
62.01–5 Applicability.

Subpart 62.05—Reference Specifications

62.05–1 Incorporation by Reference.

Subpart 62.10—Terms Used

62.10–1 Definitions.

Subpart 62.15—Equivalents

62.15–1 Conditions under which equivalents are used.

Subpart 62.20—Plan Submittal

62.20–1 Plans for Approval.
62.20–3 Plans for Information.
62.20–5 Self Certification.

Subpart 62.25—General Requirements for All Automated Vital Systems

62.25–1 General.
62.25–5 All Control Systems.
62.25–10 Alternate Manual Control Systems.
62.25–15 Safety Control Systems.
62.25–20 Instrumentation, Alarms, and Centralized Stations.
62.25–25 Programable and Adjustable Systems and Devices.
62.25–30 Environmental Design Standards.

Subpart 62.30—Reliability and Safety Criteria, All Automated Vital Systems

62.30–1 Failsafe.
62.30–5 Independence.
62.30–10 Failure Analysis.
62.30–15 Testing.

Subpart 62.35—Requirements for Specific Types of Automated Vital Systems.

62.35–1 General.
62.35–5 Remote Propulsion Control Systems.
62.35–10 Flooding Safety.
62.35–15 Fire Safety.
62.35–20 Oil-Fired Main Boilers.
62.35–35 Internal Combustion Engines.
62.35–40 Fuel Systems.
62.35–50 Tabulated Monitoring and Safety Control Requirements for Specific Systems.

Subpart 62.50—Automated Self-propelled Vessel Manning

62.50–1 General.
62.50–20 Additional Requirements for Minimally Attended Machinery Plants.
62.50–30 Additional Requirements for Periodically Unattended Machinery Plants.

Authority: 46 U.S.C. 3306, 8105; 49 CFR 1.46.

Subpart 62.01—General Provisions

§ 62.01–1 Purpose.

The purpose of this part is to make sure that the safety of a vessel with automated vital systems, in maneuvering and all other sailing conditions, is equal to that of the vessel with the vital systems under direct manual operator supervision.

§ 62.01–3 Scope.

(a) This part contains the minimum requirements for vessel automated vital systems. Specifically, this part contains—

(1) In subpart 62.25, the general requirements for all vital system automation;

(2) In subpart 62.30, the criteria used to evaluate the designed reliability and safety of all automated vital systems;

(3) In subpart 62.35, the minimum additional equipment, configuration, and functional requirements necessary when certain automated vital systems are provided; and

(4) In subpart 62.50, the minimum additional requirements when automation substitutes for manual control and observation of the engineering plant and spaces.

§ 62.01–5 Applicability.

(a) *Systems and Equipment.* Except as noted in § 62.01–5(b), this part applies to automated vital systems or equipment on vessels subject to the requirements of this subchapter that—

(1) Are automatically controlled or monitored;

(2) Are remotely controlled or monitored; or

(3) Utilize automation for the purpose of reduced manning.

(b) *Exceptions.* Unless specifically addressed, this Part does not apply to—

(1) Automatic auxiliary heating equipment (see Part 63 of this subchapter);

(2) Steering systems (see subparts 58.25 and 111.93 of this chapter);

(3) Optional control and monitoring systems provided in addition to the minimum systems required by this chapter;

(4) Jacking systems on self-elevating mobile offshore drilling units;

(5) Non-vital and industrial systems; and

(6) The communication and alarm systems in part 113 of this chapter; unless failure of any of these systems would degrade the intended safety and reliability of the systems required by this part.

(c) *Central Control Rooms.* The requirements of subpart 62.50 only apply to vessels on which reduced manning is desired, except where the main propulsion or ship service electrical generating plants are automatically or remotely controlled from a control room. In this case, § 62.50–20 (a)(3), (b)(3), (c),

(d), (e), (f)(1), (f)(2), and (g)(2) apply, regardless of manning.

Subpart 62.05—Reference Specifications

§ 62.05–1 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table, "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. In that table is found the date of the edition approved, citations to the particular sections of this part where the material is incorporated, addresses where the material is available, and the date of the approval by the Director of the Federal Register. To enforce any edition other than the one listed in the table, notice of the change must be published in the Federal Register and the material made available. All approved material is on file at the Office of the Federal Register, Washington, D.C. 20408 and at the Office of Merchant Marine Safety (G–MTH–2/12), Room 1214, U.S. Coast Guard Headquarters Building, 2100 Second Street SW, Washington, D.C. 20593.

(b) The material approved for incorporation by reference in this part is:

(1) Institute of Electrical and Electronics Engineers (IEEE) Guide for General Principles of Reliability Analysis of Nuclear Power Generating Station Protection Systems (ANSI N41.4–1976/IEEE Standard 352–1975. This standard is available from: IEEE Service Center, 445 Hoes Lane, Piscataway, New Jersey 08854, (201) 981–0060.)

Subpart 62.10—Terms Used

§ 62.10–1 Definitions.

(a) For the purpose of this part:

"Alarm" means an audible and visual indication of a hazardous or potentially hazardous condition that requires attention.

"Automated" means the use of automatic or remote control, instrumentation, or alarms.

"Automated control" means self-regulating in attaining or carrying out an operator-specified equipment response or sequence.

"Boiler low-low water level" is the minimum safe level in the boiler, in no case lower than that visible in the gage glass (see § 52.01–110 of this chapter, Water Level Indicators).

"Boiler low water level" is a water level above the low-low water level that is adequate for alarming an impending unsafe water level condition.

"Engineering Control Center (ECC)" means the centralized engineering control, monitoring, and communications location.

"Failsafe" means that upon failure or malfunction of a component, subsystem, or system, the output automatically reverts to a pre-determined design state of least critical consequence. Typical failsafe states are listed in Table 62.10–1(a).

TABLE 62.10–1(A)—TYPICAL FAILSAFE STATES

System or component	Failsafe state
Cooling water valve	As is or open.
Alarm system	Annunciate.
Safety system	Shut down or limited.
Burner valve	Closed.
Speed control	As is or shut down.
Feedwater valve	As is or open.
Controllable pitch propeller	As is.

"First level fault" means a single, non-concurrent failure and its logical consequences and effects.

"Flooding safety" refers to flooding detection, watertight integrity, and dewatering systems.

"Independent" refers to equipment arranged to perform its required function regardless of the state of operation, or failure, of other equipment.

"Limit control" means a function of an automatic control system to restrict operation to a specified safe operating range or sequence without stopping the machinery.

"Local control" means operator control from a location where the equipment and its output can be directly manipulated and observed, e.g., at the equipment.

"Manual control" means operation by direct or power-assisted operator intervention.

"Monitor" means the use of direct observation, instrumentation, alarms, or a combination of these to determine equipment operation.

"Remote control" means non-local automatic or manual control.

"Safety trip control system " means a manually or automatically operated system that rapidly shuts down another system or subsystem.

"System" means a grouping or arrangement of elements that interact to perform a specific function and typically includes the following, as applicable:
A fuel or power source.
Power conversion elements.
Control elements.
Power transmission elements.
Instrumentation.
Safety control elements.
Conditioning elements.

"Vital system or equipment" is essential to the safety of the vessel, its passengers and crew. This typically includes, but is not limited to, the following:

On all vessels:
- Fire detection, alarm, and extinguishing systems.
- Flooding safety systems.
- Ship service and emergency electrical generators, switchgear, and motor control centers.
- The emergency equipment and systems listed in § 112.15 of this chapter.

On self-propelled vessels:
- Propulsion systems.
- Steering systems.

On mobile offshore drilling units:
- Semi-submersible unit ballast systems.
- Self-elevating unit jacking systems.

Subpart 62.15—Equivalents

§ 62.15–1 Conditions under which equivalents may be used.

(a) The Coast Guard accepts a substitute or alternate for the requirements of this part if it provides an equivalent level of safety and reliability. Determination of functional equivalence must be demonstrated by comparing a failure analysis based on the requirements of this part with an analysis of the proposed substitute or alternate.

Subpart 62.20—Plan Submittal

§ 62.20–1 Plans for approval.

(a) The following plans must be submitted to the Coast Guard for approval in accordance with § 50.20–5 and § 50.20–10 of this chapter:

(1) A general arrangement plan of control and monitoring equipment, control locations, and the systems served.

(2) Control and monitoring console, panel, and enclosure layouts.

(3) Schematic or logic diagrams including functional relationships, a written description of operation, and sequences of events for all modes of operation.

(4) A qualitative failure analysis including inherent assumptions and the standard procedure used.

(5) A description of control or monitoring system connections to non-vital systems.

(6) A description of programable features.

(7) A description of built-in test features and diagnostics.

(8) Design Verification and Periodic Safety test procedures described in Subpart 61.40 of this chapter.

(9) Control system normal and emergency operating instructions.

§ 62.20–3 Plans for information.

(a) One copy of the following plans must be submitted to the Officer in Charge, Marine Inspection for use in the evaluation of automated systems when reduced manning levels are desired:

(1) Proposed engineering manning levels and operation of the vessel's engineering department.

(2) A planned maintenance program for all vital systems.

§ 62.20–5 Self certification.

(a) The designer and manufacturer of an automated system shall certify to the Coast Guard, in writing, that the system is designed to meet the environmental design standards of § 62.25–30. Plan review and independent testing of equipment to these standards is not required.

Note.—Self certification should normally accompany the system failure analysis.

Subpart 62.25—General Requirements for All Automated Vital Systems

§ 62.25–1 General.

(a) Vital systems that are automatically or remotely controlled must be provided with—

(1) An effective primary control system;

(2) A manual alternate control system;

(3) A safety control system, if required by § 62.25–15;

(4) Instrumentation to monitor system parameters necessary for the safe and effective operation of the system; and

(5) An alarm system if—

(i) Instrumentation is not continuously observed or is inappropriate for detection of a failure or unsafe condition; or

(ii) Specifically required by Table 62.35–50 for the system listed.

(b) Normal and emergency operating instructions must be provided for all remote and automatic control systems, and must include safety precautions, as applicable. Specific emergency operating instructions must be posted at centralized and alternate control locations when the operation is not common or readily apparent.

(c) Automation systems or subsystems that control or monitor more than one safety control, interlock, or operating sequence must perform all assigned tasks continuously, i.e., the detection of unsafe conditions must not prevent control or monitoring of other conditions.

(d) Vital control and alarm system consoles and similar enclosures that rely upon forced cooling for proper system operation must be provided with two independent means of cooling.

§ 62.25–5 All control systems.

(a) With the exception of safety trip controls, control of a propulsion, electric power generation, or electric power distribution system must be from only one location at any time.

(b) Controls for engines and turbines equipped with jacking or turning gear must include interlocks to prevent remote or automatic starting with the gear engaged. Status of the interlock must be displayed at the cognizant remote control location.

(c) Automatic control systems must be stable over the entire range of normal operation.

(d) Inadvertent grounding of an electrical or electronic safety control system must not cause false signals or safety control bypassing.

§ 62.25–10 Alternate manual control systems.

(a) Alternate manual control systems must—

(1) Be operable in an emergency and after a remote or automatic primary control system failure;

(2) Be suitable for manual control for prolonged periods;

(3) Be readily accessible and operable; and

(4) Include means to override automatic controls and interlocks, as applicable.

(b) Reliable communications must be provided between primary remote control locations and alternate manual control locations if operator attendance is necessary to maintain safe alternate control.

Note.—Typically, this includes main boiler fronts, local propulsion control, switchboards, and manifolds.

§ 62.25–15 Safety control systems.

(a) Minimum safety trip controls required for specific types of automated vital systems are listed in Table 62.35–50.

Note.—Safety control systems include automatic and manual safety trip controls and automatic safety limit controls.

(b) Safety trip controls must not operate as a result of failure of the normal electrical power source unless it is determined to be the failsafe state.

(c) Automatic operation of a safety control must be alarmed in the machinery spaces and at the cognizant remote control location.

(d) Local manual safety trip controls must be provided for all main boilers, turbines, and internal combustion engines.

(e) Automatic safety trip control systems must—

(1) Be provided where there is an immediate danger that a failure will result in serious damage, complete breakdown, fire, or explosion;

(2) Require manual reset prior to renewed operation of the equipment.

(f) Where risk from overspeeding of machinery exists, automatic safety trip controls must be provided to prevent overspeeding.

§ 62.25–20 Instrumentation, alarms, and centralized stations.

(a) *General.* Minimum instrumentation and alarms required for specific types of automated vital systems are listed in Table 62.35–50.

(b) *Instrumentation Location.* (1) Manual control locations, including remote manual control and alternate manual control, must be provided with the instrumentation necessary for safe operation from that location.

Note.—Typically, minimum instrumentation includes means to monitor the output of the monitored system.

(2) Systems with remote instrumentation must have provisions for the installation of instrumentation at the monitored system equipment.

(3) The status of automatically or remotely controlled vital auxiliaries, power sources, switches, and valves must be visually indicated in the machinery spaces and at the cognizant remote control location.

Note.—Status indicators include run, standby, off, open, closed, tripped, and on, as applicable. Status indicators at remote control locations may be summarized. Where status is clearly indicated by other instrumentation, e.g. pump status indicated by a pump output pressure or flow gauge, additional remote status indications, such as off and on, are not required.

(4) Sequential interlocks provided in control systems to ensure safe operation, such as boiler programming control or reversing of propulsion diesels, must have indicators in the machinery spaces and at the cognizant control location to show if the interlocks are satisfied.

(5) All temperatures, pressures, speeds, levels, voltages, amperages, and similar analog data required to be alarmed must have a continuous or demand instrumentation display in the machinery spaces unless Table 62.35–50 specifies otherwise.

(c) *Instrumentation Details.* Demand instrumentation displays must be easily readable and available with a minimum of effort and training on the part of the operator.

(d) *Alarms.* (1) All alarms must clearly distinguish among—

(i) Normal, alarm, and acknowledged alarm conditions; and

(ii) Fire, general alarm, CO_2/halon, machinery, flooding, and non-vital indications.

(2) Required alarms in high ambient noise areas must be supplemented by visual means, such as rotating beacons, that are visible throughout these areas. Red beacons must only be used for general or fire alarm purposes.

(3) Automatic transfer to required backup or redundant systems or power sources must be alarmed in the machinery spaces.

(4) Flooding safety, fire, and engineers' assistance-needed alarms extended from the machinery spaces to a remote location must not have a duty operator selector.

Note.—Other alarms may be provided with such a selector, provided there is no off position.

(5) The following systems must not share any system element, other than the emergency power source, with any machinery automation system specifically addressed by this part:

(i) The fire detection and alarm systems.

(ii) The general alarm.

(iii) CO_2/halon release alarms.

(6) Failure of an automatic control, remote control, or alarm system must be immediately alarmed at a manned control station.

(e) *Alarm Details.* (1) All alarms must—

(i) Have no means to reduce or eliminate the annunciated signal other than the manual acknowledgement device or dimmers (see paragraph (g)(2) of this section);

(ii) Be continuously powered;

(iii) Be provided with a means to test audible and visual annunciators;

(iv) Provide for normal equipment starting and operating transients and vessel motions, as applicable;

(v) Be able to simultaneously indicate more than one alarm condition, as applicable;

(vi) Visually annunciate until the alarm is manually acknowledged and the alarm condition is cleared;

(vii) Audibly annunciate until manually acknowledged;

(viii) Not prevent annunciation of subsequent alarms because of previous alarm acknowledgement; and

(ix) Automatically reset to the normal operating condition only after the alarm has been manually acknowledged and the alarm condition is cleared.

(2) Visual alarms must initially indicate the equipment or system malfunction without operator intervention.

(3) Power failure alarms must monitor on the load side of the last supply protection device.

(f) *Summarized and Grouped Alarms.* Visual alarms at a control location that are summarized or grouped by function, system, or item of equipment must—

(1) Be sufficiently specific to allow any necessary action to be taken; and

(2) Have a display at the equipment or an appropriate control location to identify the specific alarm condition or location.

(g) *Central Control Locations.* (1) Central control locations must—

(i) Be arranged to allow the operator to safely and efficiently communicate, control, and monitor the plant under normal and emergency conditions, with a minimum of operator confusion and distraction;

(ii) Be on a single deck level; and

(iii) Be arranged to co-locate control devices and instrumentation to allow the operator to visually assess system response to manual adjustments in the control input.

(2) Visual alarms and instruments on the navigating bridge must not interfere with the operator's vision. Dimmers must not eliminate visual indications.

(3) Alarms and instrumentation at the main navigating bridge control location must be limited to those that require the attention or action of the officer on watch, are required by this chapter, or that would result in increased safety.

§ 62.25–25 Programmable and adjustable systems and devices.

(a) Programmable control or alarm system logic must not be altered after Design Verification testing without the approval of the cognizant Officer in Charge, Marine Inspection. (See subpart 61.40 of this subchapter, Design Verification Tests). Safety control or automatic alarm systems must be provided with means, acceptable to the cognizant OCMI, to make sure setpoints remain within the safe operating range of the equipment.

(b) Operating programs for microprocessor-based or computer-based vital control, alarm, and monitoring systems must—

(1) Be stored in non-volatile memory;

(2) Automatically operate on supply power resumption; and

(3) Not rely on mechanical devices.

(c) If a microprocessor-based or computer-based system serves both vital and non-vital systems, hardware and software priorities must favor the vital systems.

(d) At least one copy of all required manuals, records, and instructions for automatic or remote control or monitoring systems required to be aboard the vessel must not be stored in electronic or magnetic memory.

§ 62.25–30 Environmental design standards.

(a) All equipment must be suitable for the marine environment and must be designed and constructed to operate indefinitely under the following conditions:

(1) Inclinations from vertical of—

(i) static 15° list; and

(ii) dynamic 22.5° roll and simultaneous 7.5° pitch.

Note.—Inclination requirements for fire and flooding safety systems are described in § 112.05–5(c) of this chapter.

(2) Temperatures of—

(i) 0 °C to 60 °C in enclosures;

(ii) 0 °C to 50 °C in machinery spaces and enclosures with forced cooling;

(iii) −40 °C to +55 °C on weather decks; and

(iv) 0 °C to 40 °C otherwise.

(3) System supply variations of—

(i) ±10% voltage;

(ii) ±5% frequency; and

(iii) ±20% fluid pressure.

Note.—Considerations should include normal dynamic conditions that might exceed these values, such as switching, valve closure, power supply transfer, starting, and shutdown.

(4) Relative humidity of 0 to 100%.

(5) Vibrations and accelerations of—

(i) ± 1.6mm from 2 Hz to 25 Hz and ± 4g from 25 Hz to 100 Hz for equipment mounted on or adjacent to rotating or reciprocating machinery; and

(ii) ± 1mm from 2 Hz to 13.2 Hz and ±0.7g from 13.2 Hz to 80 Hz for all other equipment.

(b) Low voltage electronics must be designed with due consideration for static discharge, electromagnetic interference, fungal growth, and contact corrosion

Subpart 62.30—Reliability and Safety Criteria, All Automated Vital Systems

§ 62.30–1 Failsafe.

(a) The failsafe state must be evaluated for each subsystem, system, or vessel to determine the least critical consequence.

(b) All automatic control, remote control, safety control, and alarm systems must be failsafe.

§ 62.30–5 Independence.

(a) Control, alarm, or instrumentation system first level faults must not prevent sustained or restored operation of any vital system or systems.

(b) The primary control, alternate control, and safety control systems for any vital system must be independent of each other. Alarm and instrumentation systems must be independent of primary and alternate control systems, including sensors.

(c) Two independent sources of power must be provided for all primary control, safety control, instrumentation and alarm systems. Failure of either of the two required power sources must actuate an alarm in the machinery spaces. One source must be from the emergency power source (see Part 112 of this chapter, Emergency Lighting and Power Systems) unless one of the sources is—

(1) Derived from the power supply to the system being controlled or monitored;

(2) A power takeoff of that system; or

(3) An independent power source equivalent to the emergency power source.

(d) In determining independence, localized fire on flooding must be considered as a first level fault for the failure analysis of § 62.30–10.

§ 62.30–10 Failure analysis.

(a) A qualitative failure analysis of first level faults must be performed for each automated vital system. The level of analysis must demonstrate compliance with the requirements of this part and must consider the manning, operation, and configuration of the vessel and its systems.

(b) Failure analysis must follow the general qualitative analysis principles of sections 1, 2, 3.1, 4.1–4.4, 8, and Table 3 of ANSI B41.4—1976/IEEE Std. 352—1975, or any similar standard procedure acceptable to the Commandant (G–MTH). All assumptions in the analysis, including modes of operation and failsafe states, must be listed.

§ 62.30–15 Testing.

(a) Automated vital systems must be tested in accordance with Subpart 61.40 of this chapter.

(b) On-line built-in test equipment must not lock out or override safety trip control systems. This equipment must indicate when it is active, and failure to return the tested system to normal operation must be alarmed at a manned control location.

Subpart 62.35—Requirements for Special Types of Automated Vital Systems

§ 62.35–1 General.

(a) Minimum instrumentation, alarms, and safety controls required for specific types of automated vital systems are listed in Table 62.35–50.

(b) Automatic propulsion systems, ship service generator systems, and all associated subsystems and equipment must be capable of meeting load demands from standby to full system rated load, under steady state and maneuvering conditions, without need for manual adjustment or manipulation.

§ 62.35–5 Remote propulsion control systems.

(a) *Manual Propulsion Control.* All vessels having remote propulsion control from the pilothouse, an ECC, a maneuvering platform, or elsewhere must have a local manual propulsion control locaton.

Note.—Separate local control locations may be provided for each independent propeller.

(b) *Alternate Control.* Alternate manual propulsion control must be provided from either the local manual control locations, the maneuvering platform, or the ECC, as applicable.

(c) *Centralized Propulsion Control Equipment.* (1) Pilothouse, ECC, maneuvering platform, and local control locations must include—

(i) Control of the speed and direction of thrust for each independent propeller controlled;

(ii) A guarded manually actuated safety trip control system for each independent propeller controlled;

(iii) Shaft speed and thrust direction indicators for each independent propeller controlled;

(iv) The means to pass propulation orders required by § 113.30–5 and § 113.35–3 of this chapter; and

(v) The means required by paragraph (e) of this part achieve control location transfer and independence.

(2) Remote propulsion control locations must be provided with indication of the location in control.

(3) An indicator must be provided at the main navigating bridge control location to annunciate when the shaft direction or controllable pitch propeller pitch does not match that commanded by the navigating bridge operator control device.

(d) *Main Navigating Bridge Propulsion Control.* (1) Navigating bridge remote propulsion control must be performed by an integrated control device for each independent propeller. Control must include automatic performance of all associated services, and must not permit overload of the propulsion machinery during normal operation.

(2) On vessels propelled by steam turbines, the navigation bridge primary control system must include throttle limit controls for high and low boiler water levels and low steam pressure. Actuation of these limits must be alarmed on the navigating bridge and at the maneuvering platform or ECC.

(3) On vessels propeller by internal combustion engines, an alarm must annunciate on the navigating bridge and at the maneuvering platform or ECC to indicate starting power less than 50% of that required by § 62.35–35(a). If the primary remote control system provides automatic starting, the number of automatic consecutive attempts that fail to produce a start must be limited to reserve 50% of the required starting capacity.

(e) *Control Location Transfer.* (1) ECC or maneuvering platform remote propulsion control locations must be capable of overriding and operating independently of other remote control locations. Local manual propulsion control locations must be capable of overriding and operating independent of all remote and automatic control locations. Override actions must be alarmed at the remote control location affected.

(2) The transfer of remote propulsion control locations, except for override action, must only be possible after acknowledgement by the receiving location.

(3) Automatic remote primary control systems must automatically prevent remote control location transfer from significantly altering propelling thrust.

(f) *Control System Details.* (1) Each operator control device must have a detent at the zero thrust position.

(2) Where propulsion turbine rollover is necessary to prevent rotor damage during prolonged idle periods, an automatic turbin safety trip control, or its equivalent, must be provided to prevent inadvertent vessel movement as a result of control system malfunction.

(3) Propulsion machinery automatic safety trip control operation must only occur when continued operation could result in serious damage, complete breakdown, or explosion of the equipment. Other than the overrides mentioned in § 62.25–10(a)(4) and temporary overrides located at the main navigating bridge control location, overrides of these safety trip controls are prohibited. Operation of permitted overrides must be alarmed at the navigating bridge and at the maneuvering platform or ECC, as applicable, and must be guarded against inadvertent operation.

(4) Remote automatic propulsion control systems must failsafe by maintaining the preset speed and direction of thrust until local manual or alternate manual control is in operation.

Failure must activate alarms on the navigating bridge and in the machinery spaces.

§ 62.35–10 Flooding safety.

(a) Automatic bilge pumps must—

(1) Be provided with an independent bilge high level alarm system that annunciates in the machinery spaces and at a manned control location;

(2) Be monitored to detect excessive operation in a specified time period; and

(3) Meet all applicable pollution control requirements.

(b) Remote controls and arrangements for flooding safety equipment must remain functional under flooding conditions to the extent required for the associated equipment by § 56.50–50 and § 56–50–95 of this chapter.

(c) Remote bilge level sensors, where provided, must be located to detect flooding at an early stage and to provide redundant coverage.

§ 62.35–15 Fire safety.

(a) All required remote fire pump control locations must include the controls necessary to charge the firemain and—

(1) A firemain pressure indicator; or

(2) A firemain low pressure alarm.

§ 62.35–20 Oil-fired main boilers.

(a) *General.* (1) All main boilers, regardless of intended mode of operation, must be provided with the automatic safety trip control system(s) of paragraph (h)(1), (h)(2)(i), (h)(2)(ii), and (i) of this section to prevent unsafe conditions after light off.

(2) Alternate manual control of boilers must be located at the boiler front.

(3) A fully automatic main boiler must include—

(i) Automatic combustion control;

(ii) Programing control;

(iii) Automatic feedwater control;

(iv) Safety controls; and

(v) An alarm system.

(4) Following system line-up and starting of auxiliaries, fully automatic boilers must only require the operator to initiate the following sequences:

(i) Boiler pre-purge.

(ii) Trial for ignition of burners subsequent to successful initial burner light-off.

(iii) Normal shutdown.

(iv) Manual safety trip control operation.

(v) Adjustment of primary control setpoints.

(5) All requirements for programing control subsystems and safety control systems must be met when a boiler—

(i) Automatically sequences burners;

(ii) Is operated from a location remote from the boiler front; or

(iii) Is fully automatic.

(6) Where light oil pilots are used, the programing control and burner safety trip controls must be provided for the light oil system. Trial for ignition must not exceed 10 seconds and the main burner trial for ignition must not proceed until the pilot flame is proven.

Note.—Light oil is defined in § 63.05–75(a) of this chapter.

(b) *Feedwater Control.* Automatic feedwater control subsystems must sense, at a minimum, boiler water level and steam flow.

(c) *Combustion Control.* Automatic combustion control subsystems must provide—

(1) The air/fuel ratio necessary for complete combustion and stable flame with the fuel in use, under light off; steady state, and transient conditions, but in no case less than 10% excess air; and

(2) Stable boiler steam pressure and outlet temperatures under steady state and transient load conditions.

(d) *Programing Control.* The programing control must provide a programed sequence of interlocks for the safe ignition and normal shutdown of the boiler burners. The programing control must prevent ignition if unsafe conditions exist and must include the following minimum sequence of events and interlocks:

(1) *Prepurge.* Boilers must undergo a continuous purge of the combustion chamber and convecting spaces to make sure of a minimum of 5 changes of air. The purge must not be less than 15 seconds in duration, and must occur immediately prior to the trial for ignition of the initial burner of a boiler. All registers and dampers must be open and an air flow of at least 29 percent of the full load volumetric air flow must be proven before the purge period commences. The prepurge must be complete before trial for ignition of the initial burner.

(2) *Trial for Ignition and Ignition.* (i) Only one burner per boiler is to be in trial for ignition at any time.

(ii) Total boiler air flow during light off must be at least 25 percent of boiler full load volumetric air flow.

(iii) The burner igniter must be in position and proven energized before admission of fuel to the boiler. The igniter must remain energized until the burner flame is established and stable, or until the trial for ignition period ends.

(iv) The trial for ignition period must not exceed 5 seconds.

(v) Failure of the burner to ignite during a trial for ignition must automatically actuate the burner safety trip controls.

(3) *Post-purge.* (i) Immediately after normal shutdown of the boiler, an automatic purge of the boiler equal to the volume and duration of the prepurge must occur.

(ii) Following emergency safety trip control operation, the air flow to the boiler must not automatically increase. Post purge in such cases must be under manual control.

(e) *Burner fuel oil valves.* Each burner must be provided with a valve that is—

(1) Automatically closed by the burner or boiler safety trip control system; and

(2) Operated by the programing control or combustion control subsystems, as applicable.

(f) *Master fuel oil valves.* Each boiler must be provided with a master fuel oil valve to stop fuel to the boiler automatically upon actuation by the boiler safety trip control system.

(g) *Valve Closure Time.* The valves described in paragraphs (e) and (f) of this section must close within 4 seconds of automatic detection of unsafe trip conditions.

(h) *Burner safety trip control system.* (1) Each burner must be provided with at least one flame detector.

(2) The burner valve must automatically close when—

(i) Loss of burner flame occurs;

(ii) Actuated by the boiler safety trip control system;

(iii) The burner is not properly seated or in place; or

(iv) Trial for ignition fails, if a programming control is provided.

(i) *Boiler safety trip control system.* (1) Each boiler must be provided with a safety trip control system that automatically closes the master and all burner fuel oil valves upon—

(i) Boiler low-low water level;

(ii) Inadequate boiler air flow to support complete combustion;

(iii) Loss of control power;

(iv) Manual safety trip operation; or

(v) Loss of flame at all burners.

(2) The low-low water level safety trip control must account for normal vessel motions and operating transients.

§ 62.35–35 Internal Combustion Engines.

(a) *Starting Capacity.* The starting system for engines required to automatically start must have sufficient capacity, without recharge, to provide—

(1) 12 starting cycles for reversing diesel propulsion engines; and

(2) 6 starting cycles for all non-reversing engines.

(b) *Gas Turbines.* All alarms and controls required by § 58.10–15 of this subchapter for gas turbines must be provided at a centralized control location.

§ 62.35–40 Fuel Systems.

(a) *Level alarms.* Where high or low fuel tank level alarms are required, they must be located to allow the operator adequate time to prevent an unsafe condition.

(b) *Coal, Gas, and Multiple Fuels.* (1) Systems and equipment that operate on coal or two types of fuels, such as oil/gas, oil/coal, heated/unheated oil, and heavy/light oil require special consideration by the Commandant (G–MTH).

(2) Interlocks must be provided to ensure a safe transfer of machinery operation from one fuel to another.

(c) *Automatic Fuel Heating.* If arrangements for automatically heating fuel oil are provided, a high temperature alarm must annunciate in the machinery spaces before the flashpoint of the fuel is exceeded.

(d) *Overflow Prevention.* Fuel oil day tanks, settlers, and similar fuel oil service tanks that are filled automatically or by remote control must be provided with a high level alarm that annunciates in the machinery spaces and either an automatic safety trip control or an overflow arrangement.

§ 62.35–50 Tabulated Monitoring and Safety Control Requirements for Specific Systems.

(a) The minimum monitoring and safety controls required for specific types of systems are listed in Table 62.35–50.

TABLE 62.35–50—MINIMUM SYSTEM MONITORING AND SAFETY CONTROL REQUIREMENTS FOR SPECIFIC SYSTEMS (1)

System	Service	Instrumentation	Alarm	Safety control	Notes
Main propulsion, boiler	Main stm., sph. outlet	Temperature	High		
		Pressure			(2)
	F.O. to burners	Viscosity (Temperature)	High (Low)		
		Pressure	Low		
	Atomizing medium	Pressure	Low		
	Feed-pump discharge	Pressure	Low		
	Smoke indicator	Status	Smoke		
	Drum water level	Level	High		(2)
			Low		(2)
			Low-Low	Auto trip	(3)
	Supply casing and uptakes		Fire		(4)
	Combustion air flow		Inadequate	Auto trip	(3)
	Burner flame	Status	Failure	Burner auto trip	(3)
	Burner seating	Status	Failure	Burner auto trip	(3)
	Trial for ignition	Status	Failure	Burner auto trip	
	Control power	Available (Pressure)	Failure (Low)	Auto trip	(3)
	Flame, all burners		Failure	Auto trip	(3)
				Manual trip	(3)
Main Propulsion, Steam Trubine	Stm. ahead chest	Pressure			
	Stm. astern chest	Pressure			
	Stm. gland seal	Pressure			
	Forced lubrication	Pressure	Low	Auto trip on loss	(5)
		Temperature	High		(5)
	L.O. sump level		Low		(5)
	L.O. gravity tank		Low		
	Beanngs	Temperature (Individual)	High		(6)
	Main condensate pump discharge.	Pressure	Low		
	Main condenser	Vacuum	Low		
	Main circulator	Status			
	Condensate level		High		
	Deaerator feed tank	Level	Low		
	Vibration		Excessrve		
	Rotor axal displacement		Exessrve		
	Auto shaft rollover	Status	Overspeed	Auto trip	
	Scoop valve	Status			
	Sea suction valve	Status			
	Overspeed		Activated	Auto trip	(7)
				Manual trip	
Main Propulsion, Diesel	Forced lubncation	Pressure	Low	Auto trip on loss	(8)
		Temperature	High		(8)
		Filter pressure differential	High		(8)
	L.O. sump level		Low		(8)
	Engine coolant	Pressure (Flow)	Low		(9)
		Outlet temperature	High		(9)
	Coolant expansion tank	Level	Low		(9)
	Seawater coolant	Pressure	Low		
	F.O. to engine	Viscosity (temperature)	High (low)		(10)
	F.O. to injectors	Pressure	Low		
	Oil mist concentration in crankcase or temperature of beanngs.		High		(4), (11)
	Charging air	Temperature	High		
	Exhaust	Temperature (individual)	High, high deviation		(12)
		Temperature (combined)	High		
	Scavenging belt		Fire		(4), (11)
	Overspeed		Activated	Manual trip	
Main propulsion, remote control				Auto trip	(7)
	Auto trip override			Manual trip	
	Starting Power		Activated		
	Location in control	Pressure (voltage)	Low		(2)
	Shaft speed	Status	Override		(13)
	Shaft thrust	RPM			(14)
	Clutch fluid	Direction	Wrong direction		(14)
Main propulsion, electric	A.C. systems	Pressure	Low		
		Amps	High		
		Voltage			
		Watts	Overload		
		Stator temperature			
	D.C. systems	Amps	High		(15)
		Volts			

TABLE 62.35-50—MINIMUM SYSTEM MONITORING AND SAFETY CONTROL REQUIREMENTS FOR SPECIFIC SYSTEMS (1)—Continued

System	Service	Instrumentation	Alarm	Safety control	Notes
Main propulsion, shafting	Slip couplings	Amps			
	Power semiconductor controlled rectifiers		High temperature	Auto trip	
	Stern tube oil tank level		Low		
	Line shaft bearing	Temperature	High		
		Forced lubrication pressure	Low		
	Reduction gear bearings	Temperature	High		
Main propulsion, controllable pitch propeller.	Hydraulic oil	Pressure	High, low		
All generators	Ship service	Temperature	High		
		Volts	Out limits		
		Amps	High		
		Frequency	Out limits		
			Tripped		
	Emergency	Run			
	Starting power	Pressure (Voltage)	Low		
Turbogenerator	Forced lubrication	Pressure	Low	Auto trip or loss	
		Temperature	High		
	Bearings	Temperature (Individual)	High		
	Aux. condenser	Vacuum	Low		
	Aux. condensate pump	Status			
	Aux. circulating pump	Status			
				Manual trip	
	Overspeed		Activated	Auto trip	(7)
Diesel generator	Oil mist concentration in crankcase or bearing temperature.		High		(11)
	F.O. to engine	Pressure	Loss		
	Overspeed		Activated	Auto trip	
	Forced lubrication	Pressure	Low	Auto trip on loss	
		Temperature	High		
				Manual trip	
	Exhaust	Temperature (Individual)	High		
	Cooling medium	Pressure (Flow)	Low		
		Temperature	High		
		Expansion Tank Level	Low		
	Seawater coolant	Pressure	Low		
Gas turbine		Vibration	High		
	Exhaust	Temperature	High		
	Overspeed		Activated	Auto trip	
				Manual trip	
	Forced lubrication	Pressure	Low	Auto trip on loss	
Engines and turbines	Jacking/turning gear	Engaged			
Fuel oil	Auto heating, temperature		High		
	Remote/auto filling level		High	Auto trip or overflow flow arrangement	
	High pressure leakage level		High		
	Day/settling tank level		High, low		
	Service pump	Status		Manual trip	
Bilge pumps	Remote control	Status			
	Auto control	Status	Excessive operations		
Bilge level			High/location		
Machinery space CL.3 W.T. doors		Status			
Fire detection	Machinery spaces		Space on fire		(17), (18)
	Deadman		Fail to acknowledge		(18)
Steering gear		(*)	(*)		
General, safety control			Activated	Auto trip	
			Activated	Auto limit	
General, primary controls	Sequential interlock	Activated			
General, redundant system, auxiliary, or power supply.		Status	Auto transfer		
General, control and alarm systems	Power supply	Available (pressure)	Failure (low)		
	System function		Failure		
	Forced control or monitoring system cooling.		Failure		

* See § 111.93, 56.25 of this chapter.

Notes on Table 62.35–50.

(1) The monitoring and controls listed in this table are applicable if the system listed is provided or required.

(2) Automatic limit control must be provided in navigating bridge primary propulsion control systems.

(3) Safety controls and alarms must be provided for all main boilers, regardless of mode of operation.

(4) Alarms and controls must be provided if an enclosed control room or a required ECC is provided.

(5) Alarms and safety trip controls must include turbines and reduction gears, as applicable.

(6) Alarms must include turbine, thrust, and reduction gear bearings, as applicable.

(7) Override of the safety control must not be provided.

(8) Individual alarms and safety controls must be provided for each separate lubrication system or subsystem (e.g. for camshafts, turbochargers, reduction gears, rocker arms, seals), as applicable. Self-contained turbocharger oil systems need not be monitored or actuate automatic safety trip controls.

(9) Individual alarms must be provided for each separate coolant system and subsystem (e.g. piston coolant, fuel valve coolant, cylinder coolant), as applicable.

(10) Alarms are not required for distillate fuels.

(11) Alarms are required for engines with cylinder bore of 300 mm or greater, or 2250KW or greater.

(12) Individual instrumentation and alarms need not be provided where engine design prohibits installation of sensors.

(13) Transfer interlocks must be provided.

(14) See § 113.37 of this chapter.

(15) Semiconductor controlled rectifiers must have current limit controls.

(16) Automatic limit controls must be provided.

(17) See § 113.10, § 161.002, and fire protection requirements of the applicable subchapters.

(18) Fire detection systems must use flame or smoke detectors, or a combination of these.

(19) Alarms must be provided for unattended and minimally attended machinery spaces.

(20) Alarms and controls must failsafe.

Subpart 62.50—Automated Self-propelled Vessel Manning

§ 62.50–1 General.

(a) Where automated systems are provided to replace manual control and observation, the arrangements must make sure that under all sailing conditions, including maneuvering, the safety of the vessel is equal to that of the same vessel with the entire plant under direct manual supervision.

(b) The engineering manning of vessels incorporating automated vital systems is conditioned upon meeting the requirements of Part 157 of this chapter and—

(1) The combination of the personnel, equipment, and systems necessary to ensure the safety of the vessel, personnel, and environment in all sailing conditions, including maneuvering;

(2) The personnel necessary to operate the plant in the event of a control or monitoring system failure, make emergency repairs in the event of control system failure, perform routine maintenance, inspection, and testing to ensure the continued performance and reliability of the plant as designed, or fight a fire; and

(3) The proven performance of the plant during an initial trial period.

Note.—The cognizant Officer in Charge, Marine Inspection (OCMI) also determines the need for more or less equipment depending on the vessel characteristics, route, or trade.

(c) Equipment provided to reduce manning that proves unsafe or unreliable in the judgment of the cognizant Officer in Charge, Marine Inspection must be immediately replaced or repaired or vessel manning will be modified to compensate for the equipment inadequacy.

§ 62.50–20 Additional requirements for minimally attended machinery plants.

(a) *General.* (1) Pilothouse propulsion control must be provided.

(2) An ECC must be provided and must include the automatic and remote control and monitoring systems necessary to limit the operator's activity to minitoring the plant, initiating programed control system sequences, and taking appropriate action in an emergency.

(3) The ECC must include control and monitoring of all vital engineering systems, including—

(i) The propulsion plant and its auxiliaries;

(ii) Electrical power generating and distribution;

(iii) Machinery space fire detection, alarm, and extingushing systems; and

(iv) Machinery space flooding safety systems.

(4) ECC control of vital systems must include the ability to place required standby systems, auxiliaries, and power sources in operation, unless automatic transfer is provided, and to shut down such equipment when necessary.

Note.—ECC remote control need not include means for a single operator to bring the plant to standby from a cold plant or dead ship condition or primary controls for non-vital systems or equipment.

(b) *Alarms and Instrumentation.* (1) A personnel alarm must be provided and must annunciate on the bridge if not routinely acknowledged at the ECC or in the machinery spaces.

(2) Continuous or demand instrumentation displays must be provided at the ECC to meet the system and equipment monitoring requirements of this part if the ECC is to be continuously manned. If the watchstander's normal activities include maintenance, a roving watch, or similar activities in the machinery spaces but not at the ECC, both alarms and instrumentation must be provided.

(3) All required alarms must be audible throughout the ECC and the machinery spaces.

(c) *Fire Detection and Alarms.* An approved automatic fire detection and alarm system must be provided to monitor all machinery spaces. The system must activate alarms at the ECC, the navigating bridge, and throughout the machinery spaces and engineers' accommodations. The ECC and bridge alarms must visually indicate which machinery space is on fire, as applicable.

Note.—For the purposes of this part, the specific location of fires that are not in machinery spaces need not be indicated.

(d) *Fire Pumps.* (1) The ECC must include control of the main machinery space fire pumps.

(2) Remote fire pump control must be provided on the navigating bridge. Where one or more fire pumps is required to be independent of the main machinery space, at least one such pump must be controlled from this location.

(e) *Fixed Gas Fire Extinguishing Systems.* The controls for machinery space fixed gas fire extinguishing systems must be operable from the ECC, except for systems that also protect the ECC. Controls for systems that protect the ECC must be located outside an ECC exit that is independent of the machinery space.

(f) *Flooding Safety.* (1) Machinery space bilges, bilge wells, shaft alley bilges, and other locations where liquids might accumulate must be monitored from the ECC to detect flooding under angles from vertical of up to 15° heel and 5° trim.

(2) Automatic bilge pumps must be provided to dewater the locations listed in paragraph (f)(1) of this section or the ECC must include the controls necessary to bring at least one of the bilge pumps required by subpart 56.50 of this chapter into operation to dewater these locations. Automatic pumps must be adequate for the removal of routine accumulations.

Note.—The pumps required by part 56 of this chapter may be used as automatic bilge pumps.

(3) Where watertight doors are required in the machinery spaces, they must be Class 3 watertight doors and must be controllable from the ECC and the required navigating bridge control location.

(g) *Communications.* (1) A system must be provided at the ECC to selectively summon any engineering department member from the engineering accommodations to the ECC.

(2) The voice communications system required by § 113.30–5(a) of this chapter must also include the engineering officers' accommodations.

(h) *Electrical Systems.* (1) The ECC must include the controls and instrumentation necessary to place the ship service and propulsion generators in service in 30 seconds.

(2) The main distribution and propulsion switchboards and generator controls must either be located at the ECC, if the ECC is within the boundaries of the main machinery space, or the controls and instrumentation required by Part 111 of this chapter must be duplicated at the ECC. Controls at the switchboard must be able to override those at the ECC, if separate.

(3) Remote starting and connection of manually started or controlled emergency electrical power sources required by subpart 112.05 of this chapter must be possible from the ECC.

(i) *Maintenance Program.* (1) The vessel must have a planned maintenance program to ensure continued safe operation of all vital systems. Program content and detail is optional, but must include maintenance and repair manuals for work to be accomplished by ship's personnel and checkoff lists for routine inspection and maintenance procedures.

(2) The planned maintenance program must be functioning prior to the completion of the evaluation period for reduced manning required by § 62.50–1(c).

(3) Maintenance and repair manuals must include details as to what, when, and how to troubleshoot, repair and test the installed equipment and what parts are necessary to accomplish the procedures. Schematic and logic diagrams required by § 62.20–1 of this part must be included in this documentation. Manuals must clearly delineate information that is not applicable to the installed equipment.

§ 62.50–30 Additional requirements for periodically unattended Machinery plants.

(a) *General.* The requirements of this section must be met in addition to those of § 62.50–20 of this part.

(b) *Automatic transfer.* Redundant auxiliaries for vital propulsion, vessel control, and electrical power generation systems must automatically transfer upon failure of the operating auxiliary. Vital control, safety, and alarm systems must automatically transfer power sources upon failure of the operating power source.

(c) *Fuel Systems.* The fuel service and treatment system(s) must allow the plant to operate for 24 hours without operator intervention. Fuel service tank low level alarms must be provided at the ECC.

(d) *Starting Systems.* Automatic or remote starting system receivers, accumulators, and batteries must be automatically and continously charged.

(e) *Assistance-Needed Alarm.* The engineers' assistance-needed alarm (see subpart 113.27 of this chapter) must annunciate if—

(1) An alarm at the ECC is not acknowledged in the period of time necessary for the duty engineer to respond at the ECC from the machinery spaces or accommodations; or

(2) An ECC alarm system normal power supply fails.

(f) *Remote Alarms.* ECC alarms for vital systems that require the immediate attention of the bridge watch officer for the safe navigation of the vessel must be extended to the bridge. All ECC alarms required by this part must be extended to the engineers' accommodations.

Note.—Other than fire, flooding, and loss of power alarms, this may be accomplished by immediate operation of the engineers' assistance needed alarm or summarized alarms.

(g) *ECC Alarms.* All requirements of this part for system or equipment monitoring must be met by providing both displays and alarms at the ECC.

(h) *Fire Control Station.* A control station from which certain fire systems can be controlled must be provided outside the machinery spaces. At least one access to this station must be independent of category A machinery spaces, and any boundary shared with these spaces must have an A–60 fire classification as defined in § 72.05 of this chapter. Except where such an arrangement is not possible, control and monitoring cables and piping for the station must not adjoin or penetrate the boundaries of a category A machinery space, uptakes, or casings. The fire control station must include—

(1) Annunciation of which machinery space is on fire;

(2) A fire pump control station that includes control of at least one pump required by this chapter to be independent of the engineroom;

(3) Controls for machinery space fixed gas fire extinguishing systems;

(4) Remote starting and connection of manual emergency electrical power sources as in § 62.50–20(h)(3), as applicable;

(5) Controls for fire door holding and release systems, closure of skylights and similar openings;

(6) The remote stopping systems for the machinery listed in §111.103 of this chapter; and

(7) Voice communications with the bridge.

(i) *Oil Leakage.* Leakages from high pressure fuel oil pipes must be collected and high levels are to be alarmed at the ECC.

(j) *Bilge Pumps.* Automatic bilge pumps must be provided for the machinery spaces.

(k) *Maintenance Program.* The maintenance program of § 62.50–20(i) must include a checkoff list to make sure that routine daily maintenance has been performed, fire and flooding hazards have been minimized, and plant status is suitable for unattended operation. Completion of this checkoff must be logged before leaving the plant unattended.

(l) *Continuity of Electrical Power.* The electrical plant must be arranged in such a way that upon failure of any one operating ship service generator, power to the main switchboard bus loads essential to propulsion, maneuvering, and safety is automatically maintained or restored within 30 seconds. This arrangement must—

(1) Not use the emergency generator for this purpose;

(2) Not overload the generators used for this purpose; and

(3) Account for loads permitted by § 111.70–3(f) of this chapter to automatically restart.

PART 110—GENERAL PROVISIONS

10. The authority citation for Part 110 reads as follows:

Authority: 46 U.S.C. 2104, 2113, 3301, 3306, 3318, 3703, 4104; 49 CFR 1.46 (b) and (n).

§ 110.25–1 [Amended]

11. In § 110.25–1, by removing the existing paragraphs (i) and (j) and redesignating the existing paragraphs (k) through (p) as (i) through (n), respectively.

PART 111—ELECTRIC SYSTEMS—GENERAL REQUIREMENTS

12. The authority citation for Part 111 reads as follows:

Authority: 46 U.S.C. 2104, 2113, 3301, 3306, 3318, 3703, 4104; 49 CFR 1.46 (b) and (n).

13. In Subpart 111.01, § 111.01–9 is revised to read as follows:

§ 111.01–9 Watertight, waterproof, and dripproof equipment.

(a) Electric equipment exposed to the weather or located in a space where it is exposed to seas, splashing, or similar moisture conditions must be watertight or be in a watertight enclosure, except a motor, which must be either watertight or waterproof. A watertight enclosure must be designed in such a way that the total rated temperature of the equipment inside the enclosure is not exceeded.

(b) Central control consoles and similar control enclosures must be dripproof, regardless of location.

14. In § 111.12–11, a new paragraph (j) is added to read as follows:

§ 111.12–11 Generator protection.

* * * * *

(j) *Circuit breaker reclosing.* Generator circuit breakers must not automatically close after tripping.

15. In subpart 111.54, a new § 111.54–3 is added to read as follows:

§ 111.54–3 Remote control.

Remotely controlled circuit breakers must have local manual means of operation.

PART 113—COMMUNICATION AND ALARM SYSTEMS AND EQUIPMENT

16. The authority citation for Part 113 reads as follows:

Authority: 46 U.S.C. 2104, 2113, 3301, 3306, 3318, 3703, 4104; 49 CFR 1.46 (b) and (n).

17. In § 113.35–3 a new paragraph (f) is added to read as follows:

§ 113.35–3 General requirements.

* * * * *

(f) Engine order telegraph and remote throttle control systems must be

separate and independent, except that a single operator control device with separate transmitters and connections for each system may be used.

June 4, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 85-22400 Filed 9-20-85; 8:45 am]

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Monday
September 23, 1985

Part III

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Parts 361, 362, 365, 366, 369, 373, 379, 385, 386, and 389

Rehabilitation Services Administration Programs; Final Regulations

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Parts 361, 362, 365, 366, 369, 373, 379, 385, 386, and 389

Rehabilitation Services Administration Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations under the Rehabilitation Act of 1973, as amended, for a variety of programs administered by the Rehabilitation Services Administration (RSA). These regulations implement amendments to the Act made by Pub. L. 98-221, the Rehabilitation Amendments of 1984.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Albert Rotundo, Rehabilitation Services Administration, Department of Education, Switzer Building, Room 3038, Washington, D.C. 20202, (202) 732-1289.

SUPPLEMENTARY INFORMATION: The Rehabilitation Services Programs are authorized by the Rehabilitation Act of 1973, Pub. L. 93-112 (29 U.S.C. 701 *et seq.*), as amended. The programs support a wide variety of services and activities that assist in the rehabilitation of handicapped individuals.

Regulations for the programs affected by these final regulations were published on December 30, 1980 (45 FR 86378) and January 19, 1981 (46 FR 5410, 5416, and 5521) and are currently codified at 34 CFR Parts 361, 362, 365, 366, 369, 373, 379, 385, 386, and 389. These final regulations implement miscellaneous amendments to the Act made by Pub. L. 98-221, the Rehabilitation Amendments of 1984.

A notice of proposed rulemaking was published in the Federal Register on October 1, 1984 (49 FR 38656). The comments received on the proposed rule and the Secretary's responses to those comments are summarized in the Appendix to these regulations.

A summary of these regulations and the significant changes adopted in response to the public comments follow:

Part 361—The State Voluntary Rehabilitation Services Program

Section 361.1 paragraph (b) identifies the regulations that apply to this program, including the Education Department General Administrative Regulations. The applicability of Part 78 is qualified because the Rehabilitation Services Administration has regulations in Subpart G of Part 361 that govern hearings on State plan conformity and compliance. The Secretary will consider at a future date whether to revoke Subpart G and conduct these hearings in accordance with the procedures in Part 78.

Subparts D and E are removed because they are obsolete. The authority to administer these two Social Security Vocational Rehabilitation programs was not transferred to the Department when it was established in 1980. Moreover, since the Omnibus Budget Reconciliation Act of 1981, the funding mechanism for these programs has been changed to provide for direct Social Security reimbursement of State expenditures for successful rehabilitations. Thus the Department has had no role in administering these programs for some time. These programs now are administered by Social Security/HHS under their own regulations.

Section 361.150 expands the scope of the Innovation and Expansion grant program to include projects that maximize the use of technological innovations in meeting employment and training needs of handicapped youth and adults in accordance with section 121(a)(3) of the Act.

Part 362—Project Grants and Other Assistance in Vocational Rehabilitation

Subpart F is removed because the National Center for Deaf-Blind Youths and Adults is now authorized under Title II of Pub. L. 98-221, the Helen Keller National Center, rather than under the Rehabilitation Act. Subpart G is removed because evaluation projects are no longer carried out under section 401 of the Act. These regulations are no longer needed.

Part 365—The State Independent Living Rehabilitation Services Program

Section 365.1 paragraph (b) identifies the regulations that apply to this program, including the Education Department General Administrative Regulations. The applicability of Part 78 is qualified because the Rehabilitation Services Administration has regulations in Subpart G of Part 361 that govern hearings on State plan conformity and compliance under this program. The Secretary will consider at a future date whether to revoke Subpart G and conduct those hearings in accordance with the procedures in Part 78.

Part 366—Centers for Independent Living

Section 366.3 identifies the regulations that apply to this program, including the Education Department General Administrative Regulations.

Section 366.20 describes the components of an annual evaluation plan that applicants for independent living centers grants would be required to include in their applications. This provision implements section 711(c)(3) of the Act.

Part 373—Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals

Section 373.10 is revised to remove the reference to spinal cord injured individuals because section 311(a) of the Act transfers authority for special projects and demonstrations on spinal cord injury from the Rehabilitation Services Administration to the National Institute of Handicapped Research.

Part 379—Projects With Industry

Section 379.2 adds State vocational rehabilitation units to the list of eligible applicants under the Projects With Industry Progam, in accordance with section 621(a)(1) of the Act.

Section 379.43 identifies the required components of an annual evaluation plan required under a Projects With Industry agreement in accordance with section 621(a)(3) of the Act and also strengthens the requirement that handicapped employees not be unreasonably segregated.

Part 385—Rehabilitation Training

Section 385.3 identifies the regulations that apply to this program, including the Education Department General Administrative Regulations.

Section 385.1(a)(1) states that the purpose of the rehabilitation training program is to increase the number of "qualified" personnel trained to provide rehabilitation services, in accordance with an amendment to Section 304(a) of the Act.

Section 385.4(b) is further clarified by defining "qualified" personnel as personnel who have met existing State certification or licensure requirements, or in the absence of State requirements, have met professionally accepted requirements established by national certification boards, in accordance with

language in the Conference Report on Pub. L. 98–221.

Section 385.43 requires that all grantees that train rehabilitation counselors under 34 CFR Parts 386–390 include training in the applicability of section 504 of the Act or ensure that those counselors are knowledgeable in the applicability of section 504. This provision implements section 304(a) of the Act.

Part 386—Rehabilitation Training: Rehabilitation Long-Term Training

Section 386.1 provides that funds for long-term training be targeted to areas of personnel shortage, in accordance with an amendment to section 304(b) of the Act.

In § 386.1, paragraphs (u) and (v) identify independent living and client assistance as areas in which personnel may be trained, in accordance with section 304(a)(2) of the Act.

Section 386.42(a)(5) corrects an error in the current regulations to permit traineeship candidates to be enrolled in academic, as well as non-academic, study.

Part 389—Rehabilitation Continuing Education Programs

Sections 389.10(c) (2) and (3) authorize grantees to train staff of centers for independent living and client assistance programs, in accordance with section 304(a)(2) of the Act.

Finally, these final regulations include several technical amendments and corrections, including a revised definition of "Act" in Part 369 and elsewhere.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Paperwork Reduction Act of 1980

The information collection requirements in these regulations in § 366.20 and § 379.43 have been approved by the Office of Management and Budget.

Intergovernmental Review

The programs under 34 CFR Parts 361 and 366 are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the absence of comments on this matter and the Department's own review, it has been determined that the regulations in this document do not require information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 361

Administrative practice and procedures, Education, Grant programs—education, Grant programs—social programs, Vocational rehabilitation.

34 CFR Part 362

Blind, Education, Grant programs—education, Grant programs—social programs, Manpower training programs, Research, Technical assistance, Vocational rehabilitation.

34 CFR Part 365

Education, Grant programs—education, Grant programs—social programs, Vocational rehabilitation.

34 CFR Part 366

Education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 369

Blind, Education, Grant programs—education, Grant programs—social programs, Manpower training programs, Research, Technical assistance, Vocational rehabilitation.

34 CFR Part 373

Education, Grant programs—social programs, Vocational rehabilitation.

34 CFR Part 379

Business and industry, Education, Reporting and recordkeeping requirements, Grant programs—social programs, Vocational rehabilitation.

34 CFR Part 385

Education, Grant programs—education, Vocational rehabilitation.

34 CFR Part 386

Education, Grant programs—education, Vocational rehabilitation.

34 CFR Part 389

Education, Grant programs—education, Vocational rehabilitation.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance No. 84.126, Basic Vocational Rehabilitation Services Program; 84.128, Special Projects; 84.129, Rehabilitation Training; 84.130, Innovation and Expansion Grants; and 84.132, Centers for Independent Living)

Dated: September 18, 1985.

William J. Bennett,

Secretary of Education.

The Secretary amends Parts 361, 362, 365, 366, 369, 373, 379, 385, 386, and 389 of Title 34 of the Code of Federal Regulations as follows:

PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

1. In § 361.1 paragraphs (b)(1), (b)(2), and the definition of "Act" in (c)(2) are revised to read as follows:

§ 361.1 The State vocational rehabilitation services program.

* * * * *

(b) * * *

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions the Apply to Department Regulations), and Part 78 (Education Appeal Board) except for hearings under Subpart G of Part 361.

(2) The regulations in this Part 361.

(c) * * *

(2) * * *

"Act" means the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), as amended

* * * * *

Subparts D and E (§§ 361.110–361.128) [Removed and reserved]

2. In Part 361, Subparts D and E (§§ 361.110–361.128) are removed and reserved, and the table of contents is amended accordingly.

3. Section 361.150 is revised to read as follows:

§ 361.150 Purpose.

Under section 121(a) of the Act, the Secretary makes grants for the purpose of paying a portion of the cost of

planning, preparing for, and initiating special programs under the State plan in order to expand vocational rehabilitation services, including—

(a) Programs to initiate or expand services to individuals with the most severe handicaps;

(b) Special programs to initiate or expand services to classes of handicapped individuals who have unusual or difficult problems in connection with their rehabilitation; or

(c) Programs to maximize the use of technological innovations in meeting the employment training needs of handicapped youth and adults.

(Sec. 121(a) of the Act; 29 U.S.C. 741(a))

PART 362—PROJECT GRANTS AND OTHER ASSISTANCE IN VOCATIONAL REHABILITATION

Subparts F and G (§§ 362.80–362.91) [Removed and reserved]

4. In Part 362, Subparts F and G (§§ 362.80–362.91) are removed and reserved, and the table of contents is amended accordingly.

PART 365—THE STATE INDEPENDENT LIVING REHABILITATION SERVCES PROGRAM

5. In section 365.1 paragraph (b) is revised to read as follows:

§ 365.1 The State independent living rehabilitation services program.

* * * * *

(b) *Regulations which apply to the State independent living rehabilitation services program.* The following regulations apply to the State plan for independent living rehabilitation services programs;

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 76 (State-Administered Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board) except for hearings under Subpart G of Part 361.

(2) The regulations in this Part 365.

* * * * *

PART 366—CENTERS FOR INDEPENDENT LIVING

6. Section 366.3 is revised to read as follows:

§ 366.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Program), and Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

(b) The regulations in this Part 366.

(Sec. 711 of the Act; 29 U.S.C. 796(e))

7. Part 366 is amended by adding a new Subpart C to read as follows and the table of contents is amended accordingly:

Subpart C—How Does One Apply for a Grant?

§ 366.20 What are the application requirements?

In addition to the information required by 34 CFR 75.107, each applicant shall include in its application—

(a) An assurance that handicapped individuals will be substantially involved in policy direction and management of the center, and will be employed by the center;

(b) An assurance that the center will offer handicapped individuals a combination of independent living services, including, as appropriate, the services described in the definition of "center for independent living" in § 366.4(b); and

(c) A description of an annual evaluation plan which contains, at a minimum, the following elements:

(1) The numbers and types of handicapped individuals assisted.

(2) The extent to which individuals with varying handicapping conditions were served.

(3) The types of services provided.

(4) The sources of funding.

(5) The percentage of resources committed to each type of service provided.

(6) How services provided contributed to the maintenance of or the increased independence of handicapped individuals assisted.

(7) The extent to which handicapped individuals participate in management and decision making in the center.

(8) The extent of capacity building activities, including collaboration with other agencies and organizations.

(9) The extent of catalytic activities to promote community awareness, involvement, and assistance.

(10) The extent of outreach efforts and the impact of those efforts.

(11) A comparison, if appropriate, of prior year(s) activities with most recent year activities.

(Approved by the Office of Management and Budget under Control Number 1820–0016)

(Sec. 711(c) of the Act; 29 U.S.C 796e(c))

PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS

8. In § 369.4(b), the definition of "Act" is revised to read as follows:

§ 369.4 What definitions apply to these programs?

* * * * *

(b) * * *

"Act" means the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), as amended.

* * * * *

PART 373—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING VOCATIONAL REHABILITATION SERVICES TO SEVERELY HANDICAPPED INDIVIDUALS

9. Section 373.10 is revised to read as follows:

§ 373.10 What types of projects are authorized under this program?

(a) Authorized activities under this program include carrying out special projects concerned with establishing programs and constructing facilities for expanding or otherwise improving vocational rehabilitation services and other rehabilitation services to handicapped individuals, especially those who are the most severely handicapped.

(b) Handicapped individuals served under this program include blind individuals, deaf individuals, and other groups of severely handicapped individuals, irrespective of age or vocational potential, identified each year by the Secretary and published in a notice in the **Federal Register**.

(Sec. 311(a) of the Act; 29 U.S.C. 777a(a))

§ 373.11 [Removed]

§§ 373.12 and 373.13 [Redesignated as § 373.11 and 373.12]

10. Section 373.11 is removed, §§ 373.12 and 373.13 are redesignated as §§ 373.11 and 373.12, respectively, and the table of contents is amended accordingly.

PART 379—PROJECTS WITH INDUSTRY

11. Section 379.2 is revised to read as follows:

§ 379.2 Who is eligible for assistance under this program?

Employers and profit-making and nonprofit organizations with which the Secretary may enter into an agreement include any—

(a) Designated State unit;

(b) Industrial, business, or commercial enterprise;
(c) Labor organization;
(d) Employer;
(e) Industrial or community trade association;
(f) Rehabilitation facility; or
(g) Other agency or organization with the capacity to arrange, coordinate, or conduct training and other employment programs, and provide supportive services and assistance for handicapped individuals in a realistic work setting.

(Sec. 621(a)(1) of the Act; 29 U.S.C. 795g(a))

12. In § 379.43, paragraphs (k) and (l) are revised, and paragraph (m) is added, to read as follows:

§ 379.43 What general provisions are required in agreements?

* * * * *

(k) Provide that handicapped employees will not be segregated from other employees unless segregation is the only approach that will assure equal opportunity to handicapped employees;
(l) Contain an agreement to make reports and to keep any records and accounts required by the Secretary and to make records and accounts available for audit purposes; and
(m) Contain a description of an annual evaluation plan which contains, at a minimum, the following elements:
(1) The numbers and types of handicapped individuals assisted.
(2) The types of assistance provided.
(3) The sources of funding.
(4) The percentage of resources committed to each type of assistance provided.
(5) The extent to which the employment status and earning power of handicapped individuals changed following assistance.
(6) The extent of capacity building activities, including collaboration with other organizations, agencies, and institutions.
(7) A comparison, if appropriate, of current activities with activities of prior years.

(Approved by the Office of Management and Budget under control number 1820-0018)

(Sec. 12(c) and 621 of the Act; 29 U.S.C. 711(c) and 795g)

PART 385—REHABILITATION TRAINING

13. In § 385.1, paragraph (a)(1) is revised to read as follows:

§ 385.1 What is the Rehabilitation Training Program?

(a) The Rehabilitation Training Program is designed to—
(1) Increase the supply of qualified personnel available for employment in public and private agencies and institutions involved in the vocational rehabilitation and independent living rehabilitation of physically and mentally handicapped individuals, especially those individuals with the most severe handicapped; and
* * * * *

14. Section 385.3 is revised to read as follows:

§ 385.3 What regulations apply to these programs?

The following regulations apply to the Rehabilitation Training Program—
(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grant), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), and Part 78 (Education Appeal Board).
(b) The regulations in this Part 385.
(c) The regulations in 34 CFR Parts 386,387,388, 389, and 390, as appropriate.

(Sec. 12(c) and 304 of the Act; 29 U.S.C. 711(c) and 774)

15. In § 385.4(b), the definition of "Act" is revised and a new definition of "Qualified personnel" is added after the definition of "Physical and mental restoration services" to read as follows:

§ 385.4 What definitions apply to these programs?

* * * * *

(b) * * *

"Act" means the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), as amended.
* * * * *

"Qualified personnel" means personnel who have met existing State certification or licensure requirements, or in the absence of State requirements, have met professionally accepted requirements established by national certification boards.

(H.R. Conf. Rep. No. 595, 98th Cong., 2d Sess. 32 (1984))
* * * * *

16. Part 385 is amended by adding a new § 385.43 to read as follows and the table of contents is amended accordingly:

§ 385.43 What requirement applies to the training of rehabilitation counselors?

Any grantee who provides training of rehabilitation counselors under any of the programs in 34 CFR Parts 386–390 shall train those counselors in the applicability of the provisions of Section 504 of the Act or ensure that those counselors are knowledgeable in the applicability of those provisions.

(Sec. 304(a) of the Act; 29 U.S.C. 774(a))

PART 386—REHABILITATION TRAINING: REHABILITATION LONG-TERM TRAINING

17. Section 386.1 is amended by revising the introductory text, by redesignating paragraph (u) as paragraph (w), and by adding new paragraphs (u) and (v), to read as follows:

§ 386.1 What is the Rehabilitation Long-Term Training Program?

This program is designed to provide academic and non-academic training in areas of personnel shortages identified by the Secretary and published as a notice in the Federal Register, which may include—
* * * * *

(u) Independent living;
(v) Client assistance; and
(w) * * *

((Sec. 304 (a) and (b) of the Act; 29 U.S.C. 774 (a) and (b))

18. In § 386.42, paragraph (a)(5) is revised to read as follows:

§ 386.42 What are the special requirements affecting the awarding of traineeships?

(a) * * *

(5) Be enrolled for academic or non-academic study in the grantee institution;
* * * * *

PART 389—REHABILITATION CONTINUING EDUCATION PROGRAMS

19. In § 389.10, paragraph (c) is revised to read as follows:

§ 389.10 What types of projects are authorized under this program?

* * * * *

(c) Develop and conduct training programs for staff of—
(1) Private rehabilitation agencies and facilities which cooperate with State vocational rehabilitation units in providing vocational rehabilitation and other rehabilitation services;
(2) Centers for independent living; and
(3) Client assistance programs.

(Sec. 304(a) of the Act; 29 U.S.C. 774(a))

Appendix A—Analysis of Public Comments and Responses

Note.—This appendix will not appear in the Code of Federal Regulations.

The following is a summary of public comments concerning the notice of proposed rulemaking for the Miscellaneous Amendments to the Rehabilitation Act published in the Federal Register on October 1, 1984 (49

FR 38656) and the Secretary's responses to the comments.

Section 361.35(c)

Comment. Several commenters recommended that the regulatory standard for making ineligibility determinations for vocational rehabilitation program services be changed from "clear evidence" to "clear and convincing evidence." The commenters were concerned because the Rehabilitation Amendments of 1984 deleted the statutory language "beyond any reasonable doubt" as the standard of proof necessary to reach a determination of ineligibility for vocational rehabilitation services under the Act.

Response. No change has been made. The Secretary believes that a regulatory requirement of "clear evidence" is a strong standard which places a heavy burden on vocational rehabilitation agencies when determining that a client or applicant is ineligible for vocational rehabiitation services. The regulations further require that a determination of ineligibility can be made only after full consultation with the individual or, as appropriate, his or her parent or guardian. The vocational rehabilitation agency must also notify the individual in writting of the action taken and of his or her appeal rights including the procedures for administrative review and fair hearing under § 361.48 of the regulations. Further, a Client Assistance Program has been established in each State to provide assistance to handicapped individuals receiving or seeking services under the Rehabilitation Act.

Section 366.20(a)

Comment. One commenter recommended that the requirement in § 366.20(a) that handicapped individuals be substantially involved in policy direction and management of a center for independent living be further defined to indicate the involvement of a majority of persons with a handicap is the desired result.

Response. No change has been made. Although the Secretary does not believe that Federal regulations should set a rigid standard for the involvement of handicapped persons in policy direction and management, he expects handicapped individuals to be substantially involved in the administration and policy direction of Centers for Independent Living.

Section 366.20(c)

Comment. Several commenters recommended that the evaluation plan for services for independent living be expanded beyond those factors stipulated in the law and that the standards be published in the **Federal Register.**

Response. No change has been made. The Rehabilitation Services Administration has let a contract for developing standards for evaluting Centers for Independent Living, and the development of the standards was recently completed. The standards has been approved by the National Council on the Handicapped and it is expected that the standards will soon be made available to the public.

Section 379.43(k)

Comment. One commenter recommended a change in the language protecting handicapped employees from unwarranted segregation in a Project With Industry grant.

Response. A change has been made. In § 379.43 paragraph (k) has been revised to read as follows: "Provide that handicapped employees will not be segregated from other employees unless segregation is the only approach that will assure equal opportunity to handicapped employees." The Secretary believes that the revised wording better protects handicapped individuals from unwarranted segregation under a Projects With Industry grant. This is consistent with the Secretary's commitment to place handicapped individuals in the least restrictive appropriate environment and to provide opportunities for the transition from dependence and segregation to independence and participation in the work place.

Section 385.4(b)

Comment. One commenter recommended a change in the definition of "qualified personnel" in § 385.4(b) to require personnel to meet either State licensure requirements, or in the absence of such standards, professionally accepted requirements established by national certification boards.

Response. A change has been made. Section 385.4(b) has been modified to address the confusion over adherence to State or national certification requirements. If there are State standards a State must adhere to them. If no State standards exist, a State must adhere to recognized National standards.

Section 386 and 389

Comment. One commenter recommended that the objective procedures used by the Secretary to identify "areas of personnel shortages" in § 386.1 related to long term training by published in the **Federal Register.**

Response. No change has been made. The procedures are currently being developed. No regulatory change is required. The goal is to develop procedures that will allow for systematic use of existing data, identification of additional data sources, and input from professional and consumer groups in determining "areas of personnel shortages".

Comment. Several commenters recommended that rehabilitation engineering be identified as a specific training discipline under the Rehabilitation Long Term Training Program in Section 386.1 and the Rehabilitation continuing education program under Part 389.

Response. No change has been made. Currently, rehabilitation engineering proposals are eligible for funding under the category "other fields . . ." in § 386.1(u). The regulation in Part 389 covering rehabilitation continuing education programs do not list separate training disciplines or categories. For these reasons and the pending development of procedures to determine "areas of personnel shortage", the Secretary believes that it would not be appropriate to make the recommended change at this time.

Comment. One commenter recommended that rehabilitation teachers of the visually handicapped be identified as a discrete group under long-term training program regulations in § 386.1.

Response. No change has been made. The § 386.1(m) "rehabilitation of the blind" category includes rehabilitation teachers of the visually handicapped. For this reason and the pending development of procedures to determine "areas of personnel shortage", the Secretary believes that it would not be appropriate to make the recommended change at this time.

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[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1985. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1984 to March 31, 1985. The CFR volume issued as of Apr. 1, 1984, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[5] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.



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federal register

Tuesday
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Fish and Wildlife Service

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Personnel Management Office

Government Procurement
Commerce Department
General Services Administration
Interior Department

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Farmers Home Administration

Marketing Agreements
Agricultural Marketing Service

Radio
Federal Communications Commission

Savings and Loan Associations
Federal Home Loan Bank Board

Securities
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing these regulations to govern the establishment of regular appropriated and nonappropriated fund wage schedules for U.S. citizens who are Federal Wage System employees in foreign areas and certain U.S. possessions. Wage schedules established under the methodologies prescribed in these regulations will provide rates of pay representative of the entire geographic area from which the employees are recruited.

EFFECTIVE DATE: October 24, 1985.

FOR FURTHER INFORMATION CONTACT: Allan Summers, (202) 632–7830.

SUPPLEMENTARY INFORMATION: On July 15, 1985, OPM published two proposed regulations [50 FR 28583 and 50 FR 28584] to change the methodology used for establishing the appropriated fund foreign area schedules and to place in the regulations the longstanding practices followed in constructing and issuing both the appropriated and nonappropriated fund foreign area schedules. The regulations also changed the methodology used by the Department of Defense and the Department of Transportation for establishing wage schedules for Guam, Midway and American Samoa.

The proposed regulations provided a 30 day period for public comment. OPM received comments from one employee organization. The employee organization felt that Guam should not be included in the new 135 area wage schedule because some of the 135 areas do not reflect high cost-of-living considerations. We cannot accept this proposal because cost-of-living is not a factor considered in setting wage schedules under FWS law. The FWS law requires that rates for FWS employees approximate private sector wages. Although the cost-of-living may be reflected in private sector wages, there is no statutory authority to consider the cost-of-living itself in fixing basic pay rates. OPM believes that an average of the 135 FWS wage areas is the most representative method for setting the pay of these overseas employees.

Except for a few editorial changes, the final regulations are identical to the proposed regulations. Application of the prescribed appropriated fund methodology will result in scheduled rates for calendar year 1985 as follows:

WG grade					
	1	2	3	4	5
1	6.49	[illegible]	[illegible]	7.30	7.57
2	[illegible]	7.21	7.50	7.79	[illegible]
3	7.34	7.65	[illegible]	[illegible]	8.57
4	7.77	[illegible]	8.41	8.74	[illegible]
5	8.16	8.50	[illegible]	[illegible]	[illegible]
6	[illegible]	[illegible]	9.30	9.66	10.01
7	[illegible]	[illegible]	[illegible]	10.13	10.51
8	9.43	[illegible]	10.21	10.61	11.00
9	[illegible]	10.25	10.66	11.07	11.48
10	10.29	10.68	11.12	11.56	11.97
11	[illegible]	11.12	[illegible]	12.01	12.45
12	11.08	11.54	12.00	[illegible]	12.92
13	11.49	11.97	12.45	[illegible]	13.41
14	11.90	12.40	[illegible]	13.39	[illegible]
15	12.31	12.82	13.33	13.85	14.36

WL Grade	WL				
	1	2	3	4	5
1	7.14	7.44	7.74	[illegible]	8.33
2	7.61	[illegible]	[illegible]	8.56	[illegible]
3	[illegible]	[illegible]	8.76	9.09	[illegible]
4	[illegible]	[illegible]	[illegible]	[illegible]	9.97
5	[illegible]	[illegible]	[illegible]	10.10	10.47
6	[illegible]	9.83	10.22	[illegible]	11.01
7	[illegible]	10.32	10.73	11.15	11.56
8	10.37	[illegible]	11.23	[illegible]	12.10
9	[illegible]	11.26	11.73	12.18	12.63
10	11.29	11.76	12.23	12.70	13.17
11	11.74	[illegible]	12.72	13.21	13.70
12	12.18	[illegible]	13.20	13.71	14.21
13	12.64	13.17	13.70	14.22	14.75
14	13.09	13.64	14.19	14.73	15.28
15	13.54	14.10	[illegible]	15.23	15.79

WS grade	Pay level		WS				
	WD	WN	1	2	3	4	5
1			9.57	[illegible]	10.37	10.77	11.17
2			[illegible]	10.42	10.84	11.25	11.67
3	1		10.43	[illegible]	11.29	11.73	12.16
4	2		10.85	11.30	11.75	12.20	12.66
5	3		11.24	11.71	12.18	12.65	13.12

WG grade	Pay level		WG				
	WD	WN	1	2	3	4	5
6	4		11.66	12.15	[illegible]	13.12	13.61
7	5	1	[illegible]	[illegible]	13.09	[illegible]	[illegible]
8	6	2	12.51	[illegible]	[illegible]	14.07	[illegible]
9	7	[illegible]	12.92	[illegible]	14.00	[illegible]	[illegible]
10	8	4	13.34	13.90	14.46	15.01	15.57
11	9	5	13.77	[illegible]	[illegible]	[illegible]	[illegible]
12	10	[illegible]	14.31	[illegible]	[illegible]	[illegible]	[illegible]
13	11	7	15.00	15.63	[illegible]	[illegible]	17.51
14	[illegible]	[illegible]	15.81	[illegible]	17.13	17.79	[illegible]
15	[illegible]	[illegible]	16.75	17.45	[illegible]	[illegible]	[illegible]
16	[illegible]	[illegible]	17.62	18.56	[illegible]	20.04	[illegible]
17	[illegible]	[illegible]	19.02	19.81	[illegible]	[illegible]	[illegible]
18	[illegible]	[illegible]	[illegible]	21.19	[illegible]	[illegible]	[illegible]
19	[illegible]	[illegible]	21.80	22.71	[illegible]	24.53	25.44

Application of the prescribed nonappropriated fund methodology will result in scheduled rates for calendar year 1985 as follows:

NA grades	[illegible]				
	1	2	3	4	5
1	[illegible]	3.81	3.96	4.11	4.27
2	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
3	4.42	[illegible]	[illegible]	[illegible]	[illegible]
4	4.77	[illegible]	5.17	[illegible]	[illegible]
5	5.13	[illegible]	5.53	5.75	[illegible]
6	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
7	5.75	[illegible]	[illegible]	[illegible]	[illegible]
8	6.10	[illegible]	6.62	[illegible]	7.13
9	6.47	6.74	7.01	[illegible]	[illegible]
10	[illegible]	7.11	[illegible]	[illegible]	[illegible]
11	7.16	[illegible]	[illegible]	[illegible]	[illegible]
12	7.50	[illegible]	[illegible]	[illegible]	[illegible]
13	7.87	[illegible]	[illegible]	[illegible]	[illegible]
14	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
15	[illegible]	[illegible]	9.26	[illegible]	[illegible]

NL grades	[illegible]				
	1	2	3	4	5
1	4.02	4.19	[illegible]	[illegible]	[illegible]
2	[illegible]	[illegible]	4.80	[illegible]	5.17
3	[illegible]	5.06	[illegible]	[illegible]	[illegible]
4	5.25	5.47	[illegible]	[illegible]	[illegible]
5	5.55	[illegible]	[illegible]	[illegible]	[illegible]
6	5.96	6.21	[illegible]	[illegible]	[illegible]
7	[illegible]	[illegible]	[illegible]	7.13	[illegible]
8	6.73	7.01	[illegible]	[illegible]	[illegible]
9	7.13	7.42	7.71	[illegible]	[illegible]
10	7.49	[illegible]	8.14	[illegible]	[illegible]
11	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
12	8.26	8.62	[illegible]	[illegible]	[illegible]
13	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
14	[illegible]	9.41	[illegible]	[illegible]	[illegible]
15	[illegible]	[illegible]	10.18	[illegible]	[illegible]

NS grades	NS rates				
	1	2	3	4	5
1	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
2	5.26	5.48	[illegible]	[illegible]	[illegible]
3	5.64	[illegible]	[illegible]	6.35	[illegible]
4	[illegible]	[illegible]	[illegible]	[illegible]	7.00
5	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
6	[illegible]	[illegible]	7.17	7.44	7.72
7	[illegible]	7.27	7.57	[illegible]	[illegible]
8	7.33	7.63	7.93	[illegible]	[illegible]
9	7.75	8.09	8.42	[illegible]	9.06
10	8.18	8.51	[illegible]	[illegible]	[illegible]
11	8.61	[illegible]	[illegible]	[illegible]	10.04
12	9.02	[illegible]	[illegible]	10.15	10.53

NS grades	NS rates				
	1	2	3	4	5
13	9 43	9 84	10.23	10 62	11 02
14	9 85	10 25	10 68	11.08	11 49
15	10.25	10 68	11.10	11 52	11 96
16	10 68	11.12	11 58	12 02	12 46
17	11 11	11 58	12.03	12 50	12 96
18	11 54	12.02	12.50	12 98	13.47
19	11 95	12 46	12 96	13.46	13.96

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they are changes which will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority for Part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346.

2. Sections 532.233 and 532.235 are added to read as follows:

§ 532.233 Regular appropriated fund wage schedules in foreign areas and certain U.S. possessions.

(a) The Office of Personnel Management shall issue regular appropriated fund wage schedules for U.S. citizens who are wage employees in foreign areas. The Department of Defense shall issue wage schedules for employees in Guam and Midway; and the Department of Transportation shall issue wage schedules for employees in American Samoa. These schedules will provide rates of pay for nonsupervisory, leader, supervisory, and production facilitating employees

(b) Schedules will be—

(1) Computed on the basis of a simple average of all regular appropriated fund wage area schedules in effect on December 31; and

(2) Effective on the first day of the first pay period that begins on or after January 1 of the succeeding year.

(c) Payline rates for each nonsupervisory grade will be derived by computing a simple average of each payline rate for each of the 15 grades of all nonsupervisory wage rate schedules designated in paragraph (b) of this section.

(d) Through the use of the payline rates derived under the schedule averaging process, the step rates for each of the 15 grades of the nonsupervisory schedule and all scheduled pay rates for leaders and supervisors will be developed by using the standard formulas established in 5 CFR 532.203, Structure of regular wage schedules.

(e) Pay schedules for nonsupervisory (WD) and supervisory (WN) production facilitating positions will be established by converting the WD and WN grade levels to regular FWS supervisory (WS) grade level as specified in the table which follows:

	WN supervisory level	WS grade
WD nonsupervisory level:		
1		3
2		4
3		5
4		6
5	1	7
6	2	8
7	3	9
8	4	10
9	5	11
10	6	12
11	7	13
	8	14
	9	15

(f) Notice of final rates will be published in the **Federal Register.** Because of yearly adjustments, these rates will not be codified in this section since the rates would be obsolete by the time they are published.

§ 532.235 Regular nonappropriated fund wage schedules in foreign areas.

(a) The Office of Personnel Management shall issue regular nonappropriated fund wage schedules for U.S. citizens who are wage employees in foreign areas. These schedules will provide rates of pay for nonsupervisory, leader, and supervisory employees.

(b) Schedules will be —

(1) Computed on the basis of a simple average of all regular nonappropriated fund wage area schedules defined for the 48 contiguous states and the District of Columbia in effect on the first Sunday in January; and

(2) Effective on the first Sunday in January of each year.

(c) Payline rates for each nonsupervisory grade will be derived by computing a simple average of each payline rate for each of the 15 grades of all nonsupervisory wage rate schedules designated in paragraph (b) of this section.

(d) Through the use of the payline rates derived under the schedule averaging process, the step rates for each of the 15 grades of the nonsupervisory schedule and all scheduled pay rates for leaders and supervisors will be developed by using the standard formulas established in 5 CFR 532.203, Structure of regular wage schedules.

(e) Notice of final rates will be published in the **Federal Register.** Because of yearly adjustments, these rates will not be codified in this section since the rates would be obsolete by the time they are published.

[FR Doc. 85–22764 Filed 9–23–85; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 534

Pay Under Other Systems

AGENCY: Office of Personnel Management.

ACTION: Interim regulations.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations to prescribe requirements necessary to implement the amendments made by Pub. L. 98–615 of November 8, 1984, to the Senior Executive Service (SES) performance award provisions of the Civil Service Reform Act of 1978. The regulations cover the total amount of award payments that may be made by an agency to career appointees of the SES and the minimum and maximum amounts that may be paid to individuals. They also prescribe the procedures under which awards may be made.

DATES:

Effective Date: September 24, 1985 and until final regulations are issued.

Comment Date: Writtten comments will be considered if received no later than November 25, 1985.

ADDRESS: Send or deliver written comments to Chief, Office of Policy, OPC, Office of Personnel Management, Room 7R48, 1900 E Street, NW, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Neal Harwood, (202) 653–5882.

SUPPLEMENTARY INFORMATION: On November 16, 1983, OPM published an interim rule (48 FR 52025) that implemented subchapter VIII of chapter 53 of title 5, United States Code, by adding § 534.403 on SES performance awards to Subpart D of Part 534 of Title 5 of the Code of Federal Regulations. The comment period, which was 60 days from the date of publication, ended on

January 16, 1984. Before final regulations could be issued, the President signed Pub. L. 98–615 on November 8, 1984. That law made a number of changes in the SES performance awards provisions, effective February 6, 1985. We are issuing revised interim regulations to implement these changes.

In the comments on the original interim regulations, one agency questioned the need to issue any regulations and argued that agencies could assure fiscal responsibility and compliance with the law on their own. We have concluded that regulations are in fact needed to assure that there is consistency in the payment of awards between agencies and that award payments are made in accordance with the intent of the law.

The major change in the 5 U.S.C. provisions governing performance awards made by Pub. L. 98–615 was to delete the provision that only 50 percent of SES career appointees are eligible for awards. Instead, a dollar "pool" from which awards can be paid is to be established in each agency. The pool may not exceed the greater of the following two methods of computation: (1) Three percent of aggregate career SES basic pay for the preceding fiscal year; or (2) Fifteen percent of the average annual rates of basic pay to career appointees for the preceding fiscal year. (To conform with the law, the current regulations have been revised to state that pool calculations are to be based on pay as of the end of the fiscal year, rather than as of the end of the performance appraisal period.)

The difference in the two methods of computing the pool can be explained as follows: Take an agency whose performance appraisal period ends on September 30, 1985 (FY 1985), and is making its award payments in November 1985 (FY 1986). By law the pool is based on career pay for the "preceding fiscal year," which in the regulations is defined as the fiscal year prior to the fiscal year in which the award payments are made. In this case, therefore, the pool would be based on employment and pay rates in effect as of the end of FY 1985 (i.e., September 30, 1985) since the award payments are being made in FY 1986, even if the award money was obligated in FY 1985. (If the performance appraisal period had ended on June 30, 1985, and the award payments were made in September 1985, then the pool would be based on FY 1984 pay.)

Continuing the example, assume the agency had 6 SES career appointees as of the end of FY 1985. Two of the appointees were ES–3 ($66,232), 2 were ES–4 ($68,700), and 2 were ES–5, ($70,500). Under method 1, the aggregate basic pay would be computed by adding all of the individual salaries, for a sum of $410,824. The pool would be 3 percent of that figure, or $12,325. Under method 2, the average pay rate would be computed by adding all of the individual pay rates, for a sum of $410,824, and then dividing by the number of appointees (6), for an average rate of $68,471. The pool would be 15 percent of that figure, or $10,271. Therefore, in this example, the agency would use method 1, since it would give the larger pool. In most instances, only agencies with 5 or fewer career SES appointees are likely to benefit from method 2, which was placed in the law to provide adequate funding to pay awards in smaller agencies.

Another change made by Pub. L. 98–615 was to establish in statute a minimum individual award of 5 percent of base pay. There already was a statutory maximum of 20 percent of base pay. The minimum 5 percent individual award is the same as the minimum established by the original interim regulations. It assures that any award is of sufficient size to adequately reward outstanding executive performance and to serve as a motivator to others to achieve such performance. The minimum and maximum amounts are to be calculated on the basis of individual basic pay as of the end of the performance appraisal period, as in the original regulations.

One agency when commenting on the original interim regulations questioned OPM's authority to issue guidance on the distribution of awards, including how many executives in total should receive awards and how many executives should receive awards at different percentage levels of salary. Section 5384(d) of title 5 of the United States Code, however, states that OPM "may issue guidance to agencies concerning . . . the distribution of awards." Further, the congressional section analysis for Pub. L. 98–615 stated Congress hoped that "with the increased flexibility in the award program, agencies will use the program prudently to grant larger awards to the superior performers."

In order to assure that there is a reasonable distribution of awards within an agency and that award amounts reflect actual executive performance, the authority of OPM to provide distribution guidance is retained in the revised interim regulations. Until new guidance is issued, OPM will continue to apply previous guidance that generally (1) total individual awards in an agency should not exceed 30–35% of the agency's SES career appointees as of the end of the appraisal period and (2) of those receiving awards no more than ten percent should receive an amount of 17–20% of base pay and 30 percent an amount of 12–20% of base pay.

The provision in the original interim regulations that drew the most comments was the requirement that agencies obtain OPM approval before payment of performance awards. A number of agencies stated that prior approval was unnecessary in view of the guidance provided agencies and unduly delayed payment of awards. The agencies also alleged that the requirement ran counter to the spirit of the Civil Service Reform Act of delegating as much authority to agencies as possible. Two agencies recommended that OPM review be done solely on a post-audit basis and that corrective action be applicable only to subsequent award payments. One agency suggested that the prior approval requirement be imposed only on agencies that deviate from OPM guidelines.

The prior approval requirement was established after the congressional appropriations restrictions on the number of executives who could get awards were removed for FY 1984. The purpose of the requirement was to assure that agencies distributed awards in an equitable manner and in accordance with the congressional intent that awards be truly based on performance. The time required by OPM to give approvals has averaged less than 4 calendar days from the date of receipt of the agency request. In view of the new provisions in Pub. L. 98–615, we are retaining the prior approval requirement in the revised interim regulations to assure that agencies are correctly implementing the law.

Pursuant to section 553(d)(3) of title 5 of the United States Code, I find that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately to implement the performance award provisions of Pub. L. 98–615, which were effective February 6, 1985. Immediate implementation is needed because a number of agencies completed their performance appraisal periods on June 30, 1985, and are ready to pay awards; and the remaining agencies will have completed their appraisal periods by September 30, 1985.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will only affect Government employees who are members of the Senior Executive Service.

List of Subjects in 5 CFR Part 534

Government employees, Wages.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Part 534 as follows:

PART 534—PAY UNDER OTHER SYSTEMS

1. The authority for Part 534 is revised to read as follows:

Authority: 5 U.S.C. 1104, 5351, 5352, 5353, 5361, 5384, 5385, 5541.

The authority citation for Subpart B and all authority citations following sections in this part are removed.

2. Section 534.403 is revised to read as follows:

§ 534.403 Performance awards.

(a) This section covers the payment of performance awards to career appointees in the Senior Executive Service (SES).

(b) The total amount of performance awards paid during a fiscal year by an agency may not exceed the greater of—

(1) Three percent of the aggregate career SES basic pay as of the end of the fiscal year prior to the fiscal year in which the award payments are made; or

(2) Fifteen percent of the average annual rates of basic pay to career SES appointees as of the end of the fiscal year prior to the fiscal year in which the award payments are made.

(c) The amount of a performance award paid to an individual career appointee may not be less than 5 percent nor more than 20 percent of the appointee's rate of basic pay as of the end of the performance appraisal period.

(d) OPM shall issue guidance concerning the distribution of performance awards within an agency.

(e) Agencies shall submit their proposed distribution of performance awards, the proposed total amount of awards, and the aggregate payroll or average rate of basic pay as computed under paragraph (b) of this section to OPM for review and approval of the distribution before payment of the awards.

[FR Doc. 85-22761 Filed 9-23-85; 8:45 am]

BILLING CODE 6325-01-M

FEDERAL LABOR RELATIONS AUTHORITY, GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY, AND FEDERAL SERVICE IMPASSES PANEL

5 CFR Ch. XIV

Denver Regional Office; Address Change

AGENCY: Federal Labor Relations Authority (including the General Counsel of the Federal Labor Relations Authority) and Federal Service Impasses Panel.

ACTION: Amendment of rules and regulations.

SUMMARY: This document amends Appendix A, paragraph (d)(7) (49 FR 30055) of the rules and regulations of the Federal Labor Relations Authority (Authority), General Counsel of the Federal Labor Relations Authority (General Counsel), and Federal Service Impasses Panel (Panel), published at 5 CFR Part 2400 *et seq.* (1985) to establish a new location and mailing address for the Authority's Denver Regional Office. The Denver Regional Office telephone numbers have not been changed.

EFFECTIVE DATE: September 16, 1985.

FOR FURTHER INFORMATION CONTACT: Nancy Anderson Speight, Deputy to the Assistant General Counsel (202) 382-0811.

SUPPLEMENTARY INFORMATION: Effective January 28, 1980, the Authority, General Counsel and Panel published at 45 FR 3482, January 17, 1980, final rules and regulations to govern the processing of cases by the Authority, General Counsel and Panel under Chapter 71 of Title 5 of the United States Code (5 CFR Part 2400 *et seq.* (1985)). These rules and regulations are required by Title VII of the Civil Service Reform Act of 1978 and are set forth in 5 CFR Part 2400 *et seq.* (1985). Appendix A, paragraph (d) of the foregoing rules and regulations sets forth office addresses and telephone numbers of the Regional Directors of the Authority. This amendment sets forth the new location and mailing address of the Denver Regional Office of the Authority. The Denver Regional Office telephone numbers have not been changed. Accordingly, in Appendix A to Chapter XIV, paragraph (d)(7) of the Authority, General Counsel, and Panel rules and regulations (5 CFR Part 2400 *et seq.* (1985)) is revised to read as follows:

Appendix A to 5 CFR Ch. XIV—Current Addresses and Geographic Jurisdictions

* * * * *

(d) The office addresses of Regional Directors of the Authority are as follows:

* * * * *

(7) *Denver Regional Office*— Suite 310, 535 16th Street, Denver, Colorado 80202. Telephone: FTS—564-5224. Commercial—(303) 844-5224.

(5 U.S.C. 7134)

Dated: September 18, 1985.

John C. Miller,

General Counsel, Federal Labor Relations Authority.

[FR Doc. 85-22746 Filed 9-23-85; 8:45 am]

BILLING CODE 6727-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 561 and 563

[No. 85-820]

Net-Worth Requirements of Insured Institutions

September 13, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule and corrections.

SUMMARY: The Federal Home Loan Bank Board, as the operating head of the Federal Savings and Loan Insurance Corporation, is adopting technical and clarifying amendments to its rules setting forth net-worth requirements for insured institutions.

EFFECTIVE DATES: The amendment to § 563.13(g)(3)(iii)(*a*) will be effective on September 20, 1985; the other amendments are effective as of March 21, 1985.

FOR FURTHER INFORMATION CONTACT: Edward Taubert, Associate Director, Policy Development, Office of Examinations and Supervision, (202) 377-6484; or Robert J. Pomeranz, Policy Analyst, Office of Policy and Economic Research, (202) 377-6209, or John F. Connolly, Attorney, (202) 377-6455, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: On January 31, 1985, effective March 21, 1985, the Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation") amended its regulations pertaining to the method of calculating the minimum amount of regulatory net worth required of all institutions whose accounts are insured by the FSLIC ("insured institutions" or "institutions"), Board Resolution No. 85-79-B (50 FR

6891, February 19, 1985). The Board today is adopting amendments clarifying certain technical provisions of those regulations.

Treatment of Liabilities Obtained Through Mergers and Branch Acquisitions.

Section 563.13(b)(3)(i) (12 CFR 563.13(b)(3)(i)) sets forth the method for determining the minimum net-worth requirement for insured institutions that participate in a merger, consolidation, or purchase of assets and assumption of liabilities (hereafter referred to as "merger"), while § 563.13(b)(3)(ii) sets forth the requirement for those institutions that have acquired less than substantially all of the liabilities of another institution in which the selling institution continues in operation as a separate entity (hereafter referred to as "branch acquisitions"). The Board in its January net-worth amendments provided different treatment for these two activities. Mergers are treated (under § 563.13(b)(3)(i)) as if the institutions had been combined into a single entity, by combining the current "base factors", "amortization factors", and "contingency factors" and then determining the:

> growth factor . . . as if both institutions had been combined as a single entity as of the close of business of the last day of the calendar year preceding the year in which the merger . . . became effective.

Thus, any growth during the calendar year by each of the parties to a merger is counted as part of the growth of the combined entity.

In contrast, the minimum net-worth requirement for an institution acquiring liabilities through a branch acquisition is calculated (under § 563.13(b)(3)(ii)) by adding three percent of the liabilities acquired to the acquiring institution's "base factor" and determining its:

> growth factor . . . as if the liabilities so acquired had been included in the acquiring institution's total liabilities as of the close of business of the last day of the calendar year preceding the year in which the acquisition became effective.

Thus, the liabilities acquired in a branch acquisition are not counted as growth for the acquiring institution. In fact, this calculation method increases the acquiring institution's total liabilities at the end of the prior year, thereby raising the level of liabilities against which the current year's growth is gauged. § 563.13 and § 563.13–1. This distinction is appropriate because a three-percent requirement is assigned to liabilities acquired in a branch acquisition, rather than considering the acquiring institution and the branch to be a combined entity.

However, as adopted in January, § 563.13(g)(3)(iii)(*a*) (the definition of "change in liabilities") inadvertently omitted to set forth the distinction. This provision provides that in calculating changes in liabilities, the total liabilities calculated as of the close of business of the last day of the preceding calendar year includes "increases in liabilities resulting from a merger, consolidation, or purchase of assets and assumption of liabilities occurring during the current calendar year." However, as explained above, this is the method used for branch acquisitions pursuant to § 563.13(b)(3)(ii). The method used for mergers under § 563.13(b)(3)(i) differs by treating the merging institutions as if they had been a combined institution at the end of the prior year. Applying the branch acquisition procedure to mergers would produce a clearly unintended result in which an institution could go grow rapidly during the year but have that growth ignored when it merged with another institution. In effect, there would be no net-worth requirement assigned to the growth in liabilities—not even the three percent added to the base factor in the case of a branch acquisition. The Board, therefore, is amending paragraph (g)(3)(iii)(*a*) to conform to the language of paragraph (b)(3)(i) for mergers and to paragraph (b)(3)(ii) for branch acquisitions.

Consolidation of Service Corporations and Operating Subsidiaries

Section 563.13(g)(5)(iii)(*b*)(*2*) permits an insured institution to exclude any investments in service corporations or operating subsidiaries when calculating the direct-investment component of the contingency factor if the institution elects to calculate its minimum net-worth requirement on a consolidated basis, and if it includes any direct investments made by a consolidated service corporation or operating subsidiary in the institution's direct investments. The operative introductory clause to this provision clearly states that this provision is "(*b*) For the purpose of paragraph (g)(5)(iii)(*a*) of this section", i.e. the calculation of the direct-investment component of the contingency factor. However, there has been some confusion resulting from the phrase "calculate its minimum net-worth requirement on a consolidated basis including that service corporation" in paragraph (g)(5)(iii)(*b*)(*2*). This phrase has led some to conclude that this consolidation requirement was also for the purpose of paragraphs (g)(3) and (4), i.e. the calculation of change in liabilities and the growth factor. This conclusion could result in an institution using the consolidation option to manipulate the calculation of the growth factor. For example, an institution could consolidate in an earlier quarter and then not consolidate in the last quarter, thereby appearing to have decreased its total liabilities. This decrease, at the end of the fourth quarter, would result in a reduced net-worth requirement. To avoid this confusion, the Board is amending this provision and the preamble to clearly indicate that for purposes of calculating the direct-investment component of the contingency factor, only the direct investment of the "consolidated" service corporation or operating subsidiary, and not the liabilities, shall be included in the institution's calculation of its direct investment.

Calculation of the 1985 Base Factor

Section 563.13(g)(2) clearly states that:

> for calendar year 1985, 'base factor' means the minimum required amount of net worth *calculated as of the beginning of the institution's current fiscal year* determined under the minimum net-worth requirement rules in effect as of the beginning of that year, excluding two percent of recourse liabilities and 20 percent of scheduled items and before reduction for qualifying balances;

(emphasis added). This language requires that, for 1985, the base factor must be calculated at the beginning of the current fiscal year, *i.e.* the fiscal year that began prior to the effective date of the amended regulation. In spite of this clear statement in the regulation, some have attempted to interpret the regulation to allow the 1985 base factor to be calculated at the beginning of the fiscal year that commenced prior to the current fiscal year. This interpretation cites as its only support the notion that, under the rule prior to the amendment, the requirement calculated at the beginning of a fiscal year did not have to be met until the end of the fiscal year. Pursuant to this former rule, the requirement in effect at the beginning of the current fiscal year is the requirement calculated at the beginning of the prior fiscal year. However, this interpretation flies in the face of the language of the amended rule, which speaks not of the requirement to be met at the beginning of the current fiscal year, but rather of the requirement calculated at the beginning of the current fiscal year. This interpretation may have been assisted by an erroneous description of the calculation in the preamble which referred to the net-worth requirement as of the beginning of the institution's most recent fiscal year. Even if this description in the preamble were

controlling over the plain language of the regulation, the interpretation would fail because the rule prior to the amendment stated:

> Calculation Period . . . the annual net-worth requirement, as set forth in paragraph (b)(2) of this section, shall be established as of the opening of business of the first day of each fiscal year and shall be met on the annual closing date of the year.

12 CFR 563.13(b)(1) (1984) (emphasis added). As cited, the rule prior to amendment provided that the net-worth requirement was calculated at the beginning of the fiscal year, although institutions did not have to meet the requirement until the end of the fiscal year. The Board therefore is amending the preamble statement to conform with prior practice and the current language of the regulation.

The Board is also taking this opportunity to update a net-worth requirement citation in 12 CFR 561.8 pertaining to loans with recourse.

Effective Date

The Board has determined that observance of the notice and public comment procedure requirements of 5 U.S.C. 552(b) and 12 CFR 508.11 and the delay of effective date provided pursuant to 5 U.S.C. 552(d) and 12 CFR 508.14 is unnecessary and contrary to the public interest. These amendments are interpretive in nature and comprise minor, technical corrections intended to clarify regulations issued after extended opportunity for public comment.

Because of the clarifying and interpretive nature of the amendments, insured institutions are advised that these amendments constitute the correct interpretation of the relevant portions of the net-worth regulations as modified effective March 21, 1985. The Board believes that consistent interpretation of the regulation is necessary to ensure uniform calculation and reporting, and to alleviate industry confusion in implementing this complex regulation.

The Board believes that the computation of the 1985 base year and the option to consolidate direct investment of insured institutions and their subsidiaries are clearly set forth in the regulatory text of the January amendments, and the Board has determined to adopt minor clarifications merely to emphasize the correct reading of the regulation and to resolve any confusion. Consequently, all insured institutions will be expected to have been in compliance with the rule as clarified, as of the effective date of March 21, 1985.

However, with regard to the amendment to the net-worth calculation for mergers, the Board wishes to avoid any unexpected compliance problems for institutions which had calculated their changes in liabilities resulting from mergers by interpreting the language of § 563.13(g)(3)(iii)(*a*) in a way other than that intended by the Board. Language clarifying the Board's intended interpretation is contained in these technical amendments. Consequently, amended § 563.13(g)(3)(iii)(*a*) will be effective upon publication. Furthermore, the Board does not intend to take supervisory action against insured institutions for past net-worth calculations resulting from misinterpretation of the merger provisions of § 563.13(g)(3)(iii)(*a*). In addition, institutions will not be required to recompute their quarterly reports for the first and second quarters to comply with amended § 563.13(g)(3)(iii)(*a*). Institutions are advised, however, that for all quarters ending after July 1, 1985, when they calculate changes in liabilities for the entire calendar year 1985 and determine their growth based on these changes in liabilities, all institutions must treat mergers and branch acquisitions occurring at any time during 1985 in accordance with revised § 563.13(g)(3)(iii)(*a*).

List of Subjects in 12 CFR Part 563

Insurance of accounts; Savings and loan associations.

Accordingly, the Board hereby corrects FR Doc. 85–3867, appearing at 50 FR 6891 *et seq.* in the issue of February 19, 1985, and amends Parts 561 and 563 of Subchapter D, Chapter V, Title 12 of the *Code of Federal Regulations*, as set forth below.

1. The authority citation for 12 CFR Parts 561 and 563 continues to read as follows:

> **Authority:** Sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425a); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464; secs. 401, 402, 403, 405, 48 Stat. 1255, 1256, 1257, as amended; (12 U.S.C. §§ 1724, 1725, 1728, 1728); Reorg. Plan No. 3 of 1947; 12 FR 4981, 3 CFR 1943–48 Comp., p. 1071.

2. Correct page 6902, second column, by removing the first, second and third full sentences and by substituting the following:

The Board wishes to clarify that any decision by an institution to consolidate its direct investments with the direct investments of its service corporation[s] or operating subsidiary[ies] for purposes of the direct-investment rule or the contingency factor of the net-worth rule shall have no effect upon the institution's option to consolidate for purposes of the other rule. The consolidation requirement is only for the purpose of calculating the direct-investment component of the contingency factor and is not also for the purpose of calculating the growth factor. A contrary approach could result in an institution using the consolidation option to manipulate the calculation of the growth factor. An institution could consolidate in an earlier quarter and then not consolidate in the last quarter, thereby appearing to have decreased its total liabilities; this decrease, at the end of the fourth quarter, would permit an institution to reduce its net-worth requirement. To avoid this manipulation, only the direct investments of the "Consolidated" service corporation or operating subsidiary, and not the liabilities, must be included in the institution's calculation of the net-worth requirement.

3. Correct page 6905, second column, first full paragraph, second sentence, by inserting the word "calculated" after the word "requirement" and before the phrase "as of the beginning of the institution's most recent fiscal year".

4. Correct page 6906, first column, first full paragraph, third sentence, by removing the phrase "which is consolidated with the institution for net-worth calculation purposes", and the word "consolidated" after the word "a" and before the word "service".

5. Correct page 6908, second column, last paragraph, by revising the first sentence, as follows:

In calculating the growth factor for an institution engaged in the assumption of less than substantially all of the liabilities of another institution in which the selling institution continues in operation as a separate entity (including, but not limited to, a branch acquisition), the acquiring institution will be allowed to treat the liabilities acquired as if they were liabilities of the acquiring institution as of December 31 of the prior year.

6. Correct page 6908, third column, by revising the first full sentence, as follows:

Thus, for example, if an institution which had total liabilities of $110,000,000 as of December 31 acquired $20,000,000 of liabilities on the following June 15 through a branch acquisition, the amount of growth experienced by the institution through the quarter ending June 30 would be measured from a December 31 base of $130,000,000 and not $110,000,000.

7. Correct page 6908, third column, by inserting a new paragraph prior to the first full paragraph, as follows:

In calculating the growth factor for an institution engaged in a consolidation, merger or purchase of assets and

assumption of liabilities, the resulting institution will calculate its growth factor as if it had been a combined entity as of December 31 of the prior year. The purpose of this is to ensure that the growth experienced by the merger partners is not excluded from the calculation of the net-worth requirement. Thus, for example, if institution A had $100,000,000 as of December 31 and grew to $120,000,000 as of June 30, and institution B had $200,000,000 as of December 31, and had grown to $240,000,000 as of June 30, and these institutions had merged as of June 30, the growth factor would be measured from a base of $300,000,000, to a June 30 level of $360,000,000.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

§ 561.8 [Amended]

8. Amend § 561.8(b) by removing the reference "§ 563.13(b)" and substituting therefor the reference "§ 563.13(g)(5)(i)".

PART 563—OPERATIONS

9. Amend § 563.13 as follows:

a. Amend paragraph (b)(3)(i) by inserting, after the word "liabilities" and before the phrase ", the minimum", the parenthetical phrase "(hereafter referred to as "mergers")";

b. Amend paragraph (b)(3)(ii) by inserting, after the parenthetical phrase "(including, but not limited to, branch acquisitions)," and before the phrase "the minimum", the phrase "hereafter referred to as "branch acquisitions";

c. Amend paragraph (g)(2) by removing the word "resource" and substituting therefor the word "recourse";

d. Revise paragraph (g)(3)(iii)(*a*) as set forth below; and

e. Amend paragraph (g)(5)(iii)(*b*)(*2*) by removing the phrase "if an institution elects to calculate its minimum net-worth requirement on a consolidated basis including that service corporation or operating subsidiary".

§ 563.13 Regulatory net-worth requirement.

* * * * *

(g) *Definitions.* For purposes of this section:

* * * * *

(3) * * *

(iii) * * *

(*a*) Total liabilities calculated as of the close of business of the last day of the preceding calendar year shall include (*1*) any increases in liabilities during the current calendar year resulting from the acquisition of substantially less than all of the liabilities of an institution in which the selling institution continues in operation as a separate entity (including, but not limited to, branch acquisitions), or (*2*) the total liabilities of the merged and continuing institutions as of the close of business of the last day of the preceding calendar year in the case of a merger, consolidation, or purchase of assets and assumption of liabilities that occurs during the current calendar year.

* * * * *

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-22610 Filed 9-23-85; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 379

[Docket No. 50948-5148]

Export of "Operation Technical Data"

AGENCY: Office of Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Office of Export Administration continually reviews and maintains the Export Administration Regulations (EAR) which identifies those items subject to Department of Commerce export controls. This rule amends the technical data regulations in § 379.4 (b) and (d) by requiring a validated license to export "operation technical data" for equipment listed in § 379.4 when exported to Country Groups Q, W, Y and Afghanistan.

"Operation technical data" is defined as instructions necessary to the assembly, installation, maintenance, repair, or operation of a commodity meeting the conditions specified in 15 CFR 379.4(b)(1)(i).

EFFECTIVE DATE: September 24, 1985.

FOR FURTHER INFORMATION CONTACT: Jim Seevaratnam, Capital Goods and Production Materials Division, Office of Export Administration, (202) 377-2279.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is exempted from the provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, an opportunity for public participation, and a delay in effective date (5 U.S.C. 553) pursuant to section 13(a) of the Export Administration Act of 1979, as amended. This regulation also involves a military and foreign affairs function of the United States.

2. This rule contains a collection of information requirement under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* This rule imposes a validated export license requirement for exports of "operation technical data" to Country Groups Q, W, Y and Afghanistan. Applications for validated export licenses required by this rule will be made on Form ITA-622P. This Form has been approved by the Office of Management and Budget under control number 0625-0001.

3. Because a notice of proposed rulemaking is not required to be published for this rule, it is not a rule within the meaning of section 601(2) of the Regulatory Flexibility Act and is not subject to the requirements of that Act. Accordingly, no initial or final Regulatory Flexibility Analysis has been or will be prepared.

4. Because this rule concerns a military and foreign affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291 and, accordingly, is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects in 15 CFR Part 379

Exports, Science and technology.

PART 379—[AMENDED]

Accordingly, 15 CFR Part 379 of the Export Administration Regulations (15 CFR Parts 368-399) is amended as follows:

1. The authority citation for 15 CFR Part 379 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97-145 of December 29, 1981 and Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

§ 379.4 [Amended]

2. In §379.4 paragraph (b) is amended as follows:

A. In paragraph (b)(2)(ii) add ", but subject to the restrictions contained in §379.4 (c) and (d)" after "commodity" and before the period at the end of the sentence in the paragraph;

B. In paragraph (b)(3)(ii), revise "paragraphs (c) and (d) of this section" to read "paragraph (d) of this section"; and

C. In paragraph (b)(4)(i), add ", but subject to the restrictions contained in §379.4(c)" after "section" and before the semicolon at the end of the sentence in the paragraph.

3. In §379.4, paragraph (d) is amended as follows:

A. In the introductory text to paragraph (d), revise "other than technical data described in paragraph (b) of this section," to read "other than technical data authorized for T and V destinations under paragraphs (b)(3) and (4) of this section,";

B. In paragraph (d)(10), add "and technical data specified in operation technical data (§379.4(b)(1)(i)) for Country Groups Q, W, Y and Afghanistan," after "(see ECCN 1301A of the Commodity Control List)," and before "regardless";

C. In paragraph (d)(11), add "and technical data specified in §379.4(b)(1)(i) relating to equipment specified in ECCNs 1203A, 4203B, 1312A for Country Groups Q, W, Y and Afghanistan" after "Commodity Control List" and before the semicolon at the end of the sentence in the paragraph; and

D. In paragraph (d)(12), add ", and technical data specified in § 379.4(b)(1)(i) relating to equipment specially designed to produce spherical metal powders for Country Groups Q, W, Y and Afghanistan" after "powder" and before the semicolon at the end of the sentence in the paragraph.

Dated: September 19, 1985.

John K. Boidock,

Office of Export Administration, International Trade Administration.

[FR Doc. 85-22931 Filed 9-20-85; 5:00 pm]

BILLING CODE 3510-DT-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-22412; File No. S7-37-84]

Unlisted Trading Privileges in Over-the-Counter Securities

AGENCY: Securities and Exchange Commission.

ACTION: Announcement of Commission policy.

SUMMARY: To permit increased competition between market centers, the Commission announces the terms and conditions under which exchanges may apply to commence trading certain over-the-counter securities on an unlisted basis.

FOR FURTHER INFORMATION CONTACT: William W. Uchimoto, Esq., (202) 272-2409, Room 5193, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Summary

The Securities and Exchange Commission ("Commission") today is announcing its policy to extend unlisted trading privileges ("UTP") to applicant national securities exchanges in certain over-the-counter ("OCT") securities, provided that certain terms and conditions are satisfied. Because this is a new policy with potentially significant market structure implications, the Commission initially has decided to proceed cautiously by authorizing each exchange requesting UTP to trade on an unlisted basis up to 25 securities of its choice selected from the OTC securities designated as National Market System ("NMS") Securities pursuant to Rule 11Aa2-1 under the Securities Exchange Act of 1934 ("Act").[1] The Commission's willingness to grant UTP is conditioned on, among other things, the Commission approving a plan submitted by the applicant exchanges and the National Association of Securities Dealers, Inc. ("NASD") to consolidate exchange and OTC quotations and transaction reports in OTC securities upon which UTP is granted. The Commission expects this plan to be submitted by December 1, 1985 and implemented by January 1, 1986.[2] The Commission considers this a first step in granting UTP on NMS Securities and believes that granting UTP on additional NMS Securities may be appropriate if no adverse effects occur in trading of the initial group.[3]

II. Background

In the Securities Acts Amendments of 1975 ("1975 Amendments"),[4] Congress directed the Commission to facilitate the development of a national market system ("NMS") for securities consistent with certain objectives, including "fair competition . . . between exchange markets and markets other than exchange markets."[5] The legislative history of the 1975 Amendments expressly indicated that many active OTC stocks were expected to become part of the NMS.[6] The 1975 Amendments also authorized the Commission to grant UTP to exchanges in OTC securities if certain broad conditions were met.[7] Since 1975, the Commission generally has deferred granting exchanges UTP in OTC stocks pending progress on the development of the NMS.[8]

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[1] 17 CFR 240.11Aa2-1. For further information on Rule 11Aa2-1, which sets forth the criteria for designating OTC securities as qualified for trading in the NMS, see Securities Exchange Act Release No. 21583 (December 18, 1984), 50 FR 730 ("NMS Securities Amendments Release").

[2] In an accompanying release, the Commission is requesting comment on proposed amendments to its short sale rule, Rule 10a-1, 17 CFR 240.10a-1, that would exclude exchange and OTC trades in NMS Securities subject to UTP from short sale regulation. *See* Securities Exchange Act Release No. 22414 (September 18, 1985) ("1985 Rule 10a-1 Proposal Release").

[3] The Commission today is adopting rule amendments that would permit security to be concurrently listed (or traded pursuant to UTP) and designated as an NMS Security. *See* Securities Exchange Act Release No. 22413 (September 18, 1985) ("OTC/Exchange-Traded NMS Securities Adoption Release").

[4] Pub. L. No. 94-29, 89 Stat. 97 (June 4, 1975).

[5] Section 11A(a)(1)(c)(ii) of the Act.

[6] Congress viewed participation in the NMS as including those equity securities whose characteristics of size, earnings history, breadth of ownership, and investor interest make them suitable for auction-market trading. *See* Senate Comm. on Banking, Housing & Urb. Affs., Report to Accompany S. 249: Securities Acts Amendments of 1975, S. Rep. No. 75, 94th Cong., 1st Sess. 16 (1975) ("Senate Report").

[7] While Congress has on more than one occasion modified the Commission's power to grant UTP on OTC stocks over the past 50 years, Section 12(f)(2) of the Act currently permits the Commission to grant OTC/UTP, but requires the Commission, prior to granting UTP on an OTC stock, to consider the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system and [the Commission] shall not grant any such application if any rule of the national securities exchange making application under this subsection would unreasonably impair the ability of any dealer to solicit or effect transactions in such security for his own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists.

For further background on the statutory history of OTC/UTP, see Securities Exchange Act Release No. 21498 (November 16, 1984), 49 FR 46156 ("November Release").

[8] The Commission has approved OTC/UTP only under the very limited circumstances where a stock subject to the last sale reporting requirements under the Act (*see infra* note 15) is delisted from an exchange and the exchange desires to continue trading the stock on a UTP basis. *See* Order Approving Pacific Stock Exchange, Inc. ("PSE") UTP Application in the common stock of Pacific Resources, Inc., Securities Exchange Act Release No. 17584 (February 27, 1981); Order Approving Midwest Stock Exchange, Inc. ("MSE") and Boston Stock Exchange, Inc. ("BSE") UTP Applications in the common stock of Bally Park Place, Securities Exchange Act Release No. 19821 (March 21, 1983); and Order Approving Philadelphia Stock Exchange, Inc. ("Phlx") UTP Application in the common stock

Continued

Major developments have occurred in the OTC market in recent years, however, leading the Commission to reconsider its position on UTP in the OTC market. The foundation for these developments was the initiation in 1971 of the NASD's NASDAQ quotation system, which collects and disseminates current interdealer quotations to dealers and investors. NASDAQ drastically increased the availability of OTC quotations, narrowed spreads[9] and increased investor interest in OTC stocks. At present, there are approximately 4,700 securities quoted in the NASDAQ system, and over 450 registered market makers.

Since enactment of the 1975 Amendments enhancements to the original NASDAQ system in conformance with the development of the NMS have altered the conditions in which OTC stocks trade and have made OTC trading of these securities more compatible with exchange trading. The dissemination in 1980 of the NASDAQ best bid and offer to registered representatives and the investing public in place of a representative bid and ask [10] has improved the usefullness of OTC quotation information.

In addition, the initiation in April 1982 of last sale reporting for OTC securities designated as NMS Securities pursuant to Rule 11Aa2–1 ("NMS Securities Rule")[11] has increased the market information available for these OTC securities. Market makers are required to report their trades in NMS Securities on a gross basis within 90 seconds of execution, providing a real-time indication of trading conditions.[12] There are now over 2000 NMS Securites.

Finally, the NASD's development of the Computer Assisted Execution System ("CAES"), which permits automatic executions in OTC stocks among participating members, and the Small Order Execution System ("SOES"), which provides automatic routing and execution of small orders at the best NASDAQ quotation on behalf of participating market makers,[13] have increased the efficiency of order processing in the OTC market and provided automatic execution systems comparable to those existing in exchange markets.

During the development of the OTC market, competitive opportunities have emerged for concurrent exchange and OTC trading of certain securities. Specifically, as a result of the removal of certain off-board trading restrictions pursuant to Rule 19c–3,[14] exchange member firms may effect principal transactions in the OTC market in reported securities [15] that were listed or admitted to UTP on an exchange after April 26, 1979 ("Rule 19c–3 securities").[16] In May 1982, the commencement of trading of certain Rule 19c–3 securities through an interface between CAES and the Intermarket Trading System ("ITS") [17] represented the first trading linkage between exchange and OTC market makers. Commission monitoring has disclosed that concurrent OTC and exchange trading of Rule 19c–3 securities, including trading of these securities through the ITS/CAES interface,[18] has not had any significant adverse effect on the markets for Rule 19c–3 securities.[19]

In light of these developments and as a result of the applications submitted by the MSE [20] and BSE [21] to trade certain

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of Central Jersey Industries, Securities Exchange Act Release No. 19624 (March 22, 1983). These decisions are referred to collectively as the "PRI exception." The Commission has declined to grant OTC/UTP where the stock delisted from the exchange was not a reported security. *See* Order Denying PSE UTP Application in the common stock of Xonics, Securities Exchange Act Release No. 19609 (March 17, 1983).

[9] *See* J. Hamilton, *Marketplace Organization and Marketability: NASDAQ, the Stock Exchange and the National Market System*, 33 J. of Fin. 487 (1978).

[10] Before 1980, NASDAQ disseminated to vendors a "representative" bid and ask consisting of the median bid of all NASDAQ bids and a representative ask calculated by adding a median spread to the representative bid. To provide more useful quotations for investors, the Commission required dissemination of the inside bid and ask quotations and prohibited dissemination of a representative quote in Rule 11Ac1–2, 17 CFR 240.11Ac1–2, adopted in securities Exchange Act Release No. 16590 (February 19, 1980), 45 FR 12391.

[11] 17 CFR 240.11Aa2–1. *See* Securities Exchange Act Release No. 17549 (February 17, 1981), 46 FR 13992. The NMS Securities Rule designated certain categories of actively traded OTC stocks as qualified for trading in an NMS. OTC securities designated as NMS Securities are subject, among other things, to Rule 11Aa3–1, 17 CFR 240.11Aa3–1 ("Transaction Reporting Rule") under the Act. *See also* note 15 *infra*. The Rule employs a two-tiered approach to determine which OTC securities are designated as NMS Securities. Tier 1 automatically requires that the most actively traded OTC securities be designated as NMS Securities Tier 2 permits issuers of less actively traded OTC securities to become NMS designated if the issuers so elect. On December 18, 1984, the Commission adopted amendments to the NMS Securities Rule which substantially increased the number of OTC securities eligible for NMS designation pursuant to the Tier 2 criteria. *See* NMS Securities Amendments Release, *supra* note 1.

[12] Similar to trade reporting for NMS Securities, in 1980, the NASD submitted, and the Commission approved, a rule change that required OTC market makers that executed trades in reported listed securities to report those securities exclusive of any mark-up, mark-down, or Commission equivalent. *See* Securities Exchange Act Release No. 16960 (July 7, 1980). Previously, OTC market makers reported trades at the net price at which the trade was executed, including the mark-up or mark-down. *See* Letter from Robert A. Lewis, Associate Director, Division of Market Regulation, SEC, to Frank Palamara, President, Consolidated Tape Assocation, dated September 27, 1974.

[13] *See* Securities Exchange Act Release No. 21742 (February 12, 1985), 50 FR 7435.

[14] 17 CFR 240.19c–3. Off-board trading restrictions are rules of national securities exchanges which limit or condition the ability of members of those exchanges to effect transactions otherwise than on an exchange in securities which are traded on those exchanges.

[15] A "reported security" is a security that is subject to last sale reporting under a transaction reporting plan required by the Transaction Reporting Rule. Listed securities substantially meeting the initial listing requirements of the New York or American Stock Exchanges are reported pursuant to the Consolidated Tape Association ("CTA") Plan. The CTA is a joint industry organization composed of the NASD and seven national securities exchanges that administer the consolidated transaction reporting system for listed securities. NMS Securities are also reported securities and are reported pursuant to the NASD's Transaction Reporting Plan With Respect to NASDAQ/NMS Securities.

[16] With respect to listed securities, Congress directed the Commission to "review any and all rules of national securities exchanges which limit or condition the ability of members to effect transactions in securities otherwise than on such exchanges . . . and to commence Section 19(c) proceedings to abrogate "any such rule imposing a burden on competition which does not appear to the Commission to be necessary or appropriate in furtherance of the purposes of [the Act]." Section 11A(c)(4). In this area, the Commission has instituted three Section 19(c) proceedings resulting in the abrogation of most exchange off-board agency restrictions (*see* Rule 19c–1, Securities Exchange Act Release No. 11942 (December 19, 1975), 41 FR 4507) and amended in Securities Exchange Act Release No. 14325 (December 30, 1977), 43 FR 1328, and principal restrictions with respect to newly listed securities (*see* Rule 19c–3, Securities Exchange Act Release No. 16888 (June 11, 1980), 45 FR 41125).

[17] The ITS is an intermarket trading and communications linkage whose participants are identical to those of the CTA. The Commission approved the ITS to operate on a permanent basis in Securities Exchange Act Release No. 19456 (January 27, 1983), 48 FR 4938; the Commission ordered the interface between the ITS and the CAES in Securities Exchange Act Release No. 17744 (April 21, 1981) ("Linkage Order"), 46 FR 23856.

[18] Trading volume through the interface and in Rule 19c–3 securities generally has been light since the few participating large firms ceased making markets in Rule 19c–3 securities in mid-1983.

[19] *See* SEC, *A Monitoring Report on Rule 19c–3 Under the Securities Exchange Act of 1934*, Securities Exchange Act Release No. 18082 (August 25, 1981) ("Rule 19c–3 Monitoring Report"), and Securities Exchange Act Release No. 20074 (August 12, 1983), 48 FR 38250.

[20] Letter from Robin Tengroth, Senior Listing Representative, MSE, to Linda Waning, Division of Market Regulation, SEC, dated October 29, 1984.

[21] Letter from Joseph Rafety, Vice President and to Linda Waning, Division of Market Regulation, SEC, Corporate Secretary, BSE, dated August 22, 1984. In its comment letter on the November Release, the BSE stated that it was "seriously considering the practicality of limiting trading to just the options, if granted, and not the underlying OTC security." *See* Letter from Charles J. Mohr, Chairman and Chief Executive Officer, BSE, to Shirley E. Hollis, Acting Secretary, SEC, dated February 6, 1985. Cincinnati Stock Exchange, Inc. ("CSE") subsequently also had requested OTC/UTP. *See* Letter from D. Rosemary Goodrich, Administrator, CSE, to Tom Etter, SEC, dated April 24, 1985.

OTC securities on a UTP basis, the Commission, on November 16, 1984, issued a release soliciting comment on both the general issue of whether UTP on NMS Securities should be granted to exchanges at this time, and on specific questions to be addressed before the grant of such privileges.[22]

Since the issuance of the November Release, a number of regulatory initiatives have occurred or have been proposed which may have a significant impact on the issue of UTP on NMS Securities. On December 18, 1984, in response to a petition from the NASD, the Commission adopted amendments to the NMS Securities Rule, which substantially increased the number of OTC securities that are eligible for designation as NMS Securities.[23]

Thereafter, on February 1, 1985, in light of requests by the BSE and MSE, the Commission proposed amendments to the NMS Securities Rule and Transaction Reporting Rule to permit, in certain circumstances, a security to be concurrently designated as an NMS Security and traded on an exchange.[24] The Commission is today adopting these amendments in a companion release.[25] The primary effect of adopting these amendments is to permit certain listed securities, which are not currently subject to a Commission approved consolidated last sale reporting plan, to be designated as NMS Securities without having to delist. The amendments also permit NMS Securities to remain NMS designated even when traded on an exchange pursuant to UTP.

Finally, on April 16, 1985, the Commission determined that a pilot program that would allow the NASD to commence trading of OTC options and underlying OTC securities ("side-by-side trading") in six NSM Securities would be appropriate only if securities exchanges would be able to participate.[26] Exchange participation, in turn, is contingent on the exchanges seeking, and the Commission granting the exchanges, OTC/UTP in the six pilot stocks.

III. Summary of Comments

The Commission received 19 comment letters in response to the November Release. Commentators included the United States Department of Justice ("Justice"), the NASD, six national securities exchanges, seven OTC market makers or organizations representing OTC market makers, and one OTC issuer. In general, the extension of UTP on OTC securities was supported by the Amex,[27] three regional exchanges,[28] Justice,[29] and the Federal Securities Committee of the American Bar Association ("ABA"),[30] and opposed by the NASD,[31] the NYSE,[32] one regional exchange,[33] and OTC market makers.

A. Section 12(f)(2) Analysis

The MSE believed that the trading standards of Section 12(f)(2) would be satisfied if, at least initially, UTP was granted on only NMS Securities designated pursuant to the Tier 1 criteria of the NMS Securities Rule.[34] The PSE and Milton Cohen [35] also favored extending UTP to Tier 1 securities. The Amex, however, believed that UTP should be extended to all NMS Securities, limited only by an exchange's quantitative listing standards. In this regard, the Amex and the ABA argued that exchanges should have flexibility in determining whether to trade active or inactive isues.

The MSE also argued that UTP on OTC securities removes an impediment to the development of the national market system by fostering exchange and OTC market competition. The MSE believed that sufficient progress has been made on the national market system to justify UTP in OTC securities. In taking this position, the MSE cited the success of OTC transaction reporting coupled with the expanded eligibility of OTC stocks to become NMS Securities, the Rule 19c–3 trading experience, the ITS/CAES interface (noting the NASD's desire to expand the interface to all ITS securities), and the now smooth operation of reporting pursuant to the Commission's consolidated quotation and transaction rules. The Amex and the ABA also cited these initiatives in supporting OTC/UTP.

Justice and the MSE believed that granting UTP on OTC securities would be procompetitive, amounting to the addition of exchange market makers to an existing multiple dealer market. In this connection, Justice argued that increased competition by exchange specialists will result in increased pricing efficiency and greater liquidity in the OTC securities traded pursuant to UTP. Both Justice and the MSE also stated that OTC securities traded on a UTP basis could receive the benefits of an exchange market, *e.g.*, agency representation of orders, limit order protection, and exchange automated execution facilities.

On the other hand, the NYSE urged maintaining the exchange and OTC markets as separate trading systems. The NYSE concluded that "the Commission must disapprove the UTP applications to preserve the best

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[22] *See* November Release, *supra* note 7.

[23] *See* NMS Securities Amendments Release, *supra* note 1.

[24] *See* Securities Exchange Act Relasee No. 21703 (February 1, 1985), 50 FR 7085 ("OTC/Exchange-Traded NMS Securities Proposal Release").

[25] *See* OTC/Exchange-Traded NMS Securities Adoption Release, *supra* note 3.

[26] *See* Securities Exchange Act Releases No. 22028 (May 8, 1985), 50 FR 20310. In response to this release, the Commission received comment letters from four exchanges, one issuer, and one OTC market maker group. *See* Letter from Henry Lowenthal, Senior Vice President, American Greetings ("AG"), to SEC, dated June 4, 1985; Letter from James E. Buck, Secretary, New York Stock Exchange, Inc. ("NYSE"), to John Wheeler, Secretary, Commission, dated June 17, 1985; Letter from Walter E. Auch, Chairman and Chief Executive Office, Chicago Board Options Exchange ("CBOE"), to John Wheeler, Secretary, Commission, dated June 14, 1985; Letter from Norman S. Shapiro, President, The Security Traders Association of New York, Inc. ("STANY"), to John Wheeler, Secretary, Commission, dated June 19, 1985; Letter from Richard O. Scribner, Executive Vice President, American Stock Exchange, Inc. ("Amex"), to John P. Wheeler, III, Secretary, Commission, dated June 24, 1985; and Letter from Nicholas A. Giordano, President, Phlx, to John P. Wheeler, III, Secretary, Commission, dated July 3, 1985. The exchange commentators argued that the general quesions of OTC/UTP should be analyzed separately from the side-by-side trading pilot. Amex, AG, CBOE, and Phlx also were concerned that OTC/UTP should be conditioned on the existence of facilities and rules that promote competition, efficiency, and investor protection in ITP/UTP securities. STANY oppposed the grant of OTC/UTP even if it meant the OTC market could not engage in side-by-side trading.

[27] Letter from Robert J. Birnbaum, President, Amex, to John P. Wheeler, Secretary, SEC, dated March 6, 1985.

[28] Letter from John G. Weithers, Chairman of the Board, MSE, to John P. Wheeler, Secretary, SEC, dated February 28, 1985; Letter from Jim Gallagher, President, PSE, to John Wheeler, Secretary, SEC, dated February 28, 1985; and Letter from Nicholas A. Giordano, President, Phlx, to John P. Wheeler, Secretary, SEC, dated March 22, 1985.

[29] Letter from J. Paul McGrath, Assistant Attorney General, Antitrust Division, Justice, to SEC, dated January 15, 1985.

[30] Letter from Richard M. Phillips, Chairman, Federal Regulation of Securities Committee, ABA, John M. Liftin, Chairman, Subcommittee on Securities Markets and Market Structure, ABA, and Andrew M. Klein, Drafting Committee, ABA, to John P. Wheeler, Secretary, SEC, dated April 12, 1985.

[31] Letter from Gordon S. Macklin, President, NASD, to John Wheeler, Secretary, SEC, dated February 8, 1985.

[32] Letter from James E. Buck, Secretary, NYSE, to John Wheeler, Secretary, SEC, dated February 6, 1985.

[33] Letter from Charles J. Mohr, Chairman and Chief Executive Officer, BSE, to Shirley E. Hollis, Acting Secretary, SEC, dated February 6, 1985.

[34] The Tier 1 criteria require, among other things, 600,000 shares monthly trading volume over a six month period.

[35] Letter from Milton H. Cohen to John P. Wheeler, Secretary, SEC, dated February 8, 1985. Mr. Cohen also commented on the OTC/Exchange-Traded NMS Securities Proposal Release; see Letter from Milton Cohen to John P. Wheeler, Secretary, dated April 2, 1985. Mr. Cohen believed that the extension of UTP for NMS Securities should be restricted to those stocks characterized by a multiple trading interest and that the Tier 1 standard was currently the best indicator of a potential multiple trading interest in OTC securities.

elements of each system and thereby to assure the superiority of our capital markets in the increasingly competitive international arenas."

Planters National Bank,[36] the sole commenting issuer, stated that granting exchanges UTP on OTC securities would jeopardize liquidity in these stocks because OTC market makers would lose interest in these stocks when order flow is diverted to exchanges. Herzog Heine Geduld ("Herzog"),[37] an OTC market marking firm, argued that granting UTP on OTC securities would fragment the market and permit exchanges to divert flow in the most active NASDAQ stocks. Planters and the National Association of OTC Companies ("NAOTC") [38] also argued that a grant of UTP would displace an issuer's choice of the marketplace for its securities.

The NASD and Bernard Madoff Investment Securities ("Madoff") [39] stated that the exchange infrastructure biases order flow to the exchange floor regardless of the existence of superior quotations displayed in other markets. In this regard, the NASD argued that OTC market makers will not be able to compete fairly for order flow in OTC stocks upon which UTP is granted. The NASD submitted a study that indicated a "clear deterioration in over-the-counter market trading when an NASDAQ security lists."[40] The NASD stated that UTP would thus restrict trading to a single exchange specialist; the NASD and Madoff stated that specialists can already trade NASDAQ stocks by becoming registered as NASDAQ market makers. If exchanges are to trade OTC securities on a UTP basis, the NASD and Madoff urged the implementation of an efficient, neutral order routing system so that OTC market makers can compete for order flow before brokers route orders to the exchange floor.

B. Consolidated Reporting Comments

Those commentators who discussed the issue of whether consolidated quotation and transaction reporting should be required, favored consolidating reporting of exchange and OTC quotations and last sale reports in OTC/UTP stocks. For example, Justice strongly supported consolidated reporting and stated that "[g]iven the existence of NMS reporting and the price reporting systems for 19c–3 stocks, it appears that prices on OTC stocks with unlisted trading privileges can be collected from OTC market makers and exchange specialists and disseminated on a real-time basis."

The MSE stated that the "facilities used for reporting transactions in securities subject to unlisted trading privileges are less important than the procedures available for resolving disputes and allocating costs and revenues." The MSE recommended that the Commission "mandate that the NASD and participating exchanges file a joint transaction and quotation reporting plan by a specified date." The MSE suggested that the new plan could be modelled after the CTA, Consolidated Quotation ("CQ"),[41] or ITS Plans and should provide for operating committees with equal representation and revenue allocation. The MSE favored consolidated reporting through NASD facilities. The Phlx generally followed the MSE's position, but argued that the "Commission should grant UTP immediately and order affected SROs to have a plan ready for implementation within a short and practical time period."[42] The Amex argued that consolidated reporting should occur by amending the CTA Plan or establishing a new plan. The Amex believed that the CTA Plan should control if exchanges achieve a large market share of the trades in an OTC security.

The PSE suggested that—

> Transactions and quotations be reported into the consolidated transaction and quotation systems that currently report both Amex securities and securities traded on other exchanges that substantially meet Amex listing standards. All exchanges (except the NYSE) and all over-the-counter market makers have facilities in place today to do this, and all vendors pick up a consolidated stream of quotes and sales in securities so designated, obviating the need to create another costly system.

Similarly, the ABA recommended that the Commission "define all OTC stocks that become listed or admitted to UTP on an exchange as 'qualified securities,' and should compel the self-regulatory organizations to . . . include them as 'eligible securities' for purposes of the CTA Plan."

Because the NASD believed that exchange specialists should only be permitted to trade NASDAQ stocks by becoming registered as NASDAQ market makers rather than through UTP, the NASD recommended the use of NASDAQ facilities to consolidate reporting. In this regard, the NASD stated that—

> [s]ince all quotation and last sale information can be centrally entered through current quotation vending facilities and systems, there is no should economic or regulatory basis for requiring the utilization of a new or different quotation or trade reporting system where it cannot be shown that any improvement in the integrity of quote collection and processing can be derived from another system.

The NASD further stated that this approach would assume that "all information on over-the-counter securities would remain centrally available in national newspapers for public investor review and for regulatory purposes."

C. Off-Board Trading Restrictions Comments [43]

All who discussed the issue agreed that Section 12(f)(2) requires that off-board trading restrictions not apply to OTC securities upon which UTP was granted. They contended that this result was compelled by the provision in Section 12(f)(2) expressly prohibiting the extension of UTP on an OTC security "if any rule of the national securities exchange . . . would unreasonably impair the ability of any dealer to solicit or effect transactions in such security for his own account, or would unreasonably restrict competition among dealers in such security or between such dealers acting in the capacity of market makers who are specialists and such dealers who are not specialists." Exchange and OTC commentators were divided, however, on whether off-board trading restrictions should be removed more generally as a precondition to granting UTP on any OTC securities.

The NYSE, Milton Cohen, the MSE, the PSE, the Amex, the Phlx, and the ABA acknowledged that Section 12(f) requires the removal of off-board trading restrictions on OTC securities upon which UTP is granted, but argued

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[36] Letter from W. Douglas Starr, Planters National Bank, to John Wheeler, Secretary, SEC, dated February 15, 1985.

[37] Letter from John E. Herzog, President, Herzog, to SEC, dated February 6, 1985.

[38] Letter from Alan T. Rains, Jr., President, NAOTC, to John Wheeler, Secretary, SEC, dated February 12, 1985.

[39] Letter from Peter B. Madoff, to John Wheeler, Secretary, SEC, dated January 31, 1985.

[40] The study indicated an almost complete withdrawal of OTC market making interest within a year after each of the NASDAQ securities studied was listed on the NYSE or Amex.

[41] The CQ Plan is the quotation reporting analogue to the CTA Plan.

[42] The ABA believed that, "as an interim measure, the Designation and Reporting Rules should be amended in the manner proposed in the Reporting Release [OTC/Exchange-Traded NMS Securities Proposal Release] (provided certain necessary technical changes are made) to ensure continuation of comprehensive last sale reporting in OTC 'reported' stocks that become listed or admitted to UTP."

[43] *See supra* note 14 for a discussion of exchange off-board trading restrictions.

against lifting such restrictions any further.[44]

The MSE believed that one of the Commission's responsibilities in fostering the development of the national market system is to "balance competitive opportunities against the need for facilities and regulations that will 'centralize' trading," and that "granting unlisted trading and removing off-board trading restrictions are not symmentrical regulatory initiatives." The MSE stated that the OTC market is a competitive market, but fragmented because it does not provide "limit order protection, prohibit sell-throughs or restrict internalization." The MSE conceded that removal of off-board trading restrictions would increase competition in listed securities, but argued that, in the absence of new "linkage" facilities and anti-internalization rules, this removal would fragment the market in these securities and thereby reduce the level of investor protection in listed securities. On the other hand, the MSE believed that granting UTP in OTC stocks "could enhance competition at no regulatory cost, *i.e.*, there would be no increase in fragmentation and therefore no decrease in investor protection."

In contrast, most commentators representing OTC market makers urged the rescission of the off-board trading restrictions of all exchanges, regardless of whether they sought UTP on OTC securities, as a precondition to granting any exchange UTP in OTC securities. Specifically, the NASD argued that—

> Congress has explicitly stated that until substantial progress has been made toward a National Market System in which *all* market makers and brokers are free to deal with each other without the application of off-board restrictions, competition might well decrease . . . . The Commission is, therefore, explicitly precluded from granting UTP in over-the-counter stocks unless all restrictions by all exchanges are lifted. [Emphasis in original.]

Moreover, the NASD stated that the grant of UTP to less than all exchanges, "in the absence of rescission by the New York Stock Exchange of its off-board trading restrictions, will result in the grant of a competitive franchise to those exchanges whose applications are granted and the denial of a comparable competitive opportunity to over-the-counter firms which are also members of the NYSE."[45] The NASD argued that this would result in unequal regulation of exchange specialists and OTC market makers because regional exchanges that obtained UTP would have the competitive advantage of being able to trade OTC securities, in addition to most exchange issues, while the majority of OTC market makers would be prohibited from trading in non-Rule 19c–3 securities.

The NASD also urged the abolition of exchange delisting standards, such as NYSE Rule 500,[46] which it believes to "operate to prevent movement of a security to the over-the-counter market", as a precondition to granting UTP in unlisted securities. The NASD viewed off-board trading restrictions and restrictive exchange delisting standards as economic barriers aimed at preserving specialists' and the exchanges' trading and listing revenues. The NASD and the National Organization of Investment Professionals ("NOIP")[47] indicated that exchange market makers already trade NASDAQ stocks by becoming registered as NASDAQ market markers, and that this method of exchange-trading of OTC stocks was more pro-competitive than permitting the exchange to designate only one specialist to trade a particular OTC security (which presumably would occur if exchanges were granted UTP on OTC securities).

Finally, Herzog stated that removal of off-board trading restrictions would provide more liquidity to the market for listed securities. Similarly, the National Securities Traders Association ("NSTA")[48] argued that removal of off-board trading restrictions would restore capital in the listed market that would be diluted should exchange specialists use their limited capital to trade OTC securities pursuant to UTP.

D. Comments on Other Facilities and Procedures

The November Release also sought comment on what other facilities and procedures (*e.g.*, linkages, trade-through rules,[49] short sale regulation) should be in place as a result of, or precondition to, granting UTP in unlisted securities.

Most proponents of UTP on OTC securities believed that exchange and OTC market makers trading OTC stocks in a UTP environment should be subject to equal regulation. In this respect, exchange commentators generally were in favor of trading linkages, trade-through rules and a short sale rule[50] for OTC stocks traded on an unlisted basis.[51] In addition, the Phlx stated that the NASD should provide limit order protection to OTC stocks granted UTP comparable to exchange protections. Milton Cohen also advocated a net confirmation rule[52] and corporate governance standards for NMS Securities. The Amex stated, however, that "[notwithstanding the critical importance of achieving a consolidated reporting plan, a more even handed regulatory scheme, and a market linkage facility, these initiatives are likely to be the subject of detailed negotiation. Therefore, we do not believe that lifting of the Commission's moratorium should be delayed pending their resolution." Similarly, Justice stated that "any delay in implementing unlisted trading privileges is a 'cost' that should be considered in deciding whether to have a comprehensive set of trade-through rules in place before unlisted trading privileges for OTC stocks are allowed."

OTC commentators argued that certain market structures should be changed if UTP is granted on OTC securities. NOIP argued that trading OTC stocks through the ITS/CAES linkage "would not provide an adequate facility for the bulk of NASDAQ trading" and "the imposition of the cumbersome ITS 'trade-through'

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[44] The NYSE argued that the Commission has historically limited the question of the removal of off-board trading restrictions to the stocks upon which UTP was requested and that Rule 19c–3 already delineates the Commission's regulatory determination of the category of stocks for which off-boerd trading restrictions are not to apply.

[45] *See also* Letter from Peter B. Madoff, to John Wheeler, Secretary, SEC, dated January 31, 1985.

[46] NYSE Rule 500 provides that the NYSE will not approve an issuer application for delisting unless the proposed withdrawal is approved at a meeting by the security holders of two thirds of the company's outstanding securities and is not objected to by 10% of the individual shareholders.

[47] *See* Letter from Aimee E. Girard, Chairman, NOIP, to John P. Wheeler, Secretary, SEC, dated April 29, 1985.

[48] *See* Letter from Morton N. Weiss, President, NSTA, to Shirely E. Hollis, Acting Secretary, SEC, dated January 28, 1985.

[49] A "trade-through" occurs when an execution occurs in one market at a price inferior to a quotation displayed in another market. The ITS participants have enacted rules remedying trade-throughs in stocks subject to ITS trading. *See* Securities Exchange Act Release No. 17704 (April 9, 1981), 46 FR 22520 (exchange trade-through rules); Securities Exchange Act Release No. 19249 (November 17, 1982), 47 FR 53552 (NASD trade-through rules).

[50] The Amex argued that exchanges should be exempt from the short sale rule with respect to OTC stocks traded on an unlisted basis until OTC market makers are made subject to the rule.

[51] Justice urged that the costs and benefits of these rules and facilities be closely studied before being implemented.

[52] The Amex also advocated that "OTC market makers should be required to conform their confirmation disclosure procedures to those of the listed market." In a separate release, the Commission has solicited comment on whether a confirmation disclosure requirement of this nature should be required for transactions in NMS Securities. *See* Securities Exchange Act Release No. 21708 (February 4, 1985), 50 FR 5786. The Commission approved this proposal. *See* Securities Exchange Act Release No. 22397 (September 11, 1985).

complaint resolution procedure would seriously disrupt today's NASDAQ marketplace." Madoff also stated that the OTC market does not have equal access to the exchange market via the ITS/CAES interface because "CAES markets in ITS are firm and automatically executed for the displayed size shown" while ITS exchange participants "may accept or reject commitments after reviewing them." [53]

IV. Discussion

Section 11A of the Act mandates the establishment of a national market system and cites one objective of that system to be "fair competition . . . between exchange markets and markets other than exchange markets."[54] Moreover, specific provisions of the Act empower the Commission to facilitate concurrent exchange and OTC competition in listed and unlisted securities.[55] With respect to unlisted securities, section 12(f) of the Act authorizes the Commission to grant exchanges the privilege of trading OTC securities on an unlisted basis if certain conditions are met; however, the Commission has generally deferred granting UTP on these stocks pending progress on the national market system.[56]

A. Section 12(f)(2)

Section 12(f)(2) of the Act requires that the Commission, prior to granting UTP for any security, must find that the grant is consistent with the maintenance of fair and orderly markets and the protection of investors. Before granting a UTP application in an OTC stock, the Commission must also consider, among other matters, the "public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system."[57]

After considering the comments, developments in the market, and progress made on the national market system to date, the Commission believes that it is now appropriate to commence exercising its section 12(f) authority to grant UTP on NMS Securities on a limited basis. The Commission believes that the increased competition resulting from OTC/UTP can result in significant benefits to the market and public investors generally. Initially, the Commission acknowledges the current limitations on fully effective intermarket competition resulting from present order routing procedures, the ability of integrated OTC market makers to internalize customer order flow in NMS Securities, and the absence of a complete and efficient linkage system between the listed and OTC markets. Nevertheless, the Commission anticipates that exchanges trading OTC/UTP securities will be able to compete at least in the manner that regional exchanges presently compete with the primary exchanges. For example, the Commission would expect that the exchanges would be able to employ their existing small order execution systems in competition with SOES and other OTC market maker systems. Similarly, brokers and specialists on the exchanges can be expected to offer their services in putting together and executing block transactions in OTC/UTP securities. Finally, the exchanges will provide auction market alternatives for persons wishing to trade in OTC/UTP securities, including a repository for limit orders. In this connection, some exchange specialists may offer public limit orders protection against inferior executions occurring in other markets (similar to the primary market protection offered by regional specialists in listed stocks), a service not generally available for OTC stocks.

In addition to the significant potential benefits which may be obtained, the Commission finds that the grant of OTC/UTP for NMS Securities is consistent with the maintenance of fair and orderly markets, the protection of investors, and the standards of section 12(f)(2). These standards are:

1. Public Trading Activity and Character of Trading

In order to ensure that the grant of UTP for OTC securities will not adversely affect the markets for OTC/UTP securities, the Commission has carefully examined the public trading activity and character of such trading for NMS Securities. The Commission believes that the prudent approach is to grant UTP initially on only a limited number of NMS Securities. The Commission foresees the same benefits deriving from the grant of UTP on all NMS Securities regardless of whether they were designated pursuant to the Tier 1 or 2 criteria of the NMS Securities Rule. Congress clearly anticipated that actively traded securities, such as NMS Securities, would most benefit from the increased competition associated with a national market system.[58]

2. Impact of OTC/UPT on Existing Markets

The NASD has argued that OTC/UTP could eliminate or reduce OTC market making activity and thus reduce competition, citing the example of the drop in OTC trading of securities that have moved from the OTC market to list on an exchange. The NASD and other commentators also argued that permitting exchanges to trade OTC securities will increase market fragmentation and investor confusion.

The legislative history of the 1975 Amendments makes clear that insuring any market's existing share of trading volume is not a relevant factor in determining whether to grant UTP.[59] Rather, the Commission must determine whether the grant of UTP for an OTC security will adversely affect the quality of the market for that security. The Commission does not believe that the grant of OTC/UTP will have a major structural effect on the OTC market. NMS stocks are presently traded by an average of 9.75 market makers. Thus, by its very nature the trading in NMS Securities is already dispersed and heavily dependent upon the availability of quotation and transaction information and market maker competition to ensure market efficiency.[60] The addition of one or more exchange markets should increase market competition without substantially changing the structural trading environment for NMS Securities.

The Commission also does not believe that the trading experience with OTC

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[53] In contrast, the Amex believed that it was unfair that "third market makers now may choose whether to participate in the linkage, where a choice to participate means being subject to ITS rules." The Amex also stated that because "the OTC market itself is not linked—since third market makers have no linked means of dealing with one another, linkage with exchange markets is even more difficult to achieve."

[54] Section 11A(a)(1)(C)(ii).

[55] *See supra* note 16 for a description of Commission action in this area with respect to fostering competition for listed securities.

[56] *But see* PRI exception, *supra* note 8.

[57] The Commission must also consider the existence of off-board trading restrictions. *See supra* note 7.

[58] *See* Senate Report, *supra* note 6 at 7.

[59] A major purpose of the 1975 Amendments was to foster greater competition among and between the elements of the nation's securities markets. The Senate Report stated that a prime objective of the Amendments was to "enhance competition and to allow economic forces, interacting within a fair regulatory field, to arrive at appropriate variations in practices and services." Accordingly, Congress desired that competition determine who receives order flow. Senate Report, *supra* note 6 at 8.

[60] While the multiple dealer nature of the OTC market results in some fragmentation, Gordon S. Macklin, the President of the NASD, cites the OTC market's key virtue as being "the liquidity that comes from multi-market makers, and the sponsorship function." NASDAQ—A Euromoney Survey, March 1985, p. 11.

securities traded on a UTP basis necessarily will be the same as the experience with securities that become listed on an exchange. While the Commission acknowledges the effect that order routing decisions had on the ability of OTC market makers to compete in Rule 19c–3 securities, the Commission believes that it is less likely that firms will choose to cease their market making activities and route all orders to an exchange floor absent an issuer listing decision. In this regard, the Commission notes that, for the small number of securities for which the exchanges previously have been granted OTC/UTP pursuant to the PRI exception, the exchanges have received a smaller portion of the order flow over time.[61] Moreover, in each of these cases the exchanges had pre-established markets in the securities prior to the grant of OTC/UTP (as a result of the securities' previous listing on the exchange).[62]

Particularly to the extent UTP on OTC securities is sought by the regional securities exchanges,[63] the Commission views the principal effect of granting OTC/UTP to be the addition of one or more new market makers in an existing multiple market maker environment.

The Commission recognizes the absence of extensive empirical experience with respect to the effects of granting UTP on OTC securities; in particular, there has not been any experience with UTP on OTC stocks by a primary exchange. For this reason, as well as to ensure that concurrent exchange and OTC trading in NMS Securities occurs in a manner consistent with the goals of the developing NMS,[64] the Commission intends to exercise the same degree of caution in granting OTC/UTP as it has exercised in implementing last sale reporting in the OTC market and move forward on an incremental basis.

As an initial step in the phase-in of OTC/UTP, the Commission intends to grant each applicant exchange UTP on up to 25 NMS Securities chosen by the exchange.[65] The limitation to 25 securities both will permit an orderly, controlled phase-in of OTC/UTP and will allow the Commission and self-regulatory organizations to monitor the effects of UTP on the subject securities. No later than a year following the commencement of OTC/UTP trading, the Commission's staff will review and report to the Commission the impact of exchange trading of NMS Securities.

The Commission believes it is preferable to allow the exchanges to select which 25 NMS Securities on which to have UTP, rather than specifying a list of 25 eligible securities. This affords the exchanges the flexibility to experiment and to make selections that they believe will maximize their competitive position within the initial phase of OTC/UTP trading. If in the future the Commission's monitoring program finds that UTP has resulted in effects consistent with the section 12(f) standards, and subject to the conditions described below, the Commission believes it will be appropriate to grant requesting exchanges UTP on additional NMS Securities.

The Commission recognizes the concern expressed by Planters National Bank and the NAOTC that UTP might reduce the ability of an issuer to ensure the quality of the trading market for its securities. For the reasons described above, however, the Commission has determined that UTP should enhance the quality of the markets for OTC securities. The Commission also notes that the Securities Industry Study,[66] which immediately preceded the 1975 Amendments, took an unequivocal position on this matter by stating that "[t]he proposition that the issuer of a security has a right to limit the markets in which investors can trade its securities finds no support either in past practices in the securities markets or in Congressional or SEC policy." The Study further stated that restricting trading to a single market is not a prerogative of corporate management, which has no legitimate interest in restricting the trading opportunities of investors who have acquired a company's shares."[67] The Senate Report stated that

> in the context of a national market system, there is little or no justification for an issuer to deprive securities holders of the advantages of exchange trading. The protections inherent in exchange-type trading should be afforded to investors in all securities with suitable trading characteristics and should not be dependent upon the decision of corporate management to list.[68]

Accordingly, the Commission does not believe that exchanges should be denied UTP in OTC securities simply because issuers of those securities have not themselves sought exchange listing.[69] The Commission, of course, will consider an issuer's unique and particularized arguments regarding why OTC/UTP should not be granted on that issuer's security.

3. Desirability of Removing Impediments to and the Progress That has Been Made Toward the Development of an NMS

The Commission believes that sufficient progress has been made on the NMS to justify the grant of OTC/UTP on at least a limited number of NMS Securities. Indeed, the Commission believes that granting UTP on NMS Securities at this time is a significant developmental step in the NMS.

The Senate Report, citing the Securities Industry Study, concluded that "the ability of individual firms as well as the various exchange and over-the-counter markets to compete with one another will be a critical element in the successful functioning of the national market system."[70]

The Commission also believes that the matters, referred to in the NMS Securities Release as key to a decision in this area, have now been adequately evaluated. Those matters were "(1) the effects of transaction reporting on NMS Securities; (2) the effects of an

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[61] For example, PRI was traded by the PSE on an OTC/UTP basis from June 23, 1977 until the security was listed on the NYSE on December 5, 1983. In 1979, the PSE traded 740,200 shares of PRI and the OTC market traded 803,800 shares. In 1980, the PSE traded 694,100 shares and the OTC market 1.7 million shares; in 1981, the PSE traded 509,200 shares and the OTC market 1.8 million shares; and in 1982, the PSE traded 266,400 shares and the OTC market traded 830,700 shares.

[62] It would also be entirely consistent with the Act's objective of increased competition for an exchange to receive substantial order flow in an NMS Security as a result of its superior quotations, depth, or execution services.

[63] As noted at the outset, to date, only the MSE, BSE and CSE have filed applications for OTC/UTP, although the PSE and Phlx, as well as one primary exchange—the Amex—have submitted comments supporting extending exchanges OTC/UTP.

[64] *See* Section IV. A. 3. *infra*

[65] Accordingly, the Commission requests the MSE and CSE to consider which NMS Securities they desire to trade, if any, and submit new applications which supersede their earlier applications for UTP on various NMS Securities.

[66] Senate Subcomm. on Banking, Housing & Urb. Affs., Securities Industry Study, S. Doc. No. 13, 93rd Cong., 1st Sess. 120 (1973) ("Securities Industry Study").

[67] *See also Ludlow Corp.* v. *SEC*, 604 F.2d 704 (D.C. Cir. 1979) (Court upheld Commission's decision to grant UTP in a listed stock over the issuer's objection).

[68] Senate Report, *supra* note 6, at 19.

[69] The Commission recognizes that an issuer may have a greater interest than other members of the public concerning the effects of UTP on its stock. In recognition of this, section 12(f)(4) of the Act provides that an issuer, or any other person with a bona fide interest, can petition the Commission to suspend or terminate UTP.

[70] Senate Report, *supra* note 6, at 13. The U.S. Court of Appeals for the District of Columbia noted that competition among markets is an objective of a national market system, and explained that unlisted trading, in turn, "is an indispensable part of Congress' plan that securities markets compete with another." *Ludlow Corp.* v. *SEC*, *supra* note 67, at 709.

automated interface between the enhanced NASDAQ facilities and the ITS; and (3) the effects of trading exchange-traded securities in an environment free of off-board trading restrictions."[71]

a. *Transaction reporting of NMS Securities.* The Commission has consistently indicated that timely and accurate consolidated trade reporting is critical to support concurrent OTC and exchange trading of the same securities.[72] Without such reporting the proliferation of markets could impair pricing efficiency and create investor confusion. For this reason, the Commission determined that the experience with trade reporting in NMS stocks should be evaluated prior to any change in policy regarding OTC/UTP.

The Commission continues to believe that trade reporting for NMS Securities enhances pricing efficiency and opportunities for improved execution of customer orders. Moreover, comprehensive monitoring of OTC trading indicates that last sale reporting has not had an adverse effect on the markets for NMS Securities.[73]

The vast majority of issuers whose securities are eligible for NMS designation pursuant to the Tier 2 criteria have elected such designation for their securities. In addition, OTC market makers, who historically have had serious reservations about last sale reporting, widely believe that last sale reporting in the OTC market is beneficial and should be extended.[74] The benefits of NMS Securities last sale reporting have thus been achieved without any negative impact on the liquidity of the OTC market.[75] Finally, the Commission does not believe that extension of UTP in NMS Securities to exchanges will have any adverse impact on the quality of transaction reporting in those securities, so long as exchange and OTC transactions in the subject securities are reported in a consolidated system, as discussed in Section IV. C., *infra.*

b. *Effects of the ITS/CAES interface and experience with Rule 19c–3 trading.* Section 11A(a)(1)(D) of the Act [76] cites as an objective of the NMS the linking of "all markets for qualified securities through communication and data processing facilities." The Commission noted in the Rule 19c–3 Monitoring Report that an impediment to effective OTC trading in Rule 19c–3 securities was the lack of a trading linkage between the OTC and exchange markets. Accordingly, on April 21, 1981, the Commission directed the establishment of an automated interface between ITS and CAES.[77] In mandating the linkage, the Commission reaffirmed its finding that it had not identified any adverse effects of Rule 19c–3 trading. After further Commission action to effect changes in the plan governing operation of the ITS to allow for implementation of the linkage,[78] the linkage became operational on May 27, 1982. Today all Rule 19c–3 securities are eligible to be traded through the linkage. Currently, there are over 900 Rule 19c–3 securities.

While linkage trading and overall OTC trading in Rule 19c–3 securities has been modest, the Commission has had an opportunity to see that concurrent OTC and exchange trading is feasible. While, as commentators indicated, regional exchanges have not been able to attract substantial order flow through ITS, ITS does permit more efficient lay-offs by market makers of order imbalances and reduces the number of trade-throughs. Moreover, the OTC market has had the opportunity to adjust to the presence of a trade-through rule.

The Commission believes that the experience with OTC and exchange trading of listed stocks indicates that an operational linkage exists which could be used for concurrent trading of OTC stocks pursuant to UTP. Although the Commission is not conditioning the grant of OTC/UTP on the requirement that OTC/UTP stocks be traded through a computerized linkage system,[79] the Commission notes that these securities would become Rule 19c–3 securities and thus candidates for inclusion in the ITS/CAES interface.

B. Off-Board Trading Restrictions

A basic condition for granting UTP on NMS Securities is that exchange off-board trading restrictions not limit competition in the subject securities. In this regard, the Commission recognizes that exchange off-board trading restrictions will not apply to these securities because of the operation of Rule 19c–3; that is, any NMS Security that is granted UTP becomes a Rule 19c–3 security, and therefore is not subject to off-board principal restrictions.

The Commission, however, recognizes the broader relationship between OTC/UTP and off-board trading restrictions. Thus, permitting exchanges to trade all NMS Securities pursuant to UTP while they continue to restrict their members from trading listed securities off-board might have an adverse competitive effect on OTC market makers. In light of the statutory goal to ensure "fair competition" among exchange and OTC markets, analysis of whether sufficient progress has occurred in the development of an NMS to support OTC/UTP must take into account the continuing existence of exchange off-board trading restrictions.

The Commission notes, however, that while the lifting of off-board trading restrictions and the grant of OTC/UTP are related, they each involve separate analysis. Commentators have long raised concerns over the fragmentation of centralized exchange markets, concerns which are not equally applicable to the determination to grant OTC/UTP. In addition, Rule 19c–3 has removed off-board trading restrictions for a continually increasing number of listed securities. The Commission does not believe that the question of the general lifting of off-board trading restrictions requires the delay of the initial grant of UTP on 25 OTC securities per exchange; the Commission, however, is specifically reserving the question of the appropriateness of further lifting exchange off-board trading restrictions until the Commission determines to grant additional OTC/UTP.[80]

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[71] NMS Securities Release, *supra* note 11, 46 FR at 14004.

[72] For example, the Commission permitted only reported securities to be Rule 19c–3 securities. Indeed, the existence of last sale reporting for PRI stock was a major factor leading to the Commission's granting OTC/UTP in PRI. The Commission stated that such reporting "should militate against market fragmentation or the development of hidden markets in PRI common stock."

[73] For a discussion of the NASD's monitoring of Tier 1 securities and initial Tier 2 securities, see *NASDAQ News*, Vol. 8, No. 1, May 1983 at 1.

[74] The NMS Securities Amendments Release noted that the NASD and the "vast majority of OTC market participants fully supported the proposed amendments to the Rule" and "felt that last sale reporting has benefited securities already designated and that Tier 2 should be extended to National List stocks." NMS Securities Amendments Release, *supra* note 1, 50 FR at 732.

[75] As discussed below, the Commission has determined that consolidated reporting should be a precondition to granting OTC/UTP. *See* discussion accompanying notes 81 and 88, *infra.*

[76] 15 U.S.C. 78k–1(a)(1)(D).

[77] *See* Linkage Order, *supra* note 17.

[78] *See* Securities Exchange Act Release No. 18713 (May 9, 1982), 47 FR 20413.

[79] *See* discussion accompanying notes 89 through 93, *infra.*

[80] The Commission will also review separately the present limitations the NYSE places on companies wishing to delist. The Commission notes, however, that significant differences remain between the corporate governance requirements of the NYSE and NASDAQ which may justify different delisting criteria.

C. Consolidated Quotation and Transaction Reporting

In the few instances that the Commission has granted UTP on OTC securities,[81] the Commission has considered the existence of quotation and last sale reporting in these securities as a major factor for granting UTP. Although OTC transaction and quotation reporting were not effected on a consolidated basis in these securities, the Commission deemed this acceptable due to extremely limited number of OTC securities affected by the PRI exception. The Commission, however, does not view the absence of consolidated reporting as acceptable for a more general grant of OTC/UTP.

The Commission believes that consolidated transaction and quotation reporting of multiple traded securities is necessary to ensure market efficiency and to avoid investor confusion. Indeed, the need for a composite transaction reporting system was identified as early as 1971 [82] and the need for such a system for quotations as early as 1972.[83] The Securities Industry Study stated that "[t]he creation of a central market system necessarily envisions a composite system for reporting current quotations, as well as past transactions, so that persons with orders to be executed can take those orders to the market where the best price is available." [84] In mandating the implementation of an NMS, Congress stated that "communications systems designed to provide automated dissemination of last sale and quotation information with respect to securities will form the heart of the national market system"[85] and provided the Commission unequivocal authority to foster the implementation of a composite tape and quotation system.[86] Accordingly, Section 11A(a)(1)(C)(iii) of the Act cites as one objective of an NMS "the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities." In light of the importance of consolidated transaction and quotation reporting, the Commission believes that such reporting for OTC/UTP securities is essential to ensure fair competition, reduce fragmentation, and facilitate regulatory surveillance of concurrent exchange and OTC trading of OTC/UTP securities.

The Commission concurs with the Amex, MSE, and PSE that reporting should be consolidated pursuant to a joint industry plan. The Commission believes that the NASDAQ system (rather than the consolidated system operated by the CTA for listed securities) is the appropriate system through which trade reporting should occur for securities subject to OTC/UTP. In this regard, the NASD has made significant investments in its quotation and last sale reporting facilities for consolidating quotation and last sale information in NMS Securities. The Commission can identify no policy reason to shift OTC/UTP securities out of NASDAQ, at least until it becomes clear that exchanges are attracting a significant percentage of the trading volume in those securities. The Commission also believes that NASDAQ, Inc. is qualified to serve as the securities information processor for exchange and OTC quotations and last sale reports in NMS Securities granted UTP, similar to the role the Securities Industry Automation Corporation ("SIAC") plays on behalf of the CQ Association and the CTA in processing exchange and third market quotation and last sale reports in listed securities.[87]

The Commission emphasizes that it is the exchange itself, and not a particular market maker or specialist on an exchange, which will be receiving the grant of UTP. Accordingly, the Commission expects that the consolidated NASDAQ system will identify the quotation as that of the exchange, and not any particular member at the exchange. In addition, while the details of such a joint plan remain to be determined, the Commission does not believe that exchange specialists must become registered NASDAQ market makers and, accordingly, subject to the panoply of NASDAQ membership requirements, to trade NMS Securities and have their quotations and transaction reports disseminated through NASDAQ facilities.

The CTA Plan currently permits securities traded on a UTP basis to be "eligible securities" if they substantially meet NYSE or Amex listing requirements, this provision would unnecessarily force stocks primarily traded in the OTC market to be reported outside of NASDAQ reporting facilities. The Commission believes that the CTA Plan should be amended or reinterpreted so that it will not apply to unlisted OTC stocks traded by exchanges. The Commission also is conditioning OTC/UTP so that such grant is effective only with respect to NMS Securities and is withdrawn if and when an NMS Security loses its status as an NMS Security for any reason, including its becoming CTA reported.[88]

Accordingly, the NASD and an exchange that has submitted an application for OTC/UTP, or submits an application within the next 30 days, must jointly submit a new plan for reporting NMS Securities that are UTP securities. Such a plan must be consistent with Rule 11Aa3–2, and must include provisions for fair voting rights and revenue sharing among participants. The Commission expects the NASD and participating exchanges to submit a plan to the Commission by December 1, 1985 so that UTP can be granted on the initial group of NMS Securities by January 1, 1986.

3. Market Access, Linkages and Trade-Through Rules

The Commission believes that OTC and exchange market makers trading the same NMS Securities must have access, at a minimum, to one another's market via telephone. Accordingly, the Commission has determined to condition the grant of OTC/UTP to an exchange on the exchange's providing NASDAQ market makers access to the exchange market in the subject securities to the same extent that NASDAQ market makers provide access to their OTC trading facilities.[89]

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[81] *See supra* note 8.

[82] *See* SEC, Institutional Investor Study Report, H.R. Doc. No. 92–64, 92nd Cong., 1st Sess. (1971).

[83] *See* SEC, Future Structure of the Securities Markets, 37 FR 5286 (February 2, 1972).

[84] Securities Industry Study, *supra* note 66, at 101.

[85] Senate Report, *supra* note 6, at 9.

[86] Prior to the 1975 Amendments, the primary exchanges and several vendors of securities' information had questioned the Commission's authority to adopt Rule 17a–15, the consolidated reporting rule. Thereafter Congress clarified the Commission's authority in 1975.

With respect to quotation reporting, the Commission exercised its Section 11A authority in adopting Rule 11Acl–1, 17 CFR 240.11Ac1–1 ("Firm Quotation Rule") [Securities Exchange Act Release No. 14415 (January 26, 1978), 43 FR 4343]. In adopting the rule, the Commission was convinced that "the availability of firm quotations for reported securities, with size, from all market centers, is of considerable value to the markets generally and to participants in those markets especially in the context of an evolving national market system."

[87] *See* OTC/Exchange-Traded NMS Securities Adoption Release, *supra* note 3.

[88] This result appears particularly disruptive in light of the fact that a CTA reported security will lose its CTA eligibility if, among other things, "during the immediately preceding twelve-month period less than 25% of the transactions in that security . . . have been executed on national securities exchanges." Thus a security might first be forced off one year later if no substantial exchange trading develops.

[89] Of course, such access would be limited to transactions only in securities for which OTC/UTP has been granted, and not all securities traded on the exchange. *See also* OTC/Exchange-Traded NMS Securities Adoption Release, *supra* note 3.

In this regard, the Commission expects that NASDAQ market makers will provide exchange members fair and efficient access to the OTC market; if the Commission becomes aware of any limitation on such access, it will take prompt remedial action.

The Commission does not believe that a more sophisticated intermarket trading linkage, accompanied by trade-through rules,[90] need be in place during the initial stages of trading OTC/UTP securities. The Commission, however, encourages the NASD and exchanges to forge promptly their own initiatives in facilitating computerized intermarket trading linkages and trade-through rules for these securities. Indeed, as many commentators noted, the existing ITS/CAES interface might be a cost-effective linkage for trading OTC/UTP securities. In addition to industry initiatives in this area, the Commission, as part of its monitoring of the initial grant of OTC/UTP, will be separately considering whether linkages and trade-through rules should apply to OTC securities and will consider whether or not the existence of linkages and trade-through rules for this market are necessary prior to further grants of UTP on NMS Securities.[91] During the monitoring period, the Commission also will be examining whether any other facilities and rules are necessary to ensure that the competition among OTC and exchange market makers is fair. In this connection, the Commission notes that the NASD and certain OTC market makers have expressed concern that their inability to immediately execute against the exchange quotations substantially reduces the efficiency of ITS and competitively disadvantages CAES market makers.[92] The Commission believes that the relevant exchanges and the NASD should consider providing an automatic execution capability for all markets trading in OTC/UTP securities.[93]

4. Short Sale Regulation

As commentators indicated, the Commission's short sale rule, Rule 10a–1,[94] would apply in its present form to both exchange and OTC markets once NMS Securities are traded by exchanges on a UTP basis.[95] Because the Commission is uncertain of the impact of the short sale rule on NMS Securities, which historically have not been subject to the rule, the Commission previously has issued a release seeking comment on the general issue of extending the short sale rule to the OTC market.[96] The Commission today has issued a release proposing amendments to Rule 10a–1 to exempt exchange and OTC market makers from short sale prohibitions with respect to NMS Securities.[97] If adopted, the amendments will assure that all market participants are subject to equal regulation and will provide time for the Commission to consider the longer-range applicability of uniform short-sale regulation with respect to NMS Securities.

IV. Conclusion

In summary, the Commission announces its policy to extend UTP to applicant exchanges in certain OTC securities subject to the following terms and conditions. First, each applicant exchange may be granted UTP on up to 25 NMS Securities. Second, a grant of OTC/UTP is conditioned on the Commission approving a plan agreed upon by the NASD and applicant exchanges consolidating OTC and exchange quotations and transaction reports in OTC/UTP securities through NASD facilities. Such a plan must be submitted by December 1, 1985 so that it can be implemented by January 1, 1986.

Third, a grant of OTC/UTP is further conditioned on applicant exchanges not applying their off-board trading restrictions to OTC/UTP securities.[98] A final condition to a grant of OTC/UTP is that exchange and NASDAQ market makers provide comparable telephonic access to each other's market.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Authority: Secs. 6, 11A, 12(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78f, 78k, 78l).

Dated: September 16, 1985.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85–22698 Filed 9–23–85; 8:45 am]

BILLING CODE 8010-01

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[90] Despite the absence of a formal linkage, the Commission would note that exchange specialists and OTC market makers are still subject to fiduciary obligations to seek best execution for their customers' orders and to comply with the Firm Quotation Rule. Although that rule provides for voluntary quotation dissemination, those who disseminate quotations are subject to the rule's mandatory provisions.

[91] In a separate but related matter, the Commission has issued a release soliciting comment on whether NMS Securities should be included in further NMS initiatives and whether exchange listed securities should be designated as NMS Securities. *See* Securities Exchange Act Release No. 22127 (June 21, 1985), 50 FR 26564 ("NMS Concept Release").

[92] The Commission recognizes the technical difficulties in operating a linkage between exchange and OTC markets. For example, coordinated openings would be difficult to accomplish due to the large number of OTC market makers and the fact that most are currently unlinked except for phone access.

[93] The Commission will monitor the respective market shares received by exchange and OTC markets in the initial group of OTC/UTP securities and evaluate whether any inappropriate impediments create an order flow diversion. To remove any inappropriate impediments found, the Commission will consider whether any structural changes should be implemented such as an introduction of a neutral order routing system.

[94] 17 CFR 240.10a–1.

[95] Specifically, paragraph (a)(1) of the short sale rule applies short sale prohibitions to any person effecting "a short sale of any security registered on, or admitted to unlisted trading privileges on, a national securities exchange, if trades in such security are reported pursuant to an effective transaction reporting plan."

[96] *See* NMS Concepts Release, *supra* note 91, 50 FR at 26586–87.

[97] 1985 Rule 10a–1 Proposal Release, *supra* note 2

[98] Off-board trading restrictions generally will not apply to OTC/UTP securities because they are Rule 19c-3 securities.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

[T.D. 85–160]

Tariff Classification of Certain Imported Continuous Cast Iron Bars; Decision on Domestic Interested Party Petition

AGENCY: Customs Service, Treasury.

ACTION: Decision concerning a domestic interested party petition.

SUMMARY: Customs has completed review of a petition filed by a domestic interested party seeking reclassification of certain imported continuous cast-iron bars. The bars are currently classified under a duty-free tariff provision for cast-iron articles which are not alloyed, not malleable, and not specially provided for elsewhere in the tariff schedules. The petitioner seeks reclassification under the dutiable provision for iron blooms and billets. Following review of the petition, consideration of the comments received in response to notice of receipt of the petition, and further study of the matter, Customs has concluded that the iron bars are properly classified in a dutiable provision for articles of iron or steel which are not provided for specially.

DATE: This document will be effective with respect to merchandise entered, or withdrawn from warehouse, for consumption on or after 30 days from the date of publication in the *Customs*

Bulletin, published on October 2, 1985. Accordingly, the change is effective November 1, 1985.

FOR FURTHER INFORMATION CONTACT: James C. Hill, Classification & Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229, (202) 566–8181.

SUPPLEMENTARY INFORMATION:

Background

On July 17, 1984, a notice was published in the **Federal Regiser** (49 FR 28884), advising the public that Customs had received a petition from a domestic interested party filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), requesting that imported continuous cast iron bars be reclassified under item 606.67, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), the provision for iron blooms and billets. Merchandise classified under this provision is dutiable at the 1985 column 1 rate of 4.8 percent ad valorem. Such merchandise does not qualify under the Generalized System of Preferences (GSP), a program established by statute whereby certain specified merchandise arriving from certain named countries may be entered free of Customs duties. See 19 U.S.C. 2641–2465 and §§ 10.171–10.178, Customs Regulations (19 CFR 10.171–10–178).

The merchandise consists of metal products which are circular and rectangular in cross section, which meet the dimensional criteria for "blooms and billets" as defined in Headnote 3(b), Subpart B, Part 2, Schedule 6, TSUS, which are not made of malleable iron and, which, therefore, do not meet the definition for steel in Headnote 2(g) of that same TSUS subpart. The merchandise is described in exhibits submitted with the petition as cast on horizontal machines on which the cross-sectional shapes are formed by a water cooled graphite die mounted on the side of a holding crucible. The bar is drawn from the die by short pulls with intermediate delays. Static pressure is exerted from the crucible bath, and after the outer shell leaves the die in solid form it is reheated by its internal molten core thereby becoming self-annealed. The resulting product is fine grained with good machining characteristics. The petitioner questioned whether iron products which are made by a continuous casting method and meet the dimensional requirements for blooms or billets may be properly regarded as semifinished articles.

Analysis of Comment and Discussion of Issues

The only submission received in response to the July 17, 1984, notice was filed on behalf of an importer of continuous cast iron products from the GSP qualifying country. The submission, which expressed oppositon to the petition, states that continuous cast iron products are not semifinished, and, therefore, not within the definition for blooms and billets in Headnote 3(b), Subpart B, Part 2, Schedule 6, TSUS, because they emerge from the continuous casting process in which they are formed without the need for further forming operations or heat treatments. It is also stated that the term "semifinished" as used in the TSUS means that further rolling, working, forging or heat treatments are required on semifinished articles in their condition as imported, that this concept of what semifinished meant at the time of enactment of the TSUS reflected trade practices, and that the farmers of the TSUS intended to incorporate trade practices in TSUS definitions. Authorities cited were the *Tariff Classification Study, Explanatory Materials*, C.I.E. 1/64, Vol. 2, p. 419, and the *Metallurgical Dictionary*, by J. G. Henderson (1953), pp. 311 and 313. Also cited was the *Explanatory Notes to the Brussels Nomenclature*, Vol. 2, p. 997 (1966 ed.).

We have examined the cited sources and have determined that the concept of what is semifinished under the TSUS requires consideration of what must be done to merchandise after importation. It also requires consideration of what was done to merchandise before importation, between the time of casting and the processing after importation which will produce the article or material in finished form. See the definition in Headnote 2(b), Subpart A, Part 2, Schedule 6, in which the TSUS, while not defining "semifinished," defines the similar term "semimanufactured" in terms of merchandise which has been worked before importation. See also *United States v. Kanthal Corporation*, 64 CCPA 89, C.A.D. 1188 (1977), cited in the submission opposing the petition.

We find that the foregoing authorities are not only persuasive of the argument that semifinished products only encompass "primary mill products" which must be subjected to further processing, as stated in the submission opposing the petition. They also indicate that unworked castings are excluded. The merchandise in question fails to meet both considerations by its lack of working or treatment after the casting-extrusion forming process before as well as after importation.

The petitioner counters this conclusion by citing legal note 1(ij), chapter 72, of the draft *Conversion of the Tariff Schedules of the United States Annotated into the Nonmenclature Structure of the Harmonized System* in which "continuous cast products are included under the heading for "Semi-finished products." This reference, however, is to steel products, as well as iron products, and presupposes that some of them will undergo further processing even though formed by continuous casting. In this connection, while *The Making, Shaping and Treating of Steel*, United States Steel Corporation (9th ed., 1971), p. 706, and the *Summaries of Trade and Tariff Information*, Schedule 6, Vol. 4, p. 78 (1967), are cited in the comment opposing the petition for the purpose of showing that the continuous casting of steel eliminates the ingot and primary-mill stages of production, that advantage of continuous casting is only shown as a "possibility." In any case, the *Harmonized System* is not legislative history for the TSUS nor otherwise recognized as a valid extrinsic aid for TSUS construction.

The issue has been raised as to the extent rules of construction relating to the tariff classification of products invented or developed subsequent to the enactment of the TSUS may be applicable in this matter. The petition and opposing comment indicate the continuous casting process was developed subsequent to enactment of the TSUS. Authorities more or less contemporaneous with enactment of the TSUS show no indication that the concept of casting in any way involved a process like what is now called continuous casting, a process more like an extrusion than casting. For example, the *Metallurgical Dictionary, supra*, at p. 60, while defining "casting" in terms of several different processes, including die casting and pressure casting, nevertheless shows that even those forms of casting form articles in molds and not by an extrusion through dies. The chapter on casting in the earlier 8th edition (1964) of United States Steel Corporation's *The Making, Shaping and Treating of Steel*, pp. 1006 through 1026, also contains no indication that the casting of iron or steel involved a process in which molten metal is extruded through dies.

Aside from the fact that new articles cannot be brought within the meaning of tariff terms as they may have been expanded after enactment, new articles may only come within preexisting tariff

terms if they have the same name and uses of predecessor products, *Polaroid Corp., v. United States*, 66 Cust. Ct. 116, C.D. 4179 (1971), or if they meet the essential resemblance test. *Borneo Sumatra Trading Co. v. United States*, 64 Cust. Ct. 165, C.D. 3980 (1970). While continuous cast iron products may have metallurgical characteristics similar to ordinary cast-iron products, this resemblance does not carry through in appearance, where the latter are shaped by molding on all surfaces, while the former are always shaped by cutting on at least two surfaces.

With respect to the question of whether continuous cast iron has the same name as predecessor cast-iron products, it is well established that merchandise must be excluded from a tariff term if it can only be designated by that term by the use of a qualifier. *United States v. Sandoz Chemical Works, Inc.*, 46 CCPA 115, C.A.D. 711 (1959); *Floral Arts Studios v. United States*, 49 Cust. Ct. 43, C.D. 2359 (1962), *app'l dismissed* 50 CCPA 97 (1963). Accordingly, if *continuous* cast iron is distinguishable from cast iron, it is not encompassed under tariff provisions for cast iron.

Whether the two terms are to be distinguished, that is, the one with the qualifier and the one without, depends, in part, upon whether the term "cast iron" denotes iron of a particular type, such as grey iron, nodular iron, etc., or whether it denotes iron formed by a specific casting process using molds. Previously, there was no distinction to be made since certain types of iron were always formed by casting in molds. The same types of iron can now be produced both by casting in molds as well as by continuous casting, although it is not shown that the same quality of iron was ever produced by casting in molds without a subsequent heat treatment.

The view that, in order to have cast iron, as opposed to continuous cast iron, both specific types of iron metallurgically and iron formed by "casting in molds" are required, is suggested by the definition of "cast iron" in *Webster's Third New International Dictionary* (unabridged ed., 1971). While it may be argued that Schedule 6, TSUS, questions are controlled by trade practices rather than dictionary definitions, which only reflect common meanings, in practice, "common and commercial meanings * * * are presumed to be the same.

Merry Mary Fabrics, Inc., v. United States, 1 CIT 13, 17 (1980). Further, while the exhibits submitted in support of the petition suggest that the terms "cast iron" and "continuous cast iron" are used interchangeably, it is not shown that there are no commercial distinctions between to two. But in the final analysis, we find that the answer to the question as to whether a distinction must be made between the two lies in the TSUS itself rather than in extraneous considerations. The merchandise under consideration is excluded from the specific dutiable provision for iron bars because that provision is limited to wrought products. The merchandise under consideration, like the cast-iron products which the submission opposing the petition claims is similar, is typically unwrought. However, the TSUS, in its definition of "unwrought" in Headnote 3(a), Part 2, Schedule 6, specifically excludes extruded products.

Decision on Petition

For the foregoing reasons, we find that continuous cast iron bars constitute subsequently developed products not within the meaning of the terms describing blooms and billets in item 606.67, TSUS, or cast-iron articles in item 657.09, TSUS, as understood at the time of enactment of the TSUS, and that they are, therefore, properly classifiable under the provision for other articles of iron or steel, not specially provided for, in item 657.25, TSUS, with duty at the 1985 rate of 6.7 percent ad valorem. Accordingly, the petition is allowed to the extent it claims there was error in the previous duty-free rate for and classification of continuous cast iron bars under item 657.09, TSUS. Our ruling letter of September 14, 1982 (File No. 803624), in which classification under item 657.09, TSUS, was established, is hereby modified. The petition is also allowed to the extent it is claimed such products produced in other than GSP beneficiary developing countries are dutiable.

The petition is denied as it relates to the claim that continuous cast iron bars are classifiable and dutiable under the provision for blooms and billets in item 606.67, TSUS, and as it relates to the prevention of duty-free treatment under such claimed classification for products of beneficiary developing countries. The petitioner may further prosecute its disagreement with the duty-free rate status of continuous cast iron products produced in beneficiary developing countries under the GSP by filing a notice of intention to contest that duty-free status, as provided for in § 175.23, Customs Regulations (19 CFR 175.23), following notice of this decision. Importers adversely affected by the change in the tariff classification of continuous cast iron bars in the document must prosecute disagreements with the change under the protest procedures in Part 174, Customs Regulations (19 CFR Part 174).

Authority

This notice is published under the authority of § 516(b), Tariff Act of 1930, as amended (19 U.S.C. 1516(b)), Tariff Act of 1930, and § 175.22(a), Customs Regulations (19 CFR 175.22(a)).

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Alfred R. De Angelus,
Acting Commissioner of Customs.

Approved: August 28, 1985.

David D. Queen,
Acting Assistant Secretary of the Treasury.

[FR Doc. 85-22666 Filed 9-23-85; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

Permanent State Regulatory Program of West Virginia

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the Director's decision to extend the deadline for the State of West Virginia to submit a required amendment to its permanent regulatory program (hereinafter referred to as the West Virginia program), which the Secretary of the Interior conditionally approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). On April 23, 1985, OSM amended 30 CFR 948.16 to require that, no later than June 24, 1985, West Virginia amend its program to require that all persons responsible for the use of explosives be certified (50 FR 15889–15891). By letter dated June 24, 1985, West Virginia notified OSM that, instead of obtaining an Attorney General's opinion on the validity of a policy statement, the State would begin formal rulemaking within 60 days to provide that all surface blasting (including those operations using less than five pounds and those involving surface disturbance at underground mines) must be done in accordance with section 4C of the West

Virginia surface mining regulations which requires that all such persons be certified (Administrative Record No. WV 661). Therefore, OSM is extending the deadline for submission of the required amendment until November 26, 1985. The Federal rules at 30 CFR Part 948 codifying decisions concerning the West Virginia program are being amended to implement this action.

EFFECTIVE DATE: September 24, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background

On March 3, 1980, West Virginia submitted its proposed permanent regulatory program to the Secretary of the Interior. On October 22, 1980, following a review of the proposed program in accordance with 30 CFR Part 732, the Secretary approved it in part and disapproved it in part (45 FR 69249–69271).

West Virginia resubmitted its proposed program on December 19, 1980, which the Secretary conditionally approved on January 21, 1981. Information concerning the general background of the permanent program submission, as well as the Secretary's findings, the disposition of comments and an explanation of the initial conditions of approval of the West Virginia program, can be found in the January 21, 1981 **Federal Register** (46 FR 5915–5956).

Since then the program has been amended several times, including a September 20, 1984 amendment containing West Virginia's blaster training, examination and certification program. In approving this amendment, the Director required correction of three minor deficiencies (49 FR 36837–36840). On November 20, 1984, West Virginia submitted proposed regulations and a policy statement to resolve these deficiencies. The Director approved this amendment on April 23, 1985, but required the State, no later than June 24, 1985, to submit an Attorney General's opinion that the policy statement involved could legally override a conflicting regulation, or otherwise amend its program to achieve the same effect (50 FR 15889–15891).

By letter dated June 24, 1985, West Virginia notified OSM that it had decided to resolve the conflict by formal rulemaking through the legislative process instead of seeking the Attorney General's opinion (Administrative Record No. WV 661). The letter committed the State to begin the rulemaking process within 60 days.

The issue involves section 4C.01 of the State's approved surface mining regulations which inappropriately relates blasting plan requirements only to blasts using more than five pounds of explosives. Since section 3.01(A) of the State's blasting regulations requires certification only of blasting personnel who use explosives in accordance with the blasting plan, certain blasting operations would be exempt from the requirement of section 4C.01 that a certified blaster be responsible for all blasting operations. In addition, since section 4C.02 provides that only surface mining operations need to prepare blasting plans, surface blasting at underground mines would not be covered. Both of these provisions are less effective than the Federal regulations at 30 CFR 816.61(c) and 817.61(c), which require that all surface blasting operations be conducted under the direction of a certified blaster.

II. Public Comment

The Director solicited public comment on the proposed extension in the July 29, 1985 **Federal Register** (50 FR 30724–30725). Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), comments were also solicited from various Federal agencies.

No comments were received during the public comment period, which closed August 28, 1985.

III. Director's Determination

The Director has determined that an extension of the deadline to submit the amendment required by 30 CFR 948.16(a) is warranted because of the change in nature of the State's planned submission and because the State has promised to promptly submit the proposed regulation changes. Therefore, to allow West Virginia sufficient time to draft the proposed regulatory changes and complete the initial procedural stages of formal rulemaking, the Director is extending the amendment submission deadline until November 26, 1985.

IV. Additional Determinations

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSM is exempt from the requirement to prepare a Regulatory Impact Analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 948

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 16, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

PART 948—WEST VIRGINIA

30 CFR Part 948 is amended as follows:

1. The authority citation for Part 948 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR 948.16 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 948.16 Required program amendments.

Pursuant to 30 CFR 732.17, West Virginia is required to submit the following proposed program amendments by the dates specified:

(a) By November 26, 1985, West Virginia must submit copies of proposed regulations or otherwise propose to amend its program to provide that all surface blasting operations (including those using less than five pounds and those involving surface activities at underground mining operations) shall be

conducted under the direction of a certified blaster.

* * * * *

[FR Doc. 85-22725 Filed 9-23-85; 8:45 am]
BILLING CODE 4310-05-M

VETERANS ADMINISTRATION

38 CFR Part 19

Appeals Regulations; Rules of Practice

AGENCY: Veterans Administration.

ACTION: Final regulatory amendments; correction.

SUMMARY: This document corrects typographical errors in the rules of practice regulations which were published in the **Federal Register** of September 11, 1985, on pages 36992-36994.

EFFECTIVE DATE: October 11, 1985.

FOR FURTHER INFORMATION CONTACT: Celia Fasone, Paperwork Management and Regulations Service, (202) 389-2340.

Dated: September 18, 1985.

Nancy C. McCoy,
Chief, Directives Management Division.

§ 19.187 [Corrected]

1. On page 36993 of the **Federal Register** of September 11, 1985, third column, § 19.187, in paragraph (b) the phrase "additional evidence as it is required," should be corrected by removing the word "it".

§ 19.201 [Corrected]

2. On page 36994 of the subject issue, § 19.201, in paragraph (b) the phrase "respect to the issues or issues to which," should be corrected by making the first "issues" singular.

[FR Doc. 85-22760 Filed 9-23-85; 8:45 am]
BILLING CODE 6320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[General Docket No. 79-144; FCC 85-467]

Consideration of Biological Effects of Radiofrequency Radiation and the Potential Effects of a Reduction in the Allowable Level of Radiofrequency Radiation; Postponement of Effective Date

AGENCY: Federal Communications Commission.

SUMMARY: This Memorandum Opinion and Order postpones until January 1, 1986, the effective date of an amendment to § 1.1305 of the Commission's Rules implementing the National Environmental Policy Act of 1969 (NEPA). Under NEPA the Commission is required to consider whether its actions have a significant effect on the quality of the human environment. The amendment satisfies that requirement with respect to radiofrequency electromagnetic radiation.

EFFECTIVE DATE: The effective date of § 1.1305(d), as published at 50 FR 11151, March 20, 1985 is postponed until January 1, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:
Dr. Robert Cleveland, Office of Science and Technology, Federal Communications Commission, Washington, DC 20554, (202) 632-7040
Mr. Stephen Klitzman, Office of Congressional and Public Affairs, Federal Communications Commission, Washington, DC 20554.

Memorandum Opinion and Order

In the matter of Responsibility of the Federal Communications Commission to consider biological effects of radiofrequency radiation when authorizing the use of radiofrequency devices. Potential effects of a reduction in the allowable level of radiofrequency radiation of FCC authorized communications services and equipment. Gen. Docket No. 79-144.

Adopted: August 12, 1985.
Released: August 22, 1985.

By the Commission.

1. Before us are petitions for partial or limited reconsideration and clarification of the *Report and Order* that amended our environmental rules to provide for evaluation of human exposure to radiofrequency (RF) radiation emitted by certain Commission regulated facilities. Petitioners, National Association of Broadcasters (NAB) and TV Broadcasters All Industry Committee (the Committee) are generally supportive of the thrust of that decision, but they seek reconsideration or clarification with respect to public participation in the preparation of a technical bulletin, the content of the bulletin, the treatment of broadcasters at multiple transmitter sites, and the effective date of the rule change.[1] They also seek a Commission policy statement regarding preemption of certain nonfederal actions. This order grants reconsideration in part by changing the effective date to January 1, 1986.

Background

2. After several years of study, we concluded that our environmental processing rules implementing the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.* (1976) (NEPA), should be amended to add a new category of major action covering RF radiation.[2] We adopted as a processing guideline for evaluating environmental impact the "Radio Frequency Protection Guides" adopted by the American National Standards Institute (ANSI) in 1982.[3] In doing so, we concluded that we could indeed recognize and use as a guideline a technically sound standard put forth by a reputable and competent standard-setting organization, although we do not have the jurisdiction or the expertise to develop a standard ourselves. Based upon the record before us, we selected the ANSI standard and made it applicable as a processing guideline to several services. The new guideline will apply to radio and television broadcast stations licensed or authorized under Part 73, experimental broadcast stations and low power TV stations authorized under Subparts A & G, of Part 74, transmitting satellite earth stations authorized under Part 25, and experimental radio stations authorized under part 5.

3. Because we are relying on guidelines developed and defined by a standard-setting organization, we did not believe we should rewrite or modify those guidelines. We selected the ANSI standard in part because it does not require interpretation as to its applicability, and because the standard itself incorporates certain measurement guidelines. We then placed responsibility for demonstrating compliance with the standard on the applicant.

4. However, we recognized that the ANSI standard did not answer all

[1] Comments generally supporting the NAB petition were filed by Corporation for Public Broadcasting (CPB), GTE Corporation (GTE), and KONG-TV, Inc. Comments supporting both the NAB and the Committee's petition were filed by the Electromagnetic Energy Policy Alliance (EEPA).

[2] *Notice of Inquiry*, General Docket No. 79-144, 72 FCC 2d 482 (1979); *Notice of Proposed Rule Making*, General Docket No. 79-144, 89 FCC 2d 214 (1982); *Report and Order*, General Docket No. 79-144, 50 FR 11151 (1985).

[3] ANSI C95.1-1982 (revision of ANSI C95.1-1974). Copyright 1982 by the Institute of Electrical and Electronics Engineers, Inc., New York, NY 10017. Copies of the ANSI recommendations are available from the American National Standards Institute, 1430 Broadway, New York, NY 10018, or from Standard Sales—IEEE, 445 Hoes Lane, Piscataway, NJ 08854.

questions about determining compliance and that licensees and applicants could benefit from guidance in evaluating their facilities. We promised that the staff would develop an advisory bulletin to provide both information and guidance in this respect.

Preparation of the Bulletin

5. Petitioners have asked that we establish a process for seeking public comment about the bulletin, including comment on a draft of the bulletin. This request reflects Petitioners' concern with the impact the new processing guidelines may have on broadcasters. Petitioners point to the burden and cost applicants may bear in making an analysis of their signal levels in areas accessible to the public, and they raise concern about the possible consequences of their findings. The petitions also reflect a desire to add as much certainty into the process as possible. Thus, Petitioners argue that the bulletin is or should be more than the technical advisory document we had originally contemplated.

6. We share Petitioner's concern about minimizing the burden of compliance and about providing as much information as possible to assist in evaluating compliance. Our staff has welcomed information and suggestions from the public. As Petitioners note, the Office of Science and Technology issued a public notice on April 15, 1985, requesting technical input from the public by June 30, 1985. This request was directed to the four basic areas the bulletin will cover. These are:

(1) General information on the rule, FCC procedures, and the ANSI standard and its interpretation.

(2) Methods of predicting field intensities around typical antennas, including calculations and computer-generated curves of field strength or power density vs. distance.

(3) Information on measurement techniques and procedures, including available instrumentation and potential problems.

(4) Methods for minimizing or eliminating potential exposure problems.[4]

7. We believe that Petitioners' concern that we receive whatever technical help the public or the affected industries can give us has already been met. Since the bulletin will not establish or change policy, we do not believe that we need to go farther by creating a more formal proceeding for comment on drafts of the bulletin. The policy decision to establish a threshold for review and to base that threshold on the ANSI standard was made in the *Report and Order* and will not be modified by the bulletin. The bulletin also will not make rules or prescribe any mandatory procedures. It will provide information about ways an applicant may evaluate field intensities in areas accessible to people. For situations where predictions are appropriate, it will provide equations and other aids to make predictions as simple as possible. To this end, our staff has been working closely with the Environmental Protection Agency to translate computer models into easily read figures and tables. The bulletin also will provide as much information as possible about measurement procedures and potential problems. This should be helpful for situations where predictions may not be accurate enough or where predictions may not be appropriate. One example might be a multiple transmitter site. While the bulletin is intended to be as helpful as possible, there is no single approach to measurements that is appropriate for every situation and, thus, there is no way to eliminate the need for judgment and expertise on the part of the broadcasters or their consultants. Nor is there any way to eliminate all possibility of error in the evaluations. We expect to gain experience in this area just as broadcasters and other potential applicants will. As our knowledge increases in this quickly changing field, our staff likely will make revisions to the bulletin.

Multiple Transmitter Sites

8. NAB also requests that emitters at multiple transmitter sites be treated as single emitters, without regard to the level of signal from other sources. Then the affected broadcasters could make predictions of their signal levels rather than have to take measurements. NAB simply points to fairness to broadcasters who have either built facilities before this guidance was adopted or whose plans for new or modified facilities may be affected by other emitters already operating at the site. However, NAB doesn't provide new information to support this request for a change in the Commission's decision.

9. While we seek to be as accommodating as possible when rule changes may adversely affect existing operations, we don't believe we have the basis here for the requested change. NEPA, the statute governing our decision, applies to all applications for major actions as defined by the resulting impact on the environment from the action. NEPA does not make any distinction between applicants for facilities that share transmitter sites and applicants for facilities that do not. More important to our decision, however, is the reason we believe NEPA applies in the first place, i.e., that excessive exposure may create health risks over time. The level of RF radiation is a critical factor, not whether the level is created collectively by a group of stations at a multiple transmitter site that individually may be operating within acceptable limits. For each of these reasons, we do not believe we should reconsider our *Report and Order* to allow stations located at multiple transmitter sites to evaluate their signals without any consideration of the overall RF radiation environment.

Effective Date

10. NAB has also requested that the effective date of our new RF radiation processing guideline be postponed so that affected entities will have time for digesting the information in the bulletin before having to evaluate compliance with the new guideline. NAB recommends making the rule effective on June 1, 1986, the date television stations will begin submitting renewal applications or, in the alternative, at least 90 days after the bulletin is issued. The comments on this request are mixed, with the Committee supporting an extension if necessary, EEPA supporting an extension for 90 days, and GTE urging rapid completion of the bulletin so that an extension can be avoided.

11. We expect the bulletin to be ready by about October 1, 1985, the effective date originally established in our *Report and Order*. But, we agree with NAB that those affected by our decision should have a reasonable amount of time to study the bulletin and evaluate their situation before having to file information about compliance with us. We also share GTE's concern that delaying the effective date creates problems. We see no reason for waiting until June, 1986, before implementing our processing guidelines. Therefore, we will postpone the effective date until January 1, 1986. This is a date certain for which those affected can begin planning now, and it should allow sufficient time for analysis by affected entities.[5]

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[4] Public Notice, "FCC Seeks Technical Input Regarding Development of Bulletin on Compliance with Radiofrequency Radiation Amendment", Mimeo No. 3911, April 15, 1985.

[5] Although GTE is concerned about the vacuum resulting from the lack of a federal standard, we do not think the slight delay in implementing our processing guideline should adversely affect the public or the industries subject to the guidelines. The Commission's decision to use ANSI as a processing guideline at this time is unchanged.

Federal Preemption

12. Finally, NAB points to the problem of possible inconsistent treatment of radiofrequency exposure issues as a result of the Commission's use of ANSI and the use of other standards at the nonfederal level. NAB asks that we deal with this by issuing a policy statement setting forth our "intention to preempt arbitrary, nonfederal radiation regulations which would unduly burden electronic communications".[6] NAB also asks that we "urge" nonfederal authorities to eliminate restrictions more stringent than those from the ANSI standard. CPB and EEPA support this request. GTE supports the policy statement but acknowledges that the guidelines used by the Commission may change. KONG–TV, Inc., describes in detail the delays it has experienced in receiving a zoning permit to build its FCC authorized UHF–TV station because of zoning board actions concerning RF exposure standards.[7] None of the parties, however, has described either the legal basis for Commission preemption at this time or, from a more practical standpoint, how the policy statement would be effectively implemented.

13. As we said in the *Report and Order*, we believe that the preemption issue is beyond the scope of this proceeding. We remain concerned about nonfederal actions that may improperly affect telecommunications services, and we reaffirm our intention to consider on an ad hoc basis nonfederal RF radiation standards adversely affecting a licensee's ability to engage in FCC-authorized activities. However, we are not prepared here to define the basis for preemption or intervention.

Conclusion

14. In conclusion, we are postponing for three months the effective date of the amendment to our rules implementing NEPA with respect to assessing possible exposure to RF energy. This is an adequate balance of the need for time to study the impact of our rules and the need to begin implementation as quickly as possible.

15. However, we are not reconsidering the other points raised by the petitioners. We do not believe the implementation of our processing guidelines should be further delayed by turning the development of an advisory bulletin into a notice and comment proceeding. As noted above, our staff is already receiving substantial public input. Since the purpose of the bulletin is to provide information and facilitate analysis, not establish or modify any Commission rule or policy, this informal method of seeking input is suitable. We also do not believe that this proceeding is appropriate for addressing the question of preemptive action should any nonfederal bodies use standards more stringent than the ANSI standard we are using as a guideline in our assessments. While we do not condone arbitrary actions that adversely affect telecommunications services, we do not believe the record here is satisfactory for answering the legal and practical questions we must answer before we consider preemptive action across the board

Ordering Clauses

16. Accordingly, *it is ordered* that, pursuant to sections 4(i), 4(j), and 303(r), of the Communications Act of 1934 as amended, 47 U.S.C. 154(i), 154(j), and 303(r), the petitions for limited or partial reconsideration and clarification are granted to the extent set forth in this *Memorandum Opinion and Order*, and are otherwise denied.

17. It is further ordered that the effective date for implementing new subsection (d) to § 1.1305 of the Commission's Rules is postponed until January 1, 1986.

18. Further information on this matter may be obtained by contacting Dr. Robert Cleveland, Office of Science and Technology, (202) 632–7040 or Mr. Stephen Klitzman, Office of Congressional and Public Affairs, (202) 632–6405.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–22801 Filed 9–23–85; 8:45 am]

BILLING CODE 6712–01–M

[6] National Association of Broadcasters' Petition for Partial Reconsideration, General Docket No. 79–144, filed April 19, 1985, at 13.

[7] At the request of the Commission and with Commission assistance, the Environmental Protection Agency (EPA) recently surveyed the electromagnetic environment at Cougar Mountain, Washington, the site of the proposed KONG–TV transmitter. RF radiation levels in accessible areas were documented in order to determine whether a potential health hazard may exist at the Cougar Mountain antenna farm. The results of this study will be described in a report to be submitted by EPA to the FCC later this year.

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47 CFR Parts 1, 13, 74, 83 and 99

Verification Cards, Technical Amendments and Correction

AGENCY: Federal Communications Commission.

ACTION: Final Rule and Correction.

SUMMARY: This action eliminates the references to verification cards (former FCC Form 758–F) throughout the Commission's rules. Following the adoption of FR Docket 85–731, the Commission ceased issuing these cards. This action also corrects the erroneous verification card form number referred to in FR Docket 85–731, published on January 10, 1985, 50 FR 1215. This action is taken pursuant to the Commission's policy of continually reviewing its rules and regulations to eliminate those which are no longer necessary. Deletion of verification card references from Commission rules will assure that the rules remain timely and accurate.

EFFECTIVE DATE: October 25, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Damon Martin, Field Operations Bureau, Federal Communications Commission, Washington, DC 20554, (202) 632–7240.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Parts 1, 13, 74, 83, and 99

Radio, Television.

Order

In the matter of amendment of Parts 1, 13, 74, 83, and 99, Eliminate References to Verification Cards and Correction of Order Eliminating Verification Cards.

Adopted: September 12, 1985.
Released: September 18, 1985.

Introduction

1. By this Order, the Commission is amending its rules to delete references to verification cards (Form 758–F), which the Commission no longer issues. This Order also corrects the erroneous form number used to refer to such cards in FR Docket 85–731.

Background

2. In 1984, the Commission adopted General Docket 83–322. That Report and Order amended Commission Rule § 13.70 to clarify that commercial radio operator licensees were only prohibited from duplicating their license documents for fraudulent purposes.[1] License holders were thus permitted to copy their documents to prove their licensee status. This obviated the need for the Commission to continue issuing verification cards (FCC Form 758–F) for the same purpose. As a result, in January 1985, the Commission released a Final Rule stating that it would no longer issue verification cards.[2]

[1] See, *Report and Order*, General Docket No. 83–322, 49 FR 20658, at para. 34, 96 FCC 2d 1123.

[2] See *Final Rule*, FR Docket No. 85–731, 50 FR 1215.

The summary of that Final Rule erroneously referred to verification cards as FCC Form 756, when they were actually FCC Form 758–F. FCC Form 756 is the application form that was filed to receive verification cards. FCC Form 758–F is the verification card document itself.

3. Since the Final Rule eliminating verification cards was issued, it was discovered that eight other sections of the Commission's rules refer to such cards.

Amendments and Correction

4. This Order eliminates the various references to verification cards (Form 758–F) which appear throughout Commission rules. Since the Commission no longer issues such cards, rule sections that mention the cards are unnecessary, inaccurate and obsolete. This action will assure the continuing textual accuracy of Commission rules, and is consistent with a major Commission goal of eliminating unnecessary regulations.

5. In the summary of FR Docket 85–731 located on page 1215 in the issue of Thursday, January 10, 1985, make the following correction:

In the first column, in the third line of the summary, the words now reading "verification cards (Form 756)" should read "verification cards (Form 758–F)".

Order

6. Because this correction and these amendments do not affect the privileges of commercial radio operator licensees, these changes constitute only minor amendments to our rules. The public is not likely to be interested in such minor amendments. Therefore, we find for good cause that compliance with the notice and comment procedures of the Administrative Procedure Act is unnecessary. *See* 5 U.S.C. 553(b)(B).

7. These changes benefit the public by providing them with accurate rule texts. Therefore, we find for good cause that compliance with the notice procedure of the Administrative Procedure Act is unnecessary. *See* 5 U.S.C. 553(d)(3).

8. Authority of these actions is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and § 0.231(d) of the Commission's rules.

9. In view of the above, it is ordered that the following sections of the Commission's rules are amended according to the attached appendix, effective October 25, 1985; §§ 1.1117, 13.72, 13.74, 74.165, 74.664, 74.965, 83.165, and 99.41.

10. It is further ordered that FR Docket 85–731 is corrected according to paragraph five of this Order.

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

Appendix

Parts 1, 13, 74, 83 and 99 of Chapter I of the Code of Federal Regulations are amended as set forth below.

PART 1—[AMENDED]

§ 1.1117 [Amended]

Paragraph § 1.1117(a)(5) is removed.

PART 13—[AMENDED]

§ 13.72 [Amended]

Section 13.72 is revised to read as follows:

§ 13.72 Exhibiting signed copy of application.

Any commercial radio operator who has made a request for either:

(a) A duplicate or replacement operator license or permit; or

(b) An operator license or permit renewal; or

(c) An endorsement; or

(d) A higher class license or permit

must exhibit a signed copy of their application submitted to the Commission in lieu of their original document.

§ 13.74 [Amended]

Paragraph 13.74(c) is revised to read as follows:

* * * * *

(c) Licensed commercial radio operators who are:

(1) On duty; and

(2) Either in charge of transmitting systems, or performing service, maintenance or inspection duties on such systems; and

(3) In a station where the rules governing that service do not require posting

must have their radio operator license or permit document, or a photocopy of such document on their person and available for inspection upon request by a Commission representative.

PART 74—[AMENDED]

§ 74.165 [Amended]

Paragraph § 74.165(b) is revised to read as follows:

* * * * *

(b) Absent the following exception, station operators must post their original operator's license at the place where they are on duty. When a station operator's original license document is:

(1) Posted at another station; and

(2) Posted according to the rules governing that class of station; and

(3) Available at such station for inspection by Commission representatives

a photocopy of the operator's license document may be posted instead. Photocopies of license documents may also be posted in licensed portable or mobile operation stations.

* * * * *

§ 74.664 [Amended]

Section 74.664(b) is revised to read as follows:

* * * * *

(b) The operator license of each station operator must be posted where the operator is on duty. A photocopy of the operator's license may be posted at the television auxiliary broadcast station when:

(1) The station operator's original license is posted at another radio transmitting station; and

(2) Such license is posted according to the rules governing that class of station; and

(3) The license remains available for inspection by Commission representatives.

If a television auxiliary broadcast station is licensed for mobile operations, its operator(s) may either post their original operator's license, or carry a photocopy of such license on their person.

* * * * *

§ 74.965 [Amended]

Paragraph § 74.965(d) is revised to read as follows:

* * * * *

(d) Station operators must post their original operator's license at the place where they are on duty, except under certain circumstances. Station operators may post photocopies of their licenses instead of originals when their original license is:

(1) Posted at another station; and

(2) Posted according to the rules governing that class of station; and

(3) Available for inspection by Commission representatives.

Operators who are on duty and hold card form (not diploma form) permits must keep their permits on their person and not post them.

* * * * *

PART 83—[AMENDED]

§ 83.165 [Amended]

Paragraph § 83.165(b) is revised to read as follows:

* * * * *

(b) Operators who hold Restricted Radiotelephone Operator Permits may,

in lieu of posting, have their permit or a photocopy of their permit on their person and immediately available for inspection by Commission representatives when they are operating either of the following:

(1) A station which is not required for the vessel under any statute or treaty that binds the United States; or

(2) Any class of ship station when the operator is only aboard to service the ship's radio equipment; or

(3) Any portable station.

PART 99—[AMENDED]

§ 99.41 [Amended]

Paragraph § 99.41(b) is revised to read as follows:

* * * * *

(b) Operators controlling emissions of licensed stations in the Disaster Communications Service must keep an original or a photocopy of their radio operator license either (1) on their person, or (2) immediately available at the station being operated.

* * * * *

[FR Doc. 85-22691 Filed 9-23-85; 8:45 am]

BILLING CODE 8712-01-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Part 734

[AIDAR Notice 85-9]

Major System Acquisition

AGENCY: Agency for International Development.

ACTION: Final rule.

SUMMARY: The AID Acquisition Regulation (AIDAR) is being amended to implement Part 34, Major System Acquisition, of the Federal Acquisition Regulations (FAR).

EFFECTIVE DATE: September 24, 1985.

FOR FURTHER INFORMATION CONTACT: M/SER/CM/SD/POL, Ms. C. R. Eldridge, telephone (703) 235-9107.

SUPPLEMENTARY INFORMATION: This AIDAR Notice amends the AIDAR to establish Agency criteria for the designation of procurements as major system acquisitions.

Since this AIDAR Notice will not have any significant impact on AID contractors or the general public, this Notice is not considered "significant" under OFPP Policy Letter 83-2, or FAR 1.303(b) and 1.501; and therefore, public comments have not been solicited.

This AIDAR Notice does not establish or modify any collection of information requirements subject to the Paperwork Reduction Act.

As required by the Regulatory Flexibility Act, it is hereby certified that this AIDAR Notice will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 48 CFR Part 734

Government procurement.

Title 48, Chapter 7 of the Code of Federal Regulations is amended by adding a new Part 734 as follows:

PART 734—MAJOR SYSTEM ACQUISITION

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445. (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

734.003 Responsibilities.

AID policy regarding major system acquisitions is to follow the procedures contained in FAR Part 34 and in OMB Circular A-109. In order for an acquisition to be considered a major system, AID has determined that the total estimated lifetime cost must be in excess of $15 million.

Dated: September 12, 1985.

John F. Owens,

AID Procurement Executive.

[FR Doc. 85-22681 Filed 9-23-85; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

48 CFR Parts 1414, 1433 and 1452

Bid Protest Regulations

AGENCY: Office of the Secretary, Interior.

ACTION: Interim final rule.

SUMMARY: This rule implements revised procedures for filing protests with the General Accounting Office (GAO) and new procedures for filing automatic data processing protests with the General Services Administration Board of Contract Appeals (GSBCA) as required by the Competition in Contracting Act of 1984. This rule is based on revisions made to the Federal Acquisition Regulation (FAR) to implement the new protest procedures under Federal Acquisition Circular (FAC) 84-6 dated January 15, 1985, and FAC 84-9 dated June 20, 1985.

DATES: The effective date of this rule is September 24, 1985, in order to effect timely implementation of the protest procedures. Comments must be received on or before October 24, 1985.

ADDRESS: Interested parties should submit written comments to Mr. William Opdyke, Room 5512, Office of Acquisition and Property Management, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. William Opdyke, Chief, Branch of Policy and Regulations, Office of Acquisition and Property Management, Department of the Interior, Washington, DC 20240, telephone (202) 343-3433.

SUPPLEMENTARY INFORMATION: The Department has determined that this rule concerns agency procedures. Further, these procedures are required for the Department's implementation of the new protest procedures established by Pub. L. 98-369. Prior notice and opportunity for public comment on this rule would be impracticable and contrary to the public interest in view of the need to implement the new protest procedures in as timely a manner as possible. In accordance with 5 U.S.C. 553(b) (A) and (B), the Department has determined that prior notice and comment may be omitted. On the same basis, the Department has found good cause to make these regulations effective upon publication under 5 U.S.C. 553(d)(3).

Public Comment

Section 22 of the Office of Federal Procurement Policy Act, 41 U.S.C. 418(b), requires a 30 day notice and comment period for significant procurement regulations. Section 22(d) provides for the waiver of that period if urgent and compelling circumstances make compliance impracticable. In such cases, the regulation may be effective on a temporary basis where provision is made for a 30 day public comment period beginning on the date of notice of the temporary regulation. The Department has determined that the need to implement the new protest procedures in a timely manner constitutes urgent and compelling circumstances permitting the issuance of this regulation on a temporary basis with provision for a 30 day comment period.

Primary Author

The primary author of this rule is Mr. William Opdyke, Office of Acquisition and Property Management, telephone (202) 343-3433.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Department has determined that this rule is not a major rule under

Executive Order 12291 and certifies that it will not have a significant economic effect on a substantial number of small entities. The only additional requirement imposed by this rule is the procedure for transmitting a copy of the protest to the Office of the Solicitor when the protest is served on the contracting officer. This rule does not contain information collection requirements which require approval by the Office of Management and Budget.

List of Subjects in 48 CFR Parts 1414, 1433, and 1452

Government procurement.

For the reasons set out in the premable, Chapter 14 of Title 48 of the Code of Federal Regulations is amended as set forth below.

Dated: August 13, 1985.

Gerald R. Riso,

Assistant Secretary of the Interior.

1. The authority citation for 48 CFR Parts 1414, 1433, and 1452 continue to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 40 U.S.C. 486(c), and 5 U.S.C. 301.

PART 1414—FORMAL ADVERTISING

Subpart 1414.4—Opening of Bids and Award of Contract

1414.407–8 Protests against award. [Amended]

2. Section 1414.407–8 is amended by removing paragraphs (a) through (d) and inserting in their place the statement "See Subpart 1433.1—Protests."

3. Part 1433 is amended by revising the title of the part; redesignating sections 1433.003 through 1433.014 as sections 1433.203 through 1433.214, respectively in a new Subpart 1433.2; adding a new Subpart 1433.1; removing the citation "33.003(b)" in newly redesignated section 1433.203(a) and inserting in its place "33.203(b)"; removing the citations "33.011(a)(4)" and "33.011(a)(4)(v)" in the first sentence of newly redesignated section 1433.211 and inserting in their place "33.211(a)(4)" and "33.211(a)(4)(v)", "33.211(a)(4)(v)" respectively. The table of contents for the part and the text of the new Subpart 1433.1 are set forth below:

PART 1433—PROTESTS, DISPUTES, AND APPEALS

Subpart 1433.1—Protests

Sec.

1433.102 General.
1433.103 Protests to the agency.
1433.104 Protests to GAO.
1433.105 Protests to GSBCA.
1433.106 Solicitation provision.

Subpart 1433.2—Disputes and Appeals

1433.203 Applicability.
1433.203–70 Interior Board of Contract Appeals.
1433.209 Suspected fraudulent claims.
1433.211 Contracting officer's decision.
1433.212 Contracting officer's duties upon appeal.
1433.214 Contract clause.

Authority: Sec. 205(C), 63 Stat. 390; 40 U.S.C. 486(c), and 5 U.S.C. 301.

Subpart 1433.1—Protests

1433.102 General.

The Office of the Solicitor shall be responsible for handling bid protests filed with the General Accounting Office (GAO) or for bid protests concerning automatic data processing (ADP) acquisitions filed with the General Services Administration Board of Contract Appeals (GSBCA). All communications relative to protests filed with GAO or GSBCA shall be coordinated with the Assistant Solicitor for Procurement and Patents.

1433.103 Protests to the agency.

For protests filed with a bureau or office and received before award, the contracting office shall obtain the advice of the Assistant Solicitor for Procurement and Patents before making the determination under FAR 33.103(a).

1433.104 Protests to the GAO.

(a) *General.* A protestor shall furnish a copy of its complete protest simultaneously to the officials designated in the provision at 1452.233–2, Service of Protest, as prescribed in 1433.106.

(b) *Notice of Protest.* Upon being telephonically advised by the GAO of the receipt of a protest before or after award, the Office of the Solicitor shall inform the appropriate contracting activity which shall immediately notify the contracting officer and request preparation of the protest report required by FAR 33.104(a)(2). For protests concerning ADP acquisitions, the Office of the Solicitor shall also inform the Director, Office of Information Resources Management, who, in turn, shall notify the appropriate bureau Information Resources Management (IRM) contact and GSA official. As required by FAR 33.104(a)(3) and 4 CFR 21.3, the contracting officer shall promptly notify all interested parties, including offerors (or the contractor if the protest is after award) involved in or affected by the protest, that a protest has been filed with the GAO and the basis for the protest. A written record of such notification shall be placed in the contract file. After receiving a copy of the protest from GAO and its request for an administrative report, the Office of the Solicitor will promptly furnish the same to the contracting activity involved which shall, in turn, promptly transmit copies to the contracting officer. The contracting officer shall promptly transmit by letter a copy of the protest to all interested parties previously notified and include a statement requiring furnishing of views and information directly to the GAO. Copies of such cover letters shall be sent concurrently to the Assistant Solicitor for Procurement and Patents. Cover letters shall contain a specified period of time for submission of comments (see FAR 33.104(a)(3)) and include instructions that any comments submitted to the GAO should also be submitted simultaneously to the contracting officer and the Assistant Solicitor for Procurement and Patents. Materials submitted by the protester may be withheld from interested parties in accordance with 4 CFR 21.3(b).

(c) *Submission of report.* (1) All personnel shall handle protests on a priority basis. Within 25 work days after receipt by the Office of the Solicitor of the GAO's telephonic notice of the protest, or within 10 work days after receipt from GAO of a determination to use the express option, a complete report shall be submitted to the GAO (see FAR 33.104(a)(2)). If the specific circumstances of the protest require a longer period, the contracting activity shall immediately notify the Office of the Solicitor which shall request, in writing, an extension of the period in accordance with 4 CFR 21.3(d). The contracting activity shall have no more than 15 work days from the date of telephonic notification by the Office of the Solicitor to deliver the protest report to the Assistant Solicitor for Procurement and Patents. For reports involving use of the 10 work day express option, the Office of the Solicitor shall establish the report delivery date after consultation with the contracting activity.

(2) In addition to the requirements of FAR 33.104(a)(2), the report responsive to the protest shall be appropriately titled and dated; shall cite the GAO file number; and shall be signed by the contracting officer or representative.' Reports shall be prepared with the assistance of the local attorney—advisor of the Office of the Solicitor. If appropriate, the report shall contain a statement regarding any urgency for the acquisition and the extent to which a delay in award may result in significant performance difficulties or additional expense to the Government. If award is

not urgent, a statement shall be included giving an estimate of the length of time an award may be delayed without significant expense or difficulty in performance. The contracting activity shall submit an original and two complete copies of the contracting officer's report to the Assistant Solicitor for Procurement and Patents plus one complete copy for each interested party who responded to GAO and the contracting officer and Assistant Solicitor for Procurement and Patents in response to the notification under paragraph (b) above. The Assistant Solicitor for Procurement and Patents shall be responsible for submitting the report to GAO and sending copies of the report to each interested party.

(d) *Protests before award.* If a protest before award has been filed with GAO and the contracting officer determines in writing that it is necessary to make award under the circumstances in FAR 33.104(b)(1), the contracting officer shall obtain advice from the Assistant Solicitor for Procurement and Patents and such determination shall be submitted for approval by the head of the contracting activity. The contracting officer shall notify GAO prior to award as required by FAR 33.104(b)(2). The written determination shall be included in the file and the contracting officer shall give notice of the decision as required by FAR 33.104(d).

(e) *Protests after award.* If notice of a protest has been received from GAO within 10 calendar days after award and the contracting officer determines in writing that contract performance should continue under the circumstances in FAR 33.104(c)(2), the contracting officer shall obtain advice from the Assistant Solicitor for Procurement and Patents and such determination shall be submitted for immediate approval by the head of the contracting activity. Pending approval of the determination, suspension of performance or termination of the contract shall not be initiated. The contracting officer shall notify GAO as required by FAR 33.104(c)(3). The written determination shall be included in the file and the contracting officer shall give notive of the decision as required by FAR 33.104(d).

(f) *Notice to GAO.* The head of the contracting activity is authorized to submit the report required by FAR 33.104(f). The report shall be submitted to the Comptroller General through the Assistant Solicitor for Procurement and Patents and the Director, Office of Aquisition and Property Management. For decisions concerning ADP acquisitions, the report shall also be submitted through the Director, Office of Information Resources Management.

1433.105 Protests to GSBCA.

(a) *General.* A protester filing a protest with GSBCA on a solicitation or contract for ADP shall comply with the requirements of the provision at 1452.233–2, Service of Protest, as prescribed in 1433.106 on the same day the protest is filed with the GSBCA.

(b) *Notice of Protest.* Immediately upon receipt of a copy of a protest to GSBCA, the Office of the Solicitor shall inform the Office of Information Resources Management and the contracting activity which shall immediately inform the contracting officer. The Office of Information Resources Management shall immediately notify its bureau IRM contact and the appropriate GSA official responsible for the delegation of procurement authority. The contracting officer shall within 1 work day after receipt of a copy of the protest provide oral or written notice to all parties required to be notified by FAR 33.105(a)(2) and shall provide the GSBCA with a written list of all such parties to whom notice was provided within 5 work days after receipt of a copy of the protest. A copy of all notifications to interested parties and related correspondence with GSBCA shall be maintained in the contract file and a copy of the list of interested parties notified shall be provided to the Office of the Solicitor simultaneously with submission to the GSBCA.

(c) *Submission of Protest File.* An original and two copies of a protest file (See FAR 33.105(b)) plus one copy for each interested party which has filed a notice of intervention or a motion to intervene in accordance with the requirements of Rule 5(a)(3) of the GSBCA Rules of Procedure (48 CFR Part 61) shall be submitted by the contracting officer to the Office of the Solicitor within 8 work days after the filing of a protest. The protest file shall be organized to comply with the requirements of Rule 4(b) of the GSBCA Rules of Procedure. The Office of the Solicitor shall then submit the file to the GSBCA within 10 work days after filing of the protest and shall also send copies to each interested party.

(d) *Hearings.* The Office of the Solicitor shall be responsible for representing the contracting officer at any hearing on suspension of the agency's delegation of procurement authority (see FAR 33.105(d)) or at any hearing on the merits of the protest (see FAR 33.105(e)). The head of the contracting activity shall be responsible for executing the determination required by FAR 33.105(d)(1). The Office of the Solicitor shall notify the contracting officer and the Office of Information Resources Management of the results of the hearing.

1433.106 Solicitation provision.

The provision at FAR 52.233–2, Service of Protest, as prescribed in FAR 33.106, shall be modified in accordance with the instructions in 1452.233–2.

PART 1452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 1452.2—Texts of Provisions and Clauses

4. Subpart 1452.2 is amended by adding new section 1452.233–2 to read as follows:

1452.233–2 Service of Protest.

(a) As prescribed in 1433.106, the provision at FAR 52.233–2, Service of Protest, shall be modified before insertion into solicitations by—

(1) Changing the title of the provision to read "SERVICE OF PROTEST (JAN 1985) (DEVIATION)"; and

(2) Adding the following sentence to the end of the provision:

A copy of the protest served on the contracting officer shall be simultaneously furnished by the protester to the Assistant Solicitor for Procurement and Patents, Office of the Solicitor, Room 6511, U.S. Department of the Interior, 18th and C Streets, NW, Washington, DC 20240.

(b) As prescribed in FAR 52.103(a) and 52.107(f), the clause at FAR 52.252–6, Authorized Deviations in Clauses, shall be inserted into solicitations and contracts containing the clause in (a) above.

[FR Doc. 85–22701 Filed 9–23–85; 8:45 am]
BILLING CODE 6170–16–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Amdt. 195–33, Docket PS–80]

Transportation of Hazardous Liquids by Pipeline; Regulation of Intrastate Pipelines

Correction

In FR Doc. 85–9609 beginning on page 15895 in the issue of Tuesday, April 23, 1985, make the following corrections:

§ 195.2 [Corrected]

On page 15899 in the first column in the first line insert "an" after "not".

§ 195.302 [Corrected]

On page 15899 in the first column in (b)(1)(i) in the fifth line "1985" should read "1981".

§ 195.406 [Corrected]

On page 15899 in the second column in (a)(5) in the ninth line insert "was" before "subjected". In the last line after "1985" add a paren.

§ 195.414 [Corrected]

On page 15899 in the second column, tenth line from the bottom, "base" should read "bare".

BILLING CODE 1505-01-M

Federal Railroad Administration

49 CFR Parts 217, 219, & 225

[FRA Docket No. RSOR-6, Notice No. 9]

Correction and Admendment of Final Rule; Control of Alcohol and Drug Use in Railroad Operations

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Correction and amendment of final rule; announcement of approval of information collection requirements under final rule.

SUMMARY: This notice sets forth corrections to the final rule document on Control of Alcohol and Drug Use in Railroad Operation and an amendment to the rule reflecting OMB approval of information collection requirements.

EFFECTIVE DATE: The amendments made by this notice are to a new Part 219 of title 49, Code of Federal Regulations, which is effective, as amended, on November 1, 1985.

FOR FURTHER INFORMATION CONTACT: Walter C. Rockey, Executive Assistant to the Associate Administrator for Safety, FRA, Washington, DC 20590 (Telephone: 202–426–0895) or Grady C. Cothen, Jr., Special Assistant to the Chief Counsel, FRA, Washington, D.C. 20590 (Telephone: 202–426–9416).

SUPPLEMENTARY INFORMATION: On July 29, 1985, FRA issued a final rule on Control of Alcohol and Drug Use in Railroad Operations (50 FR 31508; Aug. 2, 1985). Since publication of the rule in the **Federal Register**, FRA has identified certain typographical errors in the **Federal Register** version of the document and has identified an error in the rule text of the final rule document as prepared by FRA. These errors require correction. Further, since publication of the final rule, the Office of Management and Budget (OMB) has approved the information collection requirements of the rule under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This document makes the necessary corrections to the final rule document, provides notice of OMB approval of the information collection requirements, and amends the new Part 219 of Title 49, Code of Federal Regulations, to reflect the approval of new information collection requirements contained in that part.

Paperwork Reduction Act of 1980

Subsequent to publication of the final rule document, OMB approved each of the information collection requirements described under the heading "Paperwork Reduction Act" in the final rule (50 FR 31568, col. 2; Aug. 2, 1985) (pages 286–287 of typewritten version). The requirements contained in amendments to 49 CFR 217.13 and 49 CFR 225.17 were also approved and bear the previous control numbers (OMB Approval No. 2130–0035 for 49 CFR Part 217 and OMB Approval No. 2130–0500 for 49 CFR Part 225). *See* 49 FR 48938 (Dec. 17, 1984) and 50 FR 7918 (Feb. 27, 1985).

The information collection requirements contained in Part 219 were assigned OMB control number 2130–0526.

Corrections

In FR Doc. 85–18395, beginning on page 31508 in the issue of Friday, August 2, 1985 make the following corrections:

1. On page 31512, second column, third line from the bottom, "(CG/MS)" should have read "(GC/MS)".

2. On page 31527, first column, third line from the bottom, "Motorious" should have read "notorious".

3. On page 31529, third column, immediately after the citation for the second quotation ("NPRM at 171 (49 FR 24293)"), "The nationale" should have read "The rationale".

4. On page 31536, third column, in the paragraph numbered "9", sixth line from the bottom, "consume" should have read "consumed."

5. On page 31537, second column, in the second line of the final paragraph, "NTSR" should have read "NTSB".

6. On page 31539, third column, last full paragraph, 14 lines from the bottom "the 80%" should have read "that 80%".

7. On page 31540, third column, in the seventh line of the last full paragraph, "assess the minimize" should have read "assess and minimize".

8. On page 31546, first column, third full paragraph, second line, "either if which" should have read "either of which".

§ 219.5 [Corrected]

9. On page 31569, in paragraph (d) of § 219.5, next to last line, "person performs" should have read "person who performs".

§ 219.9 [Corrected]

10. On page 31570, in paragraph (a)(2) of § 219.9, first column the section cross-reference "219/101" should have read "219.101".

The corrections noted above conform the **Federal Register** publication of the final rule to the document as issued by FRA. However, FRA has also noted an error in the text of the rule prepared by FRA that involves the omission of a necessary adjective in an operative portion of the rule. That correction is made below.

These changes are editorial in nature and have no economic impact requiring further evaluation. In addition, the agency certifies that this rule will have no effect on a substantial number of small entities.

In consideration of the foregoing, Chapter II, Subtitle B, of Title 49, Code of Federal Regulations is amended as follows:

PART 219—[AMENDED]

1. The table of contents is amended by adding in place of "[Reserved]", at the entry for § 219.21, the title "Information collection."

2. The authority for Part 219 continues to read as follows:

Authority: Secs. 202 and 209, Pub. L. No. 91–458, 84 Stat. 971 and 975, as amended (45 U.S.C. 431, 438) and 49 CFR 1.49. Subpart C also issued under sec. 208, Pub. L. No. 91–458, 84 Stat. 974, as amended (45 U.S.C. 437).

3. Subpart A is amended by adding at the place reserved a new section 219.21 to read as follows:

§ 219.21 Information collection.

(a) The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2130–0526.

(b) The information collection requirements are found in the following sections:

(1) Section 219.203.
(2) Section 219.205.
(3) Section 219.207.
(4) Section 219.209.
(5) Section 219.211.
(6) Section 219.213.
(7) Section 219.301.

(8) Section 219.303.
(9) Section 219.305.
(10) Section 219.307.
(11) Section 219.309.
(12) Section 219.401.
(13) Section 219.405.
(14) Section 219.407.
(15) Section 219.501.
(17) Section 219.503.

§ 219.303 [Amended]

4. Section 219.303 is amended by adding the word "breath" immediately before the words "testing under this subpart" in the second sentence of paragraph (d)(1).

Issued in Washington, D.C., on September 20, 1985.

James C. Rooney,

Deputy Administrator.

[FR Doc. 85-22899 Filed 9-23-85; 8:45 am]

BILLING CODE 4910-06-M

Proposed Rules

Federal Register
Vol. 50, No. 185
Tuesday, September 24, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

United States Standards for Grades of Fresh Tomatoes; Extension of Time for Filing Comments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: Industry representatives have requested that the comment period be extended to allow additional time for consultation and evaluation of the proposal to amend the grade standards by revising the size classification requirements. Adoption of the proposal would provide industry with uniform size classification requirements.

DATE: The date by which written comments must be postmarked is extended to October 24, 1985.

ADDRESS: Comments should be sent to: Docket Clerk, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2069, South Building, Washington, DC 20250. Comments must be sent in duplicate and should reference the date and page number of the **Federal Register.** Comments will be made available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: David L. Priester, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–5410.

SUPPLEMENTARY INFORMATION: Proposed rulemaking to amend the United States Standards for Grades of Fresh Tomatoes by revising the size classification requirements was published on pages 30199–30200 of the **Federal Register** July 24, 1985, and invited comments for 60 days ending September 23, 1985. Two requests for extension of the comment period have been filed; one for 60 days and the other for 12 months. In view of the fact that a period of 60 days has already been provided for the submission of comments and the proposed rule is not lengthy or technically complicated, the length of the extensions requested are considered to be excessive. However, a shorter extension should be considered, in that: (1) The United States Fruit and Vegetable Association's Congress of Committees Tomato Division Advisory Board has scheduled a meeting, which will be attended by industry representatives, to be held September 23, 1985; and (2) consideration of the comments and suggestions received indicate a need for an extension of the comment period for at least 30 days. An extension of the period for comment would provide interested parties with the opportunity for further discussion and submission of comments.

Therefore, in the interest of offering sufficient opportunity for persons to file written comments in this rulemaking proceeding, the time for filing comments is hereby extended for 30 days.

Dated: September 20, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–22769 Filed 9–20–85; 3:38 pm]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1951

Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to revise its regulation regarding supervision, servicing and collection of single family housing loan accounts. This action is being taken to make editorial changes, amend the policy on moratoriums, and to add policy on servicing note-only loans. The intended effect of this proposed action is to clarify the regulation and provide guidance on servicing note-only loans in the best interest of the Government.

DATE: Comments must be received on or before November 25, 1985.

ADDRESS: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, FmHA, Room 6346, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be availabe for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Phil Girard, Senior Loan Specialist, Single Family Housing Servicing and Property Management Division, FmHA, Room 5309, South Agriculture Building, Washington, DC., telephone (202) 382–1452.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291 and has been determined to be "nonmajor." It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterpises in domestic or export markets.

This action contains policies and procedures for borrower supervision, servicing and collection of single family housing loans. Editorial revisions in the supervision section will improve the readability and comprehension of the instruction but not alter the Agency's commitment of providing supervised credit. Other proposed changes will clarify internal procedures concerning the initial payment date on subsequent loans. A new condition for reamortization is proposed in accordance with the provisions of Subpart M, Part 1951 of this Chapter. This proposal will authorize reamortization if servicing of authorized loans or unauthorized interest credit has resulted in a delinquency which requires more than 2 years for repayment. A new section is proposed concerning the servicing of not-only single family housing loans. It concerns instructions involving the sale of unsecured property,

note-only secured loan combinations, and what to do if a note-only borrower dies. These instructions are included in this regulation to continue the Agency's policy of consolidating single family housing procedures.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environment Impact Statements." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of human environment and in accordance with the National Environment Policy Act of 1969, Pub. L. 91–190, an Environment Impact Statement is not required.

This program/activity is subject to the provisions of Executive Order 12372 which requires intergovenmental consultation with State and local officials. See 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940 –J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983)."

The Catalog of Federal Domestic Assistance title and number is Section 502 Rural Housing Loans, 10.410.

FmHA proposes to revise Subpart G, Part 1951, Chapter XVIII, Title 7, Code of Federal Regulations. The following is a summary of the major changes proposed by this action:

Section 1951.312 (d) provides that rescheduled payment agreements will usually bring accounts current within 2 years but will never exceed the remaining term of the loan.

Section 1951.312 (d)(2) allows only one Additional Partial Payment Agreement in any 1-year period without prior authorization of the District Director.

Section 1951.312 (e) refers of Subpart C of Part 1965 for servicing borrowers who have declared bankruptcy. (This regulation was published as a proposed rule in the **Federal Register** on June 26, 1984, FR 26072.)

Section 1951.312 (e)(5) provides guidance on how to service accounts that are chronically one or two payments behind schedule.

Section 1951.313 (b)(3) provides that unless uninhabitable, a borrower must occupy the dwelling to be eligible for a moratorium.

Section 1951.313 (b)(4) clarifies the policy that a borrower would not be eligible for a moratorium if the account has been accelerated. Before an account is accelerated, the District Director must determine that all appropriate servicing actions (interest credit, moratorium, etc.) have been taken and that further servicing efforts would not enable the borrower to meet loan obligations. Since it has determined that a borrower is either unable or unwilling to make scheduled payments prior to acceleration, the granting of a moratorium after acceleration would only delay foreclosure and not further assist the borrower to become a successful homeowner. This requirement does not apply if it is discovered after acceleration that a borrower was not properly notified or considered for a moratorium prior to acceleration.

Section 1951.313 (b)(3) reduces from 5 years to 2 years the amount of time that must elapse between moratoriums.

Section 1951.313 (j) provides for no notice of appeal if the decision is made not to cancel interest accrued during a moratorium. FmFA has considered this authorization and determined interest cancellation to be ineffective in aiding borrowers coming off a moratorium. If a borrower pays 20 percent of adjusted income cancellation of interest would not change the monthly payment amount. The payment amount would only change if the effective interest rate is lowered to 1 percent. The reduction would be minimal and the decision to cancel/not cancel would not be a determining factor in FmHA continuing with a borrower after expiration of a moratorium, nor would it significantly change the borrower's payments.

Section 1951.314 (a)(5) provides that an account may be reamortized if a reversal and reapplication of payments, as required by Subpart M of Part 1951 of this Chapter, results in a delinquency that cannot be paid within 2 years.

Section 1951.314 (a)(6) provides that an account may be reamortized if a delinquency develops in connection with the processing of a same terms assumption.

Section 1951.314 (a)(7) provides that the RH loan of a Farmer Program borrower may be reamortized if the farmer program loans are being reamortized, rescheduled or consolidated.

Section 1951.315 allows refinancing, under certain circumstances, of loans approved prior to August 1, 1968, and loans made to above moderate borrowers.

Section 1951.316 provides guidance on servicing note-only loans.

List of Subjects in 7 CFR Part 1951

Account servicing, Low and moderate income housing loans.

Accordingly, FmHA proposes to amend Part 1951, Chapter XVIII, Title 7 Code of Federal Regulations to read as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority for Part 1951 continues to read as follows:

Authority: U.S.C. 1989; 42 U.S.C. 1480, 5 U.S.C. 301; 7 CFR 1.23; 7 CFR 2.70.

2. Subpart G is revised to read as follows:

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loans

Sec.

1951.301 Purpose.
1951.302 Authorities and Responsibilities.
1951.303 State Supplements.
1951.304–1951.306 [Reserved].
1951.307 Supervision.
1951.308 Payment coupons and Changes in Payment Plan.
1951.309 Receiving and applying payments.
1951.310 Amortization of Recoverable Cost.
1951.311 Finance Office Responsibilities.
1951.312 Servicing.
1951.313 Moratoriums.
1951.314 Reamortizations.
1951.315 Refinancing.
1951.316 Servicing a note-only loan.
1951.317 Exception authority.
1951.318–1951.350 [Reserved]
Exhibit A—Cooperating Agreement for Utilization of Housing Supervisory and Counseling Services Between the Farmers Home Administration and ————
Exhibit B—Monitoring (tickler) System.
Exhibit C—Monitoring File Record Card.

Subpart G—Borrower Supervision, Servicing and Collection of Single Family Housing Loan Accounts

§ 1951.301 Purpose.

This subpart sets forth policies and procedures of the Farmers Home Administration (FmHA) to ensure that in borrower supervision, servicing and collections of Single Family Housing Loan Accounts, all authorities are considered and used to assist borrowers to become successful homeowners, thereby reducing the number and amount of borrower delinquencies and borrower failures resulting in liquidation of the account. This subpart pertains to all Section 502 and 504 Rural Housing (RH) loans (except RH loans for farm service buildings) herein referred to as Single Family Housing (SFH) borrowers, including those who are also indebted for a Farmer Program loan (i.e., farm ownership (FO), operating (OL), soil and water (SW), recreation (RL), emergency (EM), economic emergency (EE), economic opportunity (EO), and special livestock (SL) loan. Farmer Program loans and RH loans for farm service buildings will be serviced in accordance with applicable farmer program servicing regulations. It does not apply

to borrowers who assumed RH loans, or have credit sales, on ineligible terms. These are Other Real Estate (ORE) loans, not SFH Loans, and will be collected in accordance with Subpart B of Part 1951. In executing the authorities provided in this subpart, a borrower's race, color, religion, national origin, sex, marital status, age, or handicap will not be considered in a discriminatory manner.

§ 1951.302 Authorities and responsibilities.

Country Supervisors are responsible for borrower supervision, servicing and collection of all Single Family Housing loans as prescribed by this Subpart under the general guidance and supervision of District Directors and State Office personnel. Where a servicing and collection contract has been entered into between the FmHA National Office and a contractor, the contractor is responsible for those servicing and collection actions contracted for and RH loans covered by the contract. Any such contracts shall be entered into subject to the provisions of OMB Circular A–76 and Federal Acquisition Regulations (48 CFR, Chapter 1)

§ 1951.303 State supplements.

Except for instructions on how to implement a State-wide tickler system and procedures recommended by the Office of the General Counsel, State supplements will normally not be issued for this subpart. Any State supplements proposed will be submitted to the National Office for approval prior to issuance.

§§ 1951.304–1951.306 [Reserved]

§ 1951.307 Supervision.

Supervision and counseling will be provided when deemed necessary to give borrowers an opportunity to become successful homeowners, thereby accomplishing the objectives of the loan.

(a) *Supervising and counseling borrowers.* When it is known that borrowers are experiencing financial difficulties or other problems, or when borrowers request assistance, the County Supervisor should counsel them on use and cost of credit, conserving energy, property maintenance, and applicable FmHA authorities and requirements. When deemed necessary, the County Supervior will assist in development of a budget to help borrowers make the best use of their resources.

(b) *Use of Counselors from other sources.* FmHA may enter into a Cooperative Agreement with a nonprofit corporation, public body, or other agency or organization which has employees with training and experience in counseling services. When an Agreement of this type is in effect, the County Supervisor will refer borrowers for counseling in compliance with paragraph (b)(1) through (4) of this section when he/she determines such counseling may be beneficial to the borrower. The authority and requirements for entering and participating in a Cooperative Agreement for counseling services are as follows:

(1) County Supervisors are authorized to enter into Cooperative Agreements with nonprofit corporations and public bodies which employ qualified housing counselors. The counseling Agency will provide free counseling to the FmHA borrower and neither the counseling Agency nor the Counselor will receive payment from the borrower or FmHA. The Cooperative Agreement will be in the form of Exhibit A unless an exception is authorized by the National Office.

(2) In counties where a Cooperative Agreement is in effect and the Counseling Agency will be counseling delinquent borrowers, the County Supervisor will send a letter to each borrower who the County Supervisor determines needs assistance in order to overcome the delinquency problem. This letter is to introduce the counseling program to delinquent borrowers and encourage their participation (see Guide Letter 1951–G–1). When the borrower has agreed to participate by signing and returning the letter, the counselor will be notified and provided the information in the borrower's case file which is needed for effective counseling. Release of this information is allowable and proper under the provisions of the Freedom of Information and Privacy Acts.

(3) The County Supervisor, with assistance from the District Director and State Office staff, if necessary, will provide necessary training in FmHA loan policies and servicing policies to the counselors.

(4) When a borrower is referred to a counselor, the County Supervisor will take no liquidation action for 1 month to allow a repayment agreement, acceptable to FmHA, to be worked out with the counselor. An account is considered referred after Guide Letter 1951–G–1 is executed by the borrower and the counselor notified.

(c) *Technical and Supervisory Assistance (TSA) grants.* In counties or areas in which TSA grants have been funded and implemented, the County Supervisor will refer to the grantee FmHA low-income borrowers who need counseling and supervisory assistance as defined in Subpart K of Part 1944 of this chapter, and recommend their participation.

§ 1951.308 Payment coupons and changes in payment plan.

(a) *Issuing payment coupons.* A booklet of 12 payment coupons and envelopes is provided initially for each borrower. The Finance Office will mail the payment coupons to the County Supervisor who will forward them to the borrower or keep them in the County Office depending on the status of the borrower's account. The County Supervisor will use Form FmHA 451–34, "Direct Plan Change," to reqaets new coupons when not automatically provided by the Finance Office. The Finance Office will automatically provide a new booklet of 12 coupons and envelopes when:

(1) The tenth coupon in the booklet is processed in the Finance Office;

(2) The required monthly payment is changed for one of the following reasons:

(i) Recoverable cost is charged to the borrower's account.

(ii) Form FmHA 451–37, "Additional Partial Payment Agreement," is processed.

(iii) A subsequent loan is closed.

(iv) The final payment of an advance is paid.

(v) An account rescheduled by use of Form FmHA 451–37 becomes current.

(vi) An Interest Credit Agreement is placed in effect.

(vii) An interest Credit Agreement is canceled or renewed for a different amount.

(viii) The account is reamortized.

(b) *Changes in payment plan*—(1) *From annual payment to monthly payment.* Borrowers may be converted from annual payments to the monthly payment plan at any time by using Form FmHA 451–34, completed in accordance with the Forms Manual Insert (FMI). The County Office must be careful not to create a delinquency when making this conversion. When the form is processed in the Finance Office, the required monthly payments will be established as 1/12th of the annual installment. Cents will be rounded to the next higher dollar.

(2) *From monthly payments to annual payment.* Current borrowers with annual payment notes who voluntarily converted to the monthly payment plan may be removed from the monthly payment plan upon request. The change will be accomplished by completing Form FmHA 451–34.

(c) *Subsequent loan payments.* Initial and subsequent loans of the same loan

type must be on the same payment plan and payments must be due on the same date. When a subsequent loan is closed, the Finance Office will automatically place it on the payment plan in effect for the initial loan and issue payment coupons which reflect the combined payments on all loans.

(1) *Monthly installment required.* If the initial loan was closed with a monthly payment note or the borrower has assumed a loan to be repaid with monthly installments, the subsequent loan must be closed with a monthly payment note. At the time the subsequent loan is closed, the Finance Office will prepare a new payment coupon booklet and forward it to the County Office. The monthly payment due date shown on the coupons will be that required by the initial loan, however the first installment on the subsequent loan will not be due within 15 days after closing.

(2) *Annual installment required.* If the initial loan was closed with annual installments, subsequent loans must be closed with annual installments.

§ 1951.309 Receiving and applying payments.

(a) *Payments on accounts*—(1) *Payments to Finance Office.* Normally, borrowers should mail their payments directly to the Finance Office in one of the envelopes provided with the coupon booklet. However, for all new borrowers, the payment coupons will be held in the County Office for the first six payments. The County Supervisor may continue to hold the coupons for a longer period of time until it is determined that the borrowers understand their responsibilities and will make payments in a timely manner.

(2) *Payments to County Office.* Direct payments may be accepted in the County Office or in the field by employees listed in Exhibit B of Subpart B of Part 1951 of this chapter (available in any FmHA office).

(i) A regular payment paid by check or money order and made payable to the "Farmers Home Administration" will be placed in a direct payment envelope with the appropriate payment coupon, sealed, and transmitted to the Finance Office in the manner outlined in § 1951.60(a)(2) of Subpart B of Part 1951 of this chapter (available in any FmHA Office). The check or money order and the appropriate payment coupon should not be stapled, clipped, or attached in any manner.

(ii) Cash collections will be handled in the followed manner:

(A) Cash collections for which payment coupons are available will be converted into a single cashier's check or money order and be remitted together in the same envelope. The cost of conversion can be entered on any one of the coupons but the total of the coupons in the envelope must equal the amount of the cashier's check or money order plus the conversion cost.

(B) Cash collections for which payment coupons are not available will be listed on Form FmHA 451–2, "Schedule of Remittances," and remitted with a separate cashier's check or money order in accordance with Subpart B of Part 1951 of this chapter.

(iii) Extra payments and refunds as defined in § 1951.8 of Subpart A of Part 1951 of this chapter will be listed on Form FmHA 451–2 and remitted in accordance with Subpart B of Part 1951 of this Chapter.

(b) *Application of payment.* The definitions of regular payments, extra payments, and refunds in Subpart A of Part 1951 of this chapter apply to this Subpart.

(1) *Regular payments.* Regular payments will be applied by the Finance Office in the following order of priority.

(i) Advances for recoverable cost in the amount necessary to keep the advance accounts current. Payments on amortized advances can only be applied to the amortized advance in full monthly increments. Partial payments are not applied to the amortized advance, but are applied to the borrower's loan account.

(ii) Unamortized advances.

(iii) Accrued interest on the note account.

(iv) Principal on the note account.

(2) *Payments insufficient to pay amount due.* When a borrower who has more than one loan of the same type makes a payment in an amount insufficient to pay the amount then due, the payment shall be applied on a prorata basis to each loan according to the amount then due. For delinquency reporting purposes, a borrower with more than one loan of the same type will be considered delinquent if the payments received are less than the combined amounts due on all loans of the same type.

(3) *Extra payments and refunds.* Extra payments and refunds will be credited to the borrower's note account(s) as of the date of the Form FmHA 451–2 and will be applied as prescribed in paragraph (b)(1) of this section. Extra payments and refunds do not relieve borrowers from making their next scheduled payment.

§ 1951.310 Amortization of recoverable cost.

When an advance is made by FmHA to pay recoverable costs, the Finance Office will automatically increase the payments during the amortization period by the amount necessary to repay the advance, with interest computed at the note rate.

(a) *Monthly payment borrowers.* Recoverable costs of more than $100 will be automatically amortized for 12 months when charged to monthly payment accounts unless the County Supervisor determines that, based on the borrower's repayment ability, a longer period is needed and so specifies on the voucher. An amortization period of more than 12 months will be used only when the recoverable cost charged is (1) two or more year's taxes when the amortization period ordinarily will not exceed the number of months for which the taxes are being vouchered, or (2) a non-recurring cost. Recoverable costs of less than $100 are due and payable on the next payment date. If there is an outstanding balance from a previous advance when a new advance is made, the two amounts will be combined and amortized as specified above.

If the new installment is less than the previous installment, the larger of the two will be used, thus causing the balance to be paid in less than 12 payments.

(b) *Annual payment borrowers.* Recoverable costs will be automatically due and payable for annual payment borrowers on the next payment due date, unless the County Supervisor determines, based on the borrower's repayment ability, that a longer period is needed and so specifies on the voucher. The advance can be prorated for more than one annual payment under the conditions specified in paragraph (a) of this section.

(c) *Scheduling adjusted loan payments.* A copy of Form FmHA 451–26, "Transaction Record," will be sent to the County Office when a recoverable cost is charged to an account. The first increased payment will be due on the first regular monthly due date occurring 30 or more days after the charge is made to the account.

§ 1951.311 Finance Office responsibilities.

(a) *Monthly status report.* The Finance Office will provide each County Office with a monthly report showing the unpaid balance of interest and principal, daily interest accrual, date of last payment, and schedule status of each borrower. Separate reports will be prepared for monthly payment borrowers and annual payment borowers. The Finance Office will provide each State Office with a monthly report showing the number of

delinquent monthly and annual payment borrowers in each County Office.

(b) *Annual statement.* At the end of each calendar year, the Finance Office will send each borrower a statement showing the unpaid loan balance and the total amount of principal and interest paid during the year. If the borrower received subsidy that is subject to recapture, the annual statement will also show the annual and total subsidy granted on the loans.

§ 1951.312 Servicing.

The County Supervisor will use all the authorities available to give borrowers an opportunity to become successful homeowners. Every effort should be made to reduce the number and amount of borrower delinquencies and failures resutling in liquidation of the account. To assure that effective use is made of those authorities, followup and monitoring procedures must be established. The County Office will develop a monitoring system for delinquent borrowers that will show account status and trigger needed followup activity (see Exhibits B and C). A review will be made at least montly for delinquent borrowers making payments to the Finance Office and daily for borrowers scheduled to make payments to the County Office to determine if appropriate servicing actions are being taken and desired results are being attained. The District Director will review delinquent accounts at least quarterly. All actions taken, agreements reached and recommendations made in the servicing of a borrower account are to be documented. Account servicing includes the following:

(a) *Hold payment coupons.* The County Supervisor will hold payment coupons for all new borrowers for at least 6 months and for delinquent borrowers until the delinquency is removed and the County Supervisor believes that payments will be made as scheduled.

(b) *Interest credit.* When servicing loan accounts, County Supervisors should make sure that borrowers are receiving all of the interest credit assistance for which they are eligibile as provided for in § 1944.34 of Subpart A of Part 1944 of this Chapter.

(c) *Moratorium.* Borrowers who, due to circumstances beyond their control, are unable to continue with the scheduled payments on their loan without unduly impairing their standard of living should be considered for a moratorium in accordance with § 1951.313 of this Subpart.

(d) *Rescheduled Payment Agreements.* Delinquent borrowers are expected to bring their accounts current as soon as possible, based on their ability to repay as determined by a completed Form FmHA 431–3, "Household Financial Statement and Budget." Borrowers who are unable to pay all or a substantial portion of the delinquent amount in a single payment will pay a larger than scheduled regular payment until the account is current. The remaining delinquent balance should usually be paid within 2 years but in no case will the repayment period exceed the remaining term of the loan. The borrower's circumstances will be reviewed annualy to determine if the delinquent balance can be paid or the additional payment amount should be altered.

(1) If the account can be brought current in four payments or less an agreement will be reached with the borrower and the new payment schedule confirmed by letter.

(2) Borrowers who need more than 4 months to repay a delinquency will execute Form FmHA 451–37 which will be sent to the Finance Office. Form FmHA 451–37 must be completed for each loan and the amount of the additional partial payment must be at least $10 per month for each borrower. The County Supervisor may enter into only one agreement with a borrower in any 1-year period. Prior authorization from the District Director is required for any additional agreements during this 1-year period.

(e) *Systematic method to service accounts of delinquent borrowers.* The following method is to be followed in servicing each delinquent housing account. Guide Letters 1951–G–2, 3, 4, 5, 6, 7 and 8 will be used for servicing unless letters with different wording are incorporated into a State supplement which has received prior approval of the National Office. Borrowers who have declared bankruptcy under the Federal Bankruptcy Code will be serviced as provided in § 1965.117 of Subpart C of Part 1965 of this chapter.

(1) *Initial delinquency contact.* A borrower will be contacted as soon as the County Office becomes aware of a delinquency. This should be when a borrower first misses a payment, however, an existing delinquent borrower who has not previously been contacted will be serviced in accordance with this paragraph (e). In many cases this initial contact will determine the success or failure of future servicing efforts.

(i) Borrowers scheduled to make payments in the County Office will be contacted by phone, personal visit or Guide Letter 1951–G–2 the day following the due date of a missed payment.

(ii) Borrowers paying direct to the Finance Office will be contacted by phone, personal visit or Guide Letter 1951–G–2 immediately after the County Supervisor becomes aware of the missed payment.

(iii) The borrower, when contacted in accordance with paragraphs (e)(1) (i) and (ii) of this section, will be informed that:

(A) The account is delinquent and payment should be remitted that day;

(B) Payments are expected to be received on or before the due date;

(C) The borrower must notify the County Office if a payment will be late;

(D) Interest credits or a moratorium are available to borrowers who qualify.

(2) *No response to the initial deliquency contact.* If, within 10 days, no response has been received to the initial delinquency contact, the County Supervisor will send Guide Letter 1951–G–3 notifying the borrower that the required payment has not been received. A delinquent borrower who previously has been contacted but has not been scheduled for an appointment or has not entered into a payment agreement will also receive this letter. The letter will schedule an appointment for a County Office visit. Form FmHA 431–3 will be attached and the borrower will be requested to complete the form and bring the payment coupons to the FmHA office.

(i) During the borrower's visit a payment should be collected and the Form FmHA 431–3 reviewed to determine if the borrower has repayment ability. If a payment is not received to bring the account current, the following items will be discussed and appropriate action taken:

(A) Is the borrower willing and able to make additional payments in excess of the scheduled payment to bring the account current?

(B) Is the borrower eligible for interest credit assistance or additional interest credits?

(C) Does the borrower qualify for a moratorium?

(ii) If the borrower does not qualify for a moratorium or additional interest credits and cannot or is not willing to make a firm commitment to make additional payments to bring the account current, the County Supervisor will discuss voluntary liquidation of the account. The following options listed in the order of preference, will be discussed with the borrower:

(A) *Sale of the property.* When there is equity, the borrower should be informed of the approximate amount of equity and the advantage of placing the house on the market for sale. It should

be made clear that the amount of equity is an estimate and may differ from actual equity realized. If recapture is involved, the borrower will be reminded that the amount to be recaptured must be added to the unpaid principal and interest. If the borrower agrees to attempt to sell, a reasonable time (usually 90 days) will be allowed to complete the sale. The borrower should be informed of the possibility of assumption of the FmHA debt by an FmHA applicant in accordance with § 1965.126 of Subpart C of Part 1965 of this Chapter.

(B) *Voluntary conveyance.* If the borrower is unable to sell the property within a reasonable period, voluntary conveyance to the Government should be considered. If the property is conveyed, the borrower should be informed that they will have to vacate the property and would lose title and equity (if any) they have in the property.

(C) *Foreclosure.* If the borrower does not liquidate voluntarily, explain that foreclosure will be initiated.

(3) *Borrower does not contact the County Office.* If the borrower does not respond to the County Supervisor's letter or fails to keep the scheduled appointment, the County Supervisor will immediately send Guide Letter 1951–G–4, notifying the borrower of a planned visit to the property to discuss the items in paragraphs (e)(2) (i) and (ii) of this section, make a security check, and evaluate the property.

(4) *Borrower fails to keep appointment at residence.* (i) If the borrower does not respond to the County Supervisor's letter,or fails to keep the schedcled appointment, the County Supervisor will immediately send Guide Letter 1951–G–5 notifying the borrower of the previous efforts to assist and advising that foreclosure may be recommended if payment is not received or another appointment arranged. If an appointment is arranged, the items in paragraphs (e)(2) (i) and (ii) will be discussed.

(ii) If there is no response to Guide Letter 1951–G–5 within 7 days the County Supervisor will prepare and send a completed Form FmHA 1955–2, "Report on Real Estate Problem Case," to the District Director with a recommendation for foreclosure.

(iii) The District Director will review the file and decide if appropriate action has been taken by the County Supervisor to adequately service the account in an effort to give the borrower an opportunity to become a successful homeowner. If the District Director determines that appropriate action has been taken in servicing the account and that further servicing efforts will not result in the borrower meeting loan obligations, the District Director will accelerate the account according to Subpart A of Part 1955 of this Chapter. If the District Director determines that additional servicing efforts are appropriate, the County Supervisor will be instructed regarding actions to be taken. (Guide Letter 1951–G–6 will be used if the District Director chooses to write the borrower). If the County Supervisor cannot work out an agreement with the borrower, the file will be returned to the District Director for initiation of foreclosure action.

(5) *Supplemental Contacts.* The circumstances of all borrowers encountering problems will not be the same as described in paragraphs (e)(1) through (4) of this section.

(i) Some borrowers are chronically 1 or 2 payments behind schedule and others continually default on payment agreements and fail to keep appointments. Once the requirements of paragraphs (e)(1) through (4) of this section are completed, it would be ineffective, in many cases, to continually repeat these contacts. In these cases Guide Letters 1951–G–5 and 7 will be used for future contacts. The County Supervisor must be very firm and persistent in servicing these borrowers. However, if the borrower remains uncooperative after these future contacts, the County Supervisor will prepare Form FmHA 1955–2 recommending foreclosure. The District Director will take the actions required in paragraph (e)(4)(iii) of this section.

(ii) If the borrower abandons or does not properly maintain the property, fails to pay taxes or defaults on any other mortgage covenant, the borrower, when possible, will be contacted. If the County Supervisor cannot reach an agreement with the borrower and foreclosure is recommended, the account will be serviced as in paragraph (e)(4)(iii) of this section.

§ 1951.313 Moratoriums.

(a) *Definitions.* As used in this section:

(1) *Moratorium.* A 6-month period during which scheduled payments are deferred for payment at a later date.

(2) *Scheduled payments.* The amount of the monthly or annual installment on a promissory note as modified by any Interest Credit Agreement, Additional Partial Payment Agreement or other documented agreements between FmHA and the borrower.

(3) *Unduly impaired standard of living.* A condition whereby the borrower, due to circumstances beyond his or her control, is temporarily unable to meet normal living expenses and make scheduled payments.

(b) *Eligibility requirements.* All of the following must exist before a moratorium can be granted:

(1) The borrower is unable for the following reasons to continue making scheduled payments for a period of at least 6 months without unduly impairing his or her standard of living:

(i) Income reduction that will cause the scheduled payments plus taxes and insurance on the dwelling to exceed 35% of the borrower's income during the next 12 months, or

(ii) The need to pay certain essential family expenses which has resulted or may result in a lien being placed on the borrower's dwelling and which if not paid are likely to result in loss of the dwelling. This does not include excessive consumer debt.

(2) There must be a reasonable expectation that income will be available to resume scheduled payments after the moratorium period(s).

(3) Borrower must occupy the dwelling unless determined by FmHA to be uninhabitable.

(4) The borrower's account has not been accelerated.

(5) It has been more than 2 year since the borrower went off a previous moratorium unless prior concurrence of the State Director is obtained.

(c) *Granting a moratorium.* A moratorium on scheduled payments will be granted when:

(1) The borrower has made written request on Form FmHA 1951–23, "Moratorium on Payment (Section 502–504 RH Loans)".

(2) The County Supervisor has verified the accuracy of the information provided and determines that the borrower is receiving all authorized interest credits and meets all the moratorium eligibility requirements.

(d) *Approval authority.* The County Supervisor is authorized to approve or disapprove a request for a moratorium. The borrower will be notified in writing of the action taken within 15 days after request has been received in the County Office. If the moratorium is approved, Part 2 of Form FmHA 1951–23 will be completed and sent to the borrower. Form FmHA 1951–6 "Borrower Account Description Flag," will be sent to the Finance Office. If the moratorium is denied, the borrower will be notified in accordance with paragraph (j) of this section, and § 1910.6(b)(1) of Subpart A of Part 1910 of this chapter.

(e) *Moratorium period.*

(1) A moratorium may only be granted for a 6-month period. A moratorium may be retroactive for up to 90 days prior to

the date the request for a moratorium was received in the County Office if the circumstances for which the moratorium is to be granted existed during that time. A maximum of six consecutive moratoriums may be granted, an initial moratorium and five renewals.

(2) At the beginning of the 5th month of the moratorium period, the County Supervisor will send Guide Letter 1951–G–8 to the borrower to determine if a moratorium is justified for the next 9-month period. It is the responsibility of the borrower to contact the county office. If the borrower does not contact the county office, FmHA will allow the moratorium to expire and there will be no appeal of the decision. If a moratorium is renewed, Form FmHA 1951–23 and Form FmHA 1951–6 will be completed and distributed in accordance with the FMI.

(3) The County Supervisor will remind the borrower that a moratorium on payments does not relieve them of the responsibility of paying real estate taxes and hazard insurance premiums during the moratorium period.

(f) *Action at the expiration of the final moratorium period.* At the end of the final moratorium period, the County Supervisor will verify the borrower's annual income and obtain a current budget to determine the borrower's repayment ability. The borrower will be advised by letter of the action taken, the reasons for the action, and the new repayment schedule.

(1) Borrowers who can bring the account current within 2 years by paying the payments which were deferred during the moratorium period, in addition to the regularly scheduled payments, will execute Form FmHA 451–37 to establish a new repayment schedule.

(2) When a borrower cannot bring the account current within 2 years through the use of Form 451–37, the loan will be reamortized within the remaining term of the loan.

(3) When a borrower does not have repayment ability if the loan were reamortized within the remaining term of the loan, the loan may be reamortized for the remaining term of the loan plus a period not to exceed the total time a moratorium was in effect. If the loan was not originally scheduled for the maximum legal term, the loan can be reamortized for the maximum legal term of the loan plus a period not to exceed the time the moratorium was in effect, less the number of years the loan has been outstanding. The borrower must pay for title clearance and legal services needed to assure that the Government's lien priority is retained.

(4) Part or all of the interest accrued during the moratorium period(s) will be cancelled when reamortization over the maximum authorized period will not result in payments which are within the borrower's repayment ability. If the determination is made that the borrower cannot make scheduled payments without cancellation of part or all of the interest which accrued during the moratorium, the County Supervisor will determine how much interest must be cancelled to enable the borrower to repay the loan during the maximum authorized period. The County Supervisor will advise the Finance Office by memo of the amount of interest cancelled, and this amount will be deducted from the balance owed in determining a new repayment schedule.

(5) If after 3 consecutive years of moratorium the borrower is still unable to make scheduled payments, even if the account were reamortized, all authorized interest credits were granted, and interest accrued during the moratorium were cancelled, the account must be liquidated.

(g) *Cancellation.* A moratorium may be cancelled at any time during the first 4 months of the moratorium period if the County Supervisor determines that the reason for the moratorium no longer exists. If cancelled, the borrower will be notified in writing and appeal rights given according to paragraph (j)(3) of this section. Form FmHA 451–37 will be executed to establish a new repayment schedule and the borrower will be notified in writing of the new payment amount.

(h) *Interest accrual.* Interest will accrue during the moratorium at the rate shown on the promissory noted as modified by an Interest Credit Agreement. Interest credits will be granted and renewed throughout the period a moratorium is in effect for borrowers eligible for interest credits as authorized in Subpart A of Part 1944 of this Chapter.

(i) *Notification of moratorium provision.* Applicants and borrowers will be advised of the moratorium provision as follows:

(1) During the applicant interview as required in Subpart A of Part 1944 of this chapter.

(2) In borrower servicing contacts as required in § 1951.312 of this subpart.

(j) *Appeal rights.* The borrower will be advised in writing of the right to appeal as provided in Subpart B of Part 1900 of this Chapter when:

(1) The request for an initial moratorium is denied unless the denial is based on the fact that 35% of the borrower's confirmed income is sufficient to pay principal and interest installment, real estate taxes and insurance.

(2) A request for a moratorium renewal is not approved, unless a moratorium has been in effect for a total of 3 years in which case termination of the moratorium is not appealable.

(3) A moratorium is cancelled before its expiration data.

§ 1951.314 Reamortizations.

Reamortizing Section 502 and 504 RH loans extends loan payments to the maximum authorized repayment period, or rearranges the payments within the remaining years of the original repayment period.

(a) *Conditions.* RH loan accounts may be reamortized under any of the following circumstances:

(1) When the borrower has made extra payments or refunds totaling 10 percent or more of the loan balance and the County Supervisor determines that the borrower cannot reasonably be expected to meet the obligation unless the account is reamortized to substantially reduce the annual or monthly installments;

(2) At the expiration of the final moratorium period in accordance with § 1951.313(f) of this subpart;

(3) When an individual farmer program loan for real estate purposes or a Section 502 or 504 RH loan is being made to a presently indebted Section 502 or 504 RH borrower, and the loan approval official determines that the borrower cannot reasonably be expected to meet installments due unless the account is reamortized.

(4) When the loan was not originally scheduled for the maximum legal term and the security life of the property is such that the term can be extended, the loan can be reamortized for the maximum legal term less the number of years the loan has been outstanding provided the County Supervisor determines that the borrower's financial condition has changed and the borrower cannot reasonably be expected to meet the obligation unless the account is reamortized.

(5) When an unauthorized loan or unauthorized interest credit has been serviced in accordance with Subpart M of Part 1951 of this Chapter, and the reversal and reapplication of payments have resulted in a delinquency which requires more than 2 years for the borrower to repay under Form FmHA 451–37.

(6) When a delinquency develops in connection with the processing of a same terms assumption.

(7) When a decision has been made under Subpart A of Part 1951 of this

Chapter to reamortize, reschedule or consolidate the farmer programs loans of a borrower who also has an RH loan.

(b) *Required actions.* The following actions will be taken:

(1) Form FmHA 452–2, "Reamortization and/or Deferral Agreement," will be completed in accordance with the FMI.

(2) If the note or assumption agreement being reamortized is not held in the County Office, the County Supervisor will obtain the promissory note and any assumption agreement from the Finance Office before processing the reamortization.

(3) On the back of the original note or assumption agreement, below all signatures and endorsements, the County Supervisor will insert the following: "A Reamortization and/or Deferral Agreement dated ———, 19—, in the principal sum of $———, has been given to modify the payment schedule of this note."

(4) The end of the amortization period will be the final due date of the note being reamortized unless the due date is extended in accordance with § 1951.313(f)(3) or § 1951.314(a)(4) of this subpart.

(5) Interest rate for the loan will be unchanged. If the borrower qualifies for interest credits following reamortization of the account, a new Form FmHA 1944–6, "Interest Credit Agreement (Section 502 RH Loans)," will be attached to Form FmHA 452–2 and submitted to the Finance Office.

§ 1951.315 Refinancing.

Refinancing of Section 502 loans is authorized when servicing accounts where either interest credits would not be available because the loan was approved prior to August 1, 1968, or the loan was made to an above-moderate borrower and the borrower would now be eligible for a loan with interest credits and who through circumstances beyond the borrower's control is in danger of losing his/her home. Refinancing will be accomplished in accordance with Subpart A of Part 1944 of the chapter, notwithstanding the restrictions in paragraph § 1944.22(a).

§ 1951.316 Servicing a note-only loan.

A loan made on a note-only basis will be serviced in a manner which is in the Government's best interest.

(a) *Sale of real property improved with note-only funds.* When property which was improved with note-only funds is sold, the County Supervisor should attempt to collect the balance owed on the loan. If collection cannot be made, the debt may be assumed by the purchaser of the property on the terms of the note. If collection or assumption cannot be effected, the debt should be settled in accordance with Part 1864 of this chapter (FmHA Instruction 456.1), if possible, or reclassified to collection-only if the borrower has assets and a judgment is to be sought.

(b) *Note-only in connection with secured loan(s).* When a borrower owes both secured and RH note-only loans and the security property is transferred to a party who will assume the secured loan(s), the total of the secured and unsecured loans will be assumed not to exceed the market value of the security property. When all of the transferor's debt is not assumed, the balance will be collected, secured by a judgment if there are assets from which collection may be made, or settled in accordance with Part 1864 of this Chapter (FmHA Instruction 456.1).

(c) *Deceased borrower.* When a note-only borrower dies, the County Supervisor will determine if there are relatives who will repay the loan. If payments are not made, the County Supervisor will determine whether there are assets in the borrower's estate from which a claim may be collected. If there are assets, a claim against the decedent's estate may be recommended in accordance with § 1962.49 of Subpart A of Part 1962 of this chapter. If not, the debt will be settled in accordance with Part 1864 of this Chapter (FmHA Instruction 456.1).

§ 1951.317 Exception authority.

The Administration may, in individual cases make an exception to any requirement or provision of this Subpart which is not inconsistent with the authorizing statue or other applicable law if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise this authority only at the request of the State Director and on the recommendation of the Assistant Administrator, Housing. Requests for exceptions must be made in writing by the State Director and supported with documentation to explain the adverse effect on the Government's interest, proposed alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1951.318–1951.350 [Reserved]

Exhibit A—Cooperative Agreement for Utilization of Housing Supervisory and Counseling Services Between the Farmers Home Administration and ————

1. This agreement, dated ———, between ————, a political subdivision or nonprofit organization of the State of ———— (hereinafter called the Agency), and the United States of America acting through the Farmers Home Administration (FmHA), U.S. Department of Agriculture, is entered into for the purpose of permitting the Agency to assist in the FmHA's effort to make available housing counseling and other assistance for FmHA rural housing borrowers in the County of ———— in the State of ———— and to enable them to better care for and maintain their dwellings, reduce energy consumption and better manage their finances.

2. FmHA certifies that it is empowered by current Federal laws and related rules and regulations to enter into this Cooperative Agreement with the Agency and that the work to be done by the Agency will be useful, in the public interest, could not otherwise be provided, and will not result in the displacement of employed workers.

3. The Agency certifies that it has the authority under the laws of the State of ———— to enter into this Agreement and to provide the services agreed upon in the manner provided for.

4. FmHA agrees to:

A. Provide training to employees of the Agency who will provide housing counseling. The training will include general information on the section 502 and 504 housing programs and specific information on:

1. Computing interest credit.
2. Rescheduled payment agreements.
3. Moratorium on payments.
4. Reamortization.
5. FmHA budget forms.
6. The borrower's obligation under the promissory note and security instrument.
7. Home Energy management.
8. Graduation.
9. Construction complaints and defects.

B. At its discretion, the FmHA may also provide its own servicing actions in a way to maximize the effectiveness of the Agency's counseling activities.

C. Provide access to FmHA files of a borrower upon receipt of an executed letter of permission from the borrower.

D. Evaluate the success of the counseling provided under this Agreement on a quarterly basis.

E. Consult with the Agency, as necessary, on situations involving misconduct, neglect of work, and apparent conflicts of interest of Agency employees.

5. The Agency agrees to:

A. Not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, marital status, national origin or physical or mental handicap. The Agency will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, marital status, national origin or physical or mental handicap. Such action will include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Agency will

post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. Work with borrowers in a patient and understanding manner; with a goal toward eliminating loan delinquency and other housing-related problems.

C. Pay all salaries and other expenses of Agency employees and comply with Federal, State, and local minimum wage statutes. No monies will be paid by the FmHA under this Agreement, either to the Agency or its employees.

D. Not charge borrowers or FmHA for services rendered under this Agreement or receive any compensation or payments from borrowers or FmHA for services rendered pursuant to this Agreement.

E. Not assign specific Agency employees to act as housing counselors for FmHA borrowers upon request of FmHA.

F. Advise FmHA borrowers on the items covered in 4A of this agreement and as described in FmHA regulations.

G. Contact all borrowers who have returned the authorization letter.

6. The Agency and FmHA mutually understand and agree that reasons for determining that an Agency employee is unacceptable as a housing counselor for FmHA borrowers may include but shall not be limited to the following:

A. Practicing or appearing to practice discrimination for reasons of race, color, religion, sex, age, marital status, national origin, or mental or physical handicap.

B. Being or becoming involved in real or apparent conflicts of interest, such as engaging directly or indirectly in business transactions with FmHA applicants or borrowers, or using or appearing to use a counseling assignment for private gain, other than basic salary and benefits.

C. Engaging in or having engaged in criminal, dishonest, or immoral conduct, or conducting him/herself in a manner which might embarrass or cause criticism of the FmHA.

D. Engaging is direct partisan political activity while working with FmHA borrowers.

7. The Agency and FmHA further understand that:

A. Agency employees may not represent themselves as employees of FmHA nor represent that they can enter into agreements binding on FmHA.

B. Agency employees may not collect loan payments or other funds for or on behalf of FmHA.

8. The term of this Agreement shall commence on the date in the first paragraph. It shall continue until September 30, 198—, unless terminated by at least thirty (30) days' advance written notice by either party to the other. The Agreement may be renewed for successive one-year periods beginning each October 1 hearafter if mutually agreed to by the Agency and FmHA.

9. No member of or delegate to Congress or resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom, unless it be made with a corporation for its general benefit.

Enter Official Title of Agency by
(Authorizing Official)
Farmers Home Administration by
(FMHA County Supervisor)

Exhibit B—Monitoring (Tickler) System

The objective is to have only one place where payments and servicing actions are recorded. An efficient tickler system is a "one stop" service station for effective delinquency follow-up. Anyone in the County Office or personnel from other County Offices or from the District and State level will be able to look at the servicing card and determine the borrower's payment status, needed servicing action and relevant past history.

1. A separate management box is set up for the tickler system with dividers numbered 1–31, one for each day of the month.

2. Transfer the Office Management Card (Form FmHA 1905–5) to the tickler system for all new, delinquent and other borrowers who are required to make payments in the County Office. This card is filed by due date.

3. An alphabetical list of all borrowers on the tickler system, with payment due date, is kept in front of the box so individual cards can be located.

4. A monitoring card (see Exhibit C for an example) fits into the management card. Pertinent information such as case number, address, due date, home and work phone, amount of APPA plus all contacts, agreements and payments received will be recorded on this card. When the card is full or when the borrower goes off the tickler system, the card will be filed in Position 3 of the borrower's County Office file.

5. An index card is kept by each numbered divider to record payment agreements for other than the regular due date. Example 1: Jim Frey's due date is the 15th but he advised that the payment will be made on the 18th. Record the agreement on the management card and keep filed behind the 15th. Record "Jim Frey—15" on the index card behind the 18th. This will assure follow-up on the proper day plus reference where the management card can be found. This is a "one time" agreement so can be crossed out on the index card after follow-up.

Example 2: Jody Davis's due date is the 15th, however, he has entered into an agreement to pay $150 on the 5th and 20th of each month until current. Record the agreement on the management card and keep behind the 15th. Record "Jody Davis—15" on index cards behind the 5th and 20th and keep as long as the agreement is in effect.

Note.—An alternative system would be to leave the management card (Form FmHA 1905–5) in the management box. The management box would only be used to locate the borrower's monitoring card in the tickler system. All contracts, agreements, payments etc., will be recorded on the tickler system monitoring card. This will eliminate the need for the alphabetical list described in Step 3. The 31-day tickler system would be set up in the same manner but only using the monitoring card (Exhibit C). If this alternative system is used, a notebook binder could be used instead of a card box.

Exhibit C

MONITORING FILE RECORD CARD

Case No. _____

Name & Address Telephone Home _____ Work _____

PAYMENT SCHEDULE

Due Date:
Regular :
Extra :

TOTAL :

DATE	NOTES	OFFICE PAYMENTS			
		Date	Amt	Date	Amt
	Fold on dotted line				

Dated: September 16, 1985.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 85-22792 Filed 9-23-85; 8:45 am]

BILLING CODE 3410-07-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-22414; File No. S7-40-85]

Short Sales of Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendments.

SUMMARY: In connection with extending unlisted trading privileges to certain over-the-counter stocks and permitting certain listed securities to be concurrently designated National Market System Securities, the Commission is proposing amendments to its short sale rule that would exclude from application of the rule transactions in National Market System Securities that are traded on an exchange on a listed or unlisted trading privileges basis.

DATE: Comments to be received by October 30, 1985.

ADDRESSES: All Comments should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. All comments should refer to File No. S7-40-85, and will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Andrew E. Feldman, Esq., (202) 272-2414, Room 5202, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Summary

Rule 10a-1 ("Short sale rule" or "Rule")[1] under the Securities Exchange Act of 1934 ("Act")[2] prohibits execution of short sales under certain conditions. The Rule applies to securities registered on, or admitted to unlisted trading privileges ("UTP") on, a national securities exchange for which last sale information is reported pursuant to an "effective transaction reporting plan."[3] As such, Rule 10a-1 applies to listed securities traded on an exchange or in the third market [4] and reported through the consolidated transaction reporting system, but not to purely over-the-counter ("OTC") securities or to the limited number of listed securities not eligible for inclusion in the consolidated transaction reporting system.

The Commission today has issued two releases that could, as a by-product, subject transactions in two groups of National Market System Securities ("NMS Securities")[5] to the Rule for the first time. First, the Commission has announced the terms and conditions for exchanges to commence trading NMS Securities on a UTP basis beginning January 1, 1986.[6] Second, the

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[1] 17 CFR 240.10a-1.

[2] 15 U.S.C. 78a *et seq.*, as amended by the Securities Acts Admendments of 1975, Pub. L. No. 94-29 (June 4, 1975), 89 Stat. 97, [1975] U.S. Code Cong. & Ad. News 97.

[3] The Commission's transaction reporting rule, Rule 11Aa3-1 under the Act, defines an "effective transaction reporting plan" as a plan approved by the Commission for collecting, processing, and disseminating transaction reports in reported securities. 17 CFR 240.11Aa3-1(a)(3). *See also* 17 CFR 240.11Aa3-1(a)(4)-(6). Transaction reports for listed securities from all markets are collected and disseminated in the "consolidated transaction reporting system" pursuant to such a plan administered by the Consolidated Tape Association ("CTA"). The CTA members are the New York, American, Boston, Cincinnati, Midwest, Pacific, and Philadelphia Stock Exchanges, and the National Association of Securities Dealers ("NASD").

[4] The third market is a term used to describe over-the-counter transactions in listed securities.

[5] Rule 11Aa2-1 under the Act ("NMS Securities Rule") sets forth the criteria and procedures by which certain OTC securities are designated as NMS Securities. 17 CFR 240.11Aa2-1. *See* Securities Exchange Act Release No. 21583 (December 16, 1984), 50 FR 730 ("NMS Amendments Release"); Securities Exchange Act Release No. 17549 (February 17, 1981), 46 FR 13992 ("NMS Adoption Release"). The primary effect of designation as an NMS Security is that the security is subject to last sale reporting requirements similar to those applicable to exchange traded securities. Transaction reports are collected and disseminated through the NASD's NASDAQ system pursuant to an effective transaction reporting plan administered by the NASD. These securities and listed securities included in the consolidated transaction reporting system are "reported securities." *See* 17 CFR 240.11Aa3-1(a)(4).

[6] Securities Exchange Act Release No. 22412 (September 16, 1985) ("OTC/UTP Release").

Commission has adopted amendments to the NMS Securities Rule to allow listed securities that are not reported in the consolidated transaction reporting system to be designated as NMS Securities beginning October 1, 1985.[7] Because last sale information on NMS Securities is reported pursuant to an "effective transaction reporting plan," transaction in NMS Securities that are traded on an exchange on the basis of either UTP or a concurrent listing automatically would be subject to short sale regulation, whether those transactions occur on an exchange or OTC.

The Commission, however, has not made a determination on the extent to which Rule 10a–1 should apply to NMS Securities. Thus, it is proposing to amend Rule 10a–1 to exclude transactions in NMS Securities from the Rule until the question of OTC short sale regulation is resolved.[8]

II. Background

Section 10(a) of the Act grants the Commission authority to regulate short sales in securities.[9] Consistent with that authority, the Commission in 1938 adopted Rule 10a–1 under the Act,[10] which is generally designed to prohibit short selling in a declining market.[11] It applies to securities registered on or admitted to UTP on a national securities exchange for which last sale information is reported pursuant to an "effective transaction reporting plan."[12] The short sale rule uses a tick test which relies on current last sale reporting.[13] This test compares the price of a proposed short sale to immediately preceding transactions to determine its permissibility: short sales may be effected only on a plus tick (*i.e.*, at a price above the price at which the immediately preceding last sale was effected) or a zero-plus tick (*i.e.*, at a price equal to the last sale if the last preceding transaction at a different price was at a lower price). The base price is determined by reference to the last sale either in the consolidated transaction report system or in a particular marketplace.[14]

Prior to 1975, Rule 10a-1 covered short sales in reported listed securities effected only on exchanges. OTC trading in reported securities was not subject to any short selling restrictions, in part because last sale reports were not available for OTC transactions.[15] In connection with the implementation of the CTA Plan in 1974, the Commission extended Rule 10a-1 to third market transactions in listed securities included in the consolidated system.[16]

In adopting the NMS Securities Rule thereby extending last sale reporting to those solely OTC-traded securities designated as NMS Securities, the Commission specifically sought comment on whether short sale limitations should be extended to NMS Securities.[17] In a recent release,[18] the Commission recognized that last sale reporting has become an established part of the OTC market,[19] and noted that as of June 1985 there were over 1900 NMS Securities, with prospects that additional securities would soon be designated.[20] Accordingly, the Commission again solicited comment on whether and how short sales in OTC securities designated as NMS Securities should be regulated.[21] That request for public comment is still outstanding.[22]

III. Discussion

The Commission has proceeded cautiously both in expanding short sale regulation and in designating NMS Securities. Now that last sale reporting has been established in the OTC market, the Commission is seeking public comment on the appropriateness of extending Rule 10a-1 generally to NMS Securities. It should be noted, however, that unless Rule 10a-1 is amended, Commission approval of UTP in NMS Securities and of concurrent exchange listing and NMS designation would have the effect of bringing certain NMS Securities within the scope of the Rule for the first time. Specifically, once trading in these securities begins in multiple markets pursuant to an "effective transaction reporting plan," persons engaging in transactions in such NMS Securities either on an exchange or OTC would have to comply with short selling regulations.

The Commission solicits comment on whether, in view of its ongoing consideration of NMS Securities short sale regulation, it should suspend the application of short sale restrictions to the limited group of NMS Securities subject to UTP or concurrent exchange trading. The Commission preliminarily believes that it should address short sale regulation with respect to NMS Securities on an omnibus basis and not through the automatic application of the Rule as a result of granting UTP to NMS Securities or the concurrent exchange listing and NMS designation of a limited number of securities. Automatically

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[7] Securities Exchange Act Release No. 22413 (September 16, 1985) ("OTC/Listed NMS Securities Release").

[8] The Commission has published a release soliciting comment on whether to extend short sale regulation to NMS Securities. *See* Securities Exchange Act Release No 22127 (June 21, 1985), 50 FR 26584 ("NMS Concept Release").

[9] 15 U.S.C. 78j.

[10] *See* Securities Exchange Act Release No. 1548 (January 24, 1938). ("Rule 10a–1 Adoption Release"). In addition to Rule 10a–1, the Commission adopted Rule 3b–3 under the Act, which defines the term "short sale" as any sale of a security which the seller does not own or any sale which is consumated by the delivery of a security borrowed by, or for the account of, the seller. *See id.*

[11] The Commission elaborated on the objectives of Rule 10a–1 in the *Special Study of Securities Markets*. The Commission stated that short sale regulation should:

(1) Allow relatively unrestricted short selling in an advancing market;

(2) Prevent short selling at successively lower prices, thus eliminating short selling as a tool for driving the market down;

(3) Prevent short sellers from accelerating a declining market by exhausting all remaining bids at one price level, causing successively lower prices to be established by long sellers.

Securities and Exchange Commission, *Special Study of Securities Markets*, H.R. Doc. No. 95, 88th Cong., 1st Sess. 251 (1963).

[12] *See supra* note 5.

[13] 17 CFR 240.10a–1(a)(1).

[14] 17 CFR 240.10a–1(a)(1). The "equalizing exemption" to the Rule, however, provides an exception which allows a market maker (*i.e.*, an exchange specialist, registered exchange market maker, or third market maker) to effect short sales for his own account at a price equal to the last sale price reported in the consolidated system, regardless whether that sale was on a zero-plus tick. *See* 17 CFR 240.10a–1(e)(5).

[15] *See* Securities Exchange Act Release No. 11468 (June 12, 1975), 40 FR 25442, 25443 ("1975 Rule 10a-1 Amendments Release"). In the absence of publicity concerning OTC short sales (such as that afforded by the consolidated transaction reporting system), there appeared to be little reason to fear that such sales would have a manipulative or destabilizing impact on the markets. *Id.* at 25443.

[16] *See* 1975 Rule 10a-1 Amendments Release, *supra* note 15. In proposing to expand the scope of Rule 10a-1, the Commission specifically noted that the potential for manipulation which the short sale rule was designed to prevent would be incressed by the availability of transaction reporting. *See* Securities Exchange Act Release No. 10668 (March 6, 1974), 36 FR 10804. Following a review of the comments, the Commission concluded that the publicity provided by the consolidated system for OTC transactions in reported listed securities justified the application of Rule 10a-1. *See* 1975 Rule 10a-1 Amendments Release, *supra* note 15, at 25443.

[17] NMS Adoption Release, *supra* note 5, 14001–02. In response to that solicitation, the NASD stated that "short selling regulations prior to and during a distribution of NMS Securities would be appropriate but that it is not necessary, at this time, to impose across-the-board short sale regulations on transactions in NMS Securities." Letter from S. William Broka, Secretary, NASD, to George A. Fitzsimmons, Sectary, SEC, dated July 31, 1981.

[18] NMS Concept Release, *supra* note 8.

[19] *Id.* at 26585.

[20] *See id.* at 26587.

[21] *Id.* at 26586–87.

[22] The comment period expires on September 30, 1985

applying Rule 10a-1 to these NMS Securities appears to be premature because the Commission is still studying the broader question whether short sale regulation should apply to some or all NMS Securities. It also would be confusing because only those NMS Securities traded on an exchange on a listed or UTP basis would be subject to short sale regulation. Finally, it would be arbitrary for the applicability of Rule 10a-1 to depend on exchange decisions on whether to have UTP, and for all OTC participants who trade these NMS Securities to be automatically subject to the Rule even if there was little or no exchange trading.[23]

Accordingly, the Commission is proposing for comment amendments to Rule 10a-1 that would exempt from the Rule transactions in NMS Securities traded on an exchange on a listed or UTP basis. The proposed amendments are narrow in scope, and would apply only to transactions in those NMS Securities that are subject to either UTP or a concurrent exchange listing. If adopted, the amendments would, of course, be subject to modification if the Commission decides to apply short sale restrictions to the OTC market.

IV. Summary of the Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[24] regarding the proposed amendments to Rule 10a-1. The IRFA indicates that the proposed amendments would exempt from Rule 10a-1 persons engaging in transactions in NMS Securities subject to UTP or to a concurrent exchange listing. The IRFA notes that the principal effect of this exemption would be to relieve exchange specialists, OTC market makers, and other market participants from obligations governing short selling to which they otherwise would be subject. The IRFA states that, because the proposed amendments would exempt persons from regulation the proposal would not appear to impose any costs upon those persons affected. However, the IFRA solicits comments on whether the proposed amendments might impose any other costs.

A copy of the IFRA may be obtained by contacting Andrew E. Feldman, Esq. (202) 272–2414, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC. 20549.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

V. Statutory Basis and Text of the Amendments

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 10(a) and 23(a) thereof, 15 U.S.C. 78j and 78w(a), the Commission proposes to amend § 240.10a–1 in Chapter II of Title 17 of the Code of Federal Regulations.

Text of Proposed Amendments to Rule 10a–1

Chapter II, Title 17 of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w) . . . § 240.10a–1 also issued under sec. 10(a), 48 Stat. 891, as amended (15 U.S.C. 78j) . . . .

2. Section 240.10a–1 is amended by revising paragraph (a) as follows:

§ 240.10a–1 Short sales.

(a)(1)(i) No person shall, for his own account or for the account of any other person, effect a short sale of any security registered on, or admitted to unlisted trading privileges on, a national securities exchange, if trades in such security are reported pursuant to an "effective transaction reporting plan" as defined in § 240.11Aa3–1 (Rule 11Aa3–1) under the Act), and information as to such trades is made available in accordance with such plan on a real-time basis to vendors of market transaction information, (A) below the price at which the last sale thereof, regular way, was reported pursuant to an effective transaction reporting plan; or (B) at such price unless such price is above the next proceeding different price at which a sale of such security, regular way, was reported pursuant to an effective transaction reporting plan.

(ii) The provisions of paragraph (a)(1)(i) hereof shall not apply to transactions by any person in National Market System Securities as defined in § 240.11Aa2–1 (Rule 11Aa2–1) under the Act).

* * * * *

By the Commission.

September 16, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–22899 Filed 9–23–85; 8:45 am]

BILLING CODE 8010-01-M

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[23] In this regard, there are a small number of NMS Securities that currently are traded on an exchange on a listed or UTP basis. The majority of trading in these issues has occurred in the OTC market rather than on the exchanges. *See* OTC/UTP Release, *supra* note 7, at 31–32.

[24] 5 U.S.C. 601 *et seq.*

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17 CFR Part 240

[Release No. 34–22419; File No. S7–41–85]

Proposed Amendment Relating to the Options Disclosure Document

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule amendment and solicitation of public comment.

SUMMARY: The Commission is proposing for comment an amendment to Rule 9b–1 under the Securities Exchange Act of 1934 which provides for the distribution to investors of an options disiclosure document discussing the risks and uses of standardized options. If adopted, the amendment would delete from the Rule the requirement that the disclosure document contain information regarding the uses of the options classes covered by the document.

DATE: Comments must be received on or before October 11, 1985.

ADDRESSES: Interested persons should submit three copies of their written comments to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC, 20549 and should refer to File No. S7–41–85. All submissions will be made available for public inspection at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Holly Hasley Smith, Esq., (202) 272–2415, Division of Market Regulation, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Today the Securities and Exchange Commission ("Commission") proposes for comment an amendment to Rule 9b–1 ("Rule") under the Securities Exchange Act of 1934 ("Act")[1] which would eliminate from paragraph (c) of the Rule the requirement that an options disclosure document contain information regarding the uses of the options classes covered by the document.

I. Background

Rule 9b–1 provides that an options disclosure document containing the information specified in paragraph (c) of

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[1] 17 CFR 240. 9b–1 (1985).

the Rule must be filed with the Commission by an options market [2] at least 60 days prior to the date definitive copies of the document are furnished to customers. Paragraph (c) of the Rule specified that, with respect to the options classes covered by the document, the document must contain, among other things, a discussion of the mechanics of buying, writing and exercising the options; the risks of trading, and the uses of, the options; the market for the option; and the tax consequences of options trading. Paragraph (d) of the Rule further provides that no broker or dealer shall accept an options order from a customer, or approve the customer's account for the trading of options, "unless the broker or dealer furnishes or has furnished to the customer the options disclosure document."

The Commission adopted the Rule on September 16, 1982, in an effort to foster better investor understanding of standardized options trading and reduce the costs of issuer compliance with the registration requirements of the Securities Act of 1933 ("Securities Act").[3] Prior to the adoption of the Rule, it was necessary for an options issuer to file a registration statement containing detailed information about the issuer of the options and the mechanics of options trading, in order to meet the registration requirements of the Securities Act. The Proposal Release, however, noted that the registration requirements of the Securities Act made the prospectus "lengthy and complicated" and did not meet the needs of financially unsophisticated options investors.[4] Accordingly, the Commission proposed that a disclosure document under the Act be developed which would contain information concerning the risks and uses of options trading and present the information in a manner easily understandable by investors lacking a technical, financial background. With the adoption of Rule 9b-1, the Commission established a new disclosure procedure specifically geared to meeting the information needs of investors in standardized options.[5]

In 1982, following the adoption of Rule 9b-1, an options disclosure document was prepared jointly by the American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Pacific Stock Exchange, Inc., the Philadelphia Stock Exchange, Inc. ("Exchanges") and the Options Clearing Corporation ("OCC").[6] The initial disclosure document consisted of a single booklet generally describing the risks and uses of exchange-listed options on individual equity securities. Since that time, three additional disclosure booklets have been published describing, respectively, the risks and uses of listed options on stock indexes, debt instruments and foreign currencies.

Recently, the OCC and the Exchanges, together with the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc., ("NASD"), filed with the Commission a revised options disclosure document which is intended to replace the disclosure booklets currently in use.[7] As amended, the disclosure document reflects recent significant changes in the options markets. For example, the document discusses changes relating to the introduction of the NASD as an options market,[8] proposed new products such as European-style options[9] and proposed options on the European Currency Unit.[10]

In addition to these revisions, the four disclosure booklets currently in use have been consolidated into a single revised document entitled "Characteristics and Risks of Standards Options." The amended disclosure document retains the risk disclosure discussions found formerly in each of the separate booklets, but eliminates the separate discussion of uses of each of the options classes covered by the document. Instead, possible uses of options are noted only to the extent necessary to discuss clearly possible risks of various options strategies. In connection with filing the revised disclosure document, the Exchanges, the NASD and the OCC have required that the Commission amend Rule 9b–1 to eliminate the requirement that the disclosure document contain information regarding the uses of standardized options.

In response to this request, the Commission is proposing for comment an amendment to Rule 9b–1. Under the proposed amendment, paragraph (c) of the Rule would no longer require the options disclosure document contain information on the uses of the options classes covered by the document. All other provisions of paragraph (c) of the Rule would remain the same.[11]

II. Proposed Amendment

The Commission proposes to amend paragraph (c) of Rule 9b–1 to delete the requirement that an options disclosure document contain information regarding the uses of standardized options.

The options markets have changed in several significant respects since the adoption of Rule 9b–1 and the publication of the first options disclosure document in 1982. In particular, since 1982, the Commission has approved options trading on a number of new instruments and underlying securities, including debt insturments, foreign currencies and over-the-counter stocks. Standardized options trading on these new products, among others, necessitated the issuance of additional disclosure documents to supplement the original document which dealt exclusively with options on individual exchange-listed equity securities. The publication of these documents has substantially increased the length and complexity of the disclosures provided investors regarding standardized options.[12]

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[2] Paragraph (a)(1) of the Rule defines an options market to mean "a national securities exchange, an automated quotation system of a registered securities association or a foreign securities exchange on which standardized options are traded."

[3] *See* Securities Exchange Act Release Nos. 18836 (June 24, 1982), 47 FR 28688 ("Proposal Release") and 19055 (September 16, 1982), 47 FR 41950 ("Adoption Release").

[4] Proposal Release, *id.* at 47 FR 28688.

[5] Concurrent with the adoption of Rule 9b-1, the Commission adopted a new Form S–20 for the registration of standardized options under the Securities Act. Adoption Release, *supra* note 3, 47 FR at 41951–2. This Form requires the filing of information related to the issuer of standardized options and such options. The Form must be filed with the Commission by the issuer before an options disclosure document may be distributed. 17 CFR 240.9b-1(b)(1)(1985).

[6] At the present time, all standardized options traded on United States exchanges or in the NASDAQ market are issued by OCC.

[7] *See* letter from Michael L. Meyer, Schiff, Hardin & Waite, Counsel to OCC, to Richard T. Chase, Associate Director, Division of Market Regulation, SEC, dated June 17, 1985, and letter from Marc L. Berman, General Counsel, OCC, to Richard T. Chase, dated July 30, 1985.

[8] *See* Securities Exchange Act Release No. 22026 (May 8, 1985), 50 FR 20310.

[9] *See* File No. SR–CBOE–84–31, Securities Exchange Act Release No. 22043 (May 15, 1985), 50 FR 21381.

[10] *See* File No. SR–Phlx–85–10, Securities Exchange Act Release No. 22056 (May 20, 1985), 50 FR 21536, and File No. SR–PSE–85–16.

[11] The Exchanges, NASD and OCC ("Participants") also have requested that the staff of the Division of Market Regulation ("Division") indicate that it will not recommend that the Commission take enforcement action against any of the Participants (or their member firms), pending adoption of this amendment, because the disclosure document no longer discusses the uses of standardized options. In this regard, the Commission, pursuant to its authority under paragraph (c) or Rule 9b–1, has issued an order exempting the Participants from the requirement that the disclosure document contain information on the uses of options. *See* Securities Exchange Act Release No. 22418 (September 17, 1989).

[12] In this regard, the disclosure documents covering new options products originally were crafted as separate supplements to the basic disclosure document covering options on individual equity securities. This avoided repetition of the discussion of generic risks contained in the basic

Continued

In addition, investor understanding of the mechanics of buying, writing and exercising options, and of the various uses of options, such as hedging, has increased in recent years, in part due to educational efforts undertaken by the Exchanges. In this regard, the Exchanges and many brokerage firms already produce extensive educational and sales materials that provide information on a variety of uses for options. Thus, while there may be advantages to including a discussion of uses in the disclosure document, it would appear that there are a number of alternative sources of that information for investors. Industry representatives also have become more knowledgeable about options trading strategies.

In view of these changes, the Commission believes it is consistent with the purposes of Rule 9b–1 to eliminate from the Rule the requirement that the disclosure document contain information concerning the uses of all the options classes covered by the document. In this regard, it is important to recall that, in adopting Rule 9b–1, the Commission's principal goal was to establish a "disclosure framework specifically tailored to the information needs of investors in standardized options."[13] The Commission endorsed the development of a disclosure document which would alert investors to the risks of options trading and be easily understood by readers lacking financial experties.[14] The Commission believes that the proposed amendment to Rule 9b–1 will further the Commission's intended aim of providing adequate disclosure of the risks of options trading in a manner readily understandable by investors. By eliminating the separate discussion of uses from the document, the document will be less lenghty and complex, thereby focusing attention on the risk disclosure aspects of the document.

Moreover, as a practical matter, the Commission recognizes most broker-dealers accepting options orders from public customers inform their customers of the uses of options and trading or investment strategies which may be appropriate for them. Moreover, the Commission believes that consolidation of the four disclosure booklets into a single document is consistent with the purposes of the Rule. It will simplify the disclosure of risks and related information for new options products by eliminating the need for investors to cross-reference between the basic and supplemental documents. It will also ensure that investors are in timely receipt of information concerning all options classes traded on an exchange or quoted on NASDAQ, rather than relying on the proper booklet being sent to each options customer. The unified disclosure approach should dramatically simplify compliance procedures for broker-dealers with respect to this requirement.

III. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the amendment proposed herein will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefore, is attached to this release.

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

IV. Statutory Basis and Text of Proposed Amendment

Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read as follows:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w. section 240.9b–1 also issued under 15 U.S.C. 77b, 77g, 77j, 77s(a), 78i, 78o.

§ 240.96–1 [Amended]

2. Section 240.9b–1 is amended by removing paragraph (c)(4), and redesignating paragraphs (c)(5) through (c)(12) as paragraphs (c)(4) through (c)(11).

Dated: September 17, 1985.

By the Commission.

John Wheeler,

Secretary.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendment to Rule 9b–1 set forth in Securities Exchange Act Release No. 34–22419, if promulgated, will not have a significant economic impact on a substantial number of small entities. Specifically, in the event that information on the uses of standardized options is deleted from the options disclosure document, the document will become less lengthy than the current disclosure materials, and will be less costly to print and distribute than is currently the case. Any costs incurred by options broker-dealers as a result of the proposed amendment would not have a significant economic impact on small broker-dealers as that term is defined in Rule 0–10(c).

Dated: September 18, 1985.

John S.R. Shad,

Chairman.

[FR Doc. 85–22793 Filed 9–23–85; 8:45 am]

BILLING CODE 8010-01-M

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document, but necessitated cross referencing between booklets, a source of potential investor confusion. Consolidation of the various disclosure documents obviated this problem, but without reducing its scope would have produced a formidable document that many investors might have found too imposing to read.

[13] Adoption Release, *supra* note 3, 47 FR at 41951.

[14] Proposal Release, *supra* note 3, 47 FR at 28688.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 1753; A–7–FRL–2901–8]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking (PRM).

SUMMARY: In this document, EPA proposes to approve a revision to the State air pollution control regulations as part of the State Implementation Plan. The purpose of this revision is to require that sources of air pollution submit emissions information and that emissions data correlated with allowable emission rates be publicly available as required by the Clean Air Act. The purpose of this document is to advise the public of EPA's preliminary finding and to invite comments on EPA's proposed approval.

DATE: Comments must be received by October 24, 1985.

ADDRESSES: Comments should be sent to Daniel J. Wheeler, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. The State submission is available at the above address and at the Missouri Department of Natural Resources, 1101 Rear Southwest Boulevard, Jefferson City, Missouri 65102.

FOR FURTHER INFORMATION CONTACT: Daniel J. Wheeler, 913–236–2893.

SUPPLEMENTARY INFORMATION: Section 110 of the Clean Air Act requires that State Implementation Plans (SIP) contain provisions requiring periodic submission of emission data by sources

of air pollution. It also requires that emission data as correlated with allowable emission rates be made available to the public.

The State of Missouri included rules in its 1972 SIP that were intended to comply with these requirements. A legal review by EPA found that the underlying statutory authority could be interpreted to prohibit release of emission data under the rules included in the 1972 SIP (37 FR 22089, October 28, 1972). Therefore, the Missouri SIP was disapproved with respect to this requirement. (See 40 CFR 52.1325(a).)

The State has now rescinded the 1972 regulations dealing with emission data and adopted a new comprehensive regulation in their place. Previously State regulations contained separate data submission requirements for each of the four geographical areas of the State. Similarly, there were four other rules concerning public availability of data. The single new rule replaces the eight former rules, requiring data submission and public availability on a Statewide basis.

In reviewing the new rule, EPA specifically examined the public availability provisions. Missouri statutes contain a strict prohibition on releasing information constituting a trade secret. The EPA review finds that, in the new State Rule 10 CSR 10–6.110, there is a specific defined difference between emission data, which must be released, and confidential business data, which must not be released. The State rule provides a mechanism for determining whether data are to be kept confidential, and contains a requirement that data reported under the rule must be reduced to emission data so that it may be released to the public as required by the rule. The mechanism also clarifies the distinction between information which can or must be released, and information which must be kept confidential.

This rule is subject to a povision of State law which authorizes a State agency to adopt regulations to bring the SIP into conformance with the Clean Air Act, and allows the State legislature's joint committee on administrative rules to suspend a rule that is beyond, or contrary to, this statutory authority or is inconsistent with legislative intent. This statutory provision was adopted after EPA's original disapproval of the public availability provisions of the SIP. The legislature was in session for over six months after this rule was published in the *Missouri Register* and adjourned without addressing this rule. Therefore, EPA believes the State has properly determined that the rule is within the scope of the statute.

In summary, EPA believes that this new rule, 10 CSR 10–6.110, Submission of Emission Data and Process Information, meets the requirements of the Clean Air Act and of 40 CFR 51.11(a)(6). This approval would also result in the revocation of the disapproval found at 40 CFR 52.1325(a).

This State submission constitutes a proposed revision to the Missouri SIP. The Administrator's decision to approve or disapprove this proposed revision will be based on the comments received and on a determination of whether or not the revision meets the requirements of section 110 of the Clean Air Act and of 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: August 5, 1985.

Morris Kay,

Regional Administrator.

[FR Doc. 85–22526 Filed 9–23–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 435

[FRL–2902–1]

Oil and Gas Extraction Point Source Category, Offshore Subcategory; Effluent Limitations Guidelines and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of date change.

SUMMARY: EPA has changed the date of one workshop originally announced in the **Federal Register** on August 26, 1985 (50 FR 34592), as discussed in the ADDRESSES section of this document.

DATE: Workshop rescheduled for Thursday, September 26, 1985.

ADDRESSES: The public workshop to be held at the Sheraton New Orleans Hotel, 500 Canal Street, New Orleans, Louisiana. There will be no pre-registration. Onsite registration will begin at 8:30 a.m. The workshop will be conducted from 9:00 a.m. to 5:30 p.m. local time.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Ruddy, Industrial Technology Division (WH–552), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 or call (202) 382–7131.

Dated: September 13, 1985.

Edwin L. Johnson,

Acting Assistant Administrator for Water.

[FR Doc. 85–22772 Filed 9–23–85; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 546 and 552

[GSAR Notice No. 5–92]

Contractor Inspection Requirements

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) Chapter 5, that would add Section 546.301 to prescribe a Contractor Inspection Requirements clause to be used by the Office of Federal Supply Service of GSA and to add Section 552.246–77 to provide the text of the Contractor Inspection Requirements clause which woud replace the current Quality Approved Manufacturer Agreement (QAMA) clause. Other minor editorial changes are proposed in Part 552 to eliminate language which repeats material in Part 546. The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

DATE: Comments are due, in writing, on or before October 24, 1985.

ADDRESS: Requests for a copy of the proposal and your comments should be addressed to Mrs. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations, 18th & F Sts., NW, Room 4026, Washington DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Ida M. Ustad, Office of GSA Acquisition Policy and Regulations, (202) 523–4754.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this proposed rule.

The General Services Administration certifies that this document will not

have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), and therefore has not prepared a regulatory flexibility analysis. The proposed rule provides for the Government to rely on the contractors quality control system to assure the quality of supplies provided under the contract rather than relying on Government inspection of the supplies at the source. This proposed rule does not contain information collection requirements which require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et., seq.).

List of Subjects in 48 CFR Parts 546 and 552

Government procurement.

Dated: September 10, 1985.

Richard H. Hopf III,

Director, Office of GSA Acquisition Policy and Regulations.

[FR Doc. 85-22871 Filed 9-23-85; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF COMMERCE

48 CFR Parts 1301, 1302, 1306, 1309, 1314, 1315, 1319, 1333, 1349, and 1352

[Docket No. 50830-5130, Amdt. 85-2]

Acquisition Regulation; Relating to Competition in Contracting and Miscellaneous Amendments

AGENCY: Department of Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule, if adopted, would amend the Commerce Acquisition Regulations (CAR) to implement the protest provisions of the Competition in Contracting Act of 1984, Pub. L. 98-369 (CICA), and amendments to the Federal Acquisition Regulation (FAR) which incorporate and reflect changes to Federal acquisition policy required by the protest provisions of the CICA.

This proposed rule would also make changes to the CAR unrelated to implementing the CICA and FAR revisions. Procedures would be established for: Expanding contracting and subcontracting opportunities for women-owned small businesses; conducting preaward surveys of prospective contractors for ship construction, ship alteration and ship repair; recovering administrative costs in the event of contractor default; establishing a dollar threshold for using formal source selection procedures; and using Alternate I of the FAR prescribed disputes clause. The proposed rule would also amend the CAR by adding citations to internal Department procedures for oversight reviews of contracting activities and reporting fraudulent claims and misrepresentations, and by making miscellaneous updates and corrections.

DATE: Written comments on the proposed rule will be considered if received on or before November 8, 1985.

ADDRESSES: Send written coments to: Director, Office of Procurement and Administrative Services, HCHB, Room H6316, U.S. Department of Commerce, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230. Please cite CAR; Amendment 85-2 in any written comments submitted and mark the outside of the envelope, Comments on CAR; Amendment 85-2". The public docket rulemaking file including all comments received on the proposed rule may be inspected by the public during normal business hours in Room H6414 at the above address.

FOR FURTHER INFORMATION CONTACT: John Dammeyer, Procurement Analyst, Office of Procurement Management, HCHB, Room H6424, U.S. Department of Commerce, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230, (202) 377-4248.

SUPPLEMENTARY INFORMATION:

Background

On March 27, 1984 the Department of Commerce issued a rule known as the Commerce Acquisition Regulation (CAR) (49 FR 12956-69, March 30, 1984). That rule implemented and supplemented the Federal Acquisition Regulation (FAR) which was separately promulgated by the General Services Administration (GSA), the Department of Defense (DOD), and the National Aeronautics and Space Administration (NASA). The FAR was promulgated as the uniform, simplified acquisition regulation called for by Executive Order 12352,"Federal Procurement Reforms".

On April 30, 1985 the Department of Commerce issued an interim rule known as CAR Amendment 85-1 (50 FR 19361-69, May 8, 1985). The primary purpose of CAR Amendment 85-1 was to implement the Competition in Contracting Act of 1984, Pub. L. 98-369 (CICA), and recent revisions to the FAR made by GSA, DOD, and NASA to implement that Act. CAR Amendment 85-1 did not implement the protest provisions of the CICA or the FAR.

Proposed CAR Amendment 85-2 would implement the CICA and FAR protest provisions within the Department of Commerce. This amendment would establish procedures for protesting Department acquisitions to the General Accounting Office (GAO), the General Services Board of Contract Appeals (GSBCA), and the Department of Commerce. Included in the protest coverage is a solicitation provision requiring service of protests on the contracting officer and the Contract Law Division of the Department's Office of the Assistant General Counsel for Administration. Another CICA related item establishes procedures for sending certain justifications for other than full and open competition to the United States Trade Representative.

This amendment would also make a number of changes to the CAR which are not directly related to implementation of the CICA. First, the CAR would be amended to implement Department policy encouraging the use of women-owned small businesses in Department acquisition programs by requiring women-owned small businesses to be included in mailing lists for solicitations of offers from the public to provide supplies or services to the Department by contract. It also would increase opportunities for women-owned small businesses to participate as subcontractors in Department contracts, by requiring Department contractors to include these businesses in their subcontracting plans.

Second, the amendment would provide guidance to Department contracting officers on conducting preaward surveys of prospective contractors for ship construction, ship alteration, and ship repair contracts. The FAR requires a contracting officer to determine that a prospective contractor is "responsible" before awarding a contract to the prospective contractor. When the contracting officer finds that the information on hand or readily available is not sufficient to make a determination regarding the prospective contractor's responsibility, the contracting officer normally requests or conducts a preaward survey to aid in making this determination. The proposed amendment would provide guidance to Department contracting officers when a preaward survey is contemplated for contracts involving ship construction, ship alteration, and ship repair.

Third, the amendment would establish procedures for Department contracting officers to use when recovering administrative costs incurred by the Government, as a result of a default under a Department contract. A Government contracting officer may

terminate a Government contract under FAR prescribed Default contract clauses for a contractor's failure or anticipated failure to perform its contractual obligations. Under the FAR prescribed contract clauses, the Government is entitled to acquire supplies or services similar to those terminated and the contractor is liable for any excess costs for those supplies or services. The Government's rights and remedies under the Default clauses are in addition to any other rights and remedies which the Government may have by law or under the contract. Many times, the Government incurs additional administrative costs as a result of a contractor's default which are not reflected in the difference between the cost of supplies or services under the contract and the cost of substitute supplies or services; i.e., excess costs. The Government's ability to recover these additional administrative costs has often been limited because of a lack of a credible record. The proposed Department procedures would define administrative costs and explain how they should be documented to aid in their proof.

Fourth, the amendment would amend the CAR to specify when Alternate I of the FAR prescribed Disputes clause (FAR 52.233–1) may be used in Department contracts. Before passage of the Contract Disputes Act, a Government contractor was generally obligated to continue performance under the contract, pending resolution of a contract claim "arising under" but not "related to" the contract. The validity of a claim "arising under" the contract was, and is now, subject to a contracting officer's decision which is appealable to an agency's board of contract appeals. The Contract Disputes Act extended the coverage of the contracting officer's decision and board of contract appeal's jurisdiction to disputes "related to" the contract, as well as disputes "arising under" the contract. This made breaches of contract subject to this administrative remedy. The standard FAR Disputes clause only requires the contractor to continue performance pending the resolution of a claim "arising under" the contract, but does not require continued performance in the event the dispute is only "related to" the contract. There may be occasion when it is necessary for the protection of life or public safety, particularly in the Department's weather and environmental programs, to require that performance continue. For that reason, this CAR amendment would permit Alternate I to be used in Department contracts, only when authorized on an exceptional basis by the prescribed written determination of the Head of the Contracting Activity.

Fifth, the amendment would limit Department use of formal source selection procedures to acquisitions which are estimated to be $5,000,000 or more, unless specifically approved by the Procurement Executive. The FAR states that "formal" procedures for selection of offerors for contract awards are "generally used in high-dollar-value acquisitions". The proposed amendment, if adopted, would follow the Governmentwide practice of reserving these more formal source selection procedures for high-dollar-value acquisitions.

Sixth, the amendment would make miscellaneous changes to the CAR to correct typographical errors; to cite internal Department procedures for oversight reviews of contracting activities and reporting fraudulent claims or misrepresentations; and to substitute the term "Procurement Executive" for various office titles appearing in the CAR. By using the term "Procurement Executive", the need for CAR updates based upon changed office titles would be kept to a minimum.

Administrative Procedure Act and Small Business and Federal Procurement Competition Enhancement Act Requirements

Because this amendment involves matters of agency management, public property, and contracts, under subsection 553(a)(2) of the Administrative Procedure Act (APA) (5 U.S.C. 553(a)(2)), it is exempt from all requirements of section 553 including giving notice of proposed rulemaking, providing an opportunity for comment, and delaying the effective date until at least 30 days after publication or service.

However, section 302 of the Small Business and Federal Procurement Competition Enhancement Act of 1984, Pub. L. 98–577, added section 22 to the Office of Federal Procurement Policy Act which requires that notice of proposed rulemaking and at least 30 days opportunity for comment be given for acquisition regulations having a significant cost or administrative impact on contractors or offerors, and specifies that such regulations may not take effect until 30 days after such notice. Since some of the changes that would be made to the CAR by the proposed amendment may have a significant cost or administrative impact on contractors or offerors, this notice of proposed rulemaking is published and written comments from the public are invited and will be considered in promulgating a final rule if received on or before November 8, 1985.

Regulatory Flexibility Act Requirements

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

The proposed requirement for Department contractors to include women-owned small businesses in their subcontracting plans would apply where the FAR requirement for subcontracting plans for small and disadvantaged businesses applies. In both instances, small entities would be exempt from developing subcontracting plans.

The proposed requirement for preaward surveys of prospective contractors for ship construction, ship alteration, and ship repair would involve only a small number of small entities. The requirement to respond to questions from the preaward survey team before award of a contract which in most cases exceeds $100,000 would not involve a signficant economic impact. The Government preaward survey team would complete the questionnaire. The question and answer session usually would be completed in a day or two.

The proposed procedures for recovery of administrative costs would not involve a significant economic impact because the Government has traditionally been entitled to recover administrative costs incurred as a result of contractor default. This is reflected in court decisions and board of contract appeals decisions decided under the Contract Disputes Act. Rather than setting precedent for recovery of previously unrecoverable costs, the proposed procedures allow for more demonstrable evidence.

Because this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities, an initial Regulatory Flexibility Analysis was not prepared.

Executive Order 12291 Requirements

Under Executive Order (E.O.) 12291, the Department must judge whether this proposed rule is "major" within the meaning of section 1 of the Order and therefore subject to the requirement that a Regulatory Impact Analysis be prepared. This proposed rule is not major because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries,

Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, preparation of a Regulatory Impact Analysis is not required and no preliminary or final Regulatory Impact Analysis has to be or will be prepared. This proposed rule was submitted to the Office of Management and Budget (OMB) for review in accordance with E.O. 12291 and OMB Bulletin 85–7.

Paperwork Reduction Act Requirements

This proposed rule contains collection of information requirements subject to the requirements of the Paperwork Reduction Act. These collection of information requirements are necessary: to implement Department policy encouraging greater participation by women-owned small businesses in Department acquisitions, both as contractors and subcontractors; and to provide guidance to contracting officers on conducting preaward surveys for ship construction, ship alteration, and ship repair.

The collection of information requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Comments from the public on these collection of information requirements are invited and should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20530. Attention: Desk Officer for the Department of Commerce.

List of Subjects in 48 CFR Parts 1301, 1302, 1306, 1309, 1314, 1315, 1319, 1333, 1349, and 1352

Government procurement.

For the reasons set forth in the preamble, the Department proposes to amend Chapter 13 of Title 48 of the Code of Federal Regulations as set forth below.

Issued in Washington, D.C., September 19, 1985.

Hugh L. Brennan,

Director, Office of Procurement and Administrative Services, U.S. Department of Commerce.

1. The authority citations for Parts 1301, 1302, 1306, 1309, 1314, 1315, 1319, 1333, and 1352 continue to read as follows:

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

PART 1301—[AMENDED]

1301.101 [Amended]

2. Section 1301.101(b) of Subpart 1301.1 is corrected by removing "CAP" and inserting "CAR" in its place.

3. Section 1301.104–3(b) of Subpart 1301.1 is revised to read as follows:

1301.104–3 Copies.

* * * * *

(b) Loose-leaf copies of the CAR are distributed within the Department by the Procurement Executive.

4. Section 1301.201–1(b) of Subpart 1301.2 is revised to read as follows:

1301.201–1 The two FAR councils.

(b) The Department representative to the Civilian Agency Acquisition Council will be appointed by the Procurement Executive. The Procurement Executive will be responsible for coordinating and advocating Department proposed revisions to the FAR.

1301.301 [Amended]

5. Section 1301.301(c) of Subpart 1301.3 is amended by replacing the term "Office of Procurement and Federal Assistance" with the term "Procurement Executive" in the two sentences where it appears.

1301.402 [Amended]

6. Section 1301.402 of Subpart 1301.4 is amended by replacing the term "Office of Procurement and Federal Assistance" with the term "Procurement Executive" in the two sentences where it appears.

1301.501 [Amended]

7. Section 1301.501 of Subpart 1301.5 is amended by replacing the term "Office of Procurement and Federal Assistance" in the last sentence, with the term "Procurement Executive".

1301.601–70 [Amended]

8. Section 1301.601–70 of Subpart 1301.6 is amended by replacing the term "Office of Procurement and Federal Assistance" with the term "Procurement Executive" in the two sentences where it appears.

1301.601–71 [Amended]

9. Section 1301.601–71 of Subpart 1301.6 is amended by replacing the term "Office of Procurement and Federal Assistance" with the term "Procurement Executive" in the heading and in the two sentences where it appears.

10. Section 1301.601–71 of Subpart 1301.6 is further amended by adding the phrase "pursuant to the Department Administrative Order on *Contracting (Procurement) Review and Approval Requirements* (DAO 208–5)," before the word "to" in the second sentence.

11. Section 1301.601–71 of Subpart 1301.6 is further amended by replacing the term "OPFA" with the term "Department".

PART 1302—[AMENDED]

1302.1–1 [Amended]

12. Section 1302.1–1 of Subpart 1302.1 is corrected by replacing "(DA) 208–2)" in the third sentence of the definition for "Head of the Agency" with "(DAO 208–2)".

13. Section 1302.1–1 of Subpart 1302.1 is further amended by adding the sentence "Procurement Executive also means the Senior Procurement Executive." after the first sentence in the definition for "Procurement Executive".

PART 1306—[AMENDED]

14. New sections 1306.303 and 1306.303–1 are added to Subpart 1306.3 to read as follows:

1306.303 Justifications.

1306.303–1 Requirements.

(d) Where the authority of FAR 6.302–3(a)(2)(i) or FAR 6.302–7 is cited as a basis for not providing full and open competition for any contract action subject to the Agreement on Government Procurement, the contracting officer shall send a copy of the justification to the Procurement Executive within 14 work days after contract award. The Procurement Executive shall send the copy of the justification to the Office of the United States Trade Representative.

PART 1309—[AMENDED]

15. Part 1309 is amended to add a new Subpart 1309.1 as follows:

Subpart 1309.1—Responsible Prospective Contractors

1309.106 Preaward surveys.

1309.106–70 Preaward surveys for ship construction, ship alteration, and ship repair.

(a) *General.* The contracting officer shall request a preaward survey of a prospective contractor for contracts involving ship construction, ship alteration, or ship repair, where the cost or price of the contract is anticipated to be in excees of $100,000, and the information on hand is not sufficient to make a determination regarding responsibility. The contracting officer

may request a preaward survey of a prospective contractor for contracts involving ship construction, ship alteration, or ship repair, where the cost or price of the contract is anticipated to be $100,000 or less, if the circumstances justify the cost of the survey.

(b) *Extent of preaward survey.* The contracting officer shall determine the manner and extent of the preaward survey based upon the specific requirements of the contract. At a minimum, the contracting officer shall request a preaward survey for contracts involving ship construction, ship alteration, and ship repair where the contracting officer cannot affirmatively determine that the prospective contractor's facility is adequate for the work to be performed. For the purpose of this section, the prospective contractor's facility includes the land, buildings, shop spaces, dock facilities, drydock or marine railways, and plant security and safety.

(c) *Examples of specific concern.* The contracting officer shall coordinate efforts with technical and requirements personnel to identify areas of specific concern for the preaward survey. The following examples illustrate areas which may be of specific concern to the preaward survey team, depending on the nature of the work to be performed:

(1) Acceptable facilities and equipment for special production techniques (e.g., unique welding procedures, special test fixtures, or production equipment);

(2) Adequate size and lift capacity for the drydock or marine railway;

(3) Well maintained drydock and lifting equipment and acceptable preventative maintenance of these items;

(4) Acceptable dock master and crew who are experienced in operating the equipment and lifting a vessel of comparable size and weight;

(5) Adequate drydock or pier utilities to support the vessel, including electrical power, steam, potable water, fire fighting capability, sewage disposal, and telephone service;

(6) Responsible subcontractors;

(7) Contractor's demonstrated ability to monitor and coordinate subcontractor performance;

(8) Contractor's demonstrated ability to conduct dock and sea trials;

(9) Contractor's demonstrated ability to protect the vessel and yard and vessel personnel, including safety and security programs or individual plans; and

(10) Adequate secure storage facilities for Government property.

(d) *Preaward survey team.* The contracting officer may use any of the following individuals to form the preaward survey team:

(1) A cost or price analyst or cognizant audit agency for review of the contractor's financial and accounting systems;

(2) Technical or requirements personnel from the cognizant marine center or office of marine operations, for technical, production, or quality assurance evaluations; and

(3) Representatives of the contracting officer for management and administrative evaluations.

(e) *On-site survey.* If it is necessary to conduct a survey at the proposed site where the work is to be performed, the contracting officer shall coordinate the visit with the prospective contractor or subcontractor.

(f) *Reports.* The surveying team shall comply with the applicable reporting requirements of FAR 9.106–4. When using the short-form preaward survey report prescribed in FAR 9.106–4(d), the surveying team shall provide information on the following at a minimum:

(1) The depth of water in the navigable waterway and the pier where the vessel will be berthed;

(2) The condition of the drydock or marine railway where the work is to be performed;

(3) Availability of adequate utilities and services for the vessel;

(4) Evidence of prospective contractor or subcontractor financial problems or poor past performance.

(g) *Contracting officer determination.* Upon completion of the preaward survey, the contracting officer shall determine whether the prospective contractor and subcontractors are responsible.

PART 1314—[AMENDED]

1314.407–8 [Removed]

16. Part 1314 is amended by removing section 1314.407–8.

PART 1315—[AMENDED]

17. Section 1315.612 is revised to read as follows:

1315.612 Formal source selection.

(a) *General.* It is Department policy that formal source selection procedures are not generally appropriate for other than high-dollar-value acquisitions. Accordingly, negotiated competitive acquisitions of a total estimated cost of less than $5,000,000 are not subject to formal source selection procedures, unless specifically approved by the Procurement Executive.

(e) *Safeguarding information.* The contracting officer is designated as the releasing authority for source selection information.

PART 1319—[AMENDED]

18. A new Subpart 1319.70 is added to Part 1319 as follows:

Subpart 1319.70—Contracting Opportunities for Women-Owned Small Businesses

1319.7001 Policy.

The Department encourages the use of women-owned small businesses in its acquisition programs. Whenever practicable, Department contracting activities shjall include women-owned small businesses in competitive solicitations and assist prime contractors in identifying women-owned small businesses for subcontracting opportunities.

1319.7002 Source identification and solicitation.

(a) The contracting officer shall include women-owned small businesses on the mailing list for each solicitation which is expected to result in an award in excess of the small purchase dollar threshold whenever there are women-owned small businesses known to be potential suppliers.

(b) The contracting officer should contact the Office of Small and Disadvantaged Business Utilization (OSDBU) for assistance in locating these sources through the Small Business Administration Procurement Automated Source System (PASS) and the Minority Vendor Profile System (MVPS). The contracting officer should also encourage technical and requirements personnel to identify women-owned small business sources.

1319.7003 Subcontracting opportunities.

(a) Contracting officers shall provide assistance to prime contractors to identify potential women-owned small businesses. Such assistance is intended to aid prime contractors in placing a fair proportion of subcontracts with women-owned small businesses.

(b) The contracting officer shall insert the clause at 1352.219–1, Women-Owned Small Business Sources, in solicitations and contracts where the clause prescribed by FAR 19.708(b) is required (see FAR 52.219–9).

PART 1333—PROTESTS, DISPUTES, AND APPEALS

19. The heading to Part 1333 is revised to read as set fourth above.

20. Part 1333 is amended by adding new Subparts 1333.1 and 1333.2 as follows:

Subpart 1333.1—Protests

13333.102 General.

The Departmentwide contact point for protests to the GAO or to the GSBCA is the Contract Law Division of the Office of the Assistant General Counsel for Administration (Contract Law Division). This office represents the Department in protests filed with the GAO or the GSBCA. This office furnishes all necessary correspondence concerning protests to the GAO or the GSBCA, including the Department's report in response to a GAO or GSBCA protest.

1333.103 Protests to the agency.

(a) Protests must be received within ten work days after the basis for protest is known or should have been known unless good cause is shown to extend the time limit. However, protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing time for receipt of initial proposals shall be filed prior to bid opening or the closing time for receipt of initial proposals. When a protest is filed only with the contracting activity, the contracting officer shall take prompt action towards resolution after consulting with legal counsel, and notify the protestor in writing of the action taken.

(b) When a protest is filed only with the contracting activity before award, an award shall not be made until the matter is resolved unless the head of the contracting office makes the determination presribed in FAR 33.103(a).

(c) When a protest is filed only with the contracting activity after award, the contracting officer need not notify the contractor if the protest can be promptly resolved. If it appears likely that the award may be invalidated or that a protest will be filed with the GAO or the GSBCA, the contracting officer should promptly notify the contractor in writing and consider suspending contract performance.

1333.104 Protests to GAO.

(a)(1) *General.* A protestor shall furnish a copy of its complete protest to the contracting officer designated in the solicitation and a copy of its complete protest to the Contract Law Division of the Office of the Assistant General Counsel for Administration, no later than one day after the protest is filed with the GAO. The envelope containing the complete protest shall be clearly marked "GAO Protest".

(2) The GAO report shall be assembed and organized by the contracting office in accordance with rule 4(d) of the GSBCA Rules of Procedure (48 CFR Part 6101) except where rule 4(d) may conflict with GAO procedures.

(3) The contracting officer shall give the notice required in FAR 33.104(a) (3) (GAO 4 CFR 21.3).

(4)(i) The contracting officer shall submit a draft index of the GAO report to the Contract Law Division of the Office of the Assistant General Counsel for Administration so that it is received within 10 work days after the contracting officer receives telephonic notice of the protest from the Contract Law Division.

(ii) The contracting officer shall submit the GAO report described in FAR 33.104(a)(2) to the Contract Law Division of the Office of the Assistant General Counsel for Administration so that it is received within 13 work days after the contracting officer receives telephonic notice of the protest from GAO, or from the Contract Law Division, whichever notice is sooner. The GAO report shall be submitted with the appropriate number of copies for GAO, the Contract Law Division, the protester, and all interested parties. The Contract Law Division will supplement the protest file with legal arguments to support the contracting officer's position and will submit the complete report to GAO and all interested parties within the time established by GAO.

(iii) The contracting officer shall submit a draft index of the GAO report to the Contract Law Division of the Office of the Assistant General Counsel for Administration so that it is received within 4 work days after the contracting officer receives telephonic notice of a GAO determination to use the express option.

(iv) The contracting officer shall submit the GAO report to the Contract Law Division of the Office of the Assistant General Counsel for Administration so that it is received within 6 work days after the contracting officer receives telephonic notice of a GAO determination to use the express option.

(b) *Protests before award.* When the contracting activity has received notice of a protest filed directly with GAO, a contract may not be awarded prior to a GAO decision on the protest, unless the Head of the Contracting Activity makes the written finding prescribed in FAR 33.104 (b)(1) after consulting with the Contract Law Division of the Office of the Assistant General Counsel for Administration. The head of the contracting office shall notify the Contract Law Division when the written finding has been executed so that the Contract Law Division can notify GAO. The contracting activity is not authorized to award the affected contract until the Contract Law Division has notified GAO of the written finding.

(c) *Protests after award.* When the contracting activity receives notice of a protest filed directly with GAO within 10 calendar days after contract award, the contracting officer shall immediately suspend performance pending a GAO decision on the protest or terminate the awarded contract, unless the Head of the Contracting Activity makes the written finding prescribed in FAR 33.104 (c)(2) after consulting with the Contract Law Division of the Office of the Assistant General Counsel for Administration. The head of the contracting office shall notify the Contract Law Division when the written finding has been executed so that the Contract Law Division can notify GAO. The contracting activity is not authorized to continue contract performance until the Contract Law Division has notified GAO of the written finding.

(f) *Notice to GAO.* The Head of the Contracting Activity shall report to the Comptroller General within 60 days of receipt of the GAO's recommendation if the contracting activity has decided not to comply with the recommendation. The Head of the Contracting Activity shall consult with, and send a draft report to, the Procurement Executive and the Contract Law Division of the Office of the Assistant General Counsel for Administration prior to sending the report to the Comptroller General.

§ 1333.105 Protests to GSBCA.

(a)(1) A protester shall furnish a copy of its complete protest to the contracting officer designated in the solicitation and a copy of its complete protest to the Contract Law Division of the Office of the Assistant General Counsel for Administration, on the same day the protest is filed with the GSBCA. The envelope containing the complete protest shall be clearly marked "GSBCA Protest".

(2) The contracting officer shall give the notice required in FAR 33.105(a)(2) (GSBCA Rule 5d, 48 CFR Part 6101).

(b)(1) The GSBCA protest file shall be assembled and organized by the contracting office in accordance with rule 4(d) of the GSBCA Rules of Procedure (48 CFR Part 6101).

(2) The contracting officer shall submit a draft index of the GSCBA protest file to the Contract Law Division of the Office of the Assistant General Counsel for Administration so that it is received within 5 work days after the protest is filed with the GSBCA.

(3) The contracting officer shall submit the GSBCA protest file described

in FAR 33.105(b) and (c) (GSBCA Rule 4, 48 CFR Part 6101) to the Contract Law Division of the Office of the Assistant General Counsel for Administration so that it is received within 8 work days after the protest is filed with the GSBCA. The protest file shall be submitted with the appropriate number of copies for GSBCA, the Contract Law Division, the protestor, and all interested parties. The Contract Law Division will supplement the protest file with legal arguments to support the contracting officer's position and will submit the complete protest file to GSBCA and all interested parties within the time established by GSBCA.

(d) If suspension of procurement authority was requested, but not considered appropriate due to the circumstances in FAR 33.105(d)(1), the Head of the Contracting Activity shall execute the determination and findings prescribed by FAR 33.105 after consulting with the Contracting Law Division of the Office of the Assistant General Counsel for Administration, so that the GSBCA may decide the issue.

§ 1333.106 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 1352.233–2, Service of Protest (JAN 1985) (Deviation FAR 52.223–2), in lieu of the provision at FAR 52.233–2 in solicitations for other than small purchases.

Subpart 1333.2—Disputes and Appeals

§ 1333.209 Suspected fraudulent claims.

The contracting officer shall report suspected fraudulent claims or misrepresentations of fact to the Office of Inspector General in accordance with the Department Administrative Order on *Inspector General Investigations* (DAO 207–10).

§ 1333.213 Obligation to continue performance.

(a) The contracting officer may use Alternate I to the clause at FAR 52.233–1, Disputes, only after the Head of the Contracting Activity has determined in writing that—

(1) Continued performance is necessary pending resolution of any claim arising under or relating to the contract because of unusual circumstances which make continued performance essential to the public health or welfare;

(2) Financing is or will be available for the continued performance; and

(3) The Government's interest is or will be properly secured.

21. A new Part 1349 is added to Subchapter G to read as follows:

PART 1349—TERMINATION OF CONTRACTS

Sec.
1349.001 Definitions.

Subpart 1349.4—Termination for Default

Sec.
1349.402–7 Other damages.

Authority: Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)), as delegated by the Secretary of Commerce in Department Organization Order 10–5 and Department Administrative Order 208–2.

1349.001 Definitions.

(a) "Administrative costs", as used in this part, means those costs other than excess costs, incurred by the Government as a result of the contractor's default. Administrative costs include but are not limited to:

(1) Salaries and fringe benefits paid to Government employees who are assigned to a work activity (e.g., reprocurement activities) as a result of the default;

(2) Preaward survey expenses incurred in qualifying reprocurement contractors; and

(3) Costs incurred in printing and distributing the reprocurement solicitation.

(b) "Excess costs", as used in this part, means any costs, other than administrative costs, incurred by the Government in reprocuring similar supplies or services or performing similar services as a result of the contractor's default.

Subpart 1349.4—Termination for Default

1349.402–7 Other damages.

(a) The contracting officer may recover administrative costs under the default clause when it is in the best interest of the Government. A contracting officer's decision to recover administrative costs must balance the expected cost to the Government of documenting and supporting the assessment with the expected recovery amount.

(b) Documents used to support an assessment of administrative costs must clearly demonstrate that the added costs incurred by the Government were a direct result of the default.

(1) To support administrative labor costs, the contracting officer should keep a record of:

(i) Name, position, and organization of each employee performing work activities as a consequence of the default;

(ii) Dates of work and time spent by each employee on the repurchase;

(iii) Specific tasks performed (e.g., solicitation preparation, clerical);

(iv) Hourly rates of pay (straight time or overtime); and

(v) Applicable fringe benefits.

(2) Travel vouchers, invoices, printing requisitions, and other appropriate evidence of expenditures may be used to support other administrative costs (e.g., travel, per diem, printing and distribution of the repurchase contract).

(c) If assessment of administrative costs is considered appropriate after review by the Contract Law Division of the Office of the Assistant General Counsel for Administration, the contracting officer shall make a written demand on the contractor for administrative costs. The written demand shall describe the basis for the assessment and the cost computations. The same demand letter may be used to assess administrative costs and any excess costs. If the contractor fails to make payment after receiving a contracting officer's final decision, the contracting officer shall follow the procedures in Subpart 1332.6 and FAR Subpart 32.6 to collect the amount owed the Government.

(d) The recovery of excess or administrative costs does not preclude the Government from exercising other rights or remedies which it may have by law or under the terminated contract.

PART 1352—[AMENDED]

22. Part 1352 is amended by adding a new Subpart 1352.2 as follows:

Subpart 1352.2—Texts of Provisions and Clauses

1352.219–1 Women-owned small business sources.

As prescribed in 1319.7003, insert the following provision:

Women-Owned Small Business Sources (May 1985)

The contractor agrees to develop a list of qualified bidders that are women-owned small businesses. The Small Business Administration Procurement and Automated Source System (PASS) and the Minority Vender Profile System (MVPS) may be used for this purpose. The contractor may contact the Department of Commerce, Office of Small and Disadvantaged Business Utilization (OSDBU) for assistance.

The contractor shall provide opportunities for women-owned small businesses to compete for subcontracts by making information on forthcoming opportunities available.

Where the clause "Small Business and Small Disadvantaged Business Subcontracting Plan" is required in accordance with FAR 19.708(b), the contractor shall include qualified women-

owned small businesses in the subcontracting plan.

(End of Provision)

1352.233–2 Service of protest.

As prescribed in 1333.106, insert the following provision:

Service of Protest (Jan. 1985) (Deviation FAR 52.233–2)

Protests, as defined in section 33.101 of the Federal Acquisition Regulation, shall be served on the Contracting Officer and the Contract Law Division of the Office of the Assistant General Counsel for Administration by obtaining written and dated acknowledgement of receipt from the Contracting Officer or the head of the contracting office or designee _____ and from the Contract Law Division of the Office of the Assistant General Counsel for Administration located at the U.S. Department of Commerce, Herbert C. Hoover Building, Room H5882, 14th St. between Pennsylvania and Constitution Avenues, N.W., Washington, D.C. 20230.

[Insert the address of the contracting officer to refer to the number of the block on the Standard Form 33 or 1442, etc., where the address of the contracting office is located.]

(End of Provision)

[FR Doc. 85–22765 Filed 9–23–85; 8:45 am]

BILLING CODE 3510-17-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 17

Importation of Green Sea Turtle Parts and Products

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Withdrawal of Proposed Rule.

SUMMARY: The U.S. Fish and Wildlife Service of the Department of the Interior gives notice that the April 17, 1985 proposal to amend its existing green sea turtle (*Chelonia mydas*) regulations to allow importation into the United States and trade in the parts and products of the green sea turtle has been withdrawn.

EFFECTIVE DATE: September 24, 1985.

FOR FURTHER INFORMATION CONTACT: Kathleen King, Enforcement Specialist, Branch of Investigations, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of the Interior, P.O. Box 28006, Washington, DC 20005. Telephone (202) 343–9242.

SUPPLEMENTARY INFORMATION: On April 17, 1985 (50 FR 15396), the U.S. Fish and Wildlife Service published a proposed rule to allow for import into the United States and commercial trade in green sea turtle parts and products derived from green sea turtles from populations that have been removed from Appendix I or listed on Appendix II or III as a result of action by the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The proposed rule was published in response to a petition submitted on behalf of the government of the Cayman Islands. The April 17, 1985, notice contains a full discussion of the background of the petition and the proposed rule. The public comment period on the proposed rule ended June 7, 1985. Thirty-nine public comments were received; 37 comments opposed the proposed rulemaking, while 2 were in favor.

However, all proposals for changes in the listing of any population of the green sea turtle, including those in the Cayman Islands, were rejected by action of the Parties to CITES at the Fifth Conference of the parties held in Buenos Aires April 22nd to May 3, 1985.

Because approval by the Parties to CITES of at least one of these proposals was a prerequisite to effecting the proposed rule, the U.S. Fish and Wildlife Service withdraws its proposed rulemaking with regard to the import or commercial trade in the parts of and products derived from the green sea turtle.

Dated: September 16, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–22751 Filed 9–23–85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Parts 13 and 23

Endangered Species Convention; Proposed Revision of Implementing Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to revise Subparts A and B of 50 CFR Part 23, the regulations implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora, to incorporate certain recommendations of the second, third and fourth meetings of the Conference of the Parties, and to make certain technical amendments.

DATES: Comments from the public must be received by November 25, 1985 to be assured consideration.

ADDRESSES: Comments on this proposed rule should be sent to the Director, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, 1000 North Glebe Road, Room 611, Arlington, Virginia 22201. All comments and materials received in response to this proposal will be available for public inspection during normal working hours at the Federal Wildlife Permit Office, Room 620, 1000 N. Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Thomas J. Parisot, Chief, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, 1000 North Glebe Road, Arlington, Virginia 22201, telephone (703) 235–1937.

SUPPLEMENTARY INFORMATION: The Convention on International Trade in Endangered Species of Wild Fauna and Flora, T.I.A.S. 8249, hereinafter referred to as "CITES" or "the Convention," establishes rules for trade (export, re-export, or import) of species named in three appendices to CITES.

The regulations implementing CITES have been in effect without substantial modification to those sections governing trade requirements (Subparts A and B) since the initial set of regulations was promulgated on February 22, 1977 (42 FR 10465). CITES provides for meetings of the Conference of the Parties at least once every 2 years to discuss and act upon various CITES issues. The Service proposes to revise these regulations in the light of experience in implementing them (technical amendments) and in order to incorporate certain recommendations of the second regular meeting of the Conference of the Parties ("COP") held in San Jose, Costa Rica (March 1979), the third COP held in New Delhi, India (February–March 1981) and the fourth COP held in Gaboraone, Botswana (April 1983). Notices of the availability of the reports of the Representative of the United States delegation to these meetings were published in the **Federal Register** on July 20, 1979 (44 FR 42798), September 15, 1981 (46 FR 45821) and December 29, 1983 (48 FR 57378), respectively. Pertinent COP recommendations will be discussed below.

1. San Jose Recommendations

The second COP was held in San Jose, Costa Rica, March 19–30, 1979. Among the recommendations of the Conference were certain ones concerning (1) the application of CITES to hybrids of CITES-controlled species, (2) the meaning and scope of the CITES Article VII exemption for captive-bred wildlife and artificially propagated plants and (3) the scope and standards of the exemption for the noncommercial loan, donation or exchange of museum and

herbarium specimens. The Service proposes to incorporate the substance of these recommendations into the regulations which implement CITES in the United States. Explanations of these recommendations follows.

Hybrids

The COP recommended that hybrids, even though not specifically listed in any of the three CITES species appendices, are subject to CITES controls if one or both parents are of a taxon or taxa included therein. If the parents of a hybrid are included in different appendices, the appendix with the more restrictive controls would apply. The most restrictive appendix is Appendix I and the least restrictive is Appendix III.

The recommendation dealing with hybrids reflected a growing concerning among the Parties that in many instances it was difficult to distinguish, for trade identification purposes, between purebred and hybrid specimens. If hybrids were not subject to CITES controls, it would enable persons wishing to avoid the controls of CITES to claim that the specimens in question were hybrids.

New § 23.5, entitled "Hybrids," would provide that hybrids of Convention-controlled species are considered to be wildlife or plants listed on the Appendices and therefore subject to the Part 23 regulations. A definition of the term wildlife or plant is added to § 23.3, "Definitions." The term hybrid is defined so that only those hybrids that have one or two parents that are controlled as purebreds by the Convention would themselves be controlled. This is in keeping with the language of the Resolution of the Conference of the Parties, Conf. 2.13, "Problem of Hybrids," which is here printed in full:

[Conf. 2.13]

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

Second Meeting of the Conference of the Parties

San Jose (Costa Rica), 19 to 30 March 1979

Resolution of the Conference of the Parties

Problem of Hybrids

Recognizing that the fundamental purpose of the Convention is to conserve wild fauna and flora as part of the natural systems of the earth;

Recognizing also that many hybrids are transient in occurrence and may work to diminish the genetic integrity of taxa through introgression of the gene pools of parental populations;

Observing, however, that hybridization has a role in evolution;

Observing in addition that certain hybrids form stable populations with distinctive ecological and evolutionary roles;

Considering moreover, that higher taxa and similar species have been included in the appendices because of problems of identification, and that to omit documentation requirements for hybrids of these would undermine the purpose of the listing;

Acknowledging that captive breeding and artificial propagation may produce hybrids which, if uncontrolled in trade, may have a significant adverse impact on the conservation efforts of the country in which these species are endemic and/or other species;

The Conference of the Parties to the Convention

Decides

(a) That hybrids may be specifically included in the Convention appendices, but shall be included only if they form distinctive and stable populations in the wild;

(b) That hybrids are subject to the provisions of the Convention even though not specifically included in the appendices if one or both of their parents are of taxa included in the appendices;

(c) That if the parents of a hybrid specimen are included in different appendices, the provisions of the more restrictive appendix shall apply; and

(d) That determination whether trade in unlisted hybrids will not be detrimental to survival shall be made with reference to survival of the included parental taxa or to survival of other taxa that were meant to be protected by inclusion of the parental taxa.

Specimens Bred in Captivity, Artificially Propagated

Paragraphs 4 and 5 of CITES Article VII provide for limited exemptions from the strict controls of CITES for wildlife "bred in captivity" and plants which were "artificially propagated." Recognizing the need to apply the exemption in a way that would not be detrimental to the survival of wild populations, the Conference of the Parties recommended a uniform interpretation of those terms which are proposed for addition to section 23.3, Definitions.

Article VII, paragraph 4 provides that Appendix I specimens bred in captivity or artificially propagated for commercial purposes shall be treated as if they were in Appendix II. Paragraph 5 provides that *any* specimen bred in captivity or artificially propagated shall be eligible for a certificate of exemption allowing avoidance of the normal rules applicable to Appendix II specimens. Thus, it might be claimed that paragraph 5 provides an "escape clause" from Appendix II treatment for commercially produced Appendix I specimens.

The Conference of the Parties, recognizing this interpretative problem and the need to apply those provisions in a way not detrimental to the survival of wild populations, recommended that the provisions of Article VII, paragraph 4 be applied separately from those of paragraph 5 and that captive-bred or artificially propagated specimens of species in Appendix I that have been produced for commercial purposes shall not be exempted from Appendix II treatment.

Section 23.13(e) of the Service's regulations as currently written, provides that commercially produced captive-bred or artificially propagated Appendix I specimens shall be treated as if listed in Appendix II. Section 23.13(f) provides that a certificate of exemption is available to specimens bred in captivity or artificially propagated. Similar to the aforementioned provisions of the Convention, paragraph (f) appears to provide an escape clause from Appendix II treatment of paragraph (e). Based on the recommendation of the Conference of the Parties, the Service proposes to amend § 23.13(f) to make it clear that there is no such escape clause. Captive-bred or artificially propagated Appendix I specimens produced for commercial purposes shall be treated as if in Appendix II, and § 23.13(f) is not applicable to such specimens.

Here follows the resolution from which the above definitions and interpretations are derived is reproduced below:

[Conf. 2.12]

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

Second Meeting of the Conference of the Parties

San Jose (Costa Rica), 19 to 30 March 1979

Resolution of the Conference of the Parties

Specimens Bred in Captivity or Artificially Propagated

Considering that the Convention provides for special treatment of wildlife that are bred in captivity and plant specimens that are artificially propagated;

Recognizing the need for the Parties to agree on a standard interpretation of those provisions;

Recognizing also the need to apply these provisions in a way that will not be detrimental to the survival of wild populations;

Recalling in the case of wildlife these provisions were intended to apply only to captive populations sustained without augmentation from the wild;

The Conference of the Parties to the Convention

Recommends

(a) That the provisions of Article VII, paragraph 4, of the Convention be applied

separately from those in Article VII, paragraph 5. Specimens of animal species in Appendix I bred in captivity for commercial purposes or plant species in Appendix I artificially propagated for commercial purposes shall be treated as if they were in Appendix II, and shall not be exempted from the provisions of Article IV by the granting of certificates to the effect they were bred in captivity or artificially propagated;

(b) That the term "bred in captivity" be interpreted to refer only to offspring, including eggs, born or otherwise produced in a controlled environment, either of parents that mated or otherwise transferred gametes in a controlled environment, if reproduction is sexual, or of parents that were in a controlled environment when development of the offspring began, if reproduction is asexual. The parental breeding stock must be to the satisfaction of the competent government authorities of the relevant country:

(i) Established in a manner not detrimental to the survival of the species in the wild;

(ii) Maintained without augmentation from the wild, except for the occasional addition of animals, eggs or gametes from wild populations to prevent deleterious inbreeding, with the magnitude of such addition determined by the need for new genetic material and not by other factors, and

(iii) Managed in a manner designed to maintain the breeding stock indefinitely.

A controlled environment for animals is an environment that is intensively manipulated by man for the purpose of producing the species in question, and that has boundaries designed to prevent animals, eggs or gametes of the selected species from entering or leaving the controlled environment. General characteristics of a controlled environment may include but are not limited to artificial housing, waste removal, health care, protection from predators, and artificially supplied food. A parental breeding stock shall be considered to be "managed in a manner designed to maintain the breeding stock indefinitely" only if it is managed in a manner which has been demonstrated to be capable of reliably producing second-generation offspring in a controlled environment;

(c) That the term "artificially propagated; be interpreted to refer only to plants grown by man from seeds, cuttings, callus tissue, spores or other propagules under controlled conditions. The artificially propagated stock must be:

(i) Established and maintained in a manner not detrimental to the survival of the species in the wild, and

(ii) Managed in a manner designed to maintain the artificially propagated stock indefinitely.

Controlled conditions for plants is under an environment that is intensively manipulated by man for the purpose of producing selected species. General characteristics of controlled conditions may include, but are not limited to, tillage, fertilization, weed control, irrigation, or nursery operations such as potting, bedding, or protection from weather; and

(d) That the competent government authorities of countries exporting live animals, parts and derivatives of specimens bred in captivity of species listed in Appendix I endeavor, where possible, to ensure that these be made identifiable by means other than documentation alone. [End of quoted material.]

Note that with regard to that part of paragraph (b)(iii), the Service has interpreted "second-generation offspring" to mean the offspring of parents that were offspring of the parental breeding stock used to establish the captive breeding operation.

Exchange of Museum and Herbarium Specimens

Article VII, paragraph 6 of CITES allows an exemption from strict CITES controls for preserved, dried or embedded museum specimens, herbarium specimens and live plant material which carry an approved label. The exemption covers such specimens being noncommercially loaned, donated or exchanged between scientists or scientific institutions registered by Management Authorities of their States.

An earlier meetings,the Parties considered which criteria should be used to register scientific institutions. At the first COP (Berne, Switzerland, November 1976), the Parties chose to rely on the "Index Herbariorum," a listing of many of the world's herbaria. The Special Working Session (Geneva, Switzerland, October 1977) later recommended the adoption of a set of criteria for registration of museums. The second COP adopted a revised set of criteria and applied them to all scientific institutions including herbaria. This proposal incorporates the latter criteria into § 23.15, paragraphs (c) and (d), and also adopts the recommendation that scientists who wish to avail themselves of the exemption must associate themselves with registered institutions. The exemption would be applied to frozen museum and duplicate specimens.

The Parties also recognized that the exemption should apply to legally acquired specimens that are under the authority of a registered scientific institution. This includes those legally collected in one State for shipment to another as a noncommercial loan, donation or exchange. That the specimens should be under the authority of the institution and are the subject of a loan, donation or exchange by that institution implies that the have been acquired by that institution. The recommendations make it clear that the Parties were concerned about possible abuse of the exemption. The registration criteria require the orderly handling and permanent recordation of specimens including the maintenance of permanent records for loans and transfers of specimens to other institutions. For these reasons the Service proposes that all specimens for which the exemption is being claimed must have been permanently recorded by the sending institution prior to shipment. Accession to the institution's collection is only one method of satisfying the recording requirement. Note that the Parties considered the possibility of registering individual scientists, but chose rather to call on those who wish to avail themselves of the exemption to associate with a registered institution. The text of the recomendation of the Conference of the Parties is here reprinted in full:

Conf. 2.14

CONVENTION OF INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

Second Meeting of the Conference of the Parties

San Jose (Costa Rica), 19 to 30 March 1979

Resolution of the Conference of the Parties

Guidelines for Non-Commercial Loan, Donation or Exchange of Museum and Herbarium Specimens

Considering that Article VII, paragraph 6, of the Convention provides an exemption from requirements of the regulation of trade in specimens of species included in Appendices I, II and III for "non-commercial loan, donation or exchange between scientists or scientific institutions registered by a Management Authority of their State, of herbarium specimens, other preserved, dried or embedded museum specimens, and live plant material which carry a label issued or approved by a Management Authority;"

Recognizing that this exemption applies to legally acquired animal and plant specimens that are under the authority of a registered scientific institution;

Recalling the recommendation of the first meeting of the Conference of the Parties (Berne, 1976) and the special working session (Geneva, 1977) on this subject;

The Conference of the Parties to the Convention

Recommends

(a) That parties take every opportunity within the scope of the Convention to encourage scientific research on wild fauna and flora that may be of use in conserving species that are threatened with extinction or that may become so; and

(b) That Parties implement the exemption for scientific exchange in Articles VII, paragraph 6, of the Convention as follows:

(i) Registration of scientific institutions should be done in a manner that extends the exemption to all scientific institutions meeting certain standards in each Party as determined to be *bona fide* upon the advice of a Scientific Authority;

(ii) Each Management Authority should communicate to the Secretariat as soon as practicable the names and addresses of those scientific institutions so registered, and the Secretariat without delay then communicate this information to all other Parties;

(iii) The requirement that the container used to transport the specimens carry a label issued or approved by a Management Authority should be met by authorizing the use of Customs Declaration labels, provided they bear the acronym "CITES," identification of contents as herbarium specimens, preserved, dried or embedded museum specimens or live plant material for scientific study, the name and address of the sending institution and the codes of the exporting and importing institutions over the signature of a responsible officer of that registered scientific institution; or a label issued by Management Authority containing the same information and the users of which would be responsible to that body;

(iv) To prevent abuse of this exemption, it should be limited to shipments of legally obtained specimens between registered scientific institutions, and if trade is to or from a non-Party, the Secretariat shall ensure that the institution in the non-Party nation meets the same standards for registration, as indicated by compentent authorities of the non-Party government;

(v) The exemption should be applied to include frozen museum specimens, duplicate herbarium specimens, and all other types of scientific specimens named in Article VII, paragraph 6, including those that are legally collected in one State for shipment to another State as non-commercial loans, donations, or exchanges;

(vi) The standards for registration of scientific institutions should be as follows:

(1) Collections of animal or plant specimens, and records ancillary to them, permanently housed and professionally curated;

(2) Specimens accessible to all qualified users, including those from other institutions;

(3) All accessions properly recorded in a permanent catalogue;

(4) Permanent records maintained for loans and transfers to other institutions;

(5) Specimens acquired primarily for purposes of research that is to be reported in scientific publications;

(6) Specimens prepared and collections arranged in a manner that insures their utility;

(7) Accurate data on specimen labels, permanent catalogues and other records;

(8) Acquisitions and possession of specimens according with the laws of the State in which the scientific institution is located; and

(9) All specimens of species included in Appendix I permanently and certrally housed under the direct control of the scientific institution, and managed in a manner to preclude the use of such specimens for decoration, trophies or other purposes incompatible with the principles of the Convention;

(vii) Scientists who keep private collections should be encouraged to affiliate with registered scientific institutions in order that they may take advantage of the exemption provided in Article VII, paragraph 6;

(viii) All nations should take precautions to avoid damage or loss to science of museum and herbarium specimens or of any accompanying data;

(ix) Implementation of this exemption should be accomplished as soon as possible to ensure that non-commercial exchange of scientific specimens is not interrupted and that it occurs in a way consistent with the terms of the Convention; and

(x) A five (5) character coding system for identifying registered institutions should be adopted; and the first two (2) characters of which would be the 2-letter code established by the International Organization for Standardization for the nations as presented in Doc. 2.19, Annex 3; the last three (3) characters would be a unique number assigned to each institution by a Management Authority, in case of a Party or by the Secretariat, in the case of a non-Party.

The Service proposes to formalize implementation of the recommendations of the San Jose Conference by amending § 23.15, "Permits and certificates," by adding §§ 23.15(c)(10)(iii), (d)(14)(iii) and by amending § 23.15(e)(3).

Import of Appendix I Specimens

Before an import permit can be granted for an Appendix I specimen, Artricle III, paragraph 3(a) of the Convention requires that the Scientific Authority of the State of import must advise the Management Authority of that State that import will be for purposes which are not detrimental to the survival of the species involved. With regard to the import of Appendix I trophies and specimens used for scientific purposes, the Conference of the Parties recommended that the Scientific Authority of the importing country should also cover the question of whether the taking of the animal would enhance the survival of the species concerned. The effect of this recommendation would be to enable the importing country to not only examine the purposes of the import but also to examine the removal of the specimen from its environment when considering the survivability of the species concerned. The Service proposes to incorporate this recommendation in the regulations by adding language to the issuance criteria of § 23.15(d)(1) which would require the Director to consider not only the purposes of the import, but also whether such import would enhance the survival of the species. The Service would apply these criteria not only to trophies and specimens in the "scientific field," but to specimens for all other uses as well, including specimens for personal and household uses, for public display, for education, propagation, etc. Generally, Appendix I specimens are not allowed to be imported if they are to be used primarily for commercial purposes [Article III, paragraph 3(c)]. Although the recommendation only dealt with trophies and specimens in the "scientific field" there is adequate justification for extending it to the other above listed uses of Appendix I specimens given the admonition in Article II, Paragraph 1 of the Convention that trade in Appendix I specimens must be subject to particularly strict regulation and be allowed in only exceptional circumstances. The Service's policy is to find enhancement if the import has met one or more of the following:

(a) Any activity likely to enhance the survival of the species in its native ecosystems,

(b) Any activity likely to enhance the survival of the species in captivity when the ultimate effect is intended and likely to be enhancement of the species' survival in its native ecosystem,

(c) Any activity likely to enhance the survival of the species in captivity when enhancement of survival in native ecosystems is not feasible, or

(d) Use of specimens when available evidence makes clear that (i) the possibility of import neither directly nor indirectly contributed to the specimens' death or removal from the wild, (ii) allowing the import will in no way contribute to the death or removal of any additional specimens from the will, and (iii) there are no reasonable alternative uses of the specimens that are more likely to contribute to the conservation of the species.

2. New Delhi Recommendations

A notice of availability of the report of the Representative of the United States delegation to the third regular meeting of the Conference of the Parties held in New Delhi, India, February 25 to March 8, 1981, was published in the Federal Register of September 15, 1981 (46 FR 45821). The report contains copies of all of the formal recommendations of the meeting. Among the recommendations were two concerning (1) harmonization of permit forms and (2) shipment of living wildlife and plants. The Service proposes to incorporate the substance of these recommendations into the regulations which implement CITES in the United States. Explanations of these recommendations follows:

Harmonization of Permit Forms and Procedures

Party Countries

Article VI requires that all permits and certificates (including certificates of origin for Appendix III specimens) contain the title of the Convention, the name and the identifying stamp of the granting Management Authority, a control number, and that copies be clearly marked as copies and only used in place of originals to the extent endorsed thereon. However, only export permits are required to contain: an expiration date (limiting use for export within a period of 6 months from the date granted), the name and address of the permittee and the recipient of the wildlife or plants, the scientific and common name of the species covered, the CITES Appendix on which they are listed, the quantity, marks (if any) and sex (if living) or type of part or derivative, the stamp and the signature of the issuing Management Authority and the stamps of the authorities inspecting on export and import.

Recognizing the need for proper documentation and that a more harmonized form would facilitate the work of clearing shipments at ports of exit and entry, the Conference of the Parties recommended that import permits for Appendix I specimens and re-export certificates and all other certificates contain, as appropriate, information similar to the information required by Article VI for export permits (see Conf. 3.6). They also recommended that permits and certificates contain the signature, official stamp and title of the person that issued the permit or certificate and, except for import permits, the same information for the official that inspected the shipment upon export or re-export. The Conference recommended that permits and certificates contain a more precise description of the type of species they cover. Descriptions such as one case, one shipment, or, in the case of plants, one batch or one community pot should be avoided in favor of descriptions indicating the number of whole specimens, or if this is not possible, the net weight in kilograms. Further, there should be a statement of the country of origin of the specimens covered and, in the case of re-export certificates, a control number of the document used to import the specimens into the country of re-export, or a justification for omitting the country of origin or the control number.

Further, the Conference recommended that permit or certificate forms be printed to include one or more of the working languages of CITES (English, French and Spanish). Thus the form of a permit or certificate of a Party the national language of which was not one of the working languages would be permited in the national language and one or more of the working languages.

The Conference recommended that the Parties adopt, as much as possible, the format of a model export permit/re-export certificate attached to the recommendations.

The Conference recommended nonacceptance of documents issued by any authority other than the Management Authority officials designated as competent and duly notified to the Secretariat (Conf. 3.9).

In response to these recommendations, the Service has already printed and is issuing CITES permits and certificates which substantially conform to the format of the recommended model. In addition, the Service has experienced difficulties in processing CITES documents written in foreign languages. The result has been delay in clearing some shipments. Therefore, the Service is proposing to add a requirement that, if necessary to assist the Service in understanding the document, the importer shall provide an English translation with the document. Now the Service is proposing to explicitly require that all of the above-mentioned requirements and recommendations be incorporated into the CITES implementing regulations by adding new language to § 23.14, entitled "Foreign documentation" and, with regard to the 6-month expiration date for export permits and re-export certificates, to § 23.12, entitled "Requirements".

Non-Party Countries

Article X of the Convention provides that if a party trades in CITES-listed species with a country not a party, it shall require ". . . comparable documentation issued by the competent authorities in that State which substantially conforms with the requirements of the present Convention for permits and certificates. . . ." In order words non-party documents shall contain similar information as that required for permits and certificates issued by Parties and be accepted only if the conditions which apply to the issuance of permits and certificates by Parties have been met.

Recognizing that there was a risk that exports and re-exports from countries not party to the Convention might jeopardize the effectiveness of the Convention unless Article X was uniformly observed and implemented, the Conference of the Parties recommended that documents from countries not party to the Convention not be accepted unless they contain the following information (see Conf. 3.8):

(a) The name, stamp and signature of a competent issuing authority; nature conservation authorities shall be considered competent unless the State concerned has designated another authority for that purpose of which it may inform the Secretariat or interested Parties;

(b) Sufficient identification of the species concerned for the purposes of the Convention;

(c) Certification of the origin of the specimen concerned and the re-export certificate control number or justification for omitting such certification or number;

(d) In the case of export, certification to the effect that export will not be detrimental to the survival of the species and that the specimen was not obtained in contravention of the laws of the State of export;

(e) In case of re-export, certification to the effect that the competent authority of the country of origin has issued an export document which substantially meets the requirements of Article VI of the Convention;

(f) In the case of export or re-export of live specimens, certification to the effect that transport will be in a manner which will minimize the risk of injury, damage to health or cruel treatment;

(g) In the case of import of specimens under Article III of the Convention, certification to the effect that the import will be for purposes which are not detrimental to the survival of the species involved and that the specimens are not to be used for primarily commercial purposes; and

(h) In the case of import of live specimens under Article III of the Convention, certification to the effect that the proposed recipient is suitably equipped to house and care for them.

The Service's regulations, as currently written, do not contain many of these recommendations which are designed to assure that non-party documents are comparable, i.e., granted on substantially the same conditions as permits and certificates issued by Parties. Although the Service's regulations do require that non-party documents be issued by an official responsible for authorizing export of wildlife or plants, they do not require that he or she be an official of a nature conservation authority or other designated authority with notice to the Secretariat or the Service. The Service's current regulations require a certification that export will not be detrimental to the survival of the species

in the wild, and, if living, will be transported in a manner which will minimize the risk of injury, damage to health, or cruel treatment, but they do not expressly require the certifications in paragraphs (c), (e), (g) and (h) and the certification that the specimen was not obtained in contravention of the laws of the State of export, all as mentioned above. In order to enhance the effectiveness of the Convention, the Service proposes to amend § 23.14, to incorporate these recommendations.

Security Stamps and Paper

The Conference of the Parties also recommended that the Parties affix to all original permits and certificates a serially numbered adhesive security stamp (to be designed by the Secretariat) and validate the stamp with the signature of the issuing officer written across the face of the stamp and onto the permit itself. The Conference of the Parties also recommended consideration of the use of security paper for wildlife specimens of exceptional value. The Service does not presently use a security stamp or security paper but does emboss its seal on all permits and certificates that it issues. The CITES Secretariat has begun distribution of security stamps to Parties. When this has been accomplished the stamps will be affixed on permits and certificates issued by the United States and will be required on import documents issued by other Parties using such stamp. Section 14.53 of 50 CFR Part 14, the Service's regulations which provide uniform rules and procedures for the importation, exportation, and transportation of wildlife, makes provision for refusal of clearance of permits or other documents which are not authentic. Since this provision would enable refusal of foreign CITES permits and certificates which did not bear properly validated security stamps or security paper as required by foreign law, no amendment is being proposed to Part 23 in this regard.

Shipment of Living Wildlife and Plants

Articles III, IV, and V condition the granting of an export permit or a re-export certificate for living wildlife or plants on the Management Authority being satisfied that they would be ". . . so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment. . . ."

The Conference of the Parties expressed its concern for the care and handling of live animals and plants and the resources they represent, and, noting that the "Guidelines for Transport and Preparation for Shipment of Live Wild Animals and Plants" had been adopted and communicated to the Parties, recommended that suitable measures be taken by the Parties to implement them.

The Service will implement the Guidelines by making their observance a condition of export permits and re-export certificates that it issues. Observance of the International Air Transport Association's (IATA) Live Animal Regulations if transport is by air would also satisfy the condition. The Conference of the Parties at its fourth meeting in Gaborone (Botswana) 1983, generally deemed the Live Animals Regulations to meet the CITES Guidelines in respect of air transport. The CITES Guidelines may be obtained from CITES, c/o IUCN, avenue du Mont-Blanc, CH-1196 *GLAND*, Switzerland, (phone 022 647181). The Live Animals Regulations may be obtained from the International Air Transport Association, IATA Building, 2000 Peel Street, Montreal, Quebec, Canada H3A 2R4, phone (514) 844-6311. Inclusion of a condition of this nature in § 23.15(e) is not proposed at this time because the relationship between the CITES and IATA guidelines has yet to be fully defined.

3. Gaborone Recommendations

A notice of availability of the report of the Representative of the United States delegation to the fourth regular meeting held in Gaborone, Botswana, April 19–30, 1983, was published in the **Federal Register** of December 29, 1983 (48 FR 57378). The report contains copies of all of the formal recommendations of the meeting. The substance of several recommendations is appropriate for incorporation into the Service's rules implementing the Convention or for mention in this preamble for background information.

Personal and Household Effects

Article VII, paragraph 3 of the Convention provides limited nondocumentary exemptions for personal and household effects. The drafting history of the Convention supports the view that the exemptions should not be available to living specimens. They would have exempted articles of clothing, jewelry or household effects being used by a private person for his or her personal needs which are not for resale. (See, for example, the tripartite draft, and the working paper, Doc. 3.) The United States position for the fourth meeting of the Conference of the Parties was to urge an interpretation of the exemption that would restrict the availability of the exemptions to nonliving specimens.

The Conference of the Parties called for tighter controls on so-called tourist souvenir specimens which constitute most of the specimens being traded under the personal effects exemption. Tourist souvenir specimens were defined, in part, as nonliving.

The Service proposes to clarify and restrict the availability of these exemptions to specimens which are products or manufactured articles not intended for commercial use, and either worn on the body or associated with accompanying personal baggage or which are part of a shipment of household effects of persons moving their residences to or from the United States [see proposed § 23.13(d)].

Time Validity of Permits

Article VI, paragraph 2 of the Convention provides that export permits may only be used for export within a maximum period of 6 months from the date on which they were granted.

A problem arises when export occurs within the 6-month period, but the subsequent import occurs after expiration of the 6-month period. The Conference of the Parties recommended that "used for export within a period of six months" be interpreted to mean that all export activites, including, but not limited to transport and presentation *for import* shall be undertaken and concluded before the expiration of the 6-month period, and that after expiration of the period an export permit or re-export certificate should be considered void and of no legal vaue whatsoever.

The Service believes that the above-mentioned recommendations, if incorporated into its regulations, would provide a greater degree of assurance that export permits and re-export certificates were valid at the time the wildlife or plants left the country of exportation or re-exportation. It is likely that other countries will be adopting these recommendations and applying them to permits and certificates issued by the United States. Holders of Service-granted export permits and re-export certificates should present such documents upon import into a foreign country prior to the expiration of the 6-month period the last day of which is normally indicated in the top right-hand corner of the document.

Clarifying the "Pre-Convention Exemption"

Article VII, paragraph 2, provides for the grant of a certificate of exemption for fish or wildlife or plants acquired before the provisions of the Convention applied to them. Current Service

regulations implement this exemption (see § 23.13(c)).

The Service is preparing a separate notice of proposed rulemaking to deal with recommendations made at a recent COP held in Buenos Aires, Argentina (April 22–May 3, 1985). In that notice the Service will propose further amendment to 50 CFR Part 23 based on those recommendations one of which concerns a clarification of the "Pre-Convention" exemption. Since it modifies a recommendation made at the Gaborone COP on the same subject, the Service will not address this issue in this notice.

International Reporting System for Specimens Stressed During Transport

The Conference of the Parties, noting that Article VIII, paragraph 3, requires Parties to ensure that all living specimens during any period of transit, holding, or shipment, are properly cared for so as to minimize the risk of injury, damage to health or cruel treatment, recommended that the Parties adopt a system that would enable officials inspecting animal specimens, or others to report undue stress or injury to animals shipped alive and that such reports be made to the Management Authority of the country that issued the export permit or re-export certificate for the shipment. The report should be in a card format, printed in one or more of the working languages of the Convention and be affixed to the live animal's container at the point of export or re-export. Shipments of containers that did not carry such cards from countries requiring them should be inspected carefully to ensure that the animals are not stressed and to inquire why the card was not affixed to the container.

The Service proposes to implement these recommendations by amending section 23.15(e) to add a new paragraph 4 requiring, as a condition of a permit or certificate, that containers used to export or re-export wildlife from the United States have conspicously affixed to the outside of the container a report card issued by the Service. This will enable inspecting officials or other concerned persons who notice undue stress to remove the card, fill it out and return it to the Service. Certificates of exemption will not be subject to this condition because the Convention does not require it.

Export and Re-export of Confiscated Specimens

Article III, paragraph 4(a) and Article IV, paragraph 5(a) of the Convention require as a pre-condition to the granting of a re-export certificate that the Management Authority of the country of re-export be ". . . satisfied that the specimen was imported into that State in accordance with the provisions of the present Convention." Article III, paragraph 2(b) and Article IV, paragraph 2(b) have a similar requirement for export, requiring that specimens not be obtained in contravention of the laws of the country of export for the protection of fauna and flora.

The Conference of the Parties recommend that specimens confiscated and subsequently re-exported by the Management Authority for purposes of return to the country of export, for scientific/educational or enforcement/identification purposes, or for investigatory or prosecutorial purposes shall be deemed to have been imported in accordance with the provisions of the Convention. Also, Appendix II specimens confiscated and subsequently sold by the government should be similarly so deemed, provided the Management Authority of the confiscating country determined that this would not be detrimental to the survival of the species. The Conference of the Parties did not expressly deal with the question of export of specimens obtained to contravention of the laws of the country of export and subsequently confiscated. However, because the situation for export of confiscated specimens is analogous to that for re-export of confiscated specimens, the Service proposes to allow export of confiscated specimens under the same circumstances and for the same purposes as it is proposing for re-export of confiscated specimens.

The Service proposes to amend § 23.15 to reflect these recommendations and to make similar provision for unlawfully acquired wildlife (see proposed § 23.15(d)(8)).

Effects of Reservations

Articles XV, XVI, and XXIII allow a Party to take a reservation on species listed on the Convention's appendices. These articles provide that the reserving Party shall be treated as a non-party with regard to the reserved species. Article X provides that Parties shall require comparable documents which substantially conform with Convention requirements when trading with non-parties. The issue than arises as to how a reserving Party should regard an Appendix I species on which it has taken a reservation when trading with another reserving Party or a non-party.

The Conference of the Parties recommended that any Party having taken a reservation with regard to any species transferred to or listed on Appendix I should treat that species, when trading with other reserving Parties or with non-parties, as if it were listed on Appendix II rather than as not listed at all. The Service proposes to adopt this recommendation by adding new paragraph (e) to § 23.23, "Species listed in Appendix I, II, and III," because it promotes the conservation of species listed in Appendix I, and, in cases of uplisting to Appendix I, continues, rather than eliminates, the reserving Party's obligations. Thus, when trading with non-parties and other reserving Parties, the Service would treat any Appendix I listing to which it had taken a reservation as Appendix II.

To date, the United States has not taken a reservation with regard to any listed species. Lists of species reservations published in the Code of Federal Regulations would change too frequently to be of any practical value to the trading public. The Service maintains an updated list of species reservations taken by Parties and will provide the public with such information in writing or by telephone (see amended § 23.4).

Control of Commercial Captive Breeding Operations in Appendix I Species

Article VII, paragraph 4 of the Convention provides that specimens of species included in Appendix I, which are bred in captivity for commercial purposes, shall be deemed to be specimens of species in Appendix II.

The Conference of the Parties, recognizing the potential for abuse inherent in Article VII, paragraph 4 (it is often difficult for inspectors to distinguish between specimens bred in captivity and those removed from the wild), recommended that the Parties provide the Secretariat with information on operations that regularly breed in captivity Appendix I wildlife for commercial purposes, that the Secretariat compile and distribute to the Parties a register of such operations including comparable operations in non-party countries, and that the Parties reject any document granted under Article VII, paragraph 4 if the specimens concerned do not originate from an operation duly registered by the Secretariat.

The Secretariat has compiled a "Register of Operations which Breed Specimens of Species included in Appendix I in Captivity for Commercial Purposes" and has circulated it to the Parties and updated it. The Register will be used as appropriate by Service officers as a part of the clearance procedures.

"In Transit" Exemption

The Conference of the Parties expressed concern that the Article VII, paragraph 1 exemption for specimens transiting through a country was being abused. In some cases importers were claiming the exemption while seeking delay of the transiting specimen in order to find a buyer in a foreign country. In order to prevent this abuse, the COP recommended that valid export (or presumably re-export) documentation as required by the Convention or satisfactory proof of its existence be available for inspection by the country being transited and that it clearly show the country of ultimate destination.

In order to assure that no such misuse of the transit exemption occurs, the Service proposes to amend its regulations implementing CITES to reflect this recommendation [see proposed § 23.13(b) are proposed § 23.2 which defines transship].

It should be noted that Article VII, paragraph 1, of the Convention contains the terms "transit" and "trans-shipment." The Service's regulations have combined them in its regulations implementing the exemption by use of the word "transshipped". The background of the Convention indicates that the two terms have the same meaning, but were used in order to accommodate customs terminology in different countries.

4. Technical Amendments

Definitions

The Service proposes to define the word "species" which is used in §§ 23.1, 23.15, and 23.23. The proposed definition is the same as the one in Article I of the Convention. Its inclusion in the Service's regulation (see proposed § 23.3) is only meant to make it clear that the term "species" includes subspecies and geographically separate populations thereof. This definition would represent no change in past practice.

The word "mark" is proposed for addition to the application requirements [§ 23.15(c)(3)] and to the requirements for acceptable permits and certificates [§ 23.14(a)(5)] and is defined in proposed § 23.3 by using the definition contained in Article VI of the Convention. Article VI, paragraph 7 enables the Management Authority to affix a mark on a specimen to assist in its identification if it is appropriate and feasible to do so.

List of Parties, Management Authorities, Reservations

The Service proposes to amend § 23.4, "Parties to the Convention," by deleting all references to the names and addresses of Management Authorities. These references change too frequently to be accurately reflected in the annually updated Code of Federal Regulations. Instead, the regulations would indicate in § 23.4 that a current list of the names and addresses of Management Authorities, and of competent authorities issuing equivalent documents in countries that are not party to the Convention, may be obtained by contacting the Service by mail or phone. Information on how to obtain current lists of Parties that have taken reservations to species listed in the Convention's appendices would also be indicated in § 23.4.

Export Certificates

CITES Articles XIV, paragraphs 4 and 5, provides an exception from most CITES controls for Appendix II marine wildlife and plants protected by any other treaty, convention or international agreement in force on July 1, 1975. A government certificate stating, in effect, that the specimen was taken in accordance with the provision of the treaty, convention or international agreement would still be required on export to satisfy CITES requirements. Currently this exception would apply, for example, to the minke and pygmy right whales which are protected under the International Whaling Convention to which the United States is a party.

The Service proposes to add § 23.13(h) to provide for the exception and add § 23.15 (c)(11) and (d)(12) to provide for the issuance of a CITES export certificate. However, other national laws, such as the Marine Mammal Protection Act, which prohibits the importation into the United States of marine mammals except under very limited circumstances, would remain in full effect.

Application Requirements

a. The Service proposes to add an application requirement [proposed § 23.15(c)(3)] for the source of the wildlife or plant (i.e., wild, bred in captivity, artificially propagated or other). This information is an element of the harmonized permit format adopted by the Parties at the third COP and has been incorporated into the Service's version of the harmonized permit (Form 3–201A). The Service proposes to add an application requirement [proposed § 23.15(c)(6)] calling for the number of the permit or certificate under which the wildlife or plant was imported into the United States or a justification for failure to supply such information. This is also an element of the harmonized permit format. A Management Authority must be satisfied that import was in accordance with the provisions of the Convention as a condition to the issuance of a re-export certificate. The country of origin and the re-export certificate number will provide information relevant to the determination.

b. The language of § 23.15(c)(7)(i) should be revised to reflect the language of Article III, paragraph 3(c) of the Convention. The current regulatory language, ". . . a statement of the purposes and details of the activities for which the wildlife or plant is to be imported . . ." [relevant to paragraph 3(a)], would be amended by adding ". . . a statement detailing the uses to which the Appendix I wildlife or plant will be put and the purposes of each such use . . ." This would not change the way the Service would apply the associated issuance criteria, and it is only made to add specific language implementing Article III, paragraph 3(c). It should be noted that paragraph(c)(7)(i) requires submission of information for both living and dead specimens, whereas paragraphs (c)(7)(ii)–(c)(7)(iv) are for living specimens only. Paragraph (c)(7)(iv) has been changed to eliminate the requirement that applicants provide in their initial submission information concerning the *causes* of mortalities and remedial actions. The Service has found that only in a few cases in this information necessary to evaluate the capability of the applicant to house and care for the subject wildlife. The Service proposes to retain the associated requirement (in more detailed form) that the applicant provide information concerning the *number* of mortalities. If mortality figures indicate an unusually high mortality rate, the Service would request additional information including the causes of the mortalities and remedial actions taken to avoid them.

c. A new application requirement [(proposed § 23.15(c)(8)] would require the applicant to submit evidence showing that the wildlife or plant to be re-exported had been imported into the United States in accordance with the requirements or exceptions of 50 CFR Part 23. This application requirement reflects requirements found in the Convention, and does not represent any change in practice.

d. A new application requirement [proposed § 23.15(c)(9)] would require the applicant for an export permit or re-export certificate for an Appendix I specimen to provide information showing that a valid import permit has been issued by a competent authority of a foreign country. This also reflects requirements found in the Convention, and does not represent any change in

practice. Article III, paragraphs 2(d) and 4(c) require the issuance of an import permit prior to the issuance of an export permit or re-export certificate for such specimens. The Service has, in the past, required submission of such information and the issuance criteria currently contain a requirement that the Director must consider whether an import permit has been issued. Therefore, the addition of this application requirement would only clarify past practice and obligations under the Covention and bring the application requirements into line with the issuance criteria.

e. Currently, § 23.15(a) provides that if an application meets the requirements of Part 17 or 18 it will meet the requirements in Part 23. The Service has found that the application requirements of Parts 17 and 18 do not include some of the requirements of Part 23. If the changes in this proposed rule are adopted, there will even be further disparities, which will cause delays in processing permits since the information has to be obtained from the applicant by communications made subsequent to the submission of the application. While the Service does not propose to change the provision that one application can be submitted for specimens controlled in Parts 17 or 18 and 23, it does propose to require that such an application meet the application requirements of these Parts as applicable.

Requirements Clarified

Section 23.12(a)(1)(i) currently provides, in part, that, in order to import into the United States any wildlife or plant listed in Appendix I from any foreign country, a ". . . valid foreign export permit issued by the country of origin or a valid foreign re-export certificate issued by the country of re-export. . ." must be obtained prior to importation. The implication is that if importation is from the country of origin, one must obtain an export permit, not a re-export certificate, and that if it is from the country of re-export, one must obtain a re-export certificate, not an export permit.

The Services proposes to amend § 23.12(a)(1)(i) to make it clear that one must have an export permit if importation is directly from a country of export and a re-export certificate if importation is from a country of re-export. The regulations, as currently written, could be interpreted to mean that one has the option of obtaining either an export permit or a re-export certificate if one is exporting or re-exporting.

A similar change is propsed for § 23.12(a)(2)(i) concerning import of Appendix II wildlife and plants.

Reduction of Paperwork for Licensees

Under authority of section 9(d) of the Endangered Species Act of 1973 [16 U.S.C. 1538(d)], an import/export license requirement was imposed on any person who engages in business as an importer or exporter of fish or wildlife unless that person imports or exports certain excepted wildlife or falls within one of the categories of persons excepted from the requirement. A person is engaged in business as an importer or exporter of wildlife if he/she devotes time, attention, labor, or effort to any activity for gain or profit that involves the importation of wildlife. The license requirement, which is found in 50 CFR sections 14.91–14.93, went into effect on January 1, 1981.

The licensing requirements was recently addressed by Congress while considering reauthorization of the Endangered Species Act of 1973. In the Senate Report accompanying the Endangered Species Act Amendments of 1982, the Committee on Environmental and Public Works stated:

> As part of the Administration's ongoing review of many Federal regulations and requirements that are based upon numerous laws, the Department of the Interior should review the licensing requirements that have been promulgated pursuant to section 9(d) of this Act. The paperwork and regulatory burden imposed by any such requirements should be the minimum necessary to accomplish the purposes of the law and to ensure proper administration of the law. [Report of the Committee on Environment and Public Works of the United States Senate to accompany S. 2309, S. Rep. No. 418, 97th Cong., 2d Session 1982, p. 28.]

The Service proposes to simplify the information a licensee must provide when completing a Fish and Wildlife License/Permit Application (Form 3–200) for export or re-export of Appendix II and II species. Licensees would not have to file a Form 3–200, other than the one filed to obtain their licenses, and would not have to provide the general information required in § 13.12(a) of the Service's General Permit Procedures (50 CFR Part 13). They would still be required to furnish the information specific to the particular export or re-export required by § 23.15(c). See proposed § 23.15(c).

In addition, the Service proposes to allow licensees to obtain export permits and re-export certificates for species of wildlife approved for export on a State-by-State basis as set forth in Subpart F of Part 23 by furnishing the required specific information to the Service's Law Enforcement designated port offices from which the licensee applicant plans to export or re-export or to the Special Agent in Charge of the Law Enforcement District in which the licensee/applicant resides. See the proposed amendment adding paragraph (b)(4) to § 13.11 of the Service's General Permit Procedures.

This proposal is issued under authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.; 87 Stat 884). The primary author of this proposal is Arthur Lazarowitz, Federal Wildlife Permit Office (703/235–2418).

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because no significant burden will be added to the already required paper flow, and similar requirements have or will be imposed by other Party countries with which such entities conduct their business. The Service has determined that these proposed regulations are categorically excluded from further National Environmental Policy Act (NEPA) requirements. Part 516 of the Department Manual, Chapter 6 Appendix I, section A(1) categorically excludes changes or amendments to an approved action when such changes have not potential for causing substantial environmental impact.

Paperwork Reduction Act: No substantial changes will be made in the information collection requirements contained in §§ 23.12, 23.13, 23.14 and 23.15, which requirements have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018–0022. Section 23.16 wil be added to Subpart B to meet the notice requirements of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 23

Wildlife, Imports, Exports, Plants, Endangered and threatened wildlife, Animals, Fish, Transportation, Marine mammals, Forest and forest products, Foreign official, Treaties, Foreign trade.

Proposed Regulations

For the reasons set forth in the preamble, it is proposed that Part 23, Subchapter B, Chapter I of Title 50, Code of Federal Regulations, be amended as follows:

1. 50 CFR Part 23, Subparts A and B are revised to read as follows:

PART 23—ENDANGERED SPECIES CONVENTION

Subpart A—Introduction

Sec.

23.1 Purpose of regulations.
23.2 Scope of regulations.
23.3 Definitions.
23.4 Parties to the Convention; authorities issuing permits and certificates under the Convention.
23.5 Hybrids.

Subpart B—Prohibitions, Permits and Exceptions

23.11 Prohibitions.
23.12 Requirements.
23.13 Exceptions.
23.14 Foreign documentation.
23.15 Permits and certificates.
23.16 Information collection requirements.

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and Endangered Species Act of 1973, Pub. L. 93–205, 87 Stat. 884; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531, *et seq.*).

Subpart A—Introduction

§ 23.1 Purpose of regulations.

The regulations in this part implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The regulations identify those species of wildlife and plants included in Appendix I, II or III to the Convention.

§ 23.2 Scope of regulations.

The regulations of this Part apply to wildlife and plants listed in Appendix I, II or III to the Convention, listed herein in § 23.23 for the convenience of the public. Many species listed in Appendix I, II or III are also listed in Part 17 (endangered and threatened species), Part 18 (marine mammals), Part 21 (migratory birds), or Part 22 (eagles), and are subject to additional regulations in those parts or in Parts 216 and 228 (marine mammals) or Parts 217–227 (endangered and threatened species) for species under jurisdiction of the National Marine Fisheries Service.

§ 23.3 Definitions.

In addition to the definitions contained in Parts 10 and 17 of this subchapter, and unless the context requires otherwise, in this part:

"Appendix I" means the list of wildlife and plants called "Appendix I" and attached to the Convention (see § 23.23 for the list).

"Appendix II" means the list of wildlife and plants called "Appendix II" and attached to the Convention (see § 23.23 for the list).

"Appendix III" means the list of wildlife and plants called "Appendix III" and attached to the Convention (see § 23.23 for the list).

"Artificially propagated" means the process whereby plants are grown by man using parts of other plants including seeds, cuttings, callus tissue, spores or other propagules under controlled conditions. The artificially propagated stock must be established and maintained in a manner not detrimental to the survival of the species in the wild of which it is a member and managed in a manner designed to maintain the artificially propagated stock indefinitely.

"Bred in captivity" refers to the process whereby offspring, including eggs, are born or otherwise produced in a controlled environment, either of parents that mated or otherwise transferred gametes in a controlled environment if reproduction is sexual, or of parents that were in a controlled environment when development of offspring began, if reproduction is asexual. The parental breeding stock must be established in a manner not detrimental to the survival of the species in the wild, of which it is a member, maintained without augmentation from the wild, except for the occasional addition of wildlife from wild populations to prevent deleterious inbreeding, with the magnitude of such addition determined by the need for new genetic material and not other factors, and managed in a manner which has been demonstrated to be capable of reliably producing second-generation offspring in a controlled environment.

"Controlled conditions" means an environment that is intensively manipulated by man for the purpose of producing certain plants. Intensive manipulation may involve, but is not limited to, tillage, fertilization, weed control, irrigation or nursery operations such as potting, bedding or protection from weather.

"Controlled environment" means an environment that is intensively manipulated by man for the purpose of producing certain offspring, and that has boundaries designed to prevent wildlife of the subject species from entering or leaving the environment. Intensive manipulation may involve, but is not limited to, artificial housing, waste removal, health care, protection from predators or artificially supplied food.

"Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249.

"Hybrid" means wildlife or plants derived from the union of gametes of wildlife or plants of different species, one or both of which are of taxa included in Appendix I, II or III. Hybrids derived from gametes of wildlife or plants listed in different appendices shall be considered to be wildlife or plants listed in the more restrictive appendix, Appendix I being the most restrictive and Appendix III the least. Hybrids derived from gametes of wildlife or plants only one of which is listed in an appendix shall be considered to be wildlife or plants listed in that appendix.

"Management Authority" means a national governmental management authority officially designated by a party to implement the present Convention, including the granting of permits or certificates for Convention purposes on behalf of the party. The Secretariat shall have been duly notified of such designation.

"Mark" means any indelible imprint, seal or other suitable means of identifying wildlife or plants designed in such a way as to render its imitation by unauthorized persons as difficult as possible. "Party" means a country for which the Convention has entered into force, by virtue of ratification or accession.

"Re-export" means export of wildlife or plants that have previously been imported.

"Secretariat" means the entity designated under Article XII of the Convention to perform certain administrative functions as provided by the Convention.

"Species" means any species, subspecies or geographically separate population thereof.

"Transship" means the passage of wildlife or plants through a country while remaining under customs control from a point of origin outside that country to a named consignee in another country.

"United States" means all of the several states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

"Wildlife or plant" includes a hybrid of wildlife or plants.

§ 23.4 Parties to the Convention; authorities issuing permits and certificates under the Convention.

The operation of the Convention depends on a system of permits and certificates that are issued by Management Authorities. Equivalent documents may be issued by competent authorities of countries that are not party to the Convention, and by countries that are party to the

Convention, but have made or entered reservations with regard to certain wildlife or plants listed in Appendix I, II or III. Lists of these authorities and of any reservations to wildlife or plants listed on Appendix I, II or III may be obtained from the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone 703/235–2418.

The following countries are currently parties to the Convention. The date after each country indicates the date the country became a party to the Convention. This list is for the convenience of the public, and does not preclude the application of regulations in this Part 23 to importation, exportation or re-exportation to or from other countries not here listed:

1. Algeria	(2/21/84)
2. Argentina	(4/18/81)
3. Australia	(10/27/76)
4. Austria	(4/27/82)
5. Bahamas	(9/18/79)
6. Bangladesh	(2/18/82)
7. Belgium	(1/1/84)
8. Benin	(2/28/84)
9. Bolivia	(10/4/79)
10. Botswana	(2/12/78)
11. Brazil	(11/4/75)
12. Cameroon, United Republic of	(9/3/81)
13. Canada	(7/9/75)
14. Central African Republic	(11/25/80)
15. Chile	(7/1/75)
16. People's Republic of China	(4/8/81)
17. Colombia	(11/29/81)
18. Congo	(5/1/83)
19. Costa Rica	(9/28/75)
20. Cyprus	(7/1/75)
21. Denmark	(10/24/77)
22. Ecuador	(7/1/78)
23. Egypt	(4/4/78)
24. Finland	(8/8/76)
25. France	(8/9/78)
26. Gambia	(11/24/77)
27. German Democratic Republic	(1/7/76)
28. Germany, Federal Republic of	(6/20/76)
29. Ghana	(2/12/76)
30. Guatemala	(2/5/80)
31. Guinea	(12/20/81)
32. Guyana	(8/25/77)
33. Honduras	(6/13/85)
34. India	(10/18/76)
35. Indonesia	(3/28/79)
36. Iran	(11/1/76)
37. Israel	(3/17/80)
38. Italy	(12/31/79)
39. Japan	(11/4/80)
40. Jordan	(3/14/79)
41. Kenya	(3/13/79)
42. Liberia	(6/9/81)
43. Liechtenstein	(2/28/80)
44. Luxembourg	(2/21/84)
45. Madagascar	(11/18/75)
46. Malawi	(5/6/82)
47. Malaysia	(1/18/78)
48. Mauritius	(7/27/75)
49. Monaco	(7/18/78)
50. Morocco	(1/14/76)
51. Mozambique	(6/23/81)
52. Nepal	(9/16/75)
53. Netherlands	(7/18/84)
54. Nicaragua	(11/4/77)
55. Niger	(12/7/75)
56. Nigeria	(7/1/75)
57. Norway	(10/25/76)
58. Pakistan	(7/19/76)
59. Panama	(11/15/78)
60. Papua New Guinea	(3/11/76)
61. Paraguay	(2/13/77)
62. Peru	(9/25/75)
63. Philippines	(11/16/81)
64. Portugal	(3/11/81)
65. Rwandese Republic	(1/18/81)
66. Saint Lucia	(3/15/83)
67. Senegal	(11/3/77)
68. Seychelles	(5/9/77)
69. South Africa, Republic of	(10/13/75)
70. Sri Lanka	(8/2/79)
71. Sudan	(1/24/83)
72. Suriname	(2/15/81)
73. Sweden	(7/1/85)
74. Switzerland	(7/1/75)
75. Tanzania, United Republic	(2/27/80)
76. Thailand	(4/21/83)
77. Togo	(1/21/79)
78. Trinidad/Tobago	(4/18/84)
79. Tunisia	(7/1/75)
80. Union of Soviet Socialist Republics	(12/8/76)
81. United Arab Emirates	(7/1/85)
82. United Kingdom	(10/31/76)
83. United States of America	(7/1/75)
84. Uruguay	(7/1/75)
85. Venezuela	(1/22/78)
86. Zaire	(10/18/76)
87. Zambia	(2/22/81)
88. Zimbabwe	(8/17/81)

§ 23.5 Hybrids.

For purposes of this Part 23, hybrids derived from gametes of wildlife or plants listed in one or more appendix shall be considered to be wildlife or plants listed in an appendix and therefore subject to the regulations of this Part.

Subpart B—Prohibitions, Permits and Exceptions

§ 23.11 Prohibitions.

(a) Unless the requirements in this Part 23 are met, or one of the exceptions in this Part 23 is applicable, it is unlawful for any person subject to the jurisdiction of the United States to commit, attempt to commit, solicit another to commit, or cause to be committed any of the acts described in paragraphs (b) through (d) of this section.

(b) *Import.* (1) It is unlawful to import into the United States any wildlife or plant listed in Appendix I, II or III (see § 23f.23) from any foreign country.

(2) It is unlawful to import directly into the United States any wildlife or plant listed in Appendix I or II (see § 23.23) taken from the sea beyond the jurisdiction of any country.

(c) *Export.* It is unlawful to export from the United States any wildlife or plant listed in Appendix I, II or III (see § 23.23).

(d) *Re-export.* It is unlawful to re-export from the United States any wildlife or plant listed in Appendix I, II or III (see § 23.23).

(e) *Possession.* It is unlawful for any person subject to the jurisdiction of the United States to possess any wildlife or plant listed in Appendix I, II or III imported into the United States, or exported or re-exported from the United States contrary to the provisions of the Convention or this Part 23.

§ 23.12 Requirements.

(a) *Import*—(1) *Appendix I.* (i) In order to import into the United States any wildlife or plant listed in Appendix I from a foreign country or origin, a United States import permit, issued pursuant to § 23.15, and a valid foreign export permit issued by the country of origin must be obtained prior to such importation.

(ii) In order to import into the United States any wildlife or plant listed in Appendix I from a foreign country of re-export, a United States import permit and a valid foreign re-export certificate must be obtained prior to such importation.

(iii) In order to import directly into the United States any wildlife or plant listed in Appendix I taken from the sea beyond the jurisdiction of any country, a United States import certificate issued pursuant to § 23.15 must be obtained prior to such importation.

(2) *Appendix II.* (i) In order to import into the United States any wildlife or plant listed in Appendix II from a foreign country of origin, a valid foreign export permit issued by the country of origin must be obtained prior to such importation.

(ii) In order to import into the United States any wildlife or plant listed in Appendix II from a foreign country of re-export, a valid foreign re-export certificate must be obtained prior to such importation.

(iii) In order to import directly into the United States any wildlife or plant listed in Appendix II taken from the sea beyond the jurisdiction of any country, a United States import certificate, issued pursuant to § 23.15, must be obtained prior to such importation.

(3) *Appendix III.* (i) In order to import into the United States any wildlife or plant listed in Appendix III from a foreign country of export that has listed such wildlife or plant in Appendix III, a valid foreign export permit issued by

such country must be obtained prior to such importation.

(ii) In order to import into the United States any wildlife or plant listed in Appendix III from a foreign country of export that has not listed such wildlife or plant in Appendix III, a valid foreign certificate of origin issued by such country must be obtained prior to such importation.

(iii) In order to import into the United States any wildlife or plant listed in Appendix III from a foreign country of re-export, a valid foreign re-export certificate which states that the wildlife or plant was processed in that country or is being re-exported must be obtained prior to such importation.

(4) *Time limit for importation.* Importation must occur prior to the expiration date of the export permit, re-export certificate or certificate of origin, which date shall be no later than 6 months from the date granted.

(b) *Export or Re-export*—(1) *Appendices I and II.* In order to export or re-export from the United States any wildlife or plant listed in Appendix I or II, a United States export permit or re-export certificate, issued pursuant to § 23.15, must be obtained prior to such exportation or re-exportation.

(2) *Appendix III.* (i) In order to export or re-export from the United States any wildlife or plant listed in Appendix III by the United States, a United States export permit or re-export certificate, issued pursuant to § 23.15, must be obtained prior to such exportation or re-exportation.

(ii) In order to export or re-export from the United States any wildlife or plant listed in Appendix III that has not been listed by the United States, a certificate of origin or re-export certificate, issued pursuant to § 23.15, must be obtained prior to such exportation or re-exportation.

§ 23.13 Exceptions.

(a) If any wildlife or plant listed in Appendix I, II or III is also subject to the regulations in Part 17 or Part 18 of this subchapter, the prohibitions and exceptions in those parts and in Part 23 shall apply. Exceptions in one part cannot be invoked to allow activities prohibited in another part.

(b) The prohibitions in § 23.11 (b) through (d) concerning importation, exportation, and re-exportation shall not apply to wildlife or plants that are being transshipped through the United States provided such wildlife or plants remain in Customs custody and the accompanying documents clearly show the ultimate destination of such wildlife or plants, including the name and address of the persons to whom it is being shipped.

(c) The prohibitions in § 23.11 (b) through (d) concerning importation, exportation and re-exportation shall not apply to wildlife or plants when a certificate has been issued by the management authority of the country of origin or of the country of re-export to the effect that the wildlife or plant was removed from the wild or artifically produced prior to the date the Convention applied to it. See § 23.15 for rules on the issuance of such certificates.

(d) The prohibitions in § 23.11 (b) through (d) concerning importation, exportation and re-exportation shall not apply to wildlife or plants that are products or manufactured articles not intended for commercial use, and are worn as clothing or are contained in or are part of accompanying personal baggage, or are part of a shipment of the household effects of persons moving their residences to or from the United States, *provided,* that this exception shall not apply to:

(1) Importation by U.S. residents of wildlife or plants listed in Appendix I that were acquired outside the United States; or

(2) Importation by U.S. residents of wildlife or plants listed in Appendix II that were acquired outside the United States in a country where taken from the wild, if that country requires export permits.

(e) Wildlife or plants listed in Appendix I that have been bred in captivity or artificially propagated for commercial purposes shall be treated as if listed in Appendix II and shall not be eligible for the exemption contained in paragraph (f) of this section.

(f) The prohibitions in § 23.11 (b) through (d) concerning importation, exportation and re-exportation shall not apply to wildlife or plants when a certificate has been issued by the management authority of the country of export to the effect that the wildlife or plant was bred in captivity or artificially propagated, or was part of or derived therefrom. See § 23.15 for rules on the issuance of such certificates.

(g) The prohibitions of § 23.11 (b) through (d) concerning importation, exportation and re-exportation shall not apply to herbarium specimens, other preserved (including frozen), dried or embedded museum specimens, and live plant material recorded as acquired by scientific institutions when they are imported, exported or re-exported as a noncommercial loan, donation or exchange between such institutions registered by a management authority of their country: *Provided,* That a label issued or approved by such management authority is clearly affixed to the package or container. The label shall bear the letter "CITES" (acronym for the Convention), a description such as "herbarium specimens," the code letters assigned to the sending and receiving institutions by their respective management authorities, and the name and address of the sending institution, over the signature of a responsible officer of the sending institution. See § 23.15 for rules on registration and use of approved labels.

(h) The prohibitions of § 23.11 (b) through (d) concerning importation, exportation and re-exportation shall not apply to marine wildlife or plants included in Appendix II which are afforded protection by any other treaty, convention or international agreement in force for the United States on July 1, 1975, if such wildlife or plants were taken by a ship registered in the United States and in accordance with such other treaty, convention, or international agreement; *Provided,* that: In case of any exportation of such wildlife or plants, a certificate has been issued to the effect that such wildlife or plants were taken in accordance with the provisions of such other treaty, convention or international agreement.

§ 23.14 Foreign documentation.

(a) *Party Countries.* (1) Permits and certificates which meet the following requirements shall be accepted as valid foreign documents from countries that are party to the Convention. Such documents shall (i) be granted by the Management Authority; (ii) contain the name, country, and national seal or stamp of the granting Management Authority; (iii) contain a document control number; (iv) contain the name, address, and country of the person to whom the permit or certificate was issued; (v) contain the name and address of the U.S. importer receiving the wildlife or plants; (vi) contain the quantity of the wildlife or plants; (vii) contain the scientific and common name of the wildlife or plants; (viii) be an original document, except that a copy may be used in place of the original if it is endorsed by the issuing Authority as valid for such use by placing original signature and stamps on the copy; and (ix) contain the signature, official stamp and title of the person that issued the permit or certificate and the date of issuance. (2) In addition to the requirements of § 23.14(a)(1) such documents should (i) contain the address of the granting management authority; (ii) contain a valid expiration date; (iii) contain the source (i.e., wild,

bred in captivity, artifically propagated or other) of the wildlife or plant; (iv) contain the appendix in which the wildlife or plant is listed; (v) contain a description of the wildlife or plant and any mark affixed thereto; (vi) *if* living wildlife, contain the date of birth (if known) or the approximate age and, if practical, the sex of the wildlife; (vii) if a re-export certificate, contain the country of origin of the wildlife or plant and the control number of the export permit issued by that country or a justification for omitting any such information; (viii) title of the official who inspected the wildlife or plants upon exportation or re-exportation, if the country has an export control program; and (x) *if* necessary, be accompanied by a written translation. Any missing element or combination thereof may be cause for refused clearance.

(b) *Countries that are not parties.* The requirements and exceptions in this Part 23 shall apply to all wildlife and plants listed in Appendix I, II or III to the Convention, whether the shipment is to or from a country that is party to the Convention, or to or from any other country. In the case of a shipment of wildlife or plants from a country not party to the Convention, foreign documents shall be obtained from a government official of the country responsible for authorizing the export or re-export of such wildlife or plants. In addition to the information required by paragraph (a) of this section, foreign documents issued by a country not party to the Convention shall contain one or more of the following statements as applicable or their equivalent:

(1) Export of all wildlife or plants (living or otherwise)

I, ———— (signing official), hereby certify that the shipment of wildlife or plants covered by this document will not be detrimental to the survival of the species and that the wildlife or plants were not obtained in contravention of the laws of ———— (country).

(2) Re-export of all wildlife or plants (living or otherwise)

I, ———— (signing official), hereby certify that a competent authority of the country of origin has issued an export document which substantially meets the requirements of Article VI of the Convention.

(3) Export or re-export of living wildlife or plants

I, ———— (signing official), hereby certify that transport will be in a manner which will minimize the risk of injury, damage to health or cruel treatment.

§ 23.15 Permits and certificates.

(a) In order to import, export or re-export wildlife or plants listed in Appendix I, II or III that are also listed as endangered or threatened and subject to regulations in Part 17 of this subchapter, the requirements in both Part 17 and Part 23 must be met. A single application meeting the appropriate application requirements in Part 17 and Part 23 may be submitted.

(b) In order to import wildlife listed in Appendix I, II or III that are marine mammals subject to regulations in Part 18 of this subchapter, the requirements in both Part 18 and Part 23 must be met. A single application meeting the application requirements in Part 18 and Part 23 may be submitted.

(c) *Application requirements.* Applications for permits or certificates to import, export or re-export wildlife or plants listed in Appendix I, II or III of this subchapter must be submitted to the Director by any person subject to the jurisdiction of the United States who wishes to engage in the activity. Each application must be submitted on an official application form (Form 3–200) provided by the Service (or must contain the general information and certification required by § 13.12(a) of this subchapter): *Except*, That: Licensees holding valid licenses issued under Subpart I of Part 14 of this subchapter do not have to file an official application form (Form 3–200) or provide information required in § 13.12(a) of this subchapter for export permits or re-export certificates for all wildlife listed in Appendices II and III, provided they furnish their license number and as much of the information in this paragraph (c) as relates to the purpose for which the licensee is requesting a permit or certificate. Each application must include, as an attachment or on the form itself, as much of the following information as relates to the purpose for which the applicant is requesting a permit or certificate:

(1) The scientific and common names of the species (or taxa to the rank listed in Appendix I, II or III) sought to be covered by the permit, the number of wildlife or plants, and the activity sought to be authorized (importing, exporting, re-exporting);

(2) A statement as to whether the wildlife or plant, at the time of application, (i) is living in the wild, (ii) is living but is not in the wild, or (iii) is dead;

(3) A description of the wildlife or plant, including (i) size, (ii) sex and date of birth of the wildlife or approximate age (if known), (iii) type of goods, if it is a part or derivative, (iv) any distinguishing feature including any mark affixed to the wildlife or plant, and (v) source (i.e., taken from the wild, bred in captivity or artificially propagated or other);

(4) In the case of living wildlife or plants to be exported or re-exported from the United States, (i) a description of the type, size and construction of any container the wildlife or plant will be placed in during transportation and (ii) the arrangements for watering and otherwise caring for the wildlife or plant during transportation;

(5) The name and address of the person in a foreign country to whom the wildlife or plant is to be exported or re-exported from the United States, or from whom the wildfire or plant is to be imported into the United States;

(6) The country and place where the wildlife or plant was or is to be taken from the wild, or was born or propagated; and the number of any Convention re-export certificate under which the wildlife or plant was imported into the United States or a justification for not including any such information;

(7) In the case of wildlife or plants listed in Appendix I to be imported, (i) a statement detailing the purposes of the import, the uses to which the wildlife or plant will be put and the purposes of each such use; (ii) a brief resume of the technical expertise of the applicant or other persons who will care for wildlife or plant; (iii) if living, the name, address and a description, including diagrams or photographs, of the facility where the wildlife or plant will be maintained; and (iv) if living, information indicating the total number of wildlife of each species covered in the application held (or, if such species were not held, any wildlife of species of the same genus or family) by the applicant during the 2 years preceding the date of this application, the length of time each such wildlife was held, the current number of such wildlife and the number of mortalities during the 2-year period;

(8) In the case or re-export, evidence showing that import of the wildlife or plant met the requirements or one of the exceptions of this Part 23;

(9) In the case of export or re-export of any wildlife or plant listed in Appendix I, evidence that a valid import permit or certificate has been issued by a competent authority of a foreign country. If export is to a country not party to the Convention, the import permit shall contain a certificate by that authority to the effect that the import will be for purposes not detrimental to the survival of the species involved, that the wildlife or plants are not to be used for primarily commercial purposes, and, if live wildlife or plants are involved, that the recipient is suitably equipped to house and care for them;

(10) In the case of applications for certificates of exception, copies of documents, sworn affidavits, breeding records, or similar evidence showing that either (i) the wildlife or plant was removed from the wild or artificially produced prior to the date the wildlife or plant was first listed in the Appendices to the Convention, or (ii) the wildlife or plant was bred in captivity or artificially propagated, or was part thereof or derived therefrom, and in the case of wildlife or plants listed in Appendix I, all of the purposes for which they were bred in captivity or artificially propagated, or (iii) the wildlife or plant, recorded as having been acquired by the sending institution, is an herbarium specimen, other preserved (including frozen), dried, embedded museum specimen or live plant material to be imported, exported or re-exported as a noncommercial loan, donation or exchange between scientific institutions (describe applicant's provisions for access by other institutions, housing, control, identification, preparation and care of such specimens and material, and the primary purpose of their acquisition); and

(11) In the case of marine wildlife or plants listed in Appendix II to be exported from the United States that are protected by any treaty, convention (other than the Convention) or international agreement in force as to the United States on July 1, 1975, copies of documents, sworn affidavits or other evidence showing that the wildlife or plant was taken by a ship registered in the United States and in accordance with the provisions of such treaty, convention or international agreement.

(d) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a), (b) or (c) of this section, the Director will decide whether or not a permit or certificate should be issued. In making his decision, the Director shall consider, in addition to the general criteria in § 13.21(b) of this subchapter, the following factors:

(1) Whether the proposed import of any wildlife or plant listed in Appendix I will be for purposes not detrimental to the survival of the species and will enhance the survival of the species;

(2) Whether the proposed import of any wildlife or plant listed in Appendix I or II directly from the sea beyond the jurisdiction of any country will be detrimental to the survival of the species;

(3) Whether the proposed recipient of any living wildlife or plant listed in Appendix I to be imported into the United States is suitably equipped to house and care for such wildlife or plant;

(4) Whether any wildlife or plant listed in Appendix I to be imported into the United States will be used for primarily commercial purposes;

(5) Whether any living wildlife or plant to be imported directly into the United States from the sea beyond the jurisdiction of any country will be so handled as to minimize the risk of injury, damage to health or cruel treatment.

(6) Whether the wildlife or plant to be exported was acquired lawfully.

(7) Whether any wildlife or plant to be re-exported met the requirements or one of the exceptions of this Part 23.

(8) Whether the wildlife or plant to be exported or re-exported was lawfully acquired subsequent to abandonment or forfeiture to the United States.

(9) Whether any living wildlife or plant to be exported or re-exported will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment;

(10) Whether the United States is the country of origin of any wildlife or plant listed in Appendix III by another country;

(11) Whether the proposed export of any wildlife or plant listed in Appendix I or II from the United States would be detrimental to the survival of the species; and

(12) Whether any marine wildlife or plant listed in Appendix II to be exported from the United States which is protected by any treaty, convention (other than the Convention) or international agreement in force as to the United States on July 1, 1975, was taken by a ship registered in the United States and in accordance with the provisions of such treaty, convention or international agreement;

(13) Whether an import permit has been granted by a foreign country, in the case of a proposed export or re-export from the United States of any wildlife or plant listed in Appendix I.

(14) Whether the evidence submitted is sufficient to justify an exception, in case of (i) wildlife or plants that were removed from the wild or artificially produced prior to the date the Convention applied to them; (ii) wildlife or plants that were bred in captivity or artificially propagated; or (iii) wildlife or plants recorded as having been acquired by the sending institution that are herbarium specimens, other preserved (including foreign), dried or embedded museum specimens, or live plant material to be imported, exported or re-exported as a noncommercial loan, donation or exchange between scientific institutions registered by management authorities or, in the case of a country not party to the Convention, by the authority mentioned in § 23.14(a), which maintain collections that are permanently and centrally housed, professionally curated, acquired or primarily for purposes of publishable research, accessible to all qualified users, prepared and arranged to ensure their utility, with permanent and accurate records, including records of loans, donations, and exchanges, and, with regard to wildlife or plants listed in Appendix I, are recorded and managed in a manner to preclude use for decoration, trophies or other purposes incompatible with the principles of the Convention; and whose acquisition and possession are in accordance with the laws of the state in which the institution is located.

(e) *Permit or certificate conditions.* In addition to the general requirements and conditions set forth in Part 13 of this subchapter, permits or certificates issued under this section shall be subject to the following special conditions:

(1) Any permit or certificate must be presented to a Service officer upon importation into the United States or prior to exportation or re-exportation from the United States and must be validated prior to such exportation or re-exportation;

(2) Where appropriate and feasible, the Service may require that a mark be affixed upon any wildlife or plant or require presentation of a list of State tag legends;

(3) In the case of wildlife or plants that are herbarium specimens, other preserved (including frozen), dried or embedded museum specimens, or live plant material to be imported, exported or re-exported as a noncommercial loan, donation or exchange between registered scientific institutions, the name and address of the sending institution, the letters "CITES" (acronym for the Convention), a description such as "herbarium specimens," the code assigned by the Service to the scientific institution and the code of the other scientific institution involved in the transaction must be entered over the signature of a responsible officer of the registered sending institution on a Customs declaration form affixed to each package or container. Such loan, donation or exchange must have been permanently and accurately recorded by the sending institution. Information concerning institutional codes may be obtained from the Federal Wildlife Permit Office, Washington, DC 20240, telephone 703/235–2418.

(4) Any container used to export or re-export live wildlife under any permit or certificate, except a certificate of

exemption, shall have conspicuously affixed to it a card issued by the Service for reporting undue stress to the wildlife contained therein.

(f) *Duration of permits or certificates.* The duration of permits or certificates issued under this section shall be designated on the face of the permit or certificate, but in no case will export permits or re-export certificates be valid for longer than 6 months to authorize entry at the country of import.

§ 23.16 Information collection requirements.

The information collection requirements contained in § 23.12, § 23.13, § 23.14 and § 23.14 have been approved by the Office of Management and Budget and assigned clearance number 1018–0022. The information is being collected to protect wildlife and plants listed in Appendices I, II and III against over-exploitation through international trade.

(a) Concerning § 23.12, § 23.13 and § 23.14, the information will be used to assure that the documents referred to therein are valid and related to wildlife and plants associated with them, and to maintain, report and make available pursuant to terms and reporting requirements of the Convention statistical information about the kinds and numbers of wildlife and plants imported into and exported and re-exported from the United States. Response is required to obtain approval for the activity.

(b) Concerning § 23.15, the information will be used to determine whether the Director should grant permits and certificates for import, export and re-export of wildlife and plants listed in Appendices I, II and III. Response is required to obtain approval for the activity.

2. 50 CFR Part 23, Subpart C is amended by adding a new paragraph (e) to § 23.23 to read as follows:

§ 23.23 [Amended]

* * * * *

(e) Species in Appendix I to which the United States has taken a reservation shall be treated as in Appendix II if import, export or re-export involves a country not party to the Convention or another reserving Party. Species in Appendix I to which another Party has taken a reservation shall be treated as in Appendix I. See § 23.4 of this part for information concerning reservations taken by Parties.

PART 13—[AMENDED]

3. 50 CFR Part 13, Subpart B, is amended by adding a new paragraph (b)(4) to § 13.11 to read as follows:

§ 13.11 [Amended]

* * * * *

(b) * * *

(4) Convention on International Trade in Endangered Species of Wild Fauna and Flora (50 CFR Part 23) for export by licensees holding valid licenses issued under Subpart I of Part 14 of this subchapter B of certain species of wildlife set forth in Subpart F of Part 23 of this Subchapter B or re-export of wildlife listed in Appendix II or III of the Convention—Designated port offices of Law Enforcement from which applicant plans to export or re-export wildlife or Special Agent in Charge of Law Enforcement District in which applicant resides (see 50 CFR 10.22 for addresses and boundaries of the Law Enforcement Districts).

Dated: July 31, 1985.

Susan E. Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–22615 Filed 9–23–85; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 50, No. 185
Tuesday, September 24, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Information Collection Request Under OMB Review

AGENCY: Action.

ACTION: Information Collection Request Under Review.

SUMMARY: This notice sets forth certain information about an information collection proposal by ACTION, the national volunteer agency.

Background

Under the Paperwork Reduction Act (44 U.S.C., Chapter 35), the Office of Management and Budget (OMB) reviews and acts upon proposals to collect information from the public or to impose recordkeeping requirements. ACTION has submitted the information collection proposal described below to OMB. OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements. Copies of the proposed forms and supporting documents [requests for clearance (SF 83), supporting statment, instructions, transmittal letter, and other documents] may be obtained from the agency clearance officer.

Information About This Proposed Collection

Agency Clearance Officer—Melvin E. Beetle (202) 634–9318
Agency Address: ACTION, 806 Connecticut Ave., NW., Washington, DC 20525
Office of ACTION issuing the Proposal: Office of Legislative, Public, and Intergovernmental Affairs (LPIA).
Title of Form: Nomination Form for "The President's Volunteer Action Awards".
Type of Request: Reinstatement.
Frequency of Collection: Annual.
General Description of Respondents: Individuals with Nominations for Awards.
Estimated Number of Annual Responses: 2,500.
Estimated Annual Reporting or Disclosure Burden: 2,500 hours.
Respondent's Obligation to Reply: Voluntary.
Person responsible for OMB Review: Bruce Artim, (202)395–7316.

Dated: September 19, 1985.

Melvin E. Beetle,

ACTION Clearance Officer.

[FR Doc. 85–22794 Filed 9–23–85; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–059]

Pressure Sensitive Plastic Tape From Italy; Preliminary Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Antidumping Finding.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping finding on pressure sensitive practice tape from Italy. The review covers Manuli Autoadesivi, S.p.A., one of 14 known manufacturers and/or exporters of Italian pressure sensitive plastic tape to the United States, and generally consecutive periods from February 18, 1977, through September 30, 1982. The review indicates the existence of dumping margins during certain of the periods.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value on each of the sales during the periods.

Interested parties are invited to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney, Alfredo Montemayor, or G. Leon McNeill, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 35686) the final results of its last administrative review of the antidumping finding on pressure sensitive plastic tape from Italy (42 FR 56110, October 2, 1977) and announced its intent to conduct the next administrative review. The Department has now conducted that review with respect to Manuli Autoadesivi, S.p.A. The substantive provisions of the Antidumping Act of 1921 ("the 1921 Act") and the appropriate Customs Service regulations apply to all unliquidated entries made prior to January 1, 1980.

Scope of the Review

Imports covered by the review are shipments of pressure sensitive plastic tape measuring over 1⅜ inches in width and not exceeding 4 mils in thickness, currently classifiable under items 790.5530, 790.5545, and 790.5555 of the Tariff Schedules of the United States Annotated.

The review covers one of the 14 known manufacturers and/or exporters of this merchandise to the United States, Manuli Autoadesivi, S.p.A., and generally consecutive periods from February 18, 1977, through September 30, 1982. Although Manuli requested revocation, since it has not had two or more years of sales at not less than fair value, we are not considering that request at this time.

United States Price

In calculating United States price the Department used either purchase price or exporter's sales price ("ESP"), both as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"), and sections 203 and 204 of the 1921 Act, as appropriate. Purchase price and ESP calculations were based on the c.i.f. duty paid, packed or c.i.f. delivered, packed price to the first unrelated purchasers in the United States. Where applicable, we made deductions for ocean freight, U.S. and foreign brokerage fees, U.S. and foreign inland freight, U.S. and foreign insurance, U.S. customs duties, handling fees, discounts, credit expenses, commissions to unrelated parties, and the U.S. subsidiary's selling

expenses. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used home market price as defined in section 773 of the Tariff Act, or section 205 of the 1921 Act, as appropriate, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed, delivered price with adjustments, where applicable, for foreign inland freight, insurance, credit expenses and, it ESP calculations, for indirect selling expenses to offset U.S. selling expenses and commissions.

We disallowed Manuli's claim for a level-of-trade adjustment because we found that only one level-of-trade existed in the home market which was the same level of trade that existed in the U.S. market.

We disallowed claimed adjustments for differences in the physical characteristics of the merchandise, due to inadequate quantification. No other adjustments were claimed of allowed.

Preliminary Results of the Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exists for Manuli:

Period	Margin (percent)
02/18/77 to 03/31/78	2.07
04/01/78 to 03/31/79	1.38
04/01/79 to 10/20/79	9.49
10/01/80 to 09/30/81	[illegible]
10/01/81 to 09/30/82	0..08

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, because the most recent margin is less than 0.50 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties, as provided by § 353.48(b) of the Commerce Regulations on future entries of pressure sensitive plastic tape manufactured by Manuli or on shipments from a new exporter not covered in this or a prior review, whose first shipment occurred after September 30, 1982, and who is unrelated to any reviewed firm. This deposit requirement and waiver are affective for shipments entered, or withdrawn from warehouse, for consumption on or after the date of the publication of the final results of this review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)), and § 353.53 of the Commerce Regulations (19 CFR 353.53).

September 17, 1985.

Gibert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-22750 Filed 9-23-85; 8:45 am]

[illegible]

Semiconductor Technical Advisory Committee; Partially Closed Meeting

Summary: The Semiconductor Technical Advisory Committee was initially established on January 3, 1973, and rechartered on January 5, 1984 in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

Time and place: October 24, 1985 at 9:30 a.m., Herbert C. Hoover Building, Room 5230, 14th Street and Constitution Ave., NW., Washington, DC.

AGENDA

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of approaches to decontrol of non-critical items.
4. Annual report inputs from Subcommittees.
5. Nominating Committee report.
6. Election of Committee chairman.
7. Old Committee business.
8. New Committee business.
9. Action items underway.
10. Action items due at next meeting.

Executive Session

11. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

Public Participation: The General Session will be open to the public and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

Supplementary information: A Notice of Determination to close meetings or portions of meetings of the Committee to the public on the basis of 5 U.S.C. 552b(c)(1) was approved on February 6, 1984, in accordance with the Federal Advisory Committee Act. A copy of the Notice is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202-377-4217. For further information or copies of the minutes call Margaret A. Cornejo on 202-377-2583.

Date: September 19, 1985.

Milton M. Baltas,

Director of Technical Programs Office of Export Administration.

[FR Doc. 85-22802 Filed 9-23-85; 8:45 a.m.]

[illegible]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Requesting Public Comment on Bilateral Textile Consultations With the Government of Malaysia To Review Trade in Categories 634, 635 and 645/646

September 19, 1985.

On August 30, 1985, the Government of the United States requested consultations with the Government of Malaysia with respect to Categories 634 (men's and boys' other coats of man-made fibers), 635 (women's, girls', and infants' coats of man-made fibers) and 645/646 (man-made fiber sweaters). This request was made on the basis of the agreement between the Governments of the United States and Malaysia relating to trade in cotton, wool, and man-made fiber textile products, effected by exchange of notes dated July 1 and July 11, 1985. The agreement provides for consultations when the orderly development of trade between the two countries may be impeded by imports due to market disruption, or the threat thereof.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may establish prorated specific limits of 14,524 dozen (Category 634), 10,615 dozen (Category 635) and 14,334 dozen (Category 645/646) for the entry and withdrawal from warehouse for consumption of textile products, produced or manufactured in Malaysia and exported during the period beginning on November 28, 1985 and extending through December 31, 1985.

The Government of the United States has decided, pending agreement on a mutually satisfactory solution concerning this category, to control imports during the ninety-day consultation period (August 30, 1985 through November 27, 1985) at levels of 45,477 dozen (Category 634), 33,236 dozen (Category 635) and 44,883 dozen (Category 645/646). In the event the limits established for the ninety-day period are exceeded, such excess amounts, if allowed to enter, may be charged to the levels established during the subsequent restraint period.

Summary market statements for each of these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 634, 635 and 645/646 is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Malaysia—Market Statement

Category 634—Men's and Boys' Man-made Fiber Other Coats (MB MMF Other Coats)

August 1985

Summary and Conclusion

Category 634 imports from Malaysia increased six fold during the year ending June 1985 to 138,474 dozens from 19,742 dozens during the previous twelve months. MB MMF other coat imports during the 1st six months of 1985 along, at 69,986 dozens, equaled 84 percent of the total amount of Category 634 imported from that country in all of 1984. In addition, Malaysia accounted for 28 percent of the growth in total Category 634 imports from all sources in 1984.

This is a sharp and substantial increase in imports which, if continued, creates a real risk of market disruption.

U.S. Production

In contrast to the growth in imports, Category 634 domestic production has trended downward since 1980. It declined 17 percent since 1980 to 4,595,000 dozens in 1984.

Imports

Imports have not only captured all of the growth in the U.S. Category 634 market, but have also displaced domestic production. During 1980–1984, imports increased by over 1,320,000 dozens, offsetting a 945,000 dozens decline in domestic production while additionally capturing a 375,000 increase in the U.S. Category 634 market.

In the five years ending in 1984, the import-to-production ratio doubled, rising from 37.5 percent in 1980 to 74.0 percent in 1984.

U.S. Market and Domestic Producers' Share

The U.S. Market for Category 634 coats, at 7,994,000 dozens, was 1 percent below the 1980–1984 annual average of 8,113,000 dozens. The market did fluctuate somewhat during this period, but regardless of whether the market was expanding or contracting, domestic producers continually lost market share. In 1980, U.S. producer supplied 73 percent of the market, but by 1984 their share was reduced to 57 percent.

Import Value and Domestic Producers Price

Forty-three percent of the Category 634 imports from Malaysia are woven coats entered under TSUSA No. 379.9530 and 29 percent are knit jogging jackets under TSUSA No. 379.2315. These garments are imported at landed, duty-paid values below the domestic producers price for comparable garments.

Category 635—Women's Girls' and Infants' Man-made Fiber Coats (WGI MMF Coats)

Summary and Conclusions

Category 635 imports from Malaysia more than doubled in 1984, increasing to 64,875 dozens from 29,041 dozens in 1983. Imports for the first half of 1985 at 51,020 dozens, are triple the 13,586 dozens entered during the 1st six months of 1984. This is a sharp and substantial increase in imports which, if continued, creates a real risk of market disruption.

Imports

Category 635 imports have increased by 1.5 million dozens, rising from 2,414,000 dozens in 1980 to 3,909,000 dozens in 1984. Despite some increase in domestic production thru 1983, the import-to-production ratio increased to 63.4 percent in the latter year from 57.3 percent in 1980. The high level of imports resulted in a contraction in domestic production, pushing the import-to-production ratio to 84.4 percent in 1984.

U.S. Production

Domestic production peaked at 5,793,000 dozens in 1983 and then plummeted to 4,632,000 dozens in 1984. Imports nearly equaled domestic production in the latter year.

U.S. Market and Domestic Producers Share

Despite a generally expanding market, the domestic producers' market share has been declining. The U.S. Category 635 market increased by 2.8 million dozens between 1980 and 1983 but the domestic producers' share declined from 64 percent in 1980 to 61 percent in 1983. Imports increased further in 1984, but the market softened to 8,541,000 dozens, forcing a contraction in U.S. output and a lessor 54 percent market share for domestic producers.

Import Values and Domestic Produces Price

Two thirds of the Category 635 imports from Malaysia are knit athletic jackets entered under TSUSA Nos. 383.8110—not ornamented and 383.1909—ornamented. These coats are entered at landed, duty-paid value below the domestic produces' price for comparable garments.

Categories 645/646—Man-Made Fiber Sweaters

Summary and Conclusions

Man-made fiber sweater imports from Malaysia increased from 9,441 dozens in 1983 to 118,813 dozens in 1984. Malaysia accounted for half of the growth in man-made fiber sweater imports from all sources in the latter year. During the year ending June 1985, these imports reached 128,557 dozens compared with 38,547 dozens in the previous twelve months. This increase in imports from Malaysia was sharp and substantial, further disrupting a market already severly affected by imports.

U.S. Imports

Imports have made greater inroads into the U.S. sweater market than in any other category grouping. Total sweater imports, encompassing all fibers, increased by nearly 5 million dozens in 1984 to 21, 314,000 dozens. This was nearly two times 1984 domestic sweater production levels. In 1984, the import-to-production ratio was 186 percent.

Man-made fiber sweaters accounted for about half of the sweater import total. Imports of Categories 645/646 sweaters increased by 2,846,000 dozens from 1979 to 1983, an increase equal to 40 percent of U.S. 1984 man-made fiber sweater production. Imports increased by an additional 200,000 dozens in 1984 reaching 10,976,000 dozens, a

level more than 50 percent above domestic production.

In addition, U.S. man-made fiber sweater producers are being adversely affected by imports of sweaters of polyester and acrylic blended with chief weight and chief value non-MFA fibers such as ramie. It is estimated that total non-MFA fiber sweater imports were 5,626,788 dozens in 1984. Further, during the first half of 1985, these imports reached 3,387,310 dozens.

U.S. Production

Man-made fiber sweater production averaged 7,413,000 dozens annually during 1979–1983. There was no growth in the industry during this period despite a growing market. Production in 1984, at 7,192,000 dozens, was below the five-year average.

U.S. Market

The U.S. market increased by 2.9 million dozen during 1979—1984, matching the import increase during this period. As a result, the domestic producers' share of this market declined from 48 percent in 1979 to 40 percent in 1984.

Import-to-Production Ratio

The import-to-production ratio was 148.9 percent in 1983 compared to 107.5 percent in 1979. For every seven man-made fiber sweaters produced in the United States in 1983 nearly eleven were imported. The 1984 ratio rose to 152.6 percent. This does not include imports of non-MFA sweaters.

Import Values and Domestic Producers' Price

Over two-thirds of the Categories 645/646 imports from Malaysia entered under TSUSA No. 383.8073—women's and girls' non-ornamented sweaters. These garments are entered at landed, duty-paid values below the U.S. producers price for comparable garments.

Committee for the Implementation of Textile Agreements

September 19, 1985.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated July 1 and July 11, 1985, between the Governments of the United States and Malaysia; and in accordance with the provisons of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 25, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in Categories 634, 635, and 645/646, produced or manufactured in Malaysia and exported during the ninety-day period which began on August 30 and extends through November 27, 1985, in excess of the following restraint levels:

Category	90 day level[1] (dozen)
634	45,477
635	[illegible]
645/646	44,883

[1] The levels have not been adjusted to reflect any imports exported after August 29, 1985.

Textile products in Categories 634, 635, and 645/646 which have been exported to the United States prior to August 30, 1985 shall not be subject to this directive.

Textile products in Categories 634, 635, and 645/646 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–22749 Filed 9–23–85; 8:45 am]

BILLING CODE [illegible]

Adjusting the Restraint Limit for Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Mauritius; Correction

September 19, 1985.

On September 13, 1985 a notice was published in the **Federal Register** (50 FR 37396), which announced reduction in the import restraint limit established for the knitwear group in Categories 345, 438, 445, 446, 645 and 646, produced or manufactured in Mauritius and exported during the twelve-month period which began on October 1, 1984 and extends through September 30, 1985. In the letter to the Commissioner of Customs which followed that notice paragraph two should be corrected to read as follows:

Effective on September 16, 1985, the directive of June 12, 1985 is hereby further amended to include an adjusted restraint limit of 106,950 dozen [1] for cotton, wool and man-made fiber textile products in Categories 345, 438, 445, 446, 645 and 646, as a group.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–22747 Filed 9–23–85; 8:45 am]

BILLING CODE 3510–DR–M

Adjusting the Restraint Limit for Certain Cotton Apparel Products Produced or Manufactured in the Republic of Korea

September 19, 1985

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 25, 1985. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On February 1, 1985 a notice was published in the **Federal Register** (50 FR 4720) announcing that, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea, the United States Government had decided to convert to a specific limit of 740,427 pounds the level for cotton vests in Category 359 pt. (only TSUSA, numbers 379.0258, 379.0654, 379.3949, 379.5700, 379.5820, 383.0648, 383.0652, 383.4200 and 383.4320), produced or manufactured in Korea and exported during 1985. A review of the import data has determined that merchandise in this category, exported during 1984, exceeded the 1984 level of 722,368 pounds by 946,523 pounds. In the letter to the Commissioner of Customs that follows this notice the CITA Chairman directs that 946,523 pounds be charged to the 1985 limit for Category 359 pt. This charge will fill and exceed that limit by 206,096 pounds, plus the 1985 export charges through the embargo date. Charges through August 23, 1985 were 446,776 pounds.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 19, 1985.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea, I request that, effective on September 25, 1985, you charge 946,523 pounds to the restraint limit established in the directive of January 29, 1985 for cotton textile products in Category 359 pt.[1] produced or manufactured in the Republic of Korea and exported during 1985.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-22748 Filed 9-23-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Organization of the Joint Chiefs of Staff; Joint Strategic Target Planning Staff (JSTPS), Scientific Advisory Group; Closed Meeting.

AGENCY: Joint Strategic Target Planning Staff, Department of Defense.

ACTION: Notice of closed meeting.

SUMMARY: The Director, Joint Strategic Target Planning Staff has scheduled a closed meeting of the Scientific Advisory Group.

DATE: The meeting will be held on October 29 and 30, 1985.

ADDRESS: The meeting will be held at Offutt AFB, Nebraska.

FOR FURTHER INFORMATION CONTACT: The Joint Strategic Target Planning Staff, Scientific Advisory Group, Offutt AFB, Nebraska 68113.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss strategic issues which relate to the development of the Single Integrated Operational Plan (SIOP). Full development of the topics will require discussion of information classified TOP SECRET in accordance with Executive Order 12356, April 2, 1982. Access to this information must be strictly limited to personnel having requisite security clearances and specified need-to-know. Unauthorized disclosure of the information to be discussed at the SAG meeting could have exceptionally grave impact upon national defense. Accordingly, the meeting will be closed in accordance with 5 U.S.C. 552 B(c)(1).

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 19, 1985.

[FR Doc. 85-22804 Filed 9-23-85; 8:45 am]

BILLING CODE 3810-01-M

[1] In Category 359, only TSUSA numbers (379.0258, 379.0654, 379.3940, 379.5700, 379.5820, 383.0648, 383.0652, 383.4200 and 383.4320).

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement for the Proposed New Port Island in Hampton Roads, VA

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement.

SUMMARY:

1. *Proposed Action:* The City of Newport News proposes to construct a 400 acre artificial island in the vicinity of the Newport News Bar in Hampton Roads, Virginia. The island will be constructed out of dredged material to be obtained from the proposed deepening of the Norfolk Harbor Federal project channels from 45 feet to 55 feet. The island would serve as an additional marine terminal and possibly as a site for a regional sports area. The project will displace over 400 acres of subaqueous bottom and open water habitat and is in an area of productive shellfish beds.

2. *Alternatives:* Alternatives which will be investigated include, but will not be limited to upland sites, alternative island shapes, and sites, and no project.

3. *Scoping Process:* Informal pre-application scoping meetings were held with State and Federal agencies in November 1982 and in September 1985. Significant issues which have already been identified include impacts on benthic resources, impacts to water current patterns, salinitiy, sediment transport and cumulative impacts of the project in conjunction with other planned and active projects in Hampton Roads such as the harbor deepening project, I-664 Bridge tunnel complex and the Newport News Shipbuilding and Dry Dock North Yard Expansion project. A public notice requesting scoping comments will be published in the near future.

4. *Public Meetings:* A public scoping meeting is scheduled for October 15, 1985. The location and time will be announced in the public notice mentioned above.

5. *Draft Environmental Impact Statement Availability:* It is estimated that the Draft Environmental Impact Statement will be available to the public for review and comments in the Fall of 1986.

Address: Questions about the proposed action and Draft Environmental Impact Statement can be answered by Julie Samuel, U.S. Army Corps of Engineers District, Norfolk, 803 Front Street, Norfolk, Virginia 23510-1096 (804) 441-3792 commercial, and 827-3792 FTS.

Dated: September 17, 1985.

Claude D. Boyd III,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 85-22803 Filed 9-23-85; 8:45 am]

BILLING CODE 3710-EN-M

Department of the Army

Board of Visitors, United States Military Academy; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following meeting.

Name of Committee: Board of Visitors, United States Military Academy.

Date of Meeting: 3-5 November 1985.

Place of Meeting: West Point, New York (Eisenhower Hall).

Time of Meeting: 1:30 p.m.

Proposed Agenda: Discussion of the following items: Attrition Update, Project Proteus, BOV Assistance in Minority Recruiting, Review of proposed changes to BOV and USMA Governance, and Conclusions and Recommendations for inclusion in the Annual Board of Visitors Report.

All proceedings are open. For further information contact Colonel D. P. Tillar, Jr., United States Military Academy, West Point, New York 10996-5000.

For the Board of Visitors:

D.P. Tillar, Jr.,

Executive Secretary, USMA Board of Visitors.

[FR Doc. 85-22758 Filed 9-23-85; 8:45 am]

BILLING CODE 3710-08-M

Change in Armed Guard Surveillance Service

AGENCY: Department of Army, Military Traffic Management Command, DOD.

ACTION: Notice of Revision to Armed Guard Surveillance Service Definition and Requirements.

SUMMARY: Effective October 15, 1985, all carriers providing Armed Guard Surveillance Service (AGS) in the transportation of certain sensitive

Department of Defense shipments must provide in their Uniform Tender of Rates and/or Charges for Transportation Services (Optional Form 280) a revised definition for AGS. The revised definition contains specific requirements for providing AGS, to include armed guard responsibilities, driver training and weapons familiarization. Qualified carriers must submit a new tender or amend their existing tenders containing the revised AGS definition by the effective date in order to be considered for shipments requiring AGS. Tenders should be submitted to: Headquarters, Military Traffic Management Command, ATTN: MT–INNT, 5611 Columbia Pike, Falls Church, VA 22041–5050.

Copies of the revised AGS definition may be obtained by writing to same, or by calling Betty Yanowsky at (202) 756–1356 or Allen Kirby at (202) 756–1149.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 85–22757 Filed 9–23–85; 8:45 a.m.]

BILLING CODE 3710–08–M

Department of the Navy

Intent To Prepare a Supplement to the Environmental Impact Statement for a Fleet Ballistic Missile Naval Submarine Support Base, Kings Bay, GA

Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA) (Title 40 CFR) and the requirements of Executive Order 12372, Intergovernmental Review of Federal Programs, the Officer in Charge of Construction (OICC), TRIDENT, announces the Navy's intent to prepare a Supplement to the Final Environmental Impact Statement for Preferred Alternative Location for a Fleet Ballistic Missile Submarine Support Base, Kings Bay, Georgia.

Completed in August 1977, Draft and Final Environmental Impact Statements (EIS's) described the environmental impacts of locating one tender-based submarine squadron at Kings Bay.

Soon thereafter, Kings Bay was selected by the Navy as the eastcoast base for one TRIDENT submarine squadron. This proposal covered ashore-based facilities development including strategic and defensive weapons storage and transfer, refit industrial support, crew training, waterfront support, administrative and personnel support, on-base housing, and waterfront facilities renovation. The OICC TRIDENT prepared a supplement to the EIS in August 1980 to address the development of ashore-based facilities. Construction dredging plans and configurations for the TRIDENT development were addressed at that time.

A portion of the North River extends within the boundary of Naval Submarine Base, Kings Bay, near sensitive weapons storage and operation facilities. The Navy proposes to close that portion of the North River within the boundary of the base to provide necessary security to those facilities. The Navy intends to document its evaluation of environmetal impacts associated with the proposed action by the preparation of the Supplemental EIS. This document will update the Final EIS and supplementary documents to incorporate the expanded scope of additional security requirements.

The OICC TRIDENT has retained an unaffiliated consulting firm to prepare the supplemental environmental statement. During preparation, characteristics of the existing environment will be documented. The potential environmental effects of each of several alternatives and the No-Action alternative will be addressed. In addition, potential cumulative effects resulting from the proposed action will be evaluated. Comments regarding this evaluation will be sought during the EIS process from interested local, state, and federal governmental agencies during preparation. Written comment is requested before 5 September 1985.

Questions and comments regarding this notice may be addressed to: Officer in Charge of Construction, TRIDENT, Attention: Code 09XE3, 293 Point Peter Road, St. Marys, Georgia 31558, (912) 673–2304.

Dated: September 18, 1985.

William F. Roos, Jr.,

LT, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 85–22731 Filed 9–23–85; 8:45 am]

BILLING CODE 3810–AE–M

Intent To Prepare a Draft Environmental Impact Statement for the Establishment of Two Military Operating (Airspace) Areas in Eastern North Carolina

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Guidelines (40 CFR Part 1500), the Department of Defense (DOD), U.S. Marine Corps is preparing a Draft Environmental Impact Statement (DEIS) for the establishment of two Military Operating (Airspace) Areas (MOAs) designated as Cherry 1 and Core in Eastern North Carolina.

The Cherry 1 MOA is approximately 20 by 30 miles in area and is situated over portions of Beaufort, Craven, Hyde, Pamlico and Washington Counties of North Carolina.

The Core MOA is approximately 4 by 30 miles in area and is situated over a portion of North Carolina's outer banks known as the Cape Lookout National Seashore (managed by the National Park Service). The area also extends approximately 2 miles east over the Atlantic Ocean.

Air operations within the proposed Cherry 1 MOA will encompass a series of training activites including Low Altitude Training (LAT), Air Combat Maneuvering (ACM), Evasive Maneuvering (EVM) and low-altitude intercepting of existing bombing targets located east of the Cherry 1 MOA within an adjacent existing Restricted Area, R5306A.

The Core MOA will connect existing Restricted Area R5306A (located inland) with an existing offshore Warning Area, W–122. Primary aircraft training activity associated with this proposed MOA will be low-altitude sea-to-land bombing missions intercepting existing bombing targets located at R5306A.

Certain training operations within the proposed MOAs will require flight at altitudes as low as 100 feet and as high as 18,000 feet and at speeds as high as 420 knots (subsonic). The MOAs will be jointly used by the Marine Corps, Navy and Air Force; however, the primary user will be the Second Marine Aircraft Wing (MAW) located at Marine Corps Air Station (MCAS) Cherry Point, North Carolina. MAW operations will comprise roughly 70 percent of total MOA usage. The primary aircraft type utilizing the MOAs will be the AV–8B Harrier. Operations could normally begin at 7:30 a.m. and end at 11:00 p.m. Monday through Friday. Occasional weekend operations would also be required. Approximate combined hours of daily utilization are 13.5 with the Cherry 1 MOA and 9.5 with the Core MOA.

The purpose of the proposed action is to provide sufficient training flexibility and ensure operational readiness of Department of Defense air crews.

Scoping for this DEIS was initiated in November 1984 and has included notice to potentially affected entities, a series of meetings/conferences and an exchange of correspondence. The Marine Corps is confident that all interested parties have commented on the proposal; however, to ensure that all are in fact included, further comments should be addressed to: Atlantic Division, Naval Facilities, Engineering

Command, Norfolk, VA 23511–6287, Attn: Mr. Hank Eacho, Code 2032E3.

To ensure that additional comments are considered they should be received not later than three (3) weeks after the publication of this notice in the **Federal Register.**

When the Draft EIS is completed, a public notice of its availability will be announced in order that the public and Federal, State, and local agencies may review and comment on the document. A final EIS will be prepared to respond to the review comments.

The establishment of the Cherry 1 and Core MOAs will require approval from the U.S. Department of Transportation, Federal Aviation Administration (FAA) in accordance with FAA Handbook 7400.2C. FAA approval will not occur until the environmental process is complete and the Secretary of the Navy or his representative releases a Public Record of the Decision.

Dated: September 17, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 85–22732 Filed 9–23–85; 8:45 am]

BILLING CODE 3810–AE–M

National Environmental Policy Act Record of Decision To Proceed With Agricultural Activities Associated With the Development of the Guayule Natural Rubber Demonstration Program

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR Part 1500), the U.S. Navy announces its decision to proceed with agricultural activities associated with the development of the Guayule Natural Rubber Demonstration Program, specifically to develop as a demonstration project up to a 1000 acre site located adjacent to the town of Sacaton, Arizona.

The Navy reviewed several alternative sites and agricultural practices to identify these sites and practices best suited to guayule agricultural operations. These included: evaluation of the selected site as well as two alternative sites, one located about 7 miles west of Sacaton and a second located about 13 miles northwest at Circle Farms. The preferred site had the advantage of a developed source of irrigation water and was located near existing greenhouses and farm equipment maintenance garages.

Agricultural practices included reviews of irrigation, planting and harvesting techniques. It was found that overhead spray irrigation of transplanted seedlings was best suited to the area and crop. Harvesting is to consist of complete plant removal (leaf, stem and root) at the end of a three year growth cycle.

Socio-economic factors were evaluated as well as potential impacts to surface and groundwater, air quality and land use. No significant short of long term impacts were identified as a result of the proposed project. No mitigation techniques or monitor programs have been identified as required for completion of this one year research and development/ demonstration effort.

Dated: September 18, 1985.

William F. Roos, Jr.,

Lt, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 85–22733 Filed 9–23–85; 8:45 am]

BILLING CODE 3810–AE–M

Chief of Naval Operations Executive Panel Advisory Committee, National Energy Security Policy Task Force; Rescheduling of Closed Meeting

Notice was given August 28, 1985, at 50 FR 34539 of a meeting of the Chief of Naval Operations Executive Panel Advisory Committee, National Energy Security Policy Task Force of October 1–2, 1985, from 9 a.m. to 5 p.m. each day. The dates and times for the meeting have been changed to October 9–10, 1985, from 9 a.m. to 5 p.m. All other information in the previous notice remains effective.

For further information on this meeting contact Lieutenant Thomas E. Arnold, Executive Secretary of the Chief of Naval Operations Executive Panel Advisory Committee, telephone (703) 756–1205.

Dated: September 18, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–22729 Filed 9–23–85; 8:45 am]

BILLING CODE 3810–AE–M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet October 30–31, 1985, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review maritime issues as they impact national security policy and requirements. The entire agenda for the meeting will consist of discussions of key issues related to national security policy and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Thomas E. Arnold, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 928, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: September 17, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–22730 Filed 9–23–85; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Cooperative Education Program

AGENCY: Department of Education.

ACTION: Application Notice for New and Noncompeting Continuation Awards under the Cooperative Education Program for Fiscal Year 1986.

SUMMARY: Applications are invited for new awards for administration, demonstration, and training projects and for noncompeting continuation awards for administration and training projects under the Cooperative Education Program for fiscal year 1986. Current grantees that have at least one remaining year of an approved project period are eligible to apply for a noncompeting award for continuation of their projects under the Cooperative Education Program. Applications are not invited for new research projects under this program for fiscal year 1986.

Authority for this program is contained under Title VIII of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1133–1133b)

The Cooperative Education Program provides Federal financial assistance to institutions of higher education to

enable them to initiate, improve or expand their own cooperative education programs. Cooperative education programs at institutions of higher education provide students with the opportunity to earn funds for continuing and completing their education while giving them work experiences related to their academic or career objectives. The Program also provides assistance to institutions of higher education and public or private nonprofit organizations to conduct training projects for the purpose of improving cooperative education.

Closing Date for Transmittal of Applications

(1) Applications for new awards must be mailed or hand delivered on or before *January 10, 1986.*

(2) To be assured of consideration for funding, applicants for noncompeting continuation awards should mail or hand deliver their applications on or before *February 10, 1986.* If an application is late, the Department of Education may lack sufficient time to review it with other applications for noncompeting continuation awards and may decline to accept it.

Applications Delivered by Mail

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.055A (for administration projects), 84.055B (for new demonstration projects), and 84.055D (for training projects), 400 Maryland Avenue, SW, Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) A mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first-class mail. Each late applicant for a new award will be notified that its application will not be considered.

Applications Delivered by Hand

Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th & D Streets, SW, Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays. New applications that are hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Program Information

Regulations for the Cooperative Education Program are published in 34 CFR Parts 631, 632, 633 and 635. Applicants should be guided by the requirements of the regulations in developing their applications.

Applicants for new grants are encouraged to be specific in their responses to the selection criteria, inasmuch as the Secretary, in accordance with 34 CFR 631.32, will not give further consideration for funding to any application that receives an average score of 50 points or less.

Administration Projects: To provide opportunities for a greater number of students to participate in cooperative education projects, as defined in 34 CFR 631.3 of the regulations, the Secretary strongly encourages institutions of higher education to apply for funds for more than one eligible "unit" of the institution, as that term is defined in 34 CFR 631.3.

As provided in the statute, in any fiscal year, a single institution of higher education selected for funding may receive an administration grant award of up to $325,000. If an application is for a consortium of institutions, each participating institution may receive up to $250,000.

In awarding administration grants, the Secretary, in accordance with the statute, will give special consideration to applications from institutions of higher education that show the greatest promise of success because of—

(1) The extent to which cooperative education programs, in the academic disciplines for which the application is made, have had a favorable reception by employers; and

(2) The commitment of the institution of higher education to cooperative education as demonstrated by the plans which the institution has made to continue the cooperative education program after the termination of Federal financial assistance.

Demonstration Projects: Applicants may apply for a demonstration grant to conduct a "comprehensive Cooperative Education project," as defined in 34 CFR 631.3 of the regulations. Comprehensive projects encompass nearly all academic departments or disciplines and a significant majority of a diverse student population.

Training Projects: Applicants may apply for a trainiing grant to conduct a training project as defined in 34 CFR 631.10. Training projects should be designed to meet the needs of eligible individuals who participate in the planning, establishment, administration, or coordination of cooperative education projects conducted by institutions of higher education. (34 CFR 631.14)

In preparing the application, applicants are encouraged to work jointly with employers in planning training projects.

Available Funds

Fiscal year 1986 funds have not yet been appropriated for the Cooperative Education Program. However, applications are invited to allow for sufficient time to evaluate applications and complete the grants process prior to the end of the fiscal year, should the Congress appropriate funds for this program.

Applications for noncompeting continuation awards may be submitted for administration and training projects.

Applications for new administration grants may be submitted for 12-month awards. In fiscal year 1985, the 12-month administration grants ranged between $15,000 and $204,100 and averaged approximately $64,000. Applications may also be submitted for multi-year administration grants for project periods of up to 60 months from applicants who have never before received Federal funds to support a program of cooperative education.

Applications may be submitted for comprehensive demonstration grants for project periods of up to 36 months. New three-year comprehensive demonstration grants for fiscal year 1985 ranged between $325,700 and $650,300 are averaged approximately $529,000.

Applications for training grants may be submitted for project periods of up to 36 months. Fiscal year 1985 training grants ranged between $57,100 and $225,000 and averaged approximately $100,000.

In the case of projects approved for multi-year funding, administration and training grants awarded in fiscal year 1986 will be for the first year of

operation only. Funds for multi-year demonstration grants may be awarded for the duration of the approved project period from the fiscal year 1986 appropriation.

These estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Application Forms

Application forms and program information packages are expected to be available by October 25, 1985. These may be obtained by writing to the Division of Higher Education Incentive Programs, Cooperative Education Program, Office of Postsecondary Education, U.S. Department of Education, Room 3022 ROB #3, 400 Maryland Avenue, SW., Washington, DC 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance under this program. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of new applications not exceed 25 pages in length for administrative projects, 30 pages for demonstration projects, 20 pages for training projects, and 2 pages for noncompeting continuation projects.

. The Secretary further urges that applicants not submit information that is not requested.

The application form is approved by the Office of Management and Budget under control number 1840–0126.

Applicable Regulations

Regulations applicable to this program include the following:

(a) Regulations governing the Cooperative Education Program in 34 CFR Parts 631 (General), 632 (Administration Projects), 633 (Demonstration and Exploration Projects) and 635 (Training Projects).

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77 and 78.

Further Information

For further information contact the Division of Higher Education Incentive Programs, Cooperative Education Program, Office of Postsecondary Education, Room, 3022, ROB #3, 400 Maryland, Avenue, SW, Washingon, DC 20202. Telephone: (202) 245–3253.

(20 U.S.C. 1133–1133b)

Dated: September 18, 1985.

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance Number 84.055: Cooperative Education)

[FR Doc. 85–22779 Filed 9–23–85; 8:45 am]

BILLING CODE 4000–01–M

Special Needs Program

AGENCY: Department of Education.

ACTION: Application Notice for New Awards in Fiscal Year 1986.

SUMMARY: Applications are invited for new planning grants and nonrenewable development grants under the Special Needs Program.

Authority for this program is contained in sections 321–324 and 341–347 of Title III of the Higher Education Act of 1965, as amended (HEA). (20 U.S.C. 1060–1063 and 1066–1069c).

The Special Needs Program assists eligible institutions of higher education to become self-sufficient by providing funds to improve their academic quality and to strengthen their planning, management, and fiscal capabilities. To this end, the Secretary awards planning grants and nonrenewable development grants to eligible two-year and four-year, public and private institutions of higher education.

Planning grants may be used by institutions only to develop an institutional long-range plan. Development grants may be used by institutions to implement portions of their long-range plans to enable them to move toward or achieve self-sufficiency.

Closing Date for Transmittal of Applications

An application for a planning grant or for a nonrenewable development grant must be mailed or hand-delivered by December 6, 1985.

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.031B, 400 Maryland Avenue, SW, Washington DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first-class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

An application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, ROB #3, 7th and D Streets, SW, Washington, DC

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Available Funds

The Administration's fiscal year 1986 budget request included $141,208,000 for an amended Title III, HEA program. Along with the budget request, legislative changes were proposed by the Administration which would change the institutional eligibility criteria and would consolidate the Special Needs and Strengthening Programs. Fiscal year 1986 funds have not yet been appropriated for the Institutional Aid Programs, and Congress has not acted on the accompanying legislative proposals. However, applications for new Special Needs grants are being requested at this time and under the current statutory authority to allow sufficient time to evaluate them and complete the grants process prior to the end of the fiscal year.

The Administration's fiscal year 1986 budget request also recommended that $45,741,000 of the Title III appropriation be made available to historically Black institutions. In accordance with section 347 of the HEA, priority in the selection of the grantees may be given to

historically Black and two-year institutions to satisfy statutory set-aside requirements. The Secretary considers "historically Black institutions" as those institutions listed in the 1978 publication by the National Center for Education Statistics entitled *Traditionally Black Institutions of Higher Education: Their Identification and Selected Characteristics.* (34 CFR 626.31(b))

Applications may be submitted for the following project periods: Planning grants for up to 12 months and nonrenewable grants for up to 60 months. In the case of projects approved for multi-year funding, grants awarded in fiscal year 1986 will be for the first year of operation only.

It is anticipated that a limited amount of funds will be available for new awards, after the noncompeting continuation grants are awarded. The Secretary invites applications for new planning grants or nonrenewable development grants under the Special Needs Program, to ensure that all available funds are awarded.

In accordance with 34 CFR 626.31(c)(2) of the Special Needs Program regulations, the Secretary is limiting the maximum award for planning grants to $25,000 and limiting the maximum yearly project costs for nonrenewable development grants to $800,000 per year. In the first and second years, applicants may request funds for the full cost of the project; in the third through fifth years, the maximum Federal grant is limited to 90, 80, and 70 percent of total project costs, i.e., $720,000, $640,000, and $560,000, respectively. Accordingly, applicants should not submit budget requests in excess of these amounts.

The Secretary will not accept any application containing a request in excess of these maximums. Such applications will be returned to the applicants.

Program Information

Nonrenewable Development Grants

The Secretary will accept an application for a nonrenewable development grant from any institution that is eligible to participate in the Special Needs Program. However, under 34 CFR 626.10 and 626.20 of the Special Needs Program regulations, an applicant may not receive a Special Needs grant if it previously received a Special Needs Program development grant or previously received a nonrenewable Strenthening Program development grant, either individually or as part of a cooperative arrangement.

Applicants are reminded that if they have received a planning grant under the Special Needs Program, the maximum length of a development grant is limited to four years.

Budget and Activity Requests

Applicants are reminded that, under 34 CFR 624.13(c), if they have received a prior Title III grant, *they may not receive funds for an activity previously supported under the Strengthening Developing Institutions Program (SDIP) or any of the current Institutional Aid Programs.*

Applicants should note that budget requests for the second through fifth years of multi-year nonrenewable development grants will be limited, in future years, to the amount *projected* for those years in the original application for funds, minus any amounts which had been projected for *disallowed* activities. In order to plan accurate funding requests for future years of the grant, institutions receiving awards under this competition will be notified of any disallowed activities at the time their award is negotiated.

Cost-Sharing

Grantees must pay a portion of the costs of a Special Needs Program grant during the third through fifth years of the grant, in accordance with the requirements of section 324 of the HEA. The portion paid by the grantee is 10, 20 and 30 percent of the total *project costs,* in the third, fourth, and fifth years, respectively.

In providing information on the grantee's share of the costs of allowable developmental activities, applicants are reminded that all institutional costs must be for *developmental purposes and delineated in the budget notes accompanying each proposed activity.* Grant funds may not supplant regular operating expenditures at the institution. (34 CFR 624.41 and 624.42(e))

Administrative Costs

In general, administrative costs for nonrenewable development grants should not exceed 20 percent of the total amount of funds requested or $75,000 annually, whichever sum is less. Applications containing requests in excess of this amount should include a thorough justification of the need for additional administrative funds.

Planning Grants

The Secretary will not accept an application for a planning grant solely to develop an application for a development grant, unless the applicant submits, as part of its application, its long-range plan containing all of the elements required in section 624.22 of the Institutional Aid Programs regulations. (34 CFR 624.11(c))

The Secretary will not accept an application for a planning grant from institutions applying as a cooperative arrangement, unless the purpose of the grant is to develop a separate long-range plan for each participating institution. (34 CFR 624.11(c))

The Secretary does not consider the purchase of equipment as a cost reasonably related to carrying out a planning grant. (34 CFR 624.11)

Approval of a planning grant does not commit the Secretary to fund a subsequent application for a development grant.

Designation as an Eligible Institution

Applicants for new awards, even if they currently have a grant under one or more of the Institutional Aid programs, must be designated as eligible to apply for a fiscal year 1986 grant under the Special Needs Program.

Applicants are advised that a notice was published in the **Federal Register** on May 16, 1985 (50 FR 20477–20479), explaining how an institution becomes eligible for the Special Needs Program. Institutions were required to submit eligibility requests by July 1, 1985.

Those institutions that are not designated by the Secretary as eligible to apply for a grant in fiscal year 1986 will not be considered for funding.

Application Preparation Workshop

The Department of Education will conduct an application preparation workshop to assist prospective applicants to develop applications for Special Needs grants.

The dates and locations of the application preparation workshop will be announced at a later date. Current Institutional Aid Programs grantees are advised that costs incurred to attend the workshop are not allowable costs under their current Institutional Aid Programs grant and, thus, may not be charged to those grants.

Application Forms

Application forms and program information packages are expected to be ready for mailing by October 2, 1985. The Department of Education will mail the application materials to the Office of the President of all institutions designated eligible to apply for a Special Needs Program grant in fiscal year 1986.

Interested parties may obtain the materials by writing to the Division of Institutional Development, Office of Higher Education Programs, Office of Postsecondary Education, Room 3045,

ROB #3, 400 Maryland Avenue, SW, Washington, DC 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed by the statute and regulations.

The Secretary strongly urges that the individual parts of the application not exceed the page limitations identified in the application materials and that applicants not submit information that is not requested. (Approved under Office of Management and Budget Control Number 1840–0114)

Applicable Regulations

Regulations applicable to this program include the following:

(1) The regulations in 34 CFR Part 624.

(2) The regulations in 34 CFR Part 626.

(3) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78, except under the provisions of 34 CFR 624.5(a), the provisions under 34 CFR 75.128(a)(2) and 34 CFR 75.129(a) do not apply to cooperative arrangements.

Further Information.

For further information, contact Dr. Elwood L. Bland, Chief, Special Needs Branch, Division of Institutional Development, U.S. Department of Education, Room 3045, ROB #3, 400 Maryland Avenue, SW, Washington, DC 20202. Telephone: (202) 245–9077 or 245–9094.

(U.S.C. 1060–1063 and 1066–1069c)

(20 Catalog of Federal Domestic Assistance No. 84.031B—Special Needs Program)

Dated: September 19, 1985.

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 85–22780 Filed 9–23–85; 8:45 am]

BILLING CODE 4000–01–M

Strengthening Program

AGENCY: Department of Education.

ACTION: Application Notice for New Awards in Fiscal Year 1986.

SUMMARY: Applications are invited for new planning grants and renewable development grants under the Strengthening Program.

Authority for this program is contained in sections 311–313 and 341–347 of Title III of Higher Education Act of 1965, as amended (HEA). (20 U.S.C. 1057–1059 and 1066–1069c).

The Strengthening Program assists eligible institutions of higher education to become self-sufficient by providing funds to improve their academic quality and student services, and to strengthen their planning, management, and fiscal capabilities. To this end, the Secretary awards planning grants and renewable development grants to eligible two-year and four-year, public and private institutions of higher education.

Planning grants may be used by institutions to develop an institutional long-range plan and/or an application for a development grant. Development grants may be used by institutions to implement portions of their long-range plans to enable them to move toward or achieve self-sufficiency.

Closing date for transmittal of applications: An application for a planning grant or for a renewable development grant must be mailed or hand-delivered by December 6, 1985.

Applications delivered by mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.031A, 400 Maryland Avenue, SW., Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mailing receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark, before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first-class mail. Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, ROB #3, 7th and D Streets, SW, Washington, DC.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

An Application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Available funds: The Administration's fiscal year 1986 budget request included $141,206,000 for an amended Title III, HEA program. Along with the budget request, legislative changes were proposed by the Administration which would change the institutional eligibility criteria and would consolidate the Strengthening and Special Needs Programs. Fiscal year 1986 funds have not yet been appropriated for the Institutional Aid Programs, and Congress has not acted on the accompanying legislative proposals. However, applications for new Strengthening Program grants are being requested at this time and under the current statutory authority to allow sufficient time to evaluate them and complete the grants process prior to the end of the fiscal year.

Applications may be submitted for the following project periods: Planning grants for up to 12 months and renewable development grants for up to 36 months. In the case of projects approved for multi-year funding, grants awarded in fiscal year 1986 will be for the first year of operation only.

The Secretary anticipates awarding approximately 12 to 14 planning grants and approximately 38 to 45 renewable development grants.

A minimum of $340,000 will be set aside for planning grants. If an insufficient number of qualifying applications are submitted for planning grants, the remainder of that money will be used for development grants. (34 CFR 625.31(b)).

In order to ensure a reasonable number of grants for new projects and in accordance with 34 CFR 625.31(b)(2) of the Strengthening Program regulations, the Secretary is limiting the maximum award for planning grants to $25,000. The Secretary is also limiting the maximum award for renewable grants to $200,000 for each year.

The Secretary will not accept any application containing a request in excess of these maximum amounts. Such applications will be returned to the applicants.

The Administration has requested that at least $45,741,000 of the funds appropriated for fiscal year 1986 for all of the Institutional Aid Programs be made available to historically Black colleges and universities. Such institutions are listed in the 1978

publication of the National Center for Education Statistics entitled *Traditionally Black Institutions of Higher Education: Their Identification and Selected Characteristics:* (34 CFR 626.31(b)).

The Title III statute requires that at least 24 percent of the Strengthening Program funds be awarded to two-year community and junior colleges.

Program Information:

Development Grants: The Secretary calls attention to the following rules regarding applications under the Strengthening Program.

(1) An applicant that previously received a nonrenewable development grant under the Strengthening Program may not apply for a renewable grant, either individually or as part of a cooperative arrangement. (34 CFR 625.20(b)(1))

(2) An applicant that previously received a development grant under the Special Needs or Challenge Grant Programs may not apply for a renewable grant, either individually or as part of a cooperative arrangement. (34 CFR 625.20(b)(2)); and

(3) An applicant that previously received a renewable development grant may apply for another renewable grant. (34 CFR 625.10(b))

Budget and activity requests: Applicants are reminded that, under 34 CFR 624.13(c), if they have received a prior Title III grant, *they may not receive funds for an activity previously supported under the Strengthening Developing Institutions Program (SDIP) or any of the current Institutional Aid Programs.*

Applicants should note that budget requests for the second and third years of multi-year renewable development grants will be limited in future years to the amounts *projected* for those years in the original application for funds, minus any amounts which has been projected for *disallowed* activities. In order to plan accurate funding requests for future years of the grant, institutions receiving awards under this competition will be notified of any disallowed activities at the time their award is negotiated.

Administration costs: In general, administration costs for renewable development grants should not exceed 20 percent of the total amount of funds requested. Applicants containing requests in excess of this amount must include a thorough justification of the need for additional administrative funds.

Planning grants: The Secretary will not accept an application for a planning grant solely to develop an application for a development grant, unless the applicant submits, as part of its application, its long-range plan containing all of the elements required in section 624.22 of the Institutional Aid Programs regulations. (34 CFR 624.22)

The Secretary will not accept an application for a planning grant from institutions applying under a cooperative arrangement, unless the purpose of the grant is to develop a long-range plan for each participating institution. (34 CFR 624.11(c))

The Secretary does not consider the purchase of equipment as a cost reasonably related to carrying out a planning grant. (34 CFR 624.11)

Approval of a planning grant does not commit the Secretary to fund a subsequent application for a development grant.

Designation as an eligible institution: Applicants for new awards, even if they currently have a grant under one or more of the Institutional Aid Programs, must be designated as eligible to apply for a fiscal year 1986 grant under the Strengthening Program.

Applicants are advised that a notice was published in the **Federal Register** on May 16, 1985 (50 FR 20477–20479), explaining how an institution becomes eligible for the Strengthening Program. Institutions were required to submit eligibility requests by July 1, 1985.

Those institutions that are not designated by the Secretary as eligible to apply for a grant in fiscal year 1986 will not be considered for funding.

Application preparation workshop: The Department of Education will conduct an application preparation workshop to assist prospective applicants to develop applications for Strengthening Program grants.

The date and location of the application preparation workshop will be announced at a later date. Current Institutional Aid Programs grantees are advised that costs incurred to attend the workshop are not allowable costs under their current Institutional Aid Programs grant and, thus, may not be charged to those grants.

Application forms: Application forms and program information packages are expected to be ready for mailing by October 2, 1985. The Department of Education will mail the application material to the Office of the President of all institutions designated eligible to apply for a Strengthening Program grant in fiscal year 1986.

Interested parties may obtain the materials by writing to the Division of Institutional Development, Office of Higher Education Programs, Office of Postsecondary Education, Room 3045, ROB #3, 400 Maryland Avenue, SW., Washington, DC 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed by the statute and regulations.

The Secretary strongly urges that the individual parts of the application not exceed the page limitations identified in the application materials and that applicants not submit information that is not requested. (Approved under Office of Management and Budget Control Number 1840–0114)

Applicable regulations: Regulations applicable to this program include the following:

(1) The regulations in 34 CFR Part 624

(2) The regulations in 34 CFR Part 625

(3) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78, except under the provisions of 34 CFR 624.5(a), the provisions under 34 CFR 75.128(a)(2) and 34 CFR 75.129(a) do not apply to cooperative arrangement.

FOR FURTHER INFORMATION CONTACT: Dr. Louis J. Venuto, Chief, Strengthening Branch, Division of Institutional Development, U.S. Department of Education, Room 3045, ROB #3, 400 Maryland Avenue, SW, Washington, DC 20202. Telephone: (202) 245–2429 or 245–2444. (20 U.S.C. 1057–1059 and 1066–1069c)

(Catalog of Federal Domestic Assistance No. 84.031A—Strengthening Program)

Dated: September 19, 1985

C. Ronald Kimberling,

Acting Assistance Secretary for Postsecondary Education.

[FR Doc. 85–22781 Filed 9–23–85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulation Commission

[Docket No. RP85–58–006]

El Paso Natural Gas Co.; Compliance Filing

September 18, 1985.

Take notice that on September 10, 1985, El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to Part 154 of the Federal Energy Regulatory Commission ("Commission")

Regulations Under the Natural Gas Act, the following tariff sheets to its FERC Gas Tariff:

Tariff volume	Tariff sheet
First Revised Volume No. 1	First Revised Sheet No. 252.
Original Volume No. 1-A	Second Revised Sheet No. 101.
	Second Revised Sheet No. 102.
	First Revised Sheet No. 112.
	First Revised Sheet No. 113.
	First Revised Sheet No. 120.
Third Revised Volume No. 2	Fifteenth Revised Sheet No. 1-D.2.

El Paso states that First Revised Sheet No. 252, submitted in compliance with the Commission's August 14, 1985 letter order approving the Stipulation and Agreement filed by El Paso on June 25, 1985 in this proceeding, reflects the change in threshold volumes for availability of Rate Schedule INC-1 sales to east-of-California customers agreed to in the "Statement of Understanding" dated July 31, 1985 filed by El Paso in this proceeding. The above designated sheets to Original Volume No. 1-A and Third Revised Volume No. 2 of El Paso's FERC Gas Tariff, submitted in accordance with the provisions of Article III of the Stipulation and Agreement, serve to specify that if El Paso discounts its transportation rates it will do so by posting such rates at least five days prior to the beginning of the billing month for which the discounted rates will be effective.

El Paso requests that the tendered tariff sheets be accepted by the Commission and permitted to become effective July 1, 1985, as provided for in the Commission's August 14, 1985 letter order.

El Paso states that copies of the filing have been served upon all parties of record in Docket No. RP85-58-000, *et al.*, and, otherwise, upon all interstate pipeline system customers of El Paso and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC, 20426, in accordance with §§ 385.214 and 385.211 of 18 CFR. All such motions or protests should be filed on or before September 24, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-22737 Filed 9-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-560-000]

Middle South Services, Inc.; Notice of Filing

September 16, 1985.

Take notice that on September 12, 1985, Middle South Services, Inc. (MSS), as agent for Mississippi Power & Light Company (MO&L), tendered for filing a letter amendment to Service Schedule RE—Replacement Energy under the Interchange Agreement between Big Rivers Electric Corporation and MP&L Service Schedule RE had previously been filed as part of Docket ER85-560-000.

MSS requests an effective date of August 1, 1985 for the amendment. MSS requests waiver of the Commission's notice requirements under Part 35 of the Commission's Regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 24, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-22738 Filed 9-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-726-000]

New England Power Co.; Filing of Service Agreements

September 16, 1985.

Take notice that on September 11, 1985 New England Power Service submitted for filing on behalf of New England Power Company (NEP) executed service agreements with Newport Electric Corporation and the Vermont Marble Company for transmission service under NEP's FERC Electric Tariff, Original Volume Number 3.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 24, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-22739 Filed 9-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-197-000]

Sea Robin Pipeline Co.; Petition for Authority To Institute Direct Billing Procedure of Retroactive Order No. 94 Costs

September 17, 1985.

Take notice that on September 9, 1985, Sea Robin Pipeline Company (Sea Robin) filed a Petition For Authority To Institute Direct Billing Procedure of Retroactive Order No. 94 Costs. Sea Robin states that it seeks authorization to bill customers directly for retroactive Order No. 94 costs related to periods from July 25, 1980 through December 31, 1984 hereinafter the "retroactive period"), because of what it states are inequities and undesirable market distortions inherent in recovering such costs through purchased gas adjustment (PGA) filings. As is more fully explained in the filing, Sea Robin proposes to bill its customers directly, through lump sum payments, for their respective shares of all production-related costs for the retroactive period. The company states it will bill its customers only as the amounts are actually paid by Sea Robin. Sea Robin states that its direct billing proposal will closely approximate the cost assignment that would have occurred had the payments been made at the same time as the gas purchases to which they relate.

Sea Robin requests that the Commission grant any waivers of its regulations as may be required to make the direct billing proposal effective as proposed. In addition, Sea Robin asks

that this petition be afforded expedited consideration by the Commission and that an abbreviated intervention and comment period be established.

Sea Robin states that it has served a copy of the Petition on all of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 24, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-22740 Filed 9-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 4749-002 and 4750-002]

STS Energenics Ltd.; Surrender of Licenses

September 19, 1985.

Take notice that STS Energenics Limited (formerly Energenics Systems Inc.), Licensee for the Potholes East Canal Project No. 4749 and the Eltopia Branch Canal Project No. 4750, has requested that its licenses be terminated because a power purchaser could not be found. The licenses for Project Nos. 4749 and 4750 were issued on October 5, and September 9, 1983, respectively. The projects would have been located on the named canals, which are parts of the U.S. Bureau of Reclamation's Columbia Basin Project in Franklin County, Washington. The Licensee has stated that no ground disturbing activity has taken place; therefore, no conditions are needed concerning the restoration of Federal lands.

The Licensee filed the request on August 1, 1985, and the licenses for Project Nos. 4749 and 4750 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the licenses shall remain in effect through the first business day following that day. New applications involving these project sites, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-22741 Filed 9-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-177-003]

Texas Eastern Transmission Corp.; Compliance Filing

September 18, 1985.

Take notice that on September 11, 1985, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Fourth Revised Volume No. 1, to be effective September 1, 1985:

Substitute Seventy-fifth Revised Sheet No. 14
Substitute Seventy-fifth Revised Sheet No. 14A
Substitute Seventy-fifth Revised Sheet No. 14B
Substitute Seventy-fifth Revised Sheet No. 14C
Substitute Seventy-fifth Revised Sheet No. 14D
Substitute Twenty-first Revised Sheet No. 235
Substitute Thirteenth Revised Sheet No. 241
Substitute Twenty-second Revised Sheet No. 322

Texas Eastern states that these revised sheets comply with the Commission's order issued on August 30, 1985 in this proceeding and reflect decreased gas costs and electric power cost changes approved subject to refund by the Commission's orders issued on July 19, 1985 and September 6, 1985.

Texas Eastern states that copies of its filing have been served on all parties in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 24, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-22742 Filed 9-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-28-002, et al.]

Texas Gas Pipe Line Corp., et al.; Filing of Pipeline Refund Reports and Refund Plans

September 18, 1985.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before September 26, 1985. Copies of the respective filings are on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

APPENDIX

Filing date	Company	Docket No	Type filing
7/17/85	Texas Gas Pipe Line Corp.	TA85-2-28-002	Report
7/29/85	Natural Gas Pipe Line Company of America.	[illegible]	Btu [1]
8/8/85	[illegible] Transmission, Inc.	RP73-17-010	Btu [1]
8/12/85	[illegible] Interstate Gas Co.	RP72-122-019	Report
8/16/85	Northwest Pipe Line Corp	[illegible]	Btu [1]
8/16/85	[illegible] Interstate Co	[illegible]	Report
8/21/85	Trunkline Gas Co	TA84-2-30-010	Report
8/21/85	[illegible] Gathering Co.	RP85-108-001	Btu [1]
8/30/85	[illegible] Gathering Co.	[illegible]	Btu [1]
9/3/85	[illegible] Tennessee Natural Gas Co.	RP85-117-002	[illegible]

[1] Refunds resulting from Btu Measurement Adjustments. Each company will retain its basic docket number and future related filings receive new sub-docket numbers.

[FR Doc. 85-22743 Filed 9-23-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-198-000]

United Gas Pipe Line Co.; Petition for Authority To Institute Direct Billing Procedure of Retroactive Order No. 94 Costs

September 17, 1985.

Take notice that on September 10, 1985, United Gas Pipe Line Company (United) filed a Petition For Authority To Institute Direct Billing Procedure Of Retroactive Order No. 94 Costs. United States that it seeks authorization to bill customers directly for retroactive Order No. 94 costs because of what it states are inequities and undesirable market distortions inherent in recovering such costs through purchased gas adjustment (PGA) filings. As is more fully explained in the filing, United proposes to allocate retroactive Order No. 94 cost based upon each customer's share of United's total sales for the production period over which the Order No. 94 obligation arose, and to directly bill the resulting amounts through lump-sum payments or, at the customer's option, in twelve monthly installments with interest. United states the initial installment will be equal to the refund the customers will receive from United pursuant to Order No. 399-B, and will be payable only after receipt of such refund. The remaining amount will be billed in equal installments over the remaining eleven months. United states that its direct billing proposal, unlike prospective PGA rate adjustments results in a more equitable allocation of costs among customers. The company states this is because the customers on whose behalf the costs were incurred will bear the costs in direct proportion to their purchases during the time the costs were incurred.

United requests waiver of the Commission's regulations and of its tariff, to the extent necessary, to permit the direct billing procedure. In addition, United asks for expedited consideration of its Petition and that an abbreviated intervention and comment period be established.

United states that it has served a copy of the Petition on its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 24, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-22744 Filed 9-23-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-2902-2]

Fuel Economy Retrofit Devices; Announcement of the Second Fuel Economy Retrofit Device Evaluation for POLARION-X

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Fuel Economy Retrofit Device Evaluation.

SUMMARY: This document announces the completion of the second EPA evaluation of the "POLARION-X" under provisions of section 511 of the Motor Vehicle Information and Cost Savings Act. The notice also announces our findings, conclusions, and the availability of the report.

FOR FURTHER INFORMATION CONTACT: Merrill W. Korth, Emission Control Technology Division, Office of Mobile Sources, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Telephone: (313) 668-4299.

SUPPLEMENTARY INFORMATION:

I. Background

Section 511(b)(1) and Section 511(c) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2011(b)) requires that:

(b)(1) "Upon application of any manufacturer of a retrofit device (or prototype thereof), upon the request of the Federal Trade Commission pursuant to subsection (a), or upon his own motion, the EPA Administrator shall evaluate, in accordance with rules prescribed under subsection (d), any retrofit device to determine whether the retrofit device increases fuel economy and to determine whether the representations (if any) made with respect to such retrofit devices are accurate."

(c) "The EPA Administrator shall publish in the **Federal Register** a summary of the results of all tests conducted under this section, together with the EPA Administrator's conclusions as to—

(1) the effect of any retrofit device on fuel economy;

(2) the effect of any such device on emissions of air pollutants; and

(3) any other information which the Administrator determines to be relevant in evaluating such device."

EPA published final regulations establishing procedures for conducting evaluations of fuel economy retrofit devices on March 23, 1979 [44 FR 17946]. These regulations were later amended May 1, 1984 [49 FR 18486] to explicitly include fuel additives within the definition of a retrofit device and to improve administration. They were also amended May 3, 1984 [49 FR 18837] to clarify that the manufacturer of the device must pay the cost of any EPA testing.

II. Origin of Request for Evaluation, Device Descriptions and Report Identification

On December 21, 1983, the EPA received a request from AZ Industries for a second evaluation of the POLARION-X as a fuel saving device. The device is a fuel line magnet which is installed in the fuel line between the pump and the carburetor. It incorporates two permanent magnets which are claimed to subject the fuel to a magnetic field and thereby imrpove performance. It is claimed to reduce emissions, to improve fuel economy and performance, to provide more complete combustion, to eliminate engine carbon buildup and dieseling, and to reduce the octane requirements of the engine.

Report: "Second EPA Evaluation of the POLARION-X Device Under Section 511 of the Motor Vehicle Information and Cost Savings Act". Report Number EPA-AA-TEB-511-85-2 contains the analysis and conclusions and consists of 57 pages including all attachments.

EPA also tested the POLARION-X device. The EPA testing is described completely in the report "Emissions and Fuel Economy of the POLARION-X, A Retrofit Device", EPA-AA-TEB-85-1, consisting of 22 pages. This report is contained in the preceding 511 Evaluation as an attachment. The first evaluation is given in the report "EPA Evaluation of the POLARION-X Device Under Section 511 of the Motor Vehicle Information and Cost Savings Act." Report Number EPA-AA-TEB-511-82-9.

III. Availability of Evaluation Reports

Copies of these reports may be obtained from the National Technical Information Service by using the above report numbers. Address requests to: National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, Telephone: (703) 487-4650 or FTS 737-4650.

IV. Summary of Evaluation

EPA fully considered all of the information submitted by the device manufacturer in the Application. The evaluation of the POLARION–X device was based on that information and the results of the EPA test program.

Neither the first application, the subsequent correspondence, nor this application provided an adequate technical explanation of how the magnetic device is able to improve fuel economy. The private laboratory data indicated a fuel economy improvement for some vehicles. However, the overall effect on fuel economy of passenger cars was uncertain since the test data provided did not show a clear or consistent pattern for the device but the data submitted with this second application were sufficient to justify EPA proceeding with the confirmatory test phase of the evaluation.

The applicant was advised that, since no new technical information was provided, we still had no reasonable theoretical or technical basis to conclude that the device might improve fuel economy or emissions. However, since the data from the applicant's latest test program indicated that there might be a small benefit, EPA offered to test the device if the applicant was willing to bear the test costs. The applicant requested EPA to test the device and provided the necessary funds.

Three typical passenger vehicles were tested at EPA for emissions and fuel economy. The test sequence included 1000 miles of mileage accumulation, the Fedeal Test Procedure (FTP) and the Highway Fuel Economy Test. These tests were performed both without and with the device installed. In the EPA tests there was no improvement in fuel economy for any vehicle. Changes in emissions were not statistically significant. Vehicle operation and performance were unchanged by the device. The overall conclusion from these tests is that the POLARION–X did not significantly improve vehicle emissions, fuel economy, or operation.

EPA is unaware of any technical analysis or data that demonstrates that magnetically treating a hydrocarbon fuel will beneficially affect the emissions or fuel economy of a vehicle. The previous EPA testing of Super-Mag, a similar device, showed no emissions or fuel economy benefits. Therefore, based on this information, our engineering judgment, and the test results it is concluded that the POLARION–X device will not improve on emissions or fuel economy.

At the conclusion of the testing and evaluation process copies of the test report and 511 evaluation report were sent to the applicant for review. The applicant raised objections related to the EPA analysis of the POLARION–X theory of operation and the applicant funded road and laboratory tests. Since, the EPA results differed from these results, he felt that another independent 511 test program was warranted. EPA reviewed these concerns but considered further testing unwarranted and therefore published the results unchanged.

Charles L. Elkins,

Acting Assistant Administrator.

Dated: September 18, 1985.

[FR Doc. 85–22773 Filed 9–23–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

September 18, 1985.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of the submission are available from Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–7231.

OMB Number: None
Title: Section 97.71, Spread spectrum communications
Action: New collection
Respondents: Amateur radio operators
Estimated Annual Burden: 25 Recordkeepers; 25 Hours

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–22814 Filed 9–23–85; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

September 18, 1985.

The following information collection requirements have been approved by the Office of Management and Budget. For further information contact Doris Benz, FCC, (202) 632–7513.

OMB No.: 3060–0046
Title: Application for New or Modified Common Carrier Radio Station Authorization Under Part 22
Form No.: FCC 401 (Computer-generated facsimile)

The submission of computer-generated FCC 401 applicatons in lieu of the preprinted forms has been approved for use through 4/30/87. These facisimiles will require prior Commission approval of the format and a completed sample.

OMB No.: 3060–0068
Title: Application for Consent to Assignment of Radio Station Construction Permit or License (Other than Broadcast)
Form No.: FCC 702

The approval on FCC 702 has been extended through 9/30/88. The current edition will remain in use until updated forms are available.

OMB No.: 3060–0079
Title: Application to Renew or Modify an Amateur Club, RACES or Military Recreation Station License
Form No.: FCC 610–B

A revised application form FCC 610–B has been approved for use through 8/31/88. The current edition will remain in use until revised forms are available. The previously approved revision numbered FCC 610–B/BL was never implemented.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–22815 Filed 9–23–85; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOME LOAN BANK BOARD

[No. 85–843]

Annual Report of Trust Activities; Agency Information Collection Activities Under OMB Review

Dated: September 19, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a revised information collection, "Annual Report of Trust Activities", to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and should be submitted within 15 days of publication of this notice in the **Federal Register.**

Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below:

Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, Phone: 202–377–6933.

FOR FURTHER INFORMATION CONTACT: William Fuller, Office of Examinations and Supervision. Phone: (202) 377–6492.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85–22810 Filed 9–23–85; 8:45 am]

BILLING CODE 6720–01–M

[No. 85–844]

Fair Housing and Nondiscrimination in Lending

Dated: September 19, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a request for extension, without revision, of its information collection, "Fair Housing and Nondiscrimination in Lending" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and should be submitted within 15 days of publication of this notice in the Federal Register. Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below:

Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552, Phone: 202–377–6933.

FOR FURTHER INFORMATION CONTACT: Richard Tucker, Director, Office of Community Investment. Phone: (202) 377–6211.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85–22811 Filed 9–23–85; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL RESERVE SYSTEM

Commonwealth Bancorp, Inc., et al.; Notice of Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(i) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly of through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be excepted to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the officers of the Board of Governors not later than October 14, 1985.

A. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 631666:

1. *Commonwealth Bancorp, Inc.*, Shelbyville, Kentucky to engage *de novo* through its subsidiary, Bancpro Information Systems, Inc., Shelbyville, Kentucky, in providing data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, faciltities, or data bases by any technological means, pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities would take place in the states of Ohio, Indiana, and Kentucky.

2. *Simmons First National Corporation*, Pine Bluff, Arkansas; to engage *de novo* through its subsidiary, Simmons First Agriculture Corporation, Pine Bluff, Arkansas, in developing lending; making, acquiring or servicing loans or extension of credit for its owns account or for the account of others; leasing personal or real property or acting as a broker or adviser in leasing such property; and performing appraisals of real estate.

Board of Governors of the Federal Reserve System, September 18, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–22754 Filed 9–23–85; 8:45 am]

BILLING CODE 6210–01–M

Financial Management Bancshares of West Virginia, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the

Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 16, 1985.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Financial Management Bancshares of West Virginia, Inc.*, Morgantown, West Virginia; to acquire 100 percent of the voting shares of The First National Bank of Terra Alta, Terra Alta, West Virginia.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW, Atlanta, Georgia 30303:

1. *First Bankers Corporation of Florida,* Pompano Beach, Florida; to acquire 100 percent of the voting shares of The Mall Bank, West Palm Beach, Florida.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Midwest Financial Corporation,* Hanover Park, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank & Trust Company of Hanover Park, Hanover Park, Illinois.

2. *Franklin Bancorp, Inc.,* Fort Wayne, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of South Central Bancorp, Inc., Edinburg, Indiana, thereby indirectly acquiring Edinburg State Bank, Edinburg, Indiana.

Board of Governors of the Federal Reserve System, September 18, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–22752 Filed 9–23–85; 8:45 a.m.]

BILLING CODE 6210–01–M

General Bancshares Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under section 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specificially any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 16, 1985.

A. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *General Bancshares Corporation,* St. Louis, Missouri; to merge with Boatmen's Bancshares, Inc., St. Louis, Missouri, thereby indirectly acquiring The Boatmen's National Bank of St. Louis, St. Louis; Boatmen's Bank of West County, Ballwin; Boatmen's Bank of Cape Girardeau, Cape Girardeau; Boatmen's Bank of St. Louis County, Clayton; Boatmen's Bank of Crestwood, Crestwood; Boatmen's Bank of Taney County, Forsyth; Boatmen's North Hills Bank, Kansas City; Boatmen's Mountain Grove National Bank, Mountain Grove; Boatmen's Bank of O'Fallon, O'Fallon; Boatmen's Bank of Jefferson County, Pevely; Boatmen's Raytown Bank, Raytown; Boatmen's Bank of Pulaski County, Richland; Boatmen's Bank of Concord Village, St. Louis; Boatmen's Hampton Bank, St. Louis Boatmen's National Bank of North St. Louis County, St. Louis; Boatmen's National Bank of Springfield, Springfield; Boatmen's Bank of Troy, Troy; Boatmen's Bank of Aurora, Aurora; Boatmen's Bank of Belton, Belton; Boatmen's National Bank of Boonville, Boonville; Boatmen's Bank of Bulter, Bulter; Boatmen's Bank of Carthage, Carthage; Boatmen's National Bank of Cassville, Cassville; Boatmen's Bank of Clinton, Clinton; Boatmen's Bank of DeSoto, DeSoto; Boatmen's Bank of Excelsior Springs, Excelsior Springs; Boatmen's Bank of Independence, Indepdendence; Boatmen's Bank of Jennings, Jennings; Boatmen's First National Bank of Kansas City, Kansas City; Boatmen's Livestock National Bank, Kansas City; Boatmen's National Bank of Lebanon, Lebanon; Boatmen's Bank of Lee's Summit, Lee's Summit' Boatmen's Bank of Lexington, Lexington; Boatmen's Bank of Lockwood, Lockwood; Boatmen's Bank of Marshall, Marshall; Boatmen's Bank of Nevada, Nevada; Boatmen's Bank of South Raytown, Raytown; Boatmen's National Bank of Richmond, Richmond; and Boatmen's Bank of Webster Grove, Webster Grove; all located in Missouri.

Applicant has also applied to acquire Boatmen's Life Insurance Company, St. Louis, Missouri; and thereby engage in underwriting credit life and accident and health insurance written in connection with extensions of credit by the subsidiary banks of its parent pursuant to section 4(c)(8) of the Bank Holding Company Act. These activities would be conducted in the states of Missouri, Illinois and Tennessee.

Applicant has also applied to acquire Missouri Mortgage and Investment Company, St. Louis, Missouri, and thereby engage in making, acquiring or servicing mortgage loans for its own account or for the account of others. These activities would be conducted in the states of Missouri, Illinois and Tennessee.

Board of Governors of the Federal Reserve System, September 18, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–22753 Filed 9–23–85; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Alcohol Research Grants on Alcoholism Treatment; Matching Clients to Treatments

AGENCY: National Institute on Alcohol Abuse and Alcoholism, HHS.

ACTION: Issuance of Program Announcement for Alcohol Research Grants on Alcoholism Treatment: Matching Clients to Treatment.

SUMMARY: The National Institute on Alcohol Abuse and Alcoholism announces the availability of a program announcement for Alcohol Research Grants for Research Grants on Alcoholism Treatment: Matching Clients to Treatments. These awards will be to support research grants to study the effectiveness of existing alcoholism treatment regimens at various facilities with careful control for the type and severity of alcohol dependency being treated. Research will also be supported for the development of empirical prediction scales to determine which alcoholics may be most suited for a particular treatment and when they are most treatable and for the delineation of clinically relevant approaches to match clients to therapies and treatment settings. Support may be requested for up to 5 years. It is estimated that up to $2 million will be available in Fiscal Year 1986 and future years to support several grants under this announcement.

RECEIPT DATE OF APPLICATIONS FOR FY 86 FUNDING: November 1, 1985.

FOR A COPY OF THE ANNOUNCEMENT CONTACT: The National Clearinghouse for Alcohol Information (NCALI), Box 2345, Rockville, Maryland 20852, Telephone (301) 468–2600.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85–22824 Filed 9–23–85; 8:45 am]

BILLING CODE 4160–20–M

Alcohol Research Grants for Research on Children of Alcoholics

AGENCY: National Institute on Alcohol Abuse and Alcoholism, HHS.

ACTION: Issuance of Program Announcement for Alcohol Research Grants on Children of Alcoholics.

SUMMARY: The National Institute of Alcohol Abuse and Alcoholism announces the availability of a program announcement for Alcohol Research Grants for Research on Children of Alcoholics. These awards will be to support research grants to develop more effective prevention, early intervention, and treatment programs for children of alcoholics. Areas of research interest include the identification of genetic and other biochemical, neuropsychological, and demographic markers for a predisposition for alcoholism; the identification of coping mechanisms which help some children at risk from becoming alcoholics; epidemiologic studies of the adverse consequences as a result of being the child of an alcoholic; and other research related to improving prevention, early intervention and treatment programs for the children of alcoholics. Support may be requested for up to 5 years. Applications recommended for approval by the National Advisory Council on Alcohol Abuse and Alcoholism will be considered for funding on the basis of the overall scientific and technical merit of the proposal as determined by peer review; NIAAA program needs and balance; and the availability of funds.

RECEIPT DATE OF APPLICATIONS FOR FY 86 FUNDING: November 1, 1985.

FOR A COPY OF THE ANNOUNCEMENT CONTACT: The National Clearinghouse for Alcohol Information (NCALI), Box 2345, Rockville, Maryland 20852, Telephone (301) 468–2600.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85–22825 Filed 9–23–85; 8:45 am]

BILLING CODE 4160–20–M

New Investigator Research Awards for Alcohol Research

AGENCY: National Institute on Alcohol Abuse and Alcoholism, HHS.

ACTION: Issuance of Program Announcement for New Investigator Research Awards for Alcohol Research.

SUMMARY: The National Institute on Alcohol Abuse and Alcoholism (NIAAA) announces the availability of a program announcement for New Investigator Research Awards. These awards are to help new investigators develop their research interests and capabilities in alcohol-related biomedical and psychosocial research. In addition, this program seeks to attract scientists with more than 5 years of research experience in another field provided they have not been a principal investigator on an NIAAA supported project or published extensively (5 or more journal articles) in the alcohol research field. Women and minority candidates, in particular, are encouraged to apply. Support may be requested for up to 3 years. In Fiscal Year 1986, approximately $1 million will be available for these awards, and it is anticipated that 15–20 awards will be made.

RECEIPT DATE OF APPLICATIONS FOR FY 86 FUNDING: November 1, 1985.

FOR A COPY OF THE ANNOUNCEMENT CONTACT: The National Clearinghouse for Alcohol Information (NCALI), Box 2345, Rockville, Maryland 20852, Telephone (301) 468–2600.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85–22826 Filed 9–23–85; 8:45 am]

BILLING CODE 4160–20–M

Research Grants on Alcohol-Related Performance Effects and Traumatic Injury

AGENCY: National Institute on Alcohol Abuse and Alcoholism, HHS.

ACTION: Issuance of a Special Program Announcement for Research Grants on Alcohol-Related Performance Effects and Traumatic Injury.

SUMMARY: The National Institute on Alcohol Abuse and Alcoholism (NIAAA) announces the availability of a special program announcement for Research Grants and Alcohol-Related Performance Effects and Traumatic Injury. These awards will be to support research grants to study the extent, causes and results of alcohol-involved unintentional injury and death as related to transportation, occupational, home and recreational activities. Research is encouraged on the effects of alcohol on simple and complex behavior ranging from basic neuromuscular and cognitive functioning to the performance of highly skilled tasks such as driving a car, flying an airplane, or operating sophisticated machinery and equipment. Research is also encouraged for the elucidation of the medical complications caused by the presence of alcohol in injured tissue; for epidemiologic studies of the role of alcohol in accidents and injuries; and on the design development and assessment of prevention and intervention programs. Support may be requested for up to 5 years. It is estimated that up to $1 million will be available in Fiscal Year 1986 and future years to support grants under this announcement.

RECEIPT DATE OF APPLICATIONS FOR FY 86 FUNDING: November 1, 1985.

FOR A COPY OF THE ANNOUNCEMENT CONTACT: The National Clearinghouse

for Alcohol Information (NCALI), Box 2345, Rockville, Maryland 20852, Telephone (301) 468–2600.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85–22823 Filed 9–23–85; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Camping Stay Limit on Public Land; Correction to the July 30, 1985 notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of camping stay limit for public lands administered by the BLM in the Butte District, Montana. Persons may occupy any one site or multiple sites within a 5 mile radius on public lands not closed or otherwise restricted to camping within the Butte District for a total period of not more than fourteen days during any 28-day period. Following the fourteen day period persons may not relocate within a distance of five (5) miles of the site that was just previously occupied until completion of the 28-day period. The fourteen day limit may be reached either through a number of separate visits or through a period of continuous occupations of a site. Under special circumstances and upon request, the authorized officer may give written permission for extension to the fourteen day limit.

Additionally, no person may leave personal property unattended in designated campgrounds, recreation developments or elsewhere on public lands within the Butte District for a period of more than 24 hours without written permission from the authorized officer.

SUPPLEMENTARY INFORMATION: This camping stay limit is being established in order to assist the Bureau in reducing the incidence of long-term occupancy trespass being conducted under the guise of camping on public lands within the Butte District. Of equal importance is the problem of long-term camping, which precludes equal opportunities for other members of the public to camp in the same area, which creates user conflicts.

DATE: This camping stay limit will be effective immediately upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Jack McIntosh, District Manager, Butte District Office, 106 North Parkmont, P.O. Box 3388 Butte, Montana 59702, telephone (406) 494–5059.

Authority for this stay limit is contained in CFR Title 43, Chapter II Part 8365, Subpart 8365.1–2 and 8365.2–3.

September 13, 1985.

Dean Stepanek,

State Director.

[FR Doc. 85–222783 Filed 9–23–85; 8:45 am]

BILLING CODE 4310-DN-M

Lakeview District Grazing Advisory Board; Meeting

Notice is hereby given, in accordance with Pub. L. 92–463 that the Lakeview District will hold a meeting on September 30, 1985. The meeting will take place at 10:00 a.m. in the conference room of the Bureau of Land Management office located at 1000 South 9th Street, P.O. Box 151, Lakeview, Oregon 97630. The agenda will center on allocation of forage.

The meeting is open to the public. Anyone wishing to attend and/or make written or oral statements to the board is requested to contact the District Manager at the above address before September 25, 1985. Summary minutes of the meeting will be available for review within 30 days following the meeting.

Dated: September 12, 1985.

Jerry Asher,

District Manager.

[FR Doc. 85–22782 Filed 9–23–85; 8:45 am]

BILLING CODE 4310-33-M

[W-81328]

Realty Action; Competitive Sale of Public Lands in Laramie County, WY

AGENCY: Bureau of Land Mangement, Interior.

ACTION: Competitive Sale of Four Land Parcels in Laramie County, Wyoming.

SUMMARY: The Bureau of Land Management has determined that the land described below is suitable for public sale and will accept bids on these lands. Section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713) requires the BLM to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest in the land from sale if the sale would not be consistent with FLPMA or other applicable law.

The planning document, environmental assessment/land report, and memoranda and letters of Federal, State, and local contacts concerning the sale are available for review at the Bureau of Land Management, Rawlins District Office. All bids and all requests for information should be sent to BLM, Rawlins District Office, 1300 North Third Street, P.O. Box 670, Rawlins, Wyoming 82301 (Phone 307/324–4841).

PARCELS

Parcel No.	Serial No	Legal Description	Acreage	Appraised value
1	W–81328A	T. 14 N., R. 69 W., 6th P.M., Sec. 4, Lot 3	[illegible]	$17,500
2	W–81328B	T. 14 N., R. 69 W., 6th P.M., Sec. 4, Lot 2	38.97	15,500
3	W–81328C	T. 14 N., R. 69 W., 6th P.M., Sec. 4, Lot 1	[illegible]	15,500
4	W–81328D	T. 14 N., R. 69 W., 6th P.M., Sec. 4, SE¼NE¼	40.00	16,500

Sale Procedures

1. The sale will be conducted under competitive bidding procedures, using a combination of sealed and oral bids. Any qualified bidder may submit a bid.

2. To qualify for the oral bidding portion of the sale, a bidder must submit a valid sealed bid. All sealed bids must be received in the Rawlins District Office by 2:00 p.m., on Tuesday, December 3, 1985. Sealed bid envelopes must be marked in the front lower left-hand corner with the words, "Public Land Sale, W–81328, Parcel No.——, Laramie County, Wyoming."

No special form of sealed bid is required, but all bids must show the amount bid for each parcel, the name and address of the bidder, and the bid must be signed by the bidder or by a person authorized to act for the bidder.

All sealed bids must be accompanied by a payment of not less than 20 percent of the total bid. Each bid and any final payment must be accompanied by a certified check, *postal* money order, bank draft, or cashier's check made payable to the Department of the Interior-BLM. If two (2) or more envelopes containing valid bids of the same amount are received, supplemental oral bidding will determine the high bid. The supplemental bidding will follow the opening of the sealed bids.

3. Sealed bids wil be opened at 2:00 p.m., on Wednesday, December 4, 1985, at the Wyoming State Office of the

Bureau of Land Management, 2515 Warren Avenue, Cheyenne, Wyoming.

The highest sealed bid on the parcel would determine the base of the oral bidding conducted the day of the sale. The highest qualifying bid would be publicly declared on the day of the sale and oral bids would then be invited. After oral bids, if any are received, the highest qualifying bid would be declared by the authorized officer. The person declared to have entered the highest qualifying oral bid shall submit an additional deposit by cash, personal check, bank draft, money order, cashier's check, certified check, or any combination for the balance of 20 percent of the increased bid immediately following the close of the sale.

4. Failure to pay the remainder of the full price within 180 days of the sale will disqualify the apparent high bidder and the deposit will be forfeited and disposed of as other receipts of sale. If the apparent high bidder is disqualified, the next valid high bid will be accepted or in the event it is the only bid received, the land will remain available for sale.

The high bidder will be notified in writing within 30 days whether or not the Bureau can accept the bid.

5. All bidders must be U.S. citizens, 18 years of age or older, corporations authorized to own real estate in the State of Wyoming, a State, State instrumentality or political subdivision authorized to hold property, or an entity legally capable of conveying and holding lands interests in Wyoming. A statement with respect to citizenship must be included with the bid.

6. If any or all of the parcels do not sell at the December 4 sale, the unsold parcels will be reoffered for sale under a sealed bid only process. For reoffered land, bids must be received by 11:00 a.m. on the fourth (4th) Wednesday of each month beginning February 26, 1986. Reoffered land will remain available for sale until sold or until otherwise removed from sale consideration. Contact the Rawlins District Office at the above address to determine which parcels will be reoffered. The procedures outlined in No. 2, No. 4, and No. 5 above apply.

Patent Terms and Conditions

Any patent issued will be subject to all valid existing rights. Specific patent reservations include:

1. A reservation for ditches or canals by authority of the United States, Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of this reservation, which will be incorporated in the patent document, is available for review at this BLM office.

3. A road right-of-way over and across a 40-foot strip of land will be reserved for public access and use of the people of the United States generally. A survey plat showing the location of this reserved access is available for public inspection in this office.

4. Patent issued for parcel 1 would be subject to W-40660, a right-of-way for county road 109. Patents issued for parcels 1, 2 and 4 would be subject to right-of-way C-063605 and W-079242 for powerlines. All patents issued would be subject to oil and gas lease W-77432.

For a period of 45 days from the date of this Notice, interested parties may submit comments to the District Manager, Rawlins District Office, 1300 Third Street, P.O. Box 670, Rawlins Wyoming 82301. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

September 16, 1985.

Richard Bastin,

District Manager.

[FR Doc. 85-22784 Filed 9-23-85; 8:45 am]

BILLING CODE 4310-22-M

Colorado; Completion of Amendment to the White River Resource Area, Management Framework Plan and Designation of Raven Ridges as an Area of Critical Environmental Concern.

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment to White River Resource Area, Management Framework Plan; Designation of Raven Ridge Area of Critical Environmental Concern.

SUMMARY: In accordance with 43 CFR Part 1600 and Pub. L. 94-579, section 202, the Bureau of Land Management, Craig District, Colorado, has completed the amendment to the White River Resource Area Management Framework Plan. The amendment determined that certain plant species found in the Raven Ridge area listed below should be protected through designation as an Area of Critical Environmental Concern.

SUPPLEMENTARY INFORMATION: The geographic area covered by the Raven Ridge Area Critical Environmental Concern is approximately 1,040 acres of land in Rio Blanco County, Colorado, within the White River Resource Area. The ACEC lies approximately six miles west of Rangely, Colorado. The following legal description encompasses the ACEC area:

Sixth Principal Meridian

T. 1 N., R. 103 W.
Sec. 3: SW1.4NW¼, S½
Sec. 4: SE¼NE¼, E½SE¼
T. 2 N., R. 103 W.
Sec. 18: Lots 3 and 4, SE¼SW¼
Sec. 19: W½NE¼, NW¼, NE¼SW¼, NW¼SE¼
T. 2N., R. 104 W.
Sec. 11: NW¼, NE¼SW¼, NW¼SW¼, SE¼SW¼, SE¼
Sec. 13: S½NE¼, NW¼, E½SW¼, SE¼
Sec. 14: NE¼, NE¼NW¼
Sec. 24: NE¼NE¼

The Bureau of Land Management completed the required land use plan amendment and environment analysis for consideration of Raven Ridge for designation as an Area of Critical Environmental Concern. The plan amendment was prepared and reviewed by an interdisciplinary team with experience and knowledge in the following areas: lands, minerals, wildlife, recreation, cultural resources, vegetation and livestock grazing. Full participation was provided throughout the plan amendment.

A list of species and their ranking as rare, sensitive, or threatened status is available at: Bureau of Land Management, White River Resource Area, P.O. Box 928, Meeker, Colorado 81741.

For further information contact: David C. Nylander, Team Leader, White River Resource Area, at the above address. (Telephone: 303-878-3601).

Dated: September 17, 1985.

Kannon Richards,

State Director.

[FR Doc. 85-22755 Filed 9-23-85; 8:45 am]

BILLING CODE 4310-JB-M

National Park Service

National Register of Historic Places; Arizona et al.; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 14, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior,

Washington, DC 20243. Written comments should be submitted by October 9, 1985.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Coconino County

Flagstaff, *Railroad Addition Historic District (Boundary Decrease),* Roughly bounded by Birch Ave., Agassiz St., Santa Fe RR Tracks, Leroux St., and Aspen Ave.
Grand Canyon South Rim vicinity, *Hull Cabin Historic District,* Kaibab National Forest, 1.5 miles S. of Grand Canyon South Rim

Yuma County

Sears Point Archaeological District

Arkansas

Clark County

Ross Site

Craighead County

Jonesboro, *Berger-Graham House,* 1327 S. Main St.

Izard County

Calico Rock, *Calico Rock Historic District,* Roughly bounded by Main St., Rodman, Walnut, and Peppersauce Alley

Pulaski County

Little Rock, *Van Frank Cottages,* 515–519 E. 15th St. & 1510 Park Lane

Saline County

Hughes Mound Site (3SA11)

CALIFORNIA

Riverside County

Palo Verde Circles (Earth Figures of California-Arizona-Colorado River Basin

IOWA

Clinton County

Clinton, *First National Bank,* 226 Fifth Ave. South

Jefferson County

Fairfield, *Wells—Stubbs House,* 508 E. Burlington Ave.

Linn County

Cedar Rapids, *Taylor-Van Note House,* 4600 Blairs Ferry Rd.
Troy Mills, *Odd Fellows Hall,* Troy Mills Rd.

KANSAS

Sherman County

Ruleton vicinity, *Veselik, John Ludwig, House,* CR 881

Woodson County

Yates Center, *Stockbrands and Kemmerer Department Store,* 100 E. Rutledge
Yates Center, *Woodson County Courthouse,* Courthouse Sq. between Main, Rutledge, State & Butler Sts.

LOUISIANA

Concordia Parish

Ferriday vicinity, *Roseland,* 500 Fisherman Dr.

Tangipahoa Parish

Kentwood, *Kent, Charles Adolph, Sr., House,* 701 Ave. E

MAINE

Cumberland County

Brunswick, *Pennellville Historic District,* Roughly bounded by Pennellville Rd., Middle Bay Cove and Pennell Way

MARYLAND

Frederick County

Nolands Ferry I Archeological Site

MASSACHUSETTS

Bershire County

North Adams, *Armstrong House (North Adams MRA),* 60 Brooklyn St.
North Adams, *Arnold Print Works (North Adams MRA),* 87 Marshall St.
North Adams, *Blackinton Historic District (North Adams MRA),* Roughly bounded by Ashton Ave., Wood St., Massachusetts & Doanes Aves. & Boston & Main Railroad
North Adams, *Boardman (The) (North Adams MRA),* 39–53 Montana St.
North Adams, *Browne, Charles, House (North Adams MRA),* 932 S. Church St.
North Adams, *Church Street-Caddy Hill Historic District (Boundary Increase) (North Adams MRA),* Roughly bounded by E. Main, Wall, Holbrook, & Meadow Sts., Elmwood Ave., Church, Perry, South, & Ashland Sts.
North Adams, *Crowley House (North Adams MRA),* 365 W. Main St.
North Adams, *Freeman's Grove Historic Distric (North Adams MRA),* Roughly bounded by Liberty, Hall & Eagle Sts., Bracewell Ave., & Houghton
North Adams, *Hathaway Tenement (North Adams MRA),* 311–321 River St.
North Adams, *Johnson Manufacturing Company (North Adams MRA),* 65 Brown St.
North Adams, *Johnson School (North Adams MRA),* School St.
North Adams, *Monument Square Historic District (Boundary Increase) (North Adams MRA),* Roughly bounded by Holden, Center, & Union Sts., East Middle School, Summer, & Main Sts.
North Adams, *Norad Mill (North Adams MRA),* 60 Roberts. Dr.
North Adams, *Normal School Historic District (North Adams MRA),* Roughly Church and Blackinton Sts.
North Adams, *Sherman, William B., Farm (North Adams MRA),* 1072 State Rd.
North Adams, *Sykes House (North Adams MRA),* 521 W. Main St.
North Adams, *Wells House (North Adams MRA),* 568 W. Main St.

MISSISSIPPI

Copiah County

Gallman, *Gallman Historic District,* Roughly US 51 and Church St.

Hinds County

Jackson, *Galloway-Williams House,* 427 E. Fortification St.

Lauderdale County

Causeyville, *Causeyville Historic District,* Meridian-Causeyville Rd.

Oktibbeha County

Starkville, *Cedars (The),* Old West Point Rd.

Washington County

Leland vicinity, *Hollyknowe,* SE of CR 299 & 82 Intersection

MISSOURI

Buchanan County

St. Joseph, *Christian Sachau Saloon (Frederick Avenue MRA),* 1613–1615 Frederick Ave.
St. Joseph, *City Hose Company #9 (Frederick Avenue MRA),* 2217 Frederick Ave.
St. Joseph, *Columbia Bakery—Cunliffe and Hines-Grocers (Frederick Avenue MRA),* 1606 Frederick Ave.
St. Joseph, *Cripe Bakery (Frederick Avenue MRA),* 2300 Frederick Ave.
St. Joseph, *Foster-Hall Tire Company (Frederick Avenue MRA),* 19th and Frederick
St. Joseph, *Frederick Avenue Historic District (Frederick Avenue MRA),* Frederick Ave. bounded by Isadore, 13th, N. 12th, Faracon, and N. 11th Sts.
St. Joseph, *Geiger, Dr. Jacob, House-Maud Wyeth Painter House (Frederick Avenue MRA),* 2501 Frederick Ave.
St. Joseph, *Goodrich Silvertown Inc.—Packard St. Joseph Motors (Frederick Avenue MRA),* 1700 Frederick Ave.
St. Joseph, *Hagermann Saloon (Frederick Avenue MRA),* 1605 Frederick Ave.
St. Joseph, *Lehr Construction Co. (Frederick Avenue MRA),* 2115 Frederick Ave.
St. Joseph, *Players Cocktail Lounge (Frederick Avenue MRA),* 1631–1635 Frederick Ave.
St. Joseph, *Rivoli Theatre—Uptown Theatre (Frederick Avenue MRA),* 2113 Frederick Ave.
St. Joseph, *Robertson's Conoco Service (Frederick Avenue MRA),* 1932 Frederick
St. Joseph, *Seaman and Schuske Building (Frederick Avenue MRA),* 1604 Frederick Ave.
St. Joseph, *St. Joseph City Hall (Frederick Avenue MRA),* Frederick at 11th St.
St. Joseph, *Tetherow Brothers Building (Frederick Avenue MRA),* 1320 Frederick Ave.
St. Joseph, *Wyeth Flats (Frederick Avenue MRA),* 1015–1031 Faraon St.

St. Louis County

St Louis, *Sanitol Building,* 4252–4264 Laclede Ave.

NEBRASKA

Scotts Bluff County

Scottsbluff, *Marquis Opera House,* 1601–1603 Broadway

NEW YORK

Suffolk County

Huntington, *Robinson House (Huntington Town MRA)*, 563 Asharoken Ave.

OHIO

Franklin County

Columbus, *Trinity German Evangilical Lutheran Church*, 404 S. Third St.

Madison County

London, *London Commercial Business Historic District*, Roughly bounded by Fourth, Union, Center, and Oak Sts.

Ottawa County

Middle Bass Island, Golden Eagle Wine Cellars, Fox and Lonz Rds.

Portage County

Ravenna, *East Main Street Historic District*, E. Main St. between Clinton and Linden
Ravenna, *Reed, C.A., House* 299 W. Riddle St.

Trumbull County

Brookfield, *Brookfield Center Historic District*, Roughly W. side of OH 7 between Sharon-Warren Rd. to N. Wood St., and Brookfield Village Green
Fowler, *Fowler Center Historic District*, Roughly area around Fowler Township Village Green at OH 305 & OH 193

Warren County

Kings Mills, *Peters Cartridge Company*, 1915 Grandin Rd.

SOUTH CAROLINA

Berkeley County

Huger vicinity, *Quinby Plantation House—Halidon Hill Plantation*, 3 miles W of Hager

Darlington County

Springville, *Goodson, Arthur, House (Springville MRA)*, W of CR 133
Springville, *Hart, John L., House (Springville MRA)*, E of CR 133
Springville, *Lide, Evan J., House (Springville MRA)*, W of CR 228 NW of SC 34
Springville, *Lide, John W., House (Springville MRA)*, W of CR 133
Springville, *White Plains (Springville MRA)*, N of CR 177 & NE of CR 389 JCT
Springville, *Wilds Hall (Springville MRA)*, W of CR 228 off SC 34

Greenwood County

Greenwood, *Old Greenwood High School*, 857 S. Main St.

UTAH

Daggett County

Brown's Park, *John Jarvie Historic Site*, Green River & Indian Crossing Bridge, SW of Jarvie

VIRGINIA

Culpeper County

Rapidan, *Locust Grove*, Locust Grove Farm on VA 736

Portsmouth (Independent City)

Seaboard Coastline Building, 1 High St.

Westmoreland County

Mt. Holly vicinity, *Spring Grove*, VA 202

WASHINGTON

King County

Seattle, *Showboat Theatre*, 1705 NE Pacific St., UW

WEST VIRGINIA

Kanawha County

Charleston, *Spring Hill Cemetery Historic District*, 1554 Farnsworth Dr.

WISCONSIN

Calumet County

Aebischer Site (47–Ct–30)

Milwaukee County

Wauwatosa, *Hart, Thomas B., House*, 1609 Church St.

[FR Doc. 85–22768 Filed 9–23–85; 8:45 am]
BILLING CODE 4310–70–M

National Register of Historic Places; Kailua-Kona, Hawaii, County, HI; Notice on NHL Boundaries

September 16, 1985.

The National Park Service has been working to establish boundaries for all National Historic Landmarks for which no specific boundary was identified at the time of designation and therefore are without a clear delineation of the amount of property involved. The results of such designation make it important that we define specific boundaries for each landmark.

In accordance with the National Historic Landmark program regulations, 36 CFR Part 65, the National Park Service notifies owners, public officials and other interested parties and provides them with an opportunity to make comments on the proposed boundaries.

The 60-day comment period on the attached National Historic Landmark has ended, and the boundaries have been established. Copies of the documentation of the landmark and its boundaries, including maps, may be obtained from Jerry L. Rogers, Associate Director, Cultural Resources, and Keeper of the National Register of Historic Places, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127, Attention: Chief of Registration (Phone: 202–343–9536).

Carol D. Shull,

Chief of Registration, National Register of Historic Places, Interagency Resources Division.

Kamakahonu National Historic Landmark

Kailua-Kona, Hawaii County, Hawaii

American Factors, Ltd. owns the major portions of old Kamakahonu in two parcels (7–5–06: parcels 24 and 32). These parcels are 0.8 and 1.8 acres, respectively. Additionally, the State of Hawaii owns a narrow strip of beach—lands below the high tide mark. Amfac's parcel 24 (0.8 acre) contains the reconstructed 'Ahu'ena Heiau and hale nana mahina'ai and the foundations of the hale poki.

Parcel 24 (0.8 acre) contains the only visible remains of the former Kamakahonu settlement. All other structures referred to in this text have been destroyed in the course of modern commercial developments.

[FR Doc. 85–22766 Filed 9–23–85; 8:45 am]
BILLING CODE 4310–70–M

National Register of Historic Places; Clayton, Union County, NM; Notice on NHL Boundaries

September 16, 1985.

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In accordance with the National Historic Landmark program regulations 36 CFR Part 65, the National Park Service notifies owners, public officials and other interested parties and provides them with an opportunity to make comments on the proposed boundaries. The 60-day comment period on the attached National Historic Landmark has ended, and the boundaries have been established. Copies of the documentation of the landmark and its boundaries, including maps, may be obtained from Jerry L. Rogers, Associate Director, Cultural Resources, and Keeper of the National Register of Historic Places, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127, Attention: Chief of Registration (Phone: 202–343–9536).

Carol D. Shull,

Chief of Registration, National Register of Historic Places, Interagency Resources Division.

Rabbit Ears NHL (Clayton Complex)

Clayton, Union County, New Mexico

The Rabbit Ears (Clayton Complex) National Historic Landmark consists of three camp sites (McNees' Crossing, Turkey Creek Camp and Rabbit Ears Camp) and two natural features (Rabbit Ears Mountain and Round Mound) of the Santa Fe Trail. The campsites are bound together by the remains of the Santa Fe Trail and form one elongated parcel, while the two natural features consist of two separate parcels south of the campsites and trail.

Parcel #1, is shaped like a parallelogram running from the Oklahoma-New Mexico

border in a southwesterly direction, across three USGS maps. Within the parallelogram the actual NHL boundary is delineated in blue pen. The three campsites are bound together by a corridor centered on the Santa Fe Trail (as it is indicated on the enclosed USGS maps). The boundaries of the corridor run parallel to the Trail, at a distance of 150' on either side of it. This corridor becomes thicker in the area of the three campsites. In the area of McNees Crossing (Moses Quad) the corridor is expanded to include both segments of the Cimarron Cutoff. In the area of the Turkey Creek Camp, along the Alamos Creek (McLaughlin Bridge & Bible Top Butte Quads) the northern part of the boundary runs parallel to the Santa Fe Trail, while the southern part of the boundary follows the creek bottom area of Alamos Creek, which served the travelers as a stopping place. An arbitrary line was used for the southern boundary of the Turkey Creek Camp because there was not a convenient contour line to utilize and the on-site inspection selected this area as that area most likely to have served as the camping site. The expanded boundary for the Rabbit Ears Creek Camp has its northern boundary paralleling the Santa Fe Trail, and its southern boundary consisting of the 5600' contour line. These north and south boundaries and the arbitrary west and east lines enclose a broad flat valley which encloses the general camp site area of the Rabbit Ears Creek Camp. (See Mount Dora Quad).

Parcel #2, encloses the prominent double-peaked Rabbit Ear Mesa (Bible Top Butte & Rabbit Ear Mountain Quads). Starting at Point E the Boundary runs southeast to Point F, thence straight south to Point G. From Point G the Boundary goes southwest to Point H, thence straight west to Point I. The Boundary from Point I follows State Highway 370 to Point J. From Point J the boundary runs northeast to Point K and thence due east to Point E. This boundary is to enclose those parts of Rabbit Ear Mesa which are considered significant within the most succinct boundary.

Parcel #3, Mount Clayton (Round Mound), consists of Sections 2 and 3 of T.26N., R.31E., and Sections 34 and 35 of T.27N., R.31E.

[FR Doc. 85-22767 Filed 9-23-85; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

[Federal Coal Mining Lease No. NM-0315559]

Availability of Final Environmental Impact Statement on the Proposed Mining Plan and Transportation Corridor Plan, La Plata Mine, San Juan County, NM

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of final environmental impact statement (OSM-EIS-17).

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is making available the final environmental impact statement (EIS) on the proposed La Plata mine and transportation corridor. The EIS has been prepared to assist the Department of the Interior and the New Mexico Mining and Minerals Division (MMD) in making a decision on San Juan Coal Company's application to surface mine coal approximately 18 miles north of Farmington, New Mexico.

ADDRESSES: Copies of the final EIS may be obtained from Allen D. Klein, Administrator, Attn.: Charles Albrecht, OSM, Western Technical Center, Second Floor, Brooks Towers, 1020—15th Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Charles M. Albrecht, Chief, Environmental Analysis Branch (telephone: 303-844-2451) at the Denver, Colorado, location given under "**ADDRESSES.**"

SUPPLEMENTARY INFORMATION: San Juan Coal Company proposes to mine an average of about 2.0 million tons per year or 69.7 million tons of coal over 32 years at its La Plata mine. In the process, 1,551 acres of land would be distrubed on the mine area, the facilities area, and the transportation corridor addressed by San Juan Coal Company's permit application. An additional 92 acres would be disturbed during construction of that part of the transportation corridor within the permit area of the San Juan mine. Total disturbance, therefore, would be 1,643 acres. The Black Diamond, Navajo, and San Juan mines are in operation in the general area.

The proposed La Plata mine draft EIS was released to the public on October 23, 1984. A scoping meeting and a public hearing were held on July 27, 1983, and December 4, 1984, respectively, at the La Plata Firehouse, La Plata, New Mexico. A third public hearing was held on February 28, 1985, at the Farmington Civic Center, Farmington, New Mexico. The public comment period on the draft EIS ended March 6, 1985.

The EIS analyzes the impacts on the human environment that would result from approval of the mining plan by OSM and issuance of a right-of-way grant for a coal transportation corridor by the Bureau of Land Management (BLM) for San Juan Coal Company's proposed mine. The Secretary of the Interior must make a decision of San Juan Coal Company's permit application in accordance with the Surface Mining Control and Reclamation Act of 1977. The EIS evaluates four alternative actions that cover the range of decisions available to the Secretary of the Interior regarding the mining plan and the transportation corridor plan for the proposed La Plata mine. These actions are (1) approval of the plans with conditions to bring them into compliance with Federal and State regulations (alternative A); (2) approval of the mining plan with conditions and approval of an alternative transportation scenario to transport coal from the mine (alternative B); (3) disapproval of the plans in which no Federal approval would be issued (alternative C); or (4) no action (alternative D). OSM and BLM have identified alternative A as the prefered alternative.

The final EIS is made up of two volumes. The first volume consists of the EIS text revised in response to public comments on the draft EIS; the second volume consists of written public comments received on the draft EIS, a summary of the December 4, 1984, public hearing, and excerpts from the February 28, 1985, public hearing and OSM's responses to these comments.

Dated: September 13, 1985.

Brent Wahlquist,

Assistant Director, Technical Services and Research.

[FR Doc. 85-22690 Filed 9-23-85; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[332-213]

Competitive Position of United States and European Community Pork in the United States and Third Country Markets

AGENCY: International Trade Commission.

ACTION: Change in location of hearing.

SUMMARY: Notice is hereby given that the location of the public hearing in connection with the investigation has been changed from Des Moines, Iowa, to Washington, D.C. The public hearing will be held in the Commission Hearing Room, 701 E Street NW, Washington, DC, 20436, beginning at 10:00 a.m. on September 27, 1985. Notice of the institution of the investigation was published in the Federal Register of June 19, 1985 (50 FR 25475), and notice of the public hearing location in Des Moines, Iowa was published in the Federal Register of September 12, 1985 (50 FR 37293).

FOR FURTHER INFORMATION CONTACT: David E. Ludwick (202-724-1763), Office of Industries, Animal, Fisheries, and

Forest Products Division, U.S. International Trade Commission, Washington, D.C. 20436.

By order of the Commission

Issued: September 20, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-22855 Filed 9-23-85; 8:45 am]

BILLING CODE 7035-01-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-258)]

Burlington Northern Railroad Co.; Abandonment Between Rosalia and Spring Valley, WA; Findings

The Commission has issued a certificate authorizing the Burlington Northern Railroad Company (BN), to abandon its 5.57 miles of railroad between Rosalia (milepost 45.60) and Spring Valley, WA (milepost 40.00). The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made must be remade within this 10 day period.

In formation and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

James H. Bayne,

Secretary.

[FR Doc. 22807 Filed 9-23-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-18 (Sub-77X]

The Chesapeake and Ohio Railway Co.; Abandonment in Johnson County, KY; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon its 1.69 mile line of railroad known as the Millers Creek Subdivision extending from Valuation Station 3257+74.6 (station−2+95.1) to the end of the line at Valuation Station 86+154 in Johnson County, KY.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective October 24, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by October 4, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 14, 1985 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representatives:

Lawrence H. Richmond, Suite 2204, 100 North Charles Street, Baltimore, MD 21201.

Peter J. Shudtz, P.O. Box 6419, Cleveland, OH 44202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 18, 1985.

By the Commission, Richard Lewis, Acting Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-22806 Field 9-23-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-18 (Sub-72X)]

The Chesapeake and Ohio Railway Co., Abandonment Exemption in Genesee County, MI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by The Chesapeake and Ohio Railway Company of the remaining portion of its former Otisville Branch extending a distance of 1.14 miles between milepost 0.00 and milepost 1.14 near Flint, in Genesee County, MI.

DATES: This exemption will be effective on October 24, 1985 publication. Petitions to stay must be filed by October 9, 1985, and petitions for reconsideration must be filed by October 21, 1985.

ADDRESSES: Send pleadings referring to Docket No. AB-18 (Sub-No. 72X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Rene J. Gunning, 100 North Charles Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: September 10, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioner Sterrett did not participate in the disposition of this proceeding.

James H. Bayne,

Secretary.

[FR Doc. 85-22805 Filed 9-23-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30723]

Consolidated Rail Corp.; Trackage Rights; Grand Trunk Western Railroad Co.; Exemption

The Grand Trunk Western Railroad Company (GTW) has agreed to grant overhead trackage rights to Consolidated Rail Corporation (Conrail) at North Lima, Ohio over a segment of GTW's line described as follows:

Between Conrail's connection with GTW at Sugar Street Interlocking, Lima, Ohio, Milepost 132.60 and GTW's yard tracks located at North Lima Yard, north of the City of Lima, Ohio, Milepost 130.00, all of which is located on GTW's Flat Rock Subdivision, a total distance of 2.60 miles.

The trackage rights will be effective September 11, 1985, or on such later date at GTW and Conrail agree to, as evidenced by an exchange of letters.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: September 20, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 22871 Filed 9–23–85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Stepan Chemical, Registration

By Notice dated July 10, 1985, and published in the **Federal Register** on July 18, 1985 (50 FR 29283), Stepan Chemical, Natural Products Department, 100 West Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as an importer of coca leaves (9040), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: September 17, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85–22770 Filed 9–23–85; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Syncates Associates Inc.; Registration

By Notice dated July 24, 1985, and published in the **Federal Register** on July 31, 1985 (50 FR 31058), Syncates Associates Inc., 9307–M Harwin, Houston, Texas 77038, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of Pentobarbital (2270), a basic class of controlled substance listed in Schedule II.

No Comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm of registration as a bulk manufacturer of the basic class of controlled substances listed above is granted.

Dated: September 17, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85–22771 Filed 9–23–85; 8:45 am]

BILLING CODE 4410-09-M

Bureau of Prisons

Advisory Corrections Council; Renewal

Notice is hereby given that the Charter for the Advisory Corrections Council has been renewed.

The Council will continue to consider correctional issues, especially in the Federal sphere, as provided for in Pub. L. 81–956; Title 18, U.S. Code, Section 5002. Correctional issues encompass the entire scope of imposition and execution of sanctions in criminal cases, including matters of probation, parole, imprisonment, vicitms' rights, and rights of prisoners and offenders.

Since its members included major policy makers on correctional issues in the Judiciary and Executive Branch, the recommendations of the Council have a significant role in policy development in both branches, and hence the Congress. It has been determined that the continuation of this Council is in the public interest.

The Council will meet on a quarterly basis and when specially convened. Notices of all meetings will be announced in the **Federal Register.**

Norman A. Carlson,

Director, Bureau of Prisons.

[FR Doc. 22813 Filed 9–23–85; 8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF LABOR

Office of the Secretary

Secretary of Labor's Committee on Veterans' Employment; Meeting

The Secretary's Committee on Veterans' Employment was established under section 308, Title III, Pub. L. 97–306 "Veterans Compensation, Education and Employment Amendments of 1982," to bring to the attention of the Secretary, problems and issues relating to veterans' employment.

Notice is hereby given that the Secretary of Labor's Committee on Veterans' Employment will meet on Tuesday, October 15, 1985, at 10:00 A.M., in the Secretary's Conference Room, S–2508, FPB.

Items to be discussed are:

Pre-separation Briefing Project
Colorado Project Update
Solicitation for Grant Applications Update
Emergency Veterans' Job Training Act Update
VETS Conference Highlights

The public is invited.

Signed at Washington, D.C. this 19th day of September, 1985.

Donald E. Shasteen,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 85–22786 Filed 9–23–85; 8:45 am]

BILLING CODE 4510-79-M

Employment and Training Administration

[TA–W–15,874]

Century Brass Products, Inc., Waterbury, CT; Negative Determination Regarding Application for Reconsideration

By an application dated September 3, 1985, after being granted a filing extension, the United Auto Workers (UAW) requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers of Century Brass Products' Metals Division in Waterbury, Connecticut. The determination was published in the **Federal Register** on July 16, 1985 (50 FR 28854).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that increased imports have played a major part in the demise of the Metals Division. It cites decreased orders because of the decline in sales of American made cars and increased imports of foreign cars, television sets, radios and computers, all

of which use brass, copper and aluminum parts.

Findings in the Department's investigation show that there was an absolute increase in sales and production of brass wire and brass strip in the Metals Division in 1983 compared to 1982 and in the first nine months of 1984 compared to the same period in 1983. The survey of the Metals Division's customers disclosed that increased imports of brass strip and wire by customers with reduced purchases from Century were not substantial in relation to the survey's group reduction in purchases from the firm in the first quarter of 1985 compared to the same quarter of 1984. There were no employment declines in the General Products Division other than those resulting from short-term parts shortages.

The union listed four major customers of Century Brass whose orders have diminished considerably because of imports over the last few years. Findings, however, show that three of the four customers purchased products manufactured at New Milford (tubes) and one purchased products manufactured at Waterbury (wire). The findings also show that the wire customer listed had increased purchases from Waterbury in 1984 and therefore, could not have played a part in the demise of the Metals Division.

The Trade Act confines the certification of workers to those separated from employment within one year prior to the date of the petition on which such certification is issued. Therefore, only data and information applicable to those workers are used by the Department in its factfinding and determination. Ordinarily, the Department uses import data and company sales, production and workforce data for the two years prior to the date of the petition. Reduced purchases by company customers for earlier years would not be applicable.

Finished articles such as cars and television sets cannot be considered like or directly competitive with their component parts, in this case brass wire and strip. The Senate Finance Committee, in discussing the term "like or directly competitive" as used in the Trade Act of 1974 noted that the courts concluded under the Trade Expansion Act of 1962 that imported finished articles are not like or directly competitive with domestic component parts thereof, *United Shoe Workers of America, AFL–CIO* v. *Bedell*, 506 F. 2d 174 (1974). (S. Report 93–1298, 93rd. Cong., 2d Sess., 1974, p. 122). In that case the court held that imported finished women's shoes were not like or directly competitive with shoe counters. Imports of brass wire and strip must be considered in determining import injury to workers producing those products at the Waterbury plant.

According to company officials, while the wire and strip mills at Waterbury were marginally economical, they had to be closed because of the integrated nature of the entire operation including the utilities.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C., this 17th day of September 1985.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 85–22788 Filed 9–23–85; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–15,963]

Emerald Mines Corp., Waynesburg, PA; Negative Determination Regarding Application for Reconsideration

By an application dated August 22, 1985, the United States Mine Workers requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers at Emerald Mines Corporation, Waynesburg, Pennsylvania. The determination was published in the **Federal Register** on August 13, 1985 (50 FR 32655).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous:

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that increased imports of steel have reduced demand for metallurgical coal produced by Emerald Mines Corporation from customers that manufacture steel. The union also claims that Emerald Mines' workers are being denied trade adjustment assistance benefits because they no longer are a subdivision of a major steelmaker.

Findings in the Department's investigation show that Emerald Mines Corporation produces coal and ships the major share of its production to a customer which uses the coal in steelmaking. None of the customers in the Department's survey of Emerald Mines purchased imported metallurgical coal or coke during the period applicable to the Department's factfinding investigation.

Although metallurgical coal is used in the production of steel, it cannot be considered like or directly competitive with steel within the meaning of the Trade Act of 1974. Imports of metallurgical coal must be considered in determining import injury to workers at Emerald Mines. U.S. imports of metallurgical coal and coke are negligible. The ratio of imports to domestic production was less than two percent during the period from 1980 through 1984.

In order for workers of a firm producing metallurgical coal be certified for trade adjustment assistance on the basis of steel imports, the reduction in demand for coal must originate from a company which substantially and beneficially owns or controls the coal firm. That reduction in demand must be determined to have originated at a production facility whose workers independently meet the statutory criteria for certification. These conditions do not exist for workers at the Emerald Mines Corporation since it is an independent firm.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 17th day of September 1985.

Robert A. Schaerfl,

Director, Office of Program Management, UIS.

[FR Doc. 85–22789 Filed 9–23–85; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-16,011]

Pico Products, Inc., Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 20, 1985, applicable to all workers engaged in employment related to the production of traps and filters for CATV circuit boards at Pico Products, Inc., Liverpool, New York. The Notice of Certification was published in the **Federal Register** on September 4, 1985 (50 FR 35881).

Based on additional information supplied by the International Brotherhood of Electrical Workers and the company on worker separations prior to the March 1, 1985 impact date and after the June 30, 1985 termination date set in the certification, the Department is amending the certification by establishing a new impact date of February 1, 1985 and a new termination date of December 31, 1985.

The intent of the certification is to cover all workers at the Liverpool, New York plant of Pico Products, Inc. whose separations were linked to increased imports of traps and filters for CATV circuit boards.

The amended notice applicable to TA-W-16,011 is hereby issued as follows:

All workers engaged in employment related to the production of traps and filters for CATV circuit boards at Pico Products, Inc., Liverpool, New York who became totally or partially separated from employment on or after February 1, 1985 and before December 31, 1985 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 13th day of September 1985.

Robert A. Schaerfl,

Director, Office of Program Management, UIS

[FR Doc. 85-22790 Filed 9-23-85; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Virginia Wire & Fabric Co., et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period September 9, 1985—September 13, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In the following case the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to worker separations at the firm.

TA-W-16,023; Virginia Wire & Fabric Co., Warrenton, VA

Affirmative Determinations

TA-W-16,063; Modulus Corporation, Mount Pleasant, PA

A certification was issued covering all workers of the firm separated on or after May 22, 1984 and before September 30, 1985.

TA-W-15,948; Stride Rite Footwear, Inc., Auburn, ME

A certification was issued covering all workers of the firm separated on or after February 28, 1984 and before June 30, 1985.

TA-W-16,036; Briarcliff Mills, Inc., Atlanta, GA

A certification was issued covering all workers of the firm separated on or after May 13, 1984 and before June 30, 1985.

TA-W-16,038; LGAM Manufacturing Co., Inc., Woodfield, OH

A certification was issued covering all workers of the firm separated on or after September 1, 1984 and before May 24, 1985.

TA-W-15,993; Durant Electronics, Inc., Durant, OK

A certification was issued covering all workers of the firm separated on or after April 1,1985.

TA-W-16,057; DBI Industries, Inc., Lisbon, ME

A certification was issued covering all workers of the firm separated on or after May 16, 1984 and before June 30, 1985.

I hereby certify that the aforementioned determinations were issued during the period September 9, 1985—September 16, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor 601 D. Street N.W., Washington, D.C. during normal business hours or will be mailed to persons who write to the above address.

Dated: September 17, 1985.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-22791 Filed 9-23-85; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; ASARCO; Inc., et al.

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitions or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 4, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 4, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 16th day of September 1985.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
ASARCO, Inc. (USWA)	Corpus Christi, TX	9/6/85	9/3/85	TA-W-16,400	Zinc, acid cadmium.
Calhio Chemicals, Inc	Perry, OH	9/9/85	9/6/85	TA-W-16,401	Agricultural pesticides.
Interlee, Inc., Lee Filter Div. (UAW)	Edison, NJ	9/11/85	9/4/85	TA-W-16,402	[illegible] pin filters.
Avx Corp (IBEW)	Olean, NY	[illegible]	9/3/85	TA-W-16,403	Multi-layer ceramic capacitors.
Star Sportswear Mfg Corp. (ACTWU)	Lynn, MA	9/12/85	9/10/85	TA-W-16,404	Mens leather jackets and coats
Nicky Lee Sportswear (workers)	Waynesboro, PA	9/6/85	8/8/85	TA-W-16,405	Ladies dresses.
Lincoln Pulp & Paper Co., Inc. (workers)	Lincoln, ME	9/12/85	[illegible]	TA-W-16,406	Tissue paper, specialty paper, xerox, bond.
Thatcher Glass Corp. (workers)	Tampa, FL	9/10/85	9/4/85	TA-W-16,407	Pepsi cola bottles, etc
Westmoreland Manufacturing Co. (workers)	Westmoreland, TN	9/10/85	9/5/85	TA-W-16,408	Ladies sportswear.
Berkshire Hathaway, Inc. (ACTWU)	New Bedford, MA	9/6/85	[illegible]	TA-W-16,409	Fabrics, home furnishings, curtain and industrial fabrics
Magnetic Peripherals Inc. (workers)	Bemidji, MN	9/10/85	9/5/85	TA-W-16,410	Computer disk drive sub-assemblies.
Bently Shoe Corp. (workers)	Dudley, MA	9/10/85	9/6/85	TA-W-16,411	Women's shoes.
Beech Aircraft Corp. (IAM&AW)	Selma, AL	[illegible]	8/23/85	TA-W-16,412	Single engine, light piston aircraft, commuter, airliner
Beech Aircraft Corp. (IAM&AW)	Salina, KS	9/9/85	8/23/85	TA-W-16,413	Single engine, light piston aircraft, commuter, airliner
Beech Aircraft Corp. (IAM&AW)	Boulder, CO	9/9/85	8/23/85	TA-W-16,414	Single engine, light piston aircraft, commuter, airliner
Beech Aircraft Corp. (IAM&AW)	Liberal, KS	[illegible]	8/23/85	TA-W-16,415	Single engine, light piston aircraft, commuter, airliner
Beech Aircraft Corp. (IAM&AW)	Wichita, KS	[illegible]	8/23/85	TA-W-16,416	Single engine, light piston aircraft, commuter, airliner
Cibe-Geigy Corp. (USWA)	Glen Falls, NY	9/9/85	9/6/85	TA-W-16,417	Paint pigments.
Ertl Company (UAW)	Dyersville, IA	9/13/85	9/9/85	TA-W-16,418	Toy record players.
Florsheim Co. (ACTWU)	Poplar Bluff, MO	[illegible]	9/5/85	TA-W-16,419	Footwear
KP Industries (UE)	Minneapolis, MN	9/13/85	9/9/85	TA-W-16,420	Lubricating equipment.
Nationwide Studios, Inc. (workers)	Miami, FL	9/11/85	9/1/85	TA-W-16,421	Children photos for printed T-shirts, tote bags puzzels
Northwest Automatic Products, Inc. (UE)	Minneapolis, MN	9/13/85	[illegible]	TA-W-16,422	Custom machine parts.
Opelika Manufacturing (ACTWU)	Opelika, AL	9/9/85	9/6/85	TA-W-16,423	Grey-textile fabrics
Great Western Sugar (workers)	Billings, MT	9/12/85	[illegible]	TA-W-16,424	Process raw sugar beets
U.S. Steel Corp., Technical Center (workers)	Monroeville, PA	9/11/85	9/5/85	TA-W-16,425	Flat rolled steel, structural steel, galvanized steel, ware products, tubular products.
U.S. Steel Corporation (USWA)	McKees Rock, PA	9/9/85	[illegible]	TA-W-16,426	[illegible] tubes.

[FR Doc. 85-22787 Filed 9-23-85; 8:45 am]

BILLING CODE [illegible]

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Advisory Committee; Closed Meeting

A meeting of the National Security Telecommunications Advisory Committee (NSTAC) will be held on October 9, 1985. The business session of the meeting will be held at the Department of State in the Loy Henderson Conference Room, 2201 C Street, NW., Washington, DC. An executive session of the meeting will be held in the Indian Treaty Room of the Old Executive Office Building, Washington, DC.

Business Session

—Call to Order
—Welcome from State Department
—Government response to NSTAC IV Recommendations
—Report from Industry
—NSTAC V Deliberations
—Closing Remarks
—Adjournment

Executive Session

—Call to Order
—Discussion with Government Officials
—NSTAC Closing Discussion
—Adjournment

Due to the requirement to discuss classified information in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (202-692-9274) or write the Manager, National Communications System, Washington, DC 20305.

Robert S. Williams,

Colonel, USA, Assistant Deputy Manager.

[FR Doc. 85-22777 Filed 9-23-85; 8:45 am]

BILLING CODE [illegible]

NUCLEAR REGULATORY COMMISSION

The Christ Hospital; Confirmatory Order Modifying License

[License No. 34-03831-02; EA 85-84]

I

The Christ Hospital ("the licensee") 2139 Auburn Avenue, Cincinnati, Ohio 45219, holds Byproduct Material License No. 34-03831-02, which authorizes the licensee to possess and use various licensed materials for diagnostic and therapeutic purposes. The license was issued on April 18, 1963 and the licensee's renewal application is currently being reviewed.

II

On July 17 and 18, 1985, a patient received a radiation therapy treatment with iridium-192 seeds. Lack of adequate communcation between the authorized user and the physicist resulted in the patient receiving a 14,000 rad dose instead of the 5,000 rad dose that was prescribed. The licensee informed the NRC of the misadministration of June 19, 1985.

The misadministration was reviewed during a special safety inspection that was conducted by the NRC Region III staff on June 26, 1985 at the licensee's facility. The misadministration resulted from a failure on the part of involved personnel to verify that a calculation had been performed prior to the start of therapy.

Although the misadministration did not constitute a violation of NRC regulatory requirements, the NRC is concerned that the circumstances surrounding the misadministration reflect inadequate control over the safe use of licensed material. Particularly, the NRC is concerned about the lack of formalized procedures which contributed to this event. The licensee was contacted by the NRC Region III staff during a telephone Enforcement Conference on July 10, 1985 to discuss the circumstances surrounding the event and the licensee's proposed corrective

actions to reduce the possibility of another misadministration. The licensee had previously submitted corrective actions to the NRC in a letter dated June 28, 1985.

The letter dated June 28, 1985, outlines the licensee's procedure for radioactive material implants. In this submittal, the licensee stated:

1. Physician implant prescriptions will be written and completed by the physician in accordance with sections 1a and 1b of the Radioactive Material Implant Procedures.

2. For new prescriptions, the Implant Dosimetry Form and the Intracavitary/Interstitial Summary Sheet will be reviewed by the Medical Director upon completion of the form.

3. After the physician's written prescription is completed, the dosimetrist or physicist will, within a half working day, complete TOTAL TIME and DOSE RATE items on the Intracavitary/Interstitial Summary Sheet and will provide this information to the radiotherapist in writing. Where isodose cure data is essential in determining prescription parameters (e.g., Ir-192 temporary implant), the computer plan will be completed within a half working day from the time radiographs are completed.

4. Radiographic confirmation of source distribution will be obtained for all radioactive material procedures. Computer documentation of dose distribution will be provided at the request of the radiotherapist.

The NRC staff has reviewed the licensee's Radioactive Materials Implant Procedures. Implementation of these procedures should provide enhanced assurance that all calculations for treatment are accurately made and verified and that licensed material is safely used. Accordingly, to ensure continued implementation of the licensee's commitments, I have determined that the public health, safety, and interest require confirmation of the licensee's commitments by an immediately effective Order.

III

Accordingly, pursuant to sections 81, 161b and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2, 30, and 35, it is hereby ordered, effective immediately, that:

The licensee shall implement the Radioactive Material Implant Procedure described in numbered paragraphs 1 through 4 of Section II of this Order. The Regional Administrator may relax or terminate these conditions in writing for good cause shown by the licensee.

IV

The licensee or any other person with an interest adversely affected by this Order may request a hearing on this Order. Any request for hearing shall be sent within 25 days of the date of issuance of this Order to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of any hearing request shall also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Dated at Bethesda, Maryland this 11th day of September 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 85-22816 Filed 9-23-85; 8:45 am]

BILLING CODE

[Docket Nos. 50-250-OLA-1, 50-251-OLA-1; ASLBP No. 84-496-03 LA (Vessel Flix Reduction)]

Florida Power & Light Co., (Turkey Point Plant, Units 3 & 4); Order Scheduling Hearing

September 18, 1985.

This proceeding concerns License Amendments No. 93 and 99 issued for the Turkey Point nuclear reactors on December 23, 1984. The amendments to the technical specifications of Operating Licenses DPR-41 and DPR-31 were requested to support Florida Power & Light Company's (Licensee's) program for reduction of neutron bombardment (vessel flux) and consequent embrittlement of the pressure vessel walls. Notice of the proposed amendments was published in the **Federal Register** on October 7, 1983. 48 FR 45,862-63. On August 16, 1985, this Licensing Board denied Licensee's Motion for Summary Disposition on Intervenor's Contention (d), finding that genuine issues as to material facts remain for litigation. LBP-85-29, 22 NRC—— (1985).

On September 9, 1985, Licensee filed a Motion to Establish Schedule for Hearings. In its Motion, Licensee informed the Licensing Board that the NRC Staff supported the schedule proposed but that the Center for Nuclear Responsibility, Inc., and Joette Lorion (Intervenors) did not. With all parties participating, the Board on September 12, 1985, conducted a prehearing conference by telephone and heard oral argument concerning Licensee's Motion.

At the conclusion of the prehearing conference, the Board stated that it would grant Intervenors a portion of the extension of time requested by them, and identified two possible target dates for convening the evidentiary hearing. The parties were told that the exact time and place would be announced as soon as definite arrangements were made.

Order

Wherefore, it is ordered, in accordance with the Atomic Energy Act, as amended, and the Rules of Practice of the Commission, and please take notice:

1. That an evidentiary hearing in this proceeding shall commence at 9:30 a.m., local time, Tuesday, December 10, 1985 at: United States District Courthouse, Old Building, 300 NE First Avenue, Miami, Florida 33101.

2. That the hearing shall be conducted continuously day to day until all evidence on matters outstanding has been received or until continued by further order of the Board;

3. That written direct testimony shall be served on the parties and the Licensing Board by express mail or its equivalent by November 25, 1985, or by hand delivery by November 26, 1985; and

4. That all persons who request the opportunity to make a limited appearance shall be afforded an opportunity to state their views or to file a written statement regarding matters within the scope of this license amendment proceeding on the first day of the hearings or at such other times as the Licensing Board may for good cause designate.

For the Atomic Safety and Licensing Board.

Dated at Bethesda, Maryland, this 18th day of September, 1985.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 85-22817 Filed 9-23-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed

meetings published August 21, 1985 (50 FR 33873). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or reschduled, or whether changes have been made in the agenda for the October 1985 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634–3265, ATTN: Barbara Jo White) between 8:15 a.m. and 5:00 p.m., Eastern Time.

ACRS Subcommittee Meetings

Advance Reactors, September 25, 1985, Washington, DC. The Subcommittee will discuss the proposed policy for regulation of advanced nuclear power plants.

Class 9 Accidents, September 27, 1985, Washington, DC. The Subcommittee will continue its discussion of draft NUREG–0956, "Source Term Reassessment," with the NRC Staff.

Davis-Besse, October 4, 1985, Toledo, OH. The Subcommittee will review actions taken prior to restarting following the loss of feedwater incident.

Reliability Assurance (Valves), October 8, 1985, Washington, DC. The Subcommittee will continue discussions on valve reliability. A risk perspective on valve performance will be sought. Also to be studied is the importance of valves from a safety standpoint.

Regulatory Activities, October 8, 1985, Washington, DC. The Subcommittee will review: (1) Proposed Regulatory Guide 1.23, Revision 1, "Meteorological Measurement Program for Nuclear Power Plants," (2) proposed Regulatory Guide (Task No. IC 609–5), "Criteria for Power, Instrumentation, and Control Portions of Safety Systems," and (3) proposed Regulatory Guide 1.105, Revision 2, "Instrument Setpoints for Safety-Related Systems".

Nuclear Plant Chemistry, October 8, 1985, Washington, DC—CANCELLED.

Joint Site Evaluation and Extreme External Phenomena, October 9, 1985, Washington, DC. The Subcommittees will evaluate, from a probabilistic approach, the relative importance of natural phenomena, in terms of their potential impacts on Emergency Planning and attempt to develop an ACRS consensus view on this rulemaking, i.e., Final Amendments to 10 CFR Part 50, Paragraph 50.47 and Appendix E; Consideration of Earthquakes in Emergency Preparedness.

State of Nuclear Power Safety, October 9, 1985, Washington, DC. The Subcommittee will discuss the draft report on the "State of Nuclear Power Safety" in preparation by the Subcommittee.

Safety Philsophy, Technology, and Criteria, October 9, 1985, Washington, DC (1:00 P.M.). The Subcommittee will continue the review of the two-year trial use of the proposed Safety Goal Policy, the future use of safety goals, and containment performance guidelines.

Regulatory Policies and Practices, October 16, 1985, Washington, DC. The Subcommittee will discuss recommendations made by Judge Cotter, ASLBP, and OPE related to the establishment of an "NTSB" like organization within NRC.

Joint Reactor Radiological Effects and Fire Protection, October 18, 1985, Washington, DC. The Subcommittee will review the increased N–16 radioactivity and fire protection problems associated with hydrogen addition to BWRs to reduce Intergranular Stress Corrosion Cracking in reactor coolant piping.

Joint Waste Management and Metal Components, October 24 and 25, 1985, Washington, DC. The Subcommittee will: (1) Review SECY–85–147A, Regulatory-Exempt Radiation Levels (de minimis values), dated July 25, 1985, (2) review DOE's proposed position paper on Retrievability and Retrieval for a Geologic Repository, and NRC Staff's comments on it, (3) if available by the meeting date, review the Commission's request or directive to the ACRS regarding the Committee's role in the High-Level Radioactive Waste Management Geologic Repository Program, and (4) review the philosophy and results of NRC High-Level Radioactive Waste form and container materials research programs.

Beaver Valley Power Station Unit 2, November 1, 1985, Pittsburgh, PA. The Subcommittee will review the application of the Duquesne Light Company for an operating license for Beaver Valley Unit 2.

Reactor Operations, November 4, 1985, Washington, DC. The Subcommittee will review recent operating experience.

Standard Plant Design, November 5, 1985, Washington, DC. The Subcommittee will be briefed by the NRC Staff on the Status of standard plant design.

Long Range Plan for NRC, November 6, 1985, Washington, DC. The Subcommittee will continue discussions on developing comments on a long range plan for the NRC. Topics to be discussed are primarily technical issues related to the regulaton of nuclear plant safety and safety regulation over the next 5 to 10 years.

Qualification Program for Safety-Related Equipment, November 6, 1985 (tentative), Washington, DC. The Subcommittee will discuss resolution and implementation of USI A–46.

Joint Reliability and Probabilistic Assessment and Safety Philosophy, Technology, and Criteria, November 6, 1985 (tentative), Washington, DC. The Subcommittees will: (1) Continue the review of the two-year trial use of the Proposed Safety Goal Policy, (2) review the NRC Staff proposed resolution for USI A–17, "System Interactions in Nuclear Power Plants," and (3) review the status of the ongoing NRC Staff work on steam generator overfill.

Decay Heat Removal System, Week of November 11, 1985, Washington, DC. The Subcommittee will continue the review of the NRR resolution position for USI A–45, "Shutdown Decay Heat Removal Requirements."

Emergency Core Cooling Systems, Week of November 18, 1985, Palo Alto, CA. The Subcommittee will continue the review of the joint NRC/B&WOG/EPRI/B&W joint IST Program. A visit is planned to the EPRI Stanford Research Institute facilities supporting this Program.

Millstone Point Units 1–3, November 18 and 19, 1985, Waterford, CN. The Subcommittee will review the Northeast Nuclear Energy Company's application for conversion of the Provisional Operating License to a Full-Term Operating License.

Fort St. Vrain, Date to be determined (October/November), near Longmont, CO. The Subcommittee will tour the facility, explore technical problems addressed during the recent extended outage, and discuss management changes made as a result of the licensee's independent assessment of management controls.

Quality and Quality Assurance in Design and Construction, Date to be determined (November, tentative), Washington, DC. The Subcommittee will discuss with the NRC Staff such programs as CAT, IDVP, IDI, and readiness review to ensure quality in nuclear plant design and construction. Further, a discussion with the Staff of

their program to deal with allegations at the OL stage (i.e., Comanche Peak). Emphasis should be on comparing the resources required by the various programs and the effectiveness of the programs in assuring quality of plant design, construction and readiness for operation.

Human Factors, Date to be determined (November), Washington, DC. The Subcommittee will explore methods for deciding what actions should be automated in nuclear power plant operation.

South Texas Units 1 and 2, Date to be determined (December), Washington, DC. The Subcommittee will review Houston Lighting and Power Company's application for an operating license.

Quality and Quality Assurance In Design and Construction, Date to be determined (December, tentative), Washington, DC. The Subcommittee will: (1) review the final Rule on the "Important to Safety Issue", and (2) be briefed on the "NRC Quality Assurance Program Implementation Plan."

Reliability and Probabilistic Assessment, Date to be determined (Fall, tentative), Washington, DC. The Subcommittee will review the probabilistic risk assessment for Millstone 3.

Scram Systems Reliability, Date to be determined, Washington, DC. The Subcommittee will discuss scram breaker reliability for B&W and CE plants and continue its review of the ATWS Rule implementation effort.

CE Nuclear Plants, Date to be determined, Washington, DC. The Subcommittee will discuss the issue of rapid depressurization for CE plants without PORVs.

ACRS Full Committee Meeting

October 10–12, 1985: Items are *tentatively* scheduled.

*A. *Advanced Reactors*—discuss proposed NRC Policy Statement regarding advanced reactors.

*B. *Meeting with NRC Commissioners*—discuss ACRS report of July 17, 1985 regarding EPA Standards for High Level Radioactive Waste Disposal.

*C. *Committee to Review Generic Requirements (CRGR)*—briefing regarding activities of CRGR.

*D. *Davis-Besse Nuclear Plant*—briefing by NRC representatives regarding plans to restart this facility.

*E. *General Electric Standard Safety Analysis Report (GESSAR–II)*—discuss proposed ACRS comments regarding the FDA for this type of nuclear facility.

*F. *Regulatory Activities*—report of ACRS Subcommittee regarding proposed changes in NRC Regulatory Guides including meteorological measurement change in NRC Regulatory Guides including meteorological measurement programs, criteria for power, instrumentation and control portions of safety systems, and instrument setpoints for safety-related systems.

*G. *Quantitative Safety Goals*—report of ACRS Subcommittee and discussion regarding proposed NRC safety goals policy statement.

*H. *Nuclear Source Term*—report of ACRS Subcommittee and discussion regarding the proposed NRC Assessment of Source Terms (NUREG–0956).

*I. *Resolution of Safety Issues*—report of the ACRS Subcommittee and discussion regarding the identification of significant safety issues in need of resolution.

*J. *Emergency Planning*—report of ACRS Subcommittee and discussion regarding consideration of extreme external phenomena in emergency planning.

*K. *Future Agenda Items*—the members will discuss items planned for subcommittee evaluation and topics proposed for consideration by the full Committee including the Turkey Point loss of feedwater incident, seismic design margins and further consideration of pressurized thermal shock in reactor pressure vessels.

*L. *TVA Nuclear Power Plants*—briefing regarding proposed changes in TVA organization to correct deficiencies in construction and operation of TVA nuclear power plants.

*M. *ACRS Activities*—discuss proposed scope and format of the ACRS annual report to the U.S. Congress on the NRC regulatory research program. In addition, discuss proposed ACRS reports/comments on the use of natural ability selection procedures for nuclear power plant operators, and the application of the Indian Point Nuclear Plant probabilistic risk assessment to the design and operation of this station.

November 7–9, 1985—Agenda to be announced.

December 5–7, 1985—Agenda to be announced.

Dated: September 19, 1985.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 85–22818 Filed 9–23–85; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Regulatory Activities; Meeting

The ACRS Subcommittee on Regulatory Activities will hold a meeting on October 8, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, October 8, 1985—9:00 a.m. until the conclusion of business.

The Subcommittee will review the following: (1) Proposed Regulatory Guide 1.23, Revision 1, "Meteorological Measurement Program for Nuclear Power Plants," (2) Proposed Regulatory Guide (Task No. IC 609–5), "Criteria for Power, Instrumentation, and Control Portions of Safety Systems," and (3) proposed Regulatory Guide 1.105, Revision 2, "Instrument Setpoints for Safety-Related Systems."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Sam Duraiswamy (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: September 18, 1985.

Morton W. Libarkin, *Assistant Executive Director for Project Review.*

[FR Doc. 85–22819 Filed 9–23–85; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Reliability Assurance (Valves); Meeting

The ACRS Subcommittee on Reliability Assurance (Valves) will hold a meeting on October 8, 1985, Room 1167, 1717 H Street, NW, Washington, D.C.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, October 8, 1985—8:30 a.m. until the conclusion of business.

The Subcommittee will continue discussions on valve reliability. A risk perspective on valve performance will be sought. Also to be studied is the importance of valves from a safety standpoint.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review

Further information regarding topics to be discussed, whether the meetings has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (Telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: September 28, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–22820 Filed 9–23–85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Safety Philosophy, Technology, and Criteria; Meeting

The ACRS Subcommittee on Safety Philosophy, Technology, and Criteria will hold a meeting on October 9, 1985, Room 1167, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, October 9, 1985–1:00 p.m. until the conclusion of business.

The Subcommittee will continue the review of the two-year trial use of the proposed Safety Goal Policy, the future use of safety goals, and containment performance guidelines.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that approprite arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time alloted therefor can be obtained by a prepared telephone call to the cognizant ACRS staff member, Dr. Richard Savio (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: September 18, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–22821 Filed 9–23–85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on State of Nuclear Power Safety; Meeting

The ACRS Subcommittee on State of Nuclear Power Safety will hold a meeting on October 9, 1985, Room 1167, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday October 9, 1985–8:30 a.m. until the conclusion of business

The Subcommittee will discuss the draft report on the "State of Nuclear Power Safety" in preparation by the Subcommittee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee will exchange views regarding matters pertaining to the draft Subcommittee report on the state of nuclear power safety.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Anthony Cappucci (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any

changes in schedule, etc., which may have occurred.

Dated: September 18, 1985.

Morton W. Libarkin,

Executive Director for Project Review.

[FR Doc. 85-22822 Filed 9-23-85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination Regarding the Application of Certain International Agreements

This notice modifies the determination published in the Federal Register of January 4, 1980 (45 FR 1181), as amended by determinations published at 45 FR 18547, 45 FR 36569, 45 FR 63402, 45 FR 85239, 46 FR 24059, 46 FR 40624, 46 FR 46263, 46 FR 48391, 47 FR 16697, 49 FR 47467, 50 FR 8428, 50 FR 9342, and 50 FR 18335.

Under section 1-103(b) of Executive Order 12188 of January 2, 1980, the functions of the President under section 2(b) of the Trade Agreements Act of 1979 (the Act) and section 701(b) of the Tariff Act of 1930 as amended, are delegated to the United States Trade Representative (the Trade Representative), who shall exercise such authority with the advice of the Trade Policy Committee.

Now therefore, I, Clayton Yeutter, United States Trade Representative, pursuant to section 2(b) of the Trade Agreements Act of 1979, section 701(b) of the Tariff Act of 1930, and section 1-103(b) of Executive Order 12188, do hereby determine, effective on the date of signature of this Notice, that:

With respect to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (Subsidies Code), Israel has accepted the obligations of the Agreement with respect to the United States and should not otherwise be denied the benefits of the Agreement.

In accordance with section 702(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1671(b)), as of September 18, 1985, Israel is a "country under the Agreement."

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 85-22745 Filed 9-23-85; 8:45 am]

BILLING CODE 3190-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

State Agency Advisory Committee; Regular Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its State Agency Advisory Committee, to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Discussion of the draft 1985 Power Plan.

DATE: Thursday, October 3, 1985. 9:00 a.m.

ADDRESS: The meeting will be held at the Council's Central Office, 850 SW Broadway; Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Jim Litchfield, (503)222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-22728 Filed 9-23-85; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 Fifth Street, NW., Washington, D.C. 20549.

Extension

Rule 17f-2 [17 CFR 270.17f-2]

File No. 270-233

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17f-2 under the Investment Company Act of 1940, Custody of investment by registered management company.

Comments should be submitted to OMB Desk Officer: Katie Lewin, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

September 18, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-22797 Filed 9-23-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14727; File No. 812-6672]

The Rightime Fund, Inc.; Application and Opportunity for Hearing

September 17, 1985

Notice is hereby given that The Rightime Fund, Inc. ("Applicant"), The Benson East Office Plaza, Jenkintown, PA 19046, filed an application on March 11, 1985, and amendments thereto on May 31, and August 15, 1985, for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting applicant from section 17(f) of the Act to the extent necessary to permit Applicant's proposed transactions in Financial Futures Contracts (as hereinafter defined) and its related practices in connection with margin deposits and in connection with variation margin owed to Applicant. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of all applicable provisions thereof.

Acording to the application, Applicant is registered under the Act as an open-end, diversified management investment company. The application states that other than for defensive purposes Applicant will concentrate its investments in shares of other open-end investment companies in accordance with the provisions of section 12(d)(1) of the Act. Applicant states that its investment objective is to achieve for its investors a high total return consistent with reasonable risk. Applicant states that to this end, it will generally select investment believed to offer substantial potential for capital appreciation or high current income. Applicant further states that it will vary its investments between growth-oriented funds and income-oriented funds at various times when deemed appropriate to take advantage of price cycles and market trends in the securities markets. Applicant states that on occasion, either to avoid losses or protect gains achieved by Applicant, and to avoid the necessity to readjust the composition of the portfolio (and the cost and risks attendant upon such readjustment) Applicant, solely as a hege against possible market changes.

and not for speculation, will enter into certain options contracts,or into interest rate futures contracts and stock index futures contracts (the latter two being referred to heren collectively as, "Financial Futures Contracts").

The application states that upon entering into a Financial Futures Contract, Applicant must post an "initial" margin deposit with the commodities broker effecting the transaction. Applicant states that if for any day the net equity of the Applicant's account with the broker falls below the required margin deposit, Applicant must make a "variation margin" payment to increase the equity in the account. Similarly, if the Applicant's open futures contract positions with any broker experience a net gain for any day, the broker is obligated to pay Applicant variation margin in the amount of that excess (unless part of that variation margin is retained by the broker in order that the account may continue to meet the minimum margin requirements). Applicant submits that margin deposits posted by Applicant and variation margin owed to Applicant by brokers in connection with financial Futures Contracts might be deemed to be required under section 17(f) of the Act to be held by Applicant's custodian.

In support of its requested relief from section 17(f), Applicant undertakes, with respect to Financial Futures Contracts, that its custodial agreement will always provide for the transfer of the margin deposit assets maintained for each broker into a separate segregated account with the custodian and to provide that (1) the custodian will take instructions with respect to disposition of assets in that account only from that broker and (2) in directing the disposition of these assets, the broker msut state that Applicant is in default on an obligation to perform on a contract, that all conditions precedent to its right to direct disposition have been satisfied, and that the disposition is for a proper purpose under, and in all other respects complies with, the terms of its agreement with Applicant. Applicant represents that it will enter into an agreement with each broker which would provide (1) that Applicant's assets that would otherwise be physically held by the broker would be in the possession of the custodian until released or sold or otherwise disposed of in accordance with or under the terms of that agreement, (2) that those assets would not otherwise be pledged or encumbered by the broker, (3) that when requested by Applicant, the broker would cause the custodian to release to Applicant's general custodial account any assets to which Applicant is entitled under the terms of such agreement and (4) that assets in the segregated account shall otherwise be used only to satisfy Applicant's obligations to the broker under the terms of that agreement. Applicant represents that it will promptly cause to be transferred to the general custodial account any amounts no longer required as margin to support its futures contracts. Applicant further reresents that in the prospectus used for the sale of its shares, Applicant will appropriately disclose the risk of loss or delay in recovery of margin deposits in the event of a broker's insolvency or bankruptcy, although the foregoing arrangements are intended to reduce that risk.

Applicant states that any variation margin payable by a broker to Applicant which reflects net gains will be immediately shown as increased equity in Applicant's account with the relevant broker and will be immediately credited to Applicant's net asset value. Applicant undertakes that each day it will monitor excess variation margin in order to promptly demand, on a daily basis, payment and transfer of excess amounts from a broker to Applicant's custodian (for the general or segregated custodial account, as appropriate) whenever and to the extent the amount of variaton margin owed to Applicant by a given broker exceeds $50,000 ("excess variation margin"), and to the extent necessary to maintain the aggregate amount of excess variation margin at a level which will not exceed the lesser of (1) the greater of $100,000 of ⅛ of 1% of Applicant's total assets, or (2) five percent of the total assets of Applicant; all in order to minimize any risk of loss of the variation margin to which it is entitled. In other words, no more than 5% of the Applicant's total assets, $100,000, or ⅛ of 1% of the Applicant's total assets may be left on deposit in the aggregate with brokers as excess variation margin.

Applicant states that it may be unable to conduct its business in the manner set forth in the application if it is determined that section 17(f) of the Act is a bar to such transactions as are proposed. Applicant believes, therefore, that the requested exemption is necessary and appropriate in the public interest and, when limited and controlled as set forth in the application, is consistent with the protection of investors and the purposes fairly intended by the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 11, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, or fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-22798 Filed 9-23-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22418; File No. ODD-85-2]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval to Proposed Amendments to Option Disclosure Document

On July 30, 1985, the Options Clearing Corporation ("OCC"), and the American Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the New York Stock Exchange, Inc., the Pacific Stock Exchange, Inc., the Philadelphia Stock Exchange, Inc. (the "Exchanges") and the National Association of Securities Dealers, Inc. ("NASD"), [collectively, the self-regulatory organizations ("SROs")] submitted amended copies of an options disclosure document to the Commission pursuant to Rule 9b-1 ("Rule") of the Securities Exchange Act of 1934 ("Act").[1] As amended, the disclosure document consolidates into a single, revised document, information formerly found in four separate disclosure booklets titled, respectively, "Understanding the Risks and Uses of Listed Options," "Listed Options on Stock Indices," "Listed Options on Foreign Currencies," and "Listed Options on Debt Instruments."

The disclosure document has been amended to reflect recent, significant changes in the options markets. The revised disclosure document discusses the designation of the NASD as an options market,[2] proposed new products

[1] 17 CFR 240. 9b-1 (1985).

[2] *See* Securities Exchange Act Release No. 22026 (May 8, 1985), 50 FR 20310.

such as European-style options [3] and options on the European Currency Unit.[4]

In addition, separate, detailed sections on the uses of the options classes covered by the document have been deleted from the revised disclosure document. OCC and the options markets believe that this information increases the size and complexity of the document thereby decreasing the likelihood that public investors will read the disclosure document. The OCC and the options markets also believe that the present discussion of uses in the disclosure document is redundant of thorough discussions published and widely disseminated by the options exchanges and broker-dealers. Accordingly, the OCC has requested [5] that the Commission exempt the SROs from the requirement in paragraph (c)(4) of the Rule, that a disclosure document contain information concerning the uses of standardized options.

Paragraph (c) of the Rule empowers the Commission to exempt an options disclosure document from the specific disclosure requirements of the Rule. The Commissin believes it is consistent with the protection of investors to exempt the SROs from the requirement that the document contain information on the uses of options, as of the date of this Order. This exemption is being granted in connection with the issuance today of a Commission release soliciting comment on a proposed amendment to Rule 9b–1 requested by the SROs. The proposed amendment would eliminate from paragraph (c)(4) of the Rule the requirement that an options disclosure document discuss the uses of standardized options.[6]

Rule 9b–1 provides that an options market must file five preliminary copies of an options disclosure document with the Commission at least 60 days prior to the date definitive copies are furnished to customers unless the Commission determines otherwise having due regard to the adequacy of the information disclosed and the protection of investors. This provision is intended to permit the Commission either to accelerate or extend the time period definitive copies of a disclosure document may be distributed to the public.

The Commission has reviewed the amended disclosure document, and finds it is consistent with the protection of investors and in the public interest to allow the distribution of the disclosure document as of the date of this order.[7]

By the Commission.

Dated: September 17, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–22799 Filed 9–23–85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of Grants and Denials of Applications and Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in August 1985. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) Affected	Nature of Exemption Thereof
2582–X	DOT–E [illegible]	Ozark-Mahoning Company, Tulsa, OK	49 CFR 175.3, Part 173, Subparts D, E, F, G.	To renew and to authorize certain oxidizers as additional commodities (modes 1, 2, 3, 4).
2582–P	DOT–E 2582	Stauffer Chemical Company, Westport, CT.	49 CFR 175.3, Part 173, Subparts D, E, F, G.	To become a party to Exemption 2582 (modes 1, 2, 3, 4).
2709–P	DOT–E 2709	IRECO Incorporated Salt Lake City, UT	49 CFR 173.52, 173.93, 177.821, 177.834(L)(1), 177.835(k).	To become a party to Exemption 2709 (mode 1).
2913–X	DOT–E [illegible]	U.S. Department of Energy, Washington, DC.	49 CFR 172.101, 173.301(d)(1), 173.301(d)(2), 173.302(a)(1), 173.34(d), 175.3.	To authorize use of non-DOT specification metal cylinders, for transportation of certain nonflammable and flammable nonliquefied compressed gases (modes 1, 4).
4354–X	DOT–E 4354	Pennwalt Corporation, Buffalo, NY	49 CFR 173.119(m), 173.245, 173.288(d), 173.288(e).	To authorize shipment of chloroformates in DOT Specification 6D or 37M cylindrical steel overpack with an inside DOT Specification 2S, 2SL or 2T polyethylene container (modes 1, 2, 3).
4354–X	DOT–E [illegible]	Vanchem, Inc., Lockport, NY	49 CFR 173.119(m), 173.245, 173.288(d), 173.288(e).	To authorize shipment of chloroformates in DOT Specification 6D or 37M cylindrical steel overpack with an inside DOT Specification 2S, 2SL or 2T polyethylene container (modes 1, 2, 3).
4354–X	DOT–E 4354	PPG Industries, Incorporated, Pittsburgh, PA.	49 CFR 173.119(m), 173.245, 173.288(d), 173.288(e).	To authorize shipment of chloroformates in DOT Specification 6D or 37M cylindrical steel overpack with an inside DOT Specification 2S, 2SL or 2T polyethylene container (modes 1, 2, 3).
4453–P	DOT–E [illegible]	ECONEXPRESS Incorporated, Wheaton, IL.	49 CFR 173.114a(h)(3)	To become a party to Exemption 4453 (mode 1)

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[3] *See* File No. SR–CBOE–84–31, Securities Exchange Act Release No. 22043 (May 15, 1985), 50 FR 21381.

[4] *See* File No. SR–Phlx–85–10, Securities Exchange Act Release No. 22056 (May 20, 1985), 50 FR 21536.

[5] *See* letter from Marc L. Berman, General Counsel, OCC, to Richard T. Chase, Associate Director, Division of Market Regulation, dated July 30, 1985.

[6] *See* Securities Exchange Act Release No. 34–22419 (September 17, 1985). The Commission has determined that it is in the public interest to approve the use of the amended options disclosure document prior to such time as Rule 9b–1 may be amended, in view of the anticipated start-up of options trading on the NASDAQ market in September 1985, among other matters. The Commission, of course, would have to revisit the appropriateness of not including such a separate discussion in reviewing subsequent disclosure materials, in the event it did not determine to amend Rule 9b–1 to eliminate the use disclosure requirement.

[7] Rule 9b–1 provides that the use of an options disclosure document shall not be permitted unless the options class(es) to which the document relates is the subject of an effective registration statement on Form S–20 under the Securities Act of 1933. On September 16, 1985, Post-Effective Amendment No. 1 to OCC's Form S–20 registration statement covering the options described in the SROs' Options Disclosure Document will become effective. *See* File No. 2–86384.

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	ExemptionNo	Applicant	Regulation(s) Affected	Nature of Exemption Thereof
4453-X	DOT-E 4453	Atlas Powder Company, Dallas, TX	49 CFR 173.114a(h)(3)	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures (mode 1).
4453-P	DOT-E 4453	D & J Maurer, Inc., Philipsburg, PA	49 CFR 173.114a(h)(3)	To become a party to Exemption 4453 (mode 1).
4453-P	DOT-E 4453	Kesco, Incorporated, Kittanning, PA	49 CFR 173.114a(h)(3)	To become a party to Exemption 4453 (mode 1).
4459-X	DOT-E 4459	Allied Healthcare Products, Inc. Saint Louis, MO	49 CFR 173.302(a)(1), 173.304(a)(1), 173.328(a)(2), 173.353(a)(3), 175.3, 178.37.	To authorize manufacture, marking and sale of non-DOT specifications cylinders, for shipment of flammable, nonflammable gases, Class A and B poison and mixtures thereof (modes 1, 2, 4)
4717-X	DOT-E 4717	Norchem, Inc., Omaha, NE	49 CFR 173.314(c)	To authorize shipment of ethane in non-DOT specification, insulated tank car tanks designed and constructed to comply with the AAR proposed Specification 113D120W (mode 2).
4719-X	DOT-E 4719	Allied Corporation, Morristown, NJ	49 CFR 173.314(c), 173.315(a)(1), 179.102-11.	To authorize shipment of certain compressed gases not listed in 49 CFR 173.314 and 173.315, in DOT Specification MC-330 and MC-331 cargo tanks or 105A300W, 112A340W, 114A340W, 106A500, 106A500X and 110A500W tank car tanks (modes 1, 2).
4990-X	DOT-E 4990	Schenley Distillers, Inc., Lawrenceburg, IN	49 CFR 173.125	To authorize use of AAR Specification 206W tank car, for transportation of certain flammable liquids (mode 2).
5600-P	DOT-E 5600	Stauffer Chemical Co., Westport, CT	49 CFR 175.3, Part 173, Subparts D	To become a party to Exemption 5600 (modes 1, 2, 4)
5600-X	DOTpE 5600	Ozark-Mahoning Company, Tulsa, OK	49 CFR 175.3, Part 173, Subparts D	To authorize certain oxidizers as additional commodities (modes 1, 2, 4).
5876-X	DOT-E 5876	FMC Corporation, Countryside, Il	49 CFR 173.365, 178.241, Part 107, Appendix B	To authorize transport of a Class B poison in DOT Specification 44D multiwall paper bags or non-DOT specification pinch bottom, heat-sealed multiwall bags (modes 1, 2, 3).
5945-X	DOT-E 5945	Cardox Corporation, Countryside, IL	49 CFR 173.315, 178.245	To authorize use of a small capacity DOT Specification 51 insulated portable tank, for shipment of a nonflammable compressed gas (mode 1)
6267-X	DOT-E 6267	Imperial Plastics, Evansville, IN	49 CFR 173.154, 173.217(a)	To become a party to Exemption 6267 (modes 1, 2, 3).
6267-P	DOT-E 6267	Chem-Tab Chemical Corporation, Carson, CA.	49 CFR 173.154, 173.217(a)	To become a party to Exemption 6267 (modes 1, 2, 3).
6610-P	DOT-E 6610	Phillips Petroleum Company, Bartlesville, OK.	49 CFR 173.221	To become a party to Exemption 6610 (modes 1, 2).
6614-X	DOT-E 6614	Esbro Chemical, Redwood City, CA	49 CFR 173.263(a)(26), 173.277(a)(6)	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for tranportation of certain corrosive liquids, (mode 1).
6614-X	DOT-E 6614	Jones Chemicals, Inc., Caledonia, NY	49 CFR 173.263(a)(26), 173.277(a)(6)	To authorize use of non-DOT specification polyethylene bottles, packed inside a high density polyethylene box, for transportation of certain corrosive liquids (mode 1).
6825-X	DOT-E 6825	Richmond Lox Equipment Company, Livermore, CA.	49 CFR 173.314(c)	To authorize manufacture, marking and sale of DOT Specification 113C120W vacuum insulated tank car tanks, for transportation of a liquefied flammable compressed gas (mode 2).
6902-X	DOT-E 6902	Great Lakes Chemical Corp., El Dorado, AR	49 CFR 173.314(c), 179.300-15	To authorize shipment of a liquefied nonflammable compressed gas, in a modified DOT Specfication 110A800W multi-unit tank car tank (modes 1, 2).
6922-P	DOT-E 6922	General Electric Company, Waterford, NY	49 CFR 173.314(c), 179.300-15	To become a party to Exemption 6922 (modes 1, 2, 3).
7052-P	DOT-E 7052	Monaco Enterprises, Inc., Spokane, WA	49 CFR 172.101, 175.3	To become a party to Exemption 6922 (modes 1, 2, 3, 4).
7052-P	DOT-E 7052	Exploration Logging Inc., Sacramento, CA.	49 CFR 172.101, 175.3	To become a party to Exemption 7052 (modes 1, 2, 3, 4).
7052-P	DOT-E 7052	Flopetrol Johnston, a Division of Schlumberger, Houston, TX.	49 CFR 172.101, 175.3	To become a party to Exemption 7052 (modes 1, 2, 3, 4).
7235-X	DOT-E 7235	Luxfer U.S.A., Ltd., Riverside, CA	49 CFR 173.302(a)(1), 175.3	To renew and to eliminate the thermal cycling test and the gunfire test (modes 1, 2, 3, 4, 5).
7235-X	DOT-E 7235	Luxfer U.S.A., Ltd., Riverside, CA	49 CFR 173.302(a)(1), 175.3	To authorize cylinders for shipment of various flammable or nonflammable compressed gases to be manufactured with neck rings (modes 1, 2, 3, 4, 5).
7274-X	DOT-E 7274	Union Carbide Corporation, Danbury, CT.	49 CFR 172.101, 173.315(a)	To authorize use of non-DOT specification portable tanks, for shipment of certain nonflammable gases (mode 3).
7957-X	DOT-E 7957	Process Engineering, Incorporated, Plaistow, NH.	49 CFR 173.315(a)(1), 173.33(a), 177.824(c)(4), 178.337.	To authorize manufacture, marking and sale of non-DOT specification aluminum cargo tanks, for transportation of carbon dioxide, liquefied (mode 1).
8168-X	DOT-E 8168	Container Corporation of America, Wilmington, DE.	49 CFR 173.217, 173.239a, 173.245b, 178.19	To renew and to authorize ammonium perchlorate (solid), classed as an oxidizer as additional commodity, (modes 1, 2, 3).
8239-X	DOT-E 8239	Westinghouse Electric Corporation, Horseheads, NY	49 CFR 172.101 column 6(a), 172.101 column 6(b), 173.302, 175.3.	To authorize use of non-DOT specification containers, for the shipment of nonflammable gases (modes 1, 2, 3, 4, 5).
8445-P	DOT-E [illegible]	Waste Conversion, Inc., Hatfield, PA	49 CFR Part 173, Subpart D, E, F, & H	To become a party to Exemption 8445 (mode 1).
8445-P	DOT-E 8445	S & W Waste, Inc., South Kearny, NJ	49 CFR Part 173, Subpart D, E, F, & H	To become a party to Exemption 8445 (mode 1).
8445-P	DOT-E 8445	The Upjohn Company, Kalamazoo, MI	49 CFR Part 173, Subpart D, E, F, & H	To become a party to Exemption 8445 (mode 1).
8445-P	DOT-E 8445	IT Corporation, Wilmington, CA	49 CFR Part 173, Subpart D, E, F, & H	To become a party to Exemption 8445 (mode 1).
8445-P	DOT-E 8445	Wayne State University, Detroit, MI	49 CFR Part 173, Subpart D, E, F, & H	To become a party to Exemption 8445 (mode 1).
8445-P	DOT-E 8445	Drug & Laboratory Disposal, Inc., Plainwell, MI	49 CFR Part 173, Subpart D, E, F, & H	To become a party to Exemption 8445 (mode 1).
8582-P	DOT-E 8582	The Milwaukee Road, Inc., Chicago, IL	49 CFR Part 100-177	To become a party to Exemption 8582 (mode 1).
8582-P	DOT-E 8582	Consolidated Rail Corporation, Philadelphia, PA.	49 CFR Part 100-177	To become a party to Exemption 8582 (mode 1).
8614-X	DOT-E 8614	Arrowhead Airways, Inc., Minneapolis, MN	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107 Appendix B	To authorize carriage of certain Class A, B and C explosives that are not permitted for air shipment or are in quantities greater than those prescribed for shipment by air (mode 4).
8692-X	DOT-E 8692	Dow Chemical Co., Midland, MI	49 CFR 173.101, 173.154	To authorize shipment of sodium persulfate in collapsible polyethylene-lined, woven polypropylene bags having a capacity not to exceed 2,200 pounds each (modes 1, 2, 3).
8692-X	DOT-E 8692	Mitsubishi International Corp., New York, NY	49 CFR 173.101, 173.154	To authorize shipment of sodium persulfate in collapsible polyethylene-lined, woven polypropylene bags having a capacity not to exceed 2,200 pounds each (modes 1, 2, 3).
8693-X	DOT-E 8693	Matheson Gas Products, Inc., Secaucus, NJ.	49 CFR 173.230	To authorize shipment of sodium, metal dispersion in organic solvent, in DOT Specification 4BW240 cylinders (modes 1, 3)
8693-X	DOT-E 8693	CAN-TRO Inc., Kansas, City, MO	49 CFR 173.230	To authorize shipment of sodium, metal dispersion in organic solvent, in DOT Specification 4BW240 cylinders (modes 1, 3)
8911-X	DOT-E 8911	Olin Corp., East Alton, IL	49 CFR 173.101	To authorize a 62 cubic feet capacity aluminum hopper bottom bin as an additoinal type container, for shipment of scrap guillotined small arms ammunition (mode 1)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) Affected	Nature of Exemption Thereof
8988-X	DOT-E 8988	Dresser Industries, Inc., Houston, TX	49 CFR 172.101, 173.110, 173.80, 175.30.	To authorize transport of charged oil well guns as Class C explosive when the net weight of explosive material in the vehicle or vessel does not exceed 200 pounds (modes 1, 3, 4).
8988-X	DOT-E 8988	Goex, Inc., Cleburne, TX	49 CFR 172.101, 173.110, 173.80, 175.30.	To authorize transport of charged oil well guns as Class C explosive when the net weight of explosive material in the vehicle or vessel does not exceed 200 pounds (modes 1, 3, 4).
8988-X	DOT-E 8988	Schlumberger Well Services, Houston, TX.	49 CFR 172.101, 173.110, 173.80, 175.30.	To authorize transport of charged oil well guns as Class C explosive when the net weight of explosive material in the vehicle or vessel does not exceed 200 pounds (modes 1, 3, 4).
8988-X	DOT-E 8988	Schlumberger Offshore Services, Houston, TX.	49 CFR 172.101, 173.110, 173.80, 175.30.	To authorize transport of charged oil well guns as Class C explosive when the net weight of explosive material in the vehicle or vessel does not exceed 200 pounds (modes 1, 3, 4).
9052-X	DOT-E 9052	Clawson Tank Company, Clarkson, MI	49 CFR 173.119, 173.125, 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of Non-DOT specification rotationally molded, cross-linked polyethylene portable tanks, for shipment of corrosive and flammable liquids or an oxidizer (modes 1, 2, 3).
9194-X	DOT-E 9194	Cyanamid Canada, Inc., East Willowdale, Canada.	49 CFR 173.370	To increase weight of bulk bags containing calcium cyanide from 2,865 pounds to 4,400 pounds (modes 1, 2).

NEW EXEMPTIONS

Application	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9370-N	DOT-E 9370	NI Industries, Inc., Longview, TX	49 CFR 173.301, 173.302, 173.304, 175.3, 178.45.	To authorize manufacture, marking and sale of non-DOT specification steel cylinders complying in party with DOT Specification 3T cylinder, for transportation of nonflammable gases (modes 1, 2, 3, 4).
9392-N	DOT-E 9392	Sodastream Limited, Peterborough, England.	49 CFR 173.301(b), 178.42	To authorize manufacture, marking and sale of non-DOT specification steel cylinders comparable to a DOT Specification 3E cylinder, for transportation of nonflammable gases (modes 1, 2, 3).
9422-N	DOT-E 9422	Ford Motor Company, Mount Clemens, MI	49 CFR 172.101, 172.301	To authorize use of a superseded commodity description on preprinted shipping papers (modes 1, 2).
9434-N	DOT-E 9434	Ropak Central, Inc., Elk Grove Village, IL.	49 CFR 178.16-19(b)(1)	To authorize manufacture, marking and sale of polyethylene drums complying with DOT Specification 35 with exceptions, for transportation of oxidizers (mode 1).
9443-N	DOT-E 9443	Hercules Incorporated, Wilmington, DE	49 CFR 173.92(b), 175.3	To authorize transport of Class B rocket motors with igniters installed (modes 1, 3, 4).
9446-N	DOT-E 9446	Matson Navigation Company, San Francisco, CA.	49 CFR 176.305(c)(5)	To authorize stowage of flammable liquids with flash points below 73 degrees Fahrenheit in holds or compartments that are fitted with a gooseneck type of vent head (mode 3).
8795-X	DOT-E 9450	The Marison Company, South Elgin, IL	49 CFR 173.302(a), 173.304(a), 173.305(a), 175.3, 178.61.	To authorize manufacture, marking and sale of non-DOT specification cylinders made in compliance with DOT Specification 4B240ET with certain exceptions, for transportation of flammable and nonflammable gases (modes 1, 2, 3, 4, 5).
9460-N	DOT-E 9460	Tracor MBA, East Camden, AR	49 CFR 172.101	To authorize transportation of a Class A type 4 explosive in sealed velostat bag containing not more than one pounds of powder or pellets, packed in DOT Specification 17C or 17H metal drums (mode 1).
9467-N	DOT-E 9467	United Parcel Service, Greenwich, CT	49 CFR 177.834(k)	To authorize shipment of certain flammable solids, oxidizers and corrosive materials to be excepted from the access to mixed lading requirements of 49 CFR 177.834(k) (mode 1).

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 9494-N	DOT-E 9494	Romiro Technology Corp., Cleveland, OH.	49 CFR 173.302(a)(1), 175.3	To authorize use of a non-DOT specification spun and welded steel cylinders, for shipment of a nonflammable gas (modes 1, 2, 3, 4, 5).
EE 9495-N	DOT-E 9495	Velsicol Chemical Corporation, Chattanooga, TN.	49 CFR 173.247, 179.200-19	To authorize use of a non-DOT specification tank car which conforms to DOT Specification 111A100W1 except for prescribed bracket reinforcing pads, for shipment of a corrosive material (mode 2).

WITHDRAWS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
5188-X	U.S. Department of Energy, Washington, DC.	49 CFR 173.395(c)(2), 175.3	To authorize shipment of radioactive materials and nonliquefied compressed gases, in non-DOT specification pressure vessels overpacked in metal drums (modes 1, 2, 4).
8511-P	Pennwalt Corporation, Philadelphia, PA	49 CFR 173.266(f)	To become a party to Exemption 8511 (modes 1, 2).

Denials

7060-X Request by Atlantic Airways, Inc., Hanover, MD to authorize carriage of non-fissile radioactive materials aboard cargo-only aircraft when the combined transport index exceeds 50.0 and/or the separation criteria cannot be met denied August 22, 1985.

7909-P Request by Bulldog Jordon Company, Ogdensburg, NY to authorize manufacture, marking and sale of non-DOT specification plastic metal or plastic-coated glass containers, for transport of limited quantities of poisonous liquid and solids denied August 5, 1985.

8308–P Request by All Points Courier, Inc., Piscataway, NJ to authorize carriage of non-fissile radioactive materials packages via motor vehicles when their combined transport index exceeds 50 and/or the separation distance criteria cannot be met denied August 15, 1985.

8306–P Request by American Parcel Express Inc., Huntington Park, CA to authorize carriage of non-fissile radioactive materials packages via motor vehicles when their combined transport index exceeds 50 and/or the separation distance criteria cannot be met denied August 14, 1985.

Issued in Washington, DC, on September 16, 1985.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85–22762 Filed 9–23–85; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: September 12, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0704

Form Number: IRS Form 5471 and Schedules M, N, and 9.

Type of Review: Revision.

Title: Information Return with Respect to a Foreign Corporation 1954 Relating to Returns of Foreign Personal Holding Companies.

Clearance Officer: Garrick Shear, (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Robert Neal, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Joseph F. Maty,

Departmental Reports, Management Office.

[FR Doc. 85–22785 Filed 9–23–85; 8:45 am]

BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that the hearing scheduled for October 1, 1985 at 10:00 a.m. at the Denver Regional Office for Station Committee on Educational Allowances, has been changed to Wednesday, October 16, 1985 at 8:30 a.m. in the Adjudication Hearing room, Room 410 of the Denver Veterans Administration Regional Office, 44 Union Blvd., Denver, Colorado, to conduct a hearing to determine whether Veterans Administration benefits for all eligible persons enrolled in the Stereo Equipment Salesman Course, offered by Cummings and Associates, 5701 W. 25th Avenue, Edgewater, Colorado, 80214 should be discontinued as provided in 38 CFR 21.4134, because a requirement of the law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: September 17, 1985.

Donald M. Twitty,

Director.

[FR Doc. 85–22795 Filed 9–23–85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 185
Tuesday, September 24, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:30 p.m. on Wednesday, September 18, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt a resolution making funds available for the payment of insured deposits made in Elba State Bank, Elba, Nebraska, which was closed by the Director of Banking and Finance for the State of Nebraska on Wednesday, September 18, 1985.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: September 19, 1985.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 85-22850 Filed 9-20-85; 11:17 am]
BILLING CODE 6714-01-M

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FEDERAL ENERGY REGULATORY COMMISSION

September 19, 1985.
TIME AND DATE: 10:00 a.m., September 26, 1985.
PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.
STATUS: Open.
MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenenth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the division of public information.

Consent Power Agenda, 820th Meeting—September 26, 1985, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 4244-002, Long Lake Energy Corporation
Project No. 3892-002, Georgia-Pacific Corporation
Project Nos. 6762-001 and 002, New York State Energy Research and Development Authority
CAP-2.
Project No. 5486-003, the city of New York, Department of Environmental Protection
CAP-3.
Project No. 6366-001, Hudson River-Black River Regulating District
CAP-4.
Project No. 7678-002, Michiana Hydro-Electric Power Corporation
CAP-5.
Project No. 7187-004, Pankratz Lumber Company
CAP-6.
Project No. 2984-005, S.D. Warren
CAP-7.
Project Nos. 5-009 and 2776-002, the Montana Power Company and Confederated Salish and Kootenai Tribes of the Flathead Reservation
Project No. 5-003, the Montana Power Company
Docket No. EL84-12-001, Confederated Salish and Kootenai Tribes of the Flathead Reservation v. the Montana Power Company
CAP-8.
Project No. 8383-000, Palisade Irrigation District
CAP-9.
Project No. 6220-005, Weyerhaeuser Company
CAP-10.
Project No. 3156-004, John M. Jordan
CAP-11.
Docket No. ER85-564-001, KPL Gas Service
CAP-12.
Docket Nos. ER85-585-000, ER85-656-000, ER85-657-000 and ER85-679-000, Vermont Electric Power Company
CAP-13.
Docket No. ER85-644-000, Duke Power Company
CAP-14.
Docket No. ER85-648-000, Central Hudson Gas and Electric Corporation
CAP-15.
Docket Nos. ER85-659-000 and ER85-660-000, Georgia Power Company
Docket No. EL85-40-000, Oglethorpe Power Corporation v. Georgia Power Company
CAP-16.
Docket No. ER85-655-000, Public Service Company of New Hampshire
CAP-17.
Docket Nos. ER85-515-003 and 004, Florida Power & Light Company
CAP-18.
Docket No. ER85-545-000, Boston Edison Company
CAP-19.
Docket No. ER84-541-000, Oklahoma Gas and Electric Company
CAP-20.
Docket No. ER84-404-004, Commonwealth Edison Company
CAP-21.
Docket No. ER85-398-000, Northern States Power Company (Wisconsin)
CAP-22.
Docket No. ER85-451-001, Southern California Edison Company

Consent Miscellaneous Agenda

CAM-1.
Docket No. Omitted
CAM-2.
Docket No. RM79-76-242 (Wyoming-18), High-Cost Gas Produced from Tight Formations
CAM-3.
Docket No. GP85-9-001, Texas Gas Transmission Corporation
CAM-4.
Docket Nos. SA84-8-002, SA84-9-002 and SA84-10-002, Phillips Petroleum Company
Docket Nos. SA84-11-002 and SA84-12-002, Phillips Oil Company
CAM-5.
Docket No. GP85-28-000, State of Texas, Section 108 NGPA determinations, HNG

Oil Company, Driscolseiver No. 3, et al., JD 82–11071, et al.

CAM–6.
Docket No. GP85–50–000, Bureau of Land Management, State of New Mexico, J.E.M. Resources, Inc. and Diamondback Financial Corporation, Section 102 NGPA Determinations, Levers No. 5 Well, Cave Gray San Andres Pool, FERC JD No. 82–56622, Levers No. 6 Well, Cave Gray San Andres Pool, FERC JD No. 82–56623

CAM–7.
Docket No. GP82–25–000, Pressure Transport, Inc.

CAM–8.
Docket No. Omitted

CAM–9.
Docket No. SA82–30–001, Omega Minerals, Inc.

CAM–10.
Docket No. RO83–11–000, MGPC, Inc.

CAM–11.
Docket No. RO84–2–000, Crown Central Petroleum Company

Consent Gas Agenda

CAG–1.
Docket No. RP85–191–000, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

CAG–2.
Docket No. RP85–193–000, North Penn Gas Company

CAG–3.
Docket No. RP85–194–000, Panhandle Eastern Pipe Line Company

CAG–4.
Docket No. RP85–195–000, Southern Natural Gas Company

CAG–5.
Docket Nos. TA86–1–41–000 and 001, Southwest Gas Corporation

CAG–6.
Docket Nos. TA86–1–34–000 and 001 (PGA86–1 and IPR86–1), Florida Gas Transmission Company

CAG–7.
Omitted

CAG–8.
Omitted

CAG–9.
Docket No. OR78–1–040, Trans Alaska Pipeline System

CAG–10.
Docket No. RP85–178–000, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

CAG–11.
Docket No. TA85–2–16–004, National Fuel Gas Supply Corporation

CAG–12.
Docket No. TA85–2–15–003, Mid Louisiana Gas Company

CAG–13.
Docket Nos. RP85–149–000, 001, 002 and 003, East Tennessee Natural Gas Company

CAG–14.
Docket No. RP85–3–001, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

CAG–15.
Docket Nos. RP85–155–001 and RP84–11–005, Columbia Gas Transmission Corporation

CAG–16.
Docket No. ST85–480–000, Southern Gas Pipeline Company

CAG–17.
Docket Nos. ST84–703–003 and ST80–298–005, et al., Mississippi Fuel Company

CAG–18.
Omitted.

CAG–19.
Omitted.

CAG–20.
Docket Nos. ST82–8–001, 002, ST82–409–001, ST83–94–001, ST84–898–000 and ST85–289–000, PGC Pipeline, a Division of LPC Energy, Inc.

CAG–21.
Docket No. RP85–72–000, Algonquin Gas Transmission Company

CAG–22.
Docket No. RP85–179–000, Consolidated Gas Transmission Corporation

CAG–23.
Docket Nos. TA85–2–42–000 and 002 (PGA85–2), Trans-Western Pipeline Company

CAG–24.
Docket Nos. TA85–2–7–000, 001, TA85–3–7–000, and 001, Southern Natural Gas Company

CAG–25.
Docket No. RP85–170–000, Texas Eastern Transmission Corpation

CAG–26.
Docket No. RP85–11–014, KN Energy, Inc.

CAG–27.
Docket No. RP85–135–000, Pacific Interstate Offshore Company

CAG–28.
Docket No. RP85–174–000, Consolidated Gas Transmission Corporation

CAG–29.
Docket No. TA82–1–21–016, et al., Columbia Gas Transmission Corporation

CAG–30.
Docket Nos. RI74–188–063 and RI75–21–058, Independent Oil & Gas Association of West Virginia

CAG–31.
Docket No. CI78–704–003, Mitchell Energy Corporation

CAG–32.
Docket No. CP84–292–000, Michigan Consolidated Gas Company—Interstate Storage Division
Docket No. CP84–355–000, Columbia Gas Transmission Company
Docket No. CP84–426–000, Panhandle Eastern Pipe Line Company
Docket No. CP85–442–000, and Pipeline Company

CAG–33.
Omitted

CAG–34.
Docket No. CI83–269–038, et al., Tenneco Oil Company

CAG–35.
Docket No. CP84–183–002, Transcontinental Gas Pipe Line Corportion

CAG–36.
Docket No. CP70–7–031 (Phase II), Southern Natural Gas Company

CAG–37.
Docket Nos. CP85–238–000 and CP85–239–000, National Fuel Gas Supply Corporation

CAG–38.
Docket No. CP85–447–000, Colorado Interstate Gas Company

CAG–39.
Docket No. CP85–384–000, Arkla Energy Resources, a Division of Arkla, Inc

CAG–40.
Docket No. CP85–480–000, Consolidated Gas Transmission Corporation

CAG–41.
Docket No. CP85–518–000, Natural Gas Pipeline Company of America

CAG–42.
Docket No. CP85–120–000, Panhandle Eastern Pipe Line Company

CAG–43.
Docket No. CP85–343–000, Northern Natural Gas Company, Division of Internorth, Inc.

CAG–44.
Docket No. CP83–330–000, ANR Pipeline Company
Docket No. CP83–339–000, Michigan Consolidated Gas Company
Docket Nos. CP83–351–000, and 003, Northern Border Pipeline Company
Docket No. CP83–365–000, Natural Gas Company, a Division of Internorth, Inc

CAG–45.
Docket No. CP85–381–000, 001, CP83–106–000 and 001, Colorado Interstate Gas Company
Docket No. CP83–65–000, Kansas-Nebraska Natural Gas Company, Inc.

CAG–46.
Docket No. CP85–379–000, EL Paso Natural Gas Company

I. Licensed Project Matters

P–1.
Omitted

P–2.
Project Nos. 2245–002, 003, 004, and 005, city of Vanceburg, Kentucky

P–3.
Project No. 8704–000, Gregory B. and Perina P. Ryan

II. Electric Rate Matters

ER–1.
Docket Nos. ER85–646–000 and ER85–647–000, New England Power Company

ER–2.
Docket Nos. ER82–616–000, ER82–616–005 through 015, ER82–616–017 through 024 and ER82–616–028, Middle South Energy, Inc.
Docket Nos. ER82–483–000, ER82–483–003 through 021 and ER82–483–024, Middle South Services, Inc.

ER–3.
Docket No. ER84–355–003, Virginia Electric and Power Company

Miscellaneous Agenda

M–1.
Reserved

M–2.
Reserved

M–3.
Docket No. GP84–55–000, Southern Union Gathering Company

M–4.
Docket No. GP84–56–000, Northwest Central Pipeline Corporation (Formerly Cities Service Gas Company)

I. Pipeline Rate Matters

RP–1.

Docket Nos. TA86–1–37–000 and 001 (PGA86–1), Northwest Pipeline Corporation
RP–2.
Docket Nos. TA85–5–32–000 and 001 (PGA85–5), Colorado Interstate Gas Company
RP–3.
Docket Nos. TA86–1–33–000 and 001, El Paso Natural Gas Company
RP–4.
Docket Nos. TA86–1–42–000 and 001, Transwestern Pipeline Company
RP–5.
Docket Nos. TA86–1–7–000 and 001, Southern Natural Gas Company
RP–6.
Docket Nos. TA85–154–000, Gas Research Institute
RP–7.
Omitted
RP–8.
Docket Nos. TA85–1–53–005, KN Energy, Inc.
RP–9.
Docket Nos. TA85–2–42–002, Transwestern Pipeline Company
RP–10.
Docket Nos. TA82–1–33–003, TA82–2–33–018, TA83–1–33–010, TA83–2–33–002, and TA84–1–33–001 (Unpaid Accruals), El Paso Natural Gas Company
RP–11.
Docket Nos. TA85–2–42–003, Transwestern Pipeline Company
RP–12.
Docket Nos. ST85–395–001, ST85–450–001 and ST81–307–002, Cabot Pipeline Corporation

II. Producer Matters

CP–1.
Docket Nos. G–4597–031 and CI85–222–000, Cities Service Oil and Gas Corporation

III. Pipeline Certificate Matters

CP–1.
Docket Nos. CP82–7–000, Northern Natural Gas Company, Division of Internorth, Inc.
CP–2.
Docket Nos. CP85–368–000, United Gas Pipe Line Company
CP–3.
Docket Nos. CP83–452–027, Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company
CP–4.
Docket Nos. CP85–310–000, United Gas Pipe Line Company

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85–22843 Filed 9–20–85; 11:10 am]

BILLING CODE 6717–01–M

3

FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 37947, September 18, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, September 23, 1985.

CHANGES IN THE MEETING: Change in time of the closed meeting to 9:30 a.m., Monday, September 23, 1985.

Addition of the following closed items(s) to the meeting: Proposals regarding extension of the Home Mortgage Disclosure Act.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: September 20, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–22808 Filed 9–19–85; 4:55 pm]

BILLING CODE 6210–01–M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Friday, September 27, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–22809 Filed 9–19–85; 4:55 pm]

BILLING CODE 6210–01–M

5

INTERNATIONAL TRADE COMMISSION

[USITC SE–85–39]

TIME AND DATE: Tuesday, October 1, 1985 at 2:00 p.m.

PLACE: Room 117, 701 E Street, NW, Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints.
a. Certain fans with brushless DC motors (Docket No. 1236).
5. Investigation No. 22–48 (Sugar containing articles)—briefing and vote.
6. Investigation 701–TA–223 (Final) (Agricultural tillage tools from Brazil)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, *Secretary,* (202) 523–0161.

[FR Doc. 85–22856 Filed 9–20–85; 12:43pm]

BILLING CODE 7020–02–M

6

INTERNATIONAL TRADE COMMISSION

[USITC SE–85–40]

TIME AND DATE: Friday, October 4, 1985, at 2:00 p.m.

PLACE: Room 117, 701 H Street, NW Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Petitions and Complaints:
a. Certain prefabricated bow forms (Docket No. 1238).
2. FY 87 Budget.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, *Secretary,* (202) 523–0161.

[FR Doc. 85–22857, Filed 9–20–85; 12:43 pm]

BILLING CODE 7020–02–M

7

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 9:00 a.m., Monday, September 23, 1985.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS: Closed to public observation pursuant to 5 U.S.C. 552b(c)(2) (internal personnel rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS TO BE CONSIDERED: Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, DC. 20570, Telephone: (202) 254–9430.

Dated: Washington, D.C., September 19, 1985.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 85–22853 Filed 9–2–85; 11:31 am]

BILLING CODE 7545–01–M

8

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 1 p.m. Tuesday, October 1, 1985.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Ave., SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Marine Accident Report:* Capsizing of the U.S. Self-Propelled Lift Boat AMAY S While Under Tow of the U.S. Coast Guard Cutter POINT HOPE, Gulf of Mexico, October 17, 1984.
2. *Marine Accident Report:* U.S. Mobile Offshore Drilling Unit ZAPATA LEXINGTON Explosion and Fire, Gulf of Mexico, September 14, 1984.
3. *Aircraft Accident Report:* Vieques Air Link, Inc., Britten-Norman BN–2A–6 Islander, N589SA, Vieques, Puerto Rico, August 2, 1984.
4. *Recommendations:* To the Federal Aviation Administration regarding preflight fuel sampling in Piper Model PA–23 Apache Airplanes and fuel additives for cold weather operation.
5. *Recommendations:* Collapse of U.S. Route 43 Chickasawbogue Creek Bridge Spans near Mobile, Alabama, April 24, 1985.

CONTACT PERSON FOR MORE INFORMATION: Ray Smith (202) 382–6525.

Ray Smith,

Federal Register Liaison Officer.

September 20, 1985.

[FR Doc. 85–22854 Filed 9–20–85; 12:13 pm]

BILLING CODE 7533–01–M

9

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 23, 30, October 7, and 14, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW, Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of September 23

Tuesday, September 24

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of September 30

Tentative

Tuesday, October 1

2:00 p.m.
Discussion of Plant Issues with Regional Administrators (Public Meeting)

Thursday, October 3

10:00 a.m.
Status of Interpretation of Appendix R—Fire Protection (Public Meeting) (Postponed from 9/18)
11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)
2:00 p.m.
Continuation of 9/4 Discussion of Threat Level and Physical Security (Closed—Ex. 1)

Week of October 7

Tentative

Wednesday, October 9

2:00 p.m.
Continuation of 9/11 Discussion of Proposed Station Blackout Rule (Public Meeting)

Thursday, October 10

10:30 a.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS)
11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of October 14

Thursday, October 17

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) was held September 17.

Affirmation of "Commission Review of ALAB–800 (Shoreham "Vital Equipment" Decision)" and "Final Amendments to Uranium Mill Tailings Rule to Implement EPA Stability and Radon Release Standards" (Public Meeting) was held September 17.

Continuation of Briefing on Davis-Besse (Public Meeting) was held on September 18.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado, (202) 634–1410.

Julia Corrado,

Office of the Secretary.

September 19, 1985.

[FR Doc. 85–22917 Filed 9–20–85; 3:49 pm]

BILLING CODE 7590–01–M

federal register

Tuesday
September 24, 1985

Part II

Federal Trade Commission

16 CFR Parts 801, 802, and 803

Premerger Notification; Reporting and Waiting Period Requirements; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Parts 801, 802, and 803

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed rules would amend the premerger notification rules that require the parties to certain mergers or acquisitions to file reports with the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice and to wait a specified period of time before consummating such transactions. The reporting and waiting period requirements are intended to enable these enforcement agencies to determine whether a proposed merger or acquisition might violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation. During the seven years the rules have been in effect, the Federal Trade Commission, with the concurrence of the Assistant Attorney General for Antitrust, has amended the premerger notification rules several times in order to improve the program's effectiveness and to lessen the burden of complying with the rules. These proposed revisions are intended to further reduce the cost to the public of complying with the rules and to improve the program's effectiveness.

DATES: Comments must be received on or before October 24, 1985.

ADDRESSES: Written comments should be submitted to both (1) the Secretary, Federal Trade Commission, Room 172, Washington, DC 20580, and (2) the Assistant Attorney General, Antitrust Division, Department of Justice, Room 3214, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: John M. Sipple, Jr., Senior Attorney, Premerger Notification Office, or Kenneth M. Davidson, Attorney, Evaluation Office, Bureau of Competition, Room 392, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 523–3404.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

With two exceptions, the proposed amendments to the Hart-Scott-Rodino premerger notification rules are largely technical or designed to reduce the burden to the public of reporting. The Commission has determined none of the proposed rules is a major rule, as that term is defined in Executive Order 12291. The proposed rules will not result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in the domestic market. None of the amendments would expand the coverage of the premerger notification rules in a way that would affect small business. Therefore, pursuant to section 605(b) of the Administrative Procedure Act, 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96–354 (September 19, 1980), the Federal Trade Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities. Section 603 of the Administrative Procedure Act, 5 U.S.C. 603, requiring a final regulatory flexibility analysis of these rules, is therefore inapplicable.

Paperwork Reduction Act

The Hart-Scott-Rodino Premerger Notification rule and report form contain information collection requirements as defined by the Paperwork Reduction Act. 44 U.S.C. 3501 *et seq.* These requirements have been reviewed and approved by the Office of Management and Budget (OMB Control No. 3084–0005). Because the proposed amendments would affect the information collection requirements of the premerger notification program, the proposed amendments have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. Comments on that submission may be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission.

Background

Section 7A of the Clayton Act ("the act"), 15 U.S.C. 18a, as added by section 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain acquisitions of assets or voting securities to give advance notice to the Federal Trade Commission (hereafter referred to as "the Commission") and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereafter referred to as "the Assistant Attorney General") and to wait certain designated periods before the consummation of such acquisitions. The transactions to which the advance notice requirement is applicable and the length of the waiting period required are set out respectively in subsections (a) and (b) of section 7A. This amendment to the Clayton Act does not change the standards used in determining the legality of mergers and acquisitions under the antitrust laws.

The legislative history suggests several purposes underlying the act. First, Congress clearly intended to eliminate the large "midnight merger," which is negotiated in secret and announced just before, or sometimes only after, the closing takes place. Second, Congress wanted to assure that large acquisitions were subjected to meaningful scrutiny under the antitrust laws prior to consummation. Third, Congress provided an opportunity for the Commission and the Assistant Attorney General (who are sometimes hereafter referred to collectively as the "antitrust agencies" or the "enforcement agencies") to seek a court order enjoining the completion of those transactions that the agencies deem to present significant antitrust problems. Finally, Congress sought to facilitate an effective remedy when a challenge by one of the enforcement agencies proved successful. Thus the act requires that the agencies receive prior notification of significant acquisitions, provides certain tools to facilitate a prompt, thorough investigation, and assures an opportunity to seek a preliminary injunction before the parties are legally free to complete the transaction, eliminating the problem of unscrambling the assets after the transaction has taken place.

Subsection 7A(d)(1) of the act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, to require that the notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. Subsection 7A(d)(2) of the act, 15 U.S.C. 18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority (A) to define the terms used in the act, (B) to exempt additional persons or transactions from the act's Notification and waiting period requirements, and (C) to prescribe such other rules as may be necessary and appropriate to carry out the purposes of section 7A.

On December 15, 1976, the Commission issued proposed rules and a proposed Notification and Report Form ("the Form") to implement the act. This proposed rulemaking was published in the **Federal Register** of December 20, 1976, 41 FR 55488. Because of the volume of public comment, it became clear to the Commission that some substantial revisions would have to be made in the original rules. On July 25, 1977, the Commission determined that additional public comment on the rules would be desirable and approved revised proposed rules and a revised proposed notification and Report Form. The revised rules and Form were published in the **Federal Register** of August 1, 1977, 42 FR 39040. Additional changes in the revised rules and Form were made after the close of the comment period. The Commission formally promulgated the final rules and Form and issued an accompanying Statement of Basis and Purpose on July 10, 1978. The Assistant Attorney General gave his formal concurrence on July 18, 1978. The final rules and Form and the Statement of Basis and Purpose were published in the **Federal Register** of July 31, 1978, 43 FR 33451, and became effective on September 5, 1978.

The rules are divided into three parts which appear at 16 CFR Part 801, 802, and 803. Part 801 defines a number of the terms used in the act and rules, and explains which acquisitions are subject to the reporting and waiting period requirements. Part 802 contains a number of exemptions from these requirements. Part 803 explains the procedures for complying with the act. The Notification and Report Form, which is completed by persons required to file notification, is an appendix to Part 803 of the rules.

Three changes have been made in the premerger notification rules since they were first promulgated. The first was an increase in the minimum dollar value exemption contained in § 802.20 of the rules. This amendment was proposed in the **Federal Register** of August 10, 1979, 44 FR 47099, and was published in final form in the **Federal Register** of November 21, 1979, 44 FR 60781. The second amendment replaced the requirement that certain revenue data for the year 1972 be provided in the Notification and Report Form with a requirement that comparable data be provided for the year 1977. This change was made because total revenues for the year 1977 broken down by Standard Industrial Classification (SIC) codes became available from the Bureau of the Census. The amendment appeared in the **Federal Register** of March 5, 1980, 45 FR 14205, and was effective May 3, 1980

The third set of changes were published by the Federal Trade Commission as proposed rules changes in the **Federal Register** of July 29, 1981, 46 FR 38710. These revisions were designed to clarify and improve the effectiveness of the rules and of the Notification and Report Form as well as to reduce the burden of filing notification. Several comments on the proposed changes were received during the comment period. Final rules which adopted some of the suggestions received during the comment period but which were substantially the same as the proposed rules, were published in the **Federal Register** on July 29, 1983, 48 FR 34427, and became effective on August 29, 1983.

In addition, the Notification and Report Form, found in 16 CFR 803 (Appendix), has been revised twice. The new versions were approved by the Office of Management and Budget on December 29, 1981, and February 23, 1983, respectively. Since that time the Notification and Report Form, in its current version with some additional minor clarifications, has been approved by the Office of Management and Budget. The most recent approval came on September 14, 1984.

The genesis of this set of proposed changes to the premerger notification rules is a continuing effort by the Commission to reduce the burden of filing premerger notifications. That effort was the focus of a Notice of Request for Comments the Commission published in the **Federal Register** on July 2, 1982, (47 FR 29182). With two exceptions the amendments to the rules proposed in this Notice are based on that Request for Comments, the comments received as a result of that Request, and related burden reduction efforts. The proposals seek to accomplish this reduction by: (1) Narrowing the types of acquisitions that must be reported through the notification process, (2) reducing the documents or information that must accompany notifications, and (3) clarifying the meaning of the notification rules. The two proposals that do not fit this description are discussed separately below.

The 1982 Request for Comments outlined four approaches to reducing the burden of the notification program, three of which form the basis of some of these proposed amendments to the rules. The approaches to burden reduction on which comments were requested included: narrowing the coverage of the rules by raising the dollar thresholds that determine which acquisitions must be reported; setting separate higher dollar reporting thresholds for acquisitions in some industries; eliminating one or more of the successive reporting requirements for additional acquisitions of voting securities; and, allowing persons filing notifications to reference information and documents filed in previous notifications, rather than require them to resubmit those materials.

The Commission is proposing to raise one of the dollar thresholds that determine the coverage of the rules but not the one discussed in the Request for Comments. The Request discussed raising the statutory $15 million minimum size-of-transaction criteria of section 7A(a)(3)(B) to $25 million. This discussion was premised in part on statistics from transactions filed in 1981 showing the enforcement agencies had demonstrated a lower level of interest in transactions of less than $25 million. It is clear from statistics covering 1982 and 1983 that the pattern of lower enforcement interest does not persist in the subsequent years. Consequently the Commission has not pursued that approach.

The Commission has, however, included three proposals in this Notice that would narrow the coverage of the rules. In proposal 6, the Commission would raise the dollar threshold in § 802.20(b) and thereby reduce the number of acquisitions valued at $15 million or less that are reportable. In proposal 7, the Commission would add a new rule, proposed § 802.35, to exempt the acquisition of an employer's voting securities by certain employee trusts. In proposal 4, the Commission would no longer require a notification for certain small acquisitions where the parties had previously filed a notification.

The Commission has not found a basis for establishing separate thresholds for different industries. The Request for Comments noted doubts that such system could be devised. Further study has confirmed the difficulty of defining industries and establishing separate thresholds. In proposal 5, however, the Commission would establish a higher threshold for acquisitions of carbon-based minerals in proposed § 802.3 and would exempt entirely acquisitions of certain kinds of real property that are defined in proposed § 802.2.

The Commission has not proposed to eliminate any of the sequential thresholds for reporting increased holdings of voting securities. The Commission continues to find an increase in the percentage of securities

held by a person to be a matter that can have competitive significance.

The Commission adopted the suggestions in the Request that persons filing notification should be permitted to incorporate by reference certain previously submitted documents and information when it promulgated § 802.3(e) in 1983 (48 FR 34438 (July 29, 1983)). On the basis of experience with this rule the Commission would in proposal 10 now further reduce the materials that must be submitted with a notification. A new section, proposed § 803.9, would replace existing § 802.3(e). In proposal 12, the Commission would also reduce the information required by the Notification and Report Form.

In addition to these approaches, the Commission seeks to reduce the burden of the notification program by a series of amendments to clarify the meaning of these rules, largely by codifying informal interpretations of the Commission staff. These amendments include: a method of calculating the assets of a newly-formed entity in proposal 2; a method of calculating the percentage of voting securities a person holds in proposal 3; a description of acquisitions that are exempt because they are in the ordinary course of business in proposal 5; the requirements for giving notice to an acquired entity in proposal 9; the time when the statutory waiting period begins for notifications of the formation of joint ventures in proposal 11; and a series of changes to examples in the rules to reflect amendments to the rules in proposal 13.

Finally in proposal 1 and proposal 8 the Commission addresses matters other than burden reduction. Proposal 1 would add a new rule to cover a form of transaction that has become increasingly prevalent. The proposed rule would require persons to file notifications for acquisitions made through entities whose principal purpose is to make the acquisitions as if the acquisitions had been made directly. Proposal 8 would eliminate a little used exemption to ensure that certain acquisitions are subject to meaningful antitrust review.

The Commission invites interested persons to submit comments on the nature and scope of the problems described in the Proposed Statement of Basis and Purpose as well as the appropriateness of the proposed amendments to the rules as solutions to those problems. The Commission invites special attention to proposal 1 (concerning the "acquisition vehicle" rule), proposal 5 (concerning the exemption of certain kinds of assets), proposal 6 (concerning an increase in an exemption threshold) and proposal 7 (concerning an exemption for acquisitions by employee trusts) because each of these determines for a substantial number of transactions whether an acquisition must be reported. In addition proposals 1 and 7 deserve attention because these amendments respond to ongoing developments in the form and manner of making acquisitions.

The thirteen proposals in this Notice are arranged, to the extent that clear exposition permits, in the order they would appear in the Code of Federal Regulations.

List of Subjects

16 CFR Parts 801 and 802

Antitrust.

16 CFR Part 803

Antitrust, Reporting and recordkeeping requirements.

Proposed Statement of Basis and Purpose for the Commission's Revised Premerger Notification Rules

Authority

The Federal Trade Commission proposes these amendments to the premerger notification rules pursuant to section 7A(d) of the Clayton Act, 15 U.S.C. 18a(d), as added by section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390.

I. Sections 801.1(n) and 801.5 Acquisition vehicles

The Commission proposes to amend its rules to require persons intending to make acquisitions through certain entities to file notifications as if they were making those acquisitions directly. Although the premerger notification rules subject many indirect acquisitions to antitrust review, acquisitions made by entities that are not "controlled" by other persons frequently are not reportable. The Commission has concluded that such acquisitions should be reportable if the entity's main function is to make the acquisition and if the acquisition would have been reportable had the entity's owners made their acquisitions directly instead of through that entity (or "acquisition vehicle"). The Commission proposes to add a new rule, proposed § 801.5, to require owners to file notifications for acquisitions made by entities deemed to be acquisition vehicles. The definition of the term "acquisition vehicle" would be placed in proposed § 801.1(n).

For tax and other business reasons, many acquisitions are made by a newly-formed entity. The owner of that entity typically contributes the capital or arranges for loans that are used to make the acquisition. Commonly, after an acquisition is completed the legal existence of either the acquired entity or the newly-formed entity is dissolved in a statutory merger.

In most transactions, this formation of an entity to make an acquisition has no effect on the parties who are required to file premerger notifications. Typically the newly-formed entity is a wholly owned subsidiary of an existing corporation. Because, pursuant to § 801.1(a)(1), the subsidiary is controlled by its parent corporation, the rules deem the "ultimate parent entity" to be the acquiring person. Accordingly the pre-existing parent corporation is required to file a premerger notification whether or not it creates a subsidiary to effect the acquisition.

As the Statement of Basis and Purpose to § 801.1(a)(1) notes, if this were not the result "the ultimate parent entity would be able to evade the requirements of the act by manipulating the [subsidiary]." 43 FR 33456 (July 31, 1978). Quite apart from the question of evasion, that filing obligation is appropriate because the parent corporation is the real party in interest. The subsidiary, whatever the reasons for its creation, is not a functioning business, at least not until the acquisition is completed. It is a shell incapable of corporate action until capital and corporate purposes are supplied by its owner. The ultimate parent entity is, therefore, the acquiring person. Moreover, it is the control obtained by the parent and the potential for anticompetitive effects from combining its business with that of the acquired entity that the act seeks to have the enforcement agencies review.

These reasons for requiring notifications also apply to some acquisitions in which owners of acquiring entities do not fit the premerger rules' definition of an "ultimate parent entity." If, for example, four corporations each acquire 25 percent of the voting securities or assets of another corporation, the acquisition would be reportable (assuming the act's size-of-person, size-of-transaction and other notification criteria are satisfied). The four separate transactions would be examined to determine if ownership of the acquired person's voting securities or assets by any of the four is likely to lessen competition. If, for purposes of acquiring the voting securities, the four were to create an entity to make the acquisition, the antitrust interest in the transaction would be unchanged. In fact, such acquisitions typically are followed

by a statutory merger that is not subject to the rule's notification requirements and that transfers direct ownership to the four owners. In those instances, not only is the antitrust interest in the transaction the same as in a direct acquisition, the resulting legal rights in the business are identical: each would then directly own 25 percent of the shares of the acquired business.

Nevertheless, existing rules do not consider any of these owners to be a parent of the acquiring entity (because they do not control the entity as that term is defined in § 801.1(a)(b), i.e., none has either 50 percent of the voting securities of the entity or the contractual power to designate a majority of its board of directors). Although the objective criteria of the existing rules, like the one defining control, have been the key to making the premerger review program workable in most circumstances, the consequence here is that owners may not be required to report the acquisition. In fact, the transaction might not be reportable by anyone.

Two examples illustrate how the rules do not always make such transactions reportable and why that result is inappropriate. If the entity formed for the purpose of making the acquisition is a partnership, its owners are not required to report acquisitions made by the entity. If the entity is a corporate joint venture, the transaction also may not be reportable.

The partnership transaction is easier to follow. Assume the four corporations are competitors of each other and of the firm to be acquired. Assume further that each firm is valued in excess of $1 billion. The formation of the partnership is not reportable because § 801.40 covers the formation of only corporations, not partnerships. The acquisition by the partnership is not reportable because the partnership does not meet the size-of-person test of section 7A(a)(2) (that is, it does not have total assets or annual net sales of $10 million or more), and it is not controlled by any other person. For reasons discussed below in this Notice in connection with the proposed changes to § 801.11, the premerger rules to not count the over $1 billion in cash that will be contributed to make the acquisition, thus the partnership is considered too small to be required to report its acquisitions. Moreover, a partnership does not fit § 801.1(b)'s definition of a controlled entity under existing informal interpretations. Unless the partnership has other assets, no part of the transaction will be reportable, even though the size of the firms and their market shares in this example suggest that the acquisition should be closely reviewed.

The same transaction, if pursued through a corporate joint venture, would not be reportable if the acquisition were undertaken with loans (that were not guaranteed by the persons forming the corporation) or if the voting securities in the new venture were valued at $15 million or less. Section 801.40 counts cash and loans extended or guaranteed by the owners as assets of the joint venture. Thus only if the newly-formed corporation had received cash or owner-guaranteed loans to make a $1 billion acquisition would it meet the size-of-person criteria of section 7A(a)(2) of the act. And only if the securities were valued at more than $15 million would size-of-transaction criteria be met and the transaction not be exempt under § 802.20. If either criteria is not met, the formation of the corporate joint venture would not be reportable. The failure to require the reporting of acquisitions by newly-formed entities whose only assets are cash or loans (see discussion of this issue in proposal 2 below) has become a significant omission in certain circumstances because of the growing popularity of leveraged buyouts in which loans are secured by the assets being purchased. If the four competitors obtained financing in the manner described or valued voting securities at $15 million or less, neither the formation of nor the acquisition by their corporate joint venture would be reportable.

Even if the formation and subsequent acquisition were reportable, the result under the existing rules would not provide a fully satisfactory opportunity to review the acquisition. Because the formation and acquisition transactions would be reported separately, the notification of the formation would show several firms forming a joint venture corporation which at that time had no business. The second transaction would show that corporation (or "acquisition vehicle") acquiring an existing business. In neither case would the notification by the newly-formed company be directly helpful for antitrust analysis because it has no business and cannot reflect on its notification form the potential anticompetitive effects of the acquisition. And because the timing of the notification requirements for the two transactions are separate it is possible the enforcement agencies could lose the advantage given them by the act in obtaining information from the owners of the new corporation through requests for additional information. If, for example, the acquisition vehicle were formed sixty days prior to filing for the subsequent acquisition, the enforcement agencies might have no indication of what is the intended target and no basis for preventing the joint venture if, by itself, it does not violate the antitrust laws. When the acquisition vehicle files for the subsequent acquisition, its notification is likely to provide little indication of the competitive overlap that could exist as a result of the transition. Moveover, the owners might be beyond the reach of the enforcement agencies' demands through requests for additional information.

In order to ensure acquisitions by newly formed non-controlled entities are reportable and an opportunity for examining competitive consequences of such acqusitions, the Commission proposes to treat such transactions as if the owners of the acquisition vehicle had directly acquired the voting securities or assets of the acquired person. The existing definition of "person" in § 801.1(a)(1) is designed to prevent avoidance of reporting obligations by making the formation of subsidiaries irrelevant. Similarly, proposed § 801.5 would eliminate all inquiry into the reasons owners chose the organizational form used to make an acquisition. The proposal should reduce any bias created by existing rules to structure transactions in less efficient form in order to avoid filing a premerger notification. It would thereby supplement § 801.90 which requires such transactions to be reported if the creation of the acquisition vehicle had "the purpose of avoiding the obligation to comply with the requirements of the act." In addition to shaping the reporting obligation according to the substance of the transaction rather than its form, the proposal would eliminate the anomaly under existing joint venture rules that makes it possible for a person acquiring voting securities or assets (through newly-formed entities) to complete its waiting period before the waiting period for the newly-formed entity's acquisition begins.

The Commission believes it has authority, with the concurrence of the Attorney General, to treat these acquisitions as if they were made by the owners of the acquisition vehicle on the following grounds: the requirement in section 7A(a) of the act that persons who acquire voting securities or assets "directly or indirectly" file notifications; the authority in section 7A(d)(2)(A) to "define the terms used in [the act]" including the terms "directly," "indirectly" and "hold;" and the authority in section 7A(d)(2)(C) to "prescribe such other rules as may be necessary and appropriate to carry out

the purposes of [the act]" including treating transactions which have similar characteristics in the same manner.

The Proposed Rules

The proposed acquisition vehicle rules have five principal elements. First, § 801.5(a) states the general rule that acquisitions of voting securities or assets by an acquisition vehicle are attributed to its owners on a proportional basis. Second, an acquisition vehicle is defined in § 80.1.1(n) as an entity formed or availed of principally for the purpose of making acquisitions. Third, § 801.5(b) establishes the method for calculating the number of voting securities that will be attributed as a result of an acquisition by the vehicle. Fourth, § 801.5(c) does the same for calculating the value of voting securities and assets that are attributed. Fifth, § 801.5(d) describes the circumstances in which voting securities and assets will no longer be attributed to owners of acquisition vehicles.

The General Rule

Proposed § 801.5(a) is designed to treat owners of acquisition vehicles as if they were the acquisition persons making the acquisitions directly without the agency of the acquiring vehicle. The effect of this paragraph and these proposed rules is to require an owner of an acquisition vehicle to file a premerger notification in circumstances where the proportion of the acquisition attributed to it and any other voting securities or assets it holds combine to meet or exceed one of the reporting thresholds of § 801.1(h). Proposed § 801.5 does not alter the reporting obligation arising from the formation of a joint venture under § 801.40 or the reporting obligation of the acquisition vehicle, which may be required to file separately.

The Definition of Acquisition Vehicle

The definition in proposed § 801.1(n) is formulated to include as an acquisition vehicle any entity that makes an acquisition but conducts little or no business activity apart from activities involved in making the acquisition. Thus, the definition applies to any type of entity (corporation, partnership, trust, etc.) or combination of entities, whether newly-formed or already existing, as long as its principal purpose is to make an acquisition. The definition is not limited to entities created as evasion devices. This rule applies to all new entities even where the formation of the entity is dictated by sound business reasons. It includes all entities except those that are established, ongoing businesses. Owners of an ongoing business are required to report acquisitions of that business only if the transaction meets the criteria of § 801.90, that is, if structured "for the purpose of avoiding the obligation to comply with the requirements of the act." This is made clear by a proposed new example to be added to that rule.

The Number of Voting Securities Acquired

Section 801.13 establishes the method of determining how many voting securities are held as a result of an acquisition. According to that section, an acquiring person holds already held voting securities, those to be acquired, and, as a result of proposed §801.5, those treated as held or to be held. Proposed §801.5(b) provides the formula for determining how many shares held by the acquisition vehicle are attributed to each of its owners. Paragraph (b) establishes two methods, one for an acquisition vehicle that is a single corporation and the other for all other kinds of acquisition vehicles.

Where the single corporation rule applies, each owner multiplies the total number of voting securities which will be held by the acquisition vehicle (for example, 1000) times the percentage of shares in the vehicle the owner holds (for example, 25 percent) and that will give the number of voting securities to be treated as acquired through the acquisition vehicle (that is, 1000×.25, or 250 voting securities). These voting securities would then be added to any other voting securities held by the owner to determine if it had a reporting obligation.

In other circumstances the number of voting securities held by each owner is determined by the owner's beneficial interest in the acquisition vehicle. The use of beneficial ownership criteria is designed to facilitate the calculation of proportional interests where a series of entities including corporations and partnerships obtain complex interests in an acquired entity. For these transactions the formula is the same; only the calculation of the percentage is different. Each owner multiplies the total number of voting securities the acquisition vehicle will hold by the larger of the following ratios: (1) the proportion of profits of the acquisition vehicle to which the owner would be entitled if all profits were distributed; or, (2) the proportion of assets to which each owner would be entitled upon dissolution of the acquisition vehicle.

The Value of Voting Securities and Assets Acquired

Section 801.14 establishes the method of determining the aggregate value of voting securities and assets held as a result of an acquisition. The aggregate total for each owner includes, among others, voting securities and assets acquired by the acquisition vehicle that are attributed to it by proposed § 801.5(c). The attribution rules of paragraph (c) are calculated in the same fashion as the number of voting securities are calculated under proposed § 801.5(b). The difference is that the dollar value treated as acquired by the owner is determined by multiplying the aggregate value of voting securities and assets held by the acquisition vehicle instead of by multiplying the total number of voting securities held by the acquisition vehicle.

When Attribution Ceases

Proposed § 801.5(d) declares that voting securities and assets held by an entity shall not be treated as held by its owners when the entity ceases to be an acquisition vehicle. An entity ceases to be an acquisition vehicle, pursuant to the definition in proposed § 801.1(n), when it commences active management of a business.

Affidavits Required

The Commission proposes to establish new procedures to inform the acquired person of the acquiring entity's status as an acquisition vehicle and the consequent obligation of the acquired person to file notifications in response to filings by the owners of the vehicle. The new requirements are similar to those required by existing and proposed § 803.5(a) which requires persons buying voting securities to notify the issuer of its obligations to file a premerger notification form. The new procedures will require owners to attach an affidavit to their notification and report forms stating that they have notified the acquired entity of the owner's status as an acquiring person. The proposed procedures would be contained in a new paragraph (c) of § 803.5 These amendments are discussed and set out in proposal 9 of this **Federal Register** notice.

Effects on Other Rules

In addition to rules 801.13 and 801.14 mentioned above, several other rules are affected by the addition of the acquisition vehicle rule. This section mentions some of those rules. This is not an exhaustive list, nor does it provide comprehensive treatment of each rule discussed.

Section 801.1(a)(2) Entity: The term "acquisition vehicle" is a characterization of the legal status of an entity. Thus any entity—corporation, partnership, trust, etc.—is an acquisition vehicle when it meets the definition of proposed § 801.1(a).

Section 801.1(b) Control: The acquisition vehicle rules do not alter the definition of control or the rules based on control. Thus an entity may be both an acquisition vehicle and controlled by an ultimate parent entity. Where both statuses exist, persons holding a minority of the voting securities of the acquisition vehicle will have their obligation to file notifications determined by proposed § 801.5. Persons holding a majority of the voting securities in a corporate acquisition vehicle will be the vehicle's ultimate parent entity and will be required to report accordingly.

Certain premerger rules that come into operation only when an entity is controlled never have an effect on owners of minority interests of acquisition vehicles. For example the "secondary acquisitions" described in § 801.4, the "controlled issuer" threshold of § 802.20(b) and § 802.51(b) all require the person addressed in the rules to have a controlling interest.

Section 801.1(c) Hold: The premerger rules' "hold" concept is the means by which the acquisition vehicle rules are integrated with the rest of the rules. Proposed § 801.5 requires owners of acquisition vehicles to treat the number of voting securities and the value of assets held by the vehicle as held by the owners on a proportional basis.

Section 801.2 Acquiring and acquired persons: It is through the operation of the hold concept that the owners of an acquisition vehicle become "acquiring persons" when the vehicle makes an acquisition. However owners do not automatically become "acquired persons." In a transaction described by § 801.31, for example, those accepting a non-cash tender offer of the acquisition vehicle's securities would not hold voting securities of the owner unless the vehicle were also a controlled person. Owners do not become acquired persons solely because the vehicle is an acquired person.

Section 801.10 Value of voting securities and assets to be acquired: When an acquisition vehicle acquires assets of voting securities, it must value them in accordance with § 801.10. The owners of the vehicle then apply proposed § 801.5(c) to determine the portion of that value attributable to each of them.

Section 801.12 (a) and (b) Calculating percentages of voting securities: When an acquisition vehicle acquires voting securities, each owner must first determine the number of voting securities of each class attributed to it by proposed § 801.5(b), and then calculate according to proposed § 801.12(b) the percentage of voting securities it holds.

Section 801.20 Acquisitions subsequent to exceeding threshold: Owners of acquisition vehicles are required by § 801.20 to recalculate their entire holdings to determine if as a result of the vehicle's acquisition the owners will meet or exceed a reporting threshold. Similarly, owners must calculate whether they continue to qualify for the five year exemption provided by § 802.21 or the amended tender offer exemption of § 802.23.

Section 801.30 Tender offers and acquisitions of voting securities from third parties: As with other rules, each owner must determine for itself whether it has reporting obligations under § 801.30. If such obligations exist, the acquisition vehicle cannot acquire voting securities until all of the statutory waiting periods have expired. To take down shares before then would transfer the shares to a person (one of the owners) in violation of the premerger rules. The acquired person must file a separate notification in response to filings from each owner.

Section 801.40 Formation of joint venture or other corporations: Owners can have an obligation to file notifications for the formation of an acquisition vehicle under § 801.40 as well as a separate obligation to report acquisitions of the vehicle under proposed § 801.5. The vehicle also can have a separate obligation to report when it makes acquisitions.

Proposed §§ 802.1, 802.2 and 802.3 Acquisition of assets: When assets are attributed to owners under these proposed rules, they maintain the exempt or non-exempt character they had as a result of the acquisition by the vehicle. Thus when a vehicle acquires substantially all the assets of an operating division, a one-third owner cannot claim it need not report the transaction because it holds only one-third of the acquired entity's assets. The owner has an undivided one-third interest in all the assets and therefore the transaction is not exempt.

Section 802.9 Acquisition solely for the purpose of investment: In contrast to assets, a specific number of shares held by the vehicle can be and are attributed to each owner because each share represents an undivided interest in the acquired entity. Nevertheless, the Commission believes that the intent of an acquisition vehicle to acquire control of an entity is a factor indicating that none of its owners have the "solely for the purpose of investment" intent required for the exemption established by § 802.9. At the same time the Commission recognizes that attributing such an intent in all acquisitions will create reporting obligations for passive investors in, for example, leveraged buyout transactions where there is no intention to alter the management of the business and no desire by those investors to play any role in the management of the business. As these passive investors are unlikely to raise antitrust concerns by their acquisitions, the Commission would welcome suggestions on how to exempt them yet include others who are part of a plan to transform an acquired entity.

Exempt transactions generally: In general, the exempt character of a transaction is not affected by the attribution of assets or voting securities pursuant to proposed § 801.5. For example, transfers to or from a federal agency (exempted by section 7A(c)(4)) or transactions subject to the approval of the Federal Deposit Insurance Corporation (exempted by section 7A(c)(7)) will be exempt for both the acquisition vehicle and its owners. Owners need not report transactions on the basis of acquisitions made by their acquisition vehicle if the owners would be exempt from reporting a direct acquisition equivalent to the one attributed to them by proposed § 801.5.

A. Authority

The authority for Parts 801–803 continues to read as follows:

Authority: Sec. 7A(d) of the Clayton Act, 15 U.S.C. 18a(d), as added by sec. 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94–435, 90 Stat. 1390.

B. The Commission proposes to amend its rules by the addition of § 801.1(n), § 801.5, and an Example 3 to § 801.90, as set forth below.

PART 801—COVERAGE RULES

§ 801.1 Definitions.

* * * * *

(n) *Acquisition vehicle.* The term "acquisition vehicle" means any entity or series of entities formed or availed of principally for the purpose of acquiring voting securities or assets. An entity is (or a series of entities are) an acquisition vehicle notwithstanding that the particular organizational form (e.g., partnership, corporation, etc.) chosen furthers a legitimate business purpose or that the entity engages (or entities engage) in incidental or minor business activities prior to the acquisition of

voting securities or assets. An entity ceases to be an acquisition vehicle when the entity commences active management of a business other than the business of acquiring voting securities and assets.

Examples: 1. A partnership is formed by a corporation, A, and two individuals, B and C. A has annual net sales of $1 billion and is entitled to 40 percent of the profits of the partnership (or 40 percent of the assets upon dissolution). The partnership, which has no business of its own, acquires Oldco for $50 million with bank loans guaranteed by A, B and C. The partnership is an acquisition vehicle regardless of the purpose for which it was formed, because at the time it acquired Oldco its sole function was to make the acquisition. Because Corporation A is an acquisition vehicle, "A" will be required to report the acquisition of Oldco pursuant to § 801.5 unless the transaction is otherwise exempt. "B" and "C" may also be required to file notifications if they meet the size-of-person and other reporting criteria.

2. Newco is formed by corporations A, B, C and D, for the purpose of buying and revitalizing Oldco. Each corporation has annual net sales or total assets in excess of $1 billion. At the time Newco is formed, A contributes a patent that will make the operations of Oldco more competitive. B contributes $15 million to be used to acquire Oldco. C contributes a fleet of trucks which will be used to deliver Oldco products and a factory which is sold to obtain the remaining $12 million needed to acquire Oldco. D contributes $10 million in capital to be used to revitalize and expand the Oldco operations. Newco is an acquisition vehicle because the principal purpose for which it was formed was to acquire Oldco. It had no business operations prior to that acquisition. The contribution of the patent and capital and the sale of the factory are incidental to that acquisition.

3. Assume the same facts as in example 2 except that Newco was initially formed as a subsidiary of A corporation to export A's products. Although the corporation was formed and a board of directors met, the corporation never began operations. Three years later A contributed its patent to Newco and sold shares of Newco to B, C and D on the terms outlined above when the four corporations decided to buy Oldco. Newco is an acquisition vehicle because it never had any business operations and is now being availed of principally for the purpose of acquiring Oldco.

4. Newco, an acquisition vehicle, transfers all its assets in exchange for 40 percent of the voting securities of Oldco. Newco uses its Oldco securities to nominate directors of Oldco. Newco ceases to be an acquisition vehicle when it begins to direct or participate in the management of Oldco, notwithstanding that Newco's only assets are voting securities of Oldco.

§ 801.5 Acquisitions by an acquisition vehicle.

(a) Owners (holders of voting securities, partners, etc.) of an acquisition vehicle shall, until the event described in paragraph (d) of this section, be treated under these rules as if they also hold on a proportional basis voting securities or assets held by the acquisition vehicle.

(b) The number of voting securities held by an acquisition vehicle that are treated as if they are or will be held by each of its owners shall be calculated as follows:

(1) If the acquisition vehicle is a single corporation or a single corporation and wholly owned subsidiaries of that single corporation, the number of any class of voting securities attributed to each owner is the total number of each class of voting securities held by the acquisition vehicle multiplied by the percentage of voting securities issued by the single corporation held by each owner.

(2) In circumstances other than those described by paragraph (b)(1) of this section, the number of any class of voting securities attributed to each owner is the total number of each class of voting securities held by the acquisition vehicle multiplied by the larger of the following ratios:

(i) The proportion of profits of the acquisition vehicle to which each owner would be entitled if all profits were distributed; or,

(ii) The proportion of assets to which each owner becomes entitled upon dissolution of the acquisition vehicle.

(c) The value of voting securities and assets held by an acquisition vehicle that are treated as if they are or will be held by each owner shall be calculated as follows:

(1) If the acquisition vehicle is a single corporation or a single corporation and wholly owned subsidiaries of that single corporation, the value of an acquisition attributed to each owner is the value of voting securities and assets held by the acquisition vehicle multiplied by the percentage of voting securities issued by the single corporation held by each owner.

(2) In circumstances other than those described in paragraph (c)(1) of this section, the value of the acquisition attributed to each owner is the value of the voting securities or assets held by the acquisition vehicle multiplied by the larger of the following ratios:

(i) The proportion of profits of the acquisition vehicle to which each owner would be entitled if all profits were distributed; or,

(ii) The proportion of assets to which each owner becomes entitled upon dissolution of the acquisition vehicle.

(d) When an entity ceases (or a series of entities cease) to be an acquisition vehicle, the voting securities or assets held by that entity (or those entities) shall no longer be treated as if they are also held by its (or their) owners.

Examples: 1. A Corporation together with B Corporation form a partnership for the purpose of buying Oldco for $100 million. The partnership forms Newco to buy the shares of Oldco. The partnership and Newco are an acquisition vehicle because, pursuant to § 801.1(n), they are a series of entities formed for the purpose of acquiring voting securities. A has total assets valued at $1 billion. B Corporation has assets totalling $9 million and had net sales of $5 million in the previous year. B is entitled to 5 percent of the profits of the partnership and would receive upon dissolution 10 percent of its assets. Although "A" does not control the partnership pursuant to § 801.1(b), it will be required to file a notification because "A" meets the size-of-person criteria of section 7A(a)(2) of the act and because, pursuant to § 801.5, A has attributed to it an acquisition that meets the size-of-transaction criteria of section 7A(a)(3)(B) of the act. The value of the shares in Oldco that will be deemed acquired by A is $95 million, that is, $100 million (the acquisition price) times 95 percent (the proportion of profits to which A is entitled). "B" is not required to file a notification both because its assets and annual net sales are less than the minimum size specified in the act and because the value of its acquisition results in "B" holding less than the $15 million in assets and voting securities.

2. Corporations A, B, C and D formed Newco I in which each held 25 percent of the voting securities. Each corporation has annual sales and total assets in excess of $1 billion. After formation Newco I engaged in no business activity because the business opportunity for which it was formed disappeared. Subsequently A, B, C and D decided to buy Oldco for $100 million using Newco I. Newco I then formed Newco II to buy certain assets of Oldco and Newco III to acquire the voting securities of Oldco. A, B, C and D corporations are each, pursuant to § 801.5, deemed to be acquiring $25 million in assets and voting securities of Oldco and will have to file notifications prior to the acquisition. They are shareholders of Newco I, which, although formed for other purposes, was at the time it became a functioning business entity used principally for the purpose of acquiring Oldco. Newco I will also have to file a notification for the acquisition if it meets the size of person test of section 7A(a)(2) of the act.

After the acquisition of Oldco and its assets, Newco II was merged into Newco I. Newco I then sought to acquire Otheroldco. Because Newco I is no longer a corporate shell with neglible business activity, its acquisition of Otheroldco is no longer attributable to its shareholders pursuant to § 801.5. The obligation to file a notification, if there is one, will rest solely with Newco I.

§ 801.90 Transactions or devices for avoidance.

* * * * *

Examples: * * *

3. Corporations A, B, C and D, each with annual net sales or total assets in excess of

$1 billion, decide to buy Oldco for $100 million. Rather than acquire Oldco directly or from a new business entity to acquire Oldco, the four corporations decide on the following course of action for the purpose of avoiding filing a notification under the act. A, B, C and D corporations each acquire one quarter of the outstanding securities of Littleco for a total of $1 million. Littleco is an established manufacturing concern with annual net sales and total assets of less than $10 million. They then lend Littleco $100 million and cause it to acquire Oldco. Because the purpose of acquiring Oldco through Littleco (which does not meet the size of person test of § 7A(a)(2) of the act) was to avoid reporting the transaction, the existence of Littleco as an ongoing corporation, will be disregarded. Instead Littleco will be treated as if it were a business entity formed or availed of to acquire Oldco pursuant to § 801.5. "A", "B", "C" and "D" each will be required to report the acquisition of 25 percent of Oldco.

2. Section 801.11 Total Assets of a Newly-Formed Person

The Commission proposes to amend § 801.11 to codify a longstanding informal position of the staff that a newly-formed entity generally should not include funds used to make an acquisition in determinig its size. Under this proposed rule, if an entity's only assets are cash that will be used to make the acquisition and securities of the entity it is acquiring, it generally will not have to file for that acquisition because the new entity will be deemed too small to meet the act's size-of-person test. Codification of this informal position is intended to limit coverage of the premerger rules to those situations where an antitrust violation is most likely to be present, that is, where one business entity of a substantial size acquires another business entity of a substantial size. The basic rule is explained below. The proposed rule contains an exception where the new entity acquires assets or voting securities of more than one person.

The Purpose of the Proposed Rule

A notification must be filed prior to an acquisition only if the acquiring and acquired persons meet the minimum size criteria of section 7A(a)(2) of the act. In general this requires one of the parties to have at least annual net sales or total assets of $10 million and the other at least annual net sales or total assets of $100 million. Section 801.11 establishes the procedure by which the size of parties to an acquisition is to be determined. Existing § 801.11 provides that the annual net sales and total assets of a person shall be the sales and assets stated on its last regularly prepared financial statements. It does not directly address the question of how to calculate the size of a person that does not have a regularly prepared balance sheet. However, by implication, the rule requires the preparation of a balance sheet for persons who have none. See 43 FR 33474 (July 31, 1978). In advising newly-formed persons of their obligation to prepare balance sheets, the Commission staff has advised that acquiring persons should not include as assets cash or loans that will be used to make an acquisition. The Commission now proposes to adopt this staff position and incorporate it in a new §801.11(e) which establishes the procedure for calculating the total assets of newly-formed persons. The proposed rule does not alter the manner in which ongoing firms determine whether they meet the act's size-of-person criteria, because they have regularly prepared financial statements subject to § 801.11(a)–(d).

The distinction between the calculation of assets for ongoing business entities and newly-formed entities is based on the competitive potential of a newly-formed entity and on the certainty and simplicity of the existing balance sheet rule. In most circumstances the size of an acquiring person provides some measure of its competitive presence. Congress concluded that the amount of sales and assets were useful criteria. These size criteria can be misleading, however, when applied to entities formed for the purposes of making acquisitions. Such entities typically have had no sales and frequently have no assets other than the cash or loans used to make the acquisition. In such circumstances the acquiring person has no competitive presence. The acquisition does not combine businesses and therefore cannot reduce competition. The transaction merely changes the ownership of a single ongoing business. Accordingly, the Commission has concluded that no purpose is served by requiring such acquisitions to be reported. The Commission will not count the cash which flows through the newly-formed entity to make an acquisition, because those assets do not add to the competitive presence of the business entity which results from the acquisition. (Of course, competition could be lessened if the newly-formed business were owned by current or potential competitors of the person being acquired. Proposed § 801.5 is designed to alert the antitrust enforcement agencies to such acquisitions by requiring certain owners of newly-formed entities to file notifications.)

Similary, where the newly-formed business acquires voting securities or assets of one-person (including securities issued by entities within that person) in several transactions, the prior possession of voting or non-voting securities of that person generally does not enhance the anticompetitive potential of the transaction. The already acquired securities do not constitute a business entity which when combined with additional securities of that issuer will lessen competition. There is only one business being bought. However, if the newly-formed entity acquires assets or voting securities of more than one person an anticompetitive combination could result. For that reason an exception in proposed § 801.11(e) requires counting cash, loans and securities in those circumstances and would make such transactions reportable.

Although it might be argued that existing corporations also should be directed to deduct cash or loans which are earmarked for making the acquisition and securities issued by the entity being acquired from their total assets, the desirability of such a rule is more questionable. To direct that such deductions be made would require many persons to prepare a new balance sheet to determine the reportability of acquisitions. Rules explaining how to prepare that balance sheet would reintroduce the complexity of compliance with the rules that the Commission eliminated when it promulgated the existing financial statements rule of § 801.11 (see 43 FR 33473–4 (July 31, 1978)). The considerations set out below confirm the original conclusion that there is no need to revise paragraphs (a)–(d) of the existing rule.

First, the existing rule, to a large degree, automatically arrives at the same result for ongoing corporations as proposed § 801.11(e) does for newly-formed corporations. Under the existing balance sheet rule, loans made to ongoing corporations for the purpose of making an acquisition usually are not included when calculating an acquiring person's total assets. Such loans are normally made just prior to consummation of the acquisition and are therefore not reflected on the person's last regularly prepared financial statement. Consequently even if loans ought not to be counted there is little need to deduct these assets because they usually are not included.

Second, there is value to the predictability and convenience of the balance sheet approach of the current rule even if it results in small inconsistencies in measuring corporate size. That approach allows the vast majority of firms to rely on their balance sheets to determine whether they have

an obligation to file a notification. Businesses can quickly determine from existing records whether they must file. That convenience outweighs the value of trying to make more precise or more uniform the calculation of the dollar size criteria (which are at best only very preliminary measures of competitive significance). Accordingly the Commission will continue to rely on regularly prepared balance sheets for determining the size of ongoing businesses. To do otherwise would unnecessarily complicate the rules, introduce uncertainty about coverage and make the process of calculating size much more exact than is warranted by the rough measure established by Congress.

The Proposed Rule

General Rule

Proposed section 801.11(e) states that it applies only where the person does not have a regularly prepared balance sheet. As a practical matter the section applies only to newly-formed entities (that are not controlled by any other person). Persons with outdated or otherwise incomplete balance sheets are required to reconstruct their financial documents in accordance with paragraphs (a)–(d) of this section. Subsection (e)(1) sets forth the general rule that assets including cash or securities are always included on a person's balance sheet, except for cash that will be used to make an acquisition and securities issued by the acquired person (or an entity within the acquired person).

The exclusion of cash, loans or securities established by proposed § 801.11(e) continues until the acquiring person has a regularly prepared balance sheet. This exclusion means, for example, that a series of separate acquisitions of voting securities of one person over a four month period by one acquiring person will be treated as if the separate transactions all occurred at the same time because the non-inclusion is not ended by the first acquisition. Neither the cash to be used to acquire additional voting securities nor any voting securities of the same acquired person already held by the acquiring person are counted as assets until they appear on its regularly prepared balance sheet. Thus, if the acquiring person without a regularly prepared balance sheet accumulated $200 million in voting securities of one person over the four month period, it would not meet the size-of-person test if its only assets were those voting securities and cash to acquire more voting securities of that same person. In contrast, the proposal has no effect on the acquisition of assets. Assets must be reflected on the newly-formed entity's balance sheet as soon as they are acquired.

The first two examples illustrate how, in general, proposed § 801.11(e) measures size. Example 1 illustrates the applicability of paragraph (e) when only cash is used in the acquisition. Example 2 illustrates the applicability of the rule when the newly-formed company has non-cash assets. Example 2 also illustrates treatment of cash as an asset of an acquired person. Since the rule only allows a person to exclude cash "used to make an acquisition," other cash is always included as an asset of a newly-formed acquired person in determining its size.

Exceptions to the General Rule

As explained above, the general rule of proposed § 801.11(e) is appropriate because transactions that may pose an antitrust concern are those in which two or more parties of significant size combine. In two circumstances, the general rule cannot be applied because the underlying antitrust rationale does not apply. These situations are (1) where a new entity acquires assets or voting securities of two or more persons, and (2) where a new entity is formed to make an acquisition and the owners of that entity meet the size-of-person criteria and are therefore required to report the transaction pursuant to proposed § 801.5. The method in proposed § 801.11(e)(1) for calculating the total assets of a newly-formed acquired person requires separate calculations "for acquisitions of each acquired person." This means that if a newly-formed entity will acquire assets or voting securities of person A and of person B, then, in determining if the newly-formed entity is large enough to have an obligation to report the acquisition of A, the newly-formed entity must include as part of its total assets the cash it will use to acquire B and any securities of B that it holds. Similarly, in measuring the size of the newly-formed entity to determine whether the acquisition of B must be reported the entity must include the securities of A it holds and cash that will be used to acquire assets or voting securities of A. Example 3 illustrates the calculation of total assets when the newly-formed entity will make two (or more) acquisitions after its formation.

Newly-Formed Acquired Persons

There appear to be good reasons for creating a new entity with few assets other than cash to make an acquisition. Such transactions are frequent and, as discussed above, unlikely to have direct competitive significance. However, the Commission is not aware of good business reasons for creating a new entity with cash as its primary asset for the purpose of becoming an acquisition target, nor is this a typical form of transaction. Thus it does not seem necessary for the premerger rules to treat newly-formed acquired persons the same as newly-formed acquiring persons. Accordingly proposed § 801.11(e)(2) calculates the total assets of a newly-formed acquired person by including all assets.

C. Commission proposes to revise § 801.11(a) and add a new § 801.11(e) as set forth below. New language is indicated by arrows: (► new language ◄)

§ 801.11 Annual net sales and total assets.

(a) The annual net sales and total assets of a person shall include all net sales and all assets held, whether foreign or domestic, except as provided in paragraph ►s◄ (d) ►and (e)◄ of this section.

* * * * *

►(e) Except in acquisitions in which § 801.40(c) is applicable, and subject to the limitations of paragraph (d) of this section, the total assets of:

(1) An acquiring person that does not have the regularly prepared financial statements described in paragraph (c) of this section shall be, for acquisition of each acquired person:

(i) All assets held by the acquiring person at the time of the acquisition,

(ii) Less all cash that will be used by the acquiring person as consideration in an acquisition of assets from, or voting securities issued by that acquired person (or an entity within that acquired person) and less all securities of the acquired person (or an entity within that acquired person); and

(2) An acquired person that does not have the regularly prepared financial statements described in paragaph (c) of this section shall be all assets held by the acquired person at the time of the acquistion.◄

►Examples: 1. Assume that A is a newly-formed company which is not controlled by any other entity and whose formation is not subject to § 801.40. Assume also that A has no sales and does not have the financial statements described in paragraph (c) of this section. A plans to borrow $105 million in cash and purchase assets from B for $100 million. A's total assets are determined by subtracting the $100 million that it will use to acquire B's assets from the $105 million that A will have at the time of the acquisition. Therefore, A has total assets of $5 million and does not meet the size-of-person test in section 7A(a)(2).

2. In example 1 above, assume that A will, at the time it acquires B's assets, have $85

million in cash and a factory valued at $20 million. A will exchange the factory and $80 million cash for B's assets. To determine A's total assets A should subtract from the $85 million cash it has borrowed the $80 million that will be used to acquire assets from B and add the remainder to the value of the factory. Thus, A has total assets of $25 million. Even though A will use the factory as part of the consideration for the acquisition, the value of the factory must still be included in A's total assets.

Note that A and B may also have to report the acquisition by B of A's non-cash assets (i.e., the factory). For that acquisition, the value of the cash A will use to buy B's assets is not excluded from A's total assets. Thus, in the acquisition by B, A's total assets are $105 million.

3. In example 1, assume that A borrows $150 million to acquire $100 million of assets from person B and $45 million of voting securities of person C. To determine its size for purposes of its acquisition from person B, A substracts the $100 million that it will use for that acquisition. Therefore, A has total assets of $50 million for purposes of its acquisition from B. To determine its size with respect to its acquisition from person C, A subtracts the $45 million that will be paid for C's voting securities. Thus, for purposes of its acquisition from C, A has total assets of $105 million. Both acquisitions are therefore reportable.◄

3. Section 801.12(b) Calculating Percentage of Voting Securities To Be Held or Acquired

Section 801.12(b) sets out the method by which persons are to determine the percentage of voting securities of an issuer that they hold or will hold as a result of an acquisition. The Commission proposes to refine the method to reflect more accurately the amount of voting influence one person has over another. The language of the existing formula, when applied literally, produces a grossly distorted representation of voting power if different classes of an issuer's voting securities possess substantially different voting power. For that reason the Commission staff has responded to inquiries concerning such transactions by advising persons filing notifications to weigh the number of votes that each class of stock may cast by the number of directors that each class may elect. The Commission now proposes to codify this staff advice by revising the formula for calculating holdings of voting securities contained in § 801.12(b).

The voting strength formula is important to the administration of the premerger notification program. Several key concepts in the rules and in the act turn on what percentage of a particular company's voting securities another person holds. For instance, a person is deemed to control a corporation when it holds at least 50 percent of that corporation's voting securities (§ 801.1(b)); the proper notification threshold is usually determined by the percentage of voting securities held (§ 801.1(h)); and the "investment only" exemption is available only for voting securities holdings of 10 percent or less (section 7A(c)(9) of the act and § 802.9). For all these reasons it is important that accurate determinations be made of the percentage of voting securities held by business entities.

Although the proposed revision is a great improvement it does not describe fully the voting power associated with an acquisition of shares. The Commission has found no objective and administrable criteria that will reflect for all situations the actual power resulting from an acquisition of shares. Because of the shortcomings of this proposed rule, the Commission particularly invites suggestions on how to better calculate holdings of voting securites.

The difficulties of formulating a completely descriptive rule are easily illustrated. It is well known, for example, that effective or "working" control of a widely held corporation can be maintained or in some cases obtained by ownership of a small fraction of its shares. There is, however, no objective and reliable way to determine the degree of control conferred when a person acquires a small fraction of the shares of a particular company. In addition, acquisitions of voting securities are also subject to more formal constraints which modify their power. Staggered elections of corporate directors, cumulative voting rights, voting trusts or agreements, supermajority provisions and convertible securities can each magnify or diminish the voting power of securities.

There is no way to translate these myriad factors into a single proportional measure of voting power such as the statutory "15 per centum or more of the voting securities" criterion set out in section 7A(a)(3)(A) of the act. Even a single one of these factors—cumulative voting rights—can frustrate that attempt by both enlarging and reducing voting power of shares at the same time. Cumulative voting rights can diminish the power of a majority shareholder and simultaneously magnify the power of some minority shareholders.

Like the Congressional criterion of section 7A(a)(3)(A), the Commission's proposal sometimes measures voting power only roughly, but the rule's objective criteria are quickly ascertainable in most instances. Such certainty of application has been a primary consideration in the formulation of these rules. They rely on business entities to identify themselves as having an obligation to file notifications of their acquisitions. The Commission believes therefore that the proposed rule is preferable to a rule that might measure voting power more precisely but would be less certain in its application.

The existing formula in § 801.12(b) directs an acquiring person to divide the number of votes for directors that it may cast after the acquisition by the total number of votes for directors that anyone may cast after the acquisition. In many cases the resulting ratio accurately portrays the amount of influence the buyer will have over the acquired firm. In some instances, however, this formula can significantly misrepresent the voting power of the buyer. This discrepancy occurs where there are several classes of voting securities, and one class of voting stock has voting power disproportionate to another class. It is in such instances that the Commission staff has responded to inquiries by advising that persons filing calculate their voting power on a proportional basis. The Commission now proposes to adopt that formula which recognizes both that different classes of stock may exist and that each class may elect different numbers of directors.

The following example illustrates the problem with literal application of the language in the existing rule to all acquisitions: Company X has two classes of voting stock, A and B. Class A has 1,000 shares outstanding and elects four of company X's ten directors. Each share of class A stock has one vote in each of these elections. Class B has 100 shares outstanding and elects six of company X's ten directors. Each share of Class B stock has one vote in each of these elections. Company Y proposes to acquire all class B shares. Under existing § 801.12(b), since Y can only cast 100 votes for directors, the percentage of voting securities held by Y after the acquisition will be 100 divided by 1,100 (the total number of votes for directors that anyone may cast) or about 9 percent. However, this percentage does not accurately reflect Y's influence over X, since Y can elect six of X's ten directors. Under the present rule, therefore, Y's acquisition would not cross the 15 percent threshold and, if valued at $15 million or less would not be reportable. In addition, the rules' conclusive presumption of control set out in § 801.1(b)(1) would not apply since Y does not hold 50 percent or more of X's voting securities.

The proposed new § 801.12(b)(1) would calculate that company Y holds

60 percent of the voting securities of company X. It reflects Y's influence more accurately by adopting a new formula that first determines Y's voting power within each individual class of stock, and then determines Y's total voting power by summing the ratios calculated for each individual class of stock. Moreover, since the number of directors each class elects can be different, the individual ratios are calculated by weighting Y's voting power over each class by the proportion of the total number of directors that each class may elect. In the example above, the percentage of voting securities held by Y would then be determined by the following formula:

$$\frac{\text{Number of votes of class 1 stock held by Y}}{\text{Total votes of class 1 stock}} \times \frac{\text{Directors elected by class 1 stock}}{\text{Total number of directors}}$$

Plus

$$\frac{\text{Number of votes of class 2 stock held by Y}}{\text{Total votes of class 2 stock}} \times \frac{\text{Directors elected by class 2 stock}}{\text{Total number of directors}}$$

One of the examples following proposed § 801.12(b)(1) discusses this hypothetical acquisition further.

D. It is proposed that § 801.12(b)(1), (b)(1) (i) and (ii) be revised, and examples 1, 2, and 3 be added as set forth below. New language is indicated by arrows: (►new language◄). Deleted language is indicated by brackets [deleted language]:

§ 801.12 Calculating percentage of voting securities or assets.

* * * * *

(b) *Percentage of voting securities.* (1) Whenever the act of these rules require calculation of the percentage of voting securities of an issuer to be held or acquired, the percentage shall be the [ratio] ►sum of the separate ratios for each class of voting securities◄, expressed as a percentage [, which—] ►. The ratio for each class of voting securities equals:◄

(i) ►(A)◄ The number of votes for directors of the issuer which [voting securities presently entitle] the holder ►of a class of voting securities is entitled◄ to cast, ►and◄ [or,] as a result of the acquisition, will ►become entitled◄ [entitle the acquiring person] to cast, [bears to] ►divided by,◄ (ii) ►(B)◄. The total number of votes for directors of the issuer which presently may be cast ►by that class◄, [or] ►and◄ which will be entitled to be cast, ►by that class◄ after the acquisition, [whichever is greater.] ►; multiplied by,

(ii)(A) the number of directors that class is entitled to elect, divided by, (B) the total number of directors.◄

Examples: In each of the following examples company X has two classes of common stock voting securities, class A, consisting of 1000 shares with each share having one vote, and class B, consisting of 100 shares with each share having one vote. The class A shares elect four of the ten directors and the class B shares elect six of the ten directors.

In this situation, proposed § 801.12(b) requires calculations of the percentage of voting securities held to be made according to the following formula:

$$\frac{\text{Number of votes of class 1 held}}{\text{Total votes of class 1}} \times \frac{\text{Directors elected by class 1 stock}}{\text{Total number of directors}}$$

Plus

$$\frac{\text{Number of votes of class 2 held}}{\text{Total votes of class 2}} \times \frac{\text{Directors elected by class 2 stock}}{\text{Total number of directors}}$$

1. Assume that company Y holds all 100 shares of class B stock and no shares of class A stock. By virtue of its class B holdings, Y has all 100 of the votes which may be cast by class B stock and can elect six of company X's ten directors. Applying the formula which results from the rule, Y calculates that it holds 100/100 x 6/10 or 60 percent of the voting securities of company X because of its holdings of class B stock and no additional percentage derived from holdings of class A stock. Consequently, Y holds a total of 60 percent of the voting securities of company X.

2. Assume that company Y holds 500 shares of class A stock and no shares of class B stock. By virtue of its class A holdings, Y has 500 of the 1000 votes which may be cast by class A to elect four of company X's ten directors. Applying the formula, Y calculates that it holds 500/1000 x 4/10 or 20 percent of the voting securities of company X from its holdings of class A stock and no additional percentage derived from holdings of class B stock. Consequently, Y holds a total of 20 percent of the voting securities of company X.

3. Assume company Y holds 500 shares of class A stock and 60 shares of class B stock. Y calculates that it holds 20 percent of the voting securities of company X because of its holdings of class A stock (see example 2). Additionally, as a result of its class B holdings Y has 60 of the 100 votes which may be cast by class B stock to elect six of company X's ten directors. Applying the formula, Y calculates that it holds 60/100 x 6/10 or 36 percent of the voting securities of company X because of its holdings of class B stock. Since the formula requires that a person that holds different classes of voting securities of the same issuer total the percentages calculated for each class, Y holds a total of 56 percent (20 percent plus 36 percent) of the voting securities of company X.◄

* * * * *

4. Section 801.13 Aggregation of Assets and Voting Securities

Sections 801.13 and 801.14 require parties to aggregate their purchases of voting securities and assets from the same person to determine whether the act's 15 percent of voting securities or $15 million notification thresholds are met. The purpose of aggregation is to treat acquisitions that are split into separate transactions the same as acquisitions that are consummated in a single transaction. Unfortunately, the existing rule can require repeated and burdensome reporting of even small acquisitions that have no anticompetitive potential, because it requires aggregation. For example, the rules currently require the aggregation of two asset purchases from the same person if the purchases occur within 180 days of each other, even though the first purchase was already reported and the second was very small. A similar problem arises when a small purchase of assets follows a reportable acquisition of voting securities. To reduce these problems, the Commission proposes to amend § 801.13 to eliminate the requirement that previously reported purchases must be aggregated with subsequent purchases of assets.

The current rules require aggregation in the following circumstances. Section 801.13(b) requires an acquiring person to add the value of any assets acquired within the past 180 days to the value of any present acquisition of assets from the same seller to determine whether the present purchase is reportable. If all other reporting requirements are met, therefore, an acquisition of $10 million worth of assets would have to be reported if it followed a $10 million asset purchase from the same person the previous month. Where the original acquisition was of voting securities, § 801.14 imposes similar requirements but includes no 180-day time limit for aggregating the current acquisition of assets with the earlier stock purchase. Thus, where the acquiring person acquired $8 million of stock a year ago and now intends to purchase $8 million of assets from the same company, the asset purchase is reportable (assuming other reporting requirements are satisified).

Aggregation can cause acquiring and acquired persons to file multiple notifications for tiny transactions. Once

a person makes a reportable acquisition by buying $15 million of another person's voting securities or assets, the aggregation requirement (which requires the inclusion of the prior transaction) guarantees that any additional purchase, however small, will also satisfy the act's size-of-transaction criteria. Consequently the transaction will again be subject to the notification and waiting requirements of the act (unless otherwise exempted). Repeated filings can be quite burdensome to the parties in such transactions. Where the assets have a small dollar value, the costs of filing a notification and the delay of even an abbreviated waiting period may deter parties from entering into transactions that otherwise would be advantageous.

This proposal would alleviate this burden by creating separate aggregations for each cluster of transactions that amount to $15 million. Thus, after one acquisition has been reported, it would not require the acquiring person to report subsequent acquisitions until they again amounted to $15 million in the aggregate. The proposed modification would no longer require reporting (and therefore would not deter) small subsequent transactions.

Burdening or deterring small subsequent transactions, as the current rule does, would be justified if it were likely that the subsequent transactions would lessen competition. For example, an initial reportable sale of $150 million in assets might include only assets without competitive significance. Then, if there were no aggregation rule, a subsequent anticompetitive transaction would avoid the scrutiny of the notification process if additional assets valued at $15 million or less were transferred. But, while such transactions are possible, it seems unlikely that this proposal will eliminate from premerger review a significant number of acquisitions that raise antitrust concerns.

The proposal strikes a more practical balance of contending interests than the existing rule, yet maintains much of the protection provided by the aggregation principle. For example, under the proposal the subsequent $15 million or less acquisition becomes not reportable only because there has been an antitrust analysis of a transaction between the parties. In other words, the antitrust agencies will have already examined the antitrust potential of combining certain assets of the businesses of the two parties. In doing so they may well have considered the overall effect of combining the entities and thus may be alerted to the anticompetitive danger of transferring the anticompetitive component, especially if the transaction makes sense only with that component. In such circumstances a subsequent transaction, even if unreported, is likely to come to the attention of the antitrust agencies.

These considerations do not eliminate the possibility that anticompetitive transactions will avoid scrutiny under the rules, but they suggest that few, other than persons intending to evade the act, will have an incentive to structure transactions to take advantage of the proposed modifications. Neither the proposed rule nor the existing one are designed to prevent a willful evasion of the reporting obligations under the act. Under the existing rule a determined evader can merely wait 180 days to consummate the second transaction. Willful evasions are addressed by § 801.90 and section 7A(g) of the act. On the other hand the proposed modifications make possible, or at least eliminate a barrier to, competitively insignificant transactions that could be deterred by the requirement of filing multiple notifications.

The aggregation problem does not arise when the later transaction is an acquisition of voting securities only. Under § 801.13(b)(2), an earlier acquisition of assets is only aggregated with a subsequent asset acquisition, not with a later acquisition of voting securities. In addition, where a series of acquisitions involves only voting securities, § 802.21 exempts from reporting requirements all individual acquisitions except those that meet or exceed the notification thresholds defined in § 801.1(h).

The Commission proposes to amend § 801.13 so that previously-acquired assets and voting securities which have already been subject to the reporting and waiting period requirements of the act will not be aggregated with a subsequent acquisition of assets from the same person. This change would make the aggregation requirements for successive asset acquisitions more consistent with the aggregation requirements for successive stock acquisitions. In addition, the change would eliminate the obligation to file for asset acquisitions that, because of their small size, are unlikely to violate the antitrust laws.

E. Accordingly, the Commission proposes to amend § 801.13(a)(1), add a new § 801.13(a)(3), add example 4 following § 801.13(a) and revise § 801.13(b)(2)(ii) as set forth below. New language is indicated by arrows: (►new language◄). Deleted language is indicated by brackets: [deleted language].

§ 801.13 Voting securities or assets to be held as a result of an acquisition.

(a) *Voting securities.* (1) Subject to the provisions of § 801.15, ►and subparagraph 3 of this paragraph,◄ all voting securities of the issuer which will be held by the acquiring person after the consummation of an acquisition shall be deemed voting securities held as a result of the acquisition. The value of such voting securities shall be the sum of the value of the voting securities to be acquired, determined in accordance with § 801.10(a), and the value of the voting securities held by the acquiring person prior to the acquisition, determined in accordance with paragraph (a)(2) of this section.

(2) * * *

►(3) Voting securities held by the acquiring person prior to an acquisition shall not be deemed voting securities held as a result of that subsequent acquisition if:

(i) The acquiring person is, in the subsequent acquisition, acquiring only assets; and

(ii) The acquisition of the previously acquired voting securities was subject to the filing and waiting requirements of the act.◄

Examples: * * *

►(4) On January 1, Company A acquired $30 million of voting securities of Company B. "A" and "B" filed notification and observed the waiting period for that acquisition.

Company A plans to acquire $1 million of assets from company B on May 1 of the same year. Under § 801.13(a)(3), "A" and "B" need not aggregate the value of the earlier acquired voting securities to determine whether the acquisition is subject to the act. Therefore, the value of the acquisition is $1 million and it is not reportable.◄

(b) *Assets.* * * *

(2) * * *

(ii) Subject to the provisions of § 801.15, if the acquiring person has acquired [any assets] from the acquired person within the 180 calendar days preceding the signing of such agreement [and such assets] ►any assets which◄ are presently held by the acquiring person, ►and the acquisition of which was not previously subject to the filing and waiting requirements of the act,◄ then only for purposes of section 7A(a)(3)(B) and § 801.1(h)(1), both the acquiring and the acquired person shall treat such assets as though they had not previously been acquired and are being acquired as part of the present acquisition. The value of any assets previously acquired which are subject to this subparagraph shall be

determined in accordance with § 801.10(b) as of the time of their prior acquisition.

* * * * *

5. Sections 802.1, 802.2, and 802.3 Acquisitions of Assets

Proposed §§ 802.1, 802.2, and 802.3 describe certain types of acquisitions of assets that are and are not exempt from the notification requirements of the act. The proposed rules have been developed as a result of uncertainties about the much less specific rule in the existing § 802.1. The new language reflects to a large degree informal advice given by Commission staff in response to questions. The proposals introduce and define a number of new terms. Unlike existing § 802.1 which was based solely on the statutory exemption in section 7A(c)(1) of the act for "acquisitions . . . in the ordinary course of business" and the Commission's authority (with the concurrence of the Assistant Attorney General for Antitrust) in section 7A(d)(2)(A) to "define the terms used in [section 7A]," the proposed rules also reply on the authority in section 7A(d)(2) (B) and (C) to "exempt . . . transactions which are not likely to violate the antitrust laws" and to "prescribe such other rules as may be necessary and appropriate to carry out the purposes of [section 7A]."

The proposed rules outline basic kinds of asset transactions that must undergo the premerger screening process established by the act for the antitrust enforcement agencies. Transactions are exempted if it is not necessary to examine the individual circumstances of an acquisition to determine that the category of acquisition has little potential to violate the antitrust laws. In proposed § 802.1 the principal basis for determining that potential is whether the assets transferred constitute substantially the equivalent of a business entity or are fundamental to the existence of a business. This proposal makes most transfers of assets that are the equivalent of a business reportable. When a transaction can be described that transfers assets that are less than a fundamental element of a business the proposed rule generally exempts such transactions. Proposed § 802.2 (concerning certain real property assets) and proposed § 802.3 (concerning carbon-based mineral rights), in contrast, exempt acquisitions even if they transfer an entire existing business. These transactions are proposed to be exempt because the large supply of the assets and the nature of the market for those assets make it unlikely that a transfer covered by the proposed rules will violate the antitrust laws.

The use of the "equivalent of a business" and "fundamental element of a business" criteria for the exemption in proposed § 802.1 reflects the obligations of the enforcement agencies to identify and prevent acquisitions which are likely to violate the antitrust laws by lessening competition. Mergers or acquisitions of businesses (as opposed to sales of goods or realty) can lessen competition because they automatically diminish the number of competitors in a market when the buyer is a competitor or potential competitor. Such mergers are more likely to lessen competition when the product or service market has few competitors and the business that disappears is of a substantial size. Accordingly, the proposed rule declares transactions exempt if it can be determined without review of the individual circumstances of a transaction that the acquisition of assets is not equivalent to the transfer of a business.

Business equivalency and the need for individual review are the basis for exemptions in the act and the existing rules, as well as the proposed rule. For example, section 7A(c)(1) exempts "acquisitions of goods or realty transferred in the ordinary course of business." Individual review of such transactions is unnecessary typically because selling goods is the essence of manufacturing, wholesaling, and retailing businesses. In no way do sales in the ordinary course of business diminish the capacity of the selling firm to compete. Consistent with this principle, the existing § 802.1(b) does not exempt the sale of assets if they constitute "substantially all of the assets of . . . an operating division." A business is often the sum of its assets, thus the sale of assets can diminish the productive capacity of the selling firm and concentrate productive capacity among the remaining firms. Although it is possible that the effects of selling productive assets might be to enhance competition in a particular industry, to determine those effects each acquisition must be judged individually. The rules therefore require that such transactions be reported. Proposed § 802.1 applies this business equivalency approach in greater detail.

Proposed §§ 802.2 and 802.3 rely on a different justification. Unlike the ordinary course of business criteria of proposed § 802.1, these exemptions are not determined by the use that sellers or buyers make of the acquired assets. Rather it is the abundance of the assets described in these sections and the unconcentrated nature of the market in which the assets are transferred that justifies these exemptions. Where such assets are plentiful and widely held it is not necessary to examine individual transactions to determine if typical transactions will violate the antitrust laws.

The Proposed Rules

The proposed rules are divided into three parts. Proposed § 802.1 describes three common categories of acquisitions of goods. It describes some of the circumstances in which such transactions are and are not exempt from the notification obligations of the act because the acquisitions are or are not made in the ordinary course of business. Proposed § 802.2 describes certain real property transactions that would be exempt from the notification requirements on the ground that such acquisition are unlikely to violate the antitrust laws. Proposed § 802.3 would exempt acquisitions of carbon-based minerals valued at $150 million or less, also on the grounds that such transactions are unlikely to violate the antitrust laws.

Assets Acquired in the Ordinary Course of Business

Proposed § 802.1 defines some of the circumstances in which the acquisition of assets is exempt from the notification obligations of the act.

Operating Divisions

Proposed § 802.1(a) provides guidance on when an acquisition of assets will be considered equivalent to the acquisition of a business. It states that an acquisition is reportable if it includes substantially all the assets of an operating division and gives numerous examples of operating divisions. The term "operating division" is derived from existing § 802.1(b). Paragraph (a) defines an operating division as assets that have been operated as a business entity. The sale of new tangible goods or current supplies by manufacturers, wholesalers and retailers is generally exempt except when sold as part of the sale of substantially all the assets of an ongoing business. For example, if a firm manufactures widgets and sells as part of a sale of substantially all its assets an inventory of widgets, the acquisition of those widgets would not be exempt.

The sale of an operating division is a divestiture of productive capacity. As such, the sale of the assets is extraordinary and not in the ordinary course of business. If the seller has operated the collection of assets as a free-standing profit center, the

transaction can be competitively significant. It is either an exit from the market by a competitor, an entry by a new competitor or an opportunity for an existing competitor to increase its productive capacity. Because such transactions need to be examined individually to determine if they will lessen competition, they are not exempt from the reporting requirements of the act. The sale of assets that do not constitute an operating division can be reportable nevertheless if the acquisition does not meet the exemption criteria of other rules.

Current Supplies

Proposed § 802.1(b) describes a type of asset acquisition that does not constitute the sale of a business—the acquisition of current supplies. Raw materials, components, inventory, maintenance supplies and the like are used up on a current basis, consequently their acquisition does not create or extinguish a competitive entity. Such acquisitions are clearly transactions in the ordinary course of business and are therefore exempt from the notification requirements. When inventory is the primary asset of a business, as is the case for antique shops and art galleries, the sale of all inventory is the sale of all the assets of that business and can be equivalent to the sale of a business and is not exempt under this paragraph.

Paragraph (b) introduces a new term, "current supplies," which is defined in subparagraphs (1), (2) and (3).

Durable Goods

Proposed § 802.1 deals with another problematic kind of transaction, the acquisition of "durable goods." In certain businesses, an integrated set of manufacturing machines or other pieces of equipment is the foundation of a business even though those machines do not constitute substantially all the assets of an operating division. The sale of such equipment therefore can represent the equivalent of an entry or exit of a business operation in spite of the fact that the acquisition of the machine necessarily will be supplemental by the acquisition of other goods. Such transactions can be competitively significant because, for example, one firm could monopolize an industry with high entry barriers by buying only the critical machinery from each of its competitors. Some "durable goods" acquisitions therefore need to be reviewed on an individual basis. Proposed § 802.1(c) declares which of these transactions are exempt.

Subparagraph (c)(1) exempts sales of new "durable goods." Because routine sales by manufacturers, wholesalers or retailers of new durable goods are clearly in the normal course of their businesses the sales are always exempt. Acquisitions of new machines normally only expand productive capacity and therefore do not tend to lessen competition.

In contrast, the acquisition of "used durable goods" transfers existing productive capacity from one person to another. Such used durable goods transactions may be common and considered by the parties to be in the ordinary course of their businesses. Nevertheless, where both the seller and buyer use such goods in their businesses, subparagraph (c)(2) does not define such acquisitions, however common, as ones in the ordinary course because they can lessen competition by concentrating productive capacity. Subparagraph (c)(2) exempts from the requirements of the act only those acquisitions of used durable goods in which either the buyer or seller is a dealer and not a user of such goods. Such transactions are in the ordinary course of the dealer's business.

Although sales of used durable goods to a dealer may have competitive consequences, these do not normally raise antitrust issues. The sale of such productive assets may represent an exit of a business from an industry and thereby lessen the number of competitors, but there is no basis in the antitrust laws for requiring a firm to remain in the business. When the buyer is not a competitor and has no plans to enter the business, there is no effect on competition beyond the closing of the seller's facilities. Accordingly there is nothing for the antitrust authorities to analyze and the transaction is exempt from the notification requirements.

For similar reasons there is little for antitrust officials to review when a dealer sells used durable goods. As with the sale of new durable goods, the most usual effect is to increase the productive capacity of the industry. Consequently the subparagraph exempts both sales and purchases of used goods transactions by dealers.

There is normally little reason for antitrust concern about sales of used goods to dealers because the assets are taken out of production. Unlike a competitor, a dealer has no reason to pay a premium for the goods in order to reduce industry production capacity. Rather the goods are abandoned by their former owner and lose their immediate competitive significance. Moreover when resold by a dealer they, like the assets of a "failing company," are similar to acquisitions of new durable goods which normally enlarge productive capacity and generally do not lessen competition.

However, in contrast to the sale of a failing company's assets to a possible competitor, a transaction that requires case-by-case review by antitrust authorities, the sale of used durable goods by or to dealers does not require routine examination. The primary reason for individually examining the acquisition of failing companies is to determine if the buyer is a competitive or potential competitor whose acquisition might lessen competition and to determine if the seller is going out of business as it asserts. In the case of used durable goods, the sale to the dealer resolves both of those issues. By definition the dealer is neither an actual nor potential competitor, thus there is no prospect of competitive harm resulting from the sale to a dealer. And, the seller does abandon the assets. Accordingly the Commission can generalize about such transactions and exempt the acquisition of used durable goods where either the acquired or acquiring person is a dealer.

To be sure, the combined effect of a sale to a dealer and a resale by the dealer to a competitor can be the equivalent of a sale of assets between competitors. The reasons for the used goods dealer exemption do not apply when the intermediary is merely a conduit for real parties in interest that are users of the durable goods. As a consequence, the proviso to subparagraph (c)(2) denies the exemption if the intermediary is acquiring the assets for a specific person who uses the goods. This criterion is not whether the intermediary is an agent of either seller or buyer or whether the intermediary takes title and assumes the risk of loss over the goods; rather it is whether the intermediary has agreed, at the time it acquires the goods, to whom it will resell those goods. If the intermediary has made such an agreement then its role in the transaction is ignored and the acquisition must be reported as one between the persons who are users of the durable goods. Although the proviso does not affect the dealer's right to take title to the goods from the seller (that acquisition is exempt under proposed § 802.1(c)(2)), the proviso does prevent the dealer from completing the transaction by transferring the used goods to the buyer with whom he has a contract until both buyer and seller have complied with the notification and waiting requirements of the act.

The term "durable good" is new. It is defined in proposed § 802.1(c)(1) to be a

good which is used repeatedly and has a useful life of more than one year.

Certain Real Property Transactions

Proposed § 802.2 exempts certain real property transactions on the ground that they are unlikely to lessen competition. The kinds of property proposed § 802.2 would exempt include unimproved land, office buildings and residential properties. Most, if not all, transactions conveying these kinds of property have been considered exempt under existing § 802.1. Exemption of such transactions, however, does not fit within the explicit sale of business rationale of proposed § 802.1. Unlike that section, which exempt certain acquisitions of "current supplies," and "durable goods," this section exempts acquisitions of assets that constitute freestanding business entities. It is evident, therefore, that if these real property transactions are to continue to be exempt, the exemption must have a distinct justification. The Commission has concluded that sufficient justification exists to continue exempting these transactions.

The basis for exempting the named categories of real property is that the total quantity of the resources and the large number of annual transactions makes the $15 million size-of-transaction criteria of section 7A(a)(3)(B) overly inclusive and burdensome. Although there is much variety in the market structure of transactions affected by proposed § 802.2 (for example, most competitors are engaged in business in one or a few of the many diverse regional or local markets) they have one characteristic in common. It is unlikely that acquisitions of property named in proposed § 802.2 would have any significant potential to increase market power. The low risk of anticompetitive transactions is a result of the widely dispersed holding of these resources as well as the small size of typical transactions relative to the total amount of resources. One indication of how unlikely it is that a merger of real property holdings would produce a violation of the antitrust laws is provided by a computer search of decided cases. Pairing the words "office buildings," "residential properties," and "mergers" identified no cases. Even adding the word "antitrust" to the search did not result in the identification of any relevant cases. Another indication that such mergers are unlikely to be anticompetitive is the absence of substantial barriers to entry in these most general categories of real property. Capital is available to finance real estate projects on a national basis, and, in general, anyone with financing can enter a local or regional market in the named industries.

The Commission proposes to continue the total exemption provided for acquisitions of these categories of real property, notwithstanding that the rationale for these exemptions is quantitiative (that is, typical transactions are too small to harm competition) rather than inherent in the nature of the assets being transferred. It is possible that competitive harm could result from an unusually large transaction or series of transactions. Nevertheless the Commission believes it is unwarranted to burden the many real property transactions that pose no threat to competition solely on the ground that it is theoretically possible that such transactions could reduce competition.

Proposed § 802.2 also exempts the acquisition of voting securities of a corporation holding only these real property assets and incidental related assets. This provision derived from the existing § 802.1(a) which deems "an acquisition of the voting securities of an entity whose assets consist solely of real property" and related assets to be an acquisition of real property. The proposed treatment of real property corporations has the same intent but is more narrow and more specific. Its see-through provision applies only to the kinds of real property which are exempted by proposed § 802.2.

The term "unimproved land," is defined in proposed § 802.2(a) and "office building," and "residential property" are defined in proposed § 802.2(b). "Unimproved land" does not include property if agricultural land, structures, hydro or geothermal power, or reserves of timber or minerals account for more than $15 million of the total value of the property. "Office buildings" and "residential properties" are structures that generate ninety percent of their revenues from these functions or contain facilities used for other functions that are valued at $15 million or less.

Carbon-Based Mineral Reserves

Proposed § 802.3 would add a limited exemption for acquisitions of carbon-based mineral reserves. Like the proposed exemption of § 802.3 for certain real property transactions, this proposal is based on the likelihood that typical acquisitions that satisfy the $15 million size-of-transaction criterion of section 7A(a)(3) are too small to reduce competition. However an appreciable number of larger acquisitions of carbon-based mineral reserves warrant individual examination of their competitive effects. The Commission proposes therefore to limit this exemption to acquisitions valued at $150 million or less.

Currently some acquisitions of carbon-based mineral rights are not reportable under informal interpretations of the statutory exemption for acquisitions in the ordinary course of business (see section 7A(c)(1) of the act). These staff interpretations have been applied to undeveloped mineral rights. They are justified on the grounds that the acquisitions are essentially routine purchases of raw materials by processors of carbon-based minerals in the ordinary course of their business. While the Commission believes there is some basis to the existing staff interpretation, it believes the primary justification for exempting the reserves is not that they are current supplies. Rather, it is that there are a large number of transactions valued at more than $15 million that have little anticompetitive potential.

The Commission has made numerous studies of the coal and the oil and gas industries, including in recent years the 1982 report on *Mergers in the Petroleum Industry* and the 1978 staff point report on the *Structure of the Nation's Coal Industry*. On the basis of these and other studies four conclusions seem warranted. First, the total dollar value of reserves in these industries dwarfs asset holdings of most other industries. Second, the holdings of U.S. reserves in these industries are widely dispersed, resulting in generally low industry concentration ratios in relevant product and geographic markets. Third, acquisitions of reserves have had little effect on overall concentration ratios. Fourth, the scale of the largest acquisitions of reserves, however, does warrant a careful examination of the potential effects on competition.

The Commission has therefore rejected a blanket exemption approach and proposes to adopt a $150 million limit on this exemption. The $150 million limitation serves several purposes. It avoids imposing a filing requirement on many transactions that have previously been considered exempt. It also preserves for the antitrust enforcement agencies the procedural advantages of the act in those transactions where competition has a greater probability of being affected—acquisitions in excess of $150 million. Finally, by requiring filings, the limitation will provide a record of the number of notifications filed and enforcement interest in these transactions that might form the basis for raising or lowering the exemption

limitation after experience with the proposed rule.

The proposed rule groups together different kinds of carbon-based minerals. This single category seems appropriate both because reserves are frequently found together, as is the case with oil and gas, and because the largest firms frequently are major reserve holders in the several industries. Accordingly rather than attempt to define separate exemptions for each kind of mineral, the Commission proposes to group them together.

Aggregation Rules

At present transactions exempted by section 7A(c)(1) of the act (that is, acquisitions in the ordinary course of business) are addressed in § 801.15(a). That paragraph directs that the aggregation rules of § 801.13 not be applied. Thus in determining whether the more than $15 million size-of-transaction criterion of section 7A(a)(3) is met, the value of assets acquired in the ordinary course of business are not counted. Because proposed § 802.1 merely declares that certain transactions meet and others do not meet the ordinary course of business criteria of section 7A(c)(1), there would be no occasion to change the placement of that statutory exemption or separately list proposed § 802.1. Under the proposed provisions a sale of used durable goods valued at $10 million and current supplies values at $8 million, would not meet the more than $15 million size-of-transaction criterion (assuming the sale did not constitute substantially all the assets of an operating division) because the current supplies are exempt pursuant to section 7A(c)(1).

The other transactions that would be made exempt under this proposal are no longer based on section 7A(c)(1); therefore they must be listed separately in § 801.15 to make clear whether and under what circumstances the assets they describe must be aggregated pursuant to § 801.13. (Proposed amendments to § 801.15 are set forth in proposal 7 of this Notice.) Proposed § 802.2(a), which would exempt unimproved land, would be placed in § 801.15(b) because the Commission believes it is important to aggregate the value of separate transfers of otherwise non-exempt assets for purposes of applying the $15 million limitation on the definition of unimproved land. Greater accumulations of mineral rights, timber reserves, etc., even in separate transactions, increases the probability that the toal transferred will have antitrust significance. § 801.15(b) directs that the aggregation rules of § 801.13 be applied only if the assets, as a result of aggregation, will have exceeded a quantitative limitation on the exemption of assets of that kind. Thus, if one person made two acquisitions from the same person within 180 days of unimproved land, each valued at $30 million and each contained timber valued at $10 million, then the transactions would not be exempt. Because of aggregation, the value of timber held after the second transaction would be $20 million and the entire $60 million transfer would be reportable. Proposed § 802.2(b), which would exempt office buildings and residential properties, would be placed in § 801.15(a). Because the exemption of these assets is determined by the characteristics of each individual structure it would be inconsistent to aggregate the dollar values of separate transactions.

Proposed § 802.3, which deals with carbon-based minerals, also would be placed in § 801.15(b). Like the assets subject to the $15 million limitation in proposed § 802.2(a) the antitrust significance of transfers of carbon-based minerals can be greater in larger transactions. It is therefore appropriate to aggregate these acquisitions. Thus, if a company bought $100 million of coal rights valued at $100 million in January and then bought oil and gas rights valued at $100 million in March from the same seller, then the company would have exceeded the $150 million exemption for carbon-based minerals in proposed § 802.3 and the March acquisition would be valued at $200 million for purposes of calculating the size of the transaction.

Even with proposed §§ 802.1, 802.2 and 802.3 the exempt status of some transactions will remain unaddressed by these rules. Acquisitions of certain kinds of intangible rights such as the sale of franchise rights by the franchisor have been considered to be transfers in the ordinary course of business under section 7A(c)(1) of the act and therefore exempt. In contrast an acquisition of title to a patent has not been considered to be in the ordinary course. These and other transactions will continue to be defined through informal interpretations by the Commission staff. Persons who desire advice on the exempt status of a proposed transaction should contact the Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, or phone (202) 523–3894. With these limitations in mind, the proposed rules should significantly reduce confusion, unnecessary filings and disputes over the scope of exemptions.

F. The Commission proposes to amend its rules by revising § 802.1 and adding new §§ 802.2 and 802.3 and examples as set forth below. New language is indicated by arrows: (►new language◄). Deleted language is indicated by brackets: [deleted language].

[§ 802.1 Acquisitions of goods or realty in the ordinary course of business.

(a) *Acquisitions of voting securities of entities holding only realty.* For purposes of section 7A(c)(1), an acquisition of the voting securities of an entity whose assets consist or will consist solely of real property and assets incidental to the ownership of real property (such as cash, prepaid taxes or insurance, rentals receivable and the like) shall be deemed an acquisition of realty.

(b) *Certain acquisitions of assets.* No acquisition of the goods or realty of an entity (except for entities described in paragraph (a) of this section) shall be made "in the ordinary course of business" within the meaning of section 7A(c)(1), if, as a result thereof, the acquiring person will hold all or substantially all of the assets of that entity or an operating division thereof.]

[§ 802.1 Acquisition of certain assets in the ordinary course of business.

Acquisitions of goods in the ordinary course of business are, pursuant to section 7A(c)(1), exempt from the notification requirements of the act. This section sets out criteria for determining whether certain kinds of transactions are or are not in the ordinary course of business.

(a) *Operating Divisions.* An acquisition of all or substantially all the assets of an entity or operating division thereof is not an acquisition in the ordinary course of business. The term "operating division" means a collection of assets that have been operated as a distinct or self contained business undertaking. The term includes, but is not limited to, the following collections of assets: regional or branch units, international units, financial units, service units, transportation units, factories, mines, oil wells, hotels, and shopping malls.

Example: Corporation A, a nationwide finance business, closes all of its 22 offices in one metropolitan area and sells all of its accounts receivable from these offices to corporation B. The acquisition of these accounts by B is not exempt under § 802.2(b), because these accounts receivable constitute substantially all the assets of a regional or branch unit (the remaining assets are office supplies). It is therefore the acquisition of an

operating division and not in the ordinary course of business.

(b) *Current Supplies.* Except when acquired as part of a transaction described in paragraph (a) of this section, an acquisition of current supplies is in the ordinary course of business. The term "current supplies" includes, but is not limited to, the following kinds of assets:

(1) Goods bought solely for the purpose of resale (e.g., inventory),

(2) Goods bought for consumption in the ordinary course of the acquirer's business (e.g., office supplies, maintenance supplies or electricity), and,

(3) Goods bought to be incorporated in the final product (e.g., raw material and components).

(c) *Durable Goods.* (1) Except when acquired as part of a transaction described in paragraph (a) of this section, an acquisition of durable goods is in the ordinary course of business if the goods purchased are new. A good is "durable" if it is used repeatedly in the business and has a useful life greater than one year.

(2) An acquisition of used durable goods is in the ordinary course of business only if the acquiring person or the acquired person is not a user of such goods and has no plans to become a user of such goods; *provided,* however, if a person making an acquisition that is exempt under this subparagraph has agreed to acquire specific goods from an identified person who is or has been a user of the goods for another person who is or intends to become a user of such goods, then that other person is deemed to be acquiring the goods from the user and that acquisition by the person who is or intends to become a user from the person who is or has been a user is not in the ordinary course of business.

Example: Middleman Company agrees to acquire five used jet planes from Landing Airlines and then resell them to Flying Airlines for $100 million. Middleman then purchases the five airplanes from Landing Airlines. Although Middleman's acquisition is exempt, the transaction cannot be completed by transferring the planes to Flying until Flying and Landing file notifications because the proviso to § 802.1(c)(2) deems that the acquisition be treated as if Flying bought them directly from Landing for $100 million. The acquisition by Flying from Landing is subject to the notification requirements of the act assuming all other reporting requirements are met.◄

[§ 802.2 Acquisitions of certain kinds of real property.

(a) Acquisitions of unimproved land or the voting securities of an entity whose assets consist solely of unimproved land are exempt from the requirements of the act. The term "unimproved land" includes any real property unless the aggregate value of structures, agricultural land, reserves of timber or minerals and hydro or geothermal power account for more than $15 million of the value of the property.

(b) Acquisitions of office buildings or residential properties or the voting securities of an entity whose assets include solely office buildings and residential properties are exempt from the requirements of the act. A structure is an "office building" or a "residential property" if it has generated no more than 10 percent of its revenues from functions other than office or residential use in each of the two years prior to the proposed date of acquisition or if the areas used for those other functions are valued at $15 million or less. If the structure has been erected during the two year period, the revenue criteria of this exemption is satisfied if 10 percent or less of the structure's revenue came from uses other than office or residential during that shorter period (or is projected to come from these functions if the structure has generated no revenue).

(c) Assets incidental to the ownership of real property exempted by paragraphs (a) and (b) (such as cash, prepaid taxes or insurance, rentals receivable and the like) shall not be considered part of the otherwise non-exempt property for purposes calculating the $15 million limitations of this section.

Example: 1. "A" acquires unimproved land valued at $200 million from "B". The property contains mineral rights and structures valued at $13 million. Because these otherwise non-exempt assets are valued at $15 million or less, the acquisition meets the definition of unimproved land and the transaction is exempt. Two months later "A" acquires from "B" a $30 million tract of unimproved land that includes mineral rights valued at $8 million. Because § 802.2(a) transactions are listed in § 801.15(b), separate transfers of unimproved land are aggregated in accordance with § 801.13. As a result of that aggregation the value of the otherwise non-exempt assets that will be held after the second transaction is 21 million. The $15 million limitation of § 802.2(a) is therefore exceeded and the entire $230 million transfer must be reported unless it is exempt under other provisions of the rules or the act.

2. "A" acquires two office buildings, each valued at $50 million, from "B". Each structure contains retail space valued at $10 million which generates 20 percent of the revenue of the building. Although more than 10 percent of the revenue of each building is generated by functions other than office or residential uses and the total value of that space exceeds $15 million, the transaction continues to meet the exemption criteria of § 802.2(b). That $15 million limitation on the value of non-office, non-residential space is calculated for each structure and is not exceeded in this example because the value of that space is $10 million for each building.◄

► § 802.3 Acquisition of carbon-based mineral reserves.

An acquisition of carbon-based mineral reserves (such as oil, natural gas, coal, shale or tar sands) or rights to carbon-based mineral reserves are exempt from the requirements of the act if the total assets held as a result of the acquisition do not exceed $150 million and if the value of associated machinery, structures or other assets included in the acquisition does not exceed $15 million.

Example: Company A acquires rights to oil and gas reserves valued at $100 million from company B. Sixty days later A buys coal reserves valued at $100 million. Pursuant to § 801.13(b) "A" will hold any assets acquired from "B" within 180 calendar days of signing the agreement to acquire coal reserves as a result of the acquisition of coal, therefore that acquisition of carbon based mineral reserves is valued at $200 million and is not exempt.◄

6. Section 802.20(b) Increase in the "Controlled Issuer" Threshold

Section 802.20(b) exempts acquisitions of voting securities valued at $15 million or less if the voting securities held as a result of the acquisition do not confer control of an issuer that has total assets or net annual sales of $25 million or less. The Commission proposes to expand this exemption (and parallel exemptions in §§ 802.50 and 802.51) by raising the controlled issuer threshold to $200 million, because the experience of the antitrust agencies demonstrates that few of the transactions made reportable by § 802.20(b) have raised substantial competitive problems and none have resulted in enforcement actions. Our enforcement experience indicates that raising the threshold from $25 to $200 million would eliminate the vast majority of filings required by paragraph (b), while still requiring reports for those which have the greatest possibility of raising significant antitrust concerns.

The proposed change would constitute a major increase in one of the two size-of-transaction tests in the act and rules. When read together, section 7A(a)(3)(B) of the act and § 802.20 establish two minimum size-of-transaction tests. Under these tests, notification is not currently required unless, as a result of the acquisition, the acquiring person would hold either:

(1) Voting securities, assets or a combination of voting securities and

assets of the acquired person valued at more than $15 million; or

(2) Sufficient voting securities to control a firm which, together with all the entities the acquired firm controls, has annual net sales or total assets of $25 million.

The first minimum size-of-transaction test is the one more commonly met. It establishes the basic rule that a filing is required (assuming other requirements are met) whenever a transaction is valued at more than $15 million. Almost 90 percent of the transactions reported meet this criterion. The second minimum size-of-transaction test provides a limited supplement to this basic rule. Roughly 100 transactions a year have been reported under this criterion. These transactions valued at $15 million or less are reported whenever one party will acquire enough voting securities to control a firm with sales or assets of $25 million or more. (Control is defined in § 801.1(b).) The proposed revision would substantially increase the threshold in the second test but not affect the first.

The decision to increase the threshold in § 802.20(b) is supported by an analysis of enforcement interest in transactions filed under the act during the years 1981, 1982 and 1983. The chart below shows the antitrust agencies had a consistently lower interest in transactions valued at $15 million or less than in other transactions. (Enforcement interest is reflected by two kinds of agency actions: "clearance," the first indication of antitrust concern, initiates a procedure by which the two agencies decide which will begin an in depth review of a transaction, and "second requests," a procedure under the act for obtaining additional information from the parties and generally an indication of a greater level of concern.) In 1983, for example, the first level of interest, "clearances," showed that in only seven of every hundred transactions valued at $15 million or less was it considered at all probable that a violation might exist. In contrast, for transactions above $15 million, it was felt worthwhile to determine which agency should examine transactions more closely in fifteen of each hundred transactions, or twice as often. The disparity in interest was even greater for "second requests," where the agencies were three times as likely to request additional information from parties to transactions valued at more than $15 million. To put it another way, although the $15 million or less transactions constituted over twelve percent of the total reported in 1983, they made up just over six percent of the total clearances and not quite four percent of the total second requests. An analysis of the aggregate data for all three years using a chi square test of statistical independence shows there is a less than one percent chance that the lower interest in $15 million or less transactions is a reflection of sampling error. The observed differences in clearance rates and second request rates for transactions valued at $15 million or less and more than $15 million are therefore statistically significant. On the basis of these statistics and the fact that no enforcement actions have been instituted based on reported transactions valued at $15 million or less, the Commission believes § 802.20(b) should be altered.

ENFORCEMENT INTEREST IN $15 MILLION OR LESS REPORTED TRANSACTIONS [1]

[1981-1983]

	1983	1982	1981
Number of $15 million or less transactions	111	[illegible]	87
$15 million or less transactions as a percentage of all transactions (percent)	12.3	13.0	11.4
$15 million or less clearance rate (percent)	7.2	4.3	11.5
More than $15 million clearance rate (percent)	15.3	21.5	23.1
$15 million or less second request rate (percent)	1.8	1.1	3.5
More than $15 million second request rate (percent)	6.2	[illegible]	11.1

[1] Based on Table I of the statistical supplement to the Annual Report to Congress Pursuant to Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 for the years 1981, 1982, 1983.

The Commission has considered, but rejected, deleting § 802.20(b) entirely. As the Commission has noted before, the two different transaction size thresholds in the act indicate "a clear congressional intention to reach at least some acquisitions that satisfy only the percentage [of voting securities] test," even though the absolute value of the securities purchased may be relatively low. See 43 FR 33450, 33491 (July 31, 1978); 44 FR 66781, 66782 (November 21, 1979. The Commission's proposal would preserve this statutory design.

The separate controlled issuer criteria of § 802.20(b) can be a valuable supplement when the value of the acquired entity's voting securities does not adequately reflect its competitive presence. For example, the acquired securities could represent 50 percent of the issuer's voting securities, but a much smaller percentge of the total capitalization of a large company. Also, if a company is failing as a business enterprise, its market value may be low regardless of the competitive significance of its assets. Such a firm could, for example, have a large market share and a strong competitive position, yet face bankruptcy solely as a result of liabilities based on prior tortious conduct. Athough the purchase of a large but failing company will often be permissible under the "failing company" defense, that defense requires a careful examination of the acquired company's actual prospects, the competitive importance of its productive assets and inventory, and the possibility of its acquisition by a non-competing company. That determination can only be made after a scrutiny of the proposed acquisition; the required distinctions are far too complex to be written into the reporting threshold.

Raising the threshold of § 802.20(b) to $200 million reflects a balancing of the possibility of anticompetitive transactions valued at $15 million or less with the Commission's experience that few such transactions are liklely to occur. The requirement that the acquired entity have annual net sales or total assets of $200 million or more would have exempted over ninety percent of the less than $15 million transactions filed during 1982 and 1983 (the most recent years for which complete statistics exist). At the same time it preserves for premerger review by the antitrust enforcement agencies transactions in which firms of substantial size are acquied.

The Commission also proposes to raise the corresponding controlled issuer threshold in § 802.50 (a)(2) and (b)(2), "Acquisitions by foreign assets or voting securities of a foreign issuer by United States persons," and § 802.51(b)(2), "Acquisitions by foreign persons," from $25 million to $200 million. Although the number of transactions filed under these provisions are too small to permit meaningful analysis, the considerations in evaluating the competitive significance of acquiring firms valued at $15 million or less are the same. The Commission proposes therefore to continue the parallel thresholds in §§ 802.20(b), 802.50(a)(2), 802.50(b)(2) and 802.51(b)(2).

G. The Commission proposes to revise § 802.20(b) and its example, § 802.50(a)(2) and its example 2, § 802.50(b)(2) and its example, § 802.51(b)(2) and its example 2, the example to § 802.52 and example 3 following paragraph (d) of § 801.2, as set forth below. New language is indicated by arrows: (►new language◄). Deleted language is indicated by brackets: [deleted language].

§ 802.20 Minimum dollar value.

* * * * *

(b) Voting securities which confer control of an issuer which, together with all entities which it controls, has annual

net sales or total assets of [$25] ►$200◄ million or more.

Examples: 1. Acquiring person "A" intends to acquire 66 percent of the voting securities of corporation X from X's ultimate parent entity, "W", and "A" holds no other assets or voting securities of acquired person[s] "W". X has no subsidiaries and does not have annual net sale or total assets of [$10] ►$200◄ million. If the postacquisition value of "A" 's holdings of voting securities of X would be $15 million or less, the acquisition would be exempt under this section.

• • • • •

§ 802.50 Acquisitions of foreign assets or of voting securities of a foreign issuer by United States persons.

(a) *Assets.* • • •

(2) The acquisition of assets located outside the United States, to which sales in or into the United States are attributable, shall be exempt from the requirements of the act unless as a result of the acquisition the acquiring person would hold assets of the acquired person to which such sales aggregating [$25] ►$200◄ million or more during the acquired person's most recent fiscal year were attributable.

Examples: • • •

2. Sixty days after the transaction in example 1, "A" proposes to sell to "B" a second manufacturing plant located abroad; sales in or into the United States attributable to this plant totaled [$20] ►$200◄ million in the most recent fiscal year. Since "B" would be acquiring the second plant within 180 days of the first plant, both plants would be considered assets of "A" now held by "B". See § 801.13(b)(2). Since the total annual sales in or into the United States exceed [$215] ►$200◄ million, the acquisition of the second plant would not be exempt under this paragraph.

(b) *Voting securities.* • • •

(2) Made aggregate sales in or into the United States of [$25] ►$200◄ million or more in its most recent fiscal year.

Example: "A", a U.S. person, is to acquire the voting securities of C, a foreign issuer. C has no assets in the United States, but made aggregate sales into the United States of [$27] ►$270◄ million in the most recent fiscal year. The transaction is not exempt under this section.

§ 802.51 Acquisitions by foreign persons.

• • • • •

(b) • • •

(2) A U.S. issuer with annual net sales or total assets of [$25] ►$200◄ million or more:

• • • • •

Examples: • • •

2. In example 1, assume that "A" is acquiring "B's" stock and that included within "B" is issuer C, a U.S. issuer whose total assets are valued at [$27] ►$217◄ million. Since C's voting securities will be acquired indirectly, and since "A" thus will be acquiring control of a U.S. issuer with total assets of more than [$25] ►$200◄ million, the acquisition cannot be exempt under this section.

§ 802.52 Acquisitions by or from foreign governmental corporations.

• • • • •

Example: The government of foreign country X has decided to sell assets of its wholly owned corporation, B, all of which are located in foreign country X. The buyer is "A", a U.S. person. Regardless of the aggregate annual sales in or into the United States attributable to the assets of B, the transaction is exempt under this section. (If such aggregate annual sales were less than [$10] ►$200◄ million, the transaction would also be exempt under § 802.50.)

§ 801.2 Acquiring and acquired persons.

• • • • •

(d) • • •

(2) • • •

(iii) • • •

Examples: • • •

3. In the above example, suppose the consideration for Y is 50 percent of the voting securities of Z, a wholly-owned subsidiary of A which, together with all entities it controls, has annual net sales and total assets of less than [$25] ►$200◄ million. Suppose also that the value of these securities is $15 million or less. Since the acquisition of the voting securities of Z is exempt under the minimum dollar value exemption in § 802.20, "A" will report in this transaction as an acquiring person only and "B" as an acquired person only.

7. Section 802.35 Acquisitions by Employee Trusts

The Federal Trade Commission proposes to exempt from the reporting provisions of the act acquisitions of an employer's voting securities by certain employee trusts. It is common for pension plans, profit sharing plans and bonus plans to acquire shares in an employer's business on behalf of its employees. Typically these plans hold shares in trust for the employees. Even where the trustees of the plans are appointed by the employer, the current rules make such acquisitions of employer voting securities reportable (assuming the act's other notification criteria are met). Proposed § 802.35 would exempt acquisitions of the employer's voting securities by qualified trusts pursuant to Employee Stock Ownership Plans ("ESOPs"). The proposed rule would not exempt an ESOP's acquisition of securities issued by persons other than the employer.

Under existing premerger rules, acquisitions of an employer's securities pursuant to an ESOP are likely to be subject to the notification requirements of the act. Such acquisitions are often large enough to satisfy the $15 million size-of-transaction criterion of section 7A(a)(3)(B) because the acquisitions represent an inexpensive source of financing for the employer. Also, the ESOP trust is likely to meet the $10 million size-of-person criterion of section 7A(a)(2) because the trust is considered to be controlled by the employer and must, pursuant to § 801.1(a)(1), include the total assets and annual net sales of the employer in determining the size of the trust. However, for purposes of the intraperson exemption in § 802.30, the ESOP is not within the same person as the employer, and, thus the acquisition of the employer's stock by the ESOP is not exempt.

The conclusion that ESOP transactions should be exempt is based on the mixture of stock ownership characteristics in such trusts. If complete ownership of voting securities, rather then just voting rights, were to pass to individual employees, such acquisitions almost certainly would be too small to be subject to the $10 million size-of-person and $15 million size-of-transaction criteria of the act. If the securities were held by an entity that was controlled by the employer by reason of holding voting securities, then the transaction would be exempted by § 802.30 as an intraperson transaction. The rationales for not requiring small acquisitions to be reported and for exempting intraperson transactions both apply to an ESOP trust's acquisition of an employer's voting securities. The Commission therefore proposes to create a new exemption for such acquisitions based on the distinctive characteristics of ESOP trusts discussed below.

Acquisitions of an employer's securities pursuant to an ESOP enable employers to receive advantageous tax treatment when their securities are acquired with borrowed money. See generally 26 U.S.C. 401 et seq. Typically employers initiate the formation of ESOPs and appoint and remove the trustees who manage the assets of a plan. However, to establish such plans requires the approval of the plan by affected employees. See 26 U.S.C. 401(b)(1)(A). Once the trust is established, the employees of a publicly held corproation, not the trustees, vote the employer securities held by the trust. 26 U.S.C. 409A(e)(2). The employer-appointed trustees retain the power to sell the employer securities or to purchase additional securities.

Despite these characteristics, § 801.1(c) (4) and (5) deem the securities to be held solely by the trust. For most non-ESOP trusts, that is the appropriate result because trustees usually have the

authority to both vote and dispose of all securities. From an antitrust viewpoint, therefore, a danger of lessening competition would result if those non-ESOP trusts acquired voting securities of the employer and of competing firms. In the case of an ESOP trust which also held securities of both the employer and a competing company, however, the two sets of securities would not be voted by the ESOP trust. The employees would vote the securities of their employer. Consequently most ESOP trusts do not pose the same kind of antitrust concern as other trusts.

This does not mean that employee stock ownership trusts can not pose any antitrust concerns, only that other procedures of the premerger screening program are adequate to protect the remaining antitrust interests. For example, the influence of the employer over the trust can be great due to its authority to appoint and remove trustees. An employer might use this influence to obtain control of a competitor through the trust. It also might exert great influence over the way its employees vote as shareholders. The existing premerger rules explicitly recognize the possibility of influence through control over trustees. Because the employer controls the trust, the rules require the employer to report the trust's acquisition of shares in a competing (or other) firm as its own. Section 801.1(c) declares that a person controls an entity (including a trust) if it has the right to "designate a majority of the directors of a corporation, or in the case of unincorporated entities, of individuals exercising similar functions" (i.e., trustees). Consequently, the competitive implications of acquiring another firm's voting securities would continue to be reviewed under the act even if the acquisition of the employers own securities were made not subject to the notification requirements, as the Commission proposes to do here.

The Commission has considered exempting employee trust acquisitions either by expanding the intraperson exemption in § 802.30 or by changing the definition of "hold" in § 801.1(e). It rejects both of those solutions for the reasons stated below.

In most circumstances an acquisition is exempt where a controlled entity acquires voting securities of another entity under the same control. However, § 802.30 limits this exemption to circumstances where control is exercised by reason of holding securities (not the right to appoint directors or trustees). The reason for this exception to the exemption is that the rules do not require filing a notification prior to making an acquisition of the right to appoint directors (or trustees), only prior to an acquisition of assets or voting securities. Expanding the intraperson exemption to include ESOPs would permit a person to avoid the reporting process entirely by first acquiring the right to appoint directors (which is not reportable), and then acquiring the voting securities of the then controlled entity. It is therefore not advisable to expand that exemption.

It would be possible to exempt some acquisitions by ESOP trusts by altering the "hold" provisions of § 801.1(c). This rule could be altered to declare that beneficiaries hold voting securities within a trust if the beneficiaries (in the case of an ESOP, the employees) have the right to vote those securities. That solution, however, is inadequate because it would not exempt acquisitions of an employer's voting securities pursuant to an ESOP where the employer is not a publicly held company. Closely-held companies are required to accord voting rights to employees in such plans only "with respect to a corporate matter which (by law or charter) must be decided by more than a majority vote of outstanding common shares votes". 26 U.S.C. 409A(e)(3). Consequently, altering the "hold" provisions will not exempt acquisitions by employee trusts that do not require review.

The Commission proposes instead to create a new exemption for employee trusts based on the kind of acquisition and the mixture of ownership rights between employers, employees and trustees. The provision limits the exemption to trusts that are part of qualified stock bonus, pension or profit sharing plans as defined in the Internal Revenue Code in order explicitly to accommodate those plans that are most likely to make acquisitions large enough to be reportable. It exempts acquisitions of an employer's voting securities by a trust established for employees if the employer has the right to appoint and remove the trustees. This further limitation to trusts that are controlled by the employer, according to the criteria of § 801.1(b), ensures that any acquisition of voting securities of other persons by the trust will be reportable as if made by the employer. Accordingly acquisitions which are likely to lessen competition will remain subject to the notification requirements of the act.

Because all acquisitions of employer voting securities by ESOPs are exempt, there is no need to aggregate such acquisitions pursuant to § 801.13. Such aggregation is avoided by listing § 802.35 in § 801.15(a)(2). The proposed text of § 801.15 below also contains amendments described in proposal 5.

H. The Commission proposes to add new § 802.35 and revise § 801.15 (a)(2) and (b) set forth below. New language is indicated by arrors: (►New language◄). Deleted language is indicated by brackets [deleted language].

►§ 802.35 Acquisitions by employee trusts.

An acquisition of voting securities shall be exempt from the notification requirements of the act if:

(a) The securities are acquired by a trust that meets the qualifications of section 401 of the Internal Revenue Code;

(b) The trust is controlled by a person that employs the beneficiaries of the trust; and,

(c) The voting securities acquired are those of that person or an entity within that person.◄

§ 801.15 Aggregation of voting securities and assets the acquisition of which was exempt.

. . . . . .

(a) * * *

(2) Sections ►802.2(b),◄ 802.6(b)(1), 802.8, 802.31, ►802.35, ◄802.50(a)(1), 802.51(a)(1), 802.63 and 802.70.

(b) Assets or voting securities the acquisitions of which was exempt at the time of acquisition (or would have been exempt, had the Act and these rules been in effect), or the present acquisition of which is exempt, under section 7A(c)(9) and §§ ►802.2(a), 802.3,◄ 802.50(a)(2), 802.50(b), 802.51(b) and 802.64 unless the limitations contained in section 7A(c)(9) or those sections do not apply or as a result of the acquisition would be exceeded, in which case the assets or voting securities so acquired will be held; and

. . . . . .

8. Section 802.70(b) Acquisitions Subject to Prior Approval

The Commission proposes to delete paragraph (b) of § 802.70. Paragraph (b) exempts from the notification and waiting requirements of the act certain acquisitions that require prior approval by the Federal Trade Commission or by a federal court. Although the principle of this rule is sound—to eliminate duplicative notification requirements—the practical effects can be troublesome to both the enforcement agencies and the parties subject to an order. This rule, which is applicable to only a few transactions each year, can in some instances reduce the opportunity for premerger review of acquisitions. At the

same time the automatic exemption can create a barrier to voluntary settlements of antitrust actions where companies would prefer to have their future acquisition in other markets subject to the normal premerger procedures rather than the extraordinary procedures of an order. As a consequence the Commission believes the administration of the premerger program would be better served by eliminating the exemption.

Section 802.70(b) exempts an entire acquisition from the requirements of the act if, pursuant to an order entered in an action brought by the Federal Trade Commission or the Department of Justice, the acquiring person is required to obtain approval of the Federal Trade Commission or a federal court prior to making an acquisition. If the transaction must receive approval (typically after an opportunity for public comment), then a separate review of the acquisition under the premerger program is unnecessary. However, it is not certain that the court or the Federal Trade Commission will evaluate the potential anticompetitive effects of all portions of an acquisition under the authority of the order. Consider, for example, a diversified company engaged in both lumber and cement businesses. As a result of acquisitions in the cement business, such a company might become subject to a prior approval order requiring it to submit all future cement acquisitions for review. Although all such acquisitions would be reviewed, the company—if proposing a cement and lumber acquisition—might argue that the authority of a court order extends only to that portion of the acquisition that has a competitive effect on the cement industry. Even without accepting this limited view of its authority, a court might, as a matter of judicial economy, confine its review of the cement and lumber acquisition under the order to determining that the transaction does not reduce competition in the cement industry. In such circumstances, the combined effect of the exemption and the limited review would be to eliminate, for the lumber portion of the acquisition, the procedural advantages afforded by the Hart-Scott-Rodino act and by the judicial order. That result seems entirely inappropriate for the effective enforcement of the antitrust laws.

Nevertheless, the antitrust enforcement agencies have insisted on their authority to review all portions of a transaction, under a prior review order, not merely those portions relevant to the order. This insistence can be an obstacle to obtaining consensual orders with companies because of the public disclosure procedures that are a part of prior review orders.The agencies insist that they must review all portions under the order because § 802.70(b) can automatically deprive them of authority to review, using routine premerger procedures, any portion of a transaction that is subject to a prior review order. Review under an order typically requires the person requesting approval to place on the public record business information demonstrating that the acquisition is not anticompetitive (unless the acquiring person can show a specific need for confidentiality). Thus, in the example from the previous paragraph, the diversified company would be required to disclose information about the lumber, as well as the cement, business. The prospect of broad disclosures of business information can provoke a company unnecessarily to resist an order settling an antitrust matter. In contrast privacy is required for documents and information filed in a routine premerger notification. A procedure that does not require public disclosure of unrelated portions of transactions could facilitate reaching agreement on the terms of prior review orders.

Two approaches to this problem have been considered: (1) To require redundant prior notifications under the order and the premerger notification program, or (2) to require separate notifications for different portions of an acquisition—those that will be reviewed within the terms of the order and those that will be reviewed under routine premerger notification procedues. The latter resolution, although logically superior, could require extremely complex definitions to include all transactions that might be relevant to the order. Such definitions could result in some transactions being placed in the wrong category and quite possibly would result in others not being adequately reported under either procedure.

Because the overall burden of duplicate filings is small (fewer than a dozen transactions were exempt from premerger notification requirements under § 802.70(b) in 1984), the Commission believes the administration of the notification program and the enforcement of the antitrust laws will be enhanced by eliminating the exemption contained in § 802.70(b).

These considerations do not apply to divestitures subject to prior approval because in those orders the Federal Trade Commission or a federal court will have identified the transfers of assets that are relevant to those orders. There is, therefore, no reason to delete the exemption in § 802.70(a) for divestitures pursuant to orders.

I. Accordingly the Commission proposes to amend § 802.70 to delete paragraph (b) and restructure the remaining portions of the section as set forth below. Deleted language is indicated by brackets: [deleted language].

§ 802.70 Acquisitions subject to order.

An acquisition shall be exempt from the requirements of the act if [:

(a)] The voting securities or assets are to be acquired from an entity ordered to divest such voting securities or assets by order of the Federal Trade Commission or of any Federal court in an action brought by the Federal Trade Commission or the Department of Justice [; or

(b) The acquiring person or entity is subject to an order of the Federal Trade Commission or of any Federal court in an action brought by the Federal Trade Commission or the Department of Justice, requiring prior approval of such acquisition by the Federal Trade Commission, such court, or the Department of Justice, and such approval has been obtained].

9. Section 803.5 Affidavit Requirements of the Acquiring Persons

The Commission proposes to modify the notice requirement in § 803.5(a). This rule requires an acquiring person in transactions subject to § 801.30 (tender offers, open market purchases and other acquisitions of stock from persons other than the issuer) to submit with its Notification and Report Form an affidavit attesting that the issuer has received the notice required by § 803.5(a). When first promulgated, the rule required the acquiring peron to disclose in the notice to the issuer, among other things, the identity of the acquiring person and the number of securities of each class to be acquired. Because some acquiring persons could not state their intentions in terms of numbers of securities to be acquired, the Commission, by formal interpretation on December 28, 1978, permitted such persons to state instead which of the reporting thresholds of § 801.1(h) they intended to meet or exceed. The original rule still can be inadequate in some circumstances. It does not require the acquiring person to state how many securities will be held as a result of an acquisition, only how many shares are to be acquired; thus the acquired person does not always have a basis for determining if the acquisition will require it to file a notification.

The Commission now proposes to incorporate the 1978 formal interpretation in its rules, to alter the rule to require the acquiring person to state the number of voting securities that would be held as a result of the acquisition and to describe the wording that the Commission will consider to be adequate notice of an intention to make a reportable acquisition. In addition the Commission proposes to establish a similar affidavit requirement for owners of acquisition vehicles who are required to report transactions pursuant to proposed § 801.5.

Affidavits in § 801.30 Transactions

In view of some disputes about what constitutes an adequate notice under paragraph (a), the Commission takes this opportunity to clarify the purposes and meaning of that rule. The notice procedure serves two related purposes: to inform the issuer of its obligation to file the notification required by the act and to provide the issuer and the antitrust agencies with evidence that the acquiring person seriously intends to consummate the transaction.

To Inform the Acquired Person

The principal purpose of § 803.5(a) is to inform the issuer of its obligation to file a Notification and Report Form with the antitrust enforcement agencies. In the transactions covered by this rule, voting securities are to be acquired from persons other than the business entity that issued the securities (or an entity within the same person as the issuer); thus the issuer has no reason to know that some or all of its shares are being acquired. Section 803.5(a) cures this by requiring the acquiring person to serve the notice before filing its notification.

The amendments to § 803.5(a) require the acquiring person to include in its notice information on which the acquired person can determine its obligation to file a notification. As originally promulgated the rule did not fully meet this objective because it required that the acquiring person state only the number of voting securities it intended to acquire. The obligation to file notifications rests, however, on the total value or the total percentage of voting securities held as a result of the acquisition. The formal interpretation resolved this problem in the case of a notice from a person who could not determine the number of securities it intended to acquire by requiring it to state which of the four notification thresholds it would cross as a result of the acquisition. This required the acquiring person to add, pursuant to § 801.13(a), securities already held with those to be purchased to determine if the acquiring person would meet or exceed the $15 million or the 15, 25, or 50 percent of voting securities thresholds of § 801.1(h) that trigger the notification process. In addition to incorporating this threshold option, the amendments to § 803.5(a)(1)(iii) would require equivalent information about the number of voting securities to be acquired. The proposal would delete the requirement that the notice include nonvoting securities (because they do not affect the notification obligation) and require the acquiring person to state the total number of voting securities that would be held as a result of the acquisition. That information will enable the acquired person to verify if the acquisition will obligate it to file a notification.

Evidence of Acquiring Person's Intent

The antitrust screening process initiated by the acquiring persons requires the expenditure of significant resources by the issuer and the antitrust agencies. The rule therefore requires that the acquiring person provide evidence that it intends to make a reportable transaction and is not merely considering the possibility of making one. The evidence required falls into three categories.

(1) The statement that the acquiring person has a "good faith intention . . . to make [an] acquisition" (§ 803.5(a)(2));

(2) The statement of the specific number of securities which the person intends to acquire or the filing threshold it intends to meet or exceed (§ 803.5(a)(1)(iii)); and

(3) The communication of these and other facts to the acquired person (§ 803.5(a)(1)).

The statement of "good faith" intent is but one part of the evidence the rules require to establish that an acquiring person intends to make a reportable acquisition. That general statement gains greater credibility when the acquiring person declares the exact number of securities it intends to buy or the filing threshold it intends to cross. The specificity is a greater indication of the ripeness or seriousness of the plan to acquire than a more general statement of an intention to acquire.

Because the acquired person is entitled to be reasonably certain that a reportable acquistion will be made, the Commission proposes to narrow the descriptions of an acquiring person's intention that it will consider as complying with the notice requirements of proposed § 803.5. The Commission does not accept a statement in a notice that the acquiring person intends to make an acquisition that "may exceed" a given reporting threshold. That statement does not specify a current intention to acquire any shares. While the Commission has previously allowed persons who state a present intent to make a reportable acquisition to also file for a higher threshold using "may exceed" language, proposed example 2 makes clear the Commission will no longer construe "may exceed" language as providing any notice of an intention to acquire voting securities. Similarly, language used in other public filings or in public offering documents may fail to express an intention to acquire a reportable quantity of voting securities for purposes of § 803.5(a). For instance, a tender offer is often made for "up to 50 percent of the issuer's voting securities," or an SEC Form 13D will often state purchases of the issuer's stock will "not exceed 25 percent" or will be for "not more than 15 percent" of the issuer's stock. Language such as this may be sufficient for compliance with the securities laws, but does not state with sufficient certainty for antitrust notice purposes an acquiring company's intention to meet or exceed the specific threshold mentioned or any specific threshold. A statement that an acquiring person will acquire "up to 50 percent of the acquired person's voting securities" does not express an intention to meet or exceed the 50 percent threshold. It does not state an intention to meet even the lowest notification threshold, because it does not express an intention to acquire a single share of stock. Under the terms of proposed § 803.5 an acquiring person must attach a notice that either states the exact number of shares to be acquired or declares in plain language that the acquiring person has a good faith intention to meet or exceed a specific notification threshold.

The requirements of this rule should be easy to satisfy. Acquiring persons can, for instance, state that they "intend to acquuire at least 15 percent of X's voting securities" or that they intend to "acquire voting securities, which, when aggregated with voting securities of company X currently held, will result in our holding 50 percent or more of X's voting securities." If an acquiring person cannot plainly state its intention to acquire a reportable quantity of shares, then it cannot file a Notification and Report Form; instead, it must wait to file until its intent can be stated with the requisite definitiveness.

The requirement that the acquiring person make known to the acquired person the specifics of an acquisition plan provides a final indication of a serious intent to acquire. This requirement parallels the requirement that agreements to merge be executed

(§ 803.5(b)) and tender offers be publicly announced (§ 803.5(a)(2)) prior to filing a notification. In each case the seriousness of the acquiring person is attested to by its willingness to declare openly and in writing its specific acquisition plan.

Affidavits in § 801.5 Transactions

When an acquisition vehicle acquires either voting securities or assets the acquired entity may be unaware of its obligation to file a Notification and Report Form listing revenues derived from product markets in which the owners of the acquisition vehicle do business. To make sure that acquired persons become aware of their obligation to file notifications in response to filings by owners pursuant to § 801.5, the Commission proposes to add a new affidavit requirement to the provisions of § 803.5. The proposed new paragraph (c) would require owners of acquisition vehicles to comply with the terms of § 803.5(a) in § 801.30 transactions or § 803.5(c)(3) in other transactions. In addition, owners must inform the acquired entity: that the acquisition is being made by an acquisition vehicle; that pursuant to § 801.5 the owner is treated as an acquiring person; and the extent of the acquisition that is attributed to the acquiring person. Based on this information the acquired person will be able to determine its obligations to file notifications in response to those of owners and, in the case of non § 801.30 transactions, to file affidavits purusant to § 803.5(b).

Because acquisition vehicles are sometimes not fully formed until the time an acquisition is made proposed § 803.5(c)(1)(i) permits a person to file if it has a "good faith intention to be an owner at the time of the acquisition." This good faith intention is tested by compliance with the other provisions of § 803.5, paragraphs (a) and (b), and by communication of the intention to become an owner to the acquired entity.

J. The Commission proposes to amend § 803.5 paragraph (a)(1) by revising subparagraph (iii); adding examples 2, 3, and 4, and designating the unnumbered example as example 1; and adding a new paragraph (c), as set forth below. New language is indicated by arrows: (►new language◄). Deleted language is indicated by brackets: [deleted language].

§ 803.5 Affidavits required.

(a) (1) * * *

(iii) The specific classes of voting [and nonvoting] securities of the issuer, and ►if known,◄ the number of securities of each such class that would be held by the acquiring person as a result of the acquisition; ►or, if the number is not known, the specific notification threshold that the acquiring person intends to meet or exceed;◄

* * * * *

(2) * * *

Example►s◄: * * *

►In examples 2–4 assume that one percent of B's shares are valued at $15 million.

2. Company A intends to acquire voting securities of Company B. A does not know exactly how many shares it will acquire, but it knows it will definitely acquire 15 percent and may acquire 50 percent of B's sharesa. "A"'s notice to the acquired person would meet the requirements of § 803.5(a)(iii) if it states inter alia: "Company A has a present good faith intention to acquire 15 percent of the outstanding voting securities of Company B and, depending on market conditions, may acquire up to 50 percent or more of the voting securities of Company "B". The Commission would accept this notice only for the 15 percent threshold.

3. "A" states, inter alia, that it "has a good faith intention to acquire 1,000,000 shares of Company B's voting securities." If 1,000,000 shares represents 23 percent of B's outstanding voting securities, the statement will be deemed a notification for the 15 percent threshold.

4. "A" states inter alia that it will acquire "up to 100 percent of the shares of B. "A"'s notice does not comply with § 803.5 because it does not state an intent to meet or exceed a notification threshold. "A"'s filing will be considered deficient within the meaning of § 803.10(c)(2).◄

* * * * *

►(c) *Section 801.5 transactions.* In any transaction where an owner of an acquisition vehicle is required, pursuant to § 801.5, to file a notification and report form, the notification required by the act from each such owner shall contain an affidavit, attached to the front of the notification, attesting:

(1) That the owner has communicated to the acquired entity in accordance with the procedures established by paragraph (a) of this section:

(i) That it is an owner of an entity that proposes to make a reportable acquisition, or has a good faith intention to be an owner at the time of the acquisition;

(ii) That, because the acquiring entity is an acquisition vehicle, the owner is treated by these rules as an acquiring person; and,

(iii) The portion of the acquisition that will be treated as if made by the owner; and, further,

(2) If the transaction is an acquisition to which § 801.30 applies, that the owner has also communicated all the information required by paragraph (a) of this section; or,

(3) If the transaction is not an acquisition to which § 801.30 applies, that a contract, agreement in principle or letter of intent to merge or acquire has been executed by or on behalf of the acquisition vehicle and that the owner believes that entity has a good faith intention to consummate the transaction.◄

10. Section 803.9 Incorporation by Reference

The Commission proposes to reduce the burden of filing by expanding the extent to which persons may incorporate by reference documents and information submitted in previous filings. The proposed rule would permit incorporation by reference in three situations: (1) When SEC Forms, annual reports and other documents submitted in response to items 4(a) and 4(b) of a prior filing are still current; (2) when a person has previously filed to acquire voting securities of the same issuer; and (3) when an acquiring person is filing for a secondary acquisition.

The proposal strikes a balance between the burden on parties filing notifications and the obligations of the antitrust enforcement agencies to act quickly on those notifications. To complete an antitrust review of proposed transactions within the short statutory deadlines, the enforcement agencies must have immediate access to the necessary documents and information. In the case of materials incorporated by reference such access requires adequate and conveniently located storage space and sufficient personnel to index, store, copy and promptly retrieve the incorporated material. The Commission believes that the proposed rule is feasible with existing personnel.

The proposed rule builds upon the agencies' successful experience with the incorporation by reference rules established by the formal interpretations of April 10, 1979, and April 7, 1981, and by § 803.2(e) of the rules (promulgated July 29, 1983). It would replace those rules with a new, more comprehensive rule, proposed § 803.9.

Paragraph (a) of the proposed rule specifies the circumstances in which incorporation by reference would be permitted. All of paragraph (a) is subject to the limitations set forth in paragraph (b).

Paragraph (a)(1) would permit a person to incorporate by reference documents previously submitted in response to items 4(a) and 4(b) of the Notification and Report Form. This provision would be broader than existing rule § 803.2(e). It would allow persons to incorporate, in addition to annual reports, other financial

documents called for by item 4(b). Relatively modest enlargement of the filing and retrieval system established under § 803.2(e) should be sufficient to handle this expansion.

Paragraph (a)(2) would permit documents and information to be incorporated by reference when a person acquires additional voting securities of the same issuer. The proposal would change the provisions of existing rule § 803.2(e) by increasing from 90 days to one year the period in which such incorporation would be allowed. This expansion seems manageable since filings for different thresholds of the same issuer are ordinarily reviewed by the same unit within the Commission, and these units have had few problems with existing § 803.2(e).

Paragraph (a)(3) adds a new procedure. It would permit acquiring persons in a secondary acquisition (see § 801.4) to incorporate by reference documents or information submitted with, or incorporated by reference in, the filing for the primary acquisition. Again, this provision appears feasible because both acquisitions are generally reviewed by the same unit.

Paragraph (b) would place certain limits on incorporation by reference. Although these are explained in more detail than in existing § 803.2(e), only the exclusion of cash tender offers represents a change from current policy.

Paragraph (b)(1) does not permit incorporation by reference in a notification for a cash tender offer because the enforcement agencies are authorized less time to review such transactions. See § 803.10. It is the experience of the Commission that the agencies frequently need all of the shortened waiting period to review cash tender offers. That review could be hampered by adding the time required to retrieve, copy and distribute previously filed documents or information.

Paragraph (b)(2) would require that the incorporated documents or information still be accurate and current. For example, documents could not be incorporated in response to items 4(a) and 4(b) unless they are the most recent prepared and do not refer to data more than fifteen months old. See § 801.11(b)(2).

Paragraph (b)(3) would require that the document or information have been submitted with a notification for a transaction whose waiting period expired within one year of the beginning of the waiting period for the notification which incorporates documents or information by reference. The agencies keep whole filings or selected essential parts of them as long as the filings are effective. Under § 803.7 a notification is effective for one year after the expiration of the waiting period.

Paragraph (b)(4) would prohibit incorporation by reference of documents or information submitted with a notification that has been withdrawn. The agencies do not necessarily have complete copies of such filings.

Paragraph (b)(5) similarly would not permit incorporation of materials that have been returned pursuant to § 21 of the Federal Trade Commission Act, 15 U.S.C. 57b–2. Again the agencies do not ordinarily retain copies of all such materials.

Under paragraph (b)(6) of the proposed rule, persons could not incorporate affidavits, certifications or notices required by § 803.5 or § 803.6, because these documents are unique to each transaction.

Paragraph (c) discusses certain mechanical issues. Under this paragraph, parts of documents could not be incorporated by reference. A party must be able to incorporate an entire previous document or must submit a new one. Parties may, however, incorporate portions of non-documentary information if they clearly and unmistakably indicate precisely what information is being incorporated by reference.

K. Accordingly, the Commission proposes to remove rule § 803.2(e), whose provisions are included in the new rule, and add a new rule § 803.9 as set forth below. New language is indicated by arrows: (►new language◄). Deleted language is indicated by brackets: [deleted language].

§ 803.2 Instructions applicable to Notification and Report Form

* * * * *

[(e) A person filing notification may incorporate by reference only documentary materials required to be filed in response to item 4(a) of the Notification and Report Form and annual reports required to be filed in response to item 4(b), which were previously submitted with a filing by the same person and which are the most recent versions available; except that when the same parties file for a higher notification threshold no more than 90 days after having made filings with respect to a lower threshold, each party may incorporate by reference in the subsequent filing any documents or information in its earlier filing provided that the documents and information are the most recent available.]

►§ 803.9 Incorporation by reference.

(a) A person may, subject to the limitations of paragraph (b) and in accordance with the procedures of paragraph (c), incorporate by reference documents or information it has submitted as part of a previous notification in the following circumstances:

(1) In any transaction, a person responding to items 4(a) and 4(b) of the Notification and Report Form may incorporate by reference documents submitted pursuant to these items in an earlier notification;

(2) In any acquisition of voting securities by a person who has previously filed notification at a lower threshold for an acquisition of voting securities of the same issuer, that person may incorporate by reference any document or information submitted with, or incorporated by reference in, the previous filing; or,

(3) In any secondary acquisition, an acquiring person may incorporate by reference any document or information previously submitted with, or incorporated by reference in, its notification for the primary acquisition.

(b) Notwithstanding paragraph (a) of this rule, incorporation by reference of a document or information shall not be permitted if:

(1) The notification is for a cash tender offer;

(2) The document or information is no longer responsive because of the passage of time, a change in circumstances, or for any other reason;

(3) The document or information was submitted with a notification for a transaction whose waiting period expired more than one year before the beginning of the waiting period of the transaction whose notification incorporates the document or information;

(4) The document or information was submitted with a notification that has been withdrawn;

(5) The document or information has been returned pursuant to a request for the return of documents; or

(6) The document or information to be incorporated is an affidavit, certification or notice pursuant to § 803.5 and § 803.6 of these rules.

(c)(1) A person who incorporates by reference an entire document or information submitted in a prior notification must insert at the appropriate place on the Notification and Report Form a reference containing the date the information or document was submitted and the names of the acquiring and acquired persons in that notification.

(2) A person who incorporates by reference a portion of the non-documentary information submitted in a prior notification must also unmistakably indicate precisely what information is being incorporated by reference, but in no case may a person incorporate by reference less than an entire document.

Examples: 1. Within the past year "A" filed a notification to acquire 15 percent of the voting securities of corporation B. Now "A" proposes to acquire 25 percent of the voting securities of corporation C. When "A" files its Notification and Report Form for the acquisition of C's voting securities it may, under paragraph (a)(1) of this rule, incorporate by reference documents submitted in response to items 4(a) and 4(b) of the Notification and Report Form filed for the acquisition of B's voting securities, provided that none of the limitations of paragraph (b) of the rule apply.

2. Corporation A acquires 15 percent of the voting securities of corporation B after both "A" and "B" file Notification and Report Forms as required. Within one year of the expiration of the waiting period, "A" proposes to acquire additional voting securities of B, after which "A" will hold over 25 percent of B's voting securities. Both "A" and "B" must file a Notification and Report Form for this acquisition. Subject to the limitations of paragraph (b) of this rule, both "A" and "B" may incorporate by reference any information or documents from the previous filing.

3. Within the past year "A" acquired 15 percent of the voting securities of corporation B. It then acquired over 50 percent of the voting securities of corporation C. "A", "B", and "C" filed the required Notification and Report Forms. Subsequently, "A" discontinued manufacturing several products. "A" now proposes to acquire 25 percent of B's voting securities. In its notification for the acquisition of 25 percent of B's voting securities, "A" may not simply incorporate by reference its responses to items 5, 6, 7, 8 and 9 of the Form filed for the acquisition of 15 percent of B's voting securities. Under paragraph (b)(2) of the rule "A" must, at a minimum, amend its response to item 5 by deleting the revenues and product codes applicable to the discontinued products. In addition, to reflect the acquisition of C, "A" must make the appropriate additions to items 5, 6, 7, 8 and 9.

4. "A" proposes to acquire 50 percent of the voting securities of corporation C and files a Notification and Report Form for this acquisition. C holds either more than 15 percent or more than $15 million of the voting securities of corporations D, E, and F. Under § 801.4 of these rules, "A" must file Notification and Report Forms for the secondary acquisition of the voting securities of corporations D, E, and F. In these Forms, "A" may incorporate by reference, subject to the limitations in paragraph (b), any document or information submitted with its filing for 50 percent of the voting securities of C. Notices, affidavits and certifications, however, must be separately executed for every acquisition for which a Notification and Report Form is filed.

5. "A"'s waiting period to acquire 15 percent of the voting securities of corporation X expired fourteen months ago. Six months later, that is eight months ago, "A" filed notification to acquire 15 percent of the voting securities of corporation B. "A" now proposes to acquire 25 percent of the voting securities of B. In its notification to acquire 15 percent of the voting securities of B, "A" responded to items 4(a) and 4(b) by incorporating the documents which it submitted with its filing for the voting securities of X. "A" cannot incorporate these documents in its notification for 25 percent of the voting securities of B, since the documents were submitted with its filing whose waiting period expired more than one year ago. As in example 2, however, subject to the limitations of paragraph (b) of this rules, "A" may incorporate by reference any other information and documents submitted with the notification for 15 percent of the voting securities of B.◄

11. Section 803.10(a) Running of Time in § 801.40 Transactions

The Commission proposes to amend § 803.10(a), which determines when the waiting period begins for transactions covered by the act and rules. The current rule does not make completely clear when the waiting period begins in connection with the formation of a joint venture or other corporation (hereinafter "joint venture") subject to § 801.40 of the premerger rules. The Commission's staff has consistently taken the position that the waiting period does not begin until all venturers who are required to file have done so. It is possible, however, to read the rule to permit each individual venturer's waiting period to begin as soon as that venturer files.

This latter interpretation could hamper review of joint ventures by the antitrust agencies. Separate waiting periods for individual venturers would mean that in some instances one venturer's waiting period might expire before another venturer's filing alerted the antitrust agencies to the need to issue requests for additional information to all venturers. To avoid this result, the Commission proposes to amend § 803.10(a) to state explicitly that in the case of acquisitions covered by § 801.40, the waiting period begins when all parties required to file a notification have done so.

Although the Commission is persuaded of the value of changing the language in the rule, the Commission believes that its staff has correctly interpreted the existing rule and it rejects the arguments to the contrary based on the language of that rule. Section 803.10 currently provides, in relevant part, that the waiting period for all acquisitions, other than those subject to § 801.30, begins on the "date of receipt of the notification . . . from: . . . all persons required by the act and these rules to file notification." Although this language suggests, and the Commission staff has consistently stated, that the waiting period begins only when all venturers required to file have done so, a few parties have argued that another interpretation is possible. They assert that the "all persons" language of § 803.10 refers only to those persons required to file notification in connection with a particular acquisition. They note, in addition, that § 801.40 and the Statement of Basis and Purpose treat each individual venturer's acquisition of stock of the joint venture corporation as a discrete acquisition for some purposes. Since in such an acquisition only the venturer is required to file (the joint venture itself need not file), they contend that the "all persons" requirement is satisfied whenever an individual venturer files notification. Thus, according to the argument, each venturer's waiting period begins as soon as it files its notification.

While this argument has support in some language of the rules, it is not consistent with the antitrust enforcement agencies' need to conduct an analysis of the competitive relationships among the persons forming the joint venture corporation. As the Statement of Basis and Purpose to § 802.41 notes, "it is the combination of the persons that form the new entity (and not the new entity standing alone) that presents antitrust issues when a new corporation is formed . . . ." 43 FR 33496 (July 31, 1978). Accordingly, to ensure that the enforcement agencies have the opportunity to evaluate the competitive relationships among all the venturers required to file, the agencies must be able to review all their notifications at the same time. For this reason, the Commission staff has consistently maintained that the waiting period for acquisitions subject to § 801.40 begins when all acquiring persons that are required to report to report have done so.

Furthermore, contrary to arguments by private persons the rules do not always treat the formation of a joint venture as a series of isolated acquisitions. Rather, for some purposes, the rules treat the formation of a joint venture as a single transaction. For instance, whether a particular venturer meets the size-of-person test in a § 801.40 transaction is determined not only on the basis of its size and the size of the joint venture corporation, but also by the size of the other venturers. See § 801.40(b). Similarly, the rules require

the venturers, but not the joint venture corporation itself, to file notification. This approach also indicates that it is the relationships among the venturers rather than the relationships between each individual venturer and the joint venture that are of likely competitive significance. Consequently, the Statement of Basis and Purpose indicates taht it is "the parents of the new corporation [who] will provide the information necessary to evaluate the competitive impact of the combination." 43 FR 33496 (July 31, 1978). Thus, while the rules treat each acquisition of stock of the joint venture as a discrete acquisition for some purposes, the rules also treat the formation of a joint venture as a single transaction for other purposes. Accordingly, there has been ample support for the staff interpretation that the existing "all persons" language in § 801.10(b) requires all contributors to a joint venture to file their notifications before the waiting period begins. Nevertheless, to avoid any possible ambiguity the Commission proposes to amend the rule to make this requirement explicit.

If this change is made, the Commission does not see any need to amend either § 803.10(b), which explains when the waiting period ends, or § 803.20(c), which sets out the rules for an extended waiting period. The application of those sections to acquisitions subject to § 801.40 should be clear once the meaning of § 801.10(a) becomes indisputable. For example, it should be clear that for acquisitions subject to § 801.40 in which a request for additional information is issued, the extended waiting period begins on the date the additional information or documentary materials requested is received from all contributors to the joint venture corporation who received a request.

L. The Commission proposes to revise § 803.10(a) by redesignating the present paragraph (a)(2) as (a)(3) and by adding a new paragraph (a)(2), as set forth below. New language is indicated by arrows: (► new language◄).

§ 803.10 Running of time.

(a) * * *

(2) ►In the case of the formation of a joint venture or other corporation covered by § 801.40, all persons contributing to the formation of the joint venture or other corporation that are required by the act and these rules to file a notification;

(3)◄ In the case of all other acquisitions, all persons required by the act and these rules to file notification.

* * * * * *

12. The Premerger Notification and Report Form

The Commission proposes to simplify the Premerger Notification and Report Form. The seven changes described below are the product of both the comments of interested parties and our own review. We believe each change will reduce the burden of the Form without hampering the agencies' evaluation of reported transactions.

The Commission welcomes suggestions for additional changes and comments addressing two generic issues: (1) Whether the Form calls for information that companies have normally already collected; and (2) whether the Form asks for data in the way companies normally keep it. Although much of the Form has been designed to use information on hand, the Commission would be interested in further opportunities to do so.

a. Description of Transaction

The Commission proposes to consolidate into one question the three items [2(a)–(c)] which request a description of the transaction. At present, item 2 (a) asks for the names and addresses of the parties to the acquisition, a description of the assets or voting securities to be acquired, the consideration to be received from each party and, if the acquisition involves a tender offer, the terms of the offer. Item 2(b) calls for the scheduled consummation date and item 2(c) a description of the manner in which the transaction is to be carried out, including scheduled major events such as stockholder's meetings, other requests for government approval or tender offer dates. Since parties often repeat information when responding to these items, the Commission proposes to combine them into one question. These changes should simplify the Form without diminishing the information obtained.

Appendix to Part 803—[Amended]

M. Accordingly, in the Appendix to Part 803 we propose to remove items 2(b) and 2(c), redesignate items 2(d)–2(f) as items 2(b)–2(d) respectively, and reword the instruction for item 2(a) as set forth below. Here, as well as in the other six parts of this section, new language is indicated by arrows: (►new language◄). Deleted language is indicated by brackets: [deleted language].

Item 2(a)—*Description of acquisition.* Briefly describe the transaction. Include a list of the name and mailing address of each acquiring and acquired person, whether or not required to file notification, and a description of the assets or voting securities to be acquired by and/or the consideration to be received by each party. ►In describing the acquisition, include the expected dates of any major events required to consummate the transaction (e.g., stockholders' meetings, filing of requests for approval, other public filings, terminations of tender offers) and the scheduled consummation date of the transaction.◄

If voting securities are to be acquired from a holder other than the issuer (or an entity included within the same person as the issuer) separately identify (if known) such holder and the issuer of the voting securities. Acquiring persons in tender offers should describe the terms of the offer.

[Item 2(b)—State the scheduled consummation date of the transaction.

Item 2(c)—Describe the manner in which the transaction is to be carried out. The description should include the expected dates of any major events required in order to consummate the transaction (e.g., stockholders' meetings, filing of requests for approval, other public filings, terminations of tender offers).]

b. Description of Voting Securities to be Acquired

The Commission proposes to allow persons who intend to acquire 100 percent of the acquired person's voting securities to respond to item 2(e) by stating that intent and providing the dollar value of the acquisition. Item 2(e) requires responses to eight subsections which elicit information about separate classes of voting securities and the amount of each that will be held by each acquiring person following the transaction. As the Statement of Basis and Purpose points out, the purpose of the detailed breakdown is to enable the agencies to assess the degree of control resulting from the acquisition. 43 FR 33522 (July 31, 1978). Commentors have noted that the detailed responses are likely to be unnecessry if the party is acquiring 100 percent of the voting securities of a company. In this case, there is little doubt as to how much control the acquiring person will have. The same is true where the parties will merge the two companies or where two companies will consolidate and form a new company. In these instances, therefore, the Commission proposes to eliminate the detailed responses required by item 2(e).

However, to enable the Commission to monitor compliance with the act, parties would be required to give full responses to item 2(e) if, prior to the acquisition, the acquiring person would hold 15 percent or more than $15 million of the acquired person's voting securities. Since holdings of this magnitude would normally require a filing, disclosure of this information in item 2(e) will alert the agencies to the

fact that the purchaser believed that the prior purchases were exempted by the act or rules. The agencies may independently evaluate whether an exemption applied.

N. Accordingly, the Commission proposes to revise the instruction for newly redesignated item 2(d) as follows:

Item 2(d)—*Voting securities to be acquired.* Furnish the following information separately for each issuer whose voting securities will be acquired in the acquisition ►. If the acquiring person does not currently hold 15 percent or more than $15 million worth of the voting securities of the acquired person or any entity included within the person, and if either the acquiring person will, as a result of the acquisition, hold 100 percent of the voting securities of the acquired issuer or the acquisition is a merger or consolidation (*see* § 801.2(d)), then the parties may so state and give the total dollar value of the transaction instead of responding to items 2(e)(i)–2(e)(viii) ◄:

c. Index to Ancillary Documents

The Commission proposes to delete item 2(f)(ii) which asks for an index of ancillary documents related to the agreement, such as those relating to personnel matters (e.g., union contracts and employment agreements), third-party financing agreements, leases, subleases and documents related to the transfer of realty. The Statement of Basis and Purpose states that the index "will permit the agencies to identify particular documents in a second request." 43 FR 33523 (July 31, 1978).

In the Commission's experience, however, this index has not been necessary. Usually, the second request does not focus on issues related to third-party agreements, subleases, union contracts or other documents listed in the index. Furthermore, when this type of information is needed, it can be asked for descriptively in a second request. Since the index can be lengthy and time consuming to prepare, the Commission proposes to drop this item.

O. Accordingly, the Commission proposes to remove item 2(f)(ii) in the instructions and Form:

[Item 2(f)(ii)—Index to ancillary documents. Furnish an index containing a brief description sufficient to identify each ancillary document or class of documents related to this agreement, such as those relating to personnel matters (e.g., union contracts, employment agreements), third-party financing agreements, leases, subleases and other documents relating to the transfer of realty, or other similar documents related to this transaction].

d. List of Subsidiaries

The Commission proposes to allow parties to omit from the list required by item 6(a) every subsidiary which has total assets of less than $10 million. At present, item 6(a) requires persons filing notification to provide the name and mailing address of each entity included within the person filing notification. The instructions give parties the option of not listing subsidiaries with total assets of less than $1 million. Some commentors have questioned whether a list of subsidiaries is at all helpful to the agencies in conducting their antitrust review. Others have asked whether the names of small subsidiaries are necessary for the agencies to conduct their review. One comment objected to the necessity of providing the information in the Form, suggesting instead that parties be allowed to indicate where the information is contained in an attachment to the Form.

The agencies must be able to determine the names and addresses of all significant subsidiaries of the parties involved in the acquisition. In many instances, the names of the subsidiaries give the agencies an opportunity to better understand the acquisition, and enable the agencies to seek information from public sources, most of which is only provided by company name. The need for subsidiaries' names is particularly compelling when the subsidiaries are foreign entities, since the SIC code information contained in item 5 is limited to U.S. operations. See § 803.2. Without the name of the foreign subsidiary, information about the foreign operations of the party is not readily obtainable. On the other hand, the Commission recognizes that at some point the subsidiaries may be so small that even their names are unlikely to produce information relevant to the agencies' antitrust review. The Commission believes that the $1 million cut-off provided in item 6(a) can be raised to $10 million without significantly affecting the ability of the agencies to review the transaction. This belief is, in part, based on the fact that items 6(b) and 6(c) currently are subject to a $10 million cut-off and these cut-off levels have not adversely affected the agencies' ability to conduct their antitrust review. The Commission also is willing to allow parties to provide information by referencing a document submitted with a filing so long as the information provided in the attachment is complete, up-to-date and accurate (see Proposal e, infra). Filings referencing attachments which are not complete, up-to-date and accurate will not be deemed substantially compliant and the waiting period will not begin until the correct materials are received by the agencies. See § 803.10(c)(2).

P. Accordingly, the Commission proposes to revise the instruction for item 6(a) to read:

Item 6(a)—*Entities within person filing notification.* List the name and headquarters mailing address of each entity included within the person filing notification. Entities with total assets of less than [$1]—►$10◄) million may be omitted.

e. Shareholders and Holdings of Person Filing Notification

The Commission proposes to allow documentary responses to items 6(b) and 6(c) consistent with the approach taken in item 6(a) above.

Item 6(b) asks for a list of shareholders of each entity included within the person filing notification. Holders of 5 percent or more of the voting securities of any entity included within the person must be listed unless the entity has total assets of less than $10 million. Item 6(c) requires parties to list their minority holdings. Parties may omit holdings of less than 5 percent and holdings of issuers with total assets of less than $10 million.

One comment stated that the Commission should permit parties to respond to these items by referencing to a document filed with the Form rather than including a response on the Form. The Commission is of the view that a response which references a document is adequate so long as the information contained in the document is complete, up-to-date and accurate. If the document is not complete, up-to-date and accurate the filing will not be deemed substantially compliant and the waiting period will not begin until the corrected materials are filed with both agencies.

Q. Accordingly the Commission proposes to revise the language in the instructions under item 6 to read:

Item 6. This Item need not be completed by a person filing notification only as an acquired person if only assets are to be acquired.—

►Persons filing notification may respond to Item 6 by referencing a document furnished with this Form if the information so referenced is a complete response to this item and is up-to-date and accurate.◄

f. Geographic Information in Overlapping SIC Codes.

The Commission proposes to delete the requirement that parties provide geographic information arranged by the state, county and city or town of establishments deriving revenue in certain overlapping SIC codes.

At present, item 7(a) of the Form requires the filing person to identify 4-digit industry SIC codes in which it has knowledge or belief that it and any other person which is a party to the acquisition also derives revenue (usually referred to as "the overlapping code" or "a four digit overlap"). Item

7(c) requires the filing person to identify the geographic areas in which it derives revenue in overlapping codes. For most overlapping codes the filing person lists the states in which it derives revenue. Item 7(c)(iv) currently requires parties to provide more detailed geographic information for SIC major groups 52–62 and 64–89 (see attachment 1).

In most of these major groups it is necessary, for antitrust analysis, to determine with some specificity the geographic areas in which the parties operate. For instance, acquisitions involving food stores, gasoline service stations, hospitals, apparel and accessory stores, and banks require a more detailed breakdown of geographic information, since the relevant geographic market is often local in character rather than an entire state or region of the country. The Commission believes that acquisitions involving security brokers, insurance agents, investment offices and other businesses falling within certain codes can be adequately reviewed without the more specific information currently required. In the Commission's experience, acquisitions involving overlaps in certain codes either do not involve local markets or involve local markets but nonetheless can adequately be reviewed if the parties specify only the states in which revenue is derived. Therefore, the Commission proposes to change item 7(c) to require only state by state information for overlaps occurring in SIC major groups 62, 64–67, 72, 73, 76, 79, and 81–89 (see attachment 2).

R. The Commission proposes to revise the instruction for item 7(c)(iv) to read:

Item 7(c)(iv)—for each 4-digit industry within SIC major groups [52–62 and 64–89 (retail trade, finance, insurance other than insurance carriers, and real estate, and services] ►52–61, 70, 75, 78, and 80 (retail trade, banking and certain services)◄ listed in item 7(a) above, provide the address, arranged by state, county and city or town, of each establishment from which dollar revenues were derived in the most recent year by the person filing notification;

Renumber the old item 7(c)(v) as item 7(c)(vi);

[Item 7(c)(v)] ►Item 7(c)(vi)◄ for each 4-digit industry within SIC major group 63 (insurance) listed in item 7(a) above, list the state(s) in which the person filing notification is licensed to write insurance.

Substitute a new instruction for item 7(c)(v):

►Item 7(c)(v)—for each 4-digit industry within SIC major groups 62, 64–67, 72, 73, 76, 79, and 81–89 (certain finance, insurance, and real estate groups and certain services) listed in item 7(a) above, list the states (or, if desired, the portion thereof) in which the establishments were located which derived revenues in the most recent year; and◄

g. Prior Acquisition

The Commission proposes to change item 9 of the Form by requiring the acquiring person to provide information about acquisitions made within five years of filing rather than the ten years currently required.

At present, where both the acquiring and acquired person in the acquisition for which a notification is being filed derived $1 million in revenue in a 4-digit SIC code, the acquiring person must list all acquisitions which it has made over the last ten years in which the acquired person derived revenue in that same 4-digit SIC code. A filing person need only list acquisitions of more than 50 percent of the voting securities or assets of entities which had annual net sales or total assets greater than $10 million in the year prior to the acquisition.

The purpose of item 9 if to assist the agencies in identifying any prior acquisitions by the acquiring person that may suggest a pattern of acquisitions in a particular industry by that person. See 43 FR 33534 (July 31, 1978). Several comments suggested modifications of item 9. One comment simply suggested raising the $1 million cut-off to $10 million. This suggestion was rejected because the agencies sometimes find overlaps of less than $10 million in a given 4-digit SIC code to be of competitive significance. This is particularly true where the parties compete in a small geographic area or where one of the parties to the acquisition has an extremely large share of a market.

Another comment suggested that the ten-year period be reduced to five years. This suggestion would significantly reduce the burden because it would cut in half the number of years the parties would have to search for information about prior acquisitions. The Commission believes that this change can be made without adversely affecting the agencies' ability to conduct a thorough antitrust review. The Commission believes that an accurate account of the acquiring person's acquisitions over the past five years will adequately put it on notice of possible trends toward concentration in the affected industry.

S. Therefore, the Commission proposes to reword the instruction for item 9 to read as set forth below.

Item 9—*Previous acquisitions* (to be completed by acquiring person)—Determine each 4-digit (SIC code) industry listed in Item 7(a) above, in which the person filing notification derived dollar revenues of $1 million or more in the most recent year and in which either the acquired issuer derived revenues of $1 million or more in the most recent year, (or in which, in the case of the formation of a joint venture or other corporation, the joint venture or other corporation reasonably can be expected to derive dollar revenues of $1 million or more), or revenues of $1 million or more in the most recent year were attributable to the acquired assets. For each such 4-digit industry, list all acquisitions made by the person filing notification in the [ten] ►five◄ years prior to the date of filing of entities deriving dollar revenues in that 4-digit industry. List only acquisitions of more than 50 percent of the voting securities or assets of entities which had annual net sales or total assets greater than $10 million in the year prior to the acquisition.

For each acquisition supply:

(a) The name of the entity acquired;

(b) The headquarters address of the entity prior to the acquisition;

(c) Whether securities or assets were acquired;

(d) The consummation date of the acquisition;

(e) The annual net sales of the acquired entity for the year prior to the acquisition;

(f) The total assets of the acquired entity in the year prior to the acquisition; and

(g) The 4-digit (SIC code) industries (by number and description) identified above in which the acquired entity derived dollar revenues.

Note.—This attachment will not appear in the Code of Federal Regulations.

Attachment 1

SIC major groups in which parties are currently required to provide addresses arranged by state, county and city or town.

Division G. Retail Trade

Major Group 52. Building materials, hardware, garden supply, and mobile home dealers.
Major Group 53. General Merchandise stores.
Major Group 54. Food stores.
Major Group 55. Automotive dealers and gasoline service stations.
Major Group 56. Apparel and accessory stores.
Major Group 57. Furniture, home furnishings, and equipment stores.
Major Group 58. Eating and drinking places.
Major Group 59. Miscellaneous retail.

Division H. Finance, Insurance and Real Estate

Major Group 60. Banking.
Major Group 61. Credit Agencies other than banks.
Major Group 62. Security and commodity brokers, dealers, exchanges, and services.
Major Group 64. Insurance agents, brokers, and service.
Major Group 65. Real estate.
Major Group 66. Combinations of real estate, insurance, loans, law offices.
Major Group 67. Holding and other investment offices.

Division I. Services

Major Group 70. Hotels, rooming houses, camps, and other lodging places.
Major Group 72. Personal services.
Major Group 73. Business services.
Major Group 75. Automotive repair, services, and garages.
Major Group 76. Miscellaneous repair services.
Major Group 78. Motion pictures.
Major Group 79. Amusement and recreation services, except motion pictures.
Major Group 80. Health services.
Major Group 81. Legal services.
Major Group 82. Educational services.
Major Group 83. Social services.
Major Group 84. Museums, art galleries, botanical and zoological gardens.
Major Group 86. Membership organizations.
Major Group 88. Private households.
Major Group 89. Miscellaneous services.

Note.—This attachment will not appear in the Code of Federal Regulations.

Attachment 2

SIC major groups where, under the proposed revision of the Form, only state by state breakdowns will be required.

Major Group 62. Security and commodity brokers, dealers, exchanges, and services.
Major Group 64. Insurance agents, brokers, and services.
Major Group 65. Real estate.
Major Group 66. Combinations of real estate, insurance, loans, law offices.
Major Group 67. Holding and other investment offices.
Major Group 72. Personal services.
Major Group 73. Business services.
Major Group 76. Miscellaneous repair services.
Major Group 79. Amusement and recreation services, except motion pictures.
Major Group 81. Legal services.
Major Group 82. Education services.
Major Group 83. Social services.
Major Group 84. Museums, art galleries, botanical and zoological gardens.
Major Group 86. Membership organizations.
Major Group 88. Private households.
Major Group 89. Miscellaneous services.

13. Changes to Conform with Prior Amendments to the Rules

On November 21, 1979 and July 29, 1983, the Commission published several changes in the premerger rules. See 44 FR 66781 et seq. and 48 FR 34427 et seq. Our experience with those changes indicates that it would be helpful to make several amendments to the examples appearing elsewhere in the premerger rules.

T. Therefore, the Commission proposes to revise example 1 to § 801.4, example 4 to § 801.15, example 3 to § 801.30, the example to § 801.40, and example 1 to § 802.41, as set forth below. New language is indicated by arrows: (►new language◄). Deleted language is indicated by brackets: [deleted language].

§ 801.4 Secondary acquisitions.

* * * * *

(b) * * *

Examples: 1. Assume that acquiring person "A" proposes to acquire all the voting securities of corporation B. This section provides that the acquisition of voting securities of issuers held but not controlled by B or by any entity which B controls are secondary acquisitions by "A". Thus, if B holds more than $15 million of the voting securities of corporation X (but does not control X), and "A" and "X" satisfy sections 7A (a)(1) and (a)(2), "A" must file notification separately with respect to its secondary acquisition of voting securities of X. "X" must file notification within fifteen days ►(or in the case of a cash tender offer, 10 days)◄ after "A" files, pursuant to § 801.30.

§ 801.15 Aggregation of voting securities and assets the acquisition of which was exempt.

* * * * *

(c) * * *

Examples: * * *

4. Assume that acquiring person "B", a United States person, acquired from corporation X two mines located abroad, and assume that the acquisition price was $40 million. In the most recent year, sales in the United States attributable to the mines were [$6] ►$150◄ million, and thus the acquisition was exempt under § 802.50(a)(2). Within 180 days of that acquisition, "B" seeks to acquire a third mine from X, to which United States sales of [$7] ►$60◄ million were attributable in the most recent year. Since under § 801.13(b)(2), as a result of the acquisition, "B" would hold all three mines of X, and the [$10] ►$200 million◄ limitation in § 802.50(a)(2) would be exceeded, under paragraph (b) of this rule, "B" would hold the previously acquired assets for the purpose of the second acquisition. Therefore, as a result of the second acquisition, "B" would hold assets of X exceeding $15 million, would not qualify for the exemption in § 802.50(a)(2), and must observe the requirements of the act before consummating the acquisition.

§ 801.30 Tender offers and acquisitions of voting securities for third parties.

* * * * *

(b) * * *

Examples: * * *

3. Suppose that acquiring person "A" proposes to acquire 50 percent of the voting securities of corporation B which in turn owns 30 percent of the voting securities of corporation C. Thus "A" 's acquisition of C's voting securities is a secondary acquisition (see § 801.4) to which this section applies because "A' is acquiring C's voting securities from a third party (B). Therefore, the waiting period with respect to "A" 's acquisition of C's voting securities begins when "A" files its separate Notification and Report Form with respect to C and "C" must file within 15 days ►(or in the case of a cash tender offer, 10 days)◄ thereafter. "A" 's primary and secondary acquisitions of the voting securities of B and C are subject to separate waiting periods; see § 801.4.

§ 801.40 Formation of joint venture or other corporations.

* * * * *

Example: Persons "A", "B", and "C" agree to create new corporation N, a joint venture. ►"A", "B", and "C" will each hold one third of the shares of N.◄ "A" has more than $100 million in annual net sales. "B" has more than $10 million in total assets ►but less than $100 million in annual net sales and total assets◄. Both "C" 's total assets and its annual net sales are less than $10 million. "A", "B", and "C" are each engaged in commerce. "A" "B", and "C" have agreed to make an aggregate initial contribution to the new entity of $6 million in assets and ►each◄ to make additional contributions of [an aggregate] $6 million in each of the next three years. Under paragraph (c), the assets of the new corporation are [$24] ►$60◄ million. Under paragraph (b), only "A" must file notification [and only then if] ►since◄ "A" meets [a] ►the◄ criterion of section 7A(a)(3)—that is, [if] it will be acquiring [15 percent or $15 million] ►one third◄ of the voting securities of the new entity ►for $20 million◄. N need not file notification; see § 802.41.

§ 802.41 Joint venture or other corporations at time of formation.

* * * * *

Examples: 1. Corporations A and B, each having sales of $100 million, each propose to contribute [$10] ►$20 million◄ in cash in exchange for 50 percent of the voting securities of a new corporation, N. Under this section, the new corporation need not file notification although both "A" and "B" must do so and observe the waiting period prior to receiving any voting securities of N.

By direction of the Commission. Commissioner Bailey voted to seek public comments, but expressed serious reservations concerning the proposed large increase in certain dollar thresholds for transactions to be subject to premerger reporting. The increase from $25 million to $200 million would have eliminated eleven of twelve mergers in the affected category where investigational clearance was actually sought via the FTC/Justice Department liaison process in 1982 and 1983, and all three of the mergers where second requests were actually issued. She observed that while the Notice states none of these cases resulted in enforcement actions, she does not necessarily agree that the existing rate even of clearances and/or second requests represents the appropriate level of antitrust concern with the mergers at issue.

Emily H. Rock,

Secretary.

[FR Doc. 85–22382 Filed 9–23–85; 8:45 am]

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Tuesday
September 24, 1985

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Decision and Referendum Order on Proposed Further Amendment of the Marketing Agreement and Order; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. F&V AO-198-A-13]

Raisins Produced From Grapes Grown in California; Decision and Referendum Order on Proposed Further Amendment of the Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision pertains to a proposed amendment of the Federal marketing agreement and order for raisins produced from grapes grown in California. The proposed amendment would (1) require handlers to pay certain costs in addition to the harvest cost when redeeming diversion certificates under the raisin diversion program (RDP); and (2) add authority to allow the Raisin Administrative Committee (Committee) to issue diversion certificates in an amount greater than the creditable fruit weight of the raisins produced on a particular production unit to an RDP participant agreeing to remove that production unit, or partial production unit, from production. Raisin grape vines can be diverted through vine removal or other means established by the Committee. The first issue would bring handlers' costs for acquisition of reserve tonnage raisins purchased under the RDP in line with costs handlers pay for other purchases of reserve raisins. This is necessary to maintain consistency in reserve tonnage sales under the marketing order. The second issue would provide an incentive for more producers to use vine removal which is the most direct and most effective way of accomplishing the diversion program objectives. The Committee had proposed to make these changes through informal rulemaking but was advised by the Department that the order contained no authority to implement the proposal. Raisin producers will vote in a referendum to determine whether they favor issuance of the proposed changes.

DATE: The representative period for purposes of the referendum herein ordered is August 1, 1984, to July 31, 1985.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250. Telephone (202) 447-5053.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing, issued September 4, 1985, and published September 6, 1985 (50 FR 36436).

This administrative action is governed by provisions of Sections 556 and 557 of Title 5 of the United States Code, and therefore is excluded from the requirements of Executive Order 12291 and Secretary's Memorandum 1512-1.

As stated in the notice of hearing, interested persons were invited to present evidence at the hearing on the probable regulatory and informational impacts of the proposed changes on small business. The Regulatory Flexibility Act (RFA) (Pub. L. 96-354), effective January 1, 1981, seeks to insure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. A sizeable number of raisin producers and handlers could be considered small businesses for the purposes of the RFA. In this regard, testimony was presented that there would be no difference in the impact of the proposals as between small and large producers and handlers because participation in the Raisin Diversion Program is voluntary and a small entity can participate the same as large entity. Moreover, the proposals would not impose any additional reporting requirements on producers or handlers.

The purpose of the RFA is to fit regulatory action to the scale of businesses subject to such action in order that small businesses will not be unduly or disproportionately burdened. The Agricultural Marketing Agreement Act of 1937, however, requires the application of uniform rules to regulated handlers. Marketing orders and rules proposed thereunder are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the act are usually compatible with respect to small business entities. Since many raisin producers and handlers are small businesses, and the order reflects the views and consensus of such small businesses, the changes proposed in this proceeding would impose no disproportionate regulatory burdens on any group of small entities within the industry.

While marketing order No. 989 and the changes proposed herein impose certain regulations on affected businesses and the number of businesses may be substantial, any added burden resulting from these changes should not be significant when compared to the benefits which should accrue to such businesses. All entities, small and large, would be treated equitably as a result of these changes in the order. Furthermore, there is no practical means of exempting small businesses from the order and the regulations applicable thereto.

It is hereby determined and certified that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 989.

Marketing Agreements and Orders, Grapes, Raisins, and California.

Preliminary Statement

A public hearing was held September 10, 1985, in Fresno, California on a proposed amendment of the marketing agreement and Order No. 989, both as amended (7 CFR Part 989; 50 FR 1830). The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900). Notice of this hearing was published in the **Federal Register** on September 6, 1985 (50 FR 36436). The notice contained the proposals submitted by the Committee which works with the USDA in administering the marketing order program.

Material issues

The material issues of record are as follows:

(1) Requiring handlers to pay receiving, storing, fumigating, handling, and inspecting costs, in addition to harvest costs, when redeeming diversion certificates under the RDP.

(2) Adding authority which would allow the Committee to offer diversion program participants, agreeing to remove raisin grape vines, tonnage in addition to that diverted.

(3) Determining whether an emergency exists to warrant the omission of a recommended decision with respect to this amendatory action.

Findings and Conclusions

(1) The marketing agreement and Order No. 989 (herein collectively referred to as the "order") were amended effective January 8, 1985 (50 FR 1830) to authorize a voluntary Raisin Diversion Program (RDP). The objective of the RDP is to provide the raisin industry with a means of reducing raisin production by decreasing the quantity of grapes grown to be dried into raisins in order to bring the raisin supply more closely in line with market needs. Under this program, any producer diverting

his/her crop in accordance with the Committee's diversion procedures receives a diversion certificate. The producer, in turn, submits the certificate to handler and, in essence, is selling his/her raisin crop to the handler. The handler pays the producer for the free tonnage represented by the certificate in accordance with the free and reserve percentages for the applicable crop year, less the harvest cost established by the Committee for the entire creditable fruit weight shown on the certificate. The free tonnage quantity is obtained by applying the appropriate free percentage for the crop year to that weight. Handlers may redeem diversion certificates for reserve pool raisins from the prior year's production. To redeem a diversion certificate, a handler must present the certificate to the Committee and under current procedures pay it an amount equal to the harvest cost previously deducted by the handler from the producer's proceeds. However, the evidence of record in this proceeding is that if the handler is not required to pay certain additional costs to the Committee upon redemption of the certificate, an unstable and disorderly market environment and reduced income to reserve pool equity holders would result. These additional costs would represent the payment received by the handler from the Committee in the prior crop year pursuant to § 989.401 for handler services and inspection applicable to reserve raisins. The testimony indicates that failure to include these additional costs would give a handler redeeming a diversion certificate as much as a two-cent per pound price benefit over handlers acquiring raisins directly from producers. This price benefit could enable the handler to solicit diversion certificates by paying the grower an additional amount for the certificate, retain the benefit, or enable him/her to sell raisins for about two cents a pound less than the handler buying raisins directly from a producer. These alternative courses of action could give a handler redeeming certificates an unfair competitive advantage over other handlers in the acquisition or sales of raisins. It was further testified that the RDP was never intended to create these inequities between handlers. Morever, including these additional costs would be consistent with other reserve sales to handlers, in which the costs for handler services and inspection are included in the sales price to handlers. In order to rectify inequities resulting from current provisions, § 989.56(d) should be amended to require the handler redeeming a diversion certificate to pay the Committee an amount equal to the harvest cost it has established plus an amount equal to the payment for receiving, storing, fumigating, handling, and inspecting reserve tonnage raisins specified in § 989.401 for the entire tonnage represented on the diversion certificate.

(2) As discussed in Material Issue (1), the RDP was established by the raisin industry to give producers the means of voluntarily reducing the quantity of grapes grown for drying in order to bring raisin supplies more closely in line with market needs.

Under current procedures, diversion certificates apply to a specific production unit and are equal to the creditable fruit weight of raisins produced on that unit during the prior crop year or the last prior crop year eligible for diversion. While producers have a number of alternatives available for curtailing (aborting) a crop, such as spur pruning and crop-inhibiting sprays, the greatest long-term benefit of the RDP to the raisin industry is gained when a production unit is taken out of production. This would be the most direct and effective way of accomplishing the objectives of the RDP. To provide producers with an incentive to remove production units, it was proposed in the notice of hearing that § 989.56(c) be amended by adding at the end of that paragraph the following phrase: "or such other weight as determined by the Committee." Evidence presented at the hearing was that the incentive would be in the form of a bonus; i.e., the Committee would issue a diversion certificate in an amount greater than the creditable fruit weight of the raisins produced on the production unit to be removed from production. This bonus should be determined by the Committee and applied uniformly to all eligible applicants. Also, the testimony at the hearing made reference only to the removal (pulling) of vines as a means of removing a unit from production. However, other evidence indicated that, while vine removal was the only method discussed by the Committee it should have authority through informal rulemaking to include other methods as well. Also, testimony was presented that removal of a partial production unit should also be eligible for this bonus plan. Therefore, in order to achieve the Committee's objective and also provide it with the degree of flexibility desired, § 989.56(c) should be amended by adding the following proviso at the end of that paragraph: *"Provided,* That, in the case of a production unit, or partial production unit, removed from production through vine removal or other means specified by the Committee, it may issue a diversion certificate in an amount greater than the creditable fruit weight of the raisins produced thereon." This phrase should be substituted in lieu of that contained in the notice of hearing.

(3) Section 900.12(d) of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900) authorizes the Secretary to omit issuing a recommended decision and the opportunity to file exceptions thereto when he determines on the basis of the hearing record that due and timely execution of his function imperatively and unavoidably requires such omission.

Testimony was presented at the hearing that the referendum activity and results must be completed no later than October 1, 1985, to allow the Committee to proceed with its marketing policy actions applicable to the 1985–86 crop year.

Moreover, the rules and regulations implementing the RDP require the Committee to issue diversion certificates to approved applicants by October 5 who have removed grapes in accordance with the RDP. Upon issuance of those certificates by the Committee to producers, certain rights will be vested in those producers. As indicated in Material Issue (1), a producer submitting a diversion certificate to a handler in essence is selling his/her raisin crop to the handler. Delaying the submission of such certificates to handlers would delay payment to producers. Moreover, submission of diversion certificates to handlers vests certain rights with handlers, and these cannot be abridged.

In view of all of the foregoing, it is hereby determined that on the basis of the hearing record, that due and timely execution of the Secretary's functions imperatively and unavoidably requires the omission of a recommended decision and the opportunity to file exceptions thereto. Issuance of a recommended decision, including opportunity to file exceptions thereto, would delay amendment of the order by at least four weeks.

Rulings on briefs of interested persons

No briefs were received during the period for filing briefs.

General Findings

Upon the basis of the record, it is found that: (1) The findings hereinafter set forth are supplementary, and in addition, to the previous findings and

determinations which were made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. Except the findings as to the base period for parity computation, and except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of said prior findings and determinations are hereby ratified and affirmed;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of raisins produced from grapes grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(5) There are no differences in the production and marketing of raisins produced from grapes grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(6) All handling of raisins produced from grapes grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement, as Amended, Regulating the Handling of Raisins Produced From Grapes Grown in California", and "Order Amending the Order, as Amended, Regulating the Handling of Raisins Produced From Grapes Grown in California", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the annexed marketing agreement, be published in the Federal Register. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the annexed order which is published with the decision.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*), to determine whether the issuance of the annexed order as amended and as hereby proposed to be further amended, regulating the handling of raisins produced from grapes grown in California, is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production of the regulated commodity for market.

The representative period for the conduct of such referendum is hereby determined to be August 1, 1984, to July 31, 1985.

The agents of the Secretary to conduct such referendum are hereby designated to be Richard Van Diest and Frank M. Grasberger, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture.

Signed at Washington, D.C. on September 20, 1985.

Raymond D. Lett,

Assistant Secretary, Marketing & Inspection Services.

Order[1] Amending the Order, as Amended, Regulating the Handling of Raisins Produced From Grapes Grown in California

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto. Except the findings as to the base period for parity computation, and except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of said prior findings and determinations are hereby ratified and affirmed.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed amendment of the marketing agreement, as amended, and Order No. 989, as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California.

Upon the basis of the record it is found that:

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The order, as amended, and as hereby further amended, regulates the handling of raisins produced from grapes grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) There are no differences in the production and marketing of raisins produced from grapes grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of raisins produced from grapes grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of raisins produced from grapes grown in California shall be in conformity to and in compliance with the terms and conditions of the said order, as hereby amended, as follows:

PART 989—[AMENDED]

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

2. Section 989.56(c) is revised to read as follows:

§ 989.56 Raisin diversion program.

* * * * *

(c) *Issuance of diversion certificates.* After the Committee announces a raisin diversion program, any producer may divert grapes of his/her own production and receive from the Committee a diversion certificate in accordance with the applicable rules and regulations. Such certificates only may be submitted by producers to handlers in accordance with applicable rules and regulations. Diversion certificates issued by the Committee shall apply to a specific production unit and shall be equal to the creditable fruit weight of such raisins produced on such unit during the prior crop year or the last prior crop year eligible for such diversion: *Provided:* That, in the case of a production unit, or partial production unit, removed from production through vine removal or other means established by the Committee, it may issue a diversion certificate in an amount greater than the creditable fruit weight of the raisins produced thereon.

* * * * *

3. Section 989.56(d) is revised to read as follows:

* * * * *

(d) *Redemption of diversion certificates.* Handlers may redeem diversion certificates for reserve pool raisins. To redeem a certificate, a handler must present the diversion certificate to the Committee and pay the Committee an amount equal to the harvest cost it has established, plus an amount equal to the payment for receiving, storing, fumigating, handling, and inspecting reserve tonnage raisins specified in § 989.401 for the entire tonnage represented on the diversion certificate. Upon receipt of the diversion certificate, the Committee shall note on the certificate that it is cancelled.

* * * * *

[FR Doc. 85-22976 Filed 9-23-85; 10:54 am]

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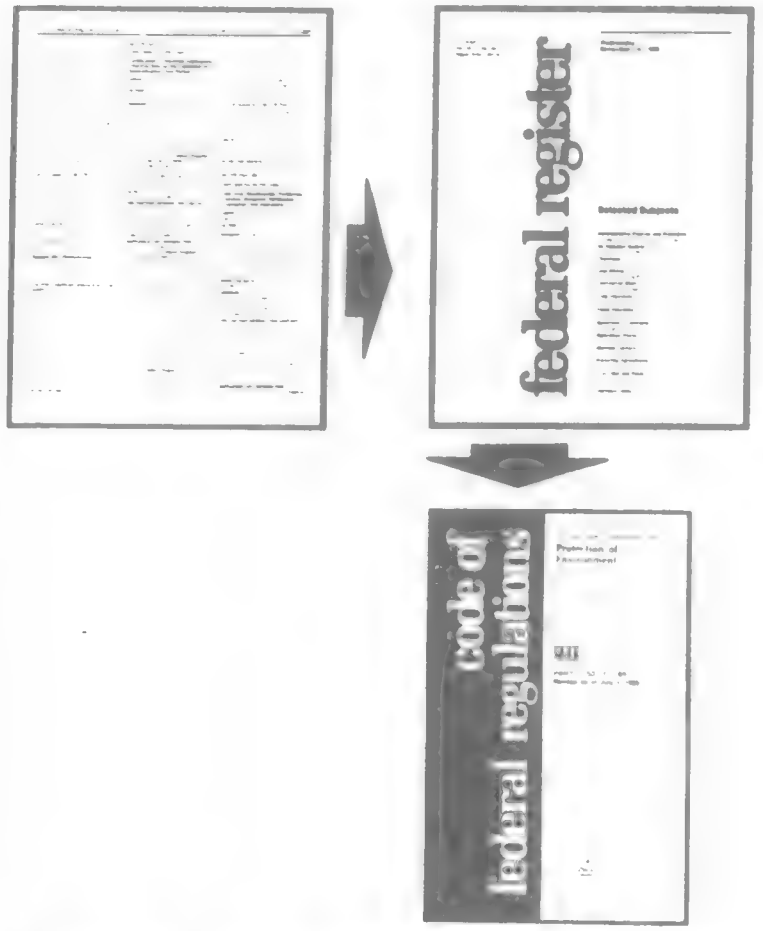
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Rules and Regulations

Federal Register
Vol. 50, No. 186
Wednesday, September 25, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 362, Amdt. 1; Valencia Orange Reg. 363]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Amendment 1 of Regulation 362 increases the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period September 20–26, 1985. Regulation 363 establishes the quantity of such fruit that may be shipped to market during the period September 26–October 3. The amendment and regulation are needed to provide for orderly marketing of fresh Valencia oranges for the periods specified due to the marketing situation confronting the orange industry.

DATE: Regulation 362, Amendment 1 (§ 908.662) is effective for the period September 20–26, 1985. Regulation 363 (§ 908.663) is effective for the period September 27–October 3, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202–447–5975.

SUPPLEMENTARY INFORMATION: These rules have been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and have been designated "non-major" rules. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that these actions will not have a significant economic impact on a substantial number of small entities.

The amendment and the regulation are issued under Marketing Order No. 906, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The actions are based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that these actions will tend to effectuate the declared policy of the act.

The amendment and the regulations are consistent with the marketing policy for 1984–85. The committee met publicly on September 17, 1985, to consider the current and prospective conditions of supply and demand and recommended the quantities of Valencia oranges that it deemed advisable to be handled during the specified weeks. The committee reports that demand for Valencia oranges has improved.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective dates until 30 days after publication in the Federal Register (5 U.S.C. 553), because there is insufficient time between the date when information upon which these regulations are based became available and the effective dates necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the amendment and the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the amendment and regulation and the effective dates.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—[AMENDED]

1. The authority citation for Part 7 CFR Part 908 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

2. Section 908.662 is added to read as follows:

§ 908.662 Valencia Orange Regulation 362.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period September 20, 1985, through September 26, 1985, are established as follows:

(a) District 1: 370,000 cartons;
(b) District 2: 630,000 cartons;
(c) District 3: Unlimited cartons.

3. Section 908.663 is added to read as follows:

§ 908.663 Valencia Orange Regulation 363.

The quantites of Valencia oranges grown in California and Arizona which may be handled during the period September 27, 1985, through October 3, 1985, are established as follows:

(a) District 1: 370,000 cartons;
(b) District 2: 630,000 cartons;
(c) District 3: Unlimited cartons.

Dated: September 20, 1985.

Thomas R. Clark,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–22912 Filed 9–24–85; 8:45 am]
BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 85–AWA–21]

Alteration to Restricted Area R–2401 Fort Chaffee, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action relocates the northern boundary of R–2401 to the south so as to safely enable military activity in the restricted area simultaneously with aircraft conducting instrument landing system (ILS) approaches to Fort Smith Municipal Airport.

EFFECTIVE DATE: 0901 GMT, October 24, 1985.

FOR FURTHER INFORMATION CONTACT: Ronald C. Montague, Airspace and Aeronautical Information Requirements Branch (ATO–240); Airspace-Rules and Aeronautical Information Division, Air

Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–3128.

SUPPLEMENTARY INFORMATION:

History

On June 10, 1985, the FAA proposed to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to relocate the northern boundary of R–2401, located near Fort Smith, AR, approximately ½ nautical mile south of its present position (50 FR 24199). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 73.24 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations relocates the northern boundary of R–2401 located near Fort Smith, AR, approximately ½ nautical mile to the south. This action will provide the required separation between activities being conducted within R–2401 (Fort Chaffee, AR) and aircraft conducting the Runway 25 ILS approach at the Fort Smith Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 73.24 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) is amended, as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. By amending § 73.24 as follows:

R–2401 Fort Chaffee, AR [Amended]

By removing the words "Beginning at lat. 35°18'35"N., long. 94°11'48"W.; to lat. 35°18'10"N., long. 94°16'30"W.;" and substituting the words "Beginning at lat. 35°18'17"N., long. 94°12'00"W.; to lat. 35°17'37"N., long. 94°17'23"W.;"

Issued in Washington, DC, on September 17, 1985.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85–22830 Filed 9–24–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 73

[Airspace Docket No. 85–ASO–15]

Revocation of Restricted Area R–3003, Fort Gordon, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the existing Restricted Area R–3003 in the state of Georgia. This action is necessary since the Department of the Army no longer has an operational requirement for the airspace and has no plans for anticipated future use.

EFFECTIVE DATE: 0901 GMT, November 21, 1985.

FOR FURTHER INFORMATION CONTACT: Ronald C. Montague, Airspace and Aeronautical Information Requirements Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–3128.

The Rule

This amendment to Part 73 of the Federal Aviation Regulations revokes the restricted area at Fort Gordon, GA. The Department of the Army, which is the using agency, has informed the FAA that the site is inactive and that there is no longer a requirement for the area. The Department of the Army has, therefore, requested that Restricted Area R–3003 be eliminated. Because the purpose of the area no longer exists, and because this action would simply restore the airspace to public use, I find that notice or public procedure under 5 U.S.C. 533(b) is unnecessary because the action is a minor amendment in which the public would not be particularly interested. Section 73.30 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Restricted areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as amended (50 FR 4202), is further amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 73.30 is amended as follows:

R–3003 Fort Gordon, GA [Revoked]

Issued in Washington, DC, on September 17, 1985.

Daniel J. Peterson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 85–22831 Filed 9–24–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM79-14]

Order of the Director, OPPR of Publication of Incremental Pricing Acquisition Cost Thresholds Under Title II of the NGPA

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Prescribing Incremental Pricing Thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street NE, Washington, DC 20426, (202) 357-8500.

Order of the Director, OPPR

Publication of Prescribed Incremental Pricing Acquisition Cost Threshold of the NGPA of 1978; Docket No. RM79-14.

Issued: September 23, 1985.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of October 1985 is issued by the publication of a price table for the applicable month. The incremental pricing acquisition cost threshold prices for months prior to October 1985 are found in the tables in § 282.304

List of Subjects in 18 CFR Part 282

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

(Calendar year 1984)

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Incremental pricing threshold	[illegible]	$2.291	[illegible]	[illegible]	$2.315	$2.323	$2.331	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
NGPA section 102 threshold	[illegible]	3.609	[illegible]	3.656	[illegible]	3.705	[illegible]	[illegible]	3.734	3.797	[illegible]	[illegible]
NGPA section 109 threshold	2.359	2.367	2.375	2.383	[illegible]	2.407	2.414	[illegible]	2.421	2.428	[illegible]	2.444
130 pct of No. 2 fuel oil in New York City threshold	7.730	7.570	[illegible]	[illegible]	[illegible]	7.670	7.930	7.740	7.650	7.230	[illegible]	[illegible]

(Calendar year 1985)

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Incremental pricing	$2.373	$2.378	[illegible]	[illegible]	[illegible]	$2.410	$2.421	$2.427	[illegible]	$2.438		
NGPA section 102 threshold	3.869	[illegible]	[illegible]	[illegible]	[illegible]	3.992	4.022	4.045	[illegible]	[illegible]		
NGPA section 109 threshold	2.452	2.457	2.462	2.467	[illegible]	2.489	2.500	[illegible]	2.512	[illegible]		
130 pct of No. 2 fuel oil in New York City threshold	7.170	7.310	7.090	[illegible]	7.210	7.120	7.400	7.000	[illegible]	6.630		

[FR Doc. 85-22973 Filed 9-24-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 82N-0393]

Gras Status of Sodium Metasilicate and Sodium Zinc Metasilicate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that the use of sodium metasilicate as a direct human food ingredient is generally recognized as safe (GRAS). In addition, FDA is not affirming that the use of sodium zinc metasilicate as a food ingredient is GRAS because of the absence of safety information. The safety of these ingredients has been evaluated under the comprehensive safety review conducted by the agency.

EFFECTIVE DATE: October 25, 1985.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In the Federal Register of April 28, 1983 (48 FR 18531), FDA published a proposal to affirm that sodium metasilicate is GRAS for use as a direct human food ingredient and not to affirm sodium zinc metasilicate as GRAS. FDA published this proposal in accordance with its announced review of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review on sodium metasilicate and sodium zinc metasilicate and the report of the Select Committee on GRAS Substances (the Select Committee) on these ingredients have been made available for public review at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Copies of these documents have also been made available for public purchase from the National Technical Information Service, as announced in the proposal.

In addition to proposing to affirm the GRAS status of sodium metasilicate, FDA gave public notice that it was unaware of any prior-sanctioned food uses for these ingredients other than the proposed conditions of use. Persons asserting additional or extended uses in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions, so that the safety of the prior-sanctioned uses could be determined.

That notice was also an opportunity to have prior-sanctioned uses of sodium metasilicate or sodium zinc metasilicate recognized by issuance of an appropriate regulation under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181) or affirmed as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

FDA also gave notice that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert that sanction at any future time.

No reports of prior-sanctioned uses for sodium metasilicate or sodium zinc metasilicate were submitted in response to the proposal. However, a comment on the proposal asserted that FDA does not have the authority to waive proof sanctions.

As discussed in the **Federal Register** documents published July 26, 1973 (38 FR 20041, 20042) and December 7, 1976 (41 FR 53600, 53603), FDA does not have a comprehensive list of all prior sanctions. The agency has found it necessary for the proper functioning of its safety review of GRAS and prior-sanctioned substances to require that persons who hold a prior sanction for a particular ingredient inform FDA of that prior sanction at the time the agency proposes a regulation that might be inconsisent with the prior-sanctioned use (41 FR 53603). Thus, the only occasion on which a person must come forward to make known the existence of a prior sanction is when FDA is proposing to limit the use of the ingredient, and the limitations, if imposed, would foreclose the prior-sanctioned use (41 FR 53603). FDA believes that, in this circumstance, it is appropriate to place the burden of coming forward on the person who intends to rely on the prior sanction (41 FR 53603).

The comment also contended that the requirement that anyone who holds a prior sanction must submit proof of that sanction to FDA or face waiving that sanction is unfair to small businesses that rely upon agency opinion letters and that are unfamiliar with FDA's regulations.

The agency disagrees with the comment that this practice is unfair to small businesses. All food manufacturers, to assure that their products are safe for the consuming public and to avoid legal sanctions for noncompliance, must be aware of any limits that FDA has imposed on the use of food ingredients. Congress has determined that the filing of documents with the Office of the Federal Register and the publication of those documents in the **Federal Register** provides adequate notice to the public, including both large and small businesses, of the actions of a Federal agency. See 5 U.S.C. 553 and 44 U.S.C. 1507.

FDA also believes that it would be unfair to both small and large firms not to have the regulations reflect all authorized food uses for each ingredient. If a prior-sanctioned use is safe, the agency believes all businesses should be able to rely upon it.

FDA, therefore, disagrees with the assertions made by this comment and finds that the procedure adopted for waiver of prior sanctions is lawful and is not unfair to small or large food manufacturers.

Thus, because no reports of prior sanctions were submitted in response to the proposal, any right to assert a prior sanction for use of these ingredients under conditions different from those set forth in this final rule has been waived.

FDA received one comment in response to the proposal. The comment was from a manufacturer of sodium metasilicate, who raised several issues. One issue, discussed above, was that FDA does not have the authority to waive prior sanctions. Summaries of the other issues raised by this comment and the agency's responses follow:

1. The comment requested that the final rule be amended to affirm the GRAS status of sodium metasilicate for use in the washing and lye peeling of fruits, vegetables, and nuts; for treating bottled or canned water; and for use as a boiler water additive.

The agency has reviewed this request to affirm as GRAS these additional food uses of sodium metasilicate. FDA finds that the safety data evaluated by the Select Committee and the agency are adequate to permit affirmation of the GRAS status of sodium metasilicate for use in the washing and lye peeling of fruits, vegetables, and nuts, when used in accordance with 21 CFR 173.315; and for use in canned and bottled water, when its use is not inconsistent with the bottled water standard of quality in 21 CFR 103.35. The agency is therefore affirming these uses as GRAS. However, the use of sodium metasilicate as a boiler water additive is already authorized under an existing food additive regualtion (21 CFR 173.310). The agency concludes that it is unnecessary and would be redundant to affirm this use as GRAS.

2. The comment also requested that sodium metasilicate be affirmed as GRAS for use in animal feed and pet food.

The agency is not affirming the GRAS status of the use of sodium metasilicate in animal feed and pet food. As indicated in the proposal, this action does not affect the current regulatory status of sodium metasilicate for these uses. FDA has ommitted pet and animal food uses from its GRAS review program because the agency does not have adequate information on the current use of GRAS and prior-sanctioned ingredients in pet and animal foods to evaluate the safety of these uses. Furthermore, this comment did not provide any information on the use of sodium metasilicate in pet and animal foods. Therefore, as stated in the proposal, FDA is not taking any action on the use of sodium metasilicate for pet and animal food uses.

No comment or new information was submitted in response to the proposed action on sodium zinc metasilicate. In accordance with the proposal, the agency is not affirming that the use of this ingredient is GRAS.

In the proposal, FDA stated that it would work with the Committee on Food Chemicals Codex of the National Academy of Sciences to develop acceptable food-grade specifications for sodium metasilicate used as a direct food ingredient and would incorporate those specifications into the regulation when they were developed. To date, however, work on the specifications is still incomplete. Until the specifications are developed, sodium metasilicate for direct food use must comply with the description in 21 CFR 184.1769a and be of food-grade purty (21 CFR 182.1(b)(3) and 170.30(h)(1)).

The agency has previously determined under 21 CFR 25.24(b)(7) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with the Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the Order. The agency has not received any new information or

comments that would alter its previous determination.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

List of Subjects in 21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR Part 184 is revised to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10, 5.61.

2. By adding new § 184.1769a, to read as follows:

§ 184.1769a Sodium metasilicate.

(a) Sodium metasilicate (CAS Reg. No. 6834–92–0) is a strongly alkaline white powder. It does not occur naturally but rather is synthesized by melting sand with sodium carbonate at 1400 °C. The commercially available forms of sodium metasilicate are the anhydrous form (Na_2SiO_3), the pentahydrate ($Na_2SiO_3 \cdot 5H_2O$), and the nonahydrate ($Na_2SiO_3 \cdot 9H_2O$).

(b) FDA is developing food-grade specifications for sodium metasilicate in cooperation with the National Academy of Sciences. In the interim, the ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 181.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a processing aid as defined in § 170.3(o)(24) of this chapter.

(2) The ingredient is used to treat the following foods at levels not to exceed current good manufacturing practice: for use in washing and lye peeling of fruits, vegetables, and nuts when used in accordance with § 173.315 of this chapter; for use as a denuding agent in tripe; for use as a hog scald agent in removing hair; and for use as a corrosion preventative in canned and bottled water when used in accordance with § 103.35 of this chapter.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Dated: August 20, 1985.

James W. Swanson,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–22837 Filed 9–24–85; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Address

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the current mailing address of Biomed Laboratories.

EFFECTIVE DATE: September 25, 1985.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6243.

SUPPLEMENTARY INFORMATION: Biomed Laboratories, 438 West Arrow Highway, Unit 30, San Dimas, CA 91773, has advised FDA of its current mailing address. The agency is amending the animal drug regulations to reflect this address.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for "Biomed Laboratories" and in paragraph (c)(2) in the entry "051259" by revising the sponsor's address to read "438 West Arrow Highway, Unit 30, San Dimas, CA 91773."

Dated: September 18, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85–22840 Filed 9–24–85; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Name

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name for a new animal drug application (NADA) from Ohio Medical Anesthetics, A Division of BOC, Inc., to Anaquest, A Division of BOC, Inc.

EFFECTIVE DATE: September 25, 1985.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6243.

SUPPLEMENTARY INFORMATION: Anaquest, A Division of BOC, Inc., Madison, WI 53713, has informed FDA of a change in sponsor name for NADA 121–291 from Ohio Medical Anesthetics, A Division of BOC, Inc. The NADA covers use of enflurane as inhalation anesthetic for horses.

This is an administrative change that does not otherwise affect approval of the firm's NADA. The agency is amending the regulations in Part 510 to reflect the change.

List of Subjects in 21 CFR PART 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. Section 510.600 is amended by removing the entry for "Ohio Medical Anesthetics" and by adding a new entry alphabetically to paragraph (c)(1) and by revising the entry for "010019" in paragraph (c)(2) to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler [illegible]
Anaquest, a division of BOC, Inc., Madison, WI 53713	010019

(2) * * *

Drug labeler [illegible]	Firm name and address
010019	Anaquest, a division of BOC Inc., Madson, WI 53713.

Dated: September 18, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85–22839 Filed 9–24–85; 8:45 am]

BILLING CODE [illegible]

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor of several new animal drug applications from Ralston Purina Co. to Purina Mills, Inc.

EFFECTIVE DATE: September 25, 1985.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6243.

SUPPLEMENTARY INFORMATION: The Ralston Purina Co., St. Louis, MO 63164, advised FDA that its agricultural products division has become a wholly owned incorporated subsidiary, Purina Mills, Inc. The change is an administrative action which does not otherwise affect current manufacturing procedures, controls, or personnel. FDA is amending the regulations in 21 CFR 510.600 to reflect the new sponsor.

List of Subjects in 21 CFR Part 510

Animal drugs, Administrative practice and procedure, Labeling, Reporting requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. Section 510.600 is amended in paragraph (c)(1) by deleting the entry "Ralston Purina Co." and by adding a new entry alphabetically, and in paragraph (c)(2) by revising the entry "017800" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

Firm name and address	Drug labeler code
Purina Mills, Inc., 835 South Eighth St., St. Louis, MO 63102	017800

(2) * * *

Drug labeler code	Firm name and address
017800	Purina Mills, Inc., 835 South Eighth St., St Louis, MO 63102

Dated: September 18, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85–22838 Filed 9–24–85; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Parts 510 and 558

New Animal Drugs for Use in Animal Feeds; Pyrantel Tartrate, Tylosin, Tylosin-Sulfamethazine

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of supplemental new animal drug applications (NADA's) providing for use of additional tylosin premix concentrations and for a change of sponsor from Central Soya Co., Inc., to Good-Life Division of Central Soya Co., Inc.

EFFECTIVE DATE: September 25, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

SUPPLEMENTARY INFORMATION: Central Soya Co., Inc., 1300 Fort Wayne Bank Bldg., Fort Wayne, IN 46802, has filed three supplemental NADA's, one providing for use of 5- and 20-gram-per-pound tylosin premixes in addition to its currently approved 10- and 40-gram-per-pound tylosin premixes, and all three for a change of sponsor name from the parent firm to a subsidiary. Affected are NADA 110–045, tylosin; NADA 128–411, tylosin/sulfamethazine; and NADA 134–286, pyrantel tartrate. The supplements are approved. Parts 510 and 558 are amended to include the added tylosin premixes and the sponsor change.

This action concerns a change of sponsor name and does not involve any other changes in the approval, including no changes in manufacturing facilities, equipment, procedures, or production personnel.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. In § 510.600 by adding a new entry alphabetically in paragraph (c)(1) and numerically in paragraph (c)(2) to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler [illegible]
* * * * *	
Good-Life Division of Central Soya Co., Inc., Good-Life Dr., P.O. Box 687, Effingham, IL 62401	021810
* * * * *	

(2) * * *

Drug labeler [illegible]	Firm name and address
* * * * *	
021810	Good-Life Division of Central Soya Co., Inc., Good-Life Dr., P.O. Box 687, Effingham, IL 62401
* * * * *	

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

4. In § 558.485 by revising paragraph (a)(14) to read as follows:

§ 558.485 Pyrantel tartrate.

(a) * * *

(14) To 021810: 9.6 grams per pound, paragraph (e) (1) through (3) of this section.

* * * * *

5. In § 558.625 by adding paragraph (b)(52) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(52) To 021810: 5, 10, 20, and 40 grams per pound, paragraph (f)(1) (i) through (vi) of this section.

* * * * *

6. In § 558.630 by revising paragraph (b)(9) to read as follows:

§ 558.630 Tylosin and sulfamethazine.

* * * * *

(b) * * *

(9) To 021810 and 022422: 5 grams per pound each, paragraph (f)(2)(ii) of this section.

* * * * *

Dated: September 18, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85–22834 Filed 9–24–85; 8:45 am]

BILLING CODE [illegible]

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for the Ohio Farmers Grain & Supply Association, providing for the manufacture of 5- and 20-gram-per-pound tylosin premixes, in addition to its currently approved 10- and 40-gram-per-pound tylosin premixes, used to make complete feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: September 25, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1414.

SUPPLEMENTARY INFORMATION: The Ohio Farmers Grain & Supply Association, P.O. Box M, Fostoria, OH 44830, is the sponsor of a supplement to NADA 137–051 submitted on its behalf by Elanco Products Co. The supplement provides for the manufacture of 5- and 20-gram-per-pound tylosin premixes used to make complete feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1) (i) through (vi). The firm currently holds approval for manufacturing 10- and 40-gram-per-pound tylosin premixes. The supplement is approved and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs; Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.625 is amended by revising paragraph (b)(82) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(82) To 026439: 5, 10, 20, and 40 grams per pound, paragraph (f)(1) (i) through (vi) of this section.

* * * * *

Dated: September 16, 1985.

Marvin A Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85–22835 Filed 9–24–85; 8:45 am]

BILLING CODE [illegible]

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal

drug application (NADA) filed for Southern Micro-Blenders, Inc., providing for the manufacture of 5- and 20-gram-per-pound tylosin premixes, used to make complete feeds for swine, beef cattle, and chickens.

EFFECTIVE DATE: September 25, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Southern Micro-Blenders, Inc., 3801 North Hawthorne St., Chattanooga, TN 37406, is the sponsor of a supplement to NADA 133-833 submitted on its behalf by Elanco Products Co. The supplement provides for the manufacture of a new 5- and 20-gram-per-pound tylosin premix used to make complete feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1) (i) through (vi). The supplement is approved and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. In § 558.625 by revising paragraph (b)(80) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(80) To 049685: 5, 10, 20, and 40 grams per pound, paragraphs (f)(1) (i) through (vi) of this section.

* * * * *

Dated: September 16, 1985.

Marvin A Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-22836 Filed 9-24-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 207, 232, 234, 242 and 244

[Docket No. R-85-0725; FR-2040]

Partial Payment of Claim; Multifamily Housing Mortgage Insurance

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule implements the provisions of section 203(e) of the Housing and Community Development Amendments of 1978, as amended by section 213(e) of the Housing and Community Development Act of 1980. The rule authorizes the Secretary, with the concurrence of the mortgagee, to make partial payment of an insurance claim on a defaulted mortgage covering a multifamily housing project. The mortgagee would agree to accept partial payment in lieu of assignment and to recast the remaining mortgage balance. The mortgagor would give the Secretary a second mortgage on the property for the amount of the partial payment. This partial payment of claim option could be exercised only where the Secretary finds that such relief would be less costly to the Federal Government than other reasonable alternatives for maintaining the low- and moderate-income character of the project. This rule is applicable to all of HUD's multifamily insurance programs, except where coinsurance is involved.

EFFECTIVE DATE: October 30, 1985.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Office of Multifamily Housing Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 426-3970. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 203(e) of the Housing and Community Development Amendments of 1978 authorizes the Secretary of HUD, in lieu of assignment of a multifamily mortgage and full payment of the insurance claim, to request that the mortgagee agree to accept partial payment of the claim under the mortgage insurance contract and to recast the remaining balance under the insured mortgage. The mortgagee would hold the reduced insured mortgage and the mortgagor would be required to give the Secretary a second mortgage on the property for the amount of the partial payment, under such terms and conditions as the Secretary may determine. As originally enacted, section 203(e) applied only to subsidized FHA-insured multifamily projects. The legislative history of this provision makes it clear that a mortgagee's participation in a partial payment arrangement is to be purely voluntary and based on its determination that such an arrangement would be in the mortgagee's own best interests (H.R. Rep. No. 95-1792 95th Congress, 2d Sess., 70).

On November 9, 1979, the Department published a proposed rule (44 FR 65081) designed to implement this provision of the 1978 Act. After publication of the proposed rule, the Congress enacted section 213(e) of the Housing and Community Development Act of 1980. One effect of section 213(e) was to expand the coverage of section 203(e) of the 1978 Act to include any multifamily rental housing project insured under the National Housing Act. This final rule implements the provisions of the 1979 proposed rule and incorporates the expanded coverage authorized by section 213(e) of the 1980 Act.

The final rule also contains revisions that respond to the comments of the Mortgage Bankers Association of America (MBA). The MBA was the only entity that provided public comments on the proposed rule. MBA expressed four primary concerns regarding the proposed rule:

(1) The preamble of the final rule should parallel the language in the Conference Report on the Housing and Community Development Amendments of 1978, by stating not only that a mortgagee's participation is voluntary, but also that it should be based on the mortgagee's determination that such an arrangement would be in its own best interest (See H.R. Rep. No. 95-1792, 95th Congress, 2d Sess., 70).

The Department agrees that there is clear legislative history to this effect.

Language added to the rule text at § 270.258(b) further clarifies the voluntary nature of this procedure and the mortgagee's right summarily to reject a partial payment offer by the Commissioner. We also note that the same Report urged the Secretary, at least during the period of initial use of its partial payment authority, to report to the appropriate committees of both the Senate and the House of Representatives on those specific instances in which the authority is being utilized (*Id.* at 70). The Department intends to administer its partial payment authority in a manner that complies with both of these provisions.

(2) It would be helpful if the final rule stated specifically which element within HUD—Central Office or Field Office—will make the determination of whether or not to request the mortgagee to accept partial payment.

The Department does not find it either necessary or desirable to incorporate into its regulation such administrative specifics. We believe it is sufficient to say that an official request from the Department will be sent to the mortgagee in appropriate cases.

(3) There is a very real possibility that investors will be discouraged from participating in FHA-insured multifamily programs if HUD uses its authority to request partial payments on other than a very limited basis, because the Federal commitment to pay an insurance claim upon default will be placed in doubt.

The Department does not find any grounds for this concern. In our view, the rights of insurance claimants are made abundantly clear both in this rule and in other HUD regulations concerned with processing claims. In any event, as noted earlier, the only authority being implemented here is the authority to *request*—to make the mortgagee an offer that can be freely accepted or rejected.

The Department also wishes to call special attention to the effect of a partial payment of claim in the context of the GNMA Mortgage-Backed Securities program. Where the mortgage that is a candidate for the partial payment procedure is backing a GNMA-guaranteed mortgage-backed security, the mortgagee should understand clearly that, while GNMA does not object to a partial payment arrangement, GNMA procedures require (1) that the full amount of the partial claim payment be passed through to security holders and (2) that the monthly payment to security holders must continue as if the partial payment arrangement had never been made. Mortgagees who agree to a recasting of the mortgage which reduces the mortgagor's monthly payment must, therefore, make up, from the mortgagees' own funds, the difference between the amount paid by the mortgagor and the amount due to the security holders, until the security holders have received all principal and interest due under the terms of the security.

(4) Another concern of the MBA was that, in its view, the proposed rule did not provide any inducements for a mortgagee to accept a partial payment in lieu of assignment. The MBA asked HUD to consider the following incentives: (a) waiver of the one percent assignment fee; (b) payment of the mortgagee's out-of-pocket expenses: *e.g.*, hazard insurance and taxes; (c) recasting the mortgage at the market rate; (d) payment of interest at the debenture rate for the 30-day grace period between the time of the last monthly payment and the time that HUD considers the mortgage to be in default.

With reference to item (a), above, the Department agrees with the comment and the final rule provides for such a waiver (see new § 207.258b(d)). With respect to item (b), the Department believes that its current policy of payment of specific out-of-pocket items under § 207.259(b)(1)—*i.e.*, taxes, MIP, reasonable payments for completion and preservation of the property—is preferable to a nonspecific reimbursement policy and provides adequate and equitable compensation to mortgagees. Recasting the mortgage at the market interest rate, as recommended in item (c), would, we believe, often defeat the basic purpose of reviving a troubled multifamily project serving low- and moderate-income tenants and would, in any case, provide an incentive only in a climate of rising interest rates. As to item (d), the Department believes the waiver of the one percent assignment fee and provision for the payment of the partial claim in cash (rather than debentures) will provide sufficient inducement to mortgagees where the terms offered by the Commissioner in a specific partial payment case are otherwise suitable to a mortgagee.

In summary, this final rule is substantially similar to the proposed rule published on November 9, 1979. Significant substantive revisions are (1) extension of program coverage to all FHA-insured multifamily rental projects—not just those that are subsidized and (2) a blanket waiver of the one percent assignment fee as an incentive to mortgagee participation in a partial payment arrangement.

As a technical matter, the final rule incorporates the provisions of the proposed rule in a new § 207.258b and in a revision to existing § 207.258(b), rather than promulgating an entirely new Part 208, as originally proposed. As indicated in both the legislative history and in the comments of the MBA, it is unlikely that this special authority will be extensively used. Because of the limited nature of the program, creation of an entire new part in the CFR does not appear to be necessary. The final rule has been extensively rewritten, although its substance remains consistent with the proposed rule. Among the additions and clarifications is a procedural provision in amended § 207.258(b) outlining the means to be used by HUD in communicating its intention to consider a partial payment of claim, and a time period during which the Commissioner would make the request to the mortgagee.

This rule is applicable to all HUD multifamily insurance programs since the regulations for these programs incorporate §§ 207.258 and 207.258(b) by reference. The rule does not apply to Department's multifamily coinsurance programs (24 CFR Parts 251 and 255), since assignment of the mortgage, which is a precondition to a partial claim payment, does not occur in the coinsurance programs. Also, exceptions are made for the Department's programs of mortgagee insurance for Nursing Homes, Intermediate Care Facilities, (24 CFR Part 232), Condominium Ownership Mortgage Insurance (24 CFR Part 234), Hospitals (24 CFR Part 242), and Group Practice Facilities (24 CFR Part 244).

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not: (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and

Urban Development, 451 Seventh Street, SW. 20410.

This rule was listed as item H–88–84 (Sequence Number 80) under the Office of Housing in the Department's Semiannual Agenda of Regulations published on April 29, 1985 (50 FR 17286, 17309), under Executive Order 12291 and the Regulatory Flexibility Act.

The catalog of Federal Domestic Assistance program numbers are 14.103, 14.112, 14.115, 14.116, 14.123, 14.124, 14.125, 14.126, 14.127, 14.128, 14.129, 14.134, 14.135, 14.137, 14.138, 14.139, 14.151, 14.154 and 14.155.

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2535–0061.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. Acceptance of partial payment of claim would be entirely voluntary and would be based upon the mortgagee's own assessment of its relative costs and benefits. The assessment of costs and benefits should be the same for both large and small entities.

List of Subjects

24 CFR Part 207

Mortgage insurance, Rental housing.

24 CFR Parts 232, 234, 242 and 244

Mortgage insurance.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

Accordingly, 24 CFR Part 207 is amended as follows:

1. The authority citation for Part 207 is revised to read as follows:

Authority: Secs. 207 and 211, National Housing Act (12 U.S.C. 1713, 1715b), and section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Sections 207.258 and 207.258b are also issued under section 203(e), Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11(e)).

2. Section 207.258 is amended by revising the introductory paragraph of paragraph (b), and by adding the OMB control number to the end of the section, to read as follows:

§ 207.258 Insurance claim requirements.

* * * * *

(b) *Assignment of mortgage to Commissioner.* If the mortgagee elects to assign the mortgage to the Commissioner, it shall, at any time within 30 days after the date of the notice of the election, file its application for insurance benefits and assign to the Commissioner, in such manner as the Commissioner may require, the credit instrument(s) and the realty and chattel security instruments. The Commissioner may extend this 30-day period by written notice that a partial payment of insurance claim under § 207.258b is being considered. The extension shall be for such term, not to exceed 60 days, as the Commissioner prescribes; however, the Commissioner's consideration of a partial payment of claim, or the Commissioner's request that a mortgagee accept partial payment of a claim in accordance with § 207.258b, shall in no way prejudice the morgagee's right to file its application for full insurance benefits within either the 30-day period or any extension prescribed by the Commissioner. The following requirements shall also be met by the morgagee:

* * * * *

(The information collection requirements contained in paragraph (b) of this section were approved by the Office of Management and Budget under control number 2535–0061.)

3. 24 CFR Part 207 is amended by adding immediately after § 207.258a a new § 207.258b, to read as follows:

§ 207.258b Partial payment of claim.

(a) Whenever the Commissioner receives notice under § 207.258 of a mortgagee's intention to file an insurance claim and to assign the mortgage to the Commissioner, the Commissioner may request the mortgagee, in lieu of assignment, to accept partial payment of the claim under the mortgage insurance contract and to recast the mortgage, under such terms and conditions as the Commissioner may determine.

(b) The Commissioner may request the mortgagee to participate in a partial payment of claim in lieu of assignment only after a determination that partial payment would be less costy to the Federal government than other reasonable alternatives for maintaining the low- and moderate-income character of the project. This determination shall be based upon the findings listed below and such other findings as the Commissioner deems appropriate:

(1) The mortgagee is entitled, under § 207.255, to assign the mortgage in exchange for the payment of insurance benefits;

(2) The relief resulting from partial payment, when considered with other resources available to the project, would be sufficient to restore the financial viability of the project;

(3) The project is, or can at reasonable cost be made, structurally sound;

(4) The management of the project is satisfactory to the Commissioner; and

(5) The default under the insured mortgage was beyond the control of the mortgagor.

(c) Partial payment of a claim under this section shall be made only when:

(1) The project is, or potentially could serve as, a low- and moderate-income housing resource;

(2) The property covered by the mortgage is free and clear of all liens other than the insured first mortgage and such other liens as the Commissioner may have approved;

(3) The mortgagee has voluntarily agreed to accept partial payment of the insurance claim under the mortgage insurance contract and to recast the remaining mortgage amount under terms and conditions prescribed by the Commissioner; and

(4) The mortgagor has agreed to repay to the Commissioner an amount equal to the partial payment, with the obligation secured by a second mortgage on the project containing terms and conditions prescribed by the Commissioner. The terms of the second mortgage will be determined on a case-by-case basis to assure that the estimated project income will be sufficient to cover estimated operating expenses and debt service on the recast insured mortgage. The Commissioner may provide for postponed amortization of the second mortgage.

(d) Payment of insurance benefits under this section shall be in cash. The Commissioner shall waive the deduction of one percent of the mortgage funds advanced to the mortgagor, provided for in § 207.259(b)(2)(iv), with respect to a partial payment of a claim under this section. The items referred to in § 207.258(b)(4) shall either be retained by the mortgagee or delivered to the Commissioner in accordance with instructions to be issued by the Commissioner with respect to a partial payment of claim under this section.

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

4. The authority citation for 24 CFR Part 232 is revised to read as set forth below, and any authority citation following any section in Part 232 is removed:

Authority: Secs. 211 and 232, National Housing Act (12 U.S.C. 1715b and 1715w); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. Paragraph (a) of § 232.251 is revised to read as follows:

§ 232.251 Cross-reference.

(a) All of the provisions, except § 207.258b, of Part 207, Subpart B of this chapter relating to mortgages insured under section 207 of the National Housing Act, apply to mortgages insured under section 232 of the Act.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

6. The authority citation for 24 CFR Part 234 is revised to read as set forth below, and any authority citation following any section in Part 234 is removed:

Authority: Secs. 211 and 234, National Housing Act (12 U.S.C. 1715b and 1715y); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

7. Section 234.751(a) is revised to read as follows:

§ 234.751 Cross-reference.

(a) All of the provisions, except § 207.258(b), of Part 207, Subpart B of this Chapter covering mortgages insured under section 207 of the National Housing Act shall apply to mortgages insured under section 234(d) of such Act.

* * * * *

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

8. The authority citation for 24 CFR Part 242 is revised to read as set forth below, and any authority citation following any section is Part 242 is removed:

Authority: Secs. 211 and 242, National Housing Act (12 U.S.C. 1715b and 1715z-7); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

9. Section 242.251 is revised to read as follows:

§ 242.251 Cross-reference.

All of the provisions of Subpart B, Part 207 of this chapter relating to mortgages insured under section 207 of the National Housing Act, apply to mortgages on hospitals insured under section 242 of the National Housing Act, except the following:

Section 207.258b—Partial payment of claims
Section 207.259—Insurance benefits

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES [TITLE XI]

10. The authority citation for 24 CFR Part 244 is revised to read as set forth below, and any authority citation following any section of Part 244 is removed:

Authority: Secs. 211 and 1104, National Housing Act (12 U.S.C. 1715b and 1749aaa-5); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

11. Paragraph (a) of 244.251 is revised to read as follows:

§ 244.251 Cross-reference.

(a) All of the provisions, except § 207.258b, of Part 207, Subpart B of this chapter relating to mortgages insured under section 207 of the National Housing Act apply to a mortgage covering a group practice facility insured under Title XI of the National Housing Act.

* * * * *

Dated: September 18, 1985.

Janet Hale,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85-22904 Filed 9-24-85; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Part 247

[Docket No. R-85-1076; FR-1661]

Evictions From Certain Subsidized and HUD-Owned Projects

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final the interim rule which clarified the Department's intent that evictions of tenants from certain subsidized and HUD-owned projects be effected solely by judicial action. This rule requires the landlord to advise the tenant, in a termination notice, that the tenant is entitled to a court proceeding under State or local law at which he or she may present a defense to the eviction. The landlord is prohibited from resorting to "self-help" evictions or any non-judicial process, even where these actions are authorized by State or local law. This rule is procedural only, and does not alter in any way the grounds for which the landlord may terminate a tenancy.

EFFECTIVE DATE: October 30, 1985.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Program Planning Division, Office of Multifamily Housing Management and Occupancy, Department of Housing and Urban Development, Washington, D.C. 20410, (202) 426-3970. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department issued an interim rule on May 23, 1983 (48 FR 22913) in compliance with a court order in *Love* v. *HUD*, Civ. No. 80-1041 B (W.D. Pa.). The interim rule amended 24 CFR Part 450 (since redesignated as Part 247), which sets forth procedures for the termination of occupancy of tenants residing in multifamily housing projects subsidized under section 221(d)(3) (BMIR) or section 236 of the National Housing Act, the Rent Supplement Program under section 101 of the Housing and Urban Development Act of 1965, or the Additional Assistance Program for Projects with HUD-Insured and HUD-Held Mortgages under Subpart A of 24 CFR Part 886. These procedures also apply to the direct loan program providing Housing for the Elderly or Handicapped under section 202 of the Housing Act of 1959, and to all multifamily projects currently owned by HUD, regardless of whether they were subsidized before HUD acquisition. The procedures do not apply where the termination of occupancy is a result of the proposed substantial rehabilitation or demolition of a project.

Background

On November 4, 1981, the U.S. District Court for the Western District of Pennsylvania (*Love* v. *HUD, supra*) directed the Secretary to promulgate interim or final regulations assuring that unreasonable provisions are not contained in leases with tenants included in the class represented by plaintiffs. An interim rule in conformity with this order was published on September 23, 1983 (48 FR 43310), corrected November 10, 1983 (48 FR 51619).

The District Court entered a second order on December 22, 1981, directing the Secretary to amend 24 CFR 450.4(a)(3) to require that the landlord's notice of termination advise the tenant that the landlord may seek to enforce the termination and evict the tenant only through a judicial proceeding at which the tenant may present a defense. In compliance with the District Court's second order and to further clarify the Department's policy, the Department promulgated an interim rule on May 23, 1983 (48 FR 22913), effective July 12, 1983 (48 FR 32006). In addition to amending 24 CFR 450.4 (*Termination notice*) to satisfy the order discussed above, the interim rule also amended § 450.1 (*Applicability*) and §450.6 (*Eviction*).

Changes made by the interim rule are explained below in the discussion of the public comments received on the interim

rule and the Department's response to those comments.

Public Comments

The Department received eight comments on the published interim rule. Five of these were from real estate management firms, including a national association; and three were from legal services corporations.

In general, the management firms were concerned with the financial impact of the rule in terms of legal expenses associated with judicial proceedings and the negative effect that the usual backlog of court proceedings will have on the operation of projects. The legal services corporations were concerned with clarifications and technical application of the rule.

Prohibition Against Self-Help Evictions

Because of the order of the Federal District Court directing the Secretary to amend the regulations to require that the landlord's notice of termination advise the tenant that the landlord may seek to enforce the termination and evict the tenant only through a judicial proceeding, the Department must amend the regulations in the manner ordered by the Court. Concerns raised by the public comments regarding operational problems are outweighed by the necessity to inform tenants of the opportunity to be heard in court.

One commenter suggested that clarification be provided to the effect that the rule applies to *all* evictions, and that self-help is prohibited, because the State of Rhode Island has two types of eviction actions. (Arkansas, New York, and possibly others have a similar choice of remedies.) Section 247.1 of the interim rule states (subject to certain exceptions not related to the commenter's concern) that the provisions apply to "*all* decisions by a landlord to terminate the occupancy of a tenant" (emphasis added), and § 247.4(a) states that "the landlord's determination to terminate the tenancy shall be in writing and shall . . . advise the tenant that if he or she remains in the leased unit on the date specified for termination, the landlord may seek to enforce the termination only by bringing a judicial action, at which time the tenant may present a defense . . . ." Section 247.6 prohibits eviction "except by judicial action . . . ."

The Department believes it is amply clear that the landlord may evict only by judicial action in which the tenant has an opportunity to present a defense. The landlord may not, therefore, use any remedies or procedures, otherwise available under State law, which would result in eviction before a judicial action that provides the tenant a chance to be heard.

One commenter suggested that tenants be advised that they should seek legal counsel and that the notice should state that the burden of proof is on the landlord. The Department believes that tenants should not be led to believe that representation by counsel is mandatory. Tenants *may* seek legal counsel to represent them. In addition, the local and state laws, not HUD, set the project owner's burden of proof.

Contents of Termination Notice

Under the language of the rule, the grounds for termination must be adequately set forth in the notice so that the notice frames the issues for trial at the eviction hearing. The interim rule clarifies that the landlord must rely on grounds that were set forth in the termination notice and may not rely on any other grounds, unless he or she had no knowledge of them when the notice was sent (§ 247.6(b), previously § 450.4(g)), and also clarifies that the tenant may rely on State or local law where that State or local law provides procedural rights which are in addition to those provided by the regulations (§ 247.6(c)).

A commenter stated that the rule should require that the landlord serve additional termination notices stating any additional grounds for termination of tenancy occurring after the original notice is served. This comment has not been accepted. The Department does not believe that it is necessary to regulate on this matter. Beyond the controls on additional grounds set out in § 247.6(b), HUD believes the issue regarding additional notices should be governed by State law. Landlords participating in the programs covered by this rule should not be held to a more demanding Federally issued regulation, but should follow the State law.

On a closely related issue, another comment stated that the second sentence in § 247.6(b) that "the landlord shall not . . . be precluded from relying on grounds about which he or she had no knowledge at the time the termination notice was sent" encourages fraudulent claims by landlords. The commenter envisions that a landlord may seek termination for one reason, then, at trial, seek eviction for a reason not stated in the notice and claim that he or she had no knowledge at the time the notice was issued. The Department has not acted on this comment. The extent of an owner's knowledge at the time of the notice is a factual question to be determined, like other factual questions, by the State court in the eviction proceeding.

Service of Termination Notice

Section 450.4 required originally that the landlord send a tenant notice of termination by first class mail and serve a copy of the notice on any adult answering the door of the leased unit, or if no adult responds, place the notice under or through the door. However, building codes in some localities require that doors be effectively sealed, making service as prescribed above impossible. Therefore, § 450.4(b) was amended by the interim rule to permit affixing the notice to the door of the leased unit in the event the notice cannot be placed under or through the door.

The interim rule required the landlord to serve the termination notice on the tenant at the tenant's address at the project, as well as by mail (§ 450.4(b)). One commenter states that it is redundant and unnecessary to mail a copy of the notice if the tenant has been served personnally, while another commenter states that delivery of notice should be by certified or registered mail, because tenants do not always receive their mail, and such service would provide a record of attempts and a signed receipt upon delivery. In answer to the latter comment, if a tenant is aware of what is contained in the certified or registered letter, he or she might prefer to not accept it or pick it up at the post office. It is not clear to the Department that service by registered or certified mail would be superior in this instance. With respect to the former comment, the cost to the landlord of mailing the notice by regular mail to the tenant is minimal, but it does offer a little more assurance that the tenant will be notified.

In this connection, a commenter states that the rule should provide that the notice be placed under, through, or *on* the door, because certain State laws require that the notice be placed *on* the door. The interim rule requires the landlord to place the termination notice under or through the door, if possible, or else to affix the notice to the door. Service under or through the door is preferable, if possible. In addition, the landlord will have to satisfy any State law requirements governing notice to a tenant, including requirements concerning service of the State-required notice.

Miscellaneous

The interim rule made a number of technical changes to Part 450. Section 450.1 was amended to delete outdated and superfluous language and to cross-reference (for the reader's convenience) 24 CFR 882.215—the termination of

tenancy procedures for tenants assisted under the Section 8 Existing Housing Program. The final rule further clarifies this cross-reference by stating that termination of tenancy of a tenant asssisted under the Section 8 Existing Housing Certificate Program is not subject to the Part 247 requirements. On March 29, 1984, HUD issued a final rule that added a new § 882.215(f), making Part 247 inapplicable in this instance (see 49 FR 12236). This is so even if the tenant is living in a project otherwise covered by Part 247.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as the term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President of February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule was listed as item number 102 at 50 FR 17313 in the Department's Semiannual Agenda of Regulations published on April 29, 1985, under Executive Order 12291 and the Regulatory Flexibility Act.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. It is intended only as clarification of existing departmental policy regarding tenant evictions, and thus should have no significant economic impact.

The Catalogue of Federal Domestic Assistance Programs numbers and titles are 14.137, Mortgage Insurance-Rental and Cooperative Housing for Low and Moderate Income Families, Market Interest Rate; 14.103, Interest Reduction Payments-Rental and Cooperative Housing for Lower Income Families; 14.149, Rent Supplements-Rental Housing for Lower Income Families; 14.157, Housing for the Elderly or Handicapped; and 14.146, Low Income Housing-Assistance Program.

List of Subjects in 24 CFR Part 247

Low and moderate income housing, Tenant eviction.

Accordingly the interim rule published on May 23, 1983, at 48 FR 22913, is adopted as final with the following changes:

PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

* * * * *

1. The authority citation for Part 247 continues to read as follows:

Authority: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

2. Section 247.1 is revised to read as follows:

§ 247.1 Applicability.

Except as provided in §§ 247.5 and 247.6(c), the provisions of this subpart shall apply to all decisions by a landlord to terminate the occupacy of a tenant in a subsidized project as defined in § 247.2(e). (Termination of tenancy of a family assisted under the Section 8 Existing Housing Certificate Program is not subject to this part—See 24 CFR 882.215.)

Dated: September 18, 1985.

Janet Hale,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85-22902 Filed 9-24-85; 8:45 am]

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24 CFR Part 510

[Docket No. R-85-1190; FR-1977]

Section 312 Rehabilitation Loan Program; Risk Premiums, and Application Fees

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: The regulation establishes the Department's policies and procedures governing premiums to be charged to offset loan default risks and fees charged for applications approved under the Department's Section 312 Rehabilitation Loan Program. This action gives effect, by regulation, to significant components of Section 312 of the Housing Act of 1964. The Department's decision to assess risk premiums and application fees will help to offset losses and administrative costs related to the implementation of the program.

EFFECTIVE DATE: October 30, 1985.

FOR FURTHER INFORMATION CONTACT: Michael Ehrmann, Deputy Director, Office of Urban Rehabilitation, Room 7170, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-5685. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

1. HUD's Proposal

On February 20, 1985, HUD published a notice of proposed rule making related to the establishment of a loan risk premium and application fee for Section 312 rehabilitation loans. See 50 FR 7089. The Department's statutory authority to make such loans is found at 42 U.S.C. 1452b (section 312 of the Housing Act of 1964), and its authority to impose related risk premiums and application fees is found at 42 U.S.C. 1452b(c)(3).

HUD proposed to establish a loan risk premium of one percent to offset losses from loan defaults. This premium would be added to the borrower's loan interest rate. The rule would also require borrowers to pay an application fee for approved applications to offset administrative costs incurred by HUD under the program. The fee would be $200 for a single-family loan and $300 for any other kind of loan, in view of the generally more staff intensive processing associated with other kinds of applications. A borrower would have the option of paying the application fee in full at loan settlement, or having the fee added to the loan amount and amortized over the term of the loan.

2. Comments and Discussion

Seventeen comments were received by the Department in response to its notice of proposed rule making. Generally, the commenters consisted of municipal housing or community development agencies, a majority of which opposed adoption of the rule. Opponents argued that the rule would discourage participation in the Section 312 program, particularly by lower income borrowers. This, in turn, would result in the loss of the program's benefits to neighborhoods that are in the greatest need of upgrading. Syracuse, NY and Allegheny County, PA asserted that Section 312 loans are becoming less attractive than loans available from more conventional sources. Minneapolis, MN alleged that HUD is responsible for monetary losses sustained under this program because it

has not employed adequate underwriting and collection procedures, and that it is unfair to now penalize future borrowers by imposing the proposed fees. Pinellas County, FL asserted that inadequate information is available to establish an appropriate risk fee, and until valid data become available, a risk fee should not be imposed.

Tacoma, WA indicated support for the proposed rule, as did Oxnard, CA. Oxnard views fees related to loan processing as "an idea whose time has come."

A few commenters indicated limited support for the proposed rule, suggesting, for example, that the fees be imposed only on borrowers with family incomes that exceed 80 percent of median family income for the area, or that fees collected be retained by local public bodies rather than HUD.

Risk fee—The principal argument against imposition of a risk fee is that it would create an undue burden upon lower income borrowers. Adding a one-percent risk premium to a three percent interest rate would result in a substantial increase in the borrower's payment. For example, Minneapolis states that, for a $27,000 loan, a lower income borrower would pay an additional $3,329 to HUD over a 20-year loan term (a 37.24 percent increase in the borrower's expense). Pinellas County suggested that HUD distinguish between single- and multifamily loan applicants in examining the need for and size of any risk premium.

HUD recognizes that the charges imposed will constitute an added expense for borrowers, including lower income borrowers. However, HUD does not agree that the added expense will constitute an "undue" financial burden, since the loan rate for lower income borrowers, including the premium add-on, will still be substantially below market rates. The additional expense for all borrowers is warranted in light of the Department's losses sustained in the past under this program. Moreover, a substantial portion of the Department's past losses have been sustained as a consequence of loan defaults by lower income borrowers. Insofar as the risk premiums will offset future losses, it will strengthen the future viability of the loan program.

The Department recently conducted an analysis of losses sustained under the program, and, in the preamble to its February 20, 1985 proposal, published loss data sufficient to demonstrate the need for the immediate establishment of the loan risk premium. The overwhelming majority of loans processed are single-family loans (about 97 percent) and distinctions between single- and multi-family loans related to losses are not sufficiently large to warrant disparate treatment under the rule.

The data included (a) losses on loans that have been written off over the life of the program, (b) anticipated losses on loans that are now in litigation (including pending charge-offs, bankruptcies, judgments, foreclosures, and properties held in decedent estates), (c) losses from sales of acquired properties, and (d) loans that are more than 30 days delinquent. HUD concluded that the rate of loss actually exceeded two percent of loan obligations under the program. HUD compared total losses to total loan amounts obligated to October 1983, and also considered more recent loans that were more than 30 days delinquent. Total losses exceeded $20 million, compared to more than $1.1 billion obligated. Of the more recent loans approximately 10 percent of $62 million were more than 30 days delinquent. Adding the two categories together produces a loss rate greater than two percent ($26.5 million of losses compared to about $1.2 billion obligated).

HUD's past experience under the program and estimation of future losses is sufficient to warrant imposing the one percent risk premium. The Department has already indicated that it will monitor the future loss rate under the program and adjust this premium if warranted.

Application fee—The principal argument against the proposed application fee is that it will create an undue burden on lower income borrowers. Henderson, NV and Portland, OR each assert that, based on economies of scale, lower income borrowers would be subjected to a disproportionate hardship. Duluth, MN opposes any requirement that an application fee be paid in full at settlement. (This, however, is optional to the borrower under the proposed rule). On the other hand, Tacoma, which favors the proposed rule, argues, that allowing borrowers to amortize the application fee over the loan term defeats the purpose of an application fee and should not be permitted.

Minneapolis, Portland, and NAHRO each indicate that insofar as an application fee is appropriate to offset administrative costs, local public bodies should collect and retain these fees. Minneapolis requests that the regulations state that a local public agency can change processing fees. Conversely, Ogden City argues that, consistent with the objectives of the section 312 program, HUD should continue to absorb administrative costs, just as do local public agencies.

The Department does not believe that the $200 application fee will create an undue burden on single-family borrowers. Again, this fee, which will strengthen the program by helping to offset administrative costs, is not likely to change the fundamental nature of a loan (*i.e.*, from one that contains generally more desirable terms than those offered in the private sector). Moreover, the fee is charged only on approved applications, and the rule permits a borrower to elect to have the fee added onto the loan principal amount and amortized over the loan term. These aspects of the rule are specifically designed to minimize any potential adverse impact based on an upfront fee assessment.

The application fee will produce revenues that should approximate, if not meet completely, HUD's administrative costs under the program. The Department does not intend to permit local public bodies to either collect or share in the proceeds derived from these fees. It is not clear that section 312 of the Act, which specifically authorizes HUD to collect fees, would permit local authorities to receive any fee proceeds to offset administrative costs that they incur under the program. Additionally, the Department is not inclined to create an employer-employee or agency type of relationship with local bodies that function as independent contractors under the program.

The risk premium and application fee shall be imposed on all loans approved by HUD on or after the effective date of this regulation.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule does not constitute a major rule as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3)

have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterpises in domestic or export markets.

Under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), HUD certifies that this rule does not have a significant economic impact on a substantial number of small entities, because the rule, while increasing costs to borrowers in the Section 312 program, will not affect a significant number of small entities as defined by the Act.

This rule was listed as item number 170 in the Department's Semiannual Agenda of Regulations published on April 29, 1985, (50 FR 17286, 17325) under Executive Order 12291 and the Regulatory Flexibility Act.

The Section 312 Rehabilitation Loan Program is listed in the Catalog of Federal Domestic Assistance as program number 14.220.

List of Subjects in 24 CFR Part 510

Loan programs—housing and community development, Relocation assistance, Urban renewal.

PART 510—SECTION 312 REHABILITATION LOAN PROGRAM

Accordingly, the Department amends 24 CFR Part 510 as follows:

1. The authority citation for 24 CFR Part 510 is revised to read as set forth below and any authority citation following any section in Part 510 is removed.

Authority: Sec. 312, United States Housing Act of 1964 (42 U.S.C. 1452b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. By adding a new § 510.34, to read as follows:

§ 510.34 Loan risk premiums.

For any loan issued under this part, a risk premium of one percent shall be added to the loan contract interest rate. The premium will constitute a part of each of the borrower's monthly payments over the loan term.

2. By adding a new § 510.36, to read as follows:

§ 510.36 Application fee.

(a) Each approved application filed for a loan under this part shall be subject to an application fee. The fee for a property containing four or fewer dwelling units shall be $200. The fee for all other applications shall be $300.

(b) A borrower may, at his or her option, either (1) submit the application fee in full at the time of loan settlement, or (2) have the amount of the application fee added to the loan amount and amortized over the term of the loan.

Dated: September 18, 1985.

Alfred C. Moran,

Assistant Secretary for Community Planning and Development.

[FR Doc. 85-22903 Filed 9-24-85; 8:45 am]

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24 CFR Parts 880, 881, 882, 883, 884, 886 and 888

[Docket No. R-85-1248; FR-2005]

Section 8 Housing Assistance Payments Program: Procedure for Issuing Fair Market Rents; Single Room Occupancy Housing for the Existing Housing Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule codifies the methodology for establishing Fair Market Rents and announces a new procedure for promulgating Fair Market Rent Schedules for use in the various section 8 Housing Assistance Payments Programs. The methodology employed by HUD in the past in establishing Fair Market Rents is not changed by this rule. However, the new publication procedure will allow the Department to publish proposed and final Fair Market Rent Schedules by notice in the **Federal Register**, as is done in the case of contract rent annual adjustment factors. This change in procedure will assist the Department in meeting its statutory obligation to publish Fair Market Rents at least annually, while preserving the opportunity for public comment before Fair Market Rents are published in final form. In addition, this rule adopts a standard for determining Fair Market Rents for single room occupancy units for the section 8 Existing Housing Certificate Program..

EFFECTIVE DATE: October 30, 1985. FMRs for Single Room Occupancy Units in the section 8 Existing Housing Program will be effective upon the effective date of the next schedule of Fair Market Rents.

FOR FURTHER INFORMATION CONTACT: Cecelia D. Livingston, Existing Housing Division, Office of Elderly and Assisted Housing, (202) 755-5720; James Tahash, Program Planning Division, Office of Multifamily Housing Management, (202) 426-3970; for technical information regarding the development of the schedules for specific areas for existing housing FMRs, contact Ellis V. St. Clair, Economic and Market Analysis Division, Office of Policy Development and Research, (202) 755-5590; for technical information regarding the development of the schedules for specific areas for new construction and substantial rehabilitation FMRs, contact Edward M. Winiarski, Technical Support Division, Office of Multifamily Housing Development, (202) 426-7625. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (the Act) authorizes a system of housing assistance payments to aid lower income families in renting decent, safe and sanitary housing. These programs, known as the Section 8 Housing Assistance Payments Programs, provide assistance payments for lower income families for a variety of housing options, including new construction, substantial rehabilitation and moderate rehabilitation of units and existing housing certificates and housing vouchers.

Under these programs, HUD or Public Housing Agencies (PHAs) make rental assistance payments on behalf of eligible families to owners. For all Section 8 program components except the Housing Voucher program, the assistance payments are equal to the difference between the contract rent (rent payable to the owner) and the gross family contribution (the amount paid by the tenant to the owner). Initial contract rents plus any allowances for utilities generally may not exceed area-wide Fair Market Rents (FMRs) established at least annually by the Department. Under the Housing Voucher Program, initial payments on behalf of assisted Families are generally equal to the difference between the applicable payment standard and 30 percent of the Family's monthly adjusted income. The payment standard is based on the published existing housing FMR for each size unit (number of bedrooms).

In the past, the Department has issued FMRs in rulemaking documents. The Department has determined that publication by rulemaking is not necessary and has delayed timely annual publication of the FMRs. All rules issued by the Department are subject to Congressional review as provided for in section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C., 3535(o)).

Under section 7(o), any rule published for comment that is not on the Department's Semiannual Agenda of Regulations, or that is on the Agenda but requested by either of HUD's authorizing committees to be submitted for review, must be submitted both to the House Committee on Banking, Finance, and Urban Affairs and the Senate Committee on Banking, Housing, and Urban Affairs for at least 15 calendar days of continuous session of Congress before the rule may be published for comment. In addition, no rule may become effective until a period of 30 calendar days of continuous session of Congress has elapsed after publication of the rule for effect.

This Rule

Publication of FMRs by Federal Register *Notice.* Today's document changes the current procedure for adopting FMRs by amending applicable regulations in Part 888, Subpart A, to provide that FMRs will be issued by notice. The Department believes that publishing FMRs on a more timely basis will benefit participants in the section 8 program as well as the Department.

Such a change benefits the Department by enabling it to comply in a more timely manner with the requirements of the Act. Section 8(c)(1) of the Act states that the Secretary shall periodically, but not less than annually, establish fair market rents. Section 8(c)(1) further states that the Department shall publish FMRs in the Federal Register, with reasonable time for public comment, and that the FMRs shall become effective upon publication in final form in the Federal Register. Under this rule, FMRs will be published initially in proposed form with a minimum of 30 days for comment, and then will be published in final form by Notice for immediate effect. This procedure will increase the flexibility of the Department in responding to changed circumstances in particular market areas. In addition, when the rents are published in final form by Notice in the Federal Register they can be made effective the same day.

FMRs for the various Section 8 Housing Assistance Payments Programs will be published as Notices, but carried in the Proposed Rules or Rules and Regulations section of the Federal Register. This procedure is used when a document is related to the Department's rules, but is not a rule and is not codified in the Code of Federal Regulations. Documents published in the Proposed Rules or Rules and Regulations section are carried in all of the Federal Register indices, which should make it easier for the public to have quick access to the information on an ongoing basis.

Methodology Used to Develop FMRs. Today's rule also amends Part 888, Subpart A, by adding an explanation of how FMRs are developed. This rule does not make any substantive change in the methodology previously used to develop FMRs, but the rule incorporates in the Department's regulations for the first time a complete description of these procedures. Any future change in the methodology used to develop FMRs would be the subject of new rulemaking.

FMRs for New Construction and Substantial Rehabilitation. The FMRs for new construction and substantial rehabilitation are based primarily on the level of rentals paid for recently constructed dwelling units of modest design within each market area. Generally, recently constructed units include units constructed within six years of the market survey. In market areas with insufficient projects built within six years, alternative procedures will be used to develop appropriate rent levels. The FMRs are estimates of rents that prospective tenants who are not receiving Federal rent subsidies would be willing to pay for recently constructed dwelling units of modest design.

FMRs for Existing Housing. The FMRs established for Existing Housing also are used to determine FMRs for the Moderate Rehabilitation Program and the Payment Standard for the Housing Voucher Program. The Department has adopted criteria (HUD's measure of modest housing) to be used in developing the existing housing FMRs. They are: (1) The 45th percentile rent of standard quality rental housing unit (that is, the rent below which 45 percent of the standard quality rental housing units are distributed); (2) rents based on units occupied by recent movers (households who moved in the two years preceding the date of the survey data used in the calculations); and (3) exclusion from the data base of all public housing units and recently completed housing (units built in the two years preceding the survey dates.) The criterion used to calculate the FMRs for manufactured home spaces is based on the 45th percentile rent for manufactured home spaces.

HUD uses the most recent Census and American Housing Survey (AHS) data to develop base rents that correspond to the designated 45th percentile, standard quality, recent-mover FMR standard for each market area. These base rents are updated to the most recent possible date through the use of available Consumer Price Index (CPI) data for rents, and for fuel and utilities. The updated rent estimates then are trended forward to a designated "as of" date by using rent inflation factors based on the CPI data for the most recent available twelve-month period. Base rents for manufactured home spaces are developed by using HUD Field Office surveys and updating them with the rent component data of the CPI.

This rule also contains technical amendments to several of the Section 8 program regulations to include a cross-reference to Part 888 for information on the determination of Fair Market's Rents.

Single Room Occupancy FMRs for Existing Housing. In addition to Fair Market Rent amendments, this rule makes several miscellaneous amendments to Parts 882 and 888, to implement section 210 of the Housing and Urban-Rural Recovery Act of 1983 (the 1983 Act) (Pub. L. 98–181, November 30, 1983). Section 210 authorizes the use, under certain conditions, of Single Room Occupancy (SRO) units in the Section 8 Existing Housing Program. (Single Room Occupancy housing means a unit which contains no sanitary facilities or food preparation facilities, or which contains one, but not both, types of facilities, and which is suitable for occupancy by a single eligible individual capable of independent living.) It is not intended that SRO housing substitute for efficiency and one-bedroom units or compensate for tight markets. Rather, local demand for this type of housing must be demonstrated for SRO units to qualify.

These authorizing amendments for SROs are consistent with SRO provisions already in place for the Section 8 Moderate Rehabilitation program, except for the few differences cited below. Two statutory provisions that apply to the Moderate Rehabilitation program also apply to the Existing Housing program. These include:

(1) The use of SROs will be approved only when the Department determines that there is a significant demand among individuals in the locality for SRO-type housing, rather than traditional housing units; and

(2) The unit of general local government in which the property is located and the local PHA approve of the units being used as single room occupancy housing.

A third statutory requirement (applicable only to the Existing Housing program) was added by the 1983 Act. This requires that the unit of local government and local PHA certify to

HUD that the property meets applicable local health and safety standards.

This rule also incorporates into the Existing Housing regulations the current Moderate Rehabilitation housing quality standards for single room occupancy (see § 882.109). This includes a requirement that local codes on sanitary facilities, space and security be met. The regulation contains a reference to the American Public Health Association's Recommended Housing Maintenance and Occupancy ordinance for use in the absence of local code standards.

The definition for Single Room Occupancy housing differs slightly from the Moderate Rehabilitation definition by not stating the minimum number of units that must be in a building as a prerequisite for any unit to qualify as SRO housing. The definitions differ to reflect the different nature implicit in the two programs. (*i.e.*, project-based assistance in the case of the Moderate Rehabilitation Program versus use of individual, eligible units wherever they are located for the Existing Program).

To permit use of SROs in both Programs, the Secretary may waive, in appropriate cases, the statutory limitation on the number of Section 8 units in a particular community occupied by single individuals who are not elderly, displaced or handicapped, and may waive the requirement that elderly, displaced or handicapped single persons be given priority over all other types of single persons for admission to Section 8 housing. Field Office Directors may direct requests for waivers of 24 CFR Part 812 concerning limitations and preferences regarding occupancy by single persons to the Assistant Secretary for Housing.

If it is determined that SROs will be used in a jurisdiction, the PHA must amend its administrative plan to include the criteria for selecting families for single room occupancy units.

The Department has determined that, since SRO units will lack private bathroom or kitchen facilities (or both), the regulations should specify that the maximum gross rents for units under the Section 8 Existing Housing Program shall not exceed 75 percent of the Section 8 Existing Housing Fair Market Rent for 0-bedroom units, unless an exception rent has been approved by HUD for a designated municipality, county or similar locality under 24 CFR 882.106(a)(3). If an exception rent is approved by HUD for 0-bedroom units, the FMR for SROs will be 75 percent of the 0-bedroom unit exception rent. A PHA may request and receive an exception rent for the single room occupancy unit size itself. However, in no case may the maximum gross rent for a single room occupancy unit exceed 120 percent of the originally determined FMR for single room occupancy units (that is, 75 percent of the published 0-bedroom Fair Market Rent and not the HUD approved exception rent for a 0-bedroom unit). Note that any comments submitted on 0-bedroom units during the Fair Market Rent development process, as described elsewhere in this rulemaking, will directly affect the FMR levels for SRO units.

Other Matters

Part 10 of the Department's regulations sets out the policies and procedures that HUD generally follows in the development of its rules. As a general policy, the Department provides for prior opportunity for comment for most classes of rules. However, Part 10 indicates that the Department may omit notice and public procedures when the rulemaking is (among other things) a rule of agency procedure, or if prior opportunity for comment is unnecessary, impracticable or contrary to the public interest. This final rule codifies a change in the way Fair Market Rents are published; it makes no substantive change in the way the FMRs are developed. Accordingly, the Department has determined that this rule is one of agency procedure, and that it is unnecessary to provide for prior opportunity for comment. As a practical matter, we also note that the manner in which FMRs are developed is not changing and the methodology used has been subject to public comment in previous years' rulemakings. Accordingly, the Department finds that prior opportunity for comment is unnecessary with reference to the methodology.

With regard to the SRO amendments, the Department has determined that the changes will benefit persons who may not otherwise be able to participate in the program, because the rule authorizes an additional housing source. While these amendments have not been the subject of public comment, the Department does have the benefit of the public comments received on its SRO implementation rule published in 1982 in connection with the Section 8 Moderate Rehabilitation Program (47 FR 34376). That interim rule also sets FMRs for SRO units at 75 percent of the 0-bedroom Fair Market Rent, and, like this rule, implemented statutorily based requirements associated with determination of demand for SRO units and the securing of PHA and local government approval of particular properties being used for SRO purposes.

The Department received limited comments on the SRO provisions of the 1982 rule. While comments were generally favorable, two commenters, (both from New York City) objected to FMRs for SROs being set at 75 percent of 0-bedroom rents. These commenters were concerned that repair and replacement costs, maintenance, and financing costs for moderate rehabilitation projects containing SROs would all be high, and urged that FMRs be set at the same level as the 0-bedroom rent for an area.

Thus, while there has been some concern expressed about the established FMR level for SRO units, it appears to be limited in scope and connected, in part, to characteristics of the moderate rehabilitation program that are not shared in the Section 8 existing program—for example, financing costs associated with moderate rehabilitation should not similarly be a factor driving up rents in existing housing.

The Department has examined the public comments received on the interim rule pertaining to SROs for moderate rehabilitation units, and will publish soon a final rule treating that subject matter in greater detail. One of the judgments that has been made in response to those comments, however, is that FMR levels for SROs should not be raised beyond the level set out in the interim rule. Accordingly, this rule also adopts 75 percent of 0-bedroom FMRs as the appropriate level for Section 8 Existing SRO rents.

A Finding of No Significant Impact with respect to the environment, required by section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332), has been made in accordance with HUD regulations in 24 CFR Part 50. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities because it merely changes the procedure used to issue FMRs. It makes no change in the methodology used to arrive at the FMR levels.

This rule was listed as item 124 in the Department's Semiannual Agenda of Regulations published on April 29, 1985 (50 FR 17286, 17317) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Programs number is 14.156, Lower-Income Housing Assistance Programs (Section 8).

List of Subjects

24 CFR Parts 880 and 881

Grant programs: housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs: housing and community development, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs: housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs: housing and community development, Rent subsidies, Rural areas.

24 CFR Parts 886 and 888

Grant programs: housing and community development, Rent subsidies.

Accordingly, 24 CFR is amended as follows:

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

1. The authority citations following the sections in Part 880 are removed and the authority citation for Part 880 is revised to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

2. In § 880.203, paragraph (d) is revised to read as follows:

§ 880.203 Fair market rents.

* * * * *

(d) Fair Market Rents will be established by HUD and will be published in the **Federal Register** in accordance with Part 888 of this chapter. Revisions for one or more market areas may be initiated by HUD at any time and may be published as market conditions dictate.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

3. The authority citations following the sections in Part 881 are removed and the authority citation for Part 881 is revised to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

4. In § 881.203, paragraph (d) is revised to read as follows:

§ 881.203 Fair market rents.

* * * * *

(d) Fair Market Rents will be established by HUD and will be published in the **Federal Register** in accordance with Part 888 of this chapter. Revisions for one or more market areas may be initiated by HUD at any time and may be published as market conditions dictate.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

5. The authority citations following the sections in Part 882 are removed and the authority citation for Part 882 is revised to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

6. In § 882.102, the definitions of "Fair Market Rent" and "Unit" are revised and a definition of "Single Room Occupancy" is added in alphabetical order, as set forth below:

§ 882.102 Definitions.

* * * * *

Fair Market Rent. The rent, including utilities (except telephone), ranges and refrigerators, and all maintenance, management, and other services, which would be required to be paid in order to obtain privately owned, existing, Decent, Safe, and Sanitary rental housing of modest (non-luxury) nature with suitable amenities. Separate Fair Market Rents will be established by HUD for dwelling units of varying sizes (number of bedrooms) and will be published in the **Federal Register** in accordance with Part 888 of this chapter.

* * * * *

Single Room Occupancy (SRO) Housing. A unit which contains no sanitary facilities or food preparation facilities, or which contains one but not both types of facilities (as those facilities are defined in §§ 882.109 (a) and (b)), and which is suitable for occupancy by a single eligible individual capable of independent living.

Unit. Residential space for the private use of a Family (including individuals who comprise a Family in accordance with 24 CFR Part 812), such as an apartment, house, or Independent Group Residence, which contains a living room, kitchen area, bathroom(s) and bedroom(s). However, a congregate housing unit need not contain a kitchen area since central dining facilities are available with the building or housing complex, a Single Room Occupancy unit need not contain sanitary and kitchen facilities, and a 0-bedroom unit may have a combined living/bedroom area. The size of a unit is based on the number of bedrooms contained within the unit and generally ranges from 0-bedroom to 6-bedrooms.

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7. In § 882.106, a new paragraph (d) is added, to read as follows:

§ 882.106 Contract rents.

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(d) *Single Room Occupancy Units.* (1) The Fair Market Rent for each SRO unit shall be equal to 75 percent of the 0-bedroom Fair Market Rent.

(2) In areas where HUD has approved the use of exception rents for 0-bedroom units under paragraph (a)(3) or (a)(4) of this section, the SRO exception rent will be 75 percent of the exception rent which applies to the Existing Housing 0-bedroom unit. Further, a SRO unit may be granted an exception rent for its own specified unit size. In no case may the authorized rent for the SRO unit exceed 75 percent of 120 percent of the 0-bedroom unit FMR.

(3) In determining the reasonableness of the rents, consideration will be given to the presence or absence of sanitary or kitchen facilities.

8. In § 882.109, a new paragraph (p) is added, to read as follows:

§ 882.109 Housing quality standards.

* * * * *

(p) *Single Room Occupancy (SRO) Unit—Performance Requirements.* (1) The foregoing standards shall apply except for paragraphs (a), (b), (c), (m), (n), and (o).

(2) Each SRO unit shall be occupied by no more than one person.

(3) Exterior doors and windows accessible from outside the SRO unit must be able to be locked.

(4) Sanitary facilities, space and security shall meet local code standards for single room occupancy housing. In the absence of applicable local code standards, the requirements for habitable rooms used for living and sleeping purposes contained in the American Public Health Association's Recommended Housing Maintenance and Occupancy Ordinance shall be used.

9. In § 882.110, paragraphs (c), (d), and (e) are redesignated as paragraphs (d), (e), and (f), respectively, and a new paragraph (c) is added, to read as follows:

§ 882.110 Types of housing.

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(c) SRO Housing may be utilized if:

(1) The property is located in an area in which there is a significant demand for SRO units, as determined by the HUD Field Office;

(2) The PHA and the unit of general local government in which the property is located approve the use of SRO units for such purpose; and

(3) The unit of general local government and local PHA certify to HUD that the property meets applicable local health and safety standards.

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§ 882.116 [Amended]

10. In § 882.116(j), the reference to "§ 882.110(c)" is removed and a reference to "§ 882.110(d)" is added in its place.

§ 882.204 [Amended]

11. Section 882.204(b)(3)(ii) is amended by removing the clause "(including any selection preferences)" and adding in its place "(including any selection preferences or use of single room occupancy units)".

§ 882.404 [Amended]

12. In § 882.404, paragraph (c) is removed.

13. In § 882.602, the definition of "Fair Market Rent" is revised to read as follows:

§ 882.602 Definitions for this subpart.

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Fair Market Rent. The rent which would be required to be paid in order to obtain a privately owned, decent, safe and sanitary Manufactured Home Space of a modest nature. This rent includes maintenance and management services described in the definition of Manufactured Home Space for single-wide and double-wide Manufactured Home Spaces. Rents for double-wide spaces will be permitted for Assisted Families of five or more persons so long as the Manufactured Home meets the minimum occupancy standards for families in accordance with § 882.209(b)(2). Fair Market Rents will be established by HUD and will be published in the **Federal Register** in accordance with Part 888 of this chapter.

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PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

14. The authority citations following the sections in Part 883 are removed and the authority citation for Part 883 is revised as set forth below:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

15. In § 883.304, paragraph (d) is revised to read as follows:

§ 883.304 Fair market rents.

* * * * *

(d) Fair Market Rents will be established by HUD and will be published in the **Federal Register** in accordance with Part 888 of this chapter. Revisions for one or more market areas will be initiated by HUD at any time and may be published as market conditions dictate.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

16. The authority citations following the sections in Part 884 are removed and the authority citation for Part 884 is revised to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

17. In § 884.102, paragraphs (a) and (c) of the definition of "Fair Market Rent" are revised to read as follows:

§ 884.102 Definitions.

* * * * *

Fair Market Rent. (a) HUD's determination of the rents, including utilities (except telephone), ranges and refrigerators, parking, and all maintenance, management and other essential housing services, which would be required to obtain, in a particular market area, privately developed and owned, recently constructed rental housing of modest (non-luxury) design with suitable amenities.

* * * * *

(c) The Fair Market Rents will be established by HUD and will be published in the **Federal Register** in accordance with Part 888 of this chapter. To allow for the period of construction, computation of the Fair Market Rents will include HUD's estimate of anticipated rent increases during an appropriate future period as stated in the publication. Accordingly, for any given project for which the scheduled construction time will be less than such future period, an appropriate reduction will be made in determining the approvable Contract Rent.

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PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

18. The authority citations following the sections in Part 886 are removed and the authority citation for Part 886 is revised to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

19. In § 886.102, paragraph (a) of the definition of "Fair Market Rent" is revised to read as follows:

§ 886.102 Definitions.

* * * * *

Fair Market Rent. (a) The rent which is determined by HUD as the Fair Market Rent for Existing Housing under Section 8. This Fair Market Rent is the rent, including utilities (except telephone), ranges and refrigerators, and all maintenance, management and other services, which would be required to be paid in order to obtain privately owned, existing, Decent, Safe and Sanitary rental housing of modest (non-luxury) nature with suitable amenities. Separate Fair Market Rents will be established by HUD for dwelling units of varying sizes (number of bedrooms) and types and will be published in the **Federal Register** in accordance with Part 888 of this chapter.

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20. In § 886.302, the introductory language in the definition of "Fair market rent" is revised to read as follows:

§ 886.302 Definitions.

* * * * *

Fair market rent. The rent, including utilities (except telephone), ranges and refrigerators, and all maintenance,

management, and other services required to be paid to lease a unit in the appropriate Section 8 program. Specific types of projects are described in the following paragraphs. All Fair Market Rents will be established by HUD and published in the **Federal Register** in accordance with Part 888 of this chapter.

. . . . . .

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

In Part 888 the authority citations for Subparts A and B are removed; a new authority citation to Part 888 is added, and

21. The Table of Contents for Part 888 is revised to read as follows:

Subpart A—Fair Market Rents

Sec.

888.101 Fair market rents for new construction and substantial rehabilitation: Applicability.
888.103 Fair market rents for new construction and substantial rehabilitation: Methodology.
888.105 Fair market rents for new construction and substantial rehabilitation: Manner of publication.
888.111 Fair market rents for existing housing and moderate rehabilitation: Applicability.
888.113 Fair market rents for existing housing and moderate rehabilitation: Methodology.
888.115 Fair market rents for existing housing and moderate rehabilitation: Manner of publication.

Subpart B—Contract Rent Automatic Annual Adjustment Factors

888.201 Purpose.
888.202 Manner of publication.
888.203 Use of contract rent automatic annual adjustment factors.
888.204 Revision to the automatic annual adjustment factors.

Authority: Secs. 5 and 8, United States Housing Act of 1937 (42 U.S.C. 1437c and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

22. Part 888, Subpart A is revised to read as follows:

Subpart A—Fair Market Rents

§ 888.101 Fair market rents for new construction and substantial rehabilitation; Applicability.

The Fair Market Rents (FMRs) for New Construction (see definition in § 880.201 of this chapter) and Substantial Rehabilitation (see definition in § 881.201 of this chapter) are determined by the Department of Housing and Urban Development (HUD) and apply to section 8 New Construction and Substantial Rehabilitation under Part 880 (New Construction), Part 881 (Substantial Rehabilitation), Part 883 (Housing Finance and Development Agencies), Part 884 (New Construction Set-Aside for section 515 Rural Rental Housing Projects), and Part 885 (Loans for Housing for the Elderly or Handicapped) and for Substantial Rehabilitation under Part 886, Subpart C (Section 8 Housing Assistance Program for the Disposition of HUD-owned Projects).

§ 888.103 Fair market rents for new construction and substantial rehabilitation: Methodology.

(a) *General.* Fair Market Rents (FMRs) for New Construction and Substantial Rehabilitation are based on the levels of rent paid, as determined by HUD, for recently constructed dwelling units of modest design within each market area. FMRs include a trend adjustment to allow time for processing and construction. FMRs are estimates of the rents that prospective tenants who do not receive Federal rent subsidies would be willing and able to pay for recently constructed living units of modest design, with suitable amenities. They do not necessarily represent rents needed to support construction and operating costs.

(b) *Geographic area.* The Fair Market Rents for New Construction and Substantial Rehabilitation are established for different market areas throughout the country. These market areas are the same as those used for the public housing prototype costs issued under Part 941 of this title. The market areas for the FMRs for New Construction/Substantial Rehabilitation are the same as the prototype cost areas that are in effect at the time the FMRs are published in final form.

(c) *Basic categories.* (1) FMRs are developed for five unit sizes (0, 1, 2, 3, and 4 or more bedrooms), as well a for five structural categories (detached, semi-detached/row homes, walk-up, 2–4 story elevator, and 5-plus story elevator buildings).

(2) FMRs may be established by financing type (for example, conventional loans, loans from the proceeds of tax-exempt obligations, loans secured by mortgages purchased under the Government National Mortgage Association Tandem Program for Section 8 projects, and direct loans under section 202 of the Housing Act of 1959 or section 515 of the Housing Act of 1949). If FMRs are being established by financing type, special note will be made in the annual publication of the FMRs.

(d) *Data Base.* (1) Estimates of FMRs by unit size, structural type, and market area are prepared by the HUD Field Office. Market surveys are conducted by appraisers within each market area to obtain representative samples of rents paid for comparable unsubsidized recently constructed or substantially rehabilitated dwelling units of modest design with suitable amentities. Adjustments are made for differences between the rental comparables and a hypothetical unit, such as adjustments for unit area, number of baths, utilities, services, and age of structure.

(2) Adjusted FMRs are trended ahead two years to allow time for anticipated changes in rent levels during the processing and construction phases of project development. The list of adjusted, trended unit rent is arrayed in ascending order. The FMRs for each combination of structural type and bedroom count are selected based upon the 75th percentile level of the array of sample rental comparables for that type of unit surveyed for each market area. Schedules of FMRs are then prepared that reflect a progression from bedroom size to bedroom size, and from one structural type to another that is both logical and reasonably consistent. Alternatively, in those instances where a sufficient number of market rental comparables are not available, FMRs may be developed by an interpolation procedure, which is more fully discussed in the Department's handbooks on the New Construction and Substantial Rehabilitation programs.

(e) *Special categories—computations.* In addition to the basic categories described in paragraph (c) of this section, FMRs for certain specialized housing types are computed as described in the following paragraphs. All rents computed in accordance with this paragraph (e) shall be rounded down to the nearest whole dollar.

(1) FMRs for dwelling units designed for the elderly or handicapped are those for appropriate size units, not to exceed 2 bedrooms for the elderly, multiplied by 1.05;

(2) Congregate housing dwelling unit FMRs are the same as for non-congregate units;

(3) Single room occupancy dwelling unit FMRs (applicable only for Substantial Rehabilitation projects) are 75 percent of those for zero-bedroom units of the same structural type;

(4) FMRs for living units in a group home developed with a direct loan under section 202 of the Housing Act of 1959 are those for zero-bedroom or one one-bedroom units of the walk-up structural type (or, if the group home

contains an elevator, of the elevator 2–4 story structural type). Each living unit in a group home is composed of a bedroom plus a proportionate part of common living space ordinarily included in a living unit. One-bedroom FMRs may be applied only when the bedroom space plus the proportionate part of the common space totals at least 450 square feet;

(5) Manufactured home (unit and space) FMRs shall be 95 percent of the rents for detached units of the appropriate bedroom size (except that where a manufactured home FMR is specified on the schedule for an area, the amount on the schedule shall be the FMR);

(6) FMRs for manufactured home spaces in newly constructed or substantially rehabilitated manufactured home parks shall be determined by multiplying the FMR for spaces published for the Existing Housing Program by 1.25.

§ 888.105 Fair market rents for new construction and substantial rehabilitation: Manner of publication.

Fair market rents will be developed in two steps and will be published at least annually in the **Federal Register**. The Department will propose FMRs and provide a comment period of at least 30 days. Once the comments are considered, the Department will publish a final notice announcing FMRs. These FMRs will be effective on publication.

§ 888.111 Fair market rents for existing housing and moderate rehabilitation: Applicability.

The Fair Market Rents (FMRs) for Existing Housing (see definition in § 882.102 of this chapter) are determined by the Department of Housing and Urban Development (HUD) and apply to the Section 8 Existing program under Part 882, Subparts A, B, and F, the Moderate Rehabilitation program under Part 882, Subparts D and E, the Assistance Program for Projects with HUD-insured or HUD-held Mortgages under Part 886, Subpart A, as well as for existing housing under the Section 8 Housing Assistance Program for the Disposition without substantial rehabilitation of HUD-owned projects under Part 886, Subpart C.

§ 888.113 Fair market rents for existing housing and moderate rehabilitation: Methodology.

(a) *General.* The criteria used to determine the Existing Housing FMRs are as follows: (1) The 45th percentile rent of standard quality rental housing units (*i.e.*, the rent below which 45 percent of the standard quality rental housing units within each market area is distributed); (2) rents for units occupied by recent movers (households who moved in the two years preceding the date of the survey data used in the calculations); and (3) exclusion from the data base of all public housing units and recently completed housing (units built in the two years preceding the survey date). The criterion used to calculate FMRs for manufactured home spaces is based on the 45th percentile rent for manufactured home spaces.

(b) *Geographic area.* (1) The Fair Market Rents for existing housing are established for all Metropolitan Statistical Areas (MSAs) Primary Metropolitan Statistical Areas (PMSAs), nonmetropolitan counties, and county equivalents in the United States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam. FMRs also are established for nonmetropolitan parts of counties in the New England States.

(2) FMRs for manufactured home spaces are established for all MSAs, PMSAs, selected nonmetropolitan counties, and the residual nonmetropolitan portion of each State.

(c) *Categories.* Existing housing FMRs are established by unit size (*i.e.*, number of bedrooms). Base rents are established for two-bedroom units, and percentage relationships developed from Census or American Housing Survey (AHS) data are used to establish 45th percentile rents for efficiencies and one-bedroom units. Higher percentage relationships are provided for units that contain three or more bedrooms. Manufactured home space FMRs are established for single-wide and double-wide spaces.

(d) *Data base.* HUD uses the most recent Census and American Housing Survey (AHS) data to develop base rents that correspond to the designated 45th percentile, standard quality, recent-mover FMR standard for each market area. These base rents are updated to the most recent possible date through use of available Consumer Price Index (CPI) data for rents, and for fuel and utilities. The updated rent estimates then are trended forward to a designated "as of" date by using rent inflation factors based on the CPI data for the most recent available 12-month period. In establishing FMRs each year, HUD will use the most accurate data available, which may include such things as new census data or additional data developed in response to sudden changes in market conditions. Any additional data used will be described in the **Federal Register** publication of the proposed FMRs for comment.

(e) *Specific categories—computation.* (1) The FMRs for the Moderate Rehabilitation Program are 120 percent of the FMRs published for the regular Existing Housing Program.

(2) Fair Market Rents for manufactured home spaces are derived from the use of a single rent inflation factor developed from the CPI in a manner similar to that used for the regular Existing Housing Program, but excluding data pertaining to fuel and utilities.

(3) The Fair Market Rent for each Single Room Occupancy unit is 75 percent of the zero-bedroom Fair Market Rent.

(4) The Fair Market Rent for each Congregate Housing unit is the same as for zero-bedroom units, except that if the unit consists of two or more private rooms, the Fair Market Rent is the same as for a one-bedroom unit.

(5) The Fair Market Rent for an Independent Group Residence is the Fair Market Rent applicable to the unit size being leased, for example, a four-bedroom unit if the residence contains four bedrooms.

§ 888.115 Fair market rents for existing housing and moderate rehabilitation: Manner of publication.

Fair market rents will be published at least annually in the **Federal Register**. The Department will propose FMRs and provide a comment period of at least 30 days. Once the comments are considered, the Department will publish a final notice announcing FMRs. These FMRs will be effective on publication in the **Federal Register**.

Dated: September 18, 1985.

Janet Hale,

Acting General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 85–22900 Filed 9–24–85; 8:45 am]

BILLING CODE 4210–27–M

Office of Assistant Secretary For Housing—Federal Housing Commissioner

24 CFR Part 885

[Docket No. R–85–1014; FR–1543]

Loans for Housing for the Elderly or Handicapped; Eligibility of Acquired Existing Housing for the Nonelderly Handicapped

AGENCY: Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule permits HUD to make loans to nonprofit organizations to acquire existing housing and related facilities, including those requiring

moderate rehabilitation, for the purpose of providing group homes for the nonelderly handicapped.

EFFECTIVE DATES: October 30, 1985.

FOR FURTHER INFORMATION CONTACT: Robert W. Wilden, Office of Elderly and Assisted Housing, Room 6116, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000. Telephone (202) 426–8730. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On November 16, 1982, at 47 FR 51565, the Department published an interim rule to implement changes made by section 319 of the Housing and Community Development Act of 1980 (1980 Act). The interim rule expanded the definition of "development cost" contained in 24 CFR 885.5 to include the cost of acquiring existing housing and related facilities, and the cost of its rehabilitation alteration, conversion, or improvement (including moderate rehabilitation). The interim rule also amended other provisions of Part 885 to conform to the new definition of "development cost". Public comments on the interim rule were invited for a 45-day period.

I. Background

Section 202(d)(1) of the Housing Act of 1959 defines "housing" to mean "structures suitable for dwelling use by elderly or handicapped families which are (A) new structures, or (B) provided by rehabilitation, alteration, conversion, or improvement of existing structures which are otherwise inadequate for proposed dwelling use by such families." Before the 1980 amendments, the Section 202 program was limited to new construction and substantial rehabilitation projects.

Section 319 of the 1980 Act amended section 202(d)(3) of the Housing Act of 1959 to expand the definition of "development cost" to include, in the case of housing to meet the needs of handicapped (primarily nonelderly) persons, the cost of acquiring existing housing and related facilities (including the cost of the land) and the cost of rehabilitation, alteration, conversion, or improvement, including the moderate rehabilitation, thereof.

Before the 1980 amendments to section 202, many nonprofit organizations developing housing for the handicapped (including the developmentally disabled) encountered considerable difficulty in finding or obtaining suitable sites for new construction, or existing housing in need of substantial rehabilitation, in acceptable residential neighborhoods. The Department believes that, by authorizing the purchase of existing housing requiring little or no rehabilitation, the supply of eligible properties should be increased and community acceptance enhanced, since moderate rehabilitation seldom involves major changes in the exterior appearance of an acquired structure.

II. The Interim Rule

The interim rule (47 FR 51565) amended various sections of 24 CFR Part 885, Loans for Housing for the Elderly and Handicapped, to incorporate the changes made by section 319 of the 1980 Act.

Section 885.1(b), *General Policy*, was amended to authorize loans to finance the acquisition of existing housing and related facilities, and, if necessary, the cost of rehabilitation, alteration, conversion, or improvement, including moderate rehabilitation. Because of the statute's emphasis on the nonelderly handicapped and HUD's policy that units for the elderly should be designed to encourage and provide maximum opportunities for independent living, the new provision was limited to group homes for the nonelderly handicapped. The needs of elderly handicapped persons are met through the section 202 new construction and substantial rehabilitation program.

Section 885.5, Definitions, was amended by (1) adding a new definition of "acquisition with or without moderate rehabilitation"; and (2) amending the definitions of "construction", "development cost" and "housing and related facilities" to include provisions relating to acquisitions with or without moderate rehabilitation.

"Acquisition with or without moderate rehabilitation" was defined to include only the acquisition of existing housing and related facilities for use as group homes for the nonelderly handicapped, and development costs attributable to moderate rehabilitation were limited to the greater of $3,000 per unit or 15 per cent of the loan amount.

The definition of "construction" was expanded to include the acquisition of existing housing with moderate rehabilitation.

"Development costs" was amended to include, in the case of group homes for the nonelderly handicapped, the cost of acquisition of existing housing and related facilities and the cost of rehabilitation, alteration, conversion, or improvement, including moderate rehabilitation thereof, and the cost of the land on which the housing and related facilities are located.

"Housing and related facilities" was amended to include acquisition with or without moderate rehabilitation, if at least 3 years had elapsed from the later of the date of completion of the project or beginning of occupancy to the date of application for a section 202 fund reservation. This provision was intended to assure that the Borrower did not develop the project without Federal assistance but with the intent to obtain section 202 refinancing upon completion of the project.

Section 885.415(p) was amended to clarify that acquisitions without rehabilitation are not subject to Davis-Bacon wage requirements, since construction is not involved. Section 885.210(a)(13) was amended to require that the Borrower have authority to finance, acquire (with or without moderate rehabilitation), construct or substantially rehabilitate, and maintain properties. Section 885.210(a)(23) was amended to require that the Borrower provide, in the case of property acquired for group homes for the nonelderly handicapped, (1) evidence that the proposed acquisition, construction, or substantial rehabilitation is, or will be, permissible under applicable zoning or regulations as soon as the site is specified, and (2) a statement that gross rents (contract rent plus any utility allowance) will not exceed 75 percent of the applicable fair market rents (FMRs) for new construction and substantial rehabilitation projects.

Section 885.220(d)(4) was revised to expand the environmental review requirements and to assure compliance with the financial assistance requirements in areas identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards.

Conforming amendments of a general nature were also made to §§ 885.215, 885.230, 885.415(n), 885.420 and 885.425.

III. Discussion of Public Comments

The Department received four public comments. They were from the Association of Retarded Citizens of the United States, the United Cerebral Palsy Association, Inc., the Santa Fe Association of Retarded Citizens, and the Mental Health Association of Westchester County (NY), Inc. The four comments were generally supportive of the interim rule.

Three of the organizations commented, however, that the FMR and the moderate rehabilitation cost limitations would adversely affect the prospects for establishing group homes for nonelderly handicapped persons. Following is a summary of suggested changes to the rule and HUD's response.

A. Fair Market Rent (FMR) Limitations

Two commenters, the Association for Retarded Citizens of the U.S. (ARC) and the United Cerebral Palsy Association, Inc., questioned the adequacy of the FMRs set by the interim rule. The commenters asserted that limiting the FMRs to 75 percent of FMRs for walk-up structures would render the program infeasible, since such FMRs would be unrealistically low. The commenters noted that at the time of the 1980 amendments, HUD was allowing sponsors of group homes to use FMRs established for semi-detached structures. The ARC commenter suggested that the FMRs for existing housing and related facilities used as group homes for the nonelderly handicapped should be set at a minimum of 90 percent of the published FMRs for new construction and substantial rehabilitation projects.

After evaluation of these comments, the Department has determined that it would be inappropriate to raise the FMR limitations above 75 percent of the FMRs for walk-up structures. Group homes ordinarily are not as expensive to develop as fully independent units, and the Department has not found that participants in the program have had major problems because of the FMR limitations. HUB believes that raising the FMRs would contravene both the legislative objective of section 319 of the 1980 Act to provide a less costly alternative to the high cost of new construction and substantial rehabilitation, and the Department's cost-containment policy. Additionally, current regulations for substantial rehabilitation projects (24 CFR 881.204(b)(1)(i)) provide that, if the rehabilitation cost is less than 25 percent of the estimated value after rehabilitation, the contract rent, plus any utility allowance, shall not exceed 75 percent of the FMR. Thus, HUD believes that the FMR limitation for moderate rehabilitation projects is correct.

B. Moderate Rehabilitation Cost Limitations

A commenter suggested that the development cost limitation for rehabilitation should be increased from 15 percent to 25 percent of the loan amount. The commenter argued that the increase was necessary, since most moderate rehabilitation projects, in order to comply with fire, safety, and accessibility standards, will have rehabilitation costs that exceed the 15 percent limitation.

The Department believes that the proposed 25 percent cost limitation would be incompatible with the purpose of the moderate rehabilitation component of the Section 202 Program. Funding of moderate rehabilitation was authorized to provide a less costly alternative to new construction and substantial rehabilitation. Limiting the development cost for moderate rehabilitation to the greater of $3,000 or 15 percent of the loan amount should assure that the program is, in fact, limited to *moderate* rehabilitation projects. However, in cases where the development cost of a Section 202 project funded under the moderate rehabilitation program increases, for reasons beyond the borrower's control, between the time of fund reservation and initial or final closing to a level higher than the moderate rehabilitation limits, HUD would consider funding the project as a substantial rehabilitation project.

C. One-Step Processing

A commenter suggested that the Department should establish a one-step process (combining the initial approval and the firm commitment stages of the Section 202 funding process) for the nonelderly handicapped program. The commenter argued that the one-step process would save time and money for sponsors. The Department has not accepted this suggestion, because it believes that one-step processing would work to the detriment of those applicants who have limited resources and experience with the program.

Currently, applicants for loans under the nonelderly handicapped program are not required to submit, at the time of the initial application, many of the extensive and costly documents required of applicants for the Section 202 elderly housing program. Applicants for the nonelderly handicapped program may delay submitting information relating to specific project sites, detailed architectural exhibits, and evidence of site control and zoning until after the Department has approved their applications and has selected them for Section 202 fund reservations. Under one-step processing, applicants would be required to submit all documents with the initial application and would face greater expenditures of time and money, not only by themselves, but also by other concerned parties, including sponsors, consultants, architects, attorneys, builders, and HUD. If one-step processing were adopted, sponsors would be forced to absorb the costs even if the applications were not approved. The Department believes that the advantages of one-step processing do not justify such additional risks to sponsors.

In order to accelerate the processing of applications for small projects (mortgages of $500,000 or less), HUD has adopted simplified cost certification procedures. See 48 FR 11431, March 18, 1983. This simplified procedure should be applicable to many of the applications involving acquisition of existing housing with or without rehabilitation, and should result in cost savings since it facilitates final closing procedures.

IV. Changes from the Interim Rule and Other Matters

The definition of "construction" in § 885.5 has been revised to clarify that, in the case of group homes for the nonelderly handicapped, it also means the acquisition of existing housing with moderate rehabilitation.

The interim rule added an amendment to § 885.415(n) to include a requirement that the Borrower on a Section 202 moderate rehabilitation project provide performance and payment bonds, each in the amount of 50 percent of the total cost of construction or moderate rehabilitation, or a cash escrow in the amount of 25 percent of the cost of construction or moderate rehabilitation. However, a final rule, published on May 15, 1984 at 49 FR 20466, amended § 885.415(n) to increase the amount of the payment and performance bond coverage from 50 percent to 100 for each bond; therefore, the amendment contained in the interim rule is not included in this final rule.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street, SW., Washington, DC 20410–5000.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The interim rule now being made final has little impact on small cities, since only 350 units (and not more than 35 units in any HUD Region) will be funded annually. Therefore, in HUD's judgment the impact is not substantial within the meaning of the Regulatory Flexibility Act.

This rule was listed as sequence number 114 in the Department's Semiannual Agenda of Regulations, published on April 29, 1985 at 49 FR 17286 under Executive Order 12291 and the Regulatory Flexibility Act.

The information collection requirements contained in this rule were submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. All requirements have been approved and have been assigned OMB control numbers. The OMB control numbers are 2502–0267 and 2502–0039.

The Catalog of Federal Domestic Assistance program number is 14.157.

List of Subjects in 24 CFR Part 885

Aged, Grant programs: housing and community development, Handicapped, Loan programs: housing and community development Low- and moderate-income housing.

PART 885—[AMENDED]

Accordingly, the Department amends 24 CFR Part 885 as follows:

1. The authority citation for Part 885 is revised to read as follows:

Authority: Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. By revising § 885.1(b) to read as follows:

§ 885.1 Purpose and policy.

* * * * *

(b) *General policy:* A loan made under this part shall be used to finance the construction or the substantial rehabilitation of residential projects for the elderly or the handicapped, or for the acquisition of existing housing and related facilities, including the moderate rehabilitation thereof, for group homes for the nonelderly handicapped. Consistent with Congressional directives stated in the Housing and Community Development Act of 1977, these regulations have been developed to consolidate the application requirements of both Section 202 and section 8. Accordingly, projects that meet the requirements of the Section 202 program shall be considered as having met the requirements for housing assistance payments under the Section 8 Housing Assistance Payments Program as provided in the U.S. Housing Act of 1937.

3. Section 885.5 is amended by adding a definition of "Acquisition With or Without Moderate Rehabilitation" and by revising the definitions of "Construction," "Development Cost," and "Housing and Related Facilities" to read as follows:

§ 885.5 Definitions.

As used in this part—

Acquisition With or Without Moderate Rehabilitation means acquisition of existing housing and related facilities to be used as group homes for the nonelderly handicapped, which may include in the development cost not more than $3,000 per unit, or not more than 15 percent of the loan amount, whichever is greater, for moderate rehabilitation, including expenditures for the rehabilitation, alteration, conversion, or improvement of the housing and related facilities.

* * * * *

Construction means the erection or substantial rehabilitation of structures for Housing and Related Facilities. In the case of group homes for the nonelderly handicapped, this term also means acquisition of existing housing with moderate rehabilitation.

* * * * *

Development Cost means the cost of construction or substantial rehabilitation of Housing and Related Facilities, and of the land on which they are located, including necessary site improvements and such other expenses as may be determined by the Assistant Secretary properly to be attributable to the capital cost of the construction, substantial rehabilitation or development of the Housing and Related Facilities. In the case of group homes for the nonelderly handicapped, Development Cost also means the cost of acquiring existing housing and related facilities and the cost of rehabilitation, alteration, conversion or improvement, including moderate rehabilitation, and the cost of the land on which the housing and related facilities are located.

* * * * *

Housing and Related Facilities means rental or cooperative housing structures constructed or substantially rehabilitated as permanent residences for use by elderly or handicapped families, or acquired, with or without moderate rehabilitation, for use by nonelderly families as group homes, and includes structures suitable for use by families residing in the project or in the area, such as cafeterias or dining halls, community rooms or buildings, or other essential service facilities. In the case of Acquisition With or Without Moderate Rehabilitation, at least three years must have elapsed from the later of the date of completion of the project or beginning of occupancy to the date of the application for a Section 202 fund reservation. "Housing and Related Facilities" does not include nursing homes, hospitals or intermediate and transitional care facilities.

* * * * *

4. By revising § 885.210(a)(13), the introductory text of § 885.210(a)(23), and § 885.210(a)(23)(iv) and (vii), and by adding the OMB control number to the end of the section to read as follows:

§ 885.210 Contents of applications.

(a) * * *

(13) Satisfactory evidence that the Borrower has the necessary legal authority to finance, acquire (with or without moderate rehabilitation), construct or substantially rehabilitate and maintain the project, and to apply for and receive the proposed loan, that it meets any requirements as to corporate organization, and that it has authority to enter into such contract obligations and execute such security documents as may be required by HUD.

* * * * *

(23) In the case of projects to be developed for the elderly, the following specific information with respect to the proposed project (such information also is to be provided for projects proposed for the handicapped as soon as the site is specified):

* * * * *

(iv) Evidence that the proposed acquisition, construction or rehabilitation is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action to make the acquisition, construction or rehabilitation permissible and the basis for belief that the proposed action will be completed successfully before the receipt of the conditional commitment for direct loan financing (e.g., a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, etc.).

* * * * *

(vii) A statement that gross rents (contract rents plus any utility allowance) will not exceed the applicable fair market rents by more than the amount allowed under § 880.204(b)(1) or § 881.204(b)(1). For new construction and substantial rehabilitation projects, the applicable fair market rents are those published in accordance with the procedures in § 888.105. For projects that are acquired with or without moderate rehabilitation for group homes for the nonelderly handicapped, the applicable fair market rents are 75 percent of the Schedule A fair market rents.

* * * * *

(Information collection requirements approved by the Office of Management and Budget under control Nos. 2502–0267 and 2502–0039.

5. By revising the introductory text of § 885.215 to read as follows:

§ 885.215 Limitation on numbers of units.

No organization shall participate as Sponsor, Co-Sponsor, or Borrower in the filing of an application or applications for a reservation of Section 202 funds in a single Region in a single fiscal year in excess of that necessary to finance the construction, substantial rehabilitation, or Acquisition With or Without Moderate Rehabilitation, of 300 units of housing and related facilities.

* * * * *

6. By revising § 885.220(d)(4) to read as follows:

§ 885.220 Review of application for fund reservation.

* * * * *

(d) * * *

(4)(i) Before project selection, the Field Office shall complete an environmental review in compliance with the National Environmental Policy Act of 1969 and the related authorities in 24 CFR Part 50, and shall determine whether the proposed site is in compliance with Executive Order 11988, Floodplain Management, and Executive Order 11990, Wetlands Protection.

(ii) No financial assistance shall be approved for acquisition, construction, reconstruction, repair, or improvement of a building located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless (A) the community in which the area is situated is participating in the National Flood Insurance Program in accordance with the regulations thereunder (44 CFR Parts 59–79), or (B) less than a year has passed since FEMA notification regarding such hazards, and flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234, 42 U.S.C. 4001).

* * * * *

7. By revising § 885.230 to read as follows:

§ 885.230 Duration of Section 202 fund reservations.

The Field Office Manager, subject to the approval of the Assistant Secretary, may cancel a fund reservation at any time if it can be established that the Borrower is not making satisfactory progress toward the start of construction, rehabilitation, or acquisition, and shall cancel any reservations of Section 202 loan funds for projects for which the construction, substantial rehabilitation, or Acquisition With or Without Moderate Rehabilitation is not begun within 18 months after the Notice of Section 202 Fund Reservation is issued, unless an extension of time, not to exceed six months, is requested of and granted by the Field Office Manager.

* * * * *

8. By revising § 885.415(p) and by adding the OMB Control Numbers to the end of the section to read as follows:

§ 885.415 Requirements prior to initial loan closing.

* * * * *

(p) Contractor's and Subcontractor's Certifications Concerning Labor Standards and Prevailing Wage Requirements, except for loans involving acquisition without moderate rehabilitation.

(Information collection requirements approved by the Office of Management and Budget under Control Nos. 2502–0267 and 2502–0039.)

9. By revising § 885.420(b) to read as follows:

§ 885.420 Loan disbursement procedures.

* * * * *

(b) All disbursements to the Borrower shall be made on a periodic basis in an amount not to exceed the HUD-approved cost of portions of construction or rehabilitation work completed and in place (except as modified in paragraph (d) of this section), minus the appropriate holdback, as determined by the Field Office.

* * * * *

10. By revising the title of § 885.425 and amending § 885.425(a) to read as follows:

§ 885.425 Completion of acquisition with or without moderate rehabilitation, construction or substantial rehabilitation, execution of HAP Contract, and cost certification and approvals by HUD.

(a) The Borrower must satisfy the requirements for completion of Acquisition With or Without Moderate Rehabilitation, construction or substantial rehabilitation and approvals by HUD before submission of a final requisition for disbursement of loan proceeds.

Dated: September 18, 1985.

Janet Hale,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85–22901 Filed 9–24–85; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

34 CFR Parts 400, 401, 407, 408, 409, 410, 411, 412, 414, 415, 416 and 417

State Vocational Education Program and Secretary's Discretionary Programs of Vocational Education

Correction

In FR Doc. 85–19531 beginning on page 33226 in the issue of Friday, August 16, 1985, make the following corrections:

1. On page 33226, in the second column, third line, "program" should read "programs". On the same page, in the third column, in the thirty-seventh line, insert "all" between "to" and "the".

2. On page 33228, in the first column, in the seventh line of the first paragraph, "it" should read "if", and in the last line, "project" should read "projects". In the same column, in the sixth line of the last paragraph, the first word should read "this". In the third column, under item (3), in the second paragraph, fourth line, a comma should follow "Act".

3. On page 33229, in the second column, first paragraph, in the fifth line, remove the comma following "tools".

4. On page 33230, in the first column, in the second paragraph under item (8), in the fifth line, "Educational" should read "Education". In the second column, the last sentence of the first paragraph is corrected to read as follows: "Also, allocations for disinterested eligible recipients would then have to be reallocated to those eligible recipients which did wish to participate, thus creating an additional administrative burden on States."

5. On page 33236, in the third column, in § 401.12(b)(1), in the twelfth line, the last word should be "and". And in paragraph (b)(2)(i), in the first line, "Employees" should read "Employers".

6. On page 33239, in the first column, the authority citation following § 401.19 (a)(3) is corrected to read as follows: "(Sec. 113(b)(1)(C); 20 U.S.C. 2323(b)(1)(C))".

7. On page 33243, in the first column, in § 401.54(b)(5), the fourth line is corrected to read: "credit is given toward an associate or ". On the same page, the headings for §§ 401.55 and 401.56 are corrected by removing the word "shall".

8. On page 33244, in the second column, the last line of § 401.60(a)(13) is corrected to read "if these institutions or employers—".

9. On page 33247, in the third column, in § 401.79(c), in the third line, "the" should read "that".

10. On page 33248, in the first column, in § 401.91(a), in the third line, "program" should read "paragraph". On the same page and on page 33249, the phrase "if fifty percent" should read "is fifty percent" in § 401.94(b) (1)(ii), (iii), (v) and (2)(ii).

11. On page 33253, in the first column, in § 407.31(d), the second of the two paragraphs designated as "(3)" is correctly designated as "(e)"; also, in the correctly designated § 407.31 (e), paragraph (c) is correctly designated as "(2)". On the same page, in the second column, in § 407.32(a), in the third line, the section citation should read "§ 407.31".

12. On page 33255, in the first column, in § 408.32, the authority citation is corrected to read: "(Sec. 441(d)(5); 20 U.S.C. 2441(d)(5))".

13. On page 33256, in the first column, in § 409.31, in the first line of the introductory text, "used" should read "uses"; also in § 409.31(b), first line, "or" should read "of".

14. On page 33259, in the second column, in § 411.31(e)(2)(ii), first line, "relating" should read "relation".

15. On page 33262, in the second column, in § 414.30(a), second line, "applicant" should read "application".

16. On page 33265, in the third column, in § 416.10(c), in the first line, "working" should read "worker".

17. On page 33267, in the first column, in § 417.1, the authority citation is corrected to read: "(Sec. 404; 20 U.S.C. 2404)".

18. On page 33271, in the first column, in the fifth line from the bottom, "school" should read "schools".

19. On page 33272, in the third column, in the first *comment* paragraph, in the fifth line, "other" should read "others".

20. On page 33275 in the third column, in the last paragraph, the ninth line, "program" should read "programs".

21. On page 33279, in the third column, in the first paragraph, between "be" and "as" in the fifth line, insert "defined".

22. On page 33285, in the third column, the third *Comment* paragraph is corrected to read as follows:

Comment. One commenter pointed out that § 401.76(c)(2)(ix) referred to "State and local administration" while section 332(b)(2) of the Act refers to "State and local . . . supervision." The commenter asked why the statutory language was not used in the regulation.

23. On page 33286, in the third column, in the last paragraph, the second line is corrected to read as follows: "The Secretary does not believe that Congress".

24. On page 33287, in the first column, in the second *Comment* paragraph under *Section 401.94,* in the seventh line, "an" should read "and".

25. On page 33293, in the third column, in the first *Response* paragraph, in the second line, the section should read "417(b)".

26. On page 33294, in the third column, in the first *Response* paragraph, in the seventh line, "required" should read "requires".

27. On page 33297, in the first column, in the third *Question* paragraph, in the third line, "the" should read "and".

28. On page 33300, in the first column, in the first *Question* paragraph under *Section 401.91,* in the third line, "service" should read "reserve".

BILLING CODE 1505-01-M

VETERANS ADMINISTRATION

38 CFR Part 1

Waiver of Overpayments

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration amends 38 CFR 1.962 by clarifying that the term "overpayment" excludes payments received by third parties who are neither payees nor beneficiaries. This situation usually arises when erroneous benefit payments are made shortly after a payee's or beneficiary's death and these payments are received by, or credited to the account of, a non-entitled third party. Title 38, United States Code, section 3102(a) prohibits recovery of an overpayment where recovery would be against equity and good conscience. Currently, 38 CFR 1.963(c) permits waiver consideration of Veterans Administration payments that have come into the possession of a person other than the person entitled. By clarifying that such payments to third parties who are neither payees nor beneficiaries are excluded from the definition of an overpayment, and by deleting § 1.963(c), we will properly limit waiver consideration to deserving veterans and beneficiaries.

EFFECTIVE DATE: September 3, 1985.

FOR FURTHER INFORMATION CONTACT: Peter T. Mulhern (202) 389–3405.

SUPPLEMENTARY INFORMATION: On page 45870 of the **Federal Register** of November 21, 1984 there was published a notice of proposed rulemaking to amend our regulations so that waiver will be properly limited to deserving veterans and beneficiaries. Interested persons were given 30 days in which to submit written comments, suggestions, or objections regarding the proposed amendments. We received no comments during this time. The amendments will be applicable nationwide. However, for debts which are within the jurisdiction of the Hartford, Connecticut, Regional Office, the Hartford Committee on Waivers and Compromises will continue to consider waiver request made by non-payees within the Regional Office's jurisdiction who have received compensation or pension benefit payments to which they have no claim of entitlement. This deviation is necessary for the Hartford Regional Office because of a decision rendered on April 11, 1983, by the U.S. District Court for the District of Connecticut. The court order requires that notice and waiver rights be extended to individuals within the jurisdiction of the Hartford Regional Office who are indebted to the U.S. because compensation or pension benefit payments were transferred, subsequent to the death of a beneficiary, into an account which these individuals held jointly with the deceased beneficiary. The U.S. District Court has not rescinded this order. However, in the event modification or rescission of the order is obtained by the Department of Justice, these regulations will be given effect within the jurisdiction of the Hartford Regional Office.

The Administrator hereby certifies that these rules will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), these rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these rules will affect only a small

number of individuals indebted to the U.S. Government. Small entities are not directly regulated or significantly affected. These rules have also been reviewed under E.O. 12291. They have been determined to be nonmajor because they will only affect certain individuals requesting waiver of collection of an indebtedness to the U.S. Government. They will not have an $100 million annual impact on the economy. These rules will not have any adverse economic impact on, or increase costs or prices to consumers, individual industries, Federal, State, and local government agencies or geographic regions.

There is no Catalog of Federal Domestic Assistance Number.

List of Subjects in 38 CFR Part 1

Claims, Administrative practices and procedures, Veterans.

The proposed amendments to the regulations are hereby adopted as final and are set forth below.

Approved: September 3, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.

Deputy Administrator.

PART 1—[AMENDED]

38 CFR Part 1, General, is amended as follows:

§ 1.957 [Amended]

1. In § 1.957, paragraph (a)(2)(ii)(B) and the title and introductory text of paragraph (b) are amended by changing the title "Chief, Centralized Accounts Receivable Division" to "Chief, Finance and Centralized Accounts Receivable Division."

2. The introductory paragraph and paragraph (a) to § 1.962 are revised to read as follows:

§ 1.962 Waiver of overpayment.

There shall be no collection of an overpayment, or any interest thereon, which results from participation in a benefit program administered under any law by the VA when it is determined by a regional office Committee on Waivers and Compromises that collection would be against equity and good conscience. For the purpose of this regulation, the term "overpayment" refers only to those benefit payments made to a designated living payee or beneficiary in excess of the amount due or to which such payee or beneficiary is entitled. The death of an indebted payee, either prior to a request for waiver of the indebtedness or during Committee consideration of the waiver request, shall not preclude waiver consideration. There shall be no waiver consideration of an indebtedness that results from the receipt of a benefit payment by a non-payee who has no claim or entitlement to such payment.

(a) Waiver consideration is applicable in an indebtedness resulting from work study and education loan default, as well as indebtedness of a veteran-borrower, veteran transferee, or indebted spouse of either, arising out of participation in the loan program administered under 38 U.S.C. ch. 37. Also subject to waiver consideration is an indebtedness which is the result of VA hospitalization, domiciliary care, or treatment of a veteran, either furnished in error or on the basis of tentative eligibility.

(38 U.S.C. 3102(a))

* * * * *

§ 1.963 [Amended].

3. Section 1.963 is amended by removing paragraph (c).

(38 U.S.C. 210(c))

[FR Doc. 85-22863 Filed 9-24-85; 8:45 am]

BILLING CODE 3320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2899-8]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: The USEPA announces final rulemaking to approve, in part and disapprove in part, revisions to the Illinois State Implementation Plan (SIP). This rulemaking pertains to rules for issuance of construction permits to new or modified air pollution sources affecting nonattainment areas in Illinois. It also pertains to rules governing public participation in the air permit programs for major sources in nonattainment areas. USEPA's action is based upon revisions which were submitted by the State to satisfy the requirements of part D of the Clean Air Act (CAA).

EFFECTIVE DATE: This final rulemaking becomes effective on September 25, 1985.

ADDRESSES: Copies of this revision to the Illinois SIP are available for inspection at:

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C. 20408,

Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Randolph O. Cano, at (312) 886-6035, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

FOR FURTHER INFORMATION CONTACT: Randolph Cano at (312) 886-6035.

SUPPLEMENTARY INFORMATION: On April 9, 1984 (49 FR 13894), USEPA proposed rulemaking and solicited public comment on Illinois Pollution Control Board (IPCB) Rule 203 entitled "Major Stationary Source Construction and Modification" (NSR rule) which was submitted to USEPA on August 23, 1983, in the form of a July 14, 1983, Opinion and Order of the Board (R81-16-Docket B). In the same rulemaking, USEPA proposed action and solicited public comment on draft Illinois Environmental Protection Agency (IEPA) Rule 252 entitled "Rules Governing Public Participation in the Air Pollution Permit Program for Major Sources in Nonattainment Areas". The public participation rules were submitted in draft form by the State which requested that they be parallel processed. On June 19, 1984, the State submitted these public participation rules in final form. Several public comments were received in response to USEPA's notice of proposed rulemaking.

USEPA has determined that these public comments are no longer pertinent to this rulemaking because of a Seventh Circuit Court of Appeals decision subsequent to USEPA's proposed rulemaking. Today's **Federal Register** notice discusses this decision and announces USEPA's final rulemaking action.

1. NSR Rule

Although in its proposed rulemaking, USEPA proposed to approve, in part and disapprove in part, and take no action on other portions of the Illinois NSR rule, this action was precluded by a Seventh Circuit decision reached subsequent to USEPA's proposed rulemaking. In *Bethlehem Steel Corporation* v. *Gorsuch* 742 F.2d 1028 (7th Cir., 1984), the Court held that

USEPA may not approve parts of a SIP and disapprove other parts if the effect of the action is to make the SIP stricter than the State ever intended. Specifically, the Court said "Congress did not mean on the one hand to create a procedure for the USEPA's revising State regulations to make them stricter, and on the other to allow the USEPA to skip the procedures [the section 110 disapproval/promulgation process] merely by naming what it was doing partial approval".

In addition, the State expressed its intent that the regulation be treated as a totality when it declared in § 203.155 of the Illinois NSR rule:

> Notwithstanding Rule 113 of this Chapter, if any provision of Part 203 is stayed or declared invalid by a final order, no longer subject to appeal, of any court of competent jurisdiction, then the entirety of Part 203 shall be deemed stayed or invalidated until the stay is lifted or the Pollution Control Board acts to revalidate the Part.

The *Bethlehem* decision governs this rulemaking because the effect of USEPA's proposed rulemaking (approving part of the NSR rule and disapproving the other parts) would have been to make new source review in nonattainment areas stricter than ever intended by the State of Illinois. The decision by the 7th Circuit in *Bethlehem* prohibits USEPA from taking such rule making action. Therefore, for the above cited reasons, USEPA disapproves the incorporation of the entire Illinois NSR rule in the SIP.

2. Public Participation

Proposed Action: USEPA proposed to approve draft IEPA Rule 252 entitled "Rules Governing Public Participation in the Air Pollution Permit Programs for Major Sources in Nonattainment Areas" (35 Illinois Administrative Code 252) as a SIP revision based on a September 16, 1983, request from the State of Illinois. This rule was submitted in final form on June 19, 1984.

USEPA Final Action: USEPA has reviewed the State's finally-adopted rule and found no significant changes from the draft regulations originally submitted by the State. No public comments concerning this rule were received. USEPA, therefore, approves the incorporation of this rule into the Illinois SIP. Neither the disapproval of the State's NSR rule nor the decision reached by the appellate court cited above affects USEPA's approval of this rule.

3. Contemplated Future Actions

In a **Federal Register** notice to be published shortly, USEPA will propose promulgation of a NSR rule for the State of Illinois which meets the minimum Federal requirements as provided in § 51.18 of Title 40 of the Code of Federal Regulations. This course of action has been determined by representatives of the State of Illinois and USEPA to be the most expeditious means of providing Illinois with New Source Review rules.

If the State adopts and submits acceptable NSR rules to USEPA, USEPA will begin rulemaking on the State's rules. If finally approved by USEPA, the State's NSR rule would replace any federally promulgated NSR rule.

Under the Regulatory Flexibility Act 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. Under 5 U.S.C. 605(b), this requirement may be waived if USEPA certifies that the rule will not have a significant economic effect on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over a population of less than 50,000.

This rule will not have a significant economic effect on a substantial number of small entities. It only approves or disapproves requirements imposed by the State of Illinois. No new requirements are imposed.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: September 6, 1985.

Lee M. Thomas,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart O—Illinois

Title 40 of the Code of Federal Regulations, Chapter 1, Part 52 is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7442.

§ 52.720 [Amended]

2. Section 52.720 Identification of Plan is amended by adding paragraph (c)(56) to read as follows:

* * * * *

(c) * * *

(56) On June 19, 1984, the State submitted Illinois Environmental Protection Agency Rule 252 entitled, "Rules for Governing Public Participation in the Air Pollution Permit Program for Major Source in Nonattainment Areas."

(i) Incorporation by Reference

(A) Illinois Environmental Protection Agency Rule 252 entitled, "Rule for Governing Public Participation in the Air Pollution Permit Program for Major Sources in Nonattainment Areas," published on June 8, 1984.

* * * * *

3. Section 52.736 Review of New Sources and Modifications is revised to read as follows:

§ 52.736 Review of new sources and modifications.

(a) Part D Disapproval. USEPA disapproves Illinois Pollution Control Board Rule 203 as adopted on July 14, 1983, and submitted to USEPA on August 23, 1983. The moratorium on construction and modification of new sources in nonattainment areas as provided in section 110(2)(I) of the Clean Air Act remains in effect for sources subject to the State's rule.

[FR Doc. 85–22290 Filed 9–24–85; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[A–1–FRL–2901–9]

Approval and Promulgation of Implementation Plans; Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State Implementation Plan revisions submitted by the Commonwealth of Massachusetts. These revisions will reduce emissions of volatile organic compounds from gasoline tank trucks. The intended effect of this action is to reduce emissions of volatile organic compounds as required under section 110 of the Clean Air Act.

Additionally, EPA is codifying the certification that no large petroleum dry cleaning sources are located in the Commonwealth of Massachusetts. The intended effect of this action is to provide this information in 40 CFR Part 52.

EFFECTIVE DATE: The action on the gasoline tank trucks will be effective October 25, 1985. The certification as to large petroleum dry cleaning sources will be effective November 25, 1985 unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Copies of the submittal are available for public inspection at Room 2313, JFK Federal Building, Boston, MA 02203; Public Information Reference Unit, EPA Library, 401 M Street, SW, Washington, DC 20460; Office of the Federal Register, 1100 L Street, NW, Room 8401, Washington, DC 20408; and the Department of Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Greene (617) 223–5133 or (FTS) 223–5133.

This Final Rulemaking Notice involves two rulemakings, (I) Gasoline Tank Trucks, a Final Rulemaking Notice (FRN) previously published in a Notice of Proposed Rulemaking (NPR) (40 CFR 4927173); and (II) Large Petroleum Dry Cleaners, an immediate final rulemaking that has not been previously published as a NPR.

I. Gasoline Tank Trucks (A Final Rulemaking Notice)

On July 2, 1984 (49 FR 27173), EPA published a Notice of Proposed Rulemaking (NPR) proposing approval for the draft Massachusetts State Implementation Plan (SIP) revisions for the Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks. These revisions were submitted in draft so that they could be parallel processed, our comment period paralleling the State's. The draft SIP revisions were proposed for approval with the understanding that the final adopted submittal would include: (1) A description of the training program and equipment needed for self-certification, and (2) the test methods and monitoring procedures to be used to determine compliance.

On February 14, 1985, S. Russell Sylva, Commissioner of the Department of Environmental Quality Engineering (DEQE), submitted Massachusetts' final regulations to control volatile organic compound leaks from gasoline tank trucks and bulk terminal vapor recovery systems which stated the training program and equipment needed to conduct self-certifications for gasoline tank trucks. Additionally, on May 22, 1985, the DEQE submitted the enforcement manual that includes the equipment, test methods and monitoring procedures it uses to determine compliance. With these two submittals, the draft regulation is complete.

The revisions and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

This action will be effective October 25, 1985.

II. Large Petroleum Dry Cleaners (An Immediate Final Rulemaking)

EPA requires states with areas which could not attain the National Ambient Air Quality Standards for ozone by 1982 to adopt reasonably available control technology (RACT) on sources of volatile organic compounds (VOCs).

In the 1982 SIP, Massachusetts committed to propose RACT regulations for Group III Control Technique Guideline (CTG) category controls. This commitment was codified in 40 CFR 52.1123, 48 FR 51480 November 9, 1983. On December 5, 1982, Kenneth A. Hagg, Director of the Division of Air Quality Control of the DEQE submitted a certification for the Group III CTGs for large petroleum dry cleaners, certifying that the State has no sources in this source category. EPA accepts the DEQE's certification and is codifying the information at 40 CFR 52.1168.

EPA is codifying the information on large petroleum dry cleaners without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective 60 days from today.

Final Action

I. EPA is approving Massachusetts' SIP revisions to Regulations 310 CMR 7.00 and 7.02(12)(c) for the control of volatile organic compound leaks from gasoline tank trucks and bulk terminal vapor recovery systems.

II. EPA is codifying information certifying that no large petroleum dry cleaners are located in the Commonwealth of Massachusetts at 40 CFR 52.1168.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 25, 1985. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Incorporation by Reference.

Note.—Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 17, 1985.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart W—Massachusetts

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1120, paragraph (c) is amended by adding paragraph (64) as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(64) A revision to the Ozone Attainment Plan was submitted by S. Russell Sylva, Commissioner of the

Massachusetts Department of Environmental Quality Engineering on February 14, and May 22, 1985 to control emissions from gasoline tank trucks and bulk terminal vapor recovery systems.

(i) Incorporation by Reference.

(A) Amendments to Regulations 310 CMR 7.00 and 7.02(12) (c) and (d), "Motor Vehicle Fuel Tank Trucks", adopted December 1984.

(B) The May 22, 1985 letter from Massachusetts DEQE, and the enforcement manual submitted and adopted on May 22, 1985, including Method 27, record form, potential leak points, major tank truck leak sources, test procedure for gasoline vapor leak detection procedure by combustible gas detector, instruction manual for Sentox 2 and Notice of Violation.

3. Section 52.1167 is added as follows:

§ 52.1167 EPA approved regulations.

TABLE 52.1167.— EPA APPROVED REGULATIONS

State citation, title and subject	Date adopted by State	Date adopted by EPA	*Federal Register* citation	Section 52.1120	Comments and unapproved sections
310 CMR 7.00 and 7.02(12)(c)	2/14 and 5/22/85	(Date Revision is published in *FR*)	(*FR* Citation from published date).	[illegible]	Motor vehicle fuel tank trucks

4. Section 52.1168 is added as follows:

§ 52.1168 Certification of no sources.

On December 12, 1984, Kenneth A. Hagg, Director, Division of Air Quality Control of the Department of Environmental Quality Engineering submitted a certification that there are no petroleum dry cleaning sources with actual emissions greater than 100 tons per year in the Commonwealth of Massachusetts.

[FR Doc. 85-22774 Filed 9-24-85; 8:45 am]

[illegible]

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40 CFR Parts 60 and 61

[A-9-FRL-2903-4]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the California Air Resources Board (CARB) on behalf of the Ventura County Air Pollution Control District (VCAPCD). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: September 16, 1985.

ADDRESS: Ventura County Air Pollution Control District, 800 South Victoria Avenue, Ventura, CA 93009.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105. Tel: (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NSPS and NESHAPS categories on behalf of the VCAPCD. Delegation of authority was granted by a letter dated September 16, 1985 and is reproduced in its entirety as follows:

Mr. James D. Boyd,
Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812

Dear Mr. Boyd: In response to your request of September 9, 1985, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) on behalf of the Ventura County Air Pollution Control District (VCAPCD). We have reviewed your request for delegation and have found the VCAPCD's programs and procedures to be acceptable. This delegation includes authority for the following source categories:

NSPS	40 CFR part 60 subpart
Fossil-fuel fired steam generators	D
Electric utility steam generators	Da
Portland cement plants	F
Petroleum storage vessels	Ka
Primary copper smelters	P
Primary zinc smelters	Q
Primary lead smelters	R
Primary aluminum reduction plants	S
[illegible]	40 CFR part 60 subpart
Electric arc furnaces and argon-oxygen decarburization	AAa
Kraft pulp mills	BB
Glass manufacturing plants	CC
Grain elevators	DD
Surface coating of metal furniture	EE
Stationary gas turbines	GG
Lime manufacturing plants	HH
Lead-acid battery manufacturing plants	KK
Metallic mineral processing plants	LL
Automobile and light-duty truck surface coating operations	MM
Phosphate rock plants	NN
Ammonium sulfate	PP
Graphic arts industry: publication rotogravure printing	QQ
Pressure sensitive tape and label surface coating operations	RR
Industrial surface coating, large appliances	SS
Metal coil surface coating	TT
Asphalt processing and asphalt roofing manufacture	UU
Synthetic organic chemical manufacturing industry: Equipment leaks of VOC	VV
Beverage can surface coating industry	WW
Flexible vinyl and urethane coating and printing	FFF
Equipment leaks of VOC, petroleum refineries and synthetic organic chemical manufacturing industry	GGG
Synthetic fiber production facilities	HHH
Petroleum dry cleaners	JJJ

NESHAPS	40 CFR part 61 subpart
Vinyl chloride	F
Equipment leaks (fugitive emission sources) of benzene	J
Asbestos	M
Equipment leaks (fugitive emission sources)	V

In addition, we are redelegating the following NSPS and NESHAPS categories since the VCAPCD's revised programs and procedures are acceptable:

NSPS	40 CFR part 60 subpart
General provisions	A
Incinerators	E
Nitric acid plants	G
Sulfuric acid plants	H
Asphalt concrete plants	I
Petroleum refineries	J
Storage vessels for petroleum liquids	K
Secondary lead smelters	L
Secondary brass and bronze ingot production plants	M
Iron and steel plants (BOPF)	N
Sewage treatment plants	O
Phosphate fertilizer industry:	
Wet process phosphoric acid plants	T
Superphosphoric acid plants	U
Diammonium phosphate plants	V
Triple superphosphate plants	W
Granular triple superphosphate	X
Coal preparation plants	Y
Ferroalloy production facilities	Z
Iron and steel plants (electric arc furnaces)	AA

NESHAPS	40 CFR part 61 subpart
General provisions	A
Beryllium	C
Beryllium rocket motor firing	D
Mercury	E

Acceptance of this delegation constitutes your agreement to follow all applicable

provisions of 40 CFR Parts 60 and 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

cc: Ventura County Air Pollution Control District

With respect to the areas under the jurisdiction of the VCAPCD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPS source categories should be directed to the VCAPCD at the address shown in the ADDRESS section of this notice.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: September 17, 1985.

John Wise,

Acting Regional Administrator.

[FR Doc. 85-22906 Filed 9-24-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[A-9-FRL-2903-3]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS), State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the California Air Resources Board (CARB) on behalf of the South Coast Air Quality Management District (SCAQMD). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments of these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: September 16, 1985.

ADDRESS: South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A-3-1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105. Tel: (415) 974-8221, FTS 454-8221.

SUPPLEMENTARY INFORMATION: The CARB has requested authority for delegation of certain NSPS and NESHAPS categories on behalf of the SCAQMD. Delegation of authority was granted by a letter dated September 16, 1985 and is reproduced in its entirety as follows:

Mr. James D. Boyd,

Executive Officer, California Air Resources Board, 1102 Q Street, P.O. Box 2815, Sacramento, CA 95812

Dear Mr. Boyd: In response to your request of September 9, 1985, I am pleased to inform you that we are delegating to your agency authority to implement and enforce certain categories of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) on behalf of the South Coast Air Quality Management District (SCAQMD). We have reviewed your request for delegation and have found the SCAQMD's programs and procedures to be acceptable. This delegation includes authority for the following source categories.

NSPS	40 CFR part 60 subpart
General provisions	A
Electric utility steam generators	Da
Steel plants: Electric arc furnaces and argon-oxygen decarburization vessels constructed after 8-17-83	AAa
Kraft pulp mills	BB
Glass manufacturing plants	CC
Surface coating of metal furniture	EE
Lead-acid battery manufacturing plants	KK
Metallic mineral processing plants	LL
Automobile and light-duty truck surface coating operations	MM
Phosphate rock plants	NN
Graphic arts industry: Publication rotogravure printing	QQ
Pressure sensitive tape and label surface coating operations	RR
Industrial surface coating, large appliances	SS
Metal coil surface coating	TT
Asphalt processing and asphalt roofing manufacture	UU
Synthetic organic chemical manufacturing industry: Equipment leaks of VOC.	VV
Beverage can surface coating industry	WW
Flexible vinyl and urethane coating and printing	FFF
Equipment leaks of VOC, petroleum refineries and synthetic organic chemical manufacturing industry	GGG
Synthetic fiber production facilities	HHH
Petroleum dry cleaners	JJJ

NESHAPS	40 CFR part 61 subpart
Equipment leaks (fugitive emission sources) of benzene	J
Asbestos	M
Equipment leaks (fugitive emission sources)	V

In addition, we are redelegating the following NSPS and NESHAPS categories since the SCAQMD's revised programs and procedures are acceptable:

NSPS	40 CFR part 60 subpart
Fossil-fuel fired steam generators	D
Incinerators	E
Portland cement plants	F
Nitric acid plants	G
Sulfuric acid plants	H
Asphalt concrete plants	I
Petroleum refineries	J
Storage vessels for petroleum liquids	K
Petroleum storage vessels	Ka
Secondary lead smelters	L
Secondary brass and bronze ingot production plants	M
Iron and steel plants (BOPF)	N
Sewage treatment plants	O
Primary copper smelters	P
Primary zinc smelters	Q
Primary lead smelters	R
Primary aluminum reduction plants	S
Phosphate fertilizer industry:	
Wet Process phosphoric acid plants	T
Superphosphoric acid plants	U
Diammonium phosphate plants	V
Triple superphosphate plants	W
Granular triple superphosphate	X
Coal preparation plants	Y
Ferroalloy production facilities	Z
Iron and steel plants (electric arc furnaces)	AA
Grain elevators	DD
Stationary gas turbines	GG
Lime manufacturing plants	HH
Ammonium sulfate	PP

NESHAPS	40 CFR part 61 subpart
General provisions	A
Beryllium	C
Beryllium rocket motor firing	D
Mercury	E
Vinyl chloride	F

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA's test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you or the District of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

cc: South Coast Air Quality Management District

With respect to the areas under the jurisdiction of the SCAQMD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPS source categories should be directed to the

SCAQMD at the address shown in the **ADDRESS** section of this notice.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: September 17, 1985.

John Wise,

Acting Regional Administrator.

[FR Doc. 22907 Filed 9–24–85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 60 and 61

[A-9-FRL-2903-2]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) State of Nevada, Clark County Health District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the Clark County Health District (CCHD). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments to these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: June 24, 1985.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A–3–1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974–8221, FTS 454–8221.

SUPPLEMENTARY INFORMATION: The CCHD has requested authority for delegation of certain NSPS and NESHAPS categories. Delegation of authority was granted by letter dated June 24, 1985 and is reproduced in its entirety as follows:

Mr. Michael H. Naylor, Director,
Air Pollution Control Division, Clark County Health District, P.O Box 4426, 625 Shadow Lane, Las Vegas, NV 89106

Dear Mr. Naylor: In response to your request of June 6, 1985, I am pleased to inform you that we are delegating to your agency authority to implement and enforce the New Source Performance Standard (NSPS) category in 40 CFR Part 60: Subpart JJJ-Standards of Performance for Petroleum Dry Cleaners and the National Emission Standard for Hazardous Air Pollutants (NESHAPS) category in 40 CFR Part 61: Subpart M—National Emission Standard for Asbestos. We have reviewed your request for delegation and have found your present programs and procedures to be acceptable.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61, including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

With respect to the areas under the jurisdiction of the CCHD, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPS source categories should be directed to the CCHD at the address shown in the letter of delegation.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

I certify that this rule will not have significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: September 17, 1985.

John Wise,

Acting Regional Administrator.

[FR Doc. 85–22908 Filed 9–24–85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR PARTS 60 and 61

[A-9-FRL-2903-1]

Delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) State of Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Delegation.

SUMMARY: The EPA hereby places the public on notice of its delegation of NSPS and NESHAPS authority to the Nevada Department of Conservation and Natural Resource (NDCNR). This action is necessary to bring the NSPS and NESHAPS program delegations up to date with recent EPA promulgations and amendments to these categories. This action does not create any new regulatory requirements affecting the public. The effect of the delegation is to shift the primary program responsibility for the affected NSPS and NESHAPS categories from EPA to State and local governments.

EFFECTIVE DATE: August 20, 1985.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, New Source Section (A–3–1), Air Operations Branch, Air Management Division, EPA, Region 9, 215 Fremont Street, San Francisco, CA 94105, Tel: (415) 974–8221, FTS 454–8221.

SUPPLEMENTARY INFORMATION: The NDCNR has requested authority for delegation of certain NSPS and NESHAPS categories. Delegation of authority was granted by letters dated May 10, 1985, June 5, 1985, June 24, 1985, and August 20, 1985 are reproduced in their entirety as follows:

Mr. Dick Serdoz, P.E.,
Air Quality Officer, Nevada Department of Conservation and Natural Resources, Capitol Complex, Carson City, NV 89710

Dear Mr. Serdoz: In response to your request of April 15, 1985, I am pleased to inform you that we are delegating to your agency authority to implement and enforce the New Source Performance Standard (NSPS) in 40 CFR Part 60: Subpart PPP-Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants. We have reviewed your request for delegation and have found your present programs and procedures to be acceptable.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60, including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

June 5, 1985.

Dick Serdoz, P.E.,
Air Quality Officer, Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, Capitol Complex, Carson City, NV 89710

Dear Mr. Serdoz: In response to your requests of May 9, 1985, I am pleased to inform you that we delegating to your agency authority to implement and enforce the New Source Performance Standard (NSPS) category in 40 CFR Part 60: Subpart A—General Provisions and the National

Emission Standard for Hazardous Air Pollutants (NESHAPS) category in 40 CFR Part 61: Subpart A—General Provisions. These delegations do not include the exceptions noted in your May 9, 1985 letters. We have reviewed your request for delegation and have found your present programs and procedures to be acceptable.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Parts 60 and 61 including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

June 24, 1985.

Dick Serdoz, P.E.

Air Quality Officer, Nevada Dept. of Conservation and Natural Resources, Division of Environmental Protection, Capitol Complex, Carson City, NV 89710

Dear Mr. Serdoz: In response to your request of May 30, 1985, I am pleased to inform you that we are delegating to your agency authority to implement and enforce the New Source Performance Standard (NSPS) category in 40 CFR Part 60: Subpart EE—Standards of Performance for Surface Coating of Metal Furniture. We have reviewed your request for delegation and have found your present programs and procedures to be acceptable.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the near future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

August 20, 1985.

Mr. Richard Serdoz, P.E.

Air Quality Officer, Division of Environmental Protection, Nevada Department of Conservation and Natural Resources, Capitol Complex, Carson City, NV 89710.

Dear Mr. Serdoz: In response to your request of July 17, 1985, I am pleased to inform you that we are delegating to your agency authority to implement and enforce the New Source Performance Standard (NSPS) category in 40 CFR Part 60: Subpart KKK—Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants. We have reviewed your request for delegation and have found your present programs and procedures to be acceptable.

Acceptance of this delegation constitutes your agreement to follow all applicable provisions of 40 CFR Part 60, including use of EPA approved test methods and procedures. The delegation is effective upon the date of this letter unless the USEPA receives written notice from you of any objections within 10 days of receipt of this letter. A notice of this delegated authority will be published in the **Federal Register** in the future.

Sincerely,

Judith E. Ayres,

Regional Administrator.

With respect to the areas under the jurisdiction of the NDCNR, all reports, applications, submittals, and other communications pertaining to the above listed NSPS and NESHAPs source categories should be directed to the NDCNR at the address shown in the letter of delegation.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

This Notice is issued under the authority of section 111 of the Clean Air Act, as amended (42 U.S.C. 1857, *et seq.*).

Dated: September 17, 1985.

John Wise,

Acting Regional Administrator.

[FR Doc. 85-22909 Filed 9-24-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 403

[OW-FRL-2855-2]

General Pretreatment Regulations for Existing and New Sources

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On February 10, 1984, the Environmental Protection Agency (EPA) revised the fundamentally different factors (FDF) variance provision of the General Pretreatment Regulations (40 CFR 403.13). This action was taken in response to the decision of the United States Court of Appeals for the Third Circuit in *National Association of Metal Finishers (NAMF)* v. *EPA*, 719 F.2d 624 (3d Cir. 1983). On February 27, 1985, the United States Supreme Court reversed the portion of the *NAMF* decision affecting FDF variances from categorical pretreatment standards. *Chemical Manufacturers Association (CMA) et al.* v. *Natural Resources Defense Council (NRDC)*, Nos. 83-1013 and 83-1373. Today, EPA is reinstating the original FDF provision of the pretreatment regulations as authorized by *CMA* v. *NRDC*.

DATE: The effective date of this action is September 25, 1985.

FOR FURTHER INFORMATION CONTACT: Craig Jakubowics, Permits Division (EN-336), U.S. Environmental Protection Agency, 401 M Street, SW. Washington, D.C. 20460, (202) 426-4793.

SUPPLEMENTARY INFORMATION: Section 403.13 of the General Pretreatment Regulations establishes the criteria and procedures for a fundamentally different factors (FDF) variance. The variance would be an adjustment, on a case-by-case basis, to the discharge limits specified in a categorical pretreatment standard as they apply to an individual indirect discharger who is able to demonstrate that it is fundamentally different from those industrial facilities considered by EPA in establishing the categorical pretreatment standard in question.

In 1981, the Natural Resources Defense Council (NRDC) challenged the pretreatment FDF provision. NRDC argued that EPA has no authority under the Clean Water Act (CWA) to grant FDF variances, and that such a variance for toxic pollutants is prohibited by section 301(1) of the Act. The U.S. Third Circuit Court of Appeals held that 301(1) bars EPA from granting pretreatment FDF variances for toxic pollutants (*NAMF* v. *EPA*, 719 F.2d 624, 643-646 (3d Cir. 1983)), and remanded the FDF provision to EPA. The court did not rule on whether EPA generally has authority under the CWA to grant FDF variances from pretreatment standards.

In response to the court's ruling, EPA made a technical change to § 403.13 of the pretreatment regulations (49 FR 5131, February 10, 1984). EPA added a sentence to § 403.13 to make it clear that an FDF variance was not available for toxic pollutants covered by a categorical pretreatment standard. FDF variances, therefore, were available only for non-conventional and conventional pollutants regulated in categorical pretreatment standards.

In addition to this regulatory action, EPA and the Chemical Manufacturers Association (CMA) sought Supreme Court review of that part of the Third Circuit's decision addressing the FDF provision. On February 27, 1985, the Supreme Court reversed the decision of the Third Circuit, holding that section 301(1) of the Clean Water Act does not prohibit EPA from granting fundamentally different factors variances for toxic pollutants regulated in pretreatment standards (*CMA* v. *NRDC*, Nos. 83-1013 and 83-1373). In reaching this conclusion, the Court found EPA's interpretation of section

301(1) (*i.e.*, that section 301(1) does not apply to FDF variances) rational in view of the language of that section, the legislative history and the overall structure of the Act.

As authorized by the Supreme Court decision, EPA today is revising § 403.13 of the General Pretreatment Regulations to again permit FDF variances for toxic pollutants regulated in categorical pretreatment standards. The effect of this final action will be to remove the sentence added to the regulation in the wake of the Third Circuit's *NAMF* decision, thus putting the FDF provision back into the form as promulgated in 1981.

A remaining question that needs to be addressed concerns the timing for filing FDF applications. As provided in § 403.13, an FDF request must be filed within 180 days of the effective date of the categorical pretreatment standard in question, or, if the indirect discharger has filed a category determination request pursuant to § 403.6(a) of the pretreatment regulations, within 30 days after a final decision has been made on the category determination.

The deadline for submitting an FDF application for a number of indirect dischargers expired prior to the *NAMF* decision. Although some industrial facilities in this group did file FDF requests for toxic pollutants in a timely fashion, some of their applications were not acted upon because the Third Circuit ruling was issued before a decision was reached by the Approval Authority (*i.e.*, an approved pretreatment State or EPA Regional Office). The deadline for some other indirect dischargers to file an FDF request for toxic pollutants expired after the Third Circuit's *NAMF* decision. Indirect dischargers in this latter group were thus precluded from filing FDF requests for toxic pollutants.

Those indirect dischargers whose deadline for applying for an FDF variance from Toxic pollutants expired prior to the Third Circuit decision, but had submitted a request in a timely manner, should inform the Approval Authority if they wish their previously filed FDF application to be considered by the Approval Authority. These indirect dischargers should contact their Approval Authority within 60 days of this **Federal Register** notice. The categorical pretreatment standards in this group are (all of the following are in 40 CFR): Electroplating (Part 413) (except for TTO limits); Timber Products (Part 429); Iron and Steel (Part 420); Inorganic Chemicals (Phase I) (Part 415); Petroleum Refining (Part 419); Pulp and Paper Mills (Parts 430 and 431); Steam Electric Power Plants (Part 423); Leather Tanning and Finishing (Part 425); Porcelain Enameling (Part 466); Coil Coating (Part 465).

Indirect dischargers wishing to reactivate their FDF application cannot submit a new or modified request raising new issues or criteria to justify an FDF variance. Only the basis alleged in the original, timely filed application can be relied upon. However, additional information can be submitted to update the original application, or to provide the Approval Authority with supplemental information that will assist in its decision on the FDF request.

Indirect dischargers in these categories who never applied for an FDF variance for toxic pollutants and whose deadline for filing an FDF request lapsed prior to the Third Circuit decision are barred from now applying for an FDF. It should be noted, however, that in some cases EPA has amended or is in the process of amending these categorical pretreatment standards. Therefore, an indirect discharger may have a new opportunity to apply for an FDF variance from such amended pretreatment standards.

With regard to those indirect dischargers whose period for filing an FDF request for toxics was totally preempted by the Third Circuit decision, EPA will consider any FDF request for toxic pollutants if filed within 180 days of the date of this **Federal Register** notice as a timely request. The categorical pretreatment standards affected by this condition are (all of the following are in 40 CFR): Electrical and Electronic Components (Phase II) Part 469); Copper Forming (Part 468); Aluminum Forming (Part 467); Pharmaceuticals (Part 439); Coil Coasting (Canmaking) (Part 465); Nonferrous Metals Manufacturing (Phases I and II) (Part 421); Battery Manufacturing (Part 461); Inorganic Chemicals (Phase II) (Part 415); Nonferrous Metals Forming (Part 471).

Several industrial categories, while not completely precluded from filing an FDF application for toxics, had their deadlines cut short by the *NAMF* ruling. These are Electroplating (Part 413) (for TTO limits only), Metal Finishing (Part 433) and Electrical and Electronic Components (Phase I) (Part 469). In recognition of the fact that these groups did have some opportunity to file an FDF application, their time for filing for an FDF variance for toxic pollutants will be less than the 180 days provided those categories completely precluded because of the *NAMF* decision. Electroplating (TTO limits only) and Metal Finishing had 22 days prior to *NAMF*, and therefore EPA will consider as timely filed any FDF variance request for toxic pollutents submitted within 158 days of this notice. Electrical and Electronic Components (Phase I) had 125 days prior to *NAMF*, and EPA will consider as timely filed any FDF variance request for toxic pollutants filed within 55 days of the date of this notice.

It is important to note that the *NAMF* ruling, and subsequent regulatory changes to the FDF provision of the General Pretreatment Regulations, concerned only the prohibition of FDF variances for toxic pollutants. At no time were FDF variances eliminated for non-conventional or conventional pollutants regulated in categorical pretreatment standards. Therefore, even though today's action reinstates the time available for some industrial categories to file FDF requests for toxic pollutants where their time period was either cut short or preempted by *NAMF*, no additional time is being provided to these industrial categories to file FDF requests exclusively for non-conventional or conventional pollutants. However, under limited circumstances, EPA will consider as timely a request for an FDF variance for a non-conventional or conventional pollutant, filed in conjuction with the request for a variance for a toxic pollutant, submitted by a facility in these industrial categories. To be considered, the applicant must demonstrate that the pollutant is in the same waste stream as the toxic pollutant(s), that it is appropriately controlled by the treatment technology used to control the toxic pollutant(s) and that the FDF request for the non-conventional or conventional pollutant was not previously submitted because the need for the variance for such a pollutant is inextricable from the need for the variance for the toxic pollutant(s). Of course, the criteria for an FDF variance as provided in § 403.13 of the pretreatment regulations must be satisfied as well.

Some categorical pretreatment standards have not yet been promulgated by EPA. Indirect dischargers in these industrial categories will be bound by the deadlines for filing an FDF application as specified in § 403.13.

One final point deserves emphasis. The filing of an FDF request does not constitute grounds to avoid or delay compliance with discharge limits specified in the applicable pretreatment standards. Not unless and until a final decision is made to approve an FDF request can the limits in a pretreatment standard be considered modified.

Executive Order 12291

Under Executive Order 12291, EPA must determine whether a regulation is major and therefore subject to the requirement of a regulatory impact analysis. The change made by today's action does not satisfy any of the criteria specified in section 1(b) of Executive Order 12291 and, as such, does not constitute a major rulemaking. This rule has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a regulatory flexibility analysis to assess the impact of all proposed rules on small entities. EPA has determined that the rule will not have a significant economic impact on a substantial number of small entities.

Final Agency Action and Effective Date

Today's action constitutes final Agency action. The Agency has determined that notice and public comment on this action are unnecessary and contrary to the public interest, and thus not required by section 4(a) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b). This action merely puts back into effect the previously existing regulation which was modified only to respond to a court order which has now been reversed by the Supreme Court. Thus, further comment on this regulation, which was originally promulgated after notice and comment, is unnecessary. Moreover, a notice and comment period would cause unwarranted delay and uncertainty for industries that have applied or wish to apply for FDF variances as authorized by the Surpeme Court decision in *CMA* v. *NRDC*. Therefore, good cause exists for taking this action without providing for notice and comment as prescribed by the APA. For the same reason the Agency has determined that good cause exists for the final action taken today to become effective immediately.

List of Subjects in 40 CFR Part 403

Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: September 17, 1985.

Lee M. Thomas,

Administrator.

PART 403–GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES

For the reasons set out in the preamble, 40 CFR Part 403 is revised as follows:

1. The authority citation for Part 403 continues to read as follows:

Authority: Section 54(c)(2) of the Clean Water Act of 1977 (Pub. L. 95–217), Secs. 204(b)(1)(B), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(b)(2)(C), 301(h)(5), 301(i)(2), 304(e), 304(g), 307, 308, 309, 402(b), 405 and 501(a) of the Federal Water Pollution Control Act (Pub. L. 92–500), as amended by the Clean Water Act of 1977.

§ 403.13 [Amended]

2. Section 403.13 is amended by removing paragraph (b)(2) of that section, and redesignating paragraph (b)(1) as (b).

[FR Doc. 85–22868 Filed 9–24–85; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435 and 436

[BERC–507–CN]

Medicaid Program; Federal Financial Participation for Inmates in Public Institutions and Individuals in an Institution for Mental Diseases; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of Final Rule.

SUMMARY: This document corrects errors in a final rule published in the **Federal Register** on April 3, 1985 (50 FR 13196) on Federal financial participation for services furnished to certain institutionalized individuals. That final rule contained obsolete references to institutions for tuberculosis and an incorrect cross reference.

EFFECTIVE DATE: September 25, 1985.

FOR FURTHER INFORMATION CONTACT: Michelle French, (301) 594–5610.

SUPPLEMENTARY INFORMATION: The final rule, "Federal Financial Participation for Inmates in Public Institutions and Individuals in an Institution for Mental Disease or Tuberculosis", published in the **Federal Register** on April 3, 1985 (50 FR 13196), contained obsolete references to institutions for tuberculosis.

Section 2335 of the Deficit Reduction Act of 1984, Pub. L. 98–369, repealed special conditions and requirements applicable to institutional services provided to Medicare and Medicaid patients with tuberculosis. These special conditions were originally intended to assure that institutional services provided to tuberculosis patients were not custodial and could reasonably be expected to improve the patient's condition or result in the condition being noncommunicable. The special provider category for tuberculosis hospitals was also eliminated. This is a self-implementing legislative provision. We, inadvertently, failed to remove the references to institutions for tuberculosis prior to publishing the final rule. In addition, two regulation sections include an incorrect cross-reference. Therefore, in FR Doc. 85–7885, beginning on page 13199, make the following corrections. The words "tuberculosis or" are removed from 42 CFR 435.1008 (a)(2) and (b) and 436.1004 (a)(2) and (b).

In §§ 435.1008(b) and 436.1004(b), the cross reference "(a)(2)" is corrected to read "(a)".

(Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: August 6, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Dated: September 20, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85–22913 Filed 9–24–85; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[Circular No. 2565]

Application Procedures; Changes of Addresses of State Offices

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The final rulemaking amends 43 CFR Part 1820 to reflect the new addresses of several of the State Offices of the Bureau of Land Management. All filings and other documents relating to public lands in the respective States shall be filed at the new addresses of the State Offices with the appropriate areas of jurisdiction.

EFFECTIVE DATE: September 25, 1985.

FOR FURTHER INFORMATION CONTACT: Eleanor R. Schwartz, (202)–343–8735.

SUPPLEMENTARY INFORMATION: This final rulemaking reflects the administrative action of changing or updating the addresses of several of the State Offices of the Bureau of Land Management. It changes the addresses for the filing of documents relating to

public lands in several States, but makes no other changes in filing requirements. Therefore, this amendment is published as a final rulemaking with the effective date shown above.

The Department of the Interior has determined that because this rule is an administrative action, it is not a major rule for purposes of E.O. 12291, and neither an environmental impact analysis nor a regulatory flexibility analysis is required. There are no additional information collection requirements imposed by this final rulemaking.

List of Subjects in 43 CFR Part 1820

Administrative practice and procedures, Alaska, Archives and records, Public lands.

Under the authority of section 2478 of the Revised Statutes (43 U.S.C. 1201), Subpart 1821, Part 1820, Group 1800, Subchapter A, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

September 18, 1985.

PART 1820—[AMENDED]

1. The authority citation for Part 1820 continues to read as follows:

Authority: R.S. 2478; 43 U.S.C. 1201, unless otherwise noted.

2. The portion of § 1821.2–1(d) beginning with the heading "State Office and Area of Jurisdiction" and ending after the address and Jurisdiction of the Wyoming State Office, is revised to read as follows:

§ 1821.2–1 [Amended]

* * * * *

State Office and Area of Jurisdiction

Alaska State Office, 701, C Street, Box 13, Anchorage, Alaska 99513—Southern Alaska, plus all mineral leasing.[1]
Fairbanks District Office, 1541 Gaffney Road, Fairbanks, Alaska 99703—Northern Alaska except for all minerals leasing.[1]
Arizona State Office, 3707 North 7th Street, Phoenix, Arizona 85014; Mail: P.O. Box Phoenix, Arizona 85011—Arizona
California State Office, Federal Building, 2800 Cottage Way, Sacramento, California 95825—California
Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205—Colorado
Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304—Arkansas, Iowa, Louisiana, Minnesota, Missouri and all States east of the Mississippi
Idaho State Office, 3380 Americana Terrace, Boise, Idaho, 83706—Idaho
Montana State Office, Granite Tower, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107—Montana, North Dakota and South Dakota
Nevada State Office, Federal Building, Room 3123, 300 Booth Street, Reno, Nevada 89509; Mail: P.O. Box 12000, Reno, Nevada 89520—Nevada
New Mexico State Office, Joseph M. Montoya, Federal Building, South Federal Place, P.O. Box 1449, Santa Fe, New Mexico 87504–1449—Kansas, New Mexico, Oklahoma, and Texas
Oregon State Office, 825 Northeast Multnomah Street, P.O. Box 2965, Portland, Oregon 97208—Oregon and Washington
Utah State Office, CFS Financial Center, 324 South State Street, Salt Lake City, Utah 84111–2303—Utah
Wyoming State Office, 2515 Warren Avenue, Cheyenne, Wyoming 82001; Mail: P.O. Box 1828, Cheyenne, Wyoming 82003—Wyoming and Nebraska

* * * * *

[FR Doc. 85–22916 Filed 9–24–85; 8:45 am]

BILLING CODE 4310–84–M

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43 CFR Part 3200

[Circular No. 2566]

Geothermal Resources Leasing; General Changes in Lease Acreage and Application Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rule increases the limitation on acreage that can be held by a lessee under Federal geothermal leases to 51,200 acres per State. This final rule also increases the geothermal lease application fee to $75.

EFFECTIVE DATE: December 26, 1985.

ADDRESS: Inquiries should be sent to: Director (140), Bureau of Land Management, Main Interior Building, Room 5555, 1800 C Street NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Karl F. Duscher, (202) 653–2187.

SUPPLEMENTARY INFORMATION: On April 16, 1985, a proposed rulemaking to increase the per State limitation on acreage that can be held by a lessee under Federal geothermal leases from 20,480 to 51,200 acres and to increase the lease application fee from $50 to $150 was published in the **Federal Register** (50 FR 14945). A 60-day comment period was provided and, consistent with section 7 of the Geothermal Steam Act of 1970 (30 U.S.C. 1001–1025), two public hearings were held to receive comments specifically on the acreage limitation increase. Eight comments were received: four from companies engaged in geothermal exploration (one of these commenters also represented an industry association), one from a Federal agency, one from a State Government, one from an industry association, and one from an individual.

Six of the comments strongly favored the proposed acreage increase. Of the remaining two comments, one was neutral on the increase, the other did not address it. Accordingly, the final rulemaking adopts the language of the proposed rulemaking on the acreage limitation increase. However, consistent with authority granted by section 7 of the Geothermal Steam Act, this aspect of the final rulemaking will not be effective until December 26, 1985.

Only one comment was received with respect to the lease application fee increase. That comment objected to the three-fold increase, noting that the application fee to obtain a Federal geothermal lease would be twice the fee required to obtain a Federal oil and gas lease. In re-examining the proposed increase, the Bureau of Land Management has determined that certain streamlining actions can be taken with respect to processing geothermal lease applications so that administrative costs should more closely parallel those incurred for processing oil and gas lease applications (currently estimated to be $75 per application). Therefore, the final rulemaking sets the application fee at $75. For convenience, this aspect of the final rulemaking also will not become effective until December 26, 1985. Geothermal lease applications received on or after the effective date of this final rulemaking that are not accompanied by the required $75 filing fee will be rejected.

The principal author of this final rulemaking is Karl Duscher, Division of Fluid Mineral Leasing, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The increase in lease size, which would be accomplished by this proposed rulemaking, will be equally favorable to anyone offering to lease the geothermal resources on the public lands.

There are no new information collection requirements contained in this rulemaking requiring approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR Part 3200

Environmental protection, Geothermal energy, Mineral royalties, Public lands-

classification, Public lands-mineral resources, Surety bonds.

Under the authority of the Geothermal Steam Act of 1970 (30 U.S.C. 1001–1025), Part 3200 of Group 3200, Subchapter C, Chapter II of the Code of Federal Regulations is amended as set forth below:

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

September 4, 1985.

PART 3200—[AMENDED]

1. The authority citation for Part 3200 is revised to read:

Authority: 30 U.S.C. 1001–1025.

§ 3201.2 [Amended]

2. Section 3201.2(a) is amended by removing the figure "20,480" where it appears and replacing it with the figure "51,200".

§ 3205.2 [Amended]

3. Section 3205.2(b) is amended by removing the figure "$50" where it appears and replacing it with the figure "$75".

[FR Doc. 85–22915 Filed 9–24–85; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PRB–1; FCC 85–506]

Federal Preemption of State and Local Regulations Pertaining to Amateur Radio Facilities

AGENCY: Federal Communications Commission.

ACTION: Declaratory ruling.

SUMMARY: This document declares a limited preemption of state and local regulations which preclude amateur communications. The ruling is necessary so that amateurs and local governing bodies alike will be aware of the strong federal interest in promoting amateur communications. The effect of the ruling is to give local communities and amateur operators a clear statement of the federal interest in amateur communications.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Amateur radio, Antennas, Radio.

Memorandum Opinion and Order

In the matter of Federal preemption of state and local regulations pertaining to Amateur radio facilities; PRB–1.

Adopted: September 16, 1985.

Released: September 19, 1985.

By the Commission: Commissioner Rivera not participating.

Background

1. On July 16, 1984, the American Radio Relay League, Inc. (ARRL) filed a Request for Issuance of a Declaratory Ruling asking us to delineate the limitations of local zoning and other local and state regulatory authority over Federally-licensed radio facilities. Specifically, the ARRL wanted an explicit statement that would preempt all local ordinances which provably preclude or significantly inhibit effective, reliable amateur radio communications. The ARRL acknowleges that local authorities can regulate amateur installations to insure the safety and health of persons in the community, but believes that those regulations cannot be so restrictive that they preclude effective amateur communications.

2. Interested parties were advised that they could file comments in the matter [1]. With extension, comments were due on or before December 26, 1984 [2], with reply comments due on or before January 25, 1985 [3]. Over sixteen hundred comments were filed.

Local Ordinances

3. Conflicts between amateur operators regarding radio antennas and local authorities regarding restrictive ordinances are common. The amateur operator is governed by the regulations contained in Part 97 of our rules. Those rules do not limit the height of an amateur antenna but they require, for aviation safety reasons, that certain FAA notification and FCC approval procedures must be followed for antennas which exceed 200 feet in height above ground level or antennas which are to be erected near airports. Thus under FCC rules some amateur antenna support structures require obstruction marking and lighting. On the other hand, local municipalities or governing bodies frequently enact regulations limiting antennas and their support structures in height and location, e.g. to side or rear yards, for health, safety or aesthetic considerations. These limiting regulations can result in conflict because the effectiveness of the communications that emanate from an amateur radio station are directly dependent upon the location and the height of the antenna. Amateur operators maintain that they are precluded from operating in certain bands allocated for there use if the height of their antennas is limited by a local ordinance.

4. Examples of restrictive local ordinances were submitted by several amateur operators in this proceeding. Stanley J. Cichy, San Diego, California, noted that in San Diego amateur radio antennas come under a structures ruling which limits building heights to 30 feet. Thus, antennas there are also limited to 30 feet. Alexander Vrenios, Mundelein, Illinois wrote that an ordinance of the Village of Mundelein provides that an antenna must be a distance from the property line that is equal to one and one-half times its height. In his case, he is limited to an antenna tower for his amateur station just over 53 feet in height.

5. John C. Chapman, an amateur living in Bloomington, Minnesota, commented that he was not able to obtain a building permit to install an amateur radio antenna exceeding 35 feet in height because the Bloomington city ordinance restricted "structures" heights to 35 feet. Mr. Chapman said that the ordinance, when written, undoubtedly applied to buildings but was now being applied to antennas in the absence of a specific ordinance regulating them. There were two options open to him if he wanted to engage in amateur communications. He could request a variance to the ordinance by way of a hearing before the City Council, or he could obtain affidavits from his neighbors swearing that they had no objection to the proposed antenna installation. He got the building permit after obtaining the cooperation of his neighbors. His concern, however, is that he had to get permission from several people before he could effectively engage in radio communications for which he had a valid FCC amateur license.

6. In addition to height restrictions, other limits are enacted by local jurisdictions—anti-climb devices on towers or fences around them; minimum distances from high voltage power lines; minimum distances of towers from property lines; and regulations pertaining to the structural soundness of the antenna installation. By and large, amateurs do not find these safety precautions objectionable. What they do object to are the sometimes prohibitive, non-refundable application filing fees to

[1] Public Notice, August 30, 1984, Mimeo. No. 6299, 49 FR 36113, September 14, 1984.

[2] Public Notice, December 19, 1984, Mimeo No. 1498.

[3] Order, November 8, 1984, Mimeo, No. 770.

obtain a permit to erect an antenna installation and those provisions in ordinances which regulate antennas for purely aesthetic reasons. The amateurs contend, almost universally, that "beauty is in the eye of the beholder." They assert that an antenna installation is not more aesthetically displeasing than other objects that people keep on their property, e.g. motor homes, trailers, pick-up trucks, solar collectors and gardening equipment.

Restrictive Covenants

7. Amateur operators also oppose restrictions on their amateur operations which are contained in the deeds for their homes or in their apartment leases. Since these restrictive covenants are contractual agreements between private parties, they are not generally a matter of concern to the Commission. However, since some amateurs who commented in this proceeding provided us with examples of restrictive covenants, they are included for information. Mr. Eugene O. Thomas of Holiister, California included in his comments an extract of the Declaration of Covenants and Restrictions for Ridgemark Estates, County of San Benito, State of California. It provides:

> No antenna for transmission or reception of radio signals shall be erected outdoors for use by any dwelling unit except upon approval of the Directors. No radio or television signals or any other form of electromagnetic radiation shall be permitted to originate from any lot which may unreasonably interfere with the reception of television or radio signals upon any other lot.

Marshall Wilson, Jr. provided a copy of the restrictive covenant contained in deeds for the Bell Martin Addition #2, Irving, Texas. It is binding upon all of the owners or purchasers of the lots in the said addition, his or their heirs, executors, administrators or assigns. It reads: No antenna or tower shall be erected upon any lot for the purposes of radio operations.

William J. Hamilton resides in an apartment building in Gladstone, Missouri. He cites a clause in his lease prohibiting the erection of an antenna. He states that he has been forced to give up operating amateur radio equipment except a hand-held 2 meter (144–148 MHz) radio transceiver. He maintains that he should not be penalized just because he lives in an apartment.

Other restrictive covenants are less global in scope than those cited above. For example, Robert Webb purchased a home in Houston, Texas. His deed restriction prohibited "transmitting or receiving antennas extending above the roof line."

8. Amateur operators generally oppose restrictive covenants for several reasons. They maintain that such restrictions limit the places that they can reside if they want to pursue their hobby of amateur radio. Some state that they impinge on First Amendment rights of free speech. Others believe that a constitutional right is being abridged because, in their view, everyone has a right to access the airwaves regardless of where they live.

9. The contrary belief held by housing subdivision communities and condominium or homeowner's associations is that amateur radio installations constitute safety hazards, cause interference to other electronic equipment which may be operated in the home (televisions, radio, stereos) or are eyesores that detract from the aesthetic and tasteful appearance of the housing development or apartment complex. To counteract these negative consequences, the subdivisions and associations include in their deeds, leases or by-laws restrictions and limitations on the location and height of antennas or, in some cases, prohibit them altogether. The restrictive covenants are contained in the contractual agreement entered into at the time of the sale or lease of the property. Purchasers or lessees are free to choose whether they wish to reside where such restrictions on amateur antennas are in effect or settle elsewhere.

Supporting Comments

10. The Department of Defense (DOD) supported the ARRL and emphasized in its comments that continued success of existing national security and emergency preparedness telecommunications plans involving amateur stations would be severely diminished if state and local ordinances were allowed to prohibit the construction and usage of effective amateur transmission facilities. DOD utilizes volunteers in the Military Affiliate Radio Service (MARS),[4] Civil Air Patrol (CAP) and the Radio Amateur Civil Emergency Service (RACES). It points out that these volunteer communicators are operating radio equipment installed in their homes and that undue restrictions on antennas by local authorities adversely affect their efforts. DOD states that the responsiveness of these volunteer systems would be impaired if local ordinances interfere with the effectiveness of these important national telecommunication resources. DOD favors the issuance of a ruling that would set limits for local and state regulatory bodies when they are dealing with amateur stations.

11. Various chapters of the Amercian Red Cross also came forward to support the ARRL's request for a preemptive ruling. The Red Cross works closely with amateur radio volunteers. It believes that without amateurs' dedicated support, disaster relief operations would significantly suffer and that its ability to serve disaster victims would be hampered. It feels that antenna height limitations that might be imposed by local bodies will negatively affect the service now rendered by the volunteers.

12. Cities and counties from various parts of the United States filed comments in support of the ARRL's request for a Federal preemption ruling. The comments from the Director of Civil Defense, Port Arthur, Texas are representative:

> The Amateur Radio Service plays a vital role with our Civil Defense program here in Port Arthur and the design of these antennas and towers lends greatly to our ability to communicate during times of disaster.
>
> We do not believe there should be any restrictions on the antennas and towers except for reasonable safety precautions. Tropical storms, hurricanes and tornadoes are a way of life here on the Texas Gulf Coast and good communications are absolutely essential when preparing for a hurricane and even more so during recovery operations after the hurricane has passed.

13. The Quarter Century Wireless Association took a strong stand in favor of the issuance of a declaratory ruling. It believes that Federal preemption is necessary so that there will be uniformity for all Amateur radio installations on private property throughout the United States.

14. In its comments, the ARRL argued that the Commission has the jurisdiction to preempt certain local land use regulations which frustrate of prohibit amateur radio communications. It said that the appropriate standard in preemption cases is not the extent of state and local interest in a given regulation, but rather the impact of that regulation of Federal goals. Its position is that Federal preemption is warranted whenever local governmental regulations relate adversely to the operational aspects of amateur communication. The ARRL maintains that localities routinely employ a variety of land use devices to preclude the installation of effective amateur antennas, including height restrictions, conditional use permits, building

[4] MARS is solely under the auspices of the military which recruits volunteer amateur operators to render assistance to it. The Commission is not involved in the MARS program.

setbacks and dimensional limitations on antennas. It sees a declaratory ruling of Federal preemption as necessary to cause municipalities to accommodate amateur operator needs in land use planning efforts.

15. James C. O' Connell, an attorney who has represented several amateurs before local zoning authorities, said that requiring amateurs to seek variances or special use approval to erect reasonable antennas unduly restricts the operation of amateur stations. He suggested that the Commission preempt zoning ordinances which impose antenna height limits of less than 65 feet. He said that this hight would represent a reasonable accommodation of the communication needs of most amateurs and the legitimate concerns of local zoning authorities.

Opposing Comments

16. The City of La Mesa, California has a zoning regulation which controls amateur antennas. Its comments reflected an attempt to reach a balanced view.

> This regulation has neither the intent, nor the effect, of precluding or inhibiting effective and reliable communications. Such antennas may be built as long as their construction does not unreasonably block views or constitute eyesores. The reasonable assumption is that there are always alternatives at a given site for different placement, and/or methods for aesthetic treatment. Thus, both public objectives of controlling land use for the public health, safety, and convenience, and providing an effective communications network, can be satisfied.
>
> A blanket ruling to completely set aside local control, or a ruling which recognizes control only for the purpose of safety of antenna construction, would be contrary to . . . legitimate local control.

17. Comments from the County of San Diego state:

> While we are aware of the benefits provided by amateur operators, we oppose the issuance of a preemption ruling which would elevate 'antenna effectiveness' to a position above all other considerations. We must, however, argue that the local government must have the ability to place reasonable limitations upon the placement and configuration of amateur radio transmitting and receiving antennas. Such ability is necessary to assure that the local decision-makers have the authority to protect the public health, safety and welfare of all citizens.
>
> In conclusion, I would like to emphasize an important difference between your regulatory powers and that of local governments. Your Commission's approval of the preemptive requests would establish a 'national policy'. However, any regulation adopted by a local jurisdiction could be overturned by your Commission or a court if such regulation was determined to be unreasonable.

18. The City of Anderson, Indiana, summarized some of the problems that face local communities:

> I am sympathetic to the concerns of these antenna owners and I understand that to gain the maximum reception from their devices, optimal location is necessary. However, the preservation of residential zoning districts as 'liveable' neighborhoods is jeopardized by placing these antennas in front yards of homes. Major problems of public safety have been encountered, particularly vision blockage for auto and pedestrian access. In addition, all communities are faced with various building lot sizes. Many building lots are so small that established setback requirements (in order to preserve adequate air and light) are vulnerable to the unregulated placement of these antennas.
>
> . . . the exercise of preemptive authority by the FCC in granting this request would not be in the best interest of the general public.

19. The National Association of Counties (NACO), the American Planning Association (APA) and the National League of Cities (NLC) all opposed the issuance of an antenna preemption ruling. NACO emphasized that federal and state power must be viewed in harmony and warns that Federal intrusion into local concerns of health, safety and welfare could weaken the traditional police power exercised by the state and unduly interfere with the legitimate activities of the states. NLC believed that both Federal and local interests can be accommodated without preempting local authority to regulate the installation of amateur radio antennas. The APA said that the FCC should continue to leave the issue of regulating amateur antennas with the local government and with the state and Federal courts.

Discussion

20. When considering preemption, we must begin with two constitutional provisions. The tenth amendment provides that any powers which the constitution either does not delegate to the United States or does not prohibit the states from exercising are reserved to the states. These are the police powers of the states. The Supremacy Clause, however, provides that the constitution and the laws of the United States shall supersede any state law to the contrary. Article III, Section 2. Given these basic premises, state laws may be preempted in three ways: First, Congress may expressly preempt the state law. See *Jones* v. *Rath Packing Co.*, 430 U.S. 519, 525 (1977). Or, Congress may indicate its intent to completely occupy a given field so that any state law encompassed within that field would implicity be preempted. Such intent to preempt could be found in a congressional regulatory scheme that was so pervasive that it would be reasonable to assume that Congress did not intend to permit the states to supplement it. See *Fidelity Federal Savings & Loan Ass'n* v. *de la Cuesta*, 458 U.S. 141, 153 (1982). Finally, preemption may be warranted when state law conflicts with federal law. Such conflicts may occur when "compliance with both Federal and state regulations is a physical impossibility." *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132, 142, 143 (1963), or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941). Furthermore, federal regulations have the same preemptive effect as federal statutes, *Fidelity Federal Savings & Loan Association* v. *de la Cuesta, supra.*

21. The situation before us requires us to determine the extent to which state and local zoning regulations may conflict with federal policies concerning amateur radio operators.

22. Few matters coming before us present such a clear dichotomy of viewpoint as does the instant issue. The cities, counties, local communities and housing associations see an obligation to all of their citizens and try to address their concerns. This is accomplished through regulations, ordinances or covenants oriented toward the health, safety and general welfare of those they regulate. At the opposite pole are the individual amateur operators and their support groups who are troubled by local regulations which may inhibit the use of amateur stations or, in some instances, totally preclude amateur communications. Aligned with the operators are such entities as the Department of Defense, the American Red Cross and local civil defense and emergency organizations who have found in Amateur Radio a pool of skilled radio operators and a readily available backup network. In this situation, we believe it is appropriate to strike a balance between the federal interest in promoting amateur operations and the legitimate interests of local governments in regulating local zoning matters. The cornerstone on which we will predicate our decision is that a reasonable accommodation may be made between the two sides.

23. Preemption is primarily a function of the extent of the conflict between federal and state and local regulation. Thus, in considering whether our regulations or policies can tolerate a state regulation, we may consider such factors as the severity of the conflict and the reasons underlying the state's

regulations. In this regard, we have previously recognized the legitimate and important state interests reflected in local zoning regulations. For example, in Earth Satellite Communications, Inc., 95 FCC 2d 1223 (1983), we recognized that

> . . . countervailing state interests inhere in the present situation . . . For example, we do not wish to preclude a state or locality from exercising jurisdiction over certain elements of an SMATV operation that properly may fall within its authority, such as zoning or public safety and health, provided the regulation in question is not undertaken as a pretext for the actual purpose of frustrating achievement of the preeminent federal objective and so long as the non-federal regulation is applied in a nondiscriminatory manner.

24. Similarly, we recognize here that there are certain general state and local interests which may, in their even-handed application, legitimately affect amateur radio facilities. Nonetheless, there is also a strong federal interest in promoting amateur communications. Evidence of this interest may be found in the comprehensive set of rules that the Commission has adopted to regulate the amateur service.[5] Those rules set forth procedures for the licensing of stations and operators, frequency allocations, technical standards which amateur radio equipment must meet and operating practices which amateur operators must follow. We recognize the Amateur radio service as a voluntary, noncommercial communication service, particularly with respect to providing emergency communications. Moreover, the amateur radio service provides a reservoir of trained operators, technicians and electronic experts who can be called on in times of national or local emergencies. By its nature, the Amateur Radio Service also provides the opportunity for individual operators to further international goodwill. Upon weighing these interests, we believe a limited preemption policy is warranted. State and local regulations that operate to preclude amateur communications in their communities are in direct conflict with federal objectives and must be preempted.

25. Because amateur station communications are only as effective as the antennas employed, antenna height restrictions directly affect the effectiveness of amateur communications. Some amateur antenna configurations require more substantial installations than others if they are to provide the amateur operator with the communications that he/she desires to engage in. For example, an antenna array for international amateur communications will differ from an antenna used to contact other amateur operators at shorter distances. We will not, however, specify any particular height limitation below which a local government may not regulate, nor will we suggest the precise language that must be contained in local ordinances, such as mechanisms for special exceptions, variances, or conditional use permits. Nevertheless, local regulations which involve placement, screening, or height of antennas based on health, safety, or aesthetic considerations must be crafted to accommodate reasonably amateur communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose.[6]

26. Obviously, we do not have the staff or financial resources to review all state and local laws that affect amateur operations. We are confident, however, that state and local governments will endeavor to legislate in a manner that affords appropriate recognition to the important federal interest at stake here and thereby avoid unnecessary conflicts with federal policy, as well as time-consuming and expensive litigation in this area. Amateur operators who believe that local or state governments have been overreaching and thereby have precluded accomplishment of their legitimate communications goals, may, in addition, use this document to bring our policies to the attention of local tribunals and forums.

27. Accordingly, the Request for Declaratory Ruling filed July 16, 1984, by the American Radio Relay League, Inc., is granted to the extent indicated herein and, in all other respects, is denied.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-22968 Filed 9-24-85; 8:45 am]

BILLING CODE 6712-01-M

[5] 47 CFR Part 97.

[6] We reiterate that our ruling herein does not reach restrictive covenants in private contractual agreements. Such agreements are voluntarily entered into by the buyer or tenant when the agreement is executed and do not usually concern this Commission.

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47 CFR Part 97

[PR Docket No. 85-21; FCC 85-505]

Amendment of the Amateur Radio Service Rules To Delete the 30-Day Waiting Period Before Retaking an Examination and To Provide the Number of Candidates for an Examination May Be Limited

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This document amends the Amateur Radio Service Rules by deleting the period that a candidate must wait before retaking an amateur examination and by providing that exams may be limited as to the number of applicants. The waiting period rule change is necessary in order to provide more flexibility to candidates who have failed exams. Making clear in the rules that exams may be limited as to the number of candidates merely makes explicit an existing practice. The effect of the rule changes is to facilitate the taking of examinations, to continue public announcements in a manner so that the concept of open and aboveboard examinations is maintained and to make the public aware that some exams are not open to everyone.

EFFECTIVE DATE: November 8, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Amateur radio, Radio, Examinations.

Report and Order

In the matter of amendment of § 97.26 of the Commission's rules to remove unnecessary regulations concerning amateur operator examinations administered by volunteers; PR Docket No. 85-21, RM-4835.

Adopted: September 16, 1985.

Released: September 19, 1985.

By the Commission.

1. On January 23, 1985, the Commission adopted a Notice of Proposed Rule Making (50 FR 5644; February 11, 1985) proposing to amend the Amateur Rules to delete the requirement that an applicant for an amateur operator license wait 30 days before retaking the same or higher examination element when the applicant has failed an element. The Notice also proposed to require public announcement only for examination sessions intended for five or more candidates. Eighteen comments were filed in the proceeding.

2. We will first address the matter of the retest waiting period. Two basic positions can be distilled from the comments. Commenters favoring complete elimination of a waiting period are of the belief that without a waiting period amateur applicants would have more incentive to study and retake the

examination. This position is illustrated by Floyd Grant in his comments:

> If a person who has failed an exam can retake it a short time in the future, he may be more likely to apply himself for a short period, knowing that if he does learn the material he will be able to upgrade (or receive an original license) soon after he has mastered the material.

3. Commenters who favor retaining a waiting period before retaking an examination element believe that an interval is necessary to preclude answering the examination questions mechanically or unthinkingly as a result of repetitive rote learning. They do not want a candidate to encounter the same questions on subsequent examinations. They also feel that it would be an undue burden on Volunteer Examiner Coordinators (VEC's) to prepare new examinations more than once a month, resulting in increased costs. These commenters also oppose the idea of allowing each VEC the latitude to establish a waiting period to suit its own capabilities, stating that it would lead to confusion and loss of program integrity.

4. Many of the commenters offer alternatives. For example, the American Radio Relay League, Inc. (ARRL) wanted a retest waiting period retained but changed to 27 days. The ARRL reasons are as follows:

> Although a uniform, mandatory waiting period prior to examination retake is necessary, it should not be so long as to require an applicant to wait two months because a thirty-day waiting period forces that person to miss an examination opportunity offered monthly. . . . Thus, the League hereby renews its request that the retake waiting period be retained, but reduced to 27 days.

5. The 30-day waiting period following failed examinations was a carry-over from the days when the Commission administered the examinations. While it may promote conscientious preparation for examinations, its purpose was to conserve Commission resources. If concerns for integrity can be satisfied, we see no need to restrict the remarkably flexible volunteer examination system with outdated prohibitions.

6. There is no persuasive evidence in the record that an applicant who has waited 30 days between tests will be better prepared for the next test than one who has waited 27 days, or 13 days or 7 days or any other period of time. Thus, we feel that the only circumstance which must be guarded against is the administration of *the same questions* at the applicant's next examination. Our instructions to the VEC's already prevent this from occurring.

7. VEC's have been instructed not to use the same set of questions in successive examination sessions. This prevents, for example, Friday test takers from giving advance information to Saturday test takers. It also precludes the possibility of the same questions on reexaminations. Different VEC's can and do coordinate examination sessions at different events in the same locality. Since each VEC makes up its own test designs following our algorithm, it is highly unlikely that examination sessions coordianted by two different VEC's will contain the same questions. Thus, we feel there is no need to guard against passing the examination by rote by the additional mechanism of a mandatory waiting period.

8. We conclude that the public interest will best be served by eliminating the retest waiting period altogether. This decision adds no additional burdens on VEC's. They are under no obligation to give tests on demand, to hold sessions on multiple dates, to examine more people than they can plan for or accommodate, to promptly return to a locality for retesting or in any other way to alter their present procedures. Their only obligations are to maximize the number of different examinations in use and to change frequently the questions used. These obligations already exist.

9. The second item in the Notice of Proposed Rule Making sought to require public announcement only for examination sessions intended for five or more candidates. This would have excluded public announcement of certain exams for handicapped persons or examinations given to a candidate at home for medical reasons. The ARRL opposed the proposal saying that no examination should be private, i.e., without public announcement. It said that unannounced "back room" exams promote abuse or the perception of possible abuse. The ARRL position is that exams should be in the public eye to insure integrity. It said that if the Commission did decide to eliminate the public announcement of exams, it should be done, not on the basis of the number of persons present (because that leads to secret exams), but rather on the basis that special exceptions are made for those who are handicapped or who cannot leave their homes because of a disability. The Central Vermont Amateur Radio Club also opposed deletion of the public announcement requirement. It said that the volunteer examiner program must be operated in the open and in full view of all interested persons. The club believes that no group is small enough to escape such scrutiny without arousing suspicions of collusion and cronyism. Five other commenters also objected to deletion of the requirement. Three commenters supported the proposal to revise the announcement requirement.

10. Examinations, whether administered in a hotel ballroom or in an invalid's parlor, must be given by a team of three examiners, each of whom has been accredited by a VEC. This circumstance alone is calculated to preclude fraudulent examinations. Nevertheless, in view of the comments, we will continue to require that public announcement of all examinations be given. However, since there are various circumstances to be considered in administering exams, the rule that we adopt makes clear that the number of candidates at any one exam session may be limited. The public announcement should therefore alert the public to any such limitation.

11. In view of the foregoing, and with the modifications discussed above, we adopt the rules that were proposed in our Notice of Proposed Rule Making.

12. Insofar as it is consistent with the rules herein adopted, the petition of Phil H. Miller concerning the waiting period is granted and is denied in all other respects.

13. It is ordered that part 97 is amended as set forth in the Appendix hereto. This action is taken pursuant to the authority contained in section 4(f)(4)(B) and (i); and, section 303(r) of the Communications Act of 1934, as amended.

14. It is further ordered, that these rule amendments shall become effective November 8, 1985.

15. It is further ordered, that the Secretary shall cause a copy of this Report and Order to be published in the Federal Register.

16. It is further ordered, that this proceeding is terminated.

17. Information in this matter may be obtained by contacting Maurice J. DePont, (202) 632-4964, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554.

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix

PART 97—[AMENDED]

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 97 continues to read as follows:

> Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. Paragraph (a) of § 97.26 is revised to read:

§ 97.26 Examination procedure.

(a) Each examination for an amateur operator license must be administered at a place and time chosen by the examiner(s). The number of candidates at any examination session may be limited. Public announcement must be made before all examinations for elements 1(B), 1(C), 3, 4(A) or 4(B).

* * * * *

3. Paragraph (h) of § 97.26 is removed and reserved.

[FR Doc. 85-22967 Filed 9-24-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 50330-5121]

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule implementing the identification system for fish traps, fish trap buoys, and vessels fishing them. This applies to all vessels harvesting species identified in the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP), with the exception of black sea bass. The FMP contained a management measure requiring that fish traps and fish trap buoys be identified with the boat or vessel fishing them. Regulations to implement this provision of the FMP were reserved pending development of the identification system by NMFS and approval by the South Atlantic Fishery Management Council. The identification system has been developed and approved and is implemented by this rule. This rule also includes requirements for buoy lines for fish traps used in specific areas and identifies materials which must be used in the construction of degradable panels or door fastening devices on traps. The intended effect of this regulation is to enhance enforcement of measures designed to prevent trap poaching and theft and to provide for escapement of fish from lost or abandoned traps.

EFFECTIVE DATE: October 25, 1985.

ADDRESS: A copy of the final supplemental regulatory impact review for this rule may be obtained from Rodney C. Dalton, Southeast Region, NMFS, 9450 Koger Boulevard, Street Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813-893-3722.

SUPPLEMENTARY INFORMATION: The FMP was approved on July 28, 1983, under authority of the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act). The FMP contains a provision for identifying traps and trap buoys with the boat or vessel fishing the traps for all snapper-grouper species except for black sea bass traps. Final regulations implementing the FMP were published on August 31, 1983 (48 FR 39466); however, § 646.5 of the regulations pertaining to gear identification was reserved pending development of the identification system. NMFS has now developed and the Council has approved the gear and vessel identification system. This final rule implements that system.

The proposed rule (50 FR 13639, April 5, 1985) for this action contained a discussion of the need for the identification of fish traps, fish trap buoys, and vessels fishing them. This discussion is not repeated here.

Response to Comments

Only three comments were received from one commentor, who first objected to traps constructed with galvanized wire, particularly chicken wire, and to the trap volume of 35 cubic feet on the basis that such traps kill fish. Limited studies as referenced in the supplemental regulatory impact review (RIR) have not indicated high mortalities in standard size traps; i.e., 35 cubic feet, and no information is known to be available on the mortality of fish in traps constructed with galvanized wire. The same commentor questioned the effect of zinc anodes on the degrading of ungalvanized 0.062-inch-diameter iron wire used in the construction of escape panels. No revisions were made based upon these comments because adequate data are not available to substantiate them. In the event future research results in evidence regarding these issues they will be readdressed.

The same commentor recommended implementation of a requirement that the escape panel be placed on the side of fish traps. This would prevent locating the panel on the bottom of the traps thereby defeating the purpose of the panel. Also, this requirement would prevent locating doors with degradable hinges on the top or bottom of traps where the panel would remain in place after the hinges have degraded. NOAA concurs with this recommendation and § 646.22(b)(1) has been modified accordingly.

Changes From the Proposed Rule

Section 646.6

The section was not reorganized as proposed, but instead two paragraphs have been added to the end of the section. Paragraph (a)(17) was revised in response to public comment.

Section 646.22(b)(1)

This was modified in response to public comment.

Classification

The Assistant Administrator determined that this regulatory amendment is necessary for the conservation and management of the snapper-grouper fishery and that it is consistent with the Magnuson Act and other applicable law.

It was previously determined, on the basis of an RIR and regulatory flexibility analysis (RFA) that rules to implement the FMP, except for this measure, were not major under Executive Order 12291. The RIR/RFA was summarized in the preamble to the final rules for the FMP (48 FR 39466, August 31, 1983). A supplemental regulatory impact review for this rule implementing the identification system review for this rule implementing the identification system was prepared, and it indicated that the anticipated benefits exceed the compliance cost to the public (see "**ADDRESS**" section for availability).

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities; a summary was published with the proposed rule (50 FR 13639, April 5, 1985). As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). A request to collect this information was submitted to the Office of Management and Budget for a review under section 3504(h) of the PRA and has been approved under OMB control number 0048-0097.

This action is part of a Federal action for which a final environmental impact statement (EIS) was prepared. The final EIS for the FMP was filed with the Environmental Protection Agency and the notice of availability was published on August 19, 1983 (48 FR 37702).

The Council determined that this rule does not directly affect the coastal zone of any State with an approved coastal zone management program.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing.

Dated: September 20, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 646 is amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for Part 646 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In Part 646, the Table of Contents is amended by revising the title for § 646.5 from "Gear identification [Reserved]" to read as follows: "Vessel and gear identification."

3. In § 646.2 the definitions of "Black sea bass trap" and "Official number" are added in alphabetical order to read as follows:

§ 646.2 Definitions.

* * * * *

Black sea bass trap means a fish trap that harvests or contains at any time no more than 25 percent by number of fishes in the management unit other than black sea bass.

* * * * *

Official number means the documentation number issued by the U.S. Coast Guard or the registration number issued by a State or by the U.S. Coast Guard for undocumented vessels.

* * * * *

4. A new § 646.5 is added to read as follows:

§ 646.5 Vessel and gear identification.

(a) *Applicability.* Fishing vessels from which fish traps, other than black sea bass traps, are deployed in the FCZ are required to obtain a vessel and gear identification number and color code from the Regional Director.

(b) *Application.* (1) An application for a vessel and gear identification number and color code under this part must be signed by the owner or operator of the vessel and submitted on an appropriate form obtained from the Regional Director. Fishermen who have an existing number and color code from another fishery may indicate on the application their preference to use that same identification system for the fish trap fishery. Whenever possible, the Regional Director will reissue the requested number and color code adding only a single letter prefex to indicate that the vessel and gear are engaged in the fish trap fishery. The application must be submitted to the Regional Director 30 days prior to the date on which the applicant desires receipt of the vessel and gear identification number and color code.

(2) Applicants must provide all of the following information:

(i) Name, mailing address including ZIP code, and telephone number of the owner of the vessel;

(ii) Name of the vessel;

(iii) The vessel's official number;

(iv) Home port on principal port of landing, gross tonnage, radio call sign, and length of the vessel;

(v) Engine horsepower and year the vessel was built;

vi) Number, dimensions, and estimated cubic volume of the fish traps that will be fished;

(vii) Any other information concerning vessel and gear characteristics requested by the Regional Director; and

(viii) A statement that the applicant will allow authorized officers reasonable access to his property (vessel and dock) to inventory fish traps for compliance with these regulations.

(3) Any change in the information specified in this paragraph must be submitted in writing to the Regional Director by the applicant within 15 days of any such change. Failure to notify the Regional Director of any change in the required information will result in a rebuttable presumption that the information is still accurate and current.

(c) *Issuance.* The Regional Director will issue a color code, vessel and gear identification number, and fish trap tags imprinted with the vessel and gear identification number to the applicant not later than 30 days from the date of receipt of a completed application.

(d) *Display.* Vessels from which fish traps, other than black sea bass traps, are fished; fish traps; and buoys must display the identification number and color code designated by the Regional Director.

(1) *Vessels.* Vessels must permanently and conspicuously display the identification number and color code designated by the Regional Director under paragraph (c) of this section in a manner so as to be readily identifiable from the air and water.

(i) To be visible from the air, the identification number and color code must be permanently affixed to the uppermost structural portion of the vessel or other similar area. The color code must be in the form of a circle at least 20 inches in diameter, and the areas surrounding the circle must be of a contrasting color. The identification number must be at least 10 inches in height and must be affixed adjacent to the 20-inch diameter circle.

(ii) To be visible from the water, the identification number and color code must be permanently affixed to both starboard and port sides of the vessel near amidships. The color code must be in the form of a circle at least 8 inches in diameter and the area surrounding the circle must be of a contrasting color. The identification number must be at least 4 inches in height and must be affixed adjacent to the 8-inch diameter circle.

(2) *Fish traps.* Each fish trap must have affixed to it permanently the numbered identification tag supplied by the Regional Director.

(3) *Buoys.* The use of buoys to identify fish traps is not required. If buoys are used, they must display the identification number and color code so as to be easily distinguished, located, and identified. The identification number must be in legible figures at least 2 inches in height and affixed to each buoy.

(e) Fish traps fished in the FCZ will be presumed to be the property of the most recently documented owner. This presumption will not apply with respect to fish traps which are lost or sold if the owner of such traps reports the loss or sale within 15 days to the Regional Director.

(f) Unmarked fish traps deployed in the FCZ, other than black sea bass traps, are illegal and may be disposed of in any appropriate manner by the Secretary (including an authorized officer). If owners of the unmarked trap can be ascertained, those owners remain subject to appropriate civil penalties.

(Approved by the Office of Management and Budget under Control No. 0048–0097.)

5. Section 646.6 is amended by redesignating existing text consisting of introductory text and paragraphs (a)–(q) as new paragraph (a) consisting of introductory text and paragraphs (a)(1)–(17), revise the new introductory text of (a), revise the newly redesignated paragraph (a)(17), add a new paragraph (a)(18), and add a new paragraph (b) to read as follows:

§ 646.6 Prohibitions.

(a) It is unlawful for any person to do any of the following:

* * * * *

(17) Fish with fish traps, except black sea bass traps, without an assigned vessel and gear identification number; possess aboard a fishing vessel unmarked fish traps; use, or possess aboard a fishing vessel, buoys not marked with the assigned gear identification number and color code; falsify or fail to affix and maintain

vessel or gear markings as required by § 646.5; or

(18) Possess fish traps shoreward of the outer boundary of the FCZ and south of 25°35.5′ N. latitude (Fowey Rocks Light, Florida) except as specified in § 646.22(b)(5).

(b) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

6. In § 646.22, paragraph (b)(1) is revised and a new paragraph (b)(5) is added to read as follows:

§ 646.22 Gear limitations.

* * * * *

(b)(1) Fish traps are required to have on at least one side, excluding top and bottom, panels or door-hinging devices or door fasteners which will degrade or self-destruct and which must be constructed of one of the following degradable materials:

(i) Untreated hemp, jute, or cotton string of 3/16-inch diameter or smaller;

(ii) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.062-inch diameter or smaller.

(iv) The diameter of the panel opening must be equal to or larger than the interior axis of the trap's throat (funnel).

* * * * *

(5) Buoy lines attached to fish possessed or fished shoreward to the outer boundary of the FCZ and south of 25°35.5′ N. latitude must be a minimum of 125 feet in length.

* * * * *

[FR Doc. 85-22870 Filed 9-20-85; 2:52 pm]

BILLING CODE 3510-22-M

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50 CFR Part 650

[Docket No. 31222-246]

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of continuation of adjusted meat count and shell height standards.

SUMMARY: NOAA extends the present average meat count standard for Atlantic sea scallops of redundant 35 meats per pound (minimum shell height of 3⅜ inches), through December 31, 1985, unless superseded by the implementation of Amendment 1. This action will eliminate the potential for inconsistencies in management measures imposed on Canadian and U.S. sea scallop fishermen that would adversely affect the U.S. domestic fishery if the standard reverted to 30 meats per pound. The adjustment allows U.S. fishermen to harvest sea scallops at sizes smaller than would be allowed in the absence of the continued adjustment.

EFFECTIVE DATE: October 1, 1985 through December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Carol Kilbride (Scallop Management Coordinator), 617 281-3600, ext. 244.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Sea Scallops (FMP) contain at § 650.22(a) provisions that require the Director, Northeast Region, National Marine Fisheries Service (Regional Director), to review the status of the Atlantic sea scallop resource on a continuing basis.

In the spring of 1983, the Regional Director, following consultation with the New England Fishery Management Council (Council), implemented the findings of his first annual report by temporarily adjusting the management standards to allow harvest of sea scallops at 35 meats per pound (minimum 3⅜ inch shell height) through December 31, 1983 (48 FR 23434, May 25, 1983).

Regulations at § 650.22(b)(5) require the Regional Director to review adjustments of the standards and permit the Regional Director to renew a temporary adjustment upon making a finding consistent with the criteria for initial adjustment specified in § 650.22(c). The criteria which must be met include: (1) The objective of the scallop FMP would be achieved more readily and be better served through an adjustment of the prevailing standards; (2) the recommended alteration in the standards would not reduce expected catch over the following year by more than 5 percent from that which would have been expected under the prevailing standard; (3) the recommended standards for meat count and shell height are consistent with each other; and (4) inconsistencies exist in the management measures applied to sea scallop stocks in areas harvested by both domestic and foreign fishermen, and those inconsistencies provide foreign fishermen with an advantage over domestic fishermen which can be demonstrated to adversely affect the domestic fishery. These criteria were met in December 1983, and the 35 meats per pound meat count adjustment was continued through May 15, 1984 (48 FR 57496, December 30, 1983). Extensions through September 30, 1984 (49 FR 21058, May 18, 1984), and September 30, 1985 (49 FR 39065, October 3, 1984) were based on the same rationale criteria.

The last adjustment to the average meat count was accomplished with the expectation that the Council would prepare an amendment to the FMP modifying the meat count measure to provide improved protection for small sea scallops and that agreement with Canada to impose regulations consistent with the amendment would occur. The Council has submitted to the Secretary for approval Amendment 1 to the Fishery Management Plan for Atlantic Sea Scallops. The amendment proposes to establish (1) a minimum standard of four ounces whereby the ten smallest scallops in a one-pint sample must weigh at least four ounces; (2) eliminate the adjustable meat count/shell height standard; and (3) extend the enforcement of the minimum weight standard beyond the point of first transaction in the United States. If the amendment is approved, final regulations implementing this new weight standard would become effective on December 1, 1985.

The Regional Director has found that the criteria specified in § 650.22(c) continue to be met and has therefore determined to renew the management standards adjustment to permit the harvest of sea scallops at an average meat count of 35 meats per pound (minimum 3⅜ inch shell height) size during the period from October 1, 1985, through December 31, 1985, unless superseded by the implementation of Amendment 1.

Other Matters

This action is taken under the authority of 50 CFR Part 650, and is taken in compliance with National Executive Order 12291.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 650

Fisheries.

Dated: September 20, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-22933 Filed 9-20-85; 5:10 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 186
Wednesday, September 25, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3

Debt Collection

AGENCY: Department of Agriculture.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule would implement the salary offset provision of the Debt Collection Act of 1982. Section 5 of the Act (codified in 5 U.S.C. 5514) authorized procedures to recover debts owed to the Federal Government by offsetting against salaries of Federal employees owing such debts. In addition, the Office of Personnel Management issued regulations (5 CFR Part 550, Subpart K) to be used by Federal agencies in implementing the Act.

This proposed rule includes protection for employees owing debts as provided in the Debt Collection Act (i.e. notification, inspection of relevant records, payment agreements, and hearings). The rule would enhance USDA's ability to recover delinquent debts owned by Federal employees, while ensuring that the rights of Federal employees are protected.

DATE: Comments must be received on or before October 25, 1985.

ADDRESS: Send comments to: Earl C. Hadlock, Deputy Director, Office of Personnel, U.S. Department of Agricultural, Washington, D.C. 20250. Written comments received may be inspected in Room 305–W of the Administration Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Frank Padalino, Office of Personnel U.S. Department of Agriculture, Room 305–W, Washington, D.C. 20250, (202) 447–5619.

SUPPLEMENTARY INFORMATION:

Background

USDA is owed a significant amount of money by Federal employees. The salary offset provision of the Debt Collection Act of 1982 provides opportunities to increase the collection of these delinquent debts while ensuring employee rights are protected. This rule would enable USDA to fully implement the salary offset provision of the Act.

Regulatory Impact

USDA has reviewed this proposed rule in accordance with Executive Order 12291 and has determined that it is not a major rule. The Department has determined that this action will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprise in domestic or export markets. It is anticipated that the final rule would enable USDA to increase collections by approximately $5 million, representing money that is already owed and overdue. It will impact on only a small percentage of Federal employees; those who are delinquent in repaying their debts to the Department of Agriculture.

Under the circumstances explained above, the Assistant Secretary for Administration has determined that this action will not have a significant impact on a substantial number of small entities. This proposed rule sets procedures for salary offset and does not affect the environment.

List of Subjects in 7 CFR Part 3

Salary offset, Claims, Debt management.

Accordingly, USDA proposes to add a new Subpart C to Part 3 of Title 7 of the Code of Federal Regulations to read as follows:

PART 3—[AMENDED]

Subpart C—Salary Offset

Sec.
3.51 Scope.
3.52 Definitions.
3.53 Coordinating offset with another federal agency.
3.54 Determination of indebtedness.
3.55 Notice requirements before offset.
3.56 Request for a hearing.
3.57 Results if employee fails to meet deadlines.
3.58 Hearings.
3.59 Written decision following a hearing.
3.60 Review of Departmental records related to the debt.
3.61 Written agreement to repay debt as alternative to salary offset.
3.62 Procedures for salary offset: when deductions may begin.
3.63 Procedures for salary offset: types of collection.
3.64 Procedures for salary offset: methods of collection.
3.65 Procedures for salary offset: imposition of interest, penalties and administrative costs.
3.66 Non-Waiver of rights.
3.67 Refunds.
3.68 Agency regulations.

Authority: 5 U.S.C. 5514; 5 CFR Part 550, Subpart K.

Subpart C—Salary Offset

§ 3.51 Scope.

(a) The provisions of this subpart set forth the Department's procedures for the collection of a Federal employee's pay by salary offset to satisfy certain valid and past due debts owed the government.

(b) These regulations apply to:

(1) Current employees of the Department and other agencies who owe debts to the Department; and

(2) Current employees of the Department who owe debts to other agencies.

(c) These regulations do not apply to debts or claims arising under the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.); the Social Security Act (42 U.S.C. 301 et seq.); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute.

(d) These regulations identify the types of salary offset available to the Department, as well as certain rights provided to the employee, which include a written notice before deductions begin, the opportunity to petition for a hearing and to receive a written decision if a hearing is granted. These employee rights do not apply to any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal

benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(e) These regulations do not preclude an employee from:

(1) Requesting waiver of a salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716;

(2) Requesting waiver of any other type of debt, if waiver is available by statute; or

(3) Questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office.

(f) Nothing in these regulations precludes the compromise, suspension or termination of collection actions where appropriate under the Department's regulations contained elsewhere.

§ 3.52 Definitions.

(a) "Agency" means:

(1) An Executive Agency as defined by section 105 of Title 5 U.S.C., the U.S. Postal Service, the U.S. Postal Rate Commission; and

(2) A Military Department as defined by section 102 of Title 5, U.S.C.

(b) "Debt" means:

(1) An amount owed to the United States from sources which include, but are not limited to, insured or guaranteed loans, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice).

(2) An amount owed to the United States by an employee for pecuniary losses, including but not limited to:

(i) Theft, misuse, or loss of Government funds;

(ii) False claims for services and travel;

(iii) Illegal, unauthorized obligations and expenditures of Government appropriations;

(iv) Authorization of the use of Government owned or leased equipment, facilities, supplies, and services for other than official or approved purposes;

(v) Vehicle accidents where the employee is determined to be liable for the repair or replacement of a government owned or leased vehicle;

(vi) Erroneous entries on accounting records or reports; and

(vii) Deliberate failure to provide physical security and control procedures for accountable officers, if such failure is determined to be the proximate cause for a loss of Government funds.

(c) "Department" or "USDA" means the United States Department of Agriculture.

(d) "Disposable Pay" means any pay due an employee that remains after required deductions for Federal, State and Local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for life and health insurance benefits; and such other deductions required by law to be withheld.

(e) "Employee" means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces.

(f) "Hearing official" means an administrative law judge of the Department or some other individual not under the control of the Secretary.

(g) "Salary Offset" means a deduction of a debt by deduction(s) from the disposable pay of an employee without his or her consent.

(h) "Secretary" means the Secretary of the U.S. Department of Agriculture or his or her designee.

(i) "Waiver" means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b) or any other law.

§ 3.53 Coordinating offset with another federal agency.

(a) *When USDA is owed the debt.* When USDA is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until USDA provides the agency with a written certification that the debtor owes USDA a debt (including the amount and basis of the debt and the due date of the payment) and that USDA has complied with these regulations.

(b) *When another agency is owed the debt.* The Department may use salary offset against one of its employees who is indebted to another agency, if requested to do so by that agency. Such a request must be accompanied by a certification by the requesting agency that the person owes the debt (including the amount and basis of the debt and the due date of the payment) and that the agency has complied with its regulations required by 5 U.S.C. 5514 and 5 CFR Part 550, Subpart K.

§ 3.54 Determination of indebtedness.

(a) In determining that an employee is indebted to USDA and that 4 CFR Parts 101 through 105 have been satisfied and that salary offset is appropriate, the Secretary will review the debt to make sure that it is valid and past due.

(b) If the Secretary determines that any of the requirements of part (a) of this section have not been met, no determination of indebtedness shall be made and salary offset will not proceed until the Secretary is assured that the requirements have been met.

§ 3.55 Notice requirements before offset.

Except as proviced in § 3.51(d), salary offset will not be made unless the Secretary first provides the employee with a minimum of 30 calendar days written notice. This Notice of Intent to Offset Salary (Notice of Intent) will state:

(a) That the Secretary has reviewed the records relating to the debt and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(b) The Secretary's intention to collect the debt by means of deduction from the employee's current disposable pay until the debt and all accumulated interest are paid in full;

(c) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(d) An explanation of the Department's requirements concerning interest, penalties and administrative costs; unless such payments are waived in accordance with 31 U.S.C. 3717 and § 3.34 of this part;

(e) The employee's right to inspect and copy Department records relating to the debt;

(f) The employee's right to enter into a written agreement with the Secretary for a repayment schedule differing from that proposed by the Secretary, so long as the terms of the repayment schedule proposed by the employee are agreeable to the Secretary;

(g) The right to a hearing conducted by a hearing official on the Secretary's determination of the debt, the amount of the debt, or percentage of disposable pay to be deducted each pay period, so long as a petition is filed by the employee as prescribed by the Secretary;

(h) That the timely filing of a petition for hearing will stay the collection proceedings;

(i) That a final decision on the hearing will be issued at the earliest practical date, but not later than 60 calendar days after the filing of the petition requesting the hearing, unless the employee requests, and the hearing officer grants, a delay in the proceedings;

(j) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. Chapter 75, 5 CFR Part 752, or any other applicable statutes or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or any other applicable statutory authority;

(k) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(l) That amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee, unless there are applicable contractual or statutory provisions to the contrary;

(m) The method and time period for requesting a hearing; and

(n) The name and address of an official of USDA to whom communications should be directed.

§ 3.56 Request for a hearing.

(a) Except as provided in paragraph (c) of this section, an employee must file a petition for a hearing, that is received by the Secretary not later than 30 calendar days from the date of the Department's notice described in § 3.55, if an employee wants a hearing concerning:

(1) The existence or amount of the debt; or

(2) The Secretary's proposed offset schedule (including percentage).

(b) The petition msut be signed by the employee and should identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support his or her position. If the employee objects to the percentage of disposable pay to be deducted from each check, the petition should state the objection and the reasons for it.

(c) If the employee files a petition for hearing later than the 30 calendar days as described in paragraph (a) of this section, the hearing officer may accept the request if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the filing deadline (unless the employee has actual notice of the filing deadline).

§ 3.57 Result if employee fails to meet deadlines.

An employee will not be granted a hearing and will have his or her disposable pay offset in accordance with the Secretary's offset schedule if the employee:

(a) Fails to file a petition for a hearing as prescribed in § 3.56; or

(b) Is scheduled to appear and fails to appear at the hearing.

§ 3.58 Hearings.

(a) If an employee timely files a petition for a hearing under § 3.56, the Secretary shall select the time, date, and location for the hearing.

(b) (1) Hearings shall be conducted by an appropriately designated hearing official; and

(2) Rules of evidence shall not be adhered to, but the hearing official shall consider all evidence that he or she determines to be relevant to the debt that is the subject of the hearing and weigh it accordingly, given all of the facts and circumstances surrounding the debt.

(c) USDA will have the burden of going forward to prove the existence of the debt.

(d) The employee requesting the hearing shall bear the ultimate burden of proof.

(e) The evidence presented by the employee must prove that no debt exists or cast sufficient doubt such that reasonable minds could differ as to the existence of the debt.

§ 3.59 Written decision following a hearing.

Written decisions provided after a hearing will include:

(a) A statement of the facts presented at the hearing to support the nature and origin of the alleged debt and those presented to refute the debt;

(b) The hearing officer's analysis, findings and conclusions, considering all of the evidence presented and the respective burdens of the parties, in light of the hearing;

(c) The amount and validity of the alleged debt determined as a result of the hearing; and

(d) The repayment schedule (including percentage of disposable pay), if applicable.

(e) The determination of the amount of the debt at this hearing is the final agency action on this matter.

§ 3.60 Review of departmental records related to the debt.

(a) *Notification by employee.* An employee who intends to inspect or copy Departmental records related to the debt must send a letter to the Secretary stating his or her intention. The letter must be received by the Secretary within 30 calendar days of the date of the Notice of Intent.

(b) *Secretary's response.* In response to the timely notice submitted by the debtor as described in paragraph (a) of this section, the Secretary will notify the employee of the location and time when the employee may inspect and copy Departmental records related to the debt.

§ 3.61 Written agreement to repay debt as alternative to salary offset.

(a) *Notification by employee.* The employee may propose, in response to a Notice of Intent, a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to do this must submit a proposed written agreement to repay the debt which is received by the Secretary within 30 calendar days of the date of the Notice of Intent.

(b) *Secretary's response.* The Secretary will notify the employee whether the employee's proposed written agreement for repayment is acceptable. The Secretary may accept a repayment agreement instead of proceeding by offset. In making this determination, the Secretary will balance the Department's interest in collecting the debt against hardship to the employee. If the debt is delinquent and the employee has not disputed its existence or amount, the Secretary will accept a repayment agreement, instead of offset, for good cause such as, if the employee is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

§ 3.62 Procedures for salary offset; when deductions may begin.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Secretary's Notice of Intent to collect from the employee's current pay.

(b) If the employee filed a petition for a hearing with the Secretary before the expiration of the period provided for in § 3.56 then deductions will begin after the hearing officer has provided the employee with a hearing, and a final written decision has been rendered in favor of the Secretary.

(c) If an employee retires or resigns before collection of the amount of the indebtedness is completed, the remaining indebtedness will be collected according to the procedures for administrative offset (see Subpart B of this part).

§ 3.63 Procedures for salary offset: types of collection.

A debt will be collected in a lump-sum or in installments. Collection will be by lump-sum collection unless the employee is financially unable to pay in one lump-sum, or if the amount of the debt exceeds 15 percent of disposable pay for an ordinary pay period. In these cases, deduction will be by installments, as set forth in § 3.64.

§ 3.64 Procedures for salary offset: methods of collection.

(a) *General.* A debt will be collected by deductions at officially-established pay intervals from an employee's current pay account, unless the employee and the Secretary agree to alternative arrangements for repayment under § 3.61.

(b) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in no more than three years. Installment payments of less than $25 per pay period or $50 a month will be accepted only in the most unusual circumstances.

(c) *Sources of deductions.* The Department will make deductions only from basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay.

§ 3.65 Procedures for salary offset: imposition of interest, penalties and administrative costs.

Interest, penalties and administrative costs will be charged in accordance with 4 CFR 102.13.

§ 3.66 Non-Waiver of rights.

So long as there are no statutory or contractural provisions to the contrary, no employee payment (of all or portion of a debt) collected under these regulations will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

§ 3.67 Refunds.

The Department will refund promptly to the appropriate individual amounts offset under these regulations when:

(a) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(b) The Department is directed by an administrative or judicial order to refund amount deducted from the employee's current pay.

§ 3.68 Agency regulations.

Heads of USDA agencies may issue regulations or policies not inconsistent with Office of Personnel Management regulations (5 CFR Part 550, Subpart K) and regulations in this subpart governing the collection of a debt by salary offset.

Done this 19th day of August 1985, at Washington, D.C.

John R. Block,

Secretary of Agriculture.

[FR Doc. 85-22918 Filed 9-24-85; 8:45 am]

BILLING CODE 3410-DC-M

Food Safety and Inspection Service

9 CFR Parts 317, 318 and 381

[Docket No. 84-020P]

Total Plant Quality Control for Labeling

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) proposes to expand the concept of generically approved labeling of meat and poultry products for these establishments operating a USDA-approved Total Quality Control system which can develop an acceptable plan for controlling the labeling of their products. Eligible establishments may submit their plan for a Total Quality Control for Labeling system to the FSIS Administrator for approval. If the Administrator finds the plan for the Total Quality Control for Labeling system to be adequate to assure that misbranding of product will not occur, all labeling for products made at the establishment and for which there is a standard of identity or composition in the meat and poultry products inspection regulations or for which there are certain specified Agency policies will be eligible for generic approval and would not be subject to additional individual review and approval by FSIS before use.

DATE: Comments must be received on or before November 25, 1985.

ADDRESS: Written comment to: Regulations Office, Attn: Ms. Annie Johnson, FSIS Hearing Clerk, FSIS, Room 2637, South Agriculture Building, USDA, Washington, DC 20250. (See also "Comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: Mr. Joseph V. Germano, Deputy Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-4293.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that the proposed rule is not a major rule under Executive Order 12291. The proposal would provide greater flexibility to meat and poultry processors in obtaining labeling approvals. It would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

The Administrator, FSIS, has determined that the proposal would not have a significant economic impact on a substantial number of small entities, as defined by Pub. L., 96-354 (5 U.S.C. 601).

The proposal would provide an alternative to certain aspects of the current labeling approval system for those meat and poultry establishments which have been in operation, for at least one year, a USDA-approved total plant quality control system. As of September 1984, there were over 400 Total Quality Control meat and poultry establishments. These establishments range from one person operations to those by some of the largest processors in the nation.

The proposal would permit a USDA-appoved Total Quality Control (TQC) establishment to submit a plan for controlling the labeling of a broad range of products prepared in its establishment. If the Administrator finds the plan for Total Quality Control for Labeling (TQCL) systems to be adequate to assure that misbranding of product will not occur, the plan would be approved. Once the plan is implemented, labeling for products within specified categories could be approved at such plants, and the labeling would not have to receive additional authorization by the Department before use. This TQC Labeling system could provide significant savings and flexibility to the establishments. Various studies by government and private groups have shown that the Department's current labeling approval system imposes costs on industry, especially those resulting from time lost in the review/approval process.

The proposed rule would provide savings to industry primarily by reducing time burdens. In exchange,

however, some paperwork burdens may increase primarily because of the initial TQCL application procedures and secondarily, because of paperwork required in maintaining the system. These may be offset, however, by the reduction in paperwork surrounding individual label approvals. However, since the proposed rule creates a voluntary program, each firm would independently determine whether the expected gain from participating will outweigh maintaining a TQCL system. Firms could continue to exercise this choice even after implementing a TQCL system; that is, firms could still, at their option, seek approvals using the current prior label approval procedures.

The Department will also consider other points of view concerning the proposal which limits the use of TQCL to TQC establishments. Comments submitted regarding this aspect of the proposal should include data and other information to support an alternative position.

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments must be submitted in duplicate to the Regulations Office. Comments should refer to the docket number located in the heading of this document. Any person desiring an opportunity for oral presentation of views must make their request to Mr. Germano so that arrangements may be made for the presentation. A transcript will be made of views orally presented. All comments submitted concerning this proposal will be available for public inspection in the Regulations Office between 9:00 a.m. and 4:00 p.m. Monday through Friday.

Background

Pursuant to the authority contained in section 1(n) and 7 of the Federal Meat Inspection Act (21 U.S.C. 601(n), 607) and in sections 4(h) and 8 of the Poultry Products Inspection Act (21 U.S.C. 453(h), 457) and related Federal meat and poultry product inspection regulations (9 CFR Parts 317 and 381, Subpart N), the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture (USDA) conducts a prior approval program for labels and other labeling material to be used on federally inspected meat and poultry products. In March 1983, FSIS published a final rule streamlining and simplifying labeling approval procedures which had in most cases required a label to be approved by the Standards and Labeling Division in Washington, DC (48 FR 11410). Consistent with a number of other efforts to make more efficient use of Agency resources, reduce costs to government and industry, and more rapidly approve labeling, the rule revised the prior labeling approval system by establishing three categories of labeling approvals.

1. IIC Approvals

The March 1983 rule authorizes inspectors in charge (IICs) of official establishments to approve certain labeling and labeling modifications provided all mandatory information is sufficiently prominent and the labeling is not false or misleading. The types of labeling an IIC is authorized to approve include the following:

New Labeling

—Final labeling which has a Standards and Labeling Division (SLD) sketch approval if the final labeling is made without modification or modified only as SLD prescribed;
—Labeling for single ingredient products which do not contain quality control claims, negative claims, geographical claims, nutritional claims, guarantees, or are printed in a foreign language;
—Container labeling for products sold under specifications only to Federal government agencies if the specifications include specific labeling requirements;
—Labeling for shipping containers containing fully labeled immediate containers;
—Labeling for products not intended for human food;
—Inspection legends;
—Meat carcass ink brands and meat food product ink and burning brands;
—Labeling for poultry heads and feet intended for export for processing as human food;
—Inserts, tags, liners, pasters, and similar devices with printed or graphic matter for use on or within containers and coverings.

Labeling Modifications to Previously Approved Labeling

—Brand name changes if the name does not use a term which connotes quality or other product characteristics, has no geographic significance and does not affect the product name or labeling format;
—Deletions of the word "new;"
—Additions, deletions, or amendments of handling instructions;
—Changes in the quantity of an ingredient statement if changes comply with any minimum or maximum limits for use of the ingredient;
—Changes in color;
—Additions, deletions, or substitutions of a USDA poultry grade shield;
—Changes in product vignette.

The types of labeling and labeling modifications in the IIC-approval category were selected because they are not complicated or the modifications involve changes of minor that they present little risk of misbranding of product. For example, final labeling for a single ingredient product such as "Chicken Wings" may be submitted to the IIC for approval provided all mandatory labeling information, including the product name, net weight statement, inspection legend and establishment number, name and address of the manufacturer, packer, or distributor, and, if needed, handling instructions, are prominently displayed. The labeling may not contain any quality claims such as "blue ribbon," negative claims such as "no phosphates added," geographical claims such as "Buffalo, New York Style," nutritional claims such as "lower fat," guarantees such as money-back offers, or be printed in a foreign language.

For IIC approvals, the establishment must submit to the IIC three copies of the labeling, each attached to a label application form. If the labeling is in full compliance with the regulations, the IIC signs, numbers, and dates each application. One copy is kept on file in the inspector's office. A second copy is submitted to SLD for possible audit and incorporation into a central labeling file. The third copy is returned to plant management.

2. Generically Approved Labeling

The March 1983 rule created a second category of labeling which no longer requires an individual review and authorization by USDA. This category includes final labeling previously approved by SLD or the IIC. The IIC receives a copy of the label prior to use. Only the minor modifications specified in 9 CFR 317.5 and 381.134 or the types of labeling or labeling changes described below may be considered generically approved. They include the following:

—Enlargements or reductions of all labeling features, provided minimum size requirements are met and the labeling is legible;
—Substitutions of certain terms for their abbreviations, or certain abbreviations for their whole forms;
—Additions of the name and address of a distributor or previously approved master or stock labeling;
—Holiday wrappers or coverings;

—Changes in the language or arrangement of package opening or serving instructions;
—Additions, deletions, or amendments of coupons, cents-off statements, cooking instructions, packer product code information, or universal product codes;
—Changes in the name or address of the packer, manufacturer, or distributor that appears in the signature line;
—Changes in the net weight statement provided size requirements are met;
—Additions, deletions, or amendments of recipe suggestions;
—Changes in punctuation;
—Newly assigned or revised establishment numbers for a particular establishment;
—Additions or deletions of open dating information;
—Changes in type of packaging material on which labeling is printed.

The generically approved category includes labeling for which an individual review and approval by USDA is believed to be unnecessary. For example, if an establishment wishes to substitute the word "pound" for the abbreviation "lb." in the net weight statement on labeling already previously approved, there seems little point in resubmitting an application for reapproval of the entire label. SLD already has a copy of the original approval which is subject to audit and the generically approved labeling is supplied to the IIC to assure its accuracy prior to its use.

For labeling to be considered as generically approved, the establishment must supply the IIC, prior to use, a single copy of the modified labeling along with the approval number of the previously approved final labeling on which it is based. This copy remains on file in the inspector's office for review by a USDA supervisor during routine plant visits. A copy of generically approved labeling is not forwarded to SLD for audit nor is it included in the SLD central labeling file. Since generically approved labeling receives no individual review and approval from the Department, the plant has primary responsibility for its compliance with the regulations. However, the IIC retains the authority to discontinue use of the labeling if a determination is made that it is false or misleading.

3. SLD Approvals

The use of IIC or generically approved labeling is strictly voluntary. Plant operators may whenever they wish submit any and all of their labeling to SLD for approval. There are, however, certain types of labeling that must be approved by SLD. This category of labeling includes:
—Labeling modifications not specifically identified in either the IIC-approval or the generically approved category;
—Sketch labeling;
—Temporary approvals.

The SLD-approved category includes labeling involving complex or novel issues where consistency and uniformity would be more difficult to maintain if delegated to the plant level. For example, a labeling claim such as "all natural" is open to a great deal of individual interpretation and thus could be confusing to the public. As such, it remains subject to SLD review.

For SLD approvals, as for those approved by the IIC, three copies of the labeling, each attached to an application form, are required. One copy is included in the SLD central labeling file; a second copy is sent to the IIC; and the third copy is returned to the plant management.

Analysis of the Current Procedures

The current labeling approval procedures have been well received by industry and field inspection personnel. Since the implementation of the Field Delegation System (IIC approvals) on June 1, 1983, over 20,000 labeling applications were approved by IIC's the first year, and a total of 2,802 plant operators opted to use IIC label approvals. Since its adoption, industry has demonstrated interest in the use and acceptance of the IIC labeling approval program.

A 100 percent audit of the IIC-approved labeling conducted by SLD for the year June 1, 1983 through May 31, 1984 revealed a relatively low error rate (6.4 percent of the entire year). Most errors were minor, and many involved procedural errors, for example, determinations of whether labeling is eligible for IIC approval, and technical errors related to the product name, printing of the inspection legend, net weight statement, or ingredient statement. Most of these errors were such that the labeling as a whole would not be considered false or misleading. Examples include an error in the size of the net weight statement or an error in the printing of the inspection legend.

SLD has no method for examining the number of types of generically approved labeling; however, a field survey for the year June 1, 1983 through May 31, 1984, showed that 5,987 generically approved labels were used by 492 of the 2148 plants participating in the survey.

Performance of agency field personnel in implementing the IIC label approval procedures has been considered positive. As anticipated, there has been little impact on the IIC's workload. The monthly average time IIC's spend on labeling approval is 2.46 hours. In addition, the increased direct involvement in labeling approvals has been well-received by most IIC's, who generally are in the best position to ensure that meat and poultry products are properly and accurately labeled.

In the preamble to the final rule that established the current labeling approval regulations, the Department acknowledged industry's desire to expand the generically approved labeling category. The Department also indicated it would consider the possibility of expanding the class of generically approved labeling for those plants which have demonstrated the technological and managerial capacity to ensure that misbranding of product will not occur. However, because of the experimental nature of the procedures, the Department initially chose to narrowly define this category until it could assess the effectiveness of the program. The Department's current position is that the present level of field delegation of label approvals is functioning satisfactorily, and, therefore, it believes that there is a basis to assume that IIC's and plant operators have the ability to assume expanded labeling approval authority without jeopardizing the integrity or effectiveness of the prior approval system or of the labeling itself.

Quality Control

Major changes have taken place throughout the meat and poultry industries over the past two decades. Rapidly changing technology, keener competition, and a growing economy have had a significant impact on the types of meat and poultry products being prepared. For recordkeeping purposes, the Department now recognizes over 1,100 different categories of processed meat and poultry products which are currently being marketed. Each year, the number of variations within these categories increases as new products are developed using complex blends of ingredients which make the products more susceptible to variations. At the same time, consumers have increasingly come to expect and indeed demand uniformity and consistency in the products they buy.

In response to these consumer demands, companies began to realize that more sophisticated procedures for controlling production were necessary to meet consumer expectations and demands. By the 1960's, meat and

poultry processors were beginning to develop quality control programs to assure product uniformity and consistency. Such quality control programs are designed to produce a product within predetermined limits using statistical sampling and monitoring at predetermined critical control points in the production process. Abnormal variations at these critical control points would, if not adjusted, result in non-conforming finished product. Companies have found that quality control programs provide cost effective methods for producing consistently uniform products within specified limits in addition to meeting their responsibility for ensuring regulatory compliance.

Total Quality Control

As a result of dramatic changes throughout the meat and poultry industries, the Department has been modernizing its inspection program to meet today's needs while continuing to carry out its regulatory responsibilities. In September 1980, the Federal meat and poultry products inspection regulations were amended to allow meat and poultry processing establishments to submit plans for implementing a USDA-approved total plant quality control (TQC) system as a method for meeting their regulatory responsibilities (45 FR 54310).

Under the TQC approach, plant management develops a plan that describes the controls at each phase of product handling and processing and provides for data collection concerning the observations and tests made at specified control points. Examinations and tests at these control points are performed by establishment personnel who record their findings and make adjustments or take other appropriate corrective action, including halting production. Thus, a plant TQC system requires the commitment and support of top management to operate effectively. The Administrator evaluates the proposed plan and determines if the system has the features that will consistently produce products in compliance with all published regulatory requirements and standards and labeling guidelines.

Once the plan is approved, specially trained Department inspectors are assigned to TQC establishments. These inspectors evaluate the data generated by the system and also conduct their own independent observations and tests and draw samples to verify that establishment data are accurate and factual and that the finished product complies with the provisions contained in the USDA-approved TQC system. If the inspector finds discrepancies between the establishment's data and FSIS verification samples or tests, but the discrepancies do not involve adulteration or misbranding of product, the establishment is notified and given an opportunity to take corrective action. If the establishment is producing adulterated or misbranded product for distribution, the Department will terminate its approval of the TQC system and institute any other appropriate actions. Currently, over 450 TQC systems have been approved for implementation in federally inspected plants.

From the Agency's perspective, TQC provides a basis for more efficient use of its resources. TQC inspection techniques are designed to prevent, through process control, the manufacture of non-complying product and to promote production efficiency. Process control can continuously be adjusted or improved due to the availability of objectively-collected and USDA-verified manufacturing data. TQC also provides a base for continuously updated, reliable information, knowledge, and experience from which regulatory reform needs can be evaluated and proposed.

Total Quality Control for Labeling (TQCL)

The Department's experience with the field labeling approval and the TQC regulations have demonstrated the willingness and ability of major segments of the meat and poultry industries to fulfill their responsibility to provide consumers with safe, wholesome, and accurately labeled meat and poultry products under a somewhat modified regulatory system. As a result of the FSIS experience with these two programs, the Department is proposing to expand the concept of generically approved labeling for those establishments operating a USDS-approved TQC system.

Any operator of a USDA-approved TQC establishment who has operated its TQC system for a period of at least one year may apply to the Administrator for approval of its TQCL system. The TQCL system, as proposed, would be an extension of the establishment's TQC system and would be subject to the same requirements and control procedures. The Department is proposing to limit the eligibility for TQCL approval to establishments which have had an approved TQC system in operation for at least one year. This reflects the view that its assessment of a system to control labeling is fully intertwined with a broader evaluation of an establishment's process controls and that, in the absence of such a broader program, the Department cannot fully evaluate the capacity to control product labeling.

In considering this issue, it may be helpful to consider labeling review and approval, as traditionally practiced by the Department, as a two-level process. The first level involves the evaluation of the labeling materials themselves. The reviewer, or IIC under the appropriate circumstances, checks the labeling in question to see that certain required features such as an accurate product name and a statement of net quantity of contents are present. The reviewer or IIC also reviews formulation information to ensure that all ingredients are used in accordance with any regulatory restrictions and that they are listed in the proper order of predominance on the label. Label copy is further checked for compliance with any other applicable requirements and to assure that it is not false or misleading in any respect. Approvals are then issued for labeling which meets all of the applicable criteria.

The approved labeling has additional regulatory impact beyond the point of this initial review, however. The labeling approval, as transmitted to both the establishment and the IIC, constitutes continuing authority to produce and market the product in question provided the establishment complies with the processing procedures as outlined in the approval form itself.

Within the first area of labeling, involving the proper assurances that the labeling itself is correct, there does not seem to be any basis for distinguishing between plants with TQC status and those without such status. In either case, an establishment could presumably develop a program that demonstrates the proper knowledge of labeling regulations, designate a responsible individual, provide access to records, etc., to the point where the Department would have considerable confidence in its ability to generate labeling materials which are accurate and in compliance with all applicable requirements. It is the Department's present position, however, that this alone would not provide sufficient basis for the type of regulatory relief being proposed, since the non-TQC establishment does not also have a continuing system in place by which the Department can readily assess continuing compliance with the labeling agreement.

In adopting this position the Department is not attempting to imply that non-TQC establishments are unable to control their processes nor that they are somehow inferior to TQC

establishments. It is simply adopting the position that, in attempting to consistently monitor a nationwide program, it needs a mechanism for gauging this ability and that TQC is the one current mechanism for doing so. Since the TQCL program will be voluntary and somewhat experimental in nature, it seems reasonable to propose this type of limitation with the expectation that experience gained from such a program could lead to the establishment of its broader application in the future. Comments are welcome on this point, particularly from establishment owners or operators operating under traditional inspection, or from other interested parties who could identity eligibility criteria for non-TQC plants.

Labeling eligible to be generically approved under a TQCL system would be limited to that for which published regulatory standards of identify or composition exist or for which there are certain specified provisions in an official Agency manual known as the "Labeling Policy Book."

Labeling of products with nutritional information or statements would continue to receive specific SLD approval prior to use. Changes to the nutrition labeling would then be eligible for TQCL approval provided the changes did not involve product reformulation or otherwise affect the SLD-approved nutritional information. The Administrator has determined that the evaluation and presentation of nutritional information is a relatively complex phase of labeling. Further, nutrition labeling is in a state of flux as the Agency attempts to identify a variety of ways in which establishments can assure the continued accuracy of nutrition information. Therefore, all such labeling must be initially approved by SLD prior to its use.

The standards of product identity or composition found in the meat and poultry products inspection regulations specify the minimum amount of meat or poultry required in the product formulation. For example, the standard of composition for "Lamb Stew" requires that at least 25 percent uncooked lamb be used in formulating the product (9 CFR 319.104). Standards of identity set specific product requirements for a food's makeup. These standards often specify: (1) The kind and minimum amount of meat and/or poultry; (2) the maximum amount of non-meat ingredients, such as extenders or binders or moisture; and (3) any other ingredients allowed or expected in certain finished products.

Also, provisions concerning names and composition for numerous meat and poultry products have evolved from the prior labeling approval process. These policy memoranda issued by SLD are incorporated periodically into the Labeling Policy Book and often specify minimum meat or poultry content, as well as restrictions, and expected or permitted ingredients. Policy memoranda are issued by SLD on an as-needed basis. A listing of these memoranda and their availability is published semi-annually in the **Federal Register**. The Labeling Policy Book is meant to provide consumers and producers with decisions by the SLD in connection with the approval of labeling for meat and poultry products based on recipe information gathered from cook books, old formulas, and other reliable sources. For example, "Chicken Almondine" should contain almonds in addition to at least 50 percent chicken meat. The Labeling Policy Book is widely recognized and quoted from by industry members and inspection personnel. The Labeling Policy Book is available to the general public for a fee by writing to: U.S. Department of Agriculture, Food Safety and Inspection Service, Administrative Services Division, Room 0151, South Building, 14th & Independence Avenue, SW, Washington, DC 20250.

The meat and poultry products inspection regulations and the Labeling Policy Book provide the labeling regulatory requirements and policy necessary to assure that all products eligible to be generically approved under the TQCL system are not misbranded. Through the development of audit procedures, the Department will continue to ensure that these products are in full compliance with the applicable product standards and Agency labeling policies, and that labeling for such products contain all mandatory information and are not false or misleading. All other labeling for products not covered by standards of identify or composition in the meat and poultry products inspection regulations or Labeling Policy Book will continue to be approved by either SLD or the IIC prior to use.

Applying for TQCL

The basic requirements for proposing a TQCL system for approval are similar to those existing for TQC. The proposal, however, must relate specifically to product labeling. At a minimum it must include:

1. A letter of intent to the Administrator from the establishment stating:

a. The company's purpose for seeking an approved TQCL system and willingness to adhere to the requirements of the system as approved by the Department.

b. That all information generated by the establishment's TQCL system will be available to USDA personnel at all times at a designated central location in each TQC plant. This must include complete formulation and processing information for each product produced.

c. That establishment quality control personnel would have authority to halt production or shipping of product in cases where other corrective measures have been ineffective.

d. That establishment management would be available for consultation any time USDA personnel find it necessary.

2. If an establishment has personnel with primary duties relating to TQCL, a plant organizational chart must be submitted. The flow of responsibility is no predominately related to production.

3. A list identifying the applicable meat and poultry product inspection regulations and Labeling Policy Book entries relating to the labeling of products prepared in the establishment that are eligible for generic approval under the TQCL system.

4. Detailed information concerning the manner in which the TQCL system would function. Such information should include the nature of the records that would be used, the procedure for reviewing the labeling, the nature and types of deficiencies the system is designed to identify, and the nature of corrective action that will be taken if necessary.

The establishment's application will be reviewed and evaluated by the Administrator. If approved, arrangements will be made for the plan's implementation. If the application is denied, the applicant will receive written notification stating the basis for denial. The applicant will have an opportunity to submit a written statement in response to the denial and the right to request a hearing, under applicable Rules of Practice, concerning the decision to deny approval of the proposed TQCL system.

Once a TQCL system is implemented, the establishment assumes primary responsibility for its generically approved labeling and for documenting its procedures for implementing the use of new labeling. The requirements for labeling under TQCL systems are no different from those under the traditional labeling approval system, that is, product labeling may not be false or misleading and must be in full compliance with the regulations. The current TQC regulations require that a TQC establishment obtain prior approval for labeling to be used on

product being test-marketed. Approval of labeling for these test products could also receive TQCL approval if the product labeling is otherwise eligible for such approval.

As is true for all generically approved labeling, the establishment must supply a single copy of each labeling to the IIC prior to use. An additional copy of any labeling approved under a TQCL system that does not qualify to be generically approved under the current field label approval regulations shall be supplied to the IIC for forwarding to SLD for possible audit. The audit system is intended to serve as an additional safeguard against misbranded products reaching the marketplace.

Termination of TQCL

The establishment or the Administrator would be able to terminate the TQCL system by following the current procedures in the regulations for termination of TQC systems. These procedures allow the establishment to terminate a TQC system by notifying the Administrator. These procedures allow the Administrator to terminate a TQC system if the establishment prepared or distributed adulterated or misbranded product or if the establishment failed to comply with the approved TQC system after notification by the Administrator of non-compliance. Under this proposal, termination of a TQC system will terminate the TQCL system approval as well. However, a TQCL system may be terminated for reasons other than adulteration or misbranding of product without affecting the TQC system.

If a TQC or a TQCL system is terminated, the Administrator would not consider a reapplication request for at least 6 months after the termination. Since a prerequiste for TQCL system approval requires that an establishment be operating a TQC system for at least the prior year, a reapplication for TQCL would have to await reapproval of a terminated TQC system and one year of its operation.

Expected Benefits

The TQCL system would provide an innovative and efficient means of carrying out the Department's prior labeling approval responsibilities. Through the use of this system, both government and industry could realize savings while continuing to ensure that meat and poultry products are properly labeled.

The proposed system should also provide multi-plant companies some of the benefits they sought when the Department proposed the field delegation program. Under the field delegation program, IIC's approve labeling for use only in the plant to which they are assigned. Therefore, a multi-plant company seeking labeling approval for several establishments must submit its labeling application or applications to SLD.

Under field delegation, all labeling within the generically approved category is, by definition, approved for use after supplying a copy of the labeling to the IIC. Under the TQCL system, a multi-plant company could receive "one" generically approved labeling for several of its plants by supplying each inspector in charge with a copy of such labeling prior to its use.

This proposal expands the generically approved labeling category and gives multi-plant companies a meaningful alternative to SLD approval. A multi-plant company could coordinate its design of labeling, perhaps at some central location, as long as each establishment has an approved TQCL system.

Accordingly, § 317.4, paragraph (a), § 317.5, paragraph (a), § 318.4, paragraph (e), paragraph (f), paragraph (g), and paragraph (h), of the Federal meat inspection regulations and § 381.134, paragraph (a), § 381.145, paragraph (e), paragraph (f), paragraph (g), and paragraph (h), and paragraph (i), of the poultry products inspection regulations would be amended to read as set forth below.

Proposed Rule

List of Subjects

9 CFR PART 317

Food labeling.

9 CFR PART 318

Food additives, Meat and poultry products, Meat inspection, Preparation of products, Official establishment, Quality control.

9 CFR PART 381

Food labeling.

PART 317—[AMENDED]

1. The authority citation for Part 317 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254.

2. Paragraph (a) of section 317.4 (9 CFR 317.4) would be revised to read as follows:

§ 317.4 Labeling to be approved by the Administrator.

(a) No labeling shall be used on any product until it has been approved in its final form by the Administrator. For the convenience of the establishment, sketches or proofs of new labeling may be submitted in triplicate to the Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Washington, DC, for approval, and the preparation of final labeling deferred until such approval is obtained. "Sketch" labeling is a printer's proof or other copy which clearly shows all labeling material, e.g., size, location, and an indication of final color. All final labeling shall be submitted in triplicate to the Standards and Labeling Division for approval, except where such approval may be obtained from the inspector-in-charge as specified in this section or where generic approval is granted as specfied in § 317.5 or as provided in § 318.4. Any establishment that wishes to submit any labeling to the Standards and Labeling Division for approval may do so.

* * * * *

3. Paragraph (a) of section 317.5 (9 CFR 317.5) would be revised to read as follows:

§ 317.5 Generically approved labeling.

(a) Labeling which is generically approved under paragraph (b) of this section or under § 318.4 is approved for use without additional authorization, provided the labeling shows all mandatory information in a sufficiently prominent manner and is not otherwise false or misleading in any particular. Any inspector-in-charge that determines that labeling being used under paragraph (b) of this section or § 318.4 is false or misleading in any particular or that labeling alleged by an establishment to be approved under paragraph (b) of this section or § 318.4 is not so approved shall prohibit the use of the labeling. This determination shall remain in effect unless and until an alternative decision is made by the Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. A copy of any labeling to be used in accordance with paragraph (b) of this section or § 318.4 shall be supplied to the inspector-in-charge prior to its use. A copy of any labeling approved in accordance with § 318.4 shall be forwarded by the inspector-in-charge to the Standards and Labeling Division.

* * * * *

PART 318—[AMENDED]

1. The authority citation for Part 318 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C.) 901 *et seq.*,); 76 Stat. 663 (7 U.S.C. 450 *et seq.*).

2. Section 318.4 would be amended by redesignating paragraphs (e) through (g) as (f) through (h) and by adding a new paragraph (e) to read as follows:

§ 318.4 Preparation of products to be officially supervised; responsibilities of official establishment; plant operated quality control.

* * * * *

(e) *Applying For Total Quality Control for Labeling.* (1) Except for the initial approval of labeling bearing nutritional information or related statements, labeling for meat food products subject to a specific definition and standard of identity or composition provided for in Part 319 of this Subchapter or subject to provisions as to composition and labeling incorporated in the Labeling Policy Book [1] are generically approved if the labeling is controlled under a total quality control for labeling system approved by the Administrator and is used in accordance with § 317.5. The logo described in paragraph (g) of this section and the labeling for test-marketed products described in paragraph (c)(4) of this section are generically approved if the conditions of this Subchapter are met.

(2) Any operator of an official establishment who has operated under a USDA-approved Total Plant Quality Control system for at least 12 months prior to making the request described in this subparagraph and who has a plan for a total quality control for labeling system to control the labeling of meat food products which are prepared in the establishment and which are subject to the standards or provisions in the Labeling Policy Book described in paragraph (e)(1) of this section, may request that the Administrator evaluate the system to determine whether it is adequate to result in such product being labeled in compliance with the requirements of the Act and the regulations under it. Such a request shall include, at a minimum, those items and information listed in paragraphs (c)(1)–(4) of this section but specifically related to product labeling.

3. Newly redesignated paragraph (f) would be revised to read as follows:

(f) *Evaluation and Approval of Total Plant Quality Control, Total Quality Control for Labeling, or Partial Quality Control.*

(1) The Administrator shall evaluate the material presented in accordance with the provisions of paragraphs (c), (d) or (e) of this section. If it is determined by the Administrator on the basis of the evaluation that the total plant quality control system, total quality control for labeling system, or partial quality control program will result in finished products and/or product labeling, as the case may be, controlled in the manner being in full compliance with requirements of the Act and regulations, the system or program will be approved. Plans will be made for implementation under USDA supervision.

(2) In any situation where the system or program is found by the Administrator to be unacceptable, formal notification shall be given to the applicant of the basis for the denial. The applicant will be afforded an opportunity to modify the system or program in accordance with the notification. The applicant shall also be afforded an opportunity to submit a written statement in response to this notification of denial and a right to request a hearing with respect to the merits or validity of the denial. If the applicant requests a hearing and the Administrator, after review of the answer, determines the initial determination to be correct, he shall file with the Hearing Clerk of the Department the notification, answer and the request for hearing, which shall constitute the complaint and anwer in the proceeding, which shall thereafter be conducted in accordance with Rules of Practice which shall be adopted for this proceeding.

(3) The establishment shall be responsible for the effective operation of the approved total plant quality control system, total quality control for labeling system, or partial quality control program to assure compliance with the requirements of the Act and regulations. The Secretary shall continue to provide the Federal inspection necessary to carry out the Secretary's responsibilities under the Act.

* * * * *

4. Newly redesignated paragraph (h) of § 318.4 (9 CFR 318.4) would be revised to read as follows:

* * * * *

(h) *Termination of Total Plant Quality Control, Total Quality Control for Labeling, or Partial Quality Control.*

(1) Termination of an approval for a total plant quality control system of an establishment with an approved total quality control for labeling system automatically terminates approval of both systems, but termination of the approval for a total quality control for labeling system does not automatically terminate approval for both systems.

(2) The approval of a total plant quality control system, total quality control for labeling system, or a partial quality control program may be terminated at any time by the operator of the official establishment upon written notice to the Administrator.

(3) The approval of a total plant quality control system, total quality control for labeling system, or partial quality control program may be terminated upon the establishment's receipt of a written notice from the Administrator under the following conditions:

(i) If adulterated or misbranded meat food product is found by the Administrator to have been prepared for or distributed in commerce by the subject establishment. In such case, opportunity will be provided to the establishment owner or operator to present views to the Administrator within 30 days of the date of terminating the approval. In those instances where there is conflict of facts, a hearing, under applicable Rules of Practice, will be provided to the establishment owner or operator to resolve the conflict. The Administrator's termination of approval shall remain in effect pending the final determination of the proceeding.

(ii) If the establishment fails to comply with the quality control program to which it has agreed after being notified by letter from the Administrator or designee. Prior to such termination, opportunity will be provided to the establishment operator to present views to the Administrator within 30 days of the date of the letter. In those instances where there is a conflict of facts, a hearing, under applicable Rules of Practice, will be provided to the establishment operator to resolve the conflict. The Administrator's termination of quality control approval shall remain in effect pending the final determination of the preceeding.

(4) If approval of the total plant quality control system, total quality control for labeling system, or partial quality control program has been terminated in accordance with the provisions of this section, an application and request for approval of the same or a modified total quality control system will not be evaluated by the Administrator for at least 6 months from the termination date; or for at least 2 months from the termination date in the case of a partial quality control program; or, in the case of a total quality control for labeling system, for at least 6 months from the termination date or satisfaction of the condition in paragraph (e)(2) of the section concerning operation of a USDA-approved total plant quality control establishment for 12 months.

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[1] The Labeling Policy Book may be obtained for a fee from the Administrative Services Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

PART 381—[AMENDED]

1. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, (21 U.S.C. 451 *et seq.*); 76 Stat. 663, (21 U.S.C. 450 *et seq.*).

2. Paragraph (a) of § 381.134 (9 CFR 381.134) would be revised to read as follows:

§ 381.134 Generically approved labeling.

(a) Labeling which is generally approved under paragraph (b) of this section or under § 381.145 is approved for use without additional authorization provided the labeling shows all mandatory information in a sufficiently prominent manner and is not otherwise false or misleading in any particular. Any inspector-in-charge that determines that labeling being used under paragraph (b) of this section or § 381.145 is false or misleading in any particular or that labeling alleged by an establishment to be approved under paragraph (b) of this section or § 381.145 is not so approved shall prohibit the use of labeling. This determination shall remain in effect unless and until an alternative decision is made by the Standards and Labeling Division. Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. A copy of any labeling to be used in accordance with paragraph (b) of this section or § 381.145 shall be supplied to the inspector-in-charge prior to its use. A copy of any labeling used in accordance with § 381.145 shall be forwarded by the inspector-in-charge to the Standards and Labeling Division.

* * * * *

3. Section 381.145 would be amended by redesignating paragraphs (e) through (h) as (f) through (i) and by adding a new paragraph (e) to read as follows:

§381.145 Poultry products and other articles entering or at official establishments; examination and other requirements.

* * * * *

(e) *Applying For Total Quality Control for Labeling.* (1) Except for the initial approval of labels bearing nutritional information or related statements, labeling for poultry products subject to a specific definition and standard of identity or composition provided for a Subpart P of this Subchapter or for a product subject to provisions as to composition and labeling incorporated in the Labeling Policy Book are generically approved if the labeling is conatrolled under a total quality control for labeling system approved by the Administrator and is used in accordance with § 381.134. The logo described in paragraph (g) of this section and the labeling for test-marketed products described in paragraph (c)(4) of this section are generically approved if the conditions of this subparagraph are met.

(2) Any operator of an official establishment who has operated under a USDA-approved Total Quality Coantrol system for at least the 12 months prior to making the request described in this subparagraph and who has a plan for a total quality control for labeling system to control the labeling of poultry product which is prepared in the establishment and which is subject to the standards or provisions in the Labeling Policy Book described in paragraph (e)(1) of this section, may request that the Administrator evaluate the system to determine whether it is adequate to result in product being labeled in compliance with the requirements of the Act and the regulations under it. Such a request shall include, at a minimum, those items and information listed in paragraphs (c)(1)–(4) of this section but specifically related to product labeling.

4. Newly redesignated paragraph (f) would be revised to read as follows:

* * * * *

(f) *Evaluation and Approval of Total Plant Quality Control, Total Quality Control for Labling, or Partial Quality Control.* (1) The Administrator shall evaluate the material presented in accordance with the provisions in paragraph (c), (d) or (e) of this section. If it is determined by the Administrator on the basis of the evaluation that the total plant quality control system, total quality control for labeling system, or partial control program will result in finished products and/or product labeling, as the case may be, controlled in the manner being in full compliance with requirements of the Act and regulations, the system or program will be approved. Plans will be made for implementation under USDA supervision.

(2) In any situation where the system or program is found by the Administrator to be unacceptable, formal notification shall be given to the applicant of the basis for the denial. The applicant will be afforded an opportunity to modify the system or program in accordance with this notification. The applicant shall also be afforded an opportunity to submit a written statement in response to this notification of denial and a right to request a hearing with respect to the merits or validity of the denial. If the applicant requests a hearing and the Administrator, after review of the answer, determines the initial determination to be correct, he shall file with the Hearing Clerk of the Department the notification, answer and the request for hearing, which shall constitute the complaint and answer in the proceeding, which shall thereafter be conducted in accordance with Rules of Practice which shall be adopted for this proceeding.

(3) The establishment shall be responsible for the effective operation of the approved total plant quality control system, total quality control for labeling system, or partial quality control program to assure compliance with the requirements of the Act and regulations. The Secretary shall continue to provide the Federal inspection necessary to carry out the responsiblities of the Act.

* * * * *

5. Newly redesignated paragraph (h) would be renewed to read as follows

* * * * *

(h) *Termination of Total Plant Quality Control, Total Quality Control for Labeling, or Partial Quality Control* (1) Termination of an approval for total plant quality control system of an establishment with an approved total quality control for labeling system automatically terminates approval of both systems, but termination of the approval for a total quality control for labeling system does not automatically terminate approval for both systems.

(2) The approval of a plant quality control system, total quality control for labeling system, or a partial quality control program may be terminated at any time by the operator of the official establishment upon written notice to the Administrator.

(3) The approval of a total plant quality control system, total quality control for labeling system, or partial quality control program may be terminated upon the establishment's receipt of a written notice from the Administrator under the following conditions:

(i) If adulterated or misbranded poultry product is found by the Administrator to have been prepared for or distributed in commerce by the subject establishment. In such case, opportunity will be provided to the establishment owner or operator to present views to the Administrator within 30 days of the date of terminating the approval. In those instances where there is a conflict of facts, a hearing, under applicable Rules of Practice, will be afforded to the establishment owner

or operator, if requested, to resolve the conflict. The Administrator's termination of approval shall remain in effect pending the final determination of the proceeding.

(ii) If the establishment fails to comply with the quality control program to which it has agreed after being notified by letter from the Administrator or designee. Prior to such termination, opportunity will be provided to the establishment operator to present views to the Administrator within 30 days of the date of the letter. In those instances where there is a conflict of facts, a hearing, under applicable Rules of Practice, will be afforded to the establishment owner or operator, if requested, to resolve the conflict. The Administrator's termination of quality control approval shall remain in effect pending the final determination of the preceeding.

(4) If approval of the total plant quality control system, total quality control for labeling system, or partial quality control program has been terminated in accordance with the provisions of this section, an application and request for approval of the same or a modified total plant quality control system will not be evaluated by the Administrator for at least 6 months from the termination date; or for at least 2 months from the termination date in the case of a partial quality control program; or, in the case of a total quality control for labeling system, for at least 6 months from the termination date or satisfaction of the condition in paragraph (e)(2) of this section concerning operation of a USDA-approved total plant quality control establishment for 12 months.

Done at Washington, DC on: August 5, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-22763 Filed 9-24-85; 8:45 am]

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FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 541 and 542

[No. 85-821]

Corporate Governance

Dated: September 13, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed Rule.

SUMMARY: The Federal Home Loan Bank Board is proposing extensive revisions to its regulations regarding the corporate governance of federal associations. Due to the magnitude of the revisions, the Board intends to present the proposal in four parts which will be issued separately for public comment. The proposed regulations would reorganize portions of subchapter C (the regulations for federally chartered associations), and amend and add sections to provide a more logical and coplete body of rules for the corporate governance of federal associations. Part I would provide proposed definitions and set forth rules for the organization and incorporation of federal associations. Part II would contain provisions regarding federal stock associations and federal mutual associations Part III would propose revisions to the rules governing operations of and conversion to federal associations. Part IV would contain provisions regarding conservators, receivers, trust powers, miscellaneous provisions, Board rulings and statements of policy.

DATE: Comments on the proposal must be received by November 18, 1985.

ADDRESS: Send comments to the Director, Public Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: David A. Permut, Senior Attorney (202-377-6962); V. Gerard Comizio, Attorney, (202-377-6457); Patricia D. Neidecker, Paralegal, (202-377-6410); or Julie L. Williams, Associate General Counsel and Director, (202-377-6459); Corporate and Securities Division, Office of General Counsel, at the above address.

SUPPLEMENTARY INFORMATION:

I. Overview

On October 15, 1982, the Garn-St Germain Depository Institutions act of 1982 ("Act") Pub. L. 97-320, was enacted. The Act greatly broadened the types of charters and organizational options open to federal associations. Previously, federal association could be organized on a *de novo* basis only as federal mutual sayings and loan associations. The Board could charter federal savings banks, but only as mutual institutions with accounts insured by the FSLIC, and only as a direct consequence of a conversion from a state-chartered mutual savings bank. The Act substantially expanded the Board's authority in this area, permitting not only *de novo* organization of federal savings banks but also allowing any current or future federal association to be chartered either as a federal savings and loan association or a federal savings bank. Furthermore, federal charters, whether in the stock or mutual from, may be obtained by state-chargtered savings banks without the requirement that they surrender their FDIC insurance in favor of FSLIC insurance of accounts.

In recognition of the fact that multiple options exist for the orgainzation of *de novo* federal association and the conversion of various coproate entities, the Board directed the staff to study whether the existing regulations adequately covered the multiplicity of structural options for federal associations. As a result, the Board has concluded that the existing regulations cover many of the options, but in a piecemeal fashion, and that a number of important matters relating to the coporate governance of federal associations have either not been adaquately covered or have not been addressed in codified form. Consequently, the Board has preliminarily determined to propose a substantial updating of its regulations for corporate governance of federal associations. The following proposed amendments to the federal regulations were developed, based on the Model Business Corporation Act ("MBCA"), the corporate codes of Delaware, California, New York and Florida, and the Board's experience with the specific statutory requirements involved in chartering or converting federal associations, set froth under the Home Owners' Loan Act of 1933, as amended, ("HOLA") 12 U.S.C. 1464 *et seq.*

II. Reorganization

The Board believes that the existing structure of the Fedeal Regulations could be improved, in order to present a more logical structure, so that the public would not need to hunt for the various rules governing federal associations, but could directly determine what they were. The following chart was developed to reorganize the Federal Regulations:

REGULATIONS FOR THE FEDERAL SAVINGS AND LOAN SYSTEM

Present	Proposed
Section I	
Part 541—Definitions	Part 541—Definsons.
Part 542—[removed 8/3/79]..	Part 542—Organization and Incorporation of Federal Associations.
Section II	
Part 543—Incorporation, Organization and Conversion of Federal Mutual Associations	Part 543—Federal Stock Associations.
Part 544—Charter and Bylaws.	Part 544—Federal Mutual Associations

REGULATIONS FOR THE FEDERAL SAVINGS AND LOAN SYSTEM—Continued

Present	Proposed
Section III	
Part 545—Operations	Part 545—Operations.
Part 546—Merger, Dissolution, Reorganization, and Conversion.	Part 546—Conversion of and to Federal Associations.
Section IV	
Part 547—Appointment of Conservators and Receivers.	Part 547—Appointment of Conservators and Receivers.
Part 548—Powers of Conservator and Conduct to Conservatorship.	Part 548—Powers of Conservator and Conduct of Conservatorships.
Part 549—Powers of Receiver and Conduct of Receivership.	Part 549—Powers of Receiver and Conduct of Receiverships.
Part 550—Trust Powers of Federal Associations.	Part 550—Trust Powers of Federal Associations.
Part 551—Service of Process Upon Board.	Part 551—Miscellaneous.
Part 552—Stock Associations	Part 552—Reserved.
Part 553—	Part 553—Reserved.
Part 554—	Part 554—Reserved.
Part 555—Board Rulings	Part 555—Board Rulings.
Part 556—Statements of Policy.	Part 556—Statements of Policy.

III. Description of the Proposed Amendments

A. Part 541—Definitions

1. Existing definitions were amended or redesignated to reflect the changes in the regulatory structure: §§ 541.1—Act; 541.2(c)—Federal Association; 541.2(d)—Interim Federal Association; 541.2(e)—Interim State Association; 541.6—Commercial Paper; 541.8—Corporate Debt Security; 541.9 Debit Card; 541.11—Director; 541.13—General Reserves; 541.14—Home; 541.14(a)—Combination of Home and Business Property; 541.14(b)—Dwelling Unit; 541.14(c)—Single-family Dwelling; 541.16—Insured Institution; 541.17—Loans; 541.17(a)—Guaranteed Loan; 541.17(b)—Insured Loan; 541.20—(Regulatory) Net Worth; 541.24—Residential Real Estate; 541.24(a)—Combination of Residential Real Estate and Business Property Involving Minor or Incidental Business Use; 541.24(b)—Improved Real Estate; 541.24(c)—Improved Residential Real Estate; 541.24(d)—Nonresidential Real Estate; 541.24(e)—Unimproved Real Estate; 541.24(f)—Cooperative housing development; 541.27(a)—Short-term Savings Accounts; 541.27(b)—Withdrawal Value of a Savings Account; 541.32 Supervisory-Agent; Principal Supervisory Agent;

2. New definitions were added, in alphabetical order, either from existing sections of the regulations and amended as necessary, or created to reflect the changes in the regulatory structure. These included: §§ 541.2—Association [old 552.13(b)(1)]; 541.3.—Bulk Purchase of Assets [new]; 541.4—Capital Stock [new]; 541.5—Chapter [new]; 541.8.—Consolidation [old 552.13(b)(2)]; 541.2(a)—Constituent Association [old 552.13(b)(3)]; 541.10 Depository Institutions [new]; 541.11—Director [old 541.31]; 541.2(b)—Disappearing Association [old 552.13(b)(4)]; 541.12—Dividend [new]; 541.15—Home Office [new]; 541.18 Members [new]; 541.19—Merger [old 552.13(b)(5)]; 541.2(f)—Mutual Association [old 552.13(b)(6)]; 541.20—Net Worth [new]; 541.21—Officer [new]; 541.2—Paid-in Capital [new]; 541.23—Redemption [new]; 541.2(g)—Resulting Association [old 546.1(c)]; 541.25—Retained Earnings [new]; 541.26—Retirement or Concellation of stock [new]; 541.28—State [HOLA]; 541.29—Stock [new]; 541.30—Stockholder [new]; 541.2(h)—Stock Association [old 552.13(b)(7)]; 541.31—Subscriber [new]; and 541.33—Treasury Stock [new].

B. Part 542—Organization and Incorporation

1. Sections of the existing Parts 543 and 552, as amended, have been put into this new section to create a logical structure for the chartering and organization of federal associations.

2. The following twelve sections are proposed.

542.1 Application for permission to organize
542.2 Corporate title
542.3 Organizational expense
542.4 Public notice and protest
542.5 Conditional approval of application/corporate existence
542.6 Interim board of directors and interim officers
542.7 Certificate of authority
542.8 Failure to complete organization
542.9 Interim associations
542.10 Associations proposed by the Corporation or the Federal Deposit Insurance Corporation
542.11 Limitation on transaction of business
542.12 Service of process

3. Section 542.1—Application for permission to organize—contains many parts of the old §§ 543.2 and 552.2.

Paragraph (a)—*General*—is a general section and remains unchanged.

Paragraph (b)—*Computation of time*—is a new section relating to timetables applied to applications for permission to organize as well as other applications when incorporated by reference by other regulations. This paragraph is in part derived from existing section 505 of the General Regulations.

Paragraph (c)—*Forms supporting information*—is current § 543.2(b) with several significant amendments. Applications could be submitted by five persons in recognition of the fact that the applicants generally become the first board of directors. This would also be consistent with the proposed elimination of the cumulative voting requirement, discussed below; in which case a five person organizational committee would be all that would be necessary. Preprinted charters would be available from the Supervisory Agent ("SA"). An undertaking that no funds would be accepted for deposit until receipt of the new certificate of authority, discussed below, would also be made an initial application requirement.

Paragraph (d)—*Amendment of applications; substitution of applicants; and additional information*—is current § 543.2(c) with the addition of directions to the applicants should they desire to substitute another applicant(s) prior to Board approval of their application.

4. Section 542.2—*Corporate title*—Paragraph (a) *General*—is the first part of current § 543.1. The second part of that section regarding title changes has been included in the amendment of charter sections at proposed new Parts 543 and 544.

Paragraph (b)—*Registered name*—is a new section drawn from the MBCA. While the Board would not "reserve" a corporate title for future use of an association in its record system, such registration would provide a means of notifying the public of the use or intended use of a registered title and could serve to reduce litigation in this area.

5. Section 542.3—*Organizational expenses*—is a new section to indicate to organizational groups the extent of permissible organizational expenses, the necessity of meeting the Board's minimum-capitalization requirements net of expenses, and the liability of the organizers for expenses in the event of withdrawal or disapproval of the application.

6. Section 542.4—*Public notice and protests*—contains most of current §§ 543.2(d), (e) and (f).

Paragraph (a)—*Public notice and inspection*—is essentially current § 543.2(d).

Paragraph (b)—*Protest*—tracks current § 543.2(e), but additionally would allow the SA to determine substantiality rather than the Principal SA, in order to expedite the process.

Paragraph (c)—*Oral argument*—is essentially current § 543.2(e), modified to provide that the Supervisory Agent will determine the time and place of oral argument.

7. Section 542.5—*Conditional approval application for permission to organize and commencement of*

corporate existence—is a new section to expressly provide that corporate existence commences upon conditional Board approval of the application, but that applicants must fulfill any conditions of the Board approval prior to being issued a certificate of authority to commence business operations. This section also refers applicants to the Administrative Procedure Act for their right to appeal in the case of Board denials.

8. Section 542.6—*Interim board of directors and interim officers*—is derived from current §§ 543.6(a) and 552.2–1(d).

9. Section 542.7—*Certificate of authority*—In a codification of longstanding practice, this new section would direct the Principal SA to issue a certificate of authority to commence business when he is satisfied that the applicants have satisfied the minimum-capitalization requirements, sold stock in accordance with the requirements of Part 563g [as proposed], obtained Bank membership and insurance of accounts, paid the necessary premium to the FSLIC for insurance, elected interim officers, bonded the interim officers, directors and agents, and have complied with any undertaking made in connection with the application or other requirement or condition imposed by the Board.

10. Section 542.8—*Failure of completion*—is essentially current §§ 543.6(d) and 552.2–1(i).

11. Sections 542.9—*Special procedures for interim Federal associations*—is essentially current §§ 543.2(h) and 552.2–2, but provides for a delegation to the Supervisory Agent for the use of interims in transactions when the interim will disappear.

12. Sections 542010—*Federal associations proposed by FSLIC or FDIC*—is essentially current §§ 543.7–1 and 552.2–3 with a provision added for institutions proposed by the FDIC under section 5(o) of the HOLA or any successor provisions.

13. Section 542.11—*Limitations on transactions of business*—is essentially current § 552.2–4 with a reference to the proposed new "certificate of authority" section.

14. Section 542.12—*Service of process*—is a new section to provide explicit direction with regard to service of process. The Board is requesting public comment on any alternate service-of-process rule such as using existing state law for service of process for federal associations with home offices in that State.

Paragraph (a)—*Registered office and registered agent*— would explicitly designate a registered office for a federal association and allow the association to appoint a registered agent for service of process.

Paragraph (b)—*Out-of-state offices and service by mail*—would establish procedures for service of process when offices of the association are outside the state where the home office is located. In addition, the section would codify the longstanding Board position that service corporation offices and agency offices are separate corporate entities to which state law on service of process applies.

C. Comment Period and Effective Date

The Board is soliciting comments on Part I of the proposal for a period of 60 days, but will also accept comments after the 60-day period if made in conjunction with comments regarding later Parts of the proposal.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603 (1982), the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the proposed rules.* These elements have been discussed elsewhere in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rules would apply.* The rule would apply to all federally chartered savings and loan associations and savings banks ("federal associations").

3. *Impact of the proposed rules on small institutions.* The policies will affect all federal associations equally and will not have an adverse impact on small institutions.

4. *Overlapping or conflicting federal rules.* There are no known federal rules which duplicate, overlap, or conflict with the proposed rules.

5. *Alternatives to the proposed rule.* There are no alternatives that would be less burdensome than the proposal in addressing the concerns expressed in the supplementary information set forth above.

List of Subjects in 12 CFR Parts 541 and 542

Savings and loan associations.

Accordingly, the Federal Home Loan Bank Board hereby proposes to revise Part 541 and add Part 542, Subchapter C, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

1. Revise Part 541 as follows:

PART 541—DEFINITIONS

Sec.

541.0 General rules of construction.
541.1. Act.
541.2 Association.
541.3 Bulk purchase of assets.
541.4 Capital stock.
541.5 Charter.
541.6 Commercial paper.
541.7 Consolidation.
541.8 Corporate debt security.
541.9 Debit card.
541.10 Depository institution.
541.11 Director.
541.12 Dividend.
541.13 General reserves.
541.14 Home.
541.15 Home office.
541.16 Insured institution.
541.17 Loans.
541.18 Members.
541.19 Merger.
541.20 Net worth.
541.21 Officer.
541.22 Paid-in capital.
541.23 Redemption.
541.24 Residential real estate.
541.25 Retained earnings.
541.26 Retirement or cancellation of stock.
541.27 Definitions relating to savings accounts.
541.28 State.
541.29 Stock.
541.30 Stockholder.
541.31 Subscriber.
541.32 Supervisory Agent; Principal Supervisory Agent.
541.33 Treasury stock.

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Reorg. Plan No. 3 of 1947; 3 CFR 1943–1948 comp.) p. 1071.

§ 541.0 General rules of construction.

Unless another definition is provided in this subchapter, or the context otherwise requires, the definitions in Part 521 of this chapter apply.

§ 541.1 Act.

The Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1461 *et. seq.*

§ 541.2 Association.

Any building and loan, savings and loan, or homestead association, cooperative bank or savings bank organized under Federal or state law, including interim Federal associations and interim state associations.

(a) *Constituent association.* Resulting or disappearing association in a merger, consolidation or bulk purchase of assets.

(b) *Disappearing association.* An association whose corporate existence does not continue after a merger or consolidation effected under this part.

(c) *Federal association.* A savings and loan association or savings bank chartered by the Board under section 5 of the Act and, except as the Board may otherwise provide, any building and

loan, savings and loan, building, or homestead association, organized or incorporated under the laws of the District of Columbia.

(d) *Interim Federal association.* An association chartered by the Board under section 5 of the Act to facilitate the acquisition of an existing Federal association or other insured institution or to facilitate any other transaction the Board may approve.

(e) *Interim state association.* An insured institution, other than a Federal association, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, chartered to facilitate the acquisition of an existing Federal association or other insured institution or to facilitate any other transaction the Board may approve.

(f) *Mutual association.* Any association not authorized to issue stock under Federal or state law.

(g) *Resulting association.* An association whose corporate existence continues after a merger, or the association resulting from a consolidation of two or more associations.

(h) *Stock association.* Any association authorized to issue stock.

§ 541.3 Bulk purchase of assets.

A transfer of all or substantially all the assets, which may include the assumption of all or substantially all the liabilities of an association or a depository institution to or from a Federal association.

§ 541.4 Capital stock.

Common, preferred or other equity securities that can be issued by a Federal stock association, but not including mutual capital certificates, income capital certificates, Net Worth Certificates or subordinated debt.

§ 541.5 Charter.

The document issued by the Board granting Federal associations the right to operate perpetually for the purpose or purposes enumerated under section 5 of the Act and subject to the Constitution, the laws of the United States and the applicable rules, regulations, and orders of the Board. The charter shall include any amendments or supplements thereto, and any revised charter.

§ 541.6 Commercial paper.

Any note, draft, or bill of exchange which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

§ 541.7 Consolidation.

Fusion of two or more associations into a newly-created association having the combined powers and rights of all its constituent associations.

§ 541.8 Corporate debt security.

A marketable obligation evidencing the indebtedness of any corporation in the form of a bond, note and/or debenture which is commonly regarded as a debt security and is not predominantly speculative in nature. A security is marketable if it may be sold with reasonable promptness at a price which corresponds reasonably to its fair value.

§ 541.9 Debit card.

A card that enables an accountholder to obtain access to a savings account for the purpose of making withdrawals or of transferring funds to a third party by non-transferable order or authorization.

§ 541.10 Depository institution.

Any commercial bank (including a private bank), savings bank, trust company, savings and loan association, building and loan association, homestead association, cooperative bank, industrial bank or credit union, chartered in the United States and having its principal office located in the United States.

§ 541.11 Director.

Any director, trustee, or other person performing similar functions with respect to any organization whether incorporated or unincorporated. The term does not include an advisory director, honorary director, director emeritus, or similar person, unless the person is otherwise performing functions similar to those of a director.

§ 541.12 Dividend.

A transfer of cash or assets or an occurrence of indebtedness to or for the benefit of any stockholders without consideration, including a transfer by an affiliate. A dividend does not include a *pro rata* distribution to stockholders of stock in the association or the purchase of stock for cash or property.

§ 541.13 General reserves.

Aggregate reserves established solely to meet losses.

§ 541.14 Home.

Real estate comprising a single-family dwelling(s) or a dwelling unit(s) for four or fewer families in the aggregate.

(a) *Combination of home and business property.* A home used in part for business.

(b) *Dwelling unit.* The unified combination of rooms designed for residential use by one family, other than a single-family dwelling.

(c) *Single-family dwelling.* A structure designed for residential use by one family, or a unit so designed, whose owner owns, directly or through a non-profit cooperative housing organization, an undividend interest in the underlying real estate, including property owned in common with others which contributes to the use and enjoyment of the structure or unit.

§ 541.15 Home office.

The office designated in Section Two of a Federal association's charter.

§ 541.16 Insured institution.

An insured institution as defined in § 561.1 of this Chapter.

§ 541.17 Loans.

Obligations and extensions or advances of credit; and any reference to a loan or investment includes an interest in such a loan or investment.

(a) *Guaranteed loan.* A loan guaranteed or as to which a commitment to guarantee has been made under the Servicemen's Readjustment Act of 1944, or Chapter 37 of Title 38, U.S. Code, as amended.

(b) *Insured loan.* A loan as to which the mortgage is insured, or as to which a commitment for such insurance has been made under the National Housing Act or the Servicemen's Readjustment Act of 1944, or Chapter 37 of Title 38 U.S. Code, as amended.

§ 541.18 Members.

Any holder of an association's savings, demand or other authorized accounts or other persons deemed members under the charter of a Federal mutual association.

§ 541.19 Merger.

United two or more associations by the transfer of all property rights and franchises to the resulting association, which retains its corporate identity.

§ 541.20 Net worth.

Regulatory net worth as defined in § 561.13 of this Chapter.

§ 541.21 Officer.

The president, and any vice-president, secretary, treasurer, comptroller and any other person performing similar functions with respect to any association. The term "officer" also includes the chairman of the board of

directors, the chief executive officer, chief financial officer, or a person performing similar functions, if such individual is authorized by the charter or bylaws of the association to participate in its operating management or if such individual in fact participates in such management.

§ 541.22 Paid-in capital.

The sum of the cash and other consideration received, less expenses, including commissions, which sum is paid or incrred by the association in connection with the issuance of stock, plus any cash and other consideration contributed to the association by or on behalf of its stockholders or transferred to paid-in capital by action of the board of directors or stockholders, less any distribution therefrom.

§ 541.23 Redemption.

(a) *Account redemption.* The termination by repayment of all or any part of the savings accounts of a Federal association pursuant to provisions in such association's charter or § 555.8 of this subchapter.

(b) *Stock redemption.* A reacquisition by a Federal stock association of the association's stock in accordance with the terms of the issuance of such stock.

§ 541.24 Residential real estate.

The terms "residential real estate" or "residential real property" means homes (including condominiums and cooperatives), combinations of homes and business property, other real estate used for primarily residential purposes other than a home (but which may include homes), combinations of such real estate and business property involving only minor business use, farm residences and combinations of farm residences and commercial farm real estate, property to be improved by the construction of structures, or leasehold interests in the above real estate.

(a) *Combination of residential real estate and business property involving only minor or incidential business use.* Residential real estate for which no more than twenty percent of the total appraised value of the real estate is attributable to the business use.

(b) *Improved nonresidential real estate.* Nonresidential real estate (1) containing a permanent structure(s) constituting at least 25 percent of its value, or (2) containing improvements which make it usable by a business or industrial enterprise; or (2) used, or to be used within a reasonable time, for commercial farming, excluding hobby and vacation property.

(c) *Improved residential real estate.* Residential real estate containing offsite or other improvements sufficient to make the property ready for primary residential construction, and real estate in the process of being improved by a building or buildings to be constructed or in the process of construction for primarily residential use.

(d) *Nonresidential real estate.* The terms" "nonresidential real estate" or "nonresidential real property" mean real estate that is not "residential real estate", as that term is defined in paragraph (a) of this section.

(e) *Unimproved real estate.* Real estate that will be improved, as defined in paragraphs (b) or (c) of this section.

(f) *Cooperative housing development.* Real estate primarily comprising a group of single-family dwellings owned by a non-profit cooperative housing organization.

§ 541.25 Retained earnings.

Cumulative net income and losses from past fiscal years that have not been distributed.

§ 541.26 Retirement of cancellation of stock.

Removal of reacquired stock from the status of outstanding and issued stock.

§ 541.27 Definitions relating to savings accounts.

(s) *Short-term savings account.* A savings account which will be withdrawn in less than twenty-four months or was established to accumulate funds to pay taxes or insurance permiums or real estate sucuring a loan.

(b) *Withdrawal value of a savings account.* The amount invested in a savings account plus earnings credited thereto, less lawful decuctions therefrom.

§ 541.28 State.

Any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Somoa, and any territory or prossession of the United States.

§ 541.29 Stock.

Common or preferred stock.

§ 541.30 Stockholder.

The owner as reflected on the books and records of the association of common or preferred stock in a stock association.

§ 541.31 Subscriber.

One who subscribes for stock in a stock association or the required capital of a mutual association.

§ 541.32 Supervisory Agent; Principal Supervisory Agent.

(a) *Supervisory Agent.* The Principal Supervisory Agent or any other officer or employee of the Federal Home Loan Bank designated under § 501.10 or § 501.11 of this Chapter.

(b) *Principal Supervisory Agent.* The President of the Federal Home Loan Bank of the district in which a Federal association or insured institution is, or will be, located, or any other person designated in writing as Principal Supervisory Agent by the Board to serve as such for such term as under such conditions as may be specified.

§ 541.33 Treasury stock.

The stock of an association which has been issued, has been acquired by and is held by the association, and has not been cancelled or restored to the status of authorized by unissued stock. Treasury stock shall be deemed to be "issued" stock, but not "outstanding" stock.

2. Add Part 542 as follows:

PART 542—ORGANIZATION AND INCORPORATION

Sec.

542.1 Application for permission to organize.
542.2 Corporate title.
542.3 Organizational expense.
542.4 Public notice and protest.
542.5 Conditional approval of application for permission to organize and commencement of corporate existence.
542.6 Interim board of directors and interim officers.
542.7 Certificate of authority.
542.8 Failure of completion.
542.9 Special procedures for interim Federal associations.
542.10 Federal associations proposed by the Corporation or the Federal Deposit Insurance Corporation.
542.11 Limitations on transaction of business.
542.12 Service of process.

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Reorg. plan No. 3 of 1947; 3 CFR 1943–1948 Comp., p. 1071.

§ 542.1 Application for permission to organize.

(a) *General.* Questions regarding this section shall be directed to the Supervisory Agent of the Federal Home Loan Bank of which the institution will be a member. Recommendations by Supervisory Agents and offices and employees of the Board regarding applications for permission to organize a Federal association are privileged, confidential, and subject to § 505.5 of this Chapter.

(b) *Computation of time.* In computing any period of time prescribed or allowed by this part, the date of the act, event, or default from which the designated period of time begins to run is not to be included. The last day so computed shall be included, unless it is a Saturday, Sunday, or a Federal holiday, in which event the period shall run until the next day which is neither a Saturday, Sunday nor a Federal holiday.

(c) *Forms; supporting information.* Persons applying for permission to organize a Federal association shall obtain the Board-approved application and notice forms and related instructions from the Supervisory Agency. An application for Federal Home Loan Bank membership pursuant to Part 523 and an application for insurance of accounts pursuant to Part 562 shall be filed. An application for permission to organize and all required supporting information shall be executed by at least five persons (the "applicants") and submitted to the Supervisory agent. The applicants shall propose a corporate title in accordance with § 542.2 of this Part to be included in Section One of the association's charter. The applicants shall specify the type of standard charter, which may include any preapproved charter provisions desired. Preprinted standard charters, preapproved optional charter provisions and model bylaws shall be available from the Supervisory Agency. The supporting information shall show: (1) Applicants are citizens of the United States of good character and responsibility; (2) there is a need for the proposed association in the community to be served by it; (3) the association has a reasonable probability of success; (4) the association can be established without undue injury to properly conducted existing local thrift and home-financing institutions; and (5) a description of local community credit needs. The application shall also include an undertaking that no funds will be accepted for deposit until the Board or its delegate issues a certificate of authority pursuant to § 542.7 of this Part. An application shall be deemed filed when an original and two conformed copies are delivered to the Supervisory Agent; the Supervisory Agent shall notify the applicant in writing that the application is complete and direct the applicant to publish notice pursuant to § 542.4(a) of this Part when the Supervisory Agent determines that all information required under this paragraph (c) has been submitted.

(d) *Amendment of application; substitution of applicants; and additional information.* An applicant may amend an application or file additional supporting information only until publication of notice under § 542.4(a), unless otherwise requested to do so by the Supervisory Agent or the Board. Change in the composition of the applicants shall be made upon the filing of required information and only with the approval of the Supervisory Agent. In connection with such changes, the Supervisory Agency may require additional information or a new application.

§ 542.2 Corporate title.

(a) *General.* A Federal association's corporate title shall be as specified in its charter. Except for corporate titles in existence or applied for as of May 4, 1984, a Federal association's title shall include the word "Savings" and in some manner indicate that the association is a Federal association. A Federal association shall not adopt a title that misrepresents the nature of the institution or the services it offers. A Federal association may effect a change in its corporate title by amending its charter in accordance with this section and §§ 543.4 or 544.4 of this subchapter.

(b) *Registered name.* Persons applying for permission to organize a Federal association pursuant to § 542.1 of this Part or a Federal association proposing to change its corporate title pursuant to section § 543.4 or 544.4 shall register the title with the Supervisory Agent. The register of proposed titles will be open to public inspection. Corporate titles may not, however, be "reserved" for future use and registration under this section is not dispositive of nor is it intended to address an association's right to use such title. Corporate titles of institutions that completed their organization prior to [Effective Date of final rule if adopted] shall be deemed registered with the Supervisory Agent.

§ 542.3 Organizational expenses.

(a) *General.* Expenses incurred by applicants in making an application for permission to organize a Federal association will generally be allowed, as a charge to an approved association's capital, if such expenses are reasonably documented and disclosed to current and/or prospective stockholders in the case of a stock association, or pledgees in the case of a mutual association, with sufficient information to enable stockholders or pledgees to evaluate the reasonableness of the expenses. Organizational expenses typically include filing fees, cost of professional and consulting services, travel expenses, and printing, postage, telephone and supply costs. While some professional and consulting assistance is normal and may properly be charged to the association's organizing expenses, organizers are expected to be able to contribute time and expertise to the organization of the association and should neither unduly rely upon, nor make an excessive charge to, the association's accounts for professional and consulting services.

(b) *Failure to document; excessive expenses.* Organization expenses which are not documented, not adequately disclosed, clearly unnecessary, or so large that the payment would render capital inadequate, reflect adversely on the organizing group. The Board may prohibit payment of excessive expenses from association funds and/or require that additional capital, sufficient to compensate for excessive expenses, be raised prior to issuance of a certificate of authority to commence business.

(c) *Responsibility for expenses.* Organizational expenses for disapproved or withdrawn applications are the sole responsibility of the organizing group. Any fee which is contingent upon any action, decision, or forbearance on the part of the Board will generally be grounds for withdrawal of the conditional approval of the application for permission to organize or for disapproval of the application.

§ 542.4 Public notice and protest.

(a) *Public notice and inspection.* (1) The applicants shall publish notice within 10 days after being notified by the Supervisory Agent that the application is complete. Notice shall be published in a newspaper printed in the English language and having a general circulation in the community in which the home office of the new association is to be located. If the Supervisory Agent determines that the primary language of a significant number of adult residents of the community is a language other than English, the Supervisory Agent may require that notice also be given simultaneously in the appropriate language(s).

(2) Promptly after publication, the applicant(s) shall transmit to the Supervisory Agent a copy of such notice and publisher's affidavit of publication.

(3) The Supervisory Agent shall give notice of the application to the State official who supervises savings and loan associations in the state in which the home office of the new association is to be located, and to persons whose requests for announcements under Part 563e of this Chapter have been received in time for such notification; these notices shall be in addition to legal notification as set forth in this section. The Supervisory Agent may also give

notice to any other persons he believes might have an interest in the application.

(4) The application and its filing shall be confidential until publication of notice. Thereafter, the application and all related communications may be inspected by any person at the Supervisory Agent's office during regular working hours, unless application information is exempted from public disclosure under § 505.5 of this Chapter.

(b) *Protest.* Communications and answers to protests shall be submitted only as provided in this paragraph (b) or as requested by the Supervisory Agent or the Board.

(1) Within 10 days of the date of publication of notice of application (or 17 days after such date if an extension is requested in writing within the 10-day period), anyone may file a communication in favor or in protest of the application by furnishing three copies to the Supervisory Agent. If the applicant or any person who has filed a substantial protest pursuant to this paragraph wishes to have oral argument heard on the merits of an application, a request for oral argument must be made within 10 days of that person being informed that the protest is substantial.

(2) Within 10 days after the filing of a protest, the Supervisory Agent shall advise the protestant and the applicant, in writing, whether the protest is considered "substantial."

(3) A protest will be considered substantial only if it is written and seasonably filed, and only in those instances where the reason for the protest is consistent with one of the regulatory bases set forth in the relevant regulation for denying the application (excluding supervisory considerations) and contains at least the following:

(i) A summary of the reasons for the protest;

(ii) The specific matters in the application to which the protestant objects, and the reasons for each objection;

(iii) Facts supporting the protest, including relevant economic or financial data; and

(iv) Any adverse effects on the protestant which may result from approval of the application.

(4) A protest filed by an individual or community group pertaining to an applicant's performance under Part 563e of this Chapter (the Community Reinvestment Act regulations) shall not be considered insubstantial merely because of the form in which it is submitted. The Supervisory Agent's determination whether a protest is "substantial" is final.

(5) The applicant may file an answer to any protest until 10 days after receiving notice pursuant to paragraph (b)(2), of this section, by furnishing three copies to the Supervisory Agent.

(c) *Oral argument.* (1) *General.* Oral argument on the merits of an application shall be heard if (i) the applicant or anyone who has filed a substantial protest has seasonably requested it pursuant to paragraph (b) of this section; or (ii) the Supervisory Agent, after reviewing the application and other pertinent information, considers oral argument desirable. The Supervisory Agent shall mail notice of the time (which shall be not less than 10 days after such mailing) and place of oral argument to the applicant and to all persons who filed substantial protests. The Supervisory Agent shall designate the time and place of any oral argument.

(2) *Procedure.* The Supervisory Agent, or any other person designated by the Board, may hear and determine all matters relating to the conduct of oral argument. Arguments may be made in person or by authorized representatives and, unless otherwise permitted by the Supervisory Agency, shall be based only on written information previously filed and determined to be substantial protests. A reasonable time of at least one hour shall be allowed to each side for oral argument. A transcript of the oral argument shall be made and included in the application file.

§ 542.5 Conditional approval of application for permission to organize and commencement of corporate existence.

Except as otherwise provided in § 542.9(b) of this Part, applications for permission to organize may only be approved by the Board and shall be subject to the condition that applicants obtain a certificate of authority under § 542.7 of this Part and to any other conditions imposed by the Board. Upon conditional approval of an application, the Board shall issue to the association a charter for a Federal savings and loan association or for a Federal savings bank, as requested by the applicants, which shall be in the form provided in Part 543 or 544 of this subchapter and which shall be furnished to the association at the time the certificate of authority is issued. Corporate existence commences upon conditional Board approval of such application. Denials of permission-to-organize applications may be appealable under 5 U.S.C. 701–706 (1976).

§ 542.6 Interim board of directors and interim officers.

Upon approval of an application for permission to organize a Federal association, the applicants shall constitute the interim board of directors of the association until the board of directors of the association are elected by the members at the organizational meeting. The interim officers of the association shall be elected by the interim directors and shall serve until their successors are duly elected and qualified. The association must hold an organizational meeting to elect its directors and officers within six months after receiving a certificate of authority to commence business. The interim officers may effect compliance with any conditions prescribed by the Board.

§ 542.7 Certificate of authority.

A Federal association may commence business activities only upon receipt of a certificate of authority. The Principal Supervisory Agent shall issue a certificate of authority and furnish the association an executed copy of the association's charter when it has been demonstrated to his satisfaction that:

(a) There are sufficient funds paid in to the association to satisfy the minimum-capitalization requirements specified in the Board's conditional approval of the application for permission to organize, and, with respect to a stock association, all shares of stock proposed to have been sold have been sold and fully paid for or, with respect to a mutual association, all accounts proposed to have been pledged as capital, have been so pledged;

(b) Any stock sold has been sold in accordance with the requirements of Part 563g [as proposed elsewhere in this issue of the **Federal Register**].

(c) The association's interim officers, directors, and agents have been bonded to the extent required by § 563.19 of this Chapter;

(d) The association has obtained membership in the Federal Home Loan Bank for which it is eligible to be a member under § 523.3–2 of this Chapter;

(e) The association has paid the necessary premium and received insurance of accounts from the Corporation; and

(f) The association and organizers have complied with all undertakings made in connection with the application and with any other requirement or condition imposed by the Board by regulation or resolution.

§ 542.8 Failure of completion.

Any charter issued by the Board shall become void and all subscriptions to capital stock in the case of a stock association, or pledges in the case of a mutual association, shall thereupon be returned, if (a) a certificate of authority

is not issued to a Federal association within six months after the Board conditionally approves the application for permission to organize, or within such additional period as the Board or its delegate for good cause may grant, or (b) in the case of an interim Federal association, if a transaction facilitated by the existence of an interim institution has not been approved.

§ 542.9 Special procedures for interim Federal associations.

(a) *General.* The procedures prescribed by § 542.4 (a), (b), and (c) of this Part shall not be required with respect to applications for permission to organize an interim Federal association except as may be required by Parts 543, 544, 563, and 574 of this Chapter.

(b) *Approval.* Conditional approval of an application for permission to organize an interim Federal association shall be conditioned on Board or delegated approval of the transaction in the following situations: (1) Where the corporate existence of an interim Federal association will not continue after consummation of the transaction which it is chartered to facilitate, the applicants need not obtain a certificate of authority but must satisfy any conditions imposed by the Supervisory Agent who may grant both conditional and final approval of the application in conjunction with approval of an application, a failure to disapprove a change-in-control notice, or failure to object to a notice of an exempt acquisition filed pursuant to Part 574. (2) Where the corporate existence of an interim Federal association will continue after the consummation of the transaction which it is chartered to facilitate, the applicants must obtain a certificate of authority pursuant to this Part and may receive conditional and final approval of the application only from the Board in conjunction with approval of an application, a failure to disapprove a change-in-control notice, or failure to object to a notice of an exempt acquisition filed pursuant to Part 574. In evaluating the information provided in accordance with the requirements of § 542.1(c) of this Part, the Board or the Supervisory Agent will consider the purpose for which the interim association will be organized, the form of any proposed transaction involving the interim association, the effect of the transaction on any existing institution involved in the transaction, and the effect of the transaction on the community and other properly conducted existing thrift institutions.

§ 542.10 Federal associations proposed by the Corporation or the Federal Deposit Insurance Corporation.

Sections 542.1 through 542.9 of this Part do not apply to a Federal association which is proposed by the Corporation under section 5(p) of the Act or to a Federal association which is proposed by the Federal Deposit Insurance Corporation under section 5(o) of the Act. Incorporation and organization of such associations shall be complete when the Board so determines.

§ 542.11 Limitations on transaction of business.

No person may collect money from others for the purpose of organizing a Federal association, or represent himself as authorized to do so, until the Board has conditionally approved the application for permission to organize pursuant to § 542.5 of this Part, and no Federal association shall transact any business prior to obtaining a certificate of authority to commence business pursuant to § 542.7 of this Part.

§ 542.12 Service of process.

(a) *Registered office and registered agent.* Service of legal process upon a Federal association shall be made by delivering a copy personally to the president, secretary, or registered agent of the Federal association at its home office, which for purposes of this section shall constitute the registered office of the Federal association. A registered agent, appointed by the board of directors, may consist of either the president, vice president, secretary, assistant secretary or any director of the Federal association. Where the principal place of business is not the home office, the board of directors shall designate a registered agent at the home office. A listing of the registered agent and the address of the home office shall be obtainable at any Office of the Federal association and a current copy of the listing shall be sent to the Supervisory Ageny.

(b) *Out-of-state offices and service by mail.* Service of legal process upon a Federal association with offices in a state other than the state where the home office is located may be made by mailing such service of legal process, by certified mail, return receipt requested, to the president, secretary, or the registered agent at the home office. Offices of service corporations or agencies of the Federal association shall not constitute offices of the Federal association for purposes of this section, and service of process shall be made upon such other entities as is provided for by the laws of the state where such entity is located.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85-22611 Filed 9-24-85; 8:45 am]

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12 CFR Parts 563, 563c, and 563g

[No. 85-822]

Securities Offerings

September 13, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is proposing to adopt regulations governing certain offers or sales of securities issued by an institution ("issuer"), where (1) the institution is an "insured institution" as that term is defined in § 561.1 of the Board's Insurance Regulations, (2) the institution is a federally-chartered insured institution in organization, or (3) the institution is a state-chartered institution and is approved for insurance of accounts by the Corporation within one year of an offer or sale of the institution's securities. The proposed rules would provide that an issuer's offer or sale of securities shall be made only through the use of an offering circular which has been filed with and declared effective by the Corporation. Exemptions would be available for offerings (1) made prior to the effective date of any final rules, (2) of securities and transactions exempt from registration under certain sections of the Securities Act of 1933 ("Securities Act"), (3) of certain collateralized debt securities in minimum denominations of $100,000 or more, (4) complying with the Board's regulations on retail repurchase agreements, except where the issuer has a net-worth deficiency, (5) in conversions from mutual to stock form other than in a supervisory case, (6) in certain non-public offerings, and (7) of securities distributed exclusively abroad to foreign nationals. The offering circular would be required to comply with certain items of Form OC and Form PS under the Board's Conversion Regulations and with all of the items of the registration form that the issuer could use if it were required to register the securities under the Securities Act. The Board also is proposing to amend its

regulations governing mutual capital certificates, outside borrowings, and subordinated debt to eliminate offering-circular requirements that would be rendered unnecessary by the proposed regulations, eliminate the minimum-denomination requirements for outside borrowing and subordinated debt securities, and permit an insured institution or an affiliate to offer or sell its securities in the offices of the insured institution under specified circumstances. Finally, the Board proposed to amend its retail-repurchase-agreement regulations to clarify the offering-circular requirements.

The proposal is a modified version of an earlier proposal which is being withdrawn. The principal modifications: (1) Delete the first proposal's exemptions for certain exchange offerings, intrastate offerings, and offerings to employees, officers or directors pursuant to certain stock plans; (2) provide an exemption for certain collateralized debt securities issued in minimum denominations of $100,000 or more; (3) require issuers in a public offering to register under the Securities Exchange Act of 1934 ("Exchange Act") and not deregister for one year; (4) clarify that the exemption for a non-public offering is only available upon compliance with the Board's requirements; (5) revise the first proposal's exemption for a non-public offering, from sales to not more than 15 persons to sales to not more than 35 sophisticated investors; (6) provide a procedure for shelf-registration; and (7) add provisions for enforcement which provide for the Corporation to direct a rescission offer.

The purpose of the proposed regulations is to establish uniform rules for securities offerings applicable to all insured institutions and thereby reduce the risk that securities offerings of insured institutions would have an adverse effect on the safety and soundness of such institutions or the FSLIC fund.

DATE: Comments must be received by November 18, 1984.

ADDRESS: Send comments to Director, Information Services, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available for public inspection at this address

FOR FURTHER INFORMATION CONTACT: John P. Harootunian, (202–377–6415), Deputy Director for Securities, Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, at the above address

SUPPLEMENTARY INFORMATION:

A. Background: Board Regulation of Securities Offerings

By Resolution No. 83–126, dated March 2, 1983 (48 FR 10684, March 14, 1983), the Board proposed regulations for securities offerings ("first proposal"). On the same day, by Resolution No. 83–127 (48 FR 10612, March 14, 1983), the Board also adopted regulations under its new chartering authority which require *de novo* federally-chartered stock institutions to comply with the proposed securities regulation or such final regulation as is adopted by the Board.

Upon further consideration, the Board is withdrawing the first proposal in favor of the modified proposal set forth herein. The Board believes that modifications are appropriate in response to the comments received on the first proposal, as discussed below, and in light of the Board's experience with filing relating to securities offerings by *de novo* federally-chartered stock institutions.

The modified proposal, like the first proposal, would be applicable to institutions the accounts of which are insured by the FSLIC ("insured institutions"), federally-chartered stock savings and loan associations and savings banks in organization, and state-chartered savings and loan associations and savings banks approved for insurance of accounts by the Corporation within one year of an offer or sale of the institution's securities.

Pursuant to section 3(a)(5) of the Securities Act, securities issues by savings and loan associations and similar institutions "supervised and examined by State or Federal authority having-supervision over . . . such institution[s]" are exempt from the registration requirements of the Securities Act. However, because the section 3(a)(5) exemption from securities registration is limited to savings and loan associations and similar institutions that are regulated by a federal or state authority (which is similar to the registration exemption for commercial banks under section 3(a)(2) of the Securities Act), a principal ground for the exemption is that the focus of regulation of the securities activities of financial institutions supervised, examined, and insured by a federal authority should be such authority rather than the Securities and Exchange Commission ("Commission"). Because the Board has supervisory and examination authority over insured institutions, it is the Board's responsibility to regulate the securities activities of those institutions when it finds such regulation to be necessary or appropriate for the protection of the investing public and the FSLIC fund.

While securities issued by insured institutions are exempt from the Securities Act registration requirements, the offer and sale of those securities are subject to certain of the antifraud provisions of the Securities Act and the Exchange Act. Although the antifraud provisions are by their terms prohibitions against certain types of conduct, their practical effect is to prescribe that an issuer make full and fair disclosure of all information material to an investment decision in connection with the offer and sale of securities. Generally, an issuer's compliance with disclosure regulations will reduce the risk of securities fraud and of potential liability.

For an insured institution, a material violation of the federal securities laws' antifraud provisions would constitute an unsafe and unsound practice. In addition, the safety and soundness of the thrift industry is dependent upon its access to capital and the rational free-market allocation of capital among individual insured institutions. The use of inadequate or misleading disclosure by individual insured institutions in connection with the offer and sale of securities could have a significant adverse effect on the capabilities of other insured institutions to raise capital, could result in an irrational allocation of capital within the industry, and could lead to illiquid and disorderly markets for the securites of insured institutions. Therefore, the Board has the responsibility of regulating the securities activities of insured institutions when it determines that such regulation is necessary or appropriate for the preservation of the safety and soundness of insured institutions. Further, the Board has the responsibility of regulating the securities activities of insured institutions when it determines that such regulation is necessry or appropriate to ensure that they are able to perform their functions as providers of housing finance. Finally, the Board has the responsibility of regulating the securities activities of all insured institutions with a class of securities registered under the Exchange Act when it determines that such regulation is necessary or appropriate in the public interest for the protection of investors and to ensure fair dealing in the securities of such insured institutions.

The Board has long found it appropriate to regulate the offer and sale of debt securities by all insured institutions. See, 12 CFR 563.8 (f), (g), and (h), 12 CFR 563.8–1(d), and 12 CFR 563.8–4. The Board also has regulated

the offer and sale of equity securities by insured institutions converting from the mutual to the stock form of organization. See, 12 CFR Part 563b. However, the Board has not regulated the post-conversion offer and sale of equity securities by insured institutions. One reason that regulation has not been extended to this area has been the absence until recently of many institutions organized in stock form. Moreover, many of the stock institutions were converted from mutual to stock form under the Board's rules which apply to converted institutions the periodic reporting requirements of the Exchange Act. Therefore, the Board's rules ensured to some extent that disclosure made by competing insured institutions in post-conversion public offerings of equity securities should be comparable. In addition, the approximately 356 institutions that have converted to stock form under the Board's rules have in most cases not been in the stock form long enough to contemplate post-conversion primary offerings of equity securities and, therefore, the subject of the regulation of post-conversion public offerings has not before been viewed as one necessary for regulatory action. The Board also has not regulated the offer and sale of equity or debt securities by state-chartered stock institutions in organization or the post-organization offer and sale of equity securities by state-chartered stock insured institutions. The principal reasons that regulation had not been extended to these activities were that (1) the thrift industry had been substantially all mutual in form, (2) the Board did not have the power to charter *de novo* federal stock institutions until 1982, and, therefore, there were previously no securities regulations for initial equity offerings of federally-chartered institutions in organization, and (3) the Board did not regulate the post-conversion offer and sale of equity securities by federally-chartered stock institutions, which offerings had previously been very limited in number. However, there have been significant developments in the past few years.

First, the thrift industry is no longer substantially all in mutual form. The continued increased in the number of insured institutions organized in the stock form is expected to result in a continued increase in the number of securities offerings by such insured institutions. As of July 31, 1985, the number of insured institutions in stock form has increased to approximately one-third of the total number of insured institutions, as follows:

Charter	Stock	Mutual	Total
Federal	353	1,384	1,737
State	701	820	1,521
Total	1,054	[illegible]	[illegible]

Second, the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 92–320, amended section 5(a) of the Home Owners' Loan Act of 1933 ("HOLA") (12 U.S.C. 1464(a)) to authorize the Board, under such rules and regulations as it may prescribe, to provide for the organization, examination, operation, regulation, and chartering of *de novo* federal stock savings and loan associations and savings banks. Previously, the Board's *de novo* chartering authority was limited to federal mutual savings and loan associations and federal stock charters could be issued only to existing insured institutions that had converted from the mutual to the stock form or, pursuant to Section 404 of the Depository Institutions Deregulation and Monetary Control Act of 1980, had converted from state stock charter to federal stock charter. The Board's new *de novo* stock chartering authority is more than simply an additional power. It reflects a demonstrable shift of the savings and loan industry from the mutual to the stock form of organization. This shift is also visible in the Board's highly successful stock conversion program, under which 356 mutual institutions have converted to the stock form. Because of the expanded powers granted to federal savings and loan institutions by the Garn-St Germain Depository Institutions Act of 1982, the Board has received and approved a significant number of applications for *de novo* federal stock charters and anticipates that the number will continue to increase. As was the case in the first proposal, the offer and sale of securities by a federally-chartered stock institution in organization is required to comply with the regulations proposed today or such final regulation as is adopted by the Board.

Third, the deregulation of the thrift industry has resulted in an increase in competition on many levels. One is for deposits and another is for capital. The Board anticipates that there will continue to be increasingly intense competition for capital in the public and private markets by (1) federally-chartered stock institutions in organization, (2) state-chartered stock institutions in organization which seek insurance of accounts by the FSLIC, (3) state and federally-chartered mutual insured institutions converting to the stock form, (4) state chartered stock insured institutions seeking to issue additional securities; (5) seasoned converted state-chartered and federally-chartered stock insured institutions seeking to issue additional securities; and (6) non-diversified savings and loan holding companies seeking to issue additional securities.

Because of these significant developments, the Board believes that it is in the interest of the Board, as the primary regulator of federally-chartered institutions, and in the interest of the FSLIC, as the insurer of insured institutions, that all insured institutions compete for capital on a equal basis with full and fair disclosure of all material information; that the disclosure of insured institutions be uniform and comparable both on a intra-industry and an inter-industry basis; and that the public and private markets for the securities of insured institutions of their holding companies be liquid and orderly. Equality of competition, comparability of disclosure, and orderly markets may all be fostered by uniform disclosure requirements. In addition, the establishment for all insured institutions of regulations governing disclosure in connection with the offer and sale of securities would serve as a significant benefit to insured institutions by providing ascertainable guides to the extent and nature of the disclosure mandated by the antifraud provisions of the federal securities laws.

The Board believes that these proposed regulations would reduce the risk that securities offerings would have an adverse effect on the safety and soundness of insured institutions or the operations of the FSLIC, since such regulations would:

(1) Set standards for disclosure which should reduce the risk of securities fraud and of potential liability for insured institutions and, therefore, the FSLIC's insurance risk exposure; and

(2) promote the strength and depth of the markets for the securities of insured institutions by seeking to ensure that (a) all insured institutions provide full and fair disclosure to prospective investors, (b) the disclosure by insured institutions is uniform and comparable on an intra-industry and inter-industry basis, and (c) the public and private markets for the securities of insured institutions are liquid and orderly.

Further, the Board believes that the proposed regulations are necessary and appropriate in the public interest for the protection of investors and to ensure fair dealing in the securities of insured institutions, since such regulations will establish uniform and rational

disclosure requirements for the securities offerings of insured institutions.

B. Summary and Discussion of Comments Received on the First Proposal

The Board received twelve public comments in response to the first proposal. Five of the comments were received from savings and loan associations and four were received from law firms. Of the remainder, one was from a state Savings and Loan Division, one was from an investment banking firm, and one was from a trade association. Five commenters generally endorsed the first proposal, two were generally opposed to the first proposal, four opposed the applicability of the securities regulations to state-chartered insured institutions, and one objected to certain other provisions.

1. Comments Regarding Authority

The two commenters that were generally opposed to the first proposal argued that the antifraud provisions of the federal securities laws and the potential liabilities for fraud make Board disclosure requirements unnecessary. Further, it was argued that close Board regulation of insured institutions protects investors and that the exemption from registration under the Securities Act indicates to the commenters a legislative intention to exempt securities offerings by thrifts from any offering-circular requirements. In the alternative, one commenter suggested that the Board require only a brief simplified disclosure statement, omitting the accounting requirements applicable in other public offerings. Another commenter suggested that the Board should extend the Board's antifraud rule for borrowings under 12 CFR 563.8(g) to include equity offerings and should adopt a statement of policy to promote greater awareness by insured institutions of their responsibilities with respect to the antifraud provisions of the federal securities laws.

The four commenters who opposed applying the regulations to securities offerings by state-chartered insured institutions argued that the appropriate state agency responsible for chartering such institutions should have the sole authority to determine the nature and extent to which securities offerings by such institutions should be regulated. While the Board may have the authority to regulate the securities offerings of the institutions it charters, it was contended, the Board has no authority to regulate the securities offerings of state-chartered insured institutions, since neither the Securities Act, the Exchange Act, nor other statutes granting the Board jurisdiction, expressly grant to the Board general rulemaking authority with regard to the securities offerings of state-chartered institutions. Further, it was argued that state-chartered institutions would be at a disadvantage since they, unlike federally-charatered institutions, would have to satisfy both state and federal disclosure standards.

The Board does not agree with those who contend that the Board does not have the authority to regulate securities offerings by insured institutions, particularly state-chartered insured institutions. The Board believes that it possesses the authority to issue such a regulation. The Board's authority to adopt the securities-offering regulation is based on its statutory authority to ensure the safety and soundness of insured institutions and, under section 403(b) of the National Housing Act ("NHA") (12 U.S.C. 1726(b)), to approve or disapprove the issuance of securities by insured institutions. Further, the Board's chartering authority, Federal Home Loan Bank Act authority, and Exchange Act authority provide additional statutory authority for the present proposed regulation.

First, as to federally-chartered institutions, the Board has the authority to regulate the securities offerings of those institutions it charters. Under § 5(a) of the HOLA (12 U.S.C. 1464(a)), the Board is authorized to prescribe rules and regulations "to provide for organization, incorporation, examination, operation and regulation of associations to be known as Federal savings and loan associations, or Federal savings banks, and to issue charters therefore, giving primary consideration to the best practices of thrift institutions in the United States." Like savings and loan associations, banks also have an exemption from registration under the Securities Act, but national banks that are regulated by the Comptroller of the Currency have long been subject to the securities-offering rules established by the Comptroller. Those regulations were not adopted pursuant to any express grant of authority under the Securities Act, but pursuant to "the general authority of the national banking laws." See 12 CFR Part 16. Also, state banking and savings and loan agencies regulate to varying degrees securities offerings by financial institutions that the state has chartered. The Board does not agree with those commenters who contend that the exemption from registration under the Securities Act was intended a a *de facto* exemption for securities offerings of thrift institutions from any and all types of securities-offering requirements and has found no support in the legislative history for the commenters' position.

The exemption from registration under the Securities Act for securities issued by savings institutions is based, in part, upon the fact that at the time the Securities Act was enacted, virtually all thrifts were in mutual form, where "share interest" in an institution arose from a depositor relationship. While the statute or the legislative history makes no specific mention of who should regulate securities offerings by savings institutions, the language of the exemption provides that such exemption is only available to those savings institutions which are supervised and examined by state or federal authority. Therefore, the Board believes that the exemption is based on a determination that the oversight of such offerings should be the responsibility of both the appropriate state and federal regulatory agencies.

The Board is not proposing to preempt state regulation of securities offerings by federally-chartered institutions. States would be free to continue to develop their own standards of disclosure, which could be more or less comprehensive than those proposed by the Board. In addition, under the current proposal, each state would continue to be free to determine whether to exempt securities offerings by federally-chartered institutions or to subject such institutions to the same requirements for qualification and review by the state as would apply to state-chartered institution. As is customary, where an offering of securities is subject to concurrent regulation of the offering materials by both state and federal authorities, the filing and disclosure requirements of each would be required to be satisfied.

Second, as to all insured institutions which have a class of securities registered under the Exchange Act, which includes both federally-chartered institutions and state-chartered institutions, the Board has the authority under section 12(i) of the Exchange Act to regulate registration, reporting, proxy solicitation, tender offers, and certain other securities activities. The Board also has the authority to regulate the securities offerings of such insured institutions pursuant to the Board's Exchange Act authority to require additional reports and filings. Under the Exchange Act, the Board can adopt regulations that are different from those issued by the Commission, provided they are necessary or appropriate in the public interest, for the protection of

investors, to ensure fair dealing in the securities, and the reasons therefor are published in the **Federal Register**. The legislative history of the 1974 amendment to section 12(i) of the Exchange Act states that the amendment "transfers responsibility for regulation of securities issued by institutions insured by the Federal Savings and Loan Insurance Corporation from the Securities and Exchange Commission to the Federal Home Loan Bank Board." *See* 1974 U.S. Code Cong. & Ad. News 6119, 6121.

Since the Board already regulates the disclosure documents of state-chartered institutions filed under the Exchange Act, the filing of offering materials should not involve an unreasonable burden. The Board currently receives no notice of the terms and conditions of proposed equity offerings, and no copies of preliminary or final offering circulars for equity offerings. The Board believes that the nature, terms, and conditions of an offering and the disclosures included in the related offering materials may require that certain additional disclosures be included in other Exchange Act filings made with the Board. Also, it has been the Board's experience that investors generally assume that, since the currently required disclosure documents are filed with an reviewed by the Board, the Board naturally should have on file and should have reviewed such an institution's offering materials, the most important document considered by a potential investor. However, this is not now the case. Further, the Board is concerned that in an effort to increase net worth and to keep the expenses of a securities offering to a minimum, insured institutions may be tempted to use offering circulars which may not satisfy the standards for disclosure. While this may work to the short-term benefit of the institution, it increases the institution's potential liability and, therefore, also the potential exposure of the FSLIC. With regard to insured institutions which have a class of securities registered under the Exchange Act, the Board believes that the proposed securities regulation, including the offering-circular requirements, for the reasons discussed, are necessary and appropriate, in the public interest, for the protection of investors, and to ensure fair dealing in the securities of such insured institutions. The instant proposal, which includes offering-circular filing and disclosure requirements, is therefore within the Board's authority under the Exchange Act.

Third, the Board's general authority to regulate the securities offerings of state-chartered insured institutions which do not have a class of equity securities registered under the Exchange Act, is based on its responsibility to ensure their safety and soundness and on the conditions for insurance of accounts. With regard to the latter, section 403(b) of the NHA requires, as a condition to obtaining insurance of accounts, that institutions sign an agreement that they will not issue securities which guarantee a definite return or which have a definitie maturity except with specific approval of the Corporation, or issue any securities the form of which has not been approved by the Corporation. The terms and conditions of an institution's securities is a factor which must be considered in determining whether to grant insurance of accounts. In addition, under 12 CFR 563.1, the Board's regulations currently provide that no insured institution shall issue any security that has not been approved in writing by the Corporation. The Board's staff has long held that such an approval relates to the issuance of the security and is not limited to an approval of the certificate evidencing the security. The Board believes that the regulation of securities offerings is an appropriate condition for granting insurance of accounts and for continued insurance of accounts. Further, the securities regulation would clarify the procedure for obtaining the required Board approval which is a condition of the insurance agreement. Securities issued in connection with an offering circular declared effective by the Board would be deemed to have been approved for purposes of § 563.1. By Resolution No. 73–317, dated February 27, 1973, the Board delegated authority to approve or disapprove certificates to the Principal Supervisory Agent. With regard to both federally-chartered and state-chartered insured institutions, the Board has for many years regulated debt offerings. *See* 12 CFR 563.8 and 563.8–1. The Board's authority to regulate offerings of debt securities has never been challenged. Further, the Board's long-recognized authority to regulate offerings of debt securities supports the Board's authority to regulate equity offerings.

In terms of safety and soundness, the Board has a firm legislative mandate. Section 402(a) of the NHA (12 U.S.C. 1725(a)) empowers the Board, as the operating head of the FSLIC, to prescribe rules and regulations "for carrying out the purposes of this [Act]." Since the proposed securities regulation is designed to maintain safe, sound, and economical home financing, as well as to protect the FSLIC fund from undue risk, the rule carries out the purposes of the NHA and so represents a permissible exercise of regulatory authority under section 402(a). Moreover, under section 407 the Board has authority to terminate insurance coverage entirely (12 U.S.C. 1730(b)) and to initiate cease-and-desist proceedings pursuant to "rules and regulations" promulgated by the Board (12 U.S.C. 1730(m)) in order to prevent "unsafe or unsound practices" that threaten the integrity of the FSLIC fund. These powers encompass the less drastic power to prevent unsafe or unsound practices through regulations such as the proposed securities rule.

In this connection, the Board believes that state-chartered institutions which are not subject to Exchange Act reporting and disclosure requirements and have little or no history of preparing disclosure documents may be subjected to a risk of claims of inadequate securities disclosure and potential liability and, therefore, of an adverse effect on the safety and soundness of such institutions and the FSLIC fund. Therefore, the Board believes that there is a pressing need for Board regulation of securities offerings by these institutions. Unless the Board receives prior notice of the terms, conditions, and disclosure to be used in an offering of securities, it can not make a determination of the risks involved for the institution or take the necessary actions to ensure the continued safety and soundness of the institution. Although one commenter suggested that the Board should not apply any disclosure requirements to state-chartered insured institutions until it has more evidence of fraudulent securities offering by such institutions, it has been the Board's experience that deregulation, the increase in the investment authority and the rapid growth of certain insured institutions, particularly those that are state-chartered, and the increase in the frequency and types of securities being offered, are increasing the risks for investors, the likelihood of securities fraud, and the necessity for Board oversight at this time. The Board also does not believe that it is prudent or necessary to wait for a series of securities frauds resulting in insolvencies that would involve significant cost to the FSLIC before considering regulations which may avoid such problems.

A material violation of the federal securities laws would constitute an unsafe and unsound practice by an insured institution, since such violations

can expose insured institutions to significant civil liability and substantial legal expenses that can jeopardize financial stability and hamper needed access to capital in the future. By requiring full and fair disclosure, the proposed securities-offering regulation would increase compliance with the antifraud provisions and lessen the likelihood of costly civil judgments against insured institutions which could result in significant reduction in the net worth of insured institutions, and potential, insolvency, with a corresponding expense to the FSLIC. In addition, the securities regulation would provide the Board with prior notice of the terms of proposed securities offerings which may not be in the best interest of the safety and soundness of insured institutions and the FSLIC fund.

Moreover, even apart from the possibility of liability under the antifraud provisions, the lack of standardized information about the securities of insured institutions may hamper marketability for such securities. The disclosure of inadequate or misleading information by an insured institution in the offer or sale of securities could have a significant adverse effect on the ability of other insured institutions to raise capital and could lead generally to illiquid and disorderly markets for securities issued by insured institutions. Because the soundness of many insured institutions depends upon free access to capital markets, restricting that access may threaten the safety and soundness of the thrift industry as a whole and have an adverse effect on the operations of the FSLIC by increasing the FSLIC's insurance risk exposure.

Finally, the Federal Home Loan Bank Act ("Bank Act") (12 U.S.C. 1421 *et seq.*) has among its paramount purposes the development and maintenance of a system of sound and economical home financing. The proposed securities regulation, by enhancing the capital-raising capabilities of insured institutions, should contribute materially to this goal. The Board is therefore empowered to adopt regulations, such as the proposal under consideration, pursuant to Section 17 of the Bank Act which expressly grants the Board the "power to adopt, amend, and require the observance of such rules, regulations, and orders as shall be necessary from time to time for carrying out the purposes of [this Act]." 12 U.S.C. 1437(a). As a matter of administrative practice, the Board has often cited its authority under the Bank Act as support for regulations governing the deposit-insurance system administered by the FSLIC. This practice is supported by the close interrelationship between the Bank Act and the NHA, including their common purpose and similar design.

The Board is aware, as discussed by one commenter, that the Federal Deposit Insurance Corporation ("FDIC") previously proposed a regulation to establish offering-circular requirements for state-chartered FDIC-insured banks which are not members of the Federal Reserve System. It was originally published for comment on May 27, 1974 and reissued for comment on May 27, 1977 (42 FR 27955). While the FDIC stated that it was the responsibility of all insured state non-member banks to comply with the disclosure requirements of the federal securities laws in the offer and sale of securities, the FDIC published a withdrawal of the proposed rule on July 6, 1979 (44 FR 39469), because of its stated concern that the proposed rule may not adequately reflect recent developments and standards applicable under the federal securities laws and because adequate guidance as to the proper format and content is available through regulations promulgated by other federal regulatory agencies. The FDIC also noted that adequate offering materials can be prepared without formal regulation and that the withdrawal of the proposal was in keeping with the FDIC's policy favoring the shortening and simplification of regulatory requirements. In addition, the FDIC concurrently published a statement of policy on July 6, 1979 (44 FR 39381), for the purpose of promoting greater awareness by insured state nonmember banks of their responsibilities with respect to the antifraud provisions of the federal securities laws. The statement of policy also specified certain information that the FDIC believed should be in offering circulars and referred banks wishing additional guidance in the preparation of offering circulars to 12 CFR Part 16 of the regulations of the Comptroller of the Currency.

The Board notes that the FDIC withdrew the proposed rule and issued a statement of policy principally because of its concern about the adequacy of the proposed disclosure standards, and not because of a concern about its authority to regulate the offerings of FDIC-insured institutions. Unlike the banking agencies which have a tradition of developing their own rules and forms for securities disclosure, the Board has, pursuant to 12 CFR Part 563d, generally incorporated the well-known rules and forms of the Commission under the Exchange Act with certain additional information relating to the description of business for certain filings for FSLIC-insured institutions (Item 7 of Form PS under 12 CFR Part 563b). Since the Board believes that its experience with this approach for Exchange Act filings has worked efficiently to keep the disclosure standards for insured institutions comparable with those imposed upon other issuers, the Board is proposing to continue to follow this approach for disclosure requirements for offering circulars. Finally, the Board does not believe that the extension of the Board's antifraud rule for borrowings under 12 CFR 563.8(g) to include equity offerings and the adoption of a statement of policy to promote a greater awareness of disclosure responsibilities with respect to the antifraud provisions, as suggested by one commenter, would alone be adequate to reduce to an acceptable level those risks with which the Board is concerned.

In summary, the Board has the statutory authority to regulate the securities offerings of insured institutions. The Board's authority to charter federal institutions, its authority to regulate the disclosure of institutions which have securities registered under the Exchange Act, the responsibility to reduce the risk that securities offerings of insured institutions would have an adverse effect on the safety and soundness of insured institutions or the operations of the FSLIC, the responsibility to develop and maintain a system of sound and economical home financing, and the statutory authority to approve the issuance of securities by insured institutions, clearly provide the Board with authority to establish requirements for offering circulars by insured institutions. Further, the Board believes that the increasing number of stock institutions and the deregulation that has occurred with respect to the types of activities in which savings institutions are permitted to engage have increased the potential risks to investors and, therefore, make the proposed regulation both necessary and appropriate at this time. In addition, as has been the Board's experience with the regulation of offerings of debt securities and Exchange Act filings by insured institutions, the Board believes that the regulation of equity offerings by insured institutions will complement and facilitate the Board's administration and enforcement of other regulations and statutes under the Board's jurisdiction and, in connection with information produced through the Board's examination process, may alert the Board to potential problems which would permit early action to prevent failures, which are clearly not in the

interest of investors, depositors, the public, or the FSLIC.

2. Other Comments

One commenter contended that it was inconsistent for the Board to prescribe the method of disclosure for a securities offering by a state-chartered insured institution when not even the Commission, which has authority to enforce the antifraud provisions of the Securities Act and the Exchange Act, has such power. Further, it was argued that a Board securities regulation would actually increase the potential liability for insured institutions by providing additional grounds for private litigants to recover from such institutions and from officers and directors who would be required to sign Form OC filed with the Board.

The Board does not find either of these arguments persuasive. First, the Commission's authority to enforce the antifraud provisions of the federal securities law is not inconsistent with a Board-adopted securities regulation which would be applicable to the equity offerings of state-chartered insured institutions. The Board's present regulations include disclosure requirements for both Exchange Act filings and public offerings of debt securities. Rather than creating an inconsistency, the proposed securities regulation would eliminate an inconsistency, since equity offerings by insured institutions would be subject to the same filing and disclosure requirements as those for debt offerings by insured institutions.

Second, the Board does not believe that the proposed securities regulation would increase liability. The securities regulation would set standards for disclosure which if complied with would reduce the risk of securities fraud and of potential liability for insured institutions. It currently is not the Board's intention to create any private right of action under the proposed securities regulation. However, it is anticipated that any issuer in compliance with the Board's securities regulations would assert such compliance as a defense in litigation brought by a private party alleging a violation of the antifraud provisions of the federal securities laws.

The same commenter argued against disclosure requirements for equity offerings of state-chartered insured institutions on the ground that administrative review does not necessarily improve the quality of disclosure and that the Commission has reduced the administrative burden by permitting issurers to integrate or incorporate Exchange Act filings in a prospectus. While the Board agrees that the administrative review of offering materials can not ensure that all matters which should be disclosed are in fact disclosed in all cases, the Board's experience with the review of Exchange Act filings, offering materials for debt securities, and offering materials for equity securities sold in connection with conversions from the mutual to stock form of organization and in connection with the organization of *de novo* federally-chartered stock institutions, has indicated that Board review significantly improves the likelihood that the disclosure documents of insured institutions will satisfy the antifraud standards of the federal securities laws. While the proposed securities regulation requires an offering circular to be filed under cover of the Board's Form OC and to include certain additional information appropriate for insured institutions, the Board notes that the basic information requirements incorporate the item requirements of the appropriate form that an issure would be required to use for a registration statement under the Securities Act. Therefore, an issuer filing offering materials with the Board would be permitted to incorporate by reference from Exchange Act filings to the same extent that any issuer may in a filing with the Commission.

In the first proposal, the Board specifically requested comments on the following: (1) Whether insured institutions should be permitted to offer and sell their securities to the public at their offices, (2) whether a minimum denomination should be established for the direct offer and sale of such securities, and (3) what safeguards, if any, should be imposed on insured institutions engaged in the direct sale of such securities. Two commenters agreed that an institution should be permitted to offer and sell its securities at its offices. However, they argued that there should be no minimum-denomination requirements for the sale of securities and that the need for any safeguards should be determined by an institution's management. Upon further consideration, the Board believes that there may be merit in allowing sales at offices, without minimum-denomination requirements, but remains concerned that there be adequate safeguards for securities offered and sold at an institution's offices. (*See* later discussion.) The Board therefore is again proposing to allow security sales at institution offices, and requesting public comments on the appropriateness of minimum-denomination requirements and the proposed safeguards on such offers and sales.

It was suggested by one commenter that the Board should consider the need for a shelf-registration rule which would permit certain offerings to be made on a continuous or delayed basis in the future. It was also suggested by the same commenter that the Board should retain an exemption for debt securities issued in minimum denominations of $100,000 or more. The Board agrees that a shelf-registration rule would be desirable and has so provided in this proposal. (*See* later discussion.) However, while the Board believes that there is a reasonable basis on which to exempt debt securities issued in denominations of $100,000 or more which are fully collateralized by interests in mortgage notes secured by real property, the Board does not believe it is appropriate to exempt debt securities which are not fully collateralized, since such securities are more likely to have higher risks and, therefore, a greater potential for fraud and liability for an insured institution and the FSLIC.

One commenter suggested that the Board clarify the information requirements to indicate that all of the information required by Schedule A to the Securities Act is required to be disclosed in an offering circular filed with the Board. Another commenter suggested that the Board either clarify or revise the word "commenced" for the purposes of the exemption under the first proposal's § 563g.3(a), for offerings "commenced" prior to the effective date of Part 563g by an issuer other than a *de novo* federally-chartered stock institution in organization. It was also suggested that the Board provide for an effective date upon the adoption of the securities regulation that would provide institutions planning a public offering with adequate notice. The Baord generally agrees with the described suggestions and believes that the provisions in this new proposal resolve each of these commenters' concerns.

C. Summary of the Proposal

1. Forms and Regulations

In adopting the Securities Act, Congress charged the Commission with the responsibility of developing regulations that would define and ensure full and fair disclosure. The disclosure rules set forth in the Board's Conversion Regulations and in its financial-statement regulations are modeled after the rules and regulations of the Commission. As set forth in greater detail below, the Board proposes to require insured institutions to observe many of the forms and regulations of the

Commission under the Securities Act, as modified where appropriate for insured institutions by the Board's regulations, in the preparation of disclosure documents used in the public offer and sale of securities. This is not proposed by the Board in the belief that the forms and regulations of the Commission approach perfection; they undergo constant revision by the Commission itself. Rather, it is proposed because such forms and regulations require the disclosure of information which is considered to be material to an investment decision, they are recognized in the capital markets, and it would be difficult for insured institutions to compete for capital in those markets if their offering documents were not comparable with those of other companies also seeking capital. In addition, the disclosures of insured institutions should be comparable to those of savings and loan holding companies, which register their securities with the Commission. Further, insured institutions that did not closely observe such forms and regulations would be susceptible to a greater risk of possible liability under the antifraud provisions of the federal securities laws by the very fact that they deviated from long-established and universally recognized disclosure practices. Finally, in recognition of the importance of the Commission's disclosure standard, the Commission's forms appear to be the basis for disclosure in underwritten offerings and, therefore, compliance would not be burdensome.

The Board also proposes to adopt, for non-public offerings of securities by insured institutions, substantially all the requirements of Regulation D of the Commission under the Securities Act, 12 CFR 230.501 *et seq.* The Board is proposing this action as a means to differentiate a public offering from a non-public offering, *i.e.*, if an offering by an insured institution would qualify as an exempt offering under Regulation D if it were undertaken by a corporation the securities of which were subject to the registration requirements of the Securities Act, the offering would be exempt from the Board's public-offering rules.

2. Non-Exempt Public Offerings

Under proposed § 563g.2, unless the offering is exempt, no insured institution, which includes a federally-chartered stock institution in organization and a state-chartered institution which is granted approval of insurance of accounts by the Corporation within one year of an offer or sale of the institution's securities, shall offer or sell, directly or indirectly, a security issued by it unless the offer or sale is made through an offering circular that has been filed with and declared effective by the FSLIC.

Proposed § 563g.7 would require the offering circular to comply with all of the requirements of Schedule A under the Securities Act and the registration form of the Commission that the issuer would satisfy the eligibility requirements to use if the issuer were required to register its securities under the Securities Act, with appropriate modifications from the form and Regulation S–K of the Commission to comply with the Board's regulations governing the non-financial statement portion of offering circulars found in Forms PS and OC under the Conversion Regulations. The financial statements would be required to conform to the Board's offering-circular accounting requirements, Subpart A of Part 563c, and, to the extent they are not inconsistent, the account requirements of Regulation S–X of the Commission and the financial information requirements of Regulation S–K.

Under proposed § 563g.8(a), an offering circular, or an amendment declared effective by the Corporation, could not be used more than nine months after the effective date unless the information contained in the offering circular was as of a date not more than 16 months prior to such use. Proposed § 563g.8(c) would prohibit the use of an offering circular subsequent to any material change in an issuer's business operations or financial condition until an amendment had been filed and declared effective. Proposed § 563g.5(b)(3) would provide a means of filing "stickered" offering circulars to reflect non-material changes.

Under proposed § 563g.6, an offering circular of an insured institution would be deemed automatically effective upon the expiration of 20 days after filing, unless the issuer included a "delaying amendment," which would delay the 20-day period for effectiveness until the filing was declared effective. If it appeared that an offering circular were incomplete or inaccurate in any material respect, the Corporation could declare the offering circular not effective until an appropriate amendment were filed.

Miscellaneous proposed regulations under Part 563g would govern matters such as communications deemed an offer (§ 563g.2(b)), the use of a preliminary offering circular (§ 563g.2(c)), filing and signature requirements § 563g.5), escrow requirements (§ 563g.9), withdrawal or abandonment (§ 563g.11), public disclosure and confidential treatment (§ 563g.13), waiver (§ 563g.14), and requests for interpretive advice or waiver (§ 563g.15). Proposed § 563g.10 would establish the Board's antifraud rule for securities offerings, which would be identical with Rule 10b–5 adopted by the Commission under § 10 of the Exchange Act. Proposed § 563g.12 would require the filing of a post-sale report with the Principal Supervisory Agent and the Corporate and Securities Division of the Office of General Counsel.

3. Exempt Public Offerings

Proposed § 563g.3 would exempt from the offering-circular requirements the following offers and sales of securities:

(a) Offerings made prior to the date Part 563g becomes effective: provided, that (1) such offering is accompanied or preceded by an offering document, (2) such offering does not continue for more than 60 days after the effective date of Part 563g, and (3) the issuer is not a *de novo* federally-chartered institution in organization;

(b) Offerings complying with the requirements for retail repurchase agreements of § 563.8–4, except where the issuer has a net-worth deficiency under that section;

(c) Offerings exempt from registration under either section 3(a) or section 4 of the Securities Act by reason of an exemption other than section 3(a)(5) (for regulated savings and loan associations), 3(a)(9) (for certain exchange offerings), 3(a)(11) (for intrastate offerings), or 4(2) (for non-public offerings) of the Securities Act;

(d) Offerings made in connection with a conversion from the mutual to the stock form of organization pursuant to Part 563b, except for supervisory conversions undertaken pursuant to Subpart C of Part 563b;

(e) Non-public offerings that satisfy the requirements of proposed § 563g.4;

(f) Offerings of debt securities issued in denominations of $100,000 or more, which are fully collateralized by interests in mortgage notes secured by real property; and

(g) Offerings of securities to be distributed exclusively abroad to foreign nationals under certain conditions.

The first proposal's exemption for offers or sales of securities to the issuer's employees, officers, or directors, under certain stock plans, has been eliminated. Unless another exemption is available, the Board believes that it is necessary to regulate the offer or sale of securities to an issuer's employees, officers, or directors, because of the likelihood that certain of such persons would not be able to obtain all of the

necessary information about an issuer and its securities to make an informed investment decision. *See, Securities and Exchange Commission* v. *Continental Tobacco Company of South Carolina,* 436 F.2d 137 (5th Cir., 1972). Since retail repurchase agreements are already subject to extensive disclosure regulations that were drafted in view of the nature of the securities, particularly their secured status and their short maturity, the Board is not inclined at this time to bring retail repurchase agreements under the proposed securities offering regulations unless the issuing institution has a net-worth deficiency as defined in § 563.8–4. The Board also does not believe it necessary to regulate offerings that are exempt from registration under the Securities Act by reason of an exemption other than section 3(a)(5), 3(a)(9), 3(a)(11), or 4(2). Conversion stock offerings would continue to be subject to the Conversion Regulations. The Board notes, however, that offering circulars for conversion stock and offering circulars for equity securities of non-converting institutions engaged in a public offering pursuant to these proposed rules would be comparable because of the requirements of proposed § 563g.7 that public offering circulars comply with applicable items of Forms PS and OC of the Conversion Regulations. As provided in 12 CFR § 563b.30, securities offered or sold in connection with a supervisory conversion would continue to be required to satisfy the requirements for a non-public offering under proposed 12 CFR Part 563g or such final regulation as is adopted by the Board. See, Board Resolution No. 83–149, dated March 17, 1983 (48 FR 15591, April 12, 1983).

This proposal would eliminate the first proposal's exemption for securities which are offered and sold intrastate and for securities which are exchanged by the issuer with its existing security holders exclusively, without any payment. The securities offering regulation as first proposed exempted securities offerings which are exempt from registration under the Securities Act by reason of an exemption other than section 3(a)(5) of the Securities Act, the exemption for securities issued by a regulated thrift institution. While the exemption for thrift securities is conditioned on agency regulation, the other exemptions are not similarly conditioned. One of these other exemptions relates to intrastate offers and another to exchange offers. The intrastate exemption was based primarily on the existence of state blue sky laws which regulate such offerings. The exchange-offer exemption was based primarily on the ground that the amount of the investment is not being increased.

Although these two exemptions indicated an intent to exclude such offerings from the requirement of registration with the Commission, such offerings are not exempt from the antifraud provisions of the federal securities laws and, as a result, they could adversely affect a FSLIC-insured institution and increase the FSLIC's insurance risk exposure. If the two exemptions were retained, the Board would not receive any prior notice of the terms and conditions of such offerings, copies of any offering materials used, or an opportunity to raise any regulatory issues prior to the time a transaction is consummated. Without the exemptions, intrastate offers and exchange offers would have to satisfy either the disclosure requirements for a public offering or the requirements for a non-public offering. The Board is now proposing to use this latter approach.

Another change from the first proposal is a proposed exemption for debt securities issued by an insured institution in denominations of $100,000 or more, which are fully collateralized by interests in mortgage notes secured by real property. This provision would be consistent with a current exemption contained in the Board's debt regulations, although there is no comparable exemption under the Securities Act. (The Commission's Regulation D under the Securities Act does provide for an exemption from registration under the Securities Act for certain transactions involving non-public offerings to accredited investors, one category of which includes certain persons who purchase $150,000 or more of the securities where the amount purchased does not exceed 20 percent of the purchaser's net worth.) The Board's proposed exemption is based on the Board's experience with secured securities relating to housing finance and the assumption that a person purchasing such debt securities will be either an accredited investor or a sophisticated investor. Since such persons are generally able to make informed investment decisions and the debt securities will be fully collateralized by mortgage notes secured by real property, the Board at this time does not believe that a prior review of the related offering materials is necessary or appropriate. While the Board's current borrowing regulations also exempt uncollateralized debt securities issued in minimum denominations of $100,000 or more from offering-circular requirements, the proposed modification, like the first proposal, would require such offerings to comply with the Board's disclosure and offering-circular requirements.

The proposal includes an exemption for offers or sales of securities to be distributed exclusively abroad to foreign nationals, provided the offering is made subject to certain safeguards reasonably designed to preclude distribution of the securities within, or to nationals of, the United States. While such a provision was not included in the first proposal, the provision is consistent with the current exemption under § 563.8(f) for borrowings.

4. Exempt Non-Public Offerings

The Board is proposing in § 563g.4 to exempt from the offering-circular requirements offerings in which securities are not sold to more than 35 sophisticated investors and offerings which comply with the Commission's Regulation D under the Securities Act (except with regard to the Commissioner's notice requirement and resale-restriction provisions). Regulation D establishes requirements for offerings that qualify for an exemption from registration by reason of the small amount involved or the limited character of the public offering under section 3(b) of the Securities Act, or by reason of the non-public character of the offering under section 4(2) of the Securities Act. Under Rule 504 of Regulation D, securities aggregating less than $500,000 may be offered and sold by an institution the equity securities of which are not registered under the Exchange Act to an unlimited number of purchasers and no specific disclosure rules are required to be observed (except, of course, for the antifraud provisions of the Federal securities laws.). Rule 505 of Regulation D is limited to offers and sales of securities not exceeding $5,000,000 in any 12-month period. Rule 506 of Regulation D has no aggregate offering-price limitation. However, the two rules are similar except in regard to the specific disclosure requirements and the requirement that all purchasers in a Rule 506 transaction must be either accredited or sophisticated. Both rules prohibit sales to more than 35 investors who are not accredited investors. Accredited investors are defined in Rule 501(a) and the term includes certain institutions and organizations, officers, directors, or general partners of the issuer, and individuals with substantial net worth or income. Generally, offers and sales made pursuant to Regulation D may not involve any form of general solicitation or general advertising.

The Board does not propose in its securities offering regulations to require pre-sale filing for clearance of offering documents in an offering that meets the requirements on Regulation D. Rather, in proposed § 563g.12 it would require, as in a public sale of securities, the filing of a post-sale report that would include all of the information required in a public offering post-sale report, a statement of the factual and legal grounds for the claim of a non-public offering exemption under the Board's regulations, and copies of all offering materials. In addition, to ensure that a claimed non-public offering is not actually a step in a transaction leading to a public distribution of securities, the Board would require in § 563g.4 that the securities acquired in an exempt non-public offering could not be resold or otherwise disposed of for a period of two years following the sale without the prior written consent of the Corporation.

Under the Commission's rules, an issuer which does not comply with the notice provisions or the other requirements of the Commission's non-public offering rules may still claim an exemption from registration under the Securities Act on the basis that the transaction did not involve a public offering under section 4(2) of the Securities Act. As proposed by the Board, the exemption for a non-public offering would only be available upon compliance with the Board's requirements under § 563g.4, which requires that the Board be furnished with a written notice including the terms of the offering and the grounds for the exemption and a final sales report indicating whether the requirements for the exemption were satisfied.

The new proposal would eliminate the first proposal's exemption for a non-public offering in the case of sales to not more than 15 persons and, as described above, exempt sales to not more than 35 sophisticated investors under certain specified conditions. Under the first proposal, an exemption from the offering-circular requirements was provided for certain non-public offerings for securities that either satisfy the requirements of the Commission's Regulation D or involve a sale of securities to not more than 15 persons. While the 15-person exemption is similar to one provided under the Comptroller's offering requirements, the proposed substitute exemption for offers or sales to not more than 35 sophisticated investors is more consistent with the customary requirements for such offerings. Further, it would make the exemption more usable, since more purchases are allowed, while reducing the risk of securities fraud, since the purchasers must be sophisticated investors. The Regulation D exemption would continue to be the basis for an exemption. This propõsal also provides for certain forms to be used for a notice of a non-public offering and a securities sale report.

As proposed, offerings of securities not exceeding $500,000 which comply with Rule 504 of Regulation D would be exempt from the offering-circular requirements of proposed § 563g.2. Like proposed § 563g.4(b), which has no dollar limitation, Rule 504 does not require that an offering circular be delivered to purchasers, provided that the other requirements of the exemption are met. Unlike proposed § 563g.4(b), however, Rule 504 allows offers and sales to an unlimited number of purchasers who are not otherwise sophisticated or accredited investors. The Board is specifically requesting comments as to the following: (1) whether both Rule 504 of Regulation D and proposed § 563g.4(b) should be independently available to issuers; and (2) whether either of these two exemptions should only be available under certain more limited conditions.

In addition, the Board is specifically requesting comments as to whether the offering-circular requirements should be applicable to the resales of securities by affiliates and certain shareholders. If in favor of such a requirement, commenters should address any conditions the Board should apply to the filing of such resale offering circulars.

5. Elimination of Minimum-Denomination Rule

The Board's regulations on outside borrowings (§ 563.8), subordinated debt (§ 563.8–1) and mutual capital certificates (§ 563.7–4) establish minimum denominations for those securities. On April 18, 1985, by Resolution 85–292 (50 FR 20552, May 17, 1985), the Board amended its borrowing regulations, 12 CFR 563.8, and its subordinated-debt regulations, 12 CFR 563.8–1, to revise its minimum-denomination requirements for certain offerings in order to require a $1,000 minimum denomination if the securities are not offered or sold at any offices of the institution or any of its affiliates. The Board, however, is now proposing to eliminate all minimum-denomination requirements for securities issued by insured institutions including borrowings, subordinated-debt securities and mutual capital certificates, as recommended by two commenters on the first proposal, for the following reasons: in a number of cases during the past two years, the Board has waived the minimum-denomination requirement for certain sales of subordinated-debt securities in institution offices on condition that the securities be sold in at least $2,500 minimum denominations and in compliance with the proposed safeguards on sales in institution offices, and there have been no adverse consequences; the lowering of the minimum denomination to $1,000 has not raised any problems to date; an exchange offer which involves amounts under $1,000 would be permitted; and the proposed safeguards on sales in institution offices make a minimum-denomination requirement unnecessary.

6. Prohibitions Against Sales in Institution Offices

The prohibition against the sale of debt securities and mutual capital certificates in the offices of issuing insured institutions or their affiliates arose out of two concerns. First, there generally was a perception that the sale of such securities in the offices of a depository institution would constitute an evasion of deposit rate control. Second, there was apprehension that some insured institutions would permit the sale of such securities to unsophisticated customers who perhaps could not reasonably be expected to fully comprehend the risks of the investment (particularly in investment in long-term securities) and who may mistakenly assume that the securities were insured. the Board does not believe that, assuming these concerns are valid, they must be addressed only through a flat prohibition of direct institutional sales.

It appears to the Board that concerns regarding the sale by insured institutions of securities to their customers could be resolved through the disclosure mechanism. The issuing institution would be required under the proposed regulations to provide customers with an offering circular prepared pursuant to proposed Part 563g, which would make full and fair disclosure of all information material to an investment decision, and would state in bold-face type on its cover that the security is not insured by the FSLIC. In addition, the Board is proposing in § 563g to adopt the following safeguards on direct institutional sales activities to prevent possible abuses: (a) No commissions would be permitted to be paid to any employee or other person; (b) no offers or sales would be permitted to be made at a teller counter; (c) offers and sales would be permitted to be made only by regular, full-time employees; (d) no unsolicited telephone

calls or visits would be permitted to be made by the issuing institution to any person in connection with the offer or sale of the securities; and (e) except for retail repurchase agreements issued in compliance with § 563.8–4, the issuing institution would be required to meet at the commencement of and during any offering its regulatory net-worth requirement. Proposed restrictions (a) through (d) above would also be extended to the offer and sale of retail repurchase agreements to the public.

In connection with this proposal, the Board again specifically asks: (1) Whether insured institutions should be permitted to offer and sell thier securities and the securities of affiliates to the public at their offices, (2) whether a minimum denomination should be established for the direct offer and sale of those securities, and (3) what safeguards, if any, should be imposed on insured institutions engaged in the direct sale of such securities.

7. One-year Registration Requirement

Under the new proposal, issuers in a public offering would be required to register their securities under the Exchange Act and not deregister for a one-year period. Following a public offering, there is a need for the Board and investors to receive information from the issuer, including disclosures of its financial condition and operations subsequent to the consummation of the offering. Under section 15(d) of the Exchange Act, each issuer that files a registration statement with the Commission which is declared effective must file periodic information and reports and not terminate such filing unless, after one fiscal year, its securities are held by less than three hundred persons. The Board currently requires converting institutions to register under the Exchange Act and not deregister for at least three years.

Requiring thrifts that are issuers in a public offering to make Exchange Act filings for at least one full fiscal year will involve additional expense and burden, but the Board believes the disadvantages would be outweighed by the benefits to investors and of reduced risk to the institution of later claims of securities fraud. The availability of subsequent information also makes more likely the development of a market for the securities.

8. Shelf Registration

By including a rule which provides for a procedure for shelf-registration for certain offerings to be made on a continuous or delayed basis in the future, the time and expense for insured institutions conducting public offerings would be substantially lowered and they would have greater flexibility to avail themselves of the most advantageous market conditions. The shelf-registration provision substantially incorporates the requirements of the Commission's Rule 415, under the Securities Act.

9. Rescission Offers

The proposal would provide for the Corporation to direct rescission offers in certain circumstances, such as if a securities offering were not made in compliance with the Board's securities regulation or if a state-chartered institution is approved for insurance of accounts by the Corporation within one year of the offer or sale of the institution's securities. Such a rescission offer could substantially reduce the risk of any potential liability for securities fraud which would have an adverse effect on the safety and soundness of such institution or the FSLIC fund. In connection with this proposal, the Board specifically requests comments regarding the provisions relating to such rescission offers.

10. Delegation

The proposal would provide for more expeditious action under the regulations by delegating the Board's authority under Part 563g to the General Counsel, or designee.

11. Offerings Made Prior to the Effective Date

De novo federally-chartered stock institutions in organization are required by the Board's chartering regulations, 12 CFR 552.2–1(e), to offer or sell their securities: (1) Only after receiving the Corporation's conditional approval of the application for federal charter and insurance of accounts and (2) pursuant to proposed Part 563g or such final regulation as may subsequently be adopted by the Board. Other insured institutions would not be subject to the offering requirements for equity securities unless the Board adopts final securities regulations but are urged to take all necessary measures to ensure that all matters which should be disclosed are disclosed and that any offering materials used would satisfy the antifraud provisions of the federal securities laws. In this connection, the Board encourages savings institutions to review the disclosures contained in offering circulars for equity offerings of converting institutions and *de novo* federally-chartered institutions in organization and for public offerings of debt securities, which have been declared effective by the Board. Copies of these documents may be obtained by contacting the Board's Information Services Section, at 1700 G Street, N.W., Washington, D.C. 20552.

12. Conforming Amendments

The Board is proposing to eliminate disclosure requirements from its regulations pertaining to outside borrowings (§ 563.8), subordinated debt (§ 563.8–1), and mutual capital certificates (§ 563.7–4), since disclosure would be regulated under proposed Part 563g. In addition, the Board is proposing conforming amendments for the retail repurchase agreement (§ 563.8–4) and accounting (§ 563c.1) regulations.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164 (September 19, 1980), the Board is providing the following regulatory flexibility analysis.

1. *Reasons, objective, and legal basis underlying the proposed rules.* These elements have been incorporated elsewhere in the supplementary information regarding the proposals.

2. *Small entities to which the proposed rules will apply.* The proposed rules would apply only to offers or sales of securities issued by an institution where (1) the institution is an "insured institution" defined in the Board's regulations, (2) the institution is a federally-chartered institution in organization, or (3) the institution is a state-chartered institution and is approved for insurance of accounts by the Corporation within one year after the offer or sale of the institution's securities.

3. *Impact of the proposed rules on small institutions.* Since the proposed rules would clarify the disclosure obligations of insured institutions in connection with the offer or sale of securities, insured institutions that may be considered small entities would be benefited. Moreover, the proposed rules would substantially reduce significant restrictions on the sale by insured institutions of debt securities and mutual capital certificates, which would benefit insured institutions that may be considered small entities.

4. *Overlapping or conflicting federal rules.* There are no federal rules that may duplicate, overlap, or conflict with the proposal.

5. *Alternatives to the proposed rules.* The proposed rules would clarify the requirements for information disclosure in connection with an insured institution's offering of securities. It is not possible to eliminate or significantly modify these requirements for small entities, since the disclosure

requirements are governed by the nature of the offering rather than by the identity or the size of the affected institution.

Regulatory Analysis

The elements of regulatory analysis for major proposed regulations required by Board Resolution No. 80–584 (September 11, 1980) have been incorporated into the supplementary information regarding the proposals.

List of Subjects in 12 CFR Parts 563, 563c, and 563g

Accounting, Savings and Loan Associations, Securities.

Accordingly, the Federal Home Loan Bank Board hereby propose to amend Parts 563 and 563c and to add a new Part 563g under Subchapter D, Chapter V of Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

1. The statutory authority for Part 563 would read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 202, 96 Stat. 1469; sec. 409, 94 Stat. 160; secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1728, 1730); 1947 Reorg. Plan No. 3, 12 FR 4981, 3 CFR 1071 (1943–48 Comp.)

The statutory authority for Part 563c would continue to read as follows:

Authority: Secs. 402, 403, 407 of the National Housing Act, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1728 and 1730); sec. 5 of the Home Owners' Loan Act of 1933, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 3(b), 12, 13, 14, and 23 of the Securities Exchange Act of 1934, 48 Stat. 882, 892, 894, 895, and 901, as amended (15 U.S.C. 78 c(b), m, n, and w); and Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071, unless otherwise noted.

PART 563—OPERATIONS

2. Amend § 563.7–4 by removing paragraphs (e), (f), and (h); and redesignating paragraphs (g), (i), (j), (k), and (l) as paragraphs (e), (f), (g), (h), and (i), respectively.

3. Amend § 563.8 by removing paragraphs (f), (g), and (h); and redesignating paragraph (i) as paragraph (f).

4. Amend § 563.8–1(d) by removing subparagraph (1)(v) and redesignating subparagraph (1)(vi) as (1)(v).

5. Amend § 563.8–4 by revising paragraph (b)(5), as follows:

§ 563.8–4 Transfer and repurchase of government securities.

* * * * *

(b) * * *

(5) *Disclosure.* An institution issuing repurchase agreements to the public shall provide each prospective repurchase agreement purchaser with an offering document which shall contain full and accurate disclosure of all material information regarding the repurchase agreement and the issuing institution. Any material change in any of the material representations set forth in the offering document shall be reflected in a revised offering document that shall be provided to purchasers before any renewal or automatic renewal of a repurchase agreement may be effected. An institution that has a net-worth deficiency under paragraph (b)(7) of this section shall be subject to the requirements of Part 563g of this Subchapter, except that the following financial statements may be substituted for those required to be included in an offering circular required under Part 563g:

(i) The institution's audited statements of condition and operations for its last fiscal year prepared in accordance with the requirements of § 563c.1 of this Subchapter;

(ii) On a comparative basis, the institution's latest unaudited statement of condition for the quarter ending within 135 days of any sale, renewal, or automatic renewal of a repurchase agreement, and an unaudited statement of operations for the period then ended, prepared in accordance with the requirements of § 563c.1; and

(iii) The institution's latest monthly financial report filed with the Corporation.

* * * * *

PART 563c—ACCOUNTING REQUIREMENTS

6. Amend § 563c.1 by revising paragraph (a)(2), as follows:

Subpart A—Form and Content of Financial Statements in Offering Circulars

§ 563c.1 Application of this subpart.

(a) * * *

(2) Any offering circular or non-public offering materials required to be used in connection with an offer or sale of securities under Part 563g of this Subchapter.

* * * * *

7. Add a new Part 563g, as follows:

PART 563g—SECURITIES OFFERINGS

Sec.

563g.1 Definitions.
563g.1 Offering–circular requirements.
563g.2 Exemptions.
563g.4 Non-public offerings.
563g.5 Filing and signature requirements.
563g.6 Effective date.
563g.7 Form, content, and accounting.
563g.8 Use of the offering circular.
563g.9 Escrow requirement.
563g.10 Manipulative and deceptive devices.
563g.11 Withdrawal or abandonment.
563g.12 Securities sale report.
563g.13 Public disclosure and confidential treatment.
563g.14 Waiver.
563g.15 Requests for interpretive advice or waiver.
563g.16 Delayed or continuous offering and sale of securities.
563g.17 Direct sales of securities at an office.
563g.18 Exchange Act registration requirement.
563g.19 Approval of the security.
563g.20 Rescission offers.
563g.21 Form for notice of a non-public offering.
563g.22 Form for securities sale report.
563g.23 Delegation of authority.

Authority: Secs. 402, 403 and 407 of the National Housing Act, 48 Stat. 1256, 1257 and 1260, as amended, 12 U.S.C. 1725, 1728 and 1730; sec. 5 of the Home Owners' Loan Act of 1933, 48 Stat. 132, as amended, 12 U.S.C. 1464; secs. 3(b), 12, 13, 14, and 23 of the Securities Exchange Act of 1934, 48 Stat. 882, 892, 894, 895, and 901, as amended (15) U.S.C. 78c(b), 781, m, n, and w, 78d–1); the Federal Home Loan Bank Act, 12 U.S.C. § 1421 *et seq.*; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

§ 563g.1 Definitions.

(a) For purposes of this Part, the following definitions apply:

(1) "Accredited investors" means the same as in the Commission Rule 501(a) (17 CFR 230.501(a)) under the Securities Act, and includes any insured institution.

(2) "Beneficial owner" means the same as in the Commission Rule 13d–3 (17 CFR 240.13d–3) under the Exchange Act.

(3) "Business combination" means the same as in Commission Rule 501(d) (12 CFR 230.501(d)) under the Securities Act.

(4) "Commission" means the Securities and Exchange Commission.

(5) "Exchange Act" means the Securities Exchange Act of 1934 (15 U.S.C. §§ 78a–78jj).

(6) "Filing date" means the date on which any documents are actually received during business hours by the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

(7) "Insured institution" means the same as in § 561.1 of this Subchapter, and includes a federally-chartered insured institution in organization under Part 552 of this Chapter, and a state-chartered institution which is granted conditional approval of insurance of

accounts by the Corporation within one year of an offer or sale of the institution's securities.

(8) "Issuer" means an insured institution which issues or proposes to issue any security.

(9) "Offer" includes "offer to sell" and "offer for sale" and means the same as in § 563b.2(a)(22) of this Subchapter.

(10) "Person" means the same as in § 563b.2(a)(24) of this Subchapter, and includes an insured institution.

(11) "Purchase" and "buy" means the same as in § 563b.2(a)(26) of this Subchapter.

(12) "Sale" and "sell" includes every contract to sell or otherwise dispose of a security or interest in a security for value.

(13) "Securities Act" means the Securities Act of 1933 (15 U.S.C. 77a–77aa).

(14) "Security" means the same as in § 561.41 of this Subchapter.

(15) "Underwriter" means the same as in § 563b.3(a)(36) of this Subchapter.

(b) A term not defined in this Part but defined in another part of this Subchapter, when used in this Part, shall have the meanings given in such other part, unless the context otherwise requires.

(c) When used in any rules, regulations, or forms of the Commission referred to in this Part, the term "Commission" shall be deemed to refer to the Corporation or the Board, the term "registrant" shall be deemed to refer to an issuer defined in this Part, and the term "registration statement" shall be deemed to refer to an offering circular filed under this Part, unless the context otherwise requires.

§ 563g.2 Offering-circular requirements.

(a) *General.* No insured institution shall offer or sell, directly or indirectly, any security issued by it unless:

(1) The offer or sale is accompanied or preceded by an offering circular which includes the information required by this Part and which has been filed and declared effective pursuant to this Part; or

(2) An exemption is available under this Part.

(b) *Communications not deemed an offer.* The following communications shall not be deemed an offer under this Part:

(1) Prior to filing an offering circular, any notice of a proposed offering which satisfies the requirements of Commission Rule 135 (17 CFR 230.135) under the Secretaries Act; and

(2) Subsequent to filing an offering circular, any notice, circular, advertisement, letter, or other communication published or transmitted to any person which satisfies the requirements of Commission Rule 134 (17 CFR 230.134) under the Securities Act.

(c) *Preliminary offering circular.* Notwithstanding paragraph (a) of this section, a preliminary offering circular may be used for an offer of any security prior to the effective date of the offering circular if:

(1) The preliminary offering circular has been filed pursuant to this Part;

(2) The preliminary offering circular includes the information required by this Part, except for the omission of information relating to offering price, discounts or commissions, amount of proceeds, conversion rates, call prices, or other matters dependent on the offering price; and

(3) The offering circular declared effective by the Corporation is furnished to the purchaser prior to the sale of any such security.

§ 563g.3 Exemptions

The offering-circular requirements of § 563g.2 of this Part shall not apply to an issuer's offer or sale of securities:

(a) Made prior to the date this Part becomes effective: *Provided,* that (1) the offer or sale was accompanied or preceded by an offering document, (2) the offer or sale does not continue for more than 60 days after the effective date of Part 563g, and (3) the issuer is not a *de novo* federally-chartered institution in organization;

(b) Complying with the requirements for retail repurchase agreements of § 563.8–4 of this Subchapter, except where the issuer has a net-worth deficiency under that section;

(c) Exempt from registration under either section 3(a) of section 4 of the Securities Act only by reason of an exemption other than section 3(a)(5) (for regulated savings and loan associations), 3(a)(9) (for certain exchange offerings), 3(a)(11) (for intrastate offerings), or 4(2) (for non-public offerings) of the Securities Act;

(d) In a conversion from the mutual to the stock form of organization pursuant to Part 563b of this Subchapter, except for a supervisory conversion undertaken pursuant to Subpart C of Part 563b of this Subchapter;

(e) In a non-public offering which satisfies the requirements of § 563g.4 of this Part;

(f) That are debt securities issued in denominations of $100,000 or more, which are fully collateralized by interests in mortgage notes secured by real property; or

(g) Distributed exclusively aboard to foreign nationals: *Provided,* that (1) the offering is made subject to safeguards reasonably designed to preclude distribution or redistribution of the securities within, or to nationals of, the United States, and (2) such safeguards include, without limitation, measures that would be sufficient to ensure that registration of the securities would not be required if the securities were not exempt under the Securities Act.

§ 563g.4 Non-public offerings.

Any offer or sale by an issuer of its securities in a non-public offering is exempt from the offering-circular requriements of § 563g.2. To qualify as a non-public offering, the offering must conform to either paragraph (a) or (b) of this section and the requirements of paragraphs (c), (d), and (e) of this section.

(a) *Regulation D.* The offer and sale of all securities in the transaction satisfies the Commission's Regulation D (17 CFR 230.501–230.506), except for the notice requirements of Commission Rule 503 (7 CFR 230.503) and the limitations on resale in Commission Rule 502(d) (17 CFR 230.502(d).

(b) *Sales to 35 persons.* The offer and sale of all securities in the transaction satisfies each of the following conditions:

(1) Sales of the security are not made to more than 35 persons during the offering period, as determined under the integration provisions of Commission Rule 502(a) (17 CFR 230.502(a)). The number of purchasers referred to above is exclusive of any officer, director or affiliate of the issuer. For purposes of this paragraph (b), a husband and wife (together with any custodian or trustee acting for the account of their minor children) are counted as one person and a partnership, corporation or other organization which was not specifically formed for the purpose of purchasing the security offered in reliance upon this exemption, is counted as one person.

(2) All purchasers either have a pre-existing personal or business relationship with the issuer or any of its officers, directors or controlling persons, or by reason of their business or financial experience or the business or financial experience of their professional advisors who are unaffiliated with and who are not compensated by the issuer or any affiliate or selling agent of the issuer, directly or indirectly, could reasonably be assumed to have the capacity to protect their own interests in connection with the transaction.

(3) Each purchaser represents that the purchaser is purchasing for the purchaser's own account (or a trust

account if the purchaser is a trustee) and not with a view to or for sale in connection with any distribution of the security.

(4) The offer and sale of the security is not accomplished by the publication of any advertisement.

(c) *Notice.* A notice shall be filed with the Corporation not later than 10 days prior to the time any security is proposed to be offered or sold in reliance on the exemption provided for a non-public offering, which shall include all of the information required by the Notice Form set forth at § 563g.21 of this Part and shall include the following:

(1) The name, address, and docket number of the issuer.

(2) The title, number, aggregate and per-unit offering price of the securities to be offered;

(3) The number of persons to whom the securities are to be offered; and

(4) A detailed statement of the factual and legal grounds for the exemption claimed.

(d) *Issuance or termination.* Within 10 days after the issuance of securities or termination of an offer of securities in a non-public offering, the issuer shall file with the Corporation a report describing the results of the offer and sale of the securities as required by § 563g.12(b) of this Part.

(e) *Limitation on resale.* Securities acquired in a transaction under this exemption shall not be resold or otherwise disposed of for a period of two years without the prior written consent of the Corporation.

(1) The issuer shall exercise reasonable care to ensure that the purchasers of the securities are not purchasing for resale or distribution, which reasonable care shall include, but not be limited to, the following:

(i) Reasonable inquiry to determine if the purchaser is acquiring the securities for himself or for other persons;

(ii) Written disclosure to each purchaser prior to sale that the securities cannot be resold or otherwise disposed for a period of two year withouts the prior written consent of the Corporation; and

(iii) Placement of a legend on the certificate or other document that evidences the securities, which states: "The securities evidenced by this certificate are restricted as to transfer for a period of two years from the date of this certificate pursuant to the rules and regulations of the Federal Savings and Loan Insurance Corporation and may not be sold or otherwise disposed of without the prior written consent of the Federal Savings and Loan Insurance Corporation."

(2) The determination of the period that securities have been held after acquisition for the purposes of this section shall be made as provided in Commission Rule 144(d) (17 CFR 230.144(d)).

(3) Where securities of the issuer are exchanged for other securities in any business combination, securities of the issuer which are restricted under this section may be exchanged for other securities which are similarly restricted and have the legend required by paragraph (e)(1)(iii) of this section, and the holding periods may run consecutively.

§ 563g.5 Filing and signature requirements.

(a) *Procedures.* An offering circular, amendment, notice, report, or other document required by this Part shall, unless othewise indicated, be filed in accordance with the requirements of § 563b.8(e) (1), (3) and (4), (f) through (q) and (s), of this Subchapter.

(b) *Number of copies.* (1) Unless otherwise required, any filing under this Part shall include 10 copies of the document to be filed with the Corporation, as follows:

(i) Seven copies, which shall include one manually signed copy with exhibits, three conformed copies with exhibits, and three conformed copies without exhibits, to the Corporate and Securities Division, Office of General Counsel; and

(ii) Three copies, which shall include one manually signed copy with exhibits and two conformed copies without exhibits, to the Principal Supervisory Agent.

(2) Within five days after the effective date of an offering circular or the commencement of a public offering after the effective date, whichever occurs later, 25 copies of the offering circular used shall be filed with the Corporation, as follows: 22 copies to the Corporate and Securities Division, Office of General Counsel, and three copies to the Principal Supervisory Agent.

(3) After the effective date of an offering circular, an offering circular which varies from the form previously filed shall not be used, unless it includes only non-material supplemental or additional information and until 10 copies have been filed with the Corporation in the manner required.

(c) *Signature.* (1) Any offering circular, amendment, exhibit, or consent filed with the Corporation pursuant to this Part shall include an attached manually signed signature page which authorizes the filing and has been signed by:

(i) The Issuer, by its duly authorized representative;

(ii) The Issuer's principal executive officer;

(iii) The Issuer's principal financial officer;

(iv) The Issuer's principal accounting officer; and

(v) At least a majority of the issuer's directors.

(2) Any other document filed pursuant to this Part shall be signed by a person authorized to do so.

(3) At least two copies of every document filed pursuant to this Part shall be manually signed, and every copy of a document filed shall:

(i) Have the name of each person who signs typed or printed beneath the signature;

(ii) State the capacity or capacities in which the signature is provided;

(iii) Provide the name of each director of the issuer, if a majority of directors is required to sign the document; and

(iv) With regard to any copies not manually signed, bear typed or printed signatures.

§ 563g.6 Effective date.

An offering circular filed by an insured institution shall automatically be declared effective by the Corporation on the twentieth day after filing or on such earlier date as the Corporation may determine for good cause shown: *Provided,* that:

(a) If any amendment is filed prior to the effective date, the offering circular shall be deemed to have been filed when such amendment was filed;

(b) The period until automatic effectiveness under § 563g.6 shall be stated at the botton of the facing page of the Form OC or any amendment:

(c) The effectiveness will be delayed if a duly authorized amendment, telegram confirmed in writing, or letter states that the effectiveness date is delayed until a further amendment is filed specifically stating that the offering circular will become effective in accordance with § 563g.6; and

(d) If it appears to the Corporation at any time that the offering circular is incomplete or inaccurate in any material respect, the Corporation may determine to declare the offering circular not effective until a materially complete and accurate amendment is filed.

§ 563g.7 Form, content, and accounting.

(a) *Form and content.* Any offering circular or amendment filed pursuant to this Part shall:

(1) Be filed under cover of Form OC, which is under Part 563b of this Subchapter;

(2) Include all of the information required by Schedule A to the Securities Act;

(3) Comply with the requirements of Items 3 and 4 of Form OC and the requirements of all items of the form for registration (17 CFR Part 239) that the issuer would be eligible to use were it required to register the securities under the Securities Act;

(4) Comply with all item requirements of the Form S–1 (17 CFR Part 239) for registration under the Securities Act, if the institution issuing the securities is not in compliance with the Corporation's regulatory net-worth requirements during the time the offering is made;

(5) Where a form specifies that the information required by an item in the Commission's Regulation S–K (17 CFR Part 229) should be furnished, include the information as modified by an corresponding item in Form PS, which is under Part 563b of this Subchapter, and all of the information required by Item 7 of such Form PS;

(6) Include after the facing page of the Form OC a cross-reference sheet listing each item requirement of the form for registration under the Securities Act and indicate for each item the applicable heading or subheading in the offering circular under which the required information is disclosed;

(7) Include in Part II of the Form OC the applicable undertakings required by the form for registration under the Securities Act;

(8) Include in Part II of Form OC the undertaking provided in paragraph (8)(i) of this section for underwritten offerings or the undertaking provided in paragraph (8)(ii) of this section for offerings not underwritten:

(i) "The issuer hereby undertakes, in connection with any distribution of the Offering Circular, to have a preliminary offering circular including the information required by this Part distributed to all persons expected to be mailed confirmations of sale not less than 48 hours prior to the time such confirmations are expected to be mailed."

(ii) "The issuer hereby undertakes, in connection with any distribution of the Offering Circular, to deliver an effective offering circular to all persons to whom the securities are to be sold at least 48 hours prior to the acceptance or conformation of sale to such persons, or to send such a circular to such persons under circumstances that it would normally be received by them 48 hours prior to the acceptance or confirmation of the sale.";

(9) Include as an additional exhibit in Part II of the Form OC, for a securities offering of a Federally-chartered institution in organization, a copy of the application for permission to organize and, for a state-chartered institution in organization, a copy of the application for insurance of accounts; and

(10) Include such information which the Corporation by interpretion or otherwise has deemed necessary.

(b) *Accounting requirements.* To be declared effective, an offering circular or amendment shall satisfy the accounting requirements in Subpart A of Part 563c of this Subchapter and, to the extent they are not inconsistent, the accounting rules in the Commission's Regulation S–X (17 CFR Part 210) and the financial information requirements in the Commission's Regulation S–K (17 CFR Part 229).

§ 563g.8 Use of offering circular.

(a) An offering circular or amendment declared effective by the Corporation shall not be used more than nine months after the effective date, unless the information contained therein is as of a date not more than 16 months prior to such use.

(b) An offering circular filed under § 563g.5(b)(3) of this Part shall not extend the period for which an effective offering circular or amendment may be used under paragraphs (c) of this section.

(c) No offering circular shall be used and no offer or sale of securities subject to the offering-circular requirements of this Part shall be made subsequent to any material change in an issuer's business operations or financial condition, until the offering circular has been amended to include information as to the material changes and the amended offering circular has been filed with and declared effective by the Corporation.

§ 563.9 Escrow requirement.

(a) Any funds received in an offering pursuant to this Part shall be held in a federally-insured escrow or similar separate account until the issuance of the securities or termination of the offer of the securities.

(b) If an offering of securities pursuant to this Part is not completed within the term of the proposed offering period, any funds collected shall be promptly refunded.

§ 563g.10 Manipulative and deceptive devices.

In any offer, purchase, or sale in connection with an issuer's offering of its securities, exempt or not exempt under this Part, no person, directly or indirectly, shall:

(a) Employ any device, scheme, or artifice to defraud,

(b) Make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

§ 563g.11 Withdrawal or abandonment.

(a) Any offering circular, amendment, or exhibit may be withdrawn prior to the effective date. A withdrawal shall be signed and state fully the grounds upon which it is made. Any documents withdrawn will not be removed from the files of the Corporation, but will be marked "Withdrawn upon the request of the issuer on (date)."

(b) When an offering circular or amendment has been on file with the Corporation for a period of nine months and has not become effective the Corporation may, in its discretion, determine whether the filing has been abandoned, after notifying the issuer that the filing is out of date and must either be amended to comply with the applicable requirements of this Part or be withdrawn within 30 days after the date of such notice. Where a filing is abandoned, the documents will not be removed from the files of the Corporation, but will be marked "Declared abandoned by the FSLIC on (date)."

§ 563g.12 Securities sale report.

(a) Within 10 days after the issuance of securities or temination of an offer of securities pursuant to this Part, the issuer shall file a report with the Corporation describing the results of the offer and sale of the securities, which shall include all of the information required by the Securities Sale Report Form set forth at § 563g.22 of this Part and shall include the following:

(1) The name, address, and docket number of the issuer;

(2) The title, number, aggregate and per-unit offering price of the securities sold;

(3) The aggregate and per-unit dollar amounts of actual itemized expenses, discounts or commissions, and other fees;

(4) The aggregate and per-unit dollar amounts of the net proceeds raised; and

(5) The number of purchasers of each class of securities sold and the number of owners of record of each class of the issuer's equity securities after the

issuance of the securities or termination of the offer.

(b) Within 10 days after the issuance of securities or termination of an offer of securities which is claimed to be exempt from filing as a non-public offering, the issuer shall file a report with the Corporation describing the results of the offer and sale of the securities, which shall include:

(1) All of the information required by paragraph (a) of this section;

(2) A detailed statement of the factual and legal grounds for the exemption claimed; and

(3) Copies of all offering materials used listed and attached as exhibits.

§ 563g.13 Public disclosure and confidential treatment.

(a) Any offering circular, amendment, exhibit, notice, or report filed pursuant to this Part will be publicly available. Any other related documents will be tended in accordance with the provisions of the Freedom of Information Act (5 U.S.C 552), the Privacy Act of 1974 (5 U.S.C. 552a), and Parts 505 and 505a of this Chapter.

(b) Any requests for confidential treatment of information in a document required to be filed under this Part shall be made as required under Commission Rule 24b–2 (17 CFR 240.24b–2) under the Exchange Act.

§ 563g.14 Waiver.

(a) The Corporation may waive any requirements of this Part, or any required information:

(1) Determined to be unnecessary by the Corporation;

(2) In connection with a transaction approved by the Corporation for supervisory reasons, or

(3) Where a provision of this Part conflicts with a requirement of applicable state law.

(b) Any condition, stipulation or provision binding any person acquiring a security issued by an insured institution which seeks to waive compliance with any provision of this Part shall be void, unless approved by the Corporation.

§ 563g.15 Requests for interpretive advice or waiver.

Any requests to the Corporation for interpretive advice or a waiver with respect to any provision of this Part shall satisfy the following requirements:

(a) Three copies of the request, including any attachments, shall be filed with the Office of General Counsel, Corporate and Securities Division;

(b) The provisions of this Part to which the request relates, the participants in the proposed transaction, and the reasons for the request, shall be specifically identified or described; and

(c) The request shall include a legal opinion as to each legal issue raised and an accounting opinion as to each accounting issue raised.

§ 563g.16 Delayed or continuous offering and sale of securities.

Any offer or sale of securities under § 563g.2 of this Part may be made on a continuous or delayed basis in the future, if:

(a) The securities would satisfy all of the eligibility requirements of the Commission's Rule 415, 17 CFR 230.415; and

(b) The institution issuing the securities is in compliance with the Corporation's regulatory net-worth requirements during the time the offering is made.

§ 563g.17 Direct sales of securities at an office.

Securities of an insured institution or an affiliate shall only be offered or sold at an office of an insured institution or an affiliate, if:

(a) No commissions are paid to any employee or other person;

(b) No offers or sales are made by tellers or at the teller counter;

(c) Offers and sales are made only by regular, full-time employees;

(d) No unsolicited telephone calls or visits are made by the issuing insured institution to any person in connection with any offers or sales; and

(e) The institution issuing the securities is in compliance with the Corporation's regulatory net-worth requirements during the time the offering is made, except that such compliance is not required for repurchase agreements issued in compliance with § 563.8–4 of this Part.

§ 563g.18 Exchange Act registration requirement.

Each insured institution that files an offering circular which becomes effective pursuant to this Part shall:

(a) Register the securities pursuant to section 12 of the Exchange Act promptly upon issuance of such securities, unless the class of securities is currently registered; and

(b) Not deregister the securities under section 12 of the Exchange Act except in accordance with the rules under the Exchange Act and until 120 days after one full fiscal year following the fiscal year during which the securities were issued.

§ 563g.19 Approval of the security.

Any securities of an insured institution which are not exempt under this Part and are offered or sold pursuant to an offering circular which becomes effective under this Part, are deemed to be approved as to form and terms for purposes of § 561.1 of this Subchapter.

§ 563g.20 Rescission offers.

(a) The Corporation may direct an issuer to make a rescission offer in compliance with paragraph (c) of this section, where the Corporation determines that the issuer has offered or sold securities in violation of § 563g.2 or § 563g.10 of this Part or has violated any of the provisions of this Part.

(b) The Corporation shall direct a state-chartered institution to make a rescission offer in compliance with paragraph (c) of this section, where the institution is granted approval of insurance of accounts by the Corporation within one year of an offer or sale of securities by the institution. The rescission offer shall be made after the Corporation's conditional approval of insurance of accounts and shall expire prior to the effective date of insurance of accounts.

(c) A rescission offer under this section shall:

(1) Be accompanied or preceded by an offering circular which has been filed and declared effective pursuant to this Part;

(2) Grant the right to rescind for a period of 20 days from the mailing date of the offering circular, unless such other period is directed by the Corporation;

(3) Offer to promptly return the consideration paid for the security with interest computed at the judgment rate in the state of the institution's home office, less the amount of any income received from the security, upon the tender of the security, and offer to promptly pay an amount equal to the measure of damages under § 11 of the Securities Act, as if that provision applied to the transaction, if the security is no longer owned; and

(4) Be made under terms and conditions which are fair and reasonable.

(d) Within 10 days of the receipt of an order or directive under this section, the issuer may submit in writing a statment of its grounds for objection, along with any supporting documentation. Where the issuer claims an exemption under this Part or assets other legal grounds for objection, a reasoned legal opinion should be provided. Within 10 days of the receipt of a written submission which is complete, the Corporation will notify the issuer whether the directive to offer rescission has been upheld, modified or withdrawn.

§ 563g.21 Form for notice of a non-public offering.

Federal Home Loan Bank Board

1700 G Street, NW.
Washington, D.C. 20552

Notice of Non-Public Offering Pursuant to Rule 563g–4

FHLBB No. _____
Issuer's Name: _____
Address: _____

If in organization, state the date of the conditional approval of insurance of accounts and the Board Resolution No.:

_____

State the title, number, aggregate and per-unit offering price of the securities to be offered:

_____

_____

State the number of persons to whom the securities are to be offered:

_____

State the factual and legal grounds for the exemption claimed (attach additional pages if necessary):

_____

_____

Person to Contact: _____
Telephone No.:_____

The issuer has duly caused this Notice to be signed on its behalf by the undersigned person.

Date of Notice:_____
Issuer:_____
Signature: _____
Name:_____
Title: _____

Instruction: Print the name and title of the signing representative under his signatures. Ten copies of the Notice should be filed, including two copies manually signed, as required under 12 CFR 563g.5.

Attention

Intentional misstatements or omissions of fact constitute violations of Federal law (18 U.S.C. 1001).

§ 563g.22 Form for securities sale report.

Federal Home Loan Bank Board

1700 G Street, N.W.
Washington, D.C. 20552

Securities Sale Report Pursuant to Rule 563g.12

FHLBB No. _____
Issuer's Name: _____
Address: _____

If in organization, state the date of certification of insurance of accounts:

_____

State the title, number, aggregate and per-unit offering price of the securities sold:

_____

State the aggregate and per-unit dollar amounts of the net proceeds raised:

_____

State the number of purchasers of each class of securities sold and the number of owners of record of each class of the issuer's equity securities at the close or termination of the offering:

_____

For a non-public offering, also state the factual and legal grounds for the exemption claimed (attach additional pages if necessary):

_____

For a non-public offering, copies of all offering materials used should be listed and attached as exhibits:

_____

Person to Contact: _____
Telephone No.:_____

The issuer has duly caused this securities sale report to be signed on its behalf by the undersigned person.

Date of securities sale report: _____
Issuer:_____
Signature: _____
Name:_____
Title: _____

Instruction: Print the name and title of the signing representative under his signatures. Ten copies of the securities sale report should be filed, including two copies manually signed, as required under 12 CFR 563g.5.

Attention

Intentional misstatements or omissions of fact constitute violations of Federal law (See 18 U.S.C. 1001).

§ 563g.23 Delegation of authority.

The General Counsel, or designee, is authorized to act on or exercise the Corporation's authority pursuant to this Part.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85–22812 Filed 9–24–85; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85–AWP–33]

Proposed Alteration of Oxnard, California, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to extend the existing control zone at Oxnard, California. The extension of the control zone is required to contain the Standard Instrument Approach Procedures proposed for Camarillo Airport, Camarillo, California. This proposal will change the published title of the control zone from Oxnard Ventura County Airport, California, to Oxnard, California. This action is necessary to ensure aircraft operating under Instrument Flight Rules (IFR) would have exclusive use of that airspace when visibility is less than 3 miles, thereby enhancing the safety of such operations.

DATE: Comments must be received on or before November 15, 1985.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, AWP–530, Docket No. 85–AWP–33,P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007.

The official docket may be examined in the Office of the Western-Pacific Regional Counsel, Room 6W14, at 15000 Aviation Boulevard, Hawthorne, California.

An informal docket may be examined during normal business hours at the Airspace and Procedures Branch, Room 6E4, at the above address.

FOR FURTHER INFORMATION CONTACT: Curtis Alms, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Hawthorne, California 90261; telephone (213) 536–6349.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this docket must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–AWP–33." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above, both before and after the closing date for comments. A report summarizing each substantive public

contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch , 15000 Aviation Boulevard, Hawthorne, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide additional controlled airspace to ensure that aircraft conducting VOR Runway 28 IFR operations at Camarillo Airport are segregated from aircraft conducting Visual Flight Rules (VFR) operations when the visibility is less than 3 miles, thereby enhancing the safety of such operations. The current control zone is titled Oxnard Ventura County Airport, California, and the control zone serves more than one airport. This proposal will change the title to read Oxnard, California. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexilibity Act.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the FAR as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.171 is amended as follows:

Oxnard, CA—[Revised]

"Within a 5-mile radius of Oxnard Ventura County Airport (lat. 34°12'02" N., long. 119°12'10" W.), beginning at lat. 34°07'40" N., long. 119°12'35" W.; to lat. 34°14'30" N., long. 119°07'40" W.; then extending beyond the 5-mile radius circle to lat. 34°14'30" N., long. 118°59'39" W.; to lat. W.; 34°10'30" N., long 118°59'30" W.; to lat. 34°10'30" N., 119°07'40" W.; then counterclockwise via the 5-mile radius circle of NAS Point Mugu (lat. 34°07'05" N., long. 119°07'20" W.); to the point of beginning. This control zone shall be effective during the specified dates and times established in advance by a Notice to Airmen. The effective date and time will, thereafter, be continuously published in the *Airport/Facility Directory."*

Issued in Los Angeles, California on September 13, 1985.

B. Keith Potts,

Acting Director,β Western-Pacific Region.

[FR Doc. 85–22827 Filed 9–24–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 85–AWP–34]

Proposed Alteration of Ke-ahole Kona, Hawaii, Control Zone and Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter and redefine the control zone and transition area at Ke-ahole Kona, Hawaii. The realignment of the controlled airspace is required to contain all IFR operations at Keahole Airport, Hawaii. This action is necessary to ensure segregation of aircraft using approach procedures in instrument weather conditions and other aircraft operating in visual weather conditions. This action will also change the title of the control zone and transition area to reflect the name of the associated community of Kailua-Kona, Hawaii, and correct the spelling of Keahole Airport.

DATE: Comments must be received on or before October 30, 1985.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, AWP–530, Docket No. 85–AWP–34, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007.

The official docket may be examined in the Office of the Western-Pacific Regional Counsel, Room 6W14, at 15000 Aviation Boulevard, Hawthorne, California.

An informal docket may be examined during normal business hours at the Airspace and Procedures Branch, Room 6E4, at the above address.

FOR FURTHER INFORMATION CONTACT: Curtis Alms, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Hawthorne, California 90261; telephone (213) 536–0049.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this docket must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85–AWP–34." All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination at the address listed above, both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and

Procedures Branch, AWP-530, 15000 Aviation Boulevard, Hawthorne, California 90261, or by calling (213) 536-6180. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 and § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide realignment of Ke-ahole Kona, Hawaii, Control Zone and Transition Area. This action is necessary to provide sufficient controlled airspace to ensure aircraft operating under Instrument Flight Rules (IFR) would have exclusive use of that airspace when visibility is less than three miles; thereby, enhancing the safety of such operations. Keahole Airport is associated with the community of Kailua-Kona, Hawaii, and this action will also change the title of the control zone and transition area to reflect this correction. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore,—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the FAR as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.171 is amended as follows:

Kailua-Kona, HI—[Revised]

Within a 5-mile radius of Keahole Airport (lat. 19°44'08" N., long. 156°02'56" W.); thence beginning at lat. 19°40'20" N., long. 156°00'30" W.; to lat. 19°38'00" N., long. 156°00'35" W.; to lat. 19°38'40" N., long. 156°06'20" W.; to lat. 19°41'10" N., long. 156°06'00" W.; thence clockwise via the 5-mile radius circle to lat. 19°43'50" N., long. 156°07'20" W.; to lat. 19°55'50" N., long. 156°06'20" W.; to lat. 19°55'0" N., long. 155°57'00" W.; to lat. 19°43'25" N., long. 155°58'25" W.; thence clockwise via the 5-mile radius circule to the point of beginning. This control zone is effective from 0600 to 2000 hours, local time, daily. The effective date and time will, thereafter, be continuously published in the *Flight Information Publication Supplement Pacific, Australasia, and Antartica.*

3. Section 71.181 is amended as follows:

Kailua-Kona, HI—[Revised]

That airspace extending upward from 700 feet above the surface beginning at lat. 19°37'28" N., long. 155°59'30" W.; to lat. 19°29'00" N., long. 156°00'30" W.; to lat. 19°29'45" N., long. 156°08'50" W.; to lat. 19°38'30" N., long. 156°08'01" W.; thence clockwise via the 8.5-mile radius circle of Keahole Airport (lat. 19°44'08" N., long. 156°02'56" W.) to the point of beginning.

Issued in Los Angeles, California on September 13, 1985.

B. Keith Potts,

Acting Director, Western-Pacific Region.

[FR Doc. 85-22828 Filed 9-24-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 73

[Airspace Docket No. 84-AWA-30]

Proposed Establishment of Restricted Areas; Lompoc and Santa Maria, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish restricted airspace at Lompoc and Santa Maria, CA, to encompass Space Shuttle vehicle launch, recovery, and flight training operations. Space Shuttle activities in the proposed area may create an unsafe environment for the shuttle vehicle and other aircraft because of the limitations on the ability of the shuttle vehicle, or aircraft simulating the shuttle vehicle's flight characteristics, to see and avoid other aircraft. The proposed restricted area would segregate nonparticipating aircraft during actual and simulated shuttle vehicle operations.

DATE: Comments must be received on or before November 12, 1985.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 84-AWA-30, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-3128.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 84-AWA-30." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on

the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

Background

On January 22, 1985, the FAA published an Advance Notice of Proposed Rulemaking (ANPRM) announcing proposed restricted area airspace over Lompoc, CA, and Santa Maria, CA (50 FR 2827). The advance notice proposed that restricted airspace over Lompoc, CA, and Santa Maria, CA, be established for Space Shuttle vehicle training operations. The notice also informed the public of an informal airspace meeting which was held in Lompoc, CA, on March 5, 1985, to discuss the restricted area proposal.

Comments

Interested parties has numerous comments and objections relating to the proposed restricted area airspace. During the comment period a total of 15 written comments were received from both aviation nonaviation groups objecting to the proposal. Approximately 135 persons attended the informal airspace meeting on March 5 concerning the proposed restricted area airspace. In attendance were the Lompoc Airport fixed-based operator, Aircraft Owners and Pilots Association (AOPA), Lompoc Valley Chamber of Commerce, Lompoc Valley Pilot is Association, Santa Barbara County Board of Supervisors, and numerous other aviation and nonaviation interested citizens.

Approximately 35 persons commented during the meeting and all were in opposition to the proposal. The areas of concern centered on the following:

1. The Lompoc Airport would be closed during Space Shuttle launch and recovery periods because of restricted airspace.
2. The Lompoc Airport would also be closed during Space Shuttle training periods because of restricted airspace.
3. Lompoc Airport would suffer economic damage due to fewer aircraft using the airport.
4. The city and community would suffer economic damage due to a reduction of airport availability and utility.
5. Lompoc Airport expansion plans would be curtailed.
6. Local farmers and crop dusters would suffer economic loss since crop dusting activity would be curtailed or halted during periods of shuttle operations and training.
7. Loss of instrument flight rules departure procedures and the VOR/DME approach would adversely impact the Lompoc Airport.
8. The floor of restricted airspace at 3,000 feet MSL over mountainous terrain will afford less than 2,000 obstruction clearance in areas of turbulence and wind shear will adversely affect flight safety.

Due to the above objections, the Department of Defense (DOD) and the National Aeronautics and Space Administration (NASA) have significantly revised the original proposal as stated in the advance notice. The FAA believes that the revised proposal will provide for an adequate, safe and efficient environmental to accommodate Space Shuttle vehicle operations, training, and support aircraft activities, while ensuring safety and minimum impact on other users.

The Proposals

The FAA is considering amendments to § 71.151 and § 73.25 of Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) to establish new Restricted Areas R–2539 A, B, C and D near Lompoc and Santa Maria, CA. All of the proposed restricted areas will also be added to the Continental Control Area. In response to public comment, DOD and NASA have submitted a revised proposal to the FAA requesting restricted area airspace near Vandenberg AFB, Lompoc, CA, contain Space Shuttle vehicle operations, training, and support aircraft activities. A total of 11 Space Shuttle vehicle launch and recoveries are scheduled to be conducted at Vandenberg AFB during the next five years. Each of these shuttle launches and recoveries would result in the Lompoc Airport being closed to the flying public for a brief period. Even though the proposed restricted area R–2539D would extend vertically from 100 feet AGL to infinity, it is not anticipated that it would have a significant adverse effect upon aerial access to Lompoc Airport or the conduct of flight activities in the vicinity, because the airspace would be activated only very infrequently. When it is active, the periods of activation would extend only from four hours prior to the scheduled launch of an orbital mission to one-half hour after lift off of the shuttle vehicle (or recovery of the vehicle at the launch site in the event of an aborted departure), and from one hour prior to a scheduled shuttle vehicle recovery until one-half hour after landing. Agricultural dispensing flight operations would not be entirely curtailed of Lompoc when R–2539D is activated because many of those activities can be accomplished below 100 feet AGL.

R–2539C would only be activated during airborne simulation of shuttle vehicle launch and recovery operations. The area would extend vertically from 1,500 feet MSL to infinity. NASA reports that they plan to conduct astronaut training to Vandenberg AFB in units of two to three days each once every other month. Each day of training includes two flights, each one lasting approximately two and one-half hours. Since the floor of the restricted area airspace would be 1,500 feet MSL, ingress/egress routes would be available at Lompoc Airport and normal flight operations would be conducted without any substantial adverse effect upon these operations.

R–2539B would be activated only in support of actual space shuttle launch/recovery operations, or Space Shuttle training aircraft flights. The floor of the restricted area airspace would be 5,000 feet MSL and would provide sufficient obstruction clearance over mountainous terrain in the Lompoc area.

R–2539A would also only be activated in support of the actual Space Shuttle launch/recovery operations or Space Shuttle training flights. The floor of the restricted area airspace would be 9,000 feet MSL and would cause no adverse effect to aircraft operations at the Lompoc or Santa Maria Airports.

The FAA believes that the revised proposal will not significantly impact aircraft operations in the Lompoc area and will provide for a safe and efficient use of the airspace by all users. In addition, DOD and NASA have agreed to the following measures to minimize any impact on the efficient and safe flying environment in the Lompoc area if the proposal is adopted:

1. A letter of agreement between Vandenberg AFB RAPCON and the Lompoc Airport operators would be developed to specify restricted area activation procedures.

2. A remote VHF site on or near the Lompoc Airport will be installed so as to provide aircraft on the ground at Lompoc Airport with direct communications to Vandenberg AFB RAPCON. This equipment is expected to be installed prior to the first Shuttle launch, which is scheduled for March 1986.

3. A VHF ATIS would be installed at Vandenberg AFB to enhance pilot awareness of restricted area status.

4. Charting of the restricted areas would clearly indicate hours of operation and Vandenberg AFB RAPCON frequencies to preclude transient pilots from avoiding the airport on the basis that it lies within restricted airspace continuously. Sections 71.123 and 73.25 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

Regulatory Evaluation

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In the ANPRM published in January 1985, the FAA did not include a draft regulatory evaluation but committed to such an evaluation if necessary in consideration of the comments received. Many of the comments received in response to the ANPRM did claim that there would be an economic impact, primarily as the result of a continuous restricted area over the Lompoc Airport with a floor of 100 feet AGL. That proposal has not been included in this notice. The 100 foot AGL area would be activated for only a few hours over a period of five years. The three remaining areas would be activated for shuttle operations and training only as necessary, at minimum altitudes of 1,500 feet MSL, 5,000 feet MSL, and 9,000 feet MSL. As a result, the areas proposed in this notice would not have the impacts on aeronautical, agricultural, and business activity of the previous proposal. The economic impact of the current proposal would be minimal, and, accordingly, no economic evaluation has been prepared. For the same reason, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area and Restricted areas.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.151 is amended as follows:

R–2539A USAF Space Shuttle Operations, Vandenberg AFB, CA [New]

R–2539B USAF Space Shuttle Operations, Vandenberg AFB, CA [New]

R–2539C USAF Space Shuttle Operations, Vandenberg AFB, CA [New]

R–2539D USAF Space Shuttle Operations, Vandenberg AFB, CA [New]

PART 73—[AMENDED]

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

4. Section 73.25 is amended as follows:

R–2539A USAF Space Shuttle Operations, Vandenberg AFB, CA [New]

Boundaries: Beginning at Lat. 35°00′00″ N., long. 120°42′00″ W.; to lat. 35°03′00″ N., long. 120°39′00″ W.; to Lat. 34°48′00″ N., long. 120°16′00″ W.; to Lat. 34°37′00″ N., long. 120°16′00″ W.; to Lat. 34°46′00″ N., long. 120°27′00″ W.; to Lat. 34°50′00″ N., long. 120°32′00″ W.; to Lat. 34°54′00″ N., long. 120°33′00″ W.; to the point of beginning.

Altitudes: 9,000 feet MSL to unlimited.

Times of use: Intermittent, activated by NOTAM.

Controlling agency: FAA, Los Angeles ARTCC.

Using agency: USAF, Western Space and Missile Center (WSMC)/SE, Vandenberg AFB, CA.

Remarks: Activation authorized only in support of actual Space Shuttle launch/recovery operations, or Space Shuttle Training aircraft flights.

R–2539B USAF Space Shuttle Operations, Vandenberg AFB, CA [New]

Boundaries: Beginning at Lat. 34°46′00″ N., long. 120°27′00″ W.; to Lat. 34°37′00″ N., long. 120°16′00″ W.; to Lat. 34°30′00″ N., long. 120°15′30″ W.; to Lat. 34°36′20″ N., long. 120°27′20″ W.; to Lat. 34°40′00″ N., long. 120°25′00″ W.; to Lat. 34°42′00″ N., long. 120°30′00″ W.; to the point of beginning.

Altitudes: 5,000 feet MSL to unlimited.

Times of use: Intermittent, activated by NOTAM.

Controlling agency: FAA, Los Angeles ARTCC.

Using agency: USAF, Western Space and Missile Center (WSMC)/SE, Vandenberg AFB, CA.

Remarks: Activation authorized only in support of actual Space Shuttle launch/recovery operations, or Space Shuttle training aircraft flights.

R–2539C USAF Space Shuttle Operations, Vandenberg AFB, CA [New]

Boundaries: Beginning at to lat. 34°42′00″ N., long. 120°30′00″ W.; to Lat. 34°40′00″ N., long. 120°25′00″ W.; to lat. 34°36′20″ N., long. 120°27′20″ W.; to lat. 34°35′45″ N., long. 120°28′10″ W.; to lat. 34°38′35″ N., long. 120°31′20″ W.; to the point of beginning.

Altitudes: 1,500 feet MSL to unlimited.

Times of use: Intermittent, activated by NOTAM.

Controlling agency: FAA, Los Angeles ARTCC.

Using agency: USAF, Western Space and Missile Center (WSMC)/SE, Vandenberg AFB, CA.

Remarks: Activation authorized only in support of actual Space Shuttle training aircraft flights.

R–2539D USAF Space Shuttle Operations, Vandenberg AFB, CA [New]

Boundaries: Beginning at lat. 34°42′00″ N., long. 120°30′00″ W.; to lat. 34°40′00″ N., long. 120°25′00″ W.; to lat. 34°36′020″ N., long. 120°27′20″ W.; to lat. 34°35′45″ N., long. 120°28′10″ W.; to lat. 34°38′35″ N., long. 120°31′20″ W.; to the point of beginning.

Altitudes: 100 feet AGL to unlimited.

Times of use: Intermittent, activated by NOTAM.

Controlling agency: FAA, Los Angeles ARTCC.

Using agency: USAF, Western Space and Missile Center (WSMC)/SE, Vandenberg AFB, CA.

Remarks: Activation authorized only during actual Space Shuttle recovery operations, and those launches identifying Vandenberg as a potential return to launch site locations.

Issued in Washington, DC, on September 17, 1985.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85–22833 Filed 9–24–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 33

Enforcement of Nondiscrimination on the basis of Handicap in Department of Labor Programs; Correction

AGENCY: Office of the Secretary, Labor.

ACTION: Proposed rule: reopening of comment period; correction.

SUMMARY: This document corrects four items contained in the notice to reopen the comment period for proposed regulations implementing the 1978 amendment to section 504 of the Rehabilitation Act of 1973, as amended, in programs or activities conducted by the Department of Labor. The notice to reopen the comment period was published September 10, 1985 (50 FR 36885).

FOR FURTHER INFORMATION CONTACT: Noelia Fernandez, Equal Opportunity Specialist, Telephone (202) 523–7002 (VOICE) or 523–7090 (TTY).

SUPPLEMENTARY INFORMATION: The following corrections shall be made on page 36885:

(1) In the second column, first paragraph, fourth line, the room number to which comments should be addressed is N–4123.

(2) The same change should be made in the second column, second paragraph, second line.

(3) In the second column, third paragraph, the contact person is corrected to read Noelia Fernandez, Equal Opportunity Specialist.

(4) In the second column, third paragraph, sixth line, the voice telephone number is corrected to read 523–7002.

Signed at Washington, D.C., this 20th day of September, 1985.

William J. Harris,

Director, Office of Civil Rights.

[FR Doc. 85–22873 Filed 9–24–85; 8:45 am]

BILLING CODE 4510-23-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Public Comment Period and Opportunity for Public Hearing on Proposed Amendment to the Colorado Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and hearing on the substantive adequacy of a program amendment submitted by the State of Colorado as a modification to its permanent regulatory program (hereinafter referred to as the Colorado program), which was conditionally approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter dated August 28, 1985, Colorado submitted revisions to 2 CCR 407–2, 5.03.02(1) to clarify that conducting surface coal mining and reclamation operations without a valid permit or engaging in coal exploration operations without approval constitutes a condition or practice that causes or can be expected to cause significant imminent environmental harm. The State also proposes to revise 2 CCR 407–2, 5.04.5(2) to establish a minimum civil penalty of $1,750 for conducting such unapproved or unpermitted operations.

This notice sets forth the times and locations that the Colorado program and proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing.

DATES: Written comments from the public not received by 4:00 p.m. on October 25, 1985 will not be considered in the decision process. A public hearing on the proposal will be held at 7:00 p.m. on October 15, 1985. Any person interested in making an oral or written presentation at the hearing should contact Mr. Robert Hagen at the OSM Albuquerque Field Office by the close of business on or before October 10, 1985. If no one expresses an interest in participating in the hearing by this date, the hearing will not be held. If only one person has so contacted Mr. Hagen, a public meeting, rather than a hearing, may be held; the results of the meeting will be included in the administrative record.

ADDRESSES: Written comments should be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, Attn: Colorado Administrative Record, 219 Central Avenue, N.W., Albuquerque, New Mexico 87102.

Copies of the proposed modifications to the program, the Colorado program, and the administrative record on the Colorado program are available for public review and copying at the OSM office and the State regulatory authority office listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed program amendment by contacting the OSM Albuquerque Field Office.

Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 219 Central Avenue, N.W., Albuquerque, New Mexico 87102, Telephone: (505) 766–1486

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5124, Washington, DC 20240, Telephone: (202) 343–4855

Colorado Mined Land Reclamation Division, Department of Natural Resources, Centennial Building, Room 423, 1313 Sherman Street, Denver, Colorado 80203, Telephone: (303) 866–3567

A public hearing on the proposal will be held at 7:00 p.m. on October 15, 1985 at the OSM Western Technical Center, Brooks Towers, 1020 Fifteenth Street, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue, NW., Albuquerque, New Mexico 87102, Telephone: (505) 766–1492.

SUPPLEMENTARY INFORMATION: On February 29, 1980, Colorado submitted its proposed permanent regulatory program to the Secretary of the Interior. On December 15, 1980, following a review in accordance with 30 CFR Part 732, the Secretary approved the program subject to the correction of 45 minor deficiences. Information pertinent to the general background and revisions to the permanent program submission, as well as the Secretary's findings, the disposition of comments and an explanation of the initial conditions of approval can be found in the December 15, 1980 **Federal Register** (45 FR 82173–82214).

Since then, the Colorado program has been amended several times, removing all but six conditions.

On August 28, 1985, Colorado submitted two proposed regulatory revisions. The State regulation at 2 CCR 407–2, 5.03.2(1) would be revised to clarify that Colorado has the authority to issue cessation orders for all unpermitted surface coal mining and reclamation operations and all unapproved coal exploration operations. The State rule at 2 CCR 407–2, 5.04.5(2) would be revised to impose a minimum $1,750 civil penalty on persons responsible for such operations.

In accordance with the provisions of 30 CFR 731.17, OSM is now seeking

comments on whether the revisions and materials satisfy the criteria for approval of State program amendments found at 30 CFR 732.15 and 732.17. With respect to Colorado's enforcement provisions, OSM must find that the State program, as proposed to be amended, incorporates sanctions no less stringent than those set forth in the Federal requirements. With respect to Colorado's penalty provisions, OSM must find that the State program, as proposed to be amended, incorporates penalties no less stringent than those set forth under the Federal requirements and that it contains the same or similar procedural requirements. If the Director determines that the proposed modifications satisfy the criteria, the amendment will be approved, and 30 CFR Part 906 modified accordingly.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 1291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 16, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

[FR Doc. 85–22844 Filed 9–24–85; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 906

Public Comment Period and Opportunity for Public Hearing on Proposed Amendment to the Colorado Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and hearing on the substantive adequacy of a program amendment submitted by the State of Colorado to satisfy one of the conditions placed on the approval of its permanent regulatory program (hereinafter referred to as the Colorado program) by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter dated June 13, 1985, Colorado submitted the final revised version of its inspection report form, as approved by the Colorado Mined Land Reclamation Board on May 23, 1985, to satisfy the requirement of 30 CFR 906.11(ss) that the State amend its program to require that inspection reports be adequate to enforce the requirements of and carry out the terms and purposes of the State program.

This notice sets forth the times and locations that the Colorado program and the proposed amendment will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing.

DATES: Written comments from the public not received by 4:00 p.m. on October 25, 1985 will not necessarily be considered in the decision process. A public hearing on the proposal will be held at 7:00 p.m. on October 15, 1985. Any person interested in making an oral or written presentation at the hearing should contact Mr. Robert Hagen at the OSM Albuquerque Field Office by the close of business on or before October 10, 1985. If no one expresses an interest in participating in the hearing by this date, the hearing will not be held. If only one person has so contacted Mr. Hagen, a public meeting, rather than an hearing, may be held; the results of the meeting will be included in the administrative record.

ADDRESSES: . Written comments should be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office Attn: Colorado Administrative Record, 219 Central Avenue, NW., Albuquerque, New Mexico 87102.

Copies of the proposed modifications to the program, the Colorado program, the administrative record on the Colorado program are available for public review and copying at the OSM office and the State regulatory authority office listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed program amendment by contacting the OSM Albuquerque Field Office.

Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 219 Central Avenue, NW., Albuquerque, New Mexico 87102, Telephone: (505) 766–1486

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5124, Washington, D.C. 20240, Telephone: (202) 343–4855

Colorado Mined Land Reclamation Division, Department of Natural Resources, Centennial Building, Room 423, 1313 Sherman Street, Denver, Colorado 80203, Telephone: (303) 866–3567

A public hearing on the proposal will be held at the OSM Western Technical Center, Brooks Towers, 1020 Fifteenth Street, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue, NW., Albuquerque, New Mexico 87102, Telephone: (505) 766–1492.

SUPPLEMENTARY INFORMATION: On February 29, 1980, Colorado submitted its proposed permanent regulatory program to the Secretary of the Interior. On December 15, 1990, following a review in accordance with 30 CFR Part 732, the Secretary approved the program subject to the correction of 45 minor deficiencies. Information pertinent to the general background and revisions to the permanent program submission, as well as the Secretary's findings, the disposition of comments and an explanation of the initial conditions of approval can be found in the December 15, 1980 **Federal Register** (45 FR 82173–82214).

Since then, the Colorado program has been amended several times, removing all but six conditions. As codified at 30 CFR 906.11(ss), one of the remaining conditions results from the Secretary's finding that the Colorado rule at 2 CCR 407–2, 5.02.2(4) is inconsistent with the Federal rule at 30 CFR 840.11(d)(3) [since recodified as 30 CFR 840.11(e)(3)] because the State rule does not expressly require that inspection reports be adequate to enforce the requirements

of the approved State program (Finding D.1.(f)(vii), 45 FR 82186, December 15, 1980).

The State rule requires only that inspection forms be approved by the Mined Land Reclamation Board.

By letter dated March 21, 1985, Colorado notified OSM that it had developed a new inspection report form to satisfy the condition, and that a regulation change was unnecessary. By letter dated May 31, 1985, OSM requested that the State submit this form as a proposed program amendment. Colorado did so by letter of June 13, 1985, noting that the Mined Land Reclamation Board had approved the form on May 23, 1985, as required by the State regulation.

In accordance with the provisions of 30 CFR 731.17, OSM is now seeking comments on whether the revised inspection report form satisfies the criteria for approval of State program amendments found at 30 CFR 732.15 and 732.17 and the requirements of the condition placed on the Secretary's approval of the Colorado program at 30 CFR 906.11(ss). If the Secretary determines that the form satisfies the criteria, the amendment will be approved, and 30 CFR Part 906 modified accordingly. If the Secretary does approve the proposed amendment, the inspection report form would become part of the approved program and could be changed only through the program amendment process.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 16, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

[FR Doc. 85-22845 Filed 9-24-85; 8:45 am]

BILLING CODE 4310-05-M

VETERANS ADMINISTRATION

38 CFR Part 21

Subsistence Allowance Payment Rates

AGENCY: Veterans Administration.

ACTION: Proposed rule.

SUMMARY: The Veterans Administration is publishing for public comment, regulations to implement the increase in subsistence allowance paid under 38 U.S.C. chapter 31. The amount of monthly subsistence allowance paid to veterans in a vocational rehabilitation program under chapter 31 is increased by 10 percent effective October 1, 1984 under Pub. L. 98-543. In addition the provisions of 38 CFR 21.260(b) are changed to clarify that payment of subsistence allowance for a veteran being provided nonpay work experience in a Federal agency may be made on less than a full-time basis. The regulatory change contained herein will better acquaint eligible veterans, educational facilities and the public at large with the way this provision will be implemented.

DATES: Comments must be received on or before October 25, 1985. It is proposed that these regulatory changes be made effective October 1, 1984, the date on which the provision of law upon which these regulatory changes are based became effective.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these changes to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC, 20420. All written comments received will be available for public inspection in room 132, Veterans Services Unit, at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until November 8, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Karen Boies (202) 389-2886.

SUPPLEMENTARY INFORMATION: The proposed regulation does not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. The proposal will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant effect on the economy.

The Administrator hereby certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the proposed rule is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reasons for this certification are that, the proposed changes simply make the regulation consistent with recent statutory changes. Thus, no regulatory burdens are imposed on small entities by these changes.

The Catalog of Federal Domestic Assistance Number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 9, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21—[AMENDED]

38 CFR Part 21, VOCATIONAL REHABILITATION AND EDUCATION, is amended by revising paragraph (b) of § 21.260 to read as follows:

§ 21.260 Subsistence allowance.

* * * * *

(b) *Rate of payment.* Subsistence allowance is paid at the following rates effective October 1, 1984.

Type of program	Monthly rate of subsistence allowance			
	No dependents	One dependent	Two dependents	Additional amount for each dependent over two
Institutional: [1]				
Full-time	$310	[illegible]	[illegible]	$33
¾ time	233	[illegible]	[illegible]	25
½	155	193	227	17
Nonpay on-job training in a Federal agency; training in the home; vocational course in a rehabilitation facility or sheltered workshop; independent instructor: Full-time only	310	384	452	33
Nonpay work experience in a Federal agency:				
Full-time	310	[illegible]	452	33
¾ time	233	[illegible]	[illegible]	25
½ time	155	193	227	17
Farm cooperative; apprenticeship or other on-job training: [2] Full-time only	271	327	377	24
Combination (institutional and OJT) (Full-time only):				
Institutional greater than ½ time	310	384	452	33
OJT greater than ½ time [2]	271	327	377	24
Non-farm cooperative (Full-time only):				
Institutional	310	[illegible]	452	33
On-job	271	327	377	24
Improvement of rehabilitation potential: Full-time only	310	[illegible]	452	33
Independent living; Extended evaluation.				
Full-time	310	[illegible]	452	33
¾ time	233	[illegible]	[illegible]	25
½ time	155	193	227	17
¼ time	78	[illegible]	113	[illegible]

[1] Measurement of rate of pursuit (§§ 21.4270–21.4275)
[2] For on-job training, subsistence allowance may not exceed the difference between the monthly training wage, exclusive of overtime, and the entrance journeyman wage for the veteran's objective (38 U.S.C. 1508(b), Pub. L. 98–543) (October 1, 1984)

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[FR Doc. 85–22862 Filed 9–24–85; 8:45 am]
BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Docket No. AM045PA; A–3–FRL–2902–9]

Extension of Public Comment Period; Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of public comment period.

SUMMARY: EPA is today approving a thirty-day extension to the public comment period pertaining to the deletion of the odor emission regulations from the Pennsylvania State Implementation Plan. EPA has received numerous comments and several requests to extend the public comment period. The public comment period is being extended until October 11, 1985.

FOR FURTHER INFORMATION CONTACT: Donna Abrams, Environmental Engineer, U.S. Environmental Protection Agency, Region III, 3AM11, 841 Chestnut Building, 8th Floor, Philadelphia, Pennsylvania 19107, (215) 597–9134.

SUPPLEMENTARY INFORMATION: EPA published a Notice of Proposed Rulemaking at 50 FR 32451 on August 12, 1985, in order to withdraw its former approval of State and local odor emission control regulations as part of the Pennsylvania State Implementation Plan (SIP). As a result of this Notice, EPA has received numerous comments and several requests to extend the public comment period. We believe sufficient interest in this proposed rulemaking exists to justify such an extension. Therefore, EPA has decided to extend the public comment period until October 11, 1985.

Authority: 42 U.S.C. 7401–7642.

Dated: September 12, 1985.

James M. Seif,

Regional Administrator.

[FR Doc. 85–22910 Filed 9–24–85; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 65

[A–3–FRL–2902–5]

State and Federal Administrative Orders Permitting a Delay in Compliance With State Implementation Plan Requirements; Proposal Approval of an Administrative Order Issued by the Pennsylvania Department of Environmental Resources to Boyertown Casket Company

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rulemaking; invitation for public comment.

SUMMARY: EPA has proposed to approve an Administrative Order issued by the Pennsylvania Department of Environmental Resources (PADER) to Boyertown Casket Company. The Order requires the company to bring air emissions from its burial casket manufacturing facilities located in Boyertown, Berks County, Pennsylvania into compliance with certain regulations contained in the federally-approved Pennsylvania State Implementation Plan (SIP) for the control of ozone. Compliance shall be achieved by September 30, 1986 utilizing low solvent technology (LST) or should LST be abandoned, compliance shall be achieved by April 21, 1987 utilizing either add-on controls or alternative emission reduction limitations subject to PADER and EPA review and approval.

Because the Order has been issued to a major source and permits delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a Delayed Compliance Order pursuant to the Clean Air Act (the Act). If approved by EPA, the Order will constitute an addition to the SIP. In addition, a source in compliance with an approved Order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approval of the Order as a Delayed Compliance Order.

DATE: Written comments must be received on or before October 25, 1985.

ADDRESSES: Comments should be submitted to Director, Air Management Division, EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. The State Order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at the EPA Region III address above during normal business hours.

FOR FURTHER INFORMATION CONTACT:
James B. Topsale, P.E., Environmental Engineer, Enforcement Policy and State Coordination Section, Air Management Division, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Telephone: (215) 597–8553.

SUPPLEMENTARY INFORMATION:
Boyertown Casket Company (the Company) operates a burial casket manufacturing facility in Boyertown, Berks County, Pennsylvania. The Order under consideration addresses emissions from the casket surface coating processes, which are subject to § 129.52, Table 1, extreme performance coatings of Title 25 of the Pennsylvania Code. The regulation limits the emissions of Volatile Organic Compounds (VOCs), and is part of the federally-approved Pennsylvania State Implementation Plan for the control of ozone. The Order requires final compliance with the regulation by September 30, 1986 through the use of low solvent technology (LST), or should LST be abandoned, compliance shall be achieved by April 21, 1987 through the use of either add-on controls or alternative emission reduction limitations subject to PADER and EPA review and approval. Failure by Boyertown Casket to receive full PADER and EPA approval of alternative emission reduction limitations (a "bubble") will not relieve the Company of its obligation to achieve full compliance by April 21, 1987.

Because this Order has been issued to a major source of VOC emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a Delayed Compliance Order under section 113(d) of the Clean Air Act (the Act). EPA has reviewed the Order and has found that the Order does satisfy the requirements of this subsection of the Act.

EPA's review indicates that the burial casket manufacturing facility is a major source of VOC emissions. The facility is located in the Northeast Pennsylvania-Upper Delaware Valley Interstate (New Jersey-Pennsylvania) Air Quality Control Region essentially a non-attainment area for the National Ambient Air Quality Standard for ozone, excluding the attainment counties of Bradford, Sullivan, and Tioga. The facility as presently constructed is unable to comply with regulations limiting emission of VOCs codified at § 129.52 of Title 25 of the Pennsylvania Code, part of the federally-approved State Implementation Plan, because low solvent coatings are still being developed. The Order requires compliance by September 30, 1986 utilizing LST, or should LST be abandoned, compliance shall be achieved by April 21, 1987 utilizing either add-on controls or alternative emission reduction limitations subject to PADER and EPA review and approval. Prior to issuance of the Order, Pennsylvania provided an opportunity for public comment and hearing on the Order. No public comments or requests for public hearing were received by the State. The Order contains expeditious increments of progress towards compliance and emission monitoring and reporting requirements and provides for interim emission reduction requirements as required by section 113(d)(6) of the Clean Air Act. These requirements are sufficient to avoid any imminent and substantial endangerment to health within the meaning of section 113(d)(7) of the Clean Air Act. The Company has made substantial progress in meeting the required increments of progress as defined in the Order. The Company has completed research and development of LST and evaluation of product quality and commercial acceptance, consistent with the first two increments of progress dates for the development of LST set forth in the Order. The third increment date required completion of equipment evaluation and submittal of a plan approval application to PADER by July 31, 1985. The Company has completed its equipment evaluation and intends to submit its application to PADER by September 30, 1985, which is acceptable to the State. The Company's delay in submitting its application should not have an effect on its meeting the next January 1, 1986 increment completion date that requires the issuance of a purchase order for LST equipment.

Pennsylvania has determined that the Order requires the facility to comply with the State Implementation Plan whenever it is temporarily able to do so. The Order notifies Boyertown Casket Company of its liability for noncompliance penalties under section 120 of the Clean Air Act, 42 U.S.C. 7420.

If the Order is approved by EPA, source compliance with its terms would preclude Federal enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded.

If approved, the Order would also constitute an addition to the Pennsylvania SIP. However, source compliance with the Order will not preclude assessment of any noncompliance penalties under section 120 of the Act, unless the source is otherwise entitled to an exemption under section 120(a)(2) (B) or (C). All interested persons are invited to submit written comments on the proposed Order. Written comments received by the date specified above will be considered in determining whether EPA may approve the Order. After the public comment period, the Administrator of EPA will publish in the Federal Register the Agency's final action on the Order in 40 CFR Part 65.

(42 U.S.C. 7413, 7601)

Dated: September 18, 1985.

Stanley Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 85–22866 Filed 9–24–85; 8:45 am]
BILLING CODE [illegible]

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40 CFR Part 65

[A–3–FRL–2902–6]

State and Federal Administrative Orders Permitting a Delay in Compliance with State Implementation Plan Requirements; Proposed Approval of an Administrative Order Issued by the Pennsylvania Department of Environmental Resources to Fruehauf Corporation

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rulemaking; invitation for public comment.

SUMMARY: EPA has proposed under parallel processing procedures to approve a Delayed Compliance Order (the "Order") issued by the Pennsylvania Department of Environmental Resources (PA DER) to Fruehauf Corporation. The Order requries the company to bring volatile organic compound (VOC) emissions from its semi-trailer manufacturing facility located in Lower Swatara Township, Dauphin County, Pennsylvania, a nonattainment area for ozone, into compliance with certain regulations contained in the federally-approved Pennsylvania State Implementation Plan (SIP) for the control of ozone. The Order requires final compliance with the regulation by April 21, 1986 through the use of low solvent technology (LST) or by April 21, 1987 should LST be abandoned and add-on controls installed. Because the Order has been issued to a major source and permits delay in compliance with

provisions of the SIP, it must be approved by EPA before it become effective as a Delayed Compliance Order pursuant to the clean Air Act (the"Act"). If approved by EPA, the Order will constitute an addition to the SIP. In addition, a source in compliance with an approved Order may not be sued under the Federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approval of the Order as a Delayed Compliance Order.

DATE: Written comments must be received on or before October 25, 1985.

ADDRESSES: Comments should be submitted to Director, Air Management Division, EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. The State Order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at the EPA Region III address above during normal business hours.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E., Environmental Engineer, Enforcement Policy and State Coordination Section, Air Management Division, U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Telephone: (215) 597–6553.

SUPPLEMENTARY INFORMATION: On September 12, 1985 the Pennsylvania Department of Environmental Resources (PA DER) entered into a Consent Order and Agreement constituting a Delay Compliance Order (DCO) with the Fruehauf Corporation. The State Order is now subject to public comment and other State procedural requirements before it becomes a final State action. Under the parallel processing procedures for public comment on this Order, EPA will work closely with the PA DER as it finalizes this Order through the State process. EPA Region III will consult with all other appropriate EPA offices as the Order is being developed and during the States and Federal rulemaking process to ensure that all issues are identified before final adoption by the State. If the PA DER or EPA obtain no information that would require significant change to the Order, it will be finally adopted by the PA DER and submitted to EPA for final approval. Only after Pennsylvania's submission of the final order would EPA take final action approving the Order. If the significant changes are made to the Order during the State rulemaking proceeding, EPA will proposed appropriate action on the resulting final Order.

Fruehauf Corporation operates a semi-trailer manufacturing facility in Lower Swatara Towhnship, Dauphin County, Pennsylvania. The Order under consideration addresses paint spray operations at the semi-trailer manufacturing facility which are subject to § 129.52 of Title 25 of the Pennsylvania Code. The regulations limit the emissions of Volatile Organic Compounds (VOC), and are part of the federally-approved Pennsylvania State Implementation Plan. The Order requires final compliance with the regulation by April 21, 1986 through the use of low solvent technology (LST) or by April 21, 1987 should LST be abandoned and add-on controls installed.

Because this Order has been issued to a major source of VOC emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a Delayed Compliance Order under section 113(d) of the Act. EPA has reviewed the Order and has determined that the Order appears to satisfy the requirements of this subsection of the Act.

EPA's review indicates that the semi-trailer manufacturing facility is a major source of VOC emissions, a precursor of ozone. The facility as presently constructed is unable to comply with regulations limiting emissions of VOCs, which are codified at § 129.52 of Title 25 of the Pennsylvania Code, because low solvent coatings are still being developed. The Order requires compliance by April 21, 1987 should LST be abandoned and add-on controls installed.

Through a public notice, dated August 8, 1985, the PA DER has provided an opportunity for public comment and hearing on the Order. However, the issuance of the Order by PA DER is an appealable action under the State Air Pollution Control Act. The appeal period extends for 30-days following the date of publication of the Notice of Action in the *Pennsylvania Bulletin*. This publication has not yet occurred.

The Order contains requirements for expeditious increments of progress towards compliance and emission monitoring and reporting requirements and provides for interim emission reduction requirements as required by section 113(d)(6) of the Clean Air Act. These requirements are sufficient to avoid any imminent and substantial endangerment to health within the meaning of section 113(d)(7) of the Clean Air Act. Based on 1984 Pennsylvania Emissions Data System (PEDS) information, the Company has made substantial progress to date in achieving compliance through LST. Out of a total number of forty-one (41) different coatings, thirteen (13) are identified as noncompliance coatings. More substantially, of the total 1984 Fruehauf VOC emissions of 221.23 tons, only 7.2% or 15.92 tons are attributable to noncompliance coatings.

The system of emissions reduction required during the period covered by this Order is the best practicable system in light of the ultimate emission reductions required for compliance with the SIP. This interim system provides significant emissions reduction in a manner which permits the company to move toward the use of additional LST or facility alterations to install add-on controls.

The Order requires the facility to comply with the State Implementation Plan whenever it is temporarily able to do so and the Order, therefore, meets the requirements of section 113(d)(7)(B). The Order notifies Fruehauf Corporation of its potential liability for noncompliance penalties under section 120 of the Clean Air Act, 42, U.S.C. 7420 as required by section 113(d)(1)(E) of the Act.

If the Order is approved by EPA, source compliance with its terms would preclude Federal enforcement action under section 113 of the Act against the source for violations of the regulation covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded.

If approved, the Order would also constitute an addition to the Pennsylvania SIP. However, source compliance with the Order will not preclude assessment of any penalties under section 120 of the Act, unless the source is otherwise entitled to an exemption under section 120(a)(2) (B) or (C).

All interested persons are invited to submit written comments on the proposed Order. Written comments received by the date specified above will be considered in determining whether EPA will approve the Order. After the public comment period, the Administrator of EPA will publish in the Federal Register the Agency's final action on the Order, which will be codified at 40 CFR Part 65.

(42 U.S.C. 7413, 7601)

Dated: September 18, 1985.

Stanley Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 85–22865 Filed 9–24–85; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 271

[SW-7-FRL-2902-8]

Missouri; Final Authorizataion of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination on Application of State of Missouri for Final Authorization, Public Hearing and Public Comment Period.

SUMMARY: The State of Missouri has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Missouri's application and has made the tentative decision that Missouri's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to Missouri to operate its hazardous waste program in lieu of the Federal program subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984. (Pub. L. 98–616, Nov. 8, 1984) (HSWA)

Missouri's application for final authorization is available for public review and comment and a public hearing will be held to solicit comments on the application. In making its final decision, EPA will consider all public comments on the application and the measures taken by the State to address the EPA concerns.

DATES: A public hearing is scheduled for October 28, 1985 at 2:00 p.m. Missouri will participate in the public hearing held by EPA on this subject. All comments on Missouri's final authorization application must be received by the close of business on October 28, 1985.

ADDRESSES: Copies of Missouri's final authorization application are available during regular business hours at the following addresses for inspection:

Missouri Department of Natural Resources, Waste Management Program, 117 E. Dunlkin, Jefferson City, Missouri 65102, (314) 751–3241

U.S. EPA Headquarters Library PM, 211A, 401 M Street SW., Washington, D.C. 20460, (202) 382–5928

U.S EPA Region VII Library, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 236–2828

Written comments should be sent to:

Chet McLaughlin, Chief, State Programs Section, RCRA Branch, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101

EPA will hold the Public Hearing on October 28, 1985 at 2:00 p.m. in Room 750 of the Truman Office Building, 301 West High St., Jefferson City, Missouri 65101.

FOR FURTHER INFORMATION CONTACT: Chet McLaughlin, Chief, State Programs Section, RCRA Branch, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, 913–236–2852.

SUPPLEMENTARY INFORMATION:

A. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. Two types of authorization may be granted. The first type, known as "interim authorization," is a temporary authorization which is granted if EPA determines that State program is "substantially equivalent" to the Federal program (Section 3006(c), 42 U.S.C. 6926). EPA's implementing regulations at 40 CFR 271.121–271.137 established a phased approach to interim authorization: Phase I, covering the EPA regulations in 40 CFR Parts 260–263 and 265 (universe of hazardous wastes, generator standards, transporter standards and standards for interim status facilities) and Phase II, covering the EPA regulations in 40 CFR Parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase IIA covers general permitting procedures and technical standards for containers and tanks. Phase IIB covers incinerator facilities; and Phase IIC addresses landfills, surface impoundments, waste piles and land treatment facilities. By statute, all interim authorizations expire on January 31, 1986. Responsibility for the hazardous waste program returns (reverts) to EPA on that date if the State has not received final authorization.

The second type of authorization is a "final" (permanent) authorization that is granted by EPA if the Agency finds that the State program: (1) Is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6926). States need not have obtained interim authorization in order to qualify for final authorization. EPA regulations for final authorization appear at 40 CFR 271.1–271.23.

B. Missouri

The State of Missouri received Phase I interm authorization on November 8, 1983. Missouri submitted a draft application for final authorization to EPA on April 26, 1985. Following the State's public hearing (on June 6, 1985) to solicit comments on its intention to apply for final authorization, Missouri submitted its official application for final authorization on July 19, 1985.

Missouri did not include jurisdiction over Indian Lands in the scope of its final authorization application because there are no Indian Lands in Missouri.

EPA has reviewed Missouri's official application and has tentatively determined that the State's program meets all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization to Missouri.

In accordance with section 3006 of RCRA and 40 CFR 271.20(d), the Agency will hold a public hearing on its tentative decision on October 28, 1985 at 2:00 p.m. in Room 750 of the Truman Office Building, 301 W. High Street, Jefferson City, Missouri 65101. The public may also submit written comments on EPA's tentative determination until October 28, 1985. Copies of Missouri's application are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

In making its final decision, EPA will consider all public comments on the tentative determination and the measures taken by the State to address these concerns. Issues raised by those comments may be the basis for a decision to deny final authorization to Missouri. EPA expects to make a final decision on whether or not to approve/deny Missouri's program by December 2, 1985 and will give notice of it in the **Federal Register.** The notice will include a summary of the reasons for the final determination and a response to all major comments.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the U.S. EPA. The Federal requirements no longer applied to the authorized State, and the U.S. EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified timeframes. However, until new Federal requirements were adopted as State law, they did not take effect in the authorized State.

In contrast, under the newly enacted section 3006(g) of RCRA, 42 U.S.C. 6926(g), the new requirements and prohibitions imposed by the HSWA take

effect in authorized States at the same time they take effect in non-authorized States. The U.S. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so. Thus, while States must still adopt HSWA related provisions, the HSWA applies in authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Missouri after final authorization. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. If the HSWA related requirements are more stringent than Missouri's, the U.S. EPA will administer and enforce those portions of the HSWA in Missouri until the State receives authorization to do so. Among others things, this may entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized.

Once Missouri is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal program. Until that time, the State will assist the U.S. EPA's implementation of the HSWA under a Cooperative Agreement.

Any State requirement that is more stringent than a HSWA provisions also remains in effect; thus, regulated handlers must comply with the more stringent State requirements. Missouri is not being authorized for any requirements implementing the HSWA.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization suspends the applicability of certain Federal regulations in favor of the State program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12291.

Authority: This notice is issued under the authority of Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C., 6912(a), 6926, and 6974(b), EPA Delegations 7.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian Lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: September 20, 1985.

William Rice,

Acting Regional Administrator.

[FR Doc. 85-22867 Filed 9-24-85; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3900

Oil Shale Management; Withdrawal of Proposed Rulemaking

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Withdrawal of Proposed Rulemaking.

SUMMARY: A proposed rulemaking providing procedures for the management of federally owned oil shale resources was published in the **Federal Register** on February 11, 1983 (48 FR 6510), with a 150-day comment period. During that comment period, comments were received from 47 sources, all of which were carefully reviewed. At the time of the publication of the proposed oil shale rulemaking, there appeared to be a substantial interest on the part of the petroleum industry in the development of oil shale resources on Federal and non-Federal lands. In the period since the publication of the proposed rulemaking, market conditions have changed dramatically and there appears to be little or no interest in the development of oil shale resources, with minimal site activity on both Federal and non-Federal lands. This apparent lack of interest in the development of oil shale resources reduces the urgent need for development of regulations for a competitive leasing system for oil shale resources located on Federal lands. Therefore, the Department of the Interior hereby withdraws the proposed rulemaking of February 11, 1983.

EFFECTIVE DATE: The withdrawal of the proposed rulemaking is effective on September 25, 1985.

ADDRESS: Any suggestions or inquiries should be sent to: Director (650), Bureau of Land Management, Room 3608, Main Interior Bldg., 1800 C Street, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Owen, (202) 343-4636

or

Robert C. Bruce, (202) 343-8735

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

September 17, 1985.

[FR Doc. 85-22914 Filed 9-24-85; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 50950-5150]

Tanner Crab Off Alaska

AGENCY: National Marine Fisheries Services (NMFS) NOAA, Commerce.

ACTION: Notice of initial fishing season dates and request for public comment.

SUMMARY: NOAA issues this notice to provide the initial 1985-1986 fishing season dates for the Commercial Tanner Crab Fishery Off the Coast of Alaska (FMP) for registration area A (Southeastern), E (Prince William Sound), H (Cook Inlet), and J (Westward). Regulations governing this fishery require that the Secretary of Commerce publish the recommended initial fishing season dates for public comment. This action is intended to promote an orderly fishery that is consistent both with the needs of the industry that is consistent both with the needs of the industry and with conservation requirements.

DATE: Written comments must be received on or before October 21, 1985.

ADDRESSES: Comments should be mailed to Robert W. McVey, Director, Alaska Region (Regional Director), National Marine Fisheries Service (NMFS), P.O. Box 1668, Juneau, Alaska 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska. Copies of the regulatory impact review may be obtained from the address above.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin, Fishery Biologist, 907-586-7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Commercial Tanner Crab Fishery Off the Coast of Alaska (FMP) was approved and initially implemented in December 1978 (43 FR 57149, December

6, 1978), and the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has approved and implemented nine amendments to the FMP. Amendment 9 (49 FR 35779, September 12, 1984) provides a framework procedure for establishing annual fishing seasons based on both biological and socioeconomic information.

The provisions of Amendment 9 allow the Council to recommend that the Regional Director make adjustments to previously specified opening or closing dates of any fishing season after considering specific factors listed in the FMP. The Secretary of Commerce (Secretary) will publish an initial notice in the **Federal Register** specifying the adjustments he considers necessary as soon as practicable after receiving the Council's recommendation. The notice will invite comments for a 30-day period from the interested public on the adjustments and whether they are consistent with the FMP. The Secretary will then publish a second notice within 45 days after the end of the comment period either approving, disapproving, or partially disapproving the season adjustments based on comments received and the consistency of the adjustments with the objectives of the FMP, the national standards of the Magnuson Act, and other applicable law.

Development of Fishing Dates

At the March 1984 meeting between the Council and the Alaska Board of Fisheries (Board), testimony was received from the fishing industry concerning the proposed season opening date changes. Both the Council and the Board adopted several identical opening date changes on the basis of the status of the crab stocks and socioeconomic factors affecting the crab fishing industry. The Council and Board met again in September 1984 and reaffirmed the opening date changes. Specific opening date changes were not considered for two of the registration areas—E and H. However, the Council requested the Regional Director to initiate action that would make all season opening dates established under the FMP consistent with those established for State of Alaska waters. On November 27, 1984, NOAA issued an emergency interim rule (49 FR 46549) to implement the season opening date changes for the 1984/85 Tanner crab fishery. This emergency rule expired on February 25, 1985, returning all of the season opening dates to those in effect during the 1983/84 season. With one exception, the Board and the Council, at their March 1985 meetings, did not change the season opening dates for the 1985/86 Tanner crab fishery from those implemented by emergency rule for the 1984/85 season. NOAA finds it necessary, therefore, to implement permanently the season opening dates that were temporarily implemented by the emergency interim rule by means of the framework procedure provided by Amendment 9.

An inconsistency also exists between State and Federal closing dates for the Yakutat District. The Regional Director intends to make these dates consistent. A discussion of the rationale for the changes in each Registration Area can be found in the emergency interim rule, and in the RIR prepared for this proposed rule.

At its March 1985 meeting the Council reviewed an additional season opening date change adopted by the Board for the Tanner crab fishery in the Western Aleutians District of Registration Area J. The Council recommended to the Regional Director that the current opening date of November 10 should be changed to November 1 in order to coincide with the State of Alaska's opening date for the king crab fishery. In the absence of the proposed change, Tanner crab caught incidentally by king crab fishermen must be returned to the water. The process of sorting and discarding Tanner crab would almost certainly result in some level of Tanner crab mortality and wastage. King crab fishermen would forego potential income from Tanner crab as well as suffer an increased labor burden due to the need to sort and discard. No biological or economic reasons were presented to justify the need to protect Tanner crab during the November 1–10 period. By changing the season opening date from November 10 to November 1, King crab fishermen can legally retain their Tanner crab, thus minimizing wastage and improving the economic efficiency of the fishery. In addition, the Council recognized that consistency of Federal and State regulations is necessary for the conservation and management of Tanner crab in order to avoid the following types of problems: (1) Burdens on State and Federal agencies in attempting to enforce seasons in the fishery conservation zone that are not concurrent with the adjacent territorial sea, (2) burdens on the State in funding and conducting dockside sampling programs, (3) incomparable data resulting from non-concurrent sampling periods, and (4) confusion in the fishing industry as to what areas may be fished during different seasons.

Also, in general, the crab fishing industry depends heavily on announced dates when planning its upcoming season schedule. Consistent dates, both in state waters and in the FCZ, make coordinated fishing and processing and fisheries management and enforcement more efficient and less costly.

Classification

This action is authorized by 50 CFR Part 671, and complies with Executive Order 12291. NOAA has prepared a regulatory impact review for this action (see ADDRESS for a copy).

The Administrator of NOAA previously determined that the rule for Amendment 9, which authorizes this action, would not have a significant economic impact upon a substantial number of small entities for the purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The General Counsel of the Department of Commerce certified to the Small Business Administration that the rule would not have a significant impact. The regulatory impact review prepared for this action supplements the analysis of Amendment 9. On the basis of these analyses the NOAA Administrator has made a preliminary determination that implementation of these seasons will not have significant economic impact on a substantial number of small enities. A summary of the socioeconomic analysis upon which this determination is based follows:

Adoption and implementation of these proposed season date changes would result in a variety of beneficial socioeconomic impacts. These would include improved prices due to better meat recovery, additional income from retaining otherwise discarded Tanner crab, improved efficiency from fishing in better weather, not having to sort and discard, and from improved catch rates. Although these benefits are not realistically quantifiable, they will all contribute in variable amounts to improved operating efficiency.

This action does not contain a collection of information for purposes of the Paperwork Reduction Act.

The Environmental Assessment (EA) prepared by NOAA for the emergency interim rule to implement the seasons for the 1984–85 Tanner crab fishery (49 FR 46549) addresses the seasons proposed in this action. The EA concludes that no significant impact on the human environment will result from implementation of the seasons. You may obtain a copy of the environmental assessment from the Regional Director (see ADDRESS for a copy).

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

Dated: September 20, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 671 is proposed to be amended as follows:

PART 671—TANNER CRAB OFF ALASKA

1. The authority citation for Part 671 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 671.21 [Amended]

2. Section 671.21 is amended by inserting a new title that reads: "Optimum yields and seasons," in the Table of Contents and in Subpart B.

3. In § 671.21, paragraph (a) is amended by inserting a new title and revising the entire paragraph to read as follows:

* * * * *

(a) *Optimum yields and season opening and closing dates.*

The optimum yield and season opening date for Tanner crab for each Federal registration area and district are set forth in Table 1. These specifications of optimum yield are effective for the fishing year beginning November 1 and ending on October 31. All season dates in this paragraph are inclusive. Time periods begin at 12:00 noon local time on the dates specified.

TABLE 1. OPTIMUM YIELDS (MILLIONS OF POUNDS) OF TANNER CRAB STOCKS AND FISHING SEASONS IN THE FISHING DISTRICTS OR REGISTRATION AREAS OFF ALASKA [1]

Registration area-district	Optimum yield	Season dates
A—Southeastern:		
Southeast	1.0 to 3.0	Feb. 10 to May 1.
Yakutat	0.1 to 1.0	Jan. 15 to May 1
E—Prince William Sound.	1.5 to 3.5	
Western		Jan. 5 to May 31
Eastern		
Hinchinbrook		
H—Cook Inlet	1.5 to 3.0	
Southern		Nov. 1 to April 30.
Central		Nov. 1 to May 31
J—Westward.		
Kodiak	11.0 to 33.0	Jan. 15 to Apr. 30 (Jan. 15 to May 15 for Semidi Island District.)
South Peninsula	2.0 to 6.0	Jan. 15 to May 15
Chignik	0.5 to 5.0	
Eastern Aleutians.	0.1 to 2.0	Jan. 15 to June 15
Aleutians	0.1 to 2.0	Nov. 1 to June 15
Bering Sea:		
(*Chionoecetes bairdi*)	5.0 to 28.5	Jan. 15 to June 15
(*Chionoecetes opilio*).	20.0 to 130.0[2]	Jan. 15 to Aug. 1

[1] Catches of Tanner crab in a State of Alaska registration area or district will be considered part of the optimum yield specified for the contiguous Federal registration area or district of the same name.

[2] This range represents the domestic annual harvest

* * * * *

4. Section 671.26 is amended by revising the section heading to read as follows:

§ 671.26 Procedures for establishing season dates, general gear restrictions, and registration areas.

5. In § 671.26, paragraphs (c)(2), (d)(2), (e)(2), and (f)(2) are removed; paragraphs (c)(3), (d)(3), and (f)(3) are redesignated as paragraphs (c)(2), (d)(2), and (f)(2); and paragraph (e)(1) is redesignated as paragraph (e) and the paragraph descriptors in paragraph (e) are redesignated (1), (2), (3), (4), (5), (6), and (7), accordingly.

[FR Doc. 85-22932 Filed 9-20-85; 4:57 pm]

BILLING CODE 3510-22-M

50 CFR Part 684

Bottomfish and Seamount Groundfish Fisheries; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Western Pacific Fishery Management Council will hold public hearings on management proposals for bottomfish and seamount groundfish fisheries. The hearings will cover two agenda items: (1) A draft plan which provides the framework for the management in the U.S. fishery conservation zone (FCZ) around Hawaii, American Samoa, Guam and the Hancock Seasmounts northwest of Hawaii; and (2) a proposal for access management in the FCZ of the Northwestern Hawaiian Islands.

DATES: See **"SUPPLEMENTARY INFORMATION"** for dates and locations of the hearings. All hearings will begin at 7:00 p.m. All written comments should be received by October 21, 1985.

ADDRESS: See **"SUPPLEMENTARY INFORMATION"** for locations of the hearings. Written comments should be sent to the Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, Hawaii 96813.

FOR FURTHER INFORMATION CONTACT: Kitty Simonds, Executive Director, Western Pacific Fishery Management Council 808–523–1368.

SUPPLEMENTARY INFORMATION: The hearings are scheduled as follows:

September 24, 1985—Satellite City Hall, 65–670 Farrington Highway, Waianae, Oahu, Hawaii

September 25, 1985—United Fishing Agency, 117 Ahui Street, Honolulu, Oahu, Hawaii

September 26, 1985—Lihue Neighborhood Center, 3353 Eono, Lihue, Kauai, Hawaii

October 1, 1985—First Hawaiian Bank, Conference Room, 74–5593 Palani Road, Kailua-Kona, Hawaii, Hawaii

October 2, 1985—Hawaii County Council Room, 25 Aupuni Street, Hilo, Hawaii, Hawaii

October 3, 1985—Maalaea Boat and Fishing Clubhouse, Maalaea, Maui, Hawaii

Dated: September 20, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-22872 Filed 9-20-85; 2:38 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 186
Wednesday, September 25, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 20, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number (s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• *Agricultural Marketing Service*
Onions Grown in South Texas (Marketing Order No. 959)
Recordkeeping; On occasion; Monthly; Annually; Daily
Farms; Businesses or other for-profit; responses; 61 hours; not applicable under 3405(h)
Charles W. Porter (202) 447–2615

• *Statistical Reporting Service*
Supplemental Qualification Statement
On occasion
Individuals or households; 900 responses; 1,800 hours; not applicable under 3504(h)
Lee Sandberg (202) 447–6802

Revision

• *Farmers Home Administration*
7 CFR 1980–A, Guaranteed Loan Programs (General)
FmHA 449–14, 30, 35, 36, 1980–19, 41, 43, 44
On occasion
Businesses or other for-profit; 29,356 responses; 45,127 hours; not applicable under 3504(h)
Pandor Hadjy (202) 475–4017

• *Farmers Home Administration*
7 CFR 1980–F, Guaranteed Economic Emergency Loans
FmHA 1980–32
On occasion
Farms; Businesses or other for-profit; 13,290 responses; 24,134 hours; not applicable under 3504(h)
Pandor Hadjy (202) 475–4017

• *Farmers Home Administration*
7 CFR 1980–B, Guaranteed Farmer Program Loans
FmHA 449–11, 449–12, 1980–15, 1980–25, 1980–38
On occasion
Individuals or households; State or local governments; Farms;
Businesses or other for-profit; 27,190 responses; 42,045 hours; not applicable under 3504(h)
Pandor Hadjy (202) 475–4017

• *Food and Nutrition Service*
Monthly Report of Commodity Supplemental Food and Elderly Feeding
Pilot Programs
FNS 153
Monthly; Quarterly
State or local governments; 156 responses; 998 hours; not applicable under 3504(h)
Linda L. Gray (703) 756–3710.

Donald E. Hulcher,
Acting Departmental Clearance Officer.
[FR Doc. 85–22911 Filed 9–24–85; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Toiyabe National Forest Grazing Advisory Board; Meeting

The Toiyabe National Forest Grazing Advisory Board will meet at 10:00 a.m. October 17, 1985 in the Austin Courthouse, Austin, Nevada. The purpose of this meeting is to discuss:

1. Allotment Management Planning.
2. Utilization of Range Betterment Fund.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, Toiyabe National Forest, 1200 Franklin Way, Sparks, NV 89431. Telephone: (702) 784–5331. Written statements may be filed with the committee before or after the meeting.

Dated: September 17, 1985.

R.M. "Jim" Nelson,
Forest Supervisor.
[FR Doc. 85–22925 Filed 9–24–85; 8:45 am]
BILLING CODE 3410–11–M

Soil Conservation Service

Canoe Creek Watershed, Florida; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Canoe Creek Watershed, Escambia County, Florida.

FOR FURTHER INFORMATION CONTACT: James W. Mitchell, State Conservationist, Soil Conservation Service, 401 SE. First Avenue, Room 248.

Gainesville, Florida 32601, telephone (904) 377–0946.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, James W. Mitchell, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This project concerns a plan for watershed protection. The planned works of improvement include accelerated technical assistance and federal cost sharing for the installation of land treatment measures

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Janes W. Mitchell.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: September 17, 1985.

J.D. Rector,

Assistant State Conservationist.

[FR Doc. 85–22880 Filed 9–24–85; 8:45 am]

BILLING CODE 3410–16–M

Croy Creek Critical Area Treatment RC&D Measure, Idaho; Finding of No Significant Impact

AGENCY: Soil Conservation Service, Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Stanley N. Hobson, State Conservationist, Soil Conservation Service, 304 North 8th Street, Rm. 345, Boise, Idaho 83702, telephone (208) 334–1601.

Notice

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmmental impact statement is not being prepared for the Croy Creek Critical Area Treatment RC&D Measure, Blaine County, Idaho.

The environmental assessment of this federally assisted action indicates that the measure will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Stanley N. Hobson, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Croy Creek Critical Area Treatment RC&D Measure will provide treatments to headcuts, a road crossing, and channel banks which have severe erosion and sedimentation problems. Planned treatments to control the severe erosion and sedimentation problems include a grade stabilization structure, an armored culvert outlet structure on existing road crossing and riprap on adjacent eroding channel banks.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Stanley N. Hobson. The FONSI has been sent to various Federal, State and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address on the previous page.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

[FR Doc. 85–22924 Filed 9–24–85; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

South Dakota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 12:30 p.m. on October 18, 1985, at the Black Hills State College, Student Center, Room 315, Spearfish, South Dakota. The committee will review a draft report on the status of women in South Dakota, and hear reports on a memorandum on the Surface Transportation Act and disparte enforcement of Driving While Intoxicated laws in Lawrence County. Also, Ron Thize will make a presentation to the committee on civil rights concerns of Native Americans in South Dakota.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Francis Whitebird, or William Muldrow, Acting Director of the Rocky Mountain Regional Office, at (303) 844–2211, (TDD 303/844–3031).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., September 19, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85–22876 Filed 9–24–85; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–502]

Fuel Ethanol From Brazil; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminary determined that fuel ethanol from Brazil is being, or is likely to be, sold in the United States at less than fair value. We also have preliminarily determined that critical circumstances do not exist. We have notified the U.S. International Trade Commission (ITC) of our determination. We have directed the U.S. Customs Service to suspend the liquidation of all entries of fuel ethanol from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by December 2, 1985.

EFFECTIVE DATE: September 25, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Shimabukuro or David Johnston, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377–5332 or 377–2239.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that fuel ethanol from Brazil is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The dumping margins range from 1 percent to 308 percent, and the weighted-average margins for the four respondents are shown in the "Suspension of Liquidation" section of this notice.

Case History

On February 25, 1985 we received a petition filed in proper form by the Ad Hoc Committee of Domestic Fuel Ethanol Producers on behalf of the domestic producers of fuel ethanol. We were informed, by letter dated March 15, 1985, that the Oil Chemical And Atomic Workers International Union (OCAW) joined the Ad Hoc Committee of Fuel Ethanol Producers as petitioners. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673), and that these imports are materially injuring, or threatening material injury to, a U.S. industry. The petitioners also alleged that sales in the home market were made at prices below the cost of production, and that "critical circumstances" exist.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated the investigation on March 18, 1985 (50 FR 11748), and notified the ITC of our action.

On April 11, 1985, the ITC found that there is a reasonable indication that imports of fuel ethanol from Brazil are threatening material injury to a U.S. industry (U.S. ITC Pub. No. 1678, April 1985).

Based on information obtained in response to preliminary questionnaires, we presented questionnaires to Cooperative Central dos Produtores de Acucare de Acool do Estado de Sao Paulo (COPERSUCAR) and certain of its distiller members and related sugar cane growners and Matarazzo Trading Cia. de Exportacao e. Importacao (Matarazzo), formerly known as Comac Trading, because these companies knew that the merchandise was being sold for export to the United States.

Three independent trading houses, Companhia de Comercio Exterior (I.A.T.), Cotia Comercio Exportacao e. Importacao S.A. (Cotia), and S.A. Costa Pinto Exportacao e. Importacao (Costa Pinto), filed voluntary responses. The responses from Cotia and Costa Pinto were incomplete and, therefore, were not used. I.A.T.'s response, being complete, was used for purposes of the preliminary determination.

By letter dated June 12, 1985, the petitioners alleged that Interbras, the major trading company selling fuel ethanol to the United States, was reselling the merchandise in the United States at prices which did not cover its costs of acquisition from unrelated suppliers plus the costs incurred in selling the merchandise to the unrelated U.S. purchasers. After careful consideration we initiated an investigation of the facts relating to this allegation. Therefore, we presented Petrobras Comercio International S.A.—Interbras (Interbras) with a questionnaire on July 18, 1985.

Scope of Investigation

The product covered by this investigation is fuel grade ethyl alcohol (fuel ethanol), currently classifiable in the *Tariff Schedules of the United States* (TSUS) under dual item number 427.8800/901.50, as well as that entered under TSUS item numbers 430.10, 430.20, and 432.10.

We made comparisons on approximately 95 percent of sales of fuel ethanol to the United States during the period of investigation, September 1, 1984, through February 28, 1985.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with foreign market value as specified below.

United States Price

As provided for in section 772(b) of the Act, for sales by Matarazzo, Copersucar, and I.A.T., we based the United States price on purchase price because the fuel ehtanol was sold to unrelated purchases in the United States prior to its importation. We made deducation from the f.o.b. prices for wharfage, handling, inland freight and port charges, as appropriate.

Based on the allegation that Interbras was selling fuel ethanol at a loss (*i.e.* at prices which were lower than its costs of acquisition from unrelated suppliers after the deduction of all costs incurred in selling the merchandise in the United States), we analyzed Interbras prices and costs relative to all sales to the United States during the period of investigation. In order to determine whether Interbras recovered its acquisition costs we deducted all costs and expenses incurred in selling the merchandise by Interbras and its U.S. subsidiary, Internor, from the selling price to the first unrelated U.S. purchaser. We made deductions from the selling price, as appropriate, for brokerage, inspection, special customs duties, regular customs duties, general selling expenses, insurance, credit costs, storage and handling, commissions, and discounts incurred in the United States. We also deducted operating costs incurred in Brazil, an export tax, and ocean freight charges. Finally, we made an addition to the selling price to the first unrelated U.S. customer for payments received under the IPI export credit premium because these payments were directly related to the U.S. sales in question and because they effectively enchanged the net return to Interbras. Certain of the costs incurred by Interbras were denominated in cruzeiros. For purposes of converting cruzeiro denominated amounts to United States dollar equivalents, we used the certified exchange rate for the estimated date of acquisition to convert acquisition costs and operating expenses, and the certified rate for the date of exportation to convert the export tax, the IPI and ocean freight. We considered these rates as reflecting most accurately the actual costs incurred. All other charges were reported in U.S. dollars. Therefore, no currenty conversion was required.

Interbras claimed an offset for revenues from certain financial transactions. We disallowed these claims since the claims were related to the financing of intracompany transfers and not to the sales to unrelated customers.

Interbras claims that we should not deduct the special duty imposed on fuel ethanol imports from the U.S. price because the United States imposed this duty in contravention of the General Agreement on Tariffs and Trade

(GATT). Interbras further argues that the compensenation granted to Brazil under GATT rules in the form of U.S. tariff reduction on imports of corned beef from Brazil nullifies the cost to Brazil of the special duty.

We have preliminarily determined that this duty is a cost incurred by Interbras in selling the merchandise which has not been reduced by revenues received by Interbras under the compensation arrangement. Therefore, we have deducted the amount of the special duties levied relative to sales during the period of investigation.

Interbras argues that a discount given on certain U.S. sales should not be deducted because Interbras granted the discount in response to changed market conditions in the geographical area served by those sales. We have preliminarily determined that the discount results in a reduction of sales revenue, and, therefore, we have deducted the discount amount. Because Interbras did not specify which sales were subject to the discount, we deducted it from all sales prices to the customer receiving it.

Interbras argues that we should limit our analysis of its U.S. sales to the resales of fuel ethanol it acquired during the period of investigation. Virtually all of this fuel ethanol was sold during a later period. We have determined that the appropriate sales for consideration were those made during the period of investigation since those sales are the sales we would analyze if we were basing United States price on Interbras' sales.

Based on our analysis of all sales by Interbras in the U.S. during the period of investigation, we have preliminarily determined that a substantial portion of those sales were at prices which resulted in losses by Interbras relative to its acquisition costs. Therefore, for all Interbras U.S. sales during the period of investigation, we have based our comparisons on sales by Interbras and its related U.S. subsidiary, Internor. In accordance with section 772(c) of the Act, because all of the U.S. sales by Interbras were made after importation, we based United States price on exporter's sales price. We calculated the exporter's sales price on the basis of ex-tank prices with deductions and additions for the costs and payments indicated above in the discussion of the analysis of sales at less than acquisition costs. We deducted operational expenses incurred in Brazil, because they included freight and handling charges, which are normally deducted. These could not be segregated from indirect selling expenses which would not be deducted if reported separately.

In making our fair value comparisons, we converted cruzeiros to United States dollars using the certified foreign exchange rates on the date of purchase in accordance with § 353.56(a)(1) of the regulations for comparisons involving purchase price.

For comparisons involving exporter's sales price, we used the official exchange rate for the date of purchase since the use of that exchange rate is consistent with section 615 of the Tariff and Trade Act of 1984 (1984 Act). Therefore, we chose not to follow § 353.56(a)(2) of our regulations which predates the 1984 Act.

Foreign Market Value

In accordance with section 773(a)(1)(B) of the Act, we based foreign market value for I.A.T on sales prices to third countries because I.A.T. had no home market sales of such or similar merchandise. We calculated third country prices on the basis of f.o.b. prices with deductions for inland freight, insurance and port charges incident to the exportation. We compared the selling prices to third countries to acquisition and selling costs to determine whether the sales were made at prices above cost. All prices were above cost for the merchandise. We made an adjustment for differences in commissions in the respective markets in accordance with section 353.15 of our regulations. We also made an adjustment for differences in physical characteristics of the merchandise in accordance with § 353.16 of our regulations.

For Matarazzo, in accordance with section 773(a)(2) of the Act, we based foreign market value on constructed value since, during the period of investigation, Matarazzo had no home market or third country sales. Constructed value was calculated on the basis of Matarazzo's acquisition cost plus the statutory minimums of 10 percent and 8 percent for general expenses and profit, respectively, since both were below the statutory minimums. There were no U.S. packing costs.

In accordance with section 773(a)(1)(A), we based Copersucar's foreign market value on home market selling prices since there were sufficient home market sales. Petitioners alleged that sales of fuel ethanol in the home market were at prices below the cost of producing fuel ethanol. We examined the production costs, which included all appropriate material and fabrication costs, selling, general, and administrative expenses. We found sufficient sales made at prices above the cost of production for purposes of determining fair value. The Department notes that the cost of production of fuel ethanol reflected by the distillers in their responses did not increase over the period of investigation at the general rate of inflation of the Brazilian economy. During verification, the Department will scrutinize these costs in order to insure that all cost elements are appropriately stated to reflect the effects of inflation in accordance with the Department policy for hyperinflationary economies.

We calculated the home market prices on the basis of the f.o.b. factory price. In accordance with § 353.15 of the Commerce Regulations (19 CFR 353.15), we made circumstance of sale adjustments for differences in credit expenses. We adjusted for taxes paid in the home market but not on export sales in accordance with section 772(d)(1)(C). For Interbras, in accordance with section 773(a)(1)(A), we based foreign market value on home market sales by its parent, Petrobras, because there was a viable home market. Interbras claimed that due to the nature of price controls in Brazil, the home market sales were inappropriate for use in determining foreign market value. We preliminarily determined that home market sales should be used since (1) the mere existence of price controls does not invalidate home market prices (Certain Carbon Steel Products from Brazil, 49 FR 28298), and (2) these home market sales were in the ordinary course of trade of fuel ethanol in Brazil since they are the only sales at this level of trade in Brazil. Prior to the final determination in this investigation, we will develop information concerning the mechanism of the particular price controls relating to sales of fuel ethanol by Petrobras.

We compared Petrobras' home market prices to its costs of acquisition plus expenses incurred in Brazil to determine whether the home market sales were made at prices below cost. Because Petrobras did not report its home market acquisition costs from unrelated suppliers, we accepted the reported acquisition prices from the Copersucar response for purposes of the preliminary determination. Because Petrobras reported no handling or selling expenses, we added the 10 percent minimum for general expenses set forth in section 773(e)(1)(B)(i) as the best information available for these expenses. We have requested additional data relating to home market cost. All home market sales were at prices above cost.

Therefore, we calculated home market prices on the basis of the ex-tank prices with an adjustment for a tax imposed

only on home market sales. We calculated foreign market value on the basis of home market sales made in the same month as the comparable U.S. sales.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching our final determination.

Preliminary Negative Determination of Critical Circumstances

The petitioner alleged that imports of fuel ethanol from Brazil present "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist when (1) there is a history of dumping in the United States, or elsewhere, of the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise, which is the subject of the investigation, at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there have been massive imports over a relatively short period, we normally consider the following factors: (1) Whether recent imports have increased significantly; (2) whether recent import penetration ratios have increased significantly; (3) whether the pattern of recent imports may be explained by seasonal factors; and (4) whether recent imports are significantly above average imports calculated over the last three years.

Based on our analysis of these factors, we have preliminarily determined that imports of fuel ethanol from Brazil were not massive over a relatively short period.

We, therefore, did not need to consider whether there is a history of dumping of fuel ethanol, or whether the person by whom or for whose account this product was imported knew or should have known that the exporters were selling this product at less than fair value.

We have determined, for the reasons described above, that "critical circumstances" do not exist with respect to fuel ethanol from Brazil.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of fuel ethanol from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted average margin percentage
Petrobras Comercio Internabonal S.A. (Interbras)	119 02
Matarazzo Trading	23 15
I.A.T.	1 05
Cooperative Central dos Productores de Accure de Alcool de Stado de Sao Paulo (COPERSUCAR)	4 28
All others	37 00

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination or 45 days after we make our final affirmative determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties and opportunity to comment on this preliminary determination at 10:00 a.m. on October 21, 1985, at the United States Department of Commerce, Room 3708, 14th Street and Constitution Avenue N.W., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by October 11, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of the publication of this notice publication, at the above address and in at least 10 copies.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

September 18, 1985.

[FR Doc. 85-22896 Filed 9-24-85; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

National Voluntary Laboratory Accreditation Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of formal establishment of a laboratory accreditation program for laboratories that perform electromagnetic compatibility and telecommunications equipment testing.

SUMMARY: Under the National Voluntary Laboratory Accreditation Program (NVLAP), the National Bureau of Standards (NBS) announces the establishment of a laboratory accreditation program (LAP) for laboratories that perform electromagnetic compatibility and telecommunications equipment testing (Electromagnetics LAP). This notice includes the fees for this LAP. Laboratories that are interested in becoming accredited under the Electromagnetics LAP may request an application by contacting the Associate Manager, Laboratory Accreditation, National Bureau of Standards.

FOR FURTHER INFORMATION CONTACT: Harvey W. Berger, Associate Manager, Laboratory Accreditation, National Bureau of Standards, Admin A531, Gaithersburg, MD 20899, (301) 921-3431.

SUPPLEMENTARY INFORMATION:

Background

This notice is issued in accordance with § 7.17 of the NVLAP Procedures (15 CFR Part 7). Establishment of this LAP for laboratories that perform electromagnetic compatibility and telecommunications equipment testing follows a request letter from Retlif, Inc. Testing Laboratories, Ronkonkoma, New York. A **Federal Register** notice announcing the request for the

Electromagnetics LAP was published on February 8, 1985 (50 FR 5411–12). A public workshop was held at NBS on June 17, 1985, to provide interested parties an opportunity to participate in the development of technical requirements for accreditating laboratories under the Electromagnetics LAP.

The purpose of the LAP is to accredit and provide national recognition to laboratories capable of performing tests in accordance with the designated test methods. The scope of the Electromagnetics LAP includes 4 test methods for conducted emissions, radiated emissions, and terminal equipment compatibility using Federal Communications Commission standard methods. Pursuant to section 7.18 of the mentioned Procedures, other related standards and test methods may be added as long as those standards and test methods are covered by the scope of this LAP.

Application Process

Any testing laboratory interested in becoming accredited under this LAP should contact the Associate Manager, Laboratory Accredition, at the address shown above. The laboratory will be sent an application package including an application form with a test method selection list and fee schedule, and the Electromagnetics LAP Handbook, which describes the administrative, operational, and technical requirements for accreditation.

The fees for the Electromagnetics LAP are as follows:

a. One-time initiation fee for laboratories applying for this LAP for the first time	$650
b. Annual administrative charge (Prorated for laboratories participating in other LAPS)	875
c. Test method and proficiency testing charge:	
Minimum	1,025
Maximum	2,100

Dated: September 19, 1985.

Ernest Ambler,

Director, National Bureau of Standards.

[FR Doc. 85–22894 Filed 9–24–85; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit: Institute of Marine Sciences

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Institute of Marine Sciences (P79E).

b. Address: University of California, Santa Cruz, CA 95064.

2. Type of Permit: Scientific research.

3. Name and Number of Marine Mammals: Pacific harbor porpoises (Phocoena phocoena) 340.

4. Type of Take: The animals will be taken by radio-tagging (10), roto-tagging (30), and harassment (300).

5. Location of Activity: California.

6. Period of Activity: 3 years.

Concurrent with the publication of this notice in the **Federal Register** the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C., 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731

Dated: September 18, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–22875 Filed 9–24–85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Import Control Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

September 20, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 26, 1985. For further information contact Jane Corwin, International Trade Specialist Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 4, 1978, as amended, between the Governments of the United States and Thailand, the United States Government has decided to control imports of cotton, wool and man-made fiber apparel products in Categories 330–359, 431–459, and 630–659, as a group, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1985, at a level of 83,132,782 square yards equivalent which includes available swing. The group level has not been adjusted to account for any merchandise exported on and after January 1, 1985. During the January-July 1985 period such goods have amounted to 64,337,169 square yards equivalent in those categories and will be charged. Further charges will be made when the data become available.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

September 20, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 21, 1984 by the Chairman of the Committee for the implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Thailand.

Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 4, 1978, as amended, between the Governments of the United Sates and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 26, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in Categories 330–359, 431–459, and 630–659, as a group, produced or manufactured in Thailand and exporterd during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985, in excess of 83,132,782 square yards equivalent.[1]

Textile products in the group, other than those in Categories 331, 334/335, 338/339, 340, 341, 347/348, 445/446, 631, 634/635, 641, 645/646 and 647/648, which have been exported before January 1, 1985 shall not be suject to this group limit.

Textile products in the group, other than those already controlled, which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 28622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Walter C. Lenahan,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–22895 Filed 9–24–85; 8:45 am]
BILLING CODE 3510-DR-M

[1] The level has not been adjusted to reflect any imports exported after December 31, 1984. Imports in the group during the January–July period have amounted to 64,337,169 square yards equivalent

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Correction of Additions and Deletions

In FR Doc. 85–21925, appearing on page 37396 in the issue of Friday, September 13, 1985, make the following correction:

In the second column on page 37397, delete Pillow, Bed, 7210–01–035–3342.

C. W. Fletcher,
Executive Director.

[FR Doc. 85–22923 Filed 9–24–85; 8:45 am]
BILLING CODE 6820–33–M

DEPARTMENT OF ENERGY

Procurement and Assistance Management Directorate; Restricted Eligibility for Grant Award; Howard University

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of restricted eligibility for grant award.

SUMMARY: DOE announces that it intends to award a grant of $30,000 for one year in accordance with the DOE Financial Assistance Regulations 600.7(b) and section 211(d) of Pub. L. 95–619, and Executive Order 12320 to Howard University providing support in the Development of a Black College Satellite and Telecommunications Network (SATNET).

Procurement Request Number: 01–85MI10075.000.

Project Scope: The purpose of this award is to assist and stimulate the Howard University Black College Satellite and Telecomunications Network (SATNET). This endeavor is to provide a nationwide information system that will assist campus-based researchers to become aware of, to understand and to seek assistance from available sources, until now unknown, in their research and development activities in energy sciences and technologies. The DOE is interested in broadening the base of energy research and enhancing cross-fertilization of researcher's efforts. The DOE has determined that the award of the grant on a restricted eligibility basis is appropriate.

For further information contact: James P. Beiriger, MA–452.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–1024.

Issued in Washington, D.C., on September 19, 1985.

Ben Goldman,
Director, Contracts Operations, Division "A", Office of Procurement Operations.

[FR Doc. 85–22952 Filed 9–24–85; 8:45 am]
BILLING CODE 6450–01–M

Procurement and Assistance Management Directorate; Restriction of Eligibility for Grant Award; Laser Institute of America

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b) it intends to award on a restricted eligibility basis a Grant providing partial support to the Laser Institute of America in support of data collection that will constitute a Laser History Archive. The Grant is valued at $60,000 and is for a twenty-seven month period.

Procurement Request Number: 01–85DP20144.000.

Project Scope: The objective of this Grant is to support the Laser Institute of America, Laser History Project in data collection that will constitute a Laser History Archive to insure the preservation of related historical records. The project, initiated in 1983, has actively been involved in accumulating oral history, written reminiscences and biographical-bibliographical data. The DOE partial support will permit continuation of historical research and completion of the Archive. As the DOE is vitally involved in Laser Research, it has been determined that award of this Grant on a restricted eligibility basis is appropriate. For further information contact: James P. Beiriger, MA–452.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue SW.,

Washington, D.C. 20585, Telephone (202) 252–1024.

Issued in Washington, D.C., on September 19, 1985.

Ben Goldman,

Contracts Operations, Division "A" Office of Procurement Operations.

[FR Doc. 85–22950 Filed 9–24–85; 8:45 am]

BILLING CODE 6450–01–M

Procurement and Assistance Management Directorate; Restriction of Eligibility for Grant Award; National Academy of Sciences

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7(b), it intends to award on a restricted eligibility basis, a grant to the National Academy of Sciences in partial support of the Committee on Chemical Engineering Frontiers survey of intellectual frontiers in chemical and process engineering. The DOE support under this grant will be $130,000 over a 24 month period.

Procurement Request No.: 01–85FE60847.000.

Project Scope: The National Academy of Sciences, through the Board on Chemical Sciences and Technology, the Committee on Chemical Engineering Frontiers will survey the array of intellectual frontiers that have developed or are emerging in chemical and process engineering and the opportunities they present for meeting societal needs. As the DOE research mission is to ensure future access to clean and abundant sources of energy, dependent on advances in chemical processing and engineering, the DOE has determined that award to NAS on a restricted eligibility basis is appropriate.

For further information contact: James P. Beiriger, MA–452.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–1024.

Issued in Washington, D.C., on September 19, 1985.

Ben Goldman,

Director, Contracts Operations, Division "A" Office of Procurement Operations.

[FR Doc. 85–22951 Filed 9–24–85; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Final Consent Order With O. B. Mobley, Jr.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final action on proposed consent order.

SUMMARY: The Economic Regulatory Administration (ERA) has determined that a proposed Consent Order between the Department of Energy (DOE) and O. B. Mobley, Jr. (Mobley) shall be made a final order of the DOE. The Consent Order resolves Mobley's civil liability for violations of the Mandatory Price Regulations in sales of crude oil from the Lewisville Smackover Unit during the period September 1, 1976 through March 6, 1978. Pursuant to the terms of the agreement, Mobley relinquishes its rights and claims to all monies deposited into the escrow account maintained by the Department of Treasury. This amount, $1,095,622.15, which includes interest, will be held pending distribution by the DOE.

The Consent Order is effective as a final order of the DOE upon publication of this notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Meyer Magence, Office of Special Counsel (RG–13), Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–4945.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Comments Received
III. Decision

I. Introduction

ERA issued a notice announcing a proposed Consent Order between the DOE and Mobley which would resolve Mobley's civil liability for violations of the Mandatory Price Regulations in sales of crude oil from the Lewisville Smackover Lime Unit during the period September 1, 1976 through March 6, 1978 (violation period).

For the violation period, Mobley applied 10 CFR 212.75 in calculating the base production control level of the Lewisville Unit. On March 16, 1978, Mobley was issued an Interpretation by DOE's Office of General Counsel, which was affirmed by the DOE's Office of Hearings and Appeals (OHA), stating that Mobley must apply 10 CFR 212.72, and not 10 CFR 212.75, to sales of crude oil produced from the Lewisville Unit. The DOE's interpretation was upheld by the District Court for the Western District of Louisiana, *Mobley* v. *DOE*, CI–78–1073 (1982). The effect of the improper application of § 212.75 was that Mobley charged higher than lawful prices for the crude oil produced and sold from that unit.

Although it applied § 212.75, rather than §212.72, Mobley on its own escrowed the difference between revenues received according to § 212.75 and those it would have received pursuant to § 212.72. While not conducting a complete audit of Mobley's compliance with the federal petroleum price regulations for the violation period, DOE has verified that Mobley escrowed the amount of the overcharges. This amount, plus interest, which totals $1,095,622.15, was subsequently transferred to the deposit fund escrow account in the Department of Treasury.

ERA's notice announcing the proposed Consent Order between DOE and Mobley, 50 FR 28114 (July 10, 1985), solicited written comments from the public relating to the terms and conditions of the settlement.

II. Comments Received

ERA received three comments, which addressed the question of the ultimate disposition of the funds paid by Mobley pursuant to the settlement, but did not question the basis of the settlement or the adequacy of the settlement amount. Comments were received from the following: Governor's Energy Office, State of Florida, State of Indiana, Attorneys General of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia.

The comments received did not relate to the issue of whether the Consent Order should be modified, rejected or adopted as a final order. All of the comments argued for disbursal of the monies to the states after refunds have been made to parties claiming actual injury.

During the period covered by this Consent Order the violations allegedly committed by Mobley related to the miscertification of its crude oil. Such violations resulted in cost increases that were distributed among all refiners by the entitlements program and the refiners could then pass the overcharges on to others. *See United States* v. *Exxon Corp.*, —F.2d—, Slip op. at 110–112 (TECA, July 1, 1985) (Nos. 91 *et seq.*).

The DOE's Office of Hearings and Appeals in a report to the District Court for the district of Kansas in *In re: The Department of Energy Stripper Well Litigation*, MDL No. 378, determined that where alleged crude oil violations involve such crude oil miscertifications, the resulting harm cannot be traced to specific customers. As explained by the DOE in an accompanying Statement of Restitutionary Policy.

Essentially, OHA concluded that direct purchasers (as such) generally did not absorb the overcharges because they were reimbursed by the entitlements programs. Tracing of overcharges is impossible in view

of the spreading effect of the entitlements program, the fungibility of refiner costs and the consequent ability of firms and OHA to determine which costs were passed through and which, if any, were retained, and the high proportion of cost passthrough, among other factors.

OHA's finding that it is impossible to trace crude oil cost increases that were equalized by the entitlements program, . . . is consistent with the conclusions to two district courts that have previously determined that the harm resulting from crude oil miscertifications cannot be traced. 50 FR 27400 (July 2, 1985).

DOE then examined the possible use of econometic modeling methods to estimate the extent to which overcharges were passed through at the various distribution levels within the industry. With regard to this indirect methodology, DOE concluded:

It is too inexact in determining injury to particular classes of claimants and yields no conclusions concerning the injury to individuals within any class. The governmental costs in resources and, more importantly, societal costs in years of continued litigation prior to distribution are unacceptably high. *Id.* at 27402.

Subpart V contemplates proceedings to identify injured persons (10 CFR 205.280). When it is impossible to determine which persons were ultimately injured, as in violations involving crude oil miscertifications, such proceedings are futile and, therefore, not appropriate. Accordingly, the funds received from Mobley pursuant to the Consent Order will not be the subject of a Subpart V petition and proceeding.

DOE's Statement of Policy also addressed the question of how to effect indirect restitution where refunds to individual injured claimants are not feasible. The policy statement provides that the ERA will retain the monies received in an escrow account for a reasonable time to allow Congress an opportunity to determine an appropriate disposition of the funds. If Congress does not enact legislation within a reasonable time, the DOE will transfer the funds to the general fund the U.S. Treasury. The Policy Statement explains that this is preferable to further *ad hoc* payments to the states because:

[T]he states, as a result of the decisions in *Exxon* and *Sutton*, will receive more than two billion dollars for use in certain federally-established energy programs. The Department of Energy, which is responsible for administering and overseeing most of these programs at the federal level, has concluded that the states, cannot make effective use of additional monies (beyond those appropriated by Congress and awarded by the *Exxon*, and *Sutton* courts) for these programs at this time. *supra*, at 27402.

Because of the terms of the settlement are consistent with the foregoing actions, ERA has determined to proceed with the finalization of the Consent Order.

III. Decision

Pursuant to 10 CFR 212.199J, the Consent Order between Mobley and DOE is made a final order of the DOE on the date of the publication of this notice.

Issued in Washington, D.C., on September 10, 1985.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 85-22948 Filed 9-24-85; 8:45 am]

BILLING CODE 6450-01-M

Final Consent Order With Don E. Pratt Oil Operations

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final action on proposed consent order.

SUMMARY: The Economic Regulatory Administration (ERA) has determined that a proposed Consent Order between the Department of Energy (DOE) and Don E. Pratt, individually, and Don E. Pratt Oil Opeations (Pratt) shall be made a final order of the DOE. The Consent Order resolves Pratt's compliance with the federal petroleum price and allocation regulations for the period September 1973 through January 27, 1981. Pratt will pay to the DOE the aggregate amount of $890,000, plus installment interest. The monies would be depostited in suitable account pending distribution by DOE. The decisin to make the Pratt Consent Order final as modified was made after a reveiw of all written comments received.

The final Consent Order incorporates the following modifications:

(1) Inclusion of a record-keeping requirements that conforms to 10 CFR 210.1, ensuring the availability of data in the event that refund procedures were necessary;

(2) Application of a fixed installment interest rate consisting of the rate applicable during the period when the modified Consent Order was executed; and

(3) Inclusion of a provision that makes clear that the Consent Order does not affect suits involving other crude oil property operators.

Other modifications were made to the provisions regarding the release of sensitive commercial and financial information and DOE's reservation of a right to seek remedies for newly discovered regulatory violations.

The Consent Order as modified is effective as a final order of the DOE on the date the document was executed.

FOR FURTHER INFORMATION CONTACT: Meyer Magence, Office of Special Counsel (RG-13), Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-4945.

SUPPLEMENTARY INFORMATION

I. Introduction
II. Comments Received
III. Modifications to the Consent Order
IV. Decision

I. Introduction

ERA issued a notice announcing a proposed consent order between DOE and Pratt which would resolve matters relating to Pratt's compliance with the federal petroleum price and allocation regulations for the period September 1973 through January 27, 1981. 49 FR 50303 (December 27, 1984). The proposed consent order requires Pratt to pay the aggregate amount of $890,000, plus installment interest, for the settlement of alleged overcharges.

The company shall pay $17,500 on the first day of the first month following the effective date of the Consent Order and $17,500 on the first day of each month thereafter for thirty-five months. Each payment shall be applied to interest first and the balance to the outstanding principal amount. The remaining unpaid principal and interest shall be paid in one payment thirty days after the thirty-sixth payment. The notice solicited written comments from the public relating to the terms and conditions of the settlement.

II. Comments Received

ERA received three comments, which addressed the question of the ultimate disposition of the funds to be paid by Pratt pursuant to the settlement, but did not question the basis of the settlement or the adequacy of the settlement amount. Comments were received from the following: Attorney General of Texas, Controller, State of California, State of Indiana.

The comments received did not relate to the issue of whether the Consent Order should be modified, rejected or adopted as a final order. The Attorney General of Texas stated that, since ERA did not identify any injured persons, ERA should request the implementation of Subpart V proceedings. The State of Indiana, on the other hand, argued for disbursal of the monies to the states. The Controller of the State of California indicated a preference for a specific reference in the Consent Order to

Subpart V proceedings or payments to the states.

During the period covered by this Consent Order the violations allegedly committed by Pratt related to the miscertification of its crude oil. Such violations resulted in cost increases that were distributed among all refiners by the entitlements program and the refiners could then pass the overcharges on to others. *See United States* v. *Exxon Corp.*,—F.2d—, Slip op. at 110–112 (TECA, July 1, 1985) (Nos. 91 *et seq.*).

The DOE's Office of Hearings and Appeals in a report to the District Court for the District of Kansas in *In re: the Department of Energy Stripper Well Litigation*, MDL No. 378, determined that where alleged crude oil violations involve such crude oil miscertification, the resulting harm cannot be traced to specific customers. As explained by the DOE in an accompanying statement of Restitutionary Policy,

> Essentially, OHA concluded that direct purchasers (as such) generally did not absorb the overcharges because they were reimbursed by the entitlements programs. Tracing of overcharges is impossible in view of the spreading effect of the entitlements program, the fungibility of refiner costs and the consequent ability of firms and OHA to determine which costs were passed through and which, if any, were retained, and the high proportion of cost passthrough, among other factors.
>
> OHA's finding that it is impossible to trace crude oil cost increases that were equalized by the entiltements program, . . . is consistent with the conclusions of two district courts that have previously determined that the harm resulting from crude oil miscertifications cannot be traced. 50 *FR* 27400 (July 2, 1985).

DOE then examined the possible use of econometric modeling methods to estimate the extent to which overcharges were passed through at the various distribution levels within the industry. With regard to this indirect methodology, DOE concluded:

> It is too inexact in determining injury to particular classes of claimants and yields no conclusions concerning the injury to individuals within any class. The governmental costs in resources and, more importantly, societal costs in years of continued litigation prior to distribution are unacceptably high. *Id.* at 27402.

Superpart V contemplates proceedings to identify injured persons (10 CFR 205.280). When it is impossible to determine which persons were ultimately injured, as in violations involving crude oil miscertifications, such proceedings are futile, and, therefore, not appropriate. Accordingly, the funds received from Pratt pursuant to the Consent Order will not be the subject of a Subpart V petition and proceeding.

DOE's Statement of Policy also addressed the question of how to effect indirect restitution where refunds to individual injured claimants are not feasible. The policy statement provides that the ERA will retain the monies received in an escrow account for a reasonable time to allow Congress an opportunity to determine an appropriate disposition of the funds. If Congress does not enact legislation within a reasonable time, the DOE will transfer the funds to the general fund of the U.S. Treasury. The Policy Statement explains that this is preferable to further *ad hoc* payments to the state because:

> [T]he states, as a result of the decisions in *Exxon* and *Sutton*, will receive more than two billion dollars for use in certain federally-established energy programs. The Department of Energy, which is responsible for administering and overseeing most of these programs at the federal level, has concluded that the states cannot make effective use of additional monies (beyond those appropriated by Congress and awarded by the *Exxon* and *Sutton* courts) for these programs at this time. *supra*, at 27402.

Because the terms of the settlements are consistent with the foregoing action, ERA has determined to proceed with the finalization of the Consent Order.

III. Modifications to the Consent Order

The ERA is seeking to standardize its Consent Orders as much as possible and has modified the Pratt Consent Order pursuant to that goal. The preamble to the ERA's recent revision of its regulation, 50 F.R. 4957, 4960 (February 5, 1985), provides that firms with restitutionary payments subject to distribution must be required to maintain records to permit appropriate distribution of these payments. ERA and Pratt have agreed to modify the proposed Consent Order to require the firm to retain records in the event of subsequent direct restitutionary payments.

Another modification concerns the installment interest rate. Pursuant to ERA's interest policy, published at 46 F.R. 21412, 21414 (April 10, 1981), the interest rate applicable to a Consent Order may be fixed as of the date of its execution. Since the modified Consent Order was executed September 3, 1985, and the appropriate interest rate for the period from July 1, 1985 to September 30, 1985 is 10.44%, the installment interest rate applicable to this Consent Order is fixed at 10.44%.

A third modification makes clear that the Consent Order does not affect any action DOE may bring against a third-party crude oil property operator nor does the Consent Order afford Pratt any protection from any possible suit against it for contribution by such a third-party operator.

Because the above-mentioned modifications to the Consent Order do not affect the basic settlement amount or substantially alter the basis of the settlement, DOE has determined that the modifications do not require an opportunity to file additional comments.

IV. Decision

Pursuant to 10 CFR 205.199J, the Consent Order between Pratt and DOE as modified has made a final order of the DOE on September 3, 1985, the date the modified Consent Order was executed.

Issued in Washington, D.C., on September 9, 1985.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 85–22949 Filed 9–24–85; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 6287–002 et al.]

Applications Filed with the Commission; Hydroelectric Applications (Rainsong Co. et al.)

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

a. Type of Application: Major License.

b. Project No.: 6287–002.

c. Date Filed: November 8, 1984.

d. Applicant: Rainsong Company.

e. Name of Project: Lena Creek.

f. Location: On Lena Creek, tributary to the Hamma Hamma River, in Jefferson and Mason Counties, Washington, and affecting lands within the Olympic National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. William L. Devine, P.O. Box 68, 8040 Mt. Baker Highway, Maple Falls, WA 98266.

i. Comment Date: October 21, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) A 6-foot-high, 40-foot-long ogee-type reinforced-concrete dam having spillway crest elevation 1,550.0 feet; (2) a gated intake structure at the right (west) bank having a sluiceway; (3) a 3,000-foot-long, 42-inch-diameter underground pipeline; (4) a 3,500-foot-long, 42-inch-diameter underground steel penstock; (5) a powerhouse containing a

generating unit rated at 5,000-kW operated at a head of 825 feet and at a flow of 80 cfs; (6) a 160-foot-long tailrace; (7) a 4,160-v/34.5-kV switchyard; (8) a 32,280-foot-long underground 34.5-kV transmission line to a 34.5/115-kV substation: and (9) a 150-foot-long access road to the powerhouse and a 7,000-foot-long access road to the diversion. Applicant estimates that the average annual energy generation would be 23,400 MWh. Applicant estimates that the project construction cost in 1986 would be $7,352,380.

This application has been accepted for filing as of May 3, 1982, the submittal date of the Applicant's originally accepted exemption application pursuant to Snowbird, Ltd., 28 FERC ¶61,062 issued July 18, 1984.

k. Purpose of Project: Project energy would be sold.

l. This notice also consists of the following standard paragraphs: A9, B, C, D1.

m. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 60 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

2 a. Type of Application: Minor License.

b. Project No.: 6786–001.

c. Date Filed: November 29, 1984.

d. Applicant: Yankee Hydro Corporation.

e. Name of Project: Aurelius Avenue Dam.

f. Location: Owasco Lake Outlet in Cayuga County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Roger P. Swanson, Yankee Hydro Corporation, 66 East Fourth Street, P.O. Box 2027, Oswego, NY 13126.

i. Comment Date: October 21, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 12-foot-high, 100-foot-long reinforced concrete gravity dam; with (2) new 1-foot-high flashboards; (3) a reservoir with a normal water surface area of 1.8 acres, a gross storage capacity of 10.92 acre-feet, and a normal water surface elevation of 580 feet MSL; (4) an intake structure; (5) a new concrete block powerhouse containing three generating units with a capacity of 120 kW each for a total installed capacity of 360 kW; (6) a new transmission line, 150 feet long; and (7) appurtenant facilities. The Applicant estimates that the average annual generation would be 1,500,000 kWh. The existing dam is owned by the City of Auburn, New York. This license application was filed pursuant to a preliminary permit, Project No. 6786–000, held by the Applicant.

k. Purpose of Project: Project power would be sold to the New York State Electric and Gas Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

3 a. Type of Application: Minor License.

b. Project No.: 7225–003.

c. Date Filed: November 16, 1984.

d. Applicant: Little Salmon River Estates, Inc.

e. Name of Project: Fall Creek.

f. Location: On Fall Creek, tributary to the Little Salmon River, in Adams County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Carl L. Myers, P.E., 750 Warm Springs Avenue, Boise, ID 83712.

i. Comment Date: October 21, 1985.

j. Description of Project: The proposed run-of-river project would affect lands of the U.S. under the jurisdication of the Bureau of Land Management and would consist of: (1) A 2-foot-high 15-foot-long reinforced-concrete weir; (2) a screened intake structure at the left (north) bank; (3) at 6,700-foot-long, 12.75-inch-diameter steel pipeline/penstock; (4) a powerhouse containing a generating unit rated at 1,091-kw operated at a static head of 1,480 feet and at a flow of 12.7 cfs; (5) a short tailrace to the Little Salmon River; (6) a 4,169-v/34.5-kV transformer; and (7) a 100-foot-long, 34.5-kV transmission line. Applicant estimates that the average annual energy generation would be 2,609,680 kWh. Applicant estimates that the 1985 total project construction cost would be $1.123,748.

This application has been accepted for filing as of April 15, 1983, the submittal date of the Applicant's originally accepted exemption application pursuant to Snowbird, Ltd., 28 FERC ¶ 61,062 issued July 18, 1984.

k. Purpose of Project: Project energy would be sold to Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A9, B, C, and D1.

m. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. submission of a timely notice of intent allows an interested person to file the competing development application no later than 60 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

4 a. Type of Application: Preliminary Permit.

b. Project No.: 9051–000.

c. Date Filed: March 26, 1985.

d. Applicant: Benton Associates.

e. Name of Project: Benton.

f. Location: Big Muddy River in Franklin County, Illinois.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Joel Kirk Rector, 5041 South Boabab Drive, Salt Lake City, UT 84117.

i. Comment Date: October 21, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers Rend Dam and would consist of: (1) A proposed penstock, 10 feet in diameter and 250 feet long; (2) a proposed powerhouse containing a single generating unit of 1,600 kW capacity; (3) a proposed tailrace, 25 feet wide and approximately 250 feet long; (4) a proposed transmission line, approximately ¾-mile long; and (5) appurtenant facilities. The estimated average annual generation of 5,000,000 kWh would be sold to Illinois Power Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $125,000.

5 a. Type of Application: Preliminary Permit.

b. Project No.: 9150–000.

c. Date Filed: May 1, 1985.

d. Applicant: Tranquility Irrigation District.

e. Name of Project: Kaiser Creek.

f. Location: On Kaiser and Westfall Creeks in Fresno County, California; within Sierra National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Keith Miller, Manager, Tranquillity Irrigation District, P.O. Box 487, Tranquillity, CA 93668.

i. Comment Date: October 21, 1985.

j. Description of Project: The proposed project would consist of: (1) A 115-foot-high, 550-foot-long rockfill dam at elevation 5,310 feet on Kaiser Creek; (2) a 63-acre reservoir with a storage capacity of 2,700 acre-feet; (3) a 42-inch-diameter, 700-foot-long pipeline; (4) the Kaiser Creek Powerhouse #1 containing a single generating unit operating under a head of 140, with a total installed capacity of 630 kW; (5) a 20-foot-high, 82-foot-long diversion dam at elevation 5,170 feet on Kaiser Creek; (6) a 42-inch-diameter, 12,900-foot-long pipeline; (7) a 10-foot-high, 40-foot-long diversion dam at elevation 5,170 feet on Westfall Creek; (8) a 24-inch-diameter pipeline carrying water diverted from the Westfall Creek to the 42-inch-diameter pipeline; (9) the Kaiser Creek Powerhouse #2 containing a single generating unit operating under a head of 1,770 feet, with a total installed capacity of 7,900 kW and discharging into the existing Mammoth Pool Reservoir of Project No. 2085; (10) a surge tank; (11) an 11.4-mile-long, 11-kV transmission line transmitting power generated by Kaiser Creek Powerhouse No. 2 to Southern California Edison Company's (SCE) Big Creek No. 2 Powerhouse of FERC Project No. 120; (12) a 2.3-mile-long, 11-kV transmission line transmitting power generated by Kaiser Creek Powerhouse No. 1 to the 11-kV transmission line connecting Kaiser Creek, Powerhouse No. 2 with Big Creek No. 2 Powerhouse of FERC Project No. 120; and (13) appurtenant facilities. The power generated by the proposed project would be sold to SCE or another utility.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $350,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

6 a. Type of Application: Preliminary Permit.

b. Project No: 9162–000.

c. Date Filed: May 2, 1985.

d. Applicant: Torrey Associates.

e. Name of Project: Fremont/Poverty Flat Hydro Project.

f. Location: On Fremont River in Wayne County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–827(r).

h. Contact Person: Mr. Mike Graham, President, G.W.P., 484 East 300 North Manti, UT 84642.

i. Comment Date: October 21, 1985.

j. Description of Project: The proposed project would utilize an abandoned site owned by the Garkane Power Company and would consist of: (1) A new concrete diversion structure, about 5-feet high; (2) a new pipeline penstock, 40-inches in diameter and 6,750 feet-long; (3) a new powerhouse with an installed capacity of 500kw; (4) a tailrace to the Fremont River; (5) a new 2,000-foot-long transmission line; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 2,936,000 kwh.

k. Purpose of Project: Project energy would be sold to local municipalities or the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $43,000.

7 a. Type of Application: Preliminary Permit.

b. Project No: 9163–000.

c. Date Filed: May 2, 1985.

d. Applicant: Stuart Associates.

e. Name of Project: St. Lucie Lock & Dam Hydro (Structure 80).

f. Location: On the St. Lucie Canal in Martin County, Florida.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, Stuart Associates, 1350 New York Ave., #600, Washington, DC 20005.

i. Comment Date: October 21, 1985.

j. Description of Project: The proposed project would utilize the existing Corps of Engineers Lock & Dam and would consist of: (1) Renovation of an existing powerhouse, 20 feet by 50 feet that will contain one turbine-generator unit, with an installed capacity of 3,000 kW; (2) a proposed 60-inch-diameter penstock approximately 30 feet long; (3) a proposed tailrace approximately 50 feet long and 30 feet wide; (4) about 2,590 feet of 12.5-kV transmission line; and (5) appurtenant facilities. Applicant estimates that the average annual energy generation would be about 13.5 GWh.

k. Purpose of Project: The Applicant anticipates that project energy will be sold to the Florida Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates that the cost of the studies under permit would be $125,000.

8 a. Type of Application: Preliminary Permit.

b. Project No.: 9166–000.

c. Date Filed: May 2, 1985.

d. Applicant: Moore Haven Associates.

e. Name of Project: Structure 77 (Moore Haven).

f. Location: On the Caloosatchee River in Glades County, Florida.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, Lorida Associates, 1350 New York Ave., #600, Washington, DC 20005.

i. Comment Date: October 21, 1985.

j. Description of Project: The proposed project would utilize the eixisting Corps of Engineers Lock and Dam and would consist of: (1) A new penstock, 40 feet in length and 6 feet in diameter; (2) a new powerhouse, 20 feet by 50 feet, housing one turbine-generator unit with an installed capacity of 3,000 kW; (3) a proposed tailrace, 50 feet long and 20 feet wide; (4) a propsed transmission line 300 feet long at 12.5–kV; and (5) appurtenant facilities. Applicant estimates that the average annual energy generation would be 10.0 GWh.

k. Purpose of Project: The Applicant anticipates that project energy will be

sold to the Florida Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $125,000.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 9178–000.

c. Date Filed: May 8, 1985.

d. Applicant: Heber City Associates.

e. Name of Project: Timponogos Hydro Project..

f. Location: On Provo River in Wasatch County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Mike Graham, President, G.W.P., 484 East 300 North Manti, UT 84642.

i. Comment Date: October 21, 1985.

j. Description of Project: The proposed project would be located both on lands owned by the State of Utah and on Federal lands administered by the U.S. Bureau of Reclamation and would consist of: (1) An existing concrete diversion structure, about 10 feet high; (2) a canal, 8,950 feet long, 4 feet wide and 4 feet deep; (3) a new 40-inch diameter, 600-foot-long penstock; (4) a new powerhouse with an installed capacity of 800 kW; (5) a tailrace to the Provo River; (6) a new 2,000-foot-long transmission line; and (7) appurtenant facilities. The Applicant estimates that the average annual energy output would be 5,760,000 KWh.

k. Purpose of Project: Project energy would be sold to local municipalities or the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit during which time Applicant would investigate project design alternatives, financial feasibility, environmental effect of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $43,000.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 9203–000.

c. Date Filed: May 20, 1985.

d. Applicant: Hyrum Associates.

e. Name of Project: Hyrum Hydro Project.

f. Location: On Little Bear River in Cache County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mike Graham, President, G.W.P., 484 East 300 North, Manti, Utah 84642.

i. Comment Date: Oct. 21, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Bureau of Reclamation's Hyrum Dam and Reservoir and would consist of: (1) A 48-inch-diameter penstock utilizing the existing outlet works; (2) a new powerhouse with an installed capacity of 1,000 kW; (3) a tailrace; (4) a new 3,000-foot-long transmission line; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 3,836,000 kWh.

k. Purpose of Project: Project energy would be sold to local municipalities or the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $17,000.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 9214–000.

c. Date Filed: May 20, 1985.

d. Applicant: Provo Associates.

e. Name of Project: Murdock Dam Hydro Project.

f. Location: On Provo River in Utah County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Mike Graham, President, G.W.P., 484 East 300 North, Manti, Utah 84642.

i. Comment Date: Oct. 21, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Bureau of Reclamation's Murdock Dam and Reservoir and would consist of: (1) A 48-inch diameter penstock utilizing the existing outlet works; (2) a new powerhouse with an installed capacity of 300 KW; (3) a tailrace; (4) a new transmission line, about 1,000-feet long; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 1,036,000 kWh.

k. Purpose of Project: Project energy would be sold to local municipalities or the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $7,000.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 9220–000.

c. Date Filed: May 21, 1985.

d. Applicant: Newton Associates.

e. Name of Project: Newton Hydro Project.

f. Location: On Clarkston Creek in Cache County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mike Graham, President, G.W.P., 484 East 300 North, Manti, Utah 84642.

i. Comment Date: October 21, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Bureau of Reclamation's Newton Dam and Reservoir and would consist of: (1) A 36-inch-diameter penstock utilizing the existing outlet works; (2) a new powerhouse with an installed capacity of 600 kW; (3) a tailrace; (4) a new 3,000-foot-long transmission line; and (5) appurtenant facilities. The Applicant estimates that the average annual energy output would be 2,236,000 kWh.

k. Purpose of Project: Project energy would be sold to local municipalities or the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $27,000.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 9236–000.

c. Date Filed: May 28, 1985.

d. Applicant: Gunnison Associates.

e. Name of Project: Gunnison Hydro Project.

f. Location: On San Pitch River in Sanpete County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mike Graham, President, G.W.P., 484 East 300 North, Manti, Utah 84642.

i. Comment Date: October 21, 1985.

j. Description of Project: The proposed project would utilize a dam and reservoir owned by the Gunnison Irrigation Company and would consist of: (1) An existing earthfill dam, about 45 feet high; (2) a reservoir with a total capacity of 18, 685 acre-feet; (3) a new 60-inch-diameter penstock; (4) a new powerhouse with an installed capacity of 500 kW; (5) a tailrace; (6) a new 3,000-foot-long transmission line; and (7) appurtenant facilities. The applicant estimates that the average annual energy output would be 3,036,000 kWh.

k. Purpose of Project: Project energy would be sold to local municipalities or the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $21,000.

14 a. Type of Application: Preliminary Permit.

b. Project N0.: 9254–000.

c. Date Filed: May 31, 1985.

d. Applicant: Herkimer County Associates.

e. Name of Project: Boyd Dam.

f. Location: On the West Canada Creek in Herkimer County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, Herkimer County Associates, 1350 New York Ave., #600, Washington, DC 20005.

i. Comment Date: October 21, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 12-foot-high, 245-foot-long stone and timber gravity dam; (2) a reservoir with a surface area of 0.8 acre, a storage capacity of 20 acre-feet, and a normal water surface elevation of 420 feet m.s.l.; (3) two new steel intake gates; (4) two new 8-foot-diameter, 30-foot-long steel penstocks; (5) a new brick powerhouse containing one generating unit with a capacity of 1,000 kW; (6) a new 5-foot-long, 20-foot-wide tailrace; (7) a new transmission line, 75 feet long; and (8) appurtenant facilities. The Applicant estimates the average annual generation would be 6,600,000 kWh. The existing dam is owned by the Pennsylvania Egg Carton Company and the Herkimer Holding Corporation, Herkimer, New York.

k. Purpose of Project: Project power would be sold to the Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to prepare an application for FERC license. Applicant estimates that the cost of the studies under the permit would be $125,000.

15 a. Type of Application: Preliminary Permit.

b. Project No.: 9267–000.

c. Date Filed: June 3, 1985.

d. Applicant: Antimony Associates.

e. Name of Project: Otter Creek Hydro Project.

f. Location: On Otter Creek in Piute County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mike Graham, President, G.W.P. 484 East 300 North Manti, Ut 84642.

i. Comment Date: October 21, 1985.

j. Description of Project: The proposed project would utilize a dam and lands owned by the Otter Creek Irrigation Company and would consist of: (1) An earthfill dam, about 35 feet high; (2) a reservior having a total capacity of 18,685 acre-feet; (3) a new 48-inch-diameter penstock utilizing the existing outlet works; (4) a new powerhouse with an installed capacity of 250 kW; (5) a tailrace; (6) a new 11,046-foot-long transmission line; and (7) appurtenant facilities. The Applicant estimates that the average annual energy output would be 896,000 kWh.

k. Purpose of Project: Project energy would be sold to local municipalities or the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under the permit would be $37,350.

16 a. Type of Application: Preliminary Permit.

b. Project No.: 9268–000.

c. Dated Filed: June 3, 1985.

d. Applicant: Minersville Associates.

e. Name of Project: Rocky Ford Hydro Project.

f. Location: On Beaver River in Beaver County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mike Graham, President, G.W.P.; 484 East 300 North. Manti, Utah 84642.

i. Comment Date: October 21, 1985.

j. Description of Project: The proposed project would utilize a dam and lands owned by the State of Utah and would consist of: (1) An existing earthfill dam; about 56 feet high; (2) a reservoir with a total capacity of 24,910 acre-feet; (3) a new 48-inch diameter penstock utilizing the existing outlet works; (4) a new powerhouse with an installed capacity of 250 kw; (5) a tailrace; (6) a new 26,826-foot-long transmission line; and

(7) appurtenant facilities. The Applicant estimates that the average annual energy output would be 1,036,000 KWh.

k. Purpose of Project: Project energy would be sold to local municipalities or the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $32,000.

17 a. Type of Application: Preliminary Permit.

b. Project No.: 9323–000.

c. Date Filed: July 3, 1985.

d. Applicant: Malta Hydro Associates.

e. Name of Project: Sugar Loaf Dam.

f. Location: On Lake Fork, near Malta, in Lake County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Malta Hydro Associates, c/o Louis Rosenman, Esg., 1350 New York Avenue, #600, Washington, D.C. 20005 (202) 783–2100.

i. Comment Date: October 21, 1985.

j. Description of Project: The proposed project would utilize the outlet works of the existing U.S. Bureau of Reclamation's 12-foot-high, 3,200-foot-long Sugar Loaf Dam and would consist of: (1) A 72-inch-diameter, 850-foot-long penstock; (2) a 20-foot by 20-foot powerhouse containing a single turbine-generator unit with a rated capacity of 2.0 MW and producing an estimated average annual generation of 10 GWh; (3) a tailrace; and (4) a 1,500-foot-long, 12.5-kV transmission line. Project power would be sold to Public Service Company of Colorado.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $145,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C an D2.

18 a. Type of Application: Preliminary Permit.

b. Project No.: 9350–000.

c. Date Filed: July 15, 1985.

d. Applicant: Michiana Hydro Electric Power Corporation.

e. Name of Project: Holliday Hydropower.

f. Location: On the West Fork of the White River in Hamilton County, Indiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Charles S. Hayes, 1634 E. Jefferson Blvd., South Bend, IN 46617.

i. Comment Date: October 21, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing concrete spillway dam approximately 200 feet long and 10 feet high, with two 20 feet wide Tainter gates located at the east end of the spillway; (2) an existing reservoir with negligible storage at pool elevation of 785 feet m.s.l.; (3) refurbishing of the existing 25 foot by 46 foot powerhouse and the two turbine/generator units, each rated at 192 kW, for a total installed capacity of 384 kW; (4) about 400 feet of new transmission line at 4,800 volts; and (5) appurtenant facilities. Applicant estimates that the average annual energy generation would be 2,335,000 kWh. The existing facility is owned by the Public Service Company of Indiana.

k. Purpose of Project: The Applicant anticipates that project energy will be sold to the Public Service Company of Indiana.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $11,500.

19 a. Type of Application: Preliminary Permit.*

* This notice supersedes the Notice of Application for Preliminary Permit issued on August 2, 1985.

b. Project No.: 9242–000.

c. Date Filed: May 28, 1985.

d. Applicant: Old Station Power Company.

e. Name of Project: Rock Creek.

f. Location: On Rock Creek in Shasta County, California, within Shasta National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis J. Simpson, 2704 Hartnell Avenue, Suite C, Redding, CA 96002.

i. Comment Date: October 21, 1985.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high, 90-foot-long diversion dam at elevation 3,269 feet; (2) a 54-inch-diameter, 500-foot-long penstock; (3) a powerhouse with a total installed capacity of 3300 kW; and (4) a 12-kV, 1-mile-long transmission line connecting with an existing Pacific Gas and Electric Company (PG&E) transmission line.

k. Purpose of Project: A preliminary permit if issued, does not authorize construction. Applicant has requested an 18-month permit to conduct feasibility studies and prepare a license application at a cost of $25,000. No new roads would be constructed to conduct these studies.

This estimated 10.1 million kWh generated annually by the project would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

20 a. Type of Application: Amendment of License.

b. Project No: 3174–002.

c. Date Filed: April 15, 1985.

d. Applicant: Ptarmigan Resources and Energy, Inc.

e. Name of Project: Vallecito.

f. Location: Vallecito Dam, on the Los Pinos River, near the City of Durango, in La Plata County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ptarmigan Resources and Energy, Inc., c/o Barbe Chamblis, 92 Atlantic Avenue, Aspen, Co 81611, (303) 920–2527.

i. Comment Date: October 31, 1985.

j. Description of Project: The proposed project would utilize the existing U.S. Bureau of Reclamation's Vallecito Dam and Reservior and would consist of: (1) An intake structure located at the existing slide gates, inside the dam outlet works, with a hydraulic capacity of 1,500 cfs; (2) a 350-foot/long, 84-inch-diameter steel penstock expanding to a 96-inch-diameter, 1,540-foot-long steel penstock; (3) a 25- by 25- by 15-foot concrete surge tank located 200 feet upstream from the powerhouse; (4) a

powerhouse containing Francis turbine-generator units with a total installed capacity of 5.0 MW and producing an estimated average annual generation of 15 GWh; (5) a tailrace returning water to the Los Pinos River; and (6) a 1,800-foot-long, 12.4-KV transmission line. Project power would be sold to Colorado Ute Electric Association.

k. Purpose of Project: Applicant was issued a license for the Vallecito Project No. 3174–001 on October 5, 1983. Applicant is now proposing, among other things, to pressurize the conveyance system and to increase installed capacity from 2.35 MW to 5.0 MW.

1. This notice also consists of the following standard paragraphs: B, C, and D1.

21 a. Type of Application: Declaration of Intention.

b. Project No: EL85–42–000.

c. Date Filed: August 5, 1985.

d. Applicant: Guy M. Carlson.

e. Name of Project: Allison Creek.

f. Location: On Allison Creek in Idaho County, Idaho.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Contact Person: Guy M. Carlson, Box 319, Riggins, Idaho 83549.

i. Comment Date: November 4, 1985.

j. Description of Project: The project constructed in 1955 consists of: (1) A 3.5-foot-high log and rock diversion dam; (2) a 16-inch-diameter, 500-foot-long steel penstock; and (3) a generating unit rated at 7.5 kW operating at a head of 55 feet with a flow of 2 cfs.

A Declaration of Intention requests that the Commission commence an investigation to determine if it has jurisdiction over a project.

k. Purpose of Project: The project was constructed to furnish electric power for domestic use on the owner's ranch, which is remote from any utility grid. Power is wholly consumed on the property.

1. This notice also consists of the following standard paragraphs: B, C, and D2.

22 a. Type of Application: Major License.

b. Project No: 6840–002.

c. Date Filed: November 15, 1984.

d. Applicant: Olympus Energy Corporation.

e. Name of Project: Tyler Peak Water Power.

f. Location: On Dungeness River, within Olympic National Forest, near Sequim, in Clallam County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Jerome E. Livingston, Olympus Energy Corporation, P.O. Box 1090, Bothell, Washington 98041.

i. Comment Date: October 25, 1985.

j. Competing Application: Project No. 5495, Date Filed: June 21, 1984.

k. Description of Project: the proposed project would consist of: (1) A 5-foot-high, 75-foot-long concrete diversion structure at elevation of 7,500 feet; (2) an 8,000-foot-long, 54-inch-diameter steel pipeline; (3) a 1,000-foot-long, 54-inch-diameter steel penstock; (4) a powerhouse containing two generating units with a total installed capacity of 4,980 kW at an operating head of 480 feet; and (6) a 6.5-mile-long, 23-kV transmission line connecting to an existing transmission line. The average annual energy generation is estimated to be 24.6 million kWh. The estimated cost of the project would be 9.5 million dollars.

This application has been accepted for filing as of November 10, 1982, the submittal date of the Applicant's originally accepted exemption application pursuant to Snowbird, Ltd. et at., 28 FERC ¶ 61,062, issued July 18, 1984.

l. Purpose of Project: Project power would be sold to a local public utility.

m. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 60 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

n. This notice also consists of the following standard paragraphs: A9, B, C and D1.

23 a. Type of Application: Exemption (5MW or Less).

b. Project No.: 9279–000.

c. Date Filed: June 6, 1985.

d. Applicant: Cottrell Paper Company.

e. Name of Project: Rock City Falls.

f. Location: Kayaderosseras Creek in Saratoga County, New York.

g. Filed Pursuant to: Energy Security Act of 1980, Section 408 (16 U.S.C. 2705 and 2708).

h. contact Person: Mr. J. Thomas Cottrell, P.O. Box 1589, Fall River, MA 02722.

i. Comment Date: October 25, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 15-foot-high, 68-foot-long dam owned by the Applicant with a crest elevation of 462 feet MSL; (2) an existing reservoir with a surface area of 1.5 acres and a storage capacity of 8 acre-feet; (3) an existing 80-inch diameter, 350-foot-long penstock; (4) a proposed powerhouse containing a generating unit with a rated capacity of 550-kW; and (5) a proposed 600-foot-long transmission line tying into the existing Niagra Mohawk Power Corporation System. The Applicant estimates a 1,375,000 kWh average annual energy production.

l. Purpose of Project: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the intial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit

application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be set to the Applicants representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: September 19, 1985.
Lois D. Cashell,
Acting Secretary.
[FR Doc. 85-22883 Filed 9-24-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP85-199-000]

Algonquin Gas Transmission Co.; Change in FERC Gas Tariff

September 19, 1985.

Take notice that on September 13, 1985, Algonquin Gas Transmission Company ("Algonquin Gas"), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed proposed changes in its FERC Gas Tariff, pursuant to section 4 of the Natural Gas Act and Part 154 of the Commission's Regulations under the Natural Gas Act. Algonquin Gas proposes that the filing take effect on September 16, 1985.

Algonquin Gas states that the filing tracks a tariff requirement for payment of bills by wire transfer recently made by its principal pipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern"). By order issued August 30, 1985, Texas Eastern's filing was suspended and was allowed to become effective on September 1, 1985, *Texas Eastern Transmission Corporation,* Docket No. RP85-177-000.

Algonquin Gas states that such change is necessary since it must obtain payment from its customers timely in order to be able to make timely payment to Texas Eastern. Algonquin Gas further represents that it is willing to make further changes in its proposed provisions, or to withdraw such changes altogether, as required, in order that the timing and method of payment under its own tariff will remain consistent with the parallel provisions of Texas Eastern's effective tariff in Docket No. RP85-177-000.

Algonquin Gas notes that a copy of this filing is being served upon each of its customers and interested State regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before *Sept. 27, 1985.* Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 85-22938 Filed 9-24-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA85-17-20-000 & 001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 19, 1985.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on September 17, 1985, tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Second Substitute Ninth Revised Sheet No. 201
Substitute Sixth Revised Sheet No. 203
Seventh Revised Sheet No. 211
Substitute Seventeenth Revised Sheet No. 213
Fourth Revised Sheet No. 241
Fourth Revised Sheet No. 311
Fourth Revised Sheet No. 405
Fourth Revised Sheet No. 425

Algonquin Gas states that such tariff sheets are being filed to reflect changes in the underlying rates of its pipeline supplier, Texas Eastern Transmission Corporation that were placed into effect by a motion filed September 11, 1985, effective September 1, 1985 under its major rate decrease filing in Docket No. RP85-177.

Algonquin Gas requests that the Commission grant such special permission as may be necessary to adjust the next month's billing subsequent to Commission approval to effectuate the result of the proposed rate change as of September 1, 1985.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 27, 1985 Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties of the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 85-22939 Filed 9-24-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA86-1-20-000,001]

Algonquin Gas Transmission Co.; Tariff Filing Under Purchased Feedstock Adjustment Clause

September 19, 1985.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on September 17, 1985, tendered for filing Eighth Revised Sheet No. 202 pursuant to its Rate Schedule SNG-1 Purchased Feedstock Adjustment Clause, as contained in its FERC Gas Tariff, Second Revised Volume No. 1, increasing the applicable rate by 92.28¢ per MMBtu reflecting a higher cost of feedstock for the 1985-86 SNG season. The adjustment is filed to be effective as of October 16, 1985.

Algonquin Gas notes that a copy of this filing is being served upon all affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 285.214). All such motions or protests should be filed on or before *September 27, 1985.* Protests will be considered by the commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 85-22940 Filed 9-24-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI85-685-000]

Exxon Corp.; Application

Issued: September 19, 1985.

Take notice that on September 16, 1985, Exxon Corporation filed an Application for Limited-Term Partial Abandonment Authorization and for Blanket Limited-Term Certificate Authorization for Sales for Resale and

Transportation. The authority sought therein would grant limited-term abandonment of sales of gas released by purchasing pipelines and the resale of that and other committed or dedicated gas with pregranted abandonment, pursuant to section 7 of the Natural Gas Act. In addition, the proposed authorization would grant a limited-term certificate with pregranted abandonment to cover transportation of gas sold under authorization therein and to cover transportation of gas which has been removed from Commission jurisdiction by reason of NGPA section 601(a).

These authorizations are being requested to permit continuation of sales and deliveries of gas previously initiated under Exxon's Special Marketing Program and other special marketing programs and to permit Exxon to maximize its efforts to sell gas to existing and new markets. Eligibility for these authorizations is limited to gas priced in excess of the prevailing ceiling price under NGPA section 109.

Exxon requests that such authorizations be issued prior to November 1, 1985, and be effective as of November 1, 1985, to avoid market disruptions which may be caused by termination of sales under Exxon's SMP and other authorized special marketing programs on October 31, 1985.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should on or before October 2, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless Exxon is otherwise advised, it will be unnecessary for Exxon to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-22941 filed 9-24-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-851-000]

Marathon Oil Co.; Application for Blanket Certificate of Public Convenience and Necessity and for an Order Permitting and Approving Abandonment and Pre-Granted Abandonment

September 19, 1985.

Take notice that on September 9, 1985, Marathon Oil Company (Marathon) filed on Application pursuant to sections 4 and 7 of the Natural Gas Act (NGA), and the provisions of 18 CFR Parts 154, and 157(i) authorizing the sale for resale in interstate commerce of certain natural gas produced by Marathon and its joint interest owners, (ii) authorizing blanket temporary abandonment and pre-granted permanent abandonment of certain sales as described therein, and (3) authorizing transportation by interstate pipelines (and the pre-granted abandonment of same), where and if necessary, to effectuate the sale and purchase of gas on the spot market, as more fully described in the Application, which is on file with the Commission and open for public inspection. Marathon also requests that said blanket authorization be made effective on or before November 1, 1985.

Marathon states that industry experience with the spot market to date demonstrates that the blanket authority as requested is consistent with the Commission's rules and regulations, *i.e.*, Parts 154 and 157 requirements, and is necessary to be compatible with the spot market. Further, Marathon states that, absent said blanket authorization, the flexibility and efficiency necessary for successful operation of the spot market would be hindered. Marathon intends to enter into blanket sales and transportation agreements in order to improve effective management of these spot market arrangements, and to facilitate more efficient and cost-effective transportation.

Marathon emphasizes that no Commission-mandated scheme of contract carriage or market access is sought by its Application. A decision by an interstate pipeline, intrastate pipeline or local distribution company to have gas transported on its behalf, or to provide transportation services as a participating pipeline, or for pipelines to enter into blanket transportation agreements with Marathon is purely voluntary. Rather, Marathon is seeking to further the efficient operation of the spot market.

Specifically, Marathon requests that the Commission authorize Marathon, effective on or before November 1, 1985:

(1) To make sales for resale in interstate commerce, without supply or market limitations, of NGA gas with an applicable maximum lawful ceiling price higher than the Natural Gas Policy Act (NGPA) secton 109 celing price that is produced form various interests owned by Marathon;

(2) To make sales for resale in interstate commerce, without supply or market limiations, of NGA gas with an applicable maximum lawful ceiling price higher than the NGPA section 109 price and produced from various interests attributable to other owners having interests in the same wells as Marathon, to the extent that such joint interest owners agree to same;

(3) To abandon, temporarily, sales for resale of NGA gas with an applicable maximum lawful ceiling price higher than the NGPA section 109 price and previously certificated by the Commission, to the extent that such gas is released by interstate pipelines for resale in the spot market to third parties;

(4) To abandon (pursuant to pre-granted abandonment authority) any sale for resale in the spot market authorized pursuant to any blanket certificate issued herein; and,

(5) to have both NGA and non-NGA gas that is sold in the spot market by Marathon and its joint interest owners transported in interstate commerce, on a self-implementing basis and without source or recipient limitations, by any willing transporter to any willing and able purchaser of such gas, with pre-granted abandonment of same.

Marathon is requesting the authorization described herein only to the extent that any element of such authorization is not otherwise made effective on or before November 1, 1985, as a result of Commission action in any other proceeding. In particular, Marathon refers to the Commission's Notice of Proposed Rulemaking (NOPR) issued May 30, 1985, in Docket No. RM85-1-000 and states that the blanket authority requested would be supplemental to the flexible transportation scheme proposed by the NOPR and would be necessary to achieve the NOPR objectives.

Sales proposed to be made by Marathon on behalf of itself and its joint interest owners will not involve a dedication of reserves but will be based on periodic nominations, either by purchasers or by Marathon. The sales volumes, prices, purchasers, delivery points, transporter, and supply source will vary. Although sales made by Marathon to end-users would qualify as direct sales, and thus not require a sales certificate, other sales under the blanket

authority requested will be for resale and will vary on a periodic basis, depending on the nominations.

Marathon proposes to sell and deliver to various spot gas purchasers all or a portion of the gas Marathon determines is available for sale at the most favorable terms for Marathon for a particular month. Marathon will not be obligated to sell gas pursuant to any nomination or proposed nomination until the exact volumes, terms and conditions, and prices are agreed to by Marathon and a purchaser. The actual contract between Marathon and the spot gas purchaser may be for all or any portion of the quanitity which was set out in the nomination or proposed nomination.

It appears reasonable and conistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before October 2, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Marathon to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-22942 Filed 9-24-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-47-000, 001]

MIGC, Inc.; Proposed Purchased Gas Adjustment Rate Change

September 19, 1985.

Take Notice That on September 16, 1985, MIGC, Inc. tendered for filing copies of Thirty-Third Revised Sheet No. 32 and Eighth Revised Sheet No. 32-A to its FERC Gas Tariff Original Volume No. 1, as required by the Commission's Rules and Regulations under the Natural Gas Act.

MIGC's Thirty-Third Revised Sheet No. 32 and Eighth Revised Sheet No. 32-A provide for a Purchased Gas Adjustment rate decrease of 69.66¢ per MMBtu effective November 1, 1985 in order (1) to provide for a current gas costs adjustment to permit MIGC to reflect the higher cost of gas purchases which it is currently incurring (Table II); (2) to provide for an adjustment to MIGC's Unrecovered Purchased Gas Cost Account as of July 31, 1984 and January 31, 1985 (Table III); (3) to recover carrying charges as permitted under FERC Order No. 47 (Table IV) as set forth in MIGC's First Revised Sheet No. 31-A, and (4) to set forth projected incremental pricing surcharges to become effective November 1, 1985 (Eighth Revised Sheet No. 32-A).[1]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before September 27, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for the public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-22943 Filed 9-24-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-200-000]

Natural Gas Pipeline Company of America; Changes in FERC Gas Tariff

September 19, 1985.

Take notice that on September 17, 1985, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the below listed tariff sheets to be effective September 1, 1985:

Second Revised Sheet No. 81
Original Sheet No. 81A

Natural states that the purpose of the filing is to eliminate from its presently effective End User Transportation Rate Schedule EUT-1 the restriction against providing onshore transportation service in the event such service would result in a reduction of sales by Natural. The rate section of Rate Schedule EUT-1 also has been revised to institute a rate which will be applicable to transportation arrangements when as a result of such transportation service a reduction in sales by Natural occurs. In addition, it is also proposed to revise the Rate Scheudle EUT-1 (1) so that Natural will be able to provide a best-efforts onshore interruptible transportation service for any Shipper which has contracted for such service and (2) to include a Disposition of Revennes provision.

A waiver of applicable Commission regulations or orders to the extend necessary to make the proposed tariff sheets effective on September 1, 1985, was requested.

A copy of the filing has been mailed to Natural's jurisdictional customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before September 27, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-22944 Filed 9-24-85; 8:45 am]

BILLING CODE 6717-01-M

[1] None of MIGC's sale-for-resale customers has reported a MSAC for any prior month determined in the manner prescribed by § 282.504(d)(2) of the Commission's Regulations.

[Docket No. CI85-681-000]

Pelto Oil Co.; Application for Blanket Certificate of Public Convenience and Necessity and for an Order Permitting and Approving Abandonment and Pre-Granted Abandonment

September 19, 1985.

Take notice that on September 16, 1985, Pelto Oil Company, (hereinafter referred to as Pelto) filed an Application pursuant to sections 4 and 7 of the Natural Gas Act (NGA), and the provisions of 18 CFR Parts 154, 157, and 385 seeking a blanket certificate of public convenience and necessity authorizing (1) the sale for resale in interstate commerce of certain natural gas produced by Pelto and its joint interest owners, (2) blanket temporary

abandonment and pre-granted permanent abandonment of certain sales as described therein, and (3) transportation by interstate pipelines and others (and the pre-granted abandonment of same), where and if necessary, to effectuate the sale and purchase of gas on the spot market, as more fully described in the Application which is file with the Commission and open for public inspection. Pelto also requests that said blanket authorization be made effective on or before November 1, 1985.

Pelto states that the blanket authority as requested in consistent with the Commission's rules and regulations, i.e., Parts 154 and 157 requirements, and is necessary for Pelto to continue making short-term gas sales. Further, Pelto states that, absent said blanket authorization, the flexibility and efficiency necessary for successful operation in the spot market would be hindered.

Pelto emphasizes that no Commission-mandated scheme of contract carriage or market access is sought by its Application. A decision by an interstate pipeline, intrastate pipeline or local distribution company to have gas transported on its behalf, or to provide transportation services as a participating pipeline, or for pipelines to enter into transportation agreements with Pelto, is purely voluntary.

Specifically, Pelto requests that the Commission authorize Pelto, effective on or before November 1, 1985:

(1) To make sales for resale in interstate commerce, without supply or market limitations, of NGA-gas with an applicable maximum lawful ceiling price higher than the Natural Gas Policy Act of 1978 (NGPA) section 109 ceiling price that is produced from various interests owned by Pelto;

(2) To make sales for resale in interstate commerce, without supply or market limitations, of NGA-gas with an applicable maximum lawful ceiling price higher than the NGPA Section 109 price and produced from various interests attributable to other owners having interests in the same wells as Pelto, to the extent that such joint interest owners agree to same;

(3) To abandon, temporary, sales for resale of NGA-gas with an applicable maximum lawful ceiling price higher than the NGPA Section 109 price and previously certificated by the Commission, to the extent that such gas is released by interstate pipelines for resale in the spot market to third parties;

(4) To abandon (pre-granted abandonment) any sale for resale in the spot market authorized pursuant to any blanket certificate issued herein; and

(5) To have both NGA- and non-NGA-gas that is sold in the spot market by Pelto and its joint interest owners transported in interstate commerce, on a self-implementing basis and without source or recipient limitations, by any willing transporter to any willing and able purchaser of such gas, with pre-granted abandonment of same.

Pelto is requesting the authorization described herein only to the extent that any element of such authorization is not otherwise made effective on or before November 1, 1985, as a result of Commission action in any other proceeding. In particular, Pelto references the Commission's Notice of Proposed Rulemaking (NOPR) issued May 30, 1985, in Docket No. RM85-1-000 and states that the blanket authority requested would be supplemental to the flexible transportation scheme proposed by the NOPR and would be necessary to achieve the NOPR objectives.

Sales proposed to be made by Pelto on behalf of itself and its joint interest owners will not involve a dedication of reserves but will be based on periodic nominations, either by purchasers or by Pelto. The sales volumes, prices, purchasers, delivery points, transporter, and supply source will vary. Pelto proposes to sell and deliver to various spot gas purchasers all or a portion of the gas Pelto determines is available for sale at terms acceptable to Pelto for a particular month. Pelto will not be obligated to sell gas pursuant to any nomination or proposed nomination until the exact volumes, terms and conditions, and prices are agreed to by Pelto and a purchaser. The acutal contract between Pelto and the spot gas purchaser may be for all or any portion of the quantity which was set out in the nomination or proposed nomination.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protests with reference to said application should on or before October 2, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-22945 Filed 9-24-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-675-000]

Texas Gas Exploration Corp.; Application for Blanket Certificate of Public Convenience and Necessity and for Order Permitting and Approving Abandonment and Pre-Granted Abandonment

September 19, 1985.

Take Notice that on September 12, 1985, Texas Gulf Exploration Corporation (TGEC), pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717-717z (1982) (NGA), and Parts 157 and 284 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Parts 157 and 284 (1984), hereby applied for a blanket certificate of public convenience and necessity (1) authorizing the sale for resale of natural gas by TGEC in interstate commerce from various interests, (2) authorizing the sale for resale of natural gas by TGEC attributable to other interest owners having an interest in the same production, (3) authorizing blanket temporary abandonment and pre-granted abandonment of certain sales as described herein, (4) authorizing transportation by interstate pipelines (and pre-granted abandonment of the same), where and if necessary, to effectuate the delivery of gas sold hereunder, and (5) to waive the system supply requirements of Part 284 of the Commission's regulations so that intrastate and Hinshaw pipelines not subject to the Commission's jurisdiction may transport gas sold hereunder on a self-implementing basis. All authority sought herein is requested to be effective no later than November 1, 1985, as more fully described in the Application which is on file with the Commission and open for public inspection.

Applicant states that the certificate and abandonment authority sought herein, if granted, will enable TGEC to sell natural gas which remains subject to the Commission's NGA authority for which the maximum lawful price is higher than that established by section 109 of the Natural Gas Policy Act

(NGPA) and to have such gas, as well as gas which is no longer within the Commission's NGA authority, transported in interstate commerce to all customers who have the ability to buy gas on the open market.

TGEC is requesting the authority described herein only to the extent that such authority is not provided for in any final rule issued by the Commission in its Notice of Proposed Rulemaking, "Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol", Docket No. RM85–1–000 (May 30, 1985) (NOPR), in the event a final rule in the NOPR is not issued by November 1, 1985, and/or in the event any such rule is stayed or not in effect after its issuance.

TGEC is requesting authority, to be effective no later than November 1, 1985, (1) to make sales for resale in interstate commerce of NGA gas for which the maximum lawful price is higher than the NGPA section 109 price and produced from various interests owned by TGEC, (2) to make sales for resale in interstate commerce of NGA gas for which the maximum lawful price is higher than the NGPA section 109 price and produced from various interests attributable to other interest owners having interests in the same wells, (3) to temporarily abandon sales for resale of NGA gas for which the maximum lawful price is higher than the NGPA section 109 price and previously certificated by the Commission, to the extent that such gas is released by interstate pipelines for resale by TGEC to third parties in the spot market, (4) to abandon (pre-granted abandonment) any sale for resale in interstate commerce authorized pursuant to the blanket certificate issued herein, and (5) to waive the system supply requirements of Part 284 of the Commission's regulations so that intrastate and Hinshaw pipelines may transport gas authorized to be sold hereunder on a self-implementing basis pursuant to section 311 of the NGPA.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before October 2, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedures herein provided for, unless otherwise advised, it will be unnecessary for TGEC to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85–22946 Filed 9–24–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI85–673–000]

UER Marketing Co.; Application for Blanket Certificate of Public Convenience and Necessity and for an Order Permitting and Approving Abandonment and Pre-Granted Abandonment

September 19, 1985.

Take notice that on September 12, 1985, UER Marketing Company (UER Marketing), pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717–717z (1982) (NGA), and Part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Part 157 (1984), applied for a blanket certificate of public convenience and necessity (1) authorizing sales for resale of natural gas in interstate commerce by UER Marketing and the producers from which UER Marketing purchases natural gas; (2) authorizing sales for resale of natural gas in interstate commerce by first sellers through UER Marketing acting as an agent; (3) authorizing blanket partial abandonment and pre-granted abandonment of certain sales as described herein; (4) authorizing transportation, where and if necessary, under section 7(c) of the NGA for interstate pipelines; (5) authorizing pre-granted abandonment of such transportation by interstate pipelines; and (6) authorizing transportation by intrastate and Hinshaw pipelines as set forth herein, all to be effective on or before the earlier of November 1, 1985 or the effective date of the new rules proposed in Docket No. RM85–1–000, as more fully described in the Application which is on file with the Commission and open for public inspection.

Applicants state that the certificate and abandonment authority sought herein, if granted, will enable UER Marketing to purchase from various producers, and resell, natural gas that remains subject to the Commission's NGA authority for which the maximum lawful price is higher than that established by Section 109 of the Natural Gas Policy Act (NGPA); to act as agent in sales by first sellers for resale of natural gas that remains subject to the Commission's NGA authority for which the maximum lawful price is higher than that established by Section 109 of the NGPA; and to have such gas, as well as gas which is no longer within the Commission's NGA authority, transported in interstate commerce to all customers who have the ability to buy gas on the open market.

UER Marketing is requesting the authority described herein only to the extent that such authority is not provided for in any final rule issued by the Commission in Docket No. RM85–1–000 (NOPR); in the event a final rule in the NOPR is not issued by November 1, 1985; and/or in the event any such rule is stayed or not in effect after its issuance.

UER Marketing on behalf of itself, producers, and pipelines, is requesting authority, to be effective no later than the earlier of November 1, 1985 or the effective date of the new regulations proposed in RM85–1–000, (1) to make sales for resale in interstate commerce of NGA gas for which the maximum lawful price is higher than the section 109 price; (2) to temporarily abandon sales for resale of NGA gas for which the maximum lawful price is higher than the section 109 price and previously certificated by the Commission, to the extent that such gas is released by interstate, intrastate and Hinshaw pipelines, and local distribution companies, to producers for resale either by UER Marketing or by first sellers through UER Marketing acting as agent; (3) to abandon (pre-granted abandonment) any sale for resale in interstate commerce authorized pursuant to the blanket certificate issue herein; (4) to have any such gas, as well as natural gas which is no longer subject to the Commission's NGA authority, transported in interstate commerce, on a self-implementing basis, by any transporter to any purchaser; and (5) to abandon (pre-granted abandonment) such transportation.

Such authority, if granted, will enable UER Marketing to purchase NGA gas for which the maximum lawful price is higher than the section 109 price (hereinafter referred to as NGA gas) from producers willing to sell to UER Marketing, for resale on the spot market.

Such authority will also enable UER Marketing to act as agent for various parties in sales of NGA gas on the spot market. UER Marketing currently acts as a reseller or agent on behalf of various

parties in marketing gas on the spot market, and the grant of this authority will allow UER Marketing to continue to perform such marketing activities involving NGA gas. Further, pipelines will be authorized to transport both NGA gas and gas which is no longer subject to the Commission's NGA authority, sold by UER Marketing on the spot market.

The authority sought by UER Marketing on behalf of itself, producers and pipelines, would merely continue that recently granted to UER Marketing in its USA special marketing program and other marketers of natural gas, it is asserted. The Commission's finding in those cases that such authority will, in particular, aid small independent producers that usually do not participate in the spot market, is equally applicable here. UER Marketing can ease the administrative burden of such activities on small producers, effect the release of surplus gas where necessary, find purchasers for that gas, and arrange for transportation on behalf of these producers. UER Marketing can provide the necessary marketing functions that many producers are not staffed to handle.

UER Marketing is willing to subject itself to the Commission's NGA jurisdiction to the extent, and only to the extent, of its participation in these jurisdictional transactions, in the same manner and on the same basis that the Commission's jurisdiction attached to UER Marketing in its USA program and to those other marketers referred to above. UER Marketing requests that the Commission clarify and declare that UER Marketing will be subject to the Commission's NGA jurisdiction only to the extent necessary to effectuate the requested authority and only with respect to its participation in the transactions authorized.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before October 2, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for UER Marketing to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-22947 Filed 9-24-85; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 8808-001, et al.]

Surrender of Preliminary Permits; Mega Renewables et al.

September 19, 1985.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Mega Renewables

[Project No. 8808-001]

Take notice that Mega Renewables, Permittee for the Upper Pine Mountain Power Project, FERC No. 8808, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 8808 was issued on May 6, 1985, and would have expired on October 31, 1986. The project would have been located on Silver and Clover Creeks, near Oak Run, in Shasta County, California.

The Permittee filed the request on July 29, 1985.

2. Larry J. Hellhake

[Project No. 8524-001]

Take notice that Larry J. Hellhake, Permittee for the Fall Creek Project No. 8524, has requested that his preliminary permit be terminated. The preliminary permit for Project No. 8524 was issued on February 12, 1984, and would have expired on July 31, 1986. The project would have been located on Fall Creek in Valley County, Idaho.

The Permittee filed the request on August 8, 1985.

3. Larry J. Hellhake

[Project No. 8525-001]

Take notice that Larry J. Hellhake, Permittee for the Boulder Creek Project No. 8525, has requested that his preliminary permit be terminated. The preliminary permit for Project No. 8525 was issued on February 12, 1985, and would have expired on July 31, 1986. The project would have been located on Boulder Creek in Valley County, Idaho.

The Permittee filed the request on August 8, 1985.

4. Larry J. Hellhake

[Project No. 8523-001]

Take notice that Larry J. Hellhake, Permittee for the Jug Creek Project No. 8523, has requested that his preliminary permit be terminated. The preliminary permit for Project No. 8523 was issued on December 27, 1984, and would have expired on May 31, 1986. The project would have been located on Jug Creek in Valley County, Idaho.

The Permittee filed the request on August 8, 1985.

5. Larry J. Hellhake

[Project No. 8379-001]

Take notice that Larry J. Hellhake, Permittee for the Louie Creek Project No. 8379, has requested that his preliminary permit be terminated. The preliminary permit for Project No. 8379 was issued on December 17, 1984, and would have expired on May 31, 1986. The project would have been located on Louie Creek in Valley County, Idaho.

The Permittee filed the request on August 8, 1985.

6. Robert W. Compton

[Project No. 8602-001]

Take notice that Robert W. Compton, Permittee for the Deadwood River Project No. 8602, has requested that his preliminary permit be terminated. The preliminary permit for Project No. 8602 was issued on February 19, 1985, and would have expired on July 31, 1986. The project would have been located on Deadwood River in Boise County, Idaho.

The Permittee filed the request on August 8, 1985.

Standard Paragraphs

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22937 Filed 9-24-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-684-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, Etc.; Wyoming Wind Power, Inc., et al.

September 19, 1985.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Wyoming Wind Power, Inc.

[Docket No. QF85-684-000]

On September 6, 1985, Wyoming Wind Power, Inc. (Applicant), of 2121 East 2nd Street, Casper, Wyoming 82609 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located at Simpson's Ridge, in Carbon County, Wyoming. The facility will consist of approximately 200 wind generators rated 100 kilowatts each. The total electric power production capacity will be 20 megawatts.

2. Garratt-Callahan Company (Lumahai River Hydroelectric Project)

[Docket No. QF85-689-000]

On September 9, 1985, Garratt-Callahan Company (Applicant), of 111 Rollins Road, Millbrae, California 94030, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 4 megawatt hydroelectric facility will be located in Kauai, Hawaii.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

3. Garratt-Callahan Company (Honolii Stream Hydroelectric Project)

[Docket No. QF85-690-000]

On September 9, 1985, Garratt-Callahan Company (Applicant), of 111 Rollins Road, Millbrae, California 94030, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 4.8 megawatt hydroelectric facility will be located on the Island of Hawaii approximately three miles north of Hilo.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

4. Garratt-Callahan Company (East and West Wailuaiki Streams Hydroelectric Project)

[Docket No. QF85-691-000]

On September 9, 1985, Garratt-Callahan Company (Applicant), of 111 Rollins Road, Millbrae, California 94030, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 2.7 megawatt hydroelectric facility will be located on the Island of Maui, Hawaii.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

5. Service Merchandise Company, Inc.

[Docket No. QF85-685-000]

On September 6, 1985, Service Merchandise Company, Inc. (Applicant), of P.O. Box 24600, Nashville, Tennessee 37202 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in Florissant, Missouri. The primary energy source will be natural gas. The electric power production capacity will be 60 kilowatts. The facility will consist of a reciprocating engine coupled to an induction generator, with waste heat recovery from the engine jacket and exhaust. Recovered heat is used for space heating and absorption cooling in a 50,000 square foot retail showroom and warehouse.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22936 Filed 9-24-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AAA-FRL-2902-7]

EPA Master List of Debarred, Suspended or Voluntarily Excluded Persons

AGENCY: Environmental Protection Agency.

ACTION: EPA Master List of Debarred, Suspended or Voluntarily Excluded Persons.

SUMMARY: 40 CFR 32.400 requires the Director, Grants Administration Division, to publish in the **Federal Register** each calendar quarter the names of, and other information concerning, those parties debarred,

suspended, or voluntarily excluded from participation in EPA assisted by programs by EPA action under Part 32. Assistance (grant and cooperative agreement) recipients and contractors under EPA assistance awards may not initiate new business with these firms or individuals on any EPA funded activity during the period of suspension, debarment, or voluntary exclusion.

This short list contains the names of those persons who have been listed as a result of EPA actions only. It is provided for general informational purposes only and is not to be relied on in determining a person's current eligibility status. A comprehensive list, updated weekly, is available in each Regional Office. Inquiries concerning the status of any individual, organization, or firm should be directed to EPA's Regional or Headquarters office for grants administration that normally serves you.

DATE: This short list is current as of September 20, 1985.

FOR FURTHER INFORMATION CONTACT: Frank Dawkins, of the EPA Compliance Staff, Grants Administration Division, at (202) 475–8025.

Dated: September 12, 1985.

Harvey G. Pippen, Jr.,

Director, Grants Administration Division (PM–216).

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS

Name and jurisdiction	File No	Status [1]	From	To	Grounds
A.C. Lawrence Lether Company, Inc. (Danvers, MA)	83–0007–00	D	04–12–84	04–11–87	§ 32.200 (a), (c), (i).
A.F. Bell Electric Company, Inc. (Youngstown, OH)	85–0014–00	D	06–27–85	[illegible]	§ 32.200(a)
Altman, Larry L. (Charleston, SC)	[illegible]	S	07–29–85	Open	§ 32.300(b)
Anderson, Scott (Walnut Creek, CA)	83–0004–01	D	06–17–83	[illegible]	§ 32.200 (a), (b), (e), (f)
Atlas Prestressing Corp. (Panorama City, CA)	[illegible]	D	[illegible]	[illegible]	§ 32.200.(a)
Averill, Ernest Jr. (Fort Myers, FL)	[illegible]	S	12–02–83	Open	§ 32.300(b)
Barber, Lawrence (Hazelwood, NC)	83–0007–05	D	04–12–84	04–11–87	§ 32.200 (a)(, (c), (i)
Blackwelder, Ray Martin (Concord, NC)	84–0011–01	D	06–27–85	[illegible]	§ 32.200(a).
Bowe, Walsh and Associates, Inc. (Melville, NY)	83–0040–00	D	04–14–83	04–13–86	§ 32.200 (a), (e)
Boyette, Wille Eugene (Wilson, NC)	83–0044–01	D	04–15–85	04–14–87	§ 32.200(a)
Bryant-Durham Electric Co., Inc. (Durham, NC)	[illegible]	D	[illegible]	[illegible]	§ 32.200(a)(3)
Croft, William A. (Madison, WI)	83–0047–01	D	08–20–84	08–19–87	§ 32.200(a)
Cryer, John P. (Baton Rouge, LA)	85–0062–03	S	07–29–85	Open	§ 32.300(b)
Cuti, Vincent J., Jr. (Huntington, NY)	83–0040–03	D	04–30–85	[illegible]	§ 32.200(a)
Dellinger, Theodore C. (Monroe, NC)	84–0012–01	VE	03–12–85	03–11–88	§ 32.200(a).
Dobson, Arthur A. (Lincoln, NE)	83–0030–01	D	08–30–85	04–18–87	§ 32.200(f)
Emcheth, Angelo J. (Camden, NJ)	83–0040–04	D	04–14–83	04–13–86	§ 32.200 (a), (b)
Floyd D. Stuckey & Associate (Winfield, KS)	[illegible]	D	[illegible]	[illegible]	§ 32.200(a)
Franklin Wining Co. (Youngstown, OH)	85–0044–00	D	09–04–85	[illegible]	§ 32.200(a)(3)
FSA Engineering Consultants (Winfield, KS)	84–0028–00	D	[illegible]	[illegible]	§ 32.200(a)
Gabey, Martin (Northport, NY)	83–0040–02	D	12–16–83	12–15–86	§ 32.200(a)
Galber, Joseph L. (Bronx, NY)	85–0022–01	S	07–30–85	Open	§ 32.300(b)
Goodspeed, Robert (North Hampton, NH)	83–0007–02	D	04–12–84	04–11–87	§ 32.200 (c), (i)
Harry Johnson Plumbing Company, Inc. (Walla Walla, WA)	[illegible]	D	07–22–83	07–21–86	§ 32.200 (b) (c), (e), (i)
Herbert G. Whyte, Associates, Inc. (Garry, IN)	82–0501	D	10–20–82	10–19–85	§ 32.200(b)(e)
Herring, Donald W. (Wilson, NC)	83–0044–01	D	10–11–84	10–10–87	§ 32.200(a)
Hunter, James C. (Gardena, CA)	83–0002–02	D	07–07–83	07–06–86	§ 32.200(a)
Insulation Speciality and Supply, Inc. (Cleveland, OH)	84–0025–00	D	10–04–84	10–03–87	§ 32.200 (c), (i)
Jackson, Manly (San Jose, CA)	[illegible]	D	06–27–83	[illegible]	§ 32.200(a).
Johnson, Mark (Walla Walla, WA)	[illegible]	D	07–22–83	07–21–86	§ 32.200 (b), (c), (e), (i)
Johnson, Richard (Hinsdale, NH)	83–0007–03	D	04–12–84	04–11–87	§ 32.200 (c), (i)
Jopel Contracting & Trucking Corporation (Bronx, NY)	85–0022–00	S	07–30–85	Open	§ 32.300(b)
Krueger, Joseph (Cleveland, OH)	84–0025–01	D	10–04–84	10–03–87	§ 32.200 (c), (i)
L.A. Reynolds Company (Winston-Salem, NC)	83–0036–00	D	07–01–83	[illegible]	§ 32.200(a)
Law, David P. (Greenwell Springs, LA)	[illegible]	S	07–29–85	Open	§ 32.300(b)
Law, Theresa McBeth (Greenwell Springs, LA)	85–0064–01	S	07–29–85	Open	§ 32.300(b)
Lee, Herbert P., III. (Sumter, SC)	84–0013–01	VE	02–14–85	12–31–87	§ 32.200(a)
Long, Harold Delmar (Los Gatos, CA)	83–0050–01	D	07–07–83	07–06–86	§ 32.200(a)
Marshall, Weymouth (Gloucester, MA)	83–0007–01	D	04–12–84	04–11–87	§ 32.200 (c), (i)
Massell, William P. (Bronx, NY)	85–0022–02	S	07–30–85	Open	§ 32.300(b)
Moorehead, Dennis L. (Graniteville, SC)	84–0006–01	D	01–11–85	01–10–88	§ 32.200(a)
Municipal & Industrial Pipe Services, Ltd. (Douglasville, GA)	82–0601 82–[illegible]	D	10–07–82	02–16–87	§ 32.200 (b), (c), (e), (i)
Murray Paving Company, Inc. (Whitesboro, NY)	84–0032–00	D	08–19–85	10–18–86	§ 32.200(a)
Murray, Harry (Whitesboro, NY)	84–0032–01	D	08–19–85	10–18–86	§ 32.200(a)
Newman, Fred M. (Vienna, VA)	83–0072–01	D	09–30–83	[illegible]	§ 32.200(i)
Newman, Richard Gordon (Pierre, SD)	83–0041–00	D	11–29–83	11–28–86	§ 32.200(a)
Post-Tensioning Service Corporation (Saratoga, CA)	83–0001–00	D	07–08–83	07–07–86	§ 32.200(a)
Reynolds, Jon R. (Winston-Salem, NC)	83–0036–91	D	07–01–83	06–30–86	§ 32.200(a)
Richmond, Elwood P. (Grand Forks, ND)	83–0006–01	D	06–06–83	06–05–86	§ 32.200 (a), (f)
Richmond Engineering, Inc. (Grand Forks, ND)	83–0006–00	D	06–06–83	06–05–86	§ 32.200 (a), (f)
Richmond, Lloyde W., Jr. (Grand Forks, ND)	83–0006–02	D	06–06–83	06–05–86	§ 32.200 (a), (f)
Rio Grande Construction Company (Bunkie, LA)	85–0063–00	S	07–29–85	Open	§ 32.300(b)
Rothrock Costruction Inc. (Murrells Inlet, NC)	83–0064–00	D	05–17–84	05–16–87	§ 32.200(a)
Rothrock, Steve D. (Murrells Inlet, NC)	83–0064–01	D	05–18–84	05–17–87	§ 32.200(a)
Sargent Electric Co., Inc. (Pittsburgh, PA)	85–0020–00	S	07–26–85	Open	§ 32.200(a)(3)
Sargent, Frederic B. (Pittsburgh, PA)	85–0020–01	S	07–26–85	Open	§ 32.200(a)(3)
Sauseda, Roy (Bunkie, LA)	85–0063–02	S	07–29–85	Open	§ 32.300(b)
Shackleford, Robert S. (Durham, NC)	85–0028–01	D	08–30–85	08–29–88	§ 32.200(a)(3)
Shepherd, Frank A. (Savannah, TN)	83–0046–01	D	07–15–83	11–93–85	§ 32.200(a)
Stone, Francis (Swantzey, NH)	83–0007–04	D	04–12–84	04–11–87	§ 32.200 (a), (c), (i).
Stuckey, Floyd D. (Winfield, KS)	84–0028–01	D	08–26–85	[illegible]	§ 32.200(a)
Tubre Enterprises (Bunkie, LA)	85–0062–01	S	07–29–85	Open	§ 32.300(b)
Tubre Enterprises, Inc. (Bunkie, LA)	85–0062–00	S	07–29–85–	Open	§ 32.300(b)
Tubre, Charles (Baton Rouge, LA)	85–0062–02	S	07–29–85	Open	§ 32.300(b)
Tubre, Thomas (Bunkie, LA)	85–0063–01	S	07–29–85	Open	§ 32.300(b)
Tucker Brothers Contracting Co. (Pell City, AL)	83–0061–00	D	11–26–84	11–25–87	§ 32.200(a)
Tucker, Harold Ray (Pell City, AL)	83–0061–02	D	11–26–84	11–25–87	§ 32.200(a)
Tucker, Kenneth W. (Pell City, AL)	83–0061–01	D	11–26–84	11–25–87	§ 32.200(a)
Twedell, David Bruce (Gainesville, FL)	83–0020–01	D	08–30–85	08–29–87	§ 32.200(a)
Vanderhurst, William (Saratoga, CA)	83–0001–01	D	07–08–83	07–07–86	§ 32.200(a)
Vryenhoek, Ralph D. (Pittsburgh, PA)	85–0020–02	S	07–26–85	Open	§ 32.200(a)(3)
Walsh, Charles T. (Huntington Bay, NY)	83–0040–01	D	04–14–83	04–13–86	§ 32.200(a)

EPA MASTER LIST OF DEBARRED, SUSPENDED AND VOLUNTARILY EXCLUDED PERSONS—Continued

Name and jurisdiction	File No.	Status [1]	From	To	Grounds
Walstad, Merrill (Huntington Beach, CA)	[illegible]	D	06-27-83	[illegible]	§ 32.200(a).
Watson Electrical Construction Co. (Wilson, NC)	[illegible]	D	04-15-85	04-14-87	§ 32.200(a).
Whyte, Herbert G. (Gary, IN)	[illegible]	D	10-20-82	10-19-85	§ 32.200 (b), (e).
Wirt, David (Douglasville, GA)	[illegible] 82-0406	D	10-07-82	02-16-87	§ 32.200 (b), (c), (e), (i).
Wirt, Grodon D. (Douglasville, GA)	[illegible]	D	12-07-82	02-16-87	§ 32.200 (c), (e).
Wirt, Judith C. (Douglasville, GA)	82-0406	D	12-07-82	[illegible]	§ 32.200 (c), (e), (i).
Zeigler, Beaty Stevens (Sumter, SC)	[illegible]	VE	07-15-83	[illegible]	§ 32.200(a).

[1] D = Debarred; S = Suspended; VE = Voluntarily Excluded.

[FR Doc. 85-22864 Filed 9-24-85; 8:45 am]

[illegible] CODE [illegible]

[PF-420; PH-FRL 2902-3]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide and feed additive petitions relating to the establishment and/or amendment of tolerances for certain pesticide chemicals in or on certain raw agricultural commodities.

ADDRESSES: By mail, submit comments identified by the document control number [PF-420] and the petition number, attention Product Manager (PM) named in each petition, at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460

In person, bring comments to:

Information Services Section (TS-757C), Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Registration Division (TS-767C), Attn: (Product Manager (PM) named in each petition), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460

In person: Contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/telephone number	Address
PM-12 Jay Ellenberger	Rm. 202, CM#2 (703-557-2386)	EPA, 1921 Jefferson Davis Hwy., Arlington, VA 22202
PM-15 George LaRocca	Rm. 204, CM#2 (703-557-2400)	Do.
PM-17 Timothy A. Gardner	Rm. 207, CM#2 (703-557-2690)	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP) and feed additive (FAP) petitions relating to the establishment and/or amendment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

I. Initial Filings

PP 5F3286. Dow Chemical USA, P.O. Box 1706, Midland, MI 48640. Proposes amending 40 CFR 180.342 by establishing a tolerance for the combined residues of the insecticide chlorpyrifos [0,0-diethyl-0-(3,5,6-trichloro-2-pyridyl phosphorothioate] and its metabolite 3,5,6-trichloro-2-pyridinol in or on the commodity fruiting vegetables (except cucurbits) at 1.5 parts per million (ppm) (of which no more than 1 ppm is chlorpyrifos). The proposed analytical method for determining residues is gas chromatography. (PM-12)

II. Amended Petitions

1. *PP 5F3177.* EPA issued a notice published in the **Federal Register** of January 30, 1985 (50 FR 4265) which announced that Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419, proposed amending 40 CFR Part 180 by establishing a tolerance for the insect growth regulator cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) and its metabolite, melamine (1,3,5-triazine-2,4,6-triamine) in or on the commodity mushrooms at 10.0 ppm.

Ciba-Geigy Corp. has revised the petition to read as follows: Ciba-Geigy Corp. propose amending 40 CFR Part 180 by establishing a tolerance for the combined residues of the insecticide cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) and its principal metabolite, melamine (1,3,5-triazine-2,4,6-triamine), calculated as cyromazine in or on the commodity mushrooms at 10.0 ppm. The proposed analytical method for determining residues is gas chromatography. (PM-17)

2. *PP 2F2657.* EPA issued a notice published in the **Federal Register** of February 8, 1984 (49 FR 4841) which announced that Shell Oil Co., Suite #200, 1025 Connecticut Ave., NW., Wash., D.C., 20036, proposes amending 40 CFR 180.179 by establishing tolerances for residues of the insecticide cyano (3-phenoxyphenyl) methyl-4-chloro-alpha-(1-methylethyl) benzeneacetate in or on the commodities as follows:

Commodities	Parts per million (ppm)
Eggs	0.3
Fat of cattle, goats, hogs, horses and sheep	[illegible]
Grapes	[illegible]
Meat of cattle, goats, hogs, horses and sheep	[illegible]
Meat byproducts (mbyp) of cattle, goats, hogs, horses and sheep	1.5
Milk, fat	12.0
Milk, whole	[illegible]
Poultry, fat and mbyp	[illegible]
Poultry, meat	[illegible]

In the **Federal Register** of April 26, 1985 (50 FR 16544) Shell Oil Co. amended the petition to include the commodity raisins at 30.0 ppm.

Shell Oil Co. has now amended the petition as follows:

Commodities	Parts per million (ppm)
Eggs	1.0
Fat, meat and mbyp of cattle, goats, hogs, horses, poultry and sheep	3.0
Grapes	10.0
Milk fat (reflecting 0.6 ppm in whole milk)	12.0
Raisins	30.0

The proposed analytical method for determining residues is by gas chromatography. (PM–15)

3. *FAP 2H5340.* EPA issued a notice published in the **Federal Register** of February 8, 1984 (49 FR 4842) which announced that Shell Oil Co. proposed amending 21 CFR Part 561 by establishing a regulation permitting residues of the above insecticide in or on the commodities grape pomace (dry) at 75.0 ppm and raisin waste at 25.0 ppm.

Shell Oil Co. has amended the petition by increasing the tolerance level on the commodity raisin waste from 25.0 ppm to 30.0 ppm. (PM–15)

Authority: 21 U.S.C. 346a and 348.

Dated: September 16, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85–22776 Filed 9–24–85; 8:45 am]

BILLING CODE [illegible]

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–744–DR]

Michigan; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Michigan (FEMA–744–DR), dated September 18, 1985, and related determinations.

DATED: September 18, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3616

Notice is hereby given that, in a letter of September 18, 1985, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the State of Michigan resulting from severe flooding, beginning on September 5, 1985, is of sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93–288. I therefore declare that such a major disaster exists in the State of Michigan.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

Pursuant to section 408(b) of Pub. L. 93–288, you are authorized to advance to the State its 25-percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Ronald B. Buddecke of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Michigan to have been affected adversely be this declared major disaster:

Alcona and Genesee Counties for Public Assistance and Individual Assistance.

LaPeer and Saginaw Counties for Public Assistance and as adjacent areas for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85–22881 Filed 9–24–85; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–741–DR]

Mississippi; Amendment to Notice of a Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA–741–DR), dated September 4, 1985, and related determinations.

DATED: September 18, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3616.

The notice of a major disaster for the State of Mississippi, dated September 4, 1985, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 4, 1985:

Stone County as an adjacent area for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85–22882 Filed 9–24–85; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

[Circular Letter No. 1–85]

All Common Carriers and Conferences of Such Carriers in the Domestic Offshore and Foreign Commerce of the United States; Prohibition of Rates Which Exclude Certain Classes of Shippers

September 19, 1985.

It has come to the attention of the Commission that various carriers and conferences have published rates, the application of which is dependent upon the identity of the shipper. There are numerous examples of such rates. Some such rates may only be used by Non-vessel Operating Common Carriers (NVOCC's) while others may only be used by the beneficial owner of the cargo. Yet other rates are constructed in such a manner that they may only be utilized by a single shipper.

Section 10(b) of the Shipping Act of 1984 (46 U.S.C. app. section 1709(b)) prohibits rates which unjustly discriminate between shippers.[1] The Commission has long held that any distinction between classes of shippers must be made on the basis of valid transportation factors. *Philadelphia Ocean Traffic Bureau v. Export S.S. Corporation,* 1 U.S.S.B.B. 538, 541 (1936), *Thatcher Glass Mfg. Co., Inc. v. Sea-Land Service, Inc.,* 8 F.M.C. 645, 649 (1965) and *Investigation of Rates in the Hong Kong - United States Atlantic and*

[1] Section 10(b) of the Shipping Act of 1984 states in part that:

(b) Common Carriers.—No common carrier, either alone or in conjunction with any other person, directly or indirectly, may—

. . . . . .

(6) except for service contracts, engage in any unfair or unjustly discriminatory practice in the matter of—

(A) rates;

. . . . . .

(10) demand, charge, or collect any rate or charge that is unjustly discriminatory between shippers or ports;

. . . . . .

(12) subject any particular person, locality, or description of traffic to an unreasonable refusal to deal or any undue or unreasonable prejudice or disadvantage in any respect whatsoever. . . .

Gulf Trade, 11 F.M.C. 168, 175–177 (1967).

. . . . .
. . . . .
. . . . .

Recently, the Commission addressed this issue in Docket No. 84–27, *Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the United States; Co-Loading Practices by NVOCC's*. The Commission's Notice of Proposed Rulemaking in that proceeding stated:

> The Commission is unaware of transportation characteristics which would warrant a distinction between cargo tendered by NVOCC's and similar cargo tendered by other shippers. 49 FR 29980, 29981 (July 25, 1984).

In adopting a rule to prohibit NVOCC tariffs from containing "special co-loading rates for the exclusive use of other NVOCC's", 50 FR 14704 (April 15, 1985), the Commission stated:

> The suggestion that NVOCC's and other shippers are not "similarly situated", or that NVOCC's are a "distinct class of shippers" is one that must be supported by transportation factors. The fact that they can be identified as NVOCC's or that they are also carriers is not sufficient. It is well settled that the identity of a shipper is not a legitimate transportation factor. *Id.* at 14708.

The same may be said of rates which, by their terms, exclude NVOCC's. As the Supreme Court stated in *ICC v. Delaware, Lackawana & Western Railroad Co.*, 220 U.S. 235, 252; 31 S.Ct. 392 (1911), where it held that common carrier railroads may not deny carload rates on cargo tendered by forwarding agents:

> The contention that a carrier, when goods are tendered to him for transportation, can make the mere ownership of the goods the test of the duty to carry, or, what is equivalent, may discriminate in fixing the charge for carriage, not upon any difference inhering in the goods or in the cost of the service rendered in transporting them, but upon the mere circumstance that the shipper is or is not the real owner of the goods is so in conflict with the obvious and elementary duty resting upon a carrier, and so destructive of the rights of shippers as to demonstrate the unsoundness of the proposition by its mere statement.

Carriers and conferences are hereby given 60 days from the date of this Circular Letter to cancel any rate item, the application of which is dependent solely on the identity of the shipper rather than on recognized transportation conditions. The Commission will take appropriate action against those carriers and conferences that fail to comply with this letter by that date.

By the Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–22922 Filed 9–24–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

South County Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 17, 1985.

A. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *South County Bancshares, Inc.*, Ashland, Missouri to become a bank holding company by acquiring 100 percent of the voting shares of South County Bank, Ashland, Missouri.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Delta Bancshares, Inc.*, Kaufman, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank in Kaufman, Kaufman, Texas.

Board of Governors of the Federal Reserve System, September 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–22846 Filed 9–24–85; 8:45 am]

BILLING CODE 6210–01–M

Western Bancorporation, Inc. and Western Bancorporation, N.V.; Applications To Engage de Novo in Permissible Nonbanking Actities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be availabe for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governs not later than October 15, 1985.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Western Bancorporation, Inc.*, Houston, Texas and *Western Bancorporation, N.V.*, Houston, Texas; to engage *de novo* through its subsidiary, Western Bancorporation Life Insurance Company of Texas, Houston, Texas, in underwriting credit life, credit accident and health insurance that is directly related to an extension of credit by the bank holding system.

Board of Governors of the Federal Reserve System, September 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 22847 Filed 9-24-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85M-0428]

Biochem International, Inc.; Approval of Supplemental Premarket Approval Application For Lifespan™ Model 4110 Transcutaneous PO_2/CO_2 Monitoring System

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Biochem International, Inc., Waukesha, WI, for premarket approval, under the Medical Device Amendments of 1976, of the Lifespan™ Model 4110 Transcutaneous PO_2/CO_2 Monitoring System. After reviewing the recommendation of the Anesthesiology and Respiratory Therapy Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the supplemental application.

DATE: Petitions for administrative review by October 25, 1985.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael S. Gluck, Center for Devices and Radiological Health (HFZ-430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7226.

SUPPLEMENTARY INFORMATION: On May 8, 1984, Biochem International, Inc., Waukesha, WI 53186, submitted to CDRH a supplemental application for premarket approval of the Lifespan™ Model 4110 Transcutaneous PO_2/CO_2 Monitoring System. The device is a transcutaneous oxygen/carbon dioxide monitor with a combined PO_2/PCO_2 (oxygen tension/carbon dioxide tension) sensor and a temperature compensation factor for PCO_2. The device is indicated for use in neonates as a monitor of skin surface PO_2 and PCO_2. The unit displays trends over time and may be used as an adjunct or supplement to arterial PO_2 and PCO_2 measurements in patients requiring frequent blood gas analyses. Data collected during clinical evaluations covered a range of arterial PCO_2 values from 11 to 107.8 torr and arterial PO_2 values from 9.7 to 396.7 torr. The oxygen monitoring portion of the device previously has been determined to be substantially equivalent to other devices that were on the market before May 28, 1976, the date of enactment of the amendments, and consequently does not at this time require premarket approval. On July 11, 1984, the Anesthesiology and Respiratory Therapy Devices Panel, and FDA advisory committee, reviewed and recommended approval of the application. On August 21, 1985, CDRH approved the supplemental application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Michael S. Gluck (HFZ-430), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 25, 1985, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: September 18, 1985.

John C Villforth,

Director, Center for Devices and Radiological Health

[FR Doc. 85-22842 Filed 9-24-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85C-0378]

Optacryl, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Optacryl, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of phthalocyanine green as a color additive in contact lenses.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1), 74 Stat. 402-403 (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 3C0168) has been filed by Optacryl, Inc., 2890 South Tejon, Englewood, CO 80110, proposing that Part 73 (21 CFR Part 73) be amended to provide for the safe use of phthalocyanine green (Colour Index Pigment Green 7, C.I. No. 74260, CAS Reg. No. 1328-53-6) as a color additive in contact lenses.

The potential environmental impact of this action is being reviewed. If the

agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c), as published in the **Federal Register** of April 26, 1985 (50 FR 16636).

Dated: September 18, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-22796 Filed 9-24-85; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of October 1985:

Name: National Advisory Council on the National Health Service Corps
Date and Time: October 8-10, 1985, 8:30 a.m.-4:30 p.m.
Place: Palmer House, 17 E. Monroe Street, Chicago, Illinois 60603

Site vists will be made to two community health centers. Transportation will not be provided. The entire meeting is open to the public.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provisions of the legislation.

Agenda: The agenda will include: A general orientation on the National Health Service Corps program; discussions of important program issues, and visits to two community health centers (one rural and one urban).

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact Dr. Kenneth P. Moritsugu, Director, National Health Service Corps, Bureau of Health Care Delivery and Assistance, Health Resources and Services Administration, Room 6-40, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone: 301 443-2900.

Agenda items are subject to change as priorities dictate.

Dated: September 23, 1985.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 85-22971 Filed 9-24-85; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

President's Commission on Americans Outdoors; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the "What Do Americans Want To Do Outdoors?" Committee of the President's Commission on Americans Outdoors will be held at 9:00 a.m., Wednesday, October 9, 1985, in Room 2856, National Geographic Society building, 1146 16th Street, NW., Washington, D.C. 20036. This is the organizational meeting of this Committee.

The meeting will be open to the public.

Further information concerning this meeting may be obtained from Victor H. Ashe, Executive Director of the Commission, Room 3142, U.S. Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20036; Telephone (202) 343-4905.

Dated: September 18, 1985.

Victor H. Ashe,

Executive Director, President's Commission on Americans Outdoors.

[FR Doc. 85-22884 Filed 9-25-85; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[U-50822, U-52743, U-53122]

Utah; Conveyance of Public Land; Reconveyed Land Opened to Entry

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and Opening Order.

SUMMARY: The Bureau of Land Management has completed three land exchanges, conveying 2646.10 acres and having 2748.55 acres reconveyed. 2,708.55 acres of the reconveyed lands will be opened to surface entry and 2,109.88 acres of the reconveyed lands will also be opened to mineral location and mineral leasing.

FOR FURTHER INFORMATION CONTACT: Lillie Hikida, BlM, Utah State Office, 324 South State, Suite 301, Salt Lake City, Utah 84111-2303, 801-524-3074.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, the Bureau of Land Management has completed three land exchanges.

1. The United States issued Patent No. 43-85-0025 dated August 15, 1985, to John Siddoway Livestock and Investment Company, for the following described lands excepting all minerals:

Salt Lake Meridian

T. 1 N., R. 23 E.,
Sec. 33, NE¼SW¼, S½SW¼, W½SE¼.
Containing 200 acres in Uintah County.

2. In the exchange for these lands, the United States acquired the following described land excepting all minerals:

Salt Lake Meridian

T. 2 S., R. 23 E.,
Sec. 35, the South 20 rods of the N½NE¼, S½NE¼.
Containing 100 acres in Uintah County.

3. The United States issued Patent No. 43-85-0026 dated August 15, 1985, to James R. and Peggy Lyn Siddoway for the following described lands excepting all minerals:

Salt Lake Meridian

T. 1 N., R. 23 E.,
Sec. 19, SE¼SE¼;
Sec. 20, NE¼NE¼, NE¼SW¼, W½SW¼;
Sec. 29, NW¼NW¼;
Sec. 30, NE¼NE¼.
Containing 280 acres in Uintah County.

4. In the exchange for these lands, the United States acquired the following described lands excepting all minerals:

Salt Lake Meridian

T. 2 S., R. 23 E.,
Sec. 26, SE¼SW¼;
Sec. 35, the North 60 rods of the N½NE¼, NE¼NW¼.
Containing 140 acres in Uintah County.

5. The United States issued Patent No. 43-85-0027 dated August 15, 1985, to the State of Utah for the following described lands:

Salt Lake Meridian

T. 9 S., R. 24 E.,
Sec. 24, lots 1, 4, 5, 6, 7, 10, N½SE¼;
Sec. 25, lots 1 through 12, NW¼SW¼, S½S½.
T. 10 S., R. 24 E.,
Sec. 1, lots through 5, S½NE¼, SE¼NW¼, N½S¼, N½S¼SW¼, SW¼SW¼SW¼, W½SE¼SW¼SW¼, SE¼SE¼SW¼, S½SE¼.
T. 9 S., R. 25 E.,
Sec. 19, SW¼;
Sec. 30, lots 1 through 4;
Sec. 31, lots 1, 2, 3 SW¼NE¼, S½.
Containing 2,166.10 acres in Uintah County.

6. In exchange for these lands, the United States acquired the following described lands:

Salt Lake Meridian

T. 9 S., R. 5 E.,
Sec. 3, lots 5 through 8, SW¼NW¼, W½SW¼ (surface only).
T. 9 S., R. 23 E.,
Sec. 1, lot 1;
Sec. 10, NE¼NE¼;
Sec. 13, NW¼NE¼;
Sec. 17, NW¼SW¼ (minerals only).
T. 10 S., R. 23 E.,
Sec. 36, all.
T. 15 S., R. 23 E.,
Sec. 28, N½SW¼, NW¼SW¼SW¼ (surface only).
T. 9 S., R. 24 E.,
Sec. 1, S½NW¼ (surface only);
Sec. 6, lot 4.
T. 10 S., R. 24 E.,
Secs. 16 and 32, all.

Containing 2,508.55 acres in Rich and Uintah Counties.

7. At 10:00 a.m. on October 1, 1985, the reconveyed lands described in paragraphs 2, 4, and 6 except those lands which reconveyed minerals only, will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10:00 am on October 1, 1985, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

8. At 10:00 am on October 1, 1985, the reconveyed lands described in paragraph 6, except those lands which reconveyed surface only, will be open to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 shall vest no rights against the United States. Acts required to establish a location and to initiate a right or possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

9. At 10:00 am on October 1, 1985, the reconveyed lands described in paragraph 6 will be open to applications and offers under the mineral leasing laws, subject to existing State-issued leases and permits for the terms of said leases and permits. All applicatins and offers received prior to 10:00 am on October 1, 1985, will be considered as simultaneously filed as of that time and date, and drawing will be held in accordance with 43 CFR 1821.2–3, if necessary. Those applications and offers received thereafter shall be considered in the order of filing.

Dated: September 18, 1985.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85–22800 Filed 9–24–85; 8:45 am]

BILLING CODE 4310-DQ-M

Wyoming; Limited Closure of Public Lands: Elk Mountain Area

AGENCY: Bureau of Land Management (BLM), Rawlins District Office, Rawlins, Wyoming, Interior.

ACTION: Limited Closure of Public Lands and Access Road.

SUMMARY: 1. Notice is hereby given that effective immediately public lands and access road in the Elk Mountain area, Rawlins District, are open for horseback and foot travel and closed to all vehicular use except as to the following authorized users, who are exempt from the closure:

a. Employees of the Federal Government in the course of their employment;

b. Grazing permittees, oil and gas lessees, right-of-way lessese, and contractors of the Bureau of Land Management;

c. Employees of Carbon County and the State of Wyoming, including the University of Wyoming, in the course of their employment, and the State of Wyoming's lessees, permittees and contractors;

d. Private landowners (Palm Livestock Company and Union Pacific Railroad), and persons licensed, permitted, or invited by the private landowners to use the road for purposes directly and exclusively related to the agricultural and/or mineral development of the private lands traversed by the road and to control unauthorized uses on the private lands but not for hunting, fishing or recreation.

2. The public lands and the access road listed below are closed to vehicle use (except by authorized users listed above) from the date of this notice until this order is terminated or modified. Signs will be posted to identify the public lands, parking areas and the access road. Vehicle parking and access will be permitted in Section 24, Township 20 North, Range 82 West. Copies of this notice will be posted in the Bureau of Land Management office having jurisdiction over the subject lands (Rawlins District Office, 1300 Third Street, Rawlins, Wyoming).

3. The legal description of the public lands for which this notice is given:

Township 20 North, Range 82 West, Section 24
Township 20 North, Range 81 West, Section 32
Township 19 North, Range 81 West, Section 8

4. The access road is closed to vehicle use from the south boundary of Section 24, Township 20 North, Range 82 West (approximately one (1) mile south of the junction with the Rattlesnake Pass County Road in Section 14, Township 20 North, Range 82 West), and that portion of the road running south and southeast through Section 25 and the northeast quarter (NE¼) of Section 36, Township 20 North, Range 82 West, the northwest quarter (NW¼) and south half (S½) of Section 31, and the southwest quarter (SW¼) of Section 32, Township 20 North, Range 81 West, the west half (W½) of Section 5 and the north half (N½) of Section 8, Township 19 North, Range 81 West.

5. Authorized vehicular use will be restricted to the access road on the above public lands.

6. The reasons for the closure of the access road to general vehicular access are the narrowness of the right-of-way and the condition of the road surfaces.

The authority for this closure is 43 CFR 8364.1.

Richard Bastin,

District Manager.

[FR Doc. 85–22858 Filed 9–24–85; 8:45 am]

BILLING CODE 4310-22-M

[INT FEIS 85–34]

Availability of Proposed Jarbidge Resource Management Plan and Final Environmental Impact Statement

SUMMARY: The Boise District, Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan (RMP) and Final Environmental Environmental Impact Statement (EIS), covering 1,690,473 acres of public land located primarily in southcentral Idaho. A small portion occurs in northcentral Nevada.

The proposed plan includes management recommendation for potential land transfer areas; livestock grazing; wild horses; range, watershed and wildlife habitat management; cultural resources; paleontologic resources; mineral and energy development; recreation; wilderness management and forest management. The plan includes preliminary suitability reommendation for three wilderness

study areas and recommendations concerning four areas being considered for Area of Critical Environmental Concern (ACEC) designation.

With the exception of the wilderness recommendations, the public may protest any part of the proposed plan. Protests should be sent to the Director, Bureau of Land Management, 18th and C Streets NW., Washington, D.C. 20240, prior to November 4, 1985—the end of the protest period—and should include the following information:

—The name, mailing address, telephone number, and interest of the person filing the protest.
—A statement of the issue or issues being protested.
—A statement of the part of parts being protested.
—A copy of all documents addressing the issue or issues that were submitted during the planing process by the protesting party or an indication of the date the issue or issues were discussed for the records.
—A short concise statement explaining why the BLM Idaho State Director's proposed decision is wrong.

A the end of the protest period, the proposed plan, excluding any portions under protest, shall become final. Approval shall be withheld on any portion of the plan under protest until final action has been completed on such protest.

FOR FURTHER INFORMATION CONTACT: Ted Milesnick, Team Leader, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705. Telephone (208) 334–1582.

SUPPLEMENTARY INFORMATION: The Jarbidge RMP/EIS analyzes four alternative plans, and two sub-alternatives for managing natural resources in the Jarbidge Planning Area over the next 15 to 20 years. One alternative has been identified as BLM's proposed plan.

The plan proposes to designate as ACECs, three of four areas considered.

The Hagerman Paleontologic Area, containing 4,394 acres of public land, would be designated an ACEC. BLM would regulate surface disturbing activities to protect the paleontologic resources in the area. Agricultural trespass would be prevented and the area would be withdrawn from all types of land disposals. Measures would be initiated to curtail or prevent water and wind erosion. The area would be closed to motorized vehicle use and livestock grazing.

The 815 acre Sand Point Palenontologic, Geologic, and Cultural Resource Area would be designated an ACEC. BLM would regulate surface disturbing activities to protect the paleontologic, geologic and cultural resources in the area. Agricultural trespass would be prevented and lands would be withdrawn from locatable mineral entry and all types of land disposals. Measures would be initiated to curtail or prevent water and wind erosion.

The Bruneau-Jarbidge River Area, containing 84,111 acres of public land, would be designated an ACEC to protect bighorn sheep habitat and cultural, scenic and natural values. BLM would establish the management priority of the canyons for bighorn sheep and other wildlife. Livestock water would not be developed within one mile of bighorn habitat unless impacts could be mitigated. New road construction would be limited and motorized vehicles would be restricted to designated roads and trails. No surface occupancy would be allowed for oil and gas or geothermal exploration or development and the area would be recommended for withdrawal from the 1872 mining laws. Activities or developments that would impair scenic quality would not be allowed.

The Salmon Falls Creek Area (2,947 acres) would not be designated an ACEC under the proposed plan but would be managed as an Outstanding Natural Area.

J. David Brunner,
Associate District Manager.

FR Doc. 85–22859 Filed 9–24; 8:45 am]
BILLING CODE 4310–GG–M

[Serial No. I–013260]

Idaho; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Corps of Engineers proposes that a portion of the withdrawal for the Mountain Home Air Force Base small arms range continue for an additional 25 years, which is the estimated time the lands will continue to be used for the purpose for which withdrawn. The lands would remain closed to surface entry and mining but have been and would remain open to the mineral leasing laws.

DATE: Comments should be received on or before December 24, 1985.

ADDRESS: Comments should be sent to: Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office 208–334–1597.

The Corps of Engineers proposes that a portion of the land withdrawal made by Public Land Order No. 2953 of February 28, 1963, be continued for a period of 25 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Boise Meridian, Idaho

T. 4 S., R. 5 E.,
Sec. 3, lot 4, SE¼NW¼, SW¼;
Sec. 4, lots 1, 2 and 3, S½NE¼, SE¼NW¼, NE¼SW¼, SE¼
Sec. 9, E½NE¼;
Sec. 10, NW¼.

The area described contains 909.36 acres in Elmore County.

The purpose of the withdrawal is to protect the lands for use as a small arms range by the Air Force. The withdrawal presently segregates the land from surface entry and mining. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: September 17, 1985.

William E. Ireland,
Chief, Realty Operations Section.

[FR Doc. 85–22861 Filed 9–24–85; 8:45 am]
BILLING CODE 4310–GG–M

Public Use Restriction (Extension); California

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of temporary vehicle use restrictions in the Short Canyon Area within Kern County in the Caliente Resource Area, Bakersfield District, California.

SUMMARY: This action extends restrictions on vehicle use on BLM-administered public land in the Short Canyon Area in Kern County, California, due to flood-caused damage. Maps of the affected area are available at the Caliente Resource Area Office, 520 Butte Street, Bakersfield, California. All vehicle use in this area is prohibited except for administrative and rehabilitative purposes. Persons allowed to drive in the area will be designated by an authorized officer. This closure will continue to apply until December 30, 1986, or will open earlier if conditions permit.

The public lands affected by this closure are located in portions of T. 26 S., R. 35 E., M.D.M., Sections 20, 21, 22, 26, 27, 28, 29, 32, 33, 34, and 35.

SUPPLEMENTARY INFORMATION: Due to extensive flooding that occurred during July and August, 1984, massive amounts of sandy soils have been eroded and deposited in the Short Canyon Area. These recently deposited soils, as well as eroded hillside soils, and loss of soil-holding vegetation, represent a potential hazard in that they are highly vulnerable to further erosion and subsequent massive soil movement. This situation directly effects commerical and residential developments in the area. In order to stabilize the eroded area, a temporary vehicle closure will be maintained so that vegetation can be reestablished to protect these fragile soils. Authority for this vehicle closure is contained in CFR Title 43, Chapter II, Part 8364.1(a).

DATES: This vehicle closure is effective from November 16, 1984 through December 30, 1986, unless conditions permit an early opening.

FOR FURTHER INFORMATION CONTACT: Glenn Carpenter, Caliente Resource Area Manager, Caliente Resource Area, Bureau of Land Management, 520 Butte Street, Bakersfield, California 93305; (805) 861–4236.

Dated: September 12, 1985.

Glenn A. Carpenter

Caliente Resource Area Manager.

[FR Doc. 85–22860 Filed 9–24–85; 8:45 am]

BILLING CODE 4310–40–M

Colorado; Filing of Plats of Survey

September 16, 1985.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., September 16, 1985.

The plat representing the dependent resurvey of a portion of the Eleventh Standard Parallel North (south boundary, T. 45 N., R. 6 E.), a portion of the south boundary and subdivisional lines, and the survey of the subdivision of sections 25 and 36, T. 44 N., R. 6 E., New Mexico Principal Meridian, Colorado, Group No. 766, was accepted September 5, 1985.

The plat, representing the dependent resurvey of a portion of the Eleventh Standard Parallel North (south boundary, T. 45 N., R. 7 E.), a portion of the south boundary, the west boundary, and a portion of the subdivisional lines, and the survey of the subdivision of certain sections in T. 44., R. 7 E., New Mexico Principal Merdian, Colorado, Group No. 766, was accepted September 5, 1985.

The plat, representing the dependent resurvey of a portion of the west boundary and a portion of the Silver Plume Townsite, and the survey of Lot No. 7 in section 18 T. 4 S., R. 74 W., Sixth Principle Meridian, Colorado, Group No. 696, was accepted September 3, 1985.

The plate representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, and the survey of the subdivision of certain sections, T. 3 S., R. 95 W., Sixth Principle Meridian, Colorado, Group No. 754, was accepted September 23, 1985.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat representing the dependent resurvey of the east boundary of T. 15 S., R. 82 W., a portion of the south boundary of T. 14 S., R. 81 W., a portion of the Third Standard Parallel South (south boundary), and Mineral Survey No. 1390, Wolf Placer; the metes-and-bounds survey of Private and public land tracts, and the independent resurvey of a portion of the subdivisional lines, T. 15 S., R. 81 W., Sixth Principal Meridian, Colorado, Group No. 585, was accepted August 29, 1985.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of certain sections, T. 34 N., R. 4 W., south of the Ute line, New Mexico Principal Meridian, Colorado, Group No. 744, was accepted September 23, 1985.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver Colorado 80205.

Kenneth D. Witt,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 85–22926 Filed 9–24–85; 8:45 am]

BILLING CODE 4310–84–M

Nevada; Airport Lease Application

Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211–214) as amended by the Act of August 16, 1941 (55 Stat. 621), Al Woodard has applied for an airport lease on the following described public lands:

Mount Diablo Base & Meridian

T. 45 N., R. 37 E., Sec. 27, Lots 3 & 4; a strip of land 450 feet wide and 2640 feet long located just north from the south section line.

The area described is located in Humboldt County, Nevada. The application was filed on December 14, 1984, and on that date, the lands were segregated from all other forms of appropriation under the public land laws.

For a period of 45 days from the date of this notice, interested persons may submit comments to the District Manager, Bureau of Land Management, Winnemucca District Office, 705 East 4th Street, Winnemucca, Nevada 89445.

Dated: September 18, 1985.

Frank C. Shields,

District Manager.

[FR Doc. 85–22930 Filed 9–24–85; 8:45 am]

BILLING CODE 4310–HC–M

Kingman Resource Area (Phoenix District) Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Phoenix District, Interior.

ACTION: Notice is hereby given in accordance with Pub. L. 92–463 of a meeting of the Kingman Resource Area (Phoenix District) Grazing Advisory Board.

DATE: Tuesday, October 29, 1985 at 9:00 a.m.

ADDRESS: 2475 Beverly Avenue, Kingman, AZ 86401, BLM Conference Room.

SUMMARY: The agenda for the meeting will include:

1. Update of the Bureau's Exchange Program,
2. Progress Report on AMP Implementation,
3. Status of Range Improvements FY 85,
4. Status of Range Improvements FY 86,
5. Multiple Use Progress Report,
6. Request for Advisory Board Expenditures,
7. Arrangements for Future Meetings.

The meeting is open to the public. Anyone wishing to make oral or written statements to the Board is requested to do so through the office of the District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027 at least seven days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District Office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: September 18, 1985.

Deane H. Zeller,

Acting District Manager.

[FR Doc. 85-22928 Filed 9-24-85; 8:45 am]

BILLING CODE 4310-32-M

Phoenix/Lower Gila Resource Areas (Phoenix District) Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Phoenix District, Interior.

ACTION: Notice is hereby given in accordance with Public Law 92-463 of a meeting of the Phoenix-Lower Gila Resource Areas (Phoenix District) Grazing Advisory Board.

DATE: Tuesday, November 5, 1985 at 9:00 a.m.

ADDRESS: 2015 West Deer Valley Road, Phoenix, AZ 85027, BLM Conference Room.

SUMMARY: The agenda for the meeting will include:

1. Update of the Bureau's Exchange Program,
2. Status of Range Improvements FY 85,
3. Status of Range Improvements FY 86,
4. Status of the Bureau's Planning and Grazing Environmental Impact Statements,
5. Arrangements for Future Meetings.

The meeting is open to the public. Anyone wishing to make oral or written statements to the Board is requested to do so through the office of the District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027 at least seven days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: September 18, 1985.

Deane H. Zeller,

Acting District Manager.

[FR Doc. 85-22929 Filed 9-24-85; 8:45 am]

BILLING CODE 4310-32-M

Minerals Management Service

Development Operations Coordination Document; Total Petroleum, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Total Petroleum Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4907, Block 57, Main Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on September 13, 1985.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 13, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-22890 Filed 9-24-85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Appalachian National Scenic Trail Advisory Council; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Appalachian National Scenic Trail Advisory Council will be held in Cashiers, North Carolina, on October 18, from 8:30 a.m. to 5:00 p.m. The agenda of the meeting will include a review of current Appalachian Trail protection and management issues.

The meeting will be open to the public, although space will be limited. Persons will be accommodated on a first-come, first-served basis. Any person may file with the Council a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting or who wish to submit written statements may contact David A. Richie, Project Manager, Appalachian Trail Project Office, Harpers Ferry, West Virginia 25425, at Area Code (304) 535-2346.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the above address. Copies of the minutes will also be available from Room 3120, Interior Building, 18th and C Streets, NW., Washington, D.C. 20240, and at the headquarters of the Appalachian Trail Conference, Washington Street, Harpers Ferry, West Virginia 25425.

Dated: September 19, 1985.

David A. Richie,

Project Manager.

[FR Doc. 85-22927 Filed 9-24-85; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-218]

Certain Automatic Bowling Machine Printed Circuit Control Boards

AGENCY: International Trade Commission.

ACTION: Nonreview of that portion of the presiding administrative law judge's initial determination terminating the above-captioned investigation with respect to respondent United Bowling Mechanics (UBM).

SUMMARY: On August 12, 1985, the presiding administrative law judge (ALJ) issued an initial determination (Order No. 9) (ID) granting the motion of complainant James C. Hudson d/b/a Omega-Tek to withdraw his complaint in its entirety based on a settlement agreement with respondent Richard J. Lynch Company, Inc. The motion included withdrawal of the complaint as to UBM, the only other respondent. The ID terminated the entire investigation. The Commission has determined not to review the ID with respect to termination of respondent UBM.

FOR FURTHER INFORMATION CONTACT: Kristian E. Anderson, Esq., Office of the General Counsel, U.S. International Trade Commission, Washington, D.C. 20436, telephone 202-523-0074.

SUPPLEMENTARY INFORMATION:

Statutory Authority

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

Public Inspection

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on, 202-724-0002.

Issued: September 17, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-22891 Filed 9-24-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-278 through 281 (Preliminary)]

Certain Cast-Iron Pipe Fittings From Brazil, the Republic of Korea, and Taiwan

Determinations

On the basis of the record [1] developed in investigations Nos. 731-TA-278 through 280, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil, the Republic of Korea (Korea), and Taiwan of nonalloy, threaded, malleable cast-iron pipe fittings,[2] provided for in items 610.70 and 610.74 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

On the basis of the record developed in investigation No. 731-TA-281, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured [3] by reason of imports from Taiwan of nonalloy, threaded and flanged, nonmalleable cast-iron pipe fittings, other than for cast-iron soil pipe,[4] provided for in items 610.62 and 610.65 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value.

Background

On July 31, 1985, a petition was filed with the Commission and the Department of Commerce by the Cast Iron Pipe Fittings Committee, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of malleable cast-iron pipe fittings from Brazil, Korea, and Taiwan, and that an industry in the United States is materially injured or threatened with material injury by reason of imports of nonmalleable cast-iron pipe fittings from Taiwan. Accordingly, effective July 31, 1985, the Commission instituted preliminary antidumping investigations Nos. 731-TA-278 through 281 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 7, 1985 (50 FR 31928). The conference with respect to investigations Nos. 731-TA-279 through 281 (Preliminary) was held in Washington, DC, on August 22, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

No conference was held with respect to investigation No. 731-TA-278 (Preliminary) involving malleable cast-iron pipe fittings from Brazil due to the time constraints resulting from the issuance of a temporary restraining order by the Court of International Trade. However, all perons who wished to submit written comments or briefs were given an opportunity to do so.[5]

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 16, 1985. The views of the Commission are contained in USITC Publication 1753 (September 1985), entitled "Certain Cast-Iron Pipe Fittings from Brazil, the Republic of Korea, and Taiwan: Determinations of the Commission in Investigations Nos. 731-TA-278 through 281 (Preliminary) Under the Tariff Act of 1930, Together with the Information Obtained in the Investigations."

Issued: September 16, 1985.

By order of the Commission:

Kenneth R. Mason,

Secretary.

[FR Doc. 85-22892 Filed 9-24-85; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(i) of the Commissions' Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] The malleable cast-iron pipe fittings covered by these investigations are those with standard pressure ratings of 150 pounds per square inch (psi) and heavy-duty pressure ratings of 300 psi.

[3] Vice Chairman Liebeler finds a reasonable indication of threat of material injury.

[4] The nonmalleable cast-iron pipe fittings covered by this investigation are those with standard pressure ratings of 125 psi and heavy-duty pressure ratings of 250 psi.

[5] 50 FR 36157 (Sept. 5, 1985). 50 FR 36926 (Sept. 10, 1985).

[Investigation No. 701-TA-257 (Preliminary)]

Certain Fresh Atlantic Groundfish From Canada

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practrice and Procedure (19 CFR 207.2(i)).

the United States is materially injured by reason of imports from Canada of certain fresh whole Atlantic groundfish,[2] provided for in items 110.15 and 110.35 of the Tariff Schedules of the United States (TSUS), which are alleged to be subsidized by the Government of Canada, and that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of certain fresh Atlantic groundfish fillets,[3] provided for in items 110.50, 110.55 and 110.70 of the TSUS, which are alleged to be subsidized by the Government of Canada.

Background

On August 5, 1985, a petition was filed with the Commission and the Department of Commerce by the North Atlantic Fisheries Task Force, Cloucester, Massachusetts, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of fresh and chilled cod, haddock, pollock, hake, and flatfish (including flounders and sole) in whole and fillet forms, from Canada. Accordingly, effective August 5, 1985, the Commission instituted preliminary countervailing duty investigation No. 701–TA–257 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 14, 1985 (50 FR 32775). The public conference was held in Washington, DC, on August 28, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 19, 1985. The views of the Commission are contained in USITC Publication 1750 (September 1985), entitled "Certain Fresh Atlantic Groundfish from Canada: Determination of the Commission in Investigation No. 701–TA–257 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: September 19, 1985.

By order to the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–22893 Filed 9–24–85; 8:45 am]

BILLING CODE 7020-02-M

[2] For purposes of this investigation, the term "certain fresh whole Atlantic groundfish" covers fresh and chilled cod, haddock, hake, and flounders and other flatfish (except halibut), whether whole or processed by removal of heads, viscera, fins, or any combination thereof, but not otherwise processed (TSUS items 110.15 and 110.35).

[3] For purposes of this investigation, the term "certain fresh Atlantic groundfish fillets" covers fresh and chilled cod, haddock, pollock, hake, and flounders and other flatfish (except halibut) processed otherwise than by only the removal of heads, viscera, fins, or any combination thereof (TSUS items 110.50, 110.55, and 110.75).

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 388 (Sub-27)]

Intrastate Rail Rate Authority; Oregon

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Certification.

SUMMARY: The Commission grants final certification to the Oregon Public Utility Commissioner under 49 U.S.C. 11501(b) to regulate intrastate rail transportation, subject to a condition precedent that it inform the Commission that its standards and procedures have been officially adopted.

DATE: Certification will begin October 25, 1985.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan Area) or toll free (800) 424–5403.

Decided: September 10, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio.

Commissioner Sterrett did not participate in the disposition of this proceeding.

Kathleen M. King,

Acting Secretary.

[FR Doc. 85–22852 Filed 9–24–85; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30656]

Consolidated Rail Corp.; Trackage Rights Exemption; Seaboard System Railroad, Inc.

Seaboard System Railroad, Inc. (SBD) has agreed to grant overhead trackage rights to Consolidated Rail Corporation (Conrail) between Crawfordsville, Lafayette and Altamont, Indiana over a 27.3 mile segment of SBD's line described as follows:

Between the track connection of Conrail and Seaboard at Ames, near Crawfordsville, Indiana, and the turnout of the connecting track to be constructed in Seaboard's track for access to NW's approximately 27.3 miles. Said trackage to include the main running tracks, passing tracks, crossovers, and appurtenant facilities, not including any terminal and/or yard tracks and related facilities, constituting Seaboard's main line of railroad between said stations.

The trackage rights were effective September 12, 1985 or on such later date as SBD and Conrail agree to, as evidenced by an exchange of letters.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: September 18, 1985.

By the Commission, Richard Lewis, Acting Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 85–22851 Filed 9–24–85; 8:45 am]

BILLING CODE 7035–01–M

LEGAL SERVICES CORPORATION

Announcement of Availability of Funds for the Provision of Legal Services to Unserved Low-Income Members of Federally Recognized Native American Tribes

AGENCY: Legal Services Corporation.

ACTION: Notice.

SUMMARY: The Legal Servcies Corporation (LSC) announces the availability of one-time grant funds for the provision of legal services to the currently unserved LSC eligible Native American clients, who reside in the following states and reservations:

States	Reservations
Arizona	Cocopah.
	[illegible]
	Quechan-Fort Yuma.
	Yavapai-Apache.
	Havapai-Prescott.
	Yavapai-Tonto Apache.
Florida	Miccosukee.
	[illegible]
Iowa	Sac and Fox.
Kansas	Iowa.
	Kickapoo.
	[illegible]
	Sac and Fox.
Louisiana	Chitmacha.
	Coushatta.

States	Reservations
Minnesota	Bois Forte.
	Fond Du Lac.
	Grand Portage.
	Lower Sioux.
	Mille Lacs.
	Prairie Island.
	Upper Sioux.
New York	Oneida.
	Onondaga.
	Seneca
	St. Regis Mohawk.
	Tonawanda.
	Tuscarora.

DATE: All proposals for grant funds must be received on or before October 15, 1985.

FOR FURTHER INFORMATION CONTACT: Britt Clapham, Manager, Legal Services Corporation, Native American Unit, 1380 Lawrence Street, Suite 610, Denver, Colorado 80204, (303) 844–4205.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation (the Corporation) through its Native American Unit (NAU), formerly the Indian Desk, has established special programs or components to provide access to legal services for low-income members of federally recognized tribes, as required by the Natiave American Funding Approach issued by the Office of Field Services in August, 1979. However, that directive only authorized annualized funding for organizations to serve areas with more than 500 low-income Native Americans. As a result, there are 31 Indian Reservations, as noted above, with fewer than 300 low-income Native Americans in seven states whose federally recognized members do not have access to a special Indian legal services program or component.

In recognition of this, the 1979 Native American Funding Approach did provide that the funds attributable to these persons would be placed in a revolving fund to be administered by the Native American Unit. Accordingly, the NAU is soliciting funding proposals from programs which already serve areas contiguous with these unserved reservations or are in close geographic proximity to these unserved reservations. Funded applications will be one to three year term projects, i.e., not annualized and need not be based on the Corporation's regular minimum access formula. These one-time grant awards will total $92,212 and applicants may request funding up to $20,000 per grant.

Proposals should describe plans for projects to serve one or more of the unserved reservations. These projects should include such activities as extensive outreach, establishment of a special short-term Native American unit, community legal education, publicity or any other activity which would provide or improve access to the Native American poor.

Proposals for awards from this discretionary fund must be submitted in a clear and concise narrative format not to exceed five (5) pages that explains the purposes for which the grant funds will be utilized, with an attachment budget. Applicants are urged to use the resources and skills of local Indian groups and tribes in developing these proposals. Past efforts, if any, at providing legal services to these reservations should be described in the proposal because, as discussed below, it is one of the criteria for the evaluation of the proposals.

The Corporation (through its Rocky Mountain Regional Office, Native American Unit) intends to fund proposals which have maximum impact on the Native American client community. Criteria that will be used to review the applications are as follows:

1. Applicant's previous efforts to serve with regular program funds the reservation based Native Americans;

2. Support for the proposal by the tribe or tribes to be served;

3. Responsiveness of proposed legal services delivery system design to needs of the low-income Native Americans to be served;

4. Methodology for evaluation of proposed legal services delivery system design;

5. Likelihood of high-quality representation (Indicators will be systems to ensure effective, economical, and high-quality legal work for Native American clients, including community outreach, client intake, case handling procedures, supervision, case review, litigation support, training, and staff evaluations.), and;

6. Applicant's administrative structure, including proposed systems and methods for ensuring economical and effective fiscal and administrative management and control.

All groups and persons interested in applying for these grant funds should submit two copies of their proposals to: Britt Clapham, Manager, Legal Services Corporation, Native American Unit, 1380 Lawrence Street, Suite 610, Denver, Colorado 80204, (303) 844–4205.

Any grant application recommended by the Legal Services Corporation will, pursuant to section 1007(f) of the LSC Act, be announced in the **Federal Register**, and additional comments and recommendations will be requested at least thirty days prior to final approval of the grant.

Peter Broccoletti,

Acting Director, Office of Field Services.

September 18, 1985.

[FR Doc. 85–22687 Filed 9–24–85; 8:45 am]

BILLING CODE 6820–35–M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATE: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 24, 1985. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357–7934.

SUPPLEMENTAL INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of

a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the **Federal Register** on July 15, 1985.

The applications received are as follows:

1. Applicant

Matthew Schwaller, NASA Goddard Space Flight Center, Greenbelt, Maryland

Activity for Which Permit Requested

Taking; Enter Site of Special Scientific Interest

The applicant requests permission to enter the penguin colonies on Cape Crozier, Cape Royds, and Beaufort Island to fulfill the scientific objectives of research on the estimation of penguin populations with remote sensing. Field work will include radiometric measurements plus photography of the nesting sites. Radiometric measurements will be made of the penguins themselves, as well as of penguin nesting sites, penguin-free sites, and mixtures of these targets. Field samples and field measurements will be used to establish the reflectance characteristics of the various ground targets which may be imaged in a satellite remote sensing scene that includes penguin rookeries. The ultimate goal of this research is to identify the best spectral bands or band combinations for locating penguin nesting sites in imagery collected with remote sensing satellites.

Location

Cape Crozier, Cape Royds, Beaufort Island.

Dates

November 1985–January 1986.

2. Applicant

Wesley E. LeMasurier, Geology Department, University of Colorado, Denver, Colorado.

Activities for Which Permit Requested

Enter Specially Protected Area; Enter Site of Special Scientific Interest

The applicant proposes to collect rock samples for geological study in Specially Protected Areas and at Sites of Special Scientific Interest. Entry into protected areas is required because the samples cannot be obtained from other locations.

Locations

Beaufort Island, Cape Hallett, Cape Crozier, Cape Royds.

Dates

January–February 1986.

3. Applicant

Warren M. Zapol, Department of Anesthesia, Massachusetts General Hospital, Boston, Massachusetts.

Activities for Which Permit Requested

Taking

A permit is being requested to enable the applicant and his representative to pursue a two-year international collaborative research project entitled "Physiological and Ecological Microprocessor Monitoring Studies of Free Ranging Antarctic Seals in Pack Ice Areas". These studies will continue and expand previous investigations carried out by the applicants under Marine Mammal Protection Act, permit #394, and Antarctic Conservation Act Permit #83–11.

In two austral summer seasons they will study depth-time diving profiles, heart rate and core temperature changes during diving and correlate heart rate changes with the swimming velocity of physiologically monitored Crabeater, Leopard, Weddell and Ross seals. They will also study key metabolic enzyme systems in muscles of the same species. For these studies they request permission to capture up to 40 Crabeater, 40 Leopard and 20 Weddell adult seals each season (1985–86 and 1986–87 austral summers). Only adult seals will be studied in approximately equal numbers of males and females. Up to 25 Crabeater and Leopard, and up to 10 Weddell seals will be equipped each year with long-term physiological monitoring/transmitting packs and released. Up to 15 will be killed for organ biochemical studies. Because they will be working in pack ice areas with indeterminate numbers of seals, the possibility of harrassing a far greater number exists, in order to approach the seals to be studied. They therefore request permission to harass 400 Crabeater, 400 Leopard, 200 Weddell and 40 Ross seals.

Location

Antarctic Peninsula, Palmer Station and vicinity.

Dates

December 1985–April 1987.

Authority to publish this notice has been delegated by the Director of the National Science Foundation.

Peter E. Wilkniss,

Division Director, Division of Polar Programs.

[FR Doc. 85–22879 Filed 9–24–85; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Accident Reports, Safety Recommendations, and Responses, etc; Public Hearing in Dallas-Fort Worth Aircraft Accident

In connection with its investigation of the accident involving a Delta Airlines Lockheed L–1011, N726DA, at the Dallas-Fort Worth International Airport, Texas, August 2, 1985, the National Transportation Safety Board will convene a public hearing at 9 a.m. (local time) on October 29, 1985, in the Mexico Rooms of the Holiday Inn D/FW Airport North, Dallas-Fort Worth International Airport, Texas. For more information contact Mr. Ira Furman, Office of Government and Public Affairs, National Transportation Safety Board, 800 Independence Avenue SW., Washington, D.C. 20594, telephone (202) 382–6600.

Ray Smith,

Federal Register Liaison Officer.

September 20, 1985.

[FR Doc. 85–22877 Filed 9–24–85; 8:45 am]

BILLING CODE 7533-01-M

Accident Reports, Safety Recommendations, and Responses, etc.; Public Hearing in Pilgrim Belle Marine Accident

In connection with its investigation of the accident involving the grounding of the U.S. Passenger Vessel PILGRIM BELLE on the Sow and Pigs Reef, Vineyard Sound, Massachusetts, July 28, 1985, the National Transportation Safety Board will convene a public hearing at 10 a.m. (local time) on October 22, 1985, in the Marriott Hotel, Charles and Orms Streets, Providence, Rhode Island. For more information contact Mr. Brad Dunbar, Office of Government and Public Affairs, National Transportation Safety Board, 800 Independence Avenue SW., Washington, D.C. 20594, telephone (202) 382–6600.

Ray Smith,

Federal Register Liaison Officer.

September 20, 1985.

[FR Doc. 85–22878 Filed 9–24–85; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-249]

Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain testing requirements of Appendix J to 10 CFR Part 50 to the Commonwealth Edison Company (CECo) (the licensee) for Dresden Nuclear Power Station, Unit No. 3 located at the licensee's site in Grundy County, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from certain requirements of Appendix J to 10 CFR Part 50 for type B and C testing of certain valves, vents, drains, sumps and penetrations which maintain containment integrity at design bases accident conditions. The exemption is strictly schedular in that it would allow a 30-day extension of the 2-year test interval for the above components required by Appendix J.

The Need for the Proposed Action

The licensee shut down for its Cycle 9 reguling outage on September 30, 1983 and was scheduled to shut down for its Cycle 10 refueling outage in the Spring of 1985. However, because of an unanticipated 4-month outage extension in 1984, the shutdown for refueling and other modifications has been extended to October 26, 1985. This will cause CECo to exceed the 2-year test interval required by Appendix J for type B and C testing of certain components.

Environmental Impact of the Proposed Action

The proposed exemption affects only the interval between the test of certain components required to assure containment integrity. Because the operational period of these components will be shortened due to the aforementioned 4-month Cycle 9 refueling outage extension, the operational challenge to these components has been less than usually occurs in the 2-year test interval. Thus, post-accident radiological releases will not differ from those determined previously and the proposed exemption does not otherwise affect facility radiological effluent or occupational exposures. With regard to potential nonradiological impacts, the proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the Appendix J requirements. Such action would not enhance the protection of the environment and would result in unjustified costs.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Dresden Unit 3.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated August 16, 1985. This letter is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Dated at Bethesda, Maryland, this 20th day of September 1985.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Assistant Director for Safety Assessment, Division of Licensing.

[FR Doc. 85-22920 Filed 9-24-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Davis-Besse Nuclear Station Unit 1; Meeting

The ACRS Subcommittee on Davis-Besse Nuclear Station Unit 1 will hold a meeting on October 4, 1985, at the Davis-Besse Administration Building, Route 2 Oak Harbor, Ohio.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Friday, October 4, 1985—1:00 p.m. until the conclusion of business.*

The Subcommittee will review actions taken prior to restarting following the loss of feedwater incident and other related matters.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Toledo Edison Company, NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85-22921 Filed 9-24-85; 8:45 am]

BILLING CODE 7590-01-M

Bi-Weekly Notice; Applications and Amendments To Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub. L.) 97–415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Pub. L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on September 11, 1985 (50 FR 37072), through September 16, 1985.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Monday through Friday.

By October 25, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free

telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Branch Chief*): petitioner's name and telphone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petition for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petition has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket No. 50–318, Calvert Cliffs Nuclear Power Plant, Unit No 2, Calvert County, Maryland

Date of applications for amendment: August 29 and August 30, 1985.

Description of amendment request: The proposed amendment would change the Unit 2 Technical Specifications (TS) to reflect analyses performed in support of Cycle 7 operation.

Basis for proposed no significant hazards consideration determination: On April 6, 1985 the NRC published guidance in the **Federal Register** (48 FR 14870) concerning examples of amendments that are not likely to involve signficant hazards considerations. One such example (iii) involves "For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable."

The proposed changes to the Unit 2 TS, submitted by applications dated August 29 and August 30, 1985 satisfy the criteria of example (iii). Accordingly, the Commission proposes to determine that the proposed changes to the TS required for Unit 2 Cycle 7 operation involve no significant hazards considerations.

Local Public Document Room location: Calvert County Library, Prince Frederick Maryland.

Attorney for licensee: George F. Trowbridge, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W. Washington, D.C. 20326

NRC Branch Chief: Edward J. Butcher, Acting.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Data of amendment request: August 9, 1985.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) as follows:

(1) In Table 3.1.1, "Reactor Protection System (SCRAM) Instrumentation Requirement", the footnote associated with the APRM high flux scram setpoint would be changed to match the value for this setting in TS 2.1.A.1.a, "Fuel Cladding Integrity" and on Figure 3.11–9, "Pilgrim Power/Flow Map." The need for this change was missed when the latter were changed by Amendment No. 72.

(2) Note reference (13) would be placed in Table 3.1.1 in the "Trip Level Setting" column at the "APRM Inoperative" line. The licensee states that this reference was inadvertently deleted during issuance of Amendment No. 15.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning application of the standards by providing certain examples (48 FR 14870). One example of an amendment considered not likely to involve significant hazard considerations is "(i) a purely administrative change to technical speacifications: for example, a change to achieve consistency throught the technical specifications, correction of an error, or a change in nomenclature." Proposed change (1) above is encompassed by this example since it is intended to achieve consistency in the TS. The second change, (2), would restore a reference to a note, still in the TS, which defines the term "APRM Inoperative". Since no requirements or conditions would be affected by restoration of the reference, this change would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of an accident of a type different from any evaluated previously, or (3) involve a significant reduction in a margin safety.

Therefore, the staff has made a proposed determination that the amendment request involves no significant hazards considerations.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Branch Chief: Domenic B. Vassallo.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendment: August 12, 1985.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) for the Brunswick Steam Electric Plant, Unit Nos. 1 and 2, by revising the surveillance requirements for them suppression pool cooling mode of the Residual Heat Removal (RHR) System.

The surveillance requirements for the suppression pool cooling mode of the RHR system, TS 4.6.2.2.b, currently require verification "that each RHR pump can be started from the control room and develops a flow of at least 10,300 gpm against a system head corresponding to a reactor pressure of greater than or equal to 20 psig on recirculation flow."

The current survillance requirement is modeled after an In-Service Inspection requirement for a full-flow test. The system is tested during normal plant operation by taking suction from the suppression pool and returning the water to the pool through a test line. Each pump must develop a flow of 10,300 gpm to satisfy the test requirement. The RHR heat exchanger must be bypassed during this test as flow through the RHR heat exchanger is limited to 7,700 gpm to prevent damage to the heat exchanger tubing.

A more accurate method of verifying operability of the RHR pumps in the suppression pool cooling mode is to

route the recirculation flow through the RHR heat exchanger (as in actual operation), since the flow path in this mode of operation is from the torus, through the RHR heat exchanger, and then back to the torus.

Therefore, the proposed TS requires that each RHR pump produces a recirculation flow of at least 7,700 gpm through the RHR heat exchanger to the suppression pool. The proposed TS follows the guidance provided by NUREG–0123, Standard Technical Specifications for Boiling Water Reactors (STS) by routing flow through the RHR heat exchanger during the surveillance test.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Carolina Power & Light Company has determined that the requested amendment per 10 CFR 50.92:

(1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed amendment only modifies the surveillance requirement. No changes are made to the design, function, operating parameters, operating procedures or setpoints to any plant system.

(2) Does not create the possibility of a new or different king of accident than previously evaluated for the same reasons as already given in item (1) above.

(3) Does not involve a significant reduction in a margin of safety. The proposed surveillance requirement provides a better indication of actual system performance by including the RHR heat exchanger in the test loop. The modified requirement is more consistent with the guidance provided in NUREG–0123, the STS. Also, the requirements of the surveillance are more clearly stated. The margin of safety, therefore, is maintained.

The staff has reviewed the licensee's determination and finds it acceptable. Based on the above, the staff proposes to determine that the proposed amendment meets the criteria of 10 CFR 50.92(c) and, therefore, does not involve significant hazards consideration.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendment: August 28, 1985.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) for the Brunswick Steam Electric Plant, Units 1 and 2 to revise the rated thermal power range over which the Rod Block Monitor (RBM) channels must be operable.

The Rod Worth Minimizer (RWM) and and Rod Sequence Control System (RSCS) are redundant systems which assure that out-of-sequence control rods will not be withdrawn or inserted during low-level power operation. Control rod withdrawal sequences are established (based on rod worth) to assure that in the event of a control rod drop accident, the fuel peak enthalpy does not exceed 280 cal/gm. At greater than 20 percent of rated thermal power, no rod has sufficient worth such that, if it were to drop, the peak enthalpy would exceed 280 cal/gm. Therefore, the RWM and RSCS need be operable only when the plant is operating at less than 20 percent of rated thermal power.

Currently, TS 3.1.4.3 requires both RBM channels to be operable when thermal power is greater than the preset power level of the RWM and the RSCS (approximately 30 percent nominal rated thermal power). In addition, this specification requires that the RBM and the RWM and RSCS operationally overlap when approaching this power level to ensure meeting the requirements of the TS. However, based on the information discussed previously, the design intent and power levels over which the systems are required are very different; RWM and RSCS are designed for low power levels, and RBM is designed for high power levels. Therefore, no overlap is necessary.

The RBM is designed to operate at high power levels. Currently, the RBM is bypassed when the Average Power Range Monitor (APRM) used to normalize the RBM reading is indicating less than 30 percent power. The proposed revision to the TS would require the RBM to be operable when thermal power is greater than or equal to 35 percent of rated thermal power. This setpoint was conservatively chosen to ensure that: (1) A clear, concise power level is designated by the TS for plant operations; (2) the RBM functions as designed; (3) the RBM is operable as required by the TS using existing plant setpoints; and (4) the margin of safety is not reduced.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from accidents previously evaluated; or (3) involve a significant reduction in a margin of safety. Carolina Power & Light Company has determined that the requested amendment per 10 CFR 50.92(c):

3. Does not involve a significant increase in the probability of consequences of an accident previously evaluated because this change merely clarifies the power level at which the RBM is required to be operable. The proposed TS changes the current setpoint to 35 percent of rated thermal power which is still well below the high power level at which the RBM is required to operate; therefore, neither the RBM design and function, nor the accident analyses that use the RBM have been changed.

2. Does not create the possibility of a new or different kind of accident than previously evaluated for the same reason as stated in 1 above.

Does not involve a significant reduction in a margin of safety. None of the actual plant operating setpoints will be changed as a result of the proposed TS. Only the power level at which the RBM is required to be operable, as specified by the TS, will be clarified; this change is consistent with the guidelines set forth in NUREG–0123, the Standard Technical Specifications.

The staff has reviewed the licensee's determination and finds it acceptable. Based on the above, the staff proposes to determine that the proposed change meets the criteria of 10 CFR 50.92(c) and, therefore, does not involve significant hazards considerations.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: George E. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, La Salle County Station, Units 1 and 2, La Salle County, Illinois

Date of amendment request: August 19, 1985 as supplemented by letter dated September 5, 1985.

Description of amendment request: The proposed amendments to Operating License NPF–11 and Operating License NPF–18 would revise the setpoints and setpoint tolerances for the 18 safety relief valves (SRVs) in the Technical Specifications for each of La Salle, Units 1 and 2. The Commonwealth Edison Company (licensee) indicates that the present values of setpoints and setpoint tolerances are too restrictive. The General Electric Company (the vendor) specifications indicate that the setpoint tolerances can be changed from ±1% to a revised value of +1% to −3% and still be consistent with the specifications because the test data of the La Salle SRVs gave a nameplate rating of +1%, −3% by ASME rating. The ASME rating practice requires an approved, preheated test loop where the accuracies are demonstrated. This is performed by preheating the SRV to be tested in the loop, then testing the SRV four times in a row. These four readings must fall within a 4% scatterband or the valve is rejected. Therefore, by definition, the +1% and −3% is the apportionment of the 4% scatterband that is designed for the valves at La Salle, and defines the nameplate setting of the SRVs.

The essential function of the 18 safety relief values for each unit is the protection of the primary system from overpressure. Since the upper tolerance band remains the same, the safety margin remains unchanged within the system since the upper limit where the SRV will open has the same tolerance. In addition, the implication of retaining a lower bound of −1% on the SRV setpoint is the possibility of unnecessary testing of valves. By the original Technical Specifications, if any of the valves fails to meet the ±1% set pressure tolerance, an additional sample of valves must be removed and tested. If any of these valves fail, then the remainder of the valves must be removed and tested. This would unnecessarily increase the length of the time the unit is shutdown and would also increase the man-rem exposure during the additional valve removals and installation.

Presently, the setpoints for these safety relief valves are as follows: 4 at 1205 psig, 4 at 1195 psig, 4 at 1185 psig, 4 at 1175 psig, and 2 at 1146 psig. The licensee is proposing that the setpoints for the last safety relief valves be changed from 1146 to 1150 psig, because of revisions to GE design documents. This represents about a .4% increase in the lowest setpoint. This would have only a minor effect on the safety function of these valves, and the 1150 psig setpoint reflects General Electric design documents.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined and the NRC Staff agrees that the proposed amendments will not;

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because: The overpressure limit as previously analyzed is maintained. The safety valves will be maintained within the allowable limits of the design.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because: No safety relief valves are being removed. No new accident is postulated. Full overpressure protection is maintained.

(3) Involve a significant reduction in the margin of safety because the ability of the safety relief valves to limit reactor pressure as required will be maintained in accordance with design requirements. Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Burke, Suite 840, 1120 Connecticut Avenue, N.W., Washington, D.C. 20036.

NRC Branch Chief: Walter R. Butler.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, La Salle County Station, Units 1 and 2, La Salle County, Illinois

Date of amendment request: August 28, 1985.

Description of amendment request: The proposed amendments to operating License NPF–11 and Operating License NPF–18 would revise the La Salle, Units 1 and 2 Tech-nical Specifications with respect to the average power range monitor (APRM) gain adjustment to allow time to correct calibrations before declaring the channels inoperable and requiring half-scram. The licensee is proposing an interpretation and clarification to provide 2 hours to correct APRMs which are less than 0.98 of the base line value during plant operation above 90 percent rated thermal power. At less than 90 percent rated thermal power, 2 hours would be allowed to correct APRMs exceeding 1.02 of the base line value and 12 hours to correct APRMs exceeding 10 percent of rated thermal power. A clarification is also proposed that would make it acceptable to trip only an inoperable channel where trip systems have more than 2 channels per system.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined and the NRC staff agrees that the proposed amendments will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because this change simply allows a more realistic time period to correct APRM calibration before reactor trip is required. The APRM channel setpoints will be maintained within required limits or restored to proper limits with the time limits consistent with other specifications.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because no change in the APRM scram function is included in this amendment.

(3) Involve a significant reduction in the margin of safety because the change does not allow the APRMs to be set non-conservatively. Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room Location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Burke, Suite 840, 1120 Connecticut Avenue, N.W., Washington, D.C. 20036.

NRC Branch Chief: W. R. Butler.

Commonwealth Edison Company, Docket No. 50-374, La Salle County Station, Unit 2, La Salle County, Illinois.

Date of amendment request: August 28, 1985.

Description of amendment request: The proposed amendment to Operating License NPR-18 would revise the La Salle Unit 2 Technical Specifications for a one-time technical specification relief during the La Salle Unit 1 first refueling outage to extend the present three-day or seven-day period to thirty days during which only three diesel generators would be required to satisfy the standby AC on-site power requirements for Unit 2. This one time change will allow the installation of the diesel generator lube oil modification required by license condition to be installed on Unit 1 prior to startup after the first refueling for the common diesel generators "O" and "1A". Because the "O" and "1A" are shared between the two units and existing Technical Specifications 3.8.1.1 require these diesel generators be operable whenever either unit is in operation, the licensee is unable to perform the modification without bringing both Units to shutdown. The licensee indicates in its application that the proposed Technical Specifications are justifiable because:

1. The probability that a station blackout will occur during the 30 days is extremely unlikely.

2. The operating unit can be safely shutdown following a loss of off-site power transient even if one of the remaining diesels fails. In addition to the above, the licensee contends that the La Salle diesels have a higher than average reliability. The average emergency diesel generator has a reliabiltity of 0.98 and those at La Salle have a reliability that exceed 0.99.

Basis of propoosed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFr 50.92 (c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined and the NRC staff agrees that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because in the event of a loss of offsite power with the "O" or "1A" diesel inoperable for this period sufficient onsite power with a single active failure will still be available to safely shutdown.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because emergency power is still available to those systems required to mitigate accidents evaluated in the FSAR.

3. Involve a significant reduction in the margin of safety because the probability of a loss of offsite power in addition to a remaining diesel generator failure during the period of these diesel generator modifications is sufficiently small to reasonably assure the health and safety of the public.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Attorney for licensee: Isham, Lincoln and Bruke, Suite 840, 1120 Connecticut Ave, N.W., Washington, D.C. 20036.

NRC Branch Chief: Walter R. Butler.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: August 2, 1985.

Description of amendment request: the proposed amendment would revise the Technical Specifications to establish limiting conditions for operation (LCO's) and surveillance requirements for the Alternate Safe Shutdown System of Indian Point Unit No. 2. The proposed Technical Specifications were directly requested by the Nuclear Regulatory Commission by Generic Letter 81-12 dated February 20, 1981. This amendment application supersedes Consolidated Edison's August 7, 1981 application concerning the same subject.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for a no significant hazards determination by providing certain examples (48 FR 14870). One of the examples (ii) of an amendment not likely to involve significant hazards considerations is a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. The staff proposes to determine that this change does not involve a significant hazards determination because it consists of additional requirements not currently in the Technical Specifications and is submitted to conform Indian Point Unit 2 to current NRC requirements.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

Consolidated Edison Company of New York, Docket No 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: August 6, 1985.

Description of amendment request: The proposed amendment would revise the Technical Specifications to include anticipatory reactor trip upon turbine trip. The proposed change was directly requested by the Nuclear Regulatory Commission by Generic Letter dated September 20, 1982, and is required to satisfy NUREG-0737 "Clarification of TMI Action Plan Requirements" Item II.K.3.12. In addition the amendment application requests a modification to bypass (block) the anticipatory reactor trip upon turbine trip below 35% power. The 35% power level was chosen because at this level the elimination of reactor trip on turbine trip will not challenge the pressurizer Power Operated Relief Valves (PORV's) and essentially will not challenge the probability of a small-break LOCA resulting from a stuck-open pressurizer PORV. The purpose of the modification is to increase plant availability by reducing the length of time required to

restart the unit following a readily correctable turbine trip at low power.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for a no significant hazards determination by providing certain examples (48 Fr 14870). One of the examples (ii) of actions not likely to involve a significant hazards consideration relates to changes that constitute additional restrictions or controls not presently included in the Technical Specifications. The staff proposes to determine that the proposed change does not involve a significant hazards consideration since it consists of an additional limitation on operation of the facility not currently in the Technical Specifications. Although Consolidated Edison h .s requested a modification to bypass the reactor trip upon turbine trip below 35% power, this still constitutes an additional limitation on operation of the facility not currently in the Technical Specifications.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Branch Chief: Steven A. Varga.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: August 6, 1985.

Description of amendment request: The proposed amendment to the Technical Specifications includes revisions to further limit the use of the containment purge and vent isolation valves during power operation. This amendment was directly requested by the Nuclear Regulatory Commission by letters dated September 29, 1983 and June 17, 1985. The proposed amendment also clarifies associated requirements in Technical Specification 3.6 relating to the application of containment isolation action statements. Minor format and editorial changes are also included.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). Example (ii) of those involving no significant hazards considerations discusses a change that constitutes an additional limitation, restriction, or control not presently included in the technical specification: for example, a more stringent surveillance requirement. The proposed revision to specification 3.6.A adds limiting conditions for operation (LCOs) relative to the containment purge and pressure relief isolation valves and is consistent with example (ii) in that the proposed change constitutes an additional limitation not presently included in the Technical Specifications.

Consistent with the Commission's criteria for determining whether a proposed amendment to an operating license involves no significant hazards considerations, 10 CFR 50.92 (48 FR 14871), the proposed revision to Specification 3.6.A relating to containment isolation provision action requirements and the editorial and format changes will not involve a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident from any previously evaluated; or involve a significant reduction in margin of safety. The proposed revisions are solely intended to provide clarifying guidance for the specification's applicability; thereby eliminating the potential for inappropriate or incorrect interpretation. The editorial and format changes are for administrative purposes only.

Therefore, the staff proposes to determine that the amendment does not involve a significant hazards determination.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Branch Chief: Steven A. Varga.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment requests: October 31, 1984, and July 15, 1985.

Description of amendment request: The proposed amendments would change the Technical Specifications for interior groundwater monitors to provide consistency between the Technical Specifications and the as-built capabilities of the Groundwater Monitoring System. The interior groundwater monitors are installed so as to detect and alarm exterior groundwater at a level 2'8" above the top of floor slabs at various locations. The current Technical Specifications require the interior groundwater monitors to detect groundwater at a level corresponding to the top of these floor slabs and to alarm 2'0" above that level. The proposed amendments would, therefore, change Technical Specification 3/4.7.13 and referenced Specification Table 3.7–7 such that the initial alarm and lower detection and control level for interior monitors is 2'8" above the monitored floor level. A second alarm level at 5'0" above floor leve and a third at 15'0" above floor level would not be changed by the proposed amendments. Specification 3.7.13 would also be clarified to indicate that its ACTION statements (requiring that the reactor be placed in hot standby or cold shutdown) are not applicable when the reactor is in Mode 5 (cold shutdown) or Mode 6 (refueling).

Basis for proposed no significant hazards consideration determination: Specification 3.7.13.d requires that various actions, the selection of which depends upon the rate of rise of groundwater level, be implemented if groundwater levels rise above specified allowable levels. The results of the Technical Specification change would be to reduce by eight inches the groundwater level interval that would be available after the initial alarm to determine the rate of rise (and, hence, the appropriate action) as required by Technical Specification 3.7.13.d. By letter dated July 15, 1985, the licensee discussed the result of its analysis which finds that with the reduced interval, there would still be ample time available to make the required determinations of groundwater rate of rise and take appropriate actions. Specifically, the licensee's analysis indicates that approximately 10 minutes would be needed by an operator to respond to a groundwater level alarm and take appropriate actions, whereas the installed detection range and setpoints of the interior groundwater monitors are such that in excess of 19 hours would be available to the operator. The Commission's preliminary review supports the licensee's analysis and conclusions that there would, therefore, be no impact on operator response time and that the amount of response time continues to allow operators time to take required actions without jeopardizing any safety margins.

The Commission has provided guidance concerning the application of the standards for determining whether license amendments involve significant hazards consideration by providing certain examples (48 FR 14870). The proposed amendments do not match the examples. However, the Commission has reviewed the licensee's request for the above amendments and has determined that should this request be

implemented, it would not: (1) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes concern only monitoring instrumentation and setpoints which provide information to plant staff to assess the need for and take timely action, and do not otherwise result in a change in any equipment, procedure or specified action. The proposed amendments also would not (2) involve a significant increase in the probability or consequences of an accident previously evaluated or (3) involve a significant reduction in a margin of safety because, as discussed above, ample operator response time remains available. Similarly, the proposed amendment to the action statement requiring hot standby or cold shutdown which would indicate that the action statement is not applicable when the reactor is already in a shutdown condition is simply a clarification and will not significantly increase the probability or consequences of accidents previously evaluated, will not create a new accident different from any previously evaluated, and will not involve a significant reduction in any margin of safety. Accordingly, the Commission proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina 28242

NRC Branch Chief: Elinor G. Adensam.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of amendment request: August 20, 1985.

Description of amendment request: This amendment would modify the Technical Specifications to add limiting conditions for operation, trip setpoints and surveillance requirements for the monitors which provide the high radiation isolation signals to the containment purge and vent valves.

The above proposed Technical Specification modifications were submitted to reflect implementation of NUREG–0737 Item II.E.4.2(7) which requires that the purge and vent valves close automatically on a high containment radiation signal.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). An example of actions involving no significant hazards considerations is an amendment involving a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. These proposed Technical Specification modifications impose additional limitations, restrictions and controls and therefore fall within this example.

Therefore, since the application for amendment involves proposed changes that are similar to an example for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G. F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–321, Edwin I. Hatch Nuclear Plant, Unit No. 1, Appling County, Georgia

Date of amendment request: August 23, 1985.

Description of amendment request: This amendment would modify the Technical Specifications to add limiting conditions for operation and surveillance requirements for new Automatic Depressurization System (ADS) bypass timers.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). An example of actions involving no significant hazards considerations is Example (ii), an amendment involving a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. ADS bypass timers are being added to Unit 1 to satisfy the requirements of NUREG–0737, Item II.K.3.18. These proposed Technical Specification modifications add operating and surveillance requirements for these new ADS bypass timers and therefore fall within this example.

Therefore, since the application for amendment involves proposed changes that are similar to an example for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G. F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of amendment request: May 9, 1985, as supplemented August 30, 1985.

Description of amendment request: The amendment would modify the Technical Specifications to remove the overcurrent trip setpoints and response time for the primary containment penetration conductor overcurrent protection breakers and remove reference to "testing at the specified setpoints" from the surveillance testing requirements. It would replace these trip setpoints and the corresponding surveillance requirements with a requirement that breakers be tested using the current specified in the applicable NEMA Standard, NEMA AB–2–1980.

The amendment would also correct an erroneous parts listing and revise two motor control center frame identification numbers.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The selection of the breaker and its setpoint is controlled and limited by the design requirement for protection of the

containment electrical penetration against damage due to overcurrent provided in Section 3.8.2 of the Hatch Unit 2 FSAR. As a practical matter, the breaker and its setpoint must also be selected to allow startup and normal operation of the electrical equipment that is powered through the electrical penetration. As a result, when electrical equipment is changed, the breaker and/or the setpoint may also be changed, and the setpoint may be higher or lower than that listed in the current TS. Thus, the margin between the trip overcurrent and the actual design overcurrent limit for electrical penetration may change when breaker setpoints are changed. However, the FSAR design requirements and the requirements of 10 CFR 50.59 concerning design changes will assure an adequate design margin of safety is maintained. The testing in accordance with the NEMA standard will assure that the breakers function as designed.

The reference to testing molded circuit breakers "at the specified setpoint" is incorrect. Correct testing of breakers requires injecting a current greater than the specified setpoint. Deletion of this requirement and replacing it with the requirement to test in accordance with the NEMA standard corrects this error. This is an administrative change.

The correction of erroneous parts listings and frame identification numbers is an administrative change.

On the basis of the above, the Commission's staff expects the proposed changes will not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Therefore, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of amendment request: August 23, 1985.

Description of amendment request: These amendments would modify the Technical Specification tables of primary containment isolation valves for each unit to reflect drywell pneumatic system modifications. The modifications divide the original single drywell pneumatic header for each unit into two separate headers which penetrate the drywell at different locations. Each header supplies approximately half of the safety/relief valves (SRVs). For Unit 1, two additional isolation valves are added to reflect the additionof the new header. For Unit 2, two additional valves are added and a third valve that has now become unnecessary has been removed. The Technical Specification tables of containment isolation valves would be modified to add the two new valves for each unit and to delete the valve that is no longer needed on Unit 2. The addition of these valves to the tables impose surveillance requirements and operability requirements for the new valves.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The system operates in the same manner as before except that the air supply to the SRVs is via two separate headers instead of one, and no new failure mode is introduced. The same degree of containment isolation is provided. Each pneumatic supply line will have two containment isolation valves, the same number as for the single supply line. The proposed changes are not expected to (1) increase the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident previously evaluated. The division of the single pneumatic header into two headers is expected to better assure that some of the SRVs will continue to have a functional pneumatic supply system following an accident. This should increase the margin of safety provided by the safety relief system.

On the basis of the above, the Commission has determined that the requested amendments meet the three criteria and therefore has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: John F. Stolz.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: May 31, 1985, as supplemented August 21, 1985.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to reflect the addition of a halon fire suppression system and fire detectors to the service water pump room at Cooper Nuclear Station. In particular, the TS would be modified to include limiting conditions for operation (LCO) and surveillance requirements for the halon system in Section 3/4.17 and to add the service water area fire detectors to the list of plant fire detectors in Table 3.14. The halon system and fire detectors were installed in the service water pump room to justify an exemption from the requirements of Appendix R to 10 CFR Part 50. The exemption was requested by the licensee in a letter dated June 28, 1982 because of the inadequate separation between redundant service water pumps. The addition of the halon system and fire detectors was found acceptable and the exemption was granted by NRC letter dated September 21, 1983. *Basis for proposed no significant hazards consideration determination:*

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples of actions invovling no significant hazards consideration, i.e., example (ii), is "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement." The current Cooper Technical Specifications do not include operability nor surveillance requirements for the service water halon system or additional fire detectors. Therefore, the proposed amendment to add these requirements is encompassed by example (ii) above. The Commission, therefore, proposes to determine that this action involves no significant hazards considerations.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Attorney for licensee: Mr. G. D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68601.

NRC Branch Chief: Domenic B. Vassallo.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: August 30, 1984, as revised November 8, 1984 and August 29, 1985.

Description of amendment request: The proposed amendment will change the Technical Specifications (TS) to incorporate the changes in the radiation monitoring requirements due to installation of Reactor Building Vent Wide Range Gas Monitors (RBV–WRGM) and to incorporate miscellaneous administrative changes. The changes are as follows:

(1) TS 3.2/4.2 and 3.8/4.8 are changed to clear up confusion associated with cross reference to the Reactor Building Vent (RBV) Plenum Monitors and RBV–WRGM. The RBV plenum monitor will be associated with isolation functions for an accident whereas, the newly installed RBV–WRGM will be associated with isolation functions for routine releases.

(2) A footnote is added to Table 4.8.1, "Radioactive Liquid Effluent Monitoring Instrumentation Surveillance Requirements" reflecting the existing calibration source requirements for the discharge canal radiation monitors and the future calibration source requirements, if the canal radioactivity monitors should ever be replaced. In addition, to avoid confusion between "effluent releases" and "liquid radwaste releases," word changes are made to Table 3.8.1, "Radioactive Liquid Effluent Monitoring Instrumentation."

(3) To clarify the Limiting Conditions for Operation (LCOs) in TS 3.8/4.8, Radioactive Effluents, certain paragraphs are moved from the Surveillance Requirements column to the LCO column without any change to the wording.

Basis for proposed no significant hazards consideration determination:

The changes proposed in Item No. (3) clarify the Radioactive Effluents LCO and Surveillance Requirements and avoids confusion. Some paragraphs have been moved from the Surveillance Requirements column to the LCO column. There is no change in the wordings or the requirements. For these reasons, the staff, therefore, proposes that the change would not: (1) Involve a significant increase in the possibility or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in the margin of safety.

The changes proposed in Item No. (1) incorporate the changes in the requirements due to installation of RBV–WRGM and to avoid confusion associated with cross-reference to TS 3.2/4.2 and 3.8/4.8. The RBV pelnum monitors no longer perform isolation functions for routine releases. The newly installed RBV–WRGM provide enhanced monitorings and calibration features and are superior to the original plenum monitors. These are set in accordance with the methods in the Offsite Dose Calculation Manual (ODCM).

The proposed change in the wording to the Technical Specifications clarifies the confusion associated with the function and appropriate setpoint for the RBW plenum monitors and the RBV–WRGM. All currently specified setpoints are preserved. For these reasons, the staff, therefore, proposes that the change would not: (1) Involve a significant increase in the possibility or consequences of an aocident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in the margin of safety.

In Item No. (2) above, the added footnote reflects the existing calibration source requirements for the discharge canal radiation monitors and its future calibration source requirements, as permitted by the existing TS, if the canal radioactivity monitors should ever be replaced. The footnote states that there is a correlation between the original liquid source and the current solid source in the instrument calibration and also recognizes, that, should the canal radioactivity monitors ever be replaced, their detector response and system efficiency shall be equal to or better than the present system and met present day calibration requirements. Thus, for these reasons, the staff concludes that the proposed change in Item No. (2) above would not: (1) Involve a significant increase in the possibility or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in the margin of safety.

Therefore, based on the reasons as described above, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: September 14, 1984.

Description of amendment request: The proposed amendment would reflect the changes in the revised Section of 10 CFR 50.72, and a new Section, 10 CFR 50.73, both of which became effective on January 1, 1984. The revised subsection 50.72 modifies the immediate notification requirements for operating nuclear power reactors and subsection 50.73 provides for a revised Licensee Event Report System.

The proposed changes are in the "Definitions" and "Administrative Control" sections of the Technical Specifications. The definition "Reportable Occurrence" is replaced by a new term "Reportable Event." A new requirement is added for the Safety Audit and Operations Committee to review all reportable events and special reports. A new position of "Assistant to the Plant Manager" is added with no other organizational changes involved. The title of "Director of Nuclear Generation" is changed to "Vice President Nuclear Generation." An additional Senior Reactor Operator (SRO) in the control room is added to comply with the requirements of 10 CFR 50.54(m)(2).

Basis for proposed no significant hazards consideration determination:

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include example (vii)—change in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations. The "reporting changes" proposed in the application for amendment are fully encompassed by this example because the license is being changed solely to conform with a change in the

regulations. The licensee was requested by the NRC staff to make these administrative changes in Generic Letter No. 83-43, "Reporting Requirements of 10 CFR Part 50, subsections 50.72 and 50.73, and Standard Technical Specifications," dated December 19, 1983. The presence of an additional SRO in the control room also falls in this category since the proposed change satisfies the requirements of § 50.54(m)(2) of 10 CFR Part 50.

The changes in the titles and a new position in the plant organization without any other organizational changes are strictly of an administrative nature. For these reasons, the staff, therefore, proposes that the changes would not: (1) Involve a significant increase in the possibility or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in the margin of safety.

Therefore, since all of the changes are encompassed by examples of changes which the Commission has determined are not likely to pose a significant hazards consideration, the staff proposes to determine that the amendment does not involve a significant hazards consideration.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: Domenic B. Vassallo.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 6, 1985, as supplemented September 3, 1985.

Description of amendment request: The proposed amendment would authorize changes to the Fort Calhoun Station, Unit No. 1 Technical Specifications which are required to support the operation of the unit at full rated power during Cycle 10. Specifically, the following specifications are proposed to be changed: minimum departure from nucleate boiling (DNB) ratio, total planar radial peak, total integrated radial peak, and reactor cold leg temperature. In addition, the licensee proposes to incorporate the axial shape index as an input to the Thermal Margin/Low Pressure Trip Function and to use a mini-CECOR/Better Axial Shape Selection System (BASSS) for incore monitoring of the linear heat rate and DNB LCOs. Because these specifications are proposed to be changed, the following figures would be changed: Thermal Margin/Low Pressure Safety Limit, Thermal Margin/Low Pressure Limiting Safety System Settings, Limiting Condition for Operation for Excore Monitoring of Linear Heat Rate, and F^T_R and F^T_{xy} and Core Power Limitations.

Basis for proposed no significant hazards consideration determination:

The licensee has presented its discussion of significant hazards considerations pursuant to 10 CFR 50.92 in regard to the above proposed technical specification changes. The licensee's discussion is based upon an in-depth Cycle 10 reload evaluation which was submitted with the application for amendment. The licensee states that (1) the probability or consequences of accidents previously evaluated are not increased because all events/accidents not enveloped by Cycle 9 parameters were evaluated and shown to have acceptable consequences, with violation of no safety limits; (2) the Cycle 10 reload does not create the possibility of a new or different kind of accident from any previously evaluated because the core loading utilizes fuel management techniques which have previously been proven acceptable, and (3) the Cycle 10 core reload does not result in a significant reduction in a margin of safety because the Cycle 10 reload evaluation, which uses NRC approved methodologies, demonstrates that the margin of safety is maintained in the revised Technical Specifications limits. The staff has reviewed the licensee's significant hazards considerations determination for the technical specification changes and, based upon this review, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, N.W., Washington, D.C. 20036.

NRC Branch Chief: Edward J. Butcher, Acting.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of amendment request: May 23, 1980, as amended by letters dated August 1, 1980, June 2, 1981, April 4, 1983, May 29, 1984, and April 24, 1985.

Description of amendment request: The proposed amendments would: (1) Change the title of the off-site safety review organization from "Operation and Safety Review Committee" to "Nuclear Review Board", (2) designate the "Superintendent, Nuclear Services" as the alternate to the "Superintendent, Nuclear Generation Division" in lieu of the "Superintendent, Fossil-Hydro Generation Division," (3) change the title of "Superintendent, Generation Division—Nuclear" to "Superintendent—Nuclear Generation Division", (4) revise the management organization chart to reflect the formation of a new position of Manager, Nuclear Production, and (5) redefine the reporting schedule for the Nuclear Review Board and Safety Limit Violation Report. This change would define the reporting schedule as "10 working days" rather than "14 days" as currently specified in the Technical Specifications (TSs). This change would establish consistency with the reporting requirements of Section 6.9.2 of the Peach Bottom TSs.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazard consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include: (i) A purely administrative change to the Technical Specifications; for example, a change to achieve consistency throughout the Technical Specifications, correction of an error or a change in nomenclature.

The proposed changes identified in items (3) and (5) above are purely administrative changes as in example (i) since they involve a change in nomenclature and result in achieving consistency throughout the TSs.

The Commission has provided standards for determining whether a significant hazards consideration exists [10 CFR 50.92(c)]. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility

in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes to Section 6 (Administrative Controls) described in items 1, 2, and 4 above are the result of the creation of a new review organization for the the Peach Bottom facility. The creation of the Nuclear Review Board (item 1) to replace the current Operation and Safety Review Committee permits the utilization of personnel with experience and expertise at both the Peach Bottom and Limerick Nuclear facilities. The Board will perform the safety review functions at Peach Bottom without changing the current functions of the Operational and Safety Review Committee as described in the current TSs.

In addition, further organization changes have resulted in the creation of the position "Superintendent, Nuclear Services" (item 2). The licensee indicates that the proposed change, including the assignment of responsibilities, would enhance the effectiveness of the Nuclear Generation Division in responding to safety issues at Peach Bottom. In a similar manner, organizational changes have resulted in the creation of a position, "Manager, Nuclear Production," which will focus separate management attention on nuclear activities (item 4 above). Based upon the above, the Commission's staff believes that these proposed changes are administrative improvements and that these changes will not diminish, in any way, current administrative requirements of the Peach Bottom TSs. The staff, therefore, proposes to conclude that the proposed amendments to the Peach Bottom TSs involving Section 6 (Administrative Controls) would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of an accident of a type different from any previously evaluated, or (3) involve a significant reduction in a margin of safety. On this basis, the staff has made an initial determination that the proposed amendments are not likely to involve a significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania.

Attorney for licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

NRC Branch Chief: John F. Stolz.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of amendment request: May 4, 1983, as supplemented November 10, 1983, and November 29, 1984.

Description of amendment request: The application requests revisions to the Technical Specifications (TSs) concerning reactor system coolant leakage monitoring. This application was previously noticed on April 5, 1984 (49 FR 13612). This new notice pertains to a revised amendment request dated November 29, 1984. Specifically, this application requested the following: (1) A change in nomenclature from "Air Sampling System" to "Drywell Atmosphere Radioactivity Monitor" to clarify the parameter being monitored; (2) elimination of Table 3.2.E (Instrumentation That Monitors Drywell Leak Detection) to remove redundancy in the TSs; (3) a change in limiting condition for operation (LCO) requirements from a 7-day to a 30-day LCO together with the addition of grab sample surveillance requirements in the revised Section 3.6.C.3; and (4) revisions to TS Bases supporting these changes. The November 29, 1984, letter also withdraws certain requests involving the proposed deletion of specific testing and surveillance requirements concerning the Drywell Atmosphere Radioactivity Monitor Systems.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples (i) of an action involving no significant hazards considerations is a purely administrative change to Technical Specifications; for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature.

The proposed change pertaining to renaming the "Air Sampling System" the "Drywell Atmosphere Radioactivity Monitor" is purely a change in nomenclature as in example (i) above. Thus, this proposed change conforms to the above example for which no significant hazards considerations exist.

The Commission has provided standards for determining whether a significant hazards consideration exists [10 CFR 50.92(c)]. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The request for deletion of Table 3.2.E will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the requirements currently contained in this Table would now be fully addressed in the proposed revised Section 3.6.C (Coolant Leakage);

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the specific monitoring functions currently indicated in Table 3.2.E will still be performed under the proposed revised Section 3.6.C; or

(3) Involve a significant reduction in a margin of safety because the required functions of Table 3.2.E would now be specified in Section 3.6.C.

The request to change the LCO requirements for the Drywell Atmosphere Radioactivity Monitor from 7-days to 30-days in the event the system is inoperable (and the TS Bases supporting these changes) will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the new specifications would also add the requirement of using grab sampling at least every 24 hours while the system is inoperable as a means of monitoring drywell air radioactivity which is in accordance with the Standard Technical Specifications for Boiling Water Reactors;

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the radioactivity monitoring function would be accomplished by the proposed grab sampling, and reactor coolant system leakage surveillance as specified in Section 3.6.C.1 would still be undertaken by the requirements of Section 3.6.C.2 (Coolant Leakage—Containment Sump and Flow Monitoring System); or

(3) Involve a significant reduction in a margin of safety because the proposed change in the LCO from 7 to 30 days

would be accompanied by the additional requirement of performing grab sampling every 24 hours which is also consistent with the provisions outlined in the Standard Technical Specifications for Boiling Water Reactors.

Therefore, since the application for amendments involves changes that are similar to examples for which no significant hazards consideration exists, or has been determined on a case by case basis that no significant hazards consideration exists, the Commission's staff has made a proposed determination that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania.

Attorney for licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

NRC Branch Chief: John F. Stolz.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of amendment request: July 17, 1985.

Description of amendment request: These proposed amendments request that bypassing scram signals which are the result of main steam line isolation valve (MISV) closure or main condenser low vacuum be permitted when the reactor mode switch is not in the RUN position. Modifications to the Reactor Protection System would be made to accomplish this. The current Technical Specifications (TSs) permit bypassing when the mode switch is not in the RUN position and reactor pressure is less than 600 psig. This proposed amendment request also would add to Tables 3.2.A (Instrumentation That Initiates Primary Containment Isolation) and 4.2.A (Minimum Test and Calibration Frequency for Primary Containment Isolation Systems) limiting conditions for operation (LCO) and surveillance requirements for certain instruments. These additional requirements are being proposed because the instruments which provided the inputs for the Reactor Protection System scram signals, as described above, and which are proposed to be bypassed, also provide input into the Primary Containment Isolation System for control of the isolation valves for the feedwater flush system.

Finally, the proposed amendments request that obsolete footnotes be deleted since applicable modifications and testing referenced in these footnotes have been completed.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include: (i) A purely administrative change to the Technical Specifications; for example, a change to achieve consistency throughout the Technical Specifications, correction of an error or a change in nomenclature; and (ii) a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications.

Example (i) encompasses the changes requested to delete obsolete footnotes since the licensee indicated that the modifications and testing programs referenced in these footnotes have been completed. Example (ii) applies to the change request which would add LCOs and surveillance requirements to the Primary Containment Isolation Systems (Tables 3.2.A and 4.2.A) for Reactor Pressure (Feedwater Flush System Interlock) instruments.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license to a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendment request to permit bypassing the scram signals which are the result of MSIV closure or main condenser low vacuum while not in the RUN mode differs only from the existing TS requirements by removing the current TS pressure restriction (". . . reactor pressure less than 600 psig"). The licensee maintains in its submittal that operation difficulties with an earlier BWR type (BWR-1) resulted in the addition of scram logic to prohibit operation above 600 psig while not in the RUN mode with MSIVs closed. Subsequent to establishing these restrictions on BWR-1s and some later BWR-4s (e.g., Peach Bottom), the reactor vendor (General Electric tested a BWR-4 configuration operating in the "bottled-up" condition (MSIV closed) and concluded that there are no unacceptable operating regions when a BWR-4 reactor was "bottled-up" at pressures well in excess of 600 psig (GE Report No. NEDO-20697, "Bottled-up Operation of a BWR", November 1974). These data were presented as part of a TS amendment application submitted by TVA for Browns Ferry, Unit 3 (a BWR-4) on January 23, 1984. The Commission's staff approved the TVA request to permit the bypassing of the scram systems which are the result of MSIV closure or main condenser low vacuum except in the RUN mode (August 27, 1984). A survey of other BWR-4s by the staff indicates that the above pressure restrictions are not present.

In summary, the existing scrams delineated in the Peach Bottom TSs are already bypassed (when the reactor mode switch is not in the RUN position) except when reactor pressure is greater than 600 psig, and test data referenced above indicate that there is no need for this pressure restriction on BWR-4s. Therefore, the Commission's staff finds that: (1) The probability of occurrence or the consequences of an accident would not be increased above those analyzed in the Final Safety Evaluation Report (FSAR) because the proposed removal of the pressure restrictions appear not to affect any safety system setting applicable to BWR-4s; (2) the possibility of a new or different kind of accident from those analyzed in the FSAR would not result from this change because technical data appear to support the conclusion that the above cited pressure restrictions are not needed and were never needed in BWR-4s; and (3) the margin of safety would not be significantly reduced because the removal of these pressure restrictions would not appear to result in any unacceptable operating conditions since BWRs can be controlled adequately in the "bottled-up" condition at pressure greater than 600 psig.

Accordingly, the Commission proposes to determine that the above proposed changes to the TSs involve no significant hazards considerations.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania.

Attorney for licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

NRC Branch Chief: John F. Stolz.

Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: August 7, 1985.

Brief description of amendment: The proposed amendment would add operability and surveillance requirements for the core exit thermocouples and the Reactor Vessel Level Instrumentation System to Tables 3.3–11 and 4.3–7, respectively.

Basis for proposed no significant hazards considerations determination: The Commission has provided guidance to the NRC staff concerning the application of the standards for determining whether a significant hazard exists by providing examples of amendments that are not likely to involve a significant hazards consideration (48 FR 14870). One such example is (ii), a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications. The proposed changes are in response to post-TMI requirements for Item II.F.2 of NUREG–0737, and appear to be consistent with the model technical specifications issued in NRC Generic Letter 83–37. As such, these changes are encompassed in example (ii) and constitute additional controls which will assist the operators in monitoring plant paramenters and in mitigating the consequences of an accident. Therefore, the staff proposes to determine that the application for amendment does not involve a significant hazards consideration.

Local Public Document Room location: Multnomah County Library, 801 S.W. 10th Avenue, Portland, Oregon.

Attorney for licensee: J.W. Durham, Senior Vice President, Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Branch Chief: Edward J. Butcher, Acting.

Power Authority of the State of New York, Docket No. 50–286, Indian Point Unit No. 3, Westchester County, New York

Date of amendment request: May 17, 1985 as supplemented August 9, 1985.

Description of amendment request: The changes to the Security Plan revise the table of the management organization to include certain title changes; remove and replace out-of-date document references with current references to the guard training and qualification plan; extend certain construction completion dates which fall due during an outage; to document changes to locations of the perimeter fence; clarify additional upgrades to the intrusion detection/CCTV system, and provide additional details on the special security measures at the condensate polisher building and intake structures.

Basis for proposed no significant hazards consideration determination: Our evaluation of change concludes that the licensee has provided equivalent or improved measure for all of the changes. Therefore, we conclude that a no significant hazards consideration finding is appropriate because (1) the proposed changes do not constitute a significant hazards consideration as defined by 10 CFR 50.92; (2) there is reasonable assurance that the health and safety of the public will not be endangered by the proposed changes; and (3) this action will not result in a condition which significantly alters the impact of the station on the environment, as described in the NRC Environmental Impact Statement.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Branch Chief: Steven A. Varga.

Public Service Electric and Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendments request: August 6, 1985.

Description of amendments request: The amendments request would change Section 4.6.1.3, Containment Air Lock Surveillance Requirements, to read:

a. *By pressurizing the volume between the airlock door gaskets to equal to or greater than 10.0 psig and checking for an extrapolated** seal leak rate equal to or less than 0.01 L_a.

1. After each opening, except when used for miltiple entries; then at least once per 72 hours.

2. After performing maintenance which could affect the airlock door gaskets sealing capability.

3. Prior to establishing containment integrity,

b. By conducting an overall air lock leakage test at design pressure (47.0 psig) and verifying the overall air leakage rate is within its limit:

1. At least once per six months#.

2. Prior to establishing containment integrity when maintenance that could affect the airlock sealing capability was performed and the maintenance affects components other than the door gaskets,* and

c. At least once per 6 months by verifying that only one door in each air lock can be opened at a time.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). This change corresponds to examples (i) and (ii) of the guidance provided in Federal Register 14870 by the Commission for Amendments That Are Considered Not Likely To Involve Significant Hazards Considerations. The change to Unit No. 1 constitutes an addition of a more stringent surveillance requirement [example (ii)] and the change conforms to example (i) for both Salem units in that it is an administrative change that achieves consistency between the Salem Technical Specifications and NUREG 0452, Standard Technical Specifications for Westinghouse Pressurized Water Reactors. Based on the above, the staff proposes to determine that the changes do not involve a significant hazards consideration.

Local Public Document Room location: Salem Free Library, 122 West Broadway, Salem, New Jersey 08709.

Attorney for licensee: Conner and Wetterhann, Suit 1050, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

NRC Branch Chief: Steven A. Varga.

Public Service Electric and Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendments request: August 6, 1985.

Description of amendments request: The proposed amendments would revise Surveillance Requirement 4.8.2.3.e for both Salem units. This change will remove the requirement for performing two separate tests of the batteries during certain plant shutdowns and allow the satisfactory performance of the more stringent of the two tests to satisfy the surveillance requirements for both the 18 month and the 60 month tests on those occasions where the 60 month test is performed.

Basis for proposed no significant hazards consideration determination: The Battery Capacity Discharge Test, the 60 month test, demonstrates the battery is still within acceptable limits relative to its original design. This test also demonstrates, unless a significant change to the DC system has been made during subsequent plant operation (and

that change would have been evaluated in terms of 10 CFR 50.59), that the battery can also satisfy the original design duty cycle, which is the purpose of the 18 month test.

Therefore, the proposed change in testing would have no appreciable impact on the operability of the batteries. There would be no significant increase in the probability or consequences of any accident previously analyzed, there would be no new accident created for which no analysis was performed, and no margin of safety would be significantly reduced. Therefore the staff proposes to determine that these changes involve no significant hazards consideration.

Local Public Document Room location: Salem Free Library, 122 West Broadway, Salem, New Jersey 08079.

Attorney for licensee: Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

NRC Branch Chief: Steven A. Varga.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: July 19, 1985.

Description of amendment request: The proposed amendment would revise the Ginna Technical Specifications to remove an inconsistency regarding the quality assurance (QA) record retention requirements. Section 6.10.1 indicates that a number of records of QA activities required by the Operational Quality Assurance Manual (OQAM) "shall be retained for at least 5 years." The inconsistency is that item 1 of Section 6.10.2 requires that records of QA activities required by the OQAM (i.e., these same records) "be retained for the duration of the Unit Operating License."

In light of the above, the NRC staff recommended that the words "not listed in Section 6.10.1 "be added to item 1 of Section 6.10.2 of the Ginna Technical Specifications. RG&E responded accordingly with the proposed amendment request.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples of actions not likely to involve a significant hazards consideration (48 FR 14870). One of the examples (i) relates to purely administrative changes to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correct errors, or change nomenclature. The proposed change would clarify a potential inconsistency in quality assurance records retention requirements.

Based on the above, since the proposed change involves actions that conform to example (i), the staff proposes to determine that this application for amendment involves no significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Harry H. Voigt, Esquire, LeBoeuf, Lamb, Leiby and MacRae, 1333 New Hampshire Avenue, N.W., Suite 1100, Washington, D.C. 20036.

NRC Branch Chief: John A. Zwolinski.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: April 25, 1985 and June 20, 1985.

Description of amendment request: These submittals revise and supplement the request for amendment dated May 31, 1984, as supplemented July 31 and August 31, 1984, which was noticed in the **Federal Register** on November 21, 1984 (49 FR 45963). The April 24, 1985 submittal revises the effective period for the license condition proposed in the May 31, 1984, submittal and revises the Living Schedule Plan to modify some of the methods for accommodating changes to establish schedules. The June 20, 1985, submittal provides additional information on the plan and procedures for preparation of the Living Schedule. The submittal does not change the license condition.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of the standards for determining whether a significant hazards consideration exists by providing examples of amendments that are considered not likely to involve significant hazards consideration (48 FR 14870). One of the examples of actions involving no significant hazards considerations relates to a purely administrative change to the Technical Specifications. Revising the effective period of the proposed license condition does not change our conclusion that the incorporation of a license condition requiring the use of a plan to provide for scheduling modifications and notification of scheduling changes is purely administrative. Modifying of the methods for accommodating changes to established schedules and providing additional information do not change the proposed license condition or the Technical Specifications.

Therefore, since the application for amendment as revised and supplemented still involves proposed changes that are similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that it involves no significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Branch Chief: John F. Stolz.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: August 12, 1985.

Brief description of amendment: The purpose of the proposed amendment request is to revise Technical Specification Figure 6.2–2 to reflect an organizational title change from Supervisor, Radwaste to Superintendent, Radwaste.

Basis for proposed no significant hazards consideration determination: On April 6, 1983, the NRC published guidance in the **Federal Register** (48 FR 14870) concerning examples of amendments that are not likely to involve significant hazards considerations. This amendment request is similar to the example of a purely administrative change to the technical specifications. The proposed organizational title change involves a minor revision to a previously submitted and approved Operations Radwaste Organization, does not involve a change in reporting relationships, does not involve a change in job responsibilities, and does not involve a change in minimum qualification requirements. Based on the above, the requested amendment does not involve a significant hazards consideration.

Local Public Document Room locations: Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevard, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: B. J. Youngblood.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: August 13, 1985.

Brief description of amendment: The purpose of the proposed amendment is to revise Technical Specification 4.7.10.1.2.c to allow the 18-month inspection of the fire pump diesel engines to be performed when the plant is at power, instead of only when the plant is shutdown.

Basis for proposed no significant hazards consideration determination: The Callaway Plant's fire suppression water system has three 1500 gpm pumps. Two are diesel-driven and one has an electric drive. Per Technical Specification 3.7.10.1 and the system design, only two fire suppression pumps are required to meet the Limiting Condition for Operation (LCO) for all modes of operation. Therefore, taking one diesel-driven pump out-of-service for inspection of the engine is consistent with the LCO in all modes of operation.

Appropriate action statements are provided in the event the LCO cannot be met. On April 6, 1983, the NRC published guidance in the **Federal Register** (48 FR 14870) concerning examples of amendments that are not likely to involve significant hazards considerations. This amendment request is similar to the example of a purely administrative change to the technical specifications; specifically a change to achieve consistency throughout the specifications. Based on the above, the requested amendment does not involve a significant hazards consideration.

Local Public Document Room locations: Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevard, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, N.W. Washington, D.C. 20036.

NRC Branch Chief: B.J. Youngblood.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: May 10, 1985.

Description of amendment request: This proposed change would revise the Vermont Yankee Technical Specifications (TS), Figures 3.6.1, 3.6.2 and 3.6.3 (Pages 111, 111a and 111b) and correspondent bases pages (Pages 117 and 118) to incorporate shifts in the Vermont Yankee reactor vessel pressure/temperature limit curves.

This change would adjust the curves of Figure 3.6.1 to compensate for the effects of increased neutron exposure to permit operation to a cumulative energy output of 1.790E8 MWh(t). This adjustment is necessary because the existing curves are limited to an energy output of 1.33E8 MWh(t), a value which is expected to be reached during May 1986. This change would also adjust the curves of Figures 3.6.1 and 3.6.2 to incorporate revised fast neutron fluence calculations.

A revision to Appendix G of 10 CFR Part 50, which became effective July 26, 1983, required that all reactor vessel pressure/temperature limit curves include additional safety margins for the closure flange region of the vessel. Subsequently, on February 7, 1984, the licensee submitted a change to reflect the additional Appendix G requirements as they applied to the licensee's May 26, 1983 submittal. On March 13, 1984, the staff issued Amendment No. 81 to the Vermont Yankee Facility Operating License. This amendment revised the Vermont Yankee TS in response to the licensee's letter of May 26, 1983 to accommodate shifts in transition temperature for the reactor pressure vessel materials that were induced by radiation effects, as required by 10 CFR Part 50, Appendix G. However, Amendment No. 81 did not incorporate the revised reactor vessel pressure/temperature curves submitted by letter dated February 7, 1984. The new curves submitted with this proposed change supersede those previously submitted.

The reactor vessel pressure/temperature curves submitted by letter dated February 7, 1984 have been revised based upon the results of the 10-Year Surveillance Capsule Report, prepared by Battelle Laboratories. Pursuant to 10 CFR Part 50, Appendix H, Reactor Vessel Material Surveillance Program Requirements, the licensee submitted Battelle Report BCL-585-84-3, "Final Report on Examination, Testing and Evaluation of Irradiated Pressure Vessel Surveillance Specimens From the Vermont Yankee Nuclear Power Station." This report documented the analysis performed on the surveillance specimen removed from the Vermont Yankee reactor vessel during the 1983 refueling outage.

Basis for proposed no significant hazards consideration determination:

The Commission has provided guidance concerning the application of standards for conclusions regarding "Significant Hazards Consideration" (48 FR 14870). The examples of actions involving no significant hazards consideration include: "A change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations" (example vii).

This change to the pressure/temperature limits is similar to the example cited above because 10 CFR Part 50, Appendices G and H require the updating of pressure/temperature limits based on the surveillance program. This proposed change will result in a change to facility operations clearly in keeping with the regulations.

Based on the above, the staff proposes to determine that the requested action would involve no significant hazards considerations.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for licensee: John A. Ritscher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Branch Chief: Domenic B. Vassallo.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendments request: August 6, 1985.

Description of amendments request: The proposed change would eliminate the NA-1&2 TS 6.5.3.(n) which is redundant to several other requirements listed in TS 6.5.3.1. TS 6.5.3.1 specifies various audits which the Quality Assurance (QA) Department is required to maintain on NA-1&2 station activities. Presently included within the scope of TS 6.5.3.1 are TS 6.5.3.1.(l) and 6.5.3.1.(m) which require the QA Department to audit the Offsite Dose Calculation Manual (ODCM) and Process Control Program (PCP) (including implementing procedures) at least every 24 months. Also, TS 6.5.3.1(n) specifies an audit of activities required by Regulatory Guide 1.21, Revision 1, June 1974, and Regulatory Guide 4.1, Revision 1, April 1975, at least once per 12 months.

Provisions contained in Regulatory Guide 1.21 (Revision 1-June 1974) and Regulatory Guide 4.1 (Revision 1-April 1975) were used by the licensee in developing the ODCM and PCP. Copies of the ODCM and PCP were included in the licensee's submittal for the NA-1&2 Radiological Effluent Technical Specifications (RETS) and were found to be acceptable. Changes to these documents require approval of the NA-1&2 Station Nuclear Safety and

Operating Committee (SNSOC) and submittal to the NRC in the Semiannual Radioactive Effluent Release Report for the period in which any change was made.

The Implementing procedure for the ODCM and the PCP contain QA Program requirements as specified in the licensee's Nuclear Power Station QA Program. The ODCM and PCP and associated implementing procedures are audited as required by TS 6.5.3.1(l) and (m) to ensure compliance with the licensee's Nuclear Power Station QA Manual.

The above referenced programs and procedures constitute the QA Program which implements the applicable provision of the Regulatory Guides referenced above. The proposed changes would increase the audit frequency of the ODCM and PCP (including implementing procedures) from 24 months to twelve months for TS 6.5.3.1(l) and (m) and delete the redundant audit requirement specified in TS 6.5.3.1(n).

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether a proposed action involves a significant hazards consideration by providing certain examples (See 48 FR 14870). Example (i) states: "A purely administrative change to technical specifications: For example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The proposed changes fall within the envelope of example (i) since the proposed change would eliminate a redundant requirement and provide greater consistency. Accordingly, the Commission proposes to determine this change involves no significant hazards consideration.

Local Public Document Room location: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Attorney for licensee: Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212.

NRC Branch Chief: Edward J. Butcher, Acting.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: August 9, 1985.

Description of amendment requests: This amendment would revise the surveillance requirements for safety-related shock suppressors (snubbers) by: (1) Deleting the snubber listings (Tables 4.17–1 and 4.17–2), (2) revising Specifications 4.17A and 4.17B to reduce the frequency of visual inspections, and (3) revising the Bases for 4.17 to include the definitions of accessible and inaccessible snubbers, and to establish snubber inspection groups based on design and application. The deletion of the snubber listings from the Technical Specifications (TS) is executed as a consideration of Generic Letter (GL) 84–13.

Basis for proposed no significant hazards consideration determination: Consistent with the Commission's criteria for determining whether a proposed amendment to an operating license involves no significant hazards consideration, 10 CFR 50.92 (48 FR 14870), the proposed revisions to the surveillance requirements of snubbers would not involve a significant increase in the probability or consequences of an accident previously evaluated; or create the possibility of a new or different kind of accident from any previously evaluated; or involve a significant reduction in margin of safety.

The Commission stated in GL 84–13 that a snubber listing within the TS was not necessary provided the TS are modified to specify which snubbers are required to be operable. Since this proposed change shifts the location of the snubber listing (Tables 4.17–1 and 4.17–2) from the TS to an administratively controlled listing and does not eliminate the requirement to inspect the snubbers, this proposal meets the three criteria stated above.

The proposed revisions to reduce the frequency of visual inspections, and the establishment of snubber inspection groups based on design, application, and accessibility may result in some increase to the probability or consequences of an accident previously evaluated or may reduce in some way a margin of safety. However, the magnitude of these effects would not be significant and would remain within all acceptable criteria. Thus, these proposals meet the three criteria stated above.

As such, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Branch Chief: Steven A. Varga.

Yankee Atomic Electric Company, Docket No. 50–29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: May 26, 1981, as revised January 23, 1984 and February 26, 1985.

Description of amendment request: Amendment 83 to the Yankee Nuclear Power Station Technical Specifications (TS) was issued July 1, 1985, and addressed a majority of the proposed changes requested in the May 16, 1981 and January 23, 1984 letters. A portion of the proposed changes were not covered by the initial notice in the **Federal Register** March 27, 1985 (50 FR 12168). These remaining proposed changes are (1) removal of one valve from the Emergency Core Cooling System (ECCS) surveillance requirements, (2) modification of the operability requirements for the high pressure carbon dioxide system to allow maintenance in Manhole No. 3, (3) changes to the Radioactive Effluent TS to require operability of certain systems only for conditions where flow exists in the systems, and (4) change the special sampling requirements for tritium radioactive gaseous waste.

Basis for proposed no significant hazards consideration determination:

(1) The requested TS change proposes to remove one of the charging header/loop #4 Hot Leg Injection Long-Term Recirculation valves from the TS. Current TS require the valve to be open with power to the valve operator removed. Modifications to the ECCS recirculation system have excluded the valve from the hot leg injection and the ECCS recirculation flow path. Thus, the valve is no longer required to be open to ensure hot leg ECCS injection or recirculation.

(2) The high pressure CO_2 system is currently required to be operable whenever equipment within the protected area is required to be operable. The requested TS change proposes to allow an exception to this requirement by allowing the automatic initiation of the high pressure CO_2 system to be disabled during maintenance activities, provided a continuous fire watch is established and the high pressure CO_2 system remains capable of being manually initiated. The protection afforded by the high pressure CO_2 system will, therefore, remain intact. The proposed change is in keeping with the current requirement to

have a continuous fire watch if the CO_2 system is inoperable.

(3) Radioactive effluent composite samplers and flow measurement devices are currently required to be operable at all times. The requested TS change proposes to require these systems to be operable only when there is flow in the applicable effluent pathway. Due to the design of these samplers and devices, they can only be checked and calibrated if flow exists. The proposed change makes the TS consistent with the physical capabilities of these systems.

(4) The requested TS change proposes to delete the requirement to sample gaseous effluent for tritium following a thermal power change. Since the tritium is not affected by thermal power changes, sampling for this isotope will reveal nothing about a change in effluents caused by the power change. Sampling will continue to be required monthly by grab sample, and is performed continuously in the stack sampling system.

Based on these discussions, the proposed changes would not: (1) Involve any significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The staff therefore proposes to determine that the requested actions would not involve a significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Branch Chief: John A. Zwolinski.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: August 8, 1985.

Description of amendment request: The amendment request would revise the Technical Specifications to add additional surveillance requirements for reactor trip breakers. The amendment would also add reference to maintenance of sampling and analysis equipment as part of the Post Accident Sampling Program and correct two typographical errors.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether an action involves a significant hazards consideration by providing certain examples (48 FR 14870). Two of the examples of actions not likely to involve significant hazards considerations are example (i), a purely administrative change to technical specifications and example (ii), a change that constitutes an additional limitation, restriction or control not presently in the technical specifications.

The proposed license amendment contains changes that fall into these two categories. Correction of two typographical errors and addition of a reference to maintenance of sampling and analysis equipment as part of the Post Accident Sampling Program are purely administrative changes. Surveillance requirements for reactor trip breakers constitute additional controls not presently in the technical specifications.

Based on the above, the staff proposes to determine that the amendments do not involve a significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Public Library, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

NRC Branch Chief: Edward J. Butcher, Acting.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Commonwealth Edison Company, Docket No. 50–373, La Salle County Station, Unit 1, La Salle County, Illinois

Date of amendment request: July 15, 1985 as supplemented by letters dated August 9, and 12, 1985.

Brief Description of amendment: The amendment would extend on a one-time-only basis for a limited number of the surveillance requirements in the La Salle Unit 1 Technical Specifications which must be performed every 18 months and which can only be done when the plant is shutdown. Since the La Salle Unit 1 has been through an extended startup program and has been shutdown for various reasons over the past months, the core has not been fully utilized. Therefore, the licensee rescheduled the refueling outage from September 22, 1985 to October 27, 1985 in order to operate the plant to extend the useful core life. Upon startup, this temporary extension will expire.

Date of publication of individual notice in **Federal Register:** August 21, 1985 (50 FR 33875).

Expiration date of individual notice: September 20, 1985.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit No. 1, Callaway County, Missouri

Date of amendment request: July 10, 1985 as supplemented by letter dated August 9, 1985.

Description of amendment request: The purpose of the proposed amendment is for an extension of the initial 18-month surveillance interval for manual initiations of the reactor trip system and engineered safety features actuation system (ESFAS), portions of diesel generator testing, ESFAS actuations on safety injection and loss of offsite power, containment spray actuation test-ing, phase A and B containment isolations, and class 1E battery service test.

Date of publication of individual notice in **Federal Register:** September 3, 1985 (50 FR 35626).

Expiration date of individual notice: October 3, 1985.

Local public document room locations: Fulton City Library, 709 Market Street, Fulton, Missouri 65251 and the Olin Library of Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the

Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Signficant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Boston Edison Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of application for amendment: April 15, 1983, as revised May 14, 1985.

Brief description of amendment: The amendment incorporates revised radiological effluent and environmental monitoring limiting conditions for operation, action statements, and surveillance requirements.

Date of issuance: August 30, 1985.

Effective date: March 1, 1986.

Amendment No.: 89.

Facility Operating License No. DPR–35. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 23, 1983 (48 FR 38390) and July 3, 1985 (50 FR 27503).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, Docket No. 50–325, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of application for amendment: April 30, 1985.

Brief description of amendment: The amendment changes the Technical Specifications (TS) to revise TS Table 3.6.3–1 to reflect modifications being made during the current refueling outage to provide a dedicated purge system for post-accident combustible gas control.

Date of issuance: September 10, 1985.

Effective date: September 10, 1985.

Amendment No.: 91.

Facility Operating License No. DPR–71. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 19, 1985 (50 FR 25483) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 10, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunwick County, North Carolina

Date of application for amendment: June 18, 1985.

Brief description of amendment: The amendments change the Technical Specifications to delete the requirements for radioactivity monitors on individual branches of the Reactor Building Component Cooling Water (Service Water) System.

Date of issuance: September 3, 1985.

Effective date: September 3, 1985.

Amendment Nos.: 90 and 115.

Facility Operating License Nos. DPR–71 and DPR–62. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 31, 1985 (50 FR 31066) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 3, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Carolina Power and Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: February 7, 1984 as supplemented by letters dated July 20, 1984 and January 31, 1985 which are superseded by letter dated May 2, 1985.

Brief description of amendment: The amendment revises Technical Specifications contained in Appendix A of the Facility Operating License and revises paragraphs 3B and 3G of the Facility Operating License in compliance with NUREG–0737 and guidance of Generic Letter 83–37.

Date of issuance: August 29, 1985.

Effective date: August 29, 1985.

Amendment No. 94.

Facility Operating License No. DPR–23. Amendment revised the Technical Specifications and Facility Operating License.

Date of initial notice in **Federal Register:** This amendment request was initially noticed on May 23, 1984 (49 FR 21826). The initial amendment request was supplemented and finally superseded by letter dated May 2, 1985. The May 2, 1985 request was renoticed on May 21, 1985 (50 FR 20972). The May 2, 1985 letter, however, was inadvertently identified as April 30, 1985 in 50 FR 20972.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 29, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29535.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: October 20, 1981.

Brief description of amendment: This amendment revises the technical specifications to delete the logic requirement of pressurizer low-level for a safety injection trip. Previously, pressurizer water level coincident with pressurizer pressure trip was necessary for initiation of safety injection, which is less stringent than the current condition for low pressurizer pressure trip actuation of safety injection. Deletion of the pressurizer level from actuation logic for safety injection maintains the more conservative logic requirements as

requested by IE Bulletin 79–06A (Revision 1).

Date of issuance: September 3, 1985.

Effective date: September 3, 1985.

Amendment No. 65.

Facility Operating License No. DPR–61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 26, 1983 (48 FR 49580). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 3, 1985.

No signficant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: May 2, 1983.

Description of amendment request: This amendment modifies the Techncial Specifications to: (1) Add post-accident instrumentation heading to Section 3 and 4 of the index; (2) add new limiting conditions for operation and surveillance requirements for post-accident instrumentation and, (3) add requirements for a special report if post-accident instrumentation is unavailable.

Date of issuance: September 3, 1985.

Effective date: September 3, 1985.

Amendment No. 66.

Facility Operating License No. DPR–61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 26, 1983 (48 FR 49581). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 3, 1985.

No signficant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: May 31, 1984.

Brief description of amendment request: This amendment modifies the Techncial Specifications to change the discharge pressure requirements for ECCS periodic flow testing to reflect true pump performance with allowance for ECCS pump degradation due to normal wear.

Date of issuance: September 3, 1985.

Effective date: September 3, 1985.

Amendment No. 67.

Facility Operating License No. DPR–61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 12, 1984 (48 FR 28484). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 3, 1985.

No signficant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: May 29, 1985 superseding the January 18, 1979 submittal.

Brief description of amendment: The amendment approves technical specifications for radiological effluent monitoring which incorporate the requirements of Appendix I to 10 CFR Part 50 into Appendix A, "Technical Specifications," and deletes Appendix B, "Environmental Technical Specifications."

Date of issuance: September 5, 1985.

Effective date: September 5, 1985.

Amendment No. 68.

Facility Operating License No. DPR–61. Amendment revised the Technical Specifications and the license.

Date of initial notice in **Federal Register:** July 17, 1985 (50 FR 29008). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 5, 1985.

No signficant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 124 Broad Street, Middletown, Connecticut 06457.

Consumers Power Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: March 29, 1985.

Brief description of amendment: The amendment deletes Technical Specifications 4.13 that required neutron noise monitoring to confirm that the modification made in 1974 to change the core barrel in place was adequate.

Date of issuance: September 5, 1985.

Effective date: September 5, 1985.

Amendment No. 91.

Provisional Operating License No. DPR–20. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1985 (50 FR 16002). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 5, 1985.

No signficant hazards consideration comments received: No.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Duquesne Light Company, Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendent: December 12, 1984 and revised by letter dated June 27, 1985.

Brief description of amendment: The amendment changes the Technical Specifications for Beaver Valley Unit No. 1 to impose requirements to protect the reactor coolant system from overpressure events under low temperature conditions. The revised technical specifications comply with the guidelines contained in Standard Review Plan Section 5.2.2, "Overpressure Protection" and Branch Technical Postition RSB 5–2, "Overpressurization Protection of PWRs While Operating At Low Temperatures".

Date of issuance: September 6, 1985.

Effective date: September 6, 1985.

Amendment No. 96.

Facility Operating License No. DPR–49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 27, 1985 (50 FR 7986) and July 31, 1985 (50 FR 31068).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 6, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50–321, and 50–366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of amendment request: October 1, 1984.

Brief description of amendment: The amendment revise the Environmental Techncial Specifications (Appendix B) to delete the requirement for aerial photography which has been employed to determine the effects of cooling tower drift on the surrounding environment.

Date of issuance: September 9, 1985.

Effective date: September 9, 1985.

Amendments Nos.: 115 and 56.

Facility Operating Licenses Nos. DPR–57 and NPF–5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 27, 1985 (50 FR 12143) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 9, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301, City Hall Drive, Baxley, Georgia.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2 Appling County, Georgia

Date of amendment request: March 11, 1985.

Brief description of amendments: The amendments revise the Technical Specifications to delete dates for completion of environmental qualification of equipment that have been superseded by the regulations (10 CFR 50.49).

Date of issuance: September 9, 1985.

Effective date: September 9, 1985.

Amendments Nos.: 114 and 54.

Facility Operating Licenses Nos. DPR–57 and NPF–5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 4, 1985 (50 FR 23548).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 9, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of amendment request: February 15, 1985, as supplemented May 14, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to change the pressure alarm setpoint for the hydraulic control units and the identification number for the automatic depressurizer timer.

Date of issuance: September 9, 1985.

Effective date: September 9, 1985.

Amendment No.: 55.

Facility Operating Licenses No. NPF–5. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 4, 1985 (50 FR 23548). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: March 5, 1985.

Brief description of amendment: This amendment incorporates editorial changes to GPU's submittal dated February 17, 1984, dealing with shock suppressors (snubbers) which was issued as Amendment 106 on March 21, 1985.

Date of issuance: September 9, 1985.

Effective date: September 9, 1985.

Amendments No.: 110.

Facility Operating License No. DPR–50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1985 (50 FR 16005). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Street, Harrisburg, Pennsylvania 17126.

Pennsylvania Power and Light Company Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: June 24, 1985.

Brief description of amendments: The NRC staff in NUREG 0737 Item III.D.1.1 required the establishment of the leakage reduction program outlined in Technical Specification 6.8.4a. This change to the Technical Specifications adds the Residual Heat Removal and Post Accident Sampling Systems to the listing of "Primary Coolant Source outside Containment" in Technical Specification 6.8.4a in order to complete the listing and accurately reflect that contained in the FSAR Section 18.1.69.

Date of issuance: September 16, 1985.

Effective date: Upon issuance.

Amendments Nos.: 49 and 17.

Facility Operating Licenses Nos. NPF–14 and NPF–2–2. Amendments revised the Technical Specifications.

Date of initial notices in **Federal Register:** July 31, 1985 (50 FR 31071).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 16, 1985.

No comments were received regarding the Commission's proposed no significant hazards consideration determination.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket No. 50–388, Susquehanna Stream Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: September 25, 1984 as amended on November 12, 1984.

Brief description of amendments: This amendment allows the licensee to physically modify the plant by adding two motor operated values to the Emergency Service Water (ESW) system return lines from the Unit 2 direct expanssion (DX) units. This physical plant modification is relfected in Technical Specification Table 3.8.4.2–1 which shows the addition of two motor operated valves in the ESW system.

Date of issuance: September 4, 1985.

Effective date: 90 days from the date of issuance.

Amendments No.: 15.

Facility Operating License No. NPF–22. Amendment revised the Technical Specifications.

Date of initial notices in **Federal Register:** December 31, 1984 (49 FR 50818). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated September 4, 1985.

No comments on the proposed determination were received.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Pennsylvania Power and Light Company, Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County Pennsylvania

Date of application for amendment: April 9, 1985.

Brief description of amendment: This amendment changes the Technical Specifications to permit Susquehanna SES refueling operations (fuel) loading and unloading) to take place without using Fuel Loading Chambers (FLCs). This change allows up to eight fuel assemblies to be loaded in order to attain the required Technical Speicification count rate on the source

range monitors (SRMs) without creating any safety concern.

During the Susquehanna SES Unit 1 end-of-cycle defueling, the FLCs, which were being used to provide neutorn monitoring, produced anomalous reading which were attributed to a detector saturation condition caused by the high gamma flux from the irradiated fuel. The same problem will be experienced during the upcoming Unit 2 refueling outage since PP&L plans to offload the entire core as they did during the Unit 1 refueling outage.

In order to assure a safe subcritical condition during the loading of the first eight fuel assemblies (2 assemblies per SRM) the licensee has performed calculations assuming maximum reactivity conditions (i.e., cold, clustered, uncontrolled, peak reactivity) which concluded that eight fuel assemblies, as analyzed, would remain subcritical. These calculations were bounding for all the fuel to be used during the Susquehanna SES Unit 2 Cycle 2.

During a typical core reloading, two irradiated fuel assemblies will be loaded around each SRM to produce greater than the minimum required count rate. The loading schemes will be selected to provide for continuous multiplying medium to be established between the required operable SRMs and the location of the core alteration to enhance the ability of the SRMs to respond to the loading of each fuel adjacent to the SRMs.

Date of issuance: September 4, 1985.
Effective Date: Upon issuance.
Amendment No.: 16.
Facility Operating License No. NPF-22: Amendment revised the Technical Specifications.
Dates of initial notices in Federal Register: July 17, 1985 (50 FR 29013). The Commission's related evalution of the amendment is contained in a Safety Evaluation dated September 4, 1985. The Commission has made a proposed no significant hazards consideration determination and has received no comments on such finding.
Local Public Document room Location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: September 20, 1984.
Brief description of amendment: The amendment revises the TSs to (1) change the name of the Reactor Building Stack, Auxiliary Building Stack, Reactor Building Service Area Vent and the Radwaste Service Area Vent Particulate Monitors to Particulate Samplers, (2) change the name of the Radwaste Service Area Iodine monitor to Iodine Sampler, and (3) delete the source check, instrument channel calibration and the channel check for these instruments.
Date of issuance: August 30, 1985.
Effective Date: August 30, 1985.
Amendment No.: 73.
Facility Operating License No. DPR-54: Amendment revised the Technical Specifications.
Dates of initial notices in Federal Register: April 23, 1985 (50 FR 16012) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 30, 1985
No significant hazards consideration comments received: No.
Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: October 29, 1984.
Brief description of amendment: The amendment revises the Technical Specifications defining the testing requirements for those pressurizer heaters powered from Class 1E power sources.
Date of issuance: September 9, 1985.
Effective date: September 9 1985.
Amendment No.: 74.
Facility Operating License No. DPR-54. Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: June 4, 1985 (50 FR 23550) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1985.
No significant hazards consideration comments received: No.
Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: October 29, 1984.
Brief description of amendments: The amendment revised the Technical Specifications defining fire hose acceptability and corrects certain inconsistencies in reporting requirements.
Date of issuance: September 9, 1985
Effective date: September 9, 1985
Amendment No: 75
Facility Operating License No. DPR-54. Amendment revised the Technical Specifications.
Date of initial notice in Federal Register: May 21, 1985 (50 FR 20988) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 1985
No significant hazards consideration comments received: No.
Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: May 21, 1985.
Brief description of amendments: The amendments change the Technical Specifications to delete references to three loop power operations.
Date of issuance: September 3, 1985.
Effective date: September 3, 1985.
Amendment Nos: 41 and 33.
Facility Operating License Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.
Date of initial notice in Federal Register: July 31, 1985 (50 FR 31072). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 3, 1985.
No significant hazards consideration comments received: No.
Local Public Document Room location: Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37401.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments. March 11, 1985.
Brief description of amendments: The amendments revised the NA-1&2 TS by reducing the boron concentration in the boron injection tank and concentrated boric acid system. The minimum required boric acid concentration for the boron injection tank and the boric acid system was revised from a range of 11.5% to 13.0% (by weight) to a range of 7.4% to 9.0% (by weight). In addition, the minimum boric acid tank temperature was revised from 145°F to 155°F. Finally, the minimum boric acid tank inventory for both NA-1&2 was increased from

4,200 gallons to 6,000 gallons. These changes will reduce maintenance problems and the associated personnel radiation exposure.

Date of issuance: September 9, 1985.

Effective date: Within 30 days from the date of issuance.

Amendment Nos: 68 and 54.

Facility Operating License Nos. NPF–4 and NPF–7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1985 (50 FR 15997 at 16019).

The Commission's related evaluation of the amendments is contained in a Safety Evaluated dated September 9, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: April 26, 1985.

Brief description of amendments: The amendments revised the Technical Specifications to remove the restrictions on movement of loads over the spent fuel pool following crane modification to meet the single failure criteria of NUREG–612. Surveillance requirements for the auxiliary building crane have also been revised to reflect crane upgrades to meet single failure criteria and to delete limit switch inspection criteria previously in the Technical Specifications. Limit switches to restrict movement over the spent fuel pool were removed following the NUREG–612 crane upgrades.

Date of issuance: September 3, 1985.

Effective date: September 3, 1985.

Amendment Nos: 96 and 100.

Facility Operating License Nos. DPR–24 and DPR–27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 31, 1985 (50 FR 31061 at 31077).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 3, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, a press release seeking public comment as to the proposed no significant hazards consideration determination was used, and the State was consulted by telephone. In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant, a shorter public comment period (less than 30 days) has been offered and the State consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the local public document room for the particular facility involved.

A copy items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By October 25, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be

made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Branch Chief*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Carolina Power & Light Company, Docket No. 50–324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of application for amendment: August 28, 1985, as supplemented August 29, 1985.

Brief description of amendment: The amendment changes the Technical Specifications to allow the isolation time for the inboard high pressure coolant injection (HPCI) steam line isolation value to be increased from 50 to 55 seconds on a temporary basis until the next reload, at which time the valve will be repacked.

Date of issuance: September 3, 1985.

Effective date: September 3, 1985.

Amendment Nos.: 116.

Facility Operating License No. DPR–62. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment and final determination are contained in a Safety Evaluation dated September 3, 1985.

Attorney for licensee: George F. Trowbridge, Esquire, Shaw Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–366, Edwin I. Hatch Nuclear Plant, Unit No. 2, Appling County, Georgia

Date of application request: August 30, 1985.

Brief description of amendment: It consists of changes to the Technical Specification setpoint for automatic transfer of the reactor core isolation cooling pump suction from the condensate storage tank (CST) to the suppression pool on low CST water level.

Date of issuance: September 11, 1985.

Effective date: September 11, 1985.

Amendment Nos.: 57.

Facility Operating License No. NPF–5 Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment and final determination of no significant hazards consideration are contained in a Safety Evaluation dated September 11, 1985.

Attorney for licensee: G. F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Indiana and Michigan Electric Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan.

Date of application for amendment: July 30, 1985, as supplemented by letters dated August 8, 1985 and two letters dated August 13, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to reflect revised setpoints in the channels for overpower delta T, overtemperature delta T, and loss of the flow trips and the reactor coolant temperature to protect against departure from nucleate boiling (DNB). The licensee submittals of August 8, 1985 and August 13, 1985 were made to clarify the language of the original submittals and provide specific values for the Technical Specifications and do not contain substantive changes.

Date of issuance: September 3, 1985.

Effective date: September 3, 1985.

Amendment No.: 91.

Facility Operating License No. DPR–58. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes. 50 FRN 31447 dated August 2, 1985.

Comments received: No.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 3, 1985.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036.

Local Public Document Room location: Maude Reston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Washington Public Power Supply System, Docket No. 50–397, WNP–2, Richland, Washington

Date of amendment request: July 17 and 19, 1985.

Brief description of amendment: This amendment revises the WNP–2 license by modifying the Technical Specifications to add a new Technical Specification Section 3/4.3.10, entitled Neutron Flux Monitoring Instrumentation and supporting licensing bases and modify Technical Specification Section 3/4.4.1 (Recirculation Loops) to permit operation at a higher power level than is currently authorized under Single Loop Operation (SLO). This amendment also corrects page number errors in the Technical Specifications Index.

Date of issuance: September 5, 1985.

Amendment No.: 16.

Effective date: July 19, 1985.

Facility Operating License No. NPF–21. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation is contained in a Safety Evaluation dated July 19, 1985.

Attorney for licensee: Bishop, Liberman, Cook, Purcell & Reynolds, 1200 Seventh Street NW, Washington, D.C. 20036.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington, 99352.

Dated at Bethesda, Maryland this 18th day of September 1985.

For the Nuclear Regulatory Commission

Edward J. Butcher,

Acting Chief, Operating Reactors Branch #3, Division of Licensing.

[FR Doc. 85–22841 Filed 9–24–85; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Statistical Policy Directive on Compilation, Release, and Evaluation of Principal Federal Economic Indicators

AGENCY: Office of Information and Regulatory Affairs, Office of Management and Budget.

ACTION: Notice of adoption of a revised Statistical Policy Directive Number 3. The existing directive is entitled "Compilation and Release of Principal Federal Economic Indicators.".

SUMMARY: The revised directive clarifies and strengthens Office of Management and Budget guidance to Federal agencies on the compilation and release of principal economic indicators. It includes more stringent procedures for announcing changes in data collection, analysis, and estimation methods, and it adds a new requirement for periodic evaluation of the performance of each economic indicator. The intent of these changes is to ensure that the Federal data and estimates used to assess current economic conditions meet high standards of reliability and usefulness and that agencies release them to the public in a fair and orderly manner. The changes reflect comments by officials of affected agencies on a draft of the revised directive.

BACKGROUND: Statistical Policy Directive Number 3 designates statistical series that provide timely measures of economic activity as Principal Economic Indicators and requires prompt release of these indicators. The intent of the directive is to preserve the time value of such information, strike a balance, between timeliness and accuracy, prevent early access to information that may affect financial and commodity markets, and preserve the distinction between the policy-neutral release of data by statistical agencies and their interpretation by policy officials.

Principal Changes

(1) *Strengthening the language on prompt release.* Economic indicators must be released promptly. Their value as aids for decisionmaking decreases as the time since the end of the reference period increases. Prompt release also reduces the chance of unauthorized, premature disclosure by minimizing the time between the completion of tabulations and the release to the public. The revised directive states that the time between the close of the reference period and the public release date for a series issued quarterly or more frequently should be at most 22 working days.

(2) *New procedures for announcing the schedule of publication.* The revised directive assigns agencies additional responsibilities for ensuring that users are informed about the release time and date of economic indicators. Each agency must publish a release schedule for each calendar year and individual publications must include an announcement of the next release date and time. These procedures should ensure that agencies annoucne release dates well in advance and that they routinely provide reminders of the next release date and time to interested users.

(3) *A new requirement thct agencies announce planned changes in data collection, analysis, or estimation methods at least three months before implementing the change.* This is to allow users of economic indicators to evaluate, comment upon, and prepare for significant changes in methods or procedures. Users of economic indicators often require a consistent time series for modeling and forecasting. If agencies make modifications, the users must have sufficient time to prepare for the changes and incorporate correction factors. This time period also gives users an opportunity to inform the agency of the effects of a new policy early enough in the planning process so that the agency can consider users' comments.

(4) *New guidance for prerelease access to indicators.* The revised directive clarifies the current provision for making material available to the President through the Chairman of the Council of Economic Advisers prior to public release. There are new rules for the granting of prerelease access to the press and to policy officials. Agencies must ensure that adequate steps (e.g., sequestering those granted access) are taken to prevent prerelease disclosure or use. So long as there is no risk of prerelease disclosure or use, prerelease access is permitted. Those granted prerelease access must be informed about the conditions surrounding the access.

(5) *New requirement for periodic evaluation of each indicator.* The last section of the directive requires the evaluation of economic indicators every 3 years. These series can have substantial effects upon market decisions and government policy. Periodic evaluation should help ensure that economic indicators continue to meet high standards of accuracy. The required evaluations include an analysis of the accuracy of the series, the effects

of revisions, and performance relative of established benchmarks. The agency that releases each economic indicator will also evaluate release procedures, prerelease security procedures, and the availability and accuracy of documentation. The Office of Management and Budget will review the evaluations to ensure that the releasing agency is adhering to all guidelines. The new requirements replace the informal and highly variable review practices currently in use with uniform evaluation principles and procedures.

The revised directive is published below.

Robert P. Bedell,

Acting Administrator for Information and Regulatory Affairs, Office of Management and Budget

Statistical Policy Directive No. 3

Compilation, Release, and Evaluation of Principal Federal Economic Indicators

Statistical series that are widely watched and heavily relied upon by government and the private sector as indicators of the current condition and direction of the economy must meet high standards of accuracy and reliability. Because such data series have significant commercial value, may affect the movement of commodity and financial markets, or may be taken as a measure of the impact of government policies, public release must be prompt and according to an established, publicly available schedule. The purpose of the procedures outlined in this directive is to assure that these data series meet specific accuracy, release, and accountability standards.

1. *Designation of Principal Indicators.* The Administrator for Information and Regulatory Affairs, Office of Management and Budget, will determine, after consultation with interested Federal agencies, the data series and estimates to be designated as principal Federal economic indicators and covered by this directive. The Administrator will review the designations annually.

2. *Prompt Release.* The interval between the period to which the data or estimates refer and the date when the data or estimates are released to the public shall be as short as practicable. Agencies should compile and release series that are issued quarterly or more frequently within 22 working days of the end of the reference period.

3. *Release Schedule.* The releasing agency is responsible for ensuring that the interested public is aware of the release time and date. The last report of each calendar year must contain the time and date of all reports in the upcoming year. In addition, each release will include an announcement of the time and date of the next release. The releasing agency shall provide a schedule of releases for the upcoming calendar year to the Statistical Policy Office, Office of Information and Regulatory Affairs, by December 15. Changes in the release schedule may occur only if special, unforeseen circumstances arise. The releasing agency must announce and fully explain any schedule changes as soon as it has determined they are unavoidable.

There should be one office in the agency that can provide the release schedule of all the agency's economic indicators. The name, address, and telephone number of this office should be readily available to the public. Agencies shall establish and maintain one or two times of day for the release of their principal economic indicators and shall only release indicators at such designated times.

4. *Announcement of Changes.* Agencies shall announce any planned change in data collection, analysis, or estimation methods that may affect the interpretation of a principal economic indicator as far in advance of the change as possible. The agency should include the announcement in a regular report of the economic indicator. When possible, a period of public comment should be provided between the announcement of an intended change and its implementation. At a minimum, for quarterly and monthly series, the agency shall announce the change at least three reports before the first report affected by the change. For weekly and annual series, the announcement should precede the first report affected by the change by at least three months. In the first report affected by the change, the agency should include a complete description of the change and its impact.

Agencies shall fully explain unforeseeable changes due to special circumstances as soon as they are known and in the first report affected by the change.

5. *Release Procedure.* The statistical agency that produces each principal economic indicator shall issue it in a press release or other printed report. The agency shall issue a press release where this will significantly speed up the dissemination of data to the public.

Each statistical agency shall be responsible for establishing procedures to assure that there is no premature release of information or data estimates during the time required for preparation of the public report. This includes the protection of public use data banks, which shall not receive any data or estimates until they are officially released. As soon as copies of materials for public release have been prepared, the agency shall physically secure them.

Except for the authorized distribution described in this section, agencies shall ensure that no information or data estimates are released before the official release time.

The agency will provide prerelease information to the President, through the Chairman of the Council of Economic Advisers, as soon as it is available. The agency may grant others prerelease access only under the following conditions:

(a) The agency head must establish whatever security arrangements are necessary and impose whatever conditions on the granting of access are necessary to ensure that there is no unauthorized dissemination or use.

(b) The agency head shall ensure that any person granted access has been fully informed of and agreed to these conditions.

(c) Any prerelease of information under an embargo shall not precede the official release time by more than 30 minutes.

(d) In all cases, prerelease access shall precede the official release time only to the extent necessary for an orderly review of the data.

All employees of the Executive Branch who receive prerelease distribution of information and data estimates as authorized above are responsible for assuring that there is no release prior to the official release time. Except for members of the staff of the agency issuing the principal economic indicator who have been designated by the agency head to provide technical explanations of the data, employees of the Executive Branch shall not comment publicly on the data until at least one hour after the official release time.

6. *Preliminary Estimates and Revisions.* Deciding when to release a principal economic indicator requires the balancing of accuracy and timeliness. Agencies should not withhold information needed to evaluate current economic conditions by imposing unnecessarily stringent accuracy requirements on preliminary estimates. However, agencies shall use the following guidelines when issuing and evaluating preliminary data and revisions:

(a) Agencies shall clearly identify figures as preliminary or revised.

(b) Agencies shall only release routine revisions of a principal economic indicator as part of the regular reporting schedule.

(c) If the difference between preliminary and final aggregate figures

is large relative to average period-to-period differences, the agency must either take steps to improve the accuracy of preliminary estimates or delay the release of estimates until a reliable estimate can be made.

(d) If preliminary estimates show signs of a consistent bias (for example, if revisions are consistently in the same direction), the agency shall take steps to correct this bias.

(e) Revisions occurring for routine reasons, such as benchmarking and updating of seasonality factors, shall be consolidated and released simultaneously.

(f) Revisions occurring for other than routine reasons shall be fully explained and shall be released as soon as corrections can be completed.

7. *Granting of Exceptions.* Prior to taking any action that may violate the provisions of this directive, the head of a releasing agency shall consult with the Administrator for Information and Regulatory Affairs. If the Administrator determines that the action is in violation of the provisions of this directive, the head of the releasing agency may apply for an exception. The Administrator may authorize exceptions to the provisions in sections 2, 3, 4, 5, and 6 of this Directive. Any agency requesting an exception must demonstrate to the satisfaction of the Administrator that the proposed exception is necessary and is consistent with the purposes of the Directive.

8. *Performance Evaluation.* Each agency that issues a principal Federal economic indicator shall submit a performance evaluation of that indicator to the Statistical Policy Office, Office of Information and Regulatory Affairs, every three years. A schedule for the performance evaluation of data series or estimates designated as principal Federal economic indicators will be prepared by the Statistical Policy Office. The evaluation shall address the following issues:

(a) the accuracy and reliability of the series, e.g., the magnitude and direction of all revisions, the performance of the series relative to established benchmarks, and the proportion and effect of nonresponses or responses received after the publication of preliminary estimates;

(b) the acuracy, completeness, and accessibility of documentation describing the methods used in compiling and revising the indicator;

(c) the agency's performance in meeting the designated release schedule and the prompt release objective of this directive;

(d) the agency's ability to avoid disclosure prior to the scheduled release time;

(e) any additional issues that the Administrator for Information and Regulatory Affairs specifies in writing to the agency at least 6 months in advance of the scheduled submission date.

The evaluation will be reviewed by the Administrator to determine whether the indicator is prepared and published in conformity with all OMB statistical policies, standards, and guidelines. A summary of the year's evaluations and their reviews will be included in the annual report to Congress required by section 3514 of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

[FR Doc. 84–22905 Filed 9–24–85; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–14729; No. 812–6082]

Application and Opportunity for Hearing; Scudder Variable Life Investment Fund, et al.

September 18, 1985.

Notice is hereby given that Scudder Variable Life Investment Fund ("Fund"), Security Equity Life Insurance Company (the "Company"), at Court House Square, P.O. Box 1625, Binghamton, New York, 13902, and Security Equity Variable Life Separate Account (the "Account"), a separate account of the Company, (hereinafter collectively called the "Applicants") filed an application on March 22, 1985, and an amendment thereto on September 12, 1985, requesting an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") exempting Applicants, separate accounts similarly situated to the Account, and life insurance companies similarly situated to the Company from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit the shares of the Fund to be sold (i) to the Account, other separate accounts of the Company hereafter established to invest in shares of the Fund, and the separate accounts of other life insurance companies ("participating insurance companies"), in connection with the offer and sale of variable annuity contracts ("VA contracts") and variable life insurance policies ("VLI policies") and (ii) to the Company and such other insurance companies in connection with providing initial capital to the Fund for investment. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the relevant provisions.

Applicants state that the Fund is an open-end diversified managment investment company and that Scudder, Steven & Clark will be the Fund's investment adviser. Applicant state that the Fund has been organized as as funding vehicle for variable insurance products to be issued by any insurance company that enters into an appropriate contractual arrangement in that connection. The Company is a New York stock life insurance company, and the Account was registered by the Company as a unit investment trust. With respect to scheduled premium VLI policies offered by the Account, Applicants state that premiums from the policies, after certain deductions, may be allocated to one or more subaccounts of the Account which, in turn, will invest in shares of the appropriate protfolio of the Fund. Applicants further state that in the future, the Company may wish to offer VA contracts or flexible premium VLI policies funded by the Fund. Applicants state that participating insurance companies will establish their own separate accounts an unit investment trusts in accordance with Rule 6c–3 and Rules 6e–2, 6e–3(T), or, when adopted, 6e–3 under the Act, which will fund variable insurance products, and these separate accounts will invest their assets in shares of the Funds.

Applicants state the Rule 6e–2(b)(15) provides, for a separate account registered as a unit investment trust, partial exemptions from sections 9(a), 13(a), 15(a), and 15(b) of the Act, but that these exemptions are available only where all of the assets of the unit investment trust are shares of managment investment companies which offer their shares exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company. Applicants state that this exclusivity requirement relates to the insurance product being offered (thereby prohibiting "mixed funding") and also relates to the entity that is offering the insurance product (thereby prohibiting "shared funding"). Rule 6e–3(T)(b)(15) also has the shared funding limitation. Applicants request exemptive relief with respect to both aspects of the exclusivity requirements; Applicants' proposal involves both mixed funding (it is proposed that the Fund be the

investment medium for VA contracts and VLI policies) and shared funding (the Fund proposes to sell its shares to both affiliated and unaffiliated insurers).

Applicants assert that granting the requested exemptive relief is in the public interest and that the Commission will not compromise the regulatory purposes of sections 9(a), 13(a), 15(a), or 15(b) of the Act or Rules 6e–2 or 6e–3(T) thereunder by granting the requested relief. Applicants assert that shared funding will benefit all contractowners of the variable insurance products by eliminating a sigificant portion of the costs of establishing and administering separate funds. Granting the requested relief, Applicants further assert, will stimulate broader industry competition by enabling a greater number of companies than otherwise to enter the field, and should result in an increased amount of assets available for investment by the Fund, which would benefit contractowners by promoting economies of scale.

With respect to the request for exemption from section 9(a), Applicants assert that they believe the partial exemption from the monitoring requirements in paragraph (b)(15) of Rules 6e–2 and 6e–3(T) is included because of a determination by the Commission that it is necessary to exclude disqualified persons only from the management or administration of the Fund, and that there is no regulatory purpose in applying the monitoring requirement derived from section 9(a) because the Account or other separate accounts invest in the Fund.

With respect to the request for exemption from sections 13(a), 15(a), and 15(b) in paragraph (b)(15) of Rules 6e–2 and 6e–3(T), Applicants submit that the rights of an insurance company or of a state insurance regulator to disregard policyowners' voting instructions are not inconsistent with the proposed mixed funding and shared funding. Applicants state that the Company will provide pass-through voting privileges and will require that pass-through voting privileges be provided by other participating insurance companies. Similarly, (and also relevant to the request to permit participating insurance companies to provide initial capital to the Fund) Applicants represent that shares held in any insurance company general or separate account and not attributable to policies will be voted in proportion to shares that are attributable to the policies.

Applicants state that the conditions in the application are designed to safeguard against any adverse effects that discrepancies between state regulatory decisions may produce, and that if a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected participating insurance company will be permitted to redeem its separate account's investment in the Fund. Further, Applicants state that if an insurer's veto action to disregard contractowners' voting instructions conflicts with the majority of all contractowners giving voting instructions, and if the insurer's judgment represents a minority position or would preclude a necessary vote, the insurer will, subject to regulatory requirements, be permitted to withdraw its separate accounts investment in the Fund.

Applicants state that the Fund's by-laws provide that the Fund will conform its investment objectives, policies, and restrictions to the insurance law requirements fo the state of New York, and that an insurer whose actions conflict with these requirements will be presumed to be the insurer creating the irreconcilable material conflict.

With respect to investment policies, Applicants state that the Fund will be not be managed to favor or disfavor a particular type of insurance policy or issuer, and that the Fund's portfolios will be managed in pursuit of their stated objectives and consistent with their stated policies.

The Applicants request that the Commission issue an exemptive order subject to the conditions which are stated in the application and are summarized as follows: (1) The trustees of the Fund, a majority of whom shall consist of persons who are not interested persons of the Fund or its investment adviser, will monitor the Fund for the existence of any material irreconcilable conflict among the interests of the contractowners of all separate accounts investing in the Fund. An irreconcilable material conflict may arise, *inter alia*, from: (a) An action by any state insurance regulatory authority; (b) a change in applicable insurance law or regulations; (c) a tax ruling or provision of the Internal Revenue Code or the regulations thereunder; (d) any other development relating to the tax treatment of insurers, contractowners or beneficiaries of VA contracts of VLI policies; (e) the manner in which the investments of any portfolio are being managed; (f) a difference in voting instructions given by VA contractowners, on the one hand, and VLI contractowners, on the other hand, or by the contractowners of different participating insurance companies; or (g) a decision by an insurer to override the voting instructions of contractowners. (2) Participating insurance companies will be responsible for reporting any potential or existing conflicts to the trustees. The Applicants will be responsible for assisting the trustees in carrying out their responsibilities under this condition 2 and condition 1, by providing the trustees with all information reasonably necessary for the trustees to consider the issues raised. This responsibility will also be a contractual obligation of all participating insurance companies under agreements governing participation in the Fund, and the Fund will request its investment adviser to report any such conflict which comes to its attention. (3) If it is determined by a majority of the trustees of the Fund or a majority of its disinterested trustees that a material irreconcilable conflict exists, the relevant insurance companies shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees), take whatever steps are necessary to eliminate the irreconcilable material conflict, including withdrawing the assets allocable to some or all of the separate accounts from the Fund or any portfolio and reinvesting such assets in a different investment medium, including another portfolio of the Fund, or offering to the affected contractowners the option of making such a change, or establishing a new funding medium including a new management investment company. The responsibility to take remedial action in the event of a determination by the trustees of the existence of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all insurers investing in the Fund under the terms of the agreements governing participation in the Fund. The trustees or the disinterested trustees shall determine whether or not any proposed action adequately remedies any irreconcilable material conflict. In the event of a determination of the existence of an irreconcilable material conflict, the trustees shall cause the Fund to take such action, such as the establishment of one or more additional portfolios, as they in their sole discretion determine to be in the interest of all shareholders and contractowners in view of all applicable factors, such as cost, feasibility, tax, regulatory and other considerations. In no event shall the Fund be required to establish a new funding medium for any variable contract or policy. No participating insurance company shall be required to establish a new funding medium for any variable contract or policy if an offer to do so has been declined by vote or a

majority of the contractowners materially adversely affected by the material irreconcilable conflict. A participating insurance company will recommend to its contractowners that they decline an offer to establish a new funding medium only if the company believes it is in the best interest of the contractowners. (4) The trustees determination of the existence of an irreconcilable material conflict and its implications promptly shall be communicated to all participating insurance companies by written notice. (5) The Company shall be responsible for assuring that its separate account participating in the Fund shall calculate voting privileges of contractowners in the manner described in the application, and the obligation of all other separate accounts investing in the Fund to calculate voting privileges in a manner substantially the same as the Account shall be a contractual obligation of all other participating insurance companies. (6) The Fund shall comply with the provisions of section 16(a) of the Act and any rules promulgated thereunder. (7) The Fund shall hold annual meetings of shareholders or, in the event its declaration of trust is amended to abolish the requirements of annual meetings, the Fund shall comply with the provisions of section 16(c) of the Act. (8) The Applicants will conform to the conditions of Rule 6e–2 if amended or 6e–3 if adopted if either contains provisions that conflict with the conditions of the order requested.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 8, 1985, at 5:30 p.m. do so by submitting a written request setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such requests should be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Managment, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–22874 Filed 9–24–85; 8:45 am]

BILLING CODE [illegible]

SMALL BUSINESS ADMINISTRATION

[License No. 03/03–0172]

Enterprise Equity Corp.; Surrender of License

Notice is hereby given that Enterprise Equity Corporation, 7787 Leesburg Pike, Falls Church, VA. 22043 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Enterprise Equity Corporation was licensed by the Small Business Administration on December 5, 1984.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on August 20, 1985, and accordingly, all rights, priveleges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: August 28, 1985.

John L. Werner,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 85–22958 Filed 9–24–85; 8:45 am]

BILLING CODE 8025–01–M

[Licence No. 04/04–5228]

Horn & Hardart Capital Corp.; Issuance of a License To Operate as Small Business Investment Company

On January 18, 1984, a notice was published in the **Federal Register** (48 FR 1957), stating that Horn & Hardart Capital Corporation (HHCC), located at 701 Southeast 6th Avenue, Del Ray Beach, Florida 33444, had filed an application with the Small Business Administration pursuant to 13 CFR 107.102(1984), for a license to operate as a small business investment company under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on February 2, 1984, and no significant comments were received.

Notice is hereby given that considering the application and other information, SBA has issued License No. 04/04–5228 to HHCC, effective September 11, 1985.

Dated: September 13, 1985.

John L. Werner,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 85–22956 Filed 9–24–85; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 04/04–5236]

Renaissance Capital Corp.; Application for License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1985)) for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended (the Act), (15 U.S.C. 661 *et. seq.*) and the Rules and Regulations promulgated thereunder.

Applicant: Renaissance Capital Corporation.

Address: 1350 North Omni International, Atlanta, Georgia 30303.

The proposed officers, directors and shareholders of the Applicant are as follows:

Name	Position	Percent of ownership
Thomas O. Cordy, 3770 Village Drive, Atlanta, GA 30331.	President, Director	None
Ernest R. Murphy, 495 Holderness Street, SW., Atlanta, GA 30310.	[illegible] Manager.	None
Walter R. Huntley, Jr., 1096 Lawton Place, Atlanta, GA 30310.	Secretary	None
John L. Clendenin, 5290 N. Powers Ferry Rd., NW., Atlanta, GA 30327.	Director	None.
Dr. Edward Irons, 3243 Kingsdale Drive, Atlanta, GA 30311.	Director	None
Richard Jackson, No. 5 Braemore Townhouses, Atlanta, GA 30310.	Director	None
Carl Ware, 1596 Willis Mill Rd., Atlanta, GA 30311.	Director	None
James K. Davis, 3389 Bobolink Circle, SW., Atlanta, GA 30311.	Director	None
William A. Clement, 428 Page Avenue, NE., Atlanta, GA 30307.	President of [illegible]	None
Dobbs Corporation, 401 West Peachtree, NE., Atlanta, GA 30308.	[illegible]	None.
Atlanta Economic Development Corporation, 1350 North Omni International,, Atlanta, GA 30303.		14.1
Coca Cola Company, 310 North Avenue, Atlanta, GA 30311.		10.0

The Applicant, a Georgia corporation, will begin operations with $1,000,000 in private capital and conduct its activities principally in the State of Georgia. As a small business investment company under section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the

Act, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the applicant under their management, including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of the Notice will be published in a newspaper of general circulation in the Atlanta, Georgia area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 19, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-22955 Filed 9-24-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 10/10-0178]

Seattle Trust Capital Corp.; Surrender of License

Notice is hereby given that Seattle Trust Capital Corporation, 804 Second Avenue, Seattle, Washington 98104 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Seattle Trust Capital Corporation was licensed by the Small Business Administration on May 10, 1982.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on August 14, 1985 and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: September 11, 1985.

John L. Werner,

Acting Deputy Associate Administrator for Investment.

[FR Doc. 85-22957 Filed 9-24-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2205]

Florida; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on September 12, 1985, I find that the Counties of Franklin, Levy, Manatee, and Pinellas constitute a disaster loan area because of damage from Hurricane Elena and flooding beginning on or about August 29, 1985. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on November 12, 1985, and for economic injury until June 12, 1986, at:

Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Springs St., SW., Suite 822, Atlanta, Georgia 30303

or other locally announced locations.

The interest rates are:

Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Business with credit available elsewhere	8.000
Business without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.00
Other (non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 220506 for physical damage and for economic injury the number is 633400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: September 16, 1985.

Alfred E. Judd,

Acting Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-22954 Filed 9-24-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2206]

Michigan; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on September 18, 1985, I find that the Counties of Alcona and Genesee and the adjacent Counties of Lapeer and Saginaw constitute a disaster loan area because of damage from severe flooding beginning on September 5, 1985. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on November 18, 1985, and for economic injury until June 18, 1986, at:

Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., SW., Suite 822, Atlanta, Georgia 30303

or other locally announced locations.

Homeowners with credit available elsewhere	[illegible]
Homeowners without credit available elsewhere	[illegible]
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	[illegible]
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	11.125

The number assigned to this disaster is 220606 for physical damage and for economic injury the number is 633500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: September 19, 1985.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-22959 Filed 9-24-85; 8:45 am]

BILLING CODE 8025-01-M

Interest Rates on Direct Business Loans

The Interest rate on section 7(a) Small Business Administration direct business loans (as amended by Pub. L. 97-35) and the SBA share of immediate participation loans is eleven and one half (11½) percent for the fiscal quarter beginning October 1, 1985.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 120.3(b)(2)(iii)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the October-December quarter of 1985.

this rate will be ten and three-eights (10⅜) percent.

Edwin T. Holloway,

Associate Administrator for Finance and Investment.

[FR Doc. 85-22960 Filed 9-24-85; 8:45 am]

BILLING CODE 8025-01-M

Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit the maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "FFB Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged by the Federal Financing Bank on ten-year debentures sold by Licensees to the Bank. Notice of this rate is generally published each month.

Accordingly, Licensees are hereby notified that effective *October 1, 1985,* and until further notice, the FFB Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 10.495% per annum.

13 CFR 107.302 does not supersede or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to Section 308(i) of the Small Business Investment Act, as amended by Section 524 of Pub. L. 96-221, March 31, 1980 (94 Stat. 161), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

Dated: September 19, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-22953 Filed 9-24-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) Air Traffic Procedures Advisory Committee (ATPAC) to be held from October 21, at 9 a.m., through October 25, 1985, at 4 p.m., at FAA Headquarters, 800 Independence Avenue, SW., Washington, D.C.

The agenda for this meeting is as follows: A continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public, but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify, not later then October 18, 1985, Mr. Walter H. Mitchell, Executive Director, ATPAC, Air Traffic, Acting ATO-300, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone (202) 426-3725. Information may be obtained from the same source.

The next quarterly meeting of the FAA ATPAC is planned to be held from January 14 through January 17, 1985, in San Antonio, Texas.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C., on September 17, 1985.

Walter H. Mitchell,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 85-22829 Filed 9-24-85; 8:45 am]

BILLING CODE 4910-13-M

Flight Service Station at Des Moines, IA; Closure

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Flight Service Station at Des Moines, Iowa; Closure.

SUMMARY: Notice is herey given that on September 30, 1985, the Flight Service Station at Des Moines, Iowa, will be closed. Thereafter services to the general aviation public at Des Moines will be provided by the Fort Dodge, Iowa, Flight Service Station. This information will be reflected in the next issue of the FAA Organizational Statement.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Kansas City, Missouri, on September 12, 1985.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 85-22832 Filed 9-24-85; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Maury and Williamson Counties, TN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Maury and Williamson Counties, Tennessee.

FOR FURTHER INFORMATION CONTACT: Mr. Wright B. Aldridge, Jr., Community Planner, Federal Highway Administration, Federal Building, U.S. Courthouse, 801 Broadway—Suite A-926, Nashville, Tennessee 37203, telephone (615) 251-7106.

SUPPLEMENTAL INFORMATION: The FHWA in cooperation with the Tennessee Department of Transportation will prepare an environmental impact statement (EIS) on a proposal to construct a four-lane access control highway on new location from State Route 6 (U.S. 31) in the vicinity of the Saturn Plant Site to Interstate Route 65 Maury and Williamson Counties, Tennessee. The proposed improvement would have a length of approximately 4.4 miles. Improvements to the corridor are considered necessary to provide for the projected traffic demands.

Options under consideration include (1) taking no action; (2) postponement; (3) reduced facility design; and (4) constructing a four-lane roadway on new location.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies at a future date. A public hearing will be held at a future date. Public notice will be given of the time and place of this hearing. The draft EIS will be available for public and agency review and comment. These activities are providing input regarding the scope of the EIS.

To insure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and suggestions concerning

the proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program)

Issued on: September 17, 1985.

Wright B. Aldridge, Jr.,

Community Planner, Tennessee Division.

[FR Doc. 85-22809 Filed 9-24-85; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 29-85]

Treasury Notes, Series Z-1987

Washington, September 19, 1985.

The Secretary announced on September 18, 1985, that the interest rate on the notes designated Series Z-1987, described in Department Circular—Public Debt Series—No. 29-85 dated September 12, 1985, will be 9 percent. Interest on the notes will be payable at the rate of 9 percent per annum.

Gerald Murphy,

Acting Fiscal Assistant Secretary

[FR Doc. 85-22897 Filed 9-24-85; 8:45 am]

BILLING CODE 4810-40-M

Customs Service

Application for Recordation of Trade Name: "Cryomec, Inc."

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "CRYOMEC, INC." used by Cryomec, Inc., a corporation organized under the laws of the State of California, located at 1265 North Kraemer Boulevard, Anaheim, California 92806.

The application states that the trade name is used in connection with the following goods, manufactured in the United States: pumps, particularly reciprocating and centrifugal pumps for cryogenic liquids, cryogenic vaporizers, and conversion systems for converting cryogenic liquids to a gas, and related equipment, including heat exchangers.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

DATE: Comments must be received on or before November 25, 1985.

ADDRESS: Written comments should be addressed to the Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue NW., Room 2417, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5765).

Dated: September 18, 1985.

Stephen Pinter,

Acting Director, Entry Procedures and Penalties Division.

[FR Doc. 85-22898 Filed 9-24-85; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Bureau of Educational and Cultural Affairs; Grant Program; Winter Institute in American Studies

The United States Information Agency (USIA) plans to sponsor a six-week Winter Institute in American Studies for twenty-five to thirty secondary school educators of English, History, and Social Studies. Participants will come from Latin American and African countries. USIA has invited proposals from selected institutions which have an acknowledged reputation in American Studies and special expertise in handling cross-cultural programs.

Other interested academic institutions should request detailed information from: Bureau of Educational and Cultural Affairs, (ATTN. Division for the Study of the U.S., Office of Academic Programs), United States Information Agency, 301 4th Street SW, Washington, DC 20547, or call (202) 485-2553.

Proposal deadline is October 25 1985

Dated: September 19, 1985.

Jane M. Alden,

Acting Chief, Division for the Study of the U.S

[FR Doc. 85-22886 Filed 9-24-85; 8:45 am]

BILLING CODE 8230-01-M

President's International Youth Exchange Initiative; Invitation for Proposals

The United States Information Agency (USIA) announces a program of selective assistance through limited grant support to private not-for-profit organizations for programs that promote an expansion of international youth exchanges, enhance the climate for youth exchanges in the U.S., and improve the quality of exchange activities. This program has been approved by OMB Clearance No. 3116-0159 (expiration date December 31, 1985).

USIA will entertain proposals for single-country and multi-country projects involving the United States and the following countries: Argentina, Austria, Bolivia, Botswana, Cameroon, Canada, Colombia, Costa Rica, Cyprus, Dominican Republic, Egypt, France, Germany (FRG), Greece, Honduras, India, Israel, Italy, Ivory Coast, Jamaica, Japan, Jordan, Kenya, Republic of Korea, Mexico, Nigeria, Panama, Senegal, Sierra Leone, Sudan, Tanzania, Thailand, Togo, Turkey, United Kingdom, Uruguay, Yugoslavia, and Zimbabwe. Some specific requirements and/or prohibitions are listed below for several of these countries. Organizations interested in exchanges with countries not listed in this announcement should inquire with the Youth Exchange Staff at the address listed at the end of this announcement.

Grant funding will generally be for 12-18 month periods. A few programs will be authorized for two or three year periods, with funding approved on an annual basis, subject to a review of progress towards clearly defined long-term goals and the availability of funds. Organizations are forewarned that competition for grants is expected to be intense.

Eligibility

Academic, cultural, not-for-profit youth exchange and youth-serving organizations are eligible to apply. General guidelines for the Bureau of Educational and Cultural Affairs require that grants to organizations that have worked in the youth exchange field for less than four years may not exceed $60,000. Organizations must be capable of meeting the "Criteria for Teenager Exchange Visitor Programs" or "Criteria for Practical Trainees," which may be found in law libraries in the Code of Federal Regulations under 22 CFR 514, recently amended by notice published in the Federal Register (see 50 FR 31709, August 6, 1985) or may be obtained by

writing to the General Counsel's Office, USIA, Washington DC 20547. Organizations whose assets are limited in comparison to the amount of the grant requested may be required to post a performance bond.

Program Content

All proposals must justify projects in terms of the desirable outcome of the grant. An organization should be prepared to describe its current situation, its goal, and the steps that are necessary to accomplish this goal. Objectives should be quantified wherever possible (e.g., to increase the number of exchange participants from 50 to 100 by June 1987). The justification must include reasons why the organization's funds are insufficient to accomplish the objectives without recourse to public funds.

Priority will be given to projects that conform to the following models:

A *Long-Term Academic Homestay.* Generally one academic year or semester programs for 15–19 year-old secondary school students or recent graduates. Program includes: homestay for the duration of the experience, attendance at a secondary school, community activities, orientation, and language study as necessary.

B. *School-to-School Exchanges.* Generally 3–4 week programs for 15–18 year-old secondary school students. This is primarily a school linkage model in which a group of students from the same school or classroom, accompanied by a teacher, participate in an exchange with a partnered school abroad. Program features include study of the partner country before departure, homestays, study and community activities during the exchange.

C. Thematic Exchanges. Generally 4–8 week group programs for students aged 15–25. Program features include: study of a country, set of revelvant issues, or common focus (e.g., the arts, journalism, the environment) prior to and during the exchange with a similar counterpart organization in the host country, under guidance of a group leader or chaperone: homestays for most or all of the visit; and orientations.

D. *Work Projects.* Programs for students and young professionals aged 15–25 for minimum 4-week duration but preferably 6–12 weeks. Program features include: experiential learning activities, including camp counseling, historical preservation or restoration, public works, conservation, and volunteer community service; may be done as a group, involving interaction with a similar-aged group of host country nationals, or as individual projects; campstays as appropriate, but homestays where possible are preferred; and pre-departure orientations and post-return debriefings.

E. *Non-Academic Homestays.* Programs for students, young workers, farm youth, et al., aged 15–25, of a minimum 4-weeks duration, but preferably 6–12 weeks. Program features include: homestay for the full period of the visit; community activities; group activities, such as scouting, recreation, service projects; individual activities, such as volunteer farm work; pre-departure orientations and post-return debriefings.

F. Internships. Programs of 6 weeks to 18 months for students, young professionals and young workers, aged 15–25. Program features include: individual homestays for the duration of the program where possible; work in a private enterprise or public agency, usually in the area of one's career choice or vocation; may be coupled with study; community activities; orientations. Grant funding is usually restricted to partial travel and partial administrative costs; tuitions and stipends are not funded. Certain types of programs may require use of the J–1 "trainee" visa, for which prior designation by USIA is a prerequisite.

Specific Country Projects

The following are specific country concerns that should be considered in preparing proposals for USIA in this competition:

Germany—Proposals for partial funding of youth exchanges between American and German organizations for projects to be initiated between May and December 1986 are invited in the following categories: (1) expansion of high school classroom-to-classroom exchanges, including development of appropriate materials on American society and U.S. foreign policy: (2) non-academic one-community homestay or work project exchanges; (3) volunteer internships or on-the-job training, 6 weeks or longer in a variety of fields. For details please write or call the Youth Exchange Staff at the address listed at the end of this announcement. American organizations should have identified German partners.

United Kingdom—No proposals for long-term academic exchanges with the U.K. will be accepted. Priority is given to short-term exchanges involving community groups and organizations or exchanges with a strong thematic focus, such as theater.

Israel—Priority will be given to projects which respond to those on the list jointly approved by the US and Israeli Governments. Please write to the Youth Exchange Staff at the address given at the end of this announcement for further information.

France—As in the case of Israel, priority will be given to projects on the jointly approved bilateral list. Contact USIA for details.

Sierra Leone—Priority is given to short-term projects, 6–8 weeks in duration, involving groups of 6–8 participants from Sierra Leone. Projects need not be reciprocal. Thematic areas include: community service and volunteerism, the American farm, and American society—the arts.

Italy—Projects should include a provision for some language training for the US participants.

India—USIA has a special interest in projects in the area of the environment.

Special Projects

USIA has a special interest in the following special projects:

1.. Bicentennial of the U.S. Constitution—USIA is interested in proposals for youth exchange programs that fit the descriptions of program models listed above, with special emphasis on the "Thematic" model, and focus on the U.S. Constitution, constitutionalism, and other related fields, in connection with the celebration of the Bicentennial of the Constitution. Exchanges must be for a minimum of 3 weeks. Participation in a conference is possible only as part of a program that meets other USIA requirements for youth exchanges.

2. Community Coalitions—USIA continues to be interested in encouraging cooperation at the local level among youth exchange organizations, educational and government authorities, schools, civic groups, and concerned citizens. A special fund will be established in 1986 for small grants in support of these efforts. Interested community coalitions or exchange networks may write to the Youth Exchange Staff for further information on this fund. Additionally some limited grant support will be available through this competition for exchange projects and support activities conducted by coalitions.

3. Projects that benefit the field of youth exchange in general—USIA support will be available for a limited number of projects that enhance the climate for youth exchanges in American secondary schools through information programs aimed at education officials, school administrators and faculty. Proposals for pilot projects in the areas of civic education and global issues for American youth preparing for an exchange are welcome.

4. Selected language programs—USIA is interested in proposals for pilot projects to enhance orientation programs to increase the competency of American youth participating in exchanges with Arabic and Japanese-speaking countries. Priority will be given to long-term academic projects for 15–19 year-olds; the minimum stay will be six weeks. Funding will be available to provide financial incentives for American youth (generally travel subsidies), intensive language training, and special cultural orientation. This program is not designed to support area studies or semester/year abroad programs of American colleges and universities.

5. Teacher exchanges—Proposals for a limited number of pilot projects involving exchanges of young teachers or student teachers will be entertained. Volunteer internship model exchanges area of special interest.

Review Criteria

Proposals will be judged on the extent to which projects address the following criteria:

Justification—As outlined above, reviewers look for realistic, quantifiable goals, clear directions, and the feasibility that the grant will contribute to growth which the organization can sustain after federal funding is terminated. The need for public funds to achieve the objectives must also be adequately justified.

Networking—Certain projects involve matching the organizational experience and capability of an exchange group with the resources of a youth-serving organization or network with facilities, youth memberships, community access, etc. These proposals will be judged on their potential for forging these relationships and generating viable exchange activities.

Cost-sharing—Financial and in-kind support from participating organizations, schools, families, communities, counterpart foreign organizations and government agencies.

Efforts to mainstream disabled youth into exchange activities.

Efforts to assist economically disadvantaged youth and increase the ethnic diversity of American participants in exchanges.

Challenge grants—This involves the use of a block grant to an organization, which in turn makes small grants available to its constituent member groups, with the proviso that matching funds be raised. Individual challenge grant projects must conform to criteria listed in this announcement.

Reciprocity—The exchanges should be two-way and as balanced (inbound/outbound numbers) as possible.

Cost-effectiveness—Greatest return for each federal dollar invested; reasonable per capita cost in comparison with other proposals submitted.

Quality—Proposals are judged in terms of the program features which enhance the educational value of the exchange and provide for extensive interaction between exchange visitors and their host communities (e.g., homestays, joint work projects).

Organizational competency—Ability of the organization to demonstrate adequate resources to carry out a quality exchange.

Self-management—The organization should demonstrate the ability to administer the project without extensive subcontracting to other non-profit or profit-making organizations. Where such arrangements exist, an organization should provide a copy of the service agreement.

Length of stay—A minimum of 3 weeks is required for any exchange experience and projects that provide for longer stays are frequently judged as more competitive than shorter exchanges.

Benefit to the general field of youth exchange—Projects designed to enhance the climate for youth exchange and/or promote quality improvements will be judged in terms of their value to the exchange field as a whole.

Geographic distribution of exchanges is a key consideration in the award of grant funds.

The following are ineligible for support under this competition:

—Sports exchanges.

—Research studies.

—Study for post-secondary academic credit or degree programs.

—Travel/observation tours and hotel-hopping delegations.

—School tuitions.

—Stipends to host families.

—Performing arts tours.

—Projects designed to assist organizations start an affiliate in a foreign country. Organizations should demonstrate that such a base has been established before seeking grant funds to assist in its expansion.

—Projects designed to promote or advertise the general program of an organization.

—Any project which is designed to lobby elected officials, promote politically partisan views, or whose aim is to promote religious activities.

—Conferences, except as part of a program that meets other criteria listed above (i.e., length of stay, project model).

In the absence of special circumstances, the following should be understood to be of low priority for purposes of this competition:

—Full scholarship support (i.e., grant funding for all costs of a program).

—Support for exchange activities already being carried out.

U.S. participants in all grant-funded exchange projects must be American citizens or permanent residents, as a matter of policy.

Proposal Format

Interested organizations should write or call the Youth Exchange Staff for guidelines which specify what should be included in the narrative portion of the proposal, how budgets should be designed, and what attachments are required. Organizations should indicate the type of visa that will be used to bring foreign exchange students to the U.S. The proposal should include a statement on the type of visa that will be used to bring foreign exchange students to the U.S. if the project is funded.

Review Process

Proposals (original and 10 copies) should be received in USIA no later than November 15, 1985. Early submission of proposals is encouraged to facilitate early review. Following an initial screening for eligibility and completeness, proposals will be reviewed by a USIA panel. Final decisions are made by the Associate Director for Educational and Cultural Affairs. Funding will be available as soon as the review process is completed.

For further information on this program contact the International Youth Exchange Staff, Bureau of Educational and Cultural Affairs (E/YX), U.S. Information Agency, Washington, DC 20547 or call 202–485–7299.

Dated: September 18, 1985.

Ronald L. Trowbridge,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 85–22886 Filed 9–24–85; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 188
Wednesday, September 25, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION

September 25, 1985.

The Federal Communications Commission will hold on Open Meeting on the subjects listed below on Friday, October 4, 1985, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

General—1—Title: Regulatory Classifications of Subscription Television and Direct Broadcast Satellite Services. SUMMARY:[1] The Commission will consider whether to issue a Notice of Proposed Rulmaking to inquire into the proper criteria to be applied when determining the regulatory classification of subscription services such as STV and DBS.

Common Carrier—1—Title: Report and Order in CC Docket 85-25, Amendment of Part 22 of the Commission's rules to require that all Cellular Customer Equipment be equipped with a means for subscriber selection of operation on frequency Block A or Block B or that wireline cellular carriers be prohibited from selling or leasing equipment without such a capability.

Common Carrier—2—Title: Guidelines for Dominant Carriers' MTS Rates and Rate Structure Plans—CC Docket No. 84-1235. Summary: The Commission will consider proposed guidelines for dominant carriers' alternative MTS rate and rate structure proposals.

Mass Media—1—Title: Application to transfer control of Golden West Television, Inc., licensee of station KTLA-TV, Los Angeles, California, from Golden West Associates, L.P., *et al.*, to Tribune Broadcasting Company (BTCCT-850607KG). Summary: The Commission will consider Tribune's application to acquire control of KTLA-TV. Tribune presently owns the Daily News, published in Van Nuys, California, and cable systems serving communities outside of Los Angeles. Since the provisions of § 73.3555(c)(3) and 76.501(a)(2) of the Commission's Rules and section 613(a) of the Communications Act prohibit common ownership of a television station with a daily newspaper and/or a cable system, Tribune requests a period of 18 months to divest itself of the newspaper and cable systems. The Commission will also consider petition to deny filed by Sue Gottfried, the California Association of the Physically Handicapped, Inc., Camellia City Telecasters, Inc., the City of Lakewood, California, and Ferris E. and Irene V. Traylor.

Mass Media—2—Title: Amendment of Part 76, Subpart G of the Commission's Rules and Regulations Concerning the Fairness Doctrine and Political Cablecasting Requirements for Cable Television Systems. Summary: The Commission will address revision or elimination or rules which make cable television system operators subject to certain obligations relative to political telecasts and the fairness doctrine obligations.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254-7674.

Issued: September 23, 1985.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-23026 Filed 9-23-85; 3:46 pm]

BILLING CODE 6712-01-M

[1] The summaries listed in this notice are intended for the use of the public attending open Commission meetings. Information not summarized may also be considered at such meetings. Consequently these summaries should not be interpreted to limit the Commission's authority to consider any relevant information.

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, September 30, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item by moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:The Permittee filed the request on August 8, 1985.

Application for consent to transfer assets in consideration of the assumption of deposit liabilities:

The South Carolina National Bank, Charleston, South Carolina, for consent to transfer certain assets to First Federal Savings and Loan Association of South Carolina, Greenville, South Carolina, a non-FDIC-insured institution, in consideration of the assumption of the liability to pay deposits made in the Columbia and North Charleston Branches of The South Carolina National Bank and the Columbia and Summerville Branches of the former First National Bank of South Carolina (now merged with The South Carolina National Bank).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: September 23, 1985.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 85–23021 Filed 9–23–85; 3:40 pm]
BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. Monday, September 30, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for consent to purchase assets and assume liabilities and establish two branches:

South Umpqua State Bank, Roseburg, Oregon, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay certain deposits made in the Roseburg, Oregon, office of Evergreen federal Savings and Loan Association, Grants Pass, Oregon, and the Sutherlin, Oregon, office of Home Federal Savings and Loan Association, Albany, Oregon, both non-FDIC-insured institutions, and for consent to establish those two offices as branches of Sourt Umpqua State Bank.

Application for consent to purchase assets and assume liabilities and establish two branches:

Horicon State bank, Horicon, Wisconsin, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in Commercial State Bank, Iron Ridge, Wisconsin, and for consent to establish the two offices of Commercial State Bank as branches of the resultant bank.

Application for consent to transfer assets in consideration of the assumption of deposit liabilities:

Heritage bank and Trust Company, Crest Hill, Illinois, an insured State nonmember bank, for consent to transfer certain assets to Joliet Federal Savings and Loan Association, Joliet, Illinois, a non-FDIC-insured institution, in consideration of the assumption of the liability to pay deposits made in Heritage bank and Trust Company.

Application for consent to relocate main office:

The First Bank of Wakenney, Wakenney, Kansas, for consent to relocate its main office from 229 Main Street to 137 Main Street, within Wakenney, Kansas.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,330—Costa Mesa Subregional Office, Costa Mesa, California

Memorandum and resolution re: Proposed amendments to Parts 303, 309, and 310 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and notices of Acquisition of Contrtol," "Disclosure of Information," and "Safeguarding Personal Information in Federal Deposit Insurance Corporation Records," respectively, which would (1) require persons who have filed notices with the Corporation under the Change in Bank Control Act of 1978 ("CBCA") (12 U.S.C. 1817(j)), to publish an announcement of the notice's acceptance in a newspaper, except that in the case of a public tender offer the announcement may be delayed until a tender offer commences; (2) make certain information regarding CBCA notices accepted by the Corporation available to the public upon request, except in certain public tender offer situations; and (3) amend a "routine use" of information contained in the Corporation's system of records concerning consumated changes in bank control (Changes in Bank Control Ownership Records).

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the Sixth floor of the FDIC Building located at 550—17th Street, NW., Wasington, D.C.

Request for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: September 23, 1985.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson
Executive Secretary
[FR Doc. 85–23022 Filed 9–23–85; 3:40 p.m.]
BILLING CODE 6714-01-M

4

FEDERAL RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: 12:00 Noon, Monday, September 30, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed policy statements regarding confirmation and relocation expenses of Federal Reserve Board nominees.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 20, 1985.
James McAfee,
Associate Secretary of the Board.
[FR Doc. 85–22934 Filed 9–20–85; 4:41 pm]
BILLING CODE 6210-01-M

5

POSTAL SERVICE

(Board of Governors)

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, October 1, 1985, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW, Washington, DC. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meetings should be addressed to the

Secretary of the Board, David F. Harris, at (202) 245–3734.

AGENDA

Tuesday Session

October 1, 1985—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, September 5–6, 1985.
2. Remarks of the Postmaster General.
3. Board of Governors Operating Budget, FY86.

(Mr. Harris, Secretary for the Board, will present a proposed operating budget for the Board of Governors for fiscal year 1986.)

4. Review of Capital Investment Program.
5. Capital Investment 5-Year Plan.

(Mr. Gordon, Senior Assistant Postmaster General, Administration Group, will present the 5-year capital investment plan.)

6. Consideration of Extension of Service Contract.

(Mr. Schiller, Assistant Postmaster General, Technology Resource Department, will make the extension of a service contract presentation.)

7. Consideration of Lease for Interim Housing at the Technical Training Center.

(Mrs. Henry, Director, Office of Training and Development, will make the presentation.)

8. Capital Investment: PRISM
9. Report of the Regional Postmaster General.

(Mr. Penttala, Regional Postmaster General, will report on postal conditions in the Southern Region.)

10. Determination of Sites of Board of Governors' Meetings in 1986.

(Mr. Harris will present the proposed 1986 meeting sites.)

11. Tentative agenda for November 4–5, 1985, meeting in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc. 85–22972 Filed 9–23–85; 10:20 am]

BILLING CODE 7710–12–M

federal register

Wednesday
September 25, 1985

Part II

Environmental Protection Agency

40 CFR Parts 265 and 270

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities; EPA Administered Permit Programs: Hazardous Waste Permit Program; Notice of Implementation and Enforcement Policy

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 265 and 270

[SWH-FRL 2868-3]

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities; EPA Administered Permit Programs: the Hazardous Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of implementation and enforcement policy.

SUMMARY: On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 (HSWA) were enacted (Pub. L. 98-616). These Amendments made changes to section 3005(e) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6925(e). Under the amendment to section 3005(e), an interim status land disposal facility will lose interim status on November 8, 1985 unless the facility applies for a final determination regarding the issuance of a permit and certifies compliance with all applicable ground-water monitoring and financial responsibility requirements by that date. This notice sets forth the Environmental Protection Agency's (EPA) policy regarding the implementation of this provision as it applies to interim status land disposal facilities.

DATE: All interim status land disposal facilities are required to submit an application for a final determination and the applicable certifications by November 8, 1985, or interim status will be terminated by statute. In the case of each land disposal facility which is in existence on the effective date of statutory or regulatory changes under RCRA that render the facility subject to the requirement to have a permit under section 3005, facilities will have 12 months after the date on which the facility first becomes subject to permit requirements to submit an application for a final determination and the applicable certification, or interim status will be terminated by law.

FOR FURTHER INFORMATION CONTACT:

Region I: Jerry Levy, Chief, Compliance Monitoring and Enforcement Section HSE/Causeway, U.S. EPA, John F. Kennedy Federal Building, Boston, MA 02203, (617) 223-1591, FTS 223-1591.

Region II: Stanley Siegel, Chief, NY Compliance Enforcement Section 2AWM, U.S. EPA, 26 Federal Plaza, Room 1043, New York, NY 10278, (212) 264-8356, FTS 264-8356.

Region III: Peter Schaul, Hazardous Waste Enforcement Branch 3H-WLL, U.S. EPA, 841 Chestnut Street, Philadelphia, PA 19107, (215) 597-8334, FTS 597-8334.

Region IV: Allan Antley, Chief, Waste Compliance Section, U.S. EPA, 345 Courtland St., NE, Atlanta, GA 30365, (404) 881-4552, FTS 257-4552.

Region V: Bill Muno, Chief, RCRA Enforcement Section, 5HE-12, U.S. EPA, 230 South Dearborn Street, Chicago, IL 60604, (312) 886-4434, FTS 886-4434.

Region VI: William Rhea, Chief, Hazardous Materials Branch 6AW-H, U.S. EPA, 1201 Elm Street, Dallas, TX 75270, (214) 767-9732, FTS 729-9732.

Region VII: Wayne Kaiser, RCRA Compliance Section, Waste Management Division, U.S. EPA, 726 Minnesota Avenue, Kansas City, KS 66101. (913) 236-2891, FTS 757-2891.

Region VIII: Diana Shannon, Chief, RCRA Compliance Monitoring 8HWM-WM, U.S. EPA, Denver Place, Suite 1300, 999 18th Street, Denver, CO 80202-2413, (303) 293-1502, FTS 564-1500.

Region IX: Judy Walker/Industry Assistance, Toxics and Waste Management Division T-2-1, U.S. EPA, 215 Fremont Street, San Franscisco, CA 94105, (415) 974-7472. FTS 454-7472.

Region X: Charles Rice, Chief, RCRA Compliance Section M/S-533, U.S. EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 442-0695, FTS 399-0695.

SUPPLEMENTARY INFORMATION: The contents of today's Notice are listed in the following outline:

I. Background
II. Statutory Interpretations
  A. Land Disposal Facility
  B. Interim Status
    1. Class I Hazardous Waste Underground Injection Wells
    2. Waste Exclusions
    3. Late and Non-Notifiers
    4. Protective Filers
  C. Application for Final Determination Regarding the Issuance of a Permit
  D. Certification of Compliance with all Applicable Ground-Water Monitoring and Financial Responsibility Requirements
III. Failure to Satisfy Statutory Requirements

I. Background

Under section 3005(a) of RCRA, owners or operators of hazardous waste treatment, storage or disposal facilities are required to obtain a RCRA permit. Recognizing that EPA would not be able to issue permits to all hazardous waste management facilities at once, section 3005(e) of RCRA provides that a hazardous waste management facility that meets certain requirements will be treated as having been issued a permit. This statutorily-conferred authorization to operate pending issuance or denial of a permit is known as "interim status." A facility may lawfully operate only if it has a permit or interim status.

Prior to the enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA) a facility's interim status could be terminated only when final administrative disposition of the permit application was made, or if the facility failed to furnish the necessary application information. HSWA amended section 3005(e) to provide additional grounds for termination of interim status for land disposal facilities.

Section 3005(e)(2) which is referred to, hereafter, as the Loss of Interim Status provision states:

> In the case of each land disposal facility which has been granted interim status under this subsection before the date of enactment of the Hazardous and Solid Waste Amendments of 1984, interim status shall terminate on the date 12 months after the date of enactment of such Amendments unless the owner or operator of such facility
>
> "(A) applies for a final determination regarding and issuance of a permit under subsection (c) for such facility before the date 12 months after the date of enactment of such Amendments; and
>
> "(B) certifies that such facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements."

Interim status land disposal facilities must satisfy these requirements by November 8, 1985. Under section 3005(e)(3) each land disposal facility which is in existence on the effective date of statutory or regulatory changes under this Act that render the facility subject to the requirement to have a RCRA permit and which qualifies for interim status must apply for a final determination and submit the applicable certifications within twelve months after the date on which the facility first becomes subject to such RCRA permit requirements or interim status terminates.

The owner/operator of each interim status land disposal facility is responsible for applying for the final permit determination and satisfying certification requirements. In view of the importance of proper and timely filings of permit applications and certifications, and to provide an orderly process for

the submittal of both permit applications and compliance certifications for interim status land disposal facilities, the Agency is today publishing this policy on the Loss of Interim Status provision.

II. Statutory Interpretations

This section defines key terms which appear in the statute.

A. Land Disposal Facility

The statute specifies that ". . . all interim status land disposal facilities . . ." are subject to the requirements of the Loss of Interim Status provision. For the purpose of section 3005(e), the Agency interprets the term "land disposal facilities" to encompass the following types of facilities: landfills; land treatment units; surface impoundments for disposal, treatment, or storage; waste piles; and Class I hazardous waste underground injection wells. EPA believes this interpretaton is consistent with RCRA statutory definitions of land disposal (see sections 1004(3), 3004(k)), the legislative history of section 3005(e)(2) and (3) and the general objective of this provision (i.e., to facilitate prompt processing of permits for the compliance by land-based facilities).

B. Interim Status

A treatment, storage or disposal facility that was in existence on November 19, 1980, or on the effective date of statutory or regulatory changes that rendered the facility subject to the requirement to have a RCRA permit, notified EPA as required by RCRA section 3010, and filed a timely application for a RCRA permit (Part A application), is considered to be in interim status until final administrative disposition of the permit application or until interim status is terminated for failure to submit information required to process the permit application. These facilities are subject to the Loss of Interim Status provision. In addition, in States or territories with EPA-authorized RCRA programs, land disposal facilities that have not yet been granted or denied a final RCRA permit (including land disposal facilities that were issued State permits after November 8, 1984) are to submit certifications and Part B applications.

1. Class I Hazardous Waste Underground Injection Wells

Class I hazardous waste injection wells that were in existence on November 19, 1980, or the effective date of statutory or regulatory changes that rendered the facility subject to the requirement to have a RCRA permit, notified EPA as required by § 3010, and filed a Part A RCRA application are considered to be in interim status under RCRA until such time as final administrative disposition of a RCRA section 3005(c) permit application is made. Such facilities must comply with the applicable sections of Subparts A-E of Part 265 interim status requirements. They are exempted under 40 CFR 265.430 from the RCRA interim status closure/post-closure and financial responsibility requirements of Subpart G and H and are not subject to the ground-water monitoring requirements of Subpart F.

Every state and jurisdiction has an Underground Injection Control (UIC) program in place, either state-administered or EPA-administered, so that all Class I hazardous waste wells are also subject to the UIC requirements. The requirements at 40 CFR 144.21 authorize existing Class I injection wells to operate, subject to certain conditions, until the effective date of UIC permit issuance or denial, in States with approved UIC programs, for five years after approval or promulgation of the UIC program (but not thereafter unless a complete permit application is pending). In States with EPA-administered UIC programs, injection is authorized under the same section, subject to certain conditions, for one year after promulgation of the UIC program and is prohibited thereafter unless a complete permit application is pending. Therefore, until the UIC permit is issued as stated above, the Class I hazardous waste underground injection well is operating under authorization by rule and must comply with UIC program requirements specified, *inter alia*, under 40 CFR 144.28.

Under previous regulations, once a well received a UIC permit, the well was deemed to have a permit-by-rule under RCRA. However, the regulations have been changed due to the enactment of section 3004(u) of RCRA, which provides that corrective action requirements for all solid waste management units must be addressed in any section 3005(c) RCRA permit. The regulations, therefore, have been amended to provide that until such time as a corrective action plan at a given facility addresses corrective action for *all* units, UIC permits issued to Class I hazardous waste underground injection wells after November 8, 1984 will be considered valid permits under the Safe Drinking Water Act, but will not be section 3005(c) RCRA permits-by-rule. 50 FR 28702, 28715-16, 28752 (July 15, 1985) (amending 40 CFR 270.60(b)). Therefore, wells at facilities which have not yet met corrective action requirements for *all* units at the facility, consistent with State law under approved UIC program, retain RCRA interim status, whether or not they have been issued a UIC permit. Such well operators who have interim status must, therefore, certify compliance with the "applicable" ground-water monitoring and financial responsibility requirements. The specific ground-water monitoring and financial responsibility requirements with which the facility must certify compliance are discussed in detail below in section D.

2. Waste Exclusions

Sections 260.20 and 260.22 of EPA's hazardous waste regulations provide a regulatory mechanism whereby the Agency may temporarily exclude a hazardous waste generated at a specific facility from being treated as a hazardous waste under the RCRA regulations. Interim status land disposal facilities handling wastes that have received "temporary" exclusions are also subject to the Loss of Interim Status provision. A "temporary" exclusion granted under 40 CFR 260.20 and 260.22 by EPA does not terminate the interim status of facilities handling that waste. Thus, the requirements of section 3005(e)(2) apply to these facilities, including facilities where the temporarily excluded waste is the only "hazardous" waste managed.

Facilities which only handle "hazardous" waste subject to a temporary exclusion, however, are not considered to be managing hazardous waste under EPA regulations. Thus they are not currently required to meet Part 265 standards (including ground-water monitoring and financial responsibility requirements), or to obtain a permit. In order words, facilities whose only "hazardous" waste has been "temporarily" excluded, while subject to the Loss of Interim Status provision, are not required to certify compliance with groundwater monitoring and financial responsibility requirements and/or submit a Part B application by November 8, 1985 in order to retain interim status after that date unless their exclusion is revoked prior to this time. If such waste exclusion is revoked, this regulatory action will immediately subject the facility to the requirements of section 3005(e)(3) of RCRA.

3. Late and Non-Notifiers

The Agency believes that the intent of the Loss of Interim Status provision was to bring all unpermitted land disposal facilities into compliance with ground-water monitoring and financial responsibility requirements or to close them. In order to advance this purpose, the Agency believes that it should also

address the problem of those facilities which never qualified for interim status, or who are operating under Interim Status Compliance Letters or section 3008 compliance orders. 40 CFR 265.1(b) states that "the standards in this Part apply to those owners and operators of facilities in existence on November 19, 1980, who have failed to provide timely notification as required by Section 3010 of RCRA, and/or failed to file Part A of the Permit Application as required by 40 CFR 270.10 (e) and (g).

The December 12, 1981 "Guidance on the Applicability of the Interim Status Standards (40 CFR Part 265) to Facilities which have Failed to Qualify for Interim Status" to EPA Regional Enforcement Division Directors also addresses the problem of "non-notifiers." The guidance directed that the Agency would enforce the interim status requirements through the use of Interim Status Compliance Letters (ISCL) and 3008 compliance orders including the assessment of penalties, where appropriate. This use of penalties was emphasized to eliminate the competitive advantage that might otherwise be enjoyed by the "non-notifiers" over facilities that complied with all notification and filing requirements.

In keeping with that policy, EPA believes it reasonable to require owners and operators of land disposal facilities to submit a Part B application and the ground-water monitoring and financial responsibility compliance certifications as a condition of EPA's continued forbearance from enforcement action. Therefore, those facilities which have not fully qualified for interim status should also submit certifications and permit applications if they wish to continue operating.

4. Protective Filers

Protective filers, i.e., facilities that were in existence on November 19, 1980, notified the Agency of their activities according to section 3010, and submitted their Part A application, but have never conducted a regulated activity requiring a permit are not considered by the Agency to be in Interim Status and are not subject to the Loss of Interim Status provision.

C. Application for Final Determination Regarding the Issuance of a Permit

Prior to the enactment of the HSWA, land disposal facilities were not required to submit their Part B permit applications to EPA (or a State) until 6 months after EPA (or the State) requested it. Section 3005(e)(2) now provides that land disposal facilities must "apply for final determination regarding the issuance of a permit" by November 8, 1985 or lose their interim status, regardless of whether the EPA Regional Office or authorized State has requested the Part B application.

Land disposal facilities wishing to retain interim status and continue operations as a hazardous waste land disposal facility after November 8, 1985, are required to submit a Part B permit application (or in an authorized State, the State equivalent of the Part B application) by November 8, 1985, to satisfy this requirement. These permit applications need to address all applicable requirements, including those set forth in the Hazardous and Solid Waste Amendments of 1984. In States where EPA manages the RCRA program, the Part B application is to be sent to the EPA Regional Office. In authorized States that manage the RCRA program, the permit application is to be sent to both the EPA Regional Office and to the State.

Some facilities have indicated that they plan to continue receiving waste after November 8, 1985, but intend to stop waste receipt and close shortly thereafter. Such facilities must submit an application for a final operating permit, as noted above. This is necessary because, as of November 8, 1985, it is assumed that an operating permit of some kind will be issued to them if they have not closed in a manner that precludes the duty to obtain a permit. The content of the application, however, may be affected by the expected remaining operating life of the facility. For example, if the facility will close before November 1988 and this is reflected in the application (e.g., in the closure plan), then there would be no need to address the HSWA requirement to retrofit existing surface impoundments (section 3005(j)). Applicants planning to continue waste receipt after November 8, 1985, and to close shortly thereafter should discuss the applicability of permit provisions with the EPA Regional Office (and the Authorized State, if appropriate) as soon as possible.

D. Certification of Compliance With All Applicable Ground-Water Monitoring and Financial Responsibility Requirements

In accordance with the requirements of the Loss of Interim Status provision, land disposal facilities must also "certify compliance with all applicable ground-water monitoring and financial responsibility requirements." All applicable ground-water monitoring and financial responsibility requirements are defined as 40 CFR Part 265 Subparts F and H, or the State analogue thereto. The requirements that are considered applicable depend upon the authorization status of the State in which the facility is located.

- *Facilities located in a State with a Federally managed RCRA program* must certify compliance with 40 CFR Subparts F and H ground-water monitoring and financial responsibility requirements.
- *Facilities located in a State with Only Phase I Authorization* under the RCRA program must certify compliance with the authorized State ground-water monitoring requirements. In States with financial responsibility requirements incorporated as a part of their RCRA programs, facilities must certify compliance with authorized State financial responsibility requirements.
- *Facilities located in a State with Phase II or Final Authorization* must certify compliance with authorized State ground-water monitoring and financial responsibility requirements.

As stated in section II. A., Land Disposal Facility, Class I hazardous waste underground injection wells must comply with a different set of interim authorization requirements.

- Facilities located in States with Federally managed underground injection control (UIC) programs must certify compliance with 40 CFR 144.28(g)(1)(iii) ground-water monitoring requirements, as required by the Director. To certify compliance with financial responsibility requirements, Class I hazardous waste underground injection wells must be in compliance with 40 CFR 144.28(d) and 40 CFR Part 144 Subpart F financial responsibility requirements.
- In primacy States, facilities with Class I hazardous waste underground injection wells must certify compliance with requirements that are the equivalent of 40 CFR 144.28(g)(h)(iii) ground-water monitoring and Part 144 Subpart F and 144.28(d) financial responsibility requirements.
- Facilities issued a UIC permit after November 8, 1984, but which are still under RCRA interim status (see Section II. B. 1) must certify compliance with 40 CFR 146.13(b)(4), ground-water monitoring requirements, where applicable, and 40 CFR 144 Subpart F financial responsibility requirements; or, in primacy States, with equivalent State requirements.

To certify compliance with all applicable requirements a facility must be in "physical" compliance. "Physical" compliance, for the purpose of certification under this provision, means that a facility has "physically" in place all that is specified in the applicable Federal or State ground-water

monitoring and financial responsibility requirements.

A facility that is not in compliance with applicable ground-water monitoring and/or financial responsibility requirements of 40 CFR Part 265 or applicable State requirements may not certify compliance. For example, a facility lacking monitoring wells and a valid waiver may not certify. Similarly, a facility failing to meet financial responsibility requirements may not certify. If a representative of a facility has admitted noncompliance in an enforcement action the facility may not certify unless it achieves and maintains compliance.

Compliance with the financial responsibility requirements is the second pre-requisite for retaining interim status after November 8. The Agency recognizes that some facilities are encountering difficulties in obtaining insurance to satisfy the financial responsibility requirement governing liability coverage (40 CFR 264.17 and 265.17). EPA has recently published a proposed rule which solicits comment on five options the Agency is considering to remedy the problem regarding the availability of liability insurance for RCRA facilities. (See 50 FR 33907.)

For the purpose of this provision, facilities are urged to certify compliance with all applicable ground-water monitoring and financial responsibility requirements for the facility as a whole. If the owner/operator submits the application and the applicable certifications of compliance for some but not all land disposal units, the termination of Interim Status only affects the unit or units at the hazardous waste management facility for which the application and/or certification were not submitted.

EPA believes that this interpretation is reasonable. EPA sees no evidence in the legislative history to suggest that Congress meant to stop all operations at a multi-unit facility because a Part B or applicable certifications had not been properly submitted for one unit. Furthermore, this interpretation of taking action at facilities on a unit-by-unit basis has precedent in EPA's hazardous waste regulations. Section 270.1 allows EPA to deal with permit issuance to a facility on a unit-by-unit basis. With regard to permit issuance, § 270.1(c)(4) states that "EPA may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility."

Facilities should certify compliance by typing or printing a certification statement as shown in Appendix A. These forms should be signed by the individuals specified in 40 CFR 270.11. An original certification will be required for each submission (no photocopies of signatures will be acceptable).

Copies of a facility's certification and Part B or state final operating permit application must be submitted to both the EPA Regional Office *and* the State in which the facility is located. However, facilities in a State with a Federally run RCRA program need only submit these documents to the Region.

III. Failure To Satisfy Statutory Loss of Interim Status Requirements

All owners/operators of land disposal facilities or units that do not apply for a final determination with regard to a permit and certify compliance with all applicable ground-water monitoring and financial requirements, must comply with all applicable closure and post-closure requirements as specified in 40 CFR Part 265 Subpart G or the equivalent State requirement, as applicable, and must stop introducing wastes into facilities or units not retaining interim status on and after November 8, 1985. The owner/operator of the facility or affected units will be required to submit a closure plan within 15 days of loss of interim status (40 CFR 265.112), i.e., by November 23, 1985. In addition, facilities that closed after January 26, 1983, must submit their post-closure permit application (upon request by the Region or authorized States). Post-closure permit applications must address continuing releases as required by the newly amended section 3004(u) of RCRA. (Facilities losing interim status remain subject to corrective action orders and civil actions.)

Owners and operators of facilities should be aware that false certification and operation without interim status are criminal offenses. In addition, the Agency intends to take enforcement action regarding inadequate closures.

Dated: September 16, 1985.

Lee M. Thomas,

Administrator.

Appendix A—Certification Statement

I _____, am the owner/operator of _____ _____ (EPA ID #) located at: _____. I certify that the _____ (name of unit(s) as identified on the attached surface topography map) at this facility is in compliance with: (1) (All applicable ground-water monitoring and financial responsibility requirements in 40 CFR Part 265 Subparts F and H; or (2) all applicable State ground-water monitoring and financial responsibility requirements which are part of the State's authorized hazardous waste program under section 3006 of RCRA.

I, _____, as owner-operator of _____, located at _____ knowingly and willfully make this true and accurate certification to the United States Environmental Protection Agency pursuant to section 3005(e) of the Hazardous and Solid Waste Disposal Act, as amended.

(Date)

(Signature)

Note: Federal Law subjects anyone who falsely makes or uses this certification to a fine and imprisonment under SWDA, 18 U.S.C. 1001 and 18 U.S.C. 1341.

[FR Doc. 85-22869 Filed 9-24-85; 8:45 am]

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federal register

Wednesday
September 25, 1985

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Late Seasons, and Bag and Possession Limits for Certain Migratory Game Birds in the United States; Final Rule and Correction

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Late Seasons, and Bag and Possession Limits for Certain Migratory Game Birds in the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule and correction.

SUMMARY: This rule prescribes the late open seasons, hunting hours, hunting areas, and daily bag and possession limits for general waterfowl seasons; special restrictions to reduce the black duck harvest; special seasons for scaup and goldeneyes; extra scaup and teal in regular seasons; experimental canvasback seasons; additional sandhill crane seasons in the Central Flyway and in Arizona; coots, common moorhens, and snipe in the Pacific Flyway; and additional special extended falconry seasons. Taking of the designated species of migratory birds is prohibited unless open hunting seasons are specifically provided. The rules will permit taking of the designated species during the 1985–86 season within specified periods of time beginning as early as September 28 and benefit the public by opening the seasons which are presently closed.

This rule also revises §§ 20.102, 20.103, and 20.109 of 50 CFR to correct the bag limits for pintails and the dates when Canada geese may not be taken in Units 5 and 6 in Alaska; the season dates for mourning doves in Florida; and the dates of extended falconry seasons for ducks, mergansers, coots, common moorhens, purple gallinules and geese in New Mexico, respectively, as published in the August 30, 1985, **Federal Register** (50 FR 35358). The final season framework for brant in Washington, Oregon and California as published in the September 5, 1985, **Federal Register** (50 FR 36217) is corrected.

EFFECTIVE DATE: September 25, 1985

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, Matomic Building Room 536, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C., telephone 202–254–3207.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended, authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

On March 14, 1985, the U.S. Fish and Wildlife Service (hereinafter the Service) published for public comment in the **Federal Register** (50 FR 10276) a proposal to amend 50 CFR Part 20, with comment periods ending June 20, July 15 and August 19 (later extended to August 22), 1985, respectively, for the 1985–86 hunting season frameworks proposed for Alaska, Hawaii, Puerto Rico, and the Virgin Islands; other early seasons; and the late hunting season frameworks. That document dealt with the establishment of hunting seasons, hours, areas, and limits for migratory game birds under §§ 20.101 through 20.107 and 20.109 of Subpart K. On June 4, 1985, the Service published in the **Federal Register** (50 FR 23459) a second document consisting of a supplemental proposed rulemaking dealing with both the early and late season frameworks. On July 5, 1985, the Service published for public comment in the **Federal Register** (50 FR 27638) a third document consisting of a proposed rulemaking dealing specifically with frameworks for early season migratory bird hunting regulations. On July 26, 1985, the Service published in the **Federal Register** (50 FR 30424) a fourth document containing final frameworks for Alaska, Puerto Rico, and the Virgin Islands. On August 13, 1985, the Service published a fifth document (50 FR 32587) containing proposed frameworks for the late-season migratory bird hunting regulations. On August 21, 1985, the Service published in the **Federal Register** (50 FR 33737) a sixth document consisting of final frameworks for the early season migratory bird hunting regulations from which State wildlife conservation agency officials selected early season hunting dates, hours, areas, and limits for the 1985–86 season. On August 30, 1985, the Service published in the **Federal Register** (50 FR 35358) a seventh document consisting of a final rule amending Subpart K of 50 CFR Part 20 to set hunting seasons, hours, areas, and limits for mourning doves, white-winged doves, band-tailed pigeons, rails, woodcock, snipe, and common moorhens and purple gallinules; September teal seasons; sea ducks in certain defined areas of the Atlantic Flyway; ducks in September in Florida, Iowa, Kentucky and Tennessee; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and special extended falconry seasons. On September 5, 1985, the Service published in the **Federal Register** an eighth document (50 FR 36198) consisting of a final rulemaking for the late-season frameworks for migratory game bird hunting regulations from which State wildlife conservation agency officials selected late season hunting dates, hours, areas, and limits for the 1985–86 season.

The final rule described here is the ninth in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending Subpart K of 50 CFR Part 20 to set hunting seasons, hours, areas and limits for species subject to late hunting regulations.

These regulations will take effect immediately upon publication.

These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980

Nontoxic Shot Regulations

In the February 12, 1985, **Federal Register** (50 FR 5759–5764) and more recently the May 7, 1985, **Federal Register** (50 FR 19178–19182), the Service published a list of zones and areas where nontoxic shot will be required for waterfowl hunting in the 1985–86 hunting season.

More recently, on June 14, 1985, the National Wildlife Federation sued the Department of the Interior to block use of lead shotgun ammunition for waterfowl hunting in parts of 22 counties in California, Illinois, Missouri, Oklahoma, and Oregon. The issues in the case involve the protection of the endangered bald eagle from lead poisoning. The federal court has ordered that lead shot may not be allowed for the hunting of waterfowl in the disputed areas of California, Illinois, Missouri, Oklahoma, and Oregon unless and until the affected States authorize, agree to and aid the imposition of steel shot requirements by the Service. Missouri, Oklahoma, Oregon, and Illinois have agreed to the imposition of steel shot regulations in the disputed areas and the closure on waterfowl hunting in those disputed areas has been lifted with the exception that in Illinois the hunting closure was only lifted for the State's September teal season (September 7–15, 1985) because the State only agreed to the imposition of steel shot for that period. The waterfowl hunting closure

remains in effect until further notice in the disputed areas of Illinois for the remainder of its waterfowl seasons and in the disputed areas of California.

NEPA Consideration

The "Final Evironmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 24241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement.

Copies of assessments are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" [and] ". . . by taking such action necessary to insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species . . . which is determined to be critical." The Service therefore initiated section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 18, 1985, the Acting Chief, Office of Endangered Species (OES), concluded that the proposed actions were not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Other biological opinions of relevance were issued January 25, April 18, and July 24, 1985.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinion resulting from its consultation under section 7 is considered a public document and is available for public inspection in or available from the Office of Endangered Species and the Office of Migratory Bird Management, Department of the Interior, Washington, D.C

Regulatory Flexibility Act and Executive Order 12291

In the **Federal Register** dated March 14, 1985 (at 50 FR 10282), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated **Final Regulatory Impact** Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the **Federal Register** dated July 26, 1985 (at 50 FR 30425).

Authorship

The primary author of this final rule is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

Regulations Promulgation

After analysis of the migratory game bird survey data obtained through investigations conducted by the Service, State conservation agencies, and other sources, and consideration of all comments received on the late season proposals (50 FR 10276, March 14, 1985; 50 FR 23459, June 4, 1985; and 50 FR 32587, August 13, 1985), the Service published in the **Federal Register** on September 5, 1985 (50 FR 36198) final late-season frameworks. Copies of the final frameworks were sent to the officials of the State conservation agencies who were invited to submit recommendations for hunting seasons which complied with the season times and lengths, hours, areas, and limits specified in the frameworks.

The taking of the designated species of migratory birds is prohibited unless open hunting seasons are specifically provided. The following amendments will permit taking of the designated species within specified time periods beginning as early as September 28 and benefit the public by relieving existing restrictions.

The rulemaking process for migratory game bird hunting, must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when proposed rulemakings were published on March 14, June 4, and August 13, 1985, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select their season dates, shooting hours, hunting areas, and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures to implement their decisions. The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. (d)(3) (Administrative Procedure Act), and these regulations will, therefore, take effect immediately upon publication.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

On August 30, 1985, the Service published in the **Federal Register** seasons, areas, limits and shooting hours for certain migratory game birds in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands. In the table under § 20.102 where the limits are listed for waterfowl, sandhill cranes and common snipe in Alaska (50 FR 35360), Footnote 1 should include the following statement: In the Gulf Coast Area, the daily bag and possession limits may include no more than 3 and 9 pintails, respectively. In Footnote 2 of the same table, the period when the taking of Canada geese is prohibited in Units 5 and 6 is listed as September 1 through September 14. The dates should read September 1 through September 20.

In the table under § 20.103 (50 FR 35361) where the seasons, limits, and shooting hours are listed for mourning doves in Florida, the opening and closing dates for the second segment of the State's 3-segment season is listed as November 9 and November 24, respectively. The opening date should read November 16 and the closing date should read December 1.

In the table under § 20.109 (50 FR 35365) where the extended seasons, limits, and hours for taking migratory game birds by falconry are listed for the Central Flyway portion of New Mexico, the opening and closing dates for ducks,

mergansers and coots; and Canada and white-fronted geese is listed as October 15 and January 13, respectively. The opening date should read October 10 and the closing date should read January 12. The opening and closing dates for common moorhens and purple gallinules is listed as October 15 and January 19, respectively. The opening date should read October 10 and the closing date should read January 12. The opening date for snow, blue and Ross' geese is listed as November 15 but should read November 14.

In table under § 20.109 (50 FR 35365) where the extended seasons, limits, and hours for taking migratory game birds by falconry are listed for the Pacific Flyway portion of New Mexico the closing date for ducks, mergansers and coots is listed as January 13 but should read January 12. The opening and closing dates for common moorhens and purple gallinules is listed as October 5 and January 19, respectively. The opening date should be October 8 and the closing date should read January 12.

PART 20—MIGRATORY BIRD HUNTING

1. The Service corrects § 20.102 of 50 CFR Part 20 by amending Footnotes 1 and 2 for Alaska at 50 FR 35360, August 30, 1985, as follows:

§ 20.102 Seasons, limits, and shooting hours for Alaska.

* * * * *

[1] "In addition to . . . red-breasted mergansers. In the Gulf Coast Area, the daily bag and possession limits may include no more than 3 and 9 pintails, respectively."

[2] "No more than 4 . . . may be white-fronted geese. In Units 5 and 6, the taking of Canada geese is prohibited from September 1 through September 20. In Units 9(e) . . . is prohibited."

* * * * *

2. The Service corrects § 20.103 of 50 CFR Part 20 at 50 FR 35361 by revising the mourning dove season dates in Florida as follows:

§ 20.103 Seasons, limits, and shooting hours for mourning and white-winged doves and wild pigeons.

* * * * *

(a) Mourning Doves—Eastern Management Unit.

* * * * *

Seasons in:

* * * * *

Florida: [2]	
12 noon to sunset	Oct. 5 to Oct. 27.
One half hour before sunrise to sunset.	November 16 to Dec. 1 & Dec. 14 to Jan. 13.

* * * * *

3. The Service corrects § 20.109 of 50 CFR Part 20 at 50 FR 35366 by revising the extended falconry seasons for ducks, mergansers and coots; common moorhens and purple gallinules; Canada and white-fronted geese; and snow, blue and Ross' geese in the Central Flyway portion of New Mexico, and by revising the extended falconry seasons for Ducks, mergansers and coots; and common moorhens and purple gallinules in the Pacific Flyway portion of New Mexico as follows:

§ 20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

* * * * *

Central Flyway

New Mexico

* * * * *

Ducks, mergansers and coots.	Oct. 10 to Jan. 12.
Common moorhens and purple gallinules.	Oct. 10 to Jan. 12.
Canada and white-fronted geese.	Oct. 10 to Jan. 12.
Snow, blue and Ross' geese.	Nov. 14 to Feb. 28.

Pacific Flyway

* * * * *

New Mexico

* * * * *

Ducks, mergansers and coots.	Oct. 8 to Jan. 12.
Common moorhens and purple gallinules.	Oct. 8 to Jan. 12.

* * * * *

§ 20.108 [Corrected]

4. On September 5, 1985, (50 FR 36198), the Service published in the **Federal Register** Final Frameworks for Late Season Migratory Bird Hunting Regulations. The Service corrects the season framework for brant in Washington, Oregon and California. The following correction is made in 50 FR 36198 issued on September 5, 1985:

On page 36217 in the middle of the left hand column, under *Outside dates, season length, and limits, on geese (include brant):* "Between October 19 and November 29, 1985, Washington, Oregon and California. . . " is corrected to read "Between October 19, and November 30, 1985, Washington, Oregon and California . . ."

Date: September 20, 1985.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

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PART 20—MIGRATORY BIRD HUNTING

Accordingly, each State conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State on those species of migratory birds for which open seasons are now to be prescribed, and consideration having been given to all other relevant matters presented, certain sections of Title 50, Chapter I, Subchapter B, Part 20, Subpart K, are hereby corrected and amended.

The hunting season regulations will not be included in the annual codification of Title 50 CFR, Wildlife and Fisheries, inasmuch as most seasons will have terminated by the time that the annual codification is issued.

Section 20.104 is revised to read as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are as follows:

	Rails (Sora & Virginia)	Rails (Clapper & King)	Woodcock	Common Snipe
Daily bag limit	25 (1)	See footnote (2)	5 (3)	8
Possession limit	25 (1)	See footnote (2).	10 (3)	16

Shooting and hawking hours: One-half hour before sunrise until sunset daily on all species, except as noted otherwise.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

Seasons in the Atlantic Flyway:

Connecticut	Sept. 2-Nov. 9.	Sept. 2-Nov. 9.	Oct. 19-Dec. 2.	Oct. 19-Dec. 2.
Delaware	Sept. 2-Nov. 9.	Sept. 2-Nov. 9.	Nov. 18-Jan. 1.	Nov. 18-Jan. 31.
Florida	Sept. 1-Nov. 9.	Sept. 1-Nov. 9.	Dec. 14-Jan. 27.	Nov. 2-Feb. 16.
Georgia	Sept. 14-Nov. 22.	Sept. 14-Nov. 22.	Nov. 30-Jan. 13.	Nov. 20-Feb. 28.
Maine	Sept. 1-Nov. 9.	Closed.	Oct. 1-Nov. 14.	Sept. 1-Dec. 16.
Maryland	Sept. 2-Nov. 9.	Sept. 2-Nov. 9	Oct. 21-Dec. 4.	Oct. 1-Jan. 15.
Massachusetts	Sept. 2-Nov. 9.	Closed.	Oct. 10-Nov. 23.	Sept. 2-Dec. 16.
New Hampshire	Closed.	Closed.	Oct. 1-Nov. 14.	Oct. 1-Dec. 4.
New Jersey (4):				
North Zone	Sept. 2-Nov. 9	Sept. 2-Nov. 9	Oct. 12-Nov. 15.	Oct. 5-Jan. 18.
South Zone	Sept. 2-Nov. 9	Sept. 2-Nov. 9	Nov. 11-Dec. 7 & Dec. 21-Dec. 28.	Oct. 5-Jan. 18.
New York (4):				
Long Island	Closed.	Closed.	Oct. 1-Nov. 14.	Closed.
Remainder of State	Sept. 1-Nov. 9.	Closed.	Oct. 1-Nov. 14.	Sept. 1-Dec. 16.
North Carolina	Sept. 23-Nov. 30.	Sept. 23-Nov. 30.	Nov. 23-Jan. 6.	Nov. 14-Feb. 28.
Pennsylvania	Sept. 2-Nov. 9.	Closed.	Oct. 19-Nov. 9.	Oct. 19-Dec. 14.
Rhode Island	Sept. 15-Nov. 23.	Sept. 15-Nov. 23.	Oct. 19-Dec. 2.	Sept. 15-Dec. 7 & Dec. 16-Jan. 7.
South Carolina	Sept. 13-Oct. 18 & Nov. 11-Dec. 14.	Sept. 13-Oct. 18 & Nov. 11-Dec. 14.	Nov. 28-Jan. 11.	Nov. 14-Feb. 28.
Vermont	Sept. 28-Dec. 6.	Closed.	Oct. 1-Nov. 14.	Sept. 28-Dec. 6.
Virginia	Sept. 9-Nov. 16.	Sept. 9-Nov. 16.	Oct. 28-Nov. 19 & Dec. 25-Jan. 15.	Oct. 17-Jan. 31.
West Virginia	Sept. 2-Nov. 9.	Closed.	Oct. 12-Nov. 23.	Sept. 2-Dec. 17.

Seasons in the Mississippi Flyway:

Alabama (5)	Nov. 12-Jan. 20	Nov. 12-Jan. 20.	Nov. 28-Jan. 31.	Nov. 14-Feb. 28.
Arkansas	Sept. 1-Nov. 9	Closed.	Nov. 9-Dec. 13 & Jan. 11-Feb. 9.	Sept. 14-Sept. 22 & Nov. 23-Feb. 28.
Illinois	Sept. 1-Nov. 9.	Closed.	Oct. 1-Dec. 4.	Sept. 7-Dec. 22.
Indiana	Sept. 1-Nov. 9.	Closed.	Sept. 21-Sept. 27 & Oct. 5-Dec. 1.	Sept. 1-Dec. 16.
Iowa (6)	Sept. 7-Nov. 15.	Closed.	Sept. 14-Nov. 17.	Sept. 7-Dec. 22.
Kentucky	Nov. 28-Jan. 20.	Closed.	Oct. 1-Dec. 4.	Oct. 1-Dec. 4.
Louisiana	Sept. 21-Sept. 29 & Nov. 9-Jan. 8.	Sept. 21-Sept. 29 & Nov. 9-Jan. 8.	Dec. 7-Feb. 9.	Nov. 9-Feb. 23.
Michigan (7)	Sept. 15-Nov. 14	Closed.	Sept. 15-Nov. 14	Sept. 15-Nov. 14.
Minnesota	Sept. 1-Nov. 4	Closed.	Sept. 1-Nov. 4.	Sept. 1-Nov. 4.
Mississippi	Oct. 19-Dec. 27.	Oct. 19-Dec. 27.	Dec. 21-Feb. 23.	Nov. 9-Feb. 23.
Missouri	Sept. 1-Nov. 9.	Closed.	Oct. 15-Dec. 18.	Sept. 1-Dec. 16.
Ohio	Sept. 2-Nov. 9	Closed.	Sept. 27-Nov. 30.	Sept. 2-Nov. 30 & Dec. 9-Dec. 25.
Tennessee	Dec. 5-Jan. 13.	Closed.	Oct. 12-Nov. 17 & Feb. 1-Feb. 28.	Nov. 19-Feb. 28.
Wisconsin:				
North Duck Zones	Oct. 5(12)-Nov. 13.	Closed	Sept. 14-Nov. 17.	Oct. 5(12)-Nov. 13.
South Duck Zones	Oct. 5(12)-Oct. 13 & Oct. 19-Nov. 18.	Closed	Sept. 14-Nov. 17.	Oct. 5(12)-Oct. 13 & Oct. 19 - Nov. 18.

Seasons in the Central Flyway:

Colorado (8)	Sept. 1-Nov. 9.	Closed.	Closed.	Sept. 1-Dec. 1.
Kansas	Sept. 14-Nov. 22.	Closed.	Oct. 1-Dec. 4.	Sept. 14-Dec. 29.
Montana (8)	Closed.	Closed.	Closed.	Sept. 28-Nov. 26.
Nebraska (9)	Sept. 1-Nov. 9	Closed.	Sept. 15-Nov. 18.	Sept. 1-Dec. 15.
New Mexico (8)	Sept. 7-Nov. 15.	Closed.	Closed.	Sept. 7-Dec. 8.
North Dakota	Closed.	Closed.	Closed.	Sept. 28-Nov. 24.
Oklahoma	Sept. 1-Nov. 9.	Closed.	Nov. 28-Jan. 30.	Oct. 20-Feb. 3.
South Dakota(10)	Closed.	Closed.	Closed.	Sept. 1-Oct. 31.
Texas	Sept. 1-Nov. 9.	Sept. 1-Nov. 9.	Nov. 23-Jan. 26.	Nov. 1-Feb. 12.
Wyoming (8)	Sept. 21-Nov. 29.	Closed.	Closed.	Sept. 21-Jan. 9.

Seasons in the Pacific Flyway:

Arizona	Closed.	Closed.	Closed.	Oct. 11-Dec. 1 & Dec. 18-Jan. 13.
California:				
Northeastern Zone (4)	Closed.	Closed.	Closed.	Oct. 12-Dec. 29.
Colorado River Zone (4)	Closed.	Closed.	Closed.	Oct. 11-Dec. 1 & Dec. 18 - Jan. 13.
Southern Zone (5)	Closed.	Closed.	Closed.	Oct. 19-Dec. 1 & Dec. 9-Jan. 12.
Balance of the State Zone	Closed	Closed.	Closed.	Oct. 26-Jan. 12.
Colorado (8)	Sept. 1-Nov. 9.	Closed.	Closed.	Sept. 1-Dec. 1.
Idaho	Closed.	Closed.	Closed.	Oct. 12-Dec. 1 & Dec. 16-Jan. 12.
Montana (8)	Closed.	Closed.	Closed.	Sept. 28-Dec. 29.
Nevada (11):				
Clark County	Closed.	Closed.	Closed.	Oct. 26-Jan. 12.
Remainder of State	Closed.	Closed.	Closed.	Oct. 12-Dec. 29.
New Mexico (8)	Sept. 7-Nov. 15.	Closed.	Closed.	Sept. 7-Dec. 8.
Oregon:				
Morrow and Umatilla Counties	Closed.	Closed.	Closed.	Oct. 12-Nov. 10 & Nov. 18 - Jan. 12.
Remainder of State	Closed.	Closed.	Closed.	Oct. 12-Nov. 10 & Nov. 28 - Jan. 12.
Utah (11)	Closed.	Closed.	Closed.	Oct. 12-Dec. 29.
Washington:				
Eastern Washington (4),(11)	Closed.	Closed.	Closed.	Oct. 12-Jan. 5.
Western Washington (4), (11)	Closed.	Closed.	Closed.	Oct. 12-Nov. 1 & Nov. 16-Jan. 12.
Wyoming (8)	Sept. 21-Nov. 29.	Closed.	Closed.	Sept. 21 - Dec. 22.

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these two species.

(2) In addition to the limits on sora and Virginia rails, in Connecticut, Delaware, Maryland, New Jersey, and Rhode Island, there is a daily bag limit of 10 and possession limit of 20 clapper and king rails, singly or in the aggregate of these two species, except that the season is closed on king rails in New Jersey by State regulation. In Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, and Virginia, there is a daily bag limit of 15 and possession limit of 30 clapper and king rails, singly or in the aggregate of these two species.

(3) In States of the Atlantic Flyway, the woodcock bag limit is 3 daily and 6 in possession.

(4) For description of zones or management units within a State, see State regulations.

(5) In Alabama, the rail limits are 15 daily and 15 in possession.

(6) In Iowa, shooting hours are sunrise to sunset. Rail limits are 15 daily and 25 in possession.

(7) See State regulations for listing of certain Great Lakes waters where the season is to open concurrently with the duck season.

(8) The Central Flyway portion consists of: Colorado and Wyoming — the area lying east of the Continental Divide; Montana — the area lying east of Hill, Chouteau, Cascade, Meagher, and Park Counties; New Mexico — the area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation. The remaining portions of these States are in the Pacific Flyway.

(9) In Nebraska the rail limits are 10 daily and 20 in possession.

(10) In South Dakota, the snipe limits are 5 daily and 15 in possession.

(11) In Nevada, the shooting hours are from sunrise to sunset throughout the season. In Utah and Eastern Washington, on the opening day, the season opens at 12 noon. In Western Washington, on the opening day, the season opens at 8 a.m.

(12) On the first day the season opens at 12 noon.

Section 20.105 is amended to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, the areas open to hunting, the respective open seasons (dates inclusive), the shooting and hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

(a) Waterfowl, coots and gallinules in Atlantic, Mississippi, Central, and Pacific Flyways.

ATLANTIC FLYWAY

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia and West Virginia.

Flywaywide Restrictions.

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily except as otherwise restricted.

Black ducks — When the black duck is permitted in the daily bag, it is part of the daily and possession limits for ducks.

Wood ducks — No more than 2 wood ducks may be taken daily nor more than 4 wood ducks may be possessed. Exceptions: during duck seasons prior to October 16, in Georgia, North Carolina, South Carolina, and Virginia. See State footnotes.

Hooded mergansers — In States selecting conventional regulations, no more than 1 hooded merganser may be taken daily nor more than 2 hooded mergansers may be possessed.

Canvasbacks and redheads — Except in closed areas, the limit on canvasbacks is 1 daily and 1 in possession. The limit on redheads throughout the flyway is 2 daily, except that in areas open to canvasback harvest the daily bag limit is 2 redheads, or 1 redhead and 1 canvasback. The canvasback possession limit is equal to the daily bag limit. The possession limit on redheads is twice the daily bag limit under conventional regulations. Under the point system, canvasbacks (except in closed areas) count 100 points each and redheads flywaywide count 70 points each. Areas closed to canvasback hunting are:

New York — Upper Niagara River between the Peace Bridge at Buffalo, New York, and the Niagara Falls. All waters of Lake Cayuga.

New Jersey — Those portions of Monmouth County and Ocean County lying east of the Garden State Parkway.

Maryland, Virginia and North Carolina — Those portions of the State lying east of U.S. Highway 1.

Portions of these areas otherwise closed to taking of canvasback, are open to hunting of canvasback at the end of the regular season State permits required in Maryland, New Jersey, New York and North Carolina. See sections below for these States for seasons and bag limits.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

The season dates for mergansers and coots are the same as those for ducks in the following tables:

	Season Dates	Limits Bag	Limits Possession
Connecticut			
Ducks:			
North Zone (1)			
Black Ducks	Nov. 27-Dec. 28	1	2
Ducks	Oct. 19-Oct. 26 & Nov. 27-Dec. 28.	4(25)	8(25)
Extra teal during regular season	Oct. 19-Oct. 26.	2(2)	4(2)
South Zone (1)			
Black Ducks	Dec. 4-Jan. 11.	1	2
Ducks	Oct. 19 & Dec. 4-Jan. 11.	4(25)	8(25)
Scaup-only season (3)	Jan. 16-Jan. 31.	1	2
Extra teal during regular season	Oct. 19.	2(2)	4(2)
Sea ducks (4)(5)(6)	Sept. 20-Jan. 4.	7	14
Mergansers		5	10
Coots		15	30
Gallinules/Moorhens	Sept. 2-Nov. 9.	15 (7)	30(7)
Geese:			
North Zone	Oct. 19-Jan. 16.		
South Zone	Oct. 19 & Nov. 4-Jan. 31.		
Canada		1	2
Snow (including blue)		4	8
Brant:		1	8
North Zone	Nov. 27-Jan. 15.		
South Zone	Nov. 30-Jan. 18.		
Delaware			
Ducks:			
Black Ducks	Nov. 28-Nov. 30 & Dec. 7-Jan. 4.	1	2
Ducks	Nov. 4-Nov. 9 & Nov. 26-Nov. 30 & Dec. 7-Jan. 4.	4(25)	8(25)
Extra teal during regular season	Nov. 4-Nov. 9 & Nov. 26-Nov. 28.	2(2)	4(2)
Extra scaup during regular season	Nov. 4-Nov. 9 & Nov. 26-Nov. 30 & Dec. 7-Jan. 4.	2(2)	4(2)
Sea ducks(4)(5)(6)	Sept. 21-Jan. 4.	7	14
Mergansers		5	10
Coots		15	30
Gallinules/Moorhens	Sept. 2-Nov. 9.	15(7)	30(7)
Geese:			
Canada	Nov. 4-Jan. 31.		
Snow (including blue)	Nov. 4-Jan. 31.	1	2
Brant	Nov. 26-Nov. 30 & Dec. 7-Jan. 20.	1	2
Florida			
Ducks, no more than 1 of which may be a species other than teal or wood ducks, and the possession limit will be double the daily bag limit	Sept. 21-Sept. 25.	1	2
Ducks:	Nov. 27-Dec. 1 & Dec. 10-Jan. 13.	Point system.	
Scaup-only season(3)	Jan. 16-Jan. 31	1	2
Coots		15	30
Gallinules (7)/Moorhens(7)	Sept. 1-Nov. 9.	15(7)	30(7)
Geese	Closed.	-	-
Georgia			
Ducks	Oct. 12 & Nov. 29-Nov. 30 & Dec. 7-Jan. 12.	4(8)(25)	8(8)(25)
Extra teal during regular season	Dec. 7-Dec. 15.	2(2)	4(2)
Extra scaup during regular season (24)	Oct. 12 & Nov. 29-Nov. 30 & Dec. 7-Jan. 12.	2(2)	4(2)
Sea ducks(4)(5)(6)	Nov. 29-Jan. 12.	7	14
Mergansers		5	10
Coots		15	30
Gallinules/Moorhens	Oct. 4-Oct. 6 & Nov. 28-Nov. 30 & Dec. 7-Jan. 19.	15(7)	30(7)
Geese	Closed.	-	-
Brant	Closed.	-	-

Maine			
North Zone (Wildlife Management Units 1-5)			
Black Ducks:		1	2
Units 1-3	Oct. 5-Oct. 19.		
Units 4 & 5	Oct. 15-Nov. 13.		
Ducks	Oct. 5-Nov. 13	[illegible]	[illegible]
Extra teal during regular season	Oct. 5-Oct. 13.	2(2)	4(2)
South Zone (Wildlife Management Units 6-8)			
Black Ducks	Nov. 20-Dec. 14	[illegible]	[illegible]
Ducks	Oct. 5-Oct. 19 & Nov. 20-Dec. 14.	5	[illegible]
Extra teal during regular season	Oct. 5-Oct. 13.	2(2)	4(2)
Scaup only season	Oct. 28-Nov. 12.	2(2)	4(2)
Sea ducks(4)(5)(6)	Oct. 1-Jan. 15.	[illegible]	[illegible]
Mergansers		[illegible]	[illegible]
Coots		15	[illegible]
Gallinules/Moorhens	Sept. 1-Nov. 9.	15(7)	30(7)
Geese:			
Canada	Oct. 5-Dec. 13.	3	6
Snow (including blue)	Oct. 5-Jan. 2.	4	8
Brant	Oct. 5-Nov. 23.	[illegible]	[illegible]
Maryland			
Ducks			
Black Ducks	Nov. 19-Nov. 29 & Dec. 9-Jan. 4.	[illegible]	[illegible]
Ducks	Oct. 11-Oct. 12 & Nov. 19-Nov. 29 & Dec. 9-Jan. 4.	4(25)	8(25)
Extra teal during regular season	Nov. 19-Nov. 27.	2(2)	4(2)
Special Canvasback Season	Dec. 30-Jan. 4.	4(10)	8(10)
Scaup only season (in sea duck zone)(3)	Jan. 6-Jan. 21.	[illegible]	[illegible]
Sea ducks(4)(5)(6)	Oct. 4-Jan. 18.	[illegible]	[illegible]
Coots		[illegible]	[illegible]
Gallinules/Moorhens	Sept. 2-Nov. 9.	15(7)	30(7)
Geese:			
Canada:			
Delmarva Peninsula (11)	Oct. 25-Nov. 29 & Dec. 9-Jan. 31.	3	[illegible]
Remainder of State	Nov. 1-Nov. 29 & Dec. 9-Jan. 18.	[illegible]	[illegible]
Snow (including blue)	Oct. 25-Nov. 29 & Dec. 9-Jan. 31.	[illegible]	[illegible]
Brant	Nov. 9-Nov. 29 & Dec. 9-Jan. 4.	[illegible]	[illegible]
Massachusetts			
Ducks:			
Western (Berkshire) Zone (1)			
Black Ducks	Oct. 15-Nov. 23.	1	2
Ducks	Oct. 15-Nov. 23.	[illegible]	[illegible]
Extra teal during regular season	Oct. 15-Oct. 23.	2(2)	4(2)
Coastal Zone (1)			
Black Ducks	Oct. 21-Oct. 26 & Nov. 25-Dec. 8 & Dec. 19-Dec. 28.	2	4
Ducks	Oct. 21-Oct. 26 & Nov. 25-Dec. 28.	[illegible]	[illegible]
Extra teal during regular season	Oct. 21-Oct. 26.	2(2)	4(2)
Central Zone (1)			
Black Ducks	Octo. 21-Nov. 2 & Nov. 25-Dec. 21.	[illegible]	[illegible]
Ducks	Oct. 21-Nov. 2 & Nov. 25-Dec. 21.	5	[illegible]
Extra teal during regular season	Oct. 21-Oct. 29.	2(2)	4(2)
Scaup-only season(3)	Jan. 3-Jan. 18.	[illegible]	[illegible]
Sea ducks(4)(5)(6)	Oct. 1-Jan. 15.	7	14
Mergansers		5	[illegible]
Coots		15	[illegible]
Gallinules/Moorhens	Closed		
Geese:			
Western (Berkshire) Zone (1)	Oct. 15-Dec. 23.		
Coastal Zone (1)	Oct. 21-Nov. 2 & Nov. 25-Jan. 20.		
Central Zone (1)	Oct. 21-Nov. 2 & Nov. 25-Jan. 20.		
Canada		[illegible]	[illegible]
Snow (including blue)		[illegible]	[illegible]
Brant:			
Inland & Central Zone	Closed		
Coastal Zone	Nov. 25-Jan. 13.	[illegible]	8
New Hampshire			
Ducks:			
Inland Zone (1)			
Black Ducks	Oct. 5-Oct. 27 & Nov. 28-Dec. 14.	[illegible]	[illegible]
Ducks	Oct. 5-Oct. 27 & Nov. 28-Dec. 14.	5	10
Extra teal during regular season	Oct. 5-Oct. 13.	[illegible]	4(2)
Scaup only season	Dec. 29-Jan. 13.	[illegible]	[illegible]
Coastal Zone (1)			
Black Ducks	Nov. 28-Dec. 28.	2	[illegible]
Ducks	Oct. 26-Nov. 3 & Nov. 28-Dec. 28.	[illegible]	[illegible]
Extra teal during regular season	Oct. 26-Nov. 3.	[illegible]	[illegible]
Extra scaup during regular season	Oct. 6-Oct. 14 & Nov. 16-Dec. 26.	[illegible]	[illegible]
Sea ducks(4)(5)(6)	Sept. 15-Dec. 30.	[illegible]	[illegible]
Mergansers		[illegible]	[illegible]
Coots		[illegible]	[illegible]
Gallinules/Moorhens	Closed.		
Geese:			
Canada		[illegible]	[illegible]
Inland Zone	Oct. 5-Dec. 13.		
Coastal Zone	Oct. 19-Dec. 27.		
Snow (including blue)		[illegible]	[illegible]
Inland Zone	Oct. 5-Jan. 2.		
Coastal Zone	Oct. 5-Jan. 2.		
Brant:		[illegible]	[illegible]
Inland Zone	Oct. 5-Nov. 23.		
Coastal Zone	Oct. 19-Dec. 7.		
New Jersey			
Ducks			
North Zone (1)			
Black Ducks	Oct. 12-Oct. 26 & Nov. 23-Dec. 17.	[illegible]	[illegible]
Ducks	Oct. 12-Oct. 26 & Nov. 23-Dec. 17.	[illegible]	[illegible]
Extra teal during regular season	Oct. 12-Oct. 19.	[illegible]	4(2)
South Zone (1)			
Black Ducks	Oct. 26-Nov. 2 & Nov. 27-Dec. 28.	[illegible]	[illegible]
Ducks	Oct. 12-Oct. 19 & Nov. 27-Dec. 28.	[illegible]	8(25)
Extra teal during regular duck season	Oct. 12-Oct. 19.	2(2)	[illegible]
Coastal Zone (1)			
Black Ducks	Oct. 26-Nov. 2 & Nov. 27-Dec. 28.	1	2
Ducks	Oct. 26-Nov. 2 & Nov. 27-Dec. 28.	4(25)	8(25)
Extra teal during regular duck season	Oct. 26-Nov. 2.		
Special Canvasback Season	Dec. 18-Dec. 28.	4(10)	8(10)
Scaup only season (3)	Jan. 18-Jan. 25.	5	10
Sea ducks(4)(5)(6)	Oct. 5-Jan. 18.	7	14
Coots		15	30
Gallinules/Moorhens	Sept. 2-Nov. 9.	15(7)	30(7)
Geese:			
Canada		4	8
North Zone (1)	Oct. 12-Nov. 6 & Nov. 23-Jan. 25.		
South Zone (1)	Oct. 12-Nov. 4 & Nov. 27-Jan. 31.		
Coastal Zone (1)	Oct. 4-Nov. 2 & Nov. 27-Jan. 25.		
Snow (including blue)	Oct. 12-Jan. 9.	[illegible]	8
Brant	Oct. 26-Nov. 12 & Nov. 27-Dec. 28.	[illegible]	8
New York			
Long Island Zone:			
Ducks			
Black Ducks	Nov. 13-Dec. 1 & Dec. 12-Jan. 1.	[illegible]	[illegible]
Ducks	Nov. 13-Dec. 1 & Dec. 12-Jan. 1.	[illegible]	[illegible]
Scaup only season(3)	Jan. 11-Jan. 26.	5	10
Extra teal during regular season	Nov. 13-Nov. 21.	[illegible]	4(2)
Sea ducks (4)(5)(6)	Sept. 23-Jan. 7.	7	14
Mergansers		5	10
Coots		15	30
Geese:	Nov. 13-Jan. 31.		
Canada		[illegible]	[illegible]
Snow (including blue)		[illegible]	[illegible]
Brant	Nov. 13-Jan. 1.	[illegible]	[illegible]

Lake Champlain Zone: (12)			
Ducks:			
Black Ducks	Oct. 9–Oct. 13 & Oct. 26–Nov. 29.	1	2
Ducks	Oct. 9–Oct. 13 & Oct. 26–Nov. 29.	[illegible]	10
Special scaup and goldeneye season (13)	Nov. 30–Dec. 15.	[illegible]	[illegible]
Extra teal during regular season	Oct. 9–Oct. 13.	2(2)	4(2)
Mergansers		5	10
Coots		15	30
Gallinules/Moorhens	Sept. 1–Nov. 9.	15(7)	30(7)
Geese	Oct. 9–Dec. 17.		
Canada		3	6
Snow (including blue)		4	8
Brant	Oct. 9–Nov. 27	4	8
Northeastern Zone (1):			
Ducks:			
Black Ducks	Oct. 10–Oct. 27 & Nov. 10–Nov. 17.	1	2
Ducks	Oct. 10–Oct. 27 & Nov. 10–Dec. 1.	4(25)	8(25)
Extra teal during regular season	Oct. 10–Oct. 18.	2(2)	4(2)
Extra scaup during regular season	Oct. 10–Oct. 27 & Nov. 10–Dec. 1.	2(2)	4(2)
Mergansers		5	10
Coots		15	30
Gallinules/Moorhens	Sept. 1–Nov. 9.	15(7)	30(7)
Geese:	Oct. 2–Dec. 30.		
Canada		3	[illegible]
Snow (including blue)		[illegible]	[illegible]
Brant	Oct. 2–Nov. 20.	4	[illegible]
Southeastern Zone (1):			
Ducks:			
Black Ducks	Nov. 15–Dec. 15.	1	[illegible]
Ducks	Oct. 12–Oct. 20 & Nov. 15–Dec. 15.	4(25)	8(25)
Extra teal during regular season	Oct. 12–Oct. 20.	2(2)	4(2)
Extra scaup during regular season	Oct. 12–Oct. 20 & Nov. 15–Dec. 15.	2(2)	4(2)
Mergansers		5	10
Coots		15	30
Gallinules/Moorhens	Sept. 1–Nov. 9.	15(7)	30(7)
Geese:	Oct. 2–Dec. 30.		
Canada		3	6
Snow (including blue)		[illegible]	[illegible]
Brant	Oct. 2–Nov. 20.	4	[illegible]
Western Zone (1):			
Ducks:			
Black Ducks	Oct. 15–Nov. 12.	1	[illegible]
[illegible]	Oct. 15–Nov. 12 & Dec. 26–Jan. 5.	4(25)	8(25)
Extra teal during regular season	Oct. 15–Oct. 23.	2(2)	4(2)
Extra scaup during regular season	Oct. 15–Nov. 12 & Dec. 26–Jan. 5.	2(2)	4(2)
Special Canvasback season	Dec. 26–Jan. 5.	4(10)	8(10)
Mergansers		[illegible]	[illegible]
Coots		15	[illegible]
Gallinules/Moorhens	Sept. 1–Nov. 9.	15(7)	30(7)
Geese:	Oct. 2–Dec. 30.		
Canada		[illegible]	6
Snow (including blue)		4	[illegible]
Brant	Oct. 2–Nov. 20.	[illegible]	8
North Carolina			
Ducks:			
Black Ducks	Oct. 10–Oct. 12 & Nov. 28–Nov. 30 & Dec. 9–Jan. 11.	1	[illegible]
Ducks	Oct. 10–Oct. 12 & Nov. 28–Nov. 30 & Dec. 9–Jan. 11.	4(8)(25)	8(8)
Special Canvasback season	Jan. 1–Jan. 11.	4(10)	8(10)
Extra scaup during regular season (14)	Oct. 10–Oct. 12 & Nov. 28–Nov. 30 & Dec. 9–Jan. 11.	2(2)	4(2)
Extra teal during regular season	Oct. 10–Oct. 12 & Nov. 28–Nov. 30 & Dec. 9–Dec. 11.	2(2)	4(2)
Sea ducks(4)(5)(6)	Oct. 1–Jan. 11.	7	14
Mergansers		5	[illegible]
Coots		15	30
Gallinules/Moorhens	Sept. 23–Nov. 30.	15	30
Geese:			
Canada	Dec. 20–Jan. 31.	1	2
Snow (including blue)	Nov. 4–Jan. 31.	4	8
Brant	Oct. 10–Oct. 12 & Nov. 28–Nov. 30 & Dec. 9–Jan. 11.	4	8
Tundra swan	Nov. 4–Jan. 31	only by permit: 1 swan per season	
Pennsylvania			
Ducks:			
North Zone (1)			
Black Ducks	Nov. 1–Nov. 25.	1	[illegible]
Ducks	Oct. 17–Nov. 25.	4(25)	8(25)
Extra teal during regular season	Oct. 17–Oct. 26.	2(2)	4(2)
South Zone (1)			
Black Ducks	Nov. 14–Dec. 7.	1	2
Ducks	Oct. 24–Oct. 30 & Nov. 14–Dec. 16.	4(25)	8(25)
Extra teal during regular season	Oct. 24–Oct. 30.	2(2)	4(2)
Northwest Zone (1)			
Black Ducks	Nov. 7–Dec. 7.	1	2
Ducks	Oct. 17–Oct. 25 & Nov. 7–Dec. 7.	4(25)	8(25)
Extra teal during regular season	Oct. 17–Oct. 25.	2(2)	4(2)
Lake Erie Zone (1)			
Black Ducks	Oct. 29–Dec. 7.	1	2
Ducks	Oct. 29–Dec. 7.	4(25)	8(25)
Extra teal during regular season	Oct. 29–Nov. 5.	2(2)	4(2)
Extra scaup during regular season	Oct. 29–Dec. 7.	2(2)	4(2)
Mergansers		5	[illegible]
Coots		15	[illegible]
Gallinules/Moorhens	Sept. 2–Nov. 9.	15(7)	30(7)
Geese:			
Canada and		3	6
Snow (including blue)		3	[illegible]
North Zone (1)	Oct. 5–Dec. 13.		
South Zone (1)	Oct. 12–Dec. 20.		
Northwest Zone (1)	Oct. 12–Dec. 20.		
Lake Erie Zone (1)	Oct. 12–Dec. 20.		
Southeastern Zone (1)	Oct. 12–Jan. 9.		
Brant	Oct. 21–Nov. 18.	2	[illegible]
Rhode Island			
Ducks:			
Black Ducks	Oct. 11–Oct. 13 & Nov. 27–Dec. 1 & Dec. 7–Jan. 7.	1	[illegible]
Ducks	Oct. 11–Oct. 13 & Nov. 27–Dec. 1 & Dec. 7–Jan. 7.	5	10
Extra teal during regular season	Oct. 11–Oct. 13 & Nov. 27–Dec. 1.	2(2)	4(2)
Scaup-only season (3)	Jan. 11–Jan. 26.	5	10
Sea ducks(4)(5)(6)	Oct. 11–Jan. 20.	7	14
Mergansers		5	10
Coots		15	30
Gallinules/Moorhens	Sept. 15–Nov. 23.	15(7)	30(7)
Geese:	Oct. 11–Oct. 13 & Nov. 6–Jan. 31.		
Canada		3	6
Snow (including blue)		[illegible]	8
Brant	Dec. 1–Jan. 19.	[illegible]	8
South Carolina(15)(16)			
Ducks:			
Black Ducks (17)	Oct. 12 & Dec. 9–Jan. 13.	1	2
Ducks	Oct. 12 & Nov. 28–Nov. 30 & Dec. 9–Jan. 13.	4(8)(25)	8(8)(25)
Extra teal during regular season	Jan. 3–Jan. 11.	2(2)	4(2)
Extra scaup during regular season (18)	Oct. 12 & Nov. 28–Nov. 30 & Dec. 9–Jan. 13.	2(2)	4(2)
Mottled duck	Closed.	-	-
Sea ducks(4)(5)(6)	Oct. 4–Jan. 18.	[illegible]	14
Mergansers		[illegible]	10
Coots		15	[illegible]
Gallinules/Moorhens	Sept. 13–Oct. 18 & Nov. 11–Dec. 14.	15(7)	30(7)

Geese:			
Canada	Closed		
Snow (including blue)	Oct. 12 & Nov. 28–Nov. 30 & Dec. 9–Jan. 13.	[illegible]	[illegible]
Brant	Oct. 12 & Nov. 28–Nov. 30 & Dec. 9–Jan. 13.	[illegible]	[illegible]
Vermont (12)			
[illegible]			
Black Ducks	Oct. 9–Oct. 13 & Oct. 26–Nov. 29.	1	2
Lake Champlian Zone (1)			
Ducks	Oct. 9–Oct. 13 & Oct. 26–Nov. 29.	[illegible]	10
Extra teal during regular season	Oct. 9–Oct. 13	2(2)	4(2)
Special scaup and goldeneye season	Nov. 30–Dec. 15.	3	[illegible]
Interior Vermont Zone (1)			
Black Ducks	Oct. 9–Nov. 17.	1	2
Ducks	Oct. 9–Nov. 17.	[illegible]	10
Extra teal during regular season	Oct. 9–Oct. 17	2(2)	4(2)
Extra scaup during regular season	Oct. 9–Nov. 17.	2(2)	4(2)
Mergansers		[illegible]	10
Coots		15	30
Gallinules/Moorhens	Sept. 28–Dec. 6.	15(7)	30(7)
Geese (19):			
Canada and snow		[illegible]	[illegible]
Lake Champlain Zone	Oct. 9–Dec. 17.	[illegible]	[illegible]
Interior Vermont Zone	Oct. 9–Dec. 17.		
Brant		[illegible]	[illegible]
Lake Champlain Zone	Oct. 9–Nov. 27.		
Interior Vermont Zone	Oct. 9–Nov. 27.		
Virginia			
Ducks:			
Black Ducks	Oct. 9–Oct. 12 & Nov. 27–Nov. 30 & Dec. 13–Jan. 13.	1	2
Ducks	Oct. 9–Oct. 12 & Nov. 27–Nov. 30 & Dec. 13–Jan. 13.	4(25)	8(25)
Extra teal during regular duck season	Oct.9–Oct. 12 & Nov. 27–Nov. 30 & Dec. 13.	2(2)	[illegible]
Special Canvasback season	Jan. 8–Jan. 13.		
Scaup only season(3)	Jan. 14–Jan. 29.	5	10
Sea ducks(4)(5)(6)	Oct. 7–Jan. 20.	[illegible]	14
Coots		15	30
Gallinules/Moorhens	Oct. 9–Oct. 12 & Nov. 27–Nov. 30 & Dec. 13–Jan. 13.	15(7)	30(7)
Geese:			
Canada:			
Back Bay Area (20)	Nov. 27–Nov. 30 & Dec. 6–Jan. 20.	2	4
Delmarva Peninsula Area	Nov. 1–Nov. 2 & Nov. 4–Nov. 9 & Nov. 11–Jan. 31	[illegible]	[illegible]
Remainder of State	Nov. 11–Nov. 16 & Nov. 18–Jan. 20.	3	[illegible]
Snow (including blue):			
Back Bay Area (21)	Nov. 27–Nov. 30 & Dec. 13–Jan. 13.	[illegible]	8
Remainder of State	Nov. 1–Nov. 2 & Nov. 4–Nov. 9 & Nov. 11–Jan. 31.	[illegible]	[illegible]
Brant	Nov. 30–Jan. 18	[illegible]	[illegible]
West Virginia			
Ducks:			
Allegheny Mountain Upland Zone (Zone 2) (1)			
Black Ducks	Oct. 8–Oct. 19 & Nov. 11–Dec. 7.	1	[illegible]
Ducks	Oct. 8–Oct. 19 & Nov. 11–Dec. 7.	4(25)	8(25)
Extra teal during regular season	Oct. 8–Oct. 16.	2(2)	4(2)
Extra scaup during regular season	Oct. 8–Oct. 19 & Nov. 11–Dec. 7.	2(2)	4(2)
Gallinules/Moorhens	Oct. 8–Oct. 19 & Nov. 11–Dec. 7.	15(7)	30(7)
Remainder of State (Zone 1)(1)			
Black Ducks	Oct. 8–Oct. 19 & Dec. 17–Jan. 13.	1	2
[illegible]	Oct. 8–Oct. 19 & Dec. 17–Jan. 13.	4(25)	8(25)
Extra teal during regular season	Oct. 8–Oct. 16.	[illegible]	4(2)
Extra scaup during regular season	Oct. 8–Oct. 19 & Dec. 17–Jan. 13.	[illegible]	4(2)
Gallinules/Moorhens	Oct. 8–Oct. 19 & Dec. 17–Jan. 13.	15(7)	[illegible]
Mergansers		5	10
Coots		15	30
Geese:			
Allegheny Mountain Upland Zone (1)	Oct. 8–Oct. 19 & Nov. 11–Dec. 7.		
Remainder of State	Oct. 8–Oct. 19 & Dec. 17–Jan. 13.		
[illegible]		1(22)	2(22)
Snow (including blue)		4	8
[illegible]		4	8
Allegheny Mountain Upland Zone	Oct. 8–Oct. 19 & Nov. 11–Dec. 7.		
Remainder of State	Oct. 8–Oct. 19 & Dec. 17–Jan. 13.		

Point system — Ducks, mergansers and coots. The Atlantic Flyway States selecting the point system bag limits on designated species are listed in the table above.

The daily bag limit is reached when the point value of the last bird taken added to the sum of the point values of the other birds already taken during that day reaches or exceeds 100 points. The possession limit is the maximum number of birds of species and sex which could have legally been taken in 2 days. The shooting (including hawking) hours are one-half hour before sunrise until sunset daily unless otherwise indicated.

The point values assigned to the species and sexes are as follows:

Atlantic Flyway

100 points	70 points	20 points	[illegible] points
[illegible] (except where closed)	Wood duck	Blue-winged teal	[illegible]
Female mallard	Redhead	Green-winged teal	Pintail
Black duck	Hooded merganser	Shoveler	Ring-necked duck
Fulvous tree duck (only in Florida)		Gadwall	Bufflehead
[illegible] (except South Carolina)		Wigeon	and all other species of ducks
		Scaup	
		Sea ducks (23)	
		Mergansers (except hooded)	

(1) Described in the September 5, 1985, Federal Register (50 FR 36198). See State Regulations for zone/area boundaries.

(2) The daily bag and possession limits specified here are in addition to any other bag and possession limits specified elsewhere.

(3) A special hunting season for scaup only is prescribed in those areas which are described, delineated and designated in the hunting regulations of the State.

(4) An open season for taking scoter, eider, and oldsquaw ducks is prescribed according to the following table during the period between September 15, 1985, and January 20, 1986, in all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut; in those coastal waters of New York lying in Long Island and Block Island Sounds and associated bays eastward from a line running between Miamogue Point in the Town of Riverhead to Red Cedar Point in the Town of Southampton, including any ocean waters of New York lying south of Long Island; in any waters of the Atlantic Ocean and, in addition, in any tidal waters of any bay which are separated by at least one mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and/or in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina, and Virginia; and provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks.

(5) The daily bag limit is 7 and possession limit is 14, singly or in the aggregate of these species. During the regular duck season in the Atlantic Flyway, States may set, in addition to the regular limits, a daily bag limit of 7 and a possession limit of 14 scoter, eider, and oldsquaw ducks, singly or in the aggregate of these species.

(6) Notwithstanding the provisions of this Part 20 the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated, and designated in their respective hunting regulations as being open to sea duck hunting.

(7) Bag and possession limits are 15 and 30 common moorhens and purple gallinules, singly or in the aggregate of the two species. In Florida, the gallinule season applies to the common gallinule only. There is no open season on the purple gallinule in Florida.

(8) No special daily bag and possession limit restrictions apply to wood ducks in Georgia on October 12, in North Carolina during October 10-October 12, in South Carolina on October 12 and in Virginia during October 9-October 12.

(9) Only in coastal waters and the waters of the rivers and streams seaward from the first upstream bridge and includes all tidal waters bounded by ME 182 and 200 north of U.S. 1 in Hancock County.

(10) In Maryland, New Jersey, New York, North Carolina and Virginia the daily bag may include no more than 4 canvasbacks, not more than one of which may be a female. Areas open to canvasbacks hunting during the special season are:

New York - Upper Niagara River between the Peace Bridge at Buffalo, New York, and the Niagara Falls, and all waters of Lake Cayuga.

North Carolina - That portion of Pamlico Sound and its tributaries designated as coastal fishing waters within two miles of the mainland, extending from Long Shoal Point on north side of Long Shoal River to that point of land near Whortonville on the north side of Broad Creek known as Piney Point and upstream in the Pamlico River to the Aurora-Bellhaven Ferry crossing.

New Jersey- East of the Garden State Parkway from Route 440, south to Route 36 (Raritan and Sandy Hook Bays, Navesink, and Shrewsbury Rivers); east of the Garden State Parkway from Route 88 south to Route 72 (Barnegat, Silver and Manahawkin Bays, Metedeconk and Toms Rivers).

Maryland - The waters of Cheasapeake Bay and its tributaries to the first upstream bridge, except on the Patuxent River the boundary is the second upstream bridge (Maryland Route 231 bridge near Benedict, MD); including Potomac River and its tributaries upstream to U.S. Route 301 bridge.

Virginia - Starting at the Virginia-Maryland line (301 bridge) those lands and waters enclosed in the area bounded by: U.S. Highway 301 south to Route 207 and continuing to the junction of U.S. Route 1, south on Route 1 to Route 460, then southeast on 460 to Route 13, then east and north on Route 13 to the Maryland line, then westward on the Maryland-Virginia line to Route 301.

The remaining portions of New Jersey, New York, North Carolina, Maryland and Virginia presently closed to the taking of canvasbacks will remain closed.

(11) In Maryland, the Delmarva Peninsula includes the counties of Caroline, Cecil, Dorchester, Kent, Queen Annes, Somerset, Talbot, Wicomico and Worcester.

(12) Throughout Vermont and in that part of New York in the Lake Champlain Zone, on opening day, October 9, shooting hours are from 7 a.m. to sunset. Shooting hours are one-half hour before local sunrise to local sunset throughout the remainder of the season.

(13) In the Lake Champlain Zone (described and delineated in the hunting regulations of New York and Vermont) a special hunting season for scaup and goldeneye is prescribed with a daily bag limit of 3 scaup or 3 goldeneyes or 3 in the aggregate and 6 scaup or 6 goldeneyes or 6 in the aggregate in possession.

(14) Only in waters east of U.S. Highway 17, except Currituck Sound north of U.S. Highway 158.

(15) Except on January 5 and January 12 there will be no Sunday hunting in Georgetown County or Charleston County from the Georgetown County line (South Santee River) to the Wando River, east of Highway U.S. 17. The shooting hours in this area will be 1/2 hour before sunrise to 12:00 noon daily, except on October 12, November 30 and January 13, when shooting hours will be 1/2 hour before sunrise to sunset.

(16) During the period December 7-January 13, the shooting hours are 1/2 hour before sunrise to 1:00 p.m. daily on all lands and waters of: that portion of Lake Marion and Santee Swamp west of Interstate 95 bridge upstream to the confluence of the Wateree and Congaree Rivers. The affected area being further described as all land west of I-95 within or adjacent to Lake Marion which is owned by Santee Cooper or the State of South Carolina in the Counties of Clarendon, Sumter, Orangeburg and Calhoun. This regulation shall apply to all land in the area described above, whether such land shall be exposed or inundated.

NOTE: These regulations shall apply to land owned by Santee-Cooper or the State of South Carolina ONLY.

In Hampton, Colleton, Dorchester, Jasper, Beaufort and Charleston (that area not covered above) Counties: The shooting hours in this area will be 1/2 hour before sunrise to 12 noon daily except on October 12, November 30, and January 13 when shooting hours will be 1/2 hour before sunrise to sunset.

(17) In South Carolina, there is no open season on black ducks in Georgetown, Charleston, Colleton, and Beaufort Counties.

(18) Only in waters east of U.S. Highway 17, north of Charleston, and east of the Seaboard Railroad bed south of Charleston.

(19) See State regulations for further limit restrictions for Dead Creek Area, Addison County, Vermont.

(20) In Virginia, the Back Bay Area is defined for Canada geese as those portions of the cities of Virginia Beach and Chesapeake lying east of U.S. Highway 17 and Interstate 64. Geese may not be taken on the waters of Back Bay, December 6-12 and January 14-20.

(21) In Virginia, the Back Bay Area is defined for snow (including blue) geese as the waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Lake Tecumseh and Red Wing Lake and the marshes adjacent thereto.

(22) In West Virginia, the daily bag and possession limits on Canada geese is 1 and 2, respectively, in both zones during the first half of the split season. During the second half of the split season in both zones, the daily bag and possession limit on Canada geese is 2 and 4, respectively.

(23) In all areas outside of special sea duck areas, sea ducks are included in the regular duck season conventional or point-system daily bag and possession limits.

(24) East of Intercoastal Waterway in Chatham, Bryan, Liberty, McIntosh, Glynn and Camden Counties.

(25) The daily bag limit may include no more than 3 mallards of which only 1 may be a hen, 2 pintails, and 1 black duck. The possession limit is twice the daily bag limit. Except in closed areas, the limit on canvasbacks is 1 daily and 1 in possession. The limit on redheads is 2 daily, except that in areas open to canvasback hunting the daily bag limit is 2 redheads, or 1 redhead and 1 canvasback.

MISSISSIPPI FLYWAY

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee and Wisconsin.

Shooting hours: One-half hour before sunrise to sunset daily except as otherwise restricted.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

The season dates for mergansers and coots are the same as those for ducks in the following tables.

	Season Dates	Limits Bag	Limits Possession
Alabama -			
Ducks:		Point system.	
North Zone (1)	Dec. 5-Jan. 13.		
South Zone (1)	Nov. 14-Nov. 24 & Dec. 16-Jan. 13.		
Coots		15	30
Gallinules/Moorhens	Nov. 12-Jan. 20.	15(11)	15(11)
Geese:		5	10
Remainder of State	Nov. 12-Jan. 20.		
Limits include no more than:			
Canada		2	4
White-fronted		2	4
Snow (including blue) and brant		5	10
Arkansas			
Ducks	Nov. 23-Dec. 8 & Dec. 21-Jan. 13.	Point system.	
Coots		15	30
Gallinules	Sept. 1-Nov. 9.	15	30
Geese:		5	10
Canada	Closed.	-	
Other geese	Nov. 12-Jan. 20.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Illinois: (12)			
Ducks (2):		Point system.	
North Zone (1)	Oct. 16-Nov. 24.		
Central Zone (1)	Oct. 24-Dec. 2.		
South Zone (1)	Oct. 31-Dec. 9.		
Coots		15	30
Geese (4):		5	10
Canada			
North Zone (1)			
Tri-County Area (1)	Nov. 1-Nov. 20.	1	4
Remainder of North Zone	Oct. 16-Nov. 4.	1	4
Central Zone (1)			
Tri-County Area (1)	Nov. 1-Nov. 20.	1	4
Remainder of Central Zone	Oct. 24-Nov. 12.	1	4
South Zone (1)			
Southern Illinois Quota Zone (Alexander, Jackson, Union, and Williamson Counties)(4)(5)	Nov. 11-Dec. 20.	2	4
Remainder of South Zone	Nov. 26-Dec. 15.	1	4
Other Geese			
North Zone (1)	Oct. 16-Nov. 24.		
Central Zone (1)	Oct. 24-Dec. 2.		
South Zone (1)	Oct. 31-Dec. 9.		
Limits include no more than:			
White-fronted geese		2	4
Snow (including blue) and brant		5	10

Indiana			
Ducks:		Point system.	
North Zone (1)	Oct. 11–Oct. 13 & Nov. 1–Dec. 7.		
South Zone (1)	Oct. 19–Oct. 23 & Nov. 23–Dec. 27.		
Ohio River Zone (1)	Oct. 26–Oct. 30 & Dec. 10–Jan. 13.		
Scaup-only season (Lake Michigan only) (6)	Dec. 14–Dec. 29.	5	10
Coots		15	30
Gallinules/Moorhens	Sept. 1–Nov. 9.	15(11)	30(11)
Geese:		5	10
Canada:			
North Zone	Oct. 11–Oct. 13 & Nov. 1–Jan. 6.	2	4
South Zone:			
Posey County	Dec. 12–Jan. 20.	1	2
Remainder of South Zone	Oct. 19–Oct. 23 & Nov. 17–Jan. 20.	2	4
Ohio River Zone:			
Posey County	Dec. 12–Jan. 20.	1	2
Remainder of Ohio River Zone	Oct. 26–Oct. 30 & Nov. 17–Jan. 20.	2	4
Other Geese:			
North Zone	Oct. 11–Oct. 13 & Nov. 1–Jan. 6.		
South Zone	Oct. 19–Oct. 23 & Nov. 17–Jan. 20.		
Ohio River Zone	Oct. 26–Oct. 30 & Nov. 17–Jan. 20.		
Limits include no more than:			
White-fronted geese		2	4
Snow (including blue) and brant		5	10
Iowa			
Ducks (2)		Point system.	
North Zone	Oct. 19–Nov. 24.		
South Zone	Oct. 26–Dec. 1.		
Coots		15	30
Geese:		5	10
Southwest Zone (1)	Oct. 12–Dec. 20.		
Remainder of State	Sept. 28–Dec. 6.		
Limits include no more than:			
Canada		2	3
White-fronted		2	4
Snow (including blue) and brant		5	10
Kentucky			
Ducks	Nov. 28–Dec. 1 & Dec. 9–Jan. 13.	3	6
Limits include no more than:			
Mallards (no more than 1 female mallard daily or 2 in possession)		2	3
Pintails		2	3
Black ducks		1	2
Wood ducks		2	3
Canvasbacks (except in closed areas)		1	2
Redheads		1	2
Coots		15	30
Gallinules/Moorhens	Nov. 28–Jan. 20.	15(11)	30(11)
Geese:		5	10
Western Zone (1) (3)(4)	Dec. 23–Jan. 31.		
Remainder of State	Nov. 28–Jan. 20.		
Limits include no more than:			
Canada		2	4
White-fronted		2	4
Snow (including blue) and brant		5	10
Louisiana			
Ducks:		Point system.	
East Zone (1)	Nov. 23–Dec. 1 & Dec. 14–Jan. 13.		
West Zone (1)	Nov. 9–Dec. 1 & Dec. 21–Jan. 11.		
Scaup only season (6)	Jan. 15–Jan. 30.	5	10
Coots		15	30
Gallinules/Moorhens	Sept. 21–Sept. 29 & Nov. 9–Jan. 8.	15(11)	30(11)
Geese:			
Canada	Closed.	-	-
Other Geese:		5	10
East Zone(1)	Nov. 23–Dec. 1 & Dec. 14–Feb. 12.		
West Zone (1)	Nov. 9–Dec. 1 & Dec. 21–Feb. 5.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Michigan			
Ducks (2):		Point system	
North Zone (1)	Oct. 5–Nov. 13.		
Middle Zone (1)	Oct. 5–Nov. 13.		
Southeast Zone (1)	Oct. 5–Nov. 13.		
Scaup only season (6)	Nov. 16–Dec. 1.	5	10
Coots		15	30
Gallinules/Moorhens		15(11)	30(11)
North Zone	Oct. 5–Nov. 13		
Middle Zone	Oct. 5–Nov. 13.		
Southeast Zone	Oct. 5–Nov. 13.		
Geese:			
Canada			
North Zone (9):			
Baraga, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee, and Ontonagon Counties	Sept 26–Oct. 15.	1	2
Remainder of North Zone	Sept. 28–Oct. 17.	1	2
Middle Zone (1):			
Southern Michigan Goose Management Area (1)	Oct. 5–Nov. 3.	1	2
	Jan. 1–Feb. 16.	3	6
Allegan County Goose Management Area	Oct. 5–Nov. 13.	1	2
Muskegon Wastewater GMA	Oct. 15–Nov. 13.	1	2
Remainder of Middle Zone	Oct. 5–Nov. 3.	1	2
Southeast Zone (1)			
Southern Michigan Goose Management Area (1)	Oct. 5–Nov. 13.	1	2
	Jan. 1–Feb. 16.	3	6
Remainder of Southeast Zone	Oct. 5–Nov. 13.	1	2
Other geese:			
North Zone (1):			
Baraga, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee, Ontonagon Counties	Sept. 26–Nov. 13.		
Remainder of North Zone	Sept. 28–Nov. 13.		
Middle Zone (1)	Oct. 5–Nov. 13.		
Southeast Zone (1)	Oct. 5–Nov. 13.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Minnesota (7)			
Ducks:	Oct. 5–Nov. 13.	3	6
Limits include no more than:			
Mallards (no more than 1 female mallard daily or 2 in possession)		2	4
Pintails		2	4
Black ducks		1	2
Wood ducks		2	4
Canvasbacks (except in closed areas)		1	2
Redheads		1	2
Mergansers (no more than 1 hooded merganser daily or 2 in possession)		5	10
Coots		15	30
Gallinules/Moorhens	Oct. 5–Nov. 13.	15(11)	30(11)
Geese:			
Canada:			
Lac Qui Parle Quota Zone (1) (4)	Sept. 28–Nov. 16	1	2
Southeastern Zone (1)	Sept. 28–Dec. 6.	2	4
Remainder of State	Sept. 28–Nov. 16.	1	2
Other geese:			
Southeastern Zone	Sept. 28–Dec. 6.		
Remainder of State	Sept. 28–Nov. 16.		
Limits include no more than:			
White-fronted		2	4
Snow (including blue) and brant		5	10
Mississippi			
Ducks	Nov. 30–Dec. 1 & Dec. 7–Jan. 13.	Point system.	
Coots		15	30
Gallinules/Moorhens	Oct. 19–Dec. 27.	15	30
Geese:		5	10
Canada:			
Sardis Zone (1)	Dec. 5–Dec. 14 & Jan. 12–Jan. 31.	1	2

Remainder of State	Dec. 30–Jan. 13.	1	2
Other geese	Nov. 12–Jan. 20.		
Limits include no more than:			
White-fronted		2	[illegible]
Snow (including blue) and brant		5	10
Missouri			
Ducks:		Point system.	
North Zone (1)	Oct. 19–Oct. 21 & Nov. 2–Dec. 8.		
South Zone (1)	Nov. 2–Dec 1 & Dec. 27–Jan. 5.		
Coots		15	30
Geese:		5	10
Canada (3)			
North Zone (1)			
Swan Lake Zone (1) (4)	Nov. 2–Dec. 21.	2	4
Southeastern Zone (east of U.S. Highway 67 and south of Crystal City)	Dec. 2–Jan. 20.	1	2
Remainder of North Zone	Nov. 2–Dec. 21.	1	2
South Zone (1)			
Southeastern Zone (1)	Dec. 2–Jan. 20.	1	2
Remainder of South Zone	Nov. 2–Dec. 1 & Dec. 27–Jan. 15.	1	2
White-fronted	Nov. 1–Jan. 9.	2	[illegible]
Snow (including blue) and brant	Nov. 2–Jan. 10.	5	10
Ohio			
Pymatuning Area (1):			
Ducks:			
Black Ducks	Nov. 7–Dec. 7.	1	2
Other Ducks	Oct. 17–Oct. 25 & Nov. 7–Dec. 7.	4	8
Limits include no more than:			
Mallards (no more than 1 female daily or 2 in possession)		3	[illegible]
Black Ducks		1	2
Wood Ducks		2	[illegible]
Canvasbacks		[illegible]	[illegible]
[illegible]		2	[illegible]
Canvasbacks and Redheads combined		2	[illegible]
Extra teal during regular season	Oct. 17–Oct. 25.	2(2)	4(2)
Coots		15	[illegible]
Gallinules/Moorhens	Sept. 2–Nov. 9.	15(11)	30(11)
Mergansers (except hooded)		5	[illegible]
Hooded mergansers		1	[illegible]
Geese:			
Brant	Oct. 21–Nov. 18.		
Other Geese	Oct. 12–Dec. 20.		
Limits include no more than:			
Canada		3	6
Snow (including blue)		4	8
Brant		4	8
Remainder of State:			
Ducks:		4	8
North Zone (1)	Oct. 21–Nov. 23 & Dec. 9–Dec. 14.		
South Zone (1)	Oct. 21–Nov. 2 & Dec. 9–Jan. 4.		
Ohio River Zone (1)	Oct. 21–Nov. 2 & Dec. 16–Jan. 11.		
Limits include no more than:			
Mallards (no more than 1 female mallard daily or 2 in possession		2	4
Black ducks		1	[illegible]
Wood ducks		[illegible]	[illegible]
Canvasbacks		[illegible]	[illegible]
Redheads		[illegible]	2
Scaup-only (North Zone only) (6)	Dec. 16–Dec. 31.	5	10
Coots		15	30
Gallinules/Moorhens	Sept. 2–Nov. 9.	15(11)	30(11)
Geese	Oct. 21–Nov. 30 & Dec. 9–Jan. 6.	5	10
Limits include no more than:			
Canada:			
Ashtabula, Auglaize, Erie, Lucas, Marion, Mercer, Ottawa, Sandusky, Trumbull, and Wyandot Counties		1	2
Remainder of State		2	4
White-fronted		2	4
Snow (including blue) and brant		5	10
Tennessee			
Ducks:		Point system	
Reelfoot Zone (1)	Nov. 2–Nov. 5 & Dec. 9–Jan. 13.		
Remainder of State Zone (1)	Dec. 5–Jan. 13.		
Coots		15	[illegible]
Gallinules/Moorhens	Dec. 5–Jan. 13.	15(11)	30(11)
Geese:		5	10
Canada(8)			
Northwest Zone (4)	Dec. 23–Jan. 31.	1	[illegible]
Southwest Zone	Jan. 17–Jan. 31.	1	2
Remainder of State			
West of State Highway 13	Nov. 12–Jan. 20.	2	[illegible]
East of State Highway 13	Nov. 12–Jan. 20.	1	2
Other geese	Nov. 12–Jan. 20.		
Limits include no more than:			
White-fronted		[illegible]	[illegible]
Snow (including blue) and brant		5	10
Wisconsin			
Ducks (2):		Point system (10)	
North Duck Zone (1)	Oct. 5 (13)–Nov. 13.		
South Duck Zone (1)	Oct. 5 (13)–Oct. 13 & Oct. 19–Nov. 18.		
Coots		15	30
Scaup-only season (6)			
North Duck Zone	Nov. 14–Nov. 29.	5	10
South Duck Zone	Nov. 19–Dec. 4.	5	10
Gallinules/Moorhens			
North Duck Zone (1)	Oct. 5(13)–Nov. 13.	15(11)	30(11)
South Duck Zone (1)	Oct. 5(13)–Oct. 13 & Oct. 19–Nov. 18.	15(11)	30(11)
Geese:			
Canada:		5	10
North Duck Zone (1)			
Brown County	Oct. 5 (13)–Oct. 24.	1	2
	Dec. 1–Dec. 31.	2	[illegible]
Mississippi River Zone	Oct. 5 (13)–Dec. 13.	1	[illegible]
Remainder of North Zone	Oct. 5 (13)–Oct. 24.	1	[illegible]
South Duck Zone (1)			
Horicon and Central Zones (1)(4)	Oct. 5(13)–Nov. 6 & Dec. 7–Dec. 13.	Tag system – see State regulations.	
Rock Prairie Zone (1)	Oct. 19–Nov. 7	1	2
	Nov. 16–Dec. 15.	2	4
Mississippi River Zone	Oct. 5(13)–Oct. 13	1	2
	Oct. 19–Dec. 15.	2	4
Remainder of South Zone	Oct. 19–Nov. 7.	1	2
Other geese			
North Duck Zone (1)	Oct.5(13)–Nov. 13.		
South Duck Zone (1)	Oct. 5 (13)–Oct. 13 & Oct. 19–Nov. 18.		
Mississippi River Zone	Nov. 25–Dec. 15.		
Rock Prairie Zone	Nov. 16–Dec. 15.		
Brown County Zone	Dec. 1–Dec. 31.		
Limits include no more than:			
White-fronted		2	[illegible]
snow (including blue) and brant		5	10

The point values assigned to the species and sexes are as follows:

Mississippi Flyway (14)

100 points	70 points	20 points	35 points
Canvasback (except where closed)	Wood duck	Blue-winged teal	Male mallard
Black duck	Redhead	Green-winged teal	Pintail
Female mallard	Hooded merganser	Cinnamon teal	and all other species of ducks.
		Wigeon	
		Shoveler	
		Gadwall	
		Scaup	
		Mergansers (except hooded).	

(1) Described in the September 5, 1985, Federal Register (50 FR 36198). See State regulations for zone/area boundaries.

(2) The areas closed to canvasback hunting are:

Mississippi River – (1) Entire river, both sides, from Lock and Dam 9 upstream to the confluence of the Chippewa River. (2) Pool 19 bordering Iowa and Illinois.

Michigan – Macomb and St. Clair Counties, including the adjacent Great Lakes waters and interconnecting waterways under the jurisdiction of the State of Michigan.

Wisconsin – In the Mississippi River Zone, all that part of Wisconsin west of the Burlington–Northern Railroad from Lock and Dam 9 north to the centerline of the Chippewa River.

(3) Geese taken in Illinois and Missouri and in the Kentucky counties of Ballard, Hickman, Fulton, and Carlisle may not be transported, shipped or delivered for transportation for shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

(4) Harvests of Canada geese will be limited as follows:

Illinois: Southern Illinois Quota Zone—17,500.
Kentucky: West Kentucky Zone—7,000.
Wisconsin: Horicon and Central Zones combined—15,000.
Missouri: Swan Lake Zone—16,000.
Minnesota: Lac qui Parle Zone—4,500.
Tennessee: Northwest Zone—1500.

Missouri, Illinois, Minnesota, Kentucky and Tennessee Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Southern Illinois Quota Zone, the Swan Lake Zone in Missouri, the Lac qui Parle Zone in Minnesota, the West Kentucky Zone and the Northwest Zone in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

(5) Shooting hours for geese are sunrise until 3 p.m.

(6) A special hunting season for scaup only is prescribed in those areas which are described, delineated and designated in the hunting regulations of the State.

(7) In Minnesota, the shooting hours for waterfowl vary as follows: Ducks - October 5—12 noon to 4 p.m.; October 6 through October 18 - 1/2 hour before sunrise to 4 p.m.; and October 19-November 13 - 1/2 hour before sunrise to sunset. Geese - September 28 — 12 noon to 4 p.m.; September 29 - October 18 - 1/2 hour before sunrise to 4 p.m.; and October 19 - December 6 - 1/2 hour before sunrise to sunset.

(8) Local restrictions, including closures, apply in specified areas. Consult State regulations. Tagging of Canada geese is required in designated zones.

(9) On the first day the season opens at 12 noon.

(10) In Wisconsin, point values for some species change during the season. See State Regulations.

(11) The daily bag and possession limit for purple gallinules and common moorhens is singly or in the aggregate of the two species.

(12) No hunting of ducks, coots, geese and brant is authorized in the following area of Illinois unless and until the State authorizes, agrees to and aids the Service in establishing steel-shot only zones encompassing that area: Illinois: Henderson, Peoria, Fulton, Mason, Calhoun, Pike, Alexander, Jackson, Union and Williamson Counties.

CENTRAL FLYWAY

The Central Flyway consists of Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Geese include all species of geese and brant.

Dark Geese include Canada geese, white-fronted geese, and "black" brant.

Light Geese include all other species.

Flywaywide Restrictions

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily except as otherwise noted.

Mergansers — All mergansers are to be included within the daily bag and possession limits under conventional and point system regulations.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS WITHIN STATES. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

	Season Dates	Limits	
		Bag	Possession
Colorado			
Ducks	Oct. 5–Oct. 19 & Nov. 3–Nov. 29 & Dec. 14–Jan. 5.	Point system.	
Coots	Same as for ducks.	15	30
Geese (1):		2	4
North-Central Unit	Sept. 28–Oct. 11 & Oct. 26–Jan. 12.		
South Park Unit (special permit)	Sept. 28–Oct. 11 & Oct. 26–Dec. 30.		
San Luis Valley Unit (special permit)	Nov. 2–Dec. 31.		
Remainder of State in Central Flyway	Nov. 2–Jan. 12.		
Kansas			
Ducks(2):		Point system.	
High Plains Area (west of U.S. 283)	Oct. 19–Nov. 3 & Nov. 9–Dec. 15 & Dec. 21–Jan. 1.		
Low Plains Area (east of U.S. 283)	Oct. 26–Nov. 3 & Nov. 9–Dec. 8 & Dec. 26–Jan. 5.		
Coots	Same as for ducks.	15	30
Dark geese (2)	Oct. 26–Jan. 5.	2	4
including no more than:			
White-fronted	Oct. 26–Jan. 5.	1	2
Canada	Nov. 25–Jan. 5.	1	2
Light geese			
Unit 1 (east of U.S. 75 and north of I-70)	Nov. 16–Dec. 11 & Dec. 19–Feb. 16.	5	10
Unit 2 (remainder of State)	Nov. 2–Dec. 8 & Dec. 14–Jan. 31.		
Montana			
Ducks			
Zone 1 (3)	Oct. 12–Nov. 24 & Dec. 7–Dec. 27.	Point system (12)	
Zone 2 (3)	Oct. 12–Oct. 28 & Nov. 2–Dec. 27.		
Coots	Same as for ducks.	15	30
Geese:	Sept. 28–Dec. 29.		
Sheridan County		2	4
Remainder of State in Central Flyway		3	6
Tundra swans	Sept. 28–Dec. 29.	Only by permit; 1 swan per season	
Nebraska			
Ducks		Point system.	
High Plains Area	Oct. 19–Dec. 7 & Dec. 22–Jan. 5.		
Low Plains Area			
Zones 1 and 2 (4)	Oct. 19–Oct. 20 & Oct. 29–Dec. 15.		
Zones 3 and 4 (4)	Oct. 12–Nov. 30.		
Coots	Same as for ducks.	15	30
Dark geese			
North Unit (5)	Oct. 5–Dec. 22.	2	4
including no more than:			
White-fronted	Oct. 5–Dec. 22.	1	2
Canada	Oct. 5–Nov. 8.	1	2
East Unit (5)	Sept. 28–Dec. 8.	2	4
including no more than:			
White-fronted	Sept. 28–Dec. 8.	1	2
Canada	Nov. 18–Dec. 8.	1	2
Central Unit (5)	Oct. 26–Jan. 5.	2	4
including no more than:			
White-fronted	Oct. 26–Jan. 5.	1	2
Canada	Nov. 18–Jan. 5.	1	2
Panhandle Unit (5)	Nov. 10–Jan. 5.	2	4
including no more than:			
White-fronted	Nov. 10–Jan. 5.	1	2
Canada	Nov. 18–Jan. 5.	1	2
Sandhills Unit(5)	Nov. 2–Dec. 31.	Only by permit - 1 Canada goose per season.	
Light Geese	Sept. 28–Dec. 22.	5	10
New Mexico			
Ducks :		Point system.	
Zone 1 (6)	Nov. 2–Jan. 5.		
Zone 2 (6)	Nov. 9–Jan. 12.		
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Oct. 15–Dec. 23.	15(16)	30(16)
Geese:			
Dark geese (7)	Oct. 19–Jan. 19.	2	4
Light geese:	Oct. 28–Nov. 10 & Dec. 11–Feb. 28.	5	10
North Dakota			
Ducks:	Oct. 5–Nov. 23.	4	8
including no more than:			
Mallards (no more than 1 female mallard daily and 1 in possession)		3	6
Pintails (no more than 1 female pintail daily and 2 in possession)		3	6
[illegible]		1	1
Redheads		1	2
Wood ducks		2	4
Hooded Mergansers		1	2

Additional blue-winged teal	Oct. 5–Oct. 13.	2(8)	4(8)
Additional scaup	Oct. 26–Nov. 23.	2(8)	4(8)
Coots	Same as for ducks.	15	30
Dark geese (8)	Sept. 28–Nov. 17.	2	4
including no more than:			
Canada	Sept. 28–Nov. 3.	1	2
Light geese (8)	Sept. 28–Nov. 23.	5	10
Oklahoma			
Ducks:		Point system.	
High Plains Area (9)	Oct. 12–Nov. 10 & Nov. 23–Dec. 27.		
Low Plains			
Zone 1 (9)	Oct. 12–Nov. 3 & Nov. 30–Dec. 26.		
Zone 2 (9)	Oct. 26–Nov. 10 & Nov. 30–Jan. 2.		
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 1–Nov. 9.	15(16)	30(16)
Dark geese (10)		2	4
including no more than:			
White-fronted		1	2
Unit 1 (10)	Nov. 9–Jan. 19.		
Unit 2 (10)	Oct. 26–Nov. 10 & Nov. 25–Jan. 19.		
Light geese	Oct. 26–Nov. 10 & Nov. 30–Feb. 7.	5	10
South Dakota			
Ducks:		Point system (12)	
High Plains Area (11)	Oct. 12–Nov. 30 & Dec. 14–Dec. 28.		
Low Plains Area			
North Zone (11)	Oct. 5–Nov. 23.		
South Zone (11)	Oct. 26–Dec. 14.		
Coots	Same as for ducks.	15	30
Dark geese (12)			
Missouri River Unit (13)	Oct. 5–Dec. 22.	2	4
including no more than:			
[illegible]	Oct. 5–Nov. 8.	1	[illegible]
White-fronted	Oct. 5–Dec. 22	1	2
Remainder of State	Sept. 28–Dec. 8.	2	[illegible]
including no more than:			
[illegible]		1	[illegible]
White-fronted		1	2
Light geese (12)	Sept. 28–Dec. 22.	5	10
Texas			
Ducks (except masked duck):		Point system.	
High Plains Area (14)	Nov. 9–Jan. 12.		
Remainder of State	Nov. 2–Nov. 5 & Nov. 23–Dec. 8 & Dec. 14–Jan. 12.		
Masked duck	Closed season.	-	-
Coots	Same as for ducks.	15	30
Gallinules/Moorhens	Sept. 1–Nov. 9.	15(16)	30(16)
Geese:			
East of U.S. Highway 81:			
Dark geese	Nov. 2–Dec. 8 & Dec. 16–Jan. 19.	2	4
including no more than:			
[illegible]		1	2
White-fronted		1	2
Light geese	Nov. 2–Jan. 26.	5	10
West of U.S. Highway 81:			
Geese:	Oct. 29–Jan. 19.	5	10
including no more than:			
Dark geese		2	[illegible]
Wyoming			
Ducks and coots		Point system (9).	
Zone 1 (15)	Oct. 12–Nov. 24 & Dec. 7–Dec. 27.		
Zone 2 (15)	Oct. 12–Nov. 24 & Dec. 7–Dec. 27.		
Zone 3 (15)	Oct. 12–Dec. 15.		
Zone 4 (15)	Oct. 12–Nov. 29 & Dec. 14–Dec. 29.		
Geese:		2	4
Zone 1 (15)	Oct. 12–Jan. 5.		
Zone 2 (15)	Nov. 16–Jan. 12.		
Zone 3 (15)	Sept. 28–Dec. 29.		
Zone 4 (15)	Sept. 28–Dec. 29.		

Point system - Ducks, mergansers and coots. The Central Flyway States selecting the point system bag limits on designated species are listed in the table above.

The daily bag limit is reached when the point value of the last bird taken added to the sum of the point values of the other birds already taken during that day reaches or exceeds 100 points. The possession limit is the maximum number of birds of species and sex which could have legally been taken in 2 days. The shooting (including hawking) hours are one-half hour before sunrise until sunset daily unless otherwise indicated.

The point values assigned to the species and sexes are as follows:

Central Flyway

100 points	70 points	20 points	35 points
Canvasback	Wood duck	Blue-winged teal	Male mallard
Female mallard	[illegible]	Green-winged teal	Pintail
	Hooded merganser	Cinnamon teal	and all other species of ducks*
Texas only:	Texas only:	Shoveler	
Mottled duck	Black duck	Gadwall	
	Black bellied and fulvous whistling (tree)	Wigeon	
		Scaup	
	[illegible]	Merganser (except hooded).	

* In Texas only, there is no open season on the Masked duck.

(1) North Central unit: Bounded by the Continental Divide, the northern State line, and highways US-85 to I-76, I-76 to I-25, I-25 to I-70, and I-70 to the Continental Divide. South Park Unit: Chaffee, Fremont, Lake, Park, and Teller Counties. San Luis Valley Unit: Alamosa, Conejos, Costilla, and Rio Grande Counties and the portions of Hinsdale, Mineral, and Saguache Counties east of the Continental Divide.

(2) Dark geese may not be hunted in (a) an area, including the Marais des Cygnes Waterfowl Refuge, bounded by the eastern State line and highways K-68 to US-169, US-169 to K-7, K-7 to K-31, K-31 to US-69, US-69 to K-239, and K-239 to the State line and (b) an area southwest of Emporia bounded by highways K-57 to US-75, US-75 to K-39, K-39 to K-96, K-96 to US-77, US-77 to US-50, and US-50 to K-57.

(3) Zone 1: The Central Flyway portion, except Zone 2, of Montana. Zone 2: The counties of Carter, Custer, Dawson, Fallon, Powder River, Prairie, Rosebud, Treasure, and Wibaux.

(4) High Plains: West of Highways US-183 and US-20 from the northern State line to Ainsworth, N-7 and N-91 to Dunning, N-2 to Merna, N-70 to Arnold, N-40 and N-47 and N-47 through Gothenburg to N-23, N-23 to Elwood, and US-283 to the southern State line. Zone 1: Keya Paha (east of US-183) and Boyd Counties including all waters of the Niobrara River. Zone 2: Bounded by Highways and political boundaries starting at the State line near Falls City, US-73 north to N-67; north through Nemaha to US-73-75; north to US-34; west to the Alvo Road; north to US-6; northeast to N-63; north and west to US-77; north to N-92; west to US-81; south to N-66; west to N-14; south to I-80; west to US-34; west to N-10; south to the State line; west to US-283; north to N-23; west to N-47; north to US-30; east to N-14; north to N-52; northwesterly to N-91; west to US-281; north to and including Wheeler, Garfield, and Loup (east US-183) Counties; east on N-70 from Wheeler County to N-14; south to N-39; southeast to N-22; east to US-81; southeast to US-30; east to US-73; north to N-51; east to the State line; and south and west along the State line to US-73. Zone 3: The area, excluding Zone 1, north of Zone 2. Zone 4: The area south of Zone 2.

(5) North Unit: Boyd (west of US-81), Keya Paha (east of US-183), and Knox Counties. East Unit: The area, excluding the North Unit, east of highways US-183 and US-20 from the northern State line to Atkinson, N-11 to Burwell, N-91 to near Taylor, US-183 to Ansley, N-2 to Grand Island, and US-281 to the southern State line. Panhandle Unit: South and west of the northern boundaries of Scotts Bluff, Morrill, and Garden Counties and highways N-2 from Garden County to N-61, N-61 to Grant, N-23 to the State line. Central Unit: The remainder of the State.

(6) Zone 1: North of highways I-40 and US-54. Zone 2: South of highways I-40 and US-54.

(7) Dark geese may not be hunted in Bernalillo, Sandoval, Sierra, Socorro, and Valencia Counties.

(8) Goose hunting is permitted daily only before 1:00 PM CDT through October 26 and only before 2:00 PM CST the remainder of the season.

(9) High Plains: Beaver, Cimarron, and Texas Counties. Zone 1: Northwestern Oklahoma, except the Panhandle, bounded by highways OK-33 from the western State line ot Roll, OK-47 to US-183, US-183 to Clinton, I-40 to US-177, US-177 to Perkins, OK-33 to Guthrie, I-35 to US-60, US-60 to US-64, US-64 to Nash, and OK-132 to the northern State line. Zone 2: The remainder of the State south and east of Zone 1.

(10) Unit 1: West and south of highways US-77 from the northern State line to Ponca City, US-177 to Perkins, OK-33 to US-75, US-75 and the Indian Nation Turnpike to Hugo, and US-271 to the southern State line. Unit 2: East and north of Unit 1.

(11) High Plains: West of highways and political boundaries starting at the State line north of Herreid; US-83 and US-14 to Blunt, Blunt-Canning Road to SD-34, a line across the Missouri River to the northwestern corner of the Lower Brule Indian Reservation, the Reservation Boundary and Lyman County Road through Presho to I-90, and US-183 to the southern State line. North Zone: East of the High Plains except the South Zone. South Zone: The Counties of Gregory, Charles Mix (south and west of highways SD-50 from the northern County line to Geddes, CFAS-6198 and FAS-3207 to Lake Andes, and SD-50 to Choteau Creek), Bon Homme (south of highway SD-50), and Yankton (south and west of highways SD-50 and US-81).

(12) Goose hunting is permitted only until 12:00 noon daily through November 1 in the Counties of Brookings, Clark, Codington, Day, Deuel, Edmunds, Grant, Hamlin, Kingsbury, Marshall, McPherson, and Roberts. Canada geese may not be hunted in the Counties of Clark (south of US-212), Harding, Lake, McCook, Minnehaha (west of highway I-29), and Moody (west of highway I-19). Canada goose hunting is by special permit only in the Counties of Bennett, Brookings, Codington (south of US-212 and south and east of SD-20 and 29), Deuel, Edmunds (north and west of highways US-12 and SD-45), Grant (south of highway SD-20), Hamlin, Kingsbury, McPherson (west of highways SD-45 and County 19) and Perkins.

(13) Missouri River Unit: The Counties of Bon Homme, Brule, Buffalo, Campbell, Charles Mix, Corson (east of highway SD-65), Dewey, Gregory, Haakon (north of Kirley Road and part of Plum Creek), Hughes, Hyde, Lyman (north and east of highways I-90 and US-183), Potter, Stanley, Sully, Tripp (east of highway US-183), Walworth, and Yankton (west of highway US-81).

(14) High Plains: West of highways US-183 from the northern State line to Vernon, US-283 to Albany, T-6 and T-351 to Abilene, US-277 to Del Rio, and the Del Rio International Toll Bridge access road.

(15) The Counties of Campbell, Converse, Crook, Johnson, Natrona, Niobrara, Sheridan, and Weston. Zone 2: The Counties of Goshen, Laramie, and Platte. Zone 3: The Counties of Albany and Carbon. Zone 4: The Counties of Big Horn, Fremont, Hot Springs, Park and Washakie. Goose management units, respectively, coincide with duck zones.

(16) The daily bag and possession limit of purple gallinules and common moorhens is singly or in the aggregate of the two species.

PACIFIC FLYWAY

The Pacific Flyway includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Flywaywide Restrictions

Shooting (including hawking) hours: One-half hour before sunrise to sunset daily, except as noted for Montana, Nevada, Utah and Washington.

Aleutian Canada Geese: The season is closed on Aleutian Canada geese throughout the Flyway.

White Geese and Dark Geese: Unless otherwise noted, seasons and limits for white geese are for snow, including blue, and Ross' geese, either singly or in the aggregate; and seasons and limits for dark geese are for Canada and white-fronted geese, brant, and all other species of geese, either singly or in the aggregate, except in Washington, Oregon, and California where there are separate seasons and limits on brant.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATION OF GEOGRAPHICAL AREAS OR ZONES WITHIN STATES. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

	Season Dates	Limits: Bag	Limits: Possession
Arizona (2)			
Ducks	Oct. 11–Dec. 1 & Dec. 18–Jan. 13.	See footnote (1).	
Geese:	Nov. 15–Jan. 19.	6	6
Including no more than:			
Dark (no more than 2 Canada geese)		3	3
White		3	3
Coots and common moorhens (singly or in the aggregate)	Same as for ducks.	25	25
Common Snipe	Same as for ducks.	8	16
Sandhill cranes (only in Game Management Units 30A, 30B, 31, and 32)	Nov. 9–Nov. 11 & Nov. 16–Nov. 18.	Only by permit; 2 cranes per season.	
California (21)			
Ducks:			
Northeastern Zone	Oct. 12–Dec. 29.	See footnote (1)	
Colorado River Zone	Oct. 11–Dec. 1 & Dec. 18–Jan 13.	See footnote (1)	
Southern Zone	Oct. 19–Dec. 1 & Dec. 9–Jan. 12.	See footnote (1)	
Balance of State Zone	Oct. 26–Jan. 12.	See footnote (1)	
Geese (except cackling Canada, Aleutian Canada and brant):			
Northeastern Zone	Oct. 12–Jan. 12.	3	6
Including no more than:			
Canada geese(except Aleutian and Cackling)		2	4
White fronted geese except that the season shall be Oct. 12–Nov. 3.		1	2
White		3	6
Colorado River Zone:	Nov. 15–Jan. 19.	6	6
Including no more than:			
Dark (but no more than 2 Canada geese)(3)		3	3
White		3	3
Southern Zone:	Oct. 19–Jan. 12.	6	6
Including no more than:			
Dark (except that Canada geese shall not exceed 2 in the daily bag and possession limits; but in that portion of District 22 within the Southern Zone, Canada geese may not exceed 1 in daily bag and 2 in possession)(3)		3	3
White		3	3
Balance-of-the-State Zone:	Nov. 2–Jan. 19.	3	3
Including no more than:			
Dark (3)(4):		1	1
Except that the season on Canada geese (3)(4) shall be:			
Counties of Del Norte and Humboldt	Closed.	-	-
Sacramento Valley Area (5)	Closed.		
San Joaquin Valley Area (6)	Nov. 2–Nov. 22.		
Except that the season on white-fronted geese shall be:	Nov. 2–Jan. 5.		
White		3	3
Cackling Canada geese and Aleutian Canada geese:	Closed.	-	-
Brant	Oct. 19–Nov. 30.	2	4
Coots and common moorhens, singly or in the aggregate.	Same as for ducks.	25	25
Common snipe	Same as for ducks.	8	16
Colorado			
Ducks (7)	Oct. 8–Oct. 20 & Nov. 9–Jan. 12.	See footnote (1)	
Geese (7):			
Brown's Park, Moffat County	Oct. 26–Dec. 8.	1	2
Delta and Montrose Counties	Nov. 16–Jan. 5.	Only by permit; 2 geese per day; 3 per season.	
Mesa County	Nov. 16–Jan. 5.	Only by permit; 2	4 6 geese per season.
Dolores, Gunnison, and Montezuma Counties	Closed.	-	-
Remainder of State in Pacific Flyway	Oct. 12–Jan. 5.	2	4
Coots (7)	Same as for ducks.	25	25
Common snipe(7)	Sept. 1–Dec. 1.	8	16
Sora and Virginia rails(7)	Sept. 1–Nov. 9.	25	25
Idaho (8)			
Ducks	Oct. 12–Dec. 1 & Dec. 16–Jan. 12.	See footnote (1)	
Geese:			
Goose Area 1 (9)	Oct. 14–Jan. 5.	3	6
Goose Area 2 (9)(10)	Oct. 14–Jan. 5	2	2
Goose Area 3 (9)	Oct. 26–Jan. 5.	2	2
Goose Area 4 (9)(10)	Oct. 14–Dec. 8	2	2
Goose Area 5 (9)	Oct. 14–Dec. 22.	2	2
Coots	Same as for ducks.	25	25
Common snipe	Same as for ducks.	8	16
Montana			
Ducks(11)	Oct. 12–Dec. 29.	See footnote (1)	
Geese (11):			
East of the Continental Divide	Sept. 28–Dec. 29.	6	8
Including no more than:			
Dark		3	6
White		3	6
West of the Continental Divide (11)	Sept. 28–Dec. 29.	5	6
Including no more than:			
Dark		2	2
White		5	6
Coots	Same as for ducks.	25	25
Common snipe	Same as for ducks.	8	16
Whistling swans, only in Teton and Cascade Counties	Oct. 12–Dec. 29.	Only by permit; 1 swan per season.	
Nevada			
Ducks (12):			
Clark County	Oct. 26–Jan. 12.	See footnote (1)	
Remainder of State	Oct. 12–Dec. 29.	See footnote (1)	
Dark geese:			
Clark County	Nov. 23–Jan. 19.	2	2
Elko County and portion of Ruby Lake National Wildlife Refuge in White Pine County	Oct. 5–Jan. 5.	2	2
White River Valley in Nye County and Pahranagat Valley in Lincoln County	Dec. 7–Dec. 29.	2	2
Remainder of State	Oct. 19–Jan. 19.	2	2
White geese:			
Clark County	Nov. 23–Jan. 19.	3	3
Elko County, except Ruby Valley	Oct. 5–Jan. 5.	3	3

Ruby Valley in Elko and White Pine Counties, White River Valley in Nye County, and Pahranagat Valley in Lincoln County	Closed.	-	-
Remainder of State	Oct. 19-Jan. 19.	3	3
Coots and common moorhens, singly or in the aggregate	Same as for ducks.	25	25
Common snipe	Same as for ducks.	8	16
Whistling swans, only in Churchill, Lyon, and Pershing Counties	Oct. 19-Dec. 29.	Only by permit; 1 swan per season.	
New Mexico			
Ducks	Oct. 12-Oct. 27 & Nov. 12-Jan. 12.	See footnote (1)	
Geese:			
North of Interstate 40	Jan. 11-Jan. 19.	2 geese per season.	
South of Interstate 40	Oct. 26-Jan. 16.	6	6
Including no more than:			
Dark (no more than 2 Canada geese)		3	3
White		3	3
Coots and common moorhens (singly or in the aggregate)	Same as for ducks.	25	25
Common snipe	Sept. 7-Dec. 8.	8	16
Virginia and sora rails (singly or in the aggregate)	Sept. 7-Nov. 15.	25	25
Oregon			
Ducks:			
Entire State, except Morrow and Umatilla counties	Oct. 12-Nov. 10 & Nov. 28-Jan. 12.	See footnote (1)	
Morrow and Umatilla counties	Oct. 12-Nov. 10 & Nov. 18-Jan 12.	See footnote (1)	
Geese (except cackling Canada, Aleutian Canada and brant):			
Western Oregon (3)(14)(13)	Nov. 12-Dec. 12.	2	4
Eastern Oregon, except the Columbia Basin counties and Baker, Malheur, Klamath, and Lake Counties	Oct. 12-Jan. 12.	6	6
Including no more than:			
Dark(3)		3	6
White		3	6
Columbia Basin counties (13)	Oct. 12-Jan. 19.	6	6
Including no more than:			
Dark(3)		3	6
White		3	6
Baker and Malheur Counties(3)	Oct. 12-Jan. 5.	2	2
Klamath and Lake Counties		6	6
Including no more than:			
Dark (3), except the season on white-fronted geese does not open until Oct. 26.	Oct. 12- Jan. 12.	3	6
White	Oct. 12-Jan. 12.	3	6
Cackling Canada geese, Aleutian Canada geese and Brant	Closed.	-	-
Coots	Same as for ducks	25	25
Common snipe	Same as for ducks	8	16
Utah			
Ducks (15)	Oct. 12-Dec. 29.	See footnote (1)	
Geese (15)(16):			
General Season:	Oct. 12-Jan. 5.	5	6
Including no more than:			
Canada geese		2	4
White geese		3	6
Special Seasons:			
Daggett County east of State Highway 44 and 260	Oct. 26-Dec. 8.		
Including no more than:			
Canada geese		1	2
Washington County	Oct. 19-Jan. 12.		
Including no more than:			
Canada geese		2	4
Coots (15)	Same as for ducks.	25	25
Common snipe (15)	Same as for ducks.	8	16
Whistling swans (15)	Oct. 12-Dec. 29.	Only by permit; 1 swan per season.	
Washington			
Ducks (17):			
Eastern Washington (18)	Oct. 12-Jan. 5.	See footnote (1)	
Western Washington (18)	Oct. 12-Nov. 1 & Nov. 16-Jan. 12.	See footnote (1)	
Geese (except cackling Canada Aleutian Canada, and brant) (17):			
Adams, Benton, Douglas, Franklin, Grant, Kittitas, Klickitat, Lincoln, Walla Walla, and Yakima Counties (19)	Oct. 12-Jan. 19.	4	4
Island, Skagit, Snohomish and Whatcom Counties	Oct. 12-Dec. 29.	3	4
Clark, Cowlitz and Wahkiakum Counties	See footnotes 3 & 20.		
Remainder of State (3)(19)	Oct. 12-Jan. 12.	4	6
Cackling Canada geese, Aleutian Canada geese and Brant:	Closed.	-	-
Coots (17)	Same as for ducks.	25	25
Common snipe (17)	Same as for ducks.	8	16
Wyoming			
Ducks and coots, singly or in the aggregate	Oct. 12-Dec. 29.	See footnote (1)	
Canada Geese	Sept. 28-Dec. 14.	4	4
Common snipe	Sept. 21-Dec. 22.	4	8
Sora and Virginia rails, singly or in the aggregate	Sept. 21-Nov. 21.	25	25

(1) Duck Limits. Basic daily bag and possession limits on ducks (including mergansers) throughout the entire Flyway is 5, including no more than 1 female (hen) mallard, 1 female (hen) pintail and either 2 canvasbacks or 2 redheads or 1 of each. The possession limit is twice the daily limit. Additionally, the following restrictions apply to limits in Arizona and Idaho. In Arizona, the daily limit may include no more than either 1 female (hen) mallard or 1 Mexican-like duck, but not both; and not more than 2 female (hen) mallards or 2 Mexican-like ducks may be in possession. In Idaho, in the counties of Benewah, Bonner, Boundary, Kootenai, and Shoshone, the daily bag and possession limits, each, may not include more than two wood ducks.

(2) The Imperial, Cibola, Buenos Aires and Havasu National Wildlife Refuges, Arizona, are open to waterfowl hunting except for posted portions. Ashurst Lake in Game Management Unit 5B is closed to all waterfowl and common snipe hunting. Unit 1, Unit 27, and those portions Units 3A and 3B lying east of Highways 77 and 260 are closed to the taking of Canada geese and its subspecies.

(3) The season on both cackling Canada geese and Aleutian Canada geese is closed.

(4) The dark goose limits may be expanded to 2 per day and 4 in possession provided they are Canada geese, except for cackling Canada and Aleutian Canada geese for which the season is closed.

(5) The Sacramento Valley Area is bounded by a line beginning at Willows in Glenn County proceeding south on Interstate Highway 5 to the junction with Hahn Road north of Arbuckle in Colusa County; then easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes on the Sacramento River, then southerly on the Sacramento River to the Tisdale By-pass; then easterly on the Tisdale By-pass to where it meets O'Banion Road; then easterly on O'Banion Road to State Highway 99; then northerly on State Highway 99 to its junction with the Gridley-Colusa Highway in Gridley in Butte County; then westerly on the Gridley-Colusa Highway to its junction with the River Road; then northerly on the River Road to the Princeton Ferry; then westerly across the Sacramento River to State Highway 45; then northerly on State Highway 45 to its junction with State Highway 162; then continuing northerly on State Highway 45-162 to Glenn; then westerly on State Highway 162 to the point of beginning in Willows.

(6) The San Joaquin Valley Area is bounded by a line beginning at Modesto in Stanislaus County proceeding west on State Highway 132 to the junction of Interstate 5; then southerly on Interstate 5 to the junction of State Highway 152 in Merced County; then easterly on State Highway 152 to the junction of State Highway 59; then northerly on State Highway 59 to the junction of State Highway 99 at Merced; then northerly and westerly on State Highway 99 to the point of beginning in Modesto.

(7) Special closures and restrictions apply to hunting ducks, coots, rails, snipe, and geese in the following areas: the Colorado River, Highline State Recreation Area, Mack Mesa Reservoir, all in Mesa County; Sweitzer Lake and Crawford State Reereation Area in Delta County; and Yampa River, Moffat County. Special closures and restrictions also apply to goose hunting on the Colorado River in Eagle and Grand Counties, on the Eagle River in Eagle County, on Granby Reservoir, Grand Lake, and Shadow Mountain Reservoir in Grand County, on the Yampa River, Routt County, and on Windy Gap Reservoir in Grand County. Consult State regulations for description of areas and nature of closure.

(8) Waterfowl may not be taken in the Pend Oreille Waterfowl Closure, Kootenai County Waterfowl Closure-Thompson Lake, Hells Canyon Waterfowl Closure, Mormon Reservoir Waterfowl Closure, Black Canyon Reservoir-Payette River Waterfowl Closure, Ada County Waterfowl Closure, Fort Hall Indian Reservation Closure, and Hagerman Wildlife Management Area. Geese may not be hunted in the Canyon County Goose Closure, Minidoka-Cassia Goose Closure, or Hagerman Valley Goose Closure. See State regulations for descriptions of these areas.

(9) Goose Area 1 is Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties. Goose Area 3 is Blaine County lying south and east of U.S. Highway 93, and the Counties of Cassia, Gooding, Jerome, Lincoln, Minidoka, and Twin Falls. Goose Area 4 is that portion of Fremont County within the North Fork of the Snake River drainage above the new Wendell Bridge near Ashton. Goose Area 5 is the counties of Ada, Adam, Canyon, Elmore, Gem, Owyhee, Payette and Washington. Goose Area 2 is the remainder of the State.

(10) The season on white geese is closed in Fremont and Teton Counties.

(11) Exceptions to the general duck and goose seasons in the following management areas (see State regulations for descriptions of areas): Shooting hours in the Canyon Ferry Goose Zone are from one-half hour before sunrise to 12 noon daily during Sept. 28-Nov. 9 and from one-half hour before sunrise to sunset during the remainder of the seasons; the goose season in the Flathead Goose Zone is Sept. 28-Nov. 25; the goose season in the Deer Lodge County Goose Zone is Oct. 12-Dec. 29; the season on dark geese in the Benton Lake Goose Zone is Nov. 1-Dec. 29; the goose season is closed in the Missoula County Goose Zone; and the Canada goose season is closed in the Kleinschmidt Lake Goose Zone. See State regulations for description of zones.

(12) The shooting hours for ducks, coots, common moorhens, common snipe and tundra swans is from sunrise to sunset throughout the season. The shooting hours for geese is from one-half hour before sunrise to sunset throughout the season.

(13) Columbia Basin counties are Wasco, Sherman, Gilliam, Morrow, and Umatilla Counties. Western Oregon consists of all counties west of the summit of the Cascades excluding Klamath and Hood River Counties. Those portions of Coos and Curry Counties lying west of U.S. Highway 101, that portion of western Oregon north of the Lane-Douglas County line are closed to all goose hunting, except for a special permit goose hunt on Sauvie Island.

(14) On Sauvie Island, by permit, at places, at times, on days, and other conditions specified in State regulations, 3 geese may be taken daily and 6 may be in possession. The season will open on October 12 and end on January 19, or earlier if emergency closure is necessitated by attainment of harvest quotas.

(15) Shooting hours are from 12 noon through sunset on October 12, from 8 a.m. through sunset on November 2, and from one-half hour before sunrise through sunset on all other days of the seasons.

(16) Goose hunting is prohibited within the boundaries of the Desert Lake Waterfowl Management Area in Emery County, Fish Springs National Wildlife Refuge in Juab County, and Ouray National Wildlife Refuge in Uintah County.

(17) In Western Washington the shooting hours are from 8 a.m. through sunset on the opening day, and in Eastern Washington the shooting hours are from 12 noon through sunset the opening day.

(18) Eastern Washington includes all areas lying east of the summit of the Cascade Mountains and east of the Big White Salmon River in Klickitat County. Western Washington includes all areas lying to the west of Eastern Washington.

(19) Geese may be hunted only on Saturdays, Sundays, and Wednesdays, and on November 11, 28 and 29, and December 25 and January 1 in Adams, Benton, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanagan, Spokane, and Walla Walla Counties and east of Satus Pass (U.S. Highway 97) in Klickitat County. Geese may be hunted every day during January 13-19 in Adams, Benton, Douglas, Franklin, Grant, Kittitas, Klickitat, Lincoln, Walla Walla, and Yakima Counties.

(20) In Cowlitz, Wahkiakum, and Clark Counties the season is closed, except for all lands south of the Kalama grain elevator in Cowlitz County and west of Interstate Highway 5 in Cowlitz and Clark Counties, where by permit, at times, on days, and conditions specified in State regulations, 3 geese may be taken daily and 6 may be in possession. The season will open on November 17 and end on December 29, or earlier if emergency closure is necessitated by attainment of harvest quotas.

(21) No hunting of ducks, coots, geese and brant is authorized in the following area of California unless and until the State authorizes, agrees to and aids the Service in establishing steel-shot only zones encompassing that area: California: That portion of the Lower Klamath Basin (including all of Lower Klamath National Wildlife Refuge) beginning at the junction of Highway 161 (State Line Road) and the Dorris-Brownell Road at the northwest corner of Indian Tom Lake, thence south and east of the Dorris-Brownell Road as it makes a semicircle and unites again with Highway 161; thence west along Highway 161 to the point of origin at the northwest side of Indian Tom Lake. Also included is the Tule Lake National Wildlife Refuge (excluding Refuge lands on Sheepy Ridge) in the Tule Lake portionof the Klamath Basin.

Section 20.106 is amended to read as follows:

§20.106 Seasons, limits, and shooting hours for sandhill cranes.

Central Flyway: Subject to the applicable provisions of the preceding sections of this part, open seasons are prescribed for taking sandhill cranes with a daily bag limit of 3 and a possession limit of 6 cranes, and with shooting (including hawking) hours from one-half hour before sunrise until sunset, in the following areas for the dates indicated:

(a) In Colorado (the Central Flyway portion except the San Luis Valley and North Park) the inclusive season dates are September 28 through November 24, 1985.

(b) In the New Mexico counties of Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt the inclusive dates are October 26, 1985, through January 26, 1986.

(c) In Oklahoma (that portion west of I-35) the inclusive dates are October 12, 1985, through January 12, 1986.

(d) In Texas, in Zone A the inclusive dates are November 9, 1985, through February 9, 1986. In Zone B the inclusive dates are November 30, 1985, through February 9, 1986. In Zone C the inclusive dates are January 11, 1986, through February 9, 1986. In the remainder of the State, the season is closed. See State regulations for description of zones.

(e) In North Dakota, sandhill crane hunting shall be from one-half hour before sunrise to 1:00 p.m. each day from the opening day through October 26 and from one-half hour before sunrise to 2:00 p.m. from October 27 through the remainder of the season. In Zone 1, the inclusive season dates are September 7 through November 3, 1985. In Zone 2, the inclusive season dates are September 7 through September 27, 1985. In the remainder of the State, the season is closed. See State regulations for description of zones and prohibited means of hunting sandhill cranes.

(f) In South Dakota, the inclusive dates are September 28 through November 3, 1985.

(g) In Montana (the Central Flyway), the inclusive season dates are September 28 through November 24, 1985; except in that area south and west of I-90 and the Bighorn River, the season is closed and in Sheridan County the inclusive season dates are November 1 through November 24, 1985.

(h) In Wyoming, in Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties, the inclusive season dates are September 21 through November 17, 1985.

(i) Each hunter participating in the regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to an authorized law enforcement official upon request.

Pacific Flyway: In Arizona (within Game Management Units 30A, 30B, 31, and 32), the season dates are November 9-11 and November 16-18, 1985. Hunting will be by special permit to be issued by the State. Each permittee may take 2 sandhill cranes per season.

Section 20.107 is revised as follows.

§20.107 Seasons, limits, and shooting hours for tundra (whistling) swans.

Whistling swans may be taken only by State-issued permit. Permittees may take only one whistling swan per season. Successful permittees must immediately validate their harvest by that method required in State regulations. Shooting hours are from one-half hour before sunrise to sunset daily except as noted below. Seasons are:

Central Flyway: (a) In Montana, tundra swans may be hunted from September 28, 1985, through December 29, 1985.

Pacific Flyway: (a) In Montana, whistling swans may be hunted only in Teton and Cascade Counties from October 12, 1985 through December 29, 1985;

(b) In Nevada, tundra swans may be hunted only in Churchill, Lyon and Pershing Counties from October 19, 1985, through December 29, 1985.

(c) In Utah, tundra swans may be hunted from October 12, 1985, through December 29, 1985. Shooting hours on the first day of the season are from noon to sunset.

Atlantic Flyway: (a) In North Carolina, tundra swans may be hunted from November 4, 1985 through January 31, 1986.

Section 20.108 Non-toxic shot zones.

* * * * *

Section 20.109 is revised as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of this part, the areas open to hunting, the respective open seasons (dates inclusive), the hawking hours, and the daily bag and possession limits on the species designated in this section are prescribed as follows:

Daily bag limit	3 singly or in the aggregate(1).
Possession limit	6 singly or in the aggregate(1).

These limits apply during both regular hunting seasons and extended falconry seasons.

Hawking hours: One-half hour before sunrise until sunset daily.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS.

Atlantic Flyway	
Florida:	
Mourning and white-winged doves	Sept. 28-Dec. 8.
Woodcock	Oct.26-Dec. 9.
Snipe	Nov. 2-Feb. 16.
Rails and common moorhens	Sept.28-Dec. 8.
Ducks, merganser, and coots	Oct. 8-Nov. 22.
Maryland:	
Mourning doves	Sept.2-Oct. 26 & Nov. 25-Jan. 5.
Rails and gallinules/moorhens	Sept. 2-Dec. 17.
Woodcock	Oct. 21-Jan. 31.
Snipe	Oct. 1-Jan. 15.
Ducks, coots, and mergansers	Oct. 8-Jan. 13.
Canada geese	
Eastern Shore	Oct.17-Jan. 31.
Remainder of State	Oct. 6-Jan. 20.
Snow geese	Oct. 17-Jan. 31.
Brant	Oct. 6-Jan. 20.
Massachusetts:	
All permitted ducks, geese, mergansers and coots	Oct. 12-Jan. 13.
Pennsylvania:	
Mourning doves	Sept. 2-Dec. 14.
Ducks, mergansers, coots and geese	Oct. 8-Jan. 13.

Virginia:	
Mourning doves	Sept. 2–Nov. 30 & Dec. 19–Jan. 4.
Rails	Sept. 2–Nov. 30 & Dec. 19–Jan. 4.
Woodcock	Oct. 17–Jan. 31.
Snipe	Oct. 17–Jan. 31.
Ducks	Oct. 8–Jan. 13.
All geese	Oct. 17–Jan. 31.

Mississippi Flyway

Illinois:	
Mourning doves, rails, and woodcock	Sept. 1–Dec. 16.
Snipe	Sept. 7–Dec. 22.
Ducks, mergansers, and coots	Oct. 8–Jan. 13.
Indiana:	
Ducks, mergansers, and coots	
North Zone	Oct. 5–Oct 10 & Oct. 14–Oct. 31.
South Zone	Oct. 5–Oct. 18 & Oct. 24–Nov. 28.
Ohio River Zone	Oct. 5–Oct. 25 & Oct. 31–Nov. 28.
Woodcock	Sept. 1–Sept. 28.
Mourning doves	Oct. 31–Nov. 27.
Iowa:	
Ducks, coots, mergansers	Sept. 21–Jan. 6.
Snipe	Sept. 7–Dec. 22.
Woodcock	Sept. 14–Nov. 17.
Rails	Sept. 7–Nov. 15.
Geese	Sept. 28–Jan. 6.
Kentucky:	
Ducks, mergansers, coots rails, and gallinules/moorhens	Nov. 1–Nov. 27.
Geese	
Western Zone	Nov. 1–Dec. 22.
Eastern Zone	Nov. 1–Nov. 27.
Michigan:	
Woodcock, rails, and snipe	Sept. 1–Dec. 16.
Geese and gallinules/moorhens	Sept. 28–Jan. 6.
Ducks, coots and mergansers	Oct. 5–Jan. 12.
Minnesota:	
Woodcock, rails, and snipe	Sept.1–Dec. 16.
Ducks, mergansers, geese, coots and gallinules/moorhens	Oct. 5–Jan. 13.
Mississippi:	
Mourning doves	Sept. 30–Oct. 13 & Nov. 22–Dec. 13.
Ducks, mergansers, and coots	Nov. 2–Dec. 13.
Missouri:	
Mourning doves	Sept.1–Dec. 16.
Ducks, mergansers, coots, and geese	Oct. 19–Oct. 21 & Nov. 2–Jan. 13.
Wisconsin:	
Rails, woodcock, snipe, and gallinules	Sept. 1–Dec. 16.
Ducks, mergansers, and coots	Oct. 8–Jan. 13.

Central Flyway

Colorado(1):	
Ducks, mergansers, coots, and geese	Oct. 20–Nov. 2 & Nov. 30–Dec. 13.
Montana (1):	
All permitted migratory birds	Oct. 12–Jan. 12.
New Mexico (2):	
Mourning doves and white-winged doves	Sept. 1–Nov. 6 & Nov. 22–Dec. 30.
Band-tailed pigeons	Sept. 1–Nov. 30.
Sandhill cranes only in Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties	Oct. 13–Jan. 27.
Ducks, mergansers and coots	Oct. 10–Jan. 12.
Common moorhens and purple gallinules	Oct. 10–Jan. 12.
Canada and white-fronted geese	Oct. 10–Jan. 12.
Snow, blue, and Ross' geese	Nov. 14–Feb. 28.
Oklahoma:	
Ducks, mergansers, and coots	Oct. 12–Jan. 13.
Texas:	
Mourning doves	Sept. 1–Nov. 30 & Jan. 4–Jan. 19.
Rails and gallinules/moorhens	Sept. 1–Dec. 16.
White-winged doves	Sept. 1–Nov. 30 & Jan. 4–Jan. 19.
Ducks, geese, and coots	Oct. 19–Jan. 13.
Sandhill cranes (Zones A, B, and C)	Nov. 1–Feb. 12.
Woodcock	Nov. 1–Feb. 15.
Snipe	Nov. 1–Feb. 15.
Wyoming (1):	
Ducks, merganser, geese, and coots	Sept. 28–Jan. 12.
Mourning doves	Sept. 1–Oct. 15.
Snipe and rails	Sept. 21–Nov. 29.

Pacific Flyway

Colorado:	
Ducks, mergansers, coots, and geese	Oct. 21–Nov. 8.
Idaho:	
Mourning doves only	Sept. 1–Oct. 30.
Ducks, merganser, coots, and snipe	Oct. 8–Jan. 13.
Geese (1)	Concurrent with firearm seasons.
Montana (1):	
All permited migratory birds	Oct. 19–Jan. 12.
New Mexico (2):	
Mourning doves, and white-winged doves	Sept. 1–Nov. 6 & Nov. 22–Dec. 30.
Band-tailed pigeons	Sept. 1–Nov. 30.
Common moorhens and purple gallinules	Oct. 8–Jan. 12.
Ducks, coots, mergansers and gallinules	Oct. 8–Jan. 12.
Geese	Oct. 5–Jan. 19.
Oregon:	
Mourning doves and band-tailed pigeons	Sept. 1–Dec. 16.
Snipe	Oct. 8–Jan. 12.
Ducks, geese, and coots	Oct. 8–Jan. 12.
Utah:	
Mourning doves	Sept. 3–Sept. 30.
Ducks, geese, coots, and snipe	Oct. 8–Jan. 13.
Washington:	
Ducks, geese, mergansers and coots	Oct. 8–Jan. 13.
Wyoming (1):	
Mourning doves	Sept. 1–Oct. 15.
Rails and snipe	Sept. 21–Nov. 29.
Ducks, coots and geese	Oct. 8–Jan. 12.

(1) In Idaho, the aggregate daily bag and possession limits may not include more than 1 and 2 geese, respectively. In Montana, the aggregate daily bag and possession limits of all species are 2 and 6, respectively, except in Sheridan County where the aggregate daily bag and possession limits for geese and 2 and 4, respectively. In Wyoming, the aggregate daily bag and possession limits of all species are 2.

(2) Daily bag and possession limits are for permitted species of migratory birds and resident game, either singly or in the aggregate.

Note: See waterfowl season footnotes for descriptions of zones. For some States, the extended falconry season dates also include general season dates.

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How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

Petition To Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends 8 CFR 204.2(j)(2) to require that certification of documents be authenticated by an original signature. This will alleviate the possible unauthorized misuse of a rubber stamp facsimile signature.

EFFECTIVE DATE: September 26, 1985.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone (202) 633–3048.
For Specific Information: Lloyd W. Sutherland, Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone (202) 633–3946.

SUPPLEMENTARY INFORMATION: The immigration and Naturalization Service will accept copies of documents submitted in support of a visa petition filed pursuant to section 204 of the Act if these copies are properly certified by an attorney or an accredited representative of a recognized nonprofit voluntary agency. The present regulation does not clarify the need for an original signature on the authentication. A facsimile signature on a rubber stamp could easily be misused by unauthorized persons. The General Counsel of the Service has also advised that a facsimile signature may not be binding in the event of litigation. To avoid such situations, the Service is amending the regulation to require an original signature on the authentication of copies of documents.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unecessary as this amendment merely clarifies an existing regulation. In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant impact on a substantial number of small entities. This is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Alien, Petitions.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

1. The authority citation for Part 204 continues to read as follows:

Authority: Secs. 103 and 204 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1154).

2. Section 204.2 is amended by adding a new paragraph (j)(4) to read as follows:

§ 204.2 Documents.

* * * * *

(j) * * *

(4) *Authentication.* Certification of documents must be authenticated by an original signature. A facsimile signature on a rubber stamp will not be acceptable.

Dated: September 17, 1985.

Marvin J. Gibson,

Acting Associate Commissioner Examinations, Immigration and Naturalization Service.

[FR Doc. 85–22992 Filed 9–25–85; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 81

[Docket No. 85–090]

Lethal Avian Influenza

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which removed the Lethal Avian Influenza regulations. The regulations were established for the purpose of preventing the artificial spread of lethal avian influenza. It has been determined that lethal avian influenza no longer occurs in the United States and and the regulations are no longer necessary for this purpose. The effect of the interim rule was to a delete prohibitions and restrictions on the movement of live poultry and certain other items and to delete other unnecessary provisions.

EFFECTIVE DATE: September 26, 1985.

FOR FURTHER INFORMATION CONTACT:

Dr. H. A. McDaniel, Chief Staff Officer, Technical Support Staff, VS, APHIS, USDA, Room 757, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8087.

SUPPLEMENTARY INFORMATION:

Background

A document published in the Federal Register on May 24, 1985 (50 FR 21419–21420), removed the Lethal Avian Influenza regulations contained in 9 CFR Part 81. Lethal avian influenza is defined as a disease of poultry caused by any form of H5 influenza virus that is determined by the Deputy Administrator to have spread from the 1983 outbreak in poultry in Pennsylvania. Based on extensive surveys, it has been determined that lethal avian influenza no longer occurs in the United States. The interim rule was made effective upon signature, May 21, 1985. Comments were solicited for 60 days after publication of the interim rule. One comment was received. The comment was in favor of the interim rule. The factual situation which was set forth in the document of May 24, 1985, still provides a basis for the removal of the Lethal Influenza regulations.

Executive Order and Regulatory Flexibility Act

This rule has been reviewed in accordance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual

industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The portion of the poultry industry affected by this rule represents less than one percent of the poultry industry in the United States.

Under the circumstances explained above, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

List of Subjects in 9 CFR Part 81

Animal diseases, Poultry and poultry products, Transportation.

PART 81—LETHAL AVIAN INFLUENZA

Accordingly, the interim rule removing 9 CFR Part 81 which was published at 50 FR 21419–21420 on May 24, 1985, is adopted as a final rule.

Authority: 7 U.S.C. 450; 21 U.S.C. 111–113, 114a–1, 115–117, 119–126, 130, 134a, 134b, 134d, 134e, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 18th day of September, 1985.

Gerald J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85–23028 Filed 9–25–85; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Codes and Standards for Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations to incorporate by reference the Winter 1982 Addenda, Summer 1983 Addenda, Winter 1983 Addenda, Summer 1984 Addenda and 1983 Edition of Section III, Division 1, of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), and the Winter 1982 Addenda, Summer 1983 Addenda, and 1983 Edition of Section XI, Division 1, of the ASME Code. The sections of the ASME Code being incorporated provide rules for the construction of light-water-cooled nuclear power plant components and specify requirements for inservice inspection of those components. Adoption of these amendments would permit the use of improved methods for construction and inservice inspection of nuclear power plants.

EFFECTIVE DATE: October 28, 1985. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 28, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. G. C. Millman, Division of Engineering Technology, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 443–7862.

SUPPLEMENTARY INFORMATION: On May 17, 1985, the Nuclear Regulatory Commission published in the Federal Register (50 CFR 20574) a proposed amendment to its regulation, 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," to update existing references to specific editions and addenda of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), to make editorial corrections to the existing rule; to simplify the language of the rule; and to delete two obsolete provisions.

This amendment revises § 50.55a to incorporate by reference all editions through the 1983 Edition and all addenda through the Summer 1984 Addenda that modify Division 1 rules of Section III, "Rules for the Construction of Nuclear Plant Components," and all editions through the 1983 Edition and all addenda through the Summer 1983 Addenda that modify Division 1 rules of Section XI, "Rules for the Inservice Inspection of Nuclear Power Plant Components," of the ASME Code. The Summer 1983 Addenda for Section XI does not include technical requirements related to Division 1, but is included in the reference to prevent the confusion that might occur with a lack of continuity in the addenda references.

Editorial revisions are included in this amendment to correct certain existing footnote and paragraph references that are inconsistent with the last amendment (49 FR 9711) this rule and to simplify the language. These editorial revisions are contained entirely in § 50.55a(g).

For facilities whose operating licenses were issued prior to March 1, 1976, this rule provided the effective date for implementing the inservice inspection requirements and for defining the effective edition and addenda of the Code for the start of the next one-third of a 120-month inspection interval after September 1, 1976. Since this one-third of an inspection interval has already been completed for all applicable facilities, § 50.55a(g)(4)(iii) which addresses the implementation of that inspection is unnecessary and is deleted by this amendment.

Power reactors for which a notice of hearing on an application for a provisional construction permit or a construction permit had been published on or before December 31, 1970, were permitted to use the rules for construction permits prior to January 1, 1971. This amendment deletes § 50.55a(i) which covers this provision because it is no longer necessary. Section 50.55a(c)(4) provides that for these and other facilities that received a construction permit prior to May 14, 1984, the applicable Code Edition and Addenda for a component of the reactor coolant pressure boundary continue to be that Code Edition and Addenda that were required by Commission regulations for the component at the time of issuance of the construction permit.

Interested persons were invited to submit written comments for consideration in connection with the proposed amendments and the draft regulatory analysis by July 16, 1985. No adverse comments or significant questions were received in response to the notice of proposed rulemaking.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and

benefits of the alternatives considered by the Commission. Interested persons may examine a copy of the regulatory analysis at the NRC Public Document Room, 1717 H St. NW., Washington, DC. Single copies of the analysis may be obtained from Mr. G.C. Millman, Division of Engineering Technology, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Telephone (301) 443–7902.

Paperwork Reduction Act Statement

This final rule incorporates by reference information collection requirements that were reviewed by the Office of Management and Budget. The OMB approval number is 3150–0011.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorgnization Act of 1974, as amended, and 5 U.S.C 553, the NRC is adopting the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Sections 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); sections 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.57(d), 50.58, 50.91 and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2071, 2073 (42 U.S.C. 2138, 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100–50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10(b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73 and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 50.55a is amended as follows: Paragraph (b)(1) and the introductory text of paragraph (b)(2) are revised; Reference to footnote 2 in paragraph (g)(1) is deleted; References to footnote 3 in paragraph (g)(2) and in paragraphs (g)(3)(ii) and (iv) are deleted; Paragraphs (g)(3)(i) and (iii) are revised; Paragraph (g)(4)(iii) is deleted and reserved; and Paragraph (j) is deleted.

§ 50.55a Codes and standards.

* * * * *

(b) * * *

(1) As used in this section, references to Section III of the ASME Boiler and Pressure Vessel Code refer to Section III, *Division 1, and include editions* through the 1983 Edition and Addenda through the Summer 1984 Addenda.

(2) As used in this section, references to Section XI of the ASME Boiler and Pressure Vessel Code refer to Section XI, Division 1, and include editions through the 1983 Edition and Addenda through the Summer 1983 Addenda, subject to the following limitations and modifications:

* * * * *

(g) * * *

(3) * * *

(i) Components which are classified as ASME Code Class 1 shall be designed and be provided with access to enable the performance of inservice examination of such components and shall meet the preservice examination requirements set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda[6] applied to the construction of the particular component.

* * * * *

(iii) Pumps and valves which are classified as ASME Code Class 1 shall be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda[6] applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

* * * * *

(4) * * *

(iii) [Reserved]

* * * * *

Dated at Bethesda, MD, this 9th day of September 1985.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 85–23070 Filed 9–25–85; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85–ANM–15]

Alteration of VOR Federal Airways V–269 and V–357—OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters Federal Airways V–269 and V–357 by deleting reference to the airway not being in effect when the Juniper Military Operations Area (MOA) is activated. A recent change to the lateral boundaries of the Juniper MOA resulted in removing the airspace conflict within these airways. This action will allow better utilization of the navigable airspace and simplify flight planning.

EFFECTIVE DATE: 0901 G.m.t., November 21, 1985.

FOR FURTHER INFORMATION CONTACT: Burton Chandler, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

History

On August 19, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend VOR Federal Airways V–269 and V–357 by deleting reference to the airway not being in effect from 42 miles northwest of Wildhorse VOR to 41 miles southeast of Redmond VORTAC 11,000 feet MSL and above and from 32 miles southwest of the Wildhorse VOR to 13 miles northeast of Lakeview VORTAC (50 FR 33352). A recent change to the lateral boundaries of the Juniper MOA resulted

in removing the airspace conflict with V–269 and a portion of V–357. This allows better utilization of navigable airspace and aids in flight planning. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations would amend VOR Federal Airways V–269 and V–357 by deleting reference to the airway not being in effect from 42 miles northwest of Wildhorse VOR to 41 miles southeast of Redmond VORTAC 11,000 feet MSL and above and from 32 miles southwest of the Wildhorse VOR to 13 miles northeast of Lakeview VORTAC. A change to the lateral boundaries of the Juniper MOA resulted in removing the airspace conflict with V–269 and a portion of V–357. This will allow better utilization of navigable airspace and aid in flight planning.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal ariways.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71, of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.123 is amended as follows:

V–269 [Amended]

By removing the words "That portion of the airway 11,000 feet MSL and above from 42 miles northwest of Wildhorse VOR to 41 miles southeast of Redmond VORTAC is suspended during the time that the Juniper MOA is activated by NOTAM."

V–357 [Amended]

By removing the words "from 32 miles southwest of Wildhorse VOR" and substituting the words "from 26 miles southwest of Wildhorse VOR".

Issued in Washington, DC, on September 19, 1985.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85–22963 Filed 9–25–85; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 85–AWA–27]

Alteration of VOR Federal Airways—NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of Federal Airways V–1 and V–70 located in the vicinity of Kinston, NC. This action eliminates an alternate route designation by renaming the route segment, but does not alter the airway or any controlled airspace.

EFFECTIVE DATE: 0901 G.m.t., November 21, 1985.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–8626.

SUPPLEMENTARY INFORMATION:

History

On August 19, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V–1 by renumbering V–1E between Kinston, NC, and Cofield, NC (50 FR 33355). This action would extend VOR Federal Airway V–70 from Kinston to Cofield via the current alignment of V–1E. This action is consistent with our agreement to eliminate all alternate route designations from the National Airspace System. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of VOR Federal Airways V–1 and V–70 located in the vicinity of Kinston, NC, to eliminate an alternate airway designation. This action is consistent with our agreement with the International Civil Aviation Organization (ICAO) to eliminate alternate route designations within the United States. This action does not change the route itself.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as amended (49 FR 48532 and 50 FR 14090), is further amended, as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.123 is amended as follows:

V–1 [Amended]

By removing the words "including an east alternate segment from Kinston to Cofield via the intersection of Kinston 050° and Cofield 186° radials;"

V–79 [Amended]

By removing the words "to Kinston, NC." and substituting the words "Kinston, NC; INT Kinston 050° and Cofield, NC, 186° radials; to Cofield."

Issued by in Washington, DC, on September 19, 1985.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85–22984 Filed 9–25–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 71 and 75

[Airspace Docket No. 84–AWP–3]

Alteration of VOR Federal Airways, Jet Routes and Tucson, AZ, Control Zone and Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments alter Federal Airways V–66, V–105, V–393, V–395, V–202 and Jet Routes J–11 and J–92. These actions result from the relocation of the Tucson Very High Frequency Omni-Directional Range and Tactical Air Navigation facility (VORTAC) approximately 2½ nautical miles west, southwest of its present location. Associated actions in this docket are the redescription of the Tucson, AZ, Control Zone and Transition Area.

EFFECTIVE DATE: 0901 G.m.t., November 21, 1985.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426–8783.

SUPPLEMENTARY INFORMATION:

History

On August 19, 1985, the FAA proposed to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to (1) alter VOR Federal Airways V–16, V–66, V–105, V–202, V–393, V–395; (2) standardize the width of V–393 between the relocated Tucson VORTAC and Nogales VORTAC as a result of the Tucson relocation; (3) reduce the airway width of V–66 on the south side of the airway between the relocated Tucson VORTAC and Douglas VORTAC to prevent airway penetration of Restricted Area R–2303B; (4) replace alternate airway V–16S between Cochise and Tucson VORTACs with V–202 consistent with the agency's overall effort to replace or delete alternate airways; (5) amend the Tucson International Airport, AZ, Control Zone; (6) amend Tucson, AZ, Transition Area; and (7) alter Jet Routes J–11 and J–92 (50 FR 33351). All proposed actions were associated with the relocation of the Tucson VORTAC approximately 2½ miles west, southwest of its current location. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. These amendments are the same as those proposed in the notice, except for the following changes: (1) No action is taken in this docket to replace V–16S with V–202 between the Tucson and Cochise VORTACs since this was accomplished in Airspace Docket 84–AWA–13, effective date June 6, 1985. However, the relocation of Tucson VORTAC does necessitate realignment of V–202 between Tucson and Cochise which is accomplished in this docket; (2) the rule contains an alteration of V–105 by changing "308°T" to "300°T"; (3) the rule also makes alterations to the original proposal on V–66 and V–105; and (4) a separate nonrule action is being taken to change the name of the Casa Grande VORTAC to Stanfield; to be effective concurrently with this action. Consistent with the name change, references to Casa Grande in § 71.123 (V–105) and § 75.100 (J–92) are changed to Standfield. Sections 71.123, 71.171, 71.181 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations alter Federal Airways V–66, V–105, V–202, V–393, V–395 and Jet Routes J–11 and J–92.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR Federal airways, Control zones, Transition areas and jet routes.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as amended (50 FR 11845, 50 FR 14089, 50 FR 14091 and 50 FR 14092) are further amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.123 is amended as follows:

V–66 [Amended]

After the words "Gila Bend; Tucson, AZ;" add the words ", 7 miles wide (3 miles south and 4 miles north of centerline)"

V–105 [Amended]

By removing the words "INT Tucson 298° and Casa Grande, AZ, 145° radials; Casa Grande;" and substituting the words "INT Tucson 300° and Stanfield, AZ, 145° radials; Stanfield;"

V–393 [Amended]

By removing the words ", (3 miles east and 4 miles west of centerline)"

V–395 [Amended]

After the words "INT Tucson" remove "198°" and substitute "186°"

V–202 [Amended]

By removing the words "INT Tucson 122° and Cochise, AZ, 257° radials;" and substituting the words "INT Tucson 119° and Cochise, AZ, 258° radials;"

3. Section 71.171 is amended as follows:

Tucson International Airport, AZ [Amended]

By removing the words "within 3 miles each side of the Tucson VORTAC 273° radial extending from the 5-mile radius zone to 15 miles west of the VORTAC;" and substituting

the words "within 3 miles each side of the 273° bearing from lat. 32°07'21"N., long. 110°49'12"W.; extending from the 5-mile radius zone to 15 miles west of lat. 32°07'21"N., long. 110°49'12"W.;"

4. Section 71.181 is amended as follows:

Tucson, AZ [Amended]

By removing the words "within 16 miles NE and 13 miles SW of the Tucson VORTAC 138° radial extending from the 10-mile radius area to 16 miles SE of the VORTAC, within 1 mile NE and 9 miles SW of the Tucson VORTAC 318° radial, extending from the 10-mile radius area to 22 miles NW of the VORTAC and within 16 miles NE of the Tucson VORTAC 318° radial extending from the Tucson VORTAC to 30 miles NW of the VORTAC" and substituting the words "within 16 miles NE and 13 miles SW of the 138° bearing from lat. 32°07'21"N., long. 110°49'12"W.; extending from the 10-mile radius area to 16 miles SE of lat. 32°07'21"N., long. 110°49'12"W.; within 1 mile NE and 9 miles SW of a 318° bearing from lat. 32°07'21"N., long. 110°49'12"W.; extending from the 10-mile radius area to 22 miles NW of lat. 32°07'21"N., long. 110°49'12"W.; and within 16 miles NE of the 318° bearing from lat. 32°07'21"N., long. 110°49'12"W.; extending from lat. 32°07'21"N., long. 110°49'12"W.; to 30 miles NW of lat. 32°07'21"N., long. 110°49'12"W."

PART 75—[AMENDED]

5. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

6. Section 75.100 is amended as follows:

J–11 [Amended]

By removing the words "via INT Tucson 316°" and substituting the words "via INT Tucson 320°"

J–92 [Amended]

By removing the words "INT of Casa Grande 145° and Tucson, AZ, 298° radials; Tucson; to the INT of the Tucson 185° radial and the United States/Mexican Border." and substituting the words "INT of Stanfield 145° and Tucson, AZ, 300° radials; Tucson; to the INT of Tucson 179° radial and the United States/Mexican Border."

Issued in Washington, D.C., on September 17, 1985.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85–22965, Filed 9–25–85; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 24777; Amdt. No. 1304]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO–230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC 20591: telephone (202) 426–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4 and 8260–5. Materials incorporated by reference are available for examiantion or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publciation is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these

SIAPs, the TERPS critria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, if find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Aviation safety.

Issued in Washington, DC, on September 20, 1985.

John S. Kern,

Acting Director of Flight Operations.

Adoption of the Amendment

PART 97—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983; and 14 CFR 11.49(b)(2)).

2. By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective November 21, 1985

Caro, MI—Caro Muni, VOR/DME–A, Amdt. 2
Pembina, ND—Pembina Muni, VOR Rwy 33, Amdt. 3
Ada, OK—Ada Muni, NDB–A, Amdt. 2
Cushing, OK—Cushing Muni, NDB Rwy 35, Amdt. 3
Chandler, OK—Chandler Muni, NDB Rwy 17, Amdt. 2
Chickasha, OK—Chickasha Muni, VOR/DME Rwy 17, Orig., Cancelled
Chickasha, OK—Chickasha Muni, VOR/DME–A, Orig.
Chickasha, OK—Chickasha Muni, RNAV Rwy 35, Orig., Cancelled
Chickasha, OK—Chickasha Muni, RNAV Rwy 35, Orig.
Guthrie, OK—Guthrie Muni, NDB Rwy 16, Amdt. 2
McAlester, OK—McAlester Muni, VOR/DME Rwy 19, Amdt. 1
McAlester, OK—McAlester Muni, LOC Rwy 1, Amdt. 2
Seminole, OK—Seminole Muni, NDB Rwy 16, Amdt. 1
Huron, SD—Huron Regional, ILS Rwy 12, Amdt. 6
Neillsville, WI—Neillsville Muni, NDB Rwy 27, Amdt. 3
Sheboygan, WI—Sheboygan County Memorial, VOR Rwy 3, Amdt. 4
Sheboygan, WI—Sheboygan County Memorial, VOR Rwy 21, Amdt. 4

. . . Effective October 24, 1985

Petaluma, CA—Petaluma Muni, VOR Rwy 29, Orig.
Harlingen, TX—Rio Grande Valley Intl, VOR Rwy 13, Amdt. 9
Harlingen, TX—Rio Grande Valley Intl, VOR/DME Rwy 31, Orig.

. . . Effective September 11, 1985

Roanoke, VA—Roanoke Regional/Woodrum Field, VOR Rwy 33, Amdt. 5

. . . Effective September 6, 1985

Kelso, WA—Kelso-Longview, NDB–A, Amdt. 4

. . . Effective September 5, 1985

Lompoc, CA—Lompoc, VOR/DME–A, Amdt. [illegible]
Washington, DC—Dulles Intl, ILS/DME Rwy 1L, Amdt. 2
Baytown, TX—RWJ Airpark, VOR/DME Rwy 33, Amdt. 2

[FR Doc. 85–22962 Filed 9–25–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 85–162]

Customs Regulations Amendments Relating To Waiver of Certificate of Registration for Articles Exported for Repairs, Alterations, or Processing

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide for waiver of the Certificate of Registration required for entry of articles exported from the U.S., for repair, alteration, or processing abroad, upon payment of duty on only the value of the work done abroad, when the importer satisfies Customs that exportation of the articles from the U.S. occurred. These amendments are necessary because, in many instances, the carrier or shipper of the exported article fails to properly register them with U.S. Customs before exportation. This must be done for the importer to claim entry of the articles under special tariff provisions subjecting them to duty only on the work done abroad, not on the value of the articles.

EFFECTIVE DATE: October 28, 1985.

FOR FURTHER INFORMATION CONTACT: Leo Wells, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202–566–2957).

SUPPLEMENTARY INFORMATION:

Background

Section 10.8(a), Customs Regulations (19 CFR 10.8(a)), provides that before exporting articles which are subject on return to the U.S. to duty on the value of repairs or alterations performed abroad, as provided for in item 806.20, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), a Certificate of Registration (the top portion of Customs Form 4455) shall be filed (in an original only) by the owner or exporter with the district director of Customs before the departure of the exporting conveyance. Section 10.9(a), Customs Regulations (19 CFR 10.9(a)), sets forth similar requirements for articles exported for processing and later returned to the U.S. under item 806.30, TSUS, except that the Customs Form 4455 must include a statement by the exporter or owner on the reverse side, containing the name and address of the U.S manufacturer and other U.S. processing details. The requirements for supervision by Customs before exportation of the articles are intended to aid Customs officials in determining what repairs, alterations, or processing were done abroad and what their cost or value was, and to ensure that the returned articles are the same articles that were exported.

Waiver of the Certificate of Registration is provided for by both §§ 10.8(k) and 10.9(k), Customs Regulations, provided the district director is satisfied that the returned articles are entitled to entry under either item 806.20 or 806.30, TSUS, and that the failure to comply with registration requirements was due to inadvertence,

mistake, or inexperience, and not to negligence or bad faith.

Customs brokers along the U.S./Canadian border claim that they, acting on behalf of the importer and/or exporter, are often unable to comply with the registration requirements because the carrier or shipper of the articles exported for work abroad fails to present the registration form to U.S. Customs at the border crossing station before exportation. Thus, there is no record of Customs supervision or approved waiver of this supervision before exportation. Therefore, the importer's subsequent claim for entry under item 806.20 or 806.30, TSUS, and duty only on the foreign work performed, is not allowed unless the failure to register with Customs is attributed to inadvertence, mistake, or inexperience, and not to negligence or bad faith. Since, in many cases, it is the shipper's or carrier's negligence which caused the failure to register with Customs, the registration form may not be waived and the requested entry under 806.20 or item 806.30, TSUS, is denied.

To relieve the importer of the consequences of the negligence of the carrier or shipper, over whom the importer may have no control, by notice published in the Federal Register on September 10, 1984 (49 FR 35509), it was proposed that §§ 10.8(k) and 10.9(k) be amended to allow for waiver of the Customs Form 4455 in instances where the importer provides sufficient documentation to Customs to prove actual exportation of the articles from the U.S., such as a Canadian landing certificate, or similar acceptable documentary proof. Interested parties were given until November 9, 1984, to submit written comments on the proposal. Of the seven comments received in response to the notice, all were in favor of the suggested change. A discussion of these comments and our responses follows:

Discussion of Comments

Comment: Two commenters requested that the waiver of the Certificate of Registration be extended to importations under item 810.20, TSUS, for tools of the trade. Another commenter believed that the proposed rule should apply to § 10.68, Customs Regulations (19 CFR 10.68), relating to articles taken abroad for exhibition or temporary use (*e.g.*, theatrical effects, commercial travelers samples, tools of trade), because the circumstances of § 10.68 are similar to those in §§ 10.8 and 10.9.

Response: Although the circumstances covered by these sections are similar in that they involve situations in which a Custom Form 4455 is used for the duty-free importation of articles taken abroad for repair, alteration, use, or exhibition and then returned to the U.S., the suggestion is beyond the scope of the proposal. The proposal dealt only with possible changes to §§ 10.8 and 10.9. However, Customs will study this matter separately, to determine what action, if any, should be taken.

Comment: One commenter suggested that the words "and not to negligence or bad faith" be eliminated from proposed §§ 10.8(k)(1) and 10.9(k)(1) because this phrase is not in conformity with the intent of the proposed amendments.

Response: Customs agrees. Accordingly, proposed §§ 10.8(k) and 10.9(k) have been modified in the final rule by removing that portion of the section which provided for waiver of Customs Form 4455 if the district director is satisfied that the failure to comply with the registration requirement was due to inadvertence, mistake or inexperience, and not to negligence or bad faith.

Comment: Another commenter suggests that Canadian Customs entries and Canadian Customs invoices, as well as bills of lading and airway bills, be included as documents acceptable to Customs as proof of exportation.

Response: Customs agrees. However, it is Customs opinion that the district director should have discretion to require additional documentation if believed necessary as proof of exportation. Further, while the commenter is concerned about articles exported to Canada, the provisions of §§ 10.8 and 10.9 are applicable to articles exported to any foreign country. Accordingly, the documentary examples in §§ 10.8 and 10.9 have been modified in the final rule to relate to *any* particular country. Sections 10.8(k) and 10.9(k) are revised in the final rule to reflect these changes.

After consideration of the comments received, and upon further review of the matter, it has been determined advisable to adopt the amendments with the modification noted above.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of section 605(b), Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the regulations set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal authors of this document were Susan Terranova and John Elkins, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 10

Exports, Imports, Repairs, Alterations, Processing abroad.

Amendments to the Regulations

Part 10, Customs Regulations (19 CFR Part 10), is amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for Part 10 is revised to read as set forth below. Authority citations appearing elsewhere in Part 10 are removed.

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1623, 1624.

a. Section 10.17 also issued under 19 U.S.C. 1401a, 1402;

b. Section 10.22 also issued under 19 U.S.C. 1304;

c. Sections 10.41, 10.41a, 10.107 also issued under 19 U.S.C. 1322;

d. Section 10.53 also issued under 18 U.S.C. 1521, *et seq;*

e. Section 10.59 also issued under 19 U.S.C. 1309, 1317;

f. Sections 10.61, 10.62, 10.63, 10.64, 10.64a also issued under 19 U.S.C. 1309;

g. Sections 10.62a, 10.65 also issued under 19 U.S.C. 1309, 1317, 1555, 1556, 1557, 1646a;

h. Sections 10.70, 10.71 also issued under 19 U.S.C. 1486;

i. Sections 10.80, 10.81, 10.82, 10.83 also issued under 19 U.S.C. 1313 (e) and (i);

j. Sections 10.152, 10.153 also issued under 19 U.S.C. 1321;

k. Sections 10.171–10.178 also issued under 19 U.S.C. 2461 *et seq;*

l. Sections 10.191–10.198 also issued under 19 U.S.C. 2701 *et seq.*

2. The first sentence of § 10.8(k) is revised to read as follows:

§ 10.8 Articles exported for repairs or alterations.

* * * * *

(k) In any case where an imported article was exported for repairs or alterations without compliance with the registration requirements of this section, the district director, only if satisfied that the returned article is entitled to entry under item 806.20, TSUS, may waive the production of the Customs Form 4455. The importer may establish eligibility

for entry under item 806.20, TSUS, by providing sufficient documentation to Customs to prove actual exportation of the article from the U.S., such as a foreign customs entry, a foreign customs invoice, a foreign landing certificate, bill of lading, or airway bill. The district directors may require such additional documentation as is deemed necessary as proof of exportation. * * *

* * * * *

3. The first sentence of § 10.9(k) is revised to read as follows:

§ 10.9 Articles exported for processing.

* * * * *

(k) In any case where an imported article was exported for processing without compliance with the registration requirements of this section, the district director, only if satisfied that the returned article is entitled to entry under item 806.30, TSUS, may waive the Customs Form 4455. The importer may establish eligibility for entry under item 806.30, TSUS, by providing sufficient documentation to Customs to prove actual exportation of the article from the U.S., such as foreign customs entry, a foreign customs invoice, a foreign landing certificate, bill of lading, or airway bill. The district director may require such additional documentation as is deemed necessary as proof of exportation. * * *

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William von Raab,
Commissioner of Customs.

Approved: August 28, 1985.

David D. Queen,
Acting Assistant Secretary of the Treasury.

[FR Doc. 85-23007 Filed 9-25-85; 8:45 am]

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19 CFR Part 101

[T.D. 85-163]

Changes in the Customs Service Field Organization; San Diego, CA

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document finalizes an interim rule which amended the Customs Regulations to change the Customs Service field organization by extending and redefining the geographical limits of the port of entry of San Diego, California. The changes, which extend the existing port limits to include the new Customs station at Otay Mesa, California, also allow Customs to maintain control of the San Diego port limits since they are currently identified with the city limits of San Diego, National City, and Chula Vista, California. This document also adds San Ysidro, California, to the list of Customs stations.

EFFECTIVE DATE: January 24, 1985.

FOR FURTHER INFORMATION CONTACT: Denise Crawford, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, Customs is amending §§ 101.3 and 101.4, Customs Regulations (19 CFR 101.3, 101.4), by extending and redefining the geographical limits of the port of entry of San Diego, California.

T.D. 54741, published in the **Federal Register** on December 9, 1958 (23 FR 9508), extended the limits of the port of San Ysidro, California. This extension was the result of an ordinance, adopted by the City Council of San Diego, pursuant to the Annexation Act of 1913 of the State of California, to extend the corporate limits of San Diego by annexing certain additional territory, including the territory within the boundaries of the port of San Ysidro, California. Since the boundaries of a Customs port of entry have been held to coincide with the territory within the corporate limits of the city or town designated as a Customs port, the port of San Ysidro thus fell within the San Diego port limits.

By T.D. 66-229, published in the **Federal Register** on October 25, 1966 (31 FR 13721), the port limits of San Diego were further expanded to include the cities of Chula Vista and National City, California, in order to provide for the increasing need for Customs services in this area.

The changes set forth in this document extend the existing San Diego port limits to include the new Customs station on the U.S.-Mexico border at Otay Mesa, California. In addition, specific boundary lines are proposed demarcating the port limits of San Diego. These limits are no longer associated with the corporate limits of the cities of San Diego, National City, and Chula Vista, California.

These changes were published as interim regulation T.D. 85-21 in the **Federal Register** on January 31, 1985 (50 FR 4504), and public comments were solicited. No comments were received. Accordingly, Customs has determined to adopt the interim regulation as a final rule. This document also adds San Ysidro, California, to the list of Customs stations. Although San Ysidro has been established and operating as a Customs station for many year, it has not been officially listed as such in the Customs Regulations.

Change in the Customs Service Field Organization

Under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp. Ch. II), and pursuant to authority provided by Treasury Department Order No. 101-5 (47 FR 2449), the existing geographical limits of the port of entry of San Diego, California, are extended to include the new Customs station at Otay Mesa, California. Accordingly, the following territory is included within the extension of the port of San Diego:

Beginning at the U.S.-Mexico international boundary at the Pacific Ocean; then north along the Pacific Ocean coastline to Zunia Point (on the southwest corner of the U.S. Naval Air Station at North Island, California); then across the entrance of San Diego Bay to Ballast Point (on the western side of Point Loma); then south on Point Loma to its southern tip; then north along the Pacific Ocean coastline to Township line T13S/T14S; then east along T13S/T14S to where it intersects San Diego County Highway S6; then east and then north along San Diego County Highway S6 to Via Rancho Parkway; then generally in an easterly direction along Via Rancho Parkway to where it meets Bear Valley Parkway; then north on Bear Valley Parkway to San Pasqual Valley Road; then east on San Pasqual Valley Road to Rangeline 1W/2W; then north on Rangeline 1W/2W to where it intersects Township line 13S; then east along Township line 13S to Rangeline 1E/2E; then south along Rangeline 1E/2E to where it intersects with State Highway 67; then south on State Highway 67 to where it intersects the San Bernardino Meridian; then south on the San Bernardino Meridian to the U.S.-Mexico international boundary; then west on the U.S.-Mexico international boundary to where it meets the Pacific Ocean.

Note.—All Rangelines and the Meridian are based on the San Bernardino Baseline and Meridian.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Imports, Organization.

Amendment to the Regulations

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101 continues to read as follows:

Authority.—5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624, Reorganization Plan 1 of 1965; 3 CFR Part 1965 Supp.

2. To reflect these changes, the list of Customs regions, districts, and ports of entry in § 101.3, Customs Regulations (19 CFR 101.3), is amended by removing "T.D. 85–21" under the column headed "Ports of entry" after "San Diego" and inserting, in its place, "(T.D. 85–163)", in the San Diego, California, Customs district in the Pacific Region.

3. To reflect the addition of a new Customs station at Otay Mesa, the list of Customs stations, in § 101.4, Customs Regulations (19 CFR 101.4), is amended by inserting "Otay Mesa, Calif." under "Campo, Calif.", under the column headed "Customs stations" and "San Diego" under the column headed "Port of entry having supervision" in the San Diego, California, Customs district.

4. To reflect the operation of a Customs station at San Ysidro, the list of Customs stations, in § 101.4, Customs Regulations (19 CFR 101.4), is amended by inserting "San Ysidro, Calif." under "Otay Mesa, Calif.", under the column headed "Customs stations" and "San Diego" under the column headed "Ports of entry having supervision" in the San Diego, California, Customs district.

Executive Order 12291

Because this amendment relates to the organization of the Customs Service, pursuant to section 1(a)(3) of E.O. 12291, it is not subject to that Executive Order.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this amendment. Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although these changes may have a limited effect upon some small entities in the San Diego area, they are not expected to be significant because the extension of the limits of Customs ports of entry in other locations has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act. Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendment will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service Headquarters. However, personnel from other Customs offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved: August 28, 1985.

David D. Queen,

Acting Assistant Secretary of the Treasury.

[FR Doc. 85–23008 Filed 9–25–85; 8:45 am]

BILLING CODE 4820–02–M

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19 CFR Part 101

[T.D. 85–164]

Customs Regulations Amendment Relating to a Change in the Customs Service Field Organization—Hidalgo and Progreso, TX

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: The document amends the Customs Regulations to change the Customs field organization by extending and redefining the geographical limits of the ports of entry of Hidalgo and Progreso, Texas. The change will enable importers, now operating produce sheds outside the port limits, to apply for a special permit for the immediate delivery for the transportation of fresh fruits and vegetables arriving from Mexico for human consumption.

EFFECTIVE DATE: October 28, 1985.

FOR FURTHER INFORMATION CONTACT: Denise Crawford, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202–566–8157).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, Customs is amending § 101.3, Customs Regulations (19 CFR 101.3), by extending and redefining the geographical limits of the ports of entry of Hidalgo and Progreso, Texas.

In the list of Customs regions, districts, and ports of entry set forth in § 101.3(b), Customs Regulations, the ports of Hidalgo and Progreso, Texas, are listed in the Laredo, Texas, Customs District in the Southwest Region. Customs had been requested to extend the geographical limits of both ports so that importers, now operating produce sheds located outside the port limits, will be able to take advantage of the privileges of § 142.21(b), Customs Regulations (19 CFR 142.21(b)). Specifically, § 142.21(b) authorizes the filing of an application with Customs for a special permit for the immediate delivery for the transportation of fresh fruits and vegetables for human consumption arriving from Canada or Mexico to the importer's premises, if within the port of importation.

After a review of the matter, Customs published a notice in the Federal Register on September 5, 1984 (49 FR 35026) proposing expanded port limits for both Hidalgo and Progreso. These proposed boundaries were designed to accommodate all active produce sheds and to simplify the descriptions of the port limits. Customs believes these proposed boundaries will be sufficient to allow all active produce sheds the privilege of operating under § 142.21(b), Customs Regulations, without the need for further expansion in the near future. Customs also believes the existing staffs at both ports will be sufficient to accommodate any additional workload.

Discussion of Comments

Four comments were received in response to the notice, all in favor of the changes. After a further review of the matter, Customs has determined to adopt the proposal as described in the notice. The list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations, are amended accordingly.

Hidalgo

By E.O. 3609, dated January 9, 1922, and effective February 1, 1922, the port of Hidalgo, Texas, was established. However, the geographic limits of the port were undefined.

Under this amended the port limits of Hidalgo will include the following territory:

On the south, the Rio Grande River, on the east, FM (Farm to Market)–1423 from the Rio Grande River north to State Highway 107, east on State Highway 107 to FM–493 and north on FM–493 to FM–2812; on the north, FM–2812 west to U.S. Highway 281 then south on U.S. Highway 281 to FM–1925 and west on

FM–1925 to FM–881; on the west, south on FM–681 to FM–492 then west on FM–492 to FM–2894; south on FM–2894 to old U.S. Highway 83; west on old U.S. Highway 83 to FM–2062; south on FM–2062 to the Rio Grande River.

Progreso

By T.D. 76–339, published in the Federal Register on December 16, 1976 (41 FR 54927), the geographical limits of Progreso, Texas, included the following territory:

Beginning at the intersection of Mile 9 North Road and the Cameron County and Hidalgo County line proceeding in a westerly direction along Mile 9 North Road to its intersection with Mile 6½ West Road, then proceeding in a southerly direction along Mile 6½ West Road and a continuation thereof to its intersection with the United States-Mexico international boundary to its intersection with the Cameron County and Hidalgo County Line, then proceeding in a northerly direction on the Cameron County and Hidalgo County Line, to its intersection with Mile 9 North Road.

The amendment will extend the existing port limits of Progreso to include the following territory:

On the south, the Rio Grande River; on the east, the county line separating Hidalgo and Cameron Counties from the Rio Grande River north to State Highway 107; on the north, State Highway 107 west from the county line to FM (Farm to Market)–1423; and on the west, FM–1423 south from State Highway 107 to the Rio Grande River.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Imports, Organization.

Authority

This change is adopted under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by E.O. No. 10289, September 17, 1951 (3 CFR 1949–1953 Comp. Ch. II) and pursuant to authority provided by Treasury Department Order No. 101–5 (47 FR 2449).

Amendments to the Regulations

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101, Customs Regulations (19 CFR Part 101), continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1, 66, 1202 (Gen. Hdnote 11), 1624, Reorganization Plan 1 of 1965; 3 CFR 1965 Supp.

2. To reflect these changes, the list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended as follows:

a. By removing "(E.O. 3609, Jan. 9, 1922)." from the column headed "Ports of entry" after "Hidalgo" in the Laredo, Texas, Customs district of the Southwest Region, and inserting, in its place, "T.D. 85–164."

b. By removing "including territory described in T.D. 76–339." from the column headed "Ports of entry" after "Progreso" in the Laredo, Texas, Customs district of the Southwest Region, and inserting, in its place, "T.D. 85–164".

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this amendment. Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although this change may have a limited effect upon some small entities in the Hidalgo and Progreso, Texas, areas, it is not expected to be significant because the extension of the limits of Customs ports of entry in other locations has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Act. Accordingly, it is certified under the provisions of section 3 of the Act (5 U.S.C. 605(b)) that the amendment will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

Because the amendment relates to the organization of the Customs Service, pursuant to section 1(a)(3) of E.O. 12291 this proposal is not subject to the E.O.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved: August 28, 1985.

David D. Queen,

Acting Assistant Secretary of the Treasury.

[FR Doc. 85–23005 Filed 9–25–85; 8:45 am]

BILLING CODE 4820–02–M

19 CFR Part 142

[T.D. 85–161]

Customs Regulations Amendments Relating to Acceptance of Formal Entries With Unsecured Bonds for Certain Importations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to acceptance of formal entries with unsecured bonds for certain importations. The amendment gives district directors authority to waive the necessity of having surety or cash deposit on formal entry bonds for commercial importations valued over $250 but not over $2,500. This waiver could only be granted when the importer has not been delinquent or otherwise remiss in any transaction with Customs and the entry summary documentation is filed and estimated duties, if any, are deposited prior to release of the merchandise. Further, the waiver would not apply to (1) quota merchandise, (2) any type of merchandise which cannot be easily appraised or classified, or (3) any type of merchandise where there may be, based on past experience, a question of redelivery. Customs does not believe the minimal risk to the revenue justifies the increased cost to the importing community for a surety on a bond covering merchandise valued at not more than $2,500.

EFFECTIVE DATE: This rule is effective on October 28, 1985.

FOR FURTHER INFORMATION CONTACT:

Legal Aspects: William Rosoff, Carriers, Drawback and Bonds Division (202–566–5856).

Operational Aspects: Herbert Geller, Duty Assessment Division, (202–535–4161). U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

SUPPLEMENTARY INFORMATION:

Background

Section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484) generally requires that all commercial imports be covered by a formal entry. One of the listed exceptions in 19 U.S.C. 1484 is for entry under regulations prescribed pursuant to section 498, Tariff Act of 1930, as amended (19 U.S.C. 1498). Section 498 was amended by Pub. L. 98–573, the Trade and Tariff Act of 1984, signed October 30, 1984, to increase to $1,250 the amount of merchandise which

may be imported under the informal entry procedures in certain instances.

Section 142.4, Customs Regulations (19 CFR 142.4), provides that, with certain exceptions, merchandise shall not be released from Customs custody at the time Customs receives the entry documentation or the entry summary documentation which serves as both the entry and the entry summary, unless covered by a bond executed by an approved corporate surety or secured by cash deposits or obligations of the United States.

While the imposition of bonding and surety requirements is necessary both in terms of import control and revenue protection for large commercial shipments, Customs believes that the same rationale does not apply to small shipments.

Since February 4, 1980, the North Central Customs Region (Chicago) has been conducting a pilot program of accepting formal entries valued not more than $1,000 without surety on the required bond. The program has been running smoothly with no incidents requiring redelivery of merchandise or the imposition of a penalty.

For the foregoing reasons, Customs believed that there was no justification in terms of cost benefit or public service to support the continued imposition of the bonding requirement for certain entries. Accordingly, on December 21, 1983, a notice of proposed rulemaking (NPRM) was published in the **Federal Register** (48 FR 56401) in which Customs proposed to amend § 142.4, to eliminate the necessity of providing a bond supported by surety or cash deposit on small value shipments (i.e. those valued in excess of $250 but not more than $1,000) which, by law, require a formal entry.

The NPRM proposed to give district directors authority to waive the necessity of having surety or cash deposit on formal entry bonds for commercial importations valued over $250 but not more than $1,000. The NPRM provided that this waiver could only be granted if the importer had not been delinquent or otherwise remiss in any transaction with Customs. Further the waiver would not apply to (1) quota merchandise, (2) any type of merchandise which could not be easily appraised or classified, or (3) any type of merchandise where there may be, based on past experience, a question of redelivery.

Several comments were received in response to the NPRM. Based upon those comments, which are discussed below, and further review of the matter, certain changes have been made to the proposed regulations.

Discussion of Comments

Several commenters were concerned about the possibility of loss of revenue to the Government and suggested that the proposal be modified to require the deposit of duties prior to release of goods.

While it was Customs intention to require deposit of estimated duties prior to release of the merchandise, this was not explicitly stated in the NPRM. To insure that this is understood, § 142.4(c) has been modified to include the requirement for deposit of estimated duties, if any, prior to release of the merchandise. Customs believes that this requirement will not only protect the revenue but will also increase cash flow.

One commenter indicated that, in its opinion, Customs will require additional manpower to enforce the proposal.

Customs does not agree. Customs experience in the Chicago test has not borne out this comment. The purpose of the proposal was to implement Customs operational philosophy of selectivity (i.e. the assessment of risk matched with appropriate enforcement response). Experience demonstrates low delinquency risk in the $251–$2,500 formal entries range. Personnel freed up from review in this area will be more able to concentrate on higher risk activities in merchandise entry. Because the risk has been shown to be minimal up to $2,500, it has been decided to increase the dollar limitation from the $1,000 level proposed in the NPRM to $2,500 in the final rule.

Two commenters raised concern regarding import-sensitive merchandise and opined that liberalizing procedures will increase document irregularities and increase opportunities for fraud.

Customs does not agree. There will be no change in the documentation requirements (i.e. formal entry requirements) under this procedure. The procedure, primarily aimed at one time or infrequent importers, requires documentation currently required to be filed and estimated duty payment, if any, to be made prior to the merchandise being released. This results in better enforcement. An importer following the procedures set forth in this document will be filing an entry summary and relinquishing the immediate release of the merchandise until the documentation is approved by Customs.

Another commenter stated that statistics on imported commodities would be skewed by not including nonsurety bond entries.

Statistical reporting is in no way affected by this procedure. Since entry summary documents are required, Customs will still be in a position to gather statistics on imported commodities.

One commenter stated that the proposal would put Customs in the position of competing with sureties.

Customs is not competing with sureties. Customs will treat low value importations in the same manner as informal entries (i.e. duties paid prior to release of merchandise). This procedure will benefit one time or infrequent importers in clearing Customs with little expense for low value shipments. Further, as other commenters pointed out, the preponderance of formal entries are covered by term bonds. These commenters further noted that the cost for a bond for a regular importer is, considering all other costs, insignificant. Thus, for the routine importer, this procedure will have little or no effect on the costs associated with importing. It is doubtful a regular importer would want a delay, however slight, in the release of its shipment pending documentation review. However, for the one time or infrequent importer, for which this procedure is primarily aimed, the delay may not be considered significant.

Another commenter wanted to know how Customs would regulate entries that fall within the proposal and keep large shipments from being split into low value increments to avoid the need for surety.

Customs will review each entry prior to release of the merchandise to assure compliance with appropriate statutes and regulations. Since this procedure is primarily for one time or infrequent importers, it is doubtful that regular importers, already possessing bonds, would go to the extra expense of splitting shipments to save on surety costs which are probably far less than the costs involved in splitting shipments.

Two commenters suggested that the Chicago pilot program could have been severely abused.

Customs analysis of the Chicago pilot program revealed no abuse or potential for abuse.

Another commenter stated that examination of imports under the procedure should include compliance with marking requirements before release.

Customs agrees. Marking requirements must be met prior to release or a bond with surety will be required. This would fall within the requirement in the final rule that the merchandise not be of a type that could be subject to redelivery.

Finally, one commenter stated that this proposal was one of the alternatives proposed in an October 14, 1983, Federal

Register advanced notice of rulemaking (48 FR 40605) relating to the necessity of requiring surety on Customs bonds, and that no action should be taken until the issues set forth in that document are resolved.

Customs does not agree. The subject matter of this final rule was under development for several months before the October 14, 1983, advance notice was prepared. Because the subject matter overlapped, this matter was included in the October 14, 1983, advance notice. Its inclusion, however, is not a bar from proceeding with this proposal as a separate matter.

In light of the foregoing, the final rule is adopted as set forth below.

Executive Order 12291

These amendments do not meet the criteria for a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

In the NPRM it was indicated that the provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) were not applicable to these amendments because the rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. However, public comment was requested on the effects, with numerical estimates of the proposal on costs, profitability, competitiveness, and employment in small entities. An analysis of the comments received has confirmed that the conclusion set forth in the NPRM was correct.

Accordingly, it is certified under the provisions of section 3, Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was John E. Elkins, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 142

Customs duties and inspection, Imports.

Amendments to the Regulations

Part 142, Customs Regulations (19 CFR Part 142), is amended as set forth below.

PART 142—ENTRY PROCESS

1. The general authority citation for Part 142, Customs Regulations (19 CFR Part 142), continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

§ 142.4 [Amended]

2. The first sentence of § 142.4(a) is amended by inserting the words "or paragraph (c) of this section," after the words "Except as provided in § 10.101(d) of this chapter".

3. A new paragraph (c) is added to § 142.4 to read as follows:

§ 142.4 Bond requirements.

* * * * *

(c) *Waiver of surety or cash deposit.* (1) The district director may waive the requirement for surety or cash deposit on the bond required by this section when (i) the value of the merchandise which the bond secures does not exceed $2,500, (ii) the entry summary documentation is filed and estimated duties, if any, are deposited prior to release of the merchandise and (iii) the importer has not been delinquent or otherwise remiss in any transaction with Customs. (2) This authority to waive surety or cash deposit does not apply to (i) quota merchandise, (ii) any type of merchandise which, in the opinion of the district director, cannot be easily appraised or classified, or (iii) any type of merchandise where there may be, in the opinion of the district director based on past experience, a question of redelivery.

William von Raab,

Commissioner of Customs.

Approved: August 28, 1985.

David D. Queen,

Acting Assistant Secretary of the Treasury.

[FR Doc. 85-23098 Filed 9-25-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: This regulation reflects the provisions of section 2611 of Pub. L. 98-369, the Deficit Reduction Act of 1984, which amended section 1611(a) of the Social Security Act (the Act). Section 2611 provides for increasing the Supplemental Security Income (SSI) resource limitations by $100 for an individual and $150 for a couple each year from January 1985 to January 1989. On January 1, 1989, and continuing, the resource limits will be $2,000/$3,000 respectively.

EFFECTIVE DATE: This regulation is effective January 1, 1985.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-7463.

SUPPLEMENTARY INFORMATION: Sections 1611(a)(1)(B) and 1611(a)(2)(B) of the Act formerly provided that an individual with no spouse may be eligible if his or her resources, other than those excluded under section 1613(a) of the Act, do not exceed $1,500, and that if the individual has an eligible spouse, or an ineligible spouse with whom he or she is living, he or she may be eligible if their resources do not exceed $2,250. Current regulations in § 416.1205 provide for the same dollar limits.

This regulation revises § 416.1205 to reflect section 2611 of Pub. L. 98-369. Section 2611 amends section 1611(a) of the Act by increasing the $1,500/$2,250 (individual/couple) dollar limits for resources to $1,600/$2,400 effective January 1, 1985, $1,700/$2,550 effective January 1, 1986, $1,800/$2,700 effective January 1, 1987, $1,900/$2,850 effective January 1, 1988, and $2,000/$3,000 effective January 1, 1989. Conforming changes have also been made in §§ 416.1202, 416.1244, 416.1246, and 416.1324.

Justification for Dispensing With Notice of Proposed Rulemaking and Opportunity for Public Comment

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on this regulation since opportunity for public

comment is unnecessary. Section 2611 increases the resource limits by specific dollar amounts, and the only amendment to this regulation is to reflect those higher resource limits. The statutory amendment is not subject to any interpretation and the Secretary has no discretion in implementing it.

Executive Order 12291

The impact of section 2611 of Pub. L. 98–369 is solely the result of legislation and would exist without regulatory action on our part. Cost impacts directly resulting from this regulation are minor. Therefore, we have determined that this regulation does not constitute a "major rule" under Executive Order 12291, and a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities because this rule affects only individuals and States. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This regulation imposes no additional reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income program)

List of Subjects in 20 CFR Part 416

Administrative Practice and Procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI).

Dated: March 13, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: July 24, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 416—[AMENDED]

Subpart L of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart L of Part 416 reads as follows:

Authority: Secs. 1102, 1601, 1602, 1611, 1612, 1613, 1614(f) and 1631(d) of the Social Security Act, as amended; 49 Stat. 647, as amended; 86 Stat. 1465, 1466, 1468, 1470, and 1473, as amended; 42 U.S.C. 1302, 1381, 1381a, 1382, 1382a, 1382b, 1382c(f) and 1383(d), unless otherwise noted.

2. In § 416.1202, paragraph (a) is amended by changing the cross reference and paragraph (b) is amended by changing the cross references and revising the resource limits, the revised paragraphs to read as follows:

§ 416.1202 Deeming of resources.

(a) *Married individual.* In the case of an individual who is living with a person not eligible under this part and who is considered to be the husband or wife of such individual under the criteria in §§ 416.1806 and 416.1811, such individual's resources shall be deemed to include any resources, not otherwise excluded under this subpart, of such spouse whether or not such resources are available to such individual.

(b) *Child.* In the case of a child (as defined in § 416.1856) who is under age 18, such child's resources shall be deemed to include any resources, not otherwise excluded under this subpart, of a parent of such child (or the spouse of such a parent) who is living in the same household (as defined in § 416.1851) as such child, whether or not available to such child, to the extent that the resources of such parent (or such spouse of a parent) exceed the resource limits described in § 416.1205. (If income is deemed to the child from only one parent, the limit for an individual applies. If income is deemed from both parents (or from one parent and his or her spouse), the limit for an individual and spouse applies.) As used in this section, the term "parent" means the natural or adoptive parent of a child and "spouse of a parent" means the spouse (as defined in Subpart R of this part) of such natural or adoptive parent.

* * * * *

3. Section 416.1205 is revised to read as follows:

§ 416.1205 Limitation on resources.

(a) *Individual with no eligible spouse.* An aged, blind, or disabled individual with no spouse is eligible for benefits under title XVI of the Act if his or her nonexcludable resources do not exceed $1,500 prior to January 1, 1985, and all other eligibility requirements are met. An individual who is living with an ineligible spouse is eligible for benefits under title XVI of the Act if his or her nonexcludable resources, including the resources of the spouse, do not exceed $2,250 prior to January 1, 1985, and all other eligibility requirements are met.

(b) *Individual with an eligible spouse.* An aged, blind, or disabled individual who has an eligible spouse is eligible for benefits under title XVI of the Act if their nonexcludable resources do not exceed $2,250 prior to January 1, 1985, and all other eligibility requirements are met.

(c) *Effective January 1, 1985 and later.* The resources limits and effective dates for January 1, 1985 and later are as follows:

Effective date	Individual	Individual and spouse
Jan. 1, 1985	$1,600	$2,400
Jan. 1, 1986	1,700	2,550
Jan. 1, 1987	1,800	2,700
Jan. 1, 1988	1,900	2,850
Jan. 1, 1989	2,000	3,000

4. In § 416.1244, paragraph (c) is revised to read as follows:

§ 416.1244 Treatment of proceeds from disposition of resources.

* * * * *

(c) After deducting any amount necessary to raise the individual's (and spouse's if any) resources to the applicable limits described in § 416.1205, as of the beginning of the disposition period, the balance of the net proceeds will be used to recover the payments made to the individual (and spouse, if any). Any remaining proceeds are considered liquid resources.

* * * * *

5. In § 416.1246, paragraph (a)(1) is revised to read as follows:

§ 416.1246 Disposal of resources at less than fair market value.

(a) *General.* (1) An individual (or eligible spouse) who gives away or sells a nonexcluded resource for less than fair market value for the purpose of establishing SSI or Medicaid eligibility will be charged with the difference between the fair market value of the resource and the amount of compensation received. The difference is referred to as uncompensated value and is counted toward the resource limit (see § 416.1205) for a period of 24 months from the date of transfer.

* * * * *

6. The authority citation for Subpart M of Part 416 reads as follows:

Authority: Secs. 1102, 1611 through 1615, and 1631, Social Security Act, as amended, 49 Stat. 647, as amended, 86 Stat. 1466 through 1477, (42 U.S.C. 1302, 1382 through 1382d, 1383), unless otherwise noted.

7. In § 416.1324, paragraph (a)(1) is revised to read as follows: (The introductory text is reprinted without change for the convenience of the reader.)

§ 416.1324 Suspension due to excess resources.

(a) *Effective date.* Except as specified in §§ 416.1240 through 416.1242, suspension of benefit payments because of excess resources is required effective with the month in which:

(1) Ineligibility exists because countable resources are in excess of:

(i) The resource limits prescribed in § 416.1205 for an individual and an individual and spouse, or

(ii) In the case of an eligible individual (and eligible spouse, if any) who for the month of December 1973 was a recipient of aid or assistance under a State plan approved under title, I, X, XIV, or XVI of the Act, the maximum amount of resources specified in such State plan as in effect for October 1972, if greater than the amounts specified in § 416.1205, as applicable; or

. . . . . .

[FR Doc. 85-23020 Filed 9-25-85; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3 85-63]

Regatta; Long Island Gran Prix, Long Island Sound, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Long Island Gran Prix sponsored by the Gateway Powerboat Association of Greenwich, CT. This powerboat racing event will be held off the north shore of Long Island between Matinicock and Oak Neck Points on October 5, 1985. This regulation is needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: This regulation becomes effective on October 5, 1985 at 11:00 a.m. and terminates the same day at 3:00 p.m. The approved postponement date in the event of inclement weather is October 6, 1985 during the same times.

FOR FURTHER INFORMATION CONTACT: Mr. Lucas A. Dlhopolsky, (212) 668-7974.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking has not been published for this regulation and it is being made effective in less than 30 days from the date of publication. Following normal rule making procedures would have been impracticable. The application for this event was received at the Third District Boating Safety Office on September 4, 1985. Therefore, there was not sufficient time to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Mr. Lucas A. Dlhopolsky, Project Officer, Third Coast Guard District Boating Safety Division and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The Long Island Gran Prix will be held off the north shore of Long Island on October 5, 1985. This event is sponsored by The Gateway Powerboat Association of Greenwich, CT. A powerboat racing event was held in the same location and course on September 29, 1984 under the title of The Queen City Powerboat Race sponsored by Wright Island Marina. The Long Island Gran Prix is being held in place of this event. Approximately 50 powerboats, 20 to 50 feet in length, will race around a course 7.8 nautical miles in length. The race is scheduled to start at 11:00 a.m. and last until approximately 3:00 p.m. The sponsor will provide from 10 to 15 vessels which will be used to mark the corners of the race course and to assist the Coast Guard and local authorities in patrolling this event. Since it is anticipated that the powerboats participating in this race will be traveling at speeds around 100 m.p.h., spectator vessels will be required to remain at least 150 yards away from any straight leg of the course and shall not approach any closer than ¼ nautical mile from any of the four turning points of the race course. When these powerboats make high speed turns, they can be expected to swing wide of the turning markers. Mariners should use extreme caution while near the race course area. The Coast Guard will issue a safety voice broadcast to notify boaters of this event. In order to provide for the safety of life and property on navigable waters, the Coast Guard will restrict vessel movement in the regulated area.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by adding a temporary § 100.35-322 to read as follows:

§ 100.35-322 Long Island Gran Prix.

(a) *Regulated Area.* Off the north shore of Long Island between Matinicock and Oak Neck Points in the area within a ¼ nautical mile radius of each of the following points, and within 150 yards of each race leg connecting these points: Latitude 40°54'32" longitude 73°38'13" W.; latitude 40°55'28" N., longitude 73°34'13" W.; latitude 40°55'37" N., longitude 73°34'14" W.; latitude 40°56'00" N., longitude 73°38'00" W.

(b) *Effective Period.* This regulation will be effective from 11:00 a.m. to 3:00 p.m. on October 5, 1985. The approved postponement date in the event of inclement weather is October 6, 1985 during the same times.

(c) *Special Local Regulations.* (1) All persons or vessel not registered with the sponsor as participants or not part of the regatta patrol are considered spectators.

(2) No spectator shall enter, pass through or remain within the regulated area as marked by the sponsor or Coast Guard patrol personnel during the effective period.

(3) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(4) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: September 20, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 85-23032 Filed 9-25-85; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Modification of Timber Sale Extension Policy; Clarification of Final Policy

AGENCY: Forest Service, USDA.

ACTION: Notice if clarification of final policy.

SUMMARY: On Wednesday, August 7, at 50 FR 31840, the Forest Service gave final notice of modifications in the 1983 Forest Service timber sale contract extension policy. The modifications were necessary to accommodate the effects of the Federal Timber Contract Payment Modification Act and became effective August 19, 1985. The modified policy, among other things, allows purchasers to add sales to the harvest schedule of their multi-sale extension plans under certain circumstances, and, permits under specified conditions, purchasers of some previously extended contracts to request an early extension under the multi-sale extension program. This notice clarifies the period during which timber sale purchasers may request these actions.

FOR FURTHER INFORMATION CONTACT: David M. Spores, Timber Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, DC 20013, (202) 447-4051.

SUPPLEMENTARY INFORMATION: Following publication of the final policy on August 7, (50 FR 31840), the Forest Service has received a number of inquiries about when a purchaser may request addition of certain timber sales to the harvest schedule of an approved multi-sale extension plan, or request an early extension under the 1983 extension policy of previously extended sales.

The Forest Service hereby clarifies that a purchaser who applies for contract buy out pursuant to 36 CFR Part 223 may make such requests any time between August 19, 1985, and 45 days after the purchaser receives the Regional Forester's approval of its application for contract buy out.

If a purchaser does not file an application for contract buy out, any requests for early extensions or addition of a sale to the harvest schedule of an approved multi-sale extension plan must be received by the Regional Forester by close-of-business, Friday, November 15, 1985, or postmarked no later than November 15, 1985, in order to be considered.

Dated: September 19, 1985.

F. Dale Robertson,

Associate Chief.

[FR Doc. 85-22987 Filed 9-25-85; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6610

[C-021250]

Colorado; Modification of Public Land Order 1800

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies a public land order insofar as it affects 82.56 acres of national forest system land to permit consummation of an exchange. The land was withdrawn for the Forest Service for protection of an administrative site. The land remains closed to other forms of surface entry and mining, but has been and remains open to mineral leasing.

EFFECTIVE DATE: September 26, 1985.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205, 303-294-7635.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 1800 dated February 19, 1959, is hereby modified insofar as it affects the following described national forest system land to permit consummation of an exchange by the Forest Service:

Sixth Principal Meridian

Arapahoe National Forest, Frisco Administrative Site No. 2

T. 5 S., R. 78 W.,
Sec. 27, S½S¼.
The area described contains 82.56 acres in Summit County.

2. Effective immediately, the land is opened to applications for disposal under the General Exchange Act of March 22, 1922, 42 Stat. 465, 466, as amended, and the Act of December 4, 1967, 81 Stat. 531, and section 206 of the Act of October 21, 1976, 90 Stat. 2743, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law.

Robert N. Broadbent,

Assistant Secretary of the Interior.

September 20, 1985.

[FR Doc. 85-23004 Filed 9-25-85; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 3

Standards of Conduct

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: This final rule revises the FEMA Standards of Conduct regulations. It sets forth FEMA policy and procedures relating to employee responsibility and conduct. It implements the Ethics in Government Act, E.O. 11222 and OPM Regulations, 5 CFR Parts 735 and 737.

DATE: This rule takes effect September 26, 1985.

FOR FURTHER INFORMATION CONTACT: William L. Harding, Room 840, 500 C St., SW., Washington, D.C. 20472 (202) 646–4096.

SUPPLEMENTARY INFORMATION: This rule revises the current FEMA Standards of Conduct which implement for FEMA the Ethics in Government Act and E.O. 11222. This regulation was initially issued in 1979 when FEMA was activated and has not been substantially revised since then. It is now being revised in accordance with suggestions from the Office of Government Ethics and as part of periodic review of all FEMA regulations to determine if parts are current and remain needed.

The rule applies to Federal employees and to agency management. For this reason, notice and public comment are not necessary, and the rule may be made effective immediately. It is not a major rule within the terms of Executive Order 12291, and as it applies to individuals it is not subject to requirements under the Regulatory Flexibility Act. As it relates to administrative matters, it is categorically excluded from any requirements for environmental documents under 44 CFR Part 10.

This rule does not contain any information collection requirements which are subject to Section 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 3

Conflict of Interest: Privacy.

Accordingly, Chapter I of Title 44, Code of Federal Regulations is amended by revising Part 3 to read as follows:

PART 3—STANDARDS OF CONDUCT

Subpart A—General

Sec.
3.1 Purpose.
3.2 Applicability and scope.
3.3 Definitions.
3.4 Notification to employees and special Government employees.
3.5 Interpretation and advisory service.
3.6 Employee responsibilities.
3.7 Sanction for violation.
3.8 Disqualification procedure.

Subpart B—Conduct and Responsibilities of Employees

3.10 Administrative extension of statutory limitations.
3.11 Proscribed actions.
3.12 Financial interests.
3.13 Outside employment and other activities.
3.14 Gifts and gratuities.
3.15 Use of Government property, vehicles, and communications systems.
3.16 Misuse of information.
3.17 Gambling, betting and lotteries.
3.18 Indebtedness.
3.19 General conduct prejudicial to the Government.
3.20 Intermediaries and product recommendation.
3.21 Membership in organizations.
3.22 Use of intoxicants.
3.23 False statements.
3.24 Care of official records and documents.
3.25 Disclosure of information about an individual.

Subpart C—Conduct and Responsibilities of Special Government Employees

Sec.
3.40 Applicability of Subpart B.
3.41 Use of Government employment.
3.42 Use of inside information.
3.43 Coercion.
3.44 Gifts, entertainment, and favors.
3.45 Applicability of other provisions.

Subpart D—Disclosure of Financial Interests

General Provisions

3.50 General.
3.51 Information not required.
3.52 Effect of employees' statements on other requirements.
3.53–3.59 [Reserved]

Financial Disclosure Under Ethics in Government Act of 1978

3.60 Who must file.
3.61 Form used to file.
3.62 When to file.
3.63 How and where to file.
3.64 Supervisory review of report.
3.65 Action on report.
3.66 Public release.
3.67–3.79 [Reserved]

Financial Disclosure Under Executive Order 11222 and 5 CFR Part 735

3.80 Who must file.
3.81 Form used to file.
3.82 When to file.
3.83 How and where to file.
3.84 Review of report.
3.85 Action on report.
3.86 Confidentiality of employees' statements.
3.87 Employees' complaint on filing requirement.
3.88 Employees not required to submit statements.
3.89 Information not known to employees.

Subpart E—Post Employment Conflicts of Interest

3.100 Scope.
3.101 Definitions.
3.102 General counsel.
3.103 Records.
3.104 Interpretative standards.
3.105 Authority to prohibit appearances.
3.106 Receipt of information concerning former employees.
3.107 Conferences.
3.108 Institution of proceeding.
3.109 Contents of complaint.
3.110 Service of complaint and other papers.
3.111 Answer.
3.112 Reply to answer.
3.113 Proof; variance; amendment of pleadings.
3.114 Motions and requests.
3.115 Representation.
3.116 Administrative Law Judge.
3.117 Hearings.
3.118 Evidence.
3.119 Depositions.
3.120 Transcript.
3.121 Proposed findings and conclusions.
3.122 Decision of the Administrative Law Judge.
3.123 Appeal to the Director, Federal Emergency Management Agency.

Sec.
3.124 Decision of the Director, Federal Emergency Management Agency.
3.125 Notice of disciplinary action.

Appendix A—Statutes Governing Conduct of Federal Employees

Appendix B—Examples of Conflict of Interest Situations

Authority: Title II of Ethics in Government Act of 1978, Pub. L. 95–521, 92 Stat. 1838 (5 U.S.C. App); 5 CFR Parts 735, 737; EO 11222.

Subpart A—General

§ 3.1 Purpose.

(a) The purpose of this part is to set forth Federal Emergency Management Agency (FEMA) policy and procedure relating to employee responsibilities and conduct.

(b) 5 CFR 735.101 states in part: "The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees is essential to assure the proper performance of the Government business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of Government employees through informed judgment is indispensable to the maintenance of these standards."

(c) This part effectuates the requirements in Subpart A of 5 CFR Part 735 that FEMA issue regulations covering FEMA employees and special Government employees which: (1) Implement Executive Order 11222 of May 8, 1965, and 5 CFR Part 735 and (2) prescribe additional standards of ethical and other conduct appropriate to the particular functions of FEMA. This part also effectuates the requirements placed on FEMA by the Ethics in Government Act of 1978, and implementing regulations of OPM.

§ 3.2 Applicability and scope.

(a) This part applies to all persons included within the terms "employee" and "special government employee" as defined in § 3.3. This part also applies to all former employees and special government employees of FEMA.

(b) This part prescribes general standards of conduct for FEMA employees. It is not, however, inclusive. Other FEMA regulations, instructions and issuances may include standards of ethical behavior. Employees must consult these. Among these instructions are those related to: (1) The Freedom of Information Act, (2) the FEMA Employee Security Program, and (3) the FEMA Acquisition Process.

(c) This part does not apply unless there is specific provision to that effect to standards of ethical conduct required by law or regulation of FEMA contractors or grantees, nor does it apply to organizational conflicts of interest.

§ 3.3 Definitions.

For purposes of this part:

(a) "FEMA" means the Federal Emergency Management Agency.

(b) "Director" means the Director, FEMA.

(c) "Employees" includes every employee of FEMA, Headquarters and field, but does not include a special Government employee nor does it include a member of the National Defense Executive Reserve except during such time as the member is serving as an employee of FEMA. "Employee" also includes disaster assistance employees hired pursuant to Public Law 93–288 during such time as the employees are on active duty status.

(d) "Special Government employee" includes an employee of FEMA who is retained, designated, appointed, or employed to perform, with or without compensation, and for not to exceed 130 days during any period of 365 consecutive days, temporary duty on either a full time or intermittent basis. See 18 U.S.C. 202.

(e) "Person" includes an individual corporation, company, association, firm partnership, society, joint stock company, or other organization or institution.

(f) "Ethics Counselor" means the FEMA officer designated to administer for FEMA Titles II and V of the Ethics in Government Act of 1978 (Pub. L. 95–521), and it also means the FEMA Official who serves as the Agency's designee to OGE on matters covered by Parts 735 and 737 of Title 5 of the Code of Federal Regulations and who coordinates and directs the FEMA ethics counseling service. In FEMA this is the General Counsel.

(g) "OGE" means the Office of Government Ethics in the Office of Personnel Management (OPM).

(h) "Head of Unit" as used herein includes the Deputy Director, Associate Directors, Regional Directors, Federal Insurance Administrator, and the United States Fire Administrator. For purposes of this part, the Deputy Director is "Head of Unit" for any organizational component of FEMA not included in the above listing. During the absence of, or a vacancy in, the Office of the Deputy Director, the Director may name another official in FEMA to exercise this function.

§ 3.4 Notification to employees and special Government employees.

(a) The provisions of this part as it is revised, shall be brought to the attention of, and made available to, each employee and special Government employee by furnishing a copy at the time of final publication. The provisions of this part shall further be brought to the attention of such employees at least annually thereafter.

(b) The provisions of this part shall be brought to the attention of each new employee and new special Government employee by furnishing a copy at the time of entrance of duty, and by such other methods of information and education as the Director may prescribe.

§ 3.5 Interpretation and advisory service.

(a) The Ethics Counselor serves as FEMA's designee to OGE on matters covered by this part and by 5 CFR Parts 735 and 737. The Ethics Counselor is responsible for coordinating FEMA's counseling services and for assuring that counseling and interpretations on questions of conflicts of interest and other matters covered by this part are available.

(b) Such deputy counselors as may be required shall be designated by the General Counsel from among the staff of the Office of General Counsel to give authoritative advice and guidance to current, former and prospective employees and special Government employees who seek advice and guidance on questions of conflicts of interest and on other matters covered by this part.

(c) To assist in avoiding situations of noncompliance the Ethics Counselor shall, in accordance with section 206(b)(7) of the Ethics in Government Act of 1978 (Pub. L. 95–521), maintain a list of those circumstances or situations which have resulted or may result in noncompliance with laws or regulations concerning conflicts of interest and shall furnish a published list to employees subject to Title II of the Ethics in Government Act of 1978. Appendix B contains a list of such conflict of interest situations.

(d) The Ethics Counselor shall provide advice promptly to former FEMA employees and special Government employees who make inquiry on any matter arising under the post employment conflict of interest regulations of OPM (5 CFR Part 737) and this part.

§ 3.6 Employee responsibilities.

(a) Each employee and special Government employee has a positive duty to become acquainted with the

numerous statutes relating to the ethical and other conduct of employees of FEMA and special Government employees of FEMA and of the Government. Appendix A of this part contains a listing of many of the more important statutory provisions of general applicability. In case of doubt on any question of statutory application to fact situations that may arise, an individual should consult the text of the statutes, Executive Orders or regulations and may consult the Ethics Counselor or Deputy Counselor, who have available for review copies of laws, Executive Orders, agency regulations, and pertinent issuances by OPM on this subject.

(b) In any case where any employee or special Government employee, regardless of grade or position, finds that participation in a particular matter or transaction might be considered to involve a direct or indirect financial interest, such individual shall promptly submit a request for disqualification to act in the matter or for other proposed remedial action in writing to the appropriate supervisor. This request will be acted on in accordance with § 3.8.

§ 3.7 Sanction for violation.

A violation of this Part by an employee or special Government employee may be cause for appropriate disciplinary action, or remedial action, which may be in addition to any penalty prescribed by law.

§ 3.8 Disqualification procedure.

(a) This section applies whether or not the conflict or apparent conflict of interest appears on any disclosure form and it applies to any employee or special Government employee, regardless of grade or position. It applies to a request for disqualification to act made pursuant to paragraph (b) of this section.

(b) All disqualification or remedial action requests are referred to the Ethics Counselor. If the Ethics Counselor reaches an opinion, based on information submitted, that an employee or special Government employee is not in compliance with applicable laws and regulations, then the Ethics Counselor shall so notify the individual of this opinion. The Ethics Counselor shall act on requests by individuals but is not required to approve the specific remedial action proposed. The individual shall be given a reasonable opportunity for an oral or written response. The Ethics Counselor may also ask for additional information.

(c) The Ethics Counselor shall consider the individual's response, and reach an opinion as to whether or not the individual is in compliance. If the opinion is that the individual is not in compliance with applicable laws and regulations, the Ethics Counselor shall notify the individual, and after consultation with the individual (if practical) determine and notify the individual of what steps if any, and the date for completion, would be appropriate for assuring compliance with the laws and regulations.

(d) These steps may include one or more of the following "ethics agreements":

(1) Divestiture;

(2) Restitution;

(3) Resignation from a non-federal business or other entity;

(4) The establishment of a blind trust;

(5) Request for waiver under section 208(b) of Title 18, United States Code; or

(6) Voluntary request for transfer, reassignment, disqualification or recusal from a particular assignment, or limitation of duties.

(e) If any of the remedial actions indicated in paragraph (d)(6) of this section is contemplated, appropriate personnel officers of FEMA shall be notified and shall participate in the determination of the action proposed to be effected.

(f) In the case of nominees to positions requiring the advice and consent of the Senate, evidence of the actions taken by the nominee to carry out an ethics agreement shall be submitted immediately by the Ethics Counselor to OGE and the Senate confirmation committee. In the case of incumbents of positions requiring the advice and consent of the Senate, evidence of actions taken shall be submitted immediately by the Ethics Counselor to OGE. Where the Ethics Counselor is neither a nominee nor an incumbent, such official must send evidence of his/her actions to OGE. In the case of other reporting individuals, evidence of action taken consists of any of the following:

(1) A copy of the recusal agreement containing the specific matters to which the recusal shall apply, a statement of the process or method by which the recusal shall be enforced within FEMA, and positions of those involved in its execution (i.e., the individual's immediate subordinates and supervisors);

(2) Written notification that the divestiture, resignation, restitution, or reassignment has occurred;

(3) A copy of the waiver, signed by the appropriate supervisory official;

(4) Information required by OGE regulations for its approval of blind trust instruments.

(g) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (c) the matter shall be referred to the Director.

Subpart B—Conduct and Responsibilities of Employees

§ 3.10 Administrative extension of statutory limitations.

The provisions of the statutes identified in this part, including those in Appendix A, which relate to the ethical and other conduct of Federal employees are adopted and will be enforced as administrative regulations, violations of which may, in appropriate cases, be the basis for disciplinary action, including removal. The fact that a statute which may relate to employee conduct is not identified in this part does not mean that it may not be the basis for disciplinary action against an employee.

§ 3.11 Prescribed actions.

An employee shall avoid any action whether or not specifically prohibited by this Subpart which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels;

(f) Affecting adversely the confidence of the public in the integrity of the Government;

(g) Discriminating contrary to any law, rule or regulation, against any other employee, or applicant for employment, on the grounds of race, color, religion, national origin, sex, age, handicapping condition, marital status, or political affiliation;

(h) Excluding contrary to any law, rule or regulation, any person from participating in, or denying to any person the benefits of, any program or activity administered by FEMA on the grounds of race, color, religion, national origin, handicapping condition, age, sex, marital status or political affiliation;

(i) Knowingly participating, while conducting official business, in or attending any segregated meetings, or meetings held in segregated facilities, from which persons are excluded because of race, color, religion, sex or national origin, etc.

§ 3.12 Financial interests.

(a) An employee shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or

appears to conflict substantially, with the employee's Government duties and responsibilities as a Federal employee; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through Government employment.

(b) No employee shall participate in any manner, on behalf of the United States, in the negotiation of contracts, the making of loans and grants, the granting of subsidies, the fixing of rates, or the issuance of valuable permits or certificates, or in any investigation or prosecution, or in the transaction of any other official business which affects chiefly a person:

(1) By whom the individual has been employed or with whom the individual has had any economic interest within the preceding two years, or

(2) With whom the individual has any economic interest or any pending negotiations concerning a prospective economic interest, except with express prior authorization in writing by the Director.

(c) Contracts shall not knowingly be entered into between the Government and employees of the Government or business concerns or organizations which are substantially owned or controlled by Government employees, except for the most compelling reasons, such as cases where the needs of the Government cannot reasonably be otherwise supplied.

(d) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, Executive Order, OPM regulation (5 CFR Parts 735 and 737) or the regulation in this part.

(e)(1) The financial (or economic) interests described below are, unless otherwise determined by the Ethics Counselor in specific cases, too remote or too inconsequential to affect the integrity of an employee's services, and are thereby exempted from the prohibitions of 18 U.S.C. 208(a), and the holding of such an interest does not exclude such employee's participation in the transaction of any official business involving such financial or economic interest;

(i) Deposits in a bank, savings and loan association, building association, credit union or similar financial institution; or policies held with an insurance company;

(ii) Any holding in a widely held mutual fund, or regulated investment company which does not specialize in any particular industry;

(iii) Continued participation in a bona fide group life, health, or accident insurance plan or other employee welfare or benefit plan that is maintained by a business or nonprofit organization by which the employee was formerly employed, to the extent that the employee's rights in the plan are vested and require no additional services by the employee or further payments to the plan by the organization with respect to the services of the employee. To the extent that such plans are profit sharing or stock bonus plans, this exemption shall not apply.

(iv) Continued participation in bona fide pension or retirement plans may be deemed to affect the integrity of an employee's services. Whether such financial interests are exempted from the prohibitions of 18 U.S.C. 208(a) must be determined by the Ethics Counselor on a case-by-case basis.

(2) These exempted financial interests should, however, be reported by employees on disclosure forms to the extent prescribed in Subpart D of this part.

(3) For purposes of this part unless otherwise provided in law, regulation, or on any form requesting disclosure, the interest of a spouse, dependent child, or other member of an employee's immediate household in considered to be an interest of the employeee. For the purpose of this section, "member of an employee's immediate household" means those relations who are residents of the employee's household.

(f) Paragraph (b) of this section does not apply if the officer or employee first advises the Ethics Counselor in writing of the nature and circumstances of the matter, makes full disclosure of the financial interest, and receives in advance a written determination by such Ethics Counselor or Deputy Counselor that such interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such employee.

(g) The provisions of this section do not limit or add to the provisions of any disclosure requirements under Subpart D of this part.

§ 3.13 Outside employment and other activities.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his or her Government employment, and which might result in a conflict or apparent conflict between the private interests of the employee and the official Government duties and responsibilities. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances where acceptance may result in, or create the appearance of, conflicts of interest;

(2) Outside employment which tends to impair the mental or physical capacity to perform Government duties and responsibilities in an acceptance manner;

(3) Outside activities that may be construed by the public to be the official acts of FEMA;

(4) Activities that establish relationships or property interests that may result in a conflict between one's private interests and official duties;

(b) Full-time employees and part-time employees with a regularly scheduled tour of duty must obtain the prior written approval of the Ethics Counselor or Deputy Counselor before engaging in outside employment in the same professional field as that of the individual's official position. All such employees must obtain written approval on an annual basis.

(c) Although teaching, lecturing, and writing are outside employment, employees are encouraged to engage in such activities so long as they are not prohibited by law, Executive Order, OPM regulations or this part.

(d) An employee shall not receive any salary or anything of monetary value from a private source as compensation for services to the Government.

(e) Any full-time employee mentioned in § 3.60 of this part, whose appointment is required to be made by and with the advice and consent of the Senate, may not have earned income in any calendar year attributable to such year in excess of 15% of his or her salary.

(f) No employee, including the Director, shall receive outside compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of FEMA, or which draws substantially on official data or ideas which have not become part of the body of public information.

(g) The use of an employee's name and title in connection with articles for publication which bear upon work in FEMA is permissible only if approval is obtained from the Ethics Counselor or Deputy Counselor.

(h) This section does not preclude an employee from:

(1) Participation in the activities of National or State political parties not proscribed by law.

(2) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

§ 3.14 Gifts and gratuities.

(a) Except as otherwise provided in this section an employee shall not solicit or accept directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with FEMA;

(2) Conducts operations or activities that are regulated by FEMA; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) The prohibitions of paragraph (a) of this section do not apply in the following cases:

(1) Obvious family or personal relationships, such as those between the parents, children, or spouse of the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors;

(2) Acceptance of food and refreshments of nominal value (fifteen dollars or less) on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance;

(3) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

(4) Acceptance of unsolicited advertising or promotional materials, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value (fifteen dollars or less).

(c) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself/herself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342.

(e) Neither this section nor § 3.13 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for actual expenses for travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, such reimbursement may be accepted only by the agency and not by the individual employee. Such expenses may be accepted by FEMA only in limited situations as provided by statute. Therefore, prior to engaging in travel for which reimbursement from a private source is planned, the written approval of the Ethics Counselor must be obtained. If such approval is obtained, however, this paragraph does not allow an employee to be reimbursed, or payment to be made on his/her behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under FEMA orders when reimbursement is proscribed by decisions of the Comptroller General. FEMA may also accept reimbursement for travel or expenses incident to travel subject to the incident to travel subject to the restrictions of this section for the actual expenses of an accompanying spouse in connection with an employee's travel.

§ 3.15 Use of Government property, vehicles and communications systems.

(a) An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities.

(b) Each employee shall protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to the employee.

(c) An employee shall not use, or authorize the use of, Government owned or leased motor vehicles or aircraft for other than official purposes (31 U.S.C. 638a(c)).

(d) An employee shall not use the Federal Telecommunications System or similar system, or commerical telephone facilities for official long-distance calls unless specifically authorized to do so. Use of these facilities for purposes other than the conduct of official business is also prohibited, except in cases of emergency.

§ 3.16 Misuse of information.

(a) *Use of inside information.* For the purpose of furthering a private interest, an employee shall not, except as provided in § 3.13, directly or indirectly use, or allow the use of, information which has been or has the appearance of having been obtained through or in connection with Government employment and which has not been made available to the general public.

(b) *Coercion.* An employee shall not use Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to self or another person, particularly one with whom the employee has family, business, or financial ties.

(c) *Disclosure of restricted information.* Except as authorized by law, or FEMA regulation, including that related to the Freedom of Information Act, no employee shall divulge restricted commercial or economic information, or restricted information concerning the personnel or operations including procurement actions of any Government agency, or release any such information in advance of the time prescribed for its authorized release.

§ 3.17 Gambling, betting and lotteries.

An employee shall not, except as otherwise lawfully authorized, participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity, including the operations of a gambling device; in conducting a lottery or pool; in a game for money or property; or in selling or purchasing a numbers slip or ticket.

§ 3.18 Indebtedness.

(a) An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For purposes of this section "a just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which, in the view of FEMA, does not under the circumstances, reflect adversely on the Government as employer.

(b) In the event of dispute between an employee and an alleged creditor, this section does not require FEMA to determine the validity or amount of the disputed debt.

§ 3.19 General conduct prejudicial to the Government.

(a) Officers and employees of the Federal Government are servants of the people. Because of this, their conduct must, in many instances, be subject to more restrictions and to higher standards than may be the case in

certain private employments. They are expected to conduct themselves in a manner which will reflect favorably upon their employer. Although the Government is not particulary interested in the private lives of its employees, it does expect them to be honest, reliable, trustworthy, and of good character and reputation. They are expected to be loyal to the Government, and to the department or agency in which they are employed.

(b) An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

(c) Each employee shall act in a manner that facilitates the effective accomplishment of the work of FEMA, observing at all times the requirements of courtesy, consideration, and promptness in dealing with the public and with persons or organizations having business with FEMA.

§ 3.20 Intermediaries and product recommendation.

Except as authorized in connection with the performance of official duties, no employee shall recommend or suggest the use of any particular or identified nongovernmental intermediary to deal with FEMA nor shall an employee recommend any device or product tested by or for, or used by FEMA, or for which FEMA provides financial assistance.

§ 3.21 Membership in organizations.

(a) An employee may not, in his or her official capacity as an employee of FEMA, serve as a member of a non-federal or private organization except where statutory authority exists, or where the Director has determined, in writing, that such service would be beneficial to FEMA and consistent with such employee's service as a FEMA employee.

(b) The foregoing is subject to the following. An employee may, and is encouraged to serve in an individual capacity as a member of a non-federal or private organization, particularly those engaged in civic or community affairs on a non-political, non-profit basis, provided that:

(1) Membership does not violate any restriction, law, or regulation, including this part, and

(2) The employee's official title or organization connection is not shown on any listing or presented in any activity of the organization in such a manner as to imply that the employee is acting in an official capacity. Publication in any manner of an employee's official title or FEMA organization connection by a private or non-federal organization must be approved in writing by the Ethics Counselor.

(c) An employee may be designated in writing to serve as a liaison representative of FEMA to a non-Federal or private organization when the Director, an Associate Director, or a Regional Director, as appropriate, has determined that such service would be beneficial to FEMA and provided that:

(1) The activity relates to the work of FEMA;

(2) The employee does not participate by vote in the policy determinations of the organization;

(3) FEMA is in no way bound by any vote or action taken by the organization.

§ 3.22 Use of intoxicants.

An employee shall not use intoxicants habitually, to excess (5 U.S.C. 7352). Intoxicants shall not be consumed on Government-owned or leased premises unless approved by the Director. An employee found using, or under the influence of, intoxicants while at work will be subject to disciplinary action.

§ 3.23 False statements.

An employee shall not, knowingly and willfully, conceal or cover up a material fact, or make any false, or fictitious statement in connection with any official matter, document, or record (18 U.S.C. 1001, 2073).

§ 3.24 Care of official records and documents.

An employee shall not, willfully and unlawfully, conceal, remove, mutilate, falsify, or destroy any Government document or record (18 U.S.C. 285, 2071).

§ 3.25 Disclosure of information about anf individual.

(a) All employees who are involved in the design, development, operation, or maintenance of a system of records or who have access to a system of records shall familiarize themselves with the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) and FEMA regulations implementing the Privacy Act of 1974 (44 CFR Part 6) and FEMA directives issued thereunder and apply these requirements to all systems of records.

(b) No officer or employee shall disclose any record which is contained in a system of records by any means of communication to any person or to another agency, except pursuant to a written request by, or with the prior written consent of the individual to whom the record pertains, unless the disclosure is to a recipient specified in paragraph (c) of this section. The term "record," for purposes of this section, means any item, collection or grouping of information about an individual that is maintained by an agency, including but not limited to education, financial transactions, medical history, and criminal or employment history, and that contains the name or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voice-print, or photograph. The term "system of records" means a group of any records under the control of FEMA from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The term "routine use" means, with respect to the disclosure of a record, the use of that record for a purpose which is compatible with the purpose for which it was collected. The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence. The term "agency" is defined in 5 U.S.C. 552(e).

(c) An employee may disclose any record which is contained in a system of records without a written request by and without the prior written consent of the individual to whom the record pertains if the disclosure is:

(1) To those employees of the agency which maintains the record who have a need for the record in the performance of their duties.

(2) Pursuant to section 552 of Title 5 U.S.C. (Freedom of Information Act);

(3) For a routine use as defined in section (a)(7) of the Privacy Act of 1974 (described in paragraph (b) of this section);

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13 U.S.C.;

(5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record and that the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of the National Archives and Records Administration or his/her designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law and if the

head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of the individual;

(9) To either House of Congrss, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress, or a subcommittee of any such joint committee;

(10) To the Comptroller General or any authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(11) Pursuant to the order of a court of competent jurisdiction.

(d) No employee shall maintain a record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

(e) No employee shall sell or rent an individual's name and address unless such action is specifically authorized by law.

(f) An employee is subject to criminal penalties and administrative sanctions who by virtue of such employment or offical position has possession of or access to agency records which contain individually identifiable information the disclosure of which is prohibited by paragraph (a) of this section or by any other rules, regulations or directives of FEMA established under the Privacy Act of 1974, and who:

(1) Knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, or

(2) Willfully maintains a system of records without meeting the notice requirements of the Privacy Act of 1974, or

(3) Knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses.

(g) An employee subjects himself/herself to administrative sanctions, and subjects FEMA to civil penalties who:

(1) Makes a determination not to amend an individual's record in accordance with the Privacy Act of 1974; or

(2) Refuses to comply with an individual's request to gain access to review and to obtain a copy of any information pertaining to him/her; or

(3) Fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to ensure fairness in any determination relating to the qualifications, character, right or opportunities of or benefits to the individual that may be made on the basis of such record and consequently a determination is made which is adverse to the individual; or

(4) Fails to comply with any provision of the Privacy Act of 1974 or any FEMA regulation or directive implementing it (5 U.S.C. 552a(g)(4)).

Subpart C—Conduct and Responsibilities of Special Government Employees

§ 3.40 Applicability of Subpart B.

Except as specifically provided in §§ 3.41 through 3.45, each special government employee is subject to the provisions of Subpart B as if such individual were an employee, with the following exceptions:

(a) Section 3.13 Outside employment and other outside activities;

(b) Section 3.14 Gifts and gratuities;

(c) Section 3.21 Membership in organizations.

§ 3.41 Use of Government employment.

A special Government employee shall not use FEMA employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for the individual or another person, particularly one with whom the employee has family, business, or financial ties.

§ 3.42 Use of inside information.

(a) A special Government employee shall not use information obtained as a result of FEMA employment which has not become part of the body of public information for private gain for the employee or another person either by direction on the employee's part or by counsel, recommendation, or suggestion to another person, particularly one with whom the employee has family, business, or financial ties.

(b) Special Government employees shall not use Government employment to coerce a person to provide financial benefit to the employee or another person, particularly one with whom the employee has family, business, or financial ties.

§ 3.43 Coercion.

A special Government employee shall not use Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to the employee or another person, particularly one with whom the employee has family, business, or financial ties.

§ 3.44 Gifts, entertainment and favors.

(a) Except as provided in paragraph (b) of this section, a special Government employee, while so employed or in connection with employment, shall not receive or solicit from a person having business with FEMA anything of monetary value as a gift, gratuity, loan, entertainment, or favor for the employee or another person, particularly one with whom the employee has family business, or financial ties.

(b) The exceptions of § 3.14, which are applicable to employees, are also applicable to special Government employees.

§ 3.45 Applicability of other provisions.

(a) Each special Government employee shall acquaint himself/herself with each statute, Executive Order, regulation, or similar provision listed in Appendix A to this part.

(b) A special Government employee engaged on an irregular or occasional basis is bound by the political activity restrictions of the Hatch Act cited in Appendix A only while in an active duty status and for the entire 24 hours of any day during which the special Government employee is actually employed.

Subpart D—Disclosure of Financial Interests

General Provisions

§ 3.50 General.

(a) Title II of the Ethics in Government Act of 1978 (Pub. L. 95–521), which became effective January 1, 1979, requires that certain officers and employees of the executive branch make specified financial disclosures in accordance with procedures for filing, review and public availability established by the Office of Personnel Management.

(b) Section 402 of Executive Order 11222 of May 8, 1965 authorizes the Office of Personnel Management to prescribe regulations requiring submission by certain officers and employees of the executive branch of statements of employment and financial interest. These are contained in Subpart D of 5 CFR Part 735.

(c) This Subpart D describes for FEMA the procedures required to implement the laws, Executive orders, and Office of Personnel Management

Regulations concerning disclosure of financial and employment interests.

(d) An individual required to file a disclosure statement by virtue of the Ethics in Government Act of 1978 need not file a disclosure statement required by virtue of E.O. 11222 and Subpart D of 5 CFR Part 735.

§ 3.51 Information not required.

Subpart D of this part does not require an employee to report information relating to a connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in disclosure statements.

§ 3.52 Effect of employees' statements on other requirements.

The statements required of employees pursuant to this part are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation, including this part.

§§ 3.53–3.59 [Reserved]

Financial Disclosure Under Ethics in Government Act of 1978

§ 3.60 Who must file.

The following officials of FEMA, if they have served 61 or more days during the preceding calendar year:

(a) Officers and employees (including special Government employees, as defined in 18 U.S.C. 202) whose positions are classified at GS–16 or above of the General Schedule, or whose basic rate of pay under other pay schedules is equal to or greater than the minimum rate of basic pay for GS–16. This includes all positions in the Senior Executive Service;

(b) Officers or employees in any other position determined by the Director of the Office of Government Ethics to be of equal classification to GS–16;

(c) Employees in the excepted service in positions which are of a confidential or policy-making character unless their positions have been excluded by regulations issued by the Director of the Office of Government Ethics (see 5 CFR 735.503).

(d) The Ethics Counselor.

§ 3.61 Form used to file.

The disclosure statement which must be used is Standard Form (SF) 278, "Executive Personnel Financial Disclosure Report." Copies are available from the Ethics Counselor.

§ 3.62 When to file.

No later than May 14 annually, or 30 days after the individual assumes a position subject to the requirement in § 3.60 of this part unless the individual has within 30 days prior to assuming the position, left another position subject to the requirement. In the event of termination of employment, if the individual has not in the interim accepted another position subject to the requirement, report must be filed no later than the 30th day after termination, covering:

(a) The preceding calendar year if the annual May 14 report has not been filed, and

(b) The portion of the present calendar year up to the date of termination.

§ 3.63 How and where to file.

(a) The SF 278 shall be submitted to the Ethics Counselor (General Counsel), who shall note on the report the date it is received. The Ethics Counselor will forward the report to the Head of Unit under whom the individual serves for review.

(b) The Forms SF 278 of heads of units shall be submitted for review to the Deputy Director. The Deputy Director's Form SF 278 will be submitted to the Director for review.

§ 3.64 Supervisory review of report.

Upon receipt of an SF 278 the head of unit will consider the reported financial interests as they relate to the individual's duties, and make recommendations. The Director or head of unit then will return the form with attachments, to the Ethics Counselor for review. The review process shall be initiated within 60 days after the date of filing, and completed no later than 120 days after the date of filing.

§ 3.65 Action on report.

(a) If, after review, the Ethics Counselor or Deputy Counselor is of the opinion that the individual making the report is in compliance with applicable law and regulation, he or she shall state such opinion on the report, and sign same. If additional information is required, the involved individual shall be notified as to what this information is and as to when it must be submitted.

(b) If the Ethics Counselor or Deputy Counselor is of the opinion, on the basis of information submitted, that the individual is not in compliance with applicable laws and regulations, the individual shall be notified and the procedures specified in § 3.8 followed. Notwithstanding § 3.8, if steps for assuring compliance with applicable laws and regulations are not taken by the date set under § 3.8(c) by an individual whose appointment requires the advice and consent of the Senate, the matter shall be referred to the President for appropriate action.

§ 3.66 Public release.

(a) No later than 15 days after any report (including SF 278) is received by FEMA, the Ethics Counselor shall permit inspection of, or furnish a copy of, such report including the position description to any person who requests inspection or a copy. The report shall be retained for six years after receipt. No fee shall be charged for furnishing a copy unless the cost of reproduction exceeds $10 in which case the fee shall be the same as those established under the FEMA regulations implementing the Freedom of Information Act (Part 5 of this Title). The Ethics Counselor shall maintain an accurate accounting of disclosures of reports in accordance with the requirements of Part 6 of this title, which relates to implementation of the Privacy Act of 1974. These reports are part of a system of records-OPM-Govt 4 established by the Office of Personnel Management.

(b) Notwithstanding paragraph (a) a report may not be made available under this section to any person, except upon a written application by such person stating—

(1) The person's name, occupation and address;

(2) The name and address of any other person on whose behalf the inspection or copy is requested; and

(3) That such person is aware of the prohibitions on the obtaining or use of the report.

These applications shall be made available to the public throughout the period during which the report is made available to the public.

§§ 3.67–3.79 [Reserved]

Financial Disclosure Under Executive Order 11222 and 5 CFR Part 735

§ 3.80 Who must file.

(a) Except as provided in § 3.88, the following categories of employees shall submit statements of employment and financial interest:

(1) Employees classified at or above the GS–13 level or its equivalent who are in a position identified as a position the incumbent of which is responsible

for making a Government decision or taking a Government action in regard to:

(i) Contracting or procurement;

(ii) Administering or monitoring grants or subsidies;

(iii) Regulating or auditing private or other non-Federal enterprise; or

(iv) Other activities in which the decision or action has an economic impact on the interests of any non-Federal enterprise.

(2) Employees classified at or above the GS–13 level or its equivalent who are in a position which the Director has determined has duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflicts-of-interest situation and to carry out the purpose of law, Executive order, and this part.

(3) All special Government employees, including members of the FEMA Advisory Board.

(4) Employees classified below the GS–13 level or its equivalent who are in a position which otherwise meets the criteria in paragraph (a) or (b) of this section, and which position has been approved by the OPM as an exception that is essential to protect the integrity of the Government and to avoid employee involvement in a possible conflict-of-interest situation.

(b) The specific positions described in paragraph (a) of this section shall be identified by the Ethics Counselor in conjunction with the Office of Personnel. Designation of a position is effective upon actual notification to the incumbent, or upon inclusion of a statement in the official job description that the position is subject to the requirements of this section.

§ 3.81 Form used to file.

The disclosure statement which must be used by the employees named according to § 3.80 is FEMA Form 11–1.

§ 3.82 When to file.

An employee required to submit a FEMA Form 11–1 pursuant to § 3.80 shall submit that statement not later than:

(a) Ninety days after the effective date of this part if employed on or before that effective date; or

(b) Thirty days after entrance on duty, but not earlier than 90 days after the effective date, if appointed after that effective date. All special Government employees must submit a FEMA Form 11–1 prior to being appointed.

§ 3.83 How and where to file.

(a) The FEMA Form 11–1 shall be submitted to the Ethics Counselor (General Counsel) for review and custody.

(b) All employees and special Government employees shall file the FEMA Form 11–1 annually no later than October 31. The statement shall report financial interests or employment as of September 30 each year. Photocopies of previous reports will "no change" annotations are unacceptable. An original report must be filed annually.

(c) Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest or engaging in outside employment or other activity that could result, or taking an action that would result, in a violation of the conflict-of-interest provisions of section 208 of Title 18, United States Code, or this part.

§ 3.84 Review of report.

The FEMA Form 11–1 is reviewed by the Ethics Counselor, or Deputy Counselor, who shall obtain copies of the relevant job description as necessary. The counselors shall show the forms to supervisors, or other employees of FEMA only to the extent required to determine if a conflict of interest exists.

§ 3.85 Action on report.

When a statement submitted pursuant to this part or information from other sources indicates a conflict between the interest of an employee and the performance of the employee's services for the Government, the employee concerned shall be provided an opportunity to explain the conflict or appearance of conflict in accordance with the procedure set out in § 3.8.

§ 3.86 Confidentiality of employees' statements.

Unlike the SF 278, each FEMA Form 11–1 shall be held in confidence by FEMA. To insure this confidentiality, the OPM regulations provide that:

(a) FEMA shall designate which officials and employees are to review and retain the statements;

(b) Officials and employees designated under paragraph (a) of this section are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part; and

(c) FEMA may not disclose information from a statement except as the OPM or the Director may determine for good cause shown.

§ 3.87 Employees' complaint on filing requirement.

Employees have the opportunity for review through the FEMA grievance procedures of a complaint by an employee that the position has been improperly included under these regulations as one requiring the submission of a statement of employment and financial interests.

§ 3.88 Employees not required to submit statements.

Employees in positions that meet the criteria in § 3.80 may be excluded from the reporting requirement when the Ethics Counselor determines that:

(a) The duties of a position are such that the likelihood of the incumbent's involvement in a conflict-of-interest situation is remote;

(b) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect on the integrity of the Government.

§ 3.89 Information not known to employees.

If any information required to be included on a statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in the employees' behalf.

Subpart E—Post Employment Conflicts of Interest

§ 3.100 Scope.

This part contains rules governing discipline of a former officer or employee of the Federal Emergency Management Agency because of a post employment conflict of interest. Such discipline may include prohibition from practice before the agency as these terms are defined in this part.

§ 3.101 Definitions.

For the purpose of this part—

(a) The term "agency" means the Federal Emergency Management Agency and includes the U.S. Fire Administration which has been designated as a separate statutory agency by rule of the Office of Government Ethics.

(b) The term "General Counsel" means the General Counsel of the agency.

(c) The term "practice" means any informal or formal appearance before, or, with the intent to influence, any oral or written communications to the agency

on a pending matter of business on behalf of any other person (except the United States).

§ 3.102 General Counsel.

The General Counsel shall initiate and provide for the conduct of disciplinary proceedings involving former employees of the agency as authorized by 18 U.S.C. 207(j) and perform such other duties as are necessary or appropriate to carry out his/her functions under this part. The General Counsel reserves the right to issue such special orders as he/she may consider proper in any case within the purview of this part.

§ 3.103 Records.

There are made available to public inspection at the Office of General Counsel the roster of all persons prohibited from practice before the agency. Other records may be disclosed upon specific request, in accordance with appropriate disclosure regulations of the agency.

§ 3.104 Interpretative standards.

A determination that a former officer or employee of the agency violated 18 U.S.C. 207 (a), (b), or (c) will be made in conformance with the standards established in the interpretative regulations promulgated by the Office of Personnel Management, 5 CFR Part 737.

§ 3.105 Authority to prohibit appearances.

Pursuant to 18 U.S.C. 207(j), if the General Counsel finds, after notice and opportunity for a hearing, that a former officer or employee of the agency violated 18 U.S.C. 207 (a), (b), or (c), the General Counsel in his/her discretion may prohibit that individual from engaging in practice before the agency for a period not to exceed five years, or may take other appropriate disciplinary action.

§ 3.106 Receipt of information concerning former employees.

(a) If an officer or employee of the Agency has reason to believe that a former officer or employee of the Agency has violated any provision of this part, or if any such officer or employee received information to that effect, he/she shall promptly make a written report thereof, which report or a copy thereof shall be forwarded to the Inspector General, Federal Emergency Management Agency. If any person has information of such violation, he/she may make a written report thereof, which report or a copy thereof shall be forwarded to the Inspector General, Federal Emergency Management Agency. If any person has information of such violations, he/she may make a report thereof to the Inspector General or to any officer or employee of the Agency. The Inspector General shall refer any information he/she deems warranted to the General Counsel.

(b) The General Counsel shall coordinate proceedings under this part with the Office of Government Ethics and with the Department of Justice in cases where the agency is in receipt of information regarding a possible violation of 18 U.S.C. 207 (5 CFR 27(a)(2)(ii)) or in cases where the Department of Justice initiates criminal prosecution.

§ 3.107 Conferences.

(a) *In general.* The General Counsel may confer with a former officer or employee concerning allegations of misconduct irrespective of whether an administrative disciplinary proceeding has been instituted against him/her. If such conference results in a stipulation in connection with a proceeding in which such person is the respondent, the stipulation may be entered in the record at the instance of either party to the proceeding.

(b) *Voluntary suspension.* A former officer or employee, in order to avoid the institution or conclusion of a proceeding, may offer his/her consent to suspension from practice before the Agency. The General Counsel in his/her discretion, may suspend a former officer or employee in accordance with the consent offered.

§ 3.108 Institution of proceeding.

Whenever the General Counsel has reason to believe that any former officer or employee of the Agency has violated 18 U.S.C. 207 (a), (b) or (c), he/she may reprimand such person or institute an administrative disciplinary proceeding for that person's suspension from practice before the Agency. The proceeding shall be instituted by a complaint which names the respondent and it signed by the General Counsel and filed in his/her office. Except in cases of willfulness, or where time, the nature of the proceeding, or the public interest does not permit, a reprimand will not be given nor will a proceeding be instituted under this section until facts or conduct which may warrant such action have been called to the attention of the proposed respondent in writing and he/she has been accorded the opportunity to provide his/her position on the matter.

§ 3.109 Contents of complaint.

(a) *Charges.* A complaint shall give a plain and concise description of the allegations which constitute the basis for the proceeding. A complaint shall be deemed sufficient if it fairly informs the respondent of the charges against him/her so that the respondent is able to prepare a defense.

(b) *Demand for answer.* In the complaint, or in a separate paper attached to the complaint, notification shall be given of the place and time within which the respondent shall file his/her answer, which time shall not be less than 15 days from the date of service of the complaint, and notice shall be given that a decision by default may be rendered against the respondent in the event he/she fails to file an answer as required.

§3.110 Service of complaint and other papers.

(a) *Complaint.* The complaint or a copy thereof may be served upon the respondent by certified mail, or first-class mail as hereinafter provided; by delivering it to the respondent or his/her attorney or agent of record either in person or by leaving it at the office or place of business of the respondent, attorney or agent; or in any other manner which has been agreed to by the respondent. Where the service is by certified mail, the return post office receipt duly signed by or on behalf of the respondent shall be proof of service. If the certified mail is not claimed or accepted by the respondent and is returned undelivered, complete service may be made upon the respondent by mailing the complaint to him/her by first-class mail, addressed to him/her at the last address known to the General Counsel. If service is made upon the respondent or his/her attorney or agent of record in person or by leaving the complaint at the office or place of business of the respondent, attorney or agent, the verified return by the person making service, setting forth the manner of service, shall be proof of service.

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served upon a respondent as provided in paragraph (a) of this section or by mailing the paper by first-class mail to the respondent at the last address known to the General Counsel, or by mailing the paper by first-class mail to the respondent's attorney or agent of record. Such mailing shall constitute complete service. Notices may be served upon the respondent or his/her attorney or agent of record by telegraph.

(c) *Filing of papers.* Whenever the filing of a paper is required or permitted in connection with a proceeding, and the place of filing is not specified by this subpart or by rule or order of the Administrative Law Judge, the paper shall be filed with the General Counsel.

Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472. All papers shall be filed in duplicate.

§ 3.111 Answer.

(a) *Filing.* The respondent's answer shall be filed in writing within the time specified in the complaint or notice of institution of the proceeding, unless on application the time is extended by the General Counsel or the Administrative Law Judge. The answer shall be filed in duplicate with the General Counsel.

(b) *Contents.* The answer shall contain a statement of facts which constitutes the grounds of defense, and it shall specifically admit or deny each allegation set forth in the complaint, except that the respondent shall not deny a material allegation in the complaint which he/she is without sufficient information to form a belief when in fact he/she possesses such information. The respondent may also state affirmatively special matters of defense.

(c) *Failure to deny or answer allegations in the complaint.* Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as provided, and no further evidence in respect of such allegation need be adduced at a hearing. Failure to file an answer within the time prescribed in the notice to the respondent, except as the time for answer is extended by the General Counsel or the Administrative Law Judge, shall constitute an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make his/her decision by default without a hearing or further procedure.

§ 3.112 Reply to answer.

No reply to the respondent's answer shall be required, and new matter in the answer shall be deemed to be denied, but the General Counsel may file a reply in his/her discretion or at the request of the Administrative Law Judge.

§ 3.113 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in a pleading and the evidence adduced in support of the pleading, the Administrative Law Judge may order or authorize amendment of the pleading to conform to the evidence: *Provided,* That the party who would otherwise be prejudiced by the amendment is given reasonable opportunity to meet the allegations of the pleading as amended; and the Administrative Law Judge shall make findings on any issue presented by the pleadings as so amended.

§ 3.114 Motions and requests.

Motions and requests may be filed with the General Counsel or with the Administrative Law Judge.

§ 3.115 Representation.

A respondent or proposed respondent may appear in person or he/she may be represented by counsel or other representative.

§ 3.116 Administrative Law Judge.

(a) *Appointment.* An Administrative Law Judge appointed as provided by 5 U.S.C. 3105 (1966), shall conduct proceedings upon complaints for the administrative disciplinary proceedings under this part.

(b) *Power of Administrative Law Judge.* Among other powers, the Administrative Law Judge shall have authority, in connection with any proceedings assigned or referred to him/her, to do the following:

(1) Administer oaths and affirmations;

(2) Make rulings upon motions and requests, which rulings may not be appealed from prior to the close of a hearing except, at the discretion of the Administrative Law Judge, in extraordinary circumstances;

(3) Determine the time and place of hearing and regulate its course and conduct;

(4) Adopt rules of procedure and modify the same from time to time as occasion requires for the orderly disposition of proceedings;

(5) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions;

(7) Receive and consider oral or written argument on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;

(9) Assess the responsible party extraordinary costs attributable to the location of a hearing;

(10) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(11) Make initial decisions.

§ 3.117 Hearings.

(a) *In general.* The Administrative Law Judge shall preside at the hearing on a complaint for the suspension of a former officer or employee from practice before the Agency. Hearings shall be stenographically recorded and transcribed and the testimony of witnesses shall be taken under oath or affirmation. Hearings will be conducted pursuant to 5 U.S.C. 556.

(b) *Public access to hearings.* Hearings will be closed unless an open hearing is requested by the respondent, except that if classified information or protected information is likely to be adduced at the hearing, it will remain closed. A request for an open hearing must be included in the answer to be considered.

(c) *Failure to appear.* If either party to the proceeding fails to appear at the hearing, after due notice thereof has been sent to the absent party, he/she shall be deemed to have waived the right to a hearing and the Administrative Law Judge may make a decision against the absent party by default.

§ 3.118 Evidence.

(a) *In general.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings on complaints for the suspension of a former officer or employee from practice before the Agency. However, the Administrative Law Judge shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* The deposition of any witness taken pursuant to § 3.109 may be admitted.

(c) *Proof of documents.* Official documents, records and papers of the Agency shall be admissible in evidence without the production of an officer or employee to authenticate them. Any such documents, records, and papers may be evidenced by a copy attested or identified by an officer or employee of the Agency.

(d) *Exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the Administrative Law Judge may authorize the withdrawal of the exhibit subject to any conditions which he/she deems proper.

(e) *Objections.* Objections to evidence shall be in short form, stating the grounds of objection relied upon, and the record shall not include argument thereon, except as ordered by the Administrative Law Judge. Rulings on such objections shall be a part of the record. No exception to the ruling is necessary to preserve the rights of the parties.

§ 3.119 Depositions.

Depositions for use at a hearing may, with the consent of the parties in writing or the written approval of the Administrative Law Judge, be taken by either the General Counsel or the respondent or their duly authorized representatives. Depositions may be

taken upon oral or written interrogatories, upon not less than 10 days' written notice to the other party before any officer duly authorized to administer an oath. Such notice shall state the names of the witnesses and the time and place where the depositions are to be taken. The requirement of 10 days' notice may be waived by the parties in writing, and depositions may then be taken from the persons and at the times and places mutually agreed to by the parties. When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and copies of any written cross-interrogation shall be mailed or delivered to the opposing party at least 5 days before the date of taking the depositions, unless the parties mutually agree otherwise. A party upon whose behalf a deposition is taken must file it with the Administrative Law Judge and serve one copy upon the opposing party. Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken.

§ 3.120 Transcript.

In cases where the hearing is stenographically reported by a Government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter. Where the hearing is stenographically reported by a regular employee of the Agency, a copy thereof will be supplied to the respondent either without charge or upon payment of a reasonable fee. Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to the parties upon the payment of a reasonable fee (Sec. 501, Pub. L. 82–137, 65 Stat. 290 (31 U.S.C. 483a)).

§ 3.121 Proposed findings and conclusions.

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the Administrative Law Judge prior to making his/her decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor.

§ 3.122 Decision of the Administrative Law Judge.

As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge shall make the initial decision in the case. The decision shall include (a) a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and (b) an order of suspension from practice before the Agency or other appropriate disciplinary action, or an order of dismissal of the complaint. In any decision of the Administrative Law Judge ordering suspension from practice or other disciplinary action the respondent shall be advised that such disciplinary action shall be subject to review in an appropriate United States district court. The Administrative Law Judge shall file the decision with the Director of the Federal Emergency Management Agency and shall transmit a copy thereof to the respondent or his/her attorney of record. In the absence of an appeal to the Director, Federal Emergency Management Agency, the decision of the Administrative Law Judge shall without further proceedings become the decision of the Agency 30 days from the date of the Administrative Law Judge's decision.

§ 3.123 Appeal to the Director, Federal Emergency Management Agency.

Within 30 days from the date of the Administrative Law Judge's decision, either party may appeal to the Director, Federal Emergency Management Agency. The appeal shall be filed in duplicate and shall include exceptions to the decision of the Administrative Law Judge and supporting reasons for such exceptions. If an appeal is filed by the General Counsel, he/she shall transmit a copy thereof to the respondent. Within 30 days after receipt of an appeal or copy thereof, the other party may file a reply brief in duplicate with the Director, Federal Emergency Management Agency. If the reply is filed by the General Counsel, he/she shall transmit a copy of it to the respondent. Upon the filing of an appeal and a reply brief, if any, the General Counsel shall transmit the entire record to the Director, Federal Emergency Management Agency.

§ 3.124 Decision of the Director, Federal Emergency Management Agency.

On appeal from the initial decision of the Administrative Law Judge, the Director, Federal Emergency Management Agency will make the agency decision. In making his/her decision, the Director, Federal Emergency Management Agency will review the record or such portions thereof as may be cited by the parties to permit limiting of the issues. A copy of the Director's disciplinary action shall contain provision that such disciplinary action is subject to review in an appropriate United States district court.

§ 3.125 Notice of disciplinary action.

(a) Upon the issuance of a final order suspending a former officer or employee from practice before the Agency, the General Counsel shall give notice thereof to appropriate officers and employees of the Agency. Officers and employees of the Agency shall refuse to participate in any appearance by such former officer or employee or to accept any communication which constitutes the prohibited practice before the Agency during the period of suspension.

(b) The General Counsel shall take other appropriate disciplinary action as may be required by the final order.

Appendix A—Statutes Governing Conduct of Federal Employees

There are numerous statutes pertaining to the ethical and other conduct of Federal employees. The important ones of general applicability are referred to in this Appendix.

A. Bribery and Graft

.01 Title 18, U.S.C. § 201, prohibits anyone from bribing or attemping to bribe a public official by corruptly giving, offering, or promising the official or any person selected by the official, anything of value with intent (a) to influence any official act, (b) to influence the official to commit or allow any fraud on the United States, or (c) to induce the performance or omission of any act in violation of the official's lawful duty. As used in section 201, "Public officials" is broadly defined to include officers, employees, and other persons carrying on activities for or on behalf of the Government.

.02 Section 201 also prohibits a public official's solicitation or acceptance of, or agreement to take a bribe. In addition, it forbids offers or payments to, and solicitations or receipt by, a public official of anything of value "for or because of" any official act performed or to be performed by him/her.

.03 Section 201 further prohibits the offering to or the acceptance by a witness of anything of value involving intent to influence the witness' testimony at a trial, Congressional hearing, or agency proceeding. A similar provision applies to witnesses "for or because of" testimony given or to be given. The provisions summarized in this section do not preclude lawful witness fees, travel and subsistence expenses, or reasonable compensation for expert testimony.

B. Compensation to Officers and Employees in Matters Affecting the Government

.01 Title 18 U.S.C. § 203, prohibits an officer or employee from receiving compensation for services rendered for others before a Federal department or agency in matters in which the Government is a party or is interested.

.02 Section 203 applies to a special Government employee as follows:

(a) If the special Government employee has served in FEMA more than 60 days during the preceding period of 365 days, section 203 applies to him/her only in relation to a particular matter involving a specific party or parties (1) in which the employee has at any time participated personally and substantially in his/her governmental capacity, or (2) which is pending in FEMA, or

(b) If the special Government employee has served in FEMA no more than 60 days during the preceding period of 365 days, section 203 applies only in relation to a particular matter involving a specific party or parties in which the employee has at any time participated personally and substantially in his/her governmental capacity.

.03 Section 203 does not apply to a retired officer of the uniformed services while not on active duty and not otherwise an officer or employee of the United States.

C. Activities of Officers and Employees in Claims Against and Other Matters Affecting the Government

.01 Title 18 U.S.C. § 205, prohibits an officer or employee, otherwise than in the performance of official duties from:

(a) Acting as agent or attorney for prosecuting any claim against the United States, or receiving any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claims; or

(b) Acting as agent or attorney for anyone before any Government agency, court, or officer in connection with any matter in which the United States is a party or has a direct and substantial interest.

.02 Section 205 applies to a special Government employee as follows:

(a) If the special Government employee has served in FEMA more than 60 days during the preceding period of 365 days, section 205 applies only in relation to a particular matter involving a specific party or parties (1) in which the employee has at any time participated personally and substantially in his/her governmental capacity, or (2) which is pending in FEMA.

(b) If the special Government employee has served no more than 60 days during the preceding period of 365 days, section 205 applies only in relation to a particular matter involving a specific party or parties in which the employee has at any time participated personally and substantially in his/her governmental capacity.

.03 Section 205 does not preclude:

(a) Employees, if not inconsistent with faithful performance of their duties, from acting without compensation as agents or attorneys for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings, in connection with those proceedings; or

(b) Employees from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

.04 Sections 203 and 205 do not preclude:

(a) Employees from acting as agents or attorneys for their parents, spouses, children, or any person for whom, or for any estate for which an employee is serving as guardian, executor, administrator, trustee, or other personal fiduciary, except in those matters in which the employee has participated personally and substantially as a Government employee or which are the subject of the employee's responsibility, provided the head of the operating unit concerned approves; or

(b) A special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with, or for the benefit of the United States provided the Director or designee shall certify in writing that the national interest so requires, and such certification shall be published in the Federal Register.

.05 Section 205 does not apply to a retired officer of the uniformed services while not on active duty and not otherwise an officer or employee of the United States.

D. Disqualification of Former Officers and Employees in Matters Connected With Former Duties or Official Responsibilities; Disqualification of Partners

Title 18 U.S.C. 207 deals with former employees and possible conflicts of interest.

E. Acts Affecting a Personal Financial Interest

.01 Title 18 U.S.C. 208 prohibits an officer or employee, including a special Government employee, from participating personally and substantially in a governmental capacity in any matter in which to his/her knowledge, the employee or his/her spouse, minor child, partner, organization in which he/she is serving as officer, director, trustee, partner, or employee, or any person or organization with whom the employee is negotiating or has any arrangement concerning prospective employment, has a financial interest.

F. Salary of Government Officials and Employees

.01 Title 18 U.S.C. 209, prohibits:

(a) An officer or employee from receiving any salary, or any contribution to or supplementation of salary, as compensation for services as an officer or employee of the United States from any source other than the Government of the United States, except as may be contributed out of the treasury of a State, county, or municipality, and

(b) Any person or organization from paying, contributing to, or supplementing the salary of an officer or employee under circumstances which would make its receipt a violation of subparagraph .01(a) of this section.

.02 Section 209:

(a) Does not prevent a Government employee from continuing to participate in a bona fide pension or other welfare plan maintained by a former employer (*but see* 44 CFR 3.12(e)(1)(iv));

(b) Exempts special Government employees and employees serving the Government without compensation, and grants a corresponding exemption to any outside person paying compensation to such individuals; and

(c) Does not prohibit the payment or acceptance of sums under the terms of the Government Employees Training Act.

G. Code of Ethics for Government Service

"Code of Ethics for Government Service," House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12 of July 11, 1958, which reads as follows:

"Any Person in Government Service Should:

"PUT loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

"UPHOLD the Constitution, laws, and legal regulations of the United States and all governments therein and never be a party to their evasion.

"GIVE a full day's labor for a full day's pay; giving to the performance of duties earnest effort and best thought.

"SEEK to find and employ more efficient and economical ways of getting tasks accomplished.

"NEVER discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for the employee's self or his/her family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.

"MAKE no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

"ENGAGE in no business with the Government either directly or indirectly, which is inconsistent with the conscientious performance of the employee's governmental duties.

"NEVER use any information coming to the employee confidentially in the performance of governmental duties as a means for making private profit.

"EXPOSE corruption wherever discovered.

"UPHOLD these principles, ever conscious that public office is a public trust."

H. Prohibitions

.01 The prohibition against lobbying with appropriated funds (18 U.S.C. 1913) reads as follows:

"No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designated to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation, but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

"Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined not more than $500

or imprisoned not more than 1 year, or both; and after notice and hearing by the superior officer vested with the power of removing him/her, shall be removed from office or employment."

.02 The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918) provide that an individual may not accept or hold a position in the Government of the United States if that individual:

(a) Advocates the overthrow of our constitutional form of Government;

(b) Is a member of an organization that the individual knows advocates the overthrow of our constitutional form of government;

(c) Participates in a strike, or asserts the right to strike the Government of the United States or the government of the District of Columbia; or

(d) Is a member of an organization of employees of the Government of the United States or of individuals employed by the government of the District of Columbia that the individual knows asserts the right to strike against the Government of the United States or the government of the District of Columbia.

.03 The prohibitions in 2 U.S.C. 441 i, against receiving any single honorarium in excess of $2,000.

.04 The prohibitions against (a) the disclosure of classified information (18 U.S.C 798, 50 U.S.C. 788); and (b) the disclosure of confidential information (18 U.S.C. 1905). Each employee who has access to classified information, e.g. confidential, secret, or top secret, or to a restricted area is responsible for knowing and for complying strictly with the security regulations of the Federal Emergency Management Agency.

.05 The prohibition against the use of the franking privilege to avoid payment of postage on private mail (18 U.S.C. 7119).

.06 The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

.07 The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001). An employee in connection with an official matter shall not knowingly and willfully conceal or cover up a material fact or falsify official papers or documents.

.08 The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508). Falsely making, altering or forging in whole or in part, any form of transportation request is prohibited.

.09 The prohibitions against:

(a) Embezzlement of Government money or property (18 U.S.C. 641). No employee may convert any Government money or Government property to his/her own use or the use of another person.

(b) Failure to account for public money (18 U.S.C. 643). Any employee, who, having received public money which he/she is not authorized to retain, fails to render accounts for same as provided by law, is guilty of embezzlement.

(c) Embezzlement of Government money or property of another person in the possession of the employee by reason of his/her employment (18 U.S.C. 654). An employee is prohibited from embezzling or wrongfully converting for his/her own use the money or property of another which comes under his/her control as the result of his/her employment.

.10 The prohibition against unauthorized removal or use of documents relating to claims from or by the Government (18 U.S.C. 285). No employee, without authority, may remove from the place where it was kept by authority of the United States any document, record, file, or paper intended to be used to procure the payment of money from or by the United States or the allowance or payment of any claim against the United States, regardless of whether the document or paper has already been used or the claim has already been allowed or paid; and no employee may use or attempt to use any such document, record, file, or paper to procure the payment of any money from or by the United States or the allowance or payment of any claim against the United States.

.11 The prohibition against proscribed political activities, including the following, among others:

(a) Using official authority or influence for the purpose of interfering with or influencing the result of an election, except as authorized by law (5 U.S.C. 7324);

(b) Taking an active part in political management or in political campaigns, except as authorized by law (5 U.S.C. 7324);

(c) Offering or promising to pay anthing of value in consideration of the use of, or promise to use, any influence to procure any appointive office or place under the United States for any person (18 U.S.C. 210);

(d) Soliciting or receiving, either as a political contribution or for personal emolument, anything of value in consideration of a promise of support or use of influence in obtaining for any person any appointive office or place under the United States (18 U.S.C. 211);

(e) Using official authority to interfere with a Federal election (18 U.S.C. 595);

(f) Promising any employment compensation, or other benefit made possible by Act of Congress in consideration of political activity or support (18 U.S.C. 600);

(g) Action by a Federal officer or employee to solicit or receive, or to be in any manner concerned with soliciting or receiving, any contribution for any political purpose whatever from any other Federal officer or employee or from any person receiving compensation for services from money derived from the Treasury of the United States (18 U.S.C. 602);

(h) Soliciting or receiving (by any person) anything of value for any political purpose whatever on any government premises (18 U.S.C. 607);

(i) Soliciting or receiving contributions for political purposes from anyone on Federal relief or work relief (18 U.S.C. 602);

(j) Payment or a contribution for political purposes by any Federal officer or employee to another Federal officer or employee (18 U.S.C. 607);

(k) Payment of a political contribution in excess of statutory limitations and purchase of goods, commodities, advertising, or articles, the proceeds of which inure to the benefit of certain political candidates or organizations (18 U.S.C. 608).

.12 The prohibition against an employee acting as the agent of a foreign principal registered under the Federal Agents Registration Act (18 U.S.C. 219).

Appendix B—Examples of Conflict of Interest Situations

The Ethics in Government Act of 1978, as amended, requires that a list be maintained for employee use of circumstances or situations involving FEMA employees which have resulted or may result in non-compliance with the various ethics laws and regulations. What follows is such a list. The absence of any situation or circumstance from this list shall not be construed as a indication that an individual in such a circumstance or situation would be in compliance with such laws or regulations. Questions concerning specific situations should be referred to the Ethics Counselor.

Example 1: A FEMA employee with decision-making authority concerning approval of evacuation plans for areas surrounding nuclear power plants holds a large amount of stock in an electric company which is seeking such approval for its new plant. This financial holding results in a conflict of interest. (It should be noted that financial interests of an employee's spouse and dependent children are considered to be interests of the employee.) The employee must recuse himself/herself from all work on the subject approval or divest himself/herself of the holding. 44 CFR 3.6.

Example 2: A program analyst for Emergency Operations desires to take a part-time night job performing manual labor for a corporation which does not do business with the United States Government. Because this outside employment is not in the same professional field as that of the employee's official position, prior written approval of the Ethics Counselor is not required. Such employment would be permissible as long as it did not impair the employee's mental or physical capacity to perform his/her government responsibilities in an acceptable manner. 44 CFR 3.13.

Example 3: A FEMA employee desires to leave the agency and is currently seeking another job. The employee has sent a resume to Business X, a corporation which does business with FEMA. The law provides that an employee may not participate personally and substantially in any particular matter in which any person or organization with whom the employee is negotiating or has any arrangement concerning prospective employment has a financial interest. The term "negotiating" has been interpreted broadly enough to encompass this example. Therefore, this employee must recuse himself/herself for any work involving Business X and must advise his/her supervisor of the fact of such negotiation with Business X. 18 U.S.C. 208.

Example 4: A FEMA regional employee desires to run for the Board of Education in his/her county. The Hatch Act, which governs the political activities of Federal employees, provides that such employees may not take an active part in any political campaign. They may, however, take part in non-partisan activities. Therefore, the employee may participate in the election *only* if none of the candidates is nominated as

representing a particular party. 5 U.S.C. 7321–28; 5 CFR 733.

Example 5: An NETC employee requests an opinion on the propriety of engaging in outside employment consisting of the sale and marketing of outdoor warning devices/sirens. FEMA provides grants to state and local governments for the acquisition of civil defense sirens. Therefore, an actual or apparent conflict of interest could be created by the employee's sale and marketing of the sirens. Without further information as to the types of sirens he/she wishes to sell and to whom they will be marketed and sold, approval to engage in this activity cannot be granted. Furthermore, such activity also would require supervisory certification of no conflict before the Ethics Counselor would approve it. 44 CFR 3.13.

Example 6: The employee in Example 5 returned with the following information: He/she would not be selling or marketing sirens to any buyer which is the recipient of a FEMA or Federal grant for the acquisition of civil defense sirens; a memorandum from his/her supervisor stating that no conflict of interest would exist if the employee sold the sirens. Under these circumstances, the outside activity would be approved. If any time during normal FEMA work hours is required in the performance of this outside activity, the employee must take annual leave.

Example 7: An employee left FEMA six months ago and is now employed with a private corporation. While at FEMA, the individual had pending under his/her responsibility development of a proposal for the acquisition of a special computer system. The private corporation desires to seek the contract for this system using the former FEMA employee as the contractor representative. Under applicable law, however, the individual may not serve in this capacity. All former Government employees are prohibited for two years after leaving the Government from representing any other person in any appearance before or, with intent to influence, communicating with the United States in connection with any particular matter, involving a specific party, which was pending under the employee's official responsibility within a period of one year prior to the termination of that responsibility. They are prohibited *forever* from acting in such a representational capacity in connection with any particular Government matter involving a specific party in which matter the employee participated personally and substantially as a Government employee. (*Note:* Separate rules apply to SES and presidential appointees.) The employee could work behind the scenes on the bid or proposal, but his/her name could not appear on the proposal in any manner prohibited above. 18 U.S.C. 209; 5 CFR 737.

Example 8: A FEMA contract officer had a lengthy meeting downtown with the representatives of a FEMA contractor. Their discussions were not completed by lunchtime, so the contractors asked the FEMA employee to join them at a nearby inexpensive restaurant to continue. The contractors want to pick up the check. However, the FEMA employee may not accept this offer and must pay for his/her own meal. The exception to the prohibition on gift acceptance applies to food and refreshment of nominal value on infrequent occasions in the ordinary course of a business meeting. This is generally interpreted to mean a meeting on the premises of the contractor and not at a restaurant. 44 CFR 3.14.

Example 9: A FEMA employee's job requires frequent travel. The employee belongs to a frequent flier club in which bonus points are accumulated for each trip which may be used for subsequent free trips or upgrades. The employee has accumulated enough points for a free trip to the Bahamas where he/she would like to go on vacation. And, on the most recent official trip, the employee volunteered to vacate his/her seat and received $200.00 from the airline, he/she plans to spend in Nassau. The law is clear that employees may not use points accumulated from official travel for personal travel. These points may be used only for free official travel and to upgrade the class of an official flight. Nor may an employee personally accept gifts received in connection with official travel, i.e., free teddy bear for renting with Car Rental Company X. Rather, such items must be accepted on behalf of the U.S. Government and turned over to the FEMA Office of the Comptroller. As for the funds received for voluntarily vacating his/her seat, the employee may keep the money. If this action results in a delay in the employee's return to work, that delay must be charged as annual leave. Nor will additional per diem be allowed for expenses incurred incident to the delay. Finally, if an employee is *involuntarily* "bumped" from a flight, any reimbursement received may not be kept and must be turned over to the Comptroller's Office. 41 CFR 101–25; *Matter of Armer*, 59 Comp. Gen. 203 (1980); *Matter of Currier*, 59 Comp. Gen. 95 (1979).

Example 10: An accountant at FEMA desires to make some extra money by preparing tax returns for private individuals outside of FEMA. Before doing so, he/she must obtain the written approval of the Ethics Counselor. Additionally, if the outside employment were approved, the employee would be prohibited from representing the individual taxpayers before the Internal Revenue Service if any questions arose concerning their returns. It would be recommended that the employee advise all clients of the restrictions in the services that he/she could provide. 44 CFR 3.13.

Dated: September 19, 1985.

Robert H. Morris,

Acting Director, Federal Emergency Management Agency.

[FR Doc. 85–22848 Filed 9–25–85; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

Amendment of the Rules To Establish the Office of Congressional and Public Affairs; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This action corrects a typographical error contained in the Final rule in this proceeding concerning the establishment of the Office of Congressional and Public Affairs.

FOR FURTHER INFORMATION CONTACT: Maureen Peratino, (202) 254–7674.

Erratum

In the Matter of Amendment of Part 0 of the Commission's Rules to Establish the Office of Congressional and Public Affairs.

Released: September 19, 1985.

An *Order* in the above captioned matter was released by the Commission on December 27, 1984 and published in the **Federal Register** (50 FR 2984) on January 23, 1985. This Erratum corrects an error in the Appendix of that document.

1. The amendatory language in item 1 of the Appendix is corrected to read as follows:

"1. Section 0.5 of the Commission Rules and Regulations is amended by revising paragraphs (a)(13) and (b)(7) to read as follows:"

2. Paragraph (a) of § 0.5 is corrected by changing "(a)(14)" to "(a)(13)".

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–22968 Filed 9–25–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 1

[FCC 85–498]

Amendment of the Rules To Clarify the Filing of Briefs

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises the Commission's rules to clarify that briefs may only be filed if they are requested. This action is being taken to reflect current practice.

EFFECTIVE DATE: September 26, 1985.

FOR FURTHER INFORMATION CONTACT: Lawrence S. Schaffner, Office of

General Counsel, Federal Communications Commission, Washington, DC 20554, (202) 632–6990.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Order

In the matter of amendment of § 1.115

Adopted: September 10, 1985.

Released: September 20, 1985.

By the Commission: Commissioner Rivera not participating.

1. Section 1.115(b)(5) of the Commission's Rules is hereby amended to delete the note at the end of that section.[1]

2. As a matter of practice, the Commission does not require briefs, permit unrequested briefs to be filed, or hear oral arguments when an application for review of a final decision of the Review Board is granted. Nor is any useful purpose served by the distinction made between grants of an application for review and a Commission decision on the merits. Thus, as presently written, the note is misleading and serves no meaningful purpose.

3. The second to last sentence in § 1.115(f) of the Rules is hereby amended to add clarifying language. In relevant part, that sentence provides that "[i]f the Commission grants review of a Review Board final decision, the parties may file briefs and reply briefs . . . ." 47 CFR 1.115(f). An additional phrase is being added to that provision to state that briefs in support of an application for review may only be filed if the Commission requests that they be filed.

4. We find that prior notice and public comment procedures are unnecessary to implement these clarifications involving general rules of agency practice and procedures. *See* 5 U.S.C. 553(b)(3)(A).

5. In view of the foregoing and pursuant to sections 4(i), 4(j), 5(c)(4) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and (j), 155(c)(4) and 303(r), it is hereby ordered that Part 1 of the Commission's Rules is amended as set forth in the attached Appendix, effective upon publication in the Federal Register.

6. For further information, contact Lawrence S. Schaffner, Office of General Counsel (202) 632–6990.

Federal Communications Commission.

William J. Tricarico,

Secretary.

PART 1—[AMENDED]

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 1 continues to read:

Authority: Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

2. 47 CFR 1.115(b)(5) is amended by removing the "Note."

3. 47 CFR 1.115(f) is revised to read as follows:

§ 1.115 Application for review of action taken pursuant to delegated authority.

* * * * *

(f) Applications for review, oppositions and replies shall conform to the requirements of §§ 1.49, 1.51 and 1.52, and shall be submitted to the Secretary, Federal Communications Commission, Washington, DC 20554. The application for review shall be served upon the parties to the proceeding. Oppositions to the application for review shall be served on the person seeking review and on parties to the proceeding. Applications for review of final decisions of the Review Board, and oppositions thereto, shall not exceed 10 double-spaced typewritten pages. Applications for review of interlocutory actions in hearing proceedings (including designation orders) and oppositions thereto, shall not exceed 5 double-spaced typewritten pages. Applications for review of other actions, and oppositions thereto, shall not exceed 25 double-spaced typewritten pages. Replies to oppositions shall be filed only if requsted by the Commission and, if requested, shall not exceed 5 double-spaced typewritten pages. If the Commission grants review of a Review Board final decision and requests that briefs be filed, the parties may file briefs and reply briefs, which shall not exceed 25 double-spaced typewritten pages. Briefs shall be filed within 30 days after release of the order granting review. Reply briefs shall be filed within 10 days after the last day for filing briefs.

[FR Doc. 85–23023 Filed 9–25–85; 8:45 am]

BILLING CODE 6712–01–M

[1] The Note presently reads as follows:

If the Commission grants an application for review of a final decision of the Review Board, it will generally permit the parties to file briefs and present oral argument. Thus, the application for review should be prepared with the understanding that its purpose is not to obtain a Commission decision on the merits of the issues but rather to convince the Commission to review those issues. 47 CFR 1.115(b)(5) note.

47 CFR Parts 21, 22, 23, 25, 73, 90, and 94

[FCC 85–497]

Table Mountain Radio Receiving Quiet Zone Protection

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: The Federal Communications Commission is amending its Rules to clarify protection provisions for the Table Mountain Radio Received Zone. The Rule amendment affirms the original intent of the Commission to protect *all* the facility from harmful interference—and not just the site location at the reference coordinates given in the Rules. The action will apply only to new or modified stations and the national importance of the facility warrants the clarification to minimize potential interference situations.

EFFECTIVE DATE: October 23, 1985.

ADDRESS: Federal Communications Commission, 1919 "M" Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Tropea, Office of Science and Technology, 1919 "M" Street, NW., Washington, DC 20554, (202) 653–8149.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Parts 21, 22, 23, 25, 73, 90, and 94

Radio.

Order

In the matter of amendment of parts 21, 22, 23, 25, 73, 90, and 94 the Commission's rules to clarify the protection provisions for the table mountain radio receiving zone.

Adopted: September 16, 1985.

Released: September 16, 1985.

By the Commission: Commissioner Rivera not participating.

1. At the request of the United States Department of Commerce, on behalf of its National Oceanic and Atmospheric Administration (NOAA), the Commission is clarifying its rules regarding the radio interference protection provisions for the Table Mountain Radio Receiving Zone at Boulder Colorado. The Table Mountain facility occupies about 1,800 acres and serves as a site for radio propagation research, including research related to national security matters for the Departments of Commerce and Defense as well as for other agencies. The facility administers a coordination procedure implemented by the

Commission in Docket 18180[1] to protect receivers at the Table Mountain site from interference from radio stations in its vicinity. As an aid in doing this, the coordinates of a central point representative of the site are listed in the Commission's Rules. However, with the growth of radio usage in the Boulder area and the development of sophisticated equipment and antenna configurations, the Department of Commerce has expressed the need to clearly state that the entire Table Mountain site—not just the location of the reference point—should be protected.

2. The Commission agrees with the Department of Commerce request. In Docket 18180, we noted that the site is "an elevated flat-top butte" and indicated our intention to establish a protected area. We are herein amending §§ 21.113(b), 22.113(b), 23.20(d), 25.203(f), 73.1030(b), 90.177(c), and 94.25(g) to clearly state the applicability of the radio interference protection provision for all of the Table Mountain Radio Receiving Zone. This action will not affect existing station operations but will serve to clarify requirements for the coordination of new and modified systems. Some editorial changes regarding the mailing address and telephone number of the Boulder Laboratory are also being made in the enumerated rule sections.

3. The specific rule amendments that we are adopting are set forth in the Appendix. Authority for the amendments is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended. We are dispensing with the prior notice and public procedure provisions of the Administrative Procedure Act as unnecessary pursuant to 5 U.S.C. 553(b)(3)(B). This is due to the fact that it is in the interest of national security to require that Table Mountain radio operations be protected from potential interference from radio stations operating in the vicinity of the site and the action is not considered to be controversial. See also 5 U.S.C. 553(a)(1) (military or foreign affairs functions). Further, the action is exempt from public procedure requirements because it is an interpretive rule that merely conforms requirements with existing policy. 5 U.S.C. 553(b)(3)(A).

4. Accordingly, it is ordered, effective October 23, 1985, that Parts 21, 22, 23, 25, 73, 90, and 94 of the Commission's Rules are amended as set forth in the attached Appendix.

[1] *Report and Order* in Docket 18180, adopted December 6, 1972 (26 RR 2d 131).

5. For further information regarding matters covered in this document contact Sam Tropea (202) 653–8149.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

In Chapter I of Title 47 of the Code of Federal Regulations, §§ 21.113, 22.113, 23.20, 25.203, 73.1030, 90.177, and 94.25 are amended to read as follows:

The authority citations in Parts 21, 22, 23, 25, 73, 90, and 94 continue to read:

Authority: Secs. 4, 303, 48 stat. 1066, 1082 and amended; 47 U.S.C. 154, 303, unless otherwise noted.

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

In § 21.113, paragraph (b) is revised to read as follows:

§ 21.113 Quiet Zones.

* * * * *

(b) In order to minimize possible harmful interference at the Table Mountain Radio Receiving Zone of the Research Laboratories of the Department of Commerce located in Boulder County, Colorado, applicants for new or modified radio facilities in the vicinity of Boulder County, Colorado are advised to give due consideration, prior to filing applications, to the need to protect the Table Mountain Radio Receiving Zone from harmful interference. To prevent degradation of the present ambient radio signal level at the site, the Department of Commerce seeks to ensure that the field strengths of any radiated signals (excluding reflected signals) received on this 1800 acre site (in the vicinity of coordinates 40°07′50″ N Latitude, 105°14′40″ W Longitude) resulting from new assignments (other than mobile stations) or from the modification or relocation of existing facilities do not exceed the following values:

Frequency range	Field strength (mV/m) in authorized bandwidth of service	Power flux density [1] (dBW/m²) in [illegible] of service
Below 540 kHz	10	65 8
540 to 1600 kHz	20	59 8
1.6 to 470 MHz	10	[2]65 8
470 to 890 MHz	30	[2]56 2
Above 890 MHz	1	[2]85 8

[1] Equivalent values of power flux density are calculated assuming free space characteristic impedance of $376.7 = 120\pi$ ohms.

[2] Space stations shall conform to the power flux density limits at the earth's surface specified in appropriate parts of the FCC rules, but in no case should exceed the above levels in any 4 kHz band for all angles of arrival.

(1) Advance consultation is recommended particularly for those applicants who have no reliable data which indicates whether the field strength or power flux density figures in the above table would be exceeded by their proposed radio facilities (except mobile stations). In such instances, the following is a suggested guide for determining whether coordination is recommended:

(i) All stations within 1.5 statute miles;

(ii) Stations within 3 statute miles with 50 watts or more effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations within 10 statute miles with 1 kW or more ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone;

(iv) Stations within 50 statute miles with 25 kW or more ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone.

(2) Applicants concerned are urged to communicate with the Radio Frequency Management Coordinator, Department of Commerce, Research Support Services, NOAA R/E5X2, Boulder Laboratories, Boulder, CO 80303; telephone (303) 497–6548, in advance of filling their applications with the Commission.

(3) The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid objections from the Department of Commerce or proceedings to modify any authorization which may be granted which, in fact, delivers a signal at the site in excess of the field strength specified herein.

* * * * *

PART 22—PUBLIC MOBILE RADIO SERVICES

In § 22.113, paragraph (b) is revised to read as follows:

§ 22.113 Quiet Zones.

* * * * *

(b) In order to minimize possible harmful interference at the Table Mountain Radio Receiving Zone of the Research Laboratories of the Department of Commerce located in Boulder County, Colorado, applicants for new or modified radio facilities in the vicinity of Boulder County, Colorado are advised to give due consideration, prior to filing applications, to the need to protect the Table Mountain Radio Receiving Zone from harmful interference. To prevent degradation of

the present ambient radio signal level at the site, the Department of Commerce seeks to ensure that the field strengths of any radiated signals (excluding reflected signals) received on this 1800 acre site (in the vicinity of coordinates 40°07'50" N Latitude, 105°14'40" W Longitude) resulting from new assignments (other than mobile stations) or from the modification or relocation of existing facilities do not exceed the following values:

Frequency Range	Field strength (mV/m) in authorized bandwidth of service	Power flux density [1] (dBW/m²) in authorized bandwidth of service
Below 540 kHz	10	[illegible]
540 to 1600 kHz	20	[illegible]
1.6 to 470 MHz	10	[2]65.8
470 to 890 MHz	30	[2]56.2
Above 890 MHz	1	[illegible]

[1] Equivalent values of power flux density are calculated assuming free space characteristic impedance of 376.7 = 120π ohms.

[2] Space stations shall conform to the power flux density limits at the earth's surface specified in appropriate parts of the FCC rules, but in no case should exceed the above levels in any 4 kHz band for all angles of arrival

(1) Advance consultation is recommended particularly for those applicants who have no reliable data which indicates whether the field strength or power flux density figures in the above table would be exceeded by their proposed radio facilities (except mobile stations). In such instances, the following is a suggested guide for determining whether coordination is recommended:

(i) All stations within 1.5 statute miles;

(ii) Stations within 3 statute miles with 50 watts or more effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations within 10 statute miles with 1 kW or more ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone;

(iv) Stations within 50 statute miles with 25 kW or more ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone.

(2) Applicants concerned are urged to communicate with the Radio Frequency Managment Coordinator, Department of Commerce, Research Support Services, NOAA R/E5X2, Boulder Laboratories, Boulder, CO 80303; telephone (303) 497–6548, in advance of filing their applications with the Commission.

(3) The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid objections from the Department of Commerce or proceedings to modify any authorization which may be granted which, in fact, delivers a signal at the site in excess of the field strength specified herein.

PART 23—INTERNATIONAL FIXED PUBLIC RADIO COMMUNICATIONS SERVICES

In § 23.20, paragraph (d) is revise as follows:

§ 23.20 Assignment of frequencies.

* * * * *

(d) Protection for Table Mountain Radio Receiving Zone, Boulder County, Colorado: Applicants for a station authorization to operate in the vicinity of Boulder County, Colorado under this part are advised to give due consideration, prior to filing applications, to the need to protect the Table Mountain Radio Receiving Zone from harmful interference. These are the research laboratories of the Department of Commerce, Boulder County, Colorado. To prevent degradation of the present ambient radio signal level at the site, the Department of Commerce seeks to ensure that the field strengths of any radiated signals (excluding reflected signals) received on this 1800 acre site (in the vicinity of coordinates 40°07'50" N Latitude, 105°14'40" W Longitude) resulting from new assignments (other than mobile stations) or from the modification or relocation of existing facilities do not exceed the following values:

Frequency range	Field strength (mV/m) in authorized bandwidth of service	Power flux density [1] (dBW/m²) in authorized bandwidth of service
Below 540 kHz	10	65.8
540 to 1600 Khz	20	59.8
1.6 to 470 MHz	10	[2]65.8
470 to 890 MHz	30	[2]56.2
Above 890 MHz	1	[2]65.8

[1] Equivalent values of power flux density are calculated assuming free space characteristic impedance of 376.7 = 120π ohms.

[2] Space stations shall conform to the power flux density limits at the earth's surface specified in appropriate parts of the FCC rules, but in no case should exceed the above levels in any 4 kHz band for all angles of arrival

(1) Advance consultation is recommended particularly for those applicants who have no reliable data which indicates whether the field strength or power flux density figures in the above table would be exceeded by their proposed radio facilities (except mobile stations). In such instances, the following is a suggested guide for determining whether coordination is recommended:

(i) All stations within 1.5 statute miles;

(ii) Stations within 3 statute miles with 50 watts or more effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations within 10 statute miles with 1 kW or more ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone;

(iv) Stations within 50 statute miles with 25 kW or more ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone.

(2) Applicants concerned are urged to communicate with the Radio Frequency Management Coordinator, Department of Commerce, Research Support Services, NOAA R/E5X2, Boulder Laboratories, Boulder, CO 80303; telephone (303) 497–6548, in advance of filing their applications with the Commission.

(3) The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid objections from the Department of Commerce or proceedings to modify any authorization which may be granted which, in fact, delivers a signal at the site in excess of the field strength specified herein.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

In § 25.203, paragraph (f) is revised as follows:

§ 25.203 Choice of sites and frequencies.

* * * * *

(f) Protection for Table Mountain Radio Receiving Zone, Boulder County, Colorado.

(1) Applicants for a station authorization to operate in the vicinity of Boulder County, Colorado under this part are advised to give due consideration, prior to filing applications, to the need to protect the Table Mountain Radio Receiving Zone from harmful interference. These are the research laboratories of the Department of Commerce, Boulder County, Colorado. To prevent degradation of the present ambient radio signal level at the site, the Department of Commerce seeks to ensure that the field strengths of any radiated signals (excluding reflected signals) received on this 1800 acre site (in the vicinity of coordinates 40°07'50" N Latitude, 105°14'40" W Longitude) resulting from new assignments (other than mobile stations) or from the modification or relocation of existing

facilities do not exceed the following values:

Frequency range	Field strength (mV/m) in authorized bandwidth of service	Power flux density [1] (dBW/m²) in authorized bandwidth of service
Below 540 kHz	10	[illegible]
540 to 1600 kHz	[illegible]	[illegible]
1.6 to 470 MHz	10	[1] 65.8
470 to 890 MHz	30	[2] 56.2
Above 890 MHz	1	[2] 85.8

[1] Equivalent values of power flux density are calculated assuming free space characteristic impedance of 376.7 = 120 π ohms.
[2] Space stations shall conform to the power flux density limits at the earth's surface specified in appropriate parts of the FCC rules, but in no case should exceed the above levels in any 4 kHz band for all angles of arrival.

(2) Advance consultation is recommended particularly for those applicants who have no reliable data which indicates where the field strength or power flux density figures in the above table would be exceeded by their proposed radio facilities (except mobile stations). In such instances, the following is a suggested guide for determining whether coordination is recommended:

(i) All stations within 1.5 statute miles;

(ii) Stations within 3 statute miles with 50 watts or more effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations within 10 statute miles with 1 kW or more ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone;

(iv) Stations within 50 statute miles with 25 kW or more ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone.

(3) Applicants concerned are urged to communicate with the Radio Frequency Management Coordinator, Department of Commerce, Research Support Services, NOAA R/E5X2, Boulder Laboratories, Boulder, CO 80303; telephone (303) 497–6548, in advance of filing their applications with the Commission.

(4) The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid objections from the Department of Commerce or proceedings to modify any authorization which may be granted which, in fact, delivers a signal at the site in excess of the field strength specified herein.

PART 73—RADIO BROADCAST SERVICES

In § 73.1030, paragraph (b) is revised as follows:

§ 73.1030 Notifications concerning interference to radio astronomy, research and receiving installations.

* * * * *

(b) Radio receiving installations. Protection for Table Mountain Radio Receiving Zone, Boulder County, Colorado: Applicants for a station authorization to operate in the vicinity of Boulder County, Colorado under this part are advised to give due consideration, prior to filing applications, to the need to protect the Table Mountain Radio Receiving Zone from harmful interference. These are the research laboratories of the Department of Commerce, Boulder County, Colorado. To prevent degradation of the present ambient radio signal level at the site, the Department of Commerce seeks to ensure that the field strengths of any radiated signals (excluding reflected signals) received on this 1800 acre site (in the vicinity of coordinates 40°07'50" N Latitude, 105°14'40" W Longitude) resulting from new assignments (other than mobile stations) or from the modification or relocation of existing facilities do not exceed the following values:

Frequency range	Field strength [1]	Power flux density [2] [3]
Below 540 kHz	10	[illegible]
540 to 1600 kHz	20	[illegible]
1.6 to 470 MHz	[illegible]	[illegible]
470 to 890 MHz	[illegible]	[illegible] 56.2
Above 890 MHz	[illegible]	[illegible] 85.8

[1] (mV/m) is authorized bandwidth of service.
[2] (dBW/M2) is authorized bandwidth of service.
[3] Equivalent values of power flux density are calculated assuming free space characteristic impedance of 376.7 = 120π ohms.
[illegible] Space stations shall conform to the power flux density limits at the earth's surface specified in appropriate parts of the FCC rules, but in no case should exceed the above levels in any 4 kHz band for all angles of arrival.

(1) Advance consultation is recommended particularly for those applicants who have no reliable data which indicates whether the field strength or power flux density figures in the above table would be exceeded by their proposed radio facilities (except mobile stations). In such instances, the following is a suggested guide for determining whether coordination is recommended:

(i) All stations within 2.4 km (1.5 statute miles);

(ii) Stations within 4.8 km (3 statute miles) with 50 watts or more effective radiated power (ERP) in the primary plane polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations within 16 km (10 statute miles) with 1 kW or more ERP in the primary plane of polarization in the azimuthal direction of Table Mountain Receiving Zone;

(iv) Stations within 80 km (50 statute miles) with 25 kW or more ERP in the primary plane polarization in the azimuthal direction of Table Mountain Receiving Zone.

(2) Applicants concerned are urged to communicate with the Radio Frequency Management Coordinator, Department of Commerce, Research Support Services, NOAA R/E5X2, Boulder Laboratories, Boulder, CO 80303; telephone (303) 497–6548, in advance of filing their applications with the Commission.

(3) The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid objections from the Department of Commerce or proceedings to modify any authorization which may be granted which, in fact, delivers a signal at the site in excess of the field strength specified herein.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

In § 90.177, paragraph (c) is revised as follows:

§ 90.177 Protection of certain radio receiving locations.

* * * * *

(c) Protection for Table Mountain Radio Receiving Zone, Boulder County, Colorado. Applicants for a station authorization to operate in the vicinity of Boulder County, Colorado under this part are advised to give due consideration, prior to filing applications, to the need to protect the Table Mountain Radio Receiving Zone from harmful interference. These are the research laboratories of the Department of Commerce, Boulder County, Colorado. To prevent degradation of the present ambient radio signal level at the site, the Department of Commerce seeks to ensure that the field strengths of any radiated signals (excluding reflected signals) received on this 1800 acre site (in the vicinity of coordinates 40°07'50" N Latitude, 105° 14'40" W Longitude) resulting from new assignments (other than mobile stations) or from the modification or relocation of existing facilities do not exceed the following values:

Frequency range	Field strength (millivolt per meter) in authorized bandwidth of service	Power flux density [1] (decibel watt per square meter) in authorized bandwidth of service
Below 540 kHz	10	65.8
540 to 1600 kHz	20	59.8
1.6 to 470 MHz	10	65.8
470 to 890 MHz	30	56.2
Above 890 MHz	1	85.8

[1] Equivalent values of power flux density are calculated assuming free space characteristic impedance of 376.7 = 120π ohms.

(1) Advance consultation is recommended particularly for those applicants who have no reliable data which indicates whether the field strength or power flux density figures in the above table would be exceeded by their proposed radio facilities (except mobile stations). In such instances, the following is a suggested guide for determining whether coordination is recommended:

(i) All stations within 2.4 km (1.5 statute miles);

(ii) Stations within 4.8 km (3 statute miles) with 50 watts or more effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations within 16 km (10 statute miles) with 1 kW or more ERP in the primary plane of polarization in the azimuthal direction of the Table Mountain Receiving Zone;

(iv) Stations within 80 km (50 statute miles) with 25 kW or more ERP in the primary plane of polarization in the azimuthal direction of the Table Mountain Receiving Zone.

(2) Applicants concerned are urged to communicate with the Radio Frequency Management Coordinator, Department of Commerce, Research Support Services, NOAA R/E5X2, Boulder Laboratories, Boulder, CO 80303; telephone (303) 497–6548, in advance of filing their applications with the Commission.

(3) The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid objections from the Department of Commerce or proceedings to modify any authorization which may be granted which, in fact, delivers a signal at the site in excess of the field strength specified herein.

PART 94—PRIVATE OPERATIONAL—FIXED MICROWAVE SERVICE

In § 94.25, paragraph (g) is revised as follows:

§ 94.25 Filing of applications.

* * * * *

(g) Protection for Table Mountain Radio Receiving Zone, Boulder County, Colorado. Applicants for a station authorization to operate in the vicinity of Boulder County, Colorado under this part are advised to give due consideration, prior to filing applications, to the need to protect the Table Mountain Radio Receiving Zone from harmful interference. These are the research laboratories of the Department of Commerce, Boulder County, Colorado. To prevent degradation of the present ambient radio signal level at the site, the Department of Commerce seeks to ensure that the field strengths of any radiated signals (excluding reflected signals) received on this 1800 acre site (in the vicinity of coordinates 40°07′50″ N Latitude, 105°14′40″ W Longitude) resulting from new assignments or from the modification or relocation of existing facilities do not exceed 1 mV/m in the authorized bandwidth of service. (A field strength of 1 mV/m is equivalent to a power flux density of 85.8 dBW/M² assuming a free-space characteristic impendance of 376.7 ohms.)

(1) Advance consultation is recommended particularly for those applicants who have no reliable data which indicates whether the field strength or power flux density figures would be exceeded by their proposed radio facilities. In such instances, the following is a suggested guide for determining whether coordination is recommended:

(i) All stations within 2.4 km (1.5 statute miles);

(ii) Stations within 4.8 km (3 statute miles) with 50 watts or more effective radiated power (ERP) in the primary plane of polarization in the azimuthal direction of the Table Mountain Radio Receiving Zone;

(iii) Stations within 16 km (10 statute miles) with 1 kW or more ERP in the primary plane of polarization in the azimuthal direction of the Table Mountain Receiving Zone;

(iv) Stations within 80 km (50 statute miles) with 25 kW or more ERP in the primary plane of polarization in the azimuthal direction of the Table Mountain Receiving Zone.

(2) Applicants concerned are urged to communicate with the Radio Frequency Management Coordinator, Department of Commerce, Research Support Services, NOAA R/E5X2, Boulder Laboratories, Boulder, CO 80303; telephone (303) 497–6548, in advance of filing their applications with the Commission.

(3) The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid objections from the Department of Commerce or proceedings to modify any authorization which may be granted which, in fact, delivers a signal at the site in excess of the field strength specified herein.

[FR Doc. 85–22584 Filed 9–25–85; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 25

[CC Docket No. 81–704]

Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; Correction.

SUMMARY: This action corrects an error made in the Appendix of the Memorandum Opinion and Order in this proceeding concerning the licensing of space stations and related revisions of Part 25 of the rules. The MO&O was published in the **Federal Register** on January 18, 1985, 50 FR 2671.

FOR FURTHER INFORMATION CONTACT: Rosalee Gorman, (202) 634–1624.

SUPPLEMENTARY INFORMATION:

Erratum

In the matter of Licensing of Space Stations in the Domestic Fixed-Satellite Service and Related Revisions of Part 25 of the Rules and Regulations; CC Docket No. 81–704.

Released: September 20, 1985.

By the Domestic Facilities Division.

The first line of the Appendix to the *Memorandum Opinion and Order*, FCC 84–487 (released January 9, 1985), is corrected to read as follows: 47 CFR 25.209 Antenna Performance Standards.

Federal Communications Commission.

Kevin J. Kelley,

Deputy Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 85–23024 Filed 9–25–85; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, and 174

[Docket No. HM-180; Amdt. Nos. 171-82, 172-98, 173-189, 174-47]

Placarding of Empty Tank Cars

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Department's Hazardous Materials Regulations (HMR) by changing the placarding and shipping paper requirements for "empty" tank cars which contain residues of hazardous materials. The applicable regulations in Parts 173 and 174 which are affected by these changes are also revised as necessary. This action is being taken in response to a petition MTB received from the International Association of Fire Chiefs (IAFC) which indicated that emergency response personnel were being misinformed and misled by the EMPTY placard. The amendments contained in this rule will improve the hazardous materials communications system.

EFFECTIVE DATE: October 1, 1986. However, compliance with the regulations as amended herein is authorized as of November 1, 1985.

FOR FURTHER INFORMATION CONTACT: Lee Jackson, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation Washington, DC 20590, telephone (202) 426-2075.

SUPPLEMENTARY INFORMATION:

I. Background

In June 1981, MTB received a petition from the IAFC which stated that the use of the EMPTY placard on tank cars is "misleading and dangerous" because it implies a lack of hazard even though, in many instances, an "empty" tank car containing a residue of a hazardous material presents a potentially greater danger than a tank car that is filled with the material. For this reason, the IAFC petition requested that MTB eliminate the requirement for display of EMPTY placards on tank cars. In response to this petition, MTB published on June 23, 1981, an advance notice of proposed rulemaking (ANPRM) (Docket HM-180, 46 FR 37953). This ANPRM reiterated the IAFC petition verbatim. Based on MTB's evaluation of the comments which they received on the ANPRM, a notice of proposed rulemaking (NPRM) was prepared by MTB and published on August 10, 1984, under Docket HM-180 (49 FR 32090). After reviewing the comments received to that NPRM, MTB has prepared this final rule (FR).

The petition from the IAFC alluded in a general way to a potentially hazardous condition. Since residues in a tank car do not provide the cooling capacity of the liquid in tank cars which are fully loaded, tank cars which only contain residues may present a risk of violent rupture in a shorter time than fully loaded cars when in a fire. Under fire impingement conditions, the actions of emergency response personnel involved with a tank car which contains only the residue of a liquefied compressed gas or a flammable liquid may be different from the actions which they might take in responding to a tank car which contains a full load of materials. Upon consideration of the substantive points made in the IAFC petition, MTB prepared an ANPRM.

The ANPRM (46 FR 37953) requested comments from interested persons on eliminating the requirement for display of the EMPTY placard. Evaluation of the comments MTB received to the ANPRM showed that almost half of the commenters favored use of the same placard for a "loaded" and an "emptied" tank car. Other commenters favored retention of the EMPTY placard or use of a placard with the word "residual" in place of the word "empty".

Based on MTB's evaluation of the comments received to the ANPRM, a notice of proposed rulemaking (NPRM) was prepared by MTB and published under Docket No. HM-180 (49 FR 32090). In this NPRM, MTB again proposed to amend the placarding regulations by eliminating the EMPTY placard. This amendment would have required that a tank car which contained only the residue of a hazardous material be placarded with the same hazard warning placard required when the tank car contained a greater quantity of the materials. Although this proposal would increase an individual's awareness, as far as knowing the type of hazardous material contained in the tank car, emergency response personnel would still have no rapid method of determining whether a tank car involved in a fire was loaded or contained only the residue of the material. One rail carrier cited, in his comments to the NPRM, an accident in which a tank car which contained only the residue of anhydrous ammonia exploded in twenty minutes after being subjected to a fire.

With this in mind and after further consideration of comments, MTB prepared this FR. MTB has concluded that a new RESIDUE placard for tank cars is needed to accurately communicate the appropriate warning to emergency response personnel. Further, to make the hazard communication information on the shipping paper consistent with that of the placard, MTB is revising the shipping paper entry from "EMPTY: Last Contained * * *" to "RESIDUE: Last Contained * * *". It should be noted that the Association of American Railroads stated in their comments to the NPRM that "the shipping paper requirements for empty tank cars which last contained hazardous materials do not apply to tank cars which held combustible liquids." This is incorrect. Under the Provisions of § 174.25(c) the shipping paper (billing) is not required to show the words "Empty" or "Empty: Last Contained", but a shipping paper must be prepared and accompany the shipment.

II. Response to Comments

MTB received forty-eight comments to the NPRM; 30 were from the chemical industry and nine were from rail carriers. The remaining nine comments came from firefighters, a State Department of Transportation, the National Transportation Safety Board (NTSB), and the Department of Defense.

Two commenters recommended that the words "residual" or "residue" be defined if used in place of the word "empty" on the placard. None of these terms are defined in the HMR. The NTSB recommended that the maximum quantity of a hazardous material that may be moved in an "empty" tank car be specified. MTB agrees with these recommendations and is adding, in § 171.8, a definition for "residue" which includes, for tank cars only, a quantitative limitation of three percent or less of the tank car's capacity. Historically, the Department's Federal Railroad Administration has considered a tank car to be "empty" when the residue remaining in the tank car does not exceed three percent of the weight of the car's last loaded movement. This operational definition is derived from Rule 35 of the Uniform Freight Classification Tariff. MTB believes that the quantitative definition for the word "residue" adopted in this rule is consistent with the FRA definition, is easy to understand and will enhance safety by providing emergency response personnel with accurate information regarding the maximum quantity of hazardous material that may remain in the tank car. Since this definition parallels the definition in use today, negligible costs should be incurred by this clarification of terminology. Eight commenters indicated that the word

"residue" or "residual" should not be substituted for the word "empty" on the shipping paper because the name used for shipping several materials that are not subject to the HMR contain the word "residue" or "residual." MTB reviewed the words "residue", "residual", and the "residuum" as listed in the *Uniform Freight Classification (UFC) 6000* and concluded that of the 47 line entries containing these words, five have names that could be confused with the description of hazardous materials. However, because of the format of the description of a hazardous material on the shipping paper, i.e., "RESIDUE: Last Contained Sulfuric acid, Corrosive material, UN 1830", there should be no confusion with UFC entries.

Five chemical industry commenters and five rail carriers, all of whom use tank cars to transport hazardous materials, requested that the present requirements for the EMPTY placard not be changed. When making up trains, the EMPTY placard is used operationally by rail carrier personnel to help them identify the correct tank cars when they are switching, humping and sorting cars. The rail carriers made the point that the EMPTY placard contributed to the safety of those rail employees involved in rail car switching, placement, and humping operations. MTB believes the RESIDUE placard can be used in rail car operations in the same manner as the EMPTY placard is now used. Several commenters who use tank cars regularly emphasized the fact that the residues of some hazardous materials present a greater hazard during a fire than tank cars which contain bulk loads of those same materials. MTB believes this evaluation is correct. Three safety or emergency response organizations and six chemical industry commenters recommended adoption of a RESIDUE or RESIDUAL placard to replace the present EMPTY placard. Eighteen commenters supported the MTB proposal contained in the NPRM to use the same placard on both loaded tank cars and tank cars which only contain the residues of hazardous materials. Fifteen of these comments were from the chemical industry and the other three were from safety or emergency response personnel.

III. Discussion

Notwithstanding a rail carrrier's reliance on the EMPTY placard for certain operational procedures (which they say also enhances safety), MTB must consider hazard warning placards in light of their contribution to emergency response as well. Based on the comments received and the knowledge gained by MTB from the comments MTB concludes that emergency response considerations overwhelmingly favor the use of the RESIDUE placard and that the final rule should be revised from what was proposed in the NPRM. Further, MTB believes that the shipping paper entries for a tank car which contains only the residue of a hazardous material should show the same hazard warning as the revised placard. Therefore, the rule is changed accordingly. The placarding requirements are revised from EMPTY to RESIDUE for a tank car which contains only the residue of a hazardous material. This rule change should resolve the problems emergency response personnel were having with the EMPTY placard, and still indicate a difference between a tank car that is loaded and one that contains only the residue of hazardous material. Revision of the placard will also improve hazard communication by removing the black triangle from the top of the placard, thus allowing display of the hazard symbol.

There should be no significant difference between the purchase price of the EMPTY placard presently required by the regulations and the RESIDUE placard that will be required by this amendment. In addition, the cost of placing the placards on the tank cars would be the same. A year is given from the publication date of this rule for the change over to the RESIDUE placard, during which time on-hand stocks of the EMPTY placard should be depleted.

IV. Review by Sections

1. Section 171.8 is revised by adding a definition for "Residue". This definition was not proposed in the notice, but commenters to the HM–180 Notice requested that "Residue" be defined. From this definition one can determine the maximum quantity of hazardous material that is contained in a tank car placarded with the RESIDUE placard.

2. Paragraph (e) of § 172.203 is revised to change the shipping paper entry for empty packagings and empty portable tanks, cargo tanks, tank cars and multi-unit tank car tanks that contain the residue of a hazardous material to include in the description the word RESIDUE instead of the word EMPTY. The description will be preceded by the words "RESIDUE: Last Contained [illegible]".

3. Footnote 4 to Table 2 in § 172.504 is revised to change the placard name from EMPTY to RESIDUE.

4. Paragraphs (a) and (c) of § 172.510 are revised to change the special placarding provisions for rail from "POISON GAS—EMPTY" to "'POISON GAS—RESIDUE" in paragraph (a) and to change the placard name from EMPTY to RESIDUE in the title of paragraph (c) and in the third line of paragraph (c). Paragraph (c)(1) is also reworded for clarity.

5. Section 172.525, and accompanying paragraph (c)(10) in Appendix B to Part 172 which contains the specifications for the EMPTY placard, have the placard name changed from EMPTY to RESIDUE.

6. Paragraph (b)(3) of § 173.190 prescribes the EMPTY-FLAMMABLE SOLID placarding requirements for tank cars which contain the residue of white or yellow Phosphorus. Since this final rule changes the placard name from EMPTY to RESIDUE, the placarding requirement for Phosphorus in 173.190(b)(3) is changed to FLAMMABLE SOLID-RESIDUE.

7. Paragraph (c) of 174.25 is amended by revising the paragraph to make the requirement consistent with the shipping paper requirements in Subpart C to Part 172.

8. Paragraph (e) of § 174.50 is revised for clarity by rewording the requirement that no open-flame light may be brought near any placarded tank car that is leaking.

9. Section 174.69 is revised to restate the requirement that the person who is responsible for removing the lading from a tank car is also responsible for assuring that if the tank car contains the residue of a hazardous material it is properly placarded before it is offered for transportation.

10. The section title and the text § 174.93 are revised for consistency and clarity to change the car placement requirements for EMPTY placarded tank cars to reflect the change to the RESIDUE placard.

V. Administrative Notice

A. *Executive Order 12291.* MTB has determined the affect of this final rule will not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule. This is not a significant rule under DOT regulatory procedures (44 FR 11034) and requires neither a Regulatory Impact Analysis, nor an Environmental Impact Statement under the National Environmental Policy Act (49 U.S.C. 4321 et. seq.). A regulatory evaluation is available for review in the Docket.

B. *Information Collection.* No change in information collection is anticipated as a result of this rulemaking since the RESIDUE placard will replace the EMPTY placard.

C. *Impact on Small Entities.* Based on limited information concerning size and nature of entities likely to be affected, I certify this final rule will not, as

promulgated, have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Definitions.

49 CFR Part 172

Hazardous materials transportation, Placarding.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 174

Hazardous materials transportation, Railroad safety.

VI. Rules and Regulations

In consideration of the foregoing, Parts 171 through 174 of Title 49, Code of Federal Regulations are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, unless otherwise noted.

2. Section 171.8 is amended by the addition in its correct alphabetic sequence, the following definition.

§ 171.8 Definition and abbreviations.

* * * * *

"Residue" means the hazardous material remaining in a packaging after its contents have been emptied and before the packaging is refilled, or cleaned and purged of vapor to remove any potential hazard. Residue of a hazardous material, as applied to the contents of a tank car (other than DOT Specification 106 or 110 tank cars), means a quantity of material no greater than 3 percent of the car's marked volumetric capacity.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

3. The authority citation for Part 172 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804; 49 CFR 1.53, unless otherwise noted.

4. In § 172.203, paragraph (e) is revised to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(e) *Empty packagings.* (1) The description on the shipping paper for a packaging containing the residue of a hazardous material may include the words "RESIDUE: Last Contained * * *" in association with the basic description of the hazardous material last contained in the packaging.

(2) For a tank car containing the residue (as defined in 171.8) of a hazardous material, the requirements of § 174.25(c) and paragraph (e)(3) of this section apply.

(3) If a packaging, including a tank car, contains a residue that is a hazardous substance, the description on the shipping papers must be prefaced with the phrase "RESIDUE: Last Contained * * *" and the letters "RQ" must be entered on the shipping paper either before or after the basic description.

* * * * *

5. In § 172.504, Footnote 4, to Table 2 is revised to read as follows:

§ 172.504 General placarding requirements.

* * * * *

TABLE 2

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[4] A FLAMMABLE placard may be used on a cargo tank, a portable tank and a compartmented tank car during transportation by highway, rail or water, if they contain materials classed as Flammable liquid or Combustible liquid. However, no RESIDUE placard may be displayed on a tank car which only contains residue of a Combustible liquid.

* * * * *

6. In § 172.510, paragraphs (a) and (c) are revised to read as follows:

§ 172.510 Special placarding provisions: Rail.

(a) *Square background required.* Each EXPLOSIVE A placard, POISON GAS placard and POISON GAS-RESIDUE placard affixed to a rail car must be placed on a square background as described in § 172.527.

* * * * *

(c) *RESIDUE placard.* Each tank car containing the residue of a hazardous material must be placarded with the appropriate RESIDUE placards, as required in § 172.525 and paragraph (a) of this section. The RESIDUE placard must correspond to the placard that was required for the material the tank car contained when loaded, unless the tank car—

(1) Contains the residue of a combustible liquid;

(2) Is reloaded with a material requiring no placards or different placards; or

(3) Is sufficiently cleaned of residue and purged of vapor to remove any potential hazard.

* * * * *

7. Section 172.525 is revised to read as follows:

§ 172.525 Standard requirements for the RESIDUE placard.

(a) Each RESIDUE placard must be as follows:

(1) The lower triangle of the RESIDUE placard must be black. The word "RESIDUE" must be in white letters approximately 1½ inches (40 mm) high made with approximately ¼ inch (6 mm) of an inch stroke.

(2) The midsection of each RESIDUE placard must display the appropriate identification number as specified in § 172.332 (c) and (d).

Otherwise the RESIDUE placard must be specified in § 172.519 and Appendix B to this Part, and §§ 172.528, 172.530, 172.532, 172.536, 172.540, 172.542, 172.546, 172.548, 172.550, 172.552, 172.554, and 172.558, as appropriate for the residue of the hazardous material being transported and required by this subchapter to be placarded. No other placard may be used as a RESIDUE placard.

(b) The lower part of each placard must be specified in Appendix B to this Part and as illustrated on the FLAMMABLE-RESIDUE placard which, except for size and color, must be as follows:



(c) The RESIDUE placard must be as shown in paragraph (b) of this section and may be—

(1) A separate placard,

(2) On the reverse side of a placard, or

(3) A composite made according to the specifications in this section, and paragraph (a)(10) of Appendix B to this Part. The lower triangle of the appropriate placard should have a black triangle bearing the word RESIDUE in white letters with the appropriate hazard class number in white.

Appendix B—[Amended]

8. In Appendix B to Part 172, paragraph (c)(10) is revised to read as follows:

Appendix B—Dimensional Specifications for Placards

* * * * *

(c) * * *

(10) *RESIDUE placard.* The specifications for the FLAMMABLE-RESIDUE placard are the same as the specifications for the following RESIDUE placards: NON-FLAMMABLE GAS; POISON GAS; CHLORINE; OXYGEN; FLAMMABLE GAS; FLAMMABLE; FLAMMABLE SOLID; FLAMMABLE SOLID W; OXIDIZER; ORGANIC PEROXIDE; POISON; and CORROSIVE. The lower triangle of each RESIDUE placard must be black. This triangle must be 2-3/8 inches (50 mm) below the horizontal center line of the placard or adjacent to the lower edge of the white block for the identification number. The letters in the word RESIDUE must be approximately 1½ inches (40 mm) high, made with approximately ¼ inch (6 mm) stroke. The letters must be located in the lower black triangle and parallel to the horizontal center line of the placard. The hazard class number must be approximately 1½ inches (40 mm) high and centered above the word RESIDUE. The RESIDUE placard may be made in any of the three ways cited in § 172.525(c), Subpart F of Part 172.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

9. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, unless otherwise noted.

10. In § 173.190, the last sentence of paragraph (b)(3) is revised to read as follows:

§ 173.190 Phosphorus, white or yellow.

* * * * *

(b) * * *

(3) * * * After unloading, the person who unloaded the tank car must fill it to its entire capacity with an inert gas or must fill it with water having a temperature not exceeding 140°F, to not more than 50 percent of the capacity of its dome. Before the car is offered for return movement, it must be placarded with FLAMMABLE SOLID-RESIDUE placards, as described in § 172.525 of this subchapter.

* * * * *

PART 174—CARRIAGE BY RAIL

11. The authority citation for Part 174 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, unless otherwise noted.

12. In § 174.25, paragraph (c) is revised to read as follows:

§ 174.25 Additional information on waybills, switching orders and other billings.

* * * * *

(c) For a tank car that contains only the residue of a hazardous material, the shipping papers must contain the words "RESIDUE: Last Contained * * *", the basic description of the hazardous material last contained in the tank car and the placard notation specified in the second column of the table in paragraph (a)(2) of this section followed by the word RESIDUE. For example, "RESIDUE: Last Contained Sulfuric acid, Corrosive material, UN 1830, Placarded: CORROSIVE-RESIDUE". For a tank car that contains only the residue of a hazardous substance, the letters "RQ" must also be entered on the shipping paper either before or after the basic description.

* * * * *

13. In § 174.50, paragraph (e) is revised to read as follows:

§ 174.50 Leaking tank cars.

* * * * *

(e) Open-flame lights may not be brought near a placarded tank car that is leaking.

* * * * *

14. Section 174.69 is revised to read as follows:

§ 174.69 Removal of placards and car certifications after unloading.

When lading requiring placards or car certificates is removed from a rail car other than a tank car, each placard and car certificate must be removed by the person unloading the car. For a tank car which contained a hazardous material, the person responsible for removing the lading must assure, in accordance with the provisions of § 172.510(c) of this subchapter, that the tank car is properly placarded for any residue which remains in the tank car.

15. The section title and text of § 174.93 are revised to read as follows:

§ 174.93 Position in train of a tank car displaying RESIDUE placards.

In a train, a tank car displaying RESIDUE placards may not be placed nearer than the second car from an engine or occupied caboose.

Issued in Washington, D.C. on September 19, 1985 under authority delegated in 49 CFR Part 1, Appendix A.

M. Cynthia Douglass,

Acting Director, Materials Transportation Bureau.

[FR Doc. 85-22978 Filed 9-25-85; 8:45 am]

BILLING CODE 4910-60-M

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49 CFR Part 195

[Amendment 195-33A; Docket PS-80]

Regulation of Intrastate Pipelines; Correction

AGENCY: Materials Transportation Bureau (MTB), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects the date after which new intrastate pipelines must be designed and constructed in accordance with the Federal safety standards. The correction conforms the date with the effective date of the final rule for intrastate pipelines published April 23, 1985. (50 FR 15895).

FOR FURTHER INFORMATION CONTACT: L.M. Furrow, (202) 426-2392 Therefore, 49 CFR Part 195 is amended as follows:

1. The authority citation for Part 195 continues to read as set forth below:

Authority: 49 U.S.C. 2002; 49 CFR 1.53 and Appendix A to Part 1.

2. In § 195.401(c)(3) the date "October 21, 1985" is corrected to read "October 20, 1985".

Issued in Washington, DC, on September 20, 1985.

M. Cynthia Douglass,

Acting Director, Materials Transportation Bureau.

[FR Doc. 85-22995 Filed 9-25-85; 8:45 am]

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49 CFR Part 195

[Docket PS-80]

Transportation of Hazardous Liquids by Pipeline; Regulation of Intrastate Pipelines

AGENCY: Materials Transportation Bureau, Research and Special Programs Administration (RSPA), DOT.

ACTION: Response to petitions for reconsideration of final rule.

SUMMARY: On April 17, 1985, pursuant to section 203(a) of the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) (49 U.S.C. 2002), the Materials Transportation Bureau, RSPA, issued a final rule extending existing Federal pipeline safety regulations to "intrastate pipeline facilities." (50 FR 15895, April 23, 1985). Southern Pacific Pipe Lines Company (Southern Pacific) and the California State Fire Marshal (Fire Marshal) filed petitions for reconsideration of the final rule, each citing the definitions of interstate and intrastate pipelines as the reason for the petitions.

By notice of June 20, 1985, (50 FR 25602), RSPA solicited comments on the petitions. RSPA has consolidated these petitions. After careful consideration of the petitions, and the comments, RSPA concludes that the petitions should be denied.

DATE: The final rule issued April 19, 1985, will become effective on October 21, 1985, as originally scheduled.

FOR FURTHER INFORMATION CONTACT: Barbara Betsock (202) 755–4972.

SUPPLEMENTARY INFORMATION: The definitions in the final rule are as follows:

Interstate pipeline means a pipeline or that part of a pipeline that is used in the transportation of hazardous liquids in interstate or foreign commerce.

Intrastate pipeline means a pipeline or that part of a pipeline to which this part applies that is not an interstate pipeline.

The definitions are substantially the same as proposed by notice of March 26, 1984 (49 FR 11226). Only one commenter to the proposed rules specifically addressed the definitions. That commenter, the Southern Pacific, objected to the proposed definitions on ground that the definitions would allow part of Southern Pacific's pipeline system to be considered intrastate. To prevent this, Southern Pacific suggested language which would have included as interstate pipeline facilities those pipelines subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC) or all segments "included in a carrier's Annual Valuation Report to [FERC] as 'carrier property'."

Summary of Petitions and Comments on Petitions

In its petition, Southern Pacific requests a change in the definitions to define as interstate pipeline any pipeline facilities that are physically connected to pipeline facilities used in transportation in interstate or foreign commerce. Southern Pacific argues that the legislative history of the HLPSA requires that the definitions be based on physical connection.

Southern Pacific further claims that pipeline facilities operated by interstate pipeline companies are "indivisible units with all parts and facilities built, operated, and maintained with a commonality of design and construction features integrated and controlled from a central command point" and that additional or more stringent safety standards that might be imposed by states on intrastate portions of those "indivisible units" "will cause service disruptions and backups throughout."

In its petition, the Fire Marshal claims that, given the agency interpretation and implementation policy expressed in Appendix A to the final rule, the definitions are difficult to apply. The Fire Marshal contends that any consideration of mere physical connection is inappropriate and that the degree of use of particular facilities in interstate or foreign commerce is the more appropriate consideration. The Fire Marshal requests that interstate pipeline facilities be defined as that part of a pipeline "which is used primarily in interstate or foreign commerce, and which crosses a State line or foreign border, and is considered from point or points of product entry in one state to point or points of delivery in another state or foreign country." The Fire Marshal appears concerned that an overemphasis on physical connection in describing interstate pipeline facilities will unduly limit the pipeline facilities subject to state regulation. Both petitioners requested deletion of Appendix A.

On June 20, 1985, RSPA solicited public comment on these conflicting petitions. (50 FR 25602) Comments were received from thirteen state agencies involved in gas or hazardous liquid pipeline safety regulation, six companies operating hazardous liquid pipelines, the National Association of Regulatory Utility Commissioners (NARUC), the National Association of Pipeline Safety Representatives (NAPSR), and the American Petroleum Institute (API). The state agencies, NARUC, and NAPSR support the Fire Marshal's petition either explicitly or implicitly and oppose the Southern Pacific view. Common arguments are the extension, through use of the physical connection theory, of exclusive Federal jurisdiction to virtually all pipeline facilities from the wellhead to the consumer, the limited available Federal resources to handle this broad assumption of jurisdiction, and the dangers of attempting to use any reference to FERC authority in a safety scheme. Four of the industry commenters and the API endorse the Southern Pacific approach and oppose that of the Fire Marshal because of possible operational difficulties and particular language in the legislative history of the HLPSA. One industry commenter believes that mere physical connection should not convert otherwise instrastate pipeline facilities to interstate facilities and suggests looking at the "projected immediate destination of the liquid." Another industry commenter supports a definition based on the degree of use as suggested by the Fire Marshal.

Because the major questions raised by the two petitions concern the same jurisdictional issues, RSPA is disposing of the petitions in this single document. The major issues concern the definitions of interstate pipeline and intrastate pipeline and are accompanied by closely related questions concerning the interpretation and implementation of those definitions expressed in Appendix A. The jurisdictional issues involve deciding where to draw the line between interstate and intrastate and the method to be used to implement the decision. The issues are as follows:

1. Physical connection—Whether reference to physical connection in defining "interstate pipeline facilities" is required or permitted by the HLPSA.

2. Use in interstate or foreign commerce—Whether defininining interstate pipeline facilities as those "used" in interstate or foreign commerce in the HLPSA requires primary or exclusive use.

3. Impact on interstate or foreign commerce—Whether the final rule as applied to pipeline facilities used solely for intrastate transportation but physically connected to pipeline facilities used for interstate transportation could lead to disruption of interstate transportation.

4. Clarity of definitions—Whether the definitions are sufficiently clear and whether Appendix A is an aid to further clarification.

5. Use of FERC tariffs—Whether any reference to the jurisdiction of FERC is reasonable.

6. Determining compatibility of additional state regulations—Whether RSPA was required in the final rule to establish standards for determining whether additional or more stringent state safety standards are "compatible" with the Federal standards within the meaning of the HLPSA.

7. Compliance with notice and comment requirements—Whether Appendix A should have been subjected to notice and comment procedures.

Physical Connection

Section 202 of the HLPSA (49 U.S.C. 2001) defines "interstate pipeline facilities" as "the pipeline facilities used in the transportation of hazardous liquids in interstate or foreign commerce" and "intrastate pipeline facilities" as those facilities which are not interstate pipeline facilities. Although pipeline is not defined, "'pipeline facilities' includes, without limitation, new and existing pipe, rights-of-way, and any equipment, facility, or building used or intended for use in the transportation of hazardous liquids." With certain exceptions, "transportation of hazardous liquids" means the "movement of hazardous liquids by pipeline, or their storage incidental to such movement, in or affecting interstate or foreign commerce." Interstate or foreign commerce is defined by the end points of the commerce. Section 203(a) requires the Secretary of Transportation to issue minimum safety standards "for the transportation of hazardous liquids and pipeline facilities" applicable to each "person who engages in the transportation of hazardous liquids or who owns or operates pipeline facilities." 49 U.S.C. 2002(a). "Person" is broadly defined. Section 203(d) provides for preemption of state safety standards applicable to "interstate pipeline facilities" and allows for state adoption of "additional or more stringent" safety standards for intrastate pipeline facilities "if such standards are compatible with the Federal standards." 49 U.S.C. 2002(d). Sec. 205 provides for a Federal-state partnership in enforcement and regulation comparable to that found in the safety regulation of gas under the Natural Gas Pipeline Safety Act of 1968 (NGPSA).

The HLPSA neither uses nor defines pipeline system, connection, or carrier. Although the word "pipeline" is used, e.g. in the definition of "transportation of hazardous liquids" and in the term "pipeline facilities," it is not used to denote a specific amalgamation of pipeline facilities (such as those owned by a common carrier or those physically connected to facilities which cross a state line.) The term "pipeline facilities" is defined broadly by a listing of the physical things associated with the movement of hazardous liquids in transportation. Use of the plural argues against any indivisibility for any particular amalgamation of pipeline facilities. The critical term "interstate pipeline facilities" is without hint of ownership or physical connection. The term simply defines as interstate those particular pipeline facilities actually used or intended for use in the transportation of hazardous liquids in interstate or foreign commerce.

RSPA believes that a plain reading of this statutory language and an examination of the HLPSA in context argues against the reading urged by Southern Pacific, namely, glossing the words with a concept of carrier-ownership or physical connection. The Southern Pacific, the API, and other industry commenters urge that the legislative history provides the gloss. They cite the following language in the section-by-section analysis from the committee report, which was repeated at the time of Senate passage of the consensus bill on November 14, 1979 (125 Cong. Rec. 32336):

> It is intended that a pipeline facility be classed as an interstate pipeline facility if it is physically part of a pipeline system that moves hazardous liquids in interstate or foreign commerce.

S. Rep. No. 182, 96th Cong. 1st Sess., at p. 19; 1979 U.S. Code Cong. & Ad. News 1989. At first blush, this language appears to support Southern Pacific's view that Congress intended something different from a plain reading of the statutory language. However, when looked at in the context of the history of and regulatory scheme created by the HLPSA, the importance of the sentence in the committee report is much less clear.

The following sentence immediately precedes the noted sentence:

> The term "interstate pipeline facility" is defined to include pipeline facilties that, either on their own or by connection with the other pipeline facilities, are used to move hazardous liquids in interstate or foreign commerce.

The committee report was issued to accompany a marked up version of S.411 which deleted the following definition of interstate pipeline facilities in favor of the one ultimately passed:

> "[I]nterstate pipeline facilities" include pipeline facilities that, either on their own or by connection with other pipeline facilities, are used to move hazardous liquids in interstate or foreign commerce.

The same marked up bill also deleted the words "or the treatment of hazardous liquids during the course of transportation" from the definition of "pipeline facilities" as well as the following broad definition in favor of that ultimately passed:

> "[T]ransportation of hazardous liquids" means the movement of hazardous liquids by pipeline or its storage in or affecting interstate or foreign commerce.

Explanation for these latter deletions was made in the committee report.

Concurrently with consideration of S. 411, a pipeline safety bill, H.R. 51 was being considered in the House. A major focus of H.R. 51 was increased regulation of liquefied natural gas. It did not contain any provisions for safety regulation of the transportation of hazardous liquids by pipeline. On November 14, 1979, the Senate passed what was announced as a compromise version of the two bills, labeled the Pipeline Safety Act of 1979. Although the Pipeline Safety Act of 1979 substantially amended S. 411 to reflect the compromise, no changes were made to the definitions of transportation of hazardous liquids, pipeline facilities, or interstate pipeline facilities and no substantive changes were made to the definitions of the liquid provisions other than the addition of some unrelated definitions. RSPA believes that the language in the section-by-section analysis was simply overlooked. Furthermore, examination of the history of the HLPSA indicates that the language was never intended to be read as urged by the Southern Pacific.

Prior to passage of the HLPSA, hazardous liquid pipeline safety regulation was administered by the Department of Transportation under the Transportation of Explosives Act (TOEA). Although the TOEA was the predecessor statute for most safety regulation for the transportation of hazardous materials, by 1979, only liquid pipelines remained regulated under it. Furthermore, the TOEA was cumbersome and incomplete, in that it allowed only regulation of carriers in interstate commerce, did not take into consideration the special needs of a regulatory program aimed at pipelines, and provided only criminal remedies.

At the time the Department also administered the gas pipeline safety program under the NGPSA. That statute, which provides for regulation of most gas pipeline facilities in or affecting interstate or foreign commerce, a Federal-state partnership in enforcement and regulation, and civil penalties, had served well. Under the NGPSA, interstate pipeline facilities subject to exclusive Federal jurisdiction are defined as those transmission facilities (other than certain lines making direct sales to customers) subject to the jurisdiction of the FERC. The states may adopt additional or more stringent standards compatible with the Federal standards with respect to other pipeline facilities (intrastate pipeline facilities). The intrastate pipeline facilities are generally connected to the interstate pipeline facilities and may be

owned and operated by the same or a related company.

With this experience in mind, the Department drafted broad legislation modeled after the NGPSA, aimed at the broad safety regulation of all hazardous liquid pipeline facilities rather than of carriers in interstate commerce, and supported by civil penalty authority. This broad legislation, supplemented by a section-by-section analysis together with substantial revisions to the NGPSA was forwarded to Congress by the Secretary and introduced as S. 411 on February 9, 1979. The section-by-section analysis for the definition of "interstate pipeline facilities" contained the same language which appears in the committee report. The hazardous liquid legislation was included as Title II of S. 411.

At hearings before the Senate Committee on Commerce, Science, and Transportation in April, 1979, the industry witness, representing API and the Association of Oil Pipelines (AOPL), opposed the Department's proposed liquid legislation as unnecessary and overly broad. Drawing specific fire was the definition of hazardous liquids which was "so broad as to include almost any conceivable activity." Hearings, at p. 122. The industry witness noted, however, that, with "strict limitations and enumerated exceptions", definitions might be fashioned that would result in withdrawal of industry opposition. The industry recognized, with unexplained reservations, a role for states. The Department's staff met with representatives of the API and AOPL to attempt to resolve differences and, on May 3, 1979, agreed to revisions of Title II of S. 411 proposed by industry. The revisions were aimed at narrowing the scope of the jurisdiction provided. In particular, the Department agreed to change the definition of interstate pipeline facilities to clarify the point at which jurisdiction begins; namely, the point where the hazardous liquid being transported enters interstate and foreign commerce. The agreed to revisions were accepted by the Committee, appeared in the printed version of S. 411 which accompanied the Committee's report, and were adopted in the HLPSA. There is simply nothing in the history of passage of the HLPSA, of which RSPA is aware, which supports a conclusion that "Interstate pipeline facilities" was ever intended to be read with a required gloss of carrier ownership or physical connection.

The Fire Marshal argues that RSPA's use of connection in Appendix A is unwarranted by the language of the HLPSA. RSPA's only uses of the concept are to flesh out the outline of an interstate pipeline which is provided by examination of tariffs and to confirm that outline in doubtful cases. For example, one carrier files a tariff with FERC for a movement which will continue over the line of another carrier which also files a tariff with FERC. One of the lines crosses a state border. Between the two carriers' lines, the hazardous liquid passes through a breakout tank in a terminal facility possibly related in ownership to one of the carriers. Breakout tanks are subject to the regulations. All three of the facilities are interstate facilities because of their use in interstate commerce. This use of the concept of connection is clearly allowed by the HLPSA.

Finally, RSPA agrees with the Fire Marshal and various state commenters that adoption of the Southern Pacific approach could result in the virtual exclusion of the states from the area of hazardous liquid pipeline regulation. This result was not intended by Congress which has always recognized a major role for the states in pipeline safety. Neither the HLPSA nor the NGPSA show any preference for Federal over state jurisdiction except for lines actually used in interstate or foreign commerce for which the possibility of conflicting state rules could impede the flow of interstate commerce. Indeed the concern has seemed to be the other way. Congress has required the establishment of uniform Federal standards for all pipelines and has encouraged extensive state involvement through the establishment of what has been considered a model Federal/state program allowing full state enforcement authority for intrastate pipeline transportation, state participation as Federal agents for interstate transportation, and Federal grants-in-aid to assist the states in meeting the costs of their programs. Therefore, RSPA believes it contrary to the spirit of the HLPSA to attempt to expand the area of exclusive Federal jurisdiction beyond that clearly intended by Congress. It is RSPA's policy to allow states to assume as much responsibility for pipeline safety within their states as possible, subject only to the limitations of the HLPSA. States are in the best position to assess the needs of their communities with respect to pipeline safety. Southern Pacific noted the possibility of designating the Fire Marshal as a Federal agent for purposes of inspecting the interstate pipelines in California. While this is possible, and could help in expanding Federal capabilities for inspection, the agency relationship still leaves with the Federal government the responsibility for carrying out enforcement and does not allow for the policy enunciated in the Federal/state partnership created by the HLPSA.

Use in Interstate or Foreign Commerce

RSPA reads the statutory language "used in the transportation of hazardous liquids in interstate or foreign commerce" as requiring some actual use for such transportation; that is, some physical involvement of the particular facilities for the movement of hazardous liquid in interstate or foreign commerce. As noted above, RSPA rejects Southern Pacific's approach which would label as interstate those facilities not used in interstate or foreign commerce but connected to facilities so used. The Fire Marshal goes to other extreme by reading the language as requiring a large degree of, if not exclusive, use of particular facilities for transportation in interstate or foreign commerce before labeling the facilities as interstate. For example, consider a pipeline from Los Angeles, California to Reno, Nevada which delivers a large percentage of its product to points within California. Under RSPA's view, all parts of the pipeline through which any product destined for delivery out-of-state flows would be interstate. Under the Fire Marshal's view, only that part of the line after the point of last delivery within the state would be interstate though the product which flows out of state must necessarily have originated in Los Angeles.

The Fire Marshal provides no explanation to support its reading of the statutory language. RSPA rejects that reading as contrary to both a plain and a contextual reading of the HLPSA, and to usual conceptions of Federal regulation of interstate and foreign commerce.

The definition of "interstate pipeline facilities" in the HLPSA does not modify the term "used in transportation". Its ordinary meaning with respect to pipeline transportation is the actual utilization in effectuating movement, not necessarily at any given point in time, of a product through a pipeline. RSPA agrees with a point made by API that a particular pipeline facility does not change its character depending on the character of the shipment at a particular time. The HLPSA established a safety regulatory scheme for all pipeline transportation, allowing structured state regulation of some pipeline transportation through a partnership with the Federal program, but reserving *all* regulation of pipeline transportation in interstate or foreign commerce to the Federal government. The only apparent purpose of such a reservation is to

prevent disruption of the flow of interstate and foreign commerce which could be caused by differing state safety regulations and enforcement. This can only be accomplished if those facilities through which product destined for out-of-state delivery points flows are reserved to Federal regulation. To use the example noted before, under the Fire Marshal's reading, the differing state regulation of the facilities between Los Angeles and the last delivery point in the state must necessarily affect the interstate shipments over that same route. The possibility for disruption of the flow of interstate commerce in this example is clearly contrary to the apparent intent of the HLPSA.

As a general principle, the amount of interstate or foreign commerce is not relevant in determining whether Federal jurisdiction based on such commerce attaches. Instead, the relevant factors are whether there is any, if only a small amount of, interstate or foreign commerce involved and whether there is any need for Federal jurisdiction to attach. For example, in a safety scheme where there is desire to regulate broadly, even a small amount of interstate or foreign commerce might suffice for Federal jurisdiction to attach. In this case, the safety regulatory scheme is already much broader than that which would occur if only transportation in interstate or foreign commerce were involved. The need is not for Federal jurisdiction but rather for exclusive Federal jurisdiction; that is, to prevent the possibly disruptive effect of state regulation on the flow of interstate and foreign commerce. The Fire Marshal's reading of the statute is not consistent with this need.

Impact on Interstate or Foreign Commerce

Southern Pacific argues that "interstate oil pipelines are indivisible units with all parts and facilities built, operated, and maintained with a commonality of design and construction features integrated and controlled from a central command point" and that "any attempt to impose different safety standards, operating procedures, or inspection requirements to different parts of the system, solely because of geographic or economic considerations, will cause service disruptions and backups throughout such a system." In issuing the final rule, RSPA was aware that Southern Pacific operates parts of its system as units. However, RSPA believed that the possibility of service disruptions caused by differing state regulation of intrastate segments of those units is not great, that there are practicable means of avoiding any potential disruptions, and that the statutory requirement tha any additional state regulation be compatible with the Federal regulations provides ample protection. To assure complete information in this area, RSPA specifically solicited comments on the question of impacts on interstate commerce.

In support of its claim of potential service disruptions, Southern Pacific notes the current California state requirements for periodic hydrostatic testing and the provision which allows the Fire Marshal to require a "pressure test at any time in the interest of public safety." Southern Pacific schedules its deliveries through "computer-assisted scheduling programs" based upon tenders by shippers six or more weeks in advance. Both interstate and intrastate shipments orginate at the same point. Should the intrastate laterals for which the intrastate shipments are destined be out of service for state-required hydrostatic testing, Southern Pacific's terminal and breakout tankage is insufficient to hold the intrastate shipments. The result would be disruption of the interstate shipments.

In addition to Southern Pacific, three industry commenters and three state commenters addressed the issue. Tennessee Oil Company states:

> Those systems which are part of, by being connected to, larger and unquestionably interstate systems should not be subject to differing requirements or standards than those applicable to the connecting systems because any different safety or construction standards would almost inevitably affect the operation of the connecting systems. The effects of various requirements such as testing or reducing pressure could well be disruptions of service, as noted in Southern Pacific's Petition, as well as other general effects on operations.

Arco Transportation Company notes that "state jurisdiction to regulate lateral lines physically connected in interstate pipelines could be very disruptive to interstate commerce." Champlin Petroleum Company agrees with Southern Pacific that state regulation of connected lines "would indeed create service disruptions and backups throughout an entire system." None of these commenters provided more specific information.

The California Public Service Commission (California PSC), which has participated in the Federal/state gas pipeline program since it inception, notes that the California PSC has always exercised safety jurisdiction over lines not only connected to interstate transmission facilities but also arguably part of the same pipeline system. This has occurred because the NGPSA itself defines the area of exclusive Federal jurisdiction by reference to the interstate transmission facilities subject to FERC jurisdiction under the Natural Gas Act. Under the Natural Gas Act, interstate transmission pipeline companies may sell their gas to related companies at a state's border and thereby elect state rather than Federal regulation provided all of the gas is consumed within the state. The California PSC notes that there have been no problems with California's regulation of the interconnected facilities.

The Texas Railroad Commission (Texas RRC) which has participated in the Federal/state gas pipeline program since its beginning and is expected to participate in the liquid pipeline program, believes that any potential service disruptions caused by more stringent state safety standards are "best addressed by waiver of the requirement on a case-by-case basis." The Michigan Department of Transportation (Michigan DOT), which has participated in the Federal/state gas pipeline program since its beginning downplays the possibility of any potential problems because "most states would simply adopt the [Federal safety standards] without changes" except where there may be "good cause."

RSPA does not believe that there is any serious risk of service disruptions of interstate pipeline transportation because of additional or more stringent state safety regulation of intrastate pipeline facilities connected to the interstate facilities. The only specific potential problem noted by industry is the current California hydrostatic testing provisions noted by Southern Pacific. With proper scheduling of the periodic testing and the interstate shipments, there need be no disruption of interstate service.

As noted in the request for comments, Southern Pacific is not currently subject to California's periodic hydrostatic testing requirement because of waivers of the requirement by the Fire Marshal. Southern Pacific argues that consideration of the waivers is not relevant because there is no reason to expect that they will continue. On the contrary, RSPA sees no reason to expect that, should the conditions that gave rise to the waivers continue (presumably safe operating history, impacts on intrastate service, potential for increased intrastate rates), existing waivers will be withdrawn. RSPA believes that state officials exercise their duties with respect to waiver decisions and with respect to

rulemaking in general in a responsible manner balancing safety and economic factors. Comments of the Texas RRC, the Michigan DOT, and agency experience support this. However, the existence of waivers is of minimum importance since, as noted perviously, periodic hydrostatic testing of connected intrastate faciltiies need not disrupt the interstate service.

Southern Pacific also objects to the California provision by which the Fire Marshal may order hydrostatic testing "in the interest of public safety." Although under this provision, the operator does not have the same control over scheduling as with periodic testing, the provision is not an additional safety standard, but rather an enforcement tool. Although Southern Pacific argues that this provision is unlike any federal requirement, RSPA can, in fact, order hydrostatic testing pursuant to section 207(b) or 209(b) of the HLPSA. The California provision, while not as broad as the Federal enforcement tools of sections 207(b) and 209(b), is subject to the requirements of due process. Those requirements should protect Southern Pacific from unnecessary disruptions of service through unreasonable use of the tool and will ensure that, should this tool ever be needed, Southern Pacific will receive sufficient notice to prevent major disruption of the interstate shipments.

As noted by the California PSC, and by the Maryland Public Service Commission, there is long experience with Federal and state regulation of connected gas pipeline facilities. Although RSPA knows that some of the states have additional or more stringent requirements applicable to the intrastate gas pipeline facilities, RSPA is unaware of any serious service disruptions or other impacts on the connected interstate facilities because of state regulation. Because most of the additional state gas pipeline safety standards address problems of gas distribution, for which there is no precise hazardous liquid counterpart, RSPA agrees with the Michigan DOT that, absent some special local concern, most states participating in the Federal/state partnership for hazardous liquid pipelines will simply adopt the Federal standards. Currently, of the seven states which are expected to participate by the end of 1985, only California has adopted additional and more stringent standards.

RSPA is unware of, and neither Southern Pacific nor other industry commenters have convincingly demonstrated, any potential for major disruptions of interstate pipelines service through state regulation of connected intrastate pipeline facilities. Given the experience with gas pipeline and the assumption that state officials will act rationally in rulemaking, RSPA does not believe that the risk of major disruptions of interstate service is great. Furthermore, the preemptive language of the HLPSA and the constitutional limitations on state action prohibit the states from impeding interstate commerce and allows only "compatible" additional regulation of the intrastate facilities. Despite the drawbacks of purely judicial remedies, those remedies provide adequate safeguards for the possible small risk of service disruptions remaining.

Clarity of Definitions

Southern Pacific, the Fire Marshal, and many of the commenters complain that the definitions of the final rule, as interpreted by RSPA, cause confusion. This claim of confusion by both petitioners merely highlights the fact that neither is completely satisfied with the delineation of Federal/state jurisdiction which results from the definitions. Neither petitioner and none of the commenters described any situation in which confusion over the meaning of the definitions would result in dual jurisdiction or no jurisdiction. Consequently, RSPA believes that the definitions are sufficiently clear and will do everything necessary to assure that each state which participates in the program is aware of RSPA's position as to what constitutes intrastate pipeline facilities subject to that state's regulation. There will be no dual jurisdiction. As noted in the preamble to the final rule, if necessary in the future, Appendix A will be modified to assure this.

Southern Pacific argues the new definition creates "confusion and controversy in an area where heretofore none existed" and that the previous "definition" was "clear-cut and unambiguous." The Fire Marshal applauds RSPA for dropping the previous specific reference to FERC jurisdiction that Southern Pacific found "clear-cut and unambiguous," but decries the continued use of FERC tariff filings as guidelines.

On September 30, 1983, the State of California, in anticipation of the establishment of the Federal/state hazardous liquid pipeline safety program, amended its existing authority to regulate intrastate hazardous liquid pipeline transportation, the California Pipeline Safety Act of 1981. The amendment added enforcement authority required for certification of a state program by the HLPSA, set periodic hydrostatic testing requirements, and established a user fee based on the costs of the Fire Marshal in carrying out the program to be assessed against intrastate operators. Under the HLPSA, states may enforce their own existing legislation without limitation until Federal standards with respect to intrastate pipeline transportation are established by RSPA. At that time, states with programs which conform to the requirements of the HLPSA may so certify and continue their programs without interruption.

Soon after the Fire Marshal began enforcement under the amended law, RSPA became aware of questions concerning the meaning of the "subject to FERC jurisdiction" language found in Part 195 and, subsequent to publication of the proposed rule, of disputes concerning the statutory definitions. During this period the Fire Marshal's office interpreted the statutory definitions of interstate and intrastate in a manner similar to that proposed in its current petition for reconsideration. Southern Pacific took the approach that all of the pipeline facilities owned by it and listed on its Annual Valuation Report filed with FERC were interstate. One of the Southern Pacific's lines, from Bakersfield to Fresno, California, is located entirely within the state, and does not connect with any other pipeline facilities. Because the line is not used in interstate commerce, there is no FERC tariff for shipments on the line. In its comments on the proposed rule, Southern Pacific objected to dropping a specific reference to FERC and proposed that all pipeline facilities listed as carrier property on Annual Valuation Reports filed with FERC be considered interstate pipeline facilities. This approach would define an interstate an isolated pipeline contained entirely within a state but owned by an interstate carrier (such as Southern Pacific's line between Bakersfield and Fresno).

Southern Pacific's disagreement with the definitions has its origins in the shift in the jurisdictional emphasis in 1979 from the character of the carrier under the old criminal legislation, the TOEA, to the character of the pipeline facilities under the HLPSA. The "facilities subject to FERC jurisdiction" language which RSPA adopted in 1981 was a stopgap measure chosen to allow the republication, without notice and comment of the regulations issued under the TOEA to reflect the terminology changes of the HLPSA. Jurisdiction under this language approximated the actual area of exclusive Federal jurisdiction under the HLPSA. However, despite Southern Pacific's assertion that

the language was unambiguous, both RSPA and the Fire Marshal have read it differently.

The Fire Marshal's disagreement arises from a basic misunderstanding of "use" in interstate or foreign commerce, as discussed above. The Fire Marshal's proposal for new definitions, requiring primary use in interstate or foreign commerce in order for exclusive Federal jurisdiction to attach, would, in RSPA's opinion, create more confusion. For example, assuming that time rather than volume were established as the proper measure of use, it is uncertain whether a line used one day for interstate shipments and the next for intrastate would be labeled interstate under such an approach. On the other hand, if the use were measured by volume, would shipments over one day, one month, or one year determine jurisdiction?

Use of FERC Tariffs.

Appendix A to the final rule indicates the RSPA will continue to look at tariffs filed with FERC as evidence that particular pipeline facilities are used in interstate or foreign commerce and, hence, constitute interstate pipeline facilities within the meaning of the HLPSA and the final rule. Appendix A also provides examples of those instances where the tariff filings may not be relied upon since the results of such reliance would be inconsistent with the HLPSA. Both Southern Pacific and the Fire Marshal object to this approach for different reasons.

Southern Pacific argues that reliance on economic tariffs will result in "misleading and inaccurate conclusions inasmuch as many of the transportation movements on interstate pipeline systems which are covered by intrastate tariffs begin on clearly interstate pipeline segments and continue on interstate trunk pipelines before branching off onto lateral or feeder pipelines which may have intrastate characteristics." Southern Pacific's argument would be correct if RSPA believed that pipeline systems owned by a carrier were individual units for purposes of regulation under the HLPSA, a position already rejected, or if RSPA were planning on examining the intrastate tariffs filed with state economic regulatory bodies as evidence of use of the facilities for intrastate pipeline transportation. However, under RSPA's approach, the existence of intrastate tariffs, indicating use of the facilities for intrastate transportation, is irrelevant. RSPA recognizes that many facilities used for interstate shipments are also used for intrastate shipments which may originate and terminate entirely on the interstate facilities or which may originate on the interstate facilities but terminate on those which are not used for interstate transportation.

The Fire Marshal objects to any use of FERC tariffs, arguing that FERC does not routinely scrutinize tariffs for jurisdictional deficiencies. Comments of the NAPSR and a few state agencies note the same objection. The Fire Marshal fears that the result may be election by operators of Federal rather than state jurisdiction by improper filing with FERC of tariffs. RSPA recognizes the possibility of such an occurrence, but does not believe that it presents any serious problem. In the first place, such an occurrence assumes that operators will file tariffs improperly, an assumption which RSPA is unwilling to make. Furthermore, FERC procedures provides a mechanism by which anyone, including a state, can challenge a filing. In Appendix A, RSPA has already attempted to address the more obvious exceptions to the tariff filings. Finally, the approach of looking at the tariff filings in a policy which may be modified if it proves unworkable because of improper filings. As noted by the Fire Marshal, economic deregulation may force modification of the policy. The policy of Appendix A uses as far as possible, an existing Federal economic regulatory scheme to aid in making jurisdictional decisions thus avoiding the creation of a distinct new regulatory scheme. Use of the FERC tariff filings produces results that approximate those obtained by a case-by-case determination of jurisdiction under the HLPSA.

Determining Compatibility of Additional State Regulations

Southern Pacific objects to the final rule because "in promoting the establishment of dual federal and state regulatory systems, [RSPA] fails to identify the standards and procedures by which it can be determined whether a state safety standard is 'compatible' with federal safety standards as required by law." RSPA has been "promoting" the Federal/state partnership in hazardous liquid pipeline safety since 1979 when the HLPSA established the program. RSPA has "promoted" the equivalent program for gas pipelines since 1968. RSPA believes that Southern Pacific is the first to suggest that RSPA should establish some sort of procedure for reviewing state regulation of intrastate pipeline facilities and presumably making some informal determinations of "compatibility."

RSPA does not reject the idea of establishing some procedure for reviewing state regulations, but believes it beyond the scope of this rulemaking and neither required nor clearly intended by the HLPSA. The HLPSA leaves questions of preemption of the state regulations up to the courts and does not clearly indicate that any agency involvement in those decisions is required. If Congress had intended otherwise, it could have written statutory language comparable to that in the Hazardous Materials Transportation Act. (49 U.S.C. 1811). That statute requires RSPA, upon application by a state agency, to waive the preemptive effect of the Federal regulations upon "inconsistent" state regulations. Because of the clear Congressional intent for agency involvement, RSPA has established an administrative procedure for determining whether, in the opinion of the agency, a state regulation is "inconsistent." Obviously, RSPA could establish such a precedure in the area of state regulation of pipeline safety on its own, but has so far believed it unnecessary. Furthermore, there is nothing to prevent a company from soliciting RSPA's opinion or to prevent RSPA, on its own motion, to proffer its opinion on a particular state requirement. In any case, the requirement of compatibility with Federal requirements is not as stringent a test as the consistency test of the Hazardous Materials Transportation Act.

Compliance With Notice and Comment Requirements

Neither Southern Pacific nor the Fire Marshal have argued that Appendix A required notice and comment. However, Southern Pacific indicates that "perhaps [Appendix A] should have been [subjected to notice and comment] because it is integral to an understanding of . . . the terms 'interstate pipeline' and 'intrastate pipeline'." RSPA disagrees that Appendix A is integral to an understanding of the definitions. Those definitions stand on their own and define the terms consistent with the statutory language. Distribution of the policy and interpretation enunciated in Appendix A could easily hae been limited to Federal and state field personnel to provide them with necessary guidance to prevent duplication of enforcement effort with only brief discussion in the rulemaking preambles. There were, in fact, discussions of jurisdiction under the HLPSA found in the preambles to the 1981 republication of regulations under the HLPSA (46 FR 38359) and the proposed rule (49 FR 11227). However,

RSPA believed that a more complete and public enunciation of its policy and interpretation would be more efficient and fairer to its state partners and the regulated industry. Because the policy of examining FERC tariffs was recognized by RSPA as imperfect, when it published Appendix A, RSPA solicited comments to be considered in possible future revisions of the appendix and that policy. None of the comments thus far received indicate a need to modify the policy prior to experience in implementing it.

In commenting on Southern Pacific's petition, the API argues that the addition of the words "or that part of a pipeline" to the definition of "interstate pipeline" constitutes a substantial change from the proposed definition. RSPA disagrees. In the preamble to the proposed rule, RSPA stated its intention of making the definitions as consistent as possible with those in the HLPSA. The HLPSA consistently uses the term "facilities" rather than "pipeline." RSPA regulations, however, have always used the term "pipeline" as denoting those facilities which actually carry hazardous liquid. Thus, defining "interstate pipeline facilities" as done in the HLPSA, rather than "interstate pipeline," would have been unwieldy in the context of Part 195. While the proposed wording for the definition of "interstate pipeline" was acceptable, RSPA felt that not adding the additional words "or that part of a pipeline" would have inadvertently changed the intent of §§ 195.1 (b)(2) and (b)(3). Those subsections exempt from regulation certain "pipelines" that create less safety risk because they are operated at lower pressures. Those exemptions, which predated the HLPSA and its terminology, have been read narrowly as exempting only those pipeline facilities where there is no risk of overpressuring from connected lines normally operated at higher pressures.

Action of Petitions

The petitions for reconsideration filed by the Southern Pacific and the Fire Marshal are hereby denied. Neither petitioner has requested and RSPA sees no need for any postponement of the effective date. Accordingly, the final rule issued April 19, 1985 will become effective on October 21, 1985 as originally scheduled. Appendix A remains as a statement of the agency's interpretation and a guide to its jurisdictional decisions.

Issued in Washington, D.C. on September 20, 1985.

M. Cynthia Douglass,

Acting Director, Materials Transportation Bureau.

[FR Doc. 85-22998 Filed 9-25-85; 8:45 am]

BILLING CODE 4910-60-M

UNITED STATES RAILWAY ASSOCIATION

49 CFR Parts 901, 903, 905, 921, 922, 931, 932, and 941

Nomenclature Changes and Miscellaneous Amendments

AGENCY: United States Railway Association.

ACTION: Final rule.

SUMMARY: The U.S. Railway Association is making nomenclature changes and deleting obsolete provisions to update the regulations in its chapter of the CFR.

EFFECTIVE DATE: September 30, 1985.

ADDRESS: United States Railway Association, 955 L'Enfant Plaza North SW., Washington, DC 20595.

FOR FURTHER INFORMATION CONTACT: Mr. Peter J. Gallagher, General Counsel—Corporate, United States Railway Association, 955 L'Enfant Plaza North SW., Washington, DC 20595, (202) 488-8777.

49 CFR Chapter IX is amended as follows:

1. Part 901 is revised to read as follows:

PART 901—ORGANIZATION, RULEMAKING, AND PUBLIC INFORMATION

Sec.

901.1 Purpose.
901.2 Status and organization of the Association.
901.3 Rulemaking procedures.
901.4 Public availability of information.

Authority: Regional Rail Reorganization Act of 1973 (Pub. L. 93-236, 87 Stat. 985; Pub. L. 93-502, 88 Stat. 1561).

§ 901.1 Purpose.

This part describes the organization of the Association, and its procedures for providing public access to information.

§ 901.2 Status and organization of the Association.

(a) The U.S. Railway Association is an incorporated non-profit association established by the Regional Rail Reorganization Act of 1973 (Pub. L. 93-236; 87 Stat. 985; 45 U.S.C. 701, *et seq.*,). To the extent not inconsistent with that Act, it is subject to the District of Columbia Non-profit Corporation Act (D.C. Code 29-10001, *et seq.*) and its status is that of a government corporation of the District of Columbia.

(b) The Association is organized as follows:

(1) The Board of Directors directs and manages the affairs of the Association.

(2) The Chairman presides over the Board of Directors, and is the chief executive officer, he is assisted by the Secretary, who performs corporate secretary functions and provides direct staff support to the Chairman.

(3) The Executive Vice President is the chief operating officer.

(4) The General Counsel is the chief legal officer.

§ 901.3 Rulemaking procedures.

The Association is not subject to the rule-making procedural requirements of section 553 of title 5, U.S.C. The Association will, nevertheless, as it considers appropriate, publish notices of proposed rule-making in the **Federal Register**; invite and consider comments and requests for extension of time; and keep public dockets. It will also publish its procedural rules, substantive rules, general policies, and general interpretations in the **Federal Register**. When a notice of proposed rule-making is issued, the specific applicable procedures will be described in the notice.

§ 901.4 Public availability of information.

(a) Subject to appeal to the Executive Vice President as provided in this section, the Office of Public Affairs is responsible for administering this section.

(b) No such request for inspection or a copy of a document shall be denied except upon the written decision of the Vice President for Public and Governmental Affairs that:

(1) The request may properly be denied under the Freedom of Information Act; and

(2) Another law, private rights, or the public interest clearly requires the denial.

Each denial decision will set forth the reasons therefor and describes the appeal from that decision that is available to the requester.

(c) A decision denying access to a document may be appealed to the President by filing with his office a written notice of appeal, within 30 days after the date of the denial under paragraph (d) of this section, specifying the relevant facts and the basis for the appeal. If the President denies the appeal, the denial shall set forth the reasons therefor and describe the rights

of judicial appeal available to the requester.

(d) Requested documents shall be made available, or a written decision denying the request furnished, within 10 working days after the date the request is received. An appeal to the President shall be decided within 20 working days after the date the notice of appeal is filed. The time may be extended in unusual cases but for not more than a total of 10 working days. Saturdays, Sundays and Federal Holidays are not considered to be working days.

(e) The fee for photocopies of documents ordered from the Association shall be $0.25 for the first page and $.05 for each additional page for each document. The fee for copies of material requiring other methods of reproduction is the cost of reproduction and handling. The fee for routine searches for documents is $2. The fee for searches requiring longer than 30 minutes and for other non-routine services is the actual cost. Fees are payable only in cash or by check or money order payable to the U.S. Railway Association. Fees may be waived or reduced at the discretion of the Office of Public Affairs, if it considers it to be in the public interest because furnishing the information will benefit the general public.

2. The Authority citation for Part 903 continues to read as follows:

Authority: Subsec. (g), Government in the Sunshine Act (5 U.S.C. 552b(g); subsec. 202(a)(4), Regional Rail Reorganizaion Act of 1973, as amended (45 U.S.C. 712(a)(4)).

PART 903—[AMENDED]

3. Section 903.11 is revised to read as follows:

§ 903.11 Providing information to the public.

(a) Information available to the public in accordance with this part will be posted in the Office of Public Affairs, Suite 7200, 955 L'Enfant Plaza North, SW., Washington, DC 20595. Such information may also be made available through a list maintained for members of the public desiring to receive such information.

(b) A person or organization may obtain copies of information from the Office of Public Affairs, Suite 7200, 955 L'Enfant Plaza North SW., Washington, DC 20595.

§ 903.16 [Amended]

4. Section 903.16(c) is amended by revising "Room 2212, 2100 2nd Street, SW.," to read "Suite 7200 955 L'Enfant Plaza North SW.

PART 932—[AMENDED]

5. The Authority citation for Part 932 continues to read as follows:

Authority: Pub. L. 93–579; 88 Stat. 1896; 5 U.S.C. 552a.

§ 932.5 [Amended]

6. Section 932.5 is amended by revising the address to read as follows: "U.S. Railway Association, Suite 7200, 955 L'Enfant Plaza North, SW, Washington, DC 20595."

§ 932.10 [Amended]

7. Section 932.10 is amended by revising "USRA Privacy Act Coordinator, Vice President of Administration, 2100 Second Street," to read, "U.S. Railway Association Suite 7200, 955 L'Enfant Plaza North, SW; Washington, DC 20595."

PART 905, 921, 922, 931 AND 941—[REMOVED]

8. Parts 905, 921, 922, 931 and 941 are removed.

Dated: September 20, 1985.

Peter J. Gallagher,

Secretary to the Board of Directors.

[FR Doc. 85–23081 Filed 9–25–85; 8:45 am]

BILLING CODE 0000-00-M

Proposed Rules

Federal Register
Vol. 50, No. 187
Thursday, September 26, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1106 and 1102

[Docket Nos. AO-210-A45 and AO-237-A34]

Milk in the Southwest Plains and Fort Smith, Arkansas, Marketing Areas; Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of Public hearing on proposed rulemaking.

SUMMARY: The hearing is being held to consider proposals by Mid-America Dairymen, Inc. (Mid-Am). The major proposals would expand the Southwest Plains marketing area to include 19 counties in southwest Missouri and 11 counties in northwest Arkansas and terminate the Fort Smith, Arkansas, order. The Arkansas territory includes portions of three counties that comprise the Fort Smith, Arkansas, marketing area. Thus, the proposals would effectuate a merger of marketing areas under one order as well as an expansion of the Southwest Plains marketing area to currently unregulated territory.

Mid-Am has proposed that the expanded area be included in three pricing zones that would maintain price levels currently existing in such areas under the Southwest Plains order. Mid-Am has also proposed a lowering of the delivery standards for regulating plants operated by cooperative associations. Except for these proposed amendments, the current Southwest Plains order provisions would apply to the merged and expanded marketing area. Mid-Am contends that its proposed changes are necessary to reflect changes in marketing conditions as a result of structural changes that occurred because of the termination of the adjacent St. Louis-Ozarks order.

DATE: The hearing will convene at 9:30 a.m., local time, on November 6, 1985.

ADDRESS: The hearing will be held at the Tulsa Marriott, 10918 East 41st Street, Tulsa, Oklahoma 74146.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Tulsa Marriott, 10918 East 41st Street, Tulsa, Oklahoma 74146, beginning at 9:30 a.m., local time, on November 6, 1985, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Southwest Plains and Fort Smith, Arkansas, marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions in each of the aforesaid specified marketing areas which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

The proposal relative to the redefinition of the Southwest Plains marketing area, by a combination of the current marketing areas of the Southwest Plains and Fort Smith, Arkansas, orders and expansion to include additional territory, raises the issue of whether the provisions of the present Southwest Plains order, as well as proposed amendments to such order, would tend to effectuate the declared policy of the Act if applied to the proposed merged and expanded marketing area and, if not, what modifications of such provisions of the Southwest Plains order would be appropriate. The issue of consolidation of the marketing areas also raises the issue of the appropriate disposition of the producer-settlement fund, marketing service funds and administrative funds accumulated under the Southwest Plains and Fort Smith, Arkansas, orders.

Actions under the Federal Milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96-354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational; impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Parts 1106 and 1102

Milk marketing orders, Milk, Dairy products.

The authority citation for parts 1106 and 1102 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Mid-America Dairymen, Inc.

Proposal No. 1

Revise § 1106.2 by adding the following:

§ 1106.2 Southwest Plains marketing area.

* * * * *

Zone VII—In the State of Missouri

Barry	McDonald
Cedar	Ozark
Christian	Polk
Dade	Pulaski
Dallas	Stone
Douglas	Taney
Greene	Texas
Howell	Webster
Laclede	Wright
Lawrence	

Zone VIII—In the State Arkansas

[illegible]	Madison
Boone	Marion
Carroll	Washington

Zone IX—In the State of Arkansas

Crawford	Scott
Franklin	Sebastian
Logan	

Proposal No. 2

Revise § 1106.7(c) to read as follows:

§ 1106.7 Pool Plant.

* * * * *

(c) Any plant located in the marketing area or in a county adjacent to the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested by the cooperative association and 45 percent or more of the producer milk of members of the cooperative association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received during the month or the 12-month period immediately preceding the current month, in the form of bulk fluid milk products at plants specified in paragraph (a) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

* * * * *

Proposal No. 3

In § 1106.52 revise the table of location adjustments in (a)(1) by adding the following and revise (a)(3)(iii) and (a)(8) to read as follows:

§ 1106.52 Plant location adjustments for handlers.

(a) * * *

(1) * * *

	Adjustment per hundredweight (cents)
Zone VII	Minus 38.
Zone VIII	Minus 21.
Zone IX	Minus 3.

(2) * * *

(3) * * *

(iii) *Minus 38 cents.* Butler, Carter, Crawford, Dent, Dunklin, Franklin, Gasconade, Iron, Jefferson, Madison, Maries, Mississippi, New Madrid, Oregon, Pemiscot, Phelps, Reynolds, Ripley, St. Charles, St. Louis, City of St. Louis, Scott, Shannon, Stoddard, Warren, Washington, and Wayne.

(4) * * *

(5) * * *

(6) * * *

(7) * * *

(8) For a plant located in any of the following Arkansas counties the adjustment shall be as follows:

(i) *Plus 25 cents.* Little River and Miller.

(ii) *No adjustment.* Any Arkansas county that is not in the marketing area or specified in paragraph (a)(8)(i) of this section.

* * * * *

Proposal No. 4

Terminate the Fort Smith, Arkansas, order (7 CFR Part 1102).

Proposed by the Dairy Division, Agricultural Marketing Service

Proposal No. 5

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be obtained from the Market Administrator, Richard E. Arnold, P.O. Box 470563, Tulsa, Oklahoma 74147, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington Office Only)
Office of the Market Administrator, Southwest Plains and Fort Smith, Arkansas, Marketing Areas.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on: September 20, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-23027 Filed 9-25-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-233-81]

Income Tax; Election To Expense Certain Depreciable Business Assets

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the election to expense certain depreciable business assets. Changes to the applicable tax law were made by the Economic Recovery Tax Act of 1981, the Subchapter S Revision Act of 1982, the Technical Corrections Act of 1982, and the Tax Reform Act of 1984 (Division A of the Deficit Reduction Act of 1984). The regulations would provide the public with the guidance needed when making an election to expense certain depreciable business assets.

DATES: Written comments and requests for a public hearing must be delivered or mailed by November 25, 1985. Generally, the amendments are proposed to be effective for property placed in service after December 31, 1980, in taxable years ending after such date. The amendments made by the Subchapter S Revision Act of 1982 are proposed to be effective for taxable years beginning after December 31, 1982.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-233-81), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: John Broadbent of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC 20224, Attention: CC:LR:T, (202) 566-3287, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 179, 263, 1033, and 1245 of the Internal Revenue Code of 1954 (Code). These amendments are proposed to

reflect the amendments made by sections 202(a) and 209 of the Economic Recovery Tax Act of 1981 (Pub. L. 97–34, 95 Stat. 219, 226), section 3(f) of the Subchapter S Revision Act of 1982 (Pub. L. 97–354, 96 Stat. 1669), section 102(aa) of the Technical Corrections Act of 1982 (Pub. L. 97–448, 96 Stat. 2369), and section 13 of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 505) and are to be issued under the authority of Code sections 179 (c), (d)(10) and 7805 (95 Stat. 219, 96 Stat. 2369, 68A Stat. 917; 26 U.S.C. 179(c), 179(d)(10), 7805).

In General

Section 179, as amended by the Economic Recovery Tax Act of 1981, provides taxpayers (other than trusts, estates, and certain noncorporate lessors) with the opportunity to elect to expense the cost or portion of the cost of certain depreciable business assets rather than capitalizing the entire cost. A section 179 expense election may be made for the taxable year in which the section 179 property is placed in service. The terms "section 179 property" and "placed in service" are defined in proposed §§ 1.179–3 (a) and (f).

Dollar Limitation

Proposed § 1.179–2(a) provides rules relating to the maximum amount a taxpayer may elect to expense. Proposed § 1.179–1(c) allows a taxpayer to claim the maximum amount allowed by § 1.179–2(a) for any taxable year, without proration based on the period of time the section 179 property has been in service during the taxable year. Proposed § 1.179–2(e)(2) provides rules for where spouses file separate returns and then subsequently file a joint return. Under proposed § 1.179–2(f), the maximum amount a married taxpayer filing a separate return may elect to expense is 50 percent of the amount determined under proposed § 1.179–2(a).

Controlled Groups

Rules for allocating the dollar limitation among component members of a controlled group of corporations are set forth in proposed § 1.179–2(b). Component members are treated as one taxpayer in applying the dollar limitation. The dollar amount may be allocated to the members of the group by the common parent corporation if a consolidated return is filed; if separate returns are filed, the amount is to be allocated in accordance with an agreement made by the members. The definition of the term "controlled group of corporations" in section 1563(a) applies for purposes of section 179 by substituting "more than 50 percent" for the phrase "at least 80 percent" wherever it appears in section 1563(a)(1).

Partnership and S Corporations

Proposed § 1.179–2(c) provides that the dollar limitation of section 179(b) applies to both the partnership and each individual partner. Under proposed § 1.179–2(c)(2), a partner's share of the partnership's section 179 expense is to be determined in accordance with section 704 and the regulations thereunder. Proposed § 1.179–2(d) provides that similar rules apply to S corporations and their shareholders.

Adjustments to Basis

Proposed §§ 1.179–1 (f) and (g) provide that if a taxpayer elects section 179, the taxpayer must adjust the basis of the section 179 property prior to computing the deduction under section 168 or the investment credit under section 38. However, no such basis reduction is made for a section 179 expense deduction that is allocable by a partnership or S corporation to a partner or shareholder that is a trust or estate.

Changes in use; recaputre

Section 179(d)(10) provides for recapture of any tax benefits derived from expensing under section 179 where, at any time prior to the close of the second taxable year following the taxable year in which the property is placed in service (recapture period), the property is not used predominantly in the taxpayer's trade or business. Proposed § 1.179–1(e)(1) provides that the amount recaptured is equal to the excess of the amount expensed under section 179 over the total amount that would have been allowable for prior taxable years and the taxable year of recapture as a deduction under section 168 (had section 179 not been elected) for the portion of the cost of the property to which the expensing relates. The amount recaptured shall be treated as ordinary income for the taxable year in which the property is no longer used predominantly in the taxpayer's trade or business. Proposed § 1.179–1(e)(2) provides that property will be treated as not predominantly used in the taxpayer's trade or business if 50 percent or more of the use of such property during any taxable year within the recapture period is for a use other than in the taxpayer's trade or business. In addition, if, during any taxable year of the recapture period, the taxpayer disposes of the property (other than in a disposition to which section 1245(a) applies) or ceases to use the property in a trade or business in a manner that had the taxpayer claimed a credit under section 38 for such property such disposition or cessation in use would cause recapture under section 47, the property will be treated as not used predominantly in a trade or business of the taxpayer. However, for purposes of applying the recapture rules of section 47 pursuant to the preceding sentence, converting the use of the property from use in a trade or business to use in the production of income will be treated as a conversion to personal use.

Section 280F

Section 280F places limitations on the amount that may be expensed with respect to certain items of section 179 property. In addition, proposed § 1.179–1(e)(1) provides that if the recapture rules of both section 280F(b)(3) and § 1.179–1(e)(1) apply to an item of section 179 property, the amount of recapture shall be determined only under the rules of section 280F(b)(3) with respect to such property.

Election

Proposed § 1.179–4(a) provides rules relating to the time and manner of making a section 179 election. In addition, the regulations provide that the amount of the expense elected and the properties chosen must be specified on the taxpayer's tax return. Proposed § 1.179–4(b) provides rules relating to the revocation of the election under section 179 and to the changing of property selected for the section 179 expense.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of a proposed rulemaking that solicits pubic comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written

request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Drafting Information

The principal author of these proposed regulations is Neil W. Zyskind of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects

26 CFR 1.61–1—1.281–4

Income taxes, Taxable income, Deductions.

26 CFR 1.1001–1—1.1102–3

Income taxes, Gain and loss, Basis, Nontaxable exchanges.

26 CFR 1.1201–1.1252–2

Income taxes, Capital gains and losses, Recapture.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Section 1.179–1 also issued under 26 U.S.C. 179(d). Section 1.179–4 also issued under 26 U.S.C. 179(c). * * *

Par. 2. Sections 1.179–1 through 1.179–4 are revised to read as set forth below.

§ 1.179–1 Election to expense certain depreciable assets.

(a) *In general.* Section 179 allows a taxpayer to elect to expense the cost (as defined in § 1.179–3(e)), or portion of the cost, of section 179 property (as defined in § 1.179–3(a)) for the taxable year in which the property is placed in service (as defined in § 1.179–3(f)). The election is not available for trusts, estates, and certain noncorporate lessors. See paragraph (i)(2) of this section relating to noncorporate lessors.

(b) *Amount subject to expense.* The expense deduction under section 179 is allowed for the entire cost or a portion of the cost of one item of section 179 property, or the entire cost or a portion of the cost of several items of section 179 property, subject to the dollar limitation of section 179(b) and § 1.179–2. The properties and apportionment of cost to be subject to the election shall be selected by the taxpayer.

(c) *Proration not required.* The expense deduction under section 179 is determined without any proration based on the period of time the section 179 property has been in service during the taxable year. For example, a taxpayer, a corporation which files its income tax returns on the calendar year basis, purchases and places in service on December 1, 1983, section 179 property costing $10,000. The corporation may elect to claim a section 179 expense deduction for the taxable year ending December 31, 1983, for the cost of the property (up to the $5,000 limitation imposed under section 179(b)(1)) without proration for the number of days in 1983 during which the property was in service.

(d) *Partial business use.* If a taxpayer uses section 179 property for both trade or business and non-trade or business purposes, the portion of the cost of the property attributable to the trade or business use is eligible for expensing under section 179, provided that more than 50 percent of the property's use in the taxable year the property is placed in service is for trade or business purposes. The dollar limitation of section 179(b) is then applied to the portion of the cost attributable to the trade or business use. For example, a taxpayer in 1983 purchases section 179 property costing $10,000 for whch 80 percent of its use will be in the taxpayer's trade or business. The cost of the property, adjusted to reflect the business use of the property, is $8,000 (80 percent × $10,000). Thus, the taxpayer could elect to expense up to $5,000 of the cost of the property (see section 179(b)). However, for property placed in service after June 18, 1984, in taxable years ending after such date, see section 280F(d)(1) relating to the coordination of section 179 with the limitation on the amount of depreciation and investment tax credit for luxury automobiles and where certain property is used for personal purposes. Futhermore, see paragraphs (e)(1) through (3) of this section relating to recapture where the property is no longer predominantly used in the taxpayer's trade or business.

(e) *Change in use; recapture*—(1) *In general.* If a taxpayer's section 179 property is not used predominantly in a trade or business of the taxpayer at any time before the close of the second taxable year following the taxable year in which the property is placed in service by the taxpayer (recapture period), the taxpayer must recapture in the taxable year in which the section 179 property is not used predominantly in a trade or business any benefit derived from expensing such property. The benefit derived from expensing the property is equal to the excess of the amount expensed under this section over the total amount that would have been allowable for prior taxable years and the taxable year of recapture as a deduction under section 168 (had section 179 not been elected) for the portion of the cost of the property to which the expensing relates (regardless of whether such excess reduced the taxapayer's tax liability). For purposes of the preceding sentence, in the case of an individual who does not elect to itemize deductions under section 63(g) in the taxable year of recapture, the amount allowable as a deduction under section 168 in the taxable year of recapture shall be determined by treating property used in the production of income other than rents or royalties as being property used for personal purposes. The amount to be recaptured shall be treated as ordinary income for the taxable year in which the property is no longer used predominantly in a trade or business of the taxpayer. For taxable years following the year of recapture, the taxpayer's deductions under sectiom 168(a) shall be determined as if no section 179 election with respect to the property had been made. However, for property placed in service after June 18, 1984, in taxable years ending after such date, see section 280F(d)(1) relating to the coordination of section 179 with the limitation on the amount of depreciation and investment tax credit for luxury automobiles and where certain property is used for personal purposes. If the recapture rules of both section 280F(b)(3) and this paragraph (e)(1) apply to an item of section 179 property, the amount of recapture shall be determined only under the rules of section 280F(b)(3) with respect to such property.

(2) *Predominant use.* Property will be treated as not used predominantly in a

trade or business of the taxpayer if 50 percent or more of the use of such property during any taxable year within the recapture period is for a use other than in a trade or business of the taxpayer. If during any taxable year of the recapture period the taxpayer disposes of the property (other than in a disposition to which section 1245(a) applies) or ceases to use the property in a trade or business in a manner that had the taxpayer claimed a credit under section 38 for such property such disposition or cessation in use would cause recapture under section 47, the property will be treated as not used in a trade or business of the taxpayer. However, for purposes of applying the recapture rules of section 47 pursuant to the preceding sentence, converting the use of the property from use in a trade or business to use in the property from use in a trade or business to use in the production of income will be treated as a conversion to personal use.

(3) *Basis; application with section 1245.* The basis of property with respect to which there is recapture under paragraph (e)(1) of this section shall be increased immediately before the event resulting in such recapture by the amount recaptured. If section 1245(a) applies to a disposition of property, there is no recapture under paragraph (e)(1) of this section.

(4) *Examples.* Paragraphs (e) (1) through (3) of this section are illustrated by the following examples:

Example (1). A, an individual who is a calendar year taxpayer, purchases and places in service on January 1, 1983, section 179 property, which is also 3-year recovery property under section 168, costing $10,000. A elects to expense $5,000 of the cost (see section 179(b)(1)) and makes no election under section 168(b)(3). On January 1, 1984, A converts the property from use in A's business to use for the production of income, and A uses the property in the latter capacity for the entire year. A elects to itemize deductions for 1984. Since the property was not predominantly used in a trade or business of A in 1984, which was the first taxable year following the taxable year the property was placed in service, A must recapture any benefit derived from expensing the property under section 179. Had A not elected to expense the $5,000 in 1983, A would have been entitled to deduct, under section 168 (a) and (b), 25 percent of the $5,000 in 1983, and 38 percent of the $5,000 in 1984. Therefore, A must include in ordinary income for the 1984 taxable year, the excess of $5,000 (the section 179 expense amount) over $3,150 (63 percent of $5,000), or $1,850. For purposes of computing the deduction under section 168 in 1985, the unadjusted basis of the property would be increased by $5,000.

Example (2). Assume the facts are the same as in example (1), except that during 1984 A uses the property 40 percent for trade or business purposes and 60 percent for personal use. Had A not elected to expense the $5,000 in 1983, A would have been entitled to deduct, under section 168(a), 25 percent of the $5,000 in 1983 and 15.2 percent (40 percent of 38 percent) of the $5,000 in 1984. See section 168(d)(1) and the regulations thereunder. Therefore, A must include in ordinary income for the 1984 taxable year the excess of $5,000 over $2,010 (40.2 percent of $5,000), or $2,990. If A uses the property solely in A's trade or business during 1985, A may deduct 37 percent of $5,000 in 1985 under section 168 (a).

(f) *Basis*—(1) *In general.* A taxpayer who elects to expense under section 179 must reduce the unadjusted basis of the section 179 property by the amount of the section 179 expense deduction. See section 168(d)(1) and the regulations thereunder.

(2) *Special rules for partnerships and S corporations.* Generally, the basis of a partnership or S corporation's section 179 property must be reduced to reflect the amount of section 179 expense elected by the partnership or S corporation. However, since a partner or shareholder that is a trust or estate may not deduct its allocable share of the section 179 expense elected by the partnership or S corporation, a partnership or S corporation's basis in section 179 property shall not be reduced to reflect any portion of the section 179 expense that is allocable to the trust or estate.

(g) *Disallowance of the section 38 credit.* If a taxpayer elects to expense under section 179, no section 38 credit is allowable for the portion of the cost expensed. In addition, no section 38 credit shall be allowed under section 48(d) to a lessee of property for the portion of the cost of the property that the lessor expensed under section 179.

(h) *Partnerships and S corporations.* In the case of property purchased and placed in service by a partnership or S corporation, the determination of whether the property is section 179 property is to be made at the partnership or S corporation level, and the election to expense the cost of section 179 property is made by the partnership or S corporation. See sections 703(b), 1363(c), 6221, 6231(a)(3), 6241, and 6245. This paragraph (h) is illustrated by the following example:

Example. A is an individual taxpayer who owns certain residential property as an investment. A, and others, form ABC partnership whose function is to rent and manage such property. A and ABC partnership file their income tax returns on a calendar year basis. In 1984, ABC partnership purchases and places in service section 179 property. Assuming ABC partnership satisfies the section 179 election requirements and chooses to make an election for the property purchased, A will be entitled, subject to the limitation contained in section 179(b), to deduct A's share of the expense allocated to A by the partnership. Although such property was only for the production of income with respect to A, the property was being used in ABC's trade or business. Therefore, since the determination of whether property is section 179 property is made at the partnership level, the property was properly expensed.

(i) *Leasing of section 179 property*—(1) *In general.* A lessor of section 179 property who is treated as the owner of the property for Federal tax purposes will be entitled to the section 179 expense deduction if the requirements of section 179 and the regulations thereunder are met. These requirements will not be met if the lessor merely holds the property for the production of income. For certain leases entered into prior to January 1, 1984, the safe harbor provisions of section 168(f)(8) apply in determining whether an agreement is treated as a lease for Federal tax purposes.

(2) *Noncorporate lessor.* In determining the class of taxpayers (other than an estate or trust) for which section 179 is applicable, section 179(d)(5) provides that if a taxpayer is a noncorporate lessor (as described in section 46(e)(3)) the taxpayer shall not be entitled to claim a section 179 expense for property purchased by the taxpayer unless a credit under section 38 is allowable to the taxpayer for such property (determined without regard to section 179). Thus, for example, if a taxpayer, a noncorporate lessor, purchases section 179 property and leases it and the taxpayer would be entitled to a section 38 credit for the property, by having satisfied all the requirements of subparagraph (A) or (B) of section 46(e)(3) and the regulations thereunder, the taxpayer is not precluded by section 179(d)(5) from electing to claim a section 179 expense for such property.

(j) *Cross references.* See section 453(i) and the regulations thereunder with respect to installment sales of section 179 property. See section 263(a)(1)(H) and the regulations thereunder with respect to capitalizing section 179 property. See section 1033(g)(3) and the regulations thereunder relating to condemnation of outdoor advertising displays. See section 1245(a) and the regulations thereunder with respect to recapture rules for section 179 property.

§ 1.179–2 Dollar limitation.

(a) *Maximum amount subject to election.* Section 179 (b) limits the aggregate cost of section 179 property that a taxpayer may elect to expense under section 179 for any one taxable

year. For a taxable year beginning in 1982, 1983, 1984, 1985, 1986, or 1987, the dollar limitation on the amount that can be expensed is $5,000; for a taxable year beginning in 1988 or 1989, $7,500; and for a taxable year beginning after 1989, $10,000. The dollar limitation of section 179 (b) applies to each taxpayer and not to each trade or business in which the taxpayer has an interest. However, for property placed in service after June 18, 1984, in taxable years ending after such date, see sections 280 F (a) and (d)(1) relating to the coordination of section 179 with the limitation on the amount of investment tax credit and depreciation for luxury automobiles. See paragraphs (b) through (f) of this section for special rules on applying the dollar limitation of section 179(b) with respect to controlled groups of corporations, partnerships, S corporations, and married individuals.

(b) *Component members of a controlled group*—(1) *In general.* Component members of a controlled group (as defined in paragaraph (g) of § 1.179–3) on a December 31 shall be treated as one taxpayer in applying the dollar limitation of section 179(b) and paragraph (a) of this section. The expense deduction under section 179 may be taken by any one such member or allocated (for the taxable year of each such member which includes such December 31) among the several members in any manner, pursuant to an allocation by the common parent corporation if a consolidated return is filed for all component members of the group, or in accordance with an agreement entered into by the members of the group if separate returns are filed. If a consolidated return is filed by some component members of the group and separate returns are filed by other component members, then the common parent of the group filing the consolidated return shall enter into an agreement with those members who do not join in filing the consolidated return allocating the amount between the group filing the consolidated return and the other component members of the controlled group who do not join in filing the consolidated return. The amount of the expense allocated to any component member, however, shall not exceed the cost of the section 179 property actually purchased by the member and placed in service by the member in the taxable year. If component members have different taxable years, the term "taxable year" in section 179(b)(1) shall mean the taxable year of the member whose taxable year begins on the earliest date.

(2) *Statement to be filed.* If a consolidated return is filed, the common parent corporation shall file a separate statement attached to the income tax return in which an election is made to claim an expense deduction under section 179. See § 1.179–4. If separate returns are filed by some or all component members of the group, each component member not included in a consolidated return to which is allocated any part of the deduction under section 179 shall file a separate statement attached to the income tax return in which an election is made to claim an expense deduction. Such statement shall include the name, address, employer identification number, and the taxable year of each component member of the controlled group, a copy of the allocation agreement signed by persons duly authorized to act on behalf of the component members, and a description of the manner in which the deduction under section 179 has been divided among them.

(3) *Revocation.* If a consolidated return is filed for all component members of the group, an allocation among such members of the expense deduction under section 179 shall not be revoked after the due date of the return (including extensions of time) of the common parent corporation for the taxable year for which an election to take an expense deduction is made. If some or all of the component members of the controlled group file separate returns for taxable years including a particular December 31 for which an election to take the expense deduction is made, the allocation as to all members of the group shall not be revoked after the due date of the return (including extensions of time) of the component member of the controlled group whose taxable year which includes such December 31 ends on the latest date.

(c) *Partnership*—(1) *In general.* The dollar limitation of section 179(b) and paragraph (a) of this section applies to the partnership as well as to each partner. Thus, neither a partnership nor a partner may deduct as a section 179 expense more than the amount provided for in section 179(b) and paragraph (a) of this section in any taxable year. In the case of a partner who is a member of two or more partnerships that elect section 179, the partner's aggregate share of the partnership section 179 expense may not exceed the dollar limitation of section 179(b). In the case of a member of a partnership that elects under section 179 who also has separately acquired section 179 property, the aggregate amount of the member's partnership and non-partnership section 179 expense may not exceed the dollar limitation of section 179(b).

(2) *Partner's share of section 179 expense.* Section 704 and the regulations thereunder shall govern the determination of a partner's share of a partnership's section 179 expense for any taxable year. However, no allocation among partners of the section 179 expense shall be modified after the due date of the partnership return (without regard to extensions of time) for the year for which the election under section 179 is made.

(3) *Taxable year.* If the taxable years of a partner and the partnership do not coincide, then for purposes of section 179, the amount of a partnership's section 179 expense attributable to a partner is determined in accordance with the provisions of section 706 and the regulations thereunder. For example, partnership AB has a taxable year ending January 31. Taxpayer A, a member of the AB partnership, has a taxable year ending November 30. On March 10, 1984, the AB partnership purchases and places in service section 179 property. Under the provisions of section 706(a) and § 1.706–1(a)(1), taxpayer A will be unable to claim any section 179 expense until A's taxable year ending November 30, 1985.

(d) *S Corporations.* For taxable years beginning after December 31, 1982, rules similar to those contained in paragraphs (c) (1) through (3) of this section shall apply in the case of S corporations (as defined in section 1361(a)) and their shareholders. Each shareholder's share of the section 179 expense of an S corporation shall be determined under section 1366.

(e) *Joint returns*—(1) *In general.* A husband and wife who file a joint income tax return under section 6013 (a) shall be treated as one taxpayer in applying the dollar limitation of section 179 (b)(1) and paragraph (a) of this section, regardless of which spouse purchased the property.

(2) *Joint returns filed after separate returns.* In the case of a husband and wife who elect under section 6013(b) to file a joint income tax return for a taxable year after the time prescribed by law for filing the return for such taxable year has expired, the dollar limitation under section 179 shall be the full dollar amount permitted by section 179(b)(1) provided the amount of one or both of the spouses' section 179 expense elections on their separate returns was limited as a result of the dollar limitation of section 179(b)(2) and paragraph (f) of this section. However, where neither of the spouses' section 179 expense elections on their separate

returns was limited by the section 179(b)(2) dollar limitation, then the maximum dollar amount permitted on the joint return is the aggregate dollar amount the spouses elected on their separate returns. For example, H and W, who are calendar year taxpayers, purchase and place in service in 1983 section 179 property costing $10,000. H and W file separate income tax returns for the 1983 taxable year. H elects to claim $2,000 as an expense and W elects to expense $2,000. After the due date of the return H and W elect under section 6013(b) to file a joint income tax return for 1983. H and W may only elect to expense $4,000 on their joint income tax return.

(f) *Married individuals filing separately.* In the case of an individual who is married but files a separate tax return, the maximum amount of section 179 property which the taxpayer may elect to expense is 50 percent of the amount otherwise determined under section 179(b)(1) and paragraph (a) of this section. For this purpose, marital status shall be determined under section 143 and the regulations thereunder. For example, H and W are calendar year taxpayers. In 1983, H and W purchased and placed in service section 179 property costing $10,000. For the 1983 taxable year, H and W are living apart within the meaning of section 143(b) and therefore are not considered married. H and W are each entitled to claim a section 179 expense of up to $5,000.

§ 1.179–3 Definitions.

The following definitions apply for purposes of section 179 and §§ 1.179–1 through 1.179–5:

(a) *Section 179 property.* The term "section 179 property" means any recovery property which is section 38 property and which is acquired by purchase for use in the taxpayer's trade or business. For this purpose, the term "trade or business" has the same meaning as in section 162 and the regulations thereunder. For definitions of the terms "recovery property," "section 38 property," and "purchase," see paragraphs (b), (c), and (d) of this section.

(b) *Recovery property.* The term "recovery property" shall have the same meaning assigned to it in section 168 (c)(1)(A) and the regulations thereunder.

(c) *Section 38 property.* The term "section 38 property" shall have the same meaning assigned to it in section 48(a) and the regulations thereunder.

(d) *Purchase.* (1)(i) Except as otherwise provided in paragraph (d)(2) of this section, the term "purchase" means any acquisition of the property, but only if all the requirements of paragraphs (d)(1) (ii), (iii), and (iv) of this section are satisfied.

(ii) Property is not acquired by purchase if it is acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707(b). The property is considered not acquired by purchase only to the extent that losses would be disallowed under section 267 or 707(b). Thus, for example, if property is purchased by a husband and wife jointly from the husband's father, the property will be treated as not acquired by purchase only to the extent of the husband's interest in the property. However, in applying the rules of section 267(b) and (c) for this purpose, section 267(c)(4) shall be treated as providing that the family of an individual will include only his spouse, ancestors, and lineal descendants. For example, a purchase of property from a corporation by a taxpayer who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of such corporation does not qualify as a purchase under section 179(d)(2); nor does the purchase of property by a husband from his wife. However, the purchase of section 179 property by a taxpayer from his brother or sister does qualify as a purchase for purposes of section 179(d)(2).

(iii) The property is not acquired by purchase if acquired from a component member of a controlled group of corporations (as defined in paragraph (g) of this section) by another component member of the same group.

(iv) The property is not acquired by purchase if the basis of the property in the hands of the person acquiring it is determined in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or is determined under section 1014(a), relating to property acquired from a decedent. For example, property acquired by gift or bequest does not qualify as property acquired by purchase for purposes of section 179(d)(2); nor does property received in a corporate distribution the basis of which is determined under section 301(d)(2)(B), property acquired by a corporation in a transaction to which section 351 applies, property acquired by a partnership through contribution (section 723), or property received in a partnership distribution which has a carryover basis under section 732(a)(1).

(2) Property deemed to have been acquired by a new target corporation as a result of a section 338 election (relating to certain stock purchases treated as asset acquisitions) will be considered acquired by purchase.

(e) *Cost.* The cost of section 179 property does not include so much of the basis of such property as is determined by reference to the basis of other property held at any time by the taxpayer. For example, X Corporation purchases a new drill press costing $10,000 in November 1984 which qualifies as section 179 property, and is granted a trade-in allowance of $2,000 on its ol drill press. The old drill press had a basis of $1,200. Under the provisions of sections 1012 and 1031(d), the basis of the new drill press is $9,200 ($1,200 basis of oil drill press plus cash expended of $8,000). However, only $8,000 of the basis of the new drill press qualifies as cost for purposes of the section 179 expense deduction; the remaining $1,200 is not part of the cost because it is determined by reference to the basis of the old drill press.

(f) *Placed in service.* The term "placed in service" means the time that property is first placed by the taxpayer in a condition or state of readiness and availability for a specifically assigned function, whether for use in a trade or business, for the production of income, in a tax-exempt activity, or in a personal activity. See § 1.46–3(d)(2) for examples regarding when property shall be considered in a condition or state of readiness and availability for a specifically assigned function.

(g) *Controlled group of corporations and component member of controlled group.* The terms "controlled group of corporations" and "component member" of a controlled group of corporations shall have the same meaning assigned to those terms in section 1563 (a) and (b), except that the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in section 1563(a)(1).

§ 1.179–4 Time and manner of making election.

(a) *Election.* A separate election must be made for each taxable year in which a section 179 expense deduction is claimed with respect to section 179 property. The election under section 179 and § 1.179–1 to claim a section 179 expense deduction for section 179 property shall be made on the taxpayer's income tax return for the taxable year to which the election applies. If the taxpayer does not file a timely return (taking into account extensions of time for filing) for such taxable year, the election shall be made at the time the taxpayer files the first return for such year. The election may be made on a return, as amended, filed within the time prescribed by law (including extensions) for filing the

return for such taxable year. The election shall be made by showing as a separate item on the taxpayer's income tax return the following items:

(1) The total section 179 expense deduction claimed with respect to all section 179 property selected; and

(2) The portion of that deduction allocable to each specific item.

The person shall maintain records which permit specific identification of each piece of section 179 property and reflect how and from whom such property was acquired and when such property was placed in service. The election to claim a section 179 expense deduction under this section, with respect to any property, is irrevocable and will be binding on the taxpayer with respect to such property for the taxable year for which the election is made and for all subsequent taxable years, unless the Commissioner consents to the revocation of the election. Similarly, the selection of section 179 property by the taxpayer to be subject to the expense deduction and apportionment scheme must be adhered to in computing the taxpayer's taxable income for the taxable year for which the election is made and for all subsequent taxable years, unless consent to change is given by the Commissioner.

(b) *Revocation.* Any election made under section 179, and any specification contained in such election, may not be revoked except with the consent of the Commissioner. Such consent will be granted only in extraordinary circumstances. Requests for consent must be filed with the Commissioner of Internal Revenue, Washington D.C., 20224. The request must include the name, address, and taxpayer identification number of the taxpayer and must be signed by the taxpayer or his duly authorized representative. it must be accompanied by a statement showing the year and property involved, and must set forth in detail the reasons for the request.

Par. 3. A new § 1.179–5 is added immediately following § 1.179–4 to read as set forth below.

§ 1.179–5 Effective date.

In general, the provisions of §§ 1.179–1 through 1.179–4 apply to property placed in service after December 31, 1980, in taxable years ending after such date. However, § 1.179–2 (d), relating to the application of the dollar limitation rules with respect to S corporations, shall be effective for taxable years beginning after December 31, 1982.

Par. 4. Section 1.263(a)–1 is amended by redesignating paragraphs (c) (4) and (5) as (c) (5) and (6) respectively, and adding a new paragraph (c)(4) before redesignated paragraph (c)(5) to read as set forth below.

§ 1.263(a)–1 Capital expenditures; in general.

* * * * *

(c) * * *

(4) Section 179 and §§ 1.179–1 through 1.179–5, relating to election to expense certain depreciable business assets.

* * * * *

Par. 5. Section 1.263(a)–3 is amended by redesignating paragraphs (b) (5), (6), (7), (8), (9), and (10) as (b) (6), (7), (8), (9), and (10) as (b) (6), (7), (8), (9), (10) and (11) respectively, and adding a new paragraph (b)(5) before redesignated paragraph (b)(6) to read as set forth below.

§ 1.263(a)–3 Election to deduct or capitalize certain expenditures.

* * * * *

(b) * * *

(5) Section 179 (election to expense certain depreciable business assets).

* * * * *

Par. 6. Section 1.1033(g)–1 is amended by revising the fourth sentence of paragraph (b)(1) to read as set forth below.

§ 1.1033(g)–1 Condemnation of real property held for productive use in trade or business or for investment.

* * * * *

(b) *Election to treat outdoor advertising displays as real property*— (1) * * * No election may be made with respect to any property for which (i) the investment credit under section 38 has been claimed, or (ii) an election to expense certain depreciable business assets under section 179(a) is in effect.

* * *

* * * * *

Par. 7. The second sentence of paragraph (a)(3) of § 1.1245–2 is revised by removing "additional first-year depreciation allowance for small business" and adding in its place "expense allowance (additional first-year depreciation allowance for property placed in service before January 1, 1981)".

These regulations are proposed to be issued under the authority contained in sections 179(c), 179(d)(10), and 7805 of the Internal Revenue Code of 1954 (95 Stat. 219, 96 Stat. 2369, 68A Stat. 917; 26 U.S.C. 179(c), 179(d)(1), 7805).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 85–23069 Filed 9–25–85; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5400 and 5440

Sales of Forest Products; General; Conduct of Sales; Procedures for Debarment of Contractors; Reopening of Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Reopening of public comment period on proposed rulemaking.

SUMMARY: At the request of the public, this notice reopens the period allowed for submission of comments on the proposed rulemaking that would amend procedures for debarment of timber sale contractors. The proposed rulemaking was published in the **Federal Register** on July 18, 1985 (50 FR 29324), with a comment period of 60 days. The period for submitting comments on the proposed rulemaking is hereby reopened for an additional 30 days.

DATE: Comments should be received by October 28, 1985. Comments received after this date may not be considered in the decisionmaking process on the final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street, NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles R. Frost (202) 653–8864.

J. Steven Griles,

Deputy Assistant Secretary of the Interior.

September 23, 1985.

[FR Doc. 85–22888 Filed 9–25–85; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 232

[Docket No. PB–7, Notice No. 2]

Railroad Power Brakes and Drawbars; Change of Hearing Date

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of change of hearing date.

SUMMARY: This notice changes the hearing date set in Docket PB–7, Notice No. 1 from October 24, 1985 to October 25, 1985. The location and time of the hearing remain the same.

DATES: A public hearing will be held at 10:00 a.m. on October 25, 1985. Any person who desires to make a statement at the hearing should notify the Docket Clerk before October 17, 1985 by phone or mail .

ADDRESSES: A public hearing will be held on October 25, 1985 in room 7200 of the Nassif Building, 400 Seventh St., SW., Washington, DC 20590. Any person who desires to make an oral statement at the hearing should notify the Docket Clerk by telephone (202–426–3984) or by writing to: Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Philip Olekszyk, Office of Safety, Federal Railroad Administration, Washington, DC 20590. Telephone 202–426–0897.

SUPPLEMENTARY INFORMATION: On September 3, 1985, FRA published a notice of proposed rulemaking in the **Federal Register** relating to the use of rear car telemetry devices to comply with certain requirements of FRA's power brake regulations in 49 CFR Part 232 (50 FR 35640). The notice scheduled a public hearing on the proposed rule for October 24, 1985 in Washington, DC. FRA is changing the hearing date from October 24, 1985 to October 25, 1985. The time of the hearing (10:00 a.m.) and the location of the hearing (room 7200 of the Nassif Building, Washington, DC) remain the same.

Issued in Washington, D.C. on September 23, 1985.

John M. Mason,

Chief Counsel.

[FR Doc. 85–23001 Filed 9–25–85; 8:45 am]

BILLING CODE 4910–06–M

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49 CFR Part 232

[Docket No. RSSI–85–1, Notice No. 2]

Special Safety Inquiry; Railroad Power Brakes; Change of Hearing Date

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of change of hearing data.

SUMMARY: This notice changes the hearing date set in Docket No. RSSI–85–1, Notice No. 1 from October 25, 1985 to October 24, 1985. The location and time of the hearing remain the same.

DATES: (1) A public hearing will be held at 10:00 a.m. on October 24, 1985.

(2) Prepared statements to be made at the hearing should be submitted to the Docket Clerk at least seven days before the hearing date.

(3) Persons desiring to participate at the hearing should notify the Docket Clerk at least seven days before the hearing.

ADDRESSES: A public hearing will be held on October 24, 1985 in room 7200 of the Nassif Building, 400 Seventh St., SW., Washington, DC 20590. Prepared statements should be submitted to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Washington, DC 20590. Telephone 202–426–8285.

SUPPLEMENTARY INFORMATION: On September 3, 1985, FRA published in the **Federal Register** (50 FR 35643) a notice of Special Safety Inquiry to obtain information from the public to assist in evaluating the impact of the changes in the power brake regulations (49 CFR Part 232) made in August 1982 in Docket No. PB–6. The safety inquiry hearing was scheduled for October 25, 1985 in Washington, DC. FRA is changing the hearing date from October 25, 1985 to October 24, 1985. The time of the hearing (10:00 a.m.) and the location of the hearing (room 7200 of the Nassif Building, Washington, DC) remain the same.

Issued in Washington, DC on September 23, 1985.

John M. Mason,

Chief Counsel.

[FR Doc. 85–23002 Filed 9–25–85; 8:45 am]

BILLING CODE 4910–06–M

Notices

Federal Register
Vol. 50, No. 187
Thursday, September 26, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Economic Affairs; Performance Review Board Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economic and Statistical Affairs Senior Executive Service (SES) Performance Appraisal System:

Barbara Ballar
Kenneth M. Brown
Joseph F. Caponio
John E. Cremeans
Lucy A. Falcone
C.L. Kincannon
Frederick T. Knickerbocker
Daniel B. Levine
Martin Marimont
Jerome Mark
Charles A. Waite
Katherine K. Wallman
Allan H. Young

Edward A. McCaw,

Executive Secretary, Economic and Statistical Affairs, Performance Appraisal System.

[FR Doc. 85-23031 Filed 9-25-85; 8:45 am]

BILLING CODE 3510-BS-M

International Trade Administration

Export Trade Certificate of Review, Notice of Application

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

FOR FURTHER INFORMATION CONTACT: James V. Lacy, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certifcate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than October 16, 1985. to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 85-00012."

Applicant: Irrigation Components International (V.I.), Inc. 5 Norre Gade, Charlotte, Amalie, St. Thomas, U.S. Virgin Islands 00801.

Contact: Grey Redditt, Jr., c/o Kilborn, Redditt & Griggs, P.O. Box 1072, Mobile, Alabama 36633.

Application #: 85-00012.

Date Deemed Submitted: September 13, 1985.

Members in Addition to Applicant: Senninger Irrigation, Inc., Orlando, FL; Irrigation Industries, Inc., Colorado Springs, CO; Marion Miller & Associates, Inc., Colorado Springs, CO.

Summary of the Application

A. Export Trade

Products: Agricultural irrigation equipment and systems, component parts and related supplies (from both member and non-member manufacturers and distributors). Such products include, but are not limited to, input sprinkler heads; spray sprinklers; pressure regulators and gauges; flowmeters; underground mainline fittings; and related electrical components, valves, gear drives and other components of center pivot irrigation systems.

Services: technical training and assistance, installation, and repair of products.

ICIVI also intends to provide the following export trade services: (a) Market research and development (including market intelligence, sales generation, communication services and other research activities, (b) project services (including project research, specifications and standards analysis, product design, and ancillary equipment services), (c) financing (including credit research and payment processing services), (d) economic analysis and systems design for foreign customers, (e) shipping (including export documentation, freight forwarding and customs brokerage services), (f) consulting (including the development, design, installation, maintenance and repair of agricultural irrigation systems), and (g) warehousing and display services.

B. Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

C. Export Trade Activities and Methods of Operation

ICIVI seeks certification to:

(a) Enter into exclusive or non-exclusive agreements with individual U.S. suppliers (members and non-members, manufacturers and distributors) of agricultural irrigation equipment, component parts, and related services to purchase these products and services and to act as an Export Intermediary, whereby:

(i) ICIVI agrees not to represent any competitors of the member suppliers unless authorized by these suppliers,

(ii) the supplier agrees not to sell, directly or indirectly, into the Export

Markets in which ICIVI exclusively represents the supplier,

(iii) purchase prices negotiated between IC IVI and member suppliers may be lower than prices quoted by those suppliers to other customers, and/or

(iv) ICIVI specifies or limits the prices at which the products and services are to be sold in the Export Markets.

(b) Enter into exclusive and non-exclusive agreements with foreign agents, sales representatives and distributors seeking agricultural irrigation equipment, component parts, and related services, whereby:

(i) ICIVI may agree to deal only with that agent, representative or distributor in particular Export Markets,

(ii) The Foreign agent, representative, or distributor agrees not to represent or buy from ICIVI's competitors in particular Export Markets, and/or

(iii) ICIVI specifies or limits the prices at which the products and services are to be sold in the Export Markets.

(c) Exchange such information among members as may be useful in conducting its export business.

(d) Establish restrictions on the sale of stock in ICIVI, whereby ICIVI and its member corporations retain a right of first refusal.

Dated: September 23, 1985.

James V. Lacy,

Director, Office of Export Trading Company Affairs.

[FR Doc. 85-23030 Filed 9-25-85; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council's Law Enforcement Advisory Panel will convene a public meeting jointly with the Gulf States Marine Fisheries Commission's Law Enforcement Committee, October 15, 1985, from 9 a.m. to 5 p.m., at the Hilton Inn Gateway, 7470 Highway 192, West, Kissimmee, FL, to review existing state and federal vessel identification requirements and to evaluate the feasibility of a Gulf-wide standardized vessel identification system. For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609; telephone: (813) 228-2815.

Dated: September 23, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-23067 Filed 9-25-85; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Amended Meeting Notice

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The September 24-25, 1985 public meeting of the Pacific Fishery Management Council's Groundfish Select Group, as cited in the **Federal Register**, September 12, 1985 (50 FR 37263), has been rescheduled for October 16-17, 1985, and will be convened in Portland, OR. For further information contact Joseph C. Greenley, Pacific Fishery Management Council, 526 SW. Mill Street, Portland, OR 97201; telephone: (503) 221-6352.

Dated: September 23, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-23068 Filed 9-25-85; 8:45 am]

BILLING CODE 3510-22-M

Membership of National Oceanic and Atmospheric Administration Performance Review Boards

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Membership of NOAA Performance Review Boards.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), NOAA announces the appointment of a supplemental member to the NOAA Performance Review Boards, J. Roy Spradley, Jr., Special Advisor, National Oceanic and Atomspheric Administration. The period of appointment is from October 1, 1985 to August 31, 1986. Reference Notice of Membership published August 29, 1985 in **Federal Register** Volume 50, No. 168, pages 35111 and 35112.

DATE: The effective date of service of the appointee to the NOAA Performance Review Board is October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Susan Johnson, Chief, Personnel Division, National Capital Administrative Support Center, NOAA, 11400 Rockville Pike, Rockville, Maryland 20852, (301) 443-8867.

Dated: September 18, 1985.

Anthony J. Calio,

Deputy Administrator, National Oceanic and Atmospheric Administration.

[FR Doc. 85-22980 Filed 9-25-85; 8:45 am]

BILLING CODE 3510-12-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Gynex

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Gynex, having a place of business in Des Plains, Illinois, an exclusive right to manufacture, use, and sell products embodied on the invention entitled "Administration of Sex Hormones in the Form of Hydrophylic Cyclodextrin Derivatives," U.S. Patent Application Serial No. 6-603,839. The patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.9. The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submited to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Techrical Information Service.

[FR Doc. 85-23066 Filed 9-25-85; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

September 23, 1985.

The Chairman of the Committee for the Implementation of Textile

Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 27, 1985. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

A CITA directive dated December 21, 1984 (49 FR 50233) established limits for certain specified categories of cotton, wool and man-made fiber textile products, including Category 631–W (work gloves in T.S.U.S.A numbers 704.3215, 704.8525, and 704.9000), produced or manufactured in Taiwan and exported during the agreement year which began on January 1, 1985. The import restraint limit for Category 631–W is filled. CITA has determined, however, that improper charges totalling 119,847, dozen pairs have been made to this limit. Accordingly, in the letter which follows this notice this amount is being deducted from the import charges.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 23, 1985.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: To facilitate implementation of the bilateral agreements concerning cotton, wool and man-made fiber textiles and textile products from Taiwan, I request that, effective on September 27, 1985, you deduct 119,847 dozen pairs from the imports charged to the restraint limit established for Category 631pt.[1] in the directive of December 21, 1984.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

This letter will be published in the **Federal Register.**

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–23000 Filed 9–25–85; 8:45 am]

BILLING CODE 3510–DR–M

Adjusting the Import Limit for Certain Wool Apparel Products Produced or Manufactured in Taiwan

September 23, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 27, 1985. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

A CITA directive dated December 21, 1984 (49 FR 50233) established limits for certain specified categories of cotton, wool and man-made fiber textile products, including Category 448, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1985. The limit for Category 448 is filled. At the request of the authorities in Taiwan, special carryforward in the amount of 1,772 dozen is being applied to the restraint limit for Category 448, increasing it from 12,382 dozen to 14,154 dozen for 1985, pending completion of a data reconciliation involving this category. The 1986 limit for Category 448 will be adjusted to account for carryforward used in the current year, depending on the outcome of the data reconciliation.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 23, 1985.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 21, 1984 from the Chairman of the Committee for the Implementaton of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Taiwan and exported during 1985.[1]

Effective on September 27, 1985, paragraph 1 of the directive of December 21, 1984 is hereby further amended to include an adjusted restraint limit for Category 448 of 14,154 dozen.[2]

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–22999 Filed 9–25–85; 8:45 am]

BILLING CODE 3510–DR–M

Requesting Public Comment on Bilaterial Textile Consultations With the Republic of South Africa on Trade in Category 335

September 23, 1985.

On August 29, 1985 the Government of the United States, under section 204 of the Agricultural Act of 1956 (7 U.S.C. 1854), requested the Government of the Republic of South Africa to enter into consultations concerning exports to the United States of women's, girls', and infants' cotton coats in Category 335,

[1] In Category 631, only T.S.U.S.A. numbers 704.3215, 704.8525, and 704.9000.

[1] The agreement of November 18, 1982 concerning cotton, wool and man-made fiber textile products from Taiwan provides, in part, that: (1) Specific limits or sublimits may be exceeded by certain designated percentages during the agreement year, provided a corresponding reduction in equivalent square yards is made in one or more specific limits or sublimits during the same agreement year; (2) certain specific limits or sublimits may be increased for carryforward; (3) special shift may be applied to certain categories, provided an equal amount in square yards equivalent is deducted from designated cateogiries; and (4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementaion of the agreement.

[2] The restraint limits have not been adjusted to reflect any imports exported after December 31, 1984.

produced or manufactured in South Africa.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations, the Committee for Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of textile products in this category, produced or manufactured in South Africa and exported to the United States during the twelve-month period which began on August 29, 1985 and extends through August 28, 1986 at a level of 25,925 dozen.

Anyone wishing to comment or provide data or information regarding the treatment of Category 335 is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Category 335—Women's, Girls', and Infants' (WGI) Cotton Coats, etc.

August 1985.

Summary and Conclusions

United States imports of Category 335 from the Republic of South Africa were 28,129 dozens in the year-ending June 1985. This compares with 131 dozens imported in the previous twelve months. Seventy-three percent of these imports were shipped in the first six months of 1985. Annualized, the year to date imports would be close to 41,000 dozens. Imports from the Republic of South Africa were 7,555 dozens in calendar year 1984, and less than 400 dozen in any of the previous four years.

These increases of low price imports were sharp and substantial and present a real risk of contributing to the existing market disruption of this category.

Production

U.S. production of Category 335 coats averaged 1.5 million dozens during the first half of the seventies, 905,000 dozens during the second half and 665,000 dozens from 1980 through 1983. Production in 1983 amounted to 661,000 dozens, down 25 percent from the 782,000 dozens produced in 1982. Production in 1984 was down an additional 21 percent from the 1983 level.

Imports

U.S. imports of Category 335 from all sources were at a record level of 2,177,000 dozens in 1984, up 33 percent from the 1,632,000 dozens imported in 1983. Year-ending June 1985 imports were up 10 percent from the same period in 1984. Imports grew 55 percent between 1980 and 1985.

Import Penetration

During the first half of the seventies, the ratio of imports to domestic production of Category 335 averaged 30 percent. This almost tripled to 88 percent during the last half of the decade and rapidly escalated to 246 percent during the first four years of the eighties. The 1984 ratio reached an all time high of 414.7 percent, one of the highest ratios of all apparel items.

The domestic producers' share of the market for domestically produced and imported Category 335 declined precipitously during the seventies and continued downward in the early eighties. They accounted for only 19 percent of the market in 1984.

Import Values

Approximately to 69 percent of the year ending June 1985 imports of Category 335 from the Republic of South Africa entered under one TSUSA classification. This was 383.3477—women's other coats, not ornamented, over 4 U.S. dollars.[1] These items entered at duty paid values below the U.S. producers' prices for similar garments.

[FR Doc. 85-22998 Filed 9-25-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Military Traffic Management Command; Directorate of Personal Property

AGENCY: Military Traffic Management Command (MTMC), Department of the Army, DOD.

ACTION: Notice of Decision on the Procedures and Implementation Date for the DD Form 1840 and DD Form 1840R.

SUMMARY: Notice is hereby given on the procedures and implementation date for the DD Form 1840 and DD Form 1840R in the Military Traffic Management Command through Government bill of lading (TGBL) Procurement Program. The procedures are as follows:

DD Form 1840 and DD Form 1840R Procedures

1. Responsibilities.

a. Carrier shall:

(1) Complete Section A of the DD Form 1840 and make all (5) copies available upon delivery.

(2) In conjunction with member, annotate all loss and/or damage in Section B on all (5) copies of the DD Form 1840.

(3) Provide the member with (3) copies of the completed DD Form 1840 signed by both the carrier and the member.

(4) Trace all missing items annotated on DD Form 1840 and or DD Form 1840R immediately and respond to the destination ITO/TMO in writing within 30 working days of notification of loss.

(5) Provide the destination ITO/TMO a copy of DD Form 1840 within 30 workdays of delivery.

(6) Discontinue using Consignee's Statement of Delivery and Loss or Damage Portion of DD Form 619-1.

b. Member shall:

(1) In conjunction with the carrier, complete Section B and sign the DD Form 1840 at time of delivery.

(2) Retain (3) signed and completed copies of the DD Form 1840.

(3) Annotate additional loss or damage found after delivery on DD Form 1840R (reverse DD Form 1840).

(4) Within 70 days from date of delivery submit all (3) copies of the completed DD Forms 1840 and DD Form 1840R to the appropriate claims office. The claims office will return one copy acknowledging receipt for use in filing claim, provide one copy to the carrier for notice of additional loss and or damage, and retain one copy for filing within the claims office.

(5) Contact the ITO/TMO for any assistance required at time of delivery and for any supporting documents required in processing a claim.

(6) File a claim with appropriate claims office.

c. ITO/TMO shall:

(1) Retain the carrier provided copy of the DD Form 1840.

(2) Conduct inspection for loss or damage upon request by service member or military service claims office within 10 workdays of request and prepare the DD 1841 (Government Inspection Report).

(3) Upon request provide a copy of the PPGBL and any other shipment

[1] 1984 TSUSA Classification 383.3464.

documents to assist member in filing a claim.

(4) Take appropriate action against carrier for Tender of Service violation for failure to return documents if DD Form 1840 is not returned by carrier within 30 workdays of delivery.

DATE: Effective 1 October 1985 for personal property shipments. Effective 1 November 1985 for nontemporary storage shipments.

ADDRESS: HQ, Military Traffic Management Command, 5611 Columbia Pike, ATTN: MT–PPM, File: DD Form 1840, Falls Church, Virginia 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Gaige, HQ, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, Virginia 224041–5050, Telephone (703) 756–1600.

Joseph R. Marotta,

Colonel, General Staff, Director of Personal Property.

[FR Doc. 85–23011 Filed 9–25–85; 8:45 am]

BILLING CODE [illegible]

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS); Village of Ontonagon, Ontonagon County, MI

AGENCY: Army Corps of Engineers, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

Proposed Actions

The purpose of this report, which is being conducted under the 1984 Flood Control Act, section 205, is to determine a plan which best minimizes the flooding potential in the Village of Ontonagon, Ontonagon County, Michigan. The structural alternatives currently under consideration consist of constructing additional levees, the installation of flashboards, upgrading an existing emergency levee, and installing floodgates at two locations.

Alternatives

The Detroit District, in the reconnaissance study phase of the project, considered both structural and non-structural alternatives. The extent of development and nature of flooding that exists in the proposed project area realistically precludes the non-structural approach in itself. The alternatives to the proposed action described above include various levee location options and no action.

Scoping Process

a. Public Involvement—Copies of the Reconnaissance Report, Small Flood Control Study Section 205, Ontonagon, Michigan, February 1985, have been circulated to various agencies, public groups and citizens. Coordination concerning proposed plans has been initiated and maintained between the Corps and the Village of Ontonagon as well as with two major industries which are included in the flood protection plan. The U.S. Fish and Wildlife Service has also been coordinated with and has provided input to the proposed plans. Also, a public meeting is being planned to occur during the period of public review of the DEIS.

b. Significant issues to be addressed in the EIS are:

(1) Protection against flooding in the Village of Ontonagon including two commercial industries.

(2) Protection of the Ontonagon Light House, a site listed in the National Register of Historic Places.

(3) Proposed reopening of the east side slough to improve fish habitat.

c. Other Environmental Review and Consultation Requirements—This project will be reviewed for compliance with the following: The Fish and Wildlife Act of 1956; Fish and Wildlife Coordination Act of 1958; National Historical Preservation Act of 1966; National Environmental Policy Act of 1969; Endangered Species Act of 1973; Water Resources Development Act of 1976; Executive Order 11990, Wetlands Protection, May 1977; Executive Order 11988, Floodplain Management, May 1977; Clean Air Act of 1977; Clean Water Act of 1977; Corps of Engineers, Department of the Army, 33 CFR, Part 230, Environmental Quality; Corps of Engineers, Department of the Army, Policy and Procedure for Implementing NEPA (ER 200–2–2).

Estimated Date of Environmental Impact Statement Release

It is anticipated that the Draft Environmental Impact Statement will be available to the public in February 1986.

Address

Questions about the proposed action and Environmental Impact Statement can be answered by Mr. Les Weigum, Environmental Analysis Branch, U.S. Army Corps of Engineers, Box 1027, Detroit, Michigan 48231.

Dated: September 17, 1985.

Robert F. Harris,

Colonel, Corps of Engineers Commanding.

[FR Doc. 85–22981 Filed 9–25–85; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended and the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/SW(EU)–133, 9,090 kilograms of uranium, enriched to 2.49% in U–235, and 13,635 kilograms of uranium, enriched to 3.32% in U–235, to be used in fuel fabrication for the Oskarshamn II power reactor. The material is presently located at the EURODIF enrichment facility, Tricastin, France, and is to be transferred to ASEA–ATOM, Vasteras, Sweden. The material was originally exported pursuant to U.S. Nuclear Regulatory Commission license XUO8586.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: September 23, 1985.

For the Department of Energy.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85–22989 Filed 9–25–85; 8:45 am]

BILLING CODE [illegible]

Federal Energy Regulatory Commission

[Docket No. CI82–47–002]

Conoco Inc.; Application

September 23, 1985.

Take notice that on September 12, 1985, Conoco Inc. (Conoco), P.O. Box

2197, Houston, Texas 77252, filed in Docket No. CI82–47 an Application for an Amended Certificate of Public Convenience and Necessity and for Partial Abandonment pursuant to section 7 of the Natural Gas Act, 15 U.S.C. 717f, and Part 157 of the Regulations of the Federal Energy Regulatory Commission ("Commission").

Conoco states that the requested certificate and partial abandonment are necessary to implement the Settlement Agreement in Docket Nos. CP74–314, *et al.*, 31 F.E.R.C. (CCH) ¶61,370 (1985), between Conoco and El Paso Natural Gas Company ("El Paso") with respect to a single gas purchase contract pursuant to which Conoco presently sells gas to El Paso as authorized by a certificate of public convenience and necessity and Gas Rate Schedule No. 484.[1]

Conoco states that the requested authorities are necessary to effectuate the intent of the parties to amend all gas purchase agreements between Conoco and El Paso covering sales of gas produced in the San Juan Basis region of New Mexico and southern Colorado to provide for Conoco's right to process such gas in accordance with the terms of the above-referenced Settlement Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before October 9, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Under the procedure herein provided for, unless otherwise advised, it will not be necessary for Conoco to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–23033 Filed 9–25–85; 8:45 am]

BILLING CODE 6717–01–M

[1] Docket No. CI82–47.

[Docket No. CI85–678–000]

Conoco Inc.; Application

September 23, 1985.

Take notice that on September 12, 1985, Conoco Inc. (Conoco), P.O. Box 2197, Houston, Texas 77252, filed in Docket No. 85–678–000 an Application for an Amended Certificate of Public Convenience and Necessity and for Partial Abandonment pursuant to section 7 of the Natural Gas Act, 15 U.S.C. 717f, and Part 157 of the Regulations of the Federal Energy Regulatory Commission ("Commission").

Conoco states that the requested certificate and partial abandonment are necessary to implement the Settlement Agreement in Docket Nos. CP74–314, *et al.*, 31 F.E.R.C. (CCH) ¶61,370 (1985), between Conoco and El Paso Natural Gas Company ("El Paso") with respect to a single gas purchase contract pursuant to which Conoco, as cosignatory party, presently sells gas to El Paso as authorized by a certificate of public convenience and necessity and Gas Rate Schedule No. 512 held by its cosignatory Arco Oil and Gas Company.[1]

Conoco states that the requested authorities are necessary to effectuate the intent of the parties to amend all gas purchase agreements between Conoco and El Paso covering sales of gas produced in the San Juan Basin region of New Mexico and southern Colorado to provide for Conoco's right to process such gas in accordance with the terms of the above-referenced Settlement Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before October 9, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Under the procedure herein provided for, unless otherwise advised, it will not be necessary for Conoco to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–23034 Filed 9–25–85; 8:45 am]

BILLING CODE 6717–01–M

[1] Docket No. CI61–1249.

[Docket No. CI85–679–000]

Conoco Inc.; Application

September 23, 1985.

Take notice that on September 12, 1985 Conoco Inc. (Conoco), P.O. Box 2197, Houston, Texas 77252, filed in Docket No. 85–679–000 an Application for a Certificate of Public Convenience and Necessity and for Partial Abandonment pursuant to section 7 of the Natural Gas Act, 15 U.S.C. 717f, and Part 157 of the Regulations of the Federal Energy Regulatory Commission ("Commission").

Conoco states that the requested certificate and partial abandonment are necessary to implement the Settlement Agreement in Docket Nos. CP74–314, *et al.*, 31 F.E.R.C. (CCH) ¶61,370 (1985), between Conoco and El Paso Natural Gas Company ("El Paso") with respect to a single gas purchase contract pursuant to which Conoco, as cosignatory party, presently sells gas to El Paso as authorized by a certificate of public convenience and necessity and Gas Rate Schedule No. 57 held by its cosignatory Ladd Petroleum Corporation.[1]

Conoco states that the requested authorities are necessary to effectuate the intent of the parties to amend all gas purchase agreements between Conoco and El Paso covering sales of gas produced in the San Juan Basin region of New Mexico and southern Colorado to provide for Conoco's right to process such gas in accordance with the terms of the above-referenced Settlement Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before October 8, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to

[1] Docket No. CI72–450.

intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Under the procedure herein provided for, unless otherwise advised, it will not be necessary for Conoco to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-23035 Filed 9-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-37-003]

High Island Offshore System, Tariff Filing

September 20, 1985.

Take notice that on September 18, 1985, High Island Offshore System ("HIOS") tendered for filing Substitute Eleventh, Twelfth and Substitute Twelfth Revised Sheet Nos. 4 to be included in the High Island Offshore System F.E.R.C. Gas Tariff, Original Volume No. 1, to be effective on January 1, 1985, July 1, 1985 and July 1, 1985, respectively.

HIOS states that Substitute Eleventh and Twelfth Revised Sheet No. 4 reflect the settlement rates pursuant to Article I and Appendices A and B of the Stipulation and Agreement approved by the Federal Energy Regulatory Commission ("Commission") on July 22, 1985.

HIOS further states that Substitute Twelfth Revised Sheet No. 4 reflects a decrease of $.01 in its Demand Rate as a result of decreased costs paid to ANR Pipeline Company ("ANR") under its Rate Schedule X-64 for measurement, dehydration, and separation at the Grand Chenier facilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol St., NW., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 27, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-23036 Filed 9-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-3-26-003]

Natural Gas Pipeline Company of America Compliance Filing

September 20, 1985.

Take notice that on September 16, 1985, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff), the below listed tariff sheets to be effective on the dates indicated:

Revised Substitute Fifty-sixth Revised Sheet No. 5 and Revised Substitute Twenty-third Revised Sheet No. 5A to be effective September 1, 1984, through February 28, 1985.

Third Substitute Fifty-seventh Revised Sheet No. 5 and Third Substitute Twenty-fourth Revised Sheet No. 5A to be effective March 1, 1985.

Revised Fifty-eighth Revised Sheet No. 5 and Revised Twenty-fifth Revised Sheet No. 5A to be effective April 1, 1985.

Revised Substitute Fifty-eighth Revised Sheet No. 5 and Revised Substitute Twenty-fifth Revised Sheet No. 5A to be effective July 1, 1985.

Third Substitute Fifty-eighth Revised Sheet No. 5 and Third Substitute Twenty-fifth Revised Sheet No. 5A to be effective September 1, 1985.

Seventh Revised Sheet No. 118 to be effective June 1, 1985.

Natural states that the purpose of the instant compliance filing is to reflect the impact on its rates and the tariff language clause revision to its Purchased Gas Adjustment, as required by Ordering Paragraphs C(2) and C(3) of the Commission Order issued on August 30, 1985, in Docket, Nos. TA85-3-26-000 and TA85-3-26-001. The Ordering Paragraphs required revisions relating to (i) the removal of certain payments to Great Lakes Gas Transmission Company as an alternative to otherwise applicable minimum commodity bill payments and (ii) reflecting current exchange imbalances in Account 191.

Natural stated that it has previously filed in this docket a motion seeking an extension of time with which to comply with the requirements of the subject order (September 12, 1985) as well as a request for rehearing of waiver of the subject order (September 16, 1985). Natural's submission of the above listed tariff sheets is to insure technical compliance with the above referenced order in the event that the request for extension and rehearing or waiver are not granted. Natural has requested the Commission to defer acceptance of the enclosed tariff sheets pending Commission action on Natural's extension and rehearing or waiver requests.

In the event that the request for extension and rehearing or waiver are not granted, Natural requests waivers of the Commission's Regulations to the extent necessary to permit the proposed tariff sheets to become effective on the dates indicated.

A copy of this filing has been mailed to Natural's jurisdictional customers and to interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before September 27, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85-23037 Filed 9-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-676-000]

Tenneco Oil Co.; Application

September 23, 1985.

Take notice that on September 12, 1985 Tenneco Oil Company ("Tenneco"), 1100 Milam, Houston, Texas 77002, filed in Docket No. 85-676-000 an Application for a successor Certificate of Public Convenience and Necessity and, conditionally, for Partial Abandonment pursuant to section 7 of the Natural Gas Act, 15 U.S.C. 717f, and Part 157 of the Regulations of the Federal Energy Regulatory Commission ("Commission").

Tenneco states that the requested certificate and partial abandonment are necessary to implement the Settlement Agreement in Docket Nos. CP74-314, *et al.*, 31 F.E.R.C. (CCH) ¶ 61,370 (1985), between Tenneco and El Paso Natural Gas Company ("El Paso") with respect to a single gas purchase contract to which Tenneco, as cosignatory party, presently sells gas to El Paso as authorized by a certificate of public convenience and necessity and Gas Rate Schedule No. 513 held by its cosignatory Arco Oil and Gas Company.[1]

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[1] Docket No. CI72-450.

Tenneco states that the requested authorities are necessary to effectuate the intent of the parties to amend all gas purchase agreements between Tenneco and El Paso covering sales of gas produced in the San Juan Basin region of New Mexico and southern Colorado to provide for Tenneco's right to process such gas in accordance with the terms of the above-referenced Settlement Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such motions or protests shuld be filed on or before October 9, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Under the procedure herein provided for, unless otherwise advised, it will not be necessary for Tenneco to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-23038 Filed 9-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-677-000]

Tenneco Oil Co.; Application

September 23, 1985.

Take notice that on September 12, 1985 Tenneco Oil Company ("Tenneco"), 1100 Milam, Houston, Texas 77002, filed in Docket No. 85-677-000 an Application for a successor Certificate of Public Convenience and Necessity and, conditionally, for Partial Abandonment And For Waiver pursuant to section 7 of the Natural Gas Act, 15 U.S.C. 717f, and Part 157 of the Regulations of the Federal Energy Regulatory Commission ("Commission").

Tenneco states that the requested certificate and partial abandonment are necessary to implement the Settlement Agreement in Docket Nos. CP74-314, *et al.*, 31 F.E.R.C. (CCH) ¶ 61,370 (1985), between Tenneco and El Paso Natural Gas Company ("El Paso") with respect to a single gas purchase contract pursuant to which Tenneco, as cosignatory party, presently sells gas to El Paso as authorized by a certificate of public convenience and necessity and Gas Rate Schedule No. 513 held by its cosignatory Arco Oil and Gas Company.[1]

Tenneco states that the requested authorities are necessary to effectuate the intent of the parties to amend all gas purchase agreements between Tenneco and El Paso covering sales of gas produced in the San Juan Basin region of New Mexico and southern Colorado to provide for Tenneco's right to process such gas in accordance with the terms of the above-referenced Settlement Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before October 9, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Under the procedure herein provided for, unless otherwise advised, it will not be necessary for Tenneco to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-23039 Filed 9-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER85-754-000 et al.]

Electric Rate and Corporate Regulation Filings; Gulf States Utilities Co. et al.

Take notice that the following filings have been made with the Commission:

1. Gulf States Utilities Company

[Docket No. ER85-754-000]

September 17, 1985.

Take notice that Gulf States Utilities Company (Gulf States), on September 11, 1985, tendered for filing an Amendment, executed as of August 27, 1985, to the Agreement for Wholesale Electric Service dated May 14, 1974, between Gulf States and the City of Kirbyville (Kirbyville). The Amendment does not provide for a rate increase.

The Amendment permits Kirbyville to cease to take service under Rate Schedule WSD (Wholesale Power at Distribution Voltage) and start to take service under Rate Schedule WST (Wholesale Power at Transmission Voltage). To qualify for the WST rate, Kirbyville agreed to pay a facilities charge of 2 percent per month of the allocated cost of the existing Gulf States substation and associated equipment. With such change, Kirbyville will pay less for electric service.

The Amendment also provides that a portion of Kirbyville's load that would otherwise be supplied by purchases of wholesale electric service from Gulf States shall instead be served by power purchased from others and delivered to Kirbyville by transmission service provided by Gulf States. The power Kirbyville will purchase from others will be power Gulf States has contracted for or will contract for with other utilities and will share, by assignment, with Kirbyville.

The Amendment would remain in effect for ten years unless terminated earlier pursuant to rights reserved in the Amendment.

Gulf States requests that any necessary waivers be granted so that the change from WSD to WST can become effective on September 1, 1985, and so the purchased power provisions can become effective on May 14, 1986.

Copies of the filing have been served upon Kirbyville, and upon the Louisiana Public Service Commission and the Public Utility Commission of Texas.

Comment date: September 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Gulf States Utilities Company

[Docket No. ER85-755-000]

September 17, 1985.

Take notice that Gulf States Utilities Company (Gulf States), on September 11, 1985, tendered for filing an Amendment, executed as of August 27, 1985, to the Agreement for Wholesale Electric Service dated February 1, 1975, between Gulf States and the City of Newton (Newton). The Amendment does not provide for a rate increase.

The Amendment permits Newton to cease to take service under Rate Schedule WSD (Wholesale Power at Distribution Voltage) and start to take service under Rate Schedule WST (Wholesale Power at Transmission Voltage). To qualify for the WST rate, Newton agreed to pay a facilities charge of 2 percent per month of the allocated cost of the existing Gulf States substation and associated equipment. With such change, Newton will pay less for electric service.

The Amendment also provides that a portion of Newton's load that would

[1] Docket No. CI72-450.

otherwise be supplied by purchases of wholesale electric service from Gulf States shall instead be served by power purchased from others and delivered to Newton by transmission service provided by Gulf States. The power Newton will purchase from others will be power Gulf States has contracted for or will contract for with other utilities and will share, by assignment, with Newton.

The Amendment would remain in effect for ten years unless terminated earlier pursuant to rights reserved in the Amendment.

Gulf States requests that any necessary waivers be granted so that the change from WSD to WST can become effective on September 1, 1985, and so the purchased power provisions can become effective on February 1, 1986.

Copies of the filing have been served upon Newton, and upon the Louisiana Public Service Commission and the Public Utility Commission of Texas.

Comment date: September 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Alamito Company

[Docket No. ER85-765-000]

September 19, 1985.

Take notice that on September 13, 1985 Alamito Company ("Alamito") submitted for filing Amendment No. Two to the 12 Year Power Sale Agreement between Alamito and Tucson Electric Power Company. The purpose of Amendment No. Two is to set forth new capitalization ratios relating to Springerville Unit 1.

Alamito requests an effective date of November 16, 1985.

Comment date: October 1, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Arizona Public Service Company

[Docket No. ER85-770-000]

September 19, 1985.

Take notice that Arizona Public Service Company on Sept. 16, 1985 tendered for filing Amendment No. 2 to the Arizona-Edison Cholla No. 4 Layoff Agreement between Arizona Public Service Company (Arizona) and Southern California Edison Company (Edison), executed August 30, 1985.

Arizona requests a waiver so that Agreement will become effective September 1, 1985.

Copies of this filing have been served upon the Arizona Corporation Commission and Edison.

Comment date: October 1, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Carolina Power & Light Company

[Docket No. ER85-772-000]

September 19, 1985.

Take notice that Carolina Power & Light Company on September 16, 1985 tendered for filing changes outlined below in its agreement with Carteret-Craven EMC, French Broad EMC, and Tri-County EMC.

1. *French Broad EMC—Micaville 12 kV*—A revision to the Exhibit A to reflect the addition of the Special Provisions for the proposed addition of Christiansted Port Terminal Corporation's hydroelectric generating facility located on the East Fork of Crabtree Creek in Mitchell County, North Carolina. The Company will purchase the generation output from this hydroelectric generating facility.

2. *Tri-County EMC—Mount Olive*—Termination of the existing Mount Olive 12 kV Point of Delivery with the load transferred to the new Mount Olive 115 kV Point of Delivery.

3. Installation of special metering facilities required to provide metering pulse information to the EMCs from the points of delivery listed below. The metering pulse information will be provided under the Company's additional facilities plan.

Carteret-Craven EMC—Atlantic Beach 115 kV.

Tri-County EMC—LaGrange 115 kV.

Comment date: October 2, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Consolidated Edison Company of New York, Inc.

[Docket No. ER 85-763-000]

September 19, 1985.

Take notice that on September 13, 1985, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing as an initial rate schedule a Lease and Operating Agreement made as of July 1, 1985 between Con Edison and The City of New York acting by and through the New York City Public Utility Service (the "City"). The rate schedule provides for the City to pay a charge for use of Con Edison's facilities to sell and distribute hydroelectric power and energy to the City's retail electric consumers equal to the charges that would have been billed those consumers under Con Edison's retail electric rate schedule on file with the New York State Public Service Commission, less Con Edison's fuel and purchased power costs reflected in such rate schedule. The rate schedule also provides for subsequent withdrawal by the City of some portion of the power and energy for sale to industrial economic development consumers; Con Edison's charges to the City allocable to that portion of the power and energy will be determined and filed as an amendment to the rate schedule.

Con Edison requests a waiver of notice requirements so that the rate schedule can be made effective as of September 11, 1985.

Con Edison states that copies of this filing have been served by mail upon the City and the Power Authority of the State of New York, from whom the City is purchasing the hydroelectric power and energy to be sold and distributed to the City's consumers.

Comment date: October 1, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. El Paso Electric Company

[Docket No. ER 85-768-000]

September 19, 1985.

Take notice that on September 16, 1985, El Paso Electric Company (El Paso) tendered for filing as an initial rate filing, an "Interchange Agreement between El Paso Electric Company and Alamito Company" dated August 23, 1985 (Agreement). El Paso states that this Agreement provides a basis for the exchange of energy between parties on a returnable basis and on an economy basis. El Paso requests that this Agreement be accepted for filing and make effective sixty (60) days from the date of filing.

El Paso further states that copies of this filing have been served upon the Public Utility Commission of Texas, the New Mexico Public Service Commission and Alamito Company.

Comment date: October 2, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power Corporation

[Docket No. ER 85-766-000]

September 19, 1985

Take notice that on *September 13, 1985,* Florida Power Corporation (Florida Power) tendered for filing Service Schedule F providing for assured capacity and energy interchange service between Florida Power and the City of Lake Worth, Florida. Florida Power states that Service Schedule F is submitted for inclusion as a supplement to the existing contract for interchange service between Florida Power and the City of Lake Worth designated as Florida Power's Rate Schedule FERC No. 101.

Florida Power requests that Service Schedule F be permitted to become effective September 16, 1985 and therefore, requests waiver of the sixty day notice requirement. Copies of this

filing have been served upon the City of Lake Worth and the Florida Service Commission.

Comment date: October 1, 1985, in accordance with Standard paragraph F at the end of this notice.

9. Florida Power Corporation

[Docket No. ER85-767-000]

September 19, 1985.

Take notice that on September 13, 1985, Florida Power Corporation (Florida Power) tendered for filing tariff revisions to Florida Power's FPC Electric Tariff, First Revised Volume No. 1. The tariff revisions reduce the power factor requirement for all and partial requirements service, reduce the notice requirements for termination or conversion of service, add a rate limitation supplement and a conjunctive billing supplement for all requirements service, and add a service agreement for partial requirements service.

Florida Power requests that the tariff revisions be permitted to become effective November 1, 1985, and therefore, requests waiver of the sixty day notice requirement. Copies of this filing have been served upon Florida Power's municipal and rural electric cooperative customers and the Florida Public Service Commission.

Comment date: October 1, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Pacific Power & Light Company an assumed business name of PacifiCorp.

[Docket No. ER85-756-000]

September 19, 1985.

Take notice that Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, on September 12, 1985, tendered for filing, in accordance with § 35.13a(d)(5) of the Commission's Regulations, Pacific's Revised Appendix 1 for the state of Montana. The Revised Appendix 1 calculates an average system cost for the state of Montana applicable to the exchange of power between Bonneville Power Administration (Bonneville) and Pacific.

Pacific requests waiver of the Commission's notice requirements to permit this rate schedule to become effective October 1, 1984, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Montana Public Service Commission, and Bonneville's Direct Service Industrial Customers.

Comment date: September 30, 1985, in accordance with Standard Paragraph E at the end of this notice.

11. The Connecticut Light and Power Company

[Docket No. ER85-764-000]

September 19, 1985.

Take notice that on September 13, 1985, The Connecticut Light and Power Company ("CL&P") tendered for filing Rider C to Resale Service Rate W-2 (CL&P's FPC Rate Schedule 1) (the "W-2 Rate") under which CL&P provides partial requirements wholesale electric service to the Town of Wallingford, Connecticut, the Second Taxing District, City of Norwalk, and the Third Taxing District, City of Norwalk (collectively referred to as the "Buyers"). Each of the Buyers has accepted and consented to the rider and its filing.

CL&P states that Rider C provides a mechanism to be incorporated in the W-2 Rate to facilitate the delivery to the Buyers of their entitlement(s) in the output of the New York Power Authority's power projects. Rider C establishes a mechanism by which each Buyer may obtain an entitlement in power projects of the New York Power Authority, arrange for delivery of such power across the transmission and distribution system of the Northeast Utilities operating companies, have power delivered to its own system loads, and, with adjustments for losses, have such delivered power accounted for in the bills rendered under the W-2 Rate by CL&P.

CL&P and the Buyers propose to make the rider effective on July 1, 1985 in conjunction with the commencement of the power flow from entitlements in the New York Power Authority power projects. In order to accomplish this effective date, CL&P has requested a waiver of the notice requirement of § 35.3 of the Commission's Regulations.

Comment date: October 1, 1985, in accordance with Standard Paragraph E at the end of this notice.

12. Ohio Power Company

[Docket No. ER85-769-000]

September 19, 1985.

Take notice that American Electric Power Service Corporation (AEP) on behalf of its affiliate Ohio Power Company (OPCO) tendered for filing on September 16, 1985 the following:

1. Agreement, dated August 1, 1985, between Village of Arcadia (Arcadia) and Ohio Power Company;
2. Agreement, dated August 1, 1985, between Village of Bloomdale (Bloomdale) and Ohio Power Company;
3. Agreement, dated August 1, 1985, between City of Bryan (Bryan) and Ohio Power Company;
4. Agreement, dated August 1, 1985, between Village of Carey (Carey) and Ohio Power Company;
5. Agreement, dated August 1, 1985, between Village of Cygnet (Cygnet) and Ohio Power Company;
6. Agreement, dated August 1, 1985, between Village of Deshler (Deshler) and Ohio Power Company;
7. Agreement, dated August 1, 1985, between Village of Greenwich (Greenwich) and Ohio Power Company;
8. Agreement, dated August 1, 1985, between Village of Ohio City (Ohio City) and Ohio Power Company;
9. Agreement, dated August 1, 1985, between Village of Plymouth (Plymouth) and Ohio Power Company;
10. Agreement, dated August 1, 1985, between Village of Republic (Republic) and Ohio Power Company;
11. Agreement, dated August 1, 1985, between Village of Sycamore (Sycamore) and Ohio Power Company;
12. Agreement, dated August 1, 1985, between City of Wapakoneta (Wapakoneta) and Ohio Power Company;
13. Agreement, dated August 1, 1985, between Village of Wharton (Wharton) and Ohio Power Company.

The Agreements set forth terms pursuant to which OPCO proposes to supply Transmission Service to Arcadia, Bloomdale, Bryan, Carey, Cygnet, Deshler, Greenwich, Ohio City, Plymouth, Republic, Sycamore, Wapakoneta, and Wharton.

The parties request an effective date of October 1, 1985.

Comment date: October 1, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to interven. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-22974 Filed 9-25-85; 8:45 pm]

BILLING CODE 6717-01-M

[Docket Nos. CP85-415-001 et al.]

Natural Gas Certificate Filings; United Gas Pipe Line Co. et al.

September 18, 1985.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket No. CP85-415-001]

Take notice that on September 4, 1985, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP85-415-001 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to modify its transportation arrangement on behalf of Brownsville Utility Department, City of Brownsville (Brownsville), as agent for the Haywood Company (Haywood), under the certificate issued in Docket No. CP82-430-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in this application which is on file with the Commission and open to public inspection.

United now proposes to transport a maximum contract demand of 600 mcf of natural gas per day in lieu of the original contract demand of 250 mcf per day for Brownsville, as agent for Haywood, until October 31, 1985. Should the Commission extend the end-user program beyond October 31, 1985, United would continue transportation of the natural gas volumes for Haywood. The gas to be transported would be purchased by Haywood from the Bishop Pipeline Corporation and would be used for low-priority space heating, boiler fuel and generator fuel at Haywood's plant in Brownsville, Tennessee.

United would receive the gas for Haywood's account from Bishop Pipeline Corporation on its 6-inch Floyd Field-Delhi pipeline located in Richland Parish, Louisiana, would redeliver the gas to the interconnection of United's and Texas Gas Transmission Corporation's facilities in Ouachita Parish, Louisiana.

United would charge Brownsville the rate equivalent to one-half of United's northern zone rate of 20.75 cents per Mcf. Such rate, it is explained, includes a component for gas consumed in company operations and the Gas Research Institute surcharge.

Comment date: November 4, 1985, in accordance with Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85-853-000]

Take notice that on September 4, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-853-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Interlake, Inc. (Interlake), under the certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that the proposed service would be performed in accordance with a transportation agreement dated May 28, 1985, which provides for the transportation of up to 15,000 Mcf of natural gas per day. The gas would be received at the following Northern receipt points:

(1) The existing interconnection between Northern and Oklahoma Natural Gas Corporation (ONG) in Sec. 32, T.22N., R.22W., Woodward County, Oklahoma (ONG#1);

(2) And/or the existing interconnection between Northern and ONG Sec. 24, T.21N., R.21W., Woodward County, Oklahoma (ONG #2);

(3) And/or the existing interconnection between Northern and OHG in Sec. 4, T.12N., R.22W., Roger Mills County, Oklahoma (ONG/Roger Mills);

(4) And/or the existing interconnection between Northern and Northwest Central Pipeline Corporation (Northwest) in Sec. 32, T.19S., R.11W., Barton County, Kansas (Northwest/Barton);

(5) And/or the existing interconnection between Northern and Northwest in Sec. 31, T.17S., R.9W., Ellsworth County, Kansas (Northwest/Bushton);

Northern would redeliver equivalent volumes for the account of Interlake at the existing interconnection between Northern and Northern Illinois Gas Company (NIGAS) in Jo Daviess County, Illinois. It is stated that NIGAS would deliver the gas directly to the plant.

Northern proposes to provide this transportation service for a term not to extend beyond October 31, 1985.

Northern submits that the subject gas would be purchased by Interlake from Northern Gas Marketing, Inc. (NGMI), and would be used as boiler and furnace reheating fuel for the operation of Interlake's Riverdale, Illinois, plant.

Northern also requests flexible authority to add or delete sources of supply and/or receipt points. With respect to such flexible authority, Northern states that it would undertake within 30 days of the addition or deletion of any gas suppliers and/or receipt points, to file certain specified information to the Commission. Transco submits that any changes made pursuant to such flexible authority would be on behalf of the same end-user for use at the same end-user location and would remain within daily and annual volumes proposed herein.

Northern states it would charge Interlake the rest provided by its Rate Schedule EUT-1 (4.65 cents per Mcf per 100 miles forward haul plus one cent per Mcf for general and administrative expenses). Northern also indicates it will retain certain percentages of fuel and unaccounted-for gas. Specifically, Northern proposes to charge the following rates and retain the respective percentages of fuel:

Northern receipt point	Transportation rate (¢ Mcf)	Fuel retention percent
ONG No. 1	36.57	3.25
ONG No. 2	[illegible]	3.25
ONG/Roger Mills	40.15	3.50
Northwest/Barton	26.67	[illegible]
Northwest/Bushton	25.92	[illegible]

Northern estimates that the peak day volume, average day volume and annual volume would be 15,000 Mcf, 8,000 Mcf, and 2,800,000 Mcf, respectively.

Comment date: November 4, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Equitable Gas Company, a division of Equitable Resources, Inc.

[Docket No. CP85-837-000]

Take notice that on August 29, 1985, Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, filed in Docket No. CP85-837-000 a request pursuant to § 157.205 of the Commission Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas for Metaltech under authorization issued in Docket No. CP83-508-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Equitable proposes to transport up to 700 dt equivalent of natural gas per day for Metaltech for delivery into Equitable's distribution system for

ultimate delivery to Metaltech in Pittsburgh, Pennsylvania. Peak day and average day deliveries are estimated to be 650 and 600 dt equivalent of gas, respectively. The annual volumes transported would not exceed 200,000 dt. The gas would be purchased from Kepco, Inc., and would be delivered to Equitable at an existing delivery point in Ritchie County, West Virginia. Equitable proposes to deliver the gas into its distribution system at its Hartson Compressor Station, Washington County, Pennsylvania. The end-use of the gas is said to be 95 percent for tin galvenizing and five percent for plant protection.

Equitable states that the current transportation rate is 15.5 cents per Mcf in its Rate Schedule TS–1. Equitable's allowance for transportation shrinkage is said to be two percent. Equitable states that it filed in Docket No. RP85–180–000 to increase the rate under Rate Schedule TS–1 to 27 cents per Mcf effective August 30, 1985, and that as of the date of the instant request, no action had been taken on Equitable filing.

Equitable also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Equitable would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: November 4, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–22975 Filed 9–25–85; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Issuance of Proposed Decisions and Orders; Period of August 5 Through September 6, 1985

During the period of August 5 through September 6, 1985, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

September 13, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Barrier Oil Corp., Tarrytown, New York, HEE–0153

Barrier Oil Corp. filed an Application for Exception from the requirement to file Form EIA–782B, entitled "Reseller/retailers Monthly Petroleum Product Sales Report." The exception request, if granted, would relieve the firm from its obligation to file the monthly EIA survey. On September 5, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

Ted's Truck Center, Quartzsite, Arizona, HEE–0156

Ted's Truck Center filed an Application for Exception from the requirement to file Form EIA–782B entitled "Reseller/retailers Monthly Petroleum Product Sales Report." The exception request, if granted, would relieve the firm from its obligation to file the monthly EIA survey. On September 6, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 85–22990 Filed 9–25–85; 8:45 am]

BILLING CODE 6450–01–M

Issuance of Decisions and Orders; Week of August 19 Through August 23, 1985

During the week of August 19 through August 23, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 13, 1985.

Appeal

John H. Hnatio, 08/23/85; HFA–0304

John H. Hnatio filed an Appeal under the Freedom of Information Act in which he sought undeleted versions of three documents released to him by the Department of Energy. In considering the Appeal, the DOE determined that the documents furnished Hnato had already been released in their entirety. Accordingly, that portion of the Appeal was denied. In addition, Hnatio asked the DOE to release documents for which the department had been conducting a FOIA search for six months. The DOE held that since no determination had been issued, the circumstances for an appeal did not exist. Accordingly, that portion of the Appeal was dismissed.

Motions for Discovery

Fedco Oil Company, 08/20/85; *HRD–0209, HRH–0209*

Fedco Oil Company filed Motions for Discovery and Evidentiary Hearing in connection with a Proposed Remedial Order (PRO) issued to the firm by the Economic Regulatory Administration (ERA). The discovery motion sought information from administrative records of DOE rulemakings, unofficial contemporaneous agency constructions of the regulations at issue (10 CFR Part 212, Subpart L), and information elaborating on the ERA's contentions in the PRO. In examining the motion, the DOE found that Fedco had failed to show that the official record of the disputed regulations was insufficient, or that the agency had interpreted the regulations inconsistently or in bad faith. The DOE therefore concluded that discovery of unofficial intra-agency documents would produce no relevant and material evidence. The DOE also pointed out that the PRO must stand or fall based on the specific conclusions of fact or law it sets forth. Accordingly, the DOE found no basis for any discovery requiring the ERA to elaborate on the contentions in the PRO. In its Motion for Evidentiary Hearing, Fedco sought to present testimony concerning the conduct of DOE personnel in enforcing the relevant regulations. The DOE denied the motion, finding that Fedco had not presented evidence of bad faith on the part of agency officials in conducting the audit and further that information necessary to establish whether the regulations were properly promulgated was already in the record of the proceeding. Both Fedco motions were therefore denied in their entirety.

RFB Petroleum, Inc., CMC Oil Company, 08/19/85; *HRD–0142, HRH–0142, HRD–0247, HRH–0247*

RFB Petroleum, Inc. and CMC Oil Company filed Motions for Discovery and Evidentiary Hearing in connection with their Statements of Objections to a Proposed Remedial Order. The DOE found that these motions, relating to the DOE's crude oil reseller regulations, were identical to those denied in *Merit Petroleum, Inc.*, 12 DOE ¶ 84,015 (1984). Since there were no differences in the circumstances of these cases that would make the reasoning of the *Merit* Decision inapplicable to the present proceeding, the Motions were denied for the reasons set forth in the *Merit* Decision.

Vanderbilt Energy Corporation, 08/23/85; *HRD–0098, HRH–0098*

Vanderbilt Energy Corporation filed Motions for Discovery and Evidentiary Hearing in connection with a Proposed Remedial Order issued to the Firm. In considering the firm's motions, the DOE found that Vanderbilt had not made the preliminary showing required to grant the firm's motions with respect to its allegation of bad faith and abuse of prosecutorial discretion by the Economic Regulatory Administration. The DOE also found that the proper method of calculating average daily production for purposes of applying the stripper well exemption is a legal and not a factual issue, and thus neither discovery nor an evidentiary hearing on this issue would be appropriate. In addition, the DOE determined that Vanderbilt had not set forth the reasons that its requests for discovery of worksheets, computations and other documents would be relevant to the down time issues in the proceeding and had not shown that its positions on these issues could only be established through an evidentiary hearing. The firm's Motions for Discovery and Evidentiary Hearing were therefore denied.

Interlocutory Orders

Economic Regulatory Administration/Fuel Oil Supply and Terminaling, Inc., 08/23/85; *HRZ–0267*

The Economic Regulatory Administration filed a Motion to Amend portions of a PRO issued to Fuel Oil Supply and Terminaling, Inc. and the Estate of Eddie E. "Bud" Hadsell. Specifically, the ERA wished to withdraw its reliance upon the regulatory definition of "firm" as the basis for asserting Hadsell's personal liability and further to clarify its position in the PRO that interest accrues on unrefunded overcharges until restitution is made. In considering the request, he DOE detemined that adopting the requested amendments would neither prejudice either of the parties nor unduly delay the enforcement proceeding. Accordingly, ERA's Motion to Amend was granted.

Gordon K. Walz, et al, Revere Petroleum, 08/21/85; *HRZ–0261, HRZ–0262*

Gordon K. Walz and four other parties (joined parties) filed a Motion for Disqualification with the Office of Hearings and Appeals (OHA). In their motion, the joined parties requested that the OHA disqualify the law firm of Chamberlin, Hrdlicka, White, Johnson & Williams (CHWJW) from continuing to repesent Revere Petroleum Corporation and Richard Dobyns (original parties) in a related Proposed Remedial Order (PRO) proceeding. In considering the joined parties' motion, the OHA determined that disqualification was inappropriate for two reasons. First, the joined parties failed to demonstrate that any testimony elicited from one of CHWJW's attorneys would prejudice the original parties under DR–102(b) of the Model Code of Professional Responsibility (Code). Second, the OHA found that disqualification of CHWJW would result in "substantial hardship" to the original parties, and thus was not warranted pursuant to DR5–102(A) of the Code. Accordingly, the Motion was denied. The OHA also considered a disqualification motion filed by the original parties and determined that the motion was based on unsubstantiated and speculative assertions. Accordingly, this Motion was also denied.

Implementation of Special Refund Procedures

Budget Airport Associates, Inc., Consolidated Leasing Corp., Grand Rent-A-Car Corp., Traveler's Rental, Inc., 08/20/85; *HEF–0044, HEF–0054, HEF–0083, HEF–0182*

The Office of Hearings and Appeals issued a final Decision and Order setting forth the procedures to be used in filing applications for refund from the settlement funds obtained by the DOE as a result of consent orders entered into with Budget Airport Associates, Inc. ($13,688.26), Consolidated Leasing Corp. ($16,500), Grand Rent-A-Car Corp. ($34,177.88), and Traveler's Rental, Inc. ($7,868.97). The funds will be available to customers who incurred refueling charges imposed by the consent order firms, when rented motor vehicles were returned with less motor gasoline than when rented. The consent orders cover only the operations of Budget, Consolidated and Grand at the Los Angeles International Airport, and Traveler's operations at Boston's Logan Airport. The Decision discussed specific information to be included in refund applications.

Naphsol Refining Company, 08/23/85; *HEF–0134*

The DOE issued a Decision and Order implementing a plan for the distribution of $29,673.56 plus interest received as a result of a consent order entered into by Naphsol Refining Company and the DOE on August 31, 1981. The DOE determined that the Naphsol settlement fund should be distributed to customers who were injured as a result of their purchases of motor gasoline, No. 1 fuel oil, or No. 2 fuel oil from Naphsol during the November 1, 1973 through March 31, 1975 consent order period. However, the DOE decided that a separate detailed showing of injury would not be required of applicants whose refund claim amounted to $5,000 or less. The Decision discussed specific information to be included in refund applications.

Northeast Petroleum Industries, 08/20/85; *HEF–0137*

The DOE issued a Decision and Order implementing a plan for the distribution of $322,748 plus interest received as a result of a consent order entered into by Northeast Petroleum Industries and the DOE. The DOE determined that the Northeast settlement fund should be distributed to customers who were injured as a result of their purchases of residual fuel oil from Northeast during the November 1, 1973 through June 30, 1975 consent order period. However, the DOE decided that a separate, detailed showing of injury would not be required of applicants whose refund claims amounted to $5 000 or less. The Decision discussed specific information to be included in refund applications.

VGS Corporation/Southland Oil Company, Young Refining Corporation, Macmillan Ring-Free Oil Co., Inc. 08/21/85; *HEF–0225, HEF–0228, HEF–0506*

The DOE issued a Decision and Order setting forth procedures to be used for distributing funds received pursuant to consent orders with VGS Corporation/ Southland Oil Company ($1,010,000), Young Refining Corporation ($75,000), and Macmillan Ring-Free Oil Co., Inc. ($1,550,000). The consent orders settled all disputes regarding each firm's compliance with the DOE petroleum regulations. The funds will be available to customers who were injured as a result of their purchases of covered petroleum products from any of the three firms during periods covered by the consent orders.

However, the DOE decided that no specific, detailed showing of injury would be required of applicants whose refund claims amounted to $5,000 or less. The Decision outlines specific information to be included in refund applications.

Refund Applications

Gulf Oil Corporation/Bursaw Oil Company, et al., 08/23/85; RF40–809, et al

Bursaw Oil Company and 48 other gasoline and middle distillate wholesalers and retailers filed Applications for Refund in which they sought a portion of the funds obtained by the DOE through a consent order entered into with the Gulf Oil Corporation. The DOE found that each of the firms satisfactorily demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund amount claimed. The DOE therefore decided that Bursaw and the 48 other wholesalers and resellers should receive a total refund of $378,702, representing $332,382 in principal and $46,320 in interest.

Gulf Oil Corporation/Jerry Dybul, et al., 08/23/85; RF40–00175, et al

The DOE issued a decision granting refunds from the Gulf Oil Corporation deposit escrow fund to five purchasers of Gulf refined petroleum products. The refunds to these firms total $17,594, representing $15,435 in principal and $2,149 in interest. All of the refund applicants demonstrated that they would not have been required to pass through to their customers a cost reduction equal to the amount of refund claimed.

Gulf Oil Corporation/Jim's Gulf Service Stations, Inc., et al., 08/21/85; RF40–00044, et al

The DOE issued a decision granting refunds from the Gulf Oil Corporation deposit escrow fund to 39 purchasers of Gulf refined petroleum products. The refunds to these firms total $152,797, representing $134,104 in principal and $18,693 in interest. All of the refund applicants demonstrated that they would not have been required to pass through to their customers a cost reduction equal to the amount of refund claimed.

Gulf Oil Corporation/John L. Baltz, et al., 08/23/85; RF40–00173, et al

The DOE issued a decision granting refunds from the Gulf Oil Corporation deposit escrow fund to 19 purchasers of Gulf refined petroleum products. The refunds to these firms total $88,876, representing $78,007 in principal and $10,869 in interest. All of the refund applicants demonstrated that they would not have been required to pass through to their customers a cost reduction equal to the amount of refund claimed.

Gulf Oil Corporation/Kirschner Brothers Oil Company, et al., 08/23/85; RF40–2004, et al

Kirschner Brothers Oil Company and 46 other gasoline and middle distillate wholesalers and retailers, filed Applications for Refund in which they sought a portion of the funds obtained by the DOE through a consent order entered into with the Gulf Oil Corporation. The DOE found that each of the firms demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund amount that it claimed. The DOE therefore decided that Kirschner and the 46 other wholesalers and resellers should receive a total refund of $297,468, representing $261,086 in principal and $36,382 in interest.

Gulf Oil Corporation/Pfleider Oil Corporation, et al., 08/23/85; RF40–877, et al

Pfleider Oil Corporation and 49 other gasoline and middle distillate wholesalers and retailers, filed Applications for Refund in which they sought a portion of the funds obtained by the DOE through a consent order entered into with the Gulf Oil Corporation. The DOE found that each of the firms demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund amount that it claimed. The DOE therefore decided that Pfleider and the 49 other wholesalers and resellers should receiver a total refund of $291,760, representing $256,075 in principal and $35,685 in interest.

Gulf Oil Corporation/Turner's E-Z Go #31, et al., 08/23/85; RF40–9 et al

The DOE issued a decision granting refunds from the Gulf Oil Corporation deposit escrow fund to 49 purchasers of Gulf refined petroleum products. The refunds to these firms total $124,532, representing $109,304 in principal and $15,228 in interest. All of the refund applicants demonstrated that they would not have been required to pass through to their customers a cost reduction equal to the amount of refund claimed.

Pioneer Corporation, Houston Natural Gas Corporation/Phillips Petroleum Company, 08/21/85; RF52–1, RF53–1

Phillips Petroleum Company filed an Application for Refund seeking a portion of the funds obtained by the DOE through consent orders entered into with Pioneer Corporation and Huston Natural Gas Corporation. Phillips claimed refunds on the grounds that it purchased natural gas liquid products from the consent order firms. The DOE found that Phillips experienced a competitive disadvantage and was injuried as a result of its NGLP purchases from the two firms during the consent order period. The DOE therefore determined that Phillips should receive 100 percent of its allocable share of the consent order funds, based on the volumetric approach. Accordingly, Phillips was granted a refund of $249,699.64 plus $82,153.18 in interest from the Pioneer escrow account, and a refund of $128,304.76 plus $55,548.24 in interest from the HNG escrow account.

Dismissal

The following submission was dismissed:

Name and Case No.

Hopland Band of Pomo Indians—RQ21–155

[FR Doc. 85–22981 Filed 9–25–85; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

Second Meeting of the Land Mobile Radio/UHF Television Technical Advisory Committee

October 15, 1985.

The second meeting of the Land Mobile Radio/UHF Television Technical Advisory Committee will be held on October 15, 1985, in Room 856, (the Commission Meeting Room), 1919 M Street NW., Washington, DC. The meeting will start at 9:30 A.M.

All interested parties are invited to attend this meeting. Since this is to be a technical advisory committee, attendees should be prepared for technical discussions.

The agenda for the second meeting will consist of:

1. Approval of minutes of last meeting;
2. Status report from working group co-convenors;
3. Discussion of additional work for the working groups or deletion of work from the working groups;
4. Discussion of appropriate date and tentative agenda for next meeting.

Any questions regarding this meeting should be directed to Mr. Kenneth Nichols at (301) 725–1585.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85–22969 Filed 9–25–85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Wasington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room, 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Wasington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 207–009767–002.

Title: ACTA/USA Joint Service Agreement.

Parties:
Associated Container Transportation (Australia) Ltd.
Blue Star Line Limited
Ellerman Lines PLC
Port Line Limited

Synopsis: The proposed amendment would restate the agreement to conform with the Commission's format, organization and content requirements. It would also add Associated Container Transportation (Australia) Ltd. as a party to the agreement.

Agreement No.: 221–010832.
Title: Savannah Terminal Agreement.
Parties:
Georgia Ports Authority (Authority)
Moller Steamship Co., Inc. as agents for Maersk Line (Maersk)

Synopsis: This agreement covers the lease by the Authority to Maersk of parking slots for operating a container yard within the confines of the Authority's Garden City Terminal in Savannah, Georgia. The container yard will be operated by employees of Maersk Line. The term of the lease shall be for one year, which term shall begin on the first day of the month following the determination of its effective date by the Federal Maritime Commission. A shortened review period for the agreement has been requested by the parties.

Dated: September 23,1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–23014 filed 9–25–85; 8:45 am]

BILLING CODE 6730–01–M

[Agreement No. 224–003930–001]

Agreement Between the Port Authority of New York and New Jersey and Universal Maritime Service Corp.; Erratum

The **Federal Register** Notice published on September 9, 1985, (Vol. 509, No. 174, Pg. 36674), covering Agreement No. 224–003930–001 inadvertently indicated that the parties to the agreement were the Port Authority of New York and New Jersey, the City of New York and the State of New York. It should have read that the parties are the Port Authority of New York and New Jersey and Universal Maritime Service Corp.

Dated: September 23, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–23015 Filed 9–25–85; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89–777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Stena Cargo Line Ltd., Imperial Ocean Services Ltd. (Bahamas), Star Cruises Limited and SeaEscape Limited, c/o SeaEscape Limited, 1080 Port Boulevard, Miami, Florida 33132

Dated: September 20, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–23017 Filed 9–25–85; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Imperial Ocean Services Ltd. (Bahamas), Star Cruises Limited and SeaEscape Limited, c/o SeaEscape Limited, 1080 Port Boulevard, Miami, Florida 33132

Dated: September 20, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–23016 Filed 9–25–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

September 20, 1985.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822);

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–6880).

Proposal to approve under OMB delegated authority the extension with revision of the following report:

1. Report title: Weekly Report to Assets and Liabilities for Large U.S. Branches and Agencies of Foreign Banks
Agency form number: FR 2069
OMB Docket number: 7100–0030
Frequency: Weekly
Reporters: U.S. Branches and Agencies of Foreign Banks
Small businesses are not affected.
General description of report:

This information collection is voluntary (12 U.S.C. 3105) and is given confidential treatment (5 U.S.C. 552(b)(4) and b(8)).

This report provides current information on credit developments and sources of funds at U.S. branches and agencies of foreign banks. These data are used to estimate bank credit and nondeposit funds and for analyzing banking and monetary conditions.

Board of Governors of the Federal Reserve System, September 20, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–22982 Filed 9–25–85; 8:45 am]

BILLING CODE 6210–01–M

Amoskeag Bank Shares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for

processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 18, 1985.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Amoskeag Bank Shares, Inc.*, Manchester, New Hampshire; to acquire 100 percent of the voting shares of Portsmouth Savings Bank, Portsmouth, New Hampshire, and indirectly acquire 7.64 prcent of the voting shares of First Coastal Bank, Inc., and indirectly acquire The First National Bank of Portsmouth, Portsmouth, New Hampshire.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *The Colonial BancGroup, Inc.*, Montgomery, Alabama; to acquire 100 percent of the voting shares of Peoples Bancshares, Inc., Pell City, Alabama, and indirectly acquire The Peoples Bank, Pell City, Alabama.

2. *The Colonial BancGroup, Inc.*, Montgomery, Alabama; to acquire 100 percent of the voting shares of The Bank of Oxford, Oxford, Alabama; Bank of Heflin, Heflin, Alabama; and The Colonial Bank of East-Central Alabama, Pell City, Alabama, a phantom bank.

C. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Illini Bancorp, Inc.*, Galesburg, Illinois; to acquire 100 percent of the voting shares of Madison Park Bank, Peoria, Illinois.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Regency Bancorporation*, Pueblo, Colorado; to become a bank holding company by acquiring 97 percent of the voting shares of Pueblo Boulevard Bank, Pueblo, Colorado. Comments on this application must be received not later than October 16, 1985.

Board of Governors of the Federal Reserve System, September 20, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-22983 Filed 9-25-85; 8:45 am]

BILLING CODE 6210-01-M

Citicorp; Correction

This notice corrects a previous Federal Register document (FR Doc. No. 85-20338), published at page 34754 of the issue for Tuesday, August 27, 1985.

Citicorp, New York, New York; to engage in data processing and data transmission activities. Citicorp proposes to engage in these activities world-wide.

Board of Governors of the Federal Reserve System, September 20, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-22984 Filed 9-25-85; 8:45 am]

BILLING CODE 6210-01-M

First Indiana Bancorp; Correction

This notice corrects a previous Federal Register document (FR Doc. No. 85-22272), published at page 37911 of the issue for Wednesday, September 18, 1985.

These activities would be conducted in the State of Indiana.

Board of Governors of the Federal Reserve System, September 20, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-22985 Filed 9-25-85; 8:45 am]

BILLING CODE 6210-01-M

T N Bancshares, Inc.; Correction

This notice corrects a previous Federal Register document (FR Doc. No. 85-22396), published at page 38033 of the issue for Thursday, September 19, 1985.

These activities would be conducted in the states of Texas and New Mexico.

Board of Governors of the Federal Reserve System, September 20, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-22986 Filed 9-25-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration.

Notice is given that the Federal Register Document 85-19983, Page 33850, published Wednesday, August 21, 1985 be amended to reflect a change in the office of Legislative and Regulatory Policy (OLRP) Federal Register code.

The OLRP material is amended as follows:

1. In the first column, nineteenth line, "Chapter (SY)" should have read "Chapter (SH)."

2. All subsequent references in the first and second columns to "SY" should have read "SH."

Dated: September 13, 1985.

Nelson J. Sabatini,

Acting Deputy Commissioner for Management and Assessment.

[FR Doc. 85-23019 Filed 9-25-85; 8:45 am]

BILLING CODE 4190-11-M

Alcohol, Drug Abuse, and Mental Health Administration

Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I) announcement is made of the following national advisory bodies scheduled to assemble during the month of October 1985.

Biological and Neurosciences Subcommittee of the Mental Health Research Education Review Committee

October 3; 1:00 p.m.

Parklawn Building

Conference Room O

5600 Fishers Lane, 3rd Floor

Rockville, Maryland 20857

Open—October 3; 1:00–2:00 p.m.

Closed—Otherwise

Contact: Betty Russell

Parklawn Building, Room 9-101

5600 Fisher Lane 20857

Rockville, Maryland 20857 (301) 443-3857

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research training activities in the area of biological sciences related to mental

health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 1:00–2:00 p.m., October 3, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applicants for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

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Basic Psychopharmacology Research Review Subcommittee of the Neurosciences Research Review Committee
October 3–4; 8:30 a.m.
Ramada Inn—Bethesda
8400 Wisconsin Avenue
Bethesda, Maryland 20814

Open—October 3; 8:30–9:30 a.m.
Closed—Otherwise
Contact: Lynn Warwick
Parklawn Building, Room 9C26
5600 Fisher Lane
Rockville, Maryland 20857 (301) 443–3444

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research training activities relating to basic psychopharmacology and neuropsychology, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 8:30–9:30 a.m., October 3, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applicants for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

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Child and Family and Prevention Subcommittee of the Life Course and Prevention Research Review Committee
October 7–8; 9:00 a.m.
Holiday Inn—Chevy Chase
5520 Wisconsin Avenue
Chevy Chase, Maryland 20815

Open—October 7; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Nell Brock
Parklawn Building, Room 9C08
5600 Fisher Lane
Rockville, Maryland 20857 (301) 443–1177

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health of the child and family and prevention, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., October 7, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applicants for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

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Applied Behavioral Sciences Subcommittee of the Mental Health Research Education Review Committee
October 10–11; 9:00 a.m.
Connecticut Avenue Club
2661 Connecticut Avenue
Washington, D.C. 20008

Open—October 10; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Emilie Embrey
Parklawn Building, Room 9–101
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443–3857

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research training activities in the areas of biological sciences, the psychological sciences, and the applied behavioral sciences related to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., October 10, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

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Psychological Sciences Subcommittee of the Mental Health Research Education Review Committee
October 10–11; 12 noon
Linden Hill Hotel
5400 Pooks Hill Road
Bethesda, Maryland 20814

Open—October 10; 12:00 noon–1:00 p.m.
Closed—Otherwise
Contact: Sandra Buckhalter
Parklawn Building, Room 9–101
Rockville, Maryland 20857, (301) 443–3857

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research training activities in the areas of psychological sciences related to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 12 noon–1:00 p.m., October 10, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

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Biochemistry Research Subcommittee of the Drug Abuse Biomedical Research Review Committee
October 15–17; 9:00 a.m.
Holiday Inn Crowne Plaza
Woodmont Conference Room
1750 Rockville Pike
Rockville, Maryland 20852

Open—October 15; 9:00-9:30 a.m.
Closed—Otherwise
Contact: Yuth Nimit, Ph.D.
Parklawn Building, Room 10–42
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443–3620

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the

National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00–9:30 a.m., October 15, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

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Pharmacology Research Subcommittee of the Drug Abuse Biomedical Research Review Committee
October 15–17; 9:00 a.m.
Crowne Plaza Holiday Inn
Woodmont Conference Room
1750 Rockville Pike
Rockville, Maryland 20852

Open—October 15; 9:00–9:30 a.m.
Closed—Otherwise
Contact: Heinz Sorer, Ph.D.
Parklawn Building, Room 10–42
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443–2620

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00–9:30 a.m., October 15, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

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Drug Abuse Clinical and Behavioral Research Review Committee
October 15–18; 9:00 a.m.
Holiday Inn Crowne Plaza
1750 Rockville Pike
Rockville, Maryland 20852

Open—October 15; 9:00–9:30 a.m.
Closed—Otherwise
Contact: Daniel L. Mintz
Parklawn Building, Room 10–42
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443–2620

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 9:00–9:30 a.m., October 15, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

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Clinical and Treatment Subcommittee of the Alcohol Psychosocial Research Review Committee
October 16–17; 9:00 a.m.
The Gramercy Hotel
1616 Rhode Island Avenue, N.W.
Washington, D.C. 20036

Open—October 16; 1:30–2:30 p.m.
Closed—Otherwise
Contact: Laura Weinstein, Ph.D.
Parklawn Building, Room 16C26
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443–6106

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol and Alcoholism for final review.

Agenda; From 1:30–2:30 p.m., October 16, the meeting will be open for discussion of review policies and procedures, administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

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Epidemiology and Prevention Subcommittee of the Drug Abuse Epidemiology, Prevention, and Services Research Review Committee
October 16–18: 8:30 a.m.
Ramada Inn
Embassy 1
8400 Wisconsin Avenue
Bethesda, Maryland 20814

Open—October 16; 8:30–9:30 a.m.
Closed—Otherwise
Contact: Ron Gold
Parklawn Building, Room 10–42
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443–2620

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 8:30–9:30 a.m., October 16, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

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Prevention and Epidemiology Subcommittee of the Alcohol Psychosocial Research Review Committee
October 16–18; 9:00 a.m.
The Gramercy Hotel
1616 Rhode Island Avenue, N.W.
Washington, D.C. 20036

Open—October 16; 9:00–10:30 a.m.
Closed—Otherwise
Contact: Mary L. Ganikos, Ph.D.
Parklawn Building, Room 16C26
5600 Fishers Lane
Rockville, Maryland 20857 (301) 443–2860

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00–10:30 a.m., October 16, the meeting will be open for discussion of review policies and procedures, administrative announcements and program

developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

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Services Research Subcommittee of the Drug Abuse Epidemiology, Prevention, and Services Research Review Committee
October 16–18; 8:30 a.m.
Ramada Inn
Embassy 11
8400 Wisconsin Avenue
Bethesda, Maryland 20814
Open—October 16; 8:30–9:30 a.m.
Closed—Otherwise
Contact: H. Noble Jones
Parklawn Building, Room 10–42
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443–2620

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Agenda: From 8:30–9:30 a.m., October 16, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

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Aging Subcommittee of the Life Course and Prevention Research Review Committee
October 17–18; 9:00 a.m.
Shoreham Hotel
Executive Conference Room
Room 763
2500 Calvert Street, N.W.
Washington, D.C. 20008
Open—October 17; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Victoria Souder
Parklawn Building, Room 9C02
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443–4728

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and activities in the fields of child, family, and aging, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., October 17, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing intial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

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Psychopharmacological, Biological, and Physical Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee
October 17–18; 9:00 a.m.
Holiday Inn Chevy Chase
5520 Wisconsin Avenue
Chevy Chase, Maryland 20815
Open—October 17; 9:00 a.m.–10:00 a.m.
Closed—Otherwise
Contact: Pamela J. Mitchell
Parklawn Building, Room 9C18
5600 Fishers Lane
Rockville, Maryland 20857 (301) 443–1367

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the fields of treatment development and assessment, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., October 17, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

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Psychosocial and Biobehavioral Treatments Subcommittee of the Treatment Development and Assessment Research Review Committee
October 17–18; 9:00 a.m.
Dupont Plaza Hotel
1500 New Hampshire Avenue, NW.,
Washington, DC 20036
Open–October 17; 9:00–10:00 a.m.
Closed–Otherwise
Contact: Maureen Eister
Parklawn Building, Room 9C14
5600 Fishers Lane
Rockville, Maryland 20857 (301) 443–4868

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the fields of treatment development and assessment and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., October 17, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

* * * * *

Cognition, Emotion, and Personality Research Review Committee
October 21–22; 9:00 a.m.
Chevy Chase Holiday Inn
5520 Wisconsin Avenue
Chevy Chase, Maryland 20815
Open—October 21; 9:00–10:00 a.m.
Closed—Otherwise
Contact: Shirley Maltz
Parklawn Building, Room 9C26
5600 Fishers Lane
Rockville, Maryland 20857 (301) 443–3944

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities in the areas of personality, emotion, cognition, and related higher mental processes, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., October 21, the meeting will be open for discussion of administrative announcements and program

developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appenix I).

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Psychopathology and Clinical Biology Research Review Committee
October 21-23; 9:00 a.m.
Shoreham Hotel
Calvert Street and Connecticut Avenue, N.W.
Washington, D.C. 20008
Open—October 21; 9:00-10:00 a.m.
Closed—Otherwise
Contact: Mary F. Curvey
Parklawn Building, Room 9C24
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443-1340

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training in the areas of clinical psychopathology and clinical biology as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00-10:00 a.m., October 21, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

* * * * *

Criminal and Violent Behavior Research Review Committee
October 23-25; 9:00 a.m.
The Gramercy Hotel
1616 Rhode Island Avenue, N.W.
Washington, D.C. 20036
Open—October 23; 9:00-10:30 a.m.
Closed—Otherwise
Contact: Jean Byrne
Parklawn Building, Room 9C14
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443-1868

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research grants, individual postdoctoral research fellowships and institutional research training grants, cooperative agreements, and research and development contracts, as they relate to the mental health aspects of criminal, delinquent, and antisocial behavior; individual violent behavior; sexual assault; and law-mental health interactions related to these areas, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00-10:30 a.m., October 23, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

* * * * *

Epidemiologic and Services Research Review Committee
October 23-25; 9:00 a.m.
Holiday Inn—Chevy Chase
5520 Wisconsin Avenue
Chevy Chase, Maryland 20815
Open—October 23; 9:00-10:00 a.m.
Closed—Otherwise
Contact: Gloria Yockelson
5600 Fishers Lane
Rockville, Maryland, (301) 443-1367

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00-10:00 a.m., October 23, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

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Clinical Program Projects/Clinical Research Centers Subcommittee of the Treatment Development and Assessment Research Review Committee
October 24; 9:00 a.m.
Holiday Inn Crowne Plaza
1750 Rockville Pike
Rockville, Maryland 20852
Open—October 24; 9:00-10:00 a.m.
Closed—Otherwise
Contact: Pamela J. Mitchell
Parklawn Building, Room 9C18
5600 Fishers Lane
Rockville, Maryland 20857 (301) 443-1367

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of mental health clinical research centers, clinical program projects, and other large-scale multidisciplinary research projects, and makes recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00-10:00 a.m., October 24, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

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Mental Health Behavioral Sciences Research Review Committee
October 24-26; 9:00 a.m.
Wellington Hotel
2505 Wisconsin Avenue, NW.,
Washington, D.C. 20007
Open—October 24; 9:00-10:00 a.m.
Closed—Otherwise
Contact: Naomi Lichtenberg
Parklawn Building, Room 9C26
5600 Fishers Lane
Rockville, Maryland 20857 (301) 443-3936

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to behavioral science areas relevant to mental health and makes recommendations to the National

Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., October 24, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

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Biochemistry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee
October 28–30; 9:00 a.m.
Wellington Hotel
2505 Wisconsin Avenue, NW.,
Washington, DC 20007
OPEN—October 28; 9:00–11:00 a.m.
CLOSED—Otherwise
Contact: Walter T. Shaffer, Ph.D.
Parklawn Building, Room 16C26
5600 Fishers Lane
Rockville, Maryland 20857 (301) 443–6106

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00–11:00 a.m., October 28, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

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Neuroscience and Behavior Subcommittee of the Alcohol Biomedical Research Review Committee
October 30–November 1; 9:00 a.m.
Wellington Hotel
2505 Wisconsin Avenue, NW.,
Washington, DC 20007
Open—October 30; 9:00–11 a.m.
Closed—Otherwise
Contact: Mark R. Green, Ph.D.
Parklawn Building, Room 16C26
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443–6106

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Alcohol Abuse and Alcoholism for support of research and training activities and makes recommendations to the National Advisory Council on Alcohol Abuse and Alcoholism for final review.

Agenda: From 9:00–11:00 am., October 30, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of grant applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6a), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

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Research Scientist Development Review Committee
October 30–November 1; 7:00 p.m.
Holiday Inn Chevy Chase
5520 Wisconsin Avenue
Chevy Chase, Maryland 20815
Open—October 30; 9:00–9:30 a.m.
Closed—Otherwise
Contact: Linda Rainey
Parklawn Building, Room 9C05
5600 Fishers Lane
Rockville, Maryland 20857, (301) 443–6470

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities to develop and execute a program of Research Scientist and Research Scientist Development Awards to appropriate institutions for the support of individuals who are engaged full time in research and related activities relevant to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–9:30 a.m., October 30, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

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Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of committee members may be obtained as follows: MIAAA: Ms. Diana Widner, Committee Management Officer, Room 16C20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4375. NIDA: Ms Mary Kielkopf, Acting Committee Management Officer, Room 10–22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1644. NIMH: Ms. Helen Garrett, Committee Management Officer, Room 17C26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Dated: September 20, 1985.

Robin I. Kawazoe,

Committee Management Officer Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85–22970 Filed 9–25–85; 8:45 am]

BILLING CODE 4160-20-M

Public Health Service

Grants Program for Baccalaureate Degree-Granting Institutions; Academic Research Enhancement Award

In its report accompanying the Fiscal Year 1985 appropriation for the National Institutes of Health (NIH), Congress called for an initiative to strengthen the research milieu of non-research-intensive, four-year colleges and universities which provide undergraduate training for significant number of our nation's research scientists. In FY 1985, the NIH made $5,000,000 available for this purpose and will be able to award approximately 75 "Academic Research Enhancement Awards" (AREAs). This award is designed to enhance the research environment of educational institutions that have not been traditional recipients of NIH research funds. The award is intended to support new research projects to expand ongoing research activities proposed by faculty members of these institutions in areas related to the health sciences.

The NIH is inviting grant applications for a second round of AREAs to be awarded in FY 1986.

Institutions eligible for the AREA Program are defined as those that offer baccalaureate degrees in the sciences related to health, but did not receive an

NIH Biomedical Research Support Grant (BRSG) in FY 1986. (If in doubt about whether an institution has received a BRSG, contact the Office of Grants Inquiries, Westwood Building, NIH, Bethesda, Maryland 20892.)

Investigators eligible for the Program are those who will not have active research grant support (including another AREA) from either NIH or ADAMHA (Alcohol, Drug Abuse, and Mental Health Administration) at the time of award of an AREA grant. Applicants for AREAs are not eligible to submit a regular NIH or ADAMHA research grant application for essentially the same project.

Funding decisions will be based on the proposed research project's scientific merit and relevance to NIH programs, and the institution's contribution to the undergraduate preparation of doctoral-level health professionals. Among projects of essentially equivalent scientific merit and program relevance, preference will be given to those submitted by institutions that have granted baccalaureate degrees to 25 or more individuals who, during the period 1977–1984, obtained academic or professional doctoral degrees in the health related sciences.

AREAs are awarded on a competitive basis. Applicants may request support for up to $50,000 in direct costs (plus applicable indirect costs) for a period not to exceed 24 months. Although this award is non-renewable, it will enable qualified individual scientists within the eligible institutions to receive support for feasibility studies, pilot studies and other small-scale research projects preparatory to seeking more substantial funding from the regular NIH research grant programs.

Applications for this award will be accepted under the regular application submission procedures of the Division of Research Grants (DRG) of NIH. Grant applications must be prepared and submitted on PHS 398 grant application forms. An abbreviated format and simplified instructions will be provided for use in preparing these applications. The receipt date is January 15, 1986.

Those individual and institutions meeting eligibility requirements and wishing to receive further information and/or application materials should write to: AREA, Office of Grants Inquiries, Division of Research Grants, National Institutes of Health, Westwood Building—Room 449, Bethesda, Maryland 20892.

Dated: September 19, 1985.

J.E. Rall,

Acting Director, National Institutes of Health.

[FR Doc. 85-22968 Filed 9-25-85; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Final Determination That the Southeastern Cherokee Confederacy, Inc., the Northwest Cherokee Wolf Band, and the Red Clay Inter-Tribal Indian Band Do Not Exist as Indian Tribes

September 16, 1985.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.9(f) (formerly 25 CFR 54.9(f)), notice is hereby given that the Assistant Secretary has determined that three separate but related petitioners (the Southeastern Cherokee Confederacy, Inc., the Northwest Cherokee Wolf Band, and the Red Clay Inter-tribal Indian Band) do not exist as Indian tribes, either individually or collectively as one tribe, within the meaning of Federal law. This determination includes all bands and clans which are now affiliated or which have been affiliated in the past with the petitioners listed below:

Southeastern Cherokee Confederacy Inc. (hereinafter SECC), c/o William R. Jackson, Route 1, Box 111, Leesburg, Georgia 31763.

Northwest Cherokee Wolf Band (NWCWB), Southeastern Cherokee Confederacy, Inc., c/o Robert E. Ponder, P.O. Box 582, Talent, Oregon 97540.

Red Clay Inter-tribal Indian Band (RCIIB), Southeastern Cherokee Confederacy, Inc., c/o John F. Neikirk, 7703 Georgetown Road, Ooltewah, Tennessee 37363.

This notice is based on determinations following a review of public comments on the proposed finding that these groups individually as well as collectively do not meet four of the criteria set forth in 25 CFR 83.7 and, therefore, do not meet the requirements necessary for a government-to-government relationship with the United States.

A notice of the proposed finding to decline to acknowledge the SECC, the NWCWB, and the RCIIB was published in the Federal Register on Monday, April 1, 1985 (page 12872, Vol. 50, No. 62). Interested parties were given 120 days in which to submit factual or legal arguments to rebut the evidence used to support the proposed finding.

Two written comments were received during the comment period. A letter was received on May 13 from Ruby Walls, Executive Secretary of the Northwest Cherokee Wolf Band (one of the petitioning organizations), which supported the Department's proposed finding and stated, on behalf of the group, that they realized that "there is no possible chance of federal recognition . . . [and that] it is also recognized by our members that our ancestors did not keep their tribal contact from the early 1800's and went on to adapt to the white man's ways."

One rebuttal was received on July 29, 1985 from Bettie L. Buford, principal vice chief of the SECC, presumably on behalf of the SECC petitioner, which challenged the proposed finding. This letter and its supporting documentation were carefully considered to determine whether the evidence and arguments presented would strengthen the group's overall petition for acknowledgment.

Supporting material submitted included numerous personal affidavits and photos attesting to the American Indian heritage of selected individuals, copies of recent corrections to vital records, miscellaneous newspaper articles and other published materials referring to Indians in general but not to the petitioning groups in particular, minutes and reports of meetings and other notices (all dated 1985) describing the participation of the Crow Band of the SECC and/or its members in local activities, and miscellaneous envelopes and other mail of recent origin addressed to individuals using Indian names.

Most of the genealogical materials submitted with the rebuttal dealt with persons who could not be identified with and were apparently different from and in addition to individuals previously reported as SECC members for acknowledgment purposes. Personal affidavits submitted were insufficient as evidence of Indian heritage since they were of recent origin and unsupported by other corroborating evidence. Vital records and corrections thereto were of recent origin, based in unsupported personal affidavits and, thus, were insufficient as evidence in the context within which they were used. News articles and other published materials were of a very general nature and did not address the historical continuity or political authority of the current petitioners. Meeting minutes and reports of Crow Band activities were of very recent (1985) origin. Although they did

discuss the group's current activities within their local community, they did not address the question of historical identification of the group and its members as a separate and distinct community of Indians. Current mail addressed to an individual who uses an Indian name is not historical evidence, nor does it necessarily show Indian ancestry or recognition as Indian.

A second mailing was received from Mrs. Buford on August 20, 21 days after the close of the 120-day period for public comment. This mailing included five letters petitioning against the Secretary's preliminary decision to deny Federal acknowledgment to the SECC and an affiliate band, the Badger Band of Oregon; as well as a few additional genealogical materials and personal affidavits, but no new substantive evidence. The petitions contained 50 signatures, only 8 of which could be identified as belonging to members of the petitioning group.

None of the evidence or arguments submitted refuted the perliminary finding that the SECC, the NWCWB, the RCIIB and their affiliated bands and clans are recently formed, overtly multi-tribal voluntary associations of individuals recruited into membership. The petitioning organizations are not derived from nor are they the historical successors of the pre-removal Cherokee Nation.

Based on information originally provided by the petitioners, on independent research conducted by the Acknowledgment staff, and on comments and supporting evidence received from the SECC petitioner in response to the proposed finding, we conclude that the SECC, the NWCWB, and the RCIIB do not meet the requirements necessary under Federal law for a government-to-government relationship with the United States.

In accordance with 25 CFR 83.9(j) of the Acknowledgment regulations, an analysis was made to determine what, if any, options other than acknowledgment would be available under which the petitioning groups could make application for services and other benefits. No viable alternatives could be found due to the mixed and uncertain Indian ancestry of each group, the geographical dispersion of its membership, and their lack of inherent social and political cohesion and continuity.

This determination is final and will become effective 60 days after the date on which this notice appears in the **Federal Register** unless the Secretary of the Interior requests reconsideration pursuant to 25 CFR 83.10.

Hazel E. Elbert,

Acting Deputy Assistant Secretary, Indian Affairs.

[FR Doc. 85-23064 Filed 9-25-85; 8:45 am]

BILLING CODE [illegible]

Information Collections Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

September 19, 1985.

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Budget Clearance Officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone number (202) 395-7313.

Title: Financial Assistance and Social Services Program (25 CFR Part 20).

Abstract: These forms request financial, demographic and employment information on clientele for the purpose of determining eligibility to receive financial assistance. These forms allow the Bureau worker to determine the degree of unmet need and arrange for a money payment.

Bureau Form Number: 5-6601, 5-6603, 5-6604, 5-6605, 5-1201B.

Description of Respondents: Individuals whose needs have not been met and some form of subsistence is required.

Annual Response: 213,288.

Annual Burden Hours: 33,498.

Bureau Clearance Officer: Cathie L. Martin (202) 343-3574.

Hazel E. Elbert,

Acting Deputy Assistant Secretary, Indian Affairs.

[FR Doc. 85-23065 Filed 9-25-85; 8:45 am]

BILLING CODE [illegible]

Bureau of Land Management

Availability of Record of Decision and Rangeland Program Summary for the John Day Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Record of Decision for the John Day Resource Management Plan.

SUMMARY: In accordance with 43 CFR 1610.5 and section 102(2)(c) of the National Environmental Policy Act of 1969 (40 CFR 1505.2), the Department of the Interior, Bureau of Land Management, notice is hereby given of the issuance of the Record of Decision and Rangeland Program Summary for the John Day Resource Management Plan. Initiation of actions which implement this plan can begin with the signing of the Record of Decision.

DATES: The Record of Decision became effective with the signing of that document on August 28, 1985 by William G. Leavell, State Director, Oregon. Copies of this document will be mailed to those people who received the draft and final RMP/EIS documents. Copies will be available for the public on or about September 20, 1985.

ADDRESS: Requests for copies of the approved Resource Management Plan Record of Decision and Rangeland Programs Summary or questions on specific activity plans, management plans or development/protection plans should be addressed to Malcolm Shrode, Three Rivers Resource Area Manager, Bureau of Land Management, Burns District, 74 S. Alvord Street, Burns, Oregon 97720.

SUPPLEMENTARY INFORMATION: The Draft RMP/EIS was released for a 90 day public comment period on June 15, 1984. The proposed RMP/Final EIS was released for public review on November 30, 1984. Two protests were received, analyzed and denied by the Director, BLM. The Governor of Oregon did not identify any inconsistencies with State or local plans, programs or policies or recommend any changes in the proposed plan.

Alternatives Analyzed: Four alternatives for managing 182,120 acres of public land in the John Day planning area (Grant and northern Harney counties) were analyzed in the Resource Management Plan/Environmental Impact Statement.

The Proposed Resource Management Plan (the Preferred Alternative in the Resource Management Plan/Environmental Impact Statement) emphasizes management, production on a sustained yield basis and use of renewable resources on the majority of the public lands in the John Day RMP area. The proposed plan provides for protection of cultural, soil, water, botanical and recreational resources,

aquatic and riparian habitats, and big, small and nongame habitats.

The Emphasize Production of Commodities Alternative would provide economic benefits to the local economy through production of goods and services on public lands to meet local and possibly regional demands.

The Emphasize Enhancement of Natural Resources Alternative would provide protection, maintenance and enhancement of the natural environment for its enjoyment and use by present and future generations.

The Continuation of Present Management Alternative would provide for management of all resources at current levels. This is the No Action Alternative required by the National Environmental Policy Act.

Decision

The decision is to adopt the Proposed Plan as the John Day Resource Management Plan. Major actions contained in the plan are to:

Manage 32,242 acres of commercial forest land for a sustainable harvest level of approximately 21.7 million board feet per decade and sell minor forest products where consistent with other resource values.

Make competitive forage available for wildlife and wild horses at current levels except for bighorn sheep which will be emphasized. Improve forage production and conditions for livestock and big game populations on targeted allotments.

Dispose of 5,240 acres through sale and an additional 16,000 acres through sale, exchange or transfer when in the public interest.

Modify grazing systems or construct improvements to enhance 28 stream miles. Develop instream structures along 55 miles of streams supporting anadromous fisheries. Construct a fish ladder to open up 85 miles of streams to anadromous fish.

Leave all locatable minerals on public lands in the planning area open to entry under the provisions of the Mining Law of 1872 as amended, except for exclusions currently under protective withdrawal. All lands currently available for mineral leasing will remain available and no additional leasing restrictions are imposed. Material sales will continue to be made when consistent with other resource values.

Designate 121,945 acres of public lands open to ORV use. An additional 49,652 acres are identified for seasonal closures to enhance wildlife habitat in the cooperative road management area and the remaining 10,523 acreas are subject to the BLM Interim Management Policy and Guidelines for Lands Under Wilderness Review.

Mitigating Measures

All practicable measures will be taken to mitigate adverse impacts. These measures will be strictly enforced during plan implementation. Monitoring will tell how effective these measures are in minimizing environmental impacts. Therefore, additional measures to protect the environment may be taken during or following monitoring.

Dated: August 30, 1985.

Joshua L. Warburton,

District Manager.

[FR Doc. 85-23049 Filed 9-25-85; 8:45 am]

BILLING CODE 4310-33-M

[CA 7035 WR, CA 7037 WR, CA 7038 WR, CA 7039 WR, LA 0103629 WR, LA 0126161 WR]

California; Proposed Continuation of Withdrawals

September 19, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Los Angeles District, Corps of Engineers, proposes that six land withdrawals for the Department of the Air Force, aggregating approximately 83,110 acres, at Edwards Air Force Base continue for an additional 25 years. The lands will remain closed to surface entry and mining. A portion of the land totalling 21,218 acres would be opened to mineral leasing subject to the consent of the Department of the Air Force. The remaining 61,892 acres have been and would remain open to mineral leasing.

DATE: Comments should be received by December 26, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E-2841), Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Sonia Santillan, California State Office, (916) 978-4815.

The Los Angeles District, Corps of Engineers, proposes that six existing land withdrawals for the Department of the Air Force made by Executive Order No. 8450 of June 20, 1940, as amended by Public Land Order (PLO) No. 1750 of November 8, 1958, and PLO No. 480 of June 2, 1948, PLO No. 613 of October 19, 1949, PLO No. 646 of May 10, 1950, PLO No. 1126 of April 15, 1955, and PLO No. 2270 of February 21, 1961, be continued for a period of 25 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714.

The lands are located on the western edge of the Mojave Desert, approximately 90 statute miles north of the City of Los Angeles, near the communities of Palmdale and Lancaster in Kern, Los Angeles, and San Bernardino Counties, affecting certain lands in the following townships and ranges.

San Bernardino Meridian

Tps. 9 and 10 N., R. 6 W.;
Tps. 9 and 10 N., R. 7 W.;
Tps. 9 and 10 N., R. 8 W.;
Tps. 8, 9 and 10 N., R. 9 W.;
Tps. 8, 9, 10, and 11 N., R. 10 W.;
Tps. 8, 9, and 10 N., R. 11 W.;
Tps. 9 and 10 N., R. 12 W.;

The purpose of the withdrawals is to provide protection for lands in support of various military testing, research, training, and evaluation functions. The withdrawals segregate the lands from operation of the public lands laws generally, including the mining laws. Five of the withdrawals aggregating approximately 21,218 acres further segregate the lands from operation of the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals, except that the 21,218 acres would be opened to mineral leasing subject to the provisions of section 6 of the Defense Withdrawals Act of February 28, 1958 (72 Stat. 30; 43 U.S.C. 30; 43 U.S.C. 158), which provides that consultation shall be made with the Secretary of Defense regarding the disposition of or exploration for minerals in the land.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, California State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and, if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will

continue until such final determination is made.

Sharon N. Janis,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 85-23056 Filed 9-25-85; 8:45 am]

BILLING CODE 4310-40-M

[CA 7042 WR and LA 099557 WR]

California; Proposed Continuation of Withdrawals

September 19, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Navy proposes that two land withdrawals affecting approximately 472,649 acres for the Marine Corps Air-Ground Combat Center at Twentynine Palms be continued for an additional 25 years. The lands have been and will remain closed to surface entry and mining but would be opened to mineral leasing subject to the consent of the Department of the Navy.

DATE: Comments should be received by December 26, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E-2841), Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Sonia Santillan, California State Office, (916) 978-4815.

The Department of the Navy proposes that two existing land withdrawals made by Public Land Order (PLO) No. 985 of July 26, 1954 and PLO No. 1860 of May 29, 1959, be continued for a period of 25 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714.

The Combat Center is located 60 miles north-northeast of Palm Springs and about 150 miles east of Los Angeles in the high desert region of the juncture of the Mohave and Colorado Deserts in San Bernardino County, affecting certain lands in the following townships and ranges:

San Bernardino Meridian

Tps. 5, 6, and 7 N., R. 5 E.,
Tps. 2, 3, 4, 5, 6, and 7 N., Rgs. 6 and 7 E.,
Tps. 2, 3, 4, 5, and 6 N., Rgs. 8 and 9 E.,
Tps. 3, 4, and 5 N., Rgs. 10 and 11 E.,
Tps. 3 and 4 N., RS. 12 E.

The purpose of the withdrawals is to provide protection of lands in support of various military testing, evaluation, and training systems. The withdrawals segregate the lands from operation of the public land laws generally, including the mining and mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals except that the lands would be opened to mineral leasing, subject to the provisions of section 6 of the Defense Withdrawals Act of February 28, 1958 (72 Stat. 30; 43 U.S.C. 158), which provides that consultation shall be made with the Secretary of Defense regarding the disposition of or exploration for any minerals in the land.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, California State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and, if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Sharon N. Janis,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 85-23055 Filed 9-5-85; 8:45 am]

BILLING CODE 4310-40-M

[R 1151 WR]

California; Proposed Continuation of Withdrawal

September 19, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers, proposes that a withdrawal containing 40 acres for the Majave River Forks Reservoir Flood Control Project continue for an additional 91 years. The land will remain closed to surface entry and mining but would be opened to mineral leasing subject to the consent of the Department of the Army.

DATE: Comments should be received by September 26, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E-2841), Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Sonia Santillan, California State Office, (919) 978-4815.

The Department of the Army proposes that the existing land withdrawal made by Public Land Order No. 5533 of September 8, 1975, be continued for a period of 91 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The withdrawal is described as follows:

San Bernardino Meridian

T. 3 N., R. 4 W.,
Sec. 22, SE¼NE¼.

The area described contains 40 acres in San Bernardino County.

The purpose of the withdrawal is to protect the water course of the Mojave River, the major drainage way of the entire Mohave River Valley. The withdrawal segregates the land from operation of the public land laws generally, including the mining and mineral leasing laws. No change is proposed in the purpose of segregative effect of the withdrawal except that the lands would be opened to mineral leasing subject to the provisions of section 6 of the Defense Withdrawals Act of February 28, 1958 (72 Stat. 30; 43 U.S.C. 158), which provides that consulation shall be made with the Secretary of Defense regarding the disposition of or exploration for any minerals in the land.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their lives in writing to the Chief, Branch of Lands and Minerals Operations, California State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.**

The existing withdrawal will continue until such final determination is made.

Sharon N. Janis,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 85-23054 Filed 9-25-85; 8:45 am]

BILLING CODE 4310-40-M

[CA 7034 WR and LA 0106066 WR]

California; Proposed Continuation of Withdrawals

September 19, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Navy proposes that two land withdrawals affecting approximately 94,681 acres for the northern portion of the Chocolate Mountains Aerial Gunnery Range continue for an additional 25 years. The lands will remain closed to surface entry and mining but would be opened to mineral leasing subject to the consent of the Department of the Navy.

DATE: Comments should be received by December 26, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E-2841), Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Sonia Santillan, California State Office, (916) 978-4815.

The Department of the Navy proposes that two existing land withdrawals made by Public Land Order (PLO) No. 281 of May 29, 1945, as amended by PLO No. 2312 of March 24, 1961, and PLO No. 893 of May 6, 1953, continue for a period of 25 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714.

The northern portion of the Chocolate Mountains Aerial Gunnery Range is located in the lower Mohave Desert, a few miles east of the Salton Sea in Riverside and Imperial Counties, affecting certain lands in the following townships and ranges:

San Bernardino Meridian

Tps. 7, 8, 9, S., R. 15 E.;
Tps. 7, 8, S., R. 12 E.;
Tps. 7, 8, 9, S., R. 13 E.;
Tps. 7, 8, 9, 10 S., R. 14 E.;
Tps. 7, 8, 9, 10 S., R. 15 E.;
Tps. 8, 9, 10 S., R. 16 E.;
Tps. 8, 9, S., R. 17 E.

The purpose of the withdrawals is to protect lands for military aerial gunnery training purposes. The withdrawals segregate the lands from operation of the public land laws generally, including the mining and mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals except that the lands would be opened to mineral leasing subject to the provisions of section 6 of the Defense Withdrawals Act of February 28, 1958 (72 Stat. 30; 43 U.S.C. 158), which provides that consultation shall be made with the Secretary of Defense regarding the disposition of or exploration for minerals in the land.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, California State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and, if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Sharon N. Janis,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 85-23053 Filed 9-25-85; 8:45 am]

BILLING CODE 4310-40-M

[C-39289]

Amendment to Withdrawal Application; Segregation of Lands; Opening of Lands; Colorado

September 18, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and Opening Order.

SUMMARY: The Department of Energy has filed an amendment to their existing withdrawal application which requested the withdrawal of three proposed sites for the disposal of radioactive wastes pursuant to the Uranium Mill Tailings Radiation Control Act of 1978, 92 Stat. 3021; 42 U.S.C. 7901. This amendment will delete the 6 and 50 Reservoir Site from the original application and replace it with the Two Road Site. This notice will remove the segregations imposed on the 6 and 50 Reservoir Site by the original notice and place these restrictions on the Two Road Site. This will not affect the original application other than to replace one site with another and does not extend the 2-year segregation which will terminate on July 31, 1986. The proposed withdrawal is requested for a period of five years pending permanent Congressional action.

DATE: Comments or requests for hearing should be received on or before December 26, 1985.

ADDRESS: Correspondence should be addressed to the State Director, BLM Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303-294-7635.

Colorado; Proposed Withdrawal; Opportunity for Public Hearing, published August 1, 1984, 49 FR 30801, is hereby amended as follows:

1. Withdrawal application C-39289 is amended to include the following described lands:

Sixth Principal Meridian

Two Road Site

T. 9 S., R. 104 W.,
Sec. 7, SE¼;
Sec. 8, W½W½SW¼;
Sec. 17, NW¼NW¼NW¼;
Sec. 18, N½N½NE¼.

The area described aggregates 250 acres in Mesa County.

Effective on date of publication, this land is segregated from all forms of appropriation under the public land laws, including the mining laws. The lands remain open to mineral leasing subject to concurrence by the Department of Energy, the Nuclear Regulatory Commission and the Department of the Interior.

Any interested persons who desire to comment in connection with this site may present their views in writing to the State Director, Colorado State Office. This site is subject to all restrictions and requirements imposed by the original notice.

2. Effective on date of publication, approximately 246 acres of land in the original notice which were described as 6 and 50 Reservoir, lots 1 and 2, S½NW¼, N½SW¼, sec. 36, T. 9 S., R. 104 W., are relieved of the restrictions imposed on mineral leasing by the original notice and opened to operation of the public land laws, including the mining laws.

Robert D. Dinsmore,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-23057 Filed 9-25-85; 8:45 am]

BILLING CODE 4310-JB-M

[M-60014]

Montana; Realty Action—Exchange of Public and Private Lands

AGENCY: Bureau of Land Management—Lewistown District Office, Interior.

ACTION: Notice of Realty Action M-60014—Exchange of public and private lands, in Lewis and Clark, Toole, and Cascade Counties, Montana.

SUMMARY: This exchange will be between the United States of America and Alfred B. Muri. The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian Montana

T. 36 N., R. 3 E.,
Sec. 1, NW¼SW¼.
T. 30 N., R. 3 E.,
Sec. 27, SE¼SW¼;
Sec. 28, SW¼;
Sec. 29, E½SE¼.
T. 17 N., R. 7 E.,
Sec. 26, NW¼NW¼.
Aggregating 360 acres.

In exchange for these lands, the United States Government will acquire the surface estate in the following described land:

Principal Meridian Montana

T. 21 N., R. 6 W.
Sec. 27, That part of the NW¼SW¼ lying west of U.S. Highway 287; that part of the SW¼NW¼ south of the Sun River and west of U.S. Highway 287.
Sec. 28, That part of the SE¼NE¼ lying south of the Sun River. There is expressly reserved out of the foregoing conveyance of the SE¼NE¼ of section 28 lying south of the Sun River, however, unto the Party of the First Part, his heirs, successors, representatives and assigns, a perpetual easement 60 feet in width along the westernmost 60 feet of the property hereby conveyed for right of ingress and egress to the Sun River for any purpose whatsoever, and to include, and without limitation, the construction of, and maintenance and repair of pipelines to and from said river.
Aggregating approximately 53.23 acres.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Managment, at the address below. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to this exchange, including the environmental assessment and land report is available for review at the Lewistown District Office, Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. The reservation to the United States of all minerals in the lands being transferred out of Federal ownership. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals. A more detailed description of these reservations, which will be incorporated in the patent document is available for review at this BLM Office.

3. All valid existing rights (e.g. rights-of-way, easements, and leases of record).

4. Mr. Muri has waived the $400.00 cash equalization payment.

5. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with local officials. The public interest will be served by completion of this exchange as we will be acquiring access as well as recreational opportunities.

Dated: September 20, 1985.

David E. Little,

Acting District Manager.

[FR Doc. 85–23046 Filed 9–25–85; 8:45 am]

BILLING CODE 4310–DN–M

[Designation Order NM–030–8502; Supersedes Designation Order NM–030–8002 (in part) and NM–030–8201]

New Mexico Off-Road Vehicle Designations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Off-Road Vehicle Designation Decisions.

DECISION: Notice is hereby given relating to the use of off-road vehicles on public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR Part 8340. The following described lands under administration of the Bureau of Land Management are designated as open, limited, or closed to off-road motorized vehicle use.

The area affected by the designations is within Dona Ana County, New Mexico which is within the Las Cruces-Lordsburg Resource Area. These designations are a result of resource management decisions made in the 1981 Southern Rio Grande Management Framework Plan. Comments received from public meetings, workshops, and numerous written responses influenced the designation decisions. This designation order supersedes interim off-road vehicle designations which were made prior to development of the 1981 Management Framework Plan. These designations are published as final today. Under 43 CFR 4.21, an appeal may be filed within 30 days with the Interior Broad of Land Appeals.

A. Open Designations

Airport ORV management area is approximately 2,160 acres and is just east of Las Cruces Crawford Airport.

B. Limited Designations

1. Designate Las Uvas Mountains Wilderness Study Area (WSA), Robledo Mountain WSA, West Potrillo Mountains WSA, Mount Riley WSA, Aden Lava Flow WSA and Organ Mountains WSA as limited to existing roads and ways. These are identified with signs and maps.

2. Designate the Organ Mountains Recreation Lands, Dona Ana Mountains, Kilbourne Hole National Landmark, Aden Lava Flow Research Natural Area and the Franklin Mountains as limited to designated roads and trails. These open roads and trails are identified with signs and maps.

3. Designate a ¼ mile strip along the International Border with Mexico as limited to permitted or licensed use only.

C. Closed Designations

Designate the 2½ acre Diamond and Rodrick Ecological Plots as closed to off-road travel by vehicles. The two areas are identified on maps and with signs. These designations become effective upon publication in this **Federal Register** and will remain in effect until rescinded or modified by the authorized officer. An environmental assessment describing the impacts of these designations is available for inspection at the office listed below.

For further information about these designations contact: Tim Read, Bureau

of Land Management, 1800 Marquess Street, Las Cruces, NM 88005.

H. James Fox,

District Manager.

[FR Doc. 85–23048 Filed 9–25–85; 8:45 am]

BILLING CODE 4310–FB–M

District Grazing Advisory Board Meeting; Ely, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR Part 1780 that a meeting of the Ely District Grazing Advisory Board will be help on Tuesday, October 22, 1985.

The meeting will convene at 9:30 a.m. in the Conference Room of the Ely District Office located on the Pioche Highway one mile south of Ely, Nevada.

The main agenda items will be the status of activity planning efforts in the district and projects programmed for construction or feasibility and survey and design studies next fiscal year.

Public comment time is scheduled for 11 a.m. The public is invited to attend this meeting and may, at the designated time, submit written or oral statements for the advisory group's consideration.

Minutes of the meeting will be available for public inspection and reproduction during regular office hours within 30 days following the meeting.

DATE: September 13, 1985.

ADDRESS: Comments and suggestions should be sent to: Bureau of Land Management, Star Route 5, Box 1, Ely, Nevada 89301.

FOR FURTHER INFORMATION CONTACT: Kathy Lindsey, 702–289–4865.

Dated: September 13, 1985.

Merrill L. DeSpain,

District Manager.

[FR Doc. 85–23047 Filed 9–25–85; 8:45 am]

BILLING CODE 4310–HC–M

Realty Action—Competitive Sale of Public Land; in Van Buren County, AR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action: Competitive Sale of Public Land in Van Buren, County, Arkansas.

SUMMARY: The following described lands have been examined and identified as suitable for sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the appraised fair market value.

5th Principle Meridian, Arkansas

T. 11 N., R 17 W.,

Sec. 24: SE¼NW¼.

Containing 40.00 acres, more or less at a Fair Market Value of $10,000.00.

The method of sale will be by sealed bid. Sealed bids must be received in the BLM Jackson District Office, P.O. Box 11348, Jackson, Mississippi 39213, not later than 4:00 p.m. on (47 days). Bids must be accompanied by not less than (10%) of the bid price. The declared high bidder will be required to submit the remainder of the payment by certified check, bank draft, money order, or combination thereof, within thirty (30) days after receipt of the decision. Should the land not be sold by close of business (47 days), it will be available for purchase over-the-counter at the Jackson District Office, P.O. Box 11348, Jackson, Mississippi 39213.

The patent will be subject to all valid existing rights and reservations of all minerals to the Untied States.

Publication of this Notice will segregate the subject land from all appropriations under the public land laws; but not the minerals leasing laws. This segregation will terminate upon issuance of patent, or 270 days from the date of this Notice or upon publication of a Notice of termination. Detailed information concerning the sale, including the environmental assessment and land report, is available for review at the BLM office listed below.

For a period of 45 days after the date of issuance of this Notice, the public and interested parties may submit comments to the District Manager, Jackson District Office, P.O. Box 11348, Jackson, Mississippi 39213. Comments will be evaluated by the District Manager, who may vacate or modify this Realty Action. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Douglas Jones (601) 960–4405.

Dated: September 18, 1985.

Robert L. Todd,

Acting District Manager.

[FR Doc. 85–23050 Filed 9–25–85; 8:45 am]

BILLING CODE 4310–FP–M

[I–21974 et al.]

Realty Action; Sale of Public Lands in Lincoln and Gooding Counties, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, I–21974 through I–21981, inclusive; I–19639, I–19640 Sale of Public Lands in Lincoln and Gooding Counties, Idaho.

SUMMARY: The following described lands were examined, and through land use planning and public input were determined to the suitable for disposal by sale pursuant to section 203(a) of the Federal Land Policy and Management Act of 1976. Only sealed bids will be accepted.

Parcel No	Serial No.	Legal description	Acres	Type of sale	Fair market value
1	I–21974	T. 5 S., R. 15 E., B.M. Sec. 27: NW¼SE¼	[illegible]	Competitive	$6,000
2	I–21975	T. 6 S., R. 15 E., B.M. Sec. 12: SE¼SW¼	40	do	5,000
3	I–21976	T. 5 S., R. 15 E., B.M. Sec. 14: NE¼SW¼NW¼	10	do	1,000
4	I–21977	T. 5 S., R. 15 E., B.M. Sec. 15: SE¼NW¼	40	do	3,000
5	I–21978	T. 5 S., R. 15 E., B.M. Sec. 15: E½SW¼	[illegible]	do	1,500
6	I–21979	T. 5 S., R. 15 E., B.M. Sec. 22: NW¼NW¼	[illegible]	do	3,000
7	I–21980	T. 5 S., R. 15 E., B.M. Sec. 22: SW¼NW¼	40	do	750
8	I–21981	T. 6 S., R. 18 E., B.M. Sec 17: S½S½NE¼SE¼.	10	Modified competitive	4,250
9	I–19639	T. 4 S., R. 19 E., B.M. Sec. 17: NW¼SW¼	40	Competitive	3,400
10	I–19640	T. 3 S., R. 19 E., B.M. Sec. 32: W½NW¼	[illegible]	do	6,800

Parcels 1 through 10, when patented, will be subject to the following reservations:

1. A right-of-way for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

2. Oil and Gas shall be reserved to the United States.

3. All valid existing rights and reservations of record.

Parcels 2 through 6, when patented, will also be subject to the following covenants:

1. Pursuant to the authority contained in section 3(d) of the Executive Order 11988 of May 24, 1977, and section 203(a)(1) of the Pub. L. 94–579, Federal Land Policy and Management Act, this patent is subject to a restriction which constitutes a covenant running with the land, that any portion of the land lying within the 100-year floodplain may be used only for agricultural purposes, but not for dwellings or buildings.

2. Pursuant to the authority contained in section 4 of Executive Order 11990 of

May 24, 1977, and section 203(a)(1) of Pub. L. 94–579, Federal Land Policy and Management Act, this patent is subject to a restriction which constitutes a covenant running with the land, that any portion of the land containing wetland-riparian habitat must be managed to protect and maintain the wetland-riparian habitat on a continuing basis.

The lands are hereby segregated from all appropriation under the public land laws including the mining laws until sold or this sale is suspended.

Sealed bids must be received in this office no later than 1:00 p.m. on December 13, 1985. Bids for less than the appraised fair market value will not be accepted. A bid will constitute an application for conveyance of mineral interests of no known value. A $50.00 filing fee for processing such mineral conveyance, along with but separate from, 30% of the full bid price, must accompany each bid.

Parcels 9 and 10 were previously offered on August 31, 1984. The two parcels were not sold and the sale was suspended. This is a reoffering of those two parcels.

If a parcel is not sold at this time, the parcel(s) will be offered the second Friday of each month at the same time and place until sold or the sale if suspended.

All parcels are offered as open competitive sales without preference to past users or adjacent landowners, except parcel 8. Parcel number 8 is a modified competitive bid.

Parcel 8 is being sold at public auction, subject to a preference bidding designation to allow Mr. & Mrs. J. Frank Depew to meet the highest bid based on historical occupancy use and adjacent landownership. Refusal or failure to meet the highest bid by Mr. & Mrs. Depew within 30 days of this offering shall constitute a waiver of such bidding provisions and the land will be offered to the high bidder. If no bid is received on the date of this offering, preference provisions will be waived and the land will be offered for sale using competitive procedures on January 10, 1986 and thereafter on the second Friday of each month until sold or the sale is suspended.

DATE AND ADDRESS: The sale offering will be held on December 13, 1985 at 1:00 p.m. in the Shoshone District, 400 West F Street, Shoshone, ID 83352.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the sale and conditions, appraised value, bidding procedures, and other details can be obtained by contacting Joe Aitken at (208) 886–2206 or writing to BLM, P.O. Box 2–B, Shoshone, ID 83352.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of this notice, interested parties may submit comments to the Shoshone District Manager at the above address.

Dated: September 18, 1985.

Charles J. Haszier,

District Manager.

[FR Doc. 85–23051 Filed 9–25–85; 8:45 am]

BILLING CODE 4310–GG–M

[U–55651]

Realty Action Sale of Public Land in Kane County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) public land described as: S2SESE, SESWSE, SESWSWSE, Section 22; Lot 7, S2SESW, S2SWSE, Section 23; NWNWNW, Section 25; Lot 5, Lot 6, Section 26; N2NE, SENENW, SESWNENW, SENENENW, Section 27; All T 43 S., R. 6 W., SLB&M, Utah totaling 295.18 acres is proposed for direct sale to Golden Circle Tours, Inc. at the appraised fair market value of $88,500.00. The lands described are hereby segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action.

SUMMARY: The purpose of the sale is to dispose of public land that is difficult and uneconomical to manage by a government agency and land that will serve important public objectives such as economic development which cannot be achieved prudently or feasibly on land other than public land.

DATES: Comments should be submitted by November 15, 1985. The sale will be held on December 5, 1985 at 10:00 a.m.

ADDRESS: Detailed information concerning the sale is available at the Kanab Area Office, 320 North First East, Kanab, Utah 84741, (801) 644–2672. Comments should also be sent to the same address.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are:

1. The sale will be for the surface estate only. Minerals will remain with the United States Government.

2. There is reserved to the United States a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

3. Title transfer will be subject to valid existing rights.

Any comments received during the comment period will be evaluated and the District Manager may vacate or modify this realty action. In the absence of ojections, this realty action notice will be the final determination of the Department of the Interior.

Dated: September 19, 1985.

Morgan S. Jensen,

District Manager.

[FR Doc. 85–23052 Filed 9–25–85; 8:45 am]

BILLING CODE 4310–DQ–M

[Int. DEIS 85–41]

Eastern Arizona Draft Grazing Management; Environmental Impact Statement

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability of Draft Environmental Impact Statement (DEIS) and Public Meeting Schedule.

DATES: BLM invites written comments on the DEIS to be submitted within 60 days of its filing with the Environmental Protection Agency. Comments to be received by December 6, 1985.

ADDRESS: Comments should be sent to the District Manager, Bureau of Land Management, 425 E. 45th Street, Safford, Arizona 85546.

SUMMARY: Purpose of section 102(2)(c) of the National Environmental Policy Act of 1969. BLM has prepared a DEIS on the Grazing Program for the scattered Public Lands in Phoenix and Safford Districts, Apache, Cochise, Coconino, Gila, Graham, Maricopa, Navajo, Pima, Pinal, Santa Cruz and Yavapai Counties, Arizona.

The Preferred Alternative (Alternative A) is the Rangeland Improvement Alternative. Other alternatives analyzed in the EIS are No Action, Reduced Livestock Use and No Grazing.

A limited number of DEIS copies are available upon request to the District Manager at the above address.

Public reading copies are available for review at the following locations:

Safford District Office, Bureau of Land Management, 425 E. 4th Street, Safford, AZ, Telephone: (602) 428–4040.

Public Room, Arizona State Office, 3707 N. 7th Street, Phoenix, AZ 85011, Telephone: (602) 241–5547.

Office of Public Affairs, Bureau of Land Management, Interior Building, 18th and C Streets, NW., Washington, DC 20240, Telephone: (202) 343–5717.

Phoenix District Office, Bureau of Land Management, 2015 W. Deer Valley

Road, Phoenix, AZ 85027, Telephone: (602) 863–4464.

In addition, the DEIS will be available for review in city libraries in Phoenix, Safford, Scottsdale, Sierra Vista and Tucson and at libraries at Arizona State University in Tempe, Northern Arizona University at Flagstaff and University of Arizona at Tucson.

FOR FURTHER INFORMATION CONTACT: Lester K. Rosenkrance, District Manager, Safford District; Jerrold O. Coolidge, Team Leader, Safford District; or Marlyn V. Jones, District Manager, Phoenix District; or James Anderson, Assistant Team Leader, Phoenix District.

SUPPLEMENTARY INFORMATION: BLM will conduct a series of public meetings to be held in St. Johns, Arizona on October 29, 1985 at the County Annex Building, Board Room, 75 W. Cleveland; in Phoenix, Arizona on October 30, 1985 at Phoenix District Office, 2015 W. Deer Valley Road; in Tucson, Arizona on November 5, 1985 at the Executive Inn, Banquet Room B, 333 N. Drachman; Sierra Vista, Arizona on November 6, 1985 at Thunder Mountain Inn, Canyon Room, 1631 S. Highway 92. All meetings will begin at 7:00 p.m. and continue until 9:00 p.m. Oral testimony will not be taken at the meetings, however, written comments will be accepted.

Dated: September 16, 1985.

Lester K. Rosenkrance,

Safford District Manager.

Dated: September 16, 1985.

Marlyn V. Jones,

Phoenix District Manager.

[FR Doc. 85–23045 Filed 9–25–85; 8:45 am]

BILLING CODE 4310-32-M

Wyoming; Emergency Closure of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency Closure of Public Lands.

SUMMARY: Notice is hereby given that effective immediately, all public lands two miles either side of the Green River from its confluence with the New Fork River westerly, and southerly to the north end of Fontenelle Reservoir, is closed to all overnight uses except those specifically authorized. Specific legal descriptions and maps are available in the Pinedale Resource Area Office, Pinedale, Wyoming.

The purpose of this closure is to protect the fragile riparian habitat, and to eliminate health hazards caused by unauthorized use, specifically: Camping in excess of the established time limit, setting or attempting to set up a primary residence on public lands, and violations of public health laws.

The authority for this closure is 43 CFR Part 8364. The closure will remain in effect until January 1, 1986.

DATE: September 26, 1985.

FOR FURTHER INFORMATION CONTACT: Donald H Sweep, District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902–1869 (307–382–5350).

Donald H. Sweep,

District Manager.

[FR Doc. 85–23044 Filed 9–25–85; 8:45 am]

BILLING CODE 4310-22-M

Fish and Wildlife Service

Intent To Prepare an Environmental Impact Statement for the Comprehensive Conservation Plan for Innoko National Wildlife Refuge, AK

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Service intends to gather information necessary for the preparation of a Comprehensive Conservation Plan (CCP), Environmental Impact Statement (EIS), and Wilderness Review for the Innoko National Wildlife Refuge in interior Alaska. Public meetings regarding preparation of this CCP, EIS, and Wilderness Review will be held. This notice is being furnished as required by the National Environmental Policy Act Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are solicited.

DATES: Written comments should be received by December 15, 1985 Public meetings regarding the Innoko National Wildlife Refuge plan and EIS will be held in Holy Cross, Anvik, Grayling, Shageluk, McGrath, and Anchorage during the fall of 1985. Oral Comments regarding the issues to be addressed by the CCP will be accepted at these meetings.

ADDRESS: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503 (Attn.: Mike Evans or Maggie Arend).

FOR MORE INFORMATION CONTACT: Mike Evans or Maggie Arend, Refuge Planning, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503. Telephone (907) 786–3369.

SUPPLEMENTARY INFORMATION: This comprehensive conservation plan is being prepared to fulfill requirements of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), section 304(g). The plan will also consider the oil and gas leasing program for the refuge as required by section 1008 of ANILCA. The environmental review of the project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), other appropriate Federal regulations, and FWS procedures for compliance with those regulations. The Wilderness Review is being prepared in response to section 1317 of ANILCA and the Wilderness Act of 1964.

We estimate the Draft Environmental Impact Statement and plan will be made available to the public by March 1987.

Dated: September 19, 1985.

Robert E. Gilmore,

Regional Director.

[FR Doc. 85–23063 Filed 9–25–85; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document; ODECO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 074, Block 20, South Pelto Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Dulac and Houma, Louisiana.

DATE: The subject DOCD was deemed submitted on September 18, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 18, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–23012 Filed 9–25–85; 8:45 am]

BILLING CODE 4310–MR–M

Outer Continental Self; Development Operations Coordination Document; Union Texas Petroleum Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Union Texas Petroleum Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1130, Block 171, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on September 18, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 18, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–23013 Filed 9–25–85; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Corpus Christi Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Corpus Christi Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 4258, Block 436, Brazos Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Port O'Conner, Texas.

DATE: The subject DOCD was deemed submitted on September 18, 1985.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 18, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–23060 Filed 9–25–85; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Huffco Petroleum Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Huffco Petroleum Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1831, Block 206, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on September 18, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 20, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-23061 Filed 9-25-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Union Oil Co. of California

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Union Oil Co. of California has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4442, Block 113A, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Intracoastal City, Louisiana.

DATE: The subject DOCD was deemed submitted on September 17, 1985. Comments must be received within 15 days of the date of this Notice for 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 18, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-23062 Filed 9-25-85; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[OP3MCF-489]

Motor Carriers; Decision-Notice

Decided: September 16, 1985.

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1181.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed by Motor Carriers Under 49 U.S.C. 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the Federal and ICC Registers. Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or

the application of a non-complying applicant shall stand denied.

James H. Bayne,

Secretary.

MC–F–16639, filed August 16, 1985. Cardinal Buses, Inc., (Cardinal) (2101 West 37th Avenue, Gary, IN 46408)—Purchase—Justak Corporation, d/b/a V.I.P. Coach Lines (Justak) (2336 Schrage Avenue, Whiting, IN 46394). Representative: Robert B. Walker, Sims, Walker and Steinfeld, P.C., 1275 K Street NW., Suite 875, Washington, DC 20005. Cardinal, a non-carrier (authority in No. MC–111884 revoked on June 29, 1983), seeks authority to purchase the regular-route passenger authority of Justak in Certificate No. MC–154175. The operating rights being transferred authorize the transportation of passengers, over regular routes, between: (1) Chicago, IL and Hammond, IN; (2) Chicago, IL and Gary, IN; (3) Hammond, IN and Calumet City, IL; (4) Hammond and Griffith, IN and Oak Glen, IL; (5) Hammond, and East Chicago, IN; (6) points in Hammond, IN; (7) points in East Chicago, IN; (8) points in Whiting and Highland, IN; (9) points in Chicago, IL; and (10) points in Hammond and Whiting, IN.

Cardinal is controlled through stock ownership by John Shoup and Margaret Shoup who each own 50 percent of the outstanding stock. John Shoup also owns 100 percent of the outstanding stock of Shoup Buses, Inc. (MC–70384) and John and Margaret Shoup together own 100 percent of the outstanding stock of Tri-State Coach Lines, Inc. (MC–129038). The common control of these transportation companies was the subject of prior Commission approval in No. MC–F–12459.

An application for temporary authority to lease the involved operating right has been granted by the Motor Carrier Board.

[FR Doc. 85–22993 Filed 9–25–85; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30726]

Michigan Interstate Railway Co.; Exemption From 49 U.S.C. 10901

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts the acquisition by the Michigan Interstate Railway Company of 53 miles of railroad it has operated for the State of Michigan. The line, to be acquired from the State, includes 47.5 miles of main line track between Ann Arbor, MI, and Toledo, OH (in Lucas County, OH, and Monroe and Washtenaw County, MI), and a 5.6 mile branch line between East Pittsfield, MI, and Saline, MI (Washtenaw County.

DATES: This exemption is effective on September 25, 1985. Petitions to reopen must be filed by October 16, 1985.

Send pleadings referring to Finance Docket No. 30726 to:

(1) Office of the Secretary Case Control Branch Interstate Commerce Commission Washington, DC 20423

(2) Petitioner's representative: Jeffrey M. Petrash 1901 L St. N.W. Suite 801 Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystem, Inc., Room 2229, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (D.C. Metropolitan area) or toll free (800) 424–5403.

Decided: September 20, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Chairman Taylor dissented in part with a separate expression. Commissioner Simmons dissented in part and will submit a separate expression at a later date. Commissioner Lamboley dissented in part with a seaprate expression.

James H. Bayne,

Secretary.

[FR Doc. 85–23133 Filed 9–25–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Attorney General's Commission on Pornography, Open Meeting; Correction

The original Notice of Meeting appeared at page 37444 in the **Federal Register** of September 13, 1985. The following Notice supersedes the original Notice.

In acordance with the Federal Advisory Committee Act, Pub. L. 92–463, the Department of Justice announces the following meetings and hearings of the Attorney General's Commission on Pornography.

Meeting:

Date and Time: October 15, 1985, 10:00 a.m.–11:00 p.m.

Place: Hall of Administration, ERC Room 374, 500 West Temple, Los Angeles, California 90012.

Status: Open to the public.

Matters to be considered at meeting:

Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received, and (3) Any other relevant matters.

Hearing:

Date and Time: October 16, 1985, 8:30 a.m.–11:00 p.m.

Place: Board of Supervisors: County of Los Angeles—Hearing Room, Hall of Administration, Room 381, 500 West Temple, Los Angeles, California 90012.

Status: Open to the public.

Matters to be considered at hearing:

Opening of Fourth Public Hearing—Welcoming remarks; 8:40 a.m.—Testimony of witnesses and examination by Commissioners. At the conclusion of the last witness' testimony, the Commission may conduct a meeting.

Matters to be considered at meeting:

Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received, (3) Review of alleged obscene and pornographic material, and (4) Any other relevant matters.

Hearing:

Date and Time: October 17, 1985, 8:30 a.m.–7:30 p.m.

Place: Board of Supervisors: County of Los Angeles—Hearing Room, Hall of Administration, Room 381, 500 West Temple, Los Angeles, California 90012.

Status: Open to the public.

Matters to be considered at hearing:

Testimony of witnesses and examination by Commissioners. At the conclusion of the last witness' testimony, the Commission may conduct a meeting.

Matters to be considered at meeting:

Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received, (3) Review of alleged obscene and pornographic material, and (4) Any other relevant matters.

Meeting:

Date and Time: October 18, 1985, 9:00 a.m.–11:00 p.m.

Place: Hall of Administration, ERC Room 374, 500 West Temple, Los Angeles, California 90012.

Status: Open to the public.

Matters to be considered at meeting:

Discussion of (1) Issues and methodology to be utilized, (2) Previous hearings and evidence received, (3) Review of alleged obscence and pornographic material, and (4) Any other relevant matters.

The meetings and hearings will be open to the public, and written comments may be submitted regarding relevant issues. Approximately 400 seats will be available for the public (including 40 seats reserved for media representatives) on a first-come, first-served basis at the meetings and hearings on October 15, 16, 17, and 18, 1985.

Copies of minutes will be available upon request, at the actual cost of duplication, 60 days after the final meeting on October 18, 1985.

Contact person for more information: Alan E. Sears, Executive Director, Attorney General's Commission on Pornography, Room 1018, HOLC Building, Department of Justice

320 First Street NW., Washington, DC 20530, (202) 724–7837.

Henry Hudson,

Commission Chairman.

[FR Doc. 85–22994 Filed 9–25–85; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL CAPITAL PLANNING COMMISSION

Proposed Amendments to Master Plan Submission Requirements

AGENCY: National Capital Planning Commission.

ACTION: Notice of Availability of Proposed Amendments.

SUMMARY: The Master Plan Submission Requirements list the contents and procedures for the submission of master plans for Federal installations in the National Capital Region and for District of Columbia installations. The proposed changes in these requirements and procedures would require the provision of certain reduced size drawings in master plan and project plan submissions and would provide an expanded review period for master plans for installations in the District of Columbia, consistent with the review period already established for jurisdictions in the National Capital Region outside the District of Columbia.

DATE: Any interested persons or agencies may submit written comments on or before October 30, 1985.

ADDRESS: Copies of the proposed amendments may be obtained from Robert E. Gresham, Assistant Executive Director for Operations, National Capital Planning Commission, 1325 G Street, NW., Washington, DC 20576. Written comments should be addressed to: Katherine Barns Soffer, General Counsel, National Capital Planning Commission, 1325 G Street, NW., Washington, DC 20576, Telephone (202) 724–0170.

FOR FURTHER INFORMATION CONTACT: Robert E. Gresham, Assistant Executive Director for Operations at (202) 724–0176 or Robert H. Cosby, Director, Review and Implementation Division at (202) 724–0191, National Capital Planning Commission, 1325 G Street, NW., Washington, DC 20576.

Katherine Barns Soffer,

General Counsel.

[FR Doc. 85–23018 Filed 9–25–85; 8:45 am]

BILLING CODE 7520–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506:

Date: October 21–22, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects in Media Program, Division of General Programs, for projects beginning after April 1, 1986.

Date: October 24–25, 1985.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects in Media Program, Division of General Programs, for projects beginning after April 1, 1986.

Date: October 31–November 1, 1985.
Time: 9:00 a.m. to 5:00 p.m.
Room: 415.
Program: This meeting will review applications submitted for the Humanities Projects for Adults, Division of General Programs, for projects beginning after April 1, 1986.

The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506, or call (202) 786–0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 85–23003 Filed 9–25–85; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Availability of the PRA Review Manual (NUREG/CR–3485) for Public Comments

The Nuclear Regulatory Commission has issued for public comments the PRA Review Manual (NUREG/CR–3485). The manual was developed to provide guidance in reviewing PRA studies submitted to NRC for evaluation. It is written to enhance the consistency of the review process and to provide the NRC reviewer with systematic guidance as well as insights and lessons learned from previous PRA studies and reviews of these studies.

The present scope of the manual covers level 1 PRAs (Evaluation and analyses of contributors to core-damage frequency). From within this defined scope, the manual guides the reviewer in defining and evaluating strengths and weaknesses in the plant design and operations from a risk/safety significance viewpoint.

The approach adopted in the manual comprises three sequential phases; the secreening phase, the qualitative evaluation phase, and the verification phase. This approach offers flexibility in defining and appropriate level of effort for reviewing PRAs based on NRC review objectives. Another attractive feature of the phased approach is that it allows timely and effective interaction between NRC and the utilities.

Phase 1 (the sreening phase) examines the form, composition and content of the submitted study for completeness and scrutability and then endeavors to identify noteworthy and distinctive aspects of the data and methods used and the reported results, particularly in light of NRC concerns and interests. This necessarily involves some comparison with the existing PRA studies. The NRC reviewers are asked to cast Phase 1 conclusions in a special format. In case a particular study feature is identified (or suspected to be

important), it will be listed together with its potential root causes. Typical root causes include methodology, assumptions, design features, operational features, and data base used. Findings of the phase will indicate to what extent the PRA can usefully be subjected to further investigations and detailed examination.

Phase 2 (the qualitative examination phase) involves further examination of the PRA study tasks in a natural sequence. The examination focuses on methodologic questions in each task and on examination of important aspects of the study as identified in Phase 1 review. A typical Phase 2 task (e.g., success criteria or treatment of human factors) is structured to include:

a. A brief discussion of the methodology and state-of-the-art of the area under review;

b. Stepwise instructions about how to conduct the review,

c. Examples of typical pitfalls and limitations in the treatment of this area as revealed from previous review experience, and

d. Review results.

Phase 3 focuses attention on safety significance of specific issues that may alter the PRA study conclusions. It may involve verification of accident sequence quantification and associated uncertainty and sensitivity analyses.

The enclosed NUREG was developed by the Reliability and Risk Assessment Branch (RRAB) of DST, with technical support from Brookhaven National Laboratory and its consultants. This draft was preceded by the May 1, 1983 issue of the NUREG which covered only the internal events (and loss of offsite power) aspects of Level 1 PRA. The current draft takes into account the 1983–1985 advancements in internal events PRA state-of-the-art in Part A, while Part B covers external events which include earthquakes, fires, floods, and high wind.

Public comments are being solicited on the draft manual and should be sent to Adel El-Bassioni, Reliability and Risk Assessment Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 no later than 45 days following the date of issuance of this notice.

Copies of the NUREG/CR–3485 are available for inspection, and copying for a fee, in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555. Copies may be purchased by calling (202) 275–2060 or (202) 275–2171, or by writing to the Superintendent of Documents, US Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies may also be purchased by calling (703) 487–4650 or by writing to the National Technical Information Service, Springfield, Va. 22161.

For further information contact Adel El-Bassioni, Reliability and Risk Assessment Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–7646.

Dated at Bethesda, Maryland this 18th day of September, 1985.

Ashok Thadani,

Chief, Reliability and Risk Assessment Branch, Division of Safety Technology, Office of Nuclear Reactor Regulation.

[FR Doc. 85–23040 Filed 9–25–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8681]

Umetco Minerals Corp.; Final Finding of No Significant Impact Regarding the Renewal of Source and Byproduct Material License SUA–1358 for Operation of Umetco Minerals Corp.'s White Mesa Uranium Mill, San Juan County, UT

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Finding of No Significant Impact.

(1) Proposed Action

The U.S. Nuclear Regulatory Commission (the Commission) is issuing a renewed Source and Byproduct Material License SUA–1358 authorizing Umetco Minerals Corporation to operate a uranium mill at their White Mesa site located in San Juan County, Utah.

(2) Reasons for Finding of No Significant Impact

The Commission's Uranium Recovery Field Office has prepared an Environmental Assessment for the proposed action. Based on this assessment, the Commission has determined that an Environmental Impact Statement for this particular action is not warranted.

The Environmental Assessment prepared by the Commission's staff evaluated potential impacts on surface and ground water due to mill accidents, seepage, and reclamation and decommissioning activities. Additionally, the assessment evaluated potential impacts on-site and off-side due to radiological releases which may occur during the course of the proposed operations. Documents used in preparing the assessment included operational data from the licensee's White Mesa Mill, the licensee's renewal application dated January 30, 1985, a revised application dated June 20, 1985, and the Safety Evaluation Report prepared by the Commission staff for the White Mesa uranium milling operation.

Based on these evaluations, the Commission's staff has determined that the proposed operations will not have a significant effect on the quality of the human environment. Specific reasons for making this determination are as follows:

(a) The synthetic liner and leak detection system underlying all tailings cells at the White Mesa mill should assure that impacts to ground water are minimal.

(b) Radiological releases from the proposed operations will be small and will be continuously monitored.

(c) Environmental monitoring is comprehensive enough to detect any significant radiological release from the milling operation.

(d) Radioactive wastes will be disposed of in tailings cells which will be reclaimed in accordance with applicable federal and state regulation.

In accordance with 10 CFR 51.33(a), the Director, Uranium Recovery Field Office, made the determination to issue a draft Finding of No Significant Impact. A draft Finding of No Significant Impact was published on August 6, 1985, and no comments were received. In accordance with 10 CFR 51.33(e), the Director, Uranium Recovery Field Office, made the determination to issue a final Finding of No Significant Impact. This finding, together with the Environmental Assessment setting forth the basis for the finding, and other related environmental documents are available for public inspection and copying at the Commission's Uranium Recovery Field Office at 730 Simms Street, Golden, CO and at the Commission's Public Document Room at 1717 H Street NW., Washington, DC.

Dated at Denver, Colorado, this 18th day of September, 1985.

For the Nuclear Regulatory Commission.

Harry J. Pettengill,

Chief, Licensing Branch 2, Uranium Recovery Field Office, RIV.

[FR Doc. 85–23041 Filed 9–25–85; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 85–066]

Equipment, Construction, and Materials

AGENCY: Coast Guard, DOT.

ACTION: Termination of Approval Notice.

SUMMARY: This notice contains a listing of Coast Guard approvals terminated between 1 February 1984 and 31 January 1985. These terminated approvals were for safety equipment and materials required by regulation to be used on certain merchant vessels and recreational boats, and also in Outer Continental Shelf activities.

FOR FURTHER INFORMATION CONTACT: Ms. Valarie Williams, Office of Merchant Marine Safety (G–MVI–3/14), Room 1404, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593, (202) 426–1444. Normal office hours are between 7 a.m. and 3:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Certain regulations in Titles 33 and 46 of the Code of Federal Regulations require that various items of lifesaving, firefighting and other safety equipment and materials used on board merchant vessels and recreational boats, and in Outer Continental Shelf activities be approved by the Commandant, U.S. Coast Guard. This document notifies interested persons that certain approvals have been terminated during the period from 1 February 1984 to 31 January 1985. These actions were taken under the procedures in 46 CFR 2.75–1 to 2.75–50.

The statutory authority for regulations governing this equipment is in sections 3306(a), 4102, and 4302(a)(2) of Title 46, United States Code, section 1333 of Title 43, United States Code, and section 198 of Title 50, United States Code. The Secretary of Transportation has delegated authority to the Commandant, U.S. Coast Guard with respect to these approvals (49 CFR 1.46(b)).

Most of the items in this list were terminated because they are no longer produced. Unless otherwise stated in the list, terminated items may continue to be used on vessels as long as the equipment is in good and serviceable condition.

Gas Mask

Termination of Approval 160.011/16/0 dated 13 July 1979, Terminated effective date 21 November 1984. Manufactured by Scott Aviation Division of ATO, Inc., 225 Erie Street, Lancaster, NY 14080.

Termination of Approval 160.011/26/0 dated 25 April 1978, Terminated effective dated 21 November 1984. Manufactured by Willson Products Division, ESB Incorporated, 2nd and Washington Streets, Reading, PA 19603.

Lifeboat Winch

Termination of Approval 160.015/92/0 dated 25 October 1977, Terminated effective date 21 November 1984. Manufactured by Carroll Engineering Company, 313 State Street, Box 711, Perth Amboy, NJ 08862.

Termination of Approval 160.015/96/0 dated 5 April 1979, Approval Terminated effective date 21 November 1984. Manufactured by Carroll Engineering Company, 313 State Street, Box 711, Perth Amboy, NJ 08862.

Termination of Approval 160.015/107/0 dated 11 September 1979, Terminated effective date 21 November 1984. Manufactured by Lake Shore, Inc., Iron Mountain, MI 49801.

Lifeboat Sea Anchor

Termination of Approval 160.019/11/0 dated 27 July 1977, Terminated effective date 21 November 1984. Manufactured by Samuel Fassman Company, 2776 Atlantic Avenue, Brooklyn, NY 11207.

Hand Red Flare Distress Signal

Termination of Approval 160.021/12/2 dated 28 January 1981, Terminated effective date 21 November 1984. Manufactured by Smith & Wesson Chemical Co., 2399 Forman Road, Rock Creek, OH 44084.

Floating Orange Smoke Distress Signal

Termination of Approval 160.022/9/1 dated 30 December 1980, Terminated effective date 21 November 1984. Manufactured by Smith & Wesson Chemical Co., Inc., 2399 Forman Road, Rock Creek, OH 44084.

Emergency Drinking Water

Termination of Approval 160.026/53/0 dated 28 October 1982, Terminated effective date 21 November 1984. Manufactured by Capilano Springs Co., Ltd., 4903–44B Avenue, Delta, B. C. V4K 1H9, CANADA.

Life Float

Termination of Approval 160.027/60/3 dated 13 July 1979, Terminated effective date 21 November 1984. Manufactured by Atlantic-Pacific Mfg. Corp., 124 Altantic Ave., Brooklyn, NY 11201.

Termination of Approval 160.027/61/4 dated 8 November 1979, Terminated effective date 21 November 1984. Manufactured by Atlantic-Pacific Mfg. Corp., 124 Altantic Ave., Brooklyn, NY 11201.

Termination of Approval 160.027/62/3 dated 8 November 1979, Terminated effective date 21 November 1984. Manufactured by Atlantic-Pacific Mfg. Corp., 124 Atlantic Ave., Brooklyn, NY 11201.

Termination of Approval 160.027/70/3 dated 8 November 1979, Terminated effective date 21 November 1984. Manufactured by Atlantic-Pacific Mfg. Corp., 124 Atlantic Ave., Brooklyn, NY 11201.

Termination of Approval 160.027/71/3 dated 8 November 1979, Terminated effective date 21 November 1984. Manufactured by Atlantic-Pacific Mfg. Corp., 124 Atlantic Ave., Brooklyn, NY 11201.

Lifeboat Davit

Termination of Approval 160.032/177/0 dated 25 October 1977, Terminated effective date 21 November 1984. Manufactured by Carroll Engineering Company, 313 State Street, Box 711, Perth Amboy, NJ 08862.

Termination of Approval 160.032/182/0 dated 5 April 1979, Terminated effective date 21 November 1984. Manufactured by Carroll Engineering Company, 313 State Street, Box 711, Perth Amboy, NJ 08862.

Termination of Approval 160.032/192/1 dated 5 April 1979, Terminated effective date 21 November 1984. Manufactured by Whittaker Corporation, 5159 Baltimore Drive, La Mesa, CA 92041.

Termination of Approval 160.032/195/0 dated 11 April 1979, Terminated effective date 21 November 1984. Manufactured by Whittaker Corporation, 5159 Baltimore Drive, La Mesa, CA 92041.

Termination of Approval 160.032/223/0 dated 22 November 1978, Terminated effective date 21 November 1984. Manufactured by Whittaker Corporation, 5159 Baltimore Drive, La Mesa, CA 92041.

Mechanical Disengaging Apparatus (for lifeboats)

Termination of Approval 160.033/65/1, dated 1 August 1977. Termination effective date 21 November 1984. Manufactured by Watercraft America, Inc., P.O. Box 307, Mims, FL 32754.

Lifeboat

Termination of Appr. 160.035/381/4, dated 27 September 1977,

Termination effective date 21 November 1984. Manufactured by Marine Safety Equipment Corp., Foot of Wyckoff Road, Farmingdale, NJ 07727.

Termination of Appr. 160.035/397/7, dated 27 September 1977. Termination effective date 21 November 1984. Manufactured by Marine Safety Equipment Corp., Foot of Wyckoff Road, Farmingdale, NJ 07727.

Termination of Appr. 160.035/410/8, dated 4 December 1980. Termination

effective date 21 November 1984. Manufactured by Marine Safety Equipment Corp., Foot of Wyckoff Road, Farmingdale, NJ 07727.

Termination of Appr. 160.035/443/6, dated 16 March 1981. Termination effective date 21 November 1984. Manufactured by Marine Safety Equipment Corp., Foot of Wyckoff Road, Farmingdale, NJ 07727.

Hand-Held Rocket-Propelled Parachute Red Flare Distress Signal

Termination of Appr. 160.036/3/2, dated 30 December 1980. Termination effective date 21 November 1984. Manufactured by Smith & Wesson Chemical Co. Inc., 2399 Forman Road, Rock Creek, OH 44084.

Termination of Appr. 160.036/4/0, dated 9 August 1979, Terminated effective date 21 November 1984. Manufactured by Kilgore Corporation, Toone, TN 38381.

Hand Orange Smoke Distress Signal

Termination of Appr. 160.037/11/1, dated 28 January 1981, Termination effective date 21 November 1984. Manufactured by Smith & Wesson Chemical Co., 2399 Forman Road, Rock Creek, OH 44084.

Termination of Appr. 160.037/14/0 dated 27 October 1977, Termination effective date 21 November 1984. Manufactured by Olin Corporation, Peru, Indiana 50222.

Impulse-Projected Rocket-Type Line Throwing Appliance

Termination of Appr. 160.040/2/2 dated 30 December 1980, Termination effective date 21 November 1984. Manufactured by Smith & Wesson Chemical Co. Inc., 2399 Forman Road, Rock Creek, OH 44084.

First-Aid Kit

Termination of Appr. 160.041/5/0 dated 13 December 1977, Terminated effective date 21 November 1984. Manufactured by Mine Safety Appliances Company, 3880 Meadowbrook Road, Murraysville, PA 15668.

Termination of Appr. 160.041/6/0 dated 2 November 1977, Termination effective date 21 November 1984. Manufactured by Pac-Kit Safety Equipment Div. of K. W. Griffin Company, 100 Pearl Street, Norwalk, Connecticut 07850.

Lifeboat Bilge Pump

Termination of Appr. 160.044/4/1 dated 20 March 1978, Termination effective date 21 November 1984. Manufactured by Tap-Rite Products Division Vending Components, Inc., 2–4 Railroad Avenue, Hackensack, NJ 07601.

Termination of Appr. 160.044/4/1 dated 20 March 1978, Termination effective date 21 November 1984. Manufactured by Tap Rite Products Division Vending Components, Inc., 2–4 Railroad Avenue, Hackensack, NJ 07601.

Kapok Buoyant Vest

Termination of Appr. 160.047/429/0, dated 6 December 1979, Termination effective date 21 November 1984. Manufactured by Noble Products Company, 306 West Street, Caldwell, OH 43724.

Termination of Appr. 160.047/431/0, dated 6 December 1979, Termination effective date 21 November 1984. Manufactured by Noble Products Company, 306 West Street, Caldwell, OH 43724.

Termination of Appr. 160.047/638/0, dated 15 December 1977, Termination effective date 21 November 1984. Manufactured by Elvin Salow Co., 15 East Street, Boston, MA 02211.

Termination of Appr. 160.047/639/0, dated 15 December 1977, Termination effective date 21 November 1984. Manufactured by Elvin Salow Co., 15 East Street, Boston, MA 02211.

Termination of Appr. 160.047/640/0, dated 15 December 1977, Termination effective date 21 November 1984. Manufactured by Elvin Salow Co., 15 East Street, Boston, MA 02211.

Kapok Buoyant Cushions

Termination of Appr. 160.048/32/0, dated 15 December 1977, Termination effective date 21 November 1984. Manufactured by Elvin Salow Co., 15 East Street, Boston, MA 02211.

Termination of Appr. 160.048/234/0, dated 15 September 1979, Termination effective date 21 November 1984. Manufactured by Sears, Roebuck and Co., 925 S. Homan Avenue, Chicago, IL 60607.

Unicellular Plastic Ring Life Buoy

Termination of Appr. 160.050/76/0, dated 9 May 1979, Termination effective date 21 November 1984. Manufactured by Aquality, Inc., P.O. Box 60, Bloomsburg, PA 17815.

Inflatable Liferaft (Ocean Service)

Termination of Appr. 160.051/89/1, dated 24 July 1979, Termination effective 21 November 1984. Manufactured by C.J. Hendry Company, 139 Townsend Street, San Francisco, CA 94107.

Termination of Appr. 160.051/90/1, dated 24 July 1979, Termination effective 21 November 1984. Manufactured by C.J. Hendry Company, 139 Townsend Street, San Francisco, CA 94107.

Termination of Appr. 160.051/93/1, dated 24 July 1979, Termination effective 21 November 1984. Manufactured by C.J. Hendry Company, 139 Townsend Street, San Francisco, CA 94107.

Termination of Appr. 160.051/94/1, dated 24 July 1979, Termination effective 21 November 1984. Manufactured by C.J. Hendry Company, 139 Townsend Street, San Francisco, CA 94107.

Termination of Appr. 160.051/95/1, dated 24 July 1979, Termination effective 21 November 1984. Manufactured by C.J. Hendry Company, 139 Townsend Street, San Francisco, CA 94107.

Termination of Appr. 160.051/96/1, dated 24 July 1979, Termination effective 21 November 1984. Manufactured by C.J. Hendry Company, 139 Townsend Street, San Francisco, CA 94107.

Termination of Appr. 160.051/97/1, dated 24 July 1979, Termination effective 21 November 1984. Manufactured by C.J. Hendry Company, 139 Townsend Street, San Francisco, CA 94107.

Termination of Appr. 160.051/98/1, dated 24 July 1979, Termination effective 21 November 1984. Manufactured by C.J. Hendry Company, 139 Townsend Street, San Francisco, CA 94107.

Termination of Appr. 160.051/132/0, dated 29 December 1982, Termination effective 21 November 1984. Manufactured by Viking-A/S Nordisk, Gummibadsfabrik, P.O. Box 3060–6700 Esbjerg, Denmark.

Termination of Appr. 160.051/133/0, dated 29 December 1982, Termination effective 21 November 1984. Manufactured by Viking-A/S Nordisk, Gummibadsfabrik, P.O. Box 3060–6700 Esbjerg, Denmark.

Termination of Appr. 160.051/134/0, dated 29 December 1982, Termination effective 21 November 1984. Manufactured by Viking-A/S Nordisk, Gummibadsfabrik, P.O. Box 3060–6700 Esbjerg, Denmark.

Unicellular Plastic Form Buoyant Vest

Termination of Appr. 160.052/190/1, dated 8 November 1979, Termination effective 21 November 1984. Manufactured by Ero Industries, Inc., 308 South Williams Street, Hazlehurst, GA 31539.

Termination of Appr. 160.052/191/1, dated 8 November 1979, Termination effective 21 November 1984. Manufactured by Ero Industries, Inc., 308 South Williams Street, Hazlehurst, GA 31539.

Termination of Appr. 160.052/192/1, dated 8 November 1979, Termination effective 21 November 1984. Manufactured by Ero Industries, Inc., 308 South Williams Street, Hazlehurst, GA 31539.

Termination of Appr. 160.052/347/0, dated 1 September 1977, Termination effective 21 November 1984. Manufactured by The Carlon Products Company, 1 New Haven Avenue, Derby, Connecticut 06418.

Termination of Appr. 160.052/348/0, dated 1 September 1977, Termination effective 21 November 1984. Manufactured by The Carlon Products Company, 1 New Haven Avenue, Derby, CT 06418.

Termination of Appr. 160.052/349/0, dated 1 September 1977, Termination effective 21 November 1984. Manufactured by The Carlon Products Company, 1 New Haven Avenue, Derby, CT 06418.

Termination of Appr. 160.052/361/0, dated 20 September 1977, Termination effective 21 November 1984. Manufactured by Gentex Corporation, Carbondale, PA 18407.

Unicellular Plastic Foam Life Preserver

Termination of Appr. 160.055/101/0, dated 6 June 1979, Termination effective 21 November 1984. Manufactured by Universal Oil Products Company, Aerospace Division, Bantam, CT 06750.

Marine Buoyant Device

Termination of Appr. 160.064/14/0, dated 17 January 1980, Termination effective 21 November 1984. Manufactured by Aquality, Inc., 8938 Mason Avenue, Chatsworth, CA 91311.

Termination of Appr. 160.064/15/0, dated 4 April 1978, Termination effective 21 November 1984. Manufactured by Texas Recreation Corporation, Texas Watercrafters Division, P.O. Drawer 539, Wichita Falls, TX 76307.

Termination of Appr. 160.064/16/0, dated 2 April 1979, Termination effective 21 November 1984. Manufactured by Crawford Manufacturing Co., 3rd & Decatur Streets, Richmond, VA 23212.

Termination of Appr. 160.064/19/0, dated 4 April 1978, Termination effective 21 November 1984. Manufactured by Texas Recreation Corporation, Texas Watercrafters Division, P.O. Drawer 539, Wichita Falls, TX 76307.

Termination of Appr. 160.064/20/0, dated 4 April 1978, Termination effective 21 November 1984. Manufactured by Texas Recreation Corporation, Texas Watercrafters Division, P.O. Drawer 539, Wichita Falls, TX 76307.

Termination of Appr. 160.064/21/0, dated 4 April 1978, Termination effective 21 November 1984. Manufactured by Texas Recreation Corporation, Texas Watercrafters Division, P.O. Drawer 539, Wichita Falls, TX 76307.

Termination of Appr. 160.064/22/0, dated 4 April 1978, Termination effective 21 November 1984. Manufactured by Texas Recreation Corporation, Texas Watercrafters Division, P.O. Drawer 539, Wichita Falls, TX 76307.

Termination of Appr. 160.064/159/1, dated 4 April 1978, Termination effective 21 November 1984. Manufactured by Texas Recreation Corporation, Texas Watercrafters Division, P.O. Drawer 539, Wichita Falls, TX 76307.

Termination of Appr. 160.064/160/1, dated 4 April 1978, Termination effective 21 November 1984. Manufactured by Texas Recreation Corporation, Texas Watercrafters Division, P.O. Drawer 539, Wichita Falls, TX 76307.

Termination of Appr. 160.064/161/1, dated 4 April 1978, Termination effective 21 November 1984. Manufactured by Texas Recreation Corporation, Texas Watercrafters Division, P.O. Drawer 539, Wichita Falls, TX 76307.

Termination of Appr. 160.064/226/0, dated 17 May 1979, Termination effective 21 November 1984. Manufactured by Gentex Corporation, Carbondale, PA 18407.

Termination of Appr. 160.064/389/0, dated 19 April 1979, Termination effective 21 November 1984. Manufactured by Gentex Corporation, Carbondale, PA 18407.

Termination of Appr. 160.064/395/0, dated 19 April 1979, Termination effective 21 November 1984. Manufactured by Gentex Corporation, Carbondale, PA 18407.

Termination of Appr. 160.064/408/0, dated 13 October 1977, Termination effective 21 November 1984. Manufactured by Red Head Brand Corporation, 4949 Joseph Hardin Drive, Dallas, TX 75236.

Termination of Appr. 160.064/409/0, dated 13 October 1977, Termination effective 21 November 1984. Manufactured by Red Head Brand Corporation, 4949 Joseph Hardin Drive, Dallas, TX 75236.

Termination of Appr. 160.064/410/0, dated 13 October 1977, Termination effective 21 November 1984. Manufactured by Red Head Brand Corporation, 4949 Joseph Hardin Drive, Dallas, TX 75236.

Termination of Appr. 160.064/412/0, dated 12 October 1977, Termination effective 21 November 1984. Manufactured by Red Head Brand Corporation, 4949 Joseph Hardin Drive, Dallas, TX 75236.

Termination of Appr. 160.064/413/0, dated 12 October 1977, Termination effective 21 November 1984. Manufactured by Buddy Schoellkopf Products, Inc., 4949 Joseph Hardin Drive, Dallas, TX 75236.

Termination of Appr. 160.064/414/0, dated 12 October 1977, Termination effective 21 November 1984. Manufactured by Buddy Schoellkopf Products, Inc., 4949 Joseph Hardin Drive, Dallas, TX 75236.

Termination of Appr. 160.064/415/0, dated 12 October 1977, Termination effective 21 November 1984. Manufactured by Buddy Schoellkopf Products, Inc., 4949 Joseph Hardin Drive, Dallas, TX 75236.

Termination of Appr. 160.064/416/0, dated 12 October 1977, Termination effective 21 November 1984. Manufactured by Buddy Schoellkopf Products, Inc., 4949 Joseph Hardin Drive, Dallas, TX 75236.

Termination of Appr. 160.064/417/0, dated 12 October 1977, Termination effective 21 November 1984. Manufactured by Buddy Schoellkopf Products, Inc., 4949 Joseph Hardin Drive, Dallas, TX 75236.

Termination of Appr. 160.064/503/0, dated 19 January 1979, Termination effective 21 November 1984. Manufactured by Wellington Puritan Mills, Inc., Wellington Cordage Division, Monticello Highway, Madison, GA 30650.

Termination of Appr. 160.064/504/0, dated 19 January 1979, Termination effective 21 November 1984. Manufactured by Wellington Puritan Mills, Inc., Wellington Cordage Division, Monticello Highway, Madison, GA 30650.

Termination of Appr. 160.064/526/0, dated 20 April 1978, Termination effective 21 November 1984. Manufactured by Texas Recreation Corporation, Texas Watercrafters Division, 912 N. Beverly Drive, Wichita Falls, TX 76307.

Termination of Appr. 160.064/573/0, dated 17 May 1979, Termination effective 21 November 1984. Manufactured by Gentex Corporation, Carbondale, PA 18407.

Termination of Appr. 160.064/574/0, dated 17 May 1979, Termination effective 21 November 1984. Manufactured by Gentex Corporation, Carbondale, PA 18407.

Termination of Appr. 160.064/576/0, dated 17 May 1979, Termination effective 21 November 1984. Manufactured by Gentex Corporation, Carbondale, PA 18407.

Termination of Appr. 160.064/577/0, dated 17 May 1979, Termination effective 21 November 1984. Manufactured by Gentex Corporation, Carbondale, PA 18407.

Termination of Appr. 160.064/578/0, dated 17 May 1979, Termination effective 21 November 1984. Manufactured by Gentex Corporation, Carbondale, PA 18407.

Termination of Appr. 160.064/579/0, dated 17 May 1979, Termination effective 21 November 1984. Manufactured by Gentex Corporation, Carbondale, PA 18407.

Termination of Appr. 160.064/580/0, dated 17 May 1979, Termination effective 21 November 1984. Manufactured by Gentex Corporation, Carbondale, PA 18407.

Termination of Appr. 160.064/581/0, dated 17 May 1979, Termination effective 21 November 1984. Manufactured by Gentex Corporation, Carbondale, PA 18407.

Termination of Appr. 160.064/582/0, dated 2 April 1979, Termination effective 21 November 1984. Manufactured by Cypress Gardens Skis, Inc., Hoover Road, P.O. Box 8, Cypress Gardens, FL 33880.

Termination of Appr. 160.064/585/0, dated 2 April 1979, Termination effective 21 November 1984. Manufactured by Texas Recreation Corporation, Texas Watercrafters Division, P.O. Drawer 539, Wichita Falls, TX 76307.

Termination of Appr. 160.064/586/0, dated 2 April 1979, Termination effective 21 November 1984. Manufactured by Texas Recreation Corporation, Texas Watercrafters Division, P.O. Drawer 539, Wichita Falls, TX 76307.

Termination of Appr. 160.064/587/0, dated 2 April 1979, Termination effective 21 November 1984. Manufactured by Texas Recreation Corporation, Texas Watercrafters Division, P.O. Drawer 539, Wichita Falls, TX 76307.

Termination of Appr. 160.064/588/0, dated 2 April 1979, Termination effective 21 November 1984. Manufactured by Texas Recreation Corporation, Texas Watercrafters Division, P.O. Drawer 539, Wichita Falls, TX 76307.

Termination of Appr. 160.064/589/0, dated 2 April 1979, Termination effective 21 November 1984. Manufactured by Texas Recreation Corporation, Texas Watercrafters Division, P.O. Drawer 539, Wichita Falls, TX 76307.

Termination of Appr. 160.064/590/0, dated 2 April 1979, Termination effective 21 November 1984. Manufactured by Texas Recreation Corporation, Texas Watercrafters Division, P.O. Drawer 539, Wichita Falls, TX 76307.

Termination of Appr. 160.064/647/0, dated 17 May 1979, Termination effective 21 November 1984. Manufactured by Gentex Corporation, Carbondale, PA 18407.

Termination of Appr. 160.064/648/0, dated 17 May 1979, Termination effective 21 November 1984. Manufactured by Gentex Corporation, Carbondale, PA 18407.

Termination of Appr. 160.064/649/0, dated 17 May 1979, Termination effective 21 November 1984. Manufactured by Gentex Corporation, Carbondale, PA 18407.

Termination of Appr. 160.064/650/0, dated 17 May 1979, Termination effective 21 November 1984. Manufactured by Gentex Corporation, Carbondale, PA 18407.

Termination of Appr. 160.064/651/0, dated 17 May 1979, Termination effective 21 November 1984. Manufactured by Gentex Corporation, Carbondale, PA 18407.

Termination of Appr. 160.064/850/0, dated 25 October 1979, Termination effective 21 November 1984. Manufactured by Omega Corporation, 266 Border Street, East Boston, MA 02128.

Termination of Appr. 160.064/851/0, dated 25 October 1979, Termination effective 21 November 1984. Manufactured by Omega Corporation, 266 Border Street, East Boston, MA 02128.

Termination of Appr. 160.064/852/0, dated 25 October 1979, Termination effective 21 November 1984. Manufactured by Omega Corporation, 266 Border Street, East Boston, MA 02128.

Termination of Appr. 160.064/1039/0, dated 25 October 1979, Termination effective 21 November 1984. Manufactured by Omega Corporation, 266 Border Street, East Boston, MA 02128.

Termination of Appr. 160.064/1040/0, dated 25 October 1979, Termination effective 21 November 1984. Manufactured by Omega Corporation, 266 Border Street, East Boston, MA 02128.

Termination of Appr. 160.064/1135/0, dated 23 June 1976, Termination effective 21 November 1984. Manufactured by American Marine Products, Inc., 240 W. Shore Drive, Hinsdale, IL 60521.

Termination of Appr. 160.064/1230/0, dated 9 November 1978, Termination effective 21 November 1984. Manufactured by Fabronics, Inc., P.O. Box 1061, Tolono, IL 61880.

Termination of Appr. 160.064/1378/0, dated 15 March 1979, Termination effective 21 November 1984. Manufactured by Ero Industries, Inc., One S. Wacker Drive, Chicago, IL 60606.

Termination of Appr. 160.064/1406/0, dated 10 November 1982, Termination effective 21 November 1984. Manufactured by Willmington Industries, Inc., P.O. Box 244, Madison, GA 30650.

Termination of Appr. 160.064/1407/0, dated 10 November 1982, Termination effective 21 November 1984. Manufactured by Willmington Industries, Inc., P.O. Box 244, Madison, GA 30650.

Termination of Appr. 160.064/1408/0, dated 10 November 1982, Termination effective 21 November 1984. Manufactured by Willmington Industries, Inc., P.O. Box 244, Madison, GA 30650.

Termination of Appr. 160.064/1409/0, dated 10 November 1982, Termination effective 21 November 1984. Manufactured by Willmington Industries, Inc., P.O. Box 244, Madison, GA 30650.

Termination of Appr. 160.064/1409/0, dated 10 November 1982, Termination effective 21 November 1984. Manufactured by Willmington Industries, Inc., P.O. Box 244, Madison, GA 30650.

Termination of Appr. 160.064/1422/0, dated 1 April 1980, Termination effective 21 November 1984. Manufactured by Sears, Roebuck & Co., Sears Tower, Chicago, IL 60684.

Termination of Appr. 160.064/1460/0, dated 8 January 1980, Termination effective 21 November 1984. Manufactured by Taperpro U.S.A., 558 Library Street, San Fernando, CA 91341.

Termination of Appr. 160.064/1461/0, dated 8 January 1980, Termination effective 21 November 1984. Manufactured by Taperpro U.S.A., 558 Library Street, San Fernando, CA 91341.

Termination of Appr. 160.064/1462/0, dated 8 January 1980, Termination effective 21 November 1984. Manufactured by Taperpro U.S.A., 558 Library Street, San Fernando, CA 91341.

Termination of Appr. 160.064/1463/0, dated 8 January 1980, Termination effective 21 November 1984. Manufactured by Taperpro U.S.A., 558 Library Street, San Fernando, CA 91341.

Termination of Appr. 160.064/1464/0, dated 8 January 1980, Termination effective 21 November 1984. Manufactured by Taperpro U.S.A., 558 Library Street, San Fernando, CA 91341.

Termination of Appr. 160.064/1465/0, dated 8 January 1980, Termination effective 21 November 1984. Manufactured by Taperpro U.S.A., 558 Library Street, San Fernando, CA 91341.

Termination of Appr. 160.064/1466/0, dated 8 January 1980, Termination effective 21 November 1984. Manufactured by Taperpro U.S.A., 558 Library Street, San Fernando, CA 91341.

Termination of Appr. 160.064/1526/0, dated 24 April 1980, Termination effective 21 November 1984. Manufactured by Ero Industries, Inc., 189 West Madison, Chicago, IL 60602.

Termination of Appr. 160.064/1527/0, dated 21 March 1979, Termination effective 21 November 1984.

Manufactured by Ero Industries, Inc., 189 West Madison, Chicago, IL 60602.

Termination of Appr. 160.064/1528/0, dated 21 March 1979, Termination effective 21 November 1984. Manufactured by Ero Industries, Inc., 189 West Madison, Chicago, IL 60602.

Termination of Appr. 160.064/1536/0, dated 26 January 1979, Termination effective date 21 November 1984. Manufactured by America's Cup, Inc., 1443 Potrero, S. El Monte, CA 91733.

Termination of Appr. 160.064/1537/0, dated 26 January 1979, Termination effective date 21 November 1984. Manufactured by America's Cup, Inc., 1443 Potrero, S. El Monte, CA 91733.

Termination of Appr. 160.064/1538/0, dated 26 January 1979, Termination effective date 21 November 1984. Manufactured by America's Cup, Inc., 1443 Potrero, S. El Monte, CA 91733.

Termination of Appr. 160.064/1539/0, dated 26 January 1979, Termination effective date 21 November 1984. Manufactured by America's Cup, Inc., 1443 Potrero, S. El Monte, CA 91733.

Termination of Appr. 160.064/1539/0, dated 26 January 1979, Termination effective date 21 November 1984. Manufactured by America's Cup, Inc., 1443 Potrero, S. El Monte, CA 91733.

Termination of Appr. 160.064/1579/0, dated 2 April 1980, Termination effective date 21 November 1984. Manufactured by Sears, Roebuck & Co., Sears Tower, Chicago, IL 60684.

Termination of Appr. 160.064/1586/0, dated 26 January 1979, Termination effective date 21 November 1984. Manufactured by Medalist Water Sports, 11525 Sorrento Valley Road, San Diego, CA 92121.

Termination of Appr. 160.064/1580/0, dated 2 April 1980, Termination effective date 21 November 1984. Manufactured by Sears, Roebuck & Co., Sears Tower, Chicago, IL 60684.

Termination of Appr. 160.064/1587/0, dated 26 January 1979, Termination effective date 21 November 1984. Manufactured by Medalist Water Sports, 11525 Sorrento Valley Road, San Diego, CA 92121.

Termination of Appr. 160.064/1588/0, dated 26 January 1979, Termination effective date 21 November 1984. Manufactured by Medalist Water Sports, 11525 Sorrento Valley Road, San Diego, CA 92121.

Termination of Appr. 160.064/1589/0, dated 26 January 1979, Termination effective date 21 November 1984. Manufactured by Medalist Water Sports, 11525 Sorrento Valley Road, San Diego, CA 92121.

Termination of Appr. 160.064/1644/0, dated 6 April 1979, Termination effective date 21 November 1984. Manufactured by Medalist Water Sports, 11525 Sorrento Valley Road, San Diego, CA 92121.

Termination of Appr. 160.064/1658/0, dated 17 January 1980, Termination effective date 21 November 1984. Manufactured by Gentex Corporation, Carbondale, PA 18407.

Termination of Appr. 160.064/1660/0, dated 27 March 1980, Termination effective date 21 November 1984. Manufactured by Sears, Roebuck & Co., Sears Tower, Chicago, IL 60684.

Termination of Appr. 160.064/1672/0, dated 17 January 1980, Termination effective date 21 November 1984. Manufactured by Medalist Water Sports, 11525 Sorrento Valley Road, San Diego, CA 92121.

Termination of Appr. 160.064/1675/0, dated 17 January 1980, Termination effective date 21 November 1984. Manufactured by Medalist Water Sports, 11525 Sorrento Valley Road, San Diego, CA 92121.

Termination of Appr. 160.064/1676/0, dated 6 June 1979, Termination effective date 21 November 1984. Manufactured by Gladding Corporation, Flotation Division, P.O. Drawer 9038, Station A, Greenville, SC 29604.

Termination of Appr. 160.064/1677/0, dated 6 June 1979, Termination effective date 21 November 1984. Manufactured by Gladding Corporation, Flotation Division, P.O. Drawer 9038, Station A, Greenville, SC 29604.

Termination of Appr. 160.064/1678/0, dated 6 June 1979, Termination effective date 21 November 1984. Manufactured by Gladding Corporation, Flotation Division, P.O. Drawer 9038, Station A, Greenville, SC 29604.

Termination of Appr. 160.064/1679/0, dated 6 June 1979, Termination effective date 21 November 1984. Manufactured by Gladding Corporation, Flotation Division, P.O. Drawer 9038, Station A, Greenville, SC 29604.

Termination of Appr. 160.064/1715/0, dated 5 November 1979, Termination effective date 21 November 1984. Manufactured by Float Gear, Inc., 705A Arroyo Ave., San Fernando, CA 91341.

Termination of Appr. 160.064/1725/0, dated 17 January 1980, Termination effective date 21 November 1984. Manufactured by Toyomenka (America) Inc., Suite 4011, One World Trade Center, New York, NY 10048.

Termination of Appr. 160.064/1739/0, dated 17 January 1980, Termination effective date 21 November 1984. Manufactured by Medalist Water Sports, 11525 Sorrento Valley Road, San Diego, CA 92121.

Termination of Appr. 160.064/1740/0, dated 17 January 1980, Termination effective date 21 November 1984. Manufactured by Medalist Water Sports, 11525 Sorrento Valley Road, San Diego, CA 92121.

Termination of Appr. 160.064/1747/0, dated 14 January 1980, Termination effective date 21 November 1984. Manufactured by Taperpro U.S.A., 558 Library Street, San Fernando, CA 91341.

Termination of Appr. 160.064/1748/0, dated 14 January 1980, Termination effective date 21 November 1984. Manufactured by Taperpro U.S.A., 558 Library Street, San Fernando, CA 91341.

Termination of Appr. 160.064/1749/0, dated 14 January 1980, Termination effective date 21 November 1984. Manufactured by Taperpro U.S.A., 558 Library Street, San Fernando, CA 91341.

Termination of Appr. 160.064/1750/0 dated 17 January 1980, Termination effective date 21 November 1984. Manufactured by Medalist Water Sport, 11525 Sorrento Valley Road, San Diego, CA 92121.

Termination of Appr. 160.064/1751/0 dated 17 January 1980, Termination effective date 21 November 1984. Manufactured by Medalist Water Sport, 11525 Sorrento Valley Road, San Diego, CA 92121.

Termination of Appr. 160.064/1752/0 dated 17 January 1980, Termination effective date 21 November 1984. Manufactured by Medalist Water Sport, 11525 Sorrento Valley Road, San Diego, CA 92121.

Termination of Appr. 160.064/1753/0 dated 17 January 1980, Termination effective date 21 November 1984. Manufactured by Medalist Water Sport, 11525 Sorrento Valley Road, San Diego, CA 92121.

Termination of Appr. 160.064/1754/0 dated 17 January 1980, Termination effective date 21 November 1984. Manufactured by Medalist Water Sport, 11525 Sorrento Valley Road, San Diego, CA 92121.

Termination of Appr. 160.064/1755/0 dated 17 January 1980, Termination effective date 21 November 1984. Manufactured by Medalist Water Sport, 11525 Sorrento Valley Road, San Diego, CA 92121.

Termination of Appr. 160.064/1756/0 dated 17 January 1980, Termination effective date 21 November 1984. Manufactured by Medalist Water Sport, 11525 Sorrento Valley Road, San Diego, CA 92121.

Termination of Appr. 160.064/1758/0 dated 5 November 1979, Termination effective date 21 November 1984. Manufactured by Ettinger Enterprises, Inc., 5310 Lance Drive, Knoxville, TN 37919.

Termination of Appr. 160.064/1767/0 dated 17 January 1980, Termination

effective date 21 November 1984. Manufactured by Gladding Corporation, Flotation Division, P.O. Drawer 9038, Station A, Greenville, SC 29604.

Termination of Appr. 160.064/1768/0 dated 17 January 1980, Termination effective date 21 November 1984. Manufactured by Gladding Corporation, Flotation Division, P.O. Drawer 9038, Station A, Greenville, SC 29604.

Termination of Appr. 160.064/1769/0 dated 17 January 1980, Termination effective date 21 November 1984. Manufactured by Gladding Corporation, Flotation Division, P.O. Drawer 9038, Station A, Greenville, SC 29604.

Termination of Appr. 160.064/1775/0 dated 20 February 1981, Termination effective date 21 November 1984. Manufactured by Miltco Products Corp., 139 Emerson Place, Brooklyn, NY 11205.

Fire Protective System

Termination of Appr. 161.002/2/1 dated 9 March 1979, Termination effective date 21 November 1984. Manufactured by Fenwal, Inc., Ashland, Massachusetts 01721.

Termination of Appr. 161.002/3/1 dated 8 November 1979, Termination effective date 21 November 1984. Manufactured by Fenwal, Inc., Ashland, Massachusetts 01721.

Termination of Appr. 161.002/9/1 dated 8 November 1979, Termination effective date 21 November 1984. Manufactured by Henschel Corporation Amesbury, MA 01913.

Hand Electric Flashlight

Termination of Appr. 161.008/13/0 dated 6 June 1974, Termination effective date 21 November 1984. Manufactured by Fulton Manufacturing, Division of Chromalloy American Corporation, Wauseon, OH 43567.

Termination of Appr. 161.008/17/0 dated 15 September 1976, Termination effective date 21 November 1984. Manufactured by West Products Corporation, 161 Prescott Street, Logan International Airport, E. Boston, MA 02128.

Termination of Appr. 161.008/18/0 dated 15 September 1976, Termination effective date 21 November 1984. Manufactured by West Products Corporation, 161 Prescott Street, Logan International Airport, E. Boston, MA 02128.

Floating Electric Water Light

Termination of Appr. 161.010/3/2 dated 25 May 1976, Termination effective date 21 November 1984. Manufactured by Automatic Lite Company, 900 N. Iris Avenue, Baltimore, Maryland 21205.

Termination of Appr. 161.010/8/2 dated 26 August 1980, Termination effective date 21 November 1984. Manufactured by Automatic Lite Company, 900 N. Iris Avenue, Baltimore, Maryland 21205.

Termination of Appr. 161.010/13/0 dated 8 August 1980, Termination effective date 21 November 1984. Manufactured by Automatic Lite Company, 900 N. Iris Avenue, Baltimore, Maryland 21205.

Class A EPIRB

Termination of Appr. 161.011/8/0 dated 13 December 1977, Termination effective date 21 November 1984. Manufactured by Leigh Systems, Inc., 6081 Court Street Road, Syracuse, New York 13206.

Pressure-Vacuum Relief Valve

Termination of Appr. 162.017/132/0 dated 17 December 1981, Termination effective date 21 November 1984. Manufactured by PRES–VAC, S.A., Capitan Haya, 3,1., Madrid–20, SPAIN.

Halon 1301 Fixed Fire Extinguishing System

Termination of Appr. 162.029/1/0 dated 15 January 1979, Termination effective date 21 November 1984. Manufactured by Fike Metal Products Corp., 704 S. 10th Street, Blue Springs, Missouri 64015.

Termination of Appr. 162.029/3/0 dated 13 July 1979, Termination effective date 21 November 1984. Manufactured by Fike Metal Products Corp., 704 S. 10th Street, Blue Springs, Missouri 64015.

Termination of Appr. 162.029/4/0 dated 13 July 1979, Termination effective date 21 November 1984. Manufactured by Fike Metal Products Corp., 704 S. 10th Street, Blue Springs, Missouri 64015.

Termination of Appr. 162.029/11/0 dated 7 March 1978, Termination effective date 21 November 1984. Manufactured by Sea Fire Marine Products, 4139 Sunset Lane, Northbrook, IL 60062.

Termination of Appr. 162.029/12/0 dated 31 October 1979, Termination effective date 21 November 1984. Manufactured by AD-X Corporation, P.O. Box 272, Littleton, CO 80160.

Termination of Appr. 162.029/26/0 dated 2 June 1982, Termination effective date 21 November 1984. Manufactured by MHI, Inc., Star Route Fairplay Rd., Somerset, CA 95684.

Termination of Appr. 162.029/27/0 dated 2 June 1982, Termination effective date 21 November 1984. Manufactured by MHI, Inc., Star Route Fairplay Rd., Somerset, CA 95684.

Termination of Appr. 162.029/28/0 dated 2 June 1982, Termination effective date 21 November 1984. Manufactured by MHI, Inc., Star Route Fairplay Rd., Somerset, CA 95684.

Termination of Appr. 162.029/29/0 dated 2 June 1982, Termination effective date 21 November 1984. Manufactured by MHI, Inc., Star Route Fairplay Rd., Somerset, CA 95684.

Termination of Appr. 162.029/30/0 dated 2 June 1982, Termination effective date 21 November 1984. Manufactured by MHI, Inc., Star Route Fairplay Rd., Somerset, CA 95684.

Termination of Appr. 162.029/31/0 dated 2 June 1982, Termination effective date 21 November 1984. Manufactured by MHI, Inc., Star Route Fairplay Rd., Somerset, CA 95684.

Carbon Dioxide Type Fire Extinguishing Systems

Termination of Appr. 162.038/1/0 dated 5 October 1979, Termination effective date 21 November 1984. Manufactured by Walter Kidde & Company, Inc., Industrial and Marine Division, Belleville, NJ 07109.

Deck Covering

Termination of Appr. 164.006/49/0 dated 12 June 1978, Termination effective date 21 November 1984. Manufactured by Chartres Company, Inc., 2121 Chartres Street, New Orleans, LA 70116.

Bulkhead Panel

Termination of Appr. 164.008/12/2 dated 29 June 1979, Termination effective date 21 November 1984. Manufactured by Johns-Manville Sales Corporation, Ken-Caryl Ranch, Denver, CO 90217.

Termination of Appr. 164.008/14/2 dated 6 June 1979, Termination effective date 21 November 1984. Manufactured by Johns-Manville Sales Corporation, Ken-Caryl Ranch, Denver, CO 90217.

Termination of Appr. 164.008/59/0 dated 5 October 1977, Termination effective date 21 November 1984. Manufactured by Eternit, C.A.P. 16121, Piazza Della Vitteria, 11, Genova, Italy.

Noncombustible Material

Termination of Appr. 164.009/21/2 dated 30 August 1979, Termination effective date 21 November 1984. Manufactured by Owens-Corning Fiberglas Corp., 900 17th St., NW., Washington, DC 20006.

Termination of Appr. 164.009/109/0 dated 26 May 1978, Termination effective date 21 November 1984. Manufactured by Rock Wool Manufacturing Company, Leeds, AL 35094.

Termination of Appr. 164.009/155/0 dated 15 June 1978, Termination effective date 21 November 1984. Manufactured by Birma Products Corporation, Jernee Mill Rd., Sayreville, NJ 08872.

Interior Finish

Termination of Appr. 164.012/2/0 dated 12 March 1979, Termination effective date 21 November 1984. Manufactured by Consoweld Corporation, 700 Durabeauty Lane, Rapids, WI 55494.

Termination of Appr. 164.012/31/0 dated 10 July 1978, Termination effective date 21 November 1984. Manufactured by Insul-Coustic Corp., Jernee Mill Rd., Sayreville, NJ 08872.

Termination of Appr. 164.012/32/0 dated 16 August 1978, Termination effective date 21 November 1984. Manufactured by W.R. Grace & Company, Hatco Plastics Division, P.O. Box 948, Colding Drive, Corinth, Mississippi 38834.

W.J. Ecker,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

September 23, 1985.

[FR Doc. 85-23042 Filed 9-25-85; 8:45 am]

BILLING CODE 4910-14-M

[CGD 85-070]

U.S. Coast Guard Academy Advisory Committee; Membership Applications

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership of the Coast Guard Academy Advisory Committee. This committee advises the Commandant, United States Coast Guard, on the status of the curricula and faculty of the United States Coast Guard Academy. The Committee consists of seven members who are recognized persons of distinction in the field of education and other fields relating to the purpose of the Academy. The Secretary of Transportation appoints members to serve three-year terms.

ADDRESS: Persons interested in applying should write to Commandant (G-PTE), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593 (202 426-9866).

Issued in Washington, DC, on September 19, 1985.

Henry H. Bell,

Rear Admiral, U.S. Coast Guard Chief, Office of Personnel.

[FR Doc. 85-23049 Filed 9-25-85; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[FAA Order 6850.26A]

Federal Funding of Visual Glideslope Indicators

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Funding Policy; extension of comment period.

SUMMARY: This notice announces the extension of the comment period for Notice of Proposed Funding Policy, FAA Order 6850.26A, which invites comments concerning the Order establishing a policy for the Federal funding of visual glideslope indicators. The full text of the Notice appears at 50 FR 34573 (August 26, 1985), and a correction of that Notice appears at 50 FR 35630 (September 3, 1985). This extension is necessary to afford all interested parties an opportunity to present their views on the proposed policy.

DATE: Comments must be received on or before October 28, 1985.

ADDRESS: Comments on the proposed funding policy should identify the Order number and be submitted in duplicate to: Federal Aviation Administration, Office of Airport Standards, Attention: Mr. Robert Bates, AAS-200, 800 Independence Avenue, SW., Washington, DC 20591. All comments submitted will be available, both before and after the closing date for comments, in the Office of Airport Standards for examination by interested persons on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

Availability of Notice: Any person may obtain a copy of the Notice by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-3058. Communications must identify the Order number.

Issued in Washington, DC on September 20, 1985.

Donald D. Engen,

Administrator.

[FR Doc. 85-22961 Filed 9-25-85; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Public Meeting; Change

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of change of time of public meeting.

SUMMARY: This notice announces a change of time of a public meeting (originally announced at 50 FR 35901; September 4, 1985) at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs (including defects). The public meeting, originally scheduled to begin at 10:30 a.m., will now begin at 9:00 a.m., and run until 1:00 p.m. It will be held on October 16, 1985, in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan.

Issued on September 23, 1985.

Barry Felrice,

Associate Administrator for Rulemaking

[FR Doc. 85-22979 Filed 9-25-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Customs Service

Receipt of Domestic Interested Party Petition Concerning Tariff Treatment of Hook and Eye Tabs Incorporated in Brassieres

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: Customs has received a petition submitted on behalf of several domestic interested parties with respect to the tariff treatment of hook and eye tabs incorporated in imported brassieres. The metal hooks and eyes are manufactured and attached to continuous textile strips in the Philippines, imported into the U.S. duty-free under the Generalized System of Preferences and further processed into individual hook and eye tabs which are then exported and assembled abroad into finished brassieres. The petitioners contend that when the finished brassieres are imported, Customs is incorrectly excluding the value of the hook and eye tabs, and that no allowances should be made for the value of the tabs in the duty assessed on the brassieres because the processing in the U.S. is not sufficient to transform the strips into products of the U.S. This document invites comments with respect to the correctness of the current tariff treatment of the imported articles.

DATE: Comments must be received on or before November 25, 1985.

ADDRESS: Written comments (preferably in triplicate) may be addressed to, and inspected at the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–8237).

FOR FURTHER INFORMATION CONTACT: Frank Foote, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202–566–2938).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), and Part 175, Customs Regulations (19 CFR Part 175), a domestic interested party petition has been filed with Customs concerning the tariff treatment of hook and eye tabs incorporated in imported brassieres. The petitioners are manufacturers and producers of metal hook and eye components which are sewn by machine onto textile strips. These strips are placed on reels and then fed into sealing machines which sever the strips into individual tab units. After heat-sealing, these tab units are ready for incorporation into brassieres.

The imported merchandise is produced using nearly identical methods. However, unlike the domestically-produced merchandise which is produced in one location, the U.S., the imported merchandise is completed in two locations. The textile strips with the hooks and eyes attached are manufactured and produced in the Philippines. These strips are then imported into the U.S. where they are currently classified under the dutiable provision for "Hooks and eyes," in item 745.60, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202). However, these strips are eligible for duty-free treatment under the Generalized System of Preferences (GSP) provided for in Title 5 of the Trade Act of 1974, as amended (19 U.S.C. 2461 *et seq.*). The GSP provides that when an eligible article is imported into the customs territory of the U.S. directly from a country, territory or association of countries listed in General Headnote 3(c)(i), TSUS, it shall receive duty-free treatment, unless excluded. These strips of uncut hook and eye tabs are being imported from the Philippines which appears on the GSP list of designated beneficiary developing countries whose articles receive duty-free treatment from the U.S. Accordingly, no duty is paid on these articles when they are imported.

Once in the U.S., these strips of hook and eye tabs are then cut into individual tab units, heat-sealed, then exported and assembled abroad into finished brassieres. The finished brassieres are then imported into the U.S. under the provisions for "Articles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting. . . ," in item 807.00, TSUS. The duty on these articles is based on the full value of the imported article, less the cost or value of any fabricated components which are products of the U.S. In Customs Ruling #053121 M, dated November 7, 1977, Customs determined that cutting and heat-sealing imported hook and eye strips in the U.S. into individual hook and eye tab units substantially transforms the strips into products of the U.S. Since these completed tabs are considered to be products of the U.S. for purposes of item 807.00, TSUS, their value is excluded from the dutiable value of the imported brassieres.

The petitioners contend that this previous Customs ruling is erroneous. It is their view that hook and eye strips of foreign origin that are imported into the U.S. and merely cut and heat-sealed into individual tabs are not substantially transformed into products of the U.S. Accordingly, they claim that the cost or value of the tabs should not be excluded from the dutiable value of the brassieres imported under item 807.00, TSUS.

Comments

Pursuant to § 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments from interested parties on the classification issue. The domestic interested party petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 1.6. Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Authority

This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: August 28, 1985.

David D. Queen,

Acting Assistant Secretary of the Treasury.

[FR Doc. 85–23009 Filed 9–25–85; 8:45 am]

BILLING CODE 4820–02–M

VETERANS ADMINISTRATION

Veterans Administration Medical Center; Modernization or Replacement, Allen Park, MI; Availability of the Supplemental Draft Environmental Impact Statement

Notice is hereby given that a document entitled "Supplemental Draft Environmental Impact Statement (SDEIS), Modernization or Replacement, Veterans Administration Medical Center (VAMC), Allen Park, Michigan," dated August 1985, has been prepared as required by the National Environmental Policy Act of 1969.

The Supplemental Draft Statement discusses the potential environmental impacts associated with the Modernization or Replacement of the VAMC Allen Park. The alternatives considered include three different degrees of renovation and new construction at the existing VAMC Allen Park; a total replacement VAMC at a site in Detroit, Michigan; a split facility alternative (Allen Park would be retained for use as a nursing home and long-term psychiatric care facility, while ambulatory and acute care including medical, surgery, and acute psychiatric care would be relocated to a site in Detroit); an enlarged VAMC at Allen Park (a replacement hospital totaling 941 beds) and the "No Action" alternative.

All the alternatives, except the "No Action" alternative, respond to a 1995 medical program and will meet the required space needs for a modern hospital providing medical care for veterans. In the renovation alternatives, some of the program space will be located in existing buildings that must

modernized with the remainder of the program in new construction. The split facility concept also would involve major renovation and new construction.

The Supplemental Draft Statement includes comments and the discussion of issues that were identified during the public comment period on the original Draft EIS and the public hearings in the Allen Park/Detroit area. The document also includes information generated by the technical analysis of various key environmental elements

The Supplemental Draft Statement is being placed for public examination at the Veterans Administration, Washington, DC. In addition, Appendix "K" which contains the transcript of the public hearing held in the Allen Park/Detroit area on September 11 and 12, 1984, is available upon request. Persons wishing to examine a copy of the documents may do so at the following office: Director, Office fo Environmental Affairs (088B), Room 419, Veterans Administration, 811 Vermont Avenue, NW., Washington, DC 20420, (202) 389–2922. Questions or requests for single copies of the Environmental Impact Statement and/or Appendix "K" may be addressed to the above office.

Dated: September 23, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 85–22997 Filed 9–25–85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 187
Thursday, September 26, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, October 1, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

The meeting scheduled for the date of October 3, 1985, has been cancelled.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202–523–4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85–23167 Filed 9–24–85; 3:36 pm]

BILLING CODE 6715–01–M

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FEDERAL MARITIME COMMISSION

TIME AND DATE: 1:00 p.m.—October 1, 1985.

PLACE: Hearing Room One—1100 L Street, NW., Washington, DC 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portion Open to the Public

1. Consideration of a draft proposed rule concerning retroactive provisons in agreements subject to the Shipping Act of 1984.

Portions Closed to the Public

1. Agreement No. 207–010811: The Peru Lines Service Agreement.
2. Docket No. 84–38: Ariel Maritime Group, Inc., et al.—Consideration of exceptions and replies to exceptions relative to the administrative law judge's Initial Decision.

CONTACT PERSON FOR MORE INFORMATION: Bruce A. Dombrowski, Acting Secretary (202) 523–5725.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–23119 Filed 9–24–85; 1:31 pm]

BILLING CODE 6730–01–M

3

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, October 3, 1985.

PLACE: Suite 410, 1825 K Street, NW., Washington, DC.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Mary Ann Miller (202) 634–4015.

Dated: September 24, 1985.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 85–23138 Filed 9–24–85; 2:11 pm]

BILLING CODE 7600–01–M

4

POSTAL RATE COMMISSION.

TIME AND DATE: 2:00 p.m., October 7, 1985.

PLACE: Suite 300, 1333 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: Docket No. RM85–2, Rules of Practice and Procedure Governing Workpapers and Computer-Generated Evidence.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 85–23071 Filed 9–24–85; 9:50 am]

BILLING CODE 7715–01–M

5

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1355]

TIME AND DATE: 9:30 a.m. (EDT), Monday, September 30, 1985.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on September 17, 1985.

Action Items

A—Budget and Financing

A1. Fiscal year 1986 Capital Budget for the Power Program comprising expenditures for ongoing and new projects during the fiscal year and the estimated total project cost for those projects.

Note.—Discussion of Item A1 will begin at 1 p.m. after the completion of all other items on the agenda.

B—Purchase Awards

B1. Invitation 33–972099—Feedwater heaters for Bull Run Fossil Plant.

B2. Amendment to Indefinite Quality Term Agreement 84KJ3–663301–2 with Wang Laboratories, Inc., for automated office systems.

B3. Proposal LC–964346—Piping ID inspection and repair equipment and related services for Browns Ferry Nuclear Plant.

B4. Requisition 11—Term coal for Paradise Steam Plant.

C—Power Items

*C1. Disposal and other actions relating to certain uranium properties located in Converse County, Wyoming.

D—Personnel Items

D1. Proposed compensation adjustments for Management and Specialist Schedule, the Physician Schedule, and excluded employees schedules. This also includes a plan authorizing the lease of automobiles for certain power managers who have round-the-clock responsibility for critical power system functions.

E—Real Property Transactions

E1. Grant of permanent easement to Roane County, Tennessee, affecting approximately 0.8 acre of Watts Bar Reservoir land located in Roane County, for the construction, operation, and

*Items approved by individual Board members. This would give formal ratification to the Board's action.

maintenance of a road—Tract No. XTWBR–133H.

*E2. Grant of permit and right of way to East Tennessee Natural Gas Company affecting approximately 2.4 acres of Melton Hill Reservoir land located in Knox County, Tennessee, for the construction, operation, and maintenance of a natural gas pipeline—Tract No. XMHR–50P.

F—Unclassified

F1. Authority to write off uncollectible accounts receivable.

F2. Contribution rate to the TVA Retirement System for fiscal year 1986.

F3. Payments to States and counties in lieu of taxes for fiscal year ending September 30, 1985, as provided under Section 13 of the TVA Act, as amended.

F4. Drawdown of Fontana Reservoir below normal minimum level for inspection of sluiceways.

F5. Supplement to Agreement No. TV–61214A with Oak Ridge Operations, U.S. Department of Energy (DOE) providing for TVA to continue performing mapping services for DOE.

F6. Supplement to Agreement No. TV–60244A with Office of Surface Mining, U.S. Department of the Interior, for aerial photographic and related activities to be performed by TVA.

F7. Interagency Agreement No. TV–67779A between Office of Surface Mining (OSM), U.S. Department of the Interior, and TVA for the continued support of the OSM Abandoned Mine Lands Inventory Program by TVA.

F8. Contract No. TV–67746A between TVA and ANFLOW, Incorporated, providing for TVA assistance to monitor and evaluate the ANFLOW wastewater treatment demonstration at Haleyville, Alabama.

F9. Supplement to interagency agreement (TV–59928A), between TVA and Agency for International Development (AID) covering arrangements for TVA's assistance to AID's Bioenergy Program.

F10. Supplement to interagency agreement (TV–66099A), between TVA and the Department of Energy (DOE) Western Area Power Administration covering arrangements for TVA to continue providing equipment inspection services.

F11. Supplement to Contract No. TV–58784A between TVA and the Department of Energy (DOE), for DOE to provide technical assistance and perform tasks as requested by TVA at the Oak Ridge National Laboratory.

F12. Cooperative Agreement No. TV–67747A between TVA and City of Bristol, Tennessee, for the planning and construction of approximately eight miles of 36-inch-diameter waterline.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: September 23, 1985.

W.F. Willis,

General Manager.

[FR Doc. 85–23139 Filed 9–24–85; 2:11 pm]

BILLING CODE 8120–01–M

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Thursday, September 26, 1985

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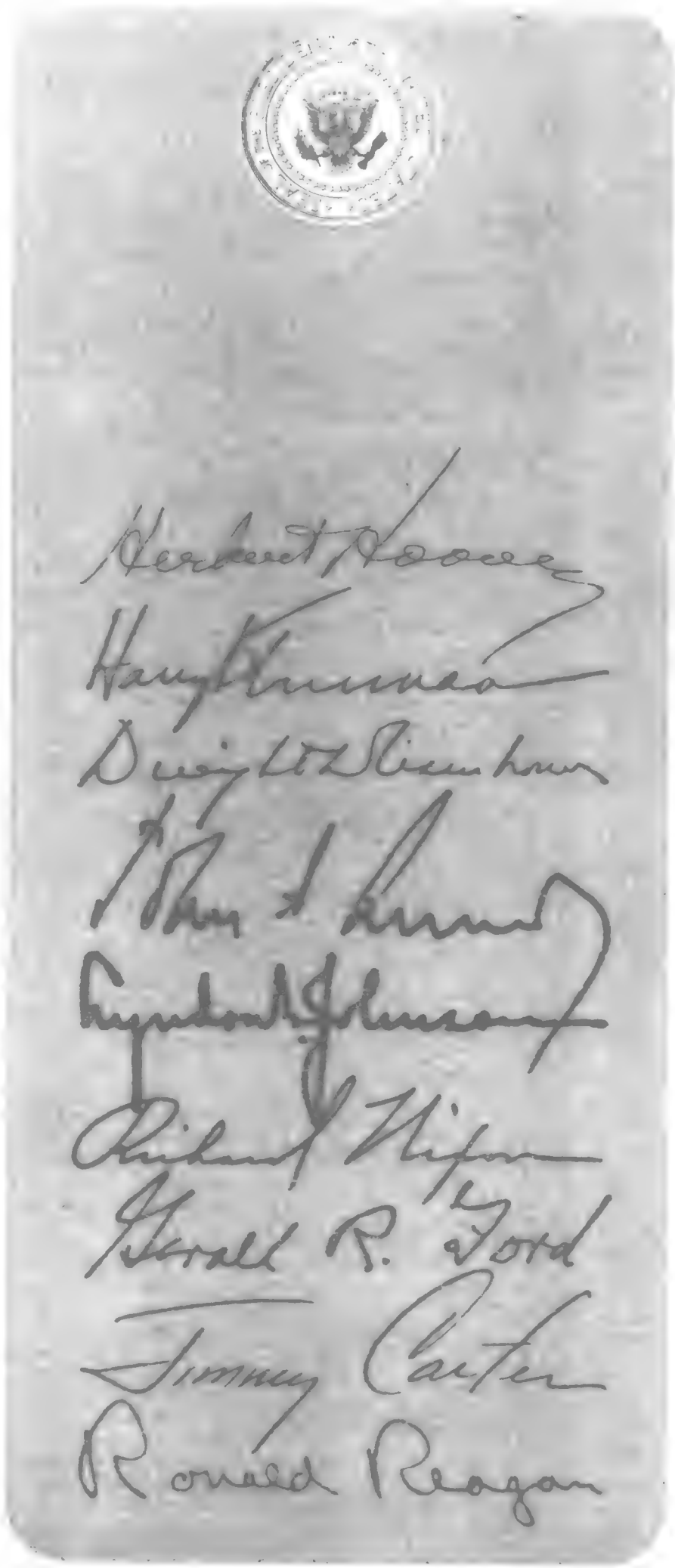
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H.J. Res. 128 / Pub. L. 99–95

Designating the month of October 1985 as "National High-Tech Month". (Sept. 23, 1985; 99 Stat. 459) Price: $1.00



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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

Nectarines, Pears, Plums and Peaches Grown in California; Amendment of Container and Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the container and pack regulations for nectarines, peaches, and plums grown in California. The principal changes add labeling requirements for consumer packages and a new container, the No. 22G standard lug box used in shipping these fruits. This action would be in accordance with the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Orders 916 and 917. These actions were unanimously recommended by the commodity committees established under these orders.

EFFECTIVE DATE: September 27, 1985.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 447–5975.

SUPPLEMENTARY INFORMATION: This action has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under the marketing agreements, as amended, and Marketing Orders 916 and 917, as amended (7 CFR Parts 916 and 917), regulating the handling of nectarines, pears, plums, and peaches grown in California. The agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Shipments of these California fruits are regulated by container and pack under Nectarine Regulation 8 (7 CFR Part 916), Peach Regulation 8 (7 CFR Part 917), and Plum Regulation 17 (7 CFR Part 917). Because these regulations do not change substantially from season to season, they were issued on a continuing basis subject to amendment, modification or suspension as may be recommended by the applicable committee and approved by the Secretary. This final rule is based upon recommendations and information submitted by the committees and other available information.

This action establishes marking requirements for master containers of consumer packages of nectarines, peaches and plums and individual consumer packages of such fruit. They are designed to prevent misrepresentation of the pack, size and net weight of the specific fruits and promote buyer confidence. Since consumer packages are removed from master containers, they should also be marked to inform the buyer of the contents of the package. This action specifies marking requirements for a new container (No. 22G standard lug box) for plums and nectarines and experimental containers for peaches to assure that fruit packed in these containers is appropriately represented to the trade.

This final rule exempts master containers of consumer packages of nectarines and peaches and individual consumer packages of such fruit from the requirements of standard pack except that nectarines shall be fairly uniform in size. A similar size uniformity requirement is currently in effect for peaches and plums. Other standard pack requirements are generally applicable to fruit packed in boxes and not consumer packages, e.g. polybags. This action requires that master containers of consumer packages of nectarines, peaches and plums be marked with the number of individual consumer packages and the net weight of each individual consumer package within the master container, minimum size of the fruit (e.g. 80 size), and name and address of the shipper. Individual consumer packages of the specified fruits are to be marked with the net weight and name and address of the shipper. Currently only the regulation for plums requires that master containers of consumer packages and individual consumer packages be marked with the net weight.

This final rule also requires the new container, the No. 22G standard lug box, of nectarines and plums and experimental containers of peaches packed in molded forms to be marked with the number of fruit in each container such as "80 count", "88 count", etc. and to be marked with the size corresponding to the number of such fruit when packed in molded forms in the No. 22D standard lug box. The action requires each No. 22G standard lug box of loose-filled nectarines to be marked with the words "25 pounds net weight". This is the same requirement in effect for loose-filled nectarines in the No. 22D standard lug box.

A proposed rule was published on July 30, 1985 (50 FR 30855) with a 15-day comment period. No comments were received. It is hereby found that this action will tend to effectuate the declared policy of the act.

Accordingly, the Secretary finds that upon good cause shown this final rule will be effective less than 30 days after publication in the **Federal Register** (5 U.S.C. 553), because: (1) Shipments of the current crop of nectarines, peaches, and plums grown in California are underway; (2) the amendments to the container and pack regulations for the specified commodities was recommended by the commodity committees following discussion at a public meeting at which there were no opposing views; (3) a proposed rule was issued on July 30, 1985 with a 15-day comment period and no opposing views were received; and (4) handlers of these commodities have been apprised of these requirements.

List of Subjects

7 CFR Part 916

Marketing agreements and orders, Nectarines, California.

7 CFR Part 917

Marketing agreements and orders, Pears, Plums, Peaches, California.

1. The authority citations for 7 CFR Parts 916 and 917 continue to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. Section 916.350 is revised to read as follows:

§ 916.350 Nectarine Regulation 8.

(a) No handler shall ship any package or container of any variety of nectarines except in accordance with the following terms and conditions:

(1) Such nectarines, when packed in any closed package or container, except master containers of consumer packages and individual consumer packages therein, shall conform to the requirements of standard pack: *Provided,* That nectarines in any container shall be fairly uniform in size.

(2) Each package or container of nectarines shall bear, on one outside end in plain sight and in plain letters, the name "nectarines" and except for consumer packages in master containers the name of the variety, if known or, when the variety is not known, the words "unknown variety."

(3) Each package or container of nectarines shall bear, on one outside end in plain sight and in plain letters, the following count and/or size description of the nectarines as applicable:

(i) The size of nectarines packed in molded forms (tray-packs) in No. 22D standard lug boxes, No. 22G standard lug boxes, cartons, No. 12B fruit (peach) boxes or flats and the size of wrapped nectarines packed in rows in No. 12B fruit (peach) boxes shall be indicated in accordance with the number of nectarines in each container, such as "80 count," "88 count," etc.

(ii) The size of nectarines in molded forms (tray-packs) in No. 22G standard lug boxes shall be indicated according to the number of such nectarines when packed in molded forms in the No. 22D standard lug box in accordance with the requirements of standard pack, such as "80 size," "88 size," etc, along with count requirements in paragraph (a)(3)(i) of this section.

(iii) The size of nectarines loose-filled or tight-filled in any container shall be indicated according to the number of such nectarines when packed in molded forms in the No. 22D standard lug box in accordance with the requirements of standard pack, such as "80 size," "88 size," etc.

(4) Each No. 22D standard lug box and No. 22G standard lug box of loose-filled nectarines shall bear on one outside end, in plain sight and in plain letters, the words "25 pounds net weight."

(5) Each No. 22E standard lug box of loose-filled nectarines shall bear on one outside end, in plain sight and in plain letters, the words "35 pounds net weight."

(6) Each bulk bin container of loose-filled nectarines shall contain not less than 400 pounds net weight, and bear on one outside panel, in plain sight and in plain letters, the following information:

(i) The name and address (including zip code) of the shipper.

(ii) The net weight.

(7) Each master container when filled with nectarines packed in consumer packages shall bear on one outside end in plain sight and in plain letters the following information:

(i) The number of individual consumer packages, the net weight of each consumer package, and the size description of the contents.

(ii) The name and address (including zip code) of the shipper.

(8) Each individual consumer package shall bear the name and address of the shipper and the net weight.

(b) As used herein, "standard pack" and "fairly uniform in size" shall have the same meanings as set forth in U.S. Standards for Grades of Nectarines (§§ 51.3145 to 51.3160) and all other terms shall have the same meaning as when used in the amended marketing agreement and order. "No. 12B standard fruit box" measures 2⅜ to 7⅛ x 11½ x 16⅛ inches, "No. 22D standard lug box" measures 2⅞ to 7⅛ x 13½ x 16⅛ inches, "No. 22E standard lug box" measures 8¾ x 13½ x 16⅛ inches, "No 22G standard lug box" measures 7⅜ to 7½ x 13¼ x 15⅞ inches. All dimensions are given in depth (inside dimension) by width by length (outside dimension).

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

3. Section 917.442 is revised to read as follows:

§ 917.442 Peach Regulation 8.

(a) No handler shall ship any package or container of any variety of peaches except in accordance with the following terms and conditions:

(1) Such peaches, when packed in any closed package or container, except master containers of consumer packages and individual consumer packages therein, shall conform to the requirements of standard pack.

(2) Each package or container of peaches shall bear, on one outside end in plain sight and in plain letters the name "peaches" and except for consumer packages in master containers the name of the variety, if known or, when the variety is not known, the words "unknown variety."

(3) Each package or container of peaches shall bear, on one outside end, in plain sight and in plain letters, the following count and/or size description of the peaches as applicable:

(i) The size of peaches packed in molded forms (tray-packs) in No. 22D standard lug boxes, experimental containers, cartons, No. 12B fruit (peach) boxes, or flats and the size of wrapped peaches packed in rows in No. 12B fruit (peach) boxes shall be indicated in accordance with the number of peaches in the container, such as "80 count," "88 count," etc.

(ii) The size of peaches in molded forms in experimental containers shall be indicated according to the number of such peaches when packed in molded forms in the No. 22D standard lug box in accordance with the requirements of standard pack, such as "80 size," "88 size," etc, along with count requirements in paragraph (a)(3)(i).

(iii) The size of peaches loose-filled or tight-filled in any container shall be indicted according to the number of such peaches when packed in molded forms in No. 22D standard lug boxes, in accordance with the requirements of standard pack, such as "80 size," "88 size," etc.

(4) The variation in diameter between the smallest and largest peach in any individual container shall not exceed one-forth (¼) inch for size 80 and smaller and three-eights (⅜) inch for peaches larger than size 80: *Provided,* That not more than five (5) percent, by count, of the peaches in any individual container may fail to meet the diameter requirements of this paragraph.

(5) Each No. 22D standard lug box of loose-filled peaches shall bear on one outside end, in plain sight and in plain letters, the words "25 pounds net weight."

(6) Each No. 22E standard lug box of loose-filled peaches shall bear on one outside end, in plain sight and in plain letters, the words "35 pounds net weight."

(7) Each bulk bin container of loose-filled peaches shall contain not less than 400 pounds net weight, and bear on one outside panel, in plain sight and in plain letters, the following information:

(i) The name and address (including zip code) of the shipper.

(ii) The net weight.

(8) Each master container when filled with peaches packed in consumer packages shall bear on one outside end in plain sight and in plain letters the following information:

(1) The number of individual consumer packages, the net weight of each consumer package, and the size description of the contents.

(ii) The name and address (including zip code) of the shipper.

(9) Each individual consumer package shall bear the name and address of the shipper and the net weight.

(b) As used herein, "standard pack" shall have the same meaning as set forth in U.S. Standards for Grades of Peaches (§§ 51.1210 to 51.1223) and all other terms shall have the same meaning as when used in the amended marketing agreement and order. "No. 12B standard fruit box" measures 2⅜ to 7⅛ x 11½ x 16⅛ inches, "No 22D standard lug box" measures 2⅞ to 7⅛ x 13 ½ x16⅛ inches. "No. 22E standard lug box" measures 8¾ x 13⅛ x 16⅛ inches. All dimensions are given in depth (inside dimensions) by width by length (outside dimensions).

4. Section 917.454 is amended by revising paragraphs (a) and (d) to read as follows:

§ 917.454 Plum Regulation 17.

(a) No handler shall ship any package or container of any variety of plums except in accordance with the following terms and conditions:

(1) Such plums, when shipped in closed in packages or containers, except master containers of consumer packages and individual consumer packages therein, shall conform to the requirements of standard pack:

(2) The diameters of the smallest and largest plums in any individual package or container shall not vary more than one-fourth (¼) inch: *Provided,* That a total of not more than five (5) percent, by count, of the plums in any package or container may fail to meet this requirement.

(3) Each package or container of plums shall bear on one outside end, in plain sight and in plain letters, the name "plums" and except for consumer packages in master containers the name of variety if known or, when the variety is not known, the words "unknown variety".

(4) Each package or container of plums shall bear on one outside end, in plain sight and in plain letters, the size description of the contents which description shall conform to the following as applicable:

(i) The size of plums in four-basket crates shall be indicated in accordance with the arrangement of the plums in the top layer of the baskets, such as "4x4 size," "4x5 size," etc.

(ii) The size of plums loose-filled or tight-filled in standard lug boxes, cartons, or other packages or containers shall be indicated in accordance with the equivalent size designation for such plums when packed in four-basket crates, such as "4x4 size," etc.

(iii) The size of plums packed in molded forms (tray-packs) in cartons or lugs and of wrapped plums packed in No. 12B fruit (peach) boxes shall be indicated in accordance with the number of plums in the container, such as "88 count," "108 count," etc.

(iv) The size of plums packed in molded forms (tray-packs) in No. 22G standard lug boxes shall be indicated according to the number of such plums when packed in molded forms in the No. 22D standard lug box in accordance with the requirements of standard pack, such as "80 size," "88 size," etc., along with count requirements in paragraph (a)(4)(iii) of this section.

(5) Each package or container of loose-filled or tight-filled plums other than bulk bin containers, master containers of consumer packages, and individual consumer packages in master containers shall bear on one outside end, in plain sight and in plain letters, the words "28 pounds net weight."

(6) Each bulk bin container of loose-filled plums shall contain not less than 400 pounds net weight, and bear on one outside panel, in plain sight and in plain letters, the following information:

(i) The name and address (including zip code) of the shipper.

(ii) The net weight.

(7) Each master container when filled with plums packed in consumer packages shall bear on one outside end in plain sight and in plain letters the following information:

(i) The number of individual consumer packages, the net weight of each consumer package, and the size description of the contents.

(ii) The name and address (including zip code) of the shipper.

(8) Each individual consumer package shall bear the name and address of the shipper and the net weight.

(b) * * *

(c) * * *

(d) When used herein "standard pack" and "diameter" shall have the same meanings as set forth in the U.S. Standards for Grades of Fresh Plums and Prunes (§§ 51.1520 to 51.1538) and all other terms shall have the same meaning as when used in the amended marketing agreement and order. "No. 12B standard fruit box" measures 2⅜ to 7⅛ x 11½ x 16⅛ inches, "No. 22D standard lug box" measures 2⅞ to 7⅛ x 13½ x 16⅛ inches and "No. 22G standard lug box" measures 7⅜ to 7½ x 13¼ x 15⅞ inches. All dimensions are given in depth (inside dimensions) by width by length (outside dimensions).

Dated: September 24, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85-23183 Filed 9-26-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines; Addition of Five Star Airlines

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Five Star Airlines to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

EFFECTIVE DATE: September 18, 1985.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Five Star Airlines on September 18, 1985 to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilitates the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportation lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

List of Subjects in 8 CFR Part 238

Airlines, Aliens, Government contracts, Travel, Travel restriction.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for Part 238 continues to read as follows:

Authority: Secs. 103 and 238 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1228).

§ 238.3 [Amended]

In § 238.3 Aliens in immediate and continuous transit, the listing of transportation lines in paragraph (b) *Signatory lines* is amended by: Adding in alphabetical sequence, Five Star Airlines.

Dated: September 20, 1985.

Marvin J. Gibeon,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 85-23105 Filed 9-26-85; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 85-086]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations governing the interstate movement of cattle because of brucellosis by including Medina County, Texas, in the portion of Texas designated as Class B rather than in the portion of the State designated as Class C. This rule is necessary because it has been determined that Medina County together with the previously designated Class B Area of Texas meets the standards for Class B. The effect of the rule is to relieve certain restrictions on the interstate movement of cattle from Medina County, Texas.

EFFECTIVE DATE: September 27, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. G.H. Frye, Cattle Diseases Staff, VS, APHIS, USDA, Room 814, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8711.

SUPPLEMENTARY INFORMATION:

Background

A document published in the **Federal Register** on June 4, 1985 (50 FR 23393-23394), amended the brucellosis regulations in 9 CFR Part 78 by including Medina County, Texas, in the Area of Texas designated as Class B. Prior to the effective date of the interim rule, Medina County, Texas, was included in the Area of Texas designated as Class C. The amendment, which was made effective June 4, 1985, relieves certain restrictions on the interstate movement of cattle from Medina County, Texas.

Comments were solicited for 60 days after publication of the amendment. No comments were received. The factual situation which was set forth in the document of June 4, 1985, still provides a basis for the amendment.

Executive Order and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Changing the status of a portion of the State of Texas reduces testing and other requirements on the interstate movement of certain cattle. Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Testing requirements for cattle moved interstate for immediate slaughter, or to quarantined feedlots are not affected by the change in status. Also, cattle from Certified Brucellosis-Free Herds moving interstate are not affected by the change in status. It has been determined that the change in brucellosis status made by this rule will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

List of Subjects in 9 CFR Part 78

Animal Diseases, Cattle, Hogs, Quarantine, Transportation, Brucellosis.

PART 78—BRUCELLOSIS

Accordingly, the interim rule amending 9 CFR Part 78 which was published at 50 FR 23393-23394 on June 4, 1985, is adopted as a final rule.

Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 20th day of September 1985.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-23029 Filed 9-26-85; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 11

Criteria and Procedures for Determining Eligibility for Access to or Control Over Special Nuclear Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending the requirements for applications for initial special nuclear material "U" and "R" access authorizations and for the renewal of "U" access authorizations by allowing utilization of information on file with the Federal government on those individuals who possess current active clearances based upon equivalent investigations. The amendments will eliminate unnecessary duplication of administrative and investigative costs to licensees for affected individuals as well as reduce certain NRC administrative costs.

EFFECTIVE DATE: October 28, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. W.B. Brown, Office of Nuclear

Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 427–4185.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 1977 (42 FR 14880), the NRC published proposed amendments to its regulations which would establish an access authorization program for individuals who have unescorted access to or control over special nuclear material. Written comments were invited and received. On December 28, 1977 (42 FR 64703), the Commission issued a notice of public hearings on the proposed regulations and subsequently established a Hearing Board to gather additional testimony. A final rule, based upon recommendations of the Hearing Board regarding only fuel cycle facilities and transportation, was published in the **Federal Register** amending 10 CFR Parts 11, 50, and 70 on November 21, 1980 (45 FR 76968).

One of the reasons for undertaking the NRC access authorization program for individuals having access to or control over special nuclear material was to maintain comparability with a similar program of clearances at Department of Energy (DOE) facilities and at mixed DOE/NRC facilities. Subsequently, the population of individuals affected has become one in which DOE/NRC mixed facility employees are by far the dominant segment. Accordingly, the incentive to establish and maintain a comparable and independent NRC program has been replaced by an incentive to use as much of the existing Federal system as possible. The revisions to 10 CFR Part 11 accomplish this end.

Conversion of Clearances

Under the revised Part 11 requirements the NRC would accept an existing personnel access clearance from any Federal agency, including NRC, DOE or DOD, if the investigation upon which the clearance is based is equivalent to the investigation required for the special nuclear material access authorization. This avoids having to conduct an investigation on an individual for whom an adequate investigation already exists.

Acceptance of Non-NRC Application Forms

Acceptance of an application for access authorizations on other than NRC forms allows the NRC to use existing information on individuals with current Federal clearances. It also allows an individual applying for renewal of a DOE "Q" personnel clearance to use some of the DOE documents in making application for the NRC "U" material access authorization. This reduces the administrative burden upon applicants.

Use of Department of Energy Reinvestigation Program

Application for renewal of an NRC "U" material access authorization may follow the schedule of the DOE Reinvestigation Program and utilize signed and dated copies of Part I of the DOE Personnel Security Questionnaire if an individual is subject to both DOE "Q" clearance and NRC "U" access authorization requirements.

Minor Administrative Changes

A number of administrative changes which are not related to reducing duplication are included in this rule revision. The schedule date for revision of fees has been changed from December to July; the fee for a full field investigation has been changed from $1550.00 to $1580.00 to reflect the current cost; and a new section has been added regarding withdrawal or cancellation of applications.

Omission of a Proposed Rule

These changes in the procedures in 10 CFR Part 11 were initiated in response to a request by a licensee for elimination of needless duplication between the NRC special nuclear material access authorization program and the Department of Energy personnel clearance program. The changes have been discussed in detail with all affected licensees. All agree that the changes are desirable. The changes do not alter the list of jobs identified in 10 CFR Part 11 as requiring material access authorization; therefore, individual applicants for access authorizations are either not affected or are benefited by the elimination of duplication. No other persons are affected by the changes. For these reasons good cause exists for omitting notice and public rulemaking as unnecessary. Accordingly, these changes in 10 CFR Part 11 are issued as a final rule effective in 30 days.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval number 3150–0062.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from Dr. W.B. Brown, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 427–4185.

List of Subjects in 10 CFR Part 11

Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Security measures, Special nuclear material.

PART 11—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO OR CONTROL OVER SPECIAL NUCLEAR MATERIAL

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 11.

1. The authority citation for Part 11 is revised to read as follows:

Authority: Sec. 161, including 161i, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841). Section 11.15(e) also issued under sec. 501, 85 Stat. 290 (31 U.S.C. 9701).

2. In § 11.7, Paragraph (c) is revised to read as follows:

§ 11.7 Definitions.

* * * * *

(c) "NRC–'U' special nuclear material access authorization" means an administrative determination based upon a national agency check and a full-field background investigation, normally conducted by the Office of Personnel Management, that an individual in the course of employment is eligible to work at a job falling within the criteria of § 11.11(a)(1) or § 11.13.

* * * * *

3. In § 11.11, the introductory text of paragraph (a) and the entire text of paragraph (b) are revised to read as follows:

§ 11.11 General requirements.

(a) Each licensee who uses, processes, stores, transports, or delivers to a carrier for transport, formula quantities of special nuclear material (as defined in Part 73 of this chapter) subject to the physical protection requirements of §§ 73.20, 73.25, 73.26, 73.45, and 73.46, and each person subject to the general licensing requirements of § 70.20a, shall identify at its facility or plant (excluding all non-power reactor facilities and storage of fuel incident thereto and facilities and plants in which the licensee possesses or uses only irradiated special nuclear material subject to the exemption of § 73.6(b) of Part 73), describe, and if not already provided, provide to the Commission, by December 26, 1985 by amendment to its security plan:

* * * * *

(b) After 365 days following Commission approval of the amended security plan submitted in accordance with paragraph (a) of this section, no individual may be permitted to work at any job determined by the Commission to fall within the criterion of paragraph (a)(1) of this section without an NRC–U special nuclear material access authorization, and no individual may be permitted unescorted access to any protected area at any site subject to this Part without either an NRC–U or NRC–R special nuclear material access authorization. The exceptions to the requirement for an NRC–U and NRC–R special nuclear material access authorization are as follows:

(1) Exceptions to the requirement for an NRC–U special nuclear material access authorization for an individual to work at a job within the criteria of paragraph (a)(1) are provided for (i) any individual employed in such a job on October 28, 1985, who is not yet in receipt of an NRC–U special nuclear material access authorization from the Commission, provided that a complete application has been submitted to and is pending before the NRC for processing for that employee in accordance with § 11.15 (a) and (b); or (ii) any individual in possession of an NRC–L or R access authorization or an equivalent active Federal security clearance but not yet in receipt of the NRC–U special nuclear material access authorization, provided that a complete application has been submitted to and is pending before the NRC for processing for that employee in accordance with § 11.15 (a) or (b), or both.

(2) Exceptions to the requirement for an NRC–R special nuclear material access authorization for an individual to have unescorted access to a protected area are provided for (i) any individual employed in such a job on October 28, 1985 who is not yet in receipt of an NRC–R special nuclear material access authorization from the Commission, provided that a complete application has been submitted to and is pending before the NRC for processing for that employee in accordance with § 11.15 (a) and (b); or (ii) any individual in possession of an NRC–L access authorization or an equivalent active Federal security clearance, provided that a complete application has been submitted to the NRC for processing for that employee in accordance with § 11.15 (a) or (b), or both.

§ 11.13 [Revised]

4. Section 11.13, is revised to read as follows:

§ 11.13 Special requirements for transportation.

(a) All individuals who, after 365 days following approval of the amended security plan submitted in accordance with § 11.11(a), transport, arrange for transport, drive motor vehicles in road shipments of special nuclear material, pilot aircraft in air shipments of special nuclear material, act as monitors at transfer points, or escort road, rail, sea, or air shipments of special nuclear material subject to the appropriate physical protection requirements of §§ 73.20, 73.25, 73.26, or 73.27 of this chapter, or who are authorized to alter the scheduling and routing of such transport shall have NRC–U special nuclear material access authorization. Exceptions are provided for (1) any individual who is employed in such a job on October 28, 1985 and who is not yet in receipt of an NRC–U special nuclear material access authorization from the Commission, provided that a complete application has been submitted to and is pending before the NRC for processing for that employee in accordance with § 11.15 (a) and (b) or (2) any individual in possession of an NRC–L or R access authorization or equivalent active Federal security clearance but not yet in receipt of the NRC–U special nuclear material access authorization, provided that a complete application has been submitted to and is pending before the NRC for processing for that employee in accordance with § 11.15 (a) or (b), or both.

(b) Licensees who, after 365 days following Commission approval of the amended security plan submitted in accordance with § 11.11(a), transport or deliver to a carrier for transport special nuclear material subject to the physical protection requirements of §§ 73.20, 73.25, 73.26, or 73.27 of this chapter shall confirm and record prior to shipment the name and special nuclear material access authorization number of all individuals identified in paragraph (a) of this section assigned to the shipment. However, the licensee need not confirm and record the special nuclear material access authorization number in the case of any individual for whom an application has been submitted and is pending before the NRC in accordance with paragraph (a) of this section.

5. Section 11.15 is revised to read as follows:

§ 11.15 Application for special nuclear material access authorization.

(a)(1) Application for special nuclear material access authorization, renewal, or change in level shall be filed by the licensee on behalf of the applicant with the Director, Division of Security, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Applications for affected individuals employed on October 28, 1985, shall be submitted within 60 days of notification of Commission approval of the amended security plan.

(2) Licensees who wish to secure NRC–U or NRC–R special nuclear material access authorizations for individuals in possession of an active NRC Q or L access authorization or other security clearance granted by another Federal agency based on an equivalent investigation shall submit a "Security Acknowledgement" (NRC Form 176) and a "Request for Access Authorization" (NRC Form 237). NRC will process these requests by verifying the data on an NRC cleared individual, or by contacting the Federal agency which granted the clearance, requesting certification of the security clearance, and determining the investigative basis and level of the clearance. Licensees may directly request the Federal agency which administered the security clearance, if other than NRC, to certify to the NRC that it has on file an active security clearance for an individual and to specify the investigative basis and level of the clearance.

(b) Applications for special nuclear material access authorization for individuals, other than those qualifying under the provisions of § 11.15(a)(2), must be made on forms supplied by the Commission, including:

(1) Personnel Security Questionnaire (PSQ) (NRC Form 1, Parts I and II);

(2) National Agency Check-Data for Nonsensitive or Noncritical-Position (SF–85A) for R cases only (This form must be typed.);

(3) Two completed standard fingerprint cards (FD–258);

(4) Security Acknowledgement (NRC Form 176);

(5) Authority to Release Information (NRC Form 259);

(6) Related forms where specified in accompanying instructions (NRC–254); and

(7) A statement by the employer, prospective employer, or contractor identifying the job to be assigned to or assumed by the individual and the level of authorization needed, justified by appropriate reference to the licensee's security plan.

(c)(1) Except as provided in paragraph (c)(2) of this section, NRC–U and R special nuclear material access authorizations shall expire 5 years from the date of issuance. If continued NRC–U and R special nuclear material access authorization is required, an application for renewal must be submitted at least 120 days prior to its expiration date. Failure to make a timely application will result in expiration of special nuclear material access authorization. Special nuclear material access authorization for which a timely application for renewal has been made may be continued beyond the expiration date pending final action on the application. An application for renewal will include:

(i) A statement by the licensee that at the time of application for renewal the individual's assigned or assumed job requires an NRC–U special nuclear material access authorization, justified by appropriate reference to the licensee's security plan;

(ii) Personnel Security Questionnaire (NRC Form 1, Parts I and II);

(iii) National Agency Check-Data for Nonsensitive or Noncritical-sensitive position (SF–85A) (This form must be typed.);

(iv) Two completed standard fingerprint cards (PD Form 258);

(v) Authority to Release Information (NRC Form 259); and

(vi) Other related forms where specified in accompanying NRC instructions (NRC Form 254).

(2) An exception to the NRC–U special nuclear material access authorization expiration date and the time for submission of NRC–U special nuclear material access authorization renewal applications is provided for those individuals who have a current and active DOE–Q access authorization and who are subject to DOE Selective Reinvestigation Program requirements. For these individuals, the time for submission of NRC–U special nuclear material access authorization renewal applications may coincide with the time for submission to DOE of Part I of a DOE Personnel Security Questionnaire pursuant to DOE Selective Reinvestigation Program requirements. The licensee may submit to NRC, concurrent with its submission to DOE, a copy of Part I of the individual's DOE Personnel Security Questionnaire which is dated and bears an original signature together with Part II of an NRC Personnel Security Questionnaire and the forms and information required by paragraphs (c)(1) (i), (iii), (iv), (v) and (vi) of this section, as the supporting documentation for an NRC–U special nuclear material access authorization renewal application. Any NRC–U special nuclear material access authorization issued in response to a renewal application submitted pursuant to this paragraph will not expire until the date set by DOE for the next reinvestigation of the individual pursuant to DOE's Selective Reinvestigation Program (generally every five years). At that time (and at the time of each subsequent reinvestigation of the individual), the licensee may again submit, concurrent with its submission to DOE, a copy of Part I of the individual's DOE Personnel Security Questionnaire which is dated and bears an original signature together with Part II of an NRC Personnel Security Questionnaire and the forms and information required by paragraphs (c)(1) (i), (iii), (iv), (v), and (vi) of this section as the supporting documentation for the renewal application. Failure to file such a renewal application concurrent with the time for submission of an individual's Part I of a DOE Personnel Security Questionnaire to DOE pursuant to DOE Selective Reinvestigation Program requirements will result in the expiration of the individual's NRC special nuclear material access authorization. NRC–U special nuclear material access authorizations for which timely applications for renewal have been made may be continued beyond the expiration date, pending final action on the application.

(3) Notwithstanding the above, in no instance shall the period of time for the initial and each subsequent NRC–U renewal application to NRC exceed 7 years. Any individual who is subject to the DOE Selective Reinvestigation Program requirements but, for administrative or other reasons, who does not submit reinvestigation forms to DOE within 7 years of the previous submission, shall submit a renewal application to NRC using the forms prescribed in paragraph (c)(1) above before the expiration of the 7 year period. Failure to request an NRC–U renewal for any individual within the 7 year period will result in termination of the individual's NRC–U access authorization.

(d) If at any time, due to new assignment or assumption of duties, a change in special nuclear material access authorization level from NRC "R" to "U" is required, the individual shall apply for a change of level of special nuclear material access authorization. The application must include a description of the new duties to be assigned or assumed, justified by appropriate reference to the licensee's security plan.

(e)(1) Each application for special nuclear material access authorization, renewal or change in level must be accompanied by the licensee's remittance payable to the U.S. Nuclear Regulatory Commission according to the following schedule:

i.	NRC–U requiring full field investigation.	$1,580
ii.	NRC–U based on certification of comparable full field background investigation.	[1] 0
iii.	NRC–U or R renewal	[1] 15
iv.	NRC–R	[1] 15
v.	NRC–R based on certification of comparable investigation.	[2] 0

[1] If a full field investigation is deemed necessary, a subsequent fee of $1580 will be assessed.

[2] If a National Agency Check investigation is deemed necessary, a subsequent fee of $15.00 will be assessed; however, if a full field investigation is deemed necessary, a subsequent fee of $1580 will be assessed.

(2) Material access authorization fees will be published in July of each year and will be applicable to each access authorization request received during the following calendar year. Applications from individuals having current Federal access authorizations may be processed expeditiously at no cost, since the Commission may accept the certification of access authorizations and investigative data from other Federal government agencies which grant personnel access authorization.

(f)(1) Any Federal employee, employee of a contractor of a Federal agency, licensee, or other person visiting an affected facility for the purpose of conducting official business, who possesses an active NRC or DOE–Q access authorization or an equivalent Federal security clearance granted by another Federal agency ("Top Secret") based on a comparable full field background investigation may be permitted in accordance with § 11.11 the same level of unescorted access that an NRC–U special nuclear material access authorization would afford. (2) Any Federal employee, employee of a contractor of a Federal agency, licensee, or other person visiting an affected

facility for the purpose of conducting official business, who possesses an active NRC or DOE–L access authorization or an equivalent security clearance granted by another Federal agency ("Secret") based on a background investigation or national agency check may be permitted in accordance with § 11.11 the same level of unescorted access that an NRC–R special nuclear material access authorization would afford.

6. A new § 11.16 is added to read as follows:

§ 11.16 Cancellation of request for special nuclear material access authorization.

When a request for an individual's access authorization is withdrawn or cancelled, the licensee shall immediately notify the Chief, Facilities and Personnel Security Branch, NRC Division of Security, by telephone, so that the full investigation or National Agency Check may be discontinued. The caller shall provide the full name and date of birth of the individual, the date of request, and the type of access authorization originally requested ("U" or "R"). The licensee shall promptly submit written confirmation of the telephone notification to the Facilities and Personnel Security Branch, NRC Division of Security. A portion of the fee for the "U" special nuclear material access authorization may be refunded depending upon the status of the full field investigation at the time of withdrawal or cancellation.

Dated at Bethesda, Maryland, this 13th day of September 1985.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 85–23166 Filed 9–26–85; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 50944–5144]

Exports to COCOM Countries

Correction

In FR Doc. 85–22650 beginning on page 38511 in the issue of Monday, September 23, 1985, make the following correction:

On page 38513, third column, paragraph 20., third line from the bottom, "(vi)" should read "(iv)".

BILLING CODE 1505–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

Review of National Futures Association Registration Proceedings

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted rules pursuant to which the Commission, in accordance with the provisions of section 17(o)(2) of the Commodity Exchange Act ("Act"), 7 U.S.C. 21(o)(2) (1982), will review registration proceedings conducted by the National Futures Association ("NFA") to deny, condition, suspend, restrict or revoke registration. The Commission has authorized NFA to conduct such proceedings effective September 30, 1985.

EFFECTIVE DATE: September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Linda Kurjan, Special Counsel, or Philip V. McGuire, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: On August 14, 1985, the Commission published in the **Federal Register** proposed rules pursuant to which the Commission, in accordance with the provisions of section 17(o)(2) of the Act, 7 U.S.C. 21(o)(2) (1982), will review registration proceedings conducted by NFA to deny, condition, suspend, restrict or revoke registration. 50 FR 32737. By order dated August 22, 1985, the Commission has authorized NFA to conduct such proceedings, effective September 30, 1985, with respect to futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors and their respective associated persons. 50 FR 34885.[1]

The Commission received no comments on its proposed rules. After careful consideration of its own, the Commission has determined to adopt them essentially as proposed. However, the second sentence of proposed rule 3.84(a), relating to the contents of an applicant's or registrant's brief in support of a petition for review, has been revised for the sole purpose of clarity. As proposed, this sentence read:

> The brief shall include a statement of the reasons why it is claimed that the order of the National Futures Association comports with the standards for disposition upon review set forth in § 3.87 of this subpart and the specific facts which support those reasons.

As revised, this sentence reads as follows:

> The brief shall include a statement of the reasons why it is claimed that the order of the National Futures Association should not be affirmed in accordance with the provisions of § 3.87 of this subpart and the specific facts which support those reasons.

This provision now more closely parallels § 3.87(b), which provides that the order of NFA shall be affirmed unless the Commission makes one or more of the findings set forth in that paragraph.

The Regulatory Flexibility Act

The Commission has previously determined that neither futures commission merchants nor registered commodity pool operators should be considered small entities for purposes of the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*[2] Accordingly, the requirements of the RFA do not apply to those entities. With respect to the remaining entities, introducing brokers, commodity trading advisors and associated persons, the Commission noted when it proposed these rules that it believed they would not impose any additional burdens upon such parties, since all registrants are already subject to similar requirements under Part 3 of the Commission's regulations, and the proposed rules simply provide a procedure to petition for review of an order concerning the registration of such parties. Therefore, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Effective Date

Section 4(c) of the Administrative Procedure Act, 5 U.S.C. 553(d), provides that rules promulgated by an agency generally may not be made effective less than thirty days after publication in the **Federal Register** except, *inter alia*, "for good cause." The Commission finds that good cause exists to make these rules effective September 30, 1985. As previously noted, the Commission has authorized NFA to conduct proceedings to deny, condition, suspend, restrict or revoke registration as of that date, and the Commission believes it is

[1] The rules in accordance with which NFA will conduct such proceedings are set forth as an appendix to the Commission's order. 50 FR at 34887.

[2] *See* 47 FR 18618 (April 30, 1982).

appropriate that these rules take effect at the same time.

List of Subjects in 17 CFR Part 3

Registration requirements, Conditional registration, Temporary licenses, Statutory disqualifications, Authority delegations, Fingerprinting, Associated persons, Floor brokers, Introducing brokers, Commodity trading advisors, Commodity pool operators, Futures commission merchants, Leverage transaction merchants, Petitions for review.

PART 3—REGISTRATION

1. The authority citation for Part 3 continues to read as follows:

Authority: Sections 2(a)(1), 4, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4k, 4m, 4n, 4o, 4p, 6, 8, 8a, 14, 15, 17 and 19 of the Commodity Exchange Act, 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a and 13b, 12, 12a, 18, 19, 21 and 23 (1982).

2. Subpart F is added to 17 CFR Part 3 to read as follows:

Subpart F—Review of National Futures Association Registration Proceedings

Sec.

3.80 Scope of rules
3.81 Service.
3.82 Notice and effective date of order affecting registration.
3.83 Petition for review.
3.84 Briefs.
3.85 Filing of the record.
3.86 Grant or denial of petition for review.
3.87 Decision of the Commission.
3.88 Default.
3.89 Applicability of the Rules of Practice.
3.90 Reservation of authority.
3.91 Participation of Commission staff.

Subpart F—Review of National Futures Association Registration Proceedings

§ 3.80 Scope of rules.

This subpart governs review by the Commission, under section 17(o) of the Act, of any proceeding conducted by the National Futures Association, pursuant to delegated authority, to deny, condition, suspend, restrict or revoke the registration of any applicant or registrant.

§ 3.81 Service.

(a) For the purposes of this subpart, service upon an applicant or registrant and the National Futures Association shall be effected in accordance with the provisions of § 3.50(a). Service upon the National Futures Association shall be at its principal office, 200 West Madison Street, Chicago, IL 60606.

(b) Any document which is required to be served upon the Commission under this subpart shall be served upon the Hearing Clerk and shall be effected in accordance with the provisions of § 3.50(c).

(c) A copy of any document which is required to be served upon or filed with the Commission under this subpart shall be filed concurrently with the Division of Trading and Markets (Attn: Chief Counsel) and the Division of Enforcement (Attn: Registration Appeals) at the Commission's Washington, DC Office, 2033 K Street, NW., Washington, DC 20581.

§ 3.82 Notice and effective date of order affecting registration.

(a) Any order issued by the National Futures Association upon completion of a proceeding to deny, condition, suspend, restrict or revoke registration, which is the final decision of the National Futures Association, shall be filed with the Division of Trading and Markets (Attn: Chief Counsel) and the Division of Enforcement (Attn: Registration Appeals) at the same time it is served upon the applicant or registrant.

(b) Such order shall take effect fifteen days after the date it is served upon the applicant or registrant unless the applicant or registrant files with the Commission a petition for review thereof in accordance with the provisions of this subpart: *Provided, however,* That if such order grants registration to, or conditions the registration of, an applicant, it shall not take effect until thirty days after the date it is served upon the applicant, unless (1) the Director of the Division of Trading and Markets, or the Director's designee, with the concurrence of the Director of the Division of Enforcement and the General Counsel, or their designees, by authority delegated hereby, directs that such registration may take effect at an earlier date, (2) the Commission, on its own motion, institutes review of the proceeding in accordance with the provisions of § 3.90 of this subpart, or (3) the Division of Trading and Markets or the Division of Enforcement requests the Commission to institute review of the proceeding in accordance with the provisions of § 3.91.

(c) If an applicant or registrant files a timely petition for review in accordance with the provisions of § 3.83, the effective date of the order of the National Futures Association shall be stayed pending a final determination and order by the Commission with respect to such petition.

§ 3.83 Petition for review.

(a) *Time to file.* Within fifteen days of service of a final order of the National Futures Association to deny, condition, suspend, restrict or revoke registration, the applicant or registrant may serve upon the Commission a petition for review thereof, together with proof of service upon the National Futures Association.

(b) *Contents.* The petition for review shall include:

(1) The name of the applicant or registrant;

(2) The statutory disqualification to which the applicant or registrant has been found to be subject;

(3) A concise statement of the facts underlying the statutory disqualification; and

(4) A copy of the order of the National Futures Association and the relief sought therefrom.

§ 3.84 Briefs.

(a) Within thirty days after service of a petition for review, the applicant or registrant shall file a brief in support thereof, together with proof of service upon the National Futures Association. The brief shall include a statement of the reasons why it is claimed that the order of the National Futures Association should not be affirmed in accordance with the provisions of § 3.87 of this subpart and the specific facts which support those reasons.

(b) Within thirty days after service of the brief in support of the petition for review, the National Futures Association may file an answering brief, together with proof of service upon the applicant or registrant. If no answering brief is filed, the final order of the National Futures Association shall be deemed the answer to the petition.

(c) No further briefs shall be permitted.

§ 3.85 Filing of the record.

Within thirty days of service of the petition for review, the National Futures Association shall file with the Commission the record of the proceeding which shall include: a certified copy of any order issued by a court of competent jurisdiction, federal or state governmental agency, or self-regulatory organization or such other document which sets forth the statutory disqualification to which the applicant or registrant has been found to be subject; the notice issued by the National Futures Association of its intent to deny, condition, suspend, restrict or revoke the registration of the applicant or registrant; the answer and all documentary evidence submitted therewith by the applicant or registrant; the reply filed by the National Futures Association; any interim order issued by the National Futures Association; the transcript of any oral hearing which may

have been held, including any documentary evidence submitted in connection therewith; and the final order of the National Futures Association. Upon request, the National Futures Association shall serve a copy of such record upon the applicant or registrant at the same time it is filed with the Commission, provided the applicant or registrant agrees to pay the National Futures Association reasonable fees for such copy.

§ 3.86 Grant or denial of petition for review.

(a) *Determination.* The determination to review any proceeding conducted by the National Futures Association to deny, condition, suspend, restrict or revoke registration is a matter committed to the Commission's discretion.

(b) *Denial of petition.* Should the Commission decline to grant review, the Commission shall issue an order to that effect which shall be deemed a final order of the Commission five days after service upon the applicant or registrant. A copy of such order shall also be served upon the National Futures Association at the same time.

(c) *Granting of petition.* Based upon the petition, the briefs and the record submitted pursuant to § 3.85, the Commission may grant review of the order of the National Futures Association.

§ 3.87 Decision of the Commission.

(a) Upon review, the Commission may affirm, modify, set aside or remand for further proceedings, in whole or in part, the order of the National Futures Association.

(b) The Commission shall affirm the order of the National Futures Association, unless the Commission finds that:

(1) The proceeding was not conducted in accordance with the rules of the National Futures Association;

(2) The National Futures Association did not observe fundamental fairness in the conduct of the proceeding;

(3) The order issued by the National Futures Association was not in accordance with the policies of the Commission with respect to the statutory disqualification provisions of the Act; or

(4) The weight of the evidence in the record does not support a finding that the applicant or registrant is subject to a statutory disqualification under section 8a(2), 8a(3) or 8a(4) of the Act.

§ 3.88 Default.

In the event that the applicant or registrant or the National Futures Association fails to file any document required under this subpart, the Commission, in its discretion, may dismiss the petition or, once instituted, the proceeding or, based on the record before it, may affirm, modify, set aside or remand for further proceedings the order of the National Futures Association. An order issued pursuant to this section shall be deemed a final order of the Commission five days after service upon the applicant or registrant. A copy of such order shall also be served upon the National Futures Association at the same time.

§ 3.89 Applicability of the Rules of Practice.

With the exception of §§ 10.4–10.6, 10.10, 10.11, and 10.12(a)(2)–10.12(g) of this chapter, and except as otherwise may be provided by the Commission by order, the Commission's Rules of Practice shall not apply to a proceeding under this subpart. For purposes of this subpart, functions assigned by the Rules of Practice to an "Administrative Law Judge" shall be performed by the Commission.

§ 3.90 Reservation of authority.

(a) Nothing in this subpart shall prevent the Commission from initiating a proceeding in an appropriate case to deny, condition, suspend, restrict or revoke registration under the provisions of section 6(b) of the Act or subpart C of this part.

(b) Nothing in this subpart affects the authority of the Commission under section 17(o)(3) of the Act to review the granting of a registration application by the National Futures Association.

(c) On its own motion, the Commission may institute review of any proceeding conducted by the National Futures Association to deny, condition, suspend, restrict or revoke the registration of any applicant or registrant.

(d) If the Commission institutes review under paragraph (b) or (c) of this section of a proceeding conducted by the National Futures Association, it shall thereafter issue an order establishing a schedule for the filing of briefs and requiring the submission of the record of the proceeding, or designated portions of the record, and such documents applicable to the particular proceeding as may aid the Commission in the review of such proceeding and of the decision rendered therein. If the order issued by the National Futures Association has not become effective, such order shall be stayed pending a final determination and order by the Commission with respect to such petition.

§ 3.91 Participation by Commission staff.

(a) If an applicant or registrant files a petition for review in accordance with § 3.83 the Division of Trading and Markets or the Division of Enforcement may file with the Commission, together with proof of service upon the applicant or registrant and upon the National Futures Association, a memorandum stating its views with respect to the matters addressed in such petition or in the brief in support thereof. Such memorandum, which shall be made a part of the record, must be filed within the time provided for the National Futures Association to file an answering brief in accordance with the provisions of § 3.84(b).

(b) At any time after an order issued by the National Futures Association is served upon the Commission in accordance with the provisions of § 3.82(a), the Division of Trading and Markets or the Division of Enforcement may file with the Commission, together with proof of service upon the applicant or registrant and upon the National Futures Association, a memorandum requesting the Commission, on its own motion, to institute review of the granting of a registration application by the National Futures Association or of any proceeding conducted by the National Futures Association to deny, condition, suspend, restrict or revoke registration. The memorandum shall set forth with particularity the reasons why the Commission should institute such review. Upon filing of the memorandum, and unless otherwise ordered by the Commission, if the order issued by the National Futures Association has not become effective, such order shall be stayed an additional fifteen days in order to afford the Commission the opportunity to consider the request.

Issued in Washington, D.C. on September 24, 1985.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 85–23086 Filed 9–26–85; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 44, 111, 203, 207, 236, 290, 511, 570, 850, 880, 881, 882, 883, 884, 886, 941, 968, and 990

[Docket No. R-85-1255; FR-2075]

Implementation of the Single Audit Act of 1984

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule implements, with reference to HUD program authorities, the requirements of the Single Audit Act of 1984 and OMB Circular A-128.

DATES: Effective Date: November 1, 1985.

Comment Due Date: November 26, 1985.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Steven A. Switzer, Assistant Inspector General for Audit, Office of Inspector General, Department of Housing and Urban Development, Room 8284, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 755-6364. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

In 1979, the General Accounting Office (GAO) and the Joint Financial Management Improvement Project (JFMIP) published studies citing certain ineffectual practices by State and local governments in auditing Federal financial assistance. A principal problem identified in these studies was the practice of State and local governments in auditing on a grant-by-grant basis, rather than organization-wide. On October 22, 1979, the Office of Management and Budget (OMB) responded to these concerns by issuing Attachment P to Circular A-102, "Uniform requirements for grants to State and local governments."

Attachment P set forth uniform guidelines for organization-wide audits of State and local governmental and Indian tribal recipients of Federal assistance. It explicitly provided that auditing procedures for State and local governments must be on an organization-wide basis, rather than grant-by-grant. This "single audit" approach was to be monitored by one "cognizant agency" assigned for a particular recipient organization by OMB. According to Attachment P, the cognizant agency must assess and coordinate the review of the auditing of its designated recipient organizations. Where significant inadequacies in an audit are disclosed, the recipient organization was to be advised and the auditor was to be requested to take corrective action. Other affected audit agencies were to be informed of irregularities uncovered.

Attachment P also included:

1. A requirement that a representative sample of auditing charges to Federal grants be tested, reflecting all Federal awards of financial assistance received and all cost categories that materially affected the award;

2. A requirement that audits must be conducted at least every two years; and

3. General requirements governing the scope of audits, content of the audit report, and auditor's comments on compliance and internal controls.

In the **Federal Register** of December 30, 1983 (48 FR 57483), HUD promulgated a rule at 24 CFR Part 44 implementing Attachment P across a broad range of the Department's programs. (Given the purpose of the December 1983 rule to incorporate Attachment P by reference, it contained only a minimal statement of regulatory provisions.)

II. The Single Audit Act of 1984

The Single Audit Act of 1984, 31 U.S.C. 7501-7507, establishes a more comprehensive framework for single audit requirements than did Attachment P. The enactment of the Single Audit Act reflected findings from a GAO report, "Study of Progress Made in Implementing the Single Audit Concept" (March 1984), indicating that the principal problems inhibiting implementation of Attachment P were: (1) Uncertainty among State and local officials concerning the scope and purpose of the single audit, (2) diffusion of responsibility among Federal cognizant agencies for certain audit functions, and (3) conflicts between the provisions of Attachment P and existing statutory grant audit requirements.

Key provisions of the Single Audit Act are directed toward establishing clearer guidelines for audit functions by State and local governments. The audit requirements in the Act apply to fiscal years of States and local governments that begin after December 31, 1984. According to OMB Circular A-128, the audit provisions of Attachment P to Circular A-102 must continue to be observed for fiscal years that begin before December 31, 1984. Among the provisions in the Single Audit Act that differ from requirements of Attachment P are:

1. *Definition of "Financial Assistance".*

The Act defines "financial assistance" to include a broad range of HUD's program activities: "grants, contracts, loans, loan guarantees, property, cooperative agreements, interest subsidies, insurance, or direct appropriations." *See* 31 U.S.C. 7501(4).

Attachment P did not describe the specific scope of financial assistance covered. However, sections 6 and 7(a) of OMB Circular A-102 did provide a basis for the Department's determination of the scope of financial assistance covered by Attachment P. Section 6 of Circular A-102 states that its standards apply to grants to State and local governments and Federally recognized Indian tribal governments, and that agencies are "encouraged" to apply its standards to loan and loan guarantee programs "to the extent practicable." The term "grant" is defined in section 7(a) of the OMB Circular to exclude coverage for: "Technical assistance programs which provided services instead of money or other assistance in the form of general revenue sharing, loans, loan guarantees, insurance, or contracts which are entered into and administered under procurement laws and regulations."

2. *Applicability of the Single Audit Requirements.*

Recipient State and local governments that receive $100,000 or more in Federal financial assistance in any fiscal year must have a single audit for that year. Governments receiving at least $25,000 but less than $100,000 have the option of performing either a single audit or separate program audits required by the applicable Federal statutes and regulations. Governments receiving less than $25,000 in any fiscal year are exempt from a single audit as well as from other Federal audit requirements for that year. Attachment P did not set any financial assistance level as a cutoff for single audit requirements.

3. *Focus on Auditing "Major Federal Assistance Programs".*

Under the Act, auditing is focused on "major Federal assistance programs" for compliance testing and for reporting instances of noncompliance. The definition of "major Federal assistance program" refers to the total amount of expenditures by the State or local government from a Federal program for the fiscal year, as compared to all Federal expenditures for that government for the fiscal year, except

for any program for which total expenditures of Federal financial assistance by the State or local government during the fiscal year exceed the larger of (i) $300,000, or (ii) 3 percent of such total expenditures for all programs, in the case of a State or local government for which such total expenditures for all programs exceed $100 million. (Under the Act, the auditor must determine and report whether there has been compliance with laws and regulations that could have a material effect on each "major Federal assistance program" rather than on the totality of Federal programs under evaluation.)

Attachment P did not include categories of assistance programs for auditing priority; rather, it delegated authority to auditors to choose a representative number of charges to Federal awards. Any audit test was required to be representative of (1) the total set of Federal awards received, and (2) all cost categories that materially affected the award.

4. *Plan for Corrective Action.*

Under 31 U.S.C. 7502(g), if the audit report indicates any material noncompliance or material weaknesses in internal control systems, the recipient government must prepare and submit a corrective action plan to the Federal cognizant agency assigned by OMB, in accordance with a schedule established by the cognizant agency. Such plans, together with the audit report, are to be submitted to appropriate Federal officials. The corrective action plan should indicate the government's plan to eliminate the noncompliance or material weakness, or reasons why corrective action is unnecessary. However, the recipient government may decide to not submit a corrective action plan if it chooses instead to submit a statement of why corrective action is not necessary.

Attachment P did not require a formal corrective action plan to respond to the results of the audit report. It merely required that audit reports include comments on any corrective action taken or planned by the grantee.

5. *Annual Audit Requirement.*

Under 31 U.S.C. 7502(b), single audits must be performed annually, unless the respective recipient government is required by constitution, statute, regulations or policy to conduct its audit less frequently. In this situation, the recipient government would conduct single audits on a biennial basis. After December 31, 1986, recipient governments must conduct such audits annually unless a recipient government codifies a requirement for biennial audits in its constitution or statutes by January 1, 1987. Audits conducted biennially under this provision must cover both years within the biennial period.

Attachment P required that single audits must be conducted at least on a biennial basis, but stated that they would "usually" be performed annually.

6. *Allocation of Audit Cost.*

Under 31 U.S.C. 7505(b), the amount charged to a program may not be more than a "reasonably proportionate share" of the audit cost. Under this standard, the proportion of the audit cost charged to Federal programs may not (in the absence of documentation demonstrating a higher actual cost) exceed the proportion of Federal expenditures to total expenditures. Attachment P stated that in the auditor's review of a representative number of charges for single audits to Federal funding sources, these auditing charges do not include costs properly allocated to other Federally assisted programs.

Under both 31 U.S.C. 7503 and Attachment P, audit activities in addition to those required under these authorities are not precluded, but such audits must build upon the single audit and not require duplicative audit functions.

III. OMB Circular A–128

HUD has revised 24 CFR Part 44 to repeat the substantive audit requirements of OMB Circular A–128. Circular A–128, issued on April 12, 1985, implements the Single Audit Act. Each recipient organization must comply with the audit requirements of the OMB Circular for fiscal years that begin after December 31, 1984, including any amendments to those requirements prescribed by future OMB action, as published. (OMB Circular A–128 provides for exceptions for public hospitals, public colleges and universities from State and local audits and the requirements of OMB Circular A–128 as long as these entities follow audit statutory requirements and OMB Circular A–110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations".) To comply with the provisions of the OMB Circular, an audit report and, where required, a corrective action plan must be submitted to the Federal cognizant agency. However, the submission of a corrective action plan is not necessary if the recipient government instead submits a statement explaining why the corrective action plan is not necessary.

Included among the audit provisions in the OMB Circular are:

(a) Definitions of "financial assistance", "State", and "local government";

(b) Threshold standards for applicable levels of Federal financial assistance covered by the single audit requirements;

(c) Requirements for compliance review, testing, and reporting standards;

(d) Standards for the auditing of "major Federal assistance programs";

(e) Requirements for the annual performance of single audits; and

(f) Procedures for the audit reports and plans for corrective action, including provisions for the allocation of audit costs.

Under this rule, HUD audit requirements at 24 CFR Part 44 will contain all of the substantive audit requirements in OMB Circular A–128. If any of the audit requirements in OMB Circular A–128 are revised in the future, HUD will promulgate regulations to implement those revisions in Part 44.

IV. HUD Program Regulations Affected by the Single Audit Act and OMB Circular A–128

Critical to the identification of HUD program regulations affected by the Single Audit Act and OMB Circular A–128 is the Act's definition of "financial assistance". Given the broad scope of the definition, the Department has determined that the following HUD programs with codified regulations are affected by the audit requirements of the Act and the OMB Circular:

1. Fair Housing Assistance Program (24 CFR Part 111);
2. Mutual Mortgage Insurance and Rehabilitation Loans (24 CFR Part 203);
3. Multifamily Housing Mortgage Insurance (24 CFR Part 207);
4. Multifamily Housing Interest Reduction Payments and Mortgage Insurance (24 CFR Part 236);
5. Management and Disposition of HUD-Owned Multifamily Housing Projects (24 CFR Part 290);
6. Rental Rehabilitation Grant Program (24 CFR Part 511);
7. Programs Authorized under Title I of the Housing and Community Development Act of 1974, as Amended, and Codified at 24 CFR Part 570 (Entitlement Grants, the Secretary's Fund, the HUD-Administered Small Cities Program, Urban Development Action Grants, the State's Program, and Loan Guarantees);
8. Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages (24 CFR Part 571));
9. Urban Homesteading Program (24 CFR Part 590) (see revised 24 CFR 590.27, which was promulgated in the **Federal Register** of June 24, 1985 (50 FR 25941, 25948));

10. Housing Development Grant Program (24 CFR Part 850);

11. Section 8 Housing Assistance Payments Program (24 CFR Parts 880, 881, 882, 883, 884, and 886);

12. Public Housing Development Program (24 CFR Part 941);

13. Comprehensive Improvement Assistance Program (24 CFR Part 968);

14. Annual Contributions for Operating Subsidies for Public Housing Projects (24 CFR Part 990); and

15. Solar Energy and Energy Conservation Bank (24 CFR Part 1800). (Revisions to the Solar Bank rule to implement HUD audit requirements in 24 CFR Part 44 were promulgated at 24 CFR 1800.125(b) and 1800.135(b), in the **Federal Register** of June 14, 1985 (50 FR 25010, 25020.))

Except as otherwise noted, these affected HUD program regulations are revised under this interim rule to refer to audit requirements for State and local governments under 24 CFR Part 44.

Concerning the programs authorized under Title I of the Housing and Community Development Act of 1974, as amended, the audit requirements in § 570.509 (which are contained in 24 CFR Part 570, Subpart J) are applicable to all of the following programs at 24 CFR Part 570 with the exception of the State's program (24 CFR Part 570, Subpart I):

1. Entitlement grants program (Subpart D);

2. Secretary's Fund program (Subpart E);

3. Small Cities program (Subpart F);

4. Urban Development Action Grant program (Subpart G); and

5. Loan Guarantees program (Subpart M).

In addition, the Indian Community Development Block Grant Program regulations at 24 CFR 571.500 refer to 24 CFR Part 570, Subpart J for applicable regulations on grant administration, including audit requirements.

In a letter dated September 29, 1981, the Director of OMB exempted States participating in the State's program from the requirements of OMB Circulars A–87 and A–102 (including the audit requirements of Attachment P to Circular A–102), provided that States apply equivalent procedures for cost accountability and audits. However, since grants made under the State's program are within the Act's definition of "Federal financial assistance", the State's program is not exempt from the requirements of the Single Audit Act.

Under the definition of "financial assistance" in OMB Circular A–128, audit requirements for the Department's single family and multifamily mortgage insurance programs apply to State and local governments when they act as mortgagees. The insurance contract provides that HUD will pay in insurance claim to a mortgagee upon the assignment of the mortgage or conveyance of the property to HUD after a default. (For a definition of mortgagee under the National Housing Act, see 12 U.S.C. 1707.) This interim rule adds provisions to 24 CFR Parts 203 and 207 to recognize that public mortgagees under the Department's single family and multifamily mortgage insurance programs, respectively, and their responsibilities under 24 CFR Part 44.

There are other HUD activities without codified regulations that are affected by the audit requirements of the Single Audit Act and OMB Circular A–128. Included among these HUD program activities are technical assistance grants provided by the HUD Office of Policy Development and Research and Congregate Housing contracts to eligible recipient governments. The primary factor for HUD's determination that this or any other uncodified activity involves recipient government responsibilities under the Single Audit Act will be the definition of "financial assistance" under section 7501(4) of the Act.

HUD is publishing this revision to Part 44, implementing the Single Audit Act and OMB Circular A–128, as an interim rule. The rule repeats the substantive audit requirements of Circular A–128, and because the OMB Circular was published for comment in the **Federal Register** (49 FR 50134, December 26, 1984) before being made effective, there is ample justification for making this rule effective without an additional comment period. There does exist, however, the possibility that public interest might be expressed with reference to the programs of the Department of Housing and Urban Development to which the rule is being made applicable. For that reason, the Department is inviting public comment for a period of sixty days, and will take these comments into account in publishing a final rule.

V. Miscellaneous

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. The rule does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local agencies or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule implements the significant audit requirements in the Single Audit Act and in OMB Circular A–128 that supercede Attachment P of OMB Circular A–102. It does not impose additional audit requirements.

Consistent with the provisions of 5 U.S.C. 605 (the Regulatory Flexibility Act), the Secretary has determined that this rule would not have a significant economic impact on a substantial number of small entities, because the audit requirements in this rule follow the Single Audit Act and OMB Circular A–128. The audit requirements of these authorities apply to State and local governments that meet certain threshold requirements for Federal assistance. In addition, section 19 of the OMB Circular is intended to encourage the use of small and minority audit firms to implement the Act.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(c) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk at Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2535–0094.

This rule is listed as item number 216 in the Department's Semiannual Agenda of Regulations published on April 29, 1985 (50 FR 17286) under Executive Order 12291 and the Regulatory Agenda.

The Catalog of Federal Domestic Assistance program numbers affected by this rule are 14.106, 14.110. 14.112, 14.115, 14.116, 14.117, 14.119, 14.120, 14.121, 14.122, 14.123, 14.124, 14.125, 14.126, 14.127, 14.129, 14.134, 14.135, 14.137, 14.138, 14.139, 14.140, 14.156, 14.161, 14.162, 14.163, 14.164, 14.165, 14.166, 14.167, 14.169, 14.170, 14.172, 14.173, 14.174, 14.218, 14.219, 14.221, 14.222, 14.223, 14.225, 14.227, 14.228, 14.230, 14.401, 14.550, 14.850, 14.851, and 14.852.

List of Subjects

24 CFR Part 44

Audit requirements: non-federal governmental entities, Reporting and recordkeeping requirements.

24 CFR Part 111

Fair housing, Cooperative agreements, Grant programs: housing and community development.

24 CFR Part 203

Home improvement, Loan programs: housing and community development, Mortgage insurance, Solar energy.

24 CFR Part 207

Mortgage insurance, Rental housing, Mobile home parks.

24 CFR Part 236

Low and moderate income housing, Mortgage insurance, Rent subsidies, Taxes, Utilities, Projects.

24 CFR Part 290

Mortgage insurance, Low and moderate income housing.

24 CFR Part 511

Rental Rehabilitation grants, Administrative practice and procedure, Grant programs: housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs; housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

24 CFR Part 850

Grant programs: housing and community development, Relocation assistance, Rental housing, Low and moderate income housing, Cooperatives.

24 CFR Part 880

Grant programs: housing and community development, Rent subsidies, Low and moderate income housing, New construction.

24 CFR Part 881

Grant programs; housing and community development, Rent subsidies, Low and moderate income housing.

24 CFR Part 882

Grant programs: housing and community development, Housing, Mobile homes, Rent subsidies, Low and moderate income housing.

24 CFR Part 883

Grant programs: housing and community development, Rent subsidies, New construction and substantial rehabilitation, Low and moderate income housing.

24 CFR Part 884

Grant programs: housing and community development, Rent subsidies, Rural areas, Low and moderate income housing.

24 CFR Part 886

Grant programs: housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 941

Loan programs: housing and community development, Public housing, Prototype costs, Cooperative agreements, Turnkey.

24 CFR Part 968

Loan programs: housing and community development, Public housing, Reporting and recordkeeping requirements, Substantial rehabilitation.

24 CFR Part 990

Grant programs: housing and community development, Low and moderate income housing, Public housing.

Accordingly, the Department of Housing and Urban Development (HUD) amends Title 24, Code of Federal Regulations as follows:

1. Title 24, Part 44 is revised to read as follows:

PART 44—NON-FEDERAL GOVERNMENTAL AUDIT REQUIREMENTS

Sec.

44.1 Purpose.
44.2 Definitions.
44.3 Scope of audit.
44.4 Frequency of audit.
44.5 Internal control and compliance reviews.
44.6 Subrecipients.
44.7 Relationship to other audit requirements.
44.8 Cognizant agency responsibilities.
44.9 Illegal acts or irregularities.
44.10 Audit reports.
44.11 Audit resolution.
44.12 Audit workpapers and reports.
44.13 Audit costs.
44.14 Sanctions.
44.15 Auditor selection.
44.16 Small and minority audit firms.
44.17 Reporting.
44.18 HUD audits.

Appendix to Part 44—Definition of Major Program as provided in the Single Audit Act of 1984.

Authority: Single Audit Act of 1984 (31 U.S.C. 7501–7507); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 44.1 Purpose.

(a) This part implements the general audit requirements for recipient organizations in OMB Circular A–128 "Audits of State and local governments." The OMB Circular was issued under the Single Audit Act of 1984, 31 U.S.C. 7501–7507. OMB Circular A–128 supersedes Attachment P, "Audit requirements," of Circular A–102, "Uniform requirements for grants to State and local governments."

(1) This part repeats all substantive audit requirements in OMB Circular A–128. If any of the substantive audit requirements in OMB Circular A–128 are revised in the future, HUD shall promulgate regulations to conform this part to those revisions.

(2) The difference between the language of this part and of OMB Circular A–128 generally reflects only the substitution of certain terms and phrases reflecting the implementation of the Circular into the codification for HUD regulations. For example, in certain sections of this part, references to "Federal agencies" in the Circular have been changed to "HUD" and references to "this Circular" are replaced with "OMB Circular A–128".

(b) The Single Audit Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget (OMB) to prescribe policies, procedures and guidelines to implement the Act. It specifies that OMB shall designate "cognizant" Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantage individuals have the opportunity to participate in contracts for single audits.

(c) Concerning the applicability of the audit requirements of the Single Audit Act, the Act requires:

(1) State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit conducted in accordance with the Act's requirements;

(2) State or local governments that receive between $25,000 and $100,000 a year shall have an audit conducted in accordance with the Act's requirements, or in accordance with Federal laws and

regulations governing the programs they participate in; and

(3) State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall comply with audit requirements prescribed by State or local law or regulation.

(d) The Act does not exempt State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided in Federal law or in OMB Circular A-102.

(e) The Act is applicable to State and local governments with respect to any fiscal year that begins after December 31, 1984.

§ 44.2 Definitions.

"Cognizant agency" means the Federal agency assigned by OMB to carry out the responsibilities described in this part, which incorporates OMB Circular A-128.

"Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

"Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.

"Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

"Generally accepted government auditing standards" means the *Standards For Audit of Government Organizations, Programs, Activities, and Functions,* developed by the Comptroller General, dated February 27, 1981.

"HUD" means the Department of Housing and Urban Development.

"Independent auditor" means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

"Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

"Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resource use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

"Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

"Major Federal Assistance Program" is defined in the Appendix to this part.

"Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

"State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has governmental functions and any Indian tribe.

"Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance through a State or local government, but does not include an individual that is a beneficiary of such assistance. A subrecipient may also be a direct recipient of Federal financial assistance.

§ 44.3 Scope of audit.

(a) The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

(c) Public hospitals and public colleges and universities may be excluded from State and local audits and from the requirements of this part. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of Circular A-110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations."

(d) The auditor shall determine whether:

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have a material effect on its financial statements and on each major Federal assistance program.

§ 44.4 Frequency of audit.

Audits shall be made annually unless the State or local government has adopted, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

§ 44.5 Internal control and compliance reviews.

The independent auditor shall determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

(a) *Internal control review.* In order to provide the above-described assurance, the auditor shall conduct a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation

shall be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures, and

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

(b) *Compliance review.* The auditor shall determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review shall include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expenditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(i) In making the test of transactions, the auditor shall determine whether the amounts reported as expenditures were for allowable services or benefits, and whether the records show that those who received services or benefits were eligible to receive them.

(ii) In addition to transaction testing, the auditor shall determine whether matching requirements, levels of effort and earmaking limitations were met; whether Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared; and whether amounts claimed or used for matching were determined in accordance with OMB Circular A–87, "Cost principles for State and local governments," and Attachment F of OMB Circular A–102.

(iii) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments*, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

(Approved by the Office of Management and Budget under OMB control number 2535–0094).

§ 44.6 Subrecipients.

State and local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

(a) Determine whether State or local subrecipients have met the audit requirements of this part and whether subrecipients covered by OMB Circular A–110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations," have met those requirements;

(b) Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this part, Circular A–110, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

(c) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

(d) Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

(e) Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this part.

§ 44.7 Relationship to other audit requirements.

(a) The Single Audit Act provides that an audit made in accordance with OMB Circular A–128 shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides HUD with information and assurances the Department needs to carry out its overall program responsibilities, such information shall be used. However, any additional audits that are necessary to carry out responsibilities under Federal law and regulation shall be planned and carried out in such a manner as to avoid duplication.

(b) HUD audit requirements in this part do not limit the authority of the Department to conduct or contract for audits and evaluations of Federal financial assistance programs, nor do these audit requirements limit the authority of the HUD Inspector General or other Federal audit offic

(c) HUD audit requirements in this part do not authorize any State or local government or subrecipient thereof to constrain HUD in any manner, from carrying out additional audits.

(d) If HUD conducts or contracts for audits in addition to the audits conducted by recipients under this part, the Department shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits.

§ 44.8 Cognizant agency responsibilities.

(a) The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this part. OMB will assign cognizant agencies for States and their subdivisions, and for larger local governments and their subdivisions. HUD may participate with an assigned cognizant agency, in order to fulfill the cognizant responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds, whether directly or indirectly.

(b) If HUD is designated as a cognizant agency, it will:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with audit requirements of this part.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements in this part. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, HUD shall notify the recipient and Federal awarding agencies of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits conducted under this part, so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

§ 44.9 Illegal acts or irregularities.

If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

§ 44.10 Audit reports.

(a) Audit reports shall be prepared at the completion of the audit. The audit report shall state that the audit was made in accordance with the provisions of HUD requirements at 24 CFR Part 44. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance*. Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing;

(i) A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

(ii) Negative assurance on those items not tested;

(iii) A summary of all instances of noncompliance; and

(iv) An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

(b) The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

(c) All fraud, abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph (f).

(d) In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective actions taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

(e) The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

(f) In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period, unless a longer period is agreed to with the cognizant agency.

(g) Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report, within 30 days after issuance, to a central clearing house, designated by OMB. The clearing house will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

(h) Recipients shall keep audit reports on file for three years after their issuance.

(Approved by the Office of Management and Budget under OMB control number 2535–0094.)

§ 44.11 Audit resolution.

(a) As described in § 44.8, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternative arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

(b) Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

§ 44.12 Audit workpapers and reports.

Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

(Approved by the Office of Management and Budget under OMB control number 2535–0094.)

§ 44.13 Audit costs.

The cost of audits made in accordance with the audit requirements of this part are allowable charges to Federal assistance programs.

(a) The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provisions of OMB Circular A–87, "Cost principles for State and local governments."

(b) Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however,

if appropriate documentation demonstrates higher actual cost.

§ 44.14 Sanctions.

No cost may be charged to Federal assistance programs for audits that are required by this part, but are not conducted in accordance with the audit requirements of this part. In case of a recipient's continued inability or unwillingness to have a proper audit, Federal agencies shall consider other appropriate sanctions, including:

(a) Withholding a percentage of assistance payments until the audit is completed satisfactorily;

(b) Witholding or disallowing overhead costs; and

(c) Suspending the Federal assistance agreement until the audit is made.

§ 44.15 Auditor selection.

In arranging for audit services, State and local governments shall follow the procurement standards prescribed by Attachment O of OMB Circular A–102, "Uniform requirements for grants to State and local governments." The standards provide that, while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by a State statute (e.g., audit services) the State statute will take precedence.

§ 44.16 Small and minority audit firms.

Small audit firms, and audit firms owned and controlled by socially and economically disadvantaged individuals, shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the audit requirements of this part. (As used in this section, the term "small audit firms" includes the term "audit firms controlled by socially and economically disadvantage individuals".) Recipients of Federal assistance shall take the following steps to further this goal:

(a) Assure that small audit firms are used to the fullest extent practicable;

(b) Make information on forthcoming opportunities available to, and arrange time schedules for the audit so as to encourage and facilitate participation by, small audit firms;

(c) Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms;

(d) Encourage contracting with small audit firms that have traditionally audited government programs and, in cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities;

(e) Encourage contracting with consortiums of small audit firms when a contract is too large for an individual small firm; and

(f) Use the services and assistance, as appropriate, of the Small Business Administration in the solicitation and utilization of small audit firms.

§ 44.17 Reporting.

HUD shall report to the Director of OMB on or before March 1, 1987, and annually thereafter, on the effectiveness of State and local governments in carrying out the requirements of the OMB Circular. The report shall identify each State or local government or Indian tribe that, in the opinion of HUD, has failed to comply with OMB Circular or with this part.

§ 44.18 HUD audits.

(a) The Secretary of HUD or the Secretary's authorized representative shall have access to all books, accounts, records, reports, files and other papers or property of a recipient organization pertaining to Federal assistance supplied by HUD to the recipient organization, for the purpose of making specific suveys, audits, examinations, excerpts and transcripts.

Appendix to Part 44—Definition of Major Program as Provided in the Single Audit Act of 1984

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100 million dollars, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100 million, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds—
More than—	But less than—	
$100 million	$1 billion	$3 million
$1 billion	$2 billion	$4 million
$2 billion	$3 billion	$7 million
$3 billion	$4 billion	$10 million
$4 billion	$5 billion	$13 million
$5 billion	$6 billion	$16 million
$6 billion	$7 billion	$19 million
Over $7 billion		$20 million

PART 111—FAIR HOUSING ASSISTANCE PROGRAM

2. The authority citation for 24 CFR Part 111 is revised to read as set forth below, and any authority citation following any section in Part 111 is removed:

Authority: Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–19); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

3. In § 111.108, a new paragraph (d) is added, to read as follows:

§ 111.108 Program administration.

* * * * *

(d) All State and local agencies that receive financial assistance under the Fair Housing Assistance Program shall conduct audits in accordance with 24 CFR Part 44.

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

4. The authority citation for 24 CFR Part 203 continues to read as follows:

Authority: Sections 203 and 211 of the National Housing Act (12 U.S.C. 1709 and 1715b); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. In § 203.7, a new paragraph (c) is added, to read as follows:

§ 203.7 Governmental institutions and national mortgage associations.

* * * * *

(c) Since the insuring of mortgage notes or other evidence of indebtedness under the National Housing Act constitutes "financial assistance" for purposes of audit requirements set out in 24 CFR Part 44, State and local governments (as defined in § 44.2) that receive mortgage insurance as mortgagees shall conduct audits in accordance with HUD audit requirements at 24 CFR Part 44.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

6. The authority citation for 24 CFR Part 207 continues to read as follows:

Authority: Sections 207 and 211 of the National Housing Act (12 U.S.C. 1713 and 1715b); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

7. A new undesignated center heading and § 207.250 are added, to read as follows:

Subpart A—Eligibility Requirements

* * * * *

Audit Requirements

§ 207.250 Audit requirements for State and local governments as mortgagees.

Since the insuring of mortgage notes or other evidence of indebtedness under the National Housing Act constitutes "financial assistance" for purposes of

audit requirements set out in 24 CFR Part 44, State and local governments (as defined in § 44.2) that receive mortgage insurance as mortgagees shall conduct audits in accordance with HUD audit requirements at 24 CFR Part 44.

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

8. The authority citation for 24 CFR Part 236 continues to read as follows:

Authority: Secs. 211 and 236, National Housing Act (12 U.S.C. 1715b and 1715z-1); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

9. A new Subpart E of 24 CFR Part 236 and § 236.901 are added, to read as follows:

Subpart E—Audit of State and Local Governments

§ 236.901 Audit.

Where a State or local government receives interest reduction payments under § 236(b) of the National Housing Act, it shall conduct audits in accordance with HUD audit requirements at 24 CFR Part 44.

PART 290—MANAGEMENT AND DISPOSITION OF HUD-OWNED MULTIFAMILY HOUSING PROJECTS

10. The authority citation for 24 CFR Part 290 is revised to read as set forth below, and any authority citation following any section in Part 290 is removed:

Authority: Secs. 202, 203, and 204, Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z-1b, 1701z-11, and 1701z-12); secs. 207 and 211, National Housing Act (12 U.S.C. 1713 and 1715b); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

11. A new § 290.9 is added, to read as follows:

§ 290.9 State and Local Government Audits.

Where State or local governments receive financial assistance as defined in 24 CFR 44.2, audits shall be conducted in accordance with HUD audit requirements at 24 CFR Part 44.

PART 511—RENTAL REHABILITATION GRANT PROGRAM

12. The authority citation for 24 CFR Part 511 is revised to read as set forth below, and any authority citation following any section in Part 511 is removed:

Authority: Section 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

13. In § 511.73, paragraph (b) is revised to read as follows:

§ 511.73 Audit.

* * * * *

(b) *Audit.* The financial management systems used by local governments as grantees and, where applicable, State recipients shall provide for audits in accordance with 24 CFR Part 44.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

14. The authority citation for 24 CFR Part 570 is revised to read as set forth below, and any authority citation following any section in Part 570 is removed.

Authority: Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

15. In § 570.496, a new paragraph (g) is added, to read as follows:

§ 570.496 Program requirements.

* * * * *

(g) *Audits.* Where States and units of general local government receive financial assistance under this part, the audit requirements in 24 CFR Part 44 shall apply.

16. In § 570.509, paragraph (b) is revised to read as follows:

§ 570.509 Audit.

* * * * *

(b) The recipient financial management systems shall provide for audits to be made by the recipient or at its direction, in accordance with 24 CFR Part 44. Where audit reports have been completed in accordance with § 44.10, these reports shall be used in conjunction with the performance review procedures of § 570.909.

PART 850—HOUSING DEVELOPMENT GRANTS

17. The authority citation for 24 CFR Part 850 is revised to read as set forth below, and any authority citation following any section in Part 850 is removed:

Authority: Section 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

18. Section 850.73 is revised to read as follows:

§ 850.73 Audit.

* * * * *

(b) *Grantee audits.* The grantee's financial management system shall provide for audits to be conducted by the grantee or at its direction, in accordance with audit requirements in 24 CFR Part 44. Audit reports will be used in conjunction with the performance review procedures of § 850.101.

* * * * *

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

19. The authority citation for 24 CFR Part 880 continues to read as follows:

Authority: Sections 3, 5, and 8 of the United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

20. A new § 880.211 is added, to read as follows:

§ 880.211 Audit.

Where a State or local government is the eligible owner of a project or a contract administrator under § 880.505 receiving financial assistance under this part, the audit requirements in 24 CFR Part 44 shall apply.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

21. The authority citation for 24 CFR Part 881 continues to read as follows:

Authority: Sections 3, 5, and 8 of the United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

22. A new § 881.211 is added, to read as follows:

§ 881.211 Audit.

Where a State or local government is the eligible owner of a project or a contract administrator under § 881.505 receiving financial assistance under this part, the audit requirements in 24 CFR Part 44 shall apply.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

23. The authority citation for 24 CFR Part 882 continues to read as follows:

Authority: Sections 3, 5, and 8 of the United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

24. Section 882.124 is added, to read as follows:

§ 882.124 Audit.

PHAs receiving financial assistance under this part are subject to audit requirements in 24 CFR Part 44.

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

25. The authority citation for 24 CFR Part 883 continues to read as follows:

Authority: Sections 3, 5, and 8 of the United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

26. A new § 883.313 is added, to read as follows:

§ 883.313 Audit.

Where housing assistance under the section 8 Program is provided for projects developed by State agencies, these agencies shall follow audit requirements in 24 CFR Part 44.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

27. The authority citation for 24 CFR Part 884 continues to read as follows:

Authority: Sections 3, 5, and 8 of the United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

28. A new § 884.124 is added, to read as follows:

§ 884.124 Audit.

Where a State or local government is the eligible owner of a project, or is a contract administrator under §§ 884.119 or 884.120, receiving financial assistance under this part, the audit requirements in 24 CFR Part 44 shall apply.

PART 886— HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATION

29. The authority citation for 24 CFR Part 886 continues to read as follows:

Authority: Sections 3, 5, and 8 of the United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

30. A new § 886.131 is added, to read as follows:

§ 886.131 Audit.

Where a State or local government is the eligible owner of a project, or is a contract administrator under § 886.120, receiving financial assistance under this part, the audit requirements in 24 CFR Part 44 shall apply.

31. A new § 886.336 is added, to read as follows:

§ 886.336 Audit.

Where a State or local government is the eligible owner of a project receiving financial assistance under this part, the audit requirements in 24 CFR Part 44 shall apply.

PART 941—PUBLIC HOUSING DEVELOPMENT

32. The authority citation for 24 CFR Part 941 is revised to read as set forth below, and any authority citation following any section in Part 941 is removed:

Authority: Sections 4, 5, and 9 of the United States Housing Act of 1937 (42 U.S.C. 1437b, 1437c, and 1437g); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

33. A new § 941.209 is added, to read as follows:

§ 941.209 Audit.

All PHAs that receive funds under this part for the development of lower-income housing shall comply with audit requirements in 24 CFR Part 44.

PART 968—COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM

34. The authority citation for 24 CFR Part 968 is revised to read as set forth below, and any authority citation following any section in Part 968 is removed:

Authority. Sections 5 and 14 of the United States Housing Act of 1937 (42 U.S.C. 1437c and 1437l); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

35. Section 968.9 is revised to read as follows:

§ 968.9 Other program requirements.

* * * * *

(j) *Audits.* PHAs that receive financial assistance under this part shall comply with audit requirements in 24 CFR Part 44.

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDIES

36. The authority citation for 24 CFR Part 990 continues to read as follows:

Authority: Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§§ 990.104, 990.105 and 990.108 [Amended]

37. 24 CFR Part 990 is amended by removing "biennial" from §§ 990.104(a), 990.105(a)(2), and 990.108(a).

38. A new § 990.117 is added, to read as follows:

§ 990.117 Audit.

PHAs that receive financial assistance under this part shall comply with audit requirements in 24 CFR Part 44.

Dated: September 20, 1985.

John J. Knapp,

Acting Secretary.

[FR Doc. 85-23058 Filed 9-26-85; 8:45 am]

BILLING CODE 4210-32-M

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24 CFR Parts 215, 236, 813, 880, 881, 883, 884 and 913

[Docket No. R-85-1246; FR-2052]

Technical Amendments to Definition of Income

AGENCY: Office of the Secretary, (HUD).

ACTION: Final rule.

SUMMARY: This rule implements section 102(b)(3) of the Housing and Community Development Technical Amendments Act of 1984 ("1984 technical amendments"), which added a deduction from income for certain handicapped assistance expenses in the determination of an assisted family's adjusted income. This rule also implements section 102(b)(9) of the 1984 technical amendments, which extended eligibility for the Housing Voucher program, administered under section 8(o) of the United States Housing Act of 1937 ("1937 Act"), to families with incomes equal to or above 50 percent of area median income if their incomes are not above 80 percent of area median income and they are displaced by Rental Rehabilitation program activities. Other minor changes are made to 24 CFR Parts 215, 236, 813 and 913, which prescribed the definition of Annual Income and Adjusted Income used in determining rental payments of tenants in the Rent Supplement, Section 236, Section 8 and Public Housing programs, and to Parts 880, 881, 883 and 884 with respect to adjustment of utility allowances.

EFFECTIVE DATE: November 1, 1985, except for amendments to § 913.102 and 913.106, which will become effective upon subsequent notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For Rent Supplement, Section 236, and Section 8 programs administered under 24 CFR Parts 880, 881 and 883–886—James J. Tahash, Director, Program Planning Division, Office of Multifamily Managment, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, telephone (202) 426–3944; for Section 8 programs administered under 24 CFR Part 882 (Existing Housing, Moderate

Rehabilitation and the Housing Voucher Demonstration Program) and for public and Indian Housing programs—Edward Whipple, Chief, Rental and Occupancy Branch, Office of Public and Indian Housing, telephone (202) 426–0744. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

1. Handicapped Assistance Expenses

Section 102(b)(3) of the 1984 technical amendments amended the definition of adjusted income found in section 3 of the 1937 Act, which governs the Section 8 and Public Housing programs and which is being applied administratively by HUD to the Rent Supplement and Section 236 programs for the sake of uniformity. The amendment expanded the deduction for elderly families for medical expenses to include handicapped assistance expenses and applied the deduction for handicapped assistance expenses to nonelderly families as well. The revised statute permits a deduction calculated as follows:

(c) the amount by which the aggregate of the following expenses of the family exceeds 3 percent of annual family income: (i) medical expenses for any elderly family; and (ii) reasonable attendant care and auxiliary apparatus expenses for each handicapped member of any family, to the extent necessary to enable any member of such family (including such handicapped member) to be employed.

This rule amends the definition sections of Parts 215, 236, 813 and 913 to add a definition of Handicapped Assistance Expenses and to revise the definition of Adjusted Income to allow a deduction for Handicapped Assistance Expenses. The statute provides that the combination of Handicapped Assistance Expenses and Medical Expenses is to be deducted only to the extent this total exceeds three percent of income. For Elderly families, the rule applies the threshold to the combined total of Medical and Handicapped Assistance Expenses. For nonelderly families, such as a family with a handicapped member who is neither the head of household or spouse, the rule applies the three percent threshold to the Handicapped Assistance Expenses only, since such families are ineligible for a deduction of Medical Expenses.

Under the income definition rules for the Section 8 and Public Housing programs before their revision in May 1984, expenses for attendant care for handicapped or disabled family members were permitted as medical expenses, or (in the Section 8 program) as unusual expenses, or (in the Public Housing program) as expenses for care of an incapacitated family member. When attendant care expenses were deducted as unusual expenses or as care for an incapacitated family member, the expenses were permitted to be deducted to the extent of the employment income derived by the family member who was thereby relieved of attendant care responsibilities. This rule preserves that limitation.

Although the statute specifically addresses the deduction of certain expenses for each "handicapped" member of a family, the rule extends the definition of Handicapped Assistance Expense to cover those expenses for each "disabled" member of a family, also. The definitions of Disabled Person and Handicapped Person, as used by HUD in, for example, 24 CFR Parts 813 and 913, are effectively prescribed by section 3 of the 1937 Act. A Disabled Person is a person who is "under a disability as defined in section 223 of the Social Security Act or in section 102 of the Developmental Disabilities Service and Facilities Construction Amendments of 1970." A Handicapped Person is defined a few sentences later in section 3 of the 1937 Act, as a person having an "impairment which is expected to be of a long-continued and indefinite duration, substantially impedes such person's ability to live independently, and is of such a nature that such ability could be improved by more suitable housing conditions." The sentence that defines a Disabled Person groups such persons with Handicapped Persons as individuals eligible to be considered an Elderly Family. The two definitions generally apply to the same persons, and there appears to be no reason to refuse a deduction for the attendant care or auxiliary apparatus expenses of a Disabled Person who has never officially been classified as a Handicapped Person. Therefore, HUD has concluded that Congress intended to apply the term "handicapped member of the family" in a general sense, to include persons who have been classified as either disabled or handicapped. (This determination will obviate the need to consider whether persons classified as "disabled" also qualify as "handicapped".)

2. Revision of Income Limit for Housing Vouchers

Section 102(b)(9) of the 1984 technical amendments amended section 8(o)(3) of the 1937 Act to broaden the category of families with income greater than 50 percent of area median income that are eligible for Housing Vouchers under the demonstration Housing Voucher program. Originally, the statute provided that Housing Vouchers could only be issued to families (1) with incomes no greater than 50 percent of area median income, or (2) that had been continuously assisted under the 1937 Act. The 1984 technical amendments extended eligibility to families with incomes between 50 and 80 percent of median who are displaced by Rental Rehabilitation program activities under section 17(c) of the 1937 Act.

Eligibility of a family for a Housing Voucher under section 8(o)(3) of the 1937 Act is related to the income limit restrictions imposed by section 16(b) of the 1937 Act. Section 16(b) limits the number of units that can be leased with assistance under the 1937 Act to families that have incomes greater than 50 percent of area median income, adjusted by family size. For units first available for occupancy on or after October 1, 1981, no more than five percent may be leased to families with incomes greater than 50 percent of area median income. The five percent limit applies to the aggregate of units nationwide. Generally, no families with incomes greater than 50 percent of area median can be admitted to these units without prior HUD approval. However, approval can be granted for such applicants to be admitted to more than five percent of the units in a particular project, if HUD finds it to be justified.

Section 813.105 is the provision that implements section 16(b) of the 1937 Act. However, as published in the Federal Register on May 10, 1984 (49 FR 19925), § 813.105 did not specifically address the interaction of section 8(o)(3) eligibility and the section 16(b) income limit restriction. A revision to an earlier notice of funding availability for Housing Vouchers in support of the Rental Rehabilitation program was published on February 28, 1985 (50 FR 8196), to inform the public of the change made by the 1984 technical amendments in eligibility for the Housing Voucher program. The February Notice also stated that Part 813 would be amended to provide for implementation of section 16 of the 1937 Act as it applies to the revised Housing Voucher program. (For other Notices affecting the Housing Voucher program, see 49 FR 28458 (July 12, 1984) and 50 FR 19475 (May 8, 1985).)

This rule now amends § 813.105 by adding a new paragraph (d) applicable only to Housing Vouchers [and redesignating old paragraphs (d) and (e)]. Under the new § 813.105(d)(1), a Housing Voucher may be issued to a family with income above 50 percent of area median income without prior permission from HUD only if the family was assisted under the 1937 Act in a unit in a public housing project that was

demolished or disposed of with HUD approval, or in a unit that was assisted under a project-based Section 8 Housing Assistance Payments Contract (*i.e.*, under 24 CFR Part 880, 881, 883, 884 or 886) that is being terminated at the sole discretion of the owner. For any other family with an income over 50 percent of median, HUD must authorize issuance of a Housing Voucher. Section 813.105(d)(2) states the only two grounds for HUD to grant permission to issue a voucher to an over-50 percent of median income family: the family has continuously received assistance under the 1937 Act, or it has an income no greater than 80 percent of area median income and is being displaced from its unit by rental rehabilitation activities. If a family moves from its unit in a building undergoing such rehabilitation activities not because it is required by the owner to move but because its post-rehabilitation rent is higher than the family is willing to pay, the family is not considered to be displaced for purposes of this provision.

The reporting provision of § 813.105, which is redesignated from paragraph (e) to paragraph (f), is revised to reflect the need for data on how many housing vouchers are issued to families moving into units that first came under HAP contract after October 1, 1981, and, of these, how many vouchers are issued to families with incomes in excess of 50 percent of median.

3. Technical and Conforming Changes

In the interim rule published on July 23, 1984 (49 FR 29580) to define income for the Rent Supplement and Section 236 programs, a provision was included that directed owners to provide an analysis of utility allowances when they request HUD to approve a rent increase, or when a utility rate change would result in a cumulative increase of 10 percent or more in the current utility allowances. The 10 percent cumulative change part of that requirement had been in the previous rule. The submission of utility data along with a rent increase application was added to assure that the utility component of rent not be overlooked when rent levels are determined.

Part 813 does not include any comparable provision. The parts governing project-based Section 8 programs administered by private owners do contain provisions requiring owners to recommend whether adjustment of utility allowances is appropriate whenever the owner submits a request for an adjustment in the rents and at "other times if appropriate." These sections (880.610, 881.610, 883.711, and 884.220) are being amended in this rule to conform to the utility adjustment provisions of Parts 215 and 236 (see §§ 215.45(e) and 236.55(d)). One change is to make the requirement more specific: owners must submit not just a "recommendation" on whether to adjust utility allowances, but an "analysis" of the project's utility allowances, including information on rates and utility consumption. The other change is to specify a time other than at rent increase approval when it is "appropriate" to recommend an adjustment: when a utility rate change would result in a cumulative increase of 10 percent or more in the previously approved utility allowances.

On the other hand, changes have already been made in the Section 8 and Public Housing rules (but not in the corresponding Rent Supplement and Section 236 rules) as a result of a recent statutory requirement that HUD consult with the Department of Agriculture in determining its definition of income under section 3 of the 1937 Act. (See 50 FR 25949, June 24, 1985.) To conform the definition of income in Parts 215 and 236 with the definition in Parts 813 and 913, this rule makes a minor change in the definition of Net Family Assets and revises §§ 215.21 (b)(2) and (b)(3) and 236.3 (b)(2) and (b)(3) to permit deduction of a depreciation allowance in the determination of net income from a business, and to include in income cash or assets withdrawn from a business, unless they were reimbursement for the family's investment in the business.

In response to questions and concerns that have arisen with respect to § 913.106(b)(8), which includes in a family's annual income the income of an absent service member whose dependents are living in the unit, the phrase "other person" is being changed to "other Family member." This change is intended to clarify that the pay of an absent service member is included in the family's annual income when the service member is a family member (e.g., a son of the head of household) and the service member's children reside in the assisted household; however, the pay of an absent service member is not included in the family's annual income, even if his children do live in the household, if the service member is not a family member (such as a divorced father). In the latter case, of course, to the extent the former husband provides support for the household, these payments would be included in the family's annual income. This change is being made to all the comparable sections (§§ 813.106(b)(8), 913.106(b)(8), 215.21(b)(8), and 236.3(b)(8)).

It came to our attention that in § 913.106 and comparable sections, the term Income was used in some cases instead of the defined term Annual Income. This failure to use the defined term was an oversight, which is being corrected in this rule by the addition of the word Annual in §§ 813.106 (b) and (d), 913.106 (b) and (d), 215.21 (b) and (d), and 236.3 (b) and (d).

The citation, in the definition of Annual Income to the provisions of the Domestic Volunteer Service Act of 1973 that prohibit inclusion of benefits under that Act as income for purposes of other governmental programs was incorrect. It is being corrected in §§ 813.106(d)(3)(iii), 913.106(d)(3)(iii), 215.21(d)(3)(iii) and 236.3(d)(3)(iii).

Use of Final Rule

This rule is being published as a final rule without prior notice and comment. Providing prior notice and comment is unnecessary and would be contrary to the public interest for several reasons. The handicapped assistance expense deduction and the application of income limits to the Housing Voucher program are mandated by statute, are relatively straightforward in their application (given the history of similar provisions), and benefit some applicants and participants while not being harmful to any. The rule treats the new handicapped assistance expense the way a similar component of the medical expense and of the unusual/dependent care expense categories was treated under previous definitions of income. The treatment of income limits with reference to applicants for Housing Vouchers is very similar to the treatment of income limits applied to applicants for the Section 8 Existing Housing Certificate program. These provisions adopt established practice and are therefore not controversial.

Another reason for immediate implementation is that revisions to forms and instructions for most of the Section 8 programs, as well as for the Rent Supplement and Section 236 programs, have been developed to implement these statutory provisions at the same time as for implementation of the major changes required by rules published in May and July of 1984 (see citations above). To avoid confusion, this simultaneous development has produced one set of forms and instructions to implement the totality of changes in income definition from the 1984 rules to the present. Since the 1984 rules already require recalculations of rental payments and rebates for many tenants, a second revision occasioned by the delay involved in development of,

first, a proposed and then a final rule, would require a great burden on PHAs and owners and would be harmful to some tenants.

The other changes made by this rule are minor and technical in nature and would not be likely to draw significant public comment.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332, in connection with the rules that are being amended herein. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order of Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more, (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions, or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because it makes only minor changes in the income definitions used by owners and PHAs in administration of assisted housing programs.

This rule was listed as sequence number 103 under the Office of Housing in the Department's Semiannual Regulatory Agenda published on April 29, 1985 (50 FR 17285, 17289) under Executive Order 12291 and the Regulatory Flexibility Act.

The information collection requirements contained in this rule were submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. All requirements have been approved and have been assigned OMB control numbers 2502–0315, 2502–0204, and 2502–0161.

The Catalog of Domestic Assistance numbers are 14.103, 14.149 and 14.156.

List of Subjects

24 CFR Part 215

Grant programs—housing and community development, Rent subsidies.

24 CFR Part 236

Low and moderate income housing, Mortgage insurance, Rent subsidies.

24 CFR Part 813

Lower income housing.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Low and moderate income housing, New construction.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Low and moderate income housing, Substantial rehabilitation.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, New construction and substantial rehabilitation.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Rural areas, Low and moderate income housing.

24 CFR Part 913

Public housing.

Accordingly, 24 CFR Parts 215, 236, 813, 880, 881, 883, 884 and 913 are amended as follows:

PART 215—RENT SUPPLEMENT PAYMENTS

1. The authority citation of Part 215 continues to read as follows:

Authority: Sec. 101(g), Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 215.1, the definition of Net Family Assets is amended by adding the phrase "business or family" after the words "value of any"; a definition of Handicapped Assistance Expenses is added, in appropriate alphabetical order; and the definition of Adjusted Income is revised, to read as follows:

§ 215.1 Definitions.

* * * * *

Adjusted Income. Annual Income less the following allowances, determined in accordance with HUD instructions:

(a) $480 for each Dependent;

(b) $400 for any Elderly Family;

(c) For any Family that is not an Elderly Family but has a Handicapped or Disabled member other than the head of household or spouse, Handicapped Assistance Expenses in excess of three percent of Annual Income, but this allowance may not exceed the employment income received by Family members who are 18 years of age or older as a result of the assistance to the Handicapped or Disabled Person;

(d) For any Elderly Family

(1) That has no Handicapped Assistance Expenses, an allowance for Medical Expenses equal to the amount by which the Medical Expenses exceed three percent of Annual Income;

(2) That has Handicapped Assistance Expenses greater than or equal to three percent of Annual Income, an allowance for Handicapped Assistance Expenses computed in accordance with paragraph (c) of this section, plus an allowance for Medical Expenses that is equal to the Family's Medical Expenses;

(3) That has Handicapped Assistance Expenses that are less than three percent of Annual Income, an allowance for combined Handicapped Assistance Expenses and Medical Expenses that is equal to the amount by which the sum of these expenses exceeds three percent of Annual Income; and

(e) Child Care Expenses.

* * * * *

Handicapped Assistance Expenses. Reasonable expenses that are anticipated, during the period for which Annual Income is computed, for attendant care and auxiliary apparatus for a Handicapped or Disabled Family member, and that are necessary to enable a Family member (including the Handicapped or Disabled member) to be employed, provided that the expenses are neither paid to a member of the Family nor reimbursed by an outside source.

* * * * *

§ 215.21 [Amended]

3. Section 215.21 is revised by adding to the introductory language of paragraphs (b) and (d), before the word "Income", the word "Annual"; by removing from paragraph (b)(8) the phrase "other person" and substituting in its place the phrase "other Family member"; and by removing from paragraph (d)(3)(iii) the phrase "42 U.S.C. 4951–4993" and substituting in its place the phrase "42 U.S.C. 5044(g), 5058".

4. Paragraphs (b)(2) and (b)(3) of § 215.21 are revised to read as follows:

§ 215.21 Annual income.

* * * * *

(b) * * *

(2) The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the Family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expnditures for amortization of capital indebtedness shall not be used as a deduction in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the Family. Where the Family has Net Family Assets in excess of $5,000, Annual Income shall include the greater of the actual income derived from all Net Family Assets or a percentage of the value of such Assets based on the current passbook savings rate, as determined by HUD;

* * * * *

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

5. The authority citation for Part 236 continues to read as follows:

Authority: Secs. 211 and 236, National House Act (12 U.S.C. 1715b, 1715z-1); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

6. In § 236.2, the definition of Net Family Assets is amended by adding the phrase "business or family" after the words "value of any"; a definition of Handicapped Assistance Expenses is added, in appropriate alphabetical order; and the definition of Adjusted Income is revised, to read as follows:

§ 236.2 Definitions.

Adjusted Income. Annual Income less the following allowances, determined in accordance with HUD instructions:

(a) $480 for each Dependent;

(b) $400 for any Elderly Family;

(c) For any Family that is not an Elderly Family but has a Handicapped or Disabled member other than the head of household or spouse, Handicapped Assistance Expenses in excess of three percent of Annual Income, but this allowance may not exceed the employment income received by Family members who are 18 years of age or older as a result of the assistance to the Handicapped or Disabled Person;

(d) For any Elderly Family

(1) That has no Handicapped Assistance Expenses, an allowance for Medical Expenses equal to the amount by which the Medical Expenses exceed three percent of Annual Income;

(2) That has Handicapped Assistance Expenses greater than or equal to three percent of Annual Income, an allowance for Handicapped Assistance Expenses computed in accordance with paragraph (c) of this section, plus an allowance for Medical Expenses that is equal to the Family's Medical Expenses;

(3) That has Handicapped Assistance Expenses that are less than three percent of Annual Income, an allowance for combined Handicapped Assistance Expenses and Medical Expenses that is equal to the amount by which the sum of these expenses exceeds three percent of Annual Income; and

(e) *Child Care Expenses.* * * *

Handicapped Assistance Expenses. Reasonable expenses that are anticipated, during the period for which Annual Income is computed, for attendant care and auxiliary apparatus for a Handicapped or Disabled Family member, and that are necessary to enable a Family member (including the Handicapped or Disabled member) to be employed, provided that the expenses are neither paid to a member of the Family nor reimbursed by an outside source.

* * * * *

§ 236.3 [Amended]

7. Section 236.3 is revised by adding to the introductory language of paragraphs (b) and (d), before the word "Income", the word "Annual"; by removing from paragraph (b)(8) the phrase "other person" and substituting in its place the phrase "other Family member"; and by removing from paragraph (d)(3)(iii) the phrase "42 U.S.C. 4951–4993" and substituting in its place the phrase "42 U.S.C. 5044(g), 5058".

8. Paragraphs (b)(2) and (b)(3) of § 236.3 are revised to read as follows:

§ 236.3 Annual income.

* * * * *

(b) * * *

(2) The net income from operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the Family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as a deduction in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the Family. Where the Family has Net Family Assets in excess of $5,000, Annual Income shall include the greater of the actual income derived from all Net Family Assets or a percentage of the value of such Assets based on the current passbook savings rate, as determined by HUD;

* * * * *

PART 813—DEFINITION OF INCOME, INCOME LIMITS, RENT AND REEXAMINATION OF FAMILY INCOME FOR THE SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS AND RELATED PROGRAMS

9. The authority citation for Part 813 continues to read as follows:

Authority: Sections 3, 8 and 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437f, and 1437n); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

10. In § 813.102, the definition of Handicapped Assistance Expenses is added, in appropriate alphabetical order, and the definition of Adjusted Income is revised, to read as follows:

§ 813.102 Definitions.

Adjusted Income. Annual Income less the following allowances, determined in accordance with HUD instructions:

(a) $480 for each Dependent;

(b) $400 for any Elderly Family;

(c) For any Family that is not an Elderly Family but has a Handicapped or Disabled member other than the head of household or spouse, Handicapped Assistance Expenses in excess of three percent of Annual Income, but this allowance may not exceed the employment income received by Family members who are 18 years of age or

older as a result of the assistance to the Handicapped or Disabled Person;

(d) For any Elderly Family

(1) That has no Handicapped Assistance Expenses, an allowance for Medical Expenses equal to the amount by which the Medical Expenses exceed three percent of Annual Income;

(2) That has Handicapped Assistance Expenses greater than or equal to three percent of Annual Income, an allowance for Handicapped Assistance Expenses computed in accordance with paragraph (c) of this section, plus an allowance for Medical Expenses that is equal to the Family's Medical Expenses;

(3) That has Handicapped Assistance Expenses that are less than three percent of Annual Income, an allowance for combined Handicapped Assistance Expenses and Medical Expenses that is equal to the amount by which the sum of these expenses exceeds three percent of Annual Income; and

(e) Child Care Expenses.

* * * * *

Handicapped Assistance Expenses. Reasonable expenses that are anticipated, during the period for which Annual Income is computed, for attendant care and auxiliary apparatus for a Handicapped or Disabled Family member, and that are necessary to enable a Family member (including the Handicapped or Disabled member) to be employed, provided that the expenses are neither paid to a member of the Family nor reimbursed by an outside source.

* * * * *

11. Section 813.105 is revised by redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively; by adding a new paragraph (d); and by revising the redesignated paragraph (f), to read as follows:

§ 813.105 Admission to units available on or after October 1, 1981.

* * * * *

(d) *Specific limitation on Housing Vouchers.* (1) Except with the prior approval of HUD, no Housing Voucher shall be issued under section 8(o) of the 1937 Act to any Lower Income Family that is not a Very Low-Income Family unless the Family has been continuously assisted under the 1937 Act and, immediately before issuance of a Housing Voucher, the Family was residing in a public housing unit that is being demolished or disposed of with HUD approval, or was residing in a unit that was assisted under a Section 8 Housing Assistance Payments contract administered under Part 880, 881, 883, 884 or 886, that is being terminated at the sole discretion of the owner.

(2) A request by a PHA for HUD approval to grant a Housing Voucher to a Lower Income Family other than a Very Low-Income Family must state the basis for requesting the exception and provide supporting data. The only bases for granting exceptions are that either the Family has been continuously assisted under the 1937 Act, or the Family is determined to be a Lower Income Family and it is being displaced by rental rehabilitation activity under 24 CFR Part 511. For this purpose, a Family that lives in a project undergoing rental rehabilitation activities and whose post-rehabilitation rent would not be affordable is not considered displaced.

* * * * *

(f) *Reporting.* PHAs and Owners shall comply with HUD-prescribed reporting requirements that will permit HUD to maintain reasonably current data as to (1) the number of dwelling units that are subject to paragraph (a) of this section; (2) the number of units that are subject to paragraphs (c) and (d) of this section for which HAP contracts were first effective under Part 882, Subpart B of this chapter or under Section 8(o) of the 1937 Act on or after October 1, 1981 (including new HAP Contracts for Families for whom HAP Contracts had been in effect before that date for a different unit); (3) the number of Families occupying units described in clause (1) of this paragraph that were admitted to such units on or after July 1, 1984 and were not Very Low-Income Families when admitted, and (4) the number of Families occupying units described in clause (2) of this paragraph with Certificates or Vouchers issued on or after July 1, 1984 and were not Very Low-Income Families when such Certificates or Vouchers were granted.

(Information collection requirements contained in paragraph (b), (c)(2) and (d)(2) were approved by the Office of Management and Budget under control number 2502–0315. Information collection requirements contained in paragraph (f) were approved by the Office of Management and Budget under control number 2502–0204.)

§ 813.106 [Amended]

12. Section 813.106 is amended by adding to the introductory language of paragraphs (b) and (d), before the word "Income", the word "Annual"; by removing from paragraph (b)(8) the phrase "other person" and substituting in its place the phrase "other Family member"; and by removing from paragraph (d)(3)(iii) the phrase "42 U.S.C. 4951–4993" and substituting in its place the phrase "42 U.S.C. 5044(g), 5058".

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

13. The authority citation for Part 880 continues to read as follows:

Authority: Secs. 3, 5 and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

14. § 880.610 is revised to read as follows:

§ 880.610 Adjustment of utility allowances.

In connection with annual and special adjustments of contract rents, the owner must submit an analysis of the project's Utility Allowances. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances, the project owner must advise the contract administrator and request approval of new Utility Allowances. Whenever a Utility Allowance for a unit is adjusted, the owner will promptly notify affected families and make a corresponding adjustment of the tenant rent and the amount of the housing assistance payment for the unit.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB control number 2502–0161)

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

15. The authority citation for Part 881 continues to read as follows:

Authority: Secs. 3, 5 and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

16. Section 881.610 is revised to read as follows:

§ 881.610 Adjustment of utility allowances.

In connection with annual and special adjustments of contract rents, the owner must submit an analysis of the project's Utility Allowances. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances, the project

owner must advise the contract administrator and request approval of new Utility Allowances. Whenever a Utility Allowance for a unit is adjusted, the owner will promptly notify affected families and make a corresponding adjustment of the tenant rent and the amount of the housing assistance payment for the unit.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB control number 2502–0161)

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

17. The authority citation for Part 883 continues to read as follows:

Authority: Secs. 3, 5 and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

18. Section 883.711 is revised to read as follows:

§ 883.711 Adjustment of utility allowances.

In connection with annual and special adjustments of contract rents, the owner must submit an analysis of the project's Utility Allowances. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances, the project owner must advise the Agency and request approval of new Utility Allowances. Whenever, a Utility Allowance for a unit is adjusted, the owner will promptly notify affected families and make a corresponding adjustment of the tenant rent and the amount of the housing assistance payment for the unit.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB control number 2502–0161.)

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

19. The authority citation for Part 884 continues to read as follows:

Authority: Sections 3, 5 and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

20. Section 884.220 is revised to read as follows:

§ 884.220 Adjustment of utility allowances.

In connection with annual and special adjustments of contract rents, the owner must submit an analysis of the project's Utility Allowances. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances, the project owner must advise the Secretary and request approval of new Utility Allowances. Whenever a Utility Allowance for a unit is adjusted, the owner will promptly notify affected families and make a corresponding adjustment of the tenant rent and the amount of the housing assistance payment for the unit.

(Information collection requirements contained in this section have been approved by the Office of Management and Budget under OMB control number 2502–0161.)

PART 913—DEFINITION OF INCOME, INCOME LIMITS, RENTS AND REEXAMINATION OF FAMILY INCOME FOR THE PUBLIC HOUSING AND INDIAN HOUSING PROGRAMS

21. The authority citation for Part 913 continues to read as follows:

Authority: Secs. 3, 6, and 16, United States Housing Act of 1937 (42 U.S.C. 1434a, 1437d, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

22. In 913.102, the definition of Handicapped Assistance Expenses is added, in appropriate alphabetical order, and the definition of Adjusted Income is revised, to read as follows:

§ 913.102 Definitions.

Adjusted Income. Annual Income less the following allowances, determined in accordance with HUD instructions:

(a) $480 for each Dependent;

(b) $400 for any Elderly Family;

(c) For any Family that is not an Elderly Family but has a Handicapped or Disabled member other than the head of household or spouse, Handicapped Assistance Expenses in excess of three percent of Annual Income, but this allowance may not exceed the employment income received by Family members who are 18 years of age or older as a result of the assistance to the Handicapped or Disabled Person;

(d) For any Elderly Family.

(1) That has no Handicapped Assistance Expenses, an allowance for Medical Expenses equal to the amount by which the Medical Expenses exceed three percent of Annual Income;

(2) That has Handicapped Assistance Expenses greater than or equal to three percent of Annual Income, an allowance for Handicapped Assistance Expenses computed in accordance with paragraph (c) of this section, plus an allowance for Medical Expenses that is equal to the Family's Medical Expenses;

(3) That has Handicapped Assistance Expenses that are less than three percent of Annual Income, an allowance for combined Handicapped Assistance Expenses and Medical Expenses that is equal to the amount by which the sum of these expenses exceeds three percent of Annual Income; and

(e) Child Care Expenses.

* * * * *

Handicapped Assistance Expenses. Reasonable expenses that are anticipated, during the period for which Annual Income is computed, for attendant care and auxiliary apparatus for a Handicapped or Disabled Family member and that are necessary to enable a Family member (including the Handicapped or Disabled member) to be employed, provided that the expenses are neither paid to a member of the Family nor reimbursed by an outside source.

* * * * *

§ 913.106 [Amended]

23. Section 913.106 is amended by adding to the introductory language of paragraphs (b) and (d), before the word "Income", the word "Annual"; by removing from paragraph (b)(8) the phrase "other person" and substituting in its place the phrase "other Family member"; and by removing from paragraph (d)(3)(iii) the phrase "42 U.S.C. 4951–4993" and substituting in its place the phrase "42 U.S.C. 5044(g), 5058".

Dated: September 20, 1985.

John J. Knapp,

Acting Secretary.

[FR Doc. 85–23059 Filed 9–26–85; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 170 and 252

[T.D. ATF-212; correction]

Distilled Spirits; Increase in Rate of Tax and Floor Stocks Tax

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule (Treasury decision); correction.

SUMMARY: This document corrects errors made in FR Doc. 85-20120, published in the **Federal Register** on August 23, 1985 at 50 FR 34116, which implemented section 27 of the Deficit Reduction Act of 1984.

FOR FURTHER INFORMATION CONTACT: Robert G. Hardt or J.R. Whitley, Distilled Spirits and Tobacco Branch, (202) 566-7531.

SUPPLEMENTARY INFORMATION: 1. On page 34116 in the right-hand column in line 6 of the 2nd paragraph the word "distillled" should read "distilled".

2. On page 34118 in the middle column of § 170.62(b)(1)(iii) should read "Combined groups as defined in 26 CFR 1.1563-1(a)(4)".

3. On page 34119 in the left hand column in line 10 of § 170.64(a) the word "bonded" should read "bond".

4. On page 34119 in the left hand column in line 6 of § 170.64(c) add the words "of this section" after the words "paragraph (b)".

5. On page 34120 in the middle column in line 5 of § 170.69(a) insert a comma after the word "inventory".

6. On page 34120 in the middle column at the end of the 1st sentence of § 170.69(a), rename the period, and add ", except that the record of disposition supporting the inventory need not include the name of the consignee.".

7. On page 34120 in the right hand column line 23 § 170.69(c) should read "open bottles-_____ proof"."

8. On page 34121 in the left hand column in § 170.70(c)(1), in line 5 the word "dividend" should read "divided".

9. On page 34121 in the left hand column in § 170.70(c)(1), in line 6 the number "10.134.4" should read "10,134.4".

10. On page 34121 in the left hand column in § 170.70(c)(2), in line 3 the number "12.667.97" should read "12,667.97".

11. On page 34121 in the right hand column in § 170.73(a) in line 11 add "of this section" after the words "paragraph (b)"..

12. On page 34121 in the right hand column in § 170.73(b) in line 11 add a comma after the number "1986".

13. On page 34122 in the right hand column under GENERAL, in § 170.80, the section number and title should read:

"§ 170.76 Retention of Records".

14. On page 34123 in the left hand column in line 10 "(26 U.S.C. 6621;" should read "(26 U.S.C. 6621);".

Signed: September 20, 1985.

Stephen E. Higgins,

Director.

[FR Doc. 85-23101 Filed 9-26-85; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[TN-022; A-4-FRL-2903-9]

Standards of Performance for New Stationary Sources, Delegation of Authority to the State of Tennessee

AGENCY: Environmental Protection Agency.

ACTION: Notice of delegation of authority.

SUMMARY: On January 16, 1985, the State of Tennessee requested that EPA delegate authority for implementation and enforcement of one additional category of Standards of Performance for New Stationary Sources (NSPS). Since EPA's review of pertinent State laws and rules and regulations showed them to be adequate for the implementation and enforcement of this Federal standard, the Agency has made the delegation as requested.

EFFECTIVE DATE: The effective date of the delegation of authority is August 14, 1985.

ADDRESSES: Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection at EPA's Region IV office, 345 Courtland Street, NE, Atlanta, Georgia 30365.

All reports required pursuant to the newly delegated standard (listed below) should be submitted to the following address: Air Pollution Control Board, Tennessee Department of Health and Environment, T.E.R.R.A. Building, 150 Ninth Avenue North, Nashville, Tennessee 37219.

FOR FURTHER INFORMATION CONTACT: Kelly McCarty, at the EPA Region IV address listed above, and phone 404/881-3286 or FTS 257-3286.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with sections 101, and 111(c)(1) of the Clean Air Act, authorizes EPA to delegate authority to implement and enforce the standards set out in 40 CFR Part 60, NSPS.

On April 11, 1980, EPA initially delegated the authority for implementation and enforcement of the NSPS program to the State of Tennessee. On January 16, 1985, Tennessee requested a delegation of authority for implementation and enforcement of the NSPS for Subpart VV—Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.

After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriated for these source categories with the conditions set forth in the original delegation letter of April 11, 1980. Tennessee sources subject to the requirements of Subpart VV of 40 CFR Part 60, will now be under the jurisdiction of the State of Tennessee.

The State definition of "existing source" differs considerably from, and could possibly conflict with, EPA's definition. However, the April 11, 1980, letter of delegation, condition 5, requires the State to notify EPA if it determines that the State version of a NSPS does not apply to a source which would be subject to the federal version.

The authority to make equivalency determinations pursuant to 40 CFR 60.484 is not delegated. All requests for equivalency determinations should be forwarded to EPA for action. Any determinations made by the State pursuant to paragraph 1200-3-16.43(3)(a)3. of the Tennessee air pollution control regulations, before EPA makes a decision, or inconsistent with EPA's decision, will not be recognized by EPA.

Dated: September 17, 1985.

John A. Little,

Deputy Regional Administrator.

[FR Doc. 85-23117 Filed 9-26-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 2F2623/R781; PH-FRL 2904-6]

Cypermethrin; Tolerance Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends tolerances for residues of the synthetic pyrethroid insecticide cypermethrin in or on certain raw agricultural commodities. This regulation to extend the maximum permissible level for residues of

cypermethrin in or on these commodities was requested by ICI Americas, Inc.

EFFECTIVE DATE: Effective on September 27, 1985.

ADDRESS: Written objections, identified by the document control number [pp 2F2823/R781], may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

George T. LaRocca, Product Manager (PM) 15, Registration Division (TS–767C), Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, Va 22202, (703–557–2690).

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of February 21, 1985 (50 FR 7172), which announced the Agency decision to extend the tolerances for residues of the insecticide cypermethrin [(±) *alpha*-cyano-(3-phenoxphenyl)methyl(±)*cis,trans*-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate] in or on the raw agricultural commodities cottonseed at 0.5 part per million (ppm); meat, fat, and meat byproducts of cattle, goat, hogs, horses, and sheep at 0.05 ppm; and milk at 0.05 ppm.

There were no comments received in response to the final rule extension.

The Agency published in the **Federal Register** of June 15, 1984 (49 Fr 24864), a notice announcing its decision to establish a tolerance for residues of cypermethrin on cottonseed, meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep; and milk for a period extending to December 31, 1985, to cover residues existing from the conditional registration of cypermethrin. Based on additional information received in response to the June 15, 1984 notice, the Agency extended the conditional registration of cypermethrin to December 1, 1986 (see 50 FR 1112; January 9, 1985). The Agency also extended the tolerances for cypermethrin for the period extending to December 1, 1987, and the tolerance may be made permanent if registration is continued based on information received in 1986. However, ICI Americas, Inc. (ICI), was prohibited from further testing in the State of Maryland. The State of Maryland Department of Agriculture denied ICI's request for further testing of cypermethrin in Maryland until the safe use of cypermethrin can be demonstrated to the satisfaction of the State Secretary of Agriculture. The action by the State of Maryland precipitates the need for initiating a new study (including baseline data), making it impossible to meet the previous deadline of April 1986. In a letter dated June 12, 1985, ICI requested an extension of the subject petition until December 31, 1988, in order to conduct a new field monitoring study. On July 1, 1985, ICI submitted a letter from the State of Alabama authorizing ICI to conduct the study in that State.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerances, as well as the oncogenic risks associated with this use of cypermethrin, are discussed in related documents, published in the **Federal Register** of June 15, 1984 (49 FR 24864) and January 9, 1985 (50 FR 1112).

Based on a 1-year dog feeding study with a no-observed-effect level (NOEL) of 1.0 mg/kg/day [1] and using a safety factor of 100, the acceptable daily intake (ADI) has been calculated to be 0.01 mg/kg/day with a maximum permissible intake (MPI) of 0.6 mg/day for a 60-kg person. The tolerances represent a theoretical maximal residue contribution (TMRC) of 0.0307 mg/day in a 1.5-kg diet and represent 5.12 percent of the MPI.

There are no regulatory actions pending against the registration of cypermethrin. The metabolism of cypermethrin in plants and animals is adequately understood for purposes of the tolerances set forth below. An analytical method using electron capture gas-liquid chromatography is available for enforcement purposes.

Based on the above information, the Agency has determined that extending the tolerances for residues of the pesticide in or on the commodities will protect the public health. Therefore, as set forth below, the tolerances are extended to December 31, 1989, to cover residues existing from this continuing conditional registration of cypermethrin, and the tolerances may be made permanent if registration is continued based on information received in 1988.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: September 17, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for 40 CFR Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

§ 180.418 [Amended]

2. Section 180.418 *Cypermethrin; tolerances for residues* is amended by extending the effective date of December 31, 1987, to December 31, 1989.

[FR Doc. 85–23112 Filed 9–26–85; 8:45 am]

BILLING CODE 6560–50–M

[1] The Agency used the 1-year dog feeding study NOEL to establish the ADI since the dog was the most sensitive species tested, i.e., gave the lowest NOEL.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

Reduction in the Number of Commissioners From Seven to Five and Correcting a Typographical Error

AGENCY: Federal Communications Commission.

ACTION: Correction to final rule.

SUMMARY: This action (Erratum) corrects an error in paragraph 12 and the Appendix section of a Commission Order (FCC 85–256, 50 FR 26566, June 27, 1985) amending Parts 0 and 1 of the Commission's Rules. The Order, released May 31, 1985, amends various sections of the rules to (1) reflect the

reduction of the number of Commissioners; (2) delete references to the Telecommunications Committee and Telegraph and Telephone Committee; and (3) reflect the transfer of the functions of the Office of Opinions and Review to the Office of General Counsel.

This action also corrects an error in the Appendix section of a Commission Order (G–3) amending Part 0 of the Commission's Rules. This Order, released July 5, 1985, 50 FR 27952, July 9, 1985, makes certain editorial amendments which changed the Official title and authority of the Executive Director.

DATES: Effective October 28, 1985.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Steve Kaminer, (202) 632–6990; Donald L. McClure, (202) 254–6530, Office of General Counsel.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Erratum

In the matter of amendments of §§ 0.1, 1.51(a)(3), 1.51(b), and 1.419 of the Commission's rules to reflect the reduction in the number of Commissioners from seven to five and to correct a typographical error; Amendment of §§ 0.91(h) and 0.201(a)(1) to delete references to the Telecommunications Committee and the Telegraph and Telephone Committee; Amendment of §§ 0.5(a)(11), 0.5(b) (2), (5) and 1.1205(b) to reflect the transfer of the questions of the Office of Opinions and Review to the Office of General Counsel and to make conforming changes to these Commission rules.

Released: September 24, 1985.

On May 31, 1985, the Commission released an Order (FCC 85–256) concerning the above-captioned matter. In this connection, paragraph 10 of the Order amended §§ 0.5(a)(11), 0.5(b)(2), 0.5(b)(5) and 1.1205(b). These amended sections reflected the transfer of functions from the Office of Opinions and Review to the Office of General Counsel. However, the amendment of § 0.5(b)(2) resulted in the unnecessary repetition of the phrase "General Counsel." Therefore, paragraph 12 of the Order and the Appendix are corrected to delete, in view of the previous amendment, the phrase "the Office of Opinions and Review."

§ 0.231 [Corrected]

On July 5, 1985, the Commission released an Order (G–3) concerning editorial amendments to Part 0 of the Commission's Rules. This Order, *inter alia*, amended relevant paragraphs of § 0.231. However, the amendment of the section title was neglected. Therefore, the section title of § 0.231 is corrected to insert, in lieu of "Executive Director", "Managing Director."

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–23108 Filed 9–26–85; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 2, 74, 90, and 94

[Gen. Docket No. 84–689; RM–4426; FCC 85–388]

Allocating Spectrum for, and Establishing Other Rules and Policies Pertaining to, a Radiodetermination Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission has allocated spectrum to provide for a new Radiodetermination Satellite Service (RDSS). The service will allow users to accurately determine their position and to relay and receive brief associated alphanumeric messages. This action is in response to favorable public comment on the FCC's Notice of Proposed Rulemaking for this proceeding.

EFFECTIVE DATE: October 31, 1985.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Melvin J. Murray, (202) 653–8168; Lawrence L. Petak, (202) 632–7025.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 2

Frequency allocations.

47 CFR Part 90

Industrial radio service, Land transportation radio service, Public Safety radio service, Radiolocation radio service.

47 CFR Part 94

Radio.

47 CFR Part 74

Communications equipment, Education, Radio, Reporting and recordkeeping requirements, Research, Television.

Report and Order

In the Matter of Amendment of the Commission's Rules to Allocate Spectrum for, and to Establish other Rules and Policies Pertaining to, a Radiodetermination Satellite Service, FCC 85–388, Gen. Docket No. 84–689, RM–4426; In the Matter of Policies and Procedures for the Licensing of Space and Earth Stations in the Radiodetermination Satellite Service, Gen. Docket No. 84–690; In the Matter of the Application of Geostar Corporation For Authority to Construct, Launch and Operate Space Stations in the Radiodetermination Satellite Service File Nos. 2191–DSS–P/L–83, 2192–DSS–P/L–83, 2193–DSS–P/L–83, 2194–DSS–P/L–83; A request to allocate the 1606.8–1613.8 MHz band on a Primary Basis to the Radio Astronomy Service, RM–4839.

Adopted: July 25, 1985.
Released: September 13, 1985.

By the Commission: Commissioners Quello and Rivera dissenting in part and issuing statements.

Introduction

1. This *Report and Order* amends Part 2 of the Commission's Rules to allocate frequencies in the 1610–1626.5 MHz, 2483.5–2500 MHz and 5117–5183 MHz bands for use by a new radiodetermination satellite service (RDSS). Also, certain rule sections in Parts 74, 90, and 94 are amended to indicate the reallocation of the 2483.5–2500 MHz band and to provide "grandfathering" for certain stations in the band. This *Report and Order* addresses issues raised in this proceeding concerning the proposed allocations. Issues concerning technical standards and licensing policies and procedures in Gen. Docket No. 84–690 will be treated in a further proceeding.

Background

2. On July 12, 1984, the Commission adopted a *Notice of Proposed Rulemaking (Notice)* in this proceeding, proposing the allocation of three frequency bands to establish a radiodetermination satellite service.[1] This *Notice* was adopted in response to a petition for rulemaking filed with the Commission by the Geostar Corporation (Geostar) in 1983. The 1610–1626.5 MHz band was to provide for the radiodetermination user uplink to geostationary satellites. A second band, 2483.5–2500 MHz, was proposed to provide for the radiodetermination user downlink. A third band, 5117–5183 MHz,

[1] A combined *Notice of Proposed Rulemaking* in Gen. Docket 84–689 and 84–690, FCC 83–319, 49 FR 36512, was adopted on July 12, 1984. Issues concerning the proposed allocations were assigned to General Docket 84–689; whereas, General Docket 84–690 addressed the matter of policies and procedures for the licensing of space and earth stations in the radiodetermination satellite service.

was to be used as a communications link from each satellite to a central control facility to handle the computational functions for the system. Geostar further requested 16 megahertz of spectrum in the range 6425 to 7075 MHz to provide for an uplink to transmit command and message traffic from the central control facility to each of the geosynchronous satellites within the system. In the *Notice* we suggested the use of the 6525–6541.5 MHz band, which is allocated to fixed and fixed-satellite (earth-to-space) services, for this purpose. Because the uplink operation is allowable, by definition, in this band, no allocation change was proposed.

3. In addition to the allocation issues, we proposed certain entry policies and application processing procedures in General Docket No. 84–690.[2] Concurrent filing dates were established for submitting comments and reply comments in General Docket 84–689 and General Docket 84–690. Also applications from the Geostar Corporation (File Nos. 2191–DSS–P/LA–83, 2192–DSS–P/LA–83, 2193–DSS–P/LA–83, and 2194–DSS–P/LA–83) were accepted for filing.[3] We stated that applications for radiodetermination satellite systems would be processed simultaneously with consideration of the rulemaking issues and a schedule was set for filing other applications to be considered concurrently with Geostar's applications. Inasmuch as the time for filing comments or petitions on Geostar's applications and for submitting other RDSS applications has been extended several times and because we desire to proceed in a timely fashion in this proceeding, we have chosen in this *First Report and Order* to address only those issues related to our specific allocation proposal. Other issues not addressed herein will be treated in a subsequent item.

Public Interest Findings

4. In response to our *Notice* we received many comments from various companies; local, state, and federal government agencies; and individuals that support the adoption of an allocation to provide for the proposed service. It is apparent from these comments that there is an outstanding need for the type of service discussed in the *Notice*. In particular, the proposed RDSS would provide to the end user certain capabilities that are not currently available by means of any other radio service.[4] Accurate positioning information could be attained within a fraction of a second using the type of service that Geostar has proposed. Related alphanumeric messages, as well as the positioning information, could be relayed to any other party or parties via the RDSS satellite system. It appears that this service could provide for a number of innovative applications that heretofore have not been possible. Moreover, we believe RDSS has the potential to assist in the administration and to improve the efficiency of a number of services that affect the general public. In Appendix B, we have summarized some of the various applications indicated for RDSS and have shown how a number of services intend to employ RDSS in their operations.

5. Relatively few comments questioned the public interest benefits offered by RDSS. Principal objection came from those licensees which presently are using the 2483.5–2500 MHz band and would be displaced by the adoption of the proposed rules. These specific concerns are addressed later. Negative comment was filed by the Federal Aviation Administration, which mentioned that the allocation should be postponed until the RDSS "design has matured to the point that its performance implications can be clearly established and spectrum efficiency has been seriously considered." Although we share some of the FAA's concern, we believe the allocation of the spectrum in question is in the public interest and should be made. Specifically, we note that the vast majority of comments support our proposal. Additionally, due to our policy of encouraging multiple entrants the spectrum will be used efficiently and the public will be able to choose among several competitors the system providing the best performance. Finally, the specific bands proposed for allocation to the RDSS provide minimal impact on existing users in the 2483.5–2500 MHz band and are compatible with known future plans for use of the 1.6 and 5 GHz bands.

6. The United States Coast Guard (USCG) also objected to the proposal in that as an aid to navigation RDSS should not be allowed for maritime use. Specifically, the USCG under United States Code (14 U.S.C. 81) has authority to establish aids to navigation. It points out that § 66.01(d) of Part 66 of Title 33, Code of Federal Regulations, provides "with the exception of shore based radar stations, operation of electronic aids to navigation as private aids will not be authorized." Accordingly, it requests that the RDSS be denied as a navigation aid to boats. While we believe RDSS may be used aboard boats for non-navigational purposes, we recognize that a boat owner could decide to use the system for navigation. It the USCG believes this to be of serious concern, it is suggested that appropriate information be provided to the boating public discouraging such use and emphasizing the legal consequences of such use.

7. Other opposing comments came from entities proposing the use of technology different from Geostar's. The Omninet Corporation, while recognizing public need for RDSS, suggests that the proposed allocation be used for voice communication as well as radiodetermination service. It claims that "the public interest is best served by adopting a flexibile regulatory regim that will permit market-place forces to regulate the mix of services to be offere in the RDSS bands." Omninet states tha it intends to file an RDSS application using a design which will employ frequency division multiplexing to establish 5 kHz user-channels and will allocate bandwidth for users on a random access basis as required by traffic demands. Omninet states that it will fully address the comparative benefits of its system design with respect to the Commission's policies of multiple entry and efficient use of scarce spectral resources when it files its application.[5]

8. Another entity filing comments, Transit Communications, Inc. (TCI), states that its system design, entitled "GPS-compatible Mobile Satellite" would more efficiently use the spectrum compared to Geostar. Its system would make use of the federal government's Global Positioning System (GPS) to acquire positioning information which could then be relayed with or without alphanumeric messages via satellite to another party. TCI also intends to file applications in conjunction with this proceeding.[6]

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[2] *Id.*

[3] See *Public Notice*, 49 FR 36155, published September 14, 1984.

[4] The Global Positioning System (also known as Navstar) which is being developed for Federal government use will have provisions for civil access. However, that system would not provide to nongovernment parties the position accuracy or associated message capability envisaged for the private RDSS.

[5] On April 5, 1985, the OMNINET Corporation filed an application with the Commission requesting a license to operate a radiodetermination satellite system.

[6] TCI filed an application on April 30, 1985, with the Commission requesting a license to operate a land mobile satellite system (General Docket No. 84–1234). It did not file an application in the radiodetermination satellite service. (General Docket 84–689 and 84–690).

9. Since we have indicated that we will consider all applications whether or not they are compatible with Geostar's design, we are not going to address herein the particular points raised by Geostar's competitors. All applicants proposing a system design incompatible with Geostar's were required to demonstrate how multiple entry would be accomplished and how their proposed design would better serve the public interest. The procedures developed in the *Notice* and subsequent *Orders* will be followed in the final determination of which applicants will receive authorization to construct, launch, and operate satellites in the radiodetermination satellite service. Accordingly, subsequent documents will discuss and address the issues raised by Omninet and TCI.

10. Under Section 1 of the Communications Act of 1934 the Commission is charged with the responsibility of establishing radio communication services that will promote safety of life and property. We feel that the comments submitted in this docket point to a conclusion that the establishment of a radiodetermination satellite service would be in the public interest. We perceive the primary benefits to the public to be increased safety to human life, reduced transportation and labor costs, and improvements in navigational service. Moreover, it appears there are numerous applications for RDSS, only a few of which have been summarized herein. In summary, we have determined that it is in the public interest to adopt the proposed allocations for the establishment of the radiodetermination satellite service.

Discussion

11. In the paragraphs that follow we address the individual allocations adopted herein and the allocation status of other services affected by this action.

The 1610–1626.6 MHz Band

We are adding a new U.S. footnote, as proposed in the *Notice,* to this band to indicate that the radiodetermination satellite service will be using these frequencies in the Earth-to-space direction. The 1610.6–1613.8 MHz band segment is used by the radio astronomy service, as provided in Footnote 734 to the Table of Frequency Allocations in the international Radio Regulations and our domestic regulations, on a secondary basis for observing the hydroxyl spectral line. Footnote 734 urges that all practicable steps be taken to protect radio astronomy from harmful interference. Recognizing the potential interference threat that RDSS transceivers could cause to the radio astronomy service, in the *Notice* we solicited specific comment on what possibilities there may be for sharing. Apparently in anticipation of this potential problem, the National Academy of Sciences submitted a petition for rulemaking in July 1984, requesting that the Commission upgrade the allocation status of the radio astronomy service in thge 1610.6–1613.8 MHz band from secondary to primary.[7] The comments and reply comments received in response to RM–4839 are summarized in Appendix C.

12. In comments in this proceeding dated November 13, 1984, the National Academy of Sciences (NAS) stated it has met with Geostar to address how both the radio astronomy service and the radiodetermination satellite service would cooperatively share the allocation in the 1610 MHz region. Proposed rules were developed by Geostar and NAS to permit use of the RDSS within regions where radio astronomy observations are made. In brief, RDSS licensees would restrict their transmissions to occur within the first 200 milliseconds following the one second time marks of Coordinated Universal Time when users enter Radio Astronomy Regions during a period of radio astronomy observations in the 1606.8–1613.8 MHz band.[8] Further, NAS and Geostar reached agreement on an emission limitation for out-of-band radiation. NAS wants the limitation applied to terrestrial and airborne vehicles and spacecraft, excluding only pedestrian "hand-held" units. However, Geostar believes the requirement to extend this limitation to ground-based vehicular users adds an additional regulatory burden that would increase transceiver costs and is unnecessary to protect radio astronomy observations.

13. We commend Geostar and NAS for reaching a preliminary agreement concerning a potential conflict on the use of this band. Although the issue concerning whether vehicular users should also be subject to their proposed emission limtiation is still unresolved, we choose not to address this issue now. we believe the agreement reached between Geostar and NAS concerning how to time-share this band can serve as a basis whereby RDSS service can be offered without serious interference problems between the two services. This matter of sharing between the two services will be further addressed when the technical standards and licensing policies and procedures are adopted and RDSS licensees are selected. We intend to incorporate technical standards which will permit the radio astronomy service to continue to make observations.

14. We believe our acknowledgement that certain geographical areas used for radio astronomy observations, designated as "quiet zones," need continued protection from harmful interference fulfills our obligation to take all practicable steps to protect the radio astronomy service in the 1606.8–1613.8 MHz bank. Moreover, we support the preliminary agreement reached by Geostar and NAS as a means whereby radio astronomy may be protected from harmful interference. Accordingly, we believe that elevation of radio astronomy's allocation status to primary is unnecessary. Therefore, we are denying the petition filed by NAS.

The 2483.5–2500 MHz Band

15. As proposed, we are reallocating this band to RDSS to provide for space-to-Earth transmissions.[9] The band will serve to provide a downlink to users from the various geosynchronous satellites involved in the RDSS network. In the *Notice,* we proposed the relocation of all terrestrial fixed and mobile operations in this band.[10] However, we did invite comments on whether some other accommodation might be possible to avoid the proposed relocation. In the event the relocation proposal was adopted, we asked for comments on the amount of time that should be given to existing licensees for relocation and also on the feasibility and desirability of requiring radiodetermination satellite system licensees to compensate terrestrial licensees for the costs for such relocation.

16. Comments objecting to our proposal came from those broadcast and private radio licensees that would be affected. The broadcasters mention that frequency agile equipment that can tune all three channels in the 2450–2500 MHz

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[7] The petition, RM–4839, from the National Academy of Sciences was placed on public notice August 10, 1984, and comments were received from the National Astronomy and Ionosphere Center, the National Science Foundation, National Radio Astronomy Observatory and the Geostar Corporation.

[8] The agreement reached between Geostar and NAS is reproduced in Appendix D.

[9] Use of this band by RDSS is subject to footnote 752 of the international radio regulations, which states that radio services operating within the 2400–2500 MHz band must accept harmful interference which may be caused by industrial, scientific, and medical (ISM) applications.

[10] At the time of the *Notice* there were about 70 mobile and fixed stations used for electronic news-gathering operations (ENG) and for studio-to-transmitter links. Also, there were about 21 private radio licensees operating in this band under Parts 90 and 94.

band is just now coming into the marketplace. (These channels are 2450–2467 MHz; 2467–2484 MHz; and 2484–2500 MHz.) Heretofore, broadcasters primarily have employed equipment that has been able to tune to only the lower seven channels in Band A, i.e., 1990–2110 MHz. However, because of the increased use of these lower channels for ENG, which has resulted in increasing incidences of interference, a number of broadcasters are beginning to acquire equipment that permits use of the upper three channels, i.e., 2450–2500 MHz. Also, in some cases channels 2450–2467 MHz and 2484–2500 MHz are being employed in two-way fixed links to interconnect various broadcast facilities. (Because the three channels are contiguous in frequency, the middle channel 2467–2484 MHz, is generally not used so as to provide greater isolation between the two links.) Further, broadcasters point out that although the three channels are shared with ISM equipment, it is channel, 2484–2500 MHz, that suffers the least interference from these ISM sources. For these reasons, broadcasters are objecting to the proposed reallocation.

17. Several comments in opposition to the proposed reallocation were also submitted from private radio licensees, representing primarily petroleum interests that use the 2483.5–2500 MHz band in their operations. One such licensee, Superior Oil, mentions that these frequencies are used for voice-grade communications and real-time data acquisition in support of drilling operations both on shore and off-shore. It contends that a frequency shift would entail a system redesign which could be quite costly. The API contends that the Commission underestimated the impact to current users in the 2483.5–2500 MHz band by failing to recognize that each authorization may have multiple transmitters in use. As an example, it points out that the Gulf Oil Communications Corp. holds two authorizations in the 2.5 GHz band and uses 22 transmitters in conjunction with these licenses. It also indicates that it could cost up to $1500 per transmitter to modify existing equipment to operate on other frequencies. This cost includes associated administrative, installation and engineering functions. API points out that the reallocation would disrupt the paired frequency channeling plan that now exists under Section 94.65(e). It states that channels in the 2483.5–2500 MHz band are paired with channels in the band 2459.1–2475.1 MHz. Accordingly, it requests that the Commission create a new channeling plan of "mixing" narrow (400 kHz) and wide (800 kHz) channels in the 2450–2483.5 MHz band in the event the 2483.5–2500 MHz band is reallocated. It also believes that Part 94 licensees should be permitted to operate on a secondary basis until such time as harmful interference is caused to the proposed radiodetermination satellite service. In its reply comments, Geostar concurred with API to the extent that non-RDSS use of the 2483.5–2500 MHz band be permitted for an indefinite period on a secondary basis.

18. We acknowledge the operational and economic impact that would result to existing broadcast and private radio licensees if they were to be required to be relocated in frequency as proposed. We believe fixed and temporary fixed operations, by their nature, are unlikely to pose a serious interference threat to RDSS licensees since interference would occur generally when an RDSS user attempts operation within the direct beamwidth of such a station. For this reason, we are grandfathering all fixed and temporary fixed stations in the 2483.5–2500 MHz band on a primary basis to RDSS licensees.[11]

19. In contrast, we believe mobile operations, by their nature, may pose more of a threat to RDSS operations and may create larger zones of interference. However, we desire to take an approach that strikes a balance between the equities of the existing licensees and the needs, as they develop, of the RDSS providers. For this reason, we are grandfathering all existing mobile licensees in the 2483.5–2500 MHz band also on a primary basis with one condition. If interference from these grandfathered mobiles is determined to be unacceptable, we are providing RDSS licensees the option of paying the reasonable and prudent cost of modifying an existing licensee's operation. We believe the primary status afforded both RDSS and mobile licensees in this band provides a firm basis for negotiations among affected parties and we expect a good faith effort by all parties to resolve problems that arise.

20. We are accordingly reallocating the band 2483.5–2500 MHz to the radiodetermination satellite service as proposed with the foregoing provisions for existing licensees. All existing stations licensed as of July 25, 1985, or on a subsequent date as a result of submitting an application for license on or before July 25, 1985, are herein grandfathered and may continue operations, subject only to license renewal, on a primary basis with the RDSS service. Applications for additional terrestrial operations filed after July 25, 1985 will be dismissed as not in compliance with the new allocation for this band.

21. We note that none of the reply comments addressed API's suggestion to rechannelize the 2450–2483.5 MHz band. Equipment manufacturers have indicated that the 24.4 MHz pairing arrangement currently employed could not be reduced appreciably without large increases in equipment costs. Nevertheless, we believe API's suggestion has sufficient merit and we intend to address this issue in a future rulemaking item.

The 5117–5183 MHz Band

22. The 5117–5183 MHz band is herein allocated for use by the RDSS for space-to-Earth transmissions. We proposed the following US footnote to be added to the *Table of Frequency Allocations:*

> The sub-band 5117–5183 MHz is also allocated for space-to-Earth transmissions in the fixed satellite service for use in conjunction with the radiodetermination satellite service operating in the bands 1610–1626.5 MHz and 2483.5–2500 MHz. The total power flux density at the earth's surface shall in no case exceed xx dBW/m² per Hz for all angles of arrival.

23. In our *Notice* we requested recommendations on what level of power flux density should be set to limit harmful emissions to other possible users in the band. Geostar provided the only response. It suggests that RDSS be limited to a power flux density at the earth's surface of 159 −dbW/m² per 4 kHz for all angles of arrival. It claims this limit will provide a more than sufficient level of protection to any future Microwave Landing System (MLS) operations in the 5117–5183 MHz band. We believe this level to be a reasonable limit. We therefore adopt it.

[11] Temporary fixed stations, which are used almost exclusively in support of petroleum operations, are licensed for a general area of operation rather than a specific transmitter site, and normally stay at one location for approximately 6 months to one year. Such stations are distinguished from permanent fixed stations only in that the transmitter is periodically moved to an unspecified location within the licensed area of operation. Otherwise, the operational characteristics and interference potential of temporary fixed stations are similar to those of permanent fixed stations. Few coordination problems are anticipated between permanent fixed stations and the RDSS. However, coordination would be somewhat more difficult for temporary fixed stations since RDSS licensees would not have exact information regarding the location of such temporary systems. Therefore, we are requiring that temporary fixed licensees notify RDSS licensees directly whenever the station is moved to a new location. We believe such an arrangement will allow both temporary and permanent fixed systems to co-exist with the RDSS.

International Coordination

24. In August 1984, the Commission forwarded information on the RDSS system proposed by Geostar to the International Frequency Registration Board (IFBR) of the International Telecommunication Union (ITU). The information was subsequently advanced published in October 1984. Comments from other nations have now been received and copies of each have been sent to the IFBR. We anticipate that the coordination process will commence shortly. Also, the United States plans to seek international recognition of the use of bands adopted herein for RDSS at the 1987 Mobile WARC (World Administrative Radio Conference).[12]

Final Regulatory Flexibility Analysis

25. This proceeding allocates spectrum for the establishment of a new radiodetermination satellite service (RDSS). No comments were received which addressed the Regulatory Flexibility Analysis put forth in the *Notice*. Further, no significant alternatives which would accomplish our stated objective were suggested, nor are we aware of any. The allocations herein adopted are intended to provide for the establishment of the new RDSS service, which promises to meet a significant outstanding public need as evidence in the comments submitted to date in this proceeding.

Paper Work Reduction Act Statement

26. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information, collection, and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase or decrease burden hours imposed on the public.

Ordering Clauses

27. Accordingly, it is ordered, effective October 31, 1985, that Parts 2, 74, 90, and 94 of the Commission's Rules (47 CFR Parts 2, 74, 90, and 94) are amended as set forth in Appendix E attached hereto. The authority for this action is found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

28. It is further ordered that the petition filed by the National Academy of Sciences, RM–4839, is denied.

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[12] For further information refer to the *Second Notice of Inquiry* in Gen. Docket 84–607, FCC 85–210, 50 FR 19803, adopted April 25, 1985.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Parties Filing Comments and/or Reply Comments in Gen. Docket No. 84–689

Aircraft Owners and Pilots Association (AOPA)
Air Line Pilots Association
American Hospital Supply Corporation
American Red Cross
Arnautical, Inc.
Association of American Railroads (AAR)
Association of Maximum Service Telecasters (AMST)
Boise Cascade Corporation
Brookes and Gatehouse, Inc. (B&G)
Cable Airport (CA)
Cadec Systems, Inc. (Cadec)
CBS Inc.
Central Committee and Telecommunications of the American Petroleum Institute (API)
Chicago and North Western Transportation
City of Los Angeles
Communications Satellite Corporation
Contract Freighters, Inc. (CFI)
Cypress College
Dona Ana County Sheriff's Department
Drug Enforcement Administration
Eaton Yachts of Essex, Connecticut
Ellis, Victor R.
Embry—Riddle Aeronautical University
Emerald Communications Company
Emery Air Freight Corporation (Emery)
Federal Aviation Administration (FAA)
Florida Radio-Phone Company
Flying Magazine
General Electric Company
Geostar Corporation
Guilford Transportation Industries, Inc.
Heacock, Lowell E.
Hearst Corporation
IESC Technologies, Inc.
Inglis, Andrew F.
International Association of Natural Resources Pilots
Jack Elliot Associates
J Boats, Inc.
Jobson, Theron S.
Koss, Christopher D.
Lahr, H. Ray
Lawrenz, James R.
Leaseway Transportation
Los Angeles County Fair
Los Angeles, County Department of Communications
L.Y. Ltd.
M/A–Com, Inc.
Marine Navigation, Inc. (MAR NAV)
Michigan Department of Transportation, Traffic and Safety Division
Mobile Data International Inc. (MDI)
Mobile Satellite Corporation
Montana Forest and Conservation Experiment Station (University of Montana)
Mt. San Antonio College
National Academy of Sciences (NAS)
National Association of Broadcasters (NAB)
National Broadcasting Company, Inc.
National Ocean Industries Association (NOIA)
National Ski Patrol System, Inc.
National Telephone Cooperative Association (NTCA)
North American Van Lines, Inc.
Northrup Corporation
Office of the State Engineer of Colorado
Omninet Corporation
Outlet Communications, Inc.
Overland Express, Inc.
Penn Jersey Piper Sales, Inc.
Piper Aircraft Corporation
Radio-Televison News Directors Association
Satellite Financial Systems Corporation
Scripps Howard Broadcasting Company
Seashore Recovery and Salvage
Seatronics, Inc.
Sherk, Jerome
Skylink Corporation
Soaring Society of America, Inc.
Society of Broadcast Engineers (SBE)
Soderlind, Paul A.
SONY
Southeastern Colorado Water Conservancy District
Spacecast Satellite Paging
Sperry Corporation
Stevenson, James F.
Story, Paul G., M.D.P.C.
Superior Oil
Transocean Air Lines, Inc.
Transit Communications, Inc.
United Airlines
United States Bureau of the Census
Untied States Department of Transportation
Utilities Telecommunications Council (UTC)
Valentine, Lee Swenson, M.D.
Vertex, Inc.
Weaver, Russell
Westar Insurance Brokers, Inc.
Western Airlines, Inc.
WPRV–TV
York Center Fire Department

Parties Filing Comments and/or Reply Comments in Petition RM–4839

Geostar Corporation
National Astronomy and Ionosphere Center
National Radio Astronomy Observatory
National Science Foundation

Appendix B

Summary of comments indicating applications for RDSS and how existing services plan to use RDSS in their operations.

1. *Safety of life.* Dr. Lee Valentine, a medical practitioner in the Pittsburgh area, indicates that there could be a 30% to 40% reduction in all deaths related to motor vehicle accidents if helicopters were able to fly victims to hospitals using a navigational aid such as RDSS. He mentions that in the northeast U.S. helicopters transporting patients are useless 50% of the time because instrument control of helicopters is not safe from the hospital to the scene and back. Dr. Valentine states that use of RDSS would allow all-weather, round-the-clock, point-to-point operation of air mobile ambulances. He estimates that several tens of thousands of young lives could annually be saved.

2. Paul G. Story, M.D., a medical practitioner in Montrose, Colorado, indicates that many persons come to the mountains and backcountry areas of Colorado each year for recreation. Consequently, he sees numerous injuries from minor aggravations to major disasters. Some injuries result in permanent damage or death only because of the relative isolation of the injured and time required to notify authorities and bring help. Dr. Story claims that these tragedies could be alleviated if each such person were equipped with a RDSS transceiver that could be used to solicit help and provide precise geographical coordinates to the search-and-rescue team. Dr. Story cites a number of cases where persons have died and have attributed them to not having received medical help shortly after an accident. He feels that the RDSS would be able to save lives and lessen injury in the future.

3. The State of Michigan, Department of Transportation, Traffic and Safety Division, states that the effectiveness of highway accident analysis work and subsequent remedial measures is highly dependent upon accurately locating highway accidents in relation to the roadway geometrics and major features such as intersections, bridges and rail crossings. Presently, many accident scenes are located by the reporting officer's judgment of the distance to the nearest major feature. Some are located by odometer, pacing, or actual direct measurement. However, the State of Michigan asserts that the locating of an accident site to within one to seven meters would be extremely beneficial in highway safety work and that in reducing the time spent locating an accident will, no doubt, result in the saving of a number of lives. Moreover, traffic flow could be restored more quickly, according to the State of Michigan.

4. The Fire Department of York Center, Illinois, states that RDSS would be extremely important in locating firemen who have encountered difficulty in the line of duty. As examples, it mentions such problems experienced during a large apartment-complex fire and in open country assignments.

5. *Law enforcement.* A number of comments pointed out the benefits to be derived from RDSS in the area of law enforcement. The comments maintain that knowing the location of enforcement vehicles and individual officers at all times could contribute to improved management of existing resources. In cases of emergency situations, dispatching could be handled more expediently, as well as more efficiently. Also, an improvement in the safety of individual law enforcement officers who often work alone could be made using RDSS. Further, it is felt that many lives could be saved in cases of assault by being able to respond within a much shorter period of time than is now possible. The Drug Enforcement Agency (DEA) of the U.S. Department of Justice urges the prompt approval of RDSS as the proposed service would have direct application to DEA's law enforcement operations. The proposed RDSS has the potential to significantly enhance the efficiency and effectiveness of DEA operations. In particular, the proposed RDSS can potentially be used in the tracking and location of packages, individuals, vehicles, aircraft, and vessels. Additionally, the navigation, location and safety of DEA ground, sea, and air resources could be improved.

6. *Aviation.* Parties representing aviation interests cite the improvements to safety and operation that implementation of the service would bring. Navigation would be improved where present line-of-sight coverage is not available. This includes such areas as mountainous terrain and offshore oceanic areas. RDSS would be able to provide accurate approach guidance to landing without the need for ground-based equipment at individual runways. Also, the service would likely contribute to a decrease in the probability of mid-air collisions and avoidance of collisions with obstructions to the airspace. Moreover, downed aircraft could be quickly located through use of the service. From an economic view, airlines would be able to further conserve fuel consumption by being able to redirect certain aircraft to fly at those altitudes where the wind velocity more effectively assists the flight or to alternate routes that would be more fuel efficient.

7. *Navigation.* The Northrup Corporation indicates that the proposed RDSS could provide a unique, low cost, space-based navigation system with an accuracy that would substantially improve efficiency and the safety of its company aircraft. The Occidental Petroleum Corporation states that the proposed RDSS would provide navigation and communication services far more accurate and efficient than the existing methods for the operation of its large fleet of company aircraft, land vehicles and marine equipment. It adds that the safety aspects provided by a RDSS are of such inestimable value to life and property so as to be beyond description.

8. *Transportation.* North American Van Lines, Inc. states that it requires a computer-assisted, vehicle-scheduling communications system in which RDSS could assist. It claims that by having the capability to track all of its vehicles throughout the United States it would be provided with the needed information to improve management of its resources. Further, to be able to communicate with a particular vehicle, regardless of its location or status, would contribute to an improvement in efficiency in serving the public.

9. Overload Express, Inc. supports the RDSS proposal indicating that the proposed service would enable it to continuously monitor the locations of all its vehicles and maintain nearly constant communication with each driver. Such a tracking system would significantly reduce the frequency of "empty" or "deadhead" miles (i.e., mileage driven without a load) and would enable the carrier to respond more quickly and efficiently to customer needs.

10. *Railroads.* The Association of American Railroads points out that RDSS could supplement existing rail traffic control systems to provide for enhanced security and efficiency of rail operations. At present there are over 168,000 miles of railroad lines not presently covered by traffic control systems. RDSS offers an effective means to extend traffic control systems so as to assure coverage of all trackage. On single track lines RDSS would offer a service that could improve rail traffic management. In order for two trains on a single tract to pass each other, one of them must move to a siding and wait until the other one arrives at that point. The precision of the RDSS would permit a train's time of arrival at the siding to be calculated precisely, minimizing the delay while one train waits for another. Furthermore, a train could be supplied with information via a RDSS transceiver on the speed it must average in order to arrive at a siding at a given time, and use this information to minimize fuel consumption.

11. *Resource Management.* The Montana Forest and Conservation Experiment Station indicates that the proposed RDSS promises to be a very useful and economical system for the consistent determination of position, communication and data transfer. Its work requires obtaining adequate position determination for data collection points, inventory plots, mapping, development work and other surveys on western forest and range lands. In addition, it states that the increased security that the proposed RDSS holds for field workers and

recreational users of western wildlands is very significant.

12. In its comments the Office of the State Engineer of Colorado points out that the proposed RDSS could provide more effective water resources management. The implementation of a real-time data collection system enhanced with two-way interrogation would be extremely valuable in the areas of dam safety and in flood warning. The radiodetermination capability of the proposed service would assist the Office in defining the location of water resources supplies, storage structures, diversions, wells, and points of water use and consumption.

Appendix C

Summary of comments related to Petition RM–4839, filed by the National Academy of Sciences.

1. On August 10, 1984, a petition filed by the National Academy of Sciences (RM–4839) was placed on public notice. The petition requested the Commission to change the allocation status of the radio astronomy service in the 1606.8–1613.8 MHz band. Radio astronomers observe OH lines in this frequency range from different regions of our galaxy. To protect these observations from wide-spread interference which could be generated from a RDSS system or systems, a change in allocation status was requested from secondary to primary.

2. Supporting comments in response to the petition, RM–4839, were submitted by the National Astronomy Observatory (NRAO), the National Astronomy and Inonsphere Center, and the National Science Foundation (NSF). The NRAO states that the 1612 MHz line is an important frequency for studying the motions of stars. Also, the 1612 MHz observations provide information on the structure and mass of the central region of our galaxy from the mapping of the ordered motion of the red-giant stars. It is from such measurements that radio astronomers hope to detect a black hole at the galaxy's center.

3. The National Astronomy and Ionosphere Center operates the world's largest radio telescope in Puerto Rico. Its equipment provides the highest instantaneous sensitivity anywhere in the world for studies of the hydroxyl (OH) molecule. It requests improved protection from air-borne usage of the 1612 MHz frequency by upgrading the existing allocation from secondary to primary. It claims that the 1612 MHz line is the dominant emission line for maturally occurring masers around infrared stars. Characteristics of these stars cannot be inferred from observations in any other frequency band.

4. NSF states that if the radio astronomy service has a lesser allocation status than other services in the band, then adequate safeguards will not be developed and radio astronomy research will be excluded from the 1612 MHz band. It urges adoption of the petition submitted by CORF.

5. The Geostar Corporation opposed the petition claiming the public interest would best be served if the Commission were to maintain the present primary allocation of the 1610–1626.5 MHz band for aeronautical radio navigation with the proposed U.S. footnote for the radiodetermination service and decline to adopt a primary allocation for a third hydroxyl frequency line. It suggests that the pending rulemaking proceeding regarding the radiodetermination satellite service is the appropriate forum for resolving conflicts between the RDSS service and the radio astronomy service. It accordingly suggests the dismissal of the NAS petition.

5. Geostar indicates that because radio astronomers rely on data summations gained from lengthy observations, it is possible that Geostar pulses, which will arrive at observations within certain knowable intervals, can be factored out with minimal signal loss.

6. In reply comments the National Academy of Sciences reiterates its position that a primary allocation in the 1606.8–1613.8 MHz band is necessary to protect radioastronomy observations of the hydroxyl lines. It indicates it is encouraged by Geostar's attitude of cooperation to protect the radio astronomy service but cannot assume that any agreement reached in bilateral discussions between Geostar and the radio astronomy community can be extended to future applicants to provide RDSS functions in the band 1610–1626.5 MHz.

Subsequent to the comment period on the petition, in a letter received December 19, 1984 enclosing comments filed by Geostar in the radiodetermination satellite service rulemaking, Geostar supported the NAS request so long as a sharing arrangement agreed by Geostar and representatives of the radio astronomy service were implemented in the Commission's Rules.

Appendix D—Agreement Reached Between Geostar and the National Academy of Sciences for Sharing Between the Radiodetermination Satellite Service and the Radio Astronomy Service in the 1606.8–1613.8 MHz Band

Emission Limitations

The mean power density of airborne and spacecraft RDSS emissions at a frequency which is removed from the assigned frequency by more than 50% shall be attenuated below the mean power density at the assigned center frequency as specified in the following equation (attenuation greater than 75 decibels is not required):

$$A = 12 + 0.2(P - 50)$$

where,

A = attenuation (in decibels) below the mean power density level, and

P = percent of assigned bandwidth removed from the carrier frequency

Radio Astronomy Coordination Procedures

All RDSS licensees will automatically restrict user transmissions to occur only within the first 200 milliseconds following the one second time marks of Coordinated Universal Time when users enter Radio Astronomy Regions (RARs) during a period of radio astronomy observations in the 1606.8–1613.8 MHz band. RARs are defined by a circle with a radius of 150 kilometers from the coordinates provided below for airborne transmissions, and by a circle with a radius of 25 kilometers from the coordinates provided below for ground-based transmissions. Any segment of a RAR which is part of a Standard Consolidated Statistical Area is not subject to coordination and transmission restriction limitations.

RDSS licensees will establish an observation notification procedure through the Electromagnetic Spectrum Management Unit, National Science Foundation, Washington, DC 20550, that satisfactorily provides for the restriction of user transmissions as described above during periods of radio astronomy observations in the frequency band 1606.8–1613.8 MHz.

RDSS licensees shall reimburse radio observatories for the cost of any special equipment or services required by their observation notification procedure.

Radio Astronomy Sites

The following radio astronomy sites are the centers of RARs as described above:

Name	Latitude	Longitude
Hat Creek, California	40°49' N.	121°28' W
Owens Valley, California	37°13' N.	118°17' W
VLA, New Mexico	34°04' N.	107°37' W
Fort Davis, Texas	30°38' N.	103°56' W
Green Bank, West Virginia	38°26' N.	79°49' W
Arecibo, Puerto Rico	18°21' N.	66°45' W

Appendix E

Parts 2, 74, 90 and 94 of Chapter I of Title 47 of the Code of Federal Regulations are proposed to be amended as follows:

The authority citations in Parts 2, 74, 90 and 94 continues to read:

Authority: Sec. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

§ 2.106 Table of frequency allocations. [Amended]

1. In § 2.106, columns 4 and 5 of the allocation table for the band 1610–1626.5 MHz are amended by adding a new footnote US 306 as follows:

UNITED STATES TABLE

Government allocation (MHz)	Non-Government allocation (MHz)
(4)	(5)
1610–1626.5 AERONAUTICAL RADIO-NAVIGATION 722 732 733 734 US39 US40 US206 US260 US306	1610–1626.5 AERONAUTICAL RADIO-NAVIGATION 722 732 733 734 US39 US40 US206 US260 US306

* * * * *

United States Footnotes

* * * * *

US306 The band 1610–1626.5 MHz is also allocated for use by the radiodetermination satellite service in the Earth-to-space direction.

2. In § 2.106, columns 5 and 6 are amended by deleting auxiliary broadcasting, private operational-fixed microwave and private land mobile from the 2483.5–2500 MHz band. A new footnote NG147 is added to provide for the grandfathering of existing auxiliary broadcasting, private operational-fixed and private land mobile stations in the 2483.5–2500 MHz band. Further, the radiodetermination satellite service is added to the 2483.5–2500 MHz band on a primary basis as follows:

UNITED STATES TABLE

Government	Non-Government	FCC use designators	
Allocation (MHz)	Allocation (MHz)	Rule part(s)	Special-use frequencies
(4)	(5)	(6)	(7)
2450–2483.5	2450–2483.5 FIXED MOBILE Radiolocation	AUXILIARY BROADCASTING (74) PRIVATE OPERATIONAL-FIXED (94)	2450 ±50 MHz industrial scientific and medical frequency
752 US41	752 US41	PRIVATE LAND MOBILE (90)	
2483.5–2500	2483.5–2500 RADIODETERMINATION SATELLITE (space-to-Earth)		
752 US41	752 US41 NG147		

* * * * *

NG Footnotes

* * * * *

NG147 Stations in the broadcast auxiliary service and private radio services licensed as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, may continue to operate on a primary basis with the radiodetermination satellite service.

3. In § 2.106 columns 4 and 5 are amended for the band 5000–5250 MHz by adding a new footnote US307 as follows:

UNITED STATES TABLE

Government	Non-Government	FCC use designators	
Allocation (MHz)	Allocation (MHz)	Rule part(s)	Special-use frequencies
(4)	(5)	(6)	(7)
5000–5250 AERONAUTICAL RADIO-NAVIGATION 733 796 797 US211 US260 US307	5000–5250 AERONAUTICAL RADIO-NAVIGATION 733 796 797 US211 US260 US307	AVIATION (87)	

* * * * *

United States Footnotes

* * * * *

US307 The sub-band 5117–5183 MHz is also allocated for space-to-Earth transmissions in the fixed satellite service for use in conjunction with the radiodetermination satellite service operating in the bands 1610–1626.5 MHz and 2483.5–2500 MHz. The total power flux density at the Earth's surface shall in no case exceed −159 dBW/m² per 4 kHz for all angles of arrival.

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST, AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. In § 74.602 the table of channel frequencies following paragraph (a) is amended by deleting the last frequency range, 2483–2500, in the first column labeled Band A MHz. Also, the ninth frequency range, 2467–2484, in the first column is amended by revising it to read as follows: 2467–2483.5.

2. Section 74.602(a)(2) is amended by adding a new footnote NG147 to read as follows:

§ 74.602 Frequency assignment.

(a) * * *

(1) * * *

(2) The following notes to the Table of Frequency Allocations contained in § 2.106 apply to the shared use of the frequency bands shown above.

NG 123 * * *

NG147 Stations in the broadcast auxiliary service and private radio services licensed as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, may continue to operate on a primary basis to the radiodetermination satellite service.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. Section 90.17(c) is amended by revising paragraph (18) to read as follows:

§ 90.17 Local Government Radio Service.

* * * * *

(c) * * *

(18) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5–2500 MHz band, no applications for new stations or modification to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the Radiodetermination Satellite Service.

2. Section 90.19(e) is amended by revising paragraph (25) to read as follows:

§ 90.19 Police Radio Service.

* * * * *

(e) * * *

(25) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5–2500 MHz band, no applications for new stations or modification to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the Radiodetermination Satellite Service.

3. Section 90.21(c) is amended by revising paragraph (13) to read as follows:

§ 90.21 Fire Radio Service.

* * * * *

(c) * * *

(13) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5–2500 MHz band, no applications for new stations or modification to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the Radiodetermination Satellite Service.

4. Section 90.23(c) is amended by revising paragraph (13) to read as follows:

§ 90.23 Highway Maintenance Radio Service.

* * * * *

(c) * * *

(13) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5–2500 MHz band, no applications for new or modification to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the Radiodetermination Satellite Service.

5. Section 90.53(b) is amended by revising paragraph (24) to read as follows:

§ 90.53 Frequencies available.

* * * * *

(b) * * *

(24) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5–2500 MHz band, no applications for new or modification to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the Radiodetermination Satellite Service.

6. Section 90.63(d) is amended by revising paragraph (19) to read as follows:

§ 90.63 Power Radio Service.

* * * * *

(d) * * *

(19) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5–250 MHz band, no applications for new or modification to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the Radiodetermination Satellite Service.

7. Section 90.65(c) is amended by revising paragraph (32) to read as follows:

§ 90.65 Petroleum Radio Service.

* * * * *

(c) * * *

(32) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5–2500 MHz band, no applications for new or modification to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the Radiodetermination Satellite Service.

8. Section 90.67(c) is amended by revising paragraph (22) to read as follows:

§ 90.67 Forest Products Radio Service.

* * * * *

(c) * * *

(22) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5–2500 MHz band, no applications for new or modification to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the Radiodetermination Satellite Service.

9. Section 90.69(c) is amended by revising paragraph (8) to read as follows:

§ 90.69 Motion Picture Radio Service.

* * * * *

(c) * * *

(8) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5–2500 MHz band, no applications for new or modification to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the Radiodetermination Satellite Service.

10. Section 90.71(c) is amended by revising paragraph (6) to read as follows:

§ 90.71 Relay Press Radio Service.

* * * * *

(c) * * *

(6) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5–2500 MHz band, no applications for new or modification to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a

result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the Radiodetermination Satellite Service.

11. Section 90.73(d) is amended by revising paragraph (23) to read as follows:

§ 90.73 Special Industrial Radio Service.

* * * * *

(d) * * *

(23) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5–2500 MHz band, no applications for new or modification to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the Radiodetermination Satellite Service.

12. Section 90.79(d) is amended by revising paragraph (17) to read as follows:

§ 90.79 Manufacturers Radio Service.

* * * * *

(d) * * *

(17) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5–2500 MHz band, no applications for new or modification to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the Radiodetermination Satellite Service.

13. Section 90.81(d) is amended by revising paragraph (9) to read as follows:

§ 90.81 Telephone Maintenance Radio Service.

* * * * *

(d) * * *

(9) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5–2500 MHz band, no applications for new or modification to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the Radiodetermination Satellite Service.

14. Section 90.89(c) is amended by revising paragraph (15) to read as follows:

§ 90.89 Motor Carrier Radio Service.

* * * * *

(c) * * *

(15) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5–2500 MHz band, no applications for new or modification to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the Radiodetermination Satellite Service.

15. Section 90.91(c) is amended by revising paragraph (16) to read as follows:

§ 90.91 Railroad Radio Service.

* * * * *

(c) * * *

(16) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5–2500 MHz band, no applications for new or modification to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the Radiodetermination Satellite Service.

16. Section 90.93(c) is amended by revising paragraph (8) to read as follows:

§ 90.93 Taxicab Radio Service.

* * * * *

(c) * * *

(8) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5–2500 MHz band, no applications for new or modification to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the Radiodetermination Satellite Service.

17. Section 90.95(d) is amended by revising paragraph (13) to read as follows:

§ 90.95 Automobile Emergency Radio Service.

* * * * *

(d) * * *

(13) Available only on a shared basis with stations in other services, and subject to no protection from interference due to the operation of industrial, scientific, or medical (ISM) devices. In the 2483.5–2500 MHz band, no applications for new or modification to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the Radiodetermination Satellite Service.

18. Section 90.103(c) is amended by revising paragraph (9) to read as follows:

§ 90.103 Radiolocation Service.

* * * * *

(c) * * *

(9) This band is allocated to the radiolocation service on a secondary basis to other fixed or mobile services and most accept any harmful interference that may be experienced from such services or from the industrial, scientific, and medical (ISM) equipment. Operating in accordance with Part 18 of this chapter. In the 2483.5–2500 MHz band, no applications for new or modification to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the Radiodetermination Satellite Service.

PART 94—PRIVATE OPERATIONAL—FIXED MICROWAVE SERVICE

1. Section 94.61(b) is amended by revising limitation (4) to read as follows:

§ 94.61 Applicability.

* * * * *

(b) * * *

(4) Frequencies in this band are shared with mobile and radiolocation stations in other services, and must accept harmful interference that may be experienced from operations of industrial, scientific, or medical (ISM) equipment operating on 2450 MHz. In the 2483.5–2500 MHz band, no applications for new stations or modifications to existing stations to increase the number of transmitters will be accepted. Existing licensees as of July 25, 1985, or on a subsequent date following as a result of submitting an application for license on or before July 25, 1985, are grandfathered and their operation is co-primary with the radiodetermination Satellite Service. However, all grandfathered temporary fixed licensees are required to notify directly each Radiodetermination Satellite Service licensee concerning present and proposed locations of operation.

Statement of Commissioner James H. Quello Dissenting in Part

Re: Amendment of the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to, a Radiodetermination Satellite Service (RDSS) (General Docket No. 84–689).

I strongly support the establishment of a radiodetermination satellite service. A review of the comments reveals the potential array of public interest benefits offered by this service, such as safety to human life, reduced transportation and labor costs, and improvements in navigational services. Further, RDSS provides to the end user certain capabilities that currently are not available by any other means. For these reasons, I agree with the necessity to establish RDSS.

The Report and Order, however, also grandfathers all existing mobile licensees in the 2483.5–2500 MHz band on a co-primary basis with RDSS licensees and provides that RDSS licensees have the option of paying the "reasonable and prudent cost of modifying an existing licensee's operation" if interference from these mobile operations is unacceptable. I dissent to these provisions.

I object first to the concept of co-primary status. The Report and Order clearly establishes the public interest served by RDSS. If the needs met by RDSS are this great, then RDSS should be granted primary status and all other licensees should be given secondary status. Further, we are establishing a dangerous precedent by having the new user of the spectrum pay to relocate existing licensees. As the demand for spectrum increases and new services are developed warranting the reallocation of spectrum, the Commission may find itself increasingly burdened with resolving disputes associated with allocating the costs of relocation. Further, in some cases the delivery of new services that would fulfill public needs may be thwarted due to the costs associated with relocating existing licensees. Accordingly, I am dissenting in part to this Report and Order.

Statement of Commissioner Henry M. Rivera Dissenting in Part

Re: Report and Order to Allocate Spectrum for a New Radiodetermination Satellite Service (RDSS).

This *Report and Order* allocating spectrum for a new Radiodetermination Satellite Service (RDSS) contains a novel, innovative, but also illegal and undesirable approach to the spectrum allocations process. After reaching the conclusion that RDSS is in the public interest, the majority concludes that existing private radio and broadcast mobile licensees in the reallocated band need not move until the cost of modifying or replacing their current equipment is paid for by future RDSS licensees. This procedure establishes a far-reaching precedent which will change the fundamental nature of the Commission's spectrum allocation process without the benefit of a public review or record on the desirability of the administrative ramifications of the change.

The majority's action has some intuitive appeal. However, this pay-to-play spectrum acquisition mechanism contravenes language in Sections 301 and 304 of the Communications Act, frustrating the congressional determination that the spectrum belongs to the government and that a licensee's right to use the spectrum is limited to the specified term of the license. Furthermore, I fear that the result the majority reaches establishes a policy that will be harmful to future spectrum allocation, because it will mire the Commission in an insoluable tar-pit of factual disputes by existing spectrum users resisting spectrum reallocation.

I agree with the majority that the reallocation of spectrum to permit the creation of the RDSS is in the public interest. I also agree that to implement this public interest determination it is appropriate for the Commission to modify the licenses of existing users in the subject bands, specifying that their future use of the band will be secondary and that, as secondary users, they must terminate operation if their continued use of the band harmful interference to RDSS.

I part company with the majority, however, on the question of how this decision should be implemented. The majority proposes to allow existing users of these bands to remain "co-equal primary" until such time as the RDSS licensees reach agreements with the existing users about paying the cost of modifying or replacing their current equipment to permit the existing licenses to operate in other bands. As the majority sees it, RDSS providers should be willing to make these payments if RDSS use of the spectrum is more valuable than that of existing licenses. The requirement that the newcomers pay the cost of displacing these current users will, therefore, validate the majority's assumption that the proposed use is superior to the existing use. If the Commission's determination that the RDSS is the most desirable use is wrong, the RDSS providers will not be willing to make the payments necessary to clear the band.

The majority's cost-benefit equation omits one critical paramenter. Nowhere in its algorithm is there a term for factoring in the *public* interest. In fact, the algorithm specified in the Communications Act provides that the public interest be the dominant term in making such calculations. As Congress envisioned it, when the *public* interest weights in favor of the spectrum being put to a particular use, *private* considerations are subordinate factors which cannot determine the outcome of the Commission's deliberations.[1] Therefore, as attractive as the principal of reimbursing displaced licensees may be, I cannot acquiesce in the majority's decision absent amendment of the Communications Act.

In drafting the Communications Act, Congress took care, in several places, to insure that a grant of a license in and of itself did not entitle the licensee to any right beyond Section 316 hearing rights.[2]

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[1] These subordinate factors have been held to require careful consideration by the Commission in the form of a hearing right pursuant to Section 316 of the Act or our careful documentation of their scope in the course of notice and comment rulemaking. *See e.g., Carroll Broadcasting* v. *FCC*, 258 F.2d 440 (D.C. Cir. 1958). These *private* considerations have also been the basis of a Commission decision to delay implementation of a spectrum reallocation to a new service until the Commission has taken action to accommodate the displaced pre-existing users. *See e.g., DBS Report and Order*, 90 FCC 2d 676 (1982).

[2] The first section of Title III, governing regulation of radio communications, specifies that: It is the purpose of this Act * * * to provide for the use of [channels of radio communications], but not the ownership thereof, by persons with limited periods of time, . . . and no such license shall be construed to create any right, beyound the terms, conditions, and periods of that license.

The statute's drafters sought to insure that future licensees would be aware of the limited na'ure of their right by requiring applicants to sign an explicit waiver to rights beyond the term of their licneses.[3] Section 309, governing the process of applying for use of the spectrum, reinforces these limitations on licensees' rights.[4]

These statutory limitations embody a plain congressional intent. Congress intended to preserve control over use of the spectrum, to ensure that ownership of the spectrum remained with the government and not licensees, and to perserve for the Commission the freedom to terminate the use of the spectrum by certain licensees in order to permit its reassignment to higher public interest uses.

In the past, compensation has been required in three instances. However, each of those instances is distinguishable from the precedent established by today's action. First, in our Direct Broadcast Satellite (DBS) decision, we decided to let new licensees gain access to the spectrum prior to the expiration of a five year transition period if they paid the cost of relocating the existing licensees.[5] The second instance in which the Commission has authorized relocation cost involved Broadcast Corporation of Georgia (WVEU–TV).[6] The third case in which the Commission authorized payment involved a situation where the requested assignment of a particular channel required a change of frequency by an existing station in the same service.[7]

While the equitable considerations involved in these prior Commission actions involving compensation may be similar to the case at hand,[8] the policy considerations are dramatically different. First, in the *Channel 69* case the Commission was not making a choice between private land mobile and broadcast utilization of the same spectrum. The television station was authorized on UHF channel 69 while the land mobile stations were authorized on an adjacent band of spectrum. Both services utilized their respective channels extensively throughout the country. The Commission failed to foresee the destructive interference that would take place if both users located their transmitters within close physical proxy. This problem arose after the fact and did not preclude effectuation of the Commission's spectrum allocation decision generally. The significance of the co-primary status in the *Channel 69* case is that the Commission's public interest determination was that *both* uses of the spectrum were in the public interest—now and in the future. In the RDSS reallocation proceeding before us today, we are concluding that the RDSS use of the spectrum is a superior public interest use, warranting a clearing of the band for RRDS.

The case law interpreting the Commission's obligations to protect the rights of existing licensees is sparse. Early cases seem to establish the principle that the ethers remain the government's property and a licensee's use of it is subject to modification without compensation as the public interest demands.[9] As indicated in footnote 1, some cases have recognized a Commission responsibility to consider the economic impact of its actions on existing licensees.[10] These uncertain or

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[3] Section 304 of the Act specifies: No station license shall be granted by the Commission until the applicant therefore shall have signed a waiver of any claim to use of any particular frequency or of the electromagnetic spectrum as against the regulatory powers of the United States because of previous use of the same, whether by license or otherwise.

[4] Section 309 specifies that: Such station licenses as the Commission may grant shall be in such general form as it may prescribe, but each license shall contain, in addition to other provisions, a statement of the following conditions to which such licensee shall be subject: (1) The station license shall not vest in a licensee any right to operate the station nor any right in the use of the frequencies designated in the license beyond the term thereof nor in any other manner than authorized therein; . . . .

[5] In the Commission's DBS proceeding, spectrum was reallocated from terrestrial microwave users to the new DBS service. *DBS Report and Order*, 90 FCC 2d 676 (1982). The existing terrestrial licensees were given a five year period to vacate the band after which their primary status would be reduced to secondary and they would be required to protect the DBS service. In response to concerns that early DBS entrants might need the spectrum prior to completion of the five year transitional period, the Commission concluded that DBS licensees "would have a strong incentive to compensate the FS users for the costs of moving to other frequency bands during this period." The distinction between that decision and the decision here is important. After the transition period the new user gained access to the spectrum regardless of the new user's ability or willingness to pay to relocate existing users. This mechanism was intended to act as an incentive to encourage early movement out of the band by the existing users. *DBS Report and Order*, 90 FCC 2d 676 at paragraph 67, note 60.

[6] *Memorandum Opinion and Order, Mar. 8, 1984.* In this case, a construction permit was issued for Channel 69, Atlanta, Georgia (Channel 69). The CP holder specified a tower site heavily used by land mobile radio service licensees operating on UHF channel 70. When the Channel 69 transmitter was activited for program test, extensive interference was experienced by the Channel 70 land mobile radio licensees. The Commission concluded that the most efficient alternative was to require the land mobile licensees to re-channelize with greater frequency separation from Channel 69. Upon comparing the equities of a later coming spectrum user causing destructive interference to existing spectrum users, the Commission concluded that fairness dictated that the Channel 69 permittee bear the cost of relocating the existing Channel 70 land mobile licensees.

[7] *Jahnke* v. *FCC*, D.C. Circuit No. 80–2448 (March 16, 1982). In this case an applicant for a new FM broadcast radio station negotiated an agreement with an existing FM station licensee which called for a channel change by the existing station at the applicant's expense to resolve a technical incompatability. The Commission then granted the requested application subject to this reimbursement agreement. The applicant subsequently filed a request for extension of the construction permit. The Commission agreed to grant the six-month extension, provided that within 30 days the applicant made definite arrangements to pay the agreed to rechannelization expense. When the applicant failed to do so, the extention was denied. On appeal challenging this denial, the Court concluded that the Commission had the authority to impose such a condition on the construction permit. In so concluding, the Court ruled that:

"Although the scope of the Commission's authority is limited to actions in the public, not private, interest, it is established that private losses to existing stations occasioned by licensing new stations may have an adverse effect on the provision of broadcast service to the public. (Citations omitted.) While it is true that the Commission lacks authority to create or enforce any legal obligation to [the applicant] to reimburse [the licensee], the Commission does have the power to determine the issuance of a license or permit to [the applicant] without his having reimburse [the licensee] would adversely effect the public interest. *See Regents of University System* v. *Carroll*, 338 U.S. 586, 596–97 and note. 12 (1950)." *Jahkne* v. *FCC, Judgment*, D.C. Cir. No. 80–2448 (March 16, 1982), slip opinion at 3.

This case is inapplicable to the situation at hand for two reasons. First, the Commission was allocating cost between two co-equal primary users, both of whose continued existence in this band the Commission determined was in the public interest. The Commission was not conditioning the initiation of a primary use found to be in the public interest on payment to secondary users whose continued use of the spectrum the Commission no longer believed was warranted. Second, as in the DBS case, the licensee here voluntarily undertook reimbursement of the existing licensee, but was not required to do so in order to use the spectrum.

[8] Commission enforcement of obligations voluntarily undertaken by applicants or the adjudication of the conflicting interest among adjacent channel co-primary users raises wholly different rights or equities than are raised by the displacement of licensees by higher public interest users in spectrum reallocation proceedings. I reiterate, we do not have such a situation here.

[9] "We are well satisfied that there is a vital difference between the rights of one whose property (in coal land such as was considered in *Pennsylvania Coal Company* v. *Mahone*, 360 U.S. 393, 43 S.Ct. 158, 67 L.Ed. 322) is confiscated by judicial decree and the rights of one to use the air, which right is dependent upon a government permit limited both in extent and time. The former is vested. The latter is permissive. *American Bond and Mortgage Co. et al.* v. *United States*, 52 F.2d 318, 320 (1932).

[10] *See e.g., Carroll Broadcasting* v. *FCC*, F.2d 440 (D.C. Cir. 1958); *FCC* v. *Sanders Brothers Radio Station*, 309 U.S. 470 (1940); *FCC* v. *National Citizens Committee for Broadcasting*, 436 U.S. 775, 805 note 24 (1978). These cases have consistently

Continued

inapplicable judicial pronouncements must be weighed against specific obligations placed upon the Commission by the Communications Act.[11] Nowhere does that Act authorize the Commission to delegate its spectrum allocation responsibilities to the private sector via auction, displacement payment or any other mechanism.[12] In those recent instances where the Commission has concluded that private or marketplace determination of the best use of the spectrum was preferable to the Commission's spectrum allocation process, the Commission has concluded that amendment of the Communications Act is necessary.[13]

The practical effect of today's decision will be to modify the public interest determination made by the Commission with a marketplace determination made by RDSS licensees. These private party interests will determine to what use this spectrum is finally put.[14]

In addition to my concern over the legality of the majority's actions, I am deeply concerned over the policy ramifications of the precedent we are establishing. As the numbers of spectrum users and the number of instances in which the Commission must displace or repack existing licensees in order to make room for new uses increases, the Commission will be confronted increasingly with situations in which the allocation of displacement costs on the new user may prevent initiation of the new use.[15]

While administrative considerations should not be a significant component of our public interest calculus, the administrative ramifications of the precedent set today provides another basis for concluding that this decision is flawed. In a relatively simple conflict between 41 land mobile radio licensees and UHF Channel 69, Atlanta, the Commission consumed an enormous amount of administrative time and energy determining what constituted reasonable costs for relocation of the land mobile licensees. The Commission also experienced extreme difficulty determining what amount of degradation was sufficient to justify a particular land mobile licensee demanding reimbursement for the cost of relocation. If this Commission was stymied by the 42 parties involved in the Channel 69 dispute, the number of parties involved in a nationwide band reallocation or channel splitting has the potential for creating a factual dispute so great that disposition will become impossible.

Even in the instant case, the majority has far from resolved the outstanding cost issues. Because it acts without the benefit of rulemaking on the question of this new payment process, the majority has no basis for concluding which RDSS applicants should bear the cost for relocating which licensees currently in their band. Should the first licensee or all the RDSS applicants share the cost? If the four RDSS applicants currently pending pay to clear the band, should later filed applicants make payments to the early entrants for their investment? Will the Commission place an assessment against each applicant to cover the relocation cost or must the applicants negotiate a private arrangement to divide the cost involved? Will the Commission adjudicate disputes over the actual cost of relocation or must the parties seek local judicial determinations? If a displaced licensee has a choice between moving into a more crowded band at somewhat less cost or a less crowded band at a higher cost, who will decide to which band the displaced licensee should relocate? Does degradation of service justify a payment? How much degradation will serve as the trigger? Conversely, how much degradation must be tolerated by existing licensees before relocation payment rights are triggered?

Under this decision, the Commission will be required to answer these questions. It is unfortunate that we will be attempting to resolve these questions for this group of applicants without the benefit of public notice and comment. It is even more unfortunate for members of the public that the majority is establishing this precedent without careful consideration of how this decision should be applied in foreseeable upcoming reallocation decisions.

While moving toward a market-oriented spectrum allocation mechanism may be consistent with the marketplace regulatory philosophy, it is inconsistent with the Commission's statutory mandate. The Commission must seek congressional revision of its organic statute before continuing down this path, it should also conduct a comprehensive public proceeding to systematically develop the new administrative machinery necessary to make such a marketplace-based system work. The failure to do so, here, is therefore, both illegal and undesirable. Accordingly, to this part of this *Report and Order*, I dissent.

[FR Doc. 85-22585 Filed 9-26-85; 8:45 am]

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required only that the Commission consider those economic impacts in the hearing prior to granting a license or as part of the rulemaking record prior to amending the rules. None of these cases required the Commission to compensate displaced licensee or arrange payment of such compensation.

[11] The Commission is assigned responsibility for allocating the spectrum; to wit:

Sec. 303.* * * The Commission from time to time, as the public convenience, interest or necessity require shall—

* * * * *

(c) Assign bands of frequency to the various classes of stations, and assign frequencies for each individual station and determine the power which each station shall use in the time during which it may operate; * * *

(f) Make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations and to carry out the provisions of this Act: *provided, however,* that changes in frequencies, authorized power, or in the times of operation of any station, shall not be made without consent of the station licensee unless, after a public hearing, the Commission shall determine that such changes will promote public convenience or interest or will serve public necessity, or the provisions of this Act will be more fully complied with; * *

[12] *Western Air Lines, Inc.* v. *Civil Aeronautics Board,* 194 F.2d 211, 214 (9th Cir. 1952); *Shreveport Engraving Co.,* v. *U.S.,* 143 F.2d 222 (5th Cir.), *cert. denied,* 323 U.S. 749 (1944).

[13] Cf. Letter of May 1, 1985 to Honorable John C. Danforth, Chairman Senate Committee on Commerce from FCC Chairman Mark S. Fowler and attached "Auction Licensing Act of 1985." *Communications Daily* (May 2, 1985)

[14] If RDSS licensees determine that payment of the pre-existing private land mobile and broadcast users is sufficiently in their economic interest, they will pay the cost of relocating these pre-existing licensees in order to clear the band the Commission now allocates for their primary use. If the RDSS licensees conclude that, given the cost of clearing the band, initiation of the service is no longer in their economic interest, the pre-existing licensees will not be paid and will continue to make use of the band for purposes for which the Commission has determined the band should no longer be used.

[15] This may arise, for example, in the proceeding where the Commission proposes to reallocate spectrum currently occupied by television broadcast licensees or common carrier mobile radio service providers to the private land mobile radio services for the purpose of satisfying the need for public safety communications. *See* Private Radio Bureau Staff *Report on Future Public Safety Telecommunications Requirements, Order* in PR Docket No. 84-232, FCC 85-329 (August 1, 1985). The precedent established today would require the public safety licensees to pay the pre-existing users of the broadcast spectrum for the displacement or diminution of their use of the spectrum. A close analogy will arise in the future if the Commission decides to split existing channels to accommodate heavier use of existing bands that have become overcrowded. The new user accommodated by this channel splitting could, consistent with today's decision, be required to pay the cost of re-channelizing the existing licensee's equipment.

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47 CFR Part 76

Oversight of the Radio and TV Broadcast Rules; Correction

AGENCY: The Federal Communications Commission.

ACTION: Correction to Final Rule.

SUMMARY: In the Order, Oversight of the Radio and TV Broadcast Rules, Mimeo No. 7001, published in the **Federal Register** on September 23, 1985 at 50 FR 38529, there is an error in the Alphabetical Index for Part 76 which omits the listing "Must carry requirements". It is changed to add the omitted listing.

ADDRESS: Federal Communications Commission, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Steve Crane, Mass Media Bureau, (202) 632–5414.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 76

Cable television service.

Erratum

In the matter of Oversight of the Radio and TV Broadcast Rules.

Released: September 24, 1985.

In the above captioned *Order*, (Mimeo No. 7001) released September 18, 1985 and published in the **Federal Register** on September 23, 1985 at 50 FR 38529, the Alphabetical Index to Part 76 (47 CFR Part 76) omitted the listing of the Must Carry requirement.

It is added herein to follow the listing, Monitoring, CATV system, and will read as follows:

Must carry requirements	76.7, 76.55, 76.57, 76.59, 76.61, 76.64

Federal Communications Commission.

William J. Tricario,

Secretary.

[FR Doc. 85–23110 Filed 9–26–85; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–09; Notice 19]

Federal Motor Vehicle Safety Standards; Child Restraint Systems; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Correction of final rule.

SUMMARY: NHTSA published a notice in the **Federal Register** on April 17, 1985, which added a new Figure 6 to Standard No. 213, *Child Restraint Systems*. Subsequently, the agency published a notice in the August 21, 1985 edition of the **Federal Register**, which added two new figures at the end of Standard No. 213. These two new figures were erroneously designated Figures 6 and 7. This notice corrects that error by designating the figures added in the August 21, 1985 rule as Figures 7 and 8. No new obligations or requirements are imposed on any party as a result of this correction.

EFFECTIVE DATE: February 18, 1986.

FOR FURTHER INFORMATION CONTACT: Stephen Kratzke, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590 (202–426–2992).

SUPPLEMENTARY INFORMATION: This agency published a final rule amending the inversion test in Standard No. 213, *Child Restraint Systems* (49 CFR 571.213) at 50 FR 15154, April 17, 1985. Among other things, that rule added a new Figure 6 at the end of Standard No. 213. Subsequently, the agency published a final rule amending the requirements of Standard No. 213 applicable to the buckles used in child restraint systems (50 FR 33722, August 21, 1985). That rule added two new figures at the end of Standard No. 213, erroneously designating them as Figures 6 and 7.

This oversight in the August 21 final rule gives rise to a situation where the next edition of the Code of Federal Regulations would show two Figure 6's at the end of Standard No. 213. Additionally, it would be unclear to which Figure 6 the text of Standard No. 213 was referring. To avoid such confusion, this notice designates the two figures added to Standard No. 213 in the August 21 rule as Figures 7 and 8, and makes the corresponding changes in the text of the standard.

Publication of this correction imposes no duties or obligations on any party nor does it alter existing obligations. This notice simply ensures that the public will have an accurate version of Standard No. 213 in the Code of Federal Regulations. Accordingly, the agency finds for good cause that notice and opportunity for comment on this correction are unnecessary.

List of subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the version of 49 CFR 571.213 published at 50 FR 33722, August 21, 1985, is amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, and 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.213, paragraph S6.2.1. is corrected to read as follows:

S6.2 Buckle release test procedure.

* * * * *

S6.2.1. Before conducting the testing specified in S6.1, place the loaded buckle on a hard, flat, horizontal surface. Each belt end of the buckle shall be pre-loaded in the following manner. The anchor end of the buckle shall be loaded with a two pound force in the direction away from the buckle. In the case of buckles designed to secure a single latch plate, the belt latch plate end of the buckle shall be pre-loaded with a two pound force in the direction away from the buckle. In the case of buckles designed to secure two or more latch plates, the belt latch plate ends of the buckle shall be loaded equally so that the total load is two pounds, in the direction away from the buckle. For pushbutton-release buckles, the release force shall be applied by a conical surface (cone angle not exceeding 90 degrees). For pushbutton-release mechanisms with a fixed edge (referred to in Figure 7 as "hinged button"), the release force shall be applied at the centerline of the button, 0.125 inches away from the movable edge directly opposite the fixed edge, and in the direction that produces maximum releasing effect. For pushbutton-release mechanisms with no fixed edge (referred to in Figure 7 as "floating button"), the release force shall be applied at the center of the release mechanism in the direction that produces the maximum releasing effect. For all other buckle release mechanisms, the force shall be applied on the centerline of the buckle lever or finger tab in the direction that produces the maximum releasing effect. Measure the force required to release the buckle. Figure 7 illustrates the loading for the different buckles and the point where the release force should be applied, and Figure 8 illustrates the conical surface used to apply the release force to pushbutton-release buckles.

3. Paragraph S6.2.4 is corrected to read as follows:

S6.2.2 * * *

S6.2.3 * * *

S6.2.4 While applying the force specified in S6.2.3, and using the device shown in Figure 8 for pushbutton-release buckles, apply the release force in the manner and location specified in S6.2.1. for that type of buckle. Measure the force required to release the buckle.

* * * * *

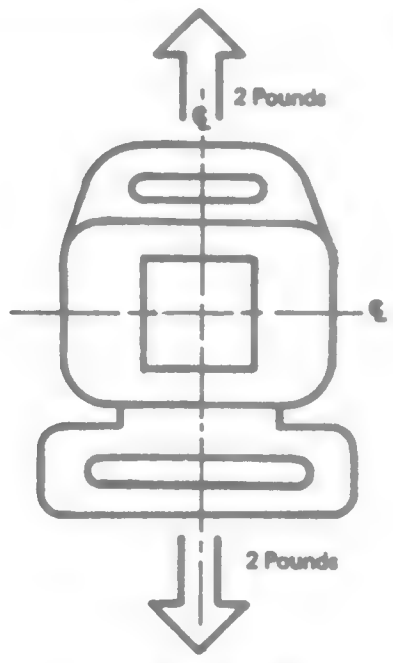
4. Figure 6, Pre-impact Buckle Release Force Test Set-up, and Figure 7, Release Force Application Device—Push Button Release Buckles, are redesignated as Figures 7 and 8, respectively, appearing as follows:

Issued: September 23, 1985.

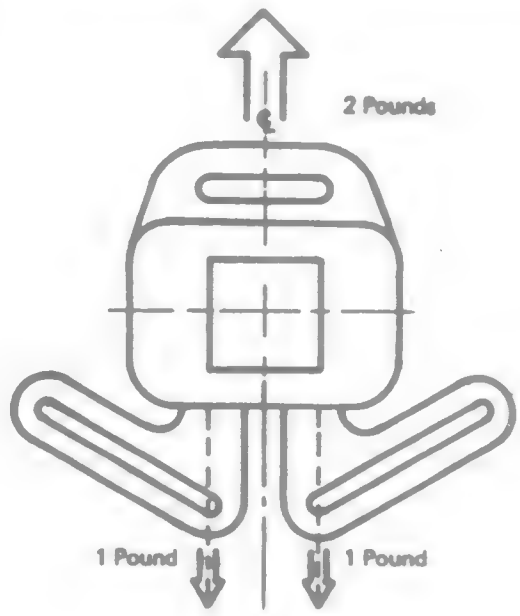
Diane K. Steed,

Administrator.

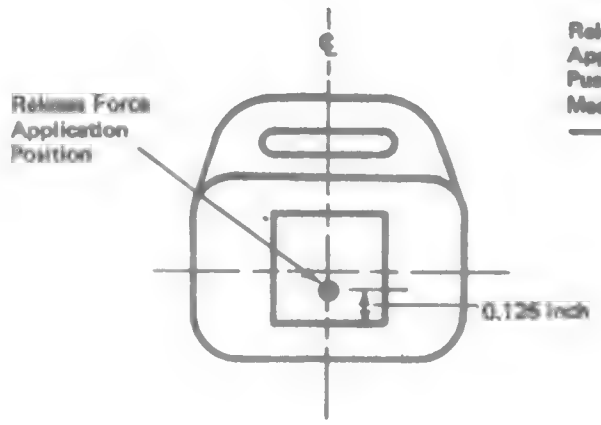
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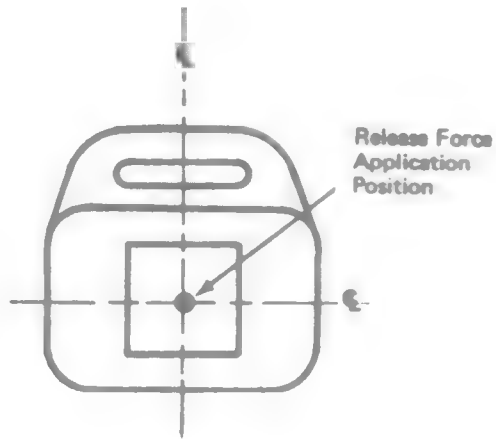
7a. Single Latch Plate Pre-load



7b. Double Latch Plate Pre-load



7c. Hinged Button



7d. Floating Button

Figure 7. Pre-impact Buckle Release Force Test Set-up

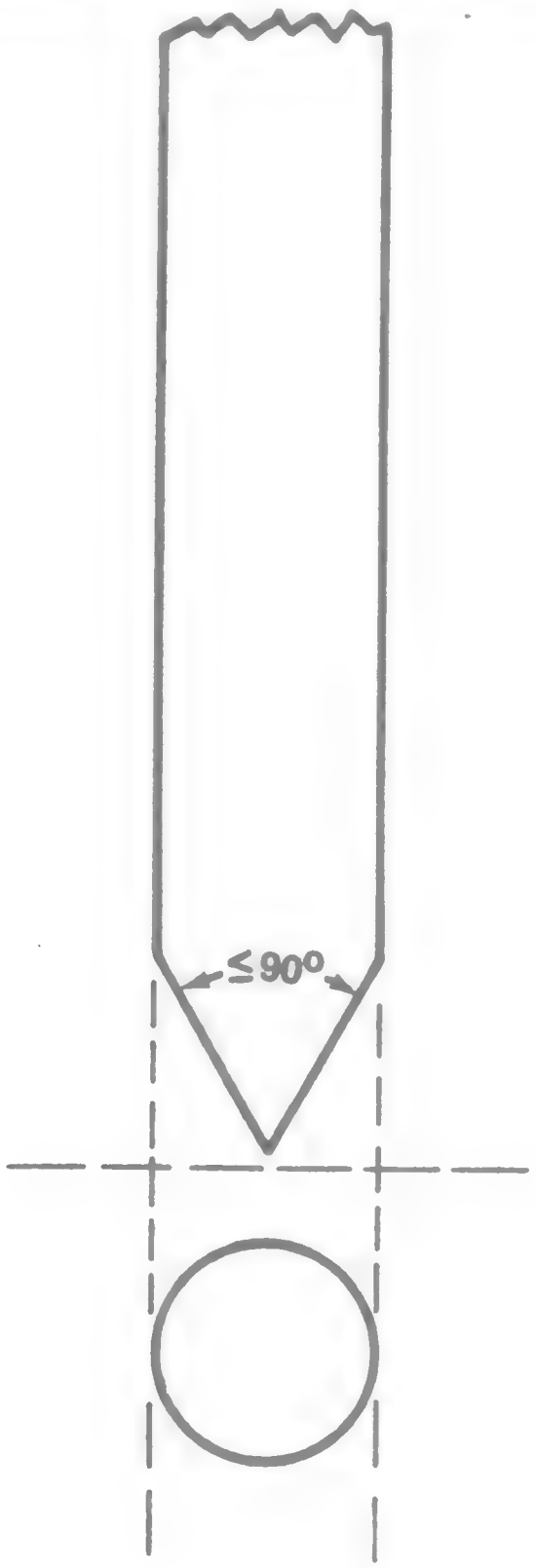


Figure 8. Release Force Application Device – Push Button Release Buckles

[FR Doc. 85–23083 Filed 9–26–85; 8:45 am]
BILLING CODE 4910–59–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination That the Warner Sucker Is a Threatened Species and Designation of Its Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Warner sucker (*Catostomus warnerensis*) to be a threatened species, with critical habitat. This action is being taken because: (1) The range and numbers of this species have been reduced substantially; (2) predation by exotic fishes has reduced survival of juvenile suckers, especially in lake habitats; and (3) instream water diversions and artificial barriers are restricting movement and migration of suckers within and among streams. Historically, the Warner sucker occurred in several natural lakes and their tributary streams in the Warner Valley of south-central Oregon. Portions of the following habitats in Lake County, Oregon, are designated as critical habitat: Twelvemile Creek, Twentymile Creek, the spillway canal north of Hart Lake, Snyder Creek, and Honey Creek. A determination that the Warner Sucker is threatened and designation of its critical habitat provide the species with the protection pursuant to the Endangered Species Act of 1973, as amended.

DATE: The effective date of this rule is October 28, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

The Warner sucker (*Catostomus warnerensis*) is endemic to the streams and lakes of the Warner Basin in south-central Oregon. It was first described by Snyder (1908). This species is particularly interesting in that it is part of a relict fauna isolated in remaining waters of a larger Pleistocene lake that previously covered much of the basin floor (Hubbs and Miller, 1948). Early residents of the area recalled when the suckers and other fishes were very abundant and would ascend the creeks in the spring for spawning (Coombs *et al.*, 1979). Cope (1883) also noted the great abundance of fishes and fish-eating birds in Warner Basin. The Warner sucker is presently known to occur in portions of Crump and Hart Lakes, the spillway canal north of Hart Lake, and portions of Snyder, Honey, Twentymile, and Twelvemile Creeks (Andreasen, 1975; Coombs *et al.*, 1979; Swenson, 1978) Land on the valley floor is primarily in private ownership, although the Hart Mountain National Wildlife Refuge includes portions of Crump and Hart Lakes. Away from the valley floor, much of the stream habitat is within Bureau of Land Management holdings.

Habitats of Warner sucker include large natural lakes and associated marshes. Although primarily lacustrine, this species spawns in headwaters of streams, tributary to lakes. Warner suckers mature at 3–4 years of age at approximately 5–6 inches (130–160 mm) in length (Coombs *et al.*, 1979). The species is a moderate-sized member of the family Catostomidae and reaches a maximum length of about 20 inches (510 mm). Lateral-line scales average 76 and scales around the caudal peduncle vary from 18–22 (Andreasen, 1975; Bond, 1973). A bright orange lateral stripe is present on adults during spawning runs.

The introduction of exotic fish species and the modification of stream flows into lakes of the Warner Valley by diversion structures have modified the Warner sucker's habitat. Predation on juvenile Warner suckers by large numbers of exotic centrarchid and ictalurid fishes may be particularly significant. All these actions have contributed to the decline in Warner sucker populations (Bond, 1974; Coombs and Bond, 1980; Coombs *et al.*, 1979; Kobetich, 1977). The water diversion structures are especially significant in that they prevent this obligatory stream-spawning sucker from reaching its spawning and rearing areas. Water pollution and siltation of gravel beds needed by the fish for spawning are also adversely affecting the lake and stream habitats. This species spawns in silt-free, gravel-bottomed flowing sections of creeks.

The depleted status of the Warner sucker has been recognized by the scientific community. The Warner sucker was listed as endangered in Bond's 1974 publication, "Endangered Plants and Animals of Oregon: I. Fishes." The species is also listed as endangered by Deacon *et al.*, (1979). However, recent work of Coombs and Bond (1980) and Coombs *et al.*, (1979) documented continued, although reduced, spawning of this species and recommended a threatened classification.

The Warner sucker was included in the Service's Vertebrate Notice of Review published December 30, 1982 (47 FR 58454). On April 12, 1983, the Desert Fishes Council petitioned the Service to add the Warner sucker to the List of Endangered and Threatened Wildlife. After evaluation of the petition, the Service published a notice on June 14, 1983 (48 FR 27273), which found that substantial information was presented in the petition to indicate that action may be warranted to list the species. The proposed rule to list the Warner sucker as a threatened species and to designate critical habitat was published by the Service on May 21, 1984 (49 FR 21383), in accordance with section 4(b)(3)(B)(ii) of the Endangered Species Act of 1973, as amended.

Summary of Comments and Recommendations

In the May 21, 1984, proposed rule (49 FR 21383) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *Lake County Examiner, Medford Mail Tribune,* and *Eugene Register-Guard,* which invited general public comment. These notices were published on June 20 and 21, 1984. A public hearing concerning the proposed listing and critical habitat determination was held in Lakeview, Oregon, on August 29, 1984. The period for accepting written comments was extended for 60 days following the hearing and closed on October 29, 1984 (49 FR 38667).

Seventeen written comments were received in response to the proposed rule. Seven of these comments were not substantive as they offered no information regarding the status of the Warner sucker, nor did they offer an opinion on whether the species should be protected under the Endangered Species Act of 1973, as amended. Of the ten respondents providing an opinion on the listing, five were opposed and five were in favor of the proposed action. Five individuals presented testimony at the August 29, 1984, public hearing. Four individuals presented testimony on behalf of the Warner Valley Association

in opposition to the listing. Written comments were received from two of the four individuals and are included in the tally of written letters referenced above. The fifth individual provided no formal statement, but later submitted one of the five letters referenced above in opposition to the listing. The comments of all individuals and agencies are discussed below.

Six individuals, all landowners in Warner Valley, mentioned that Hart Lake and a portion of Crump Lake were dry in the early 1930's and early 1960's. They questioned how the Warner sucker survived then, and, because it had survived, they felt the species must be adaptable and not in need of Federal protection. The periodic fluctuation in lake levels appears to be a natural feature of the Valley hydrology. The Warner sucker is able to survive such periods by seeking refuge in streams tributary to the lake. However, natural population numbers decrease dramatically during such periods. Also, increased irrigation demands during such periods may aggravate the natural drought conditions and cause the lakes to remain dry for longer periods than would otherwise naturally occur. The presence of drought cycles argues for proper management of the stream resources, which serve as the only refugium for the Warner sucker at these times.

One local individual questioned why the U.S. Fish and Wildlife Service introduced crappies into the Warner Valley lakes. To the Service's knowledge, all introductions of exotic fishes have been made by State agencies. The consequences of these introductions are addressed in the next response.

Four individuals (all landowners or their representatives) stated that the introductions of crappie and other exotic fishes are a much greater threat then any other factor (e.g., irrigation practices) and that there is no use in listing the Warner sucker until everyone agrees to remove the exotic fishes. The Service agrees that interactions (primarily in the form of predation) between exotic fishes and the Warner sucker are a serious problem (see "Summary of Factors Affecting the Species" section), but the Service does not see the exotic fish problem as a reason for postponing listing. Listing the fish will likely bring additional attention to the fish and increase the likelihood of addressing the exotic fish problem. The Service will work closely with the State of Oregon to determine the severity of the problem. Courses of action ranging from no further introductions of exotic fishes to partial or total control of the exotics will be investigated.

One individual argued that there have been no new dams or weirs in the Valley in the past 30 years. Therefore, agricultural practices should not be criticized as causing a decline of the species. The Service agrees that irrigation has been practiced by Warner Valley landowners over the past 100 years. Many dams and other diversion structures were in place prior to 1950. However, the Service believes that the cumulative impact of past agricultural irrigation practices, more recent additions and modifications to these practices, and the effects of introduced fishes have combined to warrant threatened status for the Warner sucker.

One individual argued that the Valley has not changed for hundreds of years and therefore the sucker should be able to continue to survive. The Service agrees that in several respects the Valley has changed little over the past two hundred years. However, the stream and lake habitats of the Warner sucker have sustained a large number of changes over this time. All agricultural and water diversion practices have occurred within the past 150 years. Establishment of exotic fishes has occurred within the past 30 years. The life cycle of the Warner sucker requires movement from lakes to headwaters of tributary streams for spawning and then back to the lakes. Dams, water diversions, and other modifications have made such movement difficult or impossible.

Two individuals suggested that the Warner sucker population level may be more closely correlated to climatic cycles than to human-induced habitat changes. The Service responds that historically such was indeed the case. Drought conditions greatly reduce the population of Warner suckers. In more recent times, climatic cycles still undoubtedly affect population numbers, but, other factors have become more important. For example, with large numbers of predatory exotic fishes in the Warner Valley lakes, these waters provide poor conditions for the Warner sucker even in years of substantial precipitation. The effects of human habitat changes are even more serious during drought years, when habitat is already reduced. Therefore, conservation measures are needed so that natural climatic cycles and habitat alterations do not combine to eliminate the species.

One individual described the present high-water conditions that exist in the Valley and stated that the Warner sucker is in fine condition. The Service agrees that weather cycles do influence the Warner sucker population. However, past climatic data indicate that annual precipitation is cyclic in amount and that a series of wet years is usually followed by a series of dry years. Thus, present climatic conditions should have little influence on the decision to list the species.

Two individuals argued that there is no justification for spending Federal dollars for this species when our national budget is so far in debt. The Department of the Interior has a legal responsibility to carry out provisions of the Act. Decisions regarding the addition of species to the List of Endangered and Threatened Wildlife are to be made on the best available scientific and commercial data.

One individual landowner argued that threatened status and critical habitat designations would service no useful purpose. The Service responds that such designations would afford the Warner sucker protection under the Act. Various provisions of the Act are discussed elsewhere and will not be repeated here. It is the Service's belief that threatened status and critical habitat designation will result in improved conditions for the Warner sucker and could eventually lead to its recovery.

Two individuals questioned whether such designation would jeopardize their agricultural-based livelihood. The Service firmly believes that existing agricultural practices and enhanced conservation of the species are compatible. Modifications to existing diversion structures could be incorporated to enhance movement and survival of the species without changing the purpose or function of the structures. For example, fish screens could prevent diversion of adult and juvenile suckers into agricultural fields. Fish ladders or other passage structures could facilitate movement of the species within streams. The Service will work with the landowners on conservation and recovery of the Warner sucker.

Three individuals questioned the Service's conclusion that the Warner sucker had declined. They also suggested that the Service had not presented any proof to indicate that the Warner sucker was ever abundant. Conversely, one individual suggested that the sucker population may be increasing. The Service must base its decisions on the best available scientific and commercial data. Prior to 1900, many scientists were impressed by the large numbers of fishes in the Valley (Cope, 1883; Gilbert, 1897; Snyder, 1908). The Warner sucker, as such, was not mentioned by many of the early

scientists because it was not recognized as distinct from other species of *Catostomus* until 1908. However, only two species of native fish, the Warner sucker and redband trout (*Salmo* sp.), are large enough to be readily noticed. Both species would have been particularly evident during their spring spawning runs. The implication that the Warner sucker was abundant historically is supported by claims of local residents (Coombs *et al.*, 1979). Although there are no historic population estimates to compare with recent data, the best scientific data available indicate that suckers were abundant, and only one species of sucker occurs in Warner Valley. Also, it should be noted that Snyder (1908) described Warner suckers collected from Warner Creek, a tributary of Deep Creek near Adel, Oregon. Recent surveys have failed to find this species near Adel or in any portion of the Deep Creek drainage.

One representative of the Warner Valley Association claimed that the Warner sucker is found in the Lahontan Basin of Nevada as well as in Oregon. The Service believes that this comment resulted from confusion in understanding some of the early ichthyological literature. Prior to 1908 when the species was described as *Catostomus warnerensis*, the sucker in Warner Valley was assumed to be the same as *C. tahoensis* of the Lahontan Basin. However, when the morphology of the Warner Valley form was closely examined by Snyder (1908), the Warner sucker was found to be unique and easily separable from *C. tahoensis* of the Lahontan Basin. The taxonomy of the Warner sucker has not been questioned since that time, and no individuals of *C. warnerensis* have ever been collected from outside the Warner Basin.

One individual questioned whether the recent studies (particularly Coombs *et al.*, 1979) were conducted under optimal conditions. If conditions were not optimal, the commenter felt that the studies were flawed. The Service responds that this comment is referencing conditions of high stream flow, poor roads, and cold weather encountered by recent investigators. Although conditions are not always ideal, valuable scientific data can be collected nonetheless. For example, Coombs *et al.* (1979) collected sufficient scientific data to determine the spawning sites, age and condition of spawners, and distribution of the species, despite less than perfect weather conditions during the study. Less than optimal weather did not seem to hamper adequate data collection by most recent investigators.

Four individuals, representing Oregon State University, the Oregon Cooperative Fishery Unit, the International Union for Conservation of Nature and Natural Resources, and the Oregon Department of Fish and Wildlife, and a private scientist, supported the proposed threatened status and critical habitat designation. Opinions were presented that agreed with the Service's analysis that the Warner sucker has become depleted since historic times. Other statements are similar to those presented in the "Summary of Factors Affecting the Species" section and will not be repeated here.

The Oregon Department of Fish and Wildlife recommended adding the upstream spring-source area of Snyder Creek to the critical habitat designation. Although this area is important for providing downstream habitat on Snyder Creek, the Service believes that flows from the spring-source area will be protected by downstream critical habitat designations. That is, a significant upstream water diversion would adversely modify critical habitat downstream on Snyder Creek, and thus could be dealt with in the manner described below under "Available Conservation Measures."

The Bureau of Land Management questioned why the proposed critical habitat on Twelvemile Creek stopped at the Oregon-Nevada border. The Service concurs that habitat in the Nevada portion appears as capable of supporting Warner suckers as does the Oregon portion. However, Warner suckers have not been collected from the Nevada portion of the creek, and the Service therefore extended critical habitat designation only to the border. The Bureau also questioned why the upper portion of Twentymile Creek was included as critical habitat. In question is the species' ability to ascend the steep canyon area in Twentymile Creek. The Service acknowledges that the pricise upstream distribution limit within Twentymile Creek is uncertain. Adult and juvenile Warner suckers have been collected in Twentymile Creek near its confluence with Twentymile Creek (Coombs *et al.* 1979). Based on our knowledge of the species' life history, it is likely that adult Warner suckers move upstream in Twentymile Creek during their spring spawning run. The Service has no evidence to indicate that the canyon area addressed in BLM's comment is a limiting factor in movement of adults. Further, information in our files indicates that some of the upstream area may provide habitat for the Warner sucker. Therefore, lacking scientific data to the contrary, we have adopted the proposed critical habitat designation for 9 miles of Twentymile Creek upstream of its confluence with Twentymile Creek.

Comments were received from the Director of the Bureau of Land Management, Supervisor of the Fremont National Forest, and the Oregon State Forester that offered guidance in management of the Warner sucker but offered no opinion as to whether the species should be listed or not. An error in the "Critical Habitat" section of the proposed rule was discovered during the comment period. In that section, the description of the proposed critical habitat did not agree with the actual metes and bounds as given in the "Proposed Regulations Promulgation" section of the rule. Service personnel prepared a handout for the public hearing that clarified the proposed critical habitat, and the critical habitat description is corrected in this final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Warner sucker (*Catostomus warnerensis)* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Warner sucker (*Catostomus warneresis)* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Warner sucker is endemic to the Warner Valley in south-central Oregon. It inhabits portions of Crump and Hart Lakes, the spillway north of Hart Lake, and some sections of Snyder, Honey, Twentymile, and Twelvemile Creeks (Andreasen, 1975; Coombs *et al.*, 1979; Swenson, 1978). The species typically ascends streams tributary to lakes in the Warner Basin to spawn. However, instream barriers and diversion structures have often prohibited the movement of suckers into spawning streams during recent years. During years with high precipitation, enough water flows by the diversion structures so that the suckers can utilize limited reaches of the streams for spawning. However, during periods of low flows, all water is often

diverted, thereby eliminating any change for the fish to spawn. If suckers are successful in ascending the barriers, spawned-out fish and progeny are likely to be restricted to small areas of streams because of instream barriers, or sometimes diverted into agricultural fields where they die. Water diversion, used to promote farming activites, exists on all streams occupied by this species. Such water barriers and diversions are particulary detrimental to this obligatory stream-spawning species. Spawning habitat consists of silt-free gravel areas with moderate flows. Postlarval and young-of-the-year Warner suckers utilize shallow backwater pools and stream margins where current is slight or nonexistent.

In addition to water diversions, channelization of streams and overgrazing have disturbed soils in the watershed and degraded streams even further by allowing siltation of gravel beds normally used for spawning. Runoff and leachates containing fertilizers and pesticides from certain agricultural and ranching activities in the Warner Valley watershed further degrade water quality of the lakes and streams.

B. *Overutilization of commercial, recreational, scientific, or educational purposes.* There is no evidence to suggest overutilization of the Warner sucker for any of these purposes.

C. *Disease or predation.* Exotic centrarchid (sunfishes and freshwater basses) and ictalurid (catfishes) fishes have been stocked into lakes in the Warner Basin. Large centrarchids and ictalurids are capable of preying on Warner suckers. Of particular concern are large numbers of crappie (*Pomoxis* spp.) in Hart and Crump Lakes. Exotic fishes also may introduce new parasites and disease organisms to which the sucker might be susceptible. Exotic salmonid fishes (trouts) introduced into the steams may also exert predation pressures.

D. *The inadequacy of existing regulatory mechanisms.* Oregon State law provides protection against taking of the Warner sucker by requiring a collecting permit, but the State has no provisions for the protection of habitat.

E. *Other natural or manmade factors affecting its continued existence.* Any prolonged drought will hasten the demise of the Warner sucker if all or most of the water in the streams is diverted. During droughts of the 1930's and early 1960's, Hart and Crump Lakes were almost dry. During such times, maintenance of adequate stream habitat is critical to survival of the species and any diversion of stream flow would be particularly deterimental. The reduced numbers of populations and individuals make this species especially susceptible to any natural or manmade factors that adversely affect it.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in deciding to make this rule final. Based on the evaluation, the preferred action is to list the Warner sucker as threatened. The range and number of the species have been reduced substantially and alteration of habitat continues. Proper and adequate management could prevent the species from becoming endangered. Recent status information has provided essential habitat data and indicates that overcollecting is not a major threat. It appears prudent to propose critical habitat for the Warner sucker.

Critical Habitat

Critical habitat, as defined by section 3 of the Act, means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated for the Warner sucker to include the following streams in Lake County, Oregon, and 50 feet on either side of the stream banks: 4 stream miles of Twelvemile Creek, 18 stream miles of Twentymile Creek, 2 stream miles of the spillway canal north of Hart Lake, 3 stream miles of Snyder Creek, and 16 stream miles of Honey Creek. The 50-foot riparian zone on each side of the streams is included to protect the integrity of the stream ecosystem. The Service determines that the maintenance of this riparian zone is essential to the conservation of the Warner sucker. Riparian vegetation helps prevent siltation and run-off of other pollutants. Shading from small trees and shrubs in the riparian zone helps maintain suitable water temperature and dissolved oxygen levels in the streams. These stream areas include spawing and rearing habitat for the species. The areas proposed did not include the entire historic or present habitat of the fish and modifications to critical habitat descriptions may be proposed in the future. No data were received during the comment period or from the public hearing that resulted in changes to the critical habitat as proposed on May 21, 1984 (49 FR 21383).

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) which may adversely modify such habitat or may be affected by such designation. These activities are: (1) Overgrazing by livestock, which would eliminate riparian vegetation and lead to streambank erosion and subsequent siltation of the stream and lake environment; (2) introduction of exotic fishes into streams or lakes of the Warner Valley, which might compete with or prey on Warner suckers; (3) construction of additional diversion dams, that do not have adequate fish-passage facilities, on streams inhabited by the Warner sucker; (4) channelization or diversion of streams inhabited by the Warner sucker; (5) application of herbicide or insecticide along stream courses or lakes inhabited by the Warner sucker, which could be toxic to the species or food; (6) pollution of stream or lake habitat by silt or other pollutants; and (7) removal of natural vegetation within or along streams.

Consultations with the U.S. Bureau of Land Management may be necessary for actions involving grazing leases along streams designated as critical habitat. Consultations with the U.S. Forest Service will be unlikely as no Warner sucker habitat occurs on National Forest lands. However, much of the watershed for streams designated as critical habitat is within Forest Service jurisdiction. Substantial increases in timber harvest and/or road construction in the Honey Creek drainage may require section 7 consultation. In addition to grazing leases and timber sales, habitat of forest management plans of the Bureau of Land Management of Forest Service will require consultations if their implementation may affect the Warner sucker. Also, consultation with the U.S. Army Corps of Engineers (Corps) may be necessary for any stream bank work under permits pursuant to section 404 of the Clean Water Act or permits pursuant to section 10 of the Rivers and Harbors Act on streams designated as critical habitat.

Section 4(b)(2) of the Act requires the Service to consider economic and other

impacts of designating a particular area as critical habitat. The Service has considered the critical habitat designation in light of relevant additional information obtained and concludes that no significant economic or other impacts are expected to result from the designation. The Bureau of Land Management has already reduced or eliminated cattle grazing along portions of some streams herein designated as critical habitat. Such action was taken to protect riparian habitats rather than to exclusively conserve Warner suckers. Both the Forest Service and the Corps have indicated that they do not expect their activities to affect or be affected by the critical habitat designation. In addition, there is no known involvement of Federal funds or permits for the private land within the critical habitat. For these reasons, no adjustments to the boundaries of the proposed critical habitat were warranted.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal activities which may be affected by the determination of critical habitat for the Warner Sucker were discussed above in the "Critical Habitat" section of this rule.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of prohibitions and exceptions that generally apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate of foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies. General regulations governing the issuance of permits to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances are set out at 50 CFR 17.32.

The Secretary has discretion under section 4(d) of the Act to issue such special regulations as are necessary and advisable for the conservation of a threatened species. The Warner sucker is threatened primarily by habitat disturbance or alterations, not by intentional, direct taking of the species or by commercialization. Given this fact, and the fact that the State of Oregon regulates direct taking of the species through the requirement of State collecting permits, the Service has concluded that the State's collection permit system is adequate to protect the species from excessive taking, so long as such takes are limited to: educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act.

Therefore, the special rule adopted herein allows take of the Warner sucker for the above-stated purposes without the need for a Federal permit if a State collection permit is obtained and all other State wildlife conservation laws and regulations are satisfied. Rules are also promulgated to allow incidential take of the species during recreational fishing activities if the fishing is conducted in accordance with State law and if the Warner suckers are returned immediately into their habitat. The Service acknowledges that incidental take of the species by State-licensed recreational fishermen is not a significant threat to the Warner sucker. It should be recognized that any activities involving the taking of this species not otherwise enumerated in the special rule are prohibited. Without this special rule, all of the prohibitions under 50 CFR 17.31 would apply. The Service believes that this special rule will allow for more efficient management of this species, thereby facilitating its conservation. For these reasons, the Service has concluded that this regulatory action is necessary and advisable for the conservation of the Warner sucker.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The critical habitat is found in the Warner Valley, Oregon, and is composed of approximately 43 stream miles and 50 feet on either side of the stream channel. The lands are federally and privately owned and are used for cattle grazing and crop production. No Federal involvement is expected to affect or be affected by this designation. Therefore, no significant economic or other impacts are anticipated to result from the critical habitat designation. In addition, no direct costs, enforcement costs, or information collection or recordkeeping requirements are imposed on small entities by this designation. These determinations are based on a Determination of Effects that is available from the U.S. Fish and Wildlife Service, at the address in the "**ADDRESSES**" section.

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Author

The primary author of this final rule is Dr. Jack E. Williams, U.S. Fish and Wildlife Service, Sacramento Endangered Species Office, 2800 Cottage Way, Room E–1823, Sacramento, California 95825 (916/978–4866 or FTS 460–4866).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Fishes," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species							
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Fishes							
Sucker, Warner	*Catostomus warnerensis*	U.S.A. (OR)	Entire	T	205	17.95(e)	17.44(l)

3. Add the following as special rules to Section 17.44:

§ 17.44 Special rules—fishes.

* * * * *

(l) Warner sucker (*Catostomus warnerensis*)

(1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: (i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; (ii) incidental to State-permitted recreational fishing activities, provided that the individual fish taken is immediately returned to its habitat.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (l) (1) through (3) of this section.

* * * * *

4. Amend § 17.95(e) by adding critical habitat of the Warner sucker as follows: (The position of this entry under § 17.95(e) will follow the same sequence as the species occurs in § 17.11.)

§ 17.95 Critical habitat—fish and wildlife.

(e) * * *

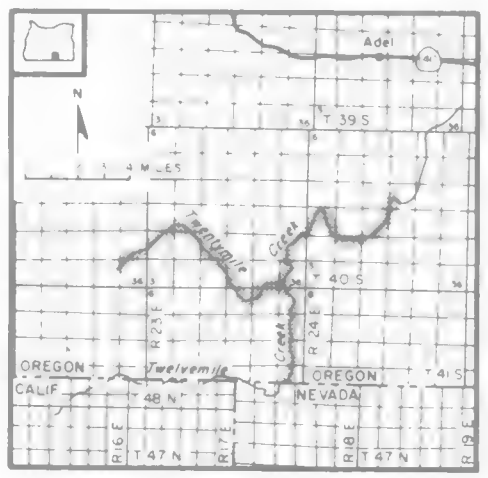
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Warner Sucker (Catostomus warnerensis)

Oregon: Lake County.

1. *Twelvemile Creek*—Approximately 4 stream miles and 50 feet on either side of the stream commencing at the confluence of Twelvemile Creek and Twentymile Creek and extending upstream, and including those portions of Twelvemile Creek in T40S, R23E, Section 35; and T41S, R23E, Sections 1, 2, 12, 13, 23, and 24.

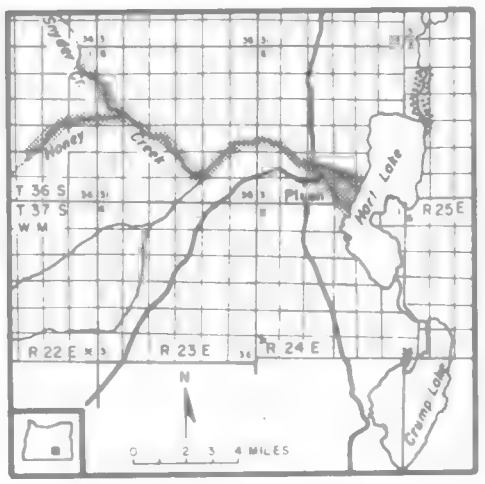
2. *Twentymile Creek*—Approximately 18 stream miles and 50 feet on either side of the stream commencing about 9 miles upstream of the junction of Twelvemile and Twentymile Creeks and extending to a point about 9 miles downstream of the junction, and including those portions of Twentymile Creek in T40S, R22E, Sections 25, 35, and 36; T40S, R23E, Sections 19, 20, 24, 25, 28, 29, 30, 33, 34, 35 and 36; T40S, R24E, Sections 15, 16, 19, 20, 21, 22, 28, 29, 30; and T41S, R23E, Sections 2 and 3.



3. *Spillway Canal north of Hart Lake*—Approximately 2 stream miles and 50 feet on either side of the waterway commencing at its confluence with Hart Lake and extending to a point about 2 miles downstream, and including those portions of the waterway in T36S, R24E, Sections 7, 18, and 19.

4. *Snyder Creek*—Approximately 3 stream miles and 50 feet on either side of the stream commencing at the confluence of Snyder Creek and Honey Creek and extending to a point about 3 miles upstream on Snyder Creek, and including those portions of Snyder Creek in T36S, R22E, Sections 1 and 12; and T36S, R23E, Sections 7, 17, and 18.

5. *Honey Creek*—Approximately 16 stream miles and 50 feet on either side of the stream commencing at the confluence of Honey Creek with Hart Lake and extending to a point about 16 miles upstream on Honey Creek, and including those portions of Honey Creek in T36S, R24E, Sections 19, 20, 27, 28, 29, 30, 33, 34, and 35; T36S, R23E, Sections 17, 18, 20, 21, 22, 23, 24, 26, 27, and 28; and T36S, R22E, Sections 13, 14, 22, and 23.



Constituent elements of all areas proposed as critical habitat include streams 15 feet to 60 feet wide with gravel-bottom shoal and riffle areas with intervening pools. Streams should have clean, unpolluted flowing water and a stable riparian zone. The streams should support a variety of aquatic insects, crustaceans, and other small invertebrates for food.

* * * * *

Dated: September 3, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–23075 Filed 9–26–85; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine Endangered Status and Critical Habitat for the White River Springfish and the Hiko White River Springfish

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status and critical habitat for the White River springfish (*Crenichthys baileyi baileyi*) and Hiko White River springfish (*Crenichthys baileyi grandis*). This action is being taken because the one known population of the White River springfish and the single remaining population of the Hiko White River springfish are threatened by habitat alteration and the presence of exotic species, which compete with and prey upon the springfishes. These springfishes occur in remnant waters of the Pluvial White River system in eastern Nevada. The White River springfish is presently known to occur only in Ash Springs while the Hiko White River springfish, extirpated from Hiko Spring, now exists as a single, small population in Crystal Springs. These spring areas are located in the Pahranagat Valley of Lincoln County, Nevada. This final rule implements Federal protection provided by the Endangered Species Act of 1973, as amended.

DATES: The effective date of this rule is October 28, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 NE. Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

Crenichthys baileyi is one of the two species within the genus *Crenichthys*. Hubbs (1932) recognized the distinct qualities of these fishes when he described *Crenichthys* and *C. nevadae* from Railroad Valley in central Nevada. Distinctive characteristics of the genus include a lack of pelvic fins, uniserial bifid teeth, a long and coiled intestine, and restricted range. Fishes of the genus *Crenichthys* have been of particular scientific interest because of their adaptation to extermely high temperatures and low dissolved oxygen (Hubbs and Hettler 1964, Hubbs *et al.* 1967, Sumner and Sargent 1940).

Crenichthys baileyi is endemic to the remnant waters of the White River system in eastern Nevada. During pluvial times, 10,000 to 40,000 years ago, the White River was a much larger river that flowed into the Colorado River by way of the Virgin River (Hubbs and Miller 1948). As the White River desiccated in response to the more xeric Recent climate, the springfishes were restricted to remaining permanent waters, such as springs.

The White River springfish (*C. b. baileyi*) and Hiko White River springfish (*C. b. grandis*) were described by Williams and Wilde (1981) as two of five subspecies of *C. baileyi* restricted to the Pahranagat Valley of Lincoln County. Both of these subspecies are threatened by habitat alteration, as well as the presence of exotic species, that are detrimental to the springfishes because of increased competition, predation, and parasitism (Hubbs and Deacon 1964, Wilson *et al.* 1966 Deacon 1979).

Habitats occupied by these taxa are extremely localized and vulnerable to alteration. During the past 20 years these habitats have been impounded to facilitate agricultural diversion and create recreational swimming facilities. Whereas historic records document the subspecies' presence in several areas (Gilbert 1893), recent investigations (Courtenay *et al.* ms.) indicate the current absence from formerly occupied habitats and/or a severe reduction in numbers. The White River springfish is presently found in a single, small locality (surface area less than 2 acres) used by the public as a swimming facility and principally occupied by exotic fishes.

The Hiko White River springfish was extirpated from one of its two known habitats in 1967 when exotic game fishes gained entrance resulting from upstream migration. Efforts to restock the springfish in Hiko Spring have occurred in recent years; the long-term viability of this population is, however, questionable. The remaining population is extremely small (less than 100 individuals) and threatened by the presence of exotic fishes, such as the convict cichlid (*Cichlasoma nigrofasciatum*) and mosquitofish (*Gambusia affinis*).

On December 30, 1982, the Service published a Review of Vertebrate Wildlife (47 FR 58454) and included the White River springfish and the Hiko White River springfish as category 1 species. Category 1 indicates that the Service has substantial information to support the biological appropriateness of listing the species as threatened or endangered.

On April 12, 1983, the Service received a petition from the Desert Fishes Council requesting that the White River springfish and the Hiko White River springfish, along with 15 other fish species, be added to the List of Endangered and Threatened Wildlife. The Service published in the **Federal Register** (48 FR 27273) on June 14, 1983, a finding that the petition presented substantial information and that the petitioned action may be warranted. The

Service proposal to list these two springfishes as endangered species with critical habitat on May 7, 1984 (49 FR 19360), constituted the required 1-year finding in accordance with Section 4(b)(3)(B)(ii) of the Act.

Summary of Comments and Recommendations

In the May 7, 1984, proposed rule (49 FR 19360) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices of the proposal were published in *The Lincoln County Record* on June 14, 1984, the *Ely Daily Times* on June 12, 1984, and the *Las Vegas Review-Journal* on June 13, 1984.

A total of 14 written comments were received and are discussed below. Local interest in the proposal by Pahranagat Valley landowners led the Service to hold a public meeting in Alamo, Nevada during the comment period. Shortly after this meeting was scheduled, Mr. Kay Wright, Chairman of the Hiko Spring Water Board, also requested a public hearing. Mr. Wright was informed of the public meeting and later decided to withdraw his request.

Comments about the proposal were basically split into two areas: the listing of these springfishes as endangered species and the designation of critical habitat. Five comments supported the listing as well as the designation of critical habitat, three comments opposed only the designation of critical habitat, and six were noncommittal, but voiced concerns about the impact such designation may have on private activities on private lands.

Mr. William A. Molini, Director, Nevada Department of Wildlife; Mr. Keith Whipple, Chairman, Lincoln County Conservation District; and Mr. E.P. Pister, Executive Secretary, Desert Fishes Council, opposed designation of critical habitat. These negative comments were not reflected, however, in recommendations for listing the two species as endangered. Director Molini concurred with the proposal to list the springfishes as endangered, but stated concern that a critical habitat designation on private lands would arouse animosity and direct unfavorable attention to the fishes. Mr. Pister also concurred with the listing, but commented that designating critical habitat for these springfishes may adversely effect the springfishes because they occupy extremely restricted habitats where extirpation could occur from a single malicious act. Mr. Whipple expressed concern that Federal designation of private lands as critical habitat acts to identify parcels where private activities cannot occur and sites that will be future acquisitions, possibly by condemnation, by the Federal Government. The Service responds that critical habitat is designated to advise Federal agencies of the need for special care in particular areas that are essential to the conservation of listed species. Designation of critical habitat does not affect State, local government, or individual actions unless an activity is funded or permitted by the Federal Government. The Service has no intention of condemning land or waters for these springfishes. Should any acquisitions occur, they will proceed with full consent of the involved parties. The Service believes that the potential for adverse effects resulting from critical habitat designations does not outweigh the potential benefits, or protections, that arise from the designations.

Comments that stated concerns, but neither objections to, nor concurrence with, the proposal, were received from Congresswoman Barbara Vucanovich, Bank of America, Mr. Mitchell Hunt, Nevada State Division of Historical Preservation and Archaeology, and Mr. Kay Wright. Congresswoman Vucanovich requested that local economic opportunities be given adequate consideration when species are listed as threatened or endangered and critical habitats are designated, and that local interests also be given adequate time to comment on Service proposals. The 1982 Amendments to the Act require that determinations to list a species as threatened or endangered be based solely on the best available scientific and commercial information about the species. Economic impacts are not allowed to be considered in making a listing determination. The Act specifies, however, that the economic impact of designating a particular area as critical habitat must be considered. An economic analysis for the designation of critical habitat has been prepared with this rule and concludes that designation of critical habitat will not affect or be affected by small entities. A copy of this document is available from the Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240. The Service has actively sought public comment regarding the subject proposal. Letters and copies of the proposal were sent to each individual owning land within the proposed critical habitat; notification of the proposal was published in local and regional newspapers. Shortly following the **Federal Register** publication of the proposal, the Service voluntarily organized a public meeting and presented the proposal to interested citizens while the formal comment period was open.

The Bank of America asked what intentions the Service has for the Burns Ranch, and made notification that it holds the subject property in trust and must, therefore, approve any action that adversely affects this trust. Service plans for the Burns Ranch presently include only an interest in being provided access onto the land to monitor springfish populations. The aquatic habitat occurring on this ranch is currently habitat for the listed endangered Pahranagat roundtail chub (*Gila robusta jordani*); anticipated activities for springfish are not different than those anticipated for this chub. The Service recognizes the responsibility the Bank of America has to the Burns Ranch and will respect this during future programs.

Mr. Hunt expressed concern that finalization of the proposal would prohibit recreational activities in and around the Ash Springs Resort. The Service does not believe these activities presently conflict with programs required to conserve the species. Therefore, no change is believed necessary.

The Nevada State Division of Historical Preservation and Archaeology requested that it be permitted to comment on any management activities that might disturb land surrounding spring habitats. The Service has planned no management activities that might disturb land surrounding spring habitats. Should any such activities be planned in the future, the Service will make the proper notifications.

The Nevada Department of Wildlife Director, William Molini, stated concerns about taxonomy of the two springfishes by noting that a difference in head length of 0.1 mm is possibly not significant enough to warrant subspecific distinction between the two Pahranagat Valley springfishes. The Service responds that taxonomic distinction of these two subspecies is not based solely on the differences in head size; Williams and Wilde (1981) also noted statistically significant differences between the two forms in least bony interorbital length and caudal peduncle length, and differences in the number of dorsal and anal fin rays. The differences they recorded are within the range of difference accepted by taxonomists to distinguish unique

subspecies of fish (Hubbs and Hubbs 1953).

The proposed listing action was supported by the Nevada Department of Wildlife, Nevada Division of State Parks, Defenders of Wildlife, American Society of Ichthyologists and Herpetologists, and Desert Fishes Council. Additional information regarding the proposal was presented by Mr. Edwin Higbee, lifetime resident of the Pahranagat Valley; Mr. Thomas Baugh, Research Associate, Endangered Fishes Research Center, University of Nevada at Las Vegas; Dr. Walter R. Courtenay, Jr., Chairman, American Society of Ichthyologists and Herpetologists, Environmental Quality Committee; and Mr. Edwin P. Pister, Executive Secretary, Desert Fishes Council.

Mr. Higbee stated that during the past 15 years he has observed a decreased number of springfish and increasing adundance of introduced fishes in the Pahranagat River through the Burns Ranch. Mr. Baugh enclosed data collected from Crystal Spring during 1983 and 1984 showing that the Hiko White River springfish occurs in exceeding low numbers; 21 were captured during 65 hours of trapping effort within an area less than one-half acre. Dr. Courtenay submitted a manuscript, recently accepted for publication by the *Southwestern Naturalist*, entitled "Comparative Status of Fishes Along the Course of the Pluvial White River, Nevada." Data summarized in this paper show the absence of springfish in Hiko Spring, and the comparatively small extant populations in Crystal and Ash Springs. Mr. Pister submitted the same manuscript submitted by Dr. Courtenay.

Summary of Factors Affecting the Species

After a thorugh review and consideration of all information available, the Service has determined that the White River springfish and Hiko White River springfish should be classified as endangered species. Procedures found at Section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the White River springfish (*Crenichthys baileyi baileyi*) and Hiko White River springfish (*Crenichthys baileyi grandis*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of their habitat or range.* Habitats occupied by these two species have been extensively altered to enhance irrigation practices and provide for public recreation. These activities have changed the character of aquatic environments by eliminating bordering and aquatic vegetation, eliminating aquatic habitat by diverting the entire flow of some streams into pipes or cement canals, and seasonally manipulating water within stream channels to facilitate irrigation. These activities effectively reduce the amount of available habitat as well as reduce invertebrate populations utilized for food by the two fishes.

Exotic species introduced into the Pahranagat Valley during the past 50 years have effectively reduced populations of the springfishes through competition for food and space, and by predation (Courtenay *et al.* ms). All of these factors have combined to eliminate one Hiko White River springfish population and reduce the only remaining population to dangerously low numbers. The only population of White River springfish declined between 1965 and 1980, but has slightly rebounded since this time (Courtenay *et al.* ms). This population, however, remains small and its occupied habitat is estimated as covering less than two acres.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* None apparent.

C. *Disease or predation.* Wilson *et al.* (1966) identified diseases affecting native springfish (*Crenichthys baileyi moapae*) and Moapa dace (*Moapa coriacea*) within the Moapa Valley of southern Nevada. These diseases are not naturally known within populations of native fishes, but are common among fishes frequently utilized by aquarists and introduced into Pahranagat Valley aquatic habitats.These diseases may be reducing viability and/or causing mortality within White River springfish and Hiko White River springfish populations.

Predation has effected the demise of one Hiko White River springfish population. Williams and Wilde (1981) correlated the disappearance of this population with introduction of largemouth bass (*Micropterus salmoides*).

D. *The inadequacy of existing regulatory mechanisms.* The State of Nevada lists the entire White River springfish species (*Crenichthys baileyi*) as rare. However, this action does not provide habitat protection to the species on Federal land, or from federally funded or approved projects on private land.

E. *Other natural or manmade factors affecting their continued existence.* The introduction of exotic organisms, particularly fishes, into springfish habitats has reduced or eliminated populations through competition for food and/or space, and by direct predation (Deacon 1979, Courtenay *et al.* ms).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list the White River springfish and Hiko White River springfish as endangered, each with critical habitat. Endangered status is appropriate because of the restricted and reduced range of these species. If not listed, the threats to these fishes and their remaining habitat could cause the extinction of both species. Thus, endangered status is appropriate at this time. An explanation of the critical habitat designation is presented in the "Critical Habitat" section of this rule.

Critical Habitat

Critical habitat, as defined by Section 3 of the Act means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat being designated for the White River springfish includes Ash Springs and its associated outflow in Pahranagat Valley, Lincoln County, Nevada. Critical habitat being designated for the Hiko White River springfish includes Crystal and Hiko Springs and their associated open outflows in Pahranagat Valley, Lincoln County, Nevada. Technical corrections have been made in the final rule to define accurately the location of Crystal Springs and associated outflows.

The areas designated as critical habitat for these two species satisfy all

known criteria for their ecological, behavioral, and physiological requirements. The White River springfish still reproduces successfully in the source spring area of Ash Springs. The Hiko White River springfish, now extirpated from Hiko Spring, is known to occur only in Crystal Springs although its numbers there are reduced.

The most critical elements to survival of the springfishes are the consistent quality and quantity of springflows. The critical habitats include the springs and associated outflows that are the only known habitats for these fishes. The critical habitats also include land areas immediately surrounding these aquatic habitats. These land areas provide vegetative cover that contributes to the uniform water conditions preferred by the springfishes and provides habitat for insects and other invertebrates which constitute a substantial portion of their diet. The maintenance of these riparian areas is essential to the conservation of the species.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) which may adversely modify such habitat or may be affected by such designation. Activities that may adversely affect the critical habitats of the White River springfish and Hiko White River springfish include pollution of the springwater, introduction of exotic species, excessive mining of water from nearby aquifers, and further physical modifications of Ash, Hiko, or Crystal Springs, such as channelization and diversion of springflows or clearing of the surrounding vegetation.

Approximately 0.1 acre of proposed critical habitat for the White River springfish is located on land administered by the Bureau of Land Management (BLM). This area is within the Pahranagat East Grazing Allotment. If BLM determined that fencing was required to protect these springs and their flows, approximately 200–300 feet of fence would be required at a cost of $0.43 per linear foot, and would result in a decrease of 0.002 Animal Unit Months (AUMs). The cost of fencing would be approximately $129, and the loss of annual grazing fees from the reduction in AUMs would be less than $0.03. BLM is presently involved in minimal activity within the proposed critical habitat. BLM's planning process identifies that a Habitat Management Plan (HMP) and Recreational Management Plan (RMP) will be prepared for this area in the future. These management plans are expected to be compatible with the critical habitat designation.

The remaining 11.9 acres of proposed critical habitat for the White River springfish consists of private land. Uses within this area include recreational swimming and grazing cattle on pastureland. There is no known involvement of Federal funds or permits for activities within this area. Present uses are considered suitable for conservation of this species. In addition, any conservation efforts by the private landowners would be voluntary.

Approximately 7 acres of privately owned land are proposed as critical habitat for the Hiko White River springfish. There is no known involvement of Federal funds or permits for these private lands. Any conservation efforts by the private landowners would be voluntary.

The Soil Conservation Service (SCS) of the U.S. Department of Agriculture has funded some irrigation projects in the Pahranagat Valley in the past, but there is little opportunity for additional SCS projects in the area. SCS has informed the Service that it does not anticipate any SCS projects that might affect or be affected by the critical habitat designation in the foreseeable future.

Environmental and other benefits may accrue from the designations of critical habitat for the Hiko White River and White River springfishes. No quantifiable estimate of the magnitude of the environmental or other benefits that may accrue from the critical habitat designations, however, can be developed at this time. Difficulties in estimating these benefits stem from: (1) Uncertainties about the nature and extent of the possible additional protection for the two springfishes that might result from the critical habitat designations; and (2) difficulties inherent in developing units of measure that adequately represent the social value of identifying, protecting, and conserving critical habitat for these fish species. No estimate of the number of persons, entities, species, or ecosystems that will be spared adverse effects by these designations of critical habitat can be developed at this time. In addition, no measure of the reduction in risk of ecosystem and species loss could be developed, although such benefits may result from the critical habitat designations and may be substantial.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has considered these critical habitat designations in light of the economic and other information obtained through the comment process and concludes that no adjustment of the proposed critical habitat is warranted.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. With respect to the White River and Hiko White River springfishes, there are currently no known Federal activities believed to be affected by the listing or designation of critical habitat. However, actions that may occur in the future have been outlined above in the "Critical Habitat" section of this rule.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or

ship any such wildlife that had been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection which otherwise lawful activities.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for these species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Based on BLM's current management and proposed HMP and RMP, the absence of current or planned SCS projects, and the unquantifiable benefits that may result from the critical habitat designations, it is not expected that any significant economic or other impacts will result from the critical habitat designations on Federal land. In addition, there is no known involvement of Federal funds or permits for the private land proposed as critical habitat. Therefore, no significant economic impacts are expected to result from the designation of critical habitat on either Federal or private lands. This determination is based on a Determination of Effects that is available from the Regional Director, U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 NE Multnomah Street, Portland, Oregon 97232.

Literature Cited

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Author

The primary author of this final rule is Donald W. Sada, U.S. Fish and Wildlife Service, Great Basin Complex, Reno, Nevada 89502 (702/784–5227 or FTS 470–5227).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Fishes," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes							
Springfish, Hiko White River	*Crenichthys baileyi grandis*	U.S.A. (NV)	Entire	E		17.95(e)	NA
Springfish, White River	*Crenichthys baileyi baileyi*	U.S.A. (NV)	Entire	E		17.95(e)	NA

3. Amend § 17.95(e) by adding critical habitat for the Hiko White River springfish as follows: (The position of this entry under § 17.95(e) will follow the same alphabetical sequence as the species occurs in § 17.11.)

§ 17.95 Critical habitat—fish and wildlife.

(e) * * *

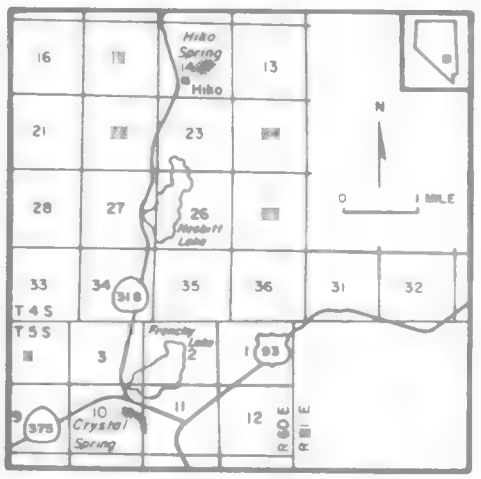
* * * * *

Hiko White River Springfish (Crenichthys baileyi grandis).

Nevada, Lincoln County. Each of the following springs and outflows plus surrounding land areas for a distance of 50 feet from these springs and outflows:

Hiko Spring and associated outflows within T4S, R60E, SW¼ of NE¼ Sec. 14 and NW¼ of SE¼ Sec. 14.

Crystal Springs and associated outflows within T5S, R60E, all of NE¼ of Sec. 10 and NE¼ of SE¼ Sec. 10, SW¼ of NW¼ Sec. 11 and NW¼ of SW¼ Sec. 11.



Known constituent elements include warmwater springs and their outflows and surrounding land areas that provide vegetation for cover and habitat for insects and other invertebrates on which the species feeds.

* * * * *

4. Amend § 17.95(e) by adding critical habitat for the White River springfish as follows: (The position of this entry under § 17.95(e) will follow the same sequence as the species occurs in § 17.11.)

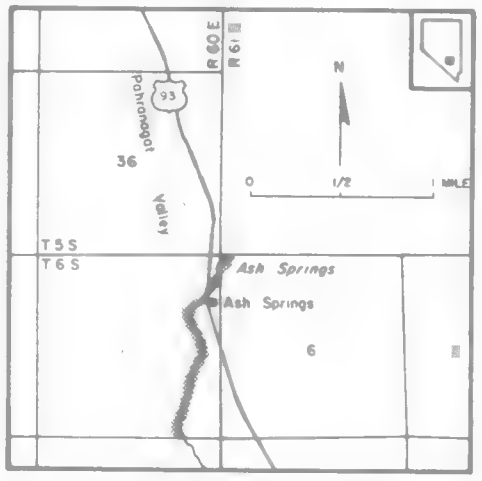
§ 17.95 Critical habitat—fish and wildlife.

(e) * * *

* * * * *

White River Springfish (Crenichthys baileyi baileyi).

Nevada, Lincoln County. Ash Springs and associated outflows plus surrounding land areas for a distance of 50 feet from the springs and outflows within the following areas: T6S, R60E, E½ of E½ Sec. 1 and T6S, R61E, NW¼ of NW¼ Sec. 6.



Known constituent elements include warmwater springs and their outflows and surrounding land areas that provide vegetation for cover and habitat or insects and other invertebrates on which the species feeds.

* * * * *

Dated: August 22, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–23074 Filed 9–26–85; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 50, No. 188
Friday, September 27, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 735

[Amdt. No. 1]

Cotton Warehouses; Inspection Fees

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations at 7 CFR Part 735 relating to cotton warehouses licensed under the United States Warehouse Act.

The intended effect of this rule is to: (1) Establish an annual warehouse fee to be paid by each cotton warehouse licensed under the United States Warehouse Act, (2) allow for examination of a warehouse upon the request of a license holder and provide a fee for that examination; (3) provide for an examination after license suspension and provide a fee therefor; and (4) provide for a charge for a tag check of the warehouse inventory whenever the Department determines such tag check is required to satisfactorily complete an examination of the warehouse. This rule is promulgated under the authority of the United States Warehouse Act, as amended.

DATE: Written comments should be received on or before 30 days after publication in the **Federal Register** to assure consideration.

ADDRESS: Written comments on this proposed rule should be sent to Paul W. King, Director, Warehouse Division, Room 5968-South Agriculture Building, Agricultural Stabilization and Conservation Service, P.O. Box 2415, Department of Agriculture, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Harry J. Wishmire, 202–475–4028.

SUPPLEMENTARY INFORMATION:

Rulemaking Matters

This proposed rule has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major." This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is February 17, 1988.

Everett Rank, Administrator, ASCS, has determined that this action is "not major" since implementation of the proposed rule will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State or local government, or a geographic region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

The information collection requirements proposed by this rule will not become effective until they have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980. Such approval has been requested and is under consideration. Comments concerning the information collection requirements contained in these proposed rules may be addressed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer, ASCS/USDA, Washington, D.C. 20503, Telephone (202) 395–7340.

Everett Rank, Administrator, ASCS, has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because (i) the proposed fees will represent a minimal part of total operating expenses, (ii) the proposed fees will be proportionate to volume of business, and (iii) application for a license and use of the service is voluntary. Consequently, no regulatory flexibility analysis is required.

It has been determined by an environmental evaluation that this action will have no significant adverse impact on the quality of the human environment, health, and safety. In addition, it will not adversely affect environmental factors such as wildlife habitat, water quality, or land use and appearance. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This action will not have a significant impact specifically upon area and community development. Therefore, review as established by Executive Order 12372 was not used to assure that units of local government are informed of this action.

Background

The U.S. Warehouse Act (7 U.S.C. 241 *et seq.*) (the "Act") provides for the licensing of warehousemen who apply to the Secretary of Agriculture and meet certain statutory and regulatory standards. The primary objectives of the Act are to: (1) Protect producers and others who store their property in public warehouses; (2) assure the integrity of warehouse receipts as documents of title, thereby facilitating trading of agricultural commodities in interstate commerce; and (3) set and maintain a standard for sound warehouse operations.

These objectives have been attained by research and development of basic standards for good warehousing paractices; original and continuing examinations of applicants and licensees; financial and bonding requirements; adn licensing and regulatory requirements.

The Department's supervision of licensees has focused on examinations of subject warehouses. The Department conducts an examination of a warehouseman applying for a license in order to determine whether the warehouseman and the warehouse which is the subject of the license application meet the standards for licensing under the Act. The Department also conducts unannounced examinations of licensed warehouses to determine whether the warehouse and the warehouseman continue to meet these standards and whether the warehouseman is capable of fulfilling all of the obligations that may have been assumed as a licensee.

The Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, amended section 10 of the Act (7 U.S.C. 251) to provide that "The Secretary of Agriculture, or the Secretary's designated representative, shall charge, assess, and cause to be collected a reasonable fee for (1) each examination

or inspection of a warehouse (including the physical facilities and records thereof and the agricultural products therein) under this Act; (2) each license issued to any person to classify, inspect, grade, sample, or weigh agricultural products stored or to be stored under provisions of this Act; (3) each annual warehouse license issued to a warehouseman to conduct a warehouse under this Act; and (4) each warehouse license amended, modified, extended, or reinstated under this Act. Such fees shall cover, as nearly as practicable, the costs of providing such services and licenses, including administrative and supervisory costs."

In addition, section 156(d) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 374), stated that "Notwithstanding any other provision of law, the Secretary shall take such action as may be necessary to insure that the . . . licensing and inspection procedures for cotton warehouses are preserved . . . ."

Accordingly, it has been determined that cotton warehousemen should be charged reasonable fees covering, as nearly as practicable, the costs to the Department of providing licenses and services in accordance with the Act, including applicable administrative and supervisory costs related to maintaining an effective program. After taking into account all available information, including comments received concerning fee proposals issued by the Department in 1981 and 1983, discussions with the cotton trade, and the fiscal situation expected to exist in fiscal year 1986, it has been determined that the imposition of reasonable charges and fees will not endanger the preservation of the licensing and inspection procedures for cotton warehouses.

It has also been determined, based on discussions with the cotton trade and other information available to the Department, that the most acceptable and practicable method of assessing annual fees is the assessment of a fixed fee for all warehouses, together with a variable fee based on the number of receipted bales handled and the average volume of bales stored.

Annual Fee

Under the proposed rule, a warehouseman would be charged an annual fee for those warehouses for which the warehouseman has a license and for those warehouses for which the warehousemen has requested a license. The annual fee will be calculated to take into account the amount of storage activity at each warehouse. The proposed fee will equal the total of the following:

(1) A fee of $200 for each warehouse to help offset certain fixed costs associated with maintaining licenses which do not tend to vary according to storage activity;

(2) For each bale handled at the warehouse during the twelve months of the calendar year preceding assessment of the fee, a charge of 2¢ for each bale for which card type receipts have been issued or a charge of 5¢ for each bale for which paper type receipts have been issued, to cover the costs associated with tracking and accounting for each bale handled at the warehouse; and

(3) A charge of 3¢ times the average of the number of bales in storage in the warehouse at the end of each month during the 12 months of the calendar year preceding assessment of the fee to offset the costs associated with the counting of bales that actually are in the warehouse at the time of the examination.

The total proposed annual fee reflects several cost factors, including salaries, rents, miscellaneous overhead, and includes applicable administrative and supervisory costs. Approximately 75 percent of the annual fee is directly related to the costs of conducting an examination of the warehouse. The remaining 25 percent reflects the costs of financial review and analysis, licensing and bonding, research and development, and other services.

Examination Fees

In addition, it has been determined that the fees for examinations currently provided for in 7 CFR 735.51 should be amended to more closely reflect actual costs incurred by the Department in connection with warehouse examinations, including examinations requested by the warehouseman and examinations conducted to determine whether a warehouseman's suspended license may be reinstated.

Under the proposed rule the present fee for a reexamination of a warehouse for the purpose of amending an existing license will be maintained. Such an examination consists largely of examining warehouse facilities. Consequently, the fee will remain tied to the capacity of the warehouse.

A warehouseman might request a warehouse examination in order to: (1) Meet requests or requirements of depositors or lending agencies, (2) determine the quantity or condition of cotton in store, (3) determine whether the quantity and quality of cotton in storage is sufficient to satisfy outstanding storage obligations, or (4) have an independent physical inventory coinciding with an end of fiscal year audit.

Under the proposed rule a warehouseman would submit a written request for such an examination stating the purposes of the examination and agreeing to pay the prescribed fee. The Department would conduct the examination if it did not adversely affect its ability to meet program commitments.

Since a requested examination will consist of only an onsite examination of the facility, the costs of providing such an examination will equal approximately 75 percent of the annual warehouse fee. Therefore, the fee proposed for this service is 75 percent of the annual fee.

If the Department has suspended a warehouseman's license because of deficiencies in operation and other violations of the applicable regulations by the warehouseman, the warehouseman may attain reinstatement of the warehouseman's license only if a reexamination of the warehouse has been made and the Department is assured that the deficiencies and violations have been corrected.

Costs of an examination for reinstatement would be much the same as those for a requested examination, except that additional time must be devoted to verify and report on the correction of the deficiencies which resulted in the suspension, thus an increased fee would be required to cover all of the costs incurred. Therefore, the proposed fee for a reinstatement examination is equal to 100 percent of the annual fee. The fee for a reinstatement examination will not be assessed the warehouseman if the Department determines, after an opportunity for hearing, that the license suspension was unjustified.

Tag Check Fee

Cotton is usually stored on an identity preserved basis, a warehouse receipt being issued for each individual bale received into storage, each bale having a visible and accessible tag, and arranged in storage so as to permit an accurate inventory check. The Department has had a policy of locating and verifying against the warehouse receipt each bale of cotton in the warehouse (commonly called a tag check).

Since costs for tag checks are very high, the Department proposes to accept a bale count as evidence that the warehouseman is meeting inventory requirements, provided that the bale count meets acceptable tolerances and does not otherwise indicate stock deficiencies or other adverse storage conditions. A tolerance of ½ of 1

percent of the total number of bales which should be in the warehouse to support all storage and non-storage obligations, according to the examiner's determination, has been determined to be acceptable. If a bale count is not within this tolerance or an examiner discovers stock discrepancies or other adverse conditions, the Department will conduct a complete tag check.

The cost of the tag check will be assessed to the warehouseman at the rate of 10 cents per bale checked. This represents the additional costs to the Department for a tag check examination as opposed to a bale count.

There will be no charge to a warehouseman when the Department makes a tag check for purposes of losses or damage or potential losses or damage from fire, floods or other situations where the Department considers the examination information necessary to protect the integrity of the program.

Payments of Commodity Credit Corporation.

The Commodity Credit Corporation (CCC) owns or has an interest in considerable quantities of cotton stored in federally licensed warehouses. The examination of such warehouses protects the interest of CCC and makes CCC a major beneficiary of the program. For this reason it is proposed, as is done presently with other agricultural commodities, that if CCC shares in the costs of the examination program at a warehouse, the applicable fees to be charged will be reduced to that warehouseman by the amount CCC pays. CCC will share the cost of the annual fee but CCC will not share in the cost of any examination for a license amendment, requested examination, reinstatement examination, or tag check.

Fee Payment

It is also proposed to amend § 735.52 to require that a warehouseman pay the annual fee on or before October 1 each year and that fees for other types of examinations be paid before the examination is made. Fees for tag checks must be paid within 15 days of the tag check. Failure to pay any prescribed fees shall be grounds for revoking a warehouseman's license.

Recordkeeping Requirements

A warehouseman's records should include information as to (1) how many and what bales of cotton are in the warehouse (i.e., in licensed space) at any given time, and (2) how many and what bales should be in the warehouse to support outstanding warehouse receipts and all other storage or non-storage obligations. Presently, pursuant to 7 CFR 735.34, each licensed warehouseman is required to make reports as requested by the Administrator. Pursuant to that section, each warehouseman will be asked to provide annually the number of bales handled during the year and the number of bales in storage at the end of each month during the preceding calendar year. This information will serve as the basis for determining the annual fee. Although warehousemen will be affected by the proposed changes in terms of recordkeeping, no amendment is necessary to 7 CFR 735.34.

List of Subjects in 7 CFR Part 735

Administrative practice and procedure, Cotton, Reporting and recordkeeping requirements, Fees, Warehouses.

Accordingly, it is proposed to amend 7 CFR Part 735 as follows:

PART 735—COTTON WAREHOUSES

1. The authority citation for 7 CFR Part 735 continues to read as follows:

Authority: Sec. 28, 39 Stat. 490 (7 U.S.C. 268).

2. Section 735.51 is revised to read as follows:

§ 735.51 Warehouse inspection Fees.

(a)(1) There shall be charged and collected from each warehouseman, for each warehouse licensed under the Act or for each warehouse for which the warehouseman is applying for a license under the Act, an annual fee equal to the total of:

(i) A fixed charge of $200;

(ii) A charge of 2¢ a bale for each bale handled at the warehouse during the preceding calendar year and for which card type warehouse receipts have been issued or are subject to issue, or a charge of 5¢ a bale for each bale handled at the warehouse during the preceding calendar year and for which paper warehouse receipts have been issued or are subject to issue; and

(iii) A charge of 3¢ per bale for the average of the number of bales in store at the warehouse at the end of each month during the preceding calendar year;

(2) There shall be charged and collected from each warehouseman, for an amendment to an existing license under the Act, an examination fee computed at the rate of $50 for each 1,000 bales of added storage capacity, or fraction thereof, as determined by the Secretary, but not less than $100 nor more than $1,000;

(3) There shall be charged and collected from each warehouseman, for any examination of a licensed warehouse conducted by the Department at the request of the warehouseman, an examination fee equal to 75% of the fee provided for in subsection (a)(1). A request for such examination must be made in writing to the Department by the warehouseman and must state the purposes of the examination.

(4) There shall be charged and collected from each warehouseman, for each warehouse for which the license has been suspended by the Department, a fee equal to 100% of the fee provided for in subsection (a)(1) for any examination of such warehouse conducted by the Department for the purpose of determining whether the warehouseman's license should be reinstated. The charge for the examination will be made unless the Department determines after an opportunity for hearing that the suspension was unjustified.

(b) A tag check fee of 10¢ per bale checked will be charged by the Department for any warehouse for which the warehouseman is applying for a license under the Act and for any licensed warehouse whenever the Department determined that a tag check of the bales stored in a licensed warehouse is warranted. A tag check of the licensed warehouse shall be deemed to be warranted whenever the examiner's bale count is not within ½ of one percent of the total number of bales which should be in the warehouse as determined from the warehouseman's total of receipted and not receipted obligations.

(c) Any fes provided for by this section will be reduced by the amount paid by the Commodity Credit Corporation with respect to such fee.

3. Section 735.52 is revised to read as follows:

§ 735.52 Payment of Fees.

(a) Fees for each original warehouseman's license and for each amended, modified, extended, reinstated, or duplicate warehouseman's license and for each license or amendment issued to any person to classify, sample, or weigh cotton must be paid upon application for such license.

(b)(1) A warehouseman who has a license under the Act must pay the annual fee for each licensed warehouse on or before October 1 of each year.

(2) A warehouseman applying for a license under the Act must pay the annual fee upon application for the license.

(3) A warehouseman must pay any examination fees in advance of the date such examination is scheduled.

(4) Charges for a tag check conducted by the Department shall be due and payable upon completion of the tag check and must be paid no later than fifteen days following completion of the tag check.

(c) Failure of a warehouseman to pay any fees provided for in this part shall be a basis for suspension and revocation of such warehouseman's license.

(d) All fees and charges provided for by this part shall be paid to the "Agricultural Stabilization and Conservation Service, USDA".

Signed at Washington, D.C. on September 23, 1985.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 85-23182 Filed 9-26-85; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 907

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of Marketing Policy.

SUMMARY: This notice sets forth a summary of the 1985–86 marketing policy for navel oranges grown in Arizona and designated part of California. The marketing policy was submitted by the Navel Orange Administrative Committee which functions under the marketing order covering California-Arizona navel oranges. The marketing policy contains information on crop and market prospects for the 1985–86 season.

DATE: Written suggestions, views, or pertinent information relating to the marketing of the 1985–86 California-Arizona navel orange crop will be considered if received by October 11, 1985.

ADDRESS: Interested persons are invited to submit written statements in duplicate to: Docket Clerk, Room 2069-S, F&V, AMS, U.S. Department of Agriculture, Washington, DC 20250. Such submissions should reference the date and page number of the **Federal Register** and will be made available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202)447-5975. Growers and handlers of navel oranges may obtain a copy of the marketing policy directly from the Navel Orange Administrative Committee. Copies of the marketing policy are also available from Mr. Doyle.

SUPPLEMENTARY INFORMATION: Pursuant to § 907.50 of the marketing order covering navel oranges grown in Arizona and designated part of California the Navel Orange Administrative Committee, hereinafter referred to as the "committee", is required to submit a marketing policy to the Secretary prior to recommending regulations for the ensuing season. The order authorizes volume and size regulations applicable to fresh shipments of navel oranges to domestic markets including Canada. Export shipments of oranges and oranges utilized in the production of processed orange products are not regulated under the order.

The committee has adopted a marketing policy for the 1985–86 marketing season. The marketing policy is intended to inform the Secretary and persons in the industry of the committees's plans for recommending regulation of shipments during the marketing season and the basis therefor. The committee evaluates market conditions and makes recommendations to the Secretary as to the quantity of navel oranges that can be shipped each week to domestic outlets without disrupting markets. Under certain conditions, the committee may recommend size regulations applicable to fresh domestic shipments.

In its 1985–86 marketing policy, the committee projected the California-Arizona navel orange crop at 57,700 cars (1,000 cartons at 37½ pounds net weight each). Last year's production was slightly less at 54,232 cars. In District 1, Central California, the committee has estimated the crop at 49,300 cars, compared to 44,432 cars produced a year ago. In District 2, Southern California, the crop is expected to be 7,300 cars, compared to 8,514 cars produced in 1984–85. In District 3, Arizona-California desert valley, the revised crop estimate is 500 cars compared to 840 cars in 1984–85. In District 4, Northern California, a 400 car crop is projected compared to 446 cars last year.

It is expected that orange sizes will be larger than last year on the average. Fruit quality shipped to the domestic market is expected to be good to excellent.

The committee estimates that shipments to domestic fresh market outlets, including Canada, will account for 42,000 cars. Last year a total of 41,319 cars were shipped to domestic markets. Fresh export shipments are expected to total 5,500 cars compared to 5,337 cars last year. Processing and other disposition is forecast at 10,200 cars compared to 7,576 cars last year.

Based on current projections, shipments are expected to begin in late-October and finish in June. The committee has adopted a schedule of estimated weekly shipments during the 1985–86 season.

The committee reports that the Florida round orange production will be 212,000 cars, about two percent greater than last year. In Texas, following severe freeze damage in 1983, orange production for 1985–86 season is expected to be 1040 cars. Production of apples is estimated at 197.3 million bushels in 1985–86 compared to 192.2 million bushels in 1984–85. Winter pear production is estimated at 7.4 million bushels in 1985–86 compared to 8.1 million bushels last year. General economic conditions are expected to continue to be favorable during 1985–86.

In addition, the committee proposes to promote flexibility in marketing order operations by: (1) Recommending weekly volume regulations to cover two consecutive one-week periods and (2) recommending open movement for a prorate district when 85 percent of the crop in that district has been shipped. Both of those actions were initiated during the 1983–84 season.

Based upon information now available, the committee reports that the season f.o.b. equivalent parity price for fresh California-Arizona navel orange (under Marketing Order No. 907) is projected at $8.49 per carton as compared to $7.60 for the 1984–85 season.

As additional information on this price relationship becomes available, it will be reviewed by the Department of Agriculture in the light of program requirements and the provisions of the Agricultural Marketing Agreement Act of 1937, as amended.

In order to provide for public input, the Department will accept written views and information pertinent to the proposed marketing policy and the need for, or level of, regulation for the 1985–86 season.

Publication of this summary of the marketing policy does not create any legal obligations or rights, either substantive or procedural.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (Navel).

1. The Authority citation for 7 CFR Part 907 continues to read:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.)

Dated: September 25, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 85–23275 Filed 9–26–85; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Parts 1006, 1007, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1097, 1098 and 1099

[Docket Nos. AO–366–A25–R01, et al.]

Milk in the Georgia and Certain Other Marketing Areas; Reopened Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders and Termination of Proposed Termination of Proceeding on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR Parts	Marketing area	Docket Nos
1007	Georgia	AO–366–A25–R01
1006	Upper Florida	AO–56–A23–R01
1011	Tennessee Valley	AO–251–A28–R01
1012	Tampa Bay	AO–347–A26–R01
1013	Southeastern Florida	AO–286–A33–R01
1046	Louisville-Lexington-Evansville	AO–123–A54–R01
1093	Alabama-West Florida	AO–386–A4–R01
1094	New Orleans-Mississippi	AO–103–A46–R01
1096	Greater Louisiana	AO–257–A33–R01
1097	Memphis, Tennessee	AO–219–A41–R01
1098	Nashville, Tennessee	AO–184–A48–R01
1099	Paducah, Kentucky	AO–183–A40–R01

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of reopened public hearing on proposed rulemaking and termination of proposed termination.

SUMMARY: This action reopens a hearing on proposals to increase Class I milk prices under 12 southeastern Federal milk marketing orders and terminates a proposed termination of proceeding regarding such proposals. At the request of Dairymen, Inc., a public hearing was held June 25–28, 1985, to consider the proposals by Dairymen, Inc., to increase Class I price differentials. The transcript of the hearing in its current state is missing approximately two-thirds of the third day's testimony and one-third of the testimony on the fourth day of the hearing. The hearing is being reopened to obtain a transcript that can be certified as a complete record of the testimony concerning the economic and marketing conditions that relate to any of the proposals set forth in the original notice of hearing that was issued May 24, 1985 (50 FR 23021).

DATE: The reopened hearing will convene at 9:30 a.m., local time, on October 2, 1985.

ADDRESS: The reopened hearing will be held at the Ramada Hotel, Capital Plaza, 450 Capitol Avenue, SE., Atlanta, Georgia 30312.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

A notice was issued on May 24, 1985 (50 FR 23021), giving notice of a public hearing to be held at the Ramada Hotel, Capital Plaza, 450 Capitol Avenue, SE., Atlanta, Georgia 30312, beginning at 9:30 a.m., local time, on June 25, 1985, with respect to proposed amendments to 12 southeastern Federal milk marketing orders. The transcript of the hearing was incomplete in that portions of the third and fourth day's testimony were missing. As a result of the delay in receipt of the complete transcript, the Department was able to take notice of more current market information and, on August 16, 1985 (50 FR 33761), sought comments on a proposal to terminate the rulemaking. Upon consideration of the comments received it is determined that the hearing should be reopened.

Notice is hereby given, pursuant to the rules of practice applicable to such proceedings (7 CFR Part 900), that the said hearing is being reopened at the Ramada Hotel, Capital Plaza, 450 Capitol Avenue, SE., Atlanta, Georgia 30312 (404) 688–1900, beginning at 9:30 a.m., local time, on October 2, 1985. The purpose of the reopened hearing is to obtain a transcript that can be certified as a complete record of the initial hearing. Also, additional evidence will be received concerning economic and marketing conditions that have developed subsequent to the close of the formal hearing and that relate to any of the proposals set forth in the original notice of hearing issued May 24, 1985 (50 FR 23021).

This action also terminates a proposed termination of proceeding that was issued by the Department on August 16, 1985 (50 FR 33761). On the basis of comments received in response to the proposed termination, it is hereby determined that the hearing should be reopened. Dairymen, Inc., stated that "an incomplete record, due to court report error or some other reason, is no grounds for termination of the proceedings. The Department *should* reopen the hearing at the earliest possible date to retake missing testimony to obtain a transcript that can be certified as a complete record of the hearing testimony. An incomplete record, due to court reporter error, is no basis for determining that the proposed amendments to the orders are not justified." In addition, the Department has concluded that the reopened hearing will allow a full discussion of economic and marketing conditions relative to the proposals under consideration which have come to the attention of the Department since the hearing closed. Accordingly, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), the proposed termination of proceeding should be and is hereby terminated.

Prior documents in this proceeding:

Notice of Hearing: Issued May 24, 1985, published May 30, 1985 (50 FR 23021).

Extensions of Time for Filing Briefs: Issued July 18, 1985; Issued August 1, 1985.

Proposed Termination of Proceeding: Issued August 16, 1985; published August 21, 1985 (50 FR 33761).

List of Subjects in 7 CFR Parts 1006, 1007, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1097, 1098, and 1099

Milk marketing orders, Milk, Dairy products.

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

Signed at Washington, D.C., on: September 25, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–23252 Filed 9–26–85; 8:45 am]

BILLING CODE 3410–02–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 33 and 190

Amendments to Minimum Financial and Related Requirements for Futures Commission Merchants and Introducing Brokers, Contract Markets and Clearing Associations; Default; Bankruptcy, and Commodity Options; Margin

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On August 5, 1985, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** (1) proposed amendments to the minimum financial and related requirements for futures commission merchants and introducing brokers (50 FR 31612); (2) proposed options margin guidelines (50 FR 31625); and (3) an advance notice of proposed rulemaking regarding the transfer of liquidation of open commodity contracts carried by a clearing member futures commission merchant which has defaulted on a margin obligation. (50 FR 31623). By letters dated August 28, and August 29, 1985, two exchanges requested a sixty-day extension of the comment period on certain of the matters published for comment. As one reason for the extension, both exchanges stated that they and other exchanges, among others, were analyzing a proposal for a futures-style margining system for commodity options and that a final recommendation would not be forthcoming until after the expiration of the present comment period for the proposed options margin guidelines.

In this regard, the Commission notes that a proposal on margin rule generally for exchange-traded options has been open since March 9, 1985, and that such a proposal deals with significant issues which are not presented by the proposed guidelines. The Commission, of course, will receive any pertinent comments in this regard, but may choose to treat these matters separately and to take final action on the proposed guidelines prior to addressing any recommendation made by commenters on a futures-style margining system for commodity options. Similarly, commenters should address specifically the financial rules proposed. Although general comments on the Commission's existing capital requirements will of course be considered, they also may be considered separately at a later date.

Nonetheless, in order to ensure that all affected parties have an opportunity to comment on the Commission's proposals, the Commission has concluded to grant an extension of the comment period, although for a shorter period of time. Accordingly, the Commission has determined to grant a thirty day extension of the comment period on each of the above-referenced matters. For the reasons set forth above, the Commission would not expect to grant any further requests for extension of the comment period on any of the foregoing matters.

DATES: Notice is hereby given that all comments on the proposed options margin guidelines (50 FR 31625, August 5, 1985) must be submitted by October 4, 1985 and all comments on the proposed amendments to minimum financial and related requirements for futures commission merchants and introducing brokers (50 FR 31612, August 5, 1985) and the advance notice of proposed rulemaking regarding the liquidation or transfer of open commodity positions carried by a defaulting clearing member futures commission merchant (50 FR 31623, August 5, 1985) must be submitted by November 4, 1985.

FOR FURTHER INFORMATION CONTACT: Kevin M. Foley, Chief Counsel, or Lawrence B. Patent, Associate Chief Counsel, Division of trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington DC 20581. Telephone: (202) 254–8955

Issued in Washington, D.C. on September 24, 1985, by the Commission.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 85–23087 Filed 9–26–85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 116

[Docket No. RM83–39–000]

Electric Utilities (Federal Power Act); List of Property for Use in the Accounting for the Addition and Retirement of Reactor Plant Equipment

September 24, 1985.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to revise its regulations at 18 CFR Part 116, "Units of Property for Use in Accounting for Additions and Retirements of Electric Plant," by codifying a list of retirement units of property in Account 322, "Reactor Plant Equipment." The Commission is establishing the list to promote proper and uniform recordkeeping by utilities to account for the addition and retirement of reactor plant equipment. The Commission is also proposing to make certain minor, technical amendments to Instruction 6 of Part 116.

DATE: Written comments must be received by the Commission by November 26, 1985.

ADDRESS: Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Kasha Ciaglo, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8465.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations at 18 CFR Part 116, "Units of Property for Use in Accounting for Additions and Retirements of Electric Plant" by codifying a list of retirement units of property in Account 322, "Reactor Plant Equipment."[1] The list would be required to be used by utilities owning nuclear facilities to classify certain reactor plant equipment as "retirement units" for accounting purposes. The list would replace the current guidelines in Account 322 which allow utilities to submit their own list of retirement units to the Commission.[2] The Commission has found that the lists developed by some utilities under the current guidelines are inconsistent with other classifications of the same items of property or are overly general designations of property. Therefore, the Commission proposes a specific list of retirement units to provide a minimum standard for utilities to use when they record the addition and retirement of reactor plant equipment.

II. Background

The Commission defines "retirement units" as "those items of electric plant which, when retired, with or without replacement, are accounted for by crediting the book cost thereof to the electric plant account in which included." (18 CFR Part 101, Definition 32.) In contrast, "minor items of property" are "the associated parts or items of which retirement units are

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[1] The Commission may require a list of units of property under its accounting authority in section 301 of the Federal Power Act, 16 U.S.C. 825 (1982). Since 1937, the Commission, or its predecessor, the Federal Power Commission, has required a list of units of property under the Uniform System of Accounts. *See* Order No. 45, 2 FD 171, January 28, 1937. Since 1961, a list of retirement units for reactor plant equipment has been required. *See* Order No. 235, 26 FR 9,887, October 21, 1961.

[2] Account 322 provides that a "[u]tility shall adopt such list of retirement units deemed appropriate for reactor plant equipment in harmony with prescribed retirement units for other accounts, and file a copy of such a retirement units list with the Commission."

composed." (18 CFR Part 101, Definition 18.) The distinction between retirement units and the minor items of property of which retirement units are composed is necessary for determining how the cost of these properties is recorded on the books and records of the company. Ultimately, this distinction is useful in considering the appropriate cost of service treatment for particular property or expenses.

The Commission has found that the current general guidelines in Account 322 are not adequate for Commission accounting purposes. For example, certain utilities have classified a particular item of property as a retirement unit in one Commission filing and as a minor item of property in another filing. Certain utilities have also filed lists of retirement units that are too general for Commission accounting needs.

III. Discussion

To promote greater consistency and specificity in accounting for this equipment, the Commission has developed the proposed list as a minimum requirement for utilities to use in classifying reactor plant equipment as retirement units. The list was developed based on the Commission's experience in collecting and analyzing such data and is consistent with the types of lists that the Commission has developed for other accounts. Consistent with current practice under existing regulations, utilities can continue to add items to the list of retirement units in Account 322, if such items are both relatively costly and not an integral part of a larger retirement unit.[3] In addition, utilities may continue to account for new or replaced minor items of property in the same manner as retirement units if these items result in a substantial addition to or betterment of the plant.[4]

[3] 18 CFR Part 116, Instruction 4.

[4] In 18 CFR Part 101, "Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act," Instruction 10.C. of "Electric Plant Instructions" provides that: "The addition and retirement of minor items of property shall be accounted for as follows:

(1) When a minor item of property which did not previoulsy exist is added to plant, the cost thereof shall be accounted for in the same manner as for the addition of a retirement unit, . . . if a substantial addition results, otherwise the charge shall be to the appropriate maintenance expense account.

* * * * * *

(3) When a minor item of depreciable property is replaced independently of the retirement unit of which it is a part, the cost of replacement shall be charged to the maintenance account appropriate for the item, except that if the replacement effects a substantial betterment (the primary aim of which is to make the property affected more useful, more efficient, of greater durability, or of greater capacity), the excess cost of the replacement over the estimated cost at current prices of replacing without betterment shall be charged to the appropriate electric plant account.

The Commission notes that most utilities already provide information that generally satisfies the requirements of the proposed rule, and submit lists of retirement units that are more detailed than the one proposed here. However, a few utilities may have to revise parts of the lists that they currently use in order to conform to the Commission's proposal. Any such revision should not result in a significant burden to the affected utilities, either in time or expense. Moreover, the Commission believes that any burden would be outweighed by the benefits to the Commission and to the utilities of having a standardized minimum list that applies to all nuclear reactor plants. In addition, because the rule is merely a codification of existing, accepted accounting practice, it should have no direct effect on utility rates.

IV. Summary of Proposed Changes

This notice proposes to replace the general guidelines in Account 322 with a definitive list of retirement units for reactor plant equipment. The list is divided under three headings: boiling water reactor, pressurized water reactor, and high temperature gas reactor. As with lists of retirement units in other accounts, and subject to the same limitations, the list is a minimum requirement upon which the utility may expand by including new items or items that it currently classifies as retirement units under its own system.[5]

The proposed list of reactor plant equipment corresponds to the format of the retirement units and instructions prescribed for other accounts in Part 116. Upon adoption of this proposed list, utilities would no longer be required to develop and file with the Commission their own list of retirement units for Account 322.

The Commission also proposes two non-substantive amendments to Instruction 6 in Part 116: (1) Redesignating items (a) through (q) as items (1) through (17) to be consistent with the corresponding list of general retirement units for gas plants,[6] and (2) revising the newly designated item (11) by deleting the term "(non-nuclear)" from the description of plant piping, because this provision applies to both nuclear and non-nuclear equipment.

V. Paperwork Reduction Act Statement

The Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520 (1982)) and the Office of Management and Budget's (OMB) regulations at 5 CFR 1320.12 (1984) require that OMB approve certain information collection and recordkeeping requirements imposed by an agency. The list of retirement units proposed for Account 322 is being submitted to OMB for its review. Interested persons can obtain information on the recordkeeping requirements by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (Attention: Kasha Ciaglo (202) 357–8465). Comments on the recordkeeping requirements can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission).

[5] *See supra*, notes 3 and 4 and accompanying text.

[6] 18 CFR Part 216, Instruction 6.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) 5 U.S.C. 601–612 (1982) requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have a "significant economic impact on a substantial number of small entities." The Commission is not required to make such analyses if a rule would not have such an impact.

The Commission does not believe that this rule will have such an impact on small entities. The proposed rule establishes a standard list of retirement units of nuclear reactor equipment owned by utilities. Most utilities do not fall within the RFA's definition of small entity.[7] In addition, those utilities that independently own nuclear facilities are all classified as "major utilities" under the Commission's uniform System of Accounts.[8] Moreover, the level of investment necessary for nuclear generating facilities generally limits their ownership to other than small entities. Although small or municipal utilities may purchase shares in these

[7] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section 3 of the Small Business Act defines a "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. *See also* SBA's revised Small Business Size Standards, 49 FR 5024 (Feb. 9, 1984) (to be codified at 13 CFR Part 121).

[8] 18 CFR Part 101, "General Instructions"

1. *Classification of Utilities*

A. * * *

(1) Major. Utilities and licensees that had, in each of the last three consecutive years, sales or transmission service that exceeded any one or more of the following:

(1) One million megawatt-hours of total sales;

(2) 100 megawatt-hours of sales for resale;

(3) 500 megawatt-hours of gross interchange out; or

(4) 500 megawatt-hours of wheeling for others (deliveries plus losses).

facilities, such utilities are not subject to the Uniform System of Accounts and the provisions of this rule.

This proposed rulemaking will not impose any regulatory or administrative burden upon small entities because it merely standardizes an accepted utility accounting practice. Therefore, it does not require any expenditures of resources by such entities. For these reasons, the Commission certifies that the rulemaking, if promulgated, will not have a significant enconomic impact upon a substantial number of small entities.

VII. Written Comment Procedures

The Commission invites interested persons to submit written comments on this proposal. An original and 14 copies of such comments should be filed with the Commission by November 26, 1985. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 and should refer to Docket No. RM83–39–000.

All written submissions will be placed in the public file which has been established in this docket and which is available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 116

Electric power plants, Electric utilities, Reporting and recordkeeping requirements, Uniform system of accounts.

In consideration of the foregoing, the Commission proposes to amend Part 116 of Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary

PART 116—[AMENDED]

1. The authority citation for Part 116 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7102–7352 (1982); Executive Order 12,009, 3 CFR 142 (1978); Federal Power Act, 16 U.S.C. 791a–828c (1982). Public Utility Regulatory Policies Act, 16 U.S.C. 7601–7645 (1982).

2. In Instruction 6 of Part 116, items (a) through (q) are redesignated as items (1) through (17), respectively.

3. In Instruction 6 in Part 116, newly designated item (11) is amended by deleting the term "(non-nuclear)".

4. Account 322 in Part 116 is revised to read as follows:

322 Reactor Plant Equipment

Boiling Water Reactor

A. Reactor:
1. Reactor vessel internals including core.
2. Reactivity control systems.
3. Reactor vessels and appurtenances.
4. Reactor trip systems.
B. Reactor Coolant System and Connected Systems:
1. Coolant recirculation systems and controls.
2. Main steam systems and controls.
3. Main steam isolation systems and controls.
4. Reactor core isolation cooling systems and controls.
5. Residual heat removal systems and controls.
6. Feedwater systems and controls.
7. Reactor coolant pressure boundary leakage detection systems.
8. Other coolant subsystems and controls.
9. Engineered safety feature instrument systems.
10. Systems required for safe shutdown.
11. Safety related display instrumentation.
12. Coolant injection systems.
13. Other instrument systems.
C. Containment System:
1. Reactor containment.
2. Containment heat removal systems and controls.
3. Containment air purification and cleanup systems and controls.
4. Containment isolation systems and controls.
5. Containment combustible gas control systems and controls.
6. Other containment systems and controls.
D. Fuel Storage and Handling Systems:
1. New fuel storage facilities.
2. Spent fuel storage facilities.
3. Spent fuel pool cooling and cleanup systems and controls.
4. Fuel handling systems.
E. Auxiliary Water Systems:
1. Cooling systems for reactor auxiliaries and controls.
F. Auxiliary Process Systems:
1. Process sampling system.
2. Failed fuel detection systems.
3. Reactor coolant cleanup systems and controls.
4. Liquid poison systems and controls.
G. Radioactive Waste Management Systems:
1. Liquid radioactive waste management systems.
2. Gaseous radioactive waste management systems.
3. Process and effluent radiological monitoring systems.
4. Solid radioactive waste management systems.
H. Radiation Protection Systems:
1. Area monitoring systems.
2. Airborne radioactivity monitoring systems.
3. Control room habitability system and controls.
I. Other Systems:
1. Auxiliary boiler systems.
2. Control air systems.
3. Service water systems.
4. Vent and drain systems.
5. Ventilating equipment.
6. Water supply and purification of cleanup system.

Note.—See list of general retirement units.

Pressurized Water Reactor

A. Reactor:
1. Reactor vessel internals including core.
2. Reactivity control systems.
3. Reactor vessels and appurtenances.
4. Reactor trip systems.
B. Reactor Coolant System and Connected Systems:
1. Coolant recirculation systems and controls.
2. Main steam systems and controls.
3. Main steam isolation systems and controls.
4. Emergency core cooling systems and controls.
5. Residual heat removal systems and controls.
6. Feedwater systems and controls.
7. Reactor coolant pressure boundary leakage detection systems.
8. Other coolant subsystems and controls.
9. Engineered safety feature instrument systems.
10. Systems required for safe shutdown.
11. Safety related display instrumentation.
12. Other instrument systems.
C. Containment Systems:
1. Reactor containment.
2. Containment heat removal systems anc controls.
3. Containment air purification and cleanup systems and controls.
4. Containment isolation systems and controls.
5. Containment combustible gas control systems and controls.
6. Other containment systems and controls.
D. Fuel Storage and Handling Systems:
1. New fuel storage facilities.
2. Spent fuel storage facilities.
3. Spent fuel cooling and cleanup systems and controls.
4. Fuel handling systems
E. Auxiliary Water Systems:

1. Cooling systems for reactor auxiliaries and controls.
F. Auxiliary Process Systems:
1. Process sampling system.
2. Failed fuel detection systems.
3. Chemical and volume control systems and controls.
G. Steam and Power Conversion Systems:
1. Steam generator blowdown systems and controls.
H. Radioactive Waste Management Systems:
1. Liquid radioactive waste management systems.
2. Gaseous radioactive waste management systems.
3. Process and effluent radiological monitoring systems.
4. Solid radioactive waste management systems.
I. Radiation Protection Systems:
1. Area monitoring systems.
2. Airborne radioactivity monitoring systems.
3. Control room habitability systems and controls.
J. Other Systems:
1. Auxiliary boiler systems.
2. Control air systems.
3. Service water system.
4. Vent and drain system.
5. Ventilating equipment.
6. Water supply and purification or cleanup system.

Note.—See list of general retirement units.

High Temperature Gas Reactor

A. Reactor:
1. Reactor.
2. Reactor reflector system.
B. Reactor Coolant System and Connected Systems:
1. Primary coolant systems and controls.
2. Secondary coolant systems and controls.
3. Feedwater and condensate system and controls.
4. Reactor plant piping.
5. Hydraulic power system and controls.
6. Moisture monitoring control system.
7. Linear neutron flux monitor and control rod calibration.
8. Analytical depressurization box controls.
9. Analytical liquid sampling control system.
10. Analytical gaseous sampling control system.
11. Tritium monitoring control system.
C. Fuel Storage and Handling System.
1. Fuel storage systems and controls.
2. Fuel handling systems and controls.
D. Radioactive Waste Management Systems:
1. Radioactive liquid waste systems management and controls.
2. Radioactive gaseous waste management systems and controls.
3. Decontamination system and controls.
E. Radiation Protection Systems:
1. Air monitor control systems and controls.
F. Auxiliary Boiler System.
G. Alternate Cooling Method.

Note.—See list of general retirement units.

[FR Doc. 85-23126 Filed 9-26-85; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 170

[Docket No. 84N-0080]

Eligibility for Classification of Food Substances as Generally Recognized as Safe; Extension of Comment Period

Correction

In FR Doc. 85-20937 beginning on page 35571 in the issue of Tuesday, September 3, 1985, make the following corrections on page 35571:

1. In the third column, in the summary, in the seventh line, "shwon" should read "shown".

2. In the third column, in the supplementary information, in the first paragraph, in the second to last line, "FRAS" should read "GRAS".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 635

[FHWA Docket No. 85-11]

Labor and Employment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA is requesting comments on a proposal to amend its regulation prescribing the inclusion of prevailing wage rates determined by the Secretary of Labor in advertisements and contracts for Federal-aid highway projects. The proposed amendment would preclude the payment of Federal-aid funds for excess costs due to State prevailing wage rates on such projects higher than that determined by the Secretary of Labor.

DATE: Written comments are due on or before November 12, 1985.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 85-11, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. ET., Monday through Friday. Those desiring notification of receipt of comment must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Paul E. Cunningham, Office of Highway Operations, 202-426-0392, or Hugh T. O'Reilly, Office of the Chief Counsel, 202-426-0780, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Federal statute commonly known as the Davis-Bacon Act (40 U.S.C. 276a-276a-7) requires that laborers and mechanics employed on Federal construction work be paid not less than a "prevailing wage" to be determined by the Secretary of Labor. Such wage rates are extended to Federal-aid highway construction projects by 23 U.S.C. 113, which provides (in part) that:

> the Secretary shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on the construction work performed on highway projects on the Federal-aid systems, * * * shall be paid wages at rates not less than those prevailing on the same type of work on similar construction in the immediate locality as determined by the Secretary of Labor in accordance with the Act of August 30, 1935, known as the Davis-Bacon Act (40 U.S.C. 267a).

According to a recent survey, Thieblot, "Prevailing Wage Laws of the States," *Government Union Review* (Fall 1983) there were thirty seven States plus the District of Columbia which had effective prevailing wage laws for State and some local public works as of 1983. Approximately nineteen of these statutes are so drafted and applied as to commonly result in the payment of wage rates in Federal-aid highway projects which are higher than the Davis-Bacon rates determined by the Secretary of Labor. The States which appear to fall into this category are: Alaska, California, Connecticut, Delaware, Hawaii, Illinois, Kansas, Kentucky, Maryland, Massachusetts, Minnesota, Missouri, Nevada, New Jersey, New York, Washington, West Virginia, Wisconsin, and Wyoming.

The method used to calculate a prevailing wage varies considerably

from State to State. Prevailing wage statutes in many States fail to specify how the pevailing wage is to be calculated. Legislative guidance regarding the selection of a prevailing wage rate is provided in 20 States but there is little consistency among States in the type of guidance provided. Statutes in two States specify that the majority rate shall be selected, but provide no guidance for proceeding when a majority of workers in a classification are not paid at the same rate. Some States specify the mean wage rate, some the median, and some require selection of the modal rate in the wage distribution. Use of the modal rate (the wage rate that appears most frequently in the wage distribution) is tantamount to adopting the union wage rate, since a union contract is the most likely reason that a significant number of workers in a given classification are paid at exactly the same rate. Five States simply adopt collectively bargained rates as prevailing.

An important part of the Federal prevailing wage law is that a wage determination can be appealed to the Administrator of DOL's Wage and Hour Division, or, if necessary, to the DOL's Wage Appeals Board, but in several States there is little or no appeal mechanism available to contractors or other interested parties to challenge arbitrary wage determinations. The result of this difference between Federal and State statutes is that a contractor who believes that he is being forced to pay a wage rate that is higher than what actually prevails in a local area has an avenue to appeal the wage determination decision to a higher level if the Federal law has established the rate. If the wage rate has been established under State law, however, the contractor would, in several cases, have no official appeal mechanism available.

In 1983, the Labor Department amended its procedures for predetermination of wage rates (29 CFR Part 1), which will result in slightly lower wage rates. The major part of these amendments was upheld against court challenge in the case of *Building Construction Trades Department, AFL–CIO* v. *Donovan*, 712 F.2d. 611, decided in early 1984. It is too early to tell whether, and to what extent, States with their own prevailing wage laws will follow suit. The result could be even more States than the 19 mentioned with labor provisions inconsistent with Federal requirements.

While it is true that the Davis-Bacon Act and 23 U.S.C. 113 provide for a minimum wage rate on Federal-aid projects, a floor not a ceiling, it is also evident that this is not solely a question of minimum wages as such. Rather, it is a question of both the Federal Government and the State Government determining the "prevailing wage rates in a locality" which must be paid as a minimum. There is nothing in 23 U.S.C. 113 which requires the Secretary to accede to higher (State) prevailing wage rate determinations than those established by the Secretary of Labor.

In addition, some of the State prevailing wage laws contain labor classification rules, employment preferences and other requirements more restrictive and costly than those provided under 23 U.S.C. 113 and the Labor Department regulations covering Davis-Bacon job classifications and wage rate determinations. These inconsistent requirements, which contribute to the problem of high labor costs, are only partially addressed by existing regulation, 23 CFR 635.124(b), which prohibits discrimination against labor from other States, and assures a contractor's free choice of his or her own labor. A rule denying Federal-aid participation in excessive labor costs due to State prevailing wage laws would remove much of the incentive for maintaining such inconsistent requirements or over-generous rate determinations.

Excess wage payments as outlined above are now seen as being an unwarranted drain on limited Federal-aid funds and counterproductive to full and open competition. Small and minority owned businesses are discouraged from bidding on Federal-aid projects with such high rates, since many are relatively new firms which could not practically jump their wage scale for one job, then attempt to return to a regular scale.

In those cases where the State-determined prevailing wage rate is higher than the wage determined to be prevailing rate under provisions of the Federal Davis-Bacon Act, the use of the wage rates established by State prevailing wage laws adds to the cost of Federal-aid highway construction in two ways. First, use of State-determined wage rates can add directly to project's wage costs by the amount of the difference between the higher prevailing wage established under State law and the Davis-Bacon wage (multiplied by the number of labor hours involved). Second, including the higher State-determined wage rate in Federal-aid contracts adds indirectly to future wage costs by ensuring that the higher wage rate will have greater influence in future wage surveys, and perpetuate higher rates regardless of true market conditions.

Since the Federal-aid highway projects are funded jointly by Federal and State governments with, in the instance of interstate construction and rehabilitation, the Federal government paying at least 90% of all costs, and States paying only 10% or less of those costs, the FHMA has an obligation to ensure that Federal dollars are not used to pay inflated wage rates imposed by State law. Stated another way, only 10 to 25 percent of project costs are paid from local or State funds. Thus, there is often only minimal incentive for those governments to avoid inflated wage levels, especially since high wages are politically attractive and the major portion of the cost is paid from Federal funds.

For example, for a recent project in one State, the Federal Davis-Bacon rate (combined wage/fringe benefit rate) for unskilled labor was $15.01, while the State's "little Davis-Bacon" rate was $19.08 (27 percent higher). For another project, the Federal Davis-Bacon rate for unskilled labor was $12.56, while the State-determined rate was $16.74 (33 percent difference). On still another project, the unskilled labor prevailing wage rate determined by the Federal Government was $13.74 while the State-determined rate was $14.89 (8 percent higher). State rates for unskilled labor have been set as high as $20.67 per hour, substantially higher than for comparable non-federally funded projects.

While its not possible to precisely reconstruct the amount of excess payments which have resulted from the application of these laws over the years, the payment of any amount in excess of that required by Federal law is not consistent with sound fiscal stewardship of Federal funds. All Federal agencies have a duty to analyze expenditures to determine if public money is being used and expended economically and efficiently. Certainly, it is unarguable that the payment of any element of excess cost will necessarily result in the building of fewer miles of highway or other necessary improvements within the States affected.

It thus becomes apparent that action to preclude Federal-aid in such excess costs will aid the program. Therefore, this proposal makes such excess costs ineligible for Federal-aid, without affecting the validity of any State law. No State's apportionment of funds is affected by this proposal.

The proposal, if promulgated as a final rule, would operate in the following manner. States would continue to publish Federal Davis-Bacon minimum

wage rates in the advertisement or call for bids on any contract for a Federal-aid project, as now required by 23 U.S.C. 635.124(d). Likewise, those States with their own minimum wage rate laws may also continue to publish state rates in the advertisement or call, since the proposal does not prohibit their use. This proposal would not affect any contract already awarded. Upon award of new contracts and commencement of work, however, those States will be required to compute the difference between Federal and State wage rates actually paid out using the contractors' weekly payrolls, which are already required to be submitted by 40 U.S.C. 276c.

It is this difference which would be ineligible for Federal-aid participation. The amount of wages paid *above* the level of State-imposed minimums by contractors, whether due to market pressure or union agreements, would be unaffected by the proposal and would continue to be eligible. The burden on the affected States is expected to be in two parts. The first, a short-term task, consists of establishing a method of review of weekly payrolls to determine the ineligible differential. The second consist of long-term use of that review method as part of the already required State review of weekly payrolls for compliance with other labor laws. It is estimated that this computation would cost a State with an average size program about $50,000 per year. Comment is specifically requested on the amount of lead time the States might need to implement this provision.

Although neither the Davis-Bacon Act nor 23 U.S.C. 113 preempts State law in this regard, the Federal Highway Administrator has broad discretionary power under statute, 23 U.S.C. 106, to approve Federal-aid projects proposed by the States. This statutory power necessarily includes the power to disapprove projects which are too costly from whatever standpoint, whether in design, materials, or labor costs. This is demonstrated not only by the extensive legislative history of the provision in the Federal-aid Road Act of 1916, 39 Stat. 355, which became 23 U.S.C. 106, but by numerous court decisions such as *Mahler* v. *United States*, 306 F.2d. 713 (1962) which drew heavily on this legislative history in ruling that "The concern of Congress was to make sure that federal funds were effectively employed and not wasted."

The statutory discretionary power of the Administrator to disapprove projects for excessive cost is buttressed by other enactments. The first section of the Department of Transportation Act, codified as 49 U.S.C. 101, begins:

> (a) The national objective of general welfare, economic growth and stability, and security of the United States require the development of transportation policies and programs that contribute to providing fast, safe, efficient, and convenient transportation at the lowest cost consistent with those and other national objectives, including the efficient use and conservation of the resources of the United States.

Further, 23 U.S.C. 101(e), expressing a Congressional policy of preventing waste in the Federal-aid programs, states:

> It is the national policy that * * * the Secretary and all other affected heads of Federal departments * * * shall encourage * * * the best use of available manpower and funds.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. The proposed rulemaking is considered significant under the Department of Transportation's regulatory policies and procedures because of the public interest and controversy that the proposed rulemaking is likely to generate.

To the extent that the proposed regulation reduces wage costs on Federal-aid highway construction projects, an important impact of the proposed change will be to make funds available for additional highway construction purposes. The regulatory and economic impacts are addressed in more detail in a Draft Regulatory Evaluation/Initial Regulatory Flexibility Analysis which has been prepared and is available for inspection in the public docket and may be obtained by contacting Mr. Paul E. Cunningham at the address provided under the heading "For Further Information Contact."

The Regulatory Evaluation suggests, based on a number of assumptions, that this proposal may save up to $60,000,000 per year in Federal-aid funds. These assumptions may bear public examination and comment. Public comment is also requested regarding the size of and reasons for the differences in prevailing wage determinations as set by the 19 States and the DOL, and how this proposal is likely to affect those differences. The FHWA is also interested in how this proposal might practically affect the operation of highway construction programs in the States concerned, particularly with regard to whether any delays or hindrance might be involved. .

With regard to the assessment of the impact this proposed rulemaking would have on small entities pursuant to the Regulatory Flexibility Act (Pub. L. 96-354), the reasons for, objectives, and legal basis for this action have been previously explained in this notice. This rulemaking would not impose any additional reporting, recordkeeping or other compliance requirements on small entities and does not duplicate, overlap, or conflict with any other Federal rules. The proposal is not expected to have a significant economic impact on a substantial number of small entities. In fact, the proposed regulation should promote a competitive environment in which small and economically disadvantaged businesses may have greater opportunity to compete for federally-funded highway contracts.

Because sufficient information was not available to allow more precise estimation of the impacts of the proposed change in those States where State-determined prevailing wage requirements have been applied to Federal-aid highway construction contracts, FHWA encourages all interested parties to comment on the preliminary assessment of impacts and to provide information that will assist in improving the initial assessment. Comments directed to the items listed below will be particularly helpful in preparation of a final assessment of impacts.

(1) Specific examples of Federal-aid highway projects where State level wage determinations resulted in the establishment of a prevailing wage requirement higher than that established under provision of the Federal Davis-Bacon Act (including project location, difference between Davis-Bacon minimum and State-determined minimum, job classifications affected).

(2) In which States do State prevailing wage determinations result in the establishment of higher prevailing wage rates on Federal-aid highway projects than those established according to the Davis-Bacon Act (the 19 listed above, or others)? In these States, by how much do the State determinations generally exceed the Federal determination, on a percentage basis? How often do State level wage determinations increase wage costs on Federal-aid projects (always, often, seldom, never)? Which job classifications are typically affected?

(3) To what extent do State level wage determinations applicable to Federal-aid projects limit competition from potential bidders? Will the proposed regulation improve the competitive environment

for small and economically disadvantaged contractors?

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

In consideration of the foregoing and under the authority of 23 U.S.C. 113 and 315, and 49 CFR 1.48(b), the FHWA proposes to amend Part 635, Subpart A to Chapter 1 of Title 23, Code of Federal Regulations, as set forth below.

List of Subjects in 23 CFR Part 635

Government contracts, Grant programs—transportation, Highways and roads.

Issued on: September 24, 1985.

Ray Barnhart,

Federal Highway Administrator.

PART 635—[AMENDED]

The FHWA proposes to amend Part 635, Subpart A to Chapter 1 of Title 23, Code of Federal Regulations, as follows:

1. The authority citation for Part 635 continues to read as follows:

Authority: 23 U.S.C. 112, 113, 114, 117, 128 and 315; 42 U.S.C. 3334, 4231–4233, 4601 *et seq.*; 49 CFR 1.48(b).

2. In § 635.124, paragraph (d) is revised to read as follows:

§ 635.124 Labor and employment.

* * * * *

(d) The advertisement or call for bids on any contract for the construction of a project on the Federal-aid system either shall include the minimum wage rates determined therefore by the Secretary of Labor or shall provide that such rates are set out in the advertised specifications, proposal or other contract document, and shall further specify that such rates are the minimum rates that must be paid under the contract covering the project. If any provision of State law, regulations, specification, or policy may operate in any manner to require the establishment of prevailing wage rates higher than those determined by the Secretary of Labor under the Davis-Bacon Act, and applied to Federal-aid work by 23 U.S.C. 113, Federal-aid funds shall not participate in any excess costs due to such provisions.

[FR Doc. 85–23185 Filed 9–26–85; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1208

[Docket 85–12; Notice 1]

National Minimum Drinking Age

AGENCIES: National Highway Traffic Safety Administration (NHTSA), Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this notice is to solicit comments on a proposed regulation which would clarify the provisions which a State must incorporate or have incorporated into its laws in order to prevent the withholding of a portion of its Federal-aid highway funds for noncompliance with the Natural Minimum Drinking Age. The rulemaking is undertaken at this time to implement section 6 of Pub. L. 98–363.

DATES: All written comments must be received by October 28, 1985. The regulation will become effective as of the date of publication of the final rule.

ADDRESSES: Written comments should refer to the docket number and the number of this notice and ten copies should be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, Nassif Building, 400 Seventh Street SW, Washington, DC 20590. Docket hours are 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT:

NHTSA: Mr. George Reagle, Associate Administrator for Traffic Safety Programs, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202–426–0837)

FHWA: Mr. R. Clarke Bennett, Director, Office of Highway Safety, Federal Highway Administration, 400 Seventh Street SW., Washington DC 20590 (202 426–1153) and Mr. David Oliver, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street SW., Washington DC 20590 (202–426–0825)

SUPPLEMENTARY INFORMATION: There has been increasing concern over the incidence of alcohol-related crashes involving the nation's youth. Studies show a direct correlation between the minimum drinking age and alcohol-related crashes in the 18 to 21 age group. In 1981, 24,000 drinking drivers died in alcohol-related crashes. Approximately 16 percent of these drivers, 3,840, were between the ages of 18 and 20. This death toll of young Americans is grossly disproportionate to the population of this age group and can be accurately termed a national tragedy. In fact, fatal crashes for every 100 million vehicle miles traveled drops from 4.12 for 18 year olds down to 2.52 for those 22 to 24 years old.

As a result of this growing awareness, on July 17, 1984, the President signed legislation which strongly encourages States to have laws prohibiting the purchase and public possession of alcoholic beverages by anyone under 21 years of age by withholding a portion of Federal-aid highway funds from States without such laws.

In enacting this legislation, both Congress and the President recognized that raising the drinking age results in a decrease both in the number of traffic crashes and in the number of fatalities. For example, Michigan, which had a drinking age of 18 since January 1972, raised the age back to 21 in December 1978. In the first 12 months after the age limit was raised, a study showed a statistically significant reduction of 31 percent in alcohol-related crashes among drivers aged 18–20. Other studies have shown that increasing the drinking age has a positive effect on the number of single vehicle nighttime male driver crashes, most of which involve drinking drivers. For example, a 1980 study in Illinois showed a 8.8 percent decline in single vehicle nighttime male driver crashes involving drivers aged 19 to 20 after the drinking age was raised.

In addition to the increase in drinking age, Congress and the President expressed overwhelming concern for the continuing "blood border" problem that exists when young people can drive from one State to another and purchase alcoholic beverages which are otherwise prohibited to them. For example, a report released by the State or New York in 1981 indicates that 39 percent of the New Jersey drivers involved in alcohol-related crashes in New York border counties, where there is a lower drinking age, are under 21 years of age, and 49 percent of similarly involved Pennsylvania drivers are under 21. A uniform national drinking age will solve the problem that now occurs when teenagers in one State with a drinking age of 21 easily drive into another State with a lower age limit, consume alcohol, and drive home. Too often, these trips result in the needless killing or maiming of young people or others who become innocent victims.

Adoption of National Minimum Drinking Age

The legislation clearly states that the Secretary must withhold a portion of

Federal-aid highway funds from any State whose laws permit the purchase or public possession of any alcoholic beverage by a person who is less than 21 years of age. If any such State does not enact a new law or amend the existing laws to make age 21 the legal minimum drinking age by October 1, 1986 (fiscal year 1987), five percent of its Federal-aid highway apportionment under 23 U.S.C. 104(b)(1); 104(b)(2); 104(b)(5) and 104(b)(6), which are primary system, secondary system, interstate system (including resurfacing, restoring, rehabilitating and reconstructing funds) and urban system funds, shall be withheld. If by October 1, 1987 (fiscal year 1988) no such law is adopted or amendments made, an additional ten percent of its Federal-aid highway funds under these sections will be withheld.

Apportionment of Withheld Funds

Pub. L. 98–363 provides that funds which have been withheld from a State which does not have 21 as the minimum drinking age be apportioned to that State "if in any succeeding fiscal year such State makes unlawful [such] purchase or public possession."

Section 1208.5 of the proposed rule notes that the apportionment of withheld funds to states is subject to their availability under 23 U.S.C. section 118(b). In relevent part, section 118(b) provides that—

> (1) Sums apportioned to each Federal-aid System (other than the Interstate System) shall continue available for expenditure in that State for the appropriate Federal-aid System or part thereof (other than the Interstate System) for a period of three years after the close of the fiscal year for which such sums are authorized and any amounts for apportioned remaining unexpended at the end of such period shall lapse.
>
> (2) Expect as otherwise provided in this subsection, sums apportioned for the Interstate System in any State shall remain available for expenditure in that State for the Interstate System until the end of the fiscal year for which authorization * * *.

NHTSA sought the advice of the Office of Management and Budget (OMB), because of its expertise and coordinating role in budgeting matters, concerning the interaction of section 118(b) with 23 U.S.C. 158, which establishes the national minimum drinking age. Consistent with OMB's advice, § 1208.5 provides that highway funds withheld for noncompliance with national minimum drinking age requirements would be subject to the standard periods of availability for Federal-aid highways funds set forth in section 118(b). That is, funds withheld from States that do not pass laws establishing 21 as the minimum drinking age in a timely manner would lapse, as provided by section 118(b), if not expended within the periods designated by that statute. For example, primary system funds for fiscal year 1987, withheld from a State because of its failure to pass an appropriate minimum drinking age law by October 1, 1986, would lapse after September 30, 1990, if not obligated by that date, regardless of whether the State had, meanwhile enacted such a statute.

Compliance Criteria

"Alcoholic beverages" are clearly defined in the legislation by references to the Internal Revenue Code of 1954 and those definitions, along with the definition of wine prescribed in the statute, are incorporated into the text of the proposed rule.

The agencies are proposing to define "public possession" to mean the possession of an alcoholic beverage for any reason, including consumption, on any street or highway or in any public place or in any place open to the public. Congress made it clear in their discussions of this legislation that they did not intend for its provisions to apply to any person under the age of 21 when the selling, transporting, delivering, serving or other handling of an alcoholic beverage was in pursuance of that person's employment and that understanding has been incorporated into the proposed definition of "public possession."

Questions have been raised concerning other parameters of "public possession" and the agencies are requesting comments on these issues. For example, there are currently eight States that have provisions in their laws that allow underage persons to consume and/or possess alcoholic beverages as part of an established religious service. The agencies are, therefore, proposing within the definition of "public possession" language clarifying that alcohol consumed for religious purposes need not be denied to underage persons.

It is clear that "public possession" does not include consumption of alcoholic beverages by underage persons in individuals' homes. However, most States do have statutes that regulate private clubs and we are requesting comments on whether or not they should be included in the definition of "public". The issue was also raised as to whether underage persons can consume alcoholic beverages in public when accompanied by a parent, spouse or legal guardian who is age 21 or over. Some States currently have laws that permit underage individuals to possess, consume or purchase alcoholic beverages in such instances. However, in these States the parent, spouse or legal guardian may be civilly liable for any damage to property or injury of persons that is proximately caused by the underage person's drinking. The legislative history does not suggest that Congress intended to permit such an exception and, therefore, we do not propose to incorporate such a provision into the definition of "public possession."

Currently, three states exempt members of the Armed Forces of the United States from the provisions of their legal drinking age laws. The debate in both the House and the Senate included arguments that persons old enough to vote and to fight for their country should be old enough to drink. However, proponents of the legislation stressed that while there may be a relationship between voting and fighting, there is no such relationship between voting and drinking. The legislative history is clear that Congress sees the right to vote as a fundamental political right of all citizens while both drinking and driving are privileges and in Congress' view are subject to reasonable regulation in the interests of public health and safety.

Further, to permit a blanket exclusion within a State for members of the military would continue the problem of "blood borders" which Congress so clearly intended to eliminate. The legislative history supports the conclusion that the statute does not permit a blanket exclusion for the military from a State's minimum drinking age requirements. It is important to note, however, that State drinking age laws do not generally apply to alcohol consumed on premises controlled by the military, such as officers' clubs. While the Department of Defense and the military services have been cooperating with NHTSA to reduce alcohol-related crashes both on and off duty, the military services retain fully authority over their lands. The agencies applaud the military's efforts to reduce drunk driving and further encourage the military to incorporate State law into their regulations governing drinking while on the premises of a military establishment in order to decrease the number of "blood borders."

Pub. L. 98–363 prohibits the "purchase" of an alcoholic beverage by an underage person. It has come to our attention that some States include within their laws governing the minimum drinking age provisions that also prohibit the "attempt to purchase"

and the "selling, giving or serving" of alcoholic beverages to underage individuals. The legislative history does not reflect any Congressional intention to extend the word "purchase" to encompass these other acts. We have, therefore, not included them within the definition.

Notification and Advance Notification of Compliance

NHTSA and FHWA will notify all States of initial determinations of compliance or non-compliance with Pub. L. 98–363 by March 1, 1986 and 1987, and each State initially found not to comply will have an opportunity to rebut this initial determination. By May 1, 1986 and 1987, the agencies will notify in writing all States of determinations of compliance or noncompliance with Pub. L. 98–363. If a State comes into compliance after May 1 but prior to the beginning of the fiscal year, any funds earmarked for withholding will be released.

NHTSA and FHWA recognize that States will want to know as soon as possible whether or not their laws satisfy the requirements of Pub. L. 98–363. Advance notification would allow States with nonconforming laws to take the necessary measures to enact conforming laws prior to the date for the withholding of funds. The agencies are, therefore, proposing to permit States to request advance notification by submiting a copy of all applicable State laws to the Director, Office of Alcohol Countermeasures, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

Procedures for Commenting on Proposal

Interested persons are invited to submit written comments on this proposal. It is requested but not required that 10 copies be submitted.

The comment period established for this notice is necessarily short in order to issue a final rule in time for States to prepare their legislative agendas for sessions that begin in January 1985.

Comments should not exceed 15 pages in length (*See* 49 CFR 553.21). Necessary attachments may be added to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise manner.

All comments received before the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date.

To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. NHTSA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all written comments will be placed in Docket 85–12; Notice 1 of the NHTSA Docket Section in Room 5109, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Regulatory Evaluation

The agencies have determined that this rulemaking should be classified as significant under the Department's regulatory policies and procedures. The agencies have not prepared a regulatory evaluation because this is a ministerial regulation implementing an Act of Congress. The regulatory impact is not greater than $100 million. Any economic impact that may occur is not attributable to this regulation but will be the result of State decisions to enact statutes that conform with the Federal statute. Such decisions are not mandated by this regulation. The agencies have determined that since this rule not have an annual impact of $100 million on the economy, it is not a major rule within the meaning of Executive Order 12291.

Regulatory Flexibility Act

We hereby certify that the requirements that will be established by this rulemaking action will not have a significant economic impact on a substantial number of small entities. Any economic impact on liquor stores or other establishments will be the result of State decisions to enact statutes that conform with the Federal statute. Such decisions are not mandated by this regulation. Additionally, States are the subject of any funds which may be withheld and, therefore, preparation of an Initial Flexibility Analysis is not necessary.

List of Subjects in 23 CFR Part 1208

Alcohol, Highway safety.

In consideration of the foregoing, a new Part 1208 is added to Title 23 of the Code of Federal Regulations to read as follows:

PART 1208—NATIONAL MINIMUM DRINKING AGE

Sec.

1208.1 Scope.
1208.2 Purpose.
1208.3 Definitions.
1208.4 Adoption of National Minimum Drinking Age.
1208.5 Apportionment of withheld funds.
1208.6 Notification of compliance.
1208.7 Advance notification of compliance.

Authority: 23 U.S.C. 158.

§ 1208.1 Scope.

This part prescribes the requirements necessary to implement 23 U.S.C. 158, which establishes the National Minimum Drinking Age.

§ 1208.2 Purpose.

The purpose of this part is to clarify the provisions which a State must have incorporated into its laws in order to prevent the withholding of Federal-aid highway funds for noncompliance with the National Minimum Drinking Age.

§ 1208.3 Definitions.

As used in this part:

(a) "Alcoholic beverage" means beer, distilled spirits and wine containing one-half of one percent or more of alcohol by volume. Beer includes, but is not limited to, ale, lager, porter, stout, sake and other similar fermented beverages brewed or produced from malt, wholly or in part or from any substitute therefor. Distilled spirits include alcoholic spirits and spirits that contain that substance known as ethyl alcohol, ethanol or spirits of wine in any form, including all dilutions and mixtures thereof from whatever process produced.

(b) "Public possession" means the possession of any alcoholic beverage for any reason, including consumption, on any street or highway or in any public place or in any place open to the public. The term does not apply to the possession of alcohol for an established religious purpose or to the sale, handling, transport, delivery, service in dispensing of any alcoholic beverage pursuant to the lawful employment of a person under the age of twenty-one years by a duly licensed manufacturer, wholesaler, or retailer of alcoholic beverages.

(c) "Purchase" means the purchase by a person who is less than twenty-one years of age.

§ 1208.4 Adoption of National Minimum Drinking Age.

(a) The Secretary shall withhold five percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5)

and 104(b)(6) of title 23 of the United States Code on the first day of the fiscal year succeeding the fiscal year beginning after September 30, 1985, in which the purchase or public possession in such State of any alcoholic beverage by a person who is less than twenty-one years of age is lawful.

(b) The Secretary shall withhold ten percent of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of title 23 of the United States Code on the first day of the fiscal year succeeding the second fiscal year beginning after September 30, 1985, in which the purchase or public possession in such State of any alcoholic beverage by a person who is less than twenty-one years of age is lawful.

§ 1208.5 Apportionment of withheld funds.

Funds withheld pursuant to § 1208.4 shall be apportioned to a State, subject to the availability of such funds under 23 U.S.C. 118(b), if such State makes unlawful the purchase or public possession of any alcoholic beverage by a person who is less than twenty-one years of age.

§ 1208.6 Notification of compliance.

(a) Each State will be notified by certified mail of NHTSA's and FHWA's initial determination of compliance or non-compliance with Pub. L. 98–363 by March 1, 1986 and 1987.

(b) If NHTSA and FHWA initially find the State in non-compliance, the notice shall state the reasons for the initial determination and shall inform the State that it may, within 20 days of its receipt of the notification, submit documentation showing why it is in compliance.

(c) Each State will be notified by certified mail of its compliance or non-compliance with Pub. L. 98–363 by May 1, 1986 and 1987.

§ 1208.7 Advance notification of compliance.

Any State wanting notification prior to the dates set forth in § 1208.6 shall submit a copy of all applicable laws to the Director, Office of Alcohol Countermeasures, NHTSA, 400 Seventh Street SW., Washington, DC 20590.

(Sec. 6, Pub. L. 98–363 (23 U.S.C. 158); 98 Stat. 435; delegations of authority at 49 CFR 1.48 and 1.50)

Issued on: September 24, 1985.

Diane K. Steed,

National Highway Traffic Safety Administrator.

L.P. Lamm,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 85–23078 Filed 9–24–85; 10:57 am]

BILLING CODE 4910–59–M; 4910–22–M

VETERANS ADMINISTRATION

DEPARTMENT OF DEFENSE

38 CFR Part 21

Veterans Education; Waiver of Right To Receive Benefits Under The G.I. Bill

Correction

In FR Doc. 85–22185 beginning on page 3770 in the issue of Tuesday, September 17, 1985, make the following correction: On page 37701, in the first column, in § 21.5040(g), in the sixth line, "39 U.S.C." should read "38 U.S.C.".

BILLING CODE 1505–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 83–1230]

International Communications Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; extension of time.

SUMMARY: This order extends, at the request of the United States Telephone Association, the time for filing comments and reply comments in CC Docket No. 83–1230, the Commission's rulemaking looking toward development of policies governing the granting of Recognized Private Operating Agency (RPOA) status, the assignment of data network identification codes and determination of the eligibility of non-common carriers to acquire indefeasible rights of user in submarine telephone cables.

DATES: Comments are due on or before October 28, 1985, and reply comments are due on or before November 18, 1985.

ADDRESS: Federal Communications Commission Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Stuart Chiron, Chief, International Policy Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632–4047.

Order

In the matter of International Communications Policies Governing Designation of Recognized Private Operating Agencies, Grants of IRUs in International Facilities and Assignment of Data Network Identification Codes; CC Docket No. 83–1230.

Adopted: September 20, 1985.
Released: September 24, 1985.

By the Chief, Common Carrier Bureau.

1. On August 19, 1985 (50 FR 34867, Aug. 28, 1985) the Commission released its Notice of Proposed Rulemaking in the above-captioned proceeding, FCC 85–368, calling for comments on the issues to be filed on or before September 27, 1985, and reply comments on or before October 18, 1985. On September 19, 1985, the United States Telephone Association (USTA) filed a request for extension of the time for filing comments until October 28, 1985, and of the time for filing reply comments until November 18, 1985. USTA states that it needs an extension because of the variety and complexity of issues in the proceeding and that its experts need more time properly to examine the technical issues the various Commission proposals raise.

2. We believe that USTA has shown good cause for a grant of its request. The requested extension will allow all parties better to study the issues and to prepare more detailed comments. The period of the request will not unduly delay the outcome of the proceeding or cause any interested person an undue hardship.

3. Accordingly, pursuant to § 0.291 of the Commission's Rules and Regulations, 47 CFR 0.291 (1984), IT IS ORDERED that the above-referenced request of the United States Telephone Association is GRANTED and that comments in this proceeding should be filed on or before October 28, 1985, and reply comments on or before November 18, 1985.

Federal Communications Commission.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 85–23109 Filed 9–26–85; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-11; Notice 1]

Federal Motor Vehicle Safety Standards; Motorcycle Helmets

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Standard No. 218 *Motorcycle Helmets*, to extend the current minimum performance requirements of the standard to all helmet sizes and to improve test procedures and conditions.

Currently, the standard applies only to those helmets which can be "placed on" the size C headform for compliance testing. Until recently, that was the only available size of headform. Now there are two more. The specifications developed for the exterior geometry of a replacement (medium size) for the size C headform have been scaled down to produce a small headform and up to produce a large headform. Adherence to the specifications for exterior geometry would ensure that all headforms of a particular size are identical in shape. The addition of the small and large test headforms would assure that all sizes of helmets tested according to the requirements of Standard No. 218 provide a reasonable degree of protection.

The proposed improvements in the Standard No. 218 test procedures and conditions are based on the NHTSA's compliance testing experience under Standard No. 218, as well as statements of the helmet industry and various research organizations. These changes would improve the consistency of testing practices and test results.

DATES: Comments must be received on or before November 26, 1985. This proposal would become effective 180 days after publication of a final rule in the Federal Register.

ADDRESSES: Comments should refer to the docket and notice number stated above and be submitted to Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590. The docket is open on weekdays from 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. William J. J. Liu, Office of Vehicle Safety Standards, NRM-12, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-426-2264).

SUPPLEMENTARY INFORMATION:

Headforms

Standard No. 218, *Motorcycle Helmets*, specifies minimum performance requirements for helmets designed for use by motorcyclists and other motor vehicle users. Although the standard has been in effect since March 1, 1974, it has never covered all helmet sizes. The major reason has been that compliance testing involves the use of a headform and until now only one size of headform has been available. On the effective date, the standard specified four test headform sizes, namely, sizes A, B, C, and D, but only size C was available. The size C headform was adopted from the American National Standards Institute (ANSI) Z90.1-1971 standard which required only one headform for testing all helmet sizes. The other three headforms were specified in Standard No. 218 in response to public comments in 1972 and 1973 on the original proposed standard.

The NHTSA tried to fabricate a complete set of headforms for the standard by contract when the original standard was proposed. Unfortunately, the headforms fabricated did not meet dimensional requirements and other specifications. Therefore, the standard stated: "Helmets that do not fit headform size C will not be covered by this standard until it is extended to those sizes by further amendment." Consequently, manufacturers tested and labeled only a portion of their production.

The NHTSA did not expect the unavailability of other headform sizes to diminish the effectiveness of the original standard, because the ANSI standard stated that the size C headform "is considered suitable to allow for proper testing of protective headgear which will accurately fit approximately 95 percent of the population of all races." Yet, after Standard No. 218 became effective, the NHTSA discoverd that only 40 to 45 percent of helmets available for sale in the United States were actually being certified by the helmet manufacturers. This conclusion was based on a NHTSA survey of manufacturers of approximately 80 percent of helmets sold in the United States at that time.

The NHTSA attempted to remedy the situation by providing a legal definition of the word "fit." The certification rate did not increase and the standard was considered incomplete by the industry. Finally, the Safety Helmet Council of America (SHCA) complained about unfair practices by some manufacturers, such as using the DOT label on untested helmets, and requested that more helmets be required to be certified on the size C headform. These practices led to uncertainty among retailers and consumers about the validity of the DOT label on some helmets.

In response to this need, the NHTSA issued a notice of proposed rulemaking in 1979 to extend application of the Standard's requirements to all helmets that could "be placed on", rather than "fit", the size C headform. The extension was adopted and became effective on May 1, 1980. This amendment to the standard was an interim rule requiring the certification of all large-size and many small-size helmets and was effective until headform sizes A (small) and D (large) could be developed and incorporated into the standard. The agency anticipated that certification of all adult helmets would end any confusion in the marketplace about the validity of the DOT label. According the SHCA, more than 90 percent of helmets currently manufactured by SHCA members are certified as complying with Standard No. 218. The size B headform contemplated in the original rule was no longer considered necessary to this effort, because sizes A, C, and D can be used to test all helmet sizes adequately. Under this interim amendment, extra-large helmets were required to be tested on the size C headform without the use of "shims" or other devices to obtain a secure fit of the helmet on the headform.

The development of the size A and D headforms began with the creation of more detailed specifications for the size C headform. The Appendix to Standard No. 218 currently includes simplified exterior dimensions for the headforms. Both the agency and the motocycle helmet companies have recognized the need for more detailed specifications. After measuring the exterior geometry of the size C headform, the agency developed a numerical table describing in detail this exterior geometry. This table was then used to manufacture the new medium headform. To produce the small and large headform sizes, scaling factors of 0.8941 and 1.069, respectively, were applied to this numerical table. The scaling factor of any headform is defined as the ratio of the radius of its equivalent sphere to the radius of the equivalent sphere of the medium headform. (The radius of the equivalent sphere of any headform is derived from the total drop weight of that headform and the circumference of the medium headform.) These specifications would be included in the proposed revision of the Appendix to the standard. The NHTSA believes the new test headforms, manufactured according to these specifications, would enhance the objectivity and repeatability of the tests.

The agency also developed the interior geometry for the small, medium and large headforms for the first time. However, these interior geometries would be added to the revised Appendix to the standard for reference purposes only. They would be used as guidelines, not as requirements of the standard, to give a manufacturer flexibility in the design of a headform interior. The flexibility is needed because Standard No. 218 currently limits the combined weight of the test headform and the supporting assembly for the drop test. If a slightly heavier supporting assembly is used by a manufacturer of drop test equipment, a manufacturer might have to take some weight out of the interior of the test headform in order to meet the combined weight limit. This would be permitted, as long as the center of gravity of the headform is not altered.

This proposal would require use of the new set of small, medium, and large test headforms for agency compliance testing. To ensure testing with the same medium size headform by the agency, the agency would discontinue the use of the size C headform to test medium size helmets after the proposed effective date. The new medium headform is considered to be a suitable replacement for several reasons. First, the validity of the new medium test headform has been demonstrated by the consistent, although not indentical, helmet test responses achieved when testing the new medium and the existing size C headforms. Second, the new medium headform would have better defined dimensions for its exterior geometry. Third, the center of gravity location would be fixed. Interior geometry specifications are referenced for the first time. As a result, the medium headform's center of gravity location would be constant at the center of the ball socket joint. Currently, the center of gravity location varies in the size C headform. Due to the constant center of gravity location, the new medium headform would give more uniform helmet test responses.

Test Procedures and Conditions

The agency contracted with Dayton T. Brown, Inc. to test all helmet sizes on the small, medium, and large headforms. The final report of this contract can be found in the docket under this notice. Dayton T. Brown's test results, as well as information available to the agency from compliance testing and other sources, resulted in the proposed changes in test procedures and conditions which are discussed below.

To achieve a more uniform helmet testing practice, the proposal states which helmets with a manufacturer's designated size range would be tested on the small, medium, and large headforms. If a manufacturer's designated helmet size range is 6⅝ (European size: 53) or smaller, the helmet would be tested only on the small headform. The medium headform would be used for testing helmets with a manufacturer's designated size range between 6¾ (European size: 54) and 7½ (European size: 60). The large headform would be used for testing helmets with a manufacturer's designated size range of 7⅝ (European size 61) or larger. However, if a helmet with an manufacturer's designated size range includes more than one of the three size ranges specified above, the helmet would be tested on more than one headform.

The need for this occasional multiple testing requirement stems from the differing practices of the manufacturers in assigning size ranges for small, medium, large, and extra-large helmets. The proposed change would eliminate the earlier problems with requiring testing of helmets that could "fit" or could "be placed on" a particular headform, because this approach would no longer be necessary. The NHTSA is aware that increased numbers of tests may be required for helmets with wide size ranges, but believes this is necessary and desirable to ensure the safety of helmets for all users.

Another proposed change concerns the helmet testing time limit after a helmet is removed from the conditioning environment. The standard currently allows five minutes after removal to complete two successive, identical impacts on a helmet test site during the impact attenuation test. After removal from the conditioning environment, the standard requires that a helmet be fixed and secured on a test headform and, then positioned for impact. To allow enough time to accomplish these tasks, and to provide a common starting time, the agency would require that the impact testing for each helmet start at two minutes after the time of removal from the conditioning environment. If the two successive impacts at one site are not completed within four minutes from the removal time, testing would stop and the helmet would be returned to the conditioning environment as currently specified in the standard. Once reconditioned, the test sequence could start again. Like the two-minute starting time, the four-minute stopping point is intended to reduce the effects of helmet temperature changes on test results. The proposed test time limit would reduce the temperature gradient across the helmet when the helmet is tested. The agency expects improved test objectivity and repeatability to result, particularly during the low temperature test.

Similarly, during the penetration test, the application of the two penetration blows would start at two minutes after removal from the conditioning chamber. The second blow would have to be completed within four minutes after removal. If this time limit is not met, the helmet would have to be reconditioned before resuming testing. The purpose of this change is to minimize possible helmet response variations due to helmet temperature changes during the testing period. The agency believes that the performance of conditioned helmets can change rapidly with time during both the impact attenuation and penetration tests. The goal of more repeatable, objective test results make this change desirable. The test compliance laboratories believe this change is reasonable and practicable.

The agency is not presently considering requiring a time limit for the retention test, because a helmet's performance during this test is not believed to be time-sensitive. If manufacturers or test laboratories think otherwise, comments and supporting data are requested.

The conditioning requirements for helmets being tested remain the same because the NHTSA believes these requirements reflect various environental conditions which a motorcycle helmet wearer may encounter. The low temperature test at 15 °F, for example, tests helmet material sensitivity to impacts in a cold temperature environment. Testing at this temperature is currently required by industry standards.

Another improvement would be provided by a proposed change in the resonant frequency limitation of a test headform. Helmet testing under the existing standard has shown that no current or past headforms satisfy the current requirement that test headforms "exhibit no resonant frequencies below 3,000 Hz." Results from NHTSA contract tests indicate that resonant frequencies of headforms usually range between 2,000 and 3,000 Hz. These headform frequencies do not influence helmet test results because they are sufficiently above the fundamental helmet frequencies (estimated to be far below 1,000 Hz.) to avoid significant distortion of helmet response measurements. Therefore, the proposed amendment would state that test headforms "exhibit no resonant frequency below 2,000 Hz." Moreover, the proposed 2,000 Hz. value would allow flexibility in the design of

the interior of virtually all headforms. Standard No. 218 specifies the combined weight of the test headforms and the supporting assembly for the drop test. If a slightly heavier supporting assembly is used by a manufacturer of drop test equipment, this flexibility would permit taking some weight out of the test headform so that the combined weight limit would be met.

The use of the currently available monorail for the drop test is specified in the proposal for the impact attenuation test to achieve more consistent, objective results. Research testing results found that the twin-wire testing system for the drop test may not produce similar results, because the headform may rotate significantly during the impact. Monorail testing equipment is currently used by NHTSA contract laboratories and by most other helmet test laboratories. Further, this equipment is available to the industry. Therefore, the requirement to use monorail equipment should not pose a hardship.

Research results show that more frequent adjustment of the monorail equipment may be necessary when the large test headform is used. The agency requests comments on the industry's experience in using the large test headform with the monorail equipment.

A proposed technical change is to provide metric equivalents for all inch and pound measurements for the first time.

Other Issues

The time duration or "dwell time" aspect of the impact attenuation test has been controversial. The current requirement provides that accelerations in excess of 200g and 150g shall not exceed 2 milliseconds and 4 milliseconds (ms), respectively. Supporting data for these g levels and their time durations were found in the Japan Automobile Research Institute, Inc. (JARI) study, published in 1980. This is the most recent study available on the threshold for head injury in frontal and occipital impacts and gives experimental head injury data using subhuman primates and human cadaver skulls.

The JARI Human Head Impact Tolerance Curve (JHTC) was extrapolated from the curves for primates and cadaver skulls. The JHTC shows the threshold of human concussion at about 200g—2.3 ms. Because average individual tolerance to head injury varies and the JHTC was derived from many scattered data points for primates and cadavers, the agency believes that retaining the 200g—2 ms requirement provides the necessary margin of safety for a motorcycle helmet user.

Another controversial aspect of this test has been the second impact which is also the test point at which most failures occur. Paragraph S7.1.2 states: "Each helmet is impacted at four sites with two successive, identical impacts at each site." The purpose of requiring the second impact at each test site is to establish a minimum level of helmet residual impact absorbing capability, as described in the following paragraph.

All other known standards which have been established by private standard organizations or by foreign countries require higher second impact levels than Standard No. 218. The NHTSA notes that in real world accidents, a second impact may occur quickly after the first, perhaps within one or two seconds, and perhaps at a different place on the helmet surface. The human head's injury tolerance is known to be lower when subjected to repeated blows. However, there is no state-of-technology test method for conducting second impacts within such a short time frame. Moreover, changing the impact point after each drop would double the total test time, resulting in a test which would arguably be less related to an accident situation.

The minimum interval in testing laboratories between the first and second impacts is about 20 seconds. The crush liner in currently available motorcycle helmets should be able to recover most of its residual impact absorbing capability in 20 seconds after the first drop, but might not do so in one or two seconds. Accordingly, this test is not intended to reproduce potential multiple impacts in a single accident. However, the NHTSA believes that the second impact test is a valid test to establish that, at least, the material has sufficient ability to recover its protective capabilities in the particular location which has been impacted. This is important motorcycle helmets may be worn agains after one severe blow, despite the required manufacturer's warning not to do so in paragraph S5.6.1 of the existing standard.

Since the recovery performance of a helmet may vary with time, the agency proposes a prescribed test time of two minutes for both impacts at each site as discussed earlier. This prescribed test time would improve the repeatability and objectivity of this test. All helmets tested would have nearly the same time in which to recover from the first impact. Thus, retaining the second impact test ensures that all helmets would have a certain minimum second impact performance level.

The agency is not proposing any change in the time duration or second impact requirements, but invites public comment on these issues.

Safety Benefits

Current fatalities of motorcycle riders, both in absolute terms and as a percentage of total highway traffic fatalities, are roughly twice those in the early 1970's. Motorcycle fatalities have kept pace with motorcycle registrations. Motorcyclist deaths in 1982 were 4,453 compared to 2,280 in 1970, a 95 percent increase, while the increase in total motorcycle registrations during the same period was 104 percent. The number of fatalities to helmet users was considerably less, totaling 1,533. During this period, many States have repealed or relaxed laws requiring helmet use. At this time, the agency estimates that 43% of registered motorcyclists are subject to State helmet use laws.

Benefits from the proposed rule would accrue directly to future users of small or large size helmets. The effectiveness of motorcycle helmets in preventing death and injury has been well established in studies prepared for DOT.

The agency tentatively estimates that about ten percent of motorcycle helmets primarily in the small size range are not currently required to be tested for compliance with Standard No. 218, because these helmets cannot be "placed on" the size C test headform. The proposed extension of the standard to cover all sizes of helmets could result, therefore, in improved safety for about 10 percent, or 388,000, of the estimated 3,880,960 motorcycle riders who wear helmets.

Data limitations preclude precise estimates of the safety benefits of this rulemaking. One benefit of the rulemaking should be to increase the percentage of these small helmets which, if tested, would meet the standard. Based on agency compliance testing results between FY 1979 and FY 1981, the rate of noncompliance of certified helmets was 25 percent. The agency believes it reasonable to assume that uncertified helmets are not manufactured to the same level of performance as certified helmets and that therefore the noncompliance rate for currently uncertified helmets would be higher if they were tested now. Extension of the standard to those helmets should reduce their rate of noncompliance to that of the currently certified helmets.

Another benefit would be that the improvements in the specification of the test procedures and conditions may lead manufacturers of currently complying

helmets to upgrade their helmets in some respects so as to ensure continued compliance with the standard.

Overall helmet usage may increase as a result of a standard that covers all helmet sizes. Extension of the standard to cover all helmet sizes should benefit NHTSA's efforts to encourage States to implement laws requiring helmet use by motorcyclists.

If additional helmet use laws are enacted, fatalities and injuries would be reduced. In 1982, in States without mandatory helmet use laws, 2,171 fatalities occurred to motorcycle riders not wearing helmets, and 524 fatalities to helmet users for a total of 2,695 fatalities. The extent of any reduction in fatalities and injuries would depend on the number of States which enact mandatory helmet use laws.

In addition to other issues raised in this notice, the agency requests comments on the following questions:

1. How many helmet manufacturers have, or do not have, their own testing equipment? Of the manufacturers with equipment, what percentage of helmet testing is done by outside laboratories?

2. How many test headforms would helmet manufacturers, who conduct their own testing, need to purchase to meet the requirements of the proposed rule? How many helmet manufacturers would do their own headform machining?

3. What are the testing costs for helmet manufacturers conducting their own testing?

4. What is the cost of redesigning a motorcycle helmet shell and its liner?

5. What percent of current helmet production can be placed on the size C headform?

6. What percent of helmet production would be tested on each of the small, medium, and large test headforms?

7. What percent of helmets would need to be tested on more than one size test headform?

8. Is there any data comparing effectiveness of complying versus non-complying helmets?

The agency also requests comments on the following issues which may be considered in future rulemaking proceedings and asks commenters to state the reasons for their responses, based on safety needs, and to include estimates of additionl testing costs for each change:

1. Should NHTSA consider adopting additional requirements, which are contained in other motorcycle helmet standards, for example, the Snell Foundation standard, the American National Standards Institute (ANSI) standard, or European standards, such as the ECE standard?

2. Should the geometric configuration of the pointed penetrated test striker be modified to resemble the narrow surface in the 1985 Snell standard?

3. Should the retention test be changed to require dynamic testing to prevent the helmet from rotating on the head and perhaps coming off the head in an accident situation?

4. Should the test line marking the limit of the test surface in Figure 2 of the standard be lowered or should the test be revised in other ways to provide more protection in accidents for the lower part of the back of the head or the front of the head in the forehead area, or to improve the performance of the helmet from the side? What requirements would represent the optimal trade-off between helmet weight, visibility, hearing, and other helmet design criteria? Do current requirements represent a reasonable trade-off?

5. Should a test procedure be developed for the chin guard area of full facial coverage helmets?

6. Should the low temperature conditioning requirement be changed so that the interior surface of the helmet, or the headform, is at body temperature for the impact attenuation and penetration tests?

Costs and Other Impacts

The agency has considered costs and other impacts of this proposal and has determined that the proposal would not be major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory procedures. The agency has determined that this proposal would not result in a major increase in costs for the motorcycle helmet industry or consumers.

The agency estimates tentatively that recurring annual manufacturing costs resulting from helmet testing and labeling should not exceed $.10 per helmet. In addition, one-time costs associated with new testing procedures and helmet redesign should not exceed $250,000 for the motorcycle helmet industry. However, this estimate could increase if helmets must be redesigned to a greater extent than anticipated as a result of the introduction of the new small and large test headforms. The extent of the necessary redesign is not precisely known because of the new requirements in this proposal. Small or child-size helmets would be required to be tested for the first time. Large-size helmets would be required to be tested on the new, heavier large test headform. the testing performed for NHTSA by the contractor who developed the new headforms did not show a greater number of helmet failures. However, the results of industry-wide testing cannot be foreseen. Industry testing will involve many more helmet models, as well as greater numbers of helmets. If some helmets do not comply when tested on the new headforms, a manufacturer may decide to redesign them. Redesign of small or large helmets should improve their physical characteristics, thus increasing safety benefits to the user.

A 1980 cost benefit study prepared for the agency stated that the extent and cost of helmet redesign resulting from the introduction of small and large test headforms was uncertain. However, this study also concluded that increased consumer costs due to possible redesign should not exceed $1 per helmet. If there were a greater cost increase for some helmets, it would be due to the need for more extensive helmet redesign. That redesign should increase safety benefits as well as costs.

Based on this agency's review of this proposal under the Regulatory Flexibility Act, I certify that it would not have a significant eocnomic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. There are approximately 11 domestic manufacturers of motorcycle helmets, all of whom are believed to have fewer than 500 employees. However, this proposal only extends an existing rule, and imposes estimated costs for helmet testing, labeling, and redesign of up to $250,000 on the motorcycle helmet industry. These costs would be spread over an annual production level of approximately 1.8 million helmets. While small organizations may purchase the small, medium, and large test headforms for testing motorcycle helmets produced by the manfacturers, their costs should be minimally affected by the impact of this proposal.

Finally, the NHTSA has considered the environmental implications of this rule in accordance with the National Environmental Policy Act and determined that the proposal would not significantly affect the human environment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Consumer protection, Motor vehicle safety, Motorcycle helmets.

To accomplish the changes outlined above, the agency would amend Standard No. 218, *Motorcycle Helmets*, in Title 49 of the Code of Federal Regulations at Part 571, as follows:

PART 571—[AMENDED]

The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.218 [Amended]

1. Paragraph S3 would be revised to read as follows:

S3. *Application.* This standard applies to helmets designed for use by motorcyclists and other motor vehicle users.

2. Paragraph S4 would be amended by revising the definitions for "Reference headform" and Test headform to read as follows:

S4. *Definitions.*

* * * * *

"Reference headform" means a measuring device contoured to the dimensions of one of the three headforms, designated small, medium, or large and described in the Appendix, with surface markings indicating the locations of the basic, mid-sagittal, and reference planes, and the centers of the external ear openings.

"Test headform" means a test device contoured to the dimensions of one of the three headforms described in the Appendix, with surface markings indicating the locations of the basic, mid-sagittal, and reference planes.

3. Section 5 would be revised to read as follows:

S.5 *Requirements.* Each helmet shall meet the requirements of S5.1 through S5.3 when subjected to any conditioning procedure specified in S6.3, and tested in accordance with S7.1, S7.2, and S7.3

4. Section 5.3.1(b) would be revised to read as follows:

(b) The adjustable portion of the retention system test device shall not move more than 1 inch (2.5 cm) measured between preliminary and test load positions.

5. Section S5.4 would be revised to read as follows:

S5.4 *Configuration.* Each helmet shall have a protective surface of continuous contour at all points on or above the test line described in S6.2.3. The helmet shall provide peripheral vision clearance of at least 105° to each side of the mid-sagittal plane, when the helmet is adjusted as specified in S6.3. The vertex of these angles, shown in Figure 3, shall be at the point on the anterior surface of the reference headform at the intersection of the mid-sagittal and basic planes. The brow opening of the helmet shall be at least 1 inch (2.5 cm) above all points in the basic plane that are within the angles of peripheral vision (see Figure 3).

6. Section S5.5 would be revised to read as follows:

S5.5 *Projections.* A helmet shall not have any rigid projections inside its shell. Rigid projections outside any helmet's shell shall be limited to those required for operation of essential accessories, and shall not protrude more than 0.20 inch (5 mm).

7. Section 5.6.1 introductory text and paragraph (5) would be revised to read as follows:

S5.6.1 Each helmet shall be permanently and legibly labeled in a manner such that the label(s) can be easily read without removing padding or any other permanent part, with the following:

* * * * *

(5) The symbol DOT, constituting he manufacturer's certification that the helmet conforms to the applicable Federal Motor Vehicle Safety Standards. This symbol shall appear on the outer surface, in a color that contrasts with the background, in letters at least ⅜ inch (1 cm) high, centered laterally with the horizontal centerline of the symbol located a minimum of 1⅛ inches (2.9 cm) and a maximum of 1⅜ inches (3.5 cm) from the bottom edge of the posterior portion of the helmet.

8. Section S6 would be revised to read as follows:

S6. *Preliminary test procedures.* Before subjecting a helmet to the testing sequence specified in S7, prepare it according to the following procedures.

S6.1 *Selection of appropriate headform.*

S6.1.1 A helmet with a manufacturer's designated discrete size or size range of 6⅝ (European size: 53) or smaller is tested on the small headform. A helmet with a manufacturer's designated discrete size or size range from 6¾ (European size: 54) to 7½ (European size: 60) is tested on the medium headform. A helmet with a manufacturer's designated discrete size or size range of 7⅝ (European size: 61) or larger is tested on the large headform.

S6.1.2 A helmet with a manufacturer's designated size range which includes two or all three size ranges described ih S6.1.1 is tested on each headform covered by the size range.

S6.2 *Reference marking.*

S6.2.1 Use a reference headform that is firmly seated with the basic and reference planes horizontal. Place the complete helmet to be tested on the appropriate reference headform, as specified in S6.1.1 and S6.1.2.

S6.2.2 Apply a 10-pound (4.5 kg) static load normal to the helmet's apex. Center the helmet laterally and seat it firmly on the reference headform according to its helmet positioning index.

S6.2.3 Maintaining the load and position described in S6.2.2, draw a line (hereinafter referred to as "test line") on the outer surface of the helmet coinciding with portions of the intersection of that surface with the following planes, as shown in Figure 2:

(a) A plane 1 inch (2.5 cm) above and parallel to the reference plane in the

anterior portion of the reference headform;

(b) A vertical transverse plane 2.5 inches (6.4 cm) behind the point on the anterior surface of the reference headform at the intersection of the midsagittal and reference planes;

(c) The reference plane of the reference headform;

(d) A vertical transverse plane 2.5 inches (6.4 cm) behind the center of the external ear opening in a side view; and

(e) A plane 1 inch (2.5 cm) below and parallel to the reference plane in the posterior portion of the reference headform.

S6.3 *Helmet positioning.*

S6.3.1 Prior to each test, fix the helmet on a test headform in the position that conforms to its helmet positioning index. Secure the helmet so that it does not shift position prior to impact or to application of force during testing.

S6.3.2 In testing as specified in S7.1 and S7.2, place the retention system in a position such that it does not interfere with free fall, impact, or penetration.

S.6.4 *Conditioning.* Immediately prior to conducting the testing sequence specified in S7, condition each test helmet in accordance with any one of the following procedures:

(a) Ambient conditions. Expose to a temperature of 70° F (21° C) and a relative humidity of 50% for 12 hours.

(b) Low temperature.. Expose to a temperature of 14° F (−10° C) for 12 hours.

(c) High temperature. Expose to a temperature of 122° F (50° C) for 12 hours.

(d) Water immersion. Immerse in water at a temperature of 77° F (25° C) for 12 hours.

If during testing, as specified in S7.1.3 and S7.2.3, a helmet is returned to the conditioning environment before the time out of that environment exceeds 4 minutes, the helmet is kept in the environment for a minimum of 3 minutes prior to resumption of testing with that helmet. If the time out of the environment exceeds 4 minutes, the helmet is returned to the environment for a minimum of 3 minutes for each minute or portion of a minute that the helmet remained out of the environment in excess of 4 minutes or for a maximum of 12 hours, whichever is less, prior to the resumption of testing with that helmet.

9. Section 7 is revised to read as follows:

S7. *Test conditions.*

S7.1 *Impact attenuation test.*

S7.1.1 Impact attenuation is measured by determining acceleration imparted to an instrumented test headform on which a complete helmet is mounted as specified in S6.3, when it is dropped in guided free fall upon fixed hemispherical and flat steel anvils.

S7.1.2 Each helmet is impacted at four sites with two successive identical impacts at each site. Two of these sites are impacted upon a flat steel anvil and two upon a hemispherical steel anvil as specified in S7.1.10 and S7.1.11. The impact sites are at any point on the area above the test line described in S6.2.3, and separated by a distance not less than one-sixth of the maximum circumference of the helmet in the test area.

S7.1.3 Impact testing at each of the four sites, as specified in S7.1.2, shall start at two minutes, and be completed by four minutes, after removal of the helmet from the conditioning environment.

S7.1.4 The guided free fall drop heights for the helmet and test headform combination onto the hemispherical anvil and flat anvil shall be such that the minimum impact speeds are 17.1 feet/second (5.2m/sec) and 19.7 ft./sec (6.0 m/sec), respectively. The minimum drop heights are 54.5 inches (138.4 cm) and 72 inches (182.9 cm), respectively. The drop heights are adjusted upward from the minimum to the extent necessary to compensate for friction losses.

S7.1.5 Test headforms for impact attenuation testing are constructed of magnesium alloy (K–1A), and exhibit no resonant frequencies below 2,000 Hz.

S7.1.6 The monorail system is to be used for impact attenuation testing.

S7.1.7 The weight of the drop assembly, as specified in Table I, is the combined weight of the instrumented test headform and supporting assembly for the drop test. The weight of the supporting assembly is not less than 2.0 lbs. and not more than 2.4 lbs. (0.9 to 1.1 kg). The supporting assembly weight for the monorail system is the drop assembly weight minus the combined weight of the test headform, the headform's clamp down ring, and its tie down screws.

S7.1.8 The center of gravity of the test headform is located at the center of the mounting ball on the supporting assembly and lies within a cone with its axis vertical and forming a 10° included angle with the vertex at the point of impact. The center of gravity of the drop assembly lies within the rectangular volume bounded by x=0.25 inch (0.64 cm), x=0.85 inch (−2.16 cm), y=0.25 inch (0.64 cm), and y=−0.25 inch (−0.64 cm) with the origin located at the center of gravity of the test headform. The x-y-z axes are mutally perpendicular and have positive or negative designations in accordance with the right-hand rule. The x-axis is horizontal with its negative direction passing through the vertical centerline of the monorail from the origin. The y-axis is also horizontal and the positive z-axis is upward.

S7.1.9 The acceleration transducer is mounted at the center of gravity of the test headform with the sensitive axis aligned to within 5° of vertical when the test headform is in the impact position. The acceleration data channel complies with SAE Recommended Practice J211 requirements for channel class 1,000.

S7.1.10 The flat anvil is constructed of steel with a 5-inch (12.7 cm) minimum diameter impact face, and the hemispherical anvil is constructed of steel with a 1.9-inch (4.8 cm) radius impact face.

S7.1.11 The rigid mount for both of the anvils consists of a solid mass of a least 300 pounds (136.1 kg), the outer surface of which consists of a steel plate with minimum thickness of 1 inch (2.5 cm) and minimum surface area of 1 ft.^{2} (929 cm ^{2}).

S7.1.12 The drop system shall restrict side movement during the impact attenuation test so that the sum of the areas bounded by the acceleration-time response curves for both the x-and y-axes (horizontal axes) is less than five percent of the area bounded by the acceleration-time response curve for the vertical axis.

S7.2 *Penetration test.*

S7.2.1 The penetration test is conducted by dropping the penetration test striker in guided free fall, with its axis aligned vertically, onto the outer surface of the complete helmet, when mounted as specified in S6.3 at any point above the test line, described in S6.2.3, except on a fastener or other rigid projection.

S7.2.2 Two penetration blows are applied at least 3 inches (7.6 cm) apart, and at least 3 inches (7.6 cm) from the centers of any impacts applied during the impact attenuation test.

S7.2.3 The application of the two penetration blows, specified in S7.2.2, shall start at two minutes and be completed by four minutes, after removal of the helmet from the conditioning environment.

S7.2.4 The height of the guided free fall is 118.1 inches (3 m), as measured from the striker point to the impact point on the outer surface of the test helmet.

S7.2.5 The contactable surface of the penetration test headforms are constructed of a metal or metallic alloy having a Brinell hardness number no greater than 55, which will readily permit detection should contact by the

striker occur. The surface is refinished if necessary prior to each penetration test blow to permit detection of contact by the striker.

S7.2.6 The weight of the penetration striker is 6 pounds, 10 ounces (3 kg).

S7.2.7 The point of the striker has an included angle of 60°, a cone height of 1.5 inches (3.8 cm), a tip radius of 0.02 inch (standard 0.5 millimeter radius) and a minimum hardness of 60 Rockwell, C-scale.

S7.2.8 The rigid mount for the penetration test headform is as described in S7.1.11.

S7.3 *Retention system test.*

S7.3.1 The retention system test is conducted by applying a static tensile load to the retention assembly of a complete helmet, which is mounted, as described in S6.3, on a stationary test headform as shown in Figure 4, and by measuring the movement of the adjustable portion of the retention system test device under tension.

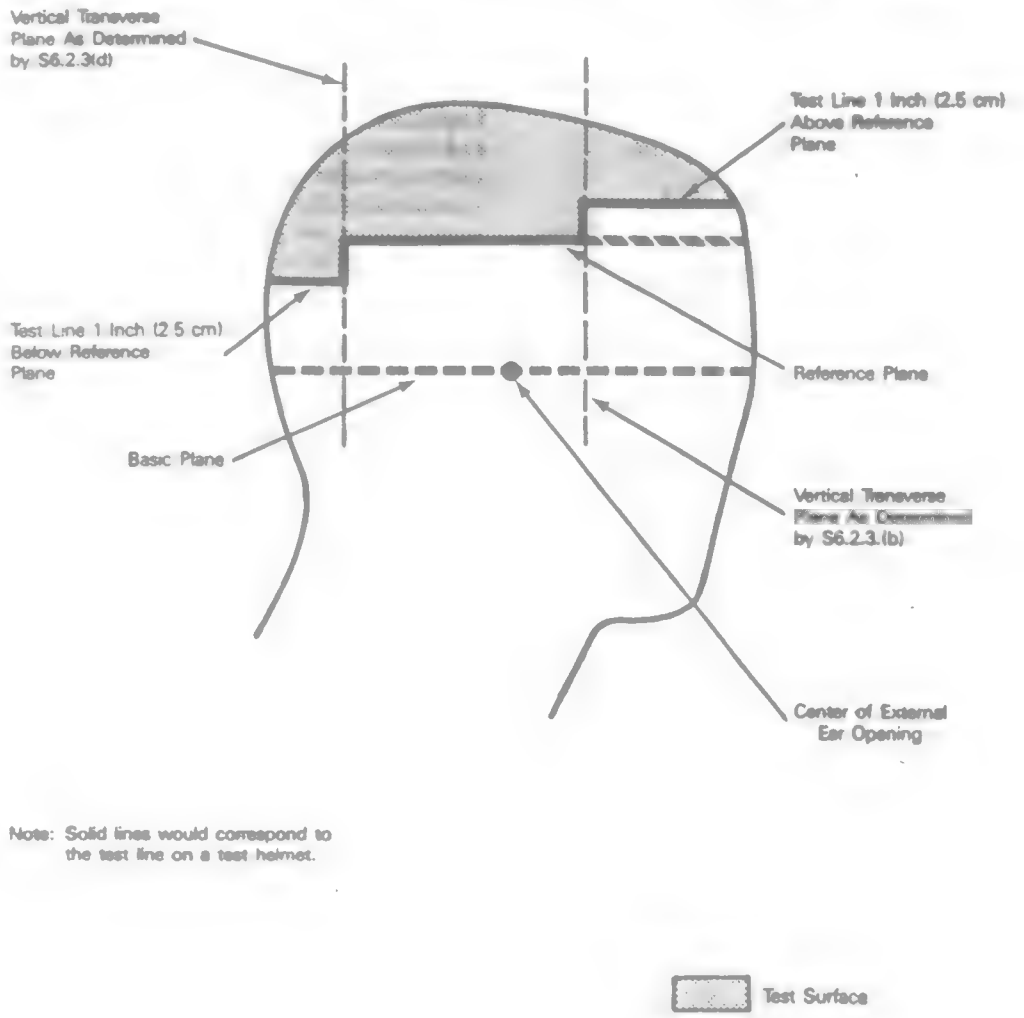
S7.3.2 The retention system test device consists of both an adjustable loading mechanism by which a static tensile load is applied to the helmet retention assembly and a means for holding the test headform and helmet stationary. The retention assembly is fastened around two freely moving rollers, both of which have a 0.5 inch (1.3 cm) diameter and a 3-inch (7.6 cm) center-to-center separation, and which are mounted on the adjustable portion of the tensile loading device (Figure 4). The helmet is fixed on the test headform as necessary to ensure that it does not move during the application of the test loads to the retention assembly.

S7.3.3 A 50-pound (22.7 kg) preliminary test load is applied to the retention assembly, normal to the basic plane of the test headform and symmetrical with respect to the center of the retention assembly for 30 seconds, and the maximum distance from the extremity of the adjustable portion of the retention system test device to the apex of the helmet is measured.

S7.3.4 An additional 250-pound (113.4 kg) test load is applied to the retention assembly, in the same manner and at the same location as described in S7.3.3, for 120 seconds, and the maximum distance from the extremity of the adjustable portion of the retention system test device to the apex of the helmet is measured.

. . . . . .

10. Figure 2 is revised as follows:



Note: Solid lines would correspond to the test line on a test helmet.

FIGURE 2

11. Table I is revised to read as follows:

TABLE I.—WEIGHTS FOR IMPACT ATTENUATION TEST DROP ASSEMBLY

Test headform size	Weight (lbs)[1]
Small	7.8 (3.5 kg)
Medium	11.0 (5.0 kg)
Large	13.4 (6.1 kg)

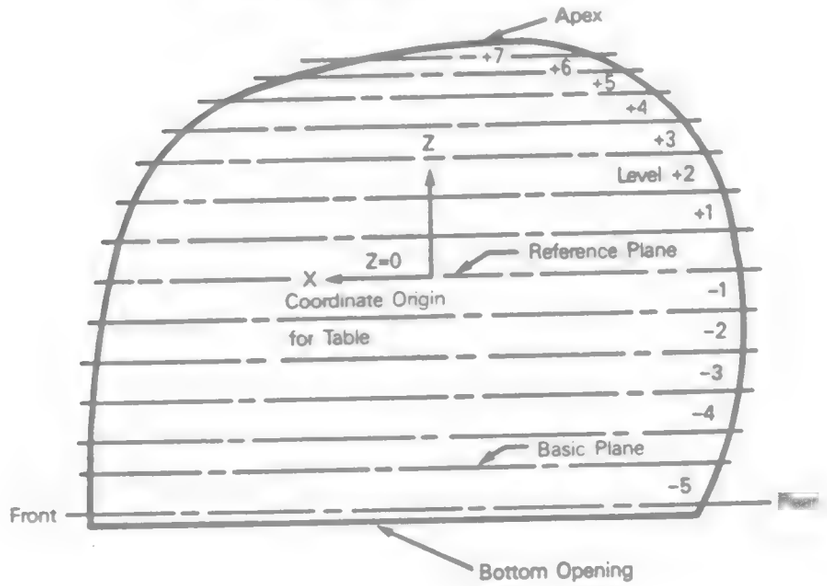
[1] Combined weight of instrumented test headform and supporting assembly for drop test

12. The Appendix is revised as follows:

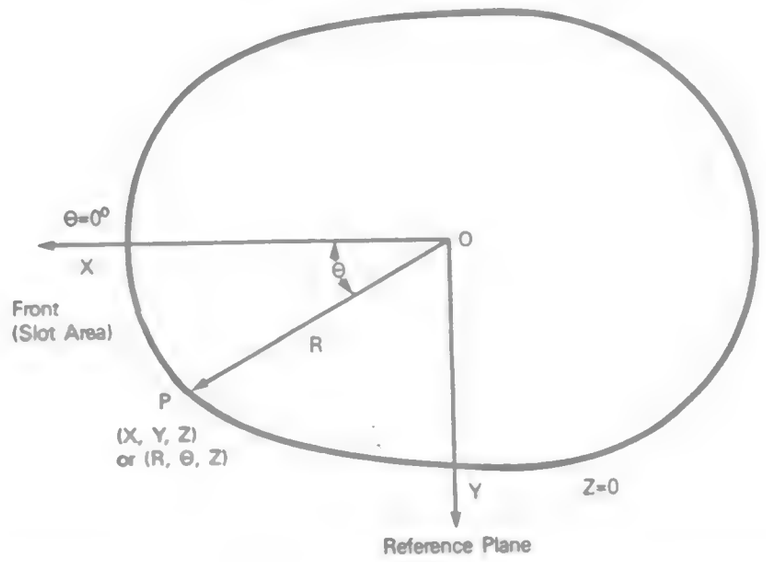
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APPENDIX
HEADFORM SECTIONS

Mid-Sagittal Plane (Symmetrical Plane)



Headform Coordinate Systems



Medium Headform — Exterior Dimension Table

Θ	Bottom Opening Z= -3.000			Level—5 Z= -2.900		
	R	X	Y	R	X	Y
0	4.282	4.282	0	4.280	4.280	0
10	4.256	4.201	0.741	4.270	4.206	0.742
20	4.159	3.908	1.423	4.172	3.920	1.427
30	3.967	3.436	1.984	3.961	3.430	1.981
40	3.690	2.804	2.353	3.670	2.811	2.359
50	3.332	2.142	2.563	3.352	2.150	2.569
60	3.039	1.525	2.632	3.057	1.534	2.656
70	2.839	0.971	2.668	2.859	0.961	2.686
80	2.720	0.472	2.679	2.772	0.481	2.730
90	2.675	0	2.675	2.708	0	2.709
100	2.700	-0.469	2.662	2.724	-0.473	2.685
110	2.764	-0.945	2.597	2.784	-0.956	2.626
120	2.888	-1.444	2.501	2.917	-1.459	2.528
130	2.985	-1.919	2.287	3.040	-1.954	2.329
140	3.100	-2.375	1.980	3.175	-2.432	2.041
150	3.175	-2.750	1.588	3.232	-2.799	1.618
160	3.199	-2.994	1.080	3.246	-3.050	1.110
170	3.177	-3.129	0.552	3.237	-3.188	0.562
180	3.187	-3.187	0	3.246	-3.246	0

Θ	Basic Plane Z= -2.360			Level—4 Z= -2.000		
	R	X	Y	R	X	Y
0	4.272	4.272	0	4.247	4.247	0
10	4.246	4.184	0.738	4.223	4.159	0.753
20	4.147	3.897	1.418	4.120	3.872	1.408
30	3.961	3.430	1.981	3.940	3.412	1.970
40	3.687	2.824	2.370	3.683	2.821	2.367
50	3.354	2.175	2.592	3.352	2.180	2.596
60	3.111	1.658	2.684	3.132	1.668	2.712
70	2.927	1.001	2.751	2.980	1.012	2.762
80	2.815	0.486	2.772	2.890	0.497	2.817
90	2.779	0	2.778	2.838	0	2.838
100	2.802	-0.487	2.758	2.861	-0.497	2.818
110	2.887	-0.987	2.713	2.958	-1.012	2.769
120	3.019	-1.510	2.615	3.096	-1.549	2.680
130	3.180	-2.044	2.426	3.260	-2.096	2.487
140	3.306	-2.533	2.125	3.405	-2.608	2.189
150	3.398	-2.943	1.699	3.516	-3.045	1.758
160	3.456	-3.250	1.183	3.585	-3.368	1.238
170	3.475	-3.422	0.603	3.612	-3.557	0.627
180	3.472	-3.472	0	3.610	-3.610	0

Medium Headform — Exterior Dimension Table (Continued)

Θ	Level −3 Z= −1.500			Level −2 Z= −1.000		
	R	X	Y	R	X	Y
0	[illegible]	[illegible]	0	[illegible]	[illegible]	0
10	4.179	4.116	[illegible]	4.112	[illegible]	0.714
20	4.075	[illegible]	[illegible]	4.013	3.771	[illegible]
30	[illegible]	3.379	1.961	[illegible]	[illegible]	[illegible]
40	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
50	3.377	2.171	[illegible]	3.352	[illegible]	[illegible]
60	[illegible]	1.547	[illegible]	3.137	[illegible]	2.717
70	[illegible]	1.020	[illegible]	[illegible]	1.022	[illegible]
80	[illegible]	[illegible]	2.847	[illegible]	[illegible]	[illegible]
90	[illegible]	0	2.876	[illegible]	0	[illegible]
100	2.918	−0.507	2.874	[illegible]	−0.511	[illegible]
110	3.021	−1.033	[illegible]	[illegible]	−1.044	[illegible]
120	3.170	−1.585	2.745	[illegible]	−1.613	[illegible]
130	3.337	−2.145	[illegible]	[illegible]	−2.184	[illegible]
140	[illegible]	−2.668	[illegible]	3.536	−2.708	2.273
150	[illegible]	−3.121	1.802	[illegible]	−3.167	[illegible]
160	[illegible]	−3.460	[illegible]	3.751	−3.525	[illegible]
170	3.725	−3.668	0.647	[illegible]	−3.749	[illegible]
180	3.741	−3.741	0	[illegible]	−3.822	0

Medium Headform — Exterior Dimension Table (Continued)

Θ	Level+1 Z=0.500			Level +2 Z=1.000		
	R	X	Y	R	X	Y
0	[illegible]	[illegible]	0	[illegible]	3.665	0
10	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
20	[illegible]	[illegible]	1.274	[illegible]	[illegible]	1.216
30	[illegible]	3.106	1.794	3.436	[illegible]	1.718
40	[illegible]	[illegible]	2.185	3.271	[illegible]	[illegible]
50	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
60	[illegible]	1.522	[illegible]	[illegible]	[illegible]	[illegible]
70	2.927	1.001	2.751	[illegible]	[illegible]	[illegible]
80	[illegible]	[illegible]	2.818	[illegible]	[illegible]	[illegible]
90	[illegible]	0	[illegible]	[illegible]	0	[illegible]
100	2.897	−0.503	[illegible]	[illegible]	−0.492	[illegible]
110	3.007	−1.029	[illegible]	[illegible]	−1.005	[illegible]
120	3.176	−1.588	[illegible]	[illegible]	−1.551	[illegible]
130	3.372	−2.168	[illegible]	[illegible]	−2.117	[illegible]
140	[illegible]	−2.697	[illegible]	[illegible]	−2.643	[illegible]
150	[illegible]	−3.155	[illegible]	[illegible]	−3.087	[illegible]
160	[illegible]	−3.503	1.275	[illegible]	−3.418	1.244
170	3.777	−3.720	[illegible]	[illegible]	−3.619	[illegible]
180	[illegible]	−3.782	0	[illegible]	−3.670	0

Θ	Level −1 Z= −0.500			Reference Plane Z=0.0		
	R	X	Y	R	X	Y
0	[illegible]	[illegible]	0	3.971	3.971	0
10	[illegible]	3.972	[illegible]	[illegible]	[illegible]	[illegible]
20	[illegible]	[illegible]	[illegible]	[illegible]	3.621	1.318
30	3.777	3.271	[illegible]	3.701	[illegible]	[illegible]
40	[illegible]	2.721	[illegible]	[illegible]	[illegible]	[illegible]
50	[illegible]	2.136	[illegible]	[illegible]	[illegible]	2.512
60	[illegible]	[illegible]	2.707	3.101	[illegible]	[illegible]
70	[illegible]	1.022	[illegible]	[illegible]	1.019	[illegible]
80	2.912	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
90	[illegible]	0	2.893	[illegible]	0	[illegible]
100	[illegible]	−0.503	[illegible]	[illegible]	−0.511	[illegible]
110	3.064	−1.048	[illegible]	[illegible]	−1.047	2.877
120	3.231	−1.616	[illegible]	[illegible]	−1.614	[illegible]
130	3.411	−2.193	2.613	3.413	−2.194	2.615
140	[illegible]	−2.727	[illegible]	[illegible]	−2.729	[illegible]
150	[illegible]	−3.189	1.841	[illegible]	−3.188	1.841
160	[illegible]	−3.555	1.294	3.773	−3.546	1.290
170	[illegible]	−3.826	0.675	[illegible]	−3.774	[illegible]
180	3.857	−3.857	[illegible]	3.844	−3.844	0

Θ	Level +3 Z=1.460			Level +4 Z=1.880		
	R	X	Y	R	X	Y
0	3.419	3.419	0	[illegible]	[illegible]	[illegible]
10	[illegible]	[illegible]	0.587	[illegible]	[illegible]	0.527
20	[illegible]	3.100	1.128	[illegible]	2.787	1.014
30	3.197	[illegible]	[illegible]	[illegible]	[illegible]	1.406
40	[illegible]	2.338	[illegible]	[illegible]	2.110	1.770
50	2.911	1.871	[illegible]	[illegible]	[illegible]	[illegible]
60	[illegible]	[illegible]	2.413	[illegible]	1.261	2.184
70	[illegible]	0.934	[illegible]	2.477	[illegible]	[illegible]
80	2.647	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
90	[illegible]	0	[illegible]	[illegible]	0	2.442
100	[illegible]	−0.467	[illegible]	[illegible]	−0.473	[illegible]
110	[illegible]	−0.966	[illegible]	[illegible]	[illegible]	[illegible]
120	[illegible]	−1.481	[illegible]	[illegible]	−1.379	[illegible]
130	3.147	−2.023	2.411	[illegible]	[illegible]	[illegible]
140	[illegible]	−2.529	[illegible]	[illegible]	[illegible]	[illegible]
150	[illegible]	−2.951	[illegible]	[illegible]	−2.751	[illegible]
160	[illegible]	−3.269	1.190	[illegible]	[illegible]	1.105
170	3.514	−3.461	0.610	3.270	−3.220	[illegible]
180	[illegible]	−3.502	0	3.271	−3.271	0

Medium Headform — Exterior Dimension Table (Continued)

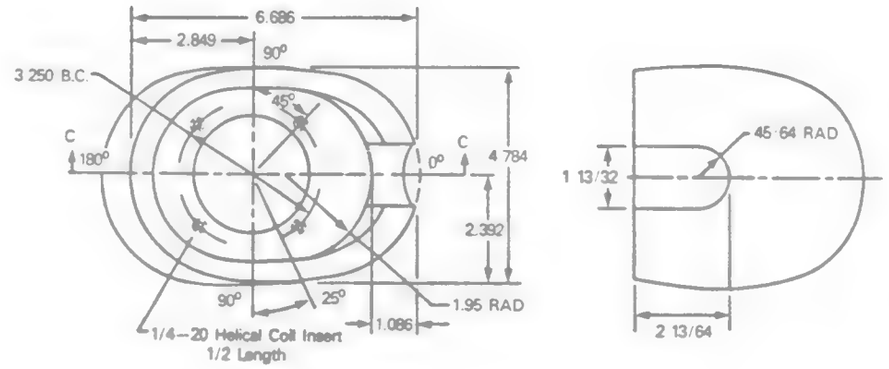
θ	Level +5 Z=2.250			Level +6 Z=2.560		
	R	X	Y	R	X	Y
0	2.526	2.526	0	1.798	1.798	0
10	2.521	2.483	[illegible]	1.798	1.771	0.312
20	2.464	2.315	0.843	1.757	1.651	[illegible]
30	2.387	2.067	1.194	1.719	1.489	[illegible]
40	2.305	1.766	1.482	1.678	1.285	1.079
50	2.232	1.435	1.710	1.652	1.062	1.266
60	2.174	1.087	1.883	1.641	0.821	1.421
70	2.144	0.733	2.015	1.645	0.563	1.546
80	2.132	0.370	2.100	1.673	0.291	1.648
90	2.147	0	2.147	1.712	0	1.712
100	2.213	-0.384	2.179	1.809	-0.314	1.782
110	2.316	-0.792	2.176	1.925	-0.658	1.809
120	2.463	-1.232	2.133	2.066	-1.033	1.789
130	2.624	-1.687	2.010	2.213	-1.423	1.695
140	2.763	-2.117	1.776	2.358	-1.806	1.516
150	2.863	-2.479	1.432	[illegible]	-2.138	1.235
160	2.919	-2.743	[illegible]	2.536	-2.383	0.867
170	2.964	-2.909	0.513	2.561	-2.522	0.445
180	2.958	-2.958	0	2.556	-2.556	0

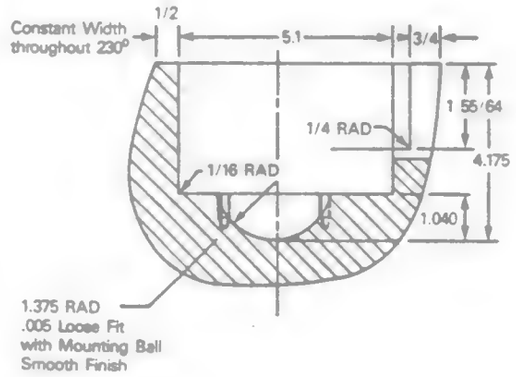
θ	Level +7 Z=2.750		
	R	X	Y
0	1.081	1.081	0
10	[illegible]	1.072	[illegible]
20	[illegible]	[illegible]	[illegible]
30	[illegible]	[illegible]	[illegible]
40	1.039	[illegible]	[illegible]
50	1.052	.0.676	[illegible]
60	[illegible]	0.534	[illegible]
70	1.106	[illegible]	1.039
80	1.171	[illegible]	1.153
90	1.242	0	1.242
100	1.422	-0.247	1.400
110	[illegible]	-0.509	[illegible]
120	[illegible]	-0.842	[illegible]
130	[illegible]	-1.158	[illegible]
140	[illegible]	-1.497	[illegible]
150	[illegible]	-1.804	[illegible]
160	[illegible]	-2.009	0.731
170	2.175	-2.142	[illegible]
180	2.175	-2.175	0

Notes:

1. Apex is located at (−0.75, 0, 3.02) for (X, Y, Z) or (0.75, 180, 3.02) for (R, θ, Z)
2. Scale all dimensions by 0.8941 for small headform.
3. Scale all dimensions by 1.069 for large headform.
4. Headform is symmetrical about the mid-sagittal plane.
5. Units:
   R, X, Y, Z — inches
   θ — degrees.

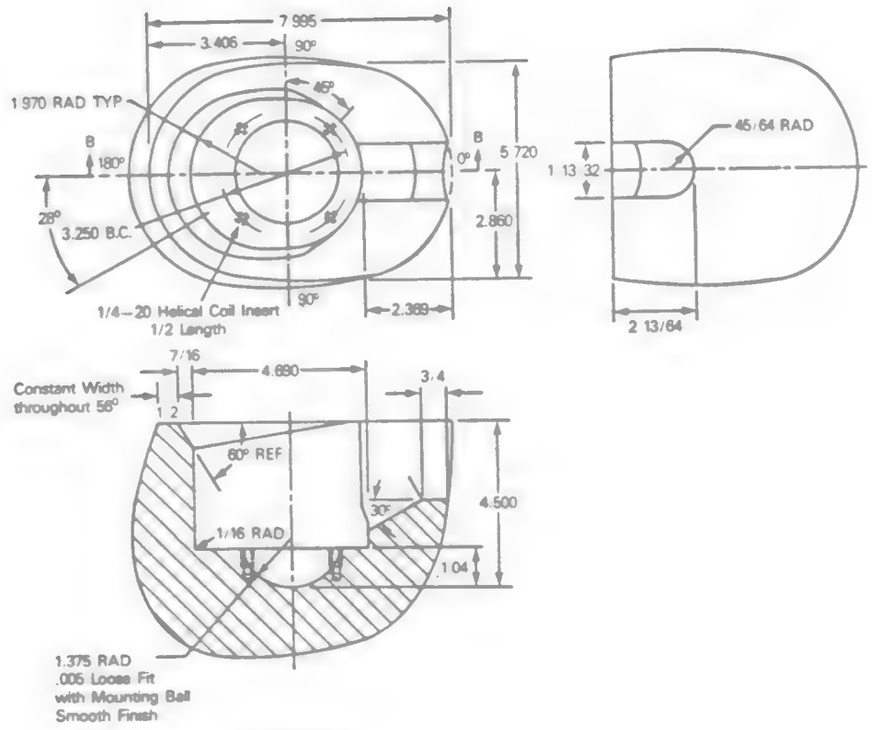
Small Headform — Interior Design





Section C-C

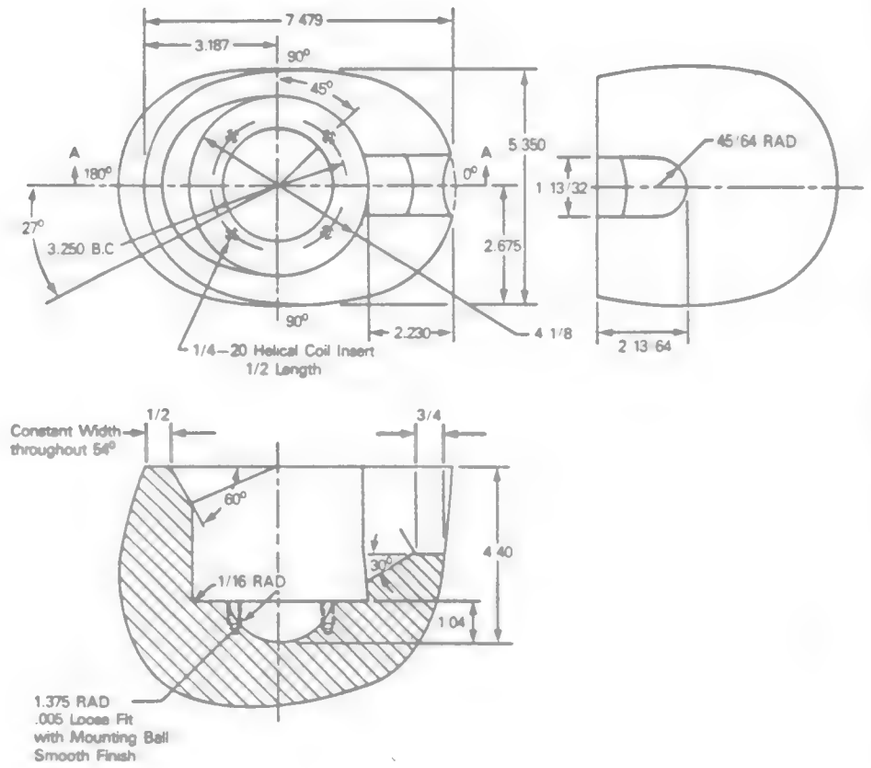
Medium Headform — Interior Design



SECTION B-B

BILLING CODE 4910-59-C

Large Headform — Interior Design



Section A-A

Issued: September 23, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-23082 Filed 9-26-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

King Mackerel and Spanish Mackerel; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene Mackerel Public Hearings to review reduced bag limits for recreational fishermen and reduced harvest quotas for commercial fishermen, and other measures to manage the stock of king mackerel. This reduction could be of sufficient magnitude to close the fishery. An increase in the size limit for Spanish mackerel will also be discussed.

DATES: Written comments should be received by October 30, 1985. All hearings will be convened at 7:00 p.m., and will adjourn at approximately 10:00 p.m. The hearings are scheduled as follows:

1. October 7, 1985, Largo, Florida
2. October 8, 1985, Corpus Christi, Texas
3. October 9, 1985, Houma, Louisiana
4. October 10, 1985, Pensacola, Florida.

ADDRESSES: Written comments should be sent to Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609; or Jack Brawner, Director, Southeast Region, National Marine Fisheries Service, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

The hearings will be held at the following locations:

1. October 7, 1985—Pinellas County Cooperative Extension Service Auditorium, 12175 125th Street, North, Largo, Florida
2. October 8, 1985—Texas A&M Research and Extension Center, Highway 44, Corpus Christi, Texas
3. October 9, 1985—East Park Recreation Center, 2007 East Park Street, Houma, Louisiana
4. October 10, 1985—Pensacola Junior College Fine Arts Auditorium, 1000 College Boulevard, Pensacola, Florida.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 813-228-2815.

Dated: September 24, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-23192 Filed 9-26-85; 8:45 am]

BILLING CODE 35-D-23-M

Notices

Federal Register
Vol. 50, No. 188
Friday, September 27, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Leola-Sullivan Timber Sale, Colville National Forest, Pend Oreille County, WA; Intent To Prepare an Environmental Impact Statement

The U.S. Department of Agriculture, Forest Service, will prepare an environmental impact statement for the development of the Leola-Sullivan timber sale on the Sullivan Lake Ranger District. The environmental impact statement will be prepared in accordance with existing land and resource management plans.

A range of alternatives for timber harvest in the assessment area will be considered. One of the alternatives will be no action. Other alternatives will consider various levels of timber harvest and road construction.

Federal, State and local agencies, potential purchasers, and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process, which will begin in October, 1985. This process will include:

1. Identification of the issues to be addressed.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues, issues covered by previous environmental analysis, and issues not within the scope of this decision.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The Fish and Wildlife Service, Department of Interior, will be invited to participate as a coordinating agency to evaluate potential impacts on threatened and endangered species habitat occurring as a result of this action.

The analysis is expected to take about five months. The draft environmental impact statement should be available for public review by August, 1986. The final environmental impact statement should be issued by December, 1986.

William D. Shenk, Forest Supervisor of the Colville National Forest, is the responsible official.

Written comments and suggestions concerning the analysis should be sent to William D. Shenk, Forest Supervisor, Federal Building, 695 South Main, Colville, Washington 99114, or to Warren N. Current, District Ranger, Sullivan Lake Ranger District, Metaline Falls, Washington 99153.

Questions about the proposed action and environmental impact statement should be directed to Constance J. Mehmel, Sale Planner, Sullivan Lake Ranger District, Metaline Falls, Washington 99153 (telephone: (509) 446–2681).

Dated: September 18, 1985.

William D. Shenk,

Forest Supervisor.

[FR Doc. 85–23097 Filed 9–26–85; 8:45 am]

BILLING CODE 3410–11–M

Threemile Timber Sale, Colville National Forest, Pend Oreille County, WA; Intent To Prepare an Environmental Impact Statement

The U.S. Department of Agriculture, Forest Service, will prepare an environmental impact statement for the development of the Threemile timber sale on the Sullivan Lake Ranger District. The environmental impact statement will be prepared in accordance with existing land and resource management plans.

A range of alternatives for timber harvest in the assessment area will be considered. One of the alternatives will be no action. Other alternatives will consider various levels of timber harvest and road construction.

Federal, State and local agencies, potential purchasers, and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of the issues to be addressed.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues, issues covered by previous environmental analysis, and issues not within the scope of this decision.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The Fish and Wildlife Service, Department of Interior, will be invited to participate as a coordinating agency to evaluate potential impacts on threatened and endangered species habitat occurring as a result of this action.

Scoping for this project will begin in October, 1985. A public meeting will be scheduled in February, 1986, to finalize issues, concerns and opportunities and to discuss development of alternatives.

The analysis is expected to take about five months. The draft environmental impact statement should be available for public review by September, 1986. The final environmental impact statement should be available by January, 1987.

William D. Shenk, Forest Supervisor of the Colville National Forest, is the responsible official.

Written comments and suggestions concerning the analysis should be sent to William D. Shenk, Forest Supervisor, Federal Building, 695 South Main, Colville, Washington 99114, or to Warren N. Current, District Ranger, Sullivan Lake Ranger District, Metaline Falls, Washington 99153.

Questions about the proposed action and environmental impact statement should be directed to Constance J. Mehmel, Sale Planner, Sullivan Lake Ranger District, Metaline Falls, Washington 99153 (telephone: (509) 446–2681).

Dated: September 18, 1985.

William D. Shenk,

Forest Supervisor.

[FR Doc. 85–23096 Filed 9–26–85; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Tri-State Generation and Transmission Association, Inc.; Information Supplement

AGENCY: Rural Electrification Administration, USDA.

ACTION: Availability of information supplement.

SUMMARY: Notice is hereby given that the Rural Electrification Administration

(REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and REA Environmental Policies and Procedures (7 CFR Part 1794), has prepared an Information Supplement (IS) in connection with the proposed participation and project changes for the Hayden-Blue River 345 kV transmission line project. The proposed facility will be located in Grand, Routt and Summit Counties, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Martin G. Seipel, Director, Western Area-Electric, Rural Electrification Administration, Room Number 0207, 14th and Independence Avenue SW., Washington, DC 20250, telephone number (202) 382–8848.

SUPPLEMENTARY INFORMATION: Tri-State Generation and Transmission Association, Inc. (Tri-State), submitted a proposed amended agreement and an environmental document relating to the proposed participation and project changes in the Hayden-Blue River 345 kV transmission line project. The proposed amended agreement will provide different ownership terms, cost, and capacity sharing, and divide construction management responsibilities for the project participants. The proposed agreement provides for Tri-State to be project manager for the northern portion of the line from Hayden to the existing Gore Pass Substation, and provides for Western Area Power Administration (Western) to be project manager for the southern portion of the line from Gore Pass Substation to the proposed Blue River Substation. Under the previous agreement, Tri-State was to be the sole project manager and would have constructed the entire line from Hayden Substation to the proposed Blue River Substation. Under the proposed participation changes, the project participants are sharing the cost as follows: Tri-State, 34 percent; Colorado-Ute Electric Association, Inc. (Colorado-Ute), 22 percent; Platte River Power Authority (Platte River), 22 percent; and Western, 22 percent. The previous capacity participation percentages were: Tri-State, 50 percent; Colorado-Ute, 20 percent; Platte River, 20 percent; and Western, 10 percent. Public Service Company of Colorado (PSC), while not participating in the transmission line construction, will construct the Blue River Substation in Summit County, Colorado.

REA issued a Record of Decision (ROD) for the Hayden-Blue River project on September 30, 1982, following the prepartion of a Draft Environmental Impact Statement (DEIS) and a final Environmental Impact Statement (FEIS) on December 24, 1981, and on July 16, 1982, respectively. REA approved financing assistance for Tri-State's portion of the project on September 30, 1982 and Colorado-Ute's portion on September 23, 1983.

The new participation agreement would allow Tri-State to utilize the existing Gore Pass Substation in the Middle Park area rather than construct a new substation. Tri-State will also construct the first 2.4 km (1.5 miles) of transmission line out of the Hayden Substation using wood-pole H-frame structures insulated at 230 kV instead of steel towers insulated at 345 kV. The use of 230 kV wood-pole H-frame structures is more economical than 345 kV structures because the line would not be uprated to 345 kV operation for at least 15 years; the Hayden Substation cannot presently be enlarged to include 345 kV facilities; and when the line is uprated to 345 kV operation, at least two feasible alternatives call for the removal of the inital section of line from Hayden. The proposed route between Hayden and Gore Pass is the same as the corridor identified in the FEIS and approved in REA's ROD for the Hayden-Blue River project with one exception near the Edna Mine area in Routt County. This exception represents a 0.6 km (0.4 mile) excurion beyond the corridor boundary for a total length of approximately 2.9 km (1.8 miles). Tri-State will utilize the resource information developed in the REA FEIS for routing the transmission line between the Hayden and Gore Pass Substations and will comply with local transmission siting requirements. Western proposes to utilize the resource information developed for REA's FEIS to analyze alternative routings in the Supplemental EIS that it is preparing for the southern portion of the line between the Gore Pass and Blue River Substations.

REA has reviewed the environmental information submitted by Tri-State and has independently evaluated the proposed changes. REA, at its discretion, is issuing this IS to carry out the purpose of the National Environmental Policy Act pursuant to 40 CFR 1502.9(c)(2) and 7 CFR 1794.90(c). The proposed changes will not affect threatened or endangered species, prime farmland, floodplains, wetlands or cultural resources. REA has determined that the environmental consequences of the proposed participation and project changes would not alter the use of the preferred corridors defined in REA's FEIS and approved in REA's ROD; and thus, no significant changes relevant to environmental concerns are expected.

REA considered the following alternatives: (a) Hayden-Blue River project as revised, (b) Hayden-Blue River project as originally proposed, (c) no joint participation in constructing the project, and (d) alternative transformer locations. After reviewing these alternatives, REA determined that the proposed project is revised is an acceptable alternative because it meets Tri-State's, Colorado-Ute's and other participants' needs with minimal adverse impact.

Copies of the IS may be examined at or obtained from the offices of REA in the South Argiculture Building, Room 0207, 14th and Independence Avenue SW., Washington, DC 20250 or at the offices of Tri-State, 12076 Grant Street, Thornton, Colorado 80241, during regular business hours. The IS may also be examined at public libraries in approriate towns in the affected counties. Copies of the IS are being sent to various Federal, State and local agencies and other individuals that have expressed an interest in this project. REA will take no final action with respect to the amended proposal until thirty (30) days after publication of notice in the **Federal Register** and a local newspaper.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850-Rural Electrification Loans and Loan Guarantees.

Dated: September 20, 1985.

Harold V. Hunter,

Administrator.

[FR Doc. 85–23154 Filed 9–26–85; 8:45 am]

BILLING CODE 3410-15-M

COMMISSION ON CIVIL RIGHTS

Connecticut Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 5:00 p.m. on October 16, 1985, at the Connecticut Historical Society, 1 Elizabeth Street, Hartford, Connecticut. The purpose of the meeting is to continue program planning for FY '86.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson James Stewart, or Jacob Schlitt, Director of the New England Regional Office, at (617) 223–4671, (TDD 617/223–0344).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, September 24, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-23120 Filed 9-26-85; 8:45 am]

BILLING CODE 6335-01-M

Kansas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 1:00 p.m. on October 22, 1985, at the Wichita Royale, 125 N. Market, Wichita, Kansas. The purpose of the meeting is to develop programs and plans for FY '86 and discuss holding community forums on civil rights issues in Western Kansas.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Burdett Loomis, or Melvin Jenkins, Director of the Central States Regional Office at (816) 374-5253, (TDD 816/374-5009).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, September 24, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-23121 Filed 9-26-85; 8:45 am]

BILLING CODE 6335-01-M

Maryland Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maryland Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 3:30 p.m. on October 21, 1985, at the Omni International Hotel, 101 West Fayette Street, Baltimore, Maryland. The purpose of the meeting will be to review a report of the Committee's community forum on handicap discrimination and develop plans for a possible study of equity issues in special education.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Lorretta Johnson, or John Binkley, Director of the Mid-Atlantic Regional Office at (202) 254-6717, (TDD 202/254-5461).

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 24, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-23122 Filed 9-26-85; 8:45 am]

BILLING CODE 6335-01-M

Minnesota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m. on October 21, 1985, at the Hamline University School of Law, 1536 Huwett Avenue, Room 101, St. Paul, Minnesota. The purpose of the meeting will be to discuss committee projects on mental health and affirmative action, as well as to hear from local groups and agencies about other civil rights matters.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Talmadge Bartelle, or Clark Roberts, Director of the Midwestern Regional Office at (312) 353-7371, (TDD 312/886-2188).

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, September 24, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-23123 Filed 9-26-85; 8:45 am]

BILLING CODE 6335-01-M

Rhode Island Advisory Committee; Agenda for Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 12:00 noon and adjourn at 1:30 p.m. on November 13, 1985, at the Girl Scouts of Rhode Island, 125 Charles Street, Council Room, Providence, Rhode Island. The purpose of the meeting is to discuss the issue of violence against Asians in Providence and continue program planning for FY '86.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, David Sholes, or Jacob Schlitt, Director of the New England Regional Office at (617) 223-4671, (TDD 617/223-0344).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, DC, September 24, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-23124 Filed 9-26-85; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC.

Docket No.: 85-179. Applicant: George Washington University Medical Center, Washington, DC 20037. Instrument: Electron Microscope, Model JEM-1200EX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: See notice at 50 FR 24552. Instrument ordered: February 25, 1985.

Docket No.: 85-180. Applicant: University of Southern California, Los Angeles, CA 90089-1141. Instrument: Electron Microscope, Model JEM-1200EX with Accessories. Manufacturer: JEOL, Ltd., Japan. Intended use: See notice at 50 FR 24552. Instrument ordered: February 5, 1985.

Docket No.: 85-184. Applicant: Brandeis University, Waltham, MA 02254. Instrument: Electron Microscope, Model EM 420 with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: See notice at 50 FR 28395. Instrument ordered: March 28, 1985.

Docket No.: 85-185. Applicant: University of Michigan, Ann Arbor, MI 48109-2029. Instrument: Electron Microscope, Model EM 10CA with Accessories. Manufacturer: Carl Zeiss, Inc., West Germany. Intended use: See notice at 50 FR 24553. Instrument ordered: March 27, 1985.

Docket No.: 85–198. Applicant: University of Pittsburgh, Pittsburgh, PA 15261. Instrument: Electron Microscope, Model JEM–2000FX with Accessories. Manufacturer: JEOL, Japan. Intended use: See notice at 50 FR 26394. Instrument ordered: September 21, 1984.

Docket No.: 85–201. Applicant: The Pennsylvania State University (MSHMC), Hershey, PA 17033. Instrument: Electron Microscope, Model EM 10–CAS with Accessories. Manufacturer: Carl Zeiss, Inc., West Germany. Intended use: See notice at 50 FR 26394. Instrument ordered: March 22, 1985.

Docket No.: 85–202. Applicant: Columbia University (College of Physicians & Surgeons), New York, NY 10032. Instrument: Electron Microscope, Model EM 10CA and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: See notice at 50 FR 26394. Instrument ordered: April 18, 1985.

Docket No.: 85–203. Applicant: The Jackson Laboratory, Bar Harbor, ME 04609. Instrument: Electron Microscope, Model JEM–100CXII and Accessories. Manufacturer: JEOL, Co., Ltd., Japan. Intended use: See notice at 50 FR 26394. Instrument ordered: February 8, 1985.

Docket No.: 85–214. Applicant: University of Pittsburgh, Pittsburgh, PA 15261. Instrument: Electron Microscope, Model JEM–200CX with Accessories. Manufacturer: JEOL, Japan. Intended use: See notice at 50 FR 28000. Application received by Commissioner of Customs: June 3, 1985.

Docket No.: 85–221. Applicant: Boston University School of Medicine, Boston, MS 02118. Instrument: Electron Microscope, Model JEM–100CXII. Manufacturer: JEOL, Ltd., Japan. Intended use: See notice at 50 FR 28001. Instrument ordered: October 24, 1984.

Docket No.: 85–224. Applicant: Oakland University, Rochester, MI 48063. Instrument: Electron Microscope, Model EM 410LS with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: See notice at 50 FR 29243. Instrument ordered: March 25, 1985.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or of any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85–23176 Filed 9–26–85; 8:45 am]

BILLING CODE 3510-DS-M

[Case No. 656]

Josef Kubicek et al.; Order Amending Temporary Denial of Export Privileges

In the Matter of Josef Kubicek, individually and doing business as, Exclusitrade, Inc. and J.O.K., Inc., with locations at 18 La Vista Verde Rancho Palos Verdes, California 90274, and 2001 Artesia Boulevard, Redondo Beach, California 90278, and Lakeside Office Park, No. 4, Wakefield, Massachusetts 01890, William Carlton Dart, individually and doing business as, Display Systems, Inc. and Perpetuum, Inc., with locations at 2000 Martin Avenue, Santa Clara, California 95050, Robert William Haire, Sr., individually and doing business as, Display Systems, Inc., 2000 Martin Avenue, Santa Clara, California 95050, and Exclusitrade, Inc., with locations at 18 La Vista Verde, Rancho Palos Verdes, California 90274, and 2001 Artesia Boulevard, Redondo Beach, California 90278, and Lakeside Office Park, No. 4, Wakefield, Massachusetts 01880, Raymond Shields Spitz, Star Route 45E, Spirit Lake, Idaho 83869.

By order issued on November 6, 1984, (19 FR 45468, November 16, 1984) ("Order"), respondents William Carlton Dart and Robert William Haire, Sr., both individually and doing business as Display Systems Inc. and Perpetuum, Inc. (all such individual and corporate respondents hereinafter referred to collectively as "Respondents"), are temporarily denied, pursuant to § 388.19 of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1985)) ("Regulations"), all privileges of participating in any manner or capacity in the export or reexport of U.S.-origin commodities or technical data under the Regulations. Under a March 5, 1985 Amendment to the Order (50 FR 9473, March 8, 1985), Respondents were permitted to export certain commodities to the People's Republic of China. The U.S. Department of Commerce ("Department") and Respondents have now moved jointly to modify the Order further, as set forth below. Josef Kubicek, individually and doing business as Exclusitrade, Inc. and J.O.K., Inc., and Raymond Shields Spitz, who are also denied export privileges under the Order, as amended, are not parties to this further requested modification.

The modification jointly requested by the Department and Respondents would, subject to the safeguards agreement described below:

1. Authorize Respondents to export under general license GTDR, without applying for individual validated licenses as otherwise required under paragraph 2 below, from the United States to the Republic of Korea and to Taiwan, technical data, consisting of drawings, artwork and written specifications for, or relating to, the manufacture of liquid crystal displays and liquid crystal display systems; and

2. Authorize Respondents to apply for individual validated licenses covering the export from the United States of U.S.-origin commodities and technical data subject to the jurisdiction of the Export Administration Act of 1979, currently codified at 50 U.S.C. app. Sections 2401–2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) ("Act"). This authorization to apply for individual validated licenses would extend also to commodities and technical data (other than GTDR exports permitted under paragraph 1 above) which, but for the Order, could be exported under general licensing provisions. All such applications shall be accompanied by a copy of the written contract, as prepared in accordance with Respondents' customary business practices, underlying the transaction.

The joint motion by the Department and Respondents further provides that the export of any commodities and technical data authorized for export under this modification must be in accordance with the terms of an agreement on safeguards ("Agreement"), entered into by the Department and Respondents of September 18, 1985. A copy of the Agreement has been submitted for the record.

Based on the representations made by the Department and by Respondents, I find that the requested motion is justified, and that granting it will not jeopardize the purpose of the Order.

Accordingly, it is hereby Ordered that the Order of November 6, 1984 is further amended, as an additional modification of the Order's denial of all of Respondents' export privileges, and subject to the condition that for each export permitted below Respondents shall comply with the safeguards set forth in the Agreement, to permit Respondents:

(a) To export under general license GTDR, without applying for individual

validated licenses as otherwise required under paragraph (b) below, from the United States to the Republic of Korea and to Taiwan, technical data, consisting of drawings, artwork and written specifications for, or relating to, the manufacture of liquid crystal displays and liquid crystal display systems; and

(b) To apply for individual validated licenses covering the export from the United States of U.S.-origin commodities and technical data subject to the jurisdiction of the Act and the Regulations, including commodities and technical data (other than GTDR exports permitted under paragraph (a) above) which, but for the Order, could be exported under general licensing provisions, provided, that every such application shall be accompanied by a copy of the written contract, as prepared in accordance with Respondents' customary business practices, underlying the transaction.

This Amendment of the Order for the exports in paragraphs (a) and (b) above, subject to the condition regarding safeguards, shall apply only to Respondents, as the parties with the Department to the joint motion, and shall not apply to the other individuals and corporations that are denied export privileges under the Order.

This Amendment of the Order is effective immediately and shall be published in the **Federal Register**.

Dated: September 20, 1985, 4:05 pm, E.d.t.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 85-23175 Filed 9-26-85; 8:45 am]

BILLING CODE 3510-DT-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1985; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1985 a commodity to be produced by and a service to be provided by workshops for the blind and other severely handicapped.

DATE: Comments must be received on or before: October 30, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and service to Procurement List 1985, October 19, 1984 (49 FR 41195):

Commodity

Kit Bag, Flyer's (Coated Nylon) 8460-00-883-8673

Service

Janitorial Service, Federal Building, 240 West Third Street, Williamsport, Pennsylvania.

C.W. Fletcher,

Executive Director.

[FR Doc. 85-23164 Filed 9-26-85; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1985 Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1985 a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: September 27, 1985.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On July 5, 1985, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (50 FR 27650) of proposed additions to Procurement List 1985, October 19, 1984 (49 FR 41195).

Addition

After consideration of the relevant matter presented, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the service listed.

c. The action will result in authorizing small entities to provide the service procured by the Government.

Accordingly, the following service is hereby added to Procurement List 1985:

Service

Commissary Shelf Stocking and Custodial, Fort Monmouth (Ocean Port), New Jersey

C.W. Fletcher,

Executive Director.

[FR Doc. 85-23165 Filed 9-26-85; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Academy Board of Visitors; Meeting

Pursuant to section 9355, Title 10, United States Code, the Air Force Academy Board of Visitors will meet at the Air Force Academy, Colorado Springs, Colorado, 31 Oct-2 Nov 1985. The purpose of the meeting is to consider morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy.

This meeting will be closed to the public to discuss matters analogous to those listed in subsections (2), (4), and (6) of section 552b(c), Title 5, United States Code. These closed sessions will include: attendance at cadet classes and panel discussions with groups of cadets and military staff and faculty officers involving personal information and opinions, the disclosure of which would result in a clearly unwarranted invasion of personal privacy. Closed sessions will also include executive sessions involving discussions of personal information, including financial information, and information relating solely to internal personnel rules and practices of the Board of Visitors and the Academy. Meeting sessions will be held in the Superintendent's Conference Room, Harmon Hall, USAF Academy.

For further information, contact Major Randall R. Cantrell, Headquarters, U.S. Air Force (MPPA), Washington, D.C. 20330, at (202) 697–7116.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 85–23177 Filed 9–26–85; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

September 16, 1985.

The USAF Scientific Advisory Board Fall General Membership Meeting will be held at Fort McNair, Washington, DC on October 23 and 24, 1985. The meeting will convene from 9:30 a.m. to 4:30 p.m. on October 23 and from 8:30 a.m. to 3:15 p.m. on October 24.

The purpose of the meeting will be to receive classified briefings on results of recent SAB studies, a briefing on the recently-completed Air Force Innovation Study, and a briefing on USAF Special Operations Forces In-Theater Operations.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 85–23178 Filed 9–26–85; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Civilian Radioactive Waste Management Transportation Institutional Workshop

AGENCY: Office of Civilian Radioactive Waste Management, DOE.

ACTION: Notice of Transportation Institutional Workshop.

The Office of Civilian Radioactive Waste Management (OCRWM), U.S. Department of Energy, is holding a Transportation Institutional Workshop in Atlanta, Georgia on November 19–21, 1985. The OCRWM Draft Transportation Institutional Plan that will be released for public comment by the end of September 1985, will be discussed, as will specific issues related to transportation procedures and policies under the provisions of the Nuclear Waste Policy Act of 1982. A working group format will be used at the meeting to promote maximum exchange of views and expertise. The objective is to foster broad-based participation in planning for NWPA transportation.

Further details of the meeting can be obtained by writing or calling Mr. Robert Philpott, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, RW–33, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252–9620.

Issued in Washington, DC, September 24, 1985.

Robert H. Bauer,

Associate Director for Resource Management, Office of Civilian Radioactive Waste Management.

[FR Doc. 85–23214 Filed 9–26–85; 8:45 am]

BILLING CODE 6450-01-M

Civilian Radioactive Waste Management Draft Transportation Institutional Plan

AGENCY: Office of Civilian Radioactive Waste Management, DOE.

ACTION: Notice of Availability for Comment on the Draft Transportation Institutional Plan.

The Office of Civilian Radioactive Waste Management (OCRWM), U.S. Department of Energy, is developing a Transportation Institutional Plan related to responsibilities assigned by the Nuclear Waste Policy Act of 1982. The document will contain information on the plans and strategies for interaction with institutions affected by the transport of high-level waste under the provisions of the Act.

For planning purposes, the institutions have been divided into three main categories: intergovernmental including other Federal agencies as well as State, Tribal, and local governments; the utilities and industry; and the public. Interaction with these groups will identify both opportunities for cooperative effort and transportation issues of concern. A primary purpose of the Draft Transportation Institutional Plan will be to establish a process for addressing and resolving these concerns.

Copies of the Draft Transportation Institutional Plan may be obtained after September 27, 1985, by telephoning (202) 252–5575, by direct pickup from, or by request in writing to:

Office of Public Affairs, U.S. Department of Energy, Room 1E–218, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585

Copies of the document will also be available by writing:

Technical Information Division, Office of Scientific and Technical Information, Technical Information Center, P.O. Box 62, Oak Ridge, TN 37831

All comments on the Draft Transportation Institutional Plan should be submitted in writing no later than December 31, 1985, to Mr. Robert Philpott, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, RW–33, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. The Department expects to prepare a Final Transportation Institutional Plan by the Spring of 1986.

Issued in Washington, DC, September 24, 1985.

Robert H. Bauer,

Associate Director for Resource Management, Office of Civilian Radioactive Waste Management.

[FR Doc. 85–23215 Filed 9–26–85; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award (Grant); Tufts University

AGENCY: Department of Energy.

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: The proposed work will be conducted at Tufts University, Electro-Optics Technical Center, Hilligan Hall, Medford, MA 02155. The proposed period of performance is thirty six months (36) beginning September 30, 1985 through September 30, 1988. The proposed cost of the work is $529,520.

Grant No. DE–FG03–85SF15927

Scope of Project

The major thrust of the research is to address four principal areas: (a) Development of polycrystalline WO_3 films with decreased free electron scattering; (b) development of high integrity, high resistivity, thin ion conducting films; (c) development of optically passive, counterelectrode layers; and (d) developoment of prototype small-area window structures which meet desired performance criteria.

The Council will survey related research to determine the extent of completed and ongoing research in this area. The final agenda will be developed with the use of an industry based review panel, include estimates of time and staff, and delineate the possible role of the Department of Energy.

FOR FURTHER INFORMATION CONTACT:

Jane Hadly, Contract Specialist, Contract Management Division, U.S. Department of Energy, San Francisco

Operations Office, 1333 Broadway, Oakland, CA 94612.

Issued in San Francisco, California, September 30, 1985.

Vito A. Magliano,

Acting Manager.

[FR Doc. 85-23153 Filed 9-26-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs and Energy Emergencies

Atomic Energy Agreement; Proposed Subsequent Arrangements; Canada

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada concerning Civil Uses of Atomic Energy, as amended, the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above-mentioned agreements involve approval of the following sales: Contract S-CA-379, to Eldorado Resources, Ltd., Port Hope, Ontario, Canada, 21.927 grams of uranium enriched to 2.38% in U-235, 43.678 grams of uranium, enriched to 1.35% in U-235, and 489.03 grams of natural uranium, for use as standard reference materials. Contract S-EU-858, to the Bureau of Analysed Samples, Ltd., England, 148.4 grams of natural uranium, for use as standard reference material. Contract S-JA-361, to Japan Nuclear Fuel Co., Ltd., Japan, 593.6 grams of natural uranium, for use as standard reference material.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: September 23, 1985.

For the Department of Energy.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-23152 Filed 9-26-85; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement; Government of Canada

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Canada concerning Civil Uses Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale: Contract Number S-CA-376, to the National Research Council of Canada, Ottawa, Canada, one microcurie of plutonium-236, for use as a tracer in analyzing picocurie levels of other plutonium isotopes.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: September 23, 1985.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-23091 Filed 9-26-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket PP-39EA]

Application for Authorization To Transmit Electric Energy to Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application by Boise Cascade, Corp. for authorization to export electric energy to a foreign country.

SUMMARY: Boise Cascade has filed an application with the Economic Regulatory Administration (ERA) for authority to export electric energy to its Canadian subsidiary, Boise Cascade Canada, Ltd., located in Fort Francis, Ontario. Sale of this electric energy will commence on or before January 1, 1986, and terminate on December 31, 1990.

FOR FURTHER INFORMATION CONTACT:

Anthony J. Como, Economic Regulatory Administration (RG-22), Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-5935

Lise Courtney M. Howe, Office of General Counsel (GC), Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2900.

SUPPLEMENTARY INFORMATION: On September 11, 1985, Boise Cascade filed an application with ERA seeking authorization to export electric power and energy to its Canadian subsidiary, Boise Cascade Canada, LTD.

The applicant is located in the City of International Falls, Minnesota and plans to transmit 21.5 megawatts of firm power and associated energy to its Canadian subsidiary located in Fort Frances, Ontario. This export is scheduled to start on or before January 1, 1986, and will terminate on December 31, 1990. Details of the agreement between the applicant and its Canadian subsidiary were made part of the application.

The proposed export would be transmitted over an existing 6.6 kilovolt transmission line extending approximately 0.20 miles between Boise Cascade's U.S. and Canadian plants. The construction and operation of this international transmission line was authorized previously by the Presidential permit in ERA Docket PP-39 (formerly Federal Power Commission Docket E-7286).

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Office of Coal & Electricity, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedure (18 CFR 385.215, 385.211, 385.214).

Any such petitions and protests should be filed within 30 days of the publication of this notice. Protests will be considered by DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with DOE and will, upon request, be made available for public inspection and copying at the DOE Freedom of Information Reading Room, Room 1E-190, 1000 Independence Avenue, SW, Washington, DC from 8:00

a.m. to 4:00 p.m., Monday through Friday.

Issued in Washington, DC on Septemer 16, 1985.

Marshall Staunton,

Acting Administrator, Economic Regulatory Administration.

[FR Doc. 85-23092 Filed 9-26-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER85-773-000, et al.]

Arkansas Power & Light Co. et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. Arkansas Power & Light Company

[Docket No. ER85-773-000]

September 20, 1985.

Take notice that Arkansas Power & Light Company (AP&L) filed on September 17, 1985, a proposed Peaking Power Agreement which is a supplement to the Power Coordination Interchange and Transmission Agreement between City of west Memphis, Arkansas and Arkansas Power & Light Company dated June 25, 1982. The agreement provides for the sale to the City of 22 MW of Peaking capacity and 5,280 MWH of Peaking Energy during the months of May through September.

The proposed Peaking Power Agreement will effect a savings of approximately $1,168,000 per year for the City of West Memphis based on the actual billings for the twelve month period ended July 31, 1985.

Comment date: October 2, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Duke Power Company

[Docket Nos. ER82-732-000 ER82-732-001, ER83-123-000 and ER83-123-001]

September 23, 1985.

Take notice that on September 3, 1985, Duke Power Company (the Company) tendered for filing a compliance report of amounts due under the fuel clause provisions of a settlement agreement between the Company and its wholesale customers. The Commission approved the agreement on June 20, 1983. The report reflects refunds being made to South Carolina municipal customers now being served under the Catawba Nuclear Station Interconnection Agreement. The Company has previously advised the Commission that service under the Catawba Interconnection Agreement would begin in July 1985 for the South Carolina municipalities who are members of the Piedmont Municipal Power Agency (Docket No. 85-602-000, Letter Order dated August 2, 1985). In a letter dated March 11, 1983, the Company advised the Commission of refunds made to the North Carolina municipalities and North and South Carolina cooperative previously served under Rate Schedule No. 10 and Rate Schedule No. 11 in August 1983 and December 1983, respectively.

Comment date: October 4, 1985, in accordance with Standard Paragraph H at the end of this notice.

3. Northern States Power Company

[Docket No. FR85-758-000]

September 23, 1985.

The notice that Northern States Power Company (NSP) on September 12, 1985, tendered for filing Supplement No. 8 to the Integrated Transmission Agreement between Cooperative Power Association (CPA) and Northern States Power Company (Supplement).

The Supplement, dated July 10, 1985, revises four exhibits to the Intergrated Transmission Agreement (ITA) dated August 25, 1967. The ITA is on file with the Commission and is designated as Rate Schedule FERC No. 342. The four exhibits revised by this Supplement contain diagrams and descriptions of the interconnection facilities covered by the ITA. The changes are necessary in order to reflect the transmission and substation facility additions and the sale to CPA in 1984 of various properties which have occurred since the exhibits were last updated.

Comment date: October 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Company

[Docket No. ER85-760-000]

September 23, 1985.

Take Notice that Northern States Power Company (NSP) on September 12, 1985 tendered for filing the Diversity Exchange Agreement Between Northern States Power Company and United Power Association (Diversity Exchange Agreement).

The Diversity Exchange Agreement is an initial rate schedule filing. The Diversity Exchange Agreement profides that NSP will supply United Power Association power and energy during the winter season beginning in November 1993 for a minimum period of fifteen years. The Agreement also provides that in consideration of the power and energy provided by NSP, United Power Association will make available to NSP power and energy during the summer season for the same period of time.

NSP requests the Diversity Exchange Agreement become effective on May 1, 1993; and therefore, requests waiver of the Commission's notice requirements.

Comment date: October 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company

[Docket No. ER85-761-000]

September 23, 1985.

Take Notice that Northern States Power Company (NSP) on Sept. 12, 1985, tendered for filing the Diversity Exchange Agreement Between Northern States Power Company and Minnkota Power Cooperative (Diversity Exchange Agreement).

The Diversity Exchange Agreement is an initial rate schedule filing. The Diversity Exchange Agreement provides that NSP will supply Minnkota Power Cooperative power and energy during the winter season beginning in November 1991 for a minimum period of ten years. The Agreement also provides that in consideration of the power and energy provided by NSP, Minnkota Power Cooperative will make available to NSP power and energy during the summer season for the same period of time.

NSP requests the Diversity Exchange Agreement become effective on May 1, 1991, and therefore, requests wavier of the Commission's notice requirements.

Comments date: October 3, 1985, in accordance with Standard paragraph E at the end of this notice.

6. Pacific Power & Light Company, an Assumed Business Name of PacifiCorp.

[Docket No. ER85-757-000]

September 23, 1985.

Take Notice that Pacific Power & Light Company (Pacific), an assumed business name of PacificCorp, on September 12, 1985, tendered for filing, in accordance with § 35.13a(d)(5) of the Commission's Regulations, Pacific's Revised Appendix 1 for state of Washington. The Revised Appendix 1 calculates an average system cost for the state of Washington applicable to the exchange of power between Bonneville Power Administration (Bonneville) and Pacific.

Pacific requests waiver of the Commission's notice requirements to permit this rate schedule to become effective October 1, 1984, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Washington Utilities and Transportation Commission, and

Bonneville's Direct Service Industries Customers.

Comment date: Octobert 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Power & Light Company, an Assumed Business Name of PacifiCorp.

[Docket No. ER85–758–000]

September 23, 1985.

Take Notice that Pacific & Light Company (Pacific), an assumed business name of PacificCorp, on September 12, 1985, tendered for filing, in accordance with § 35.13a(d)(5) of the Commission's Regulations, Pacific's Revised Appendix 1 for the state of Idaho. The Revised Appendix 1 calculates an average system cost for the state of Idaho applicable to the exchange of power between Bonneville Power Administration (Bonneville) and Pacific.

Pacific requests waiver of the Commission's notice requirements to permit this rate schedule to become effective October 1, 1984, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Idaho Public Utilities Commission, and Bonneville's Direct Service Industrial Customers.

Comment date: October 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Pacific Power & Light Company, an Assumed Business Name of PacificCorp.

[Docket No. ER85–762–000]

September 23, 1985.

Take Notice that Pacific Power & Light Company (Pacific), an assumed business name of PacificCorp, on September 12, 1985, tendered for filing, in accordance with § 35.13a(d)(5) of the Commission's Regulations, Pacific's Revised Appendix 1 for the state of Oregon. The Revised Appendix 1 calculates an average system cost for the state of Oregon applicable to the exchange of power between Bonneville Power Administration (Bonneville) and Pacific.

Pacific requests waiver of the Commission's notice requirements to permit this rate schedule to become effective October 1, 1984, which it claims is the date of commencement of service.

Copies of the filing were supplied to Bonneville, the Public Utility Commissioner of Oregon, and Bonneville's Direct Service Industrial Customers.

Comment date: October 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Puget Sound Power & Light Company

[Docket No. ER85–771–000]

September 20, 1985.

Take notice that on September 16, 1985, Puget Sound Power and Light Company (Puget) tendered for filing Appendix 1 to the Residential Purchase and Sale Agreement, Contract No. DE–MS79–81BP90604, between Puget and the Bonneville Power Administration. In addition, Puget tendered for filing BPA report dated August 26, 1985 pertaining to the above filing.

Comment date: October 2, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Puget Sound Power & Light Company

[Docket No. ER85–774–000]

September 23, 1985.

Take notice that on September 18, 1985, Puget Sound Power and Light Company (Puget) tendered for filing Appendix 1 to the Residential Purchase and Sale Agreement, Contract No. DE–MS79–81BP90604, between Puget and the Bonneville Power Administration, including the ECAC ASC adjustment demonstrated on Schedule 4. In addition, Puget tendered for filing BPA report dated September 3, 1985 pertaining to the above filing.

Comment date: October 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

11. South Carolina Generating Company

[Docket No. ER85–603–002]

September 23, 1985.

Take notice that on September 13, 1985, South Carolina Generating Company (GENCO) tendered for filing in accordance with the Commission's order of August 15, 1985 seven copies of further revised schedules 3 and 8. (Supplement Nos. 5 and 3 respectively, to GENCO's Rate Schedule FERC No. 1). The remaining schedules that accompanied GENCO's June 27, 1985 filing did not include Account No. 407 – and are not being refiled at this time in accordance with the Commission's request that Account No. 407 be deleted.

Comment date: October 1, 1985, in accordance with Standard Paragraph H at the end of this notice.

12. Northwestern Public Service Company

[Docket No. EC85–22–000]

September 23, 1985.

Take notice that Northwestern Public Service Company (NWPS) filed an application on September 16, 1985 pursuant to 18 CFR 33.1, et seq. requesting that authority be granted under Title 16, U.S.C. 824b.(a) allowing NWPS to purchase, acquire, hold and sell securities of other public utilities as part of a planned expansion of corporate investments. NWPS proposes to limit its holding or ownership of any given class of securities to an amount not to exceed one percent (1%) of the capital stock or funded debt outstanding. Additionally, NWPS is requesting a modification of the reporting requirement under Title 18, CFR 33.8 to allow an annual update and status report only. The application sets forth the limitations and requirements protecting the public interest. The application is on file with the Commission and open to public inspection.

Comment date: October 7, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–23131 Filed 9–26–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ID-1972-002, et al.]

Interlocking directorate applications; John F. Opeka et al.

September 23, 1985.

Take notice that the following filings have been made with the Commission:

1. John F. Opeka

[Docket No. ID-1972-002]

Take notice that on September 16, 1985, John F. Opeka, pursuant to section 305(b) of the Federal Power Act, submitted for filing a supplemental application for authority to hold the following position:

Assistant Treasurer, Connecticut Yankee Atomic Power Company, Public Utility

Comment date: October 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. C. Thayer Browne

[Docket No. ID-1971-001]

Take notice that on September 16, 1985, C. Thayer Browne, pursuant to section 305(b) of the Federal Power Act, submitted for filing a supplemental application for authority to hold the following position:

Assistant Treasurer, Connecticut Yankee Atomic Power Company, Public Utility

Comment date: October 3, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Stret, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protest should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-23125 Filed 9-26-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-53-003]

Ozark Gas Transmission System; Filing

September 23, 1985.

Take notice that Ozark Gas Transmission System (Ozark) on September 18, 1985, tendered for filing a Request To Charge Rates Lower Than Those Currently In Effect Under Its FERC Gas Tariff. Ozark also filed Second Revised Sheet No. 5 to its FERC Gas Tariff. Ozark proposes to place its reduced rate into effect retroactively as of March 1, 1984, and to collect said reduced rate subject to refund pending issuance of a final Commission decision in this docket.

Copies of the filing were served upon Ozark's jurisdictional customers, parties to this proceeding and the appropriate state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regualtory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 27, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-23128 Filed 9-26-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-51-000]

Pacific Gas and Electric Petition for Exemption From Incremental Pricing

September 24, 1985.

Take notice that on August 26, 1985, Pacific Gas and Electric Company (Pacific) filed a petition with the Commission pursuant to section 206(d) of the Natural Gas Policy Act of 1978 (NPGA). Pacific seeks an order from the Director of the Commission's Office of Pipeline and Producer Regulation, exempting from incremental pricing for a 15 year period, natural gas sales to be made by Pacific under Pacific's Rate Schedules G-59, G-90 and other schedules to enhanced oil recovery customers.

Pacific states that it is artificially constrained by incremental pricing regulations in attempting to sell gas to the enhanced oil recovery market, and that in the absence of the relief requested, Pacific and its ratepayers will be disadvantaged relative to competing gas suppliers and alternative fuels not subject to incremental pricing regulations. Pacific asserts that an incremental pricing exemption is warranted to insure fair competition in the enhanced oil recovery market, and that failure to grant the requests may result in hardship, inequity, and unfair distribution of burdens.

Pacific requests expedited consideration of its petition. Pacific maintains that expedition is necessary to give potential enhanced oil recovery customers sufficient lead time to obtain commitments for construction of necessary facilities. Pacific also maintains that expedited consideration is necessary to prevent a loss of enhanced oil recovery customers resulting from their procurement of alternative long term sources of supply.

The procedures applicable to the conduct of this proceeding are set forth in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this proceeding must file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene must be filed within 15 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-23129 Filed 9-26-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP84-46-000]

Petitions to Reopen and Vacate Final Well Category Determinations and Request to Withdraw

September 24, 1985

In the matter of Commonwealth of Pennsylvania, Department of environmental Resources, Section 102 Determinations, Victory Development Company, Koop, #1 Well, FERC JD No. 83-30338, #1 Defense & Emergency Well, FERC JD No. 83-30335, #3 Defense & Emergency Well, FERC JD No. 83-30337, #1 Lions recreation Center Well, FERC JD No. 83-3039.

Take notice tha on June 20, 1985, Victory Development Company filed with the Commission pursuant to § 275.205 of the Commission's regulations a petition to reopen and vacate final well category determinations under section 102 of the Natural Gas Policy Act of 1978 (NGPA) for the wells listed in the caption of this

notice and to withdraw its applications for the determinations

Victory states that the wells do not qualify under section 102 of the NGPA because they are located within 2.5 miles of a marker well drilled by T.W. Phillips Gas & Oil Company in the 1940's. victory further states that no gas has been sold from any of the wells and therefore no refunds are required.

Any person desiring to be heard or to protest Victory'a peition should filed a motion to intervene (18 CFR 385.214) or protest (18 CFR 385.211) with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC. 20426 within 30 days after this notice is published in the **Federal Register**. All protests filed will be considered by the Commission but will not make the protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-23127 Filed 9-26-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-4-000]

Shell Offshore, Inc. and Shell Western E & P, Inc.; Quarterly Status Conference

September 24, 1985.

A quarterly status conference is to be held in the above-captioned docket pursuant to Commission order of September 28, 1984, to evaluate whether the implementation of the special marketing program is achieving the Commission's purposes. The conference will be held at the offices of the Commission at 825 North Capitol Street, NE., Washington, D.C. at 2:00 p.m. on October 1, 1985. All interested persons and Staff are invited to attend.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-23130 Filed 9-26-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Energy Research Advisory Board, Solar Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Solar Panel of the Energy Research Advisory Board (ERAB).

Date and time: October 10, 1985—8:30 a.m.-4:00 p.m.

Place: Department of Energy, 1000 Independence Avenue, SW, Room 4A-110, Washington, DC 20585.

Contact: William L. Woodard, Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 252-5767.

Purpose of the Parent Board

To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel

The Solar Panel is a subgroup of ERAB and reports to the parent Board. The purpose of the Panel is to assess in more detail the appropriateness of consolidating the Department's solar research activities into fewer field offices, national laboratories, and research centers, as was recommended in the Board's 1982 report, "Solar Energy Research and Development: Federal and Private Sector Roles."

Tentative Agenda

- Introduction and Discussion of Charge.
- Program Briefings by Selected DOE Laboratories Involved in Solar Research.
- Informal Discussion.
- Consideration of Draft Letter Report.
- Public Comment (10 minute rule).

Public Participation

The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts

Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on September 17, 1985.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 85-23213 Filed 9-26-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59733; TSH-FRL 2904-5]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of ten such PMNs and provides a summary of each.

DATES: Close of Review Period:.

Y 85-157 and 85-158, October 3, 1985
Y 85-159, October 7, 1985
Y 85-160, 85-161, 85-162, and 85-163, October 8, 1985
Y 85-164, 85-165, and 85-166, October 9, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 85-157

Manufacturer. Confidential.

Chemical. (G) Polyester of carbomonocyclic acid and alkylene glycols.

Use/Production. (S) Industrial extrusion into textile fiber for apparel

and home furnishing fabric. Prod. range. Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 85–158

Manufacturer. Confidential.

Chemical. (G) Polyester of carbomonocyclic ester and alkylene glycols.

Use/Production. (S) Industrial extrusion into textile fiber for apparel and home furnishing fabric. Prod. range. Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Y 85–159

Manufacturer. Confidential.

Chemical. (G) Dimer acids, dicarboxylic acid, ethylenediamine, diamine polyamide resin.

Use/Production. (S) Industrial hot melt adhesive and is intended for use in bonding plastics in automobile applications. Prod. range. Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal and inhalation, a total of 4 workers.

Environmental Release/Disposal. Less than 0.1 kg/batch released to water and <2 kg/batch to land. Disposal by sanitary landfill.

Y 85–160

Manufacturer. S.C. Johnson & Son, Inc.

Chemical. (G) An ammonia/water soluble random copolymer of butyl acrylate and acrylic acid.

Use/Production. (G) Used as component in the manufacture of a water borne emulsion for water pressure sensitive adhesives to be used on tapes, labels and decals. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

Y 85–161

Manufacturer. S.C. Johnson & Son, Inc.

Chemical. (G) Styrene-acrylate random emulsion copolymer.

Use/Production. (G) Open, non-dispersive use. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

Y 85–162

Manufacturer. S.C. Johnson & Son, Inc.

Chemical. (G) Ammonium salt solution of a terpolymer of styrene, alpha methyl styrene and acrylic acid.

Use/Production. (G) A resin solution in the form of ammonium salt for formulating aqueous gravure inks and overprint varnishes. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

Y 85–163

Manufacturer. S.C. Johnson & Son, Inc.

Chemical. (G) A terpolymer of 2-ethylhexyl acrylate, butyl acrylate, and hydroxyethyl methacrylate.

Use/Production. (G) The material is a high solids, hydroxyl functional polymer to be cross linked with isocyanate functional crosslinkers to be used in high solids, packaging and laminating adhesives. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

Y 85–164

Importer. Urethane Concepts Inc.

Chemical. Further clarification needed before information can be released to the public files.

Use/Production. (S) Industrial manufacturing of flexible and rigid polyurethane foam. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 10–50 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. No data submitted.

Y 85–165

Importer. Urethane Concepts Inc.

Chemical. Further clarification is needed before information can be released to the public files.

Use/Production. (S) Industrial manufacturing of flexible and rigid polyurethane foam. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 10–50 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. No data submitted.

Y 85–166

Importer. Urethane Concepts Inc.

Chemical. Further clarification is needed before information can be released to the public files.

Use/Production. (S) Industrial polyol component in flexible polyurethane form. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 10–50 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. No data submitted.

Dated: September 23, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85–23113 Filed 9–26–85; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51590; TSH–FRL 2904–7]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a permanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of fifty-one PMNs and provides a summary of each.

DATES: Close of Review Period:

P 85–1479, December 10, 1985

P 85–1439, 85–1440, 85–1441, 85–1442, 85–1443, 85–1444, 85–1445 and 85–1446, December 11, 1985

P 85–1447, 85–1448, 85–1449, 85–1450, 85–1451, 85–1452, and 85–1453, December 14, 1985

P 85–1454, 85–1455, 85–1456, 85–1457, 85–1458, 85–1459, 85–1460, 85–1461, 85–1462, 85–1463, 85–1464, 85–1465, 85–1466, and 85–1467, December 15, 1985

P 85–1468, 85–1469, 85–1470, 85–1471, 85–1472, 85–1473, 85–1474, 85–1475, 85–1476, 85–1477, 85–1478, and 85–1480, December 16, 1985

P 85–1481, 85–1482, 85–1483, 85–1484, 85–1485, 85–1486, 85–1487, 85–1488, and 85–1489, December 17, 1985

Written comments by:

P 85–1479, November 10, 1985

P 85–1439, 85–1440, 85–1441, 85–1442, 85–1443, 85–1444, 85–1445, and 85–1446, November 11, 1985

P 85–1447, 85–1448, 85–1449, 85–1450, 85–1451, 85–1452, and 85–1453, November 14, 1985
P 85–1454, 85–1455, 85–1456, 85–1457, 85–1458, 85–1459, 85–1460, 85–1461, 85–1462, 85–1463, 85–1464, 85–1465, 85–1466, and 85–1467, November 15, 1985
P 85–1468, 85–1469, 85–1470, 85–1471, 85–1472, 85–1473, 85–1474, 85–1475, 85–1476, 85–1477, 85–1478, and 85–1480, November 16, 1985
P 85–1481, 85–1482, 85–1483, 85–1484, 85–1485, 85–1486, 85–1487, 85–1488, and 85–1489, November 17, 1985

ADDRESS: Written comments, identified by the document control number "[OPTS–51590]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substance, Environmental Protection Agency, Rm. E–201, 401 M St., SW, Washington, DC 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M St., SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address.

P 85–1439

Manufacturer. The Dow Chemical Company.

Chemical. Further clarification needed before information can be released to the public files.

Use/Production. (G) Solvent. Prod. range. Confidential.

Toxicity Data. Acute oral: >4,000 mg/kg; Acute oral: >2,000 mg/kg; Irritation: Skin—Moderate to severe; Eye—Moderate to severe.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Release to air and water Disposal by incineration, on-site industrial waste treatment plant and navigable waterway after treatment.

P 85–1440

Manufacturer. Lilly Industrial Coatings, Inc.

Chemical. Further clarification needed before information can be released to the public files.

Use/Production. (G) Industrial liquid paints. Prod. range. 36,000–63,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: a total of 28 workers, up to 12 hrs/da, up to 24 da/yr.

Environmental Release/Disposal. Less than 1 to 15 kg/batch released to air. Disposal by publicly owned treatment works (POTW) and incineration.

P 85–1441

Importer. Marubeni America Corporation.

Chemical. (S) Pyridinium,1,1'-[sulfonylbis[3,1-phenyleneimino[6-[[3-[[3-carboxy-4,5-dihydro-5-oxo-1-[4-sulfophenyl)-1H-pyrazoi-4-yl]azo]-4-sulfphenyl]amino]-1,3,5-triazine-4,2-diyl]]]bis [3-carboxy-, dihydroxide, tetrasodium salt.

Use/Import. (S) Dye for cellulosic fibers. Import range. 10,000 kg/yr.

Toxicity Data. Acute oral: >5,000 mg/kg; Inhalation: Ames test: Negative; TLm 48 hours (Orange medaka): >1,000 parts per million (ppm).

Exposure. Processing: dermal.

Environmental Release/Disposal. No data submitted.

P 85–1442

Importer. Marubeni America Corporation.

Chemical. (S) Bonzoic acid, 2,5-bis[[4-[[4-[(4,8-disulfo-2-naphthalenyl) azo]-3 methylphenyl]amino]-6-(4-morpholinyl)-1,3,5-triazin-2-yl]amino]-, pentasodium salt.

Use/Import. (S) Dye for cellulosic fibers. Import range. 10,000 kg/yr.

Toxicity Data: Acute oral: >5,000 mg/kg; Ames test: Negative; TLm 48 hours (Orange medaka): >1,000 ppm.

Exposure: Processing: dermal.

Environmental Release/Disposal. No data submitted.

P 85–1443

Importer. Marubeni America Corporation.

Chemical. (S) Chromate (7-) bis[1-[4-[[3-(acetylamino]-4-[(4,8-disulfo-2-naphthalenyl)azo]phenyl]amino]-6-[[6-[(2-carboxyphenyl)azo]-5-hydroxy-7-sulfo-2-naphthalenyl]amino]-1,3,5-triazin-2-yl]-3-carboxypyridiniumato(6-)]-, heptasodium, dihydrate.

Use/Import. (S) Dye for cellulosic fibers. Import range. 10,000 kg/yr.

Toxicity Data: Acute oral: >5,000 mg/kg; Ames test: Negative; TLm 48 hours (Orange medaka): >1,000 ppm.

Exposure: Processing: dermal.

Environmental Release/Disposal. No data submitted.

P 85–1444

Importer. Marubeni America Corporation.

Chemical. (S) 2,7-Naphthalenedisulfonic acid, 5-[[4-chloro-6-[(2-sulfoethyl)amino]-1,3,5-triazin-2-yl]amino]-4-hydroxy-3-[(2-sulfophenyl)azo]-, tetrasodium salt.

Use/Import. (S) Dye for cellulosic fibers. Import range. 10,000 kg/yr.

Toxicity Data: Acute oral: >5,000 mg/kg; Ames test: Negative; TLm 48 hours (Orange medaka): >1,000 ppm.

Exposure: Processing: dermal.

Environmental Release/Disposal. No data submitted.

P 85–1445

Manufacturer. Confidential.

Chemical. (G) Urethane-modified polyester-acrylic copolymer.

Use/Production. (S) Site-limited and industrial resin used in automotive paint. Prod. range. 70,000–210,000 kg/yr.

Toxicity Data: No data submitted.

Exposure: Manufacture and processing: dermal and inhalation, a total of 6 workers, up to 0.5 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. 0.2 to 180 kg/batch of resin and 0.2 to 1 kg/batch of paint released. Disposal by landfill.

P 85–1446

Manufacturer: Miranol Chemical Company, Inc.

Chemical. Further clarification needed before information can be released to public files.

Use/Production. (S) Heavy-duty concentrated alkaline cleaners, vibratory barrel cleaning, polishing and solvent emulsion cleaners for industrial, commercial and consumer use. Prod. range. 30,000–100,000 kg/yr.

Toxicity Data: No data submitted.

Exposure: Manufacture: a total of 5 workers, up to 2 hrs/da, up to 7 da/yr.

Environmental Release/Disposal. 4 kg/batch released to water. Disposal by POTW.

P 85–1447

Manufacturer: Confidential.

Chemical. (S) Polymer of methyl methacrylate, ethyl acrylate and 2-hydroxy ethyl acrylate.

Use/Production. (G) Used in an open system. Prod. range. 20,000–32,000 kg/yr.

Toxicity Data: No data submitted.

Exposure: Manufacture dermal, a total of 6 workers, up to 1 hr/da, up to 20 da/yr.

Environmental Release/Disposal. Minimal release to air. Disposal by licensed landfill.

P 85–1448

Manufacturer: Ashland Chemical Company.

Chemical. Further clarification needed before information can be released to public files.

Use/Production. (G) Adhesive component/open, non-dispersive use. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 6 workers, up to 2 hrs/da, up to 50 da/yr.

Environmental Release/Disposal. Release to land. Disposal by incineration or secure landfill.

P 85–1449

Manufacturer. Confidential.

Chemical. (G) Polymer of bisanhydride of Bisphenol-A, aliphatic diamine and an aromatic diamine.

Use/Production. (S) Electronics/appliances and transportation for industrial, commercial and consumer use. Prod. range. 200,000–900,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 24 workers, up to 8 hrs/da, up to 100 da/yr.

Environmental Release/Disposal. Trace to 5 kg/batch released to land. Disposal by POTW and navigable waterway.

P 85–1450

Manufacturer. Confidential.

Chemical. (S) Ethylene glycol benzoate trialkylacetate with carbon numbers C_{16}–C_{19}.

Use/Production. (G) Plasticizer for polyvinyl chloride. Prod. range. Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Release to air, water and land. Disposal by secondary biological treatment.

P 85–1451

Manufacturer. Quality Chemicals, Inc.

Chemical. (S) 2,2′, 4-tris-(2-chlorophenyl)-5-(3,4-dimethoxyphenyl)-4′, 5′-diphenyl-1,1′ bi-1*H*-imidazole.

Use/Production. (S) Site-limited photographic chemical. Prod. range. 5,000–8,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 6 workers, up to 8 hrs/da, up to 8 da/yr.

Environmental Release/Disposal. 1 to 5 kg/batch incinerated and 3 to 5 kg/batch released to sewer. Disposal by POTW.

P 85–1452

Manufacturer. Confidential.

Chemical. Further clarification needed before information can be released to the public files.

Use/Production. (G) Cross linker in resinous systems. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1453

Manufacturer. Confidential.

Chemical. Further clarification needed before information can be released to the public files.

Use/Production. (G) Cross linker in resinous systems. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1454

Manufacturer. Confidential.

Chemical. (G) Polyurea polyurethane polymer.

Use/Production. (G) Paint additive. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1455

Manufacturer. Confidential.

Chemical. (G) Fatty polyol.

Use/Import. (G) Chemical intermediate for coatings, elastomers, adhesives and foams. Import range. Confidential.

Toxicity Data. Acute oral: 5.0 g/kg; Acute dermal: 2.0 g/kg; Irritation: Skin—Non-irritant; Eye—Non-irritant.

Exposure. Use: dermal.

Environmental Release/Disposal. Disposal by landfill.

P 85–1456

Importer. Confidential.

Chemical. Further clarification needed before information can be released to the public files.

Use/Import. (S) Dye. Import range. Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Use: dermal, up to 2–3 hrs/da, up to 2 da/wk.

Environmental Release/Disposal. No data submitted.

P 85–1457

Manufacturer. E. I. du Pont de Nemours & Company, Inc.

Chemical. (G) Aliphatic ammonium salt of substituted aromatic acid.

Use/Production. (G) Contained use. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 12 workers.

Environmental Release/Disposal. Confidential. Disposal by incineration.

P 85–1458

Manufacturer. E. I. du Pont de Nemours & Company, Inc.

Chemical. (G) Acrylic polymer containing aromatic carboxyesters.

Use/Production. (G) Open, non-dispersive use. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 8 workers.

Environmental Release/Disposal. Release to land. Disposal by incineration.

P 85–1459

Manufacturer. E. I. du Pont de Nemours & Company, Inc.

Chemical. (G) Acrylic polymer containing aromatic carboxyesters.

Use/Production. (G) Open, non-dispersive use. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 9 workers.

Environmental Release/Disposal. Release to land. Disposal by incineration and landfill.

P 85–1460

Manufacturer. Confidential.

Chemical. (S) Polymer of bis-(4-phenoxyphenyl) methanone and 1,4-benzenedicarbonyl dichloride.

Use/Production. (S) Thermoplastic engineering resin for extrusion of fiber, film, wire and cable insulation, tubing and other profiles, molding of connectors, valves seats, seals, crimp devices, and other molded shapes for industrial, commercial and consumer use. Prod. range. Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by POTW.

P 85–1461

Manufacturer. Confidential.

Chemical. (S) Bis(4-phenoxyphenyl) methanone.

Use/Production. (S) Site-limited and industrial monomer for the production of aromatic polyketones. Prod. range. Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. No release.

P 85–1462

Importer. Confidential.
Chemical. Further clarification needed before information can be released to the public files.
Use/Import. (S) Industrial production of urethane-elastomer articles. Import range. Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 85–1463

Importer. Confidential.
Chemical. Further clarification needed before information can be released to the public files.
Use/Import. (S) Industrial production or urethane-elastomer articles. Import range. 2,000–5,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 85–1464

Importer. Ciba-Geigy Corporation.
Chemical. (G) Substituted pyrazol azo benzene sulfonic acid.
Use/Import. (G) Textile dye. Import range. 4,700 kg/yr.
Toxicity Data. Acute oral: 2,404 mg/kg; Irritation: Skin—Moderate; Eye—Slight; BOD_5: 130 mg/gO_2; Waste treatment plant bacteria: >3,000 mg/l; Inhalation: TL_{50} (Trout): 175 mg/L; Ames test: Negative; COD: 1,064 mg/gO_2.
Exposure. Processing: inhalation, a total of 2 workers, up to 0.5 hr/da, up to 2 da/yr.
Environmental Release/Disposal. 0.3 Kg/batch released to water. Disposal by navigable waterway.

P 85–1465

Manufacturer. Confidential.
Chemical. (G) (Dialkylamino, alkyl)aryl and N-(alkysulfonyl amino and halo)phenyl substituted oxopentanamide.
Use/Production. (G) Contained use in an article. Prod. range. 3,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: a total of 92 workers, up to 1.2 hrs/da, up to 7 da/yr.
Environmental Release/Disposal. Less than 0.07 ppm/batch released to water. Less than 8 to >20 kg/batch incinerated with disposal by navigable waterway.

P 85–1466

Manufacturer. Confidential.
Chemical. (G) (Dialkyl)phenoxy, (N-dialkylamino and alkyl)aryl and (cyanophenylureido)aryl substituted hexanamide.
Use/Production. (G) Contained use in article. Prod. range. 600 kg/yr.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture and processing: dermal and inhalation, a total of 88 workers, up to 1.5 hrs/da, up to 5 da/yr.
Environmental Release/Disposal. Less than 0.02 ppm/batch released to water. Less than 2 to >6 kg/batch incinerated with disposal by navigable waterway.

P 85–1467

Manufacturer. Product Research & Chemical Corporation.
Chemical. (S) Polymer of Spenkel P49–A6–60 and diethyl toluene diamine.
Use/Production. (S) Industrial polyurethane elastomer curing agent. Prod. range. 14,000–25,000 kg/yr.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal, a total of 20 workers, up to 3.0 hrs/da, up to 70 da/yr.
Environmental Release/Disposal. 2 kg/batch released to land. Disposal by approved landfill.

P 85–1468

Manufacturer. The Dow Chemical Company.
Chemical. Further clarification needed before information can be released to the public files.
Use/Production. (S) Commercial coatings. Prod. range. Confidential.
Toxicity Data. Acute oral: >2,000 g/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant; Eye—Non-irritant;
Exposure. Manufacture: dermal.
Environmental Release/Disposal. Less than 1 to >5 kg/batch released to air and land. Disposal by incineration and landfill.

P 85–1469

Manufacturer. The Dow Chemical Company.
Chemical. Further clarification needed before information can be released to the public files.
Use/Production. (S) Commercial coatings. Prod. range. Confidential.
Toxicity Data. Acute oral: >2,000 g/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant; Eye—Non-irritant.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. Less than 1 to >5 kg/batch released to air and land. Disposal by incineration and landfill.

P 85–1470

Manufacturer. The Dow Chemical Company.
Chemical. (G) Methylene diphenylene diisocyanate polyol prepolymer.
Use/Production. (S) Polyurethane elastomers for industrial components. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. dermal and inhalation.
Environmental Release/Disposal. Less than 1 kg/batch released to air. Disposal by incineration.

P 85–1471

Manufacturer. The Dow Chemical Company.
Chemical. (G) Methylene diphenylene diisocyanate polyol prepolymer.
Use/Production. (S) Polyurethane elastomers for industrial components. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacturer: dermal and inhalation.
Environmental Release/Disposal. Less than 1 kb/batch released to air. Disposal by incineration.

P 85–1472

Manufacturer. The Dow Chemical Company.
Chemical. (G) Methylene diphenylene diisocyanate polyol prepolymer.
Use/Production. (S) Polyurethane elastomers for industrial components. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacturer: dermal and inhalation.
Environmental Release/Disposal. Less than 1 kb/batch released to air. Disposal by incineration.

P 85–1473

Manufacturer. The Dow Chemical Company.
Chemical. (G) Methylene diphenylene diisocyanate polyol prepolymer.
Use/Production. (S) Polyurethane elastomers for industrial components. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacturer: dermal and inhalation.
Environmental Release/Disposal. Less than 1 kb/batch released to air. Disposal by incineration.

P 85–1474

Manufacturer. The Dow Chemical Company.
Chemical. (G) Polyumeric diisocyanate polyol prepolymer.
Use/Production. (S) Polyurethane elastomers for industrial components. Prod. range. Confidential.
Toxicity Data. No data submitted.

Exposure. Manufacturer: dermal and inhalation.
Environmental Release/Disposal. Less than 1 kb/batch released to air. Disposal by incineration.

P 85–1475

Manufacturer. The Dow Chemical Company.
Chemical. (G) Methylene diphenylene diisocyanate polyol prepolymer.
Use/Production. (S) Polyurethane elastomers for industrial components. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacturer: dermal and inhalation.
Environmental Release/Disposal. Less than 1 kb/batch released to air. Disposal by incineration.

P 85–1476

Manufacturer. The Dow Chemical Company.
Chemical. (G) Methylene diphenylene diisocyanate polyol prepolymer.
Use/Production. (S) Polyurethane elastomers for industrial components. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacturer: dermal and inhalation.
Environmental Release/Disposal. Less than 1 kb/batch released to air. Disposal by incineration.

P 85–1477

Manufacturer. The Dow Chemical Company.
Chemical. (G) Methylene diphenylene diisocyanate polyol prepolymer.
Use/Production. (S) Polyurethane elastomers for industrial components. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal and inhalation.
Environmental Release/Disposal. Less than 1 kg/batch released to air. Disposal by incineration.

P 85–1478

Manufacturer. The Dow Chemical Company.
Chemical. (G) Acyclic polymaine.
Use/Production. (S) Industrial chemical intermediate. Prod. range. Confidential.
Toxicity Data. Acute oral: Between 500–1,000 mg/kg; Irritation: Skin—Irritant.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. Release to air, water and land. Disposal by incineration, landfill and navigable waterway after treatment.

P 85–1479

Manufacturer. Confidential.
Chemical. (G) Mixed alkyl phosphate ester.
Use/Production. (G) An additive used in the energy production industry. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacturer: dermal, a total of 1 worker, up to 3–4 hrs/da.
Environmental Release/Disposal. 25 kg/da released.

P 85–1480

Manufacturer. Condidential.
Chemical. (G) Substituted bis(phenyl)isobenzofuranone.
Use/Production. (G) Captive intermediate used in manufacturing a minor component for paper coatings. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW

P 85–1481

Importer. Urethane Concepts, Inc.
Chemical. (G) Polyether triol.
Use/Import. (S) Industrial polyol component in rigid polyurethane foam. Import range. Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 10–50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No data submitted

P 85–1482

Importer. Urethane Concepts, Inc.
Chemical. Further clarification needed before information can be released to the public files.
Use/Import. (S) Industrial viscosity aid in polyurethane foam and polyol in polyurethane elastomer production. Import range. Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 10–50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No data submitted.

P 85–1483

Importer. Urethane Concepts, Inc.
Chemical. Further clarification needed before information can be released to the public files.
Use/Import. (S) Manufacturing of flexible and rigid polyurethane foam. Import range. Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 10–50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No data submitted.

P 85–1484

Importer. Urethane Concepts, Inc.
Chemical. Further clarification needed before information can be released to the public files.
Use/Import. (S) Industrial viscosity cutter in spray foam formultion. Import range. Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 10–50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No data submitted.

P-1485

Importer. Urethane Concepts, Inc.
Chemical. Further clarification needed before information can be released to public files.
Use/Import. (S) Industrial additive for flame laminable flexible polyether foam. Import range. Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 10–50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No data submitted.

P 85–1486

Importer. Urethane Concepts, Inc.
Chemical. Further clarification needed before information can be released to the public files.
Use/Import. (S) Industrial flame retardant additive in rigid foam manufacture. Import range. Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 10–50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No data submitted.

P 85–1487

Importer. Urethane Concepts, Inc.
Chemical. Further clarification needed before information can be released to the public files.
Use/Import. (S) Industrial polyol component in rigid polyurethane foam. Import range. Confidential.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 10–50 workers, up to 8 hrs/da, up to 240 da/yr.
Environmental Release/Disposal. No data submitted.

85–1488

Importer. Urethane Concepts, Inc.
Chemical. Further clarification needed before information can be released to the public files.
Use/Import. (S) Industrial polyol component in rigid polyurethane foam. Import range. Confidential.
Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 10–50 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. No data submitted.

P 85–1487

Importer. Urethane Concepts, Inc.

Chemical. (G) Polyether triol.

Use/Import. (S) Industrial polyol component in rigid polyurethane foam. Import range. Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 10–50 workers, up to 8 hrs/da, up to 240 da/yr.

Environmental Release/Disposal. No data submitted.

Dated: September 23, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85–23115 Filed 9–26–85; 8:45]

BILLING 6560–50–M

[OPP–30081B; PH–FRL 2904–4]

Cypermethrin; Extension of Conditional Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice amends the conditional registrations, pursuant to section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), for products containing the synthetic pyrethroid cypermethrin for use on cotton to control various cotton insects. The Agency has determined that the benefits of use will outweight the risks during the period of the extension of the conditional registration and that the extension is in the public interest.

EFFECTIVE DATE: September 27, 1985.

ADDRESS: Written comments may be submitted to the: Hearing Clerk (A–110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

George T. LaRocca, Product Manager (PM) 15, Registration Division, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Office location and telephone number: Rm. 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–2690).

SUPPLEMENTARY INFORMATION: In the **Federal Register** on January 9, 1985 (50 FR 1112), EPA announced its decision to extend ICI Americas, Inc. (ICI), and FMC Corp. (FMC) conditional registrations of products containing the synthetic pyrethroid active ingredient (±) *alpha*-cyano(3-phenoxyphenyl)methyl(±)-*cis*, *trans*-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate (cypermethrin) for use on cotton to control various cotton insects, for a period which extended to December 31, 1986, to allow time for the submission and evaluation of a full field study (due in April 1986). That document set forth EPA's evaluation of the data that had been submitted, the product's regulatory history, and other facts about cypermethrin.

In order to obtain the necessary data, ICI and FMC had conducted a 1-year baseline study on a proposed test site in 1984 in the State of Maryland. On May 10, 1985, ICI was issued an experimental use permit (EUP) to allow for further testing in the State of Maryland. The State of Maryland Department of Agriculture denied ICI's request for further testing of cypermethrin in Maryland until the safe use of cypermethrin can be demonstrated to the satisfaction of the State Secretary of Agriculture. The action by the State of Maryland precipitates the need for initiating a new study (including baseline data), making it impossible to meet the previous deadline of April 1986. On June 12, 1985 and June 14, 1985, ICI and FMC, respectively, submitted a letter to the Agency requesting an extension of time to December 31, 1988, for submittal of the field-monitoring study.

To further support the request for an extension of time, on July 1, 1985, ICI submitted a letter to EPA with justification for the time periods requested and a letter from the State of Alabama giving ICI permission to conduct the full field study in the State of Alabama.

Based on the information submitted by ICI and FMC and all available data, the Agency has determined that the requested extensions are proper for consideration under FIFRA section 3(c)(7)(C). Therefore, EPA concluded that the expiration date for the registrations should be extended to December 1, 1988, to allow time for the submission and evaluation of the full field study and an EPA decision whether the products may be registered under FIFRA section 3(c)(5).

EPA concluded that use of cypermethrin will not cause unreasonable adverse effects to the environment during the period of conditional registration, and the Agency finds that to extend the conditional registration of cypermethrin is in the public interest.

In accordance with section 3(c)(2) of FIFRA, a copy of the approval label and the list of data references used to support the continued conditional registration are available for public inspection in the office of the Product Manager listed above. The data and other scientific information used to support registration, except for the material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (TS–769C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, CM#2, Arlington, VA 22202. Request for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M Street SW., Washington, D.C. 20460. Such requests should identify the product names and registration number(s) and specify the data or information desired.

Dated: September 17, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85–23114 Filed 9–26–85; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2903–5]

Environmental Impact Statements; Availability

Responsible agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075. Availability of Environmental Impact Statements filed September 16, 1985 through September 20, 1985 pursuant to 40 CFR 1506.9.

EIS No. 850395, Final, BLM, ID, NV, Jarbidge Resource Area, Resource Management Plan and Wilderness Designation, Due: October 28, 1985, Contact: Ted Milesnick (208) 334–1582.

EIS No. 850396, Final, FHW, MI, M–44/East Beltline Avenue Reconstruction, I–96 to Plainfield Avenue, Kent County, Due: October 28, 1985, Contact: Ken Barkema (517) 377–1852.

EIS No. 850397, Final, COE, TX, Wright Patman Lake and Dam (Formerly Texarkana Lake), Operation and Maintenance, Sulphur River, Bowie, Cass, Morris, Titus and Red River Counties, Due: October 28, 1985, Contact: Joe Paxton (817) 334–2095.

EIS No. 850398, Final, IBR, SD, Lake Andes-Wagner Unit, Water Resource Project, Pick-Sloan Missouri Basin Program, Approval, Lake Francis Case, Missouri River, Charles Mix Co. Due: October 28, 1985, Contact: John Lawson (406) 657–6164.

EIS No. 850399, Final, FHW, TX, US 183 Upgrading, TX–71 to Ranch to

Market Road 620, Travis and Williamson Counties, Due: October 28, 1985, Contact: Gamaliel E. Olvera (512) 482–5966.

EIS No. 850400, Final, FHW, NC, Benjamin Parkway Extension, Benjamin Parkway to Airport Parkway, Guilford County, Due: October 28, 1985, Contact: Kenneth Bellamy (919) 755–4346.

EIS No. 850401, Final, SCS, MO, Big Creek-Hurricane Creek Watershed Protection and Flood Prevention Plan, Carroll and Livingston Cos., Due: October 28, 1985, Contact: Paul Larson (314) 875–5214.

EIS No. 850402, Draft, BLM, WY, MT, ND, SD, Bairoil/Dakota Carbon Dioxide Projects, Approval, R–O–W Grants and Issuance of Permits, November 12, 1985, Contact: Janis VanWyhe (303) 236–1080.

EIS No. 850403, Draft, COE, OR, West Hayden Island Marine Industrial Park Development, Section 10 and 404 Permits, Multnomah County, Due: November 12, 1985, Contact: David Kurkoski (503) 221–6094.

EIS No. 850404, Final, AFS, MS, Mississippi National Forests, Land and Resource Management Plan, Due: October 28, 1985, Contact: John Alcock (404) 881–4177.

EIS No. 850405, Final, UMT, IL, Chicago Southwest Corridor Transit Improvements, Cook County, Due: October 28, 1985, Contact: James Ryan (202) 426–9271.

EIS No. 850406, Final, EPA, MD, Parkway Wastewater Treatment Facilities Upgrading, Grant, Prince George's County, Due: October 28, 1985, Contact: Tom Slenkamp (215) 597–9169.

EIS No. 850407, DSuppl, AFS, IN, Hoosier Natl. Forest, Land and Resource Mgmt. Plan, Off-Road Vehicle Policy, Due: December 27, 1985, Contact: Harold Godlevske (812) 275–5987.

EIS No. 850408, Final, AFS, IN. Hoosier Natl. Forest, Land and Resource Management Plan, Due: October 28, 1985, Contact: Harold Godlevske (812) 275–5987.

EIS No. 850409, Final, BLM, OR, Two Rivers Planning Area, Resource Mgmt. Plan, John Day and Deschutes Rivers, Due: November 15, 1985, Contact: Brian Cunninghame (503) 447–4115.

EIS No. 850410, FSuppl, FERC, AK, Bradley Lake Hydroelectric Project, Construction and Operation, License, Kenai Peninsula, Due: October 28, 1985, Contact: Peter Foo'te (202) 376–9053.

EIS No. 850411, Final, OSM, NM, La Plata Mine Mining and Transportation Corridor Plan, Approval and Permit, San Juan County, Due: October 28, 1985, Contact: Allen Klein (303) 844–5656.

EIS No. 850412, Draft, BLM, AZ, Eastern Arizona Grazing Management Program, Due: December 6, 1985, Contact: Jerrold Coolidge (602) 428–4040.

Dated: September 24, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85–23197 Filed 9–26–85; 8:45 am]

BILLING CODE [illegible]

[ER–FRL–2903–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 9, 1985 through September 13, 1985 pursuant to the Environmental Review Process (ERP) under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D–CDB–C89023–NY, Rating LO, Rochester Science Park Development, Expansion and Replacement, CDBG, NY. Summary: EPA stated that it has no objections to the project as proposed. EPA did recommend that Alter. B be selected as the preferred alternative, although EPA believes that either alternative would not create significant adverse environmental impacts. Mitigation measures, as proposed, would provide adequate safeguards for the protection of the environment.

ERP No. D–COE–G36030–LA, Rating EC1, Aloha—Rigolette Area Agriculture Flood Control Plan, expressed environmental concerns with the proposed action as described. EPA is not opposed to the implementation of the flood damage reduction features of the preferred action; however, EPA believes the inclusion of the no development easements in the plan would significantly reduce the potential for increased flooding loss to life and human resources, substantially increase the overall environmental benefits, and clearly establish a reliable mechanism to protect and preserve the remaining bottomland hardwoods in the project area. EPA, therefore, supports Plan 19C and recommends that it be selected as the preferred action.

ERP No. D–FHW–D40209–PA, Rating EC2, I–95 Completion, Between Benjamin Franklin and Walt Whitman Bridges, Right-of-Way Improvements, PA. Summary: EPA's review of the DEIS identified a number of environmental concerns and found an incomplete discussion of the alternatives and their benefit/cost ratios. EPA suggested a supplement to the DEIS with a more detailed discussion of the alternatives.

ERP No. D–FHW–L40148–OR, Rating EC2, 185th Ave. Improvements, Rock Creek Blvd. to Tualatin Valley Hwy., 404 Permit, OR. Summary: EPA's review indicated that the project could have significant traffic noise impacts and requested that additional noise levels estimates and mitigation measures be included in the FEIS. Growth induced nonpoint source water pollution impacts were also requested to be evaluation. Park, Old Wickford, Naval Gardens, and Gould Island, Disposal of Surplus Gov't Property, RI. Summary: EPA requested that the Supplemental Final EIS identify the toxic and hazardous waste sites on Gould Island, address a schedule for clean up, and a commitment to conduct the approved remedial action. EPA also recommended that the negotiated sale for the Hoskins Park Housing Area include conditions such as conservation easements to protect surrounding wetlands; cite the federal, state and local laws, and ordinances in place to protect the wetlands; and, require that the Hoskins Park pumping facility be operational before occupany of the development.

ERP No. RD–NHT–A52150–00, Rating LO, 1986 Model Year Passenger Cars, Corporate Average Fuel Economy Stds. Summary: While agreeing with the conclusion that the proposed action should have little impact on air quality, EPA suggested that additional data that supports the conclusion be included in the Final EIS.

Final EISs

ERP No. F–AFS–E65028–SC, Sumter Nat'l Forest, Land and Resource Mgmt. Plan, SC. Summary: EPA's concerns expressed in its comments on the DEIS have been adequately addressed in the Final EIS.

ERP No. F–FHW–D40195–DC, Whitehurst Freeway/US 29 Corridor Modifications, Improvement or Replacement, Washington, DC. Summary: EPA's review found the FEIS to eliminate all previous concerns and there are now no objections to the project implementation. Construction, Cairo Bridge to Reelfoot Lake, 404 Permit, KY. Summary: EPA requested that additional information be presented concerning possible water quality/wetland impacts before the Federal Highway Adminsitration completes the Record of Decision.

ERP No. F–FHW–F40216–IL, Lake Front Hwy./FAP 437 Construction, IL Tri-State Tollway/I–94 to Grand Ave./IL–132, 404 Permit, IL. Summary: EPA's review of the FEIS did not identify any significant environmental impacts requiring changes to the proposed project.

ERP No. F–FHW–K40104–CA, CA–55/Newport Blvd. Improvement, CA–1/Pacific Coast Hwy. to US 73/Corona Del Mar Freeway, 404 Permit, CA. Summary: The FEIS adequately responded to EPA's comments made on the DEIS.

ERP No. F–FHW–K40124–CA, I–5/Santa Ana Freeway and CA–55/Newport-Costa Mesa Freeway Improvements, I–5 and I–55 Interchange Reconstruction, CA–22 to I–405, CA. Summary: The DEIS adequately responded to EPA comments on the DEIS.

ERP No. F–FHW–L40133–OR, Murray Blvd. Widening, Sunset Hwy./US 26 to Jenkins Rd., Improvements, Right-of-Way Acquisition, OR. Summary: EPA made no formal comments. EPA reviewed the FEIS and found the project to be satisfactory.

ERP No. F–SFW–L64028–AK, Alaska Peninsular Nat'l Wildlife Refuge Mgmt., Comprehensive Conservation Plan and Wilderness Designation, AK. Summary: EPA made no formal comments. EPA reviewed the FEIS and fond the project to be satisfactory.

Dated: Septemer 24, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85–23198 Filed 9–26–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL HOME LOAN BANK BOARD

Glen Ellyn Savings & Loan Association, Glen Ellyn, IL; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Glen Ellyn Savings and Loan Association, Glen Ellyn, Illinois, on September 20, 1985.

Dated: September 23, 1985.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 85–23100 Filed 9–26–85; 8:45 am]

BILLING CODE 6720–01–M

FEDERAL RESERVE SYSTEM

Bank of Boston Corporation et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 17, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of Boston Corporation*, Boston, Massachusetts; to engage *de novo* through its subsidiary, BancBoston FBC Inc., Boston, Massachusetts, in data processing services and management consulting services to depository institutions pursuant to § 225.25(b) (7) and (11), respectively, of Regulation Y.

B. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Irving Bank Corporation*, New York, New York; to engage *de novo* through its subsidiary, Irving Trust Company Florida, Miami, Florida, in performing or carrying on any one or more of the functions or activities that may be performed or carried on by a trust company, including activities of a fiduciary, investment advisory, agency or custodial nature, in the manner authorized by Florida law.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *J.R. Montgomery Bancorporation* Lawton, Oklahoma; to engage *de novo* through its subsidiary, JRMB Insurance Company, Lawton, Oklahoma, in acting as agent with respect to insurance limited to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiary in the event of the death of the debtor, pursuant to section 4(c)(8)(A) of the Act.

Board of Governors of the Federal Reserve System, September 23, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–23179 Filed 9–26–85; 8:45 am]

BILLING CODE 6210–01–M

Pennbancorp et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 18, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Pennbancorp,* Titusville, Pennsylvania; to merge with GNB Corporation, Uniontown, Pennsylvania. Comments on this application must be received not later than October 21, 1985. Comments on this application must be received not later than October 21, 1985.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Rosendale Bancshares, Inc.,* Rosendale, Wisconsin; to become a bank holding company by acquiring at least 89.72 percent of the voting shares of Rosendale State Bank, Rosendale, Wisconsin.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Lamar Financial Corporation,* Paris, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Lamar National Bank, Paris, Texas.

2. *Rockdale Bancshares, Inc.,* Rockdale, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank and Trust, Rockdale, Texas.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *United American Bancorp,* Shelton, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Hood Canal State Bank, Shelton, Washington. Comments on this application must be received not later than October 21, 1985.

Board of Governors of the Federal Reserve System, September 23, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-23180 Filed 9-26-85; 8:45 am]

BILLING CODE 6210-01-M

Post-Och Kreditbanken, Pkabanken; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissable for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 16, 1985.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Post-Och Kreditbanken, Pkbanken,* Stockholm, Sweden; to engage *de novo* through its subsidiary, Pkfinans International Corporation, Greenwich, Connecticut, in making, or acquiring, for its own account or for the account of others, commercial loans and other extensions of credit as are made by a commercial finance, equipment, finance or factoring company, including *inter alia* equipment, inventory and accounts receivable financing; making leases of real and personal property that are the functional equivalent of extensions of credit; acting as agent, broker or adviser with respect to such financing and leasing activities; and servicing loans and other extensions of credit.

Board of Governors of the Federal Reserve System, September 23, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-23181 Filed 9-26-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on September 20, 1985.

Health Care Financing Administration

Subject: Information Collection Requirements in 42 CFR Parts 405.1202, 1221, 1223, 1228 and 1229—Conditions of Participation for Home Health Agencies—HCFA-R-39—Extension (0938-0365).

Respondents: Businesses or other for-profit institutions, small businesses or organizations.

Subject: Medicare Contractor Administrative Budget and Cost Reporting System—HCFA-1523/1524—Revision (0938-0350/0351).

Respondents: Non-profit institutions.

Subject: Home Health Agency Cost Report—HCFA-1728—Revision (0938-0022).

Respondents: Businesses or other for-profit institutions.

OMB Desk Officer: Fay S. Iudicello.

Public Health Service

Food and Drug Administration

Subject: Infant Feeding Practice Study—New.

Respondents: Individuals or households.

OMB Desk Officer: Bruce Artim.

Health Resources and Services Administration

Subject: Health Resources and Services Administration Competing Training Grant Application and Supplements—Revision (0915-0060).

Respondents: Non-profit institutions.

Subject: Health Resources and Services Administration Noncompeting

Training Grant Application and Supplements—Revision (0915–0061).
Respondents: Non-profit institutions.
OMB Desk Officer: Fay S. Iudicello.

Office of the Secretary

Subject: Requirements Contained in Community Services Block Grant Legislation—Reinstatement.
Respondents: States and Indian tribes.
OMB Desk Officer: Judy A. McIntosh.

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attn: (name of OMB Desk Officer).

Agency Forms Withdrawn from the Office of Management and Budget Clearance Process.

The Department of Health and Human Services has withdrawn the following information collection package previously submitted to OMB for approval under the Paperwork Reduction Act.

Public Health Service

Subject: Malaria Survey Among U.S. Travelers—Reinstatement (0920–0154).
Reference: Federal Register/Volume 50, No. 178/Page 37437/Friday, September 13, 1985.

Dated: September 23, 1985

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85–23106 Filed 9–26–85; 8:45 am]

BILLING CODE 4150–04–M

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Ophthalmic Devices Panel

Date, time, and place. October 17 and 18, 9 a.m., Auditorium, 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, October 17, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 1 p.m.; closed committee deliberations, 2 p.m. to 5 p.m.; open public hearing, October 18, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 1 p.m.; closed committee deliberations, 2 p.m. to 3 p.m.; open committee discussion, 3 p.m. to 5 p.m.; Mary Elizabeth Jacobs, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

General function of committee. The committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation. The committee also reviews data on new devices and makes recommendations regarding their safety and effectiveness and their suitability for marketing.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 1, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 17, the committee will discuss general issues relating to approvals of premarket approval applications (PMA's) for intraocular lenses (IOL's) and neodymium:yttrium-aluminum-garnet (Nd:YAG) lasers, and may discuss specific PMA's for these devices. If discussion of all pertinent IOL or Nd:YAG laser issues is not completed, discussion will be continued the following day. On October 18, the committee will discuss PMA's for contact lenses and other ophthalmic devices and requirements for PMA approval.

Closed committee deliberations. On October 17, the committee will discuss trade secret or confidential commercial information relevant to PMA's for IOL's and Nd:YAG lasers. On October 18, the committee may discuss trade secret or confidential commercial information relevant to PMA's for contact lenses or other ophthalmic devices. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Immunology Devices Panel

Date, time, and place. October 24 and 25, 9 a.m., Rm. 703–727A, 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, October 24, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 2 p.m.; closed presentation of data, 2 p.m. to 5 p.m.; open committee discussion, October 25, 9 a.m. to 5 p.m.; Strikrishna Vadlamudi, Center for Devices and Radiological Health (HFZ–440), Food And Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendation for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 10, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss premarket approval applications for tumor marker in vitro diagnostic assays.

Closed committee deliberations. The committee will review and discuss trade secret or confidential commercial information regarding premarket approval applications for tumor marker in vitro diagnostic assays. This portion of the meeting will be closed to permit discussion of their information (5 U.S.C. 552b(c)(4)).

Each public advisory committee listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however,

that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures to expedite electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: September 23, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 85–23072 Filed 9–26–85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85P–0235]

Petition Requesting Exclusivity for Ibuprofen

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the filing of a petition requesting a period of marketing exclusivity for ibuprofen. FDA is giving notice of the filing of this petition to all interested persons because, if FDA decides to grant the petition, this decision may affect the date when abbreviated new drug applications (ANDA's) for ibuprofen may be made effective.

DATE: Comments by October 28, 1985.

ADDRESS: Requests for a copy of the petition and written comments regarding the petition to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ed Farha, Center for Drugs and Biologics (HFN–364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6490.

SUPPLEMENTARY INFORMATION: On September 24, 1984, the President signed into law the Drug Price Competition and Patent Term Restoration Act of 1984. This act amends the Federal Food, Drug, and Cosmetic Act (the act) authorizing, among other things, the agency to accept ANDA's for most previously approved new drug products. This legislation also provides for extending the term of a patent which claims a product, use, or method of manufacture that was subject to a regulatory review period in accordance with the act. Further, this new legislation also provides for periods of exclusive marketing of certain new drug products submitted in an application (or a supplement to an application) under section 505(b) of the act (21 U.S.C. 355(b)). An ANDA or paper new drug application (NDA) for such a drug may not be submitted (under some provisions) or made effective (under other provisions) until the period of "exclusive" marketing ends.

The new drug products that have been granted "exclusivity" under one of the several exclusivity provisions of this new legislation are set forth in the

volume entitled "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations" (the list) and its monthly supplements. In addition, the period of "exclusivity" is shown. Further, the list also shows those products that are covered by a patent and when the patent expires.

The agency believes that all patent and exclusivity information appearing in the list is correct, and expects that such information appearing in any future supplements to the list will also be correct. However, interested persons may disagree with the agency's findings and believe that FDA has excluded patent or exclusivity information that should have been included, or included patent or exclusivity information that should have been excluded. Accordingly, FDA has established a policy that, when an interested person submits a citizen petition requesting such inclusion or exclusion, the agency will publish a notice in the **Federal Register** of the availability of the petition. This publication is constructive notice to all interested persons that they may be affected by the petition and gives them an opportunity to submit their comments on the petition to the agency. Persons potentially affected include holders of approved ANDA's or approved paper NDA's the effective dates of which might be changed by a decision to grant the petition, persons who have pending ANDA's or paper NDA's or who contemplate submitting such applications that, when approved, would have effective dates that will be determined by the decision on the petition or, in some cases, persons whose right to submit such applications may be affected. Where a petition seeks a change in a decision to grant exclusivity, the applicant granted exclusivity has an obvious interest in the issue.

In accordance with this policy, FDA is announcing the filing of a petition submitted by Boots Pharmaceuticals, Inc. (Boots), requesting exclusivity for ibuprofen. Specifically, Boots requests that the agency:

1. Recognize and effectuate 2-year nonpatent exclusivity under section 505(j)(4)(D)(v) and (c)(3)(D)(v) of the act for 600 milligram, 400 milligram, and 300 milligram forms of ibuprofen by including notice in the list and by refusing to make effective ANDA's and paper NDA's for these dosage forms of ibuprofen until September 24, 1986; and

2. Refrain from making effective any ANDA or paper NDA for any 300 milligram, 400 milligram, or 600 milligram ibuprofen until the issues raised by this petition are resolved.

FDA is reviewing the merits of this petition and, by this notice, is giving anyone who may be affected by this petition an opportunity to submit comments within 30 days.

Interested persons may, on or before October 28, 1985, submit to the Dockets Management Branch (address above) written comments on the petition. These comments will be considered in preparing an agency response to the petition. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Requests for a single copy of the petition should be sent to the Dockets Management Branch.

Dated: September 20, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-23073 Filed 9-26-85; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Consensus Development Conference on Health Implications of Smokeless Tobacco Use; Meeting

Notice is hereby given of the NIH Consensus Development Conference on "Health Implications of Smokeless Tobacco Use," sponsored by the National Cancer Institute, the National Institute of Dental Research and the Office of Medical Applications of Research. The conference will be held January 13–15, 1986, in the Masur Auditorium of the Warren Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 900 Rockville Pike, Bethesda, Maryland 20892.

Serious questions have been raised regarding health and behavioral effects from the use of smokeless tobacco products. This meeting has been scheduled to examine these issues.

Following two days of presentations by scientific and medical experts and discussion by the audience, a Consensus Panel will consider the scientific evidence presented.

The panel members, including medical experts and the lay public, will formulate a draft statement responding to the following key questions:

What are the current trends in use of smokeless tobacco in the United States?

Does the use of smokeless tobacco increase the risk of oral or other cancers?

Does the use of smokeless tobacco increase the risk of periodontal disease or other oral and health problems?

What are the behavioral consequences of smokeless tobacco use?

What issues regarding the health consequences of smokeless tobacco use require further research?

On the third and final day of the conference, Consensus Panel Chairman Dr. Brian MacMahon, Professor and Chairman of the Department of Epidemiology at Harvard School of Public Health, will read the draft consensus statement before the conference audience and invite comments and questions. Information on the program may be obtained from Ms. Barbara McChesney, Prospect Associates, 2115 East Jefferson Street, Suite 401, Rockville, Maryland 20852, (301) 468–6555.

Dated: September 19, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-23090 Filed 9-26-85; 8:45 am]

BILLING CODE 4140-01-M

Dental Research Programs Advisory Committee; Meeting

Pursuant to Pub. L. 92–463 notice is hereby given of the meeting of the Dental Research Programs Advisory Committee from 9:00 a.m. to recess on October 24 and from 9:00 a.m. to adjournment on October 25, 1985, Wilson Hall, Shannon Building, National Institutes of Health, Bethesda, Maryland.

The entire meeting will be open to the public to discuss research progress and ongoing plans and programs. Attendance by the public will be limited to space available.

Dr. Anthony Rizzo, Deputy Associate Director for Extramural Programs, NIDR, NIH, Westwood Building, Room 504, Bethesda, MD 20892 (telephone: 301/496–7748) will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.121—Diseases of the Teeth and Supporting Tissues: Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122—Disorders of Structure, Function, and Behavior, Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13–845–Dental Research Institutes, National Institutes of Health)

Dated: September 19, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-23088, Filed 9-26-85; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Pulmonary Diseases Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Pulmonary Diseases Advisory Committee, National Heart, Lung, and Blood Institute on November 7-8, 1985 at the National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 4, Bethesda, Maryland 20892.

The entire meeting, from 8:30 a.m. on November 7 to adjournment on November 8, will be open to the public. The Committee will discuss the current status of the Division of Lung Diseases' programs and Committee plans for fiscal year 1987. Attendance by the public will be limited to the space available.

Ms. Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A-21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Suzanne S. Hurd, Executive Secretary of the Committee, Westwood Building, Room 6A16, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-7208, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.838, Lung Diseases Research, National Institutes of Health)

Dated: September 19, 1985.

Betty J. Beveridge,

Committee Management Officer.

[FR Doc. 85-23089 Filed 9-26-85; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On August 9, 1985, a notice was published in the **Federal Register** (Vol. 50, No. 154) that an application had been filed with the Fish and Wildlife Service by Miyajima Public Aquarium (PPT-696262) for a permit to take 4 Alaskan sea otters (*Enhydra lutris lutris)* for public display.

Notice is hereby given that on September 13, 1985, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 USC 1361-1407), the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Fish and Wildlife Service's Permit Office in Room 605, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: September 20, 1985.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-23155 Filed 9-26-85; 8:45 am]

BILLING CODE 4310-55-M

Issuance of Permit for Marine Mammals

On August 9, 1985, a notice was published in the **Federal Register** (Vol. 50, No. 154) that an application had been filed with the Fish and Wildlife Service by Otaru Public Aquarium (PRT-685320) for a permit to take 4 Alaskan sea otters (*Enhydra lutris lutris)* for the purpose of public display.

Notice is hereby given that on September 11, 1985, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 USC 1361-1407), the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

The permit is available for public inspection during normal business hours at the Fish and Wildlife Service's Permit Office in Room 605, 1000 North Glebe Road, Arlington, Virginia 22201.

Dated: September 20, 1985.

R.K. Robinson,

Chief Branch of Permits, Federal Wildlife Permit Office

[FR Doc. 85-23156 Filed 9-26-85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

Garnet Resource Management Plan/ Environmental Impact Statement; Butte District, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Proposed Final Resource Management Plan/Environmental Impact Statement.

SUMMARY: Pursuant to section 202(f) of the Federal Land Policy and Management Act of 1976 and section 102(2)(c) of the National Environmental Policy Act of 1969, a proposed final Resource Management Plan/ Environmental Impact Statement (RMP/ EIS) has been prepared for the Garnet Resource Area. The RMP/EIS addresses future management options for approximately 145,000 surface acres and 213,385 acres of federal mineral estate administered by the Bureau of Land Management in west-central Montana. The affected counties are Missoula, Granite, and Powell.

Public Participation. The draft RMP/ EIS was available for public review from December 14, 1984, to March 13, 1985. Letters and/or oral statements received from 48 agencies, organizations and individuals were considered during preparation of the proposed final FMP/ EIS.

Copies of the proposed final RMP/EIS are available at the Butte District Office, 106 North Parkmont, P.O. Box 3388, Butte, MT 59702, phone (406) 494-5059, and at the Garnet Resource Area Office, 3255 Fort Missoula Road, Missoula, MT 59801, phone (406) 329-3914. Public reading copies are available for review at the following locations:

Office of Public Affairs, Interior Building, 18th and C Streets, NW., Washington, DC 20240

BLM, Montana State Office, Public Affairs Office, 222 North 32nd Street, Billings, Montana 59107

BLM, Butte District Office, 106 North Parkmont, Butte, Montana 59702

BLM, Garnet Resource Area Office, 3255 Fort Missoula Road, Missoula, Montana 59801

With the exception of wilderness recommendations for the Wales Creek, Hoodoo Mountain, and Quigg West Wilderness Study Areas (WSAs), all parts of this proposed plan may be protested. A final legislative EIS dealing with wilderness recommendations for these WSAs will be available in 1986. Protests should be sent to the Director (202), Bureau of Land Management, 1800 C Street, NW., Washington, DC 20240, prior to October 27, 1985—the end of the 30-day protest period—and should include the following information:

1. The name, mailing address, telephone number, and interest of the person filing the protest.

2. A statement of the issue or issues being protested.

3. A statement of the part or parts of the plan being protested.

4. A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party, or an indication of the date the issue or issues were discussed for the record.

5. A concise statement explaining why the State Director's decision is believed to be wrong.

At the end of the 30-day protest period, the proposed plan, excluding any

portion under protest, will become final. Approval will be withheld on any portion of the plan under protest until final action has been completed.

Any significant change to the proposed plan made as a result of a protest will be made available for public review and comment prior to final approval and implementation.

SUPPLEMENTARY INFORMATION: The proposed RMP/EIS was developed following analysis of five alternatives, with one representing a continuation of present management direction (no action). The others emphasize environmental protection, partial wilderness, resource production, and an intermediate or balanced approach (the proposed RMP).

One Area of Critical Environmental Concern (ACEC) is being proposed in the final RMP/EIS. This area is referred to as Limestone Cliffs and consists of 20 acres located in T. 11 N., R. 13 W., M.P.M., Section 4, SE¼SE¼SE¼ and Section 9, NE¼NE¼NE¼. The site encompasses a unique geologic (limestone) feature which has been intensively studied and mapped by high schools and universities throughout the Northwest. This area would be closed to motorized vehicle use except along Rattler Gulch Road. Also, there would be no timber harvested and a withdrawal from mineral entry would be pursued.

The plan focuses on resolving five resource management issue groups: renewable resources; nonrenewable resources; special attention resources; land ownership and administration; and recreation, cultural and esthetic resources.

FOR FURTHER INFORMATION CONTACT: Project Manager, Garnet RMP, Garnet Resource Area, 3255 Fort Missoula Road, Missoula, MT 59801, Telephone (406) 329–3914.

Marvin LeNoue,

Acting State Director.

September 3, 1985.

[FR Doc. 85–21963 Filed 9–26–85; 8:45 am]

BILLING CODE 4310–DN–M

Sale of Public Lands in Hot Springs and Washakie Counties, WY; Termination of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Termination of realty action—sale of public lands in Hot Springs and Washakie Counties, Wyoming.

SUMMARY: The Notice of Realty Action—Rescheduling of sale of public lands in Hot Springs and Washakie Counties, published in the **Federal Register**, Volume 50, No. 59 on March 27, 1985, at page 12088 is hereby terminated for the reason that no bids were received on two of five sale parcels.

The public sale parcels were offered on April 18, 1985 and the two unsold parcels were offered in May and June, with the last offering on July 24, 1985. The lack of interest in the sale parcels does not warrant continuing the public sale.

Dated: September 17, 1985.

Chester E. Conard,

District Manager, Worland, Wyoming.

[FR Doc. 85–23186 Filed 9–26–85; 8:45 am]

BILLING CODE 4310–22–M

New Mexico; Availability of Proposed Rio Puerco Resource Management Plan and Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: The Bureau of Land Management announces the availability of the Rio Puerco Proposed Resource Management Plan (RMP) and Final Environmental Impact Statement (EIS). This document identifies and analyzes the future options for managing 896,490 acres of public land and 1,962,753 acres of Federal mineral estate in central and north-central New Mexico. The Plan also contains recommendations that the Areas of Critical Environmental Concern (ACEC) be designated.

The Draft Rio Puerco RMP/EIS was made available for public review and comment in April of 1985. Comments received on the Draft were considered in preparing the Proposed RMP/Final EIS. Any person who participated in the planning process and has an interest that is or may be affected by approval of the Proposed RMP may file a protest.

DATE: Protests must be filed by October 31, 1985.

ADDRESS: Comments should be sent to: Director, Bureau of Land Management, Department of the Interior, 18th and C Streets NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Herrick E. Hanks, Area Manager, Rio Puerco Resource Area, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87197–6770. Telelphone (505) 766–3114.

SUPPLEMENTARY INFORMATION: The Proposed RMP provides a comprehensive framework for managing and allocating public land and resources within the Rio Puerco Resource Area during the next ten to twenty years. The document is primarily focused on resolving seven key resource management issues that were identified with public involvement early in the planning process. These issues are: (1) Special Management Areas; (2) Off-Road Vehicle Designations; (3) Vegetative Uses; (4) Land Ownership Adjustments; (5) Fuelwood Supply; (6) Rights-of-way Corridors; and (7) Coal Leasing Suitability Assessment. The "Continuing Management Guidance" section of the Proposed RMP describes those aspects of current management which are not at issue and will continue after the RMP is approved. The continuing managmeent guidance was developed primarily from laws, regulations, and manuals, as well as from previous land use plans and grazing EIS's.

The Proposed Plan is a slightly modified version of the Preferred Alternative (Alternative D) presented in the Draft RMP/EIS. Slight changes were made to the ORV Designations and Special Management Areas issue resolutions of the Preferred Alternative as a result of comments received on the Draft RMP/EIS. The Proposed Plan will protect important environmental values and sensitive resources while at the same time allowing development of resources which provide commercial goods and service.

Areas of Critical Environmental Concern: Nine ACEC's were recommended for designation in the Draft RMP/EIS and were described in the **Federal Register** on April 2, 1985. As a result of the comments received on the Draft RMP/EIS, the Proposed Plan recommends the designation of one additional ACEC which is discussed briefly below. Comments on this proposed ACEC must be submitted by November 30, 1985 to the Rio Puerco Area Manager at the previously identified Address. Approval of the RMP will constitite designation of the ten proposed ACEC's.

The Pronoun Cave Complex (1,194 acres) contains nine known vertical caves which contain valued late glacial paleontological fauna. These caves also provide important habitat for several species of bats. A management agreement would be developed with the New Mexico Museum of Natural History and motorized vehicle use would be limited to exisitng roads and trails.

Dated: September 16, 1985.

Monte G. Jordan,

Associate State Director.

[FR Doc. 85–23188 Filed 9–26–85; 8:45 am]

BILLING CODE 4310–FB–M

Availability of the Proposed Two Rivers Resource Management Plan and Final Environmental Impact Statement; Proposed Area of Critical Environmental Concern (ACEC) Designations; Prineville District, OR

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, section 202(a) of the Federal Land Policy and Management Act of 1976, and 43 CFR Part 1600, the Bureau of Land Management has prepared a proposed Resource Management Plan, known as the Two Rivers RMP, and a final Environmental Impact Statement covering 324,705 acres in 7 counties north of Central Oregon. Included in the proposed Two Rivers RMP are 5 areas recommended for Area of Critical Environmental Concern (ACEC) designation.

The draft Two Rivers RMP/EIS was made available to members of the public in April 1985. Comments on the draft were considered in preparing the final EIS. Any person who participated in the planning process and has an interest which is or may be adversely affected by approval of the Two Rivers RMP may protest. A protest may raise only those issues which were submitted for the record during the planning process.

DATES AND ADDRESSES: Comments for the District Manager's consideration in the development of the decisions should be submitted to the District Manager by November 15, 1985. Copies of the Proposed Plan and Final EIS are available at the following locations: Prineville District Office BLM, 185 East Fourth Street, Prineville, Oregon 97754 (503) 447–4115. Public Affairs BLM, Oregon State Office, 825 N.E. Multnomah, Portland, Oregon 97208, (503) 231–6277; Public Affairs BLM, Interior Building, 18th and C Streets, Washington, DC 20240, (202) 343–9435. Protests must be filed on or before November 15, 1985. To be timely, protests should be filed with the Director (202), Bureau of Land Management, U.S. Department of the Interior, Washington, DC 20240. The procedures for filing a protest are listed in the Proposed Plan and in 43 CFR 1610.5–2.

SUPPLEMENTARY INFORMATION: The final EIS discusses five alternative plans for managing natural resources in the Two Rivers Planning Area over the next 10 to 15 years. One alternative has been identified as the proposed Resource Management Plan for the Two Rivers Planning Area.

The alternative plans included in the EIS are designed to resolve the planning issues identified earlier through public involvement. The general topics covered are livestock grazing management, riparian management, wildlife habitat management, land tenure and access, forestry, minerals management, recreation and the management of special areas.

The objectives of the proposed plan for each of these resource programs are as follows:

1. Maintain forage production and livestock use at 17,778 AUMs. Maintain current livestock grazing levels and meet riparian and upland vegetation management objectives.

2. Manage riparian areas along the Deschutes and John Day rivers and their major tributaries to full potential, with a minimum of 60 percent of the vegetative potential to be achieved within 20 years.

3. Provide forage to meet management objective numbers of the Oregon Department of Fish and Wildlife for deer and elk. Manage upland vegetation to achieve maximum wildlife habitat diversity. Manage all streams with fisheries or fisheries potential to achieve a good to excellent aquatic habitat condition.

4. Place emphasis on retaining and expanding, by exchange of public land, holdings in: (1) Areas of national significance, (2) areas where management is cost effective, and (3) where land is most appropriately managed in public ownership due to significant multiple resource values. Public lands having no reasonable opportunity for exchange would be offered for sale if they are: (1) Difficult and uneconomical to manage and are not needed by another agency; (2) no longer needed for the specific purpose for which they were acquired or for any other Federal purpose: (3) provide greater benefits to the public in private ownership. The transfer of public lands to other public land management agencies would occur if more efficient management of the land would result.

Authorize agricultural use of public lands if proposals are consistent with the management and protection of other values. Pursue attempts to acquire limited public access through exchange or negotiated easement, consistent with management objectives.

5. Intensively manage commercial forestlands suitable for timber production but recognize harvest restrictions or exclusions to protect riparian vegetation, wildlife, visual and other resource values.

6. Keep public lands open for exploration and development of mineral resources and related rights of way. Retain restrictive stipulations for oil and gas exploration and development on 132,000 acres of public land.

7. Designate public lands as open to off road vehicles except in areas where that use would not be appropriate or where significant damage to soils, vegetation, wildlife or other natural values is resulting from that use.

Areas which have high or moderate quality collectible mineral resources, including plant and invertebrate fossils, would be available for rockhound purposes and would be recognized in land use decisions. Public use areas would be reviewed on a case by case basis to insure that no significant conflict exists with the protection of other natural values.

8. Designate areas with identified outstanding natural or cultural values as areas of critical environmental concern. Maintain or improve other unique wildlife or ecological values.

The following areas would be designated as areas of critical environmental concern under the proposed RMP:

Designate and manage The Island in The Cove Palisades State Park, (250 acres of public land) as an Area of Critical Environmental Concern; Research Natural Area. This includes 80 acres of USFS land and will necessitate a cooperative management agreement.

The designation and management of this area will be designed to protect and preserve what is considered to be the best remaining example of the western juniper/big sagebrush/bluebunch wheatgrass ecotype plant association in the region. It is also a raptor, deer, and waterfowl use area and contains outstanding scenic vistas of Lake Billy Chinook and the Cascades.

The Horn Butte Curlew Area which totals 6,000 acres will be designated as an Area of Critical Environmental Concern. The designation and management of this area will be designed to protect and preserve the important nesting habitat for the long billed curlew which exists as a result of a bluebunch wheatgrass, Sandburg bluegrass, needlegrass, snakewood and gray rabbitbrush habitat type.

Twelve and one-half acres of public land within the Governor Tom McCall Preserve at Rowena would be designated as an Area of Critical Environmental Concern; Outstanding Natural Area. The important botanicall and scenic qualities of 76 additional acres (in two parcels) outside this preserve, but within the Columbia Gorge, will also be preserved with a designation as an Area of Critical Environmental Concern; Outstanding

Natural Area. The designation and management of these areas will be designed to protect and preserve the Idaho fescue/hawkweed and Columbia Gorge forest complex ecotypes or plant associations which exist in the areas. Four rare plants are also within this preserve. High visual qualities are also present and can be seen from both Oregon and Washington highways within the gorge.

The 335 acre Spanish Gulch Mining District will be designated as an Area of Critical Environmental Concern to protect and maintain significant historical values.

This mining district is an important historic gold mining area dating back to the mid 1800's. Remnants of early mining activities include an old stamp mill, mineshafts and several old cabins.

As the respective management plans for these areas are developed, additional protective measures may be proposed.

For further information contact: Brian Cunninghame, Project Manager, Bureau of Land Management, 185 East 4th Street, Prineville, Oregon 97754; telephone (503) 447–4115.

Dated: September 20, 1985.

Gerald E. Magnuson,

District Manager.

[FR Doc. 85–23189 Filed 9–26–85; 8:45 am]

BILLING CODE 4310–33–M

(DES 85–44)

National Park Service

Availability of Draft Environmental Impact Statement and Notice of Public Hearings; George Washington Memorial Parkway, VA; Spout Run Parkway to Theodore Roosevelt Memorial Bridge Section

Summary: The National Park Service has prepared a draft environmental impact statement (EIS) for alternatives to make structural roadway changes to improve traffic flow and safety in a section of the George Washington Memorial Parkway between Theodore Roosevelt Bridge (I–66) and Spout Run Parkway, including Spout Run Parkway to its western terminus before Lee Highway (29–211).

Public hearings will be held to solicit public opinion concerning the alternatives and impacts presented in the draft EIS. Meeting times and places are as follows: October 8, 1985, at 7:00 p.m. in the cafeteria of Cooper Intermediate School, 977 Balls Hill Road, McLean, Virginia; October 9, 1985, at 7:00 p.m. in the Professional Center Conference Room, 3rd floor of George Mason University Metro Campus, 3401 North Fairfax Drive, Arlington, Virginia; and October 10, 1985 at 7:00 p.m. in the 10th floor meeting room, National Capital Planning Commission, 1325 G Street, NW, Washington, DC.

Public reading copies of the unabridged draft EIS will be available for review at the following locations: Arlington Central Library, Virginiana Section, 1015 N. Quincy Street; Cherrydale Branch Library, 2190 N. Military Road, Arlington; Fairfax City Regional Library, 4000 Chain Bridge Road, Fairfax; Reston Regional Library, 2355–A Hunters Woods Plaza, Reston; Dolley Madison Library, 1244 Oak Ridge Avenue, Vienna; Potomac Library, 1000 Falls Road, Potomac, Maryland; and Martin Luther King Library, Washingtoniana Division, 901 G Street, NW. Washington, DC.

Written comments on the draft EIS are invited and will be accepted until November 26, 1985. Send comments to Superintendent, George Washington Memorial Parkway, Turkey Run Headquarters, McLean, Virginia 22101.

Copies of the summary and full EIS are available by writing to the above address.

Supplementary Information: Alternative A of the draft EIS is essentially a continuation of existing management where current road base reconstruction and resurfacing activities would be completed. Safety improvements, such as reflective markings, guardrails, signing, and skid-resistant surfacing, would be installed, and Rosslyn Circle would be improved. These actions would apply also to alternatives B–D.

Major actions associated with the preferred alternative, Alternative B, for inbound lanes include reconstructing the Lorcom Lane/Spout Run Parkway intersection; lengthening the merge lane from Spout Run to the George Washington Memorial Parkway; lengthening the deceleration lanes for the off-ramps to Key and Roosevelt Bridges; and reconstructing the off-ramp to Key Bridge thereby adding direct access to Lee Highway. Rosslyn Circle would be improved by removal of old bus turnarounds, rehabilitation of the roadway, and landscaping. In addition, the left turn lane from North Lynn Street to the on-ramp for outbound George Washington Memorial Parkway would be widened and realigned. Actions affecting outbound lanes include lengthening the acceleration lane from Roosevelt Bridge on-ramp to George Washington Memorial Parkway; improving access to Theodore Roosevelt Island parking lot; adding a third continuous lane from Key Bridge ramp to Spout Run exit.

Alternative B was selected as the preferred alternative because it improves traffic movement and safety and enhances the parkway's scenic and recreational values with less adverse environmental impact than alternatives C or D.

Actions associated with Alternative C for inbound lanes include installing a traffic signal at the Lorcom Lane/Spout Run intersection; adding a third lane from Spout Run to the Key Bridge off-ramp; reconstructing and reopening the Key Bridge off-ramp for morning rush hours; replacing the off-ramp to Roosevelt Bridge with a new stacking lane giving direct access to U.S. 50 into Rosslyn. Alternative C actions for outbound George Washington Memorial Parkway include those mentioned in B plus addition of new third and fourth lanes from Key Bridge ramp to Spout Run and a new merge lane north of Spout Run exit. Also, the outbound turn from Spout Run Parkway to Lorcom Lane would be redesigned.

Alternative D inbound actions which differ from C include adding a third lane from Spout Run to the Roosevelt Bridge ramp, and adding a new off-ramp to Rosslyn Circle. Alternative D differs only in that the new third lane would extend from the Roosevelt Bridge to Spout Run, while the fourth would begin at Key Bridge.

Dated: September 24, 1985.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 85–23198 Filed 9–26–85; 8:45 am]

BILLING CODE 4310–70–M

Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770 (5 U.S.C. App. 1 section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held Friday, October 18, 1985.

The Commission was established pursuant to Pub. L. 91–383 to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Cape Cod National Seashore.

The meeting will convene at Park Headquarters at 1:30 p.m. to discuss:

1. Alteration and Expansion of Commercial Use—Surfside Colony, Wellfleet.
2. Ponds Management Planning.

The meeting is open to the public. It is expected that 15 persons will be able to

attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from Herbert Olsen, Superintendent, Cape Cod National Seashore, So. Wellfleet, MA 02663. Telephone: (617) 349–3785. Minutes of the meeting will be available for public information and copying two weeks after the meeting at the office of the Superintendent, Cape Cod National Seashore, So. Wellfleet, Massachusetts.

Herbert Olsen,

Superintendent, Cape Cod National Seashore.

September 20, 1985.

[FR Doc. 85–23194 Filed 9–26–85; 8:45 am]

BILLING CODE 4310–70–M

Martin Luther King, Jr., National Historic Site and Preservation District Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Martin Luther King, Jr., National Historic Site Advisory Commission has been rescheduled from Monday, October 7, 1985, at 10:30 a.m., to Wednesday, October 16, 1985 at 7:00 p.m., at the Martin Luther King, Jr., Center for Non-Violent Social Change, Inc., Freedom Hall, Room 261, 449 Auburn Avenue, NE, Atlanta, Georgia 30312.

The purpose of the Martin Luther King, Jr., National Historic Site Advisory Commission is to consult with the Secretary of the Interior on matters of planning, development and administration of the Martin Luther King, Jr., National Historic Site. The purpose of this meeting will be to update the Commission on park planning and operations. A presentation of the final recommendations for the Development Program/Advisory Commission Study will be made.

The members of the Commission are as follows:

Mr. William Allison, Chairman
Mr. John H. Calhoun
Dr. Elizabeth A. Lyon
Mr. C. Randy Humphrey
Mrs. Christine King Farris
Mr. Handy Johnson, Jr.
Mr. James Patterson
Mrs. Freddye Scarborough Henderson
Mrs. Millicent Dobbs Jordan
Mr. John W. Cox
Reverend Joseph L. Roberts, Jr.
Mrs. Coretta Scott King, Ex-Officio Member, Director, National Park Service, Ex-Officio Member

The meeting will be open to the public; however, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements may contact Randolph Scott, Superintendent, Martin Luther King, Jr., National Historic Site, 522 Auburn Avenue, NE, Atlanta, Georgia 30312; Telephone 404/221–5190. Minutes of the meeting will be available approximately 4 weeks after the meeting.

Dated: September 18, 1985.

Frank Catroppa,

Regional Director, Southeast Region.

[FR Doc. 85–23193 Filed 9–26–85; 8:45 am]

BILLING CODE 4310–70–M

National Capital Region, Public Affairs; Public Meeting

The National Park Service is seeking public comments and suggestions on the planning of the 1985 Christmas Pageant of Peace, which opens December 12 on the Ellipse, south of the White House.

A public meeting will be held at the National Capital Region Building, 1100 Ohio Drive, SW, Room 234, at 10 a.m. on November 1, 1985.

Interested persons who would like to comment at the meeting should notify the National Park Service by October 25, by calling the Office of Public Affairs between 9 a.m. and 4 p.m., weekdays at 426–6700. Persons who cannot attend the meeting can send written comments to Regional Director, National Capital Region, 1100 Ohio Drive, SW, Washington, DC, 20242. Written comments will be accepted until October 17, 1985.

Dated: September 19, 1985.

Manus J. Fish, Jr.,

Regional Director, National Capital Region.

[FR Doc. 85–23195 Filed 9–26–85; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub–2)]

Railroad Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Notice of approval of rail cost adjustment factor and decision.

SUMMARY: The Commission has decided to approve the cost index filed by the Association of American Railroads (AAR) under the procedures of Ex Parte No. 290 (Sub-No. 2), *Railroad Cost Recovery Procedures.* The application of the index provides for a fourth quarter 1985 Rail Cost Adjustment Factor (RCAF) of 1.012. This RCAF shows a decrease of .028 in railroad input prices from the third quarter level of 1.040. Since the fourth quarter 1985 RCAF, remains below the level of a prior RCAF no rate actions are ordered.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Robert C. Hasek, (202) 275–0938; Douglas Galloway, (202) 275–7278.

SUPPLEMENTARY INFORMATION: By decision served January 2, 1985, (50 FR 87, January 2, 1985) we outlined the procedures for the calculation of the all inclusive index of railroad input costs and the methodology for the computation of the RCAF. These procedures replaced an interim methodology which was formerly used. AAR is required to calculate the forecasted index on a quarterly basis and submit it on the fifth day of the last month of each calendar quarter.

We have reviewed AAR's calculations of the index for the fourth quarter of 1985 and find that, with one exception, these calculations comply with the rules contained in our decision served January 2, 1985. These rules call for the lease rental portion of the equipment rents component of the index to be calculated using actual data. AAR states that it has been unable to develop a meaningful lease rentals index using actual data and anticipates seeking modification of our rule concerning this component. We will consider that submission when it is received. At this time we will continue to accept use of the Producer Price Index for Industrial Commodities, less Fuel, Power and Related Products as a surrogate for the lease rental portion of the equipment rents component of the index. We have previously observed that the lease rental portion of the index is only 2.4 percent of the total and is not likely to have a major effect on the RCAF.

We find the RCAF for the fourth quarter of 1985 is 1.012. This is a decrease of .028 from the third quarter of 1985. No rate actions are ordered.

The indices and RCAF derived from AAR's fourth quarter calculations are shown in Table A (see appendix). Table B (see appendix) shows the second

quarter 1985 index calculated on both an actual basis and a forecasted basis for comparative purposes.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources. This proceeding will not have a significant adverse impact on a substantial number of small entities because these procedures simplify a formerly complex and burdensome rate increase procedure.

Authority: 49 U.S.C. 10321, 10707a, 5 U.S.C. 553.)

Dated: September 13, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioner Sterrett did not participate in the disposition of this proceeding.

James H. Bayne,

Secretary.

TABLE A.—EX PARTE 290 (SUB-2) ALL INCLUSIVE INDEX OF RAILROAD INPUT COSTS

Line No.	Index component	1980 weights (per cent)	Base weights (per cent)	Third quarter 1985 forecast	Fourth quarter 1985 forecast
1	Labor	50.4	50.5	144.8	139.0
2	Fuel	10.6	10.8	91.4	87.1
3	Materials and supplies	7.8	7.8	108.5	107.7
4	Equipment Rents	9.6	9.4	161.7	161.8
5	Depreciation	7.7	7.4	117.4	116.0
6	Other items	14.0	14.1	119.8	120.0
7	Weighted Average	100.0	100.0	131.4	127.8
	a. 1980 = 100				
	b. Linked index			126.7	122.3
8	Rail Cost Adjustment Factor [2]			1.047	1.012
	(10/81-82 = 100). 120.9 = 100				

[1] Other items are a combination of Purchased Services, Casualties and Insurance, General and Administrative, Other Taxes and Loss and Damage, all of which are measured by the Producer Price Index for Industrial Commodities, less Fuel, Power and Related Products.

[2] Linking is necessitated by a change to 1984 weights beginning with the fourth quarter 1985. The following formula was used for the fourth quarter 1985 index:

$$\frac{\text{4th quarter 1985 index (1984 weights)}}{\text{3rd quarter 1985 index (1980 weights)}} \times \text{3rd quarter 1985, index (linked index)} = \text{Linked index (1980 weights to 1984 weights)}$$

or

$$\frac{127.8}{131.3} \times 136.7 = 122.3$$

[3] The denominator was rebased to an October 1, 1982 level in accordance with the requirements of the Staggers Rail Act of 1980.

TABLE B.—COMPARISON OF SECOND QUARTER 1985 INTERIM INDEX CALCULATED ON BOTH A FORECASTED AND AN ACTUAL BASIS

Line No.	Index component	1980 weights	Second quarter 1985 forecast	Second quarter 1985 actual
1	Labor	50.4	146.5	146.5
2	Fuel	10.6	88.6	39.9
3	Materials and Supplies	7.5	106.3	106.3
4	Equipment Rents	9.6	151.2	151.4
5	Depreciation	7.7	115.1	116.0
6	Other	14.0	120.1	119.7
7	Weighted Average	100.0	131.7	132.3
	a. 1980 = 100			
	b. Linked Index		135.8	126.8
8	Rail Cost Adjustment Factor		1.043	[3] 1.047

[1] For comparative purposes only, an RCAF for the second quarter 1985 has been calculated using actual data. The published RCAF for the second quarter 1985 was computed using forecasted data.

[FR Doc. 85-23132 Filed 9-26-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

President's Committee on the International Labor Organization; Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is hereby given of a meeting of the President's Committee on the ILO:

Name: President's Committee on the International Labor Organization.

Date: October 17, 1985.

Time: 2:00 p.m.

Place: Department of Labor, Third & Constitution Avenue NW., Room S-2506, Washington, DC 20210.

This meeting will be closed to the public under the authority of section 10(d) of the Federal Advisory Committee Act. During its closed session, the Committee will discuss national security matters.

All communications regarding this Committee should be addressed to: Mr. Robert W. Searby, Counselor to the Committee, Department of Labor, Third & Constitution Ave., NW., Room S-2235, Washington, DC 20210, telephone (202) 523-6043.

Signed at Washington, DC this 20th day of September, 1985.

William E. Brock,

Secretary of Labor.

[FR Doc. 85-23158 Filed 9-26-85; 8:45 am]

BILLING CODE 4510-28-M

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Department Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OBM and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirments.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and use of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Department Clearance Officer, Paul E. Larson, Telephone 202 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-

1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202 395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment Standards Administration
Requests for Medical Reports
1215–0106; LS–158, LS–415, LS–525
On occasion
Businesses or other for-profit; Small businesses or organizations
2,520 responses; 1,260 hours; 3 forms.

These medical reports are used by the Longshore and Harbor Workers' Compensation Act program to support injured worker's claims for Compensation benefits under section 7 of the Longshore and Harbor Workers' compensation Act (33 U.S.C. 901 et seq) as amended and extended.

Mine Safety and Health Administration
Mine Operator Dust Data Card
1219–0011
Bimonthly
Businesses and other for profit; small businesses or organizations
5,000 respondents; 114,808 burden hours.

Coal Mine Operators are required to collect and submit respirable dust samples to MSHA for analysis. Pertinent information associated with identifying and analyzing these samples is submitted on the dust data cards that accompanies the samples.

Signed at Washington, DC this 24th day of September, 1985.

Paul E. Larson,

Department Clearance Officer.

[FR Doc. 85–23169 Filed 9–26–85; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA–W–16,191]

Aeolian Corp., Memphis, TN; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 29, 1985 in response to a worker petition filed by the United Furniture Workers of America, Local 282, on behalf of workers at Aeolian Corporation, Piano Manufacturing Plant, Memphis, Tennessee.

A certification applicable to the petitioning group of workers was issued on July 24, 1985 (TA–W–15,810A). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C., this 18th day of September 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85–23159 Filed 9–26–85; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–16,200]

Ely Group, Inc., Rockford Textile Mills, McMinnville, TN; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 29, 1985 in response to a worker petition received on July 22, 1985 which was filed on behalf of workers at the Ely Group, Incorporated, Rockford Textile Mills, McMinnville, Tennessee.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA–W–16,013). Consequently further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, D.C. this 18th day of September 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85–23160 Filed 9–26–85; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–16,369]

Prestige Sportswear, Inc., Boston, MA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 30, 1985 in response to a worker petition which was filed by the International Ladies Garment Workers' Union on behalf of workers at Prestige Sportswear, Incorporated, Boston, Massachusetts.

A certification applicable to the petitioning group of workers was issued on April 25, 1985 (TA–W–15,737). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 19th day of September 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85–23161 Filed 9–26–85; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–15,772]

United Technologies Corp. Diesel Systems, Springfield, MA; Affirmative Determination Regarding Application for Reconsideration

By an application dated August 21, 1985, the International Union of Electrical Workers requested administrative reconsideration of the Department of Labor's Notice of Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers producing diesel systems at United Technologies Corporation, Springfield, Massachusetts. The notice of determinations was published in the Federal Register on August 13, 1985 (50 FR 32654).

The application claims, among other things, that United Technologies' market share in the diesel pump business for trucks and farm vehicles has declined and that their leading competitors are foreign. The union lists seven foreign competitors of United Technologies Corporation.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is therefore, granted.

Signed at Washington, DC, this 18th day of September 1985.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 85–23162 Filed 9–26–85; 8:45 am]

BILLING CODE 4510-30-M

[TA–W–16,135]

West Orange Manufacturing Co., West Orange, NJ; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 28, 1985 in response to a worker petition received on June 7, 1985 which was filed by the International Ladies' Garment Workers Union on behalf of workers at West Orange Manufacturing Company/Lady

Gilda, Incorporated, West Orange, New Jersey. The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 19th day of September 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-23163 Filed 9-26-85; 8:45 am]

BILLING CODE [illegible]

Mine Safety and Health Administration

[Docket No. M-85-18-M]

Hydrocarbon Resources Co.; Petition for Modification of Application of Mandatory Safety Standard

Hydrocarbon Resources Company, Star Route 2, Box 192, Randlett, Utah 84063 has filed a petition to modify the application of 30 CFR 57.19102 (shafts) to its Wild Horse Mine (I.D. No. 4201744) located in Uintah County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a means be provided to guide the movement of a shaft conveyance.

2. As an alternate method, petitioner proposes to use glancing boards on the shafts ends and the walls of the shaft for the sides.

3. Due to the narrowness of the vein, the shaft walls can be cut to accommodate the conveyance. The interface between the Gilsonite and the rock walls is smooth, which allows the conveyance to move freely in the shaft.

4. Because the vein is narrow, petitioner states that a guide rail would restrict the ingress and egress from the conveyance, creating a potential hazard.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 28, 1985. Copies of the petition are available for inspection at that address.

Dated: September 23, 1984.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-23170 Filed 9-26-85; 8:45 am]

BILLING CODE [illegible]

[Docket No. M-85-111-C]

Kanawha Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Kanawha Coal Company, Route 1, Box 420, Ashford, West Virginia 25009 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Madison No. 2 Mine (I.D. No. 46-02844) located in Boone County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the use of canopies would result in a diminution of safety for the miners affected because the canopies could rub the roof and damage roof bolts. The canopy legs are being knocked loose to the extent that the canopy has hit the equipment operator. In addition, the canopies decrease the equipment operator's visibility, increasing the chances of an accident.

3. For these reasons, petitioner requests a modification of the standard for mining machines in mining heights lower than 48 inches.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 28, 1985. Copies of the petition are available for inspection at that address.

Dated: September 23, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-23171 Filed 9-26-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-112-C]

Magnum Quality Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Magnum Quality Coal Company, Inc., HCR 85, Box 1166, Whitesburg, Kentucky 41858 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 6 Mine (I.D. No. 15-07154) located in Letcher County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that the use of a canopy on the mine's equipment would result in a diminution of safety for the miners affected because it could strike and dislodge roof support due to uneven roof and soft and uneven bottom. In addition the canopy would limit the equipment operator's visibility, increasing the chances of an accident.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 28, 1985. Copies of the petition are available for inspection at that address.

Dated: September 23, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-23172 Filed 9-26-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-105-C]

Mettiki Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Mettiki Coal Corporation, Route 3, Box 124A, Deer Park, Maryland 21550 has filed petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its C Mine (I.D. No. 18-00655) located in Garrett County, Maryland. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a qualified hoisting engineer be on duty while any person is underground.

2. As an alternate method, petitioner proposes to allow a fireboss and pumper to travel into and out of the mine on a diesel powered 955 Eimco Mine Tender utility vehicle on weekends and holidays without having a hoisting engineer on duty. The mine has a roadway continuous from all sections to the surface which is maintained in a safe condition and is always available for travel. The mine phones provide the fireboss and pumper with continual contact with surface guards who could summon additional help immediately, if necessary.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 28, 1985. Copies of the petition are available for inspection at that address.

Dated: September 23, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-23173 Filed 9-26-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-103-C]

Windsor Power House Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Windsor Power House Coal Company, Windsor Heights, West Virginia 26075 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Beech Bottom Mine (I.D. No. 46-01286) located in Brooke Country, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a located padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines.

2. As an alternate method, petitioner proposes to use metal locking devices, each consisting of a fabricated metal bracket in lieu of padlocks to secure battery plugs to machine mounted battery receptacles on permissible, mobile, battery-powered machines. The metal locking device will be designed, installed and used to prevent the threaded rings securing the battery plugs to the battery receptacles from unintentionally loosening. The metal locking devices will be securely attached to the battery receptacles to prevent accidental loss of the devices.

3. Petitioner states that the locking device will be easier to maintian than padlocks because there are no keys to be lost and dirt can't interfere with the working as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, trained in the hazards of breaking battery-plug connnections under load, and trained in the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5 For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 8, 1985. Copies of the petition are available for inspection at that address.

Dated: September 23, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-23174 File 9-26-85; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-61]

NASA Advisory Council, Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Informal Exectutive Subcommittee.

DATES AND TIMES: October 17, 1985, 8:30 a.m. to 5:30 p.m.; October 18, 1985, 8:30 a.m. to 1 p.m.

ADDRESS: National Aeronautics and Space Administration, 600 Independence Avenue, SW, Room 625, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. John Clark, Office of Aeronautics & Space Technology; Telephone: Area Code 202/453-2703

SUPPLEMENTARY INFORMATION: The Space Systems and Technology Advisory Committee was established to provide overall guidance and direction to the space research and technology activities in the Office of Aeronautics and Space Technology (OAST). The Committee, chaired by Mr. Norman Augustine, is comprised of 8 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including the Subcommittee members and other participants).

Type of Meeting: Open.

Agenda:

October 17, 1985

8:30 a.m.—Chairperson's Remarks.

9 a.m.—Review of Space Systems Technology Committee (SSTAC) Charter; Review of SSTAC and Aerospace Research & Technology Subcommittee (ARTS) Membership.

9:30 a.m.—Review of FY 86 Study Topics.

10 a.m.—Review of Automation and Robotics Program.

1 p.m.—Review of OAST Mission Drivers.

5:30 p.m.—Adjourn.

October 18, 1985

8:30 a.m.—OAST Mission Drivers: summary of recommendations.

10:30 a.m.—OAST's Role as Catalyst to Build a National Constituency for In-Space Technolgy Experiments.

12:30 p.m.—Chairperson's Closing Comments.

1 p.m.—Adjourn.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

September 20, 1985.

[FR Doc. 85-23093 Filed 9-26-85; 8:45 am]

BILLING CODE 75-10-01-M

[Notice 85-62]

NASA Advisory Council (NAC), Space and Earth Science Advisory Committee (SESAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space and Earth Science Advisory Committee.

DATE AND TIME: October 21, 1985, 9:30 a.m. to 5:30 p.m.; October 22, 1985, 8:30 a.m. to 5:30 p.m.; October 23, 1985, 8:30 a.m. to 12:30 p.m.

ADDRESS: National Aeronautics and Space Administration, FOB 10-B, Room 226-A, 600 Independence Avenue, S.W., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey D. Rosendhal, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1410).

SUPPLEMENTARY INFORMATION: The NAC Space and Earth Science Advisory Committee consults with and advises the Council as a whole and NASA on plans for, work in progress on, and accomplishments of NASA's Space and Earth Science programs. The Committee is chaired by Louis Lanzerotti and is composed of 30 members.

Type of Meeting: Open.

Agenda: Full Committee—Room 226-A

October 21, 1985

9:30 a.m.—Introduction of New Members, Announcements, Review of Agenda.
9:45 a.m.—Status of FY 1986 Budget in Congress and Office of Space Science and Applications (OSSA) Major Projects.
10:15 a.m.—Shuttle/Spacelab Payloads: A Status Report.
11:15 a.m.—Task Force on the Scientific Utilization of the Space Station Activities.
1:30 p.m.—SESAC Study Planning/Review of Progress to Date and Report on Planning Group Activities.
2:30 p.m.—Organization of Study Activities; Splinter Meetings as Appropriate.
4:30 p.m.—Plenary Session to Discuss Study Planning.
5:30 p.m.—Adjourn.

October 22, 1985

8:30 a.m.—European Space Agency (ESA) Program Planning.
9:30 a.m.—An Overview of the Microgravity Science and Applications Program.
11:00 a.m.—Continuation of SESAC Study Planning; Splinter Meetings as Appropriate
1:30 p.m.—Continuation of SESAC Study Planning.
4:00 p.m.—Plenary Session to Review Study Activities.
5:30 p.m.—Adjourn.

October 23, 1985

8:30 a.m.—The Physics Survey Report.
9:30 a.m.—Earth System Science Committee (ESSC)/A Status Report.
10:45 a.m.—Progress of the National Commission on Space, Role of Various Federal Agencies in the Earth Sciences, and Other Office of Science Technology Policy (OSTP) Activities.
11:45 a.m.—Meeting Summary, Future Plans.
12:30 p.m.—Adjourn.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 85-23094 Filed 9-26-85; 8:45 am]

BILLING CODE 7510-01-M

[Notice 85-63]

National Commission on Space; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the National Commission on Space (NCS).

DATE AND TIME: October 22, 1985, 8:30 a.m. to 5 p.m.; October 23, 1985, 8:45 a.m. to 4 p.m.

ADDRESS: Massachusetts Institute of Technology, Building 34, Room 401 (Greer Room), Cambridge, MA 02139.

FOR FURTHER INFORMATION CONTACT: Mrs. Mechthild E. "Mitzi" Peterson, National Commission on Space, Suite 3212, 490 L'Enfant Plaza East, SW, Washington, DC 20024 (202/453-8685).

SUPPLEMENTARY INFORMATION: The National Commission on Space was established to study existing and proposed U.S. space activities; formulate an agenda for the U.S. civilian space program; and identify long-range goals, opportunities, and policy options for civilian space activity for the next 20 years. The Commission, chaired by Dr. Thomas O. Paine, consists of 15 voting members. The meeting will be open to the public up to the seating capacity of the room (approximately 75 persons including Commission members and other participants).

Type of Meeting: Open.

Agenda

October 22, 1985

8:30 a.m.—Opening remarks

Space Sciences

8:45 a.m.—Evolution of the Universe
9:30 a.m.—Space-Based Observatories
10:30 a.m.—Solar and Space Plasma Physics
11:15 a.m.—Fundamental Physics and Chemistry
1 p.m.—Life Sciences
2 p.m.—Discussion
5 p.m.—Adjourn

October 23, 1985

8:45 a.m.—Opening Remarks

Space Technology

9 a.m.—Space Research and Technology
10 a.m.—Technology for Manned Space Flight
11 a.m.—Technology for Space Science
1 p.m.—Technology for Space Transportation
2 p.m.—Discussion
4 p.m.—Adjourn

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

NATIONAL SCIENCE FOUNDATION

Privacy Act of 1974; Alteration to System of Records

Notice is hereby given of a proposed amendment to the NSF System of Records No. 29 entitled "Principal Investigator/Project Director Subsystem," as published in the **Federal Register**, "Privacy Act Issuances, 1984 Compilation," Volume V, Page 209. The purpose of this amendment is to provide a better description of the categories of records covered by the "system."

NSF-29

SYSTEM NAME:

Principal Investigator/Project Director Subsystem.

SYSTEM LOCATION:

National Science Foundation, Office of Information Systems, 1800 G. Street, NW, Washington, D.C. 20550.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Each individual that requests support from the National Science Foundation, and Principal Investigators or Project Directors from institutions requesting NSF support.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal data as well as data on the disposition of each application of proposal submitted to the National Science Foundation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

Information, other than personal information of a sensitive nature, may

be released to other government agencies, which often receive proposals from the same Principal Investigator/ Project Director.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored in an automated data base on disk and magnetic tapes.

RETRIEVABILITY:

Information can be retrieved by name or Social Security Number of applicant.

SAFEGUARDS:

Authorized Users: Employees who maintain records in this system are instructed to grant access to other employees on a need-to-know basis as specifically authorized by the Privacy Act Officer.

Physical Safeguards: Building employs security guards. Building is locked during non-business hours when guard is not on duty. Room in which records are kept is locked during non-business hours.

Procedural Safeguards: Access to computer files is controlled by the use of passwords. Access to source data files is strictly controlled by program staff.

RETENTION AND DISPOSAL:

Computer files are cumulative and maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

(Computer files), Chief, Administrative Systems Branch, Office of Information Systems, National Science Foundation, Washington, D.C. 20550.

NOTIFICATION PROCEDURES:

To determine if a record exists write to: NSF Privacy Act Officer, National Science Foundation, Washington, D.C. 20550.

The National Science Foundation reserves the right to require sufficient identification to positively identify the individual making the request. Complete procedures are found at 45 CFR Part 613.

RECORDS ACCESS PROCEDURES:

See "Notification Procedures" above. Requester should reasonably specify the record contents being sought.

CONTESTING RECORDS PROCEDURES:

See "Notification Procedures" above. Requester should reasonably identify the record and specify the information to be contested, and state the corrective action sought and the reasons for the correction, with supporting justification.

RECORD SOURCE CATEGORIES:

Information is taken from materials submitted by the applicants.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: September 23, 1985.

Herman G. Fleming,

NSF Privacy Act Officer.

[FR Doc. 85-23079 Filed 9-26-85; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Regulatory Guides; Issuance and Availability

The Nuclear Regulatory Commission has issued revisions to three guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.84, Revision 23, "Design and Fabrication Code Case Acceptability, ASME Section III, Division 1," and Regulatory Guide 1.85, Revision 23, "Materials Code Case Acceptability, ASME Section III, Division 1," list those code cases that are generally acceptable to the NRC staff for implementation in the licensing of light-water-cooled nuclear power plants. Revision 4 to Regulatory Guide 1.147, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1," lists those code cases that are generally acceptable to the NRC staff for implementation in the inservice inspection of light-water-cooled nuclear power plants. These three guides are periodically revised to update the listings of acceptable code cases and to include the results of public comment and additional staff review.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, DRR, ADM, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland, from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of active guides may be purchased at the current Government Printing Office price. A subscription service for future guides in specific divisions is available through the Government Printing Office. Information on the subscription service and current prices may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland this 23rd day of September 1985.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 85-23184 Filed 9-26-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purpose of section 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on October 10-12, 1985, in Room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting was published in the **Federal Register** on August 21, 1985.

The agenda for the subject meeting will be as follows:

Thursday, October 10, 1985

8:30 A.M.-8:45 A.M.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 A.M.-10:00 A.M.: Advanced Reactors (Open)—The members will discuss proposed ACRS comments to the NRC regarding the proposed Commission policy statement on advanced reactors. Members of the NRC Staff will participate, as appropriate.

10:00 A.M.-10:30 A.M.: Topics for Meeting with NRC Commissioners (Open)—The members will discuss ACRS recommendations to the NRC regarding EPA standards for high level waste disposal.

10:30 A.M.-11:30 A.M.: Meeting with NRC Commissioners (Open)—The members will meet with the NRC Commissioners to discuss ACRS

comments on the EPA standards for high level waste disposal.

11:30 A.M.–12:45 P.M.: TVA Organizational Changes (Open)—Representatives of the NRC Staff will brief the Committee regarding proposed changes in the TVA organization to correct deficiencies in the construction and operation of TVA plants.

1:45 P.M.–3:45 P.M.: Davis-Besse Nuclear Power Plant (Open)—The members will hear and discuss a report by representatives of the NRC Staff regarding the results of the start-up test program for Unit 1 of this nuclear station. Representatives of the licensee will participate, as appropriate.

3:45 P.M.–5:45 P.M.: General Electric Standard Safety Analysis Report (GESSAR II) (Open/Closed)—The Committee will discuss the proposed ACRS report regarding the FDA for this type nuclear station.

Portions of this session will be closed as needed to discuss Proprietary Information applicable to this plant and detailed security arrangements for this type of facility.

5:45 P.M.–6:15 P.M.: Regulatory Activities (Open)—The members will hear and discuss the reports of its subcommittee on proposed changes to NRC Regulatory Guides, including meteorological measurement programs; criteria for power, instrumentation, and control portions of safety systems; and instrument setpoints for safety-related systems.

Friday, October 11, 1985

8:30 A.M.–11:30 A.M.: Source Terms for Nuclear Power Plant Accidents (Open)—The members will hear the report of its subcommittee and discuss proposed NUREG–0956, Reassessment of Source Term. Members of the NRC Staff will participate as appropriate.

11:30 A.M.–1:30 P.M.: Emergency Planning (Open)—The Committee will hear and discuss the report of its subcommittee on consideration of extreme external phenomena in emergency planning. Representatives of the NRC Staff and invited experts will participate, as appropriate.

2:30 P.M.–4:30 P.M.: General Electric Standard Safety Analysis Report (GESSAR II) (Open/Closed)—The members will continue discussion of the Committee's report to the NRC regarding an FDA for this type of nuclear plant.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this matter and details of security arrangements for this type of plant.

4:30 P.M.–5:30 P.M. Indian Point Nuclear Generating Station, Units 2 and 3 (Open)—The members will discuss proposed ACRS comments regarding application of the PRA for these units to this nuclear station.

5:30 P.M.–6:30 P.M.: Nuclear Power Plant Safety-Related Issues (Open)—The members will discuss a proposed ACRS report on the state of nuclear power safety. Members of the NRC Staff will participate, as appropriate.

Saturday, October 12, 1985

8:30 A.M.–12:30 P.M.: Preparation of ACRS Reports (Open/Closed)—The members of the Committee will discuss proposed reports to the NRC regarding items considered during this meeting. In addition, proposed ACRS comments regarding the use of natural ability testing of nuclear power plant operators will also be considered.

1:30 P.M.–2:30 P.M.: Quantitative Safety Goals (Open)—The members will hear and discuss the report of its subcommittee on proposed quantitative safety goals for nuclear power plants.

2:30 P.M.–3:00 P.M.: ACRS Procedures and Practices (Open)—The Committee will hear and discuss the report of its subcommittee on proposed changes in ACRS procedures and practices based on meetings of its subcommittee and the report of its Panel on ACRS Effectiveness.

3:00 P.M.–4:00 P.M.: ACRS Annual Report to the U.S. Congress on the Proposed NRC Safety Research Program and Budget (Open)—The members will discuss the proposed scope and content of its annual reports to the U.S. Congress on proposed NRC safety research programs and budgets.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 3, 1984 (49 FR 193). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R. F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss Proprietary Information [5 U.S.C. 552b(c)(4)], and detailed security information [5 U.S.C. 552b(c)(3)].

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 A.M. and 5:00 P.M. EDT.

Dated: September 23, 1985.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 85–23216 Filed 9–26–85; 8:45 am]

BILLING CODE [illegible]

Advisory Committee on Reactor Safeguards; Combined Site Evaluation and Extreme External Phenomena; Meeting

The ACRS Subcommittees on Site Evaluation and Extreme External Phenomena will hold a combined meeting on October 9, 1985, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, October 9, 1985—8:30 a.m. until the conclusion of business.

The Subcommittees will: (1) Evaluate, from a probabilistic approach, the relative importance of various natural phenomena, and prioritize them in terms of their potential impact on offsite emergency planning, considering the likelihood that such phenomena might cause an accident that would require the implementation of offsite emergency plans, and (2) review the proposed final amendments to 10 CFR Part Part 50, Appendix E, Consideration of Earthquakes in Emergency Planning, SECY–85–283, dated August 21, 1985, and develop an ACRS consensus on this issue for the Commission.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the

Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with respresentatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Owen Merrill (telephone 202/634–1413) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: September 24, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–23217 Filed 9–26–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–289 SP (Management Phase)]

Metropolitan Edison Co., et al. (Three Mile Island Nuclear Station, Unit No. 1); Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of September 5, 1985, oral argument on the appeals of Three Mile Island Alert, Inc., and the Union of Concerned Scientists from the Licensing Board's May 3, 1985, partial initial decision on licensed operator training (LBP–85–15) will be heard at *2:00 p.m. on Thursday, October 24, 1985, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.*

Dated: September 23, 1985.

For the Appeal Board.

Barbara A. Tompkins,

Secretary to the Appeal Board.

[FR Doc. 85–23218 Filed 9–26–85; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Advisory Committee for Trade Negotiations; Meeting and Determination of Closing

The meeting of the Advisory Committee for Trade Negotiations (the Advisory Committee) to be held Wednesday, October 23, 1985 from 1:00 p.m. to 4:00 p.m. in Washington, D.C., will involve a review and discussion of the current issues involving the trade policy of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

More detailed information can be obtained by contacting Phyllis O. Bonanno, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, D.C. 20506.

[FR Doc. 85–23099, Filed 9–26–85; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 22439; File No. SR–NASD–80–10]

Statement of Commission Views on Side-by-Side Market Making Pilot; Denial of NASD Petition for Reconsideration of Securities Exchange Act Releases No. 22026

I. Background

On May 8, 1985, the Commission issued a release that, among other things, approved in concept a pilot program in side-by-side market making involving the six most active National Market System ("NMS") Securities, subject to Commission determinations that grants of unlisted trading privileges ("UTP") and exchange side-by-side trading in the pilot stocks would be consistent with the Act and the creation of adequate equity and options audit trails.[1] In that Release the Commission solicited comment on exchange participation in the pilot. As discussed in a separate release,[2] the Commission is now prepared to grant exchanges UTP in certain NMS Securities, subject to certain conditions. For the reasons discussed below, the Commission continues to believe that the side-by-side pilot is appropriate, and also believes that the exchange participation in the pilot appears appropriate. In addition, the Commission announces that this pilot will begin on January 20, 1986.

On June 17, 1985, the NASD filed with the Commission a Petition for Reconsideration and Statement of Comments regarding the OTC Options Release.[3] For the reasons discussed below, the Commission denies the Petition for Reconsideration; the Commission, however, has carefully considered the Statement of Comments, along with those of other commentators, in addressing the question of exchange participation in the side-by-side market making pilot.

II. The Side-by-Side Market Making Pilot

A. Comments

The Commission received comments on the side-by-side market making pilot from the NASD [4] CBOE,[5] NYSE [6] PSE [7] and nineteen members [8] of the NASD.

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[1] Securities Exchange Act Release No. 22026, May 8, 1985, 50 FR 20310 ("OTC Options Release").

[2] Securities Exchange Act Release No. 22412, September 16, 1985 ("UTP Release").

[3] NASD Petition for Reconsideration and Statement of Comments on Securities Exchange Act Release No. 22026 ("Petition"), dated June 17, 1985.

[4] These comments are contained in the NASD's Petition *supra* note 3. In its Petition, and NASD also questions the Commission's April 16 deliberations for reasons other than the design of the pilot program. For example, the NASD complains that the April 16th meeting was affected by procedural irregularities. In addition, the NASD complains that it is competitively unfair not to allow the NASD to trade options on listed stocks and requests that the Commission's policy of allowing the multiple trading of index options should either be rescinded or clarified. There portions of the NASD Petition are discussed in Section III of this release.

[5] Letter from Walter E. Auch, Chairman and Chief Executive Officer, CBOE, to John Wheeler, Secretary, SEC, dated June 14, 1985 ("CBOE Letter").

[6] Letter from James E. Buck, Secretary, NYSE, to John Wheeler, Secretary, SEC, dated June 17, 1985 ("NYSE Letter").

[7] Letter from Jim Gallagher, President, PSE, to John Wheeler, Secretary, SEC, dated June 10, 1985 ("PSE Letter").

[8] Thomas J. Asher, Executive Vice President, Robinson Humphrey Company, Inc. to John S.R. Shad, Chairman, SEC, dated May 24, 1985; Jerry Williams, Williams Securities Group, Inc., to Commissioner Charles C. Cox, dated June 6, 1985; from C. Edward Fisher, Van Kampen Merritt, Inc., to SEC, dated May 31, 1985; Craig L. Beach, Vice President, George K. Baum & Company, to Commissioner Charles C. Cox, dated June 14, 1985; L. Massey Clarkson, Jr., Former Vice Chairman,

Continued

The NYSE and PSE comments restate the objections of those exchanges to the NASD's proposal on side-by-side market making; the PSE also asserts that approving the NASD proposal without permitting side-by-side market making on exchanges would subject the exchanges to an unfair competitive disadvantage; neither the PSE or NYSE discuss any issues peculiar to side-by-side market making on exchanges.

The NASD questions the design of the pilot for a variety of reasons. The NASD argues that (1) conditioning the pilot on participation of applicant exchanges is unnecessary competitively; (2) the pilot contains too few stocks; (3) the delay in the commencement of the pilot is competitively unfair to the NASD; and (4) the pilot should be limited to NASDAQ market makers [9] or if exchanges are allowed to participate in the pilot, "premium" listed stocks should be included in the pilot. Two broker-dealers also suggest that exchanges be excluded from the pilot.[10]

The CBOE states that the opportunity for exchanges to participate in the pilot would be "illusory," at least for CBOE, because CBOE, as an options only exchange, cannot obtain stock order flow in the six pilot stocks and would not have a realistic opportunity to compete for such order flow until systems and rules are in place that would provide CBOE market makers a fair opportunity to compete as a stock exchange. This problem is made especially difficult, according to CBOE, because of the ability of OTC market maker firms with retail orders to execute internally a substantial portion of their order flow. CBOE argues that it is unrealistic for CBOE to be ready to compete on a fair basis by October 1.[11]

Third, the CBOE argues that it is unfair for the Commission, "by inventing the pilot," to "impose on every OTC options market that wishes to avoid the unnecessary and unfair competitive burdens of NASD integrated trading a new trading environment" it has not sought and the terms of which have not yet been articulated. In this connection, the CBOE criticizes the absence of any criteria for determining whether market making in a pilot stock remains "competitive" and "dispersed," and argues that no single measure of "dominance" or "dispersion" can be applied in a uniform manner to both the OTC market and the securities exchanges.[12]

B. Discussion

(1) Competition Issues

(a) *Competitive Unfairness of Excluding Exchanges.* The NASD asserts that approval of side-by-side market making in NASDAQ but not on exchanges would not impose an unfair competitive burden on exchanges.[13]

First, the NASD argues that exchanges already have an unfair competitive advantage over the NASD market due to their monopoly in listed options. The Commission continues to believe, however, that it would be competitively unfair to allow one group of market makers to make side-by-side markets in OTC options and stocks but to forbid another group of market makers from doing the same. The exchanges' existing franchises in options on certain listed stocks does not offset or somehow justify this competitive unfairness.

The NASD also argues that excluding exchanges from the pilot will not subject them to an unfair competitive disadvantage because exchange market makers may become NASDAQ market makers. Such an approach, however, ignores an essential difference between exchange trading and upstairs market making—the presence of a trading crowd on the floor of an exchange. While the NASD's alternative would permit the exchange specialist, or individual competing market maker, to enter quotations and compete with upstairs market makers, it would not provide a similar opportunity for other members of the exchange trading crowd. Thus, while the NASD's alternative permits competition between individual market makers, it does not provide for fair competition between marketplaces. Therefore, Commission continues to believe that allowing side-by-side market making in the OTC market but not on exchanges—if exchanges desire side-by-side market making—would subject exchanges to unfair competitive disadvantages.[14]

(b) *Competitive Fairness of Including Exchanges.* The NASD argues that allowing side-by-side market making on exchanges would be inappropriate because exchange specialists operating on exchange floors have unfair advantages in attracting order flow. According to the NASD, the absence of a "fair and neutral intermarket linkage in a multiple market environment would substantially impair the ability of broker-dealers to provide customers with the best execution of orders." Requiring exchange specialists and market makers to participate via NASDAQ, would, according to the NASD, avoid this problem. The NASD also argues that limiting the pilot to NASDAQ represents a preferable alternative with regard to "surveillance, regulatory concerns and the

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NASD District 7, to Chairman Shad, dated May 24, 1985; Maxwell Beason Jr., Vice President, Equitable Securities Corporation, John S.R. Shad, Chairman, SEC, dated May 30, 1985; John E. Herzog, President, Herzog, Heine Geduld, dated June 5, 1985; Nicholas Kelne, Vice President, Options, R.H. Dickinson & Co., to SEC, dated June 5, 1985; Edward T. Borer, President, Hopper Soliday & Co., Inc., to John S.R. Shad, Chairman, SEC, dated June 3, 1985; J. Stephen Putman, Robert Thomas Securities, Inc. dated May 25, 1985; Don D. Strand, President, Blakely, Strand & Williams, Inc. dated May 21, 1985; Thomas J. McAllister, CFP, McAllister Financial Planning Corp., dated June 7, 1985; Peter B. Madoff, Bernard L. Madoff, to John Wheeler, Secretary, SEC, dated June 27, 1985; Douglas A. Campbell, D.A. Campbell Company, Inc., to John S.R. Shad, Chairman, SEC, dated June 10, 1985; Murray L. Pinebeam, Executive Vice President, Cantor, Fitzgerald & Co., Inc. to John S.R. Shad, Chairman, SEC, dated June 13, 1985; Alan S. Pereira, President, First Equity Corporation of Florida to John S.R. Shad, Chairman, SEC, dated June 12, 1985; H. Michael Collins, President, San Diego Securities Incorporated to John S.R. Shad, Chairman, SEC, dated, June 14, 1985; and Arnold Seidel, President, Morten Seidel & Co., Inc. to John S.R. Shad, Chairman, SEC, *et al.*, dated June 17, 1985; and Michael Silvestri, President, M.H. Myerson & Co., Inc. to Alden Adkins, SEC, dated June 26, 1985.

[9] The NASD points out that there is no restriction in its rules on exchange specialists acting as NASDAQ market makers. Thus, while this NASD alternative would exclude "exchanges" from participation in the pilot, it would not, according to the NASD, exclude exchange market makers or specialists. *See* Petition, *supra* note 3, at 31.

[10] Letters from Nicholas Kelne, Vice President, Options, R.H. Dickinson & Co., and letter from Michael Silvestri, M.H. Myerson & Co., Inc., *supra*, note 8. The other broker-dealers who commended suggested that the number of options on NMS Securities in the pilot be increased and that options on listed stocks should be included as well.

[11] The CBOE also indicates that approval of side-by-side market making OTC but not on exchanges would be inconsistent with section 15A(b)(9) of the Act by imposing a burden on competition not necessary or appropriate in furtherance of the Act's purposes.

[12] CBOE letter, *supra* note 5, at 6. The CBOE also raised additional concerns regarding the effects of UTP, as such, on the structure of the securities markets and the incentives for listing. In this regard, CBOE suggests that if the Commission nonetheless determines to proceed with the pilot and grant exchanges UTP in certain NMS Securities: (1) A uniform short sale rule should apply to the pilot stocks; (2) transaction and quotation information should be collected and disseminated on a consolidated basis; (3) pilot stocks should be deemed qualified for trading through ITS and CAES and subject to applicable trade-through rules; (4) the Commission should consider adoption of all-markers order exposure and uniform priority rules for these stocks; (5) the governance provision of the intermarket trading linkage and information systems must be modified to provide CBOE (and other new markets) an appropriate voice thereunder; and (6) regulatory disparities in trading requirements between the OTC and exchange markets should be eliminated. These issues are discussed in the UTP Release, *supra* note 2.

[13] NASD Petition, *supra* note 3, at 29. As indicated above, the NYSE, PSE and CBOE all argued that allowing side-by-side market making in the OTC markets but not on exchanges would result in competitive unfairness to the exchanges.

[14] The NASD also argues that if exchanges are not excluded from the pilot "premium" listed stocks should be included. This comment is discussed in *infra* in section II B.1.c.

Commission's need for data to . . . evaluate the success of the pilot."[15]

As discussed in the OTC Options Release, the Commission does not believe that the market linkage facilities the NASD describes are necessary conditions to multiple trading because the benefits that multiple trading provides outweigh the short-term inefficiencies that may result from the absence of such facilities.[16] The Commission also found that such facilities should not be mandated, at least until it was clear that such a linkage was economically justified. These findings are equally applicable to multiple trading between the OTC market and exchanges as for multiple trading among exchanges.[17] In addition, side-by-side market making both in the OTC market and on exchanges appears likely to provide more, not less, data with which to evaluate the trading experience during the pilot. Finally, the Commission believes that, with the equity audit trail being developed by the NASD and the options audit trails possessed by each of the options exchanges, surveillance of trading under the pilot will be satisfactory, whether such trading occurs OTC or on an exchange.[18]

As discussed above, the CBOE, on the other hand, argues that exchanges participating in the pilot, particularly the CBOE, would be at an unfair competitive disadvantage. The fact that, in order to participate in the pilot, CBOE would have to become a new entrant to the stock market, however, is not a "burden on competition" imposed upon CBOE by the Commission or by the Commission's rules or regulations. Indeed, the purpose of allowing CBOE and other exchanges to participate in the pilot is to remove obstacles that otherwise might exist and allow the exchanges an opportunity to compete. The Commission, in prividing this opportunity, cannot assure that all competitors will be on an absolutely equal footing; rather, the Commission has an obligation to ensure that the competition that results is not restricted in a manner that is not necessary or appropriate in furtherance of the purposes of the Act. In this connection, the Commission notes that the Commission allowed trading in options on OTC stocks on a non side-by-side basis pending its decision on exchange participation in the pilot, thus permitting CBOE and other established options exchanges to trade options in OTC stocks before the NASD, a new options market entrant, was ready to commence trading, despite claims by the NASD that this later start was competitively unfair.[19] The Commission also permitted established options exchanges to multiply trade these options, despite claims by new entrants, NASD and BSE, that this would be competitively unfair.[20] In making these determinations, the Commission decided that it could not, and would not, attempt—in the name of competitive fairness—to ameliorate the results of business decisions made by the various competitors in creating and operating their respective markets. Instead, the Commission consistently sought to ensure only that there are no significant regulatory disparities among those competitors. Up until now, the CBOE has made a conscious business decision to remain an options-only exchange. The Commission does not believe it would be appropriate to delay the introduction of new trading programs for other marketplaces solely to allow the CBOE to reposition itself as a stock exchange.

Second, the competitive unfairness CBOE alleges all exchanges will confront in the side-by-side pilot—essentially that upstairs firms can internalize order flow—is an allegation that exchanges have made before in the proceedings leading to the adoption of Rule 19c–3 under the Act.[21] As discussed in the OTC Options Release, exchanges have maintained their market share in Rule 19c–3 stocks despite initial active market making by many OTC firms. In that context, most firms continued to send their order flow to exchanges because (1) they did not find it profitable to make markets in Rule 19c–3 stocks, (2) they did not wish to send order flow to competitors in that stock, or (3) they preferred an auction market environment. The Commission recognizes that because the six pilot stocks are now solely traded in the NASDAQ market, brokerage firms may make different decisions as to where to allocate their customer order flow in the stock and options than they did for Rule 19c–3 securities. The Commission believes, however, that the Rule 19c–3 experience indicates that these decisions are not preordained simply by the firm's ability to internalize customer order flow.[22] Indeed, the NASD believes that the Rule 19c–3 experience indicates that upstairs firms are at an unfair disadvantage in competing with exchange specialists and market makers.[23]

In approving, in concept, the NASD's proposal to trade options OTC and the side-by-side pilot, but only if it determined to permit exchange participation, the Commission believed that such a pilot would be consistent with the Act. The Commission believes that the pilot, by allowing exchange and OTC market makers to make side-by-side markets in the same stocks and their related options, subject to comparable regulatory restrictions (giving due consideration to structural differences in these two trading systems), is structured to provide exchange and OTC market makers an opportunity to compete fairly. Accordingly, rather than either speculate on which system—exchange or OTC—will be more successful competitively or attempt to require that each system operate in an identical fashion, the Commission believes that the market place should determine which system, if any, is more successful in attracting order flow.[24] As the Congress noted in connection with the 1975 Amendments,[25] while "the goals of the [NMS] . . . are nearly universal in scope . . . [t]his is not to say that the goal of the legislation is to eliminate distinctions between the exchange market and [OTC] markets . . . some present distinctions may tend to disappear in a [NMS] but it is not the intention of the bill to force all markets

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[15] Petition, *supra* note 3, at 32.

[16] OTC Options Release, *supra* note 1, 50 FR at 20332.

[17] As discussed in section II B.1.a., the Commission does not believe that allowing exchange specialists and market makers to participate in the pilot as NASDAQ market makers is a feasible alternative. For the reasons discussed in the text above, the Commission believes that competition under the pilot between OTC and exchange market makers will occur on fair terms; thus, the Commission also finds that this proposed alternative is unnecessary.

[18] *See* UTP Release, *supra* note 2.

[19] OTC Options Release, *supra* note 1, 50 FR at 20333. *See* also Securities Exchange Act Release No. 22044, May 12, 1985, 50 FR 21532 (approving Phlx National OTC Index Option).

[20] OTC Options Release, *supra* note 1, 50 FR at 20329 n.137 and 191; and 20331–20332.

[21] 17 CFR 240.19c–3 (1985).

[22] OTC Options Release, *supra* note 1, 50 FR at 20332 n.221.

[23] NASD Petition, *supra* note 3, at 20–21.

[24] In adopting Rule 19c–3, the Commission concluded that, at least in that limited context, the competitive benefits offered by the Rule, combined with the experiential benefits to the Commission and the industry of observing the trading that would occur if the Rule were enacted, outweighed the potential risks that might result from enacting the Rule. Securities Exchange Act Release No. 19666, June 11, 1980, 45 FR 41125 at 41128–30. In coming to this conclusion, the Commission fully considered internalization concerns identified by some commentators, including adverse competitive effects on exchange market makers. *Id.*, 45 FR at 41128. The Commission believes this reasoning is equally applicable in the context of the limited six stock side-by-side market making pilot.

[25] Securities Acts Amendments of 1975 (Pub. L. No. 94–29, June 4, 1975).

for all securities into a single mold." [26] The Commission will, of course, monitor the operation of both systems and watch for opportunities whereby either system can be improved in a manner which furthers investor protection or the integrity of and confidence in the trading markets.[27]

(c) *Inclusion of Listed Stocks.* As an alternative to the exclusion of exchanges from the pilot, the NASD suggests that "premium" listed stocks be included in the pilot. The NASD argues that it would be competitively unfair to allow side-by-side market making in OTC stocks and their related options while not simultaneously allowing side-by-side trading in listed stocks and their related options. The Commission disagrees.

First, with respect to the six stocks included in the pilot, all exchange specialists and OTC market makers would have an opportunity to participate. So, as these six stocks a competitively fair environment would exist.

Second, the NASD's proposed alternative is premature. The NASD has not previously sought to trade options on "premium" listed stocks.[28] In the event the NASD submits such a filing, the Commission, of course, would review it under the standards and procedures set forth in the Act and Commission rules. However, the Commission does not believe, nor has the NASD offered, any persuasive reason why Commission action on side-by-side trading of OTC stocks and options on those stocks pursuant to the pilot must be delayed pending Commission substantive review of and action on an integrated market making pilot involving listed stocks that no market has yet requested.

In this regard, without seeking to address on the merits the question of a side-by-side pilot involving listed stocks, the Commission notes that such a proposal would raise issues distinct from those raised by the integrated market making pilot in OTC stocks and their related options. Historically, the Commission and commentators have found that side-by-side market making by exchange specialists, [29] who dominate order flow in listed stocks, [30] always has raised regulatory concerns of a different degree than side-by-side market making in more dispersed and competitive markets.[31] Extension of a side-by-side pilot in premium listed stocks to NASDAQ market makers also would require that exchange off-board trading rules be lifted in these stocks. While the Commission notes the relationship asserted by the NASD and others between granting exchanges UTPs (to allow exchange market makers to trade OTC stocks and their related options side-by-side) and the removal of off-board trading restrictions (to allow NASDAQ market makers to trade listed stocks and their related options side-by-side), as the Commission has made clear in the UTP release it views these matters as district, and believes each must be addressed separately on its own merits.[32]

(2) *Number of Stocks in the Pilot.* The NASD argues that the OTC Options Release both fails to explain why these six stocks are appropriate and fails to explain why more stocks would not be appropriate. The Commission believes that the OTC Options Release adequately explains both the basis for including the six pilot stocks chosen and the basis for not approving the NASD's proposal as submitted.

In summary, the NASD proposal—which essentially would have allowed side-by-side market making in all options eligible OTC stocks with at least 15 market makers—raised concerns that side-by-side market making could occur in markets that are not both highly competitive and characterized by dispersal of order flow among market makers. The Commission concluded that, because of the potential regulatory risks that might arise in such markets, side-by-side market making should occur initially only in clearly competitive, dispersed markets. Moreover, the OTC Options Release noted that the six stocks chosen have sufficient depth, liquidity and dispersion of order flow to reduce these concerns to manageable proportions, so long as comprehensive equity and options audit trails are in place.[33]

While the NASD suggests that the number of pilot stocks should be increased to at least 20, and should include stocks in a greater variety of industries, it fails to justify these suggestions in terms of the regulatory concerns that underlie the pilot's more limited approach.

Thus, the NASD attempts to justify the inclusion of more stocks in the pilot on the ground that six stocks and the one year duration of the pilot "mute" the economic incentives for NASDAQ market makers to commit the resources necessary to participate in the pilot. The NASD also argues that the inclusion of a larger number of NMS Securities (and listed stocks) from a broader cross-section of industries would make it possible to gather more useful empirical data during the pilot. In the absence of any justification for concluding that such economic incentive concerns should override the Commission's regulatory concerns, and given the significance of these concerns, the Commission concludes that the number of stocks in the pilot should not be increased.[34] Moreover, the Act does not

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[26] Senate Comm. on Banking, Housing & Urb. Affs., *Report to Accompany S. 249: Securities Acts Amendments of 1975*, S. Rep. No. 94–75, 94th Cong., 1st Sess. 7 (Comm. Print 1975).

[27] The CBOE also argues that, in the long term, competition in the stock market will be adversely affected by the side-by-side pilot. The Commission does not believe that a limited, six stock pilot is likely to have the "profound" effects CBOE alleges. Indeed, whether side-by-side trading will have structural consequences on the securities markets is one purpose of commencing such trading on a limited pilot basis. Accordingly, the Commission finds it unnecessary at this time to seek to determine with finality whether side-by-side trading will have the long-term impact the CBOE asserts.

[28] The NASD originally included in its filing a request to trade options on Rule 19c–3 stocks. While the term "premium" is not defined in the NASD Petition, we read the NASD's request as extending primarily, or perhaps exclusively, to listed stocks that are not covered by Rule 19c–3. Any such pilot would raise substantial new questions regarding the further removal of exchange off-board trading restrictions and the expansion of options multiple trading.

[29] Because it would raise competitive concerns if OTC market makers were allowed to make side-by-side markets in listed stocks and their related options, but exchange specialists, and market makers were not allowed to do so, we assume, for purposes of discussion, that exchange specialists also would be permitted to participate in any extension of the pilot to listed stocks.

[30] The NYSE accounts for approximately 85% of volume in consolidated share volume (*i.e.*, volume on all exchanges) in its listed stocks.

[31] *See e.g.*, SEC, *Report of the Special Study of the Options Markets*, H.R. Rep. No. IFC 3, 96th Cong. 1st sess. (Comm. Print 1978), at 870–828; and Securities Exchange Act Release No. 21710, February 4, 1985, 50 FR 5708 (approving NYSE specialists use of options for hedging purposes).

[32] A listed stock side-by-side pilot would also raise discrete questions regarding the expansion of multiple trading for options on listed stocks. OTC Options Release, *supra* note 1, 50 FR 20330–20333.

[33] *Id.*, 50 FR at 20333.

[34] Moreover, the Commission in approving in concept a side-by-side trading pilot carefully considered these issues and indicated that the economic incentives associated with the pilot are adequate. The NYSE, for example, commenced an options program with only one index option. Subsequently the NYSE began an individual options program with only three individual stock options. Thus, at least one SRO, and its membership, has been able to begin options trading with a smaller number of products. Indeed, although the NASD contends that six stocks are too few to create sufficient economic incentives for participation, it also argues that the six pilot stocks represent the "significant portion of those securities believed likely candidates for application for exchange UTP." NASD Petition, *supra* note 3, at 18–19. Indeed, the NASD provides data in its Petition showing that the six pilot stocks represent 5.6% of the total volume of trading in NASDAQ securities, 9.3% of total volume of NMS Securities and 20.3% of total capitalization of the top 100 NMS Securities. *Id.* Finally, the Commission notes that it has recently approved a

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contemplate the approval of a trading environment simply to obtain more interesting research data. Rather, the foremost concern of the Commission is, and must be, that the proposal ensures the protection of investors and is consistent with the other purposes of the Act. Thus, even if an expanded pilot might provide interesting information, because the Commission cannot conclude, at this time, that the regulatory risks associated with such an expansion are minimal, the Commission continues to believe, for the reasons stated in the OTC Options Release, that a six stock pilot is the appropriate starting point.[35]

(3) *Exchange Participation.* As discussed in the OTC Options Release, a premise of the side-by-side pilot is that the markets for the six pilot stocks are sufficiently deep, liquid and dispersed that the regulatory concerns raised by side-by-side market making can be addressed by appropriate surveillance systems so long as equity and options audit trails are in place. While, as discussed above, the Commission cannot predict the extent to which exchanges will attract orders in the six pilot stocks, it believes it unlikely, in the absence of an issuer listing decision, that any exchange will initially receive a dominant market share in any of those stocks. Therefore, the Commission sees no reason why the same premise underlying approval of OTC side-by-side trading should not be applicable to exchange specialists and market markers, who would initially, at least, constitute additional competitors in these deep, liquid and dispersed markets.[36] The Commission also believes that the increased efficiency and market liquidity which should be obtained from the side-by-side pilot can also be anticipated from exchange participation in that pilot.[37] The Commission agrees with CBOE, however, that, to participate in the pilot, an exchange would of course have to file an appropriate submission pursuant to Rule 19b-4 under the Act. Subject to an exchange making the necessary Rule 19b-4 filing and surveillance enhancements, the Commission believes that exchange participation in the pilot would be appropriate.[38]

The Commission believes that the markets for the six pilot stocks are such that side-by-side trading in the stocks and their related options will not give rise to unmanageable surveillance problems during the one-year duration of the pilot.[39] At the conclusion of the one year period, the Commission believes it will be in a better position to determine the standards that might be appropriate in order to allow side-by-side trading in any additional stocks, or indeed, to allow side-by-side trading to continue in the six pilot stocks.[40]

(4) *Commencement Date.* The NASD also suggests that it is unfair not to have required the exchanges to wait to commence trading options on NMS stocks until the NASD is ready, but to require the NASD to wait to commence trading side-by-side until the exchanges are provided an opportunity to participate in the side-by-side pilot.

In brief, the Commission allowed the exchanges to commerce trading when they were operationally ready to do so, and determined that it would be unfair to delay their programs because the NASD had chosen not to prepare itself for a start up of trading the same time.[41] The Commission also made clear that, aside from the question of side-by-side trading, the NASD proposal appeared consistent with the Act and could be approved whenever the NASD so requested.[42]

In contrast, the Commission delayed the side-by-side pilot for two reasons. First, the Commission determined that the side-by-side pilot would only be fair if the exchanges were given an opportunity to participate, a matter that was not before the Commission at the April 16th meeting. In addition, exchange participation was contingent on the Commission's decision of whether to grant the exchanges UTP in the six pilot stocks, a matter that was under review by the Commission at the time of the April 16th meeting. Thus, the Commission was unable to determine whether exchanges would be able to participate in the pilot. Hence, some period of delay was needed to enable the Commission to deliberate on the questions of extending to exchanges OTC/UTP and exchange participation in the side-by-side pilot.

Second, the target start-up date of the pilot—October 1—was designed to coincide with the earliest time that the NASD had indicated it could have in place the surveillance systems (equity and options audit trails) necessary to support side-by-side market making in the pilot program. The NASD had informed the Commission staff that it now estimates that it will not have an equity audit trail in place until January 1, 1986, at the earliest. Similarly, the implementation of transaction and quotation reporting plans for OTC securities which was set as a condition for the grant of UTP will take several months.[43]

While no one has requested a postponement of the Commencement of the pilot, because it is now clear that the NASD's best, *bona fide* efforts will result in an equity audit trail no sooner than January 1, 1986, the Commission believes that it is appropriate to postpone the commencement of the pilot to January 20, 1986, to coincide with the first Monday after the January expiration date.[44]

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proposal for the NASD to commence trading two OTC index options. Securities Exchange Act Release No. 22484 (September 13, 1985). The NASD has indicated it will begin index options trading on September 27, 1985, notwithstanding the availability of any other OTC options products.

[35] The Commission does not believe the number of industries represented in the pilot is relevant. The principal purpose of the pilot is to determine whether particular stocks with specific trading characteristics (*i.e.*, market maker participation, dispersion of order flow, firm trade and quote information, among other things) can be traded side-by-side with their related options without raising undue regulatory concerns. Accordingly, the fact that the six stocks with the characteristics desired fall into but two industry groups (Computer technology and communications) in no way impairs the validity of the pilot. Nor has the NASD suggested that there are particular characteristics of these industries, or the stocks of companies in these industries that would somehow render integrated market making in these stocks *per se* inappropriate or non-comparable with trading of stocks of companies in other industries.

[36] It is possible that, during the pilot, an exchange may establish a significant market share. The Commission does not believe, however, that it is necessary to establish standards for the pilot which would limit a market's share of volume or otherwise inhibit such a development. In designing the pilot, and particularly in limiting it to six stocks, the Commission has allowed for the possibility of market concentration and believes that the surveillance concerns would be manageable. Nevertheless, the Commission will, of course, monitor trading during the pilot to determine if the market share of any participant raises any regulatory concerns.

[37] OTC Options Release, *supra* note 1, 50 FR at 20321–22.

[38] In this connection, the Commission emphasizes that, once equity and options audit trails and other necessary surveillance enhancements are in place, the pilot may commence. Should the exchanges decide not to avail themselves of the opportunity to participate in the pilot, the NASD can proceed at such time by itself.

[39] Should manipulation or other concerns arise during the pilot period in any of the six stocks or their related options, the Commission, of course, would be prepared to take action promptly to address the concerns.

[40] In that regard, the Commission might also determine that it was inappropriate to allow the pilot to continue under any circumstances.

[41] OTC Options Release, *supra* note 1, 50 FR at 20333.

[42] *Id.*, 50 FR at 20321.

[43] *See* UTP Release, *supra* note 2.

[44] January 20 is the first trading day in January after the expiration of January series of options. The OTC Options Release also made clear that October 1, 1985, was a tentative date.

III. The Other Portions of the NASD Petition

As indicated above,[45] the NASD commented on the design of the side-by-side pilot program and the timing of commencement of trading of options on OTC stocks. In its Petition, the NASD also questions other aspects of the April 16th meeting and OTC Options Release. The NASD argues that (1) certain procedural irregularities taint the Commission's decisions, particularly as to multiple trading of OTC options and the side-by-side pilot; (2) it is competitively unfair to allow the exchanges to trade options on OTC stocks but not to allow the NASD to trade options on listed stocks; (3) the Commission should make clear that its decision to approve the multiple trading of index options does not affect any legitimate proprietary rights in such indexes. Even assuming that the Commission's procedures regarding reconsideration are applicable here,[46] we believe the NASD's arguments are unpersuasive.

A. Procedural Irregularities

The NASD claims that, in connection with its April 16th meeting, the Commission did not comply with the applicable public notice requirements.[47] The NASD states that the notice of the Commission's April 16th meeting, issued pursuant to the Government in the Sunshine Act, was not exhaustive in listing the issues to be discussed. The NASD also argues that the Commission failed to comply with the notice requirements of the Exchange Act and the rules thereunder. These failures, the NASD claims, deprived it of due process and equal protection of the law.

The NASD was accorded every procedural protection to which it was entitled. The Commission's Sunshine Act notice fully complied with the statutory requirements. The purpose of that notice, like other similar notices of upcoming meetings, is merely to announce the date of an upcoming meeting and the subjects to be discussed therein. It is issued to give interested persons an opportunity to attend the meeting (and representatives from the NASD were at the April 16th meeting), not for the purpose of providing an opportunity to submit comments.[48]

Further, the Commission provided the NASD with an opportunity to comment on the subject matter of the meeting. In April 1984, the Commission published a release which framed the issues to be considered in these proceedings, indicated certain preliminary views and specifically solicited comments.[49] The NASD, like many other commentators, availed itself of this opportunity by submitting comments.[50] Thus, the NASD not only had adequate notice of the issues to be discussed at the April 16th meeting, but the NASD also actually commented on these issues (as did numerous other commentators). The Commission noted and addressed these comments in the OTC Options Release.[51]

B. Competitive Fairness

The gravamen of the NASD's Petition seems to be that it is competitively unfair to permit the multiple trading of options on OTC stocks while (1) not approving, and indeed discouraging, the NASD proposal to trade options on exchange listed stocks which are not covered securities under Rule 19c–3 under the Act ("19c–3 stocks")[52] and (2) not allowing the multiple trading of options on all eligible listed stocks.

The NASD correctly notes that it agreed to deferral of Commission action on the listed options proposal at the request of the Commission staff.[53] Once the NASD made its decision to defer, the issue of multiple trading of listed stocks was not before the Commission at the April 16th meeting.[54]

Moreover, the Commission notes that the NASD has not in any way been actually prejudiced by and Commission action or inaction as to options on 19c–3 stocks, for the simple reason that the NASD is apparently still not ready operationally to trade any options.[55] Further, the NASD has not explained why, nor does the Commission perceive a clear basis for concluding that, the NASD would be in a better position to compete in the market for options in OTC stocks if it also could trade options on all or certain listed stocks.

Nevertheless, the Commission believes that the OTC Options Release adequately explains why it is not competitively unfair to permit the multiple trading of options on OTC stocks but not allow the multiple trading of options on listed stocks. The OTC Options Release explains the reasons why the Commission does not currently approve the multiple trading of listed stocks (essentially the potential disruption of existing market structures); and why multiple trading of options on OTC stocks does not raise these concerns. The OTC Options Release also explains why the "unfair advantage" that the NASD and others[56] argue will result is, in fact, simply the consequence of competition between new entrants and established market participation.[57] For the reasons stated

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[45] *Supra* note 4.

[46] *See* Commission Rule of Practice 21(e), 17 CFR 201.21(e).

[47] NASD Petition, *supra* note 3, at 4. The NASD also claims that it was inappropriate for the Commission to rely upon non-public staff memoranda at the April 16th meeting. Subsequent to the April 16th meeting the NASD sought these memoranda pursuant to the Freedom of Information Act. Letters from John J. Flood, Senior Attorney, NASD, to Edward A. Wilson, FOIA Officer, SEC, dated May 24, 1985. The Commission denied that this request in reliance upon 5 U.S.C. 552(b)(5). Letter from Edward A. Wilson, FOIA Officer, SEC, to John Flood, Senior Attorney, NASD, dated June 11, 1985.

[48] *See* Senate Committee on Governmental Operations, *Report to Accompany S. 5: Government in the Sunshine Act*, S. Rep. No. 94–354, 94th Cong., 1st Sess. 1–2 (Comm. Print 1975). Indeed, the remedy for violations of the Government in the Sunshine Act is not setting aside action taken at meetings improperly noticed or closed, but rather is to provide transcripts and minutes of meetings, 5 U.S.C. 552b(h) (1) and (2). Although the Commission does not believe the Sunshine Act notice was defective, the NASD has been provided transcripts of the Commission's discussion that occurred during the April 16th meeting and the resulting Commission minute.

[49] Securities Exchange Act Release No. 20853, April 12, 1984, 49 FR 45291.

[50] Among other things, the NASD stated that options on OTC stocks initially should be traded exclusively in NASDAQ and that the multiple trading of options on OTC stocks should not be allowed unless the Commission also allowed the NASD to multiply trade options on listed stocks. Letter from Gordon Macklin, President, NASD to George A. Fitzsimmons, Secretary, SEC, dated June 15, 1984. The Commission notes that the NASD's comments on the multiple trading of options on OTC stocks contained in its Petition for Reconsideration are substantially similar to its comments submitted previously and discussed in the OTC Options Release.

[51] OTC Options Release, *supra* n.1, 50 FR at 20329 n.192 and 20331–32.

[52] The term "19c–3 stocks" refers to stocks listed on an exchange after April 26, 1979. These stocks are not subject to exchange off-board trading restrictions. *See* Rule 19c–3 under the Act, 17 CFR 240 19c–3 (1984).

[53] Letter from John J. Flood, Attorney, NASD to Alden Adkins, Division of Market Regulation, SEC, dated April 8, 1985, and OTC Options Release, *supra* note 1, 50 FR at 20316, n.62.

[54] Subsequent to the April 10th meeting, the NASD did withdraw this consent. Letter from John S. Flood, Attorney, NASD, to Alden Adkins, Attorney, Division of Market Regulation, dated June 17, 1985.

[55] The Commission notes that in the OTC Options Release it specifically approved the continued multiple trading of options on any OTC stock that lists on an exchange after multiple trading of options on the stock commences. OTC Options Release, *supra* note 1, 50 FR at 20331, n.214. In other words, the Commission already has approved, in part, the multiple trading of options on stocks that become 19c–3 stocks after standardized options are multiply traded on the stocks. If the NASD obtains approval of its propsoal to trade options on 19c–3 stocks, it could of course multiply trade such options, just as the exchanges can.

[56] The Boston Stock Exchange, Inc., another potential new options entrant, made essentially the same comment.

[57] OTC Options Release, *supra* note 1, 50 FR 20331–20332. *See also* Section II B.1.b., *supra*,

Continued

in the OTC Options Release, the Commission does not believe that as a matter of logic or competitive fairness it is necessary that the Commission couple its consideration of issues related to options on OTC stocks with its review of those same matters in connection with options on listed stocks.

C. Multiple Trading of Index Options

As discussed above, the NASD also suggests that the Commission should not have approved the multiple trading of index options. It requests that this approval either be reconsidered or that the Commission make clear that the approval of multiple trading of index options does not represent "a legal determination by the Commission with respect to the validity of any copyright, trademark, service mark or related claims" with respect to the index.[58]

The Commission believes that the issue of the multiple trading of index options was properly before the Commission at its April 16th meeting and continues to believe that its approval of the multiple trading of index options was appropriate and consistent with its previous decisions to allow the multiple trading of index options among exchanges.[59] The Commission recognizes that the primary effect of this policy is to allow more than one SRO to trade options on similar indexes.[60] Indeed, the Commission in announcing its decision on the multiple trading of index options has not been faced either with proposals to trade options on identical indexes or with any claims of infringement of copyright or other proprietary rights.[61]

discussing competition between the OTC and exchange markets under the side-by-side pilot.

[58] NASD Petition, *supra* note 3, at p. 35.

[59] *See* Securities Exchange Act Release No. 19264 and 20075, November 22, 1982 and August 12, 1983, 47 FR 53981 and 48 FR 37556.

[60] *Id.* For example, the Commission recently approved the NASD's proposals to trade options on two indexes comprised of 100 NMS stocks each (Securities Exchange Act Release No. 22404, September 13, 1985); these contracts will trade simultaneously with Phlx's existing but not identical 100 stock NMS index option contract, the "National Over-the-Counter Stock Index."

[61] The NASD also suggests that the Phlx's amendment to its off-board trading rules was inadequate because it covers only options on indexes composed "entirely" of OTC stocks, thus not covering an index containing, for example, 99 OTC stocks out of 100. The Commission can address the NASD's concerns if the Phlx (or anyone else) proposes such an index option. Such a proposal would have to be made under Rule 19b–4, and thus the Commission would be able to impose appropriate conditions (including amendments of off-board trading rules) on approval of such a proposal.

IV. Conclusions

For the reasons discussed in the OTC Options Release, the Commission continues to believe that side-by-side market making in the six pilot stocks should offer substantial market benefits and, with equity and options audit trails in place, also should reduce to surveillable levels the regulatory concerns raised by side-by-side market making. The Commission also believes that the inclusion of exchange specialists and market makers does not appear to create any additional or unique regulatory problems and provides all relevant markets a fair competitive opportunity. The Commission believes that the pilot can commence on January 20, 1986, if equity and options audit trails and other necessary surveillance enhancements are in place. For the reason discussed above, and in the OTC Options Release, the Commission also denies the NASD's Petition.

Dated: September 20, 1985.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85–23137 Filed 9–26–85; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; Getty Petroleum Corp

September 19, 1985.

The above name issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the Common Stock, $.10 Par Value, of Getty Petroleum Corporation ("Company"), from listing and registration on the American Stock Exchange, Inc. ("Exchange").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Getty Petroleum Corporation has considered the direct and indirect costs and expenses attendant with maintaining the dual listing of the Common Stock on the New York Stock Exchange. The Company does not see any particular advantage in the dual trading of the stock and believes that dual listing would fragment the market for the Common stock.

Any interested person may, on or before October 10, 1985 submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned, above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–23134 Filed 9–26–85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC–14730; File No. 812–6091]

Application and Opportunity for Hearing; The Northwestern Mutual Life Insurance Co., et al.

September 20, 1985.

Notice is hereby given that the Northwestern Mutual Life Insurance Company ("Northwestern"), a Wisconsin mutual life insurance company with its executive offices at 720 East Wisconsin Avenue, Milwaukee, Wisconsin 53202; Northwestern Mutual Variable Life Account (the "Account"), registered under the Investment Company Act of 1940. (the "Act") as a unit investment trust, and established by Northwestern in connection with the issuance and funding of certain single premium variable life contracts ("contracts"); and NML Equity Services, Inc., the principal underwriter for the contracts, (collectively, "Applicants"), filed an application on April 12, 1985 and amendments thereto on July 22, September 3, and September 13, 1985, for an order of the Commission pursuant to section 6(c) of the Act exempting Applicants from section 2(a)(32), 2(a)(35), 22(c) 22(d), and (27(c)(1) of the Act and Rules 6e–2(b)(1), (b)(12), (b)(13)(iv), (c)(1)(i), (c)(4), and 22c–1 thereunder, in connection with the issuance and funding of the contracts. All interested persons are referred to the application on file with the Commission for a statement of the representation made therein, which are summarized below, and are referred to the Act and rule thereunder for a statement of the relevant provisions.

Applicants represent that the Account is a separate account to which assets are allocated from time to time to support benefits payable under Northwestern's variable life insurance

contracts. Applicants presently are offering certain periodic premium variable life insurance contracts, which are subject to a front-end sales load, and intend to offer a new single premium variable life insurance contract to be funded through the Account. The single premium contract will differ from Northwestern's existing periodic premium contracts in certain respects, including the fact that no front-end sales charge will be deducted from the single premium payment and that the surrender values are structured so as to impose what may be considered to be the imposition of a contingent deferred sales load ("CDSL"). Applicants state that the surrender values under the contract will be adjusted to reflect a charge of not more than 9% of the contract's tabular cash value at the beginning of the first contract year, declining over time thereafter until the charge reaches 0% at the end of the tenth contract year. Applicants represent that shares of the fund in which the assets of the Account are invested are voted pursuant to the instructions of the contractowners. The number of shares for which the owner of a single premium contract may give instructions will not be reduced during the first ten contract years by reason of the deduction for sales expenses which would be made if the contract were surrendered. Applicants represent that the deferred sales charge will never exceed 9% of the single premium, excluding the administrative charge of $150 which is deducted from the premium. Applicants further represent that in no sense will Northwestern make any deduction for sales expenses except when a single premium contract is actually surrendered. In the event of a partial surrender of a single premium contract, the surrender deduction will be made only on that portion of the contract which is surrendered and not on the entire tabular cash value. In the event of a conversion of a single premium contract into a fixed contract within the first 24 months after issuance, as permitted by Rule 6e–2(b)(13)(v), the equitable adjustment of cash values will result in the collection of a surrender deduction by Northwestern, but there will be no duplication of sales loads in connection with the conversions.

Applicants assert that their deferred sales load will benefit the public because, among other things, it will permit the purchaser to participate in the investment experience of a larger amount than would be the case with a traditional deduction from the purchase price. Applicants also state that the deferred sales charge is consistent with the policies of the Act as applied under Rule 6e–2 to variable life insurance. Applicants acknowledge, however, that certain provisions of Rule 6e–2 are, by their literal terms, arguably inconsistent with a deferred charge for sales expenses. Applicants therefore request relief in order to eliminate any questions regarding full compliance with the Act and the rules thereunder.

Applicants make various specific arguments in support of the requested relief. Regarding section 2(a)(35) and Rules 6e–2(b)(1) and (c)(4), Applicants assert that although these provisions reflect an assumption that any charges for distribution expenses will be taken as deductions from premiums, the purpose of these provisions is to define the amounts which are subject to the sales load limitations of the Act and the rules thereunder, not to limit the timing of the sales load charge.

Applicants also seek exemptive relief from sections 2(a)(32) and 27(c)(1) of the Act and Rules 6e–2(b)(12) and (13)(iv) thereunder, to the extent that such provisions do not contemplate the imposition of a sales charge at the time of redemption. Applicants assert that because the deferral of a sales charge does not affect the purpose of the charge, the sale of investment company securities with a deferred charge for distribution costs is not fundamentally inconsistent with the redeemability requirement of section 2(a)(32). Applicants also assert that the deferral of sales charges is not unreasonable, unfair or discriminatory within the meaning of Rule 6e–2(b)(12).

With respect to section 22(c) of the Act and Rule 22c–1, Applicants assert that Rule 6e–2(b)(12) affords exemptive relief from these provisions with respect to certain variable life insurance "redemption procedures". Applicants acknowledge that because these provisions are drawn in terms of a mechanism for determination of surrender values, the imposition of a charge at surrender arguably raises some question. Applicants assert, however, that the deferred sales charge has no impact on security holders who do not redeem, and therefore does not result in the dilution of values which Rule 22c–1 was designed to prohibit; and that the proposed single premium policies will have cash surrender values determined on the basis of forward pricing, meeting any such requirement in Rules 6e–2(b)(12) and 22c–1. Applicants also request exemption from Rule 6e–2(c)(1)(i), which defines "variable life insurance contract" in terms of a cash surrender value that varies to reflect the investment experience of a separate account, to the extent necessary to reconcile this provision with the cash surrender values under the Applicants' contracts.

Finally, Applicants requet exemption from section 22(d) and Rule 6e–2(b)(12)(ii), the latter of which grants exemption from the uniform offering price requirements of the former. Applicants submit that the use of a single separate account for both periodic premium contracts with a front-end sales load and single premium contracts with a surrender charge does not raise any significant issue in the context of the Act's requirement for a uniform offering price because Rule 6e–2(b)(12)(ii) expressly contemplates separate accounts funding more than one "class or series" of contracts. Applicants also assert that Rule 6e–2(b)(12)(ii) contemplates that prices will differ depending on differences in the securities being offered and that there is no violation of the Rule so long as premiums are reasonable, fair and not discriminatory to the interests of contract owners of the same class or series.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 15, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request shall be served personally or by mail on Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–23135 Filed 9–26–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 14735 (File No. 812-6171)]

Prudential-Bache Government Plus Fund, Inc.; Application for an Order Permitting Quarterly Distributions of Long-Term Capital Gains

September 23, 1985.

Notice is hereby given that Prudential-Bache Government Plus Fund, Inc. ("Applicant"), One Seaport Plaza, New York, NY 10292, filed an application on August 5, 1985, requesting an order of the Commission, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from the provisions of section 19(b) of the Act and Rule 19b–1 thereunder to the extent necessary to permit quarterly distributions of long-term capital gains on options and futures transactions. All interested persons are referred to the application on file with the Commission for a statement of the representations therein, and to the Act and the rules thereunder for the text of their relevant provisions.

Applicant is a diversified open-end management investment company whose investment objective is to seek a high current return by investing primarily in United States Government securities and obligations issued or guaranteed by United States Government agencies or instrumentalities, writing exchange-traded covered put and call options ("Treasury Options") on such securities and entering into closing purchase and sale transactions with respect to certain of such options. Applicant states that it also enters into purchase and sale transactions of interest rate futures contracts ("Future Contracts") and options thereon ("Futures Options") in order to hedge its portfolio against a decline in value resulting from an adverse change in interest rates.

Applicant states that it declares daily dividends, payable monthly, of its net investment income from interest on debt securities. Applicant also states that it declares and distributes quarterly its net short-term capital gains, consisting of the short-term portion of net gains from transactions in options on United States Government securities, transactions in Futures Contracts and Futures Options and of net gains from the sales of portfolio securities held for less than six months. Any long-term capital gains are currently distributed annually.

Applicant represents that under the Internal Revenue Code of 1954 (the "Code"), Treasury Options, Futures Contracts and Futures Options are all considered "Section 1256 Contracts". In general, sixty percent of the realized gain or loss with respect to Section 1256 Contracts are treated as long-term capital gain or loss, and forty percent are treated as short-term capital gain or loss ("60/40 rule"). Applicant further represents that this 60/40 rule was devised to prevent possible tax abuses and not to limit the frequency with which registered investment companies may distribute capital gains from transactions in section 1256 Contracts.

Applicant asserts that the realization of gains from premiums on Treasury Options is an integral part of the Applicant's investment objective of seeking a high current return. Notwithstanding the characterization under the Code of a portion of gains from options as long-term, the use of Treasury Options transactions by the Fund is primarily an income rather than a capital gains strategy. Similarly, Applicant asserts that its use of Futures Contracts and Futures Options (and the purchase of treasury put options) constitutes a hedging rather than a capital gains strategy. Applicant alleges that these hedging transactions are not entered into for the purpose of generating long-term capital gains, and any such gains resulting from the application of the 60/40 rule are purely incidental.

Applicant states that none of the purposes of section 19(b) and Rule 19b–1 are applicable to the quarterly distribution of long-term capital gains from transactions in Section 1256 Contracts. Applicant believes that, in light of its investment objective of seeking a high current return and the importance of income from Treasury Options and hedging through the use of Futures Contracts and Futures Options to this investment objective, it is appropriate that it distribute quarterly all gains from transactions in Section 1256 Contracts.

Applicant submits that quarterly distribution of gains from transactions in section 1256 Contracts, regardless of their characterization under the Code, will not cause stockholders of the Fund to confuse long-term capital gains with dividends out of new interest income. Applicant believes that all net gains from Treasury Options transactions, regardless of their characterization under the technical rules of Code Section 1256, constitute part of the current return contemplated by the Applicant's investment objective. Similarly, net gains from Futures Contracts and Futures Options are viewed by Applicant and its stockholders not as a source of long-term capital gains, but as an incidental effect of Applicant's hedging strategies. Applicant further represents that it will clearly distinguish any distribution of capital gains from distribution out of net interest income in a notice from Applicant to its stockholders.

Applicant also submits that permitting quarterly distributions of capital gains from Section 1256 transactions will not encourage more frequent trading in Applicant's portfolio than what is appropriate in light of the Applicant's investment objective. Applicant's state that its objective of a high current return clearly contemplates the seeking of net gains from Treasury Options and attempting to hedge Applicant's portfolio with Futures Contracts and Futures Options. Therefore, Applicant contends that whether the entire amount of these gains, as opposed to only the short-term portion, is distributed quarterly will not affect the investment decisions of Applicant's investment adviser.

Finally, Applicant submits that quarterly distributions of all of its net gains from transactions in Section 1256 Contracts will not increase administrative expenses because it already makes, and expects to continue to make, quarterly distributions of the short-term portion of such gains.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 18, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–23136 Filed 9–26–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-22429; File No. SR-Amex-85-34]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Amendments to Amex Company Guide; Sections 103 and 104

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 16, 1985, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("Amex" or "the Exchange") is proposing to amend Amex Company Guide, Sections 103 and 104, to permit the acceptance of convertible debt securities of non-listed issuers which are subject to last sale reporting and to modify the existing prohibition against accepting convertible securities for listing which contain a provision allowing the issuer the right to adjust the conversion price.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Convertible Debt Securities. Section 104 of the Amex Company Guide sets forth as a general guideline that the Exchange will not accept a convertible bond (or debenture) for listing unless the underlying stock is traded on either the Amex or NYSE. Since the price of the underlying issue into which a security is convertible will influence the market price of the convertible instrument, the historical inability to obtain ongoing price information in over-the-counter issues was considered sufficient reason to deny the Amex marketplace to such convertible issues. Last sale reporting for NASDAQ/NMS securities, which commenced in 1982, is believed adequate to permit removal of the present restriction.

This change will enhance the Exchange's bond listing program. Underwriters are often anxious to have their clients list corporate debt, even though the issuer's common stock may not be listed on one of the principal securities exchanges, since many foreign and institutional investors are reluctant or precluded from investing in unlisted debt securities. Prints in exchange-listed debt are also viewed as important for retail investors.

Conversion Provisions. Sections 103 and 104 of the Amex Company Guide set forth guidelines which prohibit the listing of convertible debt and convertible preferred stock containing provisions which grant the issuer discretion to temporarily adjust the conversion price unless the issuer undertakes not to exercise such rights while the security remains listed on the Amex. Many companies today publicly issue securities which permit their management to alter the conversion price for such periods as management may determine throughout the life of the instrument. These so-called "flush-out" provisions are viewed by many as necessary to provide corporate management with the flexibility to encourage conversions of outstanding securities into permanent capital.

The Exchange is of the view that the existing prohibitions against temporary price reductions are not well founded and interfere with legitimate corporate planning. Therefore, it is proposed that Sections 103 and 104 of the Company Guide be amended to permit the listing of convertible securities which contain "flush-out" provisions. However, to ensure that investors have sufficient time to evaluate temporary reductions in the conversion price of their securities, the proposed rule changes provide that the Exchange will not list an issue containing such a provision, unless the issuer establishes a minimum "window period" of not less than ten business days within which investors may determine whether to exercise their conversion privileges.

(2) Basis

The proposed amendments are consistent with Section 6(b) of the Exchange Act, in general, in that they are designed to ensure that the Exchange's rules remain up-to-date and are consistent with section 6(b)(5), in particular, in that they eliminate regulation not related to the purposes of this Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed amendments create no new regulations and will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW, Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file

number in the caption above and should be submited by October 18, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

September 19, 1985.

[FR Doc. 85-23140 Filed 9-26-26; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-22442; SR-Amex-85-8]

Self-Regulatory Organization; American Stock Exchange, Inc., Order Approving Proposed Rule Change

I. Introduction and Background

Pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] the American Stock Exchange ("Amex"), submitted on April 4, 1985, copies of a proposed rule change to request Commission approval of a joint plan, and accompanying rule changes, implementing a linkage between the Amex and the Toronto Stock Exchange ("TSE").[3] The linkage would permit order flow in securities dually listed on the Amex and TSE to be routed between the two exchanges. The Amex-TSE linkge will be the first linkage of a primary market in the United States with a primary market in a foreign jurisdiction. Accordingly, it represents a significant step in the increasing internationalization of the securities markets. By integrating the Amex and TSE's market making capabilities, the linkage aims to enhance liquidity in both markets, thereby benefiting Canadian and American investors by making available to them the best available price on either exchange.

Previously, the Commission approved, on November 1, 1984, a similar linkage between the Boston Stock Exchange, Inc. ("BSE") and the Montreal E change, Inc. ("Montreal" or "ME").[4] Through this linkage, orders can be routed from Montreal to Boston in approximately 200 U.S. stocks which are eligible for trading through the Intermarket Trading System ("ITS"), as well as in forty U.S.-listed Canadian stocks. In reviewing the BSE-ME linkage, the Commission was satisfied that there existed satisfactory trading and clearance and settlement procedures as well as surveillance and information sharing mechanisms between the two exchanges, and their respective regulatory agencies, the SEC and the Quebec Securities Commission.

The Amex-TSE proposed linkage differs from the ME-BSE linkage in that the Amex-TSE linkage involves two primary markets [5] and will provide for orders to be sent from the Amex to the TSE (*i.e.*, northbound) as well as for orders to be sent from the TSE to the Amex (*i.e.*, southbound).[6] Thus, An Amex specialist or Amex member will have the ability to route an order in a dually listed stock directly to Toronto.

The Amex and TSE joint Trading Linkage Plan ("Plan") reflects their agreement with respect to all facets of the linkage, including transmission of orders, execution, clearance and settlement of transactions, implementation of a surveillance program, conflict resolution and arbtration proceedings.[7] The Amex also has developed a new series of rules (Rules 240 to 244) that are designed to implement the Plan and assure the applicability of Exchange rules to orders received from Toronto and executed on the Amex.[8]

The exchanges expect to commence trading on a pilot basis on September 24 with seven dually listed securities [9] and will later expand the list of securities to include all dually-listed issues. The Amex and TSE will each display on their trading floors the quotes distributed by the other exchange in linkage stocks.[10] In addition, each exchange will display the best U.S. dollar/Canadian dollar exchange rates quoted by currency dealers on the TSE. This will enable traders to determine which market has a more favorable price at any given time.

The Amex and the TSE are prepared to commence linkage trading immediately on both a northbound and southbound basis. Thus, TSE members will be able to direct orders from the TSE trading floor to the Amex trading floor for execution, and to receive orders from Amex for execution. Likewise, Amex members will have the ability to direct orders from the Amex to the TSE trading floor for execution and to execute orders sent from the TSE. Quotes and orders will be forwarded between the exchanges using their existing automated routing systems.[11] In

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[1] 15 U.S.C. 78(c)(b) (1982).

[2] 17 CFR 240.19b-4 (1985).

[3] The proposal was published for comment in Securities Exchange Act Release No. 22001 (April 30, 1985), 50 FR 19503 (May 8, 1985). The Midwest Stock Exchange, Inc. ("MSE") also has proposed a similar linkage with the TSE. Although this order focuses on the Amex-TSE linkage, the proposed MSE-TSE linkage will raise similar concerns. *See* File No. SR-MSE-85-4, Securities Exchange Act Release No. 22156 (June 12, 1985), 50 FR 25501 (July 19, 1985).

[4] Phase I of that linkage was established solely for the purpose of routing orders from the ME to the BSE in 40 dually listed stocks. *See* Securities Exchange Act 21449 (November 1, 1984), 49 FR 44575, November 7, 1984 (File No. SR-BSE-84-5). Phase II expanded the list of securities eligibile to trade through the linkage to include U.S.-listed securities eligible to trade through ITS. *See* Securities Exchange Act Release No. 21925, April 8, 1985, 50 FR 14480, April 12, 1985.

[5] The TSE is Canada's largest public securities market, capturing approximately 74% of the dollar value of all shares traded in Canada. The Amex is the primary U.S. market in all of the equity securities traded on the exchange.

[6] Currently, the BSE-ME linkage only allows southbound traffic from ME to the BSE, although Phase III of that linkage contemplates northbound traffic.

[7] The Commission description of the Plan herein is based on the following documents, as well as conversations with the staff of the Amex, TSE and Ontario Securities Commission ("OSC"): (1) Amex's proposed rule change relating to the linkage, (File No. SR-Amex-85-8), published for notice and public comment in Securities Exchange Act Release No. 22001, April 30, 1985; 50 FR 19503, May 8, 1985; (2) letter from Dr. Stephen Williams, Senior Vice President, Amex, to Michael Cavalier, Branch Chief, Branch of Exchange Regulation, SEC, dated April 4, 1985; (3) letter from Dr. Stephen Williams, Amex, to Brandon Becker, Assistant Director, Office of Exchange and Options Regulation, dated June 21, 1985; (4) letter from Gordon Nash, Lord, Day and Lord (counsel to Amex), to Brandon Becker, dated June 27, 1985, which includes a copy of an opinion letter from the law firm of Tory, Tory, Deslauriers and Binnington, to the TSE dated June 18, 1985; (5) letter from Gordon Nash to Brandon Becker, dated August 23, 1985; and (6) letter from Blake, Cassels & Graydon, counsel to TSE, dated August 27, 1985.

[8] Commentary to Amex Rule 244 also makes certain Amex rules applicable to orders sent from Amex to TSE when deemed appropriate. The remaining rule amendments make conforming changes to existing Amex rules to accommodate linkage orders.

[9] The six pilot stocks are expected to be Asamera Inc., Canadian Marconi Co., Echo Bay Mines Ltd., Gulf Canada Ltd., Husky Oil Ltd., and Imperial Oil Ltd.

[10] Quotes distributed by the Amex for any linked stock which also is traded through ITS, shall reflect the national best bid and offer distributed by the consolidated quotation system. However, the price quoted on the TSE would be the best published quote on the TSE at the time the order is received on the exchange, though not necessarily the best Canadian price available at that time.

[11] All marketable orders sent through the linkage to the Amex will be routed through the Amex's automatic routing system, the Post Execution Reporting System ("PER") to the AUTOPER terminal (incorporating touchscreen technology to increase efficiency of the routing system) at the appropriate specialist's location on the Amex floor. Orders sent to the TSE will be entered into the TSE's Market Order System of Trading ("MOST") and will print out at the appropriate TSE trading post for manual execution on the TSE floor. Orders may not be entered through the linkage automatically by Canadian brokers from terminals located away from the TSE floor. All linkage orders must be directed through the linkage by TSE members from terminals located on the floor of the TSE.

The MOST system was introduced on the TSE in 1984, and permits the TSE to route small orders directly from member offices across Canada to the post on the floor of the exchange where the stock is traded. The system also enables members to notify clients promptly after their trade has been

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addition, the exchanges intend to implement in the hear future a mechanism for immediate currency conversion, so that all U.S. dollar and Canadian dollar settlement obligations will be known at the time a trade is executed.[12]

Initially, the linkage only will provide for the execution of marketable limit orders.[13] In other words, an order received from either exchange will only be executed by the receiving exchange if the order is at a price which is equal to or better than the quote then being distributed on the receiving exchange. Such orders are guaranteed an execution at the best available quote on the receiving exchange for up to a 1,000 shares.[14] It is anticipated that "away from the market" orders will be permitted to be sent through the linkage as soon as sufficient experience is gained with two-way trading and the execution, clearance and settlement of "at the market" orders. The Plan also provides that at some future date the linkage may be expanded to include other securities traded on either exchange. Agency orders will be subject to the normal priority rules on each exchange, while professional orders will be on parity with those of the market makers on each floor. Furthermore, all linkage orders will be subject to the rules of the receiving exchange.

The Plan provides that the linkage will not operate during a trading halt on either exchange with respect to securities subject to the trading halt. In the case of a trading halt based on regulatory concerns, the market surveillance units of both exchanges will undertake to contact each other as quickly as possible and exchange information concerning matters giving rise to the trading halt. This will enable the Amex and TSE to coordinate actions regarding trading halts in dually listed securities.

With respect to the administration of the linkage, the Plan provides that a six member joint operating committee will be responsible for administering the linkage and will meet periodically to oversee implementation of the linkage, review operational concerns and advise with respect to enhancement or expansion of the linkage.[15] In addition, the Operation Committee is authorized under the Plan to consider and evaluate complaints against individual members or member organizations of either exchange which have engaged in conduct which constitutes an abuse of the linkage procedures or a pattern of violating the provisions of the Plan.[16]

The Amex/TSE Plan also provides for on-floor dispute resolution. Article 5, section 2(a) of the Plan ("On-Floor Dispute Resolution") provides that disputes and/or questions relating to the linkage are to be resolved in accordance with procedures and policies of the receiving exchange, including any appeals process by the exchange. The Plan also provides that determinations by those persons delegated the authority to resolve disputes and questions on the receiving exchange also will be binding upon members of the originating exchange with respect to transactions effected on the receiving exchange.[17] In addition, both exchanges indicated that they have the authority to enforce their rules governing trades sent by their respective members through the linkage for execution.[18] The Plan also provides for abbreviated arbitration proceedings, permitting Amex or TSE members asserting a claim against a member of the other exchange, arising out of a linkage transaction, to resort to arbitration, notwithstanding any

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completed. Trade confirmations are transmitted via MOST to the place of order origination.

[12] Amex has stated that this will minimize U.S./Canadian dollar exchange rate risk from the time of execution to the time of settlement, and, more importantly, will permit the settlement of such transactions to be effected in the U.S. in U.S. currency. As initially planned, however, the linkage will not contain an automatic conversion mechanism. Thus, the Amex specialist will receive the Canadian quotations from the TSE in Canadian dollars only. The currency conversion rate will also be displayed and the Amex specialist will have to convert the Canadian price into U.S. dollars. For northbound orders, the Amex specialist will send orders to the TSE in U.S. dollars and specify the conversion rate that applies to the transaction, based on the TSE rate displayed on the Amex. The TSE specialist will first execute the Amex order in Canadian dollars, then convert Canadian dollars into U.S. dollars, and finally report the execution to Amex in U.S. dollars. In the near future, TSE intends to provide for automatic currency conversion, eliminating any separate manual currency conversion. In addition, Amex has indicated that, within six months, the Amex specialist will be able to receive the Canadian price simultaneously in U.S. and Canadian dollars. Such a currency conversion system, of course, would have to be filed with the Commission as a proposed rule change under section 19(b)(1) of the Act.

[13] A "marketable limit order" is an order which may be executed at the current market quote, but at no worse price. For example, if the current bid for XYZ was $20.00 for 100 shares, an order to sell 100 shares at $20.00 but not at a price less than $20.00 would be a marketable limit order. The mechanism for excution of marketable limit orders is as follows: A member of the originating exchange may send through the linkage an order at a price which is equal to the quote then being distributed on the receiving exchange. The order will be treated as an "immediate or cancel" order, so that it will be cancelled if, when received by the market maker on the receiving exchange, it is not a marketable order (*e.g.*, the order is mispriced or the market has moved between the time it was priced on one exchange and received on another). If, however, it is a marketable order when received by the market maker price or a more favorable price.

Orders larger than the displayed quotation will be subject to partial excution. Although the market maker will not be required to provide an excution in excess of the applicable guarantee, he may purchase or sell for his account to fill an order which cannot be filed from the floor of the receiving exchange.

[14] The Plan provides that this minimum guarantee may be different for specific stocks as they are added to the linkage in the future. An order, however, may not be divided into several 1,000 share lots to take advantage of the guarantee. If several orders are received from one member for the account of the same customer, the guarantee will apply only to the first 1,000 shares. Professional orders (*i.e.*, an order for the account of a market maker or a broker-dealer's firm proprietary account) will not be entitled to a guarantee but will otherwise be handled in the same manner.

In addition to providing a minimum size guarantee for orders flowing through the linkage, the Amex also will ensure the same minimum size guarantee for all public orders received through the PER system. This guarantee, however, would be limited to those stocks which are included in the linkage.

[15] *See* Article V, Section 1 of the Plan.

[16] If the Committee determines that a complaint appears to have merit, it will refer the complaint to the member's exchange and an investigation will be conducted. If it is determined by the Exchange that there may, in fact, have been abuses or repeated violations, that Exchange will be responsible for taking appropriate disciplinary action through its regular disciplinary procedures. Sanctions may include the denial of use of the linkage facility to the member or member firm.

[17] The Amex has indicated that this provision is intended to make clear that the decision of floor officials on the floor of the receiving exchange where the order is executed would be binding upon the member of the originating exchange who initiated the order, to the same extent as such decisions are binding upon the members of the receiving exchange. The Amex, however, noted that the provision was not intended to expand in any way the authority of floor officials on either exchange. *See* letter from Gordon Nash, Director, Division of Market Regulation, dated August 23, 1985.

[18] *See* letter from Gordon Nash, Lord Day & Lord, to Brandon Becker, dated August 23, 1985. *See also* letter from Gordon Nash, Lord Day & Lord, to Kenneth Leibler, Senior Executive Vice President, Amex, dated August 23, 1985. This letter sets forth the opinion of Amex's counsel that the Exchange has the clear authority to discipline an Amex member who engages in linkage trading activity which would subject him to disciplinary action if engaged in on the floor of the Amex. In this regard, the letter noted that the new Amex Rule 244, adopted as part of the linkage rules, requires that "each tranaction effected through a linkage shall be subject to the rules of the Exchange, applicable to trading on the Exchange, except to the extent such rues are inconsistent with provisions of this Section 8 (the Linkage rules) or the relevant Linkage Plan." In addition, the letter notes that Sections 9 and 10 of the Securities Exchange Act, which proscribe manipulation and fraud, are applicable to "any facility of any national securities exchange," *i.e.*, the Amex-TSE linkage, and that these sections provide an additional legal basis for Amex disciplinary action and other legal sanctions (*i.e.*, possible Commission action) against a member of the Amex who engages in such activity through use of the linkage.

The TSE also provided a letter from TSE's outside counsel which made similar representations with respect to TSE's authority to take disciplinary actions against its members in connection with trading activities conducted through the linkage. *See* letter from the law firm of Blake, Cassels and Graydon, to Keith E. Boast, Esq., TSE, dated August 27, 1985

determination by the on-floor dispute resolution process.[19]

A. Regulatory Provisions

The Commission notes that TSE's rules regulating trading and dispute resolution, as well as the Ontario and federal antifraud provisions under which it operates, are markedly similar to the Amex's own rules and to the U.S. federal securities laws' antifraud provisions.[20] For example, TSE's rules include provisions, comparable to Amex rules, relating to manipulative or abusive trading practices, such as rules regarding suitability, short sales,[21] net capital [22] and best execution.

In addition, TSE rules contain a number of provisions which augment and assist its surveillance program.[23] For example, TSE recordkeeping rules include the requirement that TSE members maintain floor tickets and other records of customer orders, confirmations of purchases or sales and written records of customer accounts and approval for a period of five years.[24] Furthermore, TSE, like the Amex and other U.S. national securities exchanges, imposes specific "know your customer" requirements on its members and requires a member to maintain records regarding the identity of customers.[25]

TSE rules specifically prohibit manipulative and deceptive methods of trading and the transaction of business which is not in accordance with just and equitable principles of trade.[26] Both the Criminal Code of Canada and the Ontario Securities Act contain general anti-fraud provisions.[27] Insider trading, for example, is strictly regulated under the Ontario Securities Act.

In addition, the TSE's dispute resolution system is analogous to the Amex's own procedures. Under Section 10.03 of the TSE's by-laws, the Floor Procedure Committee is authorized to govern all sessions of the Exchange, and has jurisdiction over trading, conduct and discipline of all members.[28] The TSE also has provisions for compulsory arbitration in the event of any dispute arising between members, regarding a TSE contract which has not been settled.[29] Finally, the TSE, like the Amex, has detailed procedures in its by-laws for procecution of violations.[30]

B. Clearing Procedures

Clearance and settlement of linkage-trades will follow the same procedures established for the BSE–ME link. Amex will be responsible for submitting trades executed on either market to NSCC for clearance and settlement. Specifically, the Amex will confirm each trade by sending a report to the TSE trading party on the same electronic terminals used to place the order. Amex then will submit all trades to NSCC as compared trades expressed in U.S. dollars. The Canadian Depository for Securities Limited ("CDS") is a member of NSCC and clearance and settlement will occur through the facilities of NSCC.[31]

All linkage trades, whether executed in New York or Toronto, will be cleared and settled through NSCC in U.S. funds. Although northbound trades will be executed on the TSE floor in Canadian dollars, a simultaneous currency transaction will be made with a currency dealer on the TSE floor to convert the trade amount into U.S. dollars. This will allow Amex members to settle their side of the trade with NSCC in U.S. currency and TSE members to settle the other side with CDS in Canadian currency, without being subject to the risk of currency fluctuations during the settlement process.[32] CDS will settle all NSCC obligations in U.S. funds.

II. Discussion

The Commission believes that a linkage of two primary markets with two-way order flow could benefit investors by providing greater liquidity and increasing market competition in dually listed issues traded through the linkage. At the same time, however, the Comission recognizes that such a linkage may encourage U.S. investors to trade on a foreign exchange where the Commission does not have oversight responsibility regarding that exchange's trading and dispute resolution rules. In addition, such international trading could limit the Commission's access to information relating to trades through the linkage by Canadian brokers on behalf of Canadian customers because foreign broker-dealers and investors may not be under the Commission's jurisdiction. Accordingly, the Amex's and Commission's ability to monitor transactions effected through the linkage depends, to a large extent, on the mutual cooperation and surveillance of both the SEC and the OSC as well as the TSE and Amex. In this regard, the Commission is especially concerned that its ability to monitor linkage transactions could be adversely affected by a recently enacted Canadian statute.

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[19] *See* Article 5, section 2(b).

[20] The Ontario Securities Act gives the OSC broad powers over the TSE, including jurisdiction over the manner in which the Exchange conducts its business or trading through its facilities. While somewhat different than the SEC's authority over SRO rulemaking, the OSC also has authority to review any by-law, ruling or other regulation by the Exchange. The OSC also has power to review decisions of the TSE and persons affected by TSE decisions have a right of appeal to the OSC.

[21] *See* TSE by-laws, Section 11.27[1].

[22] *See* TSE by-laws, Section 16.13 (capital and margin requirements).

[23] *See* Notes 34 and 35 and accompanying text, *infra* for discussion of TSE's surveillance mechanisms.

[24] *See* Sections 16.02, 16.03, 16.07, 16.09 and 16.36 of TSE's by-laws for record retention procedures. In addition, TSE maintains records of all trades generated on and through its floor for comparable periods.

[25] *See* Section 16.01 of TSE by-laws ("Supervision of Accounts"). This requirement is also set forth in the Ontario Securities Act, R.S.O. 1980, c. 466 as amended, under Section 102 of the regulations under the Act.

[26] *See*, for example, Section 11.17 of TSE by-laws, providing that "no fictitious sale or contract shall be made and each member shall transact his business openly and fairly and in accordance with just and equitable principles of trade." *See also* Section 11.26 of by-laws ("Manipulative or Deceptive Methods of Trading") which provides a list of examples of activities deemed to constitute manipulative or deceptive activity.

[27] *See* Criminal Code, RSC, 1980 section 338(2), section 340, and section 341. *See also*, Ontario Securities Act, Part XXII ("Civil Liability"). Insider trading, for example is strictly regulated by Part XX and Sections 75 and 131 of the Ontario Securities Act and the regulations under that Act.

[28] Section 10.03 outlines the authority by which the Floor Procedure Committee may discipline and impose appropriate penalties on a member or employee for trading violations.

[29] *See* Section 16.26 of TSE by-laws.

[30] *See* in general, Part XVII of TSE's by-laws ("Hearing Procedures and Discipline"). The Hearing Committee has been delegated authority by the Board of Governors to commence disciplinary proceedings and to revoke, suspend or amend the rights or privileges of a member. Like the Amex disciplinary proceedings, the TSE rules contain detailed provisions to ensure the procedural due process rights of the alleged violator.

[31] As an NSCC member, CDS clears and settles securities transactions within NSCC's automated system, including its continuous net settlement system. CDS, like any other NSCC member, is liable as a principal for all trades submitted to NSCC, is subject to NSCC's comprehensive safeguarding mechanisms and must comply with all other NSCC rules and procedures.

NSCC has requested that the Division of Market Regulation ("Division") extend a previous no-action position, regarding CDS compliance with the clearing agency registration requirements of Section 17A of the Act in connection with the BSE–ME linkage, to cover CDS' similar role in connection with the Amex-TSE linkage. The Division is granting the no-action request concurrent with this release. *See* letter from Jonathan Kallman, Assistant Director, Division of Market Regulation, to Karen L. Saperstein, Assistant General Counsel, NSCC, dated September 20, 1985.

[32] The Amex has informed the Commission that when an Amex member initiates a trade through the linkage, he will specify a limit price in U.S. dollars equal to the Canadian dollar amount of the trade. If the currency conversion transaction cannot be executed at better than that limit, the order will be rejected and sent back to the Amex unexecuted. NSCC will not be involved in the currency conversion transaction. Rather, the compared trade reported to NSCC will specify a dollar value of the trade expressed in U.S. dollars reflecting the combined securities transaction and related currency conversion transaction. *See* letter from Gordon Nash, to Brandon Becker, page 3, dated August 23, 1985.

which enables Canadian officials to limit the transfer of information and documents between Canada and a foreign country under certain enumerated circumstances.[33]

The Commission has sought to address these concerns in detail with the exchanges and the OSC and is satisfied that the appropriate channels for information sharing and cooperation between the exchanges and the two agencies have been established.[34] As discussed below, the Commission believes these issues have been adequately resolved through (1) the TSE-Amex's own mechanism for facilitating surveillance and information exchange under the terms of the Plan, (2) the channels developed by the SEC and the OSC to provide for sharing information and investigative resources, and (3) representations by OSC and TSE regarding the probable usage of the Canadian blocking statute.

A. TSE–Amex Surveillance Procedures

Both the Amex and TSE have active surveillance and record retention procedures to monitor trading through the linkage. The Amex has informed the Commission that linkage trades sent by Amex to the TSE for execution will be subject to both Amex's and Toronto's routine market surveillance procedures. TSE's rules and surveillance procedures appear to be comparable to the rules and surveillance capabilities of most U.S. exchanges.[35] Toronto, like the Amex, maintains an audit trail of all securities transactions that occur on its floor, permitting it to reconstruct the market for any particular stock and identify the time, price, size and participants of each trade in the stock.[36]

B. Amex-TSE Information Sharing Provisions

Under the Plan, the Amex and TSE have created mechanisms for the routine exchange of information [37] as well as for the exchange of additional documents and record, if requested by either exchange.[38] The Plan also provides that both exchanges will "cooperate fully" in any investigation relating to linkage transactions.[39] In this regard, each exchange has agreed to use its "best efforts" to obtain relevant information from its membership in connection with an investigation of linkage-related trading, and, to the extent not inconsistent with applicable law, to provide the other exchange with information tending to resolve any linkage-related questions or compliants.[40]

In this regard, the Amex has stated that it views the terms "cooperate fully" and "best efforts" to require the Amex and TSE each "to obtain and make accessible to the other pertinent information with with the same degree of diligence, the same allocation of resources, and the same attention to regulatory concerns as it would deem appropriate in an investigation that was solely within its own area of regulatory responsibility."[41]

C. SEC–OSC Cooperative Efforts

While most routine inquiries will be resolved though Amex's and TSE's own surveillance and information sharing procedures under the Plan, the Commission anticipates that some matters will require SEC and OSC participation, as, for example, when an investigation raises questions regarding the action of a person who is not a member of the Amex or TSE. In other cases, the SEC may find that it needs to obtain access to information possessed by or accessible to the OSC to determine whether, for example, to issue a formal order of investigation. The Commission also can foresee situations where both the SEC and OSC may be interested in investigation a linkage related transaction or where a joint SEC/OSC investigation may be undertaken.

The Commission and OSC have a long-standing history of cooperative efforts concerning regulatory matters originating either in the United States or Canada. Because the linkage will present both Commissions with the potential of increased integration of the U.S. and Canadian markets, the Commission has focused its efforts on information, as well as to provide assistance for any investigation and related subpoena enforcement actions. In this context, the Commission has sought to ensure, prior to approval of the linkage, that the Canadian blocking statute would not be used to impede the exchange of information so as to call into question the continued viability of the linkage.

The Canadian Foreign Extraterritorial Measures act ("FEMA") authorizes the Attorney General of Canada to issue orders to prevent the production or use of records or information in Canada in connection with foreign laws and proceedings and to issue orders to prevent persons in Canada from complying with foreign laws and orders. Under Section 3 of that Act, for example, the Attorney General may make the determination that a foreign tribunal is exercising or is likely to exercise jurisdiction in a manner that is likely to adversely affect significant Canadian interests in relation to commerce carried on in Canada or has

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[33] Foreign extraterritorial Measures Act, Stat. Can. c.49. (1985), *see* text accompanying notes 41 to 45, *infra*.

[34] The comparability of the trading and dispute resolution rules of Amex and TSE as well as the similarity of the U.S. and Ontario securities laws also ensures that U.S. investors engaging in transactions through the linkage will be appropriately protected.

[35] Surveillance efforts are conducted by two separate offices. the Market Surveillance Department monitors trading activity in all listed securities continuously from the opening of the market until the close, and maintains a comprehensive file on every listed company. If, for example, the Surveillance Department becomes aware of unusual trades, it will call a senior officer of the company and, in certain instances, ask for a statement to be issued. If the Department sees evidence of, for example, insider trading, wash trading, or other forms of market manipulation, the matter is forwarded to the TSE Division of Investigative Services and the OSC for follow-up. the TSE's Division of Investigative Services uses a specially designed computer program called TRACE to identify the clients behind trades made on the exchange when an in-depth investigation into trading in a particular stock appears necessary.

[36] TSE also has an on-line display of trades and quotes which identifies the most active securities, and securities with the largest price movement, and identifies instances of unusual volume or price movement for further investigation by the TSE staff.

[37] Under Article IV, Section 1, of the Plan, the exchanges have agreed to exchange on a regular basis trade documentation including, but not limited to, market surveillance reports and market data necessary to enable each exchange to carry out its respective market surveillance programs relating to linkage transactions. The Amex has informed us, however, that, at this time, the only information exchanged on a daily basis will be the TSE and Amex equity audit trail reports in linkage securities. These reports specify for every transaction the time, number of shares, price, clearing number of the two participants and dollar value of the transaction. The Amex also will receive the Toronto Daily Record which in part contains closing trade and quote information for all equity securities listed on the TSE.

[38] Article IV, Section 1, of the Plan provides that the exchanges shall furnish additional documents and records regarding linkage transactions as the exchanges shall "reasonably request" from time to time. According to the Amex, "reasonably requested" information would include such items as individual customer account information, firm proprietary positions or documentation concerning specific trades. The Amex also has indicated that, as more experience is gained with the linkage, the exchanges may agree to the exchange of additional information on a routine basis.

[39] Article IV, Section 2, of the Plan.

[40] Article IV, Section 2, also states that "any such information forwarded to the other exchange is to be kept confidential except to the extent that disclosure is required in connection with a regulatory proceeding of such exchange or pursuant to any obligation of such exchange to disclose information for surveillance purposes to any other self-regulatory organization or to the SEC or the OSC."

[41] *See* letter from Stephen Williams, Senior Vice President, Amex, to Brandon Becker, Assistant Director, Division of Market Regulation ("Division") dated June 21, 1985 at 17–18.

otherwise infringed upon Canadian sovereignty. If such a determination is made, the Attorney General may, by order, prohibit or restrict the production of Canadian records or information to a foreign tribunal, or the doing of any act in Canada which might cause the records tobe produced before a foreign tribunal.[42]

The OSC and counsel to TSE have represented that it is highly unlikely the Canadian blocking statute would be invoked to impede the flow of information regarding linkage transaction.[43] According to counsel for TSE, the legislative history of FEMA makes clear that the statute is to be invoked only as a "mechanism of last resort [to be relied upon] only if problems arise with respect to extraterritorial application of U.S. laws which U.S. and Canadian officials cannot resolve satisfactorily." [44] For example, before the Attorney General may issue an order under Section 3 of FEMA, he must reasonably form the opinion that a foreign tribunal, such as the Amex or SEC, is exercising jurisdiction of a kind that is likely to adversely affect significant Canadian interests or infringe upon Canadian sovereignty, or that the manner in which it is to be exercised is likely to adversely affect significant Canadian interests or infringe or Canadian sovereignty.[45]

Counsel to the TSE emphasized that, in light of the similar policy objectives of the U.S. and Canadian securities laws, as well as the agreements to cooperate between Amex and TSE under the Plan, "it would be difficult [to] conceive of a plausible scenario whereby the Attorney General might form the option necessary to interfere with an exchange of information pursuant to the Plan, or in investigation by Amex, the SEC or the TSE, carried out in a reasonable manner, into trading in securities undertaken in a manner contemplated in the Plan." [46] Accordingly, counsel concluded that the procedures for information sharing and surveillance are "reasonable and necessary" and are unlikely to be seen as conflicting with significant Canadian interests but rather as a framework for cooperation and consultation which will be respected by the Attorney General.[47]

The OSC confirmed TSE counsel's opinion, in a letter which stated that it is "extremely unlikely" the blocking statute would be invoked to impede the flow of information or assistance, particularly in light of the pledge of cooperation embodied in the Mutual Legal Assistance Treaty [48] which aims to improve the effectiveness of Canada and the U.S. in the investigation, prosecution and suppression of securities offenses.[49]

The SEC and OSC also have exchanged letters confirming their mutual commitment to sharing both their investigatory resources and any relevant information obtained pertaining to linkage-related transactions. The Commission's letter described the assistance it might provide the OSC under the broad statutory mandate of the U.S. securities laws.[50] In this regard, the Commission noted that such cooperation would be an extension of its long-standing policy of encouraging cooperation with foreign government authorities regarding investigations and enforcement proceedings.[51] In its letter, the Commission also noted that its investigatory authority was limited to cases involving potential violations of the U.S. securities laws.

The OSC also confirmed its commitment to cooperate with the SEC to the "fullest extent" possible in any investigation.[52] In addition, the OSC noted that its assistance also could extend to obtaining documents located in other provinces or territories of Canada, notwithstanding the fact its investigatory authority only extends to compelling attendance of witnesses and

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[42] Section 5 of FEMA similarly provides that where the Attorney General has formed the opinion that a foreign state or tribunal has taken, is taking or will take measures that adversely affect significant Canadian interests, he may, with the concurrence of the Secretary of State for External Affairs, by order, require a person in Canada to give him notice of any such directives, measures or communications, and may prohibit any person in Canada from complying with them.

[43] *See* letter from Gordon Nash, Lord Day and Lord (counsel to Amex), to Brandon Becker, dated June 27, 1985, which includes a copy of an opinion letter from the law firm of Tory, Tory, Deslauriers and Binnington, to the TSE, dated June 18, 1985 ("Tory, Tory letter"). *See* also letter from Ermanno Pascutto, Director, Ontario Securities Commission, to Richard Ketchum, Director, Division of Market Regulation, SEC and Gary Lynch, Director, Division of Enforcement, SEC, dated September 24, 1985.

[44] *See* Tory, Tory letter, page 3 and citing the Minister of Justice, John Crosbie, in the House of Commons. In the Senate debates, the Honorable Nathan Nurgitz, sponsor of the bill, emphasized that the act is "clearly designed to protect national sovereignty in exceptional cases, after diplomatic efforts have been exhausted" and that "cooperation and consultation" will be the preferred routes of resolving any extraterritorial disputes. *Id.* at page 4.

[45] *Id.* at p. 3. Counsel's letter notes that when a particular Minister such as the Attorney General, has a statutory responsibility to carry out a duty, alhough he may act in his own name, the Government is responsible, *i.e.*, a so-called "responsible form of government."

[46] Tory, Tory letter, *supra* note 42, at 4.

[47] *Id.* at 5. The TSE's opinion letter also discussed the impact on the linkage of two other Ontario laws which, like the federal blocking statute, also may grant governmental officials or agencies the right to interfere with the exchange of information or enforcement proceedings envisioned by the Plan. The Ontario Securities Act (R.S.O 1980, c.466) grants the OSC the authority to make any dicision in the public interest with respect to the manner in which any stock exhange carries on its business. This jurisdiction extends to permitting the OSC to direct the TSE as to the manner in which it conducts its business in implementing the Amex-TSE Plan. In the opinion of TSE counsel, because the Plan has been approved by the OSC, it is unlikely that the OSC would intervene in the implementation of the Plan to prevent an exchange of information, market surveillance or any investigation carried out pursuant to the Plan, absent strong public policy reasons. This is strongly reinforced by the letter the OSC has sent the Commission regarding the linkage. *See* text at note 48, *infra*. The second relevant law, the Business Records Act, R.S.O. 1980, c.56, was passed in 1947, to prevent forced or involuntary taking of records out of Canada. TSE counsel noted that there are no reported cases under the Business Records Act, and, in its opinion, it would be inapplicable to linkage related activity because, while the statute appears to be aimed at a forced or involuntary taking of records out of Canada, the plan provides for the voluntary submission of information to the TSE pursuant to Amex requests for information.

[48] The as yet unretified Treaty Between the Government of Canad and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters (March 18, 1985) provides, pursuant to Article II of the Treaty, for mutual legal assistance in, among other things, (1) exchanging information and objects; (2) locating or identifying persons; (3) serving documents, (4) taking the evidence of persons; (5) providing documents and records; and (6) executing requests for searches and seizures.

[49] *See* letter from Ermanno Pascutto, Director, OSC, to Richard G. Ketchum, Director, Division of Market Regulation and Gary Lynch, Director, Division of Enforcement, page 3, dated September 24, 1985.

[50] *See* letter from Richard G. Ketchum and Gary Lynch, to Ermanno Pascutto at page 4–6, dated September 24, 1985. We noted that if the OSC requested the SEC's assistance in connection with a northbound transaction, or a request to obtain information in furtherance of an OSC inquiry, the SEC would assist the OSC to the fullest extent possible. In its letter, the Commission also noted that its investigatory authority is limited to cases involving potential violations of the U.S. securities laws.

[51] The United States, as a rule, has offered its resources in assisting foreign discovery efforts. Under 28 U.S.C. § 1782, the United States federal district courts are authorized to lend assistance to foreign and international tribunals and to litigants before such tribunals, by ordering a person to give testimony or to produce documents for use in a proceeding of that tribunal. Such an order generally is made pursuant to a letter rogatory issued, or a request made, by a foreign or international tribunal or upon the application of any interested person, directing that the testimony or statement be given or document produced before a person appointed by the court. The person appointed has the power to administer any necessary oath, and take the testimony or statement. The statute also provides that the order may set out the practices and procedures to be used which may be, in whole or part, the practices and procedures of the foreign country.

[52] The OSC also has investigatory authority similar to the Commission's which may be exercised through informal and, where appropriate, formal procedures.

production of documents by persons within Ontario. The OSC stated that it has a close working relationship with securities administrators in other provinces and information is obtained and shared interprovincially and on an informal or formal basis.[53]

III. Conclusion

The Commission is satisfied that the Linkage Plan adequately addresses the key issues relating to the effective operation of the Amex-TSE linkage. The Commission believes that adequate surveillance and information sharing, and procedures between both the Amex and TSE and the SEC and OSC, are in place at this time. In this regard, the Commission obtained firm representations from the OSC that it is "extremely unlikely" the Canadian federal blocking statute will, in any way, hamper the Amex's or Commission's surveillance efforts.[54] Thus, the Commission believes that the exchanges, and the SEC and OSC, have provided for effective avenues for cooperation that will ensure the integrity of the linkage and the protection of investors participating in and affected by the linkage.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule changed, be, and hereby, are approved.

By the Commission.

Dated: September 20, 1985.

John Wheeler,

Secretary.

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[Rel. No. 34-22443; File No. SR-Amex-85-15]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change

The American Stock Exchange, Inc. ("Amex") submitted, on April 29, 1985, copies of a proposed rule change (SR-Amex-85-15) pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend section 140 of the Amex *Company Guide* to provide for a reduction in the Exchange's original listing fee schedule for Canadian companies listed on the Toronto Stock Exchange ("TSE") that seek to list on the Amex.

The Exchange determined to retain its current rate structure, which is based on the number of shares to be listed but will apply a fixed percentage reduction.[1] The impetus for the amendment is the proposed rule change submitted by the Amex which would establish an electronic linkage between the Amex and the TSE to allow orders in securities dually-listed on both exchanges to be routed between the two exchanges.[2] The linkage is expected to commence on a pilot basis in six of the most actively traded dual issues and eventually will be expanded to include all dually-listed securities.

The Amex anticipates that the Amex-TSE linkage will provide an incentive for Canadian companies listed on the TSE and also traded over-the-counter in the United States, to list on the Amex, in order to obtain the benefits of the linkage for their shareholders. As an additional incentive to listing, the Amex believes that it is appropriate to offer a reduced original listing fee to all Canadian companies who list on the TSE or any other Canadian stock exchange. The Amex has stated that a reduced fee is warranted because these issuers already have paid an original listing fee to a Canadian market to trade their shares. Although these companies may desire to expand the market for their issues, the Amex believes that, without the listing fee reduction, Canadian issuers may hesitate to pay a substantial additional fee to list on the Amex, particularly because the Canadian market generally remains the primary market in inter-listed securities.[3]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22184, June 28, 1985) and by publication in the **Federal Register** (50 FR 27873, July 8, 1985). No comments were received regarding the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, as appropriate, and the rules and the regulations thereunder. In particular, the Commission finds the proposed rule change is consistent with section 6(b)(4) of the Act which requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. In addition, the Commission believes that the reduced listing fees do not unfairly discriminate among issuers as proscribed by section 6(b)(5) of the Act. The Commission agrees with the Amex that a reduced fee for Canadian companies is warranted because these companies already have listed on a Canadian stock exchange, and, in addition, the Canadian market generally has been the dominant market in the majority of the inter-listed securities. Moreover, the Canadian issuers would be required to pay the same annual fee for continued Amex listing paid by all other Amex listed companies. Accordingly, the Commission views as appropriate Amex's reduction in initial listing fees for Canadian issuers that have incurred initial and continuing listing fees on a Canadian exchange that is often the primary market for their stock. Finally, the Commission notes that, to test the impact of the reduced listing fees, the reductions will be implemented on a one year pilot basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

September 20, 1985.

[FR Doc. 85-23142 Filed 9-26-85; 8:45 am]

BILLING CODE 8010-01-M

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[53] The OSC also stated that OSC staff have participated in investigations authorized by a formal order issued by an extra-provincial securities administration.

[54] As noted above, however, the Commission believes that in the event FEMA were invoked regarding linkage related trading, the Commission would have to consider under the circumstances whether, or in what form, it would be appropriate to permit continued operation of the linkage.

[1] The Amex will be applying a 50% reduction of the current rates to the Canadian companies, subject to a $30,000 overall maximum. For example, the total fee for listing 10 million shares currently would be $60,000. Under the 50% reduction for Canadian companies, the total fee for listing would be $30,000.

[2] The proposal was submitted by the Amex on April 4, 1985 and published for comment in Securities Exchange Act Release No. 22001 (April 30, 1985) 50 FR 19504 (May 8, 1985) (See File No. SR-Amex-85-8). The Commission approved the proposal on September 20, 1985. Securities Exchange Act Release No. 22442, September 20, 1985.

[3] The Amex has stated that for the year up to March 29, 1985, the Canadian market has been the dominant market for 23 out of 37 inter-listed securities on the Amex.

[Rel. No. 34-22438; File Nos. SR-Amex-85-19 and CBOE-85-38]

Self-Regulatory Organizations; Proposed Rule Changes by the American Stock Exchange, Inc., and Chicago Board Options Exchange, Inc.; Relating to the Options Allocation Plan

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 16 and August 29, 1985, the American Stock Exchange, Inc. ("Amex") and Chicago Board Options Exchange, Inc. ("CBOE") filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Orgainzations' Statement of the Terms of Substance of the Proposed Rule Changes

Amex and CBOE propose to amend the Options Allocation Plan ("Plan") to explicitly exclude from coverage of the Plan options on Over-the-counter stocks designated as National Market System securities in Rule 11Aa2–1 under the Securities Exchange Act of 1934 ("NMS securities"). *Italics* indicates material proposed to be added to the plan.

Options Allocation Plan

(A)–(I) No change.

(J)This Option Allocation Plan shall not be applicable to the listing or delisting of any option on a stock which is traded primarily through the facilities of the National Association of Securities Dealers automated Quotation System at the time said option is to be admitted to trading on the Exchange.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the self-regulatory organizations included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

On May 8, 1985, the Commission issued Release No. 34–22026 ("Release") regarding proposals to trade standardized options on NMS securities designated as such pursuant to Rule 11Aa2–1(b)(1) of the Securities Exchange Act of 1934. Among other things, the Release stated that the Exchange's proposal to trade options on NMS securities is conditioned upon the elimination of certain existing barriers to the multiple trading of these options.

The Commission found that the Options Allocation Plan is one such barrier to multiple trading. Thus, the Commission is requiring the participants in the Plan to amend the Plan to specifically exclude options on NMS securities from the coverage of the Plan.[1] The Plan will exclude from coverage such options irrespective of whether or not the stock is subsequently listed on an exchange. Accordingly, any NMS security which has been selected for standardized options trading by one or more exchanges will, even upon its subsequent listing on an exchange, continue to be eligible for selection by any other marketplace.

The proposed rule change is consistent with sections 6(b) and 11A of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it will remove barriers to multiple trading, thereby permitting exchange members, member organizations and affiliated persons to freely transact business in standardized options on NMS Securities either on an exchange or through the NASDAQ system.

B. Self-Regulatory Organizations' Statement on Burden on Compeition

The Amex and CBOE believe that the proposed rule changes will not impose a burden on competition.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filings will also be available for inspection and copying at the principal offices of the Amex and CBOE. All submissions should refer to the file numbers in the caption above and should be submitted by October 18, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 20, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–23143 Filed 9–26–85; 8:45 am]

BILLING CODE 8010-01-M

[1] Amex and CBOE, as well as the New York, Pacific and Philadelphia Stock Exchanges, previously have agreed not to apply the existing Options Allocation Plan to options on NMS stocks and to submit rule filings formally amending the Plan to this effect. *See e.g.*, Securities Exchange Act Release No. 22094, May 31, 1985, 50 FR 23859 (approval of Amex's proposal to trade options on NMS stocks).

[Rel. No. 34–22425; File No. SR–CBOE–85–39]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc.; Relating to Crossing Orders for Foreign Currency Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 29, 1985, the Chicago

Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

This rule change adds rule 22.14 to chapter XXII concerning currency options.

Crossing Orders

Rule 22.14. Exchange Rule 6.74 shall apply to the trading of currency options, except that when a facilitation order is from a firm's proprietary account or from a public customer who is not a broker-dealer, the facilitation order shall have the right to facilitate up to a minimum of 20 percent of the order being facilitated.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Procedures of the Self-Regulatory Organization

The purpose of this proposed rule change is to encourage market participants to facilitate public customer orders by providing that they can participate in at least 20 percent of the transaction, while at the same time providing that trading crowd participants also have an opportunity to participate.

The statutory basis for the proposed rule change is section 6(b)(5) of the Securities Exchange Act of 1934 (the Act), in that it would protect investors and the public interest by enhancing the facilitation of public customer orders.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 18, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 18, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-23144 Filed 9-26-85; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-22427; File No. SR-CBOE-85-30]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to Disclosure of Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 25, 1985, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Additions are italicized; deletions are bracketed.

Disclosure of Orders

Rule 7.8. [Except for the bids and offers that he displays or makes orally in accordance with Rule 7.7, no Board Broker or Order Book Official shall directly or indirectly disclose to any person, other than an official of the Exchange, any information in regard to the orders entrusted to him, unless, in his opinion and with the concurrence of a Floor Official, the interests of a fair and orderly market call for such disclosure.]

Equal Access to Book Depth and Size. Upon the request of a member, and so long as such request does not interfere with operation of the book, an Order Book Official, or such other person designated by the Exchange, may disclose the price and number contracts bid below or offered above the book information displayed pursuant to Rule 7.7. The Exchange may, in its discretion, from time to time, establish the depth to which such information may be disclosed.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to permit access to book size and depth information below and above the best bid and offer on the book. The best bid and offer on the book are displayed under Rule 7.7. Currently, Rule 7.8 precludes disclosure of Book size and depth above the best offer and below the best bid, except on a discretionary basis, with concurrence of a floor official. The proposed rule change would allow all market participants to gain access, on an equal basis, to information concerning book size and depth. Based upon experience, the Exchange will determine from time to time the extent of access to be permitted. The Order Book Official is given the responsibility to disclose book depth and size. The Exchange may designate someone else to assume this function.

This rule change will provide information to crowd participants which will permit them to establish better the best available price for handling larger orders. A common practice on stock exchanges, for example, is for block positioners to learn how much of the book, and at what price, will need to be purchased or sold as part of a transaction. This is useful information in establishing the price for transactions, and should facilitate options trading. The rule change is consistent with the Securities Exchange Act of 1934 ("the Act") and in particular Section 6(b)(5) of the Act because the rule change will facilitate the fair and efficient pricing of securities transactions, and is in the public interest, by providing equal access to information concerning book depth and size.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

This proposed rule change is the implementation of one of the recommendations of the CMTF, which was endorsed by a membership vote concluded on November 20, 1984.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by October 18, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 19, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-23145 Filed 9-26-85; 8:45 am]

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[Release No. 34-22430; File No. SR-CSE-85-4]

Self-Regulatory Organizations; Cincinnati Stock Exchange, Inc.; Order Approving Proposed Rule Change

The Cincinnati Stock Exchange, Inc. ("CSE") on August 2, 1985 submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to adopt certain stated policies, practices and interpretations describing in detail the CSE's National Securities Trading System ("NSTS") and to amend CSE Rule 11.9 to reflect recent changes in, and certain proposed changes to, the NSTS.

The CSE's NSTS is an electronic securities communication and execution system through which bids and offers of public orders and competing dealers are consolidated for review and execution. In addition to displaying limit orders and CSE and other market quotes, the NSTS matches orders and quotes at the same price in the system and executes them electronically based on programmed price/time and agency/principal priorities.[1] In addition to describing the NSTS more fully, the proposed rule change reflects recent changes made by the CSE to NSTS in order to provide automated guaranteed executions for public agency order up to 1099 shares at the best available quote displayed by all Intermarket Trading System ("ITS") participants. Under this guarantee, public agency market and marketable limit orders are priced at the best bid and offer of all ITS participants ("ITS/BBO"), and matched against any existing contra agency interest in the system at this price, and then against any similar principal interest. If less than 1099 shares of the order have been executed through this process, the system will execute the remainder of the order up to 1099 shares at the ITS/BBO on behalf of a dealer in the system designated as the Dealer of the day. The NSTS does not provide dealers the ability to improve the execution price received by the customer. If any of the order still remains, it will be flashed on NSTS terminals to approved dealers for 30 seconds to give each approved dealer an opportunity to fill the balance of the order at the ITS/BBO, before the order is formatted for potential entry into ITS.[2]

The proposed rule change also reflects changes to NSTS that make possible the automatic entry of NSTS orders into ITS. At present, orders are formatted and entered in ITS on a manual basis. The proposed rule change includes a detailed description of how the NSTS would process ITS activity through an automated interface.

Notice of the proposed rule change was given in Securities Exchange Act

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[1] The NSTS is described in greater detail in the release noticing this rule change, Securities Exchange Act Release No. 22330 (August, 15, 1985) 50 FR 33880.

[2] Dealer orders entered into the system do not receive the 1099 share guaranteed execution; similarly, dealer orders, except for orders being handled by another dealer as agent, are not subject to the 30 second delay before being formatted for entry into ITS

Release No. 22330 (August 15, 1985), and published in the **Federal Register** (50 FR 33880) on August 21, 1985. A comment letter was received from the New York Stock Exchange, Inc. ("NYSE"),[3] which noted that the CSE had already reflected several NYSE comments in the proposed rule change. The NYSE suggested, however, that because the terms of the automated CSE linkage with ITS are still under discussion among the CSE and other ITS participants, the Commission should refrain from approving the portion of the proposed rule change dealing with entry of orders into ITS until amendments to the ITS Plan "necessary to permit the automated linkage that the CSE seeks" have been prepared.[4]

The CSE proposed rule change should contribute to the efficiency of the securities markets, increased competition among markets, and promotion of the public interest. The Commission is concerned, however, that the CSE's NSTS system does not provide an opportunity for customer market orders executed automatically pursuant to the CSE guarantee to obtain an execution price between the ITS/BBO. Several other exchange small order system providing automated executions at the ITS/BBO, such as the Pacific Stock Exchange, Inc.'s SCOREX system and the Midwest Stock Exchange, Inc.'s MAX system, provide a brief period in which the order is displayed to the specialist in the stock; these systems differ from NSTS in that they enable the specialist to improve the price of the execution to reflect interest on the floor or trading patterns on another exchange. The CSE's NSTS does not at this point allow market makers to execute small customer market orders at prices other than the ITS/BBO. The Commission recognizes, however, that the CSE accounts at present for a very small share of the overall order flow in stocks traded through NSTS, and that the changes in the NSTS system are intended to be initial steps in improving the NSTS system. The Commission also has received assurances from members of the CSE governing bodies that the CSE is willing to consider modifying the NSTS in the near future to allow the execution price of customer orders to be improved in the system.

The elements of the proposed rule change designed to accommodate an automated interface between NSTS and ITS also provide a predicate for enhanced market linkages that could contribute substantially to the efficency of and competition in the market. When the Commission initially approved CSE's membership in ITS, which provided for a manual NSTS/ITS interface, it stated:

> The Commission is concerned . . . that a manual interface will provide too slow and cumbersome to provide an efficient mechanism for routing orders among market centers. Accordingly, the Commission expects that, if the CSE is willing to implement the necessary technical changes to affect an automated interface between the NSTS and ITS, the ITS participants will take necessary steps to implement such an interface.[5]

The CSE proposed rule change, by providing for the necessary changes to NSTS to accommodate an automated interface, is a necessary precondition to such action by ITS. Accordingly, the Commission finds that the CSE has set forth an approach in its rules and its stated policy, practice and interpretation concerning the interface of NSTS with ITS that, while not by any means the only possible approach to this interface, is consistent with the Act and the rules and regulations thereunder.[6]

It should be noted that the Commission, by taking this action, is not expressing any views with respect to any changes that may be made to the ITS Plan to accommodate an automated NSTS/ITS interface. The Commission recognizes that discussions are underway among the CSE and other ITS participants concerning the need for and terms of an amendment to the Plan governing the ITS to accommodate such an automated interface. In particular, the Commission understands that such discussions could result in an agreement among ITS participants that certain conditions be imposed on maintenance of this automated interface and that these discussions on Plan issues could result in changes in the description set forth in the CSE's proposed rule change. In the event changes in the CSE's proposed rules become necessary as the result of these discussions, these changes will be reviewed by the Commission in a subsequent rule filing, just as the Commission will review any ITS Plan amendments that may result from these discussions.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 20, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-23146 Filed 9-26-85; 8:45 am]

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[3] Letter from James Buck, Secretary, NYSE, to John Wheeler, Secretary, SEC (September 10, 1985).

[4] *Id.* at 1.

[5] Securities Exchange Act Release No. 17532 (February 10, 1981), 46 FR 12919.

[6] For this reason, and because, as discussed below, the Commission is not in this order expressing any view with respect to any possible ITS Plan amendments, the Commission believes it is unnecessary to withhold action on those portions of the CSE proposed rule change relating to the NSTS/ITS interface.

[Release No. 34-22426; File No. SR-NASD-85-25]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of a Temporary Proposed Rule Change by National Association of Securities Dealers, Inc.; Relating to Modification of the Small Order Execution System for Transactions in Over-the-Counter Securities

Pursuant to section 19(b)(1) of the Securities Exchange of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 13, 1985, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

The following is the full text of a rule change by the NASD relating to modification of the facilities description of the Small Order Execution System ("SOES") for transactions in over-the-counter ("OTC") securities approved by the Commission in SR-NASD-84-26. The rule change shall be effective for a period of 90 days to permit consideration by the Commission of approval of the proposed modification on a permanent basis which is the subject of a separate rule filing. The text of the rule change is:

The NASD has filed as a stated policy, practice or interpretation, a description of a new facility which has been designed and developed by NASD Market Services, Inc. ("NASD market serviced") a subsidiary of the NASD.

NASD Market Services has developed SOES which is an order routing and execution system, specifically designed to execute limited size orders [(initially 500 shares)] (*currently 500 shares for NASDAQ and 1,000 shares for NASDAQ/NMS securities*) in OTC securities.

Remaining text is unchanged.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in section (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of SOES is to improve the efficiency of execution of transactions in OTC securities through the use of new data processing and communications techniques. The entry and execution of up to 1,000 shares in NASDAQ/NMS issues is part of the increased efficiency and capability of the system.

The statutory basis for the development and implementation of SOES is found in section 11A(a)(1) (B) and (C)(i), 15A(b)(6), and 17A(a)(1) (B) and (C) of the Act. Section 11A(a)(1) (B) and (C)(i) set forth the Congressional goal for achieving more efficient and effective market operations and the economically efficient execution of transactions through new data processing and communications techniques. Section 15A(b)(6) requires that the rule of the NASD be designed "to foster cooperation and coordiantion with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market . . ." Section 17A(a)(1) (B) and (C) sets forth the Congressional goal of reducing costs involved in the clearance and settlement process through data processing and communications techniques. The NASD believes that the modification to SOES will further these ends by providing an enhanced mechanism for the efficient and economic execution and clearance of transactions in OTC securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

SOES is a service to which participants subscribe on a voluntary basis and as such the NASD believes that it imposes no burden on competition. To the extent that any burden on competition may be found to exist, the NASD believes that the benefit of increased efficiency of SOES will outweigh any potential burden upon competition and materially advance the purposes to be served under the foregoing sections of the Act. It is also important to note that the transactional size provided for in SOES comports with transactional size in execution systems operated or under the control of other self-regulatory organizations.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

Comments were neither solicited nor received in connection with the proposed modification to SOES.

III. Solicitation of Comments

Interested persons are invited to submit written comments concerning the foregoing. Persons submitting comments should file six copies with John Wheeler, Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Copies of the submission, and all related items other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the NASD, located at 1735 K Street NW., Washington, DC 20006. All submissions should refer to File No. SR–NASD–85–25 and should be submitted by October 21, 1985.

IV. Approval

The Commission finds that the proposed temporary rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 11A(a)(1)(B) and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that accelerated approval and the implementation of the modification to SOES scheduled to occur on September 27, 1985, will benefit public investors by providing more rapid and cost-effective processing of transactions while assuring that such transactions are effected at the best quote available in the market at any particular point in time. The Commission recognizes that the NASD has prepared its system for implementation of the modification on that date. The Commission also notes that the issues involving SOES will be noticed for public comment in a permanent rule change filing and, as discussed above, the Commission believes that the benefits of approval of this temporary rule change outweigh any potential adverse effects to the commentators or other market participants during the short period of the rule change's effectiveness.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 19, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–23147 Filed 9–26–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22445; File No. SR–NYSE–85–34]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc., Relating to the Capture and Submission of Specified Audit Trail Data

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 9, 1985, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes consist of requirements in regard to the capture and submision of specified audit trail data to a clearing agency or the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of

and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(1) Purpose

The purpose of the proposed rule changes is to increase the accuracy and completeness of the Exchange's Audit Trail by:

(i) Requiring parties to round-lot regular-way transactions effected on the Exchange to submit specified audit trail data to a Clearing Agency that has agreed to supply the Exchange with such data;

(ii) Requiring parties to round-lot non-regular way transactions effected on the Exchange to submit specified audit trail data to the Exchange;

(iii) Requiring executing brokers to capture audit trail data at the point of trade.

(iv) Providing that the Exchange may impose fines under the expedited procedures of Rule 476A in any case where members and member organizations do not comply with audit trail requirements as to the capturing and submission of all specified audit trail data.[1]

The Genesis of the Audit Trail. The New York Stock Exchange Audit Trail is an automated surveillance tool that can be immediately accessed via computer terminals, which is used to rapidly reconstruct trades in order to identify rule violations and other intra and intermarket trading abuses. The SEC encouraged its development at least as far back as its 1963 *Special Study of the Securities Markets* and later also proposed to develop its own Market Oversight Surveillance System (MOSS).

Aided by the development of advanced computer systems technology, the Exchange also accelerated its efforts to develop its own audit trail system. It also joined with the other securities markets to form the Intermarket Surveillance Group (ISG). The audit trail's success so far, coupled with the work of the ISG, have resulted in the SEC's conclusion of MOSS as unnecessary.

The Audit Trail System. The audit trail system was efficiently designed by modifying Floor trade data collection and comparison systems that were already in place at the Exchange, National Securities Clearing Corporation (NSCC) and the member firms. Audit trail data elements received by a clearing agency for each trade from the clearing member firms are combined with other audit trail data elements and submitted to the Securities Industry Automation Corporation (SIAC). This data is matched to the tape print with corresponding audit trail data elements that are captured on the Floor to produce the audit trail. Audit trail data, however, is automatically obtained for orders processed by any one of the Exchange's automated trading support systems, which account for slightly more than one-half of all Exchange trades. This efficiently eliminates the need for the system user to have audit trail data in regard to his side of the trade sent to a clearing agency. At present, Exchange systems do not provide for distinguishing whether the account for which an order was executed was that of a member or member organization or of a non-member or non-member organization, as called for in subparagraph (9) of proposed Rule 132.30. Until such time as Exchange systems are programmed to provide this information, the Exchange will not require compliance with subparagraph (9) as to systematized orders, unless in the interim suitable alternative methods of collecting this information are identified and implemented.

The Need for an Audit Trail Rule. In order to ensure that the audit trail is as complete and accurate as possible, the proposed audit trail rule is felt to be necessary for two basic reasons. Primarily, the proposed rule change defines the audit trail data elements necessary for submission to a clearing agency and codifies the capture and submission of each data element as an Exchange rule. In appropriate cases where these requirements are not met, the Exchange intends to take appropriate disciplinary action, including the imposition of fines under the expedited procedures of Rule 476A.

Secondly, there are two types of transactions, namely cross transactions (i.e., transactions where a member is representing both orders to buy and orders to sell) and non-regular way trades, for which audit trail data is not currently gathered. Even though it is not mandatory to do so, the majority of regular way transactions are submitted to a clearing agency for comparison and/or settlement, with the exception of cross transactions. Therefore, audit trail data is not currently collected with respect to trades which are not submitted to a clearing agency, such as cross transactions.

In addition, the Exchange also believes that audit trail data should also be collected for the small number of non-regular way trades, which cannot be accepted by clearing agencies.

Therefore, the proposed rule change requires that all regular way trades effected on the Exchange, including crosses, be submitted to a clearing agency that has agreed to supply the Exchange with specified audit trail data. However, it would not be required that the clearing agency be used for the comparison and/or settlement of these trades. For non-regular way trades, members and member firms would be required to submit audit trail data to the Exchange.

The impact of the proposed rule change should not be significant for two reasons. As most regular way trades, which are the majority of trades executed on this Exchange, are already submitted to a clearing agency for comparison and/or settlement with audit trail data attached, no new requirements would be imposed for these trades. Secondly, the proposed rule change will not impose any new requirements that a clearing agency be actually used for the comparison and/or settlement of a trade, which may be more costly for members and member firms.

The proposed audit trail rule will benefit members and member organizations because audit trail information is often of financial value to them in assisting them to resolve uncompared trades, is a factor in the resolution of disputes between interested parties to a trade and provides a valuable information source to respond to inquiries from members, listed companies and public investors. Mandatory submission of all required audit trail data for all trades effected on the Exchange should significantly reduce "QTs" (questioned trades where trade comparison elements are missing), which are often costly and time-consuming for members and member organizations to resolve.

Statutory Basis for the Proposed Rule Changes. By imposing a requirement to help ensure that the audit trail is as complete and accurate as possible, the proposed rule changes will better enable the Exchange's regulatory and surveillance capabilities to keep pace with the complexity of trading in today's

[1] The Exchange also requests an amendment to its minor disciplinary rule violation plan pursuant to Rule 19d–1(c) under the Securities Exchange Act of 1934. *See* Securities Exchange Act Release No. 22300 (August 8, 1985) 50 FR 32818 for the original notice of this plan.

sophisticated market environment, and are expected to remove impediments to and perfect the mechanism of a free and open market and a national market system, and this, in turn, will protect investors and the public interest, as called for in section 6(b)(5) of the Act. The proposed rule changes meet other requirements of section 6(b)(5) in that they will help prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade and foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The Exchange requests that the proposed rule changes be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act. The Exchange believes that the proposed rule changes will enhance its ability to regulate and surveil trading in its market on a more comprehensive and timely basis. In view of the proposal's significant anticipated benefits and the fact that the Exchange is prepared to implement the proposed rule changes as soon as it receives approval to do so from the Commission, the Exchange requests that the Commission find good cause to approve the proposed rule changes on an accelerated basis.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the rule change is intended to enhance existing audit trail procedures and will place no additional burden on member firms because the operational aspects of the proposed rule change have already been implemented.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the capiton above and should be submitted by October 21, 1985.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: September 20, 1985.

John Wheeler,

Secretary.

[FR Doc. 85–23148 Filed 9–26–85; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

September 19, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following security:

Americus Shareowner Service Corp.
Americus Trust for Exxon Shares Units
Score Component
Prime Component (File No. 7–8609)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 10, 1985 written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–23151 Filed 9–26–85; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

September 19, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Eastern Air Lines, Inc.
Purchase 1 Common at $16.00 (Warrants A) (File No. 7–8610)
Eastern Air Lines, Inc.
Purchase 1 Common at $10.00 (Warrant) (File No. 7–8611)
Wickes Companies
Common Stock, $0.10 Par Value (File No. 7–8612)
Occidental Petroleum Corporation
Purchase 1 share of Common at $24.00 (Warrants) (File No. 8613)
American Royalty Trust
Units (File No. 7–8614)
Willcox & Gibbs
Common Stock, $1.00 Par Value (File No. 7–8615)
Knogo Corporation
Common Stock, $.01 Par Value (File No. 7–8616)
General Development
Common Stock, $.01 Par Value (File No. 7–8617)
Nord Resources Corporation
Common Stock, $.01 Par Value (File

No. 7–8618)
Lomas Mortgage Corporation
Common Stock, $.01 Par Value (File No. 7–8619)
Plains Petroleum Company
Common Stock, (File No. 7–8620)
Golden Nuggets
1988 Warrants (File No. 7–8621)
R.J. Reynolds Industries, Inc.
Series C Cumulative Preferred Stock (File No. 7–8622).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 10, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies therefore with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–23150 Filed 9–26–85; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc

September 19, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following securities:

Americus Trust for Exxon Shares
10,000,000 Units of Fractional Undivided Interest (File No. 7–8606)
Americus Trust for Exxon Shares
10,000,000 Prime Components of Unites of Fractional Undivided Interest (File No. 7–8607)
Americus Trust for Exxon Shares
10,000,000 Scores Components of Units of Fractional Undivided Interest (File No. 7–8608).

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 10, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 23149 Filed 9–26–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 85–13; Notice 1]

Preliminary Evaluation Report on the Voluntary Tire Registration System, Request for Public Comment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice announces the publication by NHTSA of a Preliminary Evaluation Report concerning the Voluntary Tire Registration System. This preliminary staff report evaluates whether the Voluntary Tire Registration System increased the proportion of tires which are registered, the extent to which dealers and distributors have encouraged first purchasers to register their tires and the extent to which the dealers and distributors followed the registration procedures (49 CFR Part 574). The agency seeks public review and comment on this preliminary evaluation prior to making the determinations required by the Naitonal Traffic and Motor Vehicle Safety Act.

DATE: Comments must be received no later than December 26, 1985.

ADDRESSES: Interested persons may obtain a copy of the report free of charge by contacting Mr. Richard Jordan, Office of Management Services, National Highway Traffic Safety Administration, Room 6115, 400 Seventh Street, SW., Washington, DC 20590 (202–426–0874). All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours, 8:00 a.m.–4:00 p.m., Monday through Friday.]

FOR FURTHER INFORMATION CONTACT: Mr. Frank G. Ephraim, Director, Office of Program Evaluation, Plans and Programs, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590 (202–426–1574).

SUPPLEMENTARY INFORMATION: The Motor Vehicle Safety and Cost Savings Authorization Act of 1982 (96 STAT 1619, Pub. L. 97–331) directed that changes be made in how new tires are registered. The Act removed the requirement that independent tire dealers register new tires for the consumer (mandatory tire registration), and instead directed the Secretary of Transportation to issue a regulation requiring the dealer to hand the consumer a tire registration card which the purchaser may complete and return directly to the manufacturer of the tire. This new procedure is called voluntary tire registration (VTR).

The overriding concerns expressed by the Congress were to:

- Improve the proportion of tires sold which are registered to asure that the manufacturers could reach the first purcahser of the tire in the event of recall; and
- Reduce the burdens placed on the independent dealer. The Congress specified that the mandatory registration system was to remain in effect for stores owned or controlled by tire manufacturers.

The Act requires the Secretary to evaluate the effect of VTR after two years and to make a determination of what changes to make in the system to assure a high rate of registration.

When Congress passed the Authorization Act, the data then available showed that all original equipment tires were properly registered, but only 46.6 percent of the replacement tires were registered. While 80 to 90 percent of the tires sold by the company-owned stores were registered, only 20 percent of the tires sold by independent dealerships were. These data were submitted to the House Committee by NHTSA and were based on informal surveys of the domestic tire manufacturers taken by NHTSA in 1973, 1974 and 1979.

The preliminary evaluation examined whether voluntary registration increased the proportion of tires which are registered, the extent to which dealers and distributors have encouraged first purchasers to register their tires and the extent to which the dealers and distributors have followed registration procedures. The data reviewed included:

- The tire recall history between 1978 and 1984.
- The percentage of tires which were registered under both mandatory and voluntary registration, for both the independent dealers and distributors now covered by VTR, and, as a comparison group, for the company-owned or controlled outlets still subject to mandatory registration procedures.
- Attitudes and practices of independent tire dealers and distributors toward VTR.
- Consumer experience with registration when purchasing tires, including whether dealers mentioned VTR or gave the consumer a tire registration card.

The principal findings and tentative conclusions of the preliminary report are the following:

- Registration rates for tires sold by independent dealers dropped from 18.1 percent under mandatory procedures to 10.8 percent after the Final Rule on the voluntary registration system had been adopted. There was no comparable decline among company-owned outlets.
- The registration rates due to voluntary registration may have declined to as low as 8.4 percent because many of the registrations were due to a computer-assisted registration system and to other dealers continuing to use mandatory procedures.
- It was found that a sufficient number of registration forms are supplied to dealers and distributors by brand name owners.
- There are no records of any registrations for tires sold by over 70 percent of independent dealers (This estimate is based on information from only one manufacturer—but the largest one). Many of the other dealers have low registration rates.
- Tire purchasers want to be notified by manufacturers in the event of tire defects, but are under the misapprehension that their independent tire dealer is taking care of this for them.

NHTSA welcomes public review of the preliminary evaluation report and invites the public to submit comments.

It is requested but not required that 10 copies of comments be submitted.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 15 U.S.C. 1418; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: September 24, 1985.

Adele Spielberger,

Associate Administrator for Plans and Policy.

[FR Doc. 85-23080 Filed 9-26-85; 8:45 am]

BILLING CODE 4910-23-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 188
Friday, September 27, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Tuesday, October 1, 1985, 2:00 p.m.

LOCATION: Third Floor Hearing Room 1111, 18th Street, NW., Washington, DC.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: Strong Sensitizers—Staff and Panel Representative.[1]

The staff will brief the Commission concerning draft proposed definitions to supplement the Federal Hazardous Substances Act definition of "strong sensitizer."

For a Recorded Message Containing the Latest Agenda Information, Call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Dated: September 25, 1985.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 85–23262 Filed 9–25–85; 2:20 pm]
BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Wednesday, October 2, 1985, 9:30 a.m.

LOCATION: Room 456, 5401 Westbard Avenue, Bethesda, MD.

[1] In this matter the Commission decided to waive its rules concerning outside participation in their meetings and will permit the panel representative to take part in the discussion.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Commission will consider the Fiscal Year 1987 Budget.

For a recorded message containing the latest agenda information, call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD. 20207, 301–492–6800

Dated: September 25, 1985.

Sheldon D. Butts,
Deputy Secretary.

[FR Doc. 85–23263 Filed 9–25–85; 2:20 pm]
BILLING CODE 6355–01–M

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 PM (Eastern Time), Tuesday, October 8, 1985

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations.

CLOSED: Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634–6748.

Dated: September 25, 1985.

Cynthia C. Matthews,
Executive Officer, Executive Secretariat.

This Notice Issued September 25, 1985.

[FR Doc. 85–23267 Filed 9–25–85; 3:23 pm]
BILLING CODE 6750–06

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting.

Purusant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Monday, September 23, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Application of Metropolitan Bank St. Paul, St. Paul, Minnesota, an insured State nonmember bank, for consent to purchase the assets of and assume the liability to pay deposits made in Metro Thrift Company, Inc., St. Paul, Minnesota, a non-FDIC-insured institution.

The Board further determined, on motion of Chairman William M. Isaac, seconded by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at this meeting, on less than seven days' notice to the public, of the following matter:

Application of Bank of Dodge County, Chester, Georgia, an insured State nonmember bank, for consent to merge, under its charter and title, with Colony Interim, Inc., Fitzgerald, Georgia, in organization.

By the same majority vote, the Board further determined that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: September 24, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 85–23243 Filed 9–25–85; 12:51 pm]
BILLING CODE 6714–01–M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, September 23, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Standard Chartered Bank, London, England, for Federal deposit insurance of deposits received at and recorded for the accounts of its branch located at 900 Fourth Avenue, Suite 1515, Seattle, Washington.

Application of Bank of China, Beijing, People's Republic of China, for Federal deposit insurance of deposits received at and recorded for the accounts of its branch to be located at 42–44 East Broadway, New York, New York.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: September 24, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–23244 Filed 9–25–85; 12:51 pm]

BILLING CODE 6714–01–M

6

FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 38243, September 20, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, September 25, 1985.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added:

Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on September 16, 1985.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: September 25, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–23269 Filed 9–25–85; 3:39 pm]

BILLING CODE 6210–01–M

7

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, October 2, 1985.

PLACE: 1776 G Street, NW., Washington, DC, Filene Board Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).

2. Reports to the Board. Closed pursuant to exemptions (8) and (9)(A)(ii).

3. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board. Telephone (202) 357–1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 85–23246 Filed 9–25–85; 1:20 pm]

BILLING CODE 7535–01–M

8

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

ACTION: Addition of item to meeting agenda.

DATE OF MEETING: September 18–19, 1985.

PLACE: Council offices, Suite 1100, 850 SW Broadway, Portland, Oregon.

SUMMARY: The Government in the Sunshine Act, 5 U.S.C. 552b, requires Federal Register notice whenever an agency adds an item to its meeting agenda after the meeting has been publicly announced. At its September 18, 1985 meeting in Portland, Oregon, the Northwest Power Planning Council voted unanimously to add "Consideration of Model Conservation Standards Rulemaking" to the agenda for its September 19, 1985 meeting. The Council also found that Council business required the addition and that no earlier announcement of the addition was possible.

CONTACT PERSON FOR MORE INFORMATION: Ms. Bess Atkins, (503) 222–5161, 1–800–222–3355 (toll-free in Idaho, Montana and Washington) or 1–800–452–2324 (toll-free in Oregon).

Rich Applegate,

Executive Assistant.

[FR Doc. 85–23222 Filed 9–25–85; 10:18 am]

BILLING CODE 6065–00–M

Federal Register

Friday
September 27, 1985

Part II

Environmental Protection Agency

40 CFR Parts 796, 797, and 798
Toxic Substances Control Act Test Guidelines; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 796, 797, and 798

FRL 2896-1

[OPTS-46014]

Toxic Substances Control Act Test Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule introduces Parts 796, 797, and 798 which consist of Toxic Substances Control Act (TSCA) test guidelines. These guidelines were previously prepared for publication by EPA. Elsewhere in this issue of the **Federal Register** certain test guidelines, which have been published as Organization for Economic Cooperation and Development (OECD) Guidelines for the Testing of Chemicals are also codified as additional TSCA test guidelines.

EFFECTIVE DATE: Effective on September 27, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St., SW., Washington, D.C. 20460. Toll free: (800-424-9065). In Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: This final rule codifies TSCA test guidelines which were previously prepared for publication by EPA. Elsewhere in this issue of the **Federal Register**, certain test guidelines which have been published by OECD are also codified as TSCA test guidelines.

Section 4(b)(1) of the Toxic Substances Control Act (TSCA) specifies that test rules shall include standards for the development of test data. This action codifies guidelines which may be used to establish test standards in future TSCA section 4 test rules.

These guidelines, which are now introduced into Parts 796 (chemical fate), 797 (environmental effects), and 798 (health effects) of 40 CFR, have been previously published or prepared for publication by EPA. These guidelines present generally formulated procedures for laboratory testing of an effect or characteristic deemed important for the evaluation of health and environmental hazards of a chemical. The TSCA guidelines have been rigorously peer reviewed prior to publication. Most of these guidelines have also been offered for public comment (44 FR 27334, May 9, 1979; 44 FR 44054, July 26, 1979; 45 FR 75753, November 21, 1960; 47 FR 13013, March 26, 1982). The Agency reviews and updates its TSCA test guidelines once a year according to the process described in the **Federal Register** of September 22, 1982 (47 FR 41857).

The Agency had originally planned to incorporate by reference the pertinent TSCA guidelines into the chemical specific test rules. However, under the provisions of 1 CFR Part 51, material generated by a particular government agency is not usually acceptable for incorporation by reference unless the material meets certain criteria set forth in 1 CFR 51.7 (a) and (b). Because the Director of the Federal Register has rejected the OTS request for permission to incorporate by reference the TSCA guidelines, the Agency finds it necessary to codify these guidelines into the Code of Federal Regulations with no substantive changes. This codification will make chemical-specific rules under Part 799 more usable and understandable. It is expected that modification of existing guidelines and addition of new guidelines will occur later as the state-of-the-art evolves or the need for them warrants. Elsewhere in this issue of the **Federal Register** certain OECD guidelines are also codified into the TSCA test guidelines.

Codification of these guidelines does not impose any regulatory obligation on any person who may be subject to a TSCA section 4 test rule. Specific guidelines will not become mandatory test standards until they are promulgated as such in individual section 4 rulemakings. When promulgated in such test rules, the pertinent TSCA guidelines will become test standards for only that particular section 4 rule and will not serve as generic test standards. EPA may propose modifications to the various guidelines as they are utilized for chemical-specific test rules. In each chemical-specific rule, the proposed test standards and any modifications will be subject to public comment.

List of Subjects in 40 CFR Parts 796, 797, and 798

Testing, Environmental protection, Chemical fate, Environmental effects, Health effects, Chemicals.

Dated: September 23, 1985.

John A. Moore

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Chapter I is amended by adding new Parts 796, 797, and 798 to read as follows:

PART 796—CHEMICAL FATE TESTING GUIDELINES

Subpart A—[Reserved]

Subpart B—Physical and Chemical Properties

Sec.

796.1550 Partition Coefficient (n-Octanol/Water).
796.1570 Partition Coefficient (n-Octanol/Water)-Estimation by Liquid Chromatography.
796.1720 Octanol/Water Partition Coefficient, Generator Column Method.
796.1840 Water Solubility.
796.1860 Water Solubility (Generator Column Method).
796.1950 Vapor Pressure.

Subpart C—Transport Processes

796.2700 Soil Thin Layer Chromatography.
796.2750 Sediment and Soil Adsorption Isotherm.

Subpart D—Transformation Processes

796.3100 Anaerobic Aquatic Biodegradation.
796.3140 Anaerobic Biodegradability of organic chemicals.
796.3500 Hydrolysis as a function of pH at 25 °C.
796.3700 Photolysis in Aqueous Solution in Sunlight.
796.3780 Laboratory Determination of the Direct Photolysis Reaction Quantum Yield in Aqueous Solution and Sunlight Photolysis.
796.3800 Gas Phase Absorption Spectra and Photolysis.

Authority: 15 U.S.C. 2603.

Subpart A—[Reserved]

Subpart B—Physical and Chemical Properties

§ 796.1550 Partition Coefficient (n-Octanol/Water).

(a) *Introduction*—(1) *Background and purpose.*(i) Bioconcentration, the accumulation of a substance in living tissues or other organic matter as a result of net chemical uptake from the medium (e.g., water), is a factor in determining the movement of a chemical in the environment and the potential effects of the chemical on biota. Hydrophobic chemicals that are present in the aqueous environment at subtoxic concentrations may accumulate to toxic levels once inside organisms, presumably through diffusion into nonpolar cell components, where they accumulate because of their greater solubility. Further movement of the substance in living tissues may occur as a result of ingestion of lower trophic level organisms, i.e., food chain effects.

(ii) The tendency of an organic chemical to bioconcentrate in living cells can be inferred from the value of the octanol/water partition coefficient,

K_{ow} (Neely et al. 1974) under paragraph (d)(5) of this section. Chemicals with K_{ow} less than 10 will not significantly partition into, or tend to accumulate in, living cells. Chemicals with K_{ow} greater than 10^6 will tend to accumulate. Chemicals that exist in the environment at subtoxic levels may bioconcentrate to toxic levels once inside organisms.

(iii) This test guideline describes a detailed and commonly used procedure for determining the octanol/water partition coefficient of organic chemicals.

(2) *Definitions and units.* (i) The octanol/water partition coefficient (K_{ow}) is defined as the equilibrium ratio of the molar concentrations of a chemical in n-octanol and water, in dilute solution. K_{ow} is a constant for a given chemical at a given temperature. Since K_{ow} is the ratio of two molar concentrations, it is a dimensionless quantity. Sometimes K_{ow} is reported as log 10 K_{ow}. The mathematical statement of K_{ow} is:

Equation 1

$$K_{ow} = \frac{C_{octanol}}{C_{water}}$$

where C is the molar concentration of the solute in n-octanol and water at equilibrium at a given temperature.

(ii) The distribution law applies only to individual molecular species in solution. If a molecule dissociates or associates in octanol and water, than equation 1 under paragraph (a)(2)(i) of this section must be modified. In general, if α represents the fraction of the total solute that is dissociated or associated, assuming that either association or dissociation occurs in each solvent, then

Equation 2

$$K_{ow} = \frac{(1-\alpha_{oct.})\, C_{oct.}}{(1-\alpha_{water})\, C_{water}}$$

since $(1-\alpha)$ gives the fraction of unchanged molecules in each phase. For the special case where no association takes place in octanol, equation 2 reduces to

Equation 3

$$K_{ow} = \frac{C_{oct}}{(1-\alpha_{water})\, C_{water}}$$

where α water represents the fraction of the total solute that has dissociated in water.

(3) *Principle of the test method.* The conventional method for determining the octanol/water partition coefficient is carried out by distributing a chemical between n-octanol and water in a vessel at constant temperature and measuring the concentration in the two liquid phases after equilibration (e.g., Fujita et al. 1964 under paragraph (d)(2) of this section; Hansch and Anderson 1967 under paragraph (d)(3) of this section; Leo et al. 1971 under paragraph (d)(4) of this section; Chiou et al. 1977 under paragraph (d)(1) of this section).

(4) *Applicability and specificity.* The test guideline is designed to determine the octanol/water partition coefficient of solid or liquid organic chemicals in the range 10 to 10^6. For chemicals whose values lie outside this range, K_{ow} should be characterized as less than 10 or greater than 10^6 with no further quantification.

(b) *Test procedures*—(1) *Test conditions*—(i) *Special laboratory equipment.* (A) A thermostatic bath, chamber, or room with a shaker and temperature control as specified in Temperature Control below.

(B) An ultracentrifuge with temperature control as specified in Temperature Control below.

(C) Stainless steel or glass centrifuge tubes with sealable caps. Special glass centrifuge tubes can be used up to approximately 12,000 G and stainless steel tubes can be used at high G values.

(D) A mechanical shaker.

(E) A pH meter capable of resolving differences of 0.1 pH unit or less.

(ii) *Temperature control.* It is recommended that the temperature of the water bath, or chamber, or room, and the ultracentrifuge be controlled to (25±1) °C.

(iii) *Solvents.* It is extremely important that n-octanol, purified as described in paragraph (b)(2)(i)(A) of this section and distilled or reagent grade water, i.e., ASTM Type II water or an equivalent grade, be used. ASTM Type II water is described in ASTM D1193–77, "Standard Specification for Reagent Water." ASTM D1193–77 is available for inspection at the Office of the Federal Register, Rm. 8401, 1100 L St., NW., Washington, DC. This incorporation by reference was approved by the Director of the Office of the Federal Register. This material is incorporated as it exists on the date of approval and a notice of any change in this material will be published in the **Federal Register**. Copies of the incorporated material may be obtained from the Document Control Officer (TS–793), Office of Toxic Substances, EPA, Rm. 107, 401 M St., SW., Washington, DC 20460, and from the American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103.

(iv) *Concentration of solute.* It is extremely important that all experiments be carried out at solute concentration C<0.01M (Molar) in octanol and water and well below the solubility in either phase.

(v) *Equilibration time.* In general, 1 hour of gentle agitation is sufficient to reach equilibrium. For surfactants, at least 16 hours is required to reach equilibrium.

(vi) *Octanol/water volume ratio.* It is recommended that the ratio of the volumes of the two liquids be adjusted as appropriate for the relative solubility of the chemical in octanol and water. By adjusting the volumes, concentration errors (resulting from analytical errors) are minimized and errors resulting from dividing large numbers by small numbers are kept to a minimum.

(vii) *Chemical analysis of the octanol and water phases.* In determining the K_{ow} value for any given solute, it is important that both the octanol and water phases be analyzed for the chemical. An analytical method should be selected that is most applicable to the analysis of the specific chemical. Chromatographic methods are preferable because of their compound specificity in analyzing the parent chemical without interference from impurities. Whenever practicable, the chosen analytical method should have a precision with ±5 percent

(viii) *Emulsification and ultracentrifugation.* It is important that gentle shaking be used to minimize the formation of emulsions. Ultracentrifugation is necessary to separate troublesome emulsions and to separate the octanol and water phases. Therefore, it is very important that ultracentrifugation be carried out at 25 °C for 20 minutes in a temperature controlled ultracentrifuge. The acceleration (G) value required to break the emulsion and to achieve complete separation of the octanol and water phases can be determined by trial-and-error experimentation.

(ix) *Equilibration vessel.* (A) If feasible, equilibration should be carried out in a centrifuge tube (stainless steel or glass) with a sealable cap. It is important that the centrifuge tubes be almost completely full. In this way, partitioning with air will be minimized, especially for volatile chemicals, and the mixture will be completely mixed.

(B) Very hydrophobic chemicals, with K_{ow} in the order of 10^4 to 10^6, require

relatively large volumes of the aqueous phase. Hence, for these chemicals, it is recommended that equilibration be carried out in a large ground-glass stoppered flask.

(x) *Speciation effects.* (A) The octanol/water partition coefficient, K_{ow}, has been defined in paragraph (a)(2) of this section. The mathematical statement of K_{ow} is given by equation (1) under paragraph (a)(2)(i) of this section.

(B) If the chemical does not associate or dissociate in octanol and water, then use equation 1 under paragraph (a)(2)(i) of this section and determine K_{ow} at molar concentrations $C < 0.01M$ and $C_1 = 0.01C$.

(C) If the chemical associates in octanol or water or in both liquids, then use equation 1 under paragraph (a)(2)(i) of this section and determine K_{ow} at molar concentrations $C < 0.01M$, $C_1 = 0.1C$, $C_2 = 0.01C$, $C_3 = 0.001C$ . . . . When K_{ow} is constant at two molar concentrations differing by a factor of 10, then the effect of association has been minimized or eliminated.

(D) If a molecule dissociates or associates in octanol and water, then it is extremely important that equation 1 under paragraph (a)(2)(i) of this section be modified to take into account such speciation changes as ionization, aggregation, and hydration. For the special case, where no association takes place in octanol and only dissociation takes place in water, equation 3 under paragraph (a)(2)(ii) of this section can be used. For chemicals that reversibly ionize or pronate (e.g., carboxylic acids, phenols, or anilines), use equation 3 under paragraph (a)(2)(ii) of this section with water buffered at pH 5.0, 7.0, and 9.0. It is recommended that buffers described in paragraph (b)(2)(i)(B) of this section be used.

(xi) *Prerinsing of all transfer vessels.* It is important that all transfer vessels be prerinsed with a portion of the equilibrium phase prior to transfer for analysis. This is especially important for very hydrophobic chemicals.

(2) *Preparations*—(i) *Reagents and Solutions*—(A) *Octanol and Water.* Very pure *n*-octanol can be obtained as follows: wash pure *n*-octanol (minimum 98 percent pure) sequentially with 0.1N H_2SO_4, with 0.1N NaOH, then with distilled water until neutral. Dry the *n*-octanol with magnesium sulfate and distill twice in a good distillation column under reduced pressure [b.p. about 80 °C at 0.27 kPa (2 torr)]. It is important that the octanol produced be at least 99.9 percent pure. Alternatively, a grade equivalent to Fisher Scientific Co. No. A–402 "Certified Octanol-1" can be used. It is important that distilled or reagent grade (ASTM Type II) water be used.

(B) *Buffer solutions.* Prepare buffer solutions using reagent grade chemicals in distilled or reagent grade water as follows:

pH 5.0—To 250 mL of 0.1M potassium hydrogen phthalate add 113 mL of 0.1M sodium hydroxide; adjust final volume to 500 mL with reagent grade water.

pH 7.0—To 250 mL of 0.1 potassium dihydrogen phosphate add 145 mL of 0.1M sodium hydroxide; adjust final volume to 500 mL with reagent grade water.

pH 9.0—To 250 mL of 0.07M borax add 69 mL of 0.1M HCl; adjust final volume to 500 mL with reagent grade water.

Check the pH of each buffer solution at 25 °C with a pH meter and adjust to pH 5.0, 7.0, or 9.0, if necessary.

(C) *Presaturation of the solvents.* Before a partitioning experiment is carried out, prepare octanol saturated with water and water saturated with octanol. Add purified *n*-octanol to a large stock bottle and sufficient distilled water to saturate it. Shake the flask for 24 hours on a mechanical shaker. Then allow sufficient time for the mixture to stand so that the two phases separate. Repeat this procedure using another large stock bottle containing distilled water and sufficient octanol to saturate it. The desired quantities of the presaturated solvents can be taken from these stock bottles for each partition experiment.

(D) *Preparation of test solution.* Prepare a 10^{-2} to 10^{-3} M solution of the test material in octanol.

(3) *Performance of the test.* (i) Add a small volume of the octanol test solution (1 to 5 mL) to a centrifuge tube with a sealable cap as described in paragraph (b)(1)(ix) of this section.

(ii) Add the required volume of water to the centrifuge tube as described in paragraph (b)(1)(vi) of this section. The volume of water required is variable, depending upon the amount of chemical required for the analysis. Generally, 20–40 mL of water should be sufficient. Make sure that the centrifuge tube is almost completely full. In this way, partitioning with air will be minimized. This is important, especially when determining K_{ow} for volatile chemicals.

(iii) Equilibrate the samples at 25 °C in constant temperature bath, chamber, or room by gently shaking the centrifuge tube for 1 hour. Avoid vigorous shaking that may cause troublesome emulsions to form. For surfactants, a minimum of 16 hours of shaking is required as described in paragraph (b)(1)(v) of this section.

(iv) Centrifuge the samples at 25 °C for 20 minutes to break any emulsion and to separate the octanol and water phases. Evidence for breaking the emulsion and separation of the water and octanol phases can be obtained using a turbidimeter. The acceleration (G) value required to break the emulsion and to achieve complete separation of the octanol and water phases can be determined by trial-and-error experimentation.

(v) Sample the octanol and water phases as follows:

(A) Withdraw by pipet a known volume of the octanol phase (approximately ⅓ or less of the total octanol phase) and transfer to an analysis cell or diluting solvent. Before transferring the aliquot of the octanol phase, wipe the outside of the pipet with a paper tissue.

(B) Remove by pipet the remainder of the octanol phase including the interfacial layer and discard.

(C) Insert another clean pipet close to the bottom of the centrifuge tube and carefully withdraw a known volume of the aqueous phase. Wipe the bottom exterior part of the pipet with a tissue and discharge the aqueous sample directly into an analysis cell or extraction solvent. Do not allow the extraction solvent to contact the pipet stem.

(vi) Select an analytical method that is most applicable to the analysis of the specific chemical as described in paragraph (b)(1)(vii) of this section. Determine the concentration in the octanol and water phases. Express the concentration of the chemical in octanol and water in moles/liter (M).

(vii) Determine the partition coefficient in triplicate (steps i through vii) at two concentrations of the test material $C < 0.01M$ and $C_1 = 0.1C$ as described in paragraph (b)(1)(x) of this section. If K_{ow} is not constant at C and C_1, then association effects should be considered. Therefore, follow steps 1 through 7 at lower concentrations until K_{ow} is constant at two concentrations differing by a factor of 10 as described in paragraph (b)(1)(x) of this section.

(viii) Very hydrophobic chemicals (with K_{ow} on the order of 10^4 to 10^6) required relatively large volumes of the aqueous phase as described in paragraph (b)(1)(vi) and (ix) of this section. Hence, for very hydrophobic materials, equilibrate the octanol and water phases in a large ground-glass stoppered flask as described above in step (iii). For the final phase separation, transfer the two phase mixture to centrifuge tubes that have been prerinsed with some of the aqueous

phase; centrifuge as described in step (iv); withdraw aliquots from each centrifuge tube as described in step (v); and recombine for analysis.

[Note.—Prerinse all transfer tubes with the water phase.] Complete steps (vi) and (vii) to determine K_{ow}.

(ix) For materials that reversibly ionize or protanate, determine K_{ow} at pH 5.0, 7.0, and 0.0 as described in paragraph (b)(1)(x) of this section. Follow steps (i) through (vii) using the buffered aqueous solutions described in paragraph (b)(2)(i)(B) of this section. Using the acid dissociation constant and the concentration of the chemical in the aqueous phase [C_{water}], the term can be calculated. The concentration of undissociated chemical can be determined from α and C_{water}.

(c) *Data and reporting*— (1) *Test report.* For each individual determination, report the octanol/water partition coefficient at each concentration of the test substance, including the molar concentration of chemical in each phase [C_{oct} and C_{water}]. In addition, report the mean value of K_{ow}, and the standard deviation.

(2) *Specific analytical and recovery procedures.* (i) Provide a detailed description or reference for the analytical procedure used, including the calibration data and precision; and (ii) if extraction methods were used to separate the solute from the octanol and aqueous phases, provide a description of the extraction data.

(3) *Other test conditions.* Report the experimental (G) value required to break the emulsion and to achieve separation of the octanol and water phases.

(d) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Chiou, C.T., Freed, V.H., Schmedding, D.W., Kohnert, R.L. "Partition Coefficient and Bioaccumulation of Selected Organic Chemicals," *Environmental Science and Technology,* 11:475 (1977).

(2) Fujita, T., Iwasa, J., Hansch, C. "A New Substituent Constant Derived from Partition Coefficients," *American Chemical Society Journal,* 86:5175 (1964).

(3) Hansch, C., Anderson, S.M., "The Effect of Intermolecular Hydrophobic Bonding on Partition Coefficients," *Journal of Organic Chemistry,* 23:2583 (1977).

(4) Leo, A., Hansch, C., Elkins, D. "Partition Coefficients and Their Uses," *Chemical Reviews,* 71:525 (1971).

(5) Neely, W.B., Branson, D.R., Blau, G.E. "Partition Coefficient to Measure Bioconcentration Potential of Organic Chemicals in Fish," *Environmental Science and Technology,* 8:113 (1974).

§ 796.1570 Partition Coefficient (n-Octanol/Water)—Estimation by Liquid Chromatography.

(a) *Introduction*—(1) *Background and purpose.* (i) Since the pioneering work of Hansch and Fujita (1964) under paragraph (d)(1) of this section in the measurement and estimation of the octanol/water partition coefficient (K_{ow}), this property has become the cornerstone of a myriad of structure-activity relationships (SAR). Hansch and Leo (1979) under paragraph (d)(2) of this section have used the coefficient extensively for correlating structural changes in drugs with changes observed in biological, biochemical or toxic effects. These correlations are then used to predict the effect of a new drug for which a K_{ow} could be measured.

(ii) In the study of the environmental fate of organic chemicals, the coefficient has become a key parameter. It has been shown to be correlated to water solubility, soil/sediment adsorption coefficient, and bioconcentration. The importance of this property to SAR is indicated by its discussion in the first chapter of Lyman, Reehl and Rosenblatt's (1982) under paragraph (d)(3) of this section comprehensive compendium of methods for estimating the behavior of organic compounds in the environment. These authors consider the measurement or estimation of the coefficient to be the necessary first step in assessing the fate of new chemicals.

(iii) Of the three properties that can be estimated from K_{ow}, water solubiljty is the most important because it affects both the fate and transport of chemicals. For example, highly soluble chemicals become quickly distributed by the hydrologic cycle, have low adsorption coefficients for soils and sediments, and tend to be more easily degraded by microorganisms. In addition, chemical transformation processes such as hydrolysis and oxidation tend to occur more readily if a compound is soluble.

(iv) Direct correlations between K_{ow} and both the soil/sediment adsorption coefficient and the bioconcentration factor are to be expected. In these cases compounds that are more soluble in octanol (more hydrophobic) would be expected to partition out of the water and onto the organic portion of soils/sediments and into lipophilic tissue. The relationship between K_{ow} and the bioconcentration factor, as developed by Neely et al. (1974) under paragraph (d)(4) of this section, and other similar relationships, are the principal means of estimating bioconcentration factors. These factors are then used to predict the potential for a chemical to accumulate in living tissue. As a rough estimate, chemicals with K_{ow} less than 10 will not accumulate in tissue while those with K_{ow} greater than 10^6 will. Thus, although a chemical may be present in the aqueous environment at subtoxic concentrations, if its K_{ow} is greater than 10^6 it would accumulate to levels that may be toxic not only to the organism but also to the consumers of that organism.

(v) This test guideline describes a rapid, inexpensive method based on reverse phase-high pressure liquid chromatography (RP-HPLC) for estimating the octanol/water partition coefficient as developed by Veith et al. (1979) under paragraph (d)(5) of this section. It is not intended, however, to replace the standard shake-flask method described in § 796.1550, and should be used keeping in mind the limitations described herein. The RP-HPLC method is intended to give quick estimates of K_{ow}, particularly for very hydrophobic substances and mixtures that cannot be analyzed using the shake-flask method.

(2) *Definitions.* (i) The octanol/water partition coefficient (K_{ow}), as estimated by this test method, is the ratio of the equilibrium molar concentrations of a chemical in n-octanol and water, in dilute solution; as such it is a dimensionless quantity. K_{ow} is a constant for a given chemical at a given temperature. Because K_{ow} can assume such a wide range of values, from less than one to greater than a million, depending on the structure of the compound, K_{ow} is often reported as log K_{ow}.

(ii) The retention time, t_R, is the time in minutes elapsed between sample injection into the chromatograph and the peak maximum (concentration) as recorded on a chromatogram. The retention time is characteristic of the substance, the liquid phase flow rate, and the stationary phase, at a given temperature. With proper flow and temperature control, it can be reproduced to within one percent and used to identify multiple peaks. Although several substances can have nearly identical retention times, each substance has only one retention time. This retention time is not influenced by the presence of other components. Retention times for this method vary between several minutes for substances with a lower K_{ow} to thirty minutes or greater for substances with higher K_{ow}'s.

(3) *Principle of the test method.* This test method is based on a reverse-phase high pressure chromatographic (HPLC) separation procedure developed by Veith et al. (1979) under paragraph (d)(5)

of this section. The test substance (solute) is injected onto an HPLC column containing a support onto which a long-chain hydrocarbon has been permanently bonded. A methanol/water solvent system is used to elute the solute which is subsequently analyzed using an ultraviolet absorption detector, gas chromatograph, liquid scintillator or other suitable detector. During elution, the solute moves alone the column by partitioning between the mobile phase and the stationary hydrocarbon phase. The retention time on the column is a function of the hydrophobicity of the solute: A water soluble solute has a short retention time while a hydrophobic solute has a long retention time. Once the retention time is measured on the chromatogram, the K_{ow} of the substance is estimated from a previously established linear regression equation between log t_R and log K_{ow}. The relationship between these two variables is determined through a calibration step that involves injecting into the chromatograph a mixture of six reference chemicals having a range of retention times and known octanol/water partition coefficients. The retention time for each chemical is measured and a plot of log t_R *vs.* log K_{ow} is made. The data are also correlated using a linear regression and the resulting equation is used to calculate log K_{ow} from the log t_R of test substances; the correlation coefficient of the linear regression gives a measure of the "goodness of fit" of the calibration data to a straight line.

(4) *Applicability and specificity.* The test method described in this guideline is designed to calculate an estimated value of the octanol/water partition coefficient using an empirically derived equation that relates the K_{ow} of a substance to its experimentally determined retention time on a HPLC column. It must be emphasized that the shake-flask method in § 796.1550 remains the conventional method for determining K_{ow}. The HPLC method described herein is a rapid procedure for estimating log K_{ow} for a single substance or a mixture of substances. Estimates of log K_{ow} should be limited to within two log units of the minimum and maximum values of the calibration substances, i.e., the method is applicable to substances with log K_{ow} between zero and eight. In the range of two to six log units, estimates are within 22.5 ± 20.1 percent of the values reported in the literature obtained using other methods (Veith et al. 1979) under paragraph (d)(5) of this section.

(b) *Test procedures*—(1) *Test conditions*—(i) *Special laboratory equipment.* (A) A liquid chromatograph equipped with a 6000 psi pump, a high-pressure stopflow injector, and appropriate recorder.

(B) A preparative scale reverse phase column (250 mm × 8 mm under paragraph (a)(4) of this section), e.g., Varian Preparative Micropak C–H, consisting of a stainless steel tube filled with 10 micron LiChrosorb to which octadecylsilane is permanently bonded.

(C) For chemicals that absorb in the ultraviolet (i.e., aromatics), either 254–nm fixed wavelength detector or 190 to 600 nm variable wavelength detector, can be used. For chemicals that cannot be detected in the ultraviolet, a fraction collector can be used to collect fractions at suitable intervals (0.50 to 1.0-minutes near the retention time) for analysis by gas chromatography, liquid scintillation, or other suitable, sensitive, analytical detector.

(ii) *Purity of solvents and reagents.* All solvents (water, methanol, acetone, and cyclohexane) and reagents used in this test procedure should be reagent or HPLC grade and contain no impurities that could interfere with the determination of the retention time of the test compound. Water meeting ASTM Type II standards or an equivalent grade is recommended to minimize the effects of dissolved salts and other impurities. ASTM Type II water is described in ASTM D 1193–77, "Standard Specification for Reagent Water". ASTM D 1193–77 is available for inspection at the Office of the Federal Register, Rm. 8401, 1100 L St., NW., Washington, DC. This incorporation by reference was approved by the Director of the Office of the Federal Register. This material is incorporated as it exists on the date of approval and a notice of any change in this material will be published in the **Federal Register.** Copies of the incorporated material may be obtained from the Document Control Officer (TS–793), Office of Toxic Substances, EPA, Rm. 107, 401 M St., SW., Washington, DC 20460, and from the American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103.

(2) *Preparation of reagents and solutions*—(i) *Solvents.* For column elution and preparation of buffers, mix chromatographic or reagent grade methanol and water in an 85:15 v/v ratio.

(ii) *Calibration mixture.* Prepare a standard calibration solution containing 200 mg/L of each of the substances listed in the following Table 1 dissolved in acetone and cyclohexane (3:1 v/v) other suitable solvent. Twenty microliters of this solution injected into the chromatograph should give an adequate recorder response (25 percent of scale) for calibration purposes. However, both the concentration and amount injected may be increased or decreased without affecting the retention times, since t_R is independent of concentration in dilute solutions.

TABLE 1—MEASURED OCTANOL/WATER PARTITION COEFFICIENTS AND TYPICAL HPLC RETENTION TIMES FOR THE CHEMICALS USED IN THE CALIBRATION MIXTURE

Chemical	Literature log K_{ow}	Measured typical retention time	
		Minutes	Log minutes
Benzene	2.13	4.12	0.61
Bromobenzene	2.99	7.09	0.85
Biphenyl	3.76	8.85	0.95
Bibenzyl	4.81	15.87	1.20
p,p' DDE	5.69	21.98	1.34
2,4,5,2',5'-PCB	6.11	31.58	1.50

(iii) *Test solution.* Solutions of the test substance(s) are prepared similar to the calibration mixture: by dissolving the substance(s) to be tested in a 3:1 mixture of acetone and cyclohexane. The concentration of the substance(s), as determined by trial and error, should be sufficient to produce a chromatographic peak of at least 25 percent of the recorder scale.

(3) *Performance of the test.* (i) After conditioning the column with 85:15 methanol-water or buffered methanol-water, chromatograph the calibration mixture by injecting 20 microliters of the mixture into the column. Elute the column using a solvent flow rate of about 2.0 ml/min at a pressure of approximately 1200 psi. Determine the retention time for each substance in the mixture. The calibration mixture must be chromatographed daily because the retention time is sensitive to variations in the flow rate, temperature, solvent ratio, and the retention properties of the column.

(ii) Chromatograph 20 microliters of the test solution(s) directly following column calibration, using an identical flow rate and pump pressure. Determine the retention time(s) for the test substance(s).

(c) *Data and reporting*—(1) *Test report.* (i) Using the measured retention times of the substances in the calibration mixture and the log K_{ow} for each substance in Table 1 under paragraph (b)(2)(ii) of this section make a plot of log t_R *vs.* log K_{ow}. From the data used in making this plot compute a linear regression equation of the form:

$$\log K_{ow} = m \log t_R + b$$

i.e., $y=mx+b$. For each set of test conditions (flow rate, pressure) report this equation, its correlation coefficient and the data used in its calculation.

(ii) Calculate an estimated log K_{ow} for each test substance from its retention time and corresponding regression equation. Report the retention time, its logarithm and log K_{ow} along with the above data.

(2) *Specific analytical procedures.* (i) Provide a detailed description of, or reference for, the liquid chromatograph, separation column, and detector.

(ii) Report the temperature at which the test(s) were conducted.

(iii) Give a description of any problems (and their rectification) or changes in the test procedures.

(d) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Hansch, C., Fujita, T. "A Method for the Correlation of Biological Activity and Chemical Structure," *American Chemical Society Journal*, 86:1616 (1964).

(2) Hansch, C., Leo, A. *Substituent Constants for Correlation Analysis in Chemistry and Biology.* (J. Wiley & Sons, New York, 1979).

(3) Lyman, W.J., Reehl, W.F., Rosenblatt, D.H. *Handbook of Chemical Property Estimation Methods: Environmental Behavior of Organic Compounds.* (McGraw-Hill Book Co., New York, 1982).

(4) Neely, W.B., Branson, D.R., Blau, G.E. "Partition Coefficient to Measure Bioconcentration Potential of Organic Chemicals in Fish," *Environmental Science Technology*, 8:113 (1974).

(5) Veith, G.D., Austin, N.M., Morris, R.T. "A Rapid Method for Estimating Log P for Organic Chemicals," *Water Research*, 13:43 (1979).

§ 796.1720 Octanol/Water Partition Coefficient, Generator Column Method.

(a) *Introduction—(1) Background and purpose.* (i) Since the pioneering work of Fujita and Hansch (1964) under paragraph (d)(2) of this section in the measurement and estimation of the octanol/water partition coefficient (K_{ow}), this property has become the cornerstone of a myriad of structure-activity relationships (SAR). Hansch and Leo (1979) under paragraph (d)(3) of this section have used the coefficient extensively for correlating structural changes in drugs with changes observed in biological, biochemical or toxic effects. These correlations are then used to predict the effect of a new drug for which a K_{ow} could be measured.

(ii) In the study of the environmental fate of organic chemicals, the coefficient has become a key parameter. It has been shown to be correlated to water solubility, soil/sediment sorption coefficient, and bioconcentration. The importance of this property to SAR is indicated by its discussion in the first chapter of Lyman, Reehl and Rosenblatt's (1982) under paragraph (d)(4) of this section comprehensive compendium of methods for estimating the behavior of organic compounds in the environment. These authors consider the measurement or estimation of the coefficient to be the necessary first step in assessing the fate of new chemicals.

(iii) Of the three properties that can be estimated from K_{ow}, water solubility is the most important because it affects both the fate and transport of chemicals. For example, highly soluble chemicals become quickly distributed by the hydrologic cycle, have low sorption coefficients for soils and sediments, and tend to be more easily degraded by microorganisms. In addition, chemical transformation processes such as hydrolysis, direct photolysis, indirect photolysis (oxidation) and tend to occur more readily if a compound is soluble.

(iv) Direct correlations between K_{ow} and both the soil/sediment sorption coefficient and the bioconcentration factor are to be expected. In these cases compounds that are more soluble in octanol (more hydrophobic) would be expected to partition out of the water and into the organic portion of soils/sediments and into lipophilic tissue. The relationship between K_{ow} and the bioconcentration factor, as developed by Neely et al. (1974) under paragraph (d)(7) of this section, and other similar relationships, are the principal means of estimating bioconcentration factors. These factors are then used to predict the potential for a chemical to accumulate in living tissue.

(v) This test method describes a method for determining the octanol/water partition coefficient based on the dynamic coupled column liquid chromatographic technique, a technique commonly referred to as the generator column method. This method was the basis for a previous test method for water solubility, § 796.1860 and closely follows that section. The method described herein can be used in place of the standard shake-flask method described in § 796.1550 for compounds with a log K_{ow} greater than 1.0.

(2) *Definitions and units.* (i) The octanol/water partition coefficient (K_{ow}) is defined as the ratio of the molar concentrations of a chemical in n-octanol and water, in dilute solution. The coefficient K_{ow} is a constant for a given chemical at a given temperature. Since K_{ow} is the ratio of two molar concentrations, it is a dimensionless quantity. Sometimes K_{ow} is reported as log K_{ow}. The mathematical statement of K_{ow} is:

Equation 1

$$K_{ow}=\frac{C_{octanol}}{C_{water}}$$

where $C_{octanol}$ and C_{water} are the molar concentration of the solute in n-octanol and water, respectively, at a given temperature. This test procedure determines K_{ow} at 25±0.05 °C.

(ii) A "generator column" is used to partition the test substance between the octanol and water phases. The column in Figure 1 under paragraph (b)(1)(i)(A)(2) of this section is packed with a solid support and is coated with the test substance at a fixed concentration in n-octanol. The test substance is eluted from the column with water and the aqueous solution leaving the column represents the equilibrium concentration of the test substance that has partitioned from the octanol phase into the water phase. Preparation of the generator column is described under paragraph (b)(1)(i) of this section.

(iii) An "extractor column" is used to extract the solute from the aqueous solution produced by the generator column. After extraction onto a bonded chromatographic support, the solute is eluted with a solvent/water mixture and subsequently analyzed by high pressure liquid chromatography (HPLC). A detailed description of the preparation of the extractor column is given in paragraph (b)(1)(i) of this section.

(iv) The "sample loop" is a 1/16 in. O.D. (1.6mm) stainless steel tube with an internal volume between 20 and 50 μL. The loop is attached to the sample injection valve of the HPLC and is used to inject standard solutions into the mobile phase of the HPLC when determining the response factor for the recording integrator. The exact volume of the loop must be determined as described in paragraph (b)(3)(ii)(C)(*1*) of this section when the HPLC method is used.

(v) The "response factor" (RF) is the solute concentration required to give a one unit area chromatographic peak or one unit output from the HPLC recording integrator at a particular recorder and detector attenuation. The factor is required to convert from units of area to units of concentration. The determination of the response factor is given in paragraph (b)(3)(ii)(C)(*2*) of this section.

(3) *Principle of the test method.* (i) This test method is based on the dynamic coupled column liquid chromatographic (DCCLC) technique for determining the aqueous solubility of organic compounds that was initially developed by May et al. (1978) under paragraph (d) (5) and (6) of this section. modified by DeVoe et al. (1981) under paragraph (d)(1) of this section, and finalized by Wasik et al. (1981) under paragraph (d)(8) of this section. The DCCLC technique utilizes a generator column, extractor column and HPLC coupled or interconnected to provide a continuous closed flow system. Aqueous solutions of the test compound are produced by pumping water through the generator column that is packed with a solid support coated with an approximately 1.0 percent (w/w) solution of the compound in octanol. The aqueous solution leaving the column represents the equilibrium concentration of the test chemical which has partitioned from the octanol phase into the water phase. The compound is extracted from the aqueous solution onto an extractor column, then eluted from the extractor column with a solvent/water mixture and subsequently analyzed by HPLC using an ultraviolet absorption detector operating at a suitable wavelength. Chromatogram peaks are recorded and integrated using a recording integrator. The concentration of the compound in the effluent from the generator column is determined from the mass of the compound (solute) extracted from a measured volume of water (solvent). The octanol/water partition coefficient is calculated from the ratio of the molar concentration of the solute in the 1.0 percent (w/w) octanol and molar concentration of the solute in water as determined using the generator column technique.

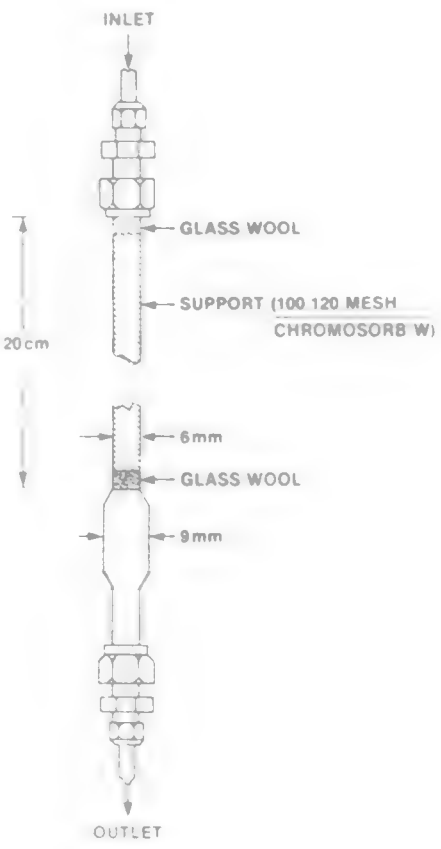
(ii) Since the HPLC method is only applicable to compounds that absorb in the ultraviolet, an alternate gas chromatographic (GC) method is used for those compounds that do not absorb in the ultraviolet. In the GC method the saturated solutions produced in the generator column are extracted using an appropriate organic solvent that is subsequently injected into the GC for analysis of the test compound.

(4) *Applicability and specificity.* The test guideline is designed to determine the octanol/water partition coefficient of solid or liquid organic chemicals in the range log K_{ow} 1.0 to >6.0 (10 to $>10^6$).

(b) *Test Procedure*—(1) *Test conditions*—(i) *Special laboratory equipment.* (A) (*1*) Generator column—Either of two different methods for connecting to the generator column are used depending on whether the eluted aqueous phase is analyzed by HPLC (Procedure A) or by solvent extraction followed by GC analysis of solvent extract (Procedure B).

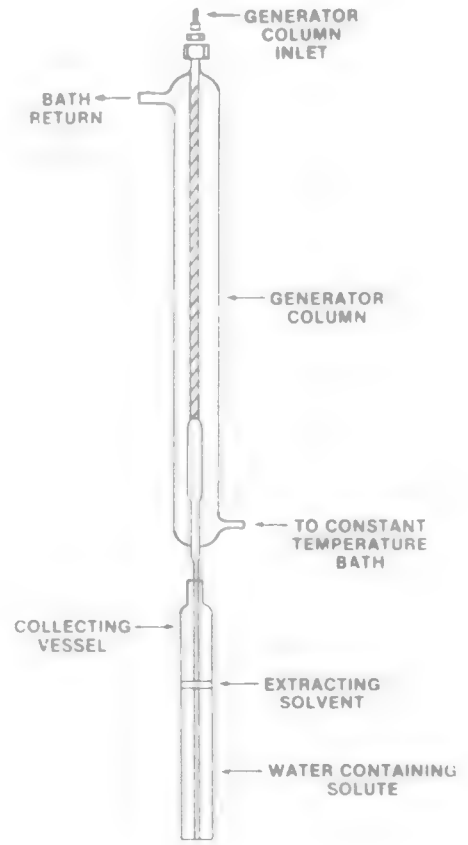
(*2*) The design of the generator column is shown in the following Figure 1:

Figure 1—Generator column



The column consists of a 6 mm (¼-inch) O.D. Pyrex tube joined to a short enlarged section of 9 mm Pyrex tubing which in turn is connected to another section of 6 mm (¼-inch) O.D. Pyrex tubing. Connections to the inlet Teflon tubing (⅛-inch O.D.) and to the outlet stainless steel tubing (1/16-inch O.D.) are made by means of stainless steel fittings with Teflon ferrules. The column is enclosed in a water jacket for temperature control as shown in the following Figure 2:

Figure 2—Setup showing generator column enclosed in a water jacket and overall arrangement of the apparatus used in GC method



(B) Constant temperature bath with circulation pump-bath and capable of controlling temperature to 25±0.05 °C. (Procedure A and B);

(C) High pressure liquid chromatograph equipped with an ultraviolet absorption detector operating at a suitable wavelength and a recording integrator (Procedure A);

(D) Extractor column—6.6 x 0.6 cm stainless steel tube with end fittings containing 5 micron frits filled with a superficially porous phase packing (Bondapack C_{18} Corasil: Water Associates) (Procedure A);

(E) Two 6-port high pressure rotary switching valves (Procedure A);

(F) Collection vessel under paragraph (b)(1)(i)(A)(2) Figure 2 of this section 8 x ¾ inch section of Pyrex tubing with a flat bottom connected to a short section of ⅜-inch O.D. borosilicate glass tubing.

The collecting vessel is sealed with a ⅜-inch Teflon cap fitting (Procedure B); and

(G) Gas chromatograph equipped with a detector sensitive to the solute of interest (Procedure B).

(ii) *Purity of Octanol and Water.* Purified n-octanol, described in paragraph (b)(2) of this section, and water meeting ASTM Type II standards, or an equivalent grade, are recommended to minimize the effects of dissolved salts and other impurities. ASTM Type II water is described in ASTM D 1193–77, "Standard Specification for Reagent Water". ASTM D 1193–77 is available for inspection at the Office of the Federal Register, Rm. 8401, 1100 L St., NW., Washington, DC. This incorporation by reference was approved by the Director of the Office of the Federal Register. This material is incorporated as it exists on the date of approval and a notice of any change in this material will be published in the **Federal Register**. Copies of the incorporated material may be obtained from the Document Control Officer (TS–793), Office of Toxic Substances, EPA, Rm. 107, 401 M St., SW., Washington, DC 20460, and from the American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103.

(iii) *Purity of Solvents.* It is important that all solvents used in this method be reagent or HPLC grade and contain no impurities which could interfere with the determination of the test compound.

(iv) *Reference Compounds.* In order to ensure that the HPLC system is working properly, at least two of the following five reference compounds should be run. The values obtained should be within ±0.1 log unit of the reference value

	Log K_{ow}
n-Propylacetate	1.24
2-Heptanone	1.98
Naphthalene	3.34
n-Propylbenzene	3.69
n-Octane	5.18

Reference compounds should be reagent or HPLC grade to avoid interferences by impurities.

(2) *Preparation of reagents and solutions*—(i) *Octanol and Water.* Very pure *n*-octanol can be obtained as follows: wash pure *n*-octanol (minimum 98 percent pure) sequentially with 0.1N H_2SO_4, with 0.1N NaOH, then with distilled water until neutral. Dry the *n*-octanol with magnesium sulfate and distill twice in a good distillation column under reduced pressure [b.p. about 80 °C at 0.27 kPa (2 torr)]. The octanol produced should be at least 99.9 percent pure. Alternatively, a grade equivalent to Fisher Scientific Co. No. A–402 "Certified Octanol–1" can be used. Distilled or reagent grade water should be used throughout the test procedure; ASTM Type II water as described in ASTM D1193–77, "Standard Specification for Water", is recommended. ASTM D1193–77 is available for inspection at the Office of the Federal Register, Rm. 8401, 1100 L St., NW., Washington, DC. This incorporation by reference was approved by the Director of the Office of the Federal Register. This material is incorporated as it exists on the date of approval and a notice of any change in this material will be published in the **Federal Register.** Copies of the incorporated material may be obtained from the Document Control Officer (TS–793), Office of Toxic Substances, EPA, Rm. 107, 401 M St., SW., Washington, DC 20460, and from the American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103.

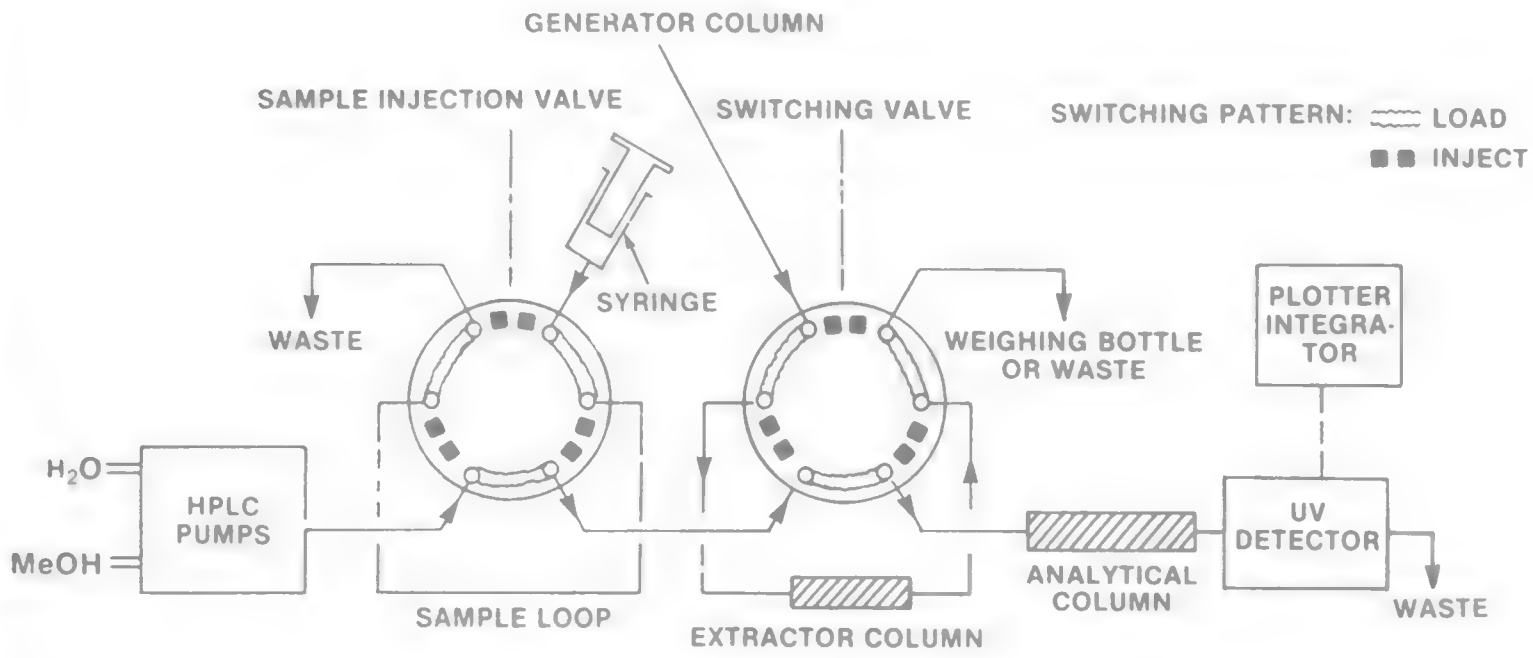
(ii) [Reserved]

(3) *Performance of the Test.* Initially, an approximately 1.0 percent (w/w) solution of the test substance in *n*-octanol is prepared. Precise measurement of the solute concentration in this solution is required for the K_{ow} calculation. Subsequently, the 1.0 percent (w/w) solution is coated on the generator column and using either Procedure A or B as described below, the molar concentration of the test substance in reagent grade water is determined.

(i) *Test solution.* The test solution consists of an approximately 1.0 percent (w/w) solution of the test substance in octanol. A sufficient quantity (about 10–20 ml) of the test solution should be prepared to coat the generator column. The solution is prepared by accurately weighing out, using a tared bottle, quantities of both the test substance and octanol required to make a 1.0 percent (w/w) solution. When the weights are measured precisely (to the nearest 0.1 mg, knowing the density of octanol (0.827 g/ml at 25 °C), then the molar concentration of the test substance in the octanol is sufficiently accurate for the purposes of the test procedure. If desired, however, a separate analytical determination (e.g., by GC) may be used to check the concentration in the test solution. If storage is required, the test solution should be kept stoppered to prevent volatilization of the test chemical.

(ii) *Procedure A—HPLC Method.* (A) Procedure A covers the determination of the aqueous solubility of compounds which absorb in the ultraviolet. The HPLC analytical system is shown schematically in the following Figure 3:

Figure 3—Schematic of HPLC—generator column flow system



Two reciprocating piston pumps deliver the mobile phase (water or solvent/water mixture) through two 6-port high pressure rotary valves and a 30 x 0.6 cm C_{18} analytical column to an ultraviolet absorption detector operating at a suitable wavelength. Chromatogram peaks are recorded and integrated with a recording integrator. One of the 6-port valves is the sample injection valve used for injecting samples of standard solutions of the solute in an appropriate concentration for determining response factors or standard solutions of basic chromate for determining the sample loop volume. The other 6-port valve in the system serves as a switching valve for the extractor column which is used to remove solute from the aqueous solutions.

(B) The general procedure for analyzing the aqueous phase after equilibration is as follows; a detailed procedure is given in part d. of this section:

(*1*) Direct the aqueous solution from the generator column to "Waste" in Figure 3 under paragraph (b)(3)(ii)(A) of this section with the switching valve in the inject position in order to equilibrate internal surfaces with the solution, thus insuring that the analyzed sample would not be depleted by solute adsorption on surfaces upstream from the valve.

(*2*) At the same time, water is pumped from the HPLC pumps in order to displace the solvent from the extractor column.

(*3*) The switching valve is next changed to the load position to divert a sample of the solution from the generator column through the extractor column, and the liquid leaving the extractor column is collected in a tared weighing bottle. During this extraction step, the HPLC mobile phase is changed to a solvent/water mixture to condition the analytical column.

(*4*) After the desired volume of sample is extracted, the switching valve is returned to the inject position for elution from the extractor column and analysis. Provided that all of the solute was adsorbed by the extractor column during the extraction step, the chromatographic peak represents all of the solute in the extracted sample.

(*5*) The solute concentration in the aqueous phase is calculated from the peak area, the weight of the extracted liquid collected in the weighing bottle, and the response factor.

(C)(*1*) *Determination of the Sample Loop Volume.* Accurate measurement of the sample loop may be accomplished by using the spectrophotometric method of Devoe et al. (1981) under paragraph (d)(1) of this section. For this method measure absorbance, A_{loop}, at 373 nm for at least three solutions, each of which is prepared by collecting from the sample valve an appropriate number, n, of loopfuls of an aqueous stock solution of K_2CrO_4 (1.3 percent by weight) and diluting to 50 mL with 0.2 percent KOH. (For a 20 μL loop, use n=5; for a 50 μL loop, use n=2.) Also measure the absorbance, A_{stock}, of the same stock solution after diluting 1:500 with 0.2 percent KOH. Calculate the loop volume to the nearest 0.1 μL using the relation:

$$V_{loop} = (A_{loop}/A_{stock})(10^{-4}/n)$$

(*2*) *Determination of the Response Factor (RF).* (*i*) For all determinations adjust the mobile phase solvent/water ratio and flow rate to obtain a reasonable retention time on the HPLC column. For example, typical concentrations of organic solvent in the mobile phase range from 50 to 100 percent while flow rates range from 1 to 3 mL/min; these conditions often give a 3 to 5 minute retention time.

(*ii*) Prepare standard solutions of known concentrations of the solute in a suitable solvent. Concentrations must give a recorder response within the

maximum response of the detector. Inject samples of each standard solution into the HPLC system using the calibrated sample loop. Obtain an average peak area from at least three injections of each standard sample at a set detector absorbance unit full scale (AUFS), i.e., at the same absorbance scale attenuation setting.

(*iii*) Calculate the response factor from the following equation:

$$\text{Response Factor (RF)} = \frac{\text{Concentration (M)}}{\text{(Average Area) (AUFS)}}$$

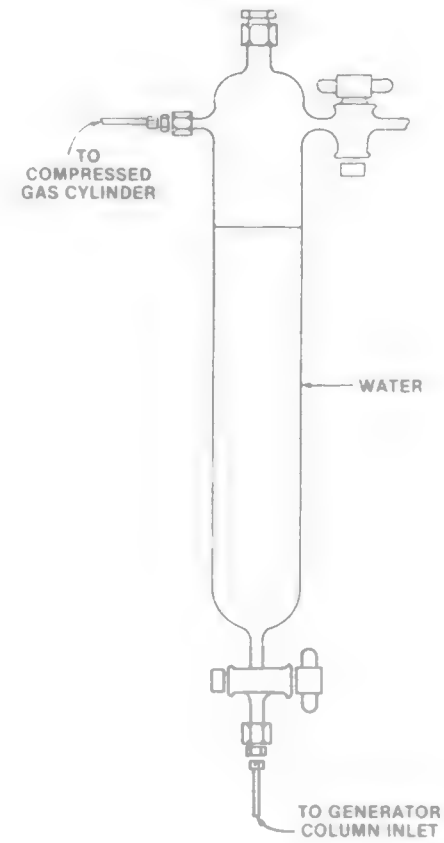
(*3*) *Loading of the Generator Column.* (*i*) The design of the generator column was described in paragraph (b)(1)(i) of this section and is shown in Figure 1 under paragraph (b)(1)(i)(A)(*2*) of this section. To pack the column, a plug of silanized glass wool is inserted into one end of the 6 mm Pyrex tubing. Silanized diatomaceous silica support (about 0.5g of 100–120 mesh Chromosorb W chromatographic support material) is poured into the tube with tapping and retained with a second plug of silanized glass wool.

(*ii*) The column is loaded by pulling the test solution through the dry support with gentle suction and then allowing the excess solution to drain out. After loading the column, draw water up through the column to remove any entrapped air.

(*4*) *Analysis of the solute.* Use the following procedure to collect and analyze the solute:

(*i*) Pump water to the generator column by means of a minipump or pressurized water reservoir as shown in the following Figure 4:

Figure 4—Water reservoir for GC method



With the switching valve in Figure 3 under paragraph (b)(3)(ii)(A) of this section in the inject position (i.e., water to waste), pump water through the generator column at a flow rate of approximately 1 mL/min for approximately 15 minutes to bring the system into equilibrium.

(*ii*) Flush out the organic solvent that remains in the system from previous runs by changing the mobile phase to 100 percent H_2O and allowing the water to reach the HPLC detector, as indicated by a negative reading. As soon as this occurs, place a 25 mL weighing bottle (weighed to the nearest mg) at the waste position and immediately turn the switching valve to the load position.

(*iii*) Collect an amount of water from the generator column (as determined by trial and error) in the weighing bottle, corresponding to the amount of solute adsorbed by the extractor column that gives a reasonable detector response. During this extraction step, switch back to the original HPLC mobile phase composition, i.e., solvent/water mixture, to condition the HPLC analytical column.

(*iv*) After the desired volume of sample has been extracted, turn the switching valve back to the inject position in Figure 3 under paragraph (b)(3)(ii)(A) of this section. As soon as switching valve is turned to the inject position, remove the weighing bottle, cap it and replace it with the waste container; at the same time turn on the recording integrator. The solvent/water mobile phase will elute the solute from the extractor column and transfer the solute to the HPLC analytical column.

(*v*) Determine the weight of water collected to the nearest mg and record the corresponding peak area. Using the same AUFS setting repeat the analysis of the solute at least two more times and determine the average ratio of peak area to grams of water collected. Calculate the solute solubility in water using the following equation:

$$S = (997\ g/L)(RF)(V_{loop})(AUFS)(R)$$

where

S = solubility (M)
RF = response factor
V_{loop} = sample loop volume (L)
R = ratio of area to grams of water.

(iii) *Procedure B—GC Method.* In the GC method, aqueous solutions from the generator column enter a collecting vessel in Figure 2 under paragraph (b)(1)(i)(A)(*2*) of this section containing a known weight of extracting solvent which is immiscible in water. The outlet of the generator column is positioned such that the aqueous phase always enters below the extracting solvent. After the aqueous phase is collected, the collecting vessel is stoppered and the quantity of aqueous phase is determined by weighing. The solvent and the aqueous phase are equilibrated by slowly rotating the collecting vessel. A small amount of the extracting solvent is then removed and injected into a gas

chromatograph equipped with an appropriate detector. The solute concentration in the aqueous phase is determined from a calibration curve constructed using known concentrations of the solute.

(A) *Determination of calibration curve.* (*1*) Prepare solute standard solutions of concentrations covering the expected range of the solute solubility. Select a column and optimum GC operating conditions for resolution between the solute and solvent and the solute and extracting solvent. Inject a known volume of each standard solution into the injection port of the GC. For each standard solution determine the average of the ratio R of peak area to volume (in μL) for the chromatographic peak of interest from at least three separate injections.

(*2*) After running all the standard solutions, determine the coefficients, a and b, using linear regression analysis on the equation of concentration (C) vs. R in the form

$$C = aR + b.$$

(B) *Loading of the Generator Column.* The generator column is packed and loaded with solute in the same manner as for the HPLC method in paragraph (b)(3)(ii) of this section. As shown in Figure 2 under paragraph (b)(1)(i)(A)(*2*) of this section, attach approximately 20 cm of straight stainless steel tubing to the bottom of the generator column. Connect the top of the generator column to a water reservoir in Figure 4 under paragraph (b)(3)(ii)(C)(*4*)(*i*) of this section using Teflon tubing. Use air or nitrogen pressure (5 PSI) from an air or nitrogen cylinder to force water from the reservoir through the column. Collect water in an Erlenmeyer flask for approximately 15 minutes while the solute concentration in water equilibrates; longer time may be required for less soluble compounds.

(C) *Collection and extraction of the solute.* During the equilibration time, add a known weight of extracting solvent to a collection vessel which can be capped. The extracting solvent should cover the bottom of the collection vessel to a depth sufficient to submerge the collecting tube but still maintain 100:1 water/solvent ratio. Record the weight (to the nearest mg) of a collection vessel with cap and extracting solvent. Place the collection vessel under the generator column so that water from the collecting tube enters below the level of the extracting solvent in Figure 2 under paragraph (b)(1)(i)(A)(*2*) of this section. When the collection vessel is filled, remove it from under the generator column, replace cap, and weigh the filled vessel. Determine the weight of water collected. Before analyzing for the solute, gently rotate the collection vessel contents for approximately 30 min., controlling the rate of rotation so as not to form an emulsion; rotating the flask end over end five times per minute is sufficient.

(D) Analysis of the solute. (*1*) After rotating, allow the collection vessel to stand for approximately 30 minutes; then remove a known volume of the extracting solvent from the vessel using a microliter syringe and inject in into the G.C. Record the ratio of peak area to volume injected and, from the regression equation of the calibration line, determine the concentration of solute in the extracting solvent. The molar concentration of solute in water C(M) is determined from the following equation

$$C(M) = (C_{es}) \frac{d_{H2O}\ g_{es}}{d_{es}\ g_{H2O}}$$

where C_{es} is the molar concentration of solute in extracting solvent, d_{H2O} and d_{es} are the densities in gm/ml of water and extracting solvent, respectively, and g_{es} and g_{H2O} are the grams of extracting solvent and water, respectively, contained in the collection vessels.

(*2*) Make replicate injections from each collecting vessel to determine the average solute concentration in water for each vessel. To make sure the generator column has reached equilibrium, run at least two additional (for a total of three) collection vessels and analyze the extracted solute as described above. Calculate (CM) from the average solute concentration in the three vessels.

(iv) *Analysis of reference compounds.* Prior to analyzing the test solution, make duplicate runs on at least two of the five reference compounds given in paragraph (b)(1)(iv) of this section. When using the reference compounds, follow the same procedure previously described for preparing the test solution and running the test. If the average value obtained for each compound is 0.1 log unit of the reference value, then the test procedure and HPLC system are functioning properly; if not a thorough checking over of the HPLC and careful adherence to the test procedures should be done to correct the discrepancy.

(v) *Modification of procedures for potential problems—Decomposition of the test compound.* If the test compound decomposes in one or more of the aqueous solvents required during the period of the test at a rate such that an accurate value for water solubility cannot be obtained, then it will be necessary to carry out detailed transformation studies; e.g., hydrolysis under § 796.3500. If decomposition is due to aqueous photolysis, then it will be necessary to carry out water solubility studies in the dark, under red or yellow lights, or by any other suitable method to eliminate this transformation process.

(c) *Data and reporting*—(1) *Test report.* (i) For the test solution, report the weights to the nearest 0.1 mg of the test substance and octanol. Also report the weight percent and molar concentration of the test substance in the octanol, the density of *n*-octanol at 25 °C is 0.827 gm/ml.

(ii) For each run provide the molar concentration of the test substance in water for each of three determinations, the mean value, and the standard deviation.

(iii) For each of the three determinations calculate the octanol/water partition coefficient as the ratio of the molar concentration of the test substance in octanol to the molar concentration in water. Also calculate and report the mean K_{ow} and its standard deviation. Values of K_{ow} may be reported as their logarithms if desired.

(iv) Report the temperature (± 0.05 °C) at which the generator column was controlled during the test.

(v) For each reference compound report the individual values of log K_{ow} and the average of the two runs.

(vi) For compounds that decompose at a rate such that a precise value for the solubility cannot be obtained, provide a statement to that effect.

(2) *Specific analytical, calibration and recovery procedures* (i)—(A) For the HPLC method describe and/or report:

(*1*) The method used to determine the sample loop volume and the average and standard deviation of that volume.

(*2*) The average and standard deviation of the response factor.

(*3*) Any changes made or problems encountered in the test procedures.

(B) For the GC method report:

(*1*) The column and GC operating conditions of temperature and flow rate.

(*2*) The average and standard deviation of the average area/μL obtained for each of the standard solutions.

(*3*) The form of the regression equation obtained in the calibration procedure.

(*4*) The extracting solvent used.

(*5*) The average and standard deviation of solute concentration in each collection vessel.

(*6*) Any changes made or problems encountered in the test procedure.

(C) If the concentration of the test substance in *n*-octanol is determined by

an independent analytical method such as gas chromatography, provide a complete description of the method.

(ii) [Reserved]

(d) *References.* For additional background information on this test guideline the following reference should be consulted:

(1) DeVoe, H., Miller, M.M., Wasik, S.P. "Generator Columns and High Pressure Liquid Chromatography for Determining Aqueous Solubilities and Octanol-Water Partition Coefficients of Hydrophobic Substances," *Journal of Research of the National Bureau of Standards,* 86:361–366 (1981).

(2) Fujita, T., Iwasa, J., Hansch, C. "A New Substituent Constant, Derived from Partition Coefficients." *American Chemical Society Journal,* 86:5175 (1964).

(3) Hansch, C., Leo, A. *Substituent Constants for Correlation Analysis in Chemistry and Biology.* (New York: J. Wiley & Sons, 1979).

(4) Lyman, W.J., Reehl, W.F., Rosenblatt, D.H. *Handbook of Chemical Property Estimation Methods, Environmental Behavior of Organic Compounds.* (McGraw Hill Book Co., New York, 1982).

(5) May, W.E., Wasik, S.P., Freeman, D.H. "Determination of the Aqueous Solubility of Polynuclear Aromatic Hydrocarbons by a Coupled Column Liquid Chromatographic Technique," *Analytical Chemistry,* 50:175–179 (1978).

(6) May, W.E., Wasik, S.P., Freeman, D.H. "Determination of the Solubility Behavior of Some Polycyclic Aromatic Hydrocarbons in Water," *Analytical Chemistry,* 50:997–1000 (1978).

(7) Neely, W.B., Bronson, D.R., Blau, G.E. "Partition Coefficient to Measure Bioconcentration Potential of Organic Chemicals in Fish." *Environmental Science and Technology,* 8:113 (1974).

(8) Wasik, S.P., Tewari, Y.B., Miller, M.M., Martire, D.E. "Octanol/Water Partition Coefficient and Aqueous Solubilities of Organic Compounds," Report NBSIR 81–2406, National Bureau of Standards, U.S. Department of Commerce, Washington, D.C. (1981).

§ 796.1840 Water Solubility.

(a) *Introduction*—(1) *Background and purpose.* (i) The water solubility of a compound can be defined as the equilibrium concentration of the compound in a saturated aqueous solution at a given temperature and pressure. The water solubility of a chemical is an important factor in determining the environmental movement and distribution of any substance. Chemicals that are relatively water soluble are more likely to be widely distributed by the hydrologic cycle than those which are relatively insoluble.

(ii) Water provides the medium in which many organisms live, and water is a major component of the internal environment of all living organisms (except for dormant stages of certain life forms). Even organisms which are adapted to life in a gaseous environment require water for normal functioning. Water is thus the medium through which most other chemicals are transported to and into living cells. As a result, the extent to which chemicals dissolve in water will be a major determinant for movement through the environment and entry into living systems.

(iii) The water solubility of a chemical has an effect on its adsorption on and desorption from soils and sediments and on volatilization from aqueous media. The more soluble a chemical substance is, the more likely it is to desorb from soils and sediments and the less likely it is to volatilize from water. The extent of chemical transformations via hydrolysis, photolysis, oxidation, reduction, and biodegradation in water depends on the chemical being soluble in water (i.e., homogeneous kinetics). Finally, the design of most chemical tests and many ecological and health tests requires precise knowledge of the water solubility of the chemical to be tested.

(iv) Procedures in this test guideline have been described to enable sponsors to determine the water solubility for solid and liquid organic compounds.

(2) *Definitions and units.* (i) "Colloidal dispersion" is a mixture resembling a true solution but containing one or more substances that are finely divided but large enough to prevent passage through a semipermeable membrane. It consists of particles which are larger than molecules, which settle out very slowly with time, which scatter a beam of light, and which are too small for resolution with an ordinary light microscope.

(ii) A "concentration vs. time study" results in a graph which plots the measured concentration of a given compound in a solution as a function of elapsed time. Usually, it provides a more reliable determination of equilibrium water solubility of hydrophobic compounds than can be obtained by single measurements of separate samples.

(iii) "Concentration" of a solution is the amount of solute in a given amount of solvent and can be expressed as a weight/weight or weight/volume relationship. The conversion from a weight relationship to one of volume incorporates density as a factor. For dilute aqueous solutions, the density of the solvent is approximately equal to the density of the solutions; thus, concentrations in mg/dm^3 are approximately equal to 10^{-3} g/10^3 g or parts per million (ppm); ones in $\mu g/dm^3$ are approximately equal to 10^{-6} g/10^3 g or parts per billion (ppb). In addition, concentration can be expressed in terms of molarity, normality, molality, and mole fraction. For example, to convert from weight/volume to molarity one incorporates molecular mass as a factor.

(iv) "Density" is the mass of a unit volume of a material. It is a function of temperature, hence the temperature at which it is measured should be specified. For a solid, it is the density of the impermeable portion rather than the bulk density. For solids and liquids, suitable units of measurement are g/cm^3. The density of a solution is the mass of a unit volume of the solution and suitable units of measurement are g/cm^3.

(v) An "oversaturated (supersaturated) solution" is a solution that contains a greater concentration of a solute than is possible at equilibrium under fixed conditions of temperature and pressure.

(vi) A "saturated solution" is a solution in which the dissolved solute is in equilibrium with an excess of undissolved solute; or a solution in equilibrium such that at a fixed temperature and pressure, the concentration of the solution is at its maximum value and will not change even in the presence of an excess of solute.

(vii) A "solution" is a homogeneous mixture of two or more substances constituting a single phase.

(3) *Principle of the test method.* The test method is based on the conventional method of preparing saturated aqueous solutions. The method involves the coating of the compound to the walls of a vessel, adding water (i.e., very pure water, buffer solution, or artificial seawater), and determining the concentration of the compound in the water as a function of time at a fixed temperature. When the concentration reaches a plateau, equilibrium has been achieved, and the water is saturated with the compound. Specific procedures have been incorporated in this test guideline to measure the water solubility of very hydrophobic compounds and to alleviate the problems of colloids and emulsions usually formed.

(4) *Applicability and specificity.* (i) Procedures have been described in this test guideline to determine the saturated water solubility for liquid or solid compounds. The water solubility can be determined in very pure water, buffer solution for compounds that reversibly

ionize or protonate, or in artificial seawater as a function of temperature (i.e., in the range of temperatures of environmental concern). Water solubility is usually not useful for gases because their solubility in water is measured when the gas above the water is at a partial pressure of one atmosphere which is several orders of magnitude greater than those existing under environmental conditions. A more important parameter for gases is Henry's law constant which is the ratio of the vapor pressure of the compound to solution concentration at low partial pressures.

(ii) This test guideline is designed to determine the saturated water solubility of a solid or liquid test chemical in the range infinity to 10 parts per billion (ppb). For chemicals whose solubility is below 10 ppb, the water solubility should be characterized as "less than 10 ppb" with no further quantification.

(b) *Description of the test procedure*—(1) *Test conditions*—(i) *Special laboratory equipment.* (A) A thermostatic bath with temperature control (±1 °C) in the approximate range of 5–30 °C.

(B) An ultracentrifuge with temperature control (±1 °C) in the approximate range of 5–30 °C and capable of obtaining acceleration (G) values to 39,000 or higher.

(C) A pH meter capable of resolving differences of 0.1 pH units or less.

(D) Centrifuge tubes with sealable caps: special glass tubes can be used up to approximately 12,000 G; tubes to be used at G value >12,000 should be made of stainless steel.

(ii) *Purity of water.* Reagent grade water, e.g., water meeting ASTM Type IIA standards or an equivalent grade, is highly recommended to minimize biodegradation and to minimize the effects of dissolved salts on water solubility. ASTM Type IIA water is described in ASTM D 1193–77, "Standard Specification for Reagent Water". ASTM D 1193–77 is available for inspection at the Office of the Federal Register, Rm. 8401, 1100 L St., NW., Washington, DC. This incorporation by reference was approved by the Director of the Office of the Federal Register. This material is incorporated as it exists on the date of approval and a notice of any change in this material will be published in the Federal Register. Copies of the incorporated material may be obtained from the Document Control Officer (TS–793), Office of Toxic Substances, EPA, RM. 107, 401 M St., SW., Washington, DC 20460, and from the American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103.

(iii) *Purity of solvents.* It is important that all solvents used for coating test compounds on the walls of vessels and in separation and analytical technique be reagent grade and contain no impurities which will interfere with the determination of the test compound.

(iv) *Seawater.* It is recommended that artificial seawater be used to determine the saturated water solubility in seawater. The preparation of artificial seawater is described in paragraph (b)(2)(ii) of this section.

(v) *Agitation and equilibration time.* It is important that contact time of test compounds with water be sufficient to obtain a saturated solution. The length of time necessary will depend upon such variables as the size of the vessel, the extent and degree of agitation, the properties of the compound and particle size. To increase the rate of solution of hydrophobic compounds, a mild agitation is recommended. For hydrophobic compounds a minimum time of one day is required.

(vi) *Effects of colloids and emulsions: Centrifugation.* (A) It is important that gentle shaking be used to minimize the formation of colloids. The presence of colloids and emulsions will lead to solubility values that are higher than those in a true saturated solution. This is a common problem with hydrophobic solids and liquids but can usually be overcome by centrifugation. It is recommended that centrifugation be conducted in tightly sealed tubes that are almost filled to capacity to avoid partitioning with air.

(B) it is extremely important that centrifugation be carried out at two or three different G values (minimum of 12,000 G) for at least 30 minutes at 25 °C until concentration changes are small. For hydrophobic compounds (solubility < 10 ppm), it is extremely important that the acceleration G values differ by 10,000 G and include a determination of 39,000 or higher.

(vii) *Effect of pH on solubility.* It is recommended that all experiments be carried out at pH's 5.0, 7.0, and 9.0 for any chemical which reversibly ionizes or protonates (e.g., carboxylic acids, phenols, amines). Buffers described in paragraph (b)(2)(i) of this section can be used.

(viii) *Analysis of saturated solutions.* Any suitable analytical method may be used; where practicable, precision should be within ±5 percent. Preferred analytical methods are those that are specific for the compound to be tested, to the exclusion of other compounds. Chromatographic methods which incorporate separation, and therefore, specification, are recommended.

(ix) *Adsorption to glass or other surfaces.* Hydrophobic compounds have a tendency to adsorb to glass or other surfaces, e.g., stainless steel. Thus, when transferring the solution to any glass vessel or container, it is essential to pre-rinse the surfaces of the vessel or container with the solution. Failure to do so will lead to solubility values that are lower than those of true equilibrium water solubility because the compound will adsorb to the unrinsed surface. However, when hydrophobic compounds are extracted with organic solvent, the extraction vessels should not be pre-rinsed since this would lead to solubility values that are greater than those of true equilibrium water solubility.

(2) *Preparation of reagents and solutions*—(i) *Buffer solutions.* Prepare buffer solutions using reagent grade water as follows:

pH 5.0—To 250 mL of 0.1M potassium hydrogen phthalate add 113 mL of 0.1M sodium hydroxide; adjust the final volume to 500 mL with reagent water.

pH 7.0—To 250 mL of 0.1M potassium dihydrogen phosphate add 145 mL of 0.1M sodium hydroxide; adjust the final volume to 500 mL with reagent gradewater.

pH 9.0—To 250 mL of 0.075M borax add 89 ml of 0.1M HCL; adjust the final volume to 500 mL with reagent gradewater.

Check the pH of each buffer solution with a pH meter at 25 °C and adjust to pH 5.0, 7.0, or 9.0, if necessary. If the pH of the solution has changed by ±0.2 pH units or more after the addition of the test compound, then a more concentrated buffer is required for that pH determination. The sponsor should then choose a more suitable buffer.

(ii) *Artificial seawater.* Add the reagent-grade chemicals listed in the following Table 1 in the specified amounts and order to 890 mL of reagent-grade water. It is important that each chemical be dissolved before another one is added.

TABLE 1—CONSTITUENTS OF ARTIFICIAL SEAWATER [1]

[illegible]	Amount
NaF	3 mg
$SrCl_2 \cdot 6H_2O$	20 mg
H_3BO_3	30 mg
KBr	1,000 mg
KCl	700 mg
$CaCl_2 \cdot 2H_2O$	1.47 g
Na_2SO_4	4.00 g
$MgCl_2 \cdot 6H_2O$	10.78 g
NaCl	23.50 g
$Na_2SiO_3 \cdot 9H_2O$	20 mg
$NaHCO_3$	200 mg

[1] If the resulting solution is diluted to 1 cubic decimeter (1 liter), the salinity should be 34 ±0.5 g/kg and the pH 8.0 ±0.2. The desired test salinity is attained by dilution at time of use

(3) *Performance of the test.* Determine the saturated water solubility of the test compound at 25 °C in reagent grade water or buffer solution, if appropriate. Under certain circumstances, it may be necessary to determine the water solubility of a test compound at 25 °C in artificial seawater. The water solubility can also be determined at other temperatures of environmental concern by adjusting the temperature of the water bath to the appropriate temperature.

(i) *Procedure for the determination of solids and liquids in water at 25* °C. (A) Dissolve a sufficient amount of the solid compound in a suitable volatile organic solvent and coat on the walls of a vessel. Viscous liquids may be coated on vessels in a similar fashion; non-viscous liquids do not require solvents. Remove the solvent under reduced pressure or with a pure nitrogen gas stream. When all the solvent is removed, add reagent grade water or, for compounds which reversibly ionize or protonate, the appropriate buffer solution and slowly stir or agitate the mixture under temperature control. Mixing may be accomplished by use of a Teflon coated stirring bar and should be continued for a minimum of 24 hours before aliquots are withdrawn. Prior to taking aliquots, the mixture should be left to stand at constant temperature for at least one hour to permit separation of any small particles. To determine the concentration of the compound in the aqueous phase, aliquots should be centrifuged at two or three different G values (minimum of 12,000 G) for at least 30 minutes at 25 °C until concentration changes are small. The concentration value so obtained is plotted against the time of mixing. At a latter time, aliquots are again taken and analyzed in the same fashion to produce another data point on a concentration vs. time plot. When the concentration reaches a plateau, equilibrium is assumed. For hydrophobic compounds (solubility < 10 ppm) it is extremely important that the acceleration (G) values differ by 10,000 G and include a determination at 39,000 G or higher.

(B) For more soluble compounds (solubility > 500 ppm) coating the walls of the vessel is not necessary and filtration may be substituted for centrifugation. Use filters which are adequate to remove suspended particles. If the concentration of the solute exceeds 10 g/dm³, then determine the density of the solution. This can be done by weighing known volumes of the solution at the same temperature as the constant temperature bath. Sufficient solution should be used so that each determination is made on a fresh aliquot. Carry out solubility and density experiments in triplicate.

(ii) *Modification of Procedures for Potential Problems*—(A) *Interference of Soluble Impurities.* Interference by soluble impurities in the test sample can be avoided by the use of an analytical technique that is specific to the compound being tested. If this is not practical, interferences can sometimes be minimized by repeatedly preparing saturated solutions from the same sample chemical until the concentration of the impurity has been depleted.

(B) *Decomposition of the test compound.* If the test compound decomposes in one or more of the aqueous solvents required during the period of the test at a rate such that an accurate value for water solubility cannot be obtained, then it will be necessary to carry out detailed transformation studies e.g., hydrolysis. If decomposition is due to aqueous photolysis, then it will be necessary to carry out the water solubility studies in the dark, under red or yellow lights, or by any other suitable method to eliminate this transformation process.

(c) *Data and reporting*—(1) *Test report.* (i) For each set of conditions, (e.g., temperature, pure water, buffer solution, artificial seawater) required for the study, provide the water solubility value for each of three determinations, the mean value, and the standard deviation.

(ii) For compounds that decompose at a rate such that a precise value for the water solubility cannot be obtained, provide a statement to that effect.

(iii) For compounds with water solubility below 10 ppb, report the value as "less than 10 ppb."

(iv) For compounds with water solubility greater than 10 g/dm³, report the density of the solution at each required temperature.

(2) *Specific analytical and recovery procedures.* (i) Provide a detailed description or references for the analytical procedure used, including the calibration data and precision; and

(ii) If extraction methods were used to separate the solute from the aqueous solution provide a description of the extraction method as well as the recovery data.

§ 796.1860 Water Solubility (Generator Column Method).

(a) *Introduction*—(1) *Background and purpose.* (i) The water solubility of a chemical is defined as the equilibrium concentration of the chemical in a saturated aqueous solution at a given temperature and pressure. The aqueous phase solubility is an important factor in governing the movement, distribution, and rate of degradation of chemicals in the environment. Substances that are relatively water soluble are more likely to be widely distributed by the hydrologic cycle than those which are relatively insoluble. Furthermore, substances with higher water solubility are more likely to undergo microbial or chemical degradation in the environment because dissolution makes them "available" to interact and, therefore, react with other chemicals and microorganisms. Both the extent and rate of degradation via hydrolysis, photolysis, oxidation, reduction, and biodegradation depend on a chemical being soluble in water (i.e., homogeneous kinetics).

(ii) Water provides the medium in which many organisms live, and water is a major component of the internal environment of all living organisms (except for dormant stages of certain life forms). Even organisms which are adapted to life in a gaseous environment require water for normal functioning. Water is thus the medium through which most other chemicals are transported to and into living cells. As a result, the extent to which chemicals dissolve in water will be a major determinant for movement through the environment and entry into living systems.

(iii) The water solubility of a chemical also has an effect on its adsorption on and desorption from soils and sediments, and on volatilization from aqueous media. The more soluble a chemical substance is, the less likely it is to adsorb to soils and sediments and the less likely it is to volatilize from water. Finally, the design of most chemical tests and many ecological and health tests requires precise knowledge of the water solubility of the chemical to be tested.

(2) *Definitions and units.* (i) "Concentration" of a solution is the amount of solute in a given amount of solvent or solution and can be expressed as a weight/weight or weight/volume relationship. The conversion from a weight relationship to one of volume incorporates density as a factor. For dilute aqueous solutions, the density of the solvent is approximately equal to the density of the solution; thus, concentrations in mg/L are approximately equal to 10^{-3} g/10^{3} g or parts per million (ppm); ones in μg/L are approximately equal to 10^{-6} g/10^{3} g or parts per billion (ppb). In addition, concentration can be expressed in terms of molarity, normality, molality, and

mole fraction. For example, to convert from weight/volume to molarity one incorporates molecular mass as a factor.

(ii) "Density" is the mass of a unit volume of a material. It is a function of temperature, hence the temperature at which it is measured should be specified. For a solid, it is the density of the impermeable portion rather than the bulk density. For solids and liquids, suitable units of measurement are g/cm^3. The density of a solution is the mass of a unit volume of the solution and suitable units of measurement are g/cm^3.

(iii) A "saturated solution" is a solution in which the dissolved solute is in equilibrium with an excess of undissolved solute; or a solution in equilibrium such that at a fixed temperature and pressure, the concentration of the solute in the solution is at its maximum value and will not change even in the presence of an excess of solute.

(iv) A "solution" is a homogeneous mixture of two or more substances constituting a single phase.

(v) A "generator column" is used to produce or generate saturated solutions of a solute in a solvent. The column (see Figure 1 under paragraph (b)(1)(i)(A) of this section) is packed with a solid support coated with the solute, i.e., the organic compound whose solubility is to be determined. When water (the solvent) is pumped through the column, saturated solutions of the solute are generated. Preparation of the generator column is described under paragraph (b)(1)(i) of this section.

(vi) An "extractor column" is used to extract the solute from the saturated solutions produced by the generator column. After extraction onto a chromatographic support, the solute is eluted with a solvent/water mixture and subsequently analyzed by high pressure liquid chromatography (HPLC). A detailed description of the preparation of the extractor column is given in paragraph (b)(1)(i) of this section.

(vii) The "sample loop" is a 1/16 in. O.D. (1.6 mm) stainless steel tube with an internal volume between 20 and 50 μL. The loop is attached to the sample injection valve of the HPLC and is used to inject standard solutions into the mobile phase of the HPLC when determining the response factor for the recording integrator. The exact volume of the loop must be determined as described in paragraph (b)(3)(i)(B)(*1*) of this section when the HPLC method is used.

(viii) The "response factor" (RF) is the solute concentration required to give a one unit area chromatographic peak or one unit output from the HPLC recording integrator at a particular recorder attenuation. The factor is required to convert from units of area to units of concentration. The determination of the response factor is given in paragraph (b)(3)(i)(B)(*2*) of this section.

(3) *Principle of the test method.* (i) This test method is based on the dynamic coupled column liquid chromatographic (DCCLC) technique for determining the aqueous solubility of organic compounds that was initially developed by May et al. (1978) under paragraph (d)(2) and (3) of this section, modified by DeVoe et al. (1981) under paragraph (d)(1) of this section, and finalized by Wasik et al. (1981) under paragraph (d)(4) of this section. The DCCLC technique utilizes a generator column, extractor column and HPLC coupled or interconnected to provide a continuous closed flow system. Saturated aqueous solutions of the test compound are produced by pumping water through the generator column that is packed with a solid support coated with the compound. The compound is extracted from the saturated solution onto an extractor column, then eluted from the extractor column with a solvent/water mixture and subsequently analyzed by HPLC using an ultraviolet absorption detector operating at a suitable wavelength. Chromatogram peaks are recorded and integrated using a recording integrator. The concentration of the compound in the effluent from the generator column, i.e., the water solubility of the compound, is determined from the mass of the compound (solute) extracted from a measured volume of water (solvent).

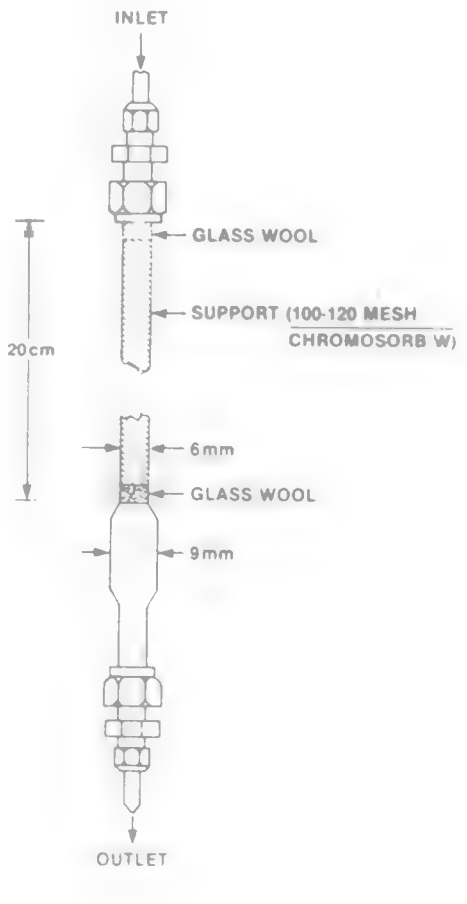
(ii) Since the HPLC method is only applicable to compounds that absorb in the ultraviolet, an alternate gas chromatographic (GC) method is used for those compounds that do not absorb in the ultraviolet. In the GC method the saturated solutions produced in the generator column are extracted using an appropriate organic solvent that is subsequently injected into the GC for analysis of the test compound.

(4) *Applicability and specificity.* (i) Procedures are described in this test guideline to determine the water solubility for liquid or solid compounds. The water solubility can be determined in very pure water, buffer solution for compounds that reversibly ionize or protonate, or in artificial seawater as a function of temperature (i.e., in the range of temperatures of environmental concern). This guideline is not applicable to the water solubility of gases.

(ii) This test guideline is designed to determine the water solubility of a solid or liquid test chemical in the range of 10 parts per billion (ppb) to 1000 ppm. For chemicals whose solubility is below 10 ppb, the water solubility should be characterized as "less than 10 ppb" with no further quantification. For solubilities greater than 1000 ppm, the shake flask method under § 796.1840 should be used.

(b) *Test procedure*—(1) *Test conditions*—(i) *Special laboratory equipment.* (A) Generator column. Either of two different designs are used depending on whether the eluted aqueous phase is analyzed by HPLC under paragraph (b)(3)(i) of this section or by solvent extraction followed by GC analysis of solvent extract under paragraph (b)(3)(ii) of this section. The design of the generator column is shown in the following figure. Figure 1:

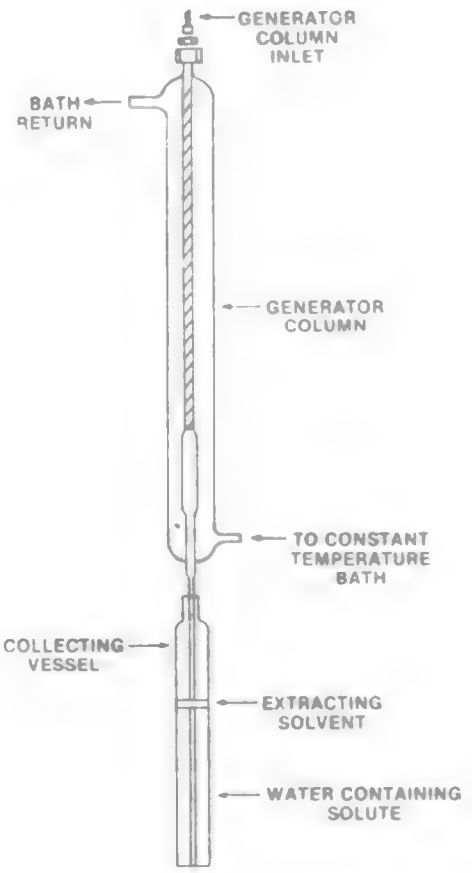
Figure 1—Generator column



The column consists of a 6 mm (¼-inch) O.D. Pyrex tube joined to a short enlarged section of 9 mm Pyrex tubing which in turn is connected to another section of 6 mm (¼-inch) O.D. Pyrex tubing. Connections to the inlet Teflon

tubing (⅛-inch O.D.) and to the outlet stainless steel tubing (1/16-inch O.D.) are made by means of stainless steel fittings with Teflon ferrules. The column is enclosed in a water jacket for temperature control as shown in the following Figure 2:

Figure 2—Setup showing generator column enclosed in a water jacket and overall arrangement of the apparatus used in the GC method



(B) Constant temperature bath with circulation pump-bath and capable of controlling temperature to ± 0.05°C. (See paragraph (b)(3) (i) and (ii) of this section.)

(C) High pressure liquid chromatograph equipped with an ultraviolet absorption detector operating at a suitable wavelength and a recording integrator under paragraph (b)(3)(i) of this section.

(D) Extractor column. 6.6 x 0.6 cm stainless steel tube with end fittings containing 5 μm frits filled with a superficially porous phase packing (Bondapack C_{18}/Corasil: Waters Associates) under paragraph (b)(3)(i) of this section.

(E) Two 6-port high pressure rotary switching valves under paragraph (b)(3)(i) of this section.

(F) Collection vessel. 8 x ¾ inch section of Pyrex tubing with a flat bottom connected to a short section of ⅜-inch O.D. borosilicate glass tubing in Figure 2 under paragraph (b)(1)(i)(A) of this section. The collecting vessel is sealed with a ⅜-inch Teflon cap fitting under paragraph (b)(3)(ii) of this section.

(G) Gas chromatograph equipped with a detector sensitive to the solute of interest under paragraph (b)(3)(ii) of this section.

(ii) *Purity of water.* Water meeting ASTM Type II standards or an equivalent grade, is recommended to minimize the effects of dissolved salts and other impurities on water solubility. ASTM Type II water is described in ASTM D 1193–77, "Standard Specification for Reagent Water". ASTM D 1193–77 is available for inspection at the Office of the Federal Register, Rm. 8401, 1100 L St., NW., Washington, DC. This incorporation by reference was approved by the Director of the Office of the Federal Register. This material is incorporated as it exists on the date of approval and a notice of any change in this material will be published in the Federal Register. Copies of the incorporated material may be obtained from the Document Control Officer (TS–793), Office of Toxic Substances, EPA, Rm. 107, 401 M St., SW., Washington, DC 20460, and from the American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103.

(iii) *Purity of solvents.* It is important that all solvents used in this method be reagent or HPLC grade and contain no impurities which could interfere with the determination of the test compound.

(iv) *Seawater.* When the water solubility in seawater is desired, the artificial seawater described in paragraph (b)(2)(ii) of this section should be used.

(v) *Effect of pH on solubility.* For chemicals that reversibly ionize or protonate (e.g., carboxylic acids, phenols, amines), experiments should be performed at pH 5.0, 7.0, and 9.0 using buffers described in paragraph (b)(2)(i) of this section.

(2) *Preparation of reagents and solutions*—(i) *Buffer solutions.* Prepare buffer solutions as follows:

(A) pH 5.0—To 250 mL of 0.1M potassium hydrogen phthalate add 113 mL of 0.1M sodium hydroxide; adjust the final volume to 500 mL with reagent grade water.

(B) pH 7.0—To 250 mL of 0.1M potassium dihydrogen phosphate add 145 mL of 0.1M sodium hydroxide; adjust the final volume to 500 mL with reagent grade water.

(C) pH 9.0—To 250 mL of 0.075M borax add 69 mL of 0.1M HCl; adjust the final volume to 500 mL with reagent grade water.

Check the pH of each buffer solution with a pH meter at 25 °C and adjust to pH 5.0, 7.0, or 9.0, if necessary. If the pH of the solution has changed by ±0.2 pH units or more after the addition of the test compound, then a more concentrated buffer is required for that pH determination. The sponsor should then choose a more suitable buffer.

(ii) *Artificial seawater.* Add the reagent-grade chemicals listed in the following Table 1 in the specified amounts and order to 800 mL of reagent-grade water. It is important that each chemical be dissolved before another one is added.

TABLE 1.—CONSTITUENTS OF ARTIFICIAL SEAWATER[1]

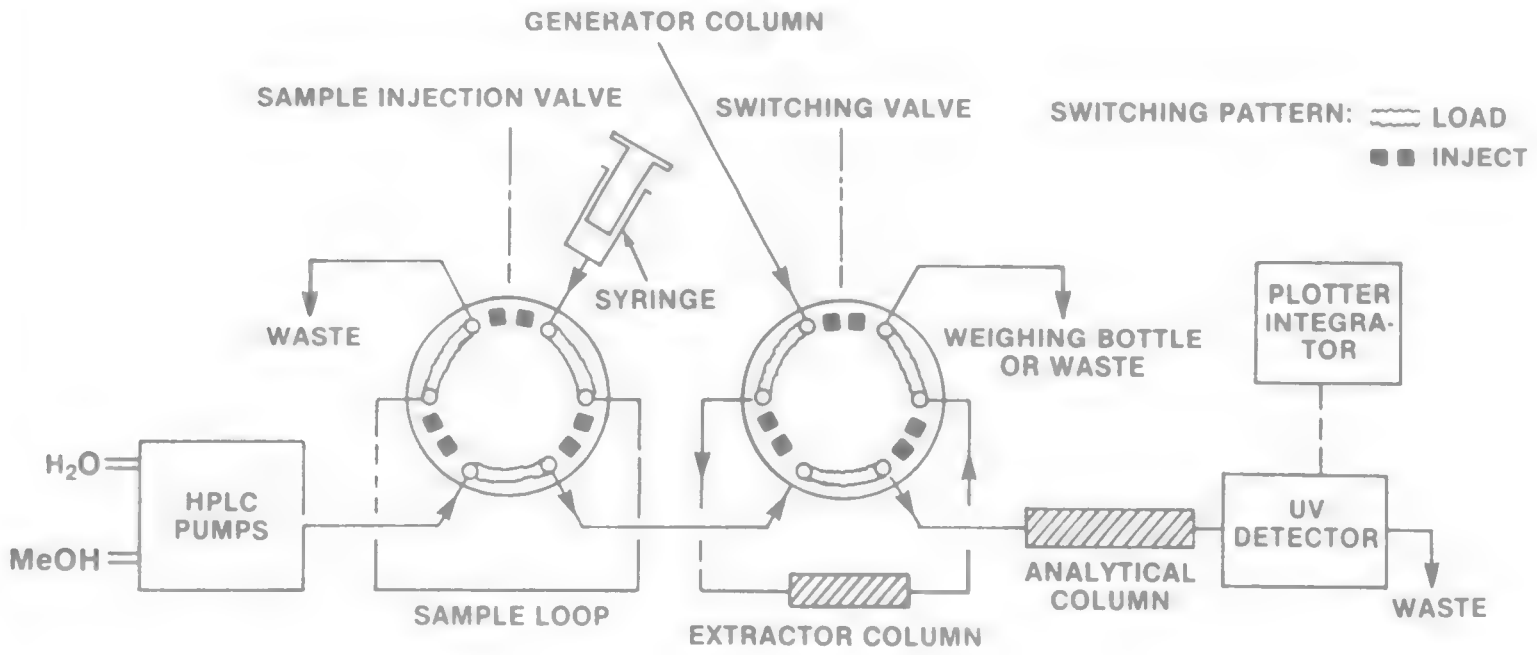
Chemical	Amount
NaF	3 mg
$SrCl_2 \cdot 6H_2O$	20 mg
H_3BO_3	30 mg
KBr	100 mg
KCl	700 mg
$CaCl_2 \cdot 2H_2O$	1.47 g
Na_2SO_4	4.00 g
$MgCl_2 \cdot 6H_2O$	10.78 g
NaCl	23.50 g
$Na_2SiO_3 \cdot 9H_2O$	20 mg
$NaHCO_3$	200 mg

[1] If the resulting solution is diluted to 1 cubic decimeter (1 liter), the salinity should be 34 ±0.5 g/kg and the pH 8.0 ±0.2. The desired test salinity is attained by dilution at time of use.

(3) *Performance of the test.* Using either the procedures under paragraph (b)(3) (i) or (ii) of this section, determine the water solubility of the test compound at 25 °C in reagent grade water or buffer solution, as appropriate. Under certain circumstances, it may be necessary to determine the water solubility of a test compound at 25 °C in artificial seawater. The water solubility can also be determined at other temperatures of environmental concern by adjusting the temperature of the water bath to the appropriate temperature.

(i) *Procedure A—HPLC Method.* (A) *Scope. (1)* Procedure A covers the determination of the aqueous solubility of compounds which absorb in the ultraviolet. The HPLC analytical system is shown schematically in the following Figure 3:

Figure 3 —Schematic of HPLC—generator column flow system



Two reciprocating piston pumps deliver the mobile phase (water or solvent/water mixture) through two 6-port high pressure rotary valves and a 30 x 0.6 cm C_{18}/Corosil analytical column to an ultraviolet absorption detector operating at a suitable wavelength; chromatogram peaks are recorded and integrated with a recording integrator. One of the 6-port valves is the sample injection valve used for injecting samples of standard solutions of the solute in an appropriate concentration for determining response factors or standard solutions of basic chromate for determining the sample loop volume. The other 6-port valve in the system serves as a switching valve for the extractor column which is used to remove solute from the aqueous solutions.

(*2*) The general procedure for analyzing the aqueous phase is as follows: a detailed procedure is given in paragraph (b)(3)(i)(B)(*4*) of this section:

(*i*) Direct the aqueous solution to "Waste" (see Figure 3 under paragraph (b)(3)(i)(A)(*1*) of this section) with the switching valve in the inject position in order to equilibrate internal surfaces with the solution, thus insuring that the analyzed sample would not be depleted by solute adsorption on surfaces upstream from the valve.

(*ii*) At the same time, water is pumped from the HPLC pumps in order to displace the solvent from the extractor column.

(*iii*) The switching valve is next changed to the load position to divert a sample of the solution through the extractor column, and the liquid leaving this column is collected in a weighing bottle. During this extraction step, the mobile phase is changed to a solvent/water mixture to condition the analytical column.

(*iv*) After the desired volume of sample is extracted, the switching valve is returned to the inject position for elution and analysis. Provided that there is no breakthrough of solute from the extractor column during the extraction step, the chromatographic peak represents all of the solute in the sample.

(*v*) The solute concentration in the aqueous phase in calculated from the peak area and the weight of the extracted liquid collected in the weighing bottle.

(B) *Determinations.*—(*1*) *Sample Loop Volume.* Accurate measurement of the sample loop may be accomplished by using the spectrophotometric method of Devoe et al. (1981) under paragraph (d)(1) of this section. For this method measure absorbance, A_{loop}, at 373 nm of at least three solutions, each of which is prepared by collecting from the sample valve an appropriate number, n, of loopfuls of an aqueous stock solution of K_2CrO_4 (1.3 percent by weight) and diluting to 50 mL with 0.2 percent KOH. (For a 20 μL loop, use n=5; for a 50 μL loop, use n=2.) Also measure the absorbance, A_{stock}, of the same stock solution after diluting 1:500 with 0.2 percent KOH. Calculate the loop volume to the nearest 0.1 μL using the relation:

$$V_{loop} = (A_{loop}/A_{stock})(10^{-4}/n)$$

(*2*) *Response Factor (RF).* (*i*) For all determinations adjust the mobile phase solvent/water ratio and flow rate to obtain a reasonable retention time on the HPLC column. For example, typical concentrations of solvent in the mobile phase range from 50 to 100 percent while flow rates range from 1 to 3 mL/min; these conditions give a 3 to 5 minute retention time.

(*ii*) Prepare standard solutions of known concentrations of the solute in a suitable solvent. Concentrations must give a recorder response within the maximum response of the detector. Inject samples of each standard solution into the HPLC system using the calibrated sample loop. Obtain an

average peak area from at least three injections of each standard sample at a set absorbance unit full scale (AUFS), i.e., at the same absorbance scale attenuation setting.

(*iii*) Calculate the response factor from the following equation:

$$\text{Response Factor (RF)} = \frac{\text{Concentration (M)}}{\text{(Average Area) (AUFS)}}$$

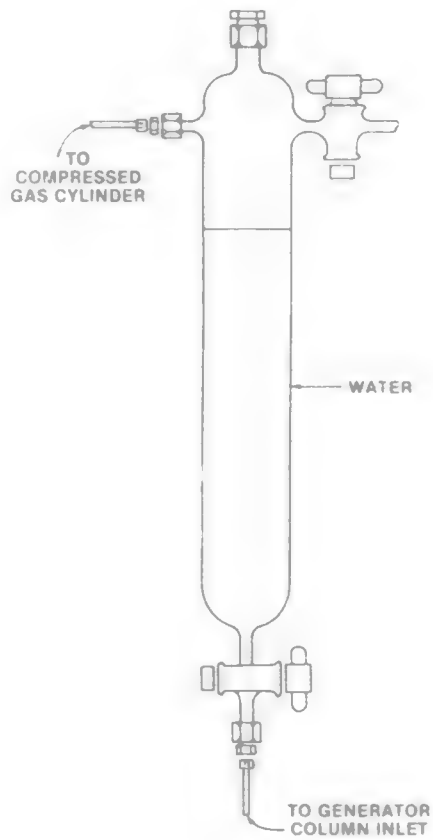
(*3*) *Loading of the Generator Column.* (*i*) The design of the generator column was described in paragraph (b)(1)(i) of this section and is shown in Figure 1 under paragraph (b)(1)(i)(A) of this section. To pack the column, a plug of silanized glass wool is inserted into one end of the 6 mm Pyrex tubing. Silanized diatomaceous silica support (about 0.5g 100–120 mesh Chromosorb W chromatographic support material) is poured into the tube with tapping and retained with a second plug of silanized glass wool.

(*ii*) If the solute is a liquid, the column is loaded by pulling the liquid solute through the dry support with gentle suction. If the solute is a solid, a 1 percent solution of the solid in a volatile solvent is added to the dry packing. The solvent is then distilled off the column under reduced pressure. After loading the column draw water up through the column to remove entrapped air.

(*4*) *Analysis of the solute.* Use the following procedure to collect and analyze the solute.

(*i*) Pump water to the generator column by means of a minipump or pressurized water reservoir as shown in the following Figure 4:

Figure 4—Water reservoir for GC method



With the switching valve (Figure 3 under paragraph (b)(3)(i)(A)(*1*) of this section) in the inject position (i.e., water to waste), pump water through the generator column at a flow rate of approximately 1 mL/min for approximately 5 minutes to bring the system into equilibrium.

(*ii*) Flush out the solvent that remains in the system from previous runs by changing the mobile phase to 100 percent H_2O and allowing the water to reach the HPLC detector, as indicated by a negative reading. As soon as this occurs, place a 25 mL weighing bottle (weighed to the nearest mg) at the waste position and immediately turn the switching valve to the load position.

(*iii*) Collect an amount of water (as determined by trial and error) in the weighing bottle, corresponding to the amount of solute adsorbed by the extractor column that gives a large on-scale detector response. During this extraction step, switch back to the original HPLC mobile phase composition, i.e., solvent/water mixture, to condition the HPLC analytical column.

(*iv*) After the desired volume of sample has been extracted, turn the switching valve back to the inject position (Figure 3 under paragraph (b)(3)(i)(A)(1) of this section); at the same time turn on the recording integrator. The solvent/water mobile phase will elute the solute from the extractor column and transfer the solute to the HPLC analytical column.

(*v*) Remove the weighing bottle, cap it and replace it with the waste container. Determine the weight of water collected to the nearest mg and record the corresponding peak area. Using the same AUFS setting repeat the analysis of the solute at least two more times and determine the average ratio of peak area to grams of water collected. Calculate the solute solubility in water using the following equation:

$$s = (997\ g/L)(RF)(V_{loop})(AUFS)(R)$$

where

s = solubility (M)
RF = response factor
V_{loop} = sample loop volume (L)
R = ratio of area to grams of water.

(*ii*) *Procedure B–GC Method.* (*A*) *Scope.* In the GC method, aqueous solutions from the generator column enter a collecting vessel (Figure 2 under paragraph (b)(1)(i)(A) of this section) containing a known weight of extracting solvent which is immiscible in water. The outlet of the generator column is positioned such that the aqueous phase always enters below the extracting solvent. After the aqueous phase is collected, the collecting vessel is stoppered and the quantity of aqueous phase is determined by weighing. The solvent and the aqueous phase are equilibrated by slowly rotating the collecting vessel. A small amount of the extracting solvent is then removed and injected into a gas chromatograph equipped with an appropriate detector. The solute concentration in the aqueous phase is determined from a calibration

curve constructed using known concentrations of the solute.

(B) *Determinations.—(1) Calibration Curve.* (i) Prepare solute standard solutions of concentrations covering the range of the solute solubility. Select a column and optimum GC operating conditions for resolution between the solute and solvent and the solute and extracting solvent. Inject a known volume of each standard solution into the injection port of the GC. For each standard solution determine the average of the ratio R of peak area to volume (in μL) for three chromatographic peaks from three injections.

(ii) After running all the standard solutions, determine the coefficients, a and b, using a linear regression equation of concentration (c) vs. R in the following form

$$c = aR + b.$$

(*2*) *Loading of the Generator Column.* The generator column is packed and loaded with solute in the same manner as for the HPLC method (see paragraph (b)(3)(i)(B)(*3*) of this section). As shown in Figure 2 under paragraph (b)(1)(i)(A) of this section, attach approximately 20 cm of straight stainless steel tubing to the bottom of the generator column. Connect the top of the generator column to a water reservoir (Figure 4 under paragraph (b)(3)(i)(B)(4)(i) of this section) using Teflon tubing. Use air or nitrogen pressure (5 PSI) from an air or nitrogen cylinder to force water from the reservoir through the column. Collect water in an Erlenmeyer flask for approximately 15 minutes while the solute concentration in water equilibrates; longer time may be required for less soluble compounds.

(*3*) *Collection and extraction of the solute.* During the equilibration time, add a known weight of extracting solvent to a collection vessel which can be capped. The extracting solvent should cover the bottom of the collection vessel to a depth sufficient to submerge the collecting tube but still maintain 100:1 water/solvent ratio. Record the weight (to the nearest mg) of a collection vessel with cap and extracting solvent. Place the collection vessel under the generator column so that water from the collecting tube enters below the level of the extracting solvent (Figure 2 under paragraph (b)(1)(i)(A) of this section). When the collection vessel is filled, remove it from under the generator column, replace cap, and weigh the filled vessel. Determine the weight of water collected. Before analyzing for the solute, gently shake the collection vessel contents for approximately 30 min., controlling the rate of shaking so as not to form an emulsion; rotating the flask end over end five times per minute is sufficient.

(*4*) *Analysis of the solute.* (*i*) After shaking, allow the collection vessel to stand for approximately 30 minutes; then remove a known volume of the extracting solvent from the vessel using a microliter syringe and inject it into the G.C. Record the ratio of peak area to volume injected and, from the regression equation of the calibration line, determine the concentration of solute in the extracting solvent. The concentration of solute in water C(M) is determined from the following equation:

$$C(M) = (C_{es}) \frac{d_{H2O}\ g_{es}}{d_{es}\ g_{H2O}}$$

where C_{es} is the concentration of solute in extracting solvent (M), d_{H2OO} and d_{es} are the densities of water and extracting solvent, respectively, and g_{es} and g_{H2O} are the grams of extracting solvent and water, respectively, contained in the collection vessel.

(*ii*) Make replicate injections from each collecting vessel to determine the average solute concentration in water for each vessel. To make sure the generator column has reached equilibrium, run at least two additional (for a total of three) collection vessels and analyze the extracted solute as described above. Calculate the water solubility of the solute from the average solute concentration in the three vessels.

(*iii*) *Modification of procedures for potential problems—(A) Decomposition of the test compound.* If the test compound decomposes in one or more of the aqueous solvents required during the period of the test at a rate such that an accurate value for water solubility cannot be obtained, then it will be necessary to carry out detailed transformation studies; e.g., hydrolysis under §796.3500. If decomposition is due to aqueous photolysis, then it will be necessary to carry out water solubility studies in the dark, under red or yellow lights, or by any other suitable method to eliminate this transformation process.

(B) [Reserved].

(*c*) *Data and reporting*— (1) *Test report.* (i) For each set of conditions, (e.g., temperature, pure water, buffer solution, artificial seawater) required for the study, provide the water solubility value for each of three determinations, the mean value, and the standard deviation.

(ii) For compounds that decompose at a rate such that a precise value for the water solubility cannot be obtained, provide a statement to that effect.

(iii) For compounds with water solubility below 10 ppb, report the value as "less than 10 ppb".

(2) *Specific analytical, calibration and recovery procedures.* (i) For the HPLC method describe and/or report:

(A) The method used to determine the sample loop volume and the average and standard deviation of that volume.

(B) The average and standard deviation of the response factor.

(C) Any changes made or problems encountered in the test procedure

(ii) For the GC method report:

(A) The column and GC operating conditions of temperature and flow rate.

(B) The average and standard deviation of the average area/μL obtained for each of the standard solutions.

(C) The form of the regression equation obtained in the calibration procedure.

(D) The extracting solvent used.

(E) The average and standard deviation of solute concentration in each collection vessel.

(F) Any changes made or problems encountered in the test procedure.

(d) *References.* For additional background information on this test guideline the following references should be consulted:

(1) DeVoe, H., Miller, M.M., Wasik, S.P. "Generator columns and high pressure liquid chromatography for determining aqueous solubilities and octanol-water partition coefficients of hydrophobic substances," *Journal of Research, National Bureau of Standards,* 86:361–366 (1981).

(2) May, W.E., Wasik, S.P., Freeman, D.H. Determination of the Aqueous Solubility of Polynuclear Aromatic Hydrocarbons by a Coupled Column Liquid Chromatographic Technique, *Analytical Chemistry,* 50:175–179.

(3) May, W.E., Wasik, S.P., Freeman, D.H. "Determination of the solubility behavior of some polycyclic aromatic hydrocarbons in the water," *Analytical Chemistry,* 50:997–1000 (1978).

(4) Wasik, S.P., Tewari, Y.B., Miller, M.M., Martire, D.E. "Octanol/Water Partition Coefficient and Aqueous Solubilities of Organic Compounds," NBS Report NBSIR 81–2406. Washington, DC: National Bureau of Standards, U.S. Department of Commerce, 1981.

§ 796.1950 Vapor pressure.

(a) *Introduction*—(1) *Background and purpose.* (i) Volatilization, the evaporative loss of a chemical, depends upon the vapor pressure of chemical and on environmental conditions which influence diffusion from a surface.

Volatilization is an important source of material for airborne transport and may lead to the distribution of a chemical over wide areas and into bodies of water far from the site of release. Vapor pressure values provide indications of the tendency of pure substances to vaporize in an unperturbed situation, and thus provide a method for ranking the relative volatilities of chemicals. Vapor pressure data combined with water solubility data permit the calculation of Henry's law constant, a parameter essential to the calculation of volatility from water.

(ii) Chemicals with relatively low vapor pressures, high adsorptivity onto solids, or high solubility in water are less likely to vaporize and become airborne than chemicals with high vapor pressures or with low water solubility or low adsorptivity to solids and sediments. In addition, chemicals that are likely to be gases at ambient temperatures and which have low water solubility and low adsorptive tendencies are less likely to transport and persist in soils and water. Such chemicals are less likely to biodegrade or hydrolyze and are prime candidates for atmospheric oxidation and photolysis (e.g., smog formation or stratospheric alterations). On the other hand, nonvolatile chemicals are less frequently involved in atmosphere transport, so that concerns regarding them should focus on soils and water.

(iii) Vapor pressure data are an important consideration in the design of other chemical fate and effects tests; for example, in preventing or accounting for the loss of violatile chemicals during the course of the test.

(2) *Definitions and units.*

(i) "Desorption efficiency" of a particular compound applied to a sorbent and subsequently extracted with a solvent is the weight of the compound which can be recovered from the sorbent divided by the weight of the compound originally sorbed.

(ii) "Pascal" (Pa) is the standard international unit of vapor pressure and is defined as newtons per square meter (N/m^2). A newton is the force necessary to give acceleration of one meter per second squared to one kilogram of mass.

(iii) The "torr" is a unit of pressure which equals 133.3 pascals or 1 mm Hg at 0 °C.

(iv) "Vapor pressure" is the pressure at which a liquid or solid is in equilibrium with its vapor at a given temperature.

(v) "Volatilization" is the loss of a substance to the air from a surface or from solution by evaporation.

(3) *Principle of the test methods.* (i) The isoteniscope procedure uses a standardized technique [ASTM 1978] that was developed to measure the vapor pressure of certain liquid hydrocarbons. The sample is purified within the equipment by removing dissolved and entrained gases until the measured vapor pressure is constant, a process called "degassing." Impurities more volatile than the sample will tend to increase the observed vapor pressure and thus must be minimized or removed. Results are subject to only slight error for samples containing nonvolatile impurities.

(ii) Gas saturation (or transpiration) procedures use a current of inert gas passed through or over the test material slowly enough to ensure saturation and subsequent analysis of either the loss of material or the amount (and sometimes kind) of vapor generated. Gas saturation procedures have been described by Spencer and Cliath (1969) under paragraph (d)(2) of this section. Results are easy to obtain and can be quite precise. The same procedures also can be used to study volatilization from laboratory scale environmental simulations. Vapor pressure is computed on the assumption that the total pressure of a mixture of gases is equal to the sum of the pressures of the separate or component gases and that the ideal gas law is obeyed. The partial pressure of the vapor under study can be calculated from the total gas volume and the weight of the material vaporized. If v is the volume which contains w grams of the vaporized material having a molecular weight M, and if p is the pressure of the vapor in equilibrium at temperature T (K), then the vapor pressure, p, of the sample is calculated by

$$p=(w/M)(RT/v),$$

where R is the gas constant (8.31 Pa $m^3 mol^{-1} K^{-1}$) when the pressure is in pascals (Pa) and the volume is in cubic meters. As noted by Spencer and Cliath (1970) under paragraph (d)(3) of this section, direct vapor pressure measurements by gas saturation techniques are more directly related to the volatilization of chemicals than are other techniques.

(iii) In an effort to improve upon the procedure described by Spencer and Cliath (1969) under paragraph (d)(2) of this section, and to determine the applicability of the gas saturation method to a wide variety of chemical types and structures, EPA has sponsored research and development work at SRI International (EPA 1982) under paragraph (d)(1) of this section. The procedures described in this Test Guideline are those developed under that contract and have been evaluated with a wide variety of chemicals of differing structure and vapor pressures.

(4) *Applicability and specificity.* (i) A procedure for measuring the vapor pressure of materials released to the environment ideally would cover a wide range of vapor pressure values, at ambient temperatures. No single procedure can cover this range, so two different procedures are described in this section, each suited for a different part of the range. The isoteniscope procedure is for pure liquids with vapor pressures from 0.1 to 100 kPa. For vapor pressures of 10^{-5} to 10^3 Pa, a gas saturation procedure is to be used.

(ii) With respect to the isoteniscope method, if compounds that boil close to or form azeotropes with the test material are present, it is necessary to remove the interfering compounds and use pure test material. Impurities more volatile than the sample will tend to increase the observed vapor pressure above its true value but the purification steps will tend to remove these impurities. Soluble, nonvolatile impurities will decrease the apparent vapor pressure. However, because the isoteniscope procedure is a static, fixed-volume method in which an insignificant fraction of the liquid sample is vaporized, it is subject to only slight error for samples containing nonvolatile impurities. That is, the nonvolatile impurities will not be concentrated due to vaporization of the sample.

(iii) The gas saturation method is applicable to solid or liquid chemicals. Since the vapor pressure measurements are made at ambient temperatures, the need to extrapolate data from high temperatures is not necessary and high temperature extrapolation, which can often cause serious errors, is avoided. The method is most reliable for vapor pressures below 10^3 Pa. Above this limit, the vapor pressures are generally overestimated, probably due to aerosol formation. Finally, the gas saturation method is applicable to the determination of the vapor pressure of impure materials.

(b) *Test Procedures*—(1) *Test conditions.* (i) The apparatus in the isoteniscope method is described in paragraph (b)(2)(i) of this section.

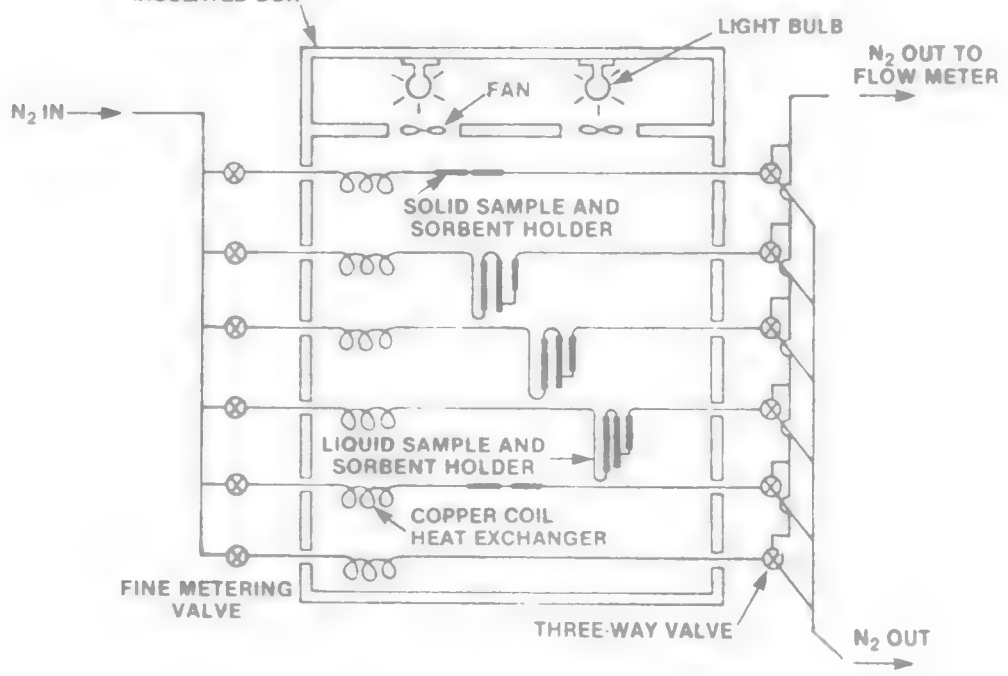
(ii) The apparatus used in the gas saturation method is described in paragraph (b)(2)(ii) of this section.

(2) *Performance of the tests*—(i) *Isoteniscope Procedure.* The isoteniscope procedure described as ANSI/ASTM Method D 2879–75 (Reapproved 1980) is applicable for the measurement of vapor pressures of liquids with vapor pressures of 0.1 to 100 kilopascals (kPa) (0.75 to 750 torr).

ASTM D 2879–75 (Reapproved 1980) is available for inspection at the Office of the Federal Register, Rm. 8401, 1100 L St., NW., Washington, DC. This incorporation by reference was approved by the Director of the Office of the Federal Register. This material is incorporated as it exists on the date of approval and a notice of any change in this material will be published in the **Federal Register**. Copies of the incorporated material may be obtained from the Document Control Officer (TS–793), Office of Toxic Substances, EPA, Rm. 107, 401 M St., SW., Washington, DC 20460, and from the American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103. The isoteniscope method involves placing liquid sample in a thermostated bulb (the isoteniscope) connected to a manometer and a vacuum pump. Dissolved and entrained gases are removed from the sample in the isoteniscope by degassing the sample at reduced presssure. The vapor pressure of the sample at selected temperatures is determined by balancing the pressure due to the vapor of the sample against a known pressure of an inert gas. The vapor pressure of the test compound is determined in triplicate at 25±0.5 °C and at any other suitable temperatures (±0.5°). It is important that additional vapor pressure measurements be made at other temperatures, as necessary, to assure that there is no need for further degassing, as described in the ASTM method.

(ii) *Gas Saturation Procedure.* (A) The test procedures require the use of a constant-temperature box as depicted in the following Figure 1.

Figure 1—Schematic diagram of vapor saturation apparatus



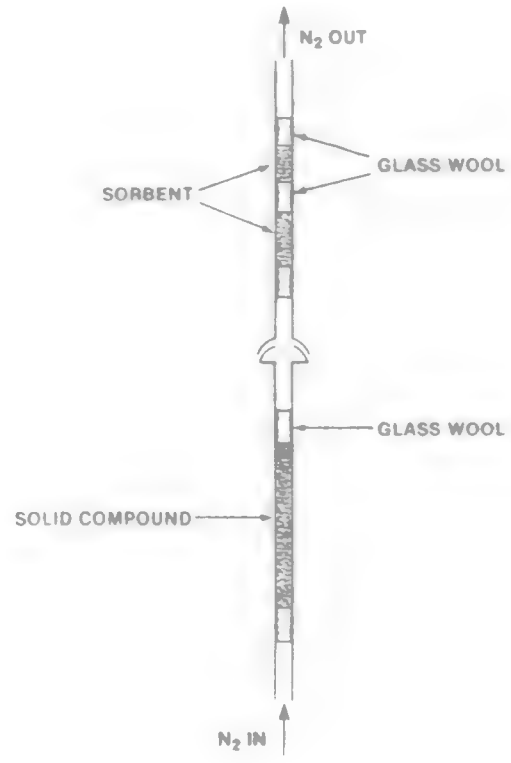
The insulated box, containing sample holders, may be of any suitable size and shape. The sketch in Figure 1 shows a box containing three solid sample holders and three liquid sample holders, which allows for the triplicate analysis of either a solid or liquid sample. The temperature within the box is controlled to ±0.5° or better. Nitrogen gas, split into six streams and controlled by fine needle valves (approximately 0.79 mm orifice), flows into the box via 3.8 mm (0.125 in.) i.d. copper tubing. After temperature equilibration, the gas flows through the sample and the sorbent trap and exits from the box. The flow rate of the effluent carrier gas is measured at room temperature with a bubble flow meter or other suitable device. The flow rate is checked frequently during the experiment to assure that there is an accurate value for the total volume of carrier gas. The flow rate is used to calculate the total volume (at room temperature) of gas that has passed through the sample and sorbent [(vol/time) × time = volume]. The vapor pressure of the test substance can be calculated from the total gas volume and the mass of sample vaporized. If v is the volume of gas that transported mass w of the vaporized test material having a molecular weight M, and if p is the equilibrium vapor pressure of the sample at temperature T, then p is calculated by the equation

$$p = (w/M)(RT/v).$$

In this equation, R is the gas constant (8.31 Pa $m^3 mol^{-1} K^{-1}$). The pressure is expressed in pascals (Pa), the volume in cubic meters (m^3), mass in grams and T in kelvins (K). $T = 273.15 + t$, if t is measured in degrees Celsius (°C).

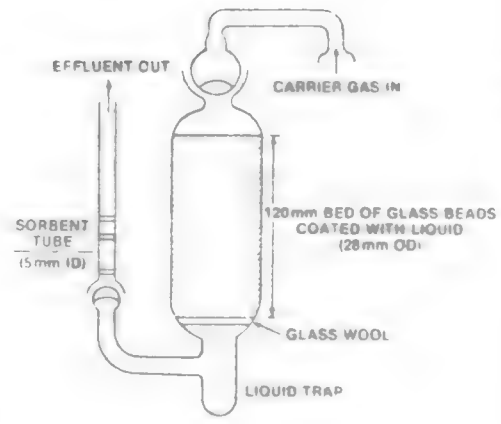
(B) Solid samples are loaded into 5 mm i.d. glass tubing between glass wool plugs. The following Figure 2 depicts a drawing of a sample holder and absorber system.

Figure 2—Solid compound sampling system



(C) Liquid samples are contained in a holder as shown in the following Figure 3.

Figure 3—Liquid compound sampling system



The most reproducible method for measuring the vapor pressure of liquids is to coat the liquid on glass beads and to pack the holder in the designated place with these beads.

(D) At very low vapor pressures and sorbent loadings, adsorption of the chemical on the glass wool separating the sample and the sorbent and on the glass surfaces may be a serious problem. Therefore, very low loadings should be avoided whenever possible. Incoming nitrogen gas (containing no interfering impurities) passes through a coarse frit and bubbles through a 38 cm column of liquid sample. The stream passes through a glass wool column to trap aerosols and then through a sorbent tube, as described above. The pressure drop across the glass wool column and the sorbent tube are negligible.

(E) With both solid and liquid samples, at the end of the sampling time, the front and backup sorbent sections are analyzed separately. The compound on each section is desorbed by adding the sorbent from that section to 1.0 ml of desorption solvent in a small vial and allowing the mixture to stand at a suitable temperature until no more test compound desorbs. It is extremely important that the desorption solvent contain no impurities which would interfere with the analytical method of choice. The resulting solutions are analyzed quantitatively by a suitable analytical method to determine the weight of sample desorbed from each section. The choice of the analytical method, sorbent, and desorption solvent is dictated by the nature of the test material. Commonly used sorbents include charcoal, Tenax GC, and XAD-2. Describe in detail the sorbent, desorption solvent, and analytical methods employed.

(F) Measure the desorption efficiency for every combination of sample, sorbent, and solvent used. The desorption efficiency is determined by injecting a known mass of sample onto a sorbent and later desorbing it and analyzing for the mass recovered. For each combination of sample, sorbent, and solvent used, carry out the determination in triplicate at each of three concentrations. Desorption efficiency may vary with the concentration of the actual sample and it is important to measure the efficiency at or near the concentration of sample under gas saturation test procedure conditions.

(G) To assure that the gas is indeed saturated with test compound vapor, sample each compound at three differing gas flow rates. Appropriate flow rates will depend on the test compound and test temperature. If the calculated vapor pressure shows no dependence on flow rate, then the gas is assumed to be saturated.

(c) *Data and reporting.* (1) Report the triplicate calculated vapor pressures for the test material at each temperature, the average calculated vapor pressure at each temperature, and the standard deviation.

(2) Provide a description of analytical methods used to analyze for the test material and all analytical results.

(3) For the isoteniscope procedure, include the plot of p vs. the reciprocal of the temperature in K, developed during the degasing step and showing linearity in the region of 298.15 K (25 °C) and any other required test temperatures.

(4) For the gas saturation procedure, include the data on the calculation of vapor pressure at three or more gas flow rates at each test temperature, showing no dependence on flow rate. Include a description of sorbents and solvents employed and the desorption efficiency calculations.

(5) Provide a description of any difficulties experienced or any other pertinent information.

(d) *References.* For additional background information on this test guideline the following references should be consulted:

(1) U.S. Environmental Protection Agency. *Evaluation of Gas Saturation Methods to Measure Vapor Pressures: Final Report,* EPA Contract No. 68–01–5117 with SRI International, Menlo Park, California (1982).

(2) Spencer, W.F. and Cliath, M.M. "Vapor Density of Dieldrin," *Journal of Agricultural and Food Chemistry,* 3:664–670 (1969).

(3) Spencer, W.F. and Cliath, M.M. "Vapor Density and Apparent Vapor Pressure of Lindane," *Journal of Agricultural and Food Chemistry,* 18:529–530 (1970).

Subpart C—Transport Processes

§ 796.2700 Soil thin-layer chromatography.

(a) *Introduction—(1) Background and purpose.* (i) Leaching of chemicals through soil is an important process which affects a chemical's distribution in the environment. If a chemical is tightly adsorbed to soil particles, it will not leach through the soil profile but will remain on the soil surface. If a chemical is weakly adsorbed, it will leach through the soil profile and may reach ground waters and then surface waters. Knowledge of the leaching potential is essential under certain circumstances for the assessment of the fate of chemicals in the environment.

(ii) Chemical leaching also affects the assessment of ecological and human health effects of chemicals. If a chemical reaches ground water, deleterious human health effects may arise due to the consumption of drinking water. If a chemical remains at the soil surface, deleterious environmental and human health effects may arise due to an increased concentration of the chemical in the zone of plant growth, possibly resulting in contamination of human food supplies.

(iii) Soil thin-layer chromatography (TLC) is a qualitative screening tool suitable for obtaining an estimate of a chemical's leaching potential. This test is one of several tests which can be used in obtaining a rough estimation of a chemical's leaching potential.

(2) *Definitions and units.* (i) "Cation exchange capacity" (CEC) is the sum total of exchangeable cations that a soil can adsorb. The CEC is expressed in milliequivalents of negative charge per 100 grams (meq/100g) or milliequivalents of negative charge per gram (meq/g) of soil.

(ii) "Particle size analysis" is the determination of the various amounts of the different particle sizes in a soil sample (i.e., sand, silt, clay) usually by sedimentation, sieving, micrometry or combinations of these methods. The names and size limits of these particles as widely used in the United States are:

[illegible]	Diameter range
Very coarse sand	2.0 to 1.0 mm
Coarse sand	1.0 to 0.5 mm
Medium sand	0.5 to 0.25 mm
Fine sand	0.25 to 0.125 mm

[Illegible]	Diameter range
Very fine sand	0.125 to 0.062 mm
Silt	0.062 to 0.002 mm
Clay	<0.002 mm

(iii) "R_f" is the furthest distance traveled by a test material on a thin-layer chromatography plate divided by the distance traveled by a solvent front (arbitrarily set at 10.0 cm in soil TLC studies).

(iv) "Soil" is the unconsolidated mineral material on the immediate surface of the earth that serves as a natural medium for the growth of land plants; its formation and properties are determined by various factors such as parent material, climate, macro- and microorganisms, topography, and time.

(v) "Soil aggregate" is the combination or arrangement of soil separates (sand, silt, clay) into secondary units. These units may be arranged in the profile in a distinctive characteristic pattern that can be classified on the basis of size, shape, and degree of distinctness into classes, type, and grades.

(vi) "Soil classification" is the systematic arrangement of soils into groups or categories. Broad groupings are made on the basis of general characteristics, subdivisions, on the basis of more detailed differences in specific properties. The soil classification system used today in the United States is the 7th Approximation Comprehensive System. The ranking of subdivisions under the system is: order, suborder, great group, family and series.

(vii) "Soil horizon" is a layer of soil approximately parallel to the land surface. Adjacent layers differ in physical, chemical, and biological properties or characteristics such as color, structure, texture, consistency, kinds, and numbers of organisms present, and degree of acidity or alkalinity.

(viii) "Soil order" is the broadest category of soil classification and is based on general similarities of physical/chemical properties. The formation by similar genetic processes causes these similarities. The soil orders found in the United States are: Alfisol, Aridisol, Entisol, Histosol, Inceptisol, Mollisol, Oxisol, Spodosol, Ultisol, and Vertisol.

(ix) "Soil organic matter" is the organic fraction of the soil; it includes plant and animal residues at various stages of decomposition, cells and tissues of soil organisms, and substances synthesized by the microbial population.

(x) "Soil pH" is the negative logarithm to the base 10 of the hydrogen ion activity of a soil as determined by means of a suitable sensing electrode coupled with a suitable reference electrode at a 1:1 soil:water ratio.

(xi) "Soil series" is the basic unit of soil classification and is a subdivision of a family. A series consists of soils that were developed under comparable climatic and vegetational conditions. The soils comprising a series are essentially alike in all major profile characteristics except for the texture of the "A" horizon (i.e., the surface layer of soil).

(xii) "Soil texture" refers to the classification of soils based on the relative proportions of the various soil separates present. The soil textural classes are: clay, sandy clay, silty clay, clay loam, silty clay loam, sandy clay loam, loam, silt loam, silt, sandy loam, loamy sand, and sand.

(3) *Principle of the test method.* (i) Before 1968, methods of investigating the mobility of nonvolatile organic chemicals within soils were based on the use of field analysis, soil adsorption isotherms, and soil columns. In 1968, Helling and Turner introduced soil thin-layer chromatography (soil TLC) as an alternative procedure; it is analogous to conventional TLC, with the use of soil instead of silica gels, oxides, etc., as the adsorbent phase.

(ii) The papers by Helling (1968, 1971) under paragraph (d) (5), (6), and (7) of this section and Helling and Turner (1968) under paragraph (d)(3) of this section were the basis of this test guideline. The soil and colloid chemistry literature and the analytical chemistry literature substantiate the experimental conditions specified in the guideline.

(iii) The soil TLC offers many desirable features. First, mobility results are reproducible. Mass transfer and diffusion components are distinguishable. The method has relatively modest requirements for chemicals, soils, laboratory space, and equipment. It yields data that are amenable to statistical analyses. A chemical extraction-mass balance procedure to elicit information on degradation and chemical transformations occurring at colloid interfaces can be incorporated into this test. The ease with which the R_f and mass balance are performed will depend upon the physical/chemical properties of the test chemical and the availability of suitable analytical techniques for measuring the chemical.

(4) *Applicability and specificity.* (i) Soil TLC can be used to determine the soil mobility of sparingly water soluble to infinitely soluble chemicals. In general, a chemical having a water solubility of less than 0.5 ppm need not be tested since the literature indicates that these chemicals are, in general, immobile, see Goring and Hamaker (1972) under paragraph (d)(1) of this section. However, this does not preclude future soil adsorption/transformation testing of these chemicals if more refined data are needed for the assessment process.

(ii) Soil TLC may be used to test the mobility of volatile chemicals by placing a clean plate over the spotted soil TLC plate and then placing both plates in a closed chromatographic chamber.

(iii) Soil TLC was originally designed for use with soils. The literature shows no published use of this method with sediments as the absorbent phase, probably due to the fact that sediment surface properties change significantly during air drying. It is extremely important that the TLC plate with the adsorbent be air dried before leaching studies can be undertaken.

(b) *Test procedures*—(1) *Test conditions.* (i) Equipment required: Distilled-deionized water adjusted to pH 7 by boiling to remove CO_2; clean glass plates (TLC); glass rods or a variable thickness plate spreader; masking tape; closed chromatographic chambers; analytical instrumentation necessary and appropriate for the detection and quantitative analysis of the test chemical.

(ii) The test procedure may be run at 23 ± 5 °C.

(iii) It is recommended that three replicate plates for each soil be used.

(2) *Test procedures.* (i) To reduce aggregate size before or during sieving, crush and grind the air-dried soil very, very gently.

(ii) Sieve air-dried soils with a 250 micrometer sieve.

(iii) Add water to the sieved soil until a smooth, moderately fluid slurry is attained (approximately ¾ ml H_2O added for each gram of soil).

(iv) Spread the slurry evenly and quickly across the clean glass plate using a variable thickness plate spreader, a glass rod, or other available method. If a glass rod is used, control the layer thickness by affixing multiple layers of masking tape along the plate edges. Soil layer thickness should be 0.50—0.75 mm.

(v) Air dry the plates at 25 °C for a minimum of 24 hours after uniform slurry application is achieved.

(vi) Scribe a horizontal line 11.5 cm above the base through the soil layer down to the glass so as to stop solven movement.

(vii) Spot the test chemical, in solution, 1.5 cm above the base. For radiolabeled materials, 0.5–5 μg

containing 0.01–0.03 μCi of ^{14}C labeled compound may be used.

(viii) If the compound is volatile, it is extremely important that a clean plate be placed over the soil TLC plate to impede volatilization.

(ix) Immerse the plate with the base down at some angle from the vertical in a closed chromatographic chamber containing H_2O at a height of 0.5 cm.

(x) Allow the solvent front to migrate to the 11.5 cm line before removing the plates from the chamber.

(xi) Determine the R_f values. Zonal extraction, plate scanning, or any other method or combination of methods suitable for detection of the parent test chemical may be used.

(xii) Determine the amount of the parent test chemical on the entire soil TLC plate after test chemical migration. Any method or combination of methods suitable for the extraction and quantitative detection of the parent test chemical may be used.

(c) *Data and reporting.* Report the following information. (1) Temperature at which the test was conducted.

(2) Amount of the test chemical applied and amount recovered from the plates.

(3) Detailed description of the analytical technique used in the R_f determination, the chemical extraction, and the quantitative recovery and analysis of the parent chemical.

(4) The mean frontal R_f value with the standard deviation for each soil tested.

(5) A photograph or diagram of the TLC plate which shows the entire leaching pattern (from 1.5 to 11.5 cm).

(6) Soil information: soil order, series, texture, sampling location, horizon, general clay fraction mineralogy.

(7) Soil physical/chemical properties: percent sand, percent silt and percent clay (particle size analysis); percent organic matter; pH (soil-to-water ratio, 1:1); and cation exchange capacity.

(d) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Goring, C.A.I., Hamaker, J.W. *Organic Chemicals in the Soil Environment.* Vol. I & II (New York: Marcel Dekker, Inc., 1972).

(2) Helling, C.S. "Pesticide mobility investigations using soil thin-layer chromatography," *American Society for Agronomy Abstracts* (1968).

(3) Helling, C.S., Turner, B.C. "Pesticide mobility: Determination by soil thin layer chromatography," *Science,* 162:562 (1968).

(4) Helling, C.S., "Movement of s-triazine herbicides in soils," *Residue Review,* 32:175–210 (1970).

(5) Helling, C.S. "Pesticide mobility in soils I. Parameters of soil thin layer chromatography," *Soil Science Society of America Proceedings,* 35:732–737 (1971).

(6) Helling, C.S. "Pesticide mobility in soils II. Applications of soil thin layer chromatography," *Soil Science Society of America Proceedings,* 35:737–743 (1971).

(7) Helling, C.S. "Pesticide mobility in soils III. Influence of soil properties," *Soil Science of America Proceedings,* 35:743–748 (1971).

§ 796.2750 Sediment and soil adsorption isotherm.

(a) *Introduction*—(1) *Background and purpose.* The adsorption of chemicals to sediments and soils is an important process that affects a chemical's distribution in the environment. If a chemical is adsorbed to soil particles, it will remain on the soil surface and will not reach ground water. If a chemical is not adsorbed, it will leach through the soil profile and may reach ground waters and then surface waters. Similarly, if a chemical adsorbed to sediment, it will accumulate in the bed and suspended load of aquatic systems. If a chemical is not adsorbed to sediment, it will accumulate in the water column of aquatic systems. Information on the adsorption potential is needed under certain circumstances to assess the transport of chemicals in the environment. This section describes procedures that will enable sponsors to determine the adsorption isotherm of a chemical on sediments and soils.

(2) *Definitions and units.* (i) The "cation exchange capacity" (CEC) is the sum total of exchangeable cations that a sediment or soil can adsorb. The CEC is expressed in milliequivalents of negative charge per 100 grams (meq/100g) or milliequivalents of negative charge per gram (meq/g) of soil or sediment.

(ii) "Clay mineral analysis" is the estimation or determination of the kinds of clay-size minerals and the amount present in a sediment or soil.

(iii) "Organic matter" is the organic fraction of the sediment or soil; it includes plant and animal residues at various stages of decomposition, cells and tissues of soil organisms, and substances synthesized by the microbial population.

(iv) "Particle size analysis" is the determination of the various amounts of the different particle sizes in a sample (i.e., sand, silt, clay), usually by sedimentation, sieving, micrometry, or combinations of these methods. The names and diameter range commonly used in the United States are:

Name	Diameter range
Very coarse sand	2.0 to 1.0 mm
Coarse sand	1.0 to 0.5 mm
Medium sand	0.5 to 0.25 mm
Fine sand	0.25 to 0.125 mm
Very fine sand	0.125 to 0.062 mm
Silt	0.062 to 0.002 mm
Clay	0.002 mm

(v) The "pH" of a sediment or soil is the negative logarithm to the base ten of the hydrogen ion activity of the sediment or soil suspension. It is usually measured by a suitable sensing electrode coupled with a suitable reference electrode at a 1/1 solid/solution ratio by weight.

(vi) The adsorption ratio, "K_a," is the amount of test chemical adsorbed by a sediment or soil (i.e., the solid phase) divided by the amount of test chemical in the solution phase, which is in equilibrium with the solid phase, at a fixed solid/solution ratio.

(vii) "Sediment" is the unconsolidated inorganic and organic material that is suspended in and being transported by surface water, or has settled out and has deposited into beds.

(viii) "Soil" is the unconsolidated mineral material on the immediate surface of the earth that serves as a natural medium for the growth of land plants. Its formation and properties are determined by various factors such as parent material, climate, macro- and microorganisms, topography, and time.

(ix) "Soil aggregate" is the combination or arrangement of soil separates (sand, silt, clay) into secondary units. These units may be arranged in the soil profile in a distinctive characteristic pattern that can be classified according to size, shape, and degree of distinctness into classes, types, and grades.

(x) "Soil classification" is the systematic arrangement of soils into groups or categories. Broad groupings are based on general soil characteristics while subdivisions are based on more detailed differences in specific properties. The soil classification system used in this standard and the one used today in the United States is the 7th Approximation-Comprehensive System. The ranking of subdivisions under this system is: Order, Suborder, Great group, family, and series.

(xi) A "soil horizon" is a layer of soil approximately parallel to the land surface. Adjacent layers differ in physical, chemical, and biological properties such as color, structure, texture, consistency, kinds and numbers of organisms present, and degree of acidity or alkalinity.

(xii) "Soil Order" is the broadest category of soil classification and is based on the general similarities of soil physical/chemical properties. The formation of soil by similar general genetic processes causes these similarities. The Soil Orders found in the United States are: Alfisol, Aridisol, Entisol, Histosol, Inceptisol, Mollisol, Oxisol, Spodosol, Ultisol, and Vertisol.

(xiii) "Soil series" is the basic unit of soil classification and is a subdivision of a family. A series consists of soils that were developed under comparable climatic and vegetational conditions. The soils comprising a series are essentially alike in all major profile characteristics except for the texture of the "A" horizon (i.e., the surface layer of soil).

(xiv) "Soil texture" is a classification of soils that is based on the relative proportions of the various soil separates present. The soil textural classes are: clay, sandy clay, silty clay, clay loam, silty clay loam, sandy clay loam, loam, silt loam, silt, sandy loam, loamy sand, and sand.

(3) *Principle of the test method.* (i) The extent of adsorption of a chemical onto sediment or soil is measured, using this test guideline, by equilibrating aqueous solutions containing different, but environmentally realistic, concentrations of the test chemical with a known quantity of sediment or soil. After equilibrium is reached, the distribution of the chemical between the water phase and the solid phase is quantitatively measured by a suitable analytical method. Then, sorption constants are calculated by using the Freundlich equation:

Equation 1

$x/m = C_s = KC_e^{1/n}$

where:

C_e = Equilibrium concentration of the chemical in the solution phase
C_s = Equilibrium concentration of the chemical in the solid phase
K = Freundlich adsorption coefficient
m = The mass of the solid in grams
$^{1/n}$ = Exponent where n is a constant
x = The mass in micrograms of the chemical adsorbed by m grams of solid.

Logarithmetic transformation of the Freundlich equation yields the following linear relationship:

Equation 2

$\log C_s = \log K + (1/n) \log C_e$

(ii) In order to estimate the environmental movement of the test chemical, the values K and 1/n are compared with the values of other chemicals whose behavior in soil and sediment systems is well-documented in scientific literature.

(iii) The adsorption isotherm (AI) test has many desirable features. First, adsorption results are highly reproducible. The test provides excellent quantitative data readily amenable to statistical analyses. Also, it has relatively modest requirements for chemicals, soils, laboratory space, and equipment. It allows solution phase organic chemical determinations that are relatively uncomplicated. A chemical extraction-mass balance procedure to elicit information on chemical transformations occurring at colloid interfaces can be incorporated into this test. The ease of performing the isotherm test and mass balance will depend upon the physical/chemical properties of the test chemical and the availability of suitable analytical techniques to measure the chemical.

(iv) The papers by Aharonson and Kafkafi (1975) under paragraph (d)(1) of this section, Harvey (1974) under paragraph (d)(3) of this section, Murray (1975) under paragraph (d)(4) of this section, Saltzman (1972) under paragraph (d)(5) of this section, Weber (1971) under paragraph (d)(6) of this section, and Wu (1975) under paragraph (d)(7) of this section served as the basis for this section. The soil and colloid chemistry literature and the analytical chemistry literature substantiate the experimental conditions and procedures specified in this guideline as accepted, standard procedures.

(4) *Applicability and specificity.* The AI Test Guideline can be used to determine the soil and sediment adsorption potential of sparingly water soluble to infinitely soluble chemicals. In general, a chemical having a water solubility of less than 0.5 ppm need not be tested with soil as the solid phase, since the literature indicates that these chemicals are, in general, immobile in soils, see Goring and Hamaker (1972) under paragraph (d)(2) of this section. However, this does not preclude future soil adsorption/transformation testing of these chemicals if more refined data are needed for the assessment process.

(b) *Test procedures*—(1) *Test conditions*—(i) *Special laboratory equipment.* (A) Equilibrating solutions that contain, besides the test chemical, 0.01M calcium nitrate dissolved in sterilized, distilled-deionized H_2O adjusted to neutral pH 7 by boiling to remove CO_2.

(B) Containers that are composed of material that (*1*) adsorb negligible amounts of test chemical, and (*2*) withstand high speed centrifugation. The volume of the container is not a major consideration; however, it is extremely important that the amount of soil or sediment and the solid/solution ratio used in the study result in minimal container headspace. It is also extremely important that the containers be sterilized before use.

(C) A 150 micron (100 mesh) stainless-steel or brass sieve.

(D) Drying oven, with circulating air, that can attain 100 °C.

(E) Vortex mixer or a comparable device.

(F) Rotary shaker or a comparable device.

(G) High speed temperature-controlled centrifuge capable of sedimenting particles greater than 0.5 micron from aqueous solution.

(ii) *Temperature.* It is recommended that the test procedure be performed at 23±5 °C.

(iii) *Replications.* It is recommended that three replications of the experimental treatments be used.

(iv) *Soil pretreatment.* It is extremely important that these soil pretreatment steps be performed under the following conditions:

(A) Decrease the water content, air or oven-dry soils at or below 50 °C.

(B) Reduce aggregate size before and during sieving, crush and grind dried soil very gently.

(C) Eliminate microbial growth during the test period using a chemical or physical treatment that does not alter or minimally alters the soil surface properties.

(D) Sieve soils with a 100 mesh stainless-steel or brass sieve.

(E) Store all solutions and soils at temperatures between 0 and 5 °C.

(v) *Sediment pretreatment.* It is extremely important that these sediment pretreatment steps be performed under the following conditions:

(A) Decrease the H_2O content by air or oven-drying sediments at or below 50 °C. Sediments should not be dried completely and should remain moist at all times prior to testing and analysis.

(B) Eliminate microbial growth during the test period by using a chemical and/or physical treatment that does not alter or minimally alters the colloid surface's properties.

(C) Store at temperatures between 0 and 5 °C.

(vi) *Solid/solution ratio.* It is recommended that the solid/solution ratio be equal to or greater than 1/10. If possible, the ratios should be equal to or greater than 1/5. The sediment or soil dry weight after drying for a 24-hour minimum at 90 °C is recommended for use as the weight of the solid for ratio and data calculations.

(vii) *Equilibration time.* The equilibration time will depend upon the length of time needed for the parent

chemical to attain an equilibrium distribution between the solid phase and the aqueous solution phase. It is recommended that the equilibration time be determined by the following procedure:

(A) Equilibrate one solution containing a known concentration of the test chemical with the sediment or soil in a solid/solution ratio not exceeding 1/10 and preferably equal to or greater than 1/5. It is important that the concentration of the test chemical in the equilibrating solution (*1*) does not exceed one-half of its solubility and (*2*) should be 10 ppm or less at the end of the equilibration period.

(B) Measure the concentration of the chemical in the solution phase at frequent intervals during the equilibration period.

(C) Determine the equilibration time by plotting the measured concentration versus time of sampling; the equilibration time is the minimum period of time needed to establish a rate of change of solution concentration of 5 percent or less per 24 hours.

(viii) *Centrifugation time.* Calculate the centrifugation time, t_c, necessary to remove particles from solution greater than approximately 0.5 micron (5×10^{-5} micron) equivalent diameter (which represents all particles except the fine clay fraction) using the following equation:

Equation 3

$$t_c(\text{min}) = 1.41\times10^9\,[\log(R_2/R_1)]/N^2$$

where:

t_c = centrifuge time in minutes
R_2 = distance from centrifuge spindle to deposition surface of centrifuge
R_1 = distance from spindle to surface of the sample
N = number of revolutions of the centrifuge per minute.

(ix) *Storage of solutions.* If the chemical analysis is delayed during the course of the experiment, store all solutions between 0 and 5 °C.

(x) *Solvents for extraction.* It is extremely important that (A) the purity of the solvent used to extract the chemical that is adsorbed on the sediment or soil is analytical grade or better and (B) the minimum solubility of the test chemical in the solvent is 10 g/l.

(2) *Test procedure* (i) *Equilibration.* Add six solutions containing different concentrations of the test chemical to at least one gram of each solid. The initial concentration of the test chemical in these solutions will depend on the affinity the chemical has for the sediment or soil. Therefore, after equilibrium is attained, it is extremely important that the highest concentration of the test chemical in the equilibrating solution does not exceed 10 ppm, is at least one order of magnitude greater than the lowest concentration reported, and does not exceed one half of its solubility.

(A) Immediately after the solutions are added to the solids, tightly cap the containers and vigorously agitate them for several minutes with a vortex mixture or similar device.

(B) Shake the containers throughout the equilibration period at a rate that suspends all solids in the solution phase.

(ii) *Centrifugation.* When the equilibration time has expired, centrifuge the containers for t_c minutes.

(iii) *Chemical extraction.* (A) After centrifugation, remove the supernatant aqueous phase from the solid-solution mixture.

(B) Extract the chemical adsorbed on the sediment or soil colloid surfaces with solvent.

(iv) *Chemical analysis.* Determine the amount of parent test chemical in the aqueous equilibrating solution and organic solvent extractions. Use any method or combination of methods suitable for the identification and quantitative detection of the parent test chemical.

(c) *Reporting.* Report the following information:

(1) Temperature at which the test was conducted.

(2) Detailed description of the analytical technique(s) used in the chemical extraction, recovery, and quantitative analysis of the parent chemical.

(3) Amount of parent test chemical applied, the amount recovered, and the percent recovered.

(4) Extent of adsorption by containers and the approach used to correct the data for adsorption by containers.

(5) The individual observations, the mean values, and graphical plots of x/m as a function of C_e for each sediment or soil for (i) the equilibration time determination and (ii) the isotherm determination.

(6) The quantities K, n, and 1/n.

(7) Soil information: Soil Order, series, texture, sampling location, horizon, general clay fraction mineralogy.

(8) Sediment information: sampling location, general clay fraction mineralogy.

(9) Sediment and soil physical-chemical properties: percent sand, silt, and clay (particle size analysis); percent organic matter; pH (1/1 solids/H_2O); and cation exchange capacity.

(10) The procedures used to determine the physical/chemical properties listed under paragraphs (c) (7) through (9) of this section.

(d) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Aharonson, N., Kafkafi, U. "Adsorption, mobility and persistence of thiabendazole and methyl 2-benzimidasole carbamate in soils," *Journal of Agricultural and Food Chemistry*, 23:720–724 (1975).

(2) Goring, C.A.I., Hamaker, J.W., (eds). *Organic Chemicals in the Soil Environment.* Vol. I & II (New York: Marcel Dekker, Inc., 1972).

(3) Harvey, R.G. et al. "Soil adsorption and volatility of dinitroaniline herbicides," *Weed Science*, 22:120–124 (1974).

(4) Murray, D.S. et al. "Comparative adsorption, desorption, and mobility of dipropetryn and prometryn in soil," *Journal of Agricultural and Food Chemistry*, 23:578–581 (1973).

(5) Saltzman, S.L. et al. "Adsorption, desorption of parathion as affected by soil organic matter," *Journal of Agricultural and Food Chemistry*, 20:1224–1226 (1972).

(6) Weber, J.B. "Model soil system, herbicide leaching, and sorption," *Weed Science*, 19:145–160 (1971).

(7) Wu, C.H., et al. "Napropamide adsorption, desorption, and movement in soils," *Weed Science*, 23:454–457 (1975).

Subpart D—Transformation Processes

§ 796.3100 Aerobic aquatic biodegradation.

(a) *Introduction*—(1) *Purpose.* (i) This Guideline is designed to develop data on the rate and extent of aerobic biodegradation that might occur when chemical substances are released to aquatic environments. A high biodegradability result in this test provides evidence that the test substance will be biodegradable in natural aerobic freshwater environments.

(ii) On the contrary, a low biodegradation result may have other causes than poor biodegradability of the test substance. Inhibition of the microbial inoculum by the test substance at the test concentration may be observed. In such cases, further work is needed to assess the aerobic aquatic biodegradability and to determine the concentrations at which toxic effects are evident. An estimate of the expected environmental concentration will help to put toxic effects into perspective.

(2) *Definitions.* (i) "Adaptation" is the process by which a substance induces the synthesis of any degradative

enzymes necessary to catalyze the transformation of that substance.

(ii) "Ultimate Biodegradability" is the breakdown of an organic compound to CO_2, water, the oxides or mineral salts of other elements and/or to products associated with normal metabolic processes of microorganisms.

(iii) "Ready Biodegradability" is an expression used to describe those substances which, in certain biodegradation test procedures, produce positive results that are unequivocal and which lead to the reasonable assumption that the substance will undergo rapid and ultimate biodegradation in aerobic aquatic environments.

(3) *Principle of the test method.* This Guideline method is based on the method described by William Gledhill (1975) under paragraph (d)(1) of this section. The method consists of a 2-week inoculum buildup period during which soil and sewage microorganisms are provided the opportunity to adapt to the test compound. This inoculum is added to a specially equipped Erlenmeyer flask containing a defined medium with test substance. A reservoir holding barium hydroxide solution is suspended in the test flask. After inoculation, the test flasks are sparged with CO_2-free air, sealed, and incubated, with shaking in the dark. Periodically, samples of the test mixture containing water-soluble test substances are analyzed for dissolved organic carbon (DOC) and the $Ba(OH)_2$ from the reservoirs is titrated to measure the amount of CO_2 evolved. Differences in the extent of DOC disappearance and CO_2 evolution between control flasks containing no test substance, and flasks containing test substance are used to estimate the degree of ultimate biodegradation.

(4) *Prerequisites.* The total organic carbon (TOC) content of the test substance should be calculated or, if this is not possible, analyzed, to enable the percent of theoretical yield of carbon dioxide and percent of DOC loss to be calculated.

(5) *Guideline information.* (i) Information on the relative proportions of the major components of the test substance will be useful in interpreting the results obtained, particularly in those cases where the result lies close to a "pass level."

(ii) Information on the toxicity of the chemical may be useful in the interpretation of low results and in the selection of appropriate test concentrations.

(6) *Reference substances.* Where investigating a chemical substance, reference compounds may be useful and an inventory of suitable reference compounds needs to be identified. In order to check the activity of the inoculum the use of a reference compound is desirable. Aniline, sodium citrate, dextrose, phthalic acid and trimellitic acid will exhibit ultimate biodegradation under the conditions of this Test Guideline method. These reference substances must yield 60 percent of theoretical maximum CO_2 and show a removal of 70 percent DOC within 28 days. Otherwise the test is regarded as invalid and should be repeated using an inoculum from a different source.

(7) *Reproducibility.* The reproducibility of the method has not yet been determined; however it is believed to be appropriate for a screening test which has solely an acceptance but no rejective function.

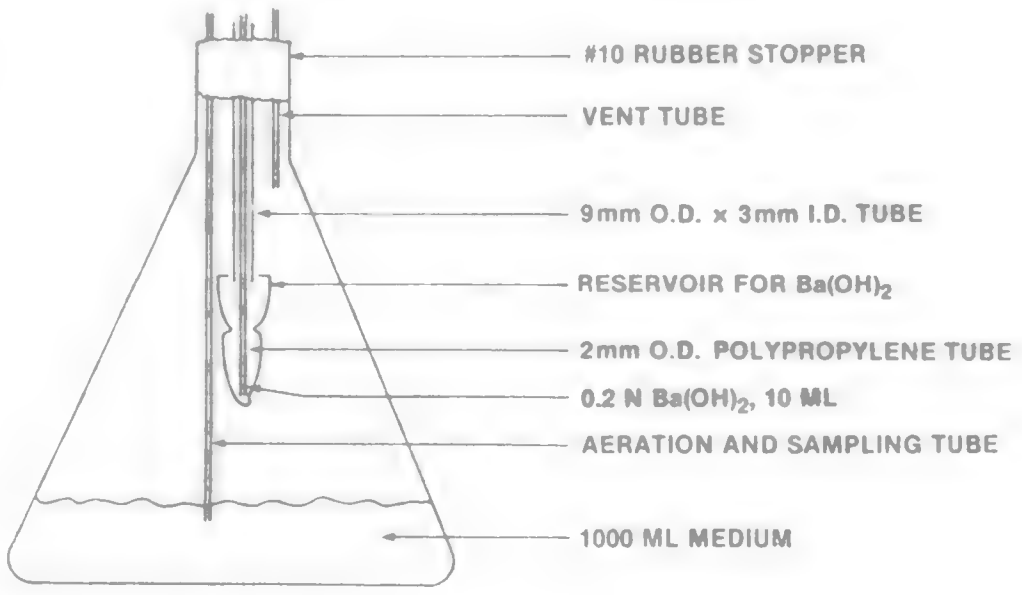
(8) *Sensitivity.* The sensitivity of the method is determined by the ability to measure the endogenous CO_2 production of the inoculum in the blank flask and by the sensitivity limit of the dissolved organic carbon analysis. If the test is adapted to handle ^{14}C-labeled test substances, test substance concentrations can be much lower.

(9) *Possibility of standardization.* This possibility exists. The major difficulty is to standardize the inoculum in such a way that interlaboratory reproducibility is ensured.

(10) *Possibility of automation.* None at present, although parts of the analyses may be automated.

(b) *Test procedures*—(1) *Preparations*—(i) *Apparatus.* The shake flask apparatus under the following Figure 1 contains 10 mL of 0.2N $Ba(OH)_2$ in an open container suspended over 1 liter of culture medium in a 2-liter Erlenmeyer flask.

Figure 1—Shake-flask system for carbon dioxide evolution



The $Ba(OH)_2$ container is made by placing a constriction just above the 10 mL mark of a 50 mL heavy-duty centrifuge tube and attaching the centrifuge tube to a 2 mm I.D. × 9 mm O.D. glass tube by means of 3 glass support rods. The centrifuge tube opening is large enough to permit CO_2 to diffuse into the $Ba(OH)_2$, while the constriction permits transferal of the flask to and from the shaker without $Ba(OH)_2$ spillage into the medium. For periodic removal and addition of base from the center well, a polypropylene capillary tube, attached at one end to a 10 ml disposable syringe, is inserted

through the 9 mm O.D. glass tube into the $Ba(OH)_2$ reservoir. The reservoir access port is easily sealed during incubation with a serum bottle stopper. Two glass tubes are added for sparging, venting, and medium sampling. The tops of these tubes are connected with a short section of flexible tubing during incubation.

(ii) *Reagents and stock solutions*

(A) Stock solutions, I, II, and III under the following Table 1.

(B) Yeast extract.

(C) Vitamin-free casamino acids.

(D) 70 percent O_2 in nitrogen or CO_2-free air.

(E) 0.2N $Ba(OH)_2$.

(F) 0.1 N HCl.

(G) 20 percent H_2SO_4.

(H) Phenolphthalein.

(I) Dilution water—distilled, deionized water (DIW).

(iii) *Soil Inoculum.* A fresh sample of an organically rich soil is used as the inoculum in the ultimate biodegradation test. Soil is collected, prepared, and stored according to the recommendations of Pramer and Bartha (1972) under paragraph (d)(2) of this section. The soil surface is cleared of litter and a soil sample is obtained 10 to 20 cm below the surface. The sample is screened through a sieve with 2 to 5 mm openings and stored in a polyethylene bag at 2 to 4 °C for not more than 30 days prior to use. The soil is never allowed to air-dry, and should not be frozen during storage.

TABLE 1—MEDIUM EMPLOYED FOR ASSAY OF CO_2 EVOLUTION

Solution [1]	Compound	Stock Solution Conc (g/L)
I	NH_4Cl	35
	KNO_3	15
	$K_2HPO_4 \cdot 3H_2O$	75
	$NaH_2PO_4 \cdot H_2O$	25
II [2]	KCl	10
	$MgSO_4$	20
	$FeSO_4 \cdot 7H_2O$	1
III	$CaCl_2$	5
	$ZnCl_2$	0 05
	$MnCl_2 \cdot 4H_2O$	0.5
	$CuCl_2$	0 05
	$CoCl_2$	0 001
	H_3BO_3	0 001
	MoO_3	0 0004

[1] = Each liter of test medium contains 1 mL of each solution

[2] = Final pH is adjusted to 3.0 with 0.10 N HCl

(iv) *Acclimation Medium.* Acclimation medium is prepared by adding, for each liter of distilled, deionized water (DIW): 1 mL each of solutions I, II, and III in Table 1 in paragraph (b)(1)(ii)(A) of this section, 1.0 gm of soil inoculum (prepared according to paragraph (b)(1)(iii) of this section), 2.0 mL of aerated mixed liquor (obtained from an activated sludge treatment plant not more than 2 days prior to commencing the acclimation phase, and stored in the interim at 4 °C) and 50 mL raw domestic influent sewage. This medium is mixed for 15 minutes and filtered through a glass wool plug in a glass funnel. The filtrate is permitted to stand for 1 hour, refiltered through glass wool, and supplemented with 25 mg/L each of Difco vitamin-free casamino acids and yeast extract. Appropriate volumes are added to 2-liter Erlenmeyer flasks. Test compounds are added incrementally during the acclimation period at concentrations equivalent to 4, 8, and 8 mg/L carbon on days 0, 7, and 11, respectively. On day 14, the medium is refiltered through glass wool prior to use in the test. For evaluating the biodegradability of a series of functionally or structurally related chemicals, media from all inoculum flasks may be combined before final filtration.

(2) *Procedures.* (i) Inoculum (100 mL of acclimation medium) is added to 900 mL DIW containing 1 mL each of solutions I, II, and III in Table 1 under paragraph (b)(1)(ii)(A) of this section in a 2-liter Erlenmeyer flask. Test compound equivalent to 10 mg/liter carbon is added to each of the replicate flasks containing the test medium. Ten mL of 0.2 N $Ba(OH)_2$ are added to the suspended reservoir in each flask and duplicate 10 mL samples of $Ba(OH)_2$ are also saved as titration blanks for analysis with test samples. Flasks are sparged with CO_2-free air (for volatile test materials, sparging is done prior to addition of the chemical), sealed, and placed on a gyrotary shaker (approximately 125 rpm) at 20 to 25 °C in the dark. For each set of experiments, each test, reference, inhibited, and control system should be analyzed at time zero and at a minimum of four other times from time zero through day 28. Sampling must be made with sufficient frequency to allow for a smooth plot of biodegradation with time. Sampling times should be varied by the investigator as deemed appropriate to match the rate of degradation of the test substance. Tests may be terminated when biodegradation reaches a plateau and is consistent (±10 percent) over 3 consecutive days or on day 28, whichever occurs first. For chemicals which are water soluble at the test concentration, an adequate volume (5 to 10 mL) of medium is removed for DOC analysis. Each sample for DOC analysis should be filtered through a membrane filter of 0.45 micrometer pore diameter before DOC analysis. For all test and reference compounds, $Ba(OH)_2$ from the center well is removed for analysis. The center well is rinsed with 10 mL CO_2-free DIW and is refilled with fresh base. Rinse water is combined with the $Ba(OH)_2$ sample to be analyzed. Flasks are resealed and placed on the shaker. On the day prior to terminating the test, 3 mL of 20 percent H_2SO_4 are added to the medium to release carbonate bound CO_2.

(ii) For each set of experiments, each test substance should be tested in triplicate.

(iii) For each set of experiments, one or two reference compounds are included to assess the microbial activity of the test medium. Duplicate reference flasks are prepared by adding reference compound equivalent to 10 mg/liter carbon to each of two flasks containing the test medium. Reference compounds which are positive for ultimate biodegradability include: sodium citrate, dextrose, phthalic acid, trimellitic acid, and aniline.

(iv) For each test set, triplicate controls receiving inoculated medium and no test compound, plus all test and reference flasks, are analyzed for CO_2 evolution and DOC removal. Results from analysis of the control flasks (DOC, CO_2 evolution, etc.) are subtracted from corresponding experimental flasks containing test compound in order to arrive at the net effect due to the test compound.

(v) A test system containing a growth inhibitor should be established as a control for each substance tested for biodegradation by this method. That inhibited system must contain the same amount of water, mineral nutrients, inoculum, and test substance used in the uninhibited test systems, plus 50 mg/L mercuric chloride ($HgCl_2$) to inhibit microbial activity.

(vi) Flasks should be incubated in the dark to minimize both photochemical reactions and algal growth. Appropriate sterile controls or controls containing a metabolic inhibitor, such as 50 mg/L $HgCl_2$, are needed to correct for interferences due to non-biological degradation. With volatile organic materials, sparging with CO_2-free air is performed only once, just prior to addition of the test chemical. Analyses for CO_2 evolution and DOC removal are conducted within 2 to 3 hours of sampling to minimize interferences which may occur in storage. All glassware should be free of organic carbon contaminants.

(3) *Analytical measurements.* The quantity of CO_2 evolved is measured by titration of the entire $Ba(OH)_2$ sample (10 mL $Ba(OH)_2$ + 10 mL rinse water) with 0.1 N HCl to the phenolphthalein end point. $Ba(OH)_2$ blanks are also supplemented with 10 mL CO_2-free DIW

and titrated in a similar manner. Samples (5 mL) for DOC are centrifuged and/or filtered and supernatant or filtrate analyzed by a suitable total organic carbon method.

(c) *Data and reporting*—(1) *Treatment of results.* (i) Test compound (10 mg carbon) is theoretically converted to 0.833 mmol CO_2. Absorbed CO_2 precipitates as $BaCO_3$ from $Ba(OH)_2$, causing a reduction in alkalinity by the equivalent of 16.67 mL of 0.1 N HCl for complete conversion of the test compound carbon to CO_2. Therefore, the percent theoretical CO_2 evolved from the test compound is calculated at any sampling time from the formula:

Percent CO_2 evolution = [(TF–CF)/16.67] 100 (for 10 mg/L test compound carbon)

where:

TF = mL 0.1 N HCl required to titrate $Ba(OH)_2$ samples from the test flask

CF = mL 0.1 N HCl required to titrate $Ba(OH)_2$ samples from the control flask.

(ii) The cumulative percent CO_2 evolution at any sample time is calculated as the summation of the percent CO_2 evolved at all sample points of the test.

(iii) The percent DOC disappearance from the test compound is calculated from the following equation:

Percent DOC Removal = $[1 - (DTF_x - DCF_x)/(DTF_o - DCF_o)]$ 100

where:

DTF = Dissolved organic carbon from test flask

DCF = Dissolved organic carbon from control flask

o = Day zero measurements

x = Day of measurements during test.

(iv) The difference between the amount of 0.1 N HCl used for the $Ba(OH)_2$ titration blank samples and the $Ba(OH)_2$ samples from the control units (no test compound) is an indication of the activity of the microorganisms in the test system. In general, this difference is approximately 1 to 3 mL of 0.1 N HCl at each sampling time. A finding of no difference in the titration volumes between these two samples indicates a poor inoculum. In this case, the validity of the test results is questionable and the test set should be rerun beginning with the acclimation phase.

(v) CO_2 evolution in the reference flasks is also indicative of the activity of the microbial test system. The suggested reference compounds should all yield final CO_2 evolution values in the range 80 to 100 percent of theoretical CO_2. If, for any test set, the percent theoretical CO_2 evolution value for the reference flasks is outside this range, the test results are considered invalid and the test is rerun.

(vi) Inhibition by the test compound is indicated by lower CO_2 evolution in the test flasks than in the control flasks. If inhibition is noted, the study for this compound is rerun beginning with the acclimation phase. During the test phase for inhibitory compounds, the test chemical is added incrementally according to the schedule: Day 0 — 0.5 mg/liter as organic carbon, Day 2—1 mg/liter C, Day 4—1.5 mg/liter C, Day 7—2 mg/liter C, Day 10—5 mg/liter C. For this case, the $Ba(OH)_2$ is sampled on Day 10, and weekly thereafter. The total test duration remains 28 days.

(vii) The use of ^{14}C-labeled chemicals is not required. If appropriately labeled test substance is readily available and if the investigator chooses to use this procedure with labeled test substance, this is an acceptable alternative. If this option is chosen, the investigator may use lower test substance concentrations if those concentrations are more representative of environmental levels.

(2) *Test report.* (i) For each test and reference compound, the following data should be reported.

(ii) Information on the inoculum, including source, collection date, handling, storage and adaptation possibilities (i.e., that the inoculum might have been exposed to the test substance either before or after collection and prior to use in the test).

(iii) Results from each test, reference, inhibited (with $HgCl_2$) and control system at each sampling time, including an average result for the triplicate test substance systems and the standard deviation for that average.

(iv) Average cumulative percent theoretical CO_2 evolution over the test duration.

(v) Dissolved organic carbon due to test compound at each sampling time (DTF–DCF).

(vi) Average percent DOC removal at each sampling time.

(vii) Twenty-eight day standard deviation for percent CO_2 evolution and DOC removal.

(d) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Gledhill, W.E. "Screening Test for Assessment of Ultimate Biodegradability: Linear Alkyl Benzene Sulfonate," *Applied Microbiology*, 30:922–929 (1975).

(2) Pramer, D., Bartha, R. "Preparation and Processing of Soil Samples for Biodegradation Testing," *Environmental Letters*, 2:217–224 (1972).

§ 796.3140 Anaerobic biodegradability of organic chemicals.

(a) *Introduction*—(1) *Purpose.* (i) This section has been developed for screening for anaerobic biodegradability of organic chemicals. A high biodegradability result in this test provides evidence that the test substance will be biodegradable in sewage-treatment plant anaerobic digestors and in many natural anaerobic environments such as swamps, flooded soils and surface water sediments.

(ii) On the contrary, a low biodegradation result may have other causes than poor biodegradability of the test substance. Inhibition of the microbial inoculum by the substance at the test concentration may be observed. In such cases further work is needed to assess the anaerobic biodegradability and to determine the concentrations at which toxic effects are evident. An estimate of the expected environmental concentration will help to put toxic effects into perspective.

(2) *Principle of the test method.* (i) This section is based on anaerobic biodegradability methods referenced in paragraph (d) of this section.

(ii) A chemically defined anaerobic medium, containing resazurin as an oxidation/reduction indicator and 10 percent (v/v) primary anaerobic digestor sludge from a waste treatment plant, is dispensed in 100 mL portions into 160 mL capacity serum bottles. Selected bottles are supplemented with test substance at a concentration equivalent to 50 mg/L as organic carbon. Gas production is measured with a pressure transducer. The extent of biodegradation is determined by comparing gas production from blank control bottles and bottles containing the test substance.

(iii) The average cumulative gas production (CH_4 + CO_2), in mL, is reported for blank controls, solvent controls, test substances and any reference compounds. Also reported is the percent of theoretical anaerobic biodegradation at test completion or 56 days (whichever comes first) and the standard deviation between replicate bottles.

(3) *Prerequisites.* The total organic carbon content of the test material should be calculated or, if this is not possible, analyzed, to enable the theoretical yield of carbon dioxide and methane to be calculated.

(4) *Guidance information.* (i) Information on the relative proportions of the major components of the test material will be useful in interpreting the results obtained, particularly in

those cases where the result lies close to a "pass level."

(ii) Information on the toxicity of the chemical may be useful in the interpretation of low results and in the selection of appropriate test concentrations.

(5) *Reference substances.* In some cases, when investigating a substance, reference substances may be useful and an inventory of suitable reference substances needs to be identified. In order to check the activity of the inoculum the use of a reference substance is desirable. Ethanol may be used for this purpose. The ethanol must exhibit anaerobic biodegradation (as gas production) greater than 50 percent of the theoretical maximum within 56 days. Otherwise the test is regarded as invalid and should be repeated using an inoculum from a different source.

(6) *Applicability.* The method is only applicable to those organic test substances which, at the concentration used in the test, are not inhibitory to bacteria.

(7) *Reproducibility.* The reproducibility of the method has not yet been determined; however, it is believed to be appropriate for a screening test which has solely an acceptance but no rejective function.

(8) *Sensitivity.* The sensitivity of the method is largely determined by the necessity to compare gas production in test-substance bottles with gas production in blank control bottles. The method suggests the use of test substance at a concentration of 50 mg/L as organic carbon. This concentration will produce a maximum of 10.5 mL of CH_4 and CO_2 gases at 35 °C. Actual measured gas production will be less due to (i) incomplete conversion of all of the organic carbon into CH_4 and CO_2 and (ii) the extent to which the CO_2 and CH_4 remain solubilized in the aqueous phase. The use of test substance at 50 mg/L as organic carbon represents a compromise between the desire to maximize gas production and thus the sensitivity of the test, and the desire to minimize the possibility of toxicity to the microbial population.

(9) *Possibility of standardization.* This possibility exists. The major difficulty is to standardize the inoculum in such a way that interlaboratory reproducibility is ensured.

(10) *Possibility of automation.* None at present.

(b) *Test procedures*—(1) *Preparations*—(i) *Apparatus.* (A) If gas production is measured with a pressure transducer, apparatus such as a 20-gauge syringe needle attached by means of an inert capillary tube to a three-way valve (Hamilton Mininert valve 3-FLM-IX or equivalent) fitted to a pressure transducer (Unimeasure 100–500 ohm/2mA pressure transducer or equivalent) and an appropriate ohmmeter (e.g. Digitec Model 2120).

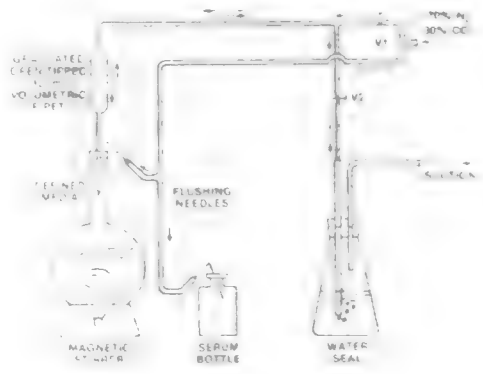
(B) If gas production is measured with a syringe, apparatus such as a 20 mL capacity gas-tight glass syringe fitted with a 20-gauge syringe needle.

(C) If methane (CH_4) and carbon dioxide (CO_2) are quantified using an analytical procedure specific for CH_4 and CO_2, apparatus necessary to carry out that analysis, such as a gas chromatograph equipped with a suitable detector.

(D) An incubator sufficient to store the test bottles at 35±1 °C for the duration of the test.

(E) Apparatus suitable for the maintenance of anaerobic conditions during medium preparation and inoculation, such as that shown in the following Figure 1:

Figure 1—Schematic diagram of apparatus suitable for maintenance of anaerobic conditions during medium preparation and inoculation



(F) A supply of 160 mL capacity serum bottles with butyl rubber stoppers.

(ii) *Nutrient medium*—(A) *Stock solutions. (1)* S–1 Prepare a solution in distilled water containing resazurin at 0.5 g/L.

(*2*) S–2 Dissolve 20 g ammonium monohydrogen phosphate, $(NH_4)_2HPO_4$, and 100 g ammonium chloride, NH_4Cl, in distilled water and dilute to 1 L.

(*3*) S–3 Dissolve 18 g calcium chloride, $CaCl_2$; 180 g magnesium chloride, $MgCl_2.6H_2O$; 130 g potassium chloride, KCl; 2 g manganous chloride, $MnCl_2.4H_2O$; 3 g cobalt chloride, $CoCl_2.4H_2O$; 0.6 g boric acid, H_3BO_3; 0.23 g cupric chloride, $CuCl_2$; 1.0 g sodium molybdate, $Na_2MoO_4.2H_2O$ and 0.2 g zinc chloride, $ZnCl_2$, in distilled water and dilute to 1 L.

(*4*) S–4 Dissolve 368 g ferrous chloride, $FeCl_2.4H_2O$, in distilled water and dilute to 1 L.

(*5*) S–5 Dissolve 50 g sodium sulfide, $Na_2S.9H_2O$, in distilled water and dilute 1L.

(B) *Reagents.* Sodium bicarbonate, $NaHCO_3$.

(iii) *Inoculum.* (A) The inoculum should consist of sludge from an anaerobic sludge digestor. It is recommended that well-mixed primary sludge from a digestor with a sludge retention time of 15 to 25 days be used. At the time of collection, the sludge should be sieved through a 2 mm mesh screen.

(B) Most sludges can be stored for up to 2 weeks at 4 °C, if necessary, but it is recommended that fresh sludge be used.

(C) Care should be taken to minimize exposure of the sludge to oxygen during collection, handling and storage.

(2) *Procedure*—(i) *Inoculated medium.* (A) Prereduced medium is prepared by adding 8 mL of stock solution S–1, 8 mL of S–2 and 40 mL of S–3 to approximately 3500 mL of deionized water in a 4-liter Florence or Erlenmeyer flask. This medium is heated to a boil, while being stirred with a magnetic stir bar and sparged with oxygen (O_2)-free nitrogen. The O_2-free nitrogen is obtained by passing nitrogen gas through a quartz cylinder filled with copper filings heated to 600 °C. Alternatively, commercial nitrogen free of oxygen may be used.

(B) The flask containing the medium is placed in an ice bath and O_2-free carbon dioxide (CO_2) is introduced into the stream of O_2-free nitrogen to a concentration in the gas stream of 30 percent (v/v).

(C) When the medium has cooled to 35 °C, the flask is removed from the ice bath and the following components added: 4 mL of solution S–4; 40 mL of solution S–5; 10.56 g sodium bicarbonate; and 400 mL of sludge inoculum. The final volume should be approximately 4 liters.

(ii) *Filling test bottles.* (A) One-hundred mL portions of the inoculated medium are transferred anaerobically into serum bottles with a total capacity of about 160 mL. An apparatus suitable for the maintenance of anaerobic conditions during medium preparation and transfer is shown in Figure 1. V1 and V2 are valves that are used to control the transfer of medium to the serum bottles. Inoculated medium is drawn into the pipet by suction, the pipet is moved and the tip inserted into a serum bottle. During these processes the serum bottle and neck of the medium flask are continually sparged with the oxygen-free mixture of N_2 and CO_2.

(B) The medium in the pipet is discharged into the serum bottle.

(C) A new butyl rubber serum-bottle stopper is inserted into the neck of the bottle while the needle being used to sparge the contents with the N_2 and CO_2 mixture is removed.

(iii) *Test and reference chemicals.* (A) Test and reference chemicals are added to serum bottles to yield a final concentration of 50 mg/L as organic carbon. These chemicals may be added to the bottles prior to the addition of inoculated medium or following medium addition, depending upon the nature of the test or reference substance and whether or not it must be added to the bottles dissolved in a volatile solvent.

(B) Test or reference chemicals with sufficiently high water solubility may be added to test bottles from a neutralized stock solution. The stock solution should be prepared so that a minimal volume is needed to yield 50 mg/L as organic carbon in the medium.

(C) Suitable liquid test or reference chemicals may be added directly by injection from a calibrated syringe.

(D) Test or reference chemicals with relatively low water solubility may be added to test bottles by a direct addition of weighed amounts or by using an organic solvent. Direct addition is recommended. If a volatile organic solvent is used, a suitable procedure is to dissolve the chemical in the solvent, pipet an appropriate amount into the bottle, allow the solvent to evaporate, and then add the inoculated medium. Diethyl ether is a suitable solvent for many organics but it must be completely removed from the bottle because it will adversely affect methanogenesis. If an organic solvent is used without removal of the solvent before the test, the solvent must neither significantly inhibit nor contribute to apparent gas production. Acetonitrile, dioxane and pyridine have been found acceptable for this purpose.

(E) Bottles containing inoculated medium but no test or reference chemical are employed in each test. These are the blank controls.

(F) If an organic solvent is used to add chemical to test bottles without evaporation of the solvent before the test, bottles containing inoculated medium and an equivalent amount of the organic solvent, but no test or reference chemical, must be employed for each solvent used. These are the solvent controls.

(G) The substance bottles, blank controls and solvent controls, should be prepared in triplicate.

(iv) *Incubation.* (A) At the start of the incubation, pressure in each bottle must be released.

(B) Bottles are incubated in the dark at 35±1 °C for 8 weeks or until biodegradation is complete. Bottles containing oxidized (pink) resazurin should be discarded.

(3) *Analytical measurements.* (i) A sufficient number of measurements of gas pressure or gas volume should be made to establish the pattern of gas production with time. Measurements are generally made weekly for up to 8 weeks. The frequency of measurements may be varied by the investigator as deemed appropriate to match the degradation rate of the chemical.

(ii) Gas production is measured for each bottle, using a pressure transducer, syringe or other suitable apparatus.

(iii) The use of a pressure transducer is recommended. The ohmmeter should be calibrated by injecting known volumes of gas into bottles containing medium and a standard curve of gas volume vs. meter reading plotted. Excess pressure should be vented after each measurement so that all bottles will have the same internal pressure following each measurement time.

(iv) If a syringe is used to measure gas volume, the following procedure is recommended. The syringe is flushed with 30 percent (v/v) CO_2 in O_2-free nitrogen. The syringe is held in a horizontal position during the measurement, taking care to keep the needle within the gas space of the serum bottle. Gas production is determined by allowing the syringe plunger to move freely to equalize the vessel and atmospheric pressures.

(v) Methane and carbon dioxide may be determined using analytical methods suitable for the detection and quantification of those compounds.

(c) *Data and reporting*—(1) *Treatment of results.* (i) Cumulative average gas volume from the anaerobic biodegradation of test or reference substances is calculated by subtracting the cumulative average gas volume production for triplicate blank controls (or solvent controls, if an organic solvent was included) from the average value for triplicate test or reference substance bottles at the same incubation time. The percent of theoretical gas volume produced is calculated by dividing cumulative average gas volume from test or reference chemical by the theoretical maximum gas production and multiplying by 100.

(ii) The maximum methane plus carbon dioxide production theoretically obtainable from an organic chemical in this test is 10.5 mL, if the starting concentration is 50 mg/L as organic carbon. This can be calculated as shown below, using benzoic acid as an example.

$C_7H_6O_2 + 12\ H_2O \rightarrow 7CO_2 + 15\ H_2$

$7\ CO_2 + 15\ H_2 \rightarrow 3.75\ CH_4 + 3.25\ CO_2 + 7.5\ H_2O$

$C_7H_6O_2 + 4.5\ H_2O \rightarrow 3.75\ CH_4 + 3.25\ CO_2$

(iii) At a concentration of 50 mg/L as organic carbon in a 100 mL aqueous phase at 35 °C, the maximum volume of gas produced is calculated as follows:

At 50 mg/L as carbon, in 100 mL there are 7.27 mg benzoic acid.

7.27 mg benzoic acid = 0.0595 m moles.
$0.0595 \times 3.75 = 0.2232$ m moles CH_4
$0.0595 \times 3.25 = 0.1934$ m moles CO_2

= 0.4167 m moles total gas production.

At 35° and atmospheric pressure, one mole of gas occupies approximately 25.25 liters.

Thus, 0.4167 m moles at 35° will occupy 10.5 mL.

(iv) Likewise, any test compound added at a concentration that provides 5 mg of organic carbon to the test bottle will have a theoretical maximum gas production of 10.5 mL.

(2) *Test report.* (i) Information on the inoculum including information on the source, retention time, percent volatile solids, date of collection, storage, handling and adaption possibilities (i.e., information on the possibility that the inoculum was exposed to the test chemical or related chemicals before the test). Retention time and percent volatile solids of the sludge are generally obtainable from the waste treatment plant operator.

(ii) Average cumulative gas production (mL) from blank control bottles, solvent control bottles, test substance bottles and reference compound bottles at each measurement time.

(iii) Percent of theoretical anaerobic biodegradation for each test substance and reference compound at each measurement time.

(iv) The standard deviation for each replicate set of bottles at the final measurement time.

(v) A plot of the percent of theoretical anaerobic biodegradation vs. time for each test substance and reference compound.

(vi) A description of any deviations from this test guideline, such as variations in the medium or the concentration of test substance, test conditions, and analytical techniques.

(d) *References.* For additional background information on this test guideline, the following references should be consulted:

(1) Gossett, J.M., Healy, J.B., Stuckey, D.C., Young, L.Y., and McCarty, P.L. "Heat treatment of refuse for increasing

anaerobic biodegradability," *Stanford University Civil Engineering Technical Report No. 205,* (1976).

(2) Healy, J.B., Owen, W.F., Stuckey, D.C., Young, L.Y., and McCarty, P.L. "Heat treatment of organics for increasing anaerobic biodegradability," *Stanford University Civil Engineering Technical Report No. 222,* (1977).

(3) Healy, J.B. and Young, L.Y. "Degradation of simple aromatic compounds under methanogenic conditions," *Abstracts—Annual Meeting American Society for Microbiology,* Vol. 013 (1977), p. 263.

(4) U.S. Environmental Protection Agency. Healy, J.B. and Young, L.Y. "Methanogenic biodegradation of aromatic compounds," Workshop: Microbial Degradation of Pollutants in Marine Environments, EPA Report No. 600/9–79–012 (Gulf Breeze, Florida, 1978).

(5) Owen, W.F., Stuckey, D.C., Healy, J.B., Jr., Young, L.Y. and McCarty, P.L. "Bioassay for Monitoring Biochemical Methane Potential and Anaerobic Toxicity," *Water Research,* 13:485–492 (1979).

(6) Healy, J.B., Jr., and Young, L.Y. "Anaerobic Biodegradation of Eleven Aromatic Compounds to Methane," *Applied Environmental Microbiology,* 38:84–89 (1979).

(7) Miller, T.C., and Wolin, M.J. "A Serum Bottle Modification of the Hungate Technique for Cultivating Obligate Anaerobes," *Applied Microbiology,* 27:985–987 (1974).

§ 796.3500 Hydrolysis as a function of pH at 25 °C.

(a) *Introduction—(1) Background and purpose.* (i) Water is one of the most widely distributed substances in the environment. It covers a large portion of the earth's surface as oceans, rivers, and lakes. The soil also contains water, as does the atmosphere in the form of water vapor. As a result of this ubiquitousness, chemicals introduced into the environment almost always come into contact with aqueous media. Certain classes of these chemicals, upon such contact, can undergo hydrolysis, which is one of the most common reactions controlling chemical stability and is, therefore, one of the main chemical degradation paths of these substances in the environment.

(ii) Since hydrolysis can be such an important degradation path for certain classes of chemicals, it is necessary, in assessing the fate of these chemicals in the environment, to know whether, at what rate, and under what conditions a substance will hydrolyze. Some of these reactions can occur so rapidly that there may be greater concern about the products of the transformation than about the parent compounds. In other cases, a substance will be resistant to hydrolysis under typical environmental conditions, while, in still other instances, the substance may have an intermediate stability that can result in the necessity for an assessment of both the original compound and its transformation products. The importance of transformation of chemicals via hydrolysis in aqueous media in the environment can be determined quantitatively from data on hydrolysis rate constants. This hydrolysis Test Guideline represents a test to allow one to determine rates of hydrolysis at any pH of environmental concern at 25 °C.

(2) *Definitions and units.* (i) "Hydrolysis" is defined as the reaction of an organic chemical with water, such that one or more bonds are broken and the reaction products of the transformation incorporate the elements of water (H_2O).

(ii) "Elimination" is defined in this Test Guideline to be a reaction of an organic chemical (RX) in water in which the X group is lost. These reactions generally follow the same type of rate laws that hydrolysis reactions follow and, thus, are also covered in this Test Guideline.

(iii) A "first-order reaction" is defined as a reaction in which the rate of disappearance of the chemical substance being tested is directly proportional to the concentration of the chemical substance and is not a function of the concentrations of any other substances present in the reaction mixture.

(iv) The "half-life" of a chemical is defined as the time required for the concentration of the chemical substance being tested to be reduced to one-half its initial value.

(v) "Hydrolysis" refers to a reaction of an organic chemical with water such that one or more bonds are broken and the reaction products incorporate the elements of water (H_2O). This type of transformation often results in the net exchange of a group X, on an organic chemical RX, for the OH group from water. This can be written as:

$$RX + HOH \rightarrow ROH + HX.$$

(A) Another result of hydrolysis can be the incorporation of both H and OH in a single product. An example of this is the hydrolysis of epoxides, which can be represented by



(B) The hydrolysis reaction can be catalyzed by acidic or basic species, including OH^- and H_3O^+ (H^+). The promotion of the reaction by H_3O^+ or OH^- is called specific acid or specific base catalysis, respectively, as contrasted with general acid or base catalysis encountered with other cationic or anionic species. Usually, the rate law for chemical RX can be written as:

Equation 1

$$-d[RX]/_{dt} = k_b[RX] = k_A[H^+][RX] + k_B[OH^-][RX] + k'_N[H_2O][RX],$$

where K_A, k_B and k'_N are the second-order rate constants for acid and base catalyzed and neutral water processes, respectively. In dilute solutions, such as are encountered in following this Test Guideline, water is present in great excess and its concentration is, thus, essentially constant during the course of the hydrolysis reaction. At fixed pH, the reaction, therefore, becomes pseudo first-order, and the rate constant (k_b) can be written as:

Equation 2

$$k_b = k_A[H^+] + k_B[OH^-] + k_N,$$

where k_N is the first-order neutral water rate constant. Since this is a pseudo first-order process, the half-life is independent of the concentration and can be written as:

Equation 3

$$t_{1/2} = 0.693/k_b.$$

At constant pH, Equation 1 can be integrated to yield the first order rate expression

Equation 4

$$\log_{10} C = -(k_b t/_{2.303}) + \log_{10} C_o.$$

where C is the concentration of the test chemical at time t and C_o is the initial chemical concentration (t=0).

(C) At a given pH, Equation 2 under paragraph (a)(2)(v)(B) of this section contains three unknowns, k_A, k_B, and k_N. Therefore, three equations (i.e., measurements at three different pH's at a fixed temperature) are required if one wishes to solve for these quantities. Making suitable approximations for quantities that are negligible, the expressions for k_A, k_B, and k_N using values of k_b measured at pH 3, 7, and 11 are:

Equation 5

$$k_A = 10^3 [k_h (3) - k_h (7) + 10^{-4} k_h (11)]$$
$$k_B = 10^3 [k_h (11) - k_h (7) + 10^{-4} k_h (3)]$$
$$k_N = k_h (7) - 10^{-4} [k_h (3) + k_h (11)]$$

The calculated rate constants from equation 5 under this paragraph can be employed in equation 2 under paragraph (a)(2)(v)(B) of this section to calculate the hydrolysis rate of a chemical at any pH of environmental concern.

(D) The equations under paragraph (a)(2) of this section apply whether the test chemical has one or more hydrolyzable groups. In the latter case, the rate may be written as:

Equation 6

$$-d[RX]/_{dt} = [RX] + k_2 [RX] + \ldots + k_n [RX] = (k_1 + k_2 + \ldots k_n) [RX] = k_h [RX].$$

Equation 6 applies to the hydrolysis rate of a molecule having n hydrolyzable groups, each of which follows first-order reaction kinetics. The measured k_h is now the sum of the individual reaction rates and is the only rate constant required in this section.

(3) *Principle of the test method.* Procedures described in this section enable sponsors to obtain quantitative information on hydrolysis rates through a determination of hydrolysis rate constants and half-lives of chemicals at pH 3.00, 7.00, and 11.00 at 25 °C. The three measured rate constants are used to determine the acidic, basic, and neutral rate constants associated with a hydrolytic reaction. The latter constants can then be employed in determining the hydrolysis rates of chemicals at any pH of environmental concern at 25 °C.

(4) *Applicability and specificity.* There are several different common classes of organic chemicals that are subject to hydrolysis transformation, including esters, amides, lactones, carbamates, organophosphates, and alkyl halides. Processes other than nucleophilic displacement by water can also take place. Among these are elimination reactions that exhibit behavior similar to hydrolysis and, therefore, are also covered in this section.

(b) *Test procedures*—(1) *Test conditions*—(i) *Special laboratory equipment.* (A) A thermostatic bath that can be maintained at a temperature of 25±1 °C.

(B) A pH meter that can resolve differences of 0.05 pH units or less.

(C) Stoppered volumetric flasks (no grease) or glass ampoules that can be sealed.

(ii) *Purity of water.* Reagent-grade water (e.g., water meeting ASTM Type IIA standards or an equivalent grade) is highly recommended to minimize biodegradation. ASTM Type IIA water is described in ASTM D 1193–77, "Standard Specification for Reagent Water." ASTM D 1193–77 is available for inspection at the Office of the Federal Register, Rm. 8401, 1100 L St., NW., Washington, DC. This incorporation by reference was approved by the Director of the Office of the Federal Register. This material is incorporated as it exists on the date of approval and a notice of any change in this material will be published in the **Federal Register.** Copies of the incorporated material may be obtained from the Document Control Officer (TS–793), Office of Toxic Substances, EPA, Rm 107, 401 M St., SW., Washington, DC 20460, and from the American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103.

(iii) *Sterilization.* It is extremely important to sterilize all glassware and to use aseptic conditions in the preparation of all solutions and in carrying out all hydrolysis experiments to eliminate or minimize biodegradation. Glassware can be sterilized in an autoclave or by any other suitable method.

(iv) *Precautions for volatility.* If the chemical is volatile, it is extremely important that the reaction vessels be almost completely filled and sealed.

(v) *Temperature controls.* It is important that all hydrolysis reactions be carried out at 25 °C and the temperature is controlled to ±1°C.

(vi) *pH conditions.* It is recommended that all hydrolysis experiments be performed at pH 3.00, 7.00, and 11.00 ± 0.05 using the appropriate buffers described in paragraph (b)(2)(i)(A) of this section.

(vii) *Concentration of solutions of chemical substances.* It is extremely imprtant that the concentration of the test chemical be less than one-half the chemical's solubility in water and not greater than 10^{-3} M.

(viii) *Effect of acidic and basic groups.* Complications can arise upon measuring the rate of hydrolysis of chemicals that reversibly ionize or are protonated in the pH range 3.00 to 11.00. Therefore, for these chemicals, it is recommended that these hydrolysis tests be performed at pH 5.00, 7.00, and 900±0.05 using the appropriate buffers described in paragraph (b)(2)(i)(A) and (B) of this section. If a test chemical reversibly ionizes or protonates in the pH range 5.00 to 9.00, then it is recommended that additional hydrolysis tests should be carried out at pH 6.00 and 8.00±0.05 using the buffers described in paragraph (b)(2)(i)(B) of this section.

(ix) *Buffer catalysis.* For certain chemicals, buffers may catalyze the hydrolysis reaction. If this is suspected, it is extremely important that hydrolysis rate determinations be carried out with the appropriate buffers and that the same experiments be repeated at buffer concentrations lowered by at least a factor of five. If the hydrolysis reaction produces a change of greater than 0.05 pH units in the lower concentration buffers at the end of the measurement time, then it is extremely important that the test chemical concentrations also be lowered by at least a factor of five. Alternatively, test chemical concentrations and buffer concentrations may both be lowered simultaneously by a factor of five. A sufficient criterion for minimization of buffer catalysis is an observed equality in the hydrolysis rate constant of two different solutions differing in buffer or test chemical concentration by a factor of five.

(x) *Photosensitive chemicals.* The solution absorption spectrum can be employed to determine whether a particular chemical is potentially subject to photolytic transformation upon exposure to light. For chemicals that absorb light of wavelengths greater than 290 nm, it is important that the hydrolysis experiment be carried out in the dark, under amber or red safelights, in amber or red glassware, or employing other suitable methods for preventing photolysis. The absorption spectrum of the chemical in aqueous solution can be measured under § 796.1050.

(xi) *Chemical analysis of solutions.* In determining the concentrations of the test chemicals in solution, any suitable analytical method may be employed, although methods which are specific for the compound to be tested are preferred. Chromatographic methods are recommended because of their compound specificity in analyzing the parent chemical without interferences from impurities. Whenever practicable, the chosen analytical method should have a precision within ±5 percent.

(2) *Preparation*—(i) *Reagents and solutions*—(A) *Buffer solutions.* Prepare buffer solutions using reagent-grade chemicals and reagent-grade water as follows:

(*1*) pH 3.00 use 250 mL of 0.100M potassium hydrogen phthalate; 111 mL of 0.100M hydrochloric acid; and adjust volume to 500 mL with reagent-grade water.

(*2*) pH 7.00 use 250 mL of 0.100M potassium dihydrogen phosphate; 145 mL of 0,100M sodium hydroxide; and adjust volume to 500 mL with reagent-grade water.

(*3*) pH 11.00 use 250 mL of 0.0500M sodium bicarbonate; 113 mL of 0.100M

sodium hydroxide; and adjust volume to 500 mL with reagent-grade water.

(B) *Additional buffer solutions.* For chemicals that ionize or are protonated as discussed in paragraph (b)(1)(viii) of this section, prepare buffers using reagent-grade water and reagent-grade chemicals as follows:

(*1*) pH 5.00 use 250 mL of 0.100M potassium hydrogen phthalate; 113 mL of 0.100M sodium hydroxide; and adjust volume to 500 mL with reagent-grade water.

(*2*) pH 6.00 use 250 mL of 0.100M potassium dihydrogen phosphate; 28 mL of 0.100M sodium hydroxide; and adjust volume to 500 mL with reagent-grade water.

(*3*) pH 8.00 use 250 mL of 0.100M potassium dihydrogen phosphate; 234 mL of 0.100M sodium hydroxide; and adjust volume to 500 mL with reagent-grade water.

(*4*) pH 9.00 use 250 mL of 0.0250M borax ($Na_2B_4O_7$); 23 mL of 0.100M hydrochloric aid; and adjust volume to 500 mL with reagent-grade water.

(C) *Adjustment of buffer concentrations.* (*1*) The concentrations of all the above buffer solutions are the maximum concentrations to be employed in carrying out hydrolysis measurements. If the initial concentration of the test chemical is less than 10^{-3}M, it is extremely important that the buffer concentrations be lowered by a corresponding amount; e.g., if the initial test chemical concentration is 10^{-4}M, then reduce the concentration of the above buffers by a factor of 10. In addition, for those reactions in which an acid or base is not a reaction product, then employ the minimum buffer concentration necessary for maintaining the pH within ±0.05 units.

(*2*) Check the pH of all buffer solutions with a pH meter at 25 °C and adjust the pH to the proper value, if necessary.

(D) *Preparation of test solution.* (*1*) If the test substance is readily soluble in water, prepare an aqueous solution of the chemical in the appropriate buffer and determine the concentration of the chemical. Alternatively, a solution of the chemical in water may be prepared and added to an appropriate buffer solution and the concentration of the chemical then determined. In the latter case, it is important that the aliquot be small enough so that the concentration of the buffer in the final solution and the pH of the solution remain essentially unchanged. Do not employ heat in dissolving the chemical. It is extremely important that the final concentration not be greater than one-half the substance's solubility in water and not greater than 10^{-3}M.

(*2*) If the test chemical is too insoluble in pure water to permit reasonable handling and analytical procedures, it is recommended that the chemical be dissolved in reagent-grade acetonitrile and buffer solution then added to an aliquot of the acetonitrile solution. Do not employ heat to dissolve the chemical in acetonitrile. It is extremely important that the final concentration of the test substance not be greater than one-half the chemical's solubility in water and not greater than 10^{-3}M. In addition, it is extremely important that the final concentration of the acetonitrile be one volume percent or less.

(3) *Performance of the test.* Carry out all hydrolysis experiments by employing one of the procedures described in this paragraph. Prepare the test solutions as described in paragraph (b)(2)(i) of this section at pH 3.00, 7.00, and 11.00±0.05, and determine the initial test chemical concentration (C_o) in triplicate. Analyze each reaction mixture in triplicate at regular intervals, employing one of the following procedures:

(i) *Procedure 1.* Analyze each test solution at regular intervals to provide a minimum of six measurements with the extent of hydrolysis between 20 and 70 percent. Rates should be rapid enough so that 60 to 70 percent of the chemical is hydrolyzed in 672 hours.

(ii) *Procedure 2.* If the reaction is too slow to conveniently follow hydrolysis to high conversion in 672 hours but still rapid enough to attain at least 20 percent conversion, take 15 to 20 time points at regular intervals after 10 percent conversion is attained.

(iii) *Procedure 3.* (A) If chemical hydrolysis is less than 20 percent after 672 hours, determine the concentration (C) after this time period.

(B) If the pH at the end of concentration measurements employing any of the above three procedures has changed by more than 0.05 units from the initial pH, repeat the experiment using a solution having a test chemical concentration lowered sufficiently to keep the pH variation within 0.05 pH units.

(iv) *Analytical methodology.* Select an analytical method that is most applicable to the analysis of the specific chemical being tested under paragraph (b)(1)(xi) of this section.

(c) *Data and reporting*—(1) *Treatment of results.* (i) If Procedure 1 or 2 were employed in making concentration measurements, use a linear regression analysis with Equation 4 under paragraph (a)(2)(v)(B) of this section to calculate k_h at 25 °C for each pH employed in the hydrolysis experiments. Calculate the coefficient of determination (R^2) for each rate constant. Use Equation 3 under paragraph (a)(2)(v)(B) of this section to calculate the hydrolysis half-life using k_h.

(ii) If Procedure 3 was employed in making rate measurements, use the mean initial concentration (C_o) and the mean concentration of chemical (C) in Equation 4 under paragraph (a)(2)(v)(B) of this section to calculate k_h for each pH used in the experiments. Calculate the hydrolysis half-life using k_h in Equation 3 under paragraph (a)(2)(v)(B) of this section.

(iii) For each set of three concentration replicates, calculate the mean value of C and the standard deviation.

(iv) For test chemicals that are not ionized or protonated between pH 3 and 11, calculate k_A, k_B, and k_N using Equation 5.

(2) *Specific analytical and recovery procedures.* (i) Provide a detailed description or reference for the analytical procedure used, including the calibration data and precision.

(ii) If extraction methods were used to separate the solute from the aqueous solution, provide a description of the extraction method as well as the recovery data.

(3) *Test data report.* (i) For procedures 1 and 2, report k_h, the hydrolysis half-life ($t_{1/2}$), and the coefficient of determination (R^2) for each pH employed in the rate measurements. In addition, report the individual values, the mean value, and the standard deviation for each set of replicate concentration measurements. Finally, report k_A, k_B, and k_N.

(ii) For Procedure 3, report k_h and the half-life for each pH employed in the rate measurements. In addition, report the individual values, the mean value, and the standard deviation for each set of replicate concentration measurements. Finally, report k_A, k_B, and k_N.

(iii) If, after 672 hours, the concentration (C) is the same as the initial concentration (C_o) within experimental error, then k_h cannot be calculated and the chemical can be reported as being persistent with respect to hydrolysis.

§ 796.3700 Photolysis in aqueous solution in sunlight.

(a) *Introduction*—(1) *Background and purpose.* Numerous chemicals enter natural aquatic systems from a variety of sources. For example, chemical wastes are discharged directly into natural water bodies, and chemicals

leach into natural water bodies from landfills. Pesticides are applied directly into water bodies, and are applied to soils and vegetation, and subsequently leach into water bodies. Pollutants present in aqueous media can undergo photochemical transformation in the environment (i.e., in sunlight by direct photolysis or by sensitized photolysis). As a result, there is considerable interest in photolysis in solution, especially the photolysis of pesticides. However, most of these studies have been qualitative in nature and involved the identification of photolysis products. Quantitative data in the form of rate constants and half-lives are needed to determine the importance of photochemical transformation of pollutants in aqueous media. This test method describes a two-tiered screening level approach for determining direct photolysis rate constants and half-lives of chemicals in water in sunlight.

(2) *Definitions and units.* (i) "Radiant energy," or radiation, is defined as the energy traveling as a wave unaccompanied by transfer of matter. Examples include x-rays, visible light, ultraviolet light, radio waves, etc.

(ii) "Absorbance (A_λ)" is defined as the logarithm to the base 10 of the ratio of the initial intensity (I_o) of a beam of radiant energy to the intensity (I) of the same beam after passage through a sample at a fixed wavelength λ. Thus, $A_\lambda = \log_{10}(I_o/I)$.

(iii) The "Beer-Lambert law" states that the absorbance of a solution of a given chemical species, at a fixed wavelength, is proportional to the thickness of the solution (l), or the light pathlength, and the concentration of the absorbing species (C).

(iv) "Molar absorptivity (ϵ_λ)" is defined as the proportionality constant in the Beer-Lambert law when the concentration is given in terms of moles per liter (i.e., molar concentration). Thus, $A_\lambda = \epsilon_\lambda Cl$, where A_λ and ϵ_λ represent the absorbance and molar absorptivity at wavelength λ and *l* and C are defined in (3). The units of ϵ_λ are $molar^{-1}\ cm^{-1}$. Numerical values of molar absorptivity depend upon the nature of the absorbing species.

(v) A "first-order reaction" is defined as a reaction in which the rate of disappearance of a chemical is directly proportional to the concentration of the chemical and is not a function of the concentration of any other chemical present in the reaction mixture.

(vi) The "half-life ($t_{1/2}$)" of a chemical is defined as the time required for the concentration of the chemical being tested to be reduced to one-half its initial value.

(vii) The "sunlight direct aqueous photolysis rate constant (k_{pE})" is the first-order rate constant in the units of day^{-1} and is a measure of the rate of disappearance of a chemical dissolved in a water body in sunlight.

(viii) The "solar irradiance in water (L_λ)" is related to the sunlight intensity in water and is proportional to the average light flux (in the units of 10^{-3} einsteins $cm^{-2}\ day^{-1}$) that is available to cause photoreaction in a wavelength interval centered at λ over a 24-hour day at a specific latitude and season date.

(ix) "The Grotthus-Draper law," the first law of photochemistry, states that only light which is absorbed can be effective in producing a chemical transformation.

(x) The "Stark-Einstein law," the second law of photochemistry, states that only one molecule is activated to an excited state per photon or quantum of light absorbed.

(xi) The "reaction quantum yield (ϕ_λ)" for an excited-state process is defined as the fraction of absorbed light that results in photoreaction at a fixed wavelength λ. It is the ratio of the number of molecules that photoreact to the number of quanta of light absorbed or the ratio of the number of moles that photoreact to the number of einsteins of light absorbed at a fixed wavelength λ.

(xii) "Direct photolysis" is defined as the direct absorption of light by a chemical followed by a reaction which transforms the parent chemical into one or more products.

A glossary of symbols can be found under paragraph (c)(5) of this section.

(3) *Principle of the test method.* (i) This test method is based on the principles developed by Zepp and Cline (1977) under paragraph (d)(8) of this section, Zepp (1978) under paragraph (d)(11) of this section, Mill et al. (1981, 1982) under paragraph (d)(4), (5), and (6) of this section, and Dulin and Mill (1982) under paragraph (d)(2) of this section.

(ii) Zepp and Cline (1977), under paragraph (d)(8) of this section published a paper on the rates of direct photolysis in aquatic environments. The rates of all photochemical processes in a water body are affected by solar spectral irradiance at the water surface, radiative transfer from air to water, and the transmission of sunlight in the water body. It has been shown that for photolysis of a chemical in an optically thin aqueous solution, the kinetics of direct photolysis can be described by the following equations:

Equation 1

$$\ln(C_o/C_t) = k_{pE}t$$

Equation 2

$$t_{1/2E} = 0.693/k_{pE}$$

Equation 3

$$k_{pE} = \phi_E k_a,$$

where ϕ_E is the reaction quantum yield of the chemical in dilute solution and is independent of the wavelength, $k_a = \Sigma k_{a\lambda}$, the sum of $k_{a\lambda}$ values of all wavelengths of sunlight that are absorbed by the chemical (i.e., the light absorption rate constant), t is the time, C_o and C_t are the concentrations of chemical at t=0 and t, and $t_{1/2E}$ represents the half-life. The term k_{pE} represents the first-order photolysis rate constant for a water body in sunlight in the units of reciprocal time.

(iii) Furthermore, under the same conditions cited above, the first-order direct photolysis rate constant, k_{pE}, is given by the equation—

Equation 4

$$k_{pE} = \phi_E \Sigma \epsilon_\lambda L_\lambda,$$

where ϕ_E is the reaction quantum yield, $\epsilon\lambda$ is the molar absorptivity in the units $molar^{-1}\ cm^{-1}$, L_λ is the solar irradiance in water in the units of 10^{-3} einsteins $cm^{-2}\ day^{-1}$ [Mill et al. (1982) under paragraph (d)(5) of this section], and the summation is taken over the range $\lambda = 290$ to 800 nm. L_λ is the solar irradiance at shallow depths for a water body under clear sky conditions and is a function of latitude and season of the year.

(iv) The method of Zepp and Cline (1977) under paragraph (d)(8) of this section and the method of Mill et al. (1982) under paragraph (d)(5) of this section are applicable to sunlight incident on a water surface such as natural water body. However, the method developed in this guideline measures rate constants in tubes (e.g., 13×100 mm) and the rate is faster in tubes. This is discussed in more detail in paragraph (b)(2)(i)(J) of this section. Thus, equations 1 and 2 have to be modified to take this into account. For simplicity, the following nomenclature is used. For water bodies, the rate constant is designated as k_{pE} with the subscript E designating rates in the environment in water bodies. For tubes, the rate constant is designated as k_p. The corresponding half-lives for water bodies and tubes are $t_{1/2E}$ and $t_{1/2}$, respectively. Thus, for tubes, equations 1 and 2 can be written as:

Equation 5

$$\ln(C_o/C_t) = k_p t$$

Equation 6

$$t_{1/2} = \frac{0.693}{k_p}$$

(v) A simple first-tier screening test has been developed using Equation 4 under paragraph (a)(3)(iii) of this section. As an approximation, it is assumed that the reaction quantum yield ϕ_E is equal to one, the maximum value. As a result, the upper limit for the direct photolysis sunlight rate constant in aqueous solution is obtained and Equation 4 under paragraph (a)(3)(iii) of this section becomes

Equation 7

$(k_{pE})_{max.} = \Sigma \epsilon_\lambda L_\lambda$.

Using equation 7 in equation 2 under paragraph (a)(3)(ii) of this section, the lower limit for the half-life is then given by

Equation 8

$$(t_{1/2E})_{min} = \frac{0.693}{(k_{pE})_{max}}$$

The molar absorptivity can be determined experimentally by the method outlined in paragraph (b)(1) of this section and values of L_λ are given in Tables 3 to 6 as a function of latitude and season of the year under paragraph (c)(3) of this section. These data can then be used in equation 7 to calculate $(k_{pE})_{max}$. Finally, $(k_{pE})_{max}$ can then be substituted in Equation 8 to calculate $(t_{1/2E})_{min}$.

(vi) In a second-tier test method, an aqueous photolysis screening test has been developed to determine rate constants and half-lives in the presence of sunlight using Equations 1, 2, 4, 5, and 6 [Mill et al. (1981, 1982, under paragraph (d) (4), (5) and (6) of this section, and Dulin and Mill (1982) under paragraph (d)(2) of this section]. The second-tier test method is divided into two phases. In phase one, the test chemical is photolyzed in sunlight in order to obtain an approximate rate constant, k^c_p. This method only gives an approximate rate constant since it fails to measure sunlight intensities incident on the sample during photolysis.

(vii) In phase two, a standard p-nitroacetophenone-pyridine actinometer (PNAP/PYR) is used to measure sunlight intensities incident on the sample during photolysis [Mill et al. (1982) under paragraph (d)(6) of this section and Dulin and Mill (1982) under paragraph (d)(2) of this section]. The rate constant for this actinometer, k^a_p, can be adjusted to match the approximate rate constant of the test chemical by adjusting the concentration of pyridine. Since the rate constant is a function of the reaction quantum yield of the actinometer, the rate constant can be adjusted according to the equation

Equation 9

$\phi^a_E = 0.0169[PYR]$,

where [PYR] is the molar concentration of pyridine for a p-nitroacetophenone (PNAP) concentration of 1.00×10^{-5} M. The reaction quantum yield for the test chemical, ϕ^c_E, is given by

Equation 10

$$\phi^c_E = \frac{k^c_p}{k^a_p} \frac{\Sigma \phi^a_\lambda L_\lambda}{\Sigma \phi^c_\lambda L_\lambda} \phi^a_E .$$

The reaction quantum yield of the test chemical, ϕ^c_E, can be determined in the following way. By measuring the concentration of test chemical and actinometer (PNAP) as a function of time t in sunlight, the ratio of rate constants, (k^c_p/k^a_p), can be determined using equation 5 under paragraph (b)(2)(i)(H) of this section. The reaction quantum yield ϕ^a_E can be determined from Equation 9 at the molar concentration of pyridine used in the standard actinometer. The term $\Sigma \epsilon^a_\lambda L_\lambda$ for the actinometer has been tabulated as a function of latitude and season of the year in Table 2 under paragraph (c)(3) of this section. The term $\Sigma \epsilon^c_\lambda L_\lambda$ for the test chemical can be obtained from the experimentally measured molar absorptivities under paragraph (b)(1) of this section and the values of L_λ listed in Tables 3 to 6, as a function of latitude and season of the year under paragraph (c)(3) of this section.

(viii) With the values of ϕ^c_E, ϵ^c_λ, and the appropriate L_λ values, k_{pE} for the test chemical can be calculated as a function of latitude and season of the year in the United States using Equation 4 under paragraph (a)(3)(iii) of this section. The corresponding half-life can be calculated using k_{pE} in Equation 2 under paragraph (a)(3)(ii) of this section.

(4) *Applicability and specificity.* (i) This test method is applicable to all chemicals which have UV-visible absorption maxima in the range of 290 to 800 nm. Some chemicals have absorption maxima significantly below 290 nm and consequently cannot undergo direct photolysis in sunlight (e.g., chemicals such as alkanes, alkenes, alkynes, saturated alcohols, and saturated acids). This is a direct consequence of the Grotthus-Draper law of photochemistry. Some chemicals have absorption maxima significantly below 290 nm but have measurable absorption tails above the baseline in their absorption spectrum at wavelengths greater than 290 nm. Photolysis experiments should be carried out for these chemicals.

(ii) These test methods are only applicable to pure chemicals and not to the technical grade.

(iii) The first-tier screening test can be employed to estimate $(k_{pE})_{max.}$ and $(t_{1/2E})_{min}$. If these data indicate that aqueous photolysis is an important process relative to other transformation processes (e.g., biodegradation, hydrolysis, oxidation, etc.), then it is recommended that the second-tier photolysis tests be carried out to determine environmentally relevant rate constants and half-lives in sunlight. The data obtained from this test can be used to determine k_{pE} for the test chemical as a function of latitude and season of the year anywhere in the United States. These rate constants are in a form suitable for preliminary mathematical modeling for environmental fate of a test chemical.

(iv) The second-tier screening test is applicable to the direct photolysis of chemicals in a homogeneous dilute solution with absorbance less than 0.05 in the reaction cell at all wavelengths greater than 290 nm and at shallow depths (less than 0.5 m). These results are applicable to direct sunlight photolysis for water bodies and clear sky conditions. In addition, these experiments are limited to the direct photolysis of chemicals in air-saturated pure water.

(v) This screening test has been designed to determine the molar absorptivity of a test chemical, ϵ^c_λ, and its reaction quantum yield, ϕ^c_E. These parameters can be used to determine environmentally relevant rate constants at low absorbance and shallow depths in pure water as a function of latitude and season of the year. Tables of solar irradiance (Tables 3 to 6) under paragraph (c)(3) of this section have been included in this test method to carry out all the calculations. However, the method is really very general and can be extended to determine the rates of photolysis over a range of other environmental conditions using a computer program. Zepp and Cline (1977) under paragraph (d)(8) of this section have written a computer program to calculate the rates of photolysis as a function of depth in water, as a function of the attenuation coefficient of the water (α_λ) for natural water bodies, the average ozone layer thickness that pertains to the seasons and location of interest, and as a

function of latitude and season of the year. This program has been recently updated with the best available solar irradiance data and is called the GC SOLAR program. The GC SOLAR computer program is available on request as referenced under paragraph (d)(10) of this section.

(b) *Test procedures*—(1) *Tier 1 Test: UV-Visible Absorption Spectra-Estimation of Aqueous Photolysis Maximum Rate Constant and Minimum Half-Life in Sunlight.* The uv-visible absorption spectra in aqueous solution can be determined by the methods described in § 796.1050. It is recommended that the following additional procedures be followed:

(i) For chemicals which ionize or protonate (e.g., carboxylic acids, phenols, amines), carry out uv-visible absorption studies at pHs at least two orders or magnitude above the pK_a and at least two orders of magnitude below the pK_a. Prepare buffer solutions at 25 °C using reagent grade chemicals and distilled water as follows:

pHs in the range 3–6[1]: NaH_2PO_4,HCl;

pHs in the range 6–8[1]: KH_2PO_4, NaOH;

pHs in the range >8: Prepare buffers as described in the Handbook of Chemistry and Physics.

Check the pH of all the buffer solutions with a pH meter at 25 °C and adjust to the proper pH, if necessary. These buffer solutions can then be added to the test chemical solution until the desired pH is obtained. If these buffers are inadequate, then adjust the pH of the test chemical solution with 1 M HCl or NaOH at 25 °C.

(ii) (A) Measure the absorbance, A_λ, as a function of wavelength in the range of 290 to 800 nm in duplicate. If applicable, measure A_λ at each experimental pH. Record, in duplicate, the baseline when both the sample and reference cells are filled with blank solutions. These data will be used to calculate the molar absorptivities for the appropriate wavelength intervals and wavelength centers in Table 1 under paragraph (c)(3) of this section, where the test chemical absorbs light. The wavelength center is defined as the midpoint of the interval range.

(B) It must be emphasized that the molar absorptivities of the test chemical must be carefully determined, especially in the tails of the absorption bands at $\lambda \geq 290$ nm. Large errors will be encountered in calculating photolysis rate constants and half-lives if these measurements are not carefully carried out.

[1] Use the minimum concentration of buffers to attain the desired pH.

(2) *Tier 2 Test: Aqueous Photolysis in Sunlight*—(i) *Test conditions*—(A) *Special laboratory equipment.* It is recommended that quartz tubes be used for the photolysis of chemicals with appreciable absorption at wavelengths below 340 nm. Chemicals that absorb appreciably at wavelengths greater than 340 nm may be tested in borosilicate tubes. Thin-walled borosilicate or quartz tubes are recommended. Disposable culture tubes (13 x 100 mm) with Teflon-lined screw caps or quartz tubes with quartz or borosilicate stoppers, Teflon-lined, may be used as reaction vessels. Tubes of 11 mm i.d. are recommended. For some chemicals, it may be difficult to determine the concentration of the test chemical in reaction tubes of small volume. For these chemicals, larger volume reaction vessels are recommended provided that the cell walls are thin and the pathlength of radiation through the vessel is less than 0.5 meter.

(B) *Purity of water.* Reagent grade water, e.g., water meeting ASTM Type II A standards, or an equivalent grade, is highly recommended to minimize biodegradation. ASTM Type II A water is described in ASTM D 1193–77, "Standard Specification for Reagent Water." Air-saturated water can be easily prepared by allowing the water to equilibrate in a vessel plugged with sterile cotton. ASTM D 1193–77 is available for inspection at the Office of the Federal Register, Rm. 8401, 1100 L St., NW., Washington, DC. This incorporation by reference was approved by the Director of the Office of the Federal Register. This material is incorporated as it exists on the date of approval and a notice of any change in this material will be published in the Federal Register. Copies of the incorporated material may be obtained from the Document Control Officer (TS–793), Office of Toxic Substances, EPA, Rm. 107, 401 M St., SW., Washington, DC 20460, and from the American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103.

(C) *Sterilization.* It is extremely important to sterilize all glassware and to use aseptic conditions in the preparation of all solutions and in carrying out all photolysis experiments to eliminate or minimize biodegradation. Glassware can be sterilized in an autoclave or by any other suitable non-chemical method.

(D) *pH effects.* It is recommended that all photolysis experiments be carried out at pHs at least two orders of magnitude above the pK_a and at least two orders of magnitude below the pK_a for any chemical which ionizes or protonates (e.g., carboxylic acids, phenols, and amines). Buffers described in paragraph (b)(2)(ii)(B) of this section should be used.

(E) *Volatile chemical substances.* Special care should be taken when testing a volatile chemical so that the chemical substance is not lost due to volatilization during the course of the photolysis experiment. Thus, it is important to effectively seal the reaction vessels. Disposable culture tubes with Teflon-lined screw caps or quartz tubes with quartz or borosilicate stoppers, Teflon-lined, are recommended. Volatile compounds can be conveniently studied in culture tubes equipped with Mininert® valves. Samples can be introduced into or removed from the tubes through the septum in these valves with no loss of substrate. As an alternative, the tubes can be sealed with a torch. In addition, the reaction vessels should be as completely filled as is possible to prevent volatilization to any air space.

(F) *Control solution.* It is extremely important to take certain precautions to prevent loss of chemical from the reaction vessels by processes other than photolysis. For example, biodegradation and volatilization can be eliminated or minimized by use of sterile conditions and minimal airspace in sealed vessels. Hydrolysis is a process which cannot be minimized by such techniques. Thus, control vessels containing test substances which are not exposed to sunlight are required. In this way, the loss of test chemical for processes other than photolysis may be determined and eliminated. For simplicity, if the loss of chemical in the control is small (i.e., approximately 10 percent or less), one can calculate a first-order loss, k_{loss}, and subtract it from $(k_p)_{obs}$, to give the corrected direct photolysis rate constant k_p. If hydrolysis is found to be significant (i.e., greater than 10 percent), hydrolysis studies should be carried out first under § 796.3500.

(G) *Absorption spectrum as a criterion for performing the Aqueous Photolysis Test.* This aqueous photolysis screening test is applicable to all chemicals which have UV-visible absorption maxima in the range 290 to 800 nm. Some chemicals have absorption maxima significantly below 290 nm but have measurable absorption tails above the baseline in their absorption spectrum at wavelengths greater than 290 nm. Photolysis experiments should be carried out for these chemicals. The absorption spectrum of the chemical in aqueous solution can be measured by § 796.1050.

(H) *Sunlight Actinometer.* (*1*) In order to quantify the rate of photolysis more precisely, it is necessary to measure the sunlight intensity incident on the sample during photolysis. A standard p-nitroacetophenone-pyridine actinometer (PNAP/PYR) has been developed [Mill et al. (1981, 1982) under paragraph (d)(4) and (6) of this section; Dulin and Mill (1982) under paragraph (d)(2) of this section] to measure the sunlight intensity incident on the sample during photolysis and this actinometer has been incorporated in this section. According to Equation 4 under paragraph (a)(3)(iii) of this section, the rate constant is a function of the reaction quantum yield. Furthermore, the reaction quantum yield can be adjusted by varying the molar concentration of the pyridine according to Equation 9 under paragraph (a)(3)(vii) of this section. Hence, by varying the pyridine concentration, the actinometer photolysis rate constant can be adjusted so that the half-life can range from several hours to several weeks. The initial concentration of PNAP is set at 1.00×10^{-5} M.

(*2*) Using the test chemical photolysis rate constant, k_p^c, determined in Tier 2, Phase 1, and the variable $k_a^a(=\Sigma\epsilon^a{}_\lambda L_\lambda)$, listed in Table 2 under paragraph (c)(3) of this section the molar concentration needed to adjust the rate of disappearance of PNAP in PNAP/PYR to match the rate of disappearance of the test chemical is given by

Equation 11

$$[PYR]=26.9\,(k_p^c/k_a^a).$$

(*3*) Experiments are carried out by simultaneously photolyzing the test chemical and actinometer solutions. The concentrations of test chemical and actinometer are measured periodically as a function of time. These data are then used to determine the ratio of the rate constants, k_p^c/k_p^a, using linear regression analysis on the following equation:

Equation 12

$$\ln(C_o/C_t)^c=(k_p^c k_p^a)\ln(C_o/C_t)^a,$$

with $\ln (C_o/C_t)^a$ as the independent variable and $\ln(C_o/C_t)^c$ as the dependent variable. The slope of the best straight line is the ratio of the rate constants, k_p^c/k_p^a.

(I) *Solar irradiance data.* In order to calculate the reaction quantum yield of the test chemical, ϕ_Σ^c, and then calculate $k_{p\Sigma}^c$ and $t_{1/2\Sigma}$, it is necessary to use the solar irradiance parameter L_λ. L_λ values are proportional to the average light flux that is available to cause photolysis in a wavelength interval centered at λ over a 24-hour day at a specific latitude and season date. The L_λ values are defined by the angle of declination of the sun at $-20°$ for winter, $-10°$ for fall, $+10°$ for spring, and $+20°$ for summer. The actual dates for 1982 that correspond to these angles of declination are January 21, April 16, July 24, and October 20, for winter, spring, summer, and fall, respectively [AA (1982) under paragraph (d)(1) of this section]. The L_λ values for these season dates are listed in Tables 3 to 6 under paragraph (c)(3) of this section as a function of latitude and are applicable to clear sky conditions, water bodies, shallow depths, and for chemicals whose absorbance is less than 0.05 in pure water [Mill et al. (1984) under paragraph (d)(7) of this section].

(J) *Geometry of the reaction vessel.* The method of Zepp and Cline (1977) under paragraph (d)(8) of this section and the method of Mill et al., (1982) under paragraph (d)(5) of this section are applicable to sunlight incident on a water surface such as a natural water body while the method developed in this test method measures rate constants (k_p) in tubes (e.g., 13 × 100 mm). However, rates in tubes are faster than in water bodies and it has been experimentally observed [Mill et al. (1982) under paragraph (d)(6) of this section] that

Equation 13

$$k_p=2.2k_{p\Sigma}.$$

Because tubes are the simplest and easiest reaction vessels to use, this test method recommends the use of tubes as reaction vessels and the method has been modified to take into account the increased rate in tubes (equation 13).

(K) *Chemical analysis of solution.* (*1*) In determining the concentration of the chemical in solution, an analytical method should be selected which is most applicable to the analysis of the specific chemical substance. Chromatographic methods are generally recommended because of their chemical specificity in analyzing the parent chemical substance without interference from impurities. Whenever practicable the chosen analytical method should have a precision of ±5 percent or better.

(*2*) The p-nitroacetophenone in the chemical actinometer solution is conveniently analyzed by high-pressure liquid chromatography using a 30 cm C_{18} reverse-phase column and a uv detector set at 280 nm. The mobile phase in volume percent is 2.5 percent acetic acid, 50 percent acetonitrile, and 47.5 percent water which is passed through the column at a flow rate of 2 mL/minute.

(ii) *Preparations*—(A) *Preparation of test chemical solution.* Prepare homogeneous solutions with the chemical at less than one-half of its solubility in water and at a concentration such that the absorbance is less than 0.05 in the photolysis reaction vessel at wavelengths greater than 290 nm. For very hydrophobic chemicals, it is difficult and time consuming to prepare aqueous solutions. To facilitate the preparation of aqueous solutions containing very hydrophobic chemicals and to allow for easier analytical measurement procedures, the following procedure may be used to aid in the dissolution of the chemical. Dissolve the pure chemical in reagent grade acetonitrile. Add pure water as described under Test Conditions, in paragraph (b)(2)(i)(B) of this section, or buffer solution as described under Preparations, in paragraph (b)(2)(ii)(B) of this section, for chemical substances which ionize or protonate, to an aliquot of the acetonitrile solution. Do not exceed one volume-percent of acetonitrile in the final solution. Place the reaction solution in the appropriate photolysis reaction tubes as described in paragraph (b)(2)(i)(A) of this section.

(B) *Preparation of buffer solutions.* Prepare buffer solutions according to the procedures outlined in paragraph (b)(1)(i) of this section using reagent grade chemicals and pure water as described under Test Conditions, in paragraph (b)(2)(i)(B) of this section.

(C) *Preparation of actinometer solution.* (*1*) Using the test chemical photolysis rate constant, k_p^c, determined in Tier 2, Phase 1, and the variable k_a^a listed in Table 2 under paragraph (c)(3) of this section, the molar concentration of pyridine needed to adjust the rate of disappearance of p-nitroacetophenone (PNAP) to match the rate of disappearance of the test chemical can be obtained from equation 11 under paragraph (b)(2)(i)(H)(*2*) of this section. The variable $k_a^a\,(=\Sigma\epsilon_\lambda{}^a L_\lambda)$ is equal to the day-average rate constant for sunlight absorption by PNAP which changes with season and latitude. The value of k_a^a is selected from Table 2 under paragraph (c)(3) of this section for the season nearest the mid-experiment date of the Tier 2, Phase 1, studies and the decadic latitude nearest the latitude of the experimental site.

(*2*) Once the molar concentration of pyridine [PYR] has been determined, an actinometer solution can be prepared as follows. Dissolve 0.165 gm. of PNAP in 100 mL of acetonitrile [0.01 M]. Add 1 mL of this solution to a one liter volumetric flask. Add to the volumetric flask the mass in grams, or the volume (V) of pyridine at 20° C, obtained from the equations

Equation 14

mass(grams) = 79.1 [PYR]

V(mL) = 80.6 [PYR].

Fill the volumetric flask with pure water in paragraph (b)(2)(i)(B) of this section to give 1 liter of solution and shake vigorously to make sure that the solution is homogeneous. The PNAP/PYR solution should be wrapped with aluminum foil and kept from bright light.

(iii) *Performance of the tests*—(A) *Phase 1 experiments.* (*1*) For all experiments, prepare an aqueous solution of the chemical substance, as described in paragraph (b)(2)(ii)(A) of this section, and a sufficient number of samples in quartz or borosilicate glass tubes to perform all the required tests. Fill the tubes as completely as possible and seal them. Prepare two control samples in the absence of ultraviolet light and totally exclude light by wrapping the tubes with aluminum foil or by other suitable methods. These samples are analyzed for the chemical substance immediately after completion of the experiment to measure the loss of chemical in the absence of light. Place the samples, including the controls, outdoors in an area free of shade and reflections of sunlight from windows and buildings. Place the samples on a black, nonreflective background and inclined at approximately 30° from the horizontal with upper end pointing due north (in the northern hemisphere). Conduct the photolysis experiments during a frost-free time of year (e.g., May, June, July, August, or September in the northern hemisphere—weather permitting) and start the experiments initially at noon (1,200 hours). Record the date and time the experiment was begun, the date and time completed, the time of sunrise and sunset on all days when photolysis experiments were performed, the times exposure was stopped and restarted for intermittent exposure, the weather conditions during the period, and the latitude of the site. For chemical substances that ionize or protonate, carry out photolysis experiments at the required pHs as described under Test Conditions under paragraph (b)(2)(i)(D) of this section.

(*2*) If a significant loss of test chemical has occurred in the control samples, determine the cause and eliminate or minimize the loss. If hydrolysis is found to be significant, hydrolysis studies should be carried out first under paragraph (b)(2)(i)(F) of this section.

(*3*) Use one of the following procedures, depending on how fast the chemical substance photolyzes.

(*i*) *Procedure 1.* If the chemical substance transforms 50 to 80 percent within 28 days, measure the concentration of the chemical substance, in duplicate, at time t=0 and periodically (at least four data points at approximately equal time intervals) at noon (1200 hours) until at least 50 percent of the substance has been consumed. As a simplification, the sampling times can be estimated as the photolysis experiments progress. Determine the concentration of test chemical from two, freshly opened, reaction tubes for each time point. Determine the concentration in each of the two control solutions as soon as the photolysis experiments are completed.

(*ii*) *Procedure 2.* If the chemical substance transforms in the range of 20 to 50 percent in 28 days, determine the concentration of the chemical substance, in duplicate, at time t=0. Determine the concentration of the chemical in the two separate reaction tubes and the two control tubes after 28 days of photolysis.

(*iii*) *Procedure 3.* For chemical substances that transform in sunlight 50–80 percent within one or two days, place the samples outside at noon (1200 hours) and analyze two samples for the concentration of the chemical substance at t=0, and in two, freshly opened, reaction tubes at noon (1200 hours) the next day, and again, in two, freshly opened, reaction tubes at noon (1200 hours) the second day. Determine the concentration of the test chemical in each of the two control solutions after the first day of photolysis and as soon as the photolysis experiments have been completed on the second day.

(*iv*) *Analytical methodology.* Select an analytical method which is most applicable to the analysis of the specific chemical being tested under paragraph (b)(2)(i)(K) of this section.

(B) *Phase 2 experiments. (1)* Using the test chemical photolysis rate constant, k^c_p, determined in Tier 2, Phase 1, prepare an actinometer solution, as described in paragraph (b)(2)(ii)(C) of this section and a sufficient number of samples in quartz tubes to perform all the required tests. Fill all the tubes as completely as possible, seal them, and cover them with aluminum foil as soon as possible after preparation. Prepare an aqueous solution of test chemical, as described in paragraph (b)(2)(ii)(A) of this section, and a sufficient number of samples in quartz or borosilicate tubes to perform all the required tests. Fill these tubes as completely as possible, seal them, and cover them with aluminum foil as soon as possible after preparation. Place all the samples outdoors in an area free of shade and reflections of sunlight from windows and buildings. Place the samples on a black, nonreflective background and inclined at approximately 30° from the horizontal with the upper end pointing due north (in the northern hemisphere). Remove the foil from all samples except for the test chemical control solutions and the actinometer control solutions at noon (1200 hours). Based on the results of the Phase 1 experiments, determine the concentration of test chemical and actinometer (PNAP), in triplicate, at time t=0 and periodically (at least five data points at approximately equal time intervals). Determine the concentration of PNAP in the three actinometer control solutions and the concentration of test chemical in the three control solutions for each time point.

(*2*) Select an analytical method which is most applicable to the analysis of the specific chemical tested, in paragraph (b)(2)(i)(K) of this section and follow the procedure given in paragraph (b)(2)(i)(K) of this section for the analysis of PNAP.

(c) *Data and reporting*—(1) *Tier 1 Test: UV-Visible Absorption Spectra—Estimation of Aqueous Photolysis Maximum Rate Constant and Minimum Half-Life in Sunlight*—(i) *Treatment of results.* (A) The molar absorptivity can be determined from the absorption spectra using the expression.

Equation 15

$\epsilon_\lambda{}^c = A_\lambda / Cl$,

where A_λ is the absorbance at wavelength λ, C is the molar concentration of test chemical, and l is the cell pathlength in centimeters. The molar absorptivity of the chemical should be determined for the wavelengths listed in Table 1 under paragraph (c)(3) of this section for a solution of concentration C and in a cell with pathlength, *l*. If the absorption curve is flat within the interval around the wavelength λcenter, ϵ_λ may be determined from the absorbance A_λ at λcenter using equation 15. If a large change in absorbance occurs within this interval, obtain an average absorbance A_λ at λcenter based on the absorbances at the two boundaries of the interval. Calculate an average ϵ_λ using the average value of A_λ in equation 15. Determine the molar absorptivity for each replicate and calculate a mean value.

(B) Using the molar absorptivities obtained from the spectra and the values of the L_λ from Tables 3 to 6 under paragraph (c)(3) of this section, the maximum rate constant $(k_{pE})_{max}$. can be calculated at a specific latitude and season of the year using equation 7 under paragraph (a)(3)(v) of this section. The minimum half-life, $(t_{1/2E})_{min}$. can then be calculated using this $(k_{pE})_{max}$. in equation 8 under paragraph (a)(3)(v) of this section.

(C) Two hypothetical examples are presented in paragraph (c)(4)(i) of this section to illustrate how the test data obtained in the first-tier screening test can be used.

(ii) *Test data report.* (A) Submit the original chart, or photocopy, containing a plot of absorbance of test chemical vs. wavelength plus the baseline. Spectra should include a readable wavelength scale, preferably marked at 10 nm intervals. Each spectrum should be clearly marked with the test conditions.

(B) Report the concentration of the test chemical solution, the type of absorption cell used (quartz or borosilicate glass) and the pathlength.

(C) Report A_λ and ϵ_λ at λcenter for each replicate and the mean value.

(D) Report $(k_{pE})_{max.}$ and $(t_{1/2E})_{min.}$ for the summer and winter solstices using the appropriate L_λ values from Tables 3–6 closest to the latitude of the chemical manufacturing site.

(E) Report the identity and compositon of the solvent used in the spectral absorption study.

(F) For ionizable chemicals, report its pK_a. Report the type and concentration of the buffers employed for each pH. Report the pHs in which the photolysis experiments were carried out.

(G) Describe the method employed in determining the test chemical's concentration.

(H) Report the name, structure, and purity of the test chemical.

(I) Submit a recent test spectrum on appropriate reference chemicals for photometric and wavelength accuracy.

(J) Report the name and model of the spectrophotometer used.

(K) Report the various control settings employed with the spectrophotometer. These might include scan speed, slit width, gain, etc.

(2) *Tier 2 Test: Aqueous Photolysis in Sunlight*—(i) *Phase 1 experiments*—(A) *Treatment of results.* (*1*) If a small loss of test substance in the control tubes has occurred, use this data to make corrections to the measured photolysis rate in paragraph (b)(2)(i)(F) of this section. Note the site of photolysis and its latitude and the weather conditions. For procedures 1 and 2 note the dates and times of actual exposure including times of sunrise and sunset and, in case the cells are moved to prevent freezing or for other reasons, make sure that these times are recorded and that the cells are kept in a dark place when exposure is not in progress.

(*i*) For chemical substances which transform 50 to 80 percent within 28 days, use a concentration C_t, which corresponds to less than 50 percent of the initial concentration of chemical substance remaining, and the corresponding time t, in days, along with the initial molar concentration C_o, in Equation 5 to calculate k_p in $days^{-1}$. From the analysis of the two samples at time t=0 and t, calculate a mean value of C_o and C_t, respectively, and a value of k_p. If a slight loss of chemical has been detected in the controls, then calculate a rate constant as follows: Calculate an average concentration C_t, based on the duplicate measurements of concentration in the controls. Use this concentration along with the average initial concentration in Equation 5 and calculate a rate constant k_{loss}. Using this rate constant along with the observed rate constant, the corrected rate constant is then

Equation 16

$$k_p = (k_p)_{obs.} - k_{loss.}$$

Calculate the half-life, $t_{1/2}$ using the corrected k_p value in Equation 6 under paragraph (a)(3)(iv) of this section.

(*ii*) For chemical substances which transform 20–50 percent in 28 days, use the mean concentration C_t remaining at t=28 days along with the mean value of C_o to calculate k_p. Use the same procedure as described above to calculate the value of k_p and $t_{1/2}$. If less than 20 percent of the chemical substance degrades in 28 days, report the mean concentration of C_t and C_o. In this case the apparent half-life is reported as greater than 3 months.

(*iii*) For chemical substances which transform 50 percent or more in the first day, as described in procedure 3, calculate a full day k_p value using the mean concentration C_t of chemical substance remaining at noon (1200 hours) after the first day along with the mean value of C_o using Equation 5 under paragraph (a)(3)(iv) of this section. For chemical substances which degrade less than 50 percent at noon (1200 hours) after the first day but 50 percent or more at noon (1200 hours) the second day, calculate k_p using the mean concentration of chemical substances remaining at noon (1200 hours) the second day. Calculate the half-life, $t_{1/2}$, using the mean value of k_p in Equation 6 under paragraph (a)(3)(iv) of this section. If a small loss of test substance in the control tubes has occurred, use this data to make corrections to the measured photolysis rate as described. Note the dates of photolysis, the latitude, and the site.

(*2*) A hypothetical example is presented in paragraph (c)(4)(ii) of this section, to illustrate how the test data obtained in the Tier 2, Phase 1, test method can be used.

(B) *Specific analytical and recovery procedures.* (*1*) Provide a detailed description or reference for the analytical procedures used, including the calibration data and precision.

(*2*) If extraction methods were used to separate the solute from the aqueous solution, provide a description of the extraction method as well as the recovery data.

(C) *Other test conditions.* (*1*) Report the size, approximate cell wall thickness, and type of glass used for the reaction tubes.

(*2*) Report the initial pH of all test solutions, if appropriate.

(*3*) For all procedures, report the dates of photolysis, the time of sunrise and sunset on each photolysis day, the site of photolysis and its latitude, and the weather conditions. For Procedures 1 and 2 submit the dates and times of actual exposure, and the duration of exposure, and, for intermittent exposure, the fraction of each day during which photolysis occurred.

(*4*) If acetonitrile was used to solubilize the test substance, report the percent, by volume.

(*5*) If a significant loss of test chemical occurred in the control solution, indicate the causes and how they were eliminated or minimized.

(D) *Test data report.* (*1*) For each photolysis experiment, report:

(*i*) The initial molar concentration of test chemical (C_o) of each replicate and the mean value.

(*ii*) The molar concentration of test chemical for each replicate and the mean value for each time point t.

(*iii*) The molar concentration of each replicate control sample and the mean value after completion of the photolysis experiments.

(*2*) For procedure 1, 2, or 3, report the value of k_p. If small losses of chemical are observed, report $(k_p)_{obs.}$, k_{loss} and k_p. Report the half-life ($t_{1/2}$) calculated using the value of k_p.

(ii) *Phase 2 experiments.*—(A) *Treatment of results.* (*1*) The objectives of this set of experiments is to determine the sunlight reaction quantum yield, ϕ^c_E, for a specific test chemical. ϕ^c_E can be calculated using equation 10 under paragraph (a)(3)(vii) of this section.

$$\phi^c_t = \frac{k^c_p \ \Sigma \epsilon^a_\lambda L_\lambda}{k^a_p \ \Sigma \epsilon^c_\lambda L_\lambda} \phi^a_F$$

by the following steps:

(*i*) Determine the ratio of the rate constants, k^a_p/k^c_p, as described in paragraph (b)(2)(i)(H) of this section using Equation 12. If a slight loss of test chemical or actinometer (PNAP) was detected in the controls at any time t, then employ the following procedure

Consider, as an example, the loss of test chemical in the control at time t. Using the average concentration of the test chemical in the controls from the replicates at time t and the average initial concentration, calculate $\ln(C_o/C_t)^c_{loss}$. Using the average concentration of test chemical from the replicates after photolysis time t, calculate $\ln(C_o/C_t)^c_{obs}$. The corrected term is then

Equation 17

$$\ln(C_o/C_t)^c_{corr.} = \ln(C_o/C_t)^c_{loss}.$$

The same procedure can be applied to obtain a corrected term from the actinometer (PNAP). Using the corrected terms for test chemical and/or actinometer in equation 12 under paragraph (b)(2)(i)(H)(*3*) of this section, determine the ratio of the rate constants (k^a_p/k^c_p) as described in paragraph (b)(2)(i)(H) of this section.

(*ii*) Determine the quantum yield of the actinometer, ϕ^a_E, using equation 9 and the molar concentration of pyridine [PYR] present in the actinometer.

(*iii*) Determine the value of $\Sigma\epsilon^c_\lambda L_\lambda$ for the test chemical as follows: the molar absorptivities, ϵ^c_λ, have been determined by the procedure given in paragraph (b)(1) of this section and the results have been tabulated according to paragraph (c)(1)(ii) of this section. Choose the appropriate L_λ values (Tables 3 to 6 under paragraph (c)(3) of this section) that correspond to the season closest to the season in which the Phase 2 experiments were performed and to the latitude nearest the latitude of the experimental site. Calculate the product of ϵ^c_λ and L_λ for each wavelength interval where ϵ_λ has a nonzero value. Sum the products of $\epsilon^a_\lambda L_\lambda$ over all wavelength intervals.

(*iv*) Determine the value of $\Sigma\epsilon_\lambda{}^a L_\lambda$, for the actinometer, as follows: These values have been calculated and are given in Table 2 under paragraph (c)(3) of this section. Choose the appropriate value that corresponds to the season closest to the season in which the Phase 2 experiments were performed and to the latitude nearest the latitude of the experimental site.

(*v*) Substitute the values of k^a_p/k^c_p, ϕ^a_E, $\Sigma\epsilon^a_\lambda L_\lambda$, and $\Sigma\epsilon^c_\lambda L_\lambda$ in Equation 10 under paragraph (a)(3)(iii) of this section and calculate ϕ^c_E, the quantum yield of the test chemical in the environment (i.e., in sunlight).

(*2*) Once ϕ^c_E has been determined, equation 4 under paragraph (a)(3)(iii) of this section can be used to calculate k_{pE} at any season of the year and latitude using the measured values of the molar absorptivities, ϵ^c_λ, and the appropriate L_λ values (Tables 3 to 6 under paragraph (c)(3) of this section). The half-life can then be calculated using k_{pE} in Equation 2 under paragraph (a)(3)(ii) of this section.

(*3*) A hypothetical example is presented in paragraph (c)(4)(iii) of this section, to illustrate how the test data obtained in the Tier 2, Phase 1, test method can be used.

(B) *Other test conditions.* (*1*) Report the size, approximate cell wall thickness, and type of glass used for tubes to hold the test chemical and actinometer solutions.

(*2*) Report the initial pH of all test chemical solutions, if appropriate, and the type and concentration of the buffers employed for each pH.

(*3*) If acetonitrile was used to solubilize the test chemical, report the percent, by volume, of the acetonitrile, which was used.

(*4*) If significant loss of test chemical occurred in the control solution, indicate the causes and how they were eliminated or minimized.

(C) *Test data report.* (*1*) Report the initial molar concentration of chemical (C_o) of each replicate and the mean value.

(*2*) Report the initial molar concentration of PNAP and the molar concentration of pyridine used in the actinometer.

(*3*) Report the time and date the sunlight photolysis experiments were started, the time and date the experiments were completed, and the elapsed photolysis time in days.

(*4*) For each time point, report the three separate values for the molar concentration of test chemical and PNAP and the mean values.

(*5*) For each time point, report the three separate values of the molar concentration of test chemical and PNAP for the controls and the mean values.

(*6*) Tabulate and report the following data: t, $\ln(C_o/C_t)^c$, and $\ln(C_o/C_t)^a$. From the linear regression analysis, report the ratio of the rate constants, $k_p{}^c/k_p{}^a$, and the correlation coefficient.

(*7*) If loss of test chemical and/or actinometer was observed during photolysis, then report the data $\ln(C_o/C_t)_{corr.}$, $\ln(C_o/C_t)_{obs.}$, $\ln(C_o/C_t)_{loss}$ for the test chemical and/or actinometer at each time t. From the linear regression analysis of $\ln(C_o/C_t)^c_{corr.}$ and $\ln(C_o/C_t)^a_{corr.}$, report the ratio of the rate constants, $k_p{}^c/k_p{}^a$ and the correlation coefficient.

(*8*) Report the reaction quantum yield of the actinometer (ϕ^a_E).

(*9*) Report the value of $k_a{}^a$ for the actinometer corresponding to the season closest to the season in which the photolysis experiments were carried out and to the latitude nearest the latitude of the experimental site.

(*10*) Tabulate the values of λcenter, $\epsilon_\lambda{}^c$, L_λ, and $\epsilon_\lambda{}^c L_\lambda$ for the test chemical corresponding to the season closest to the season in which the photolysis experiments were carried out and to the latitude nearest the latitude of the experimental site.

(*11*) Report the value $-\Sigma\epsilon^c_\lambda L_\lambda$ for the test chemical from step 10.

(*12*) Report the reaction quantum yield of the test chemical.

(*13*) Report k_{pE} and $t_{1/2E}$ for the summer and winter seasons using the appropriate L_λ values from Tables 3–6 under paragraph (c)(3) of this section closest to the latitude of the chemical manufacturing site.

(*14*) For chemicals that ionize, report the data for steps 1–13 for the experiments at the required pHs.

(3) *Tables of solar irradiance and related tables.*

TABLE 1—WAVELENGTH CENTER AND INTERVALS FOR L_λ

λ center (nm)	Interval from (nm)	Range to (nm)	Δλ (nm)
297.5	296.2	298.7	2.5
300.0	298.7	301.2	2.5
302.5	301.2	303.7	2.5
305.0	303.7	306.2	2.5
307.5	306.2	308.7	2.5
310.0	308.7	311.2	2.5
312.5	311.2	313.7	2.5
315.0	313.7	316.2	2.5
317.5	316.2	318.7	2.5
320.0	318.7	321.2	2.5
323.1	321.2	325.0	3.8
330.0	325.0	335.0	10.0
340.0	335.0	345.0	10.0
350	345.0	355.0	10.0
[illegible]	355.0	365.0	10.0
370	365.0	375.0	10.0
[illegible]	375.0	385.0	10.0
390	385.0	395.0	10.0
[illegible]	395.0	405.0	10.0
410	405.0	415.0	10.0
420	415.0	425.0	10.0
430	425.0	435.0	10.0
440	435.0	445.0	10.0
450	445.0	455.0	10.0
460	455.0	465.0	10.0
470	465.0	475.0	10.0
[illegible]	475.0	485.0	10.0
[illegible]	485.0	495.0	10.0
500	495.0	505.0	10.0
525	512.5	537.5	25
550	537.5	562.5	25
575	562.5	587.5	25
[illegible]	587.5	612.5	25
625	612.5	637.5	25
[illegible]	637.5	662.5	25
675	662.5	687.5	25
700	687.5	712.5	25
750	725.0	775.0	[illegible]
[illegible]	775.0	825.0	[illegible]

TABLE 2—DAY AVERAGED RATE CONSTANT $(K^a_a)^1$ FOR SUNLIGHT ABSORPTION BY PNAP AS A FUNCTION OF SEASON AND DECADIC LATITUDE

Latitude (degrees north)	Season			
	Spring	Summer	Fall	Winter
20	515	551	[illegible]	327
30	483	551	333	233

TABLE 2—DAY AVERAGED RATE CONSTANT (K^{a}_{n})[1] FOR SUNLIGHT ABSORPTION BY PNAP AS A FUNCTION OF SEASON AND DECADIC LATITUDE—Continued

Latitude (degrees north)	Season			
	Spring	Summer	Fall	Winter
45	431	532	245	139
50	363	496	154	84

[1] $k^{a}_{n} = \Sigma\, \epsilon^{a}_{\lambda} L_{\lambda}$ in day^{-1}.

TABLE 3—L_λ VALUES FOR LATITUDE 20° N.[1 2 3]

λ center (nm)	Spring	Summer	Fall	Winter
297.5	1.10(−4)	1.52(−4)	7.77(−5)	3.71(−5)
300.0	4.06(−4)	5.26(−4)	2.96(−4)	1.62(−4)
302.5	1.10(−3)	1.35(−3)	8.21(−4)	4.99(−4)
305.0	2.37(−3)	2.79(−3)	1.79(−3)	1.17(−3)
307.5	4.24(−3)	4.88(−3)	3.24(−3)	2.25(−3)
310.0	6.65(−3)	7.45(−3)	5.13(−3)	3.72(−3)
312.5	9.42(−3)	1.04(−2)	7.33(−3)	5.47(−3)
315.0	1.24(−2)	1.35(−2)	9.68(−3)	7.40(−3)
317.5	1.54(−2)	1.66(−2)	1.21(−2)	9.38(−3)
320.0	1.82(−2)	1.96(−2)	1.44(−2)	1.13(−2)
323.1	3.23(−2)	3.45(−2)	2.55(−2)	2.04(−2)
330.0	1.10(−1)	1.17(−1)	8.75(−2)	7.06(−2)
340.0	1.37(−1)	1.45(−1)	1.10(−1)	9.02(−2)
350.0	1.52(−1)	1.60(−1)	1.22(−1)	1.01(−1)
360.0	1.67(−1)	1.76(−1)	1.35(−1)	1.12(−1)
370.0	1.78(−1)	1.88(−1)	1.45(−1)	1.21(−1)
380.0	1.89(−1)	2.00(−1)	1.55(−1)	1.30(−1)
390.0	1.79(−1)	1.89(−1)	1.46(−1)	1.22(−1)
400.0	2.57(−1)	2.71(−1)	2.09(−1)	1.75(−1)
410.0	3.38(−1)	3.57(−1)	2.76(−1)	2.31(−1)
420.0	3.47(−1)	3.67(−1)	2.84(−1)	2.38(−1)
430.0	3.35(−1)	3.54(−1)	2.74(−1)	2.30(−1)
440.0	3.95(−1)	4.18(−1)	3.25(−1)	2.72(−1)
450.0	4.45(−1)	4.70(−1)	3.65(−1)	3.07(−1)
460.0	4.50(−1)	4.75(−1)	3.70(−1)	3.11(−1)
470.0	4.65(−1)	4.91(−1)	3.83(−1)	3.22(−1)
480.0	4.76(−1)	5.03(−1)	3.92(−1)	3.31(−1)
490.0	4.50(−1)	4.76(−1)	3.72(−1)	3.13(−1)
500.0	4.59(−1)	4.85(−1)	3.80(−1)	3.20(−1)
525.0	1.21	1.28	1.00	8.48(−1)
550.0	1.26	1.33	1.05	8.83(−1)
575.0	1.27	1.35	1.06	8.92(−1)
600.0	1.29	1.36	1.07	9.05(−1)
625.0	1.29	1.37	1.08	9.15(−1)
650.0	1.30	1.38	1.09	9.24(−1)
675.0	1.30	1.38	1.09	9.27(−1)
700.0	1.29	1.36	1.08	9.21(−1)
750.0	2.48	2.62	2.08	1.78
800.0	2.38	2.51	2.00	1.71

[1] Units of L_λ are 10^{-3} einsteins cm^{-2} day^{-1}. Multiplication of L_λ by ϵ_λ in units of molar^{-1} cm^{-1} gives rate constants in units of day^{-1}.
[2] The second number in the columns in parenthesis is the power of ten by which the first number is multiplied.
[3] Based on the GC SOLAR program.

TABLE 4—L_λ VALUES FOR LATITUDE 30° N.[1 2 3]

λcenter (nm)	Spring	Summer	Fall	Winter
297.5	5.73(−5)	1.09(−4)	3.18(−5)	6.78(−6)
300.0	2.50(−4)	4.11(−4)	1.46(−4)	4.23(−5)
302.5	7.65(−4)	1.14(−3)	4.64(−4)	1.71(−4)
305.0	1.79(−3)	2.46(−3)	1.12(−3)	4.95(−4)
307.5	3.43(−3)	4.45(−3)	2.19(−3)	1.11(−3)
310.0	5.64(−3)	7.02(−3)	3.67(−3)	2.04(−3)
312.5	8.27(−3)	1.00(−2)	5.46(−3)	3.26(−3)
315.0	1.12(−2)	1.32(−2)	7.43(−3)	4.69(−3)
317.5	1.41(−2)	1.64(−2)	9.48(−3)	6.21(−3)
320.0	1.70(−2)	1.95(−2)	1.15(−2)	7.76(−3)
323.1	3.04(−2)	3.46(−2)	2.07(−2)	1.43(−2)
330.0	1.05(−1)	1.18(−1)	7.23(−2)	5.17(−2)
340.0	1.33(−1)	1.48(−1)	9.23(−2)	6.75(−2)
350.0	1.47(−1)	1.63(−1)	1.03(−1)	7.65(−2)
360.0	1.62(−1)	1.80(−1)	1.15(−1)	8.60(−2)
370.0	1.73(−1)	1.91(−1)	1.24(−1)	9.31(−2)
380.0	1.84(−1)	2.04(−1)	1.33(−1)	1.01(−1)
390.0	1.74(−1)	1.93(−1)	1.25(−1)	9.39(−2)
400.0	2.50(−1)	2.77(−1)	1.79(−1)	1.35(−1)
410.0	3.29(−1)	3.64(−1)	2.36(−1)	1.79(−1)
420.0	3.38(−1)	3.74(−1)	2.43(−1)	1.84(−1)
430.0	3.26(−1)	3.61(−1)	2.35(−1)	1.78(−1)
440.0	3.86(−1)	4.26(−1)	2.79(−1)	2.12(−1)
450.0	4.34(−1)	4.79(−1)	3.14(−1)	2.39(−1)
460.0	4.39(−1)	4.85(−1)	3.19(−1)	2.42(−1)
470.0	4.54(−1)	5.01(−1)	3.30(−1)	2.51(−1)
480.0	4.65(−1)	5.13(−1)	3.36(−1)	2.58(−1)
490.0	4.40(−1)	4.85(−1)	3.20(−1)	2.44(−1)
500.0	4.49(−1)	4.95(−1)	3.27(−1)	2.50(−1)
525.0	1.18	1.31	8.67(−1)	6.61(−1)
550.0	1.23	1.36	9.03(−1)	6.87(−1)
575.0	1.24	1.37	9.11(−1)	6.93(−1)
600.0	1.25	1.38	9.24(−1)	7.04(−1)
625.0	1.26	1.39	9.34(−1)	7.15(−1)
650.0	1.27	1.40	9.45(−1)	7.27(−1)
675.0	1.28	1.40	9.48(−1)	7.32(−1)
700.0	1.27	1.39	9.42(−1)	7.31(−1)
750.0	2.44	2.67	1.82	1.41
800.0	2.34	2.57	1.75	1.37

[1] Units of L_λ are 10^{-3} einsteins cm^{-2} day^{-1}. Multiplication of L_λ by ϵ_λ in units of molar^{-1} cm^{-1} gives rate constants in units of day^{-1}.
[2] The second number in the columns in parenthesis is the power of ten by which the first number is multiplied.
[3] Based on the GC SOLAR program.

TABLE 5—L_λ VALUES FOR LATITUDE 40° N.[1 2 3]

λcenter (nm)	Spring	Summer	Fall	Winter
297.5	1.85(−5)	6.17(−5)	7.83(−6)	5.49(−7)
300.0	1.06(−4)	2.70(−4)	4.76(−5)	5.13(−6)
302.5	3.99(−4)	8.30(−4)	1.89(−4)	3.02(−5)
305.0	1.09(−3)	1.95(−3)	5.40(−4)	1.19(−4)
307.5	2.34(−3)	3.74(−3)	1.19(−3)	3.38(−4)
310.0	4.17(−3)	6.17(−3)	2.19(−3)	7.53(−4)
312.5	6.51(−3)	9.07(−3)	3.47(−3)	1.39(−3)
315.0	9.18(−2)	1.22(−2)	4.97(−3)	2.22(−3)
317.5	1.20(−2)	1.55(−2)	6.57(−3)	3.19(−3)
320.0	1.48(−2)	1.87(−2)	8.18(−3)	4.23(−3)
323.1	2.71(−2)	3.35(−2)	1.51(−2)	8.25(−3)
330.0	9.59(−2)	1.16(−1)	5.44(−2)	3.16(−2)
340.0	1.23(−1)	1.46(−1)	7.09(−2)	4.31(−2)
350.0	1.37(−1)	1.62(−1)	8.04(−2)	4.98(−2)
360.0	1.52(−1)	1.79(−1)	9.02(−2)	5.68(−2)
370.0	1.63(−1)	1.91(−1)	9.77(−2)	6.22(−2)
380.0	1.74(−1)	2.04(−1)	1.05(−1)	6.78(−2)
390.0	1.64(−1)	1.93(−1)	9.86(−2)	6.33(−2)
400.0	2.36(−1)	2.76(−1)	1.42(−1)	9.11(−2)
410.0	3.10(−1)	3.64(−1)	1.87(−1)	1.20(−1)
420.0	3.19(−1)	3.74(−1)	1.93(−1)	1.24(−1)
430.0	3.08(−1)	3.61(−1)	1.87(−1)	1.20(−1)
440.0	3.65(−1)	4.26(−1)	2.22(−1)	1.43(−1)
450.0	4.11(−1)	4.80(−1)	2.51(−1)	1.61(−1)
460.0	4.16(−1)	4.85(−1)	2.54(−1)	1.64(−1)
470.0	4.30(−1)	5.02(−1)	2.63(−1)	1.69(−1)
480.0	4.40(−1)	5.14(−1)	2.70(−1)	1.74(−1)
490.0	4.16(−1)	4.86(−1)	2.56(−1)	1.65(−1)
500.0	4.25(−1)	4.96(−1)	2.62(−1)	1.68(−1)
525.0	1.12	1.31	6.93(−1)	4.45(−1)
550.0	1.16	1.36	7.21(−1)	4.61(−1)
575.0	1.17	1.37	7.22(−1)	4.61(−1)
600.0	1.18	1.38	7.39(−1)	4.69(−1)
625.0	1.20	1.40	7.50(−1)	4.82(−1)
650.0	1.21	1.41	7.62(−1)	4.95(−1)
675.0	1.22	1.41	7.68(−1)	5.03(−1)
700.0	1.21	1.40	7.66(−1)	5.05(−1)
750.0	2.33	2.69	1.48	9.84(−1)
800.0	2.25	2.59	1.43	9.56(−1)

[1] Units of L_λ are 10^{-3} einsteins cm^{-2} day^{-1}. Multiplication of L_λ ϵ_λ in the units of molar^{-1} cm^{-1} gives the rate constant in units of day^{-1}.
[2] The second number in the columns in parenthesis is the power of ten by which the first number is multiplied.
[3] Based on the GC SOLAR program.

TABLE 6—L_λ VALUES FOR LATITUDE 50° N.[1 2 3]

λcenter (nm)	Spring	Summer	Fall	Winter
297.5	1.85(−5)	6.17(−5)	7.83(−6)	5.49(−7)
300.0	1.06(−4)	2.70(−4)	4.76(−5)	5.13(−6)
302.5	3.99(−4)	8.30(−4)	1.89(−4)	3.02(−5)
305.0	1.09(−3)	1.95(−3)	5.40(−4)	1.19(−4)
307.5	2.34(−3)	3.74(−3)	1.19(−3)	3.38(−4)
310.0	4.17(−3)	6.17(−3)	2.19(−3)	7.53(−4)
312.5	6.51(−3)	9.07(−3)	3.47(−3)	1.39(−3)
315.0	9.18(−2)	1.22(−2)	4.97(−3)	2.22(−3)
317.5	1.20(−2)	1.55(−2)	6.57(−3)	3.19(−3)
320.0	1.48(−2)	1.87(−2)	8.18(−3)	4.23(−3)
323.1	2.71(−2)	3.35(−2)	1.51(−2)	8.25(−3)
330.0	9.59(−2)	1.16(−1)	5.44(−2)	3.16(−2)
340.0	1.23(−1)	1.46(−1)	7.09(−2)	4.31(−2)
350.0	1.37(−1)	1.62(−1)	8.04(−2)	4.98(−2)
360.0	1.52(−1)	1.79(−1)	9.02(−2)	5.68(−2)
370.0	1.63(−1)	1.91(−1)	9.77(−2)	6.22(−2)
380.0	1.74(−1)	2.04(−1)	1.05(−1)	6.78(−2)
390.0	1.64(−1)	1.93(−1)	9.86(−2)	6.33(−2)
400.0	2.36(−1)	2.76(−1)	1.42(−1)	9.11(−2)
410.0	3.10(−1)	3.64(−1)	1.87(−1)	1.20(−1)
420.0	3.19(−1)	3.74(−1)	1.93(−1)	1.24(−1)
430.0	3.08(−1)	3.61(−1)	1.87(−1)	1.20(−1)
440.0	3.65(−1)	4.26(−1)	2.22(−1)	1.43(−1)
450.0	4.11(−1)	4.80(−1)	2.51(−1)	1.61(−1)
460.0	4.16(−1)	4.85(−1)	2.54(−1)	1.64(−1)
470.0	4.30(−1)	5.02(−1)	2.63(−1)	1.69(−1)
480.0	4.40(−1)	5.14(−1)	2.70(−1)	1.74(−1)
490.0	4.16(−1)	4.86(−1)	2.56(−1)	1.65(−1)
500.0	4.25(−1)	4.96(−1)	2.62(−1)	1.68(−1)
525.0	1.12	1.31	6.93(−1)	4.45(−1)
550.0	1.16	1.36	7.21(−1)	4.61(−1)
575.0	1.17	1.37	7.22(−1)	4.61(−1)
600.0	1.18	1.38	7.39(−1)	4.69(−1)
625.0	1.20	1.40	7.50(−1)	4.82(−1)
650.0	1.21	1.41	7.62(−1)	4.95(−1)
675.0	1.22	1.41	7.68(−1)	5.03(−1)
700.0	1.21	1.40	7.66(−1)	5.05(−1)
750.0	2.15	2.57	2.07	5.22(−1)
800.0	2.08	2.57	1.04	5.11(−1)

[1] Units of L_λ are 10^{-3} einsteins cm^{-2} day^{-1}. Multiplication of L_λ by ϵ_λ in the units of molar^{-1} cm^{-1} gives the rate constant in units of day^{-1}.
[2] The second number in the columns in parenthesis is the power of ten by which the first number is multiplied.
[3] Based on the GC SOLAR program.

(4) Examples of application of methodology—(i) Tier 1 Test: UV-Visible Absorption Spectra—Estimation of Aqueous Photolysis Rate Constant and Minimum Half-life in Sunlight—(A) Illustrative Example 1. A neutral organic chemical A was dissolved in water at a concentration of 1.00×10^{-3} M. UV-visible absorption spectra were obtained in a 10.0 cm quartz absorption cell and no absorbance was detected above the baseline in the region 290 nm and greater (i.e., $A_\lambda = 0$) for $\lambda > 290$ nm). Since $A_\lambda = 0$, then $\epsilon_\lambda{}^{c} = 0$ (Equation 15). Using this result in Equation 7, it is found that $(k_{pE})_{max.} = 0$, indicating that no direct photolysis can take place in sunlight at any latitude or season of the year. This example illustrates the principle of the Grotthus-Draper law, the first law of photochemistry. That is, in order for direct photolysis to take place in sunlight, the chemical must absorb sunlight in the region $\lambda \geq 290$ nm.

(B) *Illustrative example 2. (1)* Consider a plant located in Columbus, Georgia on the Chattahoochee River which produces an organic chemical B which is not an acid or a base. The waste effluent passes through a primary and secondary treatment plant and is then discharged directly into the river. The plant produces chemical B continuously every day of the year. The plant is located at 32.5° north latitude. Estimate the maximum sunlight direct

photolysis rate constant and the corresponding minimum half-life for this chemical in the river for the winter and summer seasons under clear skies.

(*2*) Laboratory experiments, data, and calculations: (*i*) The water solubility of chemical B is 1.00×10^{-3} M at 25 °C. Chemical B was dissolved directly in water and a 1.00×10^{-4} molar solution was prepared at 25 °C. The uv-visible absorption spectra were obtained according to the Tier 1 procedure in a 10.0 cm quartz absorption cell in duplicate. Using the wavelength interval range (from Table 1 under paragraph (c)(3) of this section), the average absorbance of the duplicate runs at λcenter was obtained and the results are summarized in the following Table 7:

TABLE 7—SUMMARY OF PHOTOLYSIS DATA FOR CHEMICAL B

SPECTRAL DATA

λ center (nm)	A_λ	ϵ^c_λ (M^{-1} cm^{-1})
297.5	1.684	1684
300.0	1.434	1434
302.5	1.221	1221
305.0	0.919	919
307.5	0.742	742
310.0	[illegible]	[illegible]
312.5	0.138	138
315.0	0.094	94
317.5	0.057	57
320.0	0.009	9
323.1	0.002	2
330.0	0.000	0

PHOTOLYSIS DATA

λ center(nm)	Summer		Winter	
	L_λ[1]	$\epsilon^c_\lambda L_\lambda$ (day[-1])	L_λ[1]	$\epsilon^c_\lambda L_\lambda$ (day[-1])
297.5	1.09(−4)	0.18	6.78(−6)	0.01
300.0	4.11(−4)	0.59	4.23(−5)	0.06
302.5	1.14(−3)	1.39	1.71(−4)	0.21
305.0	2.46(−3)	2.26	4.95(−4)	0.45
307.5	4.45(−3)	3.30	1.11(−3)	0.82
310.0	7.02(−3)	1.46	2.04(−3)	0.42
312.5	1.00(−2)	1.38	3.26(−3)	0.45
315.0	1.32(−2)	1.24	4.69(−3)	0.44
317.5	1.64(−2)	0.94	6.21(−3)	0.35
320.0	1.95(−2)	0.18	7.76(−3)	0.07
323.1	3.46(−2)	0.07	1.43(−2)	0.03
330.0	1.18(−1)	0.00	5.17(−2)	0.00
		$\epsilon A^c_\lambda L_\lambda$ = 12.99		$\epsilon A^c_\lambda L_\lambda$ = 3.31

[1] The units of L_λ are in 10^{-7} einsteins cm^{-2} day^{-1}. The second number in the columns in parenthesis is the power of ten by which the first number is multiplied.

(*ii*) From the above data and Equation 15 under paragraph (c)(1)(i)(A) of this section, the average molar absorptivity is

Equation 13

$\epsilon_\lambda = 1000\ A_\lambda$.

From the average A_λ value at $_\lambda$ center, the average molar absorptivity can be obtained from Equation 18 and the results are summarized in Table 7 under paragraph (c)(4)(i)(B)(*2*)(*i*) of this section. Since the plant is located at 32.5° north latitude, the closest L_λ values are at 30° north latitude. These values are obtained from Table 4 under paragraph (c)(3) of this section and are summarized in Table 8 under paragraph (c)(4)(i)(B)(*2*)(*i*) of this section for the summer and winter seasons. Using the data from Table 7 under paragraph (c)(4)(B)(*2*)(*i*) of this section and Equations 7 and 8 under paragraph (a)(3)(v) of this section, the following results are obtained.

Summer

$(k_{pE})_{max.} = \Sigma\epsilon_\lambda{}^c L_\lambda = 13.0\ day^{-1}$

$(t_{1/2E})_{min.} = 0.053$ day

Winter

$(k_{pE})_{max.} = \Sigma\epsilon^c L_\lambda = 3.31\ day^{-1}$

$(t_{1/2E})_{min.} = 0.21$ day

Since the chemical transforms rapidly for the summer and winter seasons, it is necessary to carry out Tier 2 experiments to more accurately define direct photolysis rates in aqueous media as a function of the season of the year.

(ii) *Tier 2 Phase 1: Aqueous Photolysis in Sunlight—Illustrative Example 3.* (A) Consider the same scenario as described in illustrative example 2, under paragraph (c)(4)(i)(B) of this section. Using the Tier 2, Phase 1 Procedure, carry out experiments to estimate the rate of direct photolysis and half-life in aqueous solution in the spring for water bodies.

(B) Photolysis experiments and calculations: Since chemical B absorbs appreciably below 340 nm, 11 mm i.d. quartz tubes were used (note: this tube has an approximate pathlength of 1 cm). Chemical B was dissolved directly in pure water and a 1.00×10^{-5} molar solution was prepared at 25°C. Since the water solubility is 1.00×10^{-3} M at 25°C, this sample solution was well below one-half its water solubility. The uv spectrum of this solution in a one cm absorption cell indicated that A_λ was less than 0.05 at 290 nm. Hence, under these conditions, first-order kinetics are applicable.

(C) A series of quartz tubes were filled with this aqueous solution, sealed, and photolysis experiments were carried out in sunlight according to the appropriate procedure described in paragraph (b)(2)(iii)(A) of this section. The experiments were started at noon (1200 hours) on May 8, 1982. The weather conditions are summarized for this period of time and the concentration data given represent the mean of duplicate determinations.

(*1*) May 2, 1982: at t = 0 (noon—1200 hours) $C_o = 1.00 \times 10^{-5}$ M.

(*2*) May 2, 1982: Noon to sunset—clear and sunny.

(*3*) May 3, 1982: Noon (1200 hours). $C_t = 0.840 \times 10^{-5}$ M.

(*4*) May 3, 1982: at 1400 hours the weather conditions were cloudy with rain. The rain and cloudy weather continued until 2200 hours.

(*5*) From sunrise, May 4, 1982 through 1200 hours May 8, 1982, the weather was clear and sunny. At 1200 hours, May 8, 1982, analysis of the samples gave an average concentration of $C_t = 0.400 \times 10^{-5}$ M. Since 60 percent of chemical B transformed, the photolysis experiments were terminated and the control samples were analyzed. The average concentration of the control samples was 0.997×10^{-5} M which was essentially the same as C_o. Hence, no adventitious processes occurred and the loss of chemical was only due to sunlight photolysis.

(D) Listed in the following Table 8 are the times of sunrise and sunset for the dates sunlight photolysis experiments were carried out along with the total number of hours of sunlight.

TABLE 8—SUMMARY OF TIMES FOR SUNRISE AND SUNSET FOR THE PERIOD MAY 2–8, 1982

Date (1982)	Sunrise (a.m.)	Sunset (p.m.	Total sunlight hours
5/2	[illegible]	2010	14.2
5/3	[illegible]	2011	14.2
5/4	[illegible]	2012	14.2
5/5	0557	2013	14.3
5/6	[illegible]	2014	14.3
5/7	0555	2015	14.3
5/8	0554	2016	14.4

(E) The following data summarizes the dates photolyzed, the times exposed to sunlight, the total sunlight photolysis time for each date in days, the total number of days of sunlight photolysis, and the calculation of k^c_P and $t_{1/2}$.

Date	Times photolyzed	Sunlight photolysis time for each date (days)
5/2	1200 hrs. to 2010 hrs. (8.2/14.2)	0.58
5/3	0559 hrs. to 1200 hrs. (6.0/14.2)	0.42
5/3	1200 hrs. to 1400 hrs. (2.0/14.2)	0.14
5/4	0558 hrs. to 2012 hrs.	1.00
5/5	0557 hrs. to 2013 hrs.	1.00
5/6	0556 hrs. to 2014 hrs.	1.00
5/7	0555 hrs. to 2015 hrs.	1.00
5/8	0554 hrs. to 1200 hrs. (6.1/14.4)	0.42

[1] Total hours.

$t = 5.6$ days; $C_o = 1.00 \times 10^{-5}$; $C_t = 0.400 \times 10^{-5}$

$1n(C_o/C_t) = k^c_P t$

$k^c_P = (1/t)\ 1n(C_o/C_t) = (1/5.6)1n(1.00 \times 10^{-5}/0.400 \times 10^{-5})$

$k^c_P = 0.16\ days^{-1}$

$t_{1/2} = 0.693/0.16\ days^{-1} = 4.3$ days

Therefore, the rate constant for direct photolysis of chemical B in tubes in pure

water is 0.16 days^{-1} and the corresponding half-life is 4.3 days for the period of photolysis May 2–8, 1982 at 32.5° north latitude. Using equation 13, under paragraph (b)(2)(i)(J) of this section, the direct photolysis rate constant (k_{pE}) for water bodies is 0.073 days^{-1} and the corresponding half-life ($t_{1/2E}$) is 9.5 days.

(iii) *Tier 2, Phase 2: Aqueous Photolysis in Sunlight—Illustrative Example* 4. (A) Consider the same scenario as described in illustrative examples 2 and 3. Using the Tier 2, Phase 2, procedure, carry out experiments to determine the sunlight reaction quantum yield and estimate the rate constant for direct photolysis in aqueous solution and the half-life for water bodies and clear sky conditions for the summer and winter seasons.

(B) Photolysis Experiments and Calculations: The sunlight photolysis experiments were carried out in the beginning of May 1982, at 32.5° north latitude.

(C) Preparation of the Actinometer Solution: (*1*) The results from the Tier 2, Phase 1, experiments indicated that K^c_p for the test chemical was 0.16 days^{-1}. Since the experiments were carried out in early May at 32.5° north latitude, the value of K^a_p was chosen from Table 2 which corresponds to the spring season and at 30° north latitude; and the value is 483 days^{-1}. Using Equation 11 under paragraph (b)(2)(i) (H) of this section, the molar concentration of pyridine required to adjust the actinometer rate to match the rate of disappearance of the test chemical is

$$[PYR] = 26.9\ (0.16/483) = 8.91 \times 10^{-3}\ \text{molar.}$$

Using this concentration of pyridine, an actinometer solution was (ii)(C) prepared according to the procedure described in paragraph (b)(2) of this section. The quantum yield for this actinometer is calculated using equation 9 under paragraph (a)(3)(vii) of this section.

$$\phi^a_E = 0.0169[PYR] = 0.0169(8.91 \times 10^{-3}) = 1.51 \times 10^{-4}$$

(*2*) Procedures for Tier 2, Phase 2 experiments (under paragraph (b)(2)(iii) of this section) were followed and sunlight experiments were initiated at 1200 hours on May 9, 1982. The mean initial concentration of test chemical was 1.00×10^{-5} molar and the mean initial concentration of PNAP was 1.00×10^{-5} molar. Samples of the chemical and actinometer and the controls were analyzed in triplicate periodically at 1200 hours on May 10, 11, 13, 15, and 16. On May 16, the photolysis experiments were terminated. The mean concentrations of all samples are summarized as follows:

Date	Concentration of chemical (M)	Concentration of actinometer (M)	Concentration of chemical control (M)	Concentration of actinometer control (M)
May 9	1.00×10^{-5}	1.00×10^{-5}	1.00×10^{-5}	1.00×10^{-5}
May 10	0.820×10^{-5}	0.855×10^{-5}	0.997×10^{-5}	1.00×10^{-5}
May 11	0.654×10^{-5}	0.710×10^{-5}	1.00×10^{-5}	0.997×10^{-5}
May 13	0.440×10^{-5}	0.515×10^{-5}	0.996×10^{-5}	0.998×10^{-5}
May 15	0.299×10^{-5}	0.383×10^{-5}	0.999×10^{-5}	0.998×10^{-5}
May 16	0.233×10^{-5}	0.304×10^{-5}	0.997×10^{-5}	0.996×10^{-5}

Since no significant loss of PNAP or test chemical was observed in the control samples, no adventitious processes occurred and the loss of test chemical and PNAP was only due to sunlight photolysis.

(*3*) Using the above data, $\ln (C_o/C_t)$ for the test chemical and actinometer can be calculated and the results are summarized as follows:

t (days)	Chemical		Actinometer	
	$C_t \times 10^5$ (M)	$\ln (C_o/C_t)^c$	$C_t \times 10^5$ (M)	$\ln (C_o/C_t)^a$
0	1.00	0.000	1.00	0.000
1	0.820	0.198	0.855	0.157
2	0.654	0.425	0.710	0.343
5	0.440	0.821	0.515	0.736
5	0.299	1.21	0.383	0.959
7	0.233	1.46	0.304	1.19

(*4*) The ratio of the rate constants, k^c_p/k^a_p, is defined by equation 12 under paragraph (b)(2)(i)(H)(3) of this section.

Equation 12

$$\ln(C_o/C_t)^c = (k^c_p/k^a_p)\ \ln(C_o/C_t)^a.$$

(*5*) Using all the data (including the time point t=0) and linear regression analysis, the slope is found to be 1.237 with a correlation coefficient of 0.9998. Therefore

$$(k^c_p/k^a_p) = 1.24.$$

(*6*) Using the molar absorptivities obtained in example 2 under paragraph (c)(4)(i)(B) of this section and the L_λ values for spring at 30° north latitude in Table 4 under paragraph (c)(3) of this section, the value of $\sum \epsilon^a_\lambda C L_\lambda$ can be calculated as follows:

λ center (nm)	ϵ^c_λ ($M^{-1}cm^{-1}$)	$L^{-1}\lambda$	$\epsilon^c_\lambda L_\lambda$ ($days^{-1}$)
297.5	1684	5.73 (−5)	0.10
300.0	1434	2.50 (−4)	0.36
302.5	1221	7.65 (−4)	0.93
305.0	919	1.79 (−3)	1.65
307.5	742	3.43 (−3)	2.55
310.0	504	5.64 (−3)	1.17
312.5	138	8.27 (−3)	1.14
315.0	94	1.12 (−2)	1.05
317.5	57	1.41 (−2)	0.80
320.0	9	1.70 (−2)	0.15
323.1	2	3.04 (−2)	0.06
330.0	0	1.05 (−1)	0.00

[1] The units of L_λ are 10^{-3} einsteins cm^{-2} day^{-1}

$$\Sigma \epsilon^c_\lambda L_\lambda = 9.96\ \text{days}^{-1}$$

For this experiment, $k^a_p(\Sigma = \epsilon^a_\lambda L_\lambda)$ is 483 days^{-1} (Table 2 under paragraph (c)(3) of this section). All the pertinent data are summarized as follows:

$k^c_p/k^a_p = 1.24$; $\Sigma \epsilon^c_\lambda L_\lambda = 9.96$ days^{-1};
$\Sigma \epsilon^a_\lambda L_\lambda = 483$ days^{-1}; $\phi^a_E = 1.51 \times 10^{-4}$.

Substituting these results into equation 10 under paragraph (a)(3)(vii) of this section yields

$\phi^c_E = (1.24)(483/9.96)(1.51 \times 10^{-4})$
$\phi^c_E = 9.08 \times 10^{-3}$.

(*7*) The rate constants for direct photolysis of test chemical in aqueous media and the half-life for water bodies and clear sky conditions for the winter and summer seasons can be calculated as follows: The values of $\sum \epsilon_\lambda C L_\lambda$ have been calculated from example under paragraph (c)(3)(i)(A) of this section. For summer $\sum \epsilon_\lambda C L_\lambda = 13.0$ days^{-1}; for winter $\Sigma \epsilon_\lambda C L_\lambda = 3.31$ days^{-1}. The reaction quantum yield for the chemical is 9.08×10^{-3}. Using these data in equation 4 under paragraph (a)(3)(iii) of this section yields

Summer

$$k_{pE} = 9.08 \times 10^{-3}(13.0) = 0.118\ \text{days}^{-1}$$

Winter

$$k_{pE} = 9.08 \times 10^{-3}(3.31) = 0.0301\ \text{days}^{-1}.$$

These values can be substituted into equation 2 under paragraph (a)(3)(ii) of this section to obtain the half-lives for these two seasons.

Summer:

$$t_{1/2E} = (0.693/0.118) = 5.9\ \text{days}$$

Winter:

$$t_{1/2E} = (0.693/0.0301) = 23\ \text{days.}$$

(5) *Glossary of important symbols*

PYR—Pyridine.
PNAP—p-Nitroacetophenone.
λ—Wavelength λ.
A_λ—Absorbance at wavelength λ.
a—Actinometer (composed of PNAP/PYR).
ϵ^c_λ—Molar absorptivity of a chemical C.
ϵ^a_λ—Molar absorptivity of the actinometer.
l—light pathlength; the distance traveled by a beam of light passing through the system.
ϕ^c_E—Sunlight reaction quantum yield of chemical c in water.

ϕ^a_E—Sunlight reaction quantum yield of the actinometer in water. Since the reaction quantum yield is independent of λ, $\phi^a_E = \phi^a$ (i.e., the reaction quantum yield of the actinometer measured in the laboratory).

[C]—Molar concentration of chemical c.

[PYR]—Molar concentration of pyridine.

$-d[C]/dt$—Direct photolysis rate of chemical c.

k_{pE}—Direct photolysis sunlight rate constant in water bodies in the environment.

$(k_{pE})_{max}$.—Maximum direct photolysis sunlight rate constant in water bodies in the environment.

k^c_p—Direct photolysis sunlight rate constant of chemical c in water in tubes.

k^a_p—Direct photolysis sunlight rate constant of the actinometer in water in tubes.

$k_{a\lambda}$—Specific light absorption of a photoreactive chemical at a low concentration and at wavelength λ.

k_a—Specific light absorption rate constant integrated over all wavelengths absorbed by the chemical.

k^a_a—Specific light absorption rate constant integrated over all wavelengths absorbed by the actinometer.

$t_{1/2}$—Sunlight half-life of a chemical in water in tubes.

$(t_{1/2E})_{min}$.—The minimum sunlight half-life of a chemical in water bodies in the environment.

I—The numbers of photons of light of wavelength λ in the system per cm^2 per second.

L_λ—Solar irradiance in water in the units 10^{-3} einsteins cm^{-2} day^{-1}.

γ—The geometry factor which represents the ratio of the rate constants in tubes (k_p) to the rate constant in water bodies in the environment (k_{pE}).

(d) *References.* For additional background information on this test guideline the following references should be consulted:

(1) *Astronomical Almanac* (1982).

(2) Dulin, D. and Mill, T. "Development and application of solar actinometers." *Environmental Science and Technology* 16:815 (1982).

(3) *Handbook of Chemistry and Physics.* (Chemical Rubber Co., Cleveland, Ohio)

(4) Mill, T., Davenport, S.E., Dulin D.E., Mabey, W.R., and Bawol, R. *Evaluation and Optimization of Photolysis Screening Protocols.* EPA Report No. 560/5–81–003 (1981).

(5) Mill, T., Mabey, W.R., Bomberger, D.C., Chou T–W., Hendry, D.G., and Smith, J.H. *Laboratory Protocols for Evaluating the Fate of Organic Chemicals in Air and Water.* EPA Report No. 600/3–82–022 (1982).

(6) Mill, T., Mabey, W.R., Hendry, D.G. Winterle, J., Davenport, J., Barich, V., Dulin, D., and Tse, D. *Design and Validation of Screening and Detailed Methods for Environmental Processes.*

(7) U.S. Environmental Protection Agency, Mill, T., Davenport, J.E., Winterle, J.S., Mabey, W.R., Drossman, H., Tse, D., and Liu, A. "Toxic substances process data generation and protocol development," Draft final report, EPA Contract No. 68–03–2981 with EPA Athens Research Laboratory, Office of Research and Development (1984).

(8) Zepp, R.G., and Cline, D.M. "Rates of direct photolysis in aquatic environment" *Environmental Science and Technology* 11:359 (1977).

(9) Zepp, R.G."Quantum yields for reaction of pollutants in dilute aqueous solution" *Environmental Science and Technology*, 12:327 (1978).

(10) Zepp, R.G. Environmental Research Laboratory, U.S. Environmental Protection Agency, College Station Road, Athens, Georgia 30601.

§ 796.3780 Laboratory determination of the direct photolysis reaction quantum yield in aqueous solution and sunlight photolysis.

(a) *Introduction*—(1) *Background and purpose.* (i) Numerous chemicals enter natural aquatic water bodies from a variety of sources. Some pollutants present in aqueous media can undergo photochemical transformation in sunlight by direct photolysis. Therefore, quantitative data in the form of rate constants and half-lives are needed to determine the importance of direct photochemical transformation of pollutants in aqueous media.

(ii) Section 796.3700, the first in a series of aqueous photolysis test methods, was designed to determine the molar absorptivity and reaction quantum yield of a test chemical in aqueous solution. These parameters can be combined with solar irradiance data to determine environmentally relevant rate constants and half-lives in aqueous solutions as a function of latitude and season of the year anywhere in the United States.

(iii) Section 796.3700 was developed as a screening test to obtain the direct photolysis reaction quantum yield of a chemical in aqueous solution by carrying out photolysis experiments in sunlight. This method does not require sophisticated and expensive photochemical equipment and therefore the reaction quantum yield can be easily determined and at a modest cost. However, there are circumstances when this method may not be applicable. For example, this procedure is not applicable for determining the reaction quantum yield of a test chemical when the temperature outdoors falls below zero degrees Centigrade. Furthermore, depending upon the status of a risk assessment for a specific chemical, a more precise value of the reaction quantum yield may be required. Thus, a more comprehensive procedure is needed to determine the direct photolysis reaction quantum yield in the laboratory using specialized photochemical equipment and monochromatic (or narrow band) light. This section describes laboratory procedures for determining the direct photolysis reaction quantum yield in aqueous solution.

(iv) The reaction quantum yield obtained in this test method can be combined with molar absorptivity data and solar irradiance data to determine environmentally relevant rate constants and half-lives in aqueous solution as a function of latitude and season of the year anywhere in the United States.

(v) The procedures described in this test method are very detailed, and the theory of photolysis in aqueous solution is relatively complicated. In order to follow these procedures, it is recommended that the Technical Support Document in the public record for this section should first be studied carefully.

(2) *Definitions and units.* (i) "Radiant energy", or radiation, is defined as the energy traveling as a wave unaccompanied by transfer of matter. Examples include x-rays, visible light, ultraviolet light, radio waves, etc.

(ii) "Absorbance (A_λ)" is defined as the logarithm to the base 10 of the ratio of the initial intensity (I_o) of a beam of radiant energy to the intensity (I) of the same beam after passage through a sample at a fixed wavelength λ. Thus, $A_\lambda = \log_{10} (I_o/I)$.

(iii) The "Beer-Lambert law" states that the absorbance of a solution of a given chemical species, at a fixed wavelength, is proportional to the thickness of the solution (l), or the light pathlength, and the concentration of the absorbing species (C).

(iv) "Molar absorptivity (ϵ_λ)" is defined as the proportionality constant in the Beer-Lambert law when the concentration is given in terms of moles per liter (i.e., molar concentration). Thus, $A_\lambda = \epsilon_\lambda$ Cl, where A_λ and ϵ_λ represent the absorbance and molar absorptivity at wavelength λ and l and C are defined in paragraph (a)(2)(iii) of this section. The units of ϵ_λ are $molar^{-1}$ cm^{-1}. Numerical

values of molar absorptivity depend upon the nature of the absorbing species.

(v) A "first-order reaction" is defined as a reaction in which the rate of disappearance of a chemical is directly proportional to the concentration of the chemical and is not a function of the concentration of any other chemical present in the reaction mixture.

(vi) A "zero-order reaction" is defined as a reaction in which the rate of disappearance of a chemical is independent of the concentration of the chemical or the concentration of any other chemical present in the reaction mixture.

(vii) The "first-order half-life ($t_{1/2}$)" of a chemical is defined as the time required for the concentration of the chemical to be reduced to one-half its initial value.

(viii) The "sunlight direct aqueous photolysis rate constant (k_{pz})" is the first-order direct photolysis rate constant in the units of day^{-1} and is a measure of the rate of disappearance of a chemical dissolved in a water body in sunlight.

(ix) The "solar irradiance in water (L_λ)" is related to the sunlight intensity in water at shallow depths and is proportional to the average light flux (in the units of 10^{-3} einsteins cm^{-2} day^{-1}) that is available to cause photoreaction in the wavelength interval centered at λ over a 24-hour day at a specific latitude and season date.

(x) "The Grotthus-Draper law", the first law of photochemistry, states that only light which is absorbed can be effective in producing a chemical transformation.

(xi) The "Stark-Einstein law", the second law of photochemistry, states that only one molecule is activated to an excited state per photon or quantum of light absorbed.

(xii) The "reaction quantum yield (ϕ_λ)" for an excited state process is defined as the fraction of absorbed light that results in photoreaction at a fixed wavelength λ. It is the ratio of the number of molecules that photoreact to the number of quanta of light absorbed or the ratio of the number of moles that photoreact to the number of einsteins of light absorbed at a fixed wavelength λ.

(xiii) "Direct photolysis" is defined as the direct absorption of light by a chemical followed by a reaction which transforms the parent chemical into one or more products.

A glossary of symbols can be found under paragraph (c)(4) of this section.

(3) *Principle of the test method.* (i) This test method is based on the principles developed by Zepp (1978) under paragraph (d)(13) of this section, the use of low optical density actinometers developed by Mill et al. (1981, 1982) under paragraph (d) (7) and (8) of this section , and Dulin and Mill (1982) under paragraph (d)(4) of this section, and the high optical density ferrioxalate actinometer developed by Parker (1953) under paragraph (d)(12) of this section, and Hatchard and Parker (1956) under paragraph (d)(6) of this section.

(ii) Zepp (1978), under paragraph (d)(13) of this section, published a paper on the determination of the reaction quantum yield for the reaction of pollutants in dilute aqueous solution in the laboratory. Based on this work, two procedures are described to determine the reaction quantum yield of a test chemical at low optical density in the laboratory. These procedures involve the use of: low-optical density test chemical and actinometer; and low-optical density test chemical and high-optical density actinometer.

(A) *Procedure One: Determination of the Reaction Quantum Yield by the Low-Optical Density Test Chemical and Actinometer Method.* (*1*) For a low optical density test chemical and actinometer in which the absorbance of aqueous solutions is less than 0.02, the reaction quantum yield of a test chemical θ_c at wavelength λ is given by equation

Equation 1

$$\phi_c = (k_{pc}/k_{pa})(\epsilon_{\lambda a}/\epsilon_{\lambda c})\phi_a.$$

where ϵ_a and $\epsilon_{\lambda c}$ are molar absorptivities of the actinometer and test chemical, respectively, at wavelength λ, ϕ_a is the reaction quantum yield of the actinometer at wavelength λ, and k_{pa} and k_{pc} are the first-order direct photolysis rate constant for actinometer and test chemical, respectively. These rate constants are defined by the equations

Equation 2

$$\ln(C_o/C_t)_a = k_{pa}t$$

Equation 3

$$\ln(C_o/C_t)_c = k_{pc}t.$$

where $(C_o)_a$ and $(C_t)_a$ are the molar concentrations of actinometer at time $t=0$ and t and $(C_o)_c$ and $(C_t)_c$ are the molar concentrations of test chemical at time $t=0$ and t. Since k_{pa} and k_{pc} are first-order rate constants, the half-lives of actinometer and test chemical are:

Equation 4

$$(t_{1/2})_a = 0.693/k_{pa}$$

Equation 5

$$(t_{1/2})_c = 0.693/k_{pc}.$$

(*2*) If both the actinometer and test chemical solutions are photolyzed in identical cells, equation 3 under paragraph (a)(3)(ii)(A)(*1*) of this section can be divided into equation 2 under paragraph (a)(3)(ii)(A)(*1*) of this section. Carrying out this operation and rearranging the resultant equation yields

Equation 6

$$\ln(C_o/C_t)_c = (k_{pc}/k_{pa})\ln(C_o/C_t)_a.$$

(*3*) Procedure One involves the simultaneous photolysis of test chemical and actinometer in an Ace-type photochemical "merry-go-round" reactor (PMGRR) using monochromatic light of wavelength λ. Two low optical density actinometers have been developed by SRI International for the Office of Toxic Substances/U.S. Environmental Protection Agency to measure the light intensity incident on the sample during photolysis [Mill et al. (1981, 1982) under paragraph (d)(7) and (8) of this section and Dulin and Mill (1982) under paragraph (d)(4) of this section]. These actinometers are: (*i*) p-nitroacetophenone-pyridine actinometer (PNAP/PYR); and (*ii*) p-nitroanisole-pyridine actinometer (PNA/PYR). The rate constant of each of these actinometers can be adjusted to match the rate constant of the test chemical by adjusting the concentration of pyridine. Since the rate constant is a function of the reaction quantum yield of the actinometer, the rate constant can be adjusted according to the following equations:

Equation 7

PNAP/PYR actinometer $\phi_a = 0.0169[PYR]$

Equation 8

PNA/PYR actinometer $\phi_a = 0.437[PYR] + 0.000282$,

where [PYR] is the molar concentration of pyridine for a PNAP or PNA concentration of approximately 1×10^{-5} M.

(*4*) The laboratory procedure for determining the reaction quantum yield of a test chemical in aqueous solution has been divided into three phases using a uv-visible absorption spectrophotometer, an Ace-type PMGRR, and a 450 watt medium pressure mercury lamp with appropriate filters to isolate the monochromatic wavelength λ. In Phase 1, the molar absorptivities of a test chemical, ϵ_{313c} and ϵ_{366c}, are determined with a UV-visible absorption spectrophotometer using procedures outlined in §§796.1050 and 796.3700. Based on these results, photolysis experiments are carried out at 313 or 366 nm corresponding to the higher value of ϵ_{313c} or ϵ_{366c}.

(*5*) The Phase 2 procedure is composed of trial photolysis

experiments at the chosen wavelength λ (313 or 366 nm) in an Ace-type PMGRR to determine the approximate rate constant and half-life of the test chemical and to choose the appropriate actinometer which has a rate constant approximately the same as the rate constant of the test chemical. First, an aqueous solution of test chemical at low optical density is photolyzed in the PMGRR at the chosen wavelength λ to determine K_{pc} and $(t_{1/2})_c$ using equations 3 and 5, respectively under paragraph (a)(3)(ii)(A)(*1*) of this section. If $(t_{1/2})_c$ is less than 12 hours, use the PNA/PYR actinometer. If $(t_{1/2})_c$ is greater than 12 hours, then use the PNAP/PYR actinometer. Trial photolysis experiments are then carried out at wavelength λ with the chosen low optical density actinometer to determine the molar concentration of pyridine needed to make the rate constant of the actinometer approximately match the rate constant of the test chemical.

(*6*) In the Phase 3 procedure, low-optical density aqueous solutions of test chemical and actinometer (at a fixed molar concentration of pyridine [PYR]) are photolyzed in identical tubes in the PMGRR at wavelength λ. Concentrations of test chemical and actinometer are measured as a function of time. These data are used in Equation 6 under paragraph (a)(3)(ii)(A)(*2*) of this section to determine the ratio of the rate constants (k_{pc}/k_{pa}). The reaction quantum yield of the actinometer ϕ_a, employed in these experiments, can be determined at the molar concentration of pyridine [PYR] using Equation 7 or 8 under paragraph (a)(3)(ii)(A)(*3*) of this section. These data, along with the molar absorptivity of the test chemical (ϵ_{313_c} or ϵ_{366_c}) and the actinometer (ϵ_{313_a} or ϵ_{366_a}) are substituted in equation 1 under paragraph (a)(3)(ii)(A)(*1*) of this section to determine the reaction quantum yield of the test chemical ϕ_c.

(B) *Procedure Two: Determination of the Reaction Quantum Yield by the Low-Optical Density Test Chemical and High Optical Density Actinometer Method.* (*1*) For a low-optical density test chemical (absorbance <0.02) and for a high optical density actinometer (absorbance >2), such as the ferrioxalate actinometer, the reaction quantum yield of the test chemical ϕ_c at wavelength λ is given by the equation

Equation 9

$$\phi_c = \phi_a(k_{pc}/k_{pa})(2.303\epsilon_{\lambda c}l)^{-1},$$

where ϕ_a is the reaction quantum yield of the ferrioxalate actinometer at wavelength λ, $\epsilon_{\lambda c}$ is the molar absorptivity of the test chemical at wavelength λ, l is the cell pathlength, k_{pc} is the first-order direct photolysis rate constant for the test chemical, and k_{pa} is the zero-order direct photolysis rate constant for the ferrioxalate actinometer. These rate constants are defined by the equations.

Equation 10

$$\ln(C_o/C_t)_c = k_{pc}t$$

Equation 11

$$(C_t)_a = k_{pa}t,$$

where $(C_o)_c$ and $(C_t)_c$ are the molar concentrations of the test chemical at time t=o and t and $(C_t)_a$ is the molar concentration of the ferrous ion formed at time t.

(*2*) The laboratory procedure for determining the reaction quantum yield of the test chemical is divided into two phases using a UV-visible absorption spectrophotometer and a photochemical optical bench (POB) or a PMGRR containing a 450-watt medium pressure lamp with appropriate filters to isolate the monochromatic wavelength λ. In Phase 1, the molar absorptivities of test chemical (ϵ_{313_c} and ϵ_{366_c}) are determined using spectroscopic procedures outlined in §§ 796.1050 and 796.3700. Based on these results, photolysis experiments are carried out at 313 or 366 nm corresponding to the higher value of ϵ_{313_c} or ϵ_{366_c}.

(*3*) In the Phase 2 procedure, aqueous low-optical density test chemical solution (absorbance <0.02) and aqueous high-optical density solution of ferrioxalate actinometer (absorbance >2) are photolyzed sequentially in identical cells in POB or PMGRR at wavelength λ. In the first and third set of experiments, the ferrioxalate actinometer is photolyzed for a few minutes and the molar concentration of ferrous ion formed $(C_t)_a$ is measured as a function of time t. These data are used in equation 11 under paragraph (a)(3)(ii)(B)(*1*) of this section to determine an average value of the actinometer rate constant $(k_{pa})_{ave.}$. The second series of experiments involves the photolysis of the aqueous solution of test chemical in the POB or PMGRR in identical cells to those used in the actinometer experiments and the molar concentration of test chemical $(C_t)_c$ is measured as a function of the time t. These data are used in equation 10 under paragraph (a)(3)(ii)(B)(*1*) of this section to determine k_{pc}. Using k_{pc} and $(k_{pa})_{ave.}$, the molar absorptivity of the test chemical (ϵ_{313_c} or ϵ_{366_c}), the pathlength of the cell l, and the reaction quantum yield of the ferrioxalate actinometer ϕ_a at wavelength λ in equation 9 under paragraph (a)(3)(ii)(B)(*1*) of this section, the reaction quantum yield of the test chemical ϕ_c can be determined.

(*4*) As described in detail in § 796.3700 and the public record for that test guideline, and briefly in the public record for this section, the direct sunlight photolysis of a chemical in an optically thin aqueous solution can be described by the following equations:

Equation 12

$$\ln(C_o/C_t) = k_{pE}t$$

Equation 13

$$t_{1/2E} = 0.693/k_{pE}$$

Equation 14

$$k_{pE} = \phi_E k_a.$$

where ϕ_E is the reaction quantum yield of the chemical in dilute solution and is independent of the wavelength, $k_a = \Sigma k_{a\lambda}$, the sum of $k_{a\lambda}$ values for all wavelengths of sunlight that are absorbed by the chemical (i.e., the light absorption rate constant), t is the time, C_o and C_t are the molar concentrations of chemical at t=0 and t, and $t_{1/2E}$ represents the half-life. The term k_{pE} represents the first-order direct photolysis rate constant for a chemical in a water body in sunlight in the units of reciprocal time. In general, the reaction quantum yield ϕ_E is equivalent to the reaction quantum yield ϕ_c determined in the laboratory.

(*5*) Furthermore, under the same conditions cited above, the first-order direct photolysis rate constant, k_{pE}, is given by the equation.

Equation 15

$$k_{pE} = \phi_E \Sigma \epsilon_{\lambda c} L_\lambda,$$

where ϕ_E is the reaction quantum yield, $\epsilon_{\lambda c}$ is the molar absorptivity in the units molar^{-1} cm^{-1}, L_λ is the solar irradiance in water in the units 10^{-3} einsteins cm^{-2} day^{-1}, and the summation is taken over the range $_\lambda$=290 to 800 nm. L_λ is the solar irradiance at shallow depths for a water body under clear sky conditions and is a function of latitude and season of the year. Solar irradiance data are tabulated in § 796.3700(c)(3), Tables 3–6 as a function of latitude and season of the year.

(*6*) A simple screening test has been developed in § 796.3700(c)(1)(i)(A) equation 15. As an approximation, it has been assumed that the reaction quantum yield ϕ_E is equal to one, the maximum value. As a result, the upper limit for the direct photolysis sunlight rate constant in aqueous solution is obtained and equation 15 becomes

Equation 16

$$(k_{pE})_{max.} = \Sigma \epsilon_{\lambda c} L_\lambda.$$

Using equation 16 in equation 13 under paragraph (a)(3)(ii)(B)(*4*) of this section,

the lower limit for the half-life is then given by

Equation 17

$(t_{1/2E})_{min.} = 0.693/(k_{pE})_{max.}$

The molar absorptivity can be determined experimentally by the method outlined in paragraph (b)(2)(i) of this section and the solar irradiance data are tabulated in § 796 (c)(3), Tables 3–6. These data can then be used in equation 16 to calculate $(k_{pE})_{max.}$. Finally, $(k_{pE})_{max.}$ can be substituted in equation 17 to calculate $(t_{1/2E})_{min.}$. Based on these data, a decision can be made whether to determine the reaction quantum yield of the test chemical in the laboratory.

(*7*) Once the reaction quantum yield has been determined in the laboratory by Procedures One or Two under paragraphs (b) (2) and (3) of this section, it can be combined with the molar absorptivity date $\epsilon_{\lambda c}$ and the appropriate L_λ values to calculate k_{pe} as a function of latitude and season of the year anywhere in the United States, using Equation 15 under paragraph (a)(3)(ii)(B)(*5*) of this section. The corresponding half-life can be calculated using k_{pe} in equation 13 under paragraph (a)(3)(ii)(B)(*4*) of this section.

(4) *Applicability and specificity.* (i) For environmental photochemistry, the general procedures outlined in this test method are applicable to all chemicals which have UV-visible absorption maxima in the range 290 to 800 nm. Some chemicals have absorption maxima significantly below 290 nm and consequently cannot undergo direct photolysis in sunlight (e.g., chemicals such as alkanes, alkenes, alkynes, saturated alcohols, and saturated acids). This is a direct consequence of the Grotthus-Draper law of photochemistry. Some chemicals have absorption maxima significantly below 290 nm but have measurable absorption tails above the baseline in their absorption spectrum at wavelengths greater than 290 nm. Photolysis experiments should be carried out for these chemicals.

(ii) These test methods are applicable to pure chemicals and not to technical grade chemicals.

(iii) The molar absorptivity data ($\epsilon_{\lambda c}$) obtained in paragraph (b)(2)(i) of this section can be combined with the appropriate L_λ data to estimate $(k_{pE})_{max}$ and $(t_{1/2E})_{min.}$ at shallow depths in water bodies as a function of latitude and season of the year in the U.S. If these data indicate that aqueous photolysis is an important process relative to other transformation processes (e.g., biodegradation, hydrolysis, oxidation, etc.), then it is recommended that the reaction quantum yield ϕ_c be determined in the laboratory by Procedures One or Two outlined under paragraph (b) (2) and (3) of this section. Once ϕ_c has been determined, it can be combined with the molar absorptivity data $\epsilon_{\lambda c}$ and the appropriate L_λ data to calculate k_{pE} at shallow depths in water bodies as a function of latitude and season of the year in the United States. The corresponding half-life can then be calculated from k_{pE}.

(iv) Procedure One under paragraph (b)(2) of this section is only applicable to solutions of test chemicals and actinometers which have low optical densities (i.e., absorbance <0.02). Procedure Two under paragraph (b)(3) of this section is only applicable to solutions of test chemicals with low optical densities and actinometers with high optical densities (i.e., absorbance >2).

(v) Procedure One, as described in detail under paragraph (B)(2) of this section, is limited to the spectral region 290–400 nm because the recommended low optical density actinometers are only sensitive to light in this region. However, Procedure Two, under paragraph (b)(3) of this section using the ferrioxalate actinometer is useful in the spectral region 290–500 nm. This procedure can be extended up to approximately 750 nm using the Reinicke's salt actinometer [de Mayo and Shizuka (1976) under paragraph (d)(3) of this section].

(vi) There is a third procedure which could be used to determine ϕ_c in the laboratory. This procedure involves the determination of ϕ_c under the conditions when the test chemical and actinometer solutions both have high optical density. However, in general, this method is limited to only very soluble or strongly absorbing organic compounds. Thus, this method is not described in detail as a procedure in this test method. However, this method is briefly described in the public record for this section.

(vii) This test method has been designed to determine the molar absorptivity of a test chemical, $\epsilon_{\lambda c}$, and its quantum yield, ϕ_c. These parameters can be used to determine environmental rate constants at low absorbance and shallow depths in pure water as a function of latitude and season of the year. Tables 3 to 6 containing solar irradiance data have been included in § 796.3700 to carry out all the calculations. However, the method is really very general and can be extended to determine the rates of photolysis over a range of other environmental conditions using a computer program. Zepp has written a GC SOLAR computer program to calculate the rates of photolysis as a function of depth in water, as a function of the attenuation (or absorption) coefficient of the water ($\alpha\lambda$) for natural water bodies, the average ozone layer thickness that pertains to the seasons and location of interest, and as a function of latitude and season of the year. The computer program is available on written request to R. Zepp, Environmental Research Laboratory, U.S. Environmental Protection Agency, College Station Road, Athens, Georgia 30601.

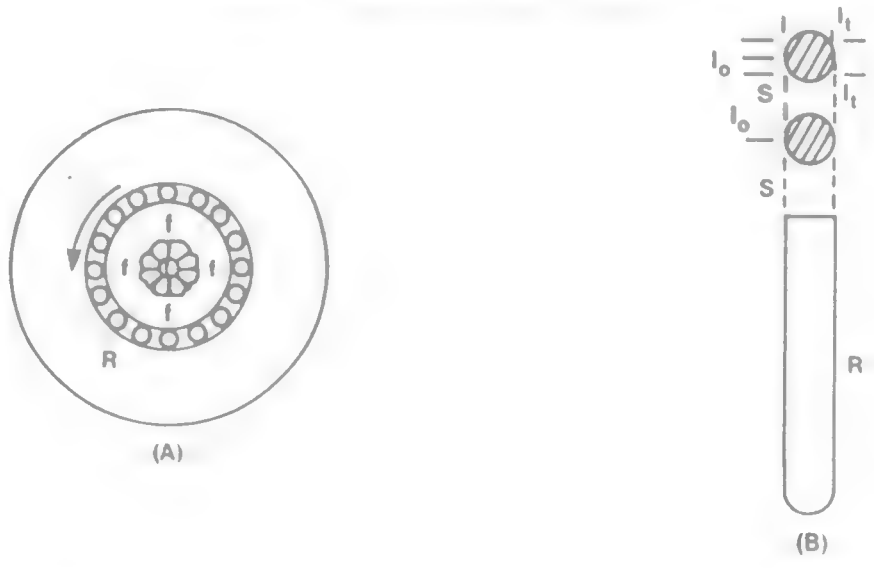
(b) *Test procedures*—(1) *Test conditions*—(i) *UV-visible absorption spectrophotometer.* The recommended uv-visible absorption spectrophotometer is described in § 796.1050.

(ii) *Special photochemical laboratory Equipment.* There are a number of different designs of photochemical equipment which can be used to measure the reaction quantum yield in the laboratory and the one chosen will depend on the equipment available and to a certain extent on the light source and filter system chosen for the measurement. The apparatus chosen must contain a light source, appropriate filters, sample holders, and cells which allow solutions of test chemical and actinometer to be reproducibly irradiated with a uniform and constant amount of light at a discrete or narrow band wavelength λ. The temperature of the reaction cells must be at reasonably constant temperature $t_i \pm 2$ °C in the range 20 to 30 °C. The apparatus should be housed in a separate part of a laboratory and properly shielded so that laboratory personnel are not exposed to uv light and to exclude extraneous light that could contribute to the photoreaction of chemicals. If the ferrioxalate actinometer is used, then actinometry experiments must be carried out in a darkroom with photographic "safelights". Excellent reviews and descriptions of a wide variety of photochemical equipment used to measure the reaction quantum yield in the laboratory are given by Calvert and Pitts (1966) under paragraph (d)(2) of this section, de Mayo and Shizuka (1976) under paragraph (d)(3) of this section, Murov (1973) under paragraph (d)(10) of this section, and Mill et al. (1982) under paragraph (d)(9) of this section, and these references are highly recommended.

(A) *Design of the apparatus.* (*1*) *Photochemical "Merry-Go-Round" Reactor.* (*i*) The design of the photochemical "merry-go-round" reactor (PMGRR) has been described in the literature [Moses et al. (1969) under paragraph (d)(11) of this section, Murov (1973) under paragraph (d)(10) of this

section, de Mayo and Shizuka (1976) under paragraph (d)(3) of this section]. In the design of a PMGRR, the light source is in the center of the apparatus with reaction tubes arranged in a ring around the light source. The ring rotates around the light source to give a uniform irradiation of the reaction tubes, as depicted in the following Figure 1:

Figure 1—"Merry-Go-Round" reactor



(A) "MERRY-GO-ROUND" APPARATUS
(B) CYLINDRICAL CELL (R). I_o = INCIDENT LIGHT; I_t = TRANSMITTED LIGHT PASSED THROUGH CELL; S = SLIT

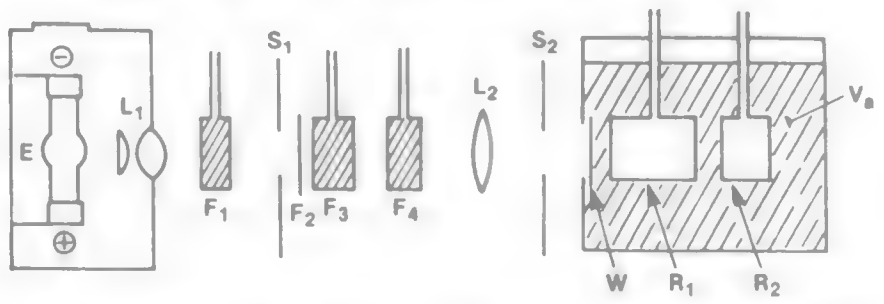
(a) "Merry-go-round" Apparatus;
(b) Cylindrical cell (R). I_o=incident light;
I_t=transmitted light passed through cell;
S=slit.

Glass filters (f) may be inserted between the light source and the reaction tubes. Filter solutions (f) may also be contained in the immersion well holding the light source or in a glass donut that surrounds the light source. In order to dissipate the heat generated by the light source, the PMGRR may be immersed in a water bath or a stream of air may be passed through the space between the light source and the filters. The filter solutions can be circulated to an external cooling source. There are two types of PMGRR equipment; the Ace-type and the Moses-type and both are very similar. The Ace-type PMGRR is designed so that the entire reaction cell is irradiated while the Moses-type PMGRR [Moses et al. (1969) under paragraph (d)(11) of this section] is designed with windows (which act as slits with a fixed aperture) so that only a narrow portion of the reaction cell is irradiated. Since the Ace-type PMGRR is the only one commercially available, this test method has been specifically designed to use this PMGRR. However, if the Moses-type PMGRR is available, this test method has to be slightly modified as described in public record for this section.

(*ii*) Small cylindrical tubes are used in the PMGRR to hold small volumes of test chemical and actinometer solutions. One tube is used for each datum point measured.

(*2*) *Photochemical optical bench.* The photochemical optical bench (POB) is composed of a light source, a lens, glass or chemical solution filters, and a reaction vessel. The component parts are mounted on a rail in the optical bench. A typical POB apparatus is depicted in the following Figure 2:

Figure 2—A typical optical train



A TYPICAL OPTICAL TRAIN, WHERE E: POINT SOURCE ARC; L: LENS; F: SOLUTION AND GLASS FILTERS; R_1: REACTION CELL; R_2: ACTINOMETER CELL; V_a: THERMOSTAT VESSEL; W: QUARTZ WINDOW

A typical optical train, where E: point source arc;

L: lens; F: solution and glass filters; R_1: reaction cell;

R_2: actinometer cell; V_a: thermostat vessel; W: quartz window.

The light source is located at the end of the bench and contains a housing around a light source and a lens to collimate the beam. The light passes through glass filters and/or through cells containing filter solutions to transmit wavelength. Filter solutions in the cell may be circulated through a cooling system and the glass filters should be cooled with a stream of air to prevent heat buildup. The photochemical reaction vessel containing the test chemical solution or actinometer solution is mounted coaxially with the lamp on the bench so that the filtered light enters the window of the reaction vessel. The reaction vessel should be temperature controlled by circulating constant temperature water through side walls. The light flux is usually measured before and after the photolysis of the test chemical solution. Commercially available optical benches are highly recommended but simple "home-made" benches can be used [Andre (1977) under paragraph (d)(1) of this section]. If a "home-made" bench is used, it must be completely described.

(B) *Light sources.* There are a number of light sources which are available for use in photochemical studies: for example, low, medium, and high pressure mercury lamps; xenon lamps; and lasers. The characteristics and application of these lamps are described in detail by Calvert and Pitts (1966) under paragraph (d)(3) of this section, Murov (1973) under paragraph (d)(10) of this section, and de Mayo and Shizuka (1976) under paragraph (d)(3) of this section. The use of a POB or PMGRR will often narrow the choice of lamp with regard to use of a point source or a tube-type lamp, since the former can be focused to give a collimated beam while the latter cannot. The light source should emit light at a constant and high intensity. The 450 watt medium pressure mercury lamp is highly recommended for use in this test method.

(C) *Light filtering systems.* (*1*) Monochromatic or narrow band wavelength light is essential for the accurate determination of the reaction quantum yield of a test chemical. Various systems for isolating monochromatic or narrow band wavelengths are described by Calvert and Pitts (1966) under paragraph (d)(2) of this section, Murov (1973) under paragraph (d)(10) of this section, and de Mayo and Shizuka (1976) under paragraph (d)(3) of this section. Two filter systems commonly used to isolate the 313 and 366 bands from a 450 watt medium pressure mercury lamp are highly recommended and have been incorporated in this test method. These two filter systems are described as follows:

(*i*) 313 nm filtering system: Corning Glass CS–754 filter (if the test chemical does not absorb light at wavelengths greater than 400 nm, this filter is not needed. The 754 filter is designed to block out visible light) with 0.005 M potassium chromate solution containing 3 percent sodium carbonate.

(*ii*) 366 nm filtering system: Corning Glass CS 0–52 and CS 7–60 filters.

(*2*) Reagent-grade chemicals should be used to prepare the chemical filter solution. Since this filter solution (and in general any filter solution) degrades slowly over prolonged periods of photolysis, the solution should be carefully monitored. Even when tap water is used to cool the lamp, the buildup of solid material or algae may reduce the light intensity; and this must be checked repeatedly.

(D) *Reaction cells.* (*1*) In general, reaction cells of large volume are appropriate for POB equipment, while small reaction cells are used for PMGRR equipment. These cells should be constructed of borosilicate glass or quartz. Actinometer and test chemical solutions must be photolyzed in identical cells and should contain the same volumes of actinometer and test chemical solution.

(*2*) For the PMGRR equipment, disposable culture tubes (13 × 100 mm) with Teflon-lined screw caps or quartz tubes (13 × 100 mm) with quartz ground glass stoppers or borosilicate screw caps, Teflon-lined, are recommended for use as reaction tubes. Grease should be avoided since hydrophobic chemicals might adsorb to it. In carrying out the photolysis experiments, one tube is used for each datum point measured. The pathlength of these cells is discussed in paragraph (b)(1)(iii) of this section.

(*3*) For the POB equipment, the most common and functional design for reaction cells is a cylindrical shape with optically flat circular windows fused to each end of the cylinder and at right angles to its axis. The windows should be made of material that will transmit 100 percent of the light at the desired wavelengths. Optically flat quartz windows are recommended. The size of the cylindrical reaction cell and windows should be consistent with the dimensions of the light beam used in the equipment. The reaction cell should be of sufficient volume to permit removal of samples for analysis without significantly altering the volume of the reaction solution in the cell. The cell pathlength can be measured directly or it can be determined by the procedure discussed in paragraph (b)(1)(iii) of this section. Details for the construction of these reaction cells may be found in Calvert and Pitts (1966) under paragraph (d)(2) of this section and de Mayo and Shizuka (1976) under paragraph (d)(3) of this section.

(iii) *Cell pathlength.* Zepp (1978) under paragraph (d)(b) of this section, described an experimental method using an isolated wavelength band to determine the effective pathlength of any cell. This procedure is described in the public record for this section. This procedure has been used to measure the effective pathlength of Corning Glass culture tubes 13 × 100 mm and it was found that l was 11.2 mm [Mill et al. (1982) under paragraph (d)(9) of this section]. In a similar manner, reaction tubes made from borosilicate glass stock of O.D. 12 mm had an effective pathlength of 10.0 mm [Mill et al. (1982) under paragraph (d)(9) of this section]. This procedure can be used to measure the pathlength of rectangular cells designed for the POB apparatus.

However, it is recommended that the pathlength of the rectangular cells be measured directly with a precise centimeter ruler or an equivalent measuring device.

(iv) *Solvents.* (A) If the half-life of an aqueous solution of test chemical in the photochemical equipment is less than 24 hours, then distilled water meeting ASTM Type II standards, or an equivalent grade, is recommended for use in this test method. If the half-life of an aqueous solution of test chemical in the photochemical equipment is greater than 24 hours, then water meeting ASTM type IIA standards, or an equivalent grade, is highly recommended for use in this test method to minimize biodegradation. ASTM Type II and IIA water are described in ASTM D 1193–77. Air saturated water is required for photolysis of test chemical solutions. Air saturated water can be easily prepared by allowing the ASTM Type II water to equilibrate in a vessel plugged with cotton or ASTM Type IIA water to equilibrate in a vessel plugged with sterile cotton. ASTM D 1193–77 is available for inspection at the Office of the Federal Register, Rm. 8401, 1100 L St., NW., Washington, DC. This incorporation by reference was approved by the Director of the Office of the Federal Register. This material is incorporated as it exists on the date of approval and a notice of any change in this material will be published in the **Federal Register.** Copies of the incorporated material may be obtained from the Document Control Officer (TS–793), Office of Toxic Substances, EPA, Rm. 107, 401 M St., SW., Washington, DC 20460, and from the American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103.

(B) Reagent grade acetonitrile is recommended as the organic cosolvent with water in photochemical studies. Spectrograde acetonitrile or methanol is recommended for spectroscopic studies to determine the molar absorptivity of the test chemical.

(v) *Sterilization.* If the half-life of an aqueous solution of test chemical in the photochemical equipment is greater than 24 hours, then it is important to sterilize all glassware and to use aseptic conditions in the preparation of all solutions for photolysis studies in order to eliminate or minimize biodegradation. Glassware can be sterilized in an autoclave or by any other suitable non-chemical method.

(vi) *pH effects.* It is recommended that all photolysis and molar absorptivity experiments be carried out at pHs at least two pH units above the pK_a and at least two pH units below the pK_a for any chemical that ionizes or protonates (e.g., carboxylic acids, phenols, and amines). Buffers described in paragraph (b)(2)(i) of this section should be used.

(vii) *Volatile chemical substances.* Special care should be taken when testing a volatile chemical so that the chemical substance is not lost due to volatilization during the course of the photolysis experiment. Thus, it is important to effectively seal the reaction vessels. Disposable culture tubes with Teflon-lined screw caps or quartz tubes with quartz or borosilicate screw caps, Teflon-lined, are recommended. Grease should not be used. Volatile compounds can be conveniently studied in culture tubes equipped with gas-tight Mininert® valves. Samples can be introduced into or removed from the tubes through the septum in these valves with no loss of substrate. As an alternative, the tubes can be sealed with a torch. In addition, the reaction vessels should be as completely filled as is possible to minimize volatilization to any air space.

(viii) *Control solution.* It is extremely important to take certain precautions to prevent loss of chemical from the reaction vessels by processes other than photolysis. For example, biodegradation and volatilization can be eliminated or minimized by use of sterile conditions and minimal air space in sealed vessels. Hydrolysis is a process which cannot be minimized by such techniques. Thus, control vessels containing test substance which are not exposed to light are required. In this way, the loss of test chemical in processes other than photolysis may be determined and eliminated or minimized. For simplicity, if the loss of chemical in the control is small (i.e., approximately 10 percent or less), one can calculate a first-order loss, k_{loss}, and subtract it from $(k_p)_{obs}$ to give the corrected direct photolysis rate constant K_p. If hydrolysis is found to be significant (greater than 10 percent), hydrolysis studies should be carried out first under § 796.3500.

(ix) *Absorption Spectrum as a criterion for performing the reaction quantum yield experiments.* This aqueous photolysis test is applicable to all chemicals which have UV-visible absorption maxima in the range 290–800 nm. Some chemicals have absorption maxima significantly below 290 nm but have measurable absorption tails above the baseline in their absorption spectrum at wavelengths greater than 290 nm. Photolysis experiments should be carried out for these chemicals to determine the reaction quantum yield. The absorption spectrum of the chemical in aqueous solution can be measured by the procedures given in § 796.1050.

(x) *Actinometers.* Chemical actinometers are used in reaction quantum yield experiments to measure the integrated light intensity incident on the sample during photolysis. Chemical actinometers have photochemical reactions which have well-defined reaction quantum yields ϕ_a at wavelength λ.

(A) *Low Optical Density Actinometers.* Two low optical density actinometers (absorbance <0.02) are described which can be used to determine the reaction quantum yield of a test chemical at low optical density (absorbance < 0.02) in Procedure One, under paragraph (b)(2) of this section. These actinometers are: p-nitroacetophenone-pyridine actinometer (PNAP/PYR); and p-nitroanisole-pyridine actinometer (PNA/PYR). The rate constants and half-lives of these actinometers can be adjusted to match the rate constant and half-life of the test chemical by adjusting the concentration of pyridine. With a 450-watt medium pressure mercury lamp in an Ace-type PMGRR, the PNAP/PYR actinometer can be adjusted with pyridine to have half-lives that range from greater than 12 hours to several weeks while the PNA/PYR actinometer can be adjusted with pyridine to have half-lives that range from approximately 15 minutes to approximately 12 hours (if a Moses-type PMGRR is used, then new criteria have to be defined to determine which of these two actinometers should be used. Details in the public record for this section).

(*1*) *p-Nitroacetophenone-Pyridine Actinometer (PNAP/PYR).* (*i*) The reaction quantum yield of the PNAP/PYR actinometer is a function of the molar concentration of pyridine [PYR] and this relationship is given by equation 7 under paragraph (a)(3)(ii)(A)(*3*) of this section. This equation is valid up to 0.2 M pyridine. The initial concentration of PNAP (C_o) is precisely set in the range of approximately 1×10^{-5} M. The molar absorptivities of PNAP at 313 and 366 nm are: $\epsilon_{313_a} = 2{,}056\ M^{-1}\,cm^{-1}$; and $\epsilon_{366_a} = 160\ M^{-1}\,cm^{-1}$. The chemical analysis of PNAP is given in paragraph (b)(1)(xi)(B) of this section.

(*ii*) Trial photolysis experiments are required to determine the concentration of pyridine needed to adjust the rate constant of the actinometer to approximately equal the rate constant of the test chemical (within ± 50 percent). In the Phase 2 experiments of Procedure 1 under paragraph (b)(2)(ii) of this section, the rate constant of the test chemical k_{pc} is determined in the Ace-type PMGRR with a 450-watt mediun

pressure mercury lamp. As an approximation, for the PNAP/PYR actinometer in the PMGRR with a 450 watt medium pressure mercury lamp, the concentration of pyridine needed to adjust the rate constant of the actinometer to approximately equal the rate constant of the test chemical at 313 and 366 nm is given by the following equations:

Equation 18

at 313 nm [PYR] = 1.16 k_{pc}

Equation 19

at 366 nm [PYR] = 5.95k_{pc},

where k_{pc} is in the units of (hours)$^{-1}$ and [PYR] is the molar concentration of pyridine.

(*iii*) A trial experiment is then carried out in the Phase 2 procedure under paragraph (b)(2)(ii) of this section by preparing the actinometer with the molar concentration of pyridine [PYR] estimated from equations 18 or 19 under paragraph (b)(1)(X)(A)(*1*)(*ii*) of this section and photolyzing the actinometer solution at a fixed molar concentration of PNAP (C_o) in the PMGRR at 313 or 366 nm. After approximately 50 percent transformation, the concentration of PNAP (C_t) is recorded at time t and an approximate rate constant k_{pa} is calculated using these data in Equation 2 under paragraph (a)(3)(ii)(A)(*1*) of this section. This trial experiment is repeated by adjusting the molar concentration of pyridine [PYR] until the rate constant of the test chemical and actinometer are approximately equal.

(*2*) *p-Nitroanisole-Pyridine Actinometer (PNA/PYR).* (*i*) The reaction quantum yield of the PNA/PYR actinometer is a function of the molar concentration of pyridine [PYR] and this relationship is given by equation 8 under paragraph (a)(3)(ii)(A)(*B*) of this section. This equation is valid up to 0.02 M pyridine. The initial concentration of PNA (C_o) is precisely set in the range of approximately 1×10^{-5} M at 366 nm and at approximately 0.4×10^{-5} M at 313 nm. The molar absorptivities of PNA at 313 and 366 nm are: $\epsilon_{313_a} = 10{,}300\ M^{-1}\ cm^{-1}$; and $\epsilon_{366_a} = 1{,}990\ M^{-1}\ cm^{-1}$. The chemical analysis for PNA is given in paragraph (b)(1)(xi)(C) of this section.

(*ii*) Trial photolysis experiments are required to determine the concentration of pyridine needed to adjust the rate constant of the actinometer to approximately equal the rate constant of the test chemical (within ± 50 percent). In the Phase 2 experiments of Procedure 1 under paragraph (b)(2)(ii) of this section, the rate constant of the test chemical k_{pc} is determined in an Ace-type PMGRR with a 450-watt medium pressure mercury lamp. As an approximation, for the PNA/PYR actinometer in the PMGRR with a 450 watt medium pressure mercury lamp, the concentration of pyridine needed to adjust the rate constant of the actinometer to equal the rate constant of the test chemical at 313 and 366 nm is given by the following equations:

Equation 20

at 313 nm [PYR] = 8.93×10^{-3} (k_{pc} − 0.0722)

Equation 21

at 366 nm [PYR] = 1.85×10^{-3} (k_{pc} − 0.0349)

where k_{pc} is in the units of (hours)$^{-1}$ and [PYR] is the molar concentration of pyridine.

(*iii*) A trial experiment is then carried out in the Phase 2 procedure under paragraph (b)(2)(ii) of this section by preparing the actinometer with the molar concentration of pyridine [PYR] estimated from equation 20 or 21 under paragraph (b)(1)(X)(A)(*2*)(*ii*) of this section and photolyzing the actinometer solution at a fixed molar concentration of PNA (C_o) in the Ace-type PMGRR at 313 or 366 nm. After approximately 50 percent transformation, the concentration of PNA (C_t) is recorded at time t and an approximate rate constant k_{pa} is calculated using these data in equation 2 under paragraph (a)(3)(ii)(A)(*1*) of this section. This trial experiment is repeated by adjusting the molar concentration of pyridine [PYR] until the rate constant of the test chemical and actinometer are approximately equal.

(B) *High Optical Density Actinometer (Ferrioxalate Actinometer).* The ferrioxalate actinometer at high optical density (absorbance >2) is a widely used actinometer by photochemists and has been recommended for use in Procedure Two under paragraph (b)(3) of this section [Murov (1973) under paragraph (d)(9) of this section, de Mayo and Shizuka (1976) under paragraph (d)(2) of this section, Calvert and Pitts (1966) under paragraph (d)(1) of this section]. This actinometer is applicable over the environmentally relevant range 290–500 nm. The net photochemical reaction is

Equation 22

$$Fe^{3+} + (C_2O_4^{2-})/2 \xrightarrow{h\gamma} Fe^{2+} + CO_2.$$

At high optical density, the reaction kinetics are zero-order and the kinetics are followed by measuring the molar concentration of Fe^{2+} formed as a function of time t using equation 11 under paragraph (a)(3)(ii)(B)(1) of this section. The Fe^{2+} formed is measured by procedures outlined in paragraph (b)(1)(xi)(D) of this section. Murov (1973) under paragraph (d)(10) of this section gives a detailed procedure for using this actinometer and it is highly recommended. This procedure should be modified slightly to use the ferrioxalate at 0.15 M. The irradiated solution is diluted 100-fold prior to analysis for ferrous ion, which must not be allowed to exceed 0.005 M. Table 1 of the associated Technical Support Document, which is part of the public record for this section, lists the reaction quantum yield as a function of wavelength. At 0.15 M, the quantum yield (ϕ_a) at 313 and 366 nm is 1.20 and 1.18, respectively. All ferrioxalate actinometry experiments must be carried out in a darkroom with photographic "safelights." Ferrioxylate is available from Alfa Inorganics. If the test chemical absorbs light at wavelengths greater than 500 nm, then Reinicke's salt can be used as the actinometer. The use of Reinicke's salt actinometer is described in the public record for this section.

(xi) *Chemical analysis of solutions.* (A) *Chemical analysis of test chemical solutions.* In determining the concentration of the chemical in solution, an analytical method should be selected which is most applicable to the analysis of the specific chemical substance. Chromatographic methods are generally recommended because of their chemical specificity in analyzing the parent chemical substance without interference from impurities. Whenever practicable the chosen analytical method should have a precision of ± 5 percent or better.

(B) *Chemical analysis of p-nitroacetophenone (PNAP).* The p-nitroacetophenone (PNAP) in the chemical actinometer solution is conveniently analyzed by high-pressure liquid chromatography using a 30 cm C_{18} reverse-phase column and a UV detector set at 280 nm. The mobile phase in volume percent is 2.5 percent acetic acid, 50 percent acetonitrile, and 47.5 percent water which is passed through the column at a flow rate of 2 mL/minute. [Mill et al. (1982) under paragraph (d)(8) of this section and Mill and Dulin (1982) under paragraph (d)(4) of this section.

(C) *Chemical analysis of p-nitroanisole (PNA).* The p-nitroanisole (PNA) in the chemical actinometer solution is conveniently analyzed by high-pressure liquid chromatography using a 30 cm C_{18} reverse-phase column and a uv detector set at 280 nm. The mobile phase in volume percent is 50 percent acetonitrile and 50 percent water which is passed through the column at a flow rate of 2 mL/minute [Dulin and Mill (1982) under paragraph (d)(4) of this section].

(D) *Chemical analysis of Ferrous Ion in the Ferrioxalate Actinometer.* The concentration of Fe^{2+} formed in the photolysis of the ferrioxalate actinometer is measured spectrophotometrically via the formation of a red phenanthroline complex and determining the absorbance of the complex at 510 nm. Murov (1973) under paragraph (d)(10) of this section describes a detailed procedure for measuring the molar concentration of ferrous ion formed in the photolysis reaction and this procedure is highly recommended. This procedure has been modified slightly to use the ferrioxalate at 0.15 M. As a result, the irradiated solution has to be diluted 100-fold prior to analysis for ferrous ion, which must not be allowed to exceed 0.005 M.

(2) *Procedure One: Determination of the Reaction Quantum Yield by the Low Optical Density Test Chemical and Actinometer Method*—(i) *Phase 1 Experiments: UV-Visible Absorption Spectra.* The UV-visible absorption spectra in aqueous solution can be determined by the methods described in §§ 796.1050 and 796.3700. It is recommended that the following additional procedures be followed:

(A) For chemicals which ionize or protonate (e.g., carboxylic acids, phenols, amines), carry out uv-visible absorption studies at pHs at least two pH units above the pK_a and at least two pH units below the pK_a. Prepare buffer solutions at 25 °C using reagent grade chemicals and distilled water as follows:

pHs in the range 3–6[1]: NaH_2PO_4, HCl;

pHs in the range 6–8[1]: KH_2PO_4, NaOH;

pHs in the range >8: Prepare buffers as described in the Handbook of Chemistry and Physics.

Check the pH of all the buffer solutions with a pH meter at 25 °C and adjust to the proper pH, if necessary. These buffer solutions can then be added to the test chemical solution until the desired pH is obtained. If these buffers are inadequate, then adjust the pH of the test chemical solution with 1 M HCl or NaOH at 25 °C.

(B) (*1*) Measure the absorbance, $A_{\lambda c}$, as a function of wavelength in the range 290 to 800 nm in duplicate. If applicable, measure $A_{\lambda c}$ at each experimental pH under paragraph (b)(i)(vi) of this section. Record, in duplicate, the baseline where both the sample and reference cells are filled with blank solutions. These data will be used to calculate the molar absorptivities for the appropriate intervals and wavelength centers, under 796.3700(c)(3) Table 1, where the test chemical absorbs light. The wavelength center is defined as the midpoint of the interval range listed in §796.(cx3) Table 1.

(*2*) Measure $A_{\lambda c}$ at 313.0 nm and 366.0 nm in duplicate. These data will be used to calculate the molar absorptivities of the test chemical, ϵ_{313c} and ϵ_{336c}. Photolysis experiments should be carried out at the wavelength corresponding to the higher value of the molar absorptivity.

(*3*) It must be emphasized that the molar absorptivities of the test chemical ($\epsilon_{\lambda c}$) must be carefully determined, especially in the tails of the absorption bands at $\lambda > 290$ nm. Large errors will occur when calculating photolysis rate constants and half-lives if these measurements are not carefully carried out.

(ii) *Phase 2 Experiments: Trial Photolysis Experiments*—(A). *Determination of the approximate rate constant of the test chemical*—(*1*) *preparation of buffer solutions.* Prepare buffer solutions according to the procedures outlined in paragraph (b)(2)(i) of this section using reagent grade chemicals and pure water as described under Test Conditions in paragraph (b)(1)(iv) of this section, for chemicals that reversibly ionize or protonate.

(*2*) *Preparation of Test Chemical Solution.* Prepare a homogeneous solution of test chemical below its water solubility and at an absorbance less than 0.02 in the photolysis reaction vessel at 313 or 366 nm. For very hydrophobic chemicals, it is difficult and time consuming to prepare aqueous solutions. To facilitate the preparation of aqueous solutions containing very hydrophobic chemicals and to allow for easier analytical procedures, the following procedure may be used as an aid in the dissolution of the test chemical. Dissolve the pure test chemical in reagent grade acetonitrile. Add pure water as described under Test Conditions in paragraph (b)(1)(iv) of this section, or buffer solution, as described in paragraph (b)(2)(iv) of this section, for chemicals which ionize or protonate, to an aliquot of the acetonitrile solution. Do not exceed one-volume percent of acetonitrile in the final solution.

(*3*) *Performance of the Test.* (*i*) Prepare an aqueous solution of test chemical as described in paragraph (b)(2)(ii)(A)(*2*) of this section and a sufficient number of samples in quartz or borosilicate glass tubes under paragraph (b)(1)(ii)(D) of this section to perform all the required tests. Measure the initial concentration of test chemical (C_o) as described in paragraph (b)(1)(xi)(A) of this section in duplicate. Fill the tubes as completely as possible and seal them. Do not use grease. Prepare two control samples in the absence of ultraviolet light and totally exclude light by wrapping the tubes with aluminum foil or by any other suitable method in paragraph (b)(1)(viii) of this section. Place the samples, including the controls, in the Ace-type PMGRR with a 450 watt medium pressure mercury lamp and appropriate filters as described in paragraph (b)(1)(ii)(B) and (A) of this section. The reaction tubes should be controlled to a temperature of $t_i \pm 2°$ C within the range 20 – 30° C. Photolyze the samples at 313 or 366 nm corresponding to the higher value of the molar absorptivity of the test chemical (ϵ_{313c} or ϵ_{366c} determined in the Phase 1 experiments, under paragraph (b)(2)(i) of this section) until approximately 50 percent of the test chemical has transformed. Measure the molar concentration of the test chemical (C_t) in duplicate at time t. For test chemicals that ionize or protonate, carry out the photolysis experiments at the required pHs as described under Test Conditions in paragraph (b)(1)(vi) of this section.

(*ii*) After the photolysis experiments are completed, determine the concentration of test chemical in the controls in duplicate. If a significant loss of test chemical has occurred in the controls, determine the cause and eliminate, or minimize, the loss. If hydrolysis is found to be significant, hydrolysis experiments should be carried out first under paragraph (b)(1)(viii) of this section.

(*iii*) The data obtained in this section will be used to determine an approximate k_{pc} and $(t_{1/2})_c$ using Equations 3 and 5 under paragraph (a)(3)(ii)(A)(*1*) of this section.

(B) *Actinometry Experiments.* These experiments are designed to choose the appropriate low optical density actinometer [i.e., PNAP/PYR under paragraph (b)(1)(x)(A)(*1*) of this section or PNA/PYR under paragraph (b)(1)(x)(A)(*2*) of this section] and to adjust the rate of the chosen actinometer so that the rate constant of the actinometer (k_{pa}) is approximately equal to the rate constant of the test chemical (k_{pc}). Based on the photolysis experiments in paragraph (b)(2)(ii) of this section, if $(t_{1/2})_c$ is less than 12 hours, use the PNA/PYR actinometer; if $(t_{1/2})_c$ is greater than 12 hours, use the PNAP/PYR actinometer.

(*1*) *Preparation of Actinometer Solutions*—(*i*) *PNAP/PYR Actinometer.* Using the test chemical photolysis rate constant k_{pc} determined in paragraph (b)(2)(ii)(A) of this section and equations

[1] Use the minimum concentration of buffers to attain the desired pH.

18 or 19 under paragraph (b)(1)(x)(A)(*1*)(*ii*) of this section, determine the molar concentration of pyridine needed to adjust the rate constant of the actinometer to approximately equal the rate constant of the test chemical at the appropriate wavelength 313 or 366 nm (chosen based on the results of the Phase 1 experiments). Once the molar concentration of pyridine [PYR] has been estimated, the actinometer solution can be prepared as follows. Dissolve 0.0165 grams of PNAP in 10 mL of acetonitrile (0.01 M). Add 1 mL of this solution to a 1 liter volumetric flask. Add to the volumetric flask the mass in grams, or the volume V of pyridine at 20 °C, obtained from the equations

Equation 23

mass (grams) = 79.1 [PYR]

Equation 24

V(mL) = 80.6[PYR]

Fill the volumetric flask with pure water as described in paragraph (b)(1)(iv) of this section to give 1 liter of solution and shake vigorously to make sure that the solution is homogeneous. The resultant concentration of PNAP is 1.00×10^{-5} M. The PNAP/PYR solution should be wrapped with aluminum foil and kept from bright light.

(*ii*) *PNA/PYR Actinometer.* Using the test chemical photolysis rate constant k_{pc} determined in paragraph (b)(2)(ii)(A) of this section and Equations 20 or 21 under paragraph (b)(1)(4)(A)(2) of this section, determine the concentration of pyridine needed to adjust the rate constant of the actinometer to approximately equal the rate constant of the test chemical at the appropriate wavelength 313 or 366 nm (chosen based on the results of the Phase 1 experiments). Once the molar concentration of pyridine has been determined, an actinometer solution can be prepared as follows. If photolysis experiments are to be carried out at 366 nm, dissolve 0.0153 grams of PNA in 10 mL of acetonitrile (0.01 M). Add 1 mL of this solution to a 1 liter flask. Add to the volumetric flask the mass in grams, or the volume of pyridine at 20 ° C as defined by equations 23 and 24 under paragraph (b)(2)(ii)(B)(*1*)(*i*) of this section. Fill the volumetric flask with pure water under paragraph (b)(1)(iv) of this section to give 1 liter of solution and shake vigorously to make sure that the solution is homogeneous. The resultant concentration is 1.00×10^{-5} M. The PNA/PYR solution should be wrapped with aluminum foil and kept from bright light. If photolysis experiments are to be carried out at 313 nm, dissolve 0.00612 grams of PNA in 10 mL of acetonitrile (0.004 M). Then follow the procedure described above. The resultant PNA concentration is 0.400×10^{-5} M. The PNA/PYR solution should be wrapped with aluminum foil and kept from bright light.

(*2*) *Performance of the Test.* Prepare a solution of the appropriate actinometer as described in paragraph (b)(2)(ii)(B)(*1*) of this section. Measure the initial molar concentration of actinometer C_o [PNAP or PNA as described in paragraph (b)(1)(xi) (B) and (C) of this section]. Prepare a sufficient number of samples in borosilicate or quartz tubes, under paragraph (b)(1)(ii)(D) of this section, to perform all the required tests. The tubes should be identical to the tubes used to determine k_{pc} in paragraph (b)(2)(ii)(A)(*3*) of this section. Fill the tubes as completely as possible and seal them. It is important that the actinometer tubes contain the same volume as that used in the test chemical tubes, paragraph (b)(2)(ii)(A)(*3*) of this section. Prepare two control samples in the absence of ultraviolet light and totally exclude light by wrapping the tubes with aluminum foil or by any other suitable method under paragraph (b)(1)(viii) of this section. Place the samples, including the controls, in the Ace-type PMGRR with the 450 watt medium pressure mercury lamp and the appropriate filters. The tubes should be controlled to a temperature $t_i \pm 2$ °C. Photolyze the samples at the chosen wavelength λ (313 or 366 nm) until approximately 50 percent of the actinometer has transformed. Determine the concentration of the actinometer (C_t) in duplicate by the appropriate procedure described in paragraph (b)(1)(xi) (B) and (C) of this section at time t. Calculate a rate constant using Equation 2 under paragraph (a)(3)(ii)(A)(*1*) of this section. If the rate constant k_{pa} is not approximately the same as the rate constant of the test chemical k_{pc}, then repeat the experiment with an appropriate concentration of pyridine until k_{pa} is approximately equal to k_{pc} (within ± 50 percent).

(iii) *Phase 3 Experiments: Determination of the Reaction Quantum Yield of the Test Chemical.* Based on the results of the Phase 1 and 2 experiments, use the appropriate actinometer with the required concentration of pyridine to make the rate constant of the actinometer approximately match the rate constant of test chemical. Follow the procedure outlined in paragraph (b)(2)(ii)(B)(*1*) of this section to prepare the actinometer and a sufficient number of samples in borosilicate glass or quartz tubes as described under paragraph (b)(1)(ii)(D) of this section to perform all the required tests. Determine the initial concentration of the actinometer $(C_o)_a$ in duplicate according to the appropriate procedure in paragraph (b)(1)(xi) of this section. Fill all the tubes as completely as possible, seal them, and cover half of the tubes with aluminum foil as soon as possible after preparation. Prepare an aqueous solution of test chemical as described in paragraph (b)(2)(ii)(A)(*2*) of this section and determine the initial concentration of test chemical $(C_o)_c$ in duplicate according to the procedure described in paragraph (b)(1)(xi)(A) of this section. Prepare a sufficient number of samples in borosilicate or quartz tubes to perform all the required tests. Fill all the tubes as completely as possible, seal them, and cover half of the tubes with aluminum foil as soon as possible after preparation. The reaction tubes for actinometer and test chemical must be identical and contain the same volume of solution. Place the tubes to be photolyzed in the Ace-type PMGRR containing a 450 watt medium pressure mercury lamp and the appropriate filters, paragraph (b)(1)(ii) (B) and (C) of this section, and all the control tubes close to the PMGRR. The tubes should be temperature controlled to a temperature $t_i \pm 2$ °C. Based on the results of the Phase 2 experiments, determine the concentration of test chemical and actinometer periodically between 10 and 80 percent transformation in duplicate [at least 6 data points at approximately equal times]. Determine the concentration of actinometer and test chemical in the controls in duplicate at each time point.

(3) *Procedure Two: Determination of the Reaction Quantum Yield by the Low Optical Density Test Chemical and High Optical Density Actinometer Method*—(i) *Phase 1 Experiments: UV-Visible Absorption Spectra.* Follow the procedure outlined in paragraph (b)(2)(i) of this section and measure the absorbance of the test chemical, $A_{\lambda c}$, as a function of wavelength in the range 290 to 800 nm in duplicate. Measure $A_{\lambda c}$ at 313.0 and 366.0 nm in duplicate. The absorbance data at 313.0 and 366.0 nm will be used to calculate the molar absorptivities of the test chemical, ϵ_{313c} and ϵ_{366c}, and photolysis experiments should be carried out at the wavelength corresponding to the highest value of the molar absorptivity.

(ii) *Phase 2 Experiments: Determination of the Reaction Quantum Yield of the Test Chemical*—(A) *Preparation of buffer solutions.* Prepare buffer solutions according to the procedures outlined in paragraph

(b)(2)(ii)(A)(*1*) of this section for a test chemical which ionizes or protonates.

(B) *Preparation of test chemical solution.* Prepare a homogeneous solution of test chemical according to the procedures outlined in paragraph (b)(2)(ii)(A)(*2*) of this section.

(C) *Preparation of ferrioxalate actinometer solution.* Prepare a ferrioxalate actinometer solution at 0.15 M as described in paragraph (b)(1)(x)(B) of this section following the procedure outlined by Murov (1973) under paragraph (d)(10) of this section which has been modified slightly. Since the ferrioxalate actinometer solution is very sensitive to visible light, all these actinometer experiments must be carried out in a darkroom with photographic "safelights."

(D) *Determination of the quantum yield of the test chemical.* (*1*) Prepare a solution of the ferrioxalate actinometer at high optical density (absorbance >2) as described in paragraph (b)(3)(ii)(C) of this section and completely fill the reaction cell described in paragraph (b)(1)(ii)(D) of this section. Place the reaction cell in the photochemical optical bench (POB) as described in paragraph (b)(1)(ii)(A)(*2*) of this section with a 450 watt medium pressure mercury lamp under paragraph (b)(1)(ii)(B) of this section and appropriate filters under paragraph (b)(1)(ii)(C) of this section. The reaction cell should be controlled to a temperature of $t_i \pm 2$ °C in the range 20 to 30 °C. The filter system used should isolate the wavelength 313 or 366 nm corresponding to the larger value of ϵ_{313c} or ϵ_{366c} determined in the Phase 1 experiments. Photolyze the actinometer solution in the reaction cell for 1, 3, 6, 9, 12, and 15 minutes and measure the concentration of Fe^{2+} formed spectrophotometrically by the procedure outlined in paragraph (b)(1)(xi)(D) of this section in duplicate at each of the time points. No time points should be taken when the optical density of the actinometer falls below 2. Only withdraw small volumes for analysis so that the total volume of the actinometer solution in the reaction cell does not change appreciably. This procedure is repeated in a third set of experiments soon after the test chemical photolysis experiments are performed.

(*2*) In the second set of experiments, a solution of test chemical is prepared according to the procedure outlined in paragraph (b)(3)(ii)(B) of this section at low optical density (absorbance <0.02). Measure the initial concentration $(C_o)_c$ in duplicate by the procedure outlined in paragraph (b)(1)(xi)(A) of this section. Fill two reaction cells with the same volume as that used in the actinometer experiments. One of these cells is wrapped with aluminum foil, placed close to the POB and temperature controlled to $t_i \pm 2$ °C. The second reaction cell (which is the same one used for the actinometry experiments) is placed in the POB and photolyzed at $t_i \pm 2$ °C at the same wavelength used in the actinometry experiments. Determine the concentration of test chemical periodically between 10 and 80 percent transformation in duplicate [at least 6 data points at approximately equal times]. Only withdraw small volumes for analysis so that the total volume of the test chemical solution in the reaction cell does not change appreciably. Determine the concentration of the control in duplicate at each time point.

(*3*) As an alternative procedure, the same series of experiments described above can be carried out in a PMGRR using individual reaction tubes for each datum point.

(c) *Data and reporting*—(1) *Procedure One: Determination of the Reaction Quantum Yield by the Low Optical Density Test Chemical and Actinometer Method*—(i) *Phase 1 Experiments: UV–Visible Absorption Spectra*—(A) *Treatment of results.*

(*1*) The molar absorptivity ($\epsilon_{\lambda C}$) can be determined from the absorption spectra using the expression

Equation 25

$$\epsilon_{\lambda C} = A_{\lambda C}/Cl,$$

where $A_{\lambda C}$ is the absorbance at wavelength λ, C is the molar concentration of test chemical, l is the cell pathlength in centimeters. The molar absorptivity of the chemical should be determined for the wavelengths listed in § 796.3700(c)(3) Table 1, for a solution of concentration C and in a cell with pathlength l. If the absorption curve is flat within the interval around the wavelength center, $\epsilon_{\lambda C}$ may be determined from the absorbance $A_{\lambda C}$ at λ center using Equation 25. If a large change in absorbance occurs within this interval, obtain an average $A_{\lambda C}$ at λ center based on the two absorbances at the boundary of the interval. Calculate an average $\epsilon_{\lambda C}$ using the average value of $A_{\lambda C}$ in Equation 25. Determine the molar absorptivity for each replicate and calculate a mean value.

(*2*) Determine the molar absorptivity of the test chemical at 313.0 and 366.0 nm for a solution of test chemical at a molar concentration C and in a cell of pathlength l using Equation 25 under paragraph (c)(1)(i)(A)(*1*) of this section. Determine $A_{\lambda C}$ and the molar absorptivity at 313.0 and 366.0 nm for each replicate and calculate a mean value.

(*3*) Using the molar absorptivities obtained from the spectra and the values of L_λ from § 796.3700(c)(3) Tables 3 to 6, calculate the maximum direct photolysis rate constant $(k_{p\varepsilon})_{max.}$ at a specific latitude (corresponding to the manufacturing site) and season of the year using equation 16 under paragraph (a)(3)(ii)(B)(*6*) of this section. The corresponding minimum half-life, $(t_{1/2\varepsilon})_{min.}$ can then be calculated using this $(k_{p\varepsilon})_{max.}$ in equation 17 under paragraph (a)(3)(ii)(B)(*6*) of this section.

(B) *Test data report.* (*1*) Report the name, structure, and purity of the test chemical.

(*2*) Submit a recent test spectrum on appropriate reference chemicals for photometric and wavelength accuracy.

(*3*) Submit the original chart, or photocopy, containing a plot of absorbance of test chemical vs. wavelength plus the baseline. Spectra should include a readable wavelength scale, preferably marked at 10 nm intervals. Each spectrum should be clearly marked with the test conditions.

(*4*) Report the concentration of the test chemical solution, the type of absorption cell used (quartz or borosilicate glass) and the pathlength.

(*5*) Report $A_{\lambda C}$ and $\epsilon_{\lambda C}$ at λ center for each replicate and the mean value.

(*6*) Report the identity and composition of the solvent used in the spectral absorption study.

(*7*) Report ϵ_{313c} and ϵ_{366c} along with A_{313c} and A_{366c} for each replicate and the mean value.

(*8*) Report $(k_{p\varepsilon})_{max.}$ and $(t_{1/2\varepsilon})_{min.}$ for the summer and winter solstices using the appropriate L_λ values from § 796.3700(c)(3) Tables 3–6, closest to the latitude of the chemical manufacturing site.

(*9*) For chemicals that ionize or protonate, report the data for steps 1 to 8 at the required pHs under paragraph (b)(1)(vi) of this section.

(*10*) For a chemical that ionizes or protonates, report its pK_a. Report the type and concentration of the buffers employed for each pH.

(*11*) Describe the method employed in determining the test chemical's concentration.

(*12*) Report the name and model of the spectrophotometer used.

(*13*) Report the various control settings employed with the spectrophotometer. These might include scan speed, slit width, gain, etc.

(*14*) If a Moses-type PMGRR was used in these experiments, describe it completely and report the aperture in cm^2.

(ii) *Phase 2 Experiments: Trial Photolysis Experiments*—(A)

Determination of the Approximate Rate Constant of the Test Chemical—(1) Treatment of results. From the photolysis experiments carried out at 313 or 366 nm (photolysis wavelength chosen based on the results of the Phase 1 experiments), use the concentration $(C_t)_c$ corresponding to approximately 50 percent of the initial molar concentration of chemical remaining at time t along with the initial molar concentration $(C_o)_c$ and the time t in hours in equation 3 under paragraph (a)(3)(ii)(A)(*1*) of this section to calculate k_{pc} in hours^{-1}. From the analysis of the two samples at time t=0 and t, calculate a mean value of $(C_o)_c$ and $(C_t)_c$, and a value of k_{pc}. If a slight loss of chemical has been detected in the controls, then calculate a rate constant as follows. Calculate an average concentration $(C_t)_c$ based on duplicate measurements of concentration in the controls at the end of the experiment (time t). Use this concentration along with the average initial concentration $(C_o)_c$ and t in equation 3 under paragraph (a)(3)(ii)(A)(*1*) of this section and calculate a rate constant k_{loss}. Using this rate constant along with the observed rate constant in the photolysis experiments, the corrected rate constant is then

Equation 26

$$k_{pc} = (k_{pc})_{obs.} - k_{loss}.$$

Calculate the half-life, $(t_{1/2})_c$ using the corrected value of k_{pc} in equation 5' under paragraph (a)(3)(ii)(A)(*1*) of this section.

(*2*) *Specific analytical and recovery procedures.* (*i*) Provide a detailed description or reference for the analytical procedures used, including the calibration data and precision; and (*ii*) if extraction methods were used to separate the solute from the aqueous solution, provide a description of the extraction method as well as the recovery data.

(*3*) *Other test conditions.* (*i*) Report the size, approximate cell wall thickness, pathlength l , and type of glass used for the test chemical reaction tubes. If the cell pathlength was measured by the procedure described in the Technical Support Document available as part oofthe public record, report all the data obtained in these experiments.

(*ii*) Report the initial pH of all test solutions, if appropriate.

(*iii*) If acetonitrile was used to solubilize the test substance, report the percent, by volume.

(*iv*) If a significant loss of test chemical occurred in the control solution, indicate the causes and how they were eliminated or minimized.

(*4*) *Test data report.*

(*i*) Report the wavelength used to photolyze the test chemical.

(*ii*) Report the initial molar concentration of test chemical $(C_o)_c$ of each replicate and the mean value.

(*iii*) Report the molar concentration of test chemical $(C_t)_c$ for each replicate and the mean value. Report the time t.

(*iv*) Report the molar concentration of each replicate control sample and the mean value after completion of the experiment. Report the time t.

(*v*) Report the value of k_{pc} and $(t_{1/2})_c$. If small losses of chemical were observed, report $(k_{pc})_{obs.}$, K_{loss}, and k_{pc}. Report the half-life $(t_{1/2})_c$ calculated using the value of k_{pc}.

(*vi*) For chemicals that ionize or protonate, report the data for steps 1 through 5 for the experiments at the required pHs. Report the initial pH of all test chemical solutions and the type of concentration of the buffers used for each pH.

(B) *Actinometry Experiments—(1) Treatment of results.* Follow the same discussion of the treatment of results, paragraph (c)(1)(ii)(A)(*1*) of this section, to determine the rate constant of the actinometer k_{pa} using equation 2 under paragraph (a)(3)(ii)(A)(*1*) of this section. Repeat these calculations for the trial actinometry experiments to determine the molar concentration of pyridine [PYR] needed to adjust the rate constant of the actinometer (k_{pa}) to be approximately equal to the rate constant of the test chemical (k_{pc}).

(*2*) *Test data report.* (*i*) Report the wavelength used to photolyze the actinometer.

(*ii*) Report the size, approximate cell wall thickness, pathlength l, and the type of glass used for the actinometer reaction tubes.

(*iii*) For each trial experiment: report the actinometer used; report the initial concentration of actinometer $(C_o)_a$ for each replicate and the mean value; report the molar concentration of the actinometer $(C_t)_a$ for each replicate and the mean value. Report the time t; report the molar concentration of each replicate control sample and the mean value after the completion of the experiment. Report the time t; and report the value of k_{pa}. If small losses were observed for the actinometer, report $(k_{pa})_{obs.}$, k_{loss}, and k_{pa}.

(*iv*) If the Moses-type PMGRR was used, list the criteria and equations used as described in the Technical Support Document available as part of the public record for this section.

(iii) *Phase 3 Experiments: Determination of the Reaction Quantum Yield of the Test Chemical*—(A) *Treatment of results.* The objective of this set of experiments is to determine the reaction quantum yield for a specific test chemical (ϕ_c) at low optical density with a low optical density actinometer. The reaction quantum yield ϕ_c can be calculated using equation 1 under paragraph (a)(3)(ii)(A)(*1*) of this section.

$$\phi_c = (k_{pc}/k_{pa})\,\epsilon_{\lambda a}/\epsilon_{\lambda c})\,\phi_a.$$

by the following steps.

(*1*) Photolysis experiments are carried out by simultaneously photolyzing the test chemical and actionometer in the PMGRR at the chosen wavelength λ. The concentration of test chemical and actinometer are measured periodically as a function of time. These data are then used to determine the ratio of the rate constants (k_{pc}/k_{pa}) employing linear regression analyses of the data on equation 6 under paragraph (a)(3)(ii)(A)(*2*) of this section.

$$\ln(C_o/C_t)_c = (k_{pc}/k_{pa})\ln(C_o/C_t)_a,$$

with $\ln(C_o/C_t)_a$ as the independent variable and $\ln(C_o/C_t)_c$ as the dependent variable. The slope of the best straight line is the ratio of the rate constants (k_{pc}/k_{pa}). If a slight loss of test chemical or actinometer was detected in the controls at any time t, then employ the following procedure. Consider, as an example, the loss of test chemical in the control at time t. Using the average concentration of the test chemical in the controls from the replicates at time t and the average initial concentration, calculate $\ln(C_o/C_t)_c^{loss}$. Using the average concentration of test chemical from the replicates after photolysis time t, calculate $\ln(C_o/C_t)_c^{obs.}$. The corrected term is then

Equation 27

$$\ln(C_o/C_t)_c^{corr.} = \ln(C_o/C_t)_c^{obs.} - \ln(C_o/C_t)_c^{loss}.$$

The same procedure can be applied to obtain a corrected term for the actinometer. Using the corrected terms for test chemical and/or actinometer in equation 6 under paragraph (a)(3)(ii)(A)(*2*) of this section, determine the ratio of the rate constants (k_{pc}/k_{pa}) as described under paragraph (c)(1)(iii)(A)(*1*) of this section.

(*2*) Determine the quantum yield of the actinometer ϕ_a using Equation 7 or 8 under paragraph (a)(3)(ii)(A)(*3*) of this section and the molar concentration of pyridine [PYR] present in the actinometer.

(*3*) Use the molar absorptivities of test chemical $(\epsilon_{\lambda c})$ and actinometer $(\epsilon_{\lambda a})$ at the wavelength the photolysis experiments were carried out (i.e., 313 or 366 nm).

(*4*) (*i*) Substitute the values of (k_{pa}/k_{pc}), $\epsilon_{\lambda a}$, $\epsilon_{\lambda c}$, and ϕ_a in Equation 1 under paragraph (a)(3)(ii)(A)(*1*) of this section and calculate the reaction quantum yield of the test chemical ϕ_c.

(*ii*) A hypothetical example is presented in the paragraph (c)(3) of this section, to illustrate how all the data can be used in Procedure One to determine the reaction quantum yield of the test chemical and to determine (k_{pE}) and ($t_{1/2E}$) as a function of latitude and season of the year.

(B) *Other test conditions.* (*1*) Report the size, approximate cell wall thickness, the pathlength l, and type of glass used for tubes used to hold the test chemical and actinometer solutions.

(*2*) Report the initial pH of all test chemical solutions, if appropriate, and the type and concentration of the buffers employed for each pH.

(*3*) If acetonitrile was used to solubilize the test chemical, report the percent, by volume, of the acetonitrile which was used.

(*4*) If significant loss of test chemical occurred in the control solution, indicate the causes and how they were eliminated or minimized.

(C) *Test data report.* (*1*) Report the wavelength used in the photolysis experiments.

(*2*) Report the actinometer used.

(*3*) Report the initial molar concentration of test chemical $(C_o)_c$ of each replicate and the mean value.

(*4*) Report the initial molar concentration of actinometer $(C_o)_a$ and the molar concentration of pyridine used.

(*5*) For each time point, report the two separate values for the molar concentration of test chemical $(C_t)_c$ and actinometer $(C_t)_a$ and the mean values.

(*6*) For each time point, report the two separate values of the molar concentration of test chemical and actinometer controls and the mean values.

(*7*) Tabulate and report the following data: t, $\ln(C_o/C_t)_c$, and $\ln(C_o/C_t)_a$. From the linear regression analysis, report the ratio of the rate constants (k_{pc}/k_{pa}), and the correlation coefficient.

(*8*) If loss of test chemical and/or actinometer was observed during photolysis, then report the data $\ln(C_o/C_t)^{corr.}$, $\ln(C_o/C_t)^{obs.}$, and $\ln(C_o/C_t)^{loss}$ for the test chemical and/or actinometer for each time point. From the linear regression analysis of test chemical $\ln(C_o/C_t)_c^{corr.}$ and/or actinometer $\ln(C_o/C_t)_a^{corr.}$, report the ratio of the rate constants (k_{pc}/k_{pa}) and the correlation coefficient.

(*9*) Report the reaction quantum yield of the actinometer (ϕ_a).

(*10*) Report the reaction quantum yield of the test chemical (ϕ_c).

(*11*) Report $(k_{pE})_{max.}$, (K_{pE}), $(t_{1/2E})_{min.}$, and $(t_{1/2E})$ for the summer and winter solstices using the appropriate L_λ values from § 796.3700(c)(3) Tables 3 to 6, closest to the latitude of the chemical manufacturing site.

(*12*) For chemicals that ionize or protonate, report the data for steps 1 through 11 for the experiments at the required pHs under paragraph (b)(1)(vi) of this section.

(2) *Procedure Two: Determination of the Reaction Quantum Yield by the Low Optical Density Test Chemical and High Optical Density Actinometer Method*—(i) *Phase 1 Experiments: UV-Visible Absorption Spectra.* The treatment of results and data reporting are exactly the same as described in paragraph (c)(1)(i) of this section.

(ii) *Phase 2 Experiments: Determination of the Reaction Quantum Yield of the Test Chemical*—(A) *Treatment of results.* The objective of this set of experiments is to determine the reaction quantum yield of a test chemical (ϕ_c) at low optical density with the high optical density ferrioxalate actinometer. ϕ_c can be calculated using Equation 9 under paragraph (a)(3)(ii)(B)(*1*) of this section),

$$\phi_c = \phi_a (k_{pc}/k_{pa}) (2.303\epsilon_{\lambda c} l)^{-1},$$

by the following steps.

(*1*) In the first set of experiments, the ferrioxalate actinometer is photolyzed in a POB at the chosen wavelength λ (313 or 366 nm) and the molar concentration of ferrous ion $(C_t)_a$ is measured as a function of the time t. These data are fitted to Equation 11 under paragraph (a)(3)(ii)(B)(*1*) of this section using linear regression analysis. The slope is equal to K_{pa}. The data obtained from the third set of experiments are used in the same manner as described above to obtain another actinometer rate constant. These two rate constants are used to obtain an average actinometer rate constant $(k_{pa})_{ave.}$.

(*2*) In the second series of experiments, the test chemical is photolyzed in the same cell in the POB and the concentration of test chemical $(C_t)_c$ is measured as a function of the time t. These data are fitted to Equation 3 under paragraph (a)(3)(ii)(A)(*1*) of this section using linear regression analysis. The slope is equal to k_{pc}. If a slight loss of test chemical is detected in the controls, then follow the procedure outlined in paragraph (b)(1)(viii) of this section to calculate a corrected test chemical rate constant.

(*3*) Use the appropriate quantum yield of the ferrioxylate actinometer (at 0.15 M) at the chosen wavelength: at 313 nm, $\phi_a = 1.20$; at 366 nm, $\phi_a = 1.18$.

(*4*) Use the molar absorptivity of the test chemical ($\epsilon_{\lambda c}$) at the appropriate photolysis wavelength (313 or 366 nm) determined in paragraph (c)(2)(i) of this section.

(*5*) Use the known pathlength of the reaction cell *l* under paragraph (b)(1)(iii) of this section.

(*6*) Substitute the values of k_{pc}, $(k_{pa})_{ave.}$, ϕ_a, $\epsilon_{\lambda c}$, and *l* in Equation 9 under paragraph (a)(3)(ii)(B)(*1*) of this section and calculate the reaction quantum yield of the test chemical ϕ_c.

(*7*) If the PMGRR equipment was used in these experiments, then repeat the calculations for Steps 1 through 6 obtained in this equipment.

(B) *Specific analytical and recovery procedures.* (*1*) Provide a detailed description or reference for the analytical procedures used, including the calibration data and precision; and

(*2*) If extraction methods were used to separate the solute from the aqueous solution, provide a description of the extraction method as well as the recovery data.

(C) *Other test conditions.* (*1*) Describe the equipment used (i.e., the type of PMGRR or POB). If a Moses-type PMGRR was used, report the aperture in cm^2.

(*2*) If the POB equipment was used, describe in detail the photolysis reaction cell. Report the volume, pathlength *l*, and a description of the optical windows used.

(*3*) If the PMGRR equipment was used, report the size, approximate cell wall thickness, and type of glass used for the reaction tubes.

(*4*) If the pathlength of the cell was measured by the procedure outlined in the Technical Support Document, available as part of the public record for this section, then report all the data obtained in determining the cell pathlength.

(*5*) If acetonitrile was used to solubilize the test chemical, report the percent by volume.

(*6*) Report the pH of all test chemical solutions, if appropriate.

(*7*) If a significant loss of test chemical occurred in the control samples, indicate the causes and how they were eliminated.

(D) *Test data report.* (*1*) Report the wavelength used in the photolysis experiments.

(*2*) For the actinometry experiments 1 and 3; (*i*) report for each time point the two values of the molar concentration of ferrous ion formed and the mean value; (*ii*) report the actinometer rate constant k_{pa} and correlation coefficient for each experiment; and (*iii*) report the average actinometer rate constant $(k_{pa})_{ave.}$.

(*3*) For the test chemical photolysis experiment; (*i*) report the initial molar concentration of chemical $(C_o)_c$ of each replicate and the mean value; (*ii*) report the two separate values of the molar

concentration of test chemical $(C_t)_c$ and the mean value at time t. Report the time t; (*iii*) report the two separate values of the molar concentration of the test chemical controls and the mean value for each time point. Report t for each time point; and (*iv*) report from the linear regression analyses of the data, the rate constant of the test chemical (k_{pc}), and the correlation coefficient.

(*4*) Report the reaction quantum yield of the actinometer and (ϕ_a).

(*5*) Report the reaction quantum yield of the test chemical (ϕ_c).

(*6*) Report $(k_{pE})_{max.}$, (k_{pE}), $(t_{1/2E})_{min.}$, and $(t_{1/2E})$ for the summer and winter solstices using the appropriate L_λ values from § 796.3700(c)(3) Tables 3 to 6, closest to the latitude of the chemical manufacturing site.

(*7*) For chemicals that ionize or protonate, report the data for steps 1 through 6 for the experiments at the required pHs under paragraph (b)(1)(vi) of this section.

(3) *Hypothetical Illustrative Example: Determination of the Reaction Quantum Yield by the Low Optical Density Test Chemical and Actinometer Method and Sunlight Photolysis.* (i)(A) Consider a chemical plant just south of Peoria, Illinois on the Illinois River which produces an organic chemical A which is not an acid or a base. The waste effluent passes through a primary and secondary treatment plant and the waste, which still contains some chemical A, is then discharged into the river. The plant is located at 40.7 degrees north latitude. Information is needed on photolysis rates and half-lives of chemical A in aqueous media in the summer and winter seasons.

(B) The company research laboratory is located in Peoria, Illinois and the required photolysis data was needed in January. Since the temperature outdoors was well below freezing during this month, the outdoor sunlight photolysis experiments, described in § 796.3700 could not be carried out. Thus, it was necessary to carry out photolysis experiments in the laboratory. The research laboratory was equipped to carry out photolysis experiments with an Ace-type PMGRR and thus Procedure One was used.

(ii) Laboratory Experiments, Data, and Calculations: (A) *Phase 1 Experiments.* (*1*) Chemical A had a saturated water solubility of 3.9×10^{-3} M at 25 °C. In the Phase 1 procedure, the UV-visible absorption spectrum was obtained for chemical A at a concentration of 1.00×10^{-5} M in a 10.0 cm quartz cell in duplicate. Using the wavelength interval range from § 796.3700(c)(3) Table 1, the average absorbance of duplicate runs at λ center was obtained and the results are summarized in the following Table 1. (It must be emphasized that $\epsilon_{\lambda c}$ has to be averaged over the wavelength intervals that correspond to the same intervals for the L_λ values centered at λ. This has already been taken care of in this section since the wavelength interval ranges listed in Table 1 coincide with the same wavelength intervals for L_λ centered at λ in § 796.3700(c)(3) Tables 3 to 6. In addition, the average absorbance was measured at 313.0 nm and at 366.0 nm and these results are summarized in the following Table 1:

TABLE 1—SUMMARY OF SPECTRAL AND PHOTOLYSIS DATA FOR CHEMICAL A

SPECTRAL DATA

λ center (nm)	$A_{\lambda c}$	$\epsilon_{\lambda c}(M^{-1}cm^{-1})$
297.5	[illegible]	[illegible]
300.0	0.5414	5414
302.5	0.4924	4924
305.0	0.4434	[illegible]
307.5	0.3810	[illegible]
310.0	0.3124	3124
312.5	0.2714	2714
315.0	0.2224	2224
317.5	[illegible]	2004
320.0	0.1514	1514
323.1	0.1310	1310
330.1	0.1030	1030
340.0	0.0645	[illegible]
350.0	0.0473	473
360.0	0.0287	287
370.0	0.0170	170
380.0	0.0085	85
390.0	[illegible]	30
400.0	0.0010	10
410.0	0.0000	[illegible]
313.0	0.2610	2610
366.0	0.0185	185

PHOTOLYSIS DATA

λ center (nm)	Summer		Winter	
	L_λ[1]	$\epsilon_{\lambda c}L_\lambda$(day^{-1})	L_λ[1]	$\epsilon_{\lambda c}L_\lambda$(day^{-1})
297.5	6.17(−5)	0.4	5.49(−7)	0.0
300.0	2.70(−4)	1.5	5.13(−6)	0.0
302.5	8.30(−4)	4.1	3.02(−5)	0.2
305.0	1.95(−3)	8.7	1.19(−4)	0.5
307.5	3.74(−3)	14.3	3.38(−4)	1.3
310.0	6.17(−3)	19.3	7.53(−4)	2.4
312.5	9.07(−3)	24.6	1.39(−3)	3.8
315.0	1.22(−2)	27.1	2.22(−3)	4.9
317.5	1.55(−2)	31.1	3.19(−3)	6.4
320.0	1.87(−2)	28.3	4.23(−3)	6.4
323.1	3.35(−2)	43.9	8.25(−3)	10.8
330.0	1.16(−1)	119.5	3.16(−2)	32.6
340.0	1.46(−1)	94.2	4.31(−2)	27.8
350.0	1.62(−1)	76.6	4.98(−2)	23.6
360.0	1.79(−1)	51.4	5.68(−2)	16.3
370.0	1.91(−1)	32.5	6.22(−2)	10.6
380.0	2.04(−1)	17.3	6.78(−2)	5.8
390.0	1.93(−1)	5.8	6.33(−2)	1.9
400.0	2.76(−1)	2.8	9.11(−2)	0.9
410.0	3.64(−1)	0.0	1.20(−1)	0.0
		$\Sigma\epsilon_{\lambda c}L_\lambda = 603.4$		$\Sigma\epsilon_{\lambda c}L_\lambda = 156.2$

[1] The units of L_λ are in 10^{-3} einsteins cm^{-2} day^{-1}. The second number in the columns in parenthesis is the power of ten by which the first number is multiplied.

From the Table 1 data and Equation 25 under paragraph (c)(1)(i)(A)(*1*) of this section, the average molar absorptivity is

Equation 28

$$\epsilon_{\lambda c} = 10^4 A_{\lambda c}$$

From the average value of $A_{\lambda c}$ at λ center, the average molar absorptivity can be obtained from Equation 28 and these results are summarized in Table 1, Spectral Data. In addition, using $A_{\lambda c}$ at 313.0 and 366.0 nm in Equation 28, the molar absorptivity ϵ_{313c} and ϵ_{366c} can be obtained and these values are also given in Table 1, Spectral Data.

(*2*) Since the plant is located at 40.7 degrees north latitude, the closest L_λ values are at 40 degrees north latitude. These values are obtained from § 796.3700(c)(3) Table 5 and are summarized in Table 1, Photolysis Data under paragraph (c)(3)(ii)(A)(*1*) of this section for the summer and winter solstices. Using the data from Table 1, Photolysis Data under paragraph (c)(3)(ii)(A)(*1*) of this section and Equations 16 and 17 under paragraph (a)(3)(ii)(B)(*6*) of this section, the following results are obtained.

Summer solstice	Winter solstice
$(k_{pE})_{max} = \Sigma\epsilon_{\lambda c}L_\lambda = 603$ days^{-1}	$(k_{pE})_{max} = \Sigma\epsilon_{\lambda c}L_\lambda = 156$ days^{-1}
$(t_{1/2E})_{min} = 1.1\times10^{-3}$ days	$(t_{1/2E})_{min} = 4.4\times10^{-3}$ days

Since the chemical transforms rapidly on the summer and winter solstices, it is necessary to determine the reaction quantum yield of chemical A in the laboratory using Procedure One and to obtain direct sunlight photolysis rates and half-lives in aqueous media during the summer and winter seasons.

(B) *Phase 2 Experiments*—(*1*) *Determination of the approximate rate constant of the test chemical.* (*i*) Chemical A was dissolved directly in pure water and a homogeneous solution was prepared. Analysis of duplicate samples indicated that the average concentration was 5.00×10^{-6} M. Using the UV spectral data obtained, the absorbance at 313 nm in a one cm absorption cell containing a solution at a concentration of 5.00×10^{-6} M was less than 0.02 [i.e., $A_{313c} = 2610\ (5.00\times10^{-6})\ (1.00) = 0.0131$]. Hence, the test chemical solution in approximately 1 cm pathlength tubes was at low optical density.

(*ii*) A series of tubes (13×100 mm), with an effective pathlength of 1.12 cm, were filled with the aqueous solution of test chemical and sealed. Since $\epsilon_{313c} > \epsilon_{366c}$ in Table 1 under paragraph (c)(3)(ii)(A) (*1*) of this section photolysis experiments were carried out at 313 nm in a PMGRR using the procedure described in paragraph (b)(2)(ii)(A) of this section. Duplicate photolyzed and control samples were removed periodically and analyzed for the

concentration of test chemical. At t=39.4 hours, the average concentration of photolyzed sample $(C_t)_c$ was 2.25×10^{-6} M and the average concentration of control sample was 4.99×10^{-6} M. Thus, approximately 55 percent of the test chemical transformed. Since no loss of chemical was observed in the control sample, no adventitious processes occurred and the loss of chemical was only due to photolysis. Using Equation 3 under paragraph (a)(3)(ii)(A)(*1*) of this section and the data in this paragraph:

Equation 29

$\ln(5.00\times10^{-6}/2.25\times10^{-6}) = k_{pc}(39.4)$

$k_{pc} = 0.0203$ hours^{-1}.

(*2*). *Actinometry experiments.* (*i*) Utilizing Equation 5 and the value of k_{pc} obtained in Equation 29, the half-life of the test chemical is then

Equation 30

$(t_{1/2})c = 0.693/0.0203 = 34.1$ hours.

Since $(t_{1/2})c > 12$ hours, the PNAP/PYR actinometer is required for the photolysis experiments.

(*ii*) Using Equation 18 under paragraph (a)(3)(x)(A)(*1*)(*ii*) of this section and the approximate rate constant k_{pc} from equation 29 under paragraph (c)(3)(ii)(B)(*1*)(*ii*) of this section, the concentration of pyridine needed to make the rate constant of the actinometer approximately equal to the rate constant of the test chemical is given below:

Equation 31

$[PYR] = 1.16\ k_{pc} = 1.16(0.0203)$

$[PYR] = 2.36\times10^{-2}$ M

An actinometer solution was then prepared according to the procedure given in paragraph (b)(2)(ii)(B)(*1*) of this section and the concentration of pyridine was 2.36×10^{-2} M. The concentration of PNAP was measured in duplicate and the average concentration (C_o) was 0.900×10^{-5} M. Using UV spectral data, the absorbance at 313 nm in a one cm absorption cell containing an actinometer solution at a concentration of 0.900×10^{-5} M was less than 0.02 (i.e., $A_{313_a} = (2056)(0.900\times10-5)(1.00) = 0.0185$]. Hence, the actinometer solution in approximately 1 cm pathlength tubes was at low optical density.

(*iii*) A series of tubes, identical to those used in the test chemical photolysis experiments, were filled with the actinometer solution and sealed. The photolysis experiments were carried out in the same PMGRR at 313 nm using the procedure described in paragraph (b)(2)(ii)(B)(*2*) of this section. Duplicate photolyzed and control samples were periodically removed and analyzed for the concentration of PNAP. At 50.6 hours, the average concentration of photolyzed sample $(C_t)_a$ was 0.360×10^{-5} M and the average concentration of the control sample was 0.900×10^{-5} M. Thus, approximately 60 percent of PNAP transformed. Since no loss of chemical was observed in the control sample, no adventitious processes occurred and the loss of chemical was only due to photolysis. Using equation 2 under paragraph (a)(3)(ii)(A)(*1*) of this section and the data:

Equation 32

$\ln(0.900\times10^{-5}/0.360\times10^{-5}) = k_{pa}(50.6)$

$k_{pa} = 0.0181$ hours^{-1}.

Thus, at the molar concentration of pyridine given by equation 31, k_{pa} is approximately the same as k_{pc} (within ± 50 percent).

(C) *Phase 3 Experiments.* (*1*) A solution of test chemical was prepared according to the procedures described in paragraph (b)(2)(ii)(A)(*2*) of this section and the concentration $(C_o)_c$ was measured in duplicate and the average concentration was found to be 5.00×10^{-6} M. An actinometer solution (PNAP/PYR) was prepared according to the procedure described in paragraph (b)(2)(ii)(B)(*1*) of this section with a pryridine concentration of 2.36×10^{-2} M under Equation 31 in paragraph (c)(3)(B)(*2*)(*ii*) of this section. The average concentration of PNAP $(C_o)_a$ from duplicate samples was measured and found to be 9.00×10^{-6} M. These solutions were placed in identical tubes (13×100 mm), sealed, and photolyzed at 313 nm in the PMGRR according to the procedure given in paragraph (b)(2)(iii) of this section. The average concentration of duplicate samples of test chemical, test chemical control, actinometer (PNAP), and actinometer control, obtained in this photolysis experiment, is summarized in the following Table 2:

TABLE 2—PHOTOLYSIS DATA FOR TEST CHEMICAL A AND (PNAP/PYR) ACTINOMETER

t(hours)	Average test chemical concentration × 10^6		Average PNAP concentration × 10^6	
	Photolyzed samples	Controls	Photolyzed samples	Controls
0	5.00	5.00	9.00	9.00
12	3.92	4.98	7.24	8.99
24	3.07	5.00	5.83	8.98
36	2.41	4.99	4.69	9.00
48	1.89	4.98	3.79	8.98
60	1.48	4.99	3.04	8.99
72	1.16	5.00	2.44	9.00

(*2*)(*i*) Since no significant loss of PNAP or test chemical was observed in the control samples, no adventitious processes occurred and the loss of test chemical and PNAP was only due to photolysis. Utilizing the data in under paragraph (c)(3)(ii)(C)(*1*) Table 2, of this section ln (C_o/C_t) for the test chemical and actinometer solution can be calculated and the results are summarized in the following Table 3:

TABLE 3—PHOTOLYSIS DATA FOR TEST CHEMICAL AND ACTINOMETER (PNAP/PYR)

t (hours)	Test chemical		Actinometer (PNAP)	
	$(C_t)_c \times 10^6$(M)	$\ln(C_o/C_t)_c$	$(C_t)_a \times 10^6$(M)	$\ln(C_o/C_t)_a$
0	5.00	0.000	[illegible]	0.000
12	3.92	0.243	7.24	0.218
24	3.07	[illegible]	5.83	0.434
[illegible]	2.41	0.730	[illegible]	0.652
[illegible]	[illegible]	0.973	3.78	[illegible]
[illegible]	1.48	1.22	3.04	1.09
72	1.16	1.46	2.44	1.31

(*ii*) The ratio of the rate constants (k_{pc}/k_{pa}) is defined by equation 6 under paragraph (a)(3)(ii)(A)(*2*) of this section,

$\ln(C_o/C_t)_c = (k_{pc}/k_{pa})\ \ln(C_o/C_t)_a$.

Utilizing all the data in paragraph (c)(3)(ii)(C)(*2*)(*i*) Table 3 of this section including the time point t=0 and linear regression analysis, the slope is found to be 1.12 with a correlation coefficient of 1.000.

(*iii*) The quantum yield of the PNAP/PYR actinometer is given by equation 7 under paragraph (a)(3)(ii)(A)(*3*) of this section,

$\phi_a = 0.0169$ [PYR].

Since the pyridine concentration in the actinometer was 2.36×10^{-2} M under Equation 31 in paragraph (c)(3)(B)(*2*)(*ii*) of this section, the quantum yield of the actinometer (ϕ_a) is 3.99×10^{-4}.

(*3*) The reaction quantum yield of the test chemical is given by Equation 1 under paragraph (a)(3)(ii)(A)(*1*) of this section,

$\phi_c = (k_{pc}/k_{pa})\ (\epsilon_{\lambda_a}/\epsilon_{\lambda_c})\ \phi a$.

The pertinent data are summarized as follows:

$\phi_a = 3.99\times10^{-4}$, $(k_{pc}/k_{pa}) = 1.12$, $\epsilon_{\lambda_c} = 2610$, and $\epsilon_{\lambda_a} = 2056$. Substituting these data in Equation 1 under paragraph (a)(3)(ii)(A)(*1*) of this section yields

Equation 33

$\phi_c = (1.12)\ (2056/2610)\ (3.99\times10^{-10})$

$\phi_c = 3.52\ \times\ 10^{-4}$

(*4*) The rate constants for direct photolysis of test chemical in aqueous media and the half-life for water bodies and clear sky conditions for the winter and summer seasons can be calculated as follows: The values of $\Sigma\epsilon_{\lambda_c}L_\lambda$ have been calculated for the summer and winter solstices under paragraph (c)(3)(ii)(A)(*1*) Table 1, Photolysis Data

of this section. For summer $\Sigma\epsilon_{\lambda c}L_\lambda = 603$ days $^{-1}$; for winter $\Sigma\epsilon_{\lambda c}L_\lambda = 156$ days $^{-1}$. The reaction quantum yield for chemical A is 3.52×10^{-4} Equation 33 under paragraph (c)(3)(B)(*3*) of this section. Using these data in Equation 16 under paragraph (a)(3)(B)(*6*) of this section yields

Equation 34 (summer)

$k_{pE} = 3.52\times10^{-4}(603) = 0.213$ days^{-1}

Equation 35 (winter)

$k_{pE} = 3.52\times10^{-4}(156) = 0.0549$ days^{-1}.

These values can be substituted into equation 18 under paragraph (b)(1)(x)(A)(*1*)(*ii*) of this section to obtain the half-lives for these two seasons.

Equation 36 (summer)

$(t_{1/2E})_c = 0.693/0.213 = 3.3$ days

Equation 37 (winter)

$(t_{1/2E})_c = 0.693/0.0549 = 13$ days

These results are valid for clear-sky conditions and at shallow depths in the Illinois River.

(4) *Glossary of important symbols.*

λ—Wavelength λ.

A_λ—Absorbance at wavelength λ.

$F_{S\lambda}$—Fraction of light absorbed by the system at wavelength λ.

$F_{c\lambda}$—Fraction of light absorbed by a chemical (c) at wavelength λ.

$\epsilon\lambda c$—Molar absorptivity of a chemical (c) at wavelength λ.

$\epsilon\lambda a$—Molar absorptivity of an actinometer (a) at wavelength λ.

$\alpha\lambda$—Absorption (or attenuation) coefficient of water at wavelength λ.

l—The light pathlength; the distance traveled by a beam of light passing through the system.

ϕ_a–Reaction quantum yield of an aqueous solution of actinometer (a).

ϕ_c–Reaction quantum yield of an aqueous solution of chemical (c).

ϕ_E—Sunlight reaction quantum yield of a chemical (c) in a water body in the environment.

$-d[C]/dt$—Direct photolysis rate of chemical (c).

k_{pE}–Direct photolysis sunlight rate constant in a water body in the environment.

$(k_{pE})_{max}$.—Maximum direct photolysis rate constant in a water body in the environment.

k_{pc}—Direct photolysis rate constant of constant of chemical (c) in water measured in the laboratory.

k_{pa}—Direct photolysis rate constant of actinometer (a) in water measured in the laboratory.

$k_{a\lambda}$–Specific light absorption of a photoreactive chemical at low concentration and at wavelength λ.

k_a—Specific light absorption rate constant integrated over all wavelengths absorbed by the chemical.

$(t_{1/2})c$—Half-life of a chemical (c) in water.

$(t_{1/2})a$—Half-life of an actinometer (a) in water.

$t_{1/2E}$—Half-life of a chemical in a water body in sunlight in the environment.

$(t_{1/2E})_{min.}$—The minimum sunlight half-life of a chemical in a water body in sunlight in the environment.

$I_{o\lambda}$–The number of photons (or einsteins) of light of wavelength λ in the system per cm^2 per second.

I_λ–The number of einsteins of light of wavelength λ in the system per liter per hour (or second).

L_λ—Solar irradiance in a water body at shallow depths in the units milli einsteins per cm^2 per second.

PYR—Pyridine.

[PYR]—Molar concentration of pyridine.

PNAP—p-Nitroacetophenone.

PNA—p-Nitroanisole.

o-NB—o-Nitrobenzaldehyde

PNAP/PYR—p-Nitroacetophenone-pyridine actinometer.

PNA/PYR—p-Nitroanisole-pyridine actinometer.

POB—Photochemical optical bench.

PMGRR—Photochemical "Merry-Go-Round" Reactor.

A_P—Aperture in the PMGRR.

(d) *References.* For additional background information on this test guideline the following references should be consulted:

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(4) Dulin, D. and Mill, T. "Development and Application of Solar Actinometer," *Environmental Science and Technology,* 16:815 (1982).

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§ 796.3800 Gas phase absorption spectra and photolysis.

(a) *Introduction*—(1) *Background and purpose.* Numerous chemicals enter the atmosphere from a variety of sources. For example, chemicals enter the atmosphere as a result of the burning of coal, from the combustion of gasoline in cars and diesel fuel in trucks, and from the release of volatile organic chemicals during manufacture, processing, use, and disposal. Pesticides, applied from airplanes, enter the atmosphere directly and volatilize from soils and water bodies. Chemical pollutants present in the atmosphere can undergo photochemical transformation in the environment by direct photolysis in sunlight. Quantitative data in the form of rate constants and half-lives are needed to determine the importance of direct photolysis of pollutants in the atmosphere. This test method describes a first-tier screening level test method to estimate the maximum direct photolysis rate constant and minimum half-life of chemicals in the atmosphere in sunlight as a function of latitude and season of the year in the United States.

(2) *Definitions and units.* (i) "Radiant energy," or radiation, is defined as the energy traveling as a wave unaccompanied by transfer of matter. Examples include x-rays, visible light, ultraviolet light, radio waves, etc.

(ii) "Absorbance (A_λ)" is defined as the logarithm to the base 10 of the ratio

of the initial intensity (I_o) of a beam of radiant energy to the intensity (I) of the same beam after passage through a sample at a fixed wavelength λ. Thus, $A_\lambda = \log_{10}(I_o/I)$.

(iii) The "Beer-Lambert law" states that the absorbance of a chemical in the gas phase, at a fixed wavelength, is proportional to the thickness of the absorbing material (l), or the light pathlength, and the concentration of the absorbing species (C).

(iv) "Cross section (σ_λ')" is defined as the proportionality constant in the Beer-Lambert law. Thus, $A_\lambda = \sigma_\lambda' Cl$, where A_λ is the absorbance, C is the concentration in molecules per cm^3 and l is the pathlength in cm. The units of the cross section σ_λ' are cm^2 $molecule^{-1}$. Numerical values of the cross section depend upon the nature of the absorbing species.

(v) A "first-order reaction" is defined as a reaction in which the rate of disappearance of a chemical is directly proportional to the concentration of the chemical and is not a function of the concentration of any other chemical present in the reaction mixture.

(vi) The "half-life ($t_{1/2}$)" of a chemical is defined as the time required for the concentration of the chemical being photolyzed to be reduced to one-half its initial value.

(vii) The "sunlight direct photolysis rate constant (k_{pE})" is the first-order rate constant in the units of day^{-1} and is a measure of the rate of disappearance of a chemical in the gas phase in sunlight.

(viii) The "actinic solar irradiance in the atmosphere (J_λ)" is related to the sunlight intensity in the atmosphere and is proportional to the average light flux (in the units of photons cm^{-2} day^{-1}) that is available to cause photoreaction in the wavelength interval Δλ, centered at λ, over a 24-hour day at a specific latitude and season date. It is the irradiance which would be measured by a weakly absorbing spherical actinometer exposed to direct solar radiation and sky radiation from all directions.

(ix) "The Grotthus-Draper law," the first law of photochemistry, states that only light which is absorbed can be effective in producing a chemical transformation.

(x) The "Stark-Einstein law," the second law of photochemistry, states that only one molecule is activated to an excited state per photon or quantum of light absorbed.

(xi) The "reaction quantum yield (ϕ_λ)" for an excited state process is defined as the fraction of absorbed light that results in photoreaction at a fixed wavelength λ. It is the ratio of a number of molecules that photoreact to the number of quanta of light absorbed or the ratio of the number of moles that photoreact to the number of einsteins of light absorbed at a fixed wavelength λ.

(xii) "Direct photolysis" is defined as the direct absorption of light by a chemical followed by a reaction which transforms the parent chemical into one or more products.

(3) *Principle of the test method.* (i) For weak absorbance of a chemical in the atmosphere, the first-order direct photolysis rate constant, k_{pe}, is given by the equation

Equation 1

$$k_{pE} = 2.30\Sigma\phi_\lambda\sigma'_\lambda J_\lambda.$$

Where ϕ_λ is the reaction quantum yield; ϕ'_λ is the cross section in the units cm^2 $molecule^{-1}$ averaged over a wavelength interval Δλ, centered at λ; J_λ is the actinic solar irradiance in the units photons cm^{-2} day^{-1} averaged over the wavelength interval Δλ, centered at λ; and the summation is taken over the range Δλ = 290 to 800 nm. J_λ is the solar actinic irradiance in the atmosphere under clear sky conditions and is a function of latitude and season of the year.

(ii) Since this photolysis process is first-order, the half-life ($t_{1/2}$) of a chemical is then given by

Equation 2

$$t_{1/2} = 0.693/k_{pe}$$

(iii) A simple first-tier screening test has been developed using Equation 1. As an approximation, it is assumed that the reaction quantum yield ϕ_λ is equal to one, the maximum value. As a result, the upper limit for the direct photolysis sunlight rate constant in the gas phase is obtained and Equation 1 becomes

Equation 3

$$(k_{pE})_{max} = 2.30\Sigma\sigma'_\lambda J_\lambda.$$

Using Equation 3 in Equation 2, the lower limit for the half-life is then given by

Equation 4

$$(t_{1/2})_{min} = 0.693/(k_{pE})_{max}.$$

The cross section can be determined experimentally by the procedures outlined in paragraph (b) of this section and the values of J_λ are given in Tables 1 to 4 under paragraph (c)(3) of this section as a function of latitude and season of the year in the United States. These data can then be used in Equation 3 to calculate $[k_{pE}]_{max}$. Finally, $(k_{pE})_{max}$ can be substituted in equation 4 to calculate $[t_{1/2}]_{min}$.

(4) *Applicability and specificity.* (i) This test method is applicable to all chemicals which have UV-visible absorptions in the range 290 to 800 nm. Some chemicals only have absorptions below 290 nm and consequently cannot undergo direct photolysis in sunlight (e.g., chemicals such as alkanes, alkenes, alkynes, dienes, and fluoroalkanes).

(ii) This test method is only applicable to pure chemicals and not to the technical grade.

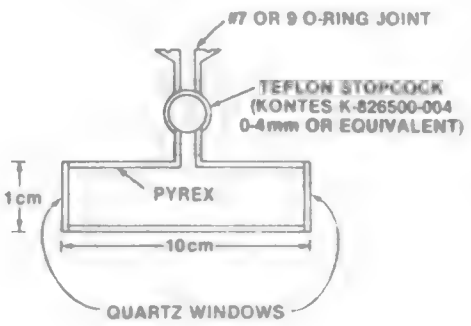
(iii) The first-tier screening test can be employed to estimate $(k_{pE})_{max}$ and $(t_{1/2})_{min}$. If these data indicate that gas phase photolysis is an important process relative to other gas phase transformation processes (e.g., oxidation with hydroxyl radicals or ozone), then it is recommended that an upper-tier photolysis test be carried out to determine the reaction quantum yield and thus obtain more precise environmentally relevant rate constants and half-lives in sunlight. The data obtained from this first-tier test method can be used to determine $(k_{pE})_{max}$ for a test chemical as a function of latitude and season of the year in the United States under clear sky conditions. These rate constants are in a form suitable for preliminary mathematical modeling for environmental fate of a test chemical.

(b) *Test procedures.* The procedures outlined in this test method are based on the method proposed by Mill et al. (1982) under paragraph (d)(1) of this section and developed by Pitts et al. (1981) under paragraph (d)(2) of this section. It is also recommended that § 796.— *Absorption in Aqueous Solution: Ultraviolet/Visible Spectra*, be consulted for additional guidance.

(1) *Test conditions*—(i) *Ultraviolet-Visible Spectrophotometer.* Although single-beam spectrophotometers may be used, recording double beam spectrophotometers are highly recommended. It is extremely important that the spectrophotometer be able to scan over the wavelength region 270 to 800 nm and have an absorbance sensitivity, at a signal/noise ratio of one, of approximately 0.001. It is important that the spectrophotometer be able to attain a 90 percent separation of two monochromatic spectral features approximately 4 nm apart, peak to peak (i.e., the resolution should be at least 4 nm). It is also desirable to have a spectrophotometer that can accommodate absorption cells of length >10 cm. A Cary 219 UV-Visible Spectrophotometer, or an equivalent model, is highly recommended.

(ii) *Vapor and Liquid Absorption Cells.* (A) Long pathlength cells are preferable; however, many commercial spectrophotometers will only accept absorption cells of 10 cm or less. A suitable vapor cell is depicted in the following Figure 1.

Figure 1—Gas absorption cell

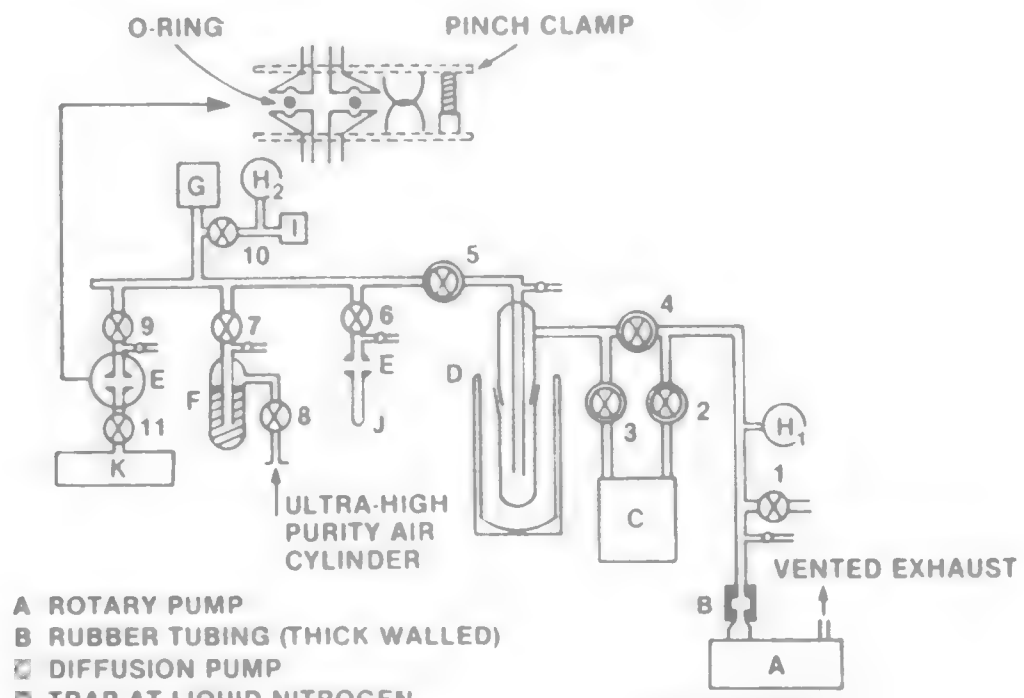


(B) A suitable vapor cell can be constructed as follows. The vapor cell should be constructed of Pyrex, 1 cm O.D. and 10 cm in length, and be fitted with plane parallel quartz windows at each end. The quartz windows can be conveniently attached to the Pyrex cell with vaccum tight epoxy resin (e.g., Torr-Seal, Varian Associates) only applied to the outside surface. A Teflon stopcock (or a Pyrex "o" ring stopcock) should be connected to the cell and contain an "o"-ring joint. The "o"-ring joint (e.g., #7 or #9, Kontes or Ace Glass) must match the one on the vacuum rack. Viton "o"-rings are highly recommended and should be frequently inspected for signs of deterioration which would result in vacuum leaks. A matched reference cell is extremely useful but not essential. However, the sample and reference cells should be very similar. Small spectral differences between the cells can be compensated for by running a blank with the sample and reference cells in the spectrophotometer. The use of stopcock grease is not required with these cells and should be avoided.

(C) A matched pair of liquid absorption cells is very desirable but is not essential. A pair of quartz ultraviolet absorption cells, 10 cm in length, and containing ground glass or Teflon stoppers are recommended. These liquid absorption cells are readily available commercially.

(iii) *Vacuum Gas Handling System.* A suitable gas handling system is shown diagramatically in the following Figure 2 and should be constructed completely with Pyrex glass.

Figure 2—Schematic of gas handling vacuum rack



The components of the gas handling system are discussed below. The use of stopcock grease is not required and should be avoided.

(A) *Vacuum Pumping System.* (*1*) In order to achieve a good vacuum, i.e., pressures $<10^{-5}$ torr (1.3×10^{-6} kPa), two pumps are required. The forepump (A) must be capable of achieving a pressure <0.05 torr (0.0065 kPa). A rotary pump (e.g., a Welch Model 1402 Duo-Seal or an equivalent model) is recommended. The forepump can be attached to the vacuum system by means of heavy-walled rubber vacuum tubing (B), or any flexible vacuum tubing. The exhaust from this pump should be vented into a hood.

(*2*) The second pump, a high vacuum model, should be a multistage oil diffusion pump (C) [e.g., a Consolidated Vacuum Corp. VMF–10 or VMF–20 or an equivalent model]. The pump fluid should be a silicone oil with a room temperature vapor pressure of $\leq10^{-6}$ torr (1.3×10^{-7} kPa) [e.g., Dow-Corning D.C. 702 or 703, or an equivalent grade].

(*3*) It is extremely important that the pumping system contain a trap (D) cooled with liquid nitrogen. The cone and socket joint on this trap can be conveniently sealed with Apiezon W wax, or an equivalent grade. This wax requires only gentle heating to apply and makes an effective vacuum seal. It is possible that a few test chemicals could dissolve Apiezon W wax. In this case, an inert silicone grease may be used to seal the trap.

(B) *Vacuum Rack.* The recommended vacuum rack assembly is depicted in Figure 2 under paragraph (b)(1)(iii) of this section. All stopcocks should be of Teflon with Viton "o"-rings [Kontes K–826500 or K–826510 series or equivalent grades (or Pyrex "o" ring stopcocks)]. The "o"-ring joints (E) [#7 or #9] must be compatible with those on the gas absorption cell (K) or on the liquid reservoir (J). These "o"-ring joints should be clamped by pinch clamps with a screw lock device (e.g., Thomas #18A, or an equivalent grade).

(C) *Pressure Gauges.* Three pressure gauges are required:

(*1*) An ionization gauge to measure high vacuum [$<10^{-3}$ torr (1.3×10^{-4} kPa)].

(*2*) A thermocouple gauge to monitor the pressure in the range 10^{-3} to 1 torr (1.3×10^{-4} to 0.13 kPa). A convenient pressure monitoring system which contains ionization and thermocouple gauges is a Consolidated Vacuum Corp. Model GIC–300A or an equivalent model.

(*3*) A pressure gauge to monitor the pressure of the test chemical and diluent in the range 0.01 to 760 torr (0.0013 to 101.3 kPa); for example, an MKS Baratron 310 BHS–1000 with the associated 170–6C electronics unit and a digital readout or an equivalent model. While this vacuum gauge exhibits a slow zero drift, it can be readily rezeroed using the ionization gauge, i.e., when the ionization gauge reads approximately 10^{-3} torr (0.00013 kPa) or less.

(2) *Operation of the Gas Handling System.* Since there are a wide variety of procedures available for operating a gas handling system, the method used is left to the discretion of the tester. For those testers who do not have experience in handling a vacuum system, the detailed procedure described in paragraph (c)(5) of this section is highly recommended.

(3) *Preparation of samples*—(i) *Preparation of the Gas Phase Test Chemical Sample: Preliminary Steps.* (A) If the test chemical is a gas at room temperature, then attach the gas container to the "o"-ring at the point where the liquid reservoir (J) is placed. Close stopcocks 2 and 3 and open 4. Pump until the pressure is less than 10^{-2} torr (1.3×10^{-3} kPa) as read on thermocouple gauge (H_2). Then open stopcocks 2 and 3 and close 4 and pump until the pressure is less than 10^{-5} torr (1.3×10^{-6} kPa) as read on the ionization gauge (I).

(B) If the test chemical is a liquid at room temperature, add a few cm^3 of liquid to a reservoir tube (J), sealed at one end and containing an "o"-ring at the other end, and connect the tube via the "o"-ring to stopcock 6. Freeze the

sample with a Dewar containing liquid nitrogen, close stopcocks 2 and 3 and open 4 and 6. Degas the test chemical by allowing it to warm up to the liquid state, briefly degas, and refreeze the liquid. Repeat this process three or more times until the evolution of gas bubbles ceases upon thawing. Freeze the liquid, open stopcocks 2 and 3 and close 4. Pump until the pressure is less than 10^{-5} torr (1.3×10^{-6} kPa) as indicated by the ionization gauge (I). Close stopcock 6.

(ii) *Introduction of the test chemical into the Gas Absorption Cell.* (A) For introduction of the test chemical into the gas absorption cell, close stopcocks 5, 7 and 10, with 9 and 11 open. If the test chemical is a gas, then stopcock 6 should be opened and the gas container valve is gradually opened to admit the gas into the gas handling manifold and gas absorption cell until the desired pressure is attained, as read on the capacitance manometer (G). Close the gas container valve and stopcock 6 and allow approximately 5 minutes before the final pressure at (G) is read. If the pressure has not stabilized in approximately 5 minutes, allow the cell to condition for several hours before the final pressure at (G) is read.

(B) For a liquid chemical in the reservoir (J), which has been degassed and is at liquid nitrogen temperature, the liquid nitrogen Dewar should be removed and stopcock 6 opened. The cold liquid in the reservoir (J) is allowed to warm up until the required pressure is attained, as read by the capacitance manometer (G). Close stopcock 6 and cool the reservoir again with liquid nitrogen and allow approximately 5 minutes before the final pressure at (G) is read. If the pressure has not stabilized in approximately 5 minutes, allow the cell to condition for several hours before the final pressure at (G) is read.

(C) With stopcocks 6, 8 and 11 closed and 5, 7, 9, and 10 open, the gas handling manifold is evacuated as described previously to a pressure less than 10^{-5} torr (1.3×10^{-6} kPa). Stopcocks 5 and 10 are then closed and ultra-high purity air from a cylinder is admitted into the gas handling manifold via stopcock 8 and through the trap (F) containing Molecular Sieve 4A. When the manifold is at one atmosphere pressure, as measured by pressure gauge (G), stopcock 11 is briefly opened to pressure the gas absorption cell to one atmosphere, and then closed. Stopcocks 8 and 9 are closed and the gas handling system is evacuated as described previously. The gas absorption cell can then be removed from (E) and covered to avoid photolysis.

(D) Based on the pressure P of the test chemical, as measured by gauge (G), the concentration of the gas sample is

Equation 5

$$C\ (\text{molecules cm}^{-3}) = 9.657\times10^{18}\ P(\text{torr})/T(\text{K})$$

Equation 5a

$$C\ (\text{molecules cm}^{-3}) = 1.287\times10^{18}\ P(\text{kPa})/T(\text{K})$$

where T is the room temperature in °K, which should be routinely monitored with a thermometer.

(E) The recommended pressure of the test chemical should be in the range 1–5 torr (0.13–0.65 kPa) where the Beer-Lambert law is obeyed. A final check on whether the test chemical obeys the Beer-Lambert law can be accomplished by demonstrating the constancy of the cross section at three partial pressures differing by a factor of 10.

(iii) *Preparation of solution phase test chemical sample.* (A) If the properties of the test chemical (i.e., small cross sections, low vapor pressure) are such that the maximum absorbance obtainable is one-tenth of the most sensitive spectrophotometer scale or less (i.e., <0.001 absorbance), a solution-phase study should be undertaken. The most sensitive scale may be limited by inherent spectrophotometer noise. For example, a given spectrophotometer's most sensitive scale is 0.00 to 0.10 absorbance units. Therefore, a test chemical for which the product of its maximum cross section and its concentration is less than 0.001 (in a 10 cm cell) could not be analyzed in the vapor phase with this particular spectrophotometer.

(B) The following spectroscopic grade chemicals are recommended to prepare solutions: chloroform, *n*-hexane, acetonitrile, and cyclohexane. Solutions of up to 10 percent by volume of test chemical can be prepared in one of these solvents in the standard manner

(C) The concentration of the test chemical is given by the equations

Equation 6

$$C\ (\text{molecules cm}^{-3}) = 6.022\times10^{23}\ \text{mass (gms)}/\text{FW}\ (V_d)$$

Equation 6a

$$C\ (\text{molecules cm}^{-3}) = 6.022\times10^{23}\ V_s\rho/\text{FW}\ (V_d).$$

where V_s is the volume of test chemical delivered into a volume V_d of solvent in cm^3, FW is the formula weight of the test chemical in gms, and ρ is the density of the test chemical in gms cm^{-3} at the room temperature the solution was prepared.

(4) *Procedure for obtaining the spectrum*

As a general guide to obtaining uv-visible absorption spectra, the procedures outlined in § 796.1050 *Absorption in Aqueous Solution: Ultraviolet/Visible Spectra*, are highly recommended. Since the method presented in this procedure was developed by Pitts et al. (1981), it is highly recommended that this report be consulted for further details.

(i) *Determination of the cell pathlength.* The method for determining the cell pathlength of gas or liquid cells is left to the discretion of the tester. However, the method listed in § 796.1050, using one of their reference compounds, is highly recommended.

(ii) *Gas Phase Spectrum.* Measure the absorbance of the test chemical in duplicate relative to a matched cell filled with ultra-high purity air from the same cylinder similarly passed through trap (F) containing the molecular sieve. The absorbance should be measured at wavelengths $\lambda > 280$ nm using minimum slit widths. Record, in duplicate, the baseline when both the same reference cells are filled with high purity air dried through the molecular sieve and at the same settings as used for the test chemical sample. These data will be used to calculate the cross section, σ'_λ, at the appropriate wavelength intervals, centered at wavelength λ, listed in Tables 1 through 4, under paragraph (c)(3) of this section.

(iii) *Solution Phase Spectrum.* (A) Measure the absorbance of the test chemical in duplicate relative to a matched cell containing the solvent. The absorbance should be measured for wavelengths $\lambda > 280$ nm using the minimum slit widths. Record, in duplicate, the baseline when both the sample and reference cells are filled with the solvents. These data will be used to calculate the cross sections, σ'_λ, for the appropriate wavelength intervals, centered at λ, listed in Tables 1 through 4 under paragraph (c)(3) of this section.

(B) The concentration of the test chemical should be in the range where the Beer-Lambert law is obeyed. A check on whether the test chemical obeys this law can be accomplished by demonstrating the constancy of the cross section at 3 concentrations differing by a factor of 10.

(c) *Data and reporting*—(1) *Treatment of results*—(i) *Determination of the cross section from the Gas Phase Spectrum.* (A) The cross section, σ_λ, can be determined from the gas phase absorption spectrum and the Beer-Lambert law in the form

Equation 7

$$(\sigma_\lambda = A_\lambda/C$$

where A_λ is the absorbance at wavelength λ, centered in the wavelength interval $\Delta\lambda$, C is the concentration of test chemical in molecules cm^{-3}, and *l* is the cell pathlength in cm. The cross section of the test chemical should be determined for the wavelength intervals listed in Tables 1 through 4 under paragraph (c)(3) of this section.

(B) There are at least three nondestructive methods of determining the absorbance over a specified wavelength interval: Estimation, square counting, and planimetry. For many spectra, estimating an average absorbance over a small wavelength interval is sufficient to yield accurate results. However, for spectra containing rapidly changing absorptions and complex fine structure, square counting or planimetry should be used. These two methods require the integration of a definite region (in A_λ x nm) followed by division by the width of the region in nm to obtain absorbance. The method using a compensating polar planimeter is the most accurate and is highly recommended. The absorbance should be obtained from the average of three tracings.

(ii) *Determination of the gross section from the Solution Phase Spectrum.* The cross section, σ'_λ, can be determined from the solution phase spectrum using equation 7 for the wavelength intervals listed in Tables 1 through 4 under paragraph (c)(3) of this section. For solution spectra, estimating an average absorbance over the wavelength intervals is sufficient to yield accurate results.

(iii) *Estimation of the maximum direct photolysis rate constant and minimum half-life in the gas phase.* (A) Using the cross sections obtained from the spectra and the values of J_λ from Tables 1–4 under paragraph (c)(3) of this section, the maximum direct photolysis rate constant $(k_{pE})_{max}$ can be calculated at a specific latitude and season for the year using equation 3. The minimum half-life, $(t_{1/2E})_{min}$, can be calculated using this $(k_{pE})_{max}$ in equation 4.

(B) An example is presented in under paragraph (c)(4) of this section, to illustrate how the test data obtained in this section can be used.

(2) *Test data report.* (i) Submit the original chart, or photocopy, containing a plot of absorbance vs. wavelength plus the baseline. Spectra should include a readable wavelength scale, preferably marked at 10 nm intervals. Each spectrum should be clearly marked.

(ii) Gas Phase Spectra. (A) Report the pressure of the test chemical in torr (or kPa), the concentration in molecules cm^{-3}, and the pathlength of the sample cell in cm. Describe the method used to determine the pathlength and report the experimental data.

(B) Report the wavelength λ, the wavelength interval for each 10 nm over the region of absorption, the value of the absorbance (A_λ) for each replicate, the mean absorbance, and the mean cross section in cm^2 molecule $^{-1}$.

(C) Report the estimated maximum direct photolysis rate constant in $days^{-1}$ and the corresponding minimum half-life in days at 20°, 30°, 40°, and 50° north latitude for the summer and winter solstices.

(iii) Solution Phase Spectra. (A) Report the concentration of the test chemical in molecules cm^{-3}, the type of cell used (quartz or borosilicate), and the pathlength in cm. Describe the method used to determine the pathlength and report the experimental results.

(B) Report the identity of the solvent.

(C) Report the wavelength λ, the wavelength interval over the region of absorption, the value of the absorbance (A_λ) of each replicate, the mean absorbance, and the mean cross section (σ'_λ) in cm^2 molecule^{-1}.

(D) Report the estimated maximum direct photolysis rate constant in days $^{-1}$ and the corresponding minimum half-life in days at 20°, 30°, 40°, and 50° north latitude for the summer and winter solstices.

(iv) Report the name, structure, and purity of the test chemical.

(v) Submit a recent spectrum on appropriate reference chemicals for photometric and wavelength accuracy.

(vi) Report the name and model of the spectrophotometer used.

(vii) Report the various control settings employed with the spectrophotometer. These might include scan speed, slit width, given, etc.

(viii) Report anything unusual about the test; e.g., if the Beer-Lambert law is not obeyed at a pressure of 1 to 5 torr (0.13 to 0.65 kPa), report the pressure at which the deviation was overcome and the experimental data. If the Beer-Lambert law is not obeyed in solution at high concentrations, report the concentration at which the deviation was overcome and the experimental data.

(ix) Report any other relevant information.

(3) *Tables of solar irradiance.*

TABLE 1—J_λ VALUES AT 20 °N. LATITUDE

Wavelength center [b]	Summer solstice [a]	Equinox [a]	Winter solstice [a]	Wavelength center [b]	Fall or winter average [a]	Spring or [illegible] average [a]	Wavelength center [b]
290	0.0000811	0.00000131	0.000000108	290	[illegible]	0.0000625	290
300	0.0810	0.0611	0.0212	300	0.0359	0.0769	300
310	1.10	0.9148	0.499	310	0.863	1.05	310
320	2.74	2.35	1.52	320	1.855	2.62	320
330	4.82	4.20	2.90	330	3.42	4.63	330
340	5.27	4.61	3.28	340	3.82	5.06	340
350	5.94	5.22	3.77	350	4.36	5.71	350
360	6.22	5.47	4.01	360	4.61	5.98	360
370	7.76	6.84	5.06	370	5.79	7.46	370
380	7.60	6.71	5.02	380	5.71	7.31	380
390	7.77	6.88	5.19	390	5.88	7.48	390
400	10.6	9.44	7.17	400	8.10	10.2	400
410	13.5	12.0	9.17	410	10.3	13.0	410
420	14.1	12.5	9.65	420	10.8	13.6	420
430	14.3	12.7	9.85	430	11.1	13.7	430
440	15.8	14.1	11.0	440	12.2	15.2	440
450	18.2	16.2	12.7	450	14.1	17.5	450
460	19.7	17.5	13.7	460	15.3	18.9	460
470	20.2	18.1	14.2	470	15.8	19.5	470
480	20.5	18.3	14.4	480	16.0	19.8	480
490	20.6	18.4	14.5	490	16.1	19.8	490
500	20.9	18.7	14.8	500	16.4	20.2	500
510	21.1	18.8	14.9	510	16.4	20.3	510
520	21.1	18.9	14.9	520	16.5	20.3	520
530	21.3	19.0	15.1	530	16.7	20.5	530

TABLE 1—J_λ VALUES AT 20 °N. LATITUDE—Continued

Wavelength center [b]	Summer solstice [a]	Equinox [a]	Winter solstice [a]	Wavelength center [b]	Fall or winter average [a]	Spring or summer average [a]	Wavelength center [b]
540	21.2	19.0	15.0	540	16.6	20.4	540
550	21.1	[illegible]	14.9	550	16.5	20.3	550
560	21.3	19.0	15.1	560	16.7	20.5	560
570	21.6	19.3	15.3	570	16.9	[illegible]	570
580	22.1	19.7	15.7	580	17.3	21.2	580
590	22.3	19.9	15.8	590	17.5	21.5	590
600	22.5	20.0	15.9	600	17.6	21.6	600
610	22.6	20.2	16.0	610	17.7	21.8	610
620	22.6	20.1	16.1	620	17.7	21.8	620
630	[illegible]	20.1	16.2	630	17.7	21.7	630
640	23.1	20.6	16.6	640	18.2	22.3	640
650	23.6	21.1	16.9	650	18.6	22.8	650
660	24.0	21.4	17.2	660	18.9	23.1	660
670	24.3	21.7	17.4	670	19.2	23.4	670
680	24.3	21.7	17.5	680	19.2	23.4	680
690	24.3	21.7	17.5	690	19.2	23.4	690
700	24.2	21.7	17.5	700	19.2	23.0	[illegible]
710	24.1	21.5	17.4	710	19.1	23.2	710
720	23.9	21.4	17.3	720	19.0	23.0	[illegible]
730	23.8	21.3	17.2	730	18.9	[illegible]	[illegible]
740	23.6	21.1	17.2	740	18.8	[illegible]	[illegible]
750	23.5	21.0	17.1	750	18.7	[illegible]	750
760	23.3	20.9	17.0	760	18.6	22.5	[illegible]
770	23.2	[illegible]	16.9	770	18.5	22.3	770
780	23.1	[illegible]	16.8	780	18.4	22.2	780
790	22.9	20.5	16.7	790	18.3	22.1	790
800	[illegible]	20.4	16.7	800	18.2	21.9	800

[a] J_λ values are in units of 10^{10} photons cm^{-2} day^{-1}.
[b] Wavelength intervals are uniformly 10 nm wide, extending from 5 nm lower than the center wavelength to 5 nm higher. Thus, the first interval centered on 290 extends from 285–295 nm.

TABLE 2—J_λ VALUES AT 30° N. LATITUDE

Wavelength center [b]	Summer solstice [a]	Equinox [a]	Winter solstice [a]	Wavelength center [b]	Fall or winter avg [a]	Spring or summer avg [a]	Wavelength center [b]
290	[illegible]	[illegible]	[illegible]	290	[illegible]	[illegible]	[illegible]
300	0.0831	0.0457	[illegible]	300	[illegible]	0.0704	[illegible]
310	1.14	0.787	[illegible]	310	[illegible]	1.02	310
320	2.84	2.13	1.06	320	1.47	[illegible]	[illegible]
330	5.02	[illegible]	2.13	330	2.81	4.62	330
340	5.49	4.30	2.48	340	3.19	[illegible]	
350	[illegible]	[illegible]	[illegible]	350	3.68	5.74	350
360	6.49	5.15	3.10	360	3.91	[illegible]	360
370	[illegible]	6.45	3.95	370	4.94	7.51	370
380	7.93	6.25	3.95	380	4.91	7.37	380
390	8.12	6.53	4.12	390	5.08	7.55	390
400	11.1	8.97	5.73	400	7.02	10.4	400
410	14.1	11.4	7.37	410	[illegible]	13.2	410
420	14.7	12.–	7.81	420	9.46	13.7	420
430	14.9	12.2	8.00	430	9.66	13.9	430
440	16.5	13.5	[illegible]	440	10.8	15.4	440
450	19.0	15.5	10.4	450	12.4	17.8	450
460	20.6	16.8	11.3	460	13.5	19.2	460
470	21.2	17.3	11.7	470	13.9	[illegible]	470
480	21.5	17.6	11.9	480	14.2	20.1	480
490	21.5	17.7	12.0	490	14.3	20.1	490
500	21.9	18.0	12.2	500	14.5	20.5	[illegible]
510	22.1	18.1	12.3	510	14.6	20.6	510
520	22.1	18.1	12.4	520	14.7	20.7	[illegible]
530	22.3	18.3	12.5	530	14.8	[illegible]	[illegible]
540	22.1	18.2	12.4	540	14.7	20.6	[illegible]
550	22.1	18.1	12.4	550	14.7	[illegible]	550
560	22.6	18.3	12.5	560	14.8	[illegible]	[illegible]
570	22.6	18.6	12.7	570	15.1	21.1	570
580	23.1	19.0	13.0	580	15.4	21.6	[illegible]
590	23.3	19.2	13.2	590	15.6	21.8	[illegible]
600	23.5	19.3	13.3	600	15.7	22.0	[illegible]
610	23.7	19.5	13.4	610	15.8	22.1	610
620	23.6	19.3	13.6	620	15.9	22.1	[illegible]
630	23.6	19.2	13.7	630	16.0	22.1	[illegible]
640	24.2	19.8	14.0	640	16.3	22.6	640
650	24.7	20.4	14.2	650	16.7	23.1	650
660	25.1	20.7	14.4	660	16.9	23.5	660
670	25.4	21.0	14.7	670	17.2	23.8	670
680	25.4	21.0	14.7	680	17.2	23.8	680
690	25.4	21.0	14.8	690	17.3	23.8	690
700	25.3	21.0	14.8	700	17.3	23.7	[illegible]
710	25.2	20.8	14.7	710	17.2	23.6	710
720	25.0	20.7	14.6	720	17.1	23.4	720
730	24.9	20.6	14.6	730	17.0	23.3	730
740	24.7	20.5	14.5	740	16.9	23.2	740
750	24.6	20.4	14.5	750	16.8	23.0	750
760	24.4	20.3	14.4	760	16.8	22.9	[illegible]
770	24.3	20.1	14.3	770	16.7	22.7	770
780	24.1	20.0	14.3	780	16.6	22.6	[illegible]
790	24.0	19.9	14.2	790	16.5	22.5	[illegible]
800	23.8	19.8	14.2	800	16.4	22.3	[illegible]

[a] J_λ values are in units of 10^{-19} photons cm^{-2} day^{-1}.
[b] Wavelength intervals are uniformly 10 nm wide, extending from 5 nm lower than the center wavelength to 5 nm higher. Thus, the first interval centered on 290 extends from 285–295 nm.

TABLE 3—J_λ VALUES AT 40° N. Latitude

Wavelength center [b]	Summer solstice [a]	Equinox [a]	Winter solstice [a]	Wavelength center [b]	Fall or winter avg. [a]	Spring or [illegible] avg. [a]	Wavelength center [b]
290	0.0000136	0.000000121	0.000000000615	290	0.000000000614	0.000000540	290
300	0.0769	0.0293	0.00145	300	0.00909	0.0567	300
310	1.12	0.618	0.132	310	0.[illegible]	0.5[illegible]	310
320	2.87	1.81	0.591	320	1.04	2.49	320
330	5.11	3.41	1.31	330	2.90	[illegible]	330
340	5.62	3.83	1.58	340	2.43	4.77	[illegible]
350	6.35	4.39	1.88	350	2.84	5.64	350
360	6.61	4.65	2.05	360	3.05	[illegible]	[illegible]
370	8.32	5.86	2.64	370	[illegible]	7.43	370
380	8.17	5.80	2.67	380	[illegible]	7.30	380
390	8.37	5.99	2.82	390	4.05	7.50	[illegible]
400	11.5	8.26	3.97	400	5.64	10.3	400
410	14.6	10.5	5.15	410	7.26	13.1	410
420	15.2	11.1	5.51	420	[illegible]	13.9	420
430	15.5	11.3	[illegible]	430	7.89	15.4	430
440	17.1	12.5	6.41	440	8.82	17.8	440
450	19.7	14.5	7.47	450	10.2	19.2	450
460	21.3	15.7	8.15	460	11.1	19.8	460
470	22.0	16.2	8.51	470	11.5	20.1	470
480	22.3	16.5	8.74	480	11.8	20.2	480
490	22.3	16.6	8.83	490	11.9	20.6	490
500	22.7	16.9	[illegible]	500	12.1	20.7	500
510	22.9	17.0	9.07	510	12.2	20.8	510
520	22.9	17.0	9.14	520	12.3	21.0	520
530	23.2	17.2	9.24	530	12.4	21.0	530
540	23.0	17.1	9.18	540	12.3	[illegible]	540
550	22.9	17.0	9.15	550	12.3	20.7	550
560	23.1	17.2	9.23	560	12.4	20.9	560
570	23.5	17.4	[illegible]	570	12.6	21.2	570
580	24.0	17.8	9.62	580	12.9	21.9	580
590	24.2	18.0	9.79	590	13.1	21.9	590
600	24.4	18.2	9.85	600	13.2	22.1	[illegible]
610	24.6	18.3	9.93	610	13.2	22.2	610
620	24.5	18.3	10.2	620	13.4	22.2	[illegible]
630	24.5	18.3	10.2	630	13.5	22.1	630
640	25.1	18.8	10.5	640	13.8	22.7	640
650	25.7	19.2	10.7	650	14.1	23.3	650
660	26.1	19.5	10.9	660	14.3	23.6	[illegible]
670	26.4	19.8	11.1	670	14.5	24.0	670
680	26.3	19.9	11.1	680	14.6	24.0	[illegible]
690	26.4	19.9	11.2	690	14.6	24.0	690
700	26.4	19.9	11.3	700	14.7	24.0	700
710	26.2	19.8	11.2	710	14.6	23.9	710
720	26.1	19.7	11.2	720	14.6	23.7	720
730	25.9	19.6	11.2	730	14.5	23.5	730
740	25.8	19.5	11.2	740	14.5	23.4	740
750	25.6	19.4	11.2	750	14.4	23.3	750
760	25.5	19.3	11.2	760	14.4	23.1	760
770	25.3	19.2	11.3	770	14.3	23.0	770
780	25.2	19.1	11.3	780	14.3	22.4	780
790	25.0	19.0	11.2	790	14.2	22.7	790
800	24.8	1.89	11.2	800	14.1	22.6	800

[a] J_λ values are in units of 10^{-19} photons cm^{-2} day^{-1}.
[b] Wavelength intervals are uniformly 10nm wide, extending from 5 nm lower than the center wavelength to 5 nm higher. Thus, the first interval centered on 290 extends from 285–295 nm.

TABLE 4—J_λ VALUES AT 50° N. Latitude

Wavelength center [b]	Summer solstice [a]	Equinox [a]	Winter solstice [a]	Wavelength center [b]	Fall or winter avg. [a]	Spring or [illegible] avg. [a]	Wavelength center [b]
290	0.00000185	0.000000200	0.0000000112	290	0.0000000391	0.00000152	290
300	0.0635	0.0140	0.0000681	300	0.00296	0.0433	300
310	1.05	0.423	0.321	310	0.147	0.810	310
320	2.81	1.41	0.214	320	0.610	2.28	320
330	5.10	2.78	0.555	330	1.33	4.23	330
340	5.64	3.19	0.711	340	1.59	4.73	340
350	6.41	3.70	0.864	350	1.88	5.40	360
360	6.75	3.96	0.953	360	2.04	5.71	350
370	8.46	5.03	1.25	370	2.63	7.18	370
380	8.32	5.01	1.28	380	2.66	7.09	380
390	8.56	5.21	1.37	390	2.80	7.31	390
400	11.8	7.22	1.95	400	3.93	10.1	400
410	15.0	9.27	2.57	410	5.09	12.8	410
420	15.7	9.79	2.79	420	5.45	13.5	420
430	15.9	10.0	2.92	430	5.62	13.7	430
440	17.6	11.2	3.33	440	6.33	15.2	440
450	20.3	12.9	3.92	450	7.37	17.6	450
460	22.0	14.0	4.31	460	8.05	19.0	460
470	22.7	14.5	4.54	470	8.40	19.7	470
480	23.1	14.8	4.70	480	8.62	20.0	480
490	23.1	15.0	4.78	490	8.72	20.1	490
500	23.5	15.2	4.88	500	8.87	20.4	500
510	23.7	15.3	4.94	510	9.00	20.6	510
520	23.8	15.4	4.98	520	9.03	20.6	520
530	24.0	15.6	5.05	530	9.12	20.8	530

TABLE 4—J_λ VALUES AT 50° N. Latitude—Continued

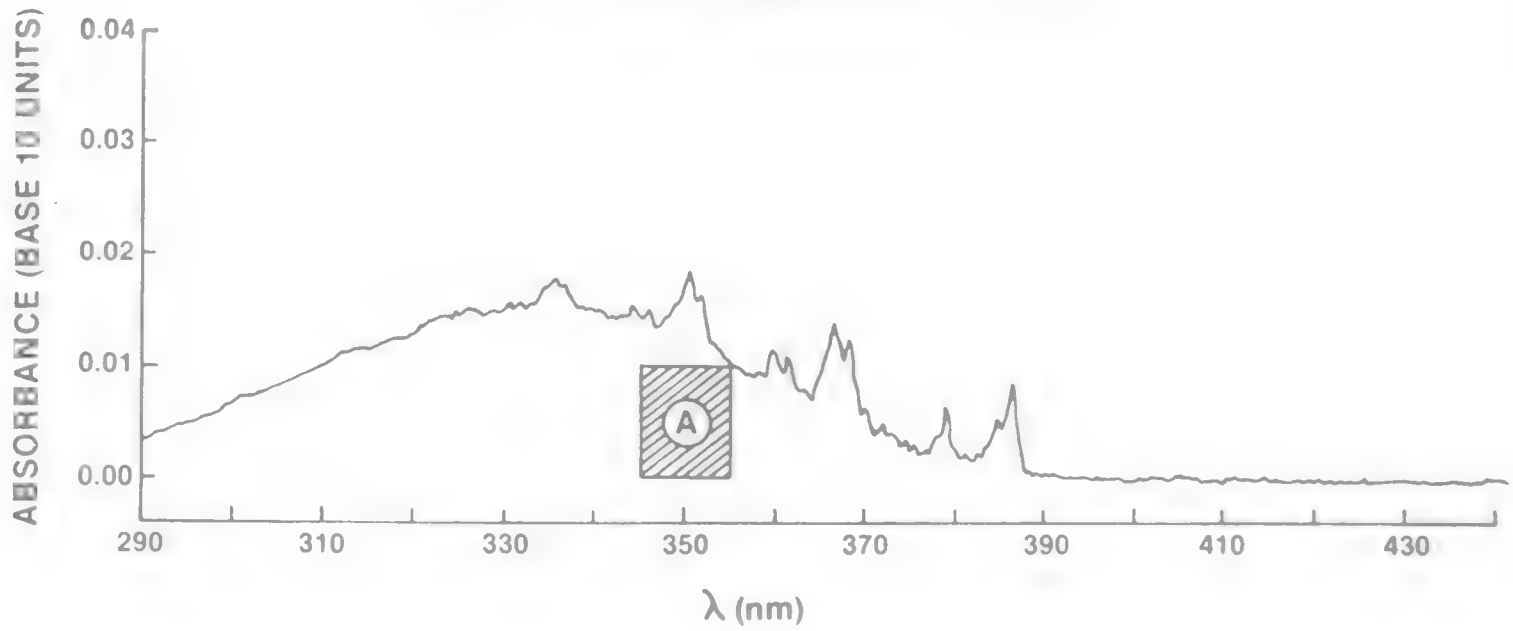
Wavelength center [b]	Summer solstice [a]	Equinox [a]	Winter solstice [a]	Wavelength center [b]	Fall or winter avg [a]	Spring or summer avg [a]	Wavelength center [b]
540	[illegible]	15.5	[illegible]	540	9.07	20.7	540
550	23.7	15.4	5.01	550	[illegible]	20.6	550
560	24.0	15.5	5.04	560	9.11	[illegible]	560
570	24.3	15.8	5.11	570	[illegible]	21.1	570
580	24.8	16.1	5.27	580	[illegible]	21.6	580
590	25.1	16.4	[illegible]	590	[illegible]	[illegible]	590
600	25.3	16.5	5.42	600	9.73	[illegible]	600
610	25.5	16.6	5.47	610	[illegible]	22.1	610
620	25.4	16.8	5.61	620	[illegible]	22.1	620
630	25.3	17.0	5.77	630	10.1	22.1	630
640	[illegible]	17.3	[illegible]	640	10.4	22.7	640
650	26.7	17.6	6.10	650	10.6	[illegible]	650
660	27.1	17.8	[illegible]	660	10.8	[illegible]	660
670	27.5	18.1	[illegible]	670	11.0	[illegible]	[illegible]
680	27.5	18.2	6.47	680	11.0	[illegible]	680
690	27.5	18.2	[illegible]	690	11.1	24.0	690
700	27.5	18.2	[illegible]	700	11.2	24.0	700
710	27.3	18.1	6.67	710	11.2	[illegible]	710
720	27.2	18.1	6.72	720	11.2	[illegible]	720
730	27.0	18.0	6.75	730	11.2	[illegible]	730
740	26.9	17.9	[illegible]	740	11.2	23.5	740
750	26.7	17.8	[illegible]	750	11.1	23.4	750
760	[illegible]	17.8	[illegible]	760	11.1	23.3	[illegible]
770	26.4	17.7	[illegible]	770	11.1	23.1	770
780	26.3	17.6	6.82	780	11.1	[illegible]	[illegible]
790	2.61	17.5	[illegible]	790	11.0	[illegible]	[illegible]
800	26.0	17.4	[illegible]	800	11.0	22.8	800

[a] J_λ values are in units of 10^{-1} photons cm^{-2} day^{-1}.
[b] Wavelength intervals are uniformly 10 nm wide, extending from 5 nm lower than the center wavelength to 5 nm higher. Thus, the first interval centered on 290 extends from 285–295 nm.

(4) *Example of application of methodology.* (i) Consider a chemical plant located in Freeport, Texas, which produces acrolein [CH_2=CHCHO] continuously every day of the year. Despite the fact that all acrolein wastes, including vented vapors, are treated in a waste-treatment plant, some acrolein escapes into the atmosphere. The chemical plant is located at 29° north latitude. Estimate the maximum sunlight direct photolysis rate constant and the corresponding minimum half-life in the atmosphere in the vicinity of the plant for the winter and summer season solstices under clear sky conditions.

(ii) The vapor phase spectrum of acrolein was obtained by the procedure outlined in this test method and is depicted in the following Figure 3:

Figure 3.—Gas phase absorption spectrum of acrolein



The spectral data were taken from the work of Pitts et al. (1981) under paragraph (d)(2) of this section.

The pathlength of the sample gas absorption cell was measured according to the recommended procedure and was found to be 9.98 cm. The gas absorption cell contained 6.52×10^{16} molecules cm^{-3} of acrolein. A compensating polar planimeter was used to integrate each 10 nm interval throughout the region of absorption from 285 nm to 425 nm in both the sample and blank spectra. Based on triplicate measurements, one square, corresponding to 0.001 absorbance units (A), was found to be 0.148 vernier units (v.u.). The mean absorbance (A_λ) was obtained from

these spectra and the mean cross section (σ'_λ) was obtained using Equation 7 under paragraph (c)(1)(i)(A) of this section for each wavelength interval, centered at λ. All the results are summarized in the following Table 5:

TABLE 5—ABSORBANCE AND CROSS SECTION FOR ACROLEIN VAPOR [1]

Wavelength λ (nm)	Wavelength interval (nm)	Mean absorbance [AA]	Mean cross section σ'_λ (cm^2 molecule^{-1})
290	285–295	0.0037	5.69×10^{-21}
300	295–305	0.0066	1.01×10^{-20}
310	305–315	0.0104	1.60×10^{-20}
320	315–325	0.0137	2.11×10^{-20}
330	325–335	0.0156	2.40×10^{-20}
340	335–345	0.0156	2.40×10^{-20}
350	345–355	0.0151	2.32×10^{-20}
360	355–365	0.0096	1.48×10^{-20}
370	365–375	0.0073	1.12×10^{-20}
380	375–385	0.0031	4.76×10^{-21}
390	385–395	0.0016	2.46×10^{-21}
400	395–405	0.0004	6.15×10^{-22}
410	405–415	0.0002	4.61×10^{-22}
420	415–425	0.0000	0.00

[1] 6.52×10^{16} molecules cm^{-3} in a 9.98 cm gas absorption cell.

(iii) A sample calculation is given for the wavelength λ=305 nm centered over the wavelength interval 345 to 355 nm. For convenience, the area A, corresponding to 100 squares was blocked off in this absorption area and was not integrated with the planimeter. The average vernier reading of the remaining absorption area was 7.2 v.u. Hence,

$$\frac{7.2\text{ v.u}}{0.148\text{ v.u./square}}=49\text{ squares,}$$

and the total area in the spectrum in the wavelength interval 345 to 355, centered at λ=350 nm, is 149 squares. This number of squares corresponds to 0.0149 absorbance units:

$$\frac{(149\text{ squares})\,(0.001\text{ A/square})}{10}=0.0149\text{ A.}$$

From the blank spectrum, the baseline absorbance (A_λ blank) over this interval was −0.0001. The sample trace lay at −0.0001 absorbance units relative to a zero point at 450 nm. The observed sample absorbance is then equal to 0.0150 (0.0149+0.0001). The absolute corrected absorbance for the sample is given by

$$A^{corr}{}_{\lambda sample}=A^{obs.}{}_{\lambda sample}-A_{\lambda\ blank}$$
$$A^{corr.}{}_{\lambda sample}=0.0150-(-0.001)=0.0151\text{ A.}$$

(iv) Using Equation 7 under paragraph (c)(1)(i)(A) of this section and the values for the corrected sample absorbance, l, and C, the mean cross section for the wavelength λ=350 nm, centered over the wavelength interval 345–355 nm, is

$$\sigma'_\lambda=\frac{0.0151}{6.52\times10^{16}\text{ molecules cm}^{-3}\text{ (9.98 cm)}}$$

$\sigma'_\lambda=2.3\times10^{-20}\,cm^2\,molecule^{-1}$.

(v) Since the plant is located at 29° north latitude, the closest J_λ values are at 30° north latitude. These values are obtained from Table 2 under paragraph (c)(3) of this section and are summarized in Table 6 for the summer and winter season solstices. Using the data in Tables 5 and 6 under paragraph (c)(4)(ii) of this section, the products $\sigma_\lambda J_\lambda$ are calculated for each wavelength interval, centered at λ, and the results are summarized in the following Table 6 for each of the solstices:

Summer	Winter
$(k_{pE})_{max}=16.9\text{ days}^{-1}$ $(t_{1/2})_{min}=0.041\text{ days}$	$(k_{pE})_{max}=7.60\text{ days}^{-1}$ $(t_{1/2})_{min}=0.091\text{ days.}$

The terms $\Sigma\sigma_\lambda J_\lambda$ are also summarized for each solstice at the bottom of Table 6. Using these data in Equations 3 and 4 yields:

Summer	Winter
$(k_{pE})_{max}=16.9\text{ days}^{-1}$ $(t_{1/2})_{min}=0.041\text{ days}$	$(k_{pE})_{max}=7.60\text{ days}^{-1}$ $(t_{1/2})_{min}=0.091\text{ days.}$

Thus, acrolein transforms rapidly under clear sky conditions in the vicinity of the plant at Freeport, Texas on the summer and winter season solstices.

TABLE 6—CALCULATION OF $(K_{pE})_{max}$ FOR ACROLEIN VAPOR; RATE AT 30 °N ON WINTER AND SUMMER SOLSTICES

Wavelength λ (nm)	Wavelength interval (nm)	Summer solstice		Winter solstice	
		J_λ photons (cm^{-2} day^{-1})	$\sigma'_\lambda J_\lambda$ (day^{-1})	J_λ photons (cm^{-2} day^{-1})	$\sigma'_\lambda J_\lambda$ (day^{-1})
290	285–295	1.0×10^{18}	0.006	2.1×10^{18}	0.000
300	295–305	8.31×10^{17}	0.008	8.35×10^{18}	0.001
310	305–315	1.14×10^{19}	0.182	3.00×10^{19}	0.048
320	315–325	2.84×10^{19}	0.598	1.06×10^{19}	0.224
330	325–335	5.02×10^{19}	1.205	2.13×10^{19}	0.511
340	335–345	5.49×10^{19}	1.318	2.48×10^{19}	0.595
350	345–355	6.28×10^{19}	1.457	2.89×10^{19}	0.671
360	355–365	6.49×10^{19}	0.961	3.10×10^{19}	0.459
370	365–375	8.09×10^{19}	0.806	3.95×10^{19}	0.442
380	375–385	7.93×10^{19}	0.378	3.95×10^{19}	0.188
390	385–395	8.12×10^{19}	0.200	4.12×10^{19}	0.101
400	395–405	1.11×10^{20}	0.068	5.73×10^{19}	0.035
410	405–415	1.41×10^{20}	0.062	7.37×10^{19}	0.032
420	415–425	1.47×10^{20}	0.000	7.81×10^{19}	0.000
			$\Sigma\sigma'_\lambda J_\lambda=7.34_7$		$\Sigma\sigma'_\lambda J_\lambda=3.30_4$

(5) *Operation of the Gas Handling System.* The following procedure briefly describes the recommended typical and detailed operation of a gas handling system.

(i) Close all stopcocks and turn on the rotary pump (A). Open stopcock 4 and place a Dewar containing liquid nitrogen around trap (D). Measure the pressure with the thermocouple gauge H_1. When the pressure is less than 0.1 torr (0.013 kPa) open stopcocks 5 and 10, pump out this portion of the manifold, and measure the pressure with the thermocouple gauge H_2. When the pressure falls below 10^{-2} torr (1.3×10^{-3} kPa), open stopcock 7 and evacuate F containing activated Linde Molecular Sieve 4A or an equivalent grade. Heat F to approximately 150 °C for 1 to 2 hours under vacuum until the pressure falls to less than 10^{-2} torr (1.3×10^{-3} kPa) as measured on thermocouple gauge H_2. Open stopcocks 6, 9, and 11 and pump until H_2 falls below 10^{-2} torr (1.3×10^{-3} kPa).

(ii) Turn on the diffusion pump (C) and when this pump has reached operating temperature, open stopcocks 2 and 3 and close stopcock 4. Pump on the manifold until the pressure is $<10^{-5}$ torr (1.3×10^{-6} kPa) as measured by the ionization gauge (I) and zero on the capacitance manometer (G). It should be noted that the ionization gauge (I) should only be used when H_2 indicates a pressure less than 10^{-2} torr (1.3×10^{-3} kPa).

(iii) It is good practice, after the gas phase spectrum has been obtained, to evacuate the gas absorption cell (K) and the trap (F) prior to shutting down the

gas handling system. The gas handling system can be shut down by the following procedure: (A) closing stopcocks 5 to 11; (B) switching off the diffusion pump; (C) closing stopcocks 2 and 3 and opening 4, after the diffusion pump is cool; (D) removing the Dewar from trap (D) and allowing it to warm up; (E) then closing stopcock 4 and switching off the rotary pump; and (F) opening stopcock 1 to admit air to the rotary pump, thus preventing suck-back of the rotary pump oil. With this procedure, the vacuum manifold, the trap (D), and the diffusion pump are left under vacuum. The method of cleaning the liquid reservoir (J) is left to the discretion of the tester. However, as a final step it should be cleaned with reagent grade methanol or dichloromethane as solvent and dried. It is then ready for use. In operating a vacuum system with the diffusion pump working, do not expose the diffusion pump to pressures >0.1 torr of air (1.3×10^{-2} kPa) to avoid the degradation of the pump oil.

(d) *References.* For additional background information on this test guideline, the following references should be consulted: (1) Mill, T., Mabey, W.R., Bomberger, D.C., Chou, T-W., Hendry, D.G., and Smith, J.H. *Laboratory Protocols for Evaluating the Fate of Organic Chemicals in Air and Water.* Chapter 5. EPA 600/3–82–022 (1982).

(2) Pitts, J.N., Jr., Winer, A.M., Fitz, D.R., Knudsen, A.K., and Atkinson, R. *Experimental Protocol for Determining Absorption Cross Sections of Organic Chemicals,* EPA Report No. 600/3–81–051 (1981).

(3) U.S. Environmental Protection Agency. Mill, T., Davenport, J.E., Winterle, J.S., Maby, W.R., Drossman, H., Tse, D., and Lin, A. "Section 5. Photolysis in Air," by J.E., Davenport, *Toxic Substances Process Generation and Protocol Development.* Work Assignment 12, Draft final report. (Athens, Georgia, and Washington, D.C., 1984).

PART 797—ENVIRONMENTAL EFFECTS TESTING GUIDELINES

Subpart A—[Reserved]

Subpart B—Aquatic Guidelines

Sec.

797.1050 Algal acute toxicity test.
797.1060 Freshwater algal acute toxicity test.
797.1075 Freshwater and marine algae acute toxicity test.
797.1160 Lemna acute toxicity test.
797.1300 Daphnid acute toxicity test.
797.1330 Daphnid chronic toxicity test.
797.1350 Daphnid chronic toxicity test.
797.1400 Fish acute toxicity test.
797.1440 Fish acute toxicity test.
797.1520 Fish bioconcentration test.
797.1560 Fish bioconcentration test.
797.1600 Fish early life stage toxicity test.
797.1800 Oyster acute toxicity test.
797.1830 Oyster bioconcentration test.
797.1930 Mysid shrimp acute toxicity test.
797.1950 Mysid shrimp chronic toxicity test.
797.1970 Penaeid shrimp acute toxicity test.

Subpart C—Terrestrial Guidelines

797.2050 Avian dietary toxicity test.
797.2130 Bobwhite reproduction test.
797.2150 Mallard reproduction test.
797.2175 Avian acute oral toxicity test.
797.2750 Seed germination/root elongation toxicity test.
797.2800 Early seedling growth toxicity test.
797.2850 Plant uptake and translocation test.

Authority: 15 U.S.C. 2603.

Subpart A—[Reserved]

Subpart B—Aquatic Guidelines

§ 797.1050 Algal acute toxicity test.

(a) *Purpose.* The guideline in this section is intended for use in developing data on the acute toxicity of chemical substances and mixtures ("chemicals") subject to environmental effects test regulations under the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003, 15 U.S.C. 2601 et seq.). This guideline prescribes test procedures and conditions using freshwater and marine algae to develop data on the phytotoxicity of chemicals. The United States Environmental Protection Agency (U.S. EPA) will use data from these tests in assessing the hazard of a chemical to the environment.

(b) *Definitions.* The definitions in section 3 of the Toxic Substances Control Act (TSCA) and the definitions in Part 792—Good Laboratory Practice Standards of this chapter apply to this test guideline. The following definitions also apply to this guideline:

(1) "Algicidal" means having the property of killing algae.

(2) "Algistatic" means having the property of inhibiting algal growth.

(3) "ECx" means the experimentally derived chemical concentration that is calculated to effect X percent of the test criterion.

(4) "Growth" means a relative measure of the viability of an algal population based on the number and/or weight of algal cells per volume of nutrient medium or test solution in a specified period of time.

(5) "Static system" means a test container in which the test solution is not renewed during the period of the test.

(c) *Test procedures*—(1) *Summary of the test.* (i) In preparation for the test fill test containers with appropriate volumes of nutrient medium and/or test solution. Start the test by introducing algae into the test and control containers in the growth chambers. Environmental conditions within the growth chambers are established at predetermined limits.

(ii) At the end of 96 hours enumerate the algal cells in all containers to determine inhibition or stimulation of growth in test containers compared to controls. Use data to define the concentration-response curve, and calculate the EC_{10}, EC_{50}, and EC_{90} values.

(2) [Reserved].

(3) *Range-finding test.* (i) A range-finding test should be conducted to determine:

(A) If definitive testing is necessary.

(B) Test chemical concentrations for the definitive test.

(ii) Algae are exposed to a widely spaced (e.g., log interval) chemical concentration series. The lowest value in the series, exclusive of controls, should be at the chemical's detection limit. The upper value, for water soluble compounds, should be the saturation concentration. No replicates are required; and nominal concentrations of the chemical are acceptable unless definitive testing is not required.

(iii) The test is performed once for each of the recommended algal species or selected alternates. Test chambers should contain equal volumes of test solution and approximately 1×10^4 *Selenastrum* cells/ml or 7.7×10^4 *Skeletonema* cells/ml of test solution. The algae should be exposed to each concentration of test chemical for up to 96 hours. The exposure period may be shortened if data suitable for the purposes of the range-finding test can be obtained in less time.

(iv) Definitive testing is not necessary if the highest chemical concentration tested (water saturation concentration or 1000 mg/l) results in less than a 50 percent reduction in growth or if the lowest concentration tested (analytical detection limit) results in greater than a 50 percent reduction in growth.

(4) *Definitive test.* (i) The purpose of the definitive test is to determine the concentration response curves, the EC_{10}'s, EC_{50}'s, and EC_{90}'s for algal growth for each species tested, with a minimum amount of testing beyond the range-finding test.

(ii) Algae should be exposed to five or more concentrations of the test chemical in a geometric series in which the ratio is between 1.5 and 2.0 (e.g., 2, 4, 6, 8, 16,

32, and 64 mg/l). Algae should be placed in a minimum of three replicate test containers for each concentration of test chemical and control. More than three replicates may be required to provide sufficient quantities of test solution for determination of test substance concentration at the end of the test. Each test chamber should contain equal volumes of test solution and approximately 1×10^4 *Selenastrum* cells ml^{-1} or 7.7×10^4 *Skeletonema* cells/ml of test solution. The chemical concentrations should result in greater than 90 percent of algal growth being inhibited or stimulated at the lowest concentrations of test substance compared to controls.

(iii) Every test should include a control consisting of the same nutrient medium, conditions, procedures, and algae from the same culture, except that none of the test substance is added. If a carrier is present in any of the test chambers, a separate carrier control is required.

(iv) The test begins when algae from 7 to 10-day-old stock cultures are placed in the test chambers containing test solutions having the appropriate concentrations of the test substance. Algal growth in controls should reach the logarithmic growth phase by 96 hours (at which time the number of algal cells should be approximately 1.5×10^6/ml for *Skeletonema* or 3.5×10^6/ml for *Selenastrum*). If growth in controls does not reach this logarithmic phase within this 96-hour period, the test is invalidated and should be repeated. At the end of 96 hours the algal growth response (number or weight of algal cells/ml) in all test containers and controls should be determined by an indirect (spectrophotometry, electronic cell counters, dry weight, etc.) or a direct (actual microscopic cell count) method. Indirect methods should be calibrated by a direct microscopic count. The percentage inhibition or stimulation of growth for each concentration, EC_{10}, EC_{50}, EC_{90} and the concentration-response curves are determined from these counts.

(v) At the end of the definitive test, the following additional analyses of algal growth response should be performed:

(A) Determine whether the altered growth response between controls and test algae was due to a change in relative cell numbers, cell sizes or both. Also note any unusual cell shapes, color differences, flocculations, adherence of algae to test containers, or aggregation of algal cells.

(B) In test concentrations where growth is maximally inhibited, algistatic effects may be differentiated from algicidal effects by the following two methods:

(*1*) Add 0.5 ml of a 0.1 percent solution (weight/volume) of Evans blue stain to a 1 milliliter aliquot of algae from a control container and to a 1 milliliter aliquot of algae from the test container having the lowest concentration of test chemical which completely inhibited algal growth (if algal growth was not completely inhibited, select an aliquot of algae for staining from the test container having the highest concentration of test chemical which inhibited algal growth). Wait 10 to 30 minutes, examine microscopically, and determine the percent of the cells which stain blue (indicating cell mortality). A staining control should be performed concurrently using heat-killed or formaldehyde-preserved algal cells; 100 percent of these cells should stain blue.

(*2*) Remove 0.5 ml aliquots of test solution containing growth-inhibited algae from each replicate test container having the concentration of test substance evaluated in paragraph (c)(4)(v)(B)(*1*) of this section. Combine these aliquots into a new test container and add a sufficient volume of fresh nutrient medium to dilute the test chemical to a concentration which does not affect growth. Incubate this subculture under the environmental conditions used in the definitive test for a period of up to 9 days, and observe for algal growth to determine if the algistatic effect noted after the 96-hour test is reversible. This subculture test may be discontinued as soon as growth occurs.

(5) [Reserved]

(6) *Analytical measurements*—(i) *Chemical.* (A) Glass distilled or deionized water should be used in the preparation of the nutrient medium. The pH of the test solution should be measured in the control and test containers at the beginning and at the end of the definitive test. The concentration of test chemical in the test containers should be determined at the beginning and end of the definitive test by standard analytical methods which have been validated prior to the test. An analytical method is unacceptable if likely degradation products of the chemical, such as hydrolysis and oxidation products, give positive or negative interference.

(B) At the end of the test and after aliquots have been removed for algal growth-response determinations, microscopic examination, mortal staining, or subculturing, the replicate test containers for each chemical concentration may be pooled into one sample. An aliquot of the pooled sample may then be taken and the concentration of test chemical determined. In addition, the concentration of test chemical associated with the algae alone should be determined. Separate and concentrate the algal cells from the test solution by centrifuging or filtering the remaining pooled sample and measure the test substance concentration in the algal-cell concentrate.

(ii) *Numerical.* Algal growth response (as percent of inhibition or stimulation in the test solutions compared to the controls) is calculated at the end of the test. Mean and standard deviation should be calculated and plotted for each treatment and control. Appropriate statistical analyses should provide a goodness-of-fit determination for the concentration response curves. The concentration response curves are plotted using the mean measured test solution concentrations obtained at the end of the test.

(d) *Test conditions*—(1) *Test species.* Species of algae recommended as test organisms for this test are the freshwater green alga, *Selenastrum capricornutum*, and the marine diatom, *Skeletonema costatum.* Algae to be used in acute toxicity tests may be initially obtained from commercial sources and subsequently cultured using sterile technique. Toxicity testing should not be performed until algal cultures are shown to be actively growing (i.e., capable of logarithmic growth within the test period) in at least 2 subcultures lasting 7 days each prior to the start of the definitive test. All algae used for a particular test should be from the same source and the same stock culture. Test algae should not have been used in a previous test, either in a treatment or a control.

(2) *Facilities*—(i) *General.* (A) Facilities needed to perform this test include: a growth chamber or a controlled environment room that can hold the test containers and will maintain the air temperature, lighting intensity and photoperiod specified in this test guideline; apparatus for culturing and enumerating algae; a source of distilled and/or deionized water; and apparatus for carrying out analyses of the test chemical.

(B) Disposal facilities should be adequate to accommodate spent glassware, algae and test solutions at the end of the test and any bench covering, lab clothing, or other contaminated materials.

(ii) *Test containers.* Erlenmeyer flasks should be used for test containers. The flasks may be of any volume between 125 and 500 ml as long as the same size is used throughout a test and the test

solution volume does not exceed 50 percent of the flask volume.

(iii) *Cleaning and sterilization.* New test containers may contain substances which inhibit growth of algae. They should therefore be cleaned thoroughly and used several times to culture algae before being used in toxicity testing. All glassware used in algal culturing or testing should be cleaned and sterilized prior to use according to standard good laboratory practices.

(iv) *Conditioning.* Test containers should be conditioned by a rinse with the appropriate test solutions prior to the start of the test. Decant and add fresh test solutions after an appropriate conditioning period for the test chemical.

(v) *Nutrient medium.* (A) Formulation and sterilization of nutrient medium used for algal culture and preparation of test solutions should conform to those currently recommended by the U.S. EPA for freshwater and marine algal bioassays. No chelating agents should be included in the nutrient medium used for test solution preparation. Nutrient medium should be freshly prepared for algal testing, and may be dispensed in appropriate volumes in test containers and sterilized by autoclaving or filtration. The pH of the nutrient medium should be 7.5 for *Selenastrum* and 8.1 for *Skeletonema* at the start of the test and may be adjusted prior to test chemical addition with 0.1N NaOH or HCl.

(B) Dilution water used for preparation of nutrient medium and test solutions should be filtered, deionized or glass distilled. Saltwater for marine algal nutrient medium and test solutions should be prepared by adding a commercial, synthetic, sea salt formulation or a modified synthetic seawater formulation to distilled/deionized water to a concentration of 30 parts per thousand.

(vi) *Carriers.* Nutrient medium should be used in making stock solutions of the test chemical. If a carrier other than nutrient medium is absolutely necessary to dissolve the chemical, the volume used should not exceed the minimum volume necessary to dissolve or suspend the chemical in the test solution.

(3) *Test parameters.* (i) The test temperature should be maintained at 24°±1 °C for *Selenastrum* and 20°± °C for *Skeletonema.* Temperature should be recorded hourly during the test.

(ii) Test chambers containing *Selenastrum* should be illuminated continuously and those containing *Skeletonema* should be provided a 14-hour light and 10-hour dark photoperiod with a 30 minute transition period under fluorescent lamps providing 300 ±25 uEin/m^2 sec (approximately 400 ft-c) measured adjacent to the test chambers at the level of test solution.

(iii) Stock algal cultures should be shaken twice daily by hand. Test containers should be placed on a rotary shaking apparatus and oscillated at approximately 100 cycles/min for *Selenastrum* and at approximataely 60 cycles/min for *Skeletonema* during the test. The rate of oscillation should be determined at least once daily during testing.

(iv) The pH of nutrient medium in which algae are subcultured should be 7.5 for *Selenastrum* and 8.1 for *Skeletonema*, and is not adjusted after the addition of the algae. The pH of all test solutions and controls should be measured at the beginning and end of the test.

(v) Light intensity should be monitored at least daily during the test at the level of the test solution.

(e) *Reporting.* The sponsor should submit to the EPA all data developed by the test that are suggestive or predictive of acute phytotoxicity. In addition to the general reporting requirements prescribed in Part 792—Good Laboratory Practice Standards of this chapter, the following should be reported:

(1) Detailed information about the test organisms, including the scientific name, method of verification, and source.

(2) A description of the test chambers and containers, the volumes of solution in the containers, the way the test was begun (e.g., conditioning, test substance additions, etc.), the number of replicates, the temperature, the lighting, and method of incubation, oscillation rates, and type of apparatus.

(3) The concentration of the test chemical in the control and in each treatment at the end of the test and the pH of the solutions.

(4) The number of algal cells in each treatment and control and the method used to derive these values at the beginning and end of the test; the percentage of inhibition or stimulation of growth relative to controls; and other adverse effect in the control and in each treatment.

(5) The 96-hour EC_{10}, EC_{50}, and EC_{90} values and their 95-percent confidence limits, the methods used to derive these values, the data used to define the shape of the concentration-response curve and the goodness-of-fit determination.

(6) Methods and data records of all chemical analyses of water quality and test substance concentrations, including method validations and reagent blanks.

(7) The results of any optional analyses such as: microscopic appearance of algae, size or color changes, percent mortality of cells and the fate of subcultured cells, the concentration of test substance associated with algae and test solution supernate or filtrate.

(8) If the range-finding test showed that the highest concentration of the chemical tested (not less than 1000 mg/l or saturation concentration) had no effect on the algae, report the results and concentration and a statement that the chemical is of minimum phytotoxic concern.

(9) If the range-finding test showed greater than a 50 percent inhibition of algal growth at a test concentration below the analytical detection limit, report the results, concentration, and a statement that the chemical is phytotoxic below the analytical detection limit.

§ 797.1060 Freshwater algae acute toxicity test.

(a) *Purpose.* (1) A unicellular green alga is used as a model system initially to estimate the concentration of a chemical which could affect the primary production of plants. Because regeneration times for unicellular algal species are measured in hours, this relatively short test can assess effects over several generations. Results allow the assessment of effects on initial organisms from short term exposures and give an indication of the effect on algal populations.

(2) Many different protocols for algal tests are available. This growth test is easy to perform and gives reproducible results with the recommended species. This Test Guideline can be adapted for other algal species. If such an adaptation is used, a description of the method should be provided with the test report.

(b) *Definitions.* The following definitions apply to this guideline:

(1) "EC–X" means the experimentally derived chemical concentration that is calculated to effect X percent of the test criterion.

(2) "Growth rate" means an increase in biomass or cell numbers of algae per unit time.

(3) "Inhibition" means any decrease in the growth rate of the test algae compared to the control algae.

(4) "Limited water-soluble substances" means chemicals which are soluble in water at less than 1,000 mg/l.

(5) "Readily water-soluble substances" means chemicals which are soluble in water at a concentration equal to or greater than 1,000 mg/l.

(c) *Test procedures*—(1) *Summary of the test.* (A) The procedures for the preparation of the algal suspension, the stock solution of the test chemical, and

the test media, are dependent on the solubility of the chemical and modifications in the testing procedure may be necessary due to the chemical's solubility in water. For chemicals with low solubility under test conditions, it may not be possible to quantitatively determine the EC_{50}.

(B) For purposes of the test, algae are grown in Erlenmeyer flasks in an environmentally controlled growth chamber. The test is started when 50 ml of algal suspension (1×10^4 or 2×10^4 cells/ml) and 50 ml of the appropriate test chemical dilutions are placed in the flasks. Algal growth is measured at 24 hour intervals for at least 96 hours. A Coulter Counter, counting chamber, or other appropriate instruments may be used to determine cell density. The data are used to define the concentration-response curve and the time-growth curve, and to calculate the EC_{50} and the no-effect level for (EC_0) for the chemical.

(2) [Reserved]

(3) *Range-finding test.* A range-finding test should be conducted to establish test chemical concentrations for the definitive test.

(4) *Definitive test.* (i) A definitive test is used to determine time-growth and concentration-response curves, as well as the EC_{50} and no effect level (EC_0) of the test chemical. The testing method will vary slightly depending upon whether the chemical is readily water-soluble, of limited solubility, or volatile.

(ii) Criteria for a valid definitive test. (A) Algae in the control flasks should exhibit log phase growth within 48 hours of test initiation and should produce a standing crop of at least 10^5 cells/ml in 96 hours.

(B) At 96 hours, one test concentration should show no significant decrease in growth rate and one concentration should show greater than a 50 percent decrease in growth rate relative to the control.

(C) The pH of each test solution should be measured before use and, if necessary, adjusted to 7.5 ± 0.2 using HCl or NaOH.

(D) The test chemical concentration should be determined before and after the test when practical.

(E) No more than 20 percent of the test chemical should be lost by volatilization. If more is lost (or is likely to be), the test should be conducted in closed flasks with a resulting lower standing crop.

(iii) *Test procedures dependent on solubility.*—(A) *Readily water-soluble chemicals.* When readily water-soluble chemicals are tested, the following procedures are recommended:

(*1*) A stock solution of the readily water-soluble chemical should be prepared with micropore-filtered (0.45 μm pore size) medium. The concentration of the stock solution should be twice as high as the highest concentration to be used in the test. From this stock solution at least five dilutions should be made. The dilutions should be in a geometric series with a ratio of 10 or n/10 (where n=number of dilutions). A minimum of five concentrations should be used such that the highest concentration results in at least 50 percent growth inhibition and the lowest concentration shows no significant difference ($p=0.05$) from the control.

(*2*) The algal suspension for testing readily-soluble chemicals should have a density of approximately 2×10^4 cells/ml of medium. The cell density should be quantified prior to beginning the test.

(*3*) The test should be carried out in triplicate (i.e., 3 replicate flasks per concentration). The test begins by transferring 50 ml of algal suspension to 250 ml Erlenmeyer flasks. Then, in sequence of increasing concentrations, a 50 ml volume of each prepared dilution is added to the appropriate flask. The control flasks receive 50 ml of medium. The flasks are then gently shaken and placed in the test chambers. The algal concentration in samples from each flask is determined at intervals of at least 24, 48, 72, and 96 hours after the start of the test and the number of cells or biomass (dry weight) per ml is calculated for each sample.

(*4*) A fluorimeter or spectrometer can be used to calculate cell number or biomass, but will not provide precise measurements at the start of the test and at 24 hours. If a Coulter Counter, or spectrophotometer, is used to enumerate algae at the beginning of the test, 100 ml of medium should be used to determine the background.

(B) *Limited water-soluble chemicals.* When chemicals with limited water-solubility are tested, the following modifications of the above procedure are recommended:

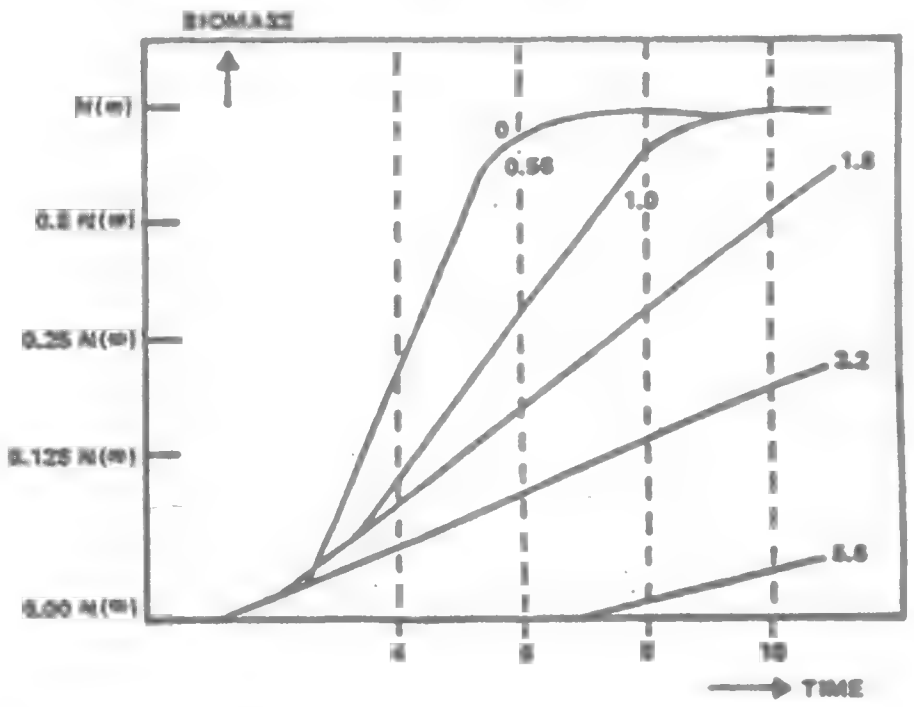
(*1*) A stock solution for chemicals with limited water-solubility should be prepared with a suitable organic solvent. This stock solution should be 10^4 times as concentrated as the highest concentration to be tested and the amount of solvent necessary to dissolve the chemical should not exceed 0.1 ml/l at the highest chemical concentration used.

(*2*) An algal suspension for testing chemicals with limited water-solubility should have a density of approximately 10^4 cells/ml. One hundred (100) ml of this algal suspension (10^4 cells/ml) are placed in each flask and 10 μl of the various dilutions of test chemical and solvent are added. Ten (10) μl of solvent are added to the solvent control flasks. Otherwise the test should be conducted as described for readily-soluble chemicals.

(iv) *Test procedures dependent on volatility.* When volatile chemicals are tested, the following modification of the procedures in paragraph (c)(4)(iii) (A) and (B) of this section is recommended. The modification prescribes the use of 250 ml conical flasks with ground glass stoppers instead of 250 ml Erlenmeyer flasks prescribed in paragraph (c)(4)(iii)(A)(*3*) of this section. These flasks are filled as described above with the algal suspension and test chemical solution. For each measurement interval the complete contents of the flasks should be used. Therefore, it is necessary to use a sufficient number of flasks to allow for this destructive sampling with time.

(5) *Test results.* (i) The results of the measurements should be tabulated and plotted on semi-logarithmic paper to yield growth curves as illustrated in the following Figure 1:

Figure 1—Theoretical example of a result of a toxicity test with algae



The growth curve is plotted on a simple logarithmic scale. The figures give the concentrations of the test compound in weight per volume. The broken lines show the measurements. $N(\infty)$ is the maximum cell density that can be achieved.

(ii) The reported chemical effects on algae should include both the EC_{50} value and the no-effect level (EC_0). A number of methods have been described for determining the EC_{50} and EC_0. Two examples are provided.

(A) *EC_50 and EC_0 determined from the specific maximum growth rate (μ).* The mean value of the three replicate measurements and the 95 percent confidence limits should be calculated for the 24, 48, 72, and 96 hour sampling times, and plotted as in Figure 1. Two values are selected from the log-linear portion of the curve and the specific growth rate (μ) is calculated according to the following formula:

$$\mu = \frac{\log_{10}\frac{N_1}{N_2}}{0.434(t_2 - t_1)}$$

where:

N_1 = the lower cell number chosen in the log phase at t_1

N_2 = the higher cell number chosen in the log phase at t_2

t = time in hours

u = maximum specific growth rate

0.434 = coefficient to convert $\log_{10}$ data to $\log_e$

The percent reduction of the growth rate compared to the control can be calculated:

$$\text{"\% inhibition"} = \frac{1 - u(tox)}{u(b)} \times 100$$

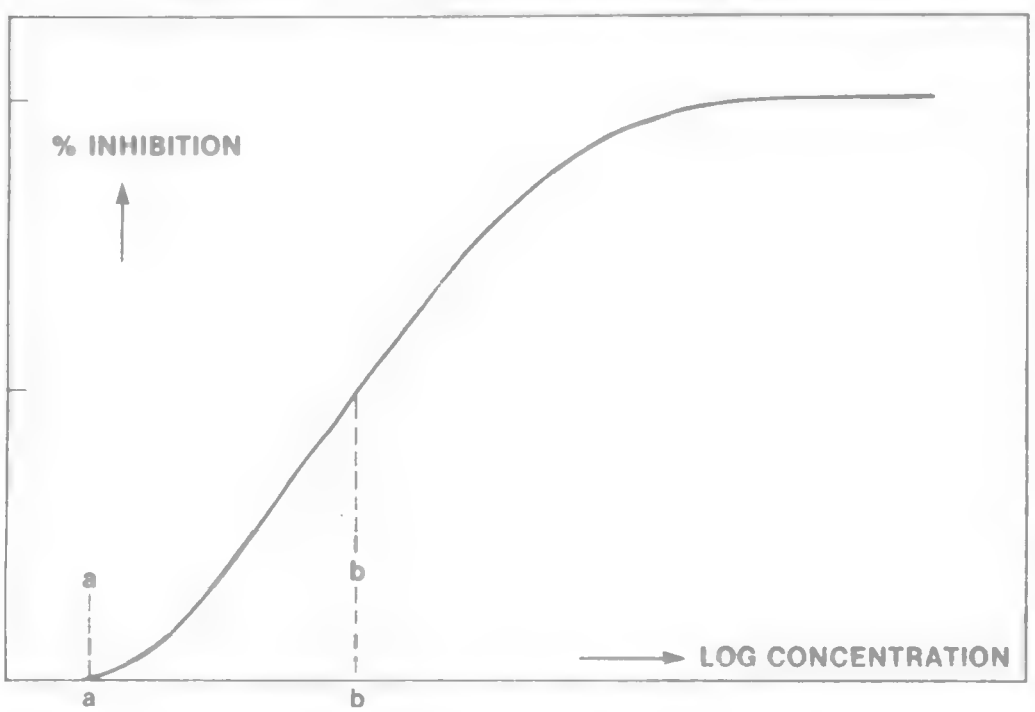
where:

$u(tox)$ = the growth rate in the presence of the chemical

$u(b)$ = the growth rate in the control

The calculated percentages ("% inhibition") are plotted against the log concentration as shown in the following Figure 2:

Figure 2—Theoretical example of the relation between the logarithm of the concentration of the chemical and the percentage inhibition



The highest concentration showing no difference from the control (*1*) and the EC_{50} (*2*) can then be read from this graph.

(B) *EC_{50} determined from the mean relative growth rate.* (*1*) The mean relative growth rate (RGR) during log phase growth for each culture can be calculated as follows:

$$RGR = \frac{Log_{10}n_2 - Log_{10}n_1}{t_2 - t_1}$$

where:

n_1 = number of cells/ml at t_1
n_2 = number of cells/ml at t_2
t = time (hours).

(*2*) The RGR of the three control replicates can be calculated and its 95 percent confidence limits determined. Treatment RGR values that are greater than the control upper 95 percent confidence limit indicate algal stimulation and should be ignored. Those above the control RGR but within the 95 percent confidence interval should be assumed to equal the control mean. Treatment RGR values that are less than the lower 95 percent confidence limit of the control should be used in the following calculations: The low treatment RGR values should be expressed as a percentage of the control RGR. The percentage values including the highest concentration of test compound at which growth is 100 percent that of control (zero inhibition and the EC_0) and the lowest concentration with a value of 0 percent (100 percent inhibition) should be included in an appropriate statistical analysis to determine the EC_{50} value and its 95 percent confidence limits.

(*3*) Interpretation of results. Algal populations rapidly regenerate themselves upon removal of stress; consequently, concentrations that produce effects need careful interpretation.

(6) [Reserved]

(d) *Test conditions*—(1) *Test species*—(i) *Selection.* (A) It is recommended that the algae used be a fast-growing species that is convenient for culturing and testing. The following freshwater species are considered suitable:

(*1*) *Selenastrum capricornutum.*

(*2*) *Scenedesmus quadricauda.*

(*3*) *Chlorella vulgaris.*

(B) Axenic cultures are recommended and are highly desirable when testing biodegradable compounds. However, pure monocultures of algae are required.

(ii) *Stock culture.* (A) The stock cultures are algal cultures that are regularly transferred to fresh medium to act as initial test material. Cultures that are not used regularly should be streaked out on sloped agar tubes. The tube cultures should be transferred to fresh medium at least once every 2 months.

(B) The stock cultures should be grown in Erlenmeyer flasks containing the appropriate medium (volume about 100 ml). When the algae are incubated at 20 °C with continuous illumination, a weekly transfer is recommended. An amount of "old" culture is transferred with sterile pipettes into a flask of fresh medium, for an approximate 100-fold dilution. The growth rate of a species can be determined from the growth curve. If this is known, it is possible to estimate at what density the culture should be transferred to new medium. This should be done before the culture reaches the senescent phase.

(iii) *Selection of test algae.* (A) Algae used in a test should be in an exponential growth phase, with a cell density of at least 10^4 cells/ml. If it is not possible to use the stock culture directly for testing (due to lack of or excessive cell growth) it may be necessary to pre-culture the algae prior to use.

(B) To preculture the algae, 2 liters of sterile nutrient solution are added to a 3 liter Erlenmeyer flask. Sufficient algal suspension from the stock culture is added to give an algal concentration of approximately 10^4 cells/ml (± 25 percent). The flasks should be continuously illuminated with fluorescent light, and the temperature maintained at 20 °C. Cultures should be shaken by hand at least once every day; this is particularly important for non-motile species. The cell concentration in the culture should be determined daily so that the desired concentration may be obtained for testing.

(C) Other methods of culturing may also be used. Some algae can be grown rapidly in shake cultures. Bubbling with air containing additional carbon dioxide may also accelerate growth. Furthermore, under the culturing conditions described above, the pre-culture, for the algal species recommended in this test, should be optimal for inoculation of test flasks after 4 to 5 days. If the algal cultures contain deformed or otherwise abnormal cells (e.g., clumped, chlorotic), they should not be used for the test.

(2) *Facilities*—(i) *Apparatus.* (A) In order to avoid contamination with bacteria and other algae, all stock culture maintenance operations should be carried out under sterile conditions. Possible contamination should be checked by suitable methods.

(B) Testing and culturing of algae should be done in an environmentally controlled cabinet or chamber capable of maintaining a temperature of 20 ° C ± 2 °C and continuous illumination of approximately 300 to 400 uE/m^2 sec.

(C) In addition to normal laboratory apparatus and equipment for algal testing, a counting apparatus (e.g., Coulter Counter, counting chamber, fluorometer, spectrophotometer,

colorimeter) to determine cell numbers is also necessary.

(D) The following apparatus and equipment are necessary for algal culturing:

(*1*) Incubators or climate rooms capable of maintaining temperature and light at the recommended levels.

(*2*) Filtering apparatus, accompaning membrane filters, (0.45 μm) and 5 liter flasks.

(*3*) Inoculation needle.

(*4*) Sterile graduated pipettes.

(*5*) pH-meter.

(*6*) Culture tubes (150 $\times$ 18 mm) with sponge and/or metal caps.

(*7*) Erlenmeyer flasks, 200 ml, with ground glass stoppers, and a 3 liter flask.

(ii) *Dilution water.* Redistilled water should be used for preparation of stock, chemical, and nutrient media solutions.

(3) *Test parameters*—(i) *Carriers.* If solvents, are used, they should not themselves be toxic at the concentrations used and should not affect algal growth. In no case should the concentration of an organic solvent exceed 0.1 ml/1 in the highest concentration.

(ii) *Lighting.* Algae should be kept under continuous, uniform illumination of approximately 300 to 400 uE/m^2 sec. The light source should be fluorescent lights.

(iii) *Loading.* For readily water-soluble and volatile chemicals, an algal suspension containing approximately 2×10^4 cells/ml should be used. For chemicals with limited water solubility the algal density should be approximately 10^4 cells/ml.

(iv) *Temperature.* The temperature for culturing and testing algae should be 20 °C $\pm$ 2 °C.

(v) *Nutrient media.* The recommended media for adequate growth of algae is shown in the following Table 1:

TABLE I—MEDIUM FOR FRESHWATER ALGAE

	Amount
Nutrient salts:	
$NaNO_3$	0.5 g.
NH_4NO_3	0.33 g.
$K_2HPO_4.3H_2O$	0.052 g.
$CaCl_2.2H_2O$	0.035 g.
$Na_2CO_3.10H_2O$	0.054 g.
Fe_3-citrate	0.006 g.
Citric acid monohydrate	0.006 g.
Trace element solution (see below).	1.0 ml.
Redistilled water made up to	1.0liter.
pH	7.7 ±0 3
Trace Element Solution:	
H_3BO_3	2.90 g.
$MnCl_2.4H_2O$	1.81 g.
$ZnCl_2$	0.11 g.
$CuSO_4.5H_2O$	0.08 g.
$(NH_4)_6Mo_7.4H_2O$	0.018 g.
Redistilled water made up to	1.0 liter.

All nutrient solutions can be prepared as concentrated stock solutions using the salts shown in Table 1 under this paragraph and stored in the dark and cold. These solutions should be sterilized by filtration or by autoclaving. The medium is prepared by adding the correct amount of stock solutions, or the nutrients salts directly, to sterile distilled water, to give the final concentrations listed. For solid medium, 1.5 to 2 percent agar can be added. Other media may be necessary if species other than those above are used.

(e) *Reporting.* In addition to a description of the type of test and method, the report submitted to EPA should include the following information.

(1) For the chemical tested: Manufacturer, empirical formula, batch number and its degree of purity, chemical characterization (e.g., trade name), and physical properties.

(2) For the test organisms: Origin of innoculum, laboratory culture and strain number, and method of cultivation (including whether cultures aerated and/or shaken).

(3) For the test conditions: Date of beginning and end of the test and its duration, temperature, light intensity and light quality in the growth chamber, type of test flask (and if closed or open), initial pH of test solution, what carrier is used and how much, concentrations of test chemical, and the counting method.

(4) For the results: A tabulation of cell number or biomass per ml for each flask at each sampling period, the plotted time-growth curves for each concentration and the concentration-effect curve, the EC_{50} value and the highest concentration showing no statistical growth inhibition (EC_0) and the statistical methods used to calculate them, and other observed effects, e.g. algicidal vs. algistatic effects, clumping or chlorosis of cells.

(5) For the laboratory performing the test: The name of the person responsible for carrying out the test (study director) as well as the name of the person carrying out the test, the name and address of the testing laboratory, and the date and signature of the person responsible for the test.

§ 797.1075 Freshwater and marine algae acute toxicity test.

(a) *Purpose.* (1) A unicellular alga is used as a model system initially to estimate the concentration of a chemical which could affect survival and growth of freshwater or marine algae. Because generation times for unicellular algal species are measured in hours, this relatively short test can assess effects over several generations. Results allow the assessment of effects on initial organisms from short term exposures and give an indication of the effect on algal populations

(2) Many different protocols for algal tests are available. This growth test is easy to perform and gives reproducible results with the recommended species. This test guideline can be adapted for other algal species. If such an adaptation is used, a description of the method should be provided with the test report.

(b) *Definitions.* The following definitions apply to this guideline:

(1) "EC–X" means the experimentally derived chemical concentration that is calculated to effect X percent of the test criterion.

(2) "Growth rate" means the rate at which the algal population grows, estimated by the increase in cell numbers or biomass over a specified period of time.

(3) "Inhibition" means any decrease in the growth rate of the population of test algae compared to the controls.

(4) "Limited water-soluble substances" means chemicals which are soluble in water at less than 1,000 mg/l.

(5) "Readily water-soluble substances" means chemicals which are soluble in water at a concentration equal to or greater than 1,000 mg/l.

(c) *Test procedures*—(1) *Summary of the test.*

(A) The procedures for the preparation of the algal suspension, the stock solution of the test chemical, and the test media, are dependent on the solubility of the chemical. Modifications in the testing procedure may be necessary due to the chemical's solubility in water. For chemicals with low solubility under test conditions, it may not be possible to quantitatively determine the EC_{50}.

(B) For purposes of the test, algae are grown in Erlenmeyer flasks in an environmentally controlled growth chamber. The test is started when an algal suspension in nutrient solution (10^4 or 2×10^4 cells/ml) and the appropriate test chemical dilutions are placed in the flasks. Algal growth is measured at 24-hour intervals for at least 96 hours. A Coulter Counter, cell counting chamber, or other appropriate instruments may be used to determine population density. The data are used to define the concentration-response curve and the time-growth curve, and to calculate the EC_{50} and EC_0 (no-effect level) for the chemical.

(2) [Reserved]

(3) *Range-finding test.* A range-finding test should be conducted to establish test chemical concentrations for the definitive test.

(4) *Definitive test.* (i) The definitive test is used to determine time-growth and concentration-response curves, as well as the EC_{50} and EC_0 of the test chemical. The testing method will vary slightly depending upon whether the chemical is readily water-soluble, of limited solubility, and/or volatile.

(ii) Criteria for a valid definitive test. (A) Algae in the control flasks should exhibit log phase growth within 48 hours of test initiation and should produce a population density of at least 10^5 cells/ml in 96 hours.

(B) At 96 hours, one test concentration should show no significant decrease in growth rate and one concentration should show greater than a 50 percent decrease in growth rate relative to the control.

(C) The pH of each test solution should be measured before use and, if necessary, adjusted to 7.5 ± 0.2 for freshwater and 8.0 ± 0.1 for marine species using HCl or NaOH.

(D) The concentration of the test chemical in the medium should be determined before and after the test.

(E) No more than 20 percent of the test chemical should be lost by volatilization. If more is lost (or is anticipated to be), the test should be conducted in closed flasks. Carbon dioxide limitations resulting from the closed flasks typically result in population densities lower than the standard in (A) above.

(iii) Test procedures dependent on solubility—(A) *Readily water-soluble chemicals.* When readily water-soluble chemicals are tested, the following procedures are recommended:

(*1*) Just prior to testing, a stock solution of the readily water-soluble chemical should be prepared with micropore-filtered (0.45 um pore size) medium. The concentration of the stock solution should be twice as high as the highest concentration to be used in the test. From this stock solution at least five dilutions should be made. The dilutions should be in a geometric series with a ratio of 10 or n/10 (where n = number of dilutions). The highest concentration should result in at least 50 percent growth inhibition while the lowest concentration should result in no significant difference ($\alpha = 0.05$) from the growth in the controls.

(*2*) The algal suspension for testing readily-soluble chemicals should have a density of approximately 2×10^4 cells/ml of nutrient solution. The cell density should be quantified prior to beginning the test.

(*3*) The test should be carried out in triplicate (i.e., three replicate flasks per concentration). The test begins by transferring 50 ml of algal suspension to 250 ml Erlenmeyer flasks. Then, in sequence of increasing concentrations, a 50 ml volume of each prepared dilution is added to the appropriate flask. The control flasks receive 50 ml of nutrient solution. The flasks are then gently shaken and placed in the growth chambers. The flasks should be shaken by hand at least once every day; this is particularly important for nonmotile species. The algal concentration in samples from each flask is determined at intervals of at least 24, 48, 72, and 96 hours after the start of the test and the number of cells or biomass (dry weight per ml) is calculated for each sample.

(*4*) If a fluorometer or spectrometer is used to calculate cell number or biomass, the measurements will be inaccurate during the first 24 hours of the test period. Therefore, a calibration curve of meter readings of cell numbers versus test concentrations should be plotted. Calculations should be limited to the straight portion of the calibration curve.

(B) *Limited water-soluble chemicals.* When chemicals with limited water-solubility are tested, the following modifications of the above procedure are recommended:

(*1*) Just prior to testing, stock solutions of test chemicals should be prepared with a suitable organic solvent. Each stock solution should be 10^4 times more concentrated than the highest concentration to be tested. The amount of solvent necessary to dissolve the chemical should not exceed 0.1 ml/l of stock solution.

(*2*) The algal suspension should have a density of approximately 10^4 cells/ml. Otherwise the test should be conducted as described for readily-soluble chemicals.

(*3*) Each test flask should contain 100 ml of algal suspension and a 10 µl aliquote of the diluted chemical stock. A series of dilutions is made of the chemical stock so that when 10 µl of each dilution is combined with 100 ml of algal suspension the desired test concentrations are obtained. Two controls should be included, one possessing the solvent (10 µl of 0.1 ml/l) and no test chemical, and the second without either.

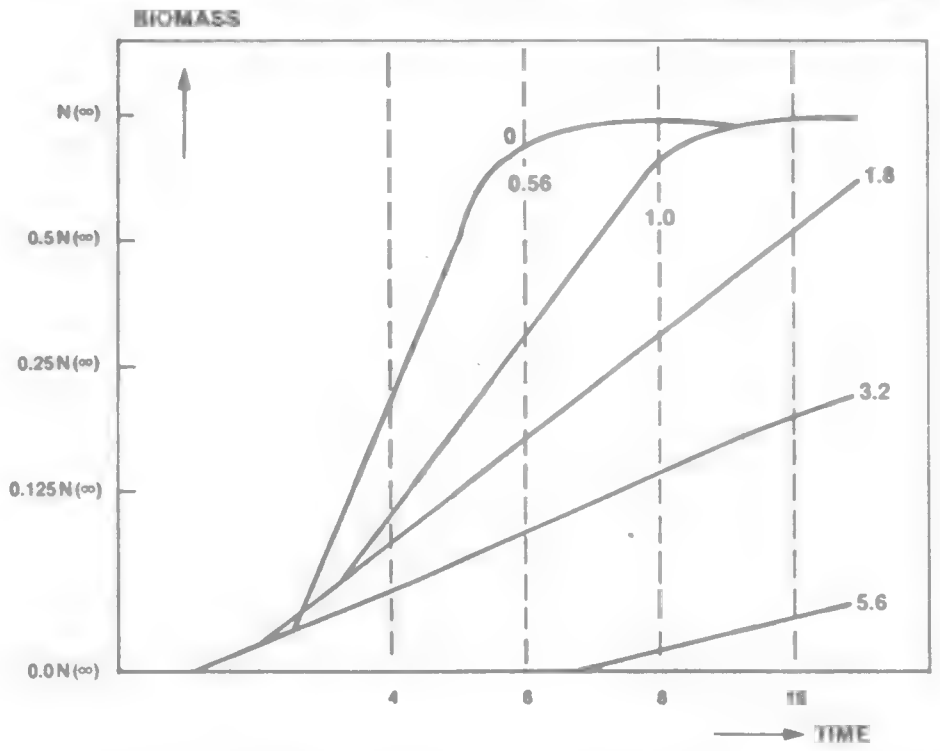
(iv) Test procedures dependent on volatility. When volatile chemicals are tested, the following modifications of the procedures in paragraph (c)(4)(iii) (A) and (B) of this section are recommended. The test is performed as described above (depending on the chemical's solubility in water) except that 250 ml conical flasks with ground glass stoppers should be used. These flasks are filled, as described above, with the algal suspension and test chemical solution. For each measurement interval the complete contents of the flasks should be used. Therefore, it is necessary to use a sufficient number of flasks to allow for this destructive sampling with time.

(5) *Test results.* (i) The results of the measurements should be tabulated. Growth curves resulting from the experiment should be drawn on semi-logarithmic paper.

(ii) The reported chemical effects on algae should include both the EC_{50} and EC_0. A number of methods have been described for determining the EC_{50} and EC_0. Two examples are provided.

(A) *EC_{50} and EC_0 determined from the specific maximum growth rate (u).* The mean value of the three replicate measurements and the 95 percent confidence limits should be calculated for the 24, 48, 72, and 96 hour sampling times, and plotted as in the following Figure 1:

Figure 1—Theoretical example of a result of a toxicity test with algae



The growth curve is plotted on a simple logarithmic scale. The figures give the concentrations of the test compound in weight per volume. The broken lines show the measurements. N(∞) is the maximum cell density that can be achieved.

Two values are selected from the log-linear portion of the curve and the specific growth rate (u) is calculated according to the following formula:

$$u = \frac{\ln (N_2/N_1)}{(t_2 - t_1)}$$

where:

N_1 = the lower cell number chosen in the log phase at t_1

N_2 = the higher cell number chosen in the log phase at t_2

t = time in hours

u = maximum specific growth rate

The percent reduction of the growth rate compared to the control can be calculated:

"% inhibition" = $1 - (u(tox)/(u(b))) \times 100$

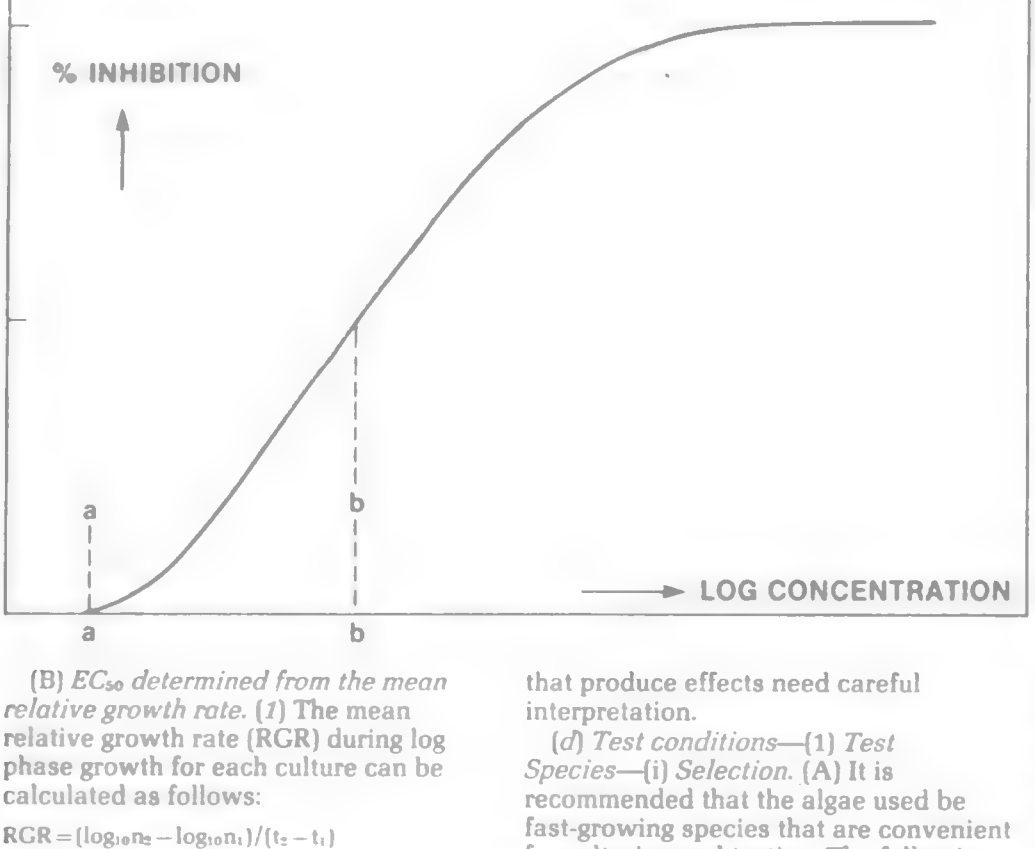
where:

u(tox) = the growth rate in the presence of the chemical

u(b) = the growth rate in the control

The calculated percentages ("% inhibition") are plotted against the log concentration as shown in the following Figure 2. The highest concentration showing no difference from the control (*1*) and the EC_{50} (*2*) can then be read from this graph.

Figure 2—Theoretical example of the relation between the logarithm of the concentration of the chemical and the percentage inhibition



(B) *EC_{50} determined from the mean relative growth rate.* (*1*) The mean relative growth rate (RGR) during log phase growth for each culture can be calculated as follows:

$$RGR = (\log_{10} n_2 - \log_{10} n_1)/(t_2 - t_1)$$

where:

n_1 = number of cells/ml at t_1
n_2 = number of cells/ml at t_2
t = time (hours)

(*2*) The mean relative growth rates (RGR) of the controls and treatment along with the 95 percent confidence intervals (95 percent CI) are calculated. Treatment RGR values that are greater than the control upper 95 percent CI will be ignored. Those above the mean control RGR but within the 95 percent CI should be assumed to equal the control mean. The treatment RGR values are then expressed as a percentage of the control mean RGR. The percentage values including the highest concentration of test compound at which growth is 100 percent that of control (if values for all higher concentrations are less than 100 percent) and the lowest concentration with a value of 0 percent (if values for higher concentrations are less than or equal to 0 percent) are included in a probit analysis to determine the EC_{50} value with its 95 percent confidence limits.

(*3*) Interpretation of results. Algal populations subjected to chemical stress may quickly establish normal growth rates when the stress condition is removed; consequently, concentrations that produce effects need careful interpretation.

(*d*) *Test conditions*—(1) *Test Species*—(i) *Selection.* (A) It is recommended that the algae used be fast-growing species that are convenient for culturing and testing. The following species are considered suitable:

(*1*) *Freshwater Algae*—
(*i*) *Selenastrum capricornutum.*
(*ii*) *Scenedesmus quadricauda.*
(*iii*) *Chlorella vulgaris.*
(*2*) *Marine Algae*—
(*i*) *Skeletonema costatum.*
(*ii*) *Thallassiosira pseudonana.*
(*iii*) *Isochrysis galbana.*

(B) Monocultures of algae are required, and axenic cultures are recommended.

(ii) *Stock culture.* (A) The stock cultures are algal cultures that are regularly transferred to fresh medium to act as initial test material. Cultures that are not used regularly should be streaked out on sloped agar slants. The tube cultures should be transferred to fresh medium at least once every 2 months. Stock cultures taken from agar slants should be subcultured in liquid medium once or twice before use.

(B) The stock cultures should be grown in Erlenmeyer flasks containing the appropriate medium (volume about 100 ml). When the algae are grown at 20 °C under continuous cool-white fluorescent light, a weekly transfer is recommended. An aliquot removed from a mature culture transferred with a sterile pipette into a flask of fresh medium, for an approximate 100-fold dilution. The growth rate of a species can be determined from the growth curve. If this growth rate is known, it is possible to estimate at what density the culture should be transferred to new medium. This should be done before the culture is out of log growth.

(iii) *Selection of test algae.* (A) Algae used in a test should be in an exponential growth phase, with a cell density of at least 10^4 cells/ml. If it is not possible to use the stock culture directly for testing (due to lack of or excessive cell growth) it may be necessary to preculture the algae prior to use.

(B) To preculture the algae, 200 ml of sterile nutrient solution are added to several 500 ml Erlenmeyer flasks. Sufficient algal suspension from stock cultures is added to give an algal concentration of approximately 10^4 cells/ml ± 25 percent). The flasks should be continuously illuminated with cool-white fluorescent light, and the temperature maintained at 20 °C. Cultures should be shaken by hand at least once every day; this is particularly important for nonmotile species. The cell concentration in the culture should be determined daily so that the desired concentration may be obtained for testing.

(C) Other methods of culturing may also be used. Some algae can be grown rapidly in shake cultures. Bubbling with filtered air containing additional carbon dioxide may also accelerate growth. Furthermore, under the culturing conditions described above, the pre-culture for the algal species recommended in this test, should be optimal for inoculation of test flasks after 4 to 5 days. If the algal cultures contain deformed or otherwise abnormal cells (e.g., clumped, chlorotic), they should not be used for the test.

(2) *Facilities*—(i) *Apparatus.* (A) In order to avoid contamination with bacteria and other algae, all stock culture maintenance operations should be carried out under aseptic conditions. Cultures should be periodically checked for contamination.

(B) Testing and culturing of algae should be done in an environmentally controlled cabinet or chamber capable of maintaining a temperature of 20 °C ± 2 °C and continuous illumination of approximately 150 to 200 $\mu E/m^2$ sec.

(C) In addition to normal laboratory apparatus and equipment for algal testing, a counting apparatus (e.g., Coulter Counter, cell counting chamber, fluorometer, spectrophotometer, or colorimeter) to determine cell numbers is also necessary.

(D) The following apparatus and equipment are necessary for algal culturing:

(*1*) Incubators or climate rooms capable of maintaining temperature and light at the recommended intensity.

(*2*) Filtering apparatus, accompanying membrane filters, (0.45 um) and flasks.

(*3*) Inoculation needle.

(*4*) Sterile graduated pipettes.

(*5*) pH-meter.

(*6*) Culture tubes (150×18 mm) with stainless steel closures.

(*7*) Erlenmeyer flasks, 250 ml, with ground glass stoppers, and a 3 liter flask.

(ii) *Dilution water.* Redistilled or deionized water should be used for preparation of stock, chemical, and nutrient solutions.

(3) *Test parameters*—(i) *Carriers.* If solvents, are used, they should not themselves be toxic at the concentrations used and should not affect algal growth. In no case should the concentration of an organic solvent exceed 0.1 ml/l in the highest concentration.

(ii) *Lighting.* Algae should be kept under continuous, uniform illumination of approximately 150 to 200 $\mu E/m^2$ sec. The light source should be cool-white fluorescent lights.

(iii) *Inoculation.* For readily water-soluble and volatile chemicals, an algal suspension containing approximately 2×10^4 cells/ml should be used. For chemicals with limited water solubility the algal density should be approximately 10^4 cells/ml. After dilution, both initial algal densities should be approximately 10^4 cells/ml.

(iv) *Temperature.* The temperature for culturing and testing algae should be 20 ° C ± 2 °C.

(v) *Nutrient media.* The recommended media for adequate growth of algae are shown in the following Table 1 and Table 2. All nutrient solutions can be prepared as concentrated stock solutions using the salts shown in the following Tables 1 and 2 and stored in the dark and cold. These solutions should be sterilized by filtration or by autoclaving. The medium is prepared by adding the correct amount of stock solutions, or the nutrient salts directly, to sterile distilled or deionized water, to give the final concentrations listed. For solid medium, 1.5 to 2 percent agar (wt/vol) should be added to the medium prior to autoclaving. Other media may be necessary if species other than those above are used.

TABLE 1.—MEDIUM FOR FRESHWATER ALGAE

	Amount
Solution 1 (Nutrient salts)	
$NaNO_3$	0.5 g
NH_4NO_3	0.33 g
$K_2HPO_4.3H_2O$	0.052 g
$CaCl_2.2H_2O$	0.035 g
$Na_2CO_3.10H_2O$	0.054 g
Fe_3-citrate	0.006 g
Citric acid monohydrate	0.006 g
Trace element solution (sol. 2) (see below)	1.0 ml
Redistilled water made up to	1.0 liter
pH	7.7±0.3
Solution 2 (Trace Metals):	
H_3BO_3	2.90 g
$MnCl_2.4H_2O$	1.81 g
$ZnCl_2$	0.11 g
$CuSO_4.5H_2O$	0.08 g
$(NH_4)_6MO_7.4H_2O$	0.018 g
Redistilled water made up to	1.0 liter

TABLE 2.—MEDIUM FOR MARINE ALGAE

	mmol/1	g/kg solution
Solution 1 (Nutrient salts)		
NaCl	362.661	[illegible]
Na_2SO_4	24.993	3.477
KCl	[illegible]	0.587
KBr	0.7249	0.0845
H_3BO_3	0.3715	0.0225
NaF	0.0657	0.0027
$MgCl_2.6H_2O$	47.176	[illegible]
$CaCl_2.2H_2O$	[illegible]	1.316
$SrCl_2.6H_2O$	0.0082	0.0214
Solution 2		
$NaHCO_3$ [1]	[illegible]	0.170
Solution 3 (Trace Metals) [2]	g/l	umol/1 [3]
$NaNO_3$	4.667	549.09
$Na_2SiO_3.9H_2O$ [4]	3.000	[illegible]
Na_2 glycerol PO_4	0.667	21.79
Na_2EDTA [5]	0.553	14.86
H_3BO_3	[illegible]	61.46
$Fe(NH_4)_2(SO_4)_2.6H_2O$	0.234	5.97
$FeCl_3.6H_2O$	0.016	0.592
$MnSO_4.4H_2O$	0.054	2.42
$ZnSO_4.7H_2O$	0.0073	0.254
$CoSO_4.7H_2O$	0.0016	0.0569
Solution 4 (Vitamins [6])		
Thiamine HCl	0.1	0.297
Vitamin B_{12}	[illegible]	0.00147
Biotin	0.001	[illegible]

[1] Dry, autoclave the $NaHCO_3$ then add to autoclaved solution 1.
[2] Final concentration in solution.
[3] Should be autoclaved (50 minutes).
[4] Should be neutralized before adding to other solutions. To neutralize, 100 ml of $Na_2SiO_3.9H_2O$(3.0 g/l) is added to 20 ml 1 *N* HCl and then added to solution.
[5] NA_2 EDTA, $FeCl_3.6H_2O$, $Fe(NH_4)_2(SO_4)_2.6H_2O$ has to be in solution before remaining salts (Mn, Zn, Co) are added.
[6] Filter, sterilize, store frozen.

(e) *Reporting.* In addition to a description of the type of test and method, the report submitted to EPA should include the following information.

(1) For the chemical tested: manufacturer, empirical formula, batch number and its degree of purity, chemical characterization, and physical properties.

(2) For the test organisms: origin of innoculum, laboratory culture and strain number, and method of cultivation (including whether and how cultures were aerated and/or shaken).

(3) For the test conditions: date of beginning and end of the test and its duration, temperature, light intensity and light quality in the growth chamber, type of test flask (and if closed), initial pH of test solution, what carrier was used and how much, concentrations of test chemical, and the counting method.

(4) For the results: A tabulation of cell number or biomass (dry weight per ml) for each flask at each sampling period; the plotted time-growth curves for each concentration and the concentration-effect curve; the EC_{50} and EC_0 values and the statistical methods used to calculate them; and other observed effects, e.g., stimulation of growth, algicidal vs. algistatic effects, clumping or chlorosis of cells.

(5) For the laboratory performing the test: the name of the person responsible for carrying out the test (e.g., study director) as well as the name of the person carrying out the test, the name and address of the testing laboratory, and the date and signature of the person responsible for the test.

§ 797.1160 Lemna acute toxicity test.

(a) *Purpose.* This guideline prescribes test procedures and conditions using the freshwater aquatic plant *Lemna gibba* G3 to develop data on the phytotoxicity of chemicals. The United States Environmental Protection Agency (USEPA) will use data from these tests in assessing the hazard of a chemical to the environment under the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003, 15 U.S.C. 2601 et seq.).

(b) *Definitions.* The definitions in section 3 of TSCA and Part 792—Good Laboratory Practice Standards of this chapter are applicable to this guideline. The following definitions also apply:

(1) "Axenic" means a culture of *Lemna* fronds free from other organisms.

(2) "Colony" means an aggregate of mother and daughter fronds attached to each other.

(3) "EC–X" means the experimentally derived chemical concentration that is calculated to effect X percent of the test criterion.

(4) "Frond" means a single *Lemna* "leaf-like" structure.

(5) "Frond mortality" means dead fronds which may be identified by a total discoloration (yellow, white, black or clear) of the entire frond.

(6) "Static-replacement test" means a test method in which the test solution is periodically replaced at specific intervals during the test.

(c) *Test procedures*—(1) *Summary of the test.* (i) In preparation for the test, containers are filled with appropriate volumes of nutrient medium and/or the test solutions. The test is started by

introducing *Lemna* fronds into each of the containers. Nutrient medium and test solutions should be replaced on days 3 and 6 or as needed to prevent nutrient limitation or depletion of the test chemical.

(ii) Colonies should be inspected for changes in frond number and appearance at the beginning of the exposure period (day 0), on days 3 and 6, and at the end of the exposure period (day 7). On day 7, the total number of living and/or dead fronds are counted. Any frond which is visible as a bud when viewed under a hand lens or dissecting microscope should be counted. Concentration response curves are plotted for total frond number, growth rate (as number of fronds per day) and mortality (percentage of dead fronds to total number of fronds). EC_{10}'s, EC_{50}'s, and EC_{90}'s are determined from the curves.

(2) [Reserved]

(3) *Range-finding test.* (i) A range-finding test should be conducted to establish (A) if definitive testing is necessary and (B) test solution concentrations for the definitive test.

(ii) The recommended procedure is to expose *Lemna* to a chemical concentration series (e.g., 0.1, 1.0, 10, 100 and 1000 mg/)l plus controls. Three, four-frond colonies should be selected and exposed to equal volumes of each chemical concentration for a period of seven days. The exposure period may be shortened if data suitable for the purpose of the range-finding test are obtained.

(iii) The lowest chemical concentration in a test series, exclusive of controls, should be the lowest concentration which can be analytically quantified. The highest concentration should be at least 1000 mg/l. Replicates are not needed and nominal concentrations of the chemical are acceptable for range-finding. If the calculated EC_{50} is greater than 1000 mg/l or is less than the analytical detection limit, definitive testing is not necessary. However, replicates and measured concentrations of the appropriate dose are needed to substantiate this result.

(4) *Definitive test.* (i) The purpose of the definitive test is to determine the EC_{10}'s, EC_{50}'s, and EC_{90}'s for *Lemna* growth based on total frond number, growth rate and/or frond mortality with a minimum amount of testing beyond the range-finding test.

(ii) At least five concentrations of chemical, exclusive of controls, should be used in the definitive test. The concentration range should be selected to define the concentration response curve between the EC_{10} and EC_{90}. For each concentration and control at least seven replicate containers should be used, each containing 150 ml of test solution and three randomly selected four-frond colonies. Fewer replicates, each containing a greater number of colonies, may be used; however, test containers and solution volumes will have to be adjusted accordingly. The range of chemical concentrations tested should result in the highest concentration affecting at least 90 percent of the fronds and the lowest concentration affecting no more than 10 percent of the fronds compared with the controls.

(iii) Every test should include controls consisting of the same nutrient medium, number of fronds, environmental conditions, and procedures as the test containers except that none of the chemical is added. If a solvent or carrier is used to dissolve or suspend the test chemical, additional controls containing the solvent or carrier should also be included in the test to determine any effect of the solvent or carrier on the plants.

(iv) The colonies should be transferred to freshly prepared test solutions on days 3 and 6. No more than 20 percent of the test substance should be lost by volatilization between replacements. The colonies may have to be transferred more frequently for highly volatile test substances in order to maintain 80 percent of the initial test substance concentration. Transfer should be done in a clean, draft-free area as quickly as possible to minimize contamination of the colonies.

(v) Observations of frond numbers and appearance should be made of the colonies on day 0, 3, 6, and 7. A dissecting microscope will facilitate observations.

(vi) Concentration response curves should be plotted. These curves can provide the basis for determining the EC_{10}'s, EC_{50}'s, and EC_{90}'s for total frond number, growth rate, and mortality.

(vii) Any change in frond development or appearance such as increase in number (a frond is counted regardless of size as long as it is visible adjacent to the parent frond), necrosis, chlorosis, etc., should be reported. Chlorophyll content of the colonies may be used as an indicator of chlorosis. Any additional observations such as sedimentation of test solution, sinking of fronds, or other abnormalities should also be recorded.

(viii) A randomized complete block design is recommended for the definitive test with blocks delineated within the test chamber. If, for any reason, blocking is not feasible, total randomization within chambers is suggested.

(5) [Reserved].

(6) *Analytical measurements*—(i) *Chemical.* Stock solutions should be prepared just prior to use and diluted with glass distilled or deionized water to obtain the test solutions. Standard analytical methods, if available, should be used to establish concentrations of these solutions and should be validated before beginning the test. An analytical method is not acceptable if likely degradation products of the chemical, such as hydrolysis and oxidation products, give positive or negative interference. The pH of the test solutions should also be measured prior to and after use.

(ii) *Numerical.* The number of fronds is counted at the end of the definitive test. Means and standard deviations are calculated and plotted for each treatment and control. Appropriate statistical analyses are used to provide a goodness-of-fit determination for the concentration response curves.

(d) *Test conditions*—(1) *Test Species.* The test species to be used in these tests is *Lemna gibba* G3. Axenic cultures may be obtained from laboratory cultures or commercial sources. A stock culture grown from a single isolated frond should be used to inoculate all the flasks used in a given test.

(2) *Acclimation.* Axenic stock cultures should be grown in the aquaria for 2 weeks (with necessary transfers) prior to being used in a test. Four-frond plants used in a test should be randomly selected from the culturing tank. Inocula should be taken from cultures which are less than 2 weeks old.

(3) *Facilities*—(i) *Apparatus.* (A) A controlled environment growth chamber or an enclosed area capable of maintaining the specified test parameters (see Section 4 below) is needed.

(B) Laboratory facilities for the mixing and diluting of nutrient medium and a source of distilled or deionized water are needed. An autoclave (for sterilizing glassware and media) and a sterile transfer hood (for maintenance of an axenic *Lemna* culture) are also necessary. Disposal facilities should be adequate to accommodate spent test solutions and plant materials as well as any bench covering, lab clothing, or other contaminated materials.

(ii) *Containers and support media.* Test containers may be glass beakers or Erlenmeyer flasks, large enough to hold 150 ml of test solution and the *Lemna* colonies without crowding for the duration of the test; 250 ml beakers are recommended. All containers should be of the same type and size. If fewer replicates are used, larger containers may be necessary to hold the additional

colonies and test solution volume. The ratio of test solution to container volume should not exceed 3:5. For each test concentration and control the same number of replicates should be used.

(iii) *Cleaning and sterilization.* All glassware and equipment should be cleaned following good laboratory practice. The Nytex screen or inoculating loops used for transferring the *Lemna* should be disposed of after use or thoroughly cleaned and sterilized before reuse.

(iv) *Nutrient media.* Hoagland's nutrient medium is recommended for maintaining *Lemna* cultures and for use as the diluent in the preparation of various concentrations of test solutions. Deionized or distilled water should be used to make the nutrient medium. The medium should be freshly prepared prior to each transfer of *Lemna* cultures and for the preparation of new test solutions during the course of a test. The pH of the medium should be adjusted to between 4.8 to 5.2 by the addition of 0.1N NaOH for culture maintenance prior to addition of the test chemical. Nutrient media should not contain EDTA, other chelating agents, or organic metabolites such as sucrose.

(v) *Carriers.* Stock solutions of substances of low aqueous solubility may be prepared by use of organic solvents, emulsifiers or dispersants of low phytotoxicity to plants. When a solvent or carrier is used, a second set of controls should contain the same concentration of the solvent or carrier as that used in the highest concentration of the test substance. The concentration of the solvent or carrier should not exceed 0.1 ml/1.

(4) *Test parameters.* Environmental conditions should be maintained as specified below:

(i) Temperature at 25 ± 2 ° C.

(ii) The pH of the nutrient medium between 4.8 and 5.2. Test solution pH may vary from the nutrient medium after the addition of the test chemical and/or carrier (if used). Any such changes should be recorded but not adjusted.

(iii) Continuous irradiation of 400±50 uEinsteins/m^2 sec measured at the test solution or nutrient medium surface.

(e) *Reporting.* Reporting requirements of Part 792—Good Laboratory Practice Standards of this chapter apply to this guideline. The following data should also be reported.

(1) Source of *Lemna* and taxonomic verification.

(2) Description of test chambers, type of lights, size of beakers or flasks used, number of concentrations and replicates per concentration, number of colonies per replicate, solution volumes, physical parameters of growth chambers (e.g., humidity, temperature, and light intensity).

(3) The pH and concentration of the test chemical in the test solutions prior to use and discarding on day 3, 6 and 7.

(4) Number of fronds per test concentration and control at the end of the test, the percent inhibition and/or stimulation of growth rate, and percent frond mortality for each test concentration compared to controls.

(5) If the range-finding test showed that the highest concentration of the chemical tested (not less than 1000 mg/l had no effect on *Lemna*, report the results and measured concentrations and a statement that the chemical is not phytotoxic at concentrations less than 1,000 mg/l.

(6) If the range-finding test showed greater than a 50 percent effect with a test concentration below the analytical detection limit, report the results and a statement that the chemical is phytotoxic below the analytical detection limit.

(7) Means and standard deviations for frond number, growth rate, and percent frond mortality in each test concentration. In addition, concentration response curve(s) with 95 percent confidence limits delineated, goodness-of-fit determination, and EC_{10}'s, EC_{50}'s, and EC_{90}'s, identified.

(8) Methods and data records from chemical and numerical analyses including validation methods and quality assurance procedures.

§ 797.1300 Daphnid acute toxicity test.

(a) *Purpose.* This guideline is intended for use in developing data on the acute toxicity of chemical substances and mixtures ("chemicals") subject to environmental effects test regulations under the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003, 15 U.S.C. 2601 *et seq.*). This guideline prescribes an acute toxicity test in which daphnids (*Daphnia magna* or *D. pulex*) are exposed to a chemical in static and flow-through systems. The United States Environmental Protection Agency will use data from this test in assessing the hazard a chemical may present in the acquatic environment.

(b) *Definitions.* The definitions in section 3 of the Toxic Substances Control Act (TSCA) and Part 792—Good Laboratory Practice Standards of this chapter apply to this test guideline. In addition, the following definitions apply to this guideline:

(1) "Brood stock" means the animals which are cultured to produce test organisms through reproduction.

(2) "EC_{50}" means that experimentally derived concentration of test substance in dilution water that is calculated to affect 50 percent of a test population during continuous exposure over a specified period of time. In this guideline, the effect measured is immobilization.

(3) "Ephippium" means a resting egg which develops under the carapace in response to stress conditions in daphnids.

(4) "Flow-through" means a continuous or an intermittent passage of test solution or dilution water through a test chamber or culture tank with no recycling.

(5) "Immobilization" means the lack of movement by the test organisms except for minor activity of the appendages.

(6) "Loading" means the ratio of daphnid biomass (grams, wet weight) to the volume (liters) of test solution in a test chamber at a point in time, or passing through the test chamber during a specific interval.

(7) "Static system" means a test system in which the test solution and test organisms are placed in the test chamber and kept there for the duration of the test without renewal of the test solution.

(c) *Test procedures*—(1) *Summary of the test.* (i) Test chambers are filled with appropriate volumes of dilution water. In the flow-through test, the flow of dilution water through each chamber is adjusted to the rate desired. The test chemical is introduced into each treatment chamber. The addition of test chemical in the flow-through system is conducted at a rate which is sufficient to establish and maintain the desired concentration in the test chamber. The test is started within 30 minutes after the test chemical has been added and uniformly distributed in static test chambers or after the concentration of test chemical in each flow-through test chamber reaches the prescribed level and remains stable. At the initiation of the test, daphnids which have been cultured and acclimated in accordance with the test design are randomly placed into the test chambers. Daphnids in the test chambers are observed periodically during the test, the immobile daphnids removed, and the findings recorded.

(ii) Dissolved oxygen concentration, pH, temperature, the concentration of test chemical and other water quality parameters are measured at specified intervals in selected test chambers. Data are collected during the test to develop concentration-response curves and determine EC_{50} values for the test chemical.

(2) [Reserved]

(3) *Range-finding test.* (i) A range-finding test should be conducted to

establish test solution concentrations for the definitive test.

(ii) The daphnids should be exposed to a series of widely spaced concentrations of the test chemical (e.g., 1, 10, 100 mg/l, etc.), usually under static conditions.

(iii) A minimum of five daphnids should be exposed to each concentration of test chemical for a period of 48 hours. The exposure period may be shortened if data suitable for the purpose of the range-finding test can be obtained in less time. No replicates are required and nominal concentrations of the chemical are acceptable.

(4) *Definitive test.* (i) The purpose of the definitive test is to determine the concentration-response curves and the 24- and 48-hour EC_{50} values with the minimum amount of testing beyond the range-finding test.

(ii) A minimum of 20 daphnids per concentration should be exposed to five or more concentrations of the chemical chosen in a geometric series in which the ratio is between 1.5 and 2.0 (e.g., 2, 4, 8, 16, 32, and 64 mg/l). An equal number of daphnids should be placed in two or more replicates. If solvents, solubilizing agents or emulsifiers have to be used, they should be commonly used carriers and should not possess a synergistic or antagonistic effect on the toxicity of the test chemical. The concentration of solvent should not exceed 0.1 ml/l. The concentration ranges should be selected to detemine the concentration-response curves and EC_{50} values at 24 and 48 hours. Concentration of test chemical in test solutions should be analyzed prior to use.

(iii) Every test should include controls consisting of the same dilution water, conditions, procedures and daphnids from the same population (culture container), except that none of the chemical is added.

(iv) The dissolved oxygen concentration, temperature and pH should be measured at the beginning of the test and at 24 and 48 hours in each chamber.

(v) The test duration is 48 hours. The test is unacceptable if more than 10 percent of the control organisms appear to be immobilized, stressed or diseased during the 48-hour test period. Each test chamber should be checked for immobilized daphnids at 3, 6, 12, 24, and 48 hours after the beginning of the test. Concentration-response curves and 24-hour and 48-hour EC_{50} values for immobilization should be determined along with their 95 percent confidence limits.

(vi) In addition to immobility, any abnormal behavior or appearance should also be reported.

(vii) Distribution of daphnids among test chambers should be randomized. In addition, test chambers within the testing area should be positioned in a random manner or in a way in which appropriate statistical analyses can be used to determine the variation due to placement.

(viii) The concentration of dissolved test chemical (that which passes through a 0.45 micron filter) in the chambers should be measured as often as is feasible during the test. In the static test the concentration of test chemical should be measured, at a minimum, at the beginning of the test and at the end of the test in each test chamber. In the flow-through test the concentration of test chemical should be measured at a minimum; (A) in each chamber at the beginning of the test and at 24 and 48 hours after the start of the test; (B) in at least one appropriate chamber whenever a malfunction is detected in any part of the test substance delivery system. Among replicate test chambers of a treatment concentration, the measured concentration of the test chemical should not vary more than 20 percent (+ or −).

(5) [Reserved]

(6) *Analytical measurements*—(i) *Test chemical.* Deionized water should be used in making stock solutions of the test chemical. Standard analytical methods should be used whenever available in performing the analyses. The analytical method used to measure the amount of test chemical in a sample should be validated before beginning the test by appropriate laboratory practices. An analytical method is not acceptable if likely degradation products of the test chemical, such as hydrolysis and oxidation products, give positive or negative interferences which cannot be systematically identified and corrected mathematically.

(ii) *Numerical.* The number of immobilized daphnids should be counted during each definitive test. Appropriate statistical analyses should provide a goodness-or-fit determination for the concentration-response curves. A 24- and 48-hour EC_{50} and corresponding 95 percent interval should be calculated.

(d) *Test conditions—(1) Test species*—(i) *Selection.* (A) The cladocerans, *Daphnia magna* or *D. pulex*, are the test species to be used in this test. Either species may be used for testing of a particular chemical. The species identity of the test organisms should be verified using appropriate systematic keys. First instar daphnids, <24 hours old, are to be used to start the test.

(B) Daphnids to be used in acute toxicity tests should be cultured at the test facility. Records should be kept regarding the source of the initial stock and culturing techniques. All organisms used for a particular test should have originated from the same source and be from the same population (culture container).

(C) Daphnids should not be used for a test (*1*) if cultures contain ephippia; (*2*) if adults in the cultures do not produce young before day 12; (*3*) if more than 20 percent of the culture stock die during the 2 days preceding the test; (*4*) if adults in the culture do not produce an average of at least 3 young per adult per day over the 7-day period prior to the test and (*5*) if daphnids have been used in any portion of a previous test, either in a treatment or in a control.

(ii) *Acclimation.* (A) Daphnids should be maintained in 100 percent dilution water at the test temperature for at least 48 hours prior to the start of the test. This is easily accomplished by culturing them in the dilution water at the test temperature. Daphnids should be fed prior to the test.

(B) During culturing and acclimation to the dilution water, daphnids should be maintained in facilities with background colors and light intensities similar to those of the testing area.

(iii) *Care and handling.* (A) Daphnids should be cultured in dilution water under similar environmental conditions to those used in the test. Organisms should be handled as little as possible. When handling is necessary it should be done as gently, carefully and quickly as possible. During culturing and acclimation, daphnids should be observed carefully for ephippia and other signs of stress, physical damage and mortality. Dead and abnormal individuals should be discarded. Organisms that touch dry surfaces or are dropped or injured in handling should be discarded.

(B) Smooth glass tubes (I.D. greater than 5 mm) equipped with rubber bulb should be used for transferring daphnids with minimal culture media carry-over. Care should be exercised to introduce the daphnids below the surface of any solution to avoid trapping air under the carapace.

(iv) *Feeding.* A variety of foods (e.g., unicellular green algae) have been demonstrated to be adequate for daphnid culture. Daphnids should not be fed during testing.

(2) *Facilities*—(i) *Apparatus.* (A) Facilities needed to perform this test include: (*1*) Containers for culturing and acclimating daphnids; (*2*) a mechanism for controlling and maintaining the water temperature during the culturing, acclimation, and test periods; (*3*)

apparatus for straining particulate matter, removing gas bubbles, or aerating the water as necessary; and (*4*) an apparatus for providing a 16-hour light and 8-hour dark photoperiod with a 15 to 30 minute transition period. In addition, the flow-through system should contain appropriate test chambers in which to expose daphnids to the test chemical and an appropriate test substance delivery system.

(B) Facilities should be well ventilated and free of fumes and disturbances that may affect the test organisms.

(C) Test chambers should be loosely covered to reduce the loss of test solution or dilution water due to evaporation and to minimize the entry of dust or other particulates into the solutions.

(ii) *Construction materials.* (A) Materials and equipment that contact test solutions should be chosen to minimize sorption of test chemicals from the dilution water and should not contain substances that can be leached into aqueous solution in quantities that can affect the test results.

(B) For static tests, daphnids can be conveniently exposed to the test chemical in 250 ml beakers or other suitable containers.

(C) For flow-through tests, daphnids can be exposed in glass or stainless steel containers with stainless steel or nylon screen bottoms. The containers should be suspended in the test chamber in such a manner to insure that the test solution flows regularly into and out of the container and that the daphnids are always submerged in at least 5 centimeters of test solution. Test chambers can be constructed using 250 ml beakers or other suitable containers equipped with screened overflow holes, standpipes or V-shaped notches.

(iii) *Dilution water.* (A) Surface or ground water, reconstituted water or dechlorinated tap water are acceptable as dilution water if daphnids will survive in it for the duration of the culturing, acclimation and testing periods without showing signs of stress. The quality of the dilution water should be constant and should meet the following specifications:

Substance	Maximum concentration
Particulate matter	20 mg/liter.
Total organic carbon or	2 mg/liter
Chemical oxygen demand	5 mg/liter.
Un-ionized ammonia	1 µg/liter
Residual chlorine	<3 µg/liter.
Total organophosphorus pesticides	50 ng/liter.
Total organochlorine pesticides plus polychlorinated biphenyls (PCBs) or.	50 ng/liter
Organic chlorine	25 ng/liter

(B) The above water quality parameters under paragraph (d)(2)(iii)(A) of this section should be measured at least twice a year or whenever it is suspected that these characteristics may have changed significantly. If dechlorinated tap water is used, daily chlorine analysis should be performed.

(C) If the diluent water is from a ground or surface water source, conductivity and total organic carbon (TOC) or chemical oxygen demand (COD) should be measured. Reconstituted water can be made by adding specific amounts of reagent-grade chemicals to deionized or distilled water. Glass distilled or carbon-filtered deionized water with a conductivity less than 1 µohm/cm is acceptable as the diluent for making reconstituted water.

(iv) *Cleaning.* All test equipment and test chambers should be cleaned before each test using standard laboratory procedures.

(v) *Test substance delivery system.* In flow-through tests, proportional diluters, metering pump systems, or other suitable devices should be used to deliver test chemical to the test chambers. The system should be calibrated before each test. Calibration includes determining the flow rate through each chamber and the concentration of the test chemical in each chamber. The general operation of the test substance delivery system should be checked twice daily during a test. The 24-hour flow-through a test chamber should be equal to at least 5 times the volume of the test chamber. During a test, the flow rates should not vary more than 10 percent from any one test chamber to another or from one time to any other.

(3) *Test parameters.* Environmental parameters of the water contained in test chambers should be maintained as specified below:

(i) Temperature of 20 ± 1 °C.

(ii) Dissolved oxygen concentration between 60 and 105 percent saturation. Aeration, if needed to achieve this level, should be done before the addition of the test chemical. All treatment and control chambers should be given the same aeration treatment.

(iii) The number of daphnids placed in a test chamber should not affect test results. Loading should not exceed 40 daphnids per liter test solution in the static system. In the flow-through test, loading limits will vary depending on the flow rate of dilution water. Loading should not cause the dissolved oxygen concentration to fall below the recommended levels.

(iv) Photoperiod of 16 hour light and 8-hours darkness, with a 15 to 30 minute transition period.

(e) *Reporting.* The sponsor should submit to the U.S. EPA all data developed by the test that are suggestive or predictive of acute toxicity and all concomitant gross toxicological manifestations. In addition to the reporting requirements prescribed in Part 792—Good Laboratory Practice Standards of this chapter, the reporting of test data should include the following:

(1) The name of the test, sponsor, testing laboratory, study director, principal investigator and dates of testing.

(2) A detailed description of the test chemical including its source, lot number, composition (identity and concentration or major ingredients and major impurities), known physical and chemical properties and any carriers or other additives used and their concentrations.

(3) The source of the dilution water, its chemical characteristics (e.g., conductivity, hardness, pH, etc.) and a description of any pretreatment.

(4) Detailed information about the daphnids used as brood stock, including the scientific name and method of verification, age, source, treatments, feeding history, acclimation procedures, and culture method. The age (in hours) of the daphnids used in the test is also reported.

(5) A description of the test chambers, the volume of solution in the chambers, the way the test was begun (e.g., conditioning, test chemical additions), the number of test organisms per test chamber, the number of replicates per treatment, the lighting, the method of test chemical introduction or the test substance delivery system and the flow rate (in flow-through test) expressed as volume additions per 24 hours.

(6) The concentration of the test chemical in each test chamber at times designated for static and flow-through tests.

(7) The number and percentage of organisms that were immobilized or showed any adverse effects in each test chamber at each observation period.

(8) Utilizing the average measured test chemical concentration, concentration-response curves should be fitted to immobilization data at 24 and 48 hours. A statistical test of goodness-of-fit should be performed and the results reported.

(9) The 24- and 48-hour EC_{50} values and their respective 95 percent confidence limits using the mean measured test chemical concentration and the methods used to calculate both

the EC_{50} values and their confidence limits.

(10) All chemical analyses of water quality and test chemical concentrations, including methods, method validations and reagent blanks.

(11) The data records of the culture, acclimation and test temperatures.

(12) Any deviation from this test guideline and anything unusual about the test, e.g., diluter failure, temperature fluctuations, etc.

§ 797.1330 Daphnid chronic toxicity test.

(a) *Purpose.* This guideline is intended for use in developing data on the chronic toxicity of chemical substances and mixtures ("chemicals") subject to environmental effects test regulations under the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003, 15 U.S.C. 2601 *et seq.*). This guideline prescribes a chronic toxicity test in which daphnids are exposed to a chemical in a renewal or a flow-through system. The United States Environmental Protection Agency will use data from this test in assessing the hazard a chemical may present to the aquatic environment.

(b) *Definitions.* The definitions in section 3 of the Toxic Substances Control Act (TSCA), and the definitions in Part 792 Good Laboratory Practice Standards of this chapter apply to this test guideline. In addition, the following definitions apply to this guideline:

(1) "Brood stock" means the animals which are cultured to produce test organisms through reproduction.

(2) "Chronic toxicity test" means a method used to determine the concentration of a substance in water that produces an adverse effect on a test organism over an extended period of time. In this test guideline, mortality and reproduction (and optionally, growth) are the criteria of toxicity.

(3) "EC_{50}" means that experimentally derived concentration of test substance in dilution water that is calculated to affect 50 percent of a test population during continuous exposure over a specified period of time. In this guideline, the effect measured is immobilization.

(4) "Ephippium" means a resting egg which develops under the carapace in response to stress conditions in daphnids.

(5) "Flow-through" means a continuous or intermittent passage of test solution or dilution water through a test chamber or culture tank with no recycling.

(6) "Immobilization" means the lack of movement by daphnids except for minor activity of the appendages.

(7) "Loading" means the ratio of daphnid biomass (grams, wet weight) to the volume (liters) of test solution in a test chamber at a point in time or passing through the test chamber during a specific interval.

(8) "MATC (Maximum Acceptable Toxicant Concentration)" means the maximum concentration at which a chemical can be present and not be toxic to the test organism.

(9) "Renewal system" means the technique in which test organisms are periodically transferred to fresh test solution of the same composition.

(c) *Test procedures*—(1) *Summary of the test.* (i) Test chambers are filled with appropriate volumes of dilution water. In the flow-through test the flow of dilution water through each chamber is then adjusted to the rate desired. The test substance is introduced into each test chamber. The addition of test substance in the flow-through system is done at a rate which is sufficient to establish and maintain the desired concentration of test substance in the test chamber.

(ii) The test is started within 30 minutes after the test substance has been added and uniformly distributed in the test chambers in the renewal test or after the concentration of test substance in each test chamber of the flow-through test system reaches the prescribed level and remains stable. At the initiation of the test, daphnids which have been cultured or acclimated in accordance with the test design, are randomly placed into the test chambers. Daphnids in the test chambers are observed periodically during the test, immobile adults and offspring produced are counted and removed, and the findings are recorded. Dissolved oxygen concentration, pH, temperature, the concentration of test substance, and other water quality parameters are measured at specified intervals in selected test chambers. Data are collected during the test to determine any significant differences ($p<0.05$) in immobilization and reproduction as compared to the control.

(2) [Reserved]

(3) *Range-finding test.* (i) A range-finding test should be conducted to establish test solution concentrations for the definitive test.

(ii) The daphnids should be exposed to a series of widely spaced concentrations of the test substance (e.g., 1, 10, 100 mg/l), usually under static conditions.

(iii) A minimum of five daphnids should be exposed to each concentration of test substance for a period of time which allows estimation of appropriate chronic test concentrations. No replicates are required and nominal concentrations of the chemical are acceptable.

(4) *Definitive test.* (i) The purpose of the definitive test is to determine concentration-response curves, EC_{50} values and effects of a chemical on immobilization and reproduction during chronic exposure.

(ii) A minimum of 20 daphnids per concentration should be exposed to five or more concentrations of the chemical chosen in a geometric series in which the ratio is between 1.5 and 2.0 (e.g., 2, 4, 8, 16, 32, 64 mg/l). An equal number of daphnids should be placed in two or more replicates. The concentration ranges should be selected to determine the concentration-response curves, EC_{50} values and MATC. Solutions should be analyzed for chemical concentration prior to use and at designated times during the test.

(iii) Every test should include controls consisting of the same dilution water, conditions, procedures and daphnids from the same population (culture container), except that none of the chemical is added.

(iv) The test duration is 21 days. The test is unacceptable if:

(A) More than 20 percent of the control organisms appear to be immobilized, stressed or diseased during the test.

(B) Each control daphnid living the full 21 days produces an average of less than 60 young.

(C) Any ephippia are produced by control animals.

(v) The number of immobilized daphnids in each chamber should be recorded on days 7, 14, and 21 of the test. After offspring are produced, they should be removed from the test chambers every 2 or 3 days. Counts of the cumulative number of offspring per adult (number of young divided by the number of adults in each chamber) and the cumulative number of immobilized offspring per adult should be recorded on days 14 and 21 of the test. Concentration-response curves, EC_{50} values and associated 95 percent confidence limits for adult immobilization should be determined for days 7, 14; and 21. A MATC should be determined for the most sensitive test criteria measured (number of adult animals immobilized, number of young per adult and number of immobilized young per adult).

(vi) In addition to immobility, any abnormal behavior or appearance should also be reported.

(vii) Distribution of daphnids among the test chambers should be randomized. In addition, test chambers

within the testing area should be positioned in a random manner or in a way in which appropriate statistical analyses can be used to determine the variation due to placement.

(5) [Reserved]

(6) *Analytical measurements*—(i) *Test chemical.* Deionized water should be used in making stock solutions of the test substance. Standard analytical methods should be used whenever available in performing the analyses. The analytical method used to measure the amount of test substance in a sample should be validated before beginning the test by appropriate laboratory practices. An analytical method is not acceptable if likely degradation products of the test substance, such as hydrolysis and oxidation products, give positive or negative interferences which cannot be systematically identified and corrected mathematically.

(ii) *Numerical.* The number of immobilized adults, total offspring per adult and immobilized offspring per adult should be counted during each definitive test. Appropriate statistical analyses should provide a goodness-of-fit determination for the adult immobilization concentration-response curves calculated on days 7, 14, and 21. A 7-, 14-, and 21-day EC_{50}, based on adult immobilization and corresponding 95 percent confidence intervals, should be calculated. Appropriate statistical tests (e.g., analysis of variance, mean separation test) should be used to test for significant chemical effects on chronic test criteria (cumulative number of immobilized adults, cumulative number of offspring per adult and cumulative number of immobilized offspring per adult) on days 7, 14, and 21. An MATC should be calculated using these chronic test criteria.

(d) *Test conditions*—(1) *Test species*—(i) *Selection.* (A) The cladocerans, *Daphnia magna* or *D. pulex*, are the species to be used in this test. Either species can be utilized for testing of a particular chemical. The species identity of the test organisms should be verified using appropriate systematic keys.

(B) First instar daphnids, $\leq$24 hours old, are to be used to start the test.

(ii) *Acquisition.* (A) Daphnids to be used in chronic toxicity tests should be cultured at the test facility. Records should be kept regarding the source of the initial stock and culturing techniques. All organisms used for a particular test should have originated from the same population (culture container).

(B) Daphnids should not be used for a test if:

(*1*) Cultures contain ephippia.

(*2*) Adults in the cultures do not produce young before day 12.

(*3*) More than 20 percent of the culture stock die in the 2 days preceding the test.

(*4*) Adults in the culture do not produce an average of at least 3 young per adult per day over the 7-day period prior to the test.

(*5*) Daphnids have been used in any portion of a previous test either in a treatment or in a control.

(iii) *Feeding.* (A) During the test the daphnids should be fed the same diet and with the same frequency as that used for culturing and acclimation. All treatments and control(s) should receive, as near as reasonably possible, the same ration of food on a per-animal basis.

(B) The food concentration depends on the type used. Food concentrations should be sufficient to support normal growth and development and to allow for asexual (parthenogenic) reproduction. For automatic feeding devices, a suggested rate is 5 to 7 mg food (either solids or algal cells, dry weight) per liter dilution water or test solution. For manual once-a-day feeding, a suggested rate is 15 mg food (dry weight) per liter dilution water or test solution.

(iv) *Loading.* The number of test organisms placed in a test chamber should not affect test results. Loading should not exceed 40 daphnids per liter in the renewal system. In the flow-through test, loading limits will vary depending on the flow rate of the dilution water. Loading should not cause the dissolved oxygen concentration to fall below the recommended level.

(v) *Care and handling of test organisms.* (A) Daphnids should be cultured in dilution water under similar environmental conditions to those used in the test. A variety of foods have been demonstrated to be adequate for daphnid culture. They include algae, yeasts and a variety of mixtures.

(B) Organisms should be handled as little as possible. When handling is necessary it should be done as gently, carefully and quickly as possible. During culturing and acclimation, daphnids should be observed carefully for ephippia and other signs of stress, physical damage and mortality. Dead and abnormal individuals should be discarded. Organisms that touch dry surfaces or are dropped or injured during handling should be discarded.

(C) Smooth glass tubes (I.D. greater than 5mm) equipped with a rubber bulb can be used for transferring daphnids with minimal culture media carry-over.

(D) Care should be exercised to introduce the daphnids below the surface of any solution so as not to trap air under the carapace.

(vi) *Acclimation.* (A) Daphnids should be maintained in 100 percent dilution water at the test temperature for at least 48 hours prior to the start of the test. This is easily accomplished by culturing them in the dilution water at the test temperature. Daphnids should be fed the same food during the test as is used for culturing and acclimation.

(B) During culturing and acclimation to the dilution water, daphnids should be maintained in facilities with background colors and light intensities similar to those of the testing area.

(2) *Facilities*—(i) *General.* (A) Facilities needed to perform this test include:

(*1*) Containers for culturing and acclimating daphnids.

(*2*) A mechanism for controlling and maintaining the water temperature during the culturing, acclimation and test periods.

(*3*) Apparatus for straining particulate matter, removing gas bubbles, or aerating the water when water supplies contain particulate matter, gas bubbles, or insufficient dissolved oxygen, respectively.

(*4*) An apparatus for providing a 16-hour light and 8-hour dark photoperiod with a 15- to 30-minute transition period.

(*5*) An apparatus to introduce food if continuous or intermittent feeding is used.

(*6*) In addition, the flow-through test should contain appropriate test chambers in which to expose daphnids to the test substance and an appropriate test substance delivery system.

(B) Facilities should be well ventilated and free of fumes and other disturbances that may affect the test organisms.

(ii) *Test chambers.* (A) Materials and equipment that contact test solutions should be chosen to minimize sorption of test chemicals from the dilution water and should not contain substances that can be leached into aqueous solution in quantities that can affect test results.

(B) For renewal tests, daphnids can be conveniently exposed to the test solution in 250 ml beakers or other suitable containers.

(C) For flow-through tests daphnids can be exposed in glass or stainless steel containers with stainless steel or nylon screen bottoms. Such containers should be suspended in the test chamber in such a manner to ensure that the test solution flows regularly into and out of the container and that the daphnids are always submerged in at least 5 centimeters of test solution. Test chambers can be constructed using 250

ml beakers or other suitable containers equipped with screened overflow holes, standpipes or V-shaped notches.

(D) Test chambers should be loosely covered to reduce the loss of test solution or dilution water due to evaporation and to minimize the entry of dust or other particulates into the solutions.

(iii) *Test substance delivery system.* (A) In the flow-through test, proportional diluters, metering pump systems or other suitable systems should be used to deliver the test substance to the test chambers.

(B) The test substance delivery system used should be calibrated before and after each test. Calibration includes determining the flow rate through each chamber and the concentration of the test substance in each chamber. The general operation of the test substance delivery system should be checked twice daily during a test. The 24-hour flow rate through a test chamber should be equal to at least five times the volume of the test chamber. During a test, the flow rates should not vary more than 10 percent from any one test chamber to another or from one time to any other. For the renewal test, test substance dilution water should be completely replaced at least once every three days.

(iv) *Dilution water.* (A) Surface or ground water, reconstituted water, or dechlorinated tap water are acceptable as dilution water if daphnids will survive in it for the duration of the culturing, acclimation, and testing periods without showing signs of stress. The quality of the dilution water should be constant and should meet the following specificiations:

Substance	Maximum concentration
Particulate matter	20 mg/l.
Total organic carbon or	2 mg/l.
Chemical oxygen demand	5 mg/l.
Un-ionized ammonia	20 µg/l.
Residual chlorine	<3 µg/l.
Total organophosphorus pesticides	50 ng/l.
Total organochlorine pesticides plus polychlorinated biphenyls (PCBs), or organic chlorine	50 ng/l. 25 ng/l.

(B) The water quality characteristics listed above should be measured at least twice a year or when it is suspected that these characteristics may have changed significantly. If dechlorinated tap water is used, daily chlorine analysis should be performed.

(C) If the diluent water is from a ground or surface water source, conductivity and total organic carbon (TOC) or chemical oxygen demand (COD) should be measured. Reconstituted water can be made by adding specific amounts of reagent-grade chemicals to deionized or distilled water. Glass distilled or carbon filtered deionized water with a conductivity of less than 1 microohm/cm is acceptable as the diluent for making reconstituted water.

(D) If the test substance is not soluble in water an appropriate carrier should be used.

(v) *Cleaning of test system.* All test equipment and test chambers should be cleaned before each test following standard laboratory procedures. Cleaning of test chambers may be necessary during the testing period.

(3) *Test parameters.* (i) Environmental conditions of the water contained in test chambers should be maintained as specified in this paragraph:

(A) Temperature of 20 ± 1 °C.

(B) Dissolved oxygen concentration between 60 and 105 percent saturation. Aeration, if needed to achieve this level, should be done before the addition of the test substance. All treatment and control chambers should be given the same aeration treatment.

(C) Photoperiod of 16-hours light and 8-hours darkness, with a 15 to 30 minute transition period.

(ii) Additional measurements include:

(A) The concentration of dissolved test substance (that which passes through a 0.45 micron filter) in the chambers should be measured during the test.

(B) At a minimum, the concentration of test substance should be measured as follows:

(*1*) In each chamber before the test.

(*2*) In each chamber on days 7, 14, and 21 of the test.

(*3*) In at least one appropriate chamber whenever a malfunction is detected in any part of the test substance delivery system. Among replicate test chambers of a treatment concentration, the measured concentration of the test substance should not vary more than 20 percent.

(C) The dissolved oxygen concentration, temperature and pH should be measured at the beginning of the test and on days 7, 14, and 21 in each chamber.

(e) *Reporting.* The sponsor should submit to the U.S. Environmental Protection Agency all data developed by the test that are suggestive or predictive of chronic toxicity and all associated toxicologic manifestations. In addition to the reporting requirements prescribed in the Part 792—Good Laboratory Practice Standards of this chapter the reporting of test data should include the following:

(1) The name of the test, sponsor, testing laboratory, study director, principal investigator, and dates of testing.

(2) A detailed description of the test substance including its source, lot number, composition (identity and concentration of major ingredients and major impurities), known physical and chemical properties, and any carriers or other additives used and their concentrations.

(3) The source of the dilution water, its chemical characteristics (e.g., conductivity, hardness, pH), and a description of any pretreatment.

(4) Detailed information about the daphnids used as brood stock, including the scientific name and method of verification, age, source, treatments, feeding history, acclimation procedures, and culture methods. The age (in hours) of the daphnids used in the test should be reported.

(5) A description of the test chambers, the volume of solution in the chambers, the way the test was begun (e.g., conditioning, test substance additions), the number of test organisms per test chamber, the number of replicates per treatment, the lighting, the renewal process and schedule for the renewal chronic test, the test substance delivery system and flow rate expressed as volume additions per 24 hours for the flow-through chronic test, and the method of feeding (manual or continuous) and type of food.

(6) The concentration of the test substance in test chambers at times designated for renewal and flow-through tests.

(7) The number and percentage of organisms that show any adverse effect in each test chamber at each observation period.

(8) The cumulative adult and offspring immobilization values and the progeny produced at designated observation times, the time (days) to first brood and the number of offspring per adult in the control replicates and in each treatment replicate.

(9) All chemical analyses of water quality and test substance concentrations, including methods, method validations and reagent blanks.

(10) The data records of the culture, acclimation, and test temperatures.

(11) Any deviation from this test guideline, and anything unusual about the test, (e.g., dilution failure, temperature fluctuations).

(12) The MATC to be reported is calculated as the geometric mean between the lowest measured test substance concentration that had a significant ($p \leq 0.05$) effect and the highest measured test substance concentration that had no significant

($p \leq 0.05$) effect on day 7, 14, or 21 of the test. The most sensitive of the test criteria (number of adult animals immobilized, the number of young per female and the number of immobilized young per female) is used to calculate the MATC. The criterion selected for MATC computation is the one which exhibits an effect (a statistically significant difference between treatment and control groups; $p \leq 0.05$) at the lowest test substance concentration for the shortest period of exposure. Appropriate statistical tests (analysis of variance, mean separation test) should be used to test for significant test substance effects. The statistical tests employed and the results of these tests should be reported.

(13) Concentration-response curves utilizing the average measured test substance concentration should be fitted to cumulative adult immobilization data at 7, 14, and 21 days. A statistical test of goodness-of-fit should be performed and the results reported.

(14) An EC_{50} value based on adult immobilization with corresponding 95 percent confidence limits when sufficient data are present for days 7, 14, and 21. These calculations should be made using the average measured concentration of the test substance.

§ 797.1350 Daphnid chronic toxicity test.

(a) *Purpose.* The proposed *Daphnia* chronic toxicity test standard is designed to assess the effects of test substances on the survival and reproduction of Daphnia as a representative freshwater invertebrate. The duration of the test permits the daphnids to be exposed to a chemical from shortly after birth until well into adulthood. The organisms are exposed long enough to allow the adults to produce several broods of progeny. Initiating exposure shortly after birth allows an assessment of the possible effects of the test chemical on such processes as reproduction, maturation, fecundity and growth.

(b) *Definitions.* The following definitions apply to this standard:

(1) "Acute lethal toxicity" is the lethal effect produced on an organism within a short period of time of exposure to a chemical.

(2) "Confidence limits" are the limits within which, at some specified level of probability, the true value of a result lies.

(3) "LC_{50}" is the median lethal concentration, i.e., that concentration of a chemical in air or water killing 50 percent of a test batch of organisms within a particular period of exposure (which shall be stated).

(4) "Reference substance" is a chemical used to access the constancy of response of a given species of test organisms to that chemical, usually by use of the acute LC_{50}. (It is assumed that any change in sensitivity to the reference substance will indicate the existence of some similar change in degree of sensitivity to other chemicals whose toxicity is to be determined.)

(5) "Static test" is a toxicity test with aquatic organisms in which no flow of test solution occurs. Solutions may remain unchanged throughout the duration of the test.

(6) "Renewal test" is a test without continuous flow of solution, but with occasional renewal of test solutions after prolonged periods, e.g., 24 hours.

(7) "Flow-through test" is a toxicity test in which water is renewed continuously in the test chambers, the test chemical being transported with the water used to renew the test medium.

(8) "Time-response curve" is the curve relating cumulative percentage response of a test batch of organisms, exposed to a single dose or single concentration of a chemical, to a period of exposure.

(9) "Toxicity curve" is the curve produced from toxicity tests when LC_{50} values are plotted against duration of exposure. (This term is also used in aquatic toxicology, but in a less precise sense, to describe the curve produced when the median period of survival is plotted against test concentrations).

(10) "Units" all concentrations are given in weight per volume (e.g., in mg/liter).

(c) *Test procedures*—(1) *Summary of the test.* (i) Test chambers are filled with appropriate volumes of dilution water. In the flow-through test the flow of dilution water through each chamber is then adjusted to the rate desired. The test substance is introduced into each test chamber. The addition of test substance in the flow-through system is done at a rate which is sufficient to establish and maintain the desired concentration of test substance in the test chamber.

(ii) For the renewal test, the test is started within 30 minutes after the test substance has been added and uniformly distributed in the test chambers. In the flow-through test the test begins after the concentration of test substance in each test chamber of the flow-through test system reaches the prescribed level and remains stable. At the initiation of the test, daphnids which have been cultured or acclimated in accordance with the test design, are randomly placed into the test chambers. Daphnids in the test chambers are observed periodically during the test, immobile adults and offspring produced are counted and removed, and the findings are recorded. Dissolved oxygen concentration, pH, temperature, the concentration of test substance, and other water quality parameters are measured at specified intervals in selected test chambers. Data are collected during the test to determine any significant difference ($p \leq 0.05$) in immobilization and reproduction as compared to the control.

(2) [Reserved]

(3) *Range-finding test*—(i) *General.* A range-finding test should be conducted to establish test solution concentrations for the definitive test.

(ii) *Introductory information for range-finding test.* (A) *Prerequisites:*

(*1*) Water solubility.

(*2*) Vapor pressure.

(B) *Guidance information:*

(*1*) Structural formula.

(*2*) Purity of the substance.

(*3*) Methods of analysis for the quantification of the substance in water.

(*4*) Chemical stability in water and light.

(*5*) *n*-octanol/water partition coefficient.

(*6*) Results of a test on biodegradability.

(C) *Qualifying statement.* For chemicals with low solubility under test conditions, it may not be possible to quantitatively determine the EC_{50}.

(iii) *Methods for range-finding test.*

(A) *Definitions and units:*

(*1*) *24 hour EC_{50}.* The concentration (based upon nominal concentration) calculated to have immobilized 50 percent of the daphnids by 24 hours exposure. (If another definition is used, this shall be reported, together with its reference.)

(*2*) *Immobilization.* Those animals not able to swim for 15 seconds after gentle agitation of the test container are considered to be immobile. (If another definition is used, this shall be reported, together with its reference.)

(B) *Reference substances.* In the course of the acute immobilization phase a reference substance may occasionally be tested for EC_{50} with the test compound as a means of assuring that the laboratory test conditions are adequate and have not changed significantly. An example of such a useful reference substance is $K_2CR_6O_7$.

(C) *Conditions for the validity of the range-finding test:*

(*1*) The mortality in the controls should not exceed 10 percent at the end of the test.

(*2*) The oxygen concentration at the end of the test shall be >70 percent of the air saturation value at the temperature used.

(3) Test Daphnia should not have been trapped at the surface of the water, at least in the control.

(4) If conducted, the results with the reference compound should be within the normal range for the laboratory conducting the test.

(5) If the EC_{50} is not calculable due to an inadequate number of intermediate response levels, it is acceptable to merely report the highest concentration causing complete immobility, provided that the concentration factor between doses was <1.8.

(D) *Performance of the range-finding test:*

(1) Equipment which will come into contact with the test solutions should be glass. This glassware should be cleaned with solvents known to remove previously tested chemicals.

(2) Any water, either reconstituted or natural water, can be used, provided that it will sustain growth and reproduction of *Daphnia* without signs of stress.

(3) At least 20 animals should be used at each test concentration, preferably divided into four batches of five animals each.

(4) At least 2 ml of test solution should be provided for each animal.

(5) The test temperature should be between 18 and 22 °C, and for each test it should be constant within ±0.5 °C.

(6) A light-dark cycle is optional.

(7) The concentrations should be formulated in a geometric series, preferably without using any solvents. If solvents, solubilizing agents, emulsifiers, etc., have to be used, they should be commonly used adjuvants and not be toxic in themselves at the levels used. Neither should they have a synergistic or antagonistic effect on the toxicity of the substance tested. In no case should the concentration of an organic solvent exceed 0.1 ml/l.

(8) The test solution should be prepared before introduction of the daphnids.

(9) The test solutions should not be aerated.

(10) The daphnids shall not be fed during the test.

(11) The highest concentration to be tested should not exceed 1.0 g/l.

(12) Concentrations sufficient to lead to zero and 100 percent immobilization and the 24 hour EC_{50} should be tested together with a control.

(13) The pH and the oxygen concentration of the blank and all the test concentrations should be measured at the beginning and the end of the test. The pH of the test solutions should not be modified.

(14) Volatile compounds should be tested in completely filled, closed containers, large enough to prevent lack of oxygen.

(4) *Definitive test.* (i) *General.* The results of the range-finding test are used to determine, with judgment, the concentration levels to be used in the definitive test. It is suggested that this reproduction test be carried out using a geometrical concentration series of at least 5 concentrations with an interval of at least 10, starting at approximately the 24 hour EC_{00} concentration and ending at $\frac{1}{100}$ of the 24 hour EC_{50}. If necessary, lower concentrations are to be tested.

(ii) *Introductory information for the definitive test.* (A) *Prerequisities:*

(1) Water solubility.

(2) Vapor pressure.

(3) Chemical stability in water and light.

(4) Results of a test on biodegradability.

(5) 24 hour EC_{50} or the highest concentration producing no immobility and the lowest concentration causing complete immobility.

(B) *Guidance information:*

(1) Structural formula.

(2) Purity of the substance.

(3) *n*-octanol/water partition coefficient.

(C) *Recommendations.* (1) Instead of a 2 week test in which 3 batches of young should be born per female, a test of 3 or 4 weeks may be preferred in order to obtain a more thorough judgment of the influence of the test substance on mortality and reproduction. In this period approximately six to nine batches of young should be born per female.

(2) It is recommended that a statistical test (such as an analysis of variance) be used to determine whether the test replications can be analyzed together.

(iii) *Criteria for a valid definitive test.* (A) Control mortality should not exceed 20 percent at the end of the test.

(B) The oxygen concentration shall have been >70 percent of the air saturation value throughout the test.

(C) The pH for the controls and for at least the most concentrated solutions shall be known throughout the test. The deviation from the initial value at the beginning of the test should be <0.3 units.

(D) The first young should have been born in the controls after a maximum of 9 days.

(E) The average cumulative number of young per female in the controls after three broods, should be >20 at a temperature of $20^{\circ} \pm 0.5^{\circ}C$.

(iv) *Definitive test procedures.* (A) At least 40 animals should be used at each test concentration, preferably divided into 4 batches of 10 animals each. The test concentrations are made up in a geometric series, and if possible, without any solvents.

(B) Every test shall include controls consisting of the same dilution water, conditions, procedures and daphnids from the same population (culture container), except that none of the chemical is added.

(C) The minimum duration of the test is 14 days, in which at least three broods of the F1 generation shall have appeared in the controls. If this is not the case, the test shall be continued until the third brood in the control is complete. If desired, the test can be continued for a total period of 3 to 4 weeks, even if three broods are born within 3 weeks.

(D) The live and dead daphnids of the "parental" generation (P) are counted and the dead specimens removed. This should preferably be carried out daily, but at least every 2 days, e.g., Monday, Wednesday and Friday.

(E) The presence of eggs in the brood pouch, males or epphipia shall be recorded. The condition and size of the parent generation should be visually compared with the controls.

(F) When the parental animals are about 7 days old, the first young daphnids emerge from the brood pouch. After this, a new batch appears every 2 to 3 days. These batches are called "broods" of the F1 generation.

(G) The newborn young of the F1 generation are counted at least every 2 days (Monday, Wednesday, and Friday) and their estimated condition (based on visual examination) is recorded. After counting and examination, the young are poured away. The presence of eggs from which no young have emerged (on the bottom of the test vessel) is recorded.

(5) [Reserved]

(6) *Analytical measurements.* (i) Deionized water should be used in making stock solutions of the test substance. Standard analytical methods should be used whenever available in performing the analyses. The analytical method used to measure the amount of test substance in a sample shall be validated before beginning the test by appropriate laboratory practices. An analytical method should not be used if likely degradation products of the test substance, such as hydrolysis and oxidation products, give positive or negative interferences which cannot be systematically identified and corrected mathematically.

(ii) Samples of the test substance should be taken at the beginning and during the test. The actual concentration shall not drop below 80 percent of the nominal concentration. Aeration of the test solutions is permissible, unless this

would cause the actual concentration of the test substance to drop below 80 percent of the nominal concentration.

(iii) The oxygen concentration in all test solutions shall be checked once every 48 hours (if desired, every Monday, Wednesday and Friday).

(iv) The pH of the controls and of at least the most concentrated solution shall be checked before and after each renewal in the renewal test and once every 48 hours in a flow-through test.

(d) *Test conditions*—(1) *Test species*—(i) *Selection. Daphnia magna* less than 24 hours old at the beginning of the test, laboratory bred, free from known diseases and with a known history (breeding method, pretreatment) are used in this test. Other *Daphnia* species may be used provided that the relevant re-production parameters are comparable to those of *Daphnia magna*.

(ii) *Feeding.* The daphnids should be fed at least daily during the definitive test. In the chronic daphnid test, food (in any quantity) of any kind that meets the criteria of reproduction for validity of the test, is acceptable. Overloading of the test system with food should be avoided in order to minimize sorption of the test substance. Log-phase, unicellular green algae are generally suitable.

(2) *Facilities*—(i) *Apparatus.* (A) Normal laboratory apparatus and equipment should be used. Equipment which will come into contact with the test solutions should preferably be all glass. This glassware should be cleaned with solvents known to remove previously tested chemicals.

(B) This reproduction test should not be carried out in a static test system; either a renewal or flow-through system shall be used. The renewal period should be guided by the chemical analysis and (if applicable) the oxygen level in the test solution. The solutions shall be renewed at least once every 48 hours (if desired, on Monday, Wednesday, and Friday).

(C) Volatile compounds should be tested in completely filled closed containers, large enough to prevent the oxygen concentrations from falling below 70 percent of the saturation value. An almost-closed, flow-through system may also be used. When more than 20 percent of the test compound would be lost through volatility, the test should be carried out either in a flow-through system or in an enclosed container of sufficient size to ensure that the oxygen level does not fall below 70 percent of the saturation value.

(ii) *Cleaning.* If the renewal scheme is used, the glassware shall be emptied and food residues removed at renewal. It is recommended that the glassware be rinsed with deionized water and kept as a coded series for the following renewal. Each test unit therefore has two vessels which are used alternately. If flow-through systems are used, these should be cleaned twice a week.

(iii) *Dilution water.* Surface or ground water, reconstituted water, or dechlorinated tap water is acceptable as dilution water if daphnids will survive and reproduce in it for the duration of the culturing, acclimation, and testing periods without showing signs of stress. The quality of the dilution water should be constant and should meet the following specifications:

Substance	Maximum concentration
Particulate matter	20 mg/l.
Total organic carbon or	2 mg/l.
chemical oxygen demand	5 mg/l.
Un-ionized ammonia	20 µg/l.
Residual chlorine	1 µg/l.
Total organophosphorus pesticides	50 ng/l.
Total organochlorine pesticides plus polychlorinated biphenyls (PCBs)	50 ng/l
or organic chlorine	25 ng/l.

(3) *Test parameters*—(i) *Carriers.* If solvents, solubilizing agents, emulsifiers, etc., have to be used, they should be commonly used adjuvants and should not themselves be toxic at the concentrations used. They should also not interact to alter the toxicity of the substance under test. In no case should the concentration of an organic solvent exceed 0.1 ml/l.

(ii) *Dissolved oxygen.* The oxygen concentration shall be >70 percent of the air saturation value throughout the test.

(iii) *Lighting.* A light-dark cycle is necessary for the definitive test; 8 hours darkness and 16 hours light are recommended.

(iv) *Loading.* At least 40 ml of test solution should be provided for each animal in the definitive test.

(v) *Temperature.* The test temperature should be between 18 and 22 °C, but for each test it should be constant, within ±0.5 °C.

(e) *Reporting*—(i) *Test substance information:*

(A) Chemical designation.

(B) Additional designations, e.g., trade name.

(C) Empirical formula.

(D) Manufacturer.

(E) Batch number.

(F) Degree of purity.

(G) Date of sampling.

(H) Water solubility.

(I) Vapor pressure.

(J) Biodegradability.

(K) Chemical stability in water and daylight.

(L) *n*-octanol/water partition coefficient.

(ii) *General information:*

(A) Source of Daphnia, any pretreatment, breeding method (including source, kind and amount of food, feeding frequency), species identification and method of verification.

(B) Name and address of the testing laboratory, name of the person responsible for carrying out the test (study director).

(C) Name and address of sponsor.

(D) Dates of testing.

(E) Description of the test method or reference to the method used.

(iii) *Conditions of testing:*

(A) Carriers and/or additives used and their concentrations. If it is observed that the stability or homogeneity of the test substance cannot be maintained, then care should be taken in the interpretation of the results and note made that these may not be reproducible.

(B) Dilution water: source and chemical and physical characteristics including at least hardness, pH, Ca/Mg ratio, Na/K ratio, alkalinity.

(C) Test temperature.

(D) Light quality, intensity and periodicity.

(E) All measurements of pH and oxygen level made during the test, preferably in tabular form.

(F) Results and date of test performed with reference compound if available.

(G) Description of test vessels: volume of solution, number of test organisms per vessel, number of test vessels per concentration, conditioning of the test vessels, the introduction of the test substance in the dilution water.

(H) In case of renewal, the renewal procedure and scheme. In case of flow-through, the test substance delivery system, the flowrate, periodicity of cleaning and technique used.

(I) If measured, the actual concentrations of the test substance and the dates of measurement.

(J) Number and percentage of daphnids that showed any adverse effect in the controls and in each treatment at each observation period and a description of the nature of the effects observed, e.g., immobilization, mortality in tabular form.

(K) Description or reference to statistical procedures applied.

(L) Any other effects differentiating organisms in tests and controls.

(iv) *Specific range-finding and definitive test information:* (A) For the 24 hour EC_{50} (acute immobilization) phase also report:.

(*1*) The 24 hour EC_{50} preferably with 95 percent confidence limits, either by computation or graphically, and the method applied. The probit method is recommended.

(*2*) If possible, the slope of the concentration response curve with its 95 percent confidence limits.

(*3*) The highest tested concentration producing no immobile daphnids.

(*4*) The lowest tested concentration producing 100 percent immobile daphnids.

(*5*) Any other effect observed and the concentration at which it occurred.

(B) For the reproduction phase also report:

(*1*) The EC_{50} (immobilization) and LC_{50} values as far as possible at 24 hours, 48 hours, 96 hours, 7 days, 14 days and at the end of the test, preferably with 95 percent confidence limits, either by computation or graphically, and the method applied. For the determination, a probit method should be used.

(*2*) The length of time for the appearance of the first brood for each concentration.

(*3*) The number of young alive in each test vessel on given days when counts were made (the minimum requirement is for counts at 48 hour intervals on Mondays, Wednesdays, and Fridays).

(*4*) The number of dead young in each test vessel on given days when counts were made.

(*5*) Source, kind and amount of food; feeding frequency.

(*6*) If the recommended concentration scheme was followed and no effects on reproduction are detected, then the results may be reported as being greater than the highest concentration tested.

(*7*) For each of the observed effects a statistical analysis of the homogeneity of replicate results for each concentration should be made. If homogeneity is found, it should be determined through an appropriate statistical analysis, whether a significant difference exists between the control and the test concentrations.

(*8*) The highest concentration tested at which no significant difference is found compared to the controls with respect to mortality, reproduction and other observed effects.

(*9*) The lowest concentration tested with significant difference compared to the controls.

(*10*) Any other parameter can be reported at the option of the study director.

§ 797.1400 Fish acute toxicity test.

(a) *Purpose.* This guideline may be used to develop data on the acute toxicity of chemical substances and mixtures ("chemicals") subject to environmental effects test regulations under the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003, 15 U.S.C. 2601 *et seq.*). This guideline prescribes tests to be used to develop data on the acute toxicity of chemicals to fish. The United States Environmental Protection Agency (EPA) will use data from these tests in assessing the hazard of a chemical to the environment.

(b) *Definitions.* The definitions in section 3 of the Toxic Substances Control Act (TSCA), and the definitions in Part 792—Good Laboratory Practice Standards of this chapter apply to this test guideline. The following definitions also apply to this guideline:

(1) "Acclimation" means the physiological compensation by test organisms to new environmental conditions (e.g., temperature, hardness, pH).

(2) "Acute toxicity test" means a method used to determine the concentration of a substance that produces a toxic effect on a specified percentage of test organisms in a short period of time (e.g., 96 hours). In this guideline, death is used as the measure of toxicity.

(3) "Carrier" means a solvent used to dissolve a test substance prior to delivery to the test chamber.

(4) "Conditioning" means the exposure of construction materials, test chambers, and testing apparatus to dilution water or to test solutions prior to the start of a test in order to minimize the sorption of the test substance onto the test facilities or the leaching of substances from the test facilities into the dilution water or test solution.

(5) "Death" means the lack of opercular movement by a test fish.

(6) "Flow-through" means a continuous or an intermittent passage of test solution or dilution water through a test chamber, or a holding or acclimation tank with no recycling.

(7) "Incipient LC_{50}" means that test substance concentration, calculated from experimentally-derived mortality data, that is lethal to 50 percent of a test population when exposure to the test substance is continued until the mean increase in mortality does not exceed 10 percent in any concentration over a 24-hour period.

(8) "LC_{50}" means that test substance concentration, calculated from experimentally-derived mortality data, that is lethal to 50 percent of a test population during continuous exposure over a specified period of time.

(9) "Loading" means the ratio of fish biomass (grams, wet weight) to the volume (liters) of test solution in a test chamber or passing through it in a 24 hour period.

(10) "Static" means the test solution is not renewed during the period of the test.

(11) "Test solution" means the test substance and the dilution water in which the test substance is dissolved or suspended.

(c) *Test procedures*—(1) *Summary of the test.* (i) Test chambers are filled with appropriate volumes of dilution water. If a flow-through test is performed, the flow of dilution water through each chamber is adjusted to the rate desired.

(ii) The test substance is introduced into each test chamber. In a flow-through test, the amount of test substance which is added to the dilution water is adjusted to establish and maintain the desired concentration of test substance in each test chamber.

(iii) Test fish which have been acclimated in accordance with the test design are introduced into the test and control chambers by stratified random assignment.

(iv) Fish in the test and control chambers are observed periodically during the test; dead fish are removed at least twice each day and the findings are recorded.

(v) The dissolved oxygen concentration, pH, temperature and the concentration of test substance are measured at intervals in selected test chambers.

(vi) Concentration-response curves and LC_{50} values for the test substance are developed from the mortality data collected during the test.

(2) [Reserved]

(3) *Range finding test.* If the toxicity of the test substance is not already known, a range finding test should be performed to determine the range of concentrations to be used in the definitive test. The highest concentration of test substance for use in the range finding test should not exceed its solubility in water or the permissible amount of the carrier used.

(4) *Definitive test.* (i) A minimum of 20 fish should be exposed to each of five or more test substance concentrations. The range of concentrations to which the fish are exposed should be such that in 96 hours there are at least two partial mortality exposures bracketing 50 percent survival.

(ii) For exposure to each concentration of a test substance, an equal number of test fish should be placed in two or more replicate test chambers. The distribution of individual fish among the test chambers should be randomized.

(iii) Every test should include a control consisting of the same dilution water, conditions, procedures, and fish from the same group used in the test,

except that none of the test substance is added.

(iv) Mortality data collected during the test are used to calculate a 96-hour LC_{50}. The 24-, 48-, and 72-hour values should be calculated whenever there is sufficient mortality data to determine such values. If the 96-hour LC_{50} is less than 50 percent of the estimated 48-hour LC_{50} in a flow-through test, the test should be continued until the mean increase in mortality at any test concentration does not exceed 10 percent over a 24-hour period or until 14 days.

(v) Test fish should not be fed while they are being exposed to the test substance under static conditions or during the first 96 hours of flow-through testing. If the test continues past 96 hours, the fish should be fed a suitable food at a maintenance level every other day beginning on test day 5. Any excess food and the fecal material should be removed when observed.

(5) *Test results.* (i) Death is the primary criterion used in this test guideline to evaluate the toxicity of the test substance.

(ii) In addition to death, any abnormal behavior such as, but not limited to, erratic swimming, loss of reflex, increased excitability, lethargy, or any changes in appearance or physiology such as discoloration, excessive mucous production, hyperventilation, opaque eyes, curved spine, or hemorrhaging should be recorded.

(iii) Observations on compound solubility should be recorded. The investigator should report the appearance of surface slicks, precipitates, or material adhering to the sides of the test chamber.

(iv) Each test and control chamber should be checked for dead fish and observations recorded at 24, 48, 72, and 96 hours after the beginning of the test or within one hour of the designated times. If the test is continued past 96 hours, additional observations should be made every 24 hours until termination.

(v) The mortality data is used to calculate LC_{50}'s and their 95 percent confidence limits, and to plot concentration-response curves for each time interval whenever sufficient data exists. The methods recommended for use in calculating LC_{50}'s include probit, logit, binomial, and moving average angle.

(vi) A test is unacceptable if more than 10 percent of the control fish die or exhibit abnormal behavior during a 96-hour test. If a flow-through test is continued past 96 hours, the maximum allowable additional mortality is 10 percent.

(6) *Analytical measurements*—(i) *Water quality analysis.* (A) The hardness, acidity, alkalinity, pH, conductivity, TOC or COD, and particulate matter of the dilution water should be measured at the beginning of each static test and at the beginning and end of each flow-through test. The month to month variation of the above values should be less than 10 percent and the pH should vary less than 0.4 units.

(B) During static tests, the dissolved oxygen concentration, temperature and pH should be measured in each test chamber at the beginning of the test and as often as needed thereafter to document changes from the initial levels. The test solution volume should not be reduced by more than 10 percent as a result of these measurements.

(C) During flow-through tests, dissolved oxygen, temperature and pH measurements should be made in each chamber at the beginning of the test and every 48 hours thereafter until the end of the test.

(ii) *Collection of samples for measurement of test substance.* Test solution samples to be analyzed for the test substance should be taken midway between the top, bottom, and sides of the test chamber. These samples should not include any surface scum or material dislodged from the bottom or sides. Samples should be analyzed immediately or handled and stored in a manner which minimizes loss of test substance through microbial degradation, photodegradation, chemical reaction, volatilization, or sorption.

(iii) *Measurement of test substance.* (A) For static tests, the concentration of dissolved test substance (that which passes through a 0.45 micron filter) should be measured at a minimum in each test chamber at the beginning (0-hour, before fish are added) and at the end of the test. During flow-through tests, the concentration of dissolved test substance should be measured as follows:

(*1*) In each chamber at 0-hour.

(*2*) In each chamber at 96-hours and every 4 days thereafter, as long as the test is continued.

(*3*) In at least one appropriate chamber whenever a malfunction is detected in any part of the test substance delivery system.

(B) Filters and their holders used for determining the dissolved test substance concentrations should be prewashed with several volumes of distilled water and undergo a final rinse with test solution. Glass or stainless steel filter holders are best for organic test substances, while plastic holders are best for metals. The sample should be filtered within 30 minutes after it is taken from the test chamber.

(C) The analytical methods used to measure the amount of test substance in a sample should be validated before beginning the test. The accuracy of a method should be verified by a method such as using known additions. This involves adding a known amount of the test substance to three water samples taken from a chamber containing dilution water and the same number and species of fish as are used in the test. The nominal concentration of the test substance in those samples should span the concentration range to be used in the test. Validation of the analytical method should be performed on at least two separate days prior to starting the test.

(D) An analytical method is not acceptable if likely degradation products of the test substance give positive or negative interferences, unless it is shown that such degradation products are not present in the test chambers during the test.

(E) In addition to analyzing samples of test solution, at least one reagent blank, containing all reagents used, should also be analyzed.

(F) If the measured concentrations of dissolved test substances are considerably lower (e.g., <50 percent) than the nominal concentrations, the total test substance concentration should be measured in the highest test concentration.

(G) Among replicate test chambers, the measured concentrations should not vary more than 20 percent. The measured concentration of the test substance in any chamber during the test should not vary more than 30 percent from the measured concentration prior to initiation of the test.

(H) The mean measured concentration of dissolved test substance should be used to calculate all LC_{50}'s and to plot all concentration-response curves.

(d) *Test conditions*—(1) *Test species.* (i) *Selection.* The test species for this test are the rainbow trout (*Salmo gairdneri*), bluegill (*Lepomis macrochirus*) and fathead minnow (*Pimephales promelas*). The particular species of fish to be used will be prescribed in the test rule.

(ii) *Age and condition of fish.* (A) Juvenile fish should be used. Fish used in a particular test should be the same age and be of normal size and appearance for their age. The longest fish should not be more than twice the length of the shortest.

(B) All newly acquired fish should be quarantined and observed for at least 14 days prior to use in a test.

(C) Fish should not be used for a test if they appear stressed or if more than five percent die during the 48 hours immediately prior to the test.

(iii) *Acclimation of test fish.* (A) If the holding water is not from the same source as the test dilution water, acclimation to the dilution water should be done gradually over a 48-hour period. The fish should then be held an additional 14 days in the dilution water prior to testing. Any changes in water temperature should not exceed 3 °C per day. Fish should be held for a minimum of 7 days at the test temperature prior to testing.

(B) During the final 48-hours of acclimation, fish should be maintained in facilities with background colors and light intensities similar to those of the testing area and should not be fed.

(2) *Facilities*—(i) *General.* Facilities needed to perform this test include:

(A) Flow-through tanks for holding and acclimating fish.

(B) A mechanism for controlling and maintaining the water temperature during the holding, acclimation and test periods.

(C) Apparatus for straining particulate matter, removing gas bubbles, or insufficient dissolved oxygen, respectively.

(D) Apparatus for providing a 16-hour light and 8-hour dark photoperiod with a 15- to 30-minute transition period.

(E) Chambers for exposing test fish to the test substance.

(F) A test substance delivery system for flow-through tests.

(ii) *Construction materials.* Construction materials and commercially purchased equipment that may contact the stock solution, test solution, or dilution water should not contain substances that can be leached or dissolved into aqueous solutions in quantities that can alter the test results. Materials and equipment that contact stock or test solutions should be chosen to minimize sorption of test chemicals. Glass, stainless steel, and perfluorocarbon plastic should be used whenever possible. Concrete, fiberglass, or plastic (e.g., PVC) may be used for holding tanks, acclimation tanks, and water supply systems, but they should be used to remove rust particles. Rubber, copper, brass, galvanized metal, epoxy glues, and lead should not come in contact with the dilution water, stock solution, or test solution.

(iii) *Test substance delivery system.* In flow-through tests, diluters, metering pump systems or other suitable devices should be used to deliver the test substance to the test chambers. The system used should be calibrated before each test. Calibration includes determining the flow rate through each chamber and the concentration of the test substance delivered to each chamber. The general operation of the test substance delivery system should be checked twice daily during a test. The 24-hour flow rate through a test chamber. During a test, the flow rates should not vary more than 10 percent from one test chamber to another or from one time to any other.

(iv) *Test chambers.* Test chambers made of stainless steel should be welded, not soldered. Test chambers made of glass should be fused or bonded using clear silicone adhesive. As little adhesive as possible should be left exposed in the interior of the chamber.

(v) *Cleaning of test system.* Test substance delivery systems and test chambers should be cleaned before each test. They should be washed with detergent and then rinsed in sequence with clean water, pesticide-free acetone, clean water, and 5 percent nitric acid, followed by two or more changes of dilution water.

(vi) *Dilution water.* (A) Clean surface or ground water reconstituted water, or dechlorinated tap water is acceptable as dilution water if the test fish will survive in it for the duration of the holding, acclimating, and testing periods without showing signs of stress, such as discoloration, hemorrhaging, disorientation or other unusual behavior. The quality of the dilution water should be constant and should meet the following specifications measured at least twice a year:

Substance	Maximum
Particulate matter	20 mg/liter
Total organic carbon or	2 mg/liter.
chemical oxygen demand	5 mg/liter
Un-ionized ammonia	1 µg/liter.
Residual chlorine	1 µg/liter
Total organochlorng pesticides	50 µg/liter
Total organocholonne pesticides plus polychlonnated biphenyls (PCBs) or organic chlorine	50 µg/liter 25 µg/liter

(B) The concentration of dissolved oxygen in the dilution water should be between 90 and 100 percent saturation; 9.8 to 10.9 mg/l for tests with trout, and 8.0 to 8.9 mg/l for tests with bluegill or fathead minnow at sea level. If necessary, the dilution water can be aerated before the addition of the test substance. All reconstituted water should be aerated before use. Buffered soft water should be aerated before but not after the addition of buffers.

(C) If disease organisms are present in the dilution water in sufficient numbers to cause infection, they should be killed or removed by suitable equipment.

(D) Glass distilled or carbon filtered deionized water with a conductivity less than 1 micromho/cm is acceptable for use in making reconstituted water. If the reconstituted water is prepared from a ground or surface water source, conductivity, and total organic carbon (TOC) or chemical oxygen demand (COD) should be measured on each batch.

(vii) *Carriers.* (A) Distilled water should be used in making stock solutions of the test substance. If the stock volume however is more than 10 percent of the test solution volume, dilution water should be used. If a carrier is absolutely necessary to dissolve the test substance, the volume used should not exceed the minimum volume necessary to dissolve or suspend the test substance in the test solution. If the test substance is a mixture, formulation, or commercial product, none of the ingredients is considered a carrier unless an extra amount is used to prepare the stock solution.

(B) Triethylene glycol and dimethyl formamide are the preferred carriers, but acetone can also be used. The concentration of triethylene glycol in the test solution should not exceed 80 mg/l. The concentration of dimethyl formamide or acetone in the test solution should not exceed 5/0 mg/l.

(3) *Test parameters*—(i) *Loading.* The number of fish placed in a test chamber should not be so great as to affect the results of the test. The loading should not be so great that the test substance concentrations are decreased by more than 20 percent due to uptake by the fish. In static tests, loading should not exceed 0.5 grams of fish per liter of solution in the test chamber at any one time. In flow-through tests loading should not exceed 0.5 grams of fish per liter of test solution passing through the chamber in 24 hours. These loading rates should be sufficient to maintain the dissolved oxygen concentration above the recommended levels and the ammonia concentration below 20 µg/l.

(ii) *Dissolved oxygen concentration.* (A) During static tests with rainbow trout the dissolved oxygen in each test chamber should be greater than 5.5 mg/1. In tests with bluegill and fathead minnows, the DO should be maintained above 4.5 mg/l.

(B) During flow-through tests the dissolved oxygen concentration should be maintained above 8.2 mg/1 in tests with trout and above 6.6 mg/l in tests with bluegills or fathead minnows.

(iii) *Temperature.* The test temperature should be 22 ± 1 °C for

bluegill and fathead minnows, and 12±1 °C for rainbow trout. The temperature should be measured at least hourly in one test chamber.

(iv) *Light.* A 16-hour light and 8-hour dark photoperiod with a 15- to 30-minute transition period should be maintained.

(e) *Reporting.* The sponsor should submit to the EPA all data developed by the test that are suggestive or predictive of toxicity. In addition to the reporting requirements prescribed in Part 792—Good Laboratory Practice Standards of this chapter, the reported test data should include the following:

(1) The source of the dilution water, a description of any pretreatment, and the measured hardness, acidity, alkalinity, pH, conductivity, TOC or COD and particulate matter.

(2) A description of the test chambers, the depth and volume of solution in the chamber, the specific way the test was begun (e.g., conditioning, test substance additions), and for flow-through tests, a description of the test substance delivery system.

(3) Detailed information about the test fish, including the scientific name and method of verification, average weight (grams, wet weight), standard length, age, source, history, observed diseases, treatments, and mortalities, acclimation procedures, and food used.

(4) The number of replicates used, the number of organisms per replicate, the loading rate, and the flow rate for flow-through tests.

(5) The measured DO, pH and temperature and the lighting regime.

(6) The solvent used, the test substance concentration in the stock solution, the highest solvent concentration in the test solution and a description of the solubility determinations in water and solvents if used.

(7) The concentration of the test substance in each test chamber just before the start of the test and at all subsequent sampling periods.

(8) The number of dead and live tests organisms, the percentage of organisms that died, and the number that showed any abnormal effects in the control and in each test chamber at each observation period.

(9) The 96-hour LC_{50}, and when sufficient data have been generated, the 24–, 48–, 72–, and incipient LC_{50} values, their 95 percent confidence limits, and the methods used to calculate the LC_{50} values and their confidence limits.

(10) When observed, the observed no effect concentration (the highest concentration tested at which there were no mortalities or abnormal behavioral or physiological effects).

(11) The concentration-response curve at each observation period for which a LC_{50} was calculated.

(12) Methods and data records of all chemical analyses of water quality parameters and test substance concentrations, including method validations and reagent blanks.

§ 797.1440 Fish Acute Toxicity Test.

(a) *Purpose.* This guideline will be used in developing data on the acute toxicity of chemical substances and mixtures ("chemicals") to fish subject to environmental effects test regulations under the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003, 15 U.S.C. 2601 *et seq.*). The United States Environmental Protection Agency (EPA) will use data from these tests in assessing the hazard of a chemical to the environment.

(b) *Definitions.* The definitions in section 3 of the Toxic Substances Control Act (TSCA) and in Part 792—Good Laboratory Practice Standards of this chapter apply to this test guideline. The following definitions also apply:

(1) "Acute toxicity" is the discernible adverse effects induced in an organism within a short period of time (days) of exposure to a chemical. For aquatic animals this usually refers to continuous exposure to the chemical in water for a period of up to four days. The effects (lethal or sub-lethal) occurring may usually be observed within the period of exposure with aquatic organisms.

(2) "Acute lethal toxicity" is the lethal effect produced on an organism within a short period of time of exposure to a chemical.

(3) "Confidence limits" are the limits within which, at some specified level of probability, the true value of a result lies.

(4) "LC_{50}" is the median lethal concentration, i.e., that concentration of a chemical in air or water killing 50 percent of a test batch of organisms within a particular period of exposure (which should be stated).

(5) "Static test" is a toxicity test with aquatic organisms in which no flow of test solution occurs. (Solutions may remain unchanged throughout the duration of the test).

(6) "Semi-static test" is a test without flow of solution, but with occasional batchwise renewal of test solutions after prolonged periods (e.g., 24 hours).

(7) "Flow-through test" is a toxicity test in which water is renewed constantly in the test chambers, the chemical under test being transported with the water used to renew the test medium.

(8) "Time-response curve" is the curve relating cumulative percentage response of a test batch of organisms, exposed to a single dose or single concentration of a chemical, to a period of exposure.

(9) "Toxicity curve" is the curve produced from toxicity tests when LC_{50} values are plotted against duration of exposure. (This term is also used in aquatic toxicology, but in a less precise sense, to describe the curve produced when the median period of survival is plotted against test concentrations.)

(10) "Units" all concentrations are given in weight per volume (e.g., mg/liter).

(c) *Test procedures*—(1) *Summary of the test.* (i) The aqueous solubility and the vapor pressure of the test chemical should be known prior to testing. The structural formula of the test chemical, its purity, stability in water and light, *n*-octanol/water partition coeffecient, and pK_a value should be known. The results of a biodegradability test and the method of analysis for the quantification of the chemical in water should also be known.

(ii) The fish are exposed to a range of test substance concentrations preferably for a period of up to 96 hours. Mortalities are recorded at 24, 48, 72 and 96 hours and the concentrations which kill 50 percent of the fish (LC_{50}) are determined where possible.

(iii) The maximum concentration tested producing no mortality and the minimum concentration tested producing total mortality should be recorded.

(iv) For chemicals with limited solubility under the test conditions, it may not be possible to determine an LC_{50}.

(2) [Reserved].

(3) *Range-finding test.* It may be necessary to perform a range-finding test prior to a definitive test. It provides information about the range of concentrations to be used in the definitive test.

(4) *Definitive test.* (i) Fish should be exposed to at least five concentrations spaced by a constant factor not exceeding 1.8. A control and solvent control, when appropriate should also be tested.

(ii) Stock solutions of the required strength are prepared by dissolving the appropriate amount of the test substance in the required volume of dilution water. The pH value of the stock solution should be adjusted to the pH value of the dilution water unless there are specific reasons not to do so. The test should be carried out without adjustment of pH if there is evidence of marked change in the pH of the solution, and it is advised that the test be repeated with pH adjustment and the

results reported. This pH adjustment should be made in such a way that the stock solution concentration is not changed to any significant extent and that no chemical reaction or physical precipitation of the test compound is caused. NCl or NaOH should be used to adjust the pH.

(iii) Stock solutions of substances of low aqueous solubility may be prepared by ultrasonic dispersion or, if necessary, by use of organic solvents, emulsifiers or dispersants of low toxicity to fish. When such auxiliary substances are used, the control fish should be exposed to the same concentration of the auxiliary substance as that used in the highest concentration of the test substance. The concentration of such auxiliaries should not exceed 0.1 ml/l.

(iv) The chosen test concentrations are prepared by dilution of the stock solution.

(v) For test to be valid, the following criteria apply:

(A) If it is observed that the stability or homogeneity of the test substance cannot be maintained, then care should be taken in the interpretation of the results and a note made that these results may not be reproducible.

(B) The mortality in the controls should not exceed 10 percent at the end of the test.

(C) The dissolved oxygen concentration should have been >60 percent of air saturation throughout the test.

(D) There should be evidence that the concentration of the substance being tested has been satisfactorily maintained (e.g., within 80 percent of the nominal concentration) over the test period.

(5) *Test results.* (i) The fish are inspected after 24, 48, 72, and 96 hours. Fish are considered dead if touching of the caudal peduncle produces no reaction. Dead fish are removed when observed, and mortalities are recorded. Observations after the first 3 hours and 6 hours are desirable.

(ii) Records are kept of visible abnormalities (e.g., loss of equilibrium, swimming behavior, respiratory function, pigmentation, etc.).

(iii) The cumulative percentage mortality for each recommended exposure period should be plotted against concentration on logarithmic-probability paper. A line is then fitted by eye to these points and the concentration corresponding to the 50 percent response point is read off. This is the LC_{50} for the appropriate exposure period. Median lethal concentrations also can be calculated using standard procedures given in any of the references cited in paragraph (f) of this section. Confidence limits (p=0.95) for the calculated LC_{50} values can be determined using the standard procedures. The LC_{50} value should be rounded off to two significant figures.

(iv) Where the data obtained are inadequate for the use of standard methods of calculating the LC_{50} (because most of the results are for either no deaths or total mortality, where a dilution ratio of 1.8 has been used) then the highest concentration causing no deaths and the lowest concentration producing 100 percent deaths should be used to determine the LC_{50} (this being taken as being the geometric mean of these two concentrations).

(6) [Reserved].

(d) *Test conditions*—(1) *Test species*—(i) *Selection.* (A) One of several species may be used, the selection being at the discretion of the testing laboratory. It is suggested that the species used be selected on the basis of such important practical criteria as: their ready availability throughout the year, their ease of maintenance, their convenience for testing, and any economic, biological or ecological factors which have bearing. The fish should be in good health and free from any apparent malformation. If other species fulfilling the above criteria are used, the test method should be adapted in such a way as to provide suitable test conditions.

(B) Examples of fish recommended for testing and their size are given in the following Table 1:

TABLE 1—RECOMMENDED SPECIES FOR ACUTE TESTING

Recommended species	Recommended size (centimeter)
Brachydanio rerio (Teleostei, Cyprinidae) (Hamilton-Buchanan) Zebra-fish	2.0 ± 1.0
Pimephales promelas (Teleostei, Cyprinidae) Fathead minnow	2.0 ± 1.0
Cyprinus carpio (Teleostei, Cyprinidae) (Linne 1758) Common carp	3.0 ± 1.0
Oryzias latipes (Teleostei, Poeciliidae) (Schlegel 1850) Red killifish	2.0 ± 1.0
Poecilis reticulata (Teleostei, Poeciliidae) (Peters 1859) Guppy	2.0 ± 1.0
Lepomis macrochirus (Teleostei, Centrarchidae) (Linnaeus 1758) Bluegill	2.0 ± 1.0
Salmo gairdneri (Teleostei, Salmonidae) (Richardson 1836) Rainbow trout	5.0 ± 1.0

(ii) *Collection or acquisition.* The fish mentioned above are easy to rear or are widely available throughout the year. They are capable of being bred and cultivated either in fish farms or in the laboratory under disease- and parasite-controlled conditions so that the test animal will be healthy and of known parentage.

(iii) *Holding and acclimation.* (A) Fish should be held for at least 12 to 15 days before testing. All fish should be maintained in water of the quality to be used in the test for at least 7 days before they are used.

(B) Coldwater fish should be held in tanks containing at least 300 l of water while warmwater fish should be held in tanks containing at least 100 l.

(C) The temperature of the holding water should be the same as that used for testing. The dissolved oxygen concentrations should be maintained above 80 percent of the air saturation value. A 12 to 16 hour photoperiod should be used.

(D) All fish should be fed three times per week or daily until 24 hours before the test is started.

(E) A batch of fish is acceptable for testing if the percentage mortality over the 7-day period prior to testing is less than five. If the mortality is between 5 and 10 percent acclimation should continue for seven 7 days. If the mortality is greater than 10 percent, the entire batch of fish should be rejected.

(2) *Test facilities*—(i) *Apparatus.* An oxygen meter, equipment for determination of water hardness, adequate apparatus for temperature control, test tanks made of chemically inert materials and other normal laboratory equipment are needed.

(ii) *Dilution water.* (A) Drinking water (dechlorinated if necessary), good quality natural water, or reconstituted water, with a total hardness of between 50 and 250 mg/l (as $CaCO_3$) and with a pH of 6.0–8.5 are preferred.

(B) Reconstituted water should be prepared from deionized water or distilled water with a conductivity <10 Scm^{-1}. One hundred liters of reconstituted water can be prepared by adding 2.5 l of the following solutions to a tank and bringing the solution to volume with deionized water:

11.76g $CACl_2 \cdot 2H_2O$/l
4.93g $MgSO_4 \cdot 7H_2O$/l
2.59g $NaHCO_3$/l
2.59g KCl/l

The sum of the calcium and magnesium ions in this solution is 2.5 mmol/l. The proportion of Ca:Mg-ions is 4.13 and of Na:K-ions is 10:1. The acid capacity of this solution is 0.8 mmol/l.

(C) The dilution water should be aerated until oxygen saturation is achieved and then stored for about 2 days without further aeration before use.

(3) *Test parameters.* (i) Constant conditions should be maintained as far as possible throughout the test and, if necessary, semi-static or flow-through procedures should be used.

(ii) The preparation and storage of the test material, the holding of the fish, and all operations and tests should be carried out in an environment free from harmful concentrations of dust, vapors, and gases and in such a way as to avoid cross-contamination. Any disturbances that may change the behavior of the fish should be avoided.

(iii) The following parameters are important:

(A) *Dissolved oxygen.* The dissolved oxygen concentrations should be at least 60 percent of the air saturation value.

(B) *Light.* A 12 to 16 hour photoperiod should be used.

(C) *Loading.* A maximum loading of 1.0 g/l for static and semi-static tests is recommended; for flow-through systems a higher loading can be acceptable.

(D) *Temperature.* Test temperatures of 15 ± 2 °C for rainbow trout and 22 ± 2 °C for carp are recommended. The other recommended species should be tested at 23 ± 2 °C. The temperature should be maintained within ±1 °C of the selected test temperature throughout the test period.

(E) *Feeding.* The fish should not be fed during the test.

(e) *Reporting.* (1) The sponsor should submit to the EPA all data developed by the test that are suggestive or predictive of toxicity.

(2) In addition to the reporting requirements prescribed in Part 792—Good Laboratory Practice Standards of this chapter the reported test data should include the following:

(i) Details of the test procedures used (e.g., static, semi-static, flow-through, aerated, etc.).

(ii) Information about the test organism (scientific name, strain, supplier, any pretreatment, etc.).

(iii) The concentrations tested.

(iv) The number of fish in each test chamber and the loading rate.

(v) The methods of preparation of stock and test solutions.

(vi) The dissolved oxygen concentrations, pH values, temperature, total hardness of the test solutions measured each 24 hours and any other available information on water quality.

(vii) Any available information on the concentrations of the test chemical in the test solutions.

(viii) The maximum concentration causing no mortality within the period of the test.

(ix) The minimum concentration causing 100 percent mortality within the period of the test.

(x) The cumulative mortality in each concentration according to the recommended observation times.

(xi) The LC_{50} values (based on nominal concentrations) at each of the recommended observation times (with 95 percent confidence limits, if possible).

(xii) A graph of the concentration-mortality curve at the end of the test.

(xiii) The statistical procedures used for determining the LC_{50} values.

(xiv) The mortality of the control animals.

(xv) Any incidents in the course of the test which might have influenced the results.

(xvi) Any abnormal responses of the fish.

(xvii) A statement that the test was carried out in agreement with the prescriptions of the Test Guideline given above (otherwise a description of any deviations occurring).

(f) *References.* For additional background information on this test guideline the following references should be consulted:

(1) American Public Health Association, *Standard methods for the examination of water and wastewater.* 14th ed. (American Public Health Association: New York, 1975).

(2) U.S. Environmental Protection Agency, Committee on Methods for Toxicity Tests with Aquatic Organisms, "methods for acute toxicity tests with fish, macroinvertebrates and amphibians," EPA Report No. 660/3–75–009 (Corvallis, Oregon, 1975).

(3) Finney, A.J. *Statistical Methods in Biological Assay.* (Griffin Ltd.: Weycombe, U.K., 1978).

(4) Litchfield, J.T., Wilcoxon, F. "A simplified method of evaluating dose-effect experiments," *Journal of Pharmacology and Experimental Therapeutics,* 96:99–1113 (1947).

(5) U.S. Environmental Protection Agency, "Methods for measuring the acute toxicity of effluents to aquatic organisms," EPA Report No. 600/4–78–012 (W. Peltier: Cincinnati, Ohio, 1978).

(6) Sprague, J.B. "Measurement of pollutant toxicity to fish. I: Bioassay Methods for Acute Toxicity," *Water Research* 3:794–821 (1969).

(7) ASTM STP 634, Stephan, C.E. Methods for calculating an LC_{50}. Eds. Mayer, F.L., Hamelink, J.L. *Aquatic Toxicology and Hazard Evaluation.* American Society for Testing and Materials. (1977) pp.65–84.

(8) Tabata, K. "Quality control of Japanese rice fish for TLm-test;" *Water and Effluent,* 14:1297–1303 (1972).

§ 797.1520 Fish Bioconcentration Test.

(a) *Purpose.* This guideline is intended to be used for assessing the propensity of chemical substances to bioconcentrate in freshwater fish. This guideline describes a bioconcentration test procedure for the continuous exposure of fathead minnows (*Pimephales promelas*) to a test substance in a flow-through system. The United States Environmental Protection Agency (EPA) will use data from this test in assessing the hazard a chemical may present to the environment.

(b) *Definitions.* The definitions in section 3 of the Toxic Substances Control Act (TSCA) and the definitions in Part 792—Good Laboratory Practice Standards of this chapter, are applicable to this test guideline. The following definitions also apply:

(1) "Acclimation" is the physiological compensation by test organisms to new environmental conditions (e.g. temperature, hardness, pH).

(2) "Bioconcentration" is the net accumulation of a substance directly from water into and onto aquatic organisms.

(3) "Bioconcentration factor (BCF)" is the quotient of the concentration of a test substance in aquatic organisms at or over a discrete time period of exposure divided by the concentration in the test water at or during the same time period.

(4) "Carrier" is a solvent used to dissolve a test substance prior to delivery of the test substance to the test chamber.

(5) "Depuration" is the elimination of a test substance from a test organism.

(6) "Depuration phase" is the portion of a bioconcentration test after the uptake phase during which the organisms are in flowing water to which no test substance is added.

(7) "Dilution water" is the water to which the test substance is added and in which the organisms undergo exposure.

(8) "Loading" is the ratio of fish biomass (grams, wet weight) to the volume (liters) of test solution passing through the test chamber during a 24-hr. period.

(9) "Organic chlorine" is the chlorine associated with all chlorine-containing compounds that elute just before lindane to just after mirex during gas chromatographic analysis using a halogen detector.

(10) "Organochlorine pesticides" are those pesticides which contain carbon and chlorine such as aldrin, DDD, DDE, DDT, dieldrin, endrin, and heptachlor.

(11) "Steady-state" is the time period during which the amounts of test substance being taken up and depurated by the test organisms are equal, i.e., equilibrium.

(12) "Steady-state bioconcentration factor" is the mean concentration of the test substance in test organisms during steady-state divided by the mean

concentration in the test solution during the same period.

(13) "Stock solution" is the concentrated solution of the test substance which is dissolved and introduced into the dilution water.

(14) "Test chamber" is the container in which the test organisms are maintained during the test period.

(15) "Test solution" is dilution water containing the dissolved test substance to which test organisms are exposed.

(16) "Uptake" is the sorption of a test substance into and onto aquatic organisms during exposure.

(17) "Uptake phase" is the initial portion of a bioconcentration test during which the organisms are exposed to the test solution.

(c) *Test procedures*—(1) *Summary of the test.* (i) Fathead minnows are continuously exposed to at least one constant sublethal concentration of a test substance under flow-through conditions for a maximum of 28 days. During this time, test solution and fish are periodically sampled and analyzed using appropriate methods to quantify the test substance concentration. If prior to day 28, the tissue concentrations of the substance sampled over three consecutive sampling periods have been shown to be statistically similar (i.e., steady-state has been reached), the uptake phase of the test may be terminated and the remaining fish transferred to untreated flowing water until 95 percent of the accumulated residues have been eliminated, or for a maximum depuration period of 14 days.

(ii) The mean test substance concentration in the fish at steady-state is divided by the mean test solution concentration at the same time to estimate the bioconcentration factor (BCF).

(iii) If steady-state is not reached during 28 days of uptake, the steady-state BCF is calculated using non-linear parameter estimation methods.

(2) [Reserved]

(3) [Reserved]

(4) *Definitive test*—(i) *Background information.* The following data on the test substance should be known prior to testing:

(A) Its solubility in water.

(B) Its stability in water.

(C) Its octanol-water partition coefficient.

(D) Its acute toxicity to fathead minnows.

(E) The validity accuracy and minimum detection limits of the proposed analytical methods.

(ii) *Selection of test concentration.* (A) At least one concentration should be tested to assess the propensity of the compound to bioconcentrate. The concentration selected should not stress or adversely affect the fish and should be less than one-tenth the 96-hr or incipient LC_{50} determined from a flow-through test with fathead minnows. The test concentration should be less than the solubility limit of the compound in water and close to the potential or expected environmental concentration. The limiting factor of how low one can test is based on the detection limit of the analytical methods. The concentration of the test material in the test solution should be at least 3 times greater than the detection limit in water.

(B) If it is desired to document that the potential to bioconcentrate is independent of the test concentration, at least 2 concentrations should be tested that are at least a factor of 10 apart.

(iii) *Estimation of test duration.* (A) An estimate of the length of the uptake and depuration phases should be made prior to testing. This will allow the most effective sampling schedule to be determined. The uptake phase should continue until steady-state has been reached, but need not be longer than 28 days. The test should continue for at least 4 days.

(B)(*1*) The time to steady state (S in hours) can be estimated from the water solubility or the octanol-water partition coefficient using the following equations:

$S = 3.0/\text{antilog}\,(0.431 \log W - 2.11)$ or,
$S = 3.0/\text{antilog}\,(-0.414 \log P + 0.122)$
where
W = water solubility (mg/l) and
P = octanol-water partition coefficient

(*2*) Based upon the estimate of the time to steady state, one of the following sampling schemes may be used to generate the appropriate data.

TIME TO STEADY-STATE IN DAYS

Test period	S<4	S>4<14	S>15<21	S>21
	Sampling Days			
Exposure	[1] 1	[1] 4	1	1
	[1] 6	1	3	[illegible]
	1	3	7	7
	2	7	10	10
	[illegible]	10	14	14
	[illegible]	12	18	21
		14	22	[illegible]
Depuration	[1] 1	1	1	1
	[1] 6	2	3	3
	[1] 12	4	7	7
	1	6	10	14
				14

[1] = hours.

(C) The depuration phase should continue until at least 95 percent of the accumulated test substance and metabolites have been eliminated, but no longer than 14 days.

(iv) *Test initiation.* (A) The test should not be started until the test substance delivery system has been observed to be functioning properly for at least 48 hours. This time should be sufficient to allow the test substance concentration to become equilibrated with the test exposure system. Analyses of two sets of test solution samples taken prior to test initiation should document this equilibrium (i.e., the concentrations do not vary more than 20 percent from each other). At initiation (time 0), test solution samples should be collected immediately prior to the addition of fish to the test chambers.

(B) The appropriate number of fathead minnows should be impartially distributed to each test chamber up to five at a time until the appropriate numbers have been distributed. The exact number of test organisms depends upon the expected length of testing, sample size, and the number of additional specialized analyses to be performed at termination.

(v) *Feeding.* (A) Fish should be fed once a day throughout the uptake and depuration phases. Feeding should always be done just after sampling to minimize the effects of the test substance present in the gut when sampling. Fish should be fed the same food at a similar quantity as they received during holding and acclimation.

(B) Uneaten food and fecal material should be removed from the test aquaria within 30 minutes after feeding to minimize uptake of test substance by the food or feces.

(vi) *Observations.* (A) Observations on fish appearance and behavior should be made and recorded daily. Any abnormal behavior such as erratic swimming, lethargy, increased excitability, or any changes in appearances or physiology such as discoloration, hyperventilation or opaque eyes should be recorded.

(B) Observations on compound solubility should also be recorded. These include the appearance of surface slicks, precipitates, or material adsorbing to the test chamber.

(vii) *Water quality measurements.* The water temperature and dissolved oxygen concentration should be recorded at least daily and the pH twice weekly in each test chamber during uptake and depuration.

(viii) *Sampling procedures.* (A) At each of the designated sampling times, triplicate water samples and enough fish should be collected from the exposure chamber(s) to allow for at least four fish tissue analyses. A similar number of control fish should also be collected at each sample point, but only fish collected at the first sampling period and weekly thereafter should be analyzed. Triplicate control water samples will be collected at the time of

test initiation and weekly thereafter. Test solution samples should be removed from the approximate center of the water column.

(B) At each sampling period, the appropriate number of fish is netted and removed from each test chamber. Care should be taken not to sample the weakest and consequently usually the smallest fish, especially during the first few sampling periods, to prevent biasing the test results. Each fish is pithed, blotted dry and then frozen at < -10 °C if not analyzed within 4 hours.

(C) At termination, an extra set of fish should be sampled and eviscerated for quantifying the residues in the viscera and carcass. If a radiolabelled test compound is used, a sufficient number of fish should be sampled at termination to permit identification and quantitation of any major (>10 percent of parent) metabolites present. It is crucial to determine how much of the activity present in the fish is directly attributable to the parent compound.

(5) *Test results*—(i) *Biological.* (A) The maximum allowable mortality of fish is 10 percent per week. If more than 10 percent of the fish in the control or test chamber(s) die during any week of testing, the test should be repeated.

(B) Steady-state has been reached when the mean concentrations of test substance in whole fish tissue taken on three consecutive sampling periods are statistically similar (F test, $P=0.05$). A BCF is then calculated by dividing the mean tissue residue concentration during steady-state by the mean test solution concentration during this same period. A 95 percent confidence interval should also be derived for the BCF. This can be done by calculating the mean fish tissue concentration at steady state (X_f) and its 97.5 percent confidence interval, $\pm t$ (S.E.), where t is the t statistic=0.025 and S.E. is one standard error of the mean. This calculation would yield lower and upper confidence limits (L_f and U_f). The same procedure can be used to calculate the mean and 97.5 percent confidence interval from the test solution concentrations at steady-state, $X_s \pm t$ (S.E.), and the resulting upper and lower confidence limits (L_s and U_s). The 95 percent confidence interval of the BCF would then be between L_f/U_s and U_f/L_s.

(C) If steady-state was not reached during the 28-day uptake period, the maximum BCF should be calculated using the mean tissue concentration from that day and the mean water concentration from that and the previous sampling day. An uptake rate constant should then be calculated using appropriate techniques, such as the BIOFAC program developed by Blau and Agin (1978) under paragraph (F)(1) of this section. This rate constant will allow the estimation of a steady state BCF and the estimated time to steady-state.

(D) If 95 percent elimination has not been observed after 14 days depuration, then a depuration rate constant should be calculated. This rate constant will allow estimation of the time to 95 percent elimination.

(ii) *Analytical.* (A) All samples should be analyzed using EPA methods and guidelines whenever feasible. The specific methodology used should be validated before the test is initiated. The accuracy of the method should be measured by the method of known additions. This involves adding a known amount of the test substance to three water samples taken from an aquarium containing dilution water and a number of fish equal to that to be used in the test. The nominal concentration of these samples should be the same as the concentration to be used in the test. Samples taken on two separate days should be analyzed. The accuracy and precision of the analytical method should be checked using reference or split samples or suitable corroborative methods of analysis. The accuracy of standard solutions should be checked against other standard solutions whenever possible.

(B) An analytical method is not acceptable if likely degradation products of the test substance, such as hydrolysis and oxidation products, give positive or negative interferences, unless it is shown that such degradation products are not present in the test chambers during the test. Atomic absorption spectrophotometric methods for metals and gas chromatographic methods for organic compounds are preferable to colorimetric methods.

(C) In addition to analyzing samples of test solution, at least one reagent blank should also be analyzed when a reagent is used in the analysis.

(D) When radiolabelled test compounds are used, total radioactivity should be measured in all samples. At the end of the uptake phase, water and tissue samples should be analyzed using appropriate methodology to identify and estimate the amount of any major (>10 percent of the parent compound) degradation products or metabolites that may be present.

(6) [Reserved]

(d) *Test conditions*—(1) *Test species*—(i) *Selection.* (A) The fathead minnow (*Pimephales promelas*) should be used as the test organism.

(B) Immature fish should be used. They should be young enough so as not to mature during the test. Fish used in the same test should be as similar in size as possible to reduce variability. The standard deviation of the weight should be less than 20 percent of the mean ($N=30$).

(C) Fish used in the same test should be from the same supplier or culture unit and from the same holding and acclimation tank(s).

(D) Fathead minnows should not be used if they appear diseased or otherwise stressed or if more than 5 percent die during the 48 hours prior to testing. Diseased fish should be discarded or treated and held for a minimum of 14 days before testing.

(ii) *Care and handling.* (A) Fish purchased from a commercial source should be attended to immediately upon arrival. Transfer of the fish from the shipping to the holding water should be gradual to reduce stress caused by differences in water quality characteristics and temperature. Fish should be quarantined and observed for at least 14 days prior to testing.

(B) During holding, the fish should not be crowded and the dissolved oxygen concentration should be above 60 percent saturation. Holding tanks should be kept clean and free of debris. Fish should be fed at least once a day with a food which will support their survival and growth.

(C) Fish should be handled as little as possible. When handling is necessary, it should be done as gently, carefully, and quickly as possible using dip nets made of small mesh nylon, silk, bolting cloth, plankton netting, or other similar knotless materials. Handling equipment should be sterilized between uses by autoclaving, treating with an iodophor or with 200 mg hypochlorite/liter.

(iii) *Acclimation.* If the holding water is not from the same source as the test dilution water, acclimation to the dilution water should be done gradually over a 48-hour period. The fish should then be held an additional 14 days in the dilution water prior to testing. Any changes in water temperature should not exceed 3 °C per day. Fish should be held for a minimum of 7 days at the test temperature prior to testing.

(iv) *Loading.* The number of fish placed in each test chamber and the flow rate through the test chamber should be such that the uptake of the test substance by fish upon introduction into the test solution does not reduce the measured concentration of the test solution by more than 20 percent of the concentration measured before the fish were introduced. The loading should not exceed 0.1 g fish per liter of test solution delivered over any 24-hour period, and the minimum turnover rate should be 6

aquaria volumes per 24 hours. For some compounds, loading rates less than 0.1g/l may be needed to prevent a substantial loss of test substance as a result of fish uptake.

(2) *Facilities*—(i) *Dilution water.* (A) A constant supply of good quality water should be available throughout the holding, acclimation and testing periods. Although unadulterated well water is recommended, dechlorinated tap water or reconstituted soft water may be used. A dilution water is acceptable if fathead minnows will survive and grow normally for 60 days without exhibiting signs of stress, i.e., discoloration, lack of feeding, poor response to external stimuli, or lethargy.

(B) The total hardness, alkalinity, pH, specific conductance, temperature and dissolved oxygen concentration of the dilution water should be determined weekly. The pH should not vary more than 0.4 units and the other parameters more than 10 percent on a monthly basis.

(C) Reconstituted soft water, if used, should be prepared by adding 4.8 g $NaHCO_3$, 3.0 g $CaSO_4 \cdot 2H_2O$, 3.0 g $MgSO_4$, and 200 mg KCl to each 100 l of deionized or glass distilled water, or to dechlorinated tap water with a total residual chlorine concentration less than 1 μg/l. In all cases the specific conductance at 25 °C of the water source should be less than 1 micromho/cm.

(D) All water should be extensively aerated prior to use if the dissolved oxygen concentration is less than 90 percent of saturation. If the concentration of dissolved gases exceeds 110 percent of saturation, the excess gases should be removed using appropriate apparatus.

(E) The quality of the dilution water should be consistent and should meet the following specifications measured at least twice a year.

Substance	Maximum concentration
Particulate matter	20 mg/liter
Total organic carbon	2 mg/liter
Chemical oxygen demand	5 mg/liter
Un-ionized ammonia	1 μg/liter
Residual chlorine	1 μg/liter
Total organophosphorus pesticides	50 ng/liter
Total organochlorine pesticides plus polychlorinated biphenyls (PCBs)	50 ng/liter
Organic chlorine	25 ng/liter
Copper, cadmium or zinc	10 μg/liter

(ii) *Construction materials.* Materials and equipment that contact dilution water, stock solutions or test solutions should not leach or absorb substances. Glass, stainless steel and perfluorocarbon plastics should be used whenever possible. Concrete, unplasticized plastics and fiberglass may be used for holding and acclimation tanks and in the water supply system, but they should be thoroughly conditioned before use by rinsing with a continuous flow of water >25 °C for 48 hours. The use of flexible tubing should be avoided as phthalate esters leach from these materials. Cast iron pipe may be used but filters will be needed to remove rust particles. Rubber, copper, brass, galvanized metal, and epoxy glue should not come in contact with dilution water, stock solutions, or test solutions.

(iii) *Fish holding and acclimation.* (A) Tanks are needed for holding and acclimating fathead minnows prior to testing. The number and size of tanks needed depends upon the amount of testing to be performed and the availability of fish of the right age. A constant supply of good quality dilution water should be supplied to all tanks. The volume required depends upon the holding temperature and the number of fish being held, but the flow should be great enough to maintain a dissolved oxygen concentration >60 percent of saturation.

(B) Temperature control apparatus are needed to maintain the desired holding and acclimation temperatures. Apparatus controls should be able to maintain temperatures within 1 °C of the appropriate temperature. If the water is heated, care should be taken to avoid supersaturation of gases in the water.

(iv) *Testing apparatus.* (A) Test chambers can be made from welded stainless steel or from double strength glass joined with clear silicone adhesive. The size, shape and depth of the test chambers are not important as long as they accommodate the loading requirements.

(B) The test substance delivery system used should accommodate the physical and chemical properties of the test substance and the selected exposure concentration. The apparatus used should accurately and precisely deliver the appropriate amount of stock solution and dilution water to the test chambers. The introduction of the test substance should be done in such a way as to maximize the homogeneous distribution of the test substance throughout the test chamber.

(C) The dilution water should be delivered to an elevated headbox from which it can flow by gravity to the test substance delivery system. Use of a headbox facilitates a constant delivery rate and heating or cooling of the water to the approximate test temperature prior to delivery. Water in the headbox may also be easily aerated or degassed as the situation dictates.

(v) *Cleaning of test apparatus.* Delivery systems and test chambers should be cleaned before and after each use. If there is obvious absorption of a test substance by the silicone adhesive, those applicable parts of the delivery system should be discarded.

(3) *Test parameters*—(i) *Dissolved oxygen.* The dissolved oxygen concentration in each chamber should be greater than 5.3 mg/l (60 percent of sea-level saturation at 22 °C) throughout testing.

(ii) *Temperature.* The test temperature should be 22 ± 1 °C. Temporary excursions (<8 hours) to 20 or 24 °C are permissible.

(iii) *Lighting.* A photoperiod of 12 hours light and 12 hours dark with a 15 to 30 minute transition period is recommended.

(iv) *Test substance.* The name and purity of the test substance to be tested will be specified in the test rule. Radiolabelled compounds should not be used unless there are no suitable, validated, analytical techniques to measure unlabelled test substance in fish, or the costs of these analytical techniques are very high.

(v) *Carrier use.* Whenever possible, the test substance should be added directly to the dilution water or from a water stock solution. With compounds having a low water solubility, it may be necessary to prepare test solutions using a carrier. The carriers to be used, in order of preference are: triethylene glycol (TEG), dimethyl formamide (DMF) and acetone. The amount used should be kept to a minimum and should not exceed 80 mg/l in the test solution for TEG and 5.0 mg/l for DMF and acetone.

(e) *Reporting.* In addition to the information required in Part 792—Good Laboratory Practice Standards of this chapter, the report should contain the following:

(1) The source of the dilution water, its mean monthly chemical characteristics (total hardness, alkalinity, pH, specific conductance, temperature and D.O.) and a description of any pretreatment.

(2) Detailed information about the fathead minnows used, including age, mean and standard deviation wet weight (blotted dry) and standard length, source, history of disease, parasites and treatment, acclimation procedures, and food used.

(3) The number of organisms tested, loading rate and volume additions per 24 hours.

(4) The percentage mortality of control fish and fish in each exposure chamber

and any observed abnormal behavioral or physiological effects.

(5) The method of stock solution preparation including nominal and measured concentrations and solvent used.

(6) The mean, standard deviation and range of the temperature, dissolved oxygen concentration and pH during the test period.

(7) Photoperiod length and light intensity.

(8) Description of sampling and analytical methods for water and tissue analyses.

(9) The mean, standard deviation and range of the concentration of test compound in the test solution and fish tissue at each sampling period.

(10) The time to steady-state.

(11) The steady-state or maximum BCF and the 95 percent confidence limits.

(12) The time to 95 percent elimination of accumulated residues.

(f) *References.* For further background information on this test guideline the following references should be consulted:

(1) Blau, G.E. and Agin, C.L., "A users manual for BIOFAC: A computer program for characterizing the ratio of uptake and clearance of chemicals in aquatic organisms," (1978). *Dow Chemical Co.,* Mammalian Environmental Toxicology, Bldg. 1702. Midland, MI 48640.

(2) [Reserved]

§ 797.1560 Fish Bioconcentration Test.

(a) *Purpose.* This guideline is to be used for assessing the propensity of chemical substances to bioconcentrate in fish. This guideline describes a bioconcentration test procedure for the continuous exposure of fish to a test substance in a flow-through system. The United States Environmental Protection Agency (EPA) will use data from this test in assessing the hazard a chemical may present to the environment.

(b) *Definitions.* The definitions in section 3 of the Toxic Substances Control Act (TSCA) and in Part 792—Good Laboratory Practice Standards of this chapter are applicable to this test guideline. The following definitions also apply:

(1) "Bioconcentration" is the increase in concentration of test material in or on test organisms (or specified tissues thereof) relative to the concentration of test material in the ambient water.

(2) "Bioconcentration factor (BCF)" is the ratio of the test substance concentration in the test fish (C_f) to the concentration in the test water (C_w) at steady-state.

(3) "Depuration or clearance or elimination" is the process of losing test material from the test organisms.

(4) "Depuration rate constant (k_2) is the mathematically determined value that is used to define the depuration of test material from previously exposed test animals when placed in untreated dilution water, usually reported in units per hour.

(5) "Steady-state or apparent plateau" is a condition in which the amount of test material being taken up and depurated is equal at a given water concentration.

(6) "Uptake (u)" is the process of sorbing test material into and/or onto the test organisms.

(7) "Uptake phase" is the time during the test when test organisms are being exposed to the test material.

(8) "Uptake rate constant (k_1)" is the mathematically determined value that is used to define the uptake of test material by exposed test organisms, usually reported in units of liters/gram/hour.

(c) *Test procedures*—(1) *Summary of the test.* (i) The test compounds' water solubility, n-octanol/water partition coefficient and stability in water (hydrolysis, photolysis and microbial degradation) should be known prior to testing. The 24-hour and 96-hour LC_{50}'s for the fish species to be used in the study should also be known. These data should be based on test substance concentrations measured during a flow-through acute toxicity test.

(ii) The procedure proposed is applicable to organic chemicals that are not readily degradable in a microbial degradation test, relatively stable in the aquatic environment and soluble in water at <1 mg/l.

(iii) Before any biological experiments are carried out, the analytical method for the particular substance should be tested. It should be shown experimentally on both water and organisms that the recovery as well as the reproducibility are satisfactory. Blank samples (of water, solvents, etc.) should regularly be analyzed to ensure that no contamination occurs. The detection level should be determined and no quantification should be based on signals which are less than 2.5 times the instrument noise. Organisms and water samples should be removed in such a way that no contamination or losses by adsorption occur.

(iv) This Guideline describes a procedure for characterizing the bioconcentration potential of chemicals in aquatic biota. Parameters used to characterize the bioconcentration potential include the uptake rate constant (k_1), the depuration rate constant (k_2), and the steady-state bioconcentration factor, BCF (k_1/k_2).

(v) Each of three separate groups of test organisms of the same species is exposed to a different concentration of the test material in water: 0, x, and 10x mg/l, where x is defined by analytical and toxicological boundaries. The duration of the uptake phase (3 hours to 30 days) and depuration phase (6 hours to 60 days) varies according to the time required to reach the desirable percent of steady-state which is roughly estimated before the test starts. During both phases of the test, organisms and water are periodically removed from the test chambers and analyzed for the test material.

(vi) The uptake rate constant, depuration rate constant(s), bioconcentration factor, and their confidence limits are calculated from the model that best describes the measured concentrations of test material in the organisms and water at any point in time.

(2) [Reserved]

(3) [Reserved]

(4) *Definitive test*—(i) *Test solution preparation.* The test material should be added to the dilution water with minimal use of solvents or other carriers. Several systems adaptable to flow-through tests have been described for saturation of water with relatively insoluble test materials (Chadwick and Kugemgi (1968) under paragraph (f)(3) of this section, Borthwick et al. (1977) under paragraph (f)(2) of this section, Veith and Comstock (1975) under paragraph (f)(11) of this section. Acetone, dimethylformamide, ethanol, methanol, and triethylene glycol are the solvents recommended for use in preparing stock solutions. The concentration of solvent in any test solution should not exceed 0.1 ml/liter in flow-through tests.

(ii) *Exposure concentrations.* Test fish should be exposed to two or more concentrations of test material in water under flow-through conditions. As a guidance, the highest concentration should be less than one-tenth of the threshold or incipient LC_{50} for the test species and at least 10 times higher than the detection limit in water and, if possible, each exposure concentration should differ from another by a factor of 10.

(iii) *Test duration*—(A) *Estimation of the uptake phase.* (*1*) As a guideline, the statistically optimum duration of the uptake phase (u) is near the midpoint of

an uptake curve plotted on semi-log paper, or $u = 1.6/k_2$, but not more than $3.0/k_2$, which is equivalent to 95 percent of steady-state (Reilly et al. (1977) under paragraph (f)(7) of this section. A pre-test estimate of k_2 may be obtained from:

(*i*) A test with the same compound and a different species.

(*ii*) A test with a similar material.

(*iii*) The results of a preliminary range-finding test.

(*iv*) Water solubility data.

$\log k_2 = 0.43 \log(s) - 2.11$

where (s) is the aqueous solubility in ppm.

(*v*) *n*-octanol/water partition coefficient data,

$\log k_2 = -0.414 \log (K_{ow}) + 0.122$

where (K_{ow}) is the n-octanol/water partition coefficient.

(*2*) The duration of the uptake phase (u) for a test material with $\log K_{ow} = 3$ would be:

$\log k_2 = 0.414\ (3) + 0.122 = -1.12$

$k_2 = 0.0759$

$u = 1.6/0.0759 = 21$ hours

Similarly, for a test material having a $\log K_{ow} = 6$, the duration of the uptake phase (u) would be:

$\log k_2 = -0.414\ (6) + 0.122 = -2.362$

$k_2 = 0.0043$

$u = 1.6/0.0043 = 372$ hours (16 days)

(B) *Estimation of the depuration phase.* Two times u is usually sufficient time for about 95 percent removal of the body burden ($t_{1/2} = 0.69/k_2$), but several biological or analytical factors may suggest equally acceptable guidelines. Some compounds follow more complex uptake/depuration behavior than a simple two compartment (C_w and C_f), two parameter (k_1 and k_2) model. For these compounds, longer depuration periods are advisable. On the other hand, the depuration time will most likely be restricted by the lower limit of analytical detection for fish.

(iv) *Sampling schedule.* As a guideline, no fewer than four uptake sampling times and five depuration sampling times should be spaced throughout the duration of the experiment according to the following fractions of the total time (T_t): first at 0.0278 T_t, second at 0.0556 T_t, third at 0.1111 T_t, fourth at 0.2222 T_t, fifth at 0.3333 T_t (this is the optimum change-over time), sixth at 0.5000 T_t, seventh at 0.6667 T_t, eighth at 0.8333 T_t, and ninth at 1.000 T_t. The following Table I contains examples of acceptable sampling schedules for bioconcentration tests with test materials with a log $K_{ow} = 3.0$ and Log $K_{ow} = 6.0$:

TABLE I.—ACCEPTABLE SAMPLING SCHEDULES FOR BIOCONCENTRATION TESTS

Test phase	Action	Sampling times: log Kow = 3 Hours	Sampling times: log Kow = 6 Days	Number of water samples	Number of fish samples
	Start test	−1	−2		
	Add fish	0	−1	2[1]	
	0.5	0	2		
	1.0	0.5	[illegible]		
	1.5	1.0	2		
Uptake	2	1.4	2	[illegible]	
	4	2.8	[illegible]	[illegible]	
	7	5.7	[illegible]	4	
	13	11	[illegible]	4	
	[illegible]	17	2	[illegible]	
	[illegible] fish to [illegible] tanks, 24	[illegible]	2		
	[illegible]	26	2	[illegible]	
Depuration	40	34	2	4	
	50	[illegible]	2	[illegible]	
Termination	60	51	2	6	
	[illegible]				
Total			[illegible]	[illegible]	

[1] Samples taken after a minimum of 3 tank volumes have been delivered.

(v) *Sampling procedures.* (A) It is advisable to analyze both water and organism samples as soon as possible after they have been collected to prevent degradation or loss of test material and to determine approximate uptake and depuration rate constants as the test proceeds. If samples cannot be analyzed immediately, it is sometimes appropriate to extract the test material into a solvent, rendering it inert or easier to store until it can be analyzed.

(B) Water samples should be obtained by siphoning through glass tubing from the most central point in the test tank. The sample vessel and siphon should be rinsed with the test solution before collecting the sample.

(C) Water samples are best collected directly into glass vessels of appropriate volume from which the test material can be extracted or analyzed. These vessels might include separatory funnels in the case of organic compounds, or scintillation vials for radioactive test materials.

(D) If significant amounts of particulate matter are present in the water sampled, a second sample should be taken and analyzed after centrifuging to determine whether test material was adsorbed on the particulate matter rather than dissolved.

(E) Water samples containing highly persistent test materials can be stored frozen in plastic containers for later analysis. Care should be exercised to avoid use of containers which could sorb or contaminate samples. With most organic test materials, and especially those tending to degrade easily, a better practice is to extract them from the water and store them under refrigeration in solvent in tightly sealed glass vials.

(F) When removing test organisms for analysis, they should be netted or trapped in a random manner with as little disturbance as possible. If two or more test material concentrations are present, separate nets should be used for each concentration. Organisms should be rinsed with dilution water if accompanied by extraneous matter, blotted dry, and killed by pithing the brain with a dissecting needle or by severing the spinal cord above the opercular region with scissors. They should then be individually weighed and a record made to permit association of the weight with the sample.

(G) Fish may be analyzed as whole fish or as portions, e.g., edible portion (muscle), viscera, remaining carcass, etc. Specific organs may also be analyzed if sufficient biomass is available. If results based on body portions are desired, after the fish is killed it should be eviscerated, taking care not to puncture any parts of the visceral portion which could leak body fluids and possibly cause contamination of the remaining portions. The edible portion or muscle may be removed with a scalpel, blotted dry, and weighed before storing or analysis. The remaining carcass should be weighed before being stored or analyzed. It is necessary to record data for each portion for each individual fish so that whole body data can be reconstructed based on the sum of the parts.

(H) After weighing, the sample is usually ground or homogenized to promote extraction of test material or to enhance solution of the tissue. Procedures for grinding, extraction, separation of impurities, determination of lipid content, etc., are described in the U.S. Food and Drug Administration's Pesticide Analytical Manual (1975) under paragraph (f)(10) of this section or the U.S. Environmental Protection Agency's Manual of Analytical Methods for the Analysis of Pesticide Residues in Human and Environmental Samples (1974) under paragraph (f)(9) of this section.

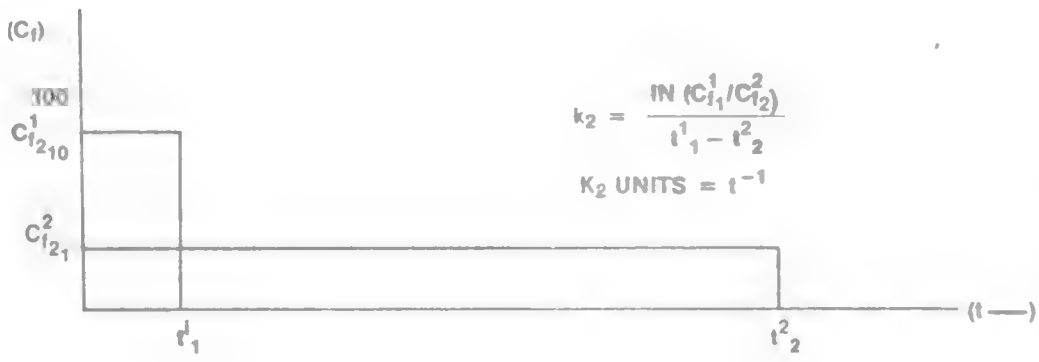
(I) When determining the bioconcentration of test materials which concentrate in lipids, it is often desirable to determine the percent of the total tissue weight made up by lipids. Results between samples are frequently less variable when based on lipid weight rather than on total weight (Reinert 1970, under paragraph (f)(8) of this section).

(J) Organism samples can be wrapped in acetone-rinsed foil, placed in glass

jars and frozen if they are not to be analyzed immediately.

(5) *Test results.* (i) Most bioconcentration data can reasonably be described with a simple two-compartment/two-parameter model as shown by a straight line depuration profile plotted on semi-log paper. If the depuration profile does not appear to be a straight line, then more complex models can be employed (Blau et al. 1975 under paragraph (f)(1) of this section). Typical variations from the simple model include a third parameter to describe the rate of metabolism of the parent compound or two additional parameters to describe redistribution of the parent compound within the body of the fish. If the best model is in question, it may be worthwhile to estimate parameters for the models in question and to compare the likelihood index of each model according to statistical tests (Blau et al. 1975 under paragraph (f)(1) of this section).

(ii) *Graph paper method for depuration rate constant.* Plot each concentration of the test material found in fish at each sampling time on semi-log paper. The slope of that line is K_2:



(iii) *Graph paper method for uptake rate constant.* Given k_2, calculate k_1 as follows:

$$k_1 = \frac{C_{f\ k2}}{C_w\ (1\text{-}e^{-k2t})}$$

The value of C_f is read from the smooth uptake/depuration curve near the uptake mid-point on semi-log paper.

(iv) *Computer method for calculating uptake and depuration rate constant.* The preferred means for obtaining the bioconcentration factor and k_1 and k_2 rate constants is to use nonlinear parameter estimation methods on a digital computer. Two such programs are BIOFAC (Dow) and NONLIN (Procter and Gamble). These programs find values for k_1 and k_2 given a set of sequential time concentration data and the model:

$$C_f = \begin{cases} C_w \cdot \frac{k_1}{k_2}\ (1-e^{-k_2 t}) & 0 \leq t \leq t_c \\ C_w \cdot \frac{k_1}{k_2}\ [e^{-k_2(t-t_c)} - e^{-k_2 t_c}] & t_c \leq t \end{cases}$$

This approach provides standard deviation estimates of k_1 and k_2, and BIOFAC statistically weights the analytical and biological variation of the fish concentration data. These and other nonlinear parameter estimation programs are readily available for most computers accepting the Fortran IV language or can be made available from a time-sharing service bureau; they are currently being used by many bioconcentration testing laboratories.

(v) *Validity of the test results.* (A) Scientific judgment rather than rigid criteria should be exercised in accepting or rejecting bioconcentration test results.

(B) Calculated BCF values based on an octanol/water partition coefficient have a very wide confidence margin (greater than ±100 percent), but the quality of the value may be better (narrower confidence margin) than an experimental value from a poorly designed study. Generally, the confidence margins for well designed studies approach ±20 percent. Acceptable bioconcentration data should be reported with confidence margins.

(C) Other criteria for judging the quality of bioconcentration data include the following guidelines:

(*1*) Percent mortality or adverse effect in control or treated organisms (suggested guideline, 10 percent).

(*2*) Percent effect of dose on uptake/depuration rate constants (suggested guideline 20 percent).

(*3*) Percent variation in C_w (suggested guideline, 20 percent) except for the initial dip that may approach 50 percent during the first few days of exposure.

(*4*) Temperature and dissolved oxygen should not vary more than ± 1 °C and ±3 mg/liter.

(*5*) The importance of actually visualizing an apparent plateau has been a subject of recent debate. It is suggested that 80 percent of steady-state (k_1/k_2) in any tissue with a confidence margin of ±20 percent is more than sufficient to estimate high quality rate constants for compounds with BCF <10,000. For compounds with BCF >10,000 it may be desirable and acceptable to terminate the uptake phase after a few days not to exceed 28 days even though <80 percent of steady-state was reached.

(*6*) A clearly defined uptake/depuration profile is an indicator of high quality bioconcentration data.

(6) *Analytical measurements.* (i) Prior to analyzing fish or water for the test substance, control samples should be spiked with several different concentrations of the test substance and then analyzed. Final values of C_w and C_f should be corrected for recoveries and background.

(ii) Analytical detection limits of test substance in both fish and water should be determined before the bioconcentration test begins and should be documented in the protocol. As a guideline, the limit of detection may be defined as a signal 2.5 times higher than the background noise level.

(iii) If possible, results reported as "not detected at the limit of detection" should be minimized by pre-test method development and experimental design.

These results cannot be used for rate constant calculations. The units C_w and C_f should both be expressed either as ppm or ppb.

(d) *Test conditions—Test species*—(1) *Selection.* (i) The procedures regarding selection of which species to test, their source, handling, holding, disease treatment, acclimation, and quality assurance prior to and during testing should be those given in Committee on Methods for Toxicity Tests with Aquatic Organisms (1975), under paragraph (b)(6) of this section.

(ii) The freshwater fish species used most frequently in bioconcentration tests have been rainbow trout, bluegill, and fathead minnows. The most commonly used marine fish have been spot, sheepshead minnows, silversides, shiner perch, English sole, staghorn sculpin, and 3-spine sticklebacks. These species are more readily available than most others and can be obtained in convenient sizes.

(2) *Facilities*—(i) *Construction materials.* Construction materials and commercially purchased equipment that may contact any water into which test organisms are placed should not contain any substances that can be leached or dissolved by the water. Glass, #316 stainless steel, and perfluorocarbon plastics should be used whenever possible to minimize leaching, dissolution, and sorption. Some will be more suitable than others for use with specific test materials. Unplasticized plastics, cast iron, and concrete can be used for holding and acclimation tanks and in the water supply system. Rubber, copper, brass, galvanized metal, and lead should not come into contact with dilution water, stock solutions, effluent samples or test solutions.

(ii) *Toxicant delivery system.* (A) One of several toxicant delivery systems can be used successfully, including the proportional diluter (Lemke et al. 1977), under paragraph (f)(6) of this section. Diluters are accurate over extended periods of time, are relatively trouble-free, and have fail-safe provisions. However, proportional diluters often require that laboratories have more than 8 feet of headroom. A small chamber to promote mixing of test material-bearing and dilution water should be used between the diluter and test chambers for each concentration. Design alterations, such as modification to deliver duplicates of only two or three concentrations, are easy to make (Jarvinen et al. 1977, under paragraph (f)(5) of this section).

(B) Pump systems are relatively simple to understand and use, require little space, and can be quite accurate. Some investigators have found metering pumps to maintain less variable test concentrations than piston operated pumps.

(C) The performance of the toxicant delivery system should be checked before and during each test. This should include determination of the flow rate through each test chamber and measurement of either the concentration of toxicant in each test chamber or the volumes delivered by each portion of the delivery system. The general operation of the toxicant delivery system should be checked daily during the test.

(D) The flow rate through the test chambers should be at least five volume additions per 24 hours, but should take into account the size of the test chamber, the size of the test organisms and the loading. It is usually desirable to construct the metering system so that it can provide at least 10 volume additions per 24 hours. The flow rates through the test chambers should not vary by more than 20 percent from any one test chamber to any other or from one time to another within a test.

(iii) *Test chambers.* Each of the height and width dimensions of the test chamber should be at least 1.5 times the largest horizontal dimension of the test organism. A minimum volume of one liter per fish is crowded but satisfactory for fish up to 15 g; large volumes to fish weight ratios are preferred to minimize the initial C_w dip and to help maintain the dissolved oxygen concentration.

(iv) *Cleaning.* Metering systems, test chambers, and equipment used to prepare and store dilution water, stock solutions, and test solutions should be cleaned before use. New equipment should be washed with detergent and rinsed with water, pesticide-free acetone, water, acid (such as 5 percent concentrated nitric acid), and twice with distilled water. At the end of every test, all items that are to be used again should be immediately emptied, rinsed with water, cleaned by a procedure appropriate for removing the test material (e.g., acid to remove metals and bases; detergent, organic solvent, or activated carbon to remove organic compounds), and rinsed twice with distilled water. Acid is useful for removing mineral deposits, and 200 mg of hypochlorite/liter is useful for removing organic matter and for disinfection. A solution containing 200 mg hypochlorite per liter is conveniently prepared by adding 6 ml of liquid household chlorine bleach to 1 liter of water. However, acid and hypochlorite should not be mixed because hazardous fumes may be produced. Metering systems and test chambers should be rinsed with dilution water just before use.

(v) *Dilution water*—(A) *General requirements.* (*1*) An adequate supply of dilution water that is acceptable to the test organisms and to the purpose of the test should be available. A minimum criterion for an acceptable dilution water is that healthy test organisms will survive in it for the duration of acclimation and testing without showing signs of stress, such as discoloration or unusual behavior. A better criterion for an acceptable freshwater dillution water is that test organisms will survive, grow, and reproduce satisfactorily in it.

(*2*) If the dilution water is or is prepared from dechlorinated water, it should be shown that in fresh samples of the dilution water either (*i*) the concentration of residual chlorine is less than 3 mg/liter or (*ii*) *Acartia tonsa*, mysid shrimp, oyster larvae, or first instar daphnids can survive for 48 hours without food. The dilution water should be assayed for the selected test material.

(B) *Freshwater.* Because daphnids are more sensitive to many toxicants than most other readily available freshwater aquatic animals, water in which first instar daphnids will survive for 48 hours without food is probably acceptable for most short-term tests with freshwater animals. Water in which daphnids will survive, grow, and reproduce satisfactorily should be an acceptable dilution water for longer tests with freshwater animals.

(C) *Estuarine and marine water.* Because *Acartia tonsa*, mysid shrimp, and oyster larvae are more sensitive to many toxicants than most other estuarine and marine aquatic animals, water in which they will survive for 48 hours without food is probably acceptable for most short-term tests with estuarine and marine animals. Water in which *Acartia tonsa* or mysid shrimp will survive, grow, and reproduce satisfactorily should be an acceptable dilution water for longer tests with estuarine and marine animals.

(e) *Reporting.* In addition to the reporting requirements prescribed in Part 792—Good Laboratory Practice Standards of this chapter, the test report should include the following information:

(1) A detailed description of the test material, including its source, lot number, composition (identity and concentration of major ingredients and major impurities), known physical and chemical properties, and identity and concentration of any carriers (solvents) or other additives used.

(2) The source of the dilution water, its chemical characteristics, and a description of any pretreatment.

(3) Detailed information about the test organisms, including scientific name and how verified (and strain for salmonids when appropriate), weight (wet, blotted dry), standard length of fish, height of bivalve molluscs, age, life stage, source, history, observed diseases, treatments, acclimation procedure, and food used.

(4) A description of the experimental design and metering system.

(5) Description of tissue and water samples analyzed, and methods used to obtain, prepare, and store them.

(6) Methods used for, and results (with standard deviation) of all chemical analyses of water quality and concentration of test material in tissue and water, including validation studies and reagent blanks.

(7) The steady-state bioconcentration factor, the uptake and depuration rate constants, the confidence margins (± standard deviation) and the method of computations/data analysis.

(8) Anything unusual about the test, any deviation from these procedures, and any other relevant information.

(f) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Blau, G.E., Neely, W.B., Branson, D.R. "Ecokinetics: a study of the fate and distribution of chemicals in laboratory ecosystems," *American Institute of Chemical Engineering Journal*, 21:854–861 (1975).

(2) Borthwick, P.W., Tagatz, M.E., Forester, J. "A gravity-flow column to provide pesticide-laden water for aquatic bioassays," *Bulletin of Environmental Contamination and Toxicology*, 13:183–187 (1977).

(3) Chadwick, G.C., Kugemagi, V. "Toxicity evaluation of a technique for introducing dieldrin into water," *Journal of the Water Pollution Control Federation*, 40: 76–82 (1968).

(4) U.S. Environmental Protection Agency, Committee on Methods for Toxicity Tests with Aquatic Organisms. "Methods for acute toxicity tests with fish, macroinvertebrates, and amphibians," EPA Report 660/3–75–009 (Corvallis, Oregon, 1975).

(5) U.S. Environmental Protection Agency, Jarvinen, A.W., Hoffman, M.J., Thorslund, T.W. "Toxicity of DDT food and water exposure to fathead minnows" U.S. Environmental Protection Agency. EPA Report No. 600/3–76–114 (Duluth, Minnesota, 1977).

(6) U.S. Environmental Protection Agency, Lemke, A.E., Brungs, W.A., Halligan, B.J. "Manual for construction and operation of toxicity testing proportional diluters," EPA Report 600/3–78–072 (Duluth, Minnesota, 1978).

(7) Reilly, P.M., Bajramovic, R., Blau, G.E., Branson, D.R., Sauerhoff, M.W. "Guidelines for the optimal design of experiments to estimate parameters in first order kinetic models," *Canadian Journal of Chemical Engineering*, 55:614–622 (1977).

(8) Reinert, R.E. "Pesticide concentrations in Great Lakes fish," *Pesticides Monitoring Journal*, 3(4): 233–240 (1970).

(9) U.S. Environmental Protection Agency. "Analysis of human or animal adipose tissue," Ed. Thompson, J.F., *Analyses of Pesticide Residues in Human and Environmental Samples*, 1974, available from U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

(10) U.S. Food and Drug Administration. *Pesticide Analytical Manual*. Vol. 1, 1975, available from the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852.

(11) Veith, G.D., Comstock, V.M. "Apparatus for continuously saturating water with hydrophobic organic chemicals" *Journal of Fishery Research Board of Canada*, 32: 1849–1851 (1975).

§ 797.1600 Fish early life stage toxicity test.

(a) *Purpose.* This guideline is intended to be used for assessing the propensity of chemical substances to produce adverse effects to fish during the early stages of their growth and development. This guideline describes the conditions and procedures for the continuous exposure of several representative species to a chemical substance during egg, fry and early juvenile life stages. The Environmental Protection Agency (EPA) will use data from this test in assessing the potential hazard of the test substance to the aquatic environment.

(b) *Definitions.* The definitions in section 3 of the Toxic Substances Control Act (TSCA) and the definitions in Part 792—Good Laboratory Practice Standards, apply to this section. In addition, the following definitions are applicable to this specific test guideline:

(1) "Acclimation" physiological or behavioral adaptation of organisms to one or more environmental conditions associated with the test method (e.g., temperature, hardness, pH).

(2) "Carrier" solvent or other agent used to dissolve or improve the solubility of the test substance in dilution water.

(3) "Conditioning" exposure of construction materials, test chambers, and testing apparatus to dilution water or to the test solution prior to the start of the test in order to minimize the sorption of test substance onto the test facilities or the leachig of substances from test facilities into the dilution water or the test solution.

(4) "Control" an exposure of test organisms to dilution water only or dilution water containing the test solvent or carrier (no toxic agent is intentionally or inadvertently added).

(5) "Dilution water" the water used to produce the flow-through conditions of the test to which the test substance is added and to which the test species is exposed.

(6) "Early life stage toxicity test" a test to determine the minimum concentration of a substance which produces a statistically significant observable effect on hatching, survival, development and/or growth of a fish species continuously exposed during the period of their early development.

(7) "Embryo cup" a small glass jar or similar container with a screened bottom in which the embryos of some species (i.e., minnow) are placed during the incubation period and which is normally oscillated to ensure a flow of water through the cup.

(8) "Flow through" refers to the continuous or very frequent passage of fresh test solution through a test chamber with no recycling.

(9) "Hardness" the total concentration of the calcium and magnesium ions in water expressed as calcium carbonate (mg $CaCO_3$/liter).

(10) "Loading" the ratio of biomass (grams of fish, wet weight) to the volume (liters) of test solution passing through the test chamber during a specific interval (normally a 24-hr. period).

(11) "No observed effect concentration (NOEC)" the highest tested concentration in an acceptable early life stage test: (i) which did not cause the occurrence of any specified adverse effect (statistically different from the control at the 95 percent level); and (ii) below which no tested concentration caused such an occurrence.

(12) "Observed effect concentration (OEC)" the lowest tested concentration in an acceptable early life stage test: (i) which caused the occurrence of any specified adverse effect (statistically different from the control at the 95 percent level); and (ii) above which all tested concentrations caused such an occurrence.

(13) "Replicate" two or more duplicate tests, samples, organisms, concentrations, or exposure chambers.

(14) "Stock solution" the source of the test solution prepared by dissolving the test substance in dilution water or a carrier which is then added to dilution

water at a specified, selected concentration by means of the test substance delivery system.

(15) "Test chamber" the individual containers in which test organisms are maintained during exposure to test solution.

(16) "Test solution" dilution water with a test substance dissolved or suspended in it.

(17) "Test substance" the specific form of a chemical substance or mixture that is used to develop data.

(c) *Test Procedures*—(1) *Summary of test.* (i) The early life stage toxicity test with fish involves exposure of newly fertilized embryos to various concentrations of a test substance. Exposure continues for 28 days post hatch for the minnows and 60 days post hatch for the trout species. During this time various observations and measurements are made in a specific manner and schedule in order to determine the lowest effect and highest no-effect concentrations of the test substance.

(ii) A minimum of five exposure (treatment) concentrations of a test substance and one control are required to conduct an early life stage toxicity test. The concentration of the test substance in each treatment is usually 50 percent of that in the next higher treatment level.

(iii) For each exposure concentration of the test substance and for each control (i.e., regular control and carrier control is required) there should be:

(A) At least two replicate test chambers, each containing one or more embryo incubation trays or cups; and there should be no water connections between the replicate test chambers;

(B) At least 60 embryos divided equally, through randomization , between the embryo incubation trays or cups for each test concentration and control (i.e., 30 per embryo cup with 2 replicates);

(C) All surviving larvae divided equally between the test chambers for each test concentration and control (e.g., 30 larvae per test chamber with 2 replicates).

(iv) *Duration.* (A) For fathead minnow and sheepshead minnow a test begins when the newly fertilized minnow embryos (less than 48-hours old) are placed in the embryo cups and are exposed to the test solution concentrations. The test terminates following 28 days of post-hatch exposure, i.e., 28 days after the newly hatched fry are transferred from the embryo cups into the test chambers.

(B) For brook trout and rainbow trout a test begins when newly fertilized trout embryos (less than 96-hours old) are placed in the embryo trays or cups and are exposed to the test solution concentrations. The test terminates following 60 days of post-hatch exposure (for an approximate total exposure period of 90 days).

(C) For silverside a test begins with newly fertilized embryos (less than or equal to 48 hours old) and is terminated 28 days after hatching. The chorionic fibrils should be cut before randomly placing the embryos in the egg incubation cups.

(2) [Reserved]

(3) *Range-finding test.* (i) A range finding test is normally performed with the test substance to determine the test concentrations to be used in the early life stage toxicity test, especially when the toxicity is unknown. It is recommended that the test substance concentrations be selected based on information gained from a 4- to 10-day flow-through toxicity test with juveniles of the selected test species.

(ii) The highest concentration selected for the early life stage toxicity test should approximate the lowest concentration indicated in any previous testing to cause a significant reduction in survival. The range of concentrations selected is expected to include both observed effect and no-observed effect levels. The dilution factor between concentrations is normally 0.50, however, other dilution factors may be used as necessary.

(4) *Definitive test*—(i) *General.* (A) A test should not be initiated until after the test conditions have been met and the test substance delivery system has been observed functioning properly for 48-hours. This includes temperature stability, flow requirements of dilution water, lighting requirements, and the function of strainers and air traps included in the water-supply system, and other conditions as specified previously.

(B) New holding and test facilities should be tested with sensitive organisms (i.e., juvenile test species or daphnids) before use to assure that the facilities or substances possibly leaching from the equipment will not adversely affect the test organisms during an actual test.

(C) Embryos should be acclimated for as long as practical to the test temperature and dilution water prior to the initiation of the test.

(D) When embryos are received from an outside culture source (i.e., rainbow and brook trout) at a temperature at variance with the recommended test temperature they should be acclimated to the test temperature. When eggs are received, they should be immediately unpacked and the temperature of the surrounding water determined. Sudden temperature changes should be avoided. Acclimation to the appropriate test temperature should be accomplished within a period of six hours, and should incorporate the use of dilution water.

(E) Embryos should be visually inspected prior to placement in the embryo cups or screen trays. All dead embryos should be discarded. Dead embryos can be discerned by a change in coloration from that of living embryos (e.g. trout embryos turn white when dead). During visual inspection, empty shells, opaque embryos and embryos with fungus or partial shells attached should be removed and discarded. If less than 50 percent of the eggs to be used appear to be healthy, all embryos in such a lot should be discarded.

(ii) *Embryo incubation procedures.* (A) Embryos can be distributed to the embryo cups or screen trays using a pipette with a large bore or a similar apparatus. Newly-hatched silverside fry are very sensitive to handling; the egg incubation cups should not be handled at all the first 5 days after hatching begins. Just before hatching is expected to begin, the embryos should be transferred to clean incubation cups. Trout embryos can be distributed by using a small container which has been precalibrated to determine the approximate number of embryos it can hold; embryos are measured volumetrically in this manner, and are then poured onto the screen tray (or embryo cup). Trout embryos should be separated on the screen tray so that they are not in contact with each other. A final count will ensure the actual number on the screen tray. After random assignment, the screen trays or embryo cups are placed in the test chambers.

(B) Each day until hatch the embryos are visually examined. Minnow embryos may be examined with the aid of a magnifying viewer. Trout embryos should not be touched. Trout embryos should be maintained in low intensity light or in darkness until one-week post hatch, and are usually examined with the aid of a flashlight or under low intensity light. Dead embryos should be removed and discarded. Live embryos which are heavily infected with fungus should be subtracted from the initial number of embryos used as a basis for the calculations of percentage hatch.

(C) When embryos begin to hatch they should not be handled.

(iii) *Initiation of fry exposure.* (A) Forty-eight hours after the first hatch in each treatment level, or when hatching is completed, the live young fish should

be counted and transferred from each embryo cup into the appropriate test chamber. For silverside, all surviving fry are not counted until six days after hatching and are not transferred to embryo cups. All of the normal and abnormal fry should be gently released into the test chamber by allowing the fry to swim out of each embryo cup; nets should not be used. The trout embryos incubated on screen trays will hatch out in the test chambers, therefore handling of fish is not necessary.

(B) If necessary, fry can be transferred from one replicate embryo cup to the other replicate within a test concentration to achieve equal numbers in each replicate chamber.

(C) The number of live fry, live normal fry, live embryos, dead embryos and unaccounted for embryos for each cup should be recorded when hatching is deemed complete. Those fry which are visibly (without the use of a dissecting scope or magnifying viewer) lethargic or grossly abnormal (either in swimming behavior or physical appearance) should be counted. Late hatching embryos should be left in the embryo cups to determine if they will eventually hatch or not. The range of time-to-hatch (to the nearest day) for each cup should be recorded.

(iv) *Time to first feeding.* (A) The first feeding for the fathead and sheepshead minnow fry should begin shortly after transfer of the fry from the embryo cups to the test chambers. Silversides are fed the first day after hatch. Trout species initiate feeding at swim-up. The trout fry should be fed trout starter mash three times a day *ad libitum*, with excess food siphoned off daily. The minnow fry should be fed live newly-hatched brine shrimp nauplii (*Artemia salina*) at least three times a day.

(B) For the first seven days, feeding should be done at minimum intervals of four hours (i.e., 8 am, 12 noon, and 4 pm); thereafter the fry should be fed as indicated below.

(v) *Feeding.* (A) The fathead and sheepshead minnow fry should be fed newly-hatched brine shrimp nauplii for the duration of the test at approximately 4-hour intervals three times a day during the week and twice on the weekend after the first week. Trout fry should be fed at similar intervals, and may receive live brine shrimp nauplii in addition to the trout starter food after the first week. Between days 1 and 8 after first hatching, silverside fry are fed the rotifer, *Brachionus plicatilis*, three times daily at a concentration of 5,000-10,000 organisms per egg cup (based on 15 fish/cup). From days 9–11, the fry should be fed approximately 2,500 newly-hatched brine shrimp (*Artemia*) nauplii and 5,000–10,000 rotifers twice daily. For the remainder of the test, the fish will be fed brine shrimp exclusively. The number of organisms used should be gradually increased to approximately 5,000 nauplii by test day 28.

(B) An identical amount of food should be provided to each chamber. Fish should be fed *ad libitum* for 30 minutes with excess food siphoned off the bottom once daily if necessary.

(C) Fish should not be fed for the last 24 hours prior to termination of the test.

(vi) *Carriers.* Water should be used in making up the test stock solutions. If carriers other than water are absolutely necessary, the amount used should be the minimum necessary to achieve solution of the test substance. Triethylene glycol and dimethyl formamide are preferred, but ethanol and acetone can be used if necessary. Carrier concentrations selected should be kept constant at all treatment levels.

(vii) *Controls.* Every test requires a control that consists of the same dilution water, conditions, procedures, and test organisms from the same group used in the other test chambers, except that none of the test substance is added. If a carrier (solvent) is used, a separate carrier control is required in addition to the regular control. The carrier control should be identical to the regular control except that the highest amount of carrier present in any treatment is added to this control. If the test substance is a mixture, formulation, or commercial product, none of the ingredients is considered a carrier unless an extra amount is used to prepare the stock solution.

(viii) *Randomization.* The location of all test chambers and species within the test system should be randomized. A representative sample of the test embryos should be impartially distributed by adding to each cup or screen tray no more than 20 percent of the number of embryos to be placed in each cup or screen tray and repeating the process until each cup or screen tray contains the specified number of embryos. Alternatively, the embryos can be assigned by random assignment of a small group (e.g., 1–5) of embryos to each embryo cup or screen tray, followed by random assignment of a second group of equal number to each cup or tray, which is continued until the appropriate number of embryos are contained in each embryo cup or screen tray. The method of randomization used should be reported in detail.

(ix) *Observations.* During the embryo exposure period observations should be made to check for mortality. During the exposure period of the fry, observations should be made to check for mortality and to note the physical appearance and behavior of the young fish. The biological responses are used in combination with physical and chemical data in evaluating the overall lethal and sublethal effects of the test substance. Additional information on the specific methodology for the data obtained during the test procedure are discussed in the following sections.

(x) *Biological data.* (A) Death of embryos should be recorded daily and dead embryos removed when discovered to prevent the spread of fungal contamination.

(B) When hatching commences, daily records of the number of embryos remaining in each embryo cup are required. This information is necessary to quantify the hatching success. A record of all deformed larvae should be kept throughout the entire post-hatch exposure. Time to swim-up should be recorded for the trout. Upon transfer of fry from the embryo cups to the test chambers, daily counts of the number of live fish should be made. At a minimum live fish should be counted on days 4, 11, 18, 25 and (weekly thereafter for the trout species) finally on termination of the test.

(C) The criteria for death of young fish is usually immobility, especially absence of respiratory movement, and lack of reaction to gentle prodding. Deaths should be recorded daily and dead fish removed when discovered.

(D) Daily and at termination of the test, the number of fish that appear (without the use of a magnifying viewer) to be abnormal in behavior (e.g., swimming erratic or uncoordinated, obviously lethargic, hyperventilating, or over excited, etc.) or in physical appearance (e.g., hemorrhaging, producing excessive mucous, or are discolored, deformed, etc.) should be recorded and reported in detail.

(E) All physical abnormalities (e.g., stunted bodies, scoliosis, etc.) should be photographed and the deformed fish which die, or are sacrificed at the termination of the test, should be preserved for possible future pathological examination.

(F) At termination, all surviving fish should be measured for growth. Standard length measurements should be made directly with a caliper, but may be measured photographically. Measurements should be made to the nearest millimeter (0.1mm is desirable). Weight measurements should also be made for each fish alive at termination (wet, blotted dry and to the nearest 0.01g for the minnows and 0.1g for the trout). If the fish exposed to the toxicant appear to be edematous compared to

control fish, determination of dry, rather than wet, weight is recommended.

(G) Special physiological, biochemical and histological investigations on embryos, fry, and juveniles may be deemed appropriate and should be performed on a case by case basis.

(5) *Test results.* (i) Data from toxicity tests are usually either continuous (e.g. length or weight measurements) or dichotomous (e.g. number hatching or surviving) in nature. Several methods are available and acceptable for statistical analysis of data derived from early life stage toxicity tests; however, the actual statistical methodology to analyze and interpret the test results should be reported in detail.

(ii) The significance level for all statistical testing should be a minimum of P=0.05 (95 percent confidence level).

(A) *Example of statistical analysis.* (*1*) Mortality data for the embryonic stage, fry stage and for both stages in replicate exposure chambers should first be analyzed using a two-way analysis of variance (ANOVA) with interaction model. This analysis will determine if replicates are significantly different from each other. If a significant difference between replicates or a significant interaction exists, cause for the difference should be determined. Modification should then be made in the test apparatus or in handling procedures for future toxicity tests. Further calculations should incorporate the separation of replicates. If no significant difference is observed, replicates may be pooled in further analyses.

(*2*) After consideration of replicate responses, mortality data should then be subjected to one-way ANOVA. The purpose of this analysis is to determine if a significant difference exists in the percentage mortality between control fish and those exposed to the test material.

(*3*) If the one-way ANOVA results in a F ratio that is significant, it would be acceptable to perform t-tests on the control versus each concentration. A second technique is to identify treatment means that are significantly different; this method should involve the additional assumption that the true mean response decreases generally with increasing concentration. The researcher may also be interested in determining significant differences between concentrations.

(*4*) Growth data should also be analyzed by one-way ANOVA with the inclusion of a covariate to account for possible differences in growth of surviving fry in embryo cup(s) that contain fewer individuals. This condition can occur in cases when the same amount of food is given to each test chamber regardless of the number of survivors.

(B) *Test data to be analyzed.* Data to be statistically analyzed are:

(*1*) Percentage of healthy, fertile embryos at 40–48 hours after initiation of the test. Percentage is based upon initial number used.

(*2*) Percentage of embryos that produce live fry for release into test chambers. Percentage is based on number of embryos remaining after thinning.

(*3*) Percentage of embryos that produce live, normal fry for release into test chambers. Percentage is based upon number of embryos remaining after thinning.

(*4*) Percentage of fry survival at swim-up for trout. Percentage is based upon number of embryos remaining after thinning.

(*5*) Percentage of embryos that produce live fish at end of test. Percentage is based upon number of embryos remaining after thinning.

(*6*) Percentage of embryos that produce live, normal fish at end of test. Percentage is based upon number of embryos remaining after thinning.

(*7*) Weights and lengths of individual fish alive at the end of the test.

(C) It is important that fish length and weight measurements be associated with individual test chambers since the density of the fish and available food should be considered in the growth of the organism.

(iii) *Acceptability criteria.* (A) An early life stage toxicity test is not acceptable unless at least one of the following criteria is significantly different (p=0.05) from control organisms when compared with treated organisms, and the responses are concentration-dependent: mortality of embryos, hatching success, mortality of fry (at swim-up for trout), total mortality throughout the test, and growth (i.e. weight). If no significant effects occur, but the concentrations tested were the highest possible due to solubility or other physio-chemical limitations, the data will be considered for acceptance.

(B) In addition to obtaining significant effects on the exposed test species, a measure of acceptability in the response of control fish is also required.

(C) A test is not acceptable if the average survival of the control fish at the end of the test is less than 80 percent or if survival in any one control chamber is less than 70 percent. For silversides, a test is not acceptable if the average overall survival of the control embryos and fish at the end of the test is less than 60 percent.

(D) If a carrier is used, the criteria for effect (mortality of embryos and fry, growth, etc.) used in the comparison of control and exposed test organisms should also be applied to the control and control with carrier chambers. For the test to be considered acceptable, no significant difference should exist between these criteria.

(E) A test is not acceptable if the relative standard deviation (RSD=100 times the standard deviation divided by the mean) of the weights of the fish that were alive at the end of the test in any control test chamber is greater than 40 percent.

(6) *Analytical measurements*—(i) *Analysis of water quality.* Measurement of certain dilution water quality parameters should be performed every 6 months, to determine the consistency of the dilution water quality. In addition, if data in 30 day increments are not available to show that freshwater dilution water is constant, measurements of hardness, alkalinity, pH, acidity, conductivity, TOC or COD and particulate matter should be conducted once a week in the control and once a week in the highest test substance concentration. Measurement of calcium, magnesium, sodium, potassium, chloride, and sulfate is desirable.

(ii) *Dissolved oxygen measurement.* The dissolved oxygen concentration should be measured in each test chamber at the beginning of the test and at least once daily thereafter (as long as live organisms are present) in one replicate of the control and the high, medium, and low test substance concentrations.

(iii) *Temperature measurement.* Temperatures should be recorded in all test chambers at the beginning of the test, once weekly thereafter and at least hourly in one test chamber. When possible, the hourly measurement should be alternated between test chambers and between replicates.

(iv) *Test substance measurement.* (A) Prior to the addition of the test substance to the dilution water, it is recommended that the test substance stock solution be analyzed to verify the concentration. After addition of the test substance, the concentration of test substance should be measured at the beginning of the test in each test concentration (including both replicates) and control(s), and in one replicate at each test concentration at least once a week thereafter. Replicates should be alternated each week. If a malfunction in the delivery system is discovered, water samples should be taken from the affected test chambers immediately and analyzed.

(B) The measured concentration of test substance in any chamber should be no more than 30 percent higher or lower than the concentration calculated from the composition of the stock solution and the calibration of the test substance delivery system. If the difference is more than 30 percent, the concentration of test substance in the solution flowing into the exposure chamber (influent) should be analyzed. These results will indicate whether the problem is in the stock solution, the test substance delivery system or in the test chamber. Measurement of degradation products of the test substance is recommended if a reduction of the test substance concentration occurs in the test chamber.

(v) *Sampling and analysis methodology.* (A) Generally, total test substance measurements are sufficient; however, the chemical characteristics of the test substance may require both dissolved and suspended test substance measurements.

(B) For measurement of dissolved or suspended test substance or both, water samples should be taken midway between the top, bottom, and sides of the test chamber and should not include any surface scum or material stirred up from the bottom or sides. For measurement of total test substance, a large volume of the solution in the test chamber should be collected and used as the sample. Samples of test solutions should be handled and stored appropriately to minimize loss of test substance by microbial degradation, photodegradation, chemical reaction, volatilization, or sorption.

(C) Chemical and physical analyses should be performed using standardized methods whenever possible. The analytical method used to measure the concentration of the test substance in the test solution should be validated before the beginning of the test. At a minimum, a measure of the accuracy of the method should be obtained, on each of two separate days by using the method of known additions, and using dilution water from a tank containing test organisms. Three samples should be analyzed at the next to lowest test substance concentration. It is also desirable to study the accuracy and precision of the analytical method for test guideline determination by use of reference (split) samples, or interlaboratory studies, and by comparsion with alternative, reference or corroborative methods of analysis.

(D) An analytical method is not acceptable if likely degradation products of the test substance, such as hydrolysis and oxidation products, give positive or negative interferences, unless it is shown that such degradation products are not present in the test chambers during the test. In general, atomic absorption spectrophotometric methods for metals and gas chromatographic methods for organic compounds are preferable to colorimetric methods.

(E) In addition to analyzing samples of test solution, at least one reagent blank also should be analyzed when a reagent is used in the analysis. Also, at least one sample for the method of known additions should be prepared by adding test substance at the concentration used in the toxicity test.

(d) *Test conditions*—(1) *Test species.* (i) One or more of the recommended test species will be specified in rules under Part 799 of this chapter requiring testing of specific chemicals. The recommended test species are:

(A) Fathead minnow (*Pimephales promelas* Rafinesque).

(B) Sheepshead minnow (*Cyprinodon variegatus*).

(C) Brook trout (*Salvelinus fontinalis*).

(D) Rainbow trout (*Salmo gairdneri*).

(E) Atlantic silverside (*Menidia menidia*).

(F) Tidewater silverside (*Menidia peninsulae*).

(ii) Embryos used to initiate the early life stage test should be less than 48 hours old for the fathead and sheepshead minnows, silversides, and less than 96 hours old for the brook trout and rainbow trout. In addition, the following requirements should be met:

(A) All embryos used in the test should be from the same source. Embryos should be obtained from a stock cultured in-house when possible, and maintained under the same parameters as specified for the test conditions. When it is necessary to obtain embryos from an external source, caution should be exercised to ensure embryo viability and to minimize the possibility of fungal growth. A description of the brood stock history or embryo source should be made available to EPA upon request.

(B) Test species should be cared for and handled properly in order to avoid unnecessary stress. To maintain test species in good condition and to maximize growth, crowding should be prevented, and the dissolved oxygen level should be maintained near saturation.

(C) Embryos and fish should be handled as little as possible. Embryos should be counted and periodically inspected until hatching begins. When larvae begin to hatch, they should not be handled. Transfer of minnow larvae from embryo cups to test chambers should not involve the use of nets. No handling is necessary following introduction into the test chambers until termination of the test.

(D) If fathead minnow embryos are obtained from in-house culture units, the embryos should be gently removed from the spawning substrate. The method for separating the fertilized eggs from the substrate is important and can affect the viability of the embryos; therefore the finger-rolling procedure is recommended.

(E) Disease treatment. Chemical treatments to cure or prevent diseases should not be used before, and should not be used during a test. All prior treatments of brood stock should be reported in detail. Severely diseased organisms should be destroyed.

(2) *Test facilities*—(i) *Construction materials.* Construction materials and equipment that contact stock solutions, test solutions, or dilution water into which test embryos or fish are placed should not contain any substances that can be leached or dissolved into aqueous solutions in quantities that can affect test results. Materials and equipment that contact stock or test solutions should be chosen to minimize sorption of test chemicals from dilution water. Glass, #316 stainless steel, nylon screen and perfluorocarbon plastic (e.g., Teflon®) are acceptable materials. Concrete or rigid (unplasticized) plastic may be used for holding and acclimation tanks, and for water supply systems, but they should be thoroughly conditioned before use. If cast iron pipe is used in freshwater supply systems, colloidal iron may leach into the dilution water and strainers should be used to remove rust particles. Natural rubber, copper, brass, galvanized metal, epoxy glues, and flexible tubing should not come in contact with dilution water, stock solutions, or test solutions.

(ii) *Test chambers* (exposure chambers). (A) Stainless steel test chambers should be welded or glued with silicone adhesive, and not soldered. Glass should be fused or bonded using clear silicone adhesive. Epoxy glues are not recommended, but if used ample curing time should be allowed prior to use. As little adhesive as possible should be in contact with the water.

(B) Many different sizes of test chambers have been used successfully. The size, shape and depth of the test chamber is acceptable if the specified flow rate and loading requirements can be achieved.

(C) The actual arrangement of the test chambers can be important to the statistical analysis of the test data. Test

chambers can be arranged totally on one level (tier) side by side, or on two levels with each level having one of the replicate test substance concentrations or controls. Regardless of the arrangement, it should be reported in detail and considered in the data analysis.

(iii) *Embryo incubation apparatus.* (A) Recommended embryo incubation apparatus include embryo cups for the minnow species and screen trays for the trout species, although embryo cups can be used for the trout species. Embryo cups are normally constructed from approximately 4–5 cm inside diameter, 7–8 cm high, glass jars with the end cut off or similar sized sections of polyethylene tubing. One end of the jar or tubing is covered with stainless steel or nylon screen (approximately 40 meshes per inch is recommended). Embryo cups for silversides are normally constructed by using silicone adhesive to glue a 10-cm high, 363-um nylon mesh tube inside a 9-cm I.D. glass Petri dish bottom. The embryo cups should be appropriately labeled and then suspended in the test chamber in such a manner as to ensure that the test solution regularly flows through the cup and that the embryos are always submerged but are not agitated too vigorously. Cups may be oscillated by a rocker arm apparatus with a low rpm motor (e.g., 2 rpm) to maintain the required flow of test water. The vertical-travel distance of the rocker arm apparatus during oscillation is normally 2.5–4.0cm. The water level in the test chambers may also be varied by means of a self-starting siphon in order to ensure exchange of water in the embryo cups.

(B) The trout embryo incubation trays can be made from stainless steel screen (or other acceptable material such as plastic) of about 3–4 mm mesh. The screen tray should be supported above the bottom of the test chamber by two folds of screen or other devices which function as legs or supports. The edges of the screen tray should be turned up to prevent bump spills and to prevent the embryos from rolling off in the event of excessive turbulence. Suspending or supporting the screen tray off the bottom ensures adequate water circulation around the embryos and avoids contact of embryos with possible bottom debris.

(iv) *Test substance delivery system.* (A) The choice of a specific delivery system depends upon the specific properties and requirements of the test substance. The apparatus used should accurately and precisely deliver the appropriate amount of stock solution and dilution water to the test chambers. The system selected should be calibrated before each test. Calibration includes determining the flow rate through each chamber, and the proportion of stock solution to dilution water delivered to each chamber. The generated operation of the test substance delivery system should be checked twice daily for normal operation throughout the test. A minimum of five test substance concentrations and one control should be used for each test.

(B) The proportional diluter and modified proportional diluter systems and metering pump systems have proven suitable and have received extensive use.

(C) Mixing chambers should be used between the diluter and the test chamber(s). This may be a small container or flow-splitting chamber to promote mixing of test substance stock solution and dilution water, and is positioned between the diluter and the test chambers for each concentration. If a proportional diluter is used, separate delivery tubes should run from the flow-splitting chamber to each replicate test chamber. Daily checks on this latter system should be made.

(D) Silverside fry are injured easily and are susceptible to impingement on the mesh of the incubation cups. Consequently, water flow into and out of the cups when counting fry must be at a slow rate. This can be accomplished by using small diameter (e.g., 2 mm I.D.) capillary tubes to drain the test solution from spitter boxes into the replicate test chambers. The use of a self-starting siphon to gradually lower (i.e., less than or equal to 1 min.) the water level approximately 2 cm in the test chamber is recommended. A minimum water depth of 5 cm should be maintained in the cups. Although it may be satisfactory, a rocker-arm type apparatus has not yet been used with silversides.

(v) *Other equipment required.* (A) An apparatus for removing undesirable organisms, particulate matter and air bubbles.

(B) An apparatus for aerating water.

(C) A suitable magnifying viewer for examination of minnow embryos.

(D) A suitable apparatus for the precise measurement of growth of the fish, including both length (e.g., with metric or ruler caliper or photographic equipment) and weight.

(E) Facilities for providing a continuous supply of live brine shrimp nauplii (*Artemia salina*).

(F) For silversides, facilities for providing a supply of rotifers (*Brachionus plicatilis*) for approximately 11 days.

(G) Facilities (or access to facilities) for performing the required water chemistry analyses.

(vi) *Cleaning of equipment.* (A) Test substance delivery systems and test chambers should be cleaned before use. Test chambers should be cleaned during the test as needed to maintain the dissolved oxygen concentration, and to prevent clogging of the embryo cup screens and narrow flow passages.

(B) Debris can be removed with a rubber bulb and large pipette or by siphoning with a glass tube attached to a flexible hose. Debris should be run into a bucket light enough to observe that no live fish are accidentally discarded.

(vii) *Dilution water*—(A) *General.* (*1*) A constant supply of acceptable dilution water should be available for use throughout the test. Dilution water should be of a minimum quality such that the test species selected will survive in it for the duration of testing without showing signs of stress (e.g., loss of pigmentation, disorientation, poor response to external stimuli, excessive mucous secretion, lethargy, lack of feeding or other unusual behavior). A better criterion for an acceptable dilution water for tests on early life stages should be such that the species selected for testing will survive, grow and reproduce satisfactorily in it.

(*2*) The concentration of dissolved oxygen in the dilution water (fresh or salt) should be between 90% and 100% saturation. When necessary, dilution water should be aerated by means of airstones, surface aerators, or screen tubes before the introduction of the test substance.

(*3*) Water that is contaminated with undesirable microorganisms (e.g., fish pathogens) should not be used. If such contamination is suspected, the water should be passed through a properly maintained ultraviolet sterilizer equipped with an intensity meter before use. Efficacy of the sterilizer can be determined by using standard plate count method.

(B) *Freshwater.* (*1*) Natural water (clean surface or ground water) is preferred, however, dechlorinated tap water may be used as a last resort. Reconstituted freshwater is not recommended as a practical dilution water for the early life stage toxicity test because of the large volume of water required.

(*2*) Particulate and dissolved substance concentrations should be measured at least twice a year and should meet the following specifications.

Substance	Concentration maximum
Particulate matter	<20 mg/liter
Total organic carbon (TOC)	<2 mg/liter.
Chemical oxygen demand (COD)	<5 mg/liter.
Un-ionized ammonia	<1 μg/liter.
Residual chlorine	<1 μg/liter.
Total organophosphorus pesticides	<50 ng/liter
Total organochlorine pesticides plus polychlorinated biphenyls (PCBs).	<50 ng/liter.
Total organic chlorine	<25 ng/liter.

(*3*) During any one month, freshwater dilution water should not vary more than 10 percent from the respective monthly averages of hardness, alkalinity and specific conductance; the monthly pH range should be less than 0.4 pH units.

(C) *Saltwater.* (*1*) Marine dilution water is considered to be of constant quality if the minimum salinity is greater than 15 °/₀₀ and the weekly range of the salinity is less than 15 °/₀₀. The monthly range of pH should be less than 0.8 pH units. Saltwater should be filtered to remove larval predators. A pore size of ≤20 micrometers (um) is recommended. For silversides, the recommended salinity is 20 ppt and should be maintained between 15 and 25 ppt throughout testing.

(*2*) Artificial sea salts may be added to natural seawater during periods of low salinity to maintain salinity above 15 °/₀₀.

(3) *Test parameters*—(i) *Dissolved oxygen concentration.* It is recommended that the dissolved oxygen concentration be maintained between 90 and 100 percent saturation; but it should be no less than 75 percent saturation at all times for both minnow species and between 90 and 100 percent saturation for the trout species in all test chambers. Dilution water in the head box may be aerated, but the test solution itself should not be aerated.

(ii) *Loading and flow rate.* (A) The loading in test chambers should not exceed 0.1 grams of fish per liter of test solution passing through the test chamber in 24 hours. The flow rate to each chamber should be a minimum of 6 tank volumes per 24 hours. During a test, the flow rates should not vary more than 10 percent from any one test chamber to any other.

(B) A lower loading or higher flow rate or both should be used if necessary to meet the following three criteria at all times during the test in each chamber containing live test organisms: (*1*) the concentration of dissolved oxygen should not fall below 75 percent saturation for the fathead and sheepshead minnows and 90 percent for the rainbow and brook trout; (*2*) the concentration of un-ionized ammonia should not exceed 1 μg/liter; and (*3*) the concentration of toxicant should not be lowered (i.e., caused by uptake by the test organisms and/or materials on the sides and bottoms of the chambers) more than 20 percent of the mean measured concentration.

(iii) *Temperature.* (A) The recommended test temperatures are:

(*1*) Fathead minnow——25 °C for all life stages.

(*2*) Sheepshead minnow——30 °C for all life stages.

(*3*) Rainbow and brook trout——10 °C for embryos. 12 °C for fry and alevins.

(*4*) Atlantic and tidewater silversides——25 °C for all life stages.

(B) The actual test temperature during the duration of the test should remain within 1.5 °C of the selected test temperature. It is recommended that the test system be equipped with an automatic alarm system to alert staff of instantaneous temperature changes in excess of 2 °C. If the water is heated (i.e., for minnow species), precautions should be taken to ensure that supersaturation of dissolved gases is avoided. Temperatures should be recorded in all test chambers at the beginning of the test and weekly thereafter. The temperature should be recorded at least hourly in one test chamber throughout the test.

(iv) *Light.* (A) Brook and rainbow trout embryos should be maintained in darkness or very low light intensity through one week post-hatch, at which time a 14-hour light and 10-hour dark photoperiod should be provided.

(B) For fathead and sheepshead minnows, a 16-hour light and 8-hour dark (or 12:12) photoperiod should be used throughout the test period.

(C) For silversides, a 14-hour light and 10-hour dark photoperiod should be used throughout the test period.

(D) A 15-minute to 30-minute transition period between light and dark is optional.

(F) Light intensities ranging from 30 to 100 lumens at the water surface should be provided; the intensity selected should be duplicated as closely as possible for all test chambers.

(E) Light intensities ranging from 30 to of an early life stage toxicity test should include the following:

(1) Name of test, sponsor, investigator, laboratory, and dates of test duration.

(2) Detailed description of the test substance including its source, lot number, composition (identity and concentration of major ingredients and major impurities), known physical and chemical properties, and any carriers (solvents) or other additives used.

(3) The source of the dilution water, its chemical characteristics, and a description of any pretreatment.

(4) Detailed information about the test organisms including scientific name and how verified and source history, observed diseases, treatments, acclimation procedure, and concentration of any contaminants and the method of measurement.

(5) A description of the experimental design and the test chambers, the depth and volume of the solution in the chambers, the way the test was begun, the number of organisms per treatment, the number of replicates, the loading, the lighting, a description of the test substance delivery system, and the flow rate as volume additions per 24 hours.

(6) Detailed information on feeding of fish during the toxicity test, including type of food used, its source, feeding frequency and results of analysis (i.e., concentrations) for contaminants.

(7) Number of embryos hatched, number of healthy embryos, time to hatch, mortality of embryos and fry, measurements of growth (weight and length), incidence of pathological or histological effects and observations of other effects or clinical signs, number of healthy fish at end of test.

(8) Number of organisms that died or showed an effect in the control and the results of analysis for concentration(s) of any contaminant in the control(s) should mortality occur.

(9) Methods used for, and the results of (with standard deviation), all chemical analyses of water quality and test substance concentration, including validation studies and reagent blanks; the average and range of the test temperature(s).

(10) Anything unusual about the test, any deviation from these procedures, and any other relevant information.

(11) A description of any abnormal effects and the number of fish which were affected during each period between observations in each chamber, and the average concentration of test substance in each test chamber.

(12) Reference to the raw data location.

§ 797.1800 Oyster acute toxicity test.

(a) *Purpose.* This guideline will be used in developing data on the acute toxicity of chemical substances and mixtures ("chemicals") subject to environmental effects test regulations under the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003, 15 U.S.C. 2601 *et. seq.*). This guideline prescribes tests to be used to develop data on the acute toxicity of chemicals to Eastern oysters, *Crassostrea virginica* (Gmelin). The United States Environmental Protection Agency (U.S. EPA) will use data from these tests in

assessing the hazard of a chemical to the environment.

(b) *Definitions.* The definitions in section 3 of the Toxic Substances Control Act (TSCA) and in Part 792—Good Laboratory Practice Standards of this chapter are applicable to this test guideline. The following definitions also apply:

(1) "Acute toxicity" is the discernible adverse effects induced in an organism within a short period of time (days) of exposure to a chemical. For aquatic animals this usually refers to continuous exposure to the chemical in water for a period of up to four days. The effects (lethal or sublethal) occurring may usually be observed within the period of exposure with aquatic organisms. In this test guideline, shell deposition is used as the measure of toxicity.

(2) "EC_{50}" is that experimentally derived concentration of a chemical in water that is calculated to induce shell deposition 50 percent less than that of the controls in a test batch of organisms during continuous exposure within a particular exposure period which should be stated.

(3) "Shell deposition" is the measured length of shell growth that occurs between the time the shell is ground at test initiation and test termination 96 hours later.

(4) "Umbo" means the narrow end (apex) of the oyster shell.

(5) "Valve height" means the greatest linear dimension of the oyster as measured from the umbo to the ventral edge of the valves (the farthest distance from the umbo).

(c) *Test procedures*—(1) *Summary of the test.* (i) The water solubility and the vapor pressure of the test chemical should be known. Prior to testing, the structural formula of the test chemical, its purity, stability in water and light, n-octanol/water partition coefficient, and pK_a values should be known prior to testing. The results of a biodegradability test and the method of analysis for the quantification of the chemical in water should also be known.

(ii) For chemicals with limited solubility under the test conditions, it may not be possible to determine an EC_{50}. If it is observed that the stability or homogeneity of the test chemical cannot be maintained, then care should be taken in the interpretation of the results and a note made that these results may not be reproducible.

(iii) Test chambers are filled with appropriate volumes of dilution water. The flow of dilution water through each chamber is adjusted to the rate desired. The test chemical is introduced into each test chamber and the flow-rate adjusted to establish and maintain the desired concentration in each test chamber. Test oysters which have been acclimated and prepared by grinding away a portion of the shell periphery are randomly introduced into the test and control chambers. Oysters in the test and control chambers are observed daily during the test for evidence of feeding or unusual conditions, such as shell gaping, excessive mucus production or formation of fungal growths in the test chambers. The observations are recorded and dead oysters removed. At the end of 96 hours the increments of new shell growth are measured in all oysters. The concentration-response curve and EC_{50} value for the test chemical are developed from these data.

(2) [Reserved]

(3) *Range-finding test.* A range-finding test should be conducted to establish test chemical concentrations for the definitive test. The test is conducted in the same way as the definitive test except a widely spaced chemical concentration series (i.e., log-interval) is used.

(4) *Definitive test.* (i) Oysters which meet condition criteria (age, size, reproductive status, health) and which have been acclimated to test conditions should have approximately 3 to 5 mm of the shell periphery, at the rounded (ventral) end, ground away with a small electric disc grinder or other appropriate device, taking care to uniformly remove the shell rim to produce a smooth, rounded blunt profile. The oyster's valves should be held together tightly during grinding to avoid vibrating the shell and injuring the adductor muscle. Oysters of which so much of the shell rim has been removed that an opening into the shell cavity is visible should not be used.

(ii) It is desirable to have shell growth values for the low and high concentrations relatively close to, but different from, 0 and 100 percent. Therefore, the range of concentrations to which the oysters are exposed should be such that in 96 hours relative to the controls, very little shell growth occurs in oysters exposed to the highest concentration and shell growth is slightly less than controls at the lowest concentration. Oysters in the remaining concentrations should have increments of shell growth, such that ideally, the concentration producing 50 percent shell growth relative to the growth is bracketed with at least one concentration above and one below it.

(iii) The test should be carried out without adjustment of pH unless there is evidence of marked change in the pH of the solution. Then it is advised that the test be repeated with pH adjustment to that of the dilution water and the results reported.

(iv) The test begins when at least 20 prepared oysters are placed in each of the test chambers containing the appropriate concentrations of test substance and controls. The steady-state flows and test chemical concentrations should be documented. At least 5 test chemical concentrations should be used. The dilution factor between concentrations should not exceed 1.8.

(v) The distribution of individual oysters among the test chambers should be randomized. The oysters should be spread out equidistantly from one another so that the entire test chamber is used. The oysters should also be placed with the left (cupped) valve down and the open, unhinged ends all oriented in the same direction facing the incoming flow of test solution.

(vi) The oysters are inspected at least after 24, 48, 72 and 96 hours. Oysters are considered dead if touching of the gaping shell produces no reaction. Dead oysters are removed when observed and mortalities are recorded. Observations at 3 hours and 6 hours are also desirable.

(vii) Shell growth is the primary criterion used in this test guideline to evaluate the toxicity of the test chemical. Shell growth increments in all oysters should be measured after 96 hours exposure. Record the length of the longest "finger" of new shell growth to the nearest 0.5 mm. Oysters should be handled very gently at this stage to prevent damage to the new shell growth.

(viii) Records should be kept of visible abnormalities such as loss of feeding activity (failure to deposit feces), excessive mucus production (stringy material floating suspended from oysters), spawning or appearance of shell (closure or gaping).

(ix) The criteria for a valid definitive test are:

(A) The mortality in the controls should not exceed 10 percent at the end of the test.

(B) The dissolved oxygen concentration should be at least 60 percent of air saturation throughout the test.

(C) Oysters should not spawn during test. If they do the test should be repeated with prespawn oysters.

(D) There should be evidence that the concentration of the substance being tested has been satisfactorily maintained (e.g., within 80 percent of the nominal concentration) over the test period. The total concentration of test substance (i.e., both dissolved and suspended undissolved particulates)

should be measured: (*1*) in each chamber at 0-hour, (*2*) in each chamber at 96-hours and (*3*) in at least one appropriate chamber whenever a malfunction is detected in any part of the test chemical delivery system.

(E) Dissolved oxygen, temperature, salinity and pH measurements should be made at the beginning of the test, at 48 hours, and at the end of the test in the control chambers and in those test chambers containing the highest, lowest and a middle concentration of the test substance.

(5) *Test results.* (i) At the end of the test, a one-way analysis of variance followed with an appropriate ad hoc test (the Studentized Neuman-Keul's or Duncan's multiple range tests; or Dunnetts' or Williams' pairwise comparison tests) should be conducted on the oyster shell deposition test data. The probit transformation should then be applied to the response variable and then regressed, using least squares regression, on dose or log-dose. An F Test for linearity should be conducted to determine whether the chosen regression technique adequately describes the experimental data.

(ii) Calculate the ratio of the mean shell growth for each group of test oysters (exposed to each of the test chemical concentrations) to the mean shell growth of the group of control oysters. From these data the concentration-response curve is drawn and an EC_{50} along with the 95 percent confidence limits on the value are determined from the curves. The mean measured concentration of test chemical should be used to calculate the EC_{50} and to plot the concentration-response curve.

(6) [Reserved]

(d) *Test conditions*—(1) *Test species*—(i) *Selection.* (A) The Eastern oyster, *Crassostrea virginica,* should be used as the test organism.

(B) Oysters used in the same test should be 30 to 50 millimeters in valve height and should be as similar in age and/or size as possible to reduce variability. The standard deviation of the valve height should be less than 20 percent of the mean.

(C) Oysters used in the same test should be from the same source and from the same holding and acclimation tank(s).

(D) Oysters should be in a prespawn condition of gonadal development prior to and during the test as determined by direct or histological observation of the gonadal tissue for the presence of gametes.

(ii) *Acquisition.* Oysters may be cultured in the laboratory, purchased from culture facilities or commercial harvesters, or collected from a natural population in an unpolluted area free from epizootic disease.

(iii) *Acclimation.* (A) Oysters should be attended to immediately upon arrival. Oyster shells should be brushed clean of fouling organisms and the transfer of the oysters to the holding water should be gradual to reduce stress caused by differences in water quality characteristics and temperature. Oysters should be held for at least 12 to 15 days before testing. All oysters should be maintained in water of the quality to be used in the test for at least 7 days before they are used.

(B) During holding, the oysters should not be crowded and the dissolved oxygen concentration should be above 60 percent saturation. The temperature of the holding water should be the same as that used for testing. Holding tanks should be kept clean and free of debris. Cultured algae may be added to dilution water sparingly, as necessary to support life and growth and such that test results are not affected as confirmed by previous testing.

(C) Oysters should be handled as little as possible. When handling is necessary, it should be done as gently, carefully, and quickly as possible.

(D) A batch of oysters is acceptable for testing if the percentage mortality over the 7 day period prior to testing is less than 5 percent. If the mortality is between 5 and 10 percent, acclimation should continue for seven additional days. If the mortality is greater than 10 percent, the entire batch of oysters should be rejected. Oysters should not be used which appear diseased or otherwise stressed. Oysters infested with mudworms (*Polydora* sp.), boring sponges (*Cliona cellata*) or which have cracked, chipped, bored, or gaping shells should not be used.

(2) *Test facilities*—(i) *Apparatus.* (A) In addition to normal laboratory equipment, an oxygen meter, equipment for delivering the test chemical, adequate apparatus for temperature control, and test tanks made of chemically inert material are needed.

(B) Constant conditions in the test facilities should be maintained as much as possible throughout the test. The preparation and storage of the test material, the holding of the oysters and all operations and tests should be carried out in an environment free from harmful concentrations of dust, vapors and gases and in such a way as to avoid cross-contamination. Any disturbances that may change the behavior of the oysters should be avoided.

(ii) *Dilution water.* A constant supply of good quality unfiltered seawater should be available throughout the holding, acclimation and testing periods. Natural seawater is recommended, although artificial seawater with food added may be used. In either case, to ensure each oyster is provided equal amounts of food, the water should come from a thoroughly mixed common source and should be delivered at a flowrate of at least one and preferably five liters per hour per oyster. The flowrate should be ±10 percent of the nominal flow. A dilution water is acceptable if oyster will survive and grow normally for 14 days without exhibiting signs of stress; i.e., excessive mucus production (stringy material floating suspended from oysters), lack of feeding, shell gaping, poor shell closing in response to prodding, or excessive mortality. The dilution water should have a salinity in excess of 12 parts per thousand, and should be similar to that in the environment from which the test oysters originated. A natural seawater should have a weekly range in salinity of less than 10 parts per thousand and a monthly range in pH of less than 0.8 units. Artificial seawater salinity should not vary more than 2 parts per thousand nor more than 0.5 pH units. Oysters should be tested in dilution water from the same origin.

(3) *Test parameters*—(i) *Carriers.* Stock solutions of substances of low aqueous solubility may be prepared by ultrasonic dispersion or, if necessary, by use of organic solvents, emulsifiers or dispersants of low toxicity to oysters. When such carriers are used the control oysters should be exposed to the same concentration of the carrier as that used in the highest concentration of the test substance. The concentration of such carriers should not exceed 0.1 ml/l.

(ii) *Dissolved oxygen.* The dissolved oxygen concentrations should be at least 60 percent of the saturation value and should be recorded daily.

(iii) *Loading.* The loading rate should not crowd oysters and should permit adequate circulation of water while avoiding physical agitation of oysters by water current.

(iv) *Temperature.* The test temperature is 20 °C ± 1 °C. Temporary fluctuations (less than 8 hours) within 15 °C to 25 °C are permissible. Temperature should be recorded continuously.

(v) *pH.* The pH should be recorded twice weekly in each test chamber.

(e) *Reporting.* In addition to the reporting requirements prescribed in Part 792—Good Laboratory Practice Standards of this chapter, the report should contain the following:

(1) The source of the dilution water, the mean, standard deviation and range

of the salinity, pH, temperature, and dissolved oxygen during the test period.

(2) A description of the test procedures used (e.g., the flow-through system, test chambers, chemical delivery system, aeration, etc.).

(3) Detailed information about the oysters used, including the age and/or size (i.e., height), source, history, method of confirmation of prespawn condition, acclimation procedures, and food used.

(4) The number of organisms tested, the loading rate, and the flowrate.

(5) The methods of preparation of stock and test solutions, and the test chemical concentrations used.

(6) The number of dead and live test organisms, the percentage of organisms that died, and the number that showed any abnormal effects in the control and in each test chamber at each observation period.

(7) The 96-hour shell growth measurements of each oyster; the mean, standard deviation and range of the measured shell growth at 96 hours of oysters in each concentration of test substance and control.

(8) The calculated 96 hour EC_{50} and its 95 percent confidence limits and the statistical methods used to calculate these values.

(9) When observed, the 96 hour observed no-effect concentration (the highest concentration tested at which there were no mortalities, abnormal behavioral or physiological effects and at which shell growth did not differ from controls).

(10) A graph of the concentration-response curve based on the 96 hour chemical concentration and shell growth measurements upon which the EC_{50} was calculated.

(11) Methods and data records of all chemical analyses of water quality parameters and test substance concentrations, including method validations and reagent blanks.

(12) Any incidents in the course of the test which might have influenced the results.

(13) A statement that the test was carried out in agreement with the prescriptions of the test guideline given above (otherwise a description of any deviations occurring).

§ 797.1830 Oyster bioconcentration test.

(a) *Purpose.* This guideline is to be used for assessing the propensity of chemical substances to bioconcentrate in tissues of estuarine and marine molluscs. This guideline describes a bioconcentration test procedure for the continuous exposure of Eastern oysters (*Crassostrea virginica*) to a test substance in a flow-through system. The United States Environmental Protection Agency (U.S. EPA) will use data from this test in assessing the hazard a chemical may present to the environment.

(b) *Definitions.* The definitions in section 3 of the Toxic Substances Control Act (TSCA) and in Part 792—Good Laboratory Practice Standards of this chapter are applicable to this test guideline. The following definitions also apply:

(1) "Acclimation" is the physiological compensation by test organisms to new environmental conditions (e.g., temperature, salinity, pH).

(2) "Bioconcentration" is the net accumulation of a chemical directly from water into and onto aquatic organisms.

(3) "Bioconcentration factor (BCF)" is the quotient of the concentration of a test chemical in tissues of aquatic organisms at or over a discrete time period of exposure divided by the concentration of test chemical in the test water at or during the same time period.

(4) "Depuration" is the elimination of a test chemical from a test organism.

(5) "Depuration phase" is the portion of a bioconcentration test after the uptake phase during which the organisms are in flowing water to which no test chemical is added.

(6) "EC_{50}" is that experimentally derived concentration of a chemical in water that is calculated to induce shell deposition 50 percent less than that of the controls in a test batch of organisms during continuous exposure within a particular period of exposure (which should be stated).

(7) "Loading" is the ratio of the number of oysters to the volume (liters) of test solution passing through the test chamber per hour.

(8) "Steady-state" is the time period during which the amounts of test chemical being taken up and depurated by the test oysters are equal, i.e., equilibrium.

(9) "Steady-state bioconcentration factor" is the mean concentration of the test chemical in test organisms during steady-state divided by the mean concentration of the test chemical in the test solution during the same period.

(10) "Umbo" is the narrow end (apex) of the oyster shell.

(11) "Uptake" is the sorption of a test chemical into and onto aquatic organisms during exposure.

(12) "Uptake phase" is the initial portion of a bioconcentration test during which the organisms are exposed to the test solution.

(13) "Valve height" is the greatest linear dimension of the oyster as measured from the umbo to the ventral edge of the valves (the farthest distance from the umbo).

(c) *Test procedures*— (1) *Summary of the test.* Oysters are continuously exposed to a minimum of one constant, sublethal concentration of a test chemical under flow-through conditions for a maximum of 28 days. During this time, test solution and oysters are periodically sampled and analyzed using appropriate methods to quantify the test chemical concentration. If, prior to day 28, the tissue concentrations of the chemical sampled over three consecutive sampling periods have been shown to be statistically similar (i.e., steady-state has been reached), the uptake phase of the test is terminated, and the remaining oysters are transferred to untreated flowing water until 95 percent of the accumulated chemical residues have been eliminated, or for a maximum depuration period of 14 days. The mean test chemical concentration in the oysters at steady-state is divided by the mean test solution concentration at the same time to determine the bioconcentration factor (BCF). If steady-state is not reached during 28 days of uptake, the steady-state BCF should be calculated using non-linear parameter estimation methods.

(2) [Reserved]

(3) *Range-finding test.* The oyster acute toxicity test is used to determine the concentration levels to be used in the oyster bioconcentration test.

(4) *Definitive test.* (i) The following data on the test chemical should be known prior to testing:

(A) Solubility in water.

(B) Stability in water.

(C) Octanol-water partition coefficient.

(D) Acute toxicity (e.g., propensity to inhibit shell deposition) to oysters.

(E) The validity, accuracy and minimum detection limits of selected analytical methods.

(ii) At least one or more concentrations should be tested to assess the propensity of the compound to bioconcentrate. The concentrations selected should not stress or adversely affect the oysters and should be less than one-tenth the EC_{50} determined in either the range-finding or 96-hour definitive test under § 797.1800. The test concentration should be less than the solubility limit of the test substance in water and should be close to the potential or expected environmental concentration. The limiting factor of how low one can test is based on the detection limits of the analytical methods. The concentration of the test material in the test solution should be at

least 10 times greater than the detection limit in water.

(iii) If it is desirable to document that the potential to bioconcentrate is independent of the test chemical concentration, at least two concentrations should be tested which are at least a factor of 10 apart.

(iv) To determine the duration of this test, an estimation of the uptake phase should be made prior to testing based upon the water solubility or octanol-water partition coefficient of the test chemical. This estimate should also be used to designate a sampling schedule.

(v) The following criteria should be met for a valid test:

(A) If it is observed that the stability or homogeneity of the test chemical cannot be maintained, then care should be taken in the interpretation of the results and a note made that these results may not be reproducible.

(B) The mortality in the controls should not exceed 10 percent at the end of the test.

(C) The dissolved oxygen concentration should be > 60 percent of saturation throughout the test.

(D) There should be evidence that the concentration of the chemical being tested has been satisfactorily maintained (e.g., within 80 percent of the nominal concentration) over the test period.

(E) Results are invalid and the test should be repeated if the oysters spawn during the test.

(F) Temperature variations from 20 °C should be held to a minimum.

(vi) The following methodology should be followed:

(A) The test should not be started until the test chemical delivery system has been observed to be functioning properly and the test chemical concentrations have equilibrated (i.e., the concentration does not vary more than 20 percent). Analyses of two sets of test solution samples taken prior to test initiation should document this equilibrium. At initiation (time 0), test solution samples should be collected immediately prior to the addition of oysters to the test chambers.

(B) The appropriate number of oysters should be brushed clean and should be randomly distributed to each test chamber. The oysters should be spread out equidistant from one another and placed with the left (cupped) valve down and the unhinged ends (opposite from umbo) all oriented in the same direction facing the incoming flow.

(C) Oysters should be exposed to the test chemical during the uptake phase until steady state has been reached or for a maximum of 28 days. The uptake phase should continue for at least 4 days. Then the remaining oysters should be transferred to untreated flowing water and sampled periodically to determine if depuration of the test chemical occurs. Every test should include a control consisting of the same dilution water, conditions, procedures, and oysters from the same group used in the test, except that none of the test chemical is added. If a carrier is present in the test chamber, a separate carrier control is required.

(D) Oysters should be observed (and data recorded) at least daily for feeding activity (deposition of feces) or any unusual conditions such as excessive mucus production (stringy material floating suspended from oysters), spawning, or appearance of shell (closure or gaping). If gaping is noted, the oyster(s) should be prodded. Oysters which fail to make any shell movements when prodded are to be considered dead, and should be removed promptly with as little disturbance as possible to the test chamber(s) and remaining live oysters.

(E) For oysters sampled, careful examination of all the tissues should be made at the time of shucking for any unusual conditions, such as a watery appearance or differences in color from the controls.

(F) Observations on compound solubility should also be recorded. These include the appearance of surface slicks, precipitates, or material adsorbing to the test chamber.

(vii) *Sampling.* (A) At each of the designated sampling times, triplicate water samples and enough oysters should be collected from the test chamber(s) to allow for tissue analyses of at least four oysters. The concentration of test chemical should be determined in a minimum of four oysters analyzed individually at each sampling period. If individual analysis is not possible, due to limitations of the sensitivity of the analytical methods, then pairs, triplicates or more oysters may be pooled to constitute a sample for measurement. A similar number of control oysters should also be collected at each sample point, but only those collected at the first sampling period and weekly thereafter, should be analyzed. Triplicate control water samples should be collected at the time of test initiation and weekly thereafter. Test solution samples should be removed from the approximate center of the water column.

(B) At each sampling period the appropriate numbers of oysters are removed and treated as follows:

(*1*) The valve height of each oyster should be measured.

(*2*) Oysters should be shucked as soon as practical after removal and should never be refrigerated or frozen in the shell. The shell should be opened at the hinge, the adductor muscle severed and the top valve removed. The remaining adductor muscle should be severed where it attaches to the lower valve and the entire oyster removed.

(*3*) The shucked oysters should then be drained 3 minutes, blotted dry, weighed and analyzed immediately for the test chemical. If analyses are delayed, the shucked oysters should be wrapped individually in aluminum foil (for organic analysis) or placed in plastic or glass containers (for metal analysis) and frozen.

(C) If a radiolabelled test compound is used, a sufficient number of oysters should also be sampled at termination to permit identification and quantitation of any major (greater than 10 percent of parent) metabolites present. It is crucial to determine how much of the activity present in the oyster is directly attributable to the parent compound.

(5) *Test results* (i) Steady-state has been reached when the mean concentrations of test chemical in whole oyster tissue for three consecutive sampling periods are statistically similar (F test, $P=0.05$). A BCF is then calculated by dividing the mean tissue residue concentration during steady-state by the mean test solution concentration during the same period. A 95 percent confidence interval should also be derived from the BCF. This should be done by calculating the mean oyster tissue concentration at steady-state (X_o) and its 97.5 percent confidence interval $X_o \pm t$ (S.E.) where t is the t statistic at $P=0.025$ and S.E. is the one standard error of the mean. This calculation would yield lower and upper confidence limits (L_o and U_o). The same procedure should be used to calculate the mean and 97.5 percent confidence interval for the test solution concentrations at steady-state, $XS \pm t$ (S.E.), and the resulting upper and lower confidence limits (L_s and U_s). The 95 percent confidence interval of the BCF would then be between L_o/U_s and U_o/L_s. If steady-state was not reached during the maximum 28-day uptake period, the maximum BCF should be calculated using the mean tissue concentration from that and the previous sampling day. An uptake rate constant should then be calculated using appropriate techniques. This rate constant is used to estimate the steady-state BCF and the time to steady-state.

(ii) If 95 percent elimination has not been observed after 14 days depuration then a depuration rate constant should

also be calculated. This rate constant is used to estimate the time to 95 percent elimination.

(iii) Oysters used in the same test should be 30 to 50 millimeters in valve height and should be as similar in age and/or size as possible to reduce variability. The standard deviation of the height should be less than 20 percent of the mean (N = 30).

(6) *Analytical measurements.* (i) All samples should be analyzed using USEPA methods and guidelines whenever feasible. The specific methodology used should be validated before the test is initiated. The accuracy of the method should be measured by the method of known additions. This involves adding a known amount of the test chemical to three water samples taken from an aquarium containing dilution water and a number of oysters equal to that to be used in the test. The nominal concentration of these samples should be the same as the concentration to be used in the test. Samples taken on two separate days should be analyzed. The accuracy and precision of the analytical method should be checked using reference or split samples or suitable corroborative methods of analysis. The accuracy of standard solutions should be checked against other standard solutions whenever possible.

(ii) An analytical method should not be used if likely degradation products of the test chemical, such as hydrolysis and oxidation products, give positive or negative interferences, unless it is shown that such degradation products are not present in the test chambers during the test. Atomic absorption spectrophotometric methods for metal and gas chromatographic methods for organic compounds are preferable to colorimetric methods.

(iii) In addition to analyzing samples of test solution at least one reagent blank should also be analyzed when a reagent is used in the analysis.

(iv) When radiolabelled test compounds are used, total radioactivity should be measured in all samples. At the end of the uptake phase, water and tissue samples should be analyzed using appropriate methodology to identify and estimate the amount of any major (at least 10 percent of the parent compound) degradation products or metabolites that may be present.

(d) *Test conditions*—(1) *Test species.* (i) The Eastern oyster, *Crassostrea virginica*, should be used as the test organism.

(ii) Oysters used in the same test should be 30 to 50 millimeters in valve height and should be as similar in age and/or size as possible to reduce variability. The standard deviation of the valve height should be less than 20 percent of the mean.

(iii) Oysters used in the same test should be from the same source and from the same holding and acclimation tank(s).

(iv) Oysters should be in a prespawn condition of gonadal development prior to and during the test as determined by direct or histological observation of the gonadal tissue for the presence of gametes.

(v) Oysters may be cultured in the laboratory, purchased from culture facilities or commercial harvesters, or collected from a natural population in an unpolluted area free from epizootic disease.

(vi) The holding and acclimation of the oysters should be as follows:

(A) Oysters should be attended to immediately upon arrival. Oyster shells should be brushed clean of fouling organisms and the transfer of the oysters to the holding water should be gradual to reduce stress caused by differences in water quality characteristics and temperature. Oysters should be held for at least 12 to 15 days before testing. All oysters should be maintained in water of the quality to be used in the test for at least 7 days before they are used.

(B) During holding, the oyster should not be crowded and the dissolved oxygen concentration should be above 60 percent saturation. The temperature of the holding waters should be the same as that used for testing. Holding tanks should be kept clean and free of debris. Cultured algae may be added to dilution water sparingly, as necessary to support life and growth, such that test results are not affected, as confirmed by previous testing. Oysters should be handled as little as possible. When handling is necessary, it should be done as gently, carefully, and quickly as possible.

(C) A batch of oysters is acceptable for testing if the percentage mortality over the 7 day period prior to testing is less than 5 percent. If the mortality is between 5 and 10 percent, acclimation should continue for 7 additional days. If the mortality is greater than 10 percent, the entire batch of oysters should be rejected. Oysters should not be used which appear diseased or otherwise stressed. Oysters infested with mudworms (*Polydora* sp.), boring sponges (*Cliona cellata*) or which have cracked, chipped, bored, or gaping shells should not be used.

(2) *Facilities*—(i) *Apparatus.* (A) An oxygen meter, equipment for delivering the test chemical, adequate apparatus for temperature control, test tanks made of chemically inert material and other normal laboratory equipment are needed.

(B) Constant conditions in the test facilities should be maintained as much as possible throughout the test. The preparation and storage of the test material, the holding of the oysters and all operations and tests should be carried out in an environment free from harmful concentrations of dust, vapors and gases and in such a way as to avoid cross-contamination. Any disturbances that may change the behavior of the oysters should be avoided.

(ii) *Dilution water.* A constant supply of good quality unfiltered seawater should be available throughout the holding, acclimation, and testing periods. Natural seawater is recommended, although artificial seawater with food (algae) added may be used. In either case, to ensure each oyster is provided equal amounts of food, the water should come from a thoroughly mixed common source and should be delivered at a flow rate of at least one, and preferably 5 liters per hour per oyster. The flowrate should be ±10 percent of the nominal flow. A dilution water is acceptable if oysters will survive and grow normally over the period in which the test is conducted without exhibiting signs of stress, i.e., excessive mucus production (stringy material floating suspended from oysters), lack of feeding, shell gaping, poor shell closing in response to prodding, or excessive mortality. The dilution water should have a salinity in excess of 12 parts per thousand, and should be similiar to that in the environment from which the test oysters originated. A natural seawater should have a weekly range in salinity of less than 10 parts per thousand and a monthly range in pH of less than 0.8 units. Artificial seawater should not vary more than 2 parts per thousand nor more than 0.5 pH units. Oysters should be tested in dilution water from the same origin.

(3) *Test parameters*—(i) *Carriers.* Stock solutions of substances of low aqueous solubility may be prepared by ultrasonic dispersion or, if necessary, by use of organic solvents, emulsifiers or dispersants of low toxicity to oysters. When such carriers are used, the control oysters should be exposed to the same concentration of the carrier as that used in the highest concentration of the test substance. The concentration of such carriers should not exceed 0.1 ml/l.

(ii) *Dissolved oxygen.* The dissolved oxygen concentrations should be at least 60 percent of the air saturation value and should be recorded daily.

(iii) *Loading.* The loading rate should not crowd oysters and should permit adequate circulation of water while avoiding physical agitation of oysters by water current.

(iv) *Temperature.* The test temperature should be 20 °C ±1 °C. Temporary excursions (less than 8 hours) within 15 °C to 25 °C are permissible. Temperature should be recorded continuously.

(v) *pH.* The pH should be recorded twice weekly in each test chamber.

(e) *Reporting.* In addition to the reporting requirements prescribed in Part 792—Good Laboratory Practice Standards of this chapter, the report should contain the following:

(1) The source of the dilution water, the mean, standard deviation and range of the salinity, pH, temperature and dissolved oxygen during the test period.

(2) A description of the test procedures used (e.g., the flow-through system, test chambers, chemical delivery system, aeration, etc.).

(3) Detailed information about the oysters used, including age, and/or size (i.e., height), weight (blotted dry), source, history, method of confirmation of prespawn condition, acclimation procedures, and food used.

(4) The number of organisms tested, loading rate and flowrate.

(5) The methods of preparation of stock and test solutions and the test chemical concentrations used.

(6) The number of dead and live organisms, the percentage of oysters that died and the number that showed any abnormal effects in the control and in each test chamber at each observation period.

(7) Methods and data records of all chemical analyses of water quality parameters and test chemical concentrations, including method validations and reagent blanks.

(8) Description of sampling, sample storage (if required) and analytical methods of water and tissue analyses for the test chemical.

(9) The mean, standard deviation and range of the concentration of test chemical in the test solution and oyster tissue at each sampling period.

(10) The time to steady-state.

(11) The steady-state or maximum BCF and the 95 percent confidence limits.

(12) The time to 95 percent elimination of accumulated residues of the test chemical from test oysters.

(13) Any incidents in the course of the test which might have influenced the results.

(14) If the test was not done in accordance with the prescribed conditions and procedures, all deviations should be described in full.

§ 797.1930 Mysid shrimp acute toxicity test.

(a) *Purpose.* This guideline is intended for use in developing data on the acute toxicity of chemical substances and mixtures ("chemicals") subject to environmental effects test regulations under the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003, 15 U.S.C. 2601 *et seq.*). This guideline prescribes a test using mysid shrimp as test organisms to develop data on the acute toxicity of chemicals. The United States Environmental Protection Agency (EPA) will use data from these tests in assessing the hazard of a chemical to the aquatic environment.

(b) *Definitions.* The definitions in section 3 of the Toxic Substances Control Act (TSCA) and in Part 792—Good Laboratory Practice Standards of this chapter, apply to this test guideline. The following definitions also apply to this guideline.

(1) "Death" means the lack of reaction of a test organism to gentle prodding.

(2) "Flow-through" means a continuous or an intermittent passage of test solution or dilution water through a test chamber or a holding or acclimation tank, with no recycling.

(3) "LC_{50}" means that experimentally derived concentration of test substance that is calculated to kill 50 percent of a test population during continuous exposure over a specified period of time.

(4) "Loading" means the ratio of test organisms biomass (grams, wet weight) to the volume (liters) of test solution in a test chamber.

(5) "Retention chamber" means a structure within a flow-through test chamber which confines the test organisms, facilitating observation of test organisms and eliminating loss of organisms in outflow water.

(6) "Static system" means a test chamber in which the test solution is not renewed during the period of the test.

(c) *Test procedures*—(1) *Summary of the test.* In preparation for the test, test chambers are filled with appropriate volumes of dilution water. If a flow-through test is performed, the flow of dilution water through each chamber is adjusted to the rate desired. The test substance is introduced into each test chamber. In a flow-through test, the rate at which the test substance is added is adjusted to establish and maintain the desired concentration of test substance in each test chamber. The test is started by randomly introducing mysids acclimated in accordance with the test design into the test chambers. Mysids in the test chambers are observed periodically during the test, the dead mysids removed and the findings recorded. Dissolved oxygen concentration, pH, temperature, salinity, the concentration of test substance, and other water quality characteristics are measured at specified intervals in test chambers. Data collected during the test are used to develop concentration-response curves and LC_{50} values for the test substance.

(2) [Reserved]

(3) *Range-finding test.* (i) A range-finding test should be conducted to determine:

(A) Which life stage (juvenile or young adult) is to be utilized in the definitive test.

(B) The test solution concentrations for the definitive test.

(ii) The mysids should be exposed to a series of widely spaced concentrations of test substance (e.g., 1, 10, 100 mg/l, etc.), usually under static conditions.

(iii) This test should be conducted with both newly-hatched juvenile (<24 hours old) and young adult (5 to 6 days old) mysids. For each age class (juvenile or young adult), a minimum of 10 mysids should be exposed to each concentration of test substance for up to 96 hours. The exposure period may be shortened if data suitable for the purpose of the range-finding test can be obtained in less time. The age class which is most sensitive to the test substance in the range-finding test should be utilized in the definitive test. When no apparent difference in sensitivity of the two life stages is found, juveniles should be utilized in the definitive test. No replicates are required and nominal concentrations of the chemical are acceptable.

(4) *Definitive test.* (i) The purpose of the definitive test is to determine the concentration-response curves and the 48- and 96-hour LC_{50} values with the minimum amount of testing beyond the range-finding test.

(ii) The definitive test should be conducted on the mysid life stage (juveniles or young adults) which is most sensitive to the test substance being evaluated.

(iii) A minimum of 20 mysids per concentration should be exposed to five or more concentrations of the chemical chosen in a geometric series in which the ratio is between 1.5 and 2.0 (e.g., 2, 4, 8, 16, 32, and 64 mg/l). An equal number of mysids should be placed in two or more replicates. If solvents, solubilizing agents or emulsifiers have to be used, they should be commonly used carriers and should not possess a synergistic or antagonistic effect on the toxicity of the test substance. The concentration of

solvent should not exceed 0.1 mg/l. The concentration ranges should be selected to determine the concentration-response curves and LC_{50} values at 48 and 96 hours. The concentration of test substance in test solutions should be analyzed prior to use.

(iv) Every test should include controls consisting of the same dilution water, conditions, procedures, and mysids from the same population or culture container, except that none of the chemical is added.

(v) The dissolved oxygen concentration, temperature, salinity, and pH should be measured at the beginning of the test and at 24, 48, 72, and 96 hours in each chamber.

(vi) The test duration is 96 hours. The test is unacceptable if more than 10 percent of the control organisms die or exhibit abnormal behavior during the 96 hour test period. Each test chamber should be checked for dead mysids at 3, 6, 12, 24, 48, 72, and 96 hours after the beginning of the test. Concentration-response curves and 48- and 96-hour LC_{50} values should be determined along with their 95 percent confidence limits.

(vii) In addition to death, any abnormal behavior or appearance should also be reported.

(viii) Distribution of mysids among test chambers should be randomized. In addition, test chambers within the testing area should be positioned in a random manner or in a way in which appropriate statistical analyses can be used to determine the variation due to placement.

(ix) The concentration of dissolved test substance (that which passes through a 0.45 micron filter) in the chambers should be measured as often as is feasible during the test. At a minimum, during static tests, the concentration of test substance should be measured in each chamber at the beginning and at the end of the test. During the flow-through test, the concentration of test substance should be measured (A) in each chamber at the beginning of the test and at 48 and 96 hours after the start of the test; (B) in at least one chamber containing the next to the lowest test substance concentration at least once every 24 hours during the test; and (C) in at least one appropriate chamber whenever a malfunction is detected in any part of the test substance delivery system. Among replicate test chambers of a treatment concentration, the measured concentration of the test substance should not vary more than 20 percent.

(5) [Reserved]

(6) *Analytical measurements*—(i) *Test chemical.* Deionized water should be used in making stock solutions of the test substance. Standard analytical methods should be used whenever available in performing the analyses. The analytical method used to measure the amount of test substance in a sample should be validated before beginning the test by appropriate laboratory practices. An analytical method is not acceptable if likely degradation products of the test substance, such as hydrolysis and oxidation products, give positive or negative interferences which cannot be systematically identified and corrected mathematically.

(ii) *Numerical.* The number of dead mysids should be counted during each definitive test. Appropriate statistical analyses should provide a goodness-of-fit determination for the concentration-response curves. A 48- and 96-hour LC_{50} and corresponding 95 percent interval should be calculated.

(d) *Test conditions*—(1) *Test species*—(i) *Selection.* (A) The mysid shrimp, *Mysidopsis bahia*, is the organism specified for these tests. Either juvenile (<24 hours old) or young adult (5 to 6 days old) mysids are to be used to start the test.

(B) Mysids to be used in acute toxicity tests should originate from laboratory cultures in order to assure that the individuals are of similar age and experiential history. Mysids used for establishing laboratory cultures may be purchased commercially or collected from appropriate natural areas. Because of similarities with other mysid species, taxonomic verification should be obtained from the commercial supplier or through an appropriate systematic key.

(C) Mysids used in a particular test should be of similar age and be of normal size and appearance for their age. Mysids should not be used for a test if they exhibit abnormal behavior or if they have been used in a previous test, either in a treatment or in a control group.

(ii) *Acclimation.* (A) Any change in the temperature and chemistry of the dilution water used for holding or culturing the test organisms to those of the test should be gradual. Within a 24-hour period, changes in water temperature should not exceed 1 °C, while salinity changes should not exceed 5 percent.

(B) During acclimation mysids should be maintained in facilities with background colors and light intensities similar to those of the testing areas.

(iii) *Care and handling.* Methods for the care and handling of mysids such as those described in paragraph (f)(1) of this section can be used during holding, culturing and testing periods.

(iv) *Feeding.* Mysids should be fed during testing. Any food utilized should support survival, growth and reproduction of the mysids. A recommended food is live *Artemia* spp. (48-hour-old nauplii).

(2) *Facilities*—(i) *Apparatus.* (A) Facilities which may be needed to perform this test include: (*1*) flow-through or recirculating tanks for holding and acclimating mysids; (*2*) a mechanism for controlling and maintaining the water temperature during the holding, acclimation and test periods; (*3*) apparatus for straining particulate matter, removing gas bubbles, or aerating the water, as necessary; and (*4*) an apparatus for providing a 14-hour light and 10-hour dark photoperiod with a 15 to 30 minute transition period. In addition, for flow-through tests, flow-through chambers and a test substance delivery system are required. Furthermore, it is recommended that mysids be held in retention chambers within test chambers to facilitate observations and eliminate loss of test organisms through outflow water. For static tests, suitable chambers for exposing test mysids to the test substance are required. Facilities should be well ventilated and free of fumes and disturbances that may affect the test organisms.

(B) Test chambers should be loosely covered to reduce the loss of test solution or dilution water due to evaporation and to minimize the entry of dust or other particulates into the solutions.

(ii) *Cleaning.* Test substance delivery systems and test chambers should be cleaned before each test following standard laboratory practices.

(iii) *Construction materials.* (A) Materials and equipment that contact test solutions should be chosen to minimize sorption of test chemicals from dilution water and should not contain substances that can be leached into aqueous solution in quantities that can affect test results.

(B) For use in the flow-through test, retention chambers utilized for confinement of test organisms can be constructed with netting material of appropriate mesh size.

(iv) *Dilution water.* (A) Natural or artificial seawater is acceptable as dilution water if mysids will survive and successfully reproduce in it for the duration of the holding, acclimating and testing periods without showing signs of stress, such as reduced growth and fecundity. Mysids should be cultured and tested in dilution water from the same origin.

(B) Natural seawater should be filtered through a filter with a pore size of <20 microns prior to use in a test.

(C) Artificial seawater can be prepared by adding commercially available formulations or by adding specific amounts of reagent-grade chemicals to deionized water. Deionized water with a conductivity less than 1 μ ohm/cm at 12 °C is acceptable for making artificial seawater. When deionized water is prepared from a ground or surface water source, conductivity and total organic carbon (or chemical oxygen demand) should be measured on each batch.

(v) *Test substance delivery system.* In flow-through tests, proportional diluters, metering pumps or other suitable systems should be used to deliver test substance to the test chambers. The system used should be calibrated before each test. Calibration includes determining the flow rate through each chamber and the concentration of the test substance in each chamber. The general operation of the test substance delivery system should be checked twice daily during a test. The 24-hour flow through a test chamber should be equal to at least 5 times the volume of the test chamber. During a test, the flow rates should not vary more than 10 percent among test chambers or across time.

(3) *Test parameters.* Environmental parameters of the water contained in test chambers should be maintained as specified below:

(i) Temperature of 25 ± 2 °C.

(ii) Dissolved oxygen concentration between 60 and 105 percent saturation. Aeration, if needed to achieve this level, should be done before the addition of the test substance. All treatment and control chambers should be given the same aeration treatment.

(iii) The number of mysids placed in a test solution should not be so great as to affect results of the test. Thirty mysids per liter is the recommended level of loading for a static test. Loading requirements for the flow-through test will vary depending on the flow rate of dilution water. The loading should not cause the dissolved oxygen concentration to fall below the recommended levels.

(iv) Photoperiod of 14 hours light and 10 hours darkness, with a 15 to 30 minute transition period.

(v) Salinity of 20 parts per thousand ±3%.

(e) *Reporting.* The sponsor should submit to the EPA all data developed during the test that are suggestive or predictive of acute toxicity and all concomitant toxicologic manifestations. In addition to the general reporting requirements prescribed in Part 792—Good Laboratory Practice Standards of this chapter, the reporting of test data should include the following:

(1) The source of the dilution water, its chemical characteristics (e.g., salinity, pH, etc.) and a description of any pretreatment.

(2) Detailed information about the test organisms, including the scientific name and method of verification, age, source, history, abnormal behavior, acclimation procedures and food used.

(3) A description of the test chambers, the depth and volume of solution in the chamber, the way the test was begun (e.g., conditioning, test substance additions, etc.), the number of organisms per treatment, the number of replicates, the loading, the lighting, the test substance delivery system and the flow rate expressed as volume additions per 24 hours.

(4) The measured concentration of test substance in test chambers at the times designated.

(5) The number and percentage of organisms that died or showed any other adverse effects in the control and in each treatment at each observation period.

(6) Concentration-response curves should be fitted to mortality data collected at 24, 48, 72, and 96 hours. A statistical test of goodness-of-fit should be performed and the results reported.

(7) The 48- and 96-hour LC_{50}, and when sufficient data have been generated, the 24-hour and 72-hour LC_{50}'s and the corresponding 95 percent confidence limits and the methods used to calculate the values. These calculations should be made using the average measured concentration of the test substance.

(8) Methods and data records of all chemical analyses of water quality and test substance concentrations, including method validations and reagent blanks.

(9) The data records of the holding, acclimation and test temperature and salinity.

(f) *References.* For additional background information on this test guideline the following references should be consulted:

(1) U.S. Environmental Protection Agency, "Bioassay Procedures for the Ocean Disposal Permit Program," EPA Report No. 600–9–78–010 (Gulf Breeze, Florida, 1978).

(2) [Reserved]

§ 797.1950 Mysid Shrimp Chronic Toxicity Test.

(a) *Purpose.* This guideline is intended for use in developing data on the chronic toxicity of chemical substances and mixtures ("chemicals") subject to environmental effects test regulations under the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003, 15 U.S.C. 2601 *et seq.*). This guideline prescribes tests using mysids as test organisms to develop data on the chronic toxicity of chemicals. The United States Environmental Protection Agency (EPA) will use data from these tests in assessing the hazard of a chemical to the aquatic environment.

(b) *Definitions.* The definitions in section 3 of the Toxic Substances Control Act (TSCA) and in Part 792—Good Laboratory Practice Standards of this chapter apply to this test guideline. The following definitions also apply to this guideline:

(1) "Chronic toxicity test" means a method used to determine the concentration of a substance that produces an adverse effect from prolonged exposure of an organism to that substance. In this test, mortality, number of young per female and growth are used as measures of chronic toxicity.

(2) "Death" means the lack of reaction of a test organism to gentle prodding.

(3) "Flow-through" means a continuous or an intermittent passage of test solution or dilution water through a test chamber or a holding or acclimation tank, with no recycling.

(4) "G1 (Generation 1)" means those mysids which are used to begin the test, also referred to as adults; G2 (Generation 2) are the young produced by G1.

(5) "LC_{50}" means that experimentally derived concentration of test substance that is calculated to kill 50 percent of a test population during continuous exposure over a specified period of time.

(6) "Loading" means the ratio of test organism biomass (gram, wet weight) to the volume (liters) of test solution in a test chamber.

(7) "MATC" (Maximum Acceptable Toxicant Concentration) means the maximum concentration at which a chemical can be present and not be toxic to the test organism.

(8) "Retention chamber" means a structure within a flow-through test chamber which confines the test organisms, facilitating observation of test organisms and eliminating washout from test chambers.

(c) *Test procedures*—(1) *Summary of the test.* (i) In preparation for the test, the flow of test solution through each chamber is adjusted to the rate desired. The test substance is introduced into each test chamber. The rate at which the test substance is added is adjusted to establish and maintain the desired concentration of test substance in each test chamber. The test is started by

randomly introducing mysids acclimated in accordance with the test design into retention chambers within the test and the control chambers. Mysids in the test and control chambers are observed periodically during the test, the dead mysids removed and the findings reported.

(ii) Dissolved oxygen concentration, pH, temperature, salinity, the concentration of test substance and other water quality characteristics are measured at specified intervals in selected test chambers.

(iii) Data collected during the test are used to develop a MATC (Maximum Acceptable Toxicant Concentration) and quantify effects on specific chronic parameters.

(2) [Reserved]

(3) *Range-finding test.* (i) A range-finding test should be conducted to establish test solution concentrations for the definitive test.

(ii) The mysids should be exposed to a series of widely spaced concentrations of the test substance (e.g., 1, 10, 100 mg/l), usually under static conditions.

(iii) A minimum of 10 mysids should be exposed to each concentration of test substance for a period of time which allows estimation of appropriate chronic test concentrations. No replicates are required and nominal concentrations of the chemical are acceptable.

(4) *Definitive test.* (i) The purpose of the definitive test is to determine concentration-response curves, LC_{50} values, and effects of a chemical on growth and reproduction during chronic exposure.

(ii) A minimum of 40 mysids per concentration should be exposed to four or more concentrations of the chemical chosen in a geometric series in which the ratio is between 1.5 and 2.0 (e.g., 2, 4, 8, 16, 32 and 64 mg/l). An equal number of mysids should be placed in two or more replicates. If solvents, solubilizing agents or emulsifiers have to be used, they should be commonly used carriers and should not possess a synergistic or antagonistic effect on the toxicity of the test substance. The concentration of solvent should not exceed 0.1 ml/l. The concentration ranges should be selected to determine the concentration-response curves, LC_{50} values and MATC. Concentration of test substance in test solutions should be analyzed prior to use.

(iii) Every test should include controls consisting of the same dilution water, conditions, procedures and mysids from the same population or culture container, except that none of the chemical is added.

(iv) The dissolved oxygen concentration, temperature, salinity and pH should be measured at the beginning of the test and on days 7, 14, 21, and 28 in each chamber.

(v) The test duration is 28 days. The test is unacceptable if more than 20 percent of the control organisms die, appear stressed or are diseased during the test. The number of dead mysids in each chamber should be recorded on days 7, 14, 21, and 28 of the test. At the time when sexual characteristics are discernible in the mysids (approximately 10 to 12 days in controls; possible delays may occur in mysids exposed to test substances), the number of males and females (identified by ventral brood pouch) in each chamber should be recorded. Body length (as measured by total midline body length, from the anterior tip of the carapace to the posterior margin of the uropod) should be recorded for males and females at the time when sex can be determined simultaneously for all mysids in control and treatment groups. This time cannot be specified because of possible delays in sexual maturation of mysids exposed to test substances. A second observation of male and female body lengths should be conducted on day 28 of the test. To reduce stress on the mysids, body lengths can be recorded by photography through a stereomicroscope with appropriate scaling information. As offspring are produced by the G1 mysids (approximately 13 to 16 days in controls), the young should be counted and separated into retention chambers at the same test substance concentration as the chambers where they originated. If available prior to termination of the test, observations on the mortality, number of males and females and male and female body length should be recorded for the G2 mysids. Concentration-response curves, LC_{50} values and associated 95 percent confidence limits for the number of dead mysids (G1) should be determined for days 7, 14, 21, and 28. An MATC should be determined for the most sensitive test criteria measured (cumulative mortality of adult mysids, number of young per female, and body lengths of adult males and females).

(vi) In addition to death, any abnormal behavior or appearance should also be reported.

(vii) Distribution of mysids among test chambers should be randomized. In addition, test chambers within the testing area should be positioned in a random manner or in a way in which appropriate statistical analyses can be used to determined the variation due to placement.

(viii) The concentration of dissolved test substance (that which passes through a 0.45 micron filter) in the chambers should be measured as often as is feasible during the test. The concentration of test substance should be measured: (A) in each chamber at the beginning of the test and on days 7, 14, 21, and 28; and (B) in at least one appropriate chamber whenever a malfunction is detected in any part of the test substance delivery system. Among replicate test chambers of a treatment concentration, the measured concentration of the test substance should not vary more than 20 percent.

(5) [Reserved]

(6) *Analytical measurements*—(i) *Test chemical.* Deionized water should be used in making stock solutions of the test substance. Standard analytical methods should be employed whenever available in performing the analyses. The analytical method used to measure the amount of test substance in a sample should be validated before beginning the test by appropriate laboratory practices. An analytical method is not acceptable if likely degradation products of the test substance, such as hydrolysis and oxidation products, give positive or negative interferences which cannot be systematically identified and corrected mathematically.

(ii) *Numerical.* (A) The number of dead mysids, cumulative young per female and body lengths of male and female mysids should be recorded during each definitive test. Appropriate statistical analyses should provide a goodness-of-fit determination for the day 7, 14, 21 and 28 adult (G1) death concentration-response curves.

(B) A 7-, 14-, 21- and 28-day LC_{50}, based on adult (G1) death, and corresponding 95 percent confidence intervals should be calculated. Appropriate statistical tests (e.g., analysis of variance, mean separation test) should be used to test for significant chemical effects on chronic test criteria (cumulative mortality of adults, cumulative number of young per female and body lengths of adult male and females) on designated days. An MATC should be calculated using these chronic tests criteria.

(d) *Test conditions*—(1) *Test species*—(i) *Selection.* (A) The mysid shrimp, *Mysidopsis bahia,* is the organism specified for these tests. Juvenile mysids, ≤24 hours old, are to be used to start the test.

(B) Mysids to be used in chronic toxicity tests should originate from laboratory cultures in order to ensure the individuals are of similar age and experimental history. Mysids used for establishing laboratory cultures may be purchased commercially or collected

from appropriate natural areas. Because of similarities with other mysid species, taxonomic determinations should be verified by the commercial supplier or by an appropriate individual.

(C) Mysids used in a particular test should be of similar age and be of normal size and appearance for their age.

(D) Mysids should not be used for a test if they exhibit abnormal behavior, or if they have been used in a previous test, either in a treatment or in a control group.

(ii) *Acclimation.* (A) Any change in the temperature and chemistry of the water used for holding or culturing the test organisms to those of the test should be gradual. Within a 24-hour period, changes in water temperature should not exceed 1 °C, while salinity changes should not exceed 5 percent.

(B) During acclimation mysids should be maintained in facilities with background colors and light intensities similar to those of the testing areas.

(iii) *Care and handling.* Methods for the care and handling of mysids such as those described in paragraph (f)(1) of this section can be used during holding, culturing and testing periods.

(iv) *Feeding.* Mysids should be fed during testing. Any food utilized should support survival, growth and reproduction of the mysids. A recommended food is live *Artemia* spp. nauplii (approximately 48 hours old).

(2) *Facilities*—(i) *Apparatus.* (A) Facilities which may be needed to perform this test include: (*1*) flow-through or recirculating tanks for holding and acclimating mysids; (*2*) a mechanism for controlling and maintaining the water temperature during the holding, acclimation and test periods; (*3*) apparatus for straining particulate matter, removing gas bubbles, or aerating the water, as necessary; and (*4*) an apparatus for providing a 14-hour light and 10-hour dark photoperiod with a 15- to 30-minute transition period. In addition, flow-through chambers and a test substance delivery system are required. It is recommended that mysids be held in retention chambers within test chambers to facilitate observations and eliminate loss through outflow water.

(B) Facilities should be well ventilated and free of fumes and disturbances that may affect test organisms.

(C) Test chambers should be loosely covered to reduce the loss of test solution or dilution water due to evaporation and to minimize the entry of dust or other particulates into the solutions.

(ii) *Cleaning.* Test substance delivery systems and test chambers should be cleaned before each test following standard laboratory practices.

(iii) *Construction materials.* (A) Materials and equipment that contact test solutions should be chosen to minimize sorption of test chemicals from the dilution water and should not contain substances that can be leached into aqueous solution in quantities that can affect the test results.

(B) Retention chambers utilized for confinement of test organisms can be constructed with netting material of appropriate mesh size.

(iv) *Dilution water.* (A) Natural or artificial seawater is acceptable as dilution water if mysids will survive and successfully reproduce in it for the duration of the holding, acclimating and testing periods without showing signs of stress, such as reduced growth and fecundity. Mysids should be cultured and tested in dilution water from the same origin.

(B) Natural seawater should be filtered through a filter with a pore size of > 20 microns prior to use in a test.

(C) Artificial seawater can be prepared by adding commercially available formulations or by adding specific amounts of reagent-grade chemicals to deionized or glass-distilled water. Deionized water with a conductivity less than 1 μ ohm/cm at 12 °C is acceptable as the diluent for making artificial seawater. When deionized water is prepared from a ground or surface water source, conductivity and total organic carbon (or chemical oxygen demand) should be measured on each batch.

(v) *Test substance delivery system.* Proportional diluters, metering pumps or other suitable systems should be used to deliver test substance to the test chambers. The system used should be calibrated before each test. Calibration includes determining the flow rate and the concentration of the test substance in each chamber. The general operation of the test substance delivery system should be checked twice daily during a test. The 24-hour flow rate through a chamber should be equal to at least 5 times the volume of the chamber. The flow rates should not vary more than 10 percent among chambers or across time.

(3) *Test parameters.* Environmental parameters of the water contained in test chambers should be maintained as specified below:

(i) Temperature of 25 ± 2 °C.

(ii) Dissolved oxygen concentration between 60 and 105 percent saturation. Aeration, if needed to achieve this level, should be done before the addition of the test substance. All treatment and control chambers should be given the same aeration treatment.

(iii) The number of mysids placed in a test solution should not be so great as to affect results of the test. Loading requirements for the test will vary depending on the flow rate of dilution water. The loading should not cause the dissolved oxygen concentration to fall below the recommended levels.

(iv) Photoperiod of 14 hours light and 10 hours darkness, with a 15–30 minute transition period.

(v) Salinity of 20 parts per thousand ±3 percent.

(e) *Reporting.* The sponsor should submit to the EPA all data developed by the test that are suggestive or predictive of chronic toxicity and all concomitant toxicologic manifestations. In addition to the general reporting requirements prescribed in Part 792—Good Laboratory Practice Standards of this chapter, the reporting of test data should include the following:

(1) The source of the dilution water, its chemical characteristics (e.g., salinity, pH, etc.) and a description of any pretreatment.

(2) Detailed information about the test organisms, including the scientific name and method of verification, average length, age, source, history, observed diseases, treatments, acclimation procedures and food used.

(3) A description of the test chambers, the depth and volume of solution in the chamber, the way the test was begun (e.g., conditioning, test substance additions, etc.), the number of organisms per treatment, the number of replicates, the loading, the lighting, the test substance delivery system, and the flow rate expressed as volume additions per 24 hours.

(4) The measured concentration of test substance in test chambers at the times designated.

(5) The first time (day) that sexual characteristics can be observed in controls and in each test substance concentration.

(6) The length of time for the appearance of the first brood for each concentration.

(7) The means (average of replicates) and respective 95 percent confidence intervals for:

(A) Body length of males and females at the first observation day (depending on time of sexual maturation) and on day 28.

(B) Cumulative number of young produced per female on day 28.

(C) Cumulative number of dead adults on day 7, 14, 21 and 28.

(D) If available prior to test termination (day 28), effects on G2 mysids (number of males and females,

body length of males and females and cumulative mortality).

(8) The MATC is calculated as the geometric mean between the lowest measured test substance concentration that had a significant ($P<0.05$) effect and the highest measured test substance concentration that had no significant ($P>0.05$) effect in the chronic test. The most sensitive of the test criteria for adult (G1) mysids (cumulative number of dead mysids, body lengths of males and females or the number of young per female) is used to calculate the MATC. The criterion selected for MATC computation is the one which exhibits an effect (a statistically significant difference between treatment and control groups; $P<0.05$) at the lowest test substance concentration for the shortest period of exposure. Appropriate statistical tests (analysis of variance, mean separation test) should be used to test for significant chemical effects. The statistical tests employed and the results of these tests should be reported.

(9) Concentration-response curves should be fitted to the cumulative number of adult dead for days 7, 14, 21 and 28. A statistical test of goodness-of-fit should be performed and the results reported.

(10) An LC_{50} value based on the number of dead adults with corresponding 95 percent confidence intervals for days 7, 14, 21 and 28. These calculations should be made using the average measured concentration of the test substance.

(11) Methods and data records of all chemical analyses of water quality and test substance concentrations, including method validations and reagent blanks.

(12) The data records of the holding, acclimation and test temperature and salinity.

(f) *References.* For additional background information on this test guideline the following references should be consulted:

(1) U.S. Environmental Protection Agency, "Bioassay Procedures for the Ocean Disposal Permit Program," EPA Report No. 600/9–78–010 (Gulf Breeze, Florida, 1978).

(2) [Reserved]

§ 797.1970 Penaeid Shrimp Acute Toxicity Test.

(a) *Purpose.* This guideline is intended for use in developing data on the acute toxicity of chemical substances and mixtures ("chemicals") subject to environmental effects test regulations under the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003, 15 U.S.C. 2601 *et seq.*). This guideline prescribes tests using penaeid shrimp as test organisms to develop data on the acute toxicity of chemicals. The United States Environmental Protection Agency (EPA) will use data from these tests in assessing the hazard of a chemical to the aquatic environment.

(b) *Definitions.* The definitions in section 3 of the Toxic Substances Control Act (TSCA), and in Part 792—Good Laboratory Practice Standards of this chapter apply to this test guideline. The following definitions also apply to this guideline:

(1) "Death" means the lack of reaction of a test organism to gentle prodding.

(2) "Flow-through" means a continuous passage of test solution or dilution water through a test chamber, holding or acclimation tank with no recycling.

(3) "LC_{50}" means that experimentally derived concentration of test substance that is calculated to have killed 50 percent of a test population during continuous exposure over a specified period of time.

(4) "Loading" means the ratio of test organism biomass (grams, wet weight) to the volume (liters) of test solution in a test chamber.

(c) *Test procedures*—(1) *Summary of the test.* Prior to testing, the bottoms of the test chambers are covered with 2 to 3 cm of sand and then filled with appropriate volumes of dilution water. The flow is adjusted to the rate desired to achieve loading requirements. Penaeid shrimp are introduced into the test chambers according to the experimental design. The shrimp are maintained in the test chambers for a period of 3 to 7 days prior to the beginning of the test. The test begins when the test substance is introduced into the test chambers. The rate of flow is adjusted to maintain the desired test substance concentration in each chamber. The shrimp are observed during the test; dead shrimp are counted, removed, and the findings recorded. Dissolved oxygen concentration, pH, temperature, salinity, test substance concentration and other water quality characteristics are measured at specified intervals in selected test chambers. Data collected during the test are used to develop concentration-response curves and LC_{50} values for the test substance.

(2) [Reserved]

(3) *Range-finding test.* (i) A range-finding test should be conducted to determine the test substance concentrations to be used for the definitive test.

(ii) The shrimp should be exposed to a series of widely spaced concentrations of test substance (e.g., 1, 10, 100 mg/l, etc.).

(iii) A minimum of five penaeid shrimp should be exposed to each concentration of test substance for up to 96 hours. No replicates are required and nominal concentrations of the chemical are acceptable.

(4) *Definitive test.* (i) The purpose of the definitive test is to determine the concentration-response curves and the 48- and 96-hour LC_{50} values with the minimum amount of testing beyond the range-finding test.

(ii) A minimum of 20 shrimp per concentration should be exposed to five or more concentrations of the chemical chosen in a geometric series in which the ratio is between 1.5 and 2.0 (e.g., 2, 4, 8, 16, 32 and 64 mg/l). An equal number of shrimp should be placed in two or more replicates. If solvents, solubilizing agents or emulsifiers have to be used, they should be commonly used carriers and should not possess a synergistic or antagonistic effect on the toxicity of the test substance. The concentration of solvent should not exceed 0.1 ml/l. The concentration ranges should be selected to determine the requested concentration-response curves and LC_{50} values. The concentration of test substance in test solutions should be analyzed for chemical concentration prior to use and at designated times.

(iii) Every test should include controls consisting of the same dilution water, conditions, procedures and shrimp from the same population or culture container, except that none of the chemical is added.

(iv) The dissolved oxygen concentration, temperature, salinity and pH should be measured at the beginning of the test and at 24, 48, 72, and 96 hours in each test chamber.

(v) The test duration is 96 hours. The test is unacceptable if more than 10 percent of the control organisms die or appear to be stressed or diseased during the 96 hour test period. Each test chamber should be checked for dead shrimp at 3, 6, 12, 24, 48, 72, and 96 hours after the beginning of the test. Concentration-response curves and 48- and 96-hour LC_{50} values should be determined along with their 95 percent confidence limits.

(vi) In addition to death, any abnormal behavior or appearance should also be reported.

(vii) Distribution of shrimp among test chambers should be randomized. In addition, test chambers within the testing area should be positioned in a random manner or in a way in which appropriate statistical analyses can be used to determine the variation due to placement.

(viii) The concentration of dissolved test substance (that which passes through a 0.45 micron filter) in the test chambers should be measured as often as is feasible during the test. The concentration of test substance should be measured:

(A) In each chamber at the beginning of the test and at 48 and 96 hours after the start of the test.

(B) In at least one chamber containing the next to the lowest test substance concentration at least once every 24 hours during the test.

(C) In at least one appropriate chamber whenever a malfunction is detected in any part of the test substance delivery system. Among replicate test chambers of a treatment concentration, the measured concentration of the test substance should not vary more than 20 percent.

(5) [Reserved]

(6) *Analytical measurements*—(i) *Test chemical.* Deionized water should be used in making stock solutions of the test substance. Standard analytical methods should be used whenever available in performing the analyses. The analytical method used to measure the amount of test substance in a sample should be validated before beginning the test by appropriate laboratory practices. An analytical method is not acceptable if likely degradation products of the test substance, such as hydrolysis and oxidation products, give positive or negative interferences which cannot be systematically identified and corrected mathematically.

(ii) *Numerical.* The number of dead shrimp should be counted during each definitive test. Appropriate statistical analyses should provide a goodness-of-fit determination for the concentration-response curves. A 48- and 96-hour LC_{50} and corresponding 95 percent intervals should be calculated.

(d) *Test conditions*—(1) *Test species*—(i) *Selection.* This test should be conducted using one of three species of penaeid shrimp: *Penaeus aztecus* (brown shrimp), *Penaeus duorarum* (pink shrimp), or *Penaeus setiferus* (white shrimp). Post-larval juvenile shrimp should be utilized. Shrimp may be reared from eggs in the laboratory or obtained directly as juveniles or adults. Shrimp used in a particular test should be of similar age and be of normal size and appearance. Shrimp should not be used for a test if they exhibit abnormal behavior or if they have been used in a previous test, either in a treatment or in a control group.

(ii) *Acclimation.* During acclimation, shrimp should be maintained in facilities with background colors and light intensities similar to those of the testing areas. In addition, any change in the temperature and chemistry of the dilution water used for holding and acclimating the test organisms to those of the test should be gradual. Within a 24-hour period, changes in water temperature should not exceed 1 °C, while salinity changes should not exceed 2 percent.

(iii) *Care and handling.* Upon arrival at the test facility, the shrimp should be transferred to water closely matching the temperature and salinity of the transporting medium. Shrimp should be held in glass tanks of 30 liter capacity or larger. No more than 22 to 24 shrimp should be placed in a 30 liter tank unless the flow-through apparatus can maintain dissolved oxygen levels above 60 percent of saturation. With species of the genus *Penaeus,* a minimum flow rate of 7.5 1/g body weight day should be provided. Larger flows, up to 22 1/g body weight day, may be desirable to ensure dissolve oxygen concentrations above 60 percent of saturation and the removal of metabolic products. The period of acclimation to ambient laboratory conditions should be at least 4 to 7 days.

(iv) *Feeding.* Penaeid shrimp should not be fed during testing. Every 2 or 3 days during the acclimation period, shrimp should be fed fish pieces approximately 1 cm^2. Uneaten food should be removed daily.

(2) *Facilities*—(i) *Apparatus.* (A) Facilities which may be needed to perform this test include: flow-through tanks for holding and acclimating penaeid shrimp; a mechanisn for controlling and maintaining the water temperature and salinity during the holding period; apparatus for straining particulate matter, removing air bubbles, or aerating water when necessitated by water quality requirements; and an apparatus providing a 12-hour light and 12-hour dark photoperiod with a 15 to 30 minute transition period. Facilities should be well ventilated, free of fumes and free of all other disturbances that may affect test organisms.

(B) Two to three centimeters of acid-washed sand, free of excess organic matter, should be placed in the bottom of test chambers.

(C) Test chambers should be loosely covered to reduce the loss of test solution or dilution water due to evaporation, minimize entry of dust and other particles and prevent escape of the shrimp.

(ii) *Cleaning.* Test substance delivery systems and test chambers should be cleaned before each test following standard laboratory practices.

(iii) *Construction materials.* Materials and equipment that contact test solutions should be chosen to minimize sorption of test chemicals from dilution water and should not contain substances that can be leached into aqueous solution in quantities that can affect test results.

(iv) *Dilution water.* (A) Natural or artificial seawater is acceptable as dilution water if shrimp will survive in it without signs of stress, such as unusual behavior or discoloration. Shrimp should be acclimated and tested in dilution water from the same origin.

(B) Natural seawater should be filtered through a 5 micrometer filter with a pore size <20 microns prior to use in a test.

(C) Artificial seawater can be prepared by adding commercially available formulations or by adding specific amounts of reagent-grade chemicals to deionized water. Deionized water with a conductivity less than 1μ ohm/cm at 12 °C is acceptable for making artificial seawater. When deionized water is prepared from a ground or surface water source, conductivity and total organic carbon (or chemical oxygen demand) should be measured on each batch.

(v) *Test substance delivery system.* Proportional diluters, metering pumps or other suitable systems should be used to deliver test substance to the test chambers. The system used should be calibrated before each test. Calibration includes determining the flow rate through each chamber and the concentration of the test substance in each chamber. The general operation of the test substance delivery system should be checked twice daily during a test. The 24-hour flow through a test chamber should be equal to a least 5 times the volume of the test chamber. During a test, the flow rates should not vary more than 10 percent among test chambers or across time.

(3) *Test parameters.* Environmental parameters of the water contained in test chambers should be as specified below:

(i) Temperature of 23 $\pm$ 1 °C.

(ii) Dissolved oxygen concentration between 60 and 105 percent saturation. Aeration, if needed to achieve this level, should be done before the addition of the test substance. All treatment and control chambers should be given the same aeration treatment.

(iii) The number of shrimp placed in a test solution should not be so great as to affect results of the test. Loading requirements will vary depending on the flow rate of dilution water. The loading should not cause the dissolved oxygen concentration to fall below the recommended levels.

(iv) Photoperiod of 12 hours light and 12 hours darkness, with a 15 to 30 minute transition period.

(v) Salinity of 20 parts per thousand ±3 percent.

(e) *Reporting.* The sponsor should submit to the EPA all data developed by the test that are suggestive or predictive of acute toxicity and all other toxicological manifestations. In addition to the general reporting requirements prescribed in Part 792—Good Laboratory Practice Standards of this chapter, the reporting of test data should include the following:

(1) The nature of the test, laboratory, name of the investigator, test substance and dates of test should be supplied.

(2) A detailed description of the test substances should be provided. This information should include the source, lot number, composition, physical and chemical properties and any carrier or additives used.

(3) Detailed information about the shrimp should be provided: common and scientific names, source of supply, age, history, weight, acclimation procedure and feeding history should be reported.

(4) A description of the experimental design including the number of test solution concentrations, number of replicates and number of shrimp per replicate should be provided.

(5) The source of the dilution water, its chemical characteristics (e.g., salinity) and a description of any pretreatment.

(6) A description of the test chambers, the depth and volume of solution in the chamber, the number of organisms per treatment, the number of replicates, the loading, the lighting, the test substance delivery system and flow rate expressed as volume additions per 24 hours.

(7) The concentration of the test substance in each test chamber before the start of the test and at the end.

(8) The number of dead shrimp and measurements of water temperature, salinity, and dissolved oxygen concentration in each test chamber should be recorded at the designated times.

(9) Methods and data records of all chemical analyses of water quality and test substance concentrations, including method validations and reagent blanks.

(10) Recorded data for the holding and acclimation period (temperature, salinity, etc.).

(11) Concentration-response curves should be fitted to mortality data collected at 24, 48, 72, and 96 hours. A statistical test of goodness-of-fit should be performed.

(12) For each set of mortality data, the 48- and 96-hour LC_{50} and 95 percent confidence limits should be calculated on the basis of the average measured concentration of the test substance. When data permits, LC_{50} values with 95 percent confidence limits should be computed for 24- and 72-hour observations.

(13) The methods used in calculating the concentration-response curves and the LC_{50} values should be fully described.

Subpart C—Terrestrial Guidelines

§ 797.2050 Avian Dietary Toxicity Test.

(a) *Purpose.* The guideline in this subpart is designed to develop data on the dietary toxicity to bobwhite and mallard of chemical substances and mixtures subject to acute environmental effects test regulations under the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003 15 U.S.C. 2601 *et seq.).* The Agency will use these and other data to assess the acute hazard to birds and to provide an indication of potential chronic hazard that these chemicals may present to the environment.

(b) *Definitions.* The definitions in section 3 of the Toxic Substances Control Act (TSCA) and Part 792—Good Laboratory Practice Standards of this chapter apply to this test guideline. In addition, the following definitions apply to this guideline:

(1) "Acclimation" Physiological or behavioral adaptation of test animals to environmental conditions and basal diet associated with the test procedure.

(2) "LC_{50}" The empirically derived concentration of the test substance in the diet that is expected to result in mortality of 50 percent of a population of birds which is exposed exclusively to the treated diet under the conditions of the test.

(3) "Test Substance" The specific form of a chemical or mixture of chemicals that is used to develop the data.

(4) "Exposure period" The 5 day period during which test birds are offered a diet containing the test substance.

(5) "Post-exposure period" The portion of the test that begins with the test birds being returned from a treated diet to the basal diet. This period is typically 3 days in duration, but may be extended if birds continue to die or demonstrate other toxic effects.

(6) "Test period" The combination of the exposure period and the post-exposure period; or, the entire duration of the test.

(7) "Hatch" Eggs or young birds that are the same age and that are derived from the same adult breeding population, where the adults are of the same strain and stock.

(8) "Basal diet" The food or diet as it is prepared or received from the supplier, without the addition of any carrier, diluent, or test substance.

(c) *Test procedures*—(1) *Summary of test.* (i) After birds have been obtained, they should be acclimated for at least 7 days.

(ii) Test birds should be randomly assigned to the various treatment levels and controls.

(iii) Definitive test concentrations should be established, possibly requiring a range-finding test to be conducted first.

(iv) The test substance should be mixed thoroughly and evenly into the diet. Three treatment levels should be analyzed for test substance concentrations.

(v) Birds should be weighed at the beginning of the exposure period.

(vi) Birds should be observed regularly for mortality or abnormal behavior; any findings should be reported.

(vii) Food treated with the test substance should be replaced by untreated food (basal diet) after 5 days of exposure. Food consumption during the exposure period should be carefully estimated on a pen by pen basis.

(viii) Food consumption should be estimated for the post-exposure period and birds should be weighed at the end of 8 days. Additional weights and food consumption estimates should be determined if the test period is longer than the typical 8 days.

(ix) The mortality pattern should be examined, and a statistical analysis should be conducted. The LC_{50} slope, and confidence limits should be reported. A test for heterogeneity of data should be conducted.

(x) Treated or positive control birds should be sacrificed and disposed of properly. Negative control birds may be kept as breeding stock, but should not be used in any other tests.

(xi) The material to be tested should be analytically pure and the degree of purity should be reported along with the percentage of each impurity at levels specified in the test rule. If specifically required by a test rule for a particular substance or mixture, the technical grade should be tested. The test rule will specify the degree of purity or a range of compositions of the test substance.

(xii) A test is unacceptable if more than 10 percent of the control birds die during the test.

(2) [Reserved]

(3) *Range-finding test.* Unless the approximate toxicity of the test substance is known already, a range-finding test should be conducted to

determine the test substance concentrations to be used in the definitive test, under paragraph (d)(4)(iii) of this section for details on concentrations for definitive tests. Procedures for range-finding tests may vary, but generally, groups of a few birds are fed three to five widely-spaced concentrations for 5 days. A concentration series of 5, 50, 500, and 5,000 ppm is suggested. The results of the range-finding test then may be used to establish the definitive test concentrations.

(4) *Definitive test*—(i) *Controls.* (A) A concurrent control is required during every test. The control birds should be from the same hatch as the test groups. Control and test birds should be kept under the same experimental conditions. The test procedures should be the same for control and treated birds, except that no test substance should be added to the diets of control birds. If a carrier is used in preparation of the test diets, the same carrier should be added to the diets of control birds in the highest concentration used for test diets. The use of shared controls is acceptable for concurrent tests as long as the same carrier is used for all the tests.

(B) A test is not acceptable if more than 10 percent of the control birds die during the test period.

(C) A positive control (e.g., dieldrin standard) may be run, but is not required for each test. However, a quarterly or semi-annual laboratory standard (positive control) is recommended as a means of detecting possible interlaboratory or temporal variation. A laboratory standard is also recommended when there is any significant change in food, housing, or source of birds.

(ii) *Number of animals tested.* In the definitive test, a minimum of 10 birds should be used for each dietary concentration of the test substance. A minimum of 20 birds should be used for the negative or carrier control. Thirty or more control birds are preferable. If a positive control or laboratory standard is used, 10 or more birds should also be used for each concentration of the positive control. When a test substance is known or expected to result in high experimental variation, it may be appropriate or required by the test rule to use additional birds.

(iii) *Concentrations and dosage-mortality data.* A minimum of five concentrations of the test substance should be used in the definitive test. These concentrations should be spaced geometrically. The recommended spacing is for each concentration to be at least 60 percent of the next higher dose (less than 1.67 times the next lower dose). If concentrations are spaced more widely than is recommended, then at least three concentrations should result in mortality between, but not including, 0 percent and 100 percent. For any concentration spacing, at least one concentration should kill more than 50 percent (including 100 percent) and at least one concentration should kill less than 50 percent (including 0 percent) of the birds in a pen. For some test substances, it may be necessary to use more than five concentrations to achieve these results.

(iv) *Duration of test.* The definitive test should include 5 days of exposure to the test substance in the diet (exposure period) followed by at least 3 days of additional observation (post-exposure period) while the test birds are receiving an untreated diet. If any test birds die during the second or third day of the post-exposure period or if toxic signs are evident on the third day of the post-exposure period, the test period should be extended until 2 successive mortality-free days and 1 day free of toxic signs occur, or until 21 days after beginning the test, whichever comes first.

(v) *Observations of record.* (A) Throughout the test period, all signs of intoxication, other abnormal behavior, and mortality should be recorded and reported by dose level and by day. Signs of intoxication are those behaviors apparently due to the test chemical and may include a wide array of behaviors, such as labored respiration, leg weakness, hemorrhage, convulsions, ruffled feathers, etc. All signs of intoxication and any other abnormal behavior, such as excessive aggression, toe-picking etc. that may or may not be attributed to the test substance should be reported. Among survivors, remission of signs of intoxication and cessation of abnormal behavior should be recorded by dose level and by day. When differential signs of intoxication are observed within a dose level, an estimate of the number of birds exhibiting such signs should be recorded. Observation of test birds should be made, at a minimum, three times on the first day of the exposure period. Observations also should be made at least daily throughout the remainder of the test period; twice daily observations are recommended, where feasible.

(B) Average body weights of birds should be recorded and reported for each pen within each treatment and control group at the beginning of the exposure period and the end of the normal 3-day post-exposure period of each test. Body weights 72 hours before the exposure period are not required, but would provide valuable base-line data. Average food consumption should be measured in control pens and pens with the second lowest and second highest concentration levels either daily or every other day. Any significant amount of food spilled onto litter pans should be estimated and reported. For all other pens, average food consumption should be measured for both the exposure period and the normal 3-day post-exposure period. If the study is continued beyond 8 days, body weight and food consumption data should be recorded weekly.

(C) Gross pathology examinations are not required, but they may provide valuable information on target site, mode of action, etc.

(5) [Reserved]

(6) *Analytical measurements*—(i) *Statistical analysis.* (A) A statistical analysis should be conducted by transforming the dietary concentrations to logarithmic values and the mortality pattern to probits. Other acceptable methods that will result in a theoretically straight line through ±2 standard deviations from the LC_{50} value may be used. The LC_{50} value and slope of the transformed concentration-response curve should be determined for mortality at the end of test period. Probit analysis by calculations or graphical probit methods are preferred. Any standard method that is used should provide the slope of the transformed concentration-response curve as well as the LC_{50} value. A statistical test for goodness-of-fit (e.g., chi-square test) also should be performed.

(B) All methods used for statistical analysis should be described completely.

(ii) *Analysis for test substance concentrations.* (A) Samples of treated diets should be analyzed to confirm proper dietary concentration of the test substance. Analyses should be conducted at the beginning of the exposure period with samples from high, middle, and low concentrations. If not already available, data should be generated to indicate whether or not the test substance degrades or volatilizes. If the test substances is known or found to be volatile or labile to the extent that 25 percent or more loss occurs over a 5 day period, then a second series of analyses of the same concentrations previously analyzed should be conducted at the end of the exposure period.

(B) The assay method used to determine actual concentrations should be reported.

(iii) *Analysis of basal diet.* A nutrient analysis of the basal diet should be included in the test report. For

commercially prepared basal diets, the list of ingredients supplied by the company is normally sufficient if it is detailed. The composition of any vitamin or other supplements should also be reported.

(d) *Test conditions*—(1) *Test Species*—(i) *Selection.* (A) Bobwhite, *Colinus virginianus* (L.), and mallard, *Anas platyrhynchos* L., are the test species. Birds may be reared in the laboratory or purchased from a breeder. If bobwhite are purchased, it is preferable that they be obtained as eggs which then are hatched and reared in the testing facility. During incubation, a temperature of 39 °C and relative humidity of 70 percent are recommended for bobwhite. It is feasible to purchase live young bobwhite chicks if they can be obtained locally; however, young bobwhite may suffer adverse effects if shipped by air or other commercial means. Young mallard ducklings normally can be shipped without undue adverse effects.

(B) All control and treatment birds used in a test should be from the same source and hatch. Birds should be obtained only from sources whose colonies have known breeding histories. Birds should be phenotypically indistinguishable (except for size) from wild stock. It is recommended that birds be obtained from flocks that have been outbred periodically with genetically wild stock in order to maintain a genetic composition that approximates the natural heterogeneity of the species.

(C) Birds used in the test should be in apparent good health. Deformed, abnormal, sick, or injured birds should not be used. Birds should not be used for a test if more than 5 percent of the total test population die during the 72 hours immediately preceding the exposure period. Purchased birds should be certified as disease free or as bred from disease free stocks. Birds should not have been selected in any way for genetic resistance to toxic substances. Birds should not have been used in a previous test, either in a treatment or control group.

(D) Test birds should be 10 to 17 days old at the beginning of the exposure period. All treatment and control birds in a test should be the same age ± one day. The exact age should be recorded and reported.

(E) Test birds should be acclimated to test facilities and basal diet for a minimum of 7 days. Acclimation to test pens may be either in the actual pens used in the test or in identical pens. Birds used in the test should be assigned randomly to treatment and control pens without respect to sex. Randomization may be done either at the initiation of the acclimation period or at the time when the birds are weighed at the beginning of the exposure period.

(F) During holding, acclimation, and testing, birds should be shielded from excessive noise, activity, or other disturbance. Birds should be handled only as much as is necessary to conform to test procedures.

(ii) *Diet.* (A) A standard commercial game bird (for bobwhite) or duck (for mallard) starter mash, or the nutritional equivalent, should be used for diet preparation. Antibiotics or other medication should not be used in the diet before or during the test. For bobwhite only, an antibiotic demonstrated to fully depurate in 72 hours may be added to the drinking water, if necessary, for birds up through 10 days of age; however, only clean unmedicated water should be offered during the 96 hours preceding the exposure period and during the test period. It may not be possible to obtain food that is completely free of pesticides, heavy metals, and other contaminants; however, diets should be analyzed periodically, and should be selected to be as free from contaminants as possible. A nutrient analysis and list of the ingredients in the diet should be included with the test report.

(B) The test substance should be mixed into the diet in a manner that will result in even distribution of the test substance throughout the diet. If possible, the test substance should be added to the diet without the use of a diluent. If a diluent is needed, the preferred diluent is distilled water; but water should not be used as a diluent for test substances known to hydrolyze readily. When a test substance is not water soluble, it may be dissolved in a reagent grade evaporative diluent (e.g., acetone, methylene chloride) and then mixed with the test diet. The diluent should be completely evaporated prior to feeding. Other acceptable diluents may be used, if necessary, and include table grade corn oil, propylene glycol, and gum arabic (acacia). If a diluent is used, it should not comprise more than 2 percent by weight of the treated diet, and an equivalent amount of diluent should be added to control diets for untreated birds.

(C) Diets can be mixed by commercial, mechanical food mixers. For many test substances, it is recommended that treated diets be mixed under a hood. Mashes and test substances should be mixed freshly just prior to the beginning of the test. For certain volatile or other test substances, the Test Rule may require preparation of fresh diets at frequent intervals. Analysis of the diet for test substance concentrations is required under paragraph (c)(6)(ii) of this section.

(D) Clean water should be available *ad libitum.* Water bottles or automatic watering devices are recommended. If water pans or bowls are used, water should be changed at least once a day.

(2) *Facilities.* (i) Tests should be conducted with birds being maintained in commercial brooder pens or pens of similar construction. Pens should be constructed of galvanized metal, stainless steel, or perfluorocarbon plastics. Materials that are toxic, may affect toxicity, or may adsorb test substances should not be used. Wire mesh should be used for floors and external walls; solid sheeting should be used for common walls and ceilings. Wire mesh for floors should be fine enough so as to not interfere with the normal movement of young birds. Pens for housing 10 young birds should have a floor area of at least 3,000 square centimeters (approximately 500 square inches) for bobwhite and 6,000 square centimeters (approximately 1,000 square inches) for mallards and should be at least 24 centimeters (approximately 9.5 inches) high. Pens should be disassembled (if feasible) and should be cleaned thoroughly between tests. Steam cleaning of cages is recommended. Cages may be brushed thoroughly, as an alternative method. The use of detergents or bleach is acceptable, but other chemical disinfectants such as quaternary ammonium compounds should not be used. When necessary to control disease vectors, hot or cold sterilization techniques are recommended, as long as such techniques will not leave chemical residues on the cages. For cold sterilization, ethylene oxide is recommended. Pens should not be cleaned during a test.

(ii) Pens should be kept indoors to control lighting, temperature, and other environmental variables. Pens should be heated, preferably by thermostatic control. A temperature gradient in the pen of approximately 35 °C to approximately 22 °C will allow young birds to seek a proper temperature. Temperature requirements for young birds typically decline over this range from birth through the first several weeks of life. Relative humidity is not as critical, but the test room should be maintained at a relative humidity of 45–70 percent. A photoperiod of 14 hours light and 10 hours dark is recommended. Other light/dark cycles should not be used, but continuous lighting is acceptable. Lighting may be either incandescent or fluorescent. Pens and lights should be positioned so that all

pens will receive similar illumination. The facilities should be well ventilated.

(iii) Where feasible, it is recommended that pens not be stacked upon each other. If pens are stacked, only one test substance is allowed in any single stack. If a test substance volatilizes or otherwise forms aerosols or vapors in the air, no more than one test substance should be tested in a room in order to avoid cross-contamination. Pens should be randomly arranged, whether or not in a stack, with respect to dose levels and controls. Pens, such as stacked, unmodified, commercial pens with external feeders, that allow food to be spilled from one pen to a lower pen, should be avoided. Any modifications that prevent cross contamination of concentration levels are acceptable. For example, commercially available, 30 cm (one foot) long chick feeders may be placed inside the pens and be covered with 1.27 cm (0.5 inch) mesh hardware cloth over the food, for bobwhite. The same feeders covered with approximately 2.5 cm (one inch) mesh wire are appropriate for mallards. For either species, external feeders can be covered with the appropriate size wire mesh and a solid piece of metal extended from the bottom of the cage to a point exterior to the feeder. Spillage may occur, but the added metal will prevent food from spilling into another feeder.

(e) *Reporting.* (1) The test report should include the following information:

(i) Name of test, sponsor, test laboratory and location, principal investigator(s), and actual dates of beginning and end, of test.

(ii) Name of species tested (including scientific name), age of birds (in days) at the beginning of the test, average body weights for birds in each pen at the beginning of the test, the end of the exposure period, and end of the test, and individual weights of all birds that die during the test.

(iii) Description of housing conditions, including type, size, and material of pen, pen temperatures, approximate test room humidity, photoperiod and lighting intensity.

(iv) Detailed description of the basal diet, including source, diluents (if used), and supplements (if used). A nutrient analysis of the diet should be included in the test report.

(v) Detailed description of the test substance including its chemical name(s), source, lot number, composition (identity of major ingredients and impurities), and known physical and chemical properties that are pertinent to the test (e.g., physical state, solubility, etc.).

(vi) The number of concentrations used, nominal and (where required) measured dietary concentration of test substance in each level, assay method used to determine actual concentrations, number of birds per concentration and for controls, and names of toxicants used for positive controls (if applicable).

(vii) Acclimation procedures and methods of assigning birds to test pens.

(viii) Frequency, duration, and methods of observation.

(ix) Description of signs of intoxication and other abnormal behavior, including time of onset, duration, severity (including death), and numbers affected in the different dietary concentrations and controls each day of the test period.

(x) Estimated food consumption per pen daily or every other day in the second highest and second lowest concentration and control pens. For other pens, food consumption should be estimated for the exposure period and for the post-exposure period.

(xi) Location of raw data storage.

(xii) Results of range finding tests (if conducted).

(xiii) The calculated EC_{50} value, 95 percent confidence limits, slope of the concentration-response curve, the results of the goodness-of-fit test (e.g., chi-square test), and a description of statistical methods used. The same statistics for positive controls (when used). The methods used for statistical analysis should be described completely.

(xiv) Anything unusual about the test, any deviation from these procedures, and any other relevant information.

(2) In addition to the above information required in every report, the following information should be available upon request:

(i) A general description of the support facilities.

(ii) A description of the Quality Control/Quality Assurance program, including the Average Quality Level for the program element performing the test, procedures used, and documentations that these levels have been achieved.

(iii) The names, qualifications, and experience of personnel working in the program element performing the test, including the study director, principal investigator, quality assurance officer, as well as other personnel involved in the study.

(iv) Standard operating procedures for all phases of the test and equipment involved in the test.

(v) Sources of all supplies and equipment involved in the test.

(vi) Originals or exact copies of all raw data generated in performing the test.

§ 797.2130 Bobwhite Reproduction Test.

(a) *Purpose.* This guideline is designed to develop data on the reproductive effects on the bobwhite of chemical substances and mixtures subject to chronic environmental effects test regulations under the Toxic Substances Control Act (TSCA) (Pub. L. 94-469, 90 Stat. 2003 15 U.S.C. 2601 *et seq.*). The Agency will use these and other data to assess the reproductive effects on birds that these chemicals may present to the environment.

(b) *Definitions.* (1) The definitions in section 3 of the Toxic Substances Control Act (TSCA) and Part 792—Good Laboratory Practice Standards of this chapter apply to this test guideline. In addition, the following definitions apply generally to this guideline:

(i) "Acclimation" Physiological and behavioral adaptation to environmental conditions (e.g., housing and diet) associated with the test procedure.

(ii) "Test substance" The specific form of a chemical or mixture of chemicals that is used to develop the data.

(iii) "Photoperiod" The light and dark periods in a 24 hour day. This is usually expressed in a form such as 17 hours light/7 hours dark or 17L/7D.

(iv) "Basal diet" The untreated form of the diet, such as the diet obtained from a commercial source.

(2) The definitions in this section refer specifically to the production and quality of eggs and the subsequent development of these eggs up to the point where young are 14 days old.

(i) "Eggs laid" This term refers to the total egg production during the test, which normally includes 10 weeks of laying. Values are expressed as numbers of eggs per pen per season (or test).

(ii) "Eggs cracked" Eggs determined to have cracked shells when inspected with a candling lamp. Fine cracks cannot be detected without using a candling lamp and if undetected will bias data by adversely affecting embryo development. Values are expressed as a percentage of eggs laid by all hens during the test.

(iii) "Eggs set" All eggs placed under incubation, i.e., total eggs minus cracked eggs and those selected for analysis of eggshell thickness. The number of eggs set, itself, is an artificial number, but it is essential for the statistical analysis of other development parameters.

(iv) "Viable embryos (fertility)" Eggs in which fertilization has occurred and embryonic development has begun. This is determined by candling the eggs 11 days after incubation has begun. It is difficult to distinguish between the absence of fertilization and early embryonic death. The distinction can be

made by breaking out eggs that appear infertile and examining further. This distinction is especially important when a test compound induces early embryo mortality. Values are expressed as a percentage of eggs set.

(v) "Live 18-day embryos" Embryos that are developing normally after 18 days of incubation. This is determined by candling the eggs. Values are expressed as a percentage of viable embryos (fertile eggs).

(vi) "Hatchability" Embryos that mature, pip the shell, and liberate themselves from the eggs on day 23 or 24 of incubation. Values are expressed as percentage of viable embryos (fertile eggs).

(vii) "14-day old survivors" Birds that survive for 2 weeks following hatch. Values are expressed both as a percentage of hatched eggs and as the number per pen per season (test).

(viii) "Eggshell thickness" The thickness of the shell and the membrane of the egg at several points around the girth after the egg has been opened, washed out, and the shell and membrane dried for at least 48 hours at room temperature. Values are expressed as the average thickness of the several measured points in millimeters.

(c) *Test procedures*—(1) *Summary of the test.* (i) After birds have been obtained they should be observed for health and acclimated for at least 2 weeks.

(ii) Test birds should be randomly assigned to control and various treatment groups.

(iii) The test substance should be thoroughly and evenly mixed into the diet at concentrations specified in the test rule. All treatment levels should be analyzed for test substance concentrations at the beginning and midway through the test.

(iv) Birds should be weighed at the beginning of the test, at 14-day intervals until the onset of laying, and at termination of the test.

(v) Photoperiod should be carefully controlled on a shortday basis during the initial exposure phase, then increased to 16 to17 hours to induce egg laying.

(vi) Birds should be observed regularly for abnormal behavior or mortality throughout the test.

(vii) Eggs should be removed daily and stored until there is a sufficient quantity for incubation. All eggs should be candled for cracks and cracked eggs removed. Once every 2 weeks, all eggs produced that day should be analyzed for eggshell thickness. Incubated eggs should be candled on day 11 and day 18. Hatching should be completed by day 24.

(viii) Hatchlings should be maintained until they are 14 days old. Abnormal behavior or death should be reported. Chicks should be weighed on day 14.

(ix) A statistical analysis should be performed, preferably by analysis of variance or regression analysis.

(x) The report should include all conditions, procedures, and results. Data should be sufficiently detailed for an independent statistical analysis.

(xi) All treated birds should be sacrificed and disposed of properly. Control birds may be kept as breeding stock, but should not be used in any other tests. Control offspring may be reared and used in another test as adults.

(2) [Reserved]

(3) [Reserved]

(4) *Definitive test*—(i) *Test substance.* (A) The concentrations of test substance in the diet will be specified in the test rule. Generally, three treatment groups and a control group will be used. The higher two treatment concentrations will be multiples (often 5×, 10×, or 20×) of the lowest treatment level. The highest treatment levels usually will be below lethal levels, unless predicted environmental exposure levels are high enough to approximate lethal concentrations.

(B) The material to be tested should be analytically pure and the degree of purity should be reported along with the percentage of each impurity at levels specified in the test rule. If specifically required by a test rule for a particular substance or mixture, the technical grade should be tested. The test rule will specify the degree of purity or a range of compositions of the technical grade material.

(ii) *Controls.* A concurrent control is required during every test. The control birds should be from the same hatch as the test groups. Control and test birds should be kept under the same experimental conditions. The test procedures should be the same for control and treated birds, except that no test substance should be added to the diets of control birds. If a carrier or diluent is used in preparation of the test diets, the same carrier should be added to the diets of control birds in the highest concentration used for test diets. The use of shared controls is acceptable for concurrent tests as long as the same carrier is used for all the tests.

(iii) *Test groups and numbers of birds.* (A) Each of the three treatment groups and the control group should consist of a minimum of 12 replicate pens. Each pen should contain one male and one female, or alternatively one male and two females. The use of 20 replicate pens in the control group may yield a test with greater statistical power. Either arrangement is acceptable if productivity reaches the definitive values given in paragraph (c)(4)(xii) of this section. Because the behavioral interactions of birds in the two arrangements are likely to be different, testing facilities using an arrangement with which they are not familiar are advised to experiment first without test substances in order to determine the feasibility of obtaining acceptable productivity levels.

(B) All control and treatment birds should be randomly distributed to pens from the same population.

(iv) *Duration of test.* (A) The test consists of three phases following acclimation to test facilities. The initial phase begins with exposure of treatment groups to diets containing the test substance and is typically 6 to 8 weeks long. After the initial phase, the photoperiod is manipulated according to paragraph (c)(4)(v) of this section to bring the hens into laying condition. This second phase ends with the onset of egg-laying and is typically 2 to 4 weeks long. The final phase begins with the onset of laying and lasts for at least 8 weeks, preferably 10 weeks. A withdrawal study period may be added to the test phase if reduced reproduction is observed. The withdrawal period, if used, need not exceed 3 weeks.

(B) Exposure of adult birds to the test substance should be continuous throughout the test. Unless otherwise specified in the test rule, test birds should be exposed for at least 10 weeks prior to the onset of egg laying.

(v) *Preparation for reproduction (photoperiod).* (A) Lighting regimes (photoperiod) are critical to successful reproduction. Various photoperiod regimes have been demonstrated to give acceptable results. Any photoperiod regime that results in productivity that meets the definitive values given in paragraph (c)(4)(xii) of this section is acceptable as long as birds are exposed to treated diets a minimum of 10 weeks prior to the onset of laying. Regardless of the methods selected, lighting should be controlled carefully. It is important during the initial phase to not interrupt the dark period unless absolutely necessary.

(B) A suggested photoperiod regime would consist of maintaining birds under a photoperiod for 7 or 8 hours of light during the initial phase. At the end of the initial phase, the photoperiod may be increased to 16 to 17 hours of light per day. The photoperiod may be maintained at this level for the remainder of the study, although an

increase each week of 15 minutes per day is acceptable.

(vi) *Observations of record on adult birds.* (A) Body weights should be recorded for each adult bird at the beginning of the treatment period, at 14-day intervals until the onset of egg laying, and at termination of treatment. Recording of body weights during egg laying is discouraged because of possible adverse effects on egg production. Food consumption should be measured and recorded by pen as often as body weights are measured prior to the onset of laying and at least bi-weekly throughout the rest of the study.

(B) Observations on adult birds should be made at least once a day. Any mortality or other signs of toxicity should be described and recorded by date or day of test. Gross pathological examinations should be conducted on all birds that die during the test period, and for all survivors at the end of the test. Analysis of two or more tissues (e.g., muscle, fat) for test substance residues is encouraged, but not required (unless specified in the Test Rule).

(vii) *Egg collection, storage, and incubation.* All eggs should be collected daily, marked according to the pen from which collected, and should be stored at 16 °C and 55 to 80 percent relative humidity. Storage in plastic bags may improve uniformity of hatching. Stored eggs should be turned daily. At weekly or bi-weekly intervals, eggs should be removed from storage and be candled to detect eggshell cracks. Except for eggs with cracked shells and those eggs removed for eggshell thickness measurements, all eggs should be set after candling for incubation in a commercial incubator. If incubators are not equipped to automatically turn eggs, they should be turned daily by hand. During the incubation period, eggs should be maintained at 37.5 °C and approximately 70 percent relative humidity. Eggs should be candled again on day 11 of incubation to determine fertility and early death of embryos. A final candling should be done on day 18 to measure embryo survival. On day 21, eggs should be removed to a separate incubator or hatcher. Hatching will normally be complete by the end of day 24.

(viii) *Chick maintenance.* By day 24 of incubation, the hatched bobwhite chicks should be removed from the hatcher or incubator. Chicks should be either housed according to the appropriate parental pen group or individually marked (such as by leg bands) as to parental group and housed together. Chicks should be maintained in commercial brooder pens or pens of similar construction. Pens should be constructed of galvanized metal or stainless steel. Temperature in the pens should be controlled, preferably by a thermostatically controlled device. A temperature gradient in the pen from approximately 35 °C to approximately 22 °C will allow young birds to seek a proper temperature. Temperature requirements for young birds typically decline over this range from birth through the first several weeks of life. Chicks should be provided a standard commercial game bird starter ration, or its nutritional equivalent. No test substance may be added to the diet of chicks. Chicks should be maintained until they are 14 days old.

(ix) *Observations of record on chicks.* The hatchability, percentage of normal hatchlings, percentage of 14-day old survivors, and number of 14-day old survivors per hen should be recorded and reported. Chicks should be observed daily from hatching until they are 14 days old. Mortality, signs of toxicity, and other clinical abnormalities should be recorded at least cumulatively through day 5 and recorded by age from days 5 through 14. Average body weights should be recorded for chicks at day 14.

(x) *Eggshell thickness.* Once every two weeks all eggs newly laid that day should be removed and measured for eggshell thickness. Eggs should be opened at the girth (the widest portion), the contents washed out (or used or saved for egg residue analysis), and the shell air dried for at least 48 hours. The thickness of the shell plus the dried membrane should be measured at a minimum of 3 points around the girth using a micrometer calibrated at least to 0.01 mm units.

(xi) *Typical observed values.* The values reported here represent those observed from a few testing facilities under their conditions. These values are not necessarily representative of those from all facilities, however, if a reproduction test does not meet or at least approach these values for control birds, then there is likely to be a problem with test procedures or conditions that should be investigated and corrected.

(A) *Eggs laid.* Normal values for bobwhite—28 to 38 eggs per hen per season.

(B) *Eggs cracked.* Normal values for bobwhite—0.8 to 2.0 percent of eggs laid.

(C) *Viable embryos (fertility).* (Normal fertility values for bobwhite—75 to 90 percent of eggs set.

(D) *Live 18-day embryos.* Normal values for bobwhite—97 to 99 percent of viable embryos.

(E) *Hatchability.* Normal values for bobwhite—50 to 90 percent of viable embryos (fertile eggs).

(F) *14-day-old survivors.* Normal values for bobwhite—75 to 90 percent of eggs hatched.

(G) *Eggshell thickness.* Normal average values for bobwhite—0.19 to 0.24 mm.

(xii) *Definitive test criteria.* (A) A test is unacceptable if bobwhite chick productivity in control groups does not average twelve 14-day old survivors per pen over a 10 week period.

(B) A test is unacceptable if the average eggshell thickness in control groups is less than 0.19 mm.

(C) A test is unacceptable if more than 10 percent of the adult control birds die during the test.

(5) [Reserved]

(6) *Analytical measurements*—(i) *Statistical analysis.* Experimental groups should be individually compared to the control group by analysis of variance. Other accepted statistical methods may be used as long as they are documented. In particular, regression analysis is highly desirable if the data and number of dose levels allow the use of this technique. Sample units are the individual pens within each treatment level or control. Analysis should include:

(A) Body weight of adults.

(B) Food consumption of adults.

(C) Percentage of hens laying eggs. This should always be determined when pens contain a single pair; if feasible, it should be determined when pens contain groups.

(D) Number of eggs laid per pen.

(E) Percentage of cracked eggs.

(F) Percent viable embryos of eggs set.

(G) Percent live 18-day embryos of viable embryos.

(H) Percent hatching of viable embryos.

(I) Percentage of hatchlings that are normal.

(J) Percent 14-day-old survivors of normal hatchlings.

(K) Number of 14-day-old survivors per hen.

(L) Body weights of 14-day-old survivors.

(M) Eggshell thickness.

(ii) *Test substance concentrations.* (A) Samples of treated diets should be analyzed to confirm proper dietary concentrations of the test substance. If samples cannot be analyzed immediately, they should be stored appropriately (e.g., frozen at a temperature of −15 °C or lower) until analysis can be performed. Analyses should be conducted on all test substance concentrations at the

beginning of the test period and again 10 to 12 weeks later. If not otherwise available, data should be generated to indicate whether or not the test substance degrades or volatilizes. If the test substance is known or found to be volatile or labile to the extent that 25 percent or more loss occurs within one week, then test substance diets should be prepared (freshly or from frozen concentrate) at a frequency that will prevent more than 25 percent loss of test substance.

(B) The assay method used to determine actual concentrations should be reported according to paragraph (e)(1)(vi) of this section.

(iii) *Analysis of Basal Diet.* A nutrient analysis of the basal diet should be included with the test report. For commercially prepared basal diets, the list of ingredients supplied by the manufacturer is normally sufficient if it is detailed. The composition of any vitamin or other supplements should also be reported.

(d) *Test conditions*—(1) *Test species*—(i) *Selection.* (A) Bobwhite. *Colinus virginianus* (L.), is the test species. Test birds should be pen-reared. They may be reared in the laboratory or purchased from commercial breeders. Rearing stock and/or tests birds should be obtained only from sources that have met the requirements for "U.S. Pullorum-Typhoid Clean" classification under paragraph (f)(1) of this section. Birds should be obtained only from sources whose colonies have known breeding histories. If possible, a history of rearing practices for test birds should be obtained and made available upon request. This history should include lighting practices during rearing, disease record, drug and any other medication administered, and exact age. Test birds should be phenotypically indistinguishable (except for size) from wild stock. Conscientious breeders of such birds will periodically outbreed their flocks with genetically wild stock in order to maintain a genetic composition that approximates the heterogeneity of naturally occurring birds.

(B) All control and experimental birds used in a test should be from the same source and strain. If shipped, all birds should be examined following shipment for possible physical injury that may have occurred in transit. All birds should have a health observation period of at least 2 weeks prior to selection for treatment. Birds should be in apparent good health. Deformed, abnormal, sick, or injured birds should not be used. A population of birds should not be used if more than 3 percent of either sex die during the health observation period. Birds should not have been selected in any way for resistance to toxic substances. Birds should not have been used in a previous test, either in a control or treatment group. Offspring of birds used in a treatment group in a previous test should not be used, but offspring of birds used as a control in a previous test are acceptable.

(C) Tests birds should be approaching their first breeding season and should be at least 7 months old. All test birds should be the same age within 1 month. The age of test birds should be reported.

(D) Bobwhite should be acclimated to test facilities and untreated basal diet for at least 2 weeks. Acclimation may be in the actual pens used in the test or in identical pens. The acclimation period may coincide with the health observation period. Birds should be randomly assigned to treatment and control pens. However, when birds in a pen are incompatible, they may be rearranged within a control or treatment group at any time prior to initiating treatment.

(E) During holding, acclimation, and testing, birds should be shielded from excessive noise, activity, or other disturbance. Birds should be handled only as much as is necessary to conform to test procedures.

(ii) *Diet*—(A) *Adult birds.* (*1*) A standard commercial game bird breeder ration, or its nutritional equivalent, should be used for diet preparation. This ration or basal diet should be used for both control and treatment birds and should be constant throughout the duration of the study. Antibiotics or other medication should not be used in the diet or water of breeding birds. It may not be possible to obtain food that is completely free of pesticides, heavy metals, and other contaminants. However, diets should be analyzed periodically for these substances and should be selected to be as free from contaminants as possible. A nutrient analysis (quantitative list of ingredients) of the diet should be included with the test report.

(*2*) The test substance should be mixed into the diet in a manner that will ensure even distribution of the test substance throughout the diet. If possible, the test substance should be added to the diet without the use of a carrier or diluent. If a diluent is needed, the preferred diluent is distilled water; but water should not be used for test substances known to hydrolyze readily. When a test substance is not water soluble, it may be dissolved in a reagent grade evaporative diluent (e.g., acetone, methylene chloride) and then mixed with the test diet. The solvent should be completely evaporated prior to feeding. Other acceptable diluents may be used, if necessary, and include table grade corn oil, propylene glycol, and gum arabic (acacia). If a diluent is used, it should comprise no more than 2 percent by weight of the treated diet, and an equivalent amount of diluent should be added to control diets.

(*3*) Diets may be mixed by commercial or mechanical food mixers. Other means are acceptable as long as they result in even distribution of the test substance throughout the diet. Screening of the basal diet before mixing is suggested to remove large particles. For many tests substances, it is recommended that diets be mixed under a hood. Frequently, the test substance is added to an aliquot of the basal diet to form a premix concentrate. The premix concentrate should be stored so as to maintain the chemical concentration. For final preparation of test diets, the premix is mixed with additional basal diet to form the proper concentrations. The frequency with which final treated diets are prepared will depend upon the stability and other characteristics of the test substance. Unless otherwise specified in the test rule or determined by degradation or volatility studies, it is recommended that final diets be prepared weekly, either fresh or from a concentrate. For volatile or labile test substances, test diets should be mixed frequently enough so that the concentrations are not reduced from initial concentrations by more than 25 percent. Analysis of diets for test substance concentration is required as specified in paragraph (c)(6)(ii) of this section.

(*4*) Clean water should be available *ad libitum.* Water bottles or automatic watering devices are recommended. If water pans or bowls are used, water should be changed daily or more often.

(B) *Young birds.* Young birds produced during the test should be fed a commercial game bird starter ration, or its nutritional equivalent. No test substance should be added to the diets of young birds. No antibiotics or medication may be used in the diet. Bacitracin, or one of its forms, may be added to the drinking water of young birds, if necessary.

(2) *Facilities.* (i) Bobwhite should be housed in breeding pens or cages of adequate size conforming to good husbandry practices. Space requirements for bobwhite have not been well defined, but it is recommended that there be at least 5000 square centimeters (approximately 2.7 square feet) of floor space per bird. Documentation that reproductive

parameters and health of birds are not adversely affected should be provided for cages much smaller than this area. The preferred construction materials are stainless steel, galvanized sheeting, and wire mesh. For enclosed cages, floors and external walls may be wire mesh; ceilings and common walls should be solid sheeting. Wire mesh for floors should be fine enough so as to not interfere with normal movement of bobwhite. Open-topped pens may be constructed of the same materials for the side walls with open tops and wire mesh or concrete floors. Concrete floors should be covered with litter such as straw, wood shavings, or sawdust. Other construction materials, except wood, are acceptable if they can be kept clean. Wood may be used as vertical framing posts for the support of wire mesh or for horizontal framing along the top of the pen. Wood should not be used for floors or lower sides of pens unless it has been coated with a non-adsorbent material such as perfluorocarbon plastic (e.g., Teflon), or unless the wood is replaced between tests.

(ii) Pens should be disassembled (if feasible) and should be cleaned thoroughly between tests. Steam cleaning of enclosed cages is recommended. Enclosed cages may be brushed thoroughly, as an alternative method. For open-topped pens, the sides and vertical supports should be thoroughly brushed. Any used floor litter should be discarded. The floor composition will dictate methods used to clean the floor. If litter is used on the floor, it should be fresh and clean when birds are placed in the pen. The use of detergents or bleach is acceptable, but other chemical disinfectants (such as quaternary ammonium compounds) should not be used. When necessary to control disease vectors, hot or cold sterilization techniques are recommended, as long as such techniques will not leave chemical residues on the cages. For cold sterilization, ethylene oxide is recommended.

(iii) Pens should be kept indoors in order to better control lighting, temperature, humidity, and other factors. Outdoor pens may be used only during the normal breeding season. The photoperiod should be carefully controlled, preferably by automatic timers. A 15 to 30 minute transition period is desirable. The photoperiod regime is described under test procedures under paragraph (c)(4)(v) of this section. Lights should emit a spectrum simulating that of daylight. The use of shorter wave-length "cool-white" fluorescent lights that do not emit the daylight spectrum should be avoided. Illumination intensity should be about 6 foot-candles at the level of the birds.

(iv) Temperature and humidity should be controlled during the study. Recommended levels are 21 °C and 55 percent relative humidity. Temperature should be recorded at least weekly at the same time of day and should be reported. For tests conducted without temperature control, temperature minimums and maximums should be recorded daily. Continuous temperature monitoring is desirable. Temperature recordings should be made at a level of 2.5 to 4 cm above the floor of the cage. Recording of approximate humidity levels is also desirable. Good ventilation should be maintained. Suggested ventilation rates are 4 changes per hour in winter and 15 changes per hour in summer.

(v) If facilities are being used for the first time, it may be desirable to allow birds to breed in the facility prior to testing in order to ensure that controls will have acceptable productivity according to the requirements given in paragraph (c)(4)(xi) and (xii) of this section.

(e) *Reporting.* (1) The test report should include the following information:

(i) Name of test, sponsor, test laboratory and location, principal investigator(s), and actual dates of beginning and end of test.

(ii) Name of species tested (including scientific name), age of birds (in months) at the beginning of the test, source of birds, and body weights for adult birds throughout the test.

(iii) Description of housing conditions, including type, size, and material of pen, temperature, humidity, photoperiod and lighting intensity, and any changes during the test.

(iv) Detailed description of the basal diet, including source, composition, diluents (if used), and supplements (if used). A nutrient analysis of the basal diet should be included.

(v) Detailed description of the test substance including its chemical name(s), source, lot number, composition (identity of major ingredients and impurities), and known physical and chemical properties pertinent to the test (e.g., solubility, volatility, degradation rate, etc.).

(vi) The number of concentrations used, nominal and measured concentrations of test substance in each level, assay method used to determine actual concentrations, storage conditions and stability of treated diets, number of birds per pen and number of replicate pens per concentration and for controls.

(vii) Acclimation procedures and methods of assigning birds to test pens, including method of randomization, and any rearrangement due to incompatibility.

(viii) Frequency, duration, and methods of observation.

(ix) Description of any signs of intoxication, including time of onset, duration, severity (including death), and numbers affected, including accidental deaths or injuries.

(x) Food consumption per pen and any observations of repellancy or food palatability.

(xi) Method of marking all birds and eggs.

(xii) Details of autopsies.

(xiii) Egg and hatching data in summary and by pen per week in sufficient detail to allow an independent statistical analysis. Data should be presented for all of the parameters listed in paragraph (c)(6)(i) of this section. The number of eggs set should also be reported.

(xiv) Egg storage, incubation, and hatching temperatures, relative humidities, and turning frequencies.

(xv) Observations of health and weights of young at 14 days of age.

(xvi) Location of all raw data storage.

(xvii) Methods of statistical analysis and interpretation of results.

(xviii) Anything unusual about the test, any deviation from these procedures, and any other relevant information.

(2) In addition, the following information should be available upon request:

(i) A general description of the support facilities.

(ii) A description of the Quality Control/Quality Assurance program, including the Average Quality Level for the program element performing the test, procedures used, and documentations that these levels have been achieved.

(iii) The names, qualifications, and experience of personnel working in the program element performing the test, including the study director, principal investigator, quality assurance officer, as well as other personnel involved in the study.

(iv) Standard operating procedures for all phases of the test and equipment involved in the test.

(v) Sources of all supplies and equipment involved in the test.

(vi) Diagram of the test layout.

(vii) Originals or exact copies of all raw data generated in performing the test.

(viii) A detailed description, with references, of all statistical methods.

(f) *References.* For additional background information on this test guideline the following references should be consulted:

(1) U.S. Department of Agriculture. "National Poultry Improvement Plan," Report No. 2. *Directory of Participants Handling Waterfowl, Exhibition Poultry, and Game Birds.* U.S.D.A., Science and Education Administration, Beltsville, MD 20705 (1979).

(2) [Reserved]

§ 797.2150 Mallard Reproduction Test.

(a) *Purpose.* This guideline is designed to develop data on the reproductive effects on the mallard of chemical substances and mixtures subject to chronic environmental effects test regulations under the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003 15 U.S.C. 2601 *et seq.*). The Agency will use these and other data to assess the reproductive effects on birds that these chemicals may present in the environment.

(b) *Definitions.* (1) The definitions in section 3 of the Toxic Substances Control Act (TSCA) and Part 792—Good Laboratory Practice Standards of this chapter apply to this test guideline. In addition, the following definitions apply generally to this guideline:

(i) "Acclimation" Physiological and behavioral adaptation to environmental conditions (e.g., housing and diet) associated with the test procedure.

(ii) "Test substance" The specific form of a chemical or mixture of chemicals that is used to develop the data.

(iii) "Photoperiod" The light and dark periods in a 24 hour day. This is usually expressed in a form such as 17 hours light/7 hours dark or 17L/7D.

(iv) "Basal diet" The untreated form of the diet, such as the diet obtained from a commercial source.

(2) The definitions in this section refer specifically to the production and quality of eggs and the subsequent development of these eggs up to the point where young are 14 days old.

(i) "Eggs laid" this term refers to the total egg production during the test, which normally includes 10 weeks of laying. Values are expressed as numbers of eggs per pen per season (or test).

(ii) "Eggs cracked" Eggs determined to have cracked shells when inspected with a candling lamp. Fine cracks cannot be detected without using a candling lamp and if undetected will bias data by adversely affecting embryo development. Values are expressed as a percentage of eggs laid by all hens during the test.

(iii) "Eggs set" All eggs placed under incubation, i.e., total eggs minus cracked eggs and those selected for analysis of eggshell thickness. The number of eggs set, itself, is an artificial number, but it is essential for the statistical analysis of other development parameters.

(iv) "Viable embryos (fertility)" Eggs in which fertilization has occurred and embryonic development has begun. This is determined by candling the eggs 14 days after incubation has begun. It is difficult to distinguish between the absence of fertilization and early embryonic death. The distinction can be made by breaking out eggs that appear infertile and examining further. This distinction is especially important when a test compound induces early embryo mortality. Values are expressed as a percentage of eggs set.

(v) "Live 21-day embryos" Embryos that are developing normally after 21 days of incubation. This is determined by candling the eggs. Values are expressed as a percentage of viable embryos (fertile eggs).

(vi) "Hatchability" Embryos that mature, pip the shell, and liberate themselves from their eggs on day 25, 26, or 27 of incubation. Values are expressed as a percentage of viable embryos (fertile eggs).

(vii) "14-day old survivors" Birds that survive for 2 weeks following hatch. Values are expressed both as a percentage of hatched eggs and as the number per pen per season (test).

(viii) "Eggshell thickness" The thickness of the shell and the membrane of the egg at several points around the girth after the egg has been opened, washed out, and the shell and membrane dried for at least 48 hours at room temperature. Values are expressed as the average thickness of the several measured points in millimeters.

(c) *Test Procedures*—(1) *Summary of test.* (i) After birds have been obtained they should be observed for health and acclimated for at least 2 weeks.

(ii) Test birds should be randomly assigned to control and various treatment groups.

(iii) The test substance should be thoroughly and evenly mixed into the diet at concentrations specified in the test rule. All treatment levels should be analyzed for test substance concentrations at the beginning and midway through the test.

(iv) Birds should be weighed at the beginning of the test, at 14-day intervals until the onset of laying, and at termination of the test.

(v) Photoperiod should be carefully controlled on a shortday basis during the initial exposure phase, then increased to 16 to 17 hours to induce egg laying.

(vi) Birds should be observed regularly for abnormal behavior or mortality throughout the test.

(vii) Eggs should be removed daily and stored until there is a sufficient quantity for incubation. All eggs should be candled for cracks and cracked eggs removed. Once every 2 weeks, all eggs produced that day should be analyzed for eggshell thickness. Incubated eggs should be candled on day 14 and day 21. Hatching should be completed by day 27.

(viii) Hatchlings should be maintained in pens until they are 14 days old. Abnormal behavior or death should be reported. Ducklings should be weighed on day 14.

(ix) A statistical analysis should be performed, preferably by analysis of variance or regression analysis.

(x) The report should include all conditions, procedures, and results. Data should be sufficiently detailed for an independent statistical analysis.

(xi) All treated birds should be sacrificed and disposed of properly. Control birds may be kept as breeding stock, but should not be used in any other tests. Control offspring may be reared and used in another test as adults.

(2) [Reserved]

(3) [Reserved]

(4) *Definitive test*—(i) *Test substance.* (A) The concentrations of test substance in the diet will be specified in the test rule. Generally, three treatment groups and a control group will be used. The higher two treatment levels will be multiples (often 5×, 10×, or 20×) of the lowest treatment level. The highest treatment levels usually will be below lethal levels, unless predicted exposure levels are high enough to approximate lethal levels.

(B) The material to be tested should be analytically pure and the degree of purity should be reported along with the percentage of each impurity at levels specified in the test rule. If specifically required by a test rule for a particular substance or mixture, the technical grade should be tested. The test rule will specify the degree of purity or a range of compositions of the technical grade material.

(ii) *Controls.* A concurrent control is required during every test. The control birds should be from the same hatch as the test groups. Control and test birds should be kept under the same experimental conditions. The test procedures should be the same for control and treated birds, except that no test substance should be added to the

diets of control birds. If a carrier is used in preparation of the test diets, the same carrier should be added to the diets of control birds in the highest concentration used for test diets. The use of shared controls is acceptable for concurrent tests as long as the same carrier is used for all the tests.

(iii) *Test groups and numbers of birds.* (A) Either one of two designs may be used for numbers of animals and pens. For one design, each of the three treatment groups and the control group should consist of a minimum of 8 replicate pens, with each pen containing one male and three females. For the alternative design, each group should consist of 12 replicate pens containing one male and one female per pen; the use of 20 replicate pens in the control group may yield a test with greater statistical power. Either design is acceptable as long as productivity reaches the definitive values given in paragraph (c)(4)(xii) of this section. Testing facilities using an experimental design with which they are not familiar are advised to experiment first without test substances in order to determine the feasibility of obtaining acceptable productivity levels.

(B) All control and treatment birds should be randomly distributed to pens from the same population.

(iv) *Duration of test.* (A) The test consists of three phases following acclimation to test facilities. the initial phase begins with exposure of treatment groups to diet containing the test substance and is typically 6 to 8 weeks long. After the initial phase, the photoperiod is manipulated according to paragraph (c)(4)(v) of this section to bring the hens into laying condition. This second phase ends with the onset of egglaying and is typically 2 to 4 weeks long. The final phase begins with the onset of laying and lasts for at least 8 weeks, preferably 10 weeks. A withdrawal study period may be added to the test phase if reduced reproduction is observed. The withdrawal period, if used, need not exceed 3 weeks.

(B) Exposure of adult birds to the test substance should be continuous throughout the test. Unless otherwise specified in the test rule, test birds should be exposed to the test substance for at least 10 weeks prior to the onset of egg laying.

(v) *Preparation for reproduction (photoperiod).* (A) Lighting regimes (photoperiod) are critical to successful reproduction. Various photoperiod regimes have been demonstrated to give acceptable results. Any photoperiod regime that results in productivity that meets the definitive values given in paragraph (c)(4)(xii) of this section is acceptable as long as birds are exposed to treated diets a minimum of 10 weeks prior to the onset of laying. Regardless of the method selected, lighting should be controlled carefully. It is important during the initial phase to not interrupt the dark period unless absolutely necessary.

(B) A suggested photoperiod regime would consist of maintaining birds under a photoperiod of 7 or 8 hours of light during the initial phase. At the end of the initial phase, the photoperiod may be increased to 16–17 hours of light per day. The photoperiod may be maintained at this level for the remainder of the study, although an increase each week of 15 minutes per day is acceptable.

(vi) *Observations of record on adult birds.* (A) Body weights should be recorded for each adult bird at the beginning of the treatment period, at 14-day intervals until the onset of egg laying, and at termination of treatment. Birds may be weighed during egg production phase of the study only if they are not unduly stressed by the procedure. Food consumption should be measured and recorded by pen at least as often as body weights are measured prior to the onset of laying and at least bi-weekly throughout the rest of the study.

(B) Observations on adult birds should be made at least once a day. Any mortality or other signs of toxicity should be described and recorded by date or day of test. Gross pathological examinations should be conducted on all birds that die during the test period, and for all survivors at the end of the test. Analysis for test substance residues of two or more tissues (e.g., muscle, fat) is encouraged, but not required unless specified in the individual Test Rule under Part 799 of this chapter.

(vii) *Egg collection, storage, and incubation.* All eggs should be collected daily, marked according to the pen from which collected, and should be stored at 16 °C and 55 to 80 percent relative humidity. Storage in plastic bags may improve uniformity of hatching. Stored eggs should be turned daily. At weekly or biweekly intervals, eggs should be removed from storage and be candled to detect eggshell cracks. Except for eggs with cracked shells and those eggs removed for eggshell thickness measurements all eggs should be set after candling for incubation in a commercial incubator. If incubators are not equipped to automatically turn eggs, they should be turned daily by hand. During the incubation period, eggs should be maintained at 37.5 °C and approximately 70 percent relative humidity. Eggs should be candled again on day 14 of incubation to determine fertility and early death of embryo. A final candling should be done on day 21 to measure embryo survival. On day 23, eggs should be removed to a separate incubator or hatcher. Hatching will normally be complete by the end of day 27.

(viii) *Duckling maintenance.* By day 27 of incubation, the hatched mallard ducklings should be removed from the hatcher or incubator. Ducklings should be either housed according to the appropriate parental pen group or individually marked (such as by leg bands) as to parental group and housed together. Ducklings should be maintained in commercial brooder pens or pens of similar construction. Pens should be constructed of galvanized metal or stainless steel. Temperature in the pens should be controlled, preferably by a thermostatic control device. A temperature gradient in the pen from approximately 35 °C to approximately 22 °C will allow young birds to seek a proper temperature. Temperature requirements for young birds typically decline over this range from birth through the first several weeks of life. Ducklings should be provided a standard commercial duck starter ration, or its nutritional equivalent. No test substance may be added to the diets of ducklings. Ducklings should be maintained until they are 14 days old.

(ix) *Observation of record on ducklings.* The hatchability, percentage of normal hatchlings, percentage of 14-day old survivors, and number of 14-day old survivors per hen should be recorded and reported. Ducklings should be observed daily from hatching until they are 14 days old. Mortality, signs of toxicity, and other clinical abnormalities should be recorded at least cumulatively through day 5 and recorded by age from days 5 through 14. Average body weights should be recorded for ducklings at day 14.

(x) *Eggshell thickness.* Once every two weeks all eggs newly laid that day should be removed and measured for eggshell thickness. Eggs should be opened at the girth (the widest portion), the contents washed out (or used or saved for egg residue analysis), and the shells air dried for at least 48 hours. The thickness of the shell plus the dried membrane should be measured at a minimum of 3 points around the girth using a micrometer calibrated at least to 0.01 mm units.

(xi) *Typical observed values.* The values reported here represent those observed from a few testing facilities

under their conditions. These values are not necessarily representative of those from all facilities, however, if a reproduction test does not meet or at least approach these values for control birds, then there is likely to be a problem with test procedures or conditions that should be investigated and corrected. Typical values include:

(A) *Eggs laid.* Normal values for mallards—28 to 38 eggs per hen per season.

(B) *Eggs cracked.* Normal values for mallards—0.6 to 6 percent of eggs laid.

(C) *Viable embryos (fertility).* Normal fertility values for mallards—85 to 98 percent of eggs set.

(D) *Live 21-day embryos.* Normal values for mallards—97 to 99 percent of viable embryos.

(E) *Hatchability.* Normal values for mallards—50 to 90 percent of viable embryos (fertile eggs).

(F) *14-day-old survivors.* Normal values for mallards—94 to 99 percent of eggs hatched.

(G) *Eggshell thickness.* Normal average values for mallards—0.34 to 0.39 mm.

(xii) *Definitive test criteria.* (A) A test is unacceptable if mallard duckling productivity in control groups does not average fourteen 14-day old survivors per hen over a 10 week period.

(B) A test is unacceptable if the average eggshell thickness in control groups is less than 0.34 mm.

(C) A test is unacceptable if more than 10 percent of the adult control birds die during the test.

(5) [Reserved]

(6) *Analytical measurements*—(i) *Statistical analysis.* (A) Experimental groups should be individually compared to the control group by analysis of variance. Other accepted statistical methods may be used as long as they are documented and described. In particular, regression analysis is highly desirable if the data and number of dose levels allow the use of this technique. Sample units are the individual pens within each treatment level or control. Analysis should include:

(*1*) Body weights of adults.

(*2*) Food consumption of adults.

(*3*) Percentage of hens laying eggs. This should always be determined when pens contain a single pair; if feasible, it should be determined when pens contain groups.

(*4*) Number of eggs laid per pen.

(*5*) Percentage of cracked eggs.

(*6*) Percent viable embryos of eggs set.

(*7*) Percent live 21-day embryos of viable embryos.

(*8*) Percent hatching of viable-embryos.

(*9*) Percentage of hatchlings that are normal.

(*10*) Percent 14-day-old survivors of normal hatchlings.

(*11*) Number of 14-day-old survivors per hen.

(*12*) Body weights of 14-day-old survivors.

(*13*) Eggshell thickness.

(ii) *Analysis for test substance concentrations.* (A) Samples of treated diets should be analyzed to confirm proper dietary concentrations of the test substance. If samples cannot be analyzed immediately, they should be stored appropriately (e.g., frozen at a temperature of −15 °C or lower) until analysis can be performed. Analyses should be conducted on all test substance concentrations at the beginning of the test period and again 10 to 12 weeks later. If not otherwise available, data should be generated to indicate whether or not the test substance degrades or volatilizes. If the test substance is known or found to be volatile or labile to the extent that 25 percent or more loss occurs within one week, then test substance diets should be prepared (freshly or from frozen concentrate) at a frequency that will prevent more than 25 percent loss of test substance.

(B) The assay method used to determine actual concentrations should be reported according to paragraph (e)(1)(vi) of this section.

(C) Analysis of basal diet. A nutrient analysis of the basal diet should be included in the test report. For commercially prepared basal diets, the list of ingredients supplied by the manufacturer is normally sufficient, if it is detailed. The composition of any vitamin or other supplements should also be reported.

(d) *Test conditions*—(1) *Test species*—(i) *Selection.* (A) The mallard, *Anas platyrhynchos* L., is the test species. Test birds should be pen-reared. They may be reared in the laboratory or purchased from commercial breeders. Rearing stock and/or test birds should be obtained only from sources that have met the requirements for "U.S. Pullorum-Typhoid Clean" classification under paragraph (f)(1) of this section. Birds should be obtained only from sources whose colonies have known breeding histories. If possible, a history of rearing practices for test birds should be obtained and made available upon request. This history should include lighting practices during rearing, disease record, drug and any other medication administered, and exact age. Test birds should be phenotypically indistinguishable (except for size) from wild stock. Conscientious breeders of such birds will periodically outbreed their flocks with genetically wild stock in order to maintain a genetic composition that approximates the heterogeneity of naturally occurring birds.

(B) All control and experimental birds used in a test should be from the same source and strain. If shipped, all birds should be examined following shipment for possible physical injury that may have occurred in transit. All birds should have a health observation period of at least 2 weeks prior to selection for treatment. Birds should be in apparent good health. Deformed, abnormal, sick, or injured birds should not be used. A population of birds should not be used if more than 3 percent of either sex die during the health observation period. Birds should not have been selected in any way for resistance to toxic substances. Birds should not have been used in a previous test, either in a control or treatment group. Offspring of birds used in a treatment group in a previous test should not be used, but offspring of birds used as a control in a previous test are acceptable.

(C) Test birds should be approaching their first breeding season and should be at least 7 months old. All test birds should be the same age within 1 month. The age of test birds should be reported.

(D) Mallards should be acclimated to test facilities and untreated basal diet for at least 2 weeks. Acclimation may be in the actual pens used in the test or in identical pens. The acclimation period may coincide with the health observation period. Birds should be randomly assigned to treatment and control pens. However, when birds in a pen are incompatible, they may be rearranged within a control or treatment group at any time prior to initiating treatment.

(E) During holding, acclimation, and testing, birds should be shielded from excessive noise, activity, or other disturbance. Birds should be handled only as much as is necessary to conform to test procedures.

(ii) *Diet*—(A) *Adult birds.* (*1*) A standard commercial duck breeder ration, or its nutritional equivalent, should be used for diet preparation. This ration or basal diet should be used for both control and treatment birds and should be constant throughout the duration of the study. Antibiotics or other medication should not be used in the diet or water of breeding birds. It may not be possible to obtain food that is completely free of pesticides, heavy metals, and other contaminants. However, diets should be analyzed

periodically for these substances and should be selected to be as free from contaminants as possible. A nutrient analysis (quantitative list of ingredients) of the diet should be included with the test report.

(*2*) The test substance should be mixed into the diet in a manner that will ensure even distribution of the test substance throughout the diet. If possible, the test substance should be added to the diet without the use of a carrier or diluent. If a diluent is needed, the preferred diluent is distilled water; but water should not be used for test substances known to hydrolyze readily. When a test substance is not water soluble, it may be dissolved in a reagent grade evaporative diluent (e.g., acetone, methylene chloride) and then mixed with the test diet. The solvent should be completely evaporated prior to feeding. Other acceptable diluents may be used, if necessary, and include table grade corn oil, propylene glycol, and gum arabic (acacia). If a diluent is used, it should comprise no more than 2 percent by weight of the treated diet, and an equivalent amount of diluent should be added to control diets.

(*3*) Diets may be mixed by commercial or mechanical food mixers. Other means are acceptable as long as they result in even distribution of the test substance throughout the diet. Screening of the basal diet before mixing is suggested to remove large particles. For many test substances, it is recommended that diets be mixed under a hood. Frequently, the test substance is added to an aliquot of the basal diet to form a premix concentrate. The premix concentrate should be stored so as to maintain the chemical concentration. For final preparation of test diets, the premix is mixed with additional basal diet to form the proper concentrations. The frequency with which final treated diets are prepared will depend upon the stability and other characteristics of the test substance. Unless otherwise specified in the test rule or determined by degradation or volatility studies, it is recommended that final diets be prepared weekly, either fresh or from a concentrate. For volatile or labile test substances, test diets should be mixed frequently enough so that the concentrations are not reduced from initial concentrations by more than 25 percent. Analysis of diets for test substance concentrations is required as specified in paragraph (c)(6)(ii) of this section.

(*4*) Clean water should be available *ad libitum*. Water bottles or automatic watering devices are recommended. If water pans or bowls are used, water should be changed daily or more often.

(B) *Young birds.* Young birds produced during the test should be fed a commercial duck starter ration, or its nutritional equivalent. No test substance should be added to the diets of young birds. No antibiotics or medication should be used in the diet.

(*2*) *Facilities.* (i) Mallards should be housed in breeding pens or cages of adequate size conforming to good husbandry practices. Space requirements for mallards have not been well defined, but it is recommended that there be at least 10,000 square centimeters (approximately 5.4 square feet) of floor space per bird. Documentation that reproductive parameters and health of birds are not adversely affected should be provided for cages much smaller than this area. The preferred construction materials are stainless steel, galvanized sheeting, and wire mesh. For enclosed cages, floors and external walls may be wire mesh; ceilings and common walls should be solid sheeting. Open-topped pens may be constructed of the same materials for the side walls with open tops and wire mesh or concrete floors. Concrete floors should be covered with litter such as straw, wood shavings, or sawdust. Other construction materials, except wood, are acceptable if they can be kept clean. Wood may be used as vertical framing posts for the support of wire mesh or for horizontal framing along the top of the pen. Wood should not be used for floors or lower sides of pens unless it has been coated with a non-adsorbent material such as perfluorocarbon plastic (e.g., Teflon) or unless the wood is replaced between tests.

(ii) Pens should be disassembled (if feasible) and should be cleaned thoroughly between tests. Steam cleaning of enclosed cages is recommended. Enclosed cages may be brushed thoroughly, as an alternative method. For open-topped pens, the sides and vertical supports should be thoroughly brushed. Any used floor litter should be discarded. The floor composition will dictate methods used to clean the floor. If litter is used on the floor, it should be fresh and clean when birds are placed in the pen. The use of detergents or bleach is acceptable, but other chemical disinfectants (such as quaternary ammonium compounds) should not be used. When necessary to control disease vectors, hot or cold sterilization techniques are recommended, as long as such techniques will not leave chemical residues on the cages. For cold sterilization, ethylene oxide is recommended.

(iii) Pens should be kept indoors in order to better control lighting, temperature, humidity, and other factors. Outdoor pens may be used only during the normal breeding season. The photoperiod should be carefully controlled, preferably by automatic timers. A 15 to 30 minute transition period is desirable. The photoperiod regime is described under paragraph (c)(4)(v) of this section. Lights should emit a spectrum simulating that of daylight. The use of shorter wave-length "cool-white" fluorescent lights that do not emit the daylight spectrum should be avoided. Illumination intensity should be about 6 foot-candles at the level of the birds.

(iv) Temperature and humidity should be controlled during the study. Recommended levels are 21 °C and 55 percent relative humidity. Temperature for indoor tests should be recorded at least weekly at the same time of day and should be reported. For tests conducted without temperature control, temperature minimums and maximums should be recorded daily. Continuous temperature monitoring is desirable. Temperature recording should be made at levels of 2.5 to 4 cm above the floor of the cage. Recording of approximate humidity levels is also desirable. Good ventilation should be maintained. Suggested ventilation rates are 4 changes per hour in winter and 15 changes per hour in the summer.

(v) If facilities are being used for the first time, it may be desirable to allow birds to breed in the facility prior to testing in order to ensure that controls will have acceptable productivity according to the requirements given in paragraph (c)(4) (xi) and (xii) of this section.

(e) *Reporting.* (1) The test report should include the following information:

(i) Name of test, sponsor, test laboratory and location, principal investigator(s), and actual dates of beginning and end of test.

(ii) Name of species tested (including scientific name), age of birds (in months) at the beginning of the test, source of birds, and body weights for adult birds throughout the test.

(iii) Description of housing conditions, including type, size, and material of pen, temperature, humidity, photoperiod and lighting intensity, and any changes during the test.

(iv) Detailed description of the basal diet, including source, composition, diluents (if used), and supplements (if

used). A nutrient analysis of the basal diet should be included.

(v) Detailed description of the test substance including its chemical name(s), source, lot number, composition (identity of major ingredients and impurities), and known physical and chemical properties pertinent to the test (e.g., solubility, volatility, degradation rate, etc.).

(vi) The number of concentrations used, nominal and measured concentrations of test substance in each level, assay method used to determine actual concentrations, storage conditions and stability of treated diets, number of birds per pen and number of replicate pens per concentration and for controls.

(vii) Acclimation procedures and methods of assigning birds to test pens, including method of randomization, and any rearrangements due to incompatibility.

(viii) Frequency, duration, and methods of observation.

(ix) Description of any signs of intoxication, including time of onset, duration, severity (including death), and numbers affected, including accidental deaths or injuries.

(x) Food consumption per pen and any observations of repellency or food palatability.

(xi) Method of marking all birds and eggs.

(xii) Details of autopsies.

(xiii) Egg and hatching data in summary and by pen per week in sufficient detail to allow an independent statistical analysis. Data should be presented for all of the parameters listed in paragraph (c)(6)(i) of this section. The number of eggs set also should be reported.

(xiv) Egg storage, incubation, and hatching temperatures, relative humidities, and turning frequencies.

(xv) Observations of health and weights of young at 14 days of age.

(xvi) Location of all raw data storage.

(xvii) Methods of statistical analysis and interpretation of results.

(xviii) Anything unusual about the test, any deviation from these procedures, and any other relevant information.

(2) In addition, the following information should be available upon request:

(i) A general description of the support facilities.

(ii) A description of the Quality Control/Quality Assurance program, including the Average Quality Level for the program element performing the test, procedures used, and documentations that these levels have been achieved.

(iii) The names, qualifications, and experience of personnel working in the program element performing the test, including the study director, principal investigator, quality assurance officer, as well as other personnel involved in the study.

(iv) Standard operating procedures for all phases of the test and equipment involved in the test.

(v) Sources of all supplies and equipment involved in the test.

(vi) Diagram of the test layout.

(vii) Originals or exact copies of all raw data generated in performing the test.

(viii) A detailed description, with references, of all statistical methods.

(f) *References.* For additional background information on this test guideline the following references should be consulted:

(1) U.S. Department of Agriculture. "National Poultry Improvement Plan," Report No. 2. *Directory of Participants Handling Waterfowl, Exhibition Poultry, and Game Birds.* U.S.D.A., Science and Education Administration, Beltsville, MD 20705 (1979).

(2) [Reserved]

§ 797.2175 Avian Acute Oral Toxicity Test.

(a) *Purpose.* The guideline in this section is designed to develop data on the acute oral toxicity to Northern bobwhite and Mallard for chemical substances and mixtures subject to acute environmental effects test regulations under the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003 15 U.S.C. 2601 *et seq.*). The Agency will use these and other data to assess the acute hazard to birds.

(b) *Definitions.* The definitions in section 3 of the Toxic Substances Control Act (TSCA) and Part 792—Good Laboratory Practice Standards of this chapter apply to this test guideline. In addition, the following definitions apply to this guideline:

(1) "Acclimation" Physiological or behavioral adaptation of test animals to environmental conditions and basal diet associated with the test procedure.

(2) "LD_{50}" The empirically derived dose of the test substance that is expected to result in mortality of 50 percent of a population of birds which is treated with a single oral dose under the conditions of the test.

(3) "Test substance" The specific form of a chemical or mixture of chemicals that is used to develop the data.

(4) "Observation period" The portion of the test that begins after the test birds have been dosed and extends at least 14 days.

(5) "Hatch" Eggs or birds that are the same age and that are derived from the same adult breeding population, where the adults are of the same strain and stock.

(c) *Test procedures*—(1) *Summary of test.* (i) After birds have been obtained, they are acclimated for at least 14 days. The dosage levels for the definitive test are established, possibly requiring a range-finding test to be conducted first. Test birds are randomly assigned to the various dosage levels and controls. Birds are weighed and the test substance is administered as a single oral dose either by gavage or capsule. Birds are closely monitored for 60 to 120 minutes after doses are given and then observed regularly for mortality or other signs of intoxication throughout the observation period. Birds are weighed and feed consumption is estimated at least weekly. The mortality pattern is examined and subjected to the appropriate statistical analysis to derive the LD_{50}, confidence limits, and slope of the dose-response line. The complete mortality pattern, along with signs of intoxication and necropsy data, should be reported.

(ii) A test is unacceptable if more than 10 percent of the control birds die during the test.

(2) [Reserved]

(3) *Range-finding test.* Unless the approximate toxicity of the test substance is known already, a range-finding test should be conducted to determine the dosage levels of the test substance to be used in the definitive test. Refer to paragraph (c)(4)(iv) of this section for details on dosage levels for definitive tests. Procedures for range-finding tests may vary, but generally, groups of a few birds are administered three to five widely-spaced doses. A series of 2, 20, 200, and 2,000 mg/kg-body weight is suggested. If a test substance is expected to be of low toxicity, it may be of advantage to conduct a limit test at 2000 mg/kg first under paragraph (c)(4)(iv)(B) of this section. If mortality occurs at this level, then further range-finding at lower levels is suggested. The results of the range-finding test then may be used to establish the definitive test dosage levels.

(4) *Definitive test*—(i) *Administration of test substance.* (A) After acclimation under paragraph (d)(1)(i)(D) of this section, feed should be withheld from all test groups for a minimum of 15 hours prior to administration of the test substance. Dosing by gavage is preferred; where gavage is not feasible doses may be administered by gelatin capsule. Doses are to be based on the individual body weight of each bird; weights are typically determined at the

time of dosing, but may be taken, especially for capsules, within 24 hours prior to dosing. Dosing should be done in the early morning hours.

(B) If a carrier is used to administer the test substance, the preferred carrier is distilled or deionized water unless the test substance is known to hydrolyze readily. Other acceptable carriers include corn oil, propylene glycol, and gum acacia. Materials with known toxic or emetic properties should not be used. The dosing volume of test substance plus carrier in a test should be constant for all birds with respect to individual body weights and should not exceed 5 ml/kg-body weight. For those unusual test substances that might require a larger dosing volume (e.g., liquids with low purity), a dosing volume up to 8 ml/kg may be used; however, the test species should be bobwhite or else steps should be taken to ensure that mallards do not regurgitate the dose.

(ii) *Controls.* (A) A concurrent control is required during every test. Control birds should be from the same hatch as the test groups. Control and test birds should be kept under the same experimental conditions. The test procedures should be the same for control and treated birds, except that no test substance should be administered to the control birds. Control birds should receive a sham dose consisting of the same carrier or capsule as received by the test birds. The use of shared controls is acceptable for concurrent tests as long as the same carrier or capsule is used for all the tests.

(B) A test is not acceptable if more than 10 percent of the control birds die during the test period.

(C) A concurrent positive control with a substance of known toxicity is not required. However, a quarterly or semi-annual test with a laboratory standard (reference toxicant) is recommended as a means of detecting possible interlaboratory or temporal variation. A laboratory standard is also recommended when there is any significant change in food, housing, or source of birds.

(iii) *Number and sex of animals tested.* (A) In the definitive test, a minimum of ten birds should be used for each dosage level of the test substance and for the control. Birds may be of either sex or both sexes in any ratio. A 1:1 ratio is commonly used.

(B) Birds at a dosage level may be divided into two pens of five birds each. If this is done, dividing the groups by sex is encouraged.

(iv) *Concentrations and dosage-mortality data.* (A) A minimum of five dosage levels of the test substance should be used in the definitive test. These levels should be spaced geometrically. The recommended spacing is for each dosage level to be at least 60 percent of the next higher level (less than 1.67 times the next lower level). Ideally, dosage levels should be spaced so that at least three levels should result in mortality between, but not including, 0 percent and 100 percent and at least one level should kill more than 50 percent and at least one level should kill less than 50 percent of the birds in a group. For some test substances, it may be necessary to use more than five dosage levels to achieve these results.

(B) For test substances expected to have relatively low toxicity, a limit test may be conducted at 2000 mg/kg. The LD_{50} may be reported as greater than 2000 mg/kg if 10 birds are dosed at 2000 mg/kg, if no mortality occurs, and if test procedures, number of controls, and duration are the same, except for the number of dosage levels, as in the definitive test. Signs of intoxication, if any, should be reported. No further testing is required at lower dosage levels.

(v) *Duration of test.* The definitive test consists of the administration of the test substance followed by an observation period of at least 14 days. If mortality occurs during the last 3 days of the 14-day period, or if signs of intoxication are not clearly in remission, or if the test substance is expected to have delayed effects, then the observation period should be extended to at least 21 days or until mortality or signs of intoxication are not observed for 72 hours.

(vi) *Observations.* (A) Birds should be monitored closely for the first 60 to 120 minutes after dosing. Any regurgitation should be noted and reported. Additional observations of test birds should be made, at a minimum, 3 times on the day of dosing and at least daily throughout the remainder of the test period. Where feasible, twice daily observations are recommended.

(B) Throughout the test period, all signs of intoxication, other abnormal behavior, and mortality should be recorded and reported by dosage level and by day. Signs of intoxication are those behaviors apparently due to the test chemical and may include a wide array of behaviors, such as labored respiration, leg weakness, hemorrhage, convulsions, ruffled feathers, etc. All signs of intoxication and any other abnormal behavior, such as excessive aggression, toe-picking, etc. that may or may not be attributed to the test substance should be reported. Among survivors, remission of signs of intoxication and cessation of abnormal behavior should be recorded by dosage level and by day. An estimate of the number of birds exhibiting such signs should be recorded for each dosage level.

(C) Individual body weights of birds should be recorded and reported for control and treated birds at the time of calculating the dosage to be administered and weekly thereafter until the test is concluded. An extra weighing the third day after dosing may provide useful information, especially on anorexia. Body weights of birds a week prior to dosing are not required, but would provide valuable base-line data. Feed consumption should be recorded at least weekly throughout the test; valuable additional information can be obtained by monitoring food consumption daily, especially for the first few days following dosing.

(D) Gross pathology examinations should be conducted on at least two or three birds dying at each dosage level and on all control birds that die. Gross pathological examinations of survivors are optional, but may provide valuable information, especialy for lesions associated with sublethal effects.

(5) [Reserved]

(6) *Analytical measurements*—(i) *Statistical analysis.* (A) The data should be analyzed, preferably by graphical or computational methods of probit analysis. The LD_{50} value, 95 percent confidence limits, and slope of the transformed dose-response curve should be determined for mortality at the end of test. A test for heterogeneity of the data (e.g., chi square test) should be conducted. Other standard statistical methods are acceptable if they provide the slope of the dose-response line as well as the LD_{50} value.

(B) All methods used for statistical analysis should be described completely.

(ii) *Analysis of basal diet.* (A) A proximate analysis of the basal diet should be included in the test report. The analysis should include percentages by weight of protein, fat, fiber, ash, calcium, and phosphorus. In addition to these analyzed components, a list of expected amounts of vitamins, minerals, or other supplements also should be reported. Most commercial feed companies provide both the analysis and the list of supplements on the label.

(B) A contaminants analysis of the feed should be conducted periodically for heavy metals (e.g., arsenic, cadmium, lead, mercury, and selenium) and persistent pesticides, especially chlorinated insecticides. A broader pesticide screen to include, for example, diazinon, methyl parathion, and malathion may be useful.

(d) *Test conditions*—(1) *Test species*—(i) *Selection.* (A) Northern bobwhite, *Colinus virginianus* (L.), and mallard, *Anas platyrhynchos* L., are the test species. Birds may be reared in the laboratory or purchased from a breeder. All control and treatment birds used in a test should be from the same source and breeding population. Birds should be obtained only from sources whose colonies have known breeding histories. Birds should be phenotypically indistinguishable (except for size) from wild stock. It is recommended that birds be obtained from flocks that have been outbred periodically in order to maintain a genetic composition that approximates the natural heterogeneity of the species.

(B) Birds used in the test should be in apparent good health. Deformed, abnormal, sick, or injured birds should not be used. Birds should not be used for a test if more than 5 percent of the total test population die during the 14-day acclimation period. Birds purchased from a breeder should be certified as disease-free or as bred from disease-free stocks. Birds should not have been selected in any way for genetic resistance to toxic substances. Birds should not have been used in a previous test, either in a treatment or control group.

(C) Test birds should be young adults, not yet mated, at least 16 weeks old at the time of dosing. A less preferred alternative is for the use of first year birds that may have been mated, as long as the birds are brought completely out of production through reduced light cycles. All birds used in a test should be the same age ±1 week. It is recommended that weights be at least 180g for bobwhite and 900g for mallard. More consistent responses may be attainable if the range of body weights is no greater ± 10 percent of the mean body weight for the test population. The age should be recorded and reported.

(D) Test birds should be acclimated to test facilities and basal diet for a minimum of 14 days. Acclimation to test pens should be in the actual pens used in the test. Birds used in the test should be assigned randomly to treatment and control pens, except that assignment may be made to result in only one sex per pen if replicate pens are used for each dosage level, under paragraph (c)(4)(iii) of this section. Randomization should be done at the initiation of the acclimation period.

(E) During holding, acclimation, and testing, birds should be shielded from excessive noise, activity, or other disturbance. Birds should be handled only as much as is necessary to conform to test procedures.

(ii) *Diet.* (A) A standard commercial game bird (for bobwhite) or duck (for mallard) feed or the nutritional equivalent, should be used as the diet. Feed should not be used past its normal shelf life. Antibiotics or other medication should not be used in the diet during the acclimation period or the test. It may not be possible to obtain feed that is completely free of pesticides, heavy metals, and other contaminants; however, diets should be analyzed periodically, under paragraph (c)(6)(ii)(B) of this section, and selected to be as free from contaminants as possible. Extra precautions should be taken when fish meal or oil is a major ingredient, since fish are often contaminated with high levels of chlorinated hydrocarbons.

(B) Clean water should be available *ad libitum.* Only clean, unmedicated water should be offered during the acclimation and testing periods. Water bottles or automatic watering devices are recommended. If water pans or bowls are used, water should be changed at least once a day.

(2) *Facilities.* (i) Tests should be conducted indoors with birds being maintained in commercial breeder or holding pens or pens of similar construction. Pens should be constructed of galvanized metal, stainless steel, or perfluorocarbon plastics. Materials that are toxic, likely to influence toxicity, or sorb test substances should not be used. Wire mesh should be used for floors and external walls; solid sheeting should be used for common walls and ceilings. Wire mesh for floors should be fine enough so as to not interfere with the normal movement of birds yet coarse enough to allow fecal material to fall through. Pens should have a floor area of at least 500 square centimeters per bird (approximately 75 square inches) for bobwhite and 1,000 square centimeters per bird (approximately 150 square inches) for mallards and should be at least 24 centimeters (approximately 9.5 inches) high for bobwhite and 32 centimeters (approximately 12.5 inches) high for mallard. Between tests pens should be disassembled (if feasible) and should be cleaned thoroughly. Steam cleaning of cages is recommended. Cages may be hosed, brushed thoroughly and hosed again, as an alternative method. The use of detergents or bleach is acceptable, but other chemical disinfectants such as quaternary ammonium compounds should not be used. When necessary to control disease vectors, hot or cold sterilization techniques are recommended, as long as such techniques will not leave chemical residues on the cages. For cold sterilization, ethylene oxide is recommended. Pens should not be cleaned during a test.

(ii) Testing is done indoors to control lighting and other environmental variables. Temperatures for adult birds should be maintained at normal indoor temperatures, preferably between 15 °C and 27 °C (60 to 80 °F). Ventilation should be sufficient to supply 10 to 15 air changes per hour. The test room should be maintained at a relative humidity of 45 to70 percent. Higher humidities are appropriate for waterfowl. A photoperiod of 8 hours light and 16 hours dark is recommended in order to prevent birds from coming into reproductive condition. Lighting may be either incandescent of fluorescent. Pens and lights should be positioned so that all pens will receive approximately equal illumination.

(3) [Reserved]

(e) *Reporting.* (1) The report should include, but not necessarily be limited to, the following information:

(i) Name and address of the facility performing the study and the dates on which the study was initiated and was completed, terminated, or discontinued.

(ii) Objectives and procedures stated in the approved protocol, including any changes in the original protocol.

(iii) Statistical methods employed for analyzing the data.

(iv) The test and, if used, control substances identified by name, Chemical Abstracts Service (CAS) number or code number, source, lot or batch number, strength, purity, and composition or other appropriate characteristics.

(v) Stability of the test and, if used, control substances under the conditions of administration.

(vi) A description of the methods used, including:

(A) Description of housing conditions, including type, size, and material of pens, and the approximate test room temperature, humidity, ventilation rate, photoperiod, and lighting intensity.

(B) Detailed description of feed, including source, supplements (if used), and proximate analysis.

(C) Acclimation procedures and methods of assigning birds to test pens, and test pens to dose-levels.

(D) Frequency, duration, and methods of observations.

(vii) A description of the test system used, including the scientific name of the test species, number used, sex and reproductive history and condition, age (in weeks) at the beginning of the test, source, and procedures used for

identification. Individual body weights (or means, extremes, and an estimate of variance) should be reported for the beginning of the test and weekly thereafter.

(viii) A description of the dosages, numbers of birds and replicates per dose, method and time of administration. The reported results should include:

(A) The results of range-finding tests, if conducted.

(B) For the definitive test, a description of signs of intoxication and other abnormal behavior, including time of onset, duration, severity (including death), and number affected at each dose level and control each day of the test.

(C) Feed consumption per pen at least weekly or as often as measured, if more frequently than weekly, along with an estimate of wastage.

(D) The results of gross pathological examinations.

(ix) A description of all circumstances that may have affected the quality or integrity of the data.

(x) The name of the sponsor, study director, principal investigator, names of other scientists or professionals, and the names of all supervisory personnel involved in the study.

(xi) A description of the transformations, calculations, or operations performed on the data, a summary and analysis of the data, and a statement of the conclusions drawn from the analysis. Results of the analysis of data should include the calculated LD_{50} value, 95 percent confidence limits, slope of the transformed dose-response line, and the results of a goodness-of-fit test (e.g., chi-square test).

(xii) The signed and dated reports of each of the individual scientists or other professionals involved in the study, including each person who, at the request or direction of the testing facility or sponsor, conducted an analysis or evaluation of data or specimens from the study after data generation was completed.

(xiii) The locations where all specimens, raw data, and the final report are stored.

(xiv) The statement prepared and signed by the quality assurance unit.

§ 797.2750 Seed Germination/Root Elongation Toxicity Test.

(a) *Purpose.* The guideline in this section is intended for use in developing data on the acute toxicity of chemical substances and mixtures ("chemicals") subject to environmental effects test regulations under the Toxic Substances Control Act (TSCA) (PUB. L. 94–469, 90 Stat. 2003, 15 U.S.C. 2601 *et seq.*). This guideline prescribes test procedures and conditions using seed of commercially important terrestrial plants to develop data on the phytotoxicity of chemicals. The United States Environmental Protection Agency (U.S. EPA) will use data from these tests in assessing the hazard of a chemical to the environment.

(b) *Definitions.* The definitions in section 3 of the Toxic Substances Control Act (TSCA) and the definitions in Part 792—Good Laboratory Practice Standards of this chapter apply to this test guideline. The following definitions also apply to this guideline:

(1) "ECX" means the experimentally derived chemical concentration that is calculated to effect X percent of the test criterion.

(2) "Embryo" means the young sporophytic plant before the start of germination.

(3) "Germination" means the resumption of active growth by an embryo. The primary root should attain a length of 5 mm for the seed to be counted as having germinated.

(4) "Hypocotyl" means that portion of the axis of an embryo or seedling situated between the cotyledons (seed leaves) and the radicle.

(5) "Radicle" means that portion of the plant embryo which develops into the primary root.

(6) "Test solution" means the test chemical and the dilution water in which the test chemical is dissolved or suspended.

(c) *Test procedures*—(1) *Summary of the test.* (i) Seed should be separated into appropriate size classes, and that size class containing the most seed used exclusively for the test. Fresh test solutions should be added to petri dishes that have been completely filled with either precleaned quartz sand, 200 micron glass beads, or other inert material. The seed should then be positioned on the substrate allowing adequate room for anticipated growth. It is recommended that the radicle end of the seed be aligned in the direction of this growth. Petri dish lids should be used to hold the seed in place, and the dishes sealed with tape. For those chemicals that are insoluble in water and that should be sorbed to the substrate, deionized or glass-distilled water should be added to the substrate prior to positioning the seed.

(ii) The dishes should be placed in a seed germinator or other growth facility at a slight angle to facilitate linear root growth. Seed should be incubated in the dark until at least 65 percent of the control seed have germinated and developed roots that are at least 20 mm long.

(iii) The number of seed that germinate should be counted, and root lengths measured. Concentration response curves, EC_{10}'s, and EC_{50}'s for seed germination and root elongation should be determined and reported for each of the species tested.

(2) *Chemical application.* (i) Test chemicals that are soluble in water should be dissolved in deionized or glass distilled water and added to the substrate in the petri dishes at the start of the test.

(ii) Test chemicals that are insoluble in water but which can be placed in aqueous suspension with a carrier should be suspended in deionized or glass-distilled water with the carrier and then added to the petri dishes. The carrier should be soluble in water, relatively nontoxic to plants, and should be used in the minimum amount required to dissolve or suspend the test chemical. There are no preferred carriers; however, acetone, gum arabic, polyethylene glycol, ethanol and others have extensively been used in testing herbicides, plant growth regulators, fungicides, and other chemicals that affect plants. Tests of the carrier effect should be included in the test experimental design and conducted simultaneously as controls.

(iii) Water-insoluble chemicals for which no nontoxic water-soluble carrier is available, should be dissolved in an appropriate volatile solvent. The solution and substrate should be placed in a rotary vacuum apparatus, and evaporated, leaving a uniform coating of test chemical on the substrate. A weighed portion of the substrate should be extracted with the same organic solvent and the chemical assayed before the containers are filled. Solvent controls should be included in the experimental design and tested simultaneously. Deionized or glass distilled water should be added to the treated substrate prior to positioning the seed on the substrate.

(3) *Range-Finding Test.* (i) A range-finding test should be conducted to establish (A) if definitive testing is necessary and (B) test solution concentrations for the definitive test.

(ii) The seed should be exposed to a chemical concentration series (e.g., 0.01, 0.1, 1.0, 10, 100, and 1,000 mg/l. The lowest concentration in the series, exclusive of controls, should be at the chemical's detection limit. The upper concentration, for water soluble compounds, should be the saturation concentration.

(iii) The test consists of one run for each of the recommended plant species or selected alternates. A minimum of 15 seed per species should be exposed to each chemical concentration and control. The test period may be ended when at least 65 percent of the control seed have germinated and developed roots that are at least 20 mm long. The exposure period may be shortened if data suitable to establish the test solution concentration series for the definitive test can be obtained in less time and if the definitive test is to be conducted. No replicates are required; and nominal concentrations of the chemical are acceptable unless definitive testing is not required as specified in paragraph (c)(3)(iv) of this section.

(iv) Definitive testing is not necessary if the highest chemical concentration tested results in less than a 50 percent inhibition of germination or reduction in root growth or if the lowest concentration tested (analytical detection limit) results in greater than a 50 percent inhibition of germination or reduction in growth.

(v) Graphical analysis of the range-finding data facilitates selection of chemical concentrations for the definitive test.

(4) *Definitive test.* (i) The purpose of the definitive test is to determine the concentration-response curves, the EC_{10}'s and EC_{50}'s for seed germination and root elongation for each species tested, with the minimum amount of testing beyond the range-finding test.

(ii) The seed of each species tested should be exposed to at least 6 concentrations of the chemical chosen in a geometric series in which the ratio is between 1.5 and 2.0 (e.g., 2,4,8,16,32, and 64 mg/l). The concentration ranges should be selected to determine the concentration response curves between the EC_{10} and EC_{50} for both germination and root elongation. Test solutions or substrate extracts should be analyzed to determine chemical concentration prior to use. Selection of seed from the size class lot to be exposed to each test concentration should be unbiased.

(iii) At least three replicates, each with at least 10 seed per species should be tested for each concentration and control.

(iv) Every test should include controls consisting of the same dilution water, conditions, procedures and seed from the same lot used in the exposure group, except that none of the chemical is added. If a carrier (solvent) is needed to suspend or disperse the chemical, a separate carrier control should also be used

(v) The test period may be ended when at least 65 percent of the control seed have germinated and developed roots that are at least 20 mm long. When both conditions are satisfied, the mean number of seed germinating and mean root length per treatment (and control) can be determined. If the test chemical concentration series does not bracket the EC_{10} through EC_{50}, for both germination and root elongation, the test should be repeated (at a higher or lower concentration series). Concentration response curves, EC_{10}'s and EC_{50}'s for germination and root elongation should be determined for each species tested and reported along with their 95 percent confidence limits.

(vi) Any abnormal seedling development or appearance such as lesions, enhanced root growth (measured), discoloration, swelling, loss of turgor, etc., should also be reported.

(vii) A randomized complete block design is recommended for the definitive test with blocks delineated within the seed germinator or growth chamber. If, for any reason, blocking is not feasible total randomization within chambers is acceptable.

(viii) Temperature in the germination facility should be recorded hourly. The pH of the test solutions should be recorded at the initiation of the definitive test.

(5) [Reserved]

(6) *Analytical measurements*—(i) *Test chemical.* Stock solutions should be diluted with glass distilled or deionized water to obtain the test solutions. Standard analytical methods, if available, should be used to establish concentrations of these solutions and should be validated before beginning the test. An analytical method is not acceptable if likely degradation products of the chemical, such as hydrolysis and oxidation products, give positive or negative interference. The pH of these solutions should also be measured prior to use.

(ii) *Numerical.* The number of seeds that germinate shall be counted and root lengths measured for each definitive test species. All root elongation measurements for a given species should be made sequentially before proceeding to the next species. Root length should be measured from the transition point between the hypocotyl and root to the tip of the root. Means and standard deviations should be calculated and plotted for each treatment and control. Appropriate statistical analyses should provide a goodness-of-fit determination for the concentration response curves.

(d) *Test conditions*—(1) *Test species.* (i) Test plants recommended for use include:

(A) *Lycopersicon esculentum* (tomato).

(B) *Cucumis sativus* (cucumber).

(C) *Lactuca sativa* (lettuce).

(D) *Glycine max* (soybean).

(E) *Brassica oleracea* (cabbage).

(F) *Avena sativa* (oat).

(G) *Lolium perenne* (perennial ryegrass).

(H) *Allium cepa* (common onion).

(I) *Daucus carota* (carrot).

(J) *Zea mays* (corn).

(ii) Other species of economic or ecological importance to the region of impact, may also be appropriate for testing. A minimum of 10 species should be tested.

(iii) Information on seed lot, the seed year or growing season collected, and germination percentage should be provided by the supplier of the seed. Only untreated seed (not treated with fungicides, repellents, etc.) taken from the same lot, and year or season of collection should be used in a given test. In addition, all seed of a species used in a test should be from the size class which contains the most seed. Damaged seed should be discarded. Standard seed dockage sieves should be used to size seed.

(2) *Facilities*—(i) *Apparatus.* (A) seed germinator, or other controlled environment chamber capable of maintaining a uniform testing temperature of 25 ± 1 °C is required. In addition, the facilities should include work areas for sizing, counting, and exposing seed for root measurement. If possible, these areas should be isolated from other activities. A fume hood may be needed when testing substances potentially hazardous to human health. Apparatus for distilling and deionizing water are needed unless reagent grade water is used. Refrigeration facilities to hold the seed in cold storage (5 °C) in moisture-proof containers at seed moisture contents of less than 10 percent are also needed.

(B) Disposal facilities should be adequate to accommodate spent glassware, sand, beads, and test solutions at the end of each run and any bench covering, lab clothing, or other contaminated materials.

(ii) *Containers and support media.* A minimum of 210 petri dishes and sufficient sand or glass beads, or other inert substrate to fill them are needed. Large (200 mm) glass petri dishes are recommended. Perlite, vermiculite, or native soils, should not be used as substrates.

(iii) *Cleaning and sterilization.* (A) All glassware and the substrate should be cleaned following standard good laboratory practice before each test. The substrate should be washed in half strength concentrated nitric acid and rinsed with a mild base followed by washes of glass-distilled or deionized water. The pH of the washed substrate should be near neutral. If the glass beads are to be reused, they should be heated to 100 °C for 8 to 12 hours prior to acid washing. A dichromate solution should not be used for cleaning beads or petri dishes. The sand and plastic petri dishes should not be reused.

(B) If fungal or other microbial contamination interferes with seed germination such that germination is less than 65 percent in the controls, glassware should be sterilized and/or the seed surface sterilized prior to use, e.g., the seed may be soaked for 10 minutes in a 10 percent sodium hypochlorite solution, then rinsed and soaked for 1 hour in glass-distilled water.

(3) *Test parameters.* Environmental conditions should be controlled to maintain incubation temperature at 25± 1 °C in complete darkness. If species other than the ten recommended for use are tested, incubation conditions may have to be adjusted to meet germination and root length criteria in the controls

(e) *Reporting.* The sponsor should submit to the USEPA all data developed during the test that are suggestive or predictive of phytotoxicity. In addition to the general reporting requirements prescribed in Part 792—Good Laboratory Practice Standards of this chapter, the following should be reported:

(1) Information on the source and history of the seed, germination percentage reported by the supplier, and the seed size class used for testing.

(2) The number of seed of each species per treatment, the number of replicates, carriers, incubation conditions, and seed sterilization procedures.

(3) The concentration of the chemical added to each treatment dish and its pH (pH is optional).

(4) If the range-finding test showed that the highest concentration of the chemical tested (not less than 1,000 mg/l) had no effect on the test species, report the results by species and concentration and a statement that the chemical is of minimum phytotoxic concern.

(5) If the range-finding test showed greater than 50 percent inhibition of germination or root elongation at a test concentration at the analytical detection limit, the results by species and concentration and a statement that the chemical is phytotoxic below the analytical detection limit.

(6) For each species included in the definitive test, means and standard deviations for germination and root length in each treatment. In addition, concentration response curves with 95 percent confidence limits delineated, goodness-of-fit determination, and EC_{10}'s and EC_{50}'s identified.

(7) Methods and data records of all chemical and numerical analyses including method validation and reagent blanks.

(8) The data records of the incubation temperature, germination counts, and root length measurements.

§ 797.2800 Early Seedling Growth Toxicity Test.

(a) *Purpose.* The guideline in this section is intended for use in developing data on the toxicity of chemical substances and mixtures ("chemicals") subject to environmental effects test regulations under the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003, 14 U.S.C. 2601 *et. seq.*). This guideline prescribes tests using commercially important terrestrial plants to develop data on the phytotoxicity of chemicals. The United States Environmental Protection Agency (U.S. EPA) will use data from these tests in assessing the hazard of a chemical to the environment.

(b) *Definitions.* The definitions in section 3 of the Toxic Substances Control Act (TSCA), and Part 792—Good Laboratory Practice Standards of this chapter apply to this test guideline. The following definitions also apply to this test guideline.

(1) "EC X" means the experimentally derived chemical concentration that is calculated to effect X percent of the test criterion.

(2) "Germination" means the resumption of active growth by an embryo.

(3) "Support media" means the quartz sand or glass beads used to support the plant.

(c) *Test Procedures*—(1) *Summary of the Test*—(i) *Root exposure.* In preparation for the test, seeds are planted in the potting containers (or in cotton or glass-wool plugs supported in hydroponic solution) and after germination seedlings are thinned by pinching the stem at the support medium surface to the 10 most uniform seedlings per pot. This marks the start of the test and the time of first application of test chemical. Seedlings emerging after this time are also pinched off at the surface. Potting mixtures of sand or glass beads are subirrigated with nutrient solution. Chemicals are applied to the plants via nutrient solution or are adsorbed to the support media. Plants are harvested after 14 days and analyzed for growth.

(ii) *Foliar exposure.* The foliar exposure test is identical to the root exposure test except that chemicals are applied to plants by either spraying or dusting the foliage of by exposing the plants to gas in a fumigation chamber.

(2) *Chemical application*—(i) *Root exposure.* (A) Chemicals that are soluble in water should be dissolved in the nutrient solution just prior to the beginning of the test. Deionized or glass-distilled water should be used in making stock solutions of the test chemical. Sufficient quantities of each concentration should be made up as needed to minimize storage time and disposal volume.

(B) Chemicals that are insoluble in water, but which can be suspended in an aqueous solution by a carrier, should be added, with the carrier, to the nutrient solution. The carrier should be soluble in water, relatively nontoxic to plants, and should be used in the minimum amount required to dissolve or suspend the test chemical. There are no preferred carriers; however, acetone, gum arabic, polyethylene glycol, ethanol, and others have extensively been used in testing herbicides, plant growth regulators, fungicides, and other chemicals that affect plants. Carrier controls should be included in the experimental design of the test and tested simultaneously.

(C) Water-insoluble chemicals for which no nontoxic, water-soluble carrier is available, should be dissolved in an appropriate volatile solvent. The solution should be mixed with the sand or glass beads which are then placed in a rotary vacuum apparatus and evaporated leaving a uniform coating of chemical on the sand or beads. A weighed portion of beads should be extracted with the same organic solvent and the chemical assayed before the potting containers are filled. Solvent controls should be included in the experimental design and tested simultaneously.

(ii) *Foliar exposure.* (A) Water-soluble chemicals should be dissolved in deionized or glass-distilled water just prior to use. Sufficient quantities of each concentration should be made up as needed. These solutions should be applied daily (during the normal 5-day work week). Plants should be placed in an exhaust hood and the chemical applied to the foliage. A plastic sleeve may be fitted over the top of the pot, and the foliage sprayed with specific quantities of test solution at known

concentrations. The plastic sleeve, confining the chemical to plant and pot, facilitates expression of chemical dosage to quantity per pot area (i.e., $\mu g/m^2$). Shoots of control plants should be sprayed in an identical manner with deionized or distilled water. Alternatively, a miniature compressed-air sprayer mounted on a pendulum and equipped to automatically spray a plant positioned directly beneath the center of its arc of swing may be used.

(B) Water-insoluble chemicals, existing as solids, may be prepared for testing by grinding or other reduction to particles of <200 um diameter. Each day (during the normal 5-day work week) plants should be placed in an exhaust hood, a plastic sleeve fitted over the top of the pot, and specific quantities of chemical sprinkled uniformly over the potted seedlings. Prior to chemical application, plants should be misted with water to promote foliar retention of the chemical. Control plants should also be misted with deionized or distilled water at each treatment date and dusted with an inert material of the same particle size. Applications are expressed as quantity per unit pot area (i.e., $\mu g/m^2$).

(C) Chemicals existing in gaseous form at normal ambient temperatures and pressures can be generated as needed or stored under pressure. The bottled gas may be 100 percent chemical or may be mixed with an inert carrier, such as nitrogen, to known concentrations. Chemicals of controlled or measured concentrations should be metered into the exposure chamber, uniformly mixed about the plants, and exhausted through an outlet port.

(3) *Range-finding test.* (i) A range-finding test should be conducted to establish (A) if definitive testing is necessary and (B) the concentrations of test substance used in the definitive test for each species.

(ii) The recommended procedure is to expose newly germinated seedlings to a series of widely spaced concentrations of test chemical and assess effect as growth reduction. Seeds (approximately 30) should be planted directly in containers filled to within 2.5 cm of the top with quartz sand or glass beads. If a hydroponic system is used, the seeds should be planted in plugs of cotton or glass wool supported at the top of the solution. When 50 percent of the seeds have germinated the seedlings should be thinned (by pinching) to the 10 most uniform per pot and exposed to a widely spaced concentration series (i.e., 0.01, 0.1, 1.0, 10, 100, 1,000 mg/l) of test chemical. The lowest concentration in the series, exclusive of controls, should be at the chemical's detection limit. The upper concentration, for water-soluble compounds, should be the saturation concentration. If the anticipated fate of the chemical is soil or soil water, and the mechanism of concern is root uptake, the chemical should be applied in nutrient solution to the root support media (or coated on sand or glass beads for non-water soluble chemicals). With a chemical whose anticipated mode of exposure to plants is surface deposition by atmospheric transport, or irrigation water, the appropriate testing method may be foliar application allowing subsequent movement into the rooting zone with watering. Effect is assessed as growth reduction.

(iii) Alternatively, the seed germination/root elongation test may be used to establish the appropriate concentration range for testing.

(iv) No replicates are required and nominal concentrations are acceptable unless definitive testing is not required.

(v) Definitive testing is not necessary if the highest chemical concentration tested results in less than a 50 percent reduction in growth or if the lowest concentration tested (analytical detection limit) results in greater than a 50 percent reduction in growth.

(4) *Definitive test.* (i) The purpose of the definitive test is to determine the concentration response curves and the EC_{10}'s and EC_{50}'s for each of the species tested with the minimum amount of testing beyond the range-finding test.

(ii) At least 5 concentrations of chemical, exclusive of controls, should be used in the definitive test. For each species tested the concentration range should be selected to define the concentration-response curve between the EC_{10} and EC_{90}'s. Test chemicals should be added to the hydroponic or nutrient solution or coated on the support media for the root exposure test; or sprayed, dusted, or gassed directly on the foliage in the foliage exposure tests.

(iii) Control pots should be included in the experimental design and should be used in each run. In addition, a carrier control should also be used for those chemicals that need to be solubilized.

(iv) If plants are to be grown hydroponically, seeds should be planted in plugs of cotton or glass wool supported in the tops of the containers. When sand or glass beads are used, the recommended planting procedure is to fill the potting containers to within 2.5 cm of the top and to sow seeds directly on the support media. After 50 percent of the seeds have germinated, the seedlings should be thinned to the 10 most uniform per pot.

(v) Alternative planting methods may be required when the chemical is highly volatile. An impervious barrier of polyethylene film, a modification of the double pot method, a glass plate, or other appropriate apparatus should be used to prevent volatilization from the root zone. Seeds should be germinated in the dark at 25 °C and seedlings with radicle lengths in the median range transplanted into the potting containers. The seedlings should be positioned such that their roots are exposed to the support media while the shoots pass through holes in the barrier. A ring of non-toxic, inert, pliable putty should be used to seal the holes around the stems. Control pots should be handled identically to the test pots except there is no exposure to the test chemical. This transplanting procedure, without the volatilization barrier, is also recommended when the test chemical is adsorbed to the support medium.

(vi) The test consists of one run for each of the recommended plant species or selected alternates. The duration of a run should be at least 14 days from the time that 50 percent of the seeds have germinated. For a particular chemical, a run is defined as exposure of the plant species to five concentrations of the chemical in a minimum of 3 replicate pots (10 plants per pot), with appropriate controls, followed by weight and height determinations and analysis.

(vii) All abnormalities (visible effects of the chemicals on plant growth and morphology including stunting of growth, discoloration, chlorosis and/or necrosis of the leaves, or morphological abnormalities) should be recorded. Observations of plants should be made daily (during the normal 5-day work week).

(viii) A randomized complete block design is recommended for this test with blocks delineated within the chambers or over greenhouse benches and randomization of treatment occurring within the blocks. If, because of very large pots, there exists inadequate space within chambers for blocking, total randomization within chambers is acceptable.

(ix) Irradiation measurements should be taken at the top of the plant canopy and the mean, plus a maximum and a minimum value, determined over the plant-growing area. These measurements should be taken daily and should be taken at least at the start and finish of the test. If the test is conducted in a greenhouse facility, hourly measurements of irradiation should be recorded and presented as daily total irradiance plus representative hourly curves for clear sky conditions and cloudy days.

(x) Temperature and humidity should be measured daily at the top of the plant

canopy during each light and dark period.

(xi) Measurements of carbon dioxide concentration should be made at the top of the plant canopy (of chamber-grown plants) on a "continuous basis".

(5) [Reserved]

(6) *Analytical measurements*—(i) *Chemical.* Stock solutions should be diluted with glass distilled or deionized water to obtain the test solutions. Standard analytical methods, if available, should be used to establish concentrations of these solutions and should be validated before beginning the test. An analytical method is not acceptable if likely degradation products of the chemical, such as hydrolysis and oxidation products, give positive or negative interference. The pH of these solutions should also be measured prior to use.

(ii) *Numerical.* Mass and length of roots, shoots, and entire plants (root and shoot) should be measured for the definitive test. Means and standard deviations should be calculated and plotted for each treatment and control. Appropriate statistical analyses should provide a goodness-of-fit determination for the concentration-response curves.

(d) *Test conditions*—(1) *Test Species*—(i) *Selection.* (A) Test plants recommended for the definitive test include:

(*1*) *Lycopersicon esculentum* (tomato)
(*2*) *Cucumis sativus* (cucumber)
(*3*) *Lactuca sativa* (lettuce)
(*4*) *Glycine max* (soybean)
(*5*) *Brassica oleracea* (cabbage)
(*6*) *Avena sativa* (oat)
(*7*) *Lolium perenne* (perennial ryegrass)
(*8*) *Allium cepa* (common onion)
(*9*) *Daucus carota* (carrot)
(*10*) *Zea mays* (corn)

(B) Other species, of economic or ecologic importance to the region of impact, may also be appropriate and selected for testing.

(ii) *Seed selection.* Information on seed lot, the seed year or growing season collected and germination percentage should be provided by the source of the seed. Only untreated seed (not treated with fungicides, repellants, etc.) taken from the same lot, and year or season of collection should be used in a given test. In addition, all seed of a species used in a test should be of the same size class; and that size class which contains the most seed should be selected and used in a given test. Any seed which is damaged should be discarded.

(2) *Facilities*—(i) *Apparatus.* (A) Greenhouses or environmental chambers should provide adequate environmental controls to meet the carbon dioxide, humidity, irradiation, photoperiod, and temperature specifications. Chambers should be designed to prevent escape of internal air into the external environment other than through appropriate filtering material or media to prevent contamination of the external environment with the test chemical.

(B) Laboratory facilities for chemical determinations should include nonporous floor covering, absorbent bench covering with non-porous backing, and adequate disposal facilities to accommodate plant nutrient, test and wash solutions containing test chemicals at the end of each run, and any bench covering, lab clothing, or other contaminated materials.

(ii) *Containers and support media.* For each run, 18 polyethylene pots sufficiently large to grow at least 10 plants up to 14 days, are required for each species. It is equally acceptable to use small, individual containers if plants are grown in hydroponic solution. An additional 3 pots will be needed if a carrier control is needed. Potting containers used in each experiment should be of equal size and volume and possess the same configuration. When sand or glass beads are used, the potting containers should be filled to within 2.5 cm of their tops. Perlite, vermiculite, native soils, etc., should not be used for root support.

(iii) *Cleaning and sterilization.* (A) Potting and receiving containers, nutrient storage containers, and root support medium should be cleaned before use. All equipment should be washed according to good standard laboratory procedures to remove any residues remaining from manufacturing or prior use. A dichromate solution should not be used for cleaning beads or pots.

(B) Rooting media other than glass beads should be discarded at the end of the experiment. Disposal should conform to existing regulations.

(iv) *Nutrient media.* Half-strength modified Hoagland nutrient solution should be utilized as nutrient media for this test. When sand or glass beads are used as a support media, the potting containers should be filled with nutrient solution and drained periodically. An automated system design is recommended.

(3) *Test parameters.* Environmental conditions should be maintained as specified in this paragraph.

(i) Carbon dioxide concentration at 350 ± 50 ppm.

(ii) Relative humidity should approach 70 ± 5 percent during light periods and 90 percent during dark periods.

(iii) Irradiation, measured at 1 meter from the source, at 350 ± 50 $\mu E/m^2$ sec at 400 to 700 nm.

(iv) Photoperiods of 16 hours light and 8 hours darkness.

(v) Day/night temperatures at 25°/20° ± 3°C.

(e) *Reporting.* Reporting requirements of Part 792—Good Laboratory Practice Standards of this chapter apply to this guideline. The following data should be reported for each of the species tested in tabular form:

(1) Concentration of chemical in nutrient solution and in the root support material when the chemical is soluble in water or solubilized with a carrier compound; or the concentration of carrier compound in nutrient solution when carrier is used; or the quantity of chemical per unit weight of root support material when it is coated on the material.

(2) The quantity of chemical, the concentration at which it was applied, and the number of applications for those chemicals applied to the foliage.

(3) Environmental conditions (day/night temperatures, relative humidity, light intensity, carbon dioxide concentration, and photoperiod).

(4) Mass of above ground (shoot) and below ground (root) portion of each plant and mass of each whole plant (dry weight at 70 °C).

(5) Length of shoot, root, and entire plant.

(6) Visible effects of chemical, if any, on the intact plants.

(7) Means and standard deviations for mass and length of roots, shoots, and entire plants in each treatment and control. In addition, concentration-response curves with 95 percent confidence limits delineated, goodness-of-fit determination, and EC_{10}'s and EC_{50}'s identified.

§ 797.2850 Plant Uptake and Translocation Test.

(a) *Purpose.* The guideline in this section is intended for use in developing data on the uptake and translocation of chemical substances and mixtures ("chemicals") by terrestrial plants subject to environmental effects test regulations under the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003, 14 U.S.C. 2601 *et seq.*). This guideline prescribes tests using commercially important terrestrial plants to develop data on the quantity of chemical substances incorporated in plant tissues and the potential for entry into food chains with resultant indirect human exposure. The United States Environmental Protection Agency (U.S. EPA) will use data from these tests in

assessing the hazard of a chemical to the environment.

(b) *Definitions.* The definitions in section 3 of the Toxic Substances Control Act (TSCA), and Part 792—Good Laboratory Practice Standards of this chapter apply to this test guideline. The following definitions also apply to this guideline:

(1) "EC X" means the experimentally derived chemical concentration that is calculated to effect X percent of the test criterion.

(2) "Mass balance" means a quantitative accounting of the distributions of chemical in plant components, support medium, and test solutions. It also means a quantitative determination of uptake as the difference between the quantity of gas entering an exposure chamber, the quantity leaving the chamber, and the quantity adsorbed to the chamber walls.

(3) "Support media" means the sand or glass beads used to support the plant.

(4) "Translocation" means the transference or transport of chemical from the site of uptake to other plant components.

(c) *Test procedures*—(1) *Summary of the test*—(i) *Root exposure.* In preparation for the test, seeds are planted in the potting containers (or in cotton or glass-wool plugs supported in hydroponic solution) and, after germination, seedlings thinned, by pinching the stem at the support surface. Potting mixtures of sand or glass beads should be subirrigated with nutrient solution. Chemicals are applied to the plants via nutrient solution or adsorbed to the support media. Carrot, lettuce, onion, cabbage, and ryegrass may be harvested whenever there is adequate plant material for chemical analysis. Cucumber, corn, soybean, tomato, and oats should be grown until fruit or seed are mature.

(ii) *Foliar exposure.* The foliar exposure test is identical to the root exposure test except that chemicals are applied to plants by either spraying or dusting the foliage or exposing the plants to gas in a fumigation chamber. If plants are fumigated, either rates of uptake and surface adsorption should be calculated, or the plants may be harvested and analyzed for test chemical and residues.

(2) *Chemical Application*—(i) *Root exposure.* (A) Chemicals that are soluble in water should be dissolved in the nutrient solution just prior to the beginning of the test. Deionized or glass distilled water should be used in making stock solutions of the test chemical. Sufficient quantities of each concentration should be made up as needed to minimize storage time and disposal volume.

(B) Chemicals that are insoluble in water but which can be placed in aqueous suspension with a carrier should be added, with the carrier, to the nutrient solution. The carrier should be soluble in water, relatively nontoxic to plants, and should be used in the minimum amount required to dissolve or suspend the test chemical. There are no preferred carriers; however, acetone, gum arabic, polyethylene glycol, ethanol, and others have been used extensively in testing herbicides, plant growth regulators, fungicides, and other chemicals that affect plants. Carrier controls shoud be included in the experimental design and tested simultaneously.

(C) Water-insoluble chemicals for which no nontoxic, water-soluble carrier is available, should be dissolved in an appropriate volatile solvent. The solution should be mixed with the sand or glass beads which are then placed in a rotary vacuum apparatus and evaporated, leaving a uniform coating of chemical on the sand or beads. A weighed portion of beads should be extracted with the same organic solvent and the chemical assayed before the potting containers are filled. Solvent controls should be included in the experimental design and tested simultaneously.

(ii) *Foliar exposure.* (A) Water soluble chemicals should be dissolved in deionized or glass distilled water just prior to use. Sufficient quantities of each concentration should be made up as needed. These solutions should be applied at weekly intervals. Plants should be placed in an exhaust hood and the chemical applied to the foliage. A plastic sleeve may be fitted over the top of the pot, and the foliage sprayed with specific quantities of test solution at known concentrations. The plastic sleeve, confining the chemical to plant and pot, facilitates expression of chemical dosage as quantity per pot area (i.e., $\mu g/m^2$). Shoots of control plants should be sprayed in an identical manner with deionized or distilled water. Alternatively, a miniature compressed-air sprayer may be mounted on a pendulum and equipped to automatically spray a plant positioned directly beneath the center of its arc of swing. When radioisotope-labelled chemicals are applied, health and safety considerations prohibit spray application. Instead, specific quantities of labelled chemical should be applied directly to leaves in single drops.

(B) Water-insoluble chemicals, existing as solids, may be prepared for testing by grinding or other reduction to particles of <200 um diameter. These chemicals should be applied at weekly intervals. Plants should be placed in an exhaust hood, a plastic sleeve fitted over the top of the pot, and a specific quantity of chemical sprinkled uniformly over them. Prior to chemical application, plants should be misted with water to promote foliar retention of the chemical. Control plants also should be misted with deionized or distilled water at each treatment date and dusted with an inert material of the same particle size. Applications should be expressed as quantity per unit pot area (i.e., $\mu g/m^2$).

(C) Chemicals existing in gaseous form at normal ambient temperatures and pressures should be generated for use as needed or stored under pressure. The bottled gas may be 100 percent pure chemical or mixed with an inert carrier, such as nitrogen, to known concentrations. Chemicals of controlled or measured concentrations should be metered into the exposure chamber, uniformly mixed about the plants, and exhausted through the outlet port where the flow rate and concentration are again measured. Use of this systems design provides an alternate method of analysis if the quantity of chemical sorbed by plants is less than that required for chemical analysis. Plants should be fumigated whenever they have reached sufficient size for measurement of photosynthesis and transpiration rates, assuming equivalent detection sensitivity of carbon dioxide, water vapor, and chemical analyzers. The appropriate size is a function of the gas exchange system and constitutes an area of expert judgment.

(3) *Range-finding test.* (i) A range-finding test should be conducted to establish the chemical concentrations used in the uptake and translocation test.

(ii) Because of the different mechanisms involved in root and leaf uptake, and to more closely define the chemical concentrations to be used in the uptake test, the definitive early seedling growth test is recommended as the range-finding test. Seeds should be germinated directly in containers filled with sand or glass beads or in cotton or glass-wool plugs supported in hydroponic solution. When 50 percent of the seedlings have germinated, the seedlings should be thinned (by pinching) to the 10 most uniform per container and exposed to a concentration series of test chemical. The lowest concentration in the series, exclusive of controls, should be at or below the EC_{10} while the upper concentration should be at or above the EC_{90}. If the anticipated fate of the

chemical is soil or soil-water, and the mechanism of concern is root uptake, the chemical should be applied in nutrient solution to the root support media (or coated on sand or glass beads for non-water soluble chemicals). With a chemical whose anticipated mode of exposure to plants is surface deposition by atmospheric transport or irrigation water, the appropriate testing method may be foliar application allowing subsequent movement into the rooting zone with watering. Effect is assessed as growth reduction. The concentration selected as the upper limit for the uptake and translocation test should be near the threshold of visible injury. Short exposure periods to gas in fumigation chambers are not expected to promote visible injury or gross reductions in growth but may alter stomatal resistance, transpiration, or photosynthesis. Absorption and adsorption rates may be calculated and gas concentrations for definitive testing selected based on the calculated sorption rates.

(iii) Alternatively, the seed germination/root elongation test or other appropriate phytotoxicity test may be used to establish the appropriate upper concentration for testing.

(4) *Definitive test.* (i) The purpose of the uptake and translocation test is to determine the propensity for a chemical's accumulation in plants or plant parts.

(ii) At least 3 concentrations of chemical, exclusive of controls, should be used in the uptake test. Recommended concentrations would be a descending geometric progression from the upper concentration tested (i.e. 100, 50, 25 mg/l). A minimum of 6 replicate pots per concentration, each containing from one to four seedlings, should be used. If techniques other than radioistopes are used to determine uptake, more replicates may be required to provide sufficient plant materials for analysis. Test chemicals should be added to the hydroponic or nutrient solution or coated on glass beads for the root uptake test; or sprayed, dusted, or gassed directly on the foliage in the foliage uptake tests. Only untreated seed (not treated with fungicides, repellants, etc.) taken from the same lot, and year or season of collection should be used in a given test.

(iii) Control pots should be included in the experimental design and should be used in each run. In addition, a carrier control should be used for those chemicals that need to be solubilized.

(iv) If plants are to be grown hydroponically, seeds should be planted in plugs of cotton or glass-wool supported in the tops of the containers. When sand or glass beads are used, the recommended planting procedure is to fill potting containers with sand or glass beads to within 2.5 cm of the top and to sow seeds directly. After germination, the seedlings should be thinned by pinching the stem at the support surface. From one to four seedlings per potting container are required depending on species tested, the size of the containers, and the size to which the plants will grow. When plants are grown hydroponically, one plant per pot will probably be the preferred method. The number of plants selected should provide sufficient biomass for analytical procedures. A greater number of plants may be required depending on species tested, duration of test, and analytical procedures. Too many plants in a container may actually reduce the growth and biomass.

(v) Alternate planting methods may be required when the chemical is highly volatile. An impervious barrier of polyethylene film, a modification of the double pot method, a glass plate, or other appropriate apparatus should be used to prevent volatilization from the root zone. Seeds should be germinated in the dark at 25°C and seedlings with radicle length in the median range transplanted into the potting containers. The seedlings should be positioned such that their roots are exposed to the support media while the shoots pass through holes in the barrier. A ring of inert, non-phytotoxic, pliable putty should be used to seal the holes around the stems. Control pots should be handled identically except there is no exposure to the test chemical. This transplanting procedure, without the volatilization barrier, is also recommended when the test chemical is adsorbed to the support medium.

(vi) Hydroponic solutions should be aerated and sand or glass filled potting containers should be periodically filled with nutrient solution and drained to provide aeration. For root exposure tests, the test chemical should be added to the nutrient solution or directly to substrate. The entire test solution should be replaced weekly, or earlier if the concentration of chemical in the test or nutrient solution varies by more than 20 percent of that specified. The volume of solution added should be recorded.

(vii) The test consists of one run for each of two specified plant species. The duration of a run, for solid and liquid chemicals, should be equal to the length of time required for the particular test variety to achieve sufficient biomass for testing. The duration of a run for gaseous chemicals should be the length of time required to make the specified gas exchange measurements. For a particular chemical, a run is defined as exposure of the plant species to three concentrations of test chemical with a minimum of six replicate pots and appropriate controls. Exposure is followed by extraction and analysis for parent compound, metabolites, and bound residues in plant tissues, and in the whole plants for solids, liquids, and gasses or by calculating rates of absorption and adsorption of gasses.

(viii) Visible effects (stunting of growth, discloration, chlorosis and/or necrosis of the leaves, decreased moisture content, or morphological abnormalities, etc.) should be recorded.

(ix) A randomized complete block design is recommended for this test, with blocks delineated within the chambers or over greenhouse benches and randomization of treatments occurring within the blocks. If, because of very large pots and plants, there exists inadequate space within chambers for blocking, total randomization within chambers is acceptable. This design is also appropriate for the growth of plants to be used for foliar exposure with gas.

(x) Irradiation measurements should be taken at the top of the plant canopy and the mean, plus a maximum and a minimum value, determined over the plant-growing area. These measurements should be taken at the start of the test, at biweekly intervals during the test, and at test termination. If the test is conducted in a greenhouse facility, hourly measurements of irradiation should be recorded and presented as daily total irradiance plus representative hourly curves for clear sky conditions and cloudy days.

(xi) Temperature and humidity measurements should be measured daily at the top of the plant canopy during each light and dark period.

(xii) Measurements of carbon dioxide concentration should be made at the top of the plant canopy (of chamber-growth plants) on a "continuous" basis.

(xiii) The amount of water and nutrient solution depleted each week should be recorded, to observe changes in evapotranspiration rates which may indicate stress. Furthermore, these data will be used to compute chemical uptake per volume of water transpired for the uptake test.

(5) [Reserved]

(6) *Analytical measurements*—(i) *Solid or liquid test chemicals.* (A) Stock solutions should be diluted with glass distilled or deionized water to obtain the test solutions. Standard analytical methods, if available, should be used to establish concentrations of these solutions and should be validated before

beginning the test. An analytical method is not acceptable if likely degradation products of the chemical, such as hydrolysis and oxidation products, give positive or negative interference. The pH of these solutions should also be measured prior to use.

(B) The entire plant should be harvested, rinsed with a minimum amount of water (which is returned to the nutrient solution), and separated into its respective organs as follows: carrot—root peels, peeled roots, and tops; cucumber—fruit, vines plus leaves, and roots; corn—kernels, husk plus cob, stalk plus leaves, and roots; lettuce—tops and roots; onion—bulb and tops; ryegrass—tops and roots; soybean—grain, chaff plus tops, and roots; oats—grain, chaff plus tops, and roots; tomato—fruit, vines, and roots; cabbage—head and roots. Plants from two pots in each treatment may be pooled, giving 3 replicate sample pools per treatment. After the fresh weights of the plant organs are obtained, each pool of organs should be subsampled for percent moisture determinations by drying, at 70 °C for 24 hours in a forced-air drying oven, and weighing. Percent moisture determined from these subsamples is used to correct for dry weight of the fresh samples which should then be homogenized and extracted in organic and aqueous solvents. If radioisotopes are used, the amount of test chemical in each extract should be determined by liquid or solid scintillation depending on the type of radiation; otherwise, the amount of chemical should be determined by standard methods. At test completion, the root support material should be washed in organic and then aqueous solvent and analyzed for test chemical before discarding.

(C) A suggested extraction procedure appropriate for many organic chemicals is as follows: One gram of plant material should be homogenized with one gram of solvent-washed anhydrous sodium sulfate in 4 ml of hexane or acetonitrile. The homogenate should be filtered or centrifuged, the solid residue rinsed with an appropriate organic solvent, and the filtrate or supernatant combined with the rinse. The solid residue should be extracted by sequentially (*1*) homogenizing in water, (*2*) centrifuging and decanting the supernatant, (*3*) extracting of the pellet with 6N hydrochloric acid at 60°C for 10 hours, (*4*) subsequently digesting with 10N potassium hydroxide, and (*5*) combining supernatants. The resulting solution should be analyzed by liquid scintillation spectrometry or GLC methodology. The organic extract should be evaporated under vacuum to a sufficiently small volume for thin layer chromatography (TLC) and co-chromatographed on silica gel plates with known standards of the parent chemical. If radioisotopes were used, the chromatographs could be scanned for radioactive substances on a radiochromatogram scanner. Alternatively, zones may be removed from the plates, extracted, and the quantity of chemical from each zone determined by liquid scintillation spectrometry or GLC methodology. The unextractable chemical in the remaining residue may be determined by oxidizing the residue in a complete combustion oxidizer.

(ii) *Gaseous test chemicals.* (A) A gas exposure system yields requisite data for a direct calculation of uptake rates. At steady state, chemical uptake may be determined by a mass balance calculation. Correction for adsorption to surfaces of the exposure chamber should be made by operating the system without plants. Pots filled with hydroponic solution or support media should be included in the system adsorption calibration. Consequently, chemical analyses of plant tissues exposed to gaseous chemicals may not be required in order to demonstrate and quantitate uptake rates.

(B) Altered rates of net photosynthesis, transpiration, and stomatal conductance are anticipated as a result of chemical uptake. Rates of these physiological processes before, during, and after exposure to the gaseous chemical should be determined. Data required for these calculations are available as a consequence of maintaining the specified environmental conditions within the fumigation chamber.

(iii) *Numerical.* Mass of pooled plant organs and pooled whole plants should be measured for the uptake and translocation test and subjected to chemical analyses (above) to quantify free parent test chemical, its metabolites and soluble and bound residues. Mass balance of the test chemical and evapotranspiration rates of the plants are also determined. Means and standard deviations should be calculated and plotted for each of the above for every treatment and control. The data should also be subjected to an analysis of variance.

(d) *Test conditions*—(1) *Test species.* (i) Test plants recommended for the uptake test include:

(A) *Lycopersicon esculentum* (tomato)
(B) *Cucumis sativus* (cucumber)
(C) *Lactuca sativa* (lettuce)
(D) *Glycine max* (soybean)
(E) *Brassica oleracea* (cabbage)
(F) *Avena sativa* (oat)
(G) *Lolium perenne* (perennial ryegrass)
(H) *Allium cepa* (common onion)
(I) *Daucus carota* (carrot)
(J) *Zea mays* (corn)

(ii) Other species of economic or ecologic importance to the region of impact, may also be appropriate and selected for testing. Two species of potentially differing sensitivity should be selected such as a monocotyledonous and a dicotyledonous species. It is further suggested that the test plants selected should be of different growth forms, e.g., a root crop and a leaf crop.

(2) *Facilities*—(i) *Apparatus.* Greenhouses, environmental chambers, or growth rooms should provide adequate environmental control to meet the carbon dioxide, humidity, irradiation, photoperiod, and temperature specifications. Chambers should be designed to prevent escape of internal air into the external environment other than through appropriate filtering material or media to prevent contamination of the external environment with radioactive and/or test substances. Laboratory facilities for plant extractions and chemical determinations should include nonporous floor covering, absorbent bench covering with non-porous backing, and adequate disposal facilities to accommodate plant nutrient, test, and wash solutions containing radioisotope and/or test chemical at the end of each run, and any bench covering, lab clothing, or other contaminated materials.

(ii) *Containers and support media.* For testing purposes, at least 24 polyethylene pots sufficiently large to grow at least 5 plants up to 28 days or one to three plants to maturity are required. If plants are grown hydroponically, one plant per pot may be the preferred method. If a carrier control is needed, 30 pots are used. Potting containers used in each experiment should be of equal size and volume and possess the same configuration. When sand or glass beads are used the potting containers should be filled to within 2.5 cm of their tops with sand or glass beads. Perlite, vermiculite, native soils, etc., should not be used for root support. Potting containers should be covered with opaque polyethylene bags to exclude light and minimize volatilization of test chemical.

(iii) *Cleaning and sterilization.* Potting containers, nutrient storage containers, and root support medium should be cleaned before use. All equipment

should be washed according to good standard laboratory procedures to remove any residues remaining from manufacturing or use. A dichromate solution should not be used for cleaning beads or pots. Rooting media other than glass beads should be discarded at the end of the experiment. Disposal should conform to existing regulations.

(iv) *Nutrient media.* Half-strength modified Hoagland nutrient solution should be utilized as nutrient media for this test. Hydroponic solution should be aerated and sand or glass beads potting containers should be filled with nutrient solution and drained periodically. An automated system design is recommended.

(3) *Test parameters.* Environmental conditions should be maintained as specified below:

(i) Carbon dioxide concentrations at 350 ± 50 ppm.

(ii) Relative humidity approaching 70 ± 5 percent during light periods and 90 percent during dark periods.

(iii) Irradiation, measured at 1 meter from the source, at 350 ± 50 $\mu E/m^2$ sec at 400 to 700 nm.

(iv) Photoperiod of 16 hours light and 8 hours darkness for all species except soybean which should be provided with 11 hours light and 13 hours darkness prior to flowering.

(v) Day/night temperatures at 25°/20° ± 3°C.

(e) *Reporting.* Reporting requirements of Part 792—Good Laboratory Practice Standards of this chapter apply to this guideline. Concentrations should be expressed in appropriate weight units per grams of dry plant material and of water lost by evapotranspiration. Data should also include initial and final total concentration of the test chemical in the growth media. These data will be used to compute mass balance. The following should be reported for each of the species tested in tabular form:

(1) *Solid and liquid test chemicals.* (i) Concentration of chemical in nutrient solution and root support material when chemical is soluble in water or solubilized with a carrier compound, as well as the concentration of carrier compound in nutrient solution when carrier is used, or the quantity of chemical per unit weight of root support material when it is coated on the material.

(ii) The quantity of chemical, the concentration at which it was applied, and the number of applications for those chemicals applied to the foliage.

(iii) Environmental conditions (day/night temperatures, relative humidity, light intensity, carbon dioxide concentration, and photoperiod) and the occurrence and extent of any disruption of environmental control facilities.

(iv) Mass of each pool of plant organs and by summation, the mass of whole plants (dry weight after 24 hours at 70 °C).

(v) Concentration of free parent test chemical, metabolites and soluble residues, and bound residues in pooled plant organs and pooled whole plants.

(vi) Mass balance of chemical.

(vii) Mean evapotranspiration rate per plant.

(viii) Visible effects of chemical, if any, on the intact plants.

(ix) Analysis of variance, F-test, means, and standard deviation about the mean are calculated under paragraph (e)(1)(iv), (v), (vi), and (vii) of this section.

(2) *Gaseous test chemicals.* (i) Concentration of gaseous test chemical at inflow and outflow ports.

(ii) Environmental conditions within gas exposure system (air temperature, dew point temperature or water vapor pressure of incoming and outgoing air streams, light intensity, air speed within chamber, carbon dioxide concentration at inflow and outflow ports, gas flow rate into and out of exposure system).

(iii) Mass (dry weight after 24 hours at 70 °C) of leaves and stems and surface area (one side of leaves) in the exposure system.

(iv) Calculated measurements of photosynthesis, transpiration, and stomatal conductance before, during, and after exposure to test chemicals.

(v) Visible effects of chemical, if any, on the plants.

(vi) Analysis of variance, F-test, means, and standard deviation about the mean are calculated for each of the following: (A) Steady state rates of photosynthesis, transpiration, and chemical uptake before, during, and after fumigation.

(B) Stomatal conductance or leaf diffusion resistance before, during, and after fumigation.

(vii) If uptake is determined by direct chemical analysis of plant tissues, then the reporting requirements also include:

(A) Concentration of free parent test chemical, metabolites and soluble residues, and bound residues in pooled plant organs and pooled whole plants.

(B) Mass balance of the chemical.

(C) Analysis of variance, F-test, means and standard deviation about the mean under paragraph (e)(2)(vi) (A) and (B) of this section.

PART 798—HEALTH EFFECTS TESTING GUIDELINES

Subpart A—[Reserved]

Subpart B—General Toxicity Testing

Sec.

798.1100 Acute dermal toxicity.
798.1150 Acute inhalation toxicity.
798.1175 Acute oral toxicity.

Subpart C—Subchronic Exposure.

798.2250 Dermal toxicity.
798.2450 Inhalation toxicity.
798.2650 Oral toxicity.
798.2675 Oral toxicity with satellite reproduction and fertility study.

Subpart D—Chronic Exposure

798.3260 Chronic toxicity.
798.3300 Oncogenicity.
798.3320 Combined chronic toxicity/oncogenicity.

Subpart E—Specific Organ/Tissue Toxicity

798.4100 Dermal sensitization.
798.4350 Inhalation developmental toxicity study.
798.4420 Preliminary development toxicity screen.
798.4470 Primary dermal irritation.
798.4500 Primary eye irritation.
798.4700 Reproduction and fertility effects.
798.4900 Developmental toxicity study.

Subpart F—Genetic Toxicity

798.5100 Escheria coli WP2 and WP2 urvA reserve mutation assays.
798.5140 Gene mutations in aspergillus nidulans.
798.5200 Mouse visible specific locus test.
798.5250 Gene mutation in neurospora crassa.
798.5265 Salmonella typhimurium reverse mutation assay.
798.5275 Sex linked recessive lethal test in drosophila melanogaster.
798.5300 Detection of gene mutations in somatic cells in culture.
798.5375 In vitro mammalian cytogenetics.
798.5385 In vivo mammalian bone marrow cytogenetics tests: Chromosomal analysis.
798.5395 In vivo mammalian bone marrow cytogenetics tests: Micronucleus assay.
798.5450 Rodent dominant lethal assay.
798.5460 Rodent heritable translocation assays.
798.5500 Differential growth inhibition of repair proficient and repair deficient bacteria: "Bacterial DNA damage or repair tests."
798.5550 Unscheduled DNA synthesis in mammalian cells in culture.
798.5575 Mitotic gene conversion in Saccharomyces cervisiae.
798.5900 In vitro sister chromatid exchange assay.
798.5915 In vivo sister chromatid exchange assay.
798.5955 Heritable translocation test in drosophila melanogaster.

Subpart G—Neurotoxicity

798.6050 Functional observational battery.
798.6200 Motor activity.

Sec.
798.6400 Neuropathology.
798.6450 NTE neurotox assay.
798.6500 Schedule-controlled operant behavior.
798.6540 Acute delayed neurotoxicity of organophosphorus substances.
798.6560 Subchronic delayed neurotoxicity of organophosphorus substances.
798.6850 Peripheral nerve function.

Subpart H—Special Studies

798.7100 Metabolism.

Authority: 15 U.S.C. 2603.

Subpart A—[Reserved]

Subpart B—General Toxicity Testing

§ 798.1100 Acute dermal toxicity.

(a) *Purpose.* In the assessment and evaluation of the toxic characteristics of a substance, determination of acute dermal toxicity is usually an initial step. It provides information on health hazards likely to arise from short-term exposure by the dermal route. Data from an acute study may serve as a basis for classification and labeling. It is traditionally a step in establishing a dosage regimen in subchronic and other studies and may provide initial information on dermal absorption and the mode of toxic action of a substance. An evaluation of acute toxicity data should include the relationship, if any, between the animals' exposure to the test substance and the incidence and severity of all abnormalities, including behavioral and clinical abnormalities, the reversibility of observed abnormalities, gross lesions, body weight changes, effects on mortality, and any other toxic effects.

(b) *Definitions.* (1) Acute dermal toxicity is the adverse effects occurring within a short time of dermal application of a single dose of a substance or multiple doses given within 24 hours.

(2) Dose is the amount of test substance applied. Dose is expressed as weight of test substance (g, mg) per unit weight of test animal (e.g., mg/kg).

(3) Dose-response is the relationship between the dose and the proportion of a population sample showing a defined effect.

(c) *Approaches to the determination of acute toxicity.* (1) At present, the evaluation of chemicals for acute toxicity is necessary for the protection of public health and the environment. When animal testing is required for this purpose, this testing should be done in ways that minimize numbers of animals used and that take full account of their welfare.

(2) EPA recommends the following means to reduce the number of animals used to evaluate acute effects of chemical exposure while preserving its ability to make reasonable judgments about safety:

(i) Attempt the use of existing data on structurally related chemicals.

(ii) If data for calculating an LD_{50} are needed, perform an acute toxicity study whereby the value of the data derived from the investment of animal lives is enhanced. EPA does not encourage the use of animals solely for the calculation of an LD_{50}.

(iii) Use methods that minimize the numbers of animals in the test.

(3) The following provides an expanded discussion of these principles and their application to the evaluation of acute toxicity of chemicals.

(i) *Using data from structurally related chemicals.* In order to minimize the need for animal testing, the Agency encourages the review of existing acute toxicity information on chemical substances that are structurally related to the agent under investigation. In certain cases, one may be able to glean enough information from these surrogate chemicals to make preliminary safety evaluations that may obviate the need for further animal testing.

(ii) *"Limit" test.* When acute lethality data are desirable, EPA's test guideline encourages the use of methods that minimize the requirement for animals, sometimes by a factor of 90 percent as compared to the more traditional LD_{50} test. In the "limit" test, a single group of animals receives a large dose (2 g/kg body weight) of the agent by the dermal route. If no lethality is demonstrated, no further testing for acute dermal toxicity is pursued.

(iii) *Estimation of lethal dose.* For those substances demonstrating lethality in a "limit" test or for substances for which there are data on structurally related chemicals that indicate potential acute toxicity below 2 g/kg, the Agency can use estimates of the dose associated with some level of acute lethality that are derived from a study comprising three doses as described in this guideline. With such an approach, use of greater numbers of animals or increased numbers of dose levels are not necessary.

(iv) *Multiple endpoint evaluation.* The Agency stresses the simultaneous monitoring of several endpoints of toxicity in animals in a single acute study including sublethal effects as well as lethality. Dosed animals are observed for abnormal behavioral manifestations such as increased salivation or muscular incoordination, in addition to the recovery from these effects during the observation period. Both dead and surviving animals are autopsied to evaluate gross anatomical evidence of organ toxicity. In selected cases, additional testing may be justified to characterize better the kinds of abnormalities that have been found in the organs of the autopsied animals.

(4) These sound, scientific practices represent some of the means which maximize the utility of the data obtained from a limited number of test animals to achieve a balance between protecting humans and the environment, and the welfare and utilization of laboratory animals. When animal testing is, nonetheless, determined to be necessary to achieve this balance, the following test method incorporates the principles discussed in this section.

(d) *Principle of the test method.* When conducting acute toxicity testing, exposure by dermal application is recommended for chemicals where exposure of humans by the dermal route is likely. A single exposure and a 14-day observation period are used. The test substance is applied dermally in graduated doses to several groups of experimental animals, one dose being used per group. For the limit test, however, only one group is tested at a single (high) dose. Subsequent to exposure, systematic daily observations of effects and deaths are made. Based on the results of cage-side observations or gross necropsy, the tester may decide to initiate histopathological review of certain organs, and/or additional clinical laboratory tests. Animals that die during the test are necropsied, and at the conclusion of the observation period, the surviving animals are sacrificed and are necropsied.

(e) *Limit test.* If a test at a dose level of at least 2 g/kg body weight produces no compound-related mortality, then a study using three dose levels will not be necessary.

(f) *Test procedures*—(1) *Animal selection*—(i) *Species and strain.* The rat, rabbit, or guinea pig may be used. The albino rabbit is preferred because of its size, skin permeability, and extensive data base. Commonly used laboratory strains should be employed. If a species other than the three indicated above is used, the tester should provide justification and reasoning for its selection.

(ii) *Age.* Young adult animals should be used. The following weight ranges are suggested to provide animals of a size which facilitates the conduct of the test: rats, 200 to 300 g; rabbits 2.0 to 3.0 kg; guinea pigs 350 to 450 g.

(iii) *Sex.* (A) Equal numbers of animals of each sex with health intact skin should be used for each dose level.

(B) The females should be nulliparous and nonpregnant.

(iv) *Numbers per dose group.* At least 5 animals of each sex should be used at each dose level.

(2) *Control groups.* A concurrent untreated control is not necessary. A vehicle control group should be run concurrently except when historical data are available to determine the acute toxicity of the vehicle.

(3) *Dose levels and dose selection.* (i) Three dose levels should be used and spaced appropriately to produce test groups with a range of toxic effects and mortality rates. The data should be sufficient to produce a dose-response curve and permit an acceptable estimation of the median lethal dose. Range finding studies using single animals may help to estimate the positioning of the dose groups so that no more than three dose levels will be necessary.

(ii) *Vehicle.* (A) Where necessary, the test substance is dissolved or suspended in a suitable vehicle. It is recommended that wherever possible the use of an aqueous solution be considered first, followed by consideration of a solution in oil (e.g., corn oil) and then by possible solution in other vehicles. For non-aqueous vehicles the toxic characteristics of the vehicle should be known, and if not known should be determined before the test.

(B) When testing solids, which may be pulverized if appropriate, the test substance should be moistened sufficiently with water or, where necessary, a suitable vehicle to ensure good contact with skin. When a vehicle is used, the influence of the vehicle on penetration of skin by the test substance should be taken into account.

(4) *Exposure duration.* The test substance should be administered over a period not exceeding 24 hours.

(5) *Observation period.* The observation period should be at least 14 days. Although 14 days is recommended as a minimum period, the duration of observation should not be fixed rigidly. It should be determined by the toxic reactions, rate of onset and length of recovery period, and may thus be extended when considered necessary. The time at which signs of toxicity appear and disappear, their duration and the time to death are important, especially if there is a tendency for deaths to be delayed.

(6) *Preparation of animal skin.* (i) Shortly before testing, fur should be clipped from the dorsal area of the trunk of the test animals. Shaving may be employed, but is should be carried out approximately 24 hours before the test. Care must be taken to avoid abrading the skin, which would alter its permeability.

(ii) Not less than 10 percent of the body surface area should be clear for the application of the test substance. The weight of the animal should be taken into account when deciding on the area to be cleared and on the dimensions of any covering used.

(7) *Application of test substance.* (i) The test substance should be applied uniformly over an area which is approximately 10 percent of the total body surface area. With highly toxic substances the surface area covered may be less, but as much of the area should be covered with as thin and uniform a film as possible.

(ii) The test substance should be held in contact with the skin with a porous gauze dressing and nonirritating tape throughout a 24-hour exposure period. The test site should be further covered in a suitable manner to retain the gauze dressing and test substance and ensure that the animals cannot ingest the test substance. Restrainers may be used to prevent the ingestion of the test substance, but complete immobilization is not a recommended method.

(iii) At the end of the exposure period, residual test substance should be removed where practicable using water or an appropriate solvent.

(8) *Observation of animals.* (i) A careful clinical examination should be made at least once each day.

(ii) Additional observations should be made daily, especially in the early days of the study. Appropriate actions should be taken to minimize loss of animals to the study (e.g., necropsy or refrigeration of those animals found dead and isolation of weak or moribund animals).

(iii) Cage-side observations should include, at the least, evaluations of the skin and fur, eyes and mucous membranes, respiratory, circulatory, autonomic and central nervous systems, somatomotor activity and behavior pattern. Particular attention should be directed to observation of tremors, convulsions, lethargy, other signs of central nervous depression, salivation and diarrhea.

(iv) Individual weights of animals should be determined shortly before the test substance is applied, weekly thereafter, and at death. Changes in weights should be calculated and recorded when survival exceeds one day.

(v) The time of death should be recorded as precisely as possible.

(vi) At the end of the test, surviving animals should be weighed and sacrificed.

(9) *Gross pathology.* A gross necropsy should be performed on all animals under test. All gross pathology changes should be recorded.

(10) *Additional evaluations.* In animals surviving 24 hours or more, clinical chemistry tests or microscopic examination of organs showing evidence of gross pathology should be considered because they may yield additional useful information on the induced toxic effects.

(g) *Data and reporting*— (1) *Treatment of results.* Data should be summarized in tabular form, showing for each test group the number of animals at the start of the test, body weights, time of death of individual animals at different dose levels, number of animals displaying other signs of toxicity, description of toxic effects and necropsy findings.

(2) *Evaluation of results.* An evaluation of results should include the relationship, if any, between the dose of the test substance and the incidence, severity and reversibility of all abnormalities, including behavioral and clinical effects, gross lesions, body weight changes, effects on mortality, and any other toxicological effects.

(3) *Test report.* In addition to the reporting requirements as specified under 40 CFR Part 792, Subchapter J, the following specific information should be reported:

(i) Tabulation of response data by sex and dose level (i.e., number of animals exposed; number of animals showing signs of toxicity; number of animals dying).

(ii) Dose-response curves for mortality and other toxic effects (when permitted by the method of determination).

(iii) Description of toxic effects including their time of onset, duration, reversibility, and relationship to dose.

(iv) Time of death after dosing.

(v) Body weight data.

(vi) Gross pathology findings.

(vii) Histopathology findings and any additional clinical chemistry evaluations, if performed.

(h) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Bliss, C.I. "The determination of the dosage mortality curve from small numbers," *Quarterly Journal of Pharmacy and Pharmacology.* 11:192–216 (1938).

(2) Finney, D.G. "Chapter 3—Estimation of the median effective dose. Chapter 4—Maximum likelihood estimation," *Probit Analysis.* 3rd Ed. (London: Cambridge University Press 1971).

(3) Litchfield, J.T., Jr., Wilcoxon, F. "A simplified method of evaluating dose-effect experiments," *Journal of*

Pharmacology and Experimental Therapeutics. 96:99–115 (1949).

(4) Miller, L.C., Tainter. M.L. "Estimation of the ED_{50} and its error by means of logarithmic graph paper," *Proceedings of the Society for Experimental Biology and Medicine*. 57:261–264 (1944).

(5) National Academy of Sciences. "Principles and procedures for evaluating the toxicity of household substances," A report prepard by the Committee for the Revision of NAS Publication 1138, under the auspices of the Committee on Toxicology, National Research Council, National Academy of Sciences, Washington, DC (1977).

(6) Thompson, W.R. "Use of moving averages and interpolation to estimate median effective dose," *Bacteriological Review*. 11:115–145 (1947).

(7) Weil, C.S. "Tables for convenient calculation of median effective dose and instructions in their use," *Biometrics*. 8:249–263 (1952).

(8) World Health Organization. "Part I. Environmental Health Criteria 6," *Principles and Methods for Evaluating the Toxicity of Chemicals*. Geneva: World Health Organization (1978).

§ 798.1150 Acute inhalation toxicity.

(a) *Purpose.* In the assessment and evaluation of the toxic characteristics of a substance that may be inhaled, determination of acute toxicity is usually an initial step. It provides information on health hazards likely to arise from short-term exposure by the inhalation route. Data from an acute study may serve as a basis for classification and labeling. It is traditionally a step in establishing a dosage regimen in subchronic and other studies and may provide initial information on the mode of toxic action of a substance. An evaluation of acute toxicity data should include the relationship, if any, between the animals' exposure to the test substance and the incidence and severity of all abnormalities, including behavioral and clinical abnormalities, the reversibility of observed abnormalities, gross lesions, body weight changes, effects on mortality, and any other toxic effects.

(b) *Definitions.* (1) Acute inhalation toxicity is the adverse effects caused by a substance following a single uninterrupted exposure by inhalation over a short period of time (24 hours or less) to a substance capable of being inhaled.

(2) Aerodynamic diameter applies to the size of particles of aerosols. It is the diameter of a sphere of unit density which behaves aerodynamically as the particle of the test substance. It is used to compare particles of different size and densities and to predict where in the respiratory tract such particles may be deposited. This term is used in contrast to measured or geometric diameter which is representative of actual diameters which in themselves cannot be related to deposition within the respiratory tract.

(3) The geometric mean diameter or the median diameter is the calculated aerodynamic diameter which divides the particles of an aerosol in half based on the weight of the particles. Fifty percent of the particles by weight will be larger than the median diameter and 50 percent of the particles will be smaller than the median diameter. The median diameter and its geometric standard deviation is used to statistically describe the particle size distribution of any aerosol based on the weight and size of the particles.

(4) Inhalable diameter refers to that aerodynamic diameter of a particle which is considered to be inhalable for the organism. It is used to refer to particles which are capable of being inhaled and may be deposited anywhere within the respiratory tract from the trachea to the alveoli. For man, the inhalable diameter is considered as 15 micrometers or less.

(5) Dose response is the relationship between the dose (or concentration) and the proportion of a population sample showing a defined effect.

(c) *Approaches to the determination of acute toxicity.* (1) At present, the evaluation of chemicals for acute toxicity is necessary for the protection of public health and the environment. When animal testing is required for this purpose, this testing should be done in ways that minimize numbers of animals used and that take full account of their welfare.

(2) EPA recommends the following means to reduce the number of animals used to evaluate acute effects of chemicals exposure while preserving its ability to make reasonable judgments about safety:

(i) Attempt the use of existing data on structurally related chemicals.

(ii) If data for calculating an LC_{50} are needed, perform an acute toxicity study whereby the value of the data derived from the investment of animal lives is enhanced. EPA does not encourage the use of animals solely for the calculation of an LC_{50}.

(iii) Use methods that minimize the numbers of animals in the test.

(3) The following provides an expanded discussion of these principles and their application to the evaluation of acute toxicity of chemicals.

(i) *Using data from structurally related chemicals.* In order to minimize the need for animal testing, the Agency encourages the review of existing acute toxicity information on chemical substances that are structually related to the agent under investigation. In certain cases one may be able to glean enough information from these surrogate chemicals to make preliminary safety evaluations that may obviate the need for further animal testing.

(ii) *"Limit" test.* If a test at an exposure of 5 mg/l (actual concentration of respirable substances) for 4 hours or, where this is not possible due to physical or chemical properties of the test substance, the maximum attainable concentration, using the procedures described for this study, produces no compound-related mortality, then a full study using three dose levels will not be necessary.

(iii) *Estimation of lethal dose.* For those substances demonstrating lethality in a "limit" test or for substances for which there are data on structurally related chemicals that indicate potential acute toxicity below 5 mg/l, the Agency can use estimates of the dose associated with some level of acute lethality that are derived from a study comprising three doses as described in this guideline. With such an approach, use of greater numbers of animals or increased numbers of dose levels are not necessary.

(iv) *Multiple endpoint evaluation.* The Agency stresses the simultaneous monitoring of several endpoints of toxicity in animals in a single acute study including sublethal effects as well as lethality. Dosed animals are observed for abnormal behavioral manifestations such as increased salivation or muscular incoordination, in addition to the recovery from these effects during the observation period. Both dead and surviving animals are autopsied to evaluate gross anatomical evidence of organ toxicity. In selected cases, additional testing may be justified to characterize better the kinds of abnormalities that have been found in the organs of the autopsied animals.

(4) These sound, scientific practices represent some of the means which maximize the utility of the data obtained from a limited number of test animals to achieve a balance between protecting humans and the environment, and the welfare and utilization of laboratory animals. When animal testing is, nonetheless, determined to be necessary to achieve this balance, the following test method incorporates the principles discussed in this section.

(d) *Principle of the test method.* When conducting acute toxicity testing, exposure by inhalation is recommended

for chemicals where exposure of humans by inhalation is likely. A single exposure and a 14-day observation period are used. The test substance is administered in graduated doses to several groups of experimental animals, one dose being used per group. For the limit test, however, only one group is tested at a single (high) dose. Subsequent to exposure, systematic daily observations of effects and deaths are made. Based on the results of cage-side observations or gross necropsy, the tester may decide to initiate histopathological review of certain organs, and/or additional clinical laboratory tests. Animals that die during the test are necropsied, and at the conclusion of the observation period, the surviving animals are sacrificed and are necropsied.

(e) *Limit test.* If a test at a dose level of at least 5 mg/l (actual concentration of respirable substances) for 4 hours or, where this is not possible due to physical or chemical properties of the test substance, the maximum attainable concentration, produces no compound-related mortality, then a full study using three dose levels will not be necessary.

(f) *Test procedures*—(1) *Animal selection*—(i) *Species and strain.* Although several mammalian test species may be used, the rat is the preferred species. Commonly used laboratory strains should be employed. If another mammalian species is employed, the tester should provide justification and reasoning for its selection.

(ii) *Age.* Young adult animals should be used. The weight variation of animals used in a test should not exceed ± 20 percent of the mean weight for each sex.

(iii) *Sex.* (A) Equal numbers of animals of each sex should be used for each dose level.

(B) The females should be nulliparous and nonpregnant.

(iv) *Numbers per dose group.* At least five animals of each sex should be used at each dose level.

(2) *Control groups.* A concurrent untreated control is not necessary. Where a vehicle is used to help generate an appropriate concentration of the substance in the atmosphere, a vehicle control group should be used when historical data are not available or adequate to determine the acute toxicity of the vehicle.

(3) *Dose levels and dose selection.* (i) Three exposure concentrations should be used and spaced appropriately to produce test groups with a range of toxic effects and mortality rates. The data should be sufficient to produce a dose-response curve and permit an acceptable estimation of the median lethal concentration. Range-finding studies using single animals may help to estimate the positioning of the test groups so that no more than three doses will be necessary.

(ii) Where necessary, a suitable vehicle may be added to the test substance to help generate an appropriate concentration of the test substance in the atmosphere. If a vehicle or diluent is needed, ideally it should not elicit important toxic effects itself or substantially alter the chemical or toxicological properties of the test substance.

(iii) In the case of potentially explosive test substances, care should be taken to avoid generating explosive concentrations.

(iv) To establish suitable exposure concentrations, a trial test is recommended.

(4) *Exposure duration.* The duration of exposure should be at least 4 hours after equilibration of the chamber concentrations.

(5) *Observation period.* The observation period should be at least 14 days. Although 14 days is recommended as a minimum period, the duration of observation should not be fixed rigidly. It should be determined by the toxic reactions, rate of onset and length of recovery period, and may thus be extended when considered necessary. The time at which signs of toxicity appear and disappear, their duration and the time of death are important, especially if there is a tendency for deaths to be delayed.

(6) *Inhalation exposure.* (i) The animals should be tested with inhalation equipment designed to sustain a dynamic air flow of 12 to 15 air changes per hour, ensure an adequate oxygen content of 19 percent and an evenly distributed exposure atmosphere. Where a chamber is used, its design should minimize crowding of the test animals and maximize their exposure to the test substance. This is best accomplished by individual caging. As a general rule to ensure stability of a chamber atmosphere, the total "volume" of the test animals should not exceed 5 percent of the volume of the test chamber. Alternatively, oro-nasal, head-only, or whole body individual chamber exposure may be used.

(ii) A suitable analytical concentration control system should be used. The rate of air flow should be adjusted to ensure that conditions throughout the equipment are essentially the same. Maintenance of a slight negative pressure inside the chamber will prevent leakage of the test substance into the surrounding area.

(iii) The temperature at which the test is performed should be maintained at 22 °C (± 2°). Ideally, the relative humidity should be maintained between 40 to 60 percent, but in certain instances (e.g., tests on aerosols, use of water vehicle) this may not be practicable.

(7) *Physical measurements.* Measurements or monitoring should be made of the following:

(i) The rate of air flow should be monitored continuously, but should be recorded at least every 30 minutes.

(ii) The actual concentrations of the test substance should be measured in the breathing zone. During the exposure period the actual concentration of the test substance should be held as constant as practicable. Continuous monitoring is desirable. Measurement of actual concentrations should be recorded near the beginning, middle, and end of the exposure period.

(iii) During the development of the generating system, particle size analysis should be performed to establish the stability of aerosol concentrations. During exposure, analysis should be made as often as necessary to determine the consistency of particle size distribution and homogeneity of the exposure stream.

(iv) Temperature and humidity should be monitored continuously but should be recorded at least every 30 minutes.

(8) *Food and water during exposure period.* Food should be withheld during exposure. Water may also be withheld in certain cases.

(9) *Observation of animals.* (i) A careful clinical examination should be made at least once each day.

(ii) Additional observations should be made daily, especially in the early days of the study. Appropriate actions should be taken to minimize loss of animals to the study (e.g., necropsy or refrigeration of those animals found dead and isolation of weak or moribund animals).

(iii) Cage-side observations should include, at the least, evaluations of the skin and fur, eyes and mucous membranes, respiratory, circulatory, autonomic and central nervous systems, somatomotor activity and behavior pattern. Particular attention should be directed to observation of tremors, convulsions, lethargy, other signs of central nervous system depression, salivation and diarrhea.

(iv) Individual weights of animals should be determined shortly before the test substance is administered, weekly thereafter, and at death. Changes in weights should be calculated and recorded when survival exceeds one day.

(v) The time of death should be recorded as precisely as possible.

(vi) At the end of the test, surviving animals should be weighed and sacrificed.

(10) *Gross pathology.* A gross necropsy should be performed on all animals under test, with particular reference to any changes in the respiratory tract. Where there are significant signs of toxicity indicating the possible involvement of other organs, these should be examined. All gross pathology changes should be recorded.

(11) *Additional evaluations.* In animals surviving 24 hours or more, clinical chemistry tests or microscopic examination of organs showing evidence of gross pathology should be considered because they may yield additional useful information on the nature of the induced toxic effects.

(g) *Data and reporting*—(1) *Treatment of results.* Data should be summarized in tabular form, showing for each test group the number of animals at the start of the test, body weights, time of death of individual animals at different dose levels, number of animals displaying other signs of toxicity, description of toxic effects and necropsy findings.

(2) *Evaluation of results.* An evaluation of results should include the relationship, if any, between the concentration of the test substance and the incidence, severity and reversibility of all abnormalities, including behavioral and clinical effects, gross lesions, body weight changes, effects on mortality, and any other toxicological effects.

(3) *Test report.* In addition to the reporting requirements as specified under 40 CFR Part 792, Subpart J the following specific information should be reported:

(i) *Test conditions.* (A) Description of exposure apparatus including design, type, dimensions, source of air, system for generating particulates and aerosols, method of conditioning air, treatment of exhaust air and the method of housing the animals in a test chamber.

(B) The equipment of measuring temperature, humidity, and particulate aerosol concentrations and size be described.

(ii) *Exposure data.* These should be tabulated and presented with mean values and a measure of variability (e.g., standard deviation) and should include:

(A) Airflow rates through the inhalation equipment.

(B) Temperature and humidity of air.

(C) Nominal concentration (total amount of test substance fed into the inhalation equipment divided by volume of air).

(D) Actual concentration in test breathing zone.

(E) Particle size distribution (e.g., median aerodynamic diameter of particles with standard deviation from the mean).

(iii) *Animal data.* (A) Tabulation of response data by sex and exposure level (i.e., number of animals exposed, number of animals showing signs of toxicity, number of animals dying).

(B) Dose-response curves for mortality and other toxic effects (when permitted by the method of determination).

(C) Description of toxic effects including their time of onset, duration, reversibility, and relationship to dose.

(D) Time of death during or following exposure.

(E) Body weight data.

(F) Gross pathology findings.

(G) Histopathology findings and any additional clinical chemistry evaluation, if performed.

(h) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Bliss, C.I. "The determination of the dosage mortality curve from small numbers," *Quarterly Journal of Pharmacy and Pharmacology.* 11:192–216 (1938).

(2) Finney, D.G. "Chapter 3—Estimation of the median effective dose, Chapter 4—Maximum likelihood estimation," Probit Analysis. 3rd Ed. (London: Cambridge University Press, 1971).

(3) Litchfield, J.T., Jr., Wilcoxon, F. "A simplified method of evaluating dose-effect experiments," *Journal of Pharmacology and Experimental Therapeutics.* 96:99–115 (1949).

(4) Miller, L.C., Tainter, M.L. "Estimation of the ED_{50} and its error by means of logarithmic graph paper," *Proceedings of the Society for Experimental Biology and Medicine.* 57:261–264 (1944).

(5) National Academy of Sciences. "Principles and procedures for evaluating the toxicity of household substances." A report prepared by the Committee for the Revision of NAS Publication 1138, under the auspices of the Committee on Toxicology, National Research Council, National Academy of Sciences, Washington, DC (1977).

(6) Smyth, H.F., Jr., Carpenter, C.P., Weil, C.S., Striegel, J.A. "Range finding toxicity data: List VI," *American Industrial Hygiene Association Journal.* 23:95 (1962).

(7) Thompson, W.R. "Use of moving averages and interpolation to estimate median effective dose," *Bacteriological Review.* 11:115–145 (1947).

(8) Weil, C.S. "Tables for convenient calculation of median effective dose and instructions in their use," *Biometrics.* 8:249–263 (1952).

(9) World Health Organization. "Part I. Environment Health Criteria 6," *Principles and Methods for Evaluating the Toxicity of Chemicals.* Geneva: World Health Organization (1979).

§ 798.1175 Acute oral toxicity.

(a) *Purpose.* In the assessment and evaluation of the toxic characteristics of a substance, determination of acute oral toxicity is usually an initial step. It provides information on health hazards likely to arise from short-term exposure by the oral route. Data from an acute study may serve as a basis for classification and labeling. It is traditionally a step in establishing a dosage regimen in subchronic and other studies and may provide initial information on the mode of toxic action of a substance. An evaluation of acute toxicity data should include the relationship, if any, between the animals' exposure to the test substance and the incidence and severity of all abnormalities, including behavioral and clinical abnormalities, the reversibility of observed abnormalities, gross lesions, body weight changes, effects on mortality, and any other toxic effects.

(b) *Definitions.* (1) Acute oral toxicity is the adverse effects occurring within a short time of oral administration of a single dose of a substance or multiple doses given within 24 hours.

(2) Dose is the amount of test substance administered. Dose is expressed as weight of test substance (g, mg) per unit weight of test animal (e.g. mg/kg).

(3) Dose-response is the relationship between the dose and the proportion of a population sample showing a defined effect.

(c) *Approaches to the determination of acute toxicity.* (1) At present, the evaluation of chemicals for acute toxicity is necessary for the protection of public health and the environment. When animal testing is required for this purpose, this testing should be done in ways that minimize numbers of animals used and that take full account of their welfare.

(2) EPA recommends the following means to reduce the number of animals used to evaluate acute effects of chemical exposure while preserving its ability to make reasonable judgments about safety:

(i) Attempt the use of existing data on structurally related chemicals.

(ii) If data for calculating an LD_{50}. are needed, perform an acute toxicity study

whereby the value of the data derived from the investment of animal lives is enhanced. EPA does not encourage the use of animals solely for the calculation of an LD_{50}.

(iii) Use methods that minimize the numbers of animals in the test.

(3) The following provides an expanded discussion of these principles and their application to the evaluation of acute toxicity of chemicals.

(i) *Using data from structurally related chemicals.* In order to minimize the need for animal testing, the Agency encourages the review of existing acute toxicity information on chemical substances that are structurally related to the agent under investigation. In certain cases one may be able to glean enough information from these surrogate chemicals to make preliminary safety evaluations that may obviate the need for further animal testing.

(ii) *"Limit" test.* When acute lethality data are desirable, EPA's test guideline encourages the use of methods that minimize the requirement for animals, sometimes by a factor of 90 percent as compared to the more traditional LD_{50} test. In the "limit" test, a single group of animals is given a large dose (5 g/kg body weight) of the agent. If no lethality is demonstrated, no further testing for acute oral toxicity is pursued.

(iii) *Estimation of lethal dose.* For those substances demonstrating lethality in a "limit" test or for substances for which there are data on structurally related chemicals that indicate potential acute toxicity below 5 g/kg the Agency can use estimates of the dose associated with some level of acute lethality that are derived from a study comprised of three doses as described in this guideline. With such an approach, use of greater numbers of animals or increased numbers of dose levels are not necessary.

(iv) *Multiple endpoint evaluation.* The Agency stresses the simultaneous monitoring of several endpoints of toxicity in animals in a single acute study including sublethal effects as well as lethality. Dosed animals are observed for abnormal behavioral manifestations such as increased salivation or muscular incoordination, in addition to the recovery from these effects during the observation period. Both dead and surviving animals are autopsied to evaluate gross anatomical evidence of organ toxicity. In selected cases, additional testing may be justified to characterize better the kinds of abnormalities that have been found in the organs of the autopsied animals.

(4) These sound, scientific practices represent some of the means which maximize the utility of the data obtained from a limited number of test animals to achieve a balance between protecting humans and the environment, and the welfare and utilization of laboratory animals. When animal testing is, nonetheless, determined to be necessary to achieve this balance, the following test method incorporates the principles discussed in this section.

(d) *Principle of the test method.* When conducting acute toxicity testing, exposure by gavage is recommended for chemicals where exposure of humans by the oral route is likely. A single exposure and a 14-day observation period are used. The test substance is administered orally in graduated doses to several groups of experimental animals, one dose being used per group. For the limit test, however, only one group is tested at a single (high) dose. Subsequent to exposure, systematic daily observations of effects and deaths are made. Based on the results of cage-side observations or gross necropsy, the tester may decided to initiate histopathological review of certain organs, and/or additional clinical laboratory tests. Animals that die during the test are necropsied, and at the conclusion of the observation period, the surviving animals are sacrificed and are necropsied.

(e) *Limit test.* If a test at a dose level of at least 5 g/kg body weight produces no compound-related mortality, then a study using three dose levels will not be necessary.

(f) *Test procedures*—(1) *Animal selection*—(i) *Species and strain.* Although several mammalian test species may be used, the rat is the preferred species. Commonly used laboratory strains should be employed. If another species is used, the tester should provide justificaion and reasoning for its selection.

(ii) *Age.* Young adult animals should be used. The weight variation of animals used in a test should not exceed ± 20 percent of the mean weight for each sex.

(iii) *Sex.* (A) Equal numbers of animals of each sex should be used for each dose level.

(B) The females should be nulliparous and nonpregnant.

(iv) *Numbers per dose group.* At least five animals of each sex should be used at each dose level.

(2) *Control groups.* A concurrent untreated control is not necessary. A vehicle control group should be run concurrently except when historical data are available to determine the acute toxicity of the vehicle.

(3) *Dose levels and dose selection.* (i) Three dose levels should be used and spaced appropriately to produce test groups with a range of toxic effects and mortality rates. The data should be sufficient to produce a dose-response curve and permit an acceptable estimation of the median lethal dose. Range-finding studies using single animals may help to estimate the positioning of the dose groups so that no more than three dose levels will be necessary.

(ii) *Vehicle.* Where necessary, the test substance is dissolved or suspended in a suitable vehicle. It is recommended that wherever possible the use of an aqueous solution be considered first, followed by consideration of a solution in oil (e.g., corn oil) and then by possible solution in other vehicles. For nonaqueous vehicles the toxic characteristics of the vehicle should be known, and if not known should be determined before the test.

(iii) *Volume.* The maximum volume of liquid that can be administered at one time depends on the size of the test animal. In rodents, the volume should not exceed 1 ml/100 g body weight, except when an aqueous solution is used where 2 ml/100 g may be administered. Variability in test volume should be minimized by adjusting the concentration to ensure a constant volume at all dose levels.

(4) *Exposure duration.* The test substance should be administered over a period not exceeding 24 hours.

(5) *Observation period.* The observation period should be at least 14 days. Although 14 days is recommended as a mininum period, the duration of observation should not be fixed rigidly. It should be determined by the toxic reactions, rate of onset and length of recovery period, and may thus be extended when considered necessary. The time at which signs of toxicity appear and disappear, their duration, and the time to death are important, especially if there is a tendency for deaths to be delayed.

(6) *Exposure.* (i) The test substance should be administered in a single dose by gavage, using a stomach tube or suitable intubation cannula.

(ii) Animals should be fasted prior to test substance administration. For the rat, food should be withheld overnight; for other rodents with higher metabolic rates a shorter period of fasting is appropriate.

(iii) After the substance has been administered, food may be withheld for an additional 3 to 4 hours.

(iv) If a single dose is not possible, the dose may be given in smaller fractions over a period not exceeding 24 hours. Where a dose is administered in fractions, it may be necessary to provide the animals with food and water

depending on the length of the dosing period.

(7) *Observation of animals.* (i) A careful clinical examination should be made at least once each day.

(ii) Additional observations should be made daily, especially in the early days of the study. Appropriate actions should be taken to minimize loss of animals to the study (e.g., necropsy or refrigeration of those animals found dead and isolation of weak or moribund animals).

(iii) Cage-side observations should include, at the least, evaluation of the skin and fur, eyes and mucous membranes, respiratory, circulatory, autonomic and central nervous systems, somatomotor activity and behavior pattern. Particular attention should be directed to observation of tremors, convulsions, lethargy, other signs of central nervous system depression, salivation, and diarrhea.

(iv) Individual weights of animals should be determined shortly before the test substance is administered, weekly thereafter, and at death. Changes in weights should be calculated and recorded when survival exceeds one day.

(v) The time of death should be recorded as precisely as possible.

(vi) At the end of the test, surviving animals should be weighed and sacrificed.

(8) *Gross pathology.* A gross necropsy should be performed on all animals under test. All gross pathology changes should be recorded.

(9) *Additional evaluations.* In animals surviving 24 hours or more, clinical chemistry tests or microscopic examination of organs showing evidence of gross pathology should be considered because they may yield additional useful information on the nature of the induced toxic effects.

(g) *Data and reporting*—(1) *Treatment of results.* Data should be summarized in tabular form, showing for each test group the number of animals at the start of the test, body weights, time of death of individual animals at different dose levels, number of animals displaying other signs of toxicity, description of toxic effects and necropsy findings.

(2) *Evaluation of results.* An evaluation of results should include the relationship, if any, between the dose of the test substance and the incidence, severity, and reversibility of all abnormalities, including behavioral and clinical effects, gross lesions, body weight changes, effects on mortality, and any other toxicological effects.

(3) *Test report.* In addition to the reporting requirements as specified under 40 CFR Part 792, Subpart J the following specific information should be reported.

(i) Tabulation of response data by sex and dose level (i.e., number of animals exposed; number of animals showing signs of toxicity; number of animals dying).

(ii) Dose-response curves for mortality and other toxic effects (when permitted by the method of determination).

(iii) Description of toxic effects, including their time of onset, duration, reversibility, and relationship to dose.

(iv) Time of death after dosing.

(v) Body weight data.

(vi) Gross pathology findings.

(vii) Histopathology findings and any additional clinical chemistry evaluations, if performed.

(h) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Balazs, T. "Measurement of acute toxicity," *Methods in Toxicology.* ed. G.E. Paget (Philadelphia: F.A. Davis Co., 1970), pp. 49–82.

(2) Bliss, C.I. "The determination of the dosage mortality curve from small numbers," *Quarterly Journal of Pharmacy and Pharmacology.* 11:192–216 (1938).

(3) Finney, D.G. "Chapter 3—Estimation of the median effective dose, Chapter 4—Maximum likelihood estimation," *Probit Analysis.* 3rd Edition. (London: Cambridge University Press, 1971).

(4) Hunter, W.J., Lingk, W., Recht, P. "Intercomparison study on the determination of single administration toxicity in rats," *Journal of the Association of Official Analytical Chemists.* 62(4):864–873 (1979).

(5) Litchfield, J.T., Jr., Wilcoxon, F. "A simplified method of evaluating dose-effect experiments," *Journal of Pharmacology and Experimental Therapeutics.* 96:99–115 (1949).

(6) Miller, L.C., Tainter, M.L. "Estimation of the ED_{50} and its error by means of logarithmic graph paper," *Proceedings of the Society for Experimental Biology and Medicine.* 57:261–264 (1944).

(7) National Academy of Sciences. "Principles and procedures for evaluating the toxicity of household substances," a report prepared by the Committee for the Revision of NAS Publication 1138, under the auspices of the Committee on Toxicology, National Research Council, National Academy of Sciences, Washington, DC (1977).

(8) Thompson, W.R. "Use of moving averages and interpolation to estimate median effective dose," *Bacteriological Review.* 11:115–145 (1947).

(9) Weil, C.S. "Tables for convenient calculation of median effective dose and instructions in their use," *Biometrics.* 8:249–263 (1952).

(10) World Health Organization. "Part I. Environmental Health Criteria 6," *Principles and Methods for Evaluating the Toxicity of Chemicals.* Geneva: World Health Organization (1978).

Subpart C—Subchronic Exposure

§ 798.2250 Dermal toxicity.

(a) *Purpose.* In the assessment and evaluation of the toxicharacteristics of a chemical, the determination of subchronic dermal toxicity may be carried out after initial information on toxicity has been obtained by acute testing. The subchronic dermal study has been designed to permit the determination of the no-observed-effect level and toxic effects associated with continuous or repeated exposure to a test substance for a period of 90 days. The test is not capable of determining those effects that have a long latency period for development (e.g., carcinogenicity and life shortening). It provides information on health hazards likely to arise from repeated exposure by the dermal route over a limited period of time. It will provide information on target organs, the possibilities of accumulation, and can be of use in selecting dose levels for chronic studies and for establishing safety criteria for human exposure.

(b) *Definitions.* (1) Subchronic dermal toxicity is the adverse effects occurring as a result of the repeated daily exposure of experimental animals to a chemical by dermal application for part (approximately 10 percent) of a life span.

(2) Dose in a dermal test is the amount of test substance applied to the skin (applied daily in subchronic tests). Dose is expressed as weight of the substance (g, mg) per unit weight of test animal (e.g., mg/kg).

(3) No-effect level/No-toxic-effect level/No-adverse-effect level/No-observed-effect level is the maximum dose used in a test which produces no observed adverse effects. A no-observed-effect level is expressed in terms of the weight of a test substance given daily per unit weight of test animal (mg/kg).

(4) Cumulative toxicity is the adverse effects of repeated doses occurring as a result of prolonged action on, or increased concentration of the administered test substance or its metabolites in susceptible tissues.

(c) *Principle of the test method.* The test substance is applied daily to the

skin in graduated doses to several groups of experimental animals, one dose level per unit group, for a period of 90 days. During the period of application the animals are observed daily to detect signs of toxicity. Animals which die during the test are necropsied, and at the conclusion of the test the surviving animals are sacrificed and necropsied and appropriate histopathological examinations carried out.

(d) *Limit test.* If a test at one dose level of at least 1000 mg/kg body weight (expected human exposure may indicate the need for a higher dose level), using the procedures described for this study, produces no observable toxic effects and if toxicity would not be expected based upon data of structurally related compounds, then a full study using three dose levels might not be necessary.

(e) *Test procedures*—(1) *Animal selection*—(i) *Species and strain.* The rat, rabbit, or guinea pig may be used although the albino rabbit is preferred. The albino rabbit is preferred because of its size, skin permeability, and extensive data base. Commonly used laboratory strains should be employed. If another mammalian species is used, the tester should provide justification/reasoning for its selection.

(ii) *Age.* Young adult animals should be used. The following weight ranges at the start of the test are suggested in order to provide animals of a size which facilitates the conduct of the test: rats, 200 to 300 g; rabbits, 2.0 to 3.0 kg; guinea pigs, 350 to 450 g.

(iii) *Sex.* (A) Equal numbers of animals of each sex with healthy skin should be used at each dose level.

(B) The females should be nulliparous and nonpregnant.

(iv) *Numbers.* (A) At least 20 animals (10 females and 10 males) should be used at each dose level.

(B) If interim sacrifices are planned, the number should be increased by the number of animals scheduled to be sacrificed before completion of the study.

(2) *Control groups.* A concurrent control group is recommended. This group should be an untreated or sham treated control group or, if a vehicle is used in administering the test substance, a vehicle control group. If the toxic properties of the vehicle are not known or cannot be made available, both untreated and vehicle control groups are recommended.

(3) *Satellite group.* A satellite group of 20 animals (10 animals per sex) may be treated with the high dose level for 90 days and observed for reversibility, persistence, or delayed occurrence, of toxic effects for a posttreatment period of appropriate length, normally not less than 28 days.

(4) *Dose level and dose selection.* (i) In subchronic toxicity tests, it is desirable to have a dose-response relationship as well as a nonobserved-toxic-effect level. Therefore, at least three dose levels with a control and, where appropriate, a vehicle control (corresponding to the concentration of vehicle at the highest exposure level) should be used. Doses should be spaced appropriately to produce test groups with a range of toxic effects. The data should be sufficient to produce a dose-response curve.

(ii) The highest dose level should result in toxic effects but not produce severe skin irritation or an incidence of fatalities which would prevent a meaningful evaluation.

(iii) The lowest dose level should not produce any evidence of toxicity. Where there is a usable estimation of human exposure, the lowest dose level should exceed this.

(iv) Ideally, the intermediate dose level(s) should produce minimal observable toxic effects. If more than one intermediate dose is used, the dose levels should be spaced to produce a gradation of toxic effects.

(v) In the low and intermediate groups and in the controls the incidence of fatalities should be low, to permit a meaningful evaluation of the results.

(5) *Exposure conditions.* The animals are treated with test substance, ideally for at least 6 hours per day on a 7-day per week basis, for a period of 90 days. However, based primarily on practical considerations, application on a 5-day per week basis is considered to be acceptable.

(6) *Observation period.* (i) Duration of observation should be at least 90 days.

(ii) Animals in the satellite group scheduled for follow-up observations should be kept for a further 28 days without treatment to detect recovery from, or persistence of, toxic effects.

(7) *Preparation of animal skin.* (i) Shortly before testing, fur should be clipped from the dorsal area of the trunk of the test animals. Shaving may be employed, but it should be carried out approximately 24 hours before the test. Repeat clipping or shaving is usually needed at approximately weekly intervals. When clipping or shaving the fur, care should be taken to avoid abrading the skin, which could alter its permeability.

(ii) Not less than 10 percent of the body surface area should be clear for the application of the test substance. The weight of the animal should be taken into account when deciding on the area to be cleared and on the dimensions of any covering used.

(iii) When testing solids, which may be pulverized if appropriate, the test substance should be moistened sufficiently with water or, where necessary, a suitable vehicle to ensure good contact with the skin. When a vehicle is used, the influence of the vehicle on toxicity of and penetration of the skin by the test substance should be taken into account.

(8) *Application of the test substance.* (i) The test substance should be applied uniformly over an area which is approximately 10 percent of the total body surface area. With highly toxic substances, the surface area covered may be less, but as much of the area should be covered with as thin and uniform a film as possible.

(ii) During the exposure period, the test substance should be held in contact with the skin with a porous gauze dressing and nonirritating tape. The test site should be further covered in a suitable manner to retain the gauze dressing and test substance and ensure that the animals cannot ingest the test substance. Restrainers may be used to prevent the ingestion of the test substance, but complete immobilization is not a recommended method.

(9) *Observation of animals.* (i) Each animal should be handled and its physical condition appraised at least once each day.

(ii) Additional observations should be made daily with appropriate actions taken to minimize loss of animals to the study (e.g., necropsy or refrigeration of those animals found dead and isolation or sacrifice of weak or moribund animals).

(iii) Signs of toxicity should be recorded as they are observed, including the time of onset, the degree, and duration.

(iv) Cage-side observations should include, but not be limited to, changes in skin and fur, eyes and mucous membranes, respiratory, circulatory, autonomic and central nervous systems, somatomotor activity and behavior pattern.

(v) Animals should be weighed weekly. Food consumption should also be determined weekly if abnormal body weight changes are observed.

(vi) At the end of the study period, all survivors in the non-satellite treatment groups are sacrificed. Moribund animals should be removed and sacrificed when noticed.

(10) *Clinical examinations.* (i) The following examinations should be made on at least five animals of each sex in each group:

(A) Certain hematology determinations should be carried out at least three times during the test period: just prior to initiation of dosing (baseline data), after approximately 30 days on test and just prior to terminal sacrifice at the end of the test period. Hematology determinations which should be appropriate to all studies: hematocrit, hemoglobin concentration, erythrocyte count, total and differential leucocyte count, and a measure of clotting potential such as clotting time, prothrombin time, thromboplastin time, or platelet count.

(B) Certain clinical biochemistry determinations on blood should be carried out at least 3 times: just prior to initiation of dosing (baseline data), after approximately 30 days on test and just prior to terminal sacrifice at the end of the test period. Test areas which are considered appropriate to all studies: electrolyte balance, carbohydrate metabolism, and liver and kidney function. The selection of specific tests will be influenced by observations on the mode of action of the substance. Suggested determinations: calcium, phosphorus, chloride, sodium, potassium, fasting glucose (with the period of fasting appropriate to the species), serum glutamic-pyruvic transaminase (now known as serum alanine aminotransferase), serum glutamic oxaloacetic transaminase (now known as serum aspartate aminotransferase), ornithine decarboxylase, gamma glutamyl transpeptidase, urea nitrogen, albumen, blood creatinine, total bilirubin and total serum protein measurements. Other determinations which may be necessary for an adequate toxicological evaluation include: analyses of lipids, hormones, acid/base balance, methemoglobin and cholinesterase activity. Additional clinical biochemistry may be employed, where necessary, to extend the investigation of observed effects.

(ii) The following examinations should be made on at least five animals of each sex in each group:

(A) Ophthalmological examination, using an ophthalmoscope or equivalent suitable equipment, should be made prior to exposure to the test substance and at the termination of the study. If changes in the eyes are detected all animals should be examined.

(B) Urinalysis is not suggested on a routine basis, but only when there is an indication based on expected or observed toxicity.

(11) *Gross necropsy.* (i) All animals should be subjected to a full gross necropsy which includes examination of the external surface of the body, all orifices, and the cranial, thoracic and abdominal cavities and their contents.

(ii) The liver, kidneys, adrenals, brain, and gonads should be weighed wet, as soon as possible after dissection, to avoid drying.

(iii) The following organs and tissues, or representative samples thereof, should be preserved in a suitable medium for possible future histopathological examination: normal and treated skin; all gross lesions; brain—including sections of medulla/pons, cerebellar cortex and cerebral cortex; pituitary; thyroid/parathyroid; thymus; trachea; lungs; heart; (sternum with bone marrow); salivary glands; liver; spleen; kidneys; adrenals; pancreas; gonads; uterus; accessory genital organs (epididymis, prostate and, if present, seminal vesicles); aorta; gall bladder (if present); esophagus; stomach; duodenum; jejunum; ileum; cecum; colon; rectum; urinary bladder; representative lymph node; (mammary gland); (thigh musculature); peripheral nerve; (eye); (femur—including articular surface); (spinal cord at three levels—cervical; midthoracic and lumbar); and (exorbital lachrymal glands).

(12) *Histopathology.* The following histopathology should be performed:

(i) Full histopathology on normal and treated skin and on organs and tissues, listed above, of all animals in the control and high dose groups.

(ii) All gross lesions in all animals.

(iii) Target organs in all animals.

(iv) The tissues mentioned in brackets (listed above)—if indicated by signs of toxicity or expected target organ involvement.

(v) Lungs of animals (rodents) in the low and intermediate dose groups should be subjected to histopathological examination for evidence of infection, since this provides a convenient assessment of the state of health of the animals.

(vi) When a satellite group is used, histopathology should be performed on tissues and organs identified as showing effects in other treated groups.

(f) *Data and reporting*—(1) *Treatment of results.* (i) Data should be summarized in tabular form, showing for each test group the number of animals at the start of the test, the number of animals showing lesions, the types of lesions, and the percentage of animals displaying each type of lesion.

(ii) All observed results, quantitative and incidental, should be evaluated by an appropriate statistical method. Any generally accepted statistical method may be used; the statistical methods should be selected during the design of the study.

(2) *Evaluation of results.* The findings of a subchronic dermal toxicity study should be evaluated in conjunction with the findings of preceding studies and considered in terms of the observed toxic effects and the necropsy and histopathological findings. The evaluation should include the relationship between the dose of the test substance and the presence or absence, the incidence and severity, of abnormalities, including behavioral and clinical abnormalities, gross lesions, identified target organs, body weight changes, effect on mortality and any other general or specific toxic effects. A properly conducted subchronic test should provide a satisfactory estimation of a no-effect level.

(3) *Test report.* In addition to the reporting requirements as specified in the EPA Good Laboratory Practice Standards under 40 CFR Part 792, Subpart J, the following specific information should be reported.

(i) *Group animal data.* Tabulation of toxic response data by species, strain, sex and exposure level for:

(A) Number of animals dying.

(B) Number of animals showing signs of toxicity.

(C) Number of animals exposed.

(ii) *Individual animal data.* (A) Time of death during the study or whether animals survived to termination.

(B) Time of observation of each abnormal sign and its subsequent course.

(C) Body weight data.

(D) Food consumption data when collected.

(E) Hematological tests employed and all results.

(F) Clinical biochemistry tests employed and all results.

(G) Necropsy findings.

(H) Detailed description of all histopathological findings.

(I) Statistical treatment of results where appropriate.

(g) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Draize, J.H. "Dermal toxicity," *Appraisal of Chemicals in Food, Drugs and Cosmetics.* The Association of Food and Drug Officials of the United States (1959, 3rd printing 1975). pp. 46–59.

(2) Fitzhugh, O.G. "Subacute toxicity," *Appraisal of the Safety of Chemicals in Foods, Drugs and Cosmetics.* The Association of Food and Drug Officials of the United States (1959, 3rd printing 1975). pp. 28–35.

(3) National Academy of Sciences. "Principles and Procedures for Evaluating the Toxicity of Household

Substances," a report prepared by the Committee for the Revision of NAS Publication 1138, under the auspices of the Committee on Toxicology, National Research Council, National Academy of Sciences, Washington, DC (1977).

(4) World Health Organization. "Part I. Environmental Health Criteria 6,"*Principles and Methods for Evaluating the Toxicity of Chemicals.* (Geneva: World Health Organization, 1978).

§ 798.2450 Inhalation toxicity.

(a) *Purpose.* In the assessment and evaluation of the toxic characteristics of a gas, volatile substance, or aerosol/particulate, determination of subchronic inhalation toxicity may be carried out after initial information on toxicity has been obtained by acute testing. The subchronic inhalation study had been designed to permit the determination of the no-observed-effect level and toxic effects associated with continuous or repeated exposure to a test substance for a period of 90 days. The test is not capable of determining those effects that have a long latency period for development (e.g., carcinogenicity and life shortening). It provides information on health hazards likely to arise from repeated exposures by the inhalation route over a limited period of time. It will provide information on target organs, the possibilities of accumulation, and can be of use in selecting dose levels for chronic studies and for establishing safety criteria for human exposure. Hazards of inhaled substances are influenced by the inherent toxicity and by physical factors such as volatility and particle size.

(b) *Definitions.* (1) Subchronic inhalation toxicity is the adverse effects occurring as a result of the repeated daily exposure of experimental animals to a chemical by inhalation for part (approximately 10 percent) of a life span.

(2) Aerodynamic diameter applies to the size of particles of aerosols. It is the diameter of a sphere of unit density which behaves aerodynamically as the particle of the test substance. It is used to compare particles of different size and densities and to predict where in the respiratory tract such particles may be deposited. This term is used in contrast to measured or geometric diameter which is representative of actual diameters which in themselves cannot be related to deposition within the respiratory tract.

(3) The geometric mean diameter or the median diameter is the calculated aerodynamic diameter which divides the particles of an aerosol in half based on the weight of the particles. Fifty percent of the particles by weight will be larger than the median diameter and 50 percent of the particles will be smaller than the median diameter. The median diameter describes the particle size distribution of any aerosol based on the weight and size of the particles.

(4) Inhalable diameter refers to that aerodynamic diameter of a particle which is considered to be inhalable for the organism. It is used to refer to particles which are capable of being inhaled and may be deposited anywhere within the respiratory tract from the trachea to the alveoli. For man, inhalable diameter is considered as 15 micrometers or less.

(5) Dose refers to an exposure level. Exposure is expressed as weight or volume of test substance per volume of air (mg/l), or as parts per million (ppm).

(6) No-effect level/No-toxic-effect level/No-adverse-effect level/No-observed-effect level is the maximum dose used in a test which produces no observed adverse effects. A no-observed-effect level is expressed in terms of weight or volume of test substance given daily per unit volume of air (mg/l or ppm).

(7) Cumulative toxicity is the adverse effects of repeated doses occurring as a result of prolonged action on, or increased concentration of the administered substance or its metabolites in susceptible tissues.

(c) *Principle of the test method.* Several groups of experimental animals are exposed daily for a defined period to the test substance in graduated concentrations, one concentration being used per group, for a period of 90 days. During the period of administration, the animals are observed daily to detect signs of toxicity. Animals which die during the test are necropsied and at the conclusion of the test, surviving animals are sacrificed and necropsied and appropriate histopathological examinations carried out.

(d) *Test procedures*—(1) *Animal selection*—(i) *Species and strain.* A variety of rodent species may be used although the rat is the preferred species. Commonly used laboratory strains should be employed. If another mammalian species is used, the tester should provide justification/reasoning for its selection.

(ii) *Age.* Young adult animals should be used. At the commencement of the study the weight variation of animals should not exceed ±20 percent of the mean weight for each sex.

(iii) *Sex.* (A) Equal numbers of animals of each sex should be used at each dose level.

(B) Females should be nulliparous and nonpregnant.

(iv) *Numbers.* (A) At least 20 animals (10 females and 10 males) should be used for each test group.

(B) If interim sacrifices are planned, the number of animals should be increased by the number of animals scheduled to be sacrificed before the completion of the study.

(2) *Control groups.* A concurrent control group is recommended. This group should be an untreated or sham-treated control group. Except for treatment with the test substance, animals in the control group should be handled in a manner identical to the test group animals. Where a vehicle is used to help generate an appropriate concentration of the substance in the atmosphere, a vehicle control group should be used. If the toxic properties of the vehicle are not known or cannot be made available, both untreated and vehicle control groups are recommended.

(3) *Satellite group.* A satellite group of 20 animals (10 animals per sex) may be treated with the high concentration level for 90 days and observed for reversibility, persistence, or delayed occurrence of toxic effects for a post-treatment period of appropriate length, normally not less than 28 days.

(4) *Dose levels and dose selection.* (i) In subchronic toxicity tests, it is desirable to have a dose-response relationship as well as a no-observed-toxic-effect level. Therefore, at least three dose levels with a control and, where appropriate, a vehicle control (corresponding to the concentration of vehicle at the highest exposure level) should be used. Doses should be spaced appropriately to produce test groups with a range of toxic effects. The data should be sufficient to produce a dose-response curve.

(ii) The highest concentration should result in toxic effects but not produce an incidence of fatalities which would prevent a meaningful evaluation.

(iii) The lowest concentration should not produce any evidence of toxicity. Where there is a usable estimation of human exposure the lowest concentration should exceed this.

(iv) Ideally, the intermediate dose level(s) should produce minimal observable toxic effects. If more than one intermediate dose level is used, the concentrations should be spaced to produce a gradation of toxic effects.

(v) In the low and intermediate groups and in the controls the incidence of fatalities should be low, to permit a meaningful evaluation of the results.

(vi) In the case of potentially explosive test substances, care should

be taken to avoid generating explosive concentrations.

(5) *Exposure conditions.* The animals are exposed to the test substance, ideally for 6 hours per day on a 7-day per week basis, for a period of 90 days. However, based primarily on practical considerations, exposure on a 5-day per week basis is considered to be acceptable.

(6) *Observation period.* (i) Duration of observation should be for at least 90 days.

(ii) Animals in a satellite group scheduled for follow-up observations should be kept for an additional 28 days without treatment to detect recovery from, or persistence of, toxic effects.

(7) *Inhalation exposure.* (i) The animals should be tested in inhalation equipment designed to sustain a dynamic air flow of 12 to 15 air changes per hour and ensure an adequate oxygen content of 19 percent and an evenly distributed exposure atmosphere. Where a chamber is used, its design should minimize crowding of the test animals and maximize their exposure to the test substance. This is best accomplished by individual caging. As a general rule, to ensure stability of a chamber atmosphere, the total "volume" of the test animals should not exceed 5 percent of the volume of the test chamber. Oro-nasal or head-only exposure may be used if it is desirable to avoid concurrent exposure by the dermal or oral routes.

(ii) A dynamic inhalation system with a suitable analytical concentration control system should be used. The rate of air flow should be adjusted to ensure that conditions throughout the equipment exposure chamber are essentially the same. Maintenance of slight negative pressure inside the chamber will prevent leakage of the test substance into the surrounding areas.

(iii) The temperature at which the test is performed should be maintained at 22 °C (±2°). Ideally, the relative humidity should be maintained between 40 to 60 percent, but in certain instances (e.g., tests of aerosols, use of water vehicle) this may not be practicable.

(8) *Physical measurements.* Measurements or monitoring should be made of the following:

(i) The rate of air flow should be monitored continuously but should be recorded at least every 30 minutes.

(ii) The actual concentrations of the test substance should be measured in the breathing zone. During the exposure period the actual concentrations of the test substance should be held as constant as practicable, monitored continuously and recorded at least at the beginning, at an intermediate time and at the end of the exposure period.

(iii) During the development of the generating system, particle size analysis should be performed to establish the stability of aerosol concentrations. During exposure, analysis should be conducted as often as necessary to determine the consistency of particle size distribution.

(iv) Temperature and humidity should be monitored continuously but should be recorded at least every 30 minutes.

(9) *Food and water during exposure period.* Food should be withheld during exposure. Water may also be withheld in certain cases.

(10) *Observation of animals.* (i) Each animal should be handled and its physical condition appraised at least once each day.

(ii) Additional observations should be made daily with appropriate actions taken to minimize loss of animals to the study (e.g., necropsy or refrigeration of those animals found dead and isolation or sacrifice of weak or moribund animals).

(iii) Signs of toxicity should be recorded as they are observed including the time of onset, the degree, and duration.

(iv) Cage-side observations should include, but not be limited to, changes in the skin and fur, eyes and mucous membranes, respiratory, circulatory, autonomic and central nervous systems, somatomotor activity and behavior pattern.

(v) Animals should be weighed weekly. Food consumption should also be determined weekly if abnormal body weight changes are observed.

(vi) At the end of the study period all survivors in the nonsatellite treatment groups should be sacrificed. Moribund animals should be removed and sacrificed when noticed.

(11) *Clinical examinations.* (i) The following examinations should be made on at least five animals of each sex in each group:

(A) Certain hematology determinations should be carried out at least three times during the test period: just prior to initiation of dosing (base line data), after approximately 30 days on test, and just prior to terminal sacrifice at the end of the test period. Hematology determinations which should be appropriate to all studies: hematocrit, hemoglobin concentration, erythrocyte count, total and differential leucocyte count, and a measure of clotting potential such as clotting time, prothrombin time, thromboplastin time, or platelet count.

(B) Certain clinical biochemistry determinations on blood should be carried out at least three times: just prior to initiation of dosing (base line data), after approximately 30 days on test and just prior to terminal sacrifice at the end of the test period. Clinical biochemistry test areas which are considered appropriate to all studies: electrolyte balance, carbohydrate metabolism, and liver and kidney function. The selection of specific tests will be influenced by observations on the mode of action of the substance. Suggested determinations: calcium, phosphorus, chloride, sodium, potassium, fasting glucose (with period of fasting appropriate to the species), serum glutamic-pyruvic transaminase, (now known as serum alanine aminotransferase), serum glutamic-oxaloacetic transaminase (now known as serum aspartate aminotransferase), ornithine decarboxylase, gamma glutamyl transpeptidase, urea nitrogen, albumen, blood creatinine, total bilirubin, and total serum protein measurements. Other determinations which may be necessary for an adequate toxicological evaluation include: analyses of lipids, hormones, acid/base balance, methemoglobin, and cholinesterase activity. Additional clinical biochemistry may be employed, where necessary, to extend the investigation of observed effects.

(ii) The following examinations should be made on at least five animals of each sex in each group:

(A) Ophthalmological examination, using an ophthalmoscope or equivalent suitable equipment, should be made prior to exposure to the test substance and at the termination of the study. If changes in the eyes are detected, all animals should be examined.

(B) Urinalysis is not recommended on a routine basis, but only when there is an indication based on expected or observed toxicity.

(12) *Gross pathology.* (i) All animals should be subjected to a full gross necropsy which includes examination of the external surface of the body, all orifices and the cranial, thoracic and abdominal cavities and their contents.

(ii) At least the liver, kidneys, adrenals, brain, and gonads should be weighed wet, as soon as possible after dissection to avoid drying.

(iii) The following organs and tissues, or representative samples thereof, should be preserved in a suitable medium for possible future histopathological examination: all gross lesions; lungs—which should be removed intact, weighed, and treated with a suitable fixative to ensure that lung structure is maintained (perfusion with the fixative is considered to be an

effective procedure); nasopharyngeal tissues; brain—including sections of medulla/pons cerebellar cortex and cerebral cortex; pituitary; thyroid/parathyroid; thymus; trachea; heart; sternum with bone marrow; salivary glands; liver; spleen; kidneys; adrenals; pancreas; gonads; uterus; accessory genital organs (epididymis, prostrate, and, if present, seminal vesicles); aorta; (skin); gall bladder (if present); esophagus; stomach; duodenum; jejunum; ileum; cecum; colon; rectum; urinary bladder; representative lymph node; (mammary gland); (thigh musculature); peripheral nerve; (eyes); (femur-cervical, midthoracic, and lumbar); and (exorbital lachrymal glands).

(13) *Histopathology.* The following histopathology should be performed:

(i) Full histopathology on the respiratory tract and other organs and tissues, listed above, of all animals in the control and high dose groups.

(ii) All gross lesions in all animals.

(iii) Target organs in all animals.

(iv) The tissues mentioned in brackets (listed above) if indicated by signs of toxicity or target organ involvement.

(v) Lungs of animals in the low and intermediate dose groups should also be subjected to histopathological examination, primarily for evidence of infection since this provides a covenient assessment of the state of health of the animals.

(vi) When a satellite group is used, histopathology should be performed on tissues and organs identified as showing effects in other treated groups.

(e) *Data and reporting*—(1) *Treatment of results.* (i) Data should be summarized in tabular form, showing for each test group the number of animals at the start of the test, the number of animals showing lesions, the types of lesions, and the percentage of animals displaying each type of lesion.

(ii) All observed results, quantitative and incidental, should be evaluated by an appropriate statistical method. Any generally accepted statistical method may be used; the statistical methods should be selected during the design of the study.

(2) *Evaluation of results.* The findings of the subchronic inhalation toxicity study should be evaluated in conjunction with the findings of preceding studies and considered in terms of the observed toxic effects and the necropsy and histopathological findings. The evaluation will include the relationship between the concentration of the test substance and duration of exposure, and the presence or absence, the incidence and severity, of abnormalities, including behavioral and clinical abnormalities, gross lesions, identified target organs, body weight changes, effects on mortality and any other general or specific toxic effects. A properly conducted subchronic test should provide a satisfactory estimation of a no-effect level.

(3) *Test report.* In addition to the reporting requirements as specified under 40 CFR Part 792, Subpart J, the following specific information should be reported:

(i) *Test conditions.* (A) Description of exposure apparatus, including design, type, dimensions, source of air, system for generating particulates and aerosols, method of conditioning air, treatment of exhaust air, and the method of housing animals in a test chamber.

(B) The equipment for measuring temperature, humidity, and particulate aerosol concentrations and size should be described.

(ii) *Exposure data.* These should be tabulated and presented with mean values and measure of variability (e.g., standard deviation) and should include:

(A) Airflow rates through the inhalation equipment.

(B) Temperature and humidity of air.

(C) Nominal concentration (total amount of test substance fed into the inhalation equipment divided by volume of air).

(D) Actual concentration in test breathing zone.

(E) Particle size distribution (e.g., median aerodynamic diameter of particles with standard deviation from the mean).

(iii) *Group animal data.* Tabulation of toxic response data by species, strain, sex, and exposure level for:

(A) Number of animals dying.

(B) Number of animals showing signs of toxicity.

(C) Number of animals exposed.

(iv) *Individual animal data.* (A) Time of death during the study or whether animals survived to termination.

(B) Time of observation of each abnormal sign and its subsequent course.

(C) Body weight data.

(D) Food consumption data when collected.

(E) Hematological tests employed and all results.

(F) Clinical biochemistry tests employed and all results.

(G) Necropsy findings.

(H) Detailed description of all histopathological findings.

(I) Statistical treatment of results where appropriate.

(f) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Cage, J.C. "Experimental Inhalation Toxicology," *Methods in Toxicology.* Ed. G.E. Paget. (Philadelphia: F.A. Davis Co. 1970, pp. 258–277.

(2) Casarett, L.J., Doull, J. "Chapter 9." *Toxicology: The Basic Science of Poisons* (New York: Macmillan Publishing Co. Inc. 1975).

(3) MacFarland, H.N. "Respiratory Toxicology," *Essays in Toxicology.* Ed. W.J. Hayes. Vol. 7 (New York: Academic Press, 1976) pp. 121–154.

(4) National Academy of Sciences. "Principles and Procedures for Evaluating the Toxicity of Household Substances," a report prepared by the Committee for the Revision of NAS Publication 1138, under the auspices of the Committee on Toxicology, National Research Council, National Academy of Sciences, Washington, DC (1977).

(5) World Health Organization. "Part I. Environmental Health Criteria 6," *Principles and Methods for Evaluating the Toxicity of Chemicals.* (Geneva: World Health Organization, 1978).

§ 798.2650 Oral toxicity.

(a) *Purpose.* In the assessment and evaluation of the toxic characteristics of a chemical, the determination of subchronic oral toxicity may be carried out after initial information on toxicity has been obtained by acute testing. The subchronic oral study has been designed to permit the determination of the no-observed-effect level and toxic effects associated with continuous or repeated exposure to a test substance for a period of 90 days. The test is not capable of determining those effects that have a long latency period for development (e.g., carcinogenicity and life shortening). It provides information on health hazards likely to arise from repeated exposure by the oral route over a limited period of time. It will provide information on target organs, the possibilities of accumulation, and can be of use in selecting dose levels for chronic studies and for establishing safety criteria for human exposure.

(b) *Definitions.* (1) Subchronic oral toxicity is the adverse effects occurring as a result of the repeated daily exposure of experimental animals to a chemical by the oral route for a part (approximately 10 percent for rats) of a life span.

(2) Dose is the amount of test substance administered. Dose is expressed as weight of test substance (g, mg) per unit weight of test animal (e.g., mg/kg), or as weight of test substance per unit weight of food or drinking water.

(3) No-effect level/No-toxic-effect level/No-adverse-effect level/No-observed-effect level is the maximum dose used in a test which produces no observed adverse effects. A no-observed-effect level is expressed in terms of the weight of a substance given daily per unit weight of test animal (mg/kg). When administered to animals in food or drinking water the no-observed-effect level is expressed as mg/kg of food or mg/ml of water.

(4) Cumulative toxicity is the adverse effects of repeated doses occurring as a result of prolonged action on, or increased concentration of the administered substance or its metabolites in susceptible tissue.

(c) *Principle of the test method.* The test substance is administered orally in graduated daily doses to several groups of experimental animals, one dose level per group, for a period of 90 days. During the period of administration the animals are observed daily to detect signs of toxicity. Animals which die during the period of administration are necropsied. At the conclusion of the test all animals are necropsied and histopathological examinations carried out.

(d) *Limit test.* If a test at one dose level of at least 1,000 mg/kg body weight (expected human exposure may indicate the need for a higher dose level), using the procedures described for this study, produces no observable toxic effects and if toxicity would not be expected based upon data of structurally related compounds, then a full study using three dose levels might not be necessary.

(e) *Test procedures*—(1) *Animal selection*—(i) *Species and strain.* A variety of rodent species may be used, although the rat is the preferred species. Commonly used laboratory strains should be employed. The commonly used non-rodent species is the dog, preferably of a defined breed; the beagle is frequently used. If other mammalian species are used, the tester should provide justification/reasoning for their selection.

(ii) *Age*—(A) *General.* Young adult animals should be employed. At the commencement of the study the weight variation of animals used should not exceed ± 20 percent of the mean weight for each sex.

(B) *Rodents.* Dosing should begin as soon as possible after weaning, ideally before the rats are 6, and in any case, not more than 8 weeks old.

(C) *Non-rodent.* In the case of the dog, dosing should commence after acclimatization, preferably at 4 to 6 months and not later than 9 months of age.

(iii) *Sex.* (A) Equal numbers of animals of each sex should be used at each dose level.

(B) The females should be nulliparous and nonpregnant.

(iv) *Numbers*—(A) *Rodents.* At least 20 animals (10 females and 10 males) should be used at each dose level.

(B) *Non-rodents.* At least eight animals (four females and four males) should be used at each dose level.

(C) If interim sacrifices are planned, the number should be increased by the number of animals scheduled to be sacrificed before the completion of the study.

(2) *Control groups.* A concurrent control group is recommended. This group should be an untreated or sham treated control group or, if a vehicle is used in administering the test substance, a vehicle control group. If the toxic properties of the vehicle are not known or cannot be made available, both untreated and vehicle control groups are recommended.

(3) *Satellite group.* (Rodent) A satellite group of 20 animals (10 animals per sex) may be treated with the high dose level for 90 days and observed for reversibility, persistence, or delayed occurrence of toxic effects for a post-treatment period of appropriate length, normally not less than 28 days.

(4) *Dose levels and dose selection.* (i) In subchronic toxicity tests, it is desirable to have a dose response relationship as well as no-observed-toxic-effect level. Therefore, at least three dose levels with a control and, where appropriate, a vehicle control (corresponding to the concentration of vehicle at the highest exposure level) should be used. Doses should be spaced appropriately to produce test groups with a range to toxic effects. The data should be sufficient to produce a dose response curve.

(ii) The highest dose level in rodents should result in toxic effects but not produce an incidence of fatalities which would prevent a meaningful evaluation; for non-rodents there should be no fatalities.

(iii) The lowest dose level should not produce any evidence of toxicity. Where there is a usable estimation of human exposure the lowest dose level should exceed this.

(iv) Ideally, the intermediate dose level(s) should produce minimal observable toxic effects. If more than one intermediate dose is used, the dose levels should be spaced to produce a gradation of toxic effects.

(v) For rodents, the incidence of fatalities in low and intermediate dose groups and in the controls should be low, to permit a meaningful evaluation of the results; for non-rodents, there should be no fatalities.

(5) *Exposure conditions.* The animals are dosed with the test substance ideally on a 7-day per week basis over a period of 90 days. However, based primarily on practical considerations, dosing in gavage or capsule studies on a 5-day per week basis is considered to be acceptable.

(6) *Observation period.* (i) Duration of observation should be for at least 90 days.

(ii) Animals in the satellite group scheduled for follow-up observations should be kept for a further 28 days without treatment to detect recovery from, or persistence of, toxic effects.

(7) *Administration of the test substance.* (i) The test substance may be administered in the diet or in capsules. In addition, for rodents it may also be administered by gavage or in the drinking water.

(ii) All animals should be dosed by the same method during the entire experimental period.

(iii) Where necessary, the test substance is dissolved or suspended in a suitable vehicle. If a vehicle or diluent is needed, ideally it should not elicit important toxic effects itself nor substantially alter the chemical or toxicological properties of the test substance. It is recommended that wherever possible the usage of an aqueous solution be considered first, followed by consideration of a solution of oil and then by possible solution in other vehicles.

(iv) For substances of low toxicity, it is important to ensure that when administered in the diet the quantities of the test substance involved do not interfere with normal nutrition. When the test substance is administered in the diet either a constant dietary concentration (ppm) or a constant dose level in terms of the animals' body weight may be used; the alternative used should be specified.

(v) For a substance administered by gavage or capsule, the dose should be given at similar times each day, and adjusted at intervals (weekly or bi-weekly) to maintain a constant dose level in terms of animal body weight.

(8) *Observation of animals.* (i) Each animal should be handled and its physical condition appraised at least once each day.

(ii) Additional observations should be made daily with appropriate actions taken to minimize loss of animals to the study (e.g., necropsy or refrigeration of those animals found dead and isolation or sacrifice of weak or moribund animals).

(iii) Signs of toxicity should be recorded as they are observed including the time of onset, degree and duration.

(iv) Cage-side observations should include, but not be limited to, changes in skin and fur, eyes and mucous membranes, respiratory, circulatory, autonomic and central nervous systems, somatomotor activity and behavior pattern.

(v) Measurements should be made weekly of food consumption or water consumption when the test substance is administered in the food or drinking water, respectively.

(vi) Animals should be weighed weekly.

(vii) At the end of the 90-day period all survivors in the nonsatellite treatment groups are sacrificed. Moribund animals should be removed and sacrificed when noticed.

(9) *Clinical examinations.* (i) The following examinations should be made on at least five animals of each sex in each group for rodents and all animals when non-rodents are used as test animals.

(A) Certain hematology determinations should be carried out at least three times during the test period: just prior to initiation of dosing (baseline data), after approximately 30 days on test and just prior to terminal sacrifice at the end of the test period. Hematology determinations which should be appropriate to all studies: hematocrit, hemoglobin concentration, erythrocyte count, total and differential leucocyte count, and a measure of clotting potential such as clotting time, prothrombin time, thromboplastin time, or platelet count.

(B) Certain clinical biochemistry determinations should be carried out at least three times during the test period: just prior to initiation of dosing (baseline data), after approximately 30 days on test and just prior to terminal sacrifice at the end of the test period. Clinical biochemical test areas which are considered appropriate to all studies: electrolyte balance, carbohydrate metabolism, and liver and kidney function. The selection of specific tests will be influenced by observations on the mode of action of the substance. Suggested determinations: calcium, phosphorus, chloride, sodium, potassium, fasting glucose (with period of fasting appropriate to the species/breed), serum glutamic-pyruvic transaminase (now known as serum alanine aminotransferase), serum glutamic oxaloacetic transaminase (now known as serum aspartate aminotransferase), ornithine decarboxylase, gamma glutamyl transpeptidase, urea nitrogen, albumen, blood creatinine, total bilirubin and total serum protein measurements. Other determinations which may be necessary for an adequate toxicological evaluation include analyses of lipids, hormones, acid/base balance, methemoglobin and cholinesterase activity. Additional clinical biochemistry may be employed where necessary to extend the investigation of observed effects. Non-rodents should be fasted for a period (not more than 24 hours) before taking blood samples.

(ii) The following examinations should be made on at least five animals of each sex in each group for rodents and all animals on test for non-rodents.

(A) Ophthalmological examination, using an ophthalmoscope or equivalent suitable equipment, should be made prior to the administration of the test substance and at the termination of the study. If changes in the eyes are detected all animals should be examined.

(B) Urinalysis is not recommended on a routine basis, but only when there is an indication based on expected or observed toxicity.

(10) *Gross necropsy.* (i) All animals should be subjected to a full gross necropsy which includes examination of the external surface of the body, all orifices, and the cranial, thoracic and abdominal cavities and their contents.

(ii) At least the liver, kidneys, adrenals, and gonads should be weighed wet, as soon as possible after dissection to avoid drying. In addition, for the rodent, the brain; for the non-rodent, the thyroid with parathyroids also should be weighed wet.

(iii) The following organs and tissues, or representative samples thereof, should be preserved in a suitable medium for possible future histopathological examination: all gross lesions; brain-including sections of medulla/pons, cerebellar cortex and cerebral cortex; pituitary; thyroid/parathyroid; thymus; lungs; trachea; heart; sternum with bone marrow; salivary glands; liver; spleen; kidneys/adrenals; pancreas; gonads; uterus; accessory genital organs (epididymis, prostate, and, if present, seminal vesicles); aorta; (skin), (non-rat gall bladder); esophagus; stomach; duodenum; jejunum; ileum; cecum; colon; rectum; urinary bladder; representative lymph node; (mammary gland), (thigh musculature), peripheral nerve; (eyes); (femur-including articular surface); (spinal cord at three levels—cervical, midthoracic and lumbar); and, (rodent—exorbital lachrymal glands).

(11) *Histopathology.* The following histopathology should be performed:

(i) Full histopathology on the organs and tissues, listed above, of all rodents in the control and high dose groups, all non-rodents, and all rodents that died or were killed during the study.

(ii) All gross lesions in all animals.

(iii) Target organs in all animals.

(iv) The tissues mentioned in brackets (listed above) if indicated by signs of toxicity of target organ involvement.

(v) Lungs, liver and kidneys of all animals. Special attention to examination of the lungs of rodents should be made for evidence of infection since this provides a convenient assessment of the state of health of the animals.

(vi) When a satellite group is used (rodents), histopathology should be performed on tissues and organs identified as showing effects in the treated groups.

(f) *Data and reporting*—(1) *Treatment of results.* (i) Data should be summarized in tabular form, showing for each test group the number of animals at the start of the test, the number of animals showing lesions, the types of lesions and the percentage of animals displaying each type of lesion.

(ii) All observed results, quantitative and incidental, should be evaluated by an appropriate statistical method. Any generally accepted statistical methods may be used; the statistical methods should be selected during the design of the study.

(2) *Evaluation of the study results.* (i) The findings of a subchronic oral toxicity study should be evaluated in conjunction with the findings of preceding studies and considered in terms of the toxic effects and the necropsy and histopathological findings. The evaluation will include the relationship between the dose of the test substance and the presence or absence, the incidence and severity, of abnormalities, including behavioral and clinical abnormalities, gross lesions, identified target organs, body weight changes, effects on mortality and any other general or specific toxic effects. A properly conducted subchronic test should provide a satisfactory estimation of a no-effect level.

(ii) In any study which demonstrates an absence of toxic effects, further investigation to establish absorption and bioavailability of the test substance should be considered.

(3) *Test report.* In addition to the reporting requirements as specified under 40 CFR Part 792, Subpart J the following specific information should be reported:

(i) *Group animal data.* Tabulation of toxic response data by species, strain, sex and exposure level for:

(A) Number of animals dying.

(B) Number of animals showing signs of toxicity.

(C) Number of animal exposed.

(ii) *Individual animal data.* (A) Time of death during the study or whether animals survived to termination.

(B) Time of observation of each abnormal sign and its subsequent course.

(C) Body weight data.

(D) Food consumption data when collected.

(E) Hematological tests employed and all results.

(F) Clinical biochemistry tests employed and all results.

(G) Necropsy findings.

(H) Detailed description of all histopathological findings.

(I) Statistical treatment of results where appropriate.

(g) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Boyd, E.M. "Chapter 14—Pilot Studies, 15—Uniposal Clinical Parameters, 16—Uniposal Autopsy Parameters." *Predictive Toxicometrics.* (Baltimore: Williams and Wilkins, 1972).

(2) Fitzhugh, O.G. "Subacute Toxicity," *Appraisal of the Safety of Chemicals in Foods, Drugs and Cosmetics.* The Association of Food and Drug Officials of the United States (1959, 3rd Printing 1975) pp. 28–35.

(3) Food Safety Council. "Subchronic Toxicity Studies," *Proposed System for Food Safety Assessment.* (Columbia: Food Safety Council, 1978) pp. 83–96.

(4) National Academy of Sciences. "Principles and Procedures for Evaluating the Toxicity of Household Substances," a report prepared by the Committee for the Revision of NAS Publication 1138, under the auspices of the Committee on Toxicology, National Research Council, National Academy of Sciences, Washington, DC (1977).

(5) World Health Organization. "Part I. Environmental Health Criteria 6," *Principles and Methods for Evaluating the Toxicity of Chemicals.* (Geneva: World Health Organization, 1978).

§ 798.2675 Oral toxicity with satellite reproduction and fertility study.

(a) *Purpose.* (1) In the assessment and evaluation of the toxic characteristics of a chemical, the determination of subchronic oral toxicity may be carried out after initial information on toxicity has been obtained by acute testing. The subchronic oral study has been designed to permit the determination of the no-observed-effect level and toxic effects associated with continuous or repeated exposure to a test substance for a period of 90 days. The test is not capable of determining those effects that have a long latency period for development (e.g., carcinogenicity and life shortening). It provides information on health hazards likely to arise from repeated exposure by the oral route over a limited period of time. It will provide information on target organs, and on the possibilities of accumulation, and can be of use in selecting dose levels for chronic studies and for establishing safety criteria for human exposure.

(2) The satellite reproduction and fertility study is designed to provide general information concerning the effects of a test substance on gonadal function, conception, parturition, and the growth and development of the offspring. The study may also provide information about the effects of the test substance on neonatal morbidity, mortality, and preliminary data on teratogenesis and serve as a guide for subsequent tests.

(b) *Definitions.* (1) Subchronic oral toxicity is the adverse effects occurring as a result of the repeated daily exposure of experimental animals to a chemical by the oral route for a part (approximately 10 percent for rats) of a life span.

(2) Dose is the amount of test substance administered. Dose is expressed as weight of test substance (g, mg) per unit weight of test animal (e.g., mg/kg), or as weight of test substance per unit weight of food or drinking water.

(3) No-effect level/No-toxic-effect level/No-adverse-effect level/No-observed effect level is the maximum dose used in a test which produces no observed adverse effects. A no-observed effect level is expressed in terms of the weight of a substance given daily per unit weight of test animal (mg/kg). When administered to animals in food or drinking water the no-observed-effect level is expressed as mg/kg of food or mg/ml of water.

(4) Cumulative toxicity is the adverse effects of repeated doses occurring as a result of prolonged action on, or increased concentration of the administered substance or its metabolites in susceptible tissue.

(c) *Principle of the test method.* (1) The test substance is administered orally in graduated daily doses to several groups of experimental animals, one dose level per group, for a period of 90 days for the subchronic study. During the period of administration the animals are observed daily to detect signs of toxicity. Animals which die during the period of administration are necropsied. At the conclusion of the test all surviving animals are necropsied and histopathological examinations carried out.

(2) Starting with the 10th week of dosing, males will be mated with females selected for the reproduction and fertility study. The test substance will continue to be administered throughout the period of mating until day 90 for all males and those females not selected for reproduction; for the mated females, dosing will continue throughout the resulting period of gestation and lactation until weaning of their offspring.

(d) *Limit test.* If a test at one dose level of at least 1,000 mg/kg body weight (expected human exposure may indicate the need for a higher dose level), using the procedures described for this study, produces no observable toxic effects and if toxicity would not be expected based upon data of structurally related compounds, then a full study using three dose levels might not be necessary.

(e) *Test procedures*—(1) *Animal selection*—(i) *Species and strain.* The rat is the preferred species. If another mammalian species is used, the tester should provide justification/reasoning for its selection. Strains with low fecundity should not be used.

(ii) *Age.* Animals should be about 5 to 8 weeks old at the start of dosing.

(iii) *Sex.* (A) Both males and females should be studied.

(B) The females should be nulliparous and non-pregnant.

(iv) *Number of animals.* Each test and control group should contain at least 10 males and at least 30 females (at least 10 for subchronic study and a sufficient amount of additional females to yield at least 20 pregnancies for the reproduction and fertility study).

(2) *Control groups.* (i) A concurrent control group should be used. This group should be an untreated or sham treated control group or if a vehicle is used in administering the test substance, a vehicle control group.

(ii) If a vehicle is used in administering the test substance, the control group should receive the vehicle in the highest volume used.

(iii) If a vehicle or other additive is used to facilitate dosing, it should not interfere with absorption of the test substance or produce toxic effects.

(3) *Dose levels and dose selection.* (i) In subchronic toxicity tests, it is desirable to have a dose response relationship as well as no-observed-toxic-effect level. Therefore, at least three dose levels with a control and, where appropriate, a vehicle control

(corresponding to the concentration of vehicle at the highest exposure level) should be used. Doses should be spaced appropriately to produce test groups with a range of toxic effects. The data should be sufficient to produce a dose response curve.

(ii) The highest dose level in rodents should result in toxic effects but not produce an incidence of fatalities which would prevent a meaningful evaluation.

(iii) The lowest dose level should not produce any evidence of toxicity. Where there is a usable estimation of human exposure the lowest dose level should exceed this.

(iv) Ideally, the intermediate dose level(s) should produce minimal observable toxic effects. If more than one intermediate dose is used, the dose levels should be spaced to produce a gradation of toxic effects.

(4) *Exposure conditions.* The animals are dosed with the test substance ideally on a 7-day per week basis over a period of 90 days. However, based primarily on practical considerations, dosing in gavage or capsule studies on a 5-day per week basis is considered to be acceptable, except during the periods of mating, gestation, and lactation during which time females selected for the reproduction and fertility study should be dosed daily.

(i) Dosing, mating, delivery, and sacrifice schedule.

(A) Dosing of the males and females should begin when they are 5 to 8 weeks old. For both sexes, dosing should be continued for at least 10 weeks before the mating period.

(B) Dosing of males should continue through the mating period and until day 90 of the subchronic study.

(C) Dosing of females not selected for the reproduction and fertility study should continue until day 90 of the subchronic study.

(D) Daily dosing (that is, on a 7-day per week basis) of the females selected for the reproduction and fertility study should begin with and continue through the mating period, pregnancy, and to the weaning of the offspring.

(ii) All animals are sacrificed as scheduled.

(A) All males and those females not selected for reproduction and fertility study should be sacrificed at the end of the 90-day subchronic study.

(B) The females selected for the reproduction and fertility study should be sacrificed upon weaning of their offspring.

(C) Offspring should be sacrificed when weaned.

(5) *Observation period.* (i) Duration of observation should be for at least 90 days for the subchronic study.

(ii) For the satellite reproduction and fertility study, observation of dams and their pups should continue until the weaning of the offspring.

(6) *Administration of the test substance.* (i) Test substance may be administered in the diet or in capsules. In addition, for rodents it may also be administered by gavage or in the drinking water.

(ii) All animals should be dosed by the same method during the entire experimental period.

(iii) Where necessary, the test substance is dissolved or suspended in a suitable vehicle. If a vehicle or diluent is needed, ideally it should not elicit important toxic effects itself nor substantially alter the chemical or toxicological properties of the test substance. It is recommended that wherever possible the usage of an aqueous solution be considered first, followed by consideration of a solution of oil and then by possible solution in other vehicles.

(iv) For substances of low toxicity, it is important to ensure that when administered in the diet the quantities of the test substance involved do not interfere with normal nutrition. When the test substance is administered in the diet either a constant dietary concentration (ppm) or a constant dose level in terms of the animals' body weight may be used; the alternative used should be specified.

(v) For a substance administered by gavage or capsule, the dose should be given at similar times each day and adjusted to maintain a constant dose level in terms of animal body weight. During pregnancy the dosage should be based on the body weight at day 0 and 6 of pregnancy.

(7) *Mating procedure*—(i) *Parental.* (A) For each mating, either a 1:1 (one male to one female) or a 1:2 (one male to two females) method may be used. Females should be placed with males from the same dose level until pregnancy occurs or one week has elapsed. If mating has not occurred after one week, the female should be placed with a different male. Paired matings should be clearly identified.

(B) Those pairs that fail to mate should be evaluated to determine the cause of the apparent infertility. This may involve such procedures as additional opportunities to mate with proven fertile males or females, histological examination of the reproductive organs, and examination of the estrus or spermatogenic cycles.

(C) Each day, the females should be examined for presence of sperm or vaginal plugs. Day 0 of pregnancy is defined as the day vaginal plugs or sperm are found.

(ii) *Special housing.* After evidence of copulation, pregnant animals should be caged separately in delivery or maternity cages and provided with nesting materials.

(iii) *Standardization of litter sizes.* (A) On day 4 after birth, the size of each litter should be adjusted by eliminating extra pups by random selection to yield, as nearly as possible, four males and four females per litter.

(B) Whenever the number of male or female pups prevents having four of each sex per litter, partial adjustment (for example, five males and three females) is permitted. Adjustments are not appropriate for litters of less than eight pups.

(C) Elimination of runts only is not appropriate.

(8) *Observation of animals.* (i) Each animal should be handled and its physical condition appraised at least once each day.

(ii) Additional observations should be made daily with appropriate actions taken to minimize loss of animals to the study (e.g., necropsy or refrigeration of those animals found dead and isolation or sacrifice of weak or moribund animals).

(iii) Signs of toxicity should be recorded as they are observed including the time of onset, degree and duration.

(iv) Cage-side observations should include, but not be limited to, changes in skin and fur, eyes and mucous membranes, respiratory, circulatory, autonomic and central nervous systems, somatomotor activity and behavior pattern.

(v) Measurements should be made weekly of food consumption or water consumption when the test substance is administered in the food or drinking water, respectively.

(vi) Animals should be weighed weekly.

(vii) At the end of the 90-day period all survivors in the non-satellite treatment groups are sacrificed. Moribund animals should be removed and sacrificed when noticed.

(viii) The duration of gestation should be calculated from day 0 of pregnancy. Signs of difficult or prolonged parturition should be recorded.

(ix) Each litter should be examined as soon as possible after delivery for the number of pups, stillbirths, live births, sex, and the presence of gross anomalies. Dead pups and pups sacrificed at day 4 should be preserved and studied for possible defects. Live pups should be counted and litters weighed, by weighing each individual

pup at birth, or soon thereafter, and on days 4, 7, 14, and 21 after parturition.

(x) Physical or behavioral abnormalities observed in the dams or offspring should be recorded.

(xi) Males and females in subchronic and satellite studies should be weighed on the first day of dosing and weekly thereafter. Litters should be weighed at birth, or soon thereafter, and on days 4, 7, 14, and 21. In all cases, litter weights should be calculated from the weights of the individual pups.

(9) *Clinical examinations.* (i) The following examinations should be made on at least five animals of each sex in each group from the subchronic study.

(A) Certain hematology determinations should be carried out at least three times during the test period: just prior to initiation of dosing (baseline data), after approximately 30 days on test and just prior to terminal sacrifice at the end of the test period. Hematology determinations which should be appropriate to all studies: hematocrit, hemoglobin concentration, erythrocyte count, total and differential leucocyte count, and a measure of clotting potential such as clotting time, prothrombin time, thromboplastin time, or platelet count.

(B) Certain clinical biochemistry determinations should be carried out at least three times during the test period: just prior to initiation of dosing (baseline data), after approximately 30 days on test and just prior to terminal sacrifice at the end of the test period. Clinical biochemical test areas which are considered appropriate to all studies: electrolyte balance, carbohydrate metabolism, and liver and kidney function. The selection of specific tests will be influenced by observations on the mode of action of the substance. Suggested determinations: calcium, phosphorus, chloride, sodium, potassium, fasting glucose (with period of fasting appropriate to the species/breed), serum glutamic-pyruvic transaminase (now known as serum alanine aminotransferase), serum glutamic oxaloacetic transaminase (now known as serum aspartate aminotransferase), ornithine decarboxylase, gamma glutamyl transpeptidase, urea nitrogen, albumen, blood creatinine, total bilirubin and total serum protein measurements. Other determinations which may be necessary for an adequate toxicological evaluation include analyses of lipids, hormones, acid/base balance, methemoglobin and cholinesterase activity. Additional clinical biochemistry may be employed where necessary to extend the investigation of observed effects.

(ii) The following examinations should be made on at least five animals of each sex in each group.

(A) Ophthalmological examination, using an ophthalmoscope or equivalent suitable equipment, should be made prior to the administration of the test substance and at the termination of the study. If changes in the eyes are detected all animals should be examined.

(B) Urinalysis is not recommended on a routine basis, but only when there is an indication based on expected or observed toxicity.

(10) *Gross necropsy.* (i) All animals (except offspring) should be subjected to a full gross necropsy which includes examination of the external surface of the body, all orifices, and the cranial, thoracic and abdominal cavities and their contents.

(ii) Special attention should be directed to the organs of the reproductive system.

(iii) At least the liver, kidneys, adrenals, brain and gonads should be weighed wet, as soon as possible after dissection to avoid drying.

(iv) The following organs and tissues, or representative samples thereof, should be preserved in a suitable medium for possible future histopathological examination: all gross lesions; brain-including sections of medulla/pons, cerebellar cortex and cerebral cortex; pituitary; thyroid/parathyroid; thymus; lungs; trachea; heart; sternum with bone marrow; salivary glands; liver; spleen; kidneys/adrenals; pancreas; vagina; uterus; cervix; ovaries; testes; epididymides; prostate; seminal vesicles; aorta; (skin); esophagus; stomach; duodenum; jejunum; ileum; cecum; colon; rectum; urinary bladder; representative lymph node; (mammary gland); (thigh musculature); peripheral nerve; (eyes); (femur including articular surface); (spinal cord at three levels—cervical, midthoracic and lumbar); and, (exorbital lachrymal glands).

(v) Dead or moribund pups should be examined for defects.

(11) *Histopathology.* The following histopathology should be performed:

(i) Full histopathology on the organs and tissues, listed above, of all animals (except offspring) in the control and high dose groups, and all animals (except offspring) that died or were killed during the study.

(ii) All gross lesions in all animals.

(iii) Target organs in all animals.

(iv) The tissues mentioned in brackets (listed above) if indicated by signs of toxicity or target organ involvement.

(v) Lungs, liver and kidneys of all animals. Special attention to examination of the lungs of rodents should be made for evidence of infection since this provides a convenient assessment of the state of health of the animals.

(vi) As suggested under mating procedures, reproductive organs of animals suspected of infertility may be subjected to microscopic examination.

(f) *Data and reporting*—(1) *Treatment of results.* (i) For the subchronic study, data should be summarized in tabular form, showing for each test group the number of animals at the start of the test, the number of animals showing lesions, the types of lesions and the percentage of animals displaying each type of lesion.

(ii) For the reproduction and fertility study, data should be summarized in tabular form, showing for each test group the number of animals at the start of the test, the number of animals pregnant, the types of change and the percentage of animals displaying each type of change.

(iii) All observed results, quantitative and incidental, should be evaluated by an appropriate statistical method. Any generally accepted statistical methods may be used; the statistical methods should be selected during the design of the study.

(2) *Evaluation of the study results.* (i) The findings of a subchronic oral toxicity study should be evaluated in conjunction with the findings of preceding studies and considered in terms of the toxic effects and the necropsy and histopathological findings. The evaluation will include the relationship between the dose of the test substance and the presence or absence, the incidence and severity, of abnormalities, including behavioral and clinical abnormalities, gross lesions, identified target organs, body weight changes, effects on mortality and any other general or specific toxic effects. A properly conducted test should provide a satisfactory estimation of a no-effect level.

(ii) In any study which demonstrates an absence of toxic effects, further investigation to establish absorption and bioavailability of the test substance should be considered.

(3) *Test report.* In addition to the reporting requirements as specified under 40 CFR Part 792, Subpart J the following specific information should be reported:

(i) Tabulation of toxic response data by species, strain, sex, and exposure level for:

(A) Number of animals dying.

(B) Number of animals showing signs of toxicity.

(C) Number of animals exposed.

(ii) *Individual animal data.* (A) Time of death during the study or whether animals survived to termination.

(B) Time of observation of each abnormal sign and its subsequent course.

(C) Body weight data.

(D) Food consumption data when collected.

(E) Hematological tests employed and all results.

(F) Clinical biochemistry tests employed and all results.

(G) Necropsy findings.

(H) Detailed description of all histopathological findings.

(I) Statistical treatment of results where appropriate.

(iii) *Additional information from reproduction and fertility satellite study.* (A) Toxic response data by sex and dose, including fertility, gestation, viability and lactation indices, and length of gestation.

(B) Species and strain.

(C) Toxic or other effects on reproduction, offspring, or postnatal growth.

(D) Time of observation of each abnormal sign and its subsequent course.

(E) Body weight data for parental animals and offspring.

(g) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Boyd, E.M. "Chapter 14—Pilot Studies, 15—Uniposal Clinical Parameters, 16—Uniposal Autopsy Parameters," *Predictive Toxicometrics.* (Baltimore: Williams and Wilkins, 1972).

(2) Clermont, Y., Perry, B. "Quantitative Study of the Cell Population of the Seminiferous Tubules in Immature Rats," *American Journal of Anatomy.* 100:241–267 (1957).

(3) Fitzhugh, O.C. Third Printing: 1975. "Subacute Toxicity," *Appraisal of the Safety of Chemicals in Foods, Drugs and Cosmetics.* The Association of Food and Drug Officials of the United States (1959), pp. 26–35.

(4) Food Safety Council. "Subchronic Toxicity Studies," *Proposed System for Food Safety Assessment.* (Columbia: Food Safety Council, 1978) pp. 83–96.

(5) Goldenthal, E.I. *Guidelines for Reproduction Studies for Safety Evaluation of Drugs for Human Use.* Drug Review Branch, Division of Toxicological Evaluation, Bureau of Science, Food and Drug Administration, Washington, DC (1966).

(6) Hasegawa, T., Hayashi, M., Ebling, F.J.G., Henderson, I.W. *Fertility and Sterility.* (New York: American Elsevier Publishing Co., Inc., 1973).

(7) National Academy of Sciences. "Principles and Procedures for Evaluating the Toxicity of Household Substances," a report prepared by the Committee for the Revision of NAS Publication 1138, under the auspices of the Committee on Toxicology, National Research Council, National Academy of Sciences, Washington, DC (1977).

(8) Oakberg, E.F. "Duration of Spermatogenesis in the Mouse and Timing of Stages of the Cycle of the Seminiferous Epithelium," *American Journal of Anatomy.* 9:507–516 (1956).

(9) Roosen-Runge, E.C. "The Process of Spermatogenesis in Mammals," *Biological Review.* 37:343–377 (1962).

(10) World Health Organization. "Part I. Environmental Health Criteria 6," *Principles and Methods for Evaluating the Toxicity of Chemicals.* (Geneva: World Health Organization, 1978).

Subpart D—Chronic Exposure

§ 798.3260 Chronic toxicity.

(a) *Purpose.* The objective of a chronic toxicity study is to determine the effects of a substance in a mammalian species following prolonged and repeated exposure. Under the conditions of the chronic toxicity test, effects which require a long latency period or which are cumulative should become manifest. The application of this guideline should generate data on which to identify the majority of chronic effects and shall serve to define long term dose-response relationships. The design and conduct of chronic toxicity tests should allow for the detection of general toxic effects, including neurological, physiological, biochemical, and hematological effects and exposure-related morphological (pathology) effects.

(b) *Test procedures*—(1) *Animal selection*—(i) *Species and strain.* Testing should be performed with two mammalian species, one a rodent and another a non-rodent. The rat is the preferred rodent species and the dog is the preferred non-rodent species. Commonly used laboratory strains should be employed. If other mammalian species are used, the tester should provide justification/reasoning for their selection.

(ii) *Age.* (A) Dosing of rats should begin as soon as possible after weaning, ideally before the rats are 6, but in no case more than 8 weeks old.

(B) Dosing of dogs should begin between 4 and 6 months of age and in no case later than 9 months of age.

(C) At commencement of the study the weight variation of animals used should not exceed ±20 percent of the mean weight for each sex.

(iii) *Sex.* (A) Equal numbers of animals of each sex should be used at each dose level.

(B) The females should be nulliparous and non-pregnant.

(iv) *Numbers.* (A) For rodents, at least 40 animals (20 females and 20 males) and for non-rodents (dogs) at least 8 animals (4 females and 4 males) should be used at each dose level.

(B) If interim sacrifices are planned the number should be increased by the number of animals scheduled to be sacrificed during the course of the study.

(C) The number of animals at the termination of the study must be adequate for a meaningful and valid statistical evaluation of chronic effects.

(2) *Control groups.* (i) A concurrent control group is suggested. This group should be an untreated or sham treated control group or, if a vehicle is used in administering the test substance, a vehicle control group. If the toxic properties of the vehicle are not known or cannot be made available, both untreated and vehicle control groups are strongly suggested.

(ii) In special circumstances such as in inhalation studies involving aerosols or the use of an emulsifier of uncharacterized biological activity in oral studies, a concurrent negative control group should be utilized. The negative control group should be treated in the same manner as all other test animals except that this control group should not be exposed to either the test substance or any vehicle.

(3) *Dose levels and dose selections.* (i) In chronic toxicity tests, it is necessary to have a dose-response relationship as well as a no-observed-toxic-effect level. Therefore, at least three dose levels should be used in addition to the concurrent control group. Dose levels should be spaced to produce a gradation of effects.

(ii) The high dose level in rodents should elicit some signs of toxicity without causing excessive lethality; for non-rodents, there should be signs of toxicity but there should be no fatalities.

(iii) The lowest dose level should not produce any evidence of toxicity. Where there is a usable estimation of human exposure the lowest dose level should exceed this even though this dose level may result in some signs of toxicity.

(iv) Ideally, the intermediate dose level(s) should produce minimal observable toxic effects. If more than one intermediate dose is used, the dose level should be spaced to produce a gradation of toxic effects.

(v) For rodents, the incidence of fatalities in low and intermediate dose groups and in the controls should be low

to permit a meaningful evaluation of the results. For non-rodents, there should be no fatalities.

(4) *Exposure conditions.* The animals are dosed with the test substance ideally on a 7-day per week basis over a period of at least 12 months. However, based primarily on practical considerations, dosing on a 5-day per week basis is considered to be acceptable.

(5) *Observation period.* Duration of observation should be for at least 12 months, and may be concurrent with or subsequent to dosing. If there is a post-exposure observation period, an interim sacrifice should be performed on no fewer than half of the animals of each sex at each dose level immediately upon termination of exposure.

(6) *Administration of the test substance.* The three main routes of administration are oral, dermal, and inhalation. The choice of the route of administration depends upon the physical and chemical characteristics of the test substance and the form typifying exposure in humans.

(i) *Oral studies.* (A) The animals should receive the test substance in their diet, dissolved in drinking water, or given by gavage or capsule for a period of at least 12 months.

(B) If the test substance is administered in the drinking water, or mixed in the diet, exposure is continuous.

(C) For a diet mixture, the highest concentration should not exceed 5 percent.

(ii) *Dermal studies.* (A) The animals are treated by topical application with the test substance, ideally for at least 6 hours per day.

(B) Fur should be clipped from the dorsal area of the trunk of the test animals. Care must be taken to avoid abrading the skin which could alter its permeability.

(C) The test substance should be applied uniformly over a shaved area which is approximately 10 percent of the total body surface area. With highly toxic substances, the surface area covered may be less, but as much of the area should be covered with as thin and uniform a film as possible.

(D) During the exposure period, the test substance may be held if necessary, in contact with the skin with a porous gauze dressing and non-irritating tape. The test site should be further covered in a suitable manner to retain the gauze dressing and test substance and ensure that the animals cannot ingest the test substance.

(iii) *Inhalation studies.* (A) The animals should be tested with inhalation equipment designed to sustain a dynamic air flow of 12 to 15 air changes per hour, ensure an adequate oxygen content of 19 percent and an evenly distributed exposure atmosphere. Where a chamber is used, its design should minimize crowding of the test animals and maximize their exposure to the test substance. This is best accomplished by individual caging. As a general rule to ensure stability of a chamber atmosphere, the total "volume" of the test animals should not exceed 5 percent of the volume of the test chamber. Alternatively, oro-nasal, head-only or whole body individual chamber exposure may be used.

(B) The temperature at which the test is performed should be maintained at 22°C (±2°). Ideally, the relative humidity should be maintained between 40 to 60 percent, but in certain instances (e.g., tests of aerosols, use of water vehicle) this may not be practicable.

(C) Food and water should be withheld during each daily 6 hour exposure period.

(D) A dynamic inhalation system with a suitable analytical concentration control system should be used. The rate of air flow should be adjusted to ensure that conditions throughout the equipment are essentially the same. Maintenance of slight negative pressure inside the chamber will prevent leakage of the test substance into the surrounding areas.

(7) *Observation of animals.* (i) Each animal should be handled and its physical condition appraised at least once each day.

(ii) Additional observations should be made daily with appropriate actions taken to minimize loss of animals to the study (e.g., necropsy or refrigeration of those animals found dead and isolation or sacrific of weak or moribund animals).

(iii) Clinical signs of toxicity including suspected tumors and mortality should be recorded as they are observed, including the time of onset, the degree and duration.

(iv) Cage-side observations should include, but not be limited to, changes in skin and fur, eyes and mucous membranes, respiratory, circulatory, autonomic and central nervous systems, somatomotor activity and behavior pattern.

(v) Body weights should be recorded individually for all animals once a week during the first 13 weeks of the test period and at least once every 4 weeks thereafter unless signs of clinical toxicity suggest more frequent weighings to facilitate monitoring of health status.

(vi) When the test substance is administered in the food or drinking water, measurements of food or water consumption, respectively, should be determined weekly during the first 13 weeks of the study and then at approximately monthly intervals unless health status or body weight changes dictate otherwise.

(vii) At the end of the study period all survivors should be sacrificed. Moribund animals should be removed and sacrificed when noticed.

(8) *Physical measurements.* For inhalation studies, measurements or monitoring should be made of the following:

(i) The rate of air flow should be monitored continuously, but should be recorded at intervals of at least once every 30 minutes.

(ii) During each exposure period the actual concentrations of the test substance should be held as constant as practicable, monitored continuously and measured at least three times during the test period: at the beginning, at an intermediate time and at the end of the period.

(iii) During the development of the generating system, particle size analysis should be performed to establish the stability of aerosol concentrations. During exposure, analysis should be conducted as often as necessary to determine the consistency of particle size distribution and homogeneity of the exposure stream.

(iv) Temperature and humidity should be monitored continuously, but should be recorded at intervals of at least once every 30 minutes.

(9) *Clinical examinations.* The following examinations should be made on at least 10 rats of each sex per dose and on all non-rodents.

(i) Certain hematology determinations (e.g., hemoglobin content, packed cell volume, total red blood cells, total white blood cells, platelets, or other measures of clotting potential) should be performed at termination and should be performed at 3 months, 6 months and at approximately 6 month intervals thereafter (for studies extending beyond 12 months) on blood samples collected from all non-rodents and from 10 rats per sex of all groups. These collections should be from the same animals at each interval. If clinical observations suggest a deterioration in health of the animals during the study, a differential blood count of the affected animals should be performed. A differential blood count should be performed on samples from those animals in the highest dosage group and the controls. Differential blood counts should be performed for the next lower group(s) if there is a major discrepancy between the highest group and the controls. If

hematological effects were noted in the subchronic test, hematological testing should be performed at 3, 6, 12, 18, and 24 months for a two year study and at 3, 6, and 12 months for a 1-year study.

(ii) Certain clinical biochemistry determinations on blood should be carried out at least three times during the test period: just prior to initiation of dosing (base line data), near the middle and at the end of the test period. Blood samples should be drawn for clinical chemistry measurements from all non-rodents and at least ten rodents per sex of all groups; if possible, from the same rodents at each time interval. Test areas which are considered appropriate to all studies: electrolyte balance, carbohydrate metabolism and liver and kidney function. The selection of specific tests will be influenced by observations on the mode of action of the substance and signs of clinical toxicity. Suggested chemical determinations: calcium, phosphorus, chloride, sodium, potassium, fasting glucose (with period of fasting appropriate to the species), serum glutamic-pyruvic transaminase (now known as serum alanine aminotransferase), serum glutamic oxaloacetic transaminase (now known as serum aspartate aminotransferase), ornithine decarboxylase, gamma glutamyl transpeptidase, blood urea nitrogen, albumen, blood creatinine, creatinine phosphokinase, total cholesterol, total bilirubin and total serum protein measurements. Other determinations which may be necessary for an adequate toxicological evaluation include analyses of lipids, hormones, acid/base balance, methemoglobin and cholinesterase activity. Additional clinical biochemistry may be employed where necessary to extend the investigation of observed effects.

(iii) Urine samples from rodents at the same intervals as the hematological examinations under paragraph (b)(9)(i) of this section should be collected for analysis. The following determinations should be made from either individual animals or on a pooled sample/sex/group for rodents: appearance (volume and specific gravity), protein, glucose, ketones, bilirubin, occult blood (semi-quantitatively); and microscopy of sediment (semi-quantitatively).

(iv) Ophthalmological examination, using an ophthalmoscope or equivalent suitable equipment, should be made prior to the administration of the test substance and at the termination of the study. If changes in eyes are detected all animals should be examined.

(10) *Gross necropsy.* (i) A complete gross examination should be performed on all animals, including those which died during the experiment or were killed in moribund conditions.

(ii) The liver, kidneys, adrenals, brain and gonads should be weighed wet, as soon as possible after dissection to avoid drying. For these organs, at least 10 rodents per sex per group and all non-rodents should be weighed.

(iii) The following organs and tissues, or representative samples thereof, should be preserved in a suitable medium for possible future histopathological examination: all gross lesions and tumors; brain—including sections of medulla/pons, cerebellar cortex, and cerebral cortex; pituitary; thyroid/parathyroid; thymus; lungs; trachea; heart; sternum and/or femur with bone marrow; salivary glands; liver; spleen; kidneys; adrenals; esophagus; stomach; duodenum; jejunum; ileum; cecum; colon; rectum; urinary bladder; representative lymph nodes; pancreas; gonads; uterus; accessory genital organs (epididymis, prostate, and, if present, seminal vesicles; female mammary gland; aorta; gall bladder (if present); skin; musculature; peripheral nerve; spinal cord at three levels—cervical, midthoracic, and lumbar; and eyes. In inhalation studies, the entire respiratory tract, including nose, pharynx, larynx, and paranasal sinuses should be examined and preserved. In dermal studies, skin from sites of skin painting should be examined and preserved.

(iv) Inflation of lungs and urinary bladder with a fixative is the optimal method for preservation of these tissues. The proper inflation and fixation of the lungs in inhalation studies is considered essential for appropriate and valid histopathological examination.

(v) If other clinical examinations are carried out, the information obtained from these procedures should be available before microscopic examination, since they may provide significant guidance to the pathologist.

(11) *Histopathology.* (i) The following histopathology should be performed:

(A) Full histopathology on the organs and tissues, listed above, of all non-rodents, of all rodents in the control and high dose groups and of all rodents that died or were killed during the study.

(B) All gross lesions in all animals.

(C) Target organs in all animals.

(D) Lungs, liver and kidneys of all animals. Special attention to examination of the lungs of rodents should be made for evidence of infection since this provides an assessment of the state of health of the animals.

(ii) If excessive early deaths or other problems occur in the high dose group compromising the significance of the data, the next dose level should be examined for complete histopathology.

(iii) In case the results of an experiment give evidence of substantial alteration of the animals' normal longevity or the induction of effects that might affect a toxic response, the next lower dose level should be examined fully, as described under paragraph (b)(11)(i) of this section.

(iv) An attempt should be made to correlate gross observations with microscopic findings.

(c) *Data and reporting*—(1) *Treatment of results.* (i) Data should be summarized in tabular form, showing for each test group the number of animals at the start of the test, the number of animals showing lesions, the types of lesions and the percentage of animals displaying each type of lesion.

(ii) All observed results, quantitative and incidental, should be evaluated by an appropriate statistical method. Any generally accepted statistical methods may be used; the statistical methods should be selected during the design of the study.

(2) *Evaluation of study results.* (i) The findings of a chronic toxicity study should be evaluated in conjunction with the findings of preceding studies and considered in terms of the toxic effects, the necropsy and histopathological findings. The evaluation will include the relationship between the dose of the test substance and the presence, incidence and severity of abnormalities (including behavioral and clinical abnormalities), gross lesions, identified target organs, body weight changes, effects on mortality and any other general or specific toxic effects.

(ii) In any study which demonstrates an absence of toxic effects, further investigation to establish absorption and bioavailability of the test substance should be considered.

(3) *Test report.* (i) In addition to the reporting requirements as specified under 40 CFR Part 792 Subpart J, the following specific information should be reported:

(A) *Group animal data.* Tabulation of toxic response data by species, strain, sex and exposure level for:

(*1*) Number of animals dying.

(*2*) Number of animals showing signs of toxicity.

(*3*) Number of animals exposed.

(B) *Individual animal data.* (*1*) Time of death during the study or whether animals survived to termination.

(*2*) Time of observation of each abnormal sign and its subsequent course.

(*3*) Body weight data.

(4) Food and water consumption data, when collected.

(5) Results of ophthalmological examination, when performed.

(6) Hematological tests employed and all results.

(7) Clinical biochemistry tests employed and all results.

(8) Necropsy findings.

(9) Detailed description of all histopathological findings.

(10) Statistical treatment of results, where appropriate.

(ii) In addition, for inhalation studies the following should be reported:

(A) *Test conditions.* (1) Description of exposure apparatus including design, type, dimensions, source of air, system for generating particulates and aerosols, method of conditioning air, treatment of exhaust air and the method of housing the animals in a test chamber.

(2) The equipment for measuring temperature, humidity, and particulate aerosol concentrations and size should be described.

(B) *Exposure data.* These should be tabulated and presented with mean values and a measure of variability (e.g., standard deviation) and should include:

(1) Airflow rates through the inhalation equipment.

(2) Temperature and humidity of air.

(3) Nominal concentration (total amount of test substance fed into the inhalation equipment divided by volume of air).

(4) Actual concentration in test breathing zone.

(5) Particle size distribution (e.g., median aerodynamic diameter of particles with standard deviation from the mean).

(d) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Benitz, K.F. "Measurement of Chronic Toxicity," *Methods of Toxicology.* Ed. G.E. Paget. (Oxford: Blackwell Scientific Publications, 1970) pp. 82–131.

(2) D'Aguanno, W. "Drug Safety Evaluation—Pre-Clinical Considerations," *Industrial Pharmacology: Neuroleptics.* Vol. I, Ed. S. Fielding and H. Lal. (Mt. Kisco: Futura Publishing Co. 1974) pp. 317–332.

(3) Fitzhugh, O.G. Third Printing: 1975. "Chronic Oral Toxicity," *Appraisal of the Safety of Chemicals in Foods, Drugs and Cosmetics.* The Association of Food and Drug Officials of the United States (1959, 3rd Printing 1975) pp. 36–45.

(4) Goldenthal, E.I., D'Aguanno, W. "Evaluation of Drugs," *Appraisal of the Safety of Chemicals in Foods, Drugs, and Cosmetics.* The Association of Food and Drug Officials of the United States (1959, 3rd Printing 1975) pp. 60–67.

(5) National Academy of Sciences. "Principles and Procedures for Evaluating the Toxicity of Household Substances," a report prepared by the Committee for the Revision of NAS Publication 1138, under the auspices of the Committee on Toxicology, National Research Council, National Academy of Sciences, Washington, DC (1977).

(6) National Center for Toxicological Research. "Appendix B," *Report of Chronic Studies Task Force Committee, April 13–21, 1972.* (Rockville: National Center for Toxicological Research, 1972).

(7) Page, N.P. "Chronic Toxicity and Carcinogenicity Guidelines," *Journal of Environmental Pathology and Toxicology,* 1:161–182 (1977).

(8) Schwartz, E. "Toxicology of Neuroleptic Agents," *Industrial Pharmacology: Neuroleptics* Ed. S. Fielding and H. Lal. (Mt. Kisco, Futura Publishing Co., 1974) pp. 203–221.

(9) United States Pharmaceutical Manufacturers Association. *Guidelines for the Assessment of Drug and Medical Device Safety in Animals.* (1977).

(10) World Health Organization. "Guidelines for Evaluation of Drugs for Use in Man," *WHO Technical Report Series No. 563.* (Geneva: World Health Organization, 1975).

(11) World Health Organization. "Part I. Environmental Health Criteria 6," *Principles and Methods for Evaluating the Toxicity of Chemicals.* (Geneva: World Health Organization, 1978).

(12) World Health Organization. "Principles for Pre-Clinical Testing of Drug Safety," *WHO Technical Report Series No. 341.* (Geneva: World Health Organization, 1966).

§ 798.3300 Oncogenicity.

(a) *Purpose.* The objective of a long-term oncogenicity study is to observe test animals for a major portion of their life span for the development of neoplastic lesions during or after exposure to various doses of a test substance by an appropriate route of administration.

(b) *Test procedures*—(1) *Animal selection*—(i) *Species and strain.* It is recommended that a compound of unknown activity should be tested on two mammalian species. Rats and mice are the species of choice because of their relatively short life spans, the limited cost of their maintenance, their widespread use in pharmacological and toxicological studies, their susceptibility to tumor induction, and the availability of inbred or sufficiently characterized strains. Commonly used laboratory strains should be employed. If other species are used, the tester should provide justification/reasoning for their selection.

(ii) *Age.* (A) Dosing of rodents should begin as soon as possible after weaning, ideally before the animals are 6 weeks old, but in no case more than 8 weeks old.

(B) At commencement of the study, the weight variation of animals used should not exceed ±20 percent of the mean weight for each sex.

(C) Studies using prenatal or neonatal animals may be recommended under special conditions.

(iii) *Sex.* (A) Equal numbers of animals of each sex should be used at each dose level.

(B) The females should be nulliparous and non-pregnant.

(iv) *Numbers.* (A) For rodents, at least 100 animals (50 females and 50 males) should be used at each dose level and concurrent control.

(B) If interim sacrifices are planned the number should be increased by the number of animals scheduled to be sacrificed during the course of the study.

(C) The number of animals at the termination of the study should be adequate for a meaningful and valid statistical evaluation of long term exposure. For a valid interpretation of negative results, it is essential that survival in all groups does not fall below 50 percent at the time of termination.

(2) *Control groups.* (i) A concurrent control group is recommended. This group should be an untreated or sham treated control group or, if a vehicle is used in administering the test substance, a vehicle control group. If the toxic properties of the vehicle are not known or cannot be made available, both untreated and vehicle control groups are recommended.

(ii) In special circumstances such as in inhalation studies involving aerosols or the use of an emulsifier of uncharacterized biological activity in oral studies, a concurrent negative control group should be utilized. The negative control group should be treated in the same manner as all other test animals except that this control group should not be exposed to either the test substance or any vehicle.

(iii) The use of historical control data (i.e., the incidence of tumors and other suspect lesions normally occurring under the same laboratory conditions and in the same strain of animals employed in the test) is desirable for assessing the significance of changes observed in exposed animals.

(3) *Dose levels and dose selection.* (i) For risk assessment purposes, at least three dose levels should be used, in

addition to the concurrent control group. Dose levels should be spaced to produce a gradation of chronic effects.

(ii) The high dose level should elicit signs of minimal toxicity without substantially altering the normal life span.

(iii) The lowest dose should not interfere with normal growth, development and longevity of the animal; and it should not otherwise cause any indication of toxicity. In general, this should not be lower than ten percent of the high dose.

(iv) The intermediate dose(s) should be established in a mid-range between the high and low doses, depending upon the toxicokinetic properties of the chemical, if known.

(v) The selection of these dose levels should be based on existing data, preferably on the results of subchronic studies.

(4) *Exposure conditions.* The animals are dosed with the test substance ideally on a 7 day per week basis over a period of at least 24 months for rats, and 18 months for mice. However, based primarily on practical considerations, dosing on a 5 day per week basis is considered to be acceptable.

(5) *Observations period.* It is necessary that the duration of an oncogenicity test comprise the majority of the normal life span of the strain of animals to be used. This time period should not be less than 24 months for rats and 18 months for mice, and ordinarily not longer than 30 months for rats and 24 months for mice. For longer time periods, and where any other species are used, consultation with the Agency in regard to the duration of the test is advised.

(6) *Administration of the test substance.* The three main routes of administration are oral, dermal, and inhalation. The choice of the route of administration depends upon the physical and chemical characteristics of the test substance and the form typifying exposure in humans.

(i) *Oral studies.* (A) The animals should receive the test substance in their diet, dissolved in drinking water, or given by gavage or capsule for a period of at least 24 months for rats and 18 months for mice.

(B) If the test substance is administered in the drinking water, or mixed in the diet, exposure should be continuous.

(C) For a diet mixture, the highest concentration should not exceed 5 percent.

(ii) *Dermal studies.* (A) The animals are treated by topical application with the test substance, ideally for at least 6 hours per day.

(B) Fur should be clipped from the dorsal area of the trunk of the test animals. Care should be taken to avoid abrading the skin which could alter its permeability.

(C) The test substance should be applied uniformly over a shaved area which is approximately 10 percent of the total body surface area. With highly toxic substances, the surface area covered may be less, but as much of the area should be covered with as thin and uniform a film as possible.

(D) During the exposure period, the test substance may be held, if necessary, in contact with the skin with a porous gauze dressing and non-irritating tape. The test site should be further covered in a suitable manner to retain the gauze dressing and test substance and ensure that the animals cannot ingest the test substance.

(iii) *Inhalation studies.* (A) The animals should be tested with inhalation equipment designed to sustain a dynamic air flow of 12 to 15 air changes per hour, ensure an adequate oxygen content of 19 percent and an evenly distributed exposure atmosphere. Where a chamber is used, its design should minimize crowding of the test animals and maximize their exposure to the test substance. This is best accomplished by individual caging. As a general rule to ensure stability of a chamber atmosphere, the total "volume" of the test animals should not exceed 5 percent of the volume of the test chamber. Alternatively, oro-nasal, head-only, or whole body individual chamber exposure may be used.

(B) The temperature at which the test is performed should be maintained at 22 °C (±2°). Ideally, the relative humidity should be maintained between 40 to 60 percent, but in certain instances (e.g. tests of aerosols, use of water vehicle) this may not be practicable.

(C) Food and water should be withheld during each daily 6-hour exposure period.

(D) A dynamic inhalation system with a suitable analytical concentration control system should be used. The rate of air flow should be adjusted to ensure that conditions throughout the equipment are essentially the same. Maintenance of slight negative pressure inside the chamber will prevent leakage of the test substance into the surrounding areas.

(7) *Observation of animals.* (i) Each animal should be handled and its physical condition appraised at least once each day.

(ii) Additional observations should be made daily with appropriate actions taken to minimize loss of animals to the study (e.g., necropsy or refrigeration of those animals found dead and isolation or sacrifice of weak or moribund animals).

(iii) Clinical signs and mortality should be recorded for all animals. Special attention should be paid to tumor development. The time of onset, location, dimensions, appearance and progression of each grossly visible or palpable tumor should be recorded.

(iv) Body weights should be recorded individually for all animals once a week during the first 13 weeks of the test period and at least once every 4 weeks thereafter unless signs of clinical toxicity suggest more frequent weighings to facilitate monitoring of health status.

(v) When the test substance is administered in the food or drinking water, measurements of food or water consumption, respectively, should be determined weekly during the first 13 weeks of the study and then at approximately monthly intervals unless health status or body weight changes dictate otherwise.

(vi) At the end of the study period all survivors are sacrificed. Moribund animals should be removed and sacrificed when noticed.

(8) *Physical measurements.* For inhalation studies, measurements or monitoring should be made of the following:

(i) The rate of air flow should be monitored continuously, but should be recorded at intervals of at least once every 30 minutes.

(ii) During each exposure period the actual concentrations of the test substance should be held as constant as practicable, monitored continuously and recorded at least three times during the test period: at the beginning, at an intermediate time and at the end of the period.

(iii) During the development of the generating system, particle size analysis should be performed to establish the stability of aerosol concentrations. During exposure, analyses should be conducted as often as necessary to determine the consistency of particle size distribution and homogeneity of the exposure stream.

(iv) Temperature and humidity should be monitored continuously, but shoud be recorded at intervals of at least once every 30 minutes.

(9) *Clinical examinations.* At 12 months, 18 months, and at sacrifice, a blood smear should be obtained from all animals. A differential blood count should be performed on blood smears from those animals in the highest dosage group and the controls. If these data, or data from the pathological examination indicate a need, then the 12- and 18-

month blood smears from other dose levels should also be examined. Differential blood counts should be performed for the next lower group(s) only if there is a major discrepancy between the highest group and the controls. If clinical observations suggest a deterioration in health of the animals during the study, a differential blood count of the affected animals should be performed.

(10) *Gross necropsy.* (i) A complete gross examination should be performed on all animals, including those which died during the experiment or were killed in moribund conditions.

(ii) The following organs and tissues or representative samples thereof, should be preserved in a suitable medium for possible future histopathological examination: all gross lesions and tumors of all animals should be preserved; brain—including sections of medulla/pons, cerebellar cortex and cerebral cortex; pituitary; thyroid/parathyroid; thymus; lungs; trachea; heart; spinal cord at three levels—cervical, midthoracic and lumbar; sternum and/or femur with bone marrow; salivary glands; liver; spleen; kidneys; adrenals; esophagus; stomach; duodenum; jejunum; ileum; cecum; colon; rectum; urinary bladder; representative lymph nodes; pancreas; gonads; uterus; accessory genital organs (epididymis, prostate, and, if present, seminal vesicles); female mammary gland; skin; musculature; peripheral nerve; and eyes. In special studies such as inhalation studies, the entire respiratory tract should be preserved, including nasal cavity, pharynx, larynx and paranasal sinuses. In dermal studies, skin from sites of skin painting should be examined and preserved.

(iii) Inflation of lungs and urinary bladder with a fixative is the optimal method for preservation of these tissues. The proper inflation and fixation of the lungs in inhalation studies is a necessary requirement for appropriate and valid histopathological examination.

(iv) If other clinical examinations are carried out, the information obtained from these procedures should be available before microscopic examination, since they may provide significant guidance to the pathologist.

(11) *Histopathology.* (i) The following histopathology should be performed:

(A) Full histopathology on organs and tissues listed above of all animals in the control and high dose groups and all animals that died or were killed during the study.

(B) All gross lesions in all animals.

(C) Target organs in all animals.

(ii) If a significant difference is observed in hyperplastic, pre-neoplastic or neoplastic lesions between the highest dose and control groups, microscopic examination should be made on that particular organ or tissue of all animals in the study.

(iii) If excessive early deaths or other problems occur in the high dose group, compromising the significance of the data, the next lower dose level should be examined for complete histopathology.

(iv) In case the results of an experiment give evidence of substantial alteration of the animals' normal longevity or the induction of effects that might affect a neoplastic response, the next lower dose level should be examined fully as described in this section.

(v) An attempt should be made to correlate gross observations with microscopic findings.

(c) *Data and reporting*—(1) *Treatment of results.* (i) Data should be summarized in tabular form, showing for each test group the number of animals at the start of the test, the number of animals showing lesions, the types of lesions and the percentage of animals displaying each type of lesion.

(ii) All observed results, quantitative and incidental, should be evaluated by an appropriate statistical method. Any generally accepted statistical method may be used; the statistical methods should be selected during the design of the study.

(2) *Evaluation of study results.* (i) The findings of an oncogenic toxicity study should be evaluated in conjunction with the findings of preceding studies and considered in terms of the toxic effects, the necropsy and histopathological findings. The evaluation should include the relationship between the dose of the test substance and the presence, incidence and severity of abnormalities (including behavioral and clinical abnormalities), gross lesions, identified target organs, body weight changes, effects on mortality and any other general or specific toxic effects.

(ii) In any study which demonstrates an absence of toxic effects, further investigation to establish absorption and bioavailability of the test substance should be considered.

(iii) In order for a negative test to be acceptable, it should meet the following criteria: no more than 10 percent of any group is lost due to autolysis, cannibalism, or management problems; and survival in each group is no less than 50 percent at 18 months for mice and hamsters and at 24 months for rats.

(3) *Test report.* (i) In addition to the reporting requirements as specified under 40 CFR Part 792, Subpart J the following specific information should be reported:

(A) *Group animal data.* Tabulation of toxic response data by species, strain, sex and exposure level for:

(*1*) Number of animals dying.

(*2*) Number of animals showing signs of toxicity.

(*3*) Number of animals exposed.

(B) *Individual animal data.*

(*1*) Time of death during the study or whether animals survived to termination.

(*2*) Time of observation of each abnormal sign and its subsequent course.

(*3*) Body weight data.

(*4*) Food and water consumption data, when collected.

(*5*) Results of ophthalmological examination, when performed.

(*6*) Hematological tests employed and all results.

(*7*) Clinical biochemistry tests employed and all results.

(*8*) Necropsy findings.

(*9*) Detailed description of all histopathological findings.

(*10*) Statistical treatment of results, where appropriate.

(*11*) Historical control data, if taken into account.

(ii) In addition, for inhalation studies the following should be reported:

(A) *Test conditions. (1)* Description of exposure apparatus including design, type, dimensions, source of air, system for generating particulates and aerosols, method of conditioning air, treatment of exhaust air and the method of housing the animals in a test chamber.

(*2*) The equipment for measuring temperature, humidity, and particulate aerosol concentrations and size should be described.

(B) *Exposure data.* These should be tabulated and presented with mean values and a measure of variability (e.g., standard deviation) and should include:

(*1*) Airflow rates through the inhalation equipment.

(*2*) Temperature and humidity of air.

(*3*) Nominal concentration (total amount of test substance fed into the inhalation equipment divided by volume of air).

(*4*) Actual concentration in test breathing zone.

(*5*) Particle size distribution (e.g., median aerodynamic diameter of particles with standard deviation from the mean).

(d) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Department of Health and Welfare. *The Testing of Chemicals for Carcinogenicity, Mutagenicity, Teratogenicity.* Minister of Health and Welfare. (Canada: Department of Health and Welfare, 1975).

(2) Food and Drug Administration Advisory Committee on Protocols for Safety Evaluation: Panel on Carcinogenesis. "Report on Cancer Testing in the Safety of Food Additives and Pesticides," *Toxicology and Applied Pharmacology.* 20:419–438 (1971).

(3) International Union Against Cancer. "Carcinogenicity Testing," *IUCC Technical Report Series.* Vol. 2. Ed. I. Berenblum. (Geneva: International Union Against Cancer, 1969).

(4) Leong, B.K.J., Laskin, S. "Number and Species of Experimental Animals for Inhalation Carcinogenicity Studies" Paper presented at Conference on Target Organ Toxicity, September 1975, Cincinnati, Ohio.

(5) National Academy of Sciences. "Principles and Procedures for Evaluating the Toxicity of Household Substances." A report prepared by the Committee for the Revision of NAS Publication 1138, under the auspices of the Committee on Toxicology, National Research Council, National Academy of Sciences, Washington, DC (1977).

(6) National Cancer Institute. *Report of the Subtask Group on Carcinogen Testing to the Interagency Collaborative Group on Environmental Carcinogenesis.* (Bethesda: United States National Cancer Institute, 1976).

(7) National Center for Toxicological Research. "Appendix B," *Report of Chronic Studies Task Force Committee.* April 13–21 (Rockville: National Center for Toxicological Research, 1972).

(8) Page, N.P. "Chronic Toxicity and Carcinogenicity Guidelines," *Journal Environmental Pathology and Toxicology.* 1:161–182 (1977).

(9) Page, N.P. "Concepts of a Bioassay Program in Environmental Carcinogenesis," *Advances in Modern Toxicology Vol. 3),* Ed. Kraybill and Mehlman. (Washington, D.C.: Hemisphere Publishing Corporation, 1977) pp. 87–171.

(10) Sontag, J.M., Page N.P., Saffiotti, U. *Guidelines for Carcinogen Bioassay in Small Rodents.* NCI–CS–TR–1. (Bethesda: United States Cancer Institute, Division of Cancer Control and Prevention, Carcinogenesis Bioassay Program, 1976).

(11) United States Pharmaceutical Manufacturers Association. *Guidelines for the Assessment of Drug and Medical Device Safety in Animals.* (1977).

(12) World Health Organization. "Principles for the Testing and Evaluation of Drugs for Carcinogenicity," *WHO Technical Report Series No. 426.* (Geneva: World Health Organization, 1969).

(13) World Health Organization. "Part I. Environmental Health Criteria 6," *Principles and Methods for Evaluating the Toxicity of Chemicals.* (Geneva: World Health Organization, 1978).

§ 798.3320 Combined Chronic Toxicity/Oncogenicity.

(a) *Purpose.* The objective of a combined chronic toxicity/oncogenicity study is to determine the effects of a substance in a mammalian species following prolonged and repeated exposure. The application of this guideline should generate data which identify the majority of chronic and oncogenic effects and determine dose-response relationships. The design and conduct should allow for the detection of neoplastic effects and a determination of oncogenic potential as well as general toxicity, including neurological, physiological, biochemical, and hematological effects and exposure-related morphological (pathology) effects.

(b) *Test procedures*—(1) *Animal selection*—(i) *Species and strain.* Preliminary studies providing data on acute, subchronic, and metabolic responses should have been carried out to permit an appropriate choice of animals (species and strain). As discussed in other guidelines, the mouse and rat have been most widely used for assessment of oncogenic potential, while the rat and dog have been most often studied for chronic toxicity. The rat is the species of choice for combined chronic toxicity and oncogenicity studies. The provisions of this guideline are designed primarily for use with the rat as the test species. If other species are used, the tester should provide justification/reasoning for their selection. The strain selected should be susceptible to the oncogenic or toxic effect of the class of substances being tested, if known, and provided it does not have a spontaneous background too high for meaningful assessment. Commonly used laboratory strains should be employed.

(ii) *Age.* (A) Dosing of rats should begin as soon as possible after weaning, ideally before the rats are 6 weeks old, but in no case more than 8 weeks old.

(B) At commencement of the study, the weight variation of animals used should not exceed ±20 percent of the mean weight for each sex.

(C) Studies using prenatal or neonatal animals may be recommended under special conditions.

(iii) *Sex.* (A) Equal numbers of animals of each sex should be used at each dose level.

(B) The females should be nulliparous and nonpregnant.

(iv) *Numbers.* (A) At least 100 rodents (50 females and 50 males) should be used at each dose level and concurrent control for those groups not intended for early sacrifice. At least 40 rodents (20 females and 20 males) should be used for satellite dose group(s) and the satellite control group. The purpose of the satellite group is to allow for the evaluation of pathology other than neoplasia.

(B) If interim sacrifices are planned, the number of animals should be increased by the number of animals scheduled to be sacrificed during the course of the study.

(C) The number of animals at the termination of each phase of the study should be adequate for a meaningful and valid statistical evaluation of long term exposure. For a valid interpretation of negative results, it is essential that survival in all groups not fall below 50 percent at the time of termination.

(2) *Control groups.* (i) A concurrent control group (50 females and 50 males) and a satellite control group (20 females and 20 males) are recommended. These groups should be untreated or sham treated control groups or, if a vehicle is used in administering the test substance, vehicle control groups. If the toxic properties of the vehicle are not known or cannot be made available, both untreated and vehicle control groups are recommended. Animals in the satellite control group should be sacrificed at the same time the satellite test group is terminated.

(ii) In special circumstances such as inhalation studies involving aerosols or the use of an emulsifier of uncharacterized biological activity in oral studies, a concurrent negative control group should be utilized. The negative control group should be treated in the same manner as all other test animals, except that this control group should not be exposed to the test substance or any vehicle.

(iii) The use of historical control data (i.e., the incidence of tumors and other suspect lesions normally occuring under the same laboratory conditions and in the same strain of animals employed in the test) is desirable for assessing the significance of changes observed in exposed animals.

(3) *Dose levels and dose selection.* (i) For risk assessment purposes, at least three dose levels should be used, in addition to the concurrent control group.

Dose levels should be spaced to produce a gradation of effects.

(ii) The highest dose level in rodents should elicit signs of toxicity without substantially altering the normal life span due to effects other than tumors.

(iii) The lowest dose level should produce no evidence of toxicity. Where there is a usable estimation of human exposure, the lowest dose level should exceed this even though this dose level may result in some signs of toxicity.

(iv) Ideally, the intermediate dose level(s) should produce minimal observable toxic effects. If more than one intermediate dose is used the dose levels should be spaced to produce a gradation of toxic effects.

(v) For rodents, the incidence of fatalities in low and intermediate dose groups and in the controls should be low to permit a meaningful evaluation of the results.

(vi) For chronic toxicological assessment, a high dose treated satellite and a concurrent control satellite group should be included in the study design. The highest dose for satellite animals should be chosen so as to produce frank toxicity, but not excessive lethality, in order to elucidate a chronic toxicological profile of the test substance. If more than one dose level is selected for satellite dose groups, the doses should be spaced to produce a gradation of toxic effects.

(4) *Exposure conditions.* The animals are dosed with the test substance ideally on a 7-day per week basis over a period of at least 24 months for rats, and 18 months for mice and hamsters, except for the animals in the satellite groups which should be dosed for 12 months.

(5) *Observation period.* It is necessary that the duration of the oncogenicity test comprise the majority of the normal life span of the animals to be used. It has been suggested that the duration of the study should be for the entire lifetime of all animals. However, a few animals may greatly exceed the average lifetime and the duration of the study may be unnecessarily extended and complicate the conduct and evaluation of the study. Rather, a finite period covering the majority of the expected life span of the strain is preferred since the probability is high that, for the great majority of chemicals, induced tumors will occur within such an observation period. The following guidelines are recommended:

(i) Generally, the termination of the study should be at 18 months for mice and hamsters and 24 months for rats; however, for certain strains of animals with greater longevity and/or low spontaneous tumor rate, termination should be at 24 months for mice and hamsters and at 30 months for rats. For longer time periods, and where any other species are used, consultation with the Agency in regard to duration of the test is advised.

(ii) However, termination of the study is acceptable when the number of survivors of the lower doses or of the control group reaches 25 percent. In the case where only the high dose group dies prematurely for obvious reasons of toxicity, this should not trigger termination of the study.

(iii) The satellite groups and the concurrent satellite control group should be retained in the study for at least 12 months. These groups should be scheduled for sacrifice for an estimation of test-substance-related pathology uncomplicated by geriatric changes.

(6) *Administration of the test substance.* The three main routes of administration are oral, dermal, and inhalation. The choice of the route of administration depends upon the physical and chemical characteristics of the test substance and the form typifying exposure in humans.

(i) *Oral studies.* (A) The animals should receive the test substance in their diet, dissolved in drinking water, or given by gavage or capsule for a period of at least 24 months for rats and 18 months for mice and hamsters.

(B) If the test substance is administered in the drinking water, or mixed in the diet, exposure is continuous.

(C) For a diet mixture, the highest concentration should not exceed 5 percent.

(ii) *Dermal studies.* (A) The animals are treated by topical application with the test substance, ideally for at least 6 hours per day.

(B) Fur should be clipped from the dorsal area of the trunk of the test animals. Care should be taken to avoid abrading the skin which could alter its permeability.

(C) The test substance should be applied uniformly over a shaved area which is approximately 10 percent of the total body surface area. With highly toxic substances, the surface area covered may be less, but as much of the area as possible should be covered with as thin and uniform a film as possible.

(D) During the exposure period, the test substance may be held, if necessary, in contact with the skin with a porous gauze dressing and nonirritating tape. The test site should be further covered in a suitable manner to retain the gauze dressing and test substance and ensure that the animals cannot ingest the test substance.

(iii) *Inhalation studies.* (A) The animals should be tested with inhalation equipment designed to sustain a dynamic air flow of 12 to 15 air changes per hour, ensure an adequate oxygen content of 19 percent and an evenly distributed exposure atmosphere. Where a chamber is used, its design should minimize crowding of the test animals and maximize their exposure to the test substance. This is best accomplished by individual caging. As a general rule, to ensure stability of a chamber atmosphere, the total "volume" of the test animals should not exceed 5 percent of the volume of the test chamber. Alternatively, oro-nasal, head only, or whole body individual chamber exposure may be used.

(B) The temperature at which the test is performed should be maintained at 22 °C (±2°). Ideally, the relative humidity should be maintained between 40 to 60 percent, but in certain instances (e.g., tests of aerosols, use of water vehicle) this may not be practicable.

(C) Food and water should be withheld during each daily 6-hour exposure period.

(D) A dynamic inhalation system with a suitable analytical concentration control system should be used. The rate of air flow should be adjusted to ensure that conditions throughout the equipment are essentially the same. Maintenance of slight negative pressure inside the chamber will prevent leakage of the test substance into the surrounding areas.

(7) *Observation of animals.* (i) Each animal should be handled and its physical condition appraised at least once each day.

(ii) Additional observations should be made daily with appropriate actions taken to minimize loss of animals to the study (e.g., necropsy or refrigeration of those animals found dead and isolation or sacrifice of weak or moribund animals).

(iii) Clinical signs and mortality should be recorded for all animals. Special attention should be paid to tumor development. The time of onset, location, dimensions, appearance and progression of each grossly visible or palpable tumor should be recorded.

(iv) Body weights should be recorded individually for all animals once a week during the first 13 weeks of the test period and at least once every 4 weeks thereafter, unless signs of clinical toxicity suggest more frequent weighings to facilitate monitoring of health status.

(v) When the test substance is administered in the food or drinking water, measurements of food or water consumption, respectively, should be determined weekly during the first 13 weeks of the study and then at approximately monthly intervals unless

health status or body weight changes dictate otherwise.

(vi) At the end of the study period, all survivors are sacrificed. Moribund animals should be removed and sacrificed when noticed.

(8) *Physical measurements.* For inhalation studies, measurements or monitoring should be made of the following:

(i) The rate of airflow should be monitored continuously, but should be recorded at intervals of at least once every 30 minutes.

(ii) During each exposure period the actual concentrations of the test substance should be held as constant as practicable, monitored continuously and recorded at least three times during the test period: at the beginning, at an intermediate time and at the end of the period.

(iii) During the development of the generating system, particle size analysis should be performed to establish the stability of aerosol concentrations. During exposure, analyses should be conducted as often as necessary to determine the consistency of particle size distribution and homogeneity of the exposure stream.

(iv) Temperature and humidity should be monitored continuously, but should be recorded at intervals of at least once every 30 minutes.

(9) *Clinical examinations.* (i) The following examinations should be made on at least 20 rodents of each sex per dose level:

(A) Certain hematology determinations (e.g., hemoglobin content, packed cell volume, total red blood cells, total white blood cells, platelets, or other measures of clotting potential) should be performed at termination and should be performed at 3 months, 6 months and at approximately 6-month intervals thereafter (for those groups on test for longer than 12 months) on blood samples collected from 20 rodents per sex of all groups. These collections should be from the same animals at each interval. If clinical observations suggest a deterioration in health of the animals during the study, a differential blood count of the affected animals should be performed. A differential blood count should be performed on samples from animals in the highest dosage group and the controls. Differential blood counts should be performed for the next lower group(s) if there is a major discrepancy between the highest group and the controls. If hematological effects were noted in the subchronic test, hematological testing should be performed at 3, 6, 12, 18 and 24 months for a year study.

(B) Certain clinical biochemistry determinations on blood should be carried out at least three times during the test period: just prior to initiation of dosing (baseline data), near the middle and at the end of the test period. Blood samples should be drawn for clinical measurements from at least ten rodents per sex of all groups; if possible, from the same rodents at each time interval. Test areas which are considered appropriate to all studies: electrolyte balance, carbohydrate metabolism and liver and kidney function. The selection of specific tests will be influenced by observations on the mode of action of the substance and signs of clinical toxicity. Suggested chemical determinations: calcium, phosphorus, chloride, sodium, potassium, fasting glucose (with period of fasting appropriate to the species), serum glutamic-pyruvic transaminase (now known as serum alanine aminotransferase), serum glutamic oxaloacetic transaminase (now known as serum aspartate aminotransferase), ornithine decarboxylase, gamma glutamyl transpeptidase, blood urea nitrogen, albumen, creatinine phosphokinase, total cholesterol, total bilirubin and total serum protein measurements. Other determinations which may be necessary for an adequate toxicological evaluation include analyses of lipids, hormones, acid/base balance, methemoglobin and cholinesterase activity. Additional clinical biochemistry may be employed where necessary to extend the investigation of observed effects.

(ii) The following should be performed on at least 10 rodents of each sex per dose level:

(A) Urine samples from the same rodents at the same intervals as hematological examination above, should be collected for analysis. The following determinations should be made from either individual animals or on a pooled sample/sex/group for rodents: appearance (volume and specific gravity), protein, glucose, ketones, bilirubin, occult blood (semi-quantitatively) and microscopy of sediment (semi-quantitatively).

(B) Ophthalmological examination, using an ophthalmoscope or equivalent suitable equipment, should be made prior to the administration of the test substance and at the termination of the study. If changes in the eyes are detected, all animals should be examined.

(10) *Gross necropsy.* (i) A complete gross examination should be performed on all animals, including those which died during the experiment or were killed in moribund conditions.

(ii) The liver, kidneys, adrenals, brain and gonads should be weighed wet, as soon as possible after dissection to avoid drying. For these organs, at least 10 rodents per sex per group should be weighed.

(iii) The following organs and tissues, or representative samples thereof, should be preserved in a suitable medium for possible future histopathological examination: all gross lesions and tumors; brain-including sections of medulla/pons, cerebellar cortex, and cerebral cortex; pituitary; thyroid/parathyroid; thymus; lungs; trachea; heart; sternum and/or femur with bone marrow; salivary glands; liver; spleen; kidneys; adrenals; esophagus; stomach; duodenum; jejunum; ileum; cecum; colon; rectum; urinary bladder; representative lymph nodes; pancreas; gonads; uterus; accessory genital organs (epididymis, prostate, and, if present, seminal vesicles); female mammary gland; aorta; gall bladder (if present); skin; musculature; peripheral nerve; spinal cord at three levels—cervical, midthoracic, and lumbar; and eyes. In inhalation studies, the entire respiratory tract, including nose, pharynx, larynx and paranasal sinuses should be examined and preserved. In dermal studies, skin from sites of skin painting should be examined and preserved.

(iv) Inflation of lungs and urinary bladder with a fixative is the optimal method for preservation of these tissues. The proper inflation and fixation of the lungs in inhalation studies is considered essential for appropriate and valid histopathological examination.

(v) If other clinical examinations are carried out, the information obtained from these procedures should be available before microscopic examination, since they may provide significant guidance to the pathologist.

(11) *Histopathology.* (i) The following histopathology should be performed:

(A) Full histopathology on the organs and tissues, listed above, of all non-rodents, of all rodents in the control and high dose groups and of all rodents that died or were killed during the study.

(B) All gross lesions in all animals.

(C) Target organs in all animals.

(D) Lungs, liver and kidneys of all animals. Special attention to examination of the lungs of rodents should be made for evidence of infection since this provides an assessment of the state of health of the animals.

(ii) If excessive early deaths or other problems occur in the high dose group compromising the significance of the data, the next dose level should be examined for complete histopathology.

(iii) In case the results of the experiment give evidence of substantial alteration of the animals' normal longevity or the induction of effects that might affect a toxic response, the next lower dose level should be examined as described above.

(iv) An attempt should be made to correlate gross observations with microscopic findings.

(c) *Data and reporting*—(1) *Treatment of results.* (i) Data should be summarized in tabular form, showing for each test group the number of animals at the start of the test, the number of animals showing lesions, the types of lesions and the percentage of animals displaying each type of lesion.

(ii) All observed results, quantitative and incidental, should be evaluated by an appropriate statistical method. Any generally accepted statistical methods may be used; the statistical methods should be selected during the design of the study.

(2) *Evaluation of study results.* (i) The findings of a combined chronic toxicity/oncogenicity study should be evaluated in conjunction with the findings of preceding studies and considered in terms of the toxic effects, the necropsy and histopathological findings. The evaluation will include the relationship between the dose of the test substance and the presence, incidence and severity of abnormalities (including behavioral and clinical abnormalities), gross lesions, identified target organs, body weight changes, effects on mortality and any other general or specific toxic effects.

(ii) In any study which demonstrates an absence of toxic effects, further investigation to establish absorption and bioavailablity of the test substance should be considered.

(iii) In order for a negative test to be acceptable, it should meet the following criteria: no more than 10 percent of any group is lost due to autolysis, cannibalism, or management problems; and survival in each group is no less than 50 percent at 18 months for mice and hamsters and at 24 months for rats.

(3) *Test report.* (i) In addition to the reporting requirements as specified under 40 CFR Part 792, Subpart J the following specific information should be reported:

(A) *Group animal data.* Tabulation of toxic response data by species, strain, sex and exposure level for:

(*1*) Number of animals dying.

(*2*) Number of animals showing signs of toxicity.

(*3*) Number of animals exposed.

(B) *Individual animal data.* (*1*) Time of death during the study or whether animals survived to termination.

(*2*) Time of observation of each abnormal sign and its subsequent course.

(*3*) Body weight data.

(*4*) Food and water consumption data, when collected.

(*5*) Results of ophthalmological examination, when performed.

(*6*) Hematological tests employed and all results.

(*7*) Clinical biochemistry tests employed and all results.

(*8*) Necropsy findings.

(*9*) Detailed description of all histopathological findings.

(*10*) Statistical treatment of results where appropriate.

(*11*) Historical control data, if taken into account.

(ii) In addition, for inhalation studies the following should be reported:

(A) *Test Conditions.* (*1*) Description of exposure apparatus including design, type, dimensions, source of air, system for generating particulates and aerosols, method of conditioning air, treatment of exhaust air and the method of housing the animals in a test chamber.

(*2*) The equipment for measuring temperature, humidity, and particulate aerosol concentrations and size should be described.

(B) *Exposure data.* These should be tabulated and presented with mean values and a measure of variability (e.g. standard deviation) and should include:

(*1*) Airflow rates through the inhalation equipment.

(*2*) Temperature and humidity of air.

(*3*) Nominal concentration (total amount of test substance fed into the inhalation equipment divided by volume of air).

(*4*) Actual concentration in test breathing zone.

(*5*) Particle size distribution (e.g. median aerodynamic diameter of particles with standard deviation from the mean).

(d) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Benitz, K.F. "Measurement of Chronic Toxicity," *Methods of Toxicology.* Ed. G.E. Paget. (Oxford: Blackwell Scientific Publications, 1970) pp. 82–131.

(2) D'Aguanno, W. "Drug Safety Evaluation—Pre-Clinical Considerations," "*Industrial Pharmacology: Neuroleptics.* Vol. I Ed. S. Fielding and H. Lal. (Mt. Kisco, New York: Futura Publishing Co., 1974) pp. 317–332.

(3) Department of Health and Welfare. *The Testing of Chemicals for Carcinogenicity, Mutagenicity, Teratogenicity. Minister of Health and Welfare. (Canada: Department of Health and Welfare, 1975).*

(4) Fitzhugh, O.G. "Chronic Oral Toxicity," *Appraisal of the Safety of Chemicals in Foods, Drugs and Cosmetics.* The Association of Food and Drug Officials of the United States (1959, 3rd Printing 1975). pp. 36–45.

(5) Food and Drug Administration Advisory Committee on Protocols for Safety Evaluation: Panel on Carcinogenesis. "*Report on Cancer Testing in the Safety of Food Additives and Pesticides,*" *Toxicology and Applied Pharmacology.* 20:419–438 (1971).

(6) Goldenthal, E.I., and D'Aguanno, W. "Evaluation of Drugs," *Appraisal of the Safety of Chemicals in Foods, Drugs, and Cosmetics.* The Association of Food and Drug Officials of the United States (1959, 3rd printing 1975) pp.60–67.

(7) International Union Against Cancer. "Carcinogenicity Testing," *IUCC Technical Report Series* Vol. 2, Ed. I. Berenblum. (Geneva: International Union Against Cancer, 1969).

(8) Leong, B.K.J., and Laskin, S. "Number and Species of Experimental Animals for Inhalation Carcinogenicity Studies," Paper presented at Conference on Target Organ Toxicity. September, 1975, Cincinnati, Ohio.

(9) National Academy of Sciences. "Principles and Procedures for Evaluating the Toxicity of Household Substances," A report prepared by the Committee for the Revision of NAS Publication 1138, under the auspices of the Committee on Toxicology, National Research Council, National Academy of Sciences, Washington, DC (1977).

(10) National Cancer Institute. *Report of the Subtask Group on Carcinogen Testing to the Interagency Collaborative Group on Environmental Carcinogenesis.* (Bethesda: United States National Cancer Institute, 1976).

(11) National Center for Toxicological. *Report of Chronic Studies Task Force Research Committee. "Appendix B, (Rockville: National Center for Toxicological Research, 1972)).*

(12) Page, N.P. "Chronic Toxicity and Carcinogenicity Guidelines," *Journal Environmental Pathology and Toxicology.* 1:161–182 (1977).

(13) Page, N.P. "Concepts of a Bioassay Program in Environmental Carcinogenesis," *Advances in Modern Toxicology* Volume 3, Ed. Kraybill and Mehlman. (Washington, D.C.: Hemisphere Publishing Corp., 1977) pp. 87–171.

(14) Schwartz, E. 1974. "Toxicology of Neuroleptic Agents," *Industrial Pharmacology: Neuroleptics.* Ed. S. Fielding and H. Lal. (Mt. Kisco, New

York: Futura Publishing Co, 1974) pp. 203–221.

(15) Sontag, J.M., Page, N.P., and Saffiotti, U. *Guidelines for Carcinogen Bioassay in Small Rodents.* NCI–CS–TR–1 (Bethesda: United States Cancer Institute, Division of Cancer Control and Prevention, Carcinogenesis Bioassay Program, 1976).

(16) United States Pharmaceutical Manufacturers Association. *Guidelines for the Assessment of Drug and Medical Device Safety in Animals.* (1977).

(17) World Health Organization. "Principles for the Testing and Evaluation of Drugs for Carcinogenicity," *WHO Technical Report Series No. 426.* (Geneva: World Health Organization, 1969).

(18) World Health Organization. "Guidelines for Evaluation of Drugs for Use in Man," *WHO Technical Report Series No. 563.* (Geneva: World Health Organization, 1975).

(19) World Health Organization. "Part I. Environmental Health Criteria 6," *Principles and Methods for Evaluating the Toxicity of Chemicals.* (Geneva: World Health Organization, 1978).

(20) World Health Organization. "Principles for Pre-Clinical Testing of Drug Safety," *WHO Technical Report Series No. 341.* (Geneva: World Health Organization, 1966).

Subpart E—Specific Organ/Tissue Toxicity

§ 798.4100 Dermal sensitization.

(a) *Purpose.* In the assessment and evaluation of the toxic characteristics of a substance, determination of its potential to provoke skin sensitization reactions is important. Information derived from tests for skin sensitization serves to identify the possible hazard to a population repeatedly exposed to a test substance. While the desirability of skin sensitization testing is recognized, there are some real differences of opinion about the best method to use. The test selected should be a reliable screening procedure which should not fail to identify substances with significant allergenic potential, while at the same time avoiding false negative results.

(b) *Definitions.* (1) Skin sensitization (allergic contact dermatitis) is an immunologically mediated cutaneous reaction to a substance. In the human, the responses may be characterized by pruritis, erythema, edema, papules, vesicles, bullae or a combination of these. In other species the reactions may differ and only erythema and edema may be seen.

(2) Induction period is a period of at least 1 week following a sensitization exposure during which a hypersensitive state is developed.

(3) Induction exposure is an experimental exposure of a subject to a test substance with the intention of inducing a hypersensitive state.

(4) Challenge exposure is an experimental exposure of a previously treated subject to a test substance following an induction period, to determine whether the subject will react in a hypersensitive manner.

(c) *Principle of the test method.* Following initial exposure(s) to a test substance, the animals are subsequently subjected, after a period of not less than 1 week, to a challenge exposure with the test substance to establish whether a hypersensitive state has been induced. Sensitization is determined by examining the reaction to the challenge exposure and comparing this reaction to that of the initial induction exposure.

(d) *Test procedures.* (1) Any of the following seven test methods is considered to be acceptable. It is realized, however, that the methods differ in their probability and degree of reaction to sensitizing substances.

(i) Freund's complete adjuvant test.
(ii) Guinea-pig maximization test.
(iii) Split adjuvant technique.
(iv) Buehler test.
(v) Open epicutaneous test.
(vi) Mauer optimization test.
(vii) Footpad technique in guinea pig.

(2) Removal of hair is by clipping, shaving, or possibly by depilation, depending on the test method used.

(3) *Animal selection*—(i) *Species and strain.* The young adult guinea pig is the preferred species. Commonly used laboratory strains should be employed. If other species are used, the tester should provide justification/reasoning for their selection.

(ii) *Number and sex.* (A) The number and sex of animals used will depend on the method employed.

(B) The females should be nulliparous and nonpregnant.

(4) *Control animals.* (i) Periodic use of a positive control substance with an acceptable level of reliability for the test system selected is recommended;

(ii) Animals may act as their own controls or groups of induced animals can be compared to groups which have received only a challenge exposure.

(5) *Dose levels.* The dose level will depend upon the method selected.

(6) *Observation of animals.* (i) Skin reactions should be graded and recorded after the challenge exposures at the time specified by the methodology selected. This is usually at 24, 48, and 72, hours. Additional notations should be made as necessary to fully describe unusual responses;

(ii) Regardless of method selected, initial and terminal body weights should be recorded.

(7) *Procedures.* The procedures to be used are those described by the methodology chosen.

(e) *Data and reporting.* (1) Data should be summarized in tabular form, showing for each individual animal the skin reaction, results of the induction exposure(s) and the challenge exposure(s) at times indicated by the method chosen. As a minimum, the erythema and edema should be graded and any unusual finding should be recorded.

(2) *Evaluation of the results.* The evaluation of results will provide information on the proportion of each group that became sensitized and the extent (slight, moderate, severe) of the sensitization reaction in each individual animal.

(3) *Test report.* In addition to the reporting requirements as specified under 40 CFR Part 792, Subpart J, the following specific information should be reported:

(i) A description of the method used and the commonly accepted name.

(ii) Information on the positive control study, including positive control used, method used, and time conducted.

(iii) The number and sex of the test animals.

(iv) Species and strain.

(v) Individual weights of the animals at the start of the test and at the conclusion of the test.

(vi) A brief description of the grading system.

(vii) Each reading made on each individual animal.

(f) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Buehler, E.V. "Delayed Contact Hypersensitivity in the Guinea Pig," *Archives Dermatology.* 91:171 (1965).

(2) Draize, J.H. "Dermal Toxicity," *Food Drug Cosmetic Law Journal.* 10:722–732 (1955).

(3) Klecak, G. "Identification of Contact Allergens: Predictive Tests in Animals," *Advances in Modern Toxicology: Dermatology and Pharmacology.* Ed. F.N. Marzulli and H.I. Maibach. (Washington, D.C.: Hemisphere Publishing Corp., 1977) 4:305–339).

(4) Klecak, G., Geleick, H., Grey, J.R. "Screening of Fragrance Materials for Allergenicity in the Guinea Pig.–1. Comparison of Four Testing Methods," *Journal of the Society of Cosmetic Chemists.* 28:53–64 (1977).

(5) Magnusson, B., Kligman, A.M. "The Identification of Contact Allergens by Animal Assay," The Guinea Pig Maximization Test. *The Journal of Investigative Dermatology.* 52:268–276 (1973).

(6) Maguire, H.C. "The Bioassay of Contact Allergens in the Guinea Pig" *Journal of the Society of Cosmetic Chemists.* 24:151–162 (1973).

(7) Maurer, T., Thomann, P., Weirich, E.G., Hess, R. "The Optimization Test in the Guinea Pig. A Method for the Predictive Evaluation of the Contact Allergenicity of Chemicals," *Agents and Actions.* (Basel: Birkhauser Verlag, 1975) Vol. 5/2.

(8) Maurer, T., Thomann, P., Weirich, E.G., Hess, R. "The Optimization Test in the Guinea Pig: A Method for the Predictive Evaluation of the Contact Allergenicity of Chemicals," *International Congress Series Excerpta Medica No. 376,* (1975) Vol. 203.

§ 798.4350 Inhalation developmental toxicity study.

(a) *Purpose.* In the assessment and evaluation of the toxic characteristics of an inhalable material such as a gas, volatile substance, or aerosol/particulate, determination of the potential developmental toxicity is important. The inhalation developmental toxicity study is designed to provide information on the potential hazard to the unborn which may arise from exposure of the mother during pregnancy.

(b) *Definitions.* (1) Developmental toxicity is the property of a chemical that causes in utero death, structural or functional abnormalities or growth retardation during the period of development.

(2) "Aerodynamic diameter" applies to the behavioral size of particles of aerosols. It is the diameter of a sphere of unit density which behaves aerodynamically like the particles of the test substance. It is used to compare particles of different sizes, shapes, and densities and to predict where in the respiratory tract such particles may be deposited. This term is used in contrast to "optical," "measured" or "geometric" diameters which are representation of actual diameters which in themselves cannot be related to deposition within the respiratory tract.

(3) "Geometric mean diameter" or "median diameter" is the calculated aerodynamic diameter which divides the particles of an aerosol in half based on the weight of the particles. Fifty percent of the particles by weight will be larger than the median diameter and 50 percent of the particles will be smaller than the median diameter. The median diameter and its geometeric standard deviation are used to statistically describe the particle size distribution of any aerosol based on the weight and size of the particles.

(4) "Inhalable diameter" refers to that aerodynamic diameter of a particle which is considered to be inhalable for the organism. It is used to refer to particles which are capable of being inhaled and may be deposited anywhere within the respiratory tract from the trachea to the deep lung (the alveoli). For man, the inhalable diameter is considered here as 15 micrometers or less.

(5) Concentration refers to an exposure level. Exposure is expressed as weight or volume of test substance per volume of air (mg/1), or as parts per million (ppm).

(6) No-observed-effect level is the maximum concentration in a test which produces no observed adverse effects. A no-observed-effect level is expressed in terms of weight or volume of test substance given daily per unit volume of air.

(c) *Principle of the test method.* The test substance is administered in graduated concentrations, for at least that part of the pregnancy covering the major period of organogenesis, to several groups of pregnant experimental animals, one exposure level being used per group. Shortly before the expected date of delivery, the pregnant females are sacrificed, the uteri removed, and the contents examined for embryonic or fetal deaths, and live fetuses.

(d) *Limit test.* If a test at an exposure of 5 mg/1 (actual concentration of respirable substances) or, where this is not possible due to physical or chemical properties of the test substance, the maximum attainable concentration, produces no observable developmental toxicity, then a full study using three exposure levels might not be necessary.

(e) *Test procedures*— (1) *Animal selection*—(i) *Species and strain.* Testing should be performed in at least two mamalian species. Commonly used species include the rat, mouse, rabbit, and hamster. If other mamalian species are used, the tester should provide justification/reasoning for their selection. Commonly used laboratory strains should be employed. The strain should not have low fecundity and should preferably be characterized for its sensitivity to developmental toxins.

(ii) *Age.* Young adult animals (nulliparous females) should be used.

(iii) *Sex.* Pregnant female animals should be used at each exposure level.

(iv) *Number of animals.* At least 20 pregnant rats, mice, or hamsters or 12 pregnant rabbits are recommended at each exposure level. The objective is to ensure that sufficient pups are produced to permit meaningful evaluation of the potential developmental toxicity of the test substance.

(2) *Control group.* A concurrent control group should be used. This group should be exposed to clean, filtered air under conditions identical to those used for the group exposed to the substance of interest. In addition, a vehicle-exposed group may be necessary when the substance under study requires a vehicle for delivery. It is recommended that during preliminary range finding studies, air vs. vehicle exposure be compared. If there is no substantial difference, air exposure itself would be an appropriate control. If vehicle and air exposure yield different results, both vehicle and air exposed control groups are recommended.

(3) *Concentration levels and concentration selection.* (i) At least three concentration levels with a control and, where appropriate, a vehicle control, should be used.

(ii) The vehicle should neither be developmentally toxic nor have effects on reproduction.

(iii) To select the appropriate concentration levels, a pilot or trial study may be advisable. Since pregnant animals have an increased minute ventilation as compared to non-pregnant animals, it is recommended that the trial study be conducted in pregnant animals. Similarly, since presumably the minute ventilation will vary with progression of pregnancy, the animals should be exposed during the same period of gestation as in the main study. In the trial study, the concentration producing embryonic or fetal lethalities or maternal toxicity should be determined.

(iv) Unless limited by the physical/chemical nature or biological properties of the substance, the highest concentration level should induce some overt maternal toxicity such as slight weight loss, but not more than 10 percent maternal deaths.

(v) The lowest concentration level should not produce any grossly observable evidence of either maternal or developmental toxicity.

(vi) Ideally, the intermediate concentration level(s) should produce minimal observable toxic effects. If more than one intermediate concentration is used, the concentration levels should be spaced to produce a gradation of toxic effects.

(4) *Exposure duration.* The duration of exposure should be at least six hours daily allowing appropriate additional time for chamber equilibrium.

(5) *Observation period.* Day 0 in the test is the day on which a vaginal plug and/or sperm are observed. The exposure period should cover the period of major organogenesis. This may be taken as days 6 to 15 for rat and mouse, 6 to 14 for hamster, or 6 to 18 for rabbit.

(6) *Inhalation exposure.* (i)(A) The animals should be tested in inhalation equipment designed to sustain a dynamic air flow of 12 to 15 air changes per hour and ensure an adequate oxygen content of 19 percent and an evenly distributed exposure atmosphere. Where a chamber is used, its design should minimize crowding of the test animals and maximize their exposure to the test substance. This is best accomplished by individual caging. As a general rule, to ensure stability of a chamber atmosphere, the total "volume" of the test animals should not exceed 5 percent of the volume of the test chamber.

(B) Pregnant animals should be subjected to the minimum amount of stress. Since whole-body exposure appears to be the least stressful mode of exposure it is the method preferred. In general, oro-nasal or head-only exposure, which is sometimes used to avoid concurrent exposure by the dermal or oral routes, is not recommended because of the associated stress accompanying the restraining of the animals. However, there may be specific instances where it may be more appropriate than whole-body exposure. The tester should provide justification/reasoning for its selection.

(ii) A dynamic inhalation system with a suitable analytical concentration control system should be used. The rate of air flow should be adjusted to ensure that conditions throughout the equipment exposure chamber are essentially the same. Maintenance of slight negative pressure inside the chamber will prevent leakage of the test substance into the surrounding areas.

(iii) The temperature at which the test is performed should be maintained at 22 °C (±2°) for rodents or 20 °C (±3°) for rabbits. Ideally, the relative humidity should be maintained between 40 to 60 percent, but in certain instances (e.g., tests of aerosols, use of water vehicle) this may not be practicable.

(7) *Physical measurements.* Measurements or monitoring should be made of the following:

(i) The rate of airflow should be monitored continuously but should be recorded at least every 30 minutes.

(ii) The actual concentrations of the test substance should be measured in the breathing zone. During the exposure period the actual concentrations of the test substance should be held as constant as practicable, monitored continuously and measured at least at the beginning, at an intermediate time and at the end of the exposure period.

(iii) During the development of the generating system, particle size analysis should be performed to establish the stability of aerosol concentrations. During exposure, analysis should be conducted as often as necessary to determine the consistency of particle size distribution.

(iv) Temperature and humidity should be monitored continuously but should be recorded at least every 30 minutes.

(8) *Food and water during exposure period.* Food should be withheld during exposure. Water may or may not be withheld. If it is not withheld it should not come in direct contact with the test atmospheres.

(9) *Observation of animals.* (i) A gross examination should be made at least once each day.

(ii) Additional observations should be made daily with appropriate actions taken to minimize loss of animals to the study (e.g., necropsy or refrigeration of animals found dead and isolation or sacrifice of weak or moribund animals).

(iii) Signs of toxicity should be recorded as they are observed, including the time of onset, the degree and duration.

(iv) During the treatment and observation periods, cage-side observations should include, but not be limited to: changes in skin and fur, eye and mucous membranes, as well as respiratory, autonomic and central nervous systems, somatomotor activity and behavioral pattern. Particular attention should be directed to observation of tremors, convulsions, salivation, diarrhea, lethargy, sleep, and coma.

(v) Measurements should be made weekly of food consumption for all animals in the study.

(vi) Animals should be weighed at least weekly.

(vii) Females showing signs of abortion or premature delivery should be sacrificed and subjected to a thorough macroscopic examination.

(10) *Gross necropsy.* (i) At the time of sacrifice or death during the study, the dam should be examined macroscopically for any structural abnormalities or pathological changes which may have influenced the pregnancy.

(ii) Immediately after sacrifice or death, the uterus should be removed, weighed, and the contents examined for embryonic or fetal deaths and the number of viable fetuses. The degree of resorption should be described in order to help estimate the relative time of death.

(iii) The number of corpora lutea should be determined for all species except mice.

(iv) The sex of the fetuses should be determined and they should be weighed individually, the weights recorded, and the mean fetal weight derived.

(v) Following removal, each fetus should be examined externally.

(vi) For rats, mice and hamsters, one-third to one-half of each litter should be prepared and examined for skeletal anomalies, and the remaining part of each litter should be prepared and examined for soft tissue anomalies using appropriate methods.

(vii) For rabbits, each fetus should be examined by careful dissection for visceral anomalies and then examined for skeletal anomalies.

(f) *Data and reporting*—(1) *Treatment of results.* Data should be summarized in tabular form, showing for each test group: the number of animals at the start of the test, the number of pregnant animals, the number and percentages of live fetuses and the number of fetuses with any soft tissue or skeletal abnormalities.

(2) *Evaluation of results.* The findings of a developmental toxicity study should be evaluated in terms of the observed effects and the exposure levels producing effects. It is necessary to consider the historical developmental toxicity data on the species/strain tested. A properly conducted developmental toxicity study should provide a satisfactory estimation of a no-effect level.

(3) *Test report.* In addition to the reporting requirements as specified under 40 CFR Part 792, Subpart J, the following specific information should be reported:

(i) *Test conditions.* (A) Description of exposure apparatus including design, type, dimensions, source of air, system for generating particulates and aerosols, methods of conditioning air, and the method of housing the animals in a test chamber when this apparatus is used.

(B) The equipment for measuring temperature, humidity, and particulate aerosol concentrations and size shall be described.

(ii) *Exposure data.* These shall be tabulated and presented with mean values and a measure of variability (e.g., standard deviation) and should include:

(A) Airflow rates through the inhalation equipment.

(B) Temperature of air.

(C) Nominal concentration—total amount of test substance fed into the inhalation equipment divided by volume of air (no standard deviation).

(D) Measured total concentrations (particulate and/or gaseous phases) in test breathing zone.

(E) Particle size distribution (e.g., median aerodynamic diameter of particles with geometric standard deviation) including estimates of the percents of inhalable and non-inhalable portions for the test animals.

(iii) *Animal data.* (A) Toxic response data by concentration.

(B) Species and strain.

(C) Time of death during the study or whether animals survived to termination.

(D) Time of onset and duration of each abnormal sign and its subsequent course.

(E) Food, body weight and uterine weight data.

(F) Pregnancy and litter data.

(G) Fetal data (live/dead, sex, soft tissue and sketetal defects, resorptions).

(g) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Department of Health and Welfare. *The Testing of Chemicals for Carcinogenicity, Mutagenicity and Teratogenicity.* Minister of Health and Welfare (Canada: Department of Health and Welfare, 1975).

(2) National Academy of Sciences. "Principles and Procedures for Evaluating the Toxicity of Household Substances." A report prepared by the Committee for the Revision of NAS Publication 1138, under the auspices of the Committee on Toxicology, National Research Council, National Academy of Sciences, Washington, DC (1977).

(3) World Health Organization. *Principles for the Testing of Drugs for Teratogenicity.* WHO Technical Report Series No. 364. (Geneva: World Health Organization, 1967).

§ 798.4420 Preliminary developmental toxicity screen.

(a) *Purpose.* The *in vivo* developmental toxicity assay is designed to assess the potential of agents to induce toxic effects in the conceptus after administration to the mother during pregnancy. This test should be used only to prioritize environmental agents for testing by more rigorous standard protocols.

(b) *Definitions.* Development toxicity is the capability of an agent to induce *in utero* death, structural or functional abnormalities, or growth retardation after contact with the pregnant animal.

(c) *Principle of the test method.* The test substance is administered to pregnant animals during a significant portion of the major period of organogenesis. A single dose level is administered. This dose level should be high enough to elicit significant maternal toxicity. The dams are allowed to give birth and the neonates are counted and weighed on days 1 and 3 postpartum (day 1 is the day after birth). The underlying hypothesis for this assay is that most prenatal insults will manifest themselves as reduced viability and/or growth during the postnatal period.

(d) *Test procedures*—(1) *Animal selection—(i) Species and strain.* Testing must be performed in a mammalian species and strain which will allow human handling of newborn pups without cannibalization or abandonment. The preferred species would be either rat or mouse, and of necessity, a strain that does not exhibit the behavior referred to above. The strain should be commonly used and should not have low fecundity.

(ii) *Age.* Young adult animals (nulliparous females) should be used.

(iii) *Sex.* Pregnant female animals should be used.

(iv) *Number of animals.* At least 30 pregnant animals should be used for each compound. The objective is to ensure that sufficient litters are produced to permit meaningful evaluation of the potential developmental toxicity of the test substance.

(2) *Control group.* A concurrent control group should be used. This group should be an untreated or sham treated control group, or, if a vehicle is used in administering the test substance, a vehicle control group. Except for treatment with the test substance, animals in the control group(s) should be handled in an identical manner to test group animals.

(3) *Dose levels and dose selection.* (i) A single dose level with a concurrent control and, when appropriate, a vehicle control, should be used.

(ii) The vehicle should be neither developmentally toxic nor have effects on reproduction.

(iii) To select the appropriate dose levels, a pilot or trial study may be advisable. It is not always necessary to carry out a trial study in pregnant animals. Comparison of the results from a trial study in non-pregnant, and the main study in pregnant animals will demonstrate whether or not the test substance is more toxic in pregnant animals.

(iv) Unless limited by the physical/chemical nature or biological properties of the substance, the dose level used should be:

(A) high enough to cause overt maternal toxicity as evidenced by significant death, weight loss or neurotoxic manifestations, or

(B) 10 gm/kg, if lower dose levels fail to induce maternal toxicity.

(4) *Observation period.* Day 0 in the test is the day in which a vaginal plug and/or sperm are observed. The dose period should encompass a significant portion of the period of major organogenesis. This may be taken as days 7–11 for rat and mouse. When there is evidence of rapid clearance it may be advisable to extend the dosing period for 2 days to cover the critical period of palatal closure.

(5) *Administration of test substance.* The test substance or vehicle is usually administered orally, by intubation unless the chemical or physical characteristics of the test substance or pattern of human exposure suggest a more appropriate route of administration. The test substance should be administered at the same time each day.

(6) *Exposure conditions.* The female test animals are treated with the test substance daily throughout the appropriate treatment period. When given by gavage, the dose may be based on the weight of the females at the start of substance administration, or, alternatively, in view of the rapid weight gain which takes place during pregnancy, the animals may be weighed periodically and the dosage based on the most recent weight determination.

(7) *Observation of pregnant animals.* (i) A gross examination of the dams should be made at least once prior to parturition.

(ii) Pregnant animals should be weighed the day prior to the beginning of treatment, and that day on which treatment ends.

(iii) During the treatment and observation periods, cage-side observations should include, but not be limited to: change in skin and fur, eye and mucous membranes, as well as respiratory, autonomic and central nervous systems, somatomotor activity and behavioral pattern.

(iv) Signs of toxicity should be recorded as they are observed, including the time of onset, the degree and duration.

(v) During the dosing period females that die or are sacrificed because they are moribund should be examined for signs of pregnancy and details of the conditions of the uterus and/or its contents recorded. Animals that have not delivered two days after expected date of parturition should be sacrificed and similar examinations made.

(8) *Observation of dams after birth.* Dams should be observed for signs of overt toxicity during the postpartum

period at the same time neonatal examinations are being made.

(9) *Neonatal examinations.* (i) Dams are allowed to give birth and the litters are examined for gross anomalies and presence of milk, counted, and weighed on postpartum days 1 and 3.

(ii) Dead pups should be necropsied and abnormalities noted.

(iii) For those compounds that induce only neonatal growth reduction it may be advisable to normalize litter size on postpartum day 3 (to approximately four females and four males) and leave them with the dam through weaning. This procedure will determine if the growth reduction is transient or if it represents a permanent functional alteration.

(e) *Data and reporting*—(1) *Treatment of results.* Data should be summarized in tabular form, showing for each test group: the number of animals at the start of the test, the number of pregnant animals, the maternal weight during the treatment period, the average number of live neonates on days 1 and 3, the average neonatal weight on days 1 and 3, and the average weight gained during that period.

(2) *Evaluation of results.* The findings of this bioassay should be evaluated in terms of the types of effects noted. All data analyses should compare treatment groups and their concurrent controls. Statistical treatment of the results should involve analysis of variance, and the number of live pups on days 1 and 3 should be used as a covariate in the analyses of postnatal body weight so as to correct for differences in pup weights due to litter size. The number of animals going to term must be sufficiently large to allow for a reasonable detection of compound-induced deficiencies. Conditions which significantly reduce the number of dams going to term (e.g. lack of pregnancy or compound-induced maternal death) should lead to a repeat of the study.

(3) *Test report.* In addition to the reporting requirements as specified under 40 CFR Part 792, Subpart J the following specific information should be reported:

(i) Toxic response data.

(ii) Species and strain.

(iii) Time of maternal death during the study or whether animals survived to termination.

(iv) Time of onset and duration of each abnormal sign and its subsequent course.

(v) Pregnancy data.

(vi) Litter data including number live and dead; and average litter weight on days 1 and 3 postpartum.

(vii) Necropsy data on dead pups.

(f) *References.* For additional background information on this test guideline the following references should be consulted.

(1) Chernoff, N. and Kavlock, R. "An *in vivo* teratology screen utilizing pregnant mice," *Journal of Toxicology and Environmental Health* 10: 541–550 (1982).

(2) Doe, J. E., Samuels, D. M., Tinston, D. J. and De Silva Wickramaratne, G. A. "Comparative aspects of the reproductive toxicology by inhalation in rats of ethylene glycol monomethyl ether and propylene glycol monomethyl ether," *Toxicology and Applied Pharmacology.* 69(1): 43–47 (1983).

§ 798.4470 Primary dermal irritation.

(a) *Purpose.* In the assessment and evaluation of the toxic characteristics of a substance, determination of the irritant and/or corrosive effects on skin of mammals is an important initial step. Information derived from this test serves to indicate the existence of possible hazards likely to arise from exposure of the skin to the test substance.

(b) *Definitions.* (1) Dermal irritation is the production of reversible inflammatory changes in the skin following the application of a test substance.

(2) Dermal corrosion is the production of irreversible tissue damage in the skin following the application of the test substance.

(c) *Principle of the test methods.* (1) The substance to be tested is applied in a single dose to the skin of several experimental animals, each animal serving as its own control. The degree of irritation is read and scored at specified intervals and is further described to provide a complete evaluation of the effects. The duration of the study should be sufficient to permit a full evaluation of the reversibility or irreversibility of the effects observed but need not exceed 14 days.

(2) When testing solids (which may be pulverized if considered necessary), the test substance should be moistened sufficiently with water or, where necessary, a suitable vehicle, to ensure good contact with the skin. When vehicles are used, the influence of the vehicle on irritation of skin by the test substance should be taken into account. Liquid test substances are generally used undiluted.

(3) Strongly acidic or alkaline substances, for example with a demonstrated pH of 2 or less, or 11.5 or greater, need not be tested for primary dermal irritation, owing to their predictable corrosive properties.

(4) The testing of materials which have been shown to be highly toxic by the dermal route is unnecessary.

(d) *Test procedures*—(1) *Animal selection*—(i) *Species and strain.* The albino rabbit is recommended as the preferred species. If another mammalian species is used, the tester should provide justification/reasoning for its selection.

(ii) *Number of animals.* At least 6 healthy adult animals should be used unless, justification/reasoning for using fewer animals is provided.

(2) *Control animals.* Separate animals are not recommended for an untreated control group. Adjacent areas of untreated skin of each animal may serve as a control for the test.

(3) *Dose level.* A dose of 0.5 ml of liquid or 500 mg of solid or semi-solid is applied to the test site.

(4) *Preparation of animals' skins.* Approximately 24 hours before the test, fur should be removed from the test area by clipping or shaving from the dorsal area of the trunk of the animals. Care should be taken to avoid abrading the skin. Only animals with healthy intact skin should be used.

(5) *Application of the test substance.* (i) The recommended exposure duration is 4-hours. Longer exposure may be indicated under certain conditions (e.g. expected pattern of human use and exposure). At the end of the exposure period, residual test substance should generally be removed, where practicable, using water or an appropriate solvent, without altering the existing response or the integrity of the epidermis.

(ii) The test substance should be applied to a small area (approximately 6 cm^2) of skin and covered with a gauze patch, which is held in place with non-irritating tape. In the case of liquids or some pastes, it may be necessary to apply the test substance to the gauze patch and then apply that to the skin. The patch should be loosely held in contact with the skin by means of a suitable semiocclusive dressing for the duration of the exposure period. However, the use of an occlusive dressing may be consided appropriate in some cases. Access by the animal to the patch and resultant ingestion/inhalation of the test substance should be prevented.

(6) *Observation period.* The duration of the observation period should be at least 72 hours, but should not be rigidly fixed. It should be sufficient to fully evaluate the reversibility or irreversiblity of the effects observed. It need not exceed 14 days after application.

(7) *Clinical examination and scoring.* (i) After removal of the patch, animals should be examined for signs of

erythema and edema and the responses scored within 30–60 minutes, and then at 24, 48 and 72 hours after patch removal.

(ii) Dermal irritation should be scored and recorded according to the grades in the following Table 1. Further observations may be needed, as necessary, to establish reversibility. In addition to the observation of irritation, any lesions and other toxic effects should be fully described.

TABLE 1—EVALUATION OF SKIN REACTION

Formation	Value
Erythema and Eschar Formation:	
No erythema	0
Very slight erythema (barely perceptible)	1
Well-defined erythema	2
Moderate to severe erythema	3
Severe erythema (beet redness) to slight eschar formation (injuries in depth)	4
Maximum possible	4
Edema Formation.	
No edema	0
Very slight edema (barely perceptible)	1
Slight edema (edges of area well defined by definite raising)	2
Moderate edema (raised approximately 1 millimeter)	3
Severe edema (raised more than 1 millimeter and extending beyond area of exposure	4
Maximum possible	4

(e) *Data and reporting*—(1) *Data summary.* Data should be summarized in tabular form, showing for each individual animal the irritation scores for erythema and edema at 30 to 60 minutes, 24, 48 and 72 hours after patch removal, any lesions, a description of the degree and nature of irritation, corrosion or reversibility, and any other toxic effects observed.

(2) *Evaluation of results.* The dermal irritation scores should be evaluated in conjunction with the nature and reversibility or otherwise of the responses observed. The individual scores do not represent an absolute standard for the irritant properties of a material. They should be viewed as reference values which are only meaningful when supported by a full description and evaluation of the observations. The use of an occlusive dressing is a severe test and the results are relevant to very few likely human exposure conditions.

(3) *Test report.* In addition to the reporting recommendations as specified under 40 CFR Part 792, Subpart J, the following specific information should be reported:

(i) Physical nature and where appropriate, concentration, and pH value for the test substance.

(ii) Species and strain.

(iii) Tabulation of irritation response data for each individual animal for each observation time period (e.g. 30 to 60 minutes, 24, 48, and 72 hours after patch removal).

(iv) Description of any lesions observed.

(v) Narrative description of the degree and nature of irritation observed.

(vi) Description of any toxic effects other than dermal irritation.

(f) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Draize, J.H. "Dermal Toxicity," *Appraisal of the Safety of Chemicals in Foods, Drugs and Cosmetics.* Association of Food and Drug Officials of the United States (1959, 3rd printing 1975) pp. 46–59.

(2) Draize, J.H. Woodward, G., Calvery, H.O. "Methods for the Study of Irritation and Toxicity of Substances Applied Topically to the Skin and Mucous Membranes" *Journal of Pharmacology and Experimental Therapeutics.* 83:377–390 (1944).

(3) Marzulli, F.N., Maibach, H.I. "Dermatotoxicology and Pharmacology." *Advances in Modern Toxicology.* Vol. 4. (New York: Hemisphere Publishing Corp., 1977).

(4) National Academy of Sciences. "Principles and Procedures for Evaluating the Toxicity of Household Substances," A report prepared by the Committee for the Revision of NAS Publication 1138, Under the auspices of the Committee on Toxicology, National Research Council, National Academy of Sciences, Washington, DC, (1978).

(5) World Health Organization. "Part I. Environmental Health Criteria 6," *Principles and Methods for Evaluating the Toxicity of Chemicals.* (Geneva: World Health Organization, 1978).

§ 798.4500 Primary eye irritation.

(a) *Purpose.* In the assessment and evaluation of the toxic characteristics of a substance, determination of the irritant and/or corrosive effects on eyes of mammals is an important initial step. Information derived from this test serves to indicate the existence of possible hazards likely to arise from exposure of the eyes and associated mucous membranes to the test substance.

(b) *Definitions*—(1) *Eye irritation.* The production of reversible changes in the eye following the application of a test substance to the anterior surface of the eye.

(2) *Eye corrosion.* The production of irreversible tissue damage in the eye following application of a test substance to the anterior surface of the eye.

(c) *Principle of the test method.* (1) The substance to be tested is applied in a single dose to one of the eyes in each of several experimental animals; the untreated eye is used to provide control information. The degree of irritation/corrosion is evaluated and scored at specified intervals and is fully described to provide a complete evaluation of the effects. The duration of the study should be sufficient to permit a full evaluation of the reversibility or irreversibility of the effects observed but need not exceed 21 days.

(2) Strongly acidic or alkaline substances, for example, with a demonstrated pH of 2 or less, or 11.5 or greater, need not be tested owing to their predictable corrosive properties.

(3) Materials which have demonstrated definite corrosion or severe irritation in a dermal study need not be further tested for eye irritation. It may be presumed that such substances will produce similarly severe effects in the eyes.

(d) *Test procedures*—(1) *Animal selection*—(i) *Species and strain.* A variety of experimental animals have been used, but it is recommended that testing should be performed using healthy adult albino rabbits. Commonly used laboratory strains should be used. If another mammalian species is used, the tester should provide justification/reasoning for its selection.

(ii) *Number of animals.* At least six animals should be used, unless justification/reasoning for using fewer animals is provided.

(2) *Dose level.* For testing liquids, a dose of 0.1 ml is recommended. In testing solids, pastes, and particulate substances, the amount used should have a volume of 0.1 ml, or a weight of not more than 100 mg (the weight must always be recorded). If the test material is solid or granular, it should be ground to a fine dust. The volume of particulates should be measured after gently compacting them (e.g. by tapping the measuring container). To test a substance contained in a pressurized aerosol container, the eye should be held open and the test substance administered in a single burst of about one second from a distance of 10 cm directly in front of the eye. The dose may be estimated by weighing the container before and after use. Care should be taken not to damage the eye. Pump sprays should not be used but instead the liquid should be expelled and 0.1 ml collected and instilled into the eye as described for liquids.

(3) *Examination of eyes prior to test.* Both eyes of each experimental animal provisionally selected for testing should

be examined within 24 hours before testing starts by the same procedure to be used during the test examination. Animals showing eye irritation, ocular defects or preexisting corneal injury should not be used.

(4) *Application of the test substance.* (i) The test substance should be placed in the conjunctival sac of one eye of each animal after gently pulling the lower lid away from the eyeball. The lids are then gently held together for about one second in order to limit loss of the material. The other eye, which remains untreated, serves as a control. If it is thought that the substance may cause extreme pain, local anesthetic may be used prior to instillation of the test substance. The type and concentration of the local anesthetic should be carefully selected to ensure that no significant differences in reaction to the test substance will result from its use. The control eye should be similarly anesthetized.

(ii) The eyes of the test animals should not be washed out for 24 hours following instillation of the test substance. At 24 hours, a washout may be used if considered appropriate.

(5) *Observation period.* The duration of the observation period is at least 72 hours, but should not be fixed rigidly. It should be sufficient to evaluate fully the reversibility or irreversibility of the effects observed. It normally need not exceed 21 days after instillation.

(6) *Clinical examination and scoring.* (i) The eyes should be examined at 1, 24, 48, and 72 hours. If there is no evidence of irritation at 72 hours, the study may be ended. Extended observation may be necessary if there is persistent corneal involvement or other ocular irritation in order to determine the progress of the lesions and their reversibility or irreversibility. In addition to the observations of the cornea, iris and conjunctivae, any other lesions which are noted should be recorded and reported. The grades of ocular reaction using the following Table I should be recorded at each examination.

Table I—Grades for Ocular Lesions

Cornea	
Opacity: degree of density (area most dense taken for reading). No ulceration or opacity	0
Scattered or diffuse areas of opacity (other than slight dulling of normal luster), details of iris clearly visible	[1] 1
Easily discernible translucent area, details of iris slightly obscured	[1] 2
Nacrous area, no details or iris visible, size of pupil barely discernible	[1] 3
Opaque cornea, iris not discernible through the opacity	[1] 4
Iris	
Normal	0
Markedly deepened rugae, congestion, swelling moderate circumcorneal hyperemia, or injection, any of these or combination of any thereof, iris still reacting to light (sluggish reaction is positive)	[1] 1
No reaction to light, hemorrhage, gross destruction (any or all of these)	[1] 2
Conjunctivae	
Redness (refers to palpebral and bulbar conjunctivae, cornea and iris).	
Blood vessels normal	0
Some blood vessels definitely hyperemic (injected)	1
Diffuse, crimson color, individual vessels not easily discernible	[1] 2
Diffuse beefy red chemosis: lids and/or nictitating membranes	[1] 3
No swelling	0
Any swelling above normal (includes nictitating membranes)	1
Obvious swelling with partial eversion of lids	[1] 2
Swelling with lids about half closed	[1] 3
Swelling with lids more than half closed	[1] 4

[1] Indicates positive effect.

(ii) Examination of reactions can be facilitated by use of a binocular loupe, hand slit-lamp, biomicroscope, or other suitable device. After recording the observations at 24 hours, the eyes of any or all rabbits may be further examined with the aid of fluorescein.

(iii) The grading of ocular responses is subject to various interpretations. To promote harmonization and to assist testing laboratories and those involved in making and interpreting the observations, an illustrated guide in grading eye irritation should be used. (Such an illustrated guide is in use in the United States and can be obtained from the Consumer Product Safety Commission, Washington, D.C. 20207.)

(e) *Data and reporting.*—(1) *Data summary.* Data should be summarized in tabular form, showing for each individual animal the irritation scores at the designated observation time; a description of the degree and nature of irritation; the presence of serious lesions and any effects other than ocular which were observed.

(2) *Evaluation of the results.* The ocular irritation scores should be evaluated in conjunction with the nature and reversibility or otherwise of the responses observed. The individual scores do not represent an absolute standard for the irritant properties of a material. They should be viewed as reference values and are only meaningful when supported by a full description and evaluation of the observations.

(3) *Test report.* In addition to the reporting requirements as specified under 40 CFR Part 792, Subpart J the following specific information should be reported:

(i) Physical nature and, where appropriate, concentration and pH value for the test substance.

(ii) Species and strain.

(iii) Tabulation of irritant/corrosive response data for each individual animal at each observation time point (e.g., 1, 24, 48, and 72 hours).

(iv) Description of any lesions observed.

(v) Narrative description of the degree and nature of irritation or corrosion observed.

(vi) Description of the method used to score the irritation at 1, 24, 48, and 72 hours (e.g., hand slit-lamp, biomicroscope, fluorescein).

(vii) Description of any non-ocular effects noted.

(f) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Buehler, EV., Newmann, E.A. "A Comparison of Eye Irritation in Monkeys and Rabbits," *Toxicology and Applied Pharmacology*. 6:701–710 (1964).

(2) Draize, J.H. "Dermal Toxicity," *Appraisal of the Safety of Chemicals in Foods, Drugs and Cosmetics*. The Association of Food and Drug Officials of the United States (1959, 3rd printing 1975), pp. 49–52.

(3) Draize, J.H., Woodward, G., Calvery, H.O. "Methods for the Study of Irritation and Toxicity of Substances Applied Topically to the Skin and Mucous Membranes," *Journal of Pharmacology and Experimental Therapeutics*. 83:377–390 (1944).

(4) Loomis, T.A. *Essentials of Toxicology*. Second, (Philadelphia: Lea and Febicer, 1974), pp. 207–213.

(5) National Academy of Sciences. "Principles and Procedures for Evaluating the Toxicity of Household Substances." A report propared by the Committee for the revision of NAS Publication 1138, under the auspices of the Committee on Toxicology, National Research Council, National Academy of Sciences, Washington, DC (1977).

(6) World Health Organization. "Part I. Environmental Health Criteria 6," *Principles and Methods for Evaluating the Toxicity of Chemicals*. (Geneva: World Health Organization, 1978).

§ 798.4700 Reproduction and fertility effects.

(a) *Purpose.* This guideline for two-generation reproduction testing is designed to provide general information concerning the effects of a test substance on gonadal function, conception, parturition, and the growth and development of the offspring. The study may also provide information about the effects of the test substance on neonatal morbidity, mortality, and preliminary data on teratogenesis and serve as a guide for subsequent tests.

(b) *Principle of the test method.* The test substance is administered to parental (P) animals prior to their mating, during the resultant pregnancies, and through the weaning of their F_1 offspring. The substance is then administered to selected F_1 offspring during their growth into adulthood, mating, and production of an F_2 generation, up until the F_2 generation is weaned.

(c) *Test procedures*—(1) *Animal selection*—(i) *Species and strain.* The rat is the preferred species. If another mammalian species is used, the tester should provide justification/reasoning for its selection. Strains with low fecundity should not be used.

(ii) *Age.* Parental (P) animals should be about 5 to 8 weeks old at the start of dosing.

(iii) *Sex.* (A) For an adequate assessment of fertility, both males and females should be studied.

(B) The females should be nulliparous and non-pregnant.

(iv) *Number of animals.* Each test and control group should contain at least 20 males and a sufficient number of females to yield at least 20 pregnant females at or near term.

(2) *Control groups.* (i) A concurrent control group should be used. This group should be an untreated or sham treated control group or if a vehicle is used in administering the test substance, a vehicle control group.

(ii) If a vehicle is used in administering the test substance, the control group should receive the vehicle in the highest volume used.

(iii) If a vehicle or other additive is used to facilitate dosing, it should not interfere with absorption of the test substance or produce toxic effects.

(3) *Dose levels and dose selection.* (i) At least three dose levels and a concurrent control should be used.

(ii) The highest dose level should induce toxicity but not high levels of mortality in the parental (P) animals.

(iii) The lowest dose level should not produce any grossly observable evidence of toxicity.

(iv) Ideally the intermediate dose level(s) should produce minimal observable toxic effects. If more than one intermediate dose is used, dose levels should be spaced to produce a gradation of toxic effects.

(4) *Exposure conditions.* The animals should be dosed with the test substance, ideally, on a 7 days per week basis.

(i) Dosing, mating, delivery, and sacrifice schedule.

(A) Daily dosing of the parental (P) males and females should begin when they are 5 to 8 weeks old. For both sexes, dosing should be continued for at least 10 weeks before the mating period.

(B) Dosing of P males should continue through the 3 week mating period. At the end of the mating period, P males may be sacrificed and examined, or may be retained for possible production of a second litter. If these animals are retained for a second litter, dosing should be continued. Dosing of the F_1 males saved for mating should continue from the time they are weaned through the period they are mated with the F_1 females (11 weeks). F_1 males may be sacrificed after the F_1 mating period.

(C) Daily dosing of the P females should continue through the three week mating period, pregnancy, and to the weaning of the F_1 offspring. Dosing of the F_1 females saved for mating should continue from the time they are weaned, through the period they are mated with the F_1 males (11 weeks from the time of weaning) pregnancy, and to the weaning of the F_2 offspring.

(ii) All animals are sacrificed as scheduled.

(A) All P males should be sacrificed at the end of the 3 week mating period, or may be retained for possible production of a second litter. If these animals are retained for a second litter, dosing should be continued.

(B) F_1 males selected for mating should be sacrificed at the end of the three week period of the F_1 mating.

(C) F_1 males and females not selected for mating should be sacrified when weaned.

(D) The P females should be sacrificed upon weaning of their F_1 offspring.

(E) F_1 dams and their F_2 offspring are sacrificed when the offspring are weaned.

(5) *Administration of the test substance*—(i) *Oral studies.* (A) It is recommended that the test substance be administered in the diet or drinking water.

(B) If administered by gavage or capsule, the dosage administered to each animal prior to mating should be based on the individual animal's body weight and adjusted weekly. During pregnancy the dosage should be based on the body weight at day 0 and 6 of pregnancy.

(ii) If another route of administration is used, the tester should provide justification and reasoning for its selection.

(6) *Mating procedure*—(i) *Parental.* (A) For each mating, each female should be placed with a single male from the same dose level until pregnancy occurs or 1 week has elapsed. If mating has not ocurred after 1 week, the female should be placed with a different male. Paired matings should be clearly identified.

(B) Those pairs that fail to mate should be evaluated to determine the cause of the apparent infertility. This may involve such procedures as additional opportunities to mate with proven fertile males or females, histological examination of the reproductive organs, and examination of the estrus or spermatogenic cycles.

(C) Each day, the females should be examined for presence of sperm or vaginal plugs. Day 0 of pregnancy is defined as the day vaginal plugs or sperm are found.

(ii) *F_1 cross.* (A) For mating the F_1 offspring, one male and one female are randomly selected at weaning from each litter for cross mating with another pup of the same dose level but different litter, to produce the F_2 generation.

(B) F_1 males and females not selected for mating are sacrificed upon weaning.

(iii) *Special housing.* After evidence of copulation, pregnant animals should be caged separately in delivery or maternity cages and provided with nesting materials.

(iv) *Standardization of litter sizes.* (A) On day 4 after birth, the size of each litter should be adjusted by eliminating extra pups by random selection to yield, as nearly as possible, 4 males and 4 females per litter.

(B) Whenever the number of male or female pups prevents having 4 of each sex per litter, partial adjustment (for example, 5 males and 3 females) is permitted. Adjustments are not appropriate for litters of less than 8 pups.

(C) Elimination of runts only is not appropriate.

(D) Adjustments of the F_2 litters is conducted in the same manner.

(7) *Observation of animals.* (i) A gross examination should be made at least once each day. Pertinent behavioral changes, signs of difficult or prolonged parturition, and all signs of toxicity, including mortality, should be recorded. These observations should be reported for each individual animal. Food consumption for all animals should be monitored weekly.

(ii) The duration of gestation should be calculated from day 0 of pregnancy.

(iii) Each litter should be examined as soon as possible after delivery for the number of pups, stillbirths, live births, sex, and the presence of gross anomalies. Dead pups and pups sacrificed at day 4 should be preserved and studied for possible defects. Live pups should be counted and litters weighed, by weighing each individual pup at birth, or soon thereafter, and on days 4, 7, 14, and 21 after parturition.

(iv) Physical or behavioral abnormalities observed in the dams of offspring should be recorded.

(v) P males and females should be weighed on the first day of dosing and weekly thereafter. F_1 litters should be weighed at birth, or soon thereafter, and on days 4, 7, 14, and 21. In all cases, litter weights should be calculated from the weights of the individual pups.

(8) *Gross necropsy.* (i) A complete gross examination should be performed on all animals, including those which died during the experiment or were killed in moribund conditions.

(ii) Special attention should be directed to the organs of the reproductive system.

(iii) The following organs and tissues, or representative samples thereof, should be preserved in a suitable medium for possible future histopathological examination: vagina; uterus; ovaries; testes; epididymides; seminal vesicles; prostate, pituitary gland; and, target organ(s) of all P and F_1 animals selected for mating.

(9) *Histopathology.* The following histopathology should be performed:

(i) Full histopathology on the organs listed above for all high dose, and control P_1 and F_1 animals selected for mating.

(ii) Organs demonstrating pathology in these animals should then be examined in animals from the other dose groups.

(iii) Microscopic examination should be made of all tissues showing gross pathological changes.

(d) *Data and reporting*—(1) *Treatment of results.* Data should be summarized in tabular form, showing for each test group the number of animals at the start of the test, the number of animals pregnant, the types of change and the percentage of animals displaying each type of change.

(2) *Evaluation of study results.* (i) An evaluation of test results, including the statistical analysis, based on the clinical findings, the gross necropsy findings, and the microscopic results, should be made and supplied. This should include an evaluation of the relationship, or lack thereof, between the animals' exposure to the test substance and the incidence and severity of all abnormalities.

(ii) In any study which demonstrates an absence of toxic effects, further investigation to establish absorption and bioavailability of the test substance should be considered.

(3) *Test report.* In addition to the reporting requirements as specified under 40 CFR Part 792, Subpart J the following specific information should be reported:

(i) Toxic response data by sex and dose, including fertility, gestation, viability and lactation indices, and length of gestation.

(ii) Species and strain.

(iii) Time of death during the study or whether animals survived to termination.

(iv) Toxic or other effects on reproduction, offspring, or postnatal growth.

(v) Time of observation of each abnormal sign and its subsequent course.

(vi) Body weight data for P, F_1, and F_2 animals.

(vii) Necropsy findings.

(viii) Detailed description of all histopathological findings.

(ix) Statistical treatment of results where appropriate.

(e) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Clermont, Y., Perry, B. "Quantitative Study of the Cell Population of the Seminiferous Tubules in Immature Rats," *American Journal of Anatomy.* 100:241–267 (1957).

(2) Goldenthal, E.I. *Guidelines for Reproduction Studies for Safety Evaluation of Drugs for Human Use.* Drug Review Branch, Division of Toxicological Evaluation, Bureau of Science, Food and Drug Administration, Washington, DC (1966).

(3) Hasegawa, T., Hayashi, M., Ebling, F.J.G., Henderson, I.W. *Fertility and Sterility.* (New York: American Elsevier Publishing Co., Inc., 1973).

(4) Oakberg, E.F. "Duration of Spermatogenesis in the Mouse and Timing of Stages of the Cycle of the Seminiferous Epithelium," *American Journal of Anatomy.* 9:507–516 (1956).

(5) Roosen-Runge, E.C. "The Process of Spermatogenesis in Mammals," *Biological Review.* 37:343–377 (1962).

§ 798.4900 Developmental toxicity study.

(a) *Purpose.* In the assessment and evaluation of the toxic characteristics of a chemical, determination of the potential developmental toxicity is important. The developmental toxicity study is designed to provide information on the potential hazard to the unborn which may arise from exposure of the mother during pregnancy.

(b) *Definitions.* (1) Developmental toxicity is the property of a chemical that causes in utero death, structural or functional abnormalities or growth retardation during the period of development.

(2) Dose is the amount of test substance administered. Dose is expressed as weight of test substance (g, mg) per unit weight of a test animal (e.g., mg/kg).

(3) No-observed-effect level is the maximum concentration in a test which produces no observed adverse effects. A no-observed-effect level is expressed in terms of weight of test substance given daily per unit weight of test animal (mg/kg)

(c) *Principle of the test method.* The test substance is administered in graduated doses for at least part of the pregnancy covering the major period of organogenesis, to several groups of pregnant experimental animals, one dose level being used per group. Shortly before the expected date of delivery, the pregnant females are sacrificed, the uteri removed, and the contents examined for embryonic or fetal deaths, and live fetuses.

(d) *Limit test.* If a test at an exposure of at least 1000 mg/kg body weight, using the procedures described for this study, produces no observable developmental toxicity, then a full study using three dose levels might not be necessary.

(e) *Test procedures*—(1) *Animal selection*—(i) *Species and strain.* Testing should be performed in at least 2 mammalian species. Commonly used species include the rat, mouse, rabbit, and hamster. If other mammalian species are used, the tester should provide justification/reasoning for their selection. Commonly used laboratory strains should be employed. The strain should not have low fecundity and should preferably be characterized for its sensitivity to developmental toxins.

(ii) *Age.* Young adult animals (nulliparous females) should be used.

(iii) *Sex.* Pregnant female animals should be used at each dose level.

(iv) *Number of animals.* At least 20 pregnant rats, mice or hamsters or 12 pregnant rabbits are recommended at each dose level. The objective is to ensure that sufficient pups are produced to permit meaningful evaluation of the potential developmental toxicity of the test substance.

(2) *Control group.* A concurrent control group should be used. This group should be an untreated or sham treated

control group, or, if a vehicle is used in administering the test substance, a vehicle control group. Except for treatment with the test substance, animals in the control group(s) should be handled in an identical manner to test group animals.

(3) *Dose levels and dose selection.* (i) At least 3 dose levels with a control and, where appropriate, a vehicle control, should be used.

(ii) The vehicle should neither be developmentally toxic nor have effects on reproduction.

(iii) To select the appropriate dose levels, a pilot or trial study may be advisable. It is not always necessary to carry out a trial study in pregnant animals. Comparison of the results from a trial study in non-pregnant, and the main study in pregnant animals will demonstrate if the test substance is more toxic in pregnant animals. If a trial study is carried out in pregnant animals, the dose producing embryonic or fetal lethalities or maternal toxicity should be determined.

(iv) Unless limited by the physical/chemical nature or biological properties of the substance, the highest dose level should induce some overt maternal toxicity such as slight weight loss, but not more than 10 percent maternal deaths.

(v) The lowest dose level should not produce any grossly observable evidence of either maternal or developmental toxicity.

(vi) Ideally, the intermediate dose level(s) should produce minimal observable toxic effects. If more than one intermediate concentration is used, the concentration levels should be spaced to produce a gradation of toxic effects.

(4) *Observation period.* Day 0 in the test is the day on which a vaginal plug and/or sperm are observed. The dose period should cover the period of major organogenesis. This may be taken as days 6 to 15 for rat and mouse, 6 to 14 for hamster, or 6 to 18 for rabbit.

(5) *Administration of test substance.* The test substance or vehicle is usually administered orally, by oral intubation unless the chemical or physical characteristics of the test substance or pattern of human exposure suggest a more appropriate route of administration. The test substance should be administered at the same time each day.

(6) *Exposure conditions.* The female test animals are treated with the test substance daily throughout the appropriate treatment period. When given by gavage, the dose may be based on the weight of the females at the start of substance administration, or, alternatively, in view of the rapid weight gain which takes place during pregnancy, the animals may be weighed periodically and the dosage based on the most recent weight determination.

(7) *Observation of animals.* (i) A gross examination should be made at least once each day.

(ii) Additional observations should be made daily with appropriate actions taken to minimize loss of animals to the study (e.g., necropsy or refrigeration of those animals found dead and isolation or sacrifice of weak or moribund animals).

(iii) Signs of toxicity should be recorded as they are observed, including the time of onset, the degree and duration.

(iv) During the treatment and observation periods, cage-side observations should include, but not be limited to: changes in skin and fur, eye and mucous membranes, as well as respiratory, autonomic and central nervous systems, somatomotor activity and behavioral pattern.

(v) Measurements should be made weekly of food consumption for all animals in the study.

(vi) Animals should be weighed at least weekly.

(vii) Females showing signs of abortion or premature delivery should be sacrificed and subjected to a thorough macroscopic examination.

(8) *Gross necropsy.* (i) At the time of sacrifice or death during the study, the dam should be examined macroscopically for any structural abnormalities or pathological changes which may have influenced the pregnancy.

(ii) Immediately after sacrifice or death, the uterus should be removed, weighed and the contents examined for embryonic or fetal deaths and the number of viable fetuses. The degree of resorption should be described in order to help estimate the relative time of death.

(iii) The number of corpora lutea should be determined for all species except mice.

(iv) The sex of the fetuses should be determined and they should be weighed individually, the weights recorded, and the mean fetal weight derived.

(v) Following removal, each fetus should be examined externally.

(vi) For rats, mice and hamsters, one-third to one-half of each litter should be prepared and examined for skeletal anomalies, and the remaining part of each litter should be prepared and examined for soft tissue anomalies using appropriate methods.

(vii) For rabbits, each fetus should be examined by careful dissection for visceral anomalies and then examined for skeletal anomalies.

(f) *Data and reporting*—(1) *Treatment of results.* Data should be summarized in tablular form, showing for each test group: the number of animals at the start of the test, the number of pregnant animals, the number and percentages of live fetuses and the number of fetuses with any soft tissue or skeletal abnormalities.

(2) *Evaluation of results.* The findings of a developmental toxicity study should be evaluated in terms of the observed effects and the exposure levels producing effects. It is necessary to consider the historical developmental toxicity data on the species/strain tested. A properly conducted developmental toxicity study should provide a satisfactory estimation of a no-effect level.

(3) *Test report.* In addition to the reporting requirements as specified under 40 CFR Part 792, Subpart J the following specific information should be reported:

(i) Toxic response data by concentration.

(ii) Species and strain.

(iii) Time of death during the study or whether animals survived to termination.

(iv) Time of onset and duration of each abnormal sign and its subsequent course.

(v) Food, body weight and uterine weight data.

(vi) Pregnancy and litter data.

(vii) Fetal data (live/dead, sex, soft tissue and skeletal defects, resorptions).

(g) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Department of Health and Welfare. *The Testing of Chemicals for Carcinogenicity, mutagenicity and Teratogenicity.* Minister of Health and Welfare (Canada: Department of Health and Welfare, 1975).

(2) National Academy of Sciences. "Principles and Procedures for Evaluating the Toxicity of Household Substances." A report prepared by the Committee for the Revision of NAS Publication 1138, under the auspices of the Committee on Toxicology, National Research Council, National Academy of Sciences, Washington, DC (1977).

(3) World Health Organization. *Principles for the Testing of Drugs for Teratogenicity.* WHO Technical Report Series No. 364. (Geneva: World Health Organization, (1967).

Subpart F—Genetic Toxicity

§ 798.5100 Escherichia coli WP2 and WP2 uvrA reverse mutation assays

(a) *Purpose.* The *E. coli* tryptophan (*trp*) reversion system is a microbial assay which measures $trp^- \rightarrow trp^+$ reversion induced by chemicals which cause mutations in the genome of this organism.

(b) *Definition.* A reverse mutation assay in *E. coli* detects mutation in a gene of tryptophan requiring strain to produce a tryptophan independent strain of this organism.

(c) *Reference substances.* These may include, but need not be limited to, 4-nitroquinoline oxide, methyl methanesulfonate, or 2-aminoanthracene.

(d) *Test method*—(1) *Principle.* Bacteria are exposed to test chemical with and without metabolic activation and plated onto minimal medium. After a suitable period of incubation, revertant colonies are counted and compared to the number of spontaneous revertants in an untreated and/or vehicle control culture.

(2) *Description.* Several methods for performing the test have been described. Among those used are:

(i) The direct plate incorporation method.

(ii) The preincubation method.

(iii) The treat and plate method.

(iv) The modified fluctuation test.

(v) The desiccator method.

The procedure described here is for the direct plate incorporation method.

(3) *Strain selection*—(i) *Designation.* At the present time, three strains, WP2, WP2 *uvrA* and WP2 *uvrA*/pKM101 should be used. Other strains may be utilized when appropriate.

(ii) *Preparation and storage.* Recognized methods of stock culture preparation and storage should be used. The requirement of tryptophan for growth should be demonstrated for each strain. Other phenotypic characteristics should be checked using such methods as sensitivity to mitomycin C and resistance to ampicillin. Spontaneous reversion frequency should be in the range expected either as reported in the literature or as established in the laboratory by historical control values.

(iii) *Bacterial growth.* Fresh cultures of bacteria should be grown up to the late exponential or early stationary phase of growth (approximately 10^8–10^9 cells per ml).

(4) *Metabolic activation.* Bacteria should be exposed to the test substance both in the presence and absence of an appropriate metabolic activation system. The most commonly used system is a cofactor supplemented postmitochondrial fraction prepared from the livers of rodents treated with enzyme inducing agents. The use of other species, tissues or techniques may also be appropriate.

(5) *Control groups*—(i) *Concurrent controls.* Concurrent positive and negative (untreated and/or vehicle) controls should be included in each experiment.

(ii) *Direct acting positive controls.* Examples of positive controls for assays performed without metabolic activation include methyl methanesulfonate and 4-nitroquinoline oxide.

(iii) *Positive controls to ensure the efficacy of the activation system.* The positive control reference substance for tests including a metabolic activation system should be selected on the basis of the type of activation system used in the test. 2-Aminoanthracene is an example of a positive control compound in tests using postmitochondrial fractions from the livers of rodents treated with enzyme inducing agents such as Aroclor-1254.

(iv) *Other positive controls.* Other positive control reference substances may be used.

(6) *Test chemicals*—(i) *Vehicle.* Test chemicals and positive control reference substances should be dissolved in an appropriate vehicle and then further diluted in vehicle for use in the assay.

(ii) *Exposure concentrations.* (A) The test should initially be performed over a broad range of concentrations. Among the criteria to be taken into consideration for determinating the upper limits of test chemical concentration are cytotoxicity and solubility. Cytotoxicity of the test chemical may be altered in the presence of metabolic activation systems. Toxicity may be evidenced by a reduction in the number of spontaneous revertants, a clearing of the background lawn or by the degree of survival of treated cultures. Relatively insoluble chemicals should be tested up to the limits of solubility. For freely soluble nontoxic chemicals, the upper test chemical concentration should be determined on a case by case basis.

(B) Generally, a maximum of 5 mg/plate for pure substances is considered acceptable. At least 5 different amounts of test substance should be tested with adequate intervals between the test points.

(C) When appropriate, a positive response should be confirmed by testing over a narrow range of concentrations.

(e) *Test performance*—(1) *Direct plate incorporation method.* (i) For this test without metabolic activation, test chemical and 0.1 ml of a fresh bacterial culture should be added to 2.0 ml of overlay agar.

(ii) For tests with metabolic activation, 0.5 ml of activation mixture containing an adequate amount of postmitochondrial fraction should be added to the overlay agar after the addition of test chemical and bacteria. Contents of each tube should be mixed and poured over the surface of a selective agar plate. Overlay agar should be allowed to solidify before incubation. At the end of the incubation period, revertant colonies per plate should be counted.

(2) *Other methods.* Other methods may also be appropriate.

(3) *Media.* An appropriate selective medium with an adequate overlay agar should be used.

(4) *Incubation conditions.* All plates in a given experiment should be incubated for the same time period. This incubation period should be for 48–72 hours at 37 °C.

(5) *Number of cultures.* All plating should be done at least in triplicate. If scientifically justified, the use of duplicates may be acceptable. All results should be confirmed in an independent experiment.

(f) *Data and report*—(1) *Treatment of results.* Data should be presented as number of revertant colonies per plate for each replicate and dose. The numbers of revertant colonies on both negative (untreated and/or vehicle) and positive control plates should also be presented. Individual plate counts, the mean number of revertant colonies per plate and standard deviation should be presented for test chemical and positive and negative (untreated and/or vehicle) controls.

(2) *Statistical evaluation.* Data should be evaluated by appropriate statistical methods.

(3) *Interpretation of results.* (i) There are several criteria for determining a positive result, one of which is a statistically significant dose-related increase in the number of revertants. Another criterion may be based upon detection of a reproducible and statistically significant positive response for at least one of the test substance concentrations.

(ii) A test substance which does not produce either a statistically significant dose-related increase in the number of revertants or a statistically significant and reproducible positive response at any one of the test points is considered non-mutagenic in the system.

(iii) Both biological and statistical significance should be considered together in the evaluation.

(4) *Test evaluation.* (i) Positive results from the *E. coli* reverse mutation assay indicate that, under the test conditions, the test substance induces mutations in the genome of this organism.

(ii) Negative results indicate that under the test conditions the test substance is not mutagenic in *E. coli.*

(5) *Test report.* In addition to the reporting recommendations as specified under 40 CFR Part 792, Subpart J the following specific information should be reported:

(i) Bacterial strain used.

(ii) Details of both the protocol used to prepare the metabolic activation system and of its use in the assay.

(iii) Dose levels and rationale for selection of dose.

(iv) Positive and negative controls.

(v) Individual plate counts, mean number of revertant colonies per plate, standard deviation.

(vi) Dose-response relationship, if applicable.

(g) *References.* For additional background information on this test guideline, the following references should be consulted:

(1) Ames, B.N. McCann, J., Yamasaki, E. "Methods for detecting carcinogens and mutagens with the *Salmonella/* mammalian-microsome mutagenicity test," *Mutation Research* 31:347–364 (1975).

(2) Brusick, D.J., Simmon, V.F., Rosenkranz, H.S., Ray, V.A., Stafford, R.S. An evaluation of the *Escherichia coli* WP2 and WP2 *uvrA* reverse mutation assay," *Mutation Research* 76:169–190 (1980).

(3) Green, M.H.L., Muriel, W.J. "Mutagen testing using trp^+ in *Escherichia coli.," Mutation Research* 38:3–32 (1976).

(4) Vogel, H.J., Bonner, D.M. "Acetylornithinase of *E. coli:* partial purification and some properties," *Journal of Biological Chemistry* 218:97–106 (1956).

§ 798.5140 Gene mutation in Aspergillus nidulans.

(a) *Purpose. Aspergillus nidulans* is a eukaryotic fungus which has been developed to detect and study a variety of genetic phenomena including chemically induced mutagenesis. *A. nidulans* can be used to detect both forward and reverse gene mutation. These mutations are detected by changes in colonial morphology or nutritional requirements in treated populations. The methionine and 2–thioxanthine forward mutation systems can be used to detect mutations in *A. nidulans.*

(b) *Definition.* A forward mutation is a gene mutation from the wild (parent) type to the mutant condition.

(c) *Reference substances.* These may include, but need not be limited to, ethyl methanesulfonate, cyclophosphamide or aflatoxin B_1.

(d) *Test method*—(1) *Principle.* Conidia are exposed to test chemical both with and without metabolic activation and plated on selective medium to determine changes in colonial morphology or nutritional requirements. At the end of a suitable incubation period, mutant colonies are counted and compared to the number of spontaneous mutants in an untreated control culture. Simultaneous determination of survival permits calculation of mutation frequency.

(2) *Description.* Tests for mutation in *A. nidulans* are performed in liquid suspension. Treated conidia are plated on selective medium to determine changes in nutritional requirements or colonial morphology.

(3) *Strain selection*—(i) *Designation.* For the methionine and 2-thioxanthine systems the hapliod Glascow *biA1; meth G1* strain is the most commonly used strain although other strains may be appropriate. Any translocation-free strain which produces green colonies on thioxanthine free medium and yellow colonies on medium containing thioxanthine may be used in the thioxanthine system.

(ii) *Preparation and storage.* Stock culture preparation and storage, growth requirements, method of strain identification and demonstration of appropriate phenotypic requirements should be performed using good microbiological techniques and should be documented.

(iii) *Media.* Any medium which supports growth and a characteristic colonial morphology may be used in the assay.

(4) *Preparation of conidia.* Prior to chemical treatment, conidia from 4–5 single colonies of the appropriate strain are grown at 37 °C on complete medium. At the end of the incubation period, conidia are collected, conidial chains broken up, mycelial debris removed and conidia concentrated prior to removal of the germination inhibitory substance. Germination inhibitory substance should be removed by Tween 80 or diethyl ether.

(5) *Metabolic activation.* Conidia should be exposed to test substance both in the presence and absence of an appropriate metabolic activation system.

(6) *Control groups.* Concurrent positive and negative untreated and/or vehicle) controls both with and without metabolic activation should be included in each experiment.

(7) *Test chemicals*—(i) *Vehicle.* Test chemicals and positive control reference substances should be dissolved in an appropriate vehicle and then further diluted in vehicle for use in the assay.

(ii) *Exposure concentrations.* (A) The test should initially be performed over a broad range of concentrations selected on the basis of a preliminary assay. Effective treatment times should also be selected in the preliminary assay.

(B) Each test should include five treatment points, two at fixed concentrations for different time periods, and three at varying concentrations for fixed periods of time.

(C) Among the criteria to be taken into consideration for determining the upper limits of test chemical concentration are cytotoxicity and solubility. Cytotoxicity of the test chemical may be altered in the presence of a metabolic activation system. Relatively insoluble chemicals should be tested up to the limits of solubility. For freely soluble nontoxic chemicals, the upper test chemical concentration should be determined on a case by case basis.

(D) When appropriate, a positive response should be confirmed by using a narrow range of test concentrations.

(e) *Test Performance*—(1) *Treatment.* Germinating or quiescent conidia in liquid suspension should be exposed to the test chemical at 37 °C under conditions of yellow light and controlled pH and oxygen tension. At the end of the exposure period, treatment should be terminated by repeated centrifugation and washing of the conidia or by dilution. Chemical neutralization of the test agent may also be used but is not recommended.

(2) *Media*—(i) *Methionine system.* For the methionine system, conidia should be plated on methionine deficient medium for mutant selection and on medium supplemented with methionine to determine survival.

(ii) *Thioxanthine system.* (A) For the 2-thioxanthine system, treated conidia should be plated on nitrogen-free glucose and salts minimal medium containing 2-thioxanthine.

(B) After incubation, green colonies should be counted and isolated by restreaking. The isolated colonies should be classified on the basis of genetic criteria. Yellow, wild-type colonies will grow on the same plate. This permits concurrent determination of survival and an estimation of mutation frequency.

(3) *Determination of mutation frequency and viability.* In both systems, mutation frequency and

viability should be determined immediately before and immediately after chemical treatment.

(4) *Incubation conditions.* All incubations should be at 37 ° C. Incubation time will vary depending upon system and endpoint (mutation or viability) being determined.

(5) *Number of cultures.* (i) At least 10 independent plates per concentration with no more than 20 colonies per plate should be used in the methionine system.

(ii) Fifteen to 20 plates per concentration are preferred for the 2-thioxanthine system.

(f) *Data and report*—(1) *Treatment of results.* Individual plate counts for test substance and controls should be presented for both mutation induction and survival. The mean number of colonies per plate and standard deviation should also be presented. Data should be presented in tabular form indicating, as applicable, numbers of colonies counted, and numbers and classification of mutants identified. Sufficient detail should be provided for verification of survival and mutation frequencies.

(2) *Statistical evaluation.* Data should be evaluated by appropriate statistical methods.

(3) *Interpretation of results.* (i) There are several criteria for determining a positive result, one of which is a statistically significant dose-related increase in the number of mutant colonies. Another criterion may be based upon detection of a reproducible and statistically significant positive response for at least one of the test points.

(ii) A test substance which does not produce either a statistically significant dose-related increase in the number of mutant colonies or a statistically significant and reproducible positive response at any one of the test points is considered nonmutagenic in this system.

(iii) Both biological and statistical significance should be considered together in the evaluation.

(4) *Test evaluation.* (i) Positive results from the methionine and 2-thioxanthine systems in *A. nidulans* indicate that, under the test conditions, the test substance causes gene (point) mutations in the DNA of this organism caused by base pair changes and small deletions in the genome.

(ii) Negative results indicate that under the test conditions the test chemical is not mutagenic in *A. nidulans.*

(5) *Test report.* In addition to the reporting recommendations as specified under 40 CFR Part 792, Subpart J the following specific information should be reported:

(i) Strain of organism used in the assay.

(ii) Test chemical vehicle, doses used and rationale for dose selection, toxicity data.

(iii) Method used for preparation of conidia.

(iv) Treatment conditions, including length of exposure and method used to stop treatment.

(v) Details of both the protocol used to prepare the metabolic activation system and of its use in the assay.

(vi) Incubation times and temperature.

(vii) Positive and negative controls.

(viii) Dose-response relationship, if applicable.

(g) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Ames, B.N., McCann, J., Yamasaki, E. "Methods for detecting carcinogens and mutagens with the *Salmonella*/mammalian-microsome mutagenicity test," *Mutation Research* 31:347–364 (1975).

(2) Kafer, E., Scott, B.R., Dorn, G.L., Stafford, R.S. "*Aspergillus nidulans:* systems and results of tests for chemical induction of mitotic segregation and mutation. I. Diploid and duplication assay systems: a report of the U.S. EPA's Gene-Tox Program," *Mutation Research* 98:1–48 (1982).

(3) Munson, R.J., Goodhead, D.T. "Relation between induced mutation frequency and cell survival: a theoretical approach and an examination of experimental data for eukaryotes," *Mutation Research* 42:145–159 (1977).

(4) Scott, B.R., Dorn, G.L., Kafer, E., Stafford, R.S. *"Aspergillus nidulans:* systems and results of tests for mitotic segregation and mutation. II. Haploid assay systems and overall response of all systems: a report of the U.S. EPA's Gene-Tox Program," *Mutation Research* 98:49–94 (1982).

§ 798.5200 Mouse visible specific locus test.

(a) *Purpose.* The mouse visible specific locus test (MSLT) may be used to detect and quantitate mutations in the germ line of a mammalian species.

(b) *Definitions.* (1) A visible specific locus mutation is a genetic change that alters factors responsible for coat color and other visible characteristics of certain mouse strains.

(2) The germ line is the cells in the gonads of higher eukaryotes which are the carriers of the genetic information for the species.

(c) *Reference substances.* Not applicable.

(d) *Test method*—(1) *Principle.* (i) The principle of the MSLT is to cross individuals who differ with respect to the genes present at certain specific loci, so that a genetic alteration involving the standard gene at any one of these loci will produce an offspring detectably different from the standard heterozygote. The genetic change may be detectable by various means, depending on the loci chosen to be marked.

(ii) Three variations of the method currently exist for detecting newly arising point mutations in mouse germ cells:

(A) The visible specific locus test using either 5 or 7 loci.

(B) The biochemical specific locus test using up to 20 enzymes.

(C) The test for mutations at histocompatibility loci.

(iii) Of the three tests, the visible specific locus test has been most widely used in assessing genetic hazard due to environmental agents. It is the method described in this guideline.

(2) *Description.* For technical reasons, males rather than females are generally treated with the test agent. Treated males are then mated to females which are genetically homozygous for certain specific visible marker loci. Offspring are examined in the next generation for evidence that a new mutation has arisen.

(3) *Animal selection*—(i) *Species and strain.* Mice are recommended as the test species. Male mice should be either $(C_3H \times 101)F_1$ or $(101 \times C_3H)F_1$ hybrids. Females should be T stock virgins.

(ii) *Age.* Healthy sexually mature animals should be used.

(iii) *Number.* A decision on the minimum number of treated animals should take into account the spontaneous variation of the biological characterization being evaluated. Other considerations should include:

(A) The use of either historical or concurrent controls.

(B) The power of the test.

(C) The minimal rate of induction required.

(D) The use of positive controls.

(E) The level of significance desired.

(iv) *Assignment to groups.* Animals should be randomized and assigned to treatment and control groups.

(4) *Control groups*—(i) *Concurrent controls.* The use of positive or spontaneous controls is left to the discretion of the investigator. However, any laboratory which has had no prior experience with the test should, at its first attempt, produce a negative control sample of 20,000 and a positive control,

using 100 mg/kg 1-ethyl-nitrosourea, in a sample of 5,000 offspring.

(ii) *Historical controls.* Long term, accumulated spontaneous control data of 43/801,406 are available for comparative purposes.

(5) *Test chemicals*—(i) *Vehicle.* When possible, test chemicals should be dissolved or suspended in distilled water or isotonic saline buffered appropriately, if needed, for stability. Water insoluble chemicals should be dissolved or suspended in appropriate vehicles. The vehicle used should neither interfere with the test compound nor produce major toxic effects. Fresh preparations of the test chemical should be employed.

(ii) *Dose levels.* Usually, only one dose level need be tested. This should be the highest dose tolerated without toxic effects, provided that any temporary sterility induced due to elimination of spermatagonia is of only moderate duration, as determined by a return of males to fertility within 80 days after treatment.

(iii) *Route of administration.* Acceptable routes of administration include gavage, inhalation, admixture with food or water, and IP or IV injections.

(e) *Test performance*—(1) *Treatment and mating.* Hybrid F_1 ($C_3H \times 101$ or $101 \times C_3H$) male mice should be treated with the test substance and immediately mated to virgin T stock females. Each treated male should be mated to a fresh group of 2 to 4 virgin females each week for 7 weeks, after which he should be returned to the first group of females and rotated through the seven sets of females repeatedly. This mating schedule generally permits sampling of all postspermatagonial stages of germ cell development during the first 7 weeks and rapid accumulation of data for exposed spermatagonial stem cells thereafter.

(2) *Examination of offspring.* (i) Offspring may be examined at (or soon after) birth but must be examined at about 3 weeks of age at which time the numbers of mutant and nonmutant offspring in each litter should be recorded.

(ii) Nonmutant progeny should be discarded. Mutant progeny should be subjected to genetic tests for verification.

(f) *Data and report*—(1) *Treatment of results.* Data should be presented in tabular form and should permit independent analysis of cell stage specific effects, and dose dependent phenomena. The data should be recorded and analyzed in such a way that clusters of identical mutations are clearly identified. The individual mutants detected should be thoroughly described. In addition, positive and negative control data, if they are available, should be tabulated so that it is possible to differentiate between concurrent (when available) and long term, accumulated mutation frequencies.

(2) *Statistical evaluation.* Data should be evaluated by appropriate statistical methods.

(3) *Interpretation of results.* (i) There are several criteria for determining a positive result, one of which is a statistically significant dose-related increase in the number of specific locus mutations. Another criterion may be based upon detection of a reproducible and statistically significant positive response for at least one of the test points.

(ii) A test substance which does not produce either a statistically significant dose-related increase in the number of specific locus mutations or a statistically significant and reproducible positive response at any one of the test points is considered nonmutagenic in this system.

(iii) Both biological and statistical significance should be considered together in the evaluation.

(4) *Test evaluation.* (i) Positive results in the MSLT indicate that under the test conditions the test substance induces heritable gene mutations in the test species.

(ii) Negative results indicate that under the test conditions the test substance does not induce heritable gene mutations in the test species.

(5) *Test report.* In addition to the reporting recommendations as specified under 40 CFR Part 792, Subpart J the following specific information should be reported:

(i) Strain, age and weight of animals used, number of animals of each sex in experimental and control groups.

(ii) Test chemical vehicle, doses used and rationale for dose selection, toxicity data.

(iii) Route and duration of exposure.

(iv) Mating schedule.

(v) Time of examination for mutant progeny.

(vi) Criteria for scoring mutants.

(vii) Use of concurrent or negative controls.

(viii) Dose response relationship, if applicable.

(g) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Russell, L.B., Shelby, P.B., von Halle, E., Sheridan, W., Valcovic, L. The mouse specific locus test with agents other than radiations: interpretation of data and recommendations for future work: a report of the U.S. EPPT Gene-Tox Program," *Mutation Research,* 86:329–354 (1981).

(2) [Reserved]

§ 798.5250 Gene mutation in Neurospora crassa.

(a) *Purpose. Neurospora crassa* is a eukaryotic fungus which has been developed to detect and study a variety of genetic phenomena including chemically induced mutagenesis. *N. crassa* can be used to detect both forward and reverse gene mutation. These mutations are detected by biochemical or morphological changes in the treated population. The most commonly used mutation assay in *N. crassa* measures forward mutation in the *ad-3* region of the genome.

(b) *Definition.* A forward mutation is a gene mutation from the wild (parent) type to the mutant condition.

(c) *Reference substances.* These may include, but need not be limited to, ethyl- or methyl methanesulfonate.

(d) *Test method*—(1) *Principle.* The detection of forward mutations at the *ad-3* locus in either homokaryons or heterokaryons may be used. However, use of two component heterokaryons is recommended because of the greater range of mutations which can be recovered. In either case, the test relies on the identification of purple (mutant) colonies among a large number of white (wild-type) colonies. A representative sample of purple colonies can be recovered and thoroughly analyzed genetically.

(2) *Description.* Forward mutations at the *ad-3* locus can be detected using noncolonial strains of *N. crassa* grown on media containing sorbose as well as glucose. Under these conditions, colonies are formed and reproducible colonial morphology results. Adenine-requiring mutants which accumulate a reddish-purple pigment can be readily identified and counted.

(3) *Strain selection*—(i) *Designation.* At the present time, heterokaryon 12 is recommended for use in this assay. The use of other strains may also be appropriate.

(ii) *Preparation and storage.* Stock culture preparation and storage, growth requirements, method of strain identification and demonstration of appropriate phenotypic requirements should be performed using good microbiological techniques and should be documented.

(iii) *Media.* Frie's No. 3 minimal medium or Westgaard's Synthetic medium with 1.5 percent agar or any medium known to support growth and characteristic colonial morphology may be used in the assay.

(4) *Preparation of conidia.* Stock cultures should be grown on minimal medium to select for single colonies with noncolonial morphology. Single colony isolates then should be inoculated into agar flasks and incubated at 35 C for 48 hrs to select colonies with spreading growth patterns in which mycelia cover the entire flask. Flasks should be incubated at 23–25 C and those with bright orange conidia selected for preparation of conidial suspensions. Suspensions should be diluted for use in distilled water.

(5) *Metabolic activation.* Conidia should be exposed to test substance both in the presence and absence of an appropriate metabolic activation system.

(6) *Control groups.* Concurrent positive and negative (untreated and/or vehicle) controls both with and without metabolic activation should be included in each experiment.

(7) *Test chemicals*—(i) *Vehicle.* Test chemicals and positive control reference substances should be dissolved in an appropriate vehicle and then further diluted in vehicle for use in the assay.

(ii) *Exposure concentrations.* (A) The test should initially be performed over a broad range of concentrations selected on the basis of a preliminary assay. Effective treatment times should also be selected in the preliminary assay.

(B) Among the criteria to be taken into consideration for determining the upper limits of test chemical concentration are cytotoxicity and solubility. Cytotoxicity of the test chemical may be altered in the presence of metabolic activation systems. For toxic chemicals, the highest concentration tested should not reduce survival below 10 percent of that seen in the control cultures. Relatively insoluble chemicals should be tested up to the limits of solubility. For freely soluble nontoxic chemicals, the upper test chemical concentration should be determined on a case by case basis.

(C) Each test should include five treatment points; two at fixed concentrations for different time periods, and three at varying concentrations for fixed periods of time.

(D) When appropriate, a positive response should be confirmed by testing over a narrow range of concentrations.

(e) *Test performance*—(1) *Treatment.* (i) Growing or nongrowing conidia should be exposed to the test chemical with and without metabolic activation. At the end of the exposure period, treatment should be terminated by chemical quenching. The quenching solution may contain 0.1 percent sodium thiosulfate.

(ii) Conidia should then be plated on the appropriate media to determine mutation induction and viability. At the end of the incubation period, colonies should be scored for viability and mutation induction.

(iii) Mutants should be classified according to color and morphology.

(iv) Both mutation frequency and viability should be determined both immediately before and immediately after chemical treatment.

(2) *Incubation conditions.* All plates in a given test should be incubated for the same time period. This incubation period may be from 2 to 7 days at 30 °C.

(3) *Number of cultures.* Generally, 15 to 20 individual plates per concentration should be used.

(f) *Data and report*—(1) *Treatment of results.* Individual plate counts for test substance and controls should be presented for both mutation induction and survival. The mean number of colonies per plate and standard deviation should be presented. Data should be presented in tabular form indicating, as applicable, numbers of colonies counted, numbers of mutants identified and classification of mutants (e.g., color segregants). Sufficient detail should be provided for verification of survival and mutation frequencies.

(2) *Statistical evaluation.* Data should be evaluated by appropriate statistical techniques.

(3) *Interpretation of results.* (i) There are several criteria for determining a positive result, one of which is a statistically significant dose-related increase in the number of mutant colonies. Another criterion may be based upon detection of a reproducible and statistically significant positive response for at least one of the test points.

(ii) A test substance which does not produce either a statistically significant dose-related increase in the number of mutant colonies or a statistically significant and reproducible positive response at any one of the test points is considered nonmutagenic in this system.

(iii) Both biological and statistical significance should be considered together in the evaluation.

(4) *Test evaluation.* (i) Positive results from the *ad-3* system in *N. crassa* indicate that, under the test conditions, the test substance causes mutations in the DNA of this organism.

(ii) Negative results indicate that under the test conditions the test substance is not mutagenic in *N. crassa.*

(5) *Test report.* In addition to the reporting recommendations as specified under 40 CFR Part 792, Subpart J the following specific information should be reported:

(i) Strain of organism used in the assay.

(ii) Test chemical vehicle, doses used and rationale for dose selection.

(iii) Method used for preparation of conida.

(iv) Treatment conditions, including length of exposure and method used to stop treatment.

(v) Incubation times and temperature.

(vi) Details of both the protocol used to prepare the metabolic activation system and of its use in the assay.

(vii) Dose-response relationship, if applicable.

(g) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Brockman, H.E., de Serres, F.J. "Induction of *ad-3* mutants of *Neurospora crassa* by 2-aminopurine," *Genetics* 48: 597–604 (1963).

(2) de Serres, F.J., Malling, H.V. "Measurement of recessive lethal damage over the entire genome and at two specific loci in the *ad-3* region of a two-component heterokaryon of *Neurospora crassa*," *Chemical mutagens: principles and methods for their detection.* Vol. 2, Ed. Hollaender, A. (New York and London: Plenum Press, 1971) pp. 311–342.

(3) Matzinger, P.K. Ong, T–M. "In vitro activation of aflatoxin B_1 to metabolites mutagenic in *Neurospora crassa.*" *Mutation Research,* 37:27–32 (1976).

§ 798.5265 The Salmonella typhimurium reverse mutation assay.

(a) *Purpose.* The *Salmonella typhimurium* histidine (his) reversion system is a microbial assay which measures $his^- \rightarrow his^+$ reversion induced by chemicals which cause base changes or frameshift mutations in the genome of this organism.

(b) *Definitions.* (1) A reverse mutation assay in *Salmonella typhimurium* detects mutation in a gene of a histidine requiring strain to produce a histidine independent strain of this organism.

(2) Base pair mutagens are agents which cause a base change in the DNA. In a reversion assay, this change may occur at the site of the original mutation or at a second site in the chromosome.

(3) Frameshift mutagens are agents which cause the addition or deletion of single or multiple base pairs in the DNA molecule.

(c) *Reference substances.* These may include, but need not be limited to, sodium azide, 2-nitrofluorene, 9-aminoacridine, 2-aminoanthracene, congo red, benzopurpurin 4B, trypan blue or direct blue 1.

(d) *Test method*—(1) *Principle.* Bacteria are exposed to test chemical with and without a metabolic activation

system and plated onto minimal medium. After a suitable period of incubation, revertant colonies are counted and compared to the number of spontaneous revertants in an untreated and/or vehicle control culture.

(2) *Description.* Several methods for performing the test have been described. Among those used are:

(i) The direct plate incorporation method.

(ii) The preincubation method.

(iii) The azo-reduction method.

The procedures described here are for the direct plate incorporation method and the azo-reduction method.

(3) *Strain selection*—(1) *Designation.* At the present time four strains, TA 1535, TA 1537, TA 98 and TA 100 should be used. The use of other strains in addition to these four is left to the discretion of the investigator.

(ii) *Preparation and storage.* Recognized methods of stock culture preparation and storage should be used. The requirement of histidine for growth should be demonstrated for each strain. Other phenotypic characteristics should be checked using such methods as crystal violet sensitivity and resistance to ampicillin. Spontaneous reversion frequency should be in the range expected either as reported in the literature or as established in the laboratory by historical control values.

(iii) *Bacterial growth.* Fresh cultures of bacteria should be grown up to the late exponential or early stationary phase of growth (approximately 10^8-10^9 cells per ml).

(4) *Metabolic activation.* Bacteria should be exposed to the test substance both in the presence and absence of an appropriate metabolic activation system. For the direct plate incorporation method, the most commonly used system is a cofactor supplemented postmitochondrial fraction prepared from the livers of rodents treated with enzyme inducing agents such as Aroclor 1254. For the azo-reduction method, a cofactor supplemented postmitochondrial fraction prepared from the livers of untreated hamsters is preferred. For this method, the cofactor supplement should contain flavin mononucleotide, exogenous glucose 6-phosphate dehydrogenase, NADH and excess of glucose-6-phosphate.

(5) *Control groups*—(i) *Concurrent controls.* Concurrent positive and negative (untreated and/or vehicle) controls should be included in each experiment. Positive controls should ensure both strain responsiveness and efficacy of the metabolic activation system.

(ii) *Strain specific positive controls.* Strain specific positive controls should be included in the assay. Examples of strain specific positive controls are as follows:

(A) Strain TA 1535, TA 100, sodium azide.

(B) TA 98, 2-nitrofluorene.

(C) TA 1537, 9-aminoacridine.

(iii) *Positive controls to ensure the efficacy of the activation system.* The positive control reference substance for tests including a metabolic activation system should be selected on the basis of the type of activation system used in the test. 2-Aminoanthracene is an example of a positive control compound in plate-incorporation tests using postmitochondrial fractions from the livers of rodents treated with enzyme inducing agents such as Aroclor-1254. Congo red is an example of a positive control compound in the azo-reduction method. Other positive control reference substances may be used.

(iv) *Class-specific positive controls.* The azo-reduction method should include positive controls from the same class of compounds as the test agent wherever possible.

(6) *Test chemicals*— (i) *Vehicle.* Test chemicals and positive control reference substances should be dissolved in an appropriate vehicle and then further diluted in vehicle for use in the assay.

(ii) *Exposure concentrations.* (A) The test should initially be performed over a broad range of concentrations. Among the criteria to be taken into consideration for determining the upper limits of test chemical concentration are cytotoxicity and solubility. Cytotoxicity of the test chemical may be altered in the presence of metabolic activation systems. Toxicity may be evidenced by a reduction in the number of spontaneous revertants, a clearing of the background lawn or by the degree of survival of treated cultures. Relatively insoluble compounds should be tested up to the limits of solubility. For freely soluble nontoxic chemicals, the upper test chemical concentration should be determined on a case by case basis.

(B) Generally, a maximum of 5 mg/plate for pure substances is considered acceptable. At least 5 different amounts of test substance should be tested with adequate intervals between test points.

(C) When appropriate, a positive response should be confirmed by testing over a narrow range of concentrations.

(e) *Test performance*—(1) *Direct plate incorporation method.* For this test without metabolic activation, test chemical and 0.1 ml of a fresh bacterial culture should be added to 2.0 ml of overlay agar. For tests with metabolic activation, 0.5 ml of activation mixture containing an adequate amount of postmitochondrial fraction should be added to the agar overlay after the addition of test chemical and bacteria. Contents of each tube should be mixed and poured over the surface of a selective agar plate. Overlay agar should be allowed to solidify before incubation. At the end of the incubation period, revertant colonies per plate should be counted.

(2) *Azo-reduction method.* (i) For this test with metabolic activation, 0.5 ml of S–9 mix containing 150 μl of S–9 and 0.1 ml of bacterial culture should be added to a test tube kept on ice. One-tenth ml of chemical should be added and the tubes should be incubated with shaking at 30 °C for 30 min. At the end of the incubation period, 2.0 ml of agar should be added to each tube, the contents mixed and poured over the surface of a selective agar plate. Overlay agar should be allowed to solidify before incubation. At the end of the incubation period, revertant colonies per plate should be counted.

(ii) For tests without metabolic activation, 0.5 ml of buffer should be used in place of the 0.5 ml of S–9 mix. All other procedures should be the same as those used for the test with metabolic activation.

(3) *Other methods.* Other methods may also be appropriate.

(4) *Media.* An appropriate selective medium with an adequate overlay agar should be used.

(5) *Incubation conditions.* All plates within a given experiment should be incubated for the same time period. This incubation period should be for 48–72 hours at 37 °C.

(6) *Number of cultures.* In general, all plating should be done at least in triplicate. If scientifically justified, the use of duplicates may be acceptable. All results should be confirmed in an independent experiment.

(f) *Data and report*— (1) *Treatment of results.* Data should be presented as number of revertant colonies per plate for each replicate and dose. The numbers of revertant colonies on both negative (untreated and/or vehicle) and positive control plates should also be presented. Individual plate counts, the mean number of revertant colonies per plate and standard deviation should be presented for test chemical and positive and negative (untreated and/or vehicle) controls.

(2) *Statistical evaluation.* Data should be evaluated by appropriate statistical methods.

(3) *Interpretation of results.* (i) There are several criteria for determining a positive result, one of which is a

statistically significant dose-related increase in the number of revertants. Another criterion may be based upon detection of a reproducible and statistically significant positive response for at least one of the test substance concentrations.

(ii) A test substance which does not produce either a statistically significant dose-related increase in the number of revertants of a statistically significant and reproducible positive response at any one of the test points is considered nonmutagenic in this system.

(iii) Both biological and statistical significance should be considered together in the evaluation.

(4) *Test evaluation.* (i) Positive results from the *S. typhimurium* reverse mutation assay indicate that, under the test conditions, the test substance induces point mutations by base changes or frameshifts in the genome of this organism.

(ii) Negative results indicate that under the test conditions the test substance is not mutagenic in *S. typhimurium*.

(5) *Test report.* In addition to the reporting recommendations as specified under 40 CFR Part 792, Subpart J, the following specific information should be reported:

(i) Bacterial strain used.

(ii) Metabolic activation system used and its preparation for use in the assay; for S–9 preparations this should include cofactor cocktail (contents, storage conditions and amount used); source and amount of S–9 and details of preparation and storage of S–9 mix.

(iii) Dose levels and rationale for selection of dose.

(iv) Positive and negative controls.

(v) Individual plate counts, mean number of revertant colonies per plate, standard deviation.

(vi) Dose-response relationship, if applicable.

(g) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Ames, B.N., McCann, J., Yamasaki, E. "Methods for detecting carcinogens and mutagens with the *Salmonella/* mammalian-microsome mutagenicity test," *Mutation Research* 31:347–364 (1975).

(2) de Serres, F.J., Shelby, M.D. "The *Salmonella* mutagenicity assay: recommendations," *Science* 203:563–565 (1979).

(3) Prival, M.J., Mitchell, V.D. "Analysis of a method for testing azo dyes for mutagenic activity in *Salmonella typhimurium* in the presence of flavin mononucleotide and hamster liver S–9," *Mutation Research* 97:103–116 (1982).

(4) Vogel, H.J., Bonner, D.M. "Acetylornithinase of *E. coli:* partial purification and some properties," *Journal of Biological Chemistry*. 218:97–106 (1956).

§ 789.5275 Sex-linked recessive lethal test in Drosophila melanogaster.

(a) *Purpose.* The sex-linked recessive lethal (SLRL) test using *Drosophila melanogaster* detects the occurrence of mutations, both point mutations and small deletions, in the germ line of the insect. This test is a forward mutation assay capable of screening for mutations at about 800 loci on the X-chromosome. This represents about 80 percent of all X-chromosome loci. The X-chromosome represents approximately one-fifth of the entire haploid genome.

(b) *Definitions.* (1) Lethal mutation is a change in the genome which, when expressed, causes death to the carrier.

(2) Recessive mutation is a change in the genome which is expressed in the homozygous or hemizygous condition.

(3) Sex-Linked genes are present on the sex (X or Y) chromosomes. Sex-linked genes in the context of this guideline refer only to those located on the X-chromosome.

(c) *Reference substances.* These may include, but need not be limited to, ethyl methanesulfonate or N-nitroso-dimethylamine.

(d) *Test method*—(1) *Principle.* Mutations in the X-chromosome of *D. melanogaster* are phenotypically expressed in males carrying the mutant gene. When the mutation is lethal in the hemizygous condition, its presence is inferred from the absence of one class of male offspring out of the two that are normally produced by a heterozygous female. The SLRL test takes advantage of these facts by means of specially marked and arranged chromosomes.

(2) *Description.* Wild-type males are treated and mated to appropriate females. Female offspring are mated individually to their brothers, and in the next generation the progeny from each separate dose are scored for phenotypically wild-type males. Absence of these males indicates that a sex-linked recessive lethal mutation has occurred in a germ cell of the P_1 male.

(3) *Drosophila stocks.* Males of a well-defined wild type stock and females of the Muller-5 stock may be used. Other appropriately marked female stocks with multiple inverted X-chromosomes may also be used.

(4) *Control groups*—(i) *Concurrent controls.* Concurrent positive and negative (vehicle) controls should be included in each experiment.

(ii) *Positive controls.* Examples of positive controls include ethyl methanesulfonate and N-nitroso-dimethylamine.

(iii) *Other positive controls.* Other positive control reference substances may be used.

(iv) *Negative controls.* Negative (vehicle) controls should be included. The size of the negative (vehicle) control group should be determined by the availability of appropriate laboratory historical control data. If the historical control data are of sufficient numbers, concurrent controls may not be necessary.

(5) *Test chemicals*—(i) *Vehicle.* Test chemicals should be dissolved in water. Compounds which are insoluble in water may be dissolved or suspended in appropriate vehicles (e.g., a mixture of ethanol and Tween-60 or 80) and then diluted in water or saline prior to administration. Dimethylsulfoxide should br avoided as a vehicle.

(ii) *Dose levels.* For the initial assesement of mutagenicity, it may be sufficient to test a single dose of the test substance. This dose should be the maximum tolerated dose or that which produces some indication of toxicity. If the test is being used to verify mutagenic activity in this system at least two additional exposure levels should be used.

(iii) *Route of administration.* Exposure may be oral, by injection or by exposure to gases or vapors. Feeding of the test compound may be done in sugar solution. When necessary, substances may be dissolved in 0.7 percent NaCl solution and injected into the thorax or abdomen.

(e) *Test performance*—(1) *Treatment and mating.* Wild-type males (3 to 5 days old) should be treated with the test substance and mated individually to an excess of virgin females from the Muller-5 stock or females from another appropriately marked (with multiply-inverted X-chromosomes) stock. The females should be replaced with fresh virgins every 2 to 3 days to cover the entire germ cell cycle. The offspring of these females are scored for lethal effects corresponding to the effects on mature sperm, mid or late stage spermatids, early spermatids, spermatocytes and spermatogonia at the time of treatment.

(2) *F1 matings.* Heterozygous F_1 females from the above crosses should be allowed to mate individually (i.e., one female per vial) with their brothers. In the F_2 generation, each culture should be scored for the absence of wild-type

males. If a culture appears to have arisen from an F_1 female carrying a lethal in the parental X-chromosome (i.e., no males with the treated chromosome are observed), daughters of that female with the same genotype should be tested to ascertain if the lethality is repeated in the next generation.

(3) *Number of matings.* (i) The test should be designed with a predetermined sensitivity and power. The number of flies in each group should reflect these defined parameters. The spontaneous mutant frequency observed in the appropriate control group will strongly influence the number of treated chromosomes that must be analysed to detect substances which show mutation rates close to those of the controls.

(ii) Test results should be confirmed in a separate experiment.

(f) *Data and report*—(1) *Treatment of results.* Data should be tabulated to show the number of chromosomes tested, the number of nonfertile males and the number of lethal chromosomes at each exposure concentration and for each mating period for each male treated. Numbers of clusters of different size per male should be reported.

(2) *Statistical evaluation.* Data should be evaluated by appropriate statistical techniques.

(3) *Interpretation of results.* (i) There are several criteria for determining a positive result, one of which is a statistically significant dose-related increase in the number of sex-lined recessive lethals. Another criterion may be based upon detection of a reproducible and statistically significant positive response for at least one of the test points.

(ii) A test substance which does not produce either a statistically significant dose-related increase in the number of sex-linked recessive lethals or a statistically significant and reproducible positive response at any one of the test points is considered non-mutagenic in this system.

(iii) Both biological and statistical significance should be considered together in the evaluation.

(4) *Test evaluation.* (i) Positive results in the SLRL test in *D. melanogaster* indicate that under the test conditions the test agent causes mutations in germ cells of this insect.

(ii) Negative results indicate that under the test conditions the test substance is not mutagenic in *D. melanogaster.*

(5) *Test report.* In addition to the reporting recommendations as specified under 40 CFR Part 792, Subpart J the following specific information should be reported.

(i) *Drosophila* stock used in the assay, age of insects, number of males treated, number of sterile males, number of F_2 cultures established, number of F_2 cultures without progeny.

(ii) Test chemical vehicle, treatment and sampling schedule, exposure levels, toxicity data, negative (vehicle) and positive controls, if appropriate.

(iii) Criteria for scoring lethals.

(iv) Number of chromosomes tested, number of chromosomes scored, number of chromosomes carrying a lethal mutation.

(v) Historical control data, if available.

(vi) Dose-response relationship, if applicable.

(g) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Sobels, F.H., Vogel, E. "The capacity of *Drosophila* for detecting relevant genetic damage," *Mutation Research* 41:95–106 (1976).

(2) Wurgler F.E., Sobels F.H., Vogel E. "*Drosophila* as assay system for detecting genetic changes," *Handbook of mutagenicity test procedures.* Eds. Kilbey, B.J., Legator, M., Nichols, W., Ramel, C., (Amsterdam: Elsevier/North Holland Biomedical Press, 1977) pp. 335–373.

§ 798.5300 Detection of gene mutations in somatic cells in culture.

(a) *Purpose.* Mammalian cell culture systems may be used to detect mutations induced by chemical substances. Widely used cell lines include L5178Y mouse lymphoma cells and the CHO and V–79 lines of Chinese hamster cells. In these cell lines the most commonly used systems measure mutation at the thymidine kinase (TK), hypoxanthine-guanine-phosphoribosyl transferase (HPRT) and Na^+/K^+ ATPase loci. The TK and HPRT mutational systems detect base pair mutations, frameshift mutations, and small deletions; the Na^+/K^+ ATPase system detects base pair mutations only.

(b) *Definitions.* (1) A forward mutation assay detects a gene mutation from the parental type to the mutant form which gives rise to a change in an enzymatic or functional protein.

(2) Base pair mutagens are agents which cause a base change in the DNA.

(3) Frameshift mutagens are agents which cause the addition or deletion of single or multiple base pairs in the DNA molecule.

(4) Phenotypic expression time is a period during which unaltered gene products are depleted from newly mutated cells.

(c) *Reference substances.* These may include, but need not be limited to, ethyl methanesulfonate, N-nitroso-dimethylamine, 2-acetylaminofluorene, 7,12-dimethylbenzanthracene or hycanthone.

(d) *Test method*—(1) *Principle.* Cells are exposed to test substance, both with and without metabolic activation, for a suitable period of time and subcultured to determine cytotoxicity and to allow phenotypic expression prior to mutant selection. Cells deficient in thymidine kinase (TK) due to the forward mutation $TK^+ \rightarrow TK^-$ are resistant to the cytotoxic effects of pyrimidine analogues such as bromodeoxyuridine (BrdU), fluorodeoxyuridine (FdU) or trifluorothymidine (TFT). The deficiency of the "salvage" enzyme thymidine kinase means that these antimetabolites are not incorporated into cellular nucleotides and the nucleotides needed for cellular metabolism are obtained solely from *de novo* synthesis. However, in the presence of thymidine kinase, BrdU, FdU or TFT are incorporated into the nucleotides, resulting in inhibition of cellular metabolism and cytotoxicity. Thus mutant cells are able to proliferate in the presence of BrdU, FdU or TFT whereas normal cells, which contain thymidine kinase, are not. Similarly cells deficient in HPRT are selected by resistance to 8-azaguanine (AG) or 6-thioguanine (TG) and cells with altered Na^+/K^+ ATPase are selected by resistance to ouabain.

(2) *Description.* Cells in suspension or monolayer culture are exposed to the test substance, both with and without metabolic activation, for a defined period of time. Cytotoxicity is determined by measuring the colony forming ability or growth rate of the cultures after the treatment period. The treated cultures are maintained in growth medium for a sufficient period of time—characteristic of each selected locus—to allow near-optimal phenotypic expression of induced mutations. Mutant frequency is determined by seeding known numbers of cells in medium containing the selective agent to detect mutant cells, and in medium without selective agent to determine the cloning efficiency. After a suitable incubation time, cell colonies are counted. The number of mutant colonies in selective medium is adjusted by the number of colonies in nonselective medium to derive the mutant frequency.

(3) *Cells*—(i) *Type of cells used in the assay.* A variety of cell lines are available for use in this assay including subclones of L5178Y, CHO cells or V–79 cells. Cell types used in this assay should have a demonstrated sensitivity

to chemical mutagens, a high cloning efficiency and a low spontaneous mutation frequency. Cells should be checked for *Mycoplasma* contamination and may be periodically checked for karyotype stability.

(ii) *Cell growth and maintenance.* Appropriate culture media and incubation conditions (culture vessels, CO_2 concentrations, temperature and humidity) should be used.

(4) *Metabolic activation.* Cells should be exposed to test substance both in the presence and absence of an appropriate metabolic activation system.

(5) *Control groups.* Positive and negative (untreated and/or vehicle) controls should be included in each experiment. When metabolic activation is used, the positive control substance should be known to require such activation.

(6) *Test chemicals*—(i) *Vehicle.* Test substances may be prepared in culture media or dissolved or suspended in appropriate vehicles prior to treatment of the cells. The final concentration of the vehicle should not interfere with cell viability or growth rate.

(ii) *Exposure concentrations.* (A) The test should be designed to have a predetermined sensitivity and power. The number of cells, cultures, and concentrations of test substance used should reflect these defined parameters. The number of cells per culture is based on the expected background mutant frequency; a general guide is to use a number which is 10 times the inverse of this frequency.

(B) Several concentrations (usually at least four) of the test substance should be used. These should yield a concentration-related toxic effect. The highest concentration should produce a low level of survival and the survival in the lowest concentration should approximate the negative control. Cytotoxicity should be determined after treatment with the test substance both in the presence and in the absence of an exogenous metabolic activation system. Relatively insoluble substances should be tested up to their limit of solubility under culture conditions. For freely-soluble nontoxic substances the highest concentration used should be determined on a case-by-case basis.

(e) Test performance. (1) Cells should be exposed to the test substance both with and without metabolic activation. Exposure should be for a suitable period of time, in most cases 1 to 5 hours is effective; exposure time may be extended over one or more cell cycles.

(2) At the end of the exposure period, cells should be washed and cultured to determine viability and to allow for expression of the mutant phenotype.

(3) At the end of the expression period, which should be sufficient to allow near optimal phenotypic expression of induced mutants, cells should be grown in medium with and without selective agent(s) for determination of numbers of mutants and cloning efficiency, respectively.

(4) Results should be confirmed in an independent experiment.

(f) *Data and report*—(1) *Treatment of results.* Data should be presented in tabular form. Individual colony counts for the treated and control groups should be presented for both mutation induction and survival. Survival and cloning efficiencies should be given as a percentage of the controls. Mutant frequency should be expressed as number of mutants per number of surviving cells.

(2) *Statistical evaluation.* Data should be evaluated by appropriate statistical methods.

(3) *Interpretation of results.* (i) There are several criteria for determining a positive result, one of which is a statistically significant concentration-related increase in the mutant frequency. Another criterion may be based upon detection of a reproducible and statistically significant positive response for at least one of the test substance concentrations.

(ii) A test substance which does not produce either a statistically significant concentration-related increase in the mutant frequency or a statistically significant and reproducible positive response at any one of the test points is considered nonmutagenic in this system.

(iii) Both biological and statistical significance should be considered together in the evaluation.

(4) *Test evaluation.* (i) Positive results for an in vitro mammalian cell gene mutation test indicate that, under the test conditions, a substance induces gene mutations in the cultured mammalian cells used.

(ii) Negative results indicate that, under the test conditions, the test substance does not induce gene mutations in the cultured mammalian cells used.

(5) *Test report.* In addition to the reporting recommendations as specified under 40 CFR Part 792, Subpart J the following specific information should be reported:

(i) Cell type used, number of cell cultures, methods used for maintenance of cell cultures.

(ii) Rationale for selection of concentrations and number of cultures.

(iii) Test conditions: composition of media, CO_2 concentration, concentration of test substance, vehicle, incubation temperature, incubation time, duration of treatment, cell density during treatment, type of metabolic activation system, positive and negative controls, length of expression period (including number of cells seeded and subculture and feeding schedules, if appropriate), selective agent(s).

(iv) Methods used to enumerate numbers of viable and mutant cells.

(v) Dose-response relationship, where possible.

(g) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Amacher, D.E., Paillet, S.C., Ray, V. "Point mutations at the thymidine kinase locus in L5178Y mouse lymphoma cells. I. Application to genetic toxicology testing," *Mutation Research*, 64:301–400 (1979).

(2) Amacher, D.E., Paillet, S.C., Turner, G.N., Ray, V.A. Salsburg, V.A. "Point mutations at the thymidine kinase locus in L5178Y mouse lymphoma cells. II. Test validation and interpretation," *Mutation Research*, 72:447–474 (1980).

(3) Bradley, M.O., Bhuyan B., Francis, M.C., Langenback, R., Peterson, A., Huberman, E. "Mutagenesis by chemical agents in V–79 Chinese hamster cells: a review and analysis of the literature: a report of the Gene-Tox Program," *Mutation Research*, 87:81–142 (1981).

(4) Clive, D., Johnson, K.O., Spector, J.F.S., Batson, A.G., Brown, M.M. "Validation and characterization of the L5178Y $TK^{+/-}$ mouse lymphoma mutagen assay system," *Mutation Research*, 59:61–108 (1979).

(5) Clive, D., Spector, J.F.S. "Laboratory procedures for assessing specific locus mutations at the TK locus in cultured L5178Y mouse lymphoma cells," *Mutation Research*, 31:17–29 (1975).

(6) Hsie, A.W., Casciano, D.A., Couch, D.B., Krahn, D.F., O'Neill, J.P., Whitfield, B.L. "The use of Chinese hamster ovary cells to quantify specific locus mutation and to determine mutagenicity of chemicals: a report of the U.S. EPA's Gene-Tox Program," *Mutation Research*, 86:193–214 (1981).

§ 798.5375 In vitro mammalian cytogenetics.

(a) *Purpose.* The in vitro cytogenetics test is a mutagenicity test system for the detection of chromosomal aberrations in cultured mammalian cells. Chromosomal aberrations may be either structural or numerical. However, because cytogenetic assays are usually designed to analyse cells at their first post-treatment mitosis and numerical aberrations require at least one cell division to be visualized, this type of

aberration is generally not observed in a routine cytogenetics assay. Structural aberrations may be of two types, chromosome or chromatid.

(b) *Definitions.* (1) Chromosome-type aberrations are changes which result from damage expressed in both sister chromatids at the same time.

(2) Chromatid-type aberrations are damage expressed as breakage of single chromatids or breakage and/or reunion between chromatids.

(c) *Reference substances.* Not applicable.

(d) *Test method*—(1) *Principle.* In vitro cytogenetics assays may employ cultures of established cell lines, cell strains or primary cell cultures. Cell cultures are exposed to the test substance both with and without metabolic activation. Following exposure of cell cultures to test substances, they are treated with a spindle inhibitor (e.g., colchicine or Colcemid®) to arrest cells in a metaphase-like stage of mitosis (c-metaphase). Cells are then harvested and chromosome preparations made. Preparations are stained and metaphase cells are analyzed for chromosomal aberrations.

(2) *Description.* Cell cultures are exposed to test compounds and harvested at various intervals after treatment. Prior to harvesting, cells are treated with a spindle inhibitor (e.g., colchicine or Colcemid®) to accumulate cells in c-metaphase. Chromosome preparations from cells are made, stained and scored for chromosomal aberrations.

(3) *Cells*—(i) *Type of cells used in the assay.* There are a variety of cell lines or primary cell cultures, including human cells, which may be used in the assay. Established cell lines and strains should be checked for *Mycoplasma* contamination and may be periodically checked for karyotype stability.

(ii) *Cell growth and maintenance.* Appropriate culture media, and incubation conditions (culture vessels CO_2 concentrations, temperature and humidity) should be used.

(4) *Metabolic activation.* Cells should be exposed to test substance both in the presence and absence of an appropriate metabolic activation system.

(5) *Control groups.* Positive and negative (untreated and/or vehicle) controls both with and without metabolic activation should be included in each experiment. When metabolic activation is used, the positive control substance should be known to require such activation.

(6) *Test chemicals*—(i) *Vehicle.* Test substances may be prepared in culture media or dissolved or suspended in appropriate vehicles prior to treatment of the cells. Final concentration of the vehicle should not interfere with cell viability or growth rate.

(ii) *Exposure concentrations.* Multiple concentrations of the test substance over a range adequate to define the response should be tested. The highest test substance concentration tested with and without metabolic activation should show evidence or cytotoxicity or reduced mitotic activity. Relatively insoluble substances should be tested up to the limit of solubility. For freely soluble nontoxic chemicals, the upper test chemical concentration should be determined on a case by case basis.

(e) *Test performance*—(1) *Established cell lines and strains.* Prior to use in the assay, cells should be generated from stock cultures, seeded in culture vessels at the appropriate density and incubated at 37 °C.

(2) *Human lymphocyte cultures.* Heparinized or acid-citrate-dextrose whole blood should be added to culture medium containing a mitogen, e.g., phytohemagglutinin (PHA) and incubated at 37 °C. White cells sedimented by gravity (buffy coat) or lymphocytes which have been purified on a density gradient may also be utilized.

(3) *Treatment with test substance.* For established cell lines and strains, cells in the exponential phase of growth should be treated with test substances in the presence and absence of a metabolic activation system. Mitogen-stimulated human lymphocyte cultures may be treated with the test substance in a similar manner.

(4) *Number of cultures.* At least two independent cultures should be used for each experimental point.

(5) *Culture harvest time.* (i) For established cell lines and strains multiple harvest times are recommended. However, for screening purposes, a single harvest time, e.g. 24 hrs, may be appropriate. If the test chemical changes the cell cycle length, the fixation intervals should be changed accordingly.

(ii) For human lymphocyte cultures, the substance to be tested may be added to the cultures at various times after mitogen stimulation so that there is a single harvest time after the initiation of the cell culture. Alternatively, a single treatment may be followed by multiple harvest times. Harvest time should be extended for those chemicals which induce an apparent cell cycle delay. Because the population of human lymphocytes is only partially synchronized, a single treatment, at, or close to, the time when metaphase stages first appear in the culture will include cells in all phases of the division cycle. Therefore, a single harvest at the time of second mitosis may be carried out for screening purposes.

(iii) Cell cultures are treated with a spindle inhibitor, (e.g. colchicine or Colcemid®). 1 or 2 hours prior to harvesting. Each culture is harvested and processed separately for the preparation of chromosomes.

(6) *Chromosome preparation.* Chromosome preparation involves hypotonic treatment of the cells, fixation and staining.

(7) *Analysis.* Slides should be coded before analysis. The number of cells to be analysed should be based upon the spontaneous control frequency, defined sensitivity and the power chosen for the test before analysis. In human lymphocytes, only cells containing 46 centromeres should be analysed. In established cell lines and strains, only metaphases containing ± 2 centromeres of the modal number should be analysed. Uniform criteria for scoring aberrations should be used.

(f) *Data and report*—(1) *Treatment of results.* Data should be presented in a tabular form. Different types of structural chromosomal aberrations should be listed with their numbers and frequencies for experimental and control groups. Data should be evaluated by appropriate statistical methods. Gaps or achromatic lesions are recorded separately and not included in the total aberration frequency.

(2) *Statistical evaluation.* Data should be evaluated by appropriate statistical methods.

(3) *Interpretation of results.* (i) There are several criteria for determining a positive result, one of which is a statistically significant dose-related increase in the number of structural chromosomal aberrations. Another criterion may be based upon detection of a reproducible and statistically significant positive response for at least one of the test substance concentrations.

(ii) A test substance which does not produce either a statistically significant dose-related increase in the number of structural chromosomal aberrations or a statistically significant and reproducible positive response at any one of the test points is considered nonmutagenic in this system.

(iii) Both biological and statistical significance should be considered together in the evaluation.

(4) *Test evaluation.* (i) Positive results in the in vitro cytogenetics assay indicate that under the test conditions the test substance induces chromosomal aberrations in cultured mammalian somatic cells.

(ii) Negative results indicate that under the test conditions the test substance does not induce chromosomal aberrations in cultured mammalian somatic cells.

(5) *Test report.* In addition to the reporting recommendations as specified under 40 CFR Part 792, Subpart J the following specific information should be reported:

(i) Cells used, density and passage number at time of treatment, number of cell cultures.

(ii) Methods used for maintenance of cell cultures including medium, temperature and CO_2 concentration.

(iii) Test chemical vehicle, concentration and rationale for the selection of the concentrations used in the assay, duration of treatment.

(iv) Details of both the protocol used to prepare the metabolic activation system and of its use in the assay.

(v) Identity of spindle inhibitor, its concentration and duration of treatment.

(vi) Time of cell harvest.

(vii) Positive and negative controls.

(viii) Methods used for preparation of slides for microscopic examination.

(ix) Number of metaphases analysed.

(x) Mitotic index where applicable.

(xi) Criteria for scoring aberrations.

(xii) Type and number of aberrations, given separately for each treated and control culture, total number of aberrations per group; frequency distribution of number of chromosomes in established cell lines and strains.

(xiii) Dose-response relationship, if applicable.

(g) *References.* For additional background information on this test guideline the following references should be consulted.

(1) Ames, B.N., McCann, J., Yamasaki, E. "Methods for detecting carcinogens and mutagens with the *Salmonella*/mammalian-microsome mutagenicity test," *Mutation Research,* 31:347–364 (1975).

(2) Evans, H.J. "Cytological methods for detecting chemical mutagens," *Chemical mutagens, principles and methods for their detection,* Vol. 4, Ed. A. Hollaender (New York, London: Plenum Press, 1976) pp. 1–29.

(3) Howard, P.N., Bloom, A.D., Krooth, R.S. "Chromosomal aberrations induced by N-methyl-N′-nitro-N-nitrosoguanidine in mammalian cells," *In Vitro* 7:359–365 (1972).

(4) Ishidate, M. Jr., Odashima, S. "Chromosome tests with 134 compounds on Chinese hamster cells in vitro: a screening for chemical carcinogens," *Mutation Research,* 48:337–354 (1975).

(5) Preston, R.J., Au, W., Bender, M.A., Brewen, J.G., Carrano, A.V., Heddle, J.A., McFee, A.F., Wolff, S., Wassom, J.S., "Mammalian in vivo and in vitro cytogenetic assays: a report of the Genetox Program," *Mutation Research,* 87:143–188 (1981).

§ 798.5385 In vivo mammalian bone marrow cytogenetics tests: Chromosomal analysis.

(a) *Purpose.* The *in vivo* bone marrow cytogenetic test is a mutagenicity test for the detection of structural chromosomal aberrations. Chromosomal aberrations are generally evaluated in first post-treatment mitoses. With the majority of chemical mutagens, induced aberrations are of the chromatid type but chromosome type aberrations also occur.

(b) *Definitions.* (1) Chromosome-type aberrations are changes which result from damage expressed in both sister chromatids at the same time.

(2) Chromatid-type aberrations are damage expressed as breakage of single chromatids or breakage and/or reunion between chromatids.

(c) *Reference substances.* Not applicable.

(d) *Test method*—(1) *Principle.* Animals are exposed to test chemicals by appropriate routes and are sacrificed at sequential intervals. Chromosome preparations are made from bone marrow cells. The stained preparations are examined and metaphase cells are scored for chromosomal aberrations.

(2) *Description.* The method employs bone marrow of laboratory rodents which have been exposed to test chemicals. Prior to sacrifice, animals are further treated with a spindle inhibitor, (e.g., colchicine or Colcemid ®) to arrest the cells in c-metaphase. Chromosome preparations from the cells are stained and scored for chromosomal aberrations.

(3) *Animal selection*—(i) *Species and strain.* Any appropriate mammalian species may be used. Examples of commonly used rodent species are rats, mice, and hamsters.

(ii) *Age.* Healthy young adult animals should be used.

(iii) *Number and sex.* At least five female and five male animals per experimental and control group should be used. Thus, 10 animals would be sacrificed per time per group treated with the test compound if several test times after treatment are included in the experimental schedule. The use of a single sex or different number of animals should be justified.

(iv) *Assignment to groups.* Animals should be randomized and assigned to treatment and control groups.

(4) *Control groups*—(1) *Concurrent controls.* Concurrent positive and negative (vehicle) controls should be included in the assay.

(ii) *Positive controls.* A single dose positive control showing a significant response at any one time point is adequate. A compound known to produce chromosomal aberrations in vivo should be employed as the positive control.

(5) *Test chemicals*—(i) *Vehicle.* When possible, test chemicals should be dissolved in isotonic saline or distilled water. Water insoluble chemicals may be dissolved or suspended in appropriate vehicles. The vehicles used should neither interfere with the test chemical nor produce toxic effects. Fresh preparations of the test compound should be employed.

(ii) *Dose levels.* For an initial assessment, one dose of the test substance may be used, the dose being the maximum tolerated dose or that producing some indication of cytotoxicity (e.g., partial inhibition of mitosis). Additioinal dose levels may be used. For determintation of dose-response, at least three dose levels should be used.

(iii) *Route of administration.* The usual routes are oral or by intraperitoneal injection. Other routes may be appropriate.

(iv) *Treatment schedule.* In general, test substances should be administered once only. However, based on toxicological information a repeated treatment schedule may be employed.

(e) *Test performance*—(1) *Generally the test may be performed in two assays.* (i) Animals are treated with the test substance once at the selected dose(s). Samples are taken at three times after treatment. For rodents, the central sampling interval is 24 hours. Since cell cycle kinetics can be influenced by the test substance, one earlier and one later sampling interval adequately spaced within the range of 6 to 48 hours should be applied. Where the additional dose levels are tested in a subsequent experiment, samples should be taken at the predetermined most sensitive interval or, if this is not established, at the central sampling time.

(ii) If a repeated treatment schedule is used at the selected dose(s), samples should be taken 6 and 24 hours after the last treatment; other sampling times may be used if justified. Where the additional dose levels are tested in a subsequent experiment, samples should be taken at the predetermined most sensitive interval or, if this is not established, at 6 hours after the last treatment.

(2) *Administration of spindle inhibitor.* Prior to sacrifice, animals should be injected IP with an appropriate dose of a spindle inhibitor (e.g., colchicine or Colcemid®) to arrest cells in c-metaphase.

(3) *Preparation of slides.* Immediately after sacrifice, the bone marrow should be obtained, exposed to hypotonic solution, and fixed. The cells should then be spread on slides and stained. Chromosome preparations should be made following standard procedures.

(4) *Analysis.* The number of cells to be analysed per animal should be based upon the number of animals used, the negative control frequency, the predetermined sensitivity and the power chosen for the test. Slides should be coded before microscopic analysis.

(f) *Data and report*—(1) *Treatment of results.* Data should be presented in tabular form for both cells and animals. Different types of structural chromosomal aberrations should be listed with their numbers and a mean frequency per cell for each animal in all treated and control groups. Gaps (achromatic lesions) should be recorded separately and not included in the total abberration frequency. Differences among animals within each group should be considered before making comparisons between treated and control groups.

(2) *Statistical evaluation.* Data should be evaluated by appropriate statistical methods.

(3) *Interpretation of results.* (i) There are several criteria for determining a positive result, one of which is a statistically significant dose-related increase in the number of structual chromosomal aberrations or abnormal metaphase figures. Another criterion may be based upon detection of a reproducible and statistically significant positive response for a least one of the test points.

(ii) A test substance which does not produce either a statistically significant dose-related increase in the number of chromosomal aberrations or abnormal metaphase figures or a statistically significant and reproducible positive response at any one of the test points is considered nonmutagenic in this system.

(iii) Both biological and statistical significance should be considered together in the evaluation.

(4) *Test evaluation.* (i) Positive results in the *in vivo* bone marrow cytogenetics assay indicate that under the test conditions the test substance induces chromosomal aberrations in the bone marrow of the test species.

(ii) Negative results indicate that under the test conditions, the test substance does not induce chromosomal aberrations in the bone marrow of the test species.

(5) *Test report.* In addition to the reporting recommendations as specified under 40 CFR Part 792, Subpart J the following specific information should be reported:

(i) Species, strain, age, weight, number and sex of animals in each treatment and control group.

(ii) Test chemical vehicle, dose levels used, rationale for dose selection.

(iii) Route of administration, treatment and sampling schedules, toxicity data, negative and positive controls.

(iv) Identity of spindle-inhibitor, its concentration and duration of treatment.

(v) Details of the protocol used for chromosome preparation, number of cells scored per animal, type and number of aberrations given separately for each treated and control animal.

(vi) Mitotic index, where applicable.

(vii) Criteria for scoring aberrations.

(viii) Number and frequency of aberrant cells per animal in each treatment and control groups.

(ix) Total number of aberrations per group.

(x) Number of cells with aberrations per group.

(xi) Dose-response relationship, if applicable.

(g) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Adler, I.D., Ramarao, G., Epstein, S.S. "In vivo cytogenetic effects of trimethyl-phosphate and of TEPA on bone marrow cells of male rats," *Mutation Research,* 13:263–273 (1971).

(2) Evans, H.J. "Cytological methods for detecting chemical mutagens," *Chemical Mutagens: Principles and Methods for Their Detection,* Vol. 4. Ed. A. Hollaender (New York and London: Plenum Press, 1976) pp. 1–29.

(3) Kilian, J.D., Moreland, F.E. Benge, M.C., Legator, M.S., Whorton, E.B. Jr. "A collaborative study to measure intralaboratory variation with the in vivo bone morrow metaphase procedure," *Handbook of mutagenicity test procedures.* Eds. Kilby, B.J., Legator, M. Nichols, C., Ramel, D., (Amsterdam: Elsevier/North Holland Biomedical Press, 1977) 243–260.

(4) Preston, J.R., Au, W., Bender, M.A., Brewen, J.G., Carrano, A.V. Heddle, J.A., McFee, A.F., Wolff, S., Wassom, J. "Mammalian in vivo and vitro cytogenetics assays: report of the Gene-Tox Program," *Mutation Research, 87:143–168 (1981).*

§ 798.5395 In vivo mammalian bone marrow cytogenetics tests: Micronucleus assay.

(a) *Purpose.* The micronucleus test is a mammalian *in vivo* test which detects damage of the chromosomes or mitotic apparatus by chemicals. Polychromatic erythrocytes in the bone marrow of rodents are used in this assay. When the erythroblast develops into an erythrocyte the main nucleus is extruded and may leave a micronucleus in the cytoplasm. The visualization of micronuclei is facilitated in these cells because they lack a nucleus. Micronuclei form under normal conditions. The assay is based on an increase in the frequency of micronucleated polychromatic erythrocytes in bone marrow of treated animals.

(b) *Definition.* Micronuclei are small particles consisting of acentric fragments of chromosomes or entire chromosomes, which lag behind at anaphase of cell division. After telophase, these fragments may not be included in the nuclei of daughter cells and form single or multiple micronuclei in the cytoplasm.

(c) *Reference substances.* Not applicable.

(d) *Test method*—(1) *Principle.* Animals are exposed to test substance by an appropriate route. They are sacrificed, the bone marrow extracted and smear preparations made and stained. Polychromatic erythrocytes are scored for micronuclei under the microscope.

(2) *Description.* The method employs bone marrow of laboratory mammals which are exposed to test substances.

(3) *Animal selection*—(i) *Species and strain.* Mice are recommended. However, any appropriate mammalian species may be used.

(ii) *Age.* Healthy young adult animals should be used.

(iii) *Number and sex.* At least five female and five male animals per experimental and control group should be used. Thus, 10 animals would be sacrificed per time per group if several test times after treatment were included in the experimental schedule. The use of a single sex or a different number of animals should be justified.

(iv) *Assignment to groups.* Animals should be randomized and assigned to treatment and control groups.

(4) *Control groups*—(i) *Concurrent controls.* Concurrent positive and negative (vehicle) controls should be included in each assay.

(ii) *Positive controls.* A compound known to produce micronuclei *in vivo*

should be employed as the positive control.

(5) *Test chemicals*—(i) *Vehicle.* Solid and liquid test substances should be dissolved or suspended in distilled water or isotonic saline. Water insoluble chemicals may be dissolved or suspended in appropriate vehicles. The vehicle used should neither interfere with the test compound nor produce toxic effects. Fresh preparations of the test compound should be employed.

(ii) *Dose levels.* For an initial assessment, one dose of the test substance may be used, the dose being the maximum tolerated dose or that producing some indication of cytotoxicity, e.g. a change in the ratio of polychromatic to normochromatic erythrocytes. Additional dose levels may be used. For determination of dose response, at least three does levels should be used.

(iii) *Route of administration.* The usual routes of administration are IP or oral. Other routes may be appropriate.

(iv) *Treatment schedule.* Test substances should generally be administered only once. However, based upon toxicological information a repeated treatment schedule may be employed.

(e) *Test performance*—(1) *Treatment and sampling times.* (i) Animals should be treated with the test substance once at the highest tolerated dose. Sampling times should coincide with the maximum response of the assay which varies with the test substance. Therefore, using the highest dose, bone marrow samples should be taken at least three times, starting not earlier than 12 hours after treatment, with appropriate intervals following the first sample but not extending beyond 72 hours. When other doses are used sampling should be at the maximum sensitive period, or, if that is not known, approximately 24 hours after treatment. Other appropriate sampling times may be used in addition.

(ii) If a repeated treatment schedule is used, samples should be taken at least three times, starting not earlier than 12 hours after the last treatment and at appropriate intervals following the first sample, but not extending beyond 72 hours.

(iii) Bone marrow should be obtained immediately after sacrifice. Cells should be prepared, put on slides, spread as a smear and stained.

(2) *Analysis.* Slides should be coded before microscopic analysis. At least 1000 polychromatic erythrocytes per animal should be scored for the incidence of micronuclei. The ratio of polychromatic to normochromatic erythrocytes should be determined for each animal by counting a total of 1000 erythrocytes. Additional information may be obtained by scoring normochromatic erythrocytes for micronuclei.

(f) *Data and report*—(1) *Treatment of results.* Criteria for scoring micronuclei should be given. Individual data should be presented in a tabular form including positive and negative (vehicle) controls and experimental groups. The number of polychromatic erythrocytes scored, the number of micronucleated polychromatic erythrocytes, the percentage of micronucleated cells, the number of micronucleated normochromatic erythrocytes, and, if applicable, the percentage of micronucleated erythrocytes and the ratio of normochromatic to polychromatic erythrocytes should be listed separately for each experimental and control animal. Absolute numbers should be included if percentages are reported.

(2) *Statistical evaluation.* Data should be evaluated by appropriate statistical methods.

(3) *Interpretation of results.* (i) There are several criteria for determining a positive response, one of which is a statistically significant dose–related increase in the number of micronucleated polychromatic erythrocytes. Another criterion may be based upon detection of a reproducible and statistically significant positive response for at least one of the test substance concentrations.

(ii) A test substance which does not produce either a statistically significant dose-related increase in the number of micronucleated polychromatic erythrocytes or a statistically significant and reproducible positive response at any one of the test points is considered nonmutagenic in this system.

(iii) Both biological and statistical significance should be considered together in the evaluation.

(4) *Test evaluation.* (i) The results of the micronucleus test provide information on the ability of a chemical to induce micronuclei in polychromatic erythrocytes of the test species under the conditions of the test. This damage may have been the result of chromosomal damage or damage to the mitotic apparatus.

(ii) Negative results indicate that under the test conditions the test substance does not produce micronuclei in the bone marrow of the test species.

(5) *Test report.* In addition to the reporting recommendations as specified under 40 CFR Part 792, Subpart J, the following specific information should be reported:

(i) Species, strain, age, weight, number and sex of animals in each treatment and control group.

(ii) Test chemical vehicle, dose levels used, rationale for dose selection.

(iii) Rationale for and description of treatment and sampling schedules, toxicity data, negative and positive controls.

(iv) Details of the protocol used for slide preparation.

(v) Criteria for identifying micronucleated erythrocytes.

(vi) Dose-response relationship, if applicable.

(g) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Cihak, R. "Evaluation of benzidine by the micronucleus test," *Mutation Research,* 67: 383–384 (1979).

(2) Cole , R.J., Taylor, N., Cole, J., Arlett, C.F. "Short-term tests for transplacentally active carcinogens. 1. Micronucleus formation in fetal and maternal mouse erythroblasts," *Mutation Research,* 80: 141–157 (1981).

(3) Kliesch, U., Danford, N., Adler, I.D. "Micronucleus test and bone-marrow chromosome analysis. A comparison of 2 methods in vivo for evaluating chemically induced chromosomal alterations," *Mutation Research,* 80: 321–332 (1981).

(4) Matter, B., Schmid, W. "Trenimon-induced chromosomal damage in bone-marrow cells of six mammalian species, evaluated by the micronucleus test," *Mutation Research,* 12: 417–425 (1971).

(5) Schmid, W. "The micronucleus test," *Mutation Research, 31:9–15 (1975).*

(6) Schmid, W. "The micronucleus test for cytogenetic analysis," *Chemical Mutagens, Principles and Methods for their Detection.* Vol. 4 Hollaender A. (Ed. A ed. (New York and London: Plenum Press, (1976) pp. 31–53.

§ 798.5450 Rodent dominant lethal assay.

(a) *Purpose.* Dominant lethal (DL) effects cause embryonic or fetal death. Induction of a dominant lethal event after exposure to a chemical substance indicates that the substance has affected germinal tissue of the test species. Dominant lethals are generally accepted to be the result of chromosomal damage (structural and numerical anomalies) but gene mutations and toxic effects cannot be excluded.

(b) *Definition.* A dominant lethal mutation is one occurring in a germ cell which does not cause dysfunction of the gamete, but which is lethal to the fertilized egg or developing embryo.

(c) *Reference substances.* These may include, but need not be limited to,

triethylenemelamine, cyclophosphamide or ethyl methanesulfonate.

(d) *Test method*—(1) *Principle.* Generally, male animals are exposed to the test substance and mated to untreated virgin females. The various germ cell stages can be tested separately by the use of sequential mating intervals. The females are sacrificed after an appropriate period of time and the contents of the uteri are examined to determine the numbers of implants and live and dead embryos. The calculation of the dominant lethal effect is based on comparison of the live implants per female in the treated group to the live implants per female in the control group. The increase of dead implants per female in the treated group over the dead implants per female in the control group reflects the post-implantation loss. The post-implantation loss is calculated by determining the ratio of dead to total implants from the treated group compared to the ratio of dead to total implants from the control group. Pre-implantation loss can be estimated on the basis of corpora lutea counts or by comparing the total implants per female in treated and control groups.

(2) *Description.* (i) Several treatment schedules are available. The most widely used requires single administration of the test substance. Other treatment schedules, such as treatment on five consecutive days, may be used if justified by the investigator.

(ii) Individual males are mated sequentially to virgin females at appropriate intervals. The number of matings following treatment is governed by the treatment schedule and should ensure that germ cell maturation is adequately covered. Females are sacrificed in the second half of pregnancy and the uterine contents examined to determine the total number of implants and the number of live and dead embryos.

(3) *Animal selection*—(i) *Species.* Rats or mice are generally used as the test species. Strains with low background dominant lethality, high pregnancy frequency and high implant numbers are recommended.

(ii) *Age.* Healthy, sexually mature animals should be used.

(iii) *Number.* An adequate number of animals should be used taking into account the spontaneous variation of the biological characteristics being evaluated. The number chosen should be based on the predetermined sensitivity of detection and power of significance. For example, in a typical experiment, the number of males in each group should be sufficient to provide between 30 and 50 pregnant females per mating interval.

(iv) *Assignment to groups.* Animals should be randomized and assigned to treatment and control groups.

(4) *Control groups*—(i) *Concurrent controls.* Generally concurrent positive and negative (vehicle) controls should be included in each experiment. When acceptable positive control results are available from experiments conducted recently (within the last 12 months) in the same laboratory these results can be used instead of a concurrent positive control.

(ii) *Positive controls.* Positive control substances should be used at a dose which demonstrates the test sensitivity.

(5) *Test chemicals*—(i) *Vehicle.* When possible, test substances should be dissolved or suspended in isotonic saline or distilled water. Water insoluble chemicals may be dissolved or suspended in appropriate vehicles. The vehicle used should neither interfere with the test chemical nor produce toxic effects. Fresh preparations of the test chemical should be employed.

(ii) *Dose levels.* Normally, three dose levels should be used. The highest dose should produce signs of toxicity (e.g., slightly reduced fertility). However, in an initial assessment of dominant lethality a single high dose may be sufficient. Nontoxic substances should be tested at 5 g/kg or, if this is not practicable, then at the highest dose attainable.

(iii) *Route of administration.* The usual routes of administration are oral or by IP injection. Other routes may be appropriate.

(e) *Test performance.* (1) Individual males are mated sequentially at appropriate predetermined intervals to one or two virgin females. Females should be left with the males for at least the duration of one estrus cycle or alternatively until mating has occurred as determined by the presence of sperm in the vagina or by the presence of a vaginal plug.

(2) The number of matings following treatment should be governed by the treatment schedule and should ensure that germ cell maturation is adequately covered.

(3) Females should be sacrificed in the second half of pregnancy and uterine contents examined to determine the number of implants and live and dead embryos. The ovaries may be examined to determine the number of corpora lutea.

(f) *Data and report*—(1) *Treatment of results.* Data should be tabulated to show the number of males, the number of pregnant females, and the number of nonpregnant females. Results of each mating, including the identity of each male and female, should be reported individually. For each female, dose level and week of mating, the frequencies of live implants and of dead implants should be enumerated. If the data are recorded as early and late deaths, the tables should make that clear. If pre-implantation loss is estimated, it should be reported. Pre-implantation loss can be calculated as the difference between the number of corpora lutea and the number of implants or as a reduction in the average number of implants per female in comparison with control matings. Where pre-implantation loss is estimated it should be reported.

(2) *Statistical evaluation.* Data should be evaluated by appropriate statistical methods. Differences among animals within the control and treatment groups should be considered before making comparisons between treated and control groups.

(3) *Interpretation of results.* (i) There are several criteria for determining a positive result, one of which is a statistically significant dose-related increase in the number of dominant lethals. Another criterion may be based upon detection of a reproducible and statistically significant positive response for at least one of the test points.

(ii) A test substance which does not produce either a statistically significant dose-related increase in the number of dominant lethals or a statistically significant and reproducible positive response at any one of the test points is considered nonmutagenic in this system.

(iii) Both biological and statistical significance should be considered together in the evaluation.

(4) *Test evaluation.* (i) A positive DL assay suggests that under the test conditions the test substance may be genotoxic in the germ cells of the treated sex of the test species.

(ii) A negative result suggests that under the conditions of the test the test substance may not be genotoxic in the germ cells of the treated sex of the test species.

(5) *Test Report.* In addition to the reporting recommendations as specified under 40 CFR Part 792, Subpart J the following specific information should be reported:

(i) Species, strain, age and weights of animals used, number of animals of each sex in experimental and control groups.

(ii) Test substance, vehicle used, dose levels and rationale for dosage selection, negative (vehicle) and positive controls, experimental observations, including signs of toxicity.

(iii) Route and duration of exposure.

(iv) Mating schedule.

(v) Methods used to determine that mating has occurred (where applicable).

(vi) Time of sacrifice.

(vii) Criteria for scoring dominant lethals.

(viii) Dose-response relationship, if applicable.

(g) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Brewen, J.G., Payne, H.S., Jones, K.P., Preston, R.J. "Studies on chemically induced dominant lethality. I. The cytogenetic basis of MMS-induced dominant lethality in post-meiotic germ cells" *Mutation Research*, 33:239–250 (1975).

(2) Ehling, U.H., Machemer, L., Buselmaier, E., Dycka, D., Frohberg, H., Kratochvilova, J., Lang, R., Lorke, D., Muller, D., Pheh, J., Rohrborn, G., Roll, R., Schulze-Schencking, M., Wiemann, H. "Standard protocol for the dominant lethal test on male mice. Set up by the Work Group "Dominant lethal mutations of the ad hoc Committee Chemogenetics," *Archives of Toxicology*, 39:173–185 (1978).

§ 798.5460 Rodent heritable translocation assays.

(a) *Purpose.* This test detects transmitted chromosomal damage which manifests as balanced reciprocal translocations in progeny descended from parental males treated with chemical mutagens.

(b) *Definitions.* (1) A heritable translocation is one in which distal segments of nonhomologous chromosomes are involved in a reciprocal exchange.

(2) Diakinesis and metaphase I are stages of meiotic prophase scored cytologically for the presence of multivalent chromosome association characteristic of translocation carriers.

(c) *Reference substances.* Not applicable.

(d) *Test method*—(1) *Principle.* When a balanced reciprocal translocation is induced in a parental male germ cell, the resulting progeny is translocation heterozygote.

(i) *Basis for fertility screening.* Male translocation heterozygotes may be completely sterile. This class consists of two types of translocations:

(A) Translocations between non-homologous chromosomes in which at least one of the breaks occurs close to one end of a chromosome.

(B) Those that carry multiple translocations. The majority of male translocation heterozygotes are semisterile—they carry one or (rarely) two translocations. The degree of semisterility is dependent upon the proportions of balanced and unbalanced (duplication-deficiency) gametes produced in the ejaculate as a function of meiotic segregation. Balanced and unbalanced sperm are equally capable of fertilizing an egg. Balanced sperm lead to viable progeny. Unbalanced sperm result in early embryonic lethality.

(ii) *Basis for cytological screening.* The great majority of male translocation heterozygotes can be identified cytologically through analysis of diakinesis metaphase I spermatocytes. Translocation heterozygotes are characterized by the presence of multivalent chromosome association such as a ring or chain of four chromosomes held together by chiasmata in paired homologous regions. Some translocation carriers can be identified by the presence of extra long and/or extra short chromosomes in spermatogonial and somatic cell metaphase preparations.

(2) *Description.* Essentially, two methods have been used to screen for translocation heterozygosity; one method uses a mating sequence to identify sterile and semisterile males followed by cytological examination of suspect male individuals; the other method deletes the mating sequence altogether and all F_1 male progeny are examined cytologically for presence of translocation. In the former approach, the mating sequence serves as a screen which eliminates most fully fertile animals for cytological confirmation as translocation heterozygotes.

(3) *Animal selection*—(i) *Species.* The mouse is the species generally used, and is recommended.

(ii) *Age.* Healthy sexually mature animals should be used.

(iii) *Number.* (A) The number of male animals necessary is determined by the following factors:

(*1*) The use of either historical or concurrent controls.

(*2*) The power of the test.

(*3*) The minimal rate of induction required.

(*4*) Whether positive controls are used.

(*5*) The level of significance desired.

(B) [Reserved]

(iv) *Assignment to groups.* Animals should be randomized and assigned to treatment and control groups.

(4) *Control groups*—(i) *Concurrent controls.* No concurrent positive or negative (vehicle) controls are recommended as routine parts of the heritable translocation assay. However, investigators not experienced in performing translocation testing should include a substance known to produce translocations in the assay as a positive control reference chemical.

(ii) *Historical controls.* At the present time, historical control data must be used in tests for significance. When statistically reliable historical controls are not available, negative (vehicle) controls should be used.

(5) *Test chemicals*—(i) *Vehicle.* Solid and liquid test substances should be dissolved or suspended in distilled water or isotonic saline. Water insoluble chemicals may be dissolved or suspended in appropriate vehicles. The vehicle used should neither interfere with the test chemical nor produce toxic effects. Fresh preparations of the test chemical should be employed.

(ii) *Dose levels.* At least two dose levels should be used. The highest dose level should result in toxic effects but should not produce an incidence of fatalities which would prevent a meaningful evaluation.

(iii) *Route of administration.* Acceptable routes of administration include oral, inhalation, admixture with food or water, and IP or IV injection.

(e) *Test performance*—(1) *Treatment and mating.* The animals should be dosed with the test substance 7 days/week over a period of 35 days. After treatment, each male should be caged with 2 untreated females for a period of 1 week. At the end of 1 week, females should be separated from males and caged individually. When females give birth, the day of birth, litter size and sex of progeny are recorded. All male progeny should be weaned and all female progeny should be discarded.

(2) *Testing for translocation heterozygosity.* When males are sexually mature, testing for translocation heterozygosity should begin. One of two methods should be used; the first method involves mating, determining those F_1 progeny which are sterile or semisterile and subsequent cytological analysis of suspect progeny; the other method does not involve mating and determining sterility or semisterility; all progeny are examined cytologically.

(i) *Determination of sterility or semisterility*—(A) *Conventional method.* Females are mated, usually three females for each male, and each female is killed at midpregnancy. Living and dead implantations are counted. Criteria for determining normal and semisterile males are usually established for each new strain because the number of dead implantations varies considerably among strains.

(B) *Sequential method.* Males to be tested are caged individually with females and the majority of the

presumably normal males are identified on the basis of a predetermined size of 1 or 2 litters. Breeding pens are examined daily on weekdays beginning 18 days after pairing. Young are discarded immediately after they are scored. Males that sire a litter whose size is the same as or greater than the minimum set for a translocation-free condition are discarded with their litter. If the litter size is smaller than the predetermined number, a second litter is produced with the same rule applying. Males that cannot be classified as normal after production of a second litter are tested further by the conventional method or by cytological confirmation of translocation.

(ii) *Cytological analysis.* For cytological analysis of suspected semisteriles, the air-drying technique is used. Observation of at least 2 diakinesis-metaphase 1 cells with mutivalent association constitutes the required evidence for the presence of a translocation. Sterile males are examined by one of two methods, those with testes of normal size and sperm in the epididymis are examined by the same techniques used for semisteriles. Animals with small testes are examined by squash preparations or, alternatively, by examination of mitotic metaphase preparations. If squash preparations do not yield diakinesis-metaphase 1 cells, analysis of spermatogonia or bone marrow for the presence of unusually long or short chromosomes should be performed.

(f) *Data and report*—(1) *Treatment of results.* (i) Data should be presented in tabular form and should include the number of animals at risk, the germ cell stage treated, the number of partial steriles and semisteriles (if the fertility test is used), the number of cytogenetically confirmed translocation heterozygotes (if the fertility test is used, report the number of confirmed steriles and confirmed partial steriles), the translocation rate, and either the standard error of the rate or the upper 95 percent confidence limit on the rate.

(ii) These data should be presented for both treated and control groups. Historical or concurrent controls should be specified, as well as the randomization procedure used for concurrent controls.

(2) *Statistical evaluation.* Data should be evaluated by appropriate statistical methods.

(3) *Interpretation of results.* (i) There are several criteria for determining a positive result, one of which is a statistically significant dose-related increase in the number of heritable translocations. Another criterion may be based upon detection of a reproducible and statistically significant positive response for at least one of the test points.

(ii) A test substance which does not produce either a statistically significant dose-related increase in the number of heritable translocations or a statistically significant and reproducible positive response at any one of the test points is considered nonmutagenic in this system.

(iii) Both biological and statistical significance should be considered together in the evaluation.

(4) *Test evaluation.* (i) Positive results in the heritable translocation assay indicate that under the test conditions the test substance causes heritable chromosomal damage in the test species.

(ii) Negative results indicate that under the test conditions the test substance does not cause heritable chromosomal damage in the test species.

(5) *Test report.* In addition to the reporting recommendations as specified under 40 CFR Part 792, Subpart J, the following specific information should be reported:

(i) Species, strain, age, weight and number of animals of each sex in each group.

(ii) Test chemical vehicle, route and schedule of administration, toxicity data.

(iii) Dosing regimen, doses tested and rationale for dosage selection.

(iv) Mating schedule, number of females mated to each male.

(v) The use of historical or concurrent controls.

(vi) Screening procedure including the decision criteria used and the method by which they were determined.

(vii) Dose-response relationship, if applicable.

(g) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Generoso, W.M., Bishop, J.B., Goslee, D.G., Newell, G.W., Sheu, G–J, von Halle, E. "Heritable translocation test in mice," *Mutation Research,* 76:191–215 (1980).

(2) [Reserved]

§ 798.5500 Differential growth inhibition of repair proficient and repair deficient bacteria: "Bacterial DNA damage or repair tests."

(a) *Purpose.* Bacterial DNA damage or repair tests measure DNA damage which is expressed as differential cell killing or growth inhibition of repair deficient bacteria in a set of repair proficient and deficient strains. These tests do not measure mutagenic events *per se.* They are used as an indication of the interaction of a chemical with genetic material implying the potential for genotoxicity.

(b) *Definition.* Test for differential growth inhibition of repair proficient and repair deficient bacteria measure differences in chemically induced cell killing between wild-type strains with full repair capacity and mutant strains deficient in one or more of the enzymes which govern repair of damaged DNA.

(c) *Reference substances.* These may include, but need not be limited to, chloramphenicol or methyl methanesulfonate.

(d) *Test method*—(1) *Principle.* The tests detect agents that interact with cellular DNA to produce growth inhibition or killing. This interaction is recognized by specific cellular repair systems. The assays are based upon the use of paired bacterial strains that differ by the presence of absence of specific DNA repair genes. The response is expressed in the preferential inhibition of growth or the preferential killing of the DNA repair deficient strain since it is incapable of removing certain chemical lesions from its DNA.

(2) *Description.* Several methods for performing the test have been described. Those described here are:

(i) Tests performed on solid medium (diffusion tests).

(ii) Tests performed in liquid culture (suspension tests).

(3) *Strain selection*—(i) *Designation.* At the present time, *Escherichia coli polA* (W3110/p3478) or *Bacillus subtilis rec* (H17/M45) pairs are recommended. Other pairs may be utilized when appropriate.

(ii) *Preparation and storage.* Stock culture preparation and storage, growth requirements, method of strain identification and demonstration of appropriate phenotypic requirements should be performed using good microbiological techniques and should be documented.

(4) *Bacterial growth.* Good microbiological techniques should be used to grow fresh cultures of bacteria. The phase of growth and cell density should be documented and should be adequate for the experimental design.

(5) *Metabolic activation.* Bacteria should be exposed to the test substance both in the presence and absence of an appropriate metabolic activation system. The most commonly used system is a cofactor supplemented postmitochondrial fraction prepared from the livers of rodents treated with enzyme inducing agents. The use of other species, tissues or techniques may also be appropriate.

(6) *Control groups*—(i) *Concurrent controls.* Concurrent positive, negative,

and vehicle controls should be included in each assay.

(ii) *Negative controls.* The negative control should show nonpreferential growth inhibition (i.e., should affect both strains equally). Chloramphenicol is an example of a negative control.

(iii) *Genotype specific controls.* Examples of genotype specific positive controls are methyl methanesulfonate for *polA* strains and mitomycin C for *rec* strains.

(iv) *Positive controls to ensure the efficacy of the activation system.* The positive control reference substance for tests including a metabolic activation system should be selected on the basis of the type of activation system used in the test.

(v) *Other positive controls.* Other positive control reference substances may be used.

(2) *Test chemicals*—(i) *Vehicle.* Test chemicals and positive and negative control reference substances should be dissolved in an appropriate vehicle and then further diluted in vehicle for use in the assay.

(ii) *Exposure concentrations.* The test should initially be performed over a broad range of concentrations. Among the criteria to be taken into consideration for determining the upper limits of test chemical concentration are cytotoxicity and solubility. Cytotoxicity of the test chemical may be altered in the presence of metabolic activation systems. For freely soluble nontoxic chemicals, the upper test chemical concentration should be determined on a case by case basis. Because results are expressed as diameters of zones of growth inhibition in the diffusion test, it is most important that the amounts of chemical on the disc (or in the wells) are exact replicates. When appropriate, a positive response should be confirmed by testing over a narrow range of concentrations.

(e) *Test performance*—(1) *Diffusion assay*—(i) *Disc diffusion assays.* Disc diffusion assays may be performed in two ways:

(A) A single strain of bacteria may be added to an agar overlay or spread on the surface of the agar and the test chemical placed on a filter disc on the surface of the agar or;

(B) DNA repair proficient and DNA repair deficient bacteria may be streaked in a line on the surface of the agar of the same plate and a disc saturated with test chemical placed on the surface of the agar in contact with the streaks.

(ii) *Well diffusion assays.* In well diffusion assays, bacteria may be either added to the agar overlay or spread onto the surface of the agar. A solution of the test chemical is then placed into a well in the agar.

(2) *Suspension assays.* (i) A bacterial suspension may be exposed to the test chemical and the number of surviving bacteria determined (as colony-forming units) either as a function of time of treatment or as a function of the concentration of test agent.

(ii) Nonturbid suspensions of bacteria may be exposed to serial dilutions of the test agent and a minimal inhibitory concentration for each strain determined, as evidenced by the presence or absence of visible growth after a period of incubation.

(iii) Paired bacterial suspensions (usually with some initial turbidity) may be treated with a single dose of the chemical. Positive results are indicated by a differential inhibition in the rate of increase of turbidity of the paired cultures.

(3) *Number of cultures.* When using a plate diffusion procedure, at least two independent plates should be used at each dilution. In liquid suspension assays, at least two independent specimens for determination of the number of viable cells should be plated.

(4) *Incubation conditions.* All plates in a given test should be incubated for the same time period. This incubation period should be for 18 to 24 hrs at 37 °C.

(f) *Data and report*—(1) *Treatment of results*—(i) *Diffusion assays.* Results should be expressed in diameters of zones of growth inhibition in millimeters or as areas derived therefrom as mm^2. Dose-response data, if available, should be presented using the same units.

(ii) *Liquid suspension assays.* (A) Survival data can be presented as dose responses, preferably as percentage of survivors or fractional survival of each strain or as a relative survival (ratio) of the two strains.

(B) Results can also be expressed as the concentrations required to effect a predetermined survival rate (e.g., D_{37}, the dose permitting 37 percent survival). These data are derived from the survival curve. The concentration should be expressed as weight per volume, as moles, or as molarity.

(C) Similarly, results can be expressed as minimal inhibitory concentration or as minimal lethal dose. The former is determined by the absence of visible growth in liquid medium and the latter is determined by plating dilutions onto semisolid media.

(iii) In all tests, concentrations must be given as the final concentrations during the treatment. Raw data, prior to transformation, should be provided. These should include actual quantities measured, e.g., neat numbers. For measurement of diffusion, the diameters of the discs and/or well should be indicated and the measurements should indicate whether the diameter of the discs and/or well was subtracted. Moreover, mention should be made as to whether the test chemical gave a sharp, diffuse, or double-zone of growth inhibition. If it is the latter, the investigator should indicate whether the inner or the outer zone was measured.

(iv) Viability data should be given as the actual plate counts with an indication of the dilution used and the volume plated or as derived titers (cells per ml). Transformed data alone in the absence of experimental data are not acceptable (i.e, ratios, differences, survival fraction).

(2) *Statistical evaluation.* Data should be evaluated by appropriate statistical methods.

(3) *Interpretation of results.* (i) There are several criteria for determining a positive result, one of which is a statistically significant dose-related preferential inhibition or killing of the repair deficient strain. Another criterion may be based upon detection of a reproducible and statistically significant positive response for at least one of the test points.

(ii) A test substance which does not produce either a statistically significant dose-related preferential inhibition or killing of the repair deficient strain or a statistically significant and reproducible positive response at any one of the test points is considered not to interact with the genetic material of the organisms used in assay.

(iii) Both biological and statistical significance should be considered together in the evaluation.

(4) *Test evaluation.* DNA damage tests in bacteria do not measure DNA repair *per se* nor do they measure mutations. They measure DNA damage which is expressed as cell killing or growth inhibition. A positive result in a DNA damage test in the absence of a positive result in another system is difficult to evaluate in the absence of a better data base.

(5) *Test report.* In addition to the reporting recommendations as specified under 40 CFR Part 792, Subpart J the following specific information should be reported:

(i) Bacterial strains used.

(ii) Phase of bacterial cell growth at time of use in the assay.

(iii) Media composition.

(iv) Details of both the protocol used to prepare the metabolic activation system and its use in the assay.

(v) Treatment protocol, including doses used and rationale for dose selection, positive and negative controls.

(vi) Method used for determination of degree of cell kill.

(vii) Dose-response relationship, if applicable.

(g) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Ames, B.N., McCann, J., Yamasaki, E. "Methods for detecting carcinogens and mutagens with the *Salmonella*/mammalian-microsome mutagenicity test," *Mutation Research,* 31:347–364 (1975).

(2) Kada, T., Sadie, Y., Tutikawa, K. "In vitro and host-mediated "rec-assay" procedures for screening chemical mutagens; and phloxine, a mutagenic red dye detected," *Mutation Research,* 16:165–174 (1972).

(3) Leifer, Z., Kada, T., Mandel, M., Zeiger, E., Stafford, R., Rosenkranz, H.S. "An evaluation of bacterial DNA repair tests for predicting genotoxicity and carcinogenicity: a report of the U.S. EPA's Gene-Tox Program," *Mutation Research,* 87:211–297 (1981).

(4) Slater, E.E., Anderson, M.D., Rosenkranz, H.S. "Rapid detection of mutagens and carcinogens." *Cancer Research,* 31:970–973 (1971).

§ 798.5550 Unscheduled DNA synthesis in mammalian cells in culture.

(a) *Purpose.* Unscheduled DNA synthesis (UDS) in mammalian cells in culture measures the repair of DNA damage induced by a variety of agents including chemicals, radiation and viruses. UDS may be measured in both in vitro and *in vivo* systems.

(b) *Definition.* In this guideline, unscheduled DNA synthesis in mammalian cells in culture is defined as the incorporation of tritium labelled thymidine (^{3}H-TdR) into the DNA of cells which are

(c) *Reference substances.* These may include, but need not be limited to, 7,12-dimethylbenzanthracene, 2-acetylaminofluorene, 4-nitroquinoline oxide or N-dimethyl-nitrosamine.

(d) *Test method*— (1) *Principle.* Mammalian cells in culture, either primary cultures of rodent hepatocytes or established cell lines, are exposed to the test agent. Established cell lines are treated both with and without metabolic activation. UDS is measured by the uptake of ^{3}H-TdR into the DNA of non-S phase cells. Uptake may be determined by autoradiography or by liquid scintillation counting (LSC) of DNA from treated cells.

(2) *Description*—(i) *Autoradiography.* For autoradiography, coverslip cultures of cells are exposed to test chemical in medium containing ^{3}H-TdR. At the end of the treatment period, cells are fixed, dipped in autoradiographic emulsion, and exposed at 4 °C. At the end of the exposure period, cells are stained and labeled nuclei are counted either manually or with an electronic counter. Established cell lines should be treated both with and without metabolic activation.

(ii) *LSC determinations.* For LSC determinations of UDS, confluent cultures of cells are treated with test chemical both with and without metabolic activation. At the end of the exposure period, DNA is extracted from the treated cells. Total DNA content is determined and extent of ^{3}H–TdR incorporation is determined by scintillation counting.

(3) *Cells*—(i) *Type of cells used in the assay.* (A) A variety of cell lines or primary cell cultures, including human cells, may be used in the assay.

(B) Established cell lines should be checked for *Mycoplasma* contamination and may be periodically checked for karyotype stability.

(ii) *Cell growth and maintenance.* Appropriate culture media and incubation conditions (culture vessels CO_2 concentration), temperature and humidity should be used.

(4) *Metabolic activation.* (i) A metabolic activation system is not used with primary cultures of rodent hepatocytes.

(ii) Established cell lines should be exposed to test substance both in the presence and absence of an appropriate metabolic activation system.

(5) *Control groups.* Concurrent positive and negative (untreated and/or vehicle) controls both with and without metabolic activation as appropriate should be included in each experiment.

(6) *Test chemicals*—(i) *Vehicle.* Test chemicals and positive control reference substances may be prepared in culture media or dissolved or suspended in appropriate vehicles prior to treatment of the cells. Final concentration of the vehicle should not interfere with cell viability or growth rate.

(ii) *Exposure concentrations.* Multiple concentrations of test substance, based upon cytotoxicity and over a range adequate to define the response, should be used. For cytotoxic chemicals, the first dose to elicit a cytotoxic response in a preliminary assay should be the highest dose tested. Relatively insoluble compounds should be tested up to the limits of solubility. For freely soluble nontoxic chemicals, the upper test chemical concentration should be determined on a case by case basis.

(e) *Test performance*—(1) *Primary cultures of rodent hepatocytes.* Freshly isolated rodent hepatocytes should be treated with chemical in medium containing ^{3}H–TdR. At the end of the treatment period, cells should be drained of medium, rinsed, fixed, dried and attached to microscope slides. Slides should be dipped in autoradiographic emulsion, exposed at 4 °C. for an appropriate length of time, developed, stained and counted.

(2) *Established cell lines*—(i) *Autoradiographic techniques.* The techniques for treatment of established cell lines are the same as those for primary cultures of rodent hepatocytes except that cells must not enter S phase prior to treatment. Entry of cells into S phase may be blocked by several methods (e.g. by growth in medium deficient in arginine or low in serum or by treatment with chemical agents such as hydroxyurea). Tests should be done both in the presence and absence of a metabolic activation system.

(ii) *LSC measurement of UDS.* Prior to treatment with test agent, entry of cells into S phase should be blocked as described in paragraph (e)(2)(i) of this section. Cells should be exposed to the test chemical in medium containing ^{3}H-TdR. At the end of the incubation period, DNA should be extracted from the cells by hydrolysis with perchloroacetic acid or by other acceptable methods. One aliquot of DNA is used to determine total DNA content; a second aliquot is used to measure the extent of ^{3}H-TdR incorporation.

(3) *Acceptable background frequencies*—(i) *Autoradiographic determinations.* Net incorporation of ^{3}HTdR into the nucleus of solvent treated control cultures should be less than 1.

(ii) *LSC determinations.* Historical background incorporation rates of ^{3}H-TdR into untreated established cell lines should be established for each laboratory.

(4) *Number of cells counted.* A minimum of 50 cells per culture should be counted for autoradiographic UDS determinations. Slides should be coded before being counted. Several widely separated random fields should be counted on each slide. Cytoplasm adjacent to the nuclear areas should be counted to determine spontaneous background.

(5) *Number of cultures.* Six independent cultures at each concentration and control should be used in LSC UDS determinations.

(F) *Data and report*—(1) *Treatment of results*—(i) *Autoradiographic*

determinations. For autoradiographic determinations, once untransformed data are recorded, background counts should be subtracted to give the correct nuclear grain count. Values should be reported as net grains per nucleus. Mean, median and mode may be used to describe the distribution of net grains per nucleus.

(ii) *LSC determinations.* For LSC determinations, ^{3}H-TdR incorporation should be reported as dpm/μg DNA. Average dpm/μg DNA with standard deviation or standard error of the mean may be used to describe distribution of incorporation in these studies.

(2) *Statistical evaluation.* Data should be evaluated by appropriate statistical methods.

(3) *Interpretation of results.* (i) There are several criteria for determining a positive result, one of which is a statistically significant dose-related increase in the incorporation of ^{3}H-TdR into treated cells. Another criterion may be based upon detection of a reproducible and statistically significant positive response for a least one of the test points.

(ii) A test substance which does not produce either a statistically significant dose-related increase in the incorporation of ^{3}H-TdR into treated cells or a statistically significant and reproducible positive response at any one of the test points is considered not to induce UDS in the test system.

(iii) Both biological and statistical significance should be considered together in the evaluation.

(4) *Test evaluation.* (i) Positive results in the UDS assay indicate that under the test conditions the test substance may induce DNA damage in cultured mammalian somatic cells.

(ii) Negative results indicate that under the test conditions the test substance does not induce DNA damage in cultured mammalian somatic cells.

(5) *Test report.* In addition to the reporting recommendations as specified under 40 CFR Part 792, Subpart J the following specific information should be reported:

(i) Cells used, density and passage number at time of treatment, number of cell cultures.

(ii) Methods used for maintenance of cell cultures including medium, temperature and CO_2 concentration.

(iii) Test chemical vehicle, concentration and rationale for selection of concentrations used in the assay.

(iv) Details of both the protocol used preparation of the metabolic activation system and its use in the assay.

(v) Treatment protocol.

(vi) Positive and negative controls.

(vii) Protocol used for autoradiography.

(viii) Details of the method used to block entry of cells into S phase.

(ix) Details of the methods used for DNA extraction and determination of total DNA content in LSC determinations.

(x) Historical background incorporation rates of ^{3}H-TdR in untreated cell lines.

(xi) Dose-response relationship, if applicable.

(g) *References.* For additional background information on this test guideline, the following references should be consulted:

(1) Ames, B.N., McCann, J., Yamasaki, E. "Methods for detecting carcinogens and mutagens with the *Salmonella*/mammalian-microsome mutagenicity test," *Mutation Research,* 31:347–364 (1975).

(2) Rasmussen, R.E., Painter, R.B. "Radiation-stimulated DNA synthesis in cultured mammalian cells," *Journal of Cell Biology,* 29:11–19 (1966).

(3) Stich, H.F., San, P.P.S., Lam, K.J., Koropatnick, D.J., Lo, L.W., Laishes, B.A. "DNA fragmentation and DNA repair as an in vitro and in vivo assay for chemical procarcinogens, carcinogens and carcinogenic nitrosation products," *Screening tests in chemical carcinogenesis.* Eds. Bartsch, H., Tomatis, L., (Lyon: IARC Scientific Publications, No. 12, 1976) pp. 617–636.

(4) Williams, G.M. "Carcinogen-induced DNA repair in primary rat liver cell cultures: a possible screen for chemical carcinogens," *Cancer Letters,* 1:231–236 (1976).

(5) Williams, G.M. "Detection of chemical carcinogens by unscheduled DNA synthesis in rat liver primary cell cultures," *Cancer Research,* 37:1845–1851 (1977).

§ 798.5575 Mitotic gene conversion in Saccharomyces cerevisiae.

(a) *Purpose.* The mitotic gene conversion assay in the yeast, *Saccharomyces cerevisiae,* measures the conversion of differentially inactive alleles to wild-type alleles by mutagenic agents. Heteroallelic diploid yeast strains carry two different inactive alleles of the same gene locus. The presence of these alleles causes a nutritional requirement, e.g., these heteroallelic diploids grow only in medium supplemented with a specific nutrient such as tryptophan. When gene conversion occurs, a fully active wild-type phenotype is produced from these inactive alleles through intragenic recombination. These wild-type colonies grow on a medium lacking the specific nutritional requirement (selective medium).

(b) *Definitions.* (1) Mitotic gene conversion is detected by the change of inactive alleles of the same gene to wild-type alleles through intragenic recombination in mitotic cells.

(2) Heteroallelic diploids are diploid strains of yeast carrying two different, inactive alleles of the same gene locus causing a nutritional requirement.

(c) *Reference substances.* These may include but need not be limited to, hydrazine sulfate or 2-acetylaminofluorene.

(d) *Test method*—(1) *Principle.* The method is based on the fact that heteroallelic diploid yeast strains carry two inactive alleles of the same gene locus making them dependent on a specific nutritional requirement (e.g., tryptophan) for their survival. Treatment of such strains with mutagenic agents can cause conversion of these alleles back to the wild-type condition which allows growth on a medium lacking the required nutrient (selective medium).

(2) *Description.* Heteroallelic diploid strains such as D7, requiring a specific nutrient in the medium, are treated with test chemical with and without metabolic activation and plated on a selective medium lacking the required nutrient. The wild-type colonies that grow on the selective medium as a result of gene conversion are scored.

(3) *Strain selection*—(i) *Designation.* At the present time, *S. cerevisiae* strain D7 is recommended for use in this assay. The use of other strains may also be appropriate.

(ii) *Preparation and storage.* Stock culture preparation and storage, growth requirements, method of strain identification and demonstration of appropriate phenotypic requirements should be performed using good microbiological techniques and should be documented.

(iii) *Media.* YEP glucose medium enriched with the appropriate growth factors may be used for cell growth and maintenance. Other media may also be appropriate.

(4) *Selection of cultures.* Cells should be grown with aeration in liquid medium enriched with growth factors to early stationary phase. Cells should then be seeded on selective medium to determine the rate of spontaneous conversion. Cultures with a high rate of spontaneous conversion should be discarded.

(5) *Metabolic activation.* Cells should be exposed to test chemical both in the presence and absence of an appropriate metabolic activation system.

(6) *Control groups.* Concurrent positive and negative (untreated and/or vehicle) controls both with and without metabolic activation should be included in each experiment.

(7) *Test chemicals*—(i) *Vehicle.* Test chemicals and positive control reference substances should be dissolved in an appropriate vehicle and then further diluted in vehicle for use in the assay. Dimethylsulfoxide should be avoided as a vehicle.

(ii) *Exposure concentrations.* (A) The test should initially be performed over a broad range of concentrations. Among the criteria to be taken into consideration for determining the upper limits of test chemical concentration are cytotoxicity and solubility. Cytotoxicity of the test chemical may be altered in the presence of metabolic activation systems. For cytotoxic chemicals, the highest dose tested should not reduce survival to less than 10 percent of that seen in the untreated control cultures. Relatively insoluble chemicals should be tested up to the limits of solubility. For freely soluble nontoxic chemicals, the upper test chemical concentration should be determined on a case by case basis.

(B) When appropriate, a positive response should be confirmed by using a narrow range of concentrations.

(e) *Test performance*—(1) *Treatment.* Cultures should be treated in liquid suspension. Resting cells should be treated in buffer; growing cells should be treated in a synthetic medium. Cultures with low spontaneous convertant frequencies should be centrifuged, washed and resuspended in liquid at the appropriate density. Cells should be exposed to test chemical both in the presence and absence of a metabolic activation system. Independent tubes should be treated for each concentration. At the end of the treatment period, cells should be centrifuged, washed and resuspended in distilled water prior to plating on selective medium for convertant selection and on complete medium to determine survival. At the end of the incubation period, plates should be scored for survival and the presence of convertant colonies.

(2) *Number of cultures.* At least six individual plates per treatment concentration and control should be used.

(3) *Incubation conditions.* All plates in a given experiment should be incubated for the same time period. This incubation period may be from 4 to 6 days at 28 °C.

(f) *Data and report*—(1) *Treatment of results.* Individual plate counts for test substance and control should be presented for both convertants and survivors. The mean number of colonies per plate and standard deviation should also be presented. Data should be presented in tabular form indicating numbers of viable and convertant colonies scored, survival frequency and convertant frequencies for each treatment and control culture. Conversion frequencies should be expressed as number of convertants per number of survivors. Sufficient detail should be provided for verification of survival and convertant frequencies.

(2) *Statistical evaluation.* Data should be evaluated by appropriate statistical methods.

(3) *Interpretation of results.* (i) There are several criteria for determining a positive result, one of which is a statistically significant dose-related increase in the number of gene convertants. Another criterion may be based upon detection of a reproducible and statistically significant positive response for at least one of the test points.

(ii) A test substance which does not produce either a statistically significant dose-related increase in the number of gene conversions or a statistically significant and reproducible positive response at any one of the test points is considered nonmutagenic in this system.

(iii) Both biological and statistical significance should be considered together in the evaluation.

(4) *Test evaluation.* (i) Positive results in this assay indicate that under the test conditions the test chemical causes mitotic gene conversion in the yeast *S. cerevisiae.*

(ii) Negative results indicate that under the test conditions the test chemical does not cause mitotic gene conversion in *S. cerevisiae.*

(5) *Test report.* In addition to the reporting recommendations as specified under 40 CFR Part 792, Subpart J, the following specific information should be reported:

(i) Strain of organism used in the assay.

(ii) Test chemical vehicle, doses used and rationale for dosage selection.

(iii) Method used to select cultures.

(iv) Treatment protocol including cell density at treatment and length of exposure to test substance.

(v) Details of both the protocol used to prepare the metabolic activation system and its use in the assay.

(vi) Incubation times and temperatures.

(vii) Dose-response relationship, if applicable.

(g) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Ames, B.N., McCann, J., Yamasaki, E. "Methods for detecting carcinogens and mutagens with the *Salmonella*/mammalian-microsome mutagenicity test," *Mutation Research,* 31:347–364 (1975).

(2) Callen, D.F., Philpot, R.M. "Cytochrome P–450 and the activation of promutagens in *Saccharomyces cerevisiae," Mutation Research,* 45:309–324 (1975).

(3) Zimmermann, F.K. "Procedures used in the induction of mitotic recombination and mutation in the yeast *Saccharomyces cerevisiae." Handbook of mutagenicity test procedures.* Eds. Kilby, B.J., Legator, M., Nicols, W., Ramel, C. (Amsterdam: Elsevier/North Holland Biomedical Press, (1979), pp. 119–134.

(4) Zimmermann, F.K., Kern, R., Rosenberger, H. "A yeast strain for simultaneous detection of induced mitotic crossing over, mitotic gene conversion and reverse mutation," *Mutation Research,* 28:381–388 (1975).

§ 798.5900 In vitro sister chromatid exchange assay.

(a) *Purpose.* The sister chromatid exchange (SCE) assay detects the ability of a chemical to enhance the exchange of DNA between two sister chromatids of a duplicating chromosome. The test may be performed in vitro, using, for example, rodent or human cells, or in vivo using mammals, for example, rodents such as mice, rats and hamsters.

(b) *Definition.* Sister chromatid exchanges represent reciprocal interchanges of the two chromatid arms within a single chromosome. These exchanges are visualized during the metaphase portion of the cell cycle and presumably require enzymatic incision, translocation and ligation of at least two DNA helices.

(c) *Reference substances.* Not applicable.

(d) *Test method*—(1) *Principle.* Following exposure of cell cultures to test chemicals, they are allowed to replicate in the presence of bromodeoxyuridine (BrdU), followed by treatment with colchicine or colcemid to arrest cells in a metaphase-like stage of mitosis (c-metaphase). Cells are then harvested and chromosome preparations made. Preparations are stained and metaphase cells analyzed for SCEs.

(2) *Description. In vitro* SCE assays may employ monolayer or suspension cultures of established cell lines, cell strains or primary cell cultures. Cell cultures are exposed to test chemical

and are allowed to replicate in the presence of BrdU. Prior to harvest, cells are treated with a spindle inhibitor (e.g. Colchicine or Colcemid ®) to accumulate cells in c-metaphase. Chromosome preparations from cells are made, stained and analyzed for SCEs.

(3) *Cells*—(i) *Type of cells used in the assay.* There are a variety of cell lines or primary cell cultures, including human cells, which may be used in the assay. Established cell lines and strains should be checked for *Mycoplasma* contamination and may be periodically checked for karyotype stability.

(ii) *Cell growth and maintenance.* Appropriate culture media and incubation conditions (culture vessels, temperature, and humidity CO_2) should be used.

(4) *Metabolic activation.* Cells should be exposed to test chemical both in the presence and absence of an appropriate metabolic activation system.

(5) *Control groups—Concurrent controls.* Positive and negative (untreated and/or vehicle) controls, with and without metabolic activation, should be included in each experiment.

(6) *Test chemicals*—(i) *Vehicle.* Test substances may be prepared in culture media or dissolved or suspended in appropriate vehicles prior to treatment of the cells. Final concentration of the vehicle should not reduce cell viability or growth rate.

(ii) *Exposure concentrations.* Multiple concentrations of the test substance over a range adequate to define the response should be tested. Among the criteria to be taken into consideration for determining the upper limits of test chemical concentration are cytotoxicity and solubility. Cytotoxicity of the test substance may be altered in the presence of metabolic activation systems. Cytotoxicity may be evidenced by a large (e.g., 75 percent) decrease in the number of cells that have divided twice in the presence of BrdU. Relatively insoluble substances should be tested up to the limit of solubility. For freely soluble nontoxic chemicals, the upper test chemical concentration should be determined on a case by case basis. When appropriate, a positive response should be confirmed by using a narrow range of test concentrations.

(e) *Test performance*—(1) *Established cell lines and strains.* (i) Prior to use in the assay, cells should be generated from stock cultures, seeded in culture vessels at the appropriate density and incubated at 37 °C.

(ii) Cell lines and strains should be treated with test chemical both with and without metabolic activation when they are in the exponential stage of growth. At the end of the exposure period, cells should be washed and incubated for two replication cycles in medium containing BrdU. After BrdU is added, the cultures should be handled in darkness, under "safe" (e.g., darkroom) lights, or in dim light from incandescent lamps to minimize photolysis of BrdU containing DNA. At the end of the BrdU incubation period, cells should be fixed and stained for SCE determination. Cultures should be treated with a spindle inhibitor (e.g., colchicine or Colcemid®) 2 hr prior to harvesting.

(2) *Human lymphocyte cultures.* (i) For preparation of human lymphocyte cell cultures, heparinized or acid-citrate-dextrose treated whole blood should be added to culture medium containing a mitogen, e.g., phytohemagglutinin (PHA) and incubated at 37 °C. White cells sedimented by gravity (buffy coat) or lymphocytes which have been purified on a density gradient such as Ficoll-Hypaque may also be utilized.

(ii) Cells should be exposed to the test chemical during at least two time intervals, e.g. G_0 and S. Exposure during the G_0 phase of the cell cycle should be accomplished by adding the test substance prior to addition of mitogen. Exposure during or after the first S phase may be accomplished by exposing cells 24–30 hrs after mitosis, under "safe" (e.g. darkroom) lights, or in dim light from incandescent lamps to minimize photolysis of BrdU containing DNA. At the end of the BrdU incubation period, cells should be fixed and stained for SCE determination. Cultures should be treated with a spindle inhibitor (e.g. colchicine or Colcemid®) 2 hr prior to harvesting.

(3) *Human lymphocyte cultures.* (i) For preparation of human lymphocyte cell cultures, heparinized or acid-citrate-dextrose treated whole blood should be added to culture medium containing a mitogen, e.g., phytohemagglutinin (PHA) and incubated at 37 °C. White cells sedimented by gravity (buffy coat) or lymphocytes which have been purified on a density gradient such as Ficoll-Hypaque may also be utilized.

(ii) Cells should be exposed to the test chemical during at least two time intervals, e.g., G_0 and S. Exposure during the G_0 phase of the cell cycle should be accomplished by adding the test substance prior to addition of mitogen. Exposure during or after the first S phase may be accomplished by exposing cells 24–30 hrs after mitogen stimulation. After exposure, cells should be washed and then cultured in the absence of the chemical.

(4) *Culture harvest time.* A single harvest time, one that yields an optimal percentage of second division metaphases, is recommended. If there is reason to suspect that this is not a representative sampling time (which may occur for short-lived, cycle specific chemicals), then additional harvest times should be selected.

(5) *Staining method.* Staining of slides to reveal SCEs can be performed according to any of several protocols. However, the fluorescence plus Giemsa method is recommended.

(6) *Number of cultures.* At least two independent cultures should be used for each experimental point.

(7) *Analysis.* Slides should be coded before analysis. The number of cells to be analyzed should be based upon the spontaneous control frequency and defined sensitivity and the power of the test chosen before analysis. In human lymphocytes, only cells containing 46 centromeres should be analyzed. In established cell lines and strains, only metaphases containing ±2 centromeres of the modal number should be analyzed. Uniform criteria for scoring SCEs should be used.

(f) *Data and report*—(1) *Treatment of results.* Data should be presented in tabular form, providing scores for both the number of SCEs for each metaphase and the number of SCEs per chromosome for each metaphase.

(2) *Statistical evaluation.* Data should be evaluated by appropriate statistical methods.

(3) *Interpretation of results.* (i) There are several criteria for determining a positive result, one of which is a statistically significant dose-related increase in the number of sister chromatid exchanges. Another criterion may be based upon detection of a reproducible and statistically significant positive response for at least one of the test substance concentrations.

(ii) A test substance which produces neither a statistically significant dose-related increase in the number of sister chromatid exchanges nor a statistically significant and reproducible positive response at any one of the test points is considered not to induce rearrangements of segments of DNA in this system.

(iii) Both biological and statistical significance should be considered together in the evaluation.

(4) *Test evaluation.* (i) Positive results in the in vitro SCE assay indicate that under the test conditions the test substance induces reciprocal chromatid interchanges in cultured mammalian somatic cells.

(ii) Negative results indicate that under the test conditions the test substance does not induce reciprocal chromatid interchanges in cultured mammalian somatic cells.

(5) *Test report.* In addition to the reporting recommendations as specified under 40 CFR Part 792, Subpart J, the following specific information should be reported:

(i) Cells used, density at time of treatment, number of cell cultures.

(ii) Methods used for maintenance of cell cultures including medium, temperature and CO_2 concentration.

(iii) Test chemical vehicle, concentration and rationale for the selection of the concentrations of test chemical used in the assay, duration of treatment.

(iv) Details of both the protocol used preparation of the metabolic activation system and its use in the assay.

(v) Growth period in BrdU; identity of spindle inhibitor, its concentration and duration of treatment.

(vi) Time of cell harvest.

(vii) Positive and negative controls.

(viii) Method used to prepare slides for SCE determination.

(ix) Criteria for scoring SCEs.

(x) Details of the protocol used for growth and treatment of human cells if used in the assay.

(xi) Dose-response relationship, if applicable.

(g) *References.* For additional background information on this test guideline the following references shoud be consulted:

(1) Latt, .S.A., Allen, J., Bloom, S.E., Carrano, A., Falke, E., Kram, D., Schneider, E., Schreck, R., Tice, R., Whitfield, B., Wolff, S. "Sister chromatid exchanges: a report of the U.S. EPA's Gene-Tox Program" *Mutation Research,* 87:17–62 (1981).

(2) [Reserved]

§ 798.5915 In vivo sister chromatid exchange assay.

(a) *Purpose.* The sister chromatid exchange (SCE) assay detects the ability of a chemical to enhance the exchange of DNA between two sister chromatids of a duplicating chromosome. The test may be perfomed in vitro using cultured mammalian cells or in vivo using nonmammalian or mammalian tissues. The most commonly used assays employ bone marrow or lymphocytes from mammalian species such as mice, rats or hamsters. Human lymphocytes may also be used.

(b) *Definition.* Sister chromatid exchanges represent reciprocal interchanges of the two chromatid arms within a single chromosome. These exchanges are visualized during the metaphase portion of the cell cycle and presumably require enzymatic incision, translocation and ligation of at least two DNA helices.

(c) *Reference substances.* Not applicable.

(d) *Test method*— (1) *Principle.* Animals are exposed to test substance by appropriate routes followed by administration of bromodeoxyuridine (BrdU). A spindle inhibitor (e.g., colchicine or Colecimid ®) is administered prior to sacrifice. After sacrifice, tissue is obtained and metaphase preparations made, stained and scored for SCE.

(2) *Description.* The method described here employs bone marrow of laboratory rodents exposed to test chemicals. After treatment with test chemical, animals are futher treated with BrdU and, prior to sacrifice, with a spindle inhibitor (e.g., colchicine or Colcemid ®) to arrest cells in c-metaphase. After sacrifice, chromosome preparations from bone marrow cells are made, stained and scored for SCE.

(3) *Animal selection*— (i) *Species and strain.* Any appropriate mammalian species may be used. Examples of commonly used rodent species include mice, rats, and hamsters.

(ii) *Age.* Healthy, young adult animals should be used.

(iii) *Number and sex.* At least five female and five male animals per experimental and control group should be used. The use of a single sex or different number of animals should be justified.

(iv) *Assignment to groups.* Animals should be randomized and assigned to treatment and control groups.

(4) *Control groups*—(i) *Concurrent controls.* Current positive and negative (vehicle) controls should be included in the assay.

(ii) *Positive controls.* A compound know to produce SCE *in vivo* should be employed as the positive control.

(5) *Test chemicals*—(i) *Vehicle.* When possible, test chemicals should be dissolved in isotonic saline or distilled water. Water insoluble chemicals may be dissolved or suspended in appropriate vehicles. The vehicle used should neither interfere with the test compound nor produce toxic effects. Fresh preparations of the test compound should be employed.

(ii) *Dose levels.* For an initial assessment, one dose of the test substance may be used, the dose being the maximum tolerated dose or that producing some indication of toxicity as evidenced by animal morbidity (including death) or target cell toxicity. The LD_{50} is a suitable guide. Additional dose levels may be used. For determination of dose-response, at least three dose levels should be used.

(iii) *Route of administration.* The usual routes of administration are IP or oral. Other routes may be appropriate.

(iv) *Treatment schedule.* In general, test substances should be administered only once. However, based upon toxicological information a repeated treatment schedule may be employed.

(e) *Test performance*—(1) *Treatment.* Animals should be treated with test chemical followed by administration of BrdU. BrdU may be administered by multiple IP injections, by continuous tail vein infusion or by subcutaneous implantation of tablets. Animals should be treated with a spindle inhibitor (e.g. colchicine or Colcemid®) 2 hr prior to sacrifice. After sacrifice, bone marrow should be extracted and slides made and prepared for SCE evaluation.

(2) *Staining method.* Staining of slides to reveal SCEs can be performed according to any of several protocols. However, the fluorescence plus Giemsa method is recommended.

(3) *Number of cells scored.* The number of cells to be analyzed per animal should be based upon the number of animals used, the negative control frequency, the predetermined sensitivity and the power chosen for the test. Slides should be coded before microscopic analysis.

(f) *Data and report*—(1) *Treatment of results.* Data should be presented in tabular form, providing scores for both the number of SCE for each metaphase and the number of SCE per chromosome for each metaphase. Differences among animals within each group should be considered before making comparisons between treated and control groups.

(2) *Statistical evaluation.* Data should be evaluated by appropriate statistical methods.

(3) *Interpretation of results.* (i) There are several criteria for determining a positive result, one of which is a statistically significant dose-related increase in the number of SCE. Another criterion may be based upon detection of a reproducible and statistically significant positive response for at least one of the test points.

(ii) A test substance which does not produce either a statistically significant dose-related increase in the number of SCE or a statistically significant and reproducible positive response at any one of the test points is considered not to induce rearrangements of DNA segments in this system.

(iii) Both biological and statistical significance should be considered together in the evaluation.

(4) *Test evaluation.* (i) Positive results in the *in vivo* SCE assay indicate that under the test conditions the test

substance induces reciprocal interchanges in the bone marrow of the test species.

(ii) Negative results indicate that under the test conditions the test substance does not induce reciprocal interchanges in the bone marrow of the test species.

(5) *Test report.* In addition to the reporting recommendations as specified under 40 CFR Part 792, Subpart J, the following specific information should be reported:

(i) Species, strain, age, weight, number and sex of animals in each treatment and control group.

(ii) Test chemical vehicle, dose level used, rationale for dose selection, toxicity data, negative and positive controls.

(iii) Route and schedule of administration of both test chemical and BrdU.

(iv) Identity of spindle inhibitor, its concentration and duration of treatment.

(v) Time of sacrifice after administration of BrdU.

(vi) Details of the protocol used for slide preparation.

(vii) Criteria for scoring SCE.

(viii) Dose-response relationship, if applicable.

(g) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Allen, J.W., Shuler, C.F., Latt, S.A. "Bromodeoxyuridine tablet methodology for in vivo studies of DNA synthesis," *Somatic Cell Genetics,* 4:393–405 (1978).

(2) Allen, J.W., Shuler, C.F., Mendes, R.W., Latt, S.A. "Simplified technique for in vivo analysis of sister chromatid exchanges using 5-bromodeoxyuridine tablets" *Cytogenetics Cell Genetics,* 18:231–237 (1977).

(3) Latt, S.A., Allen, J., Bloom, S.E., Carrano, A., Falke, E., Kram, D., Schneider, E., Schreck, R., Tice, R., Whitfield, B., Wolff, S. "Sister chromatid exchanges: a report of the U.S. EPA Gene-Tox Program," *Mutation Research,* 87:17–62 (1981).

§ 798.5955 Heritable translocation test in drosophila melanogaster.

(a) *Purpose.* The heritable translocation test in *Drosophila* measures the induction of chromosomal translocations in germ cells of insects. Stocks carrying genetic markers on two or more chromosomes are used to follow the assortment of chromosomes in meiosis. The F_1 male progeny of treated parents are individually mated to females and the F_2 progeny phenotypes are scored. The observed spectrum of phenotypes is used to determine the presence or absence of a translocation. This is usually indicated by a lack of independent assortment of genes on different chromosomes.

(b) *Definitions*—(1) Chromosome mutations are chromosomal changes resulting from breakage and reunion of chromosomes. Chromosomal mutations are also produced through nondisjunction of chromosomes during cell division.

(2) Reciprocal translocations are chromosomal translocations resulting from reciprocal exchanges between two or more chromosomes.

(3) Heritable translocations are reciprocal translocations transmitted from parent to the succeeding progeny.

(c) *Reference substances.* These may include, but need not be limited to, ethyl methanesulfonate or N-dimethyl-nitrosamine.

(d) *Test method*— (1) *Principle.* The method is based on the principle that balanced reciprocal chromosomal translocations can be induced by chemicals in the germ cells of treated flies and that these translocations are detected in the F_2 progeny using genetic markers (mutations). Different mutations may be used as genetic markers and two or more of the four chromosomes may be genetically marked for inclusion in this test.

(2) *Description.* Wild-type males are treated with chemical and bred with females of known genetic markers. The F_1 males are collected and individually bred with virgin females of the female parental stock. The resulting F_2 progeny are scored. Putative translocation carriers are confirmed with an F_3 cross.

(i) *Illustrative example.* The following example serves to illustrate the method. Males carrying genes for red eye color on chromosomes II and III are bred with females of white eye color carrying alleles for brown (bw) on the second chromosome and scarlet (st) and pink (pp) on the third chromosome. The F_1 male progeny are bred with virgin females of the female parental stock and the resulting F_2 progeny are examined for eye color phenotypes. If there is no translocation in the F_1 male, then the resulting F_2 progeny will have four eye color phenotypes: red, white, orange, and brown. If the F_1 male carries a translocation between chromosomes II and III, only red and white eye phenotypes are obtained in the F_2 generation. This happens because the F_1 translocation heterozygote produces two balanced (carrying either the parental or the translocated configuration of markers) and two unbalanced gametes. The unbalanced gametes (carrying one normal and one translocated chromosome) are unable to develop into normal individuals in the F_2 generation.

(ii) [Reserved]

(3) *Drosophila stocks.* Wild-type males and females of the genotype bw:st:pp (white eyes) may be used in the heritable translocation test. Other appropriately marked *Drosophila* stocks may also be used.

(4) *Control groups.* (i) Concurrent positive and negative (vehicle) controls should be included in each experiment.

(ii) Negative (vehicle) controls should be included. The size of the negative (vehicle) control group should be determined by the availability of appropriate laboratory historical control data.

(iii) If the historical control data are of sufficient numbers, concurrent controls may not be necessary.

(5) *Test chemicals*—(i) *Vehicle.* Test chemicals should be dissolved in water. Compounds which are insoluble in water may be dissolved or suspended in appropriate vehicles (e.g., a mixture of ethanol and Tween-60 or 80), and then diluted in water or saline prior to administration. Dimethylsulfoxide should be avoided as a vehicle.

(ii) *Dose levels.* For the initial assessment of mutagenicity, it may be sufficient to test a single dose of the test substance. This dose should be the maximum tolerated dose or that which produces some indication of toxicity. If the test is being used to verify mutagenic activity, at least two additional exposure levels should be used.

(iii) *Route of administration.* Exposure may be oral, by injection or by exposure to gases or vapours. Feeding of the test compound may be done in sugar solution. When necessary, substances may be dissolved in 0.7 percent NaCl solution and injected into the thorax or abdomen.

(e) *Test performance*—(1) *P1 mating.* (i) In the primary screen of a chemical, it is enough to sample one germ cell stage, either mature sperm or spermatids (for indirect acting mutagens). Other stages may be sampled if needed, i.e., when mature germ cells give a positive result and data from earlier germ cells are needed for the purpose of risk assessment. Thus, the treated males may be mated only once for a period of 3 days to sample sperm or transferred every 2 to 3 days to cover the entire germ cell cycle.

(ii) Mass matings may be performed because the control rate for translocations in the available literature is very low (near 0) and clustered events are extremely rare. Mated females may be aged for 2 weeks in order to recover an enhanced incidence of translocation due to the storage effect. The females

are then allowed to lay eggs and F_1 males are collected for test mating.

(2) *F_1 mating.* F_1 males should be bred with virgin females of the parental female stock. Since each F_1 male represents one treated gamete of the male parent, the F_1 males have to be mated individually to virgin females. Each F_1 male should be mated to three females to ensure sufficient progeny.

(3) *Scoring the F_2 generation.* F_2 cultures (each representing 1 F_1 male tested) should be scored for the presence or absence of phenotype variations (linkage of markers) from the expected types. The test should be designed with a predetermined sensitivity and power. The number of flies in each group should reflect these defined parameters. The spontaneous mutant frequency observed in the appropriate control group will strongly influence the number of treated chromosomes that must be analyzed to detect substances which show mutation rates close to those of the controls. A positive test should be confirmed by F_3 mating trials.

(4) *Number of replicate experiments.* Replicate experiments are usually performed for each dose of the compound tested. If a chemical is a potent inducer of translocations, one experiment may be sufficient. Otherwise two or three replicate experiments should be done.

(f) *Data and report*—(1) *Treatment of results.* Data should be tabulated to show the number of translocations and the number of fertile F_1 males at each exposure for each germ cell stage sampled.

(2) *Statistical evaluation.* Data should be evaluated by appropriate statistical methods.

(3) *Interpretation of results.* (i) There are several criteria for determining a positive result, one of which is a statistically significant dose-related increase in the number of heritable translocations. Another criterion may be based upon detection of a reproducible and statistically significant positive response for at least one of the test points.

(ii) A test substance which does not produce either a statistically significant dose-related increase in the number of heritable translocations or a statistically significant and reproducible positive response at any one of the test points is considered nonmutagenic in this system.

(iii) Both biological and statistical significance should be considered together in the evaluation.

(4) *Test evaluation.* (i) Positive results in the heritable translocation test in *Drosophila* indicate that under the test conditions the test substance causes chromosome damage in germ cells of this insect.

(ii) Negative results indicate that under the test conditions the test substance does not cause chromosomal damage in *D. melanogaster.*

(5) *Test report.* In addition to the reporting recommendations as specified under 40 CFR Part 792, Subpart J, the following specific information should be reported:

(i) *Drosophila* stock used in the assay, age of insects, number of males treated, number of F_2 cultures established, number of replicate experiments.

(ii) Test chemical vehicle, treatment and mating schedule, exposure levels, toxicity data, dose and route of exposure.

(iii) Positive and negative (vehicle) controls.

(iv) Historical control data, if available.

(v) Number of chromosomes scored.

(vi) Criteria for scoring mutant chromosomes.

(vii) Dose-response relationship, if applicable.

(g) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Wurgler, F.E., Sobels, F.H., Vogel, E. "*Drosophila* as assay system for detecting genetic changes," *Handbook of mutagenicity test procedures.* Eds. Kilby, B.J., Legator, M., Nichols, W., Ramel, C. (Amsterdam: Elsevier/North Holland Biomedical Press, 1979) pp. 335–374.

(2) [Reserved]

Subpart G—Neurotoxicity

§ 798.6050 Functional observational battery.

(a) *Purpose.* In the assessment and evaluation of the potential human health effects of substances, it may be necessary to test for neurotoxic effects. Substances that have been observed to cause neurotoxic signs (e.g., convulsions, tremors, ataxia) in other toxicity tests, as well as those having a structural similarity to known neurotoxicants, should be evaluated for neurotoxicity. The functional observational battery is a noninvasive procedure designed to detect gross functional deficits in young adults resulting from exposure to chemicals and to better quantify neurotoxic effects detected in other studies. This battery of tests is not intended to provide a detailed evaluation of neurotoxicity. It is designed to be used in conjunction with neuropathologic evaluation and/or general toxicity testing. Additional functional tests may be necessary to assess completely the neurotoxic potential of a chemical.

(b) *Definitions.* (1) Neurotoxicity is any adverse effect on the structure or function of the central and/or peripheral nervous system related to exposure to a chemical substance.

(2) A toxic effect is an adverse change in the structure or function of an experimental animal as a result of exposure to a chemical substance.

(c) *Principle of the test method.* The material is administered by an appropriate route to laboratory rodents. The animals are observed under carefully standardized conditions with sufficient frequency to ensure the detection of behavioral and/or neurologic abnormalities, if present. Various functions that could be affected by neurotoxicants are assessed during each observation period.

(d) *Test procedures*—(1) *Animal selection*—(i) *Species and strain.* The laboratory rat or mouse is recommended. Although information will generally be lacking, whenever possible the choice of species should take into consideration such factors as the comparative metabolism of the chemical and species sensitivity to the toxic effects of the test substance, as evidenced by the results of other studies. The potential for combined studies should also be considered. Standard strains should be used.

(ii) *Age.* Young adult animals (at least 42 days old for the rat or mouse) should be used.

(iii) *Sex.* (A) Equal numbers of animals of each sex are required for each dose level.

(B) The females should be nulliparous and nonpregnant.

(2) *Number of animals.* All exposed animals should be tested. At least 10 animals of each sex should be used at each dose level. If interim sacrifices are planned, the number should be increased by the number of animals scheduled to be sacrificed before the end of the study. Animals should be randomly assigned to treatment and control groups.

(3) *Control groups.* (i) A concurrent ("sham" exposure or vehicle) control group is required. Subjects should be treated in the same way as for an exposure group except that administration of the test substance is omitted.0, RULES AND REGS) A35AD0 Barrett, Douglas 04942 7–29–85 J. 54–999 File a35ad0.422 Folio 1110–11

(ii) Concurrent or historic data from the laboratory performing the testing should provide evidence of the ability of the procedures used to detect major neurotoxic endpoints such as limb

weakness or paralysis (e.g., acrylamide), CNS stimulation (e.g., β, β'-iminodiproprionitrile) autonomatic signs (e.g., physostigmine).

(iii) A satellite group may be treated with the high dose level for the duration of exposure and observed for reversibility, persistence, or delayed occurrence of toxic effects for a post-treatment period of appropriate duration, normally not less than 28 days.

(4) *Dose levels and dose selection.* At least 3 doses, equally spaced on a log scale (e.g., ½ log units) over a range of at least 1 log unit shall be used in addition to a zero dose or vehicle administration. The data should be sufficient to produce a dose-effect curve.

(i) The highest dose shall produce (A) clear behavioral effects or (B) life-threatening toxicity.

(ii) The data from the lower doses must show either (A) graded dose-dependent effects at 2 dose levels or (B) no effects at 2 dose levels, respectively.

(5) *Duration and frequency of exposure.* The duration and frequency of exposure will be specified in the test rule.

(6) *Route of exposure.* The test substance shall be administered by the route specified in the test rule. This route will usually be the one most closely approximating the expected route of human exposure. The exposure potocol shall conform to that outlined in the appropriate acute or subchronic toxicity study guideline under Subpart B or Subpart C of this Part.

(7) *Combined protocol.* Subjects used for other toxicity studies may be used if none of the requirements of either study are violated by the combination.

(8) *Study conduct.* (i) All animals in a given study should be observed carefully by the same trained technician who is blind with respect to the animals' treatments. All animals should be observed prior to initiation of exposure. Subsequent observations should be made with sufficient frequency to ensure the detection of behavioral and/or neurologic abnormalities, if present. At minimum, observations at 1 hour, 6 hours, 24 hours, 7 days, and 14 days and monthly thereafter are recommended. In a subchronic study, subsequent to the first exposure, all observations should be made before the daily exposue. The animals should be removed from the home cage to a standard arena for observation. Effort should be made to ensure that variations in the test conditions are minimal and are not systematically related to treatment. Among the variables that can affect behavior are sound level, temperature, humidity, lighting, odors, time of day, and environmental distractions. Explicit, operationally defined, scales for each function should be used. The development of objective quantitative measures of the observational endpoints specified is encouraged.

(ii) The following is a minimal list of observations that should be noted:

(A) Any unusual responses with respect to body position, activity level, coordination of movement, and gait.

(B) Any unusual or bizarre behavior including, but not limited to, headflicking, head searching, compulsive biting or licking, self-mutilation, circling, and walking backwards.

(C) The presence of:

(*1*) Convulsions.

(*2*) Tremors.

(*3*) Increased levels of lacrimation and/or red-colored tears.

(*4*) Increased levels of salivation.

(*5*) Piloerection.

(*6*) Pupillary dilation or constriction.

(*7*) Unusual respiration (shallow, labored, dyspneic, gasping, and retching) and/or mouth breathing.

(*8*) Diarrhea.

(*9*) Excessive or diminished urination.

(*10*) Vocalization.

(D) Forelimb/hindlimb grip strength. The procedure described by Meyer et al. (1979), under paragraph (f)(9) of this section is recommended.

(E) Sensory function. A simple assessment of sensory function (vision, audition, pain perception) should be made. Marshall et al. (1971) under paragraph (f)(8) of this section have described a neurologic exam for this purpose; these procedures are also discussed by Deuel (1977), under paragraph (f)(4) of this section. Irwin (1968) under paragraph (f)(7) of this section described a number of reflex tests intended to detect gross sensory deficits, including the visual placing response, Preyer reflex, and tail pinch. Many procedures have been developed for assessing pain perception (e.g., Arkier, 1974 under paragraph (f)(1) of this section; D'Amour and Smith 1941 under paragraph (f)(3) of this section; Evans 1971 under paragraph (f)(6) of this section).

(e) *Data reporting and evaluation.* In addition to the reporting requirements specified under 40 CFR Part 792 Subpart J the final test report must include the following information.

(1) *Description of system and test methods.* (i) A detailed description of the procedures used to standardize observation, including the arena and operational definitions for scoring observations.

(ii) Positive control data from the laboratory performing the test that demonstrate the sensitivity of the procedures being used. Historic data may be used if all aspects of the experimental protocol are the same, including personnel.

(2) *Results.* The following information must be arranged by test group dose level.

(i) In tabular form, data for each animal must be provided showing:

(A) Its identification number.

(B) Its body weight and score on each sign at each observation time, the time and cause of death (if appropriate).

(ii) Summary data for each group must include:

(A) The number of animals at the start of the test.

(B) The number of animals showing each observation score at each observation time.

(C) The percentage of animals showing each abnormal sign at each observation time.

(D) The mean and standard deviation for each continuous endpoint at each observation time.

(3) *Evaluation of data.* The findings of a functional observational battery should be evaluated in the context of preceding and/or concurrent toxicity studies and any correlative histopathological findings. The evaluation should include the relationship between the doses of the test substance and the presence or absence, incidence and severity, of any neurotoxic effects. The evaluation should include appropriate statistical analyses. Choice of analyses should consider tests appropriate to the experimental design and needed adjustments for multiple comparisons.

(f) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Ankier, S.I. "New hot plate tests to quantify antinociceptic and narcotic antagonist activities," *European Journal of Pharmacology*, 27: 1–4 (1974).

(2) Coughenour, L.L., McLean, J.R. and Parker, R.B. "A new device for the rapid measurement of impaired motor function in mice," *Pharmacology, Biochemistry and Behavior*, 6: 351–353 (1977).

(3) D'Amour, F.E., Smith, D.L. "A method for determining loss of pain sensation," *Journal of Pharmacology and Experimental Therapeutics*, 72: 74–79 (1941).

(4) Deuel, R.K. "Determining sensory deficits in animals," *Methods in Psychobiology* Ed. Myers R.D. (New York: Academic Press, 1977) pp. 99–125.

(5) Edwards, P.M., Parker, V.H. "A simple, sensitive and objective method for early assessment of acrylamide neuropathy in rats," *Toxicology and*

Applied Pharmacology, 40: 589–591 (1977).

(6) Evans, W.O. "A new technique for the investigation of some analgesic drugs on reflexive behavior in the rat," *Psychopharmacologia, 2:* 318–325 (1961).

(7) Irwin, S. "Comprehensive observational assessment: Ia. A systematic quantitative procedure for assessing the behavioral and physiologic state of the mouse," *Psychopharmacologia, 13:* 222–257 (1968).

(8) Marshall, J.F., Turner, B.H., Teitlbaum, P. "Sensory neglect produced by lateral hypothalamic damage," *Science, 174:* 523–525 (1971).

(9) Meyer, O.A., Tilson, H.A., Byrd, W.C., Riley, M.T. "A method for the routine assessment of fore- and hindlimb grip strength of rats and mice," *Neurobehavioral Toxicology, 1:* 233–236 (1979).

§ 798.6200 Motor activity.

(a) *Purpose*—(1) *General.* In the assessment and evaluation of the toxic characteristics of a substance, determination of the effects of administration of the substance on motor activity is useful when neurotoxicity is suspected.

(2) *Acute Motor Activity Test.* The purpose of the acute motor activity test is to examine changes in motor activity occurring over a range of acute exposure levels. These changes may then be evaluated in the context of changes occurring in other organ systems. This test is an initial step in determining the potential of a substance to produce acute neurotoxicity and may be used to screen members of a class of substances for known neurotoxicity, and/or to establish a dosage regimen prior to the initiation of subchronic neurotoxicity testing.

(3) *Subchronic Motor Activity Test.* The purpose of the subchronic motor activity test is to determine whether the repeated administration of a suspected neurotoxicant results in changes in motor activity. These changes may be evaluated in the context of changes occurring in other organ systems. This test is an initial step in determining the potential of a substance to produce subchronic neurotoxicity.

(b) *Definitions.* (1) Neurotoxicity is the adverse effect on the structure or function of the central and/or peripheral nervous system related to exposure to a chemical substance.

(2) Motor activity is any movement of the experimental animal.

(3) A toxic effect is an adverse change in the structure or function of an experimental animal as a result of exposure to a chemical substance.

(c) *Principle of the test method.* The test substance is administered to several groups of experimental animals, one dose being used per group. Measurements of motor activity are made. The exposure levels at which significant changes in motor activity are produced are compared to those levels which produce toxic effects not originating in the central and/or peripheral nervous system.

(d) *Test procedures*—(1) *Animal selection*—(i) *Species and strain.* Testing shall be performed in a laboratory rat or mouse. The choice of species should take into consideration such factors as the comparative metabolism of the chemical and species sensitivity to the toxic effects of the test substance, as evidenced by the results of other studies, the potential for combined studies, and the availability of other toxicity data for the species.

(ii) *Age.* Young adult animals (at least 42 days old for rat or mouse) should be used.

(iii) *Sex.* (A) Equal numbers of animals of each sex are required for each dose level for the motor activity test.

(B) The females should be nulliparous and nonpregnant.

(2) *Number of animals.* Animals shall be randomly assigned to test and control groups. Each test or control group must be designed to contain a sufficient number of animals at the completion of the study to detect a 40 percent change in activity of the test groups relative to the control group with 90 percent power at the 5 percent level. For most designs, calculations can be made according to Dixon and Massey (1957) under paragraph (f)(1) of this section, Neter and Wasserman (1974) under paragraph (f)(5) of this section, Sokal and Rohlf (1969) under paragraph (f)(9) of this section, or Jensen (1972) under paragraph (f)(3) of this section.

(3) *Control groups.* (i) A concurrent control group is required. This group must be an untreated group, or, if a vehicle is used in administering the test substance, a vehicle control group. If the toxic properties of the vehicle are not known or cannot be made available, both untreated and vehicle control group are required.

(ii) Positive control data are required to demonstrate the sensitivity and reliability of the activity measuring device and testing procedure. These data should demonstrate the ability to detect increases or decreases in activity and to generate a dose-effect curve or its equivalent using three values of the dose or equivalent independent variable. A single administration of the dose (or equivalent) is sufficient. It is recommended that chemical exposure be used to collect positive control data. Positive control data shall be collected at the time of the test study unless the laboratory can demonstrate the adequacy of historical data for this purpose.

(iii) A satellite group may be treated with the high dose level for 90 days and observed for reversibility, persistence or delayed occurrence of toxic effects for a post-treatment period of appropriate length, normally not less than 28 days.

(4) *Dose levels and dose selection.* At least 3 doses, equally spaced on a log scale (e.g., ½ log units) over a range of at least 1 log unit shall be used in addition to a zero dose or vehicle administration. The data should be sufficient to produce a dose-effect curve.

(i) The highest dose shall produce (A) clear effects on motor activity or (B) life-threatening toxicity.

(ii) The data from the lower doses must show either (A) graded dose-dependent effects at 2 dose levels or (B) no effects at 2 dose levels, respectively.

(5) *Duration of testing.* The duration of exposure will be specified in the test rule.

(6) *Route of administration.* The test substance shall be administered by the method specified in the test rule. This will usually be the route most closely approximating the route of human exposure. The exposure protocol shall conform to that outlined in the appropriate acute or subchronic toxicity study guideline.

(7) *Combined protocol.* The tests described herein may be combined with any other toxicity study, as long as none of the requirements of either are violated by the combination.

(8) *Study conduct*—(i) *General.* Motor activity must be monitored by an automated activity recording apparatus. The device used must be capable of detecting both increases and decreases in activity, i.e. baseline activity as measured by the device must not be so low as to preclude decreases nor so high as to preclude increases. Each device shall be tested by standard procedure to ensure, to the extent possible, reliability of operation across devices and across days for any one device. In addition, treatment groups must be balanced across devices. Each animal shall be tested individually. The test session shall be long enough for motor activity to approach asymptotic levels by the last 20 percent of the session for most treatments and animals. All sessions should have the same duration. Treatment groups shall be counter-balanced across test times. Effort should be made to ensure that variations in the

test conditions are minimal and are not systematically related to treatment. Among the variables which can affect motor activity are sound level, size and shape of the test cage, temperature, relative humidity, lighting conditions, odors, use of home cage or novel test cage and environmental distractions. Tests shall be executed by an appropriately trained individual.

(ii) *Acute.* Testing shall be timed to include the time of peak signs.

(iii) *Subchronic.* All animals shall be tested prior to initiation of exposure and at 30 ±2, 60 ±2 and 90 ±2 days during the exposure period. Testing shall occur prior to the daily exposure. Animals shall be weighed on each test day and at least once weekly during the exposure period.

(e) *Data reporting and evaluation.* In addition to the reporting requirements specified under 40 CFR Part 792, Subpart J the final test report must include the following information:

(1) *Description of system and test methods.* (i) Positive control data from the laboratory performing the test which demonstrate the sensitivity of the procedure being used.

(ii) Procedures for calibrating and assuring the equivalence of devices and balancing treatment groups.

(2) *Results.* The following information must be arranged by test group (dose level).

(i) In tabular form, data must be provided showing for each animal:

(A) Its identification number.

(B) Body weight, total session activity counts, and intrasession subtotals for each date measured.

(ii) Group summary data should also be reported.

(3) *Evaluation of data.* An evaluation of the test results (including statistical analysis comparing total activity counts at the end of exposure of treatment vs control animals must be made and supplied. This submission must include dose-effect curves for motor activity expressed as activity counts.

(f) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Dixon, W.J., Massey, E.J. *Introduction to Statistical Analysis* 2nd Ed. (New York: McGraw-Hill, 1957).

(2) Finger, F.W. "Measuring behavioral activity," *Methods in Psychobiology* Vol. 2. Ed. R.D. Myers (New York: Academic, 1972) pp. 1–19.

(3) Jensen, D.R. "Some simultaneous multivariate procedures using Hotelling's T^2 Statistics," *Biometrics,* 28:39–53 (1972).

(4) Kinnard, E.J. and Watzman, N. "Techniques utilized in the evaluation of psychotropic drugs on animals activity," Journal of Pharmaceutical Sciences, 55:995–1012 (1966).

(5) Neter, J. and Wasserman, W. *Applied Linear Statistical Models.* Homewood, Richard D. Irwin, Inc., 1974.

(6) Reiter, L.E. "Use of activity measures in behavioral toxicology," *Environmental Health Perspectives,* 26:9–20 (1978).

(7) Reiter, L.W. and MacPhail, R.C. "Motor Activity: A survey of methods with potential use in toxicity testing," *Neurobehavioral Toxicology,* 1: Suppl. 1, 53–66 (1979).

(8) Robbins, T.W. "A critique of the methods available for the measurement of spontaneous motor activity," *Handbook of Psychopharmacology.* Vol. 7. Eds. Iversen, L.L., Iversen, D.S., Snyder, S.H. (New York: Plenum, 1977) pp. 37–82.

(9) Sokal, R.P. and Rohlf, E.J. *Biometry.* (San Francisco: W.H. Freeman and Co., 1969).

§ 798.6400 Neuropathology.

(a) *Purpose.* The techniques in this guideline are designed to develop data on morphologic changes in the nervous system for chemical substances and mixtures subject to such testing under the Toxic Substances Control Act. The data will detect and characterize morphologic changes, if and when they occur, and determine a no-effect level for such changes. Neuropathological evaluation should be complemented by other neurotoxicity studies, e.g. behavioral and neurophysiological studies. Neuropathological evaluation may be done following acute, subchronic or chronic exposure.

(b) *Definition.* Neurotoxicity or a neurotoxic effect is an adverse change in the structure or function of the nervous system following exposure to a chemical agent.

(c) *Principle of the test method.* The test substance is administered to several groups of experimental animals, one dose being used per group. The animals are sacrificed and tissues in the nervous system are examined grossly and prepared for microscopic examination. Starting with the highest dosage level, tissues are examined under the light microscope for morphologic changes, until a no effect level is determined. In cases where light microscopy has revealed neuropathology, the no effect level may be confirmed by electron microscopy.

(d) *Test procedure*—(1) *Animal selection*—(i) *Species and strain.* Testing should be performed in the species being used in other tests for neurotoxicity. This will generally be the laboratory rat. The choice of species shall take into consideration such factors as the comparative metabolism of the chemical and species sensitivity to the toxic effects of the test substance, as evidenced by the results of other studies, the potential for combined studies, and the availability of other toxicity data for the species.

(ii) *Age.* Animals shall be young adults (150–200 gm for rats) at the start of exposure.

(iii) *Sex.* Both sexes should be used unless it is demonstrated that one sex is refractory to the effects.

(2) *Number of Animals.* A minimum of six animals per group shall be used. The tissues from each animal shall be examined separately. It is recommended that ten animals per group be used.

(3) *Control Groups.* (i) A concurrent control group(s) is (are) required. This group must be an untreated control group or, if a vehicle is used in administering the test substance, a vehicle control group. If the vehicle used has a known or potential toxic property, both untreated and vehicle control groups are required.

(ii) A satellite group of animals may be treated with the high level for 90 days and observed for reversibility, persistence, or delayed occurrence of toxic effects for a post-treatment period of appropriate length; normally not less than 28 days.

(4) *Dose Levels and Dose Selection.* At least 3 doses, equally spaced on a log scale (e.g., ½ log units) over a range of at least 1 log unit shall be used in addition to a zero dose or vehicle administration. The data should be sufficient to produce a dose-effect curve.

(i) The highest dose shall produce (A) clear behavioral effects or (B) life-threatening toxicity.

(ii) The data from the lower doses must show either (A) graded dose-dependent effects at two dose levels or (B) no effects at two dose levels, respectively.

(5) *Duration of testing.* The exposure duration will be specified in the test rule. This will generally be 90 days exposure.

(6) *Route of administration.* The test substance shall be administered by a route specified in the test rule. This will generally be the route most closely approximating the route of human exposure. The exposure protocol shall conform to that outlined in the appropriate acute or subchronic toxicity guideline.

(7) *Combined protocol.* The tests described herein may be combined with any other toxicity study, as long as none of the requirements of either are violated by the combination.

(8) *Study conduct*—(i) *Observation of animals.* All toxicological (e.g., weight loss) and neurological signs (e.g., motor disturbance) shall be recorded frequently enough to observe any abnormality, and not less than weekly.

(ii) *Sacrifice of animals*—(A) *General.* The goal of the techniques outlined for sacrifice of animals and preparation of tissues is preservation of tissues morphology to simulate the living state of the cell.

(B) *Perfusion technique.* Animals shall be perfused *in situ* by a generally recognized technique. For fixation suitable for light or electronic microscopy, saline solution followed by buffered 2.5 percent glutaraldehyde or buffered 4.0 percent paraformaldehyde, is recommended. While some minor modifications or variations in procedures are used in different laboratories, a detailed and standard procedure for vascular perfusion may be found in the text by Zeman and Innes (1963) under paragraph (F)(7) of this section, Hayat (1970) under paragraph (F)(3) of this section, and by Spencer and Schaumburg (1980) under paragraph (F)(6) of this section. A more sophisticated technique is described by Palay and Chan-Palay (1974) under paragraph (F)(4) of this section.

(C) *Removal of brain and cord.* After perfusion, the bonystructure (cranium and vertebral column) should be exposed. Animals should then be stored in fixative-filled bags at 4°C for 8–12 hours. The cranium and vertebral column shall, be removed carefully by trained technicians without physical damage of the brain and cord. Detailed dissection procedures may be found in the text by Palay and Chan-Palay (1974) under paragraph (F)(4) of this section. After removal, simple measurement of the size (length and width) and weight of the whole brain (cerebrum, cerebellum, pons-medulla) should be made. Any abnormal coloration or discoloration of the brain and cord should also be noted and recorded.

(D) *Sampling.* Unless a given test rule specifies otherwise, cross-sections of the following areas shall be examined: the forebrain, the center of the cerebrum, the midbrain, the cerebellum and pons, and the medulla oblongata; the spinal cord at cervical and lumbar swelling (C_3–C_6 and L_1–L_4); Gasserian ganglia, dorsal root ganglia (C_3–C_6, L_1–L_4), dorsal and ventral root fibers (C_3–C_6, L_1–L_4), proximal sciatic nerve (mid-thigh and sciatic notch), sural nerve (at knee), and tibial nerve (at knee). Other sites and tissue elements (e.g., gastrocnemius muscle) should be examined if deemed necessary. Any observable gross changes shall be recorded.

(iii) *Specimen storage.* Tissue samples from both the central and peripheral nervous system shall be further immersion fixed and stored in appropriate fixative (e.g., 10 percent buffered formalin for light microscopy; 2.5 percent buffered gluteraldehyde or 4.0 percent buffered paraformaldehyde for electron microscopy) for future examination. The volume of fixative versus the volume of tissues in a specimen jar shall be no less than 25:1. All stored tissues should be washed with buffer for at least 2 hours prior to further tissue processing.

(iv) *Histopathology examination.* (A) *Fixation.* Tissue specimens stored in 10 percent buffered formalin may be used for this purpose. All tissues must be immersion fixed in fixative for at least 48 hours prior to further tissue processing.

(B) *Dehydration.* All tissue specimens should be washed for at least 1 hour with water or buffer, prior to dehydration. (A longer washing time is needed if the specimens have been stored in fixative for a prolonged period of time.) Dehydration can be performed with increasing concentration of graded ethanols up to absolute alcohol.

(C) *Clearing and embedding.* After dehydration, tissue specimens shall be cleared with xylene and embedded in paraffin or paraplast. Multiple tissue specimens (e.g. brain, cord, ganglia) may be embedded together in one single block for sectioning. All tissue blocks shall be labelled showing at least the experiment number, animal number, and specimens embedded.

(D) *Sectioning.* Tissue sections, 5 to 6 microns in thickness, shall be prepared from the tissue blocks and mounted on standard glass slides. It is recommended that several additional sections be made from each block at this time for possible future needs for special stainings. All tissue blocks and slides shall be filed and stored in properly labeled files or boxes.

(E) *Histopathological techniques.* Although the information available for a given chemical substance may dictate test-rule specific changes, the following general testing sequence is proposed for gathering histopathological data:

(*1*) *General staining.* A general staining procedure shall be performed on all tissue specimens in the highest treatment group. Hematoxylin and eosin (H&E) shall be used for this purpose. The staining shall be differentiated properly to achieve bluish nuclei with pinkish background.

(*2*) *Special stains.* Based on the results of the general staining, selected sites and cellular components shall be further evaluated by the use of specific techniques. If H&E screening does not provide such information, a battery of stains shall be used to assess the following components in all appropriate required samples: neuronal body (e.g., Einarson's gallocyanin), axon (e.g., Bodian), myelin sheath (e.g., Kluver's Luxol Fast Blue) and neurofibrils (e.g., Bielchosky). In addition, peripheral nerve fiber teasing shall be used. Detailed staining methodology is available in standard histotechnological manuals such as AFIP (1968) under paragraph (f)(1) of this section, Ralis et al. (1973) under paragraph (f)(5) of this section, and Chang (1979) under paragraph (f)(2) of this section. The nerve fiber teasing technique is discussed in Spencer and Schaumberg (1980) under paragraph (f)(6) of this section. A section of normal tissue shall be included in each staining to assure that adequate staining has occurred. Any changes shall be noted and representative photographs shall be taken. If a lesion(s) is observed, the special techniques shall be repeated in the next lower treatment group until no further lesion is detectable.

(*3*) *Alternative technique.* If the anatomical locus of expected neuropathology is well-defined, epoxy-embedded sections stained with toluidine blue may be used for small sized tissue samples. This technique obviates the need for special stains for cellular components. Detailed methodology is available in Spencer and Schaumberg (1980) under paragraph (f)(6) of this section.

(*4*) *Electron microscopy.* Based on the results of light microscopic evaluation, specific tissue sites which reveal a lesion(s) shall be further evaluated by electron microscopy in the highest treatment group which does not reveal any light microscopic lesion. If a lesion is observed, the next lower treatment group shall be evaluated until no significant lesion is found. Detailed methodology is available in Hayat (1970) under paragraph (f)(3) of this section.

(F) *Examination*—(*1*) *General.* All stained microscopic slides shall be examined with a standard research microscope. Examples of cellular alterations (e.g., neuronal vacuolation, degeneration, and necrosis) and tissue changes (e.g., gliosis, leukocytic infiltration, and cystic formation) shall be recorded and photographed.

(*2*) *Electron microscopy.* Since the size of the tissue samples that can be examined is very small, at least 3 to 4 tissue blocks from each sampling site must be examined. Tissue sections must be examined with a transmission electron microscope. Three main

categories of structural changes must be considered:

(*i*) *Neuronal body.* The shape and position of the nucleus and nucleolus as well as any change in the chromatin patterns shall be noted. Within the neuronal cytoplasm, cytoplasmic organelles such as mitochondria, lysosomes, neurotubules, neurofilaments, microfilaments, endoplasmic reticulum and polyribosomes (Nissl substance), Golgi complex, and secretory granules shall be examined.

(*ii*) *Neuronal processes.* The structural integrity or alterations of dendrites, axons (myelinated and unmyelinated), myelin sheaths, and synapses shall be noted.

(*iii*) *Supporting cells.* Attention must also be paid to the number and structural integrity of the neuroglial elements (oligodendrocytes, astrocytes, and microglia) of the central nervous system, and the Schwann cells, satellite cells, and capsule cells of the peripheral nervous system. Any changes in the endothelial cells and ependymal lining cells shall also be noted whenever possible. The nature, severity, and frequency of each type of lesion in each specimen must be recorded. Representative lesions must be photographed and labeled appropriately.

(e) *Data collection, reporting, and evaluation.* In addition to information meeting the requirements stated under 40 CFR Part 792 Subpart J, the following specific information should be reported:

(1) *Description of test system and test methods.* A description of the general design of the experiment should be provided. This should include a short justification explaining any decisions where professional judgment is involved such as fixation technique and choice of stains.

(2) *Results.* All observations shall be recorded and arranged by test groups. This data may be presented in the following recommended format:

(i) *Description of signs and lesions for each animal.* For each animal, data must be submitted showing its identification (animal number, treatment, dose, duration), neurologic signs, location(s) nature of, frequency, and severity of lesion(s). A commonly-used scale such as 1+, 2+, 3+, and 4+ for degree of severity ranging from very slight to extensive may be used. Any diagnoses derived from neurologic signs and lesions including naturally occurring diseases or conditions, should also be recorded.

(ii) *Counts and incidence of lesions, by test group.* Data shall be tabulated to show: (A) The number of animals used in each group, the number of animals displaying specific neurologic signs, and the number of animals in which any lesion was found; (B) The number of animals affected by each different type of lesion, the average grade of each type of lesion, and the frequency of each different type and/or location of lesion.

(iii) *Evaluation of data.* (A) An evaluation of the data based on gross necropsy findings and microscopic pathology observations shall be made and supplied. The evaluation shall include the relationship, if any, between the animal's exposure to the test substance and the frequency and severity of the lesions observed.

(B) The evaluation of dose-response, if existent, for various groups shall be given, and a description of statistical method must be presented. The evaluation of neuropathology data should include, where applicable, an assessment in conjunction with other neurotoxicity studies performed (eg. electrophysiological, behavioral, neurochemical).

(f) *References.* For additional background information on this test guideline the following references should be consulted:

(1) AFIP. *Manual of Histologic Staining Methods.* (New York: McGraw-Hill (1968).

(2) Chang, L.W. *A Color Atlas and Manual for Applied Histochemistry.* (Springfield, IL: Charles C. Thomas, 1979).

(3) Hayat, M.A. "Vol. 1. Biological applications," *Principles and techniques of electron microscopy.* (New York: Van Nostrand Reinhold, 1970)

(4) Palay S.L., Chan-Palay, V. *Cerebellar Cortex: Cytology and Organization.* (New York: Springer-Verlag, 1974.

(5) Ralis, H.M., Beesley, R.A., Ralis, Z.A. *Techniques in Neurohistology.* (London: Butterworths, 1973).

(6) Spencer, P.S., Schaumburg, H.H. (eds). *Experimental and Clinical Neurotoxicology.* (Baltimore: Williams and Wilkins, 1980).

(7) Zeman, W., JRM Innes, J.R.M. *Craigie's Neuroanatomy of the Rat.* (New York: Academic, 1963).

§ 798.6450 NTE neurotox assay.

(a) *Purpose.* (1) A variety of organophosphorus (O–P) compounds cause a type of delayed neurotoxicity (OPIDN) in which inhibition of the esterase activity of a protein called neurotoxic esterase (NTE) in neural tissue is the primary biochemical correlate and predictor. This guideline will describe the conduct of an assay for measurement of the inhibition of NTE in the brain or spinal cord of animals exposed to O–P. It is based on the method described by Johnson (1975, 1977, 1982) under paragraph (f) (2),(3), and (4) of this section and quotes those sources directly. Other methods for performing the assay have been described by Sprague et al. (1981) under paragraph (f)(6) of this section, Soliman et al. (1982) under paragraph (f)(7) of this section and Caroldi and Lotti (1982) under paragraph (f)(1) of this section for peripheral nerve. These and other assays are reviewed by Johnson (1982) under paragraph (f)(4) of this section and Johnson and Richardson (1983) under paragraph (f)(5) of this section. This biochemical test is intended as an adjunct to a behavioral and pathological study in hens.

(2) NTE measurements provide objective quantitative data on the first step in initiation of OPIDN. Thus, they can be a great help in evaluating studies where the more poorly quantified behavioral or pathological data may be equivocal, or where the adequacy of a negative study is at issue. The second step necessary is "aging" of the phosphorylated NTE (the loss of an R group resulting in a negatively charged substituent bound to NTE). Not all O–P that inhibit NTE, then, cause OPIDN, but all neuropathic O–P inhibit NTE.

(3) Thus, the NTE assay is a valuable adjunct to but not a complete replacement for in-vivo testing. Johnson (1982) (under paragraph (f)(4) of this section has proposed a detailed testing scheme for combining the NTE assay with behavioral and histopathological studies in hens. Such combined testing can be faster, more accurate, and less expensive than the current EPA approach. OTS encourages testing schemes that combine this assay with in-vivo studies.

(b) *Definitions.* (1) Organophosphorus induced delayed neurotoxicity (OPIDN) is a neurological syndrome in which limb weakness and upper motor neuron spasticity are the predominant clinical signs and distal axonopathy of peripheral nerve and spinal cord are the correlative pathological signs. Clinical signs and pathology first appear between 1 and 2 weeks following exposure which normally inhibits greater than 80 percent of NTE (For O–Ps that "age").

(2) Neurotoxic target esterase (NTE) is a membrane-bound neural protein that hydrolyzes phenyl valerate and is highly correlated with the initiation of OPIDN. NTE activity is operationally defined as the phenyl valerate hydrolytic activity resistant to paraoxon but sensitive to mipafox or neuropathic O–P ester inhibition.

(c) *Principle of the test method.* The test method is a differential assay of the ability of neural tissue, following O–P exposure, to selectively hydrolyze a phenyl valerate substrate. The principle of the assay is first, to determine the amount of hydrolysis that occurs in the presence of a non-neurotoxic inhibitor, paraoxon, (a), which is intended to occupy irrelevant sites. Second, we determine the activity in the presence of paraoxon and a known neuropathic inhibitor, mipafox, (b). NTE activity is the difference between (a) and (b), that is, the proportion of activity inhibited only by mipafox. Thus, the "mipafox site" is already occupied following exposure to a neuropathic O–P ester and the activity of (b) is therefore reduced.

(d) *Testing procedure.* Because this guideline is intended as an adjunct to an in-vivo study, only those aspects of study conduct specific to the assay will be described.

(1) *Animal selection.* The adult domestic laying hen is recommended. Standard size breeds and strains should be employed.

(2) *Number of animals.* (i) At least four hens/dose or control group should be used.

(ii) It is recommended that at least two hens be dosed with a known neuropathic O–P as a positive control. Tri-o-tolyl phosphate (TOCP) or diisopropyl phosphorofluoridate (DFP) can be used but TOCP is recommended because of its low acute toxicity.

(3) *Materials.* To conduct this assay, you will need paraoxon (diethyl 4-nitrophenyl phosphate), mipafox (N, N'-diisopropylphosphorodiamido fluoridate), and phenyl valerate. Johnson (1977) under paragraph (f)(3) of this section includes a detailed description of the steps necessary for the synthesis, purification, and storage of these chemicals. Paraoxon can be obtained commercially.

(4) *Study conduct.* (i) The assay should be performed on the whole brain and spinal cord of subjects sacrificed 24 hours following acute exposure, and at regular intervals, e.g., weekly, during repeated exposure. The last measurement should follow the last exposure by 24 or 48 hours. Each assay should be performed in duplicate.

(ii) The assay has four stages: preparation of tissue; differential preincubation; hydrolysis of substrate; and measurement of product. The quotations that follow are from Johnson (1977) as corrected or modified in Johnson (1982). His is the best known method for conduct of this assay. Other acceptable methods have been used. They primarily involve minor technical modification (Sprague et al. 1981 under paragraph (f)(7) of this section and Soliman et al. 1982 under paragraph (f)(6) of this section). Testers are encouraged to discuss planned methods with EPA prior to conducting testing for approval.

(A) *Preparation of tissue.* "Normal or dosed birds are killed by cervical dislocation. The head is cut off and the whole brain removed and cooled in ice-cold buffer (50 mM Tris/0.2 mM EDTA adjusted to pH 8.0 at 25° with HCL). Meninges and blood vessels are rapidly removed and the brain is blotted dry, weighed, and homogenized thoroughly in ice-cold buffer (6.5 ml/g) using a high-speed rotating perspex pestle with not more than 0.25 mm difference in diameter between pestle and tube. The homogenate is then diluted to 1 g/65 ml for assay."

(B) *Differential preincubation.* "Paired samples of homogenate (equivalent to about 6.0 mg tissue) are pre-incubated in Tris/EDTA buffer pH 8 at 37° for exactly 20 minutes with paraoxon (40 to 100 uM) plus either (a) buffer or (b) mipafox (50uM) in a final volume of 2 ml." This step is essential.

(C) *Hydrolysis of substrate.* "After preincubation, dispersion (2ml) of phenyl valerate is added and the incubation is continued for exactly 15 minutes. The dispersion is prepared by adding a solution of Triton X–100 (0.03 percent in water) (30 vol) to a solution of phenyl valerate (15 or 30 mg/ml) in redistilled dimethylformamide (1 vol) and mixing thoroughly (by swirling): other solvents give less satisfactory dispersions. Reaction is stopped by adding 2 ml of sodium dodecyl sulphate (1% w/v) in buffer containing 4-aminoantipyrine (otherwise known as 4-aminophenazone) (0.25 percent)."

(D) *Measurement of product.* This assay is based on the colorimetric detrimination of liberated phenol.

(*1*) "The coupling of phenol liberated in the assay with the aminoantipyrine may be performed at any convenient time after quenching the enzyme: 1 ml of $K_3Fe(CN)_6$ (0.4 percent in water) is added and the stable red colour is read at 510 nm."

(*2*) "A non-tissue blank, kept to 10 percent of the "B" (paraoxon tube) value by maintaining the substrate phenol fee, should be included in each group of assay tubes. Typical control absorbance values would be 0.8 for paraoxon, 0.35 for paraoxon and mipafox and 0.07 for the blank. Colour development takes (1–2 min) in solutions stopped with sodium dodecyl sulphate. The extinction coefficient of phenol under these conditions is 13,900. NTE activity is represented by the difference in absorbance obtained from samples incubated under conditions (a) and (b) respectively."

(*3*) "To clarify the incubation media when NTE activity of spinal cord homogenates is assayed, (up to 16 mg wet weight/tube), increase sodium dodecyl sulphate concentration to 2 percent. Under standard conditions NTE hydrolyzes about 2400 umol of substrate/min/g of cortex, 550 for spinal cord, and 100 for sciatic nerve."

(e) *Data reporting and evaluation*—(1) *Test report.* In addition to the reporting requirements specified in the EPA Good Laboratory Practice Standards under 40 CFR Part 792, Subpart J. The final test report must include the following information:

(i) Neurotoxic esterase data including absorbance values for each subject tested.

(ii) Indication of whether each subject survived to sacrifice or time of death.

(iii) Data from control animals and blank samples.

(iv) Statistical evaluation of results.

(2) *Evaluation of results.* (i) Results should be evaluated in terms the extent of inhibition as a function of treatment and dose, comparison to inhibition of acetylcholinesterase (Ach E) where available, lethal potency, and data on blank samples and control group results.

(ii) Results on NTE should be compared to and evaluated with behavioral and histopathological data. Sequential data from repeated exposures studies should also be evaluated for evidence that the NTE level has plateaued.

(f) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Caroldi, S., Lotti, M. "Neurotoxic Esterose in Peripheral Nerve: Assay, Inhibition, and Rate of Resynthesis," *Toxicology and Applied Pharmacology,* 62, 498–501 (1982).

(2) Johnson, M.K. "The Delayed Neuropathy Caused By Some Organophosphorus Esters: Mechanism and Challenge," *Critical Reviews In Toxicology,* 3, 289–316 CRC Press, Inc. (1975).

(3) Johnson, M.K. "Improved Assay of Neurotoxic Esterase for Screening Organophosphates for Delayed Neurotoxicity Potential," *Archives of Toxicology,* 37, 113–115 (1977).

(4) Johnson, M.K. "The Target of Initiation of Delayed Neurotoxicity by Organophosphorus Esters: Biochemical Studies and Toxicological Applications," Reviews in *Biochemical Toxicology,* 4. Eds. Hodgson, E., Bend, Jr., Philpot, R.M., (Elsevier: New York, 1982); pp. 141–212.

(5) Johnson, M.K., Richardson, R.J. "Biochemical Endpoints: Neurotoxic Esterase Assay," *Neurotoxicology*, 4(2): 311–320 (1983).

(6) Soliman, S.A., Linder, R., Farmer, J., Curley, A. "Species Susceptibility to Delayed Toxic Neuropathy in relation to in vivo inhibition of Neurotoxic Esterase by Neurotoxic Organophosphorus Esters," *Journal of Toxicology and Environmental Health*, 9, 189–197 (1982).

(7) Sprague, G.L., Sandvik, L.L., Bickford, A.A. "Time course for neurotoxic esterase activity in hens given multiple diisopropyl fluorophosphate injections," *Neurotoxicology*, 2, 523–532 (1981).

§ 798.6500 Schedule-controlled operant behavior.

(a) *Purpose.* (1) In the assessment and evaluation of the potential human health effects of substances, it may be necessary to test for functional neurotoxic effects. Substances that have been observed to produce neurotoxic signs in other toxicity studies (e.g. CNS depression or stimulation), as well as substances with a structural similarity to known neurotoxicants should be evaluated for these effects.

(2) This guideline defines procedures for conducting studies of schedule-controlled operant behavior, one way of evaluating functional neurotoxic effects (Dews, 1972 under paragraph(f)(1) of this section; NAS 1975, 1977, 1982 under paragraph (f)(4), (5) and (6) of this section). Our purpose is to evaluate the effects of acute and repeated exposures on the rate and pattern of responding under schedules of reinforcement. Operant behavior tests may be used to evaluate many other aspects of behavior (Laties, 1978 under paragraph (f)(3) of this section). Additional tests may be necessary to completely assess the behavioral effects of any substance. Behavioral evaluation should be used in conjunction with neuropathologic evaluation and the evaluation of other toxic effects.

(b) *Definitions*—(1) *Neurotoxicity.* Neurotoxicity or a neurotoxic effect is an adverse change in the structure or function of the nervous system following exposure to a chemical agent. Behavioral toxicity is an adverse change in the functioning of the organism with respect to its environment following exposure to a chemical agent.

(2) *Operant, operant behavior, operant conditioning.* An operant is a class of behavioral responses which change or operates on the environment in the same way. Operant behavior is further distinguished as behavior which is modified by its consequences. Operant conditioning is the experimental procedure used to modify some class of behavior by reinforcement or punishment.

(3) *Schedule of reinforcement.* A schedule of reinforcement specifies the relation between behavioral responses and the delivery of reinforcers, such as food or water (Ferster and Skinner, 1957 under paragraph (f)(2) of this section). For example, a fixed ratio (FR) schedule requires a fixed number of responses to produce a reinforcer (e.g. FR 30). On a fixed interval (FI) schedule, the first response after a fixed period of time is reinforced (e.g. FI 5 minutes).

(c) *Principle of the test method.* Experimental animals are trained to perform under a schedule of reinforcement and measurements of their operant behavior are made. Several doses of the test substance are then administered according to the experimental design (between groups or within subjects) and the duration of exposure (acute or repeated). Measurements of the operant behavior are repeated. A descriptive and statistical evaluation of the data is made to evaluate the nature and extent of any changes in behavior in relation to exposures to the test substance. Comparisons are made between any exposures that influence the behavior and exposures that have neuropathological effects or effects on other targets of the chemical.

(d) *Test procedures*—(1) *Experimental design.* These test procedures may be used to evaluate the behavior of experimental animals receiving either acute or repeated exposures. For acute exposure studies, either within-subject or between groups, experimental designs may be used. For repeated exposure studies, between groups designs should be used, but within subject comparisons (pre-exposure and post-exposure) are recommended and encouraged.

(2) *Animal selection*—(i) *Species.* (A) For most studies, the laboratory mouse or rat is recommended. Standard strains should be used.

(B) Under some circumstances other species may be recommended.

(ii) *Age.* Experimental animals should be young adults. Rats or mice should be at least 14 and 6 weeks old, respectively, prior to exposure.

(iii) *Sex.* (A) Approximately equal numbers of male and female animals are required for each dose level and control group.

(B) Virgin females should be used.

(iv) *Experimental history.* Animals should be experimentally and chemically naive.

(3) *Number of animals.* Six to twelve animals should be exposed to each level of the test substance and/or control procedure. If post exposure effects are examined, a separate group, 6 to 12 additional animals not sacrificed for pathology, will required in subchronic studies.

(4) *Control groups*—(i) *Untreated controls.* A concurrent "sham" exposure or vehicle control group or session (according to the design of the study) is required. The subjects should be treated similarly except that administration of the test substance is omitted.

(ii) *Positive controls.* Positive control data is required to demonstrate that the experimental procedures, under the specific conditions in the testing laboratory, are sensitive to substances known to affect operant behavior. Both increases and decreases in response rate should be demonstrated. Data based on acute exposures will be adequate. Data should be collected according to the same experimental design as that proposed for the test substance. Historical data on the procedure collected in the same species and under the same conditions in the testing laboratory may be acceptable, but the presentation of concurrent control data is strongly encouraged since it provides evidence that the test has remained sensitive.

(5) *Dose levels and dose selection.* At least 3 doses, equally spaced over a log scale (e.g., 10, 30, 100), over a range of at least 1 log unit shall be used in addition to a zero dose or vehicle administration. The data should be sufficient to produce a dose-effect curve.

(i) The highest dose shall produce: (A) Clear behavioral effects; or (B) life-threatening toxicity.

(ii) The data from the lower doses must show either: (A) Graded dose-dependent effects at 2 dose levels; or (B) no effects at 2 dose levels, respectively.

(6) *Duration of exposure.* The duration and frequency of exposure will be specified in the test rule.

(7) *Route of Administration.* The route of administration will also be specified in the test rule and will usually be identical to one of the anticipated or actual routes of human exposure. For some chemicals, another route (e.g. parenteral) may be justified. The exposure protocol should conform to that outlined in the appropriate acute or subchronic toxicity study guideline under Subpart B or Subpart C of this Part.

(8) *Study conduct*—(i) *Apparatus.* Behavioral responses and the delivery of reinforcers shall be controlled and monitored by automated equipment located so that its operation does not provide unintended cues or otherwise

interfere with the ongoing behavior. Individual chambers should be sound attenuated to prevent disruptions of behavior by external noise. The response manipulanda, feeders, and any stimulus devices should be tested before each session; these devices should periodically be calibrated.

(ii) *Chamber assignment.* Concurrent treatment groups should be balanced across chambers. Each subject should be tested in the chamber to which it is initially assigned.

(iii) *Deprivation and training.* (A) If a nonpreferred positive reinforcer is used, all subjects should be deprived of food until they reach a fixed percentage (e.g. 80 to 90 percent, commonly) of their ad libitum body weight or for a fixed period (e.g., 18 hours) prior to training. Deprivation should be kept constant throughout the study.

(B) Subjects must be trained until they display demonstrable stability in performance across days prior to exposure. One simple and useful criterion is a minimum number of sessions on the schedule and no systematic trend during the 5 days before exposure.

(C) Cumulative records of cumulative responding over time for each animal should be presented to demonstrate that the pattern of responding is representative of that generated by the schedule of reinforcement.

(iv) *Time, frequency, and duration of testing*—(A) *Time of testing.* All experimental animals should be tested at the same time of day and with respect to the time of exposure. For acute studies, testing should be performed when effects are estimated to peak, usually shortly after exposure. For subchronic studies, subjects should be tested prior to daily exposure in order to assess cumulative effects.

(B) *Frequency of testing.* The maintenance of stable operant behavior normally will require regular and frequent (e.g., 5 days a week) testing sessions. Animals should be weighed on each test day.

(C) *Duration of testing.* (*1*) Experimental sessions should be long enough to reasonably see the effects of exposure, but brief enough to be practical. Under most circumstances, a session length of 30–40 minutes should be adequate.

(*2*) If the nature or duration of effects following cessation of repeated exposure are a concern, animals from the high dose group should be tested following exposure for a suitable period of time.

(v) *Schedule selection.* The schedule of reinforcement chosen should generate response rates that may increase or decrease as a function of exposure. Many schedules of reinforcement can do this: a single schedule maintaining a moderate response rate; fixed-interval schedules, which engender a variety of response rates in each interval; or multiple schedules, where different components may maintain high and low response rates.

(e) *Data reporting and evaluation.* In addition to the reporting requirements specified under 40 CFR Part 792, Subpart J the final test report should contain the following information:

(1) *Description of system, test methods, experimental design, and control data.* (i) A description of the experimental chamber, programming equipment, data collection devices, and environmental conditions.

(ii) A description of the experimental design including counterbalancing procedures, and the stability criterion.

(iii) A description and statistical evaluation of positive control and other control data, including standard measures of central tendency, variability, coefficient of variation of response rates, and the slope of the dose-effect curve.

(2) *Results.* (i) Data for each animal should be arranged by test group in tabular form including the animal identification number, body weight, pre-exposure rate of responding, changes in response rate produced by the chemical, and group data for the same variables, including standard measures of central tendency, variability and coefficient of variation.

(ii) A description and statistical evaluation of the test results: With particular reference to the overall statistical procedures (e.g., parametric or nonparametric) dose-effect curve, and calculation of slope. Presentation of calculations is encouraged.

(f) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Dews, P.B. "Assessing the Effects of Drugs," *Methods in Psychobiology,* Vol. 2, Ed., R.D. Myers (New York: Academic Press, 1972) 83–124.

(2) Ferster, C.B. Skinner, B.F. Schedules of Reinforcement. (New York: Appleton-Century-Crofts, 1957).

(3) Laties, V.G. "How Operant Conditioning can Contribute to Behavioral Toxicology," Environmental Health Perspectives, 28: 29–35 (1978).

(4) National Academy of Science. *Principles for Evaluating Chemicals in the Environment.* (Washington, DC: National Academy of Sciences, 1975).

(5) National Academy of Science. *Principles and Procedures for Evaluating the Toxicity of Household Substances.* (Washington, DC: National Academy of Sciences, 1977).

(6) National Academy of Science. "Strategies to determine needs and priorities for toxicity testing," Appendix 3B. *Reference Protocol Guidelines For Neurobehavioral Toxicity Tests.* 2: 123–129 (1982).

§ 798.6540 Acute delayed neurotoxicity of organophosphorus substances.

(a) *Purpose.* Organophosophorus substances should be considered as candidates for delayed neurotoxicity studies using the adult hen as the test animal. This test has certain limitations, e.g., in predicting effects from repeated exposures. These limitations may be minimized by conducting an adjunct test in which inhibition and aging of neurotoxic esterase of hen neural tissue are measured.

(b) *Definitions.* Acute delayed neurotoxicity is a prolonged, delayed-onset locomotor ataxia resulting from single administration of the test substance, repeated once if necessary.

(c) *Principle of the test method.* The test substance is administered orally in a single dose to domestic hens (Gallus gallus domesticus) which have been protected from acute cholinergic effects, when appropriate. The animals are observed for at least 21 days for delayed neurotoxicity, with redosing and observation for another 21 days if no effects or equivocal responses are seen. The animals are observed daily for behavioral abnormalities, locomotor ataxia and paralysis. Histopathological examination of selected neural tissues is undertaken on all animals surviving the initial cholinergic phases.

(d) *Test procedures*—(1) *Animal selection.* The adult domestic laying hen, aged 8 to 14 months, is recommended. Standard size breeds and strains should be employed.

(2) *Number of animals.* A sufficient number of hens should be utilized so that at least six survive the observation period.

(3) *Control groups*—(i) *General.* Appropriate control groups should be used. These should include a positive control group of at least two hens treated with a known delayed neurotoxicant and a concurrent control group of at least six hens treated in a manner identical to the treated group, except that administration of the test substance and any protective agents is omitted.

(ii) *Reference substances.* A substance which is known to produce acute delayed neurotoxicity should be used as a positive control. Examples of

such substances are triorthocresyl phosphate (TOCP) and leptophos.

(4) *Housing and feeding conditions.* Cages or enclosures which are large enough to permit free mobility of the hens and easy observation of gait should be used. Where the lighting is artificial, the sequence should be 12 hours light, 12 hours dark. Appropriate diets should be administered as well as an unlimited supply of drinking water.

(5) *Dose level.* The selected dose level of the test substance should not be less than the unprotected LD_{50} dose. Atropine or another noninterfering protective agent may be used to prevent death due to acute cholinergic effects. Doses of test substances higher than 5000 mg/kg of body weight need not be tested.

(6) *Dose selection.* A preliminary LD_{50} test using an appropriate number of animals, dosages and dose groups, as recommended in § 798.1175, should be performed in unprotected hens to establish the dose level to be used in this test. Healthy young adult hens free from interfering viral diseases and medication and without abnormalities of gait should be acclimatized to the laboratory conditions for at least 5 days prior to randomization and assignment to treatment and control groups.

(7) *Route of administration.* Dosing with the test substance should normally be by the oral route using gavage, gelatine capsules, or a comparable method.

(8) *Study conduct*—(i) *General.* The test or control substance should be administered and observations begun. All hens should be carefully observed at least once daily for a period of at least 21 days and signs of toxicity recorded, including the time of onset, degree and duration. Observations should include, but not be limited to, behavioral abnormality, locomotor ataxia and paralysis. At least twice a week the hens should be taken outside the cages and subjected to a period of forced motor activity, such as ladder climbing, in order to enhance the observation of minimal responses. If neurotoxic responses are not observed or if equivocal responses are seen, then the dose should be administered again and the animals observed for an additional 21 days. The hens should be weighed weekly. Any moribund hens should be removed and sacrificed.

(ii) *Pathology*—(A) *Gross necropsy.* In the presence of clinical signs of delayed neurotoxicity useful information may be provided by gross necropsy.

(B) *Histopathology.* All animals should be subjected to microscopic examination. Tissues should be fixed *in situ*, preferably using perfusion techniques. Sections should include medulla oblongata, spinal cord and peripheral nerves. The spinal cord sections should be taken from the upper cervical bulb, the midthoracic and the lumbo-sacral regions. Section of the proximal region of the tibial nerve and its branches should be taken. Sections should be stained with appropriate myelin and axon-specific stains.

(e) *Data reporting and evaluation*—(1) *Test report.* In addition to the reporting requirements specified under 40 CFR Part 792, Subpart J the final test report must include the following information:

(i) Toxic response data by group with a description of clinical manifestations of nervous system damage; where a grading system is used the criteria should be defined.

(ii) For each animal, time of death during the study or whether it survived to termination.

(iii) The day of observation of each abnormal sign and its subsequent course.

(iv) Body weight data.

(v) Necropsy findings for each animal, when performed.

(vi) A detailed description of all histopathological findings.

(vii) Statistical treatment of results, where appropriate.

(2) *Treatment of results.* Data may be summarized in tabular form, showing for each test group the number of animals at the start of the test, the number of animals showing lesions or effects, the types of lesions or effects and the percentage of animals displaying each type of lesion or effect.

(3) *Evaluation of results.* The findings of an acute delayed neurotoxicity study should be evaluated in terms of the incidence and severity of neurotoxic effects and of any other observed effects and histopathological findings in the treated and control groups.

(f) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Ankier, S.I. "New hot plate tests to quantify antinociceptic and narcotic antagonist activities," European Journal of Pharmacology *27:* 1–4 (1974).

(2) Coughenour, L.L. McLean, J.R., and Parker R.B. "A new device for the rapid measurement of impaired motor function in mice," Pharmacology, Biochemistry and Behavior *6:* 351–353 (1977).

(3) D'Amour, F.E. Smith, D.L. "A method for determining loss of pain sensation," *Journal of Pharmacology and Experimental Therapeutics, 72:* 74–79 (1941).

(4) Deuel, R.K." Determining sensory deficits in animals," *Methods in Psychobiology Ed.* R.D. Myers (New York: Academic Press, 1977) pp. 99–125.

(5) Edwards, P.M., Parker, V.H. "A simple sensitive and objective method for early assessment of acrylamide neuropathy in rats," *Toxicology and Applied Pharmacology 40:* 589–591 (1977).

(6) Evans, W.O. "A new technique for the investigation of some analgesic drugs on reflexive behavior in the rat," *Psychopharmacologia, 2:* 318–325 (1961).

(7) Irwin, S. "Comprehensive observational assessment: Ia. A systematic quantitative procedure for assessing the behavioral and physiologic state of the mouse," *Psychopharmacologia, 13:* 222–257 (1968).

(8) Marshall, J.F., Turner, B.H., Teitlbaum, P. "Sensory neglect produced by lateral hypothalamic damage," *Science, 174:* 523–525 (1971).

(9) Meyer, O.A, Tilson, H.A., Byrd, W.C., Riley, M.T. "A method for the routine assessment of fore- and hindlimb grip strength of rats and mice," Neurobehavioral Toxicology *1:* 233–236 (1979).

§ 798.6560 Subchronic delayed neurotoxicity of organophosphorus substances.

(a) *Purpose.* In the assessment and evaluation of the toxic characteristics of organophosphorus substances the determination of subchronic delayed neurotoxicity may be carried out, usually after initial information on delayed neurotoxicity has been obtained by acute testing or by the demonstration of inhibition and aging of neurotoxic esterase in hen neural tissue. The subchronic delayed neurotoxicity test provides information on possible health hazards likely to arise from repeated exposures over a limited period of time. It will provide information on dose response and can provide an estimate of a non-effect level which can be of use for establishing safety criteria for exposure.

(b) *Definitions.* Subchronic delayed neurotoxicity is a prolonged, delayed-onset locomoter ataxia resulting from repeated daily administration of the test substance.

(c) *Principle of the test method.* Multiple dose levels of the test substance are administered orally to domestic hens *(Gallus gallus domesticus)* for 90 days. The animals are observed at least daily for behavioral abnormalities, locomotor ataxia and paralysis. Histopathological examination of selected neural tissues is undertaken at the termination of the test period.

(d) *Test procedures*—(1) *Animal selection.* The adult domestic laying hen, aged 8 to 14 months, is recommended. Standard size breeds and strains should be employed.

(2) *Number of animals.* Ten hens should be used for each treatment and control group.

(3) *Control group*—(i) *General.* A concurrent control group should be used. This group should be treated in a manner identical to the treated group, except that administration of the test substance is omitted.

(ii) *Reference substances.* If a positive control is used, a substance which is known to produce delayed neurotoxicity should be employed. Examples of such substances are triorthocresyl phosphate (TOCP) and leptophos.

(4) *Housing and feeding conditions.* Cages or enclosures which are large enough to permit free mobility of the hens and easy observation of gait should be used. Where the lighting is artificial, the sequence should be 12 hours light, 12 hours dark. Appropriate diets should be administered as well as an unlimited supply of drinking water.

(5) *Dose levels.* At least three dose levels should be used in addition to the control group(s). The highest dose level should result in toxic effects, preferably delayed neurotoxicity, but not produce an incidence of fatalities which would prevent a meaningful evaluation. The lowest dose level should not produce any evidence of toxicity.

(6) *Route of administration.* Oral dosing each day for at least 5 days per week should be carried out, preferably by gavage or administration of gelatine capsules.

(7) *Study conduct*—(i) *General.* Healthy young adult hens free from interfering viral diseases and medication and without abnormalities of gait should be acclimatized to the laboratory conditions for at least 5 days prior to randomization and assignment to treatment and control groups. The test or control substance should be administered and observations begun. All hens should be carefully observed at least once daily throughout the test period. Signs of toxicity should be recorded, including the time of onset, degree and duration. Observations should include, but not be limited to, behavioral abnormality, locomotor ataxia and paralysis. At least once a week the hens should be taken outside the cages and subjected to a period of forced motor activity, such as ladder climbing, in order to enhance the observation of minimal responses. The hens should be weighed weekly. Any moribund hens should be removed and sacrificed.

(ii) *Pathology*—(A) *Gross necropsy.* In the presence of clinical signs of delayed neurotoxicity useful information may be provided by gross necropsy.

(B) *Histopathology.* Tissues from all animals should be fixed *in situ*, using perfusion techniques. Sections should include medulla oblongata, spinal cord and peripheral nerves. The spinal cord sections should be taken from the upper cervical bulb, the mid-thoracic and lumbosacral regions. Sections of the proximal region of the tibial nerve and its branches and of the sciatic nerve should be taken. Sections should be stained with appropriate myelin and axon-specific stains. Microscopic examination should be carried out on all hens in the control and high-dose groups. Microscopic examination should also be carried out on hens in the low and intermediate dose groups when there is evidence of effects in the high-dose group.

(e) *Data reporting and evaluation*—(1) *Test report.* In addition to the reporting requirements specified under 40 CFR Part 792, Subpart J the final test report must include the following information:

(i) Toxic response data by group with a description of clinical manifestations of nervous system damage; where a grading system is used the criteria should be defined.

(ii) For each animal, time of death during the study or whether it survived to termination.

(iii) The day of observation of each abnormal sign and its subsequent course.

(iv) Body weight data.

(v) Necropsy findings for each animal, when performed.

(vi) A detailed description of all histopathological findings.

(vii) Statistical treatment of results, where appropriate.

(2) *Treatment of results.* (i) Data may be summarized in tabular form, showing for each test group the number of animals at the start of the test, the number of animals showing lesions or effects, the types of lesions or effects and the percentage of animals displaying each type of lesion or effect.

(ii) All observed results should be evaluated by an appropriate statistical method. Any generally accepted statistical method may be used; the statistical methods should be selected during the design of the study.

(3) *Evaluation of results.* The findings of a subchronic delayed neurotoxicity study should be evaluated in conjunction with the findings of preceding studies and considered in terms of the incidence and severity of observed neurotoxic effects and any other observed effects and histopathological findings in the treated and control groups. A properly conducted subchronic test should provide a satisfactory estimation of a no-effect level based on lack of clinical signs and histopathological changes.

(f) *References.* For additional background information on this test guideline the following references should be consulted:

(1) Abou-Donia, M.B. "Organophosphorus ester-induced delayed neurotoxicity" Annual Review of Pharmacology and Toxicology, 21:511–548 (1981).

(2) Abou-Donia, M.B., Pressing, S.H. "Delayed neurotoxicity from continuous low-dose oral administration of leptophos to hens." *Toxicology and Applied Pharmacology*, 38:595–608 (1976).

(3) Baron, R.L. (ed). "Pesticide Induced Delayed Neurotoxicity," Proceedings of a Conference, February 19–20, 1976, Washington, D.C. U.S. Environmental Protection Agency. EPA Report No. 600/1–76–025, Washington, DC (1976).

(4) Cavanaugh, J.B. "Peripheral neuropathy caused by chemical agents" *Critical Reviews of Toxicity*, 2:365–417 CRC Press, Inc. (1973).

(5) Johannsen, F.R., Wright, P.L., Gordon, D.E., Levinskas, G.L., Radue, R.W., Graham, P.R. "Evaluation of delayed neurotoxicity and dose-response relationship of phosphate esters in the adult hen," *Toxicology and Applied Pharmacology*, 41:291–304 (1977)

(6) Johnson, M.K. "Organophosphorus esters causing delayed neurotoxic effects: mechanism of action and structure/activity studies," *Archives of Toxicology*, 34:259–288 (1975).

§ 798.6850 Peripheral nerve function.

(a) *Purpose.* The techniques in this guideline are designed to develop data on neurophysiological changes in the nervous system for chemical substances and mixtures subject to such testing under the Toxic Substances Control Act. The data will characterize the neurophysiological changes produced by substances known to be peripheral neurotoxicants and determine dose-effect. The EPA will use these data to assess the risk of neurotoxic effects these chemicals may present to human health.

(b) *Definitions.* (1) Neurotoxicity or a neurotoxic effect is an adverse change in the structure or function of the nervous system following exposure to a chemical agent.

(2) Conduction velocity is the speed at which the compound nerve action potential traverses a nerve.

(3) Amplitude is the voltage excursion recorded during the process of recording the compound nerve action potential. It is an indirect measure of the number of axons firing.

(c) *Principle of the test method.* The test substance is administered to several groups of experimental animals, one dose being used per group. The peripheral nerve conduction velocity and amplitude are assessed using electrophysiological techniques. A dose-effect function is determined.

(d) *Test procedure*—(1) *Animal selection*—(i) *Species and strain.* Testing should be performed on a laboratory rodent unless such factors as the comparative metabolism of the chemical or species sensitivity to the toxic effects of the test substance, as evidenced by the results of other studies, dictate otherwise. All animals should have been laboratory-reared to ensure consistency of diet and environmental conditions across groups and should be of the same strain and from the same supplier. If this is not possible, groups shall be balanced to ensure that differences are not systematically related to treatment.

(ii) *Age and weight.* Young adult animals (at least 60 days for rats) must be used. Age (± 15 days for rats) must not vary across groups. Weights should be within ± 10 percent of the mean.

(iii) *Sex.* Either (or both) sex(es) may be used. Sex must not vary across groups.

(2) *Number of animals.* Sufficient numbers of animals shall be used to detect a 10 percent change from normal conduction velocity at the 5 percent level with 90 percent power. Generally, 20 animals/group will satisfy this requirement.

(3) *Control groups.* (i) A concurrent control group is required. This group must be an untreated group, or, if a vehicle is used in administering the test substance, a vehicle control group. If the toxic properties of the vehicle are not known or cannot be made available, both untreated and vehicle control groups are required.

(ii) A satellite group may be treated with the high dose level for 90 days and observed for reversibility, persistence, or delayed occurrence of toxic effects for a post-treatment period of appropriate length, normally not less than 28 days.

(4) *Dose levels and dose selection.* At least 3 doses, equally spaced on a log scale (e.g., ½ log units) over a range of at least 1 log unit shall be used in addition to a zero dose or vehicle administration. The data should be sufficient to produce a dose-effect curve.

(i) The highest dose shall produce (A) clear effects on nerve conduction velocity and/or amplitude or (B) life-threatening toxicity.

(ii) The data from the lower doses must show either (A) graded dose-dependent effects at two dose levels or (B) no effects at two dose levels, respectively.

(5) *Duration of testing.* The exposure duration will be specified in the test rule. This will generally be 90 days of exposure.

(6) *Route of administration.* The test substance shall be administered by a route specified in the test rule. This will usually be the route most closely approximating the route of human exposure. The exposure protocol shall conform to that outlined in the appropriate acute or subchronic toxicity guideline.

(7) *Combined protocol.* The test described herein may be combined with any other toxicity study, as long as none of the requirements of either are violated by the combination.

(8) *Study conduct*—(i) *Choice of nerve(s).* The nerve conduction velocity test must separately assess the properties of both sensory and motor nerve axons. Either a hind limb (e.g., tibial) or tail (e.g., ventral caudal) nerve must be chosen. Response amplitude may be measured in a mixed nerve.

(ii) *Preparation.* (A) *In vivo* testing of anesthetized animals is required. A barbiturate anesthetic is appropriate. Care should be taken to ensure that all animals are administered an equivalent dosage and that the dosage is not excessive. If dissection is used, extreme caution must be observed to avoid damage to either the nerve or the immediate vascular supply.

(B) Both core and nerve temperature must be monitored and kept constant (±0.5 °C) during the study. Monitoring of skin temperature is adequate if it can be demonstrated that the skin temperature reflects the nerve temperature in the preparation under use. Skin temperature should be monitored with a needle thermistor at a constant site, the midpoint of the nerve segment to be tested.

(C) *Electrodes*—(*1*) *Choice of Electrodes.* Electrodes stimulation and recording may be made of any conventional electrode material, such as stainless steel, although electrodes for non-polarizing materials are preferable. If surface electrodes are used, care must be taken to ensure that good electrical contact is achieved between the electrode and the tissue surface. Following each application, any electrode must be throughly cleaned.

(*2*) *Electrode placement.* Electrode placement must be constant with respect to anatomical landmarks across animals (e.g., a fixed number of mm from the base of the tail). Distances between electrodes used to calculate conduction velocity must be measurable to ±0.5 mm. The recording electrodes should be as far from the stimulating electrodes as possible. A 40 mm separation is adequate in the caudal tail nerve of the rat.

(*3*) *Recording conditions.* The animal should be grounded at about the midpoint between the nearest stimulating and recording electrodes. The recording conditions must be such that the stimulus artifact has returned to baseline before any neural response is recorded which is used in the analysis, under condition of maximal band width of the preamplifier.

(D) The electrical stimulator must be isolated from ground. Biphasic or balanced pair stimuli to reduce polarization effects are acceptable. A constant current stimulator is preferred (and required for polarizable electrodes) and should operate from about 10 uA to about 10 mA. If a constant voltage stimulator is used, it should operate to 250V. All equipment shall be calibrated with respect to time, voltage, and temperature.

(E) The recording environment should be enclosed in a Faraday cage unless electromagnetic field pick-up can be shown to be more than 1.5 times the amplifier baseline noise, under recording conditions. The recording output should be amplified sufficiently to render the compound action potential easily measurable with an oscilloscope. The amplifier should pass signals between 2.0 Hz and 4 kHz without more than a 3dB decrement. The preamplifier must be capacitatively coupled or, if direct coupled to the first stages, must be able to tolerate any DC potentials which the electrode-preparation interface produces, and to operate without significant current leakage through the recording electrodes.

(F) A hard copy must be available for all waveforms or averaged waveforms from which measurements are derived, and for all control recording required by this standard. Hard copies must include a time and voltage calibration signal.

(iii) *Procedure*—(A) *General.* Stimulation should occur at inter-stimulus interval significantly below the relative refractory period for the nerve under study. Stimulus intensity should be increased gradually until the response amplitude no longer increases. At this point the "maximal" stimulus current is determined. An intensity 25–

50 percent (a fixed value in a given study) above the maximal intensity so determined should be used for determining response peak latency and response amplitude. Response peak latency may be read off the oscilloscope following single sweeps or determined by an average of a fired number of responses. The baseline-to-peak height technique (Daube, 1980) is acceptable for determination of the nerve compound action potential amplitude, but in this case, at least 16 responses must be averaged.

(B) *Motor nerve.* Motor conduction velocity may be measured from a mixed nerve by recording the muscle action potential which follows the compound action potential of the nerve. The stimulus intensity is adjusted so that the amplitude of the muscle action potential is supramaximal. Measurement of the latency from stimulation to the onset of the compound muscle action potential gives a measure of the conduction time of the motor nerve fibers. To calculate the conduction velocity, the nerve must be stimulated sequentially in two places each with the same cathode-anode distance, and with the cathode located toward the recording electrode. The cathode to cathode distance between the two sets of stimulating electrodes is divided by the difference between the two latencies of muscle action potential in order to obtain conduction velocity. Placement of electrodes shall be described-site of nerve stimulation may differ from point of entry through skin.

(C) *Sensory nerve.* The somatosensory evoked potential may be used to determine the sensory nerve conduction velocity in a mixed nerve. The cathode is placed proximally at the two stimulation locations with the same cathode-anode distances. The recording electrodes are placed on the skull. The conduction velocity is calculated by dividing the distance between the two stimulating cathodes by the difference between the two latencies of the largest primary peak of the somatosensory evoked potential. Between 64 and 128 responses should be averaged. The stimulation frequency should be about 0.5 Hz. Stimulus intensity should be the same as that used for determining the motor conduction velocity. Should the peak of the somatosensory response be so broad that it cannot be replicated with an accuracy of less than 5 percent of the latency difference observed, then a point on the rising phase of the potential should be chosen, e.g. at a voltage 50 percent of the peak voltage. Alternatively, the sensory nerve conduction velocity can be obtained from a purely sensory nerve or from stimulation of the dorsal rootlets of a mixed nerve, using two recording electrode pairs.

(e) *Data collection, reporting and evaluation.* In addition to information meeting the requirements stated under 40 CFR Part 792, Subpart J, the following specific information should be reported:

(1) *Description of test system and test methods.* (i) Positive control data from the laboratory performing the test which demonstrate the sensitivity of the procedure being used.

(ii) Hard copies of waveforms from which measurements were made as well as control recordings.

(iii) Voltage and time calibration referable to the standards of the Bureau of Standards or to other standards of accuracy sufficient for the measurements used.

(iv) Data demonstrating that nerve temperature was maintained constant throughout the recording period.

(2) *Results.* The following information must be arranged by test group (dose level):

(i) In tabular form, data must be provided showing for each animal:

(A) Its identification number.

(B) Body weight, nerve conduction velocity, and amplitude.

(ii) Group summary data should also be reported.

(3) *Evaluation of data.* An evaluation of the test results (including their statistical analysis) must be made and supplied. This submission must include dose-effect curves for conduction velocity and amplitude and a description of statistical methods. Deviation from conventional parametric techniques must be justified.

(f) *References.* For additional background information on this test guidline the following references should be consulted:

(1) Aminoff, M.J. (Ed). *Electrodiagnosis in Clinical Neurology.* (New York: Churchill Livingstone, 1980).

(2) Daube, J. "Nerve Conduction Studies," *Electrodiagnosis in Clinical Neurology.* Ed. M.J. Aminoff (New York: Churchill Livingstone, 1980). pp. 229–264.

(3) Glatt, A.F., H.N. Talaat and W.P. Koella "Testing of peripheral nerve function in chronic experiments in rats," *Pharmacology and Therapeutics,* 5:539–534 (1979).

(4) Johnson, E.W. *Practical Electromyography.* (Baltimore: Williams and Wilkins, 1980).

Subpart H—Special Studies

§ 798.7100 Metabolism.

(a) *Purpose.* (1) Data from studies on the absorption, distribution, excretion and metabolism of a test chemical are desirable to aid in the evaluation of test results from other toxicology studies and in the extrapolation of data from animals to man. Such studies should be done on each chemical of toxicological concern. The concern may be predicated on the level and type of toxicity observed (or anticipated) and by the magnitude of potential human exposure to the chemical. The main purpose of metabolism studies is to produce data which fortify the understanding of the safety of the chemical in consideration of its intended uses and anticipated human exposure. In addition to the general reasons stated above, a metabolism study may be performed for the following purposes:

(i) To determine the amount and rate of absorption of the test chemical at different dose levels.

(ii) To determine the pattern of distribution of the test chemical among tissues, organs and fluid compartments at different dose levels, after single and repeated doses.

(iii) To identify and, to the extent possible, quantify significant metabolites.

(iv) To characterize route(s) and rate(s) of excretion.

(v) To determine any possible bioaccumulation (bioretention) of the test substance and/or metabolites.

(vi) To determine absorption, metabolism, excretion and distribution as a function of single or repeated doses. For certain chemicals, metabolism studies may not adequately define all of these.

(b) *Definitions.* Bioaccumulation (bioretention) is the uptake and, at least temporary, storage of a chemical by an exposed animal. The chemical can be retained in its original form and/or as modified by enzymatic and non-enzymatic reactions in the body.

(c) *Test procedures*—(1) *Animal selection*—(i) *Species.* The preferred species is the rat. If another mammalian species is used, the tester should provide justification/reasoning for its selection. Commonly used laboratory strains should be employed. Preliminary studies may be performed in several species to develop information on comparative metabolism. Information derived from preliminary studies may help in the selection of species for subsequent toxicity tests.

(ii) *Age.* Young adult animals should be used. For specific purposes, a comparative study using very young animals may provide information about the effects of age on metabolism.

(iii) *Sex.* (A) Equal numbers of animals of each sex should be used at each dose level.

(B) Females should be nulliparous and nonpregnant.

(iv) *Numbers.* At least eight animals (four females and four males) should be used at each dose level.

(2) *Dose levels and dose selection.* (i) At least two dose levels should be used.

(ii) The low dose should correspond to a no-effect-level.

(iii) The upper dose should produce toxic or pharmacologic signs, but not severe effects or a high incidence of mortality which would prevent a meaningful evaluation.

(iv) The determination of absorption, tissue distribution and elimination should be studied as a function of single or repeated doses.

(v) The conclusive identification of a chemical, and its metabolites, requires the use of suitable analytical methods.

(3) *Observation period.* Animals should be kept in individual metabolism cages for 7 days after the radioactive dose or until 95 percent of the administered dose is excreted (whichever occurs first), at which time all of the animals should be killed.

(4) *Administration of the test substance.* (i) The study should be done using the oral route (capsule or gavage). If another route of administration is used, the tester should provide justification/reasoning for its selection. When vehicles are used, attention should be given to the possibility that they may interfere with the kinetics of the test chemical.

(ii) *Labeled test material:* (A) Single dose testing should be performed with an analytically pure grade of the active ingredient, usually in an isotopically labeled form.

(B) Labeled compound may not be required if sufficiently selective and sensitive physical-chemical tests for identifying the compound and its metabolites are used. The label may be radioactive such as ^{14}C, ^{35}S, and ^{36}Cl or stable such as ^{15}N and ^{18}O. In some cases, more than one label per molecule may be advantageous. Labels should be placed in positions that may be expected to follow the "core" of the molecule or significant portions thereof. If possible, one should avoid placing labels such as ^{14}C in positions from which it may be expected to enter the carbon pool of the test animal. Use of readily exchangeable labeling, should be avoided.

(iii) The following four groups of animals should be studied:

(A) Group A animals shall each receive a single intravenous dose of the labeled test substance at the low dose. If it is not possible to dissolve the test substance in physiological saline or water, this group should be omitted.

(B) Group B animals should each receive a single oral dose of the labeled test substance at the low dose.

(C) Group C animals should each receive a series of single daily oral doses of the nonlabeled test substance (by capsule or intubation) over a period of at least 14 days, followed at 24 hours after the last dose by a single oral dose (by capsule or intubation) of the labeled test substance. Each dose should be at the low dose level.

(D) Group D animals should each receive a single oral dose (by capsule or intubation) of the labeled test substance at the high dose level.

(5) *Observation of animals*—(i) *Distribution.* Concentration and quantity of test chemicals in the tissues and organs should be measured at the time of sacrifice.

(ii) *Metabolism.* For determining the extent of biotransformation, urine samples and fecal extracts should be analyzed by suitable techniques. Major metabolites of the chemical should be identified by appropriate methods. It is also important to determine the metabolite pattern of the test chemical after repeated doses.

(iii) *Excretion.* When determining excretion of the test chemical by laboratory animals, the use of individual metabolism cages is recommended for collection of urine and fecal samples. The quantities of test chemical and major metabolites in urine, feces and in expired air should be measured at several time points after exposure (i.e., 4, 8, 12 and 24 hours) and daily thereafter, until approximately 95 percent of the administered dose has been excreted or until 7 days after dosing.

(iv) (A) in the rat, quantities of label in urine, Feces and expired air should be measured at appropriate intervals (i.e, 4, 8, 12, and 24 hours, 1.5, 2, 3, 4, 5, 6, and 7 days) throughout the study for all animals. However if a preliminary study shows no volitile labeled materials are exhaled during the period of zero to 24 hours after dosing such evidence may be submitted in lieu of measuring label in the expired air for this study. In the dog, quantities of label in urine and feces should be measured at appropriate intervals (i.e., every 6 hours for the first 48 hours after dosing and every 12 hours for the remaining 5 days) throughout the study for all animals.

(B) For all animals in groups B, C, and D, the quantity of label in tissues and organs should be measured at sacrifice by suitable methods with particular attention to bone, brain, fat, gonads, heart, kidney, liver, lungs, muscle, spleen, tissues which displayed pathology (in this or prior studies), and residual carcass.

(v) Urine and feces from all groups should be analyzed by suitable methods in order to determine the extent of absorption and biotransformation and to identify the metabolites. An assay method for detection of each major metabolite may be requested by the Agency.

(d) *Data and reporting*—(1) *Treatment of results.* Data should be summarized in tabular form.

(2) *Evaluation of results.* All observed results, quantitative or incidental, should be evaluated by an appropriate statistical method.

(3) *Test report.* In addition to the reporting requirements as specified under 40 CFR Part 792, Subpart J the following specific information should be reported:

(i) Quantity of isotope, together with percent recovery of the administered dose, in feces, urine, and the following tissues and organs of animals in all groups: bone, brain, fat, gonads, heart, kidney, liver, lungs, blood, muscle, spleen, tissues which displayed pathology (in this or prior studies), and residual carcass.

(ii) Percent absorption. If possible by the oral route in groups B, C, and D.

(iii) A full description of the sensitivity and precision of all procedures used to produce the data.

(iv) Information on the degree (i.e., specific activity for a radiolabel) and site(s) of labeling of the test substance.

(v) Counting efficiency data should be made available to the Agency upon request.

(vi) Species and strain.

(e) *Additional metabolism studies.* Additional, more specific studies may be required to clarify important points. Some areas for possible further study include: identification of tissue residues; binding by macromolecules in the blood, liver, gonads and other tissues; placental transfer; entrance into breast milk; biotransformation by specific organs, tissues and cell fractions; and absorption by dermal or inhalation routes of exposure. Plasma binding studies may be conducted, usually *in vitro* with plasma. Placental transfer of a chemical substance may be determined by dosing pregnant rodents with chemicals and assaying their fetuses for the chemical. Additional species may be utilized as the rat and dog differ significantly in metabolic pattern.

[FR Doc. 85-23076 Filed 9-26-85; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 796

[OPTS-46015; FRL 2896-2]

Toxic Substances Control Act Test Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule presents certain Toxic Substances Control Act (TSCA) Test Guidelines. These guidelines have been published as Organization for Economic Cooperation and Development (OECD) Guidelines for the Testing of Chemicals. Elsewhere in this issue of the Federal Register, additional TSCA test guidelines previously published or prepared by publication by EPA are also codified.

EFFECTIVE DATE: September 27, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), in Washington, D.C.: (554-1404), Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: This notice codifies certain TSCA test guidelines which have been published by OECD. Elsewhere in this issue of the Federal Register, additional test guidelines, previously published by NTIS, are also codified into the TSCA test guidelines.

Section 4(b)(1) of the Toxic Substances Control Act (TSCA) specifies that test rules shall include standards for the development of test data. This action codifies guidelines which will be used to establish standards in future TSCA section 4 test rules.

These guidelines have been published in the Organization for Economic Cooperation and Development (OECD) Guidelines for the Testing of Chemicals. The OECD test guidelines contain generally formulated internationally accepted procedures for the laboratory testing of a property or effect deemed important for the evaluation of health or environmental hazards of a chemical.

These guidelines will be used in developing test standards in future TSCA section 4 test rules; therefore, the Agency finds it necessary to codify these guidelines. This process will make chemical specific rules under Part 799 more usable and understandable. Elsewhere in this issue of the Federal Register additional OTS guidelines, previously published by NTIS, are also codified into TSCA test guidelines.

Codification of these guidelines does not impose any regulatory obligation on any person who may be subject to a TSCA section 4 test rule. Specific guidelines will not become mandatory test standards until they are promulgated as such in individual section 4 rulemakings. When promulgated in such test rules, the pertinent TSCA guidelines will become test standards for only that particular section 4 rule and will not serve as generic test standards. EPA may propose modifications to the various guidelines as they are utilized for chemical-specific test rules. In each chemical-specific rule, the proposed test standards and any modifications will be subject to public comment.

List of Subjects in 40 CFR Part 796

Testing, Environmental protection, Chemical fate, Chemicals.

Dated: September 23, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 796—[AMENDED]

Therefore, 40 CFR Part 796 is amended as follows:

1. The authority citation for Part 796 continues to read:

Authority: 15 U.S.C. 2603.

2. Subpart B is amended by adding §§ 796.1050, 796.1220, 796.1370 and 796.1520 to read as follows:

§ 796.1050 Absorption in aqueous solution: Ultraviolet/visible spectra.

(a) *Introductory information.*

(1) *Guidance information.* (i) Molecular formula. (ii) Structural formula.

(2) *Standard documents.* The spectrophotometric method is based on national standards and consensus methods which are applied to measure the absorption spectra.

(b) *Method*—(1)(i) *Introduction, purpose, scope, relevance, application and limits of test.* (A) The primary environmental purpose in determining the ultraviolet-visible (UV-VIS) absorption spectrum of a chemical compound is to have some indication of the wavelengths at which the compounds may be susceptible to photochemical degradation. Since photochemical degradation is likely to occur in both the atmosphere and the aquatic environment, spectra appropriate to these media will be informative concerning the need for further persistence testing.

(B) Degradation will depend upon the total energy absorbed in specific wavelength regions. Such energy absorption is characterized by both molar absorption coefficient (molar extinction coefficient) and band width. However, the absence of measurable absorption does not preclude the possibility of photodegradation.

(ii) *Definitions and units.* The *UV-VIS absorption spectrum* of a solution is a function of the concentration, c_i, expressed in mol/L, of all absorbing species present; the path length, d, of the spectrophotometer cell, expressed in cm; and the molar absorption (extinction) coefficient, ϵ_i, of each species. The absorbance (optical density) A of the solution is then given by:

$$A = d \sum_i \epsilon_{ici}$$

For a resolvable absorbance peak, the band width λ is the wavelength range, expressed in nm $= 10^{-9}$ m, of the peak at half the absorbance maximum.

(iii) *Reference substances.* (A) The reference substances need not be employed in all cases when investigating a new substance. They are provided primarily so that calibration of the method may be performed from time to time and to offer the chance to compare the results when another method is applied.

(B) Reference compounds appropriate for the calibration of the system are:

(*1*) Potassium dichromate (in 0.005 mol/L, H_2SO_4 solution) from J.A.A. Ketelaar, paragraph (d)(2) of this section:

log ϵ	3.56	3.63	3.16	3.50
λ in nm	235	257	313	350

(*2*) Fluoranthene (in methanol) from *C.R.C. Atlas of Spectral Data,* paragraph (d)(3) of this section:

log ϵ	4.75	4.18	4.73	3.91	3.92
λ in nm	237	236	288	339	357

(*3*) 4-nitrophenol (in methanol) from *C.R.C. Atlas of Spectral Data,* paragraph (d)(3) of this section:

log ϵ	3.88	4.04
λ in nm	288	311

See also paragraph (d)(1) of this section.

(iv) *Principle of the test method.* This method utilizes a double-beam spectrophotometer which records only the absorption differences between the blank and test solutions to give the spectrum of the chemical being tested.

(v) *Quality criteria—Reproducibility and sensitivity.* (A) Reproducibility and sensitivity, need not be measured directly. Instead, the accuracy of the system in measuring the spectra of reference compounds will be defined so as to assure appropriate reproducibility and sensitivity. It is preferable to use a recording double-beam spectrophotometer to obtain the UV–VIS spectrum of the test compound. Such an instrument should have a photometric accuracy of ±0.02 units over the absorbance range of 0 to 2 units. It should be capable of recording absorbances at wavelengths of 200 to 750 nanometers nm with a wavelength accuracy of ±0.5 nm. The cells employed with the instrument must necessarily be transparent over this wavelength range and must have a path length determined to within 1 percent. To ensure that the instrument is performing satisfactorily, spectra for test solutions of $K_2Cr_2O_7$ (for absorbance accuracy) and holmium glass (for wavelength accuracy) should be run periodically.

(B) In the event that a recording double-beam instrument is not available, it will be necessary to determine the absorbance of the test solution in a single-beam instrument at 5-nm intervals over the entire wavelength range and at 1-nm intervals where there are indicated absorbance maxima. Wavelength and absorbance tests should be done as with the double-beam instrument.

(2) *Description of the test procedure*—(i) *Preparation*—(A) *Preparation of test solutions.* (1) Solutions should be prepared by accurately weighing an appropriate amount of the purest form of the test substance available. This should be made up in a concentration which will result in at least one absorbance maximum in the range 0.5 to 1.5 units.

(*2*) The absorption of a compound is due to its particular chemical form. It is often the case that different forms are present, depending on whether the medium is acidic, basic, or neutral. Consequently, spectra under all three conditions are required where solubility and concentration allow. Where it is not possible to obtain sufficient concentrations in any of the aqueous media, a suitable organic solvent should be used (methanol preferred).

(*3*) The acid medium should have a pH of less than 2, and the basic medium should be at least pH 10. The solvent for the neutral solution, and for preparing the acidic and basic ones, should be distilled water, transparent to ultraviolet radiation down to 200 nm. If methanol must be used, acidic and basic solutions can be prepared by adding 10 percent by volume of HCl or NaOH in aqueous solution ([HCl], [NaOH]=1 mol/L).

(*4*) In theory, all chemical species other than that being tested are present in both beams and would therefore not appear in the recorded spectrum of a double-beam instrument. In practice, because the solvent is usually present in great excess, there is a threshold value of wavelength below which it is not possible to record the spectrum of the test chemical. Such a wavelength will be a property of the solvent or of the test medium. In general, distilled water is useful from 200 nm (dissolved ions will often increase this), methanol from 210 nm, hexane from 210 nm, acetonitrile from 215 nm and dichloromethane from 235 nm.

(B) *Blank solutions.* A blank must be prepared which contains the solvent and all chemical species other than the test chemical. The absorption spectrum of this solution should be recorded in a manner identical to that of the test solution and preferably on the same chart. This "baseline" spectrum should never record an absorbance reading varying more than ±0.05 from the nominal zero value.

(C) *Cells.* Cell pathlengths are usually between 0.1 cm and 10 cm. Cell lengths should be selected to permit recording of at least one maximum in the absorbance range of 0.5 to 1.5 units. Which set of cells should be used will be governed by the concentration and the absorbance of the test solution as indicated by the Beer-Lambert Law. The cells should be transparent over the range of the spectrum being recorded, and the path-lengths should be known to an accuracy of at least 1 per cent. Cells should be thoroughly cleaned in an appropriate manner (chromic acid is useful for quartz cells) and rinsed several times with the test or blank solutions.

(ii) *Performance of the test.* Both cells to be employed should be rinsed with the blank solution and then filled with same. The instrument should be set to scan at a rate appropriate for the required wavelength resolution and the spectrum of the blank recorded. The sample cell should then be rinsed and filled with the test solution and the scanning repeated, preferably on the same spectrum chart, to display the baseline. The test should be carried out at 25° C.

(c) *Data and reporting*—(1) *Treatment of results.* (i) The molar absorption coefficient ϵ should be calculated for all absorbance maxima of the test substance. The formula for this calculation is

$$\epsilon = \frac{A}{c_1 \times d},$$

where the quantities are as defined above (see Definitions and units).

(ii) For each peak which is capable of being resolved, either as recorded or by extrapolated symmetrical peaks, the bandwidth should be recorded.

(2) *Test report.* (i) The report should contain a copy of each of the three spectra (3 pH conditions). If neither water nor methanol solutions are feasible, there will be only one spectrum. Spectra should include a readable wave-length scale. Each spectrum should be clearly marked with the test conditions.

(ii) For each maximum in each spectrum, the ϵ value and bandwidth (when applicable) should be calculated and reported, along with the wavelength of the maximum. This should be presented in tabular form.

(iii) The various test conditions should be included, such as scan speed, the name and model of the spectrophotometer, the slit width (where available), cell type and path length, the concentrations of the test substance, and the nature and acidity of the solvent medium. A recent test spectrum on appropriate reference materials for photometric and wavelength accuracy should also be submitted (see Reproducibility and sensitivity).

(d) *Literature references.* For additional background information on this test guideline, the following references should be consulted:

(1) Milazzo, G., Caroli, S., Palumbo-Doretti, M., Violante, N., *Analytical Chemistry,* 49: 711 (1977).

(2) Katelaar, J.A.A., *Photoelectric Spectrometry Group Bulletin,* 8, (Cambridge, 1955).

(3) Chemical Rubber Company, *Atlas of Spectral Data,* (Cliffland, Ohio).

§ 796.1220 Boiling point/boiling range.

(a) *Introductory information.* (Ebulliometric Method; Dynamic Method; Distillation Method; Siwoloboff Method; Photocell Detection Method).

(1) *Qualifying statement.* The methods and devices described in this test guideline can be applied to liquids, provided that these do not undergo chemical reaction at temperatures below the boiling point (for example: autoxidation, rearrangement, degradation, etc.).

(2) *Additional comments.* The Dynamic Method was tested in the OECD Laboratory Intercomparison Testing Programme, Part I, 1979, for vapor pressure determination.

(3) *Standard documents.* In this guideline, five methods to determine the boiling point are described. The Ebulliometric Method is based on the ASTM D 1120–72. The Distillation Method is based on the standards ISO R 918 and the draft ISO DIS 4626, BS 4359/68, BS 4591/71, DIN 53171. The Siwoloboff Method is based on JIS K 0064–1966. The Photocell Detection Method is based on the manufacturer's manual (4).

(b) *Method.* (1)(i) *Introduction, purpose, scope, relevance, application, and limits of test.* (A)(*1*) The boiling point of a substance is an environmentally relevant physical chemical property because it is important for identification purposes and is one factor influencing the states in which the substance will exist in the environment.

(*2*) The emphasis in this test guideline has been placed on the description of the method using photocell detection, because this method allows the determination of melting as well as boiling points. Moreover, the measurements can be performed automatically.

(B) The Dynamic Method has the advantage that it can also be applied for the determination of vapor pressure and that it is not necessary to correct the boiling temperature to the normal pressure (101.325 kPa) because the standard pressure can be adjusted during the measurement. However, this method is not at present automated. (For a detailed description, see OECD Test Guideline 104 for the Vapor Pressure Curve.)

(C) Note: In the literature, different boiling points are sometimes quoted for the same substance. These differences are due to such variables as the dimension of the apparatus (for example, the fit of the thermometer), the type of the thermometer, the stem correction, the pressure correction, and the accuracy of the pressure measurement. Therefore, the above-mentioned international and national standardised methods contain precise requirements for these specified conditions.

(D) The influence of impurities on the determination of the boiling point depends greatly upon the kind of impurity. Thus, the effect can be considered if a highly volatile solvent is present in the sample. Impurities will usually increase/decrease the measured boiling temperature.

(ii) *Definitions and units.* (A) The standard *boiling point* is described as the temperature at which the pressure of the saturated vapor of a liquid is the same as the standard pressure.

(B) The measured boiling point is dependent on the atmospheric pressure. This dependence can be described quantitatively by the Clausius-Clapeyron equation as follows:

$$\log p = -\frac{\Delta H_v}{2.3\,RT} + \text{constant}$$

(where p is the vapor pressure of the substance, ΔH_v is its heat of vaporization, and R is the universal molar gas constant. $R = 8.31441\ J\ mol^{-1}K^{-1}$. The temperature T is expressed in K).

(C) The temperature at the boiling point (boiling temperature) is stated in K, with regard to the ambient pressure during the measurement. If no pressure is given, the result refers to a standard pressure of 101.325 kPa.

(D) Conversions:

Pressure—(units—kPa)

100 kPa = 1 bar = 0.1 MPa
("bar" units are still permissible but not recommended)
133 Pa = 1 mm Hg = 1 Torr
(the units mm Hg and Torr are no longer permissible)

Temperature—(units—K)
$t = T - 273.15$
t in ° C, and T in K

(*1*) At small deviations from the normal pressure (max. ± 5 kPa), the boiling point temperatures are normalized to T_n by means of the following number-value-equation by Sidney-Young:

$T_n = T + f_T \cdot \Delta p$

where:

$\Delta p = (101.325 - p)$ note sign
p = barometer measurement in kPa
f_T = rate of change of boiling point with pressure in K/kPa
T = measured boiling temperature in K
T_n = boiling temperature corrected to normal pressure in K

(*2*) The temperature-correction factors f_T and equations for their approximation are included in the international and national standards mentioned in paragraph (b)(2) of this section for many substances. For example, the DIN 53171 method mentions the following rough corrections for solvents included in paints under the following Table 1:

TABLE 1—TEMPERATURE-CORRECTION-FACTORS F_T

Temperature T K	Correction factor f_T K/kPa	Temperature T K	Correction factor f_T K/kPa
323.15	0.26	473.15	[illegible]
348.15	[illegible]	498.15	0.41
373.15	0.31	523.15	0.44
398.15	0.33	548.15	0.45
423.15	0.35	573.15	0.47
448.15	0.37		

A table of temperature-correction factors for organic solvents (see ISO/DIS 4626) is included in the following Table 2:

TABLE 2—TEMPERATURE-CORRECTION FACTORS FOR ORGANIC SOLVENTS (SEE ISO/DIS 4626)

Product	Thermometer	Boiling point °C at 101.325 kPa	Rate of change of boiling point with pressure K °C/0.1 kPa (°C/mbar)	Rate of change of boiling point with pressure K °C/mmHg
Acetone	39 C	56.1	0.029	0.039
Acetonitrile	40 C	81.6	0.032	0.043
Allyl alcohol	40 C	[illegible]	[illegible]	[illegible]
Allyl chloride	38 C	45.1	0.029	0.039
n-Amyl acetate	102 C	149.5	[illegible]	0.048
n-Amyl alcohol	41 C	138.0	0.031	0.041
Aromatic [illegible]	42 C	[illegible]	0.037	0.049
Benzene	40 C	80.1	0.032	0.042
iso-Butyl acetate	41 C	117.3	0.034	0.045
n-Butyl acetate	41 C	126.1	0.034	0.045
sec-Butyl acetate	40 C	112.4	0.034	0.045
iso-Butyl-alcohol	40 C	107.9	0.027	0.036
n-Butyl-alcohol	40 C	117.7	[illegible]	0.037
sec-Butyl-alcohol	40 C	99.5	0.026	0.035
tert-Butyl [illegible]	40 C	82.5	0.025	0.033
p-tert-Butyl toluene	104 C	192.8	0.042	0.056
Cumene	102 C	152.4	[illegible]	0.051
Cyclohexane	40 C	80.7	0.033	0.044
Cyclohexanone	102 C	155.7	0.038	0.051
[illegible] alcohol	102 C	169.2	0.038	0.050
Di-iso-butyl ketone	103 C	169.3	0.038	0.051
Di-iso-butylene	40 C	101.4	0.034	0.046
1,2-Dichloroethane	40 C	83.5	0.032	0.043
Dichloromethane	38 C	39.8	0.028	0.037
Diethyleneglycol	106 C	245.8	0.038	0.050
Diethylene glycol-mono-n-butyl ether	105 C	230.4	0.038	0.051
Diethylene glycol-monoethyl ether	104 C	201.9	0.036	0.048
Diethylene glycol-monomethyl ether	104 C	193.8	0.035	0.047
Dimethyl formamide	102 C	153.0	0.033	0.044
Dipropylene glycol	106 C	232.8	0.038	0.051
Di-iso-propyl ether	39 C	68.3	0.031	0.041
Ethyl acetate	39 C	77.2	0.031	0.041
Ethyl alcohol	39 C	78.3	0.025	0.033

TABLE 2—TEMPERATURE-CORRECTION FACTORS FOR ORGANIC SOLVENTS (SEE ISO/DIS 4626)—Continued

Product	Thermometer	Boiling point °C at 101 325 kPa	Rate of change of boiling point with pressure: K °C/0.1 kPa (°C/mbar)	Rate of change of boiling point with pressure: K °C/mmHg
Ethyl benzene	41 C	136.2	0.037	0.049
Ethylene glycol	104 C	197.6	0.032	0.043
Ethylene glycol-mono-n-butyl ether	103 C	171.2	0.035	0.047
Ethylene glycol-monoethyl ether	102 C	135.1	0.033	0.044
Ethylene glycol-monoethyl ether acetate	102 C	156.3	0.035	0.046
Ethylene glycol-monomethyl ether	41 C	124.5	0.031	0.041
Ethylene glycol-mono-iso-propyl ether	102 C	142.8	0.033	0.044
2-Ethyl hexanol	104 C	184.8	0.034	0.046
Ethyl-iso-amyl ketone	103 C	158.2	0.037	0.049
n-Hexyl acetate	103 C	171.6	0.038	0.050
Hexylene glycol	104 C	197.1	0.034	0.045
Isophorone	105 C	215.3	0.043	0.057
Mesityloxide	41 C	129.8	0.036	0.047
4-Metoxy-4-methyl-2-pentanone	103 C	160.6	0.037	0.049
Methanol	39 C	64.6	0.025	0.033
Methyl-iso-amyl acetate	102 C	146.2	0.036	0.048
Methyl-iso-amyl ketone	102 C	144.9	0.036	0.048
Methyl-iso-butyl carbinol	41 C	131.8	0.031	0.041
Methyl-iso-butyl ketone	41 C	116.2	0.035	0.046
Mono-ethanol amine	103 C	170.7	0.030	0.040
Perchloroethylene	41 C	121.2	0.036	0.048
n-Propyl acetate	40 C	101.6	0.032	0.042
iso-Propyl acetate	40 C	88.1	0.031	0.041
n-Propyl alcohol	40 C	97.2	0.026	0.034
iso-Propyl alcohol	40 C	82.3	0.025	0.033
Propylene glycol	104 C	187.6	0.032	0.043
Propylene oxide	38 C	34.3	0.027	0.036
Pyridine	41 C	115.4	0.035	0.046
Toluene	41 C	110.6	0.035	0.046
Triethylene glycol	107 C	287.6	0.038	0.050
Triethylene glycol-monoethyl ether	106 C	255.4	0.038	0.051
Trichloroethylene	40 C	87.1	0.032	0.043
Vinyl acetate	39 C	72.7	0.030	0.040
White spirit	103 C		0.041	0.055
Xylene (isomer mixture)	41 C		0.037	0.049
m-Xylene	41 C	139.1	0.037	0.049
o-Xylene	41 C	144.4	0.037	0.050
p-Xylene	41 C	138.3	0.037	0.049

(iii) *Reference substances.* The standard methods listed include specifications for calibration and evaluation substances. These compounds need not be employed in all cases when investigating a new substance. They should primarily serve to calibrate the method from time to time and to offer the chance to compare the results when another method is applied.

(iv) *Principle of the test methods.* All methods for the determination of the boiling point (boiling range) are based on the measurement of the boiling temperature.

(A) *Determination by use of the Ebulliometer.* See paragraph (d) (1) and (4) of this section. Ebulliometers were originally developed for the determination of molecular weight by boiling point elevation, but they are also suited for exact boiling point measurements. A very simple apparatus is described in ASTM D 1120–72. The liquid is heated in this apparatus under equilibrium conditions at atmospheric pressure until it boils. The determined temperature of the liquid, corrected to standard pressure, is the boiling point.

(B) *Dynamic method.* See paragraph (d)(2) of this section. This method measures the vapor recondensation temperature by means of a thermocouple in the reflux while boiling. The pressure can be varied in this method.

(C) *Distillation method for boiling point (and boiling range).* This method involves distillation of the liquid and measurement of the vapor recondensation temperature and determination of the amount of distillate.

(D) *Method according to Siwoloboff.* See paragraph (d)(2) of this section. A sample is heated in a sample tube which is immersed in a heat-bath liquid. A fused capillary, containing an air bubble in the lower part, is dipped in the sample tube. The temperature at which a regular string of bubbles escapes from the capillary or the temperature at which the string of bubbles stops and the fluid suddenly starts rising in the capillary (Siwoloboff under paragraph (d)(2) of this section) is determined.

(E) *Photocell detection.* See paragraph (d)(3) of this section. Using the principle according to Siwoloboff. Measurements are automatic, the rising bubbles being detected photo-electrically.

(v) *Quality criteria.* The different methods for the determination of the boiling point (boiling range) are compared with regard to their use and precision and possibility to standardize/automate in the following Table 3:

TABLE 3.—COMPARISON OF THE METHODS

Methods of measurement	Approximate accuracy	Ability to standardize	Automation
Ebulliometer	± 1.4 K (up to 373 K) [1] ± 2.5 K (above 373 K) [1].	Existing standards ASTM D 1120–72 [1]	Difficult as yet
Dynamic method	± 0.5 K	Possible	Difficult
Distillation processes (Boiling range)	± 0.5 K	Existing standards e.g., ISO/R 918, DIN 53171, BS 4591/17	Difficult as yet
According to Siwoloboff	± 1K to ± 2K	Possible	Automatic method exists see photocell detection
Photocell detection	± 0.3 K (at 373 K)	Possible	Measurement process works automatically

[1] This accuracy is only valid for pure substances and for the simple device as, for example, described in ASTM D 1120–72; it can be improved with more sophisticated ebulliometer devices.

(2) *Description of the test procedures.* The procedures of several of the test methods have been established by various international and national standards mentioned above. Reference is made here to those standards which prescribe details of preparations, test conditions, and conduct of the test.

(i) *Ebulliometer.* See: ASTM D 1120–72, Standard Test Method for Boiling Point of Engine Antifreezes, and reference under paragraph (d)(4) of this section.

(ii) *Dynamic method.* See: OECD Test Guideline 104 for Vapour Pressure Curve, Principle of the test methods. The boiling temperature observed with an applied pressure of 101.325 kPa is recorded.

(iii) *Distillation process (boiling range).*

See: ISO/R 918, Test Method for Distillation (Distillation Yield and Distillation Range),

ISO 4626/1980, Volatile Organic Liquids—Determination of Boiling Range of Organic Solvents Used as Raw Materials,

BS 4349/68, Method for Determination of Distillation of Petroleum Products.

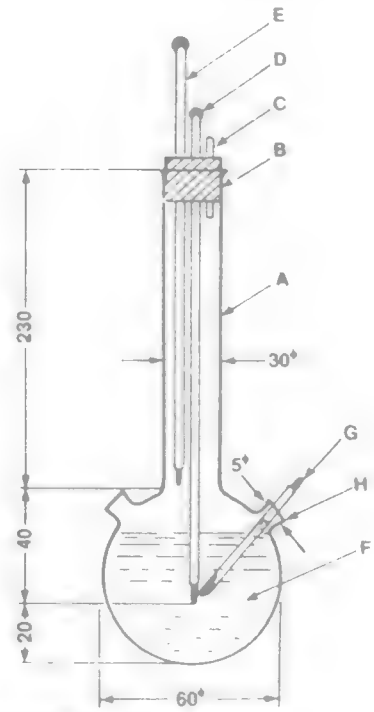
BS 4591/71, Method for the Determination of Distillation Characteristics.

DIN 53171, Lösungsmittel für Anstrichstoffe, Bestimmung des Siedeverlaufes.

DIN 51751, Prüfung flüssiger Mineralkohlenwasserstoffe—Bestimmung des Siedeverlaufes.

(iv) *Method according to Siwoloboff.* (A) The sample is heated in a melting point apparatus in a sample tube, with a diameter of approximately 5 mm in the following Figure 1:

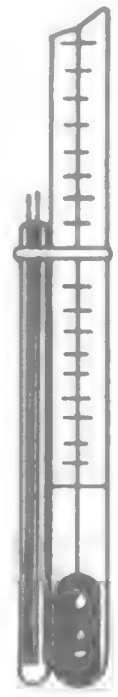
Figure 1—Apparatus for the determination of melting and boiling point (JISK 0064–1966), With Specifications in mm.



A: MEASURING TUBE
B: CORK STOPPER
C: VENT
D: THERMOMETER
E: AUXILIARY THERMOMETER
F: BATH LIQUID
G: SAMPLE TUBE; MAX. 5mm OUTER DIAMETER; CAPILLARY TUBE, APPROX. 1mm INNER DIAMETER, AND APPROX. 0.2mm TO 0.3mm WALL-THICKNESS
H: SIDE TUBE

(B) A capillary tube (boiling capillary) fused about 1 cm above the lower end is placed in the sample tube. The level to which the test substance is filled is such that the fused section of the capillary is below the surface of the liquid. The sample tube containing the boiling capillary is fastened either to the thermometer with a rubber-band or is fixed with a support from the side under the following Figure 2:

Figure 2—Principle According to Siwoloboff



(C) The bath liquid is chosen according to boiling temperature. At temperatures of up to 573 K sulfuric acid or silicon oil can be used. Liquid paraffin may only be used up to 473 K. The heating of the bath liquid should be adjusted to a temperature rise of 3 K/min at first. The bath liquid must be stirred. At about 10 K below the expected boiling point, the heating is reduced so that the rate of temperature rise is less than 1 K/min. When the boiling temperature is approached, bubbles begin to emerge from the boiling capillary.

(D) The boiling point is reached when the string of bubbles stops and fluid suddenly starts rising in the capillary. The corresponding thermometer reading is the boiling temperature of the substance.

(E) In the modified principle, under the following Figure 3, the boiling point is determined in the melting point capillary which is stretched to a fine point about 2 cm in length (1) and a small amount of the sample is aspirated. The open end of the fine capillary is closed by melting, so that a small air bubble is located at the end. When heated in the melting point apparatus (2), the air bubble expands. The boiling point corresponds to the temperature at which the substance plug reaches the level of the surface of the bath liquid (3).

Figure 3—Modified principle.



(v) *Photocell detection.* (A) The sample is heated in a capillary tube inside a heated metal block. A light beam is directed via suitable holes in the block through the substance onto a precisely calibrated photocell. During the increase of the sample temperature, single air bubbles emerge from the boiling capillary. When the boiling temperature is reached, the amount of bubbles increases immensely.

(B) This causes a change in the intensity of light, which is recorded by a photocell and gives a stop signal to the digital indicator reading out the temperature of a platinum resistance thermometer, located in the block.

(C) This method is especially useful because it allows determinations below room temperature as low as 253.15 K (−20°C) without any changes in the apparatus. The instrument merely has to be placed in a cold room or cooling bath. The exact execution of the boiling point determination can be obtained from the instrument manual.

(3) *General remarks.* (i) The results obtained for mixtures or impure samples are to be interpreted with care. With an impure sample, for instance, the emergence of a low boiling component will be registered as the boiling point. Repeated determinations with the same impure sample can change the composition from measurement to measurement, due to the volatilization of low boiling components: continously increasing values are obtained in these circumstances.

(ii) Liquids with a tendency to superheat can yield incorrect results. The values obtained are usually too high. This happens more frequently at higher temperatures. Distillation methods or the dynamic vapor pressure method are more suitable for these types of compound.

(c) *Data and reporting*—(1) *Treatment of results.* (i) The boiling point to be determined should be a mean of at least two measurements, which are in the range of approximate accuracy indicated in Table 2 under paragraph (b)(1)(v) of this section. If determinations are not reproducible, other methods should be considered (see General remarks, above).

(ii) The measured boiling points and their mean should be stated in K, and the pressure(s) at which the measurement(s) was (were) made should be recorded in kPa. Where a test substance boils over a temperature range, this range should be provided. The measured values should also be corrected to standard pressure. Estimates of accuracy should be provided for all results.

(iii) The method used should be indicated, including any deviations from procedures described in this Test Guideline.

(2) [Reserved]

(d) *Literature references.* For additional background information on this test guideline the following references should be consulted:

(1) Kienitz, H. *Methoden der Organischen Chemie* ed. Houben-Weyl, Vol. 2, (Georg Thieme Verlag, Stuttgart, 1953, pp. 815–821.

(2) *Test Guideline 104 for Vapour Pressure Curve,* A 80/5 Umweltbundesamt, Berlin (1980).

(3) Siwoloboff, A. *Berichte-Deutsche Chemische Gesellschaft* 19: 795 (1886).

(4) Manual of Apparatus FP 5+FP 51, FP 52 and FP 53, Mettler Instrumente AG, CH–8606 Greifensee-Zürich, Switzerland.

(5) *European Pharmacopoeia,* 1:75 (1974).

§ 796.1370 Dissociation constants in water.

(a) *Introductory information.* (Titration Method; Spectrophotometric Method; Conductometric Method)

(1) *Prerequisites.* (i) Suitable analytical method. (ii) Water solubility.

(2) Guidance information. (i) Structural formula. (ii) Electrical conductivity for conductometric method.

(3) *Qualifying statements.* (i) All test methods may be carried out on pure or commercial grade substances. The possible effects of impurities on results should be considered.

(ii) The *titration method* is not suitable for low solubility compounds (see Test solutions, under paragraph (b)(2)(i)(A) of this section.

(iii) The *spectrophotometric method* is only applicable to compounds having appreciably different UV/VIS-absorption spectra for the dissociated and undissociated forms. This method may also be suitable for low solubility compounds and for non-acid/base dissociations, e.g. complex formation.

(iv) In cases where the Onsager equation holds, the *conductometric method* may be used, even at moderately low concentrations and even in cases for non-acid/base equilibria.

(4) *Standard documents.* This Test Guideline is based on methods given in the references listed in Section 4 and on the Preliminary Draft Guidance for Premanufacture Notification EPA, August 18, 1978.

(b) *Method*—(1) *Introduction, Purpose, Scope, Relevance, Application and Limits of Test.* (i) The dissociation of a chemical in water is of importance in assessing its impact upon the environment. It governs the form of the substance which in turn determines its behavior and transport. It may affect the adsorption of the chemical on soils and sediments and adsorption into biological cells.

(ii) *Definitions and units. Dissociation* is the reversible splitting into two or more chemical species which may be ionic. The process is indicated generally by

$$RX \rightleftharpoons R^{+} + X^{-}$$

and the concentration equilibrium constant governing the reaction is

$$K = \frac{[R^{+}]\,[X^{-}]}{[RX]}$$

For example, in the particular case where R is hydrogen (the substance is an acid), the constant is

$$K_a = \frac{[H^{+}]\,[X^{-}]}{[HX]}$$

or

$$pK_a = pH - \log \frac{[X^{-}]}{[HX]}$$

(iii) *Reference substances.* (A) The following reference compounds need not be employed in all cases when investigating a new substance. They are provided primarily so that calibration of the method may be performed from time to time and to offer the chance to compare the results when another method is applied.

	pK_a (1)	Temp in °C
p-Nitrophenol	7.15	25
Benzoic acid	4.12	20
p-Chloroaniline	3.93	20

[1] No value for 20 °C is available, but it can be assumed that the variability of measurement results is higher than the temperature dependence to be expected.

(B) It would be useful to have a substance with several pK's as indicated in Principle of the method, under paragraph (b)(1)(iii) of this section. Such a compound could be:

	pK_a (s)	Temp in °C
Citric acid	(1) 3.14	20
	(2) 4.77	20
	(3) 6.39	20

(iv) *Principle of the test method.* The chemical process described is generally only slightly temperature dependent in the environmentally relevant temperature range. The determination of the dissociation constant requires a measure of the concentrations of the dissociated and undissociated forms of the chemical substance. From a knowledge of the stoichiometry of the dissociation reaction indicated in Definitions and units, above, the appropriate constant can be determined. In the particular case described in this guideline the substance is behaving as an acid or a base, and the determination is most conveniently done by determining the relative concentrations of ionized and un-ionized forms of the substance and the pH of the solution. The relationship between these terms is given in the equation for pK_a in Definitions and units, above. Some compounds exhibit more than one dissociation constant and similar equations can be developed. Some of the methods described herein are also suitable for non-acid/base dissociation.

(v) *Quality criteria.* (A) *Repeatability.* The dissociation constant should be replicated (a minimum of three determinations) to within ±0.1 log units.

(B) [Reserved]

(2) *Description of the test procedures.* (i) There are two basic approaches to the determination of pK_a. One involves titrating a known amount of substance with standard acid or base, as appropriate; the other involves determining the relative concentrations of the ionized and un-ionized forms and their pH dependence.

(ii) *Preparations.* Methods based on those principles may be classified as

titration, spectrophotometric and conductometric procedures.

(A) *Test solutions.* (*1*) For the titration method and the conductometric method the chemical substance should be dissolved in distilled water. For spectrophotometric and other methods buffer solutions are used. The concentrations of the test substances should not exceed the lesser of 0.01 M or half the saturation concentration, and the purest available form of the substance should be employed in making up the solutions. If the substance is only sparingly soluble, it may be dissolved in a small amount of a water-miscible solvent prior to adding to the concentrations indicated above.

(*2*) Solutions should be checked for the presence of emulsions using a Tyndall beam, especially if a co-solvent has been used to enhance solubility. Where buffer solutions are used, the buffer concentration should not exceed 0.05 M.

(B) [Reserved]

(iii) *Test conditions.* (A) *Temperature.* (*1*) The temperature should be controlled to at least ±1 °C. The determination should preferably be carried out at 20°C.

(*2*) If a significant temperature dependence is suspected, the determination should be carried out at at least two other temperatures. The temperature intervals should be 10 °C in this case and the temperature control ±0.1 °C.

(B) *Analyses.* The method will be determined by the nature of the substance being tested. It must be sufficiently sensitive to allow determination of the different species at the test solution concentrations.

(iv) *Performance of the test.* (A) *Titration method.* The test solution is determined by titration with the standard base or acid solution as appropriate, measuring the pH after each addition of titrant. At least 10 incremental additions should be made before the equivalence point. If equilibrium is reached sufficiently rapidly, a recording potentiometer may be used. For this method both the total quantity of substance and its concentration need to be accurately known. Precautions must be taken to exclude carbon dioxide. Details of procedure, precautions, and calculation are given in standard tests, e.g., references under paragraph (d)(1), (2), and (4) of this section.

(B) *Spectrophotometric methods.* A wavelength is found where the ionized and un-ionized forms of the compound have appreciably different extinction coefficients. The UV/VIS absorption spectrum is obtained from solutions of constant concentration under a pH condition where the substance is essentially un-ionized and fully ionized and at several intermediate pH's. This may be done either by adding increments of concentrated acid (base) to a relatively large volume of a solution of the compound in a multicomponent buffer, initially at high (low) pH under paragraph (d)(5) of this section, or by adding equal volumes of a stock solution of the compound in, e.g., water, methanol, to constant volumes of various buffer solutions covering the desired pH range. From the pH and absorbance values at the chosen wavelength, a sufficient number of values for the pK_a is calculated using data from at least 5 pH's where the compound is at least 10 percent and less than 90 percent ionized. Further experimental details and method of calculation are given in reference under paragraph (d)(1) of this section.

(C) *Conductometric method.* Using a cell of small, known cell constant, the conductivity of an approximately 0.1 M solution of the compound in conductivity water is measured. The conductivities of a number of accurately made dilutions of this solution are also measured. (The concentration is halved each time, and the series should cover at least an order of magnitude in concentration.) The limiting conductivity at infinite dilution is found by carrying out a similar experiment with the Na salt and extrapolating. The degree of dissociation may then be calculated from the conductivity of each solution using the Onsager equation, and hence using the Ostwald Dilution Law the dissociation constant may be calculated as

$K=\alpha_2 C/1-\alpha$ where C is the concentration in moles per litre and α is the fraction dissociated. Precautions must be taken to exclude CO_2. Further experimental details and method of calculation are given in standard texts and references under paragraphs (d)(1), and (7) of this section.

(c) *Data and reporting*—(1) *Treatment of results*—(i) *Titration method.* The pK_a is calculated for 10 measured points on the titration curve. The mean and standard deviation of such pK_a values are calculated. A plot of pH versus volume of standard base or acid should be included along with a tabular presentation.

(ii) *Spectrophotometric methods.* The absorbance and pH are tabulated from each spectrum. At least five values for the pK_a are calculated from the intermediate spectra data points, and the mean and standard deviation of these results are also calculated.

(iii) *Conductometric method.* The equivalent conductance, Λ, is calculated for each acid concentration and for each concentration of a mixture of one equivalent of acid, plus 0.98 equivalent of carbonate-free sodium hydroxide. (The excess acid is to prevent an excess of OH^- due to hydrolysis.) $1/\Lambda$ is plotted against $\sqrt{C}$ and Λ_o of the salt can be found by extrapolation to zero concentration. Λ_o of the acid can be calculated using literature values for H^+ and Na^+. The pK_a can be calculated from $\alpha=\Lambda_i/\Lambda_o$ and $Ka=\alpha^2C/1-\alpha$ for each concentration. Better values for Ka can be obtained by making corrections for mobility and activity. The mean and standard deviations of the pK_a values should be calculated.

(2) *Test report.* (i) All raw data and calculated pK_a values should be submitted together with method of calculation (preferably in a tabulated format, such as suggested in paragraph (d)(1) of this section) as should the statistical parameters described under paragraph (c)(1) of this section. For titration methods, details of the standardization of titrants should be given.

(ii) For spectrophotometric methods, all spectra should be submitted. For the conductometric method, details of the cell constant determination should be reported. Information on technique used, analytical methods and the nature of any buffers used should be given.

(iii) The test temperature(s) should be reported.

(d) *Literature references.* For additional background information on this test guideline the following references should be consulted:

(1) Albert, A. & Sergeant, E.P., *Ionization Constants of Acids and Bases.* (Wiley, Inc., New York, 1962).

(2) Nelson, N.H. & Faust, S.D., "Acidic Dissociation Constants of Selected Aquatic Herbicides," *Environment Science Technology* 3: II (1969).

(3) ASTM D 1293. American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103.

(4) Standard Method 242. *Standard Methods for the Examination of Water and Waste Water.* 14th ed., (American Public Health Association: Washington, DC, 1976).

(5) Clark, J. & Cunliffe, A.E., "Rapid Spectrophotometric Measurement of Ionisation Constants in Aqueous Solution," Chem. Ind. (London 1973).

(6) ASTM D 1125. American Society for Testing and Materials, 1916 Race St. Philadelphia, PA 19103.

(7) Standard Method 205. *Standard Methods for the Examination of Water and Waste Water.* 14th ed. (American Public Health Association: Washington, DC, 1976).

(8) *Handbook of Chemistry and Physics*, 60th ed. (CRC-Press: Boca Raton, Florida, 1980).

§ 796.1520 Particle size distribution/fiber length and diameter distributions.

(a) *Introductory information.* Method A: Particle Size Distribution (effective hydrodynamic radius). Method B: Fiber Length and Diameter Distributions.

(1) *Prerequisites.* Method A: Water insolubility. Method B: Information on fibrous nature of product; Information on stability of fiber shape under electron-microscopic conditions.

(2) *Guidance information.* Method A: Melting point. Method B: Melting point.

(3) *Qualifying statements.* Both test methods can be applied to pure and commercial grade substances.

(i) Method A: (*A*) This method can only be applied to water-insoluble ($<10^{-6}$ g/l), powdered type products.

(*B*) The equivalence of the six national and international standard methods for particle size distribution was not tested, and is currently not known. There is a particular problem in relation to sedimentation and Coulter counter measurements.

(ii) Method B: This method applies only for fibrous products. The effect of impurities on particle shape should be considered.

(4) *Recommendations.* Method A: Equivalence of the methods for determination of particle size distribution should be tested in the laboratory.

(5) *Standard documents.* The "Effective Hydrodynamic Radius Determination" is based on the following standards:

(i) ASTM—D 3360, D422.

(ii) NF–T 30044.

(iii) DIN—66115.

(iv) DIN—66116, Part 1.

(v) ASTM—C 678.

(vi) ANSI—C 690–75.

and on a test principle described in *Chem. Ing. Tech.* 46: 729 (1974).

(b) *Method*—(1) *Introduction, purpose, scope, relevance, application and limits of test.* (i)(A) Many methods are available for particle size measurements, but none of them is applicable to the entire size range. Sieving, microscopic sedimentation and elutriation techniques are most commonly employed. Moreover, in the case of airborne particles (dusts, smokes, fumes), radiation scattering and inertial methods prove particularly useful. Finally, appropriate sampling procedures should be selected in order to prepare specimens really representative of the material under test (Method A).

(B) The first method described in this guideline (Method A) is designed to provide information on the transportation and sedimentation of insoluble particles in water and air. In the special case of materials which can form fibers, an additional set of measurements (Method B) is also recommended to help identify potential health hazards arising from inhalation or ingestion.

(C) Method A is generally applicable, frequent in use and hydrodynamic in character; Method B is comparatively specialized, infrequently required and involves microscopic examination. It should be borne in mind, however, that the original particle size distribution is highly dependent on the industrial processing methods used and can also be affected by subsequent environmental or human transformations.

(D) These tests are applicable only to water insoluble (solubility $<10^{-6}$ g/l) substances. Method B for fibers will be applied only if light microscopic examination, similarities to known fibrous or fiber-releasing substances or other data indicate a likelihood that fibers are present. In this context, a fiber is a water insoluble particle, of aspect ratio (length/diameter) >3 and diameter <100 μm. Fibers of length <5 μm need not be considered. Method A, which determines the effective hydrodynamic radius, R_e, will be used for both fibrous and non-fibrous particulates without prior inspection. It is useful only in the range 2 $\mu m < R_e < 100$ μm.

(ii) *Definitions and units.* (A) For Method A the parameter of interest is the effective hydrodynamic radius, or effective Stokes radius R_e. The terminal velocity of a small sphere falling under the influence of gravity in a viscous fluid is given by:

$$v = 2_g R^2_e(d_1 - d_2)/9\eta$$

Where

v = velocity (m/sec),

g = gravitation constant (m/sec^2),

R_e = Stokes radius (m)

d_1 = density of sphere (kg/m^3),

d_2 = density of fluid (kg/m^3),

η = dynamic viscosity (Nsec/m^2 = Pa s) of the the fluid

(B) In other situations, similar relationships apply. Particle size is usually measured in micrometers ($=10^{-6}$ m).

(C) Method B provides histograms of the length (1) and diameter (d) distributions of fibres. The ordinate is the absolute number of particles in each interval of 1 or d. Typical plots are provided in Figures 1 and 2 under paragraph (b)(1)(iv) of this section.

(*iii*) *Reference substances.* (A) Five reference substances of defined particle size covering the overall range 0.35 to 650 μm (excepting the 50 to 200 μm region) have been certified with respect to the cumulative mass distribution of particles versus equivalent settling rate diameter or equivalent volume diameter. The materials will be made available from the Community Bureau of Reference of the European Economic Community and they will be issued with certificates of measurement. The certification report under paragraph (d)(4) of this section will also be available from the Community Bureau of Reference.

(*1*) The certification report of five reference materials will be available from: Commission of the European Community, Directorate—General for Research, Science and Education, Community Bureau of Reference BCR, rue de la Loi 200, B–1049 Brussels.

(*2*) Filter equipment for sample preparations according to Method B is available commercially through the following manufacturers:

(*i*) Nuclepore Corporation, 7035 Commerce Circle, Pleasanton California 94566/USA

(*ii*) Millipore Corporation, Order Service Department, Bedford, Massachusetts 01730/USA

(*iii*) Whatman Filters, W&R Balston Limited, England

(B) *Calibration materials—(1) Method A.* A binary or ternary mixture of latex spheres (2 $\mu m < d < 100$ μm) is suggested.

(*2*) *Method B.* No standard reference materials are readily available.

(C) *Evaluation materials—(1) Method A.* A ternary mixture of 2 μm, 50 μm and 100 μm latex spheres (which provides a discrete calibrated distribution) plus a sample of crushed quartz (continuous distribution).

(*2*) *Method B.* Fibrous chrysotile asbestos is recommended (specific properties not essential as long as enough of a throughly mixed sample is available for identical distribution in a ring test).

(iv) Principle of the test methods. (A) *Method A.* (*1*) There are several standard methods available which meet the sensitivity requirements:

Principle	[illegible]
Sedimentation	ASTM—D 3360, D 422, NF–T 30044 DIN—66–115
Centrifugation	ASTM—C 678, Chem.Ing.Tech. 46, 729 (1974)
Coulter counter	ANSI–C 690–75.

(*2*) The comparability of these methods (especially the sedimentation)

and the other methods must be determined.

(3) The sample should also be subjected to a simple light microscopic examination to determine the approximate nature of the particles (e.g. plates, needles, etc.).

(B) *Method B*—Since data must be collected on small diameter fibers (>0.1 μm), scanning (SEM) or transmission (TEM) electron microscopy is required. There is no standard procedure at present, and those currently under development for asbestos contamination (in which the fibrous material is already identified and in high concentration) are often more complex and expensive than necessary for the needs of this program. Extreme care must still be taken during sample preparation to avoid fiber breaking, clumping and contamination. A simple initial procedure is suggested below (Description of the test procedures). The length and diameter of the fiber images can be measured manually, semi-automatically or automatically and the results tabulated in histogram form (see the following Figures 1 and 2):

Figure 1—Sample fiber length distribution (method B).

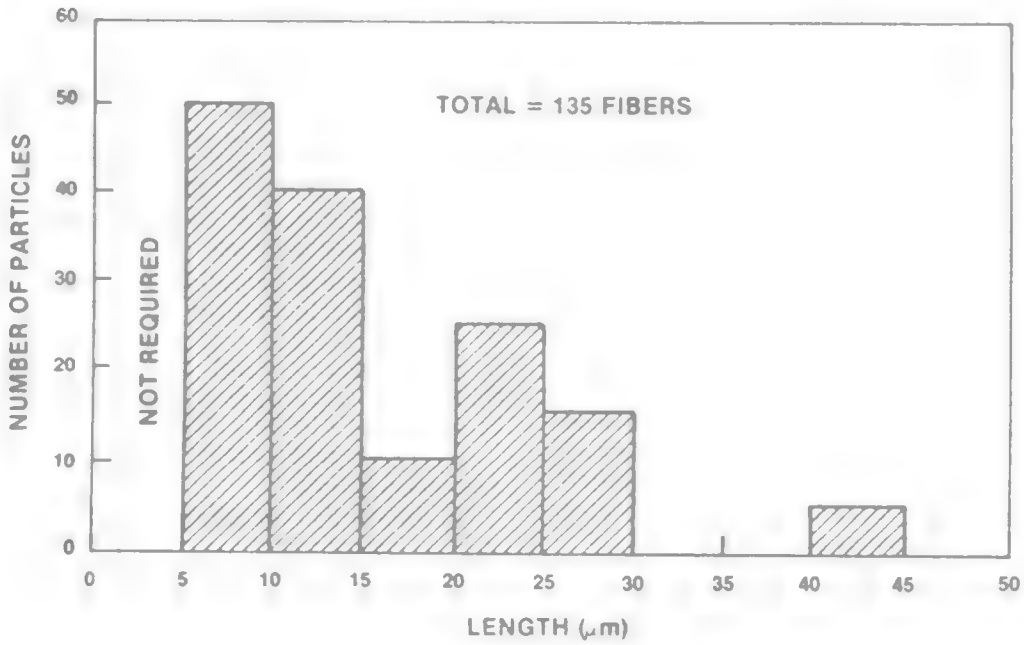
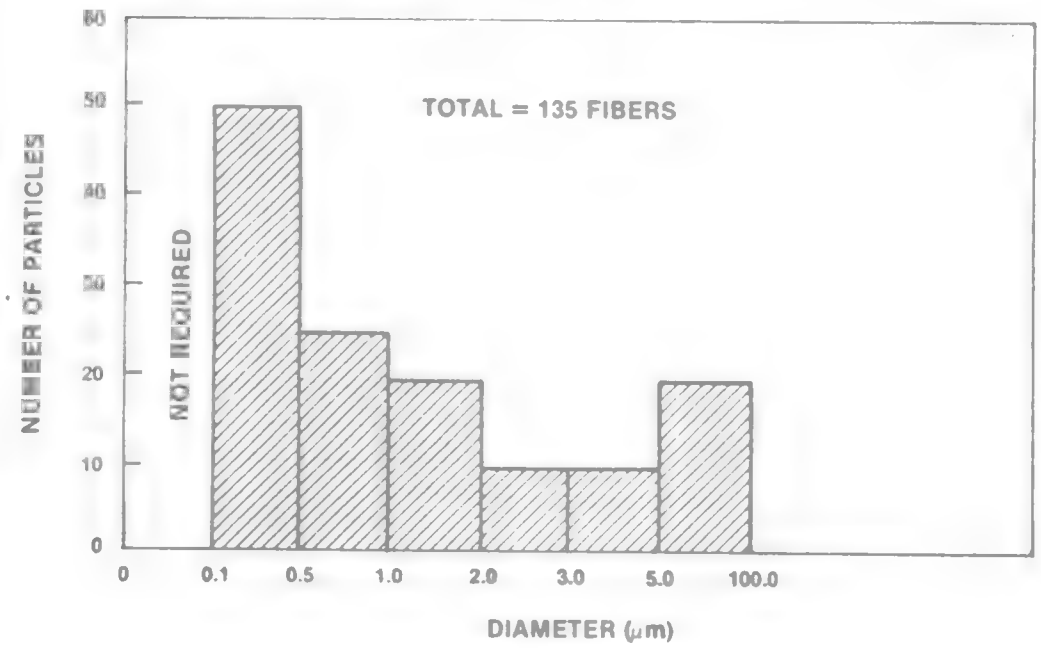


Figure 2.—Sample fiber diameter distribution (method B).



(V) *Quality criteria*—(A) *Repeatability.* (1) The effective hydrodynamic radius distribution (Method A) should be measured three times, with no two values differing by more than 20 percent.

(2) The length and diameter distributions of fibers (Method B), if required, should be measured at least twice—using separate samplings and preparations—with at least 70 fibers *per* histogram. No two values in a given histogram interval should differ by more than 50 percent or 3 fibers, whichever is larger. Such repeatability should be sufficient for the modeling and decision-making procedures currently envisaged; however, the presence of long, thin fibers—due to their potential adverse health effects—would indicate a need for further, more precise measurements.

(B) *Sensitivity.* In the general case (Method A) particles as small as 2 μm and as large as 200 μm must be measurable. The method requires that sufficient numbers of radius intervals be used to resolve the radius distribution curve. In the case of fibers (Method B), diameters as small as 0.2 μm and as large as 100 μm and lengths as small as 5 μm and as large as 300 μm, must be measurable.

(C) *Specificity.* See paragraph (b)(1) of this section.

(D) *Possibility of standardisation.* The method *procedures* can be readily standardized, if desired, but non-uniformity of sampling, preparation and prior handling may still cause considerable variation in results in Method B.

(E) *Possibility of automation.* Automation or semi-automation of these procedures if possible. Full automation of fiber 1 and d measurements and analysis is also possible.

(2) *Description of the test procedures*—(i) *Preparations*—(A) *Method A.* The small quantities used as samples must be representative of product batches comprising many kilograms; therefore, sampling and sample handling require great care. For example, small particles often form agglomerates; therefore, sample pre-treatment (e.g., the addition of dispersing agents, agitation, or low-level ultrasonic treatment) may be required before the primary particle size can be determined. However, great care must be taken to avoid changing the particle size distribution. In the case of highly stable aggregates, a strict distinction between primary particles and agglomerates is not always useful. Some representative sample preparation methods will be found in the standard procedures listed in Principle of the test

methods (Method A) under paragraph (b)(1)(iv) of this section.

(B) *Method B.* Two simple sample preparation procedures (B–1, B–2) for scanning electron microscopy can be suggested.

(*1*) *Sample preparation B–1.* Suspend a given amount of sample in 10–100 ml of filtered distilled or deionized water (the suspension should be relatively light, not a slurry). Distribution of the particles in suspension may be aided by use of a surfactant, such as small amounts (~1 part/100) of absolute ethyl alcohol or a non-ionic detergent. Suspension of the powder is achieved by gentle hand agitation, vortex mixing or magnetic stirring. Filter the suspension directly onto a 47 mm diameter Nuclepore* filter overlaying a 47 mm diameter Millipore* membrane filter housed in a 47 mm diameter Millipore* filter holder (Hydrosol, stainless) using gentle vacuum. Ensure that the powder has not precipitated out of suspension. Depending on the size of particles of interest various pore-sized filters may be used. The concentration of suspended particles determines the amount filtered. A less concentrated suspension will give a more even distribution of particles on the filter surface under paragraph (d)(2) of this section. Remove the Nuclepore filter from the filter housing, being careful not to disturb the particles on the surface. Place the filter—particle-coated face upward—into a glass or plastic Petri dish containing Whatmann No. 1 filter paper; cover Petri dish and store in a dry box or under vacuum. When completely dried, the filter is cut into pieces of appropriate size and mounted, filter face up, onto copper tape which has been previously mounted onto an SEM specimen holder (using double face tape). To ensure stickiness of the tape, preheat using infrared or similar heat source for 5 to 15 minutes. Trim the edge of the filter to fit the SEM specimen holder.

(*2*) *Sample preparation B–2.* An alternate sample preparation method is the direct transfer of the dry powder onto copper tape (adhesive electrical tape) which has been mounted onto a scanning electron microscope (SEM) specimen holder. The powder may also be sprayed onto the copper tape surface by using an atomizer or pipette equipped with a large rubber bulb.

(ii) *Test conditions and apparatus*—(A) *Method A.* Ambient conditions. Measuring apparatus for all methods are readily available. Pipettes and sedimentation balances are used for the sedimentation methods.

(B) *Method B.* (*1*) Contamination by air-borne fibers can be a problem. A hood or "clean room" should be used if available.

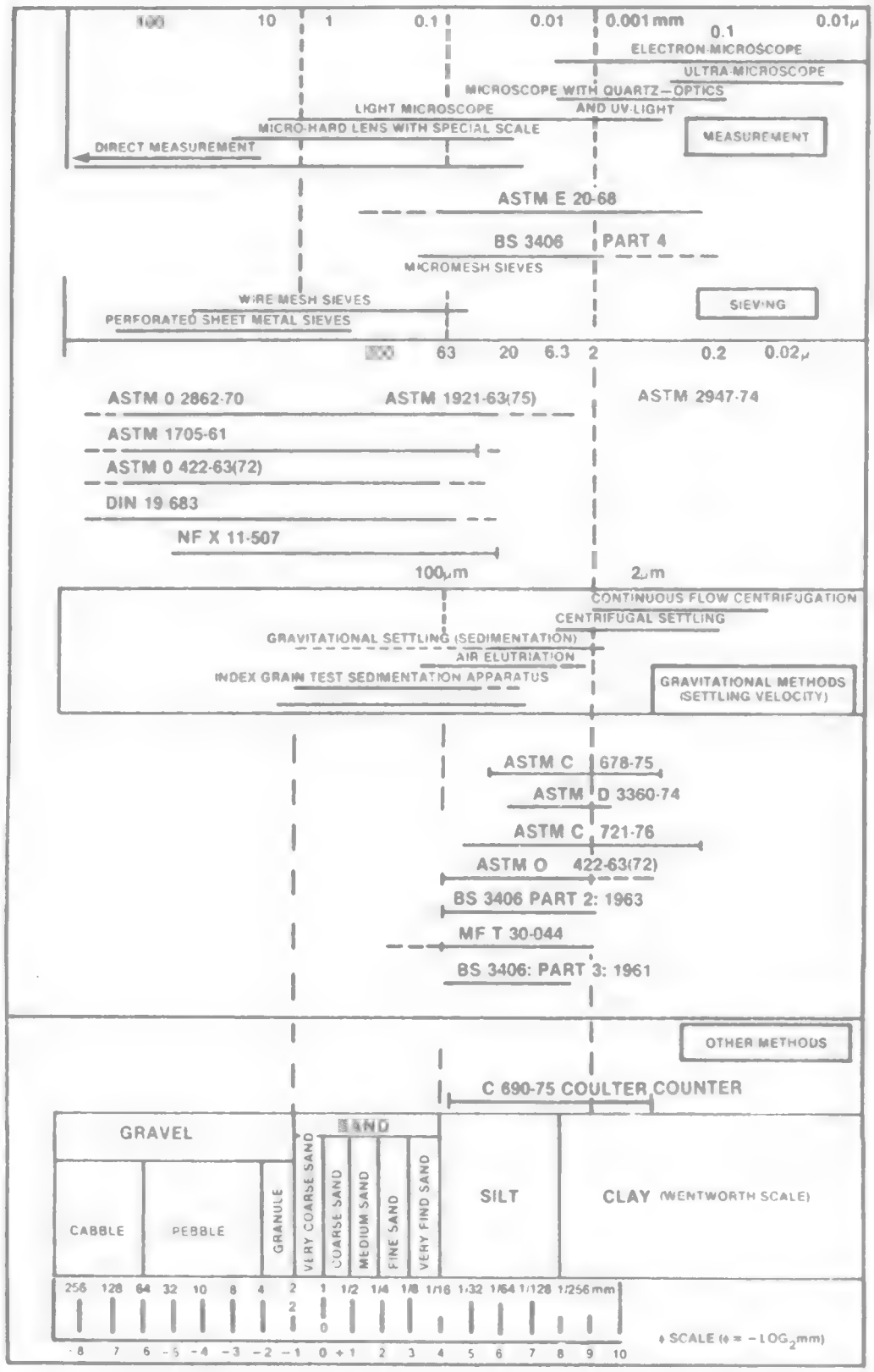
(*2*) A small electron microscope and support equipment are required.

(iii) *Performance of the tests.* (A) methods: (*1*) *Method A.* To be selected from standard procedures listed above (Principle of the test methods).

(*2*) *Method B.* Both preparation methods (B–1 and B–2) provide a particulate sample on filter paper or copper tape mounted on an SEM specimen holder. This can then be examined in the SEM, or first coated with metal film using a sputtering device or vacuum evaporator. Representative fields within the sample surface are photographed at various magnifications to yield a representative sample of the population of interest. (If desired, energy dispersive x ray analysis (EDXA) of representative particles—to check sample contamination—could be performed at this time.)

(B) Particle size distribution can be determined by measuring the screen directly or from measurements on photographs. If the SEM is equipped with an image analysis system, population statistics can be determined directly. Such measurements can be automated or semi-automated when desired (3). If the image indicates the sample is too concentrated, repeat again with a more dilute solution.

(iv) *Analysis.* Measuring the physical parameters by different methods can result in somewhat different particle size distributions; therefore, the measuring techniques used should always be reported. Representative analysis methods are discussed in reference under paragraph (d)(1) through (6) of this section, and the following "Summary of the Usual Methods for the Determination of Particle Size and the Important Granular Size Classes." (adapted from G. Müller, *Methoden der Sedimentuntersuchungen,* 1964. p. 303. Stuttgart, revised with appropriate supplements):



(c) *Data and reporting*—(1) Data. (i) Method A: Data should be obtained for 3 size ranges: >200 μm, <2 μm and the region 2 to 200 μm. Only in the latter range should the distribution curve be prepared. It should have sufficient μm increments to resolve the curve (subpopulations). A histogram presentation is required plus a statement on the weight percent of material >200 μm and <2 μm.

(ii) Method B: Full length (l) and diameter (d) data are needed on fibers of dimensions d>0.1 μm and l>5 μm. Two histogram distributions, based on examination of at least 50 fibers each, should be prepared. For diameters, the ranges should be 0.1–0.5, 0.5–1.0, 1–2, 2–3, 3–5 μm and over 5 μm. For lengths they should be 0–5, 5–10, 10–15, 15–20, (etc.) μm. This is illustrated in Figures 1 and 2, above.

(2) *Test report.* (i) Method A: The following information should be presented:

(A) Expected percent change of reported values in the future (e.g., variations between production batches).

(B) Sample preparation methods used.

(C) Analysis methods used.

(D) Approximate information on particle shape (e.g., spherical, platelike, needle shaped).

(E) Lot number, sample number.

(F) Suspending medium, temperature, pH.

(G) Concentration.

(H) Stoke's (effective hydrodynamic) radius R_s distribution for $2 \leq R_s \leq 200$ μm.

(I) Mean value and approximate "area" (percent) of any resolvable peaks in R_s distribution.

(J) Percent of particles with $R_s < 2$ μm.

(K) Percent of particles with $R_s \geq 200$ μm.

(ii) Method B: The following information should be presented:

(A) Sample description, method description.

(B) Number of particles *per* field.

(C) Total number of fibers measured.

(D) l, d distributions (histograms).

(E) Mean value and approximate "area" (percent) of any resolvable peaks in the R_s distribution.

(d) *Literature references.* For additional background information on this test guideline the following references should be consulted:

(1) Allen, T., *Particle Size Measurement.* (Chapman and Hall: London, 1975).

(2) Irani, R.R., and Callis, C.F., *Particle Size Measurement.* Interpretation and Application.

(3) Orr, S., and Dallavalle, J.M., *Fine Particle Measurement.*

(4) *Certification Report on Particles of Defined Particle Size.* (Community Bureau of Reference: Brussels, 1979).

(5) McGrath, P.P., and Ewell, J.B., "Application of Electron Microscopy to Problem of Particulate Contaminants in Food, Drugs and Biologicals," *Scanning Electron Microscopy,* Part III (1976).

(6) *Symposium on Electron Microscopy of Microfibers,* ed. Asher I.M., and McGrath, P.P., Proceedings of the First FDA Office of Science Summer Symposium, (August 23–25, 1976).

3. Subpart C is amended by adding §§ 796.3180, 796.3200, 796.3220, 796.3240,

796.3200, 796.3300, 796.3340, 796.3360, 796.3400 and 796.3460 to read as follows:

§ 796.3180 Ready biodegradability: Modified AFNOR test.

(a) *Introductory information*—(1) *Prerequisites.* (i) The test material must be at least soluble at the concentration to be tested, 40 mg dissolved organic carbon/liter (DOC/l).

(ii) The organic carbon content of the test material must be established.

(2) *Guidance information.* (i) Information on the relative proportions of the major components of the test material will be useful in interpreting the results obtained, particularly in those cases where the result lies close to the "pass level."

(ii) Information on the toxicity of the chemical may be useful in the interpretation of low results and in the selection of appropriate test concentrations.

(3) *Interpretation of results.* Because of the stringency of this test a result of less than 70 percent loss of DOC (within 28 days) does not necessarily mean that the test compound is not biodegradable under environmental conditions, but indicates that more work will be necessary to establish biodegradability.

(4) *Qualifying statements.* (i) The method is only applicable to those organic test materials which, at the concentration used in the test:

(A) Are soluble in water.

(B) Have negligible vapour pressure.

(C) Are not inhibitory to bacteria.

(D) Do not significantly adsorb on glass surfaces.

(ii) This test has been found suitable by the OECD Expert Group Degradation/Accumulation for determining the ready biodegradability of organic chemicals under aerobic conditions. It has been tested in the OECD Laboratory Intercomparison Test Program (1978–1980).

(5) *Recommendations.* (i) Test Chemicals giving a result of greater than 70 per cent loss of DOC (within 28 days) should be regarded as readily biodegradable. This level must be reached within 10 days of biodegradation exceeding 10 percent.

(ii) If the limits of sensitivity of organic carbon analyzers are improved, the use of lower test concentrations may be an advantage, particularly for toxic compounds.

(6) *Standard documents.* This test is based on "Norme Experimentale AFNOR T 90-302."

(b) *Method*—(1) *Introduction, purpose, scope, relevance, application and limits of test.* (i)(A) The method described in this test guideline allows the evaluation in aqueous medium of so-called "total" biodegradability under experimental conditions which are easy to establish. These conventional conditions do not necessarily correspond in all cases to the optimal conditions which would result in the maximal value of biodegradability.

(B) The method is applicable to those organic products, alone or in mixtures, which are:

(*1*) Soluble in water at the concentration used under the conditions of the test.

(*2*) Non-volatile or at least have a negligible vapour pressure under the conditions of the test.

(*3*) At the concentration foreseen in the test, not inhibitory with respect to the bacteria responsible for the biodegradation.

(ii) *Reference substances.* (A) In some cases when investigating a new substance reference substances may be useful; however, specific reference substances cannot yet be recommended. Aniline, sodium acetate or sodium benzoate may be used for this purpose; they must exhibit DOC removal of >70 percent within 28 days, otherwise the test is regarded as invalid and should be repeated using an inoculum from a different source.

(B) In this specific test glucose is used especially for the inhibition test and may be used also to check the activity of the inoculum.

(iii) *Principle of the test method.* The biodegradation of organic products dissolved in water by chemico-organotrophic micro-organisms using the products as the sole source of carbon and energy is observed. These products are studied at a concentration such that the initial content of organic carbon is 40 mg/l. The organic carbon remaining in solution after 3, 7, 14, 28 (and 42) days is measured and the corresponding level of biodegradation calculated. The biodegradability is evaluated on the basis of this level.

(iv) *Quality criteria.* This is an evaluation method and not a method for the determination of biodegradability.

(A) *Reproducibility.* To date no OECD ring test has been performed especially for reproducibility, but some general ring tests have been made with the CEFIC and with AFNOR, which have some relevance.

(B) *Sensitivity.* This method is sensitive to an order of magnitude of ±10 percent.

(C) *Specificity.* This Test Guideline is applicable to organic products soluble in the test medium at a concentration equal at least to one containing 40 mg/l as carbon.

(D) *Possibility of standardization.* This method may be standardized in the course of work by ISO.

(E) *Possibility of automation.* Automation seems possible.

(2) *Description of the test procedure*—(i) *Preparations*—(A) *Site.* The incubation must be carried out in the absence of any intense lighting, in an incubator maintained at 25±1 °C and free from toxic vapors.

(B) *Reagents.* (*1*) The chemical products used must be of recognized analytical purity.

(*2*) Distilled water must not contain more than 2 mg/l of organic carbon. In any case the organic carbon content of the distilled water must not exceed 10 percent of the organic carbon level introduced by the test substance.

(*3*) Test medium: (*i*) Prepare the test medium as indicated, using sterile material. For one litre of solution, dissolve the following in distilled water:

Ammonium sulphate $(NH_4)_2SO_4$	0.300 g.
Ammonium nitrate NH_4NO_3	0.150 g.
Monopotassium phosphate KH_2PO_4.	0.300 g.
Disodium phosphate $Na_2HPO_4 \cdot 12H_2O$.	2.000 g.
Magnesium sulphate $MgSO_4 \cdot 7H_2O$	0.050 g.
Calcium chloride $CaCl_2 \cdot 2H_2O$	0.050 g.
Yeast extract	0.005 g.

The pH is 7.5±0.1.

(*ii*) Add 1 ml of trace element solution of the following composition:

Ferrous sulphate $FeSO_4 \cdot 7H_2O$	0.100 g.
Manganese sulphate $MnSO_4 \cdot H_2O$	0.100 g.
Potassium molybdate K_2MoO_4	0.025 g.
Sodium tetraborate $Na_2B_4O_7 \cdot 10H_2O$.	0.025 g.
Cobalt nitrate $Co(NO_3)_2 \cdot 6H_2O$	0.025 g.
Copper chloride $CuCl_2 \cdot 2H_2O$	0.025 g.
Zinc chloride $ZnCl_2$	0.025 g.
Ammonium metavanadate NH_4VO_3.	0.010 g.
Distilled water to	100 ml.

(*4*) The trace element solution can be kept for one month at a temperature between +1 and +4 °C.

(*5*) Make up to the volume stated (1 liter) and mix. The medium must be used within 12 hours.

(C) *Apparatus.* Usual laboratory items, and

(*1*) Apparatus for the assay of organic carbon.

(*2*) Spectrophotometer.

(*3*) Centrifuge, 4000 ms^{-2}

(*4*) Shaker allowing adequate aeration and shaking.

(*5*) Apparatus for the assay of dissolved oxygen.

(*6*) pH meter.

(*7*) 500-ml wide-neck conical flasks, sterile.

(*8*) Apparatus for sterile filtration. The glassware must be thoroughly cleaned and in particular free from all traces of organic or toxic matter.

(ii) *Procedure*—(A) *Preparation of the test solutions.* (*1*) Prepare the following solutions:

(*i*) Solution of tested product in the test medium in such a way as to obtain a concentration of 40 mg/l of organic carbon.

(*ii*) Solution of glucose in the test medium in such a way as to obtain a concentration of 40 mg/l of organic carbon.

(*iii*) Solution containing in the test medium the concentrations of product and glucose used for the preparation of solutions.

(*iv*) An adequate volume of test medium should be available.

(*2*) Mix the four solutions individually and sterilize by filtration through a membrane filter of 0.22 μm porosity.

(B) *Preparation of the inoculum.* (*1*) Take an adequate volume of a mixture of three samples from polluted surface water (effluent from town sewage works) free from major specific pollutants. The bacterial count for each sample must be at least 10^5 bacteria/ml.

(*2*) The samples must be used for the inoculation within a period of 12 hours, including transportation, and must not remain for more than 6 hours without aeration.

(*3*) Filter through paper to eliminate the larger insoluble particles, collect the filtrate and pass through a membrane filter of pore size 0.22 μm. Wash with any isotonic solution. Take up the bacteria deposited on the membrane filter in a small volume of solution or with any other isotonic solution. Mix well. Measure the absorbance at 620 nm and from this deduce the concentration of bacteria in relation to a standard curve obtained previously by means of solid medium counts of *Pseudomonas fluorescens* strain ATCC 15453. Add the volume of solution required to adjust the concentration of bacteria to $5\pm3\times10^7$/ml. Use the inoculum within the next hour.

(C) *Actual test performance.* (*1*) All the necessary manipulations must be carried out by sterile methods. Divide solutions into the test flasks (previously sterilized) according to the following scheme:

Flask No. 1 (test)	150 ml solution 1.
Flask No. 2 (test)	150 ml solution 1.
Flask No. 3 (test)	150 ml solution 1.
Flask No. 4 (sterile control).	150 ml solution 1.
Flask No. 5 (glucose control).	150 ml solution 2.
Flask No. 6 (control of inhibitory action).	150 ml solution 3.
Flask No. 7 (inoculum control).	150 ml solution 4.

(*2*) Seed flasks 1, 2, 3, 5, 6 and 7 with 1.5 ml of inoculum and mix well by manual shaking.

(*3*) Take an aliquot of 3–5 ml from each flask. Centrifuge the aliquots at 4000 ms^{-2} for 15 minutes, keeping the temperature below 26 °C. In certain cases, and especially in presence of relatively low specific gravity insoluble fractions, it may be necessary to centrifuge for a longer time or with a higher acceleration. Collect the supernatants for assays of organic carbon at time 0.

(*4*) Place the flasks on the shaker and leave them there throughout the test period; the shaking must be such that the validity clause is fulfilled.

(*5*) In the same way as for the assay of organic carbon at time 0, carry out this assay on flasks 1, 2, 3, 5, 6 and 7 after 3, 7, 14, 28 (and 42) days of incubation. However, if the reduction in carbon content reaches 95 percent of the initial content in flasks 1, 2 and 3, consider the test as ended.

(*6*) The test can be finished before the 28th day in the case where a plateau is observed before the 28th day. In the case where a degradation has obviously started on day 28 but has not reached a plateau on day 28, it is considered good practice to extend the experiment for 1 of 2 weeks longer.

(*7*) At the end of the test carry out an assay of organic carbon in flask 4 in the same manner as at time 0.

(*8*) If the assays of organic carbon contents have to be deferred, keep the supernatant at 4 °C in the dark in hermetically sealed glass flasks; the maximum acceptable duration of preservation is 24 hours. If the analysis cannot be carried out within 24 hours, then freeze at a temperature below −18 °C.

(*9*) To compensate for loss of water due to evaporation, before each sampling verify the volume of medium in the flask and, if necessary, fill up with distilled water sterilized by filtration through a membrane of 0.22 μm pore size to restore the volume measured after the previous sampling.

(c) *Data and reporting*—(1) *Treatment of the results.* (i) Calculation:

(A) Determine the percentage elimination of soluble organic carbon for each sampling, using the following formula:

$$\%\ \text{elimination of carbon at time t} = \frac{(C_o - C_{oi})(C_t - C_{ti})}{(C_o - C_{oi})} \times 100$$

where

C_o = the mean level of organic carbon at time 0 in flasks 1, 2 and 3 (or the organic carbon content at time 0 in one of the flasks 4, 5 or 6).

C_{oi} = the organic carbon level in flask 7 at time 0.

C_t = the mean level of organic carbon at time t in flasks 1, 2 and 3 (or the organic carbon level at time t in one of the flasks 4, 5 or 6).

C_{ti} = the organic carbon level in flask 7 at time t.

(B) The level of biodegradation is the percentage elimination of the organic carbon.

(C) Set up a table of biodegradation levels as a function of time. Draw the curve of the change in biodegradation level as a function of time when a large enough number of significant points is available.

(ii) Note: The comparison of the percentage eliminations of carbon in flasks 1, 2 and 3, on the one hand, and in flask 4, on the other hand, allows the causes of the degradation observed to be differentiated: the physical-chemical mechanisms in flask 4 and the physical-chemical plus biological mechanisms in flasks 1, 2 and 3.

(2) *Validity of the results.* If one of the following conditions (i) to (iii) is not fulfilled, begin the test anew. In the case of condition (i), the level of shaking must be increased in the new test.

(i) The concentration of dissolved oxygen on day 3 in flask 5 must be at least 5 mg/l.

(ii) The level of glucose degradation in flask 5 must be at least 80 percent by day 7.

(iii) At the end of the test, flask 4 must still be sterile. Check this by seeding into a tube of liquid culture medium (Dehydrated yeast extract, 3 g; Pancreatic caseine peptone, 6 g; Water, 1000 ml—Dissolve the components or the dehydrated complete medium in boiling water. If necessary, adjust the pH in such a way that after sterilisation it is 7.2 ± 0.2 at 20 °C) and incubating at 25 °C for 5 days. The level of glucose biodegradation in flask 6 must, by day 7, be at least 75 percent of that observed in

flask 5. If this limit is not reached, consider that the product subjected to the test presents an inhibitory effect towards the bacteria present and that the method is not applicable to it at the concentration laid down by this standard.

(3) *Interpretation of results.* See paragraph (a) of this section.

(4) *Test report.* (i) Mention the following points in particular:

(A) Motivation for any rejection of the test.

(B) Extent of the disappearance of the product in flask 4 at the end of the test.

(C) Any inhibition phenomena observed.

(ii) *Biodegradability:* Express the biodegradability as the highest level of biodegradation noted during the period of 28 days. The course of the degradation should be displayed graphically in a diagram.

§ 796.3200 Ready biodegradability: Closed bottle test.

(a) *Introductory information*—(1) *Prerequisites.* The empirical formula of the test material is required so that the theoretical oxygen demand (TOD) may be calculated. If this is unknown, the chemical oxygen demand (COD) of the test material may serve as the reference point (6).

(2) *Guidance information.* (i) Information on the relative proportions of the major components of the test material will be useful in interpreting the results obtained, particularly in those cases where the result lies close to the "pass level."

(ii) Information on the toxicity of the chemical may be useful in the interpretation of low results and in the selection of appropriate test concentrations.

(3) *Interpretation of results.* Because of the stringency of this test, a measured BOD (biochemical oxygen demand) which is less than 60 percent of TOD (within 28 days) does not necessarily mean that the test compound is not biodegradable under environmental conditions, but indicates that more work will be necessary to establish biodegradability. The possibility that nitrogen-containing compounds may affect the results should be considered.

(4) *Qualifying statements.* (i) The method is only applicable to those organic test materials which, at the concentration used in the test, are not inhibitory to bacteria.

(ii) This test has been found suitable by the OECD Expert Group Degradation/Accumulation for determining the ready biodegradability of organic chemicals under aerobic conditions. It has been tested in the OECD Laboratory Intercomparison Test Program (1978–1980).

(5) *Recommendations.* (i) Test chemicals giving a measured BOD which is greater than 60 percent of the TOD (within 28 days) should be regarded as readily biodegradable. This level must be reached within 10 days of biodegradation exceeding 10 percent.

(ii) If the test material is not soluble at the test concentration, special measures, such as the use of ultrasound dispersion, may have to be employed to achieve a good dispersion of test material.

(6) *Standard documents.* This test guideline is based on a paper found under paragraph (d)(8) of this section.

(b) *Method*—(1) *Introduction, purpose, scope, relevance, application and limits of test.* (i) The purpose of the method is the measurement of the biodegradability of organic compounds in an aerobic, aqueous medium at a test concentration of 2 (standard concentration) to 10 mg/l of active material. Most data elaborated with this test pertain to water-soluble compounds; however, volatile compounds and those of low water solubility may also be tested, at least in principle.

(ii) *Definitions and units.* The degradation is stated as the biochemical oxygen demand (BOD) within 28 days as a percentage of either the theoretical oxygen demand (TOD) or the chemical oxygen demand (COD).

For example:

$$\text{Percent biodegradability} = \frac{\text{mg } O_2/\text{mg active substance}}{\text{TOD}} \times 100$$

or

$$\text{Percent biodegradability} = \frac{\text{mg } O_2/\text{mg active substance}}{\text{COD}} \times 100$$

where

TOD = theoretical oxygen demand (calculation, see Data and reporting, below)

COD = chemical oxygen demand determined experimentally.

(iii) *Reference substances.* In some cases when investigating a new substance, reference substances may be useful; however, specific reference substances cannot yet be recommended. In order to check the activity of the inoculum, the use of control substances is desirable. Aniline, sodium acetate, sodium benzoate, sodium n-dodecylsulfate and the sodium salt of linear alkylbenzenesulfonic acid (8, 9) may be used for this purpose. They must exhibit a BOD which is ≥60 percent of their TOD within 28 days, otherwise the test is regarded as invalid and should be repeated using an inoculum from a different source.

(iv) *Principle of the test method.* A predetermined amount of the compound is dissolved in an inorganic medium (mineral nutrient solution), providing a usual concentration of 2 mg active substance per liter (AS/l). The solution is inoculated with a small number of micro-organisms from a mixed population and kept in closed bottles in the dark in a constant temperature bath at 20±1 °C. The degradation is followed by oxygen analyses over a 28-day period. A control with inoculum, but without test material, is run parallel for the determination of oxygen blanks.

(v) *Quality criteria*—(A) *Reproducibility.* The reproducibility of the method is appropriate for a screening test for "ready biodegradability," which has solely an acceptance function, but is not sufficient for a final decision regarding biodegradibility.

(B) *Sensitivity.* A starting concentration of 2 mg AS/l usually allows the determination of 95 percent degradation. Compounds with a low TOD may require higher starting concentrations.

(C) *Specificity.* The test is applicable for the biodegradability evaluation of organic compounds. Most experience has been gathered with water soluble compounds; however, the test lends itself, at least in principle, to the biodegradability evaluation of volatile and insoluble compounds.

(D) *Possibility of standardization.* The test is suited for standardization.

(E) *Possibility of automation.* Although the whole test cannot be automated, parts of it, e.g., the analysis,

may. The procedure is well suited, however, for being operated with whole series of test materials.

(2) *Description of the test procedure*—(i) *Preparations*—(A) *Reagents*—(*1*) *Distilled or ion exchange water.* Containing not more that 0.01 mg Cu/l, air saturated. Volume according to the need of the day, e.g., 50 l, at room temperature, as close as possible to 20 °C, aerated strongly for 20 minutes with compressed air. Generally, the water is ready for use after standing for 20 hours at 20 °C. Oxygen is determined for control purposes. The concentration at 20 °C should be about 9 mg O_2/l. All transfer and filling operations of the air saturated water must be conducted bubble-free by siphon.

(*2*) *Standard dilution water for BOD determinations according to H5 of DEV* (see paragraph (d)(1) of this section).

(*i*) Solution 1: 8.5g of KH_2PO, 21.75g of K_2HPO_4, 33.3g of $Na_2HPO_4 \cdot 2H_2O$, and 1.7g of NH_4Cl are dissolved in 500 ml of distilled water. The solution is made up to 1 l. The pH ought to be 7.2.

(*ii*) Solution 2: 22.5 g of $MgSO_4 \cdot 7\ H_2O$/l.

(*iii*) Solution 3: 27.5 g of $CaCl_2$/l.

(*iv*) Solution 4: 0.25 g of $FeCl_3 \cdot 6\ H_2O$/l.

1 ml each of solutions 1 to 4 are added to 1 litre of aerated distilled water.

(B) *Materials.* (*1*) Calibrated 250–300 ml BOD bottles with glass stoppers (Uncalibrated narrow neck 250 ml bottles with glass stoppers whose volumes have been determined may be used instead without causing any appreciable error.) All glassware is cleaned according to the H23 procedure under paragraph (d)(2) of this section.

(*2*) Several 2, 3 and 5-l bottles with self-made litre marks for the preparation of the experiments and for the filling of the BOD bottles.

(*3*) Pipettes of 1 to 10 ml volume.

(*4*) Funnels and coarse filter paper.

(*5*) Baby bottles for the preparation and shaking of the inoculum.

(*6*) Water bath for keeping the bottles at constant temperature under the exclusion of light.

(C) *Inoculation.* The following inocula may be used:

(*1*) An aqueous suspension of unfertilized garden soil. 100g of unfertilized garden soil (soil from a greenhouse which is at constant temperature throughout the year is especially advantageous) are dispersed in chlorine-free tap water (1 liter). After 30 minutes the suspension is filtered through a coarse filter and the first 200 ml of the filtrate are discarded. The main part of the filtrate serves for the inoculation (1 drop from a pointed pipette per liter of final volume, see Procedure, below). The inoculum is prepared immediately before the experiment. It must be aerated if it is to be kept for several hours. The number of bacteria may be determined according to the pour plate method or with nutrient pad sets. There should be no more than 10^3 to 10^5 bacteria per milliliter of final volume.

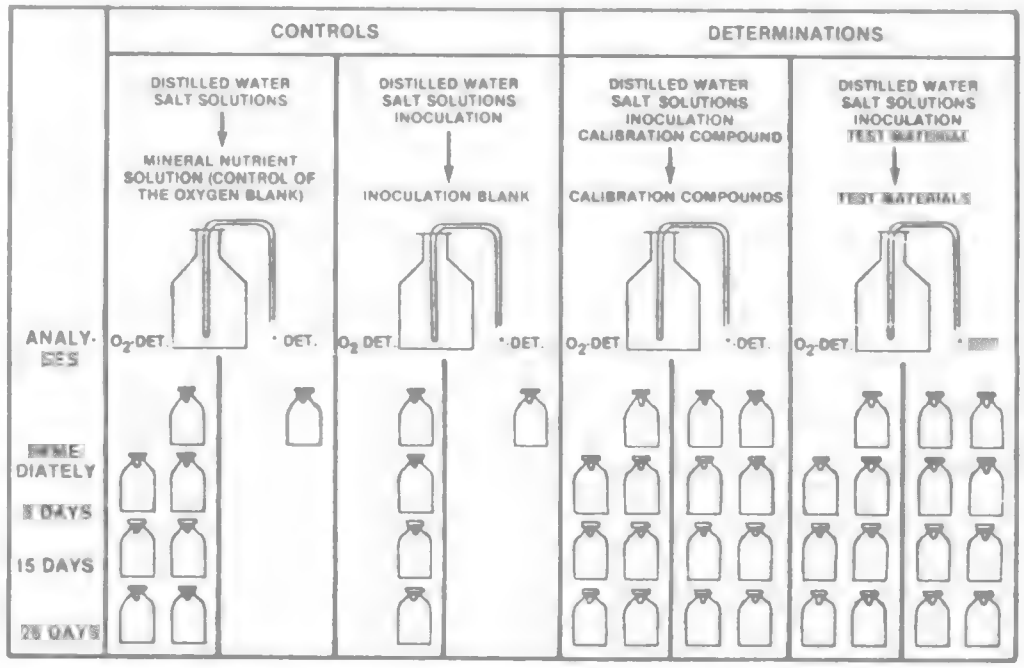
(*2*) Effluent from an activated sludge plant or trickling filter. Inoculation should preferably be made using a secondary effluent of good quality collected from a treatment plant dealing with predominantly domestic sewage. The effluent must be kept under aerobic conditions in the period between sampling and application. To prepare the inoculum the sample is filtered through a coarse filter, the first 200 ml being discarded. The rest of the filtrate is kept aerobic until used. The inoculum must be used on the day of collection.

(*3*) Effluent from a strongly aerated laboratory activated sludge plant. The inoculum is prepared as described in previous section.

(*4*) Composite inoculum. Equal volumes of the three inoculum samples are combined, mixed well and the final inoculum drawn from this mixture. The suitability of the inoculum is checked by means of a control substance.

(ii) *Procedure.* (A) (*1*) Direct comparisons are always necessary in biological experiments. Therefore groups of parallel bottles are prepared for the determination of the BOD of the test and control substances in simultaneous experimental series, see the following Figure 1:

Figure 1—Scheme for the bottle arrangement for the closed bottle test



(* = SPECIFIC ANALYSIS IF AVAILABLE)

If chemical analyses are performed simultaneously a sufficient number of bottles—including the controls for the inoculum and the blank—have to be prepared [e.g., 7 or 15 parallel bottles are prepared for one test material for the 0, 5, 15 and 28-day tests after a sufficient volume of water has been prepared in large bottles (see Reagents above)].

(*2*) These large bottles are first filled to about one third of their volume with distilled water by hose. Then the individual salt stock solutions are pipetted into these bottles according to the final volume, and the respective test or control materials are added in such amounts that final concentrations of 2 and sometimes 5 or 10 mg/l (higher concentrations only in case of poorly degradable compounds and those with a low TOD) are attained (see General considerations below). Subsequently the experimental solution is inoculated with 1 drop (from a pointed pipette) per liter of final volume, and the blank is inoculated similarly. Finally, the solutions are made up to volume with a hose which reaches down to the bottom of the flask, which achieves adequate mixing.

(*3*) Subsequently each prepared solution is filled immediately into the respective group of bottles by hose from the lower quarter (not from the bottom!)

of the bottle. Furthermore, the zero controls are analyzed or preserved for the later analyses (for the O_2-determination by precipitation with $MnCl_2$ and NaOH; for the surfactant determination by preservation with 50 mg/l of $HgCl_2$). The remaining parallels are placed in a water bath at 20 °C, kept in the dark, and removed after 5, 15 and 28 days, respectively, from the bath, and analyzed. The result is recorded as percentage biodegradability and should be visualised as a diagram.

(*4*) The test can be finished before the 28th day in the case where a plateau is observed before the 28th day. In the case where a degradation has obviously started on day 28 but has not reached a plateau on day 28, it is considered good practice to extend the experiment for one or two weeks longer.

(B) *General considerations.* (*1*) Each series is accompanied by complete parallel series for the determination of the blank, and the oxygen depletion without inoculation.

(*2*) The oxygen depletion without inoculation should not exceed 0.2 to 0.3 mg O_2/l after 5 days and 0.4 mg O_2/l after 28 days, respectively; the blank with inoculation should not exceed 0.4 to 0.5 mg O_2/l after 5 days and 0.5 to 0.6 mg O_2/l after 15 to 28 days. Typical values for the reference substances can be found in the literature references under paragraph (d)(8) and (9) of this section.

(*3*) Degradability is calculated by (*i*) subtracting the oxygen depletion result of the blank from that of the test substance and (*ii*) dividing this number by the concentration (W/V) of the test material. This calculation gives the oxygen depletion in mgO_2/mg of active material; this value is transformed to the "% biodegradability" according to Data and reporting under paragraph (c) of this section for the day under consideration.

(*4*) If the structure or elemental composition of the test material is unknown, or it is a mixture of unknown organic compounds, the chemical oxygen demand (COD) may serve as a reference instead of the TOD.

(*5*) The concentration of about 9 mg of dissolved oxygen per liter of dilution water at 20 °C limits the possible starting concentration of the test material to about 2 mg/l in order to guarantee that an oxygen concentration of 4–5 mg/l remains after the oxidation of the test substrate. Substances which are only partially degraded or those which have a low TOD are advantageously tested in parallel experiments at 5 or even 10 mg/l starting concentrations.

(C) *Inhibition test.* (*1*) Organic and inorganic materials may easily and simply be tested for inhibitory effects in the closed bottle test:

(*i*) Series 1: 2 mg/l of a well-degraded compound (e.g., fatty alcohol+10 moles ethylene oxide).

(*ii*) Series 2: × mg/l of test material (× is usually 2).

(*iii*) Series 3: 2 mg/l of the control compound plus × mg/l of test material.

(*2*) If the BOD values of series 3 correspond to the sum of those of series 1 and 2, the test material does not display inhibitory effects. This control experiment is always necessary if a negative or poor degradability result seems illogical in view of the structure of the test material, i.e., if there are indications that it may be caused by inhibition.

(iii) *Analytical means.* (A) Oxygen determination according to Winkler under paragraph (d)(3) of this section or electrometrically, if suitability is assured.

(B) In case of anionic surfactants: MBAS-determination according to H23 of DEV under paragraph (d)(2) of this section.

(C) In case of nonionic surfactants: BiAS(bismuth active substance)-determination according to Wickbold under paragraph (d)(4) of this section.

(c) *Data and reporting*—(1) *Treatment of results*—(i) *Calculation of the theoretical oxygen demand (TOD).* (A) The TOD of the compound $C_cH_hCl_{cl}N_nNa_{na}O_oP_pS_s$ of the molecular weight is calculated according to:

$$TOD_{NH_3} = \frac{16\left[2c + \frac{1}{2}(h - cl - 3n) + 3s + \frac{5}{2}p + \frac{1}{2}na - o\right]}{\text{mol. wt.}}$$

(B) This calculation implies that C is mineralised to CO_2, H to H_2O, P to P_2O_5 and Na to Na_2O. Halogen is eliminated as hydrogen halide and nitrogen as ammonia.

Example: Glucose $C_6H_{12}O_6$, mol. wt.=180

$$TOD = \frac{16\left(2 \cdot 6 + \frac{1}{2} \cdot 12 - 6\right)}{180} = 1.07 \text{ mg } O_2\text{/mg active substance}$$

(C) Molecular weights of salts other than those of the alkali metals are calculated on the assumption that the salts have been hydrolyzed.

(D) Sulfur is schematically oxidized to the state of +6. Example: Alkylbenzenesulfonate, LAS,$C_{18}H_{29}SO_3Na$, mol. wt.=348

$$TOD = \frac{16\left(36 + \frac{29}{2} + 3 + \frac{1}{2} - 3\right)}{348} = 2.34 \text{ mg } O_2\text{/mg active substance}$$

(E) In the case of nitrogen-containing compounds the nitrogen may be eliminated as ammonia, nitrite, or nitrate corresponding to different theoretical oxygen demands:

$$TOD_{NO_2} = \frac{16\left[2c + \frac{1}{2}(h - cl) + 3s + \frac{3}{2}n + \frac{5}{2}p + \frac{1}{2}na - o\right]}{\text{mol. wt.}}$$

$$TOD_{NO_3} = \frac{16\left[2c + \frac{1}{2}(h - cl) + 3s + \frac{5}{2}n + \frac{5}{2}p + \frac{1}{2}na - o\right]}{\text{mol. wt.}}$$

(F) Suppose full nitrate formation would have been observed by analysis in case of a secondary amine:

$(C_{12}H_{25})_2$ NH; mol. wt.=353

$$TOD_{NO_3} = \frac{16\left(48 + \frac{51}{2} + \frac{5}{2}\right)}{353} = 3.44 \text{ mg } O_2\text{/mg active substance}$$

(ii) *Calculation of results.* For the calculation of the percentage biodegradability after n days the determined oxygen depletions are divided by the concentration (W/V) of active substance.

Then—

$$\text{Percent biodegradability} = \frac{\text{mgO}_2/\text{mgAS}}{\text{TOD}} \times 100$$

or

$$\text{Percent biodegradability} = \frac{\text{mgO}_2/\text{mgAS}}{\text{mgCOD/mgAS}} \times 100$$

(2) *Test report.* The raw data may be listed in and evaluated according to the following form sheet:

(3) *Interpretation of results.* See paragraph (a) of this section.

Sample Form Sheet for the Closed Bottle Test

Exp. No. _____
Date of start of test _____
Test/standard material _____
Theoretical test concentration. mgAS/l.
Inoculum _____

Sample Form Sheet for the Closed Bottle Test—Continued

Analysis: (Winkler method or oxygen electrode). _____
TOD or COD of test material... $mgO_2/mgAS$.
Temp. of the dilution water after aeration. K (O_C).
O_2-conc. of the distilled (deionised) water after aeration and standing before start of test. mg O_2/l.

PART I: O_2 Determinations:

Culture medium	Flask No.	Analyses	mgO₂/l after x days			
			[illegible]	5	15	[illegible]
Mineral nutrient solution *without* test material and *without* inoculum.	O_2	c_1				
	Control	c_2				
	Mean	$m_0 = \frac{c_1 + c_2}{2}$				
Mineral nutrient solution *without* test material but *with* inoculum.	1	c_3				
	2	c_4				
	Mean blank	$m_b = \frac{c_3 + c_4}{2}$				
Mineral nutrient solution *with* test material and *with* inoculum.	1	[illegible]				
	2	a_2				
	Mean test material	$m_t = \frac{a_1 + a_2}{2}$				

PART II: O_2 Depletions (mg BOD/l) after *x* days:

$$BOD_x = (m_0 - m_{tx}) - (m_0 - m_{bx})$$

(This difference is important as a check for the validity of the test.)

$$\text{Percent biodegradability (I)} = \frac{\text{mg BOD}_x/\text{l}}{\text{mg AS/l.TOD}} \cdot 100$$

or

$$\text{Percent biodegradability (II)} = \frac{\text{mg BOD}_x/\text{l}}{\text{mg AS/l.COD}} \cdot 100$$

mg BOD/l after x days			After x days		
[illegible]	15	[illegible]	[illegible]	15	[illegible]
(I)					
(II)					

PART III: Evaluation:

(d) *Literature references.* For additional background information on this test guideline the following references should be consulted:

(1) "Methode H5," *Deutsche Einheitsverfahren zur Wasseruntersuchung,* (Verlag Chemie: Weinheim, 1960).

(2) "Methode H23," *Deutsche Einheitsverfahren zur Wasseruntersuchung,* (Verlag Chemie: Weinheim, 1960).

(3) "Methode G2," *Deutsche Einheitsverfahren zur Wasseruntersuchung,* (Verlag Chemie: Weinheim, 1960).

(4) Wickbold, R. *Wasser,* 33: 229, (1966).

(5) Wickbold, R. *Tenside Detergents* 8: 61 (1971).

(6) "Oxygen Demand," *Standard Methods for the Examination of Water and Wastewater,* 12 Ed: American Public Health Association, American Water Works Association Water Pollution Control Federation, (1965) p. 510.

(7) Fisher, W.K., Fette, Seifen, *Anstrichmittel,* 65: 37–32 (1963).

(8) Fischer, W.K., Gerike, P. and Schmid, R., *Wasser- und Abwasserforschung* 7: 99–118 (1974).

(9) Gerike, P. and Fischer, W.K., *Ecotoxicology & Environmental Safety,* Vol. *3,* No. 2, 159–173 (1979).

§ 796.3220 Ready biodegradability: Modified MITI test (I).

(a) *Introductory information*—(1) *Prerequisites.* (i) An analytical method must be available for determining the concentration of the test material in the test solution.

(ii) The empirical formula of the test material is required so that the theoretical oxygen demand (TOD) may be calculated.

(2) *Guidance information.* (i) Information on the relative proportions of the major components of the test material will be useful in interpreting the results obtained, particularly in those cases where the result lies close to the "pass level."

(ii) Information on the toxicity of the chemical may be useful to the interpretation of low results and in the selection of appropriate test concentrations.

(3) *Interpretation of results.* Because of the stringency of this test, a result of less than 60 percent of BOD (biochemical oxygen demand) (70

percent LPC (loss of parent compound)) (within 28 days) does not necessarily mean that the test compound is not biodegradable under environmental conditions, but indicates that more work will be necessary to establish biodegradability. The possibility that nitrogen-containing compounds may affect the results should be considered.

(4) *Qualifying statements.* (i) The method is only applicable to those organic test materials which, at the concentration used in the test:

(A) Have negligible vapor pressure.

(B) Are not inhibitory to bacteria.

(C) Do not reach and react with the CO_2 adsorbant.

(ii) This test has been found suitable by the OECD Expert Group "Degradation/Accumulation" for determining the "ready biodegradability of organic chemicals under aerobic conditions." It has been tested in the OECD Laboratory Intercomparison Test Program (1978–1980).

(5) *Recommendations.* (i) Test chemicals giving a result of greater than 60 percent BOD, 70 percent LPC, (within 28 days) should be regarded as readily biodegradable.This level must be reached within 10 days of biodegradation exceeding 10 percent.

(ii) If the test material is not soluble at the test concentration, special measures, such as the use of ultrasound dispersion, may have to be employed to achieve a good dispersion of the test material.

(6) *Standard documents.* This Test guideline was based upon the order prescribing the items of test, relating to new chemical substances of the Chemical Substance Control Law (Japanese Law No. 117, 1973). Order of the Japanese Prime Minister, the Minister of Health and Welfare, and the Minister of International Trade and Industry, No. 1 (July 13, 1974).

(b) *Method*—(1) *Introduction, purpose, scope, relevance, application and limits of test.* (i)(A) Purpose: Measurement of biochemical oxygen demand and the analysis of residual chemicals, intermediates necessary in the evaluation of the biodegradability of chemical substances.

(B) Appropriate chemicals: non-volatile and water soluble (more than 100 ppm) organic chemicals.

(C) Applicable chemicals: slightly water soluble chemicals; volatile chemicals (modified BOD meter should be used) ($C_{water}/C_{air}>1$ (C=concentration))

(D) Non-applicable chemicals: volatile chemical substances ($C_{water}/C_{air}<1$).

(ii) Definitions and units—(A) *Definitions. (1)*

(*i*) Percentage degradation $= \frac{BOD-B}{TOD} \times 100\%$

or

(*ii*) Percentage degradation $= \frac{Sb-Sa}{Sb} \times 100(\%)$

(*2*) BOD: Biochemical oxygen demand (experimental) (mg) of the test compound measured on the BOD curve.

(*3*) B: Oxygen consumption (experimental) (mg) of basal culture medium to which the inoculum is added measured on the BOD curve.

(*4*) TOD: Theoretical oxygen demand (theoretical) (mg) required when the test compound is completely oxidised.

(*5*) Sa: Residual amount (experimental) (mg) of the test compound after completion of the biodegradability test.

(*6*) Sb: Residual amount (experimental) (mg) of the test compound in the blank test with water to which only the test compound has been added.

(B) [Reserved]

(iii) *Reference substances.* In some cases when investigating a new substance reference substances may be useful; however, specific reference substances cannot yet be recommended. In order to check the activity of the inoculum, the use of control substances is desirable. Aniline, sodium acetate or sodium benzoate may be used for this purpose.

(A) *Aniline.* If the percentage of degradation of aniline calculated from the oxygen consumption does not exceed 40 percent after 7 days or 65 percent after 14 days, the test is regarded as invalid.

(B) [Reserved]

(iv) *Principle of the test method.* This test method is based on the following conditions:

(A) Test chemicals as sole organic carbon sources, and

(B) No adaptation of micro-organisms to test chemicals.

An automated closed system oxygen consumption measuring apparatus (BOD meter) is used. Chemicals to be tested are inoculated with micro-organisms in the testing vessels. During the test period, biochemical oxygen demand is measured continuously by the BOD meter. Biodegradability is calculated on the basis of BOD and supplemental chemical analysis is undertaken, such as measuring dissolved organic carbon concentration, concentration of residual chemicals, etc.

(v) *Quality criteria*—(A) *Reproducibility.* Generally good, especially so for chemicals of water solubility greater than 0.1 g/l.

(B) *Sensitivity.* (*1*) Oxygen consumption: Detection limit=1 mg (oxygen consumption by micro-organisms)

(*2*) Chemical analysis: Depends on the sensitivity of analytical methods.

(C) *Specificity.* Applicable to every kind of chemical, for which $C_{water}/C_{air}>1$. For volatile chemicals a "modified BOD meter," composed of capillary tubing and normal BOD meter, should be used under paragraph (b)(3) of this section.

(D) *Possibility of automation.* By using a BOD meter under paragraph (b)(3) of this section oxygen consumption by micro-organisms (in a closed system) is recorded automatically.

(2) *Description of the test procedure*—(i) *Preparations*—(A) *Apparatus.* BOD meter equipped with 6 bottles (300 ml each):

(*1*) Bottles 1 and 2: deionized water (Distilled water must never contain more than 10 percent of organic carbon introduced by the test substance), 300 ml+test chemical, 30 mg.

(*2*) Bottles 3 and 4: basal culture medium, 300 ml+activated sludge, 9 mg (dry base)+test chemical, 30 mg.

(*3*) Bottle 5: basal culture medium, 300 ml+activated sludge, 9 mg (dry base)+aniline, 30 mg.

(*4*) Bottle 6: basal culture medium, 300 ml+activated sludge, 9 mg (dry base).

(B) *Pretreatment of test chemical.* (*1*) Where the test compound is not soluble in water up to the test concentration, the test compound pulverized as finely as possible is employed.

(*2*) Where the test compound is volatile, test chemicals should be well cooled to prevent evaporation.

(*3*) If necessary, identification of the test sample should be undertaken.

(C) *Basal culture medium.* To each 3 ml of solution.A, solution B, solution C and solution D, water is added to make up to 1000 ml. (Deionized water is used throughout.)

(*1*) *Solution A.* 21.75 g of dipotassium hydrogen phosphate, 8.5 g of potassium acid phosphate, 44.6 g of dibasic sodium phosphate dodecahydrate and 1.7 g of ammonium chloride are dissolved in water and the volume is made up to 1000 ml. (The pH of the solution is 7.2.)

(*2*) *Solution B.* 22.5 g of magnesium sulfate heptahydrate is dissolved in water and the volume is made up to 1000 ml.

(*3*) *Solution C.* 27.5 g of calcium chloride is dissolved in water and the volume is made up to 1000 ml.

(*4*) *Solution D.* 0.25 g of ferric chloride hexahydrate is dissolved in water and the volume is made up to 1000 ml.

(D) *Activated sludge*—(*1*) *Sludge sampling sites.* Sludge sampling is made, in principle, at not less than 10 places throughout the country, chiefly in those areas where a variety of chemical substances may be considered to be consumed and discarded. For example, standard activated sludge of the Japanese Chemical Biotesting Center is taken up from the following places and mixed:

(*i*) *City sewage plant.* 3 plants located in the northern, central and southern part of Japan.

(*ii*) *Industry sewage plant.* One plant used for the waste water treatment of chemical industries.

(*iii*) *River.* 3 rivers located in the northern, central and southern parts of Japan.

(*iv*) *Lake.* One lake located in the middle of Japan.

(*v*) *Sea.* 2 inland seas of Japan.

(*2*) *Frequency of sludge sampling.* Sludge sampling should be made, in principle, four times a year, in March, June, September and December.

(*3*) *Sludge sampling methods.* (*i*) City sewage: 1 liter of return sludge at a sewage disposal plant.

(*ii*) Rivers, lakes and marshes or sea: 1 liter of surface water and 1 liter of surface soil on the beach which is in contact with atmosphere.

(*4*) *Preparation.* The sludge samples collected from the sampling sites are mixed by stirring in a single container, and the mixture is allowed to stand. The floating foreign matters are removed, and the supernatant is filtered with No. 2 filter paper. The filtrate is adjusted to pH 7.0±1.0 with sodium hydroxide or phosphoric acid, transferred into a culture tank and aerated.

(*5*) *Culture.* Thirty minutes after stopping the aeration of the solution obtained above, approximately ⅓ of the whole volume of the supernatant is removed. An equal volume of 0.1 percent synthetic sewage (0.1 percent synthetic sewage: 1 g of glucose, 1 g of peptones and 1 g of monopotassium phosphate are dissolved in 1 liter of water and the solution is adjusted to pH 7.0±1.0 with sodium hydroxide) is added to the remaining portion of the supernatant and the mixture is aerated again. This procedure is repeated once every day. The culturing is carried out at 25±2 °C.

(*6*) *Control.* For the control of the culturing step, the following items are checked and necessary adjustments are made.

(*i*) Appearance of supernatant: The supernatant of active sludge should be clear.

(*ii*) Precipitability of active sludge: The active sludge, being in large flocks, must have high precipitability.

(*iii*) State of formation of active sludge: In the case where growth of flocks is not observed, either the volume of 0.1 percent synthetic sewage to be added or the frequency of addition of synthetic sewage is increased.

(*iv*) The pH of the supernatant is 7.0±1.0.

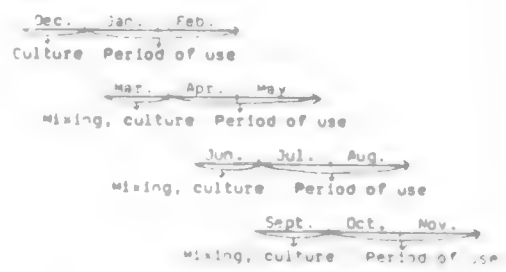
(*v*) Temperature: The temperature for cultivation of active sludge is 25±2 °C.

(*vi*) Amount of aeration: In replacing the supernatant with the synthetic sewage, the solution in the culturing tank must be sufficiently aerated to maintain the dissolved oxygen concentration of the solution above 5 ppm.

(*vii*) Microflora of activated sludge: When the active sludge is microscopically observed (at 100～400×magnification), a number of protozoa of different species together with cloudy flocks must be seen.

(*viii*) Mixing of fresh and old activated sludge: In order to maintain fresh and old activated sludges at the same activity, the filtrate of the supernatant of an activated sludge in use in the test is mixed with an equal volume of the filtrate of the supernatant of an activated sludge freshly collected and the mixture is cultured.

(*ix*) Checking of activity of activated sludge: Activity of activated sludge should be checked periodically, at least once every three months, with standard substances by applying the test method provided below. Where fresh and old activated sludge samples are mixed, especially, careful checking must be done in relation to the old activated sludge. Examples of preparation of activated sludge samples and period of use:



(The same pattern of preparation and use follows.)

(E) *Addition of test compound and preparation for test.* The following test vessels are provided and adjusted to the test temperature.

(*1*) A test vessel containing the basal culture medium, to which is added 100 ppm (W/V) of test compound: the pH of this solution is adjusted to 7 before the inoculation of active sludge, if necessary.

(*2*) A test vessel for the control blank test, containing only the basal culture medium.

(*3*) A test vessel containing water to which is added 100 pm (W/V) of the test compound.

(*4*) A test vessel containing basal culture medium to which is added 100 ppm (W/V) of aniline or any other of the control substances.

(F) *Inoculation of active sludge.* Inoculum is added to the test vessels 1, 2 and 4 above so that the suspended matter defined in the Japanese Industrial Standards described under paragraph (b)(4) of this section is contained at a concentration of 30 ppm (V/V).

(ii) *Test conditions.* (A) Concentration of test chemicals: 100 ppm (W/V).

(B) Concentration of activated sludge: 30 ppm (W/V).

(C) Test temperature: 25 °C ±2 °C.

(D) Period: 14 days.

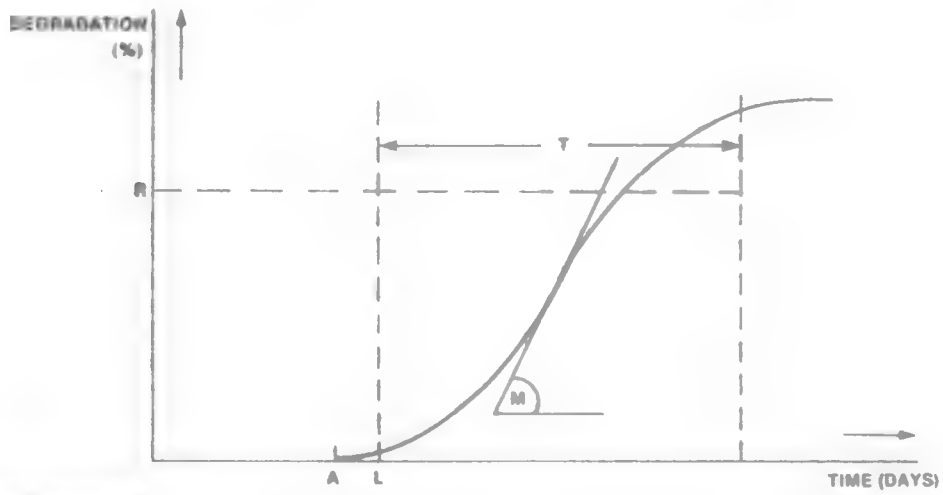
(E) Perform in darkness. Every day, the temperature, the change in color of the culturing vessel should be checked.

(F) Stir vigorously with mechanical stirrer.

(iii) *Performance of the test.* (A) The BOD curve is obtained continuously and automatically for 14 days.

(B) After the 14-day testing period, pH, residual chemicals, and intermediates in the testing vessels are analysed.

Figure 1—Degradation curve of a readily degradable compound.



A = ADAPTION PERIOD
L = PERIOD OF LOGARITHMIC GROWTH
M = MAXIMUM DEGRADATION RATE
R = REQUIRED LEVEL OF DEGRADATION
T = TIME WINDOW

The test chemicals in the testing vessel without activated sludge are also analyzed in order to confirm whether there is any change in the test chemical during the testing period or any loss of the original test chemical by evaporation or adsorption by the walls of test vessels, etc.

(iv) *Analytical means.* (A) If the test compound is soluble in water, the residual amount of total organic carbon is also determined.

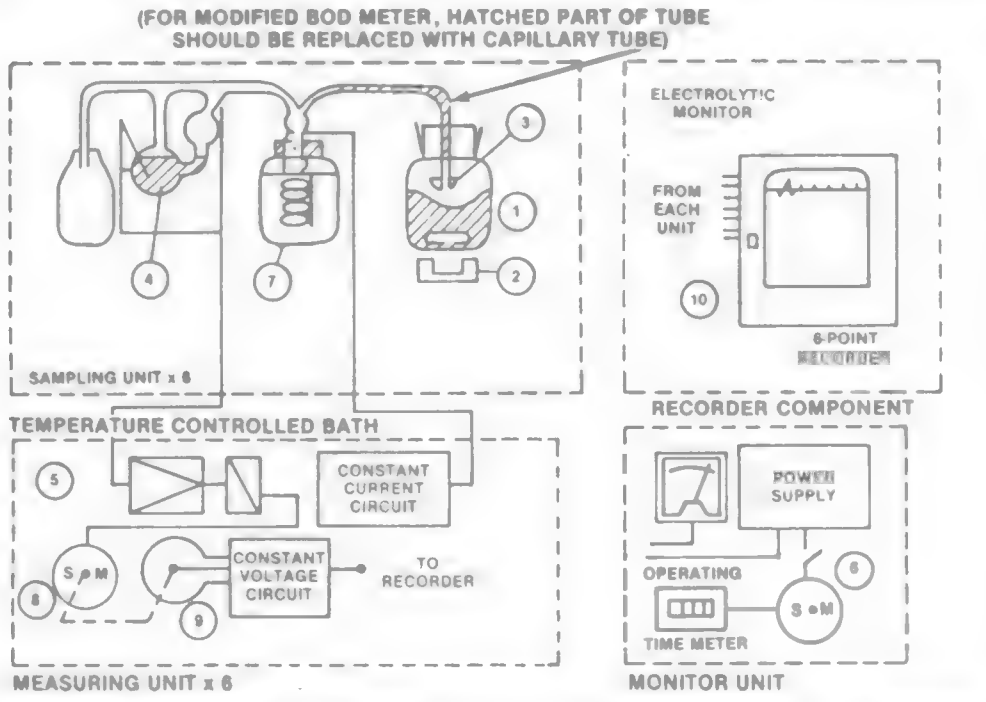
(*1*) Where a total organic carbon analyzer is used: 10 ml of the tested solution is sampled from the test vessel and centrifuged at 3000 g for five minutes. The residual amount of the total organic carbon in the supernatant is determined on a total organic carbon analyzer.

(*2*) Where other analyzers are used: The total content of a test vessel is extracted with a suitable solvent for the test compound, and, after proper pretreatment such as concentration, the residual amount of the test compound is determined on an analyzing instrument (gas chromatography, absorptiometry, mass spectrometry, atomic absorption spectrophotometry, etc.).

(B) For volatile chemicals, the temperature control bath of the BOD meter should be cooled to 10 °C and this temperature held for at least 30 min, in order to prevent evaporation. The analytical procedures (a) and (b) should then be started.

(3) *Principle of closed system oxygen consumption measuring apparatus.* (i) The coulometer is an instrument for measurement of the oxygen consumption of micro-organisms using electrochemical analysis process (coulometry).

(ii) The following is a block diagram. The BOD meter is produced by Ohkura Electric Co., Ltd., 1–11–16, Shibuya, Shibuya-ku, Tokyo, Japan. (For volatile chemicals, a capillary tube should be installed between each testing vessel and electrolytic bottle.) (For modified BOD meter, hatched part of tube should be replaced with capillary tube.)



THE SPECIMEN CONTAINED IN CULTIVATING BOTTLE (1) IS STIRRED BY MEANS OF A MAGNETIC STIRRER (2). WHEN THE REACTION PROGRESSES, THE DISSOLVED OXYGEN IN LIQUID WILL BE CONSUMED. OXYGEN (O_2) IN THE SPACE IN THE CULTIVATING BOTTLE IS DISSOLVED IN LIQUID, RESULTING IN GENERATION OF CO_2 IN ITS PLACE.

(A) The specimen contained in cultivating bottle (1) is stirred by means of a magnetic stirrer (2). When the reaction progresses, the dissolved oxygen in liquid will be consumed. Oxygen (O_2) in the space in the cultivating bottle is dissolved in liquid, resulting in generation of CO_2 in its place.

(B) As this CO_2 is absorbed by soda lime (3), the partial pressure of oxygen in the space and the total pressure decrease.

(C) The drop in pressure is detected and converted into an electric signal by means of an electrode type manometer (4) and is amplified by an amplifier (5) for operating a relay circuit (6), resulting in operation of a synchronous motor (8). Simultaneously, by constant current, electrolytic oxygen is generated from sulfuric acid copper solution contained in an electrolytic bottle (7).

(D) This oxygen is supplied to the cultivating bottle and restoration of pressure is detected by means of the manometer, resulting in switching off of the relay circuit and stopping the electrolytic and synchronous motor.

(E) The upper space in the cultivating bottle is always kept under a constant pressure of oxygen and the quantity of oxygen consumed in the cultivating bottle is proportional to the quantity of electrolytic oxygen. As this quantity of electrolytic oxygen is proportional to electrolytic time, there is a constant electrolysis current. Accordingly, the revolution angle of a synchronous motor (9) is converted to an mV signal by means of the interlocking potentiometer, resulting in an indicator quantity of consumed oxygen at the recorder (10).

(4) *Suspended matter.* (i) (From Japanese Industrial Standards K0102–10.2.)

(A) Suspended matter is that material which can be separated by filtration or by means of a centrifugal separator. It can be determined by any of the methods described below. When the test water is difficult to filter the centrifugal separation method should be applied; when the test water contains an extremely large quantity of suspended matter, the Büchner funnel method should be used.

(B) Test water is taken from the waste water passed through a 2 mm mesh sieve. At least 5 mg of the filtrate are necessary for the determination.

(ii) *Filtration through filter paper*—(A) *Sintered glass filter method*—(*1*) *Apparatus*—(*i*) *Sintered glass filter.* A crucible-type sintered glass filter IG2 or a Büchner funnel-type sintered glass filter 3G2.

(*ii*) [Reserved]

(*2*) *Procedure.* Prepare two sintered glass filters of the same type and of approximately the same weight; lay six sheets of filter paper in them and pour water through several times so that they adhere by suction. Then transfer the filters to an air oven and dry them for two hours at 105–110 °C. Allow them to cool in a desiccator, and weigh. (When a chemical balance is used, the lighter filter may be used as a supplementary weight.) Pour a suitable amount of the test water into the heavier filter (take sufficient test water to give a weight of suspended matter of not more than 5 mg after drying. Ordinarily, 200 ml of the test water is enough. However, if the test water is difficult to filter, 10 ml from each test water sample must be added from the 10 ml measuring cylinder during the filter process.), filter it by suction, and wash the wall of the filter several times with the filtrate, in order to remove substances adhering to the wall. Next, pour the filtrate into the lighter filter several times and filter it by suction. Dry the two filters in the air oven for two hours at 105–110 °C, and allow them to cool in a desiccator. Weigh each filter (when a chemical balance is used, the lighter filter may be used as a supplementary weight), obtain the difference in weight before and after the filtration, and calculate the quantity of the suspended matter in ppm according to the following formula:

$$S = (a - b) \times \frac{1000}{V}$$

where

S: Suspended matter (ppm)

a: Difference in weight before and after the filtration of test water (mg)

b: Difference in weight before and after the filtration of the filtrate (mg) (when a chemical balance is used, b=0)

V: Amount of test water (ml)

(*3*) *Remarks.* (*i*) To determine the ignition loss of volatile suspended matter, a test should be carried out in accordance with the Glass Fiber Paper Method under paragraph (b)(4)(ii)(A)(*3*)(*iii*) of this section, or, after washing the suspended matter together with filter paper into a crucible or an evaporating dish, dry and ignite in muffle furnace.

(*ii*) When the soluble evaporated residue is less than 5000 ppm, correction (for difference in weight of the filtrate before and after filtration) may be omitted. However, when a chemical balance is used, the lighter filter should be used as a supplemental weight so the filtration of the filtrate can be carried out at the same time. Even when a direct reading balance is used the weight varies with the hygroscopic properties of substances contained in the test water, and with other conditions, so it is desirable that a correction be performed

by obtaining the blank test value of the filter through which the filtrate is passed. In the case of the test water containing fats and oils, grease, wax, etc., a portion of these substances should be determined as the suspended matter. When the determination of the suspended matter exclusive of oils and fats is required, pour 10 ml volumes of n-hexane several times through the filter which has been dried and weighed after filtration and wash out the fats and oils. Then dry the filter and weigh.

(*iii*) Glass Fiber Paper Method (GFP Method): Fix an appropriate GFP (Whatman GF/B or equivalent) of known weight, which has been dried at 105 to 110 °C for 2 hours after washing, on a suitable supporting plate. Add the amount of test water to give a weight of the suspended matter after drying of over 5 mg. After filtration by suction, return a portion of the filtrate to the container holding the original test water. Wash down the suspended matter adhering to the walls of container and filter again on GFP by suction. Repeat this operation several times. Detach GFP from the filter and transfer it onto a water glass. Then operate as described for the Büchner funnel method under paragraph (b)(4)(ii)(B) of this section, and determine ppm of the suspended matter. After determination of the suspended matter determine the ignition residue of the suspended matter, if necessary, according to the operation described in the section on Filtration through asbestos layer, under paragraph (b)(4)(iii) of this section.

(B) *Büchner funnel method.* This method is applicable to samples containing a large quantity of suspended matter such as sludge.

(*1*) *Apparatus*—(*i*) *Perforated plate.* Stainless steel (SUS 27 or 28), approximately 0.5 mm in thickness, 50 mm or 90 mm in diameter. It is shaped like a watchglass with a slightly bent edge. Small holes about 0.5 mm in diameter are bored at suitable intervals all over its flat surface.

(*ii*) *Rubber packing.* A rubber ring 2 to 3 mm in thickness, 10 mm to 90 mm in diameter and about 10 mm in width, can be put in a Büchner funnel and can be used for filtration by suction, with the perforated plate on it.

(*iii*) *Büchner funnel.* 50 mm or 90 mm.

(*2*) *Testing procedure.* (*i*) Prepare two perforated plates. Put rubber packing in Büchner funnel and place the perforated plate on it. Position the filter paper (grade 6), pour water on the filter paper several times and suck. Remove the filter paper with the perforated plates and dry at a temperature of 105 to 110 °C for 2 to 3 hours. Allow to cool in a desiccator and weigh to constant weight. (When chemical balance is used, the lighter perforated plate is used as supplemental weight.)

(*ii*) Next put the heavier perforated plate together with the filter paper in the funnel and filter 200 to 400 ml of the test water by suction. Pour the filtrate into the lighter plate with filter paper several times and continue as for first plate.

(*iii*) Obtain the difference in weight before and after this operation, and calculate ppm of the suspended substances contained in the test water by the following formula:

$$S=(a-b)\times\frac{1000}{V}$$

where:

S: Suspended substances (ppm)
a: Difference in weight before and after filtration of the test water (mg)
b: Difference in the weight before and after filtration of the filtrate (mg) (when chemical balance is used b=0)
V: Test water (ml)

See also Remarks under paragraph (b)(4)(ii)(A)(*3*) of this section.

(iii) *Filtration through asbestos layer*—(A) *Apparatus.* Gooch crucible, 25 to 35 ml.

(B) *Reagents.* Suspension of asbestos: add water to 15 g asbestos and, after removing fine portion by decantation several times, add water to make 1 liter.

(C) *Procedure.* (*1*) Prepare two Gooch crucibles (same shape and approximately same weight). After drying, pour about 20 ml of the well-stirred asbestos suspension to obtain a layer of asbestos about 3 mm thick (about 0.3 g) (when half the amount of asbestos solution is poured out put in the perforated plate and pour the other half of the solution) and suck gently.

(*2*) Next put the Gooch crucibles into the air oven. After drying for two hours at a temperature of 105 to 110 °C, allow to cool to constant weight in the desiccator and measure the weight of each crucible (when chemical balance is used, the lighter crucible is used as the supplemental weight). Attach the heavier crucible to the suction bottle and pour in enough test water to give a weight of suspended matter of more than 5 mg after drying and gently filter by suction. At this time, repeat the filtration of the initial portion of the filtrate.

(*3*) Next pour a small amount of filtrate into the lighter crucible several times using suction, then dry in the air oven for two hours at 105 to 110 °C, and allow to cool in a desiccator. Weigh the crucible and obtain the difference in weight using the crucible as a supplemental weight and calculate ppm of the suspended matter by the following formula:

$$S=(a-b)\times\frac{1,000}{V}$$

(See paragraph (b)(4)(ii)(B)(*iii*) of this section for clarification of symbols.)

(D) *Remarks.* The test water should be sampled as specified in glass filter method. When the soluble volatile residue is less than 5000 ppm, refer to remark 2 in the same section.

(iv) *Centrifugation method* (A) This method is applicable to samples which are very difficult to filter due to their content of suspended matter.

(*1*) *Apparatus.* Centrifugal separator about 2000 rpm. Precipitation tube 50 to 100 ml.

(*2*) *Procedure.* (*i*) Pour into the precipitation tube enough test water to give more than 5 mg suspended matter.

(*ii*) After weighing each tube, centrifuge at about 2000 rpm for 20 minutes and precipitate the suspended matter in the test water. Remove the supernatant liquid by decantation. (When the determination of soluble evaporated residue is to be performed, keep the supernatant liquid).

(*iii*) Add 10 ml of the water to the precipitate, centrifuge again and remove the supernatant liquid by decantation.

(*iv*) Transfer the precipitate into an evaporating dish which has been previously heated to constant weight at 105 to 110 °C, and evaporate to dryness on the steam bath. After drying in the dryer at 105 to 110 °C, for 2 hours, allow to cool in a desiccator and weigh. (When a chemical balance is used, an evaporating dish of the same shape should be used as a supplemental weight after the blank test for it has been performed.) Obtain the difference in weight before and after this operation. Calculate ppm of the suspended matter by the following formula:

$$S=a\times\frac{1000}{V}$$

(See paragraph (b)(4)(ii)(B)(*2*) of this section for clarification of symbols.)

(*3*) *Remarks.* There should be a certain degree of difference in density between the dispersed phase and the dispersion medium to make centrifugal separation possible. When a particle of 1 mg is centrifuged at an angular velocity of w rad/sec at a position of r cm from the center of rotation, the

centrifugal force which a particle receives is as follows:

(*i*) Supposing that the mass of the dispersion medium expelled by a particle is 1 mg

then $RCF = \frac{F}{(m-m')g} = \frac{w^2 r}{g} = 0.00001118\ rN^2$

then $F = (m-m')\ w^2 r$

(*ii*) Supposing that the specific centrifugal force is RCF and rotational frequency per minute is N (rpm)

(*iii*) From the equation under paragraph (b)(4)(iv)(A)(*3*) of this section, it is clear that the centrifugal force near the surface differs from that at the bottom portion of the liquid. For instance, when N = 2000 rpm and the distance between the surface of the liquid in the precipitation tube and the center of rotation is 5 cm (r = 5 cm), RCF is 223 g; when the distance between the bottom of the precipitation tube and the central axis of rotation is 13 cm, RCF becomes 581 g. Therefore, the RCF value near the surface and that at the bottom should both be reported.

$$\text{Depth of the liquid layer} = \frac{(\text{RCF at the bottom}') - (\text{RCF at the surface})}{(\text{RCF at the bottom})} \times (\text{distance from the bottom})$$

In this test, a centrifugal separator whose bottom is 13 cm from the central rotation axis at a rotational frequency of 2000 rpm is regarded as standard.

(B) Calculation of suspended matter from the difference in weight of evaporated residue: Calculate the suspended matter from the difference between the total evaporated residue and the soluble evaporated residue.

A = B − C

where:

A = suspended matter (ppm)
B = total evaporated residue (ppm)
C = soluble evaporated residue (ppm)

(5) *Suspended matter formed at pH 7.* (From Japanese Industrial Standards K0102 − 10.3)

For suspended matter formed when the test water is neutralized to pH 7 ± 0.5.

(i) *Reagents.* (A) NaOH (sodium hydroxide) solution (4 to 24 w/v %)

(B) Acetic acid, diluted 1:2 to 1:16, acid:water.

(ii) *Procedure.* Place enough test water to give more than 5 mg suspended matter in a beaker and neutralize it with sodium hydroxide solution or with diluted acetic acid, according to the acidity/alkalinity of the test water, taking care to minimize the increase in the volume of the solution during neutralization. Then proceed according to procedures in the methods above to obtain amount of suspended matter at pH 7 and calculate ppm of the suspended matter formed at pH 7 by the following formula.

A = B − C (See paragraph (b)(4)(iv)(B) of this section for clarification of symbols.)

(iii) *Remarks.* (A) Depending on the kind of waste water, the weight of suspended matter may decrease when it is neutralized. In such cases, the weight of suspended matter should be reported as suspended matter formed at pH 7.

(B) Suspended matter formed at pH 7 may be determined with the supernatant liquid or filtrate after removing the suspended matter. This method is applicable to test water which contains a relatively small amount of suspended matter but which forms a large amount of precipitate after neutralization (without changing the first suspended matter) or to waste water which forms a relatively small amount of precipitate. The method should not be applied to waste water which is apt to cause the formation of a complex precipitate or a dissolution reaction by neutralization.

(c) *Data and reporting*—(1) *Treatment of results.* (i) Method for calculating the percentage degradation from the oxygen consumption.

$$\text{Percentage degradation} = \frac{\text{BOD} - \text{B}}{\text{TOD}} \times 100(\%)$$

(See Definitions and units, under paragraph (b)(1)(ii) of this section for clarification of symbols.)

(ii) Method for calculating the percentage degradation from the result of direct analysis.

$$\text{Percentage degradation} = \frac{\text{Sb} - \text{Sa}}{\text{Sb}} \times 100(\%)$$

See Definitions and units, under paragraph (b)(1)(ii) of this section for clarification of symbols.

(2) *Evaluation of results.* The following calculations are to be made:

(i) Calculation of theoretical oxygen demand.

Element	Oxidised form
C	CO_2
H	H_2O
N	NO_2
S	SO_2
X(halogen)	X

(ii) Recovery rate of analytical procedure.

(3) *Test report.* The test report should include the following points:

(i) *Information on the test chemicals.* Name, structural formula, molecular weight, purity, kind of impurities, physical chemical properties of test chemical, identification data of test chemical.

(ii) *Test conditions.* (A) Activated sludge: sludge sampling site and concentration.

(B) Test chemical: concentration.

(C) Test period.

(D) Test temperature.

(iii) *Analytical procedure.*
(A) Pretreatment.
(B) Analytical conditions of instrument.
(C) Recovery rate of analysis.
(D) Identification of intermediate.
(iv) *Results.* (A) BOD curves and instrument name.
(*1*) BOD (mg).
(*2*) B (mg).
(*3*) Sa (mg).
(*4*) Sb (mg).
(*5*) TOD (mg).
(B) Percentage of degradation by BOD.
(C) Percentage of degradation by chemical analysis.
(D) Chromatograms or spectra of test chemicals obtained and used for the purpose of analysis.
(v) *Remarks.*
(4) *Interpretation of results.* (i) For the purpose of comparison with reference substances, the biodegradability of the test compound is categorised based on the relative degree of degradability compared to that of aniline.
(ii) If the percentage of degradation of aniline calculated from the oxygen consumption does not exceed 40 percent after 7 days or 65 percent after 14 days, the test is regarded as invalid.
(iii) If the recovery rate of Sb is found to be in the order of 10 percent or less, the test is also regarded as invalid.
See also Section 1.
(d) *Literature references.* For additional background information on this test guideline the following references should be consulted:
(1) *Biodegradability and Bioaccumulation Test of Chemical Substances* (C–5/98/JAP, 1978).
(2) The Chemical Substances Control Law in Japan, Chemical Products Safety Division, Basic Industries Bureau, MITI, (C–2/78/JAP, 1978).
(3) *The Biodegradability and Bioaccumulation of New and Existing Chemical Substances,* 5:8 (C–3/78/JAP, 1978).

§ 796.3240 Ready biodegradability: Modified OECD screening test.

(a) *Introductory information*—(1) *Prerequisites.* (i) Water solubility.
(ii) The organic carbon content of the test material must be established.
(2) *Guidance information.* (i) Information on the relative proportions of the major components of the test material will be useful in interpreting the results obtained, particularly in those cases where the result lies close to the "pass level."
(ii) Information on the toxicity of the chemical may be useful to the interpretation of low results and in the selection of appropriate test concentrations.
(3) *Interpretation of results.* Because of the stringency of this test a result of less than 70 per cent loss of DOC—dissolved organic carbon—(within 28 days) does not necessarily mean that the test compound is not biodegradable under environmental conditions, but indicates that more work will be necessary to establish biodegradability.
(4) *Qualifying statements.* (i) The method is only applicable to those organic test materials which, at the concentration used in the test,
(A) Are soluble in water (at least 5 to 40 mg dissolved organic carbon/liter).
(B) Have negligible vapour pressure.
(C) Are not inhibitory to bacteria.
(D) Do not significantly adsorb on glass surfaces.
(ii) This test has been found suitable by the OECD Expert Group Degradation/Accumulation for determining the ready biodegradability of organic chemicals under aerobic conditions. It has been tested in the OECD Laboratory Intercomparison Test Program (1978–1980).
(5) *Recommendations.* (i) Test chemicals giving a result of greater than 70 percent loss of DOC (within 28 days) should be regarded as readily biodegradable. This level is reached within 10 days of biodegradation exceeding 10 percent.
(ii) If the limits of sensitivity of organic carbon analysers are improved, the use of lower test concentrations may be an advantage, particularly for toxic compounds.
(6) *Standard documents.* This Test Guideline constitutes a modification of the OECD Screening Test (OECD) Environment Directorate, Proposed Method for the Determination of the Biodegradability of Surfactants Used in Synthetic Detergents, Paris 1976, and council directive of Nov. 22, 1973, on the approximation of the laws of the member states relating to methods of testing the biodegradability of anionic surfactants (73/405/EEC), Official Journal of the European Communities No. 4 347/53 of Dec. 17, 1973) for the application of the dissolved organic carbon (DOC) analysis.
(b) *Method*—(1) *Introduction, purpose, scope, relevance, application and limits of test* (i) The purpose of the method is the measurement of the ultimate biodegradability of water soluble, nonvolatile organic compounds in an aerobic, aqueous medium at a starting test concentration corresponding to 5–40 mg DOC/l (In order to avoid inhibitory effects, it is in the investigator's own interest to choose as low a starting concentration as his analytical capability permits.)
(ii) *Definitions and units.* (A) Definition of biodegradability:

$$D_t = \left[1 - \frac{C^t - C_{blt}}{C^o - C_{blo}}\right] \times 100$$

Where
D_t = degradation in percent DOC-removal at time t
C_o = starting DOC concentration of the culture medium (mg DOC/l)
C_t = DOC concentration of the culture medium at time t (mg DOC/l)
C_{blo} = starting DOC concentration of the blank (mg DOC/l)
C_{blt} = DOC concentration of the blank at time t (mg DOC/l)

(B) Degradation is stated as the percentage DOC-removal within 28 days with respect to the test material (% DOC-removal).
(iii) *Reference substances.* In some cases when investigating a new substance reference substances may be useful; however, specific reference substances cannot yet be recommended. In order to check the activity of the inoculum the use of control substances is desirable. Aniline, sodium acetate or sodium benzoate may be used for this purpose. They must exhibit DOC removal >70 percent within 28 days, otherwise the test is regarded as invalid and should be repeated using an inoculum from a different source.
(iv) *Principle of the test method.* (A) A predetermined amount of compound is dissolved in an inorganic medium (mineral nutrient solution, fortified with a trace element and essential vitamin solution), providing a concentration corresponding to 5–40 mg DOC/l. The solution is inoculated with a small number of micro-organisms from a mixed population and aerated at 20–25 °C in the dark or at least in diffuse light only. The degradation is followed by DOC analysis over a 28-day period. The procedure is checked by means of a standard.
(B) A control with inoculation, but without either test material or standard, is run parallelly for the determination of DOC blanks.
(v) *Quality criteria*—(A) *Reproducibility.* The reproducibility of the method is appropriate for a screening test which has solely an acceptance but no rejective function.
(B) *Sensitivity.* The sensitivity of the method is largely determined by the sensitivity limit of the organic carbon analysis, which is 0.5 mg C/liter at present.
(C) *Specificity.* This method is applicable for the biodegradability

evaluation of water soluble, non-volatile organic compounds.

(D) *Possibility of standardization.* The test version with specific analyses for anionic and nonionic surfactants is standardized as the "OECD Screening Test."

(E) *Possibility of automation.* (*1*) Parts of the test, e.g., the analysis, can be automated, although hardly the total procedure.

(*2*) The procedure is, however, well suited for being operated with whole series of test materials.

(2) *Description of the test procedure*—(i) *Preparations*—(A) *Reagents*

(*1*) *Deionised water.*—(*i*) Deionized or distilled water free of toxic substances (copper in particular), for general use as a solvent. Water which has been deionized by distillation or ion exchange is suitable. Distilled water will never contain more than 10 percent of organic carbon introduced by the test material.

(*ii*) The high purity of this test water is necessary in view of the DOC analyses in the concentration range of 0–40 mg/l. Contamination may result from inherent impurities but also from the ion exchange resins and microbial developments (bacteria, algae under the influence of light, etc.). Only one water charge must be used for each test series, which is to be controlled beforehand by DOC analysis. If necessary, suitable water may be obtained by UV irradiation or other means.

(*2*) *Nutrient solution.* Mix 1 ml each of the following solutions (*i*) to (*vi*) and make up to a volume of 1 liter with water, under paragraph (b)(2)(i)(A)(*1*)(*i*) of this section. (A.R. means analytical reagent).

(*i*)

KH_2PO_4	A.R. 8.5 g
K_2HPO_4	A.R. 21.75g
$Na_2HPO_4 \cdot 2H_2O$	A.R. 33.4 g
NH_4Cl	A.R. 20.0 g

In 1000 ml of water under paragraph (b)(2)(i)(A)(*1*)(*i*) of this section the pH value should be 7.2.

(*ii*) 22.5 g of $MgSO_4 \cdot 7H_2O$ A.R. dissolved in 1000 ml of water.

(*iii*) 27.5 g of $CaCl_2$ A.R. dissolved in 1000 ml of water.

(*iv*) 0.25 g of $FeCl_3 \cdot 6H_2O$ A.R. dissolved in 1000 ml of water.

This solution is prepared freshly immediately before use.

(*v*) Trace element solution:

$MnSO_4 \cdot 4\ H_2O$	39.9 mg (30.23 mg $MnSO_4 \cdot H_2O$)
H_3BO_3	57.2 mg
$ZnSO_4 \cdot 7\ H_2O$	42.8 mg
$(NH_4)_6Mo_7O_{24}$	34.7 mg (36.85 mg $(NH_4)_6Mo_7O_{24} \cdot 4H_2O$)

Fe—chelate ($FeCl_3$, EDTA), 100 mg; water under paragraph (b)(2) (i)(A)(*1*)(*i*) of this section, 1000 ml.

Sterilization of the trace element stock solution at 120 °C (393 K), 2 atm., 20 min.

(*vi*) Vitamin solution:

Biotin	0.2 mg.
Nicotinic acid	2.0 mg.
Thiamine	1.0 mg.
p-Aminobenzoic acid	1.0 mg.
Pantothenic acid	1.0 mg.
Pyridoxamine	5.0 mg.
Cyanocobalamine	2.0 mg.
Folic acid	5.0 mg.
Water (above)	100 ml.

The solution is filtered sterile (0.2 μm). Instead of solution (*vi*) under paragraph (b)(2)(i)(A)(*2*) of this section, 15 mg of yeast extract may be used per 100 ml of water under paragraph (b)(2)(i)(A)(*1*)(*i*) of this section.

(*3*) *Control substances.* See Reference substances. Aniline must be freshly distilled.

(B) *Materials.* (*1*) Shaking machine accommodating 2 liters. Erlenmeyer flasks either with automatic temperature control or used in a constant temperature room at 20–25 °C (293–298 K).

(*2*) Narrow neck, 2 liter Erlenmeyer flasks (creased fluted flasks are recommended). The flasks must be carefully cleaned with, e.g., alcoholic hydrochloric acid, before use, rinsed and dried in order to avoid contamination with residues from previous tests. The flasks must also be cleaned before the first use since they may be contaminated.

(*3*) Membrane filtration apparatus.

(*4*) Membrane filters, 0.2 μm.

(*5*) Carbon analyzer.

(C) *Inoculation.* Either of the following three alternatives under paragraph (b)(2)(i)(C) (*1*), (*2*), and (*3*) of this section may be used as inoculum or a composite sample thereof under paragraph (b)(2)(i)(C)(*4*) of this section.

(*1*) *Inoculum from secondary effluent.* The inoculum is gained preferably from a secondary effluent of good quality collected from a treatment plant dealing with a predominantly domestic sewage. The effluent must be kept under aerobic conditions in the period between sampling and use. To prepare the inoculum the sample is filtered through a coarse filter, the first 200 ml being discarded. The filtrate is kept aerobic until used. The inoculum must be used on the day of collection.

(*2*) *Inoculum from soil.* (*i*) 100 g of soil (fertile, not sterile) are suspended in 1000 ml of chlorine-free drinking water (soils with an extremely large content of clay, sand or organic carbon are unsuitable). After stirring the suspension is allowed to settle for 30 minutes.

(*ii*) The supernatant is filtered through coarse filter paper, the first 200 ml being discarded. The filtrate is aerated immediately and continuously until use. The inoculum must be used on the day of collection.

(*3*) *Inoculum from a surface water.* (*i*) An inoculum is drawn from a suitable surface water.

(*ii*) The sample is filtered through a coarse paper, the first 200 ml being discarded. The filtrate is kept aerobic until used. The inoculum must be used on the day of collection.

(*4*) *Composite inoculum.* Equal volumes of the 3 inoculum samples are combined, mixed well, and the final inoculum drawn from this mixture. The suitability of the inoculum is checked by means of a control substance.

(ii) *Procedure.* (A) The test materials are evaluated simultaneously in duplicate together with the biodegradability standard and a control test with inoculation but without either test or standard material for the determination of DOC blanks.

(B) The control material must attain >70 percent DOC removal within 28 days at a starting concentration corresponding to 20 mg DOC/l. If <70 percent DOC removal is not achieved the whole series must be discarded. (This limit is based on present experience with the 19-day version of the test. A revision of this limit or even of the standard might have to be considered after the accumulation of experience with the new 28-day version of the test.)

(C) A stock solution of the test material in water under paragraph (b)(2)(i)(A)(*1*)(*i*) of this section is prepared. Enough stock solution is added to the nutrient solution (above) to achieve a carbon concentration of 5–40 mg DOC/l. The starting concentration of the control substance is, however, 20 mg DOC/l.

(D) Two reaction vessels are each filled with 900 ml of the nutrient solution and inoculated with 0.5 ml/l of the inoculum. The opening of the vessel is covered (e.g., aluminum foil) in such a way that the exchange of air between the flask and the surrounding atmosphere is not unduly impeded. (Cotton wool is unsuited because of the DOC analysis.) The vessels are then

inserted in the shaking machine. The temperature of 20–25 °C (293–298 K) must be maintained unchanged during the test, and the vessels should be shielded from light. The air should be free of pollutants and toxic materials (chlorinated solvents, etc.)

(E) In the course of the biodegradation test the DOC concentrations are determined in duplicate at the beginning (day 0), and on the 27th and 28th day. Three additional analyses must be performed at regular time intervals (7th, 14th, and 21st day)

(F) The analyses are registered on the form sheet (below) and evaluated.

(G) Only the necessary volumes of culture medium should be drawn for each determination; however, they must be large enough for the membrane filtration or centrifugation preceding the carbon determination. The latter requires differing volumes for the different instruments. Evaporation losses of the culture medium are to be made up by adding water under paragraph (b)(2)(i)(A)(*1*)(*i*) of this section in the required amounts. The culture medium is to be mixed well before withdrawing a sample. Material adhering to the wall of the vessel must be dissolved or suspended before sampling. The membrane filtration or centrifugation must be done immediately. The filtered or centrifuged samples must be analyzed on the same day, otherwise they must be preserved with 0.05 ml of the $HgCl_2$ solution for each 10 ml of nutrient medium or by storing at 2–4 °C. The biodegradability test is valid provided the standard exhibits a degradation rate within the specified range. The test can be finished before the 28th day if complete mineralization has been accomplished. Where degradation has obviously started on day 28 but did not reach a plateau on day 28, it is considered good practice to extend the experiments for one or two weeks longer.

(H) All steps require great care and cleanliness of the vessels, pipettes, etc. but not sterility.

(iii) *Analytical means*—(A) *Membrane filter. (1)* 0.2 μm, 25 mm diameter. Preparation of the filters: membrane filters are impregnated with surfactants for hydrophilization. Thus each filter contains up to several mg of soluble carbon which would interfere in the biodegradability determinations. Therefore, the filters are purified from surfactants and other soluble organic interferences by boiling them in deionized water for three periods each of one hour. These filters may be stored in water (above) for at least one week.

(*2*) Other membrane filters are suitable if it is assured that they neither release carbon nor adsorb the compound in the filtration step.

(*3*) If the samples are centrifuged, this must be done at 40,000 $msec^{-2}$ (4000 g) for 15 minutes, preferably in a refrigerated centrifuge, in any case <40 °C.

(*4*) (Remark: the differentiation TOC: DOC by centrifugation at very low concentrations does not seem to work well since either not all bacteria are removed or carbon as part of the bacterial plasma is redissolved. At higher test concentrations (>10 mg C/l) and the same small inoculation the centrifugation error seems to be comparatively small.)

(B) *The DOC measurement. (1)* The sample withdrawn from the culture medium (about 30 ml) is centrifuged or membrane filtered immediately in the filtration apparatus using the membrane filters prepared as stated above. The first 20 ml of the filtrate are discarded.

(*2*) The DOC concentration is determined twice in the remaining filtrate (about 10 ml) by means of the TOC/DOC instrument. If the filtrate cannot be analyzed on the same day it must be preserved as stated above. The DOC measurements (mgC/l) obtained are registered on the attached data sheet and the DOC concentrations of the culture medium and of the blanks calculated for each sampling time.

(c) *Data and reporting*—(1) *Treatment of results.* (i) The degradation at time t is calculated from the determinations of the DOC concentrations at the beginning (C_o) and at time t (C_t) according to—

$$D_t = \left[1 - \frac{C_t - C_{blt}}{C_o - C_{blo}}\right] \times 100$$

where:

D_t = degradation in percent at time t

C_o = measured starting DOC concentration of the inoculated culture medium (mg DOC/l)

C_t = DOC concentration of the culture medium at time t (mg DOC/l)

C_{blo} = starting DOC blank of the mineral nutrient solution with inoculation, but without test material (mg DOC/l)

C_{blt} = DOC blank of the mineral nutrient solution with inoculation, but without test material at time t (mg DOC/l)

(ii) The degradation rates are calculated to the nearest 0.1 percent. The means of the D_t values are calculated and reported to the nearest full percent. Results ending in 0.5 are rounded up to the nearest whole number. The course of the degradation test is presented graphically in a diagram.

(2) *Test report.* The results may be reported on the following data sheet:

BILLING CODE [illegible]

SAMPLE FORM SHEET FOR THE MODIFIED OECD SCREENING TEST

Exp no: _____

Date of start of test: _____

Test Standard material: _____

Theoretical test conc.: _____ mg DOC/l

Inoculum: _____

Carbon analyser: _____

PART I CONTROLS.

	TOC[1] mg/l	DOC[2] mg/l
Stock solution of the test material (1000 mg/l, dilution .../1000 ml of nutrient solution)		

PART II: CARBON DETERMINATIONS

Culture medium	Flask No	Analyses	Theor. conc mg/l	DOC - concentrations after x days mg/l					
				0 (C_0)	~7	~14	~21	~27	
Mineral nutrient solution with test material and with inoculum	1	a_1							
		a_2							
		m_1 (C_t) $\frac{a_1 + a_2}{2}$							
	2	b_1							
		b_2							
		m_2 (C_t) $\frac{b_1 + b_2}{2}$							
Mineral nutrient solution without test material but with inoculum	Blank	c_1							
		c_2							
		m_3 ($C_{t,1}$) $\frac{c_1 + c_2}{2}$							

PART III: EVALUATION OF RAW DATA

	Flask No		% DOC removal after x days				
			7	14	21	27	
DOC concentrations minus blanks	1	$D_1 = \left[1 - \frac{m1_t}{m_1} \cdot \frac{m3_t}{m_3}\right] \cdot 100$					
	2	$D_2 = \left[1 - \frac{m2_t}{m_2} \cdot \frac{m3_t}{m_3}\right] \cdot 100$					
	mean	D $\frac{D_1 + D_2}{2}$ for day x					

1/ Disagreement between DOC and TOC values points towards insufficient solubility of the test material

2/ All DOC values determined after membrane filtration

BILLING CODE 6560-50-C

(3) *Interpretation of results.* (i) The results of the degradation test are valid if the condition is met that in the same test series the control yields 70 percent DOC-removal.

(ii) Because of the stringency of this test a result inferior to the recommended pass level (70 percent loss of DOC) does not necessarily mean that the test compound is not biodegradable under environmental conditions, but indicates that more work will be necessary to establish this.

§ 796.3260 Ready biodegradability: Modified Sturm test.

(a) *Introductory information*—(1) *Prerequisites.* The total organic carbon content of the test material should be calculated or, if this is not possible, analyzed to enable the theoretical yield of CO_2 to be calculated.

(2) *Guidance information.* (i) Information on the relative proportions of the major components of the test material will be useful in interpreting the results obtained, particularly in those cases where the result lies close to the "pass level."

(ii) Information on the toxicity of the chemical may be useful in the interpretation of low results and in the selection of appropriate test concentrations.

(3) *Interpretation of results.* Because of the stringency of this test, a result of less than 60 percent yield of CO_2 (within 28 days) does not necessarily mean that the test compound is not biodegradable under environmental conditions, but indicates that more work will be necessary to establish biodegradability.

(4) *Qualifying statements.*

(i) The method is only applicable to those organic test materials which, at the concentration used in the test:

(A) Have negligible vapour pressure.

(B) Are not inhibitory to bacteria.

(C) Do not significantly adsorb to glass surfaces.

(ii) This test has been found suitable by the OECD Expert Group Degradation/Accumulation for determining the ready biodegradability of organic chemicals under aerobic conditions. It has been tested in the OECD Laboratory Intercomparison Test Programme (1978–1980).

(iii) Evolution of a significant amount of CO_2 from the blank flask during the test would indicate contamination of the medium, glassware or air supply. A total CO_2 evolution in the blank at the end of the test exceeding 50 mg CO_2 per 3 liters medium should be considered as invalidating the test.

(5) *Recommendations.* (i) Test chemicals giving a result of greater than 60 percent yield of CO_2 (within 28 days) should be regarded as readily biodegradable. This level must be reached within 10 days of biodegradation exceeding 10 percent.

(ii) If the test material is not soluble at the test concentration, special measures, such as the use of ultrasound dispersion, may have to be employed to achieve a good dispersion of the test material.

(6) *Standard documents.* This test guideline is based on biodegradability test methods described in paragraph (d)(1) and (2) of this section. Various improvements have been made in the test protocol, the latest ones being the object of the paper cited in paragraph (d)(3) of this section.

(b) *Method*—(1) *Introduction, purpose, scope, relevance, application and limits of test.* (i) (A) This test guideline has been developed for screening readily biodegradable chemicals. When a broader understanding of the biodegradability of a compound is required (particularly for new chemicals never discharged into the environment) environmentally relevant results may be obtained by operating the same test guideline but with inoculum preadapted to the test compound under paragraph (d) (1), (2), and (3) of this section.

(B) A high biodegradation result in this test provides the evidence that the test compound is highly biodegradable in aerobic systems.

(C) On the contrary, a low biodegradation result may have other causes than poor biodegradability of the test compound. Inhibition effects of the inoculum by the toxicity of the compound at the test concentration is often a cause for low biodegradation. In such cases the result is meaningless and further work is needed to assess the biodegradability of the test compound in systems and at concentrations where inhibition effects are overcome.

(D) An estimate of the expected environmental concentration will help to put toxicity effects into perspective and determine test concentrations.

(E) The proportion of carbon incorporated into cellular material to carbon released as CO_2 will vary depending on the organic substrate, on the particular micro-organism(s) carrying out the conversion and on the environmental conditions under which the conversion takes place. In principle, this uncertainty is a drawback in the interpretation of the results from this test.

(F) However, it has been observed that under the conditions of this test with a test compound concentration (sole source of carbon) ranging from 5 to 20 mg/l, a majority of substrate carbon is used to drive catabolic processes and a minimum is used to generate new cells under paragraph (d)(3) of this section. Under these conditions, the measure of CO_2 evolution becomes an accurate measure of the rate and extent of catabolism of a given material.

(ii) *Definitions and units.* The amount of CO_2 produced by the test compound during the test is measured and expressed as percent of the theoretical CO_2 it should have produced (TCO_2) calculated from the carbon content of the test compound. Biodegradability is therefore expressed as percentage TCO_2.

(iii) *Reference substances.* In some cases when investigating a new substance reference substances may be useful; however, specific reference substances cannot yet be recommended. In order to check the activity of the inoculum, the use of control substances is desirable. Aniline, sodium acetate or sodium benzoate may be used for this purpose. They must give a yield >60 percent CO_2 within 28 days, otherwise the test is regarded as invalid and should be repeated using an inoculum from a different source.

(iv) *Principle of the test method.* (A) A chemically defined liquid medium, essentially free of other organic carbon sources, is spiked with the test material and inoculated with sewage micro-organisms. The CO_2 released is trapped as $BaCO_3$.

(B) After reference to suitable blank controls, the total amount of CO_2 produced by the test compound is determined for the test period and calculated as the percentage of total CO_2 that the test material could have theoretically produced based on carbon composition.

(v) *Quality criteria*—(A) *Reproducibility.* In the absence of toxicity effects of the test compound on the inoculum, the reproducibility is around ±5 percent, relative. When toxicity effects start occurring, the reproducibility becomes poor.

(B) *Sensitivity.* The endogenous CO_2 production of the inoculum as measured in the blank flask (no test material) is the main reason why the test cannot use test compound concentrations lower than 5 mg/l. (When the test is adapted to handle ^{14}C labelled test compounds, test compound concentrations can be very much lower.)

(C) *Specificity.* (*1*) This test is adequate for soluble and insoluble organic materials. The test material must not be volatile. The purity of the test material should be high since organic impurities will complicate the interpretation of the CO_2 production data.

(*2*) Test results are meaningful only if, at the test concentration, the material has no toxic effect on the inoculum.

(D) *Possibility of standardization.* This possibility exists. The major difficulty is to standardise the inoculum in such a way that interlaboratory reproducibility is ensured. The selection of test organisms and their handling in the laboratory as described below (Test organisms) is one way to ensure "healthy" inoculum with a mutiplicity of micro-organism species. Procedures using preadaptation of the inoculum to the test compound usually reach higher reproducibility.

(E) *Possibility of automation.* None at present.

(2) *Description of the test procedure—*(*i*) *Preparations—*(A) *Apparatus equipment—*(*1*) *CO_2 scrubbing apparatus:* For a series of 12 carboys (3 test materials):

(*i*) Four one-liter plastic bottles, filled with 700 ml 10 N NaOH.

(*ii*) One one-liter Erlenmeyer flask containing 700 ml 0.025 N $Ba(OH)_2$ solution.

(*iii*) One empty one-liter Erlenmeyer to prevent liquid carry-over.

These bottles are connected in series, using Tygon tubing, to a pressurized air source, and air is sparged through the scrubbing solutions at a constant rate. For each additional set of carboys, add 1 additional one-litre plastic bottle filled with 700 ml 10 N NaOH.

(*2*) *CO_2 production apparatus.* (*i*) Four 5-litre disposable amber carboys for each test material.

(*ii*) Stoppers, flexible tubing, plastic tubing.

(*iii*) "French squares" (i.e. 100 ml barium hydroxide absorber bottles) or similar containers.

(*3*) *Analytical equipment.* (*i*) (Carbon analyser: optional if sample is well characterized.)

(*ii*) Analytical balance.

(*iii*) 100 ml-buret.

(B) *Chemicals/reagents/materials—*(*1*) *Stock solutions for test medium—*(*i*) *Ferric chloride solution:* dissolve 0.25 g $FeCl_3 \cdot 6H_2O$ in 1 liter distilled water.

(*ii*) *Magnesium sulfate solution:* dissolve 22.5 g $MgSO_4 \cdot 7H_2O$ in 1 liter distilled water.

(*iii*) *Calcium chloride solution:* dissolve 27.5 g anhydrous $CaCl_2$ in 1 liter distilled water.

(*iv*) *Phosphate buffer solution:* dissolve 8.5 g KH_2PO_4, 21.75 g K_2HPO_4, 33.4 g $Na_2HPO_4 \cdot 7H_2O$ and 1.7 g NH_4Cl in 1 liter distilled water.

(*v*) *Ammonium sulfate solution:* dissolve 40 g $(NH_4)_2SO_4$ in 1 liter distilled water.

(*2*) *Test medium.* The test medium will contain per liter of high quality water (High quality water, free of toxic substances (copper, in particular), with low carbon content (<2.0 mg/liter TOC) and with a resistivity >18 megohms.cm. (Distilled water must never contain more than 10 percent of organic carbon introduced by the test material.)) the following reagents:

(*i*) 1 ml of magnesium sulfate solution under paragraph (b)(2)(i)(B)(*1*)(*ii*) of this section.

(*ii*) 1 ml of calcium chloride solution under paragraph (b)(2)(i)(B)(*1*)(*iii*) of this section.

(*iii*) 2 ml of phosphate buffer solution under paragraph (b)(2)(i)(B)(*1*)(*iv*) of this section.

(*iv*) 4 ml of ferric chloride solution under paragraph (b)(2)(i)(B)(*1*)(*i*) of this section.

(*v*) 1 ml of ammonium sulfate solution under paragraph (b)(2)(i)(B)(*1*)(*v*) of this section.

(*3*) *Barium hydroxide, 0.025 N.* Dissolve 4.0 g $Ba(OH)_2 \cdot 8H_2O$ per liter high quality water. Filter through filter paper and seal the clear solution to prevent absorption of CO_2 from the air. It is wise to prepare more than 5 liters at a time when running series.

(*4*) *Test materials.* (*i*) Basic physical-chemical data regarding water solubility, impurities solvent and percentage active must be specified by the sample submitter.

(*ii*) An initial stock solution is prepared from the test material by weighing out a homogeneous aliquot of the sample. The sample is dissolved in high quality water to give a solution of test material of 1000 mg/l. Stock solutions are made up on the basis of percentage of active compound in the test material. If the percentage of active compound is unknown, stock solutions are made up to concentration of 1000 mg/l on a weight basis. To obtain a homogeneous sample, it may be necessary to mix well, at the same time avoiding foaming which will tend to concentrate the active ingredient disproportionally. For solid samples, it may be necessary to melt and mix the entire contents of the sample bottle before taking the aliquot. This portion of the procedure is extremely important since the calculations of percentage of biodegradation depend directly on having added the correct amount of carbon to the test system.

(*iii*) The pH of the stock solution need not be adjusted unless it falls outside the range of 3–10, since the phosphate buffer in the test medium will control it. If the pH lies outside this range, adjust an aliquot of the stock solution to pH 7.0 (±1.0) with 1 N HCl or NaOH, making sure that the solution is being vigorously mixed during the addition of acid or base.

(*iv*) To confirm the nominal concentration of organic carbon of the test compound, the stock solution (or the neutralized aliquot) may be analyzed for total organic carbon (TOC). A TOC analysis is also required for the control stock solution.

(*v*) If a test material is insoluble in water, add the appropriate amount of test material directly to the carboy on a weight or volume basis. Total organic carbon analysis cannot be performed on insoluble test materials.

(*5*) *Test organisms.* (*i*) The source of test organisms is activated sludge freshly sampled from a well-operated municipal sewage treatment plant. This sewage treatment should receive no or minimal effluents from industry.

(*ii*) Upon arrival at the laboratory, the activated sludge is aerated for 4 hours. 500 ml of the mixed liquor is sampled and homogenized for 2 minutes at medium speed in a Waring blender. It is then settled for ½ hour.

(*iii*) If the supernatant still contains high levels of sludge solids at the end of 30 minutes, it may be settled for an additional 30–60 minutes or adapted to laboratory conditions to obtain better settleability.

(*iv*) The supernatant is decanted to provide sufficient volume for a 1 percent inoculum for each CO_2 test flask. Avoid carryover of sludge solids which would interfere with the measurement of CO_2 production.

(*v*) Although optional, it is useful to perform viable counts on the supernatant fraction to determine microbial numbers. This inoculum should normally contain 10^6 to 20 x 10^6 colony forming units per ml. It should be used on the day it is prepared. The CO_2 production test then proceeds as follows.

(ii) *Test conditions.* (A) (*1*) Since a 1 percent inoculum is used in the CO_2 test, it is necessary to make dilutions in the CO_2 test medium.

(*2*) This is most easily achieved as follows:

(*i*) To each of the 5-liter test carboys, add 2470 ml of high quality water.

(*ii*) To each of the 5-liter test carboys, add 3 ml each of the ammonium sulfate, magnesium sulfate, and calcium chloride stock solutions; add 6 ml of the phosphate buffer stock solution and 12 ml of the ferric chloride solution.

(*iii*) To each of the 5-liter test carboys, add 30 ml of the activated sludge inoculum.

(*iv*) These additions now total 2527 ml in each carboy.

(B) This mixture is aerated with CO_2-free air for 24 hours, to purge the system of carbon dioxide (see CO_2 scrubbing apparatus, above).

(C) After the aeration period, three CO_2 absorber bottles are filled with 100 ml 0.025 N $Ba(OH)_2$ and connected in series to the exit air line of each test carboy.

(D) Test material is added to two of the four carboys to begin the testing period. Each material is tested at two concentrations: 10 and 20 mg/l. The amount of test material stock solution required in the carboy is calculated as follows:

$$\text{ml of stock solution per carboy is: } \frac{B \times C}{A}$$

where:

B is test compound concentration in test carboy (mg/l),
A is test compound concentration in stock solution (mg/l),
C is final volume of test medium in test carboy (ml).

(E) Sufficient stock solution to reach the desired test concentration, as calculated above, plus enough distilled water to make 473 ml (stock solution + high quality water) are added to the appropriate carboys. To the third carboy, used as blank control and containing no test material, 473 ml of high quality water are added. The final volume of each carboy is now 3000 ml.

(F) A control substance at a concentration of 20 mg/l is added to the last of the four carboys (see paragraph (d) of this section on reference substances.

(iii) *Performance of test.* (A)(*1*) The test is started by bubbling CO_2-free air through the solution at a rate of 50–100 ml/min per carboy (approximately 1–2 bubbles/second). The CO_2 produced in each carboy reacts with the barium hydroxide and is precipitated out as barium carbonate; the amount of CO_2 produced is determined by titrating the remaining $Ba(OH)_2$ with 0.05 N standardized HCl (see below). Periodically (every 2 or 3 days), the CO_2 absorber nearest the carboy is removed for titration. The remaining two absorbers are each moved one place closer to the carboy, and a new absorber filled with 100 ml of fresh 0.025 N $Ba(OH)_2$ is placed at the far end of the series. Titrations are made as needed (before any $BaCO_3$ precipitate is evident in the second trap), approximately every other day for the first 10 days, and the every fifth day until the 28th day.

(*2*) For water-insoluble test materials, incorporated dry into the CO_2 test carboy, agitation can be done with a magnetic stirrer. For foaming chemicals, CO_2-free air bubbling can be replaced by overhead aeration and magnetic stirring.

(B) On the 26th day, the pH of the carboy contents is measured again, and then 1 ml of concentrated HCl is added to each of the test carboys to drive off inorganic carbonate. The carboys are aerated overnight, and samples are removed from each carboy for dissolved organic carbon (DOC) analysis. The final titration is made on day 28.

(C) Titrations of the 100-ml $Ba(OH)_2$ solution are made after removing the bottles closest to the carboys. The $Ba(OH)_2$ is titrated with 0.05 N HCl, using phenophthalein as an indicator.

(D) The test is run at room temperature and temperature is recorded during the test period.

(c) *Data and reporting*—(1) *Treatment of results.* (i) *TCO_2.* (A) The theoretical amount of CO_2 that can be generated by a test material, or TCO_2, is calculated as follows:

$$TCO_2 = \text{mg } CO_2/\text{mg test material} = \frac{\text{N° of carbons in test material} \times \text{mol. wt. of } CO_2}{\text{mol. wt. of active test material}}$$

(B) For instance, dextrose ($C_6H_{12}O_6$) contains 6 carbon, therefore TCO_2 of dextrose =

$$\frac{6 \times 44}{180} = 1.467 \text{ mg } CO_2/\text{mg dextrose}$$

(C) For mixtures, the TCO_2 of the total active material is a weighted average of the TCO_2's of the individual components.

(ii) *Amount of CO^2 produced.* (A) The first step in calculating the amount of CO_2 produced is to correct the test material carboys for endogenous CO_2 production. The control carboy serves as a "seed blank" to correct for CO_2 which may be produced through endogenous respiration of the bacteria. The amount of CO_2 produced by a test material is determined by the difference (in ml of titrant) between the experimental and blank $Ba(OH)_2$ traps.
For example:

Blank ..... 48.0 ml HCl titrated

Experimental ..... 45.0 ml HCl titrated

Test material ..... 3.0 ml HCl titrated

$$\text{mg } CO_2 = \frac{((0.05) \times \text{ml titrated}}{2} \times 44 = 1.1 \times \text{ml of HCl titrated})$$

(B) The next step is to convert ml HCl titrated into mg of CO_2 produced. When CO_2 enters the absorber bottle, it reacts in the following manner:

$$Ba(OH)_2 + CO_2 \rightarrow BaCO_3 \downarrow + H_2O$$

(C) The $BaCO_3$ formed is insoluble and precipitates. The amount of $Ba(OH)_2$ remaining in solution is determined by titration of the 100 ml with HCl according to the following equation:

$$Ba(OH)_2 + 2HCl \rightarrow BaCl_2 + 2H_2O$$

(D) From the above two equations, it can be seen that 1 mmol of CO_2 is produced for every 2 mmol of HCl titrated. This means that the number of mmol of CO_2 produced:

$$\text{mmol } CO_2 = \frac{\text{mmol HCl}}{2}$$

(E) The normality of HCl used is 0.05 N. Substituting for mmol gives:

$$\text{mmol } CO_2 = \frac{(0.05 \text{ N}) \times (\text{ml of HCl}}{2}$$

(F) To convert to mg CO_2, the value must be multiplied by the molecular weight of CO_2 which is 44:

(G) Thus, to convert ml of HCl to mg CO^2, the former is multiplied by 1.1.

(iii) *Percentage of theoretical CO_2.* (A) The percentage of theoretical CO_2 produced is calculated from the following formula:

$$\%TCO_2 = \frac{\text{mg } CO_2 \text{ produced}}{(\text{mg test material added in test})(\text{mg } CO_2/\text{mg test material})} \times 100$$

$$= \frac{\text{mg } CO_2 \text{ produced}}{(\text{mg test material added in test})(TCO_2)} \times 100$$

Example

Blank .....48.0 ml 0.05 N HCl titrated
Dextrose .....45.0 ml 0.05 N HCl titrated
Difference..... 3.0 ml 0.05 N HCl titrated

(B) When multiplied by 1.1, 3.0 is equivalent to 3.3 mg CO_2 produced.

$$\%TCO_2 = \frac{3.3 \text{ mg } CO_2 \text{ produced}}{(60 \text{ mg dextrose})(1.47 \text{ mg } CO_2/\text{mg dextrose})} \times 100 = 3.74$$

(C) Since dextrose has a TCO_2 of 1.47 mg CO_2/mg dextrose, and since 60 mg of dextrose were placed in the test (i.e. 3 litres × 20 mg/l), the percentage of theoretical CO_2 that was degraded on the particular day was:

(2) *Test report.* (i) The test material should be well identified (source, physical-chemical data, organic carbon content, purity, etc.).

(ii) The test concentration at start should be reported with end results.

(iii) Indicate date and location where test organisms were sampled.

(iv) COD and TOC analyses on the stock solution of the test compound should be reported.

(v) Temperature range recorded during the test period must be noted.

(vi) If measured as suggested above (Test organisms), report number of micro-organisms per ml (colony forming units—CFU/ml).

(vii) For each titration, calculate percentage TCO_2 evolved. Plot cumulative percentage TCO_2 versus time until the end of the test. Not only the end result is important, but also the length of the lag phase and the slope (rate).

(viii) If the curve reaches a plateau before 28 days, the test can be ended and the plateau value considered as final.

(ix) If the curve shows that biodegradation started before day 28 but the plateau is not reached at day 28, then the test should be prolonged until the plateau is reached.

(x) If a more rigorous mathematical treatment of the data is desired, the cumulative CO_2 versus time data can be fit into a non-linear regression model to generate rate constants for mineralization and a final extent of degradation at infinite time (asymptote) (3).

(3) *Interpretation of results.* See paragraph (a) of this section.

(d) *Literature references.* For additional background information on this test guideline the following references should be consulted:

(1) Thompson, J.E., and Duthie, J.R., "The biodegradability of NTA," *Journal of Water Pollution Control Federation.* 40: 306–319 (1968).

(2) Sturm, R.N., "Biodegradability of Nonionic Surfactants: Screening Test for Predicting Rate and Ultimate Biodegradation," *Journal of American Oil Chemistry Society. 50:* 159–167 (1973).

(3) Larson, R.J., "Estimation of Biodegradation Potential of Xenobiotic Organic Chemicals," *Applied Environmental Microbiology. 38:* 1153–1161 (1979).

(4) American Public Health Association. *Standard Methods for the Examination of Water and Wastewater. 14*th Ed. (American Public Health Association, Inc.: New York, 1975) pp. 544–545.

(5) AFNOR T-90-302 Test, *Methode d'evaluation en milieu aqueux de biodegradabilité des produits organiques.* (1977).

(6) ISO TC 147 SC5 WG4, OECD Screening Test modified for the use of dissolved organic carbon analysis (1978).

§ 796.3300 Simulation test—aerobic sewage treatment: coupled units test.

(a) *Introductory information*—(1) *Prerequisites.* (i) Water solubility.

(ii) The organic carbon content of the test material must be established.

(2) *Guidance information.* (i) Information on the relative proportions of the major components of the test material will be useful in interpreting the results obtained, particularly in those cases where the result lies close to the "pass level".

(ii) Information on the toxicity of the chemical may be useful to the interpretation of low results and in the selection of appropriate test concentrations.

(3) *Qualifying statements.* (i) The method is only applicable to those organic test materials which, at the concentration used in the test:

(A) Are soluble in water to the extent necessary for the preparation of the test solutions.

(B) Have negligible vapor pressure.

(C) Are not inhibitory to bacteria.

(D) Do not significantly adsorb on glass surfaces.

(ii) This test is recommended by the OECD Expert Group on Degradation/Accumulation as a test for the determination of the ultimate biodegradability of test materials under conditions which stimulate treatment in an activated sludge plant.

(c) *Standard documents.* This test guideline constitutes a modification of the OECD Confirmatory Test (OECD Environmental Directorate, Proposed Method for the Determination of the Biodegradability of Surfactants Used in Synthetic Detergents, Paris 1976, and Council Directive of Nov. 22, 1973, on the Approximation of the Laws of the Member States Relating to Methods of Testing the Biodegradability of Anionic Surfactants [73/405/EEC], Official Journal of the European Communities No. 4 347/53 of Dec. 17, 1973). The modifications are described in the references cited under paragraph (d) (4) and (5) of this section.

(b) *Method*—(1) *Introduction, purpose, scope, relevance, application and limits of test* (i) The purpose of the method is the measurement of the ultimate

biodegradability of the water-soluble, nonvolatile organic compounds in an activated sludge plant model at a concentration corresponding to > 12 mg DOC/l (Dissolved organic carbon/litre) (or approximately 40 mg COD/l (Chemical oxygen demand/liter)). twenty mg DOC/l seem to be optimal.

(ii) *Definitions and units.* (A) Definition of *biodegradability:*

$$DR = \frac{T-(E-E_o)}{T} \times 100$$

Where

DR = degradation rate in percent DOC (or COD) removal within the given mean retention time with respect to the test material

T = concentration of the test material in mg DOC/litre (or mg COD/litre)

E = DOC (or COD) concentration in the effluent of the test unit in mg DOC/litre (or mg COD/litre)

E_o = DOC (or COD) concentration in the effluent of the blank unit in mg DOC/litre (or mg COD/litre)

(B) *Units.* The degradation is stated as the percentage DOC (or COD) removal within the given retention time with respect to the test material (percentage DOC [or percentage COD] removal).

(iii) *Reference substances.* In some cases when investigating a new substance reference substances may be useful; however specific reference substances cannot yet be recommended.

(iv) *Principle of the test method.* Two OECD Confirmatory Test units, i.e., model activated sludge plants, are operated in parallel whereby the parallelism is enhanced and assured by a transinoculation procedure. The test materjal is added to the influent (synthetic sewage) of one unit while the other is fed only with the synthetic sewage. The DOC (or COD) concentrations are measured in both effluents. The DOC (or COD) difference of these effluent values is due to non- or only partially degraded test material. The raw data obtained require a statistical procedure, i.e. the tolerance limits of the mean must be calculated in addition to the mean.

(v) *Quality criteria*—(A) *Reproducibility.* The reproducibility of the results obtained by this method is satisfactory.

(B) *Sensitivity.* A starting concentration of the test material corresponding to 12 mg DOC/litre (or approximately 40 mg COD/litre) constitutes the sensitivity limit at a mean retention time of 3 hrs; at a 6 hr mean retention time 9–10 DOC/litre are sufficient.

(C) *Specificity.* The method is applicable to the biodegradability evaluation of water-soluble, non-volatile organic compounds.

(D) *Possibility of standardization.* The test version with specific analyses for anionic and nonionic surfactants is standardized as the "OECD Confirmatory Test".

(E) *Possibility of automation.* Parts of the test, e.g., the analysis, can be automated, although not the total procedure.

(2) *Description of the test procedure*—(i) *Preparations*—(A) *Apparatus (1)(i)* OECD Confirmatory Test Units: The method employs two small activated sludge plants shown in the following Figure 1, and in greater detail in Figure 2, for each biodegradability determination.

A = STORAGE VESSEL
B = DOSING DEVICE
C = AERATION CHAMBER (3l CAPACITY)
D = SETTLING VESSEL
E = AIR LIFT
F = COLLECTOR
G = AERATOR
H = AIR FLOW METER

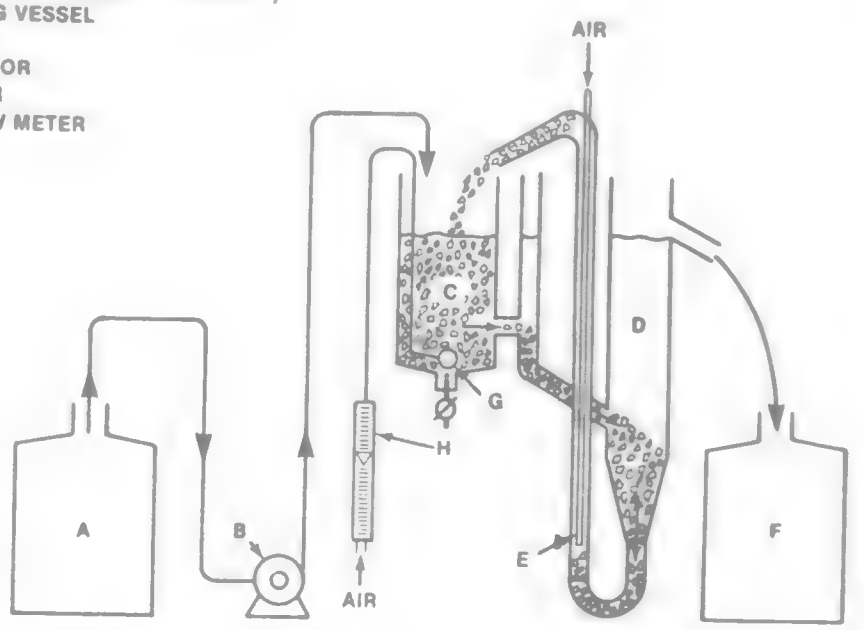
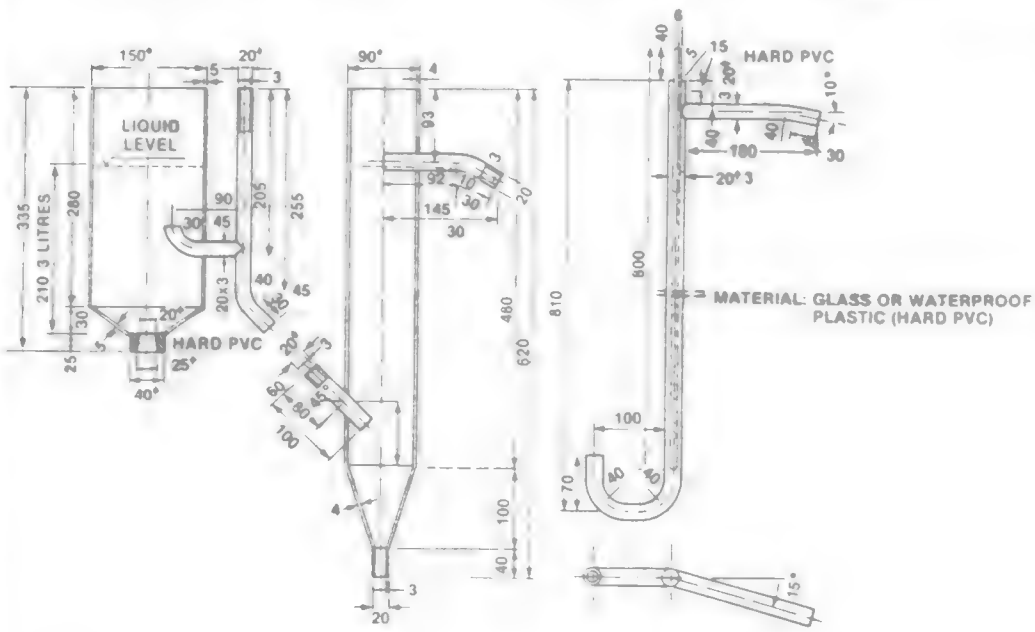


Figure 1—Schematic of OECD confirmatory test activated sludge unit.

Figure 2—Dimensions of OECD confirmatory test activated sludge unit.



(*ii*) The equipment consists of a storage vessel (A) for synthetic sewage, dosing pump (B), aeration vessel (C), separator (D), air-lift pump (E) to recycle the activated sludge, and vessel (F) for collecting the treated effluent.

(*iii*) Vessels (A) and (F) must be of glass or suitable plastic and hold at least 24 litres. Pump (B) must provide a constant flow of synthetic sewage to the aeration vessel; during normal operation this vessel contains 3 litres of mixed liquor. A sintered aeration cube (G) is suspended in vessel (C) at the apex of the cone. The quantity of air blown through the aerator should be monitored by means of a flowmeter.

(*2*) Carbon analyzer.

(*3*) Membrane filtration apparatus and membrane filters with a pore width of 1.2 μm.

(*4*) Glassware as it is commonly needed for sample preparation.

(*5*) Synthetic sewage: For the test a synthetic sewage is employed. Dissolve in each litre of tap water:

(*i*) 160 mg peptone.

(*ii*) 110 mg meat extract.

(*iii*) 30 mg urea.

(*iv*) 7 mg NaCl.

(*v*) 4 mg $CaCl_2 \cdot 2H_2O$.

(*vi*) 2 mg $MgSO_4 \cdot 7H_2O$.

(B) *Inoculation.* (*1*) A composite inoculum is used.

(*i*) *Inoculum from secondary effluent.* The inoculum should be obtained from a secondary effluent of good quality collected from a treatment plant dealing with predominantly domestic sewage. The effluent must be kept under aerobic conditions in the period between sampling and use. To prepare the inoculum the sample is filtered through a coarse filter, the first 200 ml being discarded. The filtrate is kept aerobic until used. The inoculum must be used on the day of collection.

(*ii*) *Inoculum from soil.* 100 g of garden soil (fertile, not sterile) are suspended in 1000 ml of chlorine-free drinking water. (Soils with an extremely large fraction of clay, sand or humus are unsuitable.) After stirring, the suspension is allowed to settle for 30 minutes. The supernatant is filtered through a coarse filter paper, the first 200 ml being discarded. The filtrate is aerated immediately and until use. The inoculum must be used on the day of collection.

(*iii*) *Inoculum from a surface water.* A further partial inoculum is drawn from a mesosaprobic surface water. The sample is filtered through a coarse paper, the first 200 ml being discarded. The filtrate is kept aerobic until used. The inoculum must be used on the day of collection.

(*2*) Equal volumes of the 3 partial inoculum samples are united, mixed well, and the final inoculum drawn from this mixture.

(ii) *Procedure.* (A) Initially, fill aeration vessels (C) and separator (D) of both units needed for one test with synthetic sewage. (It is strongly recommended that the synthetic sewage be prepared first in one batch. Then the storage vessels (A) of both units needed for one test are filled with the same synthetic sewage.) The height of separator (D) is so fixed that the volume contained in aeration vessel (C) is 3 litres. Inoculation is made by introducting 3 ml of the composite inoculum, above. The aerator, air lift (E) and dosing device (B) are then set in operation. The synthetic sewage must pass through aeration vessel (C) at the rate of one litre per hour; this gives a mean retention time of 3 hours; a rate of one half litre per hour results in a mean retention time of 6 hrs.

(B) The rate of aeration should be regulated so that the contents of vessel (C) are kept constantly in suspension while the dissolved oxygen content is at least 2 mg/l. Foaming must be prevented by appropriate means. Antifoaming agents which inhibit the activated sludge must not be used. Airlift pump (E) is set so that the activated sludge from the separator is continually and regularly recycled to aeration vessel (C). Sludge which has accumulated around the top of the aeration vessel (C), in the base of the settling vessel (D), or in the circulation circuit must be returned to the circulation at least once each day by brushing or some other appropriate means. When sludge fails to settle, its density may be increased by addition of 2-ml portions of a 5 percent solution of ferric chloride, repeated as necessary.

(C) The effluent from separator (D) is accumulated in vessel (F) for 24 hours, following which a sample is taken after thorough mixing. Vessel (F) must be carefully cleaned.

(D) In order to control the efficiency of the process the chemical oxygen demand (COD) or the dissolved organic carbon (DOC) of the filtrate of the effluent (especially of the blank unit) accumulated in vessel (F), is measured at least twice weekly, as well as that of the filtered synthetic sewage in vessel (A).

(E) The reduction in COD or DOC should level off when a roughly regular daily degradation is obtained, i.e. at the end of the running-in period.

(F) The dry matter content of the activated sludge in the aeration tank should be determined twice a week (in g/l). If it is more than 2.5 g/l, the excess activated sludge must be discarded.

(G) The test is performed at room temperature; this should be steady and should be kept between 18 °C and 25 °C.

(H) Two OECD Confirmatory Test units are run parallel in the fashion described above. Sufficient stock solution (approximately 1 percent) of the test material is added to the influent of the test unit that the desired concentration of test material (=

approximately 10–20 mg DOC/l or 40 mg COD/l) in the synthetic sewage is obtained. The blank unit is fed only with synthetic sewage.

(I) The coupling of the units is achieved by interchanging 1.5 litres—including sludge—from the activated sludge vessels between the two units once a day. In case of strongly adsorbing test materials 1.5 litres are drawn from the settling vessels and interchanged.

(J) The DOC (or COD) concentrations of the effluents of the test (E) and blank (E_o) units are determined daily after membrane filtration (pore size 1.2 μm).

(K) The working-in time should not exceed 6 weeks and the evaluation period should not be shorter than 3 weeks, i.e., about 20 determinations should be available for calculation of the final results.

(iii) *Analytical means.* (A) 250 ml effluent samples are drawn and immediately membrane filtered (1.2 μm). The first half of the filtrate is discarded. The DOC (or COD) concentration is determined in the remainder. If the analysis cannot be performed on the same day, the sample is stored in a refrigerator, but only after membrane filtration.

(B) The DOC concentrations are determined in duplicate with the carbon analyzer and the COD values according to APHA under paragraph (d)(1) of this section. The data are recorded on the following Figure 3 form sheet.

Figure 3.—Form sheet for the OECD confirmatory test modified for the application of unspecific analyses (coupled units test.)

Exp. No. _____
Date of start of test _____
Test material _____
Theoretical test concentration:
mg active substance/litre (or mg/l of product). _____
mg DOC/litre _____
mg COD/litre _____
Inoculum _____
Analysis or analytical instrument. _____
Mean retention time: (hrs) _____
Volume being interchanged (v_i): (l/d). _____
Daily throughput (v_d) _____
Transinoculation out of activated:
Sludge vessels _____
Settling vessel _____

REMARKS

A. Controls	mg/l	
	TOC [1]	DOC [2]
Stock solution of the test material (10,000 mg active substance/litre, dilution * * * / 1,000 ml of distilled water)		

[1] Disagreements between TOC and DOC values point towards insufficient solubility of the test material.
[2] All DOC values determined after membrane filtration (1.2 μm).

(c) *Data and reporting*—(1) *Treatment of results.* (i) The daily degradation rates DR are calculated according to

Equation 1

$$DR = \frac{T-(E-E_o)}{T} \times 100$$

(ii) For explanation of symbols, see Definitions and units, above.

(iii) These daily degradation rates are corrected for the material transfer due to the transinoculation procedure with equation 2 for a 3 hr, or equation 3 for a 6 hr, mean retention time.

Equation 2

$$DR_c = \frac{8}{7} DR - \frac{100}{7}$$

Equation 3

$$DR_c = \frac{4}{3} DR - \frac{100}{3}$$

(iv) The mean of the series of DR_c values is calculated and in addition the standard deviation according to equation 4

Equation 4

$$*DR_c = \sqrt{\frac{\sum_{i=1}^{n} (\overline{DR_c} - DR_{c_i})^2}{n-1}}$$

Where
$*DR_c$ = Standard deviation of the series of DR_c values
$\overline{DR_c}$ = mean of DR_c value
n = number of determinations

(v) Outliers of the DR_c series are eliminated according to Nalimov under paragraph (d)(2) of this section at the 95 per cent probability level and the mean and the standard deviation of the outlier-free DR_c data set recalculated. The final result is then calculated with equation 5 as

Equation 5

$$DR_c = \overline{DR_c} \pm \frac{t_{n-1;\,\alpha}}{\sqrt{n}} *DR_c$$

Where:
$t_{n-1;\,\alpha}$ = table[3] value of t for n value pairs of E and E_o and statistical confidence P ($P = 1-\alpha$) whereby P is set at 95 per cent.

(A) *Calculation of the results by computer.* A computer program BILAH available from Henkel A.G. (Düsseldorf, FRG) performs the above calculations automatically and is recommended for use. The program is written in Fortran IV and has been tested on a Honeywell-Bull series 6000 computer (Mark III Service). This program is designed for any continuous flow biodegradability test run with a transinoculation procedure.

(B) *Calculation of the results by pocket calculator.* The calculation described above can also be performed automatically by the programme BILAW for a pocket calculator (Texas Instruments 59 with printer). The programme instructions, the programme itself, and an example for a complete input and output are available from Henkle A.G. (Düsseldorf, FRG)

(2) *Test report.* (i) The report must contain a statement referring to the analytical accuracy with respect to the particular test material.

(ii) The result is stated as the mean with tolerance limits at the 95 percent probability level, the respective standard deviation and the number of data of the outlier-free DR_c data set, e.g.

$DR_c = 98.6 \pm 2.3$) % DOC removal.
s = 4.65 % DOC removal
n = 18

(iii) The running-in time also constitutes pertinent information.

(iv) Some indication of the general purification such as DOC or COD removal with respect to the total organic feed, especially of the blank unit, and the effluent concentrations of the latter must be provided.

(v) All this information is summarized in the following Figure 4 report sheet:

Figure 4—Sample Reporting Sheet

Date of start of test:
Test material:
Test concentration:
mg AS/l (or mg/l product)
mg DOC/l
mg COD/l
Result with respect to test material
Mean and tolerance limits at the 95 per cent probability level; standard deviation and number of determinations (outlier-free):
DR_c = ( ) % DOC removal
s = ( ) % DOC removal
n =
DR_c = ( ) % COD removal
s = ( ) % COD removal
n =
Working-in time: d
Evaluation period: d
Analysis:
Analysis of instrument response:
Analytical correctness with respect to test material:
Percentage recovery with respect to theory at conc . . . mg DOC (or COD)/l
General parameters:
Mean retention time: hrs
Volume being interchanged (v_i): l/d
Daily throughput (v_d): l/d
Transinoculation out of:
activated sludge vessel:
settling vessel:
Origin and preparation of inoculum:
Mean organic dry matter:
Test unit: g/l
Blank unit: g/l
Mean DOC (COD) removal with respect to total organic load:
Test unit: % DOC (or COD) removal
Blank unit: % DOC (or COD) removal
Effluent of blank unit
Concentration: mg DOC/l
Standard deviation: mg DOC/l n:
Concentration: mg COD/l
Standard deviation: mg COD/l n:

Remarks:

(vi) Special observations, e.g. "excessive formation of bulking sludge". are to be reported under "remarks".

(vii) Finally, a degradation diagram must be provided whereby the outliers in the evaluation period are not excluded in the graph.

(d) *Literature references.* For additional background information on this test guideline the following references should be consulted:

(1) "Oxygen Demand (chemical)," *Standard Methods for the Examination of Water and Waste Water*, 14 Ed. American Public Health Association, American Water Works Association Water Pollution Control Federation, (1975) p. 560

(2) Kaiser, R., and Gottschalk G., *Elementare Tests zur Beurteilung von Messdaten*, (Bibliographisches Institut: Mannheim, Wien, Zürich, 1971) p. 18.

(3) Sachs, L., *Statistische Auswertungsmethoden*, Springer-Verlag (1971) p. 111.

(4) Fischer, W.K., Gerike, P., Holtmann, W., "Biodegradability Determinations Via Unspecific Analyses (chemical oxgen demand, dissolved organic carbon) in coupled units of the OECD Confirmatory Test. 1. The Test". *Water Research*, 9:1131–1135 (1975).

(5) Gerike, P., Fischer, W.K., and Holtmann, W. "Biodegradability Determination in Trickling Filter Units Compared with the OECD Confirmatory Test," *Water Research*, 14:753 (1980).

§ 796.3340 Inherent biodegradability: Modified SCAS test.

(a) *Introductory information*—(1) *Prerequisites.* (i) Water solubility.

(ii) The organic carbon content of the test material must be established.

(2) *Guidance information.* (i) Information on the relative proportions of the major components of the test material will be useful in interpreting the results obtained, particularly in those cases where the result lies close to the "pass level".

(ii) Information on the toxicity of the chemical may be useful to the interpretation of low results and in the selection of appropriate test concentrations.

(3) *Qualifying statements.* (i) The method is only applicable to those organic test materials which, at the concentration used in the test,

(A) Are soluble in water (at least 20 mg dissolved organic carbon/l).

(B) Have negligible vapour pressure.

(C) Are not inhibitory to bacteria.

(D) Do not significantly adsorb on glass surfaces.

(E) Are not lost by foaming from the test solution.

(ii) This test has been found suitable by the OECD Expert Group Degradation/Accumulation for determining the inherent biodegradability of organic chemicals under aerobic conditions.

(4) *Recommendations.* Test chemicals giving a result of greater than 20 per cent loss of DOC in this test may be regarded as inherently biodegradable, whereas a result of greater than 70 per cent loss of DOC is evidence of ultimate biodegradability. The use of a compound specific analytical technique on ^{14}C-labelled test substance may allow greater sensitivity. In these last cases a lower level may be regarded as evidence of inherent biodegradability.

(5) *Standard documents.* This Test Guideline has been based on the paper cited under paragraph (d) (1) of this section.

(b) *Method*—(1) *Introduction, purpose, scope relevance, application and limits of test.* (i)(A) The method is an adaptation of the Soap and Detergent Association semi-continuous activated sludge (SCAS) procedure for assessing the primary biodegradation of alkyl benzene sulfonate. The method involves exposure of the chemical to relatively high concentrations of micro-organisms over a long time period (possibly several months). The viability of the micro-organisms is maintained over this period by daily addition of a settled sewage feed.

(B) Because of the long detention period (36 hours) and the intermittent addition of nutrients the test does not simulate those conditions experienced in a sewage treatment plant. The results obtained with the test substance indicate that it has a high biodegradation potential, and for this reason it is most useful as a test of inherent biodegradability.

(c) Since the conditions provided by the test are highly favorable to the selection and/or adaptation of mircro-organisms capable of degrading the test compound, the procedure may also be used to produce acclimatized inocula for use in other tests. The test is applicable to water soluble, non-volatile, organic chemicals that are not inhibitory to bacteria at the test concentration.

(ii) *Reference substances.* In some cases when investigating a new substance reference substances may be useful; however, specific reference substances cannot yet be recommended. Data on several compounds used in ring tests are provided (see Annex) primarily so that calibration of the method may be performed from time to time and to permit comparison of results when another method is employed.

(iii) *Principle of the test method.* (A) Activated sludge from a sewage treatment plant is placed in an aeration (SCAS) unit. The test compound and settled domestic sewage are added, and the mixture is aerated for 23 hours. The aeration is then stopped, the sludge allowed to settle and the supernatant liquor is removed. The sludge remaining in the aeration chamber is then mixed with a further aliquot of test compound and sewage and the cycle is repeated.

(B) Biodegradation is established by determination of the dissolved organic carbon content of the supernatant liquor. This value is compared with that found for the liquor obtained from a control tube dosed with settled sewage only.

(iv) *Quality criteria*—(A) *Reproducibility.* The reproducibility of this modification of the method based

on removal of dissolved organic carbon has not yet been established. When primary biodegradation is considered, very precise data is obtained for materials that are extensively degraded. The results reported in reference (1) suggest 95 per cent confidence limits of less than ±3 per cent, and this includes interlaboratory tests. As would be expected, wider confidence limits are obtained for less biodegradable materials.

(B) *Sensitivity.* The sensitivity of the method largely depends on the precision of the determination of dissolved organic carbon and the level of test compound in the liquor at the start of each cycle. At the end of the aeration period about 10 mg/liter of dissolved organic carbon remain in the supernatant liquor of the control experiment. Assuming that the dissolved organic carbon determination is within ±5 per cent and a level of 20 mg/litre of carbon as test material is added at the start of the aearation period, then the assessment of the extent of biodegradation should be within ±6 per cent for the range 80–100 per cent biodegradation.

(C) *Specificity.* The method is applicable to any non-volatile, water soluble, organic compound.

(D) *Possibility of standardization.* Since the method uses a feed of real settled sewage, absolute standardization is not possible unless this feed were replaced by an artificial one. However, since the method is designed to give an indication of the biodegradability potential of a chemical and is not a simulation test, such standardization is unnecessary.

(E) *Possibility of automation.* Automation of this method would be possible but would be expensive. As the method is not labor intensive, the exercise would offer few advantages.

(2) *Description of the test procedure*—(i) *Preparations.* (A) The aeration units are cleaned and fixed in a suitable support. The air inlet tubes are connected to the supply manifold. A small laboratory scale air compressor is used to aerate the units, and the air is presaturated with water to reduce evaporation losses from the units.

(B) A sample of mixed liquor from an activated sludge plant treating predominantly domestic sewage is obtained. Approximately 150 ml of the mixed liquor are required for each aeration unit.

(C) The organic carbon analyzer is calibrated using potassium hydrogen phthalate.

(D) Stock solutions of the test compounds are prepared: the concentration normally required is 400 mg/litre as organic carbon which gives a test compound concentration of 20 mg/litre carbon at the start of each aeration cycle if no biogradegradation is occurring.

(E) The organic carbon content of the stock solutions is measured.

(ii) *Test conditions.* A high concentration of aerobic micro-organisms is used, and the effective detention period is 36 hours. The carbonaceous material in the sewage feed is oxidized extensively within 8 hours of the start of each aeration cycle. Thereafter, the sludge respires endogeneously for the remainder of the aeration period, during which time the only available substrate is the test compound unless this is also readily metabolized. These features, combined with daily reinoculation of the test when domestic sewage is used as the medium, provide highly favorable conditions for both acclimatization and biodegradation.

(iii) *Performance of the test.* (A) A sample of mixed liquor from a suitable activated sludge plant is obtained and aerated during transportation to the laboratory. Each aeration unit is filled with 150 ml of mixed liquor and the aeration is started. After 23 hours, aeration is stopped, and the sludge is allowed to settle for 45 minutes. The tap is opened and 100 ml of the supernatant liquor withdrawn. A sample of settled domestic sewage is obtained immediately before use, and 100 ml are added to the sludge remaining in each aeration unit. Aeration is started anew. At this stage no test materials are added, and the units are fed daily with domestic sewage only until a clear supernatant liquor is obtained on settling. This usually takes up to two weeks, by which time the dissolved organic carbon in the supernatant liquor at the end of each aeration cycle should be less than 12 mg/litre.

(B) At the end of this period the individual settled sludges are mixed, and 50 ml of the resulting composite sludge are added to each unit.

(C) 100 ml of settled sewage are added to the control units and 95 ml plus 5 ml of the appropriate test compound stock solution (400 mg/l) to the test units. Aeration is started again and continued for 23 hours. The sludge is then allowed to settle for 45 minutes and the supernatant drawn off and analzed for dissolved organic carbon content.

(D) The fill and draw procedure under paragraph (b)(2)(iii)(A) of this section is repeated daily throughout the test.

(E) Before settling it may be necessary to clean the walls of the units to prevent the accumulation of solids above the level of the liquid. A separate scraper or brush is used for each unit to prevent cross contamination.

(F) Ideally, the dissolved organic carbon in the supernatant liquors is determined daily, although less frequent analysis is permissible. Before analysis the liquors are filtered through washed 0.45 μm membrane filters and certifuged. Temperature of the sample must not exceed 40° C while it is in the centrifuge.

(G) The length of the test for compounds, showing little or no biodegradation is indeterminate, but experience suggests that this should be at least 12 weeks.

(c) *Data and reporting*—(1) *Treatment of the results.* (i) The dissolved organic carbon results in the supernatant liquors of the test units and the control units are plotted against time. As biodegradation is achieved the level found in the test will approach that found in the control. Once the difference between the two levels is found to be constant over three consecutive measurements, 3 further measurements are made and the percentage biodegradation of the test compound is calculated by the following equation:

$$\% \text{ biodegradation} = \frac{100\,[O_T - (O_t - O_c)]}{O_T}$$

Where

O_T = concentration of test compound as organic carbon added to the settled sewage at the start of the aeration period.

O_t = concentration of dissolved organic carbon found in the supernatant liquor of the test at the end of the aeration period.

O_c = concentration of dissolved organic carbon found in the supernatant liquor of the control

(ii) The level of biodegradation is therefore the percentage elimination of organic carbon, under the following Figure 1:

FIGURE 1.—EXAMPLES OF RESULTS OF SCAS TEST ON VARIOUS COMPOUNDS USED IN THE OECD/EEC RING TEST

Test compound	O_T (mg/l)	$O_t - O_s$ (mg/l)	Percentage biodegradation/bioelimination
4-acetyl aminobenzene sulphonate	17.2	2.0	85
Tetra propylene benzene sulphonate	17.3	[illegible]	51.4
4-nitrophenol	[illegible]	0.8	95.3
Diethylene glycol	16.5	0.2	[illegible]
Aniline	16.9	1.7	[illegible]

Duration of test 40 days.

RESULTS FOUND FOR CYCLOPENTANE TETRA CARBOXYLATE

O_T (mg/l)	$(O_t - O_s)$ (mg/l)	Percentage biodegradation/bioelimination
17.9	3.2	81.1

Duration of test 120 days.

(iii) If from the outset there is no difference between the control and the test, or the difference between the two remains constant at a level less than would be expected if no degradation had taken place, further tests are necessary to distinguish between biodegradation and adsorption. This may be done by using the supernatant liquors as a source of inoculum for tests such as the Sturm or the Closed Bottle Tests under §§ 796.3200 and 796.3260.

(d) *Literature references.* For additional background information on this test guideline the following references should be consulted:

(1) "A Procedure and Standards for the Determination of the Biodegradability of Alkyl Benzene Sulphonate and Linear Alkylate Sulphonate", *Journal of the American Chemical Society*, Vol. 42 (1965), p. 986.

(2) [Reserved]

§ 796.3360 Inherent biodegradability: Modified Zahn-Wellens test.

(a) *Introductory information*—(1) *Prerequisite.* Water solubility.

(2) *Guidance information.* (i) Information on the relative proportions of the major components of the test material will be useful in interpreting the results obtained, particularly in those cases where the result lies close to the "pass level".

(ii) Information on the toxicity of the chemical may be useful to the interpretation of low results and in the selection of appropriate test concentrations.

(3) *Qualifying statements.* (i) The method is only applicable to those organic test materials which, at the concentration used in the test:

(A) Are soluble in water to the extent necessary for the preparation of the test solutions.

(B) Have negligible vapour pressure.

(C) Are not inhibitory to bacteria.

(D) Do not significantly adsorb on glass surfaces.

(E) Are not lost by foaming from the test solution.

(ii) This test has been found suitable by the OECD Expert Group "Degradation/Accumulation" for determining the inherent biodegradability of organic chemicals under aerobic conditions. It has been tested in the OECD Laboratory Intercomparison Test Program (1978–1980).

(4) *Recommendations.* Test chemicals giving a result of greater than 20 percent loss of DOC (dissolved organic carbon) in this test may be regarded as inherently biodegradable, whereas a result of greater than 70 per cent loss of DOC is evidence of ultimate biodegradability. The use of a compound specific analytical technique on ^{14}C-labeled test substances may allow greater sensitivity. In these last cases a lower level may be regarded as evidence of inherent biodegradability.

(5) *Standard documents.* This Test Guideline is based on a modification of the method cited under paragraph (d) (1) and (2) of this section.

(b) *Method*—(1) *Introduction, purpose, scope, relevance, application and limits of test* (i)(A) The static test is a simple, reproducible method for evaluating the ultimate biodegradability of organic substances in water by micro-organisms in an aerobic milieu.

(B) The static method is limited to the examination of the biodegradability of water soluble, non-volatile organic compounds. The compounds to be studied are used in concentrations corresponding to DOC-values in the range of 50–400 mg/litre or COD-values in the range of 100–1000 mg/litre (DOC = dissolved organic carbon; COD = chemical oxygen demand).

(C) These relatively high concentrations have the advantage of analytical reliability. Compounds with toxic properties may delay or inhibit the degradation process.

(ii) *Definition and units.* (A) The amount of degradation attained at the end of the test is reported as the "Biodegradability in the Static Test":

$$D_T\ (\%) = 1 - \frac{(C_T - C_B)}{C_A} \cdot 100$$

D_T = biodegradation (%) at time T

C_A = initial value (DOC or COD values in the test mixture calculated from the DOC or COD values in the stock solution, [mg/l]

C_T = DOC or COD values at time of sampling, [mg/l]

C_B = DOC or COD value of the blank, [mg/l]

(B) The degradation rates are rounded to the nearest full percent.

(C) Percentage degradation is stated as the percentage DOC (or COD) removal of the tested substance.

(iii) *Reference substances.* In some cases when investigating a new substance reference substances may be useful, however specific reference substances cannot yet be recommended.

(iv) *Principle of the test method.* Activated sludge, mineral nutrients and the test material as the sole carbon source in an aqueous solution are placed together in a 1–4 litre glass vessel equipped with an agitator and an aerator. The mixture is agitated and aerated at 22 °C (±3°) under diffuse illumination or in a dark room for up to 28 days. The degradation process is monitored by determination of the DOC (or COD) values in the filtered solution at daily or other appropriate regular time intervals. The ratio of eliminated DOC (or COD) after each interval to the value at the start is expressed as percentage biodegradation and serves as the measure for the rate of degradation at this time. The result is plotted versus time to give the biodegradation curve.

(v) *Quality criteria*—(A) *Reproducibility.* Reproducibility has been proven in ring tests. Detection of <20 per cent; >20 to <70 per cent; >70 per cent DOC-removal as required for testing inherent biodegradability is possible.

(B) *Sensitivity.* The limits for sensitivity are given by the sensitivity of the carbon analysis (0.5–1 mg C/l) and the COD-analysis (5–10 mg O_2/l).

(C) *Specificity.* Applicable for tests with water soluble (>100 mg/l), non-volatile organic substances.

(D) *Possibility of standardization.* Standardization is possible.

(E) *Possibility of automation.* Automation of analysis is possible.

(2) *Description of the test procedure*—(i) *Preparations*—(A) *Reagents.* (*1*) Test water: drinking water with an organic-carbon content <5 mg/l. The concentration of calcium and magnesium ions together must not exceed 2.7 mole/l; otherwise adequate dilution with deionised or distilled water is required.

(*2*) Sulfuric acid, analytic reagent (A.R.) 50 g/l.

(*3*) Sodium hydroxide solution, A.R., 40 g/l.

(*4*) Mineral nutrient solution: dissolve in one litre deionized water:

38.5 g ammonium chloride, NH_4Cl, A.R.

33.4 g sodium dihydrogenphosphate, $NaH_2PO_4 \cdot 2H_2O$, A.R.

8.5 g potassium dihydrogenphosphate, KH_2PO_4, A.R.

21.75 g di-potassium monohydrogenphosphate K_2HPO_4, A.R.

The mixture serves both as a nutrient compound and as a buffering system.

(B) *Apparatus.* (*1*) Glass vessels with a volume of 1—4 litre (e.g., cylindrical vessels).

(*2*) Agitator with a glass or metal stirrer on a suitable shaft. (The stirrer should rotate about 5 to 10 cm above the bottom of the vessel.) A magnetic stirrer with a 7–10 cm long rod can be used instead.

(*3*) Glass tube of 2–4 mm inner diameter to introduce air. The opening of the tube should be about 1 cm above the bottom of the vessel.

(*4*) Centrifuge (at least 2000 rpm).

(*5*) pH-meter.

(*6*) O_2-measuring instrument.

(*7*) Paper filters.

(*8*) Membrane filtration apparatus.

(*9*) Membrane filters, pore size 0.2 μm.

(*10*) Analytical equipment for determining organic carbon content and chemical oxygen demand.

(*C*) *Preparation of the inoculum.* (*1*) Activated sludge from a biological treatment plant is washed by (repeatedly) centrifuging or settling with testwater under paragraph (b)(2)(i)(B)(*4*) of this section.

The activated sludge must be in an appropriate condition. Such sludge is available from a properly working sewage treatment plant. To get as many possible different species or strains of bacteria in special cases it may be preferred to make a mixture from different sources (e.g. different treatment plants, soil extracts, river waters, etc.). The mixture is to be treated as described under paragraph (b)(2)(i)(A) of this section.

(*2*) For checking the activity of the activated sludge see Functional control, under paragraph (b)(2)(ii)(E)(*1*) of this section.

(D) *Preparation of the test solutions.* (*1*) To the test vessel add 500 ml of test water 2.5 ml/litre mineral nutrient solution and activated sludge in an amount corresponding to 0.2–1.0 g/l (normally 0.2 or 1.0 g/l (The lower concentrations: 0.2 g dry matter of activated sludge/litre and a DOC-concentration of 50 mg/l are introduced to make the test instructions compatible with the instructions of the EMPA–Test (Switzerland) under paragraph(d)(4) of this section.)) dry matter in the final mixture. Add sufficient stock solution of the test material or of the waste water to be tested that a DOC concentration of 50–400 mg/l (normally 50 or 400 mg/l (The lower concentrations: 0.2 g dry matter of activated sludge/litre and a DOC-concentration of 50 mg/l are introduced to make the test instructions compatible with the instructions of the EMPA–Test (Switzerland) under paragraph(d)(4) of this section.)) results in the final mixture. The corresponding COD-values are 100–1000 mg/l. Make up with test water to a total volume of 1–4 litres. The total volume to be chosen is dependent on the number of samples to be taken for DOC or COD determination and the volumes necessary for the analytical procedure.

(*2*) Normally a volume of 2 litres can be regarded as satisfactory.

(*3*) At least one control vessel (blank) is set up to run in parallel with each test series; it contains only activated sludge and mineral nutrient solution made up with test water to the same total volume as in the test vessels.

(*4*) Note: Before starting the test it is advisable to make certain with appropriate methods that no inhibition occurs at the chosen concentration of test material. Run the test with a smaller concentration if an inhibitory effect is found.

(ii) *Performance of the test.* (A) The test vessels are agitated with magnetic stirrers or screw propellers under diffuse illumination or in a dark room at 22 °C (±3°). Aeration is accomplished by compressed air cleaned by a cotton wool strainer and a wash bottle if necessary. It must be ensured that the sludge does not settle and the oxygen concentration does not fall below 2 mg/l.

(B) The pH-value must be checked at regular intervals (for example daily) and adjusted to pH 7–8 with NaOH or H_2SO_4, if necessary.

(C) Losses from evaporation are made up just before each sampling with deionized or distilled water in the required amounts. The best procedure is to mark the liquid level on the vessel before starting the test and after each sampling (without aeration and stirring). The first samples are always taken 3 hours after the start of the test in order to detect adsorption of test material by the activated sludge.

(D) The elimination of the test material is followed by DOC- or COD-determinations made daily or at some other regular interval. The samples from the test vessel and the blank are filtered through a carefully washed paper filter. The first 5 ml of test solution-filtrate are returned to the test vessel. Sludges difficult to filter may be removed previously by centrifugation. DOC and COD determinations are made at least in duplicate. The test is run for up to 28 days.

(E) Note: Turbid remaining samples are filtered through membrane filters. The membrane filters must not release or adsorb any organic material. Otherwise they are to be purified by boiling in deionised water previously. For procedure in connection with adaptation processes, see paragraph (b)(2)(ii)(E)(*2*) of this section.

(*1*) *Functional control.* A vessel with a known substance should be run parallel with each test series in order to check the functional capacity of the activated sludge. For this purpose compounds, such as diethyleneglycol, sodium benzoate, and aniline, are recommended.

(*2*) *Adaptation.* (*i*) If analyses are carried out at relatively short intervals (e.g. daily), adaptation can be clearly recognized from the degradation curve (see Figure 2).

(*ii*) If the adaptation occurs in the final days of the test time, the test time can be prolonged until the degradation is finished.

(*3*) Note: If a broader knowledge of the behaviour of the adapted sludge is needed, the same activated sludge is exposed once again to the same test material in accordance with the following procedure:

(*i*) Switch off the agitator and the aerator and allow the activated sludge to settle. Draw off the supernatant liquid, fill up to 2 liters with test water, stir for 15 minutes and allow to settle again. After the supernatant liquid is drawn off again use the remaining sludge to repeat the test with the same test material in accordance with Preparation of test solutions and Performance of the test, above. The activated sludge can also be isolated by centrifuging instead of settling.

(*ii*) The adapted sludge may be mixed with fresh sludge to a total amount of 0.2–1 g dry weight/litre.

(iii) *Analytical means.* (A) Normally samples are filtered through a carefully washed paper filter (for washing use deionised water).

(B) Samples which remain are filtered through membrane filters (0.2 μm, diameter 25 mm). Membrane filters are suitable if it is assured that they neither release nor adsorb organic compounds. Otherwise the membrane filters must be purified from soluble organic material by boiling them 3 times in deionized water. The purified filters may be stored in water.

(C) The DOC concentration is determined twice in the sample filtrates (the first 5 ml are discarded) by means of the TOC instrument. If the filtrate cannot be analyzed on the same day, it must be stored in the refrigerator until the next day. Longer storage cannot be recommended.

(D) The COD concentration is determined in the sample filtrates with a COD analytical set up by the procedure described under paragraph (d)(3) of this section.

(c) *Data and reporting*—(1) *Treatment of results.* (i) DOC and COD concentrations are determined at least in duplicate in the samples according to Performance of the Test and Analytical means, above. The degradation at the time T is calculated according to the formula (with definitions) given under Definitions and units, under paragraph (b)(1)(ii) of this section.

(ii) The degradation rates are rounded to the nearest full percent. The amount of degradation attained at the end of the test is reported as the "Biodegradability in the Static Test".

(iii) Note: If complete degradation is attained before the test time is over and this result is confirmed by a second analysis on the next day, the test can be concluded.

(2) *Test report.* (i) The test report comprises information about:

(A) The test substance (name, structure, impurities, solubility, concentration, etc.).

(B) The inoculum (sampling of the inoculum, concentration, status of adaptation).

(C) The kind of analysis.

(D) The toxicity evaluations.

(E) The functional control (calibration compound).

(ii) The test results at different sampling times, are seen in the following example:

Evaluation Example

Organic compound: 4-Ethoxybenzoic acid
Theoretical test concentration: 600 mg/l
Theoretical DOC: 390 mg/l
Inoculum: Treatment plant of HOECHST AG in Frankfurt/M.-Höchst
Concentration: 1 g dry material/litre
Adaptation status: not adapted
Analysis: DOC-determination
Amount of sample: 3ml
Functional control: Diethyleneglycol
Toxicity of compound: No toxic effects below 1000 ppm (Gärröhrchentest)

	Functional control				*Test compound*		
Sampling blank time	DOC [1] mg/l	DOC [1] mg/l	DOC net mg/l	Degrad. %	DOC [1] mg/l	DOC [1] net mg/l	Degrad. %
0							
3 h	4.0			2	371.6	367.6	
1 d	6.1	288.3	282.2		373.3	367.2	
2 d	5.0	281.2	276.2			355.0	
5 d	6.3	270.5	264.2	12	193.8	187.5	52
6 d	7.4	253.3	245.9	18	143.9	136.5	65
7 d	11.3	212.5	201.2		104.5	93.2	76
8 d	7.8	142.5	134.7	55		51.1	87
9 d	7.0	35.0	28.0	91	18.1	11.1	97
10 d	18.0	37.0	19.0	94	20.0	2.0	

[1] Mean values of triplicate determinations.

(iii) A second part of the test report is made up by the biodegradation curve in the following Figures 1 and 2:

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FIGURE 1—STATIC TEST—EXAMPLES OF BIODEGRADATION CURVES

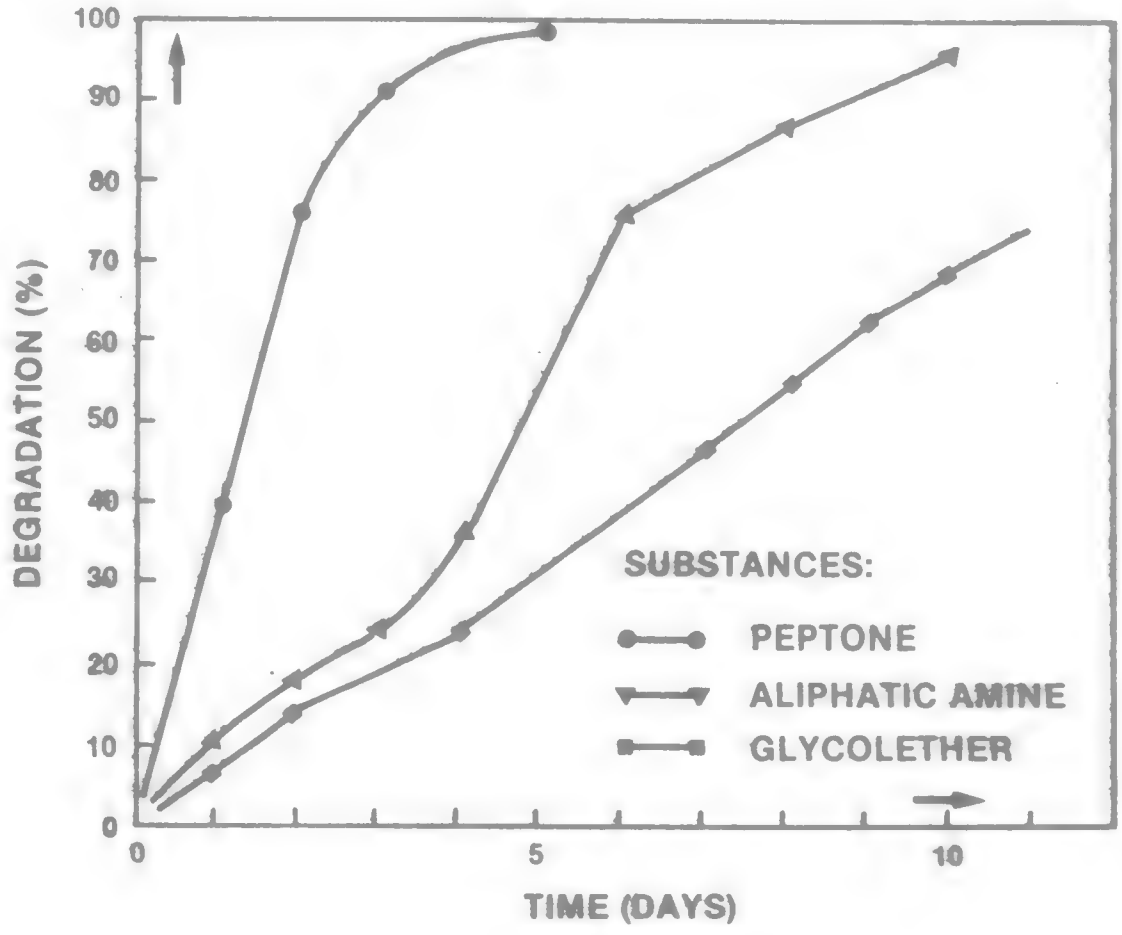
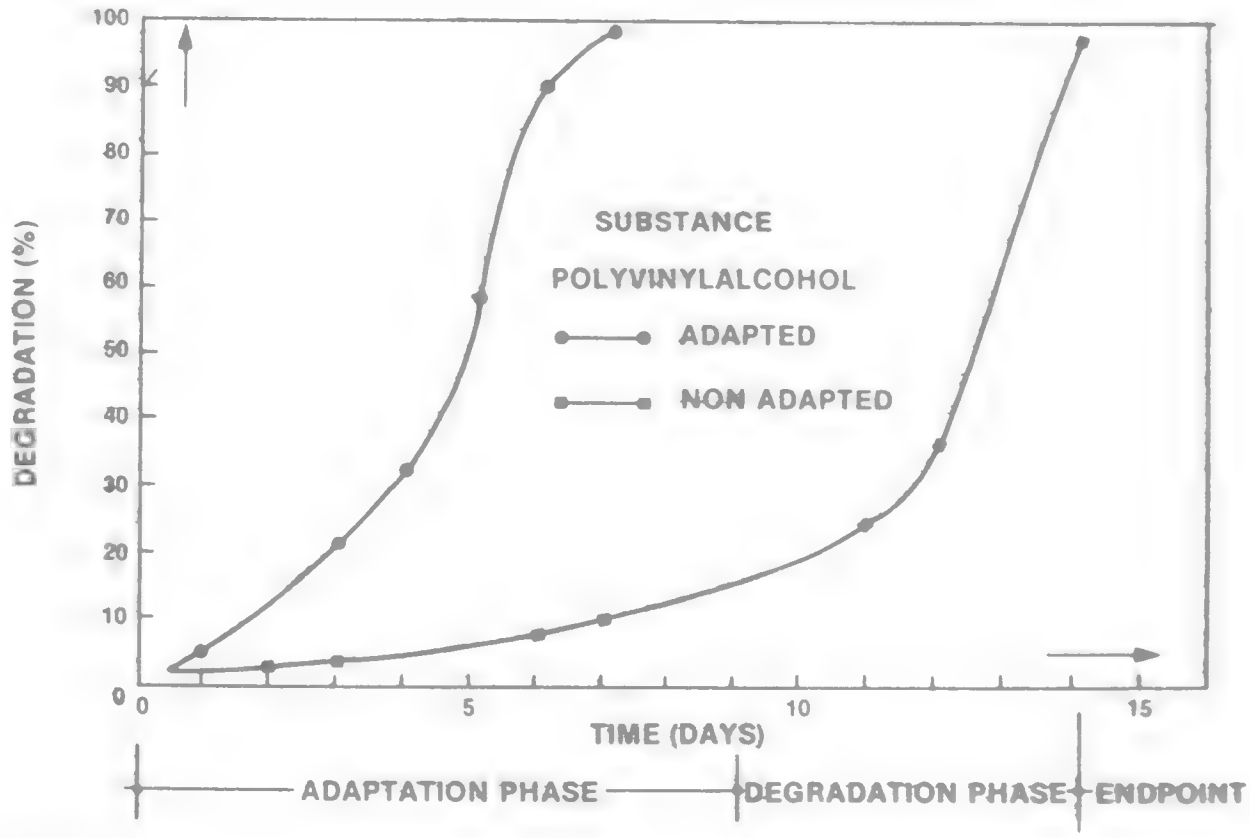


FIGURE 2—STATIC TEST—EXAMPLES OF SLUDGE ADAPTATION



BILLING CODE 6560-50-C

(3) *Interpretation/evaluation of results.* (i) The degree of biodegradation attained at the end of the test after 28 days or, if complete degradation is attained in less than 28 days, at an earlier time, is reported as "inherent biodegradability in the static test (after x days)".

(ii) If the result of analysis of the first sample (3 h after starting the test) is significantly different from the theoretical value, the amount of deficient DOC is to be reported as "adsorbed by the activated sludge".

(iii) The significant points of the degradation curve are to be reported as

(A) Adaptation-phase (days).

(B) Degradation-phase (days).

(C) Endpoint of degradation reached after * * * days (see paragraph (c)(2)(iii) of this section.

(d) *Literature references.* For additional background information on this test guideline the following references should be consulted:

(1) Zahn, R. und Wellens, H. "Ein einfaches Verfahren zur Prüfung der biologischen Abbaubarkeit von Produkten und Abwasserinhaltsstoffen." *Chemiker-Zeitung* 98 (1974) p. 228–232

(2) Umweltbundesamt: OECD-Ring-Test Programme on Detecting Biodegradability of Chemicals in Water, Berlin July 31, Test prescription No. 4, 1978.

(3) *Standard Methods for the Examination of Water and Waste Water,* 13th ed., (No. 220), (American Public Health Association, 1971) pp. 495–499.

(4) Schefer, W., "Bestimmung den biologischen Eliminierbackeit von Abwasser-Inhaltsstoffen," *Forum-Stadte-Hygiene* 110 (1978).

§ 796.3400 Inherent biodegradability in soil.

(a) *Introductory information*—(1) *Prerequisites.* ^{14}C-labeled material is required.

(2) *Guidance information.* Information on the toxicity of the test compound is useful for the interpretation of the data obtained. The concentration of the test compound can then be adapted to this information.

(3) *Qualifying statements.* The test is applicable to volatile or non-volatile, soluble or insoluble compounds which are not inhibitory to micro-organisms. The mineralization rate refers to the labeled carbonation only. Therefore, the location of the labelling within the structure and the specificity of the label need careful consideration.

(4) *Recommendations.* (i) The results obtained using the basic mineralization test may be supported by determination of the evaporation rate of the parent compound and some of possible volatile metabolites and by determination of soil extractable and nonextractable residues. Both optional tests are described in this test guideline.

(ii) Sometimes it is recommended that information about chemical degradation under anaerobic conditions be obtained. Therefore, in accordance with the description below, the biometer flask filled with the soil sample (preconditioning is not necessary), is flooded with water (2–3 cm layer) to protect against leakage, then evacuated and flushed with nitrogen several times. Degradation may be evaluated by means of measurements of methane gas and analysis of both water and soil for ^{14}C-content.

(5) *Standard documents.* This test guideline is based on the method cited in paragraph (d)(1) of this section.

(b) *Method*—(1) *Introduction, purpose, scope, relevance, application and limits of test.* (i) The method described in this test guideline is designed for the evaluation of the mineralization rate of a ^{14}C-labeled compound in soil. The method is applicable to volatile or non-volatile, soluble or insoluble compounds which are not inhibitory to micro-organisms.

(ii) *Definitions and units* (A) Soil is a mixture of mineral and organic chemical constituents, the latter containing compounds of high carbon and nitrogen content and of high molecular weights, animated by small (mostly micro-) organisms. Soil may be handled in two states:

(*1*) Undisturbed, as it has grown with time, in characteristic layers of a variety of soil types,

(*2*) Disturbed, as it is usually sampled by digging and used in the test described here.

(B) Mineralisation (in this context) means extensive degradation of a molecule during which a labelled carbon atom is oxidised quantitatively with release of the appropriate amount of $^{14}CO_2$.

(iii) *Reference substances.* In some cases when investigating a new substance reference substances may be useful; however, reference substances cannot yet be recommended. Reference substances need not be employed in all cases when investigating a new substance. They may primarily be used so that calibration of the method may be performed from time to time and to permit comparison of results when another method is employed.

(iv) *Principle of the test method*—(A) *Basic test.* (*1*) A small sample of soil is treated with the ^{14}C-labeled test chemical in a biometer flask apparatus. Release of $^{14}CO_2$ from the test chemical is measured by means of alkali absorption and liquid scintillation counting.

(*2*) Optional experiments include the following tests.

(B) *Evaporation test.* When testing chemicals of a vapour pressure higher than 0.0133 Pa, a polyurethane foam plug is placed into the biometer flask. apparatus to absorb the labelled volatile part of the parent compound and volatile metabolites for liquid scintillation counting.

(C) *Residue test.* At the point of 50 per cent mineralization the test soil may be extracted. The extractable portion of the compound, and its metabolites remaining in the soil, may be determined by liquid scintillation counting. Furthermore, data on the bound residue part may be obtained by measuring the $^{14}CO_2$ released after combustion of the soil.

(v) *Quality criteria*—(A) *Reproducibility.* Reproducibility is good if standard conditions, especially preconditioning of the soil, are strictly observed.

(B) *Sensitivity.* The evaluation of sensitivity is not relevant because a moderate amount as 37–185 kBq (1–5 μCi) of ^{14}C-labelled test chemicals is used for each experiment.

(C) *Specificity.* The method is only applicable if ^{14}C-labeled test chemicals are available. The specificity is very good.

(D) *Possibility of standardization.* This procedure is standardized to a limited extent. The limitation is related to the difficulty of standardization of soil samples between laboratories.

(E) *Possibility of automation.* Not foreseen.

(2) *Description of the test procedure*—(i) *Preparations*—(A) *Equipment.* (*1*) Liquid scintillation counter.

(*2*) Oxidizer for combustion of radioactive material.

(*3*) Ultrasonic bath, 500 ml.

(*4*) Glassware: 250 ml Erlenmeyer flasks fused to 50 ml round bottom tubes (biometer flasks, see Figure 1); 25 ml syringes (e.g. Luer-lock); syringe needle 15 gauge, 15 cm in length; 100 μl syringes (e.g. Hamilton); 25 ml graduated cylinders with stopper; 1 ml pipettes; soxhlet extraction apparatus; scintillation vials; polyurethane plugs, 30 mm diameter, 30 mm length, density 16 kg/m^3.

(B) *Reagents*—(*1*) *Test substance:* ^{14}C-labelled compounds are dissolved in water or acetone to give radioactivity of 37–185 KBq ($\simeq$1 – 5 μCi)/100 μl. Using unlabelled material this solution is made up to the required concentration (e.g. 0.5

mg/100 µl≈10 mg/kg soil, or depending on the toxicity of the substance).

(2) *Chemicals.*

(*i*) KOH, analytical grade, 0.1 N solution.

(*ii*) Acetone, analytical grade.

(*iii*) Methanol, analytical grade (for optional tests).

(*iv*) n-Hexane, analytical grade (for optional test).

(*v*) Ascarite (A.H. Thomas Co. Philadelphia or equivalent).

(*vi*) Scintillation cocktail.

(3) *Soil.*

(*i*) Alfisol: pH between 5.5 and 6.5 organic C content between 1 and 1.5 percent clay content (i.e. particles <0.002 mm in diameter) between 10 and 20 percent cation exchange capacity between 10 and 15 mval.

(*ii*) Spodosol: pH between 4.0 and 5.0 organic C content between 1.5 and 3.5 per cent clay content <per cent cation exchange capacity <10 mval.

(*iii*) Entisol: pH between 6.6 and 8.0 organic C content between 1 and 4 per cent clay content between 11 and 25 per cent cation exchange capacity >10 mval.

In special cases it is recommended that two additional soils be used: one with high silt-fraction (Diameter between 0.002 and 0.063 mm) content, the other with a high clay content (30 per cent). Air dried test soil stored at +4 °C is remoisturized to 40 per cent maximum water capacity. After incubation for 2 weeks at 22 °C+2 °C in the dark it is ready for the experiments.

(ii) *Test conditions*—(A) *Test temperature.* During the whole test period the flasks are incubated in the dark at 22 °C±2 °C

(B) *Soil characterization data.* (*1*) for determination of the pH value of the soil for selecting the soil type, 10 g air-dried soil are suspended in 25 ml 0.01 M $CaCl_2$.

(*2*) After standing overnight the sample is disturbed once more and measured in a potentiometric apparatus with a 0.1 M KCl electrode. Immediately before the measurement the instrument must be calibrated with two standard solutions within the measuring range of the sample values expected.

(*3*) For determination of the organic carbon content of the soil for selecting the soil type, 1.0 g air-dried soil is heated with 15 ml 2M $K_2Cr_2O_7$ and 20 ml H_2SO_4 (analytical reagent, $\rho c = 1.84$ g/cm³) at 145–155 °C for 15 minutes. After cooling to room temperature sample volume is made up to 150 ml with distilled water. A 20 ml aliquot is measured spectrophotometrically, after centrifuging, in a 1 cm cuvette at 590 nm compared to distilled water. The self-destroying property of the $K_2Cr_2O_7$ reagent must be determined by two blank samples. Calculation is conducted using the following equation:

$$C = \frac{\cdot 1000 \cdot v \cdot E_2(E_x - \alpha_2 \cdot c)}{e \cdot E_1 \cdot (\alpha_1 - \alpha_2 \cdot F)}$$

Where

C = carbon content (%)
V = gross volume (ml)
E_1 = equivalent weight of Cr_2O_3 (25.332)
E_2 = equivalent weight of carbon (3.0028)
E_x = extinction at 590 nm and 1 cm layer thickness
F = factor calculating $K_2Cr_2O_7$ from Cr_2O_3
c = concentration of Cr (g) per 100 ml (=1.9356)
e = sample weight (mg)
α_1 = extinction coefficient of Cr (III) α_1 is an average value from five single determinations for the calibration curve, each obtained by division of E_x by the amount of Cr_2O_3 (in g)
α_2 = extinction coefficient of Cr (VI) α_2 is an average value from two single estimations, each obtained by division of E_x by the respective amounts of $K_2Cr_2O_7$.

(*4*) For determination of particle size of the soil for selecting the soil type, 10.0 g air-dried soil are reacted with 100 ml H_2O_2 (15 per cent $^w/_v$ for 15 hours, then heated until CO_2 evolution is complete. Afterwards the suspension is left to stand overnight with 25 ml 0.4 N $Na_4P_2O_7$, then water is added to make it up to 250 ml and the solution is sieved through a mesh of 0.2 mm width. The portion >0.2 mm is fractionated further by sieving. The smaller particles (silty fractions) are fractionated by homogenous partitioning of the particles in the aqueous medium, which is made up to 1000 ml with water in an elutriating cylinder.

(*5*) 10 ml portions are removed by pipette from various heights of the cylinder after different sedimentation times; measurement of the dry weights of the suspended material in these portions yields the particle composition according to the following scheme:

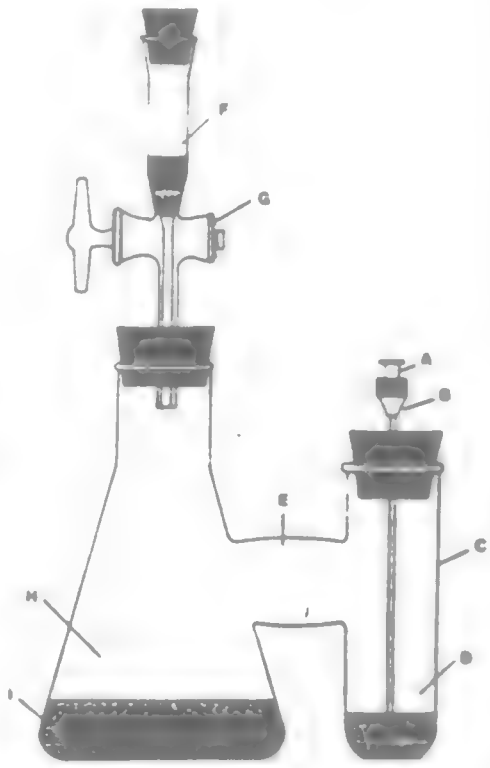
Particle fraction diameter (mm)	Dipping depth (cm)			
	20	15	10	5
<0.002			7h 45m	3h 52m
<0.0063	1h 33m 49s	1h 10m 52s	46m 55s	23m 27s
<0.02	9m 19s	6m 59s	4m 39s	2m 20s
<0.063	59s	42s		

(*6*) For determination of the cation exchange capacity of the soil, in order to select the soil type, a glass column 15 cm in length and 30 mm inner diameter is reduced in diameter at one end like a funnel. This side is stuffed with filter wool. About 1 cm quartz sand is strewn on the wool, followed by 10.0 g air-dried test soil, which is in turn covered by about 1 cm quartz sand. Above these layers comes 40 ml of a mixed solution [consisting of 100 g triethanolamine in 2 l water (adjusted to ph 8.1 with HCl) plus 100 g $BaCl_2 \cdot 2H_2O$ in 2 litres). After 1 h the solution is collected in an Erlenmyer flask of 250 ml. The procedure is then repeated. In addition, 40 ml of a solution of 25 g $BaCl_2 \cdot 2H_2O$ in 1 l are poured into the column.

(*7*) After standing overnight, this solution is also collected and the column is washed with 100 ml water. The combined eluates are titrated against HCl (bromocresol green plus methyl red as indicators) to measure H^+, Ca^{2+}, K^+, Na^+. For the determination of Ba^{2+} the column is leached in a similar mannner with 200 mil of 20 g $MgCl_2 \cdot 6H_2O$ in 1 litre water. This cation is determined by flame absorption spectrophotometry. The cation exchange capacity is expressed as the sum of all the cation equivalents sorbed by 100 g soil.

(iii) *Performance of test*—(A) *Basic test.* (*1*) Fifty grams of soil (dry weight basis) are placed into each Erlenmeyer part (H) of the biometer flask (see the following Figure 1). 100 µl of the radioactive test solution are added in 50 drops over the whole soil surface (I) of each flask. Then, the soil is carefully mixed with a Pasteur pipette (from which the lower part is cut off) and left in the flask.

Figure 1—Test flask



(*2*) In addition, an equivalent volume of test solution is placed in a 100 ml volumetric flask for direct determination of the added radioactivity.

(*3*) The biometer flask is closed with a teflon-coated silicon rubber stopper through which an Ascarite filter (F) is inserted. The filter (F) is provided with a stopper and stopcock (G). The side tube (C) is sealed with a teflon stopper pierced by a 15-gauge needle (B), 15 cm long. The needle (B) is capped by a silicone rubber stopper (A), and its tip at (D) is covered with a short length of silicone tubing that remains in contact with the base of the side tube (C).

(*4*) The unit is charged by injecting 10 ml of alkali solution into the side tube (C) in the following manner: the small stopper (A) is replaced by a calibrated Luer lock syringe containing 0.1 N KOH: then the filter stopper on (F) is removed and the stopcock (G) is opened; the alkali solution is introduced through the needle (B) into the side tube (C); then the stopcock is closed; the syringe is removed; the small stopper (A) and filter stopper on (F) are then returned to their initial positions. The ^{14}C-carbon dioxide produced is absorbed by the alkali.

(*5*) To recover the $^{14}CO_2$–loaded alkali for liquid scintillation analysis, the procedure for charging each parallel unit at increasing time intervals after start of the experiment is performed in reverse order. Thereafter the side tube (C) is rinsed with 5 ml alkali. Before recharging the side tube (C) fresh alkali, 3 volumes of 25 ml air are sucked through the system with the empty syringe to maintain the soil in an aerobic condition. A 1 ml aliquot of the alkali solution is taken for liquid scintillation counting.

(*6*) Experiment duration times of 1, 2, 4, 8, 16, 32 and—if necessary—64 days should be chosen for measurement. The test requires parallel determinations. The $^{14}CO_2$ radioactivity recovered is plotted versus time. This graph shows when to terminate the experiment. Incubation time is sufficient, when a total of 50 per cent CO_2 expressed as ^{14}C originally applied can be measured. Incubation should be stopped after reaching 64 days, whether or not this value is obtained.

(B) *Optional tests*—(*1*) *Estimation of evaporation.* If the volatility of a chemical is higher than 10^{-5} torr at 20 °C, it is recommended that a 3 cm diameter polyurethane foam plug be introduced into the arm E of the biometer flask. This plug absorbs the volatile parent compound as well as volatile organic degradation products but does not absorb $^{14}CO_2$. The plugs are extracted in a soxhlet extraction apparatus with an n-hexane/methanol mixture (1/4), and aliquots are taken for liquid scintillation counting.

(*2*) *Determination of soil-extractable and non-extractable residues.* (*i*) In cases of relatively persistent chemicals (50 per cent mineralisation in 10 days), further information concerning the soil-extractable radioactivity (parent compound plus degradation products) and soil bound residues is recommended.

(*ii*) For this purpose two further biometer flasks in addition to the four others must be prepared. At the point of 50 (or x-) percent mineralisation in the basic test, the soil in the two separate biometer flasks is extracted with 100 ml acetone (5 min ultrasonic treatment) followed by an extraction with methanol in the same manner. Aliquots of the combined extracts are taken for liquid scintillation counting. Other extract portions may be used—if necessary—for further identification studies.

(*iii*) Aliquots of the air dried soil are combusted to $^{14}CO_2$ and measured by liquid scintillation counting to determine the soil bound residues.

(c) *Data and reporting*—(1) *Treatment of results*—(i) *Basic test.* Radioactivity values for $^{14}CO_2$ (average of 4 parallel experiments) obtained from the alkali solution after 1, 2, 4, 8, 16, 32 and 64 days are expressed as the percentage of test chemical (radioactivity) initially applied and are plotted in a graph versus time. The time at which 50 per cent of the radioactivity is recovered as $^{14}CO_2$ is considered to be the "50% mineralisation" level. If this level has not been reached by the 64th day, the data at this time are taken and expressed as "x-percent-mineralisation".

(ii) *Evaporation test.* The radioactivity of vaporised (and trapped) original compound plus degradation products at the point of 50 (or x-) percent mineralisation is extracted, measured and interpreted as the percentage of volatilisation at the point of 50 (or x-) percent-mineralisation.

(iii) *Residue test.* Radioactivity values for extractable and non-extractable residues of the parent compound plus degradation products obtained after the extraction procedure of the soil at the point of 50 (or x-) percent mineralisation are given.

(2) *Test report.* The report of the degradability of a test chemical must include:

(i) Name of the test chemical, formula.

(ii) Amount applied, if not standard.

(iii) Exact characteristic data of the soil used.

(iv) Dates of the performance of the measurements.

(3) *Interpretation and evaluation of results.* The results are artificial because they are obtained with disturbed soil. However, since standardised soils are used, the test data are intercomparable and enable the experimentator to group relatively the chemicals tested within one scale for this property.

(d) *Literature references.* For additional background information on this test guideline the following references should be consulted:

(1) Bartha, R., and Pramer D., *Soil Science* 100: 68–70 (1965).

(2) Soil Survey Staff, U.S. Department of Agriculture, *Soil Taxonomy* Handbook No. 436, (Washington, DC, 1975).

(3) Butler, B.E., *Soil Classification for Soil Survey.* (Oxford, 1980) p. 129.

§ 796.3480 Complex formation ability in water.

(a) *Introductory information.* (Polarographic Method)

(1) *Prerequisites.* (i) Suitable analytical method.

(ii) Water solubility.

(iii) Dissociation constant.

(2) *Guidance information.* Structural fomula.

(3) *Qualifying statement.* (i) This method is applicable only if the water solubility is higher than 10^{-5} M.

(ii) This method should be applied to pure substances.

(iii) This method is not applicable to the determination of mercury complexes.

(4) *Standard documents.* This Test Guideline is based on the consensus method of polarography.

(b) *Method*—(1) *Introduction, purpose, scope, relevance, application and limits of test.* (i)(A) The ability of a new chemical to form soluble metal complexes may increase the availability to food chains of metals that might otherwise become inaccessible, e.g. by incorporation in sediments. This is of outstanding importance in the case of cadmium, copper, cobalt, chromium, lead and zinc. The ability of a substance to form complexes with the above metals can be assessed by means of polarographic techniques which allow the determination of stability constants for some complexes.

(B) The polarographic method can be applied to substances with a water solubility greater than 10^{-5} M. Direct measurement of the shift in half-wave potential $E_{1/2}$ can be made, provided that reactions at the dropping-mercury electrode occur reversibly. With suitable modifications, irreversible cases can occasionally be dealt with. For example, the Gelling's method under paragraph

(d)(6) of this section can be applied to calculate $E_{1/2}$ values for a reversible process from irreversible reduction data. For quasi-reversible systems the method proposed by Grabaric et al. under paragraph (d)(6) of this section may be conveniently used.

(C) Two or more ions may be determined successively, if their half-wave potentials differ by at least 0.4 V for univalent ions and 0.2 V for bivalent ions, provided that their concentrations are approximately equal.

(D) When a substance forms a series of complexes with a metal ion, the determination of stability constants for intermediate species is also possible, but generally not necessary for environmental assessment. With strong chelating agents care must be taken not to overload the system (i.e. that not all metal is in the complex form).

(ii) *Definitions and units.* (A) The potential E of the dropping-mercury electrode is given by the equation

$$E = E^{\circ} - \frac{RT}{nF} \ln \frac{[M_a]}{[M_s]}$$

Where

E° is the standard electrode potential,
R is the gas constant,
T the absolute temperature,
n the number of electrons involved in the electrode process,
F the Faraday constant, and
$[M_a]$ and $[M_s]$ the concentrations of simple metals in the amalgam and at the electrode surface, respectively.

(B) The equation given above implies that the diffusion coefficients of the free metal ions and the complexed ones are equal.

(C) The stability constant for the complexation reaction

$$M^{n+} + pX^{b-} \rightleftarrows MX_p(n-pb)+$$

is given by

$$K = \frac{[MX_p(n-pb)+]}{[M^{n+}][X^{b-}]^p}$$

Where

p is the co-ordination number.

(D) The complex formation constant depends on the temperature and diffusion coefficient.

(E) By combination of the above equations, the following relation is obtained, which is valid for the reversible reduction of a complex species at 25 °C:

$$E_{1/2} = E_m - \frac{0.0591}{n} \log K [X] P$$

Where

$E_{1/2}$ is the half-wave potential of the complex,
E_m that of the metal ion in the absence of complexing agents, and
[X] the concentration of the test compound.

(F) SI unit of the half-wave potential is volt [V].

(iii) *Reference substances.* The following reference substances need not be employed in all cases when investigating a new substance. They are primarily provided so that calibration of the method may be performed from time to time and to offer the chance to compare the results when another method is applied.

(A) ethylenediaminetetraacetic acid (EDTA).
(B) nitrilotriacetic acid (NTA).
(C) thioglycolic acid.
(D) o-nitrophenol.

(iv) *Principle of the test method.* This method is based on the fact that the reduction potentials of metal ions are shifted, usually to more negative values, as a result of complex formation. A positive shift can also occur, but only if another metal ion is present in the solution that is capable of binding to excess complex-forming agent. The potential at the point on the polarographic wave where the current is equal to one half of the diffusion current is termed the "half-wave potential" ($E_{1/2}$).This parameter is a characteristic constant for each metal ion. In the presence of a complex-forming substance the extent of the $E_{1/2}$ shift depends on its concentration as well as on the stability of the complex. Measurements of $E_{1/2}$ as a function of substance concentrations permit the calculation of both the formulae and the stability constants of some metal complexes. It is assumed that the $E_{1/2}$ shift is entirely due to complex formation, with no contribution from liquid junction potential.

(v) *Quality criteria.*—(A) *Repeatability.* Under normal conditions (particularly when working with metal ions in the concentration range 10^{-3} to 10^{-4} M the repeatability can be as good as ±2 per cent. The temperature coefficient is about 1.5–2% per °C. Precise measurements therefore require temperature control to within ±0.2 °C.

(B) *Sensitivity.* This depends upon the particular procedure adopted. Generally, metal ion concentrations down to 10^{-5} M can be determined.

(C) *Specificity.* The method can be applied to substances which are capable of forming stable aqueous solutions at concentrations greater than 10^{-5} M.

(D) *Possibility of standardization.* Yes.

(E) *Possibility of automation.* Not known.

(2) *Description of the test procedure*—(i) *Preparations.* Suitable polarographic apparatus has been fully described in the literature under paragraph (d)(1) through (8) of this section.

(ii) *Test conditions.* (A) The mercury used in the dropping electrode should be at least redistilled commercial grade and should be filtered before use. Solutions to be tested need to be well-buffered under paragraph (d) (4) of this section. High-quality pure nitrogen should be used to de-oxygenate solutions for 10 to 15 minutes before determining the current-electrode potential curve.

(B) A minimum of four known concentrations of the chemical being tested should be investigated with a known concentration of metal ions. Solutions are most conveniently prepared directly within the polarographic cell by means of a precision burette. The chemical being tested should normally be present in at least a 25-fold excess over the metal ion concentrations so that its concentration at the electrode surface will be essentially the same as in the solution bulk. The current should be measured at applied potentials in the range −0.2 V to −1.0 V.

(C) In order to detect complexes which form slowly, it is necessary to allow the solutions to stand under a nitrogen atmosphere for a minimum period of 24 hours and, by re-examination of a sufficient number of samples, to ensure that complex formation was complete at the time of original measurements.

(D) The use of buffers and the use of surface-active substances to suppress polarographic maxima should be carefully considered, in order to avoid undesirable effects on the chemical reaction-controlled current as well as on the polarographic wave slope.

(iii) *Performance of the test.* The performance of the polarographic technique has been fully described in the literature paragraph (d) (1) through (8) of this section. The test should be run at 25 °C (±0.2 °C).

(c) *Data and reporting*—(1) *Treatment of results.* The stability constant K can be easily determined by plotting $E_{1/2}$ versus log [X]P and extrapolating to [X]=1.0 M. If a straight line is obtained (whose slope is therefore 0.0591/n) the formation of a 1:1 complex is assumed. Smooth curves may be caused either by

reaction irreversibility or by formation of two or more complex species in equilibrium with each other. In this last case it is necessary to apply the method by De Ford and Hume paragraph (d) (8) of this section to calculate stepwise formation constants.

(2) *Test report.* (i) The test report should list for each metal ion investigated the half-wave potential $E_{1/2}$, co-ordination number and overall stability constant.

(ii) In addition, the following should also be reported:

(A) Type of polarisable micro-electrode, the reference electrode and, in the case of the dropping mercury electrode, the flow rate in mg/sec and drop time.

(B) IR correction (if applied).

(C) Maxima suppressors (if used).

(D) Supporting electrolyte.

(E) Buffer.

(F) Temperature of measurement.

(G) Total ionic strength.

(H) Technique applied (pilot ion, standard addition, or other).

(I) Technical difficulties encountered.

(J) Estimate of accuracy.

(K) Polarographic technique employed (e.g., DC-, AC, polarography, single sweep polarography, radio frequency polarography or square-wave polarography).

(3) *Interpretation and evaluation of results.* (i) Stability constants determined for a new substance can be compared with literature values for standard substances (see Reference substances, above) and used therefore to evaluate the strength of its complexing ability.

(ii) The system is physically meaningful if (A) the value of the stability constant is positive and (B) the standard error is less than the constant (the t-test should be used as a criterion).

(iii) If data are not significant, it is necessary to use methods based on different physicochemical principles, such as spectrophotometry or nuclear magnetic resonance spectrometry.

(d) *Literature references.* For additional background information on this test guideline the following references should be consulted:

(1) Vogel, A.I., Basset, J. *Vogel's Textbook of Qualitative Inorganic Analysis.* Chapter XIX, 4th Ed. (Wiley: New York, 1978).

(2) Crow, D.R., Westwood, J.V., "The Study of Complexed Metal Ions by Polarographic Methods", *Quarterly Review 19:* 51 (1965).

(3) Irving, H., "The Stability of Metal Complexes and Their Measurement Polarographically," *Advances in Polarography Proceedings of the 2nd International Congress,* Ed. I.S. Langmuir (Pergamon Press, 1960).

(4) Perrin, D.D., Dempsey, B., *Buffer for pH and Metal Ion Controls.* (Chapman and Hall: London, 1974).

(5) "Stability Constants of Metal-ion Complexes," Part B, *Organic Ligands,* Compiled by D.D. Perrin, IUPAC Publication on Chemical Data Series, No. 22 (Pergamon Press, 1979)

(6) Grabaric, B., Tkalcec, M., Piljac, I., Filipovic, I., Simeon, V., "Numerical Evaluation of Complex Stability Constants from Polarographic Data for Quasi-Reversible Processes," *Analytica Chimica Acta 74:* 147, (1975).

(7) Piljac, I., Grabaric, B., Filipovic, I., "Improved Technique for Determination of Stability Constants by Polarographic Method," *Journal of Electroanalytical Chemistry Interfacial Electrochemistry, 42:*433 (1973).

(8) De Ford, D.D., Hume, D.N., "The Determination of Consecutive Formation Constants of Complex Ions from Polarographic Data," *American Chemical Society Journal, 73:*5321 (1951).

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federal register

Friday
September 27, 1985

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions; Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Order 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modification to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Arkansas: AR84–4090	Jan. 13, 1984.
California: CA85–5035	Sept. 6, 1985.
Iowa:	
IA84–4031	May 11, 1984.
IA84–4109	Dec. 21, 1984.
IA84–4042	June 15, 1984.
Kansas:	
KS84–4052	Aug. 24, 1984.
KS84–4053	Do.
KS84–4107	Dec. 14, 1984.
New Jersey:	
NJ85–3031	Aug. 2, 1985.
NJ85–3032	July 19, 1985.
New Mexico: NM85–4014	June 14, 1985.
Nevada: NV84–5014	June 8, 1984.
New York: NY85–3039	July 26, 1985.

Supersedeas Decision to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Iowa: IA82–4044 (IA85–4040).	Aug. 27, 1982.
Maryland: MD85–3052 (MD85–3053).	Sept. 13, 1985.

Signed at Washington, D.C. this 20th day of September 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. AR84-4090
MOD. # 7 (49FR1844 - January 13, 1984)

Garland, Clark & Hot Springs Cos., Arkansas

Change

	Basic Hourly Rates	Fringe Benefits
Bricklayers: Garland & Clark Cos.	$12.95	$1.00
Sprinkler fitters	14.80	3.40

DECISION NO. CA85-5035 - Mod. #1
(50 FR 36519 - September 6, 1985)
Imperial, Inyo, Kern, etc., Counties, CA

Omit:
Electricians:
Area 3:
Alarm Technician

DECISION NO. KS84-4053 - MOD. # 7 - (49FR33784 - August 24, 1984

LEAVENWORTH CO., KANSAS

CHANGE:

	Basic Hourly Rates	Fringe Benefits
PLUMBERS	19.61	2.90
PIPEFITTERS	18.99	3.52
SPRINKLER FITTERS	17.00	3.40

DECISION #IA84-4031-MOD.#1
(49 FR 20228-May 11, 1984)
POTTAWATTAMIE COUNTY, IOWA

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Boilermakers	$17.345	$3.50
Sheet Metal Workers	17.68	1.34
Sprinkler Fitters	17.00	3.40

DECISION #IA84-4109-MOD.#2
(49 FR 49811-Dec. 21, 1984)
SCOTT COUNTY, IOWA

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Boilermakers	$17.345	$3.50
Bricklayers	14.13	2.30
Sprinkler Fitters	17.00	3.40

DECISION #IA84-4042-MOD.#5
(49 FR 24855- June 15, 1984)
WOODBURY COUNTY, IOWA

	Basic Hourly Rates	Fringe Benefits
Cement Masons:		
On projects $750,000 over	$12.80	
On projects over $750,000	14.08	
Laborers:		
Group 1	8.30	$2.36
Group 2	8.45	2.36
Sheet Metal Workers	11.83	2.62

DECISION NO. KS84-4052-
MOD. # 5 - (49FR33780
August 24, 1984

Sedgwick County, Kansas

OMIT: LABORERS (SITE PREPARATION & GRADING: GROUPS 3 & 4 WAGE RATES AND DEFINITIONS

CHANGE:

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$15.88	$3.45
BOILERMAKERS	16.20	3.975
LABORERS (SITE PREPARATION AND GRADING):		
Group 1	6.35	2.30
Group 2	6.60	2.30
LINE CONSTRUCTION		
Lineman	16.97	1.25+3%
Cable Splicers	17.17	1.25+3%
Groundman	10.17	1.25+3%
Powderman	13.97	1.25+3%
Line Truck & Equipment Operators	13.97	1.25+3%
PLASTERERS	14.25	
SPRINKLER FITTERS	17.00	3.40
TILE, MARBLE & TERRAZZO WORKERS	13.70	
TRUCK DRIVERS (SITE PREPARATION & GRADING):		
Group 1	9.40	1.75
Group 2	9.50	1.75
Group 3	9.65	1.75

Change: Laborers (Site Preparation & Grading) Definition for Groups 1 & 2 to Read:
Group 1: Board Mat Weavers & Cable Tiers, Georgia Buggy (Manually operated), Mixerman-No Skip Lift, Salamander Tenders, Track Men, Tractor Swamper, Truck Dumper, Wire Mesh Setter, Water Pump up to 4 inches, and all other general laborers including Flaggers.

Decision #KS84-4052(cont'd)
Laborers Definition Cont'd

Group 2: Air Tool Operators, Cement Handler (Bulk), Chain Saw, Georgia Buggy (Mechanically Operated), Grademan, Hot Mastic Kettleman, Crusher Feeder, Joint Man, Jute Man, Mason Tender, Material Batch Hopper & Scale Man, Mixer Man, Pier Hole Man (Working 10 feet deep) Pipelayer - Drainage (Concrete and/or Corrugated Metal), Signal Man (Crane), Truck Dumper (Dry Batch), Vibrator Operator, Wagon & Churn Drill Operator, Asphalt Raker, Barco Tamper, Concrete Saw, Creosote Material (Handling and Applying), Nozzle Burner (Cutting Torch & Burning Bar), Conduit Pipe, Water and Gas Distribution Line, Tile and Duct Line Setter, Form Setter & Liner on Concrete Paving, Powderman, Sandblasting & Gunite Nozzleman, Sanitary Sewer Pipe Layer, Steel Plate Structure Erectors, Screed Man.

	Basic Hourly Rates	Fringe Benefits
DECISION NO. NJ85-3031 MOD. NO. 6 (50 FR 31459 - August 2, 1985) Bergen, Essex, Hudson (excluding Ellis Island and Statue of Liberty Island), Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union and Warren Counties, New Jersey		
OMIT: LABORERS: ZONE 18: (Heavy & Highway Const.): Group 2 Power Tool Operators		
ADD: LABORERS: ZONE 18: Heavy & Highway Const: Group 1 Flaggers Group 3 Power Tool Operators		
DECISION NO. NJ85-3032 MOD. NO. 5 (50 FR 29594 - July 19, 1985) Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean, and Salem Counties, New Jersey		
ADD: HEAVY & HIGHWAY CONST: LABORERS: ZONE 1 Group 1 Flaggers		

	Basic Hourly Rates	Fringe Benefits
DECISION NO. KS84-4107 - MOD. # 1 - (49FR48881 December 14, 1984) Shawnee Co., Kansas		
CHANGE:		
BRICKLAYERS	$14.89	$1.25
CARPENTERS	12.70	1.80
MILLWRIGHTS	13.70	1.80
SHEET METAL WORKERS	14.68	3.65+ 3%
SOFT FLOOR LAYERS	11.00	1.78+ 10%
SPRINKLER FITTERS	17.00	3.40
TILE SETTERS	15.50	

	Basic Hourly Rates	Fringe Benefits
DECISION NO. NV84-5014 - Mod. #14 (49 FR 23988 - June 8, 1984) Statewide (does not include the Test Range, or Building construction in Churchill, Lyon and Mineral Counties, or Highway construction in Douglas County), Nevada		
Change: Marble Setters: Area 1	$16.59	
Terrazzo Workers; Tile Setters: Area 1	16.59	

	Basic Hourly Rates	Fringe Benefits
DECISION NO. NY85-3039 MOD #1 BROOME & CHENANGO COUNTIES NEW YORK (50 FR 30591 July 26, 1985)		
CHANGE PLUMBERS & STEAMFITTERS	15.75	2.51

	Basic Hourly Rates	Fringe Benefits
DECISION #NM85-4014- MOD. #2 (49 FR 24997- June 14, 1985) Statewide (excluding Eddy and Lea Counties for Building Construction in New Mexico)		
CHANGE: Sprinkler Fitters	$16.66	$3.40

SUPERSEDEAS DECISION

STATE: Iowa
DECISION NO.: IA85-4040
COUNTY: Webster
DATE: Date of Publication
Supersedes Decision No. IA82-4044, dated August 27, 1982 in 47 FR 38032.
DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits
BRICKLAYERS	$11.55	$ 1.77
CARPENTERS	8.84	
CEMENT MASONS	8.31	
ELECTRICIANS	10.10	1.30
IRONWORKERS	10.59	
LABORERS	5.79	
PAINTERS	6.00	
PLUMBERS & PIPEFITTERS	12.74	3.15
ROOFERS	$ 6.87	
SHEET METAL WORKERS	8.54	.86
SOFT FLOOR LAYERS	7.44	
SPRINKLER FITTERS	17.00	3.4

WELDERS: receive rate prescribed for craft performing operation to which the welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii).

SUPERSEDEAS DECISION

STATE: MARYLAND
COUNTIES: ALLEGANY AND GARRETT
DECISION NO.: MD85-3053
DATE: DATE OF PUBLICATION
Supersedes Decision No. MD85-3052 dated September 13, 1985 in 50 FR 37475

DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	16.45	5.72
BOILERMAKERS	18.90	3.75
BRICKLAYERS, MARBLE MASONS		
STONE MASONS, TERRAZZO		
WORKERS, & TILE SETTERS	15.34	1.55
CARPENTERS	14.41	3.84
CEMENT MASONS & PLASTERERS	16.43	1.50
ELECTRICIANS:		
Allegany & Garrett (East of Rt. 219 at the Lake)	15.00	3.50+ 3.75%
Garrett County (West of Rt. 219 at the Lake)	15.40	3.50+ 3.75%
ELEVATOR CONSTRUCTORS:		
Elevator Constructors	16.46	3.29+ a&b
Elevator Constructors' Helpers	11.53	3.29+ a&b
Elevator Constructors' Probationary Helpers	8.235	
GLAZIERS	13.44	3.98
IRONWORKERS:		
Structural, Ornamental, & Reinforcing	15.60	3.55
LABORERS:		
Water Boy	10.33	3.70
Laborer, landscape worker, tool checker, dumpman, spotter, handyman	10.61	3.70
Power tool operator, mason & plaster tender, mortar mixer by hand, scaffold builder, mortar mixer by machine, hod carrier, concrete puddler rammer, grade checker, tamper, pipelayer, asbestos worker, burner, large wacker	10.78	3.70
Blaster/dynamite, air track driller, diamond bit driller	11.03	3.70
Tunnel workers: caisson, driller, mucker, laborer	11.63	3.70
Gunnite workers: nozzlemen, gun operator, laborer on scaffold, laborer on ground	10.78	3.70
LATHERS	9.25	.36
LINEMEN-Allegany and Garrett (East of Rt. 219)		
Linemen	14.20	2.20+ 3.75%
Equipment Operator	13.49	2.20+ 3.75%
Truck Driver & Groundmen	9.23	2.20+ 3.75%
LINEMEN-Garrett County (West of Rt. 219)		
Linemen	14.60	2.20+ 3.75%
Equipment Operator	13.89	2.20+ 3.75%
Truck Driver & Groundmen	9.63	2.20+ 3.75%
MILLWRIGHTS	14.92	3.84
PAINTERS:		
Group I		
Brush, wall covering hangers, installation of seamless type floors, use of flame burning and power tools	11.20	.50
Spray, roller, and sandblasting	12.20	.50
Toxic materials-brush and roller	11.70	.50
Toxic materials-spray	12.70	.50

DECISION NO.: MD85-3053

	Basic Hourly Rates	Fringe Benefits
PAINTERS (Continued):		
Group II		
Brush, roller, wall covering hangers, installation of seamless type floors	12.60	.50
Spray, sandblasting, use of flame burning and power tools	13.60	.50
Toxic materials-brush and roller		
Toxic materials-spray	14.10	.50
Group III		
Brush, wall covering hangers, installation of seamless type floors	13.60	.50
Spray, roller, sandblasting, use of flame burning and power tools	14.60	.50
Epoxy materials-brush	14.10	.50
Epoxy materials-roller and spray	15.10	.50
Group IV	13.10	.50
PILEDRIVERMEN	14.84	3.84
PLUMBERS & STEAMFITTERS	15.10	3.23
POWER EQUIPMENT OPERATORS		
Group I	15.88	3.30+c
Hourly additional pay for long boom cranes (including jibs), pile driver machines with leads:		
130' to 169' plus $ .40		
170' to 209' plus .60		
210' to 249' plus .80		
250' to 299' plus 1.00		
300' & over plus 1.25		
Group II	15.31	3.30+c
Group III	14.72	3.30+c
Group IV	14.25	3.30+c
Group V	13.74	3.30+c
Group VI	13.26	3.30+c
ROOFERS:		
Composition	12.15	2.25
Mopmen-composition	12.40	2.25
Slaters	12.30	2.25
SHEET METAL WORKERS	16.28	2.42
SPRINKLER FITTERS	16.90	2.40
TRUCK DRIVERS:		
Group I	11.95	3.45
Group II	12.17	3.45
Group III	12.45	3.45
Group IV	12.70	3.45
Group V	13.04	3.45
Group VI	13.39	3.45
Group VII	13.75	3.45

FOOTNOTES:
a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.
b. Employer contributes 6% of basic hourly rate for under 5 years of service and 8% of basic hourly rate for over 5 years of service as Vacation Pay Credit.
c. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day.

DECISION NO.: MD85-305

PAINTERS DEFINITIONS

Group I - Residential and Commercial Work - schools, college dormitories, churches, retail and wholesale outlet stores, apartment buildings, hospitals, banks, residential structures, and buildings of a like nature.

Group II - Light Industrial Work - new construction and remodeling in existing manufacturing plants, including repaint work in all areas not defined as hazardous, or over 50 feet in height.

Group III - Heavy Industrial and Hazardous Work - new industrial buildings under construction, power plants, hydro-electric plants, or any type of electric generating facility, boiler houses, and all other industrial work over 50 feet in height.

Group V - Dry Wall Work (finishing and taping)

DECISION NO.: MD85-3053

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

Group I - Operators handling or setting steel, stone, pre-stressed concrete or machine. Tower Cranes.

Group II - Backfiller, backhoe, concrete mixing plants, batching plants, cable way, derrick, derrick boat, dragline, elevating grader, compressors (2 or more), space heaters, hoist (2 active drums or more), pile driving machine, power crane, power shovel, standard guage locomotive, trenching machine, tunnel mucking machine, shirley rig, certified welders, concrete paver, double concrete pump, front end loader (over 2 yds.), over welders top scale (more than 6, another man), Elimco type overhead loader, wellpoint systems, mighty midget with compressor, equipment foreman, twin engine scraper (25 yds. & over), mechanic, mechanic's welder, grader, all bulldozer, tire maintenance trucks.

Group III - Tractor with attachments (2 or more).

Group IV - Concrete mixer, concrete pump, one drum hoist, narrow guage locomotive, power roller, asphalt spreader, pumps (not exceeding 4), well drill, engine driven welders (not exceeding 4), single compressors (over 210 CFM), steam hammer, pile extractor, conveyor, stone crusher, hi-lift, excavating scoop, front end loader (up to & including 2 yds.), finishing machine, bull float, longitudinal float, screeding machine, concrete spreader, sub grader.

Group V - Fireman, truck crane oiler, wheel tractor, grease truck operator.

Group VI - Oiler, greaser, mechanic's helper, (singe compressor over 180 CFM and up to 210 CFM).

TRUCK DRIVERS CLASSIFICATION DEFINITIONS

Group I - Dumpmen.

Group II - Pick-ups, dump trucks (under 5 yds., capacity), straight trucks.

Group III - Helpers, panel trucks, straight trucks with multiple axle, dumpsters (under 5 yds. capacity), Transit mix, dumps (5 to 9 yds. capacity), flatbody material trucks (straight jobs), greasers, tiremen, mechanics' helpers, rubber-tired (towing & pushing flatbody vehicles), form trucks, dispatcher, yardmen.

Group IV - Dump trucks (10 to 15 yds. capacity).

Group V - Dump trucks (over 15 yds. capacity), button and end dump euclids, all other euclid type trucks, turnarockers, ross carriers, athey wagons, mechanics, semi-trailers or tractor-trailers, low boys, asphalt distributors, agitator mixer, dumpcretes or batch trucks, specialized earth moving equipment, off-highway tandem back-dump, twin engine equipment & double hitched equipment (where not self-loaded).

Group VI - All equipment listed in Group V over 49 tons to 59 tons.

Group VII - All equipment listed in Group V over 59 tons.

[FR Doc. 85-22919 Filed 9-26-85; 8:45 am]

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Friday
September 27, 1985

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Plant Taxa for Listing as Endangered or Threatened Species; Notice of Review

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Plant Taxa for Listing as Endangered or Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: The Service issues an updated notice of vascular plant taxa native to the United States that are being reviewed for possible addition to the List of Endangered and Threatened Plants under the Endangered Species Act of 1973, as amended. Changes from previous notices primarily involve additions of taxa to and deletions of taxa from active consideration, changes in category for candidate taxa, and additions and deletions in State distributions. While it is prudent to take candidate taxa into account in environmental planning, none of the substantive or procedural provisions of the Act apply to a species that is designated as a candidate for listing.

DATE: Comments are requested until further notice.

ADDRESSES: Interested persons or organizations should submit comments to the appropriate Regional Director(s) below or to: Director (OES), 500 Broyhill Building, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Comments and materials relating to this notice are available for public inspection by appointment during usual business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia.

Information relating to particular taxa may be obtained from the Endangered Species Coordinator(s) in the appropriate Service Regional Office(s) listed below:

Region 1.—California, Hawaii, Idaho, Nevada, Oregon, Washington, and Pacific territories
Regional Director (ARD/FA), U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 N.E. Multnomah Street, Portland, Oregon 97232, Telephone: 503/231–6131 (FTS: 8/429–6131);

Region 2.—Arizona, New Mexico, Oklahoma, and Texas
Regional Director (ARD/AFF), U.S. Fish and Wildlife Service, 500 Gold Avenue, S.W., Albuquerque, New Mexico 87103, Telephone: 505/766–3972 (FTS: 8/474–3972);

Region 3.—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin
Regional Director (ARD/AFF), U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111, Telephone: 612/725–3276 (FTS: 8/725–3276);

Region 4.—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands.
Regional Director (ARD/FA), U.S. Fish and Wildlife Service, The Richard B. Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303, Telephone: 404/221–3583 (FTS: 8/242–3583);

Region 5.—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia
Regional Director (ARD/FA), U.S. Fish and Wildlife Service, Suite 700, One Gateway Center, Newton Corner, Massachusetts 02158, Telephone: 617/965–5100, ext. 316 (FTS: 8/829–9316, 7, 8);

Region 6.—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming
Regional Director (ARD/FA), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225, Telephone: 303/236–7398 (FTS: 8/776–7398);

Region 7.—Alaska
Regional Director (ARD/AFF), U.S. Fish and Wildlife Service, 1101 East Tudor Road, Anchorage, Alaska 99503, Telephone: 907/786–3435 (FTS: 8/907/786–3435).

FOR FURTHER INFORMATION CONTACT: Endangered Species Coordinator(s) in the appropriate Regional Office(s), or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, Telephone: 703/235–2771 (FTS: 8/235–2771).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (Act), requires the Service to identify species of wildlife and plants that are endangered or threatened, based on the best available scientific and commercial data. Recognizing a special need to focus on the conservation of endangered and threatened plants, which had not previously been eligible for Federal protection, the 1973 Act directed the Secretary of the Smithsonian Institution to prepare a report on endangered and threatened plant species and to recommend necessary conservation measures. The Smithsonian report, published as House Document No. 94–51, included a list of more than 3,000 native taxa. The Service published a notice on July 1, 1975 (40 FR 27823), in which it announced that this report had been accepted as a petition under the terms of the Act, and that the taxa named in the report and notice were being reviewed for possible inclusion in the List of Endangered and Threatened Plants.

A revision of the Smithsonian's report was published in 1978 as a book: E.S. Ayensu and R.A. DeFilipps, *Endangered and Threatened Plants of the United States*, Smithsonian Institution and World Wildlife Fund, Washington, D.C.; this revision was also accepted as a petition for the taxa newly included therein (48 FR 6752). The July 1975 notice was superseded on December 15, 1980, by the Service's publication in the **Federal Register** (45 FR 82479) of a new comprehensive notice of review for native plants, which took into account the Smithsonian petitions and other accumulated information (*Endangered Species Technical Bulletin*, January, 1981). A petition on one additional species (*Serianthes nelsonii*) was accepted in the February 15, 1983, **Federal Register** (48 FR 6752). On November 28, 1983 (48 FR 53640), the Service published a supplement to its 1980 notice, noting changes in the status of various taxa.

Present Notice

This notice reflects the Service's current judgment of the possible vulnerability of all native candidate plant taxa. Taxa in the notice are assigned to several status categories, noted in the "Status" column of the table. Unlike previous plant notices, this one lists all taxa in one table, with coded entries to indicate current category. The codes are explained below:

LE—Taxa formally listed as endangered.

LE—Taxa formally listed as threatened.

PE—Taxa proposed to be formally listed as endangered.

PT—Taxa proposed to be formally listed as threatened.

S—Synonyms.

1—Taxa for which the Service currently has on file substantial information on biological vulnerability and threat(s) to support the

appropriateness of proposing to list them as endangered or threatened species. Presently, data are being gathered concerning precise habitat needs and, for some of the taxa, concerning the precise boundaries for critical habitat designations. Development and publication of proposed rules on these taxa are anticipated, but, because of the large number of such taxa, could take some years.

Also included in category 1 are taxa whose status in the recent past is known, but that may already have become extinct. These plants may retain a high priority for addition to the List, subject to the confirmation of extant populations. Such possibly extinct taxa are indicated by an asterisk (*). Double asterisks (**) indicate taxa believed to be extinct in the wild, but known to be extant in cultivation.

2—Taxa for which information now in possession of the Service indicates that proposing to list them as endangered or threatened species is possibly appropriate, but for which substantial data on biological vulnerability and threat(s) are not currently known or on file to support the immediate preparation of rules. Such taxa that are are possibly extinct are again indicated by an asterisk (*). Taxonomically questionable taxa that are believed extinct in the wild, but are extant in cultivation, are marked by double asterisks (**). Further biological research and field study usually will be necessary to ascertain the status of the taxa in category 2, and some of the taxa are of uncertain taxonomic validity. It is likely that some of these will not warrant listing, while others will be found to be in greater danger of extinction than some taxa in category 1. It is hoped that this notice will encourage necessary research on vulnerability, taxonomy, and/or threats for these taxa. To organize and elaborate status information that may be submitted, contributors are encouraged to use the status report guidelines of Henifin *et al.*, pages 261–282 in L.E. Morse and M.S. Henifin, editors, *Rare Plant Conservation*, 1981, the New York Botanical Garden, Bronx, New York; copies of these guidelines are available from the Service.

3—Taxa that are no longer being considered for listing as threatened or endangered species. Such taxa are further coded to indicate three subcategories, depending on the reason(s) for removal from consideration.

3A—Taxa for which the Service has persuasive evidence of extinction. If rediscovered, however, such taxa might acquire high priority for listing. At this time, the best available information indicates that the taxa included in this subcategory, or the habitats from which they were known, are in fact extinct or destroyed, respectively.

3B—Names that, on the basis of current taxonomic understanding, usually as represented in published revisions and monographs, do not represent taxa meeting the Act's definition of "species." Such supposed taxa could be reevaluated in the future on the basis of subsequent research.

3C—Taxa that have proven to be more abundant or widespread than was previously believed and/or those that are not subject to any identifiable threat. Should further research or changes in land use indicate significant decline in any of these taxa, they may be reevaluated for possible inclusion in category 1 or 2.

The taxa in categories 1 and 2 of this notice are candidates for possible addition to the List of Endangered and Threatened Plants. The Service encourages their consideration in environmental planning, such as in environmental impact analysis under the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500–1508). Information regarding the range, status, and habitat needs of such species is available from the Service's Regional Offices (see "ADDRESSES" above) to assist in such planning.

The Service hereby requests that further information on the vulnerable taxa named in this notice be submitted as soon as possible and on a continuing basis. Especially sought are data for our files—

(1) Indicating that a taxon would more properly be assigned to a category other than the one in which it appears;

(2) Nominating a taxon not included;

(3) Recommending an area as critical habitat for a candidate taxon, or indicating that proposal of critical habitat would not be prudent for a taxon;

(4) Documenting threats to any of the included taxa;

(5) Informing the Service of the intensity and immediacy of threats to any of the taxa;

(6) Pointing out taxonomic or nomenclatural changes for any of the taxa;

(7) Suggesting appropriate common names; or

(8) Noting errors, such as any in the indicated historic distributions.

The Service intends to consider all information received in response to this notice, to amend the contents of categories 1, 2, and 3 to reflect current knowledge concerning affected plant taxa, and to indicate its intentions with regard to future listing actions (in accord with 50 CFR 424.15). Substantive changes will be announced by periodic supplemental or revised notices in the Federal Register.

Summary of Status Categories

For ease of reference, numerical totals for taxa included in the various status categories are provided below:

LE—88
LT—25
PE—25
PT—3
1—894
  1*—177
  1**—4
2—1623
  2*—27
  2**—1
3—1414
  3A—60
  3B—310
  3C—1044

Relationship To Petition Requirements

All candidate plant taxa (those in category 1 or 2 of this notice) are treated as under petition for listing, and this notice initiates the review of status required by section 4(b)(3)(A) of the Act, as amended in 1982.

Organization of Table

The following table is arranged alphabetically by names of genera and species. Synonyms have been provided when necessary to avoid confusion. In some cases, taxa have been included that have not yet been formally described in the scientific literature. Such taxa are identified by a generic name followed by "SP. (SSP., VAR.) NOV./INED." Following the scientific name of each species (subspecies, variety) are a family designation and any common name. Known historical ranges are given on the right for all included taxa, usually indicated by abbreviations for States. Some taxa may no longer occur in some of the areas shown. For each taxon, the assigned status category appears on the left.

This notice was prepared by Dr. John J. Fay in the Service's Office of Endangered Species in Washington (703/235–1975; FTS 8/235–1975), from evaluations by appropriate staff botanists or biologists in the Washington Office and in the Service's Endangered Species Program in Regional Offices and Field Stations. The Service gratefully acknowledges the computer assistance of Dr. Larry E. Morse, The Nature Conservancy, Arlington, Virginia, and Dr. John Nagy, Brookhaven National Laboratory, Upton, New York, in compiling the lists of taxa.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: September 20, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

BILLING CODE 4310-55-M

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
S		ABAMA AMERICANUM	*** SEE ***	NARTHECIUM AMERICANUM	
S		ABAMA MONTANA	*** SEE ***	NARTHECIUM AMERICANUM	
2		ABIES FRASERI	PINACEAE	FIR, FRASER	GA NC TN VA
1		ABRONIA ALPINA	NYCTAGINACEAE	SAND-VERBENA, ALPINE	CA
3C		ABRONIA BIGELOVII	NYCTAGINACEAE		NM
1		ABRONIA MACROCARPA	NYCTAGINACEAE		TX
[illegible]		ABRONIA ORBICULATA	NYCTAGINACEAE		NV
2		ABRONIA UMBELLATA SSP. ACUTALATA	NYCTAGINACEAE	SAND-VERBENA, ROSE-PURPLE	WA
2		ABRONIA UMBELLATA SSP. BREVIFLORA	NYCTAGINACEAE		CA OR
[illegible]		ABUTILON CONMUTATUM	MALVACEAE	TERCIOPELO	PR
1	*	ABUTILON EREMITOPETALUM	MALVACEAE	ABUTILON, HIDDEN-PETALED	HI
S		ABUTILON MARSHII	*** SEE ***	ALLOWISSADULA HOLOSERICEA	
PE		ABUTILON MENZIESII	MALVACEAE	KO'OLOA 'ULA	HI
1		ABUTILON SANDWICENSE	MALVACEAE		HI
2		ABUTILON VIRGINIANUM	MALVACEAE		PR VI, British V.I.
[illegible]		ACACIA EMORYANA	FABACEAE	ACACIA, EMORY	TX
1		ACACIA KOAIA	FABACEAE	KOA OHA	HI
1		ACAENA EXIGUA	ROSACEAE	LILI-WAI	HI
2		ACANTHOMINTHA ILICIFOLIA	LAMIACEAE	THORN-MINT, SAN DIEGO	CA, Mexico
LE		ACANTHOMINTHA OBOVATA SSP. DUTTONII	LAMIACEAE	THORN-MINT, SAN MATEO	CA
3C		ACER GRANDIDENTATUM VAR. SINUOSUM	ACERACEAE		TX
1	*	ACHYRANTHES ATOLLENSIS	AMARANTHACEAE		HI
3A		ACHYRANTHES MUTICA	AMARANTHACEAE		HI
[illegible]		ACHYRANTHES NELSONII	AMARANTHACEAE		HI
[illegible]		ACHYRANTHES SPLENDENS VAR. REFLEXA	AMARANTHACEAE		HI
S		ACHYRANTHES SPLENDENS VAR. ROTUNDATA	*** SEE ***	ACHYRANTHES ROTUNDATA	HI
3C		ACHYRANTHES SPLENDENS VAR. SPLENDENS	AMARANTHACEAE		HI
2		ACLEISANTHES CRASSIFOLIA	NYCTAGINACEAE		TX, Mexico
LT		ACONITUM NOVEBORACENSE	RANUNCULACEAE	MONKSHOOD, WILD, NORTHERN	IA NY OH WI
S		ACTINEA HERBACEA	*** SEE ***	HYMENOXYS ACAULIS VAR. GLABRA	
S		ACTINELLA DEPRESSA	*** SEE ***	HYMENOXYS DEPRESSA	
S		ACTINOSTACHYS GERMANII	*** SEE ***	SCHIZAEA GERMANII	
1		ADENOPHORUS PERIENS	POLYPODIACEAE	FERN, PENDANT KIHI	HI
1	*	AERVA SERICEA	AMARANTHACEAE		HI
2		AESCHYNOMENE VIRGINICA	FABACEAE	JOINT-VETCH, SENSITIVE	DE MD NJ NC PA VA
1		AGALINIS ACUTA	SCROPHULARIACEAE	GERARDIA, SANDPLAIN	CT MA NY RI
2		AGALINIS AURICULATA	SCROPHULARIACEAE	FOXGLOVE, FALSE, AURICULATE	IL IN KS MI MN MO OH OK TN WI
1	*	AGALINIS CADDOENSIS	SCROPHULARIACEAE		LA
2		AGALINIS PSEUDAPHYLLA	SCROPHULARIACEAE		AL MS TN
2		AGALINIS PURPUREA VAR. CARTERI	SCROPHULARIACEAE		FL
2	*	AGALINIS STENOPHYLLA	SCROPHULARIACEAE	FALSE FOXGLOVE,	FL
3C		AGASTACHE CUSICKII	LAMIACEAE		ID NV OR
3C		AGASTACHE PARVIFOLIA	LAMIACEAE	AGASTACHE, SMALL-LEAVED	CA
LE		AGAVE ARIZONICA	LILIACEAE	AGAVE, ARIZONA	AZ
S		AGAVE CHISOSENSIS	*** SEE ***	AGAVE GLOMERULIFERA	
2		AGAVE EGGERSIANA	LILIACEAE		VI
2		AGAVE GLOMERULIFERA	LILIACEAE		TX
3C		AGAVE MCKELVEYANA	LILIACEAE		AZ
2		AGAVE PARVIFLORA	LILIACEAE		AZ
2		AGAVE SCHOTTII VAR. TRELEASEI	LILIACEAE		AZ
3C		AGAVE TOUMEYANA VAR. BELLA	LILIACEAE		AZ
3C		AGAVE UTAHENSIS VAR. EBORISPINA	LILIACEAE		CA NV
3C		AGAVE UTAHENSIS VAR. KAIBABENSIS	LILIACEAE		AZ
3C		AGAVE UTAHENSIS VAR. NEVADENSIS	LILIACEAE		CA NV
S		AGERATINA SHASTENSIS	*** SEE ***	EUPATORIUM SHASTENSE	
2		AGRIMONIA INCISA	ROSACEAE		FL MS SC
2		AGROSTIS ARISTIGLUMIS	POACEAE	BENT GRASS, AWNED	CA
2		AGROSTIS BLASDALEI VAR. BLASDALEI	POACEAE	BENT GRASS, BLASDALE'S	CA
2		AGROSTIS BLASDALEI VAR. MARINENSIS	POACEAE	BENT GRASS, MARIN	CA
2		AGROSTIS CLIVICOLA VAR. CLIVICOLA	POACEAE	BENT GRASS, COASTAL BLUFF	CA
2		AGROSTIS CLIVICOLA VAR. PUNTA-REYESENSIS	POACEAE	BENT GRASS, POINT REYES	CA
S		AGROSTIS HENDERSONII	*** SEE ***	AGROSTIS MICROPHYLLA VAR. HENDERSONII	
3C		AGROSTIS HOWELLII	POACEAE		OR
2		AGROSTIS MICROPHYLLA VAR. HENDERSONII	POACEAE	BENT GRASS, HENDERSON'S	CA OR
2		AGROSTIS ROSSIAE	POACEAE	BENT GRASS, ROSS	WY
S		AJANIA SENJAVINENSIS	*** SEE ***	ARTEMISIA SENJAVINENSIS	
1		ALECTRYON MACROCOCCUM	SAPINDACEAE	MAHOE,	HI
3C		ALECTRYON MAHOE	SAPINDACEAE	MAHOE,	HI
3C		ALETES FILIFOLIUS	APIACEAE		NM TX
2		ALETES HUMILIS	APIACEAE		[illegible]
[illegible]		ALLIONIA CRISTATA	NYCTAGINACEAE		AZ
1		ALLIUM AASEAE	LILIACEAE	ONION, AASE	ID
2		ALLIUM DICTUON	LILIACEAE	ONION, BLUE MOUNTAIN	WA
2		ALLIUM DOUGLASII VAR. CONSTRICTUM	LILIACEAE		[illegible]
2		ALLIUM FIMBRIATUM VAR. MUNZII	LILIACEAE	ONION, MUNZ'S	CA
1		ALLIUM GOODDINGII	LILIACEAE		AZ NM
1		ALLIUM HICKMANII	LILIACEAE	ONION, HICKMAN'S	CA
2		ALLIUM HOFFMANII	LILIACEAE	ONION, BEEGUM	[illegible]
3C		ALLIUM MADIDUM	LILIACEAE		ID OR
2		ALLIUM OXYPHILUM	LILIACEAE		VA WV
[illegible]		ALLIUM PASSEYI	LILIACEAE	ONION, PASSEY'S	UT
3C		ALLIUM PERDULCE VAR. BPERRYI	LILIACEAE		TX

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
3B		ALLIUM PLEIANTHUM	LILIACEAE		OR
3C		ALLIUM ROBINSONII	LILIACEAE		OR WA
1		ALLIUM SANBORNII VAR. TUOLUMNENSE	LILIACEAE		CA
3C		ALLIUM SCILLOIDES	LILIACEAE		WA
2		ALLIUM SPECULAE	LILIACEAE		AL
3C		ALLIUM TOLMIEI VAR. PERSIMILE	LILIACEAE		ID
3C		ALLIUM YOSEMITENSE	LILIACEAE	ONION, YOSEMITE	CA
3C		ALLOWISSADULA HOLOSERICEA	MALVACEAE		TX
3C		ALNUS MARITIMA	BETULACEAE	ALDER, SEASIDE	DE MD OK
2		ALOPECURUS AEQUALIS VAR. SONOMENSIS	POACEAE	ALOPECURUS, SONOMA	CA
3C		ALPHITONIA PONDEROSA	RHAMNACEAE	KAUILA	HI
1		ALSINODENDRON OBOVATUM	CARYOPHYLLACEAE		HI
1		ALSINODENDRON TRINERVE	CARYOPHYLLACEAE		HI
1	*	ALSINODENDRON VISCOSUM	CARYOPHYLLACEAE		HI
2		ALSOPHILA BROOKSII	CYATHEACEAE		PR, Cuba, Hispaniola
1		ALSOPHILA DRYOPTEROIDES	CYATHEACEAE		PR
1		AMARANTHUS BROWNII	AMARANTHACEAE		HI
2		AMARANTHUS PUMILUS	AMARANTHACEAE	PIGWEED, SEA-BEACH	DE MA MD NC NJ NY RI SC VA
1		AMBROSIA CHEIRANTHIFOLIA	ASTERACEAE	RAGWEED,	TX Mexico
2		AMBROSIA LINEARIS	ASTERACEAE		CO
2		AMBROSIA PUMILA	ASTERACEAE	AMBROSIA, SAN DIEGO	CA
3C		AMMOBROMA SONORAE	LENNOACEAE	SANDFOOD	AZ CA Mexico
3C		AMOREUXIA WRIGHTII	COCHLOSPERMACEAE		TX Mexico
3B		AMORPHA BRACHYCARPA	FABACEAE		MD
LE		AMORPHA CRENULATA	FABACEAE	LEAD-PLANT, CRENULATE	FL
1		AMORPHA OUACHITENSIS	FABACEAE	FALSE INDIGO,	AR OK
2		AMORPHA ROEMERANA	FABACEAE		TX
S		AMORPHA TEXANA	*** SEE ***	AMORPHA ROEMERANA	TX
2		AMPHIANTHUS PUSILLUS	SCROPHULARIACEAE	AMPHIANTHUS, LITTLE	AL GA SC
2		AMSINCKIA CARINATA	BORAGINACEAE		OR
2		AMSINCKIA FURCATA	BORAGINACEAE		CA
LE		AMSINCKIA GRANDIFLORA	BORAGINACEAE	FIDDLENECK, LARGE-FLOWERED	CA
2		AMSINCKIA VERNICOSA	BORAGINACEAE		CA
S		AMSINCKIA VERNICOSA VAR. FURCATA	*** SEE ***	AMSINCKIA FURCATA	
2		AMSONIA GLABERRIMA	APOCYNACEAE		TX
2		AMSONIA GRANDIFLORA	APOCYNACEAE		AZ, Mexico
1		AMSONIA KEARNEYANA	APOCYNACEAE		AZ
2		AMSONIA LUDOVICIANA	APOCYNACEAE	BLUE-STAR, LOUISIANA	LA MS
3C		AMSONIA PALMERI	APOCYNACEAE		AZ
2		AMSONIA PEEBLESII	APOCYNACEAE		AZ
3C		AMSONIA REPENS	APOCYNACEAE		TX
2		AMSONIA TABERNAEMONTANA VAR. GATTINGERI	APOCYNACEAE		TN
1		AMSONIA THARPII	APOCYNACEAE		TX
LE		ANCISTROCACTUS TOBUSCHII	CACTACEAE	FISHHOOK CACTUS, TOBUSCH	TX
3C		ANDRACHNE ARIDA	EUPHORBIACEAE		TX
3C		ANDROPOGON ARCTATUS	POACEAE	BEARD GRASS,	AL FL
3C		ANEMONE EDWARDSIANA VAR. EDWARDSIANA	RANUNCULACEAE		TX
2		ANEMONE EDWARDSIANA VAR. PETRAEA	RANUNCULACEAE		TX
3C		ANEMONE MINIMA	RANUNCULACEAE	ANEMONE,	VA WV
3C		ANEMONE OREGANA VAR. FELIX	RANUNCULACEAE		OR [illegible]
3C		ANGELICA CALLII	APIACEAE	ANGELICA, CALL'S	CA
1		ANGELICA SCABRIDA	APIACEAE		NV
3C		ANGELICA WHEELERI	APIACEAE		UT
2		ANGURIA COOKIANA	CUCURBITACEAE	ALGODONCILLO	PR
3C		ANODA ABUTILOIDES	MALVACEAE	FALSE INDIAN-MALLOW	AZ, Mexico
S		ANODA PYGMAEA	*** SEE ***	FRYXELLIA PYGMAEA	
2		ANTENNARIA ARCUATA	ASTERACEAE	PUSSYTOES, MEADOW	ID NV WY
2		ANTENNARIA AROMATICA	ASTERACEAE		WY
1		ANTENNARIA SOLICEPS	ASTERACEAE		NV
3C		ANTENNARIA SUFFRUTESCENS	ASTERACEAE	EVERLASTING, EVERGREEN	CA [illegible]
2		ANTHERICUM CHANDLERI	LILIACEAE		TX, Mexico
3B		ANTIDESMA CRENATUM	EUPHORBIACEAE		HI
2		ANTIRHEA PORTORICENSIS	RUBIACEAE	QUINA	PR
3C		ANTIRRHINUM SUBCORDATUM	SCROPHULARIACEAE	SNAPDRAGON, DIMORPHIC	CA
3C		APACHERIA CHIRICAHUENSIS	CROSSOSOMATACEAE		AZ [illegible]
2		APHANISMA BLITOIDES	CHENOPODIACEAE		CA
1		APIOS PRICEANA	FABACEAE	POTATO-BEAN (GROUNDNUT), PRICE'S	AL IL KY MS TN
S		APLOPAPPUS SALICINUS	*** SEE ***	HAPLOPAPPUS SALICINUS	
2		APOCYNUM JONESII	APOCYNACEAE	DOGBANE, JONES'	AZ
S		AQUILEGIA AUSTRALIS	*** SEE ***	AQUILEGIA CANADENSIS VAR. AUSTRALIS	
3C		AQUILEGIA BARNEBYI	RANUNCULACEAE		CO UT
3B		AQUILEGIA CAERULEA VAR. DAILEYAE	RANUNCULACEAE		CO
2		AQUILEGIA CANADENSIS VAR. AUSTRALIS	RANUNCULACEAE	COLUMBINE, CANADIAN,	FL
3C		AQUILEGIA CHAPLINEI	RANUNCULACEAE	COLUMBINE,	NM TX
3C		AQUILEGIA CHRYSANTHA VAR. RYDBERGII	RANUNCULACEAE	COLUMBINE,	AZ CO NM
3C		AQUILEGIA DESERTORUM	RANUNCULACEAE		AZ
2		AQUILEGIA HINCKLEYANA	RANUNCULACEAE	COLUMBINE, HINCKLEY'S	TX
3C		AQUILEGIA JONESII	RANUNCULACEAE	COLUMBINE, JONES'	MT WY, Canada (Alta.
3C		AQUILEGIA LARAMIENSIS	RANUNCULACEAE	COLUMBINE, LARAMIE	WY
3B		AQUILEGIA LONGISSIMA	RANUNCULACEAE	COLUMBINE, LONG SPUR	Mexico
2	*	AQUILEGIA MICRANTHA VAR. MANCOSANA	RANUNCULACEAE	COLUMBINE,	CO
3C		AQUILEGIA SAXIMONTANA	RANUNCULACEAE		CO

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
3C		ARABIS ACULEOLATA	BRASSICACEAE		CA OR
3C		ARABIS BLEPHAROPHYLLA	BRASSICACEAE	ROCK CRESS, COAST	CA
2		ARABIS BREWERI VAR. AUSTINIAE	BRASSICACEAE		CA
2		ARABIS BREWERI VAR. PECUNIARIA	BRASSICACEAE	ROCK CRESS, SAN BERNARDINO	CA
2		ARABIS CONSTANCEI	BRASSICACEAE	ROCK CRESS, CONSTANCE'S	CA
3C		ARABIS CRANDALLII	BRASSICACEAE		CO WY
3C		ARABIS DEMISSA VAR. LANGUIDA	BRASSICACEAE	ROCK CRESS, DAGGETT,	UT WY
3C		ARABIS DEMISSA VAR. RUSSEOLA	BRASSICACEAE	ROCK CRESS, DAGGETT,	CO UT WY
3C		ARABIS DISPAR	BRASSICACEAE		CA NV
3B		ARABIS FRUCTICOSA	BRASSICACEAE	ROCK CRESS, FRUIT	WY
2		ARABIS GEORGIANA	BRASSICACEAE		AL GA
3C		ARABIS GRACILIPES	BRASSICACEAE		AZ
3C		ARABIS GUNNISONIANA	BRASSICACEAE	ROCK CRESS,	CO
1	*	ARABIS HOFFMANNII	BRASSICACEAE	ROCK CRESS, HOFFMANN'S	CA
1		ARABIS JOHNSTONII	BRASSICACEAE	ROCK CRESS, JOHNSTON'S	CA
2		ARABIS KOEHLERI VAR. KOEHLERI	BRASSICACEAE	ROCK CRESS, KOEHLER'S	[illegible]
2		ARABIS KOEHLERI VAR. STIPITATA	BRASSICACEAE		OR
LE		ARABIS MCDONALDIANA	BRASSICACEAE	ROCK CRESS, MCDONALD'S	CA
2		ARABIS MISSOURIENSIS VAR. DEAMII	BRASSICACEAE		IN MI MO WI
3C		ARABIS MODESTA	BRASSICACEAE	ROCK CRESS, MODEST	CA OR
3C		ARABIS OREGANA	BRASSICACEAE		CA OR
3C		ARABIS OXYLOBULA	BRASSICACEAE	ROCK CRESS,	CO
2		ARABIS PARISHII	BRASSICACEAE	ROCK CRESS, PARISH'S	CA
1	*	ARABIS PERSTELLATA VAR. AMPLA	BRASSICACEAE	ROCK CRESS, LARGE	TN
1		ARABIS PERSTELLATA VAR. PERSTELLATA	BRASSICACEAE	ROCK CRESS, SMALL	AL KY
3C		ARABIS PETIOLARIS	BRASSICACEAE		TX
2		ARABIS PINZLIAE	BRASSICACEAE	ROCKCRESS, PINZL'S	CA
2		ARABIS PUSILLA	BRASSICACEAE		WY
3C		ARABIS PYGMAEA	BRASSICACEAE		CA
2		ARABIS SEROTINA	BRASSICACEAE		VA WV
2		ARABIS SERPENTINICOLA	BRASSICACEAE		CA OR
3C		ARABIS SHOCKLEYI	BRASSICACEAE	ROCK CRESS, SHOCKLEY'S	CA NV UT
2*		ARABIS SP. NOV. /INED.	BRASSICACEAE	ROCK CRESS (GRAY KNOLLS, UINTAH CO.)	UT
2		ARABIS SP. NOV. /INED. (DEL NORTE, CURRY COS.)	BRASSICACEAE		CA OR
3C		ARABIS SP. NOV. /INED. (JONES HOLE, UINTA CO.)	BRASSICACEAE	ROCK CRESS (JONES HOLE, UINTAH CO.)	UT
2		ARABIS SUFFRUTESCENS VAR. HORIZONTALIS	BRASSICACEAE		OR
S		ARABIS SUFFRUTESCENS VAR. PERSTYLOSA	*** SEE ***	ARABIS CONSTANCEI	
2		ARABIS WILLIAMSII	BRASSICACEAE		NV
3C		ARCEUTHOBIUM APACHENSE	LORANTHACEAE		AZ
2		ARCTOMECON CALIFORNICA	PAPAVERACEAE	DESERT-POPPY,	AZ NV
LE		ARCTOMECON HUMILIS	PAPAVERACEAE	BEAR-POPPY, DWARF	UT
3C		ARCTOMECON MERRIAMII	PAPAVERACEAE	DESERT-POPPY,	CA NV
S		ARCTOSTAPHYLOS ANDERSONII VAR. PALLIDA	*** SEE ***	ARCTOSTAPHYLOS PALLIDA	
3C		ARCTOSTAPHYLOS AURICULATA	ERICACEAE	MANZANITA, MT. DIABLO	CA
S		ARCTOSTAPHYLOS BAKERI	*** SEE ***	ARCTOSTAPHYLOS PUNGENS SSP. BAKERI	
2		ARCTOSTAPHYLOS CATALINAE	ERICACEAE	MANZANITA, SANTA CATALINA ISLAND	CA
2		ARCTOSTAPHYLOS CONFERTIFLORA	ERICACEAE	MANZANITA, SANTA ROSA ISLAND	CA
3C		ARCTOSTAPHYLOS CRUZENSIS	ERICACEAE	MANZANITA, ARROYO DE LA CRUZ	CA
S		ARCTOSTAPHYLOS DENSIFLORA	*** SEE ***	ARCTOSTAPHYLOS UVA-URSI VAR. DENSIFLORA	
S		ARCTOSTAPHYLOS EDMUNDSII VAR. EDMUNDSII	*** SEE ***	ARCTOSTAPHYLOS UVA-URSI SSP. EDMUNDSII	
S		ARCTOSTAPHYLOS EDMUNDSII VAR. PARVIFOLIA	*** SEE ***	ARCTOSTAPHYLOS UVA-URSI VAR. PARVIFOLIA	
3B		ARCTOSTAPHYLOS GLANDULOSA SSP. CRASSIFOLIA	ERICACEAE	MANZANITA, EASTWOOD	CA
2		ARCTOSTAPHYLOS GLUTINOSA	ERICACEAE	MANZANITA, SCHREIBER'S	CA
3C		ARCTOSTAPHYLOS HISPIDULA	ERICACEAE		CA OR
S		ARCTOSTAPHYLOS HOOKERI SSP. FRANCISCANA	*** SEE ***	ARCTOSTAPHYLOS UVA-URSI VAR. FRANCISCANA	
S		ARCTOSTAPHYLOS HOOKERI SSP. HEARSTIORUM	*** SEE ***	ARCTOSTAPHYLOS UVA-URSI VAR. HEARSTIORUM	
S		ARCTOSTAPHYLOS HOOKERI SSP. MONTANA	*** SEE ***	ARCTOSTAPHYLOS PUNGENS SSP. MONTANA	
LE		ARCTOSTAPHYLOS HOOKERI SSP. RAVENII	ERICACEAE	MANZANITA, RAVEN'S (PRESIDIO)	CA
1		ARCTOSTAPHYLOS IMBRICATA	ERICACEAE	MANZANITA, SAN BRUNO MOUNTAIN	CA
3B		ARCTOSTAPHYLOS INTRICATA VAR. OBLONGIFOLIA	ERICACEAE		CA OR
2		ARCTOSTAPHYLOS KLAMATHENSIS	ERICACEAE		CA
3C		ARCTOSTAPHYLOS LUCIANA	ERICACEAE	MANZANITA, SANTA LUCIA	CA
S		ARCTOSTAPHYLOS MONTANA	*** SEE ***	ARCTOSTAPHYLOS PUNGENS SSP. MONTANA	
2		ARCTOSTAPHYLOS MONTARAENSIS	ERICACEAE	MANZANITA, MONTARA	CA
3C		ARCTOSTAPHYLOS MONTEREYENSIS	ERICACEAE	MANZANITA, MONTERREY	CA
1		ARCTOSTAPHYLOS MORROENSIS	ERICACEAE	MANZANITA, MORRO	CA
S		ARCTOSTAPHYLOS MYRTIFOLIA	*** SEE ***	ARCTOSTAPHYLOS UVA-URSI SSP. MYRTIFOLIA	
3C		ARCTOSTAPHYLOS NISSENANA	ERICACEAE		CA
2		ARCTOSTAPHYLOS OTAYENSIS	ERICACEAE	MANZANITA, OTAY	CA
S		ARCTOSTAPHYLOS PACIFICA	*** SEE ***	ARCTOSTAPHYLOS UVA-URSI VAR. SAXICOLA	
2		ARCTOSTAPHYLOS PALLIDA	ERICACEAE	MANZANITA, ALAMEDA	CA
3C		ARCTOSTAPHYLOS PECHOENSIS	ERICACEAE	MANZANITA, PECHO	CA
2		ARCTOSTAPHYLOS PILOSULA SSP. PILOSULA	ERICACEAE	MANZANITA, SANTA MARGARITA	CA
S		ARCTOSTAPHYLOS PUMILA	*** SEE ***	ARCTOSTAPHYLOS UVA-URSI SSP. PUMILA	
2		ARCTOSTAPHYLOS PUNGENS SSP. BAKERI	ERICACEAE	MANZANITA, BAKER'S	CA
2		ARCTOSTAPHYLOS PUNGENS SSP. MONTANA	ERICACEAE	MANZANITA, TAMALPAIS	CA
3C		ARCTOSTAPHYLOS REFUGIOENSIS	ERICACEAE	MANZANITA, REFUGIO	CA
2		ARCTOSTAPHYLOS RUDIS	ERICACEAE		CA
2		ARCTOSTAPHYLOS SILVICOLA	ERICACEAE	MANZANITA, SILVER-LEAVED	CA

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
S		ARCTOSTAPHYLOS STANFORDIANA SSP. HISPIDULA	*** SEE ***	ARCTOSTAPHYLOS HISPIDULA	
2		ARCTOSTAPHYLOS UVA-URSI SSP. EDMUNDSII	ERICACEAE	MANZANITA, LITTLE SUR	CA
1		ARCTOSTAPHYLOS UVA-URSI SSP. MYRTIFOLIA	ERICACEAE	MANZANITA, IONE	CA
2		ARCTOSTAPHYLOS UVA-URSI SSP. PUMILA	ERICACEAE	MANZANITA, SANDMAT	CA
1		ARCTOSTAPHYLOS UVA-URSI VAR. DENSIFLORA	ERICACEAE	MANZANITA, VINE HILL	CA
1	**	ARCTOSTAPHYLOS UVA-URSI VAR. FRANCISCANA	ERICACEAE	MANZANITA, SAN FRANCISCO	CA
2		ARCTOSTAPHYLOS UVA-URSI VAR. HEARSTIORUM	ERICACEAE	MANZANITA, HEARST'S	CA
1	**	ARCTOSTAPHYLOS UVA-URSI VAR. LEOBREWERI	ERICACEAE	MANZANITA, LEO BREWER'S	CA
2		ARCTOSTAPHYLOS UVA-URSI VAR. MARINENSIS	ERICACEAE	MANZANITA, PT. REYES	CA
2		ARCTOSTAPHYLOS UVA-URSI VAR. MONOENSIS	ERICACEAE	MANZANITA, MONO	CA
3C		ARCTOSTAPHYLOS UVA-URSI VAR. PARVIFOLIA	ERICACEAE	MANZANITA, HANGING GARDENS	CA
1		ARCTOSTAPHYLOS UVA-URSI VAR. SAXICOLA	ERICACEAE	MANZANITA, PACIFIC	CA
-		ARCTOSTAPHYLOS UVA-URSI VAR. SUBORBICULATA	ERICACEAE	MANZANITA, KAMCHATKA POINT	CA
2		ARCTOSTAPHYLOS VIRGATA	ERICACEAE	MANZANITA, BOLINAS	CA
2		ARENARIA ALABAMENSIS	CARYOPHYLLACEAE	SANDWORT, ALABAMA	AL NC
1		ARENARIA CUMBERLANDENSIS	CARYOPHYLLACEAE		TN
S		ARENARIA DECUMBENS	*** SEE ***	MINUARTIA DECUMBENS	
1		ARENARIA FONTINALIS	CARYOPHYLLACEAE	STITCHWORT, WATER	KY TN
2		ARENARIA FRANKLINII VAR. THOMPSONII	CARYOPHYLLACEAE		OR WA
S		ARENARIA GODFREYI	*** SEE ***	MINUARTIA GODFREYI	
3C		ARENARIA HOWELLII	CARYOPHYLLACEAE	SANDWORT, HOWELL'S	CA OR
1		ARENARIA KINGII SSP. ROSEA	CARYOPHYLLACEAE		NV
2		ARENARIA LIVERMORENSIS	CARYOPHYLLACEAE	SANDWORT, LIVERMORE	TX
2		ARENARIA MACRADENIA VAR. KUSCHEI	CARYOPHYLLACEAE	SANDWORT, FOREST CAMP	CA
S		ARENARIA MARCESCENS	*** SEE ***	MINUARTIA MARCESCENS	
2		ARENARIA PALUDICOLA	CARYOPHYLLACEAE		CA MA
S		ARENARIA ROSEI	*** SEE ***	MINUARTIA ROSEI	
3C		ARENARIA STENOMERES	CARYOPHYLLACEAE		NV
S		ARENARIA UNIFLORA	*** SEE ***	MINUARTIA UNIFLORA	
2		ARENARIA URSINA	CARYOPHYLLACEAE	SANDWORT, BEAR VALLEY	CA
2		ARGEMONE ARIZONICA	PAPAVERACEAE		AZ
2		ARGEMONE GLAUCA VAR. INERMIS	PAPAVERACEAE		HI
2		ARGEMONE MUNITA SSP. ROBUSTA	PAPAVERACEAE	PRICKLY-POPPY, ROBUST	CA
1		ARGEMONE PLEIACANTHA SSP. PINNATISECTA	PAPAVERACEAE	PRICKLY-POPPY,	NM
1		ARGYROXIPHIUM KAUENSE	ASTERACEAE	SILVERSWORD, KA'U	HI
S		ARGYROXIPHIUM MACROCEPHALUM	*** SEE ***	ARGYROXIPHIUM SANDWICENSE VAR. MACROCEPHALUM	HI
PE		ARGYROXIPHIUM SANDWICENSE VAR. SANDWICENSE	ASTERACEAE	'AHINAHINA (MAUNA KEA SILVERSWORD)	HI
1		ARGYROXIPHIUM VIRESCENS VAR. VIRESCENS	ASTERACEAE	GREENSWORD	HI
2		ARGYTHAMNIA APHOROIDES	EUPHORBIACEAE	MERCURY, WILD,	TX
3C		ARGYTHAMNIA ARGYRAEA	EUPHORBIACEAE	MERCURY, WILD,	TX
2		ARGYTHAMNIA BLODGETTII	EUPHORBIACEAE		FL
1		ARISTIDA FLORIDANA	POACEAE	TRIPLE-AWNED GRASS,	FL
2		ARISTIDA PORTORICENSIS	POACEAE	PELOS DEL DIABLO	PR
2		ARISTIDA SIMPLICIFLORA	POACEAE		AL FL MS
3C		ARNICA AMPLEXICAULIS VAR. PIPERI	ASTERACEAE		OR WA
2		ARNICA PANICULATA	ASTERACEAE		WY
3C		ARNICA VENOSA	ASTERACEAE	ARNICA, VEINY	CA
3C		ARNICA VISCOSA	ASTERACEAE	ARNICA, SHASTA	CA OR
2		ARTEMISIA ALEUTICA	ASTERACEAE	WORMWOOD, ALEUTIAN	AK
S		ARTEMISIA ANDROSACEA	*** SEE ***	ARTEMISIA SENJAVINENSIS	
2		ARTEMISIA ARGILOSA	ASTERACEAE	SAGEBRUSH, COALTOWN	CO
2		ARTEMISIA CAMPESTRIS VAR. WORMSKIOLDII	ASTERACEAE		OR WA
3C		ARTEMISIA CANA SSP. BOLANDERI	ASTERACEAE		CA
2		ARTEMISIA LUDOVICIANA SSP. ESTESII	ASTERACEAE		OR
3C		ARTEMISIA PAPPOSA	ASTERACEAE		ID NV OR
3C		ARTEMISIA PORTERI	ASTERACEAE	SAGEBRUSH, PORTER	WY
2		ARTEMISIA SENJAVINENSIS	ASTERACEAE	SAGE, ARCTIC	AK, U.S.S.R.
3B		ARTEMISIA SP.	ASTERACEAE	ARTEMISIA (KAIHOLENA GULCH, LANAI)	HI
2		ARTEMISIA UNALASKENSIS VAR. ALEUTICA	ASTERACEAE		AK
S		ASARUM CONTRACTA	*** SEE ***	HEXASTYLIS CONTRACTA	
S		ASARUM LEWISII	*** SEE ***	HEXASTYLIS LEWISII	
S		ASARUM NANIFLORA	*** SEE ***	HEXASTYLIS NANIFLORA	
2		ASCLEPIAS CUTLERI	ASCLEPIADACEAE	MILKWEED, CUTLER	AZ UT
2		ASCLEPIAS EASTWOODIANA	ASCLEPIADACEAE	MILKWEED, EASTWOOD'S	NV
2		ASCLEPIAS MEADII	ASCLEPIADACEAE	MILKWEED, MEAD'S	IL IN IA KS MO MI
2		ASCLEPIAS PROSTRATA	ASCLEPIADACEAE		TX MEXICO
3C		ASCLEPIAS RUTHIAE	ASCLEPIADACEAE	MILKWEED, RUTH	UT
2		ASCLEPIAS VIRIDULA	ASCLEPIADACEAE		FL
PE		ASCLEPIAS WELSHII	ASCLEPIADACEAE		UT
S		ASIMINA PULCHELLA	*** SEE ***	DEERINGOTHAMNUS PULCHELLUS	
S		ASIMINA RUGELII	*** SEE ***	DEERINGOTHAMNUS RUGELII	
1		ASIMINA TETRAMERA	ANNONACEAE	PAWPAW,	FL
2		ASPLENIUM ANDREWSII	POLYPODIACEAE		AZ CO UT
3B		ASPLENIUM EBENOIDES	POLYPODIACEAE	SPLEENWORT, SCOTT'S	AL CT IL NJ OH PA TN VA WV
1	*	ASPLENIUM FRAGILE VAR. INSULARIS	POLYPODIACEAE		HI
2		ASPLENIUM HETERORESILIENS	POLYPODIACEAE		FL GA NC SC
3B		ASPLENIUM KENTUCKIENSE	POLYPODIACEAE	SPLEENWORT,	AR IL IN KY OH VA
1	*	ASPLENIUM LEUCOSTEGIOIDES	POLYPODIACEAE		HI

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
2		ASPLENIUM PLENUM	POLYPODIACEAE		FL
[illegible]		ASPLENIUM RHOMBOIDEUM	*** SEE ***	ASPLENIUM FRAGILE VAR. INSULARIS	
S		ASPLENOSORUS EBENOIDES	*** SEE ***	ASPLENIUM EBENOIDES	
3C		ASTELIA VERATROIDES SSP. MACROSPERMA	LILIACEAE	PA 'INIU	HI
3C		ASTELIA VERATROIDES VAR. GRACILIS	LILIACEAE	PA 'INIU	HI
3C		ASTELIA VERATROIDES VAR. VERATROIDES	LILIACEAE	PA 'INIU	HI
1		ASTER AVITUS	ASTERACEAE		[illegible] SC
2		ASTER BLEPHAROPHYLLUS	ASTERACEAE		[illegible]
3B		ASTER BRACHYPHOLIS	ASTERACEAE		FL
3C		ASTER BRICKELLIOIDES	ASTERACEAE		CA OR
3B		ASTER CHASEI	ASTERACEAE		IL
S		ASTER CHILENSIS SSP. HALLII	*** SEE ***	ASTER HALLII	
2		ASTER CHILENSIS VAR. LENTUS	ASTERACEAE	ASTER, SUISUN	CA
2		ASTER CURTUS	ASTERACEAE	ASTER, CURTUS	OR WA, Canada (B.C.)
2		ASTER DEPAUPERATUS	ASTERACEAE	ASTER, SERPENTINE	[illegible] PA
S		ASTER ERICOIDES VAR. DEPAUPERATUS	*** SEE ***	ASTER DEPAUPERATUS	
2		ASTER FURCATUS	ASTERACEAE		[illegible] IL IN IA MO [illegible]
3C		ASTER GLAUCESCENS	ASTERACEAE		[illegible]
2		ASTER GORMANII	ASTERACEAE	ASTER, GORMAN	[illegible]
3C		ASTER GREATAI	ASTERACEAE		CA
3C		ASTER HALLII	ASTERACEAE		OR [illegible]
2		ASTER JESSICAE	ASTERACEAE		ID [illegible]
1		ASTER LEMMONII	ASTERACEAE		[illegible]
2		ASTER MOLLIS	ASTERACEAE		MT [illegible]
[illegible]		ASTER PALUDICOLA	ASTERACEAE		[illegible] [illegible]
3C		ASTER PEIRSONII	ASTERACEAE	ASTER, PEIRSON'S	CA
3B		ASTER PINIFOLIUS	ASTERACEAE	ASTER,	AL FL
3B		ASTER PLUMOSUS	ASTERACEAE		FL
3C		ASTER PUNICEUS VAR. SCABRICAULIS	ASTERACEAE		TX
3B		ASTER SANDWICENSIS	ASTERACEAE	ASTER, HAWAIIAN	HI
[illegible]		ASTER SCABRICAULIS	*** SEE ***	ASTER PUNICEUS VAR. SCABRICAULIS	
2		ASTER SCHISTOSUS	ASTERACEAE		VA
2		ASTER SPINULOSUS	ASTERACEAE		FL
3B		ASTER VERUTIFOLIUS	ASTERACEAE		[illegible]
2		ASTER VIALIS	ASTERACEAE		[illegible]
2		ASTER YUKONENSIS	ASTERACEAE	ASTER, YUKON	AK, Canada (Yukon)
1	*	ASTILBE CRENATILOBA	SAXIFRAGACEAE		TN
3C		ASTRAGALUS ACCUMBENS	FABACEAE		[illegible]
3C		ASTRAGALUS ACKERMANNII	FABACEAE		NV
2		ASTRAGALUS AEQUALIS	FABACEAE		NV
1	*	ASTRAGALUS AGNICIDUS	FABACEAE		CA
3C		ASTRAGALUS ALTUS	FABACEAE		[illegible]
3C		ASTRAGALUS ALVORDENSIS	FABACEAE		[illegible] [illegible]
3C		ASTRAGALUS AMNIS-AMISSI	FABACEAE	MILK-VETCH,	ID
2		ASTRAGALUS AMPULLARIUS	FABACEAE	MILK-VETCH, GUMBO	[illegible] UT
[illegible]		ASTRAGALUS ANSERINUS	FABACEAE		NV UT
2		ASTRAGALUS APPLEGATEI	FABACEAE		[illegible]
2		ASTRAGALUS ATRATUS VAR. INSEPTUS	FABACEAE	MILK-VETCH,	ID
3C		ASTRAGALUS BARNEBYI	FABACEAE	MILK-VETCH, BARNEBY	AZ UT
[illegible]		ASTRAGALUS BARRII	FABACEAE		[illegible]
3C		ASTRAGALUS BEATHII	FABACEAE	MILK-VETCH, BEATH	AZ
1		ASTRAGALUS BEATLEYAE	FABACEAE	MILK-VETCH, BEATLEY	NV
2		ASTRAGALUS BRAUNTONII	FABACEAE	MILK-VETCH, BRAUNTON'S	CA
3C		ASTRAGALUS CALLITHRIX	FABACEAE	MILK-VETCH, CALLOWAY	NV UT
3C		ASTRAGALUS CALYCOSUS VAR. MONOPHYLLIDIUS	FABACEAE		NV
[illegible]		ASTRAGALUS CAMPTOPUS	FABACEAE		ID
S		ASTRAGALUS CASTANEIFORMIS VAR. CONSOBRINUS	*** SEE ***	ASTRAGALUS CONSOBRINUS	
3C		ASTRAGALUS CASTETTERI	FABACEAE	MILK-VETCH, CASTETTER	[illegible]
3C		ASTRAGALUS CERAMICUS VAR. APUS	FABACEAE		ID
3C		ASTRAGALUS CHLOODES	FABACEAE	MILK-VETCH, GRASS	UT
3C		ASTRAGALUS CIMAE VAR. CIMAE	FABACEAE	RATTLEWEED, CIMA	CA NV
3C		ASTRAGALUS CIMAE VAR. SUFFLATUS	FABACEAE		CA
[illegible]		ASTRAGALUS CLARIANUS	FABACEAE	MILK-VETCH, NAPA	CA
2		ASTRAGALUS COLLINUS VAR. LAURENTII	FABACEAE		[illegible]
[illegible]		ASTRAGALUS COLUMBIANUS	FABACEAE	MILK-VETCH, COLUMBIA	WA
3C		ASTRAGALUS CONSOBRINUS	FABACEAE		UT
3C		ASTRAGALUS CONVALLARIUS VAR. FINITIMUS	FABACEAE		UT NV
3C		ASTRAGALUS COTTAMII	FABACEAE	MILK-VETCH, COTTAM	AZ UT
[illegible]		ASTRAGALUS COTTONII	FABACEAE		WA
1		ASTRAGALUS CREMNOPHYLAX VAR. CREMNOPHYLAX	FABACEAE	MILK-VETCH, SENTRY	AZ
3C		ASTRAGALUS CREMNOPHYLAX VAR. MYRIORRHAPHIS	FABACEAE		AZ
2		ASTRAGALUS CRONQUISTII	FABACEAE	MILK-VETCH, CRONQUIST	[illegible] UT
2		ASTRAGALUS DEANEI	FABACEAE	MILK-VETCH, DEANE	CA
2		ASTRAGALUS DEBEQUAEUS	FABACEAE		CO
2		ASTRAGALUS DESERETICUS	FABACEAE	MILK-VETCH, DESERET	UT
S		ASTRAGALUS DESPERATUS VAR. CONSPECTUS	*** SEE ***	ASTRAGALUS BARNEBYI	
3C		ASTRAGALUS DETERIOR	FABACEAE	MILK-VETCH, CLIFF-PALACE	[illegible]
3C		ASTRAGALUS DETRITALIS	FABACEAE	MILK-VETCH, DEBRIS	[illegible] UT
[illegible]		ASTRAGALUS DIAPHANUS	FABACEAE		[illegible] [illegible]
[illegible]		ASTRAGALUS DOUGLASII VAR. PERSTRICTUS	FABACEAE	MILK-VETCH, ROUND-PODDED	CA

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
3C		ASTRAGALUS DRABELLIFORMIS	FABACEAE		WY
3C		ASTRAGALUS DUCHESNENSIS	FABACEAE	MILK-VETCH, DUCHESNE	CO UT
3C		ASTRAGALUS ENSIFORMIS	FABACEAE		AZ UT
1		ASTRAGALUS EQUISOLENSIS	FABACEAE	MILK-VETCH,	UT
2		ASTRAGALUS FUNEREUS	FABACEAE	WOOLY POD, BLACK	CA NV
2		ASTRAGALUS GEYERI VAR. TRIQUETRUS	FABACEAE		AZ NV
2		ASTRAGALUS GYPSODES	FABACEAE	MILK-VETCH, GYPSUM	NM TX
2		ASTRAGALUS HAMILTONII	FABACEAE	MILK-VETCH, HAMILTON	UT
2		ASTRAGALUS HARRISONII	FABACEAE	MILK-VETCH, HARRISON	UT
3C		ASTRAGALUS HENRIMONTANENSIS	FABACEAE		UT
2		ASTRAGALUS HOLMGRENIORUM	FABACEAE		AZ UT
3C		ASTRAGALUS HOODIANUS	FABACEAE		OR WA
LE		ASTRAGALUS HUMILLIMUS	FABACEAE	MILK-VETCH, MANCOS	CO NM
3C		ASTRAGALUS ISELYI	FABACEAE	MILK-VETCH, ISELY	UT
2		ASTRAGALUS JAEGERIANUS	FABACEAE	MILK-VETCH, COOLGARDIE	CA
2		ASTRAGALUS JEJUNUS SSP. NOV. /INED.	FABACEAE		NV
3C		ASTRAGALUS JOHANNIS-HOWELLII	FABACEAE		CA NV
2	*	ASTRAGALUS KENTROPHYTA VAR. DOUGLASII	FABACEAE	MILK-VETCH, THISTLE, DOUGLAS	OR WA
2		ASTRAGALUS KNIGHTII	FABACEAE		NM
3C		ASTRAGALUS LANCEARIUS	FABACEAE		AZ UT
S		ASTRAGALUS LAURENTII	*** SEE ***	ASTRAGALUS COLLINUS VAR. LAURENTII	
3C		ASTRAGALUS LENTIFORMIS	FABACEAE		CA
2		ASTRAGALUS LENTIGINOSUS VAR. AMBIGUUS	FABACEAE		AZ
2		ASTRAGALUS LENTIGINOSUS VAR. ANTONIUS	FABACEAE		CA
3B		ASTRAGALUS LENTIGINOSUS VAR. CHARTACEUS	FABACEAE		CA CO ID OR UT NV
1		ASTRAGALUS LENTIGINOSUS VAR. COACHELLAE	FABACEAE		CA
3C		ASTRAGALUS LENTIGINOSUS VAR. LATUS	FABACEAE		NV
3C		ASTRAGALUS LENTIGINOSUS VAR. MARICOPAE	FABACEAE		AZ
1		ASTRAGALUS LENTIGINOSUS VAR. MICANS	FABACEAE	MILK-VETCH, SHINY	CA
1		ASTRAGALUS LENTIGINOSUS VAR. PISCINENSIS	FABACEAE		CA
3C		ASTRAGALUS LENTIGINOSUS VAR. POHLII	FABACEAE	MILK-VETCH,	UT
1		ASTRAGALUS LENTIGINOSUS VAR. SESQUIMETRALIS	FABACEAE		CA NV
2		ASTRAGALUS LENTIGINOSUS VAR. SIERRAE	FABACEAE		CA
2	*	ASTRAGALUS LENTIGINOSUS VAR. URSINUS	FABACEAE	MILK-VETCH, BEAR VALLEY	UT
3C		ASTRAGALUS LIMNOCHARIS VAR. LIMNOCHARIS	FABACEAE		UT
2		ASTRAGALUS LINIFOLIUS	FABACEAE	MILK-VETCH, GRAND JUNCTION	CO UT
3C		ASTRAGALUS LOANUS	FABACEAE	MILK-VETCH,	UT
3C		ASTRAGALUS LUTOSUS	FABACEAE		CO UT
2		ASTRAGALUS MAGDALENAE VAR. PEIRSONII	FABACEAE	MILK-VETCH, PEIRSON'S	CA
3C		ASTRAGALUS MALACOIDES	FABACEAE	MILK-VETCH, KAIPAROWITS	UT
2		ASTRAGALUS MICROCYMBUS	FABACEAE	MILK-VETCH,	CO
3B		ASTRAGALUS MINTHORNIAE VAR. GRACILIOR	FABACEAE		UT
2		ASTRAGALUS MISELLUS VAR. PAUPER	FABACEAE	MILK-VETCH, PAUPER	NM
2		ASTRAGALUS MOHAVENSIS VAR. HEMIGYRUS	FABACEAE	MILK-VETCH, DARWIN MESA	CA NV
2		ASTRAGALUS MOLLISSIMUS VAR. MARCIDUS	FABACEAE		TX
1		ASTRAGALUS MONOENSIS	FABACEAE		CA
PE		ASTRAGALUS MONTII	FABACEAE	MILK-VETCH, HELIOTROPE	UT
3C		ASTRAGALUS MONUMENTALIS	FABACEAE		AZ NM UT
2		ASTRAGALUS MULFORDIAE	FABACEAE		ID OR
2		ASTRAGALUS MUSIMONUM	FABACEAE		AZ NV
3C		ASTRAGALUS NATURITENSIS	FABACEAE	MILK-VETCH, NATURITA	CO
2		ASTRAGALUS NEVINII	FABACEAE	MILK-VETCH, SAN CLEMENTE ISLAND	CA
3C		ASTRAGALUS NIDULARIUS	FABACEAE		UT
3C		ASTRAGALUS NYENSIS	FABACEAE	MILK-VETCH,	NV
2		ASTRAGALUS ONICIFORMIS	FABACEAE		ID
3C		ASTRAGALUS OOCALYCIS	FABACEAE		CO NM
2		ASTRAGALUS OOCARPUS	FABACEAE	MILK-VETCH, DESCANSO	CA
1		ASTRAGALUS OOPHORUS VAR. CLOKEYANUS	FABACEAE		NV
3C		ASTRAGALUS OOPHORUS VAR. LONCHOCALYX	FABACEAE		NV UT
2		ASTRAGALUS OSTERHOUTII	FABACEAE	MILK-VETCH, OSTERHOUT	CO
3C		ASTRAGALUS PANAMINTENSIS	FABACEAE		CA
3C		ASTRAGALUS PARDALINUS	FABACEAE		UT
3C		ASTRAGALUS PAUPERCULUS	FABACEAE		CA
3C		ASTRAGALUS PAYSONII	FABACEAE		ID NV
2		ASTRAGALUS PECKII	FABACEAE		NM
LT		ASTRAGALUS PERIANUS	FABACEAE	MILK-VETCH, RYDBERG	UT
LT		ASTRAGALUS PHOENIX	FABACEAE	MILK-VETCH, ASH MEADOWS	NV
3C		ASTRAGALUS PORRECTUS	FABACEAE	MILK-VETCH,	NV
3C		ASTRAGALUS PROIMANTHUS	FABACEAE	MILK-VETCH,	NV
3C		ASTRAGALUS PSEUDIODANTHUS	FABACEAE		CA NV
3C		ASTRAGALUS PTEROCARPUS	FABACEAE		NV
3B		ASTRAGALUS PUNICEUS VAR. GERTRUDIS	FABACEAE		NM
3C		ASTRAGALUS PURSHII VAR. OPHIOGENES	FABACEAE	MILK-VETCH,	ID
1	*	ASTRAGALUS PYCNOSTACHYUS VAR. LANOSISSIMUS	FABACEAE	MILK-VETCH, VENTURA MARSH	CA
3C		ASTRAGALUS RAFAELENSIS	FABACEAE	MILK-VETCH, SAN RAFAEL	UT
2		ASTRAGALUS RAVENII	FABACEAE		CA
2		ASTRAGALUS REMOTUS	FABACEAE	MILK-VETCH, SPRING MOUNTAIN	NV
2		ASTRAGALUS ROBBINSII VAR. ALPINIFORMIS	FABACEAE	MILK-VETCH, ROBBINS,	OR
1		ASTRAGALUS ROBBINSII VAR. JESUPI	FABACEAE	MILK-VETCH, ROBBINS,	NH VT
2		ASTRAGALUS ROBBINSII VAR. OCCIDENTALIS	FABACEAE	MILK-VETCH, ROBBINS,	NH
3A		ASTRAGALUS ROBBINSII VAR. ROBBINSII	FABACEAE	MILK-VETCH, ROBBINS,	VT

STATUS	SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
2	ASTRAGALUS SABULOSUS	FABACEAE		UT
3C	ASTRAGALUS SAURINUS	FABACEAE	MILK-VETCH, DINOSAUR	UT
2	ASTRAGALUS SCHMOLLIAE	FABACEAE	MILK-VETCH, SCHMOLL	CO
3C	ASTRAGALUS SERENOI VAR. SORDESCENS	FABACEAE	MILK-VETCH,	NV
3C	ASTRAGALUS SERPENS	FABACEAE	MILK-VETCH,	UT
2	ASTRAGALUS SHEVOCKII	FABACEAE		CA
2	ASTRAGALUS SHULTZIORUM	FABACEAE		NV
3C	ASTRAGALUS SILICEUS	FABACEAE	MILK-VETCH,	[illegible]
2	ASTRAGALUS SINUATUS	FABACEAE	MILK-VETCH, WHITED	WA
2	ASTRAGALUS SOLITARIUS	FABACEAE		NV OR
S	ASTRAGALUS SPALDINGII VAR. TYGHENSIS	*** SEE ***	ASTRAGALUS TYGHENSIS	
2	ASTRAGALUS STERILIS	FABACEAE	MILK-VETCH,	ID OR
S	ASTRAGALUS STOCKSII	*** SEE ***	ASTRAGALUS HENRIMONTANENSIS	
3C	ASTRAGALUS STRIATIFLORUS	FABACEAE	MILK-VETCH, ESCARPMENT	AZ UT
2	ASTRAGALUS SUBCINEREUS VAR. BASALTICUS	FABACEAE		UT
3C	ASTRAGALUS SUBVESTITUS	FABACEAE		CA
2	ASTRAGALUS TEGETARIOIDES	FABACEAE		CA OR
2	ASTRAGALUS TENER VAR. TITI	FABACEAE	RATTLEWEED, COASTAL DUNES	CA
2	ASTRAGALUS TENNESSEENSIS	FABACEAE		AL IL IN TN
2	ASTRAGALUS TEPHRODES VAR. EURYLOBUS	FABACEAE		NV
2	ASTRAGALUS TITANOPHILUS	FABACEAE		AZ
3C	ASTRAGALUS TOQUIMANUS	FABACEAE		NV
2	ASTRAGALUS TRASKIAE	FABACEAE	MILK-VETCH, TRASK'S	CA
3C	ASTRAGALUS TROGLODYTUS	FABACEAE		AZ
3C	ASTRAGALUS TWEEDYI	FABACEAE		OR WA
2	ASTRAGALUS TYGHENSIS	FABACEAE		[illegible]
2	ASTRAGALUS UNCIALIS	FABACEAE	MILK-VETCH,	NV UT
2	ASTRAGALUS VEXILLIFLEXUS VAR. NUBILUS	FABACEAE		ID
3C	ASTRAGALUS WETHERILLII	FABACEAE		CO UT
3C	ASTRAGALUS WITTMANNII	FABACEAE		[illegible]
3C	ASTRAGALUS WOODRUFFII	FABACEAE		UT
1	ASTRAGALUS XIPHOIDES	FABACEAE	MILK-VETCH, GLADIATOR	AZ
2	ASTRAGALUS YODER-WILLIAMSII	FABACEAE	MILK-VETCH, OSGOOD MOUNTAINS	ID NV
3C	ASTRANTHIUM ROBUSTUM	ASTERACEAE		TX
2	ATRIPLEX CANESCENS VAR. GIGANTEA	CHENOPODIACEAE		UT
3C	ATRIPLEX GRIFFITHSII	CHENOPODIACEAE	SALTBUSH, GRIFFITH'S	AZ NM
3C	ATRIPLEX KLEBERGORUM	CHENOPODIACEAE	SALTBUSH, KLEBERG'S	TX
2	ATRIPLEX PATULA SSP. SPICATA	CHENOPODIACEAE		CA
2	ATRIPLEX PLEIANTHA	CHENOPODIACEAE	SALTBUSH,	CO NM UT
1	ATRIPLEX TULARENSIS	CHENOPODIACEAE	SALTBUSH, BAKERSFIELD	CA
2	ATRIPLEX VALLICOLA	CHENOPODIACEAE	SALTBUSH, LOST HILLS	CA
3C	ATRIPLEX WELSHII	CHENOPODIACEAE	SALTBUSH, WELSH	UT
1	AUREOLARIA PATULA	SCROPHULARIACEAE		AL GA KY TN
2	AYENIA LIMITARIS	STERCULIACEAE		TX MEXICO
S	AZALEA AUSTRINUM	*** SEE ***	RHODODENDRON AUSTRINUM	
2	BACCHARIS PLUMMERAE SSP. GLABRATA	ASTERACEAE	BACCHARIS, HOOVER'S	CA
2	BACCHARIS VANESSAE	ASTERACEAE	BACCHARIS, ENCINITIS	CA
2 *	BACOPA SIMULANS	SCROPHULARIACEAE	WATER-HYSSOP, CHICKAHOMINY	VA
2	BACOPA STRAGULA	SCROPHULARIACEAE	WATER-HYSSOP, MAT-FORMING	MD VA
3C	BAHIA BIGELOVII	ASTERACEAE		TX
3C	BALDUINA ATROPURPUREA	ASTERACEAE		FL GA MS SC
3C	BALSAMORHIZA ROSEA	ASTERACEAE		OR WA
2	BALSAMORHIZA SERICEA /SP. NOV. INED.	ASTERACEAE		[illegible]
1	BANARA VANDERBILTII	FLACOURTIACEAE		PR
LE	BAPTISIA ARACHNIFERA	FABACEAE	RATTLEWEED, HAIRY	GA
2	BAPTISIA CALYCOSA VAR. CALYCOSA	FABACEAE		FL
2	BAPTISIA CALYCOSA VAR. HIRSUTA	FABACEAE	WILD INDIGO, HAIRY	FL
S	BAPTISIA HIRSUTA	*** SEE ***	BAPTISIA CALYCOSA VAR. HIRSUTA	
3C	BAPTISIA MEGACARPA	FABACEAE	WILD INDIGO, APALACHICOLA	AL FL
3B	BAPTISIA RIPARIA	FABACEAE	WILD INDIGO,	FL
2	BAPTISIA SIMPLICIFOLIA	FABACEAE		FL
3C	BARTONIA TEXANA	GENTIANACEAE	SCREWSTEM, TEXAS	TX
2	BASIPHYLLAEA ANGUSTIFOLIA	ORCHIDACEAE		PR, Cuba, Hispaniola
2	BATESIMALVA VIOLACEA	MALVACEAE	BAY-MALLOW, PURPLE	TX, Mexico
3C	BENITOA OCCIDENTALIS	ASTERACEAE	BENITOA	CA
2	BENSONIELLA OREGONA	SAXIFRAGACEAE	BENSONIELLA	CA OR
3C	BERBERIS HARRISONIANA	BERBERIDACEAE	BARBERRY,	AZ
3C	BERBERIS HIGGINSIAE	BERBERIDACEAE	BARBERRY, HIGGIN'S	CA
[illegible]	BERBERIS NERVOSA VAR. MENDOCINENSIS	*** SEE ***	MAHONIA NERVOSA VAR. MENDOCINENSIS	
S	BERBERIS NEVINII	*** SEE ***	MAHONIA NEVINII	
[illegible]	BERBERIS PINNATA SSP. INSULARIS	*** SEE ***	MAHONIA PINNATA SSP. INSULARIS	
[illegible]	BERBERIS SONNEI	*** SEE ***	MAHONIA SONNEI	
3C	BERBERIS SWASEYI	BERBERIDACEAE		TX
2	BESSEYA BULLII	SCROPHULARIACEAE		IL IN IA MI MN OH WI
S	BETULA LENTA VAR. UBER	*** SEE ***	BETULA UBER	
LE	BETULA UBER	BETULACEAE	BIRCH, ROUND-LEAF, VIRGINIA	VA
[illegible]	BIDENS ASPLENIOIDES	ASTERACEAE	KO'OKO'OLAU	HI
3C	BIDENS BIDENTOIDES VAR. BIDENTOIDES	ASTERACEAE	BUR-MARIGOLD,	DE NJ NY PA
2	BIDENS BIDENTOIDES VAR. MARIANA	ASTERACEAE	BUR-MARIGOLD, MARYLAND	[illegible]
I	BIDENS CAMPYLOTHECA	ASTERACEAE	BIDENS, CAMPYLOTHECA	HI
3C	BIDENS CERVICATA	ASTERACEAE	KO'OKO'OLAU	HI
[illegible]	BIDENS COARCTATA	ASTERACEAE	BIDENS, MANOA	HI
3C	BIDENS CONJUNCTATA	ASTERACEAE	KO'OKO'OLAU	HI

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
S		BIDENS CTENOPHYLLA	*** SEE ***	BIDENS MICRANTHA SSP. CTENOPHYLLA	
LE		BIDENS CUNEATA	ASTERACEAE	BIDENS, CUNEATE	HI
3B		BIDENS DEGENERI	ASTERACEAE	KO'OKO'OLAU	HI
3B		BIDENS DISTANS	ASTERACEAE	BIDENS, LANAI	HI
3C		BIDENS FORBESII	ASTERACEAE	BIDENS, FORBES	HI
3B		BIDENS GRACILOIDES	ASTERACEAE	BIDENS, MAUNALUA	HI
3C		BIDENS HAWAIIENSIS	ASTERACEAE	KO'OKO'OLAU	HI
3B		BIDENS MACROCARPA VAR. OVATIFOLIA	ASTERACEAE	KO'OKO'OLAU	HI
3B		BIDENS MAGNIDISCA	ASTERACEAE	KO'OKO'OLAU	HI
3C		BIDENS MAUIENSIS	ASTERACEAE	KO'OKO'OLAU	HI
3C		BIDENS MENZIESII VAR. LEPTODONTA	ASTERACEAE	KO'OKO'OLAU	HI
2		BIDENS MICRANTHA SSP. CTENOPHYLLA	ASTERACEAE		HI
1		BIDENS MICRANTHA SSP. KALEALAHA	ASTERACEAE	KO'OKO'OLAU	HI
3B		BIDENS MICRANTHA VAR. CADUCA	ASTERACEAE	KO'OKO'OLAU	HI
3B		BIDENS MICRANTHA VAR. KAALANA	ASTERACEAE	KO'OKO'OLAU	HI
3B		BIDENS MICRANTHA VAR. LACINIATA	ASTERACEAE	KO'OKO'OLAU	HI
1		BIDENS MOLOKAIENSIS	ASTERACEAE	KO'OKO'OLAU	HI
3C		BIDENS NAPALIENSIS	ASTERACEAE	KO'OKO'OLAU	HI
S		BIDENS NEMATOCERA	*** SEE ***	BIDENS WIEBKEI	HI
3B		BIDENS OBTUSILOBA	ASTERACEAE	KO'OKO'OLAU	HI
3C		BIDENS POPULIFOLIA	ASTERACEAE	BIDENS, POPLAR-LEAVED	HI
3B		BIDENS PULCHELLA	ASTERACEAE	KO'OKO'OLAU	HI
3B		BIDENS SALICOIDES	ASTERACEAE	BIDENS, WILLOW-LEAVED	HI
3B		BIDENS SANDWICENSIS VAR. SETOSA	ASTERACEAE	KO'OKO'OLAU	HI
3B		BIDENS SKOTTSBERGII	ASTERACEAE	KO'OKO'OLAU	HI
3B		BIDENS STOKESII	ASTERACEAE	BIDENS, STOKES	HI
3C		BIDENS VALIDA	ASTERACEAE	BIDENS, ROBUST	HI
3C		BIDENS WAIMEANA	ASTERACEAE	KO'OKO'OLAU	HI
1		BIDENS WIEBKEI	ASTERACEAE	KO'OKO'OLAU	HI
2		BLENNOSPERMA BAKERI	ASTERACEAE	BLENNOSPERMA, BAKER'S	CA
2		BLENNOSPERMA NANUM VAR. ROBUSTUM	ASTERACEAE	BLENNOSPERMA, POINT REYES	CA
2		BLOOMERIA HUMILIS	LILIACEAE	GOLDENSTAR, DWARF	CA
3C		BOBEA SANDWICENSIS	RUBIACEAE	'AHAKEA	HI
1		BOBEA TIMONIOIDES	RUBIACEAE	'AHAKEA	HI
1		BOERHAVIA MATHISIANA	NYCTAGINACEAE		TX
S		BOLOPHYTA ALPINA	*** SEE ***	PARTHENIUM ALPINUM	
S		BOLOPHYTA LIGULATA	*** SEE ***	PARTHENIUM LIGULATUM	
S		BOLOPHYTA TETRANEURIS	*** SEE ***	PARTHENIUM TETRANEURIS	
2		BOLTONIA ASTEROIDES VAR. DECURRENS	ASTERACEAE		IL MO
1		BONAMIA GRANDIFLORA	CONVOLVULACEAE		FL
1		BONAMIA MENZIESII	CONVOLVULACEAE		HI
2		BONAMIA OVALIFOLIA	CONVOLVULACEAE		TX MEXICO
3C		BOTHRIOCHLOA EXARISTATA	POACEAE		LA TX
2		BOTRYCHIUM CRENULATUM	OPHIOGLOSSACEAE		[illegible]
2		BOTRYCHIUM PARADOXUM	OPHIOGLOSSACEAE		MT, Canada (Alta.)
2		BOTRYCHIUM PUMICOLA	OPHIOGLOSSACEAE	GRAPE FERN, CRATER LAKE	CA OR
1	*	BOTRYCHIUM SUBBIFOLIATUM	OPHIOGLOSSACEAE	MAKOU	HI
1		BRACHIONIDIUM CILIOLATUM	ORCHIDACEAE		[illegible]
2		BRASSIA CAUDATA	ORCHIDACEAE		FL, Mexico, West Indies, Central America, South America
2		BRAYA HUMILIS SSP. VENTOSA	BRASSICACEAE		[illegible]
3C		BRAYA HUMILIS VAR. LEIOCARPA	BRASSICACEAE		MI VT, Canada
3C		BRAZORIA PULCHERRIMA	LAMIACEAE	BROZOS-MINT, CENTERVILLE	TX
S		BREWERIA GRANDIFLORA	*** SEE ***	BONAMIA GRANDIFLORA	
2		BRICKELLIA BRACHYPHYLLA VAR. HINCKLEYI	ASTERACEAE		TX
2		BRICKELLIA BRACHYPHYLLA VAR. TERLINGUENSIS	ASTERACEAE		TX
2		BRICKELLIA CORDIFOLIA	ASTERACEAE	NEMESIS, FLYR'S	AL FL GA
3C		BRICKELLIA DENTATA	ASTERACEAE		TX
S		BRICKELLIA EUPATORIOIDES VAR. FLORIDANA	*** SEE ***	BRICKELLIA MOSIERI	
3C		BRICKELLIA KNAPPIANA	ASTERACEAE	BRICKELLIA, KNAPP'S	CA NV
3C		BRICKELLIA LEPTOPHYLLA	ASTERACEAE		TX, MEXICO
2		BRICKELLIA MOSIERI	ASTERACEAE		AL FL GA SC
3C		BRICKELLIA SHINERI	ASTERACEAE		TX, Mexico
2		BRICKELLIA VIEJENSIS	ASTERACEAE	BRICKELLIA, SIERRA VIEJA	TX
E		BRIGHAMIA CITRINA	CAMPANULACEAE	ALULA	HI
1		BRIGHAMIA INSIGNIS	CAMPANULACEAE	ALULA	HI
1	*	BRIGHAMIA REMYI	CAMPANULACEAE		HI
1		BRIGHAMIA ROCKII	CAMPANULACEAE	PUA 'ALA	HI
2		BRODIAEA CORONARIA SSP. ROSEA	LILIACEAE	BRODIAEA, INDIAN VALLEY	CA
2		BRODIAEA FILIFOLIA	LILIACEAE	BRODIAEA, THREAD-LEAVED	CA
1		BRODIAEA INSIGNIS	LILIACEAE		[illegible]
2		BRODIAEA KINKIENSIS	LILIACEAE	BRODIAEA, SAN CLEMENTE ISLAND	CA
2		BRODIAEA ORCUTTII	LILIACEAE	BRODIAEA, ORCUTT'S	CA, Mexico
1		BRODIAEA PALLIDA	LILIACEAE	BRODIAEA, CHINESE CAMP	[illegible]
3C		BROMUS TEXENSIS	POACEAE		TX, Mexico
2		BRONGNIARTIA MINUTIFOLIA	FABACEAE	BRONGNIARTIA, LITTLE-LEAF	TX, Mexico
1		BRUNFELSIA PORTORICENSIS	SOLANACEAE		[illegible]
2		BUCKLEYA DISTICHOPHYLLA	SANTALACEAE		NC TN VA
2		BUMELIA THORNEI	SAPOTACEAE	BUCKTHORN,	[illegible]
LE		BUXUS VAHLII	BUXACEAE	BOXWOOD,	PR
2		BYRSONIMA HORNEANA	MALPIGHIACEAE	MARICAO CIMARRON	PR

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
2		BYRSONIMA OPHITICOLA	MALPIGHIACEAE	MARICAO CIMARRON	PR
2		CACALIA DIVERSIFOLIA	ASTERACEAE		AL FL GA
1		CACALIA RUGELIA	ASTERACEAE		NC TN
3C		CAESALPINIA BRACHYCARPA	FABACEAE		TX
2		CAESALPINIA CULEBRAE	FABACEAE	MATO AMARILLO (SMOOTH YELLOW NICKER)	PR
3C		CAESALPINIA DRUMMONDII	FABACEAE		TX, Mexico
3B		CAESALPINIA MONENSIS	FABACEAE	MATO NEGRO (BLACK NICKER)	PR
1		CAESALPINIA PORTORICENSIS	FABACEAE	MATO (BROWN NICKER)	PR
1		CALAMAGROSTIS CAINII	POACEAE		TN
2		CALAMAGROSTIS CRASSIGLUMIS	POACEAE	REED GRASS, THURBER'S	AK CA WA, Canada (B.C.)
2		CALAMAGROSTIS DENSA	POACEAE	REED GRASS, DENSE	CA, Mexico
2		CALAMAGROSTIS FOLIOSA	POACEAE	REED GRASS, LEAFY	CA
3B		CALAMAGROSTIS INEXPANSA VAR. NOVAE-ANGLIAE	POACEAE	REED GRASS, NORTHERN, NEW ENGLAND	ME NH VT
S		CALAMAGROSTIS INSPERATA	*** SEE ***	CALAMAGROSTIS PORTERI SSP. INSPERATA	
3B		CALAMAGROSTIS NUBILA	POACEAE	REED GRASS,	NM
2		CALAMAGROSTIS PERPLEXA	POACEAE	REED GRASS, WOOD	NY
3C		CALAMAGROSTIS PORTERI	POACEAE	REED GRASS,	KY NY NC PA VA WV
2		CALAMAGROSTIS PORTERI SSP. INSPERATA	POACEAE	REED GRASS, OFER HOLLOW	AR MO OH
2		CALAMAGROSTIS TWEEDYI	POACEAE	REED GRASS,	ID MT WA
1		CALAMINTHA ASHEI	LAMIACEAE		FL GA
2		CALAMINTHA DENTATA	LAMIACEAE		FL GA
1		CALAMOVILFA ARCUATA	POACEAE	SAND GRASS,	OK TN
2		CALAMOVILFA BREVIPILIS	POACEAE	SAND GRASS,	NJ NC VA
3B		CALAMOVILFA BREVIPILIS VAR. CALVIPES	POACEAE	SAND GRASS,	VA
2		CALAMOVILFA CURTISSII	POACEAE	SAND GRASS,	FL
3C		CALLIANDRA BIFLORA	FABACEAE	STICK-PEA, TWO-FLOWERED	TX, Mexico
1		CALLICARPA AMPLA	VERBENACEAE	CAPA ROSA	PR VI
2		CALLIRHOE BUSHII	MALVACEAE	POPPY-MALLOW,	AR KS MO OK
S		CALLIRHOE PAPAVER VAR. BUSHII	*** SEE ***	CALLIRHOE BUSHII	
LE		CALLIRHOE SCABRIUSCULA	MALVACEAE	POPPY-MALLOW, TEXAS	TX
2		CALOCHORTUS CLAVATUS SSP. RECURVIFOLIUS	LILIACEAE	MARIPOSA, CRUZ	CA
1		CALOCHORTUS CLAVATUS VAR. AVIUS	LILIACEAE	MARIPOSA, PLEASANT VALLEY	CA
1		CALOCHORTUS COERULEUS VAR. WESTONII	LILIACEAE	MARIPOSA, SHIRLEY MEADOWS	CA
2		CALOCHORTUS DUNNII	LILIACEAE	MARIPOSA, DUNN'S	CA, Mexico
2		CALOCHORTUS EXCAVATUS	LILIACEAE	MARIPOSA, INYO	CA
2		CALOCHORTUS GREENEI	LILIACEAE	MARIPOSA, GREENE'S	CA OR
2		CALOCHORTUS HOWELLII	LILIACEAE		OR
2	*	CALOCHORTUS INDECORUS	LILIACEAE	MARIPOSA,	OR
2		CALOCHORTUS LONGEBARBATUS VAR. LONGEBARBATUS	LILIACEAE	STAR-TULIP, LONG-HAIRED	CA OR WA
2		CALOCHORTUS LONGEBARBATUS VAR. PECKII	LILIACEAE	MARIPOSA-LILY, LONG-BEARDED, PECK'S	OR
1	*	CALOCHORTUS MONANTHUS	LILIACEAE	MARIPOSA, SHASTA RIVER	CA
2		CALOCHORTUS NITIDUS	LILIACEAE		ID WA
2		CALOCHORTUS OBISPOENSIS	LILIACEAE	MARIPOSA, SAN LUIS	CA
2		CALOCHORTUS PERSISTENS	LILIACEAE	MARIPOSA, SISKIYOU	CA
3C		CALOCHORTUS SIMULANS	LILIACEAE		CA
2		CALOCHORTUS STRIATUS	LILIACEAE	MARIPOSA, ALKALI	CA NV
1		CALOCHORTUS TIBURONENSIS	LILIACEAE	MARIPOSA, TIBURON	CA
3C		CALOCHORTUS VENUSTUS VAR. SANGUINEUS	LILIACEAE		CA
2		CALYCADENIA FREMONTII	ASTERACEAE	ROSINWEED, FREMONT'S	CA
2		CALYCADENIA HOOVERI	ASTERACEAE		CA
1		CALYPTRANTHES LUQUILLENSIS	MYRTACEAE		NM
1		CALYPTRANTHES PEDUNCULARIS	MYRTACEAE		PR
2		CALYPTRANTHES THOMASIANA	MYRTACEAE		PR VI
1		CALYPTRANTHES TRIFLORUM	MYRTACEAE		PR
2		CALYPTRIDIUM PULCHELLUM	PORTULACACEAE	PUSSY PAWS, MARIPOSA	CA
1		CALYPTRONOMA RIVALIS	ARECACEAE	PALMA MANACA	PR
2		CALYSTEGIA COLLINA SSP. OXYPHYLLA	CONVOLVULACEAE		CA
2		CALYSTEGIA COLLINA SSP. VENUSTA	CONVOLVULACEAE		CA
2		CALYSTEGIA MACROSTEGIA SSP. AMPLISSIMA	CONVOLVULACEAE		CA
2		CALYSTEGIA PEIRSONII	CONVOLVULACEAE	MORNING-GLORY, PEIRSON'S	CA
2		CALYSTEGIA STEBBINSII	CONVOLVULACEAE	MORNING-GLORY, STEBBINS'	CA
2		CALYSTEGIA SUBACAULIS SSP. EPISCOPALIS	CONVOLVULACEAE		CA
3C		CAMASSIA CUSICKII	LILIACEAE		ID OR
3C		CAMASSIA LEICHTLINII VAR. LEICHTLINII	LILIACEAE	CAMASSIA, LEICHTLIN	OR
LT		CAMISSONIA BENITENSIS	ONAGRACEAE	EVENING-PRIMROSE, SAN BENITO	CA
2		CAMISSONIA CONFERTIFLORA	ONAGRACEAE		AZ
2		CAMISSONIA EXILIS	ONAGRACEAE		AZ UT
3C		CAMISSONIA GOULDII	ONAGRACEAE		AZ UT
2		CAMISSONIA GUADALUPENSIS SSP. CLEMENTINA	ONAGRACEAE	EVENING-PRIMROSE, SAN CLEMENTE I.	CA
2		CAMISSONIA HARDHAMIAE	ONAGRACEAE	EVENING-PRIMROSE, HARDHAM'S	CA
2		CAMISSONIA MEGALANTHA	ONAGRACEAE		NV
3C		CAMISSONIA NEVADENSIS	ONAGRACEAE		NV
3C		CAMISSONIA PARRYI	ONAGRACEAE		AZ UT
2		CAMISSONIA SIERRAE SSP. ALTICOLA	ONAGRACEAE		CA
2		CAMISSONIA SPECUICOLA SSP. HESPERIA	ONAGRACEAE		AZ
3C		CAMISSONIA SPECUICOLA SSP. SPECUICOLA	ONAGRACEAE		AZ
2		CAMISSONIA TANACETIFOLIA SSP. QUADRIPERFORATA	ONAGRACEAE		CA
2		CAMPANULA CALIFORNICA	CAMPANULACEAE	HAREBELL, SWAMP	CA
3C		CAMPANULA PIPERI	CAMPANULACEAE	HAREBELL, OLYMPIC	WA
3C		CAMPANULA REVERCHONII	CAMPANULACEAE		TX

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2		CAMPANULA ROBINSIAE	CAMPANULACEAE	BELLFLOWER, ROBINS	FL
3B		CAMPANULA ROTUNDIFOLIA VAR. SACAJAWEANA	CAMPANULACEAE		OR
2		CAMPANULA SHARSMITHIAE	CAMPANULACEAE	HAREBELL, MT. HAMILTON	CA
3C		CAMPANULA SHETLERI	CAMPANULACEAE	CAMPANULA, CASTLE	CA
3C		CAMPANULA WILKINSIANA	CAMPANULACEAE	HAREBELL, WILKIN'S	CA
1		CANAVALIA CENTRALIS	FABACEAE	JACK-BEAN,	HI
1		CANAVALIA FORBESII	FABACEAE	JACK-BEAN,	HI
1		CANAVALIA HALEAKALAENSIS	FABACEAE	JACK-BEAN,	HI
3C		CANAVALIA IAOENSIS	FABACEAE	JACK-BEAN,	HI
1		CANAVALIA KAUAIENSIS	FABACEAE	JACK-BEAN,	HI
1		CANAVALIA KAUENSIS	FABACEAE	JACK-BEAN,	HI
1		CANAVALIA LANAIENSIS	FABACEAE	JACK-BEAN, LANAI	HI
1		CANAVALIA MAKAHAENSIS	FABACEAE	JACK-BEAN,	HI
1		CANAVALIA MOLOKAIENSIS	FABACEAE	JACK-BEAN, MOLOKAI	HI
1		CANAVALIA MUNROI	FABACEAE	JACK-BEAN,	HI
3C		CANAVALIA NAPALIENSIS	FABACEAE	JACK-BEAN,	HI
1		CANAVALIA NUALOLOENSIS	FABACEAE	JACK-BEAN,	HI
1		CANAVALIA PENINSULARIS	FABACEAE	JACK-BEAN,	HI
1		CANAVALIA PUBESCENS	FABACEAE	JACK-BEAN,	HI
1		CANAVALIA ROCKII	FABACEAE	PUA-KAUHI	HI
3C		CANAVALIA SANGUINEA	FABACEAE	JACK-BEAN,	HI
1		CANAVALIA STENOPHYLLA	FABACEAE	JACK-BEAN,	HI
2		CANNA PERTUSA	CANNACEAE	MARACA	FL PR
1		CAPPARIS SANDWICHIANA VAR. SANDWICHIANA	CAPPARACEAE	PUA PILO (CAPER, NATIVE)	HI
3C		CARDAMINE CONSTANCEI	BRASSICACEAE	BITTER CRESS, CONSTANCE'S	ID
S		CARDAMINE GAMBELII	*** SEE ***	NASTURTIUM GAMBELII	
3C		CARDAMINE KONAENSIS	BRASSICACEAE	BITTER CRESS, KONA	HI
2		CARDAMINE LONGII	BRASSICACEAE	BITTER CRESS, LONG'S	[illegible] ME MD NC NH NJ NY VA
1	*	CARDAMINE MICRANTHERA	BRASSICACEAE	BITTER CRESS,	NC
2		CARDAMINE PATTERSONII	BRASSICACEAE	BITTER CRESS, SADDLE MOUNTAIN	OR
3C		CARDAMINE PENDULIFLORA	BRASSICACEAE		OR
3C		CARDAMINE RUPICOLA	BRASSICACEAE	BITTER CRESS,	MT
2	*	CAREX ABORIGINUM	CYPERACEAE	SEDGE, INDIAN VALLEY	ID
1		CAREX ALBIDA	CYPERACEAE	SEDGE, WHITE	CA
1		CAREX AMPLISQUAMA	CYPERACEAE		[illegible]
3B		CAREX ARAPAHOENSIS	CYPERACEAE		CO MT UT WY
3C		CAREX AUSTROCAROLINIANA	CYPERACEAE		GA NC SC TN
2		CAREX BALTZELLII	CYPERACEAE		AL FL
2		CAREX BARRATTII	CYPERACEAE	SEDGE, BARRATT'S	AL CT DE MD NC NJ NY PA TN VA
2		CAREX BILTMOREANA	CYPERACEAE	SEDGE, BILTMORE	[illegible] NC SC
2		CAREX CHAPMANII	CYPERACEAE	SEDGE,	FL NC SC VA
S		CAREX CURATORUM	*** SEE ***	CAREX SCIRPOIDEA VAR. CURATORUM	
2		CAREX DECOMPOSITA	CYPERACEAE		[illegible] FL GA IL IN MI MO SC VA
3B		CAREX ELACHYCARPA	CYPERACEAE	SEDGE, AROOSTOOK	[illegible]
2		CAREX FISSA	CYPERACEAE		OK
3C		CAREX INTERRUPTA	CYPERACEAE		[illegible]
3B		CAREX JACOBI-PETERI	CYPERACEAE	SEDGE, ANDERSON	AK
3B		CAREX JOSSELYNII	CYPERACEAE	SEDGE, JOSSELYN'S	[illegible]
1		CAREX LATEBRACTEATA	CYPERACEAE	SEDGE, WATERFALL'S	[illegible] OK
2		CAREX LENTICULARIS VAR. DOLIA	CYPERACEAE		[illegible] MT, Canada (Alta., B.C., Yukon)
3C		CAREX MICROPTERA VAR. CRASSINERVIA	CYPERACEAE	SEDGE, SMALL-LIVING, THICK-NERVED	[illegible] MT WV WY
3C		CAREX MISERA	CYPERACEAE		[illegible] NC TN
3C		CAREX OBISPOENSIS	CYPERACEAE	SEDGE, SAN LUIS	CA
3B		CAREX ONUSTA	CYPERACEAE		TX
2		CAREX ORONENSIS	CYPERACEAE	SEDGE,	[illegible]
3C		CAREX PARRYANA SSP. IDAHOA	CYPERACEAE		ID [illegible]
2		CAREX PAUCIFRUCTUS	CYPERACEAE	SEDGE, SIERRA	CA
S		CAREX PLECTOCARPA	*** SEE ***	CAREX LENTICULARIS VAR. DOLIA	
2		CAREX POLYMORPHA	CYPERACEAE	SEDGE, VARIABLE	CT DE MA MD ME NH NJ NY [illegible] RI VA WV
3C		CAREX PURPURIFERA	CYPERACEAE		AL GA KY NC TN
1	*	CAREX ROANENSIS	CYPERACEAE		TN
3C		CAREX SCIRPOIDEA VAR. CURATORUM	CYPERACEAE		AZ UT
3C		CAREX SOCIALIS	CYPERACEAE		AR IL IN KY MO TN
LT		CAREX SPECUICOLA	CYPERACEAE	SEDGE,	[illegible]
3C		CAREX TOMPKINSII	CYPERACEAE	SEDGE, THOMPKINS	CA
3C		CAREX WHITNEYI	CYPERACEAE	SEDGE, WHITNEY	CA
1		CARPENTERIA CALIFORNICA	SAXIFRAGACEAE	CARPENTERIA	CA
3B		CASSIA EXUNGUIS	FABACEAE	TAMARINDILLO	[illegible]
2		CASSIA FASCICULATA VAR. MACROSPERMA	FABACEAE		[illegible] VA
1		CASSIA KEYENSIS	FABACEAE	SENNA, FLORIDA KEYS	FL
1		CASSIA MIRABILIS	FABACEAE		[illegible]
3C		CASSIA RIPLEYANA	FABACEAE		TX
S		CASTANEA OZARKENSIS	*** SEE ***	CASTANEA PUMILA VAR. OZARKENSIS	
2		CASTANEA PUMILA VAR. OZARKENSIS	FAGACEAE	CHINQUAPIN, OZARK	AL AR MO OK
2		CASTILLEJA ANNUA	SCROPHULARIACEAE		AK
1		CASTILLEJA AQUARIENSIS	SCROPHULARIACEAE	INDIAN PAINTBRUSH, AQUARIUS	UT
3C		CASTILLEJA BREVILOBATA	SCROPHULARIACEAE	INDIAN PAINTBRUSH, SHORT-LOBED RED	[illegible]
2		CASTILLEJA CHLOROTICA	SCROPHULARIACEAE	INDIAN PAINTBRUSH, GREEN-TINGED	[illegible]
1		CASTILLEJA CHRISTII	SCROPHULARIACEAE	INDIAN PAINTBRUSH, CHRIST'S	ID

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
3C		CASTILLEJA CHRYSANTHA	SCROPHULARIACEAE		OR
2		CASTILLEJA CILIATA	SCROPHULARIACEAE	INDIAN PAINTBRUSH,	TX
2		CASTILLEJA CINEREA	SCROPHULARIACEAE	INDIAN PAINTBRUSH, ASH GREY	CA
3A		CASTILLEJA CRUENTA	SCROPHULARIACEAE	INDIAN PAINTBRUSH,	AZ
2		CASTILLEJA CRYPTANTHA	SCROPHULARIACEAE		NM
3C		CASTILLEJA CULBERTSONII	SCROPHULARIACEAE	INDIAN PAINTBRUSH, CULBERTSON	CA
3C		CASTILLEJA ELATA	SCROPHULARIACEAE		CA OR
2		CASTILLEJA ELONGATA	SCROPHULARIACEAE		TX
S		CASTILLEJA EWANII	*** SEE ***	CASTILLEJA MARTINII VAR. EWANII	
2		CASTILLEJA FRATERNA	SCROPHULARIACEAE		OR
3C		CASTILLEJA GLANDULIFERA	SCROPHULARIACEAE		OR
2		CASTILLEJA GLEASONII	SCROPHULARIACEAE	PAINTBRUSH, MT. GLEASON	CA
LE		CASTILLEJA GRISEA	SCROPHULARIACEAE	INDIAN PAINTBRUSH, SAN CLEMENTE IS.	CA
2		CASTILLEJA HOLOLEUCA	SCROPHULARIACEAE		CA
S		CASTILLEJA HOLOLEUCA SSP. GRISEA	*** SEE ***	CASTILLEJA GRISEA	
2		CASTILLEJA KAIBABENSIS	SCROPHULARIACEAE		AZ
3C		CASTILLEJA LASSENENSIS	SCROPHULARIACEAE	INDIAN PAINTBRUSH, LEMMON'S	CA
2		CASTILLEJA LATIFOLIA SSP. MENDOCINENSIS	SCROPHULARIACEAE	INDIAN PAINTBRUSH, MENDOCINO COAST	CA
1	*	CASTILLEJA LESCHKEANA	SCROPHULARIACEAE	INDIAN PAINTBRUSH, POINT REYES	CA
2		CASTILLEJA LEVISECTA	SCROPHULARIACEAE		OR WA, CANADA (B.C.)
3B		CASTILLEJA LINOIDES	SCROPHULARIACEAE		NV
3B		CASTILLEJA LUDOVICIANA	SCROPHULARIACEAE	INDIAN PAINTBRUSH, JEFF DAVIS PARISH	LA
3C		CASTILLEJA MARTINII VAR. EWANII	SCROPHULARIACEAE	INDIAN PAINTBRUSH, EWAN'S	CA
S		CASTILLEJA MINIATA SSP. ELATA	*** SEE ***	CASTILLEJA ELATA	
2		CASTILLEJA MOLLIS	SCROPHULARIACEAE	INDIAN PAINTBRUSH, SOFT-LEAVED	CA
1		CASTILLEJA NEGLECTA	SCROPHULARIACEAE		CA
3C		CASTILLEJA ORESBIA	SCROPHULARIACEAE		ID OR
3B		CASTILLEJA OWNBEYANA	SCROPHULARIACEAE	INDIAN PAINTBRUSH, COMMON WALLOWA	[illegible]
3C		CASTILLEJA PARVIFLORA VAR. OLYMPICA	SCROPHULARIACEAE		[illegible]
3C		CASTILLEJA PARVULA	SCROPHULARIACEAE	INDIAN PAINTBRUSH, TUSHAR	UT
2		CASTILLEJA REVEALII	SCROPHULARIACEAE	INDIAN PAINTBRUSH, REVEAL	UT
2		CASTILLEJA SALSUGINOSA	SCROPHULARIACEAE	INDIAN PAINTBRUSH,	NV
3C		CASTILLEJA SCABRIDA	SCROPHULARIACEAE	INDIAN PAINTBRUSH,	UT
2		CASTILLEJA STEENENSIS	SCROPHULARIACEAE		[illegible]
1		CASTILLEJA ULIGINOSA	SCROPHULARIACEAE	INDIAN PAINTBRUSH, PITKIN MARSH	CA
2		CASTILLEJA XANTHOTRICHA	SCROPHULARIACEAE		[illegible]
2		CAULANTHUS AMPLEXICAULIS VAR. BARBARAE	BRASSICACEAE	CAULANTHUS, SANTA BARBARA	CA
2		CAULANTHUS CALIFORNICUS	BRASSICACEAE	JEWELFLOWER, CALIFORNIA	CA
S		CAULANTHUS LEMMONII	*** SEE ***	STREPTANTHUS LEMMONII	
2		CAULANTHUS SIMULANS	BRASSICACEAE		CA
2		CAULANTHUS STENOCARPUS	BRASSICACEAE	CAULANTHUS, SLENDER-POD	CA, Mexico
2		CAULOSTRAMINA JAEGERI	BRASSICACEAE	CAULOSTRAMINA, JAEGER'S	CA
3C		CEANOTHUS ARBOREUS	RHAMNACEAE		CA
2		CEANOTHUS CONFUSUS	RHAMNACEAE	CEANOTHUS, RINCON	CA
2		CEANOTHUS CYANEUS	RHAMNACEAE	CEANOTHUS, LAKESIDE	CA
2		CEANOTHUS DIVERGENS	RHAMNACEAE	CEANOTHUS, CALISTOGA	CA
2		CEANOTHUS FERRISAE	RHAMNACEAE	CALIFORNIA-LILAC, COYOTE	CA
2		CEANOTHUS GLORIOSUS VAR. PORRECTUS	RHAMNACEAE	CEANOTHUS, MOUNT VISION	CA
2		CEANOTHUS HEARSTIORUM	RHAMNACEAE	CEANOTHUS, HEARST'S	CA
2		CEANOTHUS IMPRESSUS VAR. NIPOMENSIS	RHAMNACEAE		CA
2		CEANOTHUS MARITIMUS	RHAMNACEAE	CALIFORNIA-LILAC, MARITIME	CA
2		CEANOTHUS MASONII	RHAMNACEAE	CEANOTHUS, BOLINAS	CA
3C		CEANOTHUS PROSTRATUS VAR. LAIUS	RHAMNACEAE	SQUAW CARPET	CA
2		CEANOTHUS RIGIDUS	RHAMNACEAE	CEANOTHUS, MONTERREY	CA
2		CEANOTHUS RODERICKII	RHAMNACEAE	CEANOTHUS, PINE HILL	CA
3C		CENCHRUS AGRIMONIOIDES VAR. AGRIMONIOIDES	POACEAE	SANDBUR, AGRIMONY,	HI
1	*	CENCHRUS AGRIMONIOIDES VAR. LAYSANENSIS	POACEAE	SANDBUR, AGRIMONY, LAYSAN	HI
3B		CENCHRUS PENDUNCULATUS	POACEAE	SANDBUR, WOOLY MAIANAE	HI
LT		CENTAURIUM NAMOPHILUM VAR. NAMOPHILUM	GENTIANACEAE	CENTAURY, SPRING-LOVING	CA NV
3C		CENTROSEMA ARENICOLA	FABACEAE	BUTTERFLY-PEA,	FL
1		CENTROSTEGIA LEPTOCERAS	POLYGONACEAE	SPINEFLOWER, SLENDER-HORNED	CA
S		CEPHALOCEREUS DEERINGII	*** SEE ***	CEREUS ROBINII	
3C		CERASTIUM ALEUTICUM	CARYOPHYLLACEAE	CHICKWEED, ALEUTIAN	AK
2		CERASTIUM ARVENSE VAR. VILLOSISSIMUM	CARYOPHYLLACEAE	CHICKWEED, FIELD, LONG-HAIRY	PA
S		CERASTIUM BEERINGIANUM VAR. ALEUTICUM	*** SEE ***	CERASTIUM ALEUTICUM	
3B		CERASTIUM CLAWSONII	CARYOPHYLLACEAE	CHICKWEED, MOUSE-EAR	TX
3B		CERATOPHYLLUM FLORIDANUM	CERATOPHYLLACEAE	HORNWORT, FLORIDA	FL
1		CERCOCARPUS TRASKIAE	ROSACEAE	MOUNTAIN-MAHOGANY, CATALINA	CA
PE		CEREUS ERIOPHORUS VAR. FRAGRANS	CACTACEAE	PRICKLY-APPLE, FRAGRANT	FL
2		CEREUS GRACILIS VAR. ABORIGINUM	CACTACEAE	PRICKLY-APPLE, ABORIGINAL	FL
2		CEREUS GRACILIS VAR. SIMPSONII	CACTACEAE	PRICKLY-APPLE, SIMPSON'S	FL
2		CEREUS GREGGII	CACTACEAE		AZ CA NM TX, Mexico
1		CEREUS PORTORICENSIS	CACTACEAE	HIGO CHUMBO	[illegible]
2		CEREUS QUADRICOSTATUS	CACTACEAE	SEBUCAN	[illegible]
LE		CEREUS ROBINII	CACTACEAE	TREE CACTUS, KEY	FL, Cuba
S		CEREUS ROBINII VAR. DEERINGII	*** SEE ***	CEREUS ROBINII	
S		CEREUS ROBINII VAR. ROBINII	*** SEE ***	CEREUS ROBINII	
3C		CHAENACTIS EVERMANNII	ASTERACEAE		ID
3C		CHAENACTIS NEVII	ASTERACEAE		OR
2		CHAENACTIS PARISHII	ASTERACEAE	CHAENACTIS, PARISH'S	CA, Mexico (Baja California)
3C		CHAENACTIS RAMOSA	ASTERACEAE		[illegible]

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
3C		CHAENACTIS THOMPSONII	ASTERACEAE		WA
2		CHAETOPAPPA ELEGANS	ASTERACEAE		NM
2		CHAETOPAPPA HERSHEYI	ASTERACEAE		NM TX
3C		CHAMAECHAENACTIS SCAPOSA	ASTERACEAE		CO ID UT
S		CHAMAECRISTA KEYENSIS	*** SEE ***	CASSIA KEYENSIS	
S		CHAMAECRISTA MIRABILIS	*** SEE ***	CASSIA MIRABILIS	
S		CHAMAESYCE ATROCOCCA VAR. ATROCOCCA	*** SEE ***	EUPHORBIA ATROCOCCA	
S		CHAMAESYCE CUMULICOLA	*** SEE ***	EUPHORBIA CUMULICOLA	
S		CHAMAESYCE DELTOIDEA SSP. DELTOIDEA	*** SEE ***	EUPHORBIA DELTOIDEA SSP. DELTOIDEA	
S		CHAMAESYCE DELTOIDEA SSP. SERPYLLUM	*** SEE ***	EUPHORBIA DELTOIDEA SSP. SERPYLLUM	
S		CHAMAESYCE GARBERI	*** SEE ***	EUPHORBIA GARBERI	
S		CHAMAESYCE PORTERANA VAR. KEYENSIS	*** SEE ***	EUPHORBIA PORTERANA VAR. KEYENSIS	
S		CHAMAESYCE PORTERANA VAR. PORTERANA	*** SEE ***	EUPHORBIA PORTERANA VAR. PORTERANA	
S		CHAMAESYCE PORTERANA VAR. SCOPARIA	*** SEE ***	EUPHORBIA PORTERANA VAR. SCOPARIA	
S		CHAMAESYCE REMYI	*** SEE ***	EUPHORBIA REMYI	
2		CHARPENTIERA DENSIFLORA	AMARANTHACEAE	PAPALA	HI
2		CHEILANTHES ARIZONICA	POLYPODIACEAE		AZ
2		CHEILANTHES FIBRILLOSA	POLYPODIACEAE	LIP FERN, FIBRILLOSE	CA
2		CHEILANTHES PRINGLEI	POLYPODIACEAE		AZ
S		CHEILANTHES PYRAMIDALIS VAR. ARIZONICA	*** SEE ***	CHEILANTHES ARIZONICA	
2		CHEIRODENDRON HELLERI VAR. HELLERI	ARALIACEAE		HI
2		CHEIRODENDRON HELLERI VAR. MICROCARPUM	ARALIACEAE		HI
2		CHEIRODENDRON HELLERI VAR. SODALIUM	ARALIACEAE		HI
1	*	CHEIRODENDRON TRIGYNUM VAR. ROCKII	ARALIACEAE	OLAPA,	HI
1	*	CHEIRODENDRON TRIGYNUM VAR. SUBCORDATUM	ARALIACEAE	OLAPA,	HI
S		CHEIROGLOSSA PALMATA	*** SEE ***	OPHIOGLOSSUM PALMATUM	
3C		CHELONE OBLIQUA VAR. SPECIOSA	SCROPHULARIACEAE		AR IA IL IN KY MI MO
2		CHENOPODIUM OAHUENSE VAR. DISCOSPERMUM	CHENOPODIACEAE		HI
1		CHENOPODIUM PEKELOI	CHENOPODIACEAE	GOOSEFOOT, MOLOKAI	HI
1		CHIONANTHUS PYGMAEUS	OLEACEAE	FRINGE-TREE, PYGMY	FL
2		CHLORIS TEXENSIS	POACEAE		TX
2		CHLOROGALUM GRANDIFLORUM	LILIACEAE	SOAPROOT, RED HILLS	CA
1		CHLOROGALUM PURPUREUM VAR. PURPUREUM	LILIACEAE	AMOLE, PURPLE	CA
1		CHLOROGALUM PURPUREUM VAR. REDUCTUM	LILIACEAE	AMOLE, CAMMATTA CANYON	CA
3C		CHOISYA ARIZONICA	RUTACEAE		AZ
2		CHOISYA MOLLIS	RUTACEAE		AZ
3C		CHORIZANTHE BLAKLEYI	POLYGONACEAE		CA
2		CHORIZANTHE BREWERI	POLYGONACEAE	CHORIZANTHE, BREWER'S	CA
2		CHORIZANTHE HOWELLII	POLYGONACEAE	CHORIZANTHE, HOWELL	CA
3C		CHORIZANTHE INSIGNIS	POLYGONACEAE	CHORIZANTHE, INDIAN VALLEY	CA
S		CHORIZANTHE LEPTOCERAS	*** SEE ***	CENTROSTEGIA LEPTOCERAS	
2		CHORIZANTHE ORCUTTIANA	POLYGONACEAE	SPINEFLOWER, ORCUTT'S	CA
1	*	CHORIZANTHE PARRYI VAR. FERNANDINA	POLYGONACEAE	CHORIZANTHE, SAN FERNANDO VALLEY	CA
2		CHORIZANTHE PUNGENS VAR. PUNGENS	POLYGONACEAE		CA
2		CHORIZANTHE RECTISPINA	POLYGONACEAE	CHORIZANTHE, SAN FERNANDO VALLEY	CA
3C		CHORIZANTHE SPINOSA	POLYGONACEAE	SPINEFLOWER, MOJAVE	CA
2		CHORIZANTHE STATICOIDES SSP. CHRYSACANTHA	POLYGONACEAE	TURKISH RUGGING, ORANGE COUNTY	CA
2		CHORIZANTHE VALIDA	POLYGONACEAE	SPINEFLOWER, SONOMA	CA
S		CHROMOLAENA BORINQUENSIS	*** SEE ***	EUPATORIUM BORINQUENSE	
S		CHROMOLAENA OTEROI	*** SEE ***	EUPATORIUM OTEROI	
1		CHRYSOPSIS CRUISEANA	ASTERACEAE		FL
PE		CHRYSOPSIS FLORIDANA	ASTERACEAE		FL
2		CHRYSOSPLENIUM IOWENSE	SAXIFRAGACEAE		IA MN
2		CHRYSOTHAMNUS MOLESTUS	ASTERACEAE		AZ
3C		CHRYSOTHAMNUS NAUSEOSUS SSP. NANUS	ASTERACEAE		ID OR WA
3B		CHRYSOTHAMNUS NAUSEOSUS SSP. TEXENSIS	ASTERACEAE		NM TX
S		CHRYSOTHAMNUS VISCIDIFLORUS VAR. MODESTUS	*** SEE ***	CHRYSOTHAMNUS MOLESTUS	
3C		CICUTA BOLANDERI	APIACEAE	WATER-HEMLOCK, BOLANDER	CA
1		CIMICIFUGA ARIZONICA	RANUNCULACEAE		AZ
3C		CIMICIFUGA LACINIATA	RANUNCULACEAE		OR WA
2		CIMICIFUGA RUBIFOLIA	RANUNCULACEAE		AL IL KY TN VA
3C		CIRSIUM BREVIFOLIUM	ASTERACEAE		ID OR WA
2		CIRSIUM CAMPYLON	ASTERACEAE	THISTLE, MT. HAMILTON	CA
2		CIRSIUM CILIOLATUM	ASTERACEAE	THISTLE, ASHLAND	CA OR
3C		CIRSIUM CLOKEYI	ASTERACEAE	THISTLE, CLOKEY'S	NV
2		CIRSIUM CRASSICAULE	ASTERACEAE	THISTLE, SLOUGH	CA
3C		CIRSIUM DAVISII	ASTERACEAE		ID
2		CIRSIUM FONTINALE VAR. FONTINALE	ASTERACEAE	THISTLE, FOUNTAIN	CA
2		CIRSIUM FONTINALE VAR. OBISPOENSE	ASTERACEAE	THISTLE, BOG, CHORRO CREEK	CA
3C		CIRSIUM HALLII	ASTERACEAE		CA NV OR UT
2		CIRSIUM HILLII	ASTERACEAE		IA IL IN MI MN OH PA WI; Canada (Ontario)
1		CIRSIUM HYDROPHILUM VAR. HYDROPHILUM	ASTERACEAE	THISTLE, SUISUN	CA
2		CIRSIUM HYDROPHILUM VAR. VASEYI	ASTERACEAE	THISTLE, MT. TAMALPAIS	CA
2		CIRSIUM LONCHOLEPIS	ASTERACEAE	THISTLE, LA GRACIOSA	CA
2		CIRSIUM OCCIDENTALE VAR. COMPACTUM	ASTERACEAE	THISTLE, COBWEB, COMPACT	CA
2		CIRSIUM OWNBEYI	ASTERACEAE	THISTLE, OWNBEY'S	UT
1		CIRSIUM PITCHERI	ASTERACEAE	THISTLE, DUNE	IL IN MI WI, Canada
2		CIRSIUM RHOTHOPHILUM	ASTERACEAE	THISTLE, SURF	CA
3C		CIRSIUM RYDBERGII	ASTERACEAE		AZ UT
3C		CIRSIUM TURNERI	ASTERACEAE		TX

STATUS	SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
PT	CIRSIUM VINACEUM	ASTERACEAE		NM
2	CIRSIUM VIRGINENSIS	ASTERACEAE		AZ UT
1	CLADOCARPA ATOLLENSIS	CUCURBITACEAE		HI
1	CLADOCARPA CAUMII	CUCURBITACEAE		HI
1	CLADOCARPA LAMOUREUXII	CUCURBITACEAE		HI
1	CLADOCARPA MAXIMOWICZII	CUCURBITACEAE		HI
1	CLADOCARPA NIIHAUENSIS	CUCURBITACEAE	PUA O KAMA	HI
1	CLADOCARPA SEMITONSUS	CUCURBITACEAE		HI
3C	CLADRASTIS KENTUKEA	FABACEAE		AL AR GA IL IN KY MS MO NC OK SC TN
S	CLADRASTIS LUTEA	*** SEE ***	CLADRASTIS KENTUKEA	
2	CLAOXYLON SANDWICENSE VAR. SANDWICENSE	EUPHORBIACEAE	POOLA	HI
3C	CLARKIA AMOENA SSP. WHITNEYI	ONAGRACEAE		CA
3B	CLARKIA AMOENA VAR. PACIFICA	ONAGRACEAE		OR WA
3C	CLARKIA AUSTRALIS	ONAGRACEAE		CA
3C	CLARKIA BILOBA SSP. AUSTRALIS	ONAGRACEAE		CA
2	CLARKIA BOREALIS SSP. ARIDA	ONAGRACEAE		CA
2	CLARKIA CALIENTENSIS	ONAGRACEAE		CA
1	CLARKIA FRANCISCANA	ONAGRACEAE	CLARKIA, PRESIDIO	CA
1	CLARKIA IMBRICATA	ONAGRACEAE		CA
1	CLARKIA LINGULATA	ONAGRACEAE	CLARKIA, MERCED	CA
2	CLARKIA MOSQUINII SSP. MOSQUINII	ONAGRACEAE		CA
3A	CLARKIA MOSQUINII SSP. XEROPHILA	ONAGRACEAE		CA
2	CLARKIA ROSTRATA	ONAGRACEAE	CLARKIA, BEAKED	CA
2	CLARKIA SPECIOSA SSP. IMMACULATA	ONAGRACEAE	CLARKIA, SAN LUIS OBISPO	CA
2	CLARKIA SPRINGVILLENSIS	ONAGRACEAE	CLARKIA, SPRINGVILLE	CA
3C	CLAYTONIA BELLIDIFOLIA	PORTULACACEAE		CA OR
S	CLAYTONIA BOSTOCKII	*** SEE ***	MONTIA BOSTOCKII	
S	CLAYTONIA FLAVA	*** SEE ***	CLAYTONIA LANCEOLATA VAR. FLAVA	
3B	CLAYTONIA LANCEOLATA VAR. CHRYSANTHA	PORTULACACEAE		WA
2	CLAYTONIA LANCEOLATA VAR. FLAVA	PORTULACACEAE		ID MT
1	CLAYTONIA LANCEOLATA VAR. PEIRSONII	PORTULACACEAE	SPRING BEAUTY, PEIRSON'S	CA
3C	CLAYTONIA MEGARHIZA VAR. NIVALIS	PORTULACACEAE		WA
3C	CLEMATIS ADDISONII	RANUNCULACEAE	VIRGIN'S BOWER, ADDISON'S	VA
3C	CLEMATIS ALBICOMA	RANUNCULACEAE	LEATHERFLOWER, WHITE-HAIRED	VA WV
3B	CLEMATIS GATTINGERI	RANUNCULACEAE	VIRGIN'S BOWER,	AL TN
2	CLEMATIS HIRSUTISSIMA VAR. ARIZONICA	RANUNCULACEAE		AZ
3B	CLEMATIS MICRANTHA	RANUNCULACEAE	OLD MAN'S BEARD	FL
3C	CLEMATIS OCCIDENTALIS VAR. DISSECTA	RANUNCULACEAE		WA
1	CLEMATIS SOCIALIS	RANUNCULACEAE		AL
2	CLEMATIS VITICAULIS	RANUNCULACEAE	LEATHERFLOWER, MILLBORO	VA
2	CLEOME MULTICAULIS	CAPPARACEAE		AZ CO NM TX WY, Mexico
S	CLEOME SANDWICENSIS	*** SEE ***	CLEOME SPINOSA SSP. NOV. /INED.	
1	CLEOME SPINOSA SSP. NOV. /INED.	CAPPARACEAE	SPIDERFLOWER, WILD	HI
3B	CLEOMELLA MONTROSAE	CAPPARACEAE		CO
1	CLERMONTIA DREPANOMORPHA	CAMPANULACEAE	CLERMONTIA, KOHALA	HI
3A	CLERMONTIA HALEAKALENSIS	CAMPANULACEAE		HI
3C	CLERMONTIA HAWAIIENSIS VAR. HAWAIIENSIS	CAMPANULACEAE		HI
3A	CLERMONTIA KONAENSIS	CAMPANULACEAE		HI
1	CLERMONTIA LINDSEYANA	CAMPANULACEAE		HI
1	CLERMONTIA LOYANA	CAMPANULACEAE		HI
1	CLERMONTIA MUNROI	CAMPANULACEAE		HI
3C	CLERMONTIA PELEANA	CAMPANULACEAE		HI
1	CLERMONTIA PYRULARIA	CAMPANULACEAE		HI
1	CLITORIA FRAGRANS	FABACEAE		FL
3C	CLUSIA FLAVA	HYPERICACEAE		West Indies
2	COCCULUS INTEGER	MENISPERMACEAE		HI
2	COCCULUS LONCHOPHYLLUS	MENISPERMACEAE		HI
2	COCCULUS VIRGATUS	MENISPERMACEAE		HI
S	COCHISEIA ROBBINSORUM	*** SEE ***	CORYPHANTHA ROBBINSORUM	
2	COELORACHIS TUBERCULOSA	POACEAE		AL FL
2	COLLINSIA ANTONINA	SCROPHULARIACEAE		CA
3C	COLLOMIA LARSENII	POLEMONIACEAE		CA OR WA
2	COLLOMIA MACROCALYX	POLEMONIACEAE	COLLOMIA, BRISTLE-FLOWERED	OR
2	COLLOMIA MAZAMA	POLEMONIACEAE		[redacted]
1	COLLOMIA RAWSONIANA	POLEMONIACEAE	TRUMPET, FLAMING	CA
S	COLORADOA MESAE-VERDAE	*** SEE ***	SCLEROCACTUS MESAE-VERDAE	
3C	COLUBRINA CALIFORNICA	RHAMNACEAE		AZ CA
1	COLUBRINA OPPOSITIFOLIA	RHAMNACEAE	KAUILA	HI
2	COLUBRINA STRICTA	RHAMNACEAE	SNAKEWOOD, COMAL	TX, Mexico
1	COMMELINA GIGAS	COMMELINACEAE	DAYFLOWER, CLIMBING	FL
2	CONDALIA HOOKERI VAR. EDWARDSIANA	RHAMNACEAE	BRASIL, EDWARDS'	TX
2	CONRADINA BREVIFOLIA	LAMIACEAE	ROSEMARY, SHORT-LEAVED	FL
2	CONRADINA GLABRA	LAMIACEAE	ROSEMARY, APALACHICOLA	FL
2	CONRADINA GRANDIFLORA	LAMIACEAE		FL
1	CONRADINA VERTICILLATA	LAMIACEAE		KY TN
S	CONYZA ERIOPHYLLA	*** SEE ***	ERIGERON ERIOPHYLLUS	
1	COPROSMA FAUREI VAR. LANAIENSIS	RUBIACEAE		HI
1	COPROSMA MONTANA VAR. ORBICULARIS	RUBIACEAE		HI
1	COPROSMA OCHRACEA VAR. KAALAE	RUBIACEAE		HI
3C	COPROSMA PUBENS VAR. SESSILIFLORA	RUBIACEAE		HI
1	COPROSMA SERRATA	RUBIACEAE		HI
2	CORDIA BELLONIS	BORAGINACEAE		PR

STATUS	SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
2	CORDIA RUPICOLA	BORAGINACEAE		PR, British V.I.
1	CORDIA WAGNERORUM	BORAGINACEAE		PR
S	CORDYLANTHUS BRUNNEUS VAR. CAPILLARIS	*** SEE ***	CORDYLANTHUS TENUIS SSP. CAPILLARIS /INED.	
2	CORDYLANTHUS EREMICUS SSP. BERNARDINUS /INED.	SCROPHULARIACEAE	BIRD'S-BEAK, SAN BERNARDINO	CA
2	CORDYLANTHUS EREMICUS SSP. EREMICUS	SCROPHULARIACEAE	BIRD'S-BEAK, DESERT	CA
S	CORDYLANTHUS LITTORALIS	*** SEE ***	CORDYLANTHUS RIGIDUS SSP. LITTORALIS /INED.	
LE	CORDYLANTHUS MARITIMUS SSP. MARITIMUS	SCROPHULARIACEAE	BIRD'S-BEAK, SALT MARSH	CA, Mexico (Baja California)
2	CORDYLANTHUS MARITIMUS SSP. PALUSTRIS	SCROPHULARIACEAE	BIRD'S-BEAK, NORTH COAST	CA OR
2	CORDYLANTHUS MOLLIS SSP. HISPIDUS	SCROPHULARIACEAE	BIRD'S-BEAK, HISPID	CA
1	CORDYLANTHUS MOLLIS SSP. MOLLIS	SCROPHULARIACEAE	BIRD'S-BEAK, SOFT	CA
2	CORDYLANTHUS NIDULARIUS	SCROPHULARIACEAE	BIRDS-ON-NEST	CA
PE	CORDYLANTHUS PALMATUS	SCROPHULARIACEAE	BIRD'S-BEAK, PALMATE-BRACTED	CA
S	CORDYLANTHUS RAMOSUS SSP. EREMICUS	*** SEE ***	CORDYLANTHUS EREMICUS SSP. EREMICUS	
1	CORDYLANTHUS RIGIDUS SSP. LITTORALIS /INED.	SCROPHULARIACEAE	BIRD'S-BEAK, SEASIDE	CA
2	CORDYLANTHUS TECOPENSIS	SCROPHULARIACEAE	BIRD'S-BEAK, TECOPA	CA NV
2	CORDYLANTHUS TENUIS SSP. CAPILLARIS /INED.	SCROPHULARIACEAE	BIRD'S-BEAK, PENNELL	CA
2	CORDYLANTHUS TENUIS SSP. PALLESCENS /INED.	SCROPHULARIACEAE	BIRD'S-BEAK, PALLID	CA
2	COREOPSIS HAMILTONII	ASTERACEAE	COREOPSIS, MT. HAMILTON	CA
3B	COREOPSIS HETEROLEPIS	ASTERACEAE		AR
3C	COREOPSIS INTERMEDIA	ASTERACEAE	TICKSEED, GOLDEN WAVE	LA TX
2	COREOPSIS LATIFOLIA	ASTERACEAE		GA NC SC TN
3C	COREOPSIS PULCHRA	ASTERACEAE		AL
3B	COREOPSIS TRIPTERIS VAR. SUBRHOMBOIDEA	ASTERACEAE		TX
2	CORETHROGYNE FILAGINIFOLIA VAR. LINIFOLIA	ASTERACEAE		CA
1	CORNUTIA OBOVATA	VERBENACEAE	NIGUA	[redacted]
2	CORYDALIS AQUAE-GELIDAE	FUMARIACEAE		OR WA
3C	CORYDALIS CASEANA SSP. BRACHYCARPA	FUMARIACEAE		UT
3C	CORYDALIS CASEANA SSP. CASEANA	FUMARIACEAE		CA
3C	CORYDALIS CASEANA SSP. HASTATA	FUMARIACEAE		ID
2	CORYPHANTHA DASYACANTHA VAR. DASYACANTHA	CACTACEAE		TX MEXICO
3C	CORYPHANTHA DASYACANTHA VAR. VARICOLOR	CACTACEAE		TX
3C	CORYPHANTHA DUNCANII	CACTACEAE		NM TX
3C	CORYPHANTHA HESTERI	CACTACEAE		TX
LE	CORYPHANTHA MINIMA	CACTACEAE	CORY CACTUS, NELLIE	TX
2	CORYPHANTHA MISSOURIENSIS VAR. MARSTONII	CACTACEAE		AZ UT
S	CORYPHANTHA NELLIEAE	*** SEE ***	CORYPHANTHA MINIMA	
LT	CORYPHANTHA RAMILLOSA	CACTACEAE	CORY CACTUS, BUNCHED	TX, Mexico (Coahuila)
2	CORYPHANTHA RECURVATA	CACTACEAE		AZ, Mexico
PT	CORYPHANTHA ROBBINSORUM	CACTACEAE	CACTUS, COCHISE PINCUSHION	AZ
1	CORYPHANTHA SCHEERI VAR. ROBUSTISPINA	CACTACEAE		AZ, Mexico
3C	CORYPHANTHA SCHEERI VAR. UNCINATA	CACTACEAE		TX
LT	CORYPHANTHA SNEEDII VAR. LEEI	CACTACEAE	PINCUSHION CACTUS, LEE	[redacted]
LE	CORYPHANTHA SNEEDII VAR. SNEEDII	CACTACEAE	PINCUSHION CACTUS, SNEED	NM TX
2	CORYPHANTHA STROBILIFORMIS VAR. DURISPINA	CACTACEAE		TX, Mexico
2	CORYPHANTHA SULCATA VAR. NICKELSIAE	CACTACEAE		TX, Mexico
2	CORYPHANTHA VIVIPARA VAR. ALVERSONII	CACTACEAE	PINCUSHION CACTUS, ALVERSON'S	CA
3B	CORYPHANTHA VIVIPARA VAR. BUOFLAMA	CACTACEAE		AZ
3C	CORYPHANTHA VIVIPARA VAR. ROSEA	CACTACEAE		AZ CA NV UT
3C	COURSETIA AXILLARIS	FABACEAE		TX, Mexico
LE	COWANIA SUBINTEGRA	ROSACEAE	CLIFF-ROSE, ARIZONA	AZ
2	CRATAEGUS BERBERIFOLIA	ROSACEAE		LA TX
2	CRATAEGUS HARBISONII	ROSACEAE	HAW.	AL GA TN
3B	CRATAEGUS STENOSEPALA	ROSACEAE		TX
3B	CRATAEGUS SUTHERLANDENSIS	ROSACEAE		TX
2	CRATAEGUS WARNERI	ROSACEAE		TX
1	CRESCENTIA PORTORICENSIS	BIGNONIACEAE	HIGUERO DE SIERRA	PR
2	CROOMIA PAUCIFLORA	STEMONACEAE	CROOMIA	AL FL GA LA
3C	CROSSOSOMA CALIFORNICUM	CROSSOSOMATACEAE		CA, Mexico (Baja California)
3C	CROSSOSOMA PARVIFLORUM	CROSSOSOMATACEAE		AZ
2	CROTON ALABAMENSIS	EUPHORBIACEAE		AL TN
2	CROTON ELLIOTTII	EUPHORBIACEAE		AL FL GA SC
3B	CROTON GLANDULOSUS VAR. SIMPSONII	EUPHORBIACEAE		FL
2	CROTON IMPRESSUS	EUPHORBIACEAE		PR, Hispaniola
2	CROTON NUMMULARIIFOLIUS	EUPHORBIACEAE		PR, Cuba, Hispaniola
3C	CROTON WIGGINSII	EUPHORBIACEAE		AZ CA, Mexico (Baja California, Sonora)
2 *	CRYPTANTHA APERTA	BORAGINACEAE	CATSEYE,	CO
3C	CRYPTANTHA ATWOODII	BORAGINACEAE	CATSEYE, ATWOOD'S	AZ
1	CRYPTANTHA BARNEBYI	BORAGINACEAE	CATSEYE, BARNEBY	UT
3C	CRYPTANTHA BREVIFLORA	BORAGINACEAE	CATSEYE,	ID UT
2	CRYPTANTHA COMPACTA	BORAGINACEAE	CATSEYE, COMPACT	UT
2	CRYPTANTHA CRASSIPES	BORAGINACEAE		TX
2	CRYPTANTHA CREUTZFELDTII	BORAGINACEAE		UT

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
2		CRYPTANTHA CRINITA	BORAGINACEAE	CRYPTANTHA, SILKY	CA
3C		CRYPTANTHA CRYMOPHILA	BORAGINACEAE		CA
3C		CRYPTANTHA ELATA	BORAGINACEAE	CATSEYE, CLIFFDWELLER'S CANDLESTICK	CO UT
2		CRYPTANTHA GANDERI	BORAGINACEAE	CRYPTANTHA, GANDER'S	CA, Mexico
3C		CRYPTANTHA GRAHAMII	BORAGINACEAE	CATSEYE, GRAHAM	UT
2		CRYPTANTHA HOFFMANNII	BORAGINACEAE		CA NV
3C		CRYPTANTHA HYPSOPHILA	BORAGINACEAE		CA ID OR
2	*	CRYPTANTHA INSOLITA	BORAGINACEAE	CATSEYE,	NV
3C		CRYPTANTHA INTERRUPTA	BORAGINACEAE		ID MT NV OR, Canada (B.C.)
3C		CRYPTANTHA JOHNSTONII	BORAGINACEAE	CATSEYE, JOHNSTON	UT
3C		CRYPTANTHA JONESIANA	BORAGINACEAE	CATSEYE, JONES	UT
3C		CRYPTANTHA MENSANA	BORAGINACEAE		UT
S		CRYPTANTHA NUBIGENA	*** SEE ***	CRYPTANTHA HYPSOPHILA	
2		CRYPTANTHA OCHROLEUCA	BORAGINACEAE	CATSEYE, YELLOW-WHITE	UT
3C		CRYPTANTHA PARADOXA	BORAGINACEAE		CO NM UT
2		CRYPTANTHA ROOSIORUM	BORAGINACEAE	CATSEYE, BRISTLE-CONE	CA
3C		CRYPTANTHA SEMIGLABRA	BORAGINACEAE	CATSEYE,	AZ
2		CRYPTANTHA SHACKLETTEANA	BORAGINACEAE	CATSEYE,	AK
3C		CRYPTANTHA SOBOLIFERA	BORAGINACEAE	CATSEYE,	MT
3C		CRYPTANTHA STRICTA	BORAGINACEAE	CATSEYE,	CO UT WY
2		CRYPTANTHA SUBCAPITATA	BORAGINACEAE		WY
3C		CRYPTANTHA THOMPSONII	BORAGINACEAE		OR WA
2		CRYPTANTHA TRASKIAE	BORAGINACEAE		CA
3C		CRYPTANTHA TUMULOSA	BORAGINACEAE		CA NV
3C		CRYPTANTHA WEBERI	BORAGINACEAE	CATSEYE, WEBER'S	CO
E		CRYPTOCARYA OAHUENSIS	LAURACEAE		HI
1	*	CTENITIS SQUAMIGERA	POLYPODIACEAE		HI
3C		CTENIUM FLORIDANUM	POACEAE		FL GA
2		CUCURBITA OKEECHOBEENSIS	CUCURBITACEAE	GOURD, OKEECHOBEE	FL
3C		CUCURBITA TEXANA	CUCURBITACEAE		TX
2		CUPHEA ASPERA	LYTHRACEAE		FL
PE		CUPRESSUS ABRAMSIANA	CUPRESSACEAE	CYPRESS, SANTA CRUZ	CA
E		CUPRESSUS ARIZONICA VAR. NEVADENSIS	*** SEE ***	CUPRESSUS NEVADENSIS	
S		CUPRESSUS ARIZONICA VAR. STEPHENSONII	*** SEE ***	CUPRESSUS STEPHENSONII	
2		CUPRESSUS GOVENIANA	CUPRESSACEAE	CYPRESS, GOWEN	CA
S		CUPRESSUS GOVENIANA VAR. ABRAMSIANA	*** SEE ***	CUPRESSUS ABRAMSIANA	
2		CUPRESSUS MACROCARPA	CUPRESSACEAE	CYPRESS, MONTEREY	CA
3C		CUPRESSUS NEVADENSIS	CUPRESSACEAE		CA
1		CUPRESSUS STEPHENSONII	CUPRESSACEAE	CYPRESS, CUYAMACA	CA
1		CUSCUTA ATTENUATA	CUSCUTACEAE	DODDER,	OK
3C		CUSCUTA HARPERI	CUSCUTACEAE		AL GA
3C		CUSCUTA HOWELLIANA	CUSCUTACEAE	DODDER, BOGG'S LAKE	CA
2	*	CUSCUTA WARNERI	CUSCUTACEAE	DODDER, WARNER'S	UT
1		CYANEA ANGUSTIFOLIA VAR. LANAIENSIS	CAMPANULACEAE		HI
3C		CYANEA ANGUSTIFOLIA VAR. RACEMOSA	CAMPANULACEAE		HI
1	*	CYANEA ARBOREA	CAMPANULACEAE		HI
S		CYANEA ARBOREA VAR. PYCNOCARPA	*** SEE ***	CYANEA PYCNOCARPA	
1	*	CYANEA ASPLENIIFOLIA	CAMPANULACEAE		HI
1		CYANEA BALDWINII	CAMPANULACEAE	CYANEA, BALDWIN	HI
1		CYANEA BRYANII	CAMPANULACEAE	CYANEA, BRYAN	HI
1		CYANEA CARLSONII	CAMPANULACEAE		HI
1		CYANEA CHOCKII	CAMPANULACEAE		HI
3A		CYANEA COMATA	CAMPANULACEAE		HI
1		CYANEA FERNALDII	CAMPANULACEAE		HI
1		CYANEA GIBSONII	CAMPANULACEAE		HI
1	*	CYANEA GIFFARDII	CAMPANULACEAE		HI
3C		CYANEA GRIMESIANA VAR. GRIMESIANA	CAMPANULACEAE		HI
2		CYANEA GRIMESIANA VAR. HIRSUTIFOLIA	CAMPANULACEAE		HI
1	*	CYANEA GRIMESIANA VAR. LYDGATEI	CAMPANULACEAE		HI
1		CYANEA GRIMESIANA VAR. MAUIENSIS	CAMPANULACEAE		HI
1		CYANEA GRIMESIANA VAR. MUNROI	CAMPANULACEAE		HI
2		CYANEA KUNTHIANA	CAMPANULACEAE		HI
1		CYANEA LEPTOSTEGIA	CAMPANULACEAE	CYANEA, GIANT KOKE'E	HI
S		CYANEA LINDSEYANA	*** SEE ***	CLERMONTIA LINDSEYANA	
1		CYANEA LINEARIFOLIA	CAMPANULACEAE		HI
1		CYANEA MARKSII	CAMPANULACEAE		HI
1		CYANEA MCELDOWNEYI	CAMPANULACEAE		HI
2		CYANEA NELSONII	CAMPANULACEAE		HI
S		CYANEA PINNATIFIDA	*** SEE ***	ROLLANDIA PINNATIFIDA	
1		CYANEA PLATYPHYLLA	CAMPANULACEAE		HI
1		CYANEA PYCNOCARPA	CAMPANULACEAE		HI
1	*	CYANEA REGINA	CAMPANULACEAE		HI
S		CYANEA RIVULARIS	*** SEE ***	DELISSEA RIVULARIS	
1		CYANEA ROLLANDIOIDES	CAMPANULACEAE		HI
2		CYANEA SCABRA	CAMPANULACEAE		HI
1		CYANEA SHIPMANII	CAMPANULACEAE		HI
1		CYANEA SOLANACEA	CAMPANULACEAE	POPOLO	HI
1		CYANEA SOLENOCALYX	CAMPANULACEAE	CYANEA, MOLOKAI	HI
1		CYANEA STICTOPHYLLA	CAMPANULACEAE		HI
1		CYANEA SUBMURICATA	CAMPANULACEAE		HI
1		CYANEA SUPERBA	CAMPANULACEAE		HI
1		CYANEA TRITOMANTHA	CAMPANULACEAE	AKU 'AKU	HI

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
E		CYATHEA BROOKSII	*** SEE ***	ALSOPHILA BROOKSII	
S		CYATHEA DRYOPTEROIDES	*** SEE ***	ALSOPHILA DRYOPTEROIDES	
PE		CYCLADENIA HUMILIS VAR. JONESII	APOCYNACEAE	CYCLADENIA, JONES	UT
S		CYCLODON ALABAMENSIS	*** SEE ***	MATELEA ALABAMENSIS	
3C		CYMOPHYLLUS FRASERI	CYPERACEAE		KY MD NC PA SC TN VA WV
3C		CYMOPTERUS BASALTICUS	APIACEAE		NV UT
2		CYMOPTERUS BECKII	APIACEAE		UT
3C		CYMOPTERUS CORRUGATUS	APIACEAE		ID NV OR
3C		CYMOPTERUS COULTERI	APIACEAE	BISCUITROOT, COULTER	UT
2		CYMOPTERUS DESERTICOLA	APIACEAE	CYMOPTERUS, DESERT	CA
3C		CYMOPTERUS DUCHESNENSIS	APIACEAE	BISCUITROOT, DUCHESNE	CO UT
2		CYMOPTERUS GOODRICHII	APIACEAE		NV
2		CYMOPTERUS HIGGINSII	APIACEAE	BISCUITROOT, HIGGINS	UT
3C		CYMOPTERUS IBAPENSIS	APIACEAE		ID
2		CYMOPTERUS MINIMUS	APIACEAE	BISCUITROOT, CEDAR BREAKS	UT
3C		CYMOPTERUS NEWBERRYI	APIACEAE		AZ UT
2		CYMOPTERUS NIVALIS	APIACEAE		NV
2		CYMOPTERUS RIPLEYI VAR. SANICULOIDES	APIACEAE		NV
3C		CYMOPTERUS ROSEI	APIACEAE		UT
2		CYMOPTERUS SP. NOV. /INED.	APIACEAE		WY
S		CYMOPTERUS SP. NOV. /INED. (CUSTER CO.)	*** SEE ***	CYMOPTERUS IBAPENSIS	ID
2		CYMOPTERUS SP. NOV. /INED. (CUSTER, LEMHI COS.)	APIACEAE		ID
2		CYNANCHUM [illegible]	ASCLEPIADACEAE		PR
2		CYNANCHUM WIGGINSII	ASCLEPIADACEAE		AZ
3C		CYPERUS GRANITOPHILUS	CYPERACEAE		AL GA NC SC
2		CYPERUS GRAYIOIDES	CYPERACEAE	SEDGE, UMBRELLA,	IL
2		CYPERUS ONEROSUS	CYPERACEAE		TX
1		CYPERUS PENNATIFORMIS VAR. BRYANII	CYPERACEAE		HI
S		CYPERUS URBANII	*** SEE ***	MARISCUS URBANII	
3C		CYPRIPEDIUM ARIETINUM	ORCHIDACEAE	LADY'S-SLIPPER, RAM'S-HEAD	CT ME MA MI MN NH NY VT WI
3C		CYPRIPEDIUM CALIFORNICUM	ORCHIDACEAE	LADY'S-SLIPPER, CALIFORNIA	CA OR
3C		CYPRIPEDIUM CANDIDUM	ORCHIDACEAE	LADY'S-SLIPPER, SMALL WHITE	IL IN IA KY MI MN MO ME NJ NY ND OH PA SD WI
3C		CYPRIPEDIUM FASCICULATUM	ORCHIDACEAE		CA CO ID MT OR UT WA WY, Canada
2		CYPRIPEDIUM KENTUCKIENSE	ORCHIDACEAE		AL AR KY LA MS TN
3C		CYPRIPEDIUM MONTANUM	ORCHIDACEAE		AK CA MT OR WA WY, Canada (Alta., B.C.)
1		CYRTANDRA ALATA	GESNERIACEAE		HI
1		CYRTANDRA ALNEA	GESNERIACEAE		HI
1		CYRTANDRA AMBIGUA	GESNERIACEAE		HI
1		CYRTANDRA AXILLIFLORA	GESNERIACEAE		HI
1		CYRTANDRA BASIPARTITA	GESNERIACEAE		HI
3A		CYRTANDRA BEGONIIFOLIA	GESNERIACEAE	ILIHIA	HI
2		CYRTANDRA BISERRATA	GESNERIACEAE		HI
1		CYRTANDRA BREVICORNUTA	GESNERIACEAE		HI
1		CYRTANDRA BRYANII	GESNERIACEAE		HI
1		CYRTANDRA CAMPANIFORMIS	GESNERIACEAE		HI
1	*	CYRTANDRA CARINATA	GESNERIACEAE		HI
1		CYRTANDRA CAUDATISEPALA	GESNERIACEAE		HI
1		CYRTANDRA CHARTACEA	GESNERIACEAE		HI
1		CYRTANDRA CHRISTOPHERSENII	GESNERIACEAE		HI
1	*	CYRTANDRA COLLARIFERA	GESNERIACEAE		HI
2		CYRTANDRA CONRADTII	GESNERIACEAE		HI
1	*	CYRTANDRA CORDIFOLIA VAR. BREVIPILITA	GESNERIACEAE		HI
2		CYRTANDRA CORDIFOLIA VAR. GYNOGLABRA	GESNERIACEAE		HI
1	*	CYRTANDRA CRASSIOR	GESNERIACEAE		HI
1		CYRTANDRA CRENATA	GESNERIACEAE		HI
1		CYRTANDRA CUPULIFORMIS	GESNERIACEAE		HI
1		CYRTANDRA DENTATA	GESNERIACEAE		HI
1		CYRTANDRA ELLIPTICIFOLIA	GESNERIACEAE		HI
1		CYRTANDRA ELLIPTISEPALA	GESNERIACEAE		HI
1		CYRTANDRA FERRICOLORATA	GESNERIACEAE		HI
1	*	CYRTANDRA FERRUGINOSA	GESNERIACEAE		HI
2		CYRTANDRA FILIPES	GESNERIACEAE		HI
1		CYRTANDRA FORBESII	GESNERIACEAE		HI
1		CYRTANDRA FOSBERGII	GESNERIACEAE		HI
1		CYRTANDRA FREDERICKII	GESNERIACEAE		HI
1		CYRTANDRA FUSIFORMIS	GESNERIACEAE		HI
1	*	CYRTANDRA GARBERI	GESNERIACEAE		HI
2		CYRTANDRA GEORGIANA	GESNERIACEAE		HI
2		CYRTANDRA GIFFARDII	GESNERIACEAE		HI
2		CYRTANDRA GLAUCA	GESNERIACEAE		HI
3A		CYRTANDRA GRACILIS	GESNERIACEAE		HI
2		CYRTANDRA GRAYANA VAR. LANAIENSIS	GESNERIACEAE		HI
3A		CYRTANDRA GROSSECRENATA	GESNERIACEAE		HI
2		CYRTANDRA HALAWENSIS	GESNERIACEAE		HI
2		CYRTANDRA HAWAIENSIS	GESNERIACEAE		HI
2		CYRTANDRA HIRSUTULA	GESNERIACEAE		HI
1		CYRTANDRA HOBDYI	GESNERIACEAE		HI
3A		CYRTANDRA HONOLULENSIS	GESNERIACEAE		HI

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
2		CYRTANDRA HOSAKAE	GESNERIACEAE		HI
1		CYRTANDRA INFRAPALLIDA	GESNERIACEAE		HI
1		CYRTANDRA INTONSA	GESNERIACEAE		HI
2		CYRTANDRA INTRAPILOSA	GESNERIACEAE		HI
2		CYRTANDRA INTRAVILLOSA	GESNERIACEAE		HI
1		CYRTANDRA KAALAE	GESNERIACEAE		HI
1		CYRTANDRA KAHANENSIS	GESNERIACEAE		HI
1		CYRTANDRA KAHUKUENSIS	GESNERIACEAE		HI
1		CYRTANDRA KALUANUIENSIS	GESNERIACEAE		HI
1		CYRTANDRA KANEOHEENSIS	GESNERIACEAE		HI
1	*	CYRTANDRA KAUAIENSIS	GESNERIACEAE	ULUNAHELE	HI
2		CYRTANDRA KAULANTHA	GESNERIACEAE		HI
1		CYRTANDRA KOOLAUENSIS	GESNERIACEAE		HI
1	*	CYRTANDRA LAEVIS	GESNERIACEAE		HI
3A		CYRTANDRA LAXIFLORA	GESNERIACEAE		HI
3A		CYRTANDRA LESSONIANA VAR. ANGUSTIFOLIA	GESNERIACEAE		HI
1		CYRTANDRA LESSONIANA VAR. INTRAPUBENS	GESNERIACEAE		HI
2		CYRTANDRA LIMOSIFLORA	GESNERIACEAE		HI
3A		CYRTANDRA LINEARIS	GESNERIACEAE		HI
2		CYRTANDRA LONGICALYX	GESNERIACEAE		HI
1	*	CYRTANDRA LONGIFOLIA VAR. LONGIFOLIA	GESNERIACEAE		HI
3A		CYRTANDRA LONGIFOLIA VAR. PARALLELA	GESNERIACEAE		HI
1		CYRTANDRA LONGILOBA	GESNERIACEAE		HI
2		CYRTANDRA LYSIOSEPALA VAR. GRAYI	GESNERIACEAE		HI
2		CYRTANDRA LYSIOSEPALA VAR. HALEAKALENSIS	GESNERIACEAE		HI
2		CYRTANDRA LYSIOSEPALA VAR. LYSIOSEPALA	GESNERIACEAE		HI
2		CYRTANDRA MACRANTHA	GESNERIACEAE		HI
2		CYRTANDRA MALACOPHYLLA VAR. MALACOPHYLLA	GESNERIACEAE		HI
1	*	CYRTANDRA MANNII	GESNERIACEAE		HI
1		CYRTANDRA MEGASTIGMATA	GESNERIACEAE		HI
1		CYRTANDRA MENZIESII	GESNERIACEAE	HA'I MALE	HI
2		CYRTANDRA MUNROI	GESNERIACEAE		HI
1		CYRTANDRA NIUENSIS	GESNERIACEAE		HI
1		CYRTANDRA NUBINCOLENS	GESNERIACEAE		HI
2		CYRTANDRA OENOBARBA	GESNERIACEAE		HI
1		CYRTANDRA OLIVACEA	GESNERIACEAE		HI
1		CYRTANDRA PALOLOENSIS	GESNERIACEAE		HI
2		CYRTANDRA PALUDOSA VAR. HAUPUENSIS	GESNERIACEAE		HI
1	*	CYRTANDRA PARTITA	GESNERIACEAE		HI
1		CYRTANDRA PEARSALLII	GESNERIACEAE		HI
1		CYRTANDRA PERSTAMINODICA	GESNERIACEAE		HI
1	*	CYRTANDRA PICKERINGII	GESNERIACEAE		HI
1	*	CYRTANDRA PILIGYNA	GESNERIACEAE		HI
2		CYRTANDRA PLATYPHYLLA VAR. HILOENSIS	GESNERIACEAE		HI
1		CYRTANDRA PLURIFOLIA	GESNERIACEAE		HI
1		CYRTANDRA POLYANTHA	GESNERIACEAE		HI
1		CYRTANDRA PRUINOSA	GESNERIACEAE		HI
1		CYRTANDRA PUBENS	GESNERIACEAE		HI
2		CYRTANDRA RAMOSISSIMA	GESNERIACEAE		HI
1		CYRTANDRA ROCKII	GESNERIACEAE		HI
1		CYRTANDRA SANDWICENSIS	GESNERIACEAE		HI
3A		CYRTANDRA SCABRELLA	GESNERIACEAE		HI
1	*	CYRTANDRA SKOTTSBERGII	GESNERIACEAE		HI
1		CYRTANDRA SUBCORDATA	GESNERIACEAE		HI
3A		CYRTANDRA SUBINTEGRA	GESNERIACEAE		HI
1		CYRTANDRA SUBRECTA	GESNERIACEAE		HI
1		CYRTANDRA SUBUMBELLATA VAR. INTOSA	GESNERIACEAE		HI
1		CYRTANDRA TERNATA	GESNERIACEAE		HI
3A		CYRTANDRA TRIFLORA	GESNERIACEAE		HI
1		CYRTANDRA TURBINIFORMIS	GESNERIACEAE		HI
1	*	CYRTANDRA VANIOTA	GESNERIACEAE		HI
1		CYRTANDRA VILLICALYX VAR. PUBENTIGYNA	GESNERIACEAE		HI
1		CYRTANDRA VILLOSA	GESNERIACEAE		HI
1		CYRTANDRA VILLOSIFLORA	GESNERIACEAE		HI
1	*	CYRTANDRA WAIANUENSIS	GESNERIACEAE		HI
1	*	CYRTANDRA WAIOLANI	GESNERIACEAE		HI
1		CYRTANDRA WAIOMAOENSIS	GESNERIACEAE		HI
S		DALEA ARBORESCENS	*** SEE ***	PSOROTHAMNUS ARBORESCENS	
2		DALEA BARTONII	FABACEAE		TX
2		DALEA EPICA	FABACEAE	PRAIRIE-CLOVER, HOLE-IN-THE-ROCK	UT
2		DALEA FOLIOSA	FABACEAE	PRAIRIE-CLOVER,	AL IL TN
3C		DALEA GATTINGERI	FABACEAE		AL GA TN
S		DALEA KINGII	*** SEE ***	PSOROTHAMNUS KINGII	
2		DALEA REVERCHONII	FABACEAE	PRAIRIE-CLOVER, COMANCHE-PEAK	TX
2		DALEA SABINALIS	FABACEAE	PRAIRIE-CLOVER, SABINAL	TX
3C		DALEA SCARIOSA	FABACEAE	PRAIRIE-CLOVER,	NM
1		DALEA TENTACULOIDES	FABACEAE	INDIGOBUSH, GENTRY'S	AZ
S		DALEA THOMPSONAE	*** SEE ***	PSOROTHAMNUS THOMPSONAE	
1		DAPHNOPSIS MELLERANA	THYMELAEACEAE		FL
3C		DARLINGTONIA CALIFORNICA	SARRACENIACEAE	PITCHERPLANT, CALIFORNIA	CA OR
3C		DASYNOTUS DAUBENMIREI	BORAGINACEAE		ID
2		DEDECKERA EUREKENSIS	POLYGONACEAE	JULY GOLD	CA
1		DEERINGOTHAMNUS PULCHELLUS	ANNONACEAE	SQUIRREL-BANANA, WHITE	FL

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
1		DEERINGOTHAMNUS RUGELII	ANNONACEAE	SQUIRREL-BANANA, YELLOW	FL
1	•	DELISSEA FALLAX	CAMPANULACEAE		HI
1	•	DELISSEA LACINIATA	CAMPANULACEAE		HI
1	•	DELISSEA NIIHAUENSIS	CAMPANULACEAE		HI
1	•	DELISSEA PARVIFLORA	CAMPANULACEAE		HI
1		DELISSEA RHYTIDOSPERMA	CAMPANULACEAE		HI
2		DELISSEA RIVULARIS	CAMPANULACEAE		HI
1	•	DELISSEA SINUATA	CAMPANULACEAE		HI
3C		DELISSEA SUBCORDATA VAR. OBTUSIFOLIA	CAMPANULACEAE		HI
3C		DELISSEA SUBCORDATA VAR. SUBCORDATA	CAMPANULACEAE		HI
1	•	DELISSEA UNDULATA	CAMPANULACEAE		HI
3C		DELPHINIUM ALABAMICUM	RANUNCULACEAE		AL
2		DELPHINIUM BAKERI	RANUNCULACEAE	LARKSPUR, BAKER'S	CA
2		DELPHINIUM CALIFORNICUM SSP. INTERIUS	RANUNCULACEAE		CA
2		DELPHINIUM HESPERIUM SSP. CUYAMACAE	RANUNCULACEAE	LARKSPUR, CUYAMACA	CA
2		DELPHINIUM HUTCHINSONAE	RANUNCULACEAE	DELPHINIUM, HUTCHINSON'S	CA
2		DELPHINIUM INOPINUM	RANUNCULACEAE		CA
LE		DELPHINIUM KINKIENSE	RANUNCULACEAE	LARKSPUR, SAN CLEMENTE ISLAND	CA
2		DELPHINIUM LEUCOPHAEUM	RANUNCULACEAE		CA
2		DELPHINIUM LUTEUM	RANUNCULACEAE	LARKSPUR, YELLOW	CA
3C		DELPHINIUM MULTIPLEX	RANUNCULACEAE	LARKSPUR,	MA
3C		DELPHINIUM NEWTONIANUM	RANUNCULACEAE		AR
3C		DELPHINIUM NUTTALLIANUM VAR. LINEAPETALUM	RANUNCULACEAE	LARKSPUR,	MA
3C		DELPHINIUM PARISHII SSP. PURPUREUM	RANUNCULACEAE		CA
2		DELPHINIUM PAVONACEUM	RANUNCULACEAE		OR
3C		DELPHINIUM TRELEASEI	RANUNCULACEAE		AR MO
1		DELPHINIUM VARIEGATUM SSP. THORNEI	RANUNCULACEAE	LARKSPUR, ROYAL, THORNE'S	CA
1		DELPHINIUM VIRIDESCENS	RANUNCULACEAE	LARKSPUR, MENATCHEE	WA
3C		DELPHINIUM XANTHOLEUCUM	RANUNCULACEAE	LARKSPUR, NORTHWESTERN	WA
2		DENDROMECON RIGIDA SSP. RHAMNOIDES	PAPAVERACEAE		CA
2		DENDROPEMON SINTENISII	LORANTHACEAE	MICAQUILLO (MISTLETOE)	PR
3B		DENTARIA INCISA	BRASSICACEAE		TN
2		DESCURAINIA TORULOSA	BRASSICACEAE		NV
2		DESMANTHUS BICORNUTUS	FABACEAE	BUNDLEFLOWER, RUBY	Mexico
2		DESMODIUM LINDHEIMERI	FABACEAE		TX, Mexico
S		DICENTRA FORMOSA SSP. NEVADENSIS	*** SEE ***	DICENTRA NEVADENSIS	
3C		DICENTRA FORMOSA SSP. OREGANA	FUMARIACEAE	BLEEDINGHEART, PACIFIC	CA OR
3C		DICENTRA NEVADENSIS	FUMARIACEAE	BLEEDINGHEART, NEVADA	CA
3C		DICENTRA OCHROLEUCA	FUMARIACEAE	BLEEDINGHEART, YELLOW	CA
PE		DICERANDRA CORNUTISSIMA	LAMIACEAE	BALM, LONGSPURRED	FL
PE		DICERANDRA FRUTESCENS	LAMIACEAE	BALM, SCRUB	FL
LE		DICERANDRA IMMACULATA	LAMIACEAE		FL
3C		DICERANDRA ODORATISSIMA	LAMIACEAE		FL GA SC
2		DICHANTHELIUM LANUGINOSUM VAR. THERMALE	POACEAE	PANIC GRASS, HOT SPRING	CA
3C		DICHELOSTEMMA LACUNA-VERNALIS	LILIACEAE	BRODIAEA, VERNAL POOL	CA
3C		DICHONDRA DONNELLIANA	CONVOLVULACEAE	DICHONDRA, CALIFORNIA	CA
3C		DICHONDRA OCCIDENTALIS	CONVOLVULACEAE		CA
3B		DICLIPTERA KRUGII	ACANTHACEAE		PR
1		DIELLIA ERECTA	POLYPODIACEAE		HI
1		DIELLIA FALCATA	POLYPODIACEAE		HI
1		DIELLIA LACINIATA	POLYPODIACEAE		HI
1	•	DIELLIA MANNII	POLYPODIACEAE		HI
1		DIELLIA UNISORA	POLYPODIACEAE		HI
2		DIGITARIA FLORIDANA	POACEAE		FL
2		DIGITARIA GRACILLIMA	POACEAE		FL
2		DIGITARIA PAUCIFLORA	POACEAE	FINGER GRASS,	FL
3C		DIONAEA MUSCIPULA	DROSERACEAE	VENUS' FLY-TRAP	NC SC
2		DIPLACUS ARIDUS	SCROPHULARIACEAE	BUSH MONKEYFLOWER, LOW	CA, Mexico (Baja California)
1	•	DIPLAZIUM MOLOKAIENSE	POLYPODIACEAE		HI
1	•	DISSANTHELIUM CALIFORNICUM	POACEAE	DISSANTHELIUM, CALIFORNIA	CA, Mexico
3C		DISSOCHONDRUS BIFLORUS	POACEAE		HI
2		DITAXIS CALIFORNICA	EUPHORBIACEAE	DITAXIS, CALIFORNIA	CA
3B		DITAXIS DIVERSIFLORA	EUPHORBIACEAE		NV
2		DITHYREA MARITIMA	BRASSICACEAE	SPECTACLE-POD, BEACH	CA
2		DODECATHEON FRENCHII	PRIMULACEAE	SHOOTINGSTAR, FRENCH S	AR IL IN KY MO
3C		DODECATHEON POETICUM	PRIMULACEAE		OR WA
2		DODONAEA ERIOCARPA VAR. CONFERTIOR	SAPINDACEAE		HI
2		DODONAEA ERIOCARPA VAR. COSTULATA	SAPINDACEAE		HI
2		DODONAEA ERIOCARPA VAR. FORBESII	SAPINDACEAE		HI
2		DODONAEA ERIOCARPA VAR. LANAIENSIS	SAPINDACEAE		HI
2		DODONAEA ERIOCARPA VAR. MOLOKAIENSIS	SAPINDACEAE		HI
2		DODONAEA ERIOCARPA VAR. OBLONGA	SAPINDACEAE		HI
2		DODONAEA ERIOCARPA VAR. PALLIDA	SAPINDACEAE		HI
2		DODONAEA ERIOCARPA VAR. SKOTTSBERGII	SAPINDACEAE		HI
2		DODONAEA ERIOCARPA VAR. VARIANS	SAPINDACEAE		HI
2		DODONAEA SANDWICENSIS VAR. LATIFOLIA	SAPINDACEAE		HI
2		DODONAEA SANDWICENSIS VAR. SIMULANS	SAPINDACEAE		HI
2		DODONAEA STENOPTERA VAR. FAURIEI	SAPINDACEAE		HI
1		DODONAEA STENOPTERA VAR. STENOPTERA	SAPINDACEAE		HI
2		DOUGLASIA IDAHOENSIS	PRIMULACEAE		ID
3C		DOUGLASIA LAEVIGATA VAR. LAEVIGATA	PRIMULACEAE		OR WA

STATUS	SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
3C	DOUGLASIA NIVALIS VAR. NIVALIS	PRIMULACEAE		WA
2	DOWNINGIA CONCOLOR VAR. BREVIOR	CAMPANULACEAE	DOWNINGIA, CUYAMACA LAKE	CA
3C	DOWNINGIA HUMILIS	CAMPANULACEAE		CA
S	DOWNINGIA PUSILLA	*** SEE ***	DOWNINGIA HUMILIS	
3C	DRABA APICULATA VAR. DAVIESIAE	BRASSICACEAE		MT
2	DRABA APRICA	BRASSICACEAE		AR GA MO OK SC
3C	DRABA ARGYRAEA	BRASSICACEAE		ID
2	DRABA ARIDA	BRASSICACEAE		NV
3C	DRABA ASPRELLA VAR. ASPRELLA	BRASSICACEAE		AZ
3B	DRABA ASPRELLA VAR. KAIBABENSIS	BRASSICACEAE		AZ
3B	DRABA ASPRELLA VAR. STELLIGERA	BRASSICACEAE		AZ
3C	DRABA ASPRELLA VAR. ZIONENSIS	BRASSICACEAE	WHITLOW-GRASS, ZION	UT
3C	DRABA ASTEROPHORA VAR. ASTEROPHORA	BRASSICACEAE	DRABA, LAKE TAHOE	CA NV
2	DRABA ASTEROPHORA VAR. MACROCARPA	BRASSICACEAE	DRABA, CUP LAKE	CA
2	DRABA CARNOSULA	BRASSICACEAE	DRABA, MT. EDDY	CA
3C	DRABA CRASSIFOLIA VAR. NEVADENSIS	BRASSICACEAE		CA NV
3C	DRABA CRUCIATA VAR. CRUCIATA	BRASSICACEAE	DRABA, MINERAL KING	CA
3C	DRABA CRUCIATA VAR. INTEGRIFOLIA	BRASSICACEAE	DRABA, WHITNEY	CA
3C	DRABA DOUGLASII VAR. CROCKERI	BRASSICACEAE		CA NV
3C	DRABA DOUGLASII VAR. DOUGLASII	BRASSICACEAE		CA ID NV OR WA
3C	DRABA EXUNGUICULATA	BRASSICACEAE	WHITLOW-WORT,	CO
S	DRABA HOWELLII VAR. CARNOSULA	*** SEE ***	DRABA CARNOSULA	
2	DRABA JAEGERI	BRASSICACEAE		NV
2	DRABA LEMMONII VAR. CYCLOMORPHA	BRASSICACEAE		OR
3C	DRABA LEMMONII VAR. INCRASSATA	BRASSICACEAE		CA
2	DRABA MAGUIREI VAR. BURKEI	BRASSICACEAE		UT
3C	DRABA MAGUIREI VAR. MAGUIREI	BRASSICACEAE		UT
3C	DRABA MOGOLLONICA	BRASSICACEAE		NM
2	DRABA MURRAYI	BRASSICACEAE		AK, Canada (Yukon)
3C	DRABA NIVALIS VAR. BREVICULA	BRASSICACEAE	DRABA, SNOW, LITTLE	WY
S	DRABA OLIGOSPERMA VAR. PECTINIPILA	*** SEE ***	DRABA PECTINIPILA	
2	DRABA PAUCIFRUCTA	BRASSICACEAE		NV
3C	DRABA PECTINIPILA	BRASSICACEAE		CO WY
3C	DRABA QUADRICOSTATA	BRASSICACEAE	DRABA, BODIE HILLS	CA NV
3C	DRABA RUAXES	BRASSICACEAE		AK WA, Canada (B.C.)
3C	DRABA SOBOLIFERA	BRASSICACEAE	WHITLOW-GRASS, STOLON	UT
3C	DRABA SPHAEROCARPA	BRASSICACEAE		ID
3C	DRABA SPHAEROIDES VAR. CUSICKII	BRASSICACEAE		NV OR UT
3C	DRABA STENOLOBA VAR. RAMOSA	BRASSICACEAE		CA NV
3C	DRABA SUBALPINA	BRASSICACEAE	WHITLOW-GRASS,	UT
S	DRABA VENTOSA VAR. RUAXES	*** SEE ***	DRABA RUAXES	
S	DRABA ZIONENSIS	*** SEE ***	DRABA ASPRELLA VAR. ZIONENSIS	
3C	DRACAENA AUREA	LILIACEAE	HALAPEPE,	HI
1	DRACAENA FORBESII	LILIACEAE	HALAPEPE,	HI
1	DRACAENA HAWAIIENSIS	LILIACEAE	HALAPEPE,	HI
S	DRYPETES PHYLLANTHOIDES	*** SEE ***	NEOWAWRAEA PHYLLANTHOIDES	
3C	DUBAUTIA ARBOREA	ASTERACEAE		HI
1	DUBAUTIA HERBSTOBATAE	ASTERACEAE		HI
3B	DUBAUTIA HILLEBRANDII	ASTERACEAE		HI
3C	DUBAUTIA KNUDSENII	ASTERACEAE	DUBAUTIA, KNUDSEN	HI
3B	DUBAUTIA KNUDSENII VAR. DEGENERI	ASTERACEAE		HI
2	DUBAUTIA LAEVIGATA VAR. PARVIFOLIA	ASTERACEAE		HI
1	DUBAUTIA LATIFOLIA	ASTERACEAE		HI
2	DUBAUTIA LAXA VAR. BLAKEI	ASTERACEAE		HI
1	DUBAUTIA LAXA VAR. WAIANENSIS	ASTERACEAE	NAENAE-PUA-MELEMELE,	HI
3B	DUBAUTIA LONCHOPHYLLA	ASTERACEAE		HI
2	DUBAUTIA MAGNIFOLIA	ASTERACEAE		HI
1	DUBAUTIA MICROCEPHALA	ASTERACEAE		HI
3B	DUBAUTIA MOLOKAIENSIS	ASTERACEAE		HI
3B	DUBAUTIA MONTANA VAR. LONGIFOLIA	ASTERACEAE		HI
3B	DUBAUTIA MONTANA VAR. ROBUSTIOR	ASTERACEAE		HI
1	DUBAUTIA PLANTAGINEA VAR. ACRIDENTATA	ASTERACEAE		HI
3C	DUBAUTIA PLANTAGINEA VAR. PLANTAGINEA	ASTERACEAE		HI
2	DUBAUTIA PLATYPHYLLA VAR. LEPTOPHYLLA	ASTERACEAE		HI
1	DUBAUTIA RETICULATA	ASTERACEAE		HI
3B	DUBAUTIA ROCKII	ASTERACEAE		HI
3C	DUBAUTIA SHERFFIANA	ASTERACEAE	RAILLIARDIA, SHERFF	HI
3B	DUBAUTIA STRUTHIOLOIDES	ASTERACEAE	NA'ENA'E	HI
3B	DUBAUTIA TERNIFOLIA	ASTERACEAE		HI
3B	DUBAUTIA THYRSIFLORA VAR. CERNUA	ASTERACEAE		HI
3B	DUBAUTIA THYRSIFLORA VAR. THYRSIFLORA	ASTERACEAE		HI
2	DUBAUTIA WAIALEALAE VAR. MEGAPHYLLA	ASTERACEAE		HI
2	DUDLEYA ABRAMSII SSP. MURINA	CRASSULACEAE	LIVEFOREVER, SAN LUIS OBISPO	CA
2	DUDLEYA BETTINAE	CRASSULACEAE	LIVEFOREVER, BETTY'S	CA
S	DUDLEYA BLOCHMANIAE SSP. BREVIFOLIA	*** SEE ***	DUDLEYA BREVIFOLIA	
2	DUDLEYA BLOCHMANIAE SSP. INSULARIS	CRASSULACEAE	DUDLEYA, SANTA ROSA ISLAND	CA
1	DUDLEYA BREVIFOLIA	CRASSULACEAE	DUDLEYA, SHORT-LEAVED	CA
2	DUDLEYA CANDELABRUM	CRASSULACEAE	LIVEFOREVER, CANDLEHOLDER	CA
S	DUDLEYA COLLOMIAE	*** SEE ***	DUDLEYA SAXOSA VAR. COLLOMIAE	
2	DUDLEYA CYMOSA SSP. MARCESCENS	CRASSULACEAE	LIVEFOREVER, SANTA MONICA MOUNTAINS	CA
2	DUDLEYA DENSIFLORA	CRASSULACEAE	DUDLEYA, SAN GABRIEL MOUNTAIN	CA
2	DUDLEYA MULTICAULIS	CRASSULACEAE	LIVEFOREVER, MANY-STEMMED	CA
2	DUDLEYA NESIOTICA	CRASSULACEAE	LIVEFOREVER, SANTA CRUZ ISLAND	CA

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
1		DUDLEYA PARVA	CRASSULACEAE	DUDLEYA, SERPENTINE	CA
2		DUDLEYA SAXOSA SSP. SAXOSA	CRASSULACEAE		CA
3C		DUDLEYA SAXOSA VAR. COLLOMIAE	CRASSULACEAE		AZ
1		DUDLEYA STOLONIFERA	CRASSULACEAE	LIVEFOREVER, LAGUNA BEACH	CA
LE		DUDLEYA TRASKIAE	CRASSULACEAE	LIVEFOREVER, SANTA BARBARA ISLAND	CA
2		DUDLEYA VARIEGATA	CRASSULACEAE	DUDLEYA, VARIEGATED	CA, Mexico
2		DUDLEYA VERITYI	CRASSULACEAE		CA
2		DUDLEYA VIRENS	CRASSULACEAE	LIVEFOREVER, GREEN	CA
1		DUDLEYA VISCIDA	CRASSULACEAE	LIVEFOREVER, STICKY	CA
3C		DYSCHORISTE CRENULATA	ACANTHACEAE		TX, Mexico
LE		DYSSODIA TEPHROLEUCA	ASTERACEAE	DOGWEED, ASHY	TX
S		ECHEVERIA COLLOMIAE	*** SEE ***	DUDLEYA SAXOSA VAR. COLLOMIAE	
S		ECHEVERIA RUSBYI	*** SEE ***	GRAPTOPETALUM RUSBYI	
S		ECHINACEA ANGUSTIFOLIA VAR. TENNESSEENSIS	*** SEE ***	ECHINACEA TENNESSEENSIS	
2		ECHINACEA LAEVIGATA	ASTERACEAE	CONEFLOWER,	AL GA NC SC VA
LE		ECHINACEA TENNESSEENSIS	ASTERACEAE	CONEFLOWER, PURPLE, TENNESSEE	TN
2		ECHINOCACTUS ASTERIAS	CACTACEAE	CACTUS, STAR	TX MEXICO
S		ECHINOCACTUS GLAUCUS	*** SEE ***	SCLEROCACTUS GLAUCUS	
LE		ECHINOCACTUS HORIZONTHALONIUS VAR. NICHOLII	CACTACEAE	CACTUS, TURK'S HEAD, NICHOL'S	AZ
S		ECHINOCACTUS MARIPOSENSIS	*** SEE ***	NEOLLOYDIA MARIPOSENSIS	
S		ECHINOCACTUS MESAE-VERDAE	*** SEE ***	SCLEROCACTUS MESAE-VERDAE	
S		ECHINOCACTUS PEEBLESIANUS	*** SEE ***	PEDIOCACTUS PEEBLESIANUS VAR. PEEBLESIANUS	
S		ECHINOCACTUS SILERI	*** SEE ***	PEDIOCACTUS SILERI	
S		ECHINOCACTUS SUBGLAUCUS	*** SEE ***	SCLEROCACTUS GLAUCUS	
S		ECHINOCACTUS TOBUSCHII	*** SEE ***	ANCISTROCACTUS TOBUSCHII	
S		ECHINOCACTUS WHIPPLEI VAR. GLAUCUS	*** SEE ***	SCLEROCACTUS GLAUCUS	
E		ECHINOCEREUS ARIZONICUS	*** SEE ***	ECHINOCEREUS TRIGLOCHIDIATUS VAR. ARIZONICUS	
2		ECHINOCEREUS BERLANDIERI VAR. ANGUSTICEPS	CACTACEAE		TX
S		ECHINOCEREUS BLANKII VAR. ANGUSTICEPS	*** SEE ***	ECHINOCEREUS BERLANDIERI VAR. ANGUSTICEPS	
2		ECHINOCEREUS CHLORANTHUS VAR. NEOCAPILLUS	CACTACEAE	HEDGEHOG CACTUS,	TX
S		ECHINOCEREUS COCCINEUS VAR. INERMIS	*** SEE ***	ECHINOCEREUS TRIGLOCHIDIATUS VAR. INERMIS	
S		ECHINOCEREUS DAVISII	*** SEE ***	ECHINOCEREUS VIRIDIFLORUS VAR. DAVISII	
2		ECHINOCEREUS ENGELMANNII VAR. HOWEI	CACTACEAE	HEDGEHOG CACTUS, HOWE'S	CA
2		ECHINOCEREUS ENGELMANNII VAR. MUNZII	CACTACEAE	HEDGEHOG CACTUS, MUNZ'S	CA, Mexico
LE		ECHINOCEREUS ENGELMANNII VAR. PURPUREUS	CACTACEAE	HEDGEHOG CACTUS, PURPLE-SPINED	UT
LE		ECHINOCEREUS FENDLERI VAR. KUENZLERI	CACTACEAE	HEDGEHOG CACTUS, KUENZLER	NM
S		ECHINOCEREUS HEMPELII /OF AUTHORS, NOT FOBE	*** SEE ***	ECHINOCEREUS FENDLERI VAR. KUENZLERI	
S		ECHINOCEREUS KUENZLERI	*** SEE ***	ECHINOCEREUS FENDLERI VAR. KUENZLERI	
3C		ECHINOCEREUS LEDINGII	CACTACEAE		AZ
LE		ECHINOCEREUS LLOYDII	CACTACEAE	HEDGEHOG CACTUS, LLOYD S	TX
E		ECHINOCEREUS MELANOCENTRUS	*** SEE ***	ECHINOCEREUS REICHENBACHII VAR. ALBERTII	
S		ECHINOCEREUS PHOENICEUS VAR. INERMIS	*** SEE ***	ECHINOCEREUS TRIGLOCHIDIATUS VAR. INERMIS	
LE		ECHINOCEREUS REICHENBACHII VAR. ALBERTII	CACTACEAE	CACTUS, BLACK LACE	TX
1		ECHINOCEREUS REICHENBACHII VAR. CHISOSENSIS	CACTACEAE		TX, Mexico
2		ECHINOCEREUS REICHENBACHII VAR. FITCHII	CACTACEAE		TX
S		ECHINOCEREUS ROETTERI VAR. LLOYDII	*** SEE ***	ECHINOCEREUS LLOYDII	
E		ECHINOCEREUS RUSSANTHUS	CACTACEAE	HEDGEHOG CACTUS, RUSTY	TX
LE		ECHINOCEREUS TRIGLOCHIDIATUS VAR. ARIZONICUS	CACTACEAE	HEDGEHOG CACTUS, ARIZONA	AZ
LE		ECHINOCEREUS TRIGLOCHIDIATUS VAR. INERMIS	CACTACEAE	HEDGEHOG CACTUS, SPINELESS	CO UT
3C		ECHINOCEREUS VIRIDIFLORUS VAR. CORRELLII	CACTACEAE		TX
LE		ECHINOCEREUS VIRIDIFLORUS VAR. DAVISII	CACTACEAE	PITAYA, GREEN, DAVIS	TX
S		ECHINOMASTUS MARIPOSENSIS	*** SEE ***	NEOLLOYDIA MARIPOSENSIS	
E		ECTOSPERMA ALEXANDRAE	*** SEE ***	SWALLENIA ALEXANDRAE	
3C		ELEOCHARIS AUSTROTEXANA	CYPERACEAE		TX
E		ELEOCHARIS BRACHYCARPA	CYPERACEAE		TX MEXICO
2		ELEOCHARIS CYLINDRICA	CYPERACEAE	SPIKE-RUSH, CYLINDER	TX, Mexico
3C		ELLIOTTIA RACEMOSA	ERICACEAE	PLUME, GEORGIA	GA SC
3A		ELODEA BRANDEGEAE	HYDROCHARITACEAE	WATERWEED, TRUCKEE	CA
1	*	ELODEA LINEARIS	HYDROCHARITACEAE	WATERWEED, NASHVILLE	TN
2	*	ELODEA NEVADENSIS	HYDROCHARITACEAE	WATERWEED, NEVADA	NV
3A		ELODEA SCHWEINITZII	HYDROCHARITACEAE	WATERWEED, SCHWEINITZ S	PA
E		ELYMUS SVENSONII	POACEAE		TN
E		ELYTRARIA CAROLINIENSIS VAR. ANGUSTIFOLIA	ACANTHACEAE		FL
3C		ELYTRARIA CAROLINIENSIS VAR. CAROLINIENSIS	ACANTHACEAE		FL GA SC
2		EMBELIA MILLEBRANDII	MYRSINACEAE		HI
3C		ENCELIA FRUTESCENS VAR. RESINOSA	ASTERACEAE		AZ
2		ENCELIOPSIS COVILLEI	ASTERACEAE	DAISY, PANAMINT	CA
LT		ENCELIOPSIS NUDICAULIS VAR. CORRUGATA	ASTERACEAE	SUNRAY, ASH MEADOWS	NV

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
2		ENCYCLIA BOOTHIANA VAR. ERYTHRONIOIDES	ORCHIDACEAE	ORCHID, DOLLAR	FL, Bahamas, Belize, Cuba, Jamaica, Mexico, Hispaniola, South America
3C		ENCYCLIA KRUGII	ORCHIDACEAE		PR
2		ENCYCLIA SINTENISII	ORCHIDACEAE		PR, Cuba, Jamaica, Hispaniola
3C		EPHEDRA FUNEREA	EPHEDRACEAE		CA NV
3B		EPIDENDRUM BRITTONIANUM	ORCHIDACEAE		PR
S		EPIDENDRUM ERYTHRONIOIDES	*** SEE ***	ENCYCLIA BOOTHIANA VAR. ERYTHRONIOIDES	
3C		EPIDENDRUM KRANZLINII	ORCHIDACEAE		PR
S		EPIDENDRUM KRUGII	*** SEE ***	ENCYCLIA KRUGII	
2		EPIDENDRUM LACERUM	ORCHIDACEAE		PR, Cuba
S		EPIDENDRUM SINTENISII	*** SEE ***	ENCYCLIA SINTENISII	
3C		EPILOBIUM NEVADENSE	ONAGRACEAE	WILLOWHERB, NEVADA	NV UT
3C		EPILOBIUM NIVIUM	ONAGRACEAE	WILLOWHERB, SNOW MOUNTAIN	CA
S		EPILOBIUM OBCORDATUM SSP. SISKIYOUENSE	*** SEE ***	EPILOBIUM SISKIYOUENSE	
2		EPILOBIUM OREGANUM	ONAGRACEAE		CA OR
3C		EPILOBIUM SISKIYOUENSE	ONAGRACEAE	ROCK-FRINGE, SISKIYOU	CA OR
3C		EPITHELANTHA BOKEI	CACTACEAE		TX, Mexico
1		ERAGROSTIS FOSBERGII	POACEAE	LOVE GRASS, FOSBERG'S	HI
1	*	ERAGROSTIS MAUIENSIS	POACEAE	LOVE GRASS, MAUI	HI
1		ERAGROSTIS NIIHAUENSIS	POACEAE	LOVE GRASS, NIIHAU	HI
1	*	ERAGROSTIS PAUPERA	POACEAE		HI
2		ERAGROSTIS TRACYI	POACEAE	LOVE GRASS, SANIBEL	FL
2		EREMALCHE KERNENSIS	MALVACEAE	MALLOW, KERN	CA
2		ERIASTRUM BRANDEGEAE	POLEMONIACEAE	ERIASTRUM, BRANDEGEE	CA
1		ERIASTRUM DENSIFOLIUM SSP. SANCTORUM	POLEMONIACEAE	ERIASTRUM, SANTA ANA RIVER	CA
2		ERIASTRUM HOOVERI	POLEMONIACEAE	ERIASTRUM, HOOVER'S	CA
2		ERIASTRUM TRACYI	POLEMONIACEAE	ERIASTRUM, TRACY	CA
1		ERICAMERIA FASCICULATA	ASTERACEAE	GOLDENWEED, EASTWOOD'S	CA
S		ERICAMERIA PALMERI SSP. PALMERI	*** SEE ***	HAPLOPAPPUS PALMERI SSP. PALMERI	
3C		ERIGERON ABAJOENSIS	ASTERACEAE	DAISY, ABAJO	UT
2		ERIGERON AEQUIFOLIUS	ASTERACEAE	DAISY, HALL'S	CA
3C		ERIGERON ALLOCOTUS	ASTERACEAE	FLEABANE, BRANCHED	MT WY
3C		ERIGERON ARENARIOIDES	ASTERACEAE		UT
3C		ERIGERON ARIZONICUS	ASTERACEAE		AZ
1		ERIGERON BASALTICUS	ASTERACEAE	DAISY, BASALT	WA
3C		ERIGERON BIGELOVII	ASTERACEAE		TX, Mexico
3C		ERIGERON BLOOMERI VAR. NUDATUS	ASTERACEAE		CA OR
3C		ERIGERON CALVUS	ASTERACEAE	FLEABANE,	CA
2		ERIGERON CHRYSOPSIDIS VAR. BREVIFOLIUS	ASTERACEAE		OR
2		ERIGERON CRONQUISTII	ASTERACEAE	DAISY, CRONQUIST	UT
2		ERIGERON DECUMBENS VAR. DECUMBENS	ASTERACEAE		OR
3B		ERIGERON DELICATUS	ASTERACEAE	FLEABANE, DEL NORTE	CA OR
3C		ERIGERON ERIOPHYLLUS	ASTERACEAE	FLEABANE,	AZ
S		ERIGERON FLAGELLARIS VAR. TRILOBATUS	*** SEE ***	ERIGERON PROSELYTICUS	
3C		ERIGERON FLETTII	ASTERACEAE		WA
2		ERIGERON FLEXUOSUS	ASTERACEAE	DAISY, TRINITY ALPS	CA
3C		ERIGERON FOLIOSUS VAR. BLOCHMANIAE	ASTERACEAE	LEAFY-DAISY, BLOCKMAN'S	CA
3C		ERIGERON GARRETTII	ASTERACEAE		UT
S		ERIGERON GEISERI VAR. CALCICOLA	*** SEE ***	ERIGERON MIMEGLETES	
S		ERIGERON GRANDIFLORUS SSP. MUIRII	*** SEE ***	ERIGERON MUIRII	
2		ERIGERON HESSII	ASTERACEAE		NM
2		ERIGERON HOWELLII	ASTERACEAE	FLEABANE, HOWELL'S	OR WA
-		ERIGERON HULTENII	ASTERACEAE		AK
-		ERIGERON KACHINENSIS	ASTERACEAE	DAISY, KACHINA	CO UT
1		ERIGERON KUSCHEI	ASTERACEAE	FLEABANE,	AZ
2		ERIGERON LATUS	ASTERACEAE	FLEABANE,	ID NV
3C		ERIGERON LEIBERGII	ASTERACEAE		WA
2		ERIGERON LEMMONII	ASTERACEAE		AZ
3C		ERIGERON LOBATUS	ASTERACEAE		AZ
2		ERIGERON MAGUIREI VAR. HARRISONII	ASTERACEAE		UT
LE		ERIGERON MAGUIREI VAR. MAGUIREI	ASTERACEAE	DAISY, MAGUIRE	UT
2		ERIGERON MANCUS	ASTERACEAE	DAISY, DEPAUPERATE	UT
2		ERIGERON MIMEGLETES	ASTERACEAE	FLEABANE,	TX
2		ERIGERON MUIRII	ASTERACEAE		AK
2		ERIGERON MULTICEPS	ASTERACEAE	DAISY, KERN RIVER	CA
3C		ERIGERON OREGANUS	ASTERACEAE	FLEABANE, OREGON	OR WA
2		ERIGERON OVINUS	ASTERACEAE		NV
2		ERIGERON PARISHII	ASTERACEAE	DAISY, PARISH'S	CA
3A		ERIGERON PERGLABER	ASTERACEAE		AZ
3C		ERIGERON PIPERANUS	ASTERACEAE		WA
2		ERIGERON PRINGLEI	ASTERACEAE		AZ
3C		ERIGERON PROSELYTICUS	ASTERACEAE	DAISY, CLIFF	UT
2		ERIGERON PULCHELLUS VAR. TOLSTEADII	ASTERACEAE		MN
3C		ERIGERON RELIGIOSUS	ASTERACEAE	FLEABANE, CLEAR CREEK	UT
LT		ERIGERON RHIZOMATUS	ASTERACEAE	FLEABANE,	[illegible]
2		ERIGERON SIONIS	ASTERACEAE		UT
2		ERIGERON SP. NOV. /INED.	ASTERACEAE		WY
2		ERIGERON SUPPLEX	ASTERACEAE	DAISY, SUPPLE	CA
3C		ERIGERON UNCIALIS VAR. CONJUGANS	ASTERACEAE		NV
2		ERIGERON UNTERMANNII	ASTERACEAE		UT

STATUS	SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
2	ERIOCAULON KORNICKIANUM	ERIOCAULACEAE	PIPEWORT,	AR GA OK TX
2	ERIOCAULON PARKERI	ERIOCAULACEAE	PIPEWORT, PARKER'S	CT DC DE MA MD ME NC NJ NY PA VA, Canada (N B., Que.)
2	ERIOCHLOA MICHAUXII VAR. SIMPSONII	POACEAE		FL
1	ERIODICTYON ALTISSIMUM	HYDROPHYLLACEAE	MOUNTAIN BALM, INDIAN KNOB	CA
1	ERIODICTYON CAPITATUM	HYDROPHYLLACEAE	LOMPOC YERBA SANTA	CA
3C	ERIOGONUM ALLENII	POLYGONACEAE		VA WV
3C	ERIOGONUM ALPINUM	POLYGONACEAE	WILD BUCKWHEAT, TRINITY	CA
1	ERIOGONUM AMMOPHILUM	POLYGONACEAE	WILD BUCKWHEAT, SAND-LOVING	UT
2	ERIOGONUM AMPULLACEUM	POLYGONACEAE	WILD BUCKWHEAT, MONO	CA
3C	ERIOGONUM ANEMOPHILUM	POLYGONACEAE	WILD BUCKWHEAT,	NV
2	ERIOGONUM APACHENSE	POLYGONACEAE		AZ
1	ERIOGONUM APRICUM VAR. APRICUM	POLYGONACEAE	WILD BUCKWHEAT, IONE	CA
1	ERIOGONUM APRICUM VAR. PROSTRATUM	POLYGONACEAE	WILD BUCKWHEAT, IRISH HILL	CA
2	ERIOGONUM ARETIOIDES	POLYGONACEAE	WILD BUCKWHEAT, MIDSTOE	UT
2	ERIOGONUM ARGOPHYLLUM	POLYGONACEAE	WILD BUCKWHEAT,	NV
3C	ERIOGONUM BEATLEYAE	POLYGONACEAE	WILD BUCKWHEAT, BEATLEY	CA NV
2	ERIOGONUM BIFURCATUM	POLYGONACEAE		CA NV
2	ERIOGONUM BRANDEGEI	POLYGONACEAE	WILD BUCKWHEAT, BRANDEGEE	CO
2	ERIOGONUM BREEDLOVEI VAR. BREEDLOVEI	POLYGONACEAE	WILD BUCKWHEAT, PIUTE	CA
2	ERIOGONUM BREEDLOVEI VAR. SHEVOCKII	POLYGONACEAE		CA
2	ERIOGONUM BUTTERWORTHIANUM	POLYGONACEAE	WILD BUCKWHEAT, BUTTERWORTH'S	CA
3C	ERIOGONUM CANINUM	POLYGONACEAE	WILD BUCKWHEAT, TIBURON	CA
2	ERIOGONUM CAPILLARE	POLYGONACEAE	WILD BUCKWHEAT,	AZ
2	ERIOGONUM CHRYSOPS	POLYGONACEAE	WILD BUCKWHEAT, GOLDEN	NM
3C	ERIOGONUM CLAVELLATUM	POLYGONACEAE	WILD BUCKWHEAT, COMB WASH	CO UT
3C	ERIOGONUM CONCINNUM	POLYGONACEAE		NM
3C	ERIOGONUM CONGDONII	POLYGONACEAE	ERIOGONUM, CONGDON	CA
3C	ERIOGONUM CONTIGUUM	POLYGONACEAE		CA NV
3C	ERIOGONUM CORRELLII	POLYGONACEAE		TX
1B	ERIOGONUM CORYMBOSUM VAR. DAVIDSEI	POLYGONACEAE	WILD BUCKWHEAT, CORYMBED, DAVIDSE	UT
3C	ERIOGONUM CORYMBOSUM VAR. MATTHEWSAE	POLYGONACEAE	WILD BUCKWHEAT, MATTHEW'S	UT
3C	ERIOGONUM CORYMBOSUM VAR. REVEALIANUM	POLYGONACEAE	WILD BUCKWHEAT, CORYMBED, REVEAL	UT
2	ERIOGONUM CROCATUM	POLYGONACEAE	WILD BUCKWHEAT, CONEJO	CA
2	ERIOGONUM CRONQUISTII	POLYGONACEAE	WILD BUCKWHEAT, CRONQUIST	UT
2	ERIOGONUM CROSBYAE	POLYGONACEAE		OR
2	ERIOGONUM CUSICKII	POLYGONACEAE		OR
3C	ERIOGONUM DARROVII	POLYGONACEAE	WILD BUCKWHEAT,	AZ NV
3B	ERIOGONUM DENSUM	POLYGONACEAE		AZ NM
3C	ERIOGONUM DESERTICOLA	POLYGONACEAE	ERIOGONUM, DESERT	AZ CA
3C	ERIOGONUM DICLINUM	POLYGONACEAE	ERIOGONUM, JAMES CANYON*	CA OR
3C	ERIOGONUM EASTWOODIANUM	POLYGONACEAE		CA
3C	ERIOGONUM EPHEDROIDES	POLYGONACEAE	WILD BUCKWHEAT, EPHEDRA	CO UT
2	ERIOGONUM EREMICOLA	POLYGONACEAE	ERIOGONUM, WILD ROSE CANYON	CA
3C	ERIOGONUM EREMICUM	POLYGONACEAE	WILD BUCKWHEAT, LIMESTONE	UT
3C	ERIOGONUM ERICIFOLIUM VAR. ERICIFOLIUM	POLYGONACEAE	WILD BUCKWHEAT,	AZ
2	ERIOGONUM ERICIFOLIUM VAR. THORNEI	POLYGONACEAE	WILD BUCKWHEAT, THORNE S	CA
2	ERIOGONUM FLAVUM VAR. AQUILINUM	POLYGONACEAE	WILD BUCKWHEAT,	AK
S	ERIOGONUM FLORIDANUM	*** SEE ***	ERIOGONUM LONGIFOLIUM VAR. GNAPHALIFOLIUM	
2	ERIOGONUM GIGANTEUM VAR. COMPACTUM	POLYGONACEAE	GIANT BUCKWHEAT, SANTA BARBARA IS.	CA
2	ERIOGONUM GIGANTEUM VAR. FORMOSUM	POLYGONACEAE	WILD BUCKWHEAT, SAN CLEMENTE IS.	CA
3C	ERIOGONUM GILMANII	POLYGONACEAE	WILD BUCKWHEAT, GILMAN'S	CA
2	ERIOGONUM GOSSYPINUM	POLYGONACEAE	ERIOGONUM, COTTON	CA
2	ERIOGONUM GRANDE VAR. DUNKLEI	POLYGONACEAE	WILD BUCKWHEAT, SAN MIGUEL IS.	CA
3C	ERIOGONUM GRANDE VAR. TIMORUM	POLYGONACEAE	WILD BUCKWHEAT, SAN NICOLAS ISLAND	CA
1B	ERIOGONUM GRAYI	POLYGONACEAE		UT
LT	ERIOGONUM GYPSOPHILUM	POLYGONACEAE	WILD-BUCKWHEAT, GYPSUM	NM
S	ERIOGONUM HARPERI	*** SEE ***	ERIOGONUM LONGIFOLIUM VAR. HARPERI	
3C	ERIOGONUM HEERMANNII VAR. FLOCCOSUM	POLYGONACEAE	ERIOGONUM, CLARK MOUNTAIN	CA NV
3C	ERIOGONUM HEERMANNII VAR. SUBRACEMOSUM	POLYGONACEAE		AZ UT
3C	ERIOGONUM HIRTELLUM	POLYGONACEAE	WILD BUCKWHEAT, KLAMATH MOUNTAIN	CA
3C	ERIOGONUM HOFFMANNII VAR. HOFFMANNII	POLYGONACEAE	ERIOGONUM, HOFFMAN,	CA
3C	ERIOGONUM HOFFMANNII VAR. ROBUSTIUS	POLYGONACEAE	ERIOGONUM, HOFFMAN, ROBUST	CA
2	ERIOGONUM HOLMGRENII	POLYGONACEAE		NV
1	ERIOGONUM HUMIVAGANS	POLYGONACEAE	WILD BUCKWHEAT, SPREADING	UT
3C	ERIOGONUM HYLOPHILUM	POLYGONACEAE	WILD BUCKWHEAT, BADLANDS	UT
3C	ERIOGONUM INTERMONTANUM	POLYGONACEAE	WILD BUCKWHEAT, DIVIDE	UT
3C	ERIOGONUM INTRAFRACTUM	POLYGONACEAE	WILD BUCKWHEAT, JOINTED	CA
3C	ERIOGONUM JAMESII VAR. RUPICOLA	POLYGONACEAE	WILD BUCKWHEAT, SANDSTONE	UT
1	ERIOGONUM KELLOGGII	POLYGONACEAE	WILD BUCKWHEAT, RED MOUNTAIN	CA
2	ERIOGONUM KENNEDYI VAR. AUSTROMONTANUM	POLYGONACEAE	WILD BUCKWHEAT, SOUTHERN MOUNTAIN	CA
2	ERIOGONUM KENNEDYI VAR. PINICOLA	POLYGONACEAE	WILD BUCKWHEAT, CACHE PEAK	CA
2	ERIOGONUM LAGOPUS	POLYGONACEAE		MT WY
3C	ERIOGONUM LANCIFOLIUM	POLYGONACEAE	WILD BUCKWHEAT, LANCE LEAF	UT
3C	ERIOGONUM LATENS	POLYGONACEAE		CA
3C	ERIOGONUM LEMMONII	POLYGONACEAE	WILD BUCKWHEAT,	NV
3C	ERIOGONUM LIBERTINI	POLYGONACEAE		CA
2	ERIOGONUM LOBBII VAR. ROBUSTUM	POLYGONACEAE		WA
3C	ERIOGONUM LOGANUM	POLYGONACEAE	WILD BUCKWHEAT, LOGAN	UT
S	ERIOGONUM LONGIFOLIUM VAR. FLORIDANUM	*** SEE ***	ERIOGONUM FLORIDANUM	
2	ERIOGONUM LONGIFOLIUM VAR. GNAPHALIFOLIUM	POLYGONACEAE	WILD BUCKWHEAT, SCRUB	FL

STATUS	SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
2	ERIOGONUM LONGIFOLIUM VAR. HARPERI	POLYGONACEAE		AL KY TN
2	ERIOGONUM MICROTHECUM VAR. JOHNSTONII	POLYGONACEAE	BRUSH BUCKWHEAT, JOHNSTON'S	CA
2	ERIOGONUM MICROTHECUM VAR. PANAMINTENSE	POLYGONACEAE	BRUSH BUCKWHEAT, PANAMINT MOUNTAINS	CA
2	ERIOGONUM MORTONIANUM	POLYGONACEAE	WILD BUCKWHEAT,	AZ
3B	ERIOGONUM NANUM	POLYGONACEAE	WILD BUCKWHEAT, DWARF	UT
3C	ERIOGONUM NATUM	POLYGONACEAE		UT
3C	ERIOGONUM NEALLEYI	POLYGONACEAE	WILD BUCKWHEAT, IRION COUNTY	TX
2	ERIOGONUM NERVULOSUM	POLYGONACEAE		CA
3C	ERIOGONUM NORTONII	POLYGONACEAE	WILD BUCKWHEAT, PINNACLES	CA
3C	ERIOGONUM NOVONUDUM	POLYGONACEAE		[illegible]
2	ERIOGONUM NUDUM VAR. MURINUM	POLYGONACEAE	WILD BUCKWHEAT, MOUSE	CA
3B	ERIOGONUM NUMMULARE	POLYGONACEAE		UT
3C	ERIOGONUM OSTLUNDII	POLYGONACEAE	WILD BUCKWHEAT, OSTLUND	UT
3C	ERIOGONUM OVALIFOLIUM VAR. CAELESTINUM	POLYGONACEAE		NV
1	ERIOGONUM OVALIFOLIUM VAR. VINEUM	POLYGONACEAE	WILD BUCKWHEAT,	CA
PE	ERIOGONUM OVALIFOLIUM VAR. WILLIAMSIAE	POLYGONACEAE		NV
3C	ERIOGONUM PANGUICENSE VAR. ALPESTRE	POLYGONACEAE	WILD BUCKWHEAT, PANGUITCH	UT
[illegible]	ERIOGONUM PARVIFOLIUM VAR. LUCIDUM	POLYGONACEAE	WILD BUCKWHEAT, POINT LOBOS	CA
3B	ERIOGONUM PARVIFOLIUM VAR. PAYNEI	POLYGONACEAE	ERIOGONUM, SANTA PAULA	CA
LE	ERIOGONUM PELINOPHILUM	POLYGONACEAE	WILD-BUCKWHEAT, CLAY-LOVING	CO
3C	ERIOGONUM PENDULUM	POLYGONACEAE	WILD BUCKWHEAT, WALDO	CA OR
2	ERIOGONUM PROCIDUUM	POLYGONACEAE	WILD BUCKWHEAT, PROSTRATE	CA NV [illegible]
2	ERIOGONUM RIPLEYI	POLYGONACEAE		AZ
3C	ERIOGONUM RUBRICAULE	POLYGONACEAE		NV
3C	ERIOGONUM SAURINUM	POLYGONACEAE	WILD BUCKWHEAT, DINOSAUR	CO UT
2	ERIOGONUM SCOPULORUM	POLYGONACEAE		OR
3C	ERIOGONUM SISKIYOUENSE	POLYGONACEAE	ERIOGONUM, SISKIYOU	CA
2	ERIOGONUM SMITHII	POLYGONACEAE	WILD BUCKWHEAT, SMITH	UT
2	ERIOGONUM SORDIDUM	POLYGONACEAE		UT
S	ERIOGONUM SP. (LAKEVIEW CO., OR)	*** SEE ***	ERIOGONUM CROSBYAE	
[illegible]	ERIOGONUM SP. (TRINITY, TEHAMA COS., CA)	*** SEE ***	ERIOGONUM LIBERTINI	
2	ERIOGONUM SUFFRUTICOSUM	POLYGONACEAE	WILD BUCKWHEAT, BUSHY	TX
3C	ERIOGONUM TEMBLORENSE	POLYGONACEAE	WILD BUCKWHEAT, TEMBLOR	CA
3C	ERIOGONUM THOMPSONAE VAR. ALBIFLORUM	POLYGONACEAE	WILD BUCKWHEAT, THOMPSON, WHITE-FLOW	AZ UT
2	ERIOGONUM THOMPSONAE VAR. ATWOODII	POLYGONACEAE	WILD BUCKWHEAT, THOMPSON, ATWOOD'S	AZ
3C	ERIOGONUM THOMPSONAE VAR. THOMPSONAE	POLYGONACEAE	WILD BUCKWHEAT, THOMPSON, THOMPSON'S	AZ UT
3C	ERIOGONUM THYMOIDES	POLYGONACEAE		[illegible] OR [illegible]
2	ERIOGONUM TRUNCATUM	POLYGONACEAE	ERIOGONUM, CONTRA COSTA	CA
3C	ERIOGONUM TUMULOSUM	POLYGONACEAE		CO UT
I	ERIOGONUM TWISSELMANNII	POLYGONACEAE	ERIOGONUM, TWISSELMANN'S	CA
2	ERIOGONUM UMBELLATUM VAR. HUMISTRATUM	POLYGONACEAE	WILD BUCKWHEAT, MT. EDDY	CA
3C	ERIOGONUM UMBELLATUM VAR. HYPOLEIUM	POLYGONACEAE		WA
3C	ERIOGONUM UMBELLATUM VAR. MINUS	POLYGONACEAE	WILD BUCKWHEAT, SULFUR-FLOWERED, ALP	CA
3C	ERIOGONUM UMBELLATUM VAR. TORREYANUM	POLYGONACEAE	WILD BUCKWHEAT, SULFUR-FLOWERED, TOR	CA
3C	ERIOGONUM VESTITUM	POLYGONACEAE	ERIOGONUM, IDRIA	CA
S	ERIOGONUM VILLIFLORUM VAR. TUMULOSUM	*** SEE ***	ERIOGONUM TUMULOSUM	
3C	ERIOGONUM VIRIDULUM	POLYGONACEAE		CO UT
2	ERIOGONUM VISCIDULUM	POLYGONACEAE	WILD BUCKWHEAT,	NV
2	ERIOGONUM VISHERI	POLYGONACEAE		SD WY
2	ERIOGONUM WRIGHTII VAR. OLANCHENSE	POLYGONACEAE	WILD BUCKWHEAT, OLANCHE PEAK	CA
3C	ERIOGONUM ZIONIS VAR. COCCINEUM	POLYGONACEAE	WILD BUCKWHEAT, ZION,	[illegible]
3C	ERIOGONUM ZIONIS VAR. ZIONIS	POLYGONACEAE	WILD BUCKWHEAT, ZION,	AZ UT
3C	ERIOPHYLLUM CONGDONII	ASTERACEAE	ERIOPHYLLUM, CONGDON'S	CA
2	ERIOPHYLLUM LANATUM VAR. HALLII	ASTERACEAE	WOOLY-SUNFLOWER, FT. TEJON	CA
1	ERIOPHYLLUM LATILOBUM	ASTERACEAE	WOOLY-SUNFLOWER, SAN MATEO	CA
2	ERIOPHYLLUM MOHAVENSE	ASTERACEAE	WOOLY-SUNFLOWER, BARSTOW	CA
2	ERIOPHYLLUM NEVINII	ASTERACEAE		CA
2	ERIOPHYLLUM NUBIGENUM	ASTERACEAE	WOOLY-SUNFLOWER, YOSEMITE	CA
S	ERIOPHYLLUM NUBIGENUM VAR. CONGDONII	*** SEE ***	ERIOPHYLLUM CONGDONII	
2	ERITHALIS REVOLUTA	RUBIACEAE		PR
3C	ERRAZURIZIA ROTUNDATA	FABACEAE		AZ
2	ERYNGIUM ARISTULATUM VAR. HOOVERI	APIACEAE	BUTTON-CELERY, HOOVER'S	CA
1	ERYNGIUM ARISTULATUM VAR. PARISHII	APIACEAE	COYOTE-THISTLE, SAN DIEGO	CA
LE	ERYNGIUM CONSTANCEI	APIACEAE	COYOTE-THISTLE, CONSTANCE'S	CA
1	ERYNGIUM CUNEIFOLIUM	APIACEAE		FL
2	ERYNGIUM MATHIASIAE	APIACEAE	COYOTE-THISTLE, MATHIAS	CA
3C	ERYNGIUM PETIOLATUM	APIACEAE		[illegible] WA
2	ERYNGIUM PINNATISECTUM	APIACEAE	COYOTE-THISTLE, TUOLUMNE	CA
1	ERYNGIUM RACEMOSUM	APIACEAE	COYOTE-THISTLE, DELTA	CA
2	ERYNGIUM SPINOSEPALUM	APIACEAE		CA
2	ERYSIMUM AMMOPHILUM	BRASSICACEAE	WALLFLOWER, COAST	CA
S	ERYSIMUM ANGUSTATUM /GREENE	*** SEE ***	ERYSIMUM CAPITATUM VAR. ANGUSTATUM	
S	ERYSIMUM ANGUSTATUM /P.A.RYDBERG	*** SEE ***	ERYSIMUM ASPERUM VAR. ANGUSTATUM	
2	ERYSIMUM ASPERUM VAR. ANGUSTATUM	BRASSICACEAE	WALLFLOWER,	AK, Canada (Yukon)
LE	ERYSIMUM CAPITATUM VAR. ANGUSTATUM	BRASSICACEAE	WALLFLOWER, CONTRA COSTA	CA
2	ERYSIMUM FRANCISCANUM VAR. FRANCISCANUM	BRASSICACEAE	WALLFLOWER, SAN FRANCISCO	CA
2	ERYSIMUM INSULARE	BRASSICACEAE	WALLFLOWER, ISLAND	CA, Mexico
1	ERYSIMUM MENZIESII	BRASSICACEAE	WALLFLOWER, MENZIES'	CA
1	ERYSIMUM TERETIFOLIUM	BRASSICACEAE	WALLFLOWER, BEN LOMOND	CA
3C	ERYTHRONIUM CLIFTONII /SP. NOV. INED.	LILIACEAE		CA
3C	ERYTHRONIUM GRANDIFLORUM SSP. PUSATERI	LILIACEAE	FAWN-LILY,	CA
3C	ERYTHRONIUM HELENAE	LILIACEAE		CA
3C	ERYTHRONIUM HOWELLII	LILIACEAE		CA OR

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
3C		ERYTHRONIUM OREGONUM	LILIACEAE		OR WA
PE		ERYTHRONIUM PROPULLANS	LILIACEAE		MN
2		ERYTHRONIUM SP. NOV. /INED.	LILIACEAE		OR
2		ERYTHRONIUM TUOLUMNENSE	LILIACEAE	FAWN-LILY, TUOLUMNE	CA
2		ESCHSCHOLZIA PROCERA	PAPAVERACEAE	POPPY, KERNVILLE	CA
3C		ESCHSCHOLZIA RAMOSA	PAPAVERACEAE	POPPY, ISLAND	CA
2		ESCHSCHOLZIA RHOMBIPETALA	PAPAVERACEAE	POPPY, DIAMOND-PETALED	CA
S		ESCOBARIA LEEI	*** SEE ***	CORYPHANTHA SNEEDII VAR. LEEI	
S		ESCOBARIA NELLIEAE	*** SEE ***	CORYPHANTHA MINIMA	
S		ESCOBARIA SNEEDII	*** SEE ***	CORYPHANTHA SNEEDII VAR. SNEEDII	
1		EUGENIA HAEMATOCARPA	MYRTACEAE	UVILLO	PR
2		EUGENIA MARGARETTAE	MYRTACEAE		PR
1		EUGENIA MOLOKAIANA	MYRTACEAE	NIOI	HI
1		EUGENIA UNDERWOODII	MYRTACEAE		PR
S		EULOPHIA ECRISTATA	*** SEE ***	PTEROGLOSSASPIS ECRISTATA	
2		EUPATORIUM BORINQUENSE	ASTERACEAE		PR
3A		EUPATORIUM DROSEROLEPIS	ASTERACEAE	OREGANILLO	PR
3C		EUPATORIUM LEUCOLEPIS VAR. NOVAE-ANGLIAE	ASTERACEAE	THOROUGHWORT, WHITE-BRACTED, N.E.	MA RI
1		EUPATORIUM LUCIAE-BRAUNIAE	ASTERACEAE		KY TN
2		EUPATORIUM OTEROI	ASTERACEAE		PR
2		EUPATORIUM RESINOSUM	ASTERACEAE	BONESET, PINE BARRENS	DE NJ NY NC
3B		EUPATORIUM RESINOSUM VAR. KENTUCKIENSE	ASTERACEAE	THOROUGHWORT,	KY
3B		EUPATORIUM SALTUENSE	ASTERACEAE		NC VA
3C		EUPATORIUM SHASTENSE	ASTERACEAE	EUPATORIUM, SHASTA	CA
3C		EUPHORBIA ARNOTTIANA VAR. ARNOTTIANA	EUPHORBIACEAE		HI
1		EUPHORBIA ARNOTTIANA VAR. INTEGRIFOLIA	EUPHORBIACEAE		HI
1		EUPHORBIA ATROCOCCA	EUPHORBIACEAE		HI
3B		EUPHORBIA AUSTRINA	EUPHORBIACEAE		FL
3C		EUPHORBIA CELASTROIDES VAR. HALAWANA	EUPHORBIACEAE		HI
3C		EUPHORBIA CELASTROIDES VAR. HAUPUANA	EUPHORBIACEAE		HI
3C		EUPHORBIA CELASTROIDES VAR. HUMBERTII	EUPHORBIACEAE		HI
1		EUPHORBIA CELASTROIDES VAR. KAENANA	EUPHORBIACEAE		HI
1		EUPHORBIA CELASTROIDES VAR. KEALIANA	EUPHORBIACEAE		HI
1		EUPHORBIA CELASTROIDES VAR. KOHALANA	EUPHORBIACEAE		HI
3C		EUPHORBIA CELASTROIDES VAR. MOOMOMIANA	EUPHORBIACEAE		HI
2		EUPHORBIA CELASTROIDES VAR. NELSONII	EUPHORBIACEAE		HI
1	*	EUPHORBIA CELASTROIDES VAR. NEMATOPODA	EUPHORBIACEAE		HI
3C		EUPHORBIA CELASTROIDES VAR. NIUENSIS	EUPHORBIACEAE		HI
1		EUPHORBIA CELASTROIDES VAR. SAXICOLA	EUPHORBIACEAE		HI
1		EUPHORBIA CELASTROIDES VAR. STOKESII	EUPHORBIACEAE		HI
3C		EUPHORBIA CELASTROIDES VAR. WAIKOLUENSIS	EUPHORBIACEAE		HI
2		EUPHORBIA CUMULICOLA	EUPHORBIACEAE		FL
1		EUPHORBIA DEGENERI VAR. MOLOKAIENSIS	EUPHORBIACEAE		HI
LE		EUPHORBIA DELTOIDEA SSP. DELTOIDEA	EUPHORBIACEAE		FL
1		EUPHORBIA DELTOIDEA SSP. SERPYLLUM	EUPHORBIACEAE	SPURGE, WEDGE	FL
3A		EUPHORBIA DEPPEANA	EUPHORBIACEAE		HI
3C		EUPHORBIA DISCOIDALIS	EUPHORBIACEAE		FL
3C		EUPHORBIA EXSERTA	EUPHORBIACEAE		FL GA NC SC
2		EUPHORBIA FENDLERI VAR. TRILIGULATA	EUPHORBIACEAE	SPURGE,	TX
LT		EUPHORBIA GARBERI	EUPHORBIACEAE	SPURGE,	FL
2		EUPHORBIA GOLONDRINA	EUPHORBIACEAE	SPURGE,	TX
1		EUPHORBIA HAELEELEANA	EUPHORBIACEAE		HI
1		EUPHORBIA HALEMANUI	EUPHORBIACEAE		HI
2		EUPHORBIA HILLEBRANDII VAR. PALIKEANA	EUPHORBIACEAE		HI
1		EUPHORBIA HILLEBRANDII VAR. WAIMANOANA	EUPHORBIACEAE		HI
1		EUPHORBIA HOOVERI	EUPHORBIACEAE	SPURGE, HOOVER	CA
3C		EUPHORBIA INNOCUA	EUPHORBIACEAE		TX
3C		EUPHORBIA JEJUNA	EUPHORBIACEAE		TX
3C		EUPHORBIA MULTIFORMIS VAR. HALEAKALANA	EUPHORBIACEAE		HI
1	*	EUPHORBIA MULTIFORMIS VAR. KAALANA	EUPHORBIACEAE		HI
1		EUPHORBIA MULTIFORMIS VAR. KAPULEIENSIS	EUPHORBIACEAE		HI
3C		EUPHORBIA MULTIFORMIS VAR. MULTIFORMIS	EUPHORBIACEAE		HI
1		EUPHORBIA MULTIFORMIS VAR. PERDITA	EUPHORBIACEAE		HI
1		EUPHORBIA MULTIFORMIS VAR. SPARSIFLORA	EUPHORBIACEAE		HI
3A		EUPHORBIA MULTIFORMIS VAR. TOMENTELLA	EUPHORBIACEAE		HI
3C		EUPHORBIA NEPHRADENIA	EUPHORBIACEAE	SPURGE, PARIA	UT
3C		EUPHORBIA OCELLATA VAR. RATTANII	EUPHORBIACEAE		CA
3C		EUPHORBIA OLOWALUANA VAR. OLOWALUANA	EUPHORBIACEAE		HI
2		EUPHORBIA PERENNANS	EUPHORBIACEAE		TX
2		EUPHORBIA PLATYSPERMA	EUPHORBIACEAE	SPURGE, FLAT-SEEDED	AZ, MEXICO
1		EUPHORBIA PORTERANA VAR. KEYENSIS	EUPHORBIACEAE	SPURGE, PORTER'S,	FL
1		EUPHORBIA PORTERANA VAR. PORTERANA	EUPHORBIACEAE		FL
1		EUPHORBIA PORTERANA VAR. SCOPARIA	EUPHORBIACEAE	SPURGE, PORTER'S,	FL
2		EUPHORBIA PURPUREA	EUPHORBIACEAE	SPURGE, DARLINGTON S	DE MD NJ NC OH PA VA WV
1		EUPHORBIA REMYI	EUPHORBIACEAE		HI
3C		EUPHORBIA ROEMERANA	EUPHORBIACEAE		TX
1		EUPHORBIA SKOTTSBERGII VAR. AUDENS	EUPHORBIACEAE		HI
LE		EUPHORBIA SKOTTSBERGII VAR. KALAELOANA	EUPHORBIACEAE	'AKOKO, 'EWA PLAINS	HI
1	*	EUPHORBIA SKOTTSBERGII VAR. SKOTTSBERGII	EUPHORBIACEAE		HI
1	*	EUPHORBIA SKOTTSBERGII VAR. VACCINIOIDES	EUPHORBIACEAE		HI
3C		EUPHORBIA STRICTIOR	EUPHORBIACEAE		NM TX
2		EUPHORBIA TELEPHIOIDES	EUPHORBIACEAE		FL
1		EURYA SANDWICENSIS VAR. GRANDIFOLIA	THEACEAE		HI

STATUS	SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
3C	EURYTAENIA MINCKLEYI	APIACEAE		TX
3C	EUTREMA PENLANDII	BRASSICACEAE		CO
3C	EXOCARPOS GAUDICHAUDII	SANTALACEAE		HI
1	EXOCARPOS LUTEOLUS	SANTALACEAE	HEAU (EXOCARPOS, LEAFY)	HI
2	FEROCACTUS ACANTHODES VAR. ACANTHODES	CACTACEAE		AZ CA, Mexico
S	FEROCACTUS ACANTHODES VAR. EASTWOODIAE	*** SEE ***	FEROCACTUS EASTWOODIAE COMB. NOV. /INED.	
[illegible]	FEROCACTUS EASTWOODIAE /COMB. NOV. INED.	CACTACEAE		AZ
2	FEROCACTUS VIRIDESCENS	CACTACEAE	BARREL CACTUS, SAN DIEGO	CA, Mexico
2	FESTUCA DASYCLADA	POACEAE	FESCUE, SEDGE	CO UT
2	FESTUCA HALLII	POACEAE		CO
2	FESTUCA LIGULATA	POACEAE		TX
3C	FILIPENDULA OCCIDENTALIS	ROSACEAE	QUEEN-OF-THE-FOREST	OR
1	FIMBRISTYLIS PERPUSILLA	CYPERACEAE	FIMBRISTYLIS, HARPER'S	GA NE NC SC
3C	FIMBRISTYLIS SPADICEA	CYPERACEAE		CA NV, Tropical America
1	FLAVERIA MACDOUGALLII	ASTERACEAE		AZ
1	FORESTIERA SEGREGATA VAR. PINETORUM	OLEACEAE		FL
3C	FORSELLESIA PUNGENS VAR. GLABRA	CROSSOSOMATACEAE		CA NV
2	FORSELLESIA TEXENSIS	ERLASTRACEAE		TX
3C	FOTHERGILLA GARDENII	HAMAMELIDACEAE	WITCH-ALDER, DWARF	AL FL GA MS NC SC
LE	FRANKENIA JOHNSTONII	FRANKENIACEAE	FRANKENIA, JOHNSTON'S	TX, Mexico (Nuevo Leon)
1	** FRANKLINIA ALATAMAHA	THEACEAE	FRANKLIN TREE	GA
S	FRASERA ALBICAULIS VAR. IDAHOENSIS	*** SEE ***	FRASERA IDAHOENSIS	
2	FRASERA COLORADENSIS	GENTIANACEAE		CO
1	FRASERA GYPSICOLA	GENTIANACEAE	GREEN-GENTIAN,	NM UT
3C	FRASERA IDAHOENSIS	GENTIANACEAE		ID OR
2	FRASERA PAHUTENSIS	GENTIANACEAE	GREEN-GENTIAN,	NV
3C	FRASERA PUBERULENTA	GENTIANACEAE		CO
3C	FRASERA TUBULOSA	GENTIANACEAE		CO
2	FRASERA UMPQUAENSIS	GENTIANACEAE	GREEN-GENTIAN, UMPQUA	CA OR
3C	FRAXINUS ANOMALA VAR. LOWELLII	OLEACEAE	ASH,	NM
3C	FRAXINUS CUSPIDATA VAR. MACROPETALA	OLEACEAE	ASH,	AZ CA NV NM
3C	FRAXINUS GOODDINGII	OLEACEAE	ASH, GOODDING'S	AZ, Mexico
2	FREMONTODENDRON DECUMBENS	STERCULIACEAE	FLANNELBUSH, PINE HILL	CO
2	FREMONTODENDRON MEXICANUM	STERCULIACEAE	FREMONTIA, MEXICAN	CA, Mexico
3B	FRITILLARIA ADAMANTINA	LILIACEAE	MISSION-BELLS, DIAMOND LAKE	[illegible]
2	FRITILLARIA AGRESTIS	LILIACEAE		CO
3C	FRITILLARIA BRANDEGEI	LILIACEAE	FRITILLARY, GREENHORN	CA
2	FRITILLARIA EASTWOODIAE	LILIACEAE	FRITILLARY, BUTTE	CO
2	FRITILLARIA FALCATA	LILIACEAE	FRITILLARY, TALUS	CA
2	FRITILLARIA GENTNERI	LILIACEAE	MISSION-BELLS, GENTNER	CA
2	FRITILLARIA GRAYANA	LILIACEAE	FRITILLARY, RODERICK'S	CO
2	FRITILLARIA LILIACEA	LILIACEAE		CA
2	FRITILLARIA OJAIENSIS	LILIACEAE		CA
S	FRITILLARIA PHAEANTHERA	*** SEE ***	FRITILLARIA EASTWOODIAE	
2	FRITILLARIA PLURIFLORA	LILIACEAE		TX
S	FRITILLARIA RODERICKII	*** SEE ***	FRITILLARIA GRAYANA	
2	FRITILLARIA STRIATA	LILIACEAE	ADOBE-LILY, GREENHORN	CA
2	FRITILLARIA VIRIDEA	LILIACEAE		CA
2	FRYXELLIA PYGMAEA	MALVACEAE		TX MEXICO
1	GAHNIA LANAIENSIS	CYPERACEAE		HI
2	GAILLARDIA FLAVA	ASTERACEAE	BLANKETFLOWER, YELLOW	UT
2	GALACTIA EGGERSII	FABACEAE		VI, British V.I.
2	GALACTIA PINETORUM	FABACEAE	MILK-PEA	FL
LE	GALACTIA SMALLII	FABACEAE	MILK-PEA, SMALL'S	FL
3B	GALINSOGA SEMICALVA VAR. PERCALVA	ASTERACEAE		AZ
3C	GALIUM ANDREWSII VAR. GATENSE	RUBIACEAE		CA
2	GALIUM ANGUSTIFOLIUM SSP. BORREGOENSE	RUBIACEAE	BEDSTRAW, BORREGO	CA
2	GALIUM BUXIFOLIUM	RUBIACEAE	BEDSTRAW, ISLAND	CA
2	GALIUM CALIFORNICUM SSP. LUCIENSE	RUBIACEAE	BEDSTRAW,	CA
2	GALIUM CALIFORNICUM SSP. PRIMUM	RUBIACEAE	BEDSTRAW, SAN JACINTO	CA
2	GALIUM CALIFORNICUM SSP. SIERRAE	RUBIACEAE	BEDSTRAW, EL DORADO	CA
3C	GALIUM CALIFORNICUM VAR. MIGUELENSE	RUBIACEAE		CA
2	GALIUM CATALINENSE SSP. ACRISPUM	RUBIACEAE	BEDSTRAW, SAN CLEMENJE ISLAND	CA
3C	GALIUM CLEMENTIS	RUBIACEAE	BEDSTRAW, SANTA LUCIA	CA
3C	GALIUM COLLOMAE	RUBIACEAE	BEDSTRAW,	AZ
2	GALIUM CORRELLII	RUBIACEAE		TX
2	GALIUM GLABRESCENS SSP. MODOCENSE	RUBIACEAE	BEDSTRAW, MODOC	CA
2	GALIUM GRANDE	RUBIACEAE	BEDSTRAW,	CA
2	GALIUM HARDHAMIAE	RUBIACEAE	BEDSTRAW, HARDHAM'S	CA
2	GALIUM HILENDIAE SSP. KINGSTONENSE	RUBIACEAE	BEDSTRAW, KINGSTON	CA NV
2	GALIUM HYPOTRICHIUM VAR. TOMENTELLUM	RUBIACEAE		CA
3C	GALIUM SERPENTICUM SSP. SCOTTICUM	RUBIACEAE	BEDSTRAW,	CA
2	GALIUM SERPENTICUM SSP. WARNERENSE	RUBIACEAE		CA
2	GALVEZIA SPECIOSA	SCROPHULARIACEAE	GAMBELIA, SHOW-	CA
LE	GARDENIA BRIGHAMII	RUBIACEAE	NANU	HI
2	GARDENIA MEISSICHII	RUBIACEAE		HI
3C	GAURA DEMAREEI	ONAGRACEAE		AR
1	GAURA NEOMEXICANA SSP. COLORADENSIS	ONAGRACEAE		CO NV
S	GAYA VIOLACEA	*** SEE ***	BATESIMALVA VIOLACEA	
3B	GAYLUSSACIA BRACHYCERA	ERICACEAE	HUCKLEBERRY, BOI	DE KY MD PA TN VA WV
2	GENISTIDIUM DUMOSUM	FABACEAE		TX, Mexico
S	GENTIANA ALEUTICA	*** SEE ***	GENTIANELLA PROPINQUA SSP. ALEUTICA	
3C	GENTIANA AUSTROMONTANA	GENTIANACEAE		NC TN VA WV

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	[illegible]
3C		GENTIANA AUTUMNALIS	GENTIANACEAE	GENTIAN, PINE BARREN	DE NJ NC SC VA
2		GENTIANA BISETAEA	GENTIANACEAE	GENTIAN,	GA
3B		GENTIANA DELOACHII	GENTIANACEAE	GENTIAN,	SA
3C		GENTIANA FREMONTII	GENTIANACEAE	GENTIAN, MOSS	[illegible]
3C		GENTIANA PENNELLIANA	GENTIANACEAE	GENTIAN, WIREGRASS	FL
S		GENTIANA PORPHYRIO	*** SEE ***	GENTIANA AUTUMNALIS	
3C		GENTIANELLA PROPINQUA SSP. ALEUTICA	GENTIANACEAE		AK
1		GEOCARPON MINIMUM	CARYOPHYLLACEAE		AR MO
1		GERANIUM ARBOREUM	GERANIACEAE	GERANIUM, HAWAIIAN, RED-FLOWERED	HI
1		GERANIUM CUNEATUM VAR. HOLOLEUCUM	GERANIACEAE	GERANIUM, NATIVE,	HI
3C		GERANIUM MARGINALE	GERANIACEAE		UT
1		GERANIUM MULTIFLORUM VAR. MULTIFLORUM	GERANIACEAE	GERANIUM, NATIVE,	HI
2		GERANIUM MULTIFLORUM VAR. OVATIFOLIUM	GERANIACEAE	NINA NINA, LARGE-LEAVED	HI
2		GERANIUM MULTIFLORUM VAR. SUPERBUM	GERANIACEAE	GERANIUM, NATIVE	HI
3B		GERANIUM TOQUIMENSE	GERANIACEAE	GERANIUM,	WY
S		GERARDIA ACUTA	*** SEE ***	AGALINIS ACUTA	
S		GERARDIA STENOPHYLLA	*** SEE ***	AGALINIS STENOPHYLLA	
2		GESNERIA PAUCIFLORA	GESNERIACEAE		PR
2		GEUM GENICULATUM	ROSACEAE	AVENS, BENT	NC TN
3C		GEUM PECKII	ROSACEAE	AVENS, MOUNTAIN	NH, Canada
2		GEUM RADIATUM	ROSACEAE	AVENS, SPREADING	NC TN
1		GILIA CAESPITOSA	POLEMONIACEAE	GILIA, RABBIT VALLEY	UT
2		GILIA FORMOSA	POLEMONIACEAE	GILIA, BEAUTIFUL	WA
3C		GILIA MCVICKERAE	POLEMONIACEAE		UT
3C		GILIA NYENSIS	POLEMONIACEAE		NV
3C		GILIA PENTSTEMONOIDES	POLEMONIACEAE		CO
3C		GILIA RIPLEYI	POLEMONIACEAE		CA NV
1		GILIA TENUIFLORA SSP. ARENARIA	POLEMONIACEAE		CA
2		GILIA TENUIFLORA SSP. HOFFMANNII	POLEMONIACEAE	GILIA, SLENDER-FLOWERED, HOFFMAN	CA
2		GILMANIA LUTEOLA	POLYGONACEAE	GOLDEN CARPET	CA
2		GITHOPSIS DIFFUSA SSP. FILICAULIS	CAMPANULACEAE	BLUECUP, MISSION CANYON	CA
3B		GITHOPSIS LATIFOLIA	CAMPANULACEAE	BLUECUP, LAKE ALAMANOR	CA
PE		GLAUCOCARPUM SUFFRUTESCENS	BRASSICACEAE		UT
2		GLOEOCANTHARELLUS PURPURASCENS	BURSERACEAE	MUSHROOM, INDIAN CREEK	NC
1		GLYCERIA NUBIGENA	POACEAE	MANNA GRASS, SMOKY MOUNTAINS	NC TN
2		GNAPHALIUM OBTUSIFOLIUM VAR. BAXICOLA	ASTERACEAE	CATFOOT, ROCK,	NJ
3C		GNAPHALIUM SANDWICENSIUM VAR. FLAGELLARE	ASTERACEAE	'ENA'ENA, WHIP	HI
2		GNAPHALIUM SANDWICENSIUM VAR. MOLOKAIENSE	ASTERACEAE	'ENA'ENA	HI
LE		GOETZEA ELEGANS	GOLANACEAE	MATA BUEY	PR
2		GONOCALYX CONCOLOR	ERICACEAE		PR
S		GOSSYPIUM SANDVICENSE	*** SEE ***	GOSSYPIUM TOMENTOSUM	
3C		GOSSYPIUM TOMENTOSUM	MALVACEAE	COTTON, HAWAIIAN	HI
3A		GOUANIA DISHOPII	RHAMNACEAE		HI
3A		GOUANIA CUCULLATA	RHAMNACEAE		HI
1		GOUANIA FAURIEI	RHAMNACEAE		HI
1		GOUANIA GAGNEI	RHAMNACEAE		HI
3A		GOUANIA HAWAIIENSIS	RHAMNACEAE		HI
LE		GOUANIA HILLEBRANDII	RHAMNACEAE		HI
3A		GOUANIA LYDGATEI	RHAMNACEAE		HI
3A		GOUANIA MANNII	RHAMNACEAE		HI
3A		GOUANIA MEYENII	RHAMNACEAE		HI
1	•	GOUANIA OLIVERI	RHAMNACEAE		HI
3A		GOUANIA PILATA	RHAMNACEAE		HI
3A		GOUANIA REMYI	RHAMNACEAE		HI
3A		GOUANIA SANDWICHIANA	RHAMNACEAE		HI
3A		GOUANIA THINOPHILA	RHAMNACEAE		HI
1	•	GOUANIA VITIFOLIA	RHAMNACEAE		HI
3B		GOULDIA SP. /SP. NOV. INED.	RUBIACEAE	(MT. KAHILI, KAUAI CO.)	HI
2		GOULDIA ST-JOHNII VAR. MUNROI	RUBIACEAE		HI
1		GOULDIA TERMINALIS VAR. BOBEOIDES	RUBIACEAE		HI
1		GOULDIA TERMINALIS VAR. CONGESTA	RUBIACEAE		HI
1		GOULDIA TERMINALIS VAR. CRASSICAULIS	RUBIACEAE		HI
1		GOULDIA TERMINALIS VAR. DEGENERI	RUBIACEAE		HI
1		GOULDIA TERMINALIS VAR. LANAI	RUBIACEAE		HI
2		GOULDIA TERMINALIS VAR. PARVIFOLIA	RUBIACEAE		HI
1		GOULDIA TERMINALIS VAR. PSEUDODICHOTOMA	RUBIACEAE		HI
1		GOULDIA TERMINALIS VAR. PUBESCENS	RUBIACEAE		HI
1		GOULDIA TERMINALIS VAR. QUADRANGULARIS	RUBIACEAE		HI
1		GOULDIA TERMINALIS VAR. ROTUNDIFOLIA	RUBIACEAE		HI
1		GOULDIA TERMINALIS VAR. SUBCORDATA	RUBIACEAE		HI
2		GRAFFENRIEDA OTTOSCHULZII	MELASTOMATACEAE	CAMASEY, PETITES GRAINES	PR, Dominican Republic, Haiti
2		GRAMMITIS NIMBATA	POLYPODIACEAE		NC, Cuba
2		GRAPTOPETALUM BARTRAMII	CRASSULACEAE		AZ
3C		GRAPTOPETALUM RUSBYI	CRASSULACEAE		AZ NM
2		GRATIOLA HETEROSEPALA	SCROPHULARIACEAE	HEDGE-HYSSOP, BOGGS LAKE	CA OR
3B		GREENELLA DISCOIDEA	ASTERACEAE		AZ
LT		GRINDELIA FRAXINO-PRATENSIS	ASTERACEAE	GUM-PLANT, ASH MEADOWS	CA NV
3C		GRINDELIA HALLII	ASTERACEAE		CO
2		GRINDELIA HOWELLII	ASTERACEAE		ID MT
2		GRINDELIA MARITIMA	ASTERACEAE	GUMPLANT, SAN FRANCISCO	CA
3C		GRINDELIA OOLEPIS	ASTERACEAE	GUMWEED, PLAINS	TX

STATUS	SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
2	GRINDELIA STRICTA SSP. BLAKEI	ASTERACEAE		CA
S	GROSSULARIA ECHINELLA	*** SEE ***	RIBES ECHINELLUM	
3C	GUNNERA KAALENSIS	HALORAGACEAE		HI
3C	GUNNERA MAKAHAENSIS	HALORAGACEAE		HI
3C	GUTIERREZIA CALIFORNICA	ASTERACEAE	MATCHWEED, BAY	CA
3B	GUTIERREZIA LINOIDES	ASTERACEAE		AZ
3C	GUTIERREZIA SAROTHRAE VAR. POMARIENSIS	ASTERACEAE		UT
3B	GYMNOCARPIUM HETEROSPORUM	POLYPODIACEAE		AK MI MN WI
2	GYMNOPOGON FLORIDANUS	POACEAE		FL
S	HABENARIA FLAVA	*** SEE ***	PLATANTHERA FLAVA	
S	HABENARIA GREENEI	*** SEE ***	PLATANTHERA UNALASCENSIS SSP. MARITIMA	
S	HABENARIA HOLOCHILA	*** SEE ***	PLATANTHERA HOLOCHILA	
S	HABENARIA INTEGRA	*** SEE ***	PLATANTHERA INTEGRA	
S	HABENARIA LEUCOPHAEA	*** SEE ***	PLATANTHERA LEUCOPHAEA	
S	HABENARIA MARITIMA	*** SEE ***	PLATANTHERA UNALASCENSIS SSP. MARITIMA	
S	HABENARIA PERAMOENA	*** SEE ***	PLATANTHERA PERAMOENA	
S	HABENARIA UNALASCENSIS VAR. MARITIMA	*** SEE ***	PLATANTHERA UNALASCENSIS SSP. MARITIMA	
2	HACKELIA BREVICULA	BORAGINACEAE	STICKSEED, POISON CANYON	CA
1	HACKELIA CRONQUISTII	BORAGINACEAE	STICKSEED, CRONQUIST'S	OR
3C	HACKELIA DAVISII	BORAGINACEAE	STICKSEED, DAVIS'	ID
3C	HACKELIA HISPIDA	BORAGINACEAE		ID OR WA
2	HACKELIA IBAPENSIS	BORAGINACEAE	STICKSEED,	UT
3C	HACKELIA OPHIOBIA	BORAGINACEAE	STICKSEED,	NV OR
S	HACKELIA PATENS VAR. SEMIGLABRA	*** SEE ***	HACKELIA CRONQUISTII	
3C	HACKELIA SHARSMITHII	BORAGINACEAE		CA NV
2	HACKELIA VENUSTA	BORAGINACEAE	STICKSEED, SHOWY	WA
3C	HALIMOLOBOS PERPLEXA VAR. LEMHIENSIS	BRASSICACEAE		ID
2	HALIMOLOBOS PERPLEXA VAR. PERPLEXA	BRASSICACEAE		ID
3C	HALIMOLOBOS VIRGATA	BRASSICACEAE	HALIMOLOBUS, VIRGATE	CA
3C	HAPLOPAPPUS ABERRANS	ASTERACEAE		ID
2	HAPLOPAPPUS ALPINUS	ASTERACEAE		NV
S	HAPLOPAPPUS BRICKELLIOIDES	*** SEE ***	HAZARDIA BRICKELLIOIDES	
S	HAPLOPAPPUS CANUS	*** SEE ***	HAZARDIA CANA	
S	HAPLOPAPPUS CARTHAMOIDES VAR. MAXIMUS	*** SEE ***	HAPLOPAPPUS RADIATUS	
3C	HAPLOPAPPUS CERVINUS	ASTERACEAE		AZ NV UT
3B	HAPLOPAPPUS CONTRACTUS	ASTERACEAE	GOLDENWEED,	WY
S	HAPLOPAPPUS EASTWOODIAE	*** SEE ***	ERICAMERIA FASCICULATA	
3C	HAPLOPAPPUS EXIMIUS	ASTERACEAE		CA NV
2	HAPLOPAPPUS FREMONTII SSP. MONOCEPHALUS	ASTERACEAE	GOLDENWEED,	CO
3C	HAPLOPAPPUS HALLII	ASTERACEAE		OR WA
2	HAPLOPAPPUS INSECTICRURIS	ASTERACEAE		ID
S	HAPLOPAPPUS INTEGRIFOLIUS SSP. INSECTICRURIS	*** SEE ***	HAPLOPAPPUS INSECTICRURIS	
2	HAPLOPAPPUS LIATRIFORMIS	ASTERACEAE		ID WA
3C	HAPLOPAPPUS OPHITIDIS	ASTERACEAE	MACRONEMA, SERPENTINE	CA
2	HAPLOPAPPUS PALMERI SSP. PALMERI	ASTERACEAE		CA, Mexico
3C	HAPLOPAPPUS RACEMOSUS SSP. CONGESTUS	ASTERACEAE		CA OR
2	HAPLOPAPPUS RADIATUS	ASTERACEAE	GOLDENWEED,	ID OR
3C	HAPLOPAPPUS SALICINUS	ASTERACEAE	GOLDENWEED,	AZ
3C	HAPLOPAPPUS SCOPULORUM	ASTERACEAE		AZ UT
3C	HAPLOPAPPUS SPINULOSUS SSP. LAEVIS	ASTERACEAE		NM
2	HAPLOPAPPUS UNIFLORUS SSP. GOSSYPINUS	ASTERACEAE	GOLDEN-ASTER, BEAR VALLEY	CA
3C	HAPLOPAPPUS WATSONII	ASTERACEAE		NV
1 *	HAPLOSTACHYS BRYANII	LAMIACEAE		HI
LE	HAPLOSTACHYS HAPLOSTACHYA VAR. ANGUSTIFOLIA	LAMIACEAE		HI
1 *	HAPLOSTACHYS HAPLOSTACHYA VAR. HAPLOSTACHYA	LAMIACEAE		HI
1 *	HAPLOSTACHYS HAPLOSTACHYA VAR. LEPTOSTACHYA	LAMIACEAE		HI
1 *	HAPLOSTACHYS LINEARIFOLIA	LAMIACEAE		HI
1 *	HAPLOSTACHYS MUNROI	LAMIACEAE		HI
1 *	HAPLOSTACHYS TRUNCATA	LAMIACEAE		HI
LE	HARPEROCALLIS FLAVA	LILIACEAE	HARPER'S BEAUTY	FL
S	HARRISIA PORTORICENSIS	*** SEE ***	CEREUS PORTORICENSIS	
2	HARTWRIGHTIA FLORIDANA	ASTERACEAE	HARTWRIGHTIA	FL GA
1	HASTINGSIA BRACTEOSA	LILIACEAE		OR
3C	HAZARDIA BRICKELLIOIDES	ASTERACEAE		CA NV
2	HAZARDIA CANA	ASTERACEAE	HAZARDIA, ISLAND	CA, Mexico (Baja California Norte)
2	HAZARDIA ORCUTTII	ASTERACEAE	HAZARDIA, ORCUTT'S	CA, Mexico
3B	HECHTIA TEXENSIS	BROMELIACEAE		TX
LT	HEDEOMA APICULATUM	LAMIACEAE	PENNYROYAL, MCKITTRICK	NM TX
3C	HEDEOMA DENTATUM	LAMIACEAE		AZ
3C	HEDEOMA DIFFUSUM	LAMIACEAE	PENNYROYAL, FLAGSTAFF	AZ
1	HEDEOMA GRAVEOLENS	LAMIACEAE	PENNYROYAL, MOCK	FL
3C	HEDEOMA MOLLE	LAMIACEAE		TX
3C	HEDEOMA NANUM VAR. CALIFORNICUM	LAMIACEAE		AZ CA NV
2	HEDEOMA PILOSUM	LAMIACEAE	PENNYROYAL, OLD BLUE	TX
3C	HEDEOMA PULCHERRIMUM	LAMIACEAE		NM
LE	HEDEOMA TODSENII	LAMIACEAE	PENNYROYAL, TODSEN'S	NM
1 *	HEDYOTIS ANGUSTA VAR. ANGUSTA	RUBIACEAE		HI
1	HEDYOTIS ANGUSTA VAR. UMBROSA	RUBIACEAE	HEDYOTIS, NARROW-LEAVED	HI

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
3A		HEDYOTIS CODEIANA	RUBIACEAE		MI
1	•	HEDYOTIS CORIACEA	RUBIACEAE	KIOʻELE	MI
1		HEDYOTIS DEGENERI	RUBIACEAE		MI
2		HEDYOTIS ELATIOR VAR. ELATIOR	RUBIACEAE		MI
1		HEDYOTIS ELATIOR VAR. HERBACEA	RUBIACEAE		MI
2		HEDYOTIS FLUVIATILIS VAR. KAUAIENSIS	RUBIACEAE		MI
1	•	HEDYOTIS FOLIOSA	RUBIACEAE		MI
2		HEDYOTIS FORMOSA	RUBIACEAE		MI
2		HEDYOTIS GLAUCIFOLIA VAR. HELLERI	RUBIACEAE		MI
1		HEDYOTIS LITTORALIS	RUBIACEAE		MI
2		HEDYOTIS MANNII	RUBIACEAE		MI
2		HEDYOTIS NIGRICANS VAR. PULVINATA	RUBIACEAE	DIAMONDFLOWERS,	FL
1		HEDYOTIS PARVULA	RUBIACEAE		MI
2		HEDYOTIS PURPUREA VAR. MONTANA	RUBIACEAE		NC
1	•	HEDYOTIS REMYI VAR. NUTTALLII	RUBIACEAE		MI
1		HEDYOTIS REMYI VAR. PLANA	RUBIACEAE		MI
S		HEDYOTIS SCHLECHTENDAHLIANA VAR. NUTTALLII	*** SEE ***	HEDYOTIS REMYI VAR. NUTTALLII	
S		HEDYOTIS SCHLECHTENDAHLIANA VAR. PLANA	*** SEE ***	HEDYOTIS REMYI VAR. PLANA	
1		HEDYOTIS SCHLECHTENDAHLIANA VAR. RETICULATA	RUBIACEAE		MI
1		HEDYOTIS ST.-JOHNII	RUBIACEAE	HEDYOTIS, NA PALI BEACH	MI
1	•	HEDYOTIS THYRSOIDEA	RUBIACEAE		MI
3C		HEDYSARUM BOREALE VAR. GREMIALE	FABACEAE		UT
2		HEDYSARUM OCCIDENTALE VAR. CANONE	FABACEAE		UT
3C		HEIMIA LONGIPES	LYTHRACEAE		TX
3C		HELENIUM ARIZONICUM	ASTERACEAE		AZ
2		HELENIUM VIRGINICUM	ASTERACEAE		NC
2		HELIANTHELLA CASTANEA	ASTERACEAE	ROCK-ROSE, DIABLO	CA
3C		HELIANTHEMUM DUMOSUM	CISTACEAE	ROCK-ROSE, BUSHY	CT MA NY RI
2		HELIANTHEMUM GREENEI	CISTACEAE	RUSH-ROSE, ISLAND	CA
2		HELIANTHEMUM SUFFRUTESCENS	CISTACEAE	RUSH-ROSE, AMADOR	CA
2		HELIANTHUS CARNOSUS	ASTERACEAE		FL
1		HELIANTHUS DEBILIS SSP. VESTITUS	ASTERACEAE		FL
3C		HELIANTHUS DESERTICOLA	ASTERACEAE		AZ NV UT
2		HELIANTHUS EGGERTII	ASTERACEAE		AL KY NC TN
3C		HELIANTHUS EXILIS	ASTERACEAE	SUNFLOWER, SERPENTINE	CA
2		HELIANTHUS GLAUCOPHYLLUS	ASTERACEAE		NC TN
3B		HELIANTHUS LACINIATUS SSP. CRENATUS	ASTERACEAE		NM
3B		HELIANTHUS LUDENS	ASTERACEAE	GOLDENEYE, FIELD	TX
2		HELIANTHUS NIVEUS SSP. TEPHRODES	ASTERACEAE	SUNFLOWER, DESERT	CA, Mexico
1	•	HELIANTHUS NUTTALLII SSP. PARISHII	ASTERACEAE	SUNFLOWER, LOS ANGELES	CA
1		HELIANTHUS PARADOXUS	ASTERACEAE	SUNFLOWER,	NM TX
2		HELIANTHUS PRAECOX SSP. HIRTUS	ASTERACEAE		TX
3A		HELIANTHUS PRAETERMISSUS	ASTERACEAE		MS
1		HELIANTHUS SCHWEINITZII	ASTERACEAE		NC SC
2		HELIANTHUS SMITHII	ASTERACEAE		AL GA
S		HELIOMERIS SOLICEPS	*** SEE ***	VIGUIERA SOLICEPS	
1		HELIOTROPIUM GUANICENSE	BORAGINACEAE	COTORRILLA	PR
2		HELIOTROPIUM POLYPHYLLUM VAR. HORIZONTALE	BORAGINACEAE		FL
2		HELONIAS BULLATA	LILIACEAE	SWAMP-PINK,	DE GA MD NJ NY NC SC VA
1		HEMIZONIA ARIDA	ASTERACEAE	TARWEED, RED ROCK	CA
2		HEMIZONIA CONJUGENS	ASTERACEAE	TARWEED, OTAY	CA
2		HEMIZONIA FLORIBUNDA	ASTERACEAE	TARWEED, TECATE	CA, Mexico
3C		HEMIZONIA HALLIANA	ASTERACEAE	TARWEED, HALL'S	CA
2		HEMIZONIA MINTHORNII	ASTERACEAE	TARWEED, SANTA SUSANA	CA
1	•	HEMIZONIA MOHAVENSIS	ASTERACEAE	TARWEED, MAJAVE	CA
2		HEMIZONIA MULTICAULIS SSP. MULTICAULIS	ASTERACEAE		CA
2		HEMIZONIA MULTICAULIS SSP. VERNALIS	ASTERACEAE		CA
2		HERITIERA LONGIPETIOLATA	STERCULIACEAE	UFA-HALOMTANO	GU, Rota, Saipan
3B		HERMIDIUM ALIFES VAR. PALLIDUM	NYCTAGINACEAE		CO UT
1		HESPEROCNIDE SANDWICENSIS	URTICACEAE		MI
3C		HESPEROLINON ADENOPHYLLUM	LINACEAE	DWARF-FLAX, GLANDULAR	CA
3C		HESPEROLINON BICARPELLATUM	LINACEAE	DWARF-FLAX, TWO CARPEL	CA
2		HESPEROLINON BREWERI	LINACEAE	DWARF-FLAX, BREWER'S	CA
1		HESPEROLINON CONGESTUM	LINACEAE	DWARF-FLAX, MARIN	CA
2		HESPEROLINON DIDYMOCARPUM	LINACEAE	DWARF-FLAX, LAKE COUNTY	CA
3C		HESPEROLINON DRYMARIOIDES	LINACEAE	DWARF-FLAX, DRYMARIA	CA
1		HESPEROMANNIA ARBORESCENS	ASTERACEAE	HESPEROMANNIA, LANAI	HI
1		HESPEROMANNIA ARBUSCULA	ASTERACEAE	HESPEROMANNIA, MAUI	HI
1		HESPEROMANNIA LYDGATEI	ASTERACEAE	HESPEROMANNIA, KAUAI	HI
S		HETEROTHECA FLEXUOSA	*** SEE ***	PITYOPSIS FLEXUOSA	
S		HETEROTHECA FLORIDANA	*** SEE ***	CHRYSOPSIS FLORIDANA	
2		HETEROTHECA JONESII	ASTERACEAE	GOLDEN-ASTER, JONES	UT
S		HETEROTHECA RUTHII	*** SEE ***	PITYOPSIS RUTHII	
3C		HEUCHERA AMERICANA VAR. HISPIDA	SAXIFRAGACEAE	ALUMROOT,	VA WV
S		HEUCHERA ARKANSANA	*** SEE ***	HEUCHERA VILLOSA VAR. ARKANSANA	
2		HEUCHERA BREVISTAMINEA	SAXIFRAGACEAE	HEUCHERA, LAGUNA	CA
3C		HEUCHERA DURANII	SAXIFRAGACEAE	HEUCHERA, DURAN'S	CA NV
S		HEUCHERA HISPIDA	*** SEE ***	HEUCHERA AMERICANA VAR. HISPIDA	
2		HEUCHERA MAXIMA	SAXIFRAGACEAE	ALUMROOT, ISLAND	CA
2		HEUCHERA MISSOURIENSIS	SAXIFRAGACEAE		MO

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
2		HEUCHERA VILLOSA VAR. ARKANSANA	SAXIFRAGACEAE		AR
3C		HEXALECTRIS GRANDIFLORA	ORCHIDACEAE	HEXALECTRIS, GREENMAN S	TX, Mexico
2		HEXALECTRIS NITIDA	ORCHIDACEAE		TX
2		HEXALECTRIS REVOLUTA	ORCHIDACEAE		TX, Mexico
2		HEXASTYLIS CONTRACTA	ARISTOLOCHIACEAE		KY NC TN
2		HEXASTYLIS LEWISII	ARISTOLOCHIACEAE	HEARTLEAF,	NC VA
1		HEXASTYLIS NANIFLORA	ARISTOLOCHIACEAE	HEARTLEAF, DWARF-FLOWERED	NC SC
3C		HEXASTYLIS SPECIOSA	ARISTOLOCHIACEAE	HEARTLEAF, HARPER'S	AL
3A		HIBISCADELPHUS BOMBYCINUS	MALVACEAE		HI
PE		HIBISCADELPHUS DISTANS	MALVACEAE	HAU KUAHIWI, KAUAI	HI
1	**	HIBISCADELPHUS GIFFARDIANUS	MALVACEAE	HAU KUAHIWI, KILAUEA	HI
1		HIBISCADELPHUS HUALALAIENSIS	MALVACEAE	HAU KUAHIWI, HUALALAI	HI
3A		HIBISCADELPHUS WILDERANUS	MALVACEAE		HI
1		HIBISCUS BRACKENRIDGEI	MALVACEAE	HIBISCUS, NATIVE YELLOW	HI
2		HIBISCUS CALIFORNICUS	MALVACEAE	HIBISCUS, CALIFORNIA	CA
1		HIBISCUS CLAYI	MALVACEAE	HIBISCUS, CLAY'S	HI
2		HIBISCUS DASYCALYX	MALVACEAE	ROSE-MALLOW, NECHES RIVER	TX
1		HIBISCUS IMMACULATUS	MALVACEAE	HIBISCUS, WHITE MOLOKAI	HI
3C		HIBISCUS KAHILII	MALVACEAE	HIBISCUS,	HI
2		HIBISCUS KOKIO VAR. KOKIO	MALVACEAE	PUALOALO, KOKI'O 'ULA 'ULA	HI
2		HIBISCUS KOKIO VAR. PUKOONIS	MALVACEAE		HI
1		HIBISCUS NEWHOUSEI	MALVACEAE		HI
2		HIBISCUS ROEATAE	MALVACEAE		HI
2		HIBISCUS SAINT-JOHNIANUS	MALVACEAE		HI
3C		HIBISCUS WAIMEAE	MALVACEAE		HI
3C		HIERACIUM LONGIBERBE	ASTERACEAE		OR WA
PE		HOFFMANNSEGGIA TENELLA	FABACEAE	RUSH-PEA, SLENDER	TX
1		HOLOCARPHA MACRADENIA	ASTERACEAE	TARWEED, SANTA CRUZ	CA
2		HORKELIA HENDERSONII	ROSACEAE		OR
3C		HORKELIA TRUNCATA	ROSACEAE		CA
2		HORKELIA TULARENSIS	ROSACEAE		CA
2		HORKELIA WILDERAE	ROSACEAE	HORKELIA, WILDER S	CA
3B		HOUSTONIA CAERULEA VAR. FAXONORUM	RUBIACEAE	BLUET, ALPINE	NH, St. Pierre & Miquelon
S		HOUSTONIA MONTANA	*** SEE ***	HEDYOTIS PURPUREA VAR. MONTANA	
W		HOUSTONIA NIGRICANS VAR. PULVINATA	*** SEE ***	HEDYOTIS NIGRICANS VAR. PULVINATA	
S		HOUSTONIA PULVINATA	*** SEE ***	HEDYOTIS NIGRICANS VAR. PULVINATA	
2		HOWELLIA AQUATILIS	CAMPANULACEAE		CA ID MT OR WA
S		HUDSONIA ERICOIDES SSP. MONTANA	*** SEE ***	HUDSONIA MONTANA	
LT		HUDSONIA MONTANA	CISTACEAE	GOLDEN-HEATHER, MOUNTAIN	NC
3C		HULSEA CALIFORNICA	ASTERACEAE		CA
W		HULSEA INYOENSIS	*** SEE ***	HULSEA VESTITA SSP. INYOENSIS	
3C		HULSEA VESTITA SSP. INYOENSIS	ASTERACEAE	HULSEA, INYO	CA NV
3C		HYDRASTIS CANADENSIS	RANUNCULACEAE	GOLDENSEAL	AL AR CT DE GA IL IN KY MD MI MN MS MO NE NY NC OH PA TN VT VA WV WI, Canada
3C		HYDROPHYLLUM CAPITATUM VAR. THOMPSONII	HYDROPHYLLACEAE	WATERLEAF, BALLHEAD, THOMPSON'S	OR WA
2		HYMENOCALLIS CORONARIA	LILIACEAE	SPIDER-LILY,	AL GA SC
3C		HYMENOCALLIS LATIFOLIA	LILIACEAE		FL, Bahamas, Cayman Islands, Cuba, Hispaniola, Jamaica
3C		HYMENOPAPPUS FILIFOLIUS VAR. IDAHOENSIS	ASTERACEAE		ID
3C		HYMENOPAPPUS FILIFOLIUS VAR. TOMENTOSUS	ASTERACEAE	HYMENOPAPPUS, COBWEB	UT
2		HYMENOPHYLLUM TUNBRIGENSE	HYMENOPHYLLACEAE		SC, Europe
1		HYMENOXYS ACAULIS VAR. GLABRA	ASTERACEAE	DAISY, LAKESIDE	IL OH, Canada (Ont.)
2		HYMENOXYS DEPRESSA	ASTERACEAE		UT
2		HYMENOXYS HELENIOIDES	ASTERACEAE		AZ CO UT
3C		HYMENOXYS QUINQUESQUAMATA	ASTERACEAE		AZ
3C		HYMENOXYS SUBINTEGRA	ASTERACEAE		AZ
PE		HYMENOXYS TEXANA	ASTERACEAE	BITTERWEED, TEXAS	TX
3C		HYMENOXYS TURNERI	ASTERACEAE		TX
1		HYPERICUM CUMULICOLA	HYPERICACEAE	ST. JOHN'S-WORT, HIGHLANDS SCRUB	FL
W		HYPERICUM EDISONIANUM	HYPERICACEAE	ASCYRUM, EDISON'S	FL
2		HYPERICUM LISSOPHLOEUS	HYPERICACEAE		FL
3C		HYPERICUM SPHAEROCARPUM VAR. TURGIDUM	HYPERICACEAE	ST.JOHN'S-WORT,	AL KY TN
S		HYPOPITYS CALIFORNICUS	*** SEE ***	PITYOPUS CALIFORNICUS	
3C		HYPOXIS LONGII	LILIACEAE	STAR-GRASS,	AR LA OK TX VA
2		HYSTRIX CALIFORNICA	POACEAE	GRASS, BOTTLEBRUSH, CALIFORNIA	CA
2		ILEX AMELANCHIER	AQUIFOLIACEAE	HOLLY,	AL FL GA LA MS NC SC
2		ILEX COLLINA	AQUIFOLIACEAE	HOLLY, LONG-STALKED	NC VA WV
1		ILEX COOKII	AQUIFOLIACEAE	TE	PR
3C		ILEX OPACA VAR. ARENICOLA	AQUIFOLIACEAE		FL
PE		ILIAMNA COREI	MALVACEAE		VA
2		ILIAMNA REMOTA	MALVACEAE	GLOBE-MALLOW, KANKAKEE	IL IN VA
S		ILIAMNA REMOTA VAR. COREI	*** SEE ***	ILIAMNA COREI	
2		ILLICIUM PARVIFLORUM	ILLICIACEAE		FL
3C		IPOMOEA CAIRICA VAR. LINEARILOBA	CONVOLVULACEAE		HI
3C		IPOMOEA CARDIOPHYLLA	CONVOLVULACEAE		TX
3B		IPOMOEA EGREGIA	CONVOLVULACEAE	MORNING-GLORY,	AZ NM
1		IPOMOEA KRUGII	CONVOLVULACEAE	MORNING-GLORY, KRUG'S WHITE	PR
2		IPOMOEA LEMMONII	CONVOLVULACEAE	MORNING-GLORY, LEMMON'S	AZ
3C		IPOMOPSIS GLOBULARIS	POLEMONIACEAE		CO

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2		IPOMOPSIS POLYANTHA	POLEMONIACEAE		CO
2		IPOMOPSIS POLYANTHA VAR. POLYANTHA	POLEMONIACEAE		CO
1		IRIS LACUSTRIS	IRIDACEAE	IRIS,	MI WI, Canada (Ont.)
3C		IRIS TENAX SSP. KLAMATHENSIS	IRIDACEAE	IRIS,	CA
3B		IRIS TENAX VAR. GORMANII	IRIDACEAE	IRIS,	OR
3C		IRIS TENUIS	IRIDACEAE	IRIS, CLACKAMAS	OR
1		ISCHAEMUM BYRONE	POACEAE		HI
1		ISODENDRION FORBESII	VIOLACEAE	AUPAKA,	HI
3A		ISODENDRION HAWAIIENSE	VIOLACEAE	WAHINE-NOHO-KULA	HI
3A		ISODENDRION HILLEBRANDII	VIOLACEAE	AUPAKA,	HI
1		ISODENDRION HOSAKAE	VIOLACEAE	AUPAKA,	HI
3A		ISODENDRION LANAIENSE	VIOLACEAE	AUPAKA,	HI
1		ISODENDRION LAURIFOLIUM	VIOLACEAE	AUPAKA,	HI
1		ISODENDRION LONGIFOLIUM	VIOLACEAE	AUPAKA,	HI
1	*	ISODENDRION LYDGATEI	VIOLACEAE	AUPAKA,	HI
3C		ISODENDRION MACULATUM	VIOLACEAE	AUPAKA,	HI
I	*	ISODENDRION MOLOKAIENSE	VIOLACEAE	AUPAKA,	HI
I	*	ISODENDRION PYRIFOLIUM	VIOLACEAE	AUPAKA,	HI
3A		ISODENDRION REMYI	VIOLACEAE	AUPAKA,	HI
I		ISODENDRION SUBSESSILIFOLIUM	VIOLACEAE	AUPAKA,	HI
I	*	ISODENDRION WAIANAEENSE	VIOLACEAE	AUPAKA,	HI
3C		ISOETES BOLANDERI VAR. PYGMAEA	ISOETACEAE		AZ CA
2		ISOETES EATONII	ISOETACEAE	QUILLWORT, EATON S	CT MA NH NJ NY, Canada (Ont.)
3C		ISOETES FLACCIDA	ISOETACEAE		FL [illegible]
3B		ISOETES FOVEOLATA	ISOETACEAE	QUILLWORT, PITTED	CT [illegible] NH
3C		ISOETES LITHOPHYLLA	ISOETACEAE	QUILLWORT, ROCK	TX
2		ISOETES LOUISIANENSIS	ISOETACEAE	QUILLWORT, LOUISIANA	GA LA
2		ISOETES MELANOSPORA	ISOETACEAE		GA SC
3C		ISOETES ORCUTTII	ISOETACEAE		CA
2		ISOETES TEGETIFORMANS	ISOETACEAE		[illegible] NC
2		ISOETES VIRGINICA	ISOETACEAE	QUILLWORT,	[illegible] SC VA
LE		ISOTRIA MEDEOLOIDES	ORCHIDACEAE	WHORLED POGONIA, SMALL	CT IL ME MD MA MI MO NH NJ [illegible] PA RI SC VT VA, Canada (Ont.)
3C		IVESIA ARGYROCOMA	ROSACEAE	IVESIA, SILVER-HAIRED	CA
2		IVESIA CALLIDA	ROSACEAE	IVESIA, TAHQUITZ	CA
[illegible]		IVESIA CORYMBOSA	*** SEE ***	IVESIA PANICULATA	
2		IVESIA CRYPTOCAULIS	ROSACEAE		NV
LT		IVESIA EREMICA	ROSACEAE	IVESIA, ASH MEADOWS	NV
S		IVESIA MULTIFOLIOLATA	*** SEE ***	POTENTILLA MULTIFOLIOLATA	
2		IVESIA PANICULATA	ROSACEAE	IVESIA, ASH CREEK	CA
3C		IVESIA PICKERINGII	ROSACEAE	IVESIA, PICKERING	CA
2		IVESIA RHYPARA	ROSACEAE	IVESIA, GRIMY	NV OR
2		JACQUEMONTIA CURTISSII	CONVOLVULACEAE	JACQUEMONTIA, PINELAND	FL
2		JACQUEMONTIA RECLINATA	CONVOLVULACEAE		FL
2		JAMESIANTHUS ALABAMENSIS	ASTERACEAE	JAMESIANTHUS, ALABAMA	AL
2		JAQUINIA UMBELLATA	THEOPHRASTACEAE		PR, Hispaniola
3C		JOINVILLEA ASCENDENS SSP. ASCENDENS	FLAGELLARIACEAE	'OHE	HI
2		JUGLANS HINDSII	JUGLANDACEAE	WALNUT, NORTHERN CALIFORNIA BLACK	CA
2		JUNCUS CAESARIENSIS	JUNCACEAE	RUSH, NEW JERSEY	MD NJ VA
3C		JUNCUS GYMNOCARPUS	JUNCACEAE	RUSH,	AL FL MS NC PA SC TN
1		JUNCUS LEIOSPERMUS VAR. AHARTII /INED.	JUNCACEAE	RUSH,	CA
2		JUNCUS LEIOSPERMUS VAR. LEIOSPERMUS /INED.	JUNCACEAE	RUSH, RED BLUFF	CA
3A		JUNCUS PERVETUS	JUNCACEAE	RUSH, BOG, BARNSTABLE	MA
3B		JUNCUS SLWOOKOORUM	JUNCACEAE		AK
2		JUNCUS TRIFIDUS SSP. CAROLINIANUS	JUNCACEAE		NC NY TN VA
1		JUSTICIA BORINQUENSIS	ACANTHACEAE		PR
1		JUSTICIA COOLEYI	ACANTHACEAE	WATER-WILLOW, COOLEY'S	FL
2		JUSTICIA CRASSIFOLIA	ACANTHACEAE	WATER-WILLOW, THICK-LEAVED	FL
1		JUSTICIA CULEBRITAE	ACANTHACEAE		PR, British V.I.
3B		JUSTICIA MORTUIFLUMINIS	ACANTHACEAE	WATER-WILLOW,	VA
2		JUSTICIA RUNYONII	ACANTHACEAE		TX, Mexico
3C		JUSTICIA WARNOCKII	ACANTHACEAE		TX
3C		JUSTICIA WRIGHTII	ACANTHACEAE		TX
2		KALLSTROEMIA PERENNANS	ZYGOPHYLLACEAE		TX
I		KALMIA CUNEATA	ERICACEAE	WHITE-WICKY	NC SC
3C		KALMIOPSIS LEACHIANA	ERICACEAE		OR
[illegible]		KOANOPHYLLON DROSEROLEPIS	*** SEE ***	EUPATORIUM DROSEROLEPIS	
LE		KOKIA COOKEI	MALVACEAE	KOKIO, COOKE'S	HI
LE		KOKIA DRYNARIOIDES	MALVACEAE	HAU-HELE'ULA (TREE COTTON, HAWAIIAN)	HI
2		KOKIA KAUAIENSIS	MALVACEAE	KOKI'O, KAUAI	HI
3A		KOKIA LANCEOLATA	MALVACEAE	KOKI'O,	HI
2		KOSTELETZKYA SMILACIFOLIA	MALVACEAE		AL FL
3A		LABORDIA BAILLONII	LOGANIACEAE		HI
2		LABORDIA CYRTANDRAE VAR. NAHIKUANA	LOGANIACEAE		HI
[illegible]		LABORDIA DECURRENS VAR. DECURRENS	LOGANIACEAE		HI
I		LABORDIA FAGRAEOIDEA VAR. FAGRAEOIDEA	LOGANIACEAE	KAMAKAHALA	HI
1	*	LABORDIA FAGRAEOIDEA VAR. LONGISEPALA	LOGANIACEAE		HI
[illegible]		LABORDIA FAGRAEOIDEA VAR. SAINT-JOHNIANA	LOGANIACEAE		HI
1		LABORDIA FAGRAEOIDEA VAR. WAIANAEANA	LOGANIACEAE		HI
2		LABORDIA GLABRA	LOGANIACEAE		HI

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1		LABORDIA HEDYOSMIFOLIA VAR. KILAUEANA	LOGANIACEAE		HI
1		LABORDIA HEDYOSMIFOLIA VAR. MAGNIFOLIA	LOGANIACEAE		HI
1		LABORDIA HEDYOSMIFOLIA VAR. ROBUSTA	LOGANIACEAE		HI
1		LABORDIA HEDYOSMIFOLIA VAR. ROCKII	LOGANIACEAE		HI
1		LABORDIA HEDYOSMIFOLIA VAR. SKOTTSBERGII	LOGANIACEAE		HI
1		LABORDIA HIRTELLA VAR. IMBRICATA	LOGANIACEAE		HI
1		LABORDIA HIRTELLA VAR. LAEVIS	LOGANIACEAE		HI
1		LABORDIA HIRTELLA VAR. LAEVISEPALA	LOGANIACEAE		HI
1	•	LABORDIA HIRTELLA VAR. MICROCALYX	LOGANIACEAE		HI
1	•	LABORDIA HIRTELLA VAR. MICROPHYLLA	LOGANIACEAE		HI
1	•	LABORDIA KAALAE VAR. BRACHYPODA	LOGANIACEAE		HI
1		LABORDIA KAALAE VAR. FOSBERGII	LOGANIACEAE		HI
1	•	LABORDIA KAALAE VAR. KAUAIENSIS	LOGANIACEAE		HI
1		LABORDIA KAALAE VAR. MENDAI	LOGANIACEAE		HI
2		LABORDIA LYDGATEI	LOGANIACEAE		HI
E		LABORDIA MEMBRANACEA	LOGANIACEAE	KAMAKAHALA	HI
1	•	LABORDIA MOLOKAIANA VAR. MOLOKAIANA	LOGANIACEAE		HI
1		LABORDIA MOLOKAIANA VAR. MUNROI	LOGANIACEAE		HI
1		LABORDIA MOLOKAIANA VAR. SETOSA	LOGANIACEAE		HI
2		LABORDIA NELSONII	LOGANIACEAE		HI
1	•	LABORDIA OLYMPIANA	LOGANIACEAE		HI
1	•	LABORDIA PALLIDA	LOGANIACEAE		HI
1	•	LABORDIA PEDUNCULATA	LOGANIACEAE		HI
2		LABORDIA TINIFOLIA VAR. EUPHORBIOIDEA	LOGANIACEAE		HI
1	•	LABORDIA TINIFOLIA VAR. FORBESII	LOGANIACEAE		HI
1	•	LABORDIA TINIFOLIA VAR. HONOLULENSIS	LOGANIACEAE		HI
2		LABORDIA TINIFOLIA VAR. LANAIENSIS	LOGANIACEAE		HI
1		LABORDIA TINIFOLIA VAR. MICROGYNA	LOGANIACEAE		HI
1	•	LABORDIA TINIFOLIA VAR. PARVIFOLIA	LOGANIACEAE		HI
1		LABORDIA TINIFOLIA VAR. TENUIFOLIA	LOGANIACEAE		HI
2		LABORDIA TRIFLORA	LOGANIACEAE		HI
2		LABORDIA WAWRANA	LOGANIACEAE		HI
3C		LACHNOCAULON BEYRICHIANUM	ERIOCAULACEAE		FL GA NC SC
2		LACHNOCAULON DIGYNUM	ERIOCAULACEAE		AL FL LA MS
S		LAPHAMIA CERNUA	*** SEE ***	PERITYLE CERNUA	
2		LAPLACEA PORTORICENSIS	THEACEAE	NINO DE COTA (MARICAO VERDE)	PR, Hispaniola
2		LASTHENIA BURKEI	ASTERACEAE	GOLDFIELDS, BURKE'S	CA
2		LASTHENIA CONJUGENS	ASTERACEAE	GOLDFIELDS, CONTRA COSTA	CA
2		LASTHENIA LEPTALEA	ASTERACEAE	BAERIA, SALINAS VALLEY	CA
2		LASTHENIA MACRANTHA SSP. PRISCA	ASTERACEAE		[illegible]
3C		LASTHENIA MINOR SSP. MARITIMA	ASTERACEAE	GOLDFIELDS, SEASIDE	CA OR WA, Canada (B.C.)
2		LATHYRUS BIFLORUS	FABACEAE		CA
3C		LATHYRUS HITCHCOCKIANUS	FABACEAE	WILD PEA, BULLFROG MOUNTAIN	CA NV
2		LATHYRUS HOLOCHLORUS	FABACEAE		[illegible]
2		LATHYRUS JEPSONII SSP. JEPSONII	FABACEAE	TULE-PEA, DELTA	CA
S		LAVATERA ASSURGENTIFLORA	*** SEE ***	LAVATERA ASSURGENTIFLORA SSP. ASSURGENTIFLORA	
3C		LAVATERA ASSURGENTIFLORA SSP ASSURGENTIFLORA	MALVACEAE	MALVA ROSA	CA
2		LAYIA DISCOIDEA	ASTERACEAE	TIDYTIPS, RAYLESS	CA
2		LAYIA JONESII	ASTERACEAE	LAYIA, JONES	CA
2		LAYIA LEUCOPAPPA	ASTERACEAE	LAYIA, COMANCHE	CA
1		LAYIA ZIEGLERI	ASTERACEAE		CA
2		LEAVENWORTHIA ALABAMICA VAR. ALABAMICA	BRASSICACEAE		AL
2		LEAVENWORTHIA ALABAMICA VAR. BRACHYSTYLA	BRASSICACEAE	GLADE CRESS,	AL
3C		LEAVENWORTHIA AUREA	BRASSICACEAE	GLADE CRESS, GOLDEN	OK TX
2		LEAVENWORTHIA CRASSA VAR. CRASSA	BRASSICACEAE	GLADE CRESS,	AL
2		LEAVENWORTHIA CRASSA VAR. ELONGATA	BRASSICACEAE	GLADE CRESS,	AL
2		LEAVENWORTHIA EXIGUA VAR. EXIGUA	BRASSICACEAE		AL [illegible] TN
1		LEAVENWORTHIA EXIGUA VAR. LACINIATA	BRASSICACEAE	GLADE CRESS,	KY
2		LEAVENWORTHIA EXIGUA VAR. LUTEA	BRASSICACEAE	GLADE CRESS,	AL TN
3C		LEAVENWORTHIA STYLOSA	BRASSICACEAE		AL TN
3C		LEAVENWORTHIA TORULOSA	BRASSICACEAE	GLADECRESS, NECKLACE	AL KY TN
2		LECHEA CERNUA	CISTACEAE		FL
2		LECHEA DIVARICATA	CISTACEAE		FL
2		LECHEA LAKELAE	CISTACEAE		FL
3C		LECHEA MARITIMA VAR. VIRGINICA	CISTACEAE	PINWEED, BEACH, VIRGINIAN	VA
2		LECHEA MENSALIS	CISTACEAE	PINWEED,	TX MEXICO
2		LEGENERE LIMOSA	CAMPANULACEAE	LEGENERE	CA
S		LEIBERGIA OROGENIOIDES	*** SEE ***	TAUSCHIA TENUISSIMA	
3C		LEITNERIA FLORIDANA	LEITNERIACEAE		AR FL GA MO TX
S		LENOPHYLLUM TEXANUM	*** SEE ***	SEDUM TEXANUM	
3C		LEPANTHES DODIANA	ORCHIDACEAE		PR
1		LEPANTHES ELTOROENSIS	ORCHIDACEAE		PR
2		LEPANTHOPSIS MELANANTHA	ORCHIDACEAE	ORCHID, TINY	FL, Cuba, Dominican Republic, Haiti, Jamaica
2		LEPECHINIA CARDIOPHYLLA	LAMIACEAE		CA
2		LEPECHINIA GANDERI	LAMIACEAE		CA
1	•	LEPIDIUM ARBUSCULUM	BRASSICACEAE		HI
1		LEPIDIUM BARNEBYANUM	BRASSICACEAE	PEPPER CRESS, BARNEBY	UT
3C		LEPIDIUM BIDENTATUM VAR. O-WAIMIENSE	BRASSICACEAE	ANAUNAU,	HI
1	•	LEPIDIUM BIDENTATUM VAR. REMYI	BRASSICACEAE	ANAUNAU, REMY'S	HI
2		LEPIDIUM DAVISII	BRASSICACEAE	PEPPER CRESS, DAVIS	ID OR

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2	LEPIDIUM FLAVUM VAR. FELIPENSE	BRASSICACEAE	PEPPER-GRASS, BORREGO VALLEY	CA
2	LEPIDIUM MONTANUM VAR. NEESEAE	BRASSICACEAE		UT
1	LEPIDIUM MONTANUM VAR. STELLAE	BRASSICACEAE		UT
3C	LEPIDIUM NANUM	BRASSICACEAE		NV
2	LEPIDIUM OSTLERI	BRASSICACEAE		UT
1	LEPIDIUM SERRA	BRASSICACEAE	ANAUNAU	HI
2	LEPIDOSPARTUM BURGESSII	ASTERACEAE		NM TX
S	LEPTOCEREUS QUADRICOSTATUS	*** SEE ***	CEREUS QUADRICOSTATUS	
3C	LEPTODACTYLON HAZELAE	POLEMONIACEAE		CA
2	LEPTODACTYLON JAEGERI	POLEMONIACEAE		CA
S	LEPTOGRAMMA PILOSA VAR. ALABAMENSIS	*** SEE ***	THELYPTERIS PILOSA VAR. ALABAMENSIS	
1	LESPEDEZA LEPTOSTACHYA	FABACEAE	BUSH-CLOVER, PRAIRIE	IL IA MN WI
3C	LESQUERELLA ANGUSTIFOLIA	BRASSICACEAE	BLADDERPOD, THREAD-LEAVED	OK TX
3B	LESQUERELLA ARCTICA VAR. SCAMMANAE	BRASSICACEAE		AK
3C	LESQUERELLA AUREA	BRASSICACEAE	BLADDERPOD, GOLDEN	OR
3C	LESQUERELLA CARINATA	BRASSICACEAE	BLADDERPOD, KEELED	ID MT WY
2	LESQUERELLA CONDENSATA	BRASSICACEAE		CO
3C	LESQUERELLA DENSIPILA	BRASSICACEAE	BLADDERPOD, DUCK RIVER	AL TN
1	LESQUERELLA FILIFORMIS	BRASSICACEAE	BLADDERPOD,	MO
3C	LESQUERELLA FREMONTII	BRASSICACEAE	BLADDERPOD, FREMONT'S	WY
3C	LESQUERELLA GARRETTII	BRASSICACEAE	BLADDERPOD, GARRETT	UT
2	LESQUERELLA GLOBOSA	BRASSICACEAE	BLADDERPOD, SHORT'S	IN KY TN
3B	LESQUERELLA GOODINGII	BRASSICACEAE	BLADDERPOD,	AZ NM
3C	LESQUERELLA HITCHCOCKII	BRASSICACEAE	BLADDERPOD,	NM
2	LESQUERELLA KAIBABENSIS	BRASSICACEAE		AZ
1	LESQUERELLA KINGII SSP. BERNARDINA	BRASSICACEAE	BLADDERPOD,	CA
3C	LESQUERELLA KINGII SSP. DIVERSIFOLIA	BRASSICACEAE	BLADDERPOD,	NM
3B	LESQUERELLA LATA	BRASSICACEAE	BLADDERPOD,	NM
3C	LESQUERELLA LESCURII	BRASSICACEAE		AL TN
2	LESQUERELLA LYRATA	BRASSICACEAE	BLADDERPOD, LYRATE	AL
3C	LESQUERELLA MACROCARPA	BRASSICACEAE	BLADDERPOD, LARGE-FRUITED	NM
3C	LESQUERELLA MCVAUGHIANA	BRASSICACEAE	BLADDERPOD,	TX
2	LESQUERELLA PALLIDA	BRASSICACEAE		TX
2	LESQUERELLA PARVIFLORA	BRASSICACEAE		CO
1	LESQUERELLA PERFORATA	BRASSICACEAE	BLADDERPOD, SPRING CREEK	TN
2	LESQUERELLA PRUINOSA	BRASSICACEAE	BLADDERPOD,	CO
3C	LESQUERELLA RUBICUNDULA	BRASSICACEAE	BLADDERPOD, BRYCE	UT
1	LESQUERELLA STONENSIS	BRASSICACEAE	BLADDERPOD, STONES RIVER	TN
2	LESQUERELLA THAMNOPHILA	BRASSICACEAE	BLADDERPOD,	TX
2	LESQUERELLA TUMULOSA	BRASSICACEAE	BLADDERPOD,	UT
3C	LESQUERELLA VALIDA	BRASSICACEAE	BLADDERPOD,STRONG	NM TX
1	LESSINGIA GERMANORUM VAR. GERMANORUM	ASTERACEAE	LESSINGIA, SAN FRANCISCO	CA
2	LESSINGIA GLANDULIFERA VAR. TOMENTOSA	ASTERACEAE	LESSINGIA, WARNER SPRINGS	CA
3C	LEWISIA CANTELOWII	PORTULACACEAE	LEWISIA, CANTELOW'S	CA
3C	LEWISIA COLUMBIANA VAR. WALLOWENSIS	PORTULACACEAE		ID MT OR
3C	LEWISIA CONGDONII	PORTULACACEAE		CA
2	LEWISIA COTYLEDON SSP. /SSP. NOV. INED.	PORTULACACEAE	LEWISIA, FRINGED	CA
2	LEWISIA COTYLEDON VAR. HECKNERI	PORTULACACEAE	LEWISIA, HECKNER'S	CA
2	LEWISIA COTYLEDON VAR. HOWELLII	PORTULACACEAE	LEWISIA, HOWELL'S	CA OR
2	LEWISIA COTYLEDON VAR. PURDYI	PORTULACACEAE		OR
3C	LEWISIA DISEPALA	PORTULACACEAE	BITTERROOT, YOSEMITE	CA
2	LEWISIA MAGUIREI	PORTULACACEAE		NV
3C	LEWISIA OPPOSITIFOLIA	PORTULACACEAE		CA OR
2	LEWISIA PYGMAEA SSP. LONGIPETALA	PORTULACACEAE	LEWISIA, LONG-PETALED	CA
2	LEWISIA SERRATA	PORTULACACEAE	LEWISIA, SAW-TOOTHED	CA
2	LEWISIA STEBBINSII	PORTULACACEAE	LEWISIA, STEBBINS	CA
3C	LEWISIA TWEEDYI	PORTULACACEAE		WA, Canada (B.C.)
3C	LIATRIS CYMOSA	ASTERACEAE		TX
2	LIATRIS HELLERI	ASTERACEAE		NC
1	LIATRIS OHLINGERAE	ASTERACEAE	BLAZINGSTAR,	FL
2	LIATRIS PROVINCIALIS	ASTERACEAE	BLAZINGSTAR, GODFREY'S	FL
3C	LIATRIS TENUIS	ASTERACEAE		TX
3B	LIGUSTICUM PORTERI VAR. BREVILOBUM	APIACEAE		UT
2	LILAEOPSIS CAROLINENSIS	APIACEAE		AL FL GA LA MS NC SC VA
2	LILAEOPSIS MASONII	APIACEAE		CA
2	LILAEOPSIS RECURVA	APIACEAE		AZ
3C	LILIUM BOLANDERI	LILIACEAE		CA OR
2	LILIUM FAIRCHILDII	LILIACEAE		CA
2	LILIUM GRAYI	LILIACEAE	LILY, GRAY'S	NC TN VA
2	LILIUM IRIDOLLAE	LILIACEAE	LILY, PANHANDLE	AL FL
2	LILIUM OCCIDENTALE	LILIACEAE	LILY, WESTERN	CA OR
2	LILIUM PARRYI	LILIACEAE		AZ CA
1	LILIUM PITKINENSE	LILIACEAE	LILY, PITKIN MARSH	CA
3C	LILIUM VOLLMERI	LILIACEAE	LILY, VOLLMER	CA OR
3B	LILIUM WASHINGTONIANUM VAR. MINUS	LILIACEAE		CA
3C	LILIUM WIGGINSII	LILIACEAE	LILY, WIGGINS	CA OR
2	LIMNANTHES BAKERI	LIMNANTHACEAE	MEADOWFOAM, BAKER'S	CA
2	LIMNANTHES DOUGLASII VAR. SULPHUREA	LIMNANTHACEAE	MEADOWFOAM, PT. REYES	CA
2	LIMNANTHES FLOCCOSA SSP. BELLINGERANA	LIMNANTHACEAE	MEADOWFOAM, BELLINGER'S	CA OR
1	LIMNANTHES FLOCCOSA SSP. CALIFORNICA	LIMNANTHACEAE		CA
2	LIMNANTHES FLOCCOSA SSP. GRANDIFLORA	LIMNANTHACEAE	MEADOWFOAM, WOOLY, LARGE-FLOWERED	OR
1	LIMNANTHES FLOCCOSA SSP. PUMILA	LIMNANTHACEAE	MEADOWFOAM, WOOLY, DWARF	OR
2	LIMNANTHES GRACILIS VAR. GRACILIS	LIMNANTHACEAE		OR

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	[illegible]
2		LIMNANTHES GRACILIS VAR. PARISHII	LIMNANTHACEAE	MEADOWFOAM, PARISH'S	CA
2		LIMNANTHES VINCULANS	LIMNANTHACEAE	MEADOWFOAM, SEBASTOPOL	CA
3B		LIMONIUM CAROLINIANUM VAR. ANGUSTATUM	PLUMBAGINACEAE	SEA-LAVENDER,	FL
3C		LIMONIUM LIMBATUM	PLUMBAGINACEAE		AZ NM TX
2		LIMOSELLA PUBIFLORA	SCROPHULARIACEAE	MUDWORT,	[illegible]
3C		LINANTHUS ARENICOLA	POLEMONIACEAE		CA NV, Mexico (Baja California)
3C		LINANTHUS BELLUS	POLEMONIACEAE	DESERT BEAUTY	CA, Mexico
[illegible]		LINANTHUS HARKNESSII SSP. CONDENSATUS	POLEMONIACEAE		CA
[illegible]		LINANTHUS KILLIPII	POLEMONIACEAE	LINANTHUS, BALDWIN LAKE	CA
[illegible]		LINANTHUS MACULATUS	POLEMONIACEAE	LINANTHUS, SAN BERNARDINO MT., LITTLE	CA
2		LINANTHUS ORCUTTII	POLEMONIACEAE	LINANTHUS, ORCUTT	CA
S		LINANTHUS ORCUTTII SSP. PACIFICUS	*** SEE ***	LINANTHUS ORCUTTII	
FE		LINDERA MELISSIFOLIA	LAURACEAE		AL AR FL GA LA MS MO NC OK
2		LINDERA SUBCORIACEA	LAURACEAE		LA MS NC
[illegible]	•	LINDERNIA SAXICOLA	SCROPHULARIACEAE	FALSE PIMPERNEL,	GA NC
2		LINUM ARENICOLA	LINACEAE	FLAX, SAND	FL
1		LINUM CARTERI VAR. CARTERI	LINACEAE	FLAX,	FL
1		LINUM CARTERI VAR. SMALLII	LINACEAE	FLAX,	FL
2		LINUM MACROCARPUM	LINACEAE	FLAX,	AL
[illegible]		LINUM SULCATUM VAR. HARPERI	LINACEAE		AL FL GA
2		LINUM WESTII	LINACEAE	FLAX, WEST'S	FL GA
3B		LIPOCHAETA ALATA VAR. ALATA	ASTERACEAE	NEHE,	HI
1	•	LIPOCHAETA BRYANII	ASTERACEAE	NEHE, BRYAN'S	HI
1	•	LIPOCHAETA DEGENERI	ASTERACEAE	NEHE, SMALL-LEAVED	HI
S		LIPOCHAETA DELTOIDEA	*** SEE ***	LIPOCHAETA SUBCORDATA	HI
3B		LIPOCHAETA DUBIA	ASTERACEAE		HI
3B		LIPOCHAETA EXIGUA	ASTERACEAE	NEHE, LESSER	HI
1	•	LIPOCHAETA FAURIEI	ASTERACEAE	NEHE, FAURIE	HI
[illegible]		LIPOCHAETA FLEXUOSA	ASTERACEAE	NEHE, FLEXUOUS	HI
3B		LIPOCHAETA FORBESII VAR. FORBESII	ASTERACEAE	NEHE, FORBES	HI
3C		LIPOCHAETA HETEROPHYLLA VAR. HETEROPHYLLA	ASTERACEAE		HI
3B		LIPOCHAETA HETEROPHYLLA VAR. MALVACEA	ASTERACEAE		HI
3B		LIPOCHAETA HETEROPHYLLA VAR. MOLOKAIENSIS	ASTERACEAE		HI
3B		LIPOCHAETA INTEGRIFOLIA VAR. ARGENTEA	ASTERACEAE		HI
3B		LIPOCHAETA INTEGRIFOLIA VAR. GRACILIS	ASTERACEAE	NEHE,	HI
3B		LIPOCHAETA INTEGRIFOLIA VAR. MAJOR	ASTERACEAE	NEHE,	HI
3B		LIPOCHAETA INTEGRIFOLIA VAR. MEGACEPHALA	ASTERACEAE	NEHE,	HI
3B		LIPOCHAETA INTERMEDIA	ASTERACEAE		HI
3B		LIPOCHAETA KAHOOLAWENSIS	ASTERACEAE	NEHE,	HI
1		LIPOCHAETA KAMOLENSIS	ASTERACEAE		HI
3B		LIPOCHAETA LAVARUM VAR. CONFERTA	ASTERACEAE		HI
3B		LIPOCHAETA LAVARUM VAR. MILLEBRANDIANA	ASTERACEAE		HI
3B		LIPOCHAETA LAVARUM VAR. LONGIFOLIA	ASTERACEAE	NEHE,	HI
3B		LIPOCHAETA LAVARUM VAR. MANELEANA	ASTERACEAE		HI
3B		LIPOCHAETA LAVARUM VAR. OVATA	ASTERACEAE		HI
3B		LIPOCHAETA LAVARUM VAR. SALICIFOLIA	ASTERACEAE	NEHE,	HI
3B		LIPOCHAETA LAVARUM VAR. SKOTTSBERGII	ASTERACEAE	NEHE,	HI
3B		LIPOCHAETA LAVARUM VAR. STEARNSII	ASTERACEAE		HI
3B		LIPOCHAETA LOBATA VAR. ALBESCENS	ASTERACEAE	NEHE,	HI
3B		LIPOCHAETA LOBATA VAR. APREVALLIANA	ASTERACEAE	NEHE,	HI
3B		LIPOCHAETA LOBATA VAR. GROSSEDENTATA	ASTERACEAE		HI
3B		LIPOCHAETA LOBATA VAR. HASTULATA	ASTERACEAE	NEHE,	HI
2		LIPOCHAETA LOBATA VAR. HASTULATOIDES	ASTERACEAE		HI
1		LIPOCHAETA LOBATA VAR. LEPTOPHYLLA	ASTERACEAE	NEHE,	HI
3C		LIPOCHAETA LOBATA VAR. LOBATA	ASTERACEAE	NEHE, LOBED,	HI
3B		LIPOCHAETA LOBATA VAR. MAKENENSIS	ASTERACEAE		HI
3B		LIPOCHAETA LOBATA VAR. MAUNALOENSIS	ASTERACEAE	NEHE, LOBED, MAUNA LOA	HI
1		LIPOCHAETA MICRANTHA	ASTERACEAE		HI
3B		LIPOCHAETA MINUSCULA	ASTERACEAE		HI
1	•	LIPOCHAETA OVATA	ASTERACEAE		HI
1	•	LIPOCHAETA PERDITA	ASTERACEAE	NEHE,	HI
3B		LIPOCHAETA POPULIFOLIA	ASTERACEAE	NEHE,	HI
3B		LIPOCHAETA POROPHILA	ASTERACEAE		HI
3B		LIPOCHAETA PROFUSA VAR. PROFUSA	ASTERACEAE	NEHE, MANY-FLOWERED	HI
3B		LIPOCHAETA PROFUSA VAR. ROBUSTIOR	ASTERACEAE	NEHE,	HI
3C		LIPOCHAETA REMYI	ASTERACEAE	NEHE, REMY'S	HI
3C		LIPOCHAETA ROCKII	ASTERACEAE	NEHE, ROCK'S	HI
3B		LIPOCHAETA ROCKII VAR. DISSECTA	ASTERACEAE	NEHE,	HI
3B		LIPOCHAETA ROCKII VAR. SUBOVATA	ASTERACEAE	NEHE,	HI
3B		LIPOCHAETA SCABRA	ASTERACEAE		HI
3B		LIPOCHAETA SUBCORDATA VAR. MEMBRANACEA	ASTERACEAE	NEHE,	HI
S		LIPOCHAETA SUBCORDATA VAR. POPULIFOLIA	*** SEE ***	LIPOCHAETA POPULIFOLIA	
3B		LIPOCHAETA SUCCULENTA VAR. ANGUSTATA	ASTERACEAE	NEHE,	HI
3C		LIPOCHAETA SUCCULENTA VAR. SUCCULENTA	ASTERACEAE	NEHE,	HI
3B		LIPOCHAETA SUCCULENTA VAR. TRIFIDA	ASTERACEAE	NEHE,	HI
1		LIPOCHAETA TENUIFOLIA	ASTERACEAE	NEHE, SLENDER-LEAVED	HI
2		LIPOCHAETA TENUIS	ASTERACEAE		HI
3B		LIPOCHAETA TRILOBATA	ASTERACEAE		HI
LE		LIPOCHAETA VENOSA	ASTERACEAE	NEHE,	HI

STATUS	SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
1	LIPOCHAETA WAIMEAENSIS	[illegible]		HI
2	LISTERA AURICULATA	ORCHIDACEAE	TWAYBLADE, AURICLED	ME MI MN NH NY VT WI, Canada (Lab., N.B., Nfld., Ont., Que.)
1	LITHOPHRAGMA MAXIMUM	SAXIFRAGACEAE	WOODLAND STAR, SAN CLEMENTE ISLAND	CA
S	LITHOSPERMUM DRUMMONDII	*** SEE ***	MERTENSIA DRUMMONDII	
3C	LITSEA WESTIVALIS	LAURACEAE	PUNOPITE	FL GA MC SC TN VA
2	LOBELIA APPENDICULATA VAR. GATTINGERI	[illegible]		TN
2	LOBELIA BOYKINII	CAMPANULACEAE	LOBELIA, BOYKIN'S	AL DE FL GA MC NJ SC
1	LOBELIA DUNBARIAE	[illegible]		MI
S	LOBELIA GATTINGERI	*** SEE ***	LOBELIA APPENDICULATA VAR. GATTINGERI	
1	LOBELIA GAUDICHAUDII VAR. KOOLAUENSIS	CAMPANULACEAE		HI
1	LOBELIA MILLEBRANDII VAR. MONOSTACHYA	[illegible]		HI
2	LOBELIA HYPOLEUCA VAR. ROCKII	CAMPANULACEAE		HI
1	LOBELIA NIIHAUENSIS	CAMPANULACEAE		HI
1	LOBELIA OAHUENSIS	CAMPANULACEAE		HI
3A	LOBELIA REMYI	CAMPANULACEAE		HI
1	LOBELIA TORTUOSA	CAMPANULACEAE		HI
3C	LOEFLINGIA SQUARROSA SSP. ARTEMISIARUM	CARYOPHYLLACEAE		CA
2	LOMATIUM ATTENUATUM	APIACEAE		NV
1	LOMATIUM BRADSHAWII	APIACEAE	DESERT-PARSLEY, BRADSHAW	OR
2	LOMATIUM CONCINNUM	APIACEAE		CO
1	LOMATIUM CONGDONII	APIACEAE	LOMATIUM, CONGDON'S	CA
3C	LOMATIUM CUSPIDATUM	APIACEAE		WA
2	LOMATIUM ERYTHROCARPUM	APIACEAE	DESERT-PARSELY, RED-FRUITED	OR
3C	LOMATIUM FOENICULACEUM SSP. INYOENSE	APIACEAE	LOMATIUM, INYO	CA ID
1	LOMATIUM GREENMANII	APIACEAE	DESERT-PARSLEY, GREENMAN'S	OR
3C	LOMATIUM HENDERSONII	APIACEAE		OR WA
3C	LOMATIUM HOWELLII	APIACEAE	LOMATIUM, HOWELL'S	CA OR
2	LOMATIUM LAEVIGATUM	APIACEAE		OR WA
2	LOMATIUM LATILOBUM	APIACEAE		CO UT
3C	LOMATIUM MINIMUM	APIACEAE		UT
3C	LOMATIUM MINUS	APIACEAE	DESERT-PARSLEY, DAY VALLEY	OR
2	LOMATIUM NELSONIANUM	APIACEAE		OR
2	LOMATIUM OREGANUM	APIACEAE		OR
S	LOMATIUM OROGENIOIDES	*** SEE ***	TAUSCHIA TENUISSIMA	
2	LOMATIUM PECKIANUM	APIACEAE	LOMATIUM, PECK'S	CA OR
3C	LOMATIUM QUINTUPLEX	APIACEAE		WA
3C	LOMATIUM RAVENII	APIACEAE	DESERT-PARSLEY, LASSEN	CA ID NV OR UT
3C	LOMATIUM RIGIDUM	APIACEAE	LOMATIUM, BIG PINE	CA
2	LOMATIUM ROLLINSII	APIACEAE		ID OR WA
3C	LOMATIUM SERPENTINUM	APIACEAE		ID OR WA
2	LOMATIUM STEBBINSII	APIACEAE		CA
2	LOMATIUM SUKSDORFII	APIACEAE	DESERT-PARSLEY, SUKSDORF'S	OR WA
3C	LOMATIUM THOMPSONII	APIACEAE		WA
2	LOMATIUM TUBEROSUM	APIACEAE	DESERT-PARSLEY, HOOVER'S	WA
2	LOTUS ARGOPHYLLUS SSP. ADSURGENS	FABACEAE	HOSACKIA, SILVER, SAN CLEMENTE IS.	CA
2	LOTUS ARGOPHYLLUS SSP. NIVEUS	FABACEAE	HOSACKIA, SILVER, SANTA CRUZ ISLAND	CA, Mexico
LE	LOTUS DENDROIDEUS SSP. TRASKIAE	FABACEAE	BROOM, SAN CLEMENTE ISLAND	CA
3C	LOTUS NUTTALLIANUS	FABACEAE	HOSACKIA, PROSTRATE	CA, Mexico
S	LOTUS SCOPARIUS SSP. TRASKIAE	*** SEE ***	LOTUS DENDROIDEUS SSP. TRASKIAE	
1	LUINA SERPENTINA	ASTERACEAE		UT
S	LUPINUS ABORTIVUS	*** SEE ***	LUPINUS CUSICKII SSP. ABORTIVUS	
2	LUPINUS ANTONINUS	FABACEAE		CA
2	LUPINUS ARBOREUS VAR. EXIMIUS	FABACEAE	TREE LUPINE, SAN MATEO	CA
1	LUPINUS ARIDORUM	FABACEAE		FL
2	LUPINUS ARIDUS SSP. ASHLANDENSIS	FABACEAE		WA
S	LUPINUS ARIDUS VAR. ABORTIVUS	*** SEE ***	LUPINUS CUSICKII SSP. ABORTIVUS	
2	LUPINUS BIDDLEI	FABACEAE		OR
3C	LUPINUS BURKEI SSP. CAERULEOMONTANUS	FABACEAE		OR
3C	LUPINUS CERVINUS	FABACEAE	LUPINE, SANTA LUCIA	CA
2	LUPINUS CITRINUS	FABACEAE		CA
S	LUPINUS CITRINUS VAR. DEFLEXUS	*** SEE ***	LUPINUS DEFLEXUS	
2	LUPINUS CONSTANCEI	FABACEAE	LUPINE, LASSICS	CA
2	LUPINUS CRASSUS	FABACEAE		CO
2	LUPINUS CULBERTSONII SSP. CULBERTSONII	FABACEAE		CA
2	LUPINUS CUSICKII	FABACEAE		OR
3C	LUPINUS CUTLERI	FABACEAE		AZ
2	LUPINUS DALESIAE	FABACEAE		CA
S	LUPINUS DEDECKERAE	*** SEE ***	LUPINUS PADRE-CROWLEYI	
2	LUPINUS DEFLEXUS	FABACEAE	LUPINE, MARIPOSA	CA
2	LUPINUS DURANII	FABACEAE		CA
2	LUPINUS EXCUBITUS VAR. MEDIUS	FABACEAE		CA
S	LUPINUS EXIMIUS	*** SEE ***	LUPINUS ARBOREUS VAR. EXIMIUS	
2	LUPINUS GUADALUPENSIS	FABACEAE	LUPINE, GUADALUPE ISLAND	CA, Mexico
3C	LUPINUS HOLMGRENIANUS	FABACEAE	LUPINE, HOLMGREN	CA NV
S	LUPINUS HUMBOLDTIENSIS /SP. NOV. INED.	*** SEE ***	LUPINUS CONSTANCEI	
3C	LUPINUS INYOENSIS	FABACEAE		CA
3C	LUPINUS JONESII	FABACEAE		UT
2	LUPINUS LUDOVICIANUS	FABACEAE	LUPINE, SAN LUIS	CA
2	LUPINUS MAGNIFICUS VAR. MAGNIFICUS	FABACEAE	LUPINE, PANAMINT MOUNTAINS	CA
3C	LUPINUS MALACOPHYLLUS	FABACEAE		NV
S	LUPINUS MARIANUS	*** SEE ***	LUPINUS SERVICEUS SSP. MARIANUS	

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
2		LUPINUS MILO-BAKERI	FABACEAE	LUPINE, MILO BAKER	CA
3C		LUPINUS MONTIGENUS VAR. MONTIGENUS	FABACEAE		CA NV
3B		LUPINUS MUCRONULATUS	FABACEAE		[illegible]
2		LUPINUS NIPOMENSIS	FABACEAE	LUPINE, NIPOMO MESA	CA
2		LUPINUS PADRE-CROWLEYI	FABACEAE	LUPINE, DEDECKER'S	CA
3C		LUPINUS PEIRSONII	FABACEAE		CA
3C		LUPINUS SABINII	FABACEAE		OR WA
3C		LUPINUS SERICATUS	FABACEAE	LUPINE, COBB MOUNTAIN	CA
3C		LUPINUS SERVICEUS SSP. MARIANUS	FABACEAE		UT
2		LUPINUS SPECTABILIS	FABACEAE	LUPINE, SHAGGY HAIR	CA
2		LUPINUS TIDESTROMII VAR. LAYNEAE	FABACEAE	LUPINE, POINT REYES	CA
1		LUPINUS TIDESTROMII VAR. TIDESTROMII	FABACEAE	LUPINE, TIDESTROM	CA
3C		LUPINUS TRACYI	FABACEAE	LUPINE, TRACY'S	CA OR
3C		LUPINUS WESTIANUS	FABACEAE	LUPINE, GULFCOAST	FL
3C		LUZULA HAWAIIENSIS VAR. OAHUENSIS	JUNCACEAE		HI
2		LYCIUM BERBERIOIDES	SOLANACEAE		TX
1	•	LYCIUM HASSEI	SOLANACEAE	DESERT-THORN, SANTA CATALINA	[illegible]
3C		LYCIUM TEXANUM	SOLANACEAE		TX
1	•	LYCIUM VERRUCOSUM	SOLANACEAE	DESERT-THORN, SAN NICOLAS	CA, Mexico
2		LYCOPODIUM HALEAKALAE	LYCOPODIACEAE		HI
1		LYCOPODIUM MANNII	LYCOPODIACEAE		HI
2		LYCOPODIUM NUTANS	LYCOPODIACEAE		HI
3B		LYCOPODIUM PORTORICENSE	LYCOPODIACEAE	CLUBMOSS,	[illegible]
2		LYGODESMIA DOLORESENSIS	ASTERACEAE		CO
2		LYGODESMIA ENTRADA	ASTERACEAE	SKELETONPLANT, ENTRADA	CO UT
3C		LYGODESMIA GRANDIFLORA VAR. STRICTA	ASTERACEAE		UT
2		LYONOTHAMNUS FLORIBUNDUS SSP. ASPLENIFOLIUS	ROSACEAE	IRONWOOD, FERN-LEAVED	CA
2		LYONOTHAMNUS FLORIBUNDUS SSP. FLORIBUNDUS	ROSACEAE	IRONWOOD, CATALINA	CA
3C		LYSILOMA MICROPHYLLA VAR. THORNBERI	FABACEAE		AZ
1		LYSIMACHIA ASPERULAEFOLIA	PRIMULACEAE		NC SC
S		LYSIMACHIA CILIATA	*** SEE ***	STEIRONEMA LAEVIGATUM	
2		LYSIMACHIA FILIFOLIA	PRIMULACEAE		HI
1		LYSIMACHIA HILLEBRANDII VAR. HILLEBRANDII	PRIMULACEAE	PUA-HEKILI	HI
1		LYSIMACHIA KALALAUENSIS	PRIMULACEAE		HI
2		LYSIMACHIA OVATA	PRIMULACEAE		HI
2		LYSIMACHIA SP. /SP. NOV. INED.	PRIMULACEAE	(WAIHOI VALLEY, MAUI CO.)	HI
2		LYTHRUM CURTISSII	LYTHRACEAE		FL GA
2		LYTHRUM FLAGELLARE	LYTHRACEAE		FL
3C		LYTHRUM OVALIFOLIUM	LYTHRACEAE		TX
2		MACBRIDEA ALBA	LAMIACEAE	BIRDS-IN-A-NEST, WHITE	FL
3B		MACHAERANTHERA AMMOPHILA	ASTERACEAE		CA NV
3B		MACHAERANTHERA ARIZONICA	ASTERACEAE		AZ
3C		MACHAERANTHERA AUREA	ASTERACEAE	MACHAERANTHERA, HOUSTON	TX
3C		MACHAERANTHERA CANESCENS VAR. ZIEGLERI	ASTERACEAE		CA
S		MACHAERANTHERA COGNATA	*** SEE ***	XYLORHIZA COGNATA	
S		MACHAERANTHERA GLABRIUSCULA VAR. CONFERTIFOLIA	*** SEE ***	XYLORHIZA CONFERTIFOLIA	
3C		MACHAERANTHERA GRINDELIOIDES VAR. DEPRESSA	ASTERACEAE		AZ NV UT
3C		MACHAERANTHERA KINGII	ASTERACEAE		UT
2		MACHAERANTHERA LAGUNENSIS	ASTERACEAE	ASTER, LAGUNA MOUNTAINS	CA
3C		MACHAERANTHERA LEUCANTHEMIFOLIA	ASTERACEAE		CA NV
3C		MACHAERANTHERA MUCRONATA	ASTERACEAE		AZ
S		MACHAERANTHERA ORCUTTII	*** SEE ***	XYLORHIZA ORCUTTII	
2		MADIA HALLII	ASTERACEAE		CA
3C		MADIA STEBBINSII	ASTERACEAE		CA
3C		MAGNOLIA ASHEI	MAGNOLIACEAE	MAGNOLIA, ASHE'S	FL
2		MAHONIA NERVOSA VAR. MENDOCINENSIS	BERBERIDACEAE	BARBERRY, MENDOCINO	CA
1		MAHONIA NEVINII	BERBERIDACEAE	BARBERRY, NEVIN'S	CA
2		MAHONIA PINNATA SSP. INSULARIS	BERBERIDACEAE	BARBERRY, ISLAND	CA
LE		MAHONIA SONNEI	BERBERIDACEAE	BARBERRY, TRUCKEE	CA
1	•	MALACOTHAMNUS ABBOTTII	MALVACEAE	BUSH-MALLOW, ABBOTT'S	CA
LE		MALACOTHAMNUS CLEMENTINUS	MALVACEAE	BUSH-MALLOW, SAN CLEMENTE ISLAND	CA
2		MALACOTHAMNUS FASCICULATUS VAR. NESIOTICUS	MALVACEAE	BUSH-MALLOW, SANTA CRUZ ISLAND	CA
1	•	MALACOTHAMNUS MENDOCINENSIS	MALVACEAE	BUSH-MALLOW, MENDOCINO	CA
2		MALACOTHAMNUS PALMERI VAR. INVOLUCRATUS	MALVACEAE	BUSH-MALLOW, CARMEL VALLEY	CA
2		MALACOTHAMNUS PALMERI VAR. LUCIANUS	MALVACEAE	BUSH-MALLOW, ARROYO SECO	CA
3C		MALACOTHAMNUS PALMERI VAR. PALMERI	MALVACEAE	BUSH-MALLOW, PALMER	CA
2		MALACOTHAMNUS PARISHII	MALVACEAE	BUSH-MALLOW, PARISH'S	CA
2		MALACOTHRIX SAXATILIS VAR. ARACHNOIDEA	ASTERACEAE	MALACOTHRIX, CARMEL VALLEY	CA
1		MALPIGHIA INFESTISSIMA	MALPIGHIACEAE	STINGINGBUSH	VI
S		MALPIGHIA PALLENS	*** SEE ***	MALPIGHIA INFESTISSIMA	
S		MAMMILLARIA LEEI	*** SEE ***	CORYPHANTHA SNEEDII VAR. LEEI	
S		MAMMILLARIA NELLIEAE	*** SEE ***	CORYPHANTHA MINIMA	
3C		MAMMILLARIA ORESTERA	CACTACEAE		AZ
S		MAMMILLARIA SNEEDII	*** SEE ***	CORYPHANTHA SNEEDII VAR. SNEEDII	
PT		MAMMILLARIA THORNBERI	CACTACEAE		AZ, Mexico
S		MAMMILLARIA TOBUSCHII	*** SEE ***	ANCISTROCACTUS TOBUSCHII	
3C		MANIHOT DAVISIAE	EUPHORBIACEAE		AZ

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
1		MANIHOT WALKERAE	EUPHORBIACEAE		TX, Mexico
S		MANISURIS TUBERCULOSA	*** SEE ***	COELORACHIS TUBERCULOSA	
2		MARGARANTHUS LEMMONII	SOLANACEAE		AZ
2		MARINA ORCUTTII VAR. ORCUTTII	FABACEAE		CA
1		MARISCUS URBANII	CYPERACEAE		PR
1		MARLIEREA SINTENISII	MYRTACEAE	MURTA	PR
1		MARSDENIA ELLIPTICA	ASCLEPIADACEAE		PR
2		MARSHALLIA GRANDIFLORA	ASTERACEAE	BARBARA'S BUTTONS, LARGE-FLOWERED	KY MD NC PA TN WV
2		MARSHALLIA MONRII	ASTERACEAE	BARBARA'S BUTTONS,	AL GA
3C		MARSHALLIA RAMOSA	ASTERACEAE		FL GA
1		MARSILEA VILLOSA	MARSILEACEAE		MI
2		MATELEA ALABAMENSIS	ASCLEPIADACEAE	ANGLEPOD,	AL FL LA
3C		MATELEA BREVICORONATA	ASCLEPIADACEAE		TX
3C		MATELEA EDWARDSENSIS	ASCLEPIADACEAE	MILKVINE, PLATEAU	TX
2		MATELEA FLORIDANA	ASCLEPIADACEAE		FL
3C		MATELEA PARVIFLORA	ASCLEPIADACEAE		TX
2		MATELEA RADIATA	ASCLEPIADACEAE	ANGLEPOD (MILKVINE), FALFURRIAS	TX
2		MATELEA TEXENSIS	ASCLEPIADACEAE		TX
2		MAURANDYA PETROPHILA	SCROPHULARIACEAE	ROCK LADY	CA
2		MAYTENUS CYMOSA	CELASTRACEAE		PR VI, British V.I.
2		MAYTENUS ELONGATA	CELASTRACEAE	CUERO DE SAPO	PR
1		MAYTENUS PONCEANA	CELASTRACEAE	CUERO DE SAPO	PR
2		MELANTHERA PARVIFOLIA	ASTERACEAE		FL
2		MENTZELIA ARGILLOSA	LOASACEAE	BLAZING STAR, CLAY	CO UT
2		MENTZELIA DENSA	LOASACEAE		CO
3C		MENTZELIA HIRSUTISSIMA VAR. STENOPHYLLA	LOASACEAE	STICKLEAF, HAIRY	CA
LT		MENTZELIA LEUCOPHYLLA	LOASACEAE	BLAZING STAR, ASH MEADOWS	NV
2		MENTZELIA MOLLIS	LOASACEAE	STICKLEAF, SMOOTH	ID NV OR
3A		MENTZELIA NITENS VAR. LEPTOCAULIS	LOASACEAE	STICKLEAF,	AZ
2		MENTZELIA PACKARDIAE	LOASACEAE	STICKLEAF, PACKARD'S	OR
2		MERTENSIA DRUMMONDII	BORAGINACEAE	BLUEBELL, DRUMMOND	AK, Canada (N.W.T., Yukon)
S		MERTENSIA LANCEOLATA VAR. DRUMMONDII	*** SEE ***	MERTENSIA DRUMMONDII	
3C		MERTENSIA TOYABENSIS	BORAGINACEAE	BLUEBELLS,	NV
3C		MERTENSIA VIRIDIS VAR. CANA	BORAGINACEAE	BLUEBELLS, CANESCENT	CO UT
3C		MERTENSIA VIRIDIS VAR. DILATATA	BORAGINACEAE	BLUEBELLS, SMOOTH-LEAF	CO UT WY
2		MESADENUS PORTORICENSIS	ORCHIDACEAE		PR
1		METROSIDEROS COLLINA VAR. NEWELLII	MYRTACEAE		HI
PE		MEZONEURON KAVAIENSE	FABACEAE	UHIUHI	HI
S		MICONIA OTTOSCHULZII	*** SEE ***	GRAFFENRIEDA OTTOSCHULZII	
1	*	MICRANTHEMUM MICRANTHEMOIDES	SCROPHULARIACEAE	MICRANTHEMUM, NUTTALL'S	DE DC MD NJ NY PA VA
2		MICROSERIS DECIPIENS	ASTERACEAE	MICROSERIS, SANTA CRUZ	CA
3C		MICROSERIS DETLINGII	ASTERACEAE		OR
2		MICROSERIS HOWELLII	ASTERACEAE		OR
S		MICROSERIS LACINIATA SSP. DETLINGII	*** SEE ***	MICROSERIS DETLINGII /SP. NOV. INED.	
S		MICROSERIS LACINIATA SSP. SISKIYOUENSIS	*** SEE ***	MICROSERIS NUTANS SSP. SISKIYOUENSIS /INED.	
3C		MICROSERIS NUTANS SSP. SISKIYOUENSIS /INED.	ASTERACEAE		CA OR
1		MIKANIA STEVENSIANA	ASTERACEAE	GUACO	PR
S		MIMULUS ARIDUS	*** SEE ***	DIPLACUS ARIDUS	
1	*	MIMULUS BRANDEGEI	SCROPHULARIACEAE	MONKEYFLOWER, SANTA CRUZ ISLAND	CA
2		MIMULUS EXIGUUS	SCROPHULARIACEAE	MONKEYFLOWER, MEAN	CA
2		MIMULUS GEMMIPARUS	SCROPHULARIACEAE		CO
2		MIMULUS GLABRATUS VAR. MICHIGANENSIS	SCROPHULARIACEAE	MONKEYFLOWER,	MI
3B		MIMULUS GUTTATUS SSP. ARENICOLA	SCROPHULARIACEAE	MONKEYFLOWER,	CA
3C		MIMULUS JUNGERMANNIOIDES	SCROPHULARIACEAE		OR WA
2		MIMULUS PATULUS	SCROPHULARIACEAE	MONKEY FLOWER, STALK-LEAVED	ID OR WA
3C		MIMULUS PICTUS	SCROPHULARIACEAE	MONKEYFLOWER, CALICO	CA
2		MIMULUS PURPUREUS VAR. PURPUREUS	SCROPHULARIACEAE	MONKEYFLOWER, PURPLE	CA
2		MIMULUS PYGMAEUS	SCROPHULARIACEAE	MONKEYFLOWER, PYGMY	CA OR
2		MIMULUS RINGENS VAR. COLPOPHILUS	SCROPHULARIACEAE	MONKEYFLOWER, SQUARE-STEMMED	ME, Canada.
2		MIMULUS RUPICOLA	SCROPHULARIACEAE	MONKEYFLOWER, DEATH VALLEY	CA
2		MIMULUS SP./SP. NOV. INED. (KERN CO.)	SCROPHULARIACEAE		CA
2		MIMULUS SP./SP. NOV. INED. (TULARE CO.)	SCROPHULARIACEAE		CA
1	*	MIMULUS TRASKIAE	SCROPHULARIACEAE	MONKEYFLOWER, SANTA CATALINA	CA
3B		MIMULUS WASHOENSIS	SCROPHULARIACEAE		NV
1	*	MIMULUS WHIPPLEI	SCROPHULARIACEAE	MONKEYFLOWER, WHIPPLE S	CA
2		MINUARTIA DECUMBENS	CARYOPHYLLACEAE	SANDWORT, LASSICS	CA
2		MINUARTIA GODFREYI	CARYOPHYLLACEAE		AL AR FL NC SC
3C		MINUARTIA MARCESCENS	CARYOPHYLLACEAE		VT, Canada
2		MINUARTIA ROSEI	CARYOPHYLLACEAE	SANDWORT, PEANUT	CA
3C		MINUARTIA UNIFLORA	CARYOPHYLLACEAE		AL GA NC SC
LE		MIRABILIS MACFARLANEI	NYCTAGINACEAE	FOUR-O'CLOCK, MACFARLANE S	ID OR
3C		MIRABILIS PUDICA	NYCTAGINACEAE		NV
2		MIRABILIS ROTUNDIFOLIA	NYCTAGINACEAE		TX
2		MITRACARPUS MAXWELLIAE	RUBIACEAE		PR
1		MITRACARPUS POLYCLADUS	RUBIACEAE		PR
3C		MONARDA STIPITATOGLANDULOSA	LAMIACEAE	HORSE-MINT,	AR OK
3C		MONARDELLA ANTONINA	LAMIACEAE		CA
3C		MONARDELLA BENITENSIS	LAMIACEAE	MONARDELLA, SAN BENITO	CA
2		MONARDELLA CRISPA	LAMIACEAE	MONARDELLA, CRISP	CA
2		MONARDELLA DIABOLI /SP. NOV. INED.	LAMIACEAE		CA

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
2		MONARDELLA DOUGLASSII VAR. VENOSA	LAMIACEAE		CA
2		MONARDELLA HYPOLEUCA SSP. LANATA	LAMIACEAE	MONARDELLA, FELT LEAF	CA
1	•	MONARDELLA LEUCOCEPHALA	LAMIACEAE	MONARDELLA, MERCED	CA
2		MONARDELLA LINOIDES SSP. OBLONGA	LAMIACEAE		CA
2		MONARDELLA LINOIDES SSP. VIMINEA	LAMIACEAE	MONARDELLA, WILLOWY	CA
3C		MONARDELLA MACRANTHA SSP. HALLII	LAMIACEAE	MONARDELLA, HALL'S	CA
2		MONARDELLA NANA SSP. LEPTOSIPHON	LAMIACEAE	MONARDELLA, SAN FELIPE	CA
3C		MONARDELLA PALMERI	LAMIACEAE		CA
1	•	MONARDELLA PRINGLEI	LAMIACEAE	MONARDELLA, PRINGLE	CA
3C		MONARDELLA PURPUREA	LAMIACEAE		CA OR
2		MONARDELLA ROBISONII	LAMIACEAE	MONARDELLA, ROBISON	CA
2		MONARDELLA SCELERATA /SP. NOV. INED.	LAMIACEAE	MONARDELLA, STONE CORRAL CANYON	CA
2		MONARDELLA STEBBINSII SP. NOV. /INED.	LAMIACEAE	MONARDELLA, STEBBINS'	CA
2		MONARDELLA UNDULATA VAR. FRUTESCENS	LAMIACEAE	MONARDELLA, CURLY-LEAVED, SAN LUIS O	CA
3C		MONARDELLA VIRIDIS SSP. SAXICOLA	LAMIACEAE		CA
2		MONOTROPA BRITTONII	ERICACEAE		FL
S		MONOTROPA CALIFORNICUS	*** SEE ***	PITYOPUS CALIFORNICUS	
2		MONOTROPSIS REYNOLDSIAE	ERICACEAE	PINESAP, SWEET	FL
2		MONTIA BOSTOCKII	PORTULACACEAE		AK, Canada (Yukon)
3C		MORINDA SANDWICENSIS	RUBIACEAE		HI
1		MORINDA TRIMERA	RUBIACEAE	NONI-KUAHIWI	HI
3B		MUHLENBERGIA CURTISETOSA	POACEAE	MUHLY,	IL MO OH PA
3B		MUHLENBERGIA PILOSA	POACEAE		TX
S		MUHLENBERGIA SCHREBERI VAR. CURTISETOSA	*** SEE ***	MUHLENBERGIA CURTISETOSA	
1		MUHLENBERGIA TORREYANA	POACEAE	MUHLY, TORREY'S	DE GA MD NJ NY TN
3B		MUHLENBERGIA VILLOSA	POACEAE	MUHLY, VILLOUS	NM TX
2		MUILLA CLEVELANDII	LILIACEAE	GOLDENSTAR, SAN DIEGO	CA, Mexico (Baja California)
3B		MUILLA CORONATA	LILIACEAE		CA
1		MUNROIDENDRON RACEMOSUM	ARALIACEAE		HI
2		MUNZOTHAMNUS BLAIRII	ASTERACEAE		CA
2		MUSINEON LINEARE	APIACEAE		UT
2		MYOPORUM SANDWICENSE VAR. STELLATUM	MYOPORACEAE	NAIO	HI
2		MYOSURUS MINIMUS SSP. APUS	RANUNCULACEAE		CA OR
1		MYRCIA PAGANII	MYRTACEAE	AUSU	[illegible]
2		MYRCIANTHES FRAGRANS VAR. SIMPSONII	MYRTACEAE		FL
3C		MYRICA HARTWEGII	MYRICACEAE	SWEET-BAY, SIERRA	CA
2		MYRIOPHYLLUM LAXUM	HALORAGACEAE		AL FL GA NC SC
1		MYRSINE FERNSEEI	MYRSINACEAE	KOLEA	HI
1		MYRSINE LANAIENSIS VAR. OAHUENSIS	MYRSINACEAE		HI
1		MYRSINE LINEARIFOLIA VAR. LINEARIFOLIA	MYRSINACEAE		HI
1		MYRSINE MEZII	MYRSINACEAE		HI
2		MYRSINE PETIOLATA	MYRSINACEAE		HI
1		MYRSINE ST-JOHNII	MYRSINACEAE		HI
2	•	NAJAS CAESPITOSA	NAJADACEAE	NAIAD, FISH LAKE	UT
S		NAJAS FLEXILIS SSP. CAESPITOSA	*** SEE ***	NAJAS CAESPITOSA	
3C		NAMA RETRORSUM	HYDROPHYLLACEAE		AZ UT
3C		NAMA XYLOPODUM	HYDROPHYLLACEAE		NM TX
2		NAPAEA DIOICA	MALVACEAE		IL IN OH MN WI
2		NARTHECIUM AMERICANUM	LILIACEAE		DE NJ NY NC SC
S		NARTHECIUM OSSIFRAGUM VAR. AMERICANUM	*** SEE ***	NARTHECIUM AMERICANUM	
2		NASTURTIUM GAMBELII	BRASSICACEAE	WATERCRESS, GAMBEL'S	CA
S		NAVAJOA PEEBLESIANUS	*** SEE ***	PEDIOCACTUS PEEBLESIANUS VAR. PEEBLESIANUS	
2		NAVARRETIA FOSSALIS	POLEMONIACEAE	NAVARRETIA, NO-NAMED	CA, Mexico (Baja California)
2		NAVARRETIA PAUCIFLORA	POLEMONIACEAE	NAVARRETIA, FEW-FLOWERED	CA
2		NAVARRETIA PLIEANTHA	POLEMONIACEAE	NAVARRETIA, MANY-FLOWERED	CA
3C		NAVARRETIA PROLIFERA SSP. LUTEA	POLEMONIACEAE	NAVARRETIA, YELLOW-BUR	CA
2		NAVARRETIA SETILOBA	POLEMONIACEAE	NAVARRETIA, COVILLE'S	CA
2		NEMACLADUS TWISSELMANNII	CAMPANULACEAE	NEMACLADUS, TWISSELMANN'S	CA
2		NEMASTYLIS FLORIDANA	IRIDACEAE	IXIA, FALL-FLOWERING	FL
S		NEMOPANTHUS COLLINUS	*** SEE ***	ILEX COLLINA	
1		NEOLLOYDIA ERECTOCENTRA VAR. ACUMENSIS	CACTACEAE		AZ, Mexico
2		NEOLLOYDIA ERECTOCENTRA VAR. ERECTOCENTRA	CACTACEAE		AZ
2		NEOLLOYDIA GAUTII	CACTACEAE		TX
LT		NEOLLOYDIA MARIPOSENSIS	CACTACEAE	CACTUS, MARIPOSA, LLOYD S	TX, Mexico (Coahuila)
3C		NEOLLOYDIA WARNOCKII	CACTACEAE		TX
2		NEOPARRYA LITHOPHILA	APIACEAE		CO
2		NEOSTAPFIA COLUSANA	POACEAE	GRASS, COLUSA	CA
1		NEOWAWRAEA PHYLLANTHOIDES	EUPHORBIACEAE	NEHAMEHAME	HI
2		NEPHROPETALUM PRINGLEI	STERCULIACEAE	KIDNEYPETAL, PRINGLE S	TX, Mexico
1		NERAUDIA ANGULATA	URTICACEAE		HI
3A		NERAUDIA COOKII	URTICACEAE		HI
3A		NERAUDIA KAHOOLAWENSIS	URTICACEAE		HI
1		NERAUDIA KAUAIENSIS	URTICACEAE		HI
2		NERAUDIA MELASTOMIFOLIA	URTICACEAE	MA'OLOA	HI
1		NERAUDIA OVATA	URTICACEAE	MA'OLOA, BIG ISLAND	HI
1		NERAUDIA SERICEA	URTICACEAE		HI
S		NESAEA LONGIPES	*** SEE ***	HEIMIA LONGIPES	
2		NESTRONIA UMBELLULA	SANTALACEAE		AL GA MS NC SC TN VA
2		NEVIUSIA ALABAMENSIS	ROSACEAE		AL AR MS MO TN

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
LE		NITROPHILA MOHAVENSIS	CHENOPODIACEAE	NITERWORT, AMARGOSA	CA
2		NOLINA ARENICOLA	LILIACEAE		TX
2		NOLINA ATOPOCARPA	LILIACEAE	BEAR-GRASS,	FL
2		NOLINA BRITTONIANA	LILIACEAE	BEAR-GRASS,	FL
1		NOLINA INTERRATA	LILIACEAE	BEAR-GRASS, DEHESA (SAN DIEGO)	CA, Mexico
1		NOTHOCESTRUM BREVIFLORUM	SOLANACEAE		HI
1		NOTHOCESTRUM LATIFOLIUM	SOLANACEAE	'AIEA,	HI
1		NOTHOCESTRUM LONGIFOLIUM VAR. RUFIPILOSUM	SOLANACEAE	'AIEA,	HI
1		NOTHOCESTRUM PELTATUM	SOLANACEAE	'AIEA,	HI
1		NOTHOCESTRUM SUBCORDATUM	SOLANACEAE	'AIEA,	HI
2		NOTHOLAENA LEMMONII	POLYPODIACEAE		AZ, Mexico
3C		NOTHOLAENA SCHAFFNERI VAR. NEALLEYI	POLYPODIACEAE		TX
1		NOTOTRICHIUM HUMILE	AMARANTHACEAE		HI
3B		NOTOTRICHIUM SANDWICENSE VAR. DECIPIENS	AMARANTHACEAE		HI
3B		NOTOTRICHIUM SANDWICENSE VAR. DUBIUM	AMARANTHACEAE		HI
3B		NOTOTRICHIUM SANDWICENSE VAR. FORBESII	AMARANTHACEAE		HI
3B		NOTOTRICHIUM SANDWICENSE VAR. HELLERI	AMARANTHACEAE		HI
3B		NOTOTRICHIUM SANDWICENSE VAR. KOLEKOLENSE	AMARANTHACEAE		HI
3B		NOTOTRICHIUM SANDWICENSE VAR. LANAIENSE	AMARANTHACEAE		HI
3B		NOTOTRICHIUM SANDWICENSE VAR. LANCEOLATUM	AMARANTHACEAE		HI
3B		NOTOTRICHIUM SANDWICENSE VAR. LATIFOLIUM	AMARANTHACEAE		HI
3B		NOTOTRICHIUM SANDWICENSE VAR. LEPTOPODUM	AMARANTHACEAE		HI
3B		NOTOTRICHIUM SANDWICENSE VAR. LONGESPICATUM	AMARANTHACEAE		HI
3B		NOTOTRICHIUM SANDWICENSE VAR. MACROPHYLLUM	AMARANTHACEAE		HI
3B		NOTOTRICHIUM SANDWICENSE VAR. MAUIENSE	AMARANTHACEAE		HI
3B		NOTOTRICHIUM SANDWICENSE VAR. NIIHAUENSE	AMARANTHACEAE		HI
3B		NOTOTRICHIUM SANDWICENSE VAR. OLOKELEANUM	AMARANTHACEAE		HI
3B		NOTOTRICHIUM SANDWICENSE VAR. PULCHELLOIDES	AMARANTHACEAE		HI
3B		NOTOTRICHIUM SANDWICENSE VAR. PULCHELLUM	AMARANTHACEAE		HI
3B		NOTOTRICHIUM SANDWICENSE VAR. SUBCORDATUM	AMARANTHACEAE		HI
3B		NOTOTRICHIUM SANDWICENSE VAR. SYRINGIFOLIUM	AMARANTHACEAE		HI
3B		NOTOTRICHIUM VIRIDE	AMARANTHACEAE		HI
2		NUPHAR LUTEUM SSP. ULVACEUM	NYMPHAEACEAE		FL
3C		OCHROSIA COMPTA	APOCYNACEAE		HI
2		OCHROSIA KILAUEAENSIS	APOCYNACEAE	HOLEI	HI
2		OENOTHERA ACUTISSIMA	ONAGRACEAE	EVENING-PRIMROSE,	CO UT
LE		OENOTHERA AVITA SSP. EUREKENSIS	ONAGRACEAE	EVENING-PRIMROSE, EUREKA VALLEY	CA
S		OENOTHERA CAESPITOSA VAR. PSAMMOPHILA	*** SEE ***	OENOTHERA PSAMMOPHILA	
LE		OENOTHERA DELTOIDES SSP. HOWELLII	ONAGRACEAE	EVENING-PRIMROSE, ANTIOCH DUNES	CA
S		OENOTHERA GOULDII	*** SEE ***	CAMISSONIA GOULDII	
S		OENOTHERA HOOKERI SSP. WOLFII	*** SEE ***	OENOTHERA WOLFII	
2	*	OENOTHERA KLEINII	ONAGRACEAE	EVENING-PRIMROSE, KLEIN'S	CO
S		OENOTHERA MEGALANTHA	*** SEE ***	CAMISSONIA MEGALANTHA	
2		OENOTHERA ORGANENSIS	ONAGRACEAE		NM
1		OENOTHERA PILOSELLA SSP. SESSILIS	ONAGRACEAE	EVENING-PRIMROSE,	AR LA TX
2		OENOTHERA PSAMMOPHILA	ONAGRACEAE	EVENING-PRIMROSE,	ID
S		OENOTHERA SESSILIS	*** SEE ***	OENOTHERA PILOSELLA SSP. SESSILIS	
2		OENOTHERA WOLFII	ONAGRACEAE	EVENING-PRIMROSE, WOLF'S	CA OR
2		ONCIDIUM CARTHAGENENSE	ORCHIDACEAE	DANCING-LADY, COOT BAY	FL, Mexico, Central America, South America
3C		ONOSMODIUM HELLERI	BORAGINACEAE		TX
3C		ONOSMODIUM MOLLE SSP. MOLLE	BORAGINACEAE		AL IL KY TN
S		OONOPSIS MONOCEPHALA	*** SEE ***	HAPLOPAPPUS FREMONTII SSP. MONOCEPHALUS	
2		OPERCULINA TRIQUETRA	CONVOLVULACEAE		VI
S		OPHIOGLOSSUM CALIFORNICUM	*** SEE ***	OPHIOGLOSSUM LUSITANICUM VAR. CALIFORNICUM	
1		OPHIOGLOSSUM CONCINNUM	OPHIOGLOSSACEAE	ADDER'S-TONGUE,	HI
3C		OPHIOGLOSSUM DENDRONEURON	OPHIOGLOSSACEAE		FL, Cuba, Mexico, Philippines, Africa, South America
3C		OPHIOGLOSSUM LUSITANICUM VAR. CALIFORNICUM	OPHIOGLOSSACEAE	ADDER'S-TONGUE, CALIFORNIA	CA, Mexico
3C		OPHIOGLOSSUM PALMATUM	OPHIOGLOSSACEAE	FERN, HAND	FL, West Indies, Central America, South America
2		OPUNTIA ARENARIA	CACTACEAE		NM TX, Mexico
2		OPUNTIA BASILARIS VAR. BRACHYCLADA	CACTACEAE		CA
3B		OPUNTIA BASILARIS VAR. LONGIAREOLATA	CACTACEAE		AZ
1		OPUNTIA BASILARIS VAR. TRELEASEI	CACTACEAE	BEAVERTAIL CACTUS, KERN	CA
3B		OPUNTIA BASILARIS VAR. WOODBURYI	CACTACEAE		UT
2		OPUNTIA BIGELOVII VAR. HOFFMANNII	CACTACEAE		CA
3B		OPUNTIA BORINQUENSIS	CACTACEAE	OLAGA	PR
2		OPUNTIA IMBRICATA VAR. ARGENTEA	CACTACEAE		TX
2	**	OPUNTIA LINDHEIMERI VAR. LINGUIFORMIS	CACTACEAE	PRICKLY PEAR, COW-TONGUE	TX
1		OPUNTIA MUNZII	CACTACEAE	CHOLLA, MUNZ	CA

STATUS	SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
2	OPUNTIA PARRYI VAR. SERPENTINA	CACTACEAE	CHOLLA, SNAKE	CA, Mexico (Baja California)
3C	OPUNTIA PHAEACANTHA VAR. FLAVISPINA	CACTACEAE		AZ
3B	OPUNTIA PHAEACANTHA VAR. MOJAVENSIS	CACTACEAE		AZ CA
[illegible]	OPUNTIA PHAEACANTHA VAR. SUPERBOSPINA	CACTACEAE		AZ
3C	OPUNTIA PULCHELLA	CACTACEAE	CHOLLA, SAND	AZ NV UT
2	OPUNTIA SPINOSISSIMA	CACTACEAE		FL PR VI, Jamaica, British V.I.
2	OPUNTIA STRIGIL VAR. FLEXOSPINA	CACTACEAE	PRICKLY-PEAR,	TX
[illegible]	OPUNTIA TRIACANTHA	CACTACEAE		FL PR VI, Guadeloupe, Lesser Antilles
[illegible]	OPUNTIA WHIPPLEI VAR. MULTIGENICULATA	CACTACEAE		AZ NV
2	OPUNTIA WIGGINSII	CACTACEAE	CHOLLA, WIGGINS	AZ CA
S	ORCHIS FLAVA	*** SEE ***	PLATANTHERA FLAVA	
[illegible]	ORCHIS INTEGRA	*** SEE ***	PLATANTHERA INTEGRA	
[illegible]	ORCHIS LEUCOPHAEA	*** SEE ***	PLATANTHERA LEUCOPHAEA	
1	ORCUTTIA CALIFORNICA	POACEAE	ORCUTT GRASS, CALIFORNIA	CA, Mexico
[illegible]	ORCUTTIA CALIFORNICA VAR. INEQUALIS	*** SEE ***	ORCUTTIA INAEQUALIS	
S	ORCUTTIA CALIFORNICA VAR. VISCIDA	*** SEE ***	ORCUTTIA VISCIDA	
S	ORCUTTIA GREENEI	*** SEE ***	TUCTORIA GREENEI	
[illegible]	ORCUTTIA INEQUALIS	POACEAE	ORCUTT GRASS, SAN JOAQUIN	CA
LE	ORCUTTIA MUCRONATA	POACEAE	GRASS, SOLANO (CRAMPTON'S ORCUTT)	CA
[illegible]	ORCUTTIA PILOSA	POACEAE	ORCUTT GRASS, PILOSE	CA
[illegible]	ORCUTTIA TENUIS	POACEAE	ORCUTT GRASS, SLENDER	CA
[illegible]	ORCUTTIA VISCIDA	POACEAE	ORCUTT GRASS, SACRAMENTO	CA
2	OREONANA PURPURASCENS	APIACEAE		CA
2	OROBANCHE PARISHII SSP. BRACHYLOBA	OROBANCHACEAE	BROOMRAPE, SHORT-LOBED	CA
2	OROBANCHE VALIDA SSP. VALIDA	OROBANCHACEAE	BROOMRAPE, ROCK CREEK	CA
2	ORTHOCARPUS CAMPESTRIS VAR. SUCCULENTUS	SCROPHULARIACEAE	OWL'S-CLOVER, SUCCULENT	CA
2	ORTHOCARPUS CASTILLEJOIDES VAR. HUMBOLDTIENSIS	SCROPHULARIACEAE	OWL'S-CLOVER, HUMBOLDT	CA
2	ORTHOCARPUS FLORIBUNDUS	SCROPHULARIACEAE	OWL'S-CLOVER, SAN FRANCISCO	CA
2	ORTHOCARPUS LASIORHYNCHUS	SCROPHULARIACEAE	ORTHOCARPUS, SAN BERNARDINO	CA
1 *	ORTHOCARPUS PACHYSTACHYUS	SCROPHULARIACEAE	OWL-CLOVER, SHASTA	CA
S	ORTHOCARPUS SUCCULENTUS	*** SEE ***	ORTHOCARPUS CAMPESTRIS VAR. SUCCULENTUS	
2	ORYCTES NEVADENSIS	SOLANACEAE		CA NV
3C	ORYZOPSIS HYMENOIDES VAR. CONTRACTA	POACEAE		CO WY
2	ORYZOPSIS SWALLENII	POACEAE		WY
S	OSMIA BORINQUENSIS	*** SEE ***	EUPATORIUM BORINQUENSE	
2	OSMORHIZA MEXICANA SSP. BIPATRIATA	APIACEAE		TX, Mexico
2	OSTRYA CHISOSENSIS	BETULACEAE		TX
1	OTTOSCHULZIA RHODOXYLON	ICACINACEAE	PALO DE ROSA	PR, Hispaniola
S	OXYBAPHUS ROTUNDIFOLIUS	*** SEE ***	MIRABILIS ROTUNDIFOLIA	
PE	OXYPOLIS CANBYI	APIACEAE	DROPWORT, CANBY'S	DE GA MD NC SC
2	OXYPOLIS GREENMANII	APIACEAE	WATER-DROPWORT, GIANT (GREENMAN'S)	FL
3C	OXYTHECA WATSONII	POLYGONACEAE		[illegible]
3C	OXYTROPIS BESSEYI VAR. OBNAPIFORMIS	FABACEAE		CO UT WY
1	OXYTROPIS CAMPESTRIS VAR. CHARTACEA	FABACEAE		WI
2	OXYTROPIS CAMPESTRIS VAR. JOHANNENSIS	FABACEAE		ME, Canada
2	OXYTROPIS GLABERRIMA	FABACEAE		AK
S	OXYTROPIS JOHANNENSIS	*** SEE ***	OXYTROPIS CAMPESTRIS VAR. JOHANNENSIS	
3C	OXYTROPIS JONESII	FABACEAE		UT
3C	OXYTROPIS KOBUKENSIS	FABACEAE	LOCOWEED, KOBUK	AK
2	OXYTROPIS KOKRINENSIS	FABACEAE	OXYTROPE, KOKRINES	AK
S	OXYTROPIS OBNAPIFORMIS	*** SEE ***	OXYTROPIS BESSEYI VAR. OBNAPIFORMIS	
2	OXYTROPIS SOPOIDA SSP. BARNEBYANA	FABACEAE		AK
S	PACHISTIMA CANBYI	*** SEE ***	PAXISTIMA CANBYI	
S	PACHYSTIMA CANBYI	*** SEE ***	PAXISTIMA CANBYI	
2	PALAFOXIA ARIDA VAR. GIGANTEA	ASTERACEAE	SPANISHNEEDLE, GIANT	CA
[illegible]	PALAFOXIA LINEARIS VAR. GIGANTEA	*** SEE ***	PALAFOXIA ARIDA VAR. GIGANTEA	
3C	PANAX QUINQUEFOLIUS	ARALIACEAE	GINSENG, AMERICAN	AL AR CT DE DC FL IL IN IA KY LA ME MD MA MI MN MS MO NE NH NJ NY NC OH OK PA RI SC TN VT VA WV WI, Canada
3B	PANICUM ACULEATUM	POACEAE	PANIC GRASS,	DC NY RI VA
1	PANICUM ALAKAIENSE	POACEAE	PANIC GRASS,	HI
LE	PANICUM CARTERI	POACEAE	PANICGRASS, CARTER S	HI
2	PANICUM FAURIEI	POACEAE	PANIC GRASS, FAURIE'S	HI
2	PANICUM HIRSTII	POACEAE	PANIC GRASS, HIRST'S	GA NJ
3B	PANICUM LAMIATILE	POACEAE	PANIC GRASS,	HI
3B	PANICUM LITHOPHILUM	POACEAE		GA SC
[illegible]	PANICUM LUSTRIALE	POACEAE	PANIC GRASS,	HI
3B	PANICUM MUNDUM	POACEAE	PANIC GRASS, FERNALD S	VA
2	PANICUM NIIHAUENSE	POACEAE	PANIC GRASS, NIIHAU	HI
2	PANICUM NUDICAULE	POACEAE		AL FL MS
2	PANICUM PINETORUM	POACEAE		FL
3B	PANICUM SHASTENSE	POACEAE	PANIC GRASS, SHASTA	CA
2	PANICUM STEVENSIANUM	POACEAE		PR, Cuba
S	PANICUM THERMALE	*** SEE ***	DICHANTHELIUM LANUGINOSUM VAR. THERMALE	
3C	PAPAVER ALBOROSEUM	PAPAVERACEAE	POPPY, PALE	AK, Canada (B.C., Yukon), U.S.S.R.
3C	PAPAVER WALPOLEI	PAPAVERACEAE	POPPY, WALPOLE	AK, Canada (Yukon), U.S.S.R.

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
2		PARNASSIA CAROLINIANA	SAXIFRAGACEAE		AL FL MS NC SC
3B		PARNASSIA KOTZEBUEI VAR. PUMILA	SAXIFRAGACEAE	GRASS-OF-PARNASSUS, KOTZEBUE'S,	WA
3B		PARONYCHIA ARGYROCOMA VAR. ALBIMONTANA	CARYOPHYLLACEAE	SILVERLING	MA ME NH
2		PARONYCHIA CHARTACEA	CARYOPHYLLACEAE	WHITLOW-WORT,	FL
3C		PARONYCHIA CHORIZANTHOIDES	CARYOPHYLLACEAE		TX
1		PARONYCHIA CONGESTA	CARYOPHYLLACEAE	WHITLOW-WORT,	TX
3C		PARONYCHIA DRUMMONDII SSP. PARVIFLORA	CARYOPHYLLACEAE		TX
2		PARONYCHIA MACCARTII	CARYOPHYLLACEAE	WHITLOW-WORT, MCCART'S	TX
3C		PARONYCHIA MONTICOLA	CARYOPHYLLACEAE		TX
3B		PARONYCHIA NUDATA	CARYOPHYLLACEAE		TX
3B		PARONYCHIA RUGELII VAR. INTERIOR	CARYOPHYLLACEAE	WHITLOW-WORT,	FL GA
2		PARONYCHIA VIRGINICA VAR. PARKSII	CARYOPHYLLACEAE		TX
2		PARONYCHIA VIRGINICA VAR. VIRGINICA	CARYOPHYLLACEAE	NAILWORT, SILVERY	NC MD VA WV
2		PARONYCHIA WILKINSONII	CARYOPHYLLACEAE		TX, Mexico
3C		PARRYA NUDICAULIS	BRASSICACEAE		AK MT, Canada U.S.S.R.
3C		PARRYA RYDBERGII	BRASSICACEAE	PARRYA, RYDBERG	UT
3C		PARTHENIUM ALPINUM	ASTERACEAE		NM WY
3C		PARTHENIUM LIGULATUM	ASTERACEAE	FEVERFEW,	CO UT WY
2		PARTHENIUM TETRANEURIS	ASTERACEAE		CO
2		PARVISEDUM LEIOCARPUM	CRASSULACEAE	STONECROP, LAKE COUNTY	CA
2		PASSIFLORA BILOBATA	PASSIFLORACEAE		PR, Hispaniola
2		PASSIFLORA MURUCUJA	PASSIFLORACEAE		PR, Hispaniola
2		PAXISTIMA CANBYI	CELASTRACEAE		KY OH PA TN VA WV
2		PECTIS IMBERBIS	ASTERACEAE		AZ
3C		PECTIS RUSBYI	ASTERACEAE	FETID-MARIGOLD, RUSBY'S	AZ
3C		PEDICULARIS DUDLEYI	SCROPHULARIACEAE	LOUSEWORT, DUDLEY'S	CA
LE		PEDICULARIS FURBISHIAE	SCROPHULARIACEAE	LOUSEWORT, FURBISH	ME, Canada (N.B.)
3C		PEDICULARIS HOWELLII	SCROPHULARIACEAE	LOUSEWORT, HOWELL	ID OR
3C		PEDICULARIS RAINIERENSIS	SCROPHULARIACEAE		WA
LE		PEDIOCACTUS BRADYI	CACTACEAE	PINCUSHION CACTUS, BRADY	AZ
1		PEDIOCACTUS DESPAINII	CACTACEAE		UT
S		PEDIOCACTUS GLAUCUS	*** SEE ***	SCLEROCACTUS GLAUCUS	
LE		PEDIOCACTUS KNOWLTONII	CACTACEAE	CACTUS, KNOWLTON	CO NM
S		PEDIOCACTUS MESAE-VERDAE	*** SEE ***	SCLEROCACTUS MESAE-VERDAE	
2		PEDIOCACTUS PAPYRACANTHUS	CACTACEAE		AZ NM
1		PEDIOCACTUS PARADINEI	CACTACEAE		AZ
1		PEDIOCACTUS PEEBLESIANUS VAR. FICKEISENIAE	CACTACEAE		AZ
LE		PEDIOCACTUS PEEBLESIANUS VAR. PEEBLESIANUS	CACTACEAE	CACTUS, PEEBLES NAVAJO	AZ
LE		PEDIOCACTUS SILERI	CACTACEAE	PINCUSHION CACTUS, SILER	AZ UT
1		PEDIOCACTUS WINKLERI	CACTACEAE		UT
S		PEDIOCACTUS WRIGHTIAE	*** SEE ***	SCLEROCACTUS WRIGHTIAE	
S		PEDIOMELUM SUBACAULIS	*** SEE ***	PSORALEA SUBACAULIS	
2		PELEA ANISATA VAR. HAUPUANA	RUTACEAE		HI
S		PELEA APODA	*** SEE ***	PELEA PARVIFOLIA VAR. APODA	
1		PELEA BALLOUI	RUTACEAE		HI
1		PELEA CHRISTOPHERSENII	RUTACEAE		HI
1		PELEA CINEREA	RUTACEAE	MANENA	HI
1		PELEA CINEREOPS	RUTACEAE		HI
1		PELEA CLUSIAEFOLIA VAR. PICKERINGII	RUTACEAE		HI
1		PELEA DEGENERI	RUTACEAE		HI
1		PELEA DESCENDENS	RUTACEAE		HI
3A		PELEA ELLIPTICA VAR. MAUIENSIS	RUTACEAE		HI
1		PELEA GLABRA	RUTACEAE		HI
1		PELEA GRANDIFOLIA VAR. LIANOIDES	RUTACEAE		HI
1		PELEA GRANDIFOLIA VAR. MONTANA	RUTACEAE		HI
2		PELEA GRANDIFOLIA VAR. OVALIFOLIA	RUTACEAE		HI
S		PELEA GRANDIFOLIA VAR. TERMINALIS	*** SEE ***	PELEA GRANDIFOLIA VAR. OVALIFOLIA	
1		PELEA HAUPUENSIS	RUTACEAE		HI
1		PELEA HAWAIENSIS	RUTACEAE	MANENA	HI
2		PELEA HIIAKAE	RUTACEAE		HI
1		PELEA HOSAKAE	RUTACEAE		HI
2		PELEA KAUAENSIS	RUTACEAE		HI
1		PELEA KAVAIENSIS	RUTACEAE		HI
1	*	PELEA KNUDSENII	RUTACEAE		HI
1		PELEA LAKAE	RUTACEAE		HI
1	*	PELEA LANCEOLATA	RUTACEAE		HI
1		PELEA LEVEILLEI	RUTACEAE		HI
1		PELEA LYDGATEI	RUTACEAE		HI
1	*	PELEA MACROPUS	RUTACEAE		HI
1		PELEA MAKAHAE	RUTACEAE		HI
1	*	PELEA MUCRONULATA	RUTACEAE	ALANI	HI
1		PELEA MULTIFLORA	RUTACEAE		HI
1	*	PELEA MUNROI	RUTACEAE		HI
1		PELEA NEALIAE	RUTACEAE	PELEA, NEAL	HI
S		PELEA NIUENSIS	*** SEE ***	PELEA PEDUNCULARIS VAR. NIUENSIS	
1		PELEA OBLONGIFOLIA	RUTACEAE		HI
3A		PELEA OBOVATA	RUTACEAE		HI
1		PELEA OLOWALUENSIS	RUTACEAE		HI
1		PELEA ORBICULARIS	RUTACEAE		HI
1	*	PELEA OVALIS	RUTACEAE		HI
1		PELEA OVATA	RUTACEAE		HI

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
1		PELEA PALLIDA	RUTACEAE	ALANI	HI
1		PELEA PANICULATA	RUTACEAE	ALANI	HI
1	•	PELEA PARVIFOLIA VAR. APODA	RUTACEAE	APODA	HI
1		PELEA PARVIFOLIA VAR. SESSILIS	RUTACEAE		HI
1		PELEA PEDUNCULARIS VAR. CORDATA	RUTACEAE		HI
1		PELEA PEDUNCULARIS VAR. NIUENSIS	RUTACEAE		HI
1		PELEA PEDUNCULARIS VAR. NUMMULARIA	RUTACEAE		HI
S		PELEA PICKERINGII	*** SEE ***	PELEA CLUSIAEFOLIA VAR. PICKERINGII	
1		PELEA PLUVIALIS	RUTACEAE		HI
1		PELEA PUAULUENSIS	RUTACEAE		HI
1		PELEA QUADRANGULARIS	RUTACEAE		HI
1		PELEA RECURVATA	RUTACEAE	ALANI	HI
1		PELEA REFLEXA	RUTACEAE		HI
1		PELEA SAINT-JOHNII	RUTACEAE	PELEA, ST. JOHN'S	HI
1	•	PELEA SANDWICENSIS	RUTACEAE		HI
3A		PELEA STOREYANA	RUTACEAE		HI
1		PELEA TOMENTOSA	RUTACEAE		HI
1		PELEA VOLCANICA VAR. KOHALAE	RUTACEAE		HI
1		PELEA WAHIAWAENSIS	RUTACEAE		HI
2		PELEA WAIMEAENSIS	RUTACEAE		HI
1		PELEA ZAHLBRUCKNERI	RUTACEAE		HI
S		PLATYCEREUS GREGII	*** SEE ***	CEREUS GREGGII	
3C		PENSTEMON ABIETINUS	SCROPHULARIACEAE	BEARDTONGUE,	NV UT
2		PENSTEMON ABSAROKENSIS	SCROPHULARIACEAE		WY
3C		PENSTEMON ACAULIS	SCROPHULARIACEAE	BEARDTONGUE, STEMLESS	UT WY
2		PENSTEMON ALAMOSENSIS	SCROPHULARIACEAE		NM TX
1		PENSTEMON ALBIFLUVIS	SCROPHULARIACEAE	BEARDTONGUE,	CO UT
2		PENSTEMON AMMOPHILUM	SCROPHULARIACEAE		UT
3C		PENSTEMON ANGUSTIFOLIUS VAR. VERNALENSIS	SCROPHULARIACEAE		UT
2		PENSTEMON ARENARIUS	SCROPHULARIACEAE		NV
2		PENSTEMON ATWOODII	SCROPHULARIACEAE		UT
3C		PENSTEMON BACCHARIFOLIUS	SCROPHULARIACEAE		TX, Mexico
2		PENSTEMON BARRETTIAE	SCROPHULARIACEAE		[illegible]
2		PENSTEMON BICOLOR SSP. BICOLOR	SCROPHULARIACEAE		WY
2		PENSTEMON BICOLOR SSP. ROSEUS	SCROPHULARIACEAE		AZ NV
2		PENSTEMON BRACTEATUS	SCROPHULARIACEAE	BEARDTONGUE, RED CANYON	UT
3B		PENSTEMON CAESPITOSUS VAR. SUFFRUTICOSUS	SCROPHULARIACEAE	BEARDTONGUE,	UT
3C		PENSTEMON CALCAREUS	SCROPHULARIACEAE	PENSTEMON, LIMESTONE	CA NV
3C		PENSTEMON CALIFORNICUS	SCROPHULARIACEAE	PENSTEMON, CALIFORNIA	CA, Mexico
3C		PENSTEMON CARYI	SCROPHULARIACEAE	BEARDTONGUE, CARY	MT WY
3C		PENSTEMON CINICOLA	SCROPHULARIACEAE	PENSTEMON, ASH	CA OR
3C		PENSTEMON CLUTEI	SCROPHULARIACEAE	BEARDTONGUE,	[illegible]
3C		PENSTEMON COBAEA VAR. PURPUREUS	SCROPHULARIACEAE		AR MO
2		PENSTEMON COMPACTUS	SCROPHULARIACEAE	BEARDTONGUE, CACHE	UT
2		PENSTEMON CONCINNUS	SCROPHULARIACEAE	BEARDTONGUE, TUNNEL SPRINGS	NV UT
3B		PENSTEMON DECURVUS	SCROPHULARIACEAE	BEARDTONGUE,	NV UT
2		PENSTEMON DEGENERI	SCROPHULARIACEAE	BEARDTONGUE, DEGENER	CO
1		PENSTEMON DISCOLOR	SCROPHULARIACEAE	BEARDTONGUE,	AZ
3C		PENSTEMON DISSECTUS	SCROPHULARIACEAE		[illegible]
2		PENSTEMON DISTANS	SCROPHULARIACEAE		[illegible]
3C		PENSTEMON ELEGANTULUS	SCROPHULARIACEAE		ID OR
3C		PENSTEMON FILIFORMIS	SCROPHULARIACEAE	PENSTEMON, THREAD-LEAVED	CA
2		PENSTEMON FLOWERSII	SCROPHULARIACEAE		UT
3C		PENSTEMON FRANCISCI-PENNELLII	SCROPHULARIACEAE		NV
2		PENSTEMON FRUTICIFORMIS SSP. AMARGOSAE	SCROPHULARIACEAE	PENSTEMON, AMARGOSA	CA NV
3B		PENSTEMON GARRETTII	SCROPHULARIACEAE	BEARDTONGUE, GARRETT'S	UT
2		PENSTEMON GIBBENSII	SCROPHULARIACEAE		CO WY
2		PENSTEMON GLAUCINUS	SCROPHULARIACEAE	BEARDTONGUE,	[illegible]
2		PENSTEMON GOODRICHII	SCROPHULARIACEAE		UT
1		PENSTEMON GRAHAMII	SCROPHULARIACEAE	BEARDTONGUE, GRAHAM	CO UT
2		PENSTEMON HARRINGTONII	SCROPHULARIACEAE	BEARDTONGUE, HARRINGTON	CO
1		PENSTEMON HAYDENII	SCROPHULARIACEAE		NE
3C		PENSTEMON HUMILIS VAR. BREVIFOLIUS	SCROPHULARIACEAE		UT
3C		PENSTEMON HUMILIS VAR. OBTUSIFOLIUS	SCROPHULARIACEAE		UT
3C		PENSTEMON KECKII	SCROPHULARIACEAE	BEARDTONGUE,	[illegible]
3C		PENSTEMON LEIOPHYLLUS	SCROPHULARIACEAE	BEARDTONGUE,	NV UT
2		PENSTEMON LEMHIENSIS	SCROPHULARIACEAE	BEARDTONGUE, LEMHI	ID MT
2		PENSTEMON LEPTANTHUS	SCROPHULARIACEAE		UT
S		PENSTEMON MODESTUS	*** SEE ***	PENSTEMON PROCERUS VAR. MODESTUS	
3C		PENSTEMON MORIAHENSIS	SCROPHULARIACEAE		NV
3B		PENSTEMON MULTICAULIS	SCROPHULARIACEAE		AR
3C		PENSTEMON NANUS	SCROPHULARIACEAE	BEARDTONGUE, LOW	UT
2		PENSTEMON NAVAJOA	SCROPHULARIACEAE		UT
3B		PENSTEMON NYEENSIS	SCROPHULARIACEAE	BEARDTONGUE,	NV
1		PENSTEMON PAHUTENSIS	SCROPHULARIACEAE	BEARDTONGUE,	NV
3C		PENSTEMON PAPILLATUS	SCROPHULARIACEAE	PENSTEMON, INYO	CA
2	•	PENSTEMON PARVIFLORUS	SCROPHULARIACEAE		CO
3C		PENSTEMON PARVUS	SCROPHULARIACEAE	BEARDTONGUE, SMALL	UT
3C		PENSTEMON PATRICUS	SCROPHULARIACEAE		NV UT
3C		PENSTEMON PAYSONIORUM	SCROPHULARIACEAE	BEARDTONGUE, PAYSON	WY
2		PENSTEMON PECKII	SCROPHULARIACEAE		OR
2		PENSTEMON PERSONATUS	SCROPHULARIACEAE	BEARDTONGUE, CLOSED-LIP	CA
3C		PENSTEMON PROCERUS VAR. MODESTUS	SCROPHULARIACEAE		NV

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	[illegible]
2		PENSTEMON PUDICUS	SCROPHULARIACEAE		NV
1		PENSTEMON RETRORSUS	[illegible]	BEARDTONGUE,	CO
3C		PENSTEMON RUBICUNDUS	SCROPHULARIACEAE	BEARDTONGUE,	NV
3C		PENSTEMON SP. /SP. NOV. INED.	[illegible]	BEARDTONGUE (BRANDLETT, UINTAH CO.)	UT
2		PENSTEMON SPATULATUS	SCROPHULARIACEAE	BEARDTONGUE, MALLOWA	OR
2		PENSTEMON STEPHENSII	[illegible]	PENSTEMON, STEPHENS	CA
3C		PENSTEMON THOMPSONIAE SSP. JAEGERI	[illegible]		NV
3B		PENSTEMON THURBERI VAR. ANESTIUS	SCROPHULARIACEAE		NV
2		PENSTEMON TIDESTROMII	[illegible]	BEARDTONGUE, TIDESTROM	UT
2		PENSTEMON TRACYI	SCROPHULARIACEAE	PENSTEMON, TRACY	CA
3C		PENSTEMON UINTAHENSIS	SCROPHULARIACEAE	BEARDTONGUE, UINTAH	UT
3C		PENSTEMON VIRGATUS SSP. PSEUDOPUTUS	[illegible]		NV
2		PENSTEMON WARDII	SCROPHULARIACEAE	BEARDTONGUE, WARD	UT
3C		PENSTEMON WASHINGTONENSIS	SCROPHULARIACEAE		WA
3C		PENSTEMON YAMPAENSIS	[illegible]		CO
2		PENTACHAETA BELLIDIFLORA	ASTERACEAE	PENTACHAETA, WHITE-RAYED	CA
2		PENTACHAETA EXILIS SSP. AEOLICA	[illegible]	PENTACHAETA, SLENDER	CA
2		PENTACHAETA LYONII	ASTERACEAE	PENTACHAETA, LYON'S	CA
2		PEPEROMIA COOKIANA VAR. MINUTILIMBA	PIPERACEAE		HI
1	*	PEPEROMIA CORNIFOLIA	PIPERACEAE		HI
1		PEPEROMIA DEGENERI	PIPERACEAE		HI
2		PEPEROMIA EXPALLESCENS VAR. BREVIPILOSA	PIPERACEAE		HI
2		PEPEROMIA FAURIEI	PIPERACEAE		HI
2		PEPEROMIA FLORIDANA	PIPERACEAE		FL
2		PEPEROMIA FORBESII	PIPERACEAE		HI
2		PEPEROMIA MAUPUENSIS	PIPERACEAE		HI
2		PEPEROMIA MELLERI VAR. KNUDSENII	PIPERACEAE		HI
1		PEPEROMIA MULENSIS	PIPERACEAE		HI
2		PEPEROMIA OAHUENSIS VAR. OBTUSATA	PIPERACEAE		HI
2		PEPEROMIA MAUNAKEANA	PIPERACEAE		HI
1		PEPEROMIA OAHUENSIS VAR. ST-JOHNII	[illegible]		HI
3A		PEPEROMIA PLINERVATA	PIPERACEAE		HI
2		PEPEROMIA RIGIDILIMBA	[illegible]		HI
2		PEPEROMIA SUBPETIOLATA	[illegible]		HI
1		PEPEROMIA TRELEASEI	PIPERACEAE		HI
2		PEPEROMIA WATKAMOIANA	[illegible]		HI
1		PEPEROMIA WHEELERI	PIPERACEAE		PR
3C		PERIDERIDIA BACIGALUPII	APIACEAE	YAMPAH, MOTHER LODE	CA
2		PERIDERIDIA ERYTHRORHIZA	APIACEAE		OR
2		PERIDERIDIA GAIRDNERI SSP. GAIRDNERI	APIACEAE	YAMPAH, GAIRDNER'S	CA
3C		PERIDERIDIA LEPTOCARPA	APIACEAE	YAMPAH, NARROW-SEEDED	CA
3C		PERIDERIDIA PRINGLEI	APIACEAE	YAMPAH, ADOBE	CA
2		PERITYLE AJOENSIS	[illegible]	ROCK-DAISY, AJO	AZ
2		PERITYLE BISETOSA VAR. BISETOSA	ASTERACEAE	ROCK-DAISY, TWO-SPIKE,	TX
2		PERITYLE BISETOSA VAR. SCALARIS	ASTERACEAE	ROCK-DAISY, TWO-SPIKE,	TX
2		PERITYLE CERNUA	ASTERACEAE		NM
3C		PERITYLE CINEREA	[illegible]	ROCK-DAISY, GRAY	TX
2		PERITYLE COCHISENSIS	[illegible]		AZ
3C		PERITYLE GILENSIS VAR. SALENSIS	ASTERACEAE	ROCK-DAISY,	AZ
2		PERITYLE INYOENSIS	[illegible]	LAPHAMIA, INYO	CA
3C		PERITYLE LEMMONII	[illegible]		AZ NM
3C		PERITYLE LINDHEIMERI	ASTERACEAE	ROCK-DAISY,	TX
3B		PERITYLE LINDHEIMERI VAR. MALTIPOLIA	[illegible]	ROCK-DAISY,	TX
3C		PERITYLE MEGALOCEPHALA VAR. INTRICATA	ASTERACEAE		CA NV
3C		PERITYLE PARRYI	ASTERACEAE		TX
S		PERITYLE ROTUNDATA	*** SEE ***	PERITYLE LINDHEIMERI VAR. LINDHEIMERI	
2		PERITYLE SAXICOLA	ASTERACEAE		AZ
3C		PERITYLE STAUROPHYLLA	ASTERACEAE		NM
2		PERITYLE VILLOSA	ASTERACEAE	LAPHAMIA, MANACPAN	CA
2		PERITYLE VITREOMONTANA	ASTERACEAE	ROCK-DAISY, GLASS MOUNTAIN	TX
2		PERITYLE WARNOCKII	ASTERACEAE		TX
3C		PERSEA BORBONIA VAR. HUMILIS	LAURACEAE		FL GA
3B		PERSICARIA PALUDICOLA	POLYGONACEAE		FL
2		PETALONYX THURBERI SSP. GILMANII	LOASACEAE	SANDPAPERPLANT, DEATH VALLEY	CA
S		PETALOSTEMUM FOLIOSUM	*** SEE ***	DALEA FOLIOSA	
S		PETALOSTEMUM GATTINGERI	*** SEE ***	DALEA GATTINGERI	
S		PETALOSTEMUM REVERCHONII	*** SEE ***	DALEA REVERCHONII	
S		PETALOSTEMUM SABINALE	*** SEE ***	DALEA SABINALIS	
S		PETALOSTEMUM SCARIOSUM	*** SEE ***	DALEA SCARIOSA	
3C		PETERIA THOMPSONAE	FABACEAE		AZ CO NV UT
2		PETROPHYTUM CINERASCENS	ROSACEAE	ROCKMAT, CHELAN	WA
3C		PETROPHYTUM HENDERSONII	ROSACEAE		WA
2		PEUCEDANUM KAUAIENSE	APIACEAE		HI
2		PEUCEDANUM SANDWICENSE VAR. SANDWICENSE	APIACEAE	MAKOU	HI
2		PHACELIA AMABILIS	HYDROPHYLLACEAE	PHACELIA, SALINE VALLEY	CA
3C		PHACELIA ANELSONII	HYDROPHYLLACEAE	PHACELIA, MACBRIDE	CA NV UT
2		PHACELIA ARGENTEA	HYDROPHYLLACEAE		CA OR
LE		PHACELIA ARGILLACEA	HYDROPHYLLACEAE	PHACELIA, CLAY	UT
2		PHACELIA BEATLEYAE	HYDROPHYLLACEAE	PHACELIA, BEATLEY	NV
2		PHACELIA CAPITATA	HYDROPHYLLACEAE	PHACELIA,	OR
2		PHACELIA CEPHALOTES	HYDROPHYLLACEAE	PHACELIA, VIRGIN	AZ UT
2		PHACELIA CILIATA VAR. OPACA	HYDROPHYLLACEAE		CA
1	*	PHACELIA CINEREA	HYDROPHYLLACEAE	PHACELIA, ASHY	CA

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
3C		PHACELIA CONSTANCEI	HYDROPHYLLACEAE		AZ UT
2		PHACELIA COOKEI	HYDROPHYLLACEAE	PHACELIA, COOKE'S	CA
2		PHACELIA DALESIANA	HYDROPHYLLACEAE	PHACELIA, TRINITY	CA
3C		PHACELIA DEMISSA VAR. HETEROTRICHA	HYDROPHYLLACEAE	PHACELIA,	UT
E		PHACELIA DIVARICATA VAR. INSULARIS	*** SEE ***	PHACELIA INSULARIS VAR. INSULARIS	
3C		PHACELIA DUBIA VAR. GEORGIANA	HYDROPHYLLACEAE		AL [illegible]
3B		PHACELIA FILIFORMIS	HYDROPHYLLACEAE	PHACELIA,	AZ
2		PHACELIA FLORIBUNDA	HYDROPHYLLACEAE		CA
LE		PHACELIA FORMOSULA	HYDROPHYLLACEAE	PHACELIA, NORTH PARK	CO
3C		PHACELIA GLABERRIMA	HYDROPHYLLACEAE		NV
2		PHACELIA GREENEI	HYDROPHYLLACEAE	PHACELIA, SCOTT VALLEY	CA
3C		PHACELIA HOWELLIANA	HYDROPHYLLACEAE	PHACELIA, HOWELL	AZ UT
2		PHACELIA INCONSPICUA	HYDROPHYLLACEAE		ID NV
3B		PHACELIA INDECORA	HYDROPHYLLACEAE	PHACELIA, DRAB	UT
2		PHACELIA INSULARIS VAR. CONTINENTIS	HYDROPHYLLACEAE		CA
2		PHACELIA INSULARIS VAR. INSULARIS	HYDROPHYLLACEAE	PHACELIA, ISLAND	CA
3C		PHACELIA INTEGRIFOLIA VAR. TEXANA	HYDROPHYLLACEAE		[illegible] TX
2		PHACELIA LENTA	HYDROPHYLLACEAE	PHACELIA, STICKY	WA
3C		PHACELIA MAMMILLARENSIS	HYDROPHYLLACEAE	PHACELIA, NIPPLE BENCH	UT
2		PHACELIA MONOENSIS	HYDROPHYLLACEAE	PHACELIA, MONO	CA NV
3C		PHACELIA MUSTELINA	HYDROPHYLLACEAE	PHACELIA, ROUND LEAF, DEATH VALLEY	CA [illegible]
2	*	PHACELIA NEVADENSIS	HYDROPHYLLACEAE		NV
2		PHACELIA NOVENMILLENSIS	HYDROPHYLLACEAE	PHACELIA, NINE MILE CANYON	CA
3C		PHACELIA OROGENES	HYDROPHYLLACEAE	PHACELIA, MOUNTAIN	CA
2		PHACELIA PALLIDA	HYDROPHYLLACEAE	PHACELIA, PALE	TX MEXICO
3C		PHACELIA PARISHII	HYDROPHYLLACEAE		CA NV
3C		PHACELIA PECKII	HYDROPHYLLACEAE		OR
2		PHACELIA PHACELIOIDES	HYDROPHYLLACEAE	PHACELIA, MT. DIABLO	CA
3C		PHACELIA RAFAELENSIS	HYDROPHYLLACEAE	PHACELIA,	AZ UT
3C		PHACELIA SERRATA	HYDROPHYLLACEAE		AZ
2		PHACELIA STEBBINSII	HYDROPHYLLACEAE	PHACELIA, STEBBINS	CA
2		PHACELIA SUAVEOLENS SSP. KECKII	HYDROPHYLLACEAE		CA
2		PHACELIA SUBMUTICA	HYDROPHYLLACEAE	PHACELIA,	CO
3C		PHACELIA UTAHENSIS	HYDROPHYLLACEAE	PHACELIA, UTAH	UT
2		PHACELIA VERNA	HYDROPHYLLACEAE		[illegible]
2		PHACELIA WELSHII	HYDROPHYLLACEAE	PHACELIA,	AZ
3C		PHASEOLUS SUPINUS	FABACEAE	BEAN, SUPINE	AZ UT
3C		PHILADELPHUS ERNESTII	SAXIFRAGACEAE		TX
3C		PHILADELPHUS MEARNSII	SAXIFRAGACEAE		[illegible]
3C		PHILADELPHUS TEXENSIS VAR. TEXENSIS	SAXIFRAGACEAE		TX
3C		PHIPPSIA ALGIDA	POACEAE	ICE GRASS	AK CO NY, Canada, U.S.S.R.
2		PHLOX BIFIDA SSP. STELLARIA	POLEMONIACEAE	PHLOX, CLEFT,	AR IL IN KY MO TN
3C		PHLOX BUCKLEYI	POLEMONIACEAE		VA WV
2		PHLOX CARYOPHYLLA	POLEMONIACEAE	PHLOX,	CO NM
3C		PHLOX CLUTEANA	POLEMONIACEAE	PHLOX, NAVAJO MOUNTAIN	AZ UT
2		PHLOX DOLICHANTHA	POLEMONIACEAE	PHLOX, BEAR VALLEY	CA
3C		PHLOX GLADIFORMIS	POLEMONIACEAE	PHLOX, RED CANYON	NV UT
3B		PHLOX GRAHAMII	POLEMONIACEAE	PHLOX,	UT
2		PHLOX HIRSUTA	POLEMONIACEAE	PHLOX, YREKA	CA
1		PHLOX IDAHONIS	POLEMONIACEAE	PHLOX, CLEARWATER	ID
3B		PHLOX JONESII	POLEMONIACEAE	PHLOX,	UT
S		PHLOX LONGIPILOSA	*** SEE ***	PHLOX PILOSA VAR. LONGIPILOSA	OK
3C		PHLOX MISSOULENSIS	POLEMONIACEAE	PHLOX,	MT
3B		PHLOX MOLLIS	POLEMONIACEAE	PHLOX,	ID OR WA
1		PHLOX NIVALIS SSP. TEXENSIS	POLEMONIACEAE	PHLOX, TRAILING, TEXAS	TX
3C		PHLOX OKLAHOMENSIS	POLEMONIACEAE	PHLOX,	KS OK TX
3B		PHLOX PECKII	POLEMONIACEAE		OR
3C		PHLOX PILOSA VAR. LONGIPILOSA	POLEMONIACEAE	PHLOX, LONG-HAIRED	OK
3C		PHLOX PULCHRA	POLEMONIACEAE	PHLOX,	AL
2		PHLOX SP. NOV. /INED.	POLEMONIACEAE		WY
2		PHOLISMA ARENARIUM	LENNOACEAE	PHOLISMA	AZ CA, MEXICO (Baja California)
2		PHOLISMA SONORAE	LENNOACEAE		AZ
3C		PHYLLANTHUS ERICOIDES	EUPHORBIACEAE	LEAF-FLOWER,	TX, Mexico
3C		PHYLLANTHUS LIEBMANNIANUS SSP. PLATYLEPIS	EUPHORBIACEAE		FL
2		PHYLLANTHUS PENTAPHYLLUS SSP. FLORIDANUS	EUPHORBIACEAE		FL
2		PHYLLANTHUS SANDWICENSIS VAR. DEGENERI	EUPHORBIACEAE		HI
2		PHYLLITIS SCOLOPENDRIUM VAR. AMERICANUM	POLYPODIACEAE	FERN, AMERICAN	AL MI NY TN, Canada
1	*	PHYLLOSTEGIA BREVIDENS VAR. AMBIGUA	LAMIACEAE		HI
2		PHYLLOSTEGIA BREVIDENS VAR. DEGENERI	LAMIACEAE		HI
1		PHYLLOSTEGIA BREVIDENS VAR. HETERODOXA	LAMIACEAE		HI
1	*	PHYLLOSTEGIA BREVIDENS VAR. HIRSUTULA	LAMIACEAE		HI
1	*	PHYLLOSTEGIA BREVIDENS VAR. LONGIPES	LAMIACEAE		HI
1	*	PHYLLOSTEGIA BREVIDENS VAR. PUBESCENS	LAMIACEAE		HI
1		PHYLLOSTEGIA FLORIBUNDA VAR. FORBESII	LAMIACEAE		HI
1		PHYLLOSTEGIA GLABRA VAR. LANAIENSIS	LAMIACEAE		HI
1		PHYLLOSTEGIA HELLERI VAR. IMMINUTA	LAMIACEAE		HI
2		PHYLLOSTEGIA HILLEBRANDII	LAMIACEAE		HI
2		PHYLLOSTEGIA HIRSUTA	LAMIACEAE		HI
1		PHYLLOSTEGIA KNUDSENII	LAMIACEAE		HI
3A		PHYLLOSTEGIA LEDYARDII	LAMIACEAE		HI

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3A		PHYLLOSTEGIA LONGIMONTIS	LAMIACEAE		MI
1		PHYLLOSTEGIA MACROPHYLLA VAR. VELUTINA	LAMIACEAE		MI
1		PHYLLOSTEGIA MOLLIS VAR. FAGERLINDII	LAMIACEAE		MI
1		PHYLLOSTEGIA MOLLIS VAR. MOCHREUTINERI	LAMIACEAE	NENE KUMUA	MI
1	•	PHYLLOSTEGIA MOLLIS VAR. LYDGATEI	LAMIACEAE		MI
1		PHYLLOSTEGIA MOLLIS VAR. MICRANTHA	LAMIACEAE		MI
1	•	PHYLLOSTEGIA PARVIFLORA VAR. CANESCENS	LAMIACEAE		MI
1	• •	PHYLLOSTEGIA PARVIFLORA VAR. GLABRIUSCULA	LAMIACEAE		MI
1	•	PHYLLOSTEGIA PARVIFLORA VAR. HONOLULENSIS	LAMIACEAE		MI
1	•	PHYLLOSTEGIA VARIABILIS	LAMIACEAE		MI
2		PHYLLOSTEGIA YAMAGUCHII	LAMIACEAE	PHYLLOSTEGIA, YAMAGUCHI	MI
3C		PHYSALIS VISCOSA VAR. ELLIOTII	SOLANACEAE		FL
2		PHYSARIA ACUTIFOLIA VAR. PURPUREA	BRASSICACEAE		UT
S		PHYSARIA ALPESTRIS VAR. LYRATA	*** SEE ***	PHYSARIA DIDYMOCARPA VAR. LYRATA	
S		PHYSARIA ALPESTRIS VAR. PURPUREA	*** SEE ***	PHYSARIA GEYERI VAR. PURPUREA	
2		PHYSARIA BELLII	BRASSICACEAE		CO
3C		PHYSARIA CONDENSATA	BRASSICACEAE	TWINPOD, DENSE	WY
2		PHYSARIA DIDYMOCARPA VAR. LYRATA	BRASSICACEAE		ID
2		PHYSARIA DORNII	BRASSICACEAE		WY
3C		PHYSARIA GEYERI VAR. PURPUREA	BRASSICACEAE		ID
3C		PHYSARIA GRAHAMII	BRASSICACEAE	TWINPOD, GRAHAM'S	UT
2		PHYSARIA OBCORDATA	BRASSICACEAE		CO
2		PHYSOSTEGIA CORRELLII	LAMIACEAE	FALSE DRAGON-HEAD, CORRELL'S	• TX
2		PHYSOSTEGIA LEPTOPHYLLA	LAMIACEAE		FL GA NC SC VA
2		PHYSOSTEGIA LONGISEPALA	LAMIACEAE		LA TX
3B		PHYSOSTEGIA MICRANTHA	LAMIACEAE		OK TX
3B		PHYSOSTEGIA VERONICIFORMIS	LAMIACEAE	DRAGONHEAD, FALSE	FL GA
3C		PIERIS PHILLYREAEFOLIA	ERICACEAE		AL FL GA MS SC
1		PILEA LEPTOPHYLLA	URTICACEAE		PR
1		PILEA MULTICAULIS	URTICACEAE		PR
2		PILEA RICHARDII	URTICACEAE		PR VI
2		PILEA YUNQUENSIS	URTICACEAE		PR
3C		PILOSTYLES THURBERI	RAFFLESIACEAE	PILOSTYLES, THURBER'S	AZ CA NV Td, Mexico (Baja California)
3C		PINCKNEYA PUBENS	RUBIACEAE		FL GA SC
2		PINGUICULA IONANTHA	LENTIBULARIACEAE	BUTTERWORT,	FL
2		PINGUICULA PLANIFOLIA	LENTIBULARIACEAE	BUTTERWORT, CHAPMAN'S	AL FL MS
2		PINUS TORREYANA	PINACEAE	PINE, TORREY	CA
3A		PISONIA FLORIDANA	NYCTAGINACEAE		FL
3B		PITTOSPORUM ACUMINATUM VAR. LEPTOPODUM	PITTOSPORACEAE		HI
3B		PITTOSPORUM ACUMINATUM VAR. MAGNIFOLIUM	PITTOSPORACEAE		HI
3B		PITTOSPORUM ACUMINATUM VAR. WAIMEANUM	PITTOSPORACEAE		HI
3B		PITTOSPORUM AMPLECTENS	PITTOSPORACEAE		HI
3B		PITTOSPORUM ARGENTIFOLIUM VAR. ARGENTIFOLIUM	PITTOSPORACEAE		HI
3B		PITTOSPORUM ARGENTIFOLIUM VAR. SESSILE	PITTOSPORACEAE		HI
3C		PITTOSPORUM CAULIFLORUM VAR. CAULIFLORUM	PITTOSPORACEAE		HI
3B		PITTOSPORUM CAULIFLORUM VAR. CLADANTHOIDES	PITTOSPORACEAE		HI
2		PITTOSPORUM CAULIFLORUM VAR. PEDICELLATUM	PITTOSPORACEAE		HI
3B		PITTOSPORUM CLADANTHUM VAR. GRACILIPES	PITTOSPORACEAE		HI
2		PITTOSPORUM CONFERTIFLORUM VAR. LONGIPES	PITTOSPORACEAE		HI
3B		PITTOSPORUM CONFERTIFLORUM VAR. MICROPHYLLUM	PITTOSPORACEAE		HI
3B		PITTOSPORUM GLABRUM VAR. GLOMERATUM	PITTOSPORACEAE		HI
3B		PITTOSPORUM GLABRUM VAR. INTERMEDIUM	PITTOSPORACEAE		HI
3B		PITTOSPORUM GLABRUM VAR. TINIFOLIUM	PITTOSPORACEAE		HI
3B		PITTOSPORUM HALOPHILOIDES	PITTOSPORACEAE		HI
3B		PITTOSPORUM HALOPHILUM	PITTOSPORACEAE		HI
1		PITTOSPORUM HAWAIIENSE	PITTOSPORACEAE		HI
3B		PITTOSPORUM HELLERI	PITTOSPORACEAE		HI
3B		PITTOSPORUM HOSMERI VAR. HOSMERI	PITTOSPORACEAE		HI
3B		PITTOSPORUM HOSMERI VAR. SAINT-JOHNII	PITTOSPORACEAE		HI
3B		PITTOSPORUM INSIGNE VAR. MICRANTHUM	PITTOSPORACEAE		HI
3B		PITTOSPORUM KAHANANUM	PITTOSPORACEAE		HI
3B		PITTOSPORUM KAUAIENSE VAR. REPENS	PITTOSPORACEAE		HI
3B		PITTOSPORUM TERMINALIOIDES VAR. LANAIENSE	PITTOSPORACEAE		HI
3B		PITTOSPORUM TERMINALIOIDES VAR. MACROPUS	PITTOSPORACEAE		HI
3B		PITTOSPORUM TERMINALIOIDES VAR. MAUIENSE	PITTOSPORACEAE		HI
2		PITYOPSIS FLEXUOSA	ASTERACEAE		FL
LE		PITYOPSIS RUTHII	ASTERACEAE	GOLDEN-ASTER, RUTH S	TN
3C		PITYOPUS CALIFORNICUS	ERICACEAE		CA OR
S		PITYOPUS OREGONA	*** SEE ***	PITYOPUS CALIFORNICUS	
S		PITYOTHAMNUS TETRAMERUS	*** SEE ***	ASIMINA TETRAMERA	
2	•	PLAGIOBOTHRYS DIFFUSUS	BORAGINACEAE	POPCORNFLOWER, SAN FRANCISCO	CA
3C		PLAGIOBOTHRYS DISTANTIFLORUS	BORAGINACEAE		CA
2		PLAGIOBOTHRYS GLABER	BORAGINACEAE	ALLOCARYA, GLABROUS	CA
2		PLAGIOBOTHRYS GLYPTOCARPUS VAR. MODESTUS	BORAGINACEAE	ALLOCARYA, CEDAR VALLEY	CA
2	•	PLAGIOBOTHRYS HIRTUS VAR. CORALLICARPUS	BORAGINACEAE		OR

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2		PLAGIOBOTHRYS HIRTUS VAR. HIRTUS	BORAGINACEAE	POPCORNFLOWER,	OR
2		PLAGIOBOTHRYS HYSTRICULUS	BORAGINACEAE	ALLOCARYA, BEARDED	CA
2	•	PLAGIOBOTHRYS LAMPROCARPUS	BORAGINACEAE	POPCORNFLOWER,	OR
2		PLAGIOBOTHRYS MOLLIS VAR. VESTITUS	BORAGINACEAE	ALLOCARYA, PETALUMA	CA
2		PLAGIOBOTHRYS SCRIPTUS	BORAGINACEAE	ALLOCARYA, SCRIBE	CA
2		PLAGIOBOTHRYS STRICTUS	BORAGINACEAE	ALLOCARYA, CALISTOGA	CA
S		PLANCHONELLA AUAHIENSIS	*** SEE ***	POUTERIA AUAHIENSIS	
S		PLANCHONELLA RHYNCHOSPERMA	*** SEE ***	POUTERIA RHYNCHOSPERMA	
2		PLANTAGO CORDATA	PLANTAGINACEAE	PLANTAIN, HEART-LEAVED	AL AR DC FL GA IL IN KY LA MD MI MO NY NC OH VA WI, Canada (Ont.)
2		PLANTAGO PRINCEPS VAR. ACAULIS	PLANTAGINACEAE		HI
1		PLANTAGO PRINCEPS VAR. DENTICULATA	PLANTAGINACEAE		HI
1		PLANTAGO PRINCEPS VAR. ELATA	PLANTAGINACEAE		HI
1		PLANTAGO PRINCEPS VAR. LAXIFOLIA	PLANTAGINACEAE		HI
1		PLANTAGO PRINCEPS VAR. PRINCEPS	PLANTAGINACEAE	ALE	HI
2		PLANTAGO PRINCEPS VAR. QUELENIANA	PLANTAGINACEAE		HI
3C		PLATANTHERA FLAVA	ORCHIDACEAE	REIN ORCHID, SOUTHERN	AR DE DC FL GA IL IN IA KY LA ME MD MA MI MN MO NH NJ NY NC OH OK PA RI SC SD TN TX VT VA WV WI
1		PLATANTHERA HOLOCHILA	ORCHIDACEAE		HI
3C		PLATANTHERA INTEGRA	ORCHIDACEAE		AL FL GA LA MS NJ NC SC TN TX
2		PLATANTHERA INTEGRILABIA	ORCHIDACEAE		AL KY MS NC SC TN
2		PLATANTHERA LEUCOPHAEA	ORCHIDACEAE	ORCHID, WHITE-FRINGED, PRAIRIE	AR IL IN IA KS LA ME MI MN MO NE NY ND OH OK PA SD VA WI, Canada, Ont.)
3C		PLATANTHERA PERAMOENA	ORCHIDACEAE	ORCHID, PURPLE, FRINGELESS	AL AR DE IL IN KY MD MS MO NJ NY NC OH PA SC TN VA WV
3B		PLATANTHERA UNALASCENSIS SSP. MARITIMA	ORCHIDACEAE	REIN ORCHID, ALASKA	CA OR WA, Canada (B.C.)
1		PLATYDESMA REMYI	RUTACEAE	PILOKEA, REMY	HI
2		PLATYSTEMON CALIFORNICUS VAR. CILIATUS	PAPAVERACEAE		CA
1		PLEODENDRON MACRANTHUM	CANELLACEAE	CHUPAGALLO (CHUPACALLOS)	PR
S		PLEOMELE AUREA	*** SEE ***	DRACAENA AUREA	
S		PLEOMELE FORBESII	*** SEE ***	DRACAENA FORBESII	
2		PLEUROPOGON HOOVERANUS	POACEAE	SEMAPHORE GRASS, HOOVER'S	CA
2		PLEUROPOGON OREGONUS	POACEAE	SEMAPHORE GRASS, OREGON	OR
3C		PLUMMERA AMBIGENS	ASTERACEAE		AZ
3B		PLUMMERA FLORIBUNDA	ASTERACEAE		AZ
1		POA ATROPURPUREA	POACEAE	BLUE GRASS, SAN BERNADINO	CA
3C		POA CURTIFOLIA	POACEAE		WA
2		POA EYERDAMII	POACEAE		AK
2		POA FIBRATA	POACEAE	BLUE GRASS, LASSEN COUNTY	CA
2		POA INVOLUTA	POACEAE	BLUE GRASS, BIG BEND	TX
3C		POA LAXIFLORA	POACEAE		AK OR WA, Canada (B.C.)
1		POA MANNII	POACEAE	BLUE GRASS, MANN'S	HI
3C		POA MARCIDA	POACEAE		OR WA, Canada (B.C.)
2		POA MERRILLIANA	POACEAE		AK
2		POA NAPENSIS	POACEAE	BLUE GRASS, NAPA	CA
2		POA NORBERGII	POACEAE		AK
S		POA PACHYPHOLIS	*** SEE ***	POA UNILATERALIS	
2		POA PALUDIGENA	POACEAE	BLUE GRASS,	IL IN MI MN NY OH PA WI
3C		POA PIPERI	POACEAE		CA OR
2		POA RHIZOMATA	POACEAE		CA
1		POA SANDVICENSIS	POACEAE	BLUE GRASS, HAWAIIAN	HI
1		POA SIPHONOGLOSSA	POACEAE		HI
1		POA UNILATERALIS	POACEAE	BLUE GRASS, SEA CLIFF	WA
2		PODISTERA YUKONENSIS	APIACEAE		AK, Canada (Yukon)
LE		POGOGYNE ABRAMSII	LAMIACEAE	MESA MINT, SAN DIEGO	CA
2		POGOGYNE CLAREANA	LAMIACEAE	POGOGYNE, SANTA LUCIA	CA
2		POGOGYNE DOUGLASII SSP. PARVIFLORA	LAMIACEAE		CA
1		POGOGYNE NUDIUSCULA	LAMIACEAE	POGOGYNE, LOMA ALTA	CA, Mexico
3C		POLEMONIUM CHARTACEUM	POLEMONIACEAE		CA
3B		POLEMONIUM NEVADENSE	POLEMONIACEAE		NV
2	•	POLEMONIUM OCCIDENTALE VAR. LACUSTRE	POLEMONIACEAE	JACOB'S LADDER,	MN
2		POLEMONIUM PAUCIFLORUM SSP. HINCKLEYI	POLEMONIACEAE	JACOB'S LADDER,	AZ TX
2		POLEMONIUM PECTINATUM	POLEMONIACEAE		WA
2		POLEMONIUM REPTANS VAR. VILLOSUM	POLEMONIACEAE	JACOB'S LADDER,	KY OH
2		POLEMONIUM VANBRUNTIAE	POLEMONIACEAE	JACOB'S LADDER,	CT MD NJ NY PA VT WV, Canada (N.B., Que.)
3C		POLIANTHES MACULOSA	LILIACEAE		TX
2		POLIANTHES RUNYONII	LILIACEAE	HUACO, RUNYON	TX
3C		POLIOMINTHA GLABRESCENS	LAMIACEAE	ROSEMARY-MINT	TX, Mexico
2		POLYCTENIUM WILLIAMSIAE	BRASSICACEAE	COMBLEAF	NV
S		POLYGALA ARENICOLA	*** SEE ***	POLYGALA SMALLII	
2		POLYGALA BOYKINII VAR. SPARSIFOLIA	POLYGALACEAE		FL
2		POLYGALA COWELLII	POLYGALACEAE	PALO DE VIOLETA (VIOLET TREE)	PR
1		POLYGALA LEWTONII	POLYGALACEAE	POLYGALA, LEWTON'S	FL
3C		POLYGALA MARAVILLASENSIS	POLYGALACEAE	MILKWORT, MARAVILLAS	TX
3B		POLYGALA PILIOPHORA	POLYGALACEAE		AZ
3C		POLYGALA RIMULICOLA	POLYGALACEAE		NM TX

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	[illegible]
LE		POLYGALA SMALLII	POLYGALACEAE	POLYGALA, TINY	FL
3C		POLYGALA SUBSPINOSA VAR. HETERORHYNCA	POLYGALACEAE		CA [illegible]
1		POLYGONELLA CILIATA VAR. BASIRAMIA	POLYGONACEAE	JOINTWEED,	FL
1		POLYGONELLA MACROPHYLLA	POLYGONACEAE	JOINTWEED, LARGE-LEAVED	AL FL
3C		POLYGONELLA MYRIOPHYLLA	POLYGONACEAE	JOINTWEED,	FL
3C		POLYGONELLA PARKSII	POLYGONACEAE	JOINTWEED, PARKS'	TX
3C		POLYGONUM BIDWELLIAE	POLYGONACEAE	KNOTWEED, BIDWELL	[illegible]
3C		POLYGONUM CASCADENSE	POLYGONACEAE		OR
2		POLYGONUM FUSIFORME	POLYGONACEAE		AZ CA
2		POLYGONUM MARINENSE	POLYGONACEAE	KNOTWEED, MARIN	CA
1	*	POLYGONUM MONTEREYENSE	POLYGONACEAE	KNOTWEED, MONTEREY	CA
2		POLYGONUM PENSYLVANICUM VAR. EGLANDULOSUM	POLYGONACEAE	PINKWEED, LAKE ERIE	MO OH, Canada (Ont.)
3C		POLYGONUM STRIATULUM	POLYGONACEAE		TX
3C		POLYGONUM TEXENSE	POLYGONACEAE	KNOTWEED,	TX
3B		POLYGONUM UTAHENSE	POLYGONACEAE		UT
2		POLYMNIA LAEVIGATA	ASTERACEAE		AL FL GA KY MO [illegible]
2		POLYSTICHUM ALEUTICUM	POLYPODIACEAE	SHIELD FERN (HOLLY FERN), ALEUTIAN	AK
3C		POLYSTICHUM DUDLEYI	POLYPODIACEAE	SWORD FERN, DUDLEY'S	CA
3C		POLYSTICHUM KRUCKEBERGII	POLYPODIACEAE		CA ID MT OR WA, Canada (B.C.)
3B		POPULUS HINCKLEYANA	SALICACEAE	COTTONWOOD, GOAT CANYON	TX
3C		POROPHYLLUM GREGGII	ASTERACEAE		TX
2		PORTULACA CAULERPOIDES	PORTULACACEAE		PR
1		PORTULACA HAWAIIENSIS	PORTULACACEAE	PORTULACA, HAWAII	HI
1		PORTULACA SCLEROCARPA	PORTULACACEAE	IHI-MAKOLE	HI
3C		PORTULACA SMALLII	PORTULACACEAE		[illegible] VA
1		POTAMOGETON CLYSTOCARPUS	POTAMOGETONACEAE	PONDWEED,	TX
2		POTAMOGETON FLORIDANUS	POTAMOGETONACEAE		FL
3C		POTAMOGETON HILLII	POTAMOGETONACEAE	PONDWEED, HILL'S	CT [illegible] MI NY OH PA VT, Canada (Ont.)
3B		POTAMOGETON LATERALIS	POTAMOGETONACEAE		CT [illegible] MI MN NH NY VT
3B		POTAMOGETON PORTERI	POTAMOGETONACEAE		PA
2		POTENTILLA EFFUSA VAR. RUPINCOLA	ROSACEAE		CO
2		POTENTILLA HICKMANII VAR. HICKMANII	ROSACEAE	CINQUEFOIL, HICKMAN'S	CA
2		POTENTILLA HICKMANII VAR. ULIGINOSA /INED.	ROSACEAE	CINQUEFOIL, CUNNINGHAM MARSH	CA
3C		POTENTILLA MULTIFOLIOLATA	ROSACEAE		AZ
I	*	POTENTILLA MULTIJUGA	ROSACEAE	CINQUEFOIL, BALLONA	CA
2		POTENTILLA PATELLIFERA	ROSACEAE	CINQUEFOIL, KINGSTON MOUNTAINS	[illegible]
LE		POTENTILLA ROBBINSIANA	ROSACEAE	CINQUEFOIL, ROBBINS'	[illegible] VT
S		POTENTILLA RUPINCOLA	*** SEE ***	POTENTILLA EFFUSA VAR. RUPINCOLA	
3C		POTENTILLA SIERRA-BLANCAE	ROSACEAE		[illegible]
S		POTENTILLA ULIGINOSA	*** SEE ***	POTENTILLA HICKMANII VAR. ULIGINOSA VAR. NOV. /INED.	
1		POUTERIA AUAHIENSIS	SAPOTACEAE	ALA'A	HI
1		POUTERIA RHYNCHOSPERMA	SAPOTACEAE	ALA'A	HI
2		PRENANTHES BOOTTII	ASTERACEAE	RATTLESNAKE ROOT, BOOTT'S	ME NH NY VT
3C		PRENANTHES ROANENSIS	ASTERACEAE	RATTLESNAKE ROOT, MOUNTAIN	[illegible] TN [illegible]
2		PRIMULA CAPILLARIS	PRIMULACEAE	PRIMROSE,	NV
3C		PRIMULA CUSICKIANA	PRIMULACEAE	PRIMROSE, WALLOWA	ID OR
2		PRIMULA HUNNEWELLII	PRIMULACEAE		AZ
LT		PRIMULA MAGUIREI	PRIMULACEAE	PRIMROSE, MAGUIRE	UT
3C		PRIMULA MISTASSINICA	PRIMULACEAE	PRIMROSE, BIRD'S-EYE	IL IA ME MI MN NY VT WI, Canada
2		PRIMULA NEVADENSIS	PRIMULACEAE	PRIMROSE,	NV
3C		PRIMULA SPECUICOLA	PRIMULACEAE	PRIMROSE,	AZ UT
2		PRIMULA WILCOXIANA /SP. NOV. INED.	PRIMULACEAE		ID
I		PRITCHARDIA AYLMER-ROBINSONII	ARECACEAE	HAWANE (LO'ULU)	HI
2		PRITCHARDIA ELLIPTICA	ARECACEAE	LO'ULU	HI
1		PRITCHARDIA ERIOPHORA	ARECACEAE	LO'ULU	HI
2		PRITCHARDIA GAUDICHAUDII	ARECACEAE	LO'ULU	HI
1		PRITCHARDIA GLABRATA	ARECACEAE		HI
1		PRITCHARDIA MILLEBRANDII	ARECACEAE	LO'ULU-LELO	HI
3C		PRITCHARDIA KAALAE VAR. KAALAE	ARECACEAE	LO'ULU	HI
3C		PRITCHARDIA KAALAE VAR. MINIMA	ARECACEAE	LO'ULU	HI
2		PRITCHARDIA KAHANAE	ARECACEAE	LO'ULU	HI
1		PRITCHARDIA LANAIENSIS	ARECACEAE	LO'ULU	HI
1		PRITCHARDIA MONTIS-KEA	ARECACEAE		HI
1		PRITCHARDIA MUNROII	ARECACEAE		HI
1		PRITCHARDIA REMOTA	ARECACEAE		HI
2		PRITCHARDIA SCHATTAUERI	ARECACEAE		HI
3B		PRIVA PORTORICENSIS	VERBENACEAE		PR
2		PROBOSCIDEA SABULOSA	PEDALIACEAE		NM TX
2		PROBOSCIDEA SPICATA	PEDALIACEAE		TX
3C		PRUNUS ALLEGHANIENSIS	ROSACEAE	PLUM, ALLEGHANY	CT MD MI NJ PA VA WV
1		PRUNUS GENICULATA	ROSACEAE	PLUM, SCRUB	FL
S		PRUNUS GRAVESII	*** SEE ***	PRUNUS MARITIMA VAR. GRAVESII	
3C		PRUNUS HAVARDII	ROSACEAE		TX
2		PRUNUS MARITIMA VAR. GRAVESII	ROSACEAE	PLUM, BEACH, GRAVE'S	CT
3C		PRUNUS MINUTIFLORA	ROSACEAE		TX
3C		PRUNUS MURRAYANA	ROSACEAE		TX
3C		PRUNUS TEXANA	ROSACEAE		TX

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
2		PSEUDOBAHIA BAHIAEFOLIA	ASTERACEAE	PSEUDOBAHIA, HARTWEG'S	CA
2		PSEUDOBAHIA PEIRSONII	ASTERACEAE	PSEUDOBAHIA, TULARE	CA
S		PSEUDOTAENIDIA MONTANA	*** SEE ***	TAENIDIA MONTANA	
1		PSIDIUM SINTENISII	MYRTACEAE	HOJA MENUDA	PR
2		PSORALEA EPIPSILA	FABACEAE	SCURF-PEA,	AZ UT
1	*	PSORALEA MACROPHYLLA	FABACEAE	SCURF-PEA,	NC
2		PSORALEA PARIENSIS	FABACEAE		UT
2		PSORALEA RYDBERGII	FABACEAE		TX MEXICO
1	*	PSORALEA STIPULATA	FABACEAE	SCURF-PEA,	IN KY
3C		PSOROTHAMNUS ARBORESCENS	FABACEAE		AL GA TN
2		PSOROTHAMNUS THOMPSONAE VAR. THOMPSONAE	FABACEAE		NM TX MEXICO
3C		PSOROTHAMNUS KINGII	FABACEAE		CA
3C		PSOROTHAMNUS POLYADENIUS VAR. JONESII	FABACEAE		NV
2		PSOROTHAMNUS THOMPSONAE VAR. WHITINGII	FABACEAE		UT
3C		PSOROTHAMNUS THOMPSONAE VAR. THOMPSONAE	FABACEAE		AZ UT
2		PSOROTHAMNUS THOMPSONAE VAR. WHITINGII	FABACEAE		AZ UT
1		PSYCHOTRIA GRANDIFLORA	RUBIACEAE		HI
1	*	PSYCHOTRIA INSULARUM VAR. PARADISII	RUBIACEAE		HI
3B		PTERALYXIA CAUMIANA	APOCYNACEAE	KAULU	HI
1		PTERALYXIA KAUAIENSIS	APOCYNACEAE	PTERALYXIA, KAUAI	HI
1		PTERIS LIDGATEI	POLYPODIACEAE		HI
2		PTEROGLOSSASPIS ECRISTATA	ORCHIDACEAE		FL GA LA MS NC SC, Cuba
2		PTILAGROSTIS MONGHOLICA SSP. PORTERI	POACEAE	NEEDLE GRASS, PORTER'S	CO
S		PTILAGROSTIS PORTERI	*** SEE ***	PTILAGROSTIS MONGHOLICA SSP. PORTERI	
2		PTILIMNIUM FLUVIATILE	APIACEAE	HARPERELLA,	AL MD NC MV
2		PTILIMNIUM NODOSUM	APIACEAE		GA SC
2		PUCCINELLIA PARISHII	POACEAE	ALKALI GRASS, PARISH'S	AZ CA NM
2		PUCCINELLIA TRIFLORA	POACEAE		AK
3B		PYCNANTHEMUM CURVIPES	LAMIACEAE	MOUNTAIN-MINT,	AL GA TN
3C		PYCNANTHEMUM FLORIDANUM	LAMIACEAE		FL
3A		PYCNANTHEMUM MONOTRICHUM	LAMIACEAE	MOUNTAIN-MINT,	VA
S		PYRROCOMA ACUMINATA	*** SEE ***	HAPLOPAPPUS CONTRACTUS	
S		PYRROCOMA LIATRIFORMIS	*** SEE ***	HAPLOPAPPUS LIATRIFORMIS	
S		PYRROCOMA RADIATUS	*** SEE ***	HAPLOPAPPUS RADIATUS	
S		PYRROCOMA UNIFLORA VAR. GOSSYPINA	*** SEE ***	HAPLOPAPPUS UNIFLORUS SSP. GOSSYPINUS	
1		PYXIDANTHERA BARBULATA VAR. BREVIFOLIA	DIAPENSIACEAE	PIXIE-MOSS, WELL'S (SANDHILL)	NC SC
S		PYXIDANTHERA BREVIFOLIA	*** SEE ***	PYXIDANTHERA BARBULATA VAR. BREVIFOLIA	
3C		QUERCUS ARKANSANA	FAGACEAE		AL AR
3C		QUERCUS GEORGIANA	FAGACEAE		AL GA SC
3C		QUERCUS GRACILIFORMIS	FAGACEAE	OAK, SLENDER	TX
1		QUERCUS MINCKLEYI	FAGACEAE	OAK, MINCKLEY'S	TX
2		QUERCUS OGLETHORPENSIS	FAGACEAE		GA LA SC
3C		QUERCUS PARVULA	FAGACEAE	OAK, SANTA CRUZ ISLAND	CA
2		QUERCUS SHUMARDII VAR. ACERIFOLIA	FAGACEAE		AR
2		QUERCUS TARDIFOLIA	FAGACEAE	OAK, CHIZOS MOUNTAINS	TX
3C		QUERCUS TOMENTELLA	FAGACEAE	OAK, ISLAND	CA, MEXICO
3C		RAILLARDELLA MUIRII	ASTERACEAE	RAILLARDELLA, MUIR'S	CA
3C		RAILLARDELLA PRINGLEI	ASTERACEAE	RAILLARDELLA, SHOWY	CA
3C		RAILLARDELLA SCABRIDA	ASTERACEAE		CA
S		RAILLIARDIA ARBOREA	*** SEE ***	DUBAUTIA ARBOREA	
S		RAILLIARDIA MILLEBRANDII	*** SEE ***	DUBAUTIA MILLEBRANDII	
S		RAILLIARDIA LONCHOPHYLLA	*** SEE ***	DUBAUTIA LONCHOPHYLLA	
S		RAILLIARDIA RETICULATA	*** SEE ***	DUBAUTIA RETICULATA	
S		RAILLIARDIA SHERFFIANA	*** SEE ***	DUBAUTIA SHERFFIANA	
2		RANDIA PORTORICENSIS	RUBIACEAE		PR
1		RANUNCULUS ACRIFORMIS VAR. AESTIVALIS	RANUNCULACEAE	BUTTERCUP, SHARP, AUTUMN	UT
2		RANUNCULUS AUSTRO-OREGANUS	RANUNCULACEAE		OR
3B		RANUNCULUS FASCICULARIS VAR. CUNEIFORMIS	RANUNCULACEAE	CROWFOOT, KERR	TX
3C		RANUNCULUS INAMOENUS VAR. SUBAFFINIS	RANUNCULACEAE	BUTTERCUP,	AZ
3C		RANUNCULUS OCCIDENTALIS SSP. NELSONII	RANUNCULACEAE		AK
2		RANUNCULUS RECONDITUS	RANUNCULACEAE		OR WA
3B		RANUNCULUS SUBCORDATUS	RANUNCULACEAE	BUTTERCUP, BLADEN	NC
3B		RAUVOLFIA HELLERI	APOCYNACEAE		HI
3B		RAUVOLFIA MAUIENSIS	APOCYNACEAE		HI
3B		RAUVOLFIA MOLOKAIENSIS VAR. PARVIFOLIA	APOCYNACEAE		HI
3B		RAUVOLFIA REMOTIFLORA	APOCYNACEAE	WAHAULA HEIAU	HI
3B		RAUVOLFIA SANDWICENSIS VAR. SANDWICENSIS	APOCYNACEAE	HAO	HI
3B		RAUVOLFIA SANDWICENSIS VAR. SUBACUMINATA	APOCYNACEAE		HI
2		RAVENIA URBANII	RUTACEAE	TORTUGO PRIETO	PR
1		REMYA KAUAIENSIS	ASTERACEAE		HI
1		REMYA MAUIENSIS	ASTERACEAE	REMYA, MAUI	HI
S		REYNOLDSIA DEGENERI	*** SEE ***	REYNOLDSIA SANDWICENSIS	
S		REYNOLDSIA MILLEBRANDII	*** SEE ***	REYNOLDSIA SANDWICENSIS	
S		REYNOLDSIA MUEHUENSIS	*** SEE ***	REYNOLDSIA SANDWICENSIS	
S		REYNOLDSIA MAUIENSIS	*** SEE ***	REYNOLDSIA SANDWICENSIS	
3C		REYNOLDSIA SANDWICENSIS	ARALIACEAE	OHE	HI
S		REYNOLDSIA VENUSTA	*** SEE ***	REYNOLDSIA SANDWICENSIS	
3C		RHAPIDOPHYLLUM HYSTRIX	ARECACEAE	PALM, NEEDLE	AL FL GA MS SC
2		RHEXIA ARISTOSA	MELASTOMATACEAE	MEADOWBEAUTY, AWNED	AL DE GA NC NJ SC VA
2		RHEXIA PARVIFLORA	MELASTOMATACEAE	MEADOWBEAUTY,	AL FL GA
2		RHEXIA SALICIFOLIA	MELASTOMATACEAE	MEADOWBEAUTY, FARMANDLE	AL FL
3C		RHINANTHUS ARCTICUS	SCROPHULARIACEAE		AK
3C		RHIPSALIS BACCIFERA	CACTACEAE		FL, Mexico, Sri Lanka, Africa, Central America, South America, West Indies

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
S		RHIPSALIS CASSUTHA	*** SEE ***	RHIPSALIS BACCIFERA	
3C		RHODODENDRON AUSTRINUM	ERICACEAE		AL FL GA MS
3C		RHODODENDRON BAKERI	ERICACEAE	RHODODENDRON, BAKER'S	AL GA KY NC TN VA
LE		RHODODENDRON CHAPMANII	ERICACEAE	RHODODENDRON, CHAPMAN	FL
S		RHODODENDRON MINUS VAR. CHAPMANII	*** SEE ***	RHODODENDRON CHAPMANII	
2		RHODODENDRON PRUNIFOLIUM	ERICACEAE	AZALEA, PLUMLEAF	AL GA
3C		RHODODENDRON VASEYI	ERICACEAE	AZALEA, PINK-SHELL	NC
3C		RHODODON CILIATUS	LAMIACEAE		TX
S		RHUS AROMATICA VAR. ARENARIA	*** SEE ***	RHUS TRILOBATA VAR. ARENARIA	
3C		RHUS KEARNEYI	ANACARDIACEAE	SUMAC, KEARNEY'S	AZ
E		RHUS MICHAUXII	ANACARDIACEAE		GA NC SC
2		RHUS TRILOBATA VAR. ARENARIA	ANACARDIACEAE	SUMAC,	IL IN OH
S		RHYNCHOPHORUM FLORIDANUM	*** SEE ***	PEPEROMIA FLORIDANA	
2		RHYNCHOSIA CINEREA	FABACEAE		FL
2		RHYNCHOSPORA CALIFORNICA	CYPERACEAE	BEAKED-RUSH, CALIFORNIA	CA
E		RHYNCHOSPORA CRINIPES	CYPERACEAE	BEAKED-RUSH,	AL
3C		RHYNCHOSPORA CULIXA	CYPERACEAE		FL GA
2		RHYNCHOSPORA GLOBULARIS VAR. SAXICOLA	CYPERACEAE		GA
E		RHYNCHOSPORA KNIESKERNII	CYPERACEAE	BEAKED-RUSH, KNIESKERN S	DE NJ
2		RHYNCHOSPORA PUNCTATA	CYPERACEAE		FL GA
3C		RHYSOPTERUS PLURIJUGUS	APIACEAE		OR
2		RIBES CANTHARIFORME	SAXIFRAGACEAE	CURRANT, MORENO	CA
LT		RIBES ECHINELLUM	SAXIFRAGACEAE	GOOSEBERRY, FLORIDA (MICCOSUKEE	FL SC
1		ROLLANDIA ANGUSTIFOLIA VAR. OCHREATA	CAMPANULACEAE		HI
2		ROLLANDIA CALYCINA	CAMPANULACEAE		HI
1		ROLLANDIA CRISPA VAR. CRISPA	CAMPANULACEAE		HI
1		ROLLANDIA DEGENERANA	CAMPANULACEAE		HI
1		ROLLANDIA HUMBOLDTIANA	CAMPANULACEAE		HI
1		ROLLANDIA LANCEOLATA	CAMPANULACEAE	ROLLANDIA, LANCEOLATE-LEAVED	HI
1	*	ROLLANDIA PARVIFOLIA	CAMPANULACEAE		HI
1		ROLLANDIA PINNATIFIDA	CAMPANULACEAE		HI
2		ROLLANDIA PURPURELLIFOLIA	CAMPANULACEAE		HI
1		ROLLANDIA SESSILIFOLIA	CAMPANULACEAE		HI
1		ROLLANDIA ST-JOHNII	CAMPANULACEAE		HI
1		ROLLANDIA WAIANAEENSIS	CAMPANULACEAE		HI
3C		ROMANZOFFIA THOMPSONII /SP. NOV. (NED.	HYDROPHYLLACEAE		OR
2		RORIPPA CALYCINA	BRASSICACEAE		MT ND MN, Canada (N.W.T.)
S		RORIPPA CALYCINA VAR. COLUMBIAE	*** SEE ***	RORIPPA COLUMBIAE	
2	*	RORIPPA COLORADENSIS	BRASSICACEAE	WATER CRESS,	CO
2		RORIPPA COLUMBIAE	BRASSICACEAE		CA OR WA
1		RORIPPA SUBUMBELLATA	BRASSICACEAE		CA NV
2		ROSA STELLATA	ROSACEAE		AZ NM TX
1		ROYSTONEA ELATA	ARECACEAE	PALM, ROYAL, FLORIDA	FL
3C		RUBUS BARTONIANUS	ROSACEAE		ID OR
3C		RUBUS DUPLARIS	ROSACEAE	DEWBERRY,	TX
2		RUBUS GLAUCIFOLIUS VAR. GANDERI	ROSACEAE		CA
3C		RUBUS MISSOURICUS	ROSACEAE		MO
1		RUBUS NIGERRIMUS	ROSACEAE		[illegible]
2		RUBUS WHARTONIAE	ROSACEAE		KY TN
3C		RUDBECKIA AURICULATA	ASTERACEAE		AL
2		RUDBECKIA HELIOPSIDIS	ASTERACEAE		AL GA NC SC VA
2		RUDBECKIA NITIDA VAR. NITIDA	ASTERACEAE		FL GA
2		RUDBECKIA TRILOBA VAR. PINNATILOBA	ASTERACEAE		FL NC
3C		RUELLIA DRUMMONDIANA	ACANTHACEAE		TX
1		RUMEX ORTHONEURUS	POLYGONACEAE	DOCK,	AZ
3C		RUMEX SPIRALIS	POLYGONACEAE		TX
3B		RUPPIA ANOMALA	RUPPIACEAE	YERBA DE ZANJA	PR
3C		SAGERETIA MINUTIFLORA	RHAMNACEAE		AL FL GA MS SC
LE		SAGITTARIA FASCICULATA	ALISMATACEAE	ARROWHEAD, BUNCHED	NC SC
2		SAGITTARIA SANFORDII	ALISMATACEAE		CA
2		SAGITTARIA SECUNDIFLORA	ALISMATACEAE		AL
2		SALIX ARIZONICA	SALICACEAE		AZ
2		SALIX FLORIDANA	SALICACEAE	WILLOW, FLORIDA	FL GA
3C		SALIX FLUVIATILIS	SALICACEAE		OR WA
3B		SALIX INTERIOR VAR. EXTERIOR	SALICACEAE	WILLOW, SANDBAR, INSIDE-OUTSIDE	ME PA
2		SALIX OVALIFOLIA VAR. GLACIALIS	SALICACEAE	WILLOW, ROUND-LEAF	AK
3B		SALVIA BLODGETTII	LAMIACEAE	SAGE, BLODGETT'S	FL
2		SALVIA BRANDEGEI	LAMIACEAE	SAGE, BRANDEGEE'S	CA
3B		SALVIA COLUMBARIAE VAR. ZIEGLERI	LAMIACEAE	CHIA, ZIEGLER'S	CA
3C		SALVIA EREMOSTACHYA	LAMIACEAE		CA
3C		SALVIA FUNEREA	LAMIACEAE		CA NV
2		SALVIA GREATAE	LAMIACEAE		CA
2		SALVIA PENSTEMONOIDES	LAMIACEAE		TX
2		SANICULA HOFFMANNII	APIACEAE	SANICLE, HOFFMAN	CA
2		SANICULA MARITIMA	APIACEAE	SANICLE, ADOBE	CA
3C		SANICULA PECKIANA	APIACEAE	SANICLE, PECK'S	CA OR
3C		SANICULA PURPUREA	APIACEAE	SANICLE, PURPLE-FLOWERED	HI
2		SANICULA SANDWICENSIS	APIACEAE		HI
2		SANICULA SAXATILIS	APIACEAE	SANICLE, ROCK	CA
2		SANICULA TRACYI	APIACEAE	SANICLE, TRACY'S	CA
S		SANIDOPHYLLUM CUMULICOLA	*** SEE ***	HYPERICUM CUMULICOLA	
3B		SANTALUM ELLIPTICUM VAR. LITTORALE	SANTALACEAE		HI

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
PE		SANTALUM FREYCINETIANUM VAR. LANAIENSE	SANTALACEAE	SANDALWOOD, LANAI	HI
S		SANTALUM LANAIENSE	*** SEE ***	SANTALUM FREYCINETIANUM VAR. LANAIENSE	
[illegible]		SANTALUM SALICIFOLIUM	SANTALACEAE		HI
S		SARRACENIA ALABAMENSIS SSP. ALABAMENSIS	*** SEE ***	SARRACENIA RUBRA SSP. ALABAMENSIS	
S		SARRACENIA ALABAMENSIS SSP. WHERRYI	*** SEE ***	SARRACENIA RUBRA SSP. WHERRYI	
S		SARRACENIA JONESII	*** SEE ***	SARRACENIA RUBRA SSP. JONESII	
L[illegible]		SARRACENIA OREOPHILA	SARRACENIACEAE	PITCHERPLANT, GREEN	AL [illegible]
3C		SARRACENIA PSITTACINA	SARRACENIACEAE	PITCHERPLANT, PARROT	AL FL GA LA MS
1		SARRACENIA RUBRA SSP. ALABAMENSIS	SARRACENIACEAE	PITCHERPLANT, ALABAMA CANEBREAK	[illegible]
1		SARRACENIA RUBRA SSP. JONESII	SARRACENIACEAE	PITCHERPLANT, SWEET,	[illegible]
3C		SARRACENIA RUBRA SSP. RUBRA	SARRACENIACEAE	PITCHERPLANT, SWEET, RED-FLOWERED	AL FL [illegible]
2		SARRACENIA RUBRA SSP. WHERRYI	SARRACENIACEAE		AL [illegible]
2		SATUREJA CHANDLERI	LAMIACEAE	SAVORY, SAN MIGUEL	[illegible], Mexico
3C		SAUSSUREA WEBERI	ASTERACEAE		[illegible] MT
2		SAXIFRAGA ALEUTICA	SAXIFRAGACEAE	SAXIFRAGE, ALEUTIAN	AK
2		SAXIFRAGA CAREYANA	SAXIFRAGACEAE	SAXIFRAGE,	[illegible]
2		SAXIFRAGA CAROLINIANA	SAXIFRAGACEAE	SAXIFRAGE, GRAY'S	[illegible]
3C		SAXIFRAGA FORBESII	SAXIFRAGACEAE	SAXIFRAGE, FORBES	IL IN IA MN MO WI
2		SAXIFRAGA HITCHCOCKIANA	SAXIFRAGACEAE	SAXIFRAGE, SADDLE MOUNTAIN	OR
S		SAXIFRAGA OCCIDENTALIS VAR. LATIPETIOLATA	*** SEE ***	SAXIFRAGA HITCHCOCKIANA	
PE		SCAEVOLA CORIACEA	GOODENIACEAE	NAUPAKA, DWARF	HI
3C		SCAEVOLA GAUDICHAUDI	GOODENIACEAE	NAUPAKA, MOUNTAIN	HI
1		SCAEVOLA KILAUEAE	GOODENIACEAE	NAUPAKA, KILAUEA	HI
1		SCAEVOLA SKOTTSBERGII	GOODENIACEAE		HI
LE		SCHIEDEA ADAMANTIS	CARYOPHYLLACEAE	SCHIEDEA, DIAMOND HEAD	HI
1	•	SCHIEDEA AMPLEXICAULIS	CARYOPHYLLACEAE	MA'OLI'OLI	HI
1		SCHIEDEA APOKREMNOS	MA'OLI'OLI	CARYOPHYLLACEAE	HI
3B		SCHIEDEA GLOBOSA VAR. FOLIOSIOR	CARYOPHYLLACEAE		HI
3C		SCHIEDEA GLOBOSA VAR. GLOBOSA	CARYOPHYLLACEAE	MA'OLI'OLI	HI
3C		SCHIEDEA GLOBOSA VAR. GRAMINIFOLIA	CARYOPHYLLACEAE	MA'OLI'OLI	HI
1		SCHIEDEA HALEAKALENSIS	CARYOPHYLLACEAE	MA'OLI'OLI	HI
3B		SCHIEDEA HAWAIIENSIS	CARYOPHYLLACEAE	MA'OLI'OLI	HI
1	•	SCHIEDEA HELLERI	CARYOPHYLLACEAE	MA'OLI'OLI	HI
2		SCHIEDEA HOOKERI	CARYOPHYLLACEAE	MA'OLI'OLI	HI
1	•	SCHIEDEA IMPLEXA	CARYOPHYLLACEAE	MA'OLI'OLI	HI
1		SCHIEDEA KAALAE	CARYOPHYLLACEAE	MA'OLI'OLI	HI
3C		SCHIEDEA KEALIAE	CARYOPHYLLACEAE	MA'OLI'OLI	HI
1		SCHIEDEA LIGUSTRINA VAR. NEMATOPODA	CARYOPHYLLACEAE		HI
1		SCHIEDEA LYDGATEI	CARYOPHYLLACEAE	MA'OLI'OLI	HI
3C		SCHIEDEA MANNII	CARYOPHYLLACEAE		HI
2		SCHIEDEA MEMBRANACEA	CARYOPHYLLACEAE		HI
2		SCHIEDEA MENZIESII VAR. MENZIESII	CARYOPHYLLACEAE		HI
2		SCHIEDEA MENZIESII VAR. SPERGULACEA	CARYOPHYLLACEAE	MA'OLI'OLI	HI
S		SCHIEDEA PUBESCENS VAR. LANAIENSIS	*** SEE ***	SCHIEDEA PUBESCENS VAR. PUBESCENS	
2		SCHIEDEA PUBESCENS VAR. PUBESCENS	CARYOPHYLLACEAE	MA'OLI'OLI	HI
2		SCHIEDEA SALICARIA	CARYOPHYLLACEAE	MA'OLI'OLI	HI
1		SCHIEDEA SPERGULINA	CARYOPHYLLACEAE	MA'OLI'OLI	HI
1	•	SCHIEDEA STELLARIOIDES	CARYOPHYLLACEAE	MA'OLI'OLI	HI
1		SCHIEDEA VERTICILLATA	CARYOPHYLLACEAE		HI
3C		SCHISANDRA GLABRA	SCHISANDRACEAE		AL [illegible] FL GA LA MS NC SC TN
2		SCHIZACHYRIUM NIVEUM	POACEAE		FL [illegible]
3B		SCHIZACHYRIUM RHIZOMATUM	POACEAE		FL
2		SCHIZAEA GERMANII	SCHIZAEACEAE	FERN, CURLY-GRASS	FL, Belize, Cuba, Guadeloupe
2		SCHIZAEA PUSILLA	SCHIZAEACEAE	FERN, CURLY-GRASS	NJ NY, Canada (Nfld., N.S., Ont.), St. Pierre & Miquelon
S		SCHIZOSTEGE LIDGATEI	*** SEE ***	PTERIS LIDSATEI	
S		SCHMALTZIA KEARNEYI	*** SEE ***	RHUS KEARNEYI	
1		SCHOENOCRAMBE BARNEBYI	BRASSICACEAE		UT
S		SCHOENOLIRION BRACTEOSUM	*** SEE ***	HASTINGSIA BRACTEOSA	
S		SCHOENOLIRION TEXANUM	*** SEE ***	SCHOENOLIRION WRIGHTII	
3C		SCHOENOLIRION WRIGHTII	LILIACEAE	SUNNYBELL, TEXAS	AL AR TX
2		SCHOEPFIA ARENARIA	OLACACEAE	ARANA	[illegible]
1		SCHRANKIA PORTORICENSIS	FABACEAE	ZARZARILLA	[illegible]
2		SCHWALBEA AMERICANA	SCROPHULARIACEAE	CHAFFSEED	CT DE FL GA KY LA MA MD MS NC NJ NY SC TN VA
2		SCIRPUS ANCISTROCHAETUS	CYPERACEAE	BULRUSH, NORTHEASTERN	MA NY PA VA VT
3C		SCIRPUS FLACCIDIFOLIUS	CYPERACEAE		NC VA
2		SCIRPUS LONGII	CYPERACEAE	BULRUSH, LONG S	CT ME MA NJ NY, Canada (N.S.)
1		SCLERIA DORADOENSIS	CYPERACEAE		[illegible]
S		SCLEROCACTUS FRANKLINII	*** SEE ***	SCLEROCACTUS GLAUCUS	
LT		SCLEROCACTUS GLAUCUS	CACTACEAE	CACTUS, HOOKLESS, UINTA BASIN	CO UT
LT		SCLEROCACTUS MESAE-VERDAE	CACTACEAE	CACTUS, MESA VERDE	CO NM
3C		SCLEROCACTUS POLYANCISTRUS	CACTACEAE	FISHHOOK CACTUS, MOHAVE	CA NV
3C		SCLEROCACTUS PUBISPINUS	CACTACEAE	FISHHOOK CACTUS, GREAT BASIN	NV UT
3C		SCLEROCACTUS SP. /SP. NOV. IMED.	CACTACEAE	CACTUS (DUCHESNE & UINTAH COS.)	UT
3C		SCLEROCACTUS SPINOSIOR	CACTACEAE		UT
2		SCLEROCACTUS WHIPPLEI VAR. HEILII	CACTACEAE		[illegible]
[illegible]		SCLEROCACTUS WHIPPLEI VAR. REEVESII	CACTACEAE		NM

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
LE		SCLEROCACTUS WRIGHTIAE	CACTACEAE	FISHHOOK CACTUS, WRIGHT	UT
2		SCROPHULARIA ATRATA	SCROPHULARIACEAE	FIGWORT, BLACK-FLOWERED	CA
1		SCROPHULARIA COCCINEA	SCROPHULARIACEAE	FIGWORT,	NM
6		SCROPHULARIA MACRANTHA	*** SEE ***	SCROPHULARIA COCCINEA	
2		SCROPHULARIA VILLOSA	SCROPHULARIACEAE	FIGWORT, SANTA CATALINA	CA
2		SCUTELLARIA FLORIDANA	LAMIACEAE		FL
2		SCUTELLARIA HOLMGRENIORUM	LAMIACEAE	SKULLCAP, RAVENDALE	CA
2		SCUTELLARIA LAEVIS	LAMIACEAE		TX
1		SCUTELLARIA MONTANA	[illegible]	SKULLCAP, LARGE-FLOWERED	[illegible]
1	*	SCUTELLARIA OCMULGEE	LAMIACEAE	SKULLCAP,	GA
2		SCUTELLARIA OVATA SSP. PSEUDOARGUTA	LAMIACEAE	SKULLCAP, HEART-LEAVED,	VA WV
6		SCUTELLARIA SERRATA VAR. MONTANA	*** SEE ***	SCUTELLARIA MONTANA	
2		SCUTELLARIA THIERETII	LAMIACEAE		LA
2		SEDUM ALBOMARGINATUM	CRASSULACEAE	STONECROP, FEATHER RIVER	[illegible]
1		SEDUM LAXUM SSP. EASTWOODIAE	CRASSULACEAE		[illegible]
2		SEDUM LAXUM SSP. FLAVIDUM	CRASSULACEAE	STONECROP, PALE YELLOW	[illegible]
3C		SEDUM LAXUM SSP. HECKNERI	CRASSULACEAE		[illegible]
2		SEDUM MORANII	CRASSULACEAE	STONECROP,	[illegible]
2		SEDUM NEVII	CRASSULACEAE	STONECROP,	AL GA TN
3C		SEDUM NIVEUM	CRASSULACEAE		[illegible]
2		SEDUM OBLANCEOLATUM	CRASSULACEAE		[illegible]
2		SEDUM OBTUSATUM SSP. PARADISUM	CRASSULACEAE	STONECROP, CANYON CREEK	[illegible]
2	*	SEDUM PINETORUM	CRASSULACEAE	STONECROP, PINE CITY	[illegible]
2		SEDUM PUSILLUM	CRASSULACEAE		GA NC SC
3B		SEDUM RADIATUM SSP. DEPAUPERATUM	CRASSULACEAE		[illegible]
2		SEDUM ROBERTSIANUM	CRASSULACEAE		TN
2		SEDUM ROSEA VAR. ROANENSIS	CRASSULACEAE		[illegible]
3C		SEDUM TEXANUM	CRASSULACEAE	STONECROP, TEXAS	TX
6		SEDUM TEXANUM	*** SEE ***	LEMOPHYLLUM TEXANUM	
2		SELAGINELLA UTAHENSIS	SELAGINELLACEAE		[illegible]
3C		SELENIA JONESII	BRASSICACEAE	SELENIA, JONES'	TX
3C		SENECIO ANTENNARIIFOLIUS	ASTERACEAE	RAGWORT, PUSSYTOES	MD PA VA WV
2		SENECIO BERNARDINUS	ASTERACEAE	BUTTERWEED, SAN BERNARDINO	CA
3C		SENECIO CARDAMINE	ASTERACEAE		AZ NM
3B		SENECIO CLEVELANDII VAR. HETEROPHYLLUS	ASTERACEAE		[illegible]
2		SENECIO DIMORPHOPHYLLUS VAR. INTERMEDIUS	ASTERACEAE	GROUNDSEL, INTERMEDIATE	CO UT
1		SENECIO ERTTERAE	ASTERACEAE	RAGWORT, ERTTER'S	[illegible]
LT		SENECIO FRANCISCANUS	ASTERACEAE	GROUNDSEL, SAN FRANCISCO PEAKS	AZ
2		SENECIO GANDERI	ASTERACEAE	BUTTERWEED, GANDER	[illegible]
3B		SENECIO HALLII VAR. DISCOIDEA	ASTERACEAE	GROUNDSEL,	[illegible]
2		SENECIO HESPERIUS	ASTERACEAE		[illegible]
1		SENECIO HUACHUCANUS	ASTERACEAE	GROUNDSEL, HUACHUCA	AZ, Mexico
2		SENECIO LAYNEAE	ASTERACEAE	BUTTERWEED, LAYNE'S	[illegible]
3B		SENECIO LYNCEUS VAR. LEUCOREUS	ASTERACEAE		[illegible]
3C		SENECIO MILLEFOLIUM	ASTERACEAE		GA NC SC
3C		SENECIO NEOWEBSTERI	ASTERACEAE		[illegible]
3C		SENECIO PORTERI	ASTERACEAE	GROUNDSEL, PORTER'S	CO OR
2		SENECIO QUAERENS	ASTERACEAE		[illegible]
3B		SENECIO SANDVICENSIS	ASTERACEAE		MI
3B		SENECIO WARNOCKII	ASTERACEAE		TX
1		SERIANTHES NELSONII	FABACEAE	HAYUN LAGU	GU, Rota
1		SESBANIA ARBOREA	FABACEAE	'OHAI	MI
1		SESBANIA HAWAIIENSIS	FABACEAE	'OHAI	MI
1	*	SESBANIA HOBDYI	FABACEAE	OHAI	MI
1		SESBANIA MOLOKAIENSIS	FABACEAE	OHAI	MI
1		SESBANIA TOMENTOSA	FABACEAE	OHAI	MI
S		SESBANIA TOMENTOSA VAR. MOLOKAIENSIS	*** SEE ***	SESBANIA MOLOKAIENSIS	
1	*	SESUVIUM TRIANTHEMOIDES	AIZOACEAE	SEA-PURSLANE, TEXAS	TX
3B		SEYMERIA HAVARDII	SCROPHULARIACEAE		TX
2		SHORTIA GALACIFOLIA	DIAPENSIACEAE	OCONEE-BELLS	GA NC SC
3B		SHORTIA GALACIFOLIA VAR. BREVISTYLA	DIAPENSIACEAE	OCONEE-BELLS, SHORT-STYLED	GA NC SC
2		SHOSHONEA PULVINATA	APIACEAE		[illegible]
1	*	SIBARA FILIFOLIA	BRASSICACEAE	ROCK CRESS, ISLAND	[illegible]
2		SIBARA GRISEA	BRASSICACEAE		[illegible]
3C		SIBARA ROSULATA	BRASSICACEAE		[illegible]
S		SICYOS ATOLLENSIS	*** SEE ***	CLADOCARPA ATOLLENSIS	
S		SICYOS CAUMII	*** SEE ***	CLADOCARPA CAUMII	
S		SICYOS LAMOUREUXII	*** SEE ***	CLADOCARPA LAMOUREUXII	
1		SICYOS LAYSANENSIS	CUCURBITACEAE		HI
S		SICYOS MAXIMOWICZII	*** SEE ***	CLADOCARPA MAXIMOWICZII	
1		SICYOS NIHOAENSIS	CUCURBITACEAE		HI
S		SICYOS NIIHAUENSIS	*** SEE ***	CLADOCARPA NIIHAUENSIS	
S		SICYOS SEMITONSUS	*** SEE ***	CLADOCARPA SEMITONSUS	
S		SIDA EGGERSII	*** SEE ***	ABUTILON VIRGINIANUM	
3C		SIDA HERMAPHRODITA	MALVACEAE	MALLOW, VIRGINIA	DC IN KY MD MI OH PA TN VA WV
2		SIDA INFLEXA	MALVACEAE		VA
2		SIDA LEDYARDII	MALVACEAE		[illegible]
2		SIDA NELSONII	MALVACEAE		[illegible]
2		SIDA RUBROMARGINATA	MALVACEAE		FL
2		SIDALCEA CAMPESTRIS	MALVACEAE	CHECKER-MALLOW, MEADOW	[illegible]
3C		SIDALCEA CANDIDA	MALVACEAE		CO WY NM UT WY
2		SIDALCEA COVILLEI	MALVACEAE	CHECKER-MALLOW, OWENS VALLEY	[illegible]

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
3C		SIDALCEA CUSICKII	MALVACEAE		OR
2		SIDALCEA HICKMANII SSP. ANOMALA	MALVACEAE	SIDALCEA, CUESTA PASS	CA
2		SIDALCEA HICKMANII SSP. HICKMANII	MALVACEAE	SIDALCEA, HICKMAN	CA
2		SIDALCEA HICKMANII SSP. PARISHII	MALVACEAE	SIDALCEA, PRAISH	CA
2		SIDALCEA HICKMANII SSP. VIRIDIS	MALVACEAE	MALLOW, MARIN	CA
1	*	SIDALCEA KECKII	MALVACEAE	SIDALCEA, KECK	CA
3C		SIDALCEA MALVAEFLORA SSP. ELEGANS	MALVACEAE		CA OR
2		SIDALCEA NELSONIANA	MALVACEAE	CHECKER-MALLOW, NELSON'S	OR
3B		SIDALCEA OREGANA SSP. HYDROPHILA	MALVACEAE	CHECKER-MALLOW, WATER-LOVING	CA
2		SIDALCEA OREGANA SSP. VALIDA	MALVACEAE	CHECKER-MALLOW, KENWOOD MARSH	CA
2		SIDALCEA OREGANA VAR. CALVA	MALVACEAE		WA
LE		SIDALCEA PEDATA	MALVACEAE	CHECKER-MALLOW, PEDATE	CA
2		SIDALCEA ROBUSTA	MALVACEAE	SIDALCEA, BUTTE COUNTY	CA
3C		SIDALCEA SETOSA	MALVACEAE		CA OR
1		SIDALCEA STIPULARIS	MALVACEAE		CA
1		SILENE ALEXANDRI	CARYOPHYLLACEAE		HI
3C		SILENE APERTA	CARYOPHYLLACEAE		CA
1		SILENE CAMPANULATA SSP. CAMPANULATA	CARYOPHYLLACEAE		CA
2		SILENE CLOKEYI	CARYOPHYLLACEAE		NV
1	*	SILENE CRYPTOPETALA	CARYOPHYLLACEAE		HI
1	*	SILENE DEGENERI	CARYOPHYLLACEAE		HI
2		SILENE DOUGLASII VAR. ORARIA	CARYOPHYLLACEAE	CATCHFLY, CASCADE HEAD	OR
1		SILENE HAWAIIENSIS	CARYOPHYLLACEAE		HI
3C		SILENE INVISA	CARYOPHYLLACEAE	CATCHFLY, RED FIR	CA
1		SILENE LANCEOLATA	CARYOPHYLLACEAE		HI
2		SILENE MARMORENSIS	CARYOPHYLLACEAE	CATCHFLY, MARBLE MOUNTAINS	CA
2		SILENE OCCIDENTALIS SSP. LONGISTIPITATA	CARYOPHYLLACEAE	CAMPION, BUTTE COUNTY	CA
1		SILENE PETERSONII VAR. MINOR	CARYOPHYLLACEAE	CATCHFLY, RED CANYON	UT
2		SILENE PETERSONII VAR. PETERSONII	CARYOPHYLLACEAE	CATCHFLY, PLATEAU	UT
3C		SILENE PLANKII	CARYOPHYLLACEAE		NM TX
1		SILENE POLYPETALA	CARYOPHYLLACEAE		FL GA
2		SILENE RECTIRAMEA	CARYOPHYLLACEAE		AZ
2		SILENE REGIA	CARYOPHYLLACEAE		AL AR GA IL IN KS KY MO OH OK
3C		SILENE SCAPOSA VAR. LOBATA	CARYOPHYLLACEAE		ID NV OR
2		SILENE SCAPOSA VAR. SCAPOSA	CARYOPHYLLACEAE		OR
2		SILENE SEELYI	CARYOPHYLLACEAE		WA
2		SILENE SPALDINGII	CARYOPHYLLACEAE		ID MT OR WA
2		SILENE VERECUNDA SSP. VERECUNDA	CARYOPHYLLACEAE	CAMPION, DOLORES	CA
3C		SILENE WRIGHTII	CARYOPHYLLACEAE		NM
2		SILPHIUM BRACHIATUM	ASTERACEAE	ROSINWEED,	AL TN
2		SILPHIUM CONFERTIFOLIUM	ASTERACEAE		AL MS
3B		SILPHIUM INTEGRIFOLIUM VAR. GATTINGERI	ASTERACEAE	ROSINWEED,	TN
3B		SISYMBRIUM KEARNEYI	BRASSICACEAE		AZ
2		SISYRINCHIUM SARMENTOSUM	IRIDACEAE		WA
2		SIUM FLORIDANUM	APIACEAE	WATER-PARSNIP, FLORIDA	AL FL
2		SMELOWSKIA BOREALIS VAR. VILLOSA	BRASSICACEAE		AK
3C		SMELOWSKIA HOLMGRENII	BRASSICACEAE		NV
2		SMELOWSKIA OVALIS SSP. CONGESTA	BRASSICACEAE		CA
2		SMELOWSKIA PYRIFORMIS	BRASSICACEAE		AK
1	*	SMILAX LEPTANTHERA	LILIACEAE		GA
2		SMILAX MELASTOMIFOLIA VAR. MELASTOMIFOLIA	LILIACEAE		HI
3A		SOLANUM BAHAMENSE VAR. RUGELII	SOLANACEAE	NIGHTSHADE,	FL
2		SOLANUM CAROLINENSE VAR. FLORIDANUM	SOLANACEAE		FL
1	*	SOLANUM CAROLINENSE VAR. HIRSUTUM	SOLANACEAE	HORSE-NETTLE,	GA
1	*	SOLANUM CONOCARPUM	SOLANACEAE		VI
1		SOLANUM DRYMOPHILUM	SOLANACEAE	ERUBIA	PR
S		SOLANUM GODFREYI	*** SEE ***	SOLANUM CAROLINENSE VAR. FLORIDANUM	
1	*	SOLANUM HALEAKALAENSE	SOLANACEAE		HI
1	*	SOLANUM HILLEBRANDII	SOLANACEAE		HI
1		SOLANUM INCOMPLETUM	SOLANACEAE	POPOLO, THORNY	HI
1		SOLANUM KAUAIENSE	SOLANACEAE	POPOLO-'AI-A-KE-AKUA	HI
2		SOLANUM MUCRONATUM	SOLANACEAE		PR VI
3C		SOLANUM NELSONII VAR. NELSONII	SOLANACEAE	NIGHTSHADE, NELSON	HI
1		SOLANUM NELSONII VAR. THOMASIAEFOLIUM	SOLANACEAE		HI
1		SOLANUM SANDWICENSE	SOLANACEAE		HI
2		SOLANUM TENUILOBATUM	SOLANACEAE	NIGHTSHADE, NARROW-LEAVED	CA, Mexico
[illegible]		SOLANUM WOODBURYI	SOLANACEAE		PR
1		SOLIDAGO ALBOPILOSA	ASTERACEAE	GOLDENROD,	KY
3C		SOLIDAGO ARGUTA VAR. HARRISSII	ASTERACEAE		MD PA VA WV
S		SOLIDAGO HARRISSII	*** SEE ***	SOLIDAGO ARGUTA VAR. HARRISSII	
1		SOLIDAGO HOUGHTONII	ASTERACEAE	GOLDENROD, HOUGHTON'S	MI, Canada (Ont.)
3C		SOLIDAGO LINDHEIMERIANA	ASTERACEAE		TX
3C		SOLIDAGO MOLLIS VAR. ANGUSTATA	ASTERACEAE		TX
2	*	SOLIDAGO PORTERI	ASTERACEAE	GOLDENROD, PORTER'S	GA
I		SOLIDAGO PULCHRA	ASTERACEAE		NC
LE		SOLIDAGO SHORTII	ASTERACEAE	GOLDENROD, SHORT'S	KY
LT		SOLIDAGO SPITHAMAEA	ASTERACEAE		NC TN
2		SOLIDAGO VERNA *	ASTERACEAE		NC SC
3C		SOPHORA ARIZONICA	FABACEAE		AZ
2		SOPHORA CHRYSOPHYLLA VAR. CIRCULARIS	FABACEAE		HI
2		SOPHORA CHRYSOPHYLLA VAR. ELLIPTICA	FABACEAE		HI

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
2		SOPHORA CHRYSOPHYLLA VAR. GLABRATA	FABACEAE		HI
1		SOPHORA CHRYSOPHYLLA VAR. GRISEA	FABACEAE		HI
2		SOPHORA CHRYSOPHYLLA VAR. KANAIOENSIS	FABACEAE		HI
2		SOPHORA CHRYSOPHYLLA VAR. KAUENSIS	FABACEAE		HI
3A		SOPHORA CHRYSOPHYLLA VAR. LANAIENSIS	FABACEAE		HI
1		SOPHORA CHRYSOPHYLLA VAR. MAKUAENSIS	FABACEAE		HI
1	*	SOPHORA CHRYSOPHYLLA VAR. UNIFOLIATA	FABACEAE		HI
3B		SOPHORA FORMOSA	FABACEAE		AZ
2		SOPHORA GYPSOPHILA VAR. GUADALUPENSIS	FABACEAE		NM TX
2		SOPHORA LEACHIANA	FABACEAE		AZ
2		SPHAERALCEA CAESPITOSA	MALVACEAE	GLOBE-MALLOW, JONES	NV UT
3B		SPHAERALCEA FENDLERI VAR. ALBESCENS	MALVACEAE	GLOBE-MALLOW,	AZ
2		SPHAERALCEA PROCERA	MALVACEAE		NM
2		SPHAERALCEA PSORALOIDES	MALVACEAE		UT
2		SPHAERALCEA RUSBYI SSP. EREMICOLA	MALVACEAE	MALLOW, DESERT, RUSBY	CA
1		SPHAEROMERIA COMPACTA	ASTERACEAE	TANSY,	NV
2		SPHAEROMERIA RUTHIAE	ASTERACEAE	TANSY, ZION	UT
2		SPHAEROMERIA SIMPLEX	ASTERACEAE	FALSE SAGEBRUSH, LARAMIE	WY
2		SPHENOSTIGMA COELESTINUM	IRIDACEAE	IXIA, BARTRAM'S	FL
2		SPIGELIA GENTIANOIDES	LOGANIACEAE	PINKROOT,	FL
3C		SPIGELIA LOGANIOIDES	LOGANIACEAE	PINKROOT,	FL
3C		SPIGELIA TEXANA	LOGANIACEAE		TX
2		SPIRAEA VIRGINIANA	ROSACEAE	SPIRAEA, VIRGINIA	GA NC PA TN WV
2		SPIRANTHES DILUVIALIS	ORCHIDACEAE		CO UT
2		SPIRANTHES LANCEOLATA VAR. PALUDICOLA	ORCHIDACEAE	LADIES'-TRESSES,	FL
LE		SPIRANTHES PARKSII	ORCHIDACEAE	LADIES'-TRESSES, NAVASOTA	TX
2		SPIRANTHES POLYANTHA	ORCHIDACEAE		FL PR, Bahamas, Dominican Republic, Guatemala, Mexico
S		SPOROBOLUS NEGLECTUS VAR. OZARKANUS	*** SEE ***	SPOROBOLUS OZARKANUS	
2		SPOROBOLUS OZARKANUS	POACEAE		KS MO
3B		SPOROBOLUS PATENS	POACEAE	DROPSEED,	NJ
2		SPOROBOLUS TERETIFOLIUS	POACEAE		GA NC SC
2		STACHYS HYSSOPIFOLIA VAR. LYTHROIDES	LAMIACEAE		FL
S		STACHYS LYTHROIDES	*** SEE ***	STACHYS HYSSOPIFOLIA VAR. LYTHROIDES	
1		STAHLIA MONOSPERMA	FABACEAE	COBANA NEGRA	PR, Dominican Republic
3B		STANLEYA PINNATA VAR. GIBBEROSA	BRASSICACEAE		NM
S		STEIRONEMA CILIATUM	*** SEE ***	STEIRONEMA LAEVIGATUM	
3C		STEIRONEMA LAEVIGATUM	PRIMULACEAE	LOOSESTRIFE, FRINGED	AL AZ CO CT FL IO LA ME MA MS MT NH NM OR RI TX VT WA, Canada (B.C., N.S.)
S		STELLARIA FONTINALIS	*** SEE ***	ARENARIA FONTINALIS	
3C		STELLARIA IRRIGUA	CARYOPHYLLACEAE	CHICKWEED, (STARWORT,)	CO NM, U.S.S.R.
3C		STENANDRIUM FASCICULARIS	ACANTHACEAE		TX, Mexico
1		STENOGYNE AFFINIS VAR. AFFINIS	LAMIACEAE		HI
1		STENOGYNE AFFINIS VAR. DEGENERI	LAMIACEAE		HI
LE		STENOGYNE ANGUSTIFOLIA VAR. ANGUSTIFOLIA	LAMIACEAE		HI
1		STENOGYNE ANGUSTIFOLIA VAR. HILLEBRANDII	LAMIACEAE		HI
1	*	STENOGYNE ANGUSTIFOLIA VAR. MAUIENSIS	LAMIACEAE		HI
1		STENOGYNE ANGUSTIFOLIA VAR. MEEBOLDII	LAMIACEAE		HI
1	*	STENOGYNE ANGUSTIFOLIA VAR. SPATHULATA	LAMIACEAE		HI
2		STENOGYNE CALAMINTHOIDES VAR. OXYODONATA	LAMIACEAE		HI
1	*	STENOGYNE CINEREA	LAMIACEAE		HI
1		STENOGYNE CRENATA	LAMIACEAE	STENOGYNE, CRENATE-LEAVED	HI
2		STENOGYNE DIFFUSA	LAMIACEAE		HI
2		STENOGYNE GLABRATA	LAMIACEAE		HI
2		STENOGYNE HALIAKALAE	LAMIACEAE	STENOGYNE, HALEAKALA	HI
2		STENOGYNE HIRSUTULA	LAMIACEAE		HI
1		STENOGYNE KANEHOANA	LAMIACEAE		HI
1		STENOGYNE MACRANTHA	LAMIACEAE		HI
1		STENOGYNE MICROPHYLLA	LAMIACEAE		HI
1		STENOGYNE MOLLIS	LAMIACEAE		HI
2		STENOGYNE OXYGONA	LAMIACEAE		HI
2		STENOGYNE PURPUREA VAR. FORBESII	LAMIACEAE		HI
1		STENOGYNE ROTUNDIFOLIA VAR. OBLONGA	LAMIACEAE		HI
S		STENOGYNE RUGOSA VAR. MOLLIS	*** SEE ***	STENOGYNE MOLLIS	
2		STENOGYNE RUGOSA VAR. SUBULATA	LAMIACEAE	MA'OHI'OHI	HI
3B		STENOGYNE SALICIFOLIA	LAMIACEAE		HI
1	*	STENOGYNE SCANDENS	LAMIACEAE		HI
2		STENOGYNE SCROPHULARIOIDES	LAMIACEAE		HI
1		STENOGYNE SESSILIS VAR. HEXANTHA	LAMIACEAE		HI
1		STENOGYNE SESSILIS VAR. LANIENSIS	LAMIACEAE		HI
1	*	STENOGYNE SESSILIS VAR. WILKESII	LAMIACEAE		HI
1		STENOGYNE SHERFFII	LAMIACEAE		HI
1	*	STENOGYNE SORORIA	LAMIACEAE		HI
1	*	STENOGYNE VAGANS	LAMIACEAE		HI
2		STENOGYNE VIRIDIS	LAMIACEAE		HI
S		STEPHANOMERIA BLAIRII	*** SEE ***	MUNZOTHAMNUS BLAIRII	
LE		STEPHANOMERIA MALHEURENSIS	ASTERACEAE	WIRE-LETTUCE, MALHEUR	OR
3C		STEPHANOMERIA SCHOTTII	ASTERACEAE	WIRE-LETTUCE, SCHOTT'S	AZ
2		STILLINGIA SYLVATICA SSP. TENUIS	EUPHORBIACEAE		FL
3C		STIPA CURVIFOLIA	POACEAE		NM

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
LE		STIPA LEMMONII VAR. PUBESCENS	POACEAE	NEEDLE GRASS, HAIRY LEMMON'S	CA
[illegible]		STREPTANTHUS ALBIDUS SSP. ALBIDUS	BRASSICACEAE	JEWELFLOWER, METCALF CANYON	CA
[illegible]		STREPTANTHUS BATRACHOPUS	BRASSICACEAE	STREPTANTHUS, TAMALPAIS	CA
3C		STREPTANTHUS BERNARDINUS	BRASSICACEAE		CA
2		STREPTANTHUS BRACHIATUS	BRASSICACEAE	STREPTANTHUS, CONTACT MINE	CA
2		STREPTANTHUS BRACTEATUS	BRASSICACEAE		TX
2		STREPTANTHUS CALLISTUS	BRASSICACEAE	JEWELFLOWER, ROYAL	CA
3C		STREPTANTHUS CARINATUS	BRASSICACEAE		TX
2		STREPTANTHUS CORDATUS VAR. PIUTENSIS	BRASSICACEAE		CA
[illegible]		STREPTANTHUS CUTLERI	BRASSICACEAE		TX
3C		STREPTANTHUS FARNSWORTHIANUS	BRASSICACEAE	JEWELFLOWER, EVALYN'S	CA
3C		STREPTANTHUS FENESTRATUS	BRASSICACEAE		CA
2		STREPTANTHUS GLANDULOSUS VAR. HOFFMANII	BRASSICACEAE		CA
[illegible]		STREPTANTHUS GLANDULOSUS VAR. PULCHELLUS	BRASSICACEAE		CA
3C		STREPTANTHUS GRACILIS	BRASSICACEAE	STREPTANTHUS, ALPINE	CA
2		STREPTANTHUS HISPIDUS	BRASSICACEAE	JEWELFLOWER, MT. DIABLO	CA
2		STREPTANTHUS HOWELLII	BRASSICACEAE		CA OR
[illegible]		STREPTANTHUS INSIGNIS SSP. LYONII /INED.	BRASSICACEAE	JEWELFLOWER, BRUHA RANCH	CA
2		STREPTANTHUS LEMMONII	BRASSICACEAE	JEWELFLOWER, LEMMON'S	AZ
[illegible]		STREPTANTHUS MORRISONII	BRASSICACEAE	JEWELFLOWER, MORRISON'S	CA
I		STREPTANTHUS NIGER	BRASSICACEAE	JEWELFLOWER, TIBURON	CA
3C		STREPTANTHUS OLIGANTHUS	BRASSICACEAE	STREPTANTHUS, MASONIC MOUNTAIN	CA NV
2		STREPTANTHUS SPARSIFLORUS	BRASSICACEAE	JEWELFLOWER, SPARSELY-FLOWERED	TX
2		STREPTANTHUS SQUAMIFORMIS	BRASSICACEAE	JEWELFLOWER,	AR OK
[illegible]		STROGANOMIA TIEHMII	BRASSICACEAE	STROGANOMIA, TIEHM'S	NV
2		STYLISMA PICKERINGII VAR. PICKERINGII	CONVOLVULACEAE	MORNING-GLORY, PICKERING'S	GA NC NJ SC
S		STYLOPHYLLUM TRASKIAE	*** SEE ***	DUDLEYA TRASKIAE	
[illegible]		STYPHELIA TAMEIAMEIAE VAR. HEXAMERA	EPACRIDACEAE		HI
3C		STYRAX PLATANIFOLIA VAR. STELLATA	STYRACACEAE	SILVERBELLS,	TX
3A		STYRAX PORTORICENSIS	STYRACACEAE	PALO DE JAZMIN	PR
LE		STYRAX TEXANA	STYRACACEAE	SNOWBELLS, TEXAS	TX
2		STYRAX YOUNGAE	STYRACACEAE		TX, Mexico
1	•	SUAEDA DURIPES	CHENOPODIACEAE	SEEPWEED, HARDTOE	TX
3C		SULLIVANTIA HAPEMANII	SAXIFRAGACEAE		MT WY
S		SULLIVANTIA OHIONIS	*** SEE ***	SULLIVANTIA SULLIVANTII	
2		SULLIVANTIA OREGANA	SAXIFRAGACEAE		OR WA
3C		SULLIVANTIA PURPUSII	SAXIFRAGACEAE		CO
2		SULLIVANTIA RENIFOLIA	SAXIFRAGACEAE	SULLIVANTIA, KIDNEY-LEAVED	IL IA MN MO WI
3C		SULLIVANTIA SULLIVANTII	SAXIFRAGACEAE	SULLIVANTIA,	IN KY OH
LE		SWALLENIA ALEXANDRAE	POACEAE	GRASS, EUREKA DUNES	CA
S		SWERTIA COLORADENSIS	*** SEE ***	FRASERA COLORADENSIS	
2		SYMPHORICARPOS GUADALUPENSIS	CAPRIFOLIACEAE		TX
2		SYNANDRA HISPIDULA	LAMIACEAE	SYNANDRA,	AL IL IN KY NC OH TN VA WV
3C		SYNTHYRIS CANBYI	SCROPHULARIACEAE		MT
S		SYNTHYRIS HENDERSONII	*** SEE ***	SYNTHYRIS PINNATIFIDA VAR. CANESCENS	
2	•	SYNTHYRIS MISSURICA SSP. MIRSUTA	SCROPHULARIACEAE		OR
3C		SYNTHYRIS MISSURICA SSP. STELLATA /INED.	SCROPHULARIACEAE		OR WA
3C		SYNTHYRIS PINNATIFIDA VAR. CANESCENS	SCROPHULARIACEAE		ID MT
3C		SYNTHYRIS PINNATIFIDA VAR. LANUGINOSA	SCROPHULARIACEAE		WA
3C		SYNTHYRIS PLATYCARPA	SCROPHULARIACEAE		ID
1		SYNTHYRIS RANUNCULINA	SCROPHULARIACEAE	KITTENTAILS,	NV
3C		SYNTHYRIS SCHIZANTHA	SCROPHULARIACEAE		OR WA
2		TAENIDIA MONTANA	APIACEAE	PIMPERNEL, MOUNTAIN	MD PA VA WV
3C		TAGETES LEMMONII	ASTERACEAE		AZ
3B		TALINUM APPALACHIANUM	PORTULACACEAE		AL
2		TALINUM CALCARICUM	PORTULACACEAE		AL TN
3B		TALINUM GOODDINGII	PORTULACACEAE	FLAMEFLOWER, GOODDING	AZ
2		TALINUM MARGINATUM	PORTULACACEAE		AZ, Mexico
3C		TALINUM MENGESII	PORTULACACEAE		AL GA
3C		TALINUM OKANOGANENSE	PORTULACACEAE		WA, Canada (B.C.)
2		TALINUM RUGOSPERMUM	PORTULACACEAE		IA IL IN MN WI
2		TALINUM VALIDULUM	PORTULACACEAE		AZ UT
2		TANACETUM CAMPHORATUM	ASTERACEAE	TANSY, DUNE	CA
S		TANACETUM COMPACTUM	*** SEE ***	SPHAEROMERIA COMPACTA	
S		TANACETUM SIMPLEX	*** SEE ***	SPHAEROMERIA SIMPLEX	
I		TARAXACUM CALIFORNICUM	ASTERACEAE	DANDELION, CALIFORNIA	CA
2		TARAXACUM CARNEOCOLORATUM	ASTERACEAE		AK, Canada (Yukon)
3C		TAUSCHIA GLAUCA	APIACEAE	TAUSCHIA, GLAUCOUS	CA OR
[illegible]		TAUSCHIA HOOVERI	APIACEAE		WA
2		TAUSCHIA HOWELLII	APIACEAE	TAUSCHIA, HOWELL'S	CA OR
3C		TAUSCHIA STRICKLANDII	APIACEAE		OR WA
3C		TAUSCHIA TENUISSIMA	APIACEAE		ID WA
1		TAXUS FLORIDANA	TAXACEAE	YEW, FLORIDA	FL
2		TECTARIA AMESIANA	POLYPODIACEAE		FL, Bahamas
I		TEPHROSIA ANGUSTISSIMA	FABACEAE		FL
2		TEPHROSIA MOHRII	FABACEAE		AL FL GA
1		TERNSTROEMIA LUQUILLENSIS	THEACEAE	PALO COLORADO	PR
I		TERNSTROEMIA SUBSESSILIS	THEACEAE		PR
[illegible]		TETRACOCCUS DIOICUS	EUPHORBIACEAE	TETRACOCCUS, PARRY'S	CA, Mexico
2		TETRACOCCUS ILICIFOLIUS	EUPHORBIACEAE	TETRACOCCUS, HOLLY-LEAVED	CA
1	•	TETRAMOLOPIUM ARBUSCULUM	ASTERACEAE		HI
1	•	TETRAMOLOPIUM ARENARIUM	ASTERACEAE		HI

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
1	*	TETRAMOLOPIUM CAPILLARE	ASTERACEAE		HI
1		TETRAMOLOPIUM CONSANGUINEUM	ASTERACEAE		HI
1	*	TETRAMOLOPIUM CONYZOIDES	ASTERACEAE		HI
1		TETRAMOLOPIUM FILIFORME	ASTERACEAE		HI
1		TETRAMOLOPIUM HUMILE VAR. SUBLAEVE	ASTERACEAE		HI
3B		TETRAMOLOPIUM KAVAIENSIS VAR. KOLOANA	ASTERACEAE		HI
1		TETRAMOLOPIUM LEPIDOTUM	ASTERACEAE		HI
1		TETRAMOLOPIUM POLYPHYLLUM	ASTERACEAE		HI
1		TETRAMOLOPIUM REMYI	ASTERACEAE		HI
1		TETRAMOLOPIUM ROCKII	ASTERACEAE		HI
1	*	TETRAMOLOPIUM TENERRIMUM	ASTERACEAE		HI
7*		TETRAMOLOPIUS KAVAIENSIS VAR. KOLOANA	ARALIACEAE		HI
2		TETRAPLASANDRA BISATTENUATA	ARALIACEAE		HI
3B		TETRAPLASANDRA GYMNOCARPA VAR. PUPUKEENSIS	ARALIACEAE	'OHE,	HI
2		TETRAPLASANDRA HAWAIIENSIS VAR. HAWAIIENSIS	ARALIACEAE		HI
1		TETRAPLASANDRA HAWAIIENSIS VAR. MICROCARPA	ARALIACEAE	'OHE,	HI
2		TETRAPLASANDRA KAALAE VAR. MULTIPLEX	ARALIACEAE	'OHE,	HI
3B		TETRAPLASANDRA KAHANANA	ARALIACEAE		HI
1		TETRAPLASANDRA KAVAIENSIS VAR. DIPYRENA	ARALIACEAE	'OHE 'OHE,	HI
1		TETRAPLASANDRA KAVAIENSIS VAR. GRANDIS	ARALIACEAE	'OHE 'OHE,	HI
1	*	TETRAPLASANDRA KAVAIENSIS VAR. INTERCEDENS	ARALIACEAE	OHE 'OHE,	HI
1		TETRAPLASANDRA KAVAIENSIS VAR. KOLOANA	ARALIACEAE		HI
1	*	TETRAPLASANDRA KAVAIENSIS VAR. NAHIKUENSIS	ARALIACEAE		HI
1		TETRAPLASANDRA KAVAIENSIS VAR. OCCIDUA	ARALIACEAE		HI
1		TETRAPLASANDRA KOHALAE	ARALIACEAE		HI
1	*	TETRAPLASANDRA LANAIENSIS	ARALIACEAE		HI
2		TETRAPLASANDRA LIHUENSIS VAR. GRACILIPES	ARALIACEAE		HI
1		TETRAPLASANDRA LYDGATEI	ARALIACEAE		HI
2		TETRAPLASANDRA MEIANDRA VAR. BISOBTUSA	ARALIACEAE		HI
1		TETRAPLASANDRA MEIANDRA VAR. BRYANII	ARALIACEAE		HI
1		TETRAPLASANDRA MEIANDRA VAR. DEGENERI	ARALIACEAE		HI
1		TETRAPLASANDRA MEIANDRA VAR. HILLEBRANDII	ARALIACEAE		HI
2		TETRAPLASANDRA MEIANDRA VAR. HILOENSIS	ARALIACEAE		HI
1	*	TETRAPLASANDRA MEIANDRA VAR. LEPTOMERA	ARALIACEAE		HI
1		TETRAPLASANDRA MEIANDRA VAR. MAKALEHANA	ARALIACEAE		HI
2		TETRAPLASANDRA MEIANDRA VAR. RHYNCHOCARPOIDES	ARALIACEAE		HI
2		TETRAPLASANDRA MEIANDRA VAR. SIMULANS	ARALIACEAE		HI
1	*	TETRAPLASANDRA MUNROI	ARALIACEAE		HI
1		TETRAPLASANDRA OAHUENSIS VAR. ERADIATA	ARALIACEAE		HI
2		TETRAPLASANDRA OAHUENSIS VAR. FAURIEI	ARALIACEAE		HI
2		TETRAPLASANDRA OAHUENSIS VAR. HAILIENSIS	ARALIACEAE		HI
2		TETRAPLASANDRA OAHUENSIS VAR. LONGIPES	ARALIACEAE		HI
2		TETRAPLASANDRA OAHUENSIS VAR. PSEUDORHACHIS	ARALIACEAE		HI
2		TETRAPLASANDRA PUPUKEENSIS VAR. NITIDA	ARALIACEAE		HI
1		TETRAPLASANDRA PUPUKEENSIS VAR. PUPUKEENSIS	ARALIACEAE		HI
2		TETRAPLASANDRA PUPUKEENSIS VAR. VENOSA	ARALIACEAE		HI
2		TETRAPLASANDRA TURBANS	ARALIACEAE		HI
2		TETRAPLASANDRA WAIALEALAE VAR. URCEOLATA	ARALIACEAE		HI
1		TETRAPLASANDRA WAIANENSIS	ARALIACEAE	TETRAPLASANDRA, WAIANAE	HI
2		TETRAPLASANDRA WAIMEAE VAR. ANGUSTIOR	ARALIACEAE		HI
1		THALICTRUM COOLEYI	RANUNCULACEAE	MEADOWRUE, COOLEY'S	FL NC
3C		THALICTRUM DEBILE	RANUNCULACEAE		AL AR GA MS TX
2		THALICTRUM HELIOPHILUM	RANUNCULACEAE		CO
2		THALICTRUM STEELEANUM	RANUNCULACEAE	MEADOW-RUE, STEELE'S	DC MD PA VA WV
2		THALICTRUM TEXANUM	RANUNCULACEAE		TX
2		THELESPERMA PUBESCENS	ASTERACEAE		WY
2		THELESPERMA SUBNUDUM VAR. ALPINUM	ASTERACEAE		UT
3C		THELOCACTUS BICOLOR VAR. FLAVIDISPINUS	CACTACEAE		TX, Mexico
2		THELYPODIOPSIS ARGILLACEA	BRASSICACEAE	THELYPODY, CLAY	UT
3C		THELYPODIUM BRACHYCARPUM	BRASSICACEAE	THELYPODY, SHORT-PODDED	CA OR
2		THELYPODIUM EUCOSMUM	BRASSICACEAE		[illegible]
1		THELYPODIUM HOWELLII VAR. SPECTABILIS	BRASSICACEAE		[illegible]
3C		THELYPODIUM LAXIFLORUM	BRASSICACEAE		AZ CO NV UT
1		THELYPODIUM REPANDUM	BRASSICACEAE	THELYPODY, JAEGER'S (WAVY-LEAF)	ID
3C		THELYPODIUM SAGITTATUM VAR. OVALIFOLIUM	BRASSICACEAE		NV UT
LE		THELYPODIUM STENOPETALUM	BRASSICACEAE	MUSTARD, SLENDER-PETALED	CA
3C		THELYPODIUM TENUE	BRASSICACEAE	THELYPODY,	TX
3C		THELYPODIUM TEXANUM	BRASSICACEAE	THELYPODY,	TX
3B		THELYPODIUM VERNALE	BRASSICACEAE		NM
2		THELYPTERIS PILOSA VAR. ALABAMENSIS	POLYPODIACEAE		AL
2		THERMOPSIS MACROPHYLLA VAR. AGNINA	FABACEAE	FALSE LUPINE, SANTA BARBARA	CA
3C		THERMOPSIS MACROPHYLLA VAR. SEMOTA	FABACEAE		CA
1	*	THISMIA AMERICANA	BURMANNIACEAE		IL
2		THLASPI ARCTICUM	BRASSICACEAE		AK, Canada (B.C., Yukon)

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
2		THLASPI MONTANUM VAR. CALIFORNICUM	BRASSICACEAE		[illegible]
2		THLASPI MONTANUM VAR. SISKIYOUENSE	BRASSICACEAE		OR
2		THYSANOCARPUS CONCHULIFERUS	BRASSICACEAE	FRINGEPOD, ISLAND	CA
1		TILLANDSIA LINEATISPICA	BROMELIACEAE	PINON	[illegible] VI
3C		TITHONIA THURBERI	ASTERACEAE		AZ, Mexi[illegible]
S		TITHYMALUS AUSTRINUS	*** SEE ***	EUPHORBIA AUSTRINA	
3B		TOFIELDIA GLUTINOSA SSP. ABSONA	LILIACEAE		[illegible]
LE		TORREYA TAXIFOLIA	TAXACEAE	TORREYA, FLORIDA	FL [illegible]
S		TOUMEYA BRADYI	*** SEE ***	PEDIOCACTUS BRADYI	
S		TOUMEYA KNOWLTONII	*** SEE ***	PEDIOCACTUS KNOWLTONII	
S		TOUMEYA PEEBLESIANUS	*** SEE ***	PEDIOCACTUS PEEBLESIANUS VAR. PEEBLESIANUS	
3C		TOWNSENDIA ALPIGENA VAR. MINIMA	ASTERACEAE		UT
LT		TOWNSENDIA APRICA	ASTERACEAE	TOWNSENDIA, LAST CHANCE	UT
2		TOWNSENDIA JONESII VAR. TUMULOSA	ASTERACEAE		[illegible]
3C		TOWNSENDIA MENSANA	ASTERACEAE		UT
S		TOWNSENDIA MINIMA	*** SEE ***	TOWNSENDIA ALPIGENA VAR. MINIMA	
3C		TOWNSENDIA ROTHROCKII	ASTERACEAE		[illegible]
3C		TOWNSENDIA SMITHII	ASTERACEAE	GROUND-DAISY, BLACK ROCK	AZ
2		TOWNSENDIA SP. NOV. /INED. (NYE CO.)	ASTERACEAE	TOWNSENDIA	NV
2		TOWNSENDIA SP. NOV. INED.	ASTERACEAE		[illegible]
3C		TOWNSENDIA SPATHULATA	ASTERACEAE	TOWNSENDIA, SWORD	WY
2		TRACYINA ROSTRATA	ASTERACEAE	TRACYINA, BEAKED	CA
3C		TRADESCANTIA EDWARDSIANA	COMMELINACEAE		TX
2		TRADESCANTIA OZARKANA	COMMELINACEAE		AR [illegible] OK
3C		TRADESCANTIA WRIGHTII	COMMELINACEAE		[illegible] TX
3C		TRAGIA NIGRICANS	EUPHORBIACEAE		TX
2		TRAGIA SAXICOLA	EUPHORBIACEAE		FL
1		TREMATOLOBELIA WIMMERI	CAMPANULACEAE		HI
1		TRICHILIA TRIACANTHA	MELIACEAE	BARIACO	PR
1		TRICHOMANES DRAYTONIANUM	HYMENOPHYLLACEAE		HI
1		TRICHOSTEMA AUSTROMONTANUM SSP. COMPACTUM	LAMIACEAE	BLUECURLS, MIDDEN LAKE	CA-
2	*	TRIFOLIUM AMOENUM	FABACEAE	CLOVER, SHOWY INDIAN	CA
3C		TRIFOLIUM ANDERSONII SSP. BEATLEYAE	FABACEAE	CLOVER, FIVE-LEAF, BEATLEY'S	CA NV
1		TRIFOLIUM ANDERSONII VAR. FRISCANUM	FABACEAE		UT
2		TRIFOLIUM BARNEBYI	FABACEAE		WY
2		TRIFOLIUM BOLANDERI	FABACEAE	CLOVER, BOLANDER	CA
3C		TRIFOLIUM DEDECKERAE	FABACEAE	CLOVER, DEDECKER	CA
2		TRIFOLIUM LEIBERGII	FABACEAE		[illegible]
3C		TRIFOLIUM LEMMONII	FABACEAE	CLOVER, LEMMON'S	CA NV
2		TRIFOLIUM OWYHEENSE	FABACEAE	CLOVER, OWYHEE	ID OR
3C		TRIFOLIUM PLUMOSUM VAR. AMPLIFOLIUM	FABACEAE		ID
3C		TRIFOLIUM PLUMOSUM VAR. PLUMOSUM	FABACEAE		OR [illegible]
2		TRIFOLIUM POLYODON	FABACEAE	CLOVER, PACIFIC GROVE	CA
1		TRIFOLIUM STOLONIFERUM	FABACEAE	BUFFALO-CLOVER, RUNNING	[illegible] IL IN KS KY MO OH WV
2		TRIFOLIUM THOMPSONII	FABACEAE	CLOVER, THOMPSON	WA
2		TRIFOLIUM TRICHOCALYX	FABACEAE	CLOVER, DEL MONTE	CA
2		TRIFOLIUM VIRGINICUM	FABACEAE	CLOVER, KATE'S-MOUNTAIN	[illegible] PA VA WV
3C		TRILLIUM OVATUM SSP. OETTINGERI	LILIACEAE		CA
LE		TRILLIUM PERSISTENS	LILIACEAE	TRILLIUM, PERSISTENT	[illegible] SC
2		TRILLIUM PUSILLUM VAR. MONTICULUM	LILIACEAE		VA WV
2		TRILLIUM PUSILLUM VAR. OZARKANUM	LILIACEAE	TRILLIUM, LEAST, OZARK	[illegible] KY [illegible] TN
2		TRILLIUM PUSILLUM VAR. PUSILLUM	LILIACEAE		AL KY MS NC SC TN
2		TRILLIUM PUSILLUM VAR. VIRGINIANUM	LILIACEAE	TRILLIUM, LEAST, VIRGINIA	[illegible] VA
2		TRILLIUM RELIQUUM	LILIACEAE		AL [illegible] SC
3C		TRILLIUM TEXANUM	LILIACEAE		LA TX
2		TRIPHORA CRAIGHEADII	ORCHIDACEAE	NODDING-CAPS,	FL
2	*	TRIPHORA LATIFOLIA	ORCHIDACEAE	NODDING-CAPS,	FL
1		TRIPSACUM FLORIDANUM	POACEAE	GAMA GRASS,	FL
2	*	TRISETUM ORTHOCHAETUM	POACEAE		MT
2		TRITELEIA CLEMENTINA	LILIACEAE		CA
3C		TRITELEIA DUDLEYI	LILIACEAE		CA
3C		TRITELEIA LEMMONAE	LILIACEAE		AZ
3C		TRITELEIOPSIS PALMERI	LILIACEAE		AZ, Mexico
3C		TROLLIUS LAXUS SSP. LAXUS	RANUNCULACEAE		CT NJ NY OH PA
2		TROPIDOCARPUM CAPPARIDEUM	BRASSICACEAE	TROPIDOCARPUM, CAPER-FRUITED	CA
1		TUCTORIA GREENEI	POACEAE	ORCUTT GRASS, GREENE'S	CA
PE		TUMAMOCA MACDOUGALII	CUCURBITACEAE	GLOBE-BERRY, TUMAMOC	AZ, Mexico
1		URERA KAALAE	URTICACEAE	OPUHE	HI
2		URERA KONAENSIS	URTICACEAE		HI
S		UROSTACHYS HALEAKALAE	*** SEE ***	LYCOPODIUM HALEAKALAE	
S		UROSTACHYS NUTANS	*** SEE ***	LYCOPODIUM NUTANS	
2		URTICA CHAMAEDRYOIDES VAR. RUNYONII	URTICACEAE	ORTIGUILLA,	TX
S		UTAHIA PEEBLESIANUS	*** SEE ***	PEDIOCACTUS PEEBLESIANUS VAR. PEEBLES	[illegible]anus
S		UTAHIA SILERI	*** SEE ***	PEDIOCACTUS SILERI	
3B		VACCINIUM COCCINEUM	ERICACEAE	BILBERRY, SISKIYOU MOUNTAINS	CA OR
1		VACCINIUM SEMPERVIRENS	ERICACEAE		SC
3B		VACCINIUM VACILLANS VAR. MISSOURIENSE	ERICACEAE		MO
3C		VALERIANA COLUMBIANA	VALERIANACEAE		WA, Canada (B.C.)
3C		VALERIANA TEXANA	VALERIANACEAE		[illegible] TX
3C		VALERIANA ULIGINOSA	VALERIANACEAE	VALERIAN, MARSH	IL IN ME MI NH NY OH VT WI, Canada (N.B., Ont., Que.)

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
3C		VALERIANELLA TEXANA	VALERIANACEAE	CORNSALAD, EDWARDS' PLATEAU	TX
3C		VANCOUVERIA CHRYSANTHA	BERBERIDACEAE		[illegible]
2		VAUQUELINIA PAUCIFLORA	ROSACEAE		[illegible], Mexico
3C		VERATRUM FIMBRIATUM	LILIACEAE		[illegible]
S		VERATRUM INTERMEDIUM	*** SEE ***	VERATRUM WOODII	
3C		VERATRUM WOODII	LILIACEAE	HELLEBORE, FALSE	AR FL [illegible] IL IN IA KY MO [illegible] TN TX
1		VERBENA CALIFORNICA	VERBENACEAE		CA
2		VERBENA MARITIMA	VERBENACEAE		FL
1		VERBENA TAMPENSIS	[illegible]	VERVAIN,	FL
2		VERBESINA CHAPMANNII	ASTERACEAE	CROWNBEARD, CHAPMAN'S	FL
1		VERBESINA HETEROPHYLLA	ASTERACEAE		FL
2		VERNONIA BORINQUENSIS	ASTERACEAE		[illegible]
3C		VERNONIA PULCHELLA	[illegible]		[illegible]
3C		VERONICA COPELANDII	SCROPHULARIACEAE	SPEEDWELL, COPELAND'S	CA
3B		VERONICA SHERWOODII	SCROPHULARIACEAE		[illegible]
2		VIBURNUM BRACTEATUM	CAPRIFOLIACEAE	ARROWWOOD,	AL [illegible] TN
LE		VICIA MENZIESII	FABACEAE	VETCH, HAWAIIAN	HI
1		VICIA OCALENSIS	FABACEAE	VETCH, OCALA	FL
3B		VICIA REVERCHONII	FABACEAE	VETCH, HAIRY POD	[illegible] TX
1		VIGNA OWAHUENSIS	FABACEAE	VIGNA, OAHU	HI
1		VIGNA SANDWICENSIS	FABACEAE		HI
S		VIGUIERA LUDENS	*** SEE ***	HELIANTHUS LUDENS	
3C		VIGUIERA PORTERI	ASTERACEAE		AL [illegible]
3C		VIGUIERA SOLICEPS	ASTERACEAE	SUNFLOWER, PARIA	UT
S		VINCETOXICUM ALABAMENSE	*** SEE ***	MATELEA ALABAMENSIS	
3B		VIOLA ADUNCA VAR. CASCADENSIS	VIOLACEAE		[illegible]
1		VIOLA CHAMISSONIANA	VIOLACEAE	'OLOPU	HI
S		VIOLA CHARLESTONENSIS	*** SEE ***	VIOLA PURPUREA VAR. CHARLESTONENSIS	
3C		VIOLA EGGLESTONII	VIOLACEAE		AL [illegible] KY [illegible]
3C		VIOLA FLETTII	VIOLACEAE	VIOLET, FLETT'S	[illegible]
1		VIOLA HELENA	VIOLACEAE		HI
1		VIOLA KAUAIENSIS VAR. WAHIAWAENSIS	VIOLACEAE		HI
3C		VIOLA LANCEOLATA SSP. OCCIDENTALIS	VIOLACEAE		[illegible]
2		VIOLA NOVAE-ANGLIAE	VIOLACEAE	VIOLET, NEW ENGLAND	[illegible] MI, Canada (Man., N.B., Ont.)
1		VIOLA OAHUENSIS	VIOLACEAE		HI
3C		VIOLA PURPUREA VAR. CHARLESTONENSIS	VIOLACEAE	VIOLET, LIMESTONE	[illegible] UT
2		VIOLA ROBUSTA	VIOLACEAE		HI
3C		VIOLA TOMENTOSA	VIOLACEAE	VIOLET, FELT-LEAF	[illegible]
3C		WALDSTEINIA IDAHOENSIS	ROSACEAE		ID
2		WALDSTEINIA LOBATA	ROSACEAE		[illegible] SC
2		WALTHERIA PYROLAEFOLIA	STERCULIACEAE		HI
2		WAREA AMPLEXIFOLIA	BRASSICACEAE		FL
1		WAREA CARTERI	BRASSICACEAE		FL
3C		WAREA SESSILIFOLIA	BRASSICACEAE		AL FL
S		WEDELIA CRISTATA	*** SEE ***	ALLIONIA CRISTATA	
2		WIKSTROEMIA BASICORDA	THYMELAEACEAE		HI
2		WIKSTROEMIA HANALEI	THYMELAEACEAE		HI
2		WIKSTROEMIA ISAE	THYMELAEACEAE		HI
1		WIKSTROEMIA LEPTANTHA	THYMELAEACEAE		HI
2		WIKSTROEMIA MONTICOLA VAR. OCCIDENTALIS	THYMELAEACEAE		HI
2		WIKSTROEMIA PERDITA	THYMELAEACEAE		HI
2		WIKSTROEMIA SKOTTSBERGIANA	THYMELAEACEAE		HI
1	*	WIKSTROEMIA VILLOSA	THYMELAEACEAE		HI
1	-	WILKESIA HOBDYI	ASTERACEAE	ILIAU, DWARF	HI
3C		WILLKOMMIA TEXANA	POACEAE		TX
3B		WOODSIA ABBEAE	POLYPODIACEAE		MI [illegible] WI
2		WOODSIA OREGANA VAR. CATHCARTIANA	POLYPODIACEAE	WOODSIA, OREGON	[illegible] NY WI, Canada
S		WULFENIA BULLII	*** SEE ***	BESSEYA BULLII	
2		WYETHIA RETICULATA	ASTERACEAE	MULE-EARS, EL DORADO	CA
S		XANTHOCEPHALUM CALIFORNICUM	*** SEE ***	GUTIERREZIA CALIFORNICA	
S		XANTHOCEPHALUM SAROTHRAE VAR. POMARIENSE	*** SEE ***	GUTIERREZIA SAROTHRAE VAR. POMARIENSIS	
3C		XYLORHIZA COGNATA	ASTERACEAE		CA, Mexico (Baja California)
3C		XYLORHIZA CONFERTIFOLIA	ASTERACEAE		UT
2		XYLORHIZA CRONQUISTII	ASTERACEAE		UT
2		XYLORHIZA ORCUTTII	ASTERACEAE	ASTER, ORCUTT'S	CA, Mexico (Baja California)
2		XYLOSMA CRENATUM	FLACOURTIACEAE		HI
2		XYRIS DRUMMONDII	XYRIDACEAE		[illegible] FL GA LA MS
2		XYRIS ISOETIFOLIA	XYRIDACEAE		FL
3C		XYRIS LONGISEPALA	XYRIDACEAE	YELLOW-EYED-GRASS, KRAL'S	AL FL
2		XYRIS SCABRIFOLIA	XYRIDACEAE		AL FL GA MS
2		XYRIS TENNESSEENSIS	XYRIDACEAE		AL [illegible] TN
3C		YUCCA ANGUSTISSIMA VAR. TOFTIAE	LILIACEAE		UT
S		YUCCA TOFTIAE	*** SEE ***	YUCCA ANGUSTISSIMA VAR. TOFTIAE	
S		ZAMIA FLORIDANA	*** SEE ***	ZAMIA INTEGRIFOLIA	
3C		ZAMIA INTEGRIFOLIA	CYCADACEAE	COONTIE, FLORIDA	FL GA
2		ZANTHOXYLUM BLUETTIANUM	RUTACEAE	A'E (HEA'E)	HI
1		ZANTHOXYLUM DIPETALUM	RUTACEAE	KAWA'U	HI
2		ZANTHOXYLUM GLANDULOSUM	RUTACEAE		HI
1		ZANTHOXYLUM HAWAIIENSE	RUTACEAE		HI

STATUS		SCIENTIFIC NAME	FAMILY	COMMON NAME	RANGE
2		ZANTHOXYLUM KAUAENSE VAR. KOHUANA	RUTACEAE		HI
2		ZANTHOXYLUM MAVIENSE	RUTACEAE		HI
2		ZANTHOXYLUM PARVUM	RUTACEAE	TICKLE-TONGUE, SHINNER'S	TX
1		ZANTHOXYLUM SEMIARTICULATUM	RUTACEAE	A'E (HEA'E)	HI
2		ZANTHOXYLUM SKOTTSBERGII	RUTACEAE	A'E (HEA'E)	HI
PE		ZANTHOXYLUM THOMASIANUM	RUTACEAE	PRICKLY-ASH,	PR VI
3C		ZEPHYRANTHES SIMPSONII	LILIACEAE		FL GA SC
3C		ZEPHYRANTHES TREATIAE	LILIACEAE		FL
3C		ZIGADENUS VAGINATUS	LILIACEAE	DEATHCAMUS, SHEATHED	NV UT
LE		ZIZANIA TEXANA	POACEAE	WILD-RICE, TEXAS	TX
2		ZIZIA LATIFOLIA	APIACEAE		FL
2	•	ZIZIPHUS CELATA	RHAMNACEAE		FL

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Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

Minimum Property Standards for One and Two Family Dwellings; Final Rule

(Replaces HUD Handbook 4900.1)

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R-85-1183; FR-1655]

Revision of Minimum Property Standards (MPS) for One and Two Family Dwellings

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule changes the basic structure of HUD's Minimum Property Standards (MPS) for one and two family dwellings. The handbook which contained the MPS for such structures is eliminated. The Department will now rely upon acceptable local building codes, acceptable State building codes where there are no acceptable local building codes, or the Counsel of American Building Officials' (CABO) One and Two Family Dwelling Code where there are no acceptable State building codes. State and local codes are acceptable when the HUD Field Office verify them as being comparable to one of the national model codes. Necessary requirements which are unlikely to be contained in State or local codes and not contained in the CABO One and Two Family Dwelling Code are set forth in the Department's regulations as written herein.

These revisions will preserve the quality of one and two family dwellings and protect the Department's insurance fund while simplifying the Department's construction criteria.

EFFECTIVE DATE: November 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mark W. Holman, Manufactured Housing and Construction Standards Division, Room 9156, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755–6584. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The National Housing Act, 12 U.S.C. 1701–1749, authorizes the Secretary of Housing and Urban Development (Secretary) to prescribe standards for determining the acceptability of one and two family residential structures for purposes of mortgage insurance. *See, e.g.*, 12 U.S.C. 1715/(f). Some general statutory guidelines govern the nature of these standards. For example, the standards are "to establish the acceptability of. . . . propert[ies] for mortgage insurance . . ." 12 U.S.C. 1715/(f). In addition, the standards must be consistent with the declared national housing policy of realizing "the goal of a decent and suitable living environment for every American family. . . ." *See* 42 U.S.C. 1441.

The Department has prescribed these standards by issuing the Minimum Property Standards (MPS) for One and Two Family Dwellings, which were published as HUD Handbook 4900.1, and incorporated by reference into the Department's regulations by authority of 24 CFR 200.927. Changes in the structure of the MPS are being made to further the indicated statutory purposes.

The Department also has evaluated the revisions to the MPS in light of the recent amendment of Section 526 of the National Housing Act, 12 U.S.C. 1735f–4. *See* Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98–181, sec. 405, 97 Stat. 1153 (1983). As amended, section 526 now permits the Secretary to require, with respect to health and safety, that properties other than manufactured homes comply "with one of the nationally recognized model building codes, or with a State or local building code based on one of the nationally recognized model building codes or their equivalent." The Secretary is "responsible for determining the comparability of the State and local codes to such model codes. . . ."

On October 11, 1984, the Department published a proposed rule to revise the MPS. *See* 49 FR 39855. That rule proposed that the Department rely upon acceptable State and local codes and eliminate the handbook containing the MPS for One and Two Family Dwellings. This final rule adopts as final that proposed rule. It is also similar in many respects to the final rule amending the MPS for Multifamily Housing which was published on May 1, 1984 [49 FR 18690].

Four hundred sixty-one comments were received in response to the proposed rule, and the Department has evaluated the revisions to the MPS in light of those comments.

The Department is aware of the fact that unnecessary or needlessly complex regulations can increase the final cost of a home. This rule is part of the Department's continuing effort to eliminate regulations where possible and to simplify regulations that cannot be eliminated.

I. Description of Final Rule

A. General

The Department is revising the MPS for One and Two Family Dwellings in order to simplify them. Generally, HUD will rely upon State or local building codes or the Council of American Building Officials' (CABO) One and Two Family Dwelling Code to provide the health and safety criteria for its single family construction standards. The Department will rely upon a State or local code only after it has been accepted by the Department as being comparable to one of the nationally recognized model building codes or its equivalent. In some jurisdictions, the Department may partially accept a State or local code. In such areas, the Department will rely upon the State or local code, plus those provisions of the CABO One and Two Family Dwelling Code identified by the local HUD Field Office in accordance with 24 CFR 200.926c. In jurisdictions where a State or local code has not been accepted or partially accepted by the Department, or where no State or local code exists, the Department will require compliance with the CABO One and Two Family Dwelling Code, the Electrical Code for One and Two Family Dwellings and the requirements under Sections 200.926 d and e.

In those instances where the Department will require compliance with the CABO One and Two Family Dwelling Code, the developer or other interested party must also comply with the mandatory codes or standards incorporated by reference therein and the requirements of § 200.926e. In addition, compliance with the Electrical Code for One and Two Family Dwellings, NFPA 70A, 1984 edition, including the appendices, is required. This is identified in 24 CFR 200.926b(a)(2).

In all instances, the Department will require compliance with the standards set forth in § 200.926d, entitled "Construction Requirements". This section contains standards relating to energy and certain other matters.

Section 521 of the National Housing Act, 12 U.S.C. 1735e, requires the Secretary to "adopt a uniform procedure for the acceptance of materials and products to be used in structures approved for mortgages or loans insured under [the National Housing] Act." The Secretary has established such procedures in Handbook 4950.1 and in 24 CFR 200.935. This final rule will not affect these procedures.

Section 100–2 of the now-eliminated MPS for One and Two Family

Dwellings, HUD Handbook 4900.1, provided that "[e]xisting construction shall comply with the Requirements for Existing Housing—One- to Four-Family Living Units, HUD Handbook 4905.1." Under this final rule, this handbook will not be referenced in the Code of Federal Regulations. This handbook will, however, be maintained by the Department as a single family program handbook.

B. Standard for Determining Comparability of State or Local Codes

The Department will determine whether a State or local code is comparable to one of the nationally recognized model codes by conducting an analysis of the comprehensiveness of the State or local code. For use in performing this analysis, the Department has prepared a list of construction-related areas. *See* § 200.926a. This list is based upon the provisions of the nationally recognized model building codes and is made up of major areas and subareas. Each major area has been made a separate paragraph of § 200.926a. For example, Fire Safety is paragraph (a) and Light and Ventilation is paragraph (b). Each major area has been further divided into subareas. For example, the Light and Ventilation paragraph has been divided into two subareas: (1) Habitable rooms and (2) Bath and Toilet rooms.

A State or local code will be found comparable, and therefore acceptable, if it regulates every subarea set forth in § 200.926a. A State or local code will be found partially acceptable if it fails to regulate from one to eight subareas in the same major area; however, no code will be found partially acceptable if it fails to regulate subareas in more than one of the major areas.

Consequently, every State or local code which is partially accepted will be deficient in only one major area. The local HUD Field Office will remedy the deficiency by designating those provisions of the CABO One and Two Family Dwelling Code which regulate the entire major area found deficient. This designation will be made in accordance with the table set forth in § 200.926c.

If a local code is not found to be acceptable or partially acceptable, one and two family residential structures will have to comply, for HUD purposes, with the State code if the State code is considered acceptable or partially acceptable. If the State code is not found acceptable or partially acceptable, one and two family residential structures will have to comply, for HUD purposes, with the CABO One and Two Family Dwelling Code, § 200.926e, and NFPA 70A. In all cases, the requirements set forth in § 200.926d shall apply.

The HUD Field Office, using provisions from the CABO code, will remedy deficiencies in partially acceptable State or local codes so they may be used for HUD purposes. For example, a jurisdiction's code may be deficient in the "Plumbing" major area because it fails to regulate the "Vents and Venting" and the "Cleanouts" subareas. In such a case, the code will be found to be partially acceptable because only subareas from one major area are lacking. The Field Office will remedy the deficiencies in the "Plumbing" major area by designating Part V of the CABO One and Two Family Dwelling Code. Thus, in that jurisdiction, for HUD purposes, properties will have to comply with Part V of the CABO One and Two Family Dwelling Code, the entire local code except for the plumbing requirements, and the requirements set forth in § 200.926d.

To determine whether this method of evaluating comparability would protect the Department's interests and satisfy all statutory requirements, the Department conducted a study of representative local codes. Codes from nine jurisdictions were evaluated. Three of the jurisdictions were large cities, three were medium sized cities, and three were small cities. One city of each size was selected from geographically diverse areas of the nation. As a result of this evaluation, it was found that seven of the codes regulated the areas identified in § 200.926a.

These seven codes were then subjected to a more detailed evaluation. This detailed analysis was performed to determine whether the local codes were in fact comparable to one of the nationally recognized model codes. In each case where the Department subjected a code to detailed analysis, we determined that it was comparable to one of the model codes.

C. Review Process

Before a State or local code can be relied upon to provide health and safety requirements for HUD purposes, it will have to be accepted or partially accepted by the Department. The review process for State codes, however, differs from that for local codes. With respect to State codes, the HUD Field Offices will immediately review them, without requests or submissions from lenders or other interested parties.

The Department will review a local code when it receives a request from a lender or other interested party. The person requesting review must submit to the HUD Field Office a copy of the local building code and a copy of the statute, ordinance, order or regulation establishing the code, if any. The submitting party will not be required to submit copies of any part of a code already in the possession of the particular HUD Field Office. If the Department accepts the local code, it will issue a letter stating that the code is acceptable. If the Department declines to accept a local code, the submitting party will be notified, and given an opportunity to present its views as to why the local code should be accepted.

If the local code has been neither previously accepted nor partially accepted and if a lender or other interested party wishes to have it accepted, then it must submit the material described in the preceding paragraph. If a local code has been previously accepted or partially accepted, then lenders or other interested parties must submit either a certificate stating that the local code has not been changed since the date of its acceptance or partial acceptance by the Secretary, or a copy of all changes that have been made since the date of the Secretary's acceptance or partial acceptance. All submissions must be made by the time of application for mortgage insurance or other benefits.

Each Regional and Field Office will maintain a current list of States and jurisdictions with accepted or partially accepted codes, including the dates of acceptances.

D. Use of the Council of American Building Officials (CABO) One and Two Family Dwelling Code

In those jurisdictions without acceptable or partially acceptable local codes, one and two family dwellings must comply, for HUD purposes, with an acceptable or partially acceptable State code. In those jurisdictions without acceptable or partially acceptable State or local codes, one and two family dwellings will have to comply, for HUD purposes, with the CABO One and Two Family Dwelling Code identified in 24 CFR 200.926b(a) and with the requirements of § 200.926e. In all cases, the requirements set forth in § 200.926d shall apply.

In those jurisdictions with a partially acceptable local code or a partially acceptable State code, certain portions of the CABO code identified in 24 CFR 200.926b(a) will be used. The HUD Field Office will identify, in the written notice of partial acceptance, those portions of the CABO code with which the dwelling must comply. In so doing, the HUD Field Office will rely upon the table at § 200.926c to determine which portions

of the CABO code will supplement the partially acceptable State or local code.

The requirement to comply, for HUD purposes, with all or part of the CABO code or any State or local code applies only to the particular one or two family dwelling in question and has no applicability to other buildings in the community.

E. Differences Between the Proposed and Final Rules

Under the proposed rule, if the code which was applicable in a particular jurisdiction was found to be neither acceptable nor partially acceptable, then one and two family dwellings would have had to comply, for HUD purposes, with one of three nationally recognized model codes. The code to be evaluated was the code applicable in the jurisdiction, whether it was a local code, a State code, or a combination of the two. The final rule changes this system in two respects. First, the Department will evaluate a local code, if there is one, to determine its acceptability. If it is found to be neither acceptable nor partially acceptable, then one and two family dwellings will have to comply, for HUD purposes, with an acceptable or partially acceptable State code, if one exists. If no acceptable or partially acceptable State code exists, then one and two family dwelling will have to comply, for HUD purposes, with the CABO One and Two Family Dwelling Code. Reliance upon the CABO code is the second change in the system which would have been established under the proposed rule. Under the proposed rule, the Department would have permitted reliance upon the BOCA Basic/National Building Code; the Standard Building Code; or the Uniform Building Code. In addition to these changes, the final rule adds references to Appendices C and F of HUD Handbook 4910.1, "Minimum Property Standards for Multifamily Housing." Finally, a number of minor editorial changes have been made in the rule in order to clarify its meaning and application.

II. Public Comments

A. General

The Department received 461 comments. Most of these were concerned with the thermal energy requirements set forth in § 200.926d. Many of the comments indicated support for the policies underlying the rule change. Other comments suggested changes to specific provisions of the proposed rule.

The Department received several comments with respect to the rule's general policy of relying on State or local codes to the greatest extent possible. One commenter complained that the rule would allow an "unnecessary and excessive proliferation" of different requirements throughout the country. All housing, whether conventionally or HUD financed, has always had to comply with local building codes. Only HUD financed housing had to comply with an additional set of standards, the MPS. The Department believes that the use of State or local codes will significantly reduce the burden of conflicting requirements that several layers of building standards tend to create. Moreover, this rule is consistent with both the Administration's policy of federalism and the Department's statutory mandate.

Another commenter argued that the existing MPS should be retained because model and State or local codes are primarily concerned with health and safety issues. They do not regulate performance and durability, as the existing MPS do. According to this commenter, the elimination of HUD's MPS will enable builders and developers to increase their profits and in the process build shoddier houses, which, in the long run, will reduce the quality of housing. For several reasons, the Department believes that the new system will not be deleterious to HUD-financed or other housing. First of all, the elimination of some criteria does not mean that builders will eliminate quality materials or good design. Conventionally financed housing has for years been built to meet specifications that exceed HUD's standards, because HUD has historically set only minimum standards. Consumer taste has often dictated more than the MPS requires. While elimination of the MPS will not reduce the quality of construction, it will eliminate the adherence to duplicative building codes, which can increase the cost of construction. Additionally, elimination of a single federal standard will allow for greater flexibility in addressing local needs through the use of local or regional codes. Further, buyers in today's market place are better educated and able to determine for themselves whether they wish to purchase homes containing marketability or liveability fixtures.

Moreover, the rule addresses only the construction criteria of home building, not the valuation procedures. If a buyer chooses to accept smaller spaces or fewer features in a home so that he or she can save money, the valuation procedures will reflect this choice. These valuation procedures establish the maximum mortgage amount the Department will insure.

Finally, the primary purpose for the MPS throughout its history was to reduce the risk to the Department's insurance fund by ensuring that HUD could dispose of homes acquired through foreclosure at a minimum of loss to the Department. The Department has concluded that because of the increasing acceptability of local codes, buyer education, and builder interest, the use of model codes and the additional criteria of the Rule are sufficient to produce construction which will be adequate collateral to support an acceptable mortgage insurance risk. In sum, the Department is confident that construction meeting acceptable State or local codes or the CABO code, plus the additional requirements set forth herein, is adequate for HUD purposes and ensures that the quality of construction will remian high for the homebuyer.

The Department solicited comment on six subjects. *See* the proposed rule to revise the Minimum Property Standards for one and two family dwellings published on October 11, 1984 at 49 FR 39858. The discussion of the comments below corresponds to these six inquiries. Comments not pertaining to any of these areas are discussed in section II.g.

B. Energy

In the proposed rule, the Department solicited comment concerning the energy requirements of the MPS:

> The Department is considering making changes to the energy requirements discussed above. In particular, the Department is considering whether to adopt the energy standards contained in the January 29, 1984 Addenda to ANSI/ASHRAE/IES 90A–1980 or the standards contained in the 1983 edition of the Model Energy Code. The Department seeks comment on these alternatives and on the availability and the propriety of other options. 49 FR 39858.

In response, the Department received numerous comments relating to energy requirements. Many commenters expressed concern that adoption of a model code or standard would eliminate the special consideration for masonry construction granted by HUD's Local Acceptable Standard for Arizona and Florida. Many other commenters suggested that we adopt one of the versions of the Model Energy Code or the ANSI/ASHRAE/IES Standard. Finally, the Department received many comments suggesting specific changes to the MPS energy standards.

After reviewing these comments, the Department has decided not to proceed to a final rule with respect to the energy

requirements of the MPS for one and two family dwellings. Rather, the Department will continue to evaluate the comments and to study possible alternatives, and will issue a final rule for energy criteria in the future.

The energy criteria will, therefore, remain unchanged from those currently in effect. To be consistent with the new structure of the MPS, however, the current energy criteria will be published in the Code of Federal Regulations, at 24 CFR 200.926d(d). One commenter suggested that the energy criteria should remain in handbook form because the Code of Federal Regulations (CFR) is not available to builders. The Department believes that publication in the CFR ensures that any standards contained therein are widely available. Moreover, the HUD Field Offices will reprint and make available to builders the construction requirements in § 200.926 d and e.

C. Burden on Small Homebuilders

The second subject on which the Department solicited comment was whether this rule would "reduce burdens on small homebuilders, who often find it especially difficult to comply with two different sets of construction standards." 49 FR 39858. The Department also sought comment as to "whether the proposed arrangements will lead to any particular difficulties for small builders in learning of the standards to which they must comply, and as to what additional measures the Department might adopt to alleviate the disadvantages inherent in small operations." 49 FR 39858. Only a few commenters responded directly concerning this matter. In general, the commenters who responded believed that the Department's proposal would reduce regulatory conflicts, minimize waste and bring home costs down. They also commented that neither lenders nor builders would have problems in complying with the simplified requirements.

One commenter recognized that lenders and builders will need some type of education program to acquaint them with the changes. The Department realizes there will be some uncertainty as to the correct procedures during the transition period from the current system to the new system. During this transition, the Department's staff will be trained in code acceptance and use and will be instructed to give as much assistance to lenders and builders as possible. Formal or organized training by the Department for lenders and builders is not possible because of staff and funding limitations. However, if problems arise, appropriate information will be disseminated to ensure a full understanding of the necessary program functions by private sector participants.

D. Applicable Construction Standards

The Department requested comment on whether the proposed approach to correcting deficiencies in State or local codes, when they are judged partially acceptable, would impose any serious burdens upon builders. The Department also requested comment on whether there was an alternative, less burdensome approach that is consistent with the Department's mandate.

One commenter expressed concern that when local codes are supplemented by referencing portions of model codes (in the final rule, only the CABO code), there is a possibility that conflicts between the local and CABO codes could occur. The commenter suggested that when conflicts arise, the local code should prevail.

The Department's intent is to allow the use, where possible, of State or local codes as HUD's health and safety criteria. When the State or local code is deficient in that it does not cover subareas in only one area, CABO code criteria will be used only to supplement the deficient State or local code. The Department recognizes that there may be times when the State or local code criteria are not compatible with the portion of the CABO code designated to supplement the deficient code. When conflict occurs, the local HUD Field Office will determine, on a case-by-case basis, which criteria will apply. *See* § 200.926(b). The Department believes that this approach provides sufficient flexibility for lenders and builders, yet will ensure that the Department's interest in providing decent, safe and sanitary housing is met.

Another commenter pointed out that, under the Proposed Rule, the local HUD Field Office would have been required to designate an appropriate model code to be used when a jurisdiction has a partially accepted code. This could result in more than one model code being designated by a HUD Field Office, depending upon which part of the local code was deficient. Further, in neighboring local jurisdictions under the same or a different HUD Field Office jurisdiction, a different model code could be referenced for the same deficient part of a local code. Finally, it was pointed out that when there is no acceptable local code, the Proposed Rule directed the lender or other interested party to select the model code to be used. The commenter concluded that this system could yield a maze of construction requirements. It would have been very difficult for the small home builder, fee inspectors, direct endorsement mortgagees, and HUD Field Office staff to know which criteria would be applicable in every local jurisdiction, to keep current editions of the local and model codes, and to build, review plans and specifications and inspect construction to so many different combinations of local and model codes.

To eliminate potential conflicts or confusion, we are eliminating the options that permit the HUD Field Office and the lender or other interested party to choose which model code applies. The Final Rule now incorporates by reference only the CABO One and Two Family Dwelling Code as a model building code. Where there is no acceptable local code, the lender or other interested party is required to comply with the State building code, if it is acceptable or partially acceptable. If there is not an acceptable or partially acceptable State building code, then the CABO One and Two Family Dwelling Codes applies. Where the State or local code is partially acceptable, the HUD Field Office will supplement it with portions of the CABO code.

The Department has decided to use only the CABO code for several reasons other than the simplicity that the use of only one code will provide. First, the CABO code has been widely adopted throughout the country. Second, it is a model code created strictly for the regulation of single family dwellings. Third, it was created and is referenced by the three major model code organizations as single family dwelling criteria. Fourth, referencing only the CABO code will obviate the need for including a mechanism in the rule to ensure that all of the model code references are current. Finally, the CABO code regulates the construction areas identified in § 200.926a in a way that the Department has concluded adequately protects its interests.

One commenter argued that the Department should not supplement a deficient subarea of a State or local code by substituting an entire major area of a model (now CABO) code. Another commenter suggested that HUD should specify, on a case-by-case basis, what modifications would be necessary. The Department believes, however, that the system as proposed will effectively supplement partially acceptable codes. It has been the Department's experience that if a State or local code is deficient in one subarea, there are likely to be other deficiencies in other subareas within the major area involved. Thus, substitution of the entire major area ensures that all relevant criteria are

adequately addressed. Further, by establishing a uniform system under which partially acceptable codes will be supplemented, the Department can both minimize confusion and attain some uniformity within a State or local jurisdiction.

E. The Developer Submission of "No Change" Certificate

Comment was solicited as to whether the Department's requirement for a certificate of "no change" and the requirement to submit all changes made to a local code since it was previously accepted or partially accepted were overly burdensome to small builders. We asked if there were alternatives to this approach that would be less burdensome but still meet HUD's objectives.

In response, the Department received several comments. One commenter stated that the certification of "no change" would in fact increase the burden on builders and on lenders and other interested parties. The commenter also argued that the Department should maintain, and that lenders or others should not be required to submit, this information. Another commenter believed that it is not unreasonable to require that all current local amendments to the codes be submitted to the HUD Field Office by the builder, lender or other interested party.

The Department believes that the certificate of "no change" is the least burdensome way of ensuring that a code has remained acceptable or partially acceptable. The Department does not have the resources to monitor the status of the thousands of building codes that exist in the country. In contrast, a builder must always comply with local codes whether or not he participates in HUD programs. Thus, he must know what the latest edition of an applicable code requires and is in a better position to know whether any changes have been made on the code since he last used it.

F. Procedures for Acceptance of Products and Materials

The Department also solicited comments concerning how its procedures for acceptance of materials and products under section 521 of the National Housing Act could be streamlined so that the Department would not duplicate functions and analyses performed by adjuncts to the national recognized model code organizations.

Several commenters approved of HUD's moving toward private sector product acceptance systems, such as those of the model code organizations and the National Evaluation Service (NES). These comments however, failed to discuss any other means of acceptance of materials and products available to HUD that would not be duplicative of the functions of the code organizations or the NES. In reply to our question on how HUD duplicates NES or model code procedures, one commenter suggested that internal HUD procedures be developed to permit HUD recognition of CABO National Evaluation Reports (NER) or new products, thus avoiding duplication. The commenter pointed out that the present HUD system requires the product manufacturer to pay Material Release and Structural Engineering Bulletin fees for the same product for which he has previously paid a fee for CABO analysis and issuance of an NER. The commenter concluded that this additional Federal agency expense and overlap should be avoided.

Similarly, in response to the Department's inquiry regarding how product durability might be ensured, several commenters suggested that the long-term durability of products and materials which are evaluated by NES and the model code organizations is assured because the reports are prepared on the basis of compliance with the code criteria and with nationally recognized industry standards. The commenters were not aware of any long-term durability problem with products, materials and housing systems that are evaluated by the model code organizations.

On the other hand, some commenters wanted to continue with HUD's Technical Suitability of Products Program, particularly the certification of products program. To do otherwise, the commenters argued, would compromise HUD's acceptance/assurance activity as well as cause considerable disruption to the current industry-wide certification process.

The Department has carefully evaluated these comments, and has decided to make no changes to the Technical Suitability of Products Program at this time. Although the Proposed Rule set forth no changes in the program, it requested comment on the issue to determine whether there was more information available since our last request for comment on this issue, on March 1, 1984. At that time, the Department published a proposed rule, at 49 FR 7587, that would have instituted a system of fees to cover the costs of services provided by the Technical Suitability of Products Program. On August 9, 1984, at 49 FR 31854, the Final Rule was published. The preamble of that Final Rule explained that, for several reasons, the Department decided not to make any changes in the present system for evaluating new products and materials.

As explained therein, the Department is required by statute to maintain such a system. Section 521 of the National Housing Act, 12 U.S.C. 1735e, states, in part, that "[t]he Secretary shall adopt a uniform procedure for the acceptance of materials and products to be used in structures approved for mortgages or loans insured under this Act. Under such procedure any material or product which the Secretary finds is technically suitable for the use proposed shall be accepted." The Department has complied with the statute by instituting the Technical Suitability of Products Program, and the system cannot, in accordance with the statute, be eliminated.

Because the Department received no new information since its previous determination to maintain current procedures, we are not changing the Technical Suitability of Products Program at this time.

The Department also received comments on the manner, if any, in which the new structure of the MPS would affect the current system of products and materials acceptance. Some commenters suggested that HUD, in view of the necessity to maintain durability criteria, should maintain in the MPS for One and Two Family Dwellings a list of product standards similar to that found in the MPS for Multifamily Housing. By so doing, it was suggested, HUD could assure that products and materials would at least meet an industry standard of quality and safety. It was also pointed out that some standards will never be listed in CABO because they relate to components or products such as cabinets, furnishings and carpet, which are not subject to building code enforcement. The commenters concluded that the omission of these standards from CABO necessitated HUD's referencing the standards, because homes with mortgages insured by HUD contain those components and products, and HUD should therefore ensure that they would meet acceptable levels of quality, safety and durability.

We agree that many products standards, and particularly HUD Use of Materials Bulletins, are not and probably will never be listed in model codes such as CABO. Because of our need to ensure the continued durability of products which are likely to be used in HUD-insured dwellings, we will reference, in § 200.926d, Appendices C and F of HUD Handbook 4910.1, MPS for Multifamily Housing. These appendices

are lists of standards referenced by the Department.

Finally, a commenter recommended that HUD management coordinate any changes regarding the HUD Technical Suitability of Products Program with the Farmers Home Administration, Veterans Administation, and the Office of Management and Budget. The commenter noted that various agencies have conflicting requirements with respect to materials acceptance, and suggested that three Federal agencies and OMB jointly decide on workable acceptance procedures for new products, to be followed by the three agencies in the future. The Department agrees that this idea is worthwhile, and will investigate the possibility of coordinating acceptance procedures among these agencies.

G. Design Criteria for Housing for the Elderly

The last subject on which the Department solicited comment was its proposal to eliminate criteria for housing for the elderly. The Department asked whether any of these requirements should remain and whether other requirements should be incorporated.

Only a few commenters responded to the question. One commenter agreed that the Department should delete the design criteria for housing for the elderly. The commenter suggested that the free market should dictate design criteria, and that private sector committees under AARP, ANSI and others provide adequate guidelines.

Another commenter questioned whether the Department intended to adopt Appendix M of the Standard Building Code (SBC), which contains criteria for the handicapped. Because the final rule adopts only the CABO code and does not reference the SBC, it is inappropriate to adopt Appendix M of the SBC.

The Final Rule remains unchanged on this issue. We will therefore eliminate specific criteria for housing for the elderly.

H. Other Comments

The Department received many comments which suggested that the various appendices or supplements to the model codes be incorporated or excluded. One commenter also suggested that the Department designate the model code predominantly in use in any given area when supplementing partially acceptable codes. Because the final rule references only the CABO One and Two Family Dwelling Code, and not the four model codes, these issues are no longer of concern.

Several commenters expressed concern over the rule's impact on the Technical Suitability of Products Program. Some urged the Department to retain Use of Materials Bulletin No. 44, which establishes a standard for carpets. Another commenter suggested that HUD retain certain Federal Specifications for the tile and sheet vinyl flooring, as was done for the MPS for multifamily structures. As discussed above, we have incorporated Appendices C and F of the MPS for Multifamily Housing, HUD Handbook 4910.1, which list material standards and Use of Materials Bulletins that may be used in HUD-insured housing. Another commenter stated that § 200.926d(d), which covers Special Construction and Product Acceptance, was unclear with reference to whether HUD will continue to accept existing certification programs for HUD-approved products. This section has been rewritten to clarify that the procedures of HUD Handbook 4950.1 and Use of Materials Bulletins shall be applicable to the MPS for One and Two Family Dwellings.

One commenter suggested that the list of construction comparison items at §200.926a be rewritten so as to require a State or local code to regulate certain subareas only if local conditions warrant criteria on those subareas. The Department finds this comment persuasive, and has revised § 200.926a by requiring a code to regulate certain subareas only if certain conditions of ANSI A58.1–82 are present in the specific jurisdiction.

One commenter suggested that the number of major areas listed in § 200.926a be reduced, arguing that the Model Codes are not broken down in the same manner as the list of major areas. The Department based this list on the Model Codes themselves, and we believe that our list is reasonably consistent with the codes. The Department, however, has modified the list, which is also used to review codes for multifamily use, by deleting some subareas that apply primarily to multifamily-type construction. For example, the "Mechanical" major area no longer contains the "Boiler and Pressure Vessels" subarea.

One commenter suggested that the Department exempt modular construction from the rule. Although the Department is sympathetic to modular home manufacturers' concern regarding inconsistent local requirements, we see no reason to exempt modular construction from the system set forth in this rule, because modular housing always must comply with local requirements, whether it is being financed through HUD or through other means. The Department has no authority to promulgate a preemptive national code for modular housing.

One commenter suggested that local building officials should serve as the model code enforcement officials, instead of the Secretary's designee, as set forth in § 200.926b(b)(2). The Department, however, has no means of ascertaining the qualifications of local officials; therefore, to ensure that this function is adequately performed, the final rule is unchanged in this regard.

Another commenter suggested that the local code acceptance system could be simplified by using the certification of a State or local official or other qualified individual that the local or State code regulates the areas and subareas identified in § 200.926a.

Section 526 of the National Housing Act, however, states that the "Secretary shall be responsible for determining the acceptability of the State and local codes to . . . model codes." The Department therefore cannot delegate this responsibility. Moreover, the HUD Field Offices are responsible for determining whether a house complies with the applicable requirements. They must therefore be familiar with the codes, and should have responsibility for their acceptance.

One commenter argued that the system for code acceptance is too complex and should be simplified. The Department believes that, as set forth in the final rule, the system for acceptance is as simple as possible, considering the need for flexibility and thoroughness. The result of the system—reliance on State or local codes as much as possible—will ease the burden of unnecessary standards on builders and lenders. The Department believes that this goal justifies the complexity of the acceptance process.

Finally, the Department received many comments of an editorial nature. We have evaluated these comments, and have made changes in the Final Rule as appropriate.

III. Procedural Requirements

The collection of information requirements contained in this rule have been approved by the Office of Management and Budget (OMB) and assigned approval number 2502–0338.

This final rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. The rule does not: (1) Have an annual effect on the economy of one hundred million dollars or more; (2) cause a major increase in costs or prices for

consumers, individual industries, Federal State, or local government agencies or geographic regions; or (3) have significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Consistent with the provisions of 5 U.S.C. 605(b) (The Regulatory Flexibility Act), the Secretary hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. In all cases, one and two family residential structures must be built in compliance with State or local codes. Upon the effective date of this rule, the Department generally will accept such compliance as satisfying the Department's concerns relating to the health and safety aspects of those structures. Further, this rule will generally reduce the burden of compliance which already exists for both small and large entities.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of Rules Docket Clerk at Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

This rule is listed as item H–74–82 in the Department's Semiannual Agenda of Regulations published at 50 FR 17286, 17298 on April 29, 1985 pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The catalog of Federal Domestic Assistance does not apply to this Rule.

Paperwork Reduction Act

Information collection requirements contained in this regulation (§ 200.926) have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2502–0338.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs: Housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum Property Standards, Incorporation by reference.

Accordingly, HUD proposes to amend 24 CFR Part 200 as follows:

PART 200—INTRODUCTION

Subpart S—Minimum Property Standards

1. The authority citation for Part 200 continues to read as follows:

Authority: Titles I and II of the National Housing Act (12 U.S.C. 1701 through 1715a–18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. § 200.927 is revised as follows:

§ 200.927 Incorporation by reference of minimum property standards.

The Minimum Property Standards as contained in the handbooks identified in § 200.929(b) are incorporated by reference into this section as though set forth in full in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

3. Section 200.929 is amended by revising the introductory paragraph of paragraph (b) and paragraph (b)(1) as follows:

§ 200.929 [Amended]

* * * * *

(b) *Identification.* The Minimum Property Standards have been published as described below:

(1) MPS for One and Two Family Dwellings. *See* §§ 200.926, 200.926a–e.

* * * * *

4. 24 CFR Part 200 is amended by adding §§ 200.926, 200.926a, 200.926b, 200.926c, 200.926d and 200.926e as follows:

§ 200.926 Minimum property standards for one and two family dwellings.

(a) *Construction standards.*—(1) *Applicable structures.* The standards identified or contained in §§ 200.926 and 200.926a–200.926e shall apply to single family detached homes, duplexes, triplexes and to living units in a structure where the units are located side by side in townhouse fashion.

(2) *Applicability of standards to new construction.* The standards referenced in paragraph (a)(1) of this section are applicable to:

(i) Structures approved for insurance or other benefits prior to the start of construction;

(ii) Structures which are approved for insurance or other benefits based upon participation in an insured warranty program;

(iii) Structures which are insured as new construction based upon a Certificate of Reasonable Value issued by the Veterans Administration; and

(iv) Proposed construction insured under the Direct Endorsement program.

(b) *Conflicting standards.* The requirements contained in § 200.926d do not preempt local or State standards, nor do they alter or affect a builder's obligation to comply with any local or State requirements. However, a property shall be eligible for benefits only if it complies with the requirements of this subpart, including any referenced standards. When any of the requirements identified in § 200.926c are in conflict with a partially accepted local or state code, the conflict will be resolved by the HUD Field Office servicing the jurisdiction in which the property is to be located.

(c) *Standard for evaluating local or state building codes.* The Secretary shall compare a local building code submitted under § 200.926(d) or a State code to the list of construction related areas contained in § 200.926a.

(1) A local or State code will be accepted if it regulates each area and subarea on the list.

(2) A local or State building code will be partially accepted if it regulates most of the areas on the list. Provided, however, that no code may be partially accepted if it fails to regulate one or more subareas in more than one of the major areas. The major areas are: fire safety, light and ventilation, structural loads, foundation systems, materials standards, construction components, glass, mechanical, plumbing and electrical. *See* § 200.926a.

(3) For purposes of this paragraph, a local or State code regulates an area or subarea if it establishes a standard concerning that area or subarea.

(d) *Code selection.* Any materials required to be submitted under this section must be submitted by the time the lender or other interested party applies for mortgage insurance or other benefits.

(1) *Jurisdictions without previously accepted building codes.* The following submission requirements apply to lenders and other interested parties in jurisdictions without building codes, jurisdictions with building codes which have never been submitted for acceptance, and jurisdictions with building codes which previously have been submitted for acceptance and have not been accepted or partially accepted by the Secretary.

(i) In jurisdictions without local building codes:

(A) If the State building code is acceptable, the lender or other interested party must comply with the State building code and the requirements of § 200.926d;

(B) If the State building code is partially acceptable, the lender or other interested party must comply with:

(*1*) The acceptable portions of the partially acceptable code; and

(*2*) Those portions of the CABO One and Two Family Dwelling Code or the Electrical Code for One-and-Two-Family Dwellings designated by the HUD Field Office in accordance with § 200.926c; and

(*3*) The requirements of § 200.926d.

(C) If there is no State building code or if the State building code is unacceptable, the lender or other interested party must comply with:

(*1*) The CABO One and Two Family Code and the Electrical Code for One and Two Family Dwellings, as identified in § 200.926b(a); and

(*2*) The requirements of § 200.926d.

(ii) In jurisdictions with local building codes which have never been submitted for review, lenders or other interested parties must:

(A) Comply with the requirements of § 200.926(d)(1)(i) (A), (B) or (C), as appropriate; or

(B) Request the Secretary's acceptance of the local building code in accordance with § 200.926(d)(1)(iv).

(*1*) If the Secretary determines that the local building code is unacceptable, then the lender or other interested party must comply with the requirements of § 200.926(d)(1)(i) (A), (B) or (C) as appropriate.

(*2*) If the Secretary determines that the local code is partially acceptable, then the lender or other interested party must comply with:

(*i*) The acceptable portions of the partially acceptable local code; and

(*ii*) Those portions of the CABO One and Two Family Dwelling Code or the Electrical Code for One and Two Family Dwellings designated by the HUD Field Office in accordance with § 200.926c; and

(*iii*) The requirements of § 200.926d.

(*3*) If the Secretary determines that the local code is acceptable, then the lender or other interested party must comply with the local building code and the requirements of § 200.926d.

(iii) In jurisdictions with local building codes which previously have been submitted for review and which have been found unacceptable by the Secretary:

(A) If the local code has not been changed since the date the code or changes thereto were submitted to the Secretary, the lender or other interested party must comply with the requirements of § 200.926(d)(1)(i) (A), (B) or (C), as appropriate; or

(B) If the local code has been changed since the date when the code or changes thereto were submitted to the Secretary, the lender or other interested party must submit a copy of all changes to the local building code, including all applicable service codes and appendices and a copy of the statute, ordinance, regulation or order making such changes in the code, which have been made since the date when the code or other changes thereto were last submitted to the Secretary. However, the lender or other interested party need not submit any part already in the possession of the HUD Field Office. Based upon the Secretary's determination concerning the acceptability of the local code as changed, the lender or other interested party must comply with the requirements of § 200.926(d)(1)(ii)(B) (*1*), (*2*) or (*3*), as appropriate.

(iv) In order to obtain the Department's approval of a local code, the lender or other interested party must submit the following material to the HUD Field Office serving the jurisdiction in which the property is to be constructed:

(A) A copy of the jurisdiction's local building code, including all applicable service codes and appendices; and

(B) A copy of the statute, ordinance, regulation, or order establishing the code, if such statute, ordinance, regulation or order is not contained in the building code itself.

However, the lender or other interested party need not submit any document already on file in the HUD Field Office.

(2) *Jurisdictions with previously accepted or partially accepted building codes.* The following submission requirements apply to lenders or other interested parties in any jurisdiction with a building code which has been accepted or partially accepted by the Secretary:

(i) The lender or other interested party shall submit to the HUD Field Office serving the jurisdiction in which the property is to be constructed:

(A) A certificate stating that, since the date when the code or any changes thereto were last submitted to the Secretary, the jurisdiction's local building code has not been changed; or

(B) (*1*) A copy of all changes to the jurisdiction's building code, including all applicable service codes and appendices, which have been made since the date when the code or other changes thereto were last submitted to the Secretary. However, the lender or other interested party need not submit any part already in the possession of the HUD Field Office; and

(*2*) A copy of the statute, ordinance, regulation, or order making such changes in the code.

(ii) If, based upon changes to the local building code, the Secretary determines that it is unacceptable, the lender or other interested party must comply with the requirements of § 200.926(d)(1)(i)(A), (B) or (C), as appropriate.

(iii) If the local building code was previously found by the Secretary to be partially acceptable and there have been no changes to it or if the local building code was previously found by the Secretary to be partially acceptable and if, based upon changes to it, the Secretary determines that it is still partially acceptable or if the local building code was previously found by the Secretary to be acceptable and if, based upon changes to it, the Secretary determines that it is partially acceptable, then the lender or other interested party must comply with § 200.926(d)(1)(ii)(B)(*2*) (*i*), (*ii*) and (*iii*).

(iv) If the local building code was previously found by the Secretary to be partially acceptable and if, based upon changes to it, the Secretary determines that it is acceptable, or if the local building code was previously found by the Secretary to be acceptable and there have been no changes to the code, or if the local building code was previously found by the Secretary to be acceptable and if, based upon changes to it, the Secretary determines that it is still acceptable, then the lender or other interested party must comply with the local building code and the requirements of § 200.926d.

(3) *Notification of decision.* The Secretary shall review the material submitted under § 200.926(d). Following that review, the Secretary shall issue a written notice (except where there is a previously accepted or partially accepted code which has not been changed) to the submitting party stating whether the local building code is acceptable, partially acceptable, or not acceptable. Where the local building code is not acceptable, the notice shall also state whether the State code is acceptable, partially acceptable or not acceptable. The notice shall also contain the basis for the Secretary's decision and a notification of the submitting party's right to present its views concerning the denial of acceptance if the code is neither accepted nor partially accepted. The Secretary may, in his discretion, permit either an oral or written presentation of views.

(4) *Department's responsibilities.* (i) Each Regional and Field Office will maintain a current list of jurisdictions with accepted local or State building codes, a current list of jurisdictions with partially accepted local or State building codes and a current list of jurisdictions

with local or State building codes which have not been accepted. For local codes, the lists will state the most recent date when the code or changes thereto were submitted to the Secretary. The lists, which shall be prepared by the Field Offices and submitted to the Regional Offices, will be available to any interested party upon request. In addition, the list of jurisdictions whose codes have been partially accepted shall identify in accordance with § 200.926c those portions of the codes listed at § 200.926b(a) with which the property must comply.

(ii) The Department is responsible for obtaining copies of the State codes and any changes thereto.

§ 200.926a Residential building code comparison items.

HUD will review each local and State code submitted under this subpart to determine whether it regulates all of the following areas and subareas:

(a) *Fire Safety.*
(1) Allowable height;
(2) Fire separations;
(3) Fire resistance requirements;
(4) Egress doors and windows;
(5) Unit smoke detectors;
(6) Flame spread.
(b) *Light and ventilation.*
(1) Habitable rooms;
(2) Bath and toilet rooms.
(c) *Structural loads.*
(1) Design live loads;
(2) Design dead loads;
(3) Snow loads (for jurisdictions with snow loading conditions identified in Section 7 of ANSI A58.1–82);
(4) Wind loads;
(5) Earthquake loads (for jurisdictions in seismic zones 3 or 4 as identified in Section 9 of ANSI A58.1–82).
(d) *Foundation systems.*
(1) Foundation depths;
(2) Footings;
(3) Foundation materials criteria.
(e) *Materials standards.*
(1) Materials standards.
(f) *Construction components.*
(1) Steel;
(2) Masonry;
(3) Concrete;
(4) Lumber;
(5) Roof construction and covering;
(6) Chimneys and fireplaces.
(g) *Glass.*
(1) Thickness/area requirements;
(2) Safety glazing.
(h) *Mechanical.*
(1) Heating, cooling and ventilation systems;
(2) Gas, liquid and solid fuel piping and equipment;
(3) Chimneys and vents;
(4) Ventilation (air changes).
(i) *Plumbing.*
(1) Materials standards;
(2) Sizing and installing drainage systems;
(3) Vents and venting;
(4) Traps;
(5) Cleanouts;
(6) Plumbing fixtures;
(7) Water supply and distribution;
(8) Sewage disposal systems.
(j) *Electrical.*
(1) Branch circuits;
(2) Services;
(3) Grounding;
(4) Wiring methods;
(5) Cable;
(6) Conduit;
(7) Outlets, switches and junction boxes;
(8) Panelboards.

§ 200.926b Model codes.

(a) *Incorporation by reference.* The following model code publications are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. The incorporation by reference of these publications has been approved by the Director of the Federal Register. The locations where copies of these publications are available are set forth below.

(1) *CABO One and Two Family Dwelling Code,* 1983 edition, with the 1984 and 1985 Amendments, excluding Chapter 1—Administrative; Part VI—Electrical; and Part VII—Energy Conservation, but including Appendices A and B of the Code. Available from Council of American Building Officials, 5203 Leesburg Pike, Falls Church, VA 22041.

(2) *Electrical Code for One and Two Family Dwellings,* NFPA 70A, 1984 Edition, including appendices. Available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(b) *Model code compliance requirements.* (1) When a one or two family dwelling is to comply with the model codes set forth in § 200.926b(a), the following requirements of those model codes shall not apply to those properties:

(i) Those provisions of the model codes that establish energy requirements for one and two family dwellings; and

(ii) Those provisions of the model codes that require or allow the issuance of permits of any sort.

(2) Where the model codes set forth in § 200.926b(a) designate a building, fire, mechanical, plumbing or other official, the Secretary's designee in the HUD Field Office serving the jurisdiction in which the dwelling is to be constructed shall act as such official.

(c) *Designation of Model Codes.* When a one or two family dwelling is to comply with portions of a model code or the entire model code, it shall comply with the model codes in paragraph (c)(1) and/or (c)(2) of this section as designated by the HUD Field Office serving the jurisdiction in which the property is located. In addition, such property shall comply with all of the standards which are referenced in such code or codes.

(1) *CABO One and Two Family Dwelling Code/1983 with 1984 and 1985 Amendments.*

(2) *Electrical Code for One and Two Family Dwellings, NFPA 70A/1984.*

§ 200.926c Model code provisions for use in partially accepted code jurisdictions.

If a lender or other interested party is notified that a State or local building code has been partially accepted, then the properties eligible for HUD benefits in that jurisdiction shall be constructed in accordance with the applicable State or local building code, plus those additional requirements identified below. Depending upon the major area identified in § 200.926a which is not adequately regulated by the State or local code, the HUD Field Office will designate, in accordance with the schedule below, those portions of one of the model codes with which the property must comply.

SCHEDULE FOR MODEL CODE SUPPLEMENTS TO LOCAL OR STATE CODES

Deficient major from § 200.926a as determined by field office review	Portions of the CABO 1- and 2-family dwelling code/1983 with 1984 and 1985 amendments with which property must comply
(a) Fire safety	Chapters 2, 9; Section R-402
(b) Light and ventilation	Chapter 2; Section R-309
(c) Structural loads	Chapter 2
(d) Foundation systems	Chapter 3
(e) Materials standards	Chapter 26.
(f) Construction components	Part III.
(g) Glass	Chapter 2.
(h) Mechanical	Part IV
(i) Plumbing	Part V.
(j) Electrical	Electrical code for 1- and 2-family dwellings (NFPA 70A–1984).

§ 200.926d Construction requirements.

(a) *Application.* (1) *General.* These standards cover the actual site, the immediate site environment for the dwellings, including streets, storm water disposal, and other services and facilities for the site.

(2) *Requirements for accessibility to physically handicapped people.* The HUD Field Office will advise project sponsors as to the extent accessibility will be required for new construction of one- and two-family dwellings on a project-by-project basis.

(i) *Technical standards. See* HUD Handbook, 4910.1, Sections 100–1.3b and 100–1.3c.

(3) *Variations to standards.*—

(i) *New materials and technologies. See* § 200.926d(d). Alternatives, nonconventional or innovative methods and materials shall be equivalent to these standards in the areas of structural soundness, durability, economy of maintenance or operation and usability.

(ii) *Variation procedures.* Variations from the requirements of any standard with which the Department requires compliance shall be made in the following ways:

(A) For a particular design or construction method to be used on a single case or project, the decision is the responsibility of the Field Office. Headquarters concurrence is not required.

(B) Where a variation is intended to be on a repetitive basis, a recommendation for a Local Acceptable Standard, substantiating data, and background information shall be submitted by the Field Office to the Director, Office of Manufactured Housing and Regulatory Functions.

(iii) Variances which require individual analysis and decision in each instance are not considered as repetitive variances even though one particular standard is repeatedly the subject of variation. Such variances are covered by § 200.926d(a)(3)(ii)(A).

(b) *General acceptability criteria.*—(1) *Real estate entity.* The property shall comprise a single plot except that a primary plot with a secondary plot for an appurtenant garage or for other use contributing to the marketability of the property will be acceptable provided the two plots are in such proximity as to comprise a readily marketable real estate entity.

(2) *Service and facilities.*—(i) *Trespass.* Each living unit shall be one that can be used and maintained individually without trespass upon adjoining properties, except when the windowless wall of a detached dwelling is located on a side lot line. A detached dwelling may be located on a side lot line if:

(A) legal provision is made for permanent access for the maintenance of the exterior portion of the lot line wall, and

(B) the minimum distances from the dwelling to the dwellings on the abutting properties are not less than the sum of the side yard distances computed as appropriate for the type of opposing walls. (minimum distance 10 ft).

(ii) *Utilities.* Utility services shall be independent for each living unit, except that common services such as water, sewer, gas and electricity may be provided for living units under a single mortgage or ownership. Separate utility service shut-off for each unit shall be provided. For living units under separate ownership, common utility services may be provided from the main to the building line when protected by an easement or convenant and maintenance agreement acceptable to HUD, but shall not pass over, under or through any other living unit. Individual utilities serving a living unit may not pass over, under or through another living unit under the same mortgage unless provision is made for repair and maintenance of utilities without trespass or when protected by an easement or covenant providing permanent access for maintenance and repair of the utilities. Building drain cleanouts shall be accessible from the exterior where a single drain line within the building serves more than one unit.

(3) *Site conditions.* (i) The property shall be free of those foreseeable hazards and adverse conditions which may affect the health and safety of the occupants or the structural soundness of the improvements, or which may impair the customary use and enjoyment of the property. The hazards include toxic chemicals, radioactive materials, other pollution, hazardous activities, potential damage from soil or other differential ground movements, ground water, inadequate surface drainage, flood, erosion, or others located on or off site. The site must meet the standards set forth at 24 CFR Part 51.

(ii) When special conditions exist or arise during construction which were unforeseen and which necessitate precautionary or hazard mitigation measures, the HUD Field Office shall require corrective work to mitigate potential adverse effects from the special conditions as necessary. Special conditions include rock formations, unstable soils or slopes, high ground water levels, springs, or other conditions which may adversely affect a property. It shall be the builder's responsibility to ensure proper design, construction and satisfactory performance where these conditions are present.

(4) *Access.* (i) Each property shall be provided with vehicular or pedestrian access by a public or private street. Private streets shall be protected by permanent easement.

(ii) Each living unit shall have a means of access such that it is unnecessary to pass through any other living unit.

(iii) The rear yard shall be accessible without passing through any other living unit.

(iv) For a townhouse type dwelling, access to the rear yard may be by means of alley, easement, passage through the dwelling, or other means acceptable to the HUD Field Office.

(c) *Site design.*—(1) *General.* (i) A site design shall be provided which includes an arrangement of all site facilities necessary to create a safe, functional, healthful, durable and energy efficient living environment.

(ii) These site design standards are applicable only in communities which have not adopted criteria for site development applicable to one and two family dwellings.

(iii) Single family detached houses situated on individual lots located on existing streets with utilities need not comply with the requirements of § 200.926d(c) (2), (3) and (4)(ii).

(2) *Streets.* (i) Existing or proposed streets on the site shall connect to private or public streets and shall provide all-weather access to all buildings for essential and emergency use, including access needed for deliveries, service, maintenance and fire equipment.

(ii) Streets shall be designed for dedication for public use and maintenance or, when approved by the HUD Field Office, may be retained as private streets where protected by permanent easements.

(3) *Dedication.* Utilities shall be located to permit dedication to the local government or appropriate public body.

(4) *Drainage and flood hazard exposure.* (i) The minimum grades at buildings and at openings into basements shall be at elevations which prevent adverse effect by water or water entering basements from flood levels equivalent to a 50 year return frequency after full development. The floor elevations of all habitable space shall be above runoff and flood levels equivalent to a 100 year return frequency after full development.

(ii) Streets shall be usable during runoff equivalent to a 10 year return frequency. Where drainage outfall is inadequate to prevent runoff equivalent to a 10 year return frequency from ponding over 6 inches deep, streets shall be made passable for commonly used emergency vehicles during runoff equivalent to a 25 year return frequency, except where an alternate access street not subject to such ponding is available.

(iii) Crawl spaces shall not pond water or be subject to prolonged dampness.

(d) *Special construction and product acceptance.*—(1) *Structural features of factory produced (modular or panelized) housing or components.*

(i) For factory fabricated systems or components, HUD Handbook 4950.1, "Technical Suitability of Products Program Technical and Processing Procedures" shall apply.

(ii) The requirements of this Part shall apply to structural features, consisting of factory fabricated systems or components assembled either at the factory or at the construction site, if the total construction is covered by these standards and can be inspected on-site for determination of compliance.

(2) *Non-structural or non-standard features.* These features include methods of construction, systems, sub-systems, components, materials and processes which are not covered by these requirements. *See* HUD Handbook 4950.1 for procedures to be followed in order to obtain acceptance of non-structural components or materials. *See* HUD Handbook 4910.1, Appendix F for a list of Use of Materials Bulletins. Products and methods shall conform to the appropriate Use of Materials Bulletin.

(3) *Standard features.* These features include methods of construction, systems, sub-systems, components, materials and processes which are covered by national society or industry standards. For a list of standards to which compliance is required, *see* HUD Handbook 4910.1, Appendix C.

(e) *Thermal requirements.*—(1) *Building insulation.*

(i) *General.* Buildings shall be insulated so as to ensure conservation of energy, economy of operation and comfort to the occupants.

(ii) *Overall coefficient of heat transmission.* (A) All buildings which are heated or cooled mechanically shall be constructed to comply with the U values shown in the table at § 200.926d(e)(1)(iii). The U values shown do not include adjustments for framing in walls, ceilings or floors, nor for the sash frame in windows or glass doors.

(B) Where the stated U value of any one component of roof deck, ceiling, wall or floor cannot be practically obtained, such U value may be increased to the minimum figure attainable and the U value for other components decreased until the overall heat gain or heat loss does not exceed the total attained by conformance to the stated U values. (See Note 2 of the table at § 200.926d(e)(1)(iii)).

(iii) *Component coefficient values.* For ceilings, walls, floors and openings, U values shall not exceed those shown in the following table:

MAXIMUM U VALUES FOR CEILING, WALL AND FLOOR SECTIONS FOR ELECTRIC RESISTANCE HEAT (E.R.) AND HEAT PUMP OR FOSSIL FUEL HEAT (F.F.)[1]

Heating degree days (65 °F base)	Ceilings [2 3]		Walls [5]		Floors [4]		Windows [6]		Sliding glass doors [5]		Storm doors [6]	
	E.R.	F.F.	E.R.	F.F.	E.R.	F.F.	E.R.	F.F.	E.R.	F.F	E.R.	F.F
0 to 1000	.05	.05	.08	.08			1.13	1.13	1.13	1.13	No	No
1001 to 2500	.04	.05	.07	.08			.69	1.13	.69	1.13	No [7]	No
2501 to 3500	.03	.04	.06	.06	.07		.69	1.13	.69	1.13	No [7]	No
3501 to 4500	.03	.03	.05	.07	.05	.05	.69	.69	.69	.69	No [7]	No
4501 to 6000	.03	.03	.05	.07	.05	.07	.47	.69	.69	.69	Yes	No.[7]
6001 to 7000	.026	.03	.05	.07	.05	.07	.47	.69	.69	.69	Yes	No.[7]
70001 +	.026	.026	.05	.05	.05	.05	.47	.47	.69	.69	Yes	Yes.

Notes

[1] For areas of 5,000 heating degree days (HDD) or less, houses using heat pumps may be insulated to levels required for fossil fuels. In areas above 5,000 HDD, houses using air-to-air heat pumps shall be insulated to levels required for electric resistance (E.R.) heating, except where the following are used:

a. Water source heat pumps.
b. Fossil fuel supplement heat.
c. Units with multiple capacity.
(1) Dual compressors
(2) Modulating compressor speed
(3) Dual speed compressor
d. Uni-directional heat pumps (such as annual cycle energy systems (ACES)).

e. Units with balanced heating and cooling load.

[2] The following combinations of wall and ceiling values are considered to provide annual heating and cooling consumption comparable to that predicted for values in the above Table and may be substituted accordingly. Other components shall conform to the values shown below for the specific heating degree day (HDD):

HDD (65°-F	ER		FF	
	CLG	Wall	CLG	Wall
0 to 1000	04	.14	04	14
	03	15	03	.15
	026	.16	026	.16
1001 to 1500	+	+	04	13
	03	.13	03	.14
	026	.14	026	.16
1501 to 2500	+	+	04	12
	03	.11	03	.13
	026	.12	026	.14
2501 to 3000	+	+	03	.12
	026	.07	026	.13

(+See Table at § 200.926d(e)(1)(iii).

[3] Includes roof/ceiling assemblies, in which the finished ceiling is the underside of the roof deck.

[4] For floors of heated spaces over unheated basements, unheated garages or unheated crawl spaces. A basement, crawl space or garage shall be considered unheated unless it is provided with a positive heat supply sufficient to maintain a minimum temperature of 50°F. A positive heat supply is defined as heat supplied to a space by design or by heat losses occurring from energy-consuming systems or components associated with that space. Where the walls of an unheated basement or crawl space are insulated in lieu of floor insulation, the total heat loss attributed to the floor from the heated area shall not exceed the heat loss calculated for floors with required insulation.

[5] Maximum glass area shall not exceed 15 percent of the gross area of all exterior walls enclosing heated spaces, except when it can be demonstrated that the winter daily solar heat gain exceeds the 24 hour heat loss and the glass area is properly screened from summer solar heat gain. In areas where cooling is the predominant load and the heating load is insignificant (as an example, 2000 or more cooling hours and 2000 or less heating degree days), the maximum glazing area stated above may be waived when glass area is properly screened from solar heat gain. Any additional glass area shall have a significant portion of operable sash in order to provide natural ventilation.

[6] A 1-¾ inch metal faced door system with an insulated core and durable weatherstripping providing a U value equal or better than 0.32, and an infiltration rate not greater than .50 cfm per foot of crack length, tested accordingly to ASTM E 283 at 1.567 psf of air pressure, may be substituted for a conventional door and storm door. All exterior doors shall be weatherstripped.

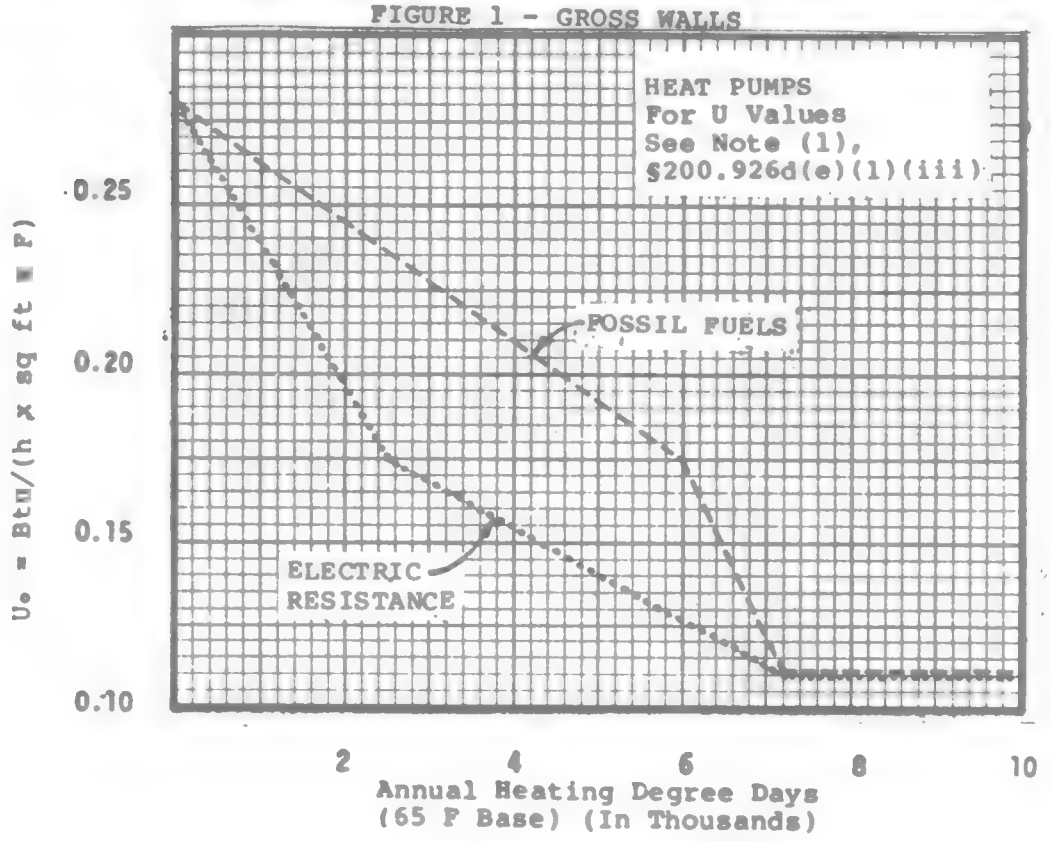
[7] In areas with 1501 or more heating degree days, a storm door is required when the primary door is a hollow core door or is over 25% glass.

(iv) *Alternate performance criteria.* (A) As an alternative to conformance with the table at § 200.926d(e)(1)(iii), dwellings which conform to the performance criteria of this section shall be considered acceptable.

(B) U_o (gross wall)—Total exterior wall area (opaque wall and window and door) shall have a combined thermal transmittance value (U_o value) not to exceed the values shown in Figure 1. Equation 1 shall be used to determine acceptable combinations to meet the requirements of Figure 1.

(C) U_o (gross ceiling)—Total ceiling area (opaque ceiling and skylights) shall have a combined thermal transmittance value (U_o value) not to exceed the values shown in Figure 2. Equation 2 shall be used to determine acceptable combinations to meet the requirements of Figure 2.

FIGURE 1 - GROSS WALLS



Equation 1 Formula for Determining Combinations (See Figure 1)

where

$U_0 = (U_{wall} A_{wall} + U_{window} A_{window} + U_{door} A_{door})/A$

U_0 = the average thermal transmittance of the gross wall area, Btu/(h x sq. ft. x F)

A_0 = the gross area of all exterior walls enclosing heated spaces, sq. ft.

U_{wall} = the thermal transmittance of all elements of the opaque wall area, Btu/(h x sq. ft. x F)

A_{wall} = opaque wall area enclosing heated spaces, sq. ft.

U_{window} = the thermal transmittance of the window area, Btu/(h x sq. ft. x F)

A_{window} = window area (including sash), sq. ft.

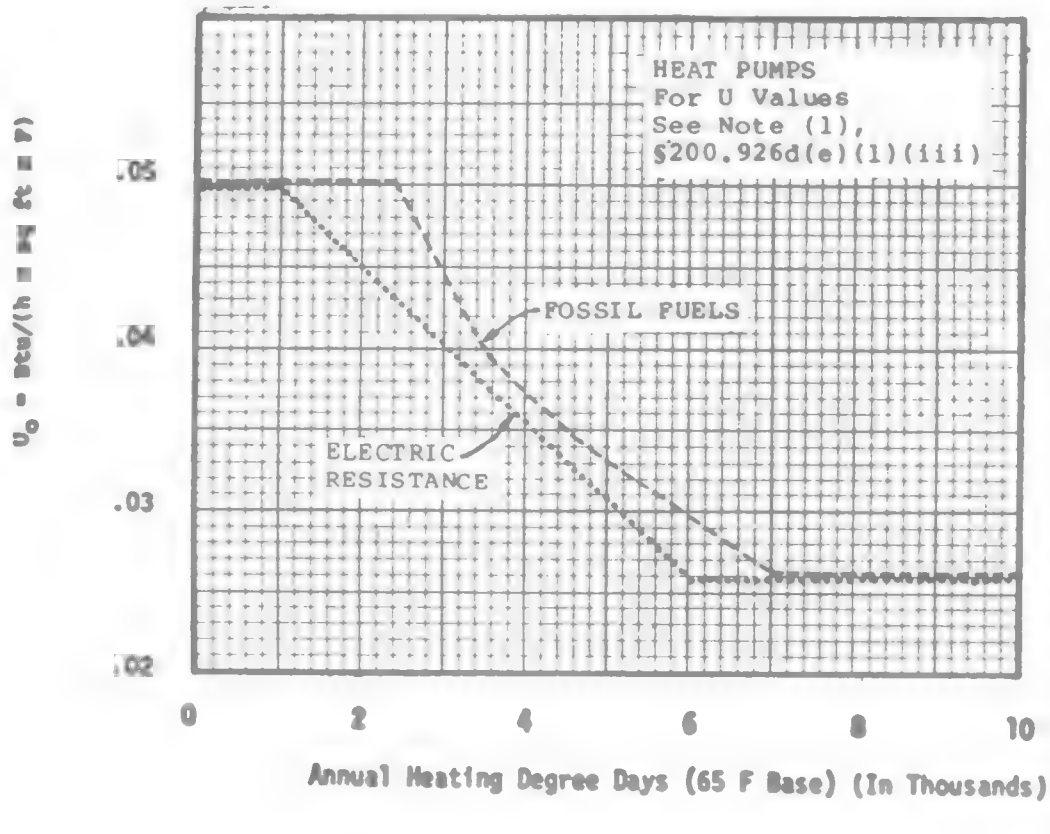
U_{door} = the thermal transmittance of the door area, Btu/(h x sq. ft. x F)

A_{door} = door area (including sash), sq. ft.

Note.—Where more than one type of wall, window and/or door is used, the U x A term for that exposure shall be expanded into its sub-elements, as follows:

$U_{wall_1} A_{wall_1} + U_{wall_2} A_{wall_2}$, etc.

GROSS CEILING - FIGURE 2



MAXIMUM U VALUES OF THE FOUNDATION WALL SECTIONS OF HEATED BASEMENT OR HEATED CRAWL SPACE

Heating degree days (65 °F base)	Maximum U value
[illegible]	No requirement.
2501 to 4500	0.17
4501 or more	0.10

Equation 2 Formula for Determining Roof/Ceiling Combinations

where:

$U_o = ({}^{U}roof\,{}^{A}roof + {}^{U}skylight\,{}^{A}skylight/A$.

U_o = the average thermal transmittance of the gross roof/ceiling area, Btu/(h x sq. ft. x F)

A_o = the gross area of a roof/ceiling assembly, sq. ft.

$^{A}roof$ = opaque roof/ceiling area, sq. ft.

$^{U}roof$ = the thermal transmittance of all elements of the opaque roof/ceiling area, Btu/(h x sq. ft. x F).

$^{U}skylight$ = the thermal transmittance of all skylight elements in the roof/ceiling assembly, Btu/h x sq. ft. x f)

$^{A}skylight$ = skylight area (including frame), sq. ft.

Note to Equation 2.—Where more than one type of roof/ceiling and/or skylight is used, the U x A term for that exposure shall be expanded into its subelements, as:

$^{U}roof_1\ ^{A}roof_1 = {}^{U}roof_2\ ^{A}roof_2$, etc.

(v) *Overall structure performance alternative.* Structures which can be shown by accepted engineering practice to have energy consumption equal to or less than that which would be obtained by conformance to the criteria of § 200.926(e)(1)(iii) or (iv) shall be considered acceptable. The contribution of passive solar energy and the related storage and reradiation capacity of masonry, water and other mass may be recognized in computing energy consumption under this alternate method. The following requirements shall govern in determining comparability:

(A) The methodology shall be cost effective to the energy consumer.

(B) The methodology shall not adversely affect the structural capacity, durability, or safety aspects of the structure.

(C) All data and calculations must show valid performance comparison between the proposed option and a structure comparable in size, configuration, orientation and occupant usage designed in accordance with § 200.926d(e)(1) (iii) or (iv).

(vi) *Basement or crawl space foundation walls.* Insulation may be omitted from floors over heated basement areas or heated crawl spaces if foundation walls are insulated. Foundation walls of heated areas below grade need not be insulated except where recreation or similar use rooms or habitable rooms are provided, or where more than 50 percent of the wall is exposed to outside air. The U value of foundation wall sections shall not exceed the values shown in the following table except where the alternative methods shown in § 200.926d(e)(1) (iv) or (v) are employed and foundation walls are included in the determination of the average thermal transmittance of the gross wall area.

(vii) *Crawl space plenum walls.* When a crawl space is used as a supply or return plenum, the crawl space perimeter wall shall be insulated to provide a maximum heat loss of 35 Btuh per lineal foot of perimeter wall, assuming a crawl space air temperature of 70 °F for return plenums and 110 °F for supply plenums.

(viii) *Slab-on-grade floors.* For slab-on-grade floors of heated or mechanically cooled spaces, the thermal resistance of the insulation around the perimeter of the floor shall be not less than shown in the following table. Insulation shall extend downward from the top of the slab for not less than 24 in. or downward to the bottom of the slab and horizontally beneath the slab for a minimum total distance of 24 in.

MINIMUM R VALUES OF PERIMETER INSULATION FOR SLABS-ON-GRADE

Heating degree days (65 °F base)	Minimum R values [1]	
	Heated slab	Unheated slab
500 or less	2.8	[illegible]
1,000	3.5	[illegible]
2,000	4.0	[illegible]
2,500	4.4	2.5
3,000	[illegible]	2.8
4,000	5.5	3.5
5,000	6.3	4.2
6,000	7.0	4.8
7,000	7.8	5.5
8,000	8.5	[illegible]
9,000	9.2	[illegible]
10,000 or greater	10.0	7.5

[1] For increments between degree days shown, U values may be interpolated, or the values shown in Figure 3 of ASHRAE 90A-80 may be substituted.

(ix) *Heat loss and heat gain calculations.* (A) Calculations of heat loss and heat gain shall be made in accordance with the data and procedures contained in the American Society of Heating Refrigerating and Air-conditioning Engineers' (ASHRAE) Handbook of Fundamentals–1985, the Hydronics Institute's "Heat Loss Calculation Guide" H–21–1984 and "Cooling Load Calculation Guide" C–30–1965, and the Air Conditioning Contractors of America's "Load Calculation for Residential Winter and Summer Air Conditioning" Manual J–1981.

(B) Inside design temperature shall be 70 °F for heating and 75 °F for cooling. The outside design temperature for

heating shall be that established by the ASHRAE Handbook of Fundamentals at the 97.5% winter design dry bulb temperature for the location involved. The outside design temperature for cooling shall be that established by the ASHRAE Handbook of Fundamentals at the 2.5% summer design dry bulb temperature for the location involved.

(f) *Water supply systems.*— (1) *General.* (i) Each living unit shall be provided with a continuing and sufficient supply of safe water under adequate pressure and of appropriate quality for all household uses. This system shall not impair the function or durability of the plumbing system or attachments.

(ii) The chemical and bacteriological standards of the local health authority shall apply. In the absence of such standards, the maximum contaminant levels of EPA shall apply. A water analysis may be required by either the health authority or the HUD Field Office.

(iii) Whenever feasible, connection shall be made to a public water system. When a public system is not available, connection shall be made to a community system which complies with HUD Handbook 4940.2, if feasible.

(2) *Individual water systems.* (i) The system should be capable of delivering a flow of 5 gpm over at least a 4 hour period.

(ii) Water that requires continuing or repetitive treatment to be safe bacterially or chemically is not acceptable. Individual dwelling water purification units are not an acceptable alternative but may be used to improve acceptable water.

(iii) After installation, the system shall be disinfected in accordance with the recommendations or requirements of the local health authority. In the absence of a health authority, system cleaning and disinfection shall conform to the current EPA Manual of Individual Water Supply Systems.

(iv) Bacteriological or chemical examination of a water sample collected by a representative of the local or state health authority shall be made when required by that authority or the HUD Field Office.

(3) *Location of wells.* (i) A well located within the foundation walls of a dwelling is not acceptable except in arctic or subarctic regions.

(ii) Water which comes from any soil formation which may be polluted, contaminated, fissured, creviced or less than 20 ft. below the natural ground surface is not acceptable, unless acceptable to the local health authority.

(iii) Individual water supply systems are not acceptable for individual lots in areas where chemical soil poisoning has been or is practiced if the overburden of soil between the ground surface and the water bearing strata is coarse grained sand, gravel, or porous rock, or is creviced in a manner which will permit the recharge water to carry the toxicants into the zone of saturation.

(iv) The following table shall be used in establishing the minimum acceptable distances between wells and sources of pollution located on either the same or adjoining lots. These distances may be increased by either the health authority having jurisdiction or the HUD Field Office.

DISTANCE FROM SOURCE OF POLLUTION

Source of pollution	Minimum horizontal distance (feet)
Property Line	10
Septic Tank	[2]
Absorption Field	[1] 100
Seepage Pit	[1] 100
Absorption Bed	[1] 100
Sewer Lines w/Permanent Watertight Joints	10
Other Sewer Lines	[2]
Chemically Poisoned Soil	[3] 25
Dry Well	50
Other	(7)

[1] This clearance may be increased or decreased depending upon soil and rock penetrated by the well and aquifer conditions. The clearance may be increased in creviced limestone and permeable strata of gravel and sand. The clearance may be reduced to 50 ft. only where the ground surface is effectively separated from the water bearing formation by an extensive, continuous and impervious strata of clay, hardpan, or rock. The well shall be constructed so as to prevent the entrance of surface water and contaminants.

[2] The recommendations or requirements of the local health authority shall apply.

[3] This clearance may be reduced to 15 feet only where the ground surface is effectively separated from the water bearing formation by an extensive, continuous and impervious strata of clay, hardpan, or rock.

(4) *Well construction.* (i) The well shall be constructed so as to allow the pump to be easily placed and to function properly.

(ii)(A) All drilled wells shall be provided with a sound, durable and watertight casing capable of sustaining the loads imposed.

(B) The casing shall extend from a point several feet below the water level at drawdown or from an impervious strata above the water level to 12 in. above either the ground surface or the pump room floor. The casing shall be sealed at the upper opening to a depth of at least 15 feet.

(iii) Bored wells shall be lined with concrete, vitrified clay or equivalent materials.

(iv) The space between the casing or liner and the wall of the well hole shall be sealed with cement grout.

(v) The well casing shall not be used to convey water except under positive pressure. A separate drop pipe shall be used for the suction line.

(vi) When sand or silt is encountered in the water-bearing formation, the well shall either be compacted and gravel packed, or a removable strainer or screen shall be installed.

(vii) The surface of the ground above and around the well shall be compacted and graded to drain surface water away from the well.

(viii) Openings in the casing, cap, or concrete cover for the entrance of pipes, pumps or manholes shall be watertight.

(ix) If a breather is provided, it shall extend above the highest level to which surface water may rise. The breather shall be watertight, and the open end shall be screened and positioned to prevent entry of dust, insects and foreign objects.

(5) *Pump and equipment.* (i) Pumps shall be capable of delivering the volume of water required under normal operating pressure within the living unit. Pump capacity shall not exceed the output of the well.

(ii) Pumps and equipment shall be mounted to be free of objectionable noises, vibrations, flooding, pollution, and freezing.

(iii) Suction lines shall terminate below maximum drawdown of the water level in the well.

(iv) Horizontal segments of suction line shall be placed below the frost line in a sealed casing pipe or in at least 4 in. of concrete. The distance from suction line to sources of pollution shall be not less than shown in the table at § 200.926d(f)(3)(iv).

(6) *Storage tanks.* (i) A pressure tank having a minimum capacity of 42 gallons shall be provided. However, prepressured tanks and other pressurizing devices are acceptable provided that delivery between pump cycles equals or exceeds that of a 42 gallon tank.

(ii) Tanks shall be equipped with a clean-out plug at the lowest point, and a suitable pressure relief valve.

§ 200.926e Supplemental information for use with the CABO One and Two Family Dwelling Code.

The following shall be used in Table No. R–202, Climatic and Geographic Design Criteria of the CABO One and Two Family Dwelling Code.

(a) *Roof live loads.*

Roof slope 3 in 12 or less: 20 psf
Roof slope over 3 in 12: 15 psf
Roof used as deck: 40 psf

(b) *Roof snow load.* The roof snow load shall be in accordance with section 7 of ANSI A58.1–82.

(c) *Wind pressures.* The minimum Design Wind Pressures (net pressures) set forth below apply to areas designated as experiencing basic wind speeds up to and including 80 mph, as

shown in ANSI A58.1–82, Figure 1, Basic Wind Speed Map. These pressures also apply to buildings not over 30 ft. in height above finish grade, assuming exposure C or defined in ANSI A58.1–82.

(1) *Minimum design wind pressure criteria.*

(i) Buildings (for overturning racking or sliding); p=20 psf.

(ii) Chimneys, p=30 psf.

(iii) Exterior walls, p=15 psf inward or outward. Local pressure at corners of walls shall be not less than p=30 psf outward. These local pressures shall not be included with the design pressure when computing overall loads. The pressures shall be applied perpendicularly outward on strips of width equal to 10 percent of the least width of building.

(iv) Partitions, p=10 psf.

(v) Windows, p=20 psf inward or outward.

(vi) Roof, p=20 psf inward or outward.

Roofs with slopes greater than 6 in 12 shall be designed to withstand pressures acting inward normal to the surface, equal to the design wind pressure for exterior walls. Overhanging eaves, cornices, and ridges, 40 psf upward normal to roof surface. These local pressures shall not be included with the design pressure when computing overall loads. The pressures shall be applied perpendicularly outward on strips of width equal to 10 percent of the least width of building.

Net uplift on horizontal projection of roof shall not be less than 12 psf.

(2) *Severe wind design pressures.* If the construction is higher than 30 ft., or if it is located in an area experiencing wind speeds greater than 80 mph, higher design wind pressures than shown above are required. Use Section 6 of ANSI A58.1–82 for higher criteria and for determining where wind speeds greater than 80 mph occur.

Pressures are assumed to act horizontally on the gross area of the vertical projection of the structure except as noted for roof design.

(d) Seismic conditions shall be in accordance with Section 9 of ANSI A58.1–82.

(e) *Subject to damage from: weathering.* A jurisdiction's weathering region shall be as established by the map in ASTM C 62–83.

(f) *Subject to damage from: frost line depth.* Exterior wall footings or foundation walls including those of accessory buildings shall extend a minimum of 6 in. below the finished grade and, where applicable, the prevailing frost line.

(g) *Subject to damage from: termites.* "Yes" shall be used in locations designated as Regions I, II or III. "No" shall be used in locations designated as Region IV. The map for Termite Infestation Probability in Appendix A of CABO, One and Two Family Dwelling Code shall be used to determine the jurisdiction's region.

(h) *Subject to damage from: decay.* "Yes" shall be used in locations designated as moderate to severe and slight to moderate. "No" shall be used in locations designated as none to slight. The Decay Probability map in Appendix A of CABO, One and Two Family Dwelling Code shall be used to determine the jurisdiction's decay designation.

(Approved by the Office of Management and Budget under OMB control number 2502–0338.)

5. The Appendix to Part 200 is revised as follows:

Appendix to Part 200—Standards Incorporated by Reference in the Minimum Property Standards for One and Two Family Dwellings

The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS). The MPS are in turn incorporated by reference in 24 CFR Part 200, Subpart S. The MPS may be purchased from the U.S. Government Printing Office, Washington, DC 20402. It is also available for public inspection at the HUD Program Information Center, Room 1104, 451 Seventh Street, S.W., Washington, DC, at each HUD Regional, Area, and Service Office, and at the Office of the Federal Register, 1100 L Street, NW, Washington, DC. The individual standards referenced in the MPS are available at the addresses contained in the following table. They are also available for public inspection at HUD, Manufactured Housing and Construction Standards Division, Room 9156, 451 Seventh Street, SW, Washington, DC and the Office of the Federal Register.

Air Conditioning Contractors of America, 1228 17th Street, N.W., Washington, DC 20036.

Load Calculation for Residential Winter and Summer Air Conditioning, Manual J 1981.

American National Standards Institute, 1430 Broadway, New York, New York 10018.

ANSI A58.1–82 Minimum Design Loads in Building and other Structures.

American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

ASTM C 62–83 Standard Specification for Building Brick (Solid masonry units made from clay or shale).

American Society of Heating, Refrigerating and Air Conditioning Engineers, 1791 Tullie Circle, NE, Atlanta, Georgia 30329.

ASHRAE Handbood of Fundamentals—1985.

ASHRAE Energy Conservation in New Building Design 90A–80.

Council of American Building Officials, 5203 Leesburg Pike, Falls Church, Virginia 22041.

CABO One and Two Family Dwelling Code, 1983 edition, with the 1984 and 1985 Amendments, excluding chapter 1—Administrative; Part VI—Electrical; and Part VII—Energy Conservation, but including appendices A and B of the Code.

The Hydronics Institute, 35 Russo Place, Berkeley Heights, New Jersey 07922.

Heat Loss Calculation guide, H–21–1984.

The National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

Electrical Code for One and Two Family Dwellings, NFPA 70A, 1984 Edition, including appendices.

Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410.

Handbooks:

4940.2–8/73 Minimum Design Standards for Community Water Supply.

4950.1–8/79 Technical Suitability of Products Program, Technical and Processing Procedures.

Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460.

EPA 430/9–74/007 Manual of Individual Water Supply Systems (Reprinted 1975) (PB 258402).

Dated: September 18, 1985.

Janet Hale,

Acting General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 85–22935 Filed 9–26–85; 8:45 am]

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Friday
September 27, 1985

Part VI

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Program Announcement; School Crime and Discipline Research and Development; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Program Announcement: School Crime and Discipline Research and Development Program

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of issuance of a solicitation of applications to conduct a research and development program on school crime.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to section 243 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, announces a new OJJDP initiative entitled, "School Crime and Discipline Research and Development Program." The primary goal is to test promising strategies for the development, implementation, and monitoring of disciplinary and crime control policies and procedures which are intended to reduce school crime and disorder to provide for a safer school environment.

OJJDP's National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) invites public or private agencies to submit competitive grant applications to design, develop and test the efficacy of improved disciplinary policies and procedures for the reduction of school crime and disorder in secondary schools. Targeted schools must be experiencing a high level of disciplinary or crime problems. Emphasis will be placed on the assessment of the effects of legislation, case law, regulations and lawsuits related to discipline and crime control. This initiative will require a collaborative effort among researchers, program planners, school administrators, faculty, and law enforcement personnel, as appropriate.

The deadline for submission of applications is December 6, 1985.

FOR FURTHER INFORMATION CONTACT: Deborah A. Wysinger, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Ave, N.W., Room 742, Washington, D.C. 20531, telephone (202) 724–7560.

SUPPLEMENTARY INFORMATION:

Request for Proposals—School Crime and Discipline Research and Development Program

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I. Introduction

This solicitation for applications to conduct a School Crime and Discipline Research and Development Program is issued by the National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP), of the Office of Juvenile Justice and Delinquency Prevention (OJJDP), U.S. Department of Justice. The OJJDP and its NIJJDP were established by the Juvenile Justice and Deliquency Prevention Act of 1974, as amended (JJDP Act).

The JJDP Act authorizes NIJJDP to: "encourage the development of demonstration projects in new, innovative techniques and methods to prevent and treat juvenile delinquency;" (Section 243(2)) and to "provide for the evaluation of all juvenile delinquency programs assisted under this title in order to determine the results and the effectiveness of such programs," (Section 243(3)).

OJJDP's National Institute for Juvenile Justice and Delinquency Prevention invites public or private agencies to submit applications designed to develop and test promising strategies for the reduction of school crime and improvement of disciplinary procedures and school environment.

OJJDP has allocated a total of $300,000 for the first phase of this Initiative. Up to three projects not to exceed $100,000 each for the initial twelve month budget period will be funded as a result of this competition. It is anticipated that this research and development initiative will entail three to four years of program activity to conduct the necessary planning, implementation and testing. Therefore project periods will not exceed four years. The second phase of this initiative will consist of awards to each of the three selected R&D projects for up to $200,000 for each subsequent twelve month budget period.

This competition will be conducted according to the OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart A, published August 2, 1985 at 50 FR 31365–31366.

II. Background

Creating a safe and orderly school environment is a prerequisite for students to focus their attention on learning. Many of the recent reports on educational reform—while agreeing on the need for improved curricula and graduation standards—insist that little reform can occur unless schools become safer. President Reagan put the problem in perspective while speaking to secondary school principals, "As long as one teacher is assaulted, one classroom disrupted, or one student attacked, then I must and will speak out to give you the support you need to enforce discipline in our schools. I can't say it too forcefully, to get learning back into our schools, we must get crime and violence out." The issue of student rights and administrative control have become a focal point for political discussion.

The most comprehensive recent national study specifically devoted to school crime is the *Safe School Study*, which was conducted by the National Institute of Education (NIE) in the mid 1970's. The major objectives of that study were to determine the frequency and seriousness of crime in elementary and secondary schools in the United States and what schools are doing to prevent it. The findings, published in 1978, indicated that 8% of the nation's schools had a serious problem with crime, that one-fourth of all schools in the country were vandalized in a given month and 10% were burglarized.

Based on student reports, NIE estimated that 2.4 million secondary school students (11%) had something stolen from them in a typical month. Approximately 1.3% of the students (282,000) reported being attacked in a typical month, with more than two-fifth of the attacks involving some injury. Junior high school students were twice as likely to report being attacked as high school students. The risk of serious attack was greater in urban areas. Teacher victimization rates reported in the NIE study were roughly similar to those of students.

A 1983 report on school violence by Jackson Toby, Director of Rutgers University's Institute for Criminological Research, concluded that the NIE data had probably under estimated the actual instances of school violence at the time the survey was conducted ("Violence in School," *Crime and Justice: An Annual Review of Research*, Vol. 4).

Problems with school discipline are not only recognized by the general public—teachers also list discipline problems as a major concern. The National Education Association (1977) reported that 66% of responding teachers viewed managing student behavior as the main problem faced in teaching. Many teachers felt they were unable to even cope with, much less resolve, the discipline problems they faced each day (Kindsvetter, 1978).

The operation of public schools has traditionally been largely a matter for

local determination, subject to state control in certain respects. Recently, however, a number of federal statues and judicial decisions have regulated, in one way or another, the activities of public schools,[3] and some of these have engendered state legislative action also affecting local practices.[3] The complexity of this regulatory enterprise is apparent. On the one hand, legislative and judicial decisions set policies at a remote level that are expected to produce consistent behavior in schools. This requires collaboration and cooperation among various levels. The rule or desired practice must be clearly expressed and understood by those charged with implementation. Local administrators must be able and willing to carry out the policy,[4] and where several agencies are responsible for administration, they must agree about their obligations and discharge them in a coordinated and uniform fashion for policy implementation to be complete.

On the other hand, regulation has significance for local officials whether or not they accurately follow specific commands. While appellate courts usually address these discipline and crime control issues on a piecemeal basis, program administrators ordinarily cannot.

The relationship between judicial or legislative regulation and the behavior of those affected by regulatory activity is a complicated matter from a number of perspectives. Courts are mandated to make decisions of specific issues and in contrast school officials need to develop comprehensive policies. For example, based on the United States Supreme Court decision in *Goss v. Lopez*, 419 U.S. 565 (1975), the Indiana State legislature applied that decision through the imposition of procedural rules for short disciplinary supensions of students.[5] School districts have gone somewhat further by specifying procedures for expulsion and exclusion from school, or for inschool suspension of students and other forms of discipline.

However, school administrators must also decide what procedures are required for other alternative methods of discipline they employ. Another example is the recent analysis of the court decision of the *New Jersey v. T.L.O.*, 105 S. Ct. 733 (1985), where the court provided general guidelines for permissible student searches by school officials, but did not specifically address issues such as: whether students have a legitimate expectation of privacy in lockers, desks or other school property in which school supplies are stored; or standards governing searches of those areas by school officials or other public authorities acting at school officials' request.[6] School administrators and teachers must either abandon procedures for which clear guidance is lacking, which may be undesirable or even impracticable, or they must consider additional safeguards in terms of what will probably be required by courts when they ultimately address the procedural requirements for those alternatives. This latter approach carries with it some significant risks, including the possiblity that the action taken will not only be declared invalid but will give rise to a lawsuit for damages predicated upon violation of a student's civil rights.[7]

Some commentators have suggested that certain legislative code provisions and case law may prevent the use of disciplinary and crime control techniques perceived as necessary to maintain a safe education environment. One problem appears to be the effectiveness of the punishment that is both legally acceptable and educationally sound. Several reports indicate that student lawsuits filed against teachers and administrators, the threat of such suits, and the belief that they may be filed inhibit effective discipline in schools. Specifically, lawsuits brought pursuant to 42 U.S.C. Section 1983, as interpreted by *Wood v. Strickland*, 420 U.S. 308 (1975), are believed to influence disciplinary and crime control practices, although empirical evidence is virtually nonexistent. In addition, those practices are influenced by court decision such as *Goss v. Lopez*, 419 U.S. 565 (1975), and *New Jersey v. T.L.O.*, 105 S.Ct. 733 (1985). The following questions merit further investigation: whether changes in the law, including court decisions, have resulted in more or less effective school discipline and crime control; to what extent does the perception that lawsuits might be filed actually inhibit implementation of certain approaches to school discipline and their effectiveness; to what extent do lawsuits (potential suits and those actually filed and decided) have an impact on the effectiveness of school discipline and how widespread are these perceptions and effects; what changes, if any, in the law are desirable.

Opinions differ regarding whether the justice system standards and procedures of due process are appropriate for schools, or, whether they interfere with effective disciplining of disruptive students. Certain studies, supporting the incorporation of justice system due process, associate observance of these standards with more positive student attitudes towards school rules, the legal system and academic achievement. Other educators would argue that following the burdensome procedures of due process unduly inhibits their ability to discipline a disruptive student in a timely and effective fashion.

Preliminary findings based on a 12 percent return from a study currently being conducted by the National Center for Education Statistics on school principals' perceptions of school discipline policies and practices show that only a small percentage of the principals surveyed consider the Supreme Court rulings to be a moderate or large operational burden. The findings also indicated that the principals believed that lack of security personnel, or fear of being sued for disciplining students had little effect on the ability of teachers or themselves to maintain order and discipline students. Other constraints, such as inadequate teacher training in discipline procedures and school law and inadequate alternative placement programs for disruptive students, had a greater effect on the ability to maintain order than those previously discussed. It should be noted, however, that the study findings are very preliminary and that the survey was only of school principals and not teachers.

In assessing the impact of federal case precedents on local school operations, it is important to assess the level of knowledge of administrators and teachers about relevant legislation and major court decisions. A recent survey conducted by Julius Menacker and Ernest Pascarella of teachers and administrators of inner city and suburban Chicago public schools on their knowledge of education-related Supreme Court rulings revealed that administrators scored significantly higher (74%) than teachers (63%) on a questionnaire about 13 major Supreme Court cases. Findings from this survey also revealed an ineffective and haphazard communication network for transmitting important Supreme Court decisions to the schools where they have the greatest impact—at the classroom level.

While there does not appear to be a consensus among educators, researchers and parents regarding the impact of legislation, case law and litigation on school disciplinary policies and procedures, there is national recognition that some secondary schools are experiencing unacceptably high levels of disruption. The magnitude of this problem appears to be greatest among those schools located in urban areas serving junior high populations.

OJJDP has sponsored demonstrations of a variety of innovative approaches designed to reduce school crime, to improve disciplinary policies and practices, to improve teacher and student safety, and to enhance academic achievement. Practitioners in the field have also identified a number of promising approaches that attempt to deal with problems of school crime, discipline and school environment. While there has been considerable attention to various aspects of disciplinary and crime control policies—e.g., the role of law enforcement in schools, appropriate strategies to respond to classroom disruption, improvement of the school environment to prevent delinquency—less attention has been given to the relationship between Federal and State legislation, case law and litigation, and development of comprehensive school disciplinary and crime control policies and procedures.

III. Program Goal and Objectives

A. Program Goal

To test promising strategies for the development, implementation, and monitoring of disciplinary and crime control policies and procedures, which are intended to reduce school crime and disorder to provide for a safer school environment.

B. Major Objectives

1. To identify significant Federal and State legislation, case law, and litigation that are relevant to the development of disciplinary and crime control policies, procedures and practices in selected schools/school districts.
2. To develop clear, consistent discipline and crime control codes, based on analysis of legislation, case laws state regulations, and lawsuits.
3. To develop strategies to implement discipline and crime control codes.
4. To implement procedures that translate the codes into practice.
5. To document the planning and implementation of approaches to discipline and to school crime in order to identify the essential components of this process.
6. To measure the impact of strategy implementation on the reduction of disciplinary infractions and school crime.
7. To assess the strategies in terms of cost effectiveness and suitability for replication and institutionalization within school systems.

IV. R&D Strategy

This Research and Development (R&D) model is designed to develop and test the efficacy of improved disciplinary policies and procedures for the reduction of school crime and disorder in secondary schools. It calls for the development of policies and procedures based on a careful analysis of relevant legislation, case law and litigation against the schools. This program will consist of three separate R&D projects, which will be coordinated by OJJDP. This initiative requires a collaborative effort at each site among researchers, program planners, school administrators, faculty, and law enforcement personnel, as appropriate. This working group will be referred to as the "program team" throughout this solicitation.

The program team will first conduct a thorough assessment of the school crime and discipline problems, taking into account relevant legislation, case law, and previous lawsuits. This should include the identification of significant legislative provisions and case law that may promote or inhibit the development of effective policies and procedures for discipline and crime problems. It should also include an assessment of the perceived effects of previous lawsuits on discipline and crime control practices. The program team will generate a strategy for crime reduction and improvement of disciplinary policies and procedures in target school(s). The program team should develop clear policy statements and should communicate these policies to those responsible for implementation. Finally, implementation of disciplinary policies and practices should be monitored by school administrators and evaluated by the program team.

Under this initiative each program team *will be required* to conduct a review of existing discipline codes and establish revised school-wide disciplinary policies and procedures based on assessment of legislation, case law and lawsuits. These revisions should be characterized by clear stipulation of sanctions for disciplinary infractions, consistent and fair enforcement of rules, and differentiation between disciplinary violations and criminal acts; Local jurisdictions will be allowed considerable flexibility in determining which specific program strategies offer the greatest potential for improvement of disciplinary practices in their target schools. Examples of strategies for implementing revised policies which can be tested:

1. Involvement of students and parents in the development of disciplinary codes;
2. development of written guidelines and/or statements of understanding with police and courts;
3. development of in-service training for teaches and administrators on their legal rights and responsibilities related to discipline and crime control, including an emphasis on protecting themselves from lawsuits as appropriate;
4. improved communications procedures for day-to-day operations, delineation of respective roles and responsibilities, establishment of cooperative working relationships through written policies and procedures for working with law enforcement agencies and the courts;
5. training of teachers in techniques of effective classroom management and control of disruptive behavior;
6. improved school incident reporting procedures and utilization of crime analysis techniques.

All projects are required to utilize a systematic program development process in both the planning and implementation stages. This process provides a structure for identifying possible relationships between legislation, case law, and lawsuits and discipline and crime control strategies, assessing the nature and extent of discipline and crime problems, establishing clear measurable goals, designating measurable objectives, developing appropriate strategied and interventions, identifying potential obstacles and resources for program implementation, developing work plans, and establishing an on-going data collection and feedback system. It is expected that the assessment and planning process will require six to nine months. *Successful completion of the assessment, policy revisions and action plan will be a requirement for continued funding (by special condition).* The following outline is provided to serve as a conceptual framework for all members of the working team involved in the collaborative effort of the program development process. The ultimate aim of this collaboration is to generate a common focus and shared vision of what the program is being designed to accomplish.

A. Problem Statement

Clear articulation of the problem being addressed requires identification of the various relevant legislation, case law and data sources and utilization of this information to define the nature and extent of the problem.

B. Clear Goals

Researchers and program implementers focus their activities on the problem at hand by delineating measurable goals. Goal statements

describe what the organization is ultimately trying to achieve.

C. Theory

A theoretical framework must be developed which clearly outlines why the problem exists and provides guidance for project implementers' use in building their strategies.

D. Measurable Objectives

The statement of the project objectives must specify the time frame for achievement of these intermediary outcomes, the anticipated level of improvement, as well as the basis for measurement of change. Clearly delineated objectives provide the foundation for the evaluation design.

E. Strategies

Interventions and strategies are those selected activities designed to achieve an objective or set of objectives. For the purposes of this initiative, applicants will be allowed considerable local discretion in choosing to test a variety of strategies for policy implementation. The selection and development of strategies or interventions must be based on systematic analysis of crime and discipline problems and relevant laws and regulations.

F. Work Plans

Work plans are to be developed with specific strategies for implementation of project interventions. Fully articulated strategies include specification of two elements: critical bench marks and tasks. Critical bench marks are those key decisions, agreements, or actions necessary to progress with implementation of the plan. Failure to accomplish critical bench marks in a timely fashion will signal program planners to devise a new strategy. To effectively execute strategies, action planners should also specify time frames for task completion and individuals responsible. The action plan serves as a management tool and provides objective standards for achievement.

G. Evaluation

During theprogram development process, researchers and program managers work together to specify key research questions and develop a process and impact evaluation design. Data collection activities are jointly planned and carefully executed. Researchers provide timely interim feedback to program managers on: (1) progress toward executing program strategies as well as (2) success or failure in meeting measurable objectives.

The program development process begins with the initial conceptualization of the problem and continues throughout the duration of this program test. For the purpose of responding to this RFP, applicants must include all components listed in section V, "Application Requirements." The work plan included in the application will be considered preliminary and subject to continued development and refinement during the planning period to be scheduled for the first six to nine months following the grant award.

NIJJDP will encourage coordination among individual R&D projects in terms of developing and utilizing similar concepts and comparable "core" measures. With cross-site adoption of comparable measures, a substantial data base could be generated. This coordinated effort is expected to enhance the potential contribution of this research initiative to the state-of-the-art of developing safe school environments.

V. Eligibility Criteria

Eligible applicants include public or private research agencies or organizations. In order to implement this program design, it is required that a collaborative relationship exist between researchers, school administrators and justice system representatives, as appropriate. The intent of this initiative is to assess the effects of legislation, case law, regulations and lawsuits related to discipline and crime control; and to develop methods for establishing comprehensive, and consistent discipline and crime control codes, and to determine if the policy has been effectively implemented. School districts targeted for program change must be experiencing a high level of disciplinary or crime problems within the school. They should also have experienced several lawsuits or significant threats of lawsuits related to disciplinary actions in the past couple years. Research organizations will apply directly for grant awards and may choose to provide limited support through subcontracts to schools to cover on-site costs critical for program implementation. The primary cost of implementing the intervention strategies must be supported by available community and school system resources. This requirement is in keeping with the intent of this program to test cost effective program models which would be suitable for replication in other jurisdictions without external funding.

In order to maximize open competition in the award of this R&D grant, "for-profit" organizations are eligible to apply, provided they certify compliance with the following two requirements:

(1) The OJJDP grant award will not be used to support the normal profit-making operations of the organization, but will serve to support or stimulate the legislatively authorized research and evaluation objectives of NIJJDP.

(2) For at least one year following the termination of this award, the recipient will not compete for or accept any procurement or assistance award supported by OJJDP funds which may have resulted or been derived from the original award.

VI. Minimum Program Application Requirements

Applicants must complete all parts of the application for Federal Assistance (Standard Form 424). Particular attention should be paid to the Budget Information, Part III, and Program Narrative, Part IV. In addition to the requirements set forth under the Program Narrative, the following information must be included in the application:

(1) A succinct statement of your understanding of the goal and objectives of the School Crime and Discipline R&D Program.

(2) A problem statement which clearly documents the nature and extent of school crime and disciplinary problems in the schools or school systems targeted for change. Identify the criteria utilized in school site selection and provide data to justify this selection. Document recent experiences with actual lawsuits or significant threats of lawsuits related to disciplinary actions.

(3) A description of those long-range measurable goals which your program is designed to reach. Specify how goals will be measured, when a substantial level of goal accomplishment is expected, and how progress in meeting goals can be attributed to program interventions.

(4) A review of the theoretical and empirical literature relevant to relationship of legislation and case law to discipline and crime control problems. Include a discussion of the theoretical framework developed to specifically guide the identification and assessment of problems identified at the targeted school system(s).

(5) A description of program objectives which specifies what measurable changes are expected, and when change is anticipated.

(6) A description of assessment and planning process.

(7) A work plan which describes time frames for accomplishing critical bench

marks and specifies responsibilities for tasks for the planning process. This work plan must provide a detailed description of the six to nine month planning period and a preliminary plan for implementation of program interventions, evaluation activities and for the development of research products. It should also include a plan for delivering training and technical assistance to local school administrators, faculty, and justice system personnel, as appropriate, to assist them in incorporating the program development process into their routine operations.

(8) A preliminary evaluation design which includes research questions, key concepts and variables, research methodology (including sampling procedures and measurement of key variables), and a plan for data analysis and feedback. Applicants must provide evidence that the most rigorous experimental design possible will be utilized in order to increase the strength of attributions of program impact. Applicants must address the issue of coordination with other research sites funded under this program investigating and developing comparable measures of similar concepts across schools.

A Privacy Certificate must be submitted with the application in accordance with funding agency regulations, copies of which are available upon request.

(9) Written verification from authorized officials of all parties involved in the R&D program team (e.g., school administrators, faculty, and justice system personnel) of commitment to collaborate in the program planning, implementation, data collection, and program refinement processes. Access to specific types of data (official school records, police arrest records, student and teacher interviews) must also be verified in writing.

(10) If it is determined to be necessary for the research organization grantee to provide financial support from the grant award to another organization to cover costs critical for program implementation, the application must include: a statement of work for the proposed contract; and the procedures to be followed for competitive selection *or* a justification for noncompetitive award for these support services.

(11) A detailed budget must be provided for the initial twelve months budget period including travel funds for coordination meetings with other program grantees (estimate costs for three two-day meetings to be hosted by various participating grantees), and any costs which might be required to serve as a host site for one meeting. An annual estimate of costs to complete the R&D program must also be included.

(12) A description of the project management structure which includes proposed staffing plan, brief position descriptions which delineate roles and responsibilities, description of relevant staff experience and expertise, and resumes of key project staff (include as an appendix to the application). The project director must devote a minimum of fifty percent (50%) of his/her time to this effort.

(13) An organizational capability statement which describes relevant organizational experience and demonstrates that the applicant has the substantive and financial capability to effectively administer the project.

(14) The applicant must indicate a willingness to host an on-site visit by OJJDP staff and/or Peer Review Panel.

VII. Selection Procedures and Criteria

In general, all applications received in response to this solicitation will be reviewed in terms of the rigor and feasibility of the R&D design, and thoroughness regarding approaches to planning, implementation and evaluation problems. Applications will be technically evaluated by Department of Justice (DOJ) employees who are qualified by training and experience and by a peer review panel (a group of experts other than officers and employees of the DOJ). Site visits may be conducted by peer review panel and/or OJJDP staff to verify information provided by those applicants ranked as best qualified for further consideration.

Specifically, applications will be rated according to the following criteria and weights:

(1) The problem to be addressed is clearly stated including evidence of knowledge of related literature and justification for site selection (refer to Section V (3) and (4))	15
(2) An understanding of the goal and objectives of this research and development program is clearly articulated, including a description of the goals and objectives of the proposed research (refer to Sections V (3), (4), (5) and (6))	20
(3) The research and development design and methodology is sound and contains program elements directly linked to the achievement of project objectives including written verification of commitment to collaborate and accessibility of data (refer to Sections V (8) and (9))	20
(4) The project management structure is adequate to the successful conduct of the project (refer to Sections V(12))	10
(5) Organizational capability is demonstrated at a level sufficient to successfully support the project (refer to Section V(14))	10
(6) Budget costs are reasonable, complete and appropriate in comparison to the activities proposed to be undertaken (refer to Sections V (11), (12) and (10))	10
(7) The workplan is adequate, clear and feasible and will support the development of useful products (refer to Section V(7))	15

In order to examine variations in state level impact on school crime and discipline only one site will be funded in a given state.

Applications receiving the highest total score on the above criteria will be recommended for funding to the Administrator, OJJDP. Peer review recommendations in conjunction with the results of internal review and any necessary supplementary review will assist the Administrator's consideration of competing applications and selection of applications for funding. The final award decision will be made by the OJJDP Administrator.

VIII. Submission Requirements

All applicants responding to this solicitation should be aware of the following requirements for submission:

1. Applicants which plan to respond to this announcement are requested to submit written notification of their intent to apply to NIJJDP/OJJDP by October 21, 1985. Such notification should specify: the name of the applicant organization, mailing address, telephone number, and primary contact person. This notification should be forwarded to Deborah Wysinger, NIJJDP/OJJDP, U.S. Department of Justice, 633 Indiana Ave., N.W., Washington, D.C. 20531.

2. Applicants must submit the original signed application and three copies to NIJJDP/OJJDP. The necessary forms for applications (Standard Form 424) will be provided upon request.

3. The NIJJDP/OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding. It is anticipated that the grant may be awarded as early as April, 1986.

4. Applications must be received by mail or hand delivered to the NIJJDP/OJJDP by 5:00 p.m. e.s.t. on December 6, 1985. Those applications sent by mail should be addressed to Deborah Wysinger, NIJJDP/OJJDP, U.S.

Department of Justice, 633 Indiana Avenue, NW., Washington, D.C. 20531. Hand delivered applications must be taken to the NIJJDP/OJJDP, Room 784, 633 Indiana Avenue, N.W., Washington, D.C. between the hours of 8:00 and 5:30 p.m. except Saturdays, Sundays or federal holidays.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR Part 42, Subparts C, D, E, and G).

B. In the event a Federal or State court of Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (CRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other persons(s) or groups(s), such other recipient, persons(s) or groups(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any grant award.

X. References

(See appendices A & B.)

Alfred S. Regnery,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

Appendix A

Notes

1. E.g., *Goss v. Lopez*, 419 U.S. 565 (1975) (school disciplinary procedures); Tinker v. Des Moines Indep. Community School District. 393 U.S. 503 (1969) (School discipline-free spreech); Education of All Handicapped Children Act, 20 U.S.C. .1401.1461 (1976); Rehabilitation Act of 1973, 29 U.S.C. SS 701–794 (1976).
2. E.g., Ind. Code .20–8.1–5–1 to –17 (1982).
3. See S. Wasby, the Impact of the United States Supreme Court 231–32 (1970).
4. Indiana Due Process and Pupil Discipline Code, Ind. Code .20–8.1–5–8, –10 (1982).
5. National School Safety Center News Journal, Spring 1985, New Jersey v. T.L.O., The Lay of the Law, Diane Mahoney, (p. 31).
6. See e.g., Wood v. Strickland, 420 U.S. 308 (1975).

Appendix B

References

Cabinet Council on Human Resources (1983). *Disorder in Our Public Schools.* (Available from Cabinet Council Working Group on School Violence/Discipline, Washington, D.C.)

Epley, Glen B. Crime and Punishment: The Judicial Role in School Discipline and Substantive Due Process. *Education Law Reporter, Vol. 19* (p. 765), 1983.

Gallup, George H. The 14th Annual Gallup Poll of the Public's Attitudes Toward Public Schools. *Phi Delta Kappan,* September 1982.

Kindsvetter, R. A new view of the dynamics of discipline. *Phi Delta Kappan,* January 1978, 59(5), 322–324.

Lufler, Henry S., Jr. Past Court Cases and Future School Discipline. *Education and Urban Society, Vol. 14, No. 2.* February 1982, 169–1984.

Menacker, Julius and Pascarella, Ernest. How Aware Are Educators of Supreme Court Decisions That Affect Them? *Phi Delta Kappan Journal,* 1983.

Moles, Oliver C. "Trends in Interpersonal Crimes in Schools," paper presented at the annual meeting of the *American Educational Research Association, Montreal,* April 1983.

National Institute of Education, Violent Schools, Safe Schools: *The Safe School Study Report to the Congress, Vol. I (Washington, D.C.: NIE,* 1978).

Schimmel, David. Discipline, Due Process and Religion in the Schools: Recent Court Decisions Affecting Education (or Controversial Issues of the 80's) submitted to Phi Delta Kappan Journal.

Teitelbaum, Lee E. School Discipline Procedures: Some Empirical Findings and Some Theoretical Questions. *Indiana Law Journal, Vol. 58, No. 4,* 1983.

Wright, Douglas & Moles, Oliver. Legal Issues in Educational Order: Principals' Perceptions of School Discipline Policies and Practices. Paper presented at an Annual Conference, *American Education Research Association,* April, 1985.

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Friday
September 27, 1985

Part VII

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Program Announcement; Program of Research on the Causes and Correlates of Delinquency; Notice

DEPARTMENT OF JUSTICE

Program Announcement; Program of Research on the Causes and Correlates of Delinquency

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of issuance of solicitation of applications to conduct research on the causes and correlates of delinquent behavior.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to Part C, Section 243 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, hereby announces a new OJJDP initiative entitled "Program of Research on the Causes and Correlates of Delinquency." The primary research goal is to improve our understanding of the development of prosocial and antisocial behavior patterns.

OJJDP's National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) invites public or private agencies to submit applications to design and carry out longitudinal investigations of the development of prosocial and antisocial behavior patterns in communities characterized by high rates of serious delinquency.

Under this program of research, each project will establish an interdisciplinary research team capable of examining the etiology of delinquency in the context of the community, family, and individual differences. Emphasis will be placed on developing innovative techniques for measurement of those delinquency risk factors which offer the greatest utility in terms of being suitable targets for change through prevention and intervention strategies.

OJJDP has allocated a total of $1,000,000 for initial awards to four to six grantees competitively selected under this program of research. These initial awards will provide financial assistance for each research organization to: Conduct planning activities; coordinate their efforts with other grantees involved in this program of research; develop refined research designs and data collection instruments; produce baseline data on the study community and youth population; and to support longitudinal data collection. Under the initial award, the timeframe for conduct of the above tasks is estimated to be 15 to 18 months. Due to the longitudinal nature of this initiative, total project periods will be up to five years. This competition will be conducted according to the OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart A, published August 2, 1985 at 50 FR 31365–31366. The deadline for submission of applications is December 2, 1985.

FOR FURTHER INFORMATION CONTACT: Barbara Tatem Kelley, Research and Program Development Division, NIJJDP, OJJDP, 633 Indiana Avenue, NW., Room 784, Washington, DC 20531; telephone (202) 724–5929.

SUPPLEMENTARY INFORMATION:

Request for Proposals—Program of Research on the Causes and Correlates of Delinquency

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I. Introduction and Background
II. Program Goals and Objectives
III. Research Strategy
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VIII. Procedures and Criteria for Selection
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I. Introduction and Background

The Office of Juvenile Justice and Delinquency Prevention (OJJDP), hereby invites applications for a Program of Research on the Causes and Correlates of Delinquency. To understand the goal, objectives and strategy of this initiative, it is imperative to first consider previous research on this topic. Substantial effort has been expended by researchers as they attempted to isolate those risk factors which were associated with an increased propensity for involvement in delinquent behavior. Overall, this research supports the conclusion that no single cause accounts for all delinquency, and no single pathway or developmental progression leads to a life of crime.

Certain studies focused on the identification of early behavioral problems which might indicate that a child is especially "high risk" for subsequent delinquency. In the family setting, high risk children challenged parental authority or were difficult to control at home. In the school setting, high risk children displayed what might be considered nonadaptive or aggressive behavior patterns in the elementary classroom. While such early problem behavior may not have had origins of hostility and defiance, if these disruptive behavior patterns produce negative peer and angry adult reactions, antisocial and delinquent behaviors were likely to emerge with increasing age.

Other researchers have targeted for investigation those youth entering adolescence. At this stage of a youth's socialization, examples of delinquency risk factors include: Association with delinquent peers; alienation from parents and school authorities; disrespect for the law; lack of educational achievement; evidence of learning disabilities; failure to achieve age-appropriate, psychosocial developmental milestones; presence of psychiatric difficulties; impairment of neurological/psychomotor functioning; residence in a high crime neighborhood; and experimentation with alcohol and drugs.

Several long-term studies have been supported to identify risk factors related to substantial serious and violent delinquency. These studies have been conducted in a variety of jurisdictions to identify correlates and causes of delinquency and the development of serious delinquent careers. Factors such as violence in the family, involvement in law-violating gangs and groups, use of alcohol and other drugs, and residence in a high crime neighborhood all seem to contribute to the chronic involvement of a small proportion of offenders in serious crime.

The most common pattern of delinquent behavior appears to be one of declining seriousness and discontinuation after the teen-age period. However, it is apparent that those juvenile offenders characterized by an early age of delinquency onset, frequent police contacts, numerous court referrals, more serious offense histories, and commitment to juvenile corrections are more likely to pursue adult criminal careers. A number of researchers have investigated the career criminal phenomenon (Petersilia, 1980).

If one considers that delinquency research falls on a continuum from investigations of correlates to causes, then empirical findings produced to date have largely clustered on the "correlate" end of the scale. While it is likely that researchers have detected virtually all of the major risk factors correlated with a proclivity for involvement in delinquency, researchers reporting their findings have frequently had to stop short of attributing causality to any given factor or combination of factors. This hesitation to draw causal inferences was largely a function of the limitations of the research methodologies employed as well as the lack of an explicit articulation of the theoretical bases for the causal relationships.

It is exceedingly difficult to determine causality in a nonlaboratory setting

lacking experimental controls. Even when delinquency is described in behavioristic terms, there is no simple statement of a given stimulus producing a particular response. Rather, the individual brings to a given situation a biological/genetic makeup which has been influenced by a host of reinforcement contingencies in the social learning arena of the family, the schools, peer associations and community environment.

Asserting delinquency causality also implies that a temporal relationship has been established, with the casual variable preceding or precipitating the onset of antisocial behavior. Interpretation of causal sequencing of events involves the application of repeated measures of the same individuals over that span of time relevant to the development of antisocial patterns. With the exception of such research as the Cambridge Study in Delinquent Behavior (Farrington, 1983), very few delinquency investigations have fulfilled the criteria of prospective longitudinal research.

Another key consideration in the attribution of causality is evidence that in the absence of a given risk factor, a youth will be less inclined to engage in antisocial behavior. Much of the previous research has failed to establish adequate comparison samples to demonstrate that the nonoccurrence of a presumed relevant condition results in a nondelinquent outcome.

The emphasis in this discussion on causality is intended to challenge the research community to creatively approach the "why" of the development of antisocial behavior in order to provide a sound, empirical basis for advances in delinquency prevention strategies and juvenile justice system intervention.

Previous research provides a basis for the identification of which groups of youth are at greater risk for delinquency involvement. Under this program of research, children growing up in high crime communities will be the focus of investigation. By virtue of this design parameter, the generalizability of findings will necessarily be limited to populations exposed to comparable risk factors. A critical research question which remains largely unanswered is why many children growing up in high crime communities experience positive socialization and thrive in spite of exposure to many delinquency risk factors. A significant challenge is to distinguish which of the risk factors appear to have the most direct impact on antisocial behavior and what naturally occurring phenomenon support prosocial development. Full exploration of this question will entail an interdisciplinary examination of the child's development, with consideration of individual differences, family experiences, socio-cultural influences, and environmental factors.

Another practical concern in prevention programming is the need to establish a sounder basis for identifying at an early age those children at greatest risk of negative social development. It is of limited utility, and certainly more costly, to wait until an individual adopts an antisocial or delinquent lifestyle and then attempt to reverse a well entrenched behavior pattern. Recent literature on prediction technology is promising in terms of more clearly specifying base rates, relative improvement over chance, and multiple gating techniques (Monahan, 1981; Loeber and Dishion, 1983). Also, with the advent of computerized sophistication in data analyses, previously insurmountable data management issues can now be addressed.

Under this program of research, OJJDP is committed to supporting innovative research designs which will yield useful findings regarding the causes and correlates of delinquency. Utility, in this instance, refers to the applicability of theoretical and empirical advances to the improvement of cause-focused strategies for delinquency prevention (Hawkins, Pastor, Bell and Morrison, 1980) and intervention.

II. Program Goals and Objectives

A. Purpose and Goal Statement

The purpose of this Program of Research on the Causes and Correlates of Delinquency is to expand the existing body of knowledge. The primary research goal is to improve our understanding of the development of prosocial and antisocial behavior patterns.

B. Major Research Objectives

The following is a listing of those objectives which are considered most critical to this program research:

1. To identify the sequential ordering of different developmental processes and life experiences, including social, psychological, behavioral and environmental, which lead to either positive socialization or adaptation of a delinquent or criminal lifestyle.

2. To identify those predisposing factors, of whatever nature, which characterize a child at risk for involvement in antisocial behavior, delinquency and crime.

3. To examine the etiology of crime and delinquency in the context of the community, family and individual differences.

4. To enhance our ability for early identification and intervention with high risk children for the prevention of delinquency.

5. To advance the development of a sound theoretical framework for the development of effective strategies for delinquency prevention and justice system intervention.

III. Research Strategy

This program of research is intended to function as a coordinated effort by multiple grantees. Applicants may propose to initiate a new study under this announcement or they may propose to supplement ongoing or existing research. In either case, applicants must demonstrate that their proposed research fulfills the objectives and design requirements of this initiative.

A. Theoretical Considerations

The theoretical framework for many previous studies tended to be rather open-ended, with researchers often capturing those risk factor data which were readily available. This approach often limited the applicability of findings to theory testing or theory building. Under this initiative, researchers will be required to delineate the theoretical foundation which guides their inclusion of factors to be investigated. Applicants are urged to approach the etiology of antisocial behavior from an interdisciplinary perspective and to take into consideration existing theories of delinquency causality as well as possible integrations of theories across disciplines.

B. Design Requirements

The research strategy does not call for replication of prior studies, rather for innovation in overcoming the methodological shortcomings of previous research. For example, due to technological limitations and funding constraints, past studies have frequently focused on a narrow range of factors, have lacked an interdisciplinary approach to the investigation of child development, and have not involved the collection of data at such points in time that would allow for interpretation of causal sequencing. Under this initiative, emphasis will be placed on conducting contemporary or prospective longitudinal studies, instead of relying exclusively on retrospective and archival data sources. Researchers should not only address those demographic factors which are easy to measure and relatively immutable, but also devise assessment techniques to

capture data on those factors which are more difficult to measure but more suitable targets for change through prevention and intervention strategies.

Researchers are encouraged to approach creatively the very complex design issues related to the longitudinal investigation of the etiology of delinquency in the context of the individual, family, and community. Under this program of research, each research project should have the following characteristics:

1. Selection of study communities characterized by serious delinquency in order to have a sufficient number of the most high risk families and youth.

2. Longitudinal design which provides for data collection at critical stages of the developmental process and allows for interpretation of causal sequencing of events.

3. Careful delineation of a sampling plan to answer specific research and policy questions.

4. Emphasis on studying those delinquency risk factors which offer the greatest utility in terms of being suitable targets for change through prevention and intervention strategies.

5. Innovative techniques for measurement of those factors related to the development of prosocial and antisocial behavior patterns.

6. Sensitivity to cultural and ethnic distinctions in the etiology of delinquency.

7. Establishment of an interdisciplinary research team.

C. Restrictions on Bio-Medical or Behavior Control Experimentation

While OJJDP encourages researchers to assess a broad range of delinquency risk factors, it should be noted that this office is legislatively restricted from conducting research involving any biomedical or behavior control experimentation on individuals. As described in section 261(d) of the JJDP Act, the term "behavior control" refers to methods which involve a substantial risk of physical or psychological harm to the individual and which are intended to modify or alter antisocial behavior.

D. Coordination of Program of Research

OJJDP recognizes the need for all researchers involved in this program of research to coordinate their activities. Purposeful coordination will serve:

1. To ensure comprehensive coverage of key research questions.

2. To provide a forum for collaboration among the various researchers in the development and subsequent utilization of comparable measures.

3. To establish multiple longitudinal data bases which could be subjected to aggregate secondary analysis on selected issues.

While coordination activities will be scheduled throughout the duration of this initiative, the initial six to nine months will be an intensive coordinated planning period. During this planning period, all researchers will convene to familiarize each other with their proposed research designs, and to exchange ideas on state-of-the-art interdisciplinary advances in such areas as factor measurement and predictive modeling.

IV. Major Responsibilities of Successful Applicants

Each organization selected to participate in this program of research will be responsible for all aspects of the project design, implementation, and product development.

A. Phase I

Initial awards will support Phase I project activities. Under Phase I, each research organization will be responsible for the following tasks:

1. Conduct of planning activities.

2. Coordination of efforts with other grantees involved in this program of research, as discussed in section III. D.

3. Development of refined and detailed research design.

4. Development of comprehensive workplan for the implementation of the refined design.

5. Development and pretesting of data collection instruments.

6. Securement of full access to all study data sources.

7. Development of detailed plan for protection of confidentiality of data.

8. Production of baseline data on the study community and youth population.

9. Initiation of longitudinal data collection.

There is no exact timeframe for the completion of these tasks, however, Phase I awards will provide support for 15 to 18 months of activity. For those reseachers initiating a new study, it is estimated that a considerable amount of time under the initial Phase I award will be devoted to tasks 1 through 8. For those researchers supplementing ongoing studies, more time under Phase I may be available for proceeding with actual data collection. All participants in this initiative must successfully complete tasks 1 through 8 prior to receiving consideration for continuation funding under Phase II.

B. Phase II

All subsequent continuation awards will support Phase II activities, which include the following:

1. Full implementation of longitudinal data collection.

2. Development and maintenance of a computerized data base.

3. Analysis of data.

4. Continued coordination and data sharing with other researchers involved in this initiative.

5. Ongoing assessment of the validity and reliability of measurement techniques and instruments.

6. Refinement of data collection approaches and research design, as appropriate.

7. Communication of findings through the production of interim reports, issue papers, and final reports.

With respect to task 7, researchers are strongly urged to surface interesting findings as they become available. Throughout the life of these projects, researchers should strive to produce documents which clearly convey significant findings and practical applications for policy-makers, practitioners, and other researchers.

V. Eligibility Requirements

Applicants who fail to satisfy the following requirements will be ineligible for funding consideration. Funding agency determination of eligibility will be based solely upon OJJDP review of documentation provided in the application.

A. Eligible applicants include public or private agencies or organizations.

B. In order to maximize open competition in the award of these research grants, "for-profit" organizations are eligible to apply provided they certify compliance with the following two agency policy requirements:

1. The OJJDP grant award must not be used to support the normal profit-making operations of the organization, but must serve to support or stimulate the legislatively authorized research and evaluation objectives of NIJJDP.

2. For at least one year following the termination of this award, the recipient will not complete or accept any procurement or assistance award supported by OJJDP funds which may have resulted or been derived from the original award.

C. Applicant organizations may choose to submit joint proposals with other organizations as long as one organization is designated in the application as the primary applicant and any co-applicants are designated as

such. Further discussion of co-applicants is provided under section VII. Together co-applicants must meet the eligibility requirements specified in section V. D and E.

D. The applicant must have experience in the following areas in order to be eligible for consideration:

1. Prior experience in the design and implementation of research on the causes and correlates of delinquency or crime.

2. Prior experience in the conduct of longitudinal research.

3. Prior experience in the development, maintenance and analysis of large computerized data bases.

E. The applicant must establish a project research team with interdisciplinary expertise necessary for the design and conduct of research on the child developmental, family, and community risk factors for anti-social behavior.

F. The applicant must have the management and financial capability to effectively implement a project of this scope and complexity.

VI. Duration and Dollar Amount

A. Due to the longitudinal nature of this research, project periods will be up to five years. For the purposes of responding to this solicitation, applicants are advised that the initial awards will provide support for Phase I activities (refer to Section IV.A). The timeframe for the conduct of Phase I tasks is estimated to be 15 to 18 months.

B. OJJDP has allocated a total of $1,000,000 for initial Phase I awards to four to six grantees competitively selected under this program of research. It is anticipated that a series of Phase II (see section IV.B) grants will be made available to support the continuation of individual research projects. Funding of a noncompeting continuation grant within a previously approved project period may be withheld for justifiable reasons, which include:

1. There is no continued need for further research.

2. A grantee is delinquent in submitting required reports.

3. Adequate grantor agency funds are not available to support the project.

4. A grantee fails to show satisfactory progress in achieving the objectives of the project or otherwise fails to meet the terms and conditions of the award.

5. A grantee's management practices fail to provide adequate stewardship of the grantor agency funds.

6. Outstanding audit exceptions have not been cleared.

7. Any reason which would indicate that continued funding would not be in the best interests of the Government.

C. Recognizing the considerable expense involved in conducting longitudinal research of this nature, OJJDP strongly encourages applicants to seek funding from additional sources, both public and private.

VII. Minimum Program Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget and a budget narrative. The program narrative shall not exceed 75 double-spaced pages in length.

In submitting applications which contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations which describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered as co-applicants. Those organizations which are primarily procuring services or products from another organization would not be considered as co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicants. Under this arrangement each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and serveral responsibility with the other co-applicants.

In addition to the requirements specified in the instructions for preparation of Standard Form 424, the following information must be included in the application:

A. A statement of the problem to be addressed, including the review of the theoretical and empirical literature on the development of prosocial and antisocial behavior patterns, causes and correlates of delinquency, and implications of research findings for prevention and intervention.

B. A succinct statement of your understanding of the goal and objectives of the Program of Research on the Causes and Correlates of Delinquency.

C. A complete discussion of the proposed research design and methodology including:

1. Delineation of theoretical framework which guides your study.

2. Presentation of your specific study's goals, objectives, and research questions to be addressed.

3. Discussion of what theory-based factors will be addressed and how these will be measured.

4. Description of the high crime community selected for investigation including socio-demographic information, documentation of the delinquency problem, cultural and ethnic context, and location/boundaries.

5. Description of proposed sample, discussion of expected rate of attrition, and justification that the proposed sample size is adequate for longitudinal design.

6. Presentation of the longitudinal design for data collection.

7. Specification of data sources and verification of data access.

8. A Privacy Certificate describing procedures to be followed to assure confidentiality of data in accordance with funding agency regulations, copies of which are available upon request.

9. Discussion of plans for data analysis.

10. Suggestions for ways to coordinate with other researchers involved in this initiative.

D. A detailed workplan for Phase I activities which includes identification of major milestones, designation of organizational responsibility, and a schedule for completion of tasks and products. The nature and utility of products should be discussed.

E. A description of the project management structure which includes proposed staffing plan, brief positions descriptions which delineate roles and responsibilities, identification of proposed members of interdisciplinary research team, description of relevant staff experience and expertise, and résumés of key project staff (include as an appendix to the application). The project director must devote a minimum of fifty percent (50%) of his/her time to this effort.

F. An organizational capability statement which describes relevant organizational experience and demonstrates that the applicant has the substantive and financial capability to effectively administer the project.

G. A detailed budget for the Phase I period, including travel funds for coordination meetings with other program grantees (estimate costs for three three-day meetings to be hosted by various participating grantees), and any costs which might be required to serve as a host site for one meeting.

H. An estimated budget of annual costs for conducting Phase II activities through the conclusion of the project period.

I. Applications which propose noncompetitive contracts for the

provision of specific services must contain a sole source justification for any procurement in excess of $10,000.

VIII. Selection Procedures and Criteria

In general, all applications received in response to this solicitation will be reviewed in terms of their potential contribution to the state-of-the-art, the appropriateness and feasibility of the research design, and innovative measurement of risk factors. Applications will be evaluated by a peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart B, published August 2, 1985 at 50 FR 31366–31367. Site visits may be conducted by peer review panelists and/or OJJDP staff to verify information provided by those applicants ranked through peer review as best qualified for further consideration.

Specifically, applications will be rated according to the following criteria and weights:

A. The problem to be addressed by this research project is clearly stated, including evidence of knowledge of related literature (refer to section VII, A)	10
B. An understanding of the goals and objectives of this program of research is clearly articulated, including assessment of the degree to which proposed research would further these objectives (refer to section VII, B and C.2)	10
C. The research design and methodology is sound and contains program elements directly linked to the achievement of project objectives (refer to section VII, C)	40
D. The project management structure is adequate to the successful conduct of the project (refer to section VII, E)	15
E. Organizational capability is demonstrated at a level sufficient to successfully support the project (refer to section VII, F)	5
F. Budget costs are reasonable, complete and appropriate in comparison to the activities proposed to be undertaken (refer to section VII, G, H, and I)	10
G. The workplan is adequate, clear and feasible and will support the development of useful products (refer to section VII, D)	10

The results of peer review under a competitive program will be a relative aggregate ranking of applications in the form of "Summary Ratings." These will ordinarily be based on numerical values assigned by individual peer reviewers, and as set forth in the OJJDP *Peer Review Manual*.

OJJDP intends to sponsor a number of individual projects which, in combination, serve to investigate a broad range of developmental issues related to the etiology of delinquency. To achieve this end, individual projects sponsored under this program of research should be complementary in scope and approach rather than duplicative. In addition to the scores based upon the above weighted criteria, the final selection process will also include consideration of diversity of: Research approach and developmental risk factors targeted for investigation. A final selection consideration will also be the estimated long-range costs of conducting the proposed research for the duration of the project period. OJJDP may choose to negotiate with the finalists to make certain adjustments to their applications. Peer review recommendations in conjunction with the results of internal review and any necessary supplementary review, will assist the Administrator's consideration of competing applications and selection of applications for funding. The final award decision will be made by the OJJDP Administrator.

IX. Procedures and Deadlines for Submission of Applications

A. Organizations which plan to respond to this announcment are requested to submit written notification of their intent to apply to NIJJDP/OJJDP by October 25, 1985. Such notification should specify: The name of the applicant organization, mailing address, telephone number, and primary contact person. In the event that organizations intend to apply as co-applicants (as described in section VII of this solicitation), each of the co-applicants are to provide the above information. The submission of this notification is optional. It is requested to assist NIJJDP in estimating the workload associated with the review of applications and for notifying potential applicants of any supplemental information related to the preparation of their applications.

B. Applicants must submit the original signed application and three copies to NIJJDP/OJJDP. The necessary forms for applying (Standard Form 424) will be provided upon request.

C. The deadline for submission of applications is *December 2, 1985*. All applications must be delivered or mailed to NIJJDP/OJJDP by 5:30 p.m. on that date. Those applications which are mailed must be postmarked on or before December 2, 1985, by the U.S. Postal Service.

D. The mailing address for all correspondence (e.g., applications, notification of intent to apply, requests for forms) related to this program announcement is as follows: Research and Program Development Division, National Institute for Juvenile Justice and Delinquency Prevention, Office of Juvenile Justice and Delinquency Prevention, Room 784, 633 Indiana Avenue, NW, Washington, D.C., 20531.

X. Civil Rights Compliance

A. All recipients of OJJDP assistance must comply with the nondiscrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended; Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR Part 42, Subparts C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (CRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any grant award.

XI. References

Farrington, D. *Further Analyses of a Longitudinal Survey of Crime and Delinquency.* Unpublished final report to the National Institute of Justice, Washington, D.C., 1983.

Loeber, R., and Dishion, T. Early predictors of male delinquency: A review. *Psychological Bulletin,* 1983, Volume 94, Numer 1, pp. 68–99.

Monahan, J. *Predicting Violent Behavior: An Assessment of Clinical Techniques.* Beverly Hills, California: Sage Publications, Inc., 1981.

Petersilia, J. Criminal career research: Morris, N., and Tonry, M., eds. *Crime and Justice: An Annual Review of Research.* Chicago: University of Chicago Press, 1980, Volume 2, pp. 321–379.

Alfred S. Regnery,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 85–23085 Filed 9–26–85; 8:45 am]

BILLING CODE 4410-18-M

Federal Register

Friday
September 27, 1985

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Part 61

Duration of Airman Medical Certificates; Withdrawal of Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. 19176; ref. Notice 82-15]

Duration of Airman Medical Certificates

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This notice withdraws Notice 82–15, published in the **Federal Register** on December 2, 1982 (47 FR 54414), which proposed to extend the duration of third-class airman medical certificates for operations requiring a private or student pilot certificate. Notice 82–15 was in response to a petition for rulemaking by the Aircraft Owners and Pilots Association (AOPA) dated May 11, 1979. This petition asks that the duration of all third-class certificates be changed to 3 years. As proposed in Notice 82–15, the new rule would have required periodic third-class medical examinations at 2- to 5-year intervals based on the age of the airman rather than every 2 years as now required. Notice 82–15 elicited significant opposition. A number of concerns were expressed by the medical community. After careful consideration, Notice 82–15 is being withdrawn.

FOR FURTHER INFORMATION CONTACT: William H. Hark, M.D., Aeromedical Standards Division, AAM–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone number (202) 426–3802.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1982 (47 FR 54414), in response to a petition by the AOPA, the Federal Aviation Administration (FAA) published Notice of Proposed Rulemaking (NPRM) No. 82–15. That notice proposed to extend the duration of third-class airman medical certificates for operations requiring a private or student pilot certificate. The proposal would have required periodic third-class medical examinations at intervals based on the age of the airman. It also would have relaxed the requirements for a large number of private or student pilots to undergo a medical examination every 24 months.

Reasons for the Withdrawal

A majority of the commenting private physicians and an aviation-oriented medical association experessed to opposition to the proposal. A number of physicians, though expressing support for the intent of the proposal, suggest alternative examination intervals or changes in the scope of examination. Several note their belief that the periodic medical certification examination is the only reason many airmen visit a physician. They believe that health consciousness is desirable in airmen and that the periodic encounters with designated physicians (Aviation Medical Examiners) encourage it. They argue that a reduction in examination frequency may be construed as a downgrade of the importance of health to flight safety.

The majority of individual airmen and their organizations are in favor of a reduction in frequency of examination. One large organization of airline pilots expresses support but emphasizes the need for limiting certificate validity periods in questionable cases where the airman's medical condition requires evaluation to determine if the standards are met. Some commenters want the elimination of all medical examinations.

Whereas Notice No. 82–15 dealt solely with the duration of airman medical certificates, the FAA has announced and is conducting a complete review of the medical standards for airmen and of its certification practices and procedures (47 FR 16298, April 15, 1982; 47 FR 30795, July 15, 1982). As part of that review the American Medical Association (AMA) is reviewing these standards and procedures and is expected to report its recommendations to the FAA in February 1986. Given the imminent issuance of the AMA's report, and the fact that the report may well provide the FAA with better data on which to base an evaluation of the safety concerns regarding the proposals which were raised by the medical community, the FAA has decided to withdraw the notice and reconsider this matter in the context of its review of the AMA's recommendation. Any future consideration of examination frequency will be given within the context of this study's outcome.

Withdrawal of NPRM

Accordingly, Notice No. 82–15 (47 FR 54414, December 2, 1982) is withdrawn. This action does not preclude the FAA from considering similar proposals in the future or commit it to any further or future course of action on this subject.

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

Issued in Washington, D.C., on September 23, 1985

William T. Brennan,

Acting Director of Flight Operotions.

[FR Doc. 85–23103 Filed 9–24–85; 12:16 pm]

federal register

Friday
September 27, 1985

Part IX

Environmental Protection Agency

40 CFR Part 3

Employee Responsibilities and Conduct; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 3

[OGC FRL-2874-6]

Employee Responsibilities and Conduct

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: EPA is revising the Employee Responsibilities and Conduct regulations at 40 CFR Part 3. These regulations are necessary to reflect changes in the Agency's organization, to implement Rule 1.11 of the American Bar Association's 1983 Model Rules of Professional Conduct, to exempt tax-exempt bond funds from the prohibition of 18 U.S.C. § 208(a), to make minor changes based on the Agency's experience in administering the earlier regulation and to clarify other provisions. The effect of these changes is to allow employees who own tax-exempt bond funds to participate in matters affecting the financial interests of state and local governments and, in jurisdictions where Rule 1.11 of the American Bar Association's 1983 Model Rules of Professional Conduct applies, to bar former EPA attorneys from participating in court challenges to rules they helped to make. In addition, Deputy Ethics Officials are authorized to require certain employees below GS/GM–13 to file confidential financial statements.

DATE: This regulation is effective September 27, 1985.

ADDRESS: Office of General Counsel (LE–132G), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Donnell L. Nantkes, (202) 382–4550.

SUPPLEMENTARY INFORMATION:

Background

On June 28, 1985, EPA published a Notice of Proposed Rulemaking at 50 FR 26506 to revise regulations published February 29, 1985 (49 FR 7528). Comments were due by July 29, 1985. No comments were received. Accordingly, these regulations are published as proposed, except that 40 CFR 3.302(e) is revised to make it clear that the employment interests of employees' spouses and minor children are required to be reported on EPA Form 3120–1, Confidential Statement of Employment and Financial Interests.

EPA published a complete revision of its regulation regarding Employee Responsibilities and Conduct on February 29, 1984. Since then, parts of the revised regulation have become outdated as a result of changes in the Agency's organizational structure. For example, the list of officials in Appendix B to Subpart C who are subject to special requirements under Section 318(d) of the Clean Air Act is out-of-date. This list is updated without substantive change. In addition, § 3.302(b)(1) currently refers to the "Enforcement Counsel." This position has been replaced by an "Assistant Administrator for Enforcement and Compliance Monitoring."

Section 3.301(b)(1) is revised to exempt tax-exempt bond funds from the prohibition of 18 U.S.C. 208(a). Such funds are analogous to the diversified mutual funds which are currently exempt.

Section 3.302 is revised to authorize Ethics Officials to require certain employees below GM/GS–13 to file EPA Form 3120–1, Confidential Statement of Employment and Financial Interests, where their duties directly affect the financial interests of specific parties. This authority applies only to employees who are contracting officers, project officers, inspectors, auditors or On-Scene Coordinator representatives. Such employees may have serious conflicts, and Ethics Officials should be able to monitor their financial and employment interests. Directing other employees below GM/GS–13 to file continues to require the specific approval of the Office of Government Ethics.

Section 3.302 is also revised to make it clear that employees who are required to file EPA Form 3120–1, Confidential Statement of Employment and Financial Interests, must provide information concerning the employment interests of their spouses and minor children.

Since in EPA's experience there is no basis for distinguishing outside employment involving holders of assistance agreements from such employment involving EPA contractors and subcontractors, the provisions regarding approval of outside employment are expanded to include outside employment involving holders of assistance agreements.

The regulation also implements Rule 1.11 of the American Bar Association's 1983 Model Rules of Professional Conduct by providing that, where the local jurisdiction has adopted Rule 1.11, former EPA attorneys are prohibited from participating in judicial challenges to rules which they helped to develop. This change applies only where a complaint has not been filed by the effective date of this regulation or the date Rule 1.11 became effective in the jurisdiction, whichever occurs later.

The following changes are intended to clarify existing provisions:

(1) The *Discussion* paragraph after the verbatim reprint of 18 U.S.C. 208 in Appendix A to Subpart A is revised to make it clear that a vested right to funds in a State retirement system does not create a disqualification under the statute where the funds are invested in a separate trust account and are not controlled by the former employer.

(2) Paragraph (1) of Appendix A to Subpart C is revised to make it clear that interests in mutual funds must be reported on EPA Form 3120–1. This is desirable because the exemption for mutual funds at § 3.301(b)(1) does not apply to funds which concentrate their investments in particular industries, and Ethics Officials should be able to judge whether mutual funds are within the exemption.

(3) Paragraph (3) of Appendix A to Subpart C is revised to specify the information to be included in the Deputy Ethics Officials' annual certifications to the Designated Agency Ethics Official. This information includes: (1) the number of employees at GM/GS 13–15; (2) the number required to file; (3) the number of other employees required to file; (4) the number of remedial actions by type; (5) a certification that no employee who performs any "functions or duties" under the Surface Mining Control and Reclamation Act holds any prohibited interests; and (6) a certification that all required reports have been received, reviewed and signed and that any necessary remedial actions have been completed. This paragraph has also been reworded to clarify the procedures for submission of annual supplemental statements and (where employees interests have changed) submission of updates every four months.

(4) Paragraph (4) of Appendix A to Subpart C is revised to make it clear that a Confidential Statement of Employment and Financial Interests may be disclosed to the Office of Inspector General and, on the written request of the chairman, to a committee or subcommittee of Congress. This provision is implicit in the February 29, 1984 regulation and does not change existing practice.

(5) Section 3.508(e) is revised to make it clear that the requirement for approval of outside employment applies to employment involving firms regulated by the "EPA program Office or Regional Office" in which an employee serves.

(6) Appendix A to Subpart E is revised to make it clear that requests for approval of outside employment are to

be routed through employees' supervisors.

Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether a regulation is "major" and therefore subject to the regulatory impact analysis requirements of the Order or whether it may follow other development procedures. We have determined that this regulation is not "major" as it will not have a substantial impact on the economy. Consequently, the regulation is not subject to the impact analysis requirements of Executive Order 12291.

List of Subjects in 40 CFR Part 3

Conflicts of interests.

Dated: September 11, 1985.

Lee M. Thomas,

Administrator.

Therefore, 40 CFR Chapter I, Part 3 is amended as follows:

PART 3—EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. The authority citation for Part 3 continues to read as follows:

Authority: Executive Order 11222, 30 FR 6480; 3 CFR 1964–1965, p. 306; 5 CFR Parts 734, 735 and 737.

2. Redesignate § 3.105 as 3.106 and add a new § 3.105 to read as follows:

§ 3.105 Post-employment restrictions affecting former EPA Attorneys.

This section applies where a jurisdiction in which a former EPA employee holds bar membership has adopted Rule 1.11 of the American Bar Association's Model Rules of Professional Conduct dated August 1983, in particular Rule 1.11(d)(2) which provides that the term "matter" includes "any other matter covered by the conflict of interest rules of the appropriate government agency." In such cases, the term "matter" includes participation (in the form of drafting, providing advice or making recommendations) in the development of EPA regulations. Where a former EPA employee participated in the development of an EPA regulation while employed by EPA, he or she may not represent or assist in representing any party or parties as an attorney in any judicial proceeding to contest the validity of the rule. However, this section applies only where the complaint was not filed before the effective date of this regulation or the date when Rule 1.11 became effective in the jurisdiction, whichever occurs later.

3. In Appendix A to Subpart A, add the following sentences at the end of the Discussion paragraphs within the discussion of 18 U.S.C. 207:

Appendix A to Subpart A—Conflict of Interest Statutes and Examples.

* * * * *

Retirement plans maintained by a former employer may also amount to a financial interest, depending on the circumstances. For example, a fund managed by a former employer which includes company stock would create a personal financial interest, whereas a pension plan of a State government which is managed by a separate trustee and in which the former employee's right have vested would not create a personal financial interest in the State government in which an EPA employee formerly served. Employees are encouraged to seek the advice of the Designated Agency Ethics Official regarding pension plans.

4. Section 3.300 is amended by revising paragraphs (a) and (b)(7) to read as follows:

§ 3.300 Prohibitions against acts affecting a personal financial interest.

(a) As discussed in Appendix A to Subpart A, section 208(a) of Title 18, United States Code, prohibits an employee from knowingly participating in an EPA matter in which the employee, the employee's spouse, minor child, present or prospective employer, or organization in which the employee is an officer, has a financial interest.

(b) * * *

(7) Rulemaking and policy matters which have a direct and predictable effect on the financial interests of companies in which the employee owns stock or has an official or employment relationships. Examples are discussed in Appendix A to Subpart A.

5. In § 3.301 revise paragraph (b)(1) to read as follows:

§ 3.301 Waiver.

* * * * *

(b) * * *

(1) Mutual funds (including tax-exempt bond funds), except those which concentrate their investments in particular industries;

* * * * *

6. In § 3.302 revise paragraph (b)(1) and redesignate paragraphs (c)(2) and (d) as paragraphs (d) and (e) respectively. Add a new paragraph (c)(2) and revise redesignated paragraph (d) and redesignated paragraph (e), to read as follows:

§ 3.302 Financial Disclosure Reports and Confidential Statements of Employment and Financial Interests.

* * * * *

(b) * * *

(1) All employees who report to the General Counsel or the Assistant Administrator for Enforcement and Compliance Monitoring, and Regional Counsel employees;

(c) * * *

(2) Those in positions classified at GS–12 or below (or comparable levels under other pay systems) if their duties directly affect the financial interests of specific parties. Such positions are limited to contracting officers, project officers, inspectors, auditors and On-Scene Coordinator representatives.

(d) Other employees classified below the GM or GS–13 level (or comparable levels under other pay systems) who are in positions which otherwise meet the criteria of paragraph (c)(1) of this section may also be required to file, provided the Office of Government Ethics has approved in writing. Deputy Ethics Officials should consult with the Designated Agency Ethics Official in seeking such approval.

(e) *Financial and employment interests of employees' relatives.* In completing Confidential Statements of Employment and Financial Interests, the financial and employment interests of a spouse or minor child are considered to be interests of the employee and must be reported.

7. Revise paragraphs (1), (3) and (4) of Appendix A to Subpart C to read as follows:

Appendix A to Subpart C—Procedures for Filing Confidential Statement of Employment and Financial Interests

(1) *Submission*—Each employee required to submit a Confidential Statement of Employment and Financial Interests must submit the completed EPA Form 3120–1 within 30 days after entrance on duty or (where the position is not specifically listed in this Part) within 30 days after being notified of the requirement to file. Interests which are exempt from the prohibition of 18 U.S.C. 208(a) (except for interests in mutual funds) need not be reported. *See* § 3.301(b). The completed form is sent to the Deputy Ethics Official for the employee's organization. Headquarters employees in the Office of General Counsel and employees in the immediate Office of the Administrator submit their forms to the Designated Agency Ethics Official.

* * * * *

(3) *Supplemental Statements*—For purposes of annual review, employees who are required to submit EPA Form 3120–1 must submit a new statement each July by no later than July 31, even if no changes have taken place during the year.

Deputy Ethics Officials must notify such employees of this requirement and must complete review of the statements within 30 days after submission. By September 30 of each year, Deputy Ethics Officials must submit a statement to the Designated Agency Ethics Official containing the following information: (i) the number of employees in their organization at GM/GS 13–15; (ii) the

number required to file; (iii) the number of other employees required to file under § 3.302(c) or 3.302(d); (iv) the number of remedial actions taken by type of action (i.e., recusals, waivers, divestitures, reassignments or blind trusts); (v) a certification that no employee who performs any "functions or duties" under the Surface Mining Control and Reclamation Act holds any prohibited interests (see § 3.305); and (6) a certification that all required reports have been received, reviewed and signed and that any necessary remedial actions have been taken.

In addition, whenever additions or changes have taken place, employees who are required to file must submit a supplemental statement by the end of the four month period in which the transactions occurred; that is, by November 30 and March 31. Deputy Ethics Officials must notify employees of this requirement during the months when these updates are due, and must review and sign the updates within 30 days after submission. However, they need not provide any report to the Designated Agency Ethics Official regarding the updates.

(4) *Confidentiality*—EPA Form 3120–1 is confidential. No information from this form may be disclosed other than to the Designated Agency Ethics Official and the Alternate Agency Ethics Official, immediate staff assistants whom the responsible Deputy Ethics Official has specifically designated in writing, the Office of Inspector General, committees or subcommittees of Congress on the written request of the chairman, or as the Director of the Office of Government Ethics or the Administrator may determine for good cause.

* * * * *

8. In Appendix B to Subpart C revise paragraph (2) under Coverage to read as follows:

Appendix B to Subpart C—Employees Subject to Special Requirements Under the Clean Air Act

* * * * *

(2)(i) In the Office of the Administrator: Administrator, Deputy Administrator, and the Director of the Science Advisory Board.

(ii) Regional Administrators.

(iii) In the Office of General Counsel: General Counsel, Deputy General Counsel, Associate General Counsel for Air and Radiation.

(iv) In the Office of Enforcement and Compliance Monitoring: Assistant Administrator for Enforcement and Compliance Monitoring, Senior Enforcement Counsel, Associate Enforcement Counsel for Air Enforcement.

(v) In the Office of Policy, Planning and Evaluation: Assistant Administrator for Policy, Planning and Evaluation, Deputy Assistant Administrator for Policy, Planning and Evaluation, Director of the Office of Policy Analysis, Director of the Office of Standards and Regulations.

(vi) In the Office of Air and Radiation: Assistant Administrator for Air and Radiation, Deputy Assistant Administrator for Air and Radiation, Director of the Office of Policy Analysis and Review, Director of the Office of Program Development, Director of the Office of Air Quality Planning and Standards, Director of the Office of Mobile Sources, and Directors of the following Divisions: Control Programs Development, Emission Standards and Engineering, Monitoring and Data Analysis, Stationary Source Compliance, Strategies and Air Standards, Certification, Emission Control Technology, Engineering Operations, Field Operations and Support and Manufacturers Operations.

* * * * *

9. In § 3.501 revise paragraph (a) to read as follows:

§ 3.501 Policy.

(a) Subject to the approval requirements of § 3.506, employees may engage in outside employment or other outside activity consistent with the standards of this Subpart.

* * * * *

10. In § 3.502 revise paragraph (d) to read as follows:

§ 3.502 Guidelines and Limitations.

* * * * *

(d) Involve work with any EPA contractor or subcontractor on an EPA project or work with any holder of an EPA assistance agreement or subagreement on an EPA project (unless the Designated Agency Ethics Official approves work on such acquisition or assistance agreement in writing) or would involve work for any person or organization in a position to gain advantage through the employee's exercise of official duties;

* * * * *

11. In § 3.507 revise paragraph (a) to read as follows:

§ 3.507 Special conditions applicable to publishing.

* * * * *

(a) No income is derived from publishing materials which EPA makes available to the general public or which are available to the employee because of his or her official duties but are not available to the general public; and

* * * * *

12. In § 3.508 revise paragraphs (d) and (e) to read as follows:

§ 3.508 Administrative approval.

* * * * *

(d) Outside employment or other outside activity involving an EPA contractor or subcontractor or holder of an EPA assistance agreement or subagreement; and

(e) Employment by a firm which is regulated by the EPA program Office or Regional Office in which the employee serves.

* * * * *

13. In Appendix A to Subpart E revise the introductory text of paragraph 1 (Form and content of request) to read as follows:

Appendix A to Subpart E—Procedures for Permission To Engage in Outside Employment or Other Outside Activity

1. *Form and content of request*—A written request for administrative approval of outside employment must be addressed to the appropriate Deputy Ethics Official, or, in the immediate Office of the Administrator or Deputy Administrator, to the Designated Agency Ethics Official. The request must be sent through the employee's supervisors and must indicate:

* * * * *

§ 3.603 [Amended]

14. In § 3.603(a), change "Statements of employment and financial interest" to "Statements of Employment and Financial Interests."

[FR Doc. 85–22420 Filed 9–26–85; 8:45 am]

BILLING CODE [illegible]

federal register

Friday
September 27, 1985

Part X

Environmental Protection Agency

Intent To List Chloroform as a Hazardous Air Pollutant; Notice

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-2861-5]

Intent To List Chloroform as a Hazardous Air Pollutant

AGENCY: Environmental Protection Agency.

ACTION: Intent to List Chloroform Under section 112 of the Clean Air Act and Solicitation of information.

SUMMARY: This notice announces the results of EPA's preliminary assessment of chloroform as a potentially toxic air pollutant. Based on the health and preliminary risk assessment described in today's notice, EPA now intends to add chloroform to the list of hazardous air pollutants for which it intends to establish emission standards under section 112(b)(1)(A) of the Clean Air Act (CAA). The EPA will decide whether to add chloroform to the list only after studying possible techniques that might be used to control emissions of chloroform and further assessing the public health risks. The EPA will add chloroform to the list if emission standards are warranted.

This notice has no effect on the regulation of chloroform as a volatile organic compound in order to attain and maintain the national ambient air quality standards (NAAQS) for ozone. In addition, this notice does not preclude any State or local air pollution control agency from specifically regulating emission sources of chloroform.

DATES: Written comments pertaining to this notice must be received on or before November 26, 1985.

ADDRESSES: Submit comments (duplicate copies are preferred) to: Central Docket Section (A–130), Environmental Protection Agency, ATTN: Docket No. A–85–12, 401 M Street SW, Washington, DC, Docket A–85–12, which contains information relevant to this proposed decision and is located in the Central Docket Section of the U.S. Environmental Protection Agency, West Tower Lobby Gallery I, 401 M Street SW, Washington, DC. The docket may be inspected between 8:00 a.m. and 4:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

Availability of Related Informtion

The Health Assessment Document (HAD) for chloroform is available through the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Information on the availability of the HAD is available from ORD Publications, CERI–FR, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268 (Telephone: 513–684–7562 commercial/684–7562 FTS).

FOR FURTHER INFORMATION CONTACT: Robert M. Schell, Pollutant Assessment Branch (MD–12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (Telephone: 919–541–5645 commercial/629–5645 FTS).

SUPPLEMENTARY INFORMATION:

Introduction

Chloroform is a volatile organic compound (VOC) which is primarily used for the production of refrigerants (i.e., fluorocarbon 22; 90% of 1982 U.S. production). In the past, chloroform was extensively used as an anaesthetic agent for surgical procedures. This use continued for many years before chloroform was substituted with safer anaesthetics.

The HAD, which was reviewed by EPA's independent Science Advisory Board (SAB) in a public meeting on December 20, 1984, summarizes a number of studies which suggest that chloroform is the causative agent of liver and kidney tumors in experimental animals. Furthermore, the HAD concludes that chloroform is probably carcinogenic to humans. Non-cancer health effects have also been reported as a result of chloroform exposure. The SAB generally agreed wth the content and conclusions of the HAD.

Sources and Emissions

The sources of chloroform emissions can be divided into three major categories:

(1) *Primary Sources:* Those processes which produce or use chloroform and that emit chloroform from process vents, storage tanks and fugitive leaks.

(2) *Secondary Sources:* Processes which inadvertently form and release chloroform through volatilization.

(3) *Miscellaneous Sources:* Other sources assumed to exist based on nationwide material balance i.e., chloroform production estimates minus known uses and exports of chloroform; all of this difference is assumed to be emitted to the air.

The primary sources emit a relatively small amount of chloroform individually or collectively. Secondary sources (e.g., water treatment, pulp and paper production), account for the majority of chloroform emissions. Chloroform is formed by secondary sources via the reaction of free chlorine and dissolved organic material in aqueous solutions. The chloroform created in this way will spontaneously volatilize to the atmosphere. A significant amount of the chloroform estimated to be emitted nationwide results from the miscellaneous uses category which has not been adequately defined. A complete summary of estimated chloroform emissions is presented in Table 1.

TABLE 1.—SUMMARY OF ESTIMATED ANNUAL EMISSIONS OF CHLOROFORM

	[illegible] of [illegible]	Chloroform [illegible] (mg/yr)	Chloroform [illegible] (mg/yr)
Primary sources:			
Pharmaceutical production	2/2	2,000	1,000
Chloroform production	6/5	[illegible]	[illegible]
Ethylene dichloride (EDC) production	18/2	[illegible]	173
Hypalon® production	1/1	N.A.	[illegible]
Fluorocarbon 22 production	6/5	144,000	[illegible]
[illegible] (OBPA) production	1/1	N.A.	[illegible]
Grain fumigation	Many	28	[illegible]
Secondary sources:			
Pulp and paper production	129/33	[illegible]	3,890
Drinking water treatment	Many	[illegible]	1,900
Waste-water treatment	Many	[illegible]	424
Cooling water treatment	Many	[illegible]	263
Trichloroethylene (TCE) photodegradation	[illegible]	[illegible]	420
Miscellaneous uses*	Many	[illegible]	6,000
[illegible]	[illegible]	152,000	14,736

N.A. = Not Available

*Miscellaneous uses are unidentified. Emission estimate is based on the assumption that all chloroform estimated by material balance is emitted to the air.

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Source: GCA 1984.

There is uncertainty in many of these emission estimates. An example of this uncertainty can be found in the quantification of chloroform emissions from the miscellaneous uses category. The emission estimate developed for this category was based on a mass balance of production and use data and assumes that all chloroform in this category is released to the air. Similarly, there is uncertainty in the estimation of chloroform emissions from secondary sources. Emissions from drinking water treatment facilities were estimated based on the average chloroform concentration in finished drinking water from a subset of all drinking water treatment facilities. This estimate, as well as the emission estimates for the other secondary source categories, is uncertain because it is based on a generalized data base and there is a potential for considerable variability in individual sources.

Many of the primary source categories already control emissions of chloroform through equipment installed to reduce VOC emissions. The secondary source

categories, however, with the exception of drinking water treatment, do not control chloroform emissions. Although drinking water treatment facilities are currently regulated under the Safe Drinking Water Act (44 FR 68624–68707), this regulation has little impact on chloroform air emissions.

Public Exposure

The chloroform exposure assessment is based on the Human Exposure Model (HEM) for estimating exposure around point sources, and the Hanna-Gifford algorithm for estimating exposure from area source emissions (e.g., miscellaneous uses, drinking water treatment). Chloroform sources and emissions are distributed widely throughout the nation, and chloroform is relatively persistent in the atmosphere. The entire population, therefore, is exposed to chloroform at some concentration. Ambient air quality data indicate that annual average urban and non-urban chloroform concentrations are 0.66 $\mu g/m^3$ (0.00014 ppm) and 0.1 $\mu g/m^3$ (0.00002 ppm), respectively.

An additional analysis was conducted to evaluate the potential for short-term exposures around major emission points to result in adverse health effects. This analysis, which used worst case meteorological conditions in a conservative screening model, indicated that the maximum chloroform concentrations predicted to occur nearby the facility associated with the highest annual emissions and highest individual cancer risk are 9.7 ppm averaged over 3 minutes, and 3.8 ppm averaged over 10 hours. Although the actual level of exposure associated with the onset of non-cancer health effects in humans is unknown, the National Institute of Occupational Safety and Health (NIOSH) and the Occupational Safety and Health Administration (OSHA) have established exposure limits to protect individuals occupationally exposed to chloroform from non-cancer health effects. NIOSH recommends an exposure limit of 10 ppm (averaged over 10 hours) and OSHA recommends a ceiling limit of 50 ppm, not be exceeded at any time in workplace air. The results of this analysis (shown above) indicate that modeled ambient chloroform concentrations resulting from continuous routine emissions from chloroform sources do not exceed the occupational exposure limits established by NIOSH and OSHA. Furthermore, the maximum monitored concentration at 0.07 ppm (24-hour average) is well below the exposure limits established by NIOSH and OSHA.

In the atmosphere, chloroform photochemically degrades relatively slowly with an estimated half life of 11.5 weeks (i.e., the time required to decrease the original concentration by 50%). Assuming an average wind speed of 4 meters/second, chloroform can be expected to travel great distances from its point of emission. Chloroform, however, will not accumulate in the atmosphere.

The end products of chloroform atmospheric reactions are carbon dioxide and hydrochloric acid, with an important intermediate product being phosgene. There are no data to suggest that any of the products or intermediates of chlorofrom atmospheric reactions significantly impact public health.

Health Effects

The HAD concludes that there is sufficient evidence to conclude that chloroform is carcinogenic in experimental animals. Confirming evidence from human studies, however, is limited to epidemiological studies of chlorinated drinking water ingestion (chlorinated drinking water contains chloroform as well as other trihalomethanes). Although the results of these studies suggest increased incidences of cancer in humans, chloroform could not be implicated as the sole causative agent; therefore, the available direct evidence for chloroform carcinogenicity in humans is inadequate to assess its carcinogenic potential. Applying the International Agency for Research on Cancer (IARC) criteria, the HAD concludes that chloroform is a Category 2B carcinogen (i.e., probably carcinogenic to humans). The HAD also concludes that the evidence for carcinogenicity would place chloroform into group B2, according to the proposed EPA classification scheme (November 23, 1984, FR 46294).

Birth defects (teratogenicity and embryotoxicity) have been observed in experimental animals in association with chloroform exposure. These effects, however, were only observed at very high dose levels (adverse effects on the conceptus were only observed in association with maternal toxicity). At present, there is no accepted method of extrapolating animal studies reporting birth defects to low dose levels generally encountered by the public in ambient air. For this reason, the relevance of these studies to the current decision is unclear.

Several studies have been conducted to attempt to assess the mutagenic properties of chloroform. In analyzing the literature concerning mutagenicity, the HAD cited problems with the experimental protocol of many of these studies. The HAD concludes that, with the data currently available, no definitive conclusions can be reached concerning the mutagenicity of chloroform.

Other non-cancer health effects associated with chloroform exposure are central nervous system (CNS) depression (e.g., anaesthesia), liver and kidney damage, and cardiovascular irregularities. Prolonged exposure to high doses can lead to respiratory failure and death.

Risks to Public Health

The quantitative estimation of public health risks centers around the risk of cancer. The estimate of cancer risk to humans is based on data from oral exposure animal bioassays. In order to assess the risk of cancer to public health, the EPA's Carcinogen Assessment Group (CAG) used a linearized multistage extrapolation model, together with assumptions and conversion factors to adapt data from ingestion studies for inhalation use, to derive the unit risk estimate for chloroform. The unit risk estimate, at 2.3 x 10^{-5} $(\mu g/m^3)^{-1}$, is the upper bound probability of an individual contracting cancer if that individual were exposed to 1 microgram of chloroform per cubic meter of inspired air throughout his or her lifetime (assumed to be 70 years). This upper bound unit risk factor, combined with exposure information, was used to quantitatively estimate the risk chloroform poses to public health. The risk to public health is further quantified by two estimates: the maximum individual risk and the annual aggregate incidence. The maximum individual risk is the added lifetime probability of the most exposed individual contracting cancer as a result of exposure to chloroform in the ambient air. The annual aggregate incidence is an estimate of the excess cancer cases every year (nationwide) attributable to exposure from ambient air concentratiosn of chloroform. A complete summary of the risk estimates for each source category is presented in Table 2.

TABLE 2.—QUANTITATIVE RISK ASSESSMENT

Source category	Maximum individual risk	Annual aggregate incidence cancer/year
Drinking water treatment [a]	8.5 x 10^{-6}	[illegible]
[illegible] water treatment [b]	2.0 x 10^{-6}	[illegible]
Total of water treatment [a]	8.5 x 10^{-6}	[illegible]
Pulp and paper production	1.1 x 10^{-5}	[illegible]
Pharmaceutical production [a]	1.1 x 10^{-5}	[illegible]
Chloroform production	2.5 x 10^{-3}	[illegible]
TCE photodegradation [c]	1.9 x 10^{-5}	[illegible]
Cooling water treatment [a]	1.2 x 10^{-6}	[illegible]

TABLE 2.—QUANTITATIVE RISK ASSESSMENT—Continued

Source category	Maximum [illegible] risk	Aggregate [illegible] cancer cases/year
EDC production	3.9 x 10 [illegible]	0.02
Hypalon® production	1.2 x 10 -6	<0.01
Fluorocarbon 22 production	4.4 x 10 [illegible]	[illegible]
Grain fumigation [illegible]	1.3 x 10 -6	0.02
OBPA production	7.1 x 10 [illegible]	0.02
Miscellaneous uses [illegible]	2.8 x 10 -7	[illegible]
Total	[illegible]	[illegible]

[illegible] Chloroform emissions were modeled as an area source.
[illegible] Exposure and risk estimated for only one plant (largest vitamin C producer). The aggregate incidence estimated for the entire source category is underestimated.
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There are a number of assumptions underlying these estimates that can yield either over or underestimates of the risk posed by chloroform. Further study and assessment will not likely narrow the uncertainties associated with some of the inputs to the risk assessment or yield an improvement in some of these assumptions (e.g., the carcinogenic potency of a chemical estimated through the use of a mathematical model for extrapolating high-dose animal studies to the much lower concentrations present in the ambient air). There are other inputs to the risk estimates which are very preliminary at the current stage of assessment and which will be substantially refined through further study. The primary example of this is the source information: number and types of sources, their locations, emission rates, stack parameters, variability of emissions, etc. Current source information is based on engineering estimates, data obtained under section 114 of the CAA, and other readily available information in the literature. This information, in many cases, will be improved through plant visits and source tests. The Agency has concluded that the preliminary risk estimates presented here are sufficient to warrant further study for possible regulation. The Agency will improve these estimates, particularly with respect to emissions and exposure, before making a final decision on whether to add chloroform to the list under section 112.

Statement of Intent

Section 112(b)(1)(A) of the Clean Air Act provides that the Administrator shall maintain "* * * a list which includes each hazardous air pollutant for which he intends to establish an emission standard under this section." In deciding whether to establish such an emission standard for carcinogens, EPA considers both public health risks and the feasibility and reasonableness of control techniques [e.g., 49 FR 23522; 23498 (June 6, 1984) (emission standards for benzene)].

Based on the health and preliminary risk assessment described in today's notice, the EPA now intends to add chloroform to the section 112(b)(1)(A) list. The EPA will decide whether to add chloroform to the list only after studying techniques that might be used to control emissions of chloroform and further improving the assessment of the public health risks. The EPA will add chloroform to the list if national emission standards are warranted. The EPA will publish this decision in the **Federal Register.**

If standards are not warranted under section 112 of the Clean Air Act, the Agency will consider other options as described in EPA's report, "A Strategy to Reduce Public Health Risks from Air Toxics," June 1985. For example, in that strategy EPA described other approaches for dealing with routine releases of toxic air pollutants from stationary sources such as working with State and local air pollution control agencies to address problems that do not warrant federal regulatory action but which account for elevated risks in some areas.

Standards Development Process

The following discussion has been prepared to provide the reader with an explanation of the standards development process and the timing of the process. The standards development process involves two phases, each taking about two years. The first phase is the identification of the emission sources and the need and ability to control those sources. The second phase involves Agency decisionmaking and public review prior to a final action.

During the first phase, EPA identifies the industrial processes that are significant emitters of the pollutant and the specific emission points within each process, and then determines the quantities of pollution emitted, the alternative control systems available, and their cost and effectiveness in reducing emissions and associated public health risks. A set of alternative regulations is developed and the environmental, economic, and energy impacts, as well as public health risks are evaluated.

The first phase requires investigation of the many different ways in which a candidate pollutant can be emitted and controlled. Within a source category there is wide variation in design, size, and process. This variation affects the emission rates, the public health risks, and the cost and availability of controls for the pollutant. Assessment of source emissions and controls is further complicated by the fact that emissions are not always contained in stacks or ducts (i.e., some are fugitive emissions), and emission test programs are technically difficult and costly.

The decisionmaking and review phase involves a series of EPA internal and external activities. Prior to publication of proposed rules, the Agency reviews all of the technical, cost, and exposure/risk data and makes decisions on the level of standards. The data and conclusions are reviewed publicly by an independent technical advisory committee. The standard is proposed for public comment. The comment period is open a minimum of two months and a public hearing is held, if requested. Following the comment period, Agency technical staff reviews the comments and resolves technical issues, an activity that often requires obtaining and analyzing new data.

Call for Information

Information is requested on source and emissions data, and the potential health effects associated with chloroform. People with information to submit on a voluntary basis should either provide this information by November 26, 1985 or notify the Agency by November 26, 1985 that they will be providing this information. Information should be submitted in duplicate to the Central Docket Section (A–130), Environmental Protection Agency, Attn: Docket No. A–85–12, 401 M Street, SW, Washington, DC 20460.

Miscellaneous

Chloroform is currently listed as a hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) section 101(14). The statutory Reportable Quantity (RQ) for chloroform is listed as 5000 pounds. This RQ may soon change, however, because chloroform is currently under assessment for carcinogenic effects.

Pursuant to CERCLA section 103(a), any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally-permitted release or normal application of a pesticide) of a hazardous substance from such vessel or facility in a quantity equal to or exceeding the RQ determined in any 24-hour period, immediately notify the National Response Center (NRC) (1–800–424–8802; in the Washington, D.C. metropolitan area 202–426–2675).

Since chloroform is already listed specifically by CERCLA authority as a

hazardous substance which requires reporting of such releases equaling or exceeding an RQ to all media, this notice poses no additional burden on the regulated community, the government or the public. However, all parties are given notice here that such a requirement for reporting exists under the authority of CERCLA. For additional information on CERCLA hazardous substance reporting, refer to 50 FR, No. 65 P–13481 (April 4, 1985).

Under Executive Order 12291, EPA must judge whether this action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not major because it imposes no additional regulatory requirements on States or sources. This proposal was submitted to the Office of Management and Budget (OMB) for review. Any written comments from OMB and any EPA responses are available in the docket. Pursuant to 5 U.S.C. 605(6), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it imposes no new requirements. This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980.

Dated: September 18, 1985.

Lee M. Thomas,

Administrator.

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[FR Doc. 85–23116 Filed 9–26–85; 8:45 am]

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federal register

Friday
September 27, 1985

Part XI

Environmental Protection Agency

Assessment of Chloroprene as a Potentially Toxic Air Pollutant; Notice

ENVIRONMENTAL PROTECTION AGENCY

[ADL-FRL-2859-3]

Assessment of Chloroprene as a Potentially Toxic Air Pollutant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent not to regulate and solicitation of information.

SUMMARY: This notice describes the results of EPA's assessment of chloroprene as a potentially toxic air pollutant. The EPA is announcing its intent not to specifically regulate chloroprene as an air pollutant under any section of the Clean Air Act (CAA). Given that there are uncertainties in the health and exposure information incorporated in this notice and that there has been limited opportunity for public review, the Agency is also soliciting comment on this notice. A further notice will be published, however, only if the public comment indicates a need to reconsider the conclusions presented here. This determination has no effect on the regulation of chloroprene as a volatile organic compound in order to attain the national ambient air quality standards (NAAQS) for ozone. In addition, this determination does not preclude any State or local air pollution control agency from specifically regulating emission sources of chloroprene.

DATES: Written comments pertaining to this notice must be received on or before November 26, 1985.

ADDRESSES: Submit written materials (duplicate copies are preferred) to: Central Docket Section (A-130), Environmental Protection Agency, Attn: Docket No. A-85-11, 401 M Street, SW, Washington, DC. Docket A-85-11, which contains information relevant to this decision, is located in the Central Docket Section of the U.S. Environmental Protection Agency, West Tower Lobby Gallery I, 401 M Street, SW, Washington, DC. The docket may be inspected between 8:00 a.m. and 4:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Robert M. Schell, Pollutant Assessment Branch (MD-12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (Telephone: 919-541-5645 commercial/629-5645 FTS).

SUPPLEMENTARY INFORMATION: The EPA initiated this assessment because of the potential for human exposure to chloroprene as a result of emissions from industrial sources, because of reports of adverse health effects, and because of its chemical structural similarity to vinyl chloride, which is a carcinogen. As a first step in this process, a Health Assessment Summary (HAS) for chloroprene was drafted, summarizing properties, sources, emissions, and health effects. Because of the lack of available data, a full health assessment document was not written nor was the HAS reviewed by the Science Advisory Board (SAB), a group of independent scientists. The HAS was reviewed both internally and externally for technical quality and conclusions.

Other Federal Activities

Other EPA review activities involving gathering information on chloroprene are being conducted under section 4 of the Toxic Substances Control Act (TSCA). The EPA is committed to further analysis of new data as it becomes available.

Introduction

Chloroprene (2-chloro-1,3-butadiene), a monomer used in the manufacture of synthetic rubber, is a volatile and highly reactive chemical with an estimated residence time in the atmosphere of 4.8 hours. Chloroprene's only known use is in the manufacture of polychloroprene synthetic rubber. Solid polychloroprene, also known as neoprene synthetic rubber, is used in the automotive industry for tubing, belts, and gaskets, in the construction industry, and in the manufacture of wire and cable jackets, and consumer goods. Liquid or latex polychloroprene is used in adhesives and as fabric coatings.

Health Effects

Carcinogenicity/Mutagenicity—Epidemiological studies conducted in the Soviet Union have reported conflicting results (IARC, 1979; HAS). Results from studies of chloroprene workers in this country are suggestive of a slightly increased cancer risk (Infante, 1977; Pell, 1978; HAS). Serious limitations in data regarding the likelihood of chloroprene being carcinogenic for humans preclude the development of conclusions (Infante, 1977; IARC, 1979, HAS).

Tumorigenic effects of chloroprene have been studied in mice following skin application and in rats by oral, subcutaneous, and intratracheal administration. No conclusive tumorigenic effects were found. However, the compound was reported to increase the rate of tumor growth of transplanted tumor cells possibly due to immunosuppression. None of these studies are adequate for evaluating the carcinogenicity of chloroprene in experimental animals, as they lacked adequate durations of exposure and the experimental details reported are not adequate (HAS). Based on both the International Agency for Research on Cancer (IARC, 1979) and EPA's proposed weight-of-evidence criteria (FR 49 46294-46301, November 23, 1984), the available data are inadequate to evaluate the carcinogenic potential for chloroprene (IARC Group 3, EPA Group D).

Chloroprene has been reported to be mutagenic in bacteria. Poor quality Russian studies have reported mutagenesis in other systems (HAS).

Acute Toxicity (less than 24 hours)—The HAS reports human exposure to chloroprene at 970 parts per million (ppm) for less than 15 minutes causes giddiness and nausea (Nystrom, 1948; HAS). The threshold limit value (TLV), recommended by the American Conference of Governmental Industrial Hygienists (ACGIH) is 10 ppm averaged over 8 hours.

Based on various species and exposure paradigms Von Oettingen et al. (1936) concluded that several thousand ppm for several hours should be considered lethal, 280 ppm should be considered dangerous and 80 ppm may cause less severe toxic effects. Recent better controlled studies indicate lethal acute inhalation exposures of rats at 2280 ppm for 4 hours (Clary et al., 1978, HAS). A single inhalation exposure of 225 ppm for 4 hours has been reported to result in liver damage in rats. This effect was not seen after exposure to 150 ppm for 4 hours (Plugge & Jaeger, 1979).

Subchronic Toxicity (less than 3 months but greater than 24 hours)—Exposures of humans to 55 to 333 ppm for a minimum of one week have been reported to produce fatigue, pressure and chest pain (electrocardiograms showed no abnormalities), dermatitis and hair loss in a substantial number of workers (Nystrom, 1948; HAS).

Exposure of rats and hamsters to chloroprene (39 ppm for 6 hours per day, 5 days per week for 4 weeks) resulted in slight growth depression, behavioral effects, eye and skin irritation. At higher concentrations (625 and 160 ppm) tissue damage, especially to lung and livers, and mortality were observed (Clary et al., 1978; HAS). Exposure of both male and pregnant female rats to 25 ppm for 4 hours per day for 12 to 22 days resulted in no obvious toxic effects for parents or embryos, including teratogenic effects (Culik et al., 1978; HAS).

Chronic Toxicity (Noncarcinogenic)—There are no epidemiological studies with reported exposure levels. In one

study, biochemical and hematological evaluation of workers exposed to chloroprene showed no significant differences compared to controls (Gooch and Hawn, 1961; HAS). However, another study suggested that exposure to chloroprene may contribute to liver function abnormalities (Ward et al., 1961; HAS). Exposure concentrations were not reported in either study.

Reproductive Toxicity—A number of papers, chiefly from the Soviet Union, have consistently reported reproductive toxicity in the range of 1–10 ppm. These studies are poorly reported and consequently are inadequate for risk assessment purposes. Attempts have been made to validate these studies but these attempts have largely been unsuccessful (NIOSH, 1977). One animal study performed in this country has not substantiated these effects (Culik et al., 1978; HAS). Based primarily on these Soviet studies and the lack of additional information, the National Institute of Occupational Safety and Health has recommended a 1 ppm, 15-minute ceiling for workplace chloroprene exposure.

Overall, the data available on potential reproductive hazard, carcinogenicity or other toxicity subsequent to chronic chloroprene exposure is inadequate to support a decision to regulate under the Clean Air Act.

Sources and Emissions

Limited data are available to determine the occurrence of chloroprene in the environment (SAI, 1982; Radian, 1985). Given the short predicted residence time in the atmosphere (4.8 hours), it is unlikely that detectable amounts would be observed distant from chloroprene emitting sources (Cupitt, 1980; HAS). Only four facilities manufacture or use chloroprene in the United States. Annual production is estimated to be 1.2×10^8 megagrams per year (49 FR 46938, November 29, 1984). Annual emissions are estimated to be 770 megagrams per year (Radian, 1985). Limited measurements have been reported for ambient chloroprene concentrations. Those made in Deer Park, TX were reported as 73.9 and 1111.1 ppt (2 hour sampling periods) (Pellizzari et al., 1979; HAS). Measurements made at an industrial waste treatment facility in Houston, TX ranged from less than 0.02 to 0.40 ppm with approximately 7 hour sampling periods (Timm, 1985).

Exposure Estimates and Risks To Public Health

A preliminary analysis was conducted to examine the potential for short-term concentrations of chloroprene in the ambient air surrounding industrial facilities to approach or exceed those concentrations at which noncarcinogenic health effects have been reported. This is a rough analysis, which uses worst case meteorological conditions in a conservative screening model. This analysis indicated that ambient concentrations resulting from continuous routine emissions would not be expected to approach levels at which systemic toxicity has been reported as a result of acute or subchronic exposures. Approximately 4.7 million people live within 50 kilometers of the four domestic chloroprene producing facilities. A 15-minute concentration of 4.5 ppm, a 4-hour concentration of 2.8 ppm, a 6-hour concentration of 2.6 ppm and an 8-hour concentration of 2.5 ppm were estimated using this short-term exposure model. Given the health effects data, it appears that the potential for systemic toxicity to occur in the general population subsequent to acute or subchronic chloroprene exposures is low (see Table 1) (Cote, 1985). As stated earlier, the health effects data for chronic exposure are inadequate to assess risk.

Discussion

Based on currently available data, EPA has determined that no regulation directed specifically at chloroprene is appropriate at this time under the CAA. Unless additional information becomes available during the public comment period, the effect of this notice is to remove chloroprene from EPA's list of potential air toxics currently under assessment.

In order to improve upon the health effects information base for chloroprene, the National Toxicology Program is testing chloroprene carcinogenicity and reproductive hazard in animal bioassays; however, results are not expected before 1987. Further assessment and review of chloroprene will be initiated upon completion of these studies.

Due to uncertainties in assessing the risk of health effects, the EPA is soliciting health effects and exposure information on chloroprene as well as comments on the analysis and conclusions on which this notice is based. A further notice will be published, however, only if public comments indicate a need to reconsider these conclusions. In addition, if significant new information becomes available, the Agency will reexamine the need to regulate chloroprene.

This notice has no effect on the regulation of chloroprene as a volatile organic compound in order to attain the NAAQS for ozone. In addition, this notice does not preclude any State or local air pollution control agency from specifically regulating emission sources of chloroprene.

Dated: September 17, 1985.

Lee M. Thomas,

Administrator.

TABLE 1.—COMPARISON OF SYSTEMIC TOXICITY, MODELING AND MONITORING DATA

NOEL or TLV[1]	Lowest observed effect level	Modeling	Monitoring
Acute:			
10 ppm (8 hr TLV).	972 ppm × 15 min. (human).	4.5 ppm × 15 min.	1.1 ppb.
150 ppm × 4 hrs (rats).	225 ppm × 4 hrs (rat).	2.8 ppm × 4 hrs.	1.1 ppb.
Subchronic:			
10 ppm (8 hr TLV).	55 ppm × 8 hr (1 wk—humans).	2.5 ppm × 8 hrs[2].	1.1 ppb.
25 ppm × 4 hr (4 wks—rats).	39 ppm × 6 hr (4 wks—rats).	2.6 ppm × 6 hrs[2].	1.1 ppb.

[1] The American Conference of Governmental Industrial Hygienists' recommended threshold limit value (TLV) is presented for comparison in addition to the no observed effect level (NOEL) in animals.

[2] Subchronic exposure estimates were not modeled. The 8-hour and 6-hour acute exposure estimates are used for comparison and are shown here.

Information on health effects subsequent to chronic exposure is inadequate for risk assessment purposes.

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[FR Doc. 85–23118 Filed 9–26–85; 8:45 am]

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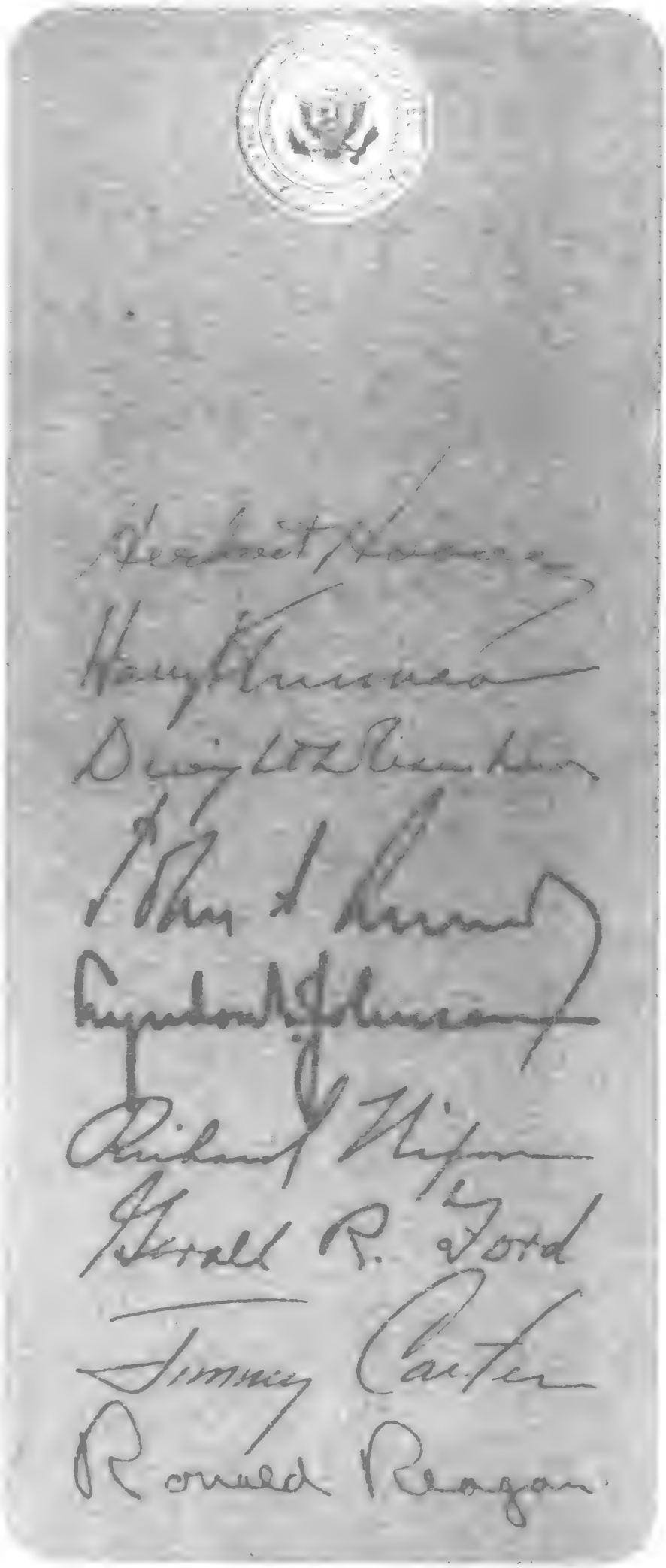
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Federal Register
Vol. 50, No. 189
Monday, September 30, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 403, 404, 408, 409, 411, 413, and 439

[Docket No. 0038A]

Crop Insurance Regulations; 1985 Eastern and Western U.S. Apple, Peach, Almond, and Grape and 1986 Arizona-California and Texas Citrus

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Eastern and Western U.S. Apple, Peach, Almond, and Grape, Crop Insurance Regulations, effective for the 1985 crop year only, and the Arizona-California Citrus and Texas Citrus Crop Insurance Regulations effective for the 1986 crop year only by extending the date for filing contract changes specified in the policies for insuring such crops. The intended effect of this rule is to provide additional time in which to file changes made in the Actuarial Tables for such crops. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE:

Effective: September 30, 1985.

Comment: Written comments, data, and opinions on this interim rule must be submitted not later than November 29, 1985, to be sure of consideration.

ADDRESS: Written comments on this interim rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1 (December 15, 1983). This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) an annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Wednesday, August 28, 1985, FCIC published an interim rule in the **Federal Register** at 50 FR 34801 amending the policies for insuring Eastern and Western U.S. Apple, Almond, and Grape Crop Insurance Regulations, by changing the date for filing contract changes to September 30, 1985, effective for the 1985 crop year only and amending the policies for insuring Arizona-California Citrus and Texas Citrus, effective for the 1986 crop year only. Because of the delay in establishing the premium rates or the price elections offered under each crop insurance policy, additional time to include these rates in the Actuarial Tables is needed under the terms and conditions of the 1985 or 1986 policies to insure that the program is actuarially sound.

Section 16 of the policy for each of the crops affected provides that any changes in the contract must be placed on file in the service office by a certain date. The contract consists of the application, the policy, and the actuarial table. Due to the workload involved in making changes on the Actuarial Table for each crop insured in each county where such insurance is offered, it is necessary for FCIC to further extend the date for filing changes to the contract an additional 31 days. It has therefore been determined that the date is further extended to October 31, 1985, effective for the 1985 crop year only (1986 crop year only for Arizona-California and Texas Citrus).

FCIC is still reviewing all the actuarial tables for the regulations referred to herein to determine whether the premium rates or the price elections offered under each crop insurance policy are consistent with sound actuarial principles and if not to make adjustments where necessary. This is an annual review conducted on all crops. The amount of work involved is such that these reviews will not be completed prior to the date for filing such actuarial data in the service offices for the crops and counties involved unless the filing date is further extended.

Merritt W. Sprague, Manager, FCIC, has determined that an emergency situation exists which warrants publication of this rule without providing for a period for public comment before such publication. Without this review, the statutory mandate that the program be actuarially sound could not be met. The workload involved in these actuarial changes will not permit filing of these actuarial tables by the present contract date of September 30. There is not sufficient time to provide for public comment and implement these changes prior to September 30. It has been determined that the date by which such changes are required to be placed on file in the service office shall be extended from

September 30, 1985, until October 31, 1985, and made effective for the 1985 crop year only for peaches, apples, grapes, and almonds and for the 1986 crop year only for Arizona-California citrus and Texas citrus.

The changes in the actuarial tables for the crops affected by this rule may be beneficial in some instances and detrimental in others. All policyholders should be aware of the changes in the actuarial table affecting their individual crop insurance contract and of the additional time provided for FCIC to file such changes.

FCIC is soliciting public comment on this rule for 60 days after publication in the **Federal Register**. This rule will be scheduled for review in order that any amendment made necessary by public comment may be published in the **Federal Register** as quickly as possible.

Any comments received pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC, 20250, during the regular business hours, Monday through Friday.

List of Subjects in 7 CFR Parts 403, 404, 408, 409, 411, 413, and 439

Crop Insurance, Peach, Western U.S. Apple, Eastern U.S. Apple, Arizona-California Citrus, Grape, Texas Citrus, Almond.

Interim rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Peach, Western U.S. Apple, Eastern U.S. Apple, Grape, and Almond Crop Insurance Regulations, effective for the 1985 crop year only and Arizona-California Citrus and Texas Citrus Crop Insurance Regulations, effective for the 1986 crop year only (7 CFR Parts 403, 404, 408, 409, 411, 413, and 439 respectively) in the following instances:

1. The Authority Citation for 7 CFR Parts 403, 404, 408, 409, 411, 413, and 439 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

PART 403—[AMENDED]

2. In 7 CFR § 403.7(d), paragraph 16 to the Crop insurance policy is revised to read as follows:

16. Contract Changes.

We may changes any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by September 30, preceding the cancellation date, except that, for the 1985 crop year only, all contract changes will be available at your service office by October 31 preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

PARTS 404, 408 AND 439—[AMENDED]

3. In §§ 404.7(d), 408.7(d), and 439.7(d), paragraph 16 to the crop insurance policy is revised to read as follows:

16. Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31, preceding the cancellation date except that, for the 1985 crop year only, all contract changes will be available at your service office by October 31. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

PART 409—[AMENDED]

4. In § 409.7(d), paragraph 16 to the crop insurance policy is revised to read as follows:

16. Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31, preceding the cancellation date for counties with a November 20 or December 10 cancellation date by October 31 preceding the cancellation date for all other counties except that, for the 1986 crop year only, all contract changes will be available at your service office by October 31. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

PART 411—[AMENDED]

5. In § 411.7(d), paragraph 16 to the insurance policy is revised to read as follows:

16. Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31, preceding the cancellation date and by October 31 preceding the cancellation date for all other counties except that, for the 1985 crop year only, all contract changes will be available at your service office by October 31. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

PART 413—[AMENDED]

6. In § 413.7(d), paragraph 16 to the insurance policy is revised to read as follows:

16. Contract Changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31, preceding the cancellation date except that, for the 1986 crop year only, all contract changes will be available at your service office by October 31. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

Done in Washington, D.C., on September 19, 1985.

Merritt W. Sprague,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 85–23191 Filed 9–27–85; 8:45 am]

BILLING CODE 3410-08-M

Farmers Home Administration

7 CFR Parts 1806, 1863, 1872, 1924, 1944, 1951, 1965, and 1980

Servicing of Real Estate Security for Single Family Housing Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) revises and redesignates its regulations regarding servicing of Single Family Housing (SFH) loans secured by real estate. This action is being taken to comply with an overall restructuring of FmHA regulations, and to incorporate the provisions of enacted legislation affecting these regulations. The intended effect of this action is for FmHA to be more responsive to SFH borrowers and to clarify servicing authorities and procedures for field employees.

EFFECTIVE DATE: October 30, 1985.

FOR FURTHER INFORMATION CONTACT: Frances B. Calhoun, Chief, Property Management Branch, Single Family Housing Servicing and Property Management Division, FmHA, USDA, Room 5309, South Agriculture Building, Washington, DC 20250, telephone (202) 382–1452.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1 which implements Executive Order 12291, and has been determined to be "nonmajor." This action has been determined "nonmajor" since the annual effect on the economy is less than $100 million and there will be no increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

FmHA is removing its regulations on servicing and liquidation of real estate security for SFH loans from Subpart A of Part 1872, and incorporating those regulations into new Subpart C of Part 1965, Chapter XVIII, Title 7, Code of Federal Regulations. In addition, we are amending related regulations to change affected references from Part 1872 to Subpart C of Part 1965.

Discussion of Final Rule

A proposed rule was published in the Federal Register (49 FR 26072) on June 26, 1984. The proposal provided for a 60-day comment period. The comment period ended August 27, 1984. In response to the notice of proposed rulemaking comments were received from FmHA personnel who will be administering the regulation. No comments were received from the public. The proposed rule also covered Subpart A of Part 1965 for servicing security for Farmer Program loans. Subpart A is being finalized along with certain other Farmer Program regulations and will be issued as a final rule at a later date.

Substantive changes to Subpart C of Part 1965 since the proposed rule was published are summarized as follows:

1. A section on servicing real estate taxes is incorporated into this subpart, and the opening paragraph of Subpart E of Part 1863 of this chapter is revised to exclude tax servicing for borrowers who have Single Family Housing loans only. This reflects a policy change wherein taxes can be vouchered by the Government when it is necessary to enable the borrower to become a successful homeowner, although it is before it is legally possible for the borrower to lose title to the security property. This is now § 1965.105; the section that was numbered 1965.105 in the proposed rule is redesignated as § 1965.106. This section provides that when taxes are vouchered, the amount advanced will be charged to the borrower's account as a recoverable cost and amortized over the number of months for which the taxes are being vouchered. Since the taxes accrued over that period of time, it is reasonable to expect repayment over the same length of time. A recent court case indicated that there may have been problems with the previous procedure and has been considered as public comment on the proposed rule.

2. Section 1965.111 on Junior Liens is rewritten to reflect provisions of section 341 of the Garn-St Germain Depository Institutions Act of 1982, specifically, (a) that FmHA consent is not required for a borrower to give a junior lien on the security property, and (b) the creation of a junior lien may not be used as the sole basis for requiring liquidation of the FmHA loan.

3. Section 1965.112 on lease of security property was slightly rewritten for further clarification. The policy in this section also complies with section 341 of the Garn-St Germain Depository Institutions Act of 1982.

4. Section 1965.116 on Deceased Borrowers is also rewritten to reflect provisions of section 341 of the Garn-St Germain Depository Institutions Act of 1982 as it relates to the rights of persons who are relatives, joint tenants, or tenants by the entirety of a deceased borrower.

5. The opening paragraph of § 1965.125 on Liquidation is rewritten to strengthen the Agency's policy on (a) encouraging the borrowers to liquidate voluntarily, (b) requiring that the borrower be advised of the estimated amount of apparent equity, if any, and (c) to increase the time allowed for voluntary liquidation from 60 to 120 days.

6. Section 1965.125(a)(3) is revised to include a real estate broker's commission and points paid by the seller among the items which may be deducted from sale proceeds before payment to FmHA.

7. Section 1965.126(b)(1) is added to clarify (a) the terms on which loans may be assumed and (b) how the loans will be classified after the assumption. Subsequent paragraphs in the section were renumbered accordingly.

8. In § 1965.126, the paragraph entitled "Above-modest property" was retitled to "Suitability of property for retention in program" and rewritten to clarify FmHA's policy on houses which have been improved between the time of the initial loan and the proposed assumption. It also now addresses other situations where FmHA determines the property should not be retained in the program.

9. Section 1965.126(c) on assumptions on eligible terms is slightly rewritten for clarification and paragraph (d) of that section on assumption on ineligible terms is revised to distinguish between the purchaser who intends to use the home as a residence and the investor-type purchaser and provides different repayment terms for each.

10. Subpart M of Part 1951, "Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received" was published as a Final Rule on April 2, 1985, with an effective day of May 2, 1985. Since servicing of accounts under the provisions of Subpart M of Part 1951 can result in an account being substantially delinquent, particularly in the case where unauthorized interest credit was recovered through reversal and reapplication of payments, the Agency has determined the authority to reamortize such an account should be incorporated into Subpart G of Part 1951 when this action will assist the borrower in becoming a successful homeowner.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.410—Low Income Housing Loans and No. 10.417—Very Low Income Housing Repair Loans and Grants. For the reasons set forth in the Final Rule related Notice(s) to 7 CFR Part 3015, Subpart V, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

List of Subjects

7 CFR Part 1872

Foreclosure, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Housing, Rural areas, Mortgages.

Therefore, Chapter XVIII of Title 7, Code of Federal Regulations, is amended as follows:

PART 1806—INSURANCE

1. The authority citation for Part 1806 is revised to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Real Property Insurance

2. Section 1806.4(b)(2)(ii) is revised to read as follows:

§ 1806.4 Examining and general servicing of insurance.

* * * * *

(b) * * *

(2) * * *

(ii) In a transfer with assumption, insurance will be required in the same amount and according to the same provisions as for an initial loan of the same type.

* * * * *

3. Sections 1806.5 (c)(1)(ii) and (c)(1)(iii) are revised to read as follows:

§ 1806.5 Losses.

* * * * *

(c) * * *

(1) * * *

(ii) When (A) the essential buildings are not to be repaired or replaced and other suitable buildings are not to be erected, or (B) a balance remains after all repairs, replacements, and other authorized disbursements have been made, such insurance funds will be applied on prior liens, or to current payment to the borrower's loan accounts secured by the real estate or disposed of in accordance with the general principles applicable to the use of proceeds from the sale of a part of the security contained in applicable security servicing regulations for the type loan involved.

(iii) An insurance payment for loss or damage to a nonessential building the borrower voluntarily insured will be (A) applied on prior lines, or to current delinquencies to FmHA or as an extra payment on the borrower's loan accounts secured by real estate, (B) disposed of as authorized by the State Director in accordance with the general principles applicable to the use of proceeds from the sale of a part of the security contained in applicable security servicing regulations for the type loan involved, or (C) used for other purposes as authorized by the State Director if the loan is adequately secured and the loan account is current.

* * * * *

4. In § 1806.6 the introductory paragraph of paragraph (a)(1)(vii) is revised to read as follows:

§ 1806.6 Failure of the borrower to provide insurance.

* * * * *

(a) * * *

(1) * * *

(vii) After the County Supervisor and the borrower exhaust all efforts to obtain acceptable insurance, the County Supervisor will request advice from the State Office as to companies issuing acceptable policies in the State and from which the borrower might be able to obtain an acceptable policy. If the borrower still cannot obtain an acceptable policy from any such company, and the determination has been made to continue with the borrower, the County Supervisor will temporarily accept from the borrower the available insurance policy the FmHA determines most nearly conforms to the requirements of § 1806.2 of this subpart.

* * * * *

PART 1863—REAL ESTATE TAX SERVICING

5. The authority citation of Part 1863 is revised to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

6. Section 1863.1 is revised to read as follows:

§ 1863.1 General.

This Part applies to borrowers with a Farm Ownership (FO), Operating Loan (OL), Soil and Water (SW), Recreation Loan (RL), Emergency (EM), Economic Opportunity (EO), Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Labor Housing (LH), and Other Real Estate (ORE) loans secured by real estate. It also applies to section 502 and section 504 Rural Housing borrowers [Single Family Housing (SFH)] who also have a Farmer Program loan. *It does not apply to borrowers who have a SFH loan only;* those will be serviced under § 1965.105 of Subpart C of Part 1965 of this chapter. Borrowers are responsible for paying taxes on the real estate security to the proper taxing authorities before the taxes become delinquent. This obligation is set forth in the security instrument securing the loan.

PART 1872—REAL ESTATE SECURITY

7. The authority citation for Part 1872 is revised to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 42 U.S.C. 2942, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70, 29 FR 14764, 33 FR 9850.

Subpart A—Servicing and Liquidation of Real Estate Security for Loans to Individuals and Certain Note-Only Cases

8. Section 1872.1 (a) is revised and reads as follows:

§ 1872.1 General.

(a) *Purpose.* The purpose of this Instruction is to delegate authority and prescribe policies and procedures for servicing and liquidating real estate security for Farmers Home Administration (FmHA) insured Farmer Program loans, including leasehold interests and certain note-only cases. Where borrowers have *both* FmHA Farmer Program and Single Family Housing (SFH) loans, security servicing will be according to this Instruction. However, where borrowers are indebted for SFH loans *only,* security servicing will be according to Subpart C of Part 1965 of this chapter.

* * * * *

9. In § 1872.2, paragraphs (b)(1) and (e) are revised to read as follows:

§ 1872.2 Preservation of security property and protection of liens.

* * * * *

(b) * * *

(1) *Management/maintenance or lease of security.* Services for the management, care, and maintenance of security property will be obtained according to § 1955.55 or security property may be leased according to the provisions of § 1955.66 of Subpart B of Part 1955 of this chapter.

* * * * *

(e) *Abandonment.* When the borrower has removed personal property from the farm or home or the County Supervisor otherwise has reason to believe security property has been abandoned by the borrower, the County Supervisor will make the determinations and take the actions outlined in § 1955.55 of Subpart B of Part 1955 of this chapter to protect the security property.

§ 1872.3 [Amended]

10. In § 1872.3(h), the second sentence which begins with "Form FmHA 440–2," place a period after "land" and delete the remainder of the sentence.

11. In § 1872.18, paragraph (d)(3) is revised to read as follows:

§ 1872.18 Transfer of real estate security.

* * * * *

(d) * * *

(3) *Term—nonfarm.* For RH loans secured by a lien on a nonfarm tract, the balance of the RH debt assumed will be scheduled for repayment in not more than ten years with amortized annual or monthly installments. Interest on the amount assumed will be charged at the Single Family Housing—Ineligible rate in effect when the transfer is approved *or* the interest rate specified in the note being assumed, whichever is greater.

* * * * *

12. In § 1872.18(f), in the second sentence, delete the phrase "other than

sections 502 and 504 RH loans" and the commas on either side of that phrase.

PART 1924—CONSTRUCTION AND REPAIR

13. The authority citation for Part 1924 is revised to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Planning and Performing Construction and Other Development

14. Section 1924.5(g)(4) is revised to read as follows:

§ 1924.5 Planning development work.

* * * * *

(g) * * *

(4) Releases requested by the borrower or the buyer will be processed in accordance with applicable release procedures contained in Subpart A of Part 1872 of this chapter or Subpart C of Part 1965 of this chapter, as appropriate.

* * * * *

PART 1944—HOUSING

15. The authority citation for Part 1944 is revised to read as follows:

Authority: 42 U.S.C. 1480, 7 CFR 2.23, 7 CFR 2.70.

Subpart A—Section 502 Rural Housing Policies, Procedures, and Authorizations.

16. Section 1944.10(g)(3) is revised to read as follows:

§ 1944.10 Rural area designation.

* * * * *

(g) * * *

(3) Credit sales and transfers with assumptions may be processed in such areas as authorized in § 1955.103(q) of Subpart C of Part 1955 or § 1965.126 of Subpart C of Part 1965 of this chapter, respectively.

* * * * *

§ 1944.18 [Amended]

17. Section 1944.18(d) is amended in the first sentence by changing the reference from "§ 1872.11 of Part 1872 of this chapter (FmHA Instruction 465.1, Paragraph XI)" to "applicable portions of Subpart C of Part 1965 of this chapter."

18. Section 1944.34(f)(3) is revised to read as follows:

§ 1944.34 Interest credit.

* * * * *

(f) * * *

(3) *Transfers.* Interest credit may be granted to a borrower assuming an RH loan provided the assuming party(ies) qualifies according to paragraph (f)(1) of this section.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

19. The authority citation for Part 1951 is revised to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 42 U.S.C. 2942, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70, 29 FR 14764, 33 FR 9850.

Subpart G—Borrower Supervision, Servicing and Collection of Single-Family Housing Loan Accounts

20. Section 1951.310 is amended by revising the introductory paragraph and paragraph (a), and reads as follows:

§ 1951.310 Amortization of recoverable cost.

When an advance is made by FmHA to pay recoverable costs, the Finance Office will automatically increase the payments during the amortization period by the amount necessary to repay the advance, with interest computed at the rate which is in effect for the loan to which the advance is charged (the fund code and loan number shown on SF–1034 and Form FmHA 2024–1).

(a) *Monthly payment borrowers.* If there is an outstanding balance from a previous advance when a new advance is made, the two amounts will be combined and reamortized as provided in paragraph (a)(1) or (a)(2) of this section. If the new installment is less than the previous installment, the larger of the two will be used, thus causing the balance to be paid over a shorter period.

(1) *Payment of real estate taxes.* When a borrower's taxes are paid by voucher as authorized in § 1965.105 of Subpart C of Part 1965 of this chapter, the tax advance will bear interest at the rate which is in effect on the loan to which the advance is charged (as specified on SF–1034 and Form FmHA 2024–1). The amortization period of the tax advance will be the number of months for which the taxes are being vouchered and will be stated on the voucher.

(2) *Costs other than real estate taxes.* Advances for costs other than real estate taxes will be automatically amortized for 12 months unless the County Supervisor determines that, based on the borrower's repayment ability, a longer period is needed and so specified on the voucher. An amortization period of more than 12 months will be used only when the cost is of a nonrecurring type.

* * * * *

21. Section 1951.314(a) is amended by adding subparagraph (5) to read as follows:

§ 1951.314 Reamortizations.

* * * * *

(a) * * *

(5) When an unauthorized loan or unauthorized interest credit has been serviced in accordance with Subpart M of Part 1951 of this chapter, and the reversal and reapplication of payments have resulted in a delinquency which requires more than 2 years for the borrower to repay under Form FmHA 451–37.

* * * * * *

22. Section 1951.315 is added and reads as follows:

§ 1951.315 Servicing a note-only loan.

A loan made on a note-only basis will be serviced in a manner which is in the Government's best interest.

(a) *Sale of real property improved with note-only funds.* When property improved with note-only funds is sold, the County Supervisor should attempt to collect the balance owed on the loan. If collection cannot be made, the debt may be assumed by the purchaser of the property on the terms of the note. If collection or assumption cannot be effected, the debt should be settled under Part 1864 of this chapter (FmHA Instruction 456.1), if possible, or reclassified to collection-only if the borrower has assets and a judgment is to be sought.

(b) *Note-only in connection with secured loan(s).* When a borrower owes both secured and RH note-only loans and the security property is transferred to a party who will assume the secured loan(s), the amount to be assumed will be the total of the secured and unsecured loans, not to exceed the market value of the security property. When all of the transferor's debt is not assumed, the balance will be collected, secured by a judgment if there are assets from which collection may be made, or settled under Part 1864 of this chapter (FmHA Instruction 456.1).

(c) *Deceased borrower.* When a note-only borrower dies, the County Supervisor will determine whether there are assets in the borrower's estate from which a claim be collected. If there are assets, a claim against the decedent's estate may be recommended under § 1962.49 of Subpart A of Part 1962 of this chapter. If not, the debt will be settled under Part 1864 of this chapter (FmHA Instruction 456.1).

PART 1965—REAL PROPERTY

23. The authority citation for Part 1965 is revised to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480, 42 U.S.C. 2942, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70, 29 FR 14764, 33 FR 9850.

Subpart B—Security Servicing for Multiple Housing Loans

24. In § 1965.61, paragraphs (d) and (e)(3) are revised to read as follows:

§ 1965.61 General loan servicing requirements.

* * * * *

(d) *Actions by third parties affecting FmHA security.* Cases including third party action will be handled according to the provisions of § 1965.104(c) of Subpart C of Part 1965 of this chapter, except that references to the County Supervisor shall be construed to mean District Director when applied to multiple housing type programs.

(e) * * *

(3) *Mineral leases.* Mineral leases will be handled according to § 1965.113 of Subpart C of Part 1965 of this chapter except that all references to County Supervisor will be construed to mean District Director when applied to the Multiple Housing Programs.

* * * * *

25. Subpart C is added and reads as follows:

PART 1965—REAL PROPERTY

Subpart C—Security Servicing for Single Family Rural Housing Loans

Sec.

1965.101 Purpose.
1965.102 Policy.
1965.103 Responsibilities.
1965.104 Preservation of security and protection of liens.
1965.105 Servicing real estate taxes.
1965.106 Subordination of FmHA lien.
1965.107–1965.109 [Reserved]
1965.110 Release of security.
1965.111 Junior liens.
1965.112 Lease of security property.
1965.113 Mineral leases.
1965.114–1965.115 [Reserved]
1965.116 Deceased borrower.
1965.117 Bankruptcy.
1965.118 Release of FmHA lien without monetary consideration.
1965.119–1965.124 [Reserved]
1965.125 Liquidation.
1965.126 Transfer of property with assumption of indebtedness.
1965.127 Release from liability.
1965.128 Assignment of promissory notes and security instruments.
1965.129 Co-signers.
1965.130–1965.135 [Reserved]
1965.136 Redelegation of authority.
1965.137 Exception authority.
1965.138 State Supplements.
1965.139–1965.150 [Reserved]

Subpart C—Security Servicing for Single Family Rural Housing Loans

§ 1965.101 Purpose.

This subpart prescribes policies and procedures for servicing actions related to real estate which secures Section 502 and Section 504 Rural Housing (RH) loans on nonfarm tracts or on farms when the borrower is indebted to Farmers Home Administration (FmHA) for an RH loan(s) *only*, herein referred to as Single Family Housing (SFH) loan(s). Security servicing for RH loans when the borrower is also indebted to FmHA for Farmer Programs loans is under Subpart A of Part 1872 of this chapter (FmHA Instruction 465.1).

§ 1965.102 Policy.

Real estate security is servicing under provisions of the security instruments and related agreements, including authorized modifications, in a manner which will assist the borrower in accomplishing the loan objectives and protect the Government's financial interest.

§ 1965.103 Responsibilities.

(a) *Borrower.* The borrower is responsible for:

(1) Making loan payments as agreed;

(2) Paying real estate taxes and/or assessments when due;

(3) Keeping adequate property insurance in force; and

(4) Maintaining the property in good repair.

(b) *FmHA officials.* In this subpart, "County Supervisor" includes an Assistant County Supervisor, GS–7 or above, who has written delegated authority to carry out provisions of this subpart; and "District Director" includes an Assistant District Director or District Loan Specialist who has written delegated authority to carry out the provisions of this subpart. Authority of County Supervisors in this subpart applies to Area Loan Specialists in Alaska, Island Directors in Hawaii, and the Director for the Western Pacific Territories. Authority of District Directors in this subpart applies to Area Loan Specialists in Alaska and the Director for the Western Pacific Territories. Servicing actions will be documented in the running record of the case file. The County Supervisor is authorized to execute, on behalf of the Government, all forms and other documents necessary to complete transactions under this subpart after the transaction has been approved by the approving official.

(1) The County Supervisor is responsible for servicing the loan account under Subpart G of Part 1951 of this chapter, for seeing that the security property is properly maintained, and for taking appropriate action promptly when necessary to protect the Government's interest.

(2) The District Director will assist in unusual cases or when the County Supervisor requests assistance in servicing any case.

(3) The State Director will obtain legal advice from the Regional Attorney, Office of the General Counsel (OGC), as necessary on an individual-case basis or in issuing a State Supplement where specifically authorized.

§ 1965.104 Preservation of security and protection of liens.

(a) *Inspection of security.* The County Supervisor will inspect real estate security as necessary to protect the Government's interest.

(b) *Actions by FmHA for account of borrower.* When necessary to protect the interest of the Government, FmHA may make protective advances for purposes outlined in paragraphs (b)(1) through (b)(4) of this section. Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," Form FmHA 2024–11, "Solicitation, Quotation, Purchase Order, Inspection, and Invoice," or other approved voucher, and Form FmHA 2024–1, "Miscellaneous Payment System," must be prepared and submitted according to the Forms Manual Insert (FMI) for payment to be charged to the borrower's account as recoverable costs.

(1) *Taxes and/or assessments.* Real estate taxes and assessments will be handled under § 1965.105 of this subpart.

(2) *Insurance.* Property insurance will be handled under Subparts A and B of Part 1806 of this chapter (FmHA Instructions, 426.1 and 426.2), if applicable.

(3) *Maintenance.* When the borrower continues to occupy the security property but is not adequately maintaining it, prior authorization from the National Office must be obtained before funds are advanced for essential repairs. The State Director will submit the facts and reasons why the loan should not be liquidated to the Assistant Administrator, Housing. If there is a prior lien, expenditures for maintenance will not be made by the Government unless the prior lienholder refuses to make them. Evidence of the prior lienholder's refusal to make these expenditures must be fully documented.

(4) *Abandonment.* When the County Supervisor believes the borrower has abandoned security property, actions

will be taken without delay under Subpart B of Part 1955 of this chapter.

(c) *Actions by third parties which affect security property.* When a third party brings suit or takes any other action which affects FmHA security property, borrowers are expected to protect their own interests in the property. Examples of these actions are: condemnation proceedings, trespass suits, and actions to quiet title. When the County Supervisor learns of a third-party action which may jeopardize the Government's interest in the security or when the County Supervisor or the Government is made a party to a court proceeding, the County Supervisor will send the case file, complete with information concerning the action, and recommendations for FmHA servicing actions to the State Director. A copy of the petition or complaint, as soon as available; the account status; a current appraisal; the name and address of the borrower's attorney, if any; and any other information the County Supervisor believes important will be included. The State Director will consult OGC about all such lawsuits. The State Director will also consult OGC about other third-party actions when legal advice is needed. Protective advances will be authorized only to protect the Government's interest. When foreclosure or other action which would cause the borrower to lose possession of the property is imminent, the State Director may consider making a subsequent loan in accordance with Subpart A of Part 1944 of this chapter provided the third party agrees to postpone further action pending the processing of a subsequent loan. The State Director will advise the County Supervisor of the actions to be taken to protect the Government's interest.

(1) *Prior lien foreclosure.* When FmHA learns that a prior lienholder is contemplating foreclosure, the prior lienholder will be contacted to determine the amount of the prior lien indebtedness, the estimated costs of the foreclosure sale, and whether or not SF–1034 would be accepted if the Government were the successful bidder at the sale.

(i) *Paying the prior lien debt.* When it is advantageous to the Government to pay the prior lienholder in full before the foreclosure sale, title evidence must be obtained. Information clearly supporting the action as being to the Government's financial advantage must be documented in the file. Payment of the prior lien and required costs may be made with the advice of OGC, provided:

(A) The Government will obtain a greater recovery on the secured debt than it could by bidding at the foreclosure sale; and

(B) The FmHA account, after payment of the prior lien, will be liquidated.

(ii) *Bidding at prior lien foreclosure sale.* When acceptable title evidence has been obtained and it is determined that a net recovery on the Government's investment can be made by acquiring the property, the State Director may authorize bidding at the foreclosure sale. Calculation of the bid amount, designation of bidder and reporting of sale will be under the portion of Subpart A of Part 1955 of this chapter concerning foreclosure. If payment by voucher is not acceptable, SF–1034 and Form FmHA 2024–1 must be prepared and submitted according to the FMI in time to receive a check before the sale date.

(2) *Junior lien foreclosure.* FmHA will not bid at a junior lien foreclosure sale unless OGC advises that not bidding would likely result in FmHA's lien being extinguished. When a junior lienholder foreclosure does not result in payment in full of the FmHA debt but the property is sold subject to the FmHA lien, the account may be assumed by the purchaser if the requirements of § 1965.126 (c) or (d) of this subpart can be met; otherwise the FmHA loan will be liquidated.

(3) *Tax sale.*—(i) *Authority.* The State Director may authorize bidding at a tax sale it it is determined to be in the best financial interest of the Government and all of the following conditions exist:

(A) OGC has advised that under applicable State law the tax sale will not extinguish the FmHA lien in case another party is the successful bidder at the tax sale or the borrower redeems the property before the tax deed is delivered.

(B) Under applicable State law the purchaser will be able to obtain a deed to the property sooner than foreclosure could be completed.

(C) Taxes which will accrue during the time that foreclosure is expected to take will create or increase a loss to the Government.

(ii) *Limitations.* (A) When all of the conditions outlined in paragraph (c)(3)(i) of this section are met and the taxing authority schedules the security property to be sold for delinquent taxes (which are a prior lien), the State Director may designate an FmHA employee to bid at the tax sale provided a title search covering the period since the last title opinion in the file reveals no liens which cannot be settled in accordance with § 1955.10 of Subpart A of Part 1955 of this chapter.

(B) When all of the conditions outlined in paragraph (c)(3)(i) of this section are *not* met, FmHA will pay the taxes to protect the Government's security interest as provided in § 1965.105 of this subpart. When taxes are paid by FmHA under these circumstances, the case will be considered a problem case and a decision made on whether liquidation will be required.

(iii) *Bid.* The gross investment will be determined under the portion of Subpart A of Part 1955 of this chapter concerning foreclosure. The State Director will designate, in writing, an employee to bid at the tax sale. The designation will specify that incremental bidding will be used starting at the lowest level possible and that the maximum bid will not exceed the gross investment or the market value of the security property (less other liens which must be settled), whichever is less (stated in dollar amount).

(iv) *Credit to borrower.* When title to SFH security property is acquired by tax deed, the borrower's account will be credited as though the acquisition had been through foreclosure by FmHA under Subpart A of Part 1955 of this chapter.

(v) *State Supplement.* The State Director, with the assistance of OGC, will issue a State Supplement to this section setting forth the applicable provisions of State law and giving specific guidance pertinent to the particular state.

(4) *Bankruptcy sale.* With prior advice from OGC, the State Director may authorize bidding at a bankruptcy sale provided title to the security property can be acquired free of liens other than FmHA's lien(s). Bidding and credit to the borrower's account will be the same as outlined in paragraph (c)(3) (iii) and (iv) of this section.

§ 1965.105 Servicing real estate taxes.

In this section, "taxes" includes assessments which, if not paid, will become a lien on the property. Security instruments for FmHA loans provide that the borrower will pay real estate taxes as they become due, and failure to do so is a default of that loan covenant. In credit counseling or assisting the borrower in budgeting or other financial planning, payment of taxes must be included.

(a) *Responsibility.* The County Supervisor is responsible for determining which borrowers have not paid their taxes.

(b) *Decision on servicing.* Upon determining a borrower has not paid taxes when due, the County Supervisor will make a diligent effort to have the borrower pay the taxes. If the borrower

is unable to pay the taxes, the County Supervisor will take one of the following actions:

(1) Based on a realistic budget, if it is determined the borrower can likely be successful if FmHA vouchers the taxes, the voucher will be processed according to paragraph (e) of this section. At the same time, an agreement should be reached as to the amount the borrower must set aside to pay the current year's taxes when due as well as make the increased payments to repay the tax advance. Advances for taxes for more than two consecutive years must have the prior concurrence of the District Director.

(2) If the borrower does not respond and cooperate with FmHA; if it cannot be projected through a budget that vouchering taxes will likely enable the borrower to be successful; or if the taxes are so low that the amount will not have a critical bearing on the success of the borrower, FmHA will not pay the taxes by voucher. If a taxing authority schedules a tax sale and the conditions outlined in § 1965.104 (c)(3)(i) and (c)(3)(ii) of this subpart are met, FmHA will bid at the tax sale. If those conditions are not met, FmHA will pay the taxes to protect the Government's security interest. When taxes are paid by FmHA under these circumstances, the case will be considered a problem case and a decision made on whether liquidation will be required.

(c) *Foreclosure-pending cases.* When foreclosure action is pending, taxes will not be vouchered until the date for the public sale is set and taxes due up to the sale date can be paid at one time unless the taxing authority schedules a tax sale sooner. If a tax sale is scheduled and the conditions of §1965.104 (c)(3)(i) and (c)(3)(ii) of this subpart are met, FmHA may bid at the tax sale; or the taxes will be paid by voucher and foreclosure action continued.

(d) *Other Real Estate (ORE) cases.* As used in this subpart, ORE refers only to ORE loans for SFH property. ORE loans include credit sales from inventory on ineligible terms; assumptions of loans on ineligible terms; and loans which have been rescheduled through an accelerated repayment agreement in accordance with § 1965.125(a)(4) of this subpart. FmHA will not voucher taxes of ORE borrowers except to protect the Government's security interest. If a tax sale is scheduled, FmHA may bid at the tax sale if the conditions outlined in § 1965.104 (c)(3)(i) and (c)(3)(ii) of this subpart are met. If those conditions are not met, the taxes will be vouchered and subsequent servicing actions which are in the Government's best financial interest will be taken.

(e) *Processing tax advances.* When a borrower's taxes are to be paid by FmHA, Standard Form 1034, and Form FmHA 2024–1, will be prepared and submitted for payment under FmHA Instruction 2024–P, (available in any FmHA office) and the FMIs as a recoverable cost. The following provisions apply:

(1) Vouchers will be prepared to request that the check be made payable to the taxing authority but mailed to the County Supervisor. The County Supervisor is responsible for delivery of the check to the taxing authority and for obtaining a receipt.

(2) A tax advance will bear interest at the rate which is in effect on the loan to which the advance is charged (as specified on SF–1034 and Form FmHA 2024–1). When a borrower has more than one loan secured by the real estate on which taxes are being paid, the advance will be charged to the initial loan or the lowest loan number within the fund code that is still outstanding. The amortization period of the tax advance will be the number of months for which the taxes are being vouchered.

§ 1965.106 Subordination of FmHA lien.

(a) *Conditions for subordination.* Subordination of FmHA's lien to another lender may be granted subject to the following provisions:

(1) The funds obtained from the other lender will be used only for purposes for which an RH loan could be made and subject to the same limitations applicable to RH loan funds.

(2) The prior lien debt plus the FmHA debt will not exceed the market value of the security. (For this purpose, the FmHA debt is the unpaid balance on the loan exclusive of recapture of subsidy.)

(3) The prior lien debt must be on terms and conditions which the borrower can reasonably be expected to meet without jeopardizing repayment of the FmHA indebtedness.

(4) Proposed development, if any, will be planned and performed in accordance with Subpart A of Part 1924 of this chapter or directed by the other lender in a manner which is consistent with that subpart.

(5) The funds obtained from the other lender for development will be handled through a supervised bank account or under other arrangements approved by the County Supervisor which will assure that the funds are used for the planned purposes.

(6) An agreement must be obtained in writing from the prior lienholder providing that at least 30 days advance notice will be given to FmHA before action to foreclose on their prior lien is initiated.

(b) *Approval authority.* An approval official may approve a subordination when the total indebtedness against the security including prior-lien debt(s) does not exceed his/her respective loan approval authority.

(c) *Request for subordination and processing.* When a borrower requests FmHA to subordinate its lien, Form FmHA 465–1, "Application for Partial Release, Subordination, or Consent," will be prepared. A new appraisal will be made when the latest appraisal report is more than one year old or if it does not reflect market value. When development work is planned, a new appraisal is required to reflect the development. The subordination will be completed according to a State Supplement approved by OGC.

§ 1965.107–1965.109 [Reserved]

§ 1965.110 Release of security.

(a) *Release or partial release.* FmHA may consent to transactions affecting the security, such as sale or exchange of security or granting of a right-of-way across the security, and grant a release or partial release provided:

(1) The consideration is:

(i) In sale of property, cash in an amount equal to the value of the security being disposed of or rights granted;

(ii) In exchange of property, another parcel of property acquired in exchange with value equal to or greater than that being disposed of; or

(iii) In granting an easement or right-of-way, benefits derived which are equal to or greater than the value of the property being disposed of.

(2) The security after the transaction is completed will be an adequate but modest, decent, safe, and sanitary dwelling and related facilities.

(3) Repayment of the FmHA debt will not be jeopardized.

(b) *Approval authority.* An official who has loan approval authority may approve release or partial release transactions when the total indebtedness against the security does not exceed his/her respective loan approval authority.

(c) *Request for consent and processing.* When a borrower requests consent to sell or other disposition of a portion of the security, Form FmHA 465–1 will be prepared. If exchange of all or part of the security is involved, title clearance on the proposed new security and a new security instrument will be obtained in accordance with Part 1807 of this chapter (FmHA Instruction 427.1) before release of existing security. A new appraisal will be made when the latest appraisal is more than one year

old or if it does not reflect market value. When a new appraisal is required, it will be based on the property being retained with a notation on the value of the portion to be released entered on Form FmHA 1922-8, "Residential Appraisal Report," in the "Comments" section of the same appraisal report. Form FmHA 480-1, "Partial Release," or other form approved by OGC, will be used to release a portion of the security. When all or a portion of the security is being exchanged, OGC will be requested to provide a form of release without satisfaction of debt, and the release may be recorded simultaneously with the new security instrument. In sale of all or a portion of the security when full payment is received in the form of cash, money order, certified check, or Cashier's check, the release may be delivered.

(d) *Use of proceeds.* Proceeds from sale of a portion of the security granting of an easement or right-of-way, damage compensation, and all similar transactions requiring FmHA consent, will be used in the following order:

(1) To pay customary and reasonable costs (as determined by FmHA) related to the transaction which must be paid by the borrower, such as real estate taxes which must be paid to conclude the transaction; cost of title examination, survey, abstract, and reasonable attorney's fees; costs necessary to determine a reasonable price, such as appraisal of minerals, when the necessary appraisal cannot be obtained without cost; and additional income tax the borrower will be required to pay;

(2) To be applied on a prior lien debt, if any; and

(3) To be applied to the FmHA indebtedness as an extra payment or used for improvements to the security property in keeping with purposes and subject to limitations applicable to use of RH loan funds. Proposed development will be planned and performed in accordance with Subpart A of Part 1924 of this chapter and the proceeds handled through a supervised bank account to assure that the proceeds are used as planned.

§ 1965.111 Junior liens.

Within the scope of credit counseling, SFH borrowers will generally be discouraged from giving junior liens on real estate which secures their SFH debt. However, FmHA consent is not required and the existence of a junior lien may not be treated as a default or used as justification for forced liquidation action. When junior liens exist, the FmHA loan will be serviced in the usual manner as long as the borrower makes payments as scheduled, properly maintains the security, and meets other loan conditions. The existence of a junior lien will not prevent liquidation action if the borrower is in default. Should FmHA be approached by an existing or potential junior lienholder as to the amount of FmHA's debt, the unpaid balance on the FmHA loan for this purpose will be stated as the *sum* of unpaid principal and interest and, if the loan is subject to recapture of subsidy, total subsidy granted and principal reduction attributed to subsidy. The County Supervisor may consent to a junior lien and enter into an agreement to notify the junior lienholder in the event FmHA initiates foreclosure only when:

(a) The proposed loan is for purposes for which FmHA RH loan funds could be used or for business purposes to enhance earning capacity;

(b) Repayment of the FmHA loan will not be jeopardized; and

(c) The total debt against the security will not exceed its market value.

§ 1965.112 Lease of security property.

(a) When the County Supervisor is aware a borrower has leased or proposes to lease security property, the borrower will be informed in writing of the limitations on leasing outlined in subparagraphs (1), (2), and (3) of this paragraph. The borrower will be requested to furnish FmHA a copy of the lease or proposed lease. FmHA consent to lease is not required, and if the County Supervisor is unable to obtain a copy of the lease or is advised by the borrower a written lease does not exist, no further action is required by the County Supervisor and no action to initiate liquidation will be taken unless the borrower:

(1) Has entered into a lease for a term of more than 3 years;

(2) Has entered into a lease for any term containing an option to purchase; or

(3) Is in default of one or more of the following loan obligations:

(i) Keeping the account current.

(ii) Adequately maintaining the property.

(iii) Keeping the property insured.

(iv) Paying real estate taxes when due.

(b) If a borrower leases or proposes to lease security property for a term of more than 3 years, or with an option to purchase, FmHA should normally initiate liquidation action, preferably voluntary. However, if under unusual circumstances the County Supervisor believes FmHA should consent to such a lease arrangement, prior approval of the Assistant Administrator, Housing, is required. The State Director should forward such a request along with a justification to the National Office.

§ 1965.113 Mineral leases.

(a) *Authority.* When a borrower requests consent to lease the mineral rights to security property, the County Supervisor may consent provided the proposed use of the leased rights will not result in the property being made unsuitable as a nonfarm residence and the Government's security interest is not adversely affected.

(b) *Income from lease of mineral rights.* (1) The basic rental proceeds from lease of mineral rights will be treated as income.

(2) If the proposed activity is such that it will decrease the security value of the property (such as oil drilling or quarrying), consent may be given only if the borrower assigns the income from the lease (both damage compensation and royalty payments) to FmHA to be applied to the FmHA loan(s) as extra payments.

(3) If the proposed activity is not likely to decrease the security value of the property, damage compensation must be used to repair the damage or assigned to FmHA for application on the FmHA loan(s) as an extra payment; and royalty payments will be treated as income.

(c) *Processing.* Form FmHA 465-1 will be used to process requests under this section. The County Supervisor should carefully document the facts to support the determinations reached concerning the effects of a mineral lease on value. Assignment of income will be taken by use of Form FmHA 443-16, "Assignment of Income from Real Estate Security," or other from approved by OGC which is necessary to comply with State law.

§ 1965.114-1965.115 [Reserved]

§ 1965.116 Deceased borrower.

When an SFH borrower dies, servicing actions and the circumstances under which they may be considered are outlined in paragraphs (a) through (d) of this section. The case file containing completed Form FmHA 455-17, "Report On Deceased Borrower," will be submitted to the State Director only when the FmHA debt is inadequately secured and the estate has other assets from which collection could likely be made or the County Supervisor needs advice on servicing the case. When arrangements cannot be effected for continuation of the loan under any of the provisions of this section, the loan may be liquidated according to § 1965.125 of this subpart. In the event a person(s) decides to make loan

payments under the provisions of paragraph (b) or (d) of this section without obtaining full title to the property, the County Supervisor will notify the person(s) making the payments, in writing, of the risks involved (such as possible loss of equity to other heirs or dispossession by other heirs) and suggest that legal advice be obtained.

(a) *Continue with jointly liable borrower.* If a jointly liable borrower will continue occupying the dwelling and repaying the loan, no action will be taken except to notify the Finance Office by use of Form FmHA 450–10, "Advice of Borrower's Change of Address or Name," to place the account in the name of the surviving borrower if the account is not already in that name. An assumption agreement will not be used.

(b) *Continue with relative, joint tenant, or tenant by the entirety.* When a relative, joint tenant, or tenant by the entirety who inherits title to (or an interest in) the security property by devise, descent, or operation of law upon the death of a borrower makes payments as scheduled in the promissory note (or assumption agreement), FmHA may not take action to liquidate the loan as long as the property is adequately maintained, real estate taxes and assessments are paid when due, and the dwelling is not known to be uninsured. Assumption of the indebtedness is not required, and occupancy of the dwelling is subject only to the restrictions on leasing outlined in § 1965.112 of this subpart. Interest credit, however, may be granted only to a *borrower* (obligor by virtue of a note or assumption agreement); therefore, interest credit may be granted only when at least one obligor is occupying the dwelling except as provided in § 1965.126(c)(2)(ii) of this subpart. The loan remains subject to graduation requirements set forth in Subpart F of Part 1951 of this chapter. Continuation with a relative, joint tenant, or tenant by the entirety under the provisions of this paragraph applies only to the transfer of title resulting from the death of the borrower; it *does not* apply to any subsequent transfer of title by the inheritor(s) except by devise, descent, or operation of law upon the death of the inheritor(s). Any other subsequent transfer of title will be treated as a sale and is subject to the requirements of § 1965.126 of this subpart.

(c) *Assumption by spouse not liable for the FmHA debt.* The spouse of a deceased borrower who is not liable for the FmHA debt and who wishes to assume the loan may do so in accordance with § 1965.126(c)(2)(i) of this subpart.

(d) *Assumption by person, other than the spouse, who is not liable for the FmHA debt.* A person other than the deceased borrower's spouse who wishes to assme the loan for the benefit of persons who were dependent on the deceased borrower at the time of death, without receiving title to the property, may do so in accordance with § 1965.126(c)(2)(ii) of this subpart provided:

(1) The dwelling will continue to be occupied by one or more persons who were dependent of the borrower at the time of death; and

(2) There is reasonable prospect for orderly repayment of the loan and other loan conditions will be met such as payment of taxes, insurance, maintenance, and assessments.

§ 1965.117 Bankruptcy.

The section applies to SFH borrowers who declare bankruptcy under Chapter 7 (liquidation) or Chapter 13 (adjustment of debts of an individual with regular income) of the Federal Bankruptcy Code. SFH borrowers who declare bankruptcy under Chapter 11 (reorganization) will be handled on a case-by-case basis under a State Supplement or as advised by OGC.

(a) *Meetings and hearings.* It is normally not necessary that FmHA be represented at meetings and hearings during bankruptcy proceedings. If, however, the Reigional Attorney advises that FmHA attend a meeting or hearing, the State Director will appoint an FmHA representative.

(b) *Initial notification of bankruptcy.* When an Order of First Meeting of Creditors is received or the County Supervisor is otherwise informed that a borrower has filed a petition in bankruptcy, the County Supervisor shall:

(1) Continue to accept and remit payments made voluntarily by the borrower, but discontinue collection efforts.

(2) Flag the office management card to indicate that the borrower is in bankruptcy.

(3) Request a statement of account from the Finance Office if a Proof of Claim will be filed.

(4) Determine whether or not FmHA wishes to continue with the borrower and advise the State Director. If the decision is to continue, the actions outlined in paragraph (d)(l) of this section will be taken.

(5) Refer the case to the State Director who will consult OGC for advice. Form FmHA 1965–14, "Proof of Claim," or other form approved by OGC, is required in all Chapter 13 cases unless the Order of First Meeting of Creditors specifically states that a proof of claim is not required. Proofs of claim will be sent to OGC for filing. A proof of claim need not be filed in no-asset Chapter 7 cases, but otherwise it should be filed even if FmHA does not wish to continue with the borrower. The Order of First Meeting of Creditors and a copy of the proof of claim will be placed in the borrower's case file. A proof of claim must be filed within 90 days after the date set for the first meeting of creditors, unless the Bankruptcy Court has granted an extension. The proof of claim will set forth the amount of unpaid principal and interest, as well as principal reduction attributed to subsidy and the total amount of interest credit granted if the loan is subject to recapture. The proof of claim will cover all indebtedness to FmHA except judgments obtained by a U.S. Attorney and will indicate whether the indebtedness is secured or unsecured.

(c) *Continuation in Chapter 13 cases.* FmHA must continue with a borrower covered under a confirmed Chapter 13 plan while the plan is in effect. Prior to confirmation of the plan, the State Director or his/her delegate through OGC will contact the Trustee and request that the plan provide that all payments to FmHA, whether paid through the Trustee or directly to FmHA, will be made through the County Office. If a borrower defaults in payments during the plan, OGC may be requested to petition for relief from the automatic stay if liquidation of the loan is recommended. Upon completion of the Chapter 13 plan, the borrower will not be discharged from the FmHA debt if the final due date on the loan is after expiration of the plan.

(d) *Continuation in Chapter 7 cases.* (1) If a decision is made to continue with the borrower, Form FmHA 460–10, "New Promise to Pay," or other form approved by OGC, will be completed and, with the advice of OGC, forwarded to the borrower or the borrower's attorney with instructions to execute prior to discharge and present the executed Form FmHA 460–10 to the Bankruptcy Court in accordance with section 524(d) of the Bankruptcy Code. The borrower's attorney should be advised to return the fully executed Form FmHA 460–10 to the County Supervisor after the Bankruptcy Court has granted the borrower's discharge and the reaffirmation hearing has been held. The New Promise to Pay should be executed prior to the borrower's discharge even if the Bankruptcy Court has previously

advised that it will not review Form FmHA 460–10.

(2) If Form FmHA 460–10 is not executed prior to discharge, a letter in the form of Exhibit A (available in any FmHA office) of this subpart (with changes approved by OGC) will be sent to the borrower after discharge. This letter will advise the borrower that FmHA acknowledges that he/she is not personally liable for the debt; the security property will be the only source to which FmHA may look for recovery of the debt, and in the event of foreclosure, FmHA will be barred from seeking a deficiency judgment. The Letter will also indicated that as long as the scheduled payments are made and all other covenants contained in the promissory note(s) and security instrument(s) are complied with, FmHA will not foreclose, but will continue servicing the loan in accordance with this subpart and Subpart G of Part 1951 of this chapter.

(e) *Not continuing with borrower.* If a decision is made not to continue with a secured loan, liquidation action, either voluntary or foreclosure, may be initiated as soon as one of the following has occurred:

(1) The bankruptcy case is dismissed or closed.

(2) An order lifting the automatic stay is received. This may be in connection with an order of abandonment or a separate order; however, an order of abandonment without specific language that the automatic stay is removed *does not* permit liquidation to be initiated. To petition for relief from the automatic stay, the State Director will forward a request to OGC along with the borrower's case file including a current appraisal and the account status.

(3) The property is no longer property of the bankruptcy estate *and* the borrower has received a discharge.

(f) *Servicing prior to discharge or during a Chapter 13 plan.* A petition filed under Chapter 7 or 13 of the Bankruptcy Code operates as an automatic stay. This stay prohibits all collection efforts and foreclosure actions. The receipt of voluntary payments, granting of interest credit and moratoriums, and collection letters for a borrower under a confirmed Chapter 13 plan that are sent to the Trustee, however, are allowed. Any other servicing actions may not be initiated or approved without the prior consent of OGC.

(g) *Servicing discharged borrowers.* Discharge under Chapter 7 of the Bankruptcy Code operates as an injunction against any act to collect a debt which implies personal liability of the debtor. Chapter 13 debtors' discharges will not include the FmHA debt if the final due date is after expiration of the plan. For borrowers who have received discharges under Chapter 7, normal servicing procedures may be followed after the discharge provided the borrower has received the letter specified in paragraph (d)(2) of this section or properly executed Form FmHA 460–10. For borrowers who filed under Chapter 13, normal servicing may be resumed when the confirmed plan has expired or been terminated. After discharge of an *unsecured* debt (for example, a note-only loan), the State Director will request the Finance Office to cancel the account balance. This will be done by memorandum with copy of the Order of Discharge attached.

§ 1965.118 Release of FmHA lien without monetary consideration.

FmHA liens may be released without monetary consideration as follows:

(a) *Additional security.* The State Director may approve and authorize the release from FmHA's lien real estate which was taken as additional security before the loan is repaid provided the market value of the remaining security is clearly adequate to secure the loan balance. Property considered as "additional security" may not be any part of the tract bought with RH loan funds or part of the minimum-adequate site on which the dwelling is located.

(b) *Mutual mistake.* The State Director may approve and authorize the release of property included in the FmHA security instrument through mutual mistake when substantiated by facts and when he/she can determine with the advice of OGC that a mutual error existed at the time the property was included in the security instrument.

(c) *Valueless lien.* The State Director may approve and authorize release of an FmHA lien which is determined to have no present or prospective value or when enforcement would be ineffectual or uneconomical. This does not include judgment liens or statutory redemption rights except with the consent of OGC. When recommending release of an FmHA lien as valueless, the County Supervisor will forward to the State Director the case file and the following:

(1) Current appraisal report reflecting market value of the property;

(2) The name(s) of prior lienholder(s) and the amount secured by each lien which is prior to FmHA;

(3) Amount of real estate taxes and/or assessments which are or will become a prior lien on the property; and

(4) Facts which substantiate that the lien is valueless.

§§ 1965.119–1965.124 [Reserved]

§ 1965.125 Liquidation.

(a) *Voluntary liquidation.*—(1) *Agreement.* When it is determined the borrower cannot or will not successfully achieve the loan objectives, the County Supervisor will attempt to have the borrower liquidate voluntarily. The exception is: A borrower who has bankruptcy proceedings pending should not be requested to liquidate voluntarily until one of the situations outlined in § 1965.117(e) of this subpart exists. If it appears the borrower has equity in the property, the County Supervisor will advise the borrower of the estimated market value and the approximate amount of equity. The borrower will be encouraged to sell the property, paying FmHA in full and realizing the equity. After reaching agreement for voluntary liquidation, the County Supervisor may allow the borrower 120 days to sell the property or otherwise arrange to pay FmHA in full, after which voluntary conveyance should be considered unless a transaction is pending which will likely result in paying the loan in full. At the borrower's request, an extension of time may be allowed to complete a transaction provided:

(i) The property is listed with a real estate broker for not more than the market value as determined by FmHA;

(ii) A sales contract has been entered into and assumption of the FmHA loan, or a loan from another lender, is pending; or

(iii) The borrower has applied to a lender for a long-term loan to pay FmHA in full.

(2) *Consent to sale for less than the FmHA debt.* If a borrower proposes to sell or transfer the property for an amount less than the FmHA debt (and prior lien(s), if any), the County Supervisor will appraise the property and may consent to the sale if the proposed sale price is not less than the market value. When consent under this paragraph is given and payment in an amount at least equal to the market value of the security property (less prior liens if paid separately and/or allowable costs authorized in paragraph (a)(3) of this section is received by FmHA in cash, money order, certified check, or Cashier's Check, the County Supervisor is authorized to release the FmHA security instrument(s). When necessary to comply with State law, a State supplement approved by OGC will prescribe procedures for releasing security instruments when the debt evidenced therein is not satisfied in full. Release of the borrower from liability

for the deficiency is covered in § 1965.127(b) of this subpart.

(3) *Distribution of proceeds.* If the FmHA debt will not be paid in full, the entire sale proceeds must be applied to the FmHA debt (and prior lien(s), if any), minus costs which the seller customarily or legally must pay in order the convey title; a real estate broker's commission, and no more than 3 points to enable the buyer to obtain credit from another lender. Points will not be paid to reduce the interest rate. The allowable costs may include real estate taxes, preparation of the deed, abstract fees, and deed or other revenue stamps. A real estate commission allowed under this subparagraph must not exceed the prevailing rate for sale of similar property in the area.

(4) *Accelerated repayment agreement.* If liquidation is necessary for reasons other than failure to graduate to other credit, the State Director may, in lieu of foreclosure, permit the borrower to pay the account under an accelerated repayment agreement. When this type agreement has been reached with the borrower, Form FmHA 1965–11, "Accelerated Repayment Agreement," will be prepared and executed according to the FMI. Forms FmHA 1965–22, "Information on Assumption on New Terms or Other Change of Terms," and 1965–23, "Supplemental Information on Assumption and/or Change of Terms" will be prepared and distributed according to the FMIs. Accounts rescheduled by means of Form FmHA 1965–11 will be reclassified to "Other Real Estate (ORE)" loans. The term for the rescheduled payments may not exceed 10 years or the final due date of the note being rescheduled, whichever is sooner. The interest rate will be the SFH-Ineligible rate in effect on the date the agreement is executed or the note rate, whichever is greater.

(b) *Forced liquidation.* If the borrower will not agree to voluntary liquidation or fails to accomplish it within the time agreed to by FmHA, the County Supervisor will recommend foreclosure in accordance with Subpart A of Part 1955 of this chapter.

§ 1965.126 Transfer of property with assumption of indebtedness.

When a borrower proposes to sell real estate security, assumption of the loan(s) may be approved on eligible or ineligible terms, as applicable, subject to the provisions of paragraphs (c) and (d) of this section. When security property is sold (or title is otherwise conveyed), whether by full conveyance or by land contract, contract-for-deed, or other similar instrument, and the FmHA account is not assumed by the purchaser (or new owner), the loan must be liquidated except as provided in paragraph (b)(12) of this section or § 1965.116 of this subpart.

(a) *Authority.* Subject to prior concurrence of the State Director required by paragraph (b)(8) of this section, the County Supervisor may approve transfer and assumption on eligible or ineligible terms and release borrowers and co-signers from liability, when applicable, when the indebtedness involved does not exceed his/her loan approval authority. If the indebtedness exceeds the County Supervisor's loan approval authority, approval must be by an official with appropriate approval authority.

(b) *General.* The following policies apply to all transfers and assumptions under this subpart:

(1) *Loan classification and/or changes.* A loan may be assumed as outlined in this subparagraph, after which the loan will be classified according to the terms on which it was assumed. Assumption on eligible terms is authorized ONLY when both the assuming party meets eligibility requirements *AND* the property is suitable for the housing program. The following loans may be assumed on eligible or ineligible terms under paragraphs (c) or (d) of this section:

(i) Low-or moderate-income.

(ii) Above-moderate-income.

(iii) ORE for residential property.

(2) *Forms.* (i) Form FmHA 465–5, "Transfer of Real Estate Security," or an executed sales contract, will reflect the agreement between the transferor and the party(ies) who will assume the FmHA debt.

(ii) Form FmHA 1940–1, "Request for Obligation of Funds," will be used for approval of the assumption and/or a subsequent loan, if any.

(iii) Form FmHA 1965–15, "Assumption Agreement—Single Family Housing Loan(s)," will be executed by the assuming party(ies).

(iv) Form FmHA 1965–22, except for assumptions under paragraph (c)(2) of this section.

(v) Form FmHA 1965–23, except for assumptions under paragraph (c)(2) of this section.

(3) *Dwelling situated on more than a minimum-adequate site.* If the property to be transferred with assumption consists of a dwelling on more than a minimum-adequate site as defined in Subpart A of Part 1944 of this chapter, a determination must be made as to whether the excess land can serve as a minimum-adequate site for another dwelling. It is not intended to exclude an otherwise-suitable dwelling from being transferred to another program-eligible applicant simply because it is situated on more than a minimum-adequate site. Consideration must be given to such things as local zoning requirements, road or street access, and marketability of portions separately if subdivided. If it is determined that the excess property cannot be sold separately as a minimum-adequate site for another dwelling, the facts must be documented and the property may be retained in the SFH program. When all of the security property is not being transferred to the party assuming the FmHA debt and the balance of the FmHA debt is not paid in full when the assumption is closed, the remaining debt of the transferor will be rescheduled through an accelerated repayment agreement in accordance with § 1965.125(a)(4) of this subpart. OGC will be requested to advise how to retain the appropriate security interest on each portion of the security property. When the balance of the transferor's debt is paid and it is necessary to release the portion of the security property not transferred within the program, OGC will be requested to prepare the release document.

(4) *Suitability of property for retention in program.* (i) A single-family dwelling presently financed by FmHA may be transferred to an eligible applicant on eligible terms provided it meets FmHA program requirements and policies. These properties are not being brought into the RH program in the same sense as existing properties not already financed by FmHA. They are properties in which FmHA already has a long-term lending commitment and security interest. Therefore, such properties may be suitable although they contain more than 1,400 square feet of living area and/or design features which would not be permitted when making an initial loan for an existing dwelling. It must, however, be typical of modest homes in the area.

(ii) In some instances a property presently financed under the Section 502 RH program may be determined to be unsuitable for retention in the program. In those instances, assumption may be on ineligible terms only, according to paragraph (d) of this section. Situations of this type include, but are not limited to:

(A) A dwelling which has been enlarged or improved to the point where it is clearly above modest.

(B) When a determination is made a dwelling should not have been financed originally.

(C) A dwelling brought into the program as an existing dwelling which met program requirements and policies at the time it was originally financed by

FmHA but which does not conform to current policies. This includes the older and/or larger homes of a type which have been proven to create excessive energy and maintenance costs to low- or moderate-income borrowers.

(5) *Amount of assumption.* The transferee will assume the entire FmHA indebtedness unless the indebtedness plus prior liens exceeds the market value of the property, in which case the transferee will assume an amount equal to the market value of the property, less the amount of prior liens, if any. When the buyer and seller have agreed upon transfer for "amount of debt," recapture of subsidy due based on market value of the security property must be calculated and included as part of the total indebtedness.

(6) *Recapture of subsidy.* Recapture of subsidy in connection with assumptions will be as provided in Subpart I of Part 1951 of this chapter.

(7) *Consent of prior lineholder.* If there is a prior lien and if required by security instruments or other agreement, written consent of the prior lienholder will be obtained before approval of a transfer and assumption.

(8) *Junior liens.* When the full amount of the FmHA debt is assumed, there must be no liens, judgments, or other claims against the security which are junior to the FmHA lien(s) being assumed unless the State Director determines those liens will not adversely affect the Government's security interest and that the transferee's ability to repay the FmHA debt will not be impaired. When less than the full indebtedness is being assumed, there must be no liens against the security which are junior to the FmHA lien(s).

(9) *Loan in connection with assumption.* A loan for which the assuming party is eligible may be made according to Subpart A of Part 1944 of this chapter in connection with the assumption.

(10) *Withdrawal of jointly liable borrower.* When a jointly liable borrower withdraws, such as in a divorce case, the remaining borrower will not execute an assumption agreement. Form FmHA 450–10 will be prepared and submitted to the Finance Office if the account is not in the name of the person with whom the account will be continued.

(11) *Change in rural area designation.* Where security property is located in an area which has been redesignated from rural to nonrural, a loan may be assumed without considering the nonrural designation.

(12) *Conveyance of security property by borrower to spouse or child.* When a borrower conveys security property to his/her spouse or child (children), assumption of the indebtedness is not required and FmHA may not take action to liquidate the loan as long as payments are made as scheduled and other loan conditions are met. Interest credit may be granted only to a qualified borrower; therefore, if the house is not occupied by the borrower, interest credit may not be granted. In the event the transferee(s) wishes to assume the indebtedness, it may be assumed on the terms outlined in paragraph (c)(2)(i), (c)(2)(ii), or (c)(2)(iii) of this section as applicable to the circumstances. The loan remains subject to the graduation requirements set forth in Subpart F of Part 1951 of this chapter.

(c) *Assumption on eligible terms.* A loan may be assumed on eligible terms when the transferee meets eligibility requirements in the loan making regulation for the type loan involved, except that a section 504 transferee may have only an ownership interest in the property and must occupy the dwelling as his/her residence after the assumption is closed. Interest rates and amortization periods will be as follows:

(1) Except as provided in paragraph (c)(2) of this section, all assumptions will be at the interest rate in effect when the assumption is approved as determined from Exhibit B of FmHA Instruction 440.1 (available in any FmHA office) for the type loan involved. The repayment period may be up to the maximum legal limit for the type loan involved.

(2) In the situations outlined in paragraphs (c)(2)(i), (c)(2)(ii) and (c)(3)(iii) of this section *only,* the assuming party will execute Form FmHA 1965–15; however, Forms FmHA 1965–22 and FmHA 1965–23 will *not* be completed or submitted to the Finance Office. The name on the account will be changed by submitting Form FmHA 450–10 to the Finance Office. The interest rate, final due date, payment date, account status (current, delinquent, ahead of schedule), and whether or not the loan is subject to recapture will not be changed by virtue of the assumption. Eligibility for interest credit will be considered or re-evaluated at the time of assumption. Situations where these terms are authorized are:

(i) A deceased or divorced borrower's spouse, other relative, or joint tenant, who acquires title to the property but is not liable for the debt and wishes to assume the loan may do so, after which compliance with the loan conditions is required.

(ii) A person other than the deceased borrower's spouse who wishes to continue with the loan under conditions outlined in § 1965.116 (b) or (d) of this subpart may do so without considering the assuming party's eligibility for program assistance. In this type situation, interest credit may be considered based on the income of only the occupants of the security property, whether or not the assuming party is one of the oocupants, if the loan is otherwise eligible for interest credit.

(iii) A borrower's spouse, other relative or joint tenant who is not liable for the debt and wishes to assume the debt with an existing borrower may do so.

(d) *Assumption on ineligible terms.* When a borrower sells or proposes to sell security property and the purchaser does not meet the eligibility requirements for an RH loan, or the property is not suitable for retention in the housing program, the debt may be assumed on ineligible terms if the assuming party as repayment ability and it is advantageous to the Government to allow the assumption. If the purchaser does not assume the debt, the loan must be liquidated. After assumption on ineligible terms, the loan will be classified as an ORE loan. A payment on the debt of not less then 10 percent of the unpaid balance, including any subsidy to be recaptured, must be made. The assumption agreement will bear interest at the SFH-Ineligible rate in effect on the date the assumption is approved. The loan balance after the 10 percent payment will be amortized as follows, except the terms will never be longer than the period for which the property will serve as adequate security:

(1) When the purchaser does not own an adequate home, intends to occupy the house, and cannot obtain other credit for its purchase, the term may be for a period not to exceed 30 years.

(2) When the purchaser does not meet the criteria in paragraph (d)(1) of this section, the amortization period will be not more than 10 years unless the State Director determines more favorable terms are necessary to facilitate the sale. When the State Director determines more favorable terms should be given, the assumption may be amortized using a 20-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing.

(e) *Processing and closing transfer with assumption.*—(1) *Refund of unused funds and loan funds not advanced.* Funds remaining in a supervised bank account will be applied to the transferor's account unless the transfer is to an eligible applicant and the funds will be used to complete planned development. In this case the funds will

be transferred to a supervised bank account in the transferee's name at closing. Obligation of funds not yet advanced, if any, will be cancelled.

(2) *Preparation and distribution of docket.* Loan docket preparation and forms required will be the same as in Subpart A of Part 1944 of this chapter for section 502 loans or Subpart J of Part 1944 of this chapter for section 504 loans, with the addition of the forms in paragraph (b)(2) of this section. Forms will be prepared and distributed according to the respective FMIs.

(3) *Title clearance and loan closing.* Title clearance and closing of the assumption (and subsequent loan, if any) will be under Part 1807 of this chapter (FmHA Instruction 427.1) and Subpart A of Part 1944 of this chapter for a section 502 loan or Subpart J of Part 1944 of this chapter for a section 504 loan. A State Supplement will be issued with the advice of OGC to provide instructions on:

(i) The type security instrument which is required to secure recapture of subsidy when the loan being assumed is not subject to recapture and a new loan is not being made simultaneously; and

(ii) Whether or not a new security instrument is required when the term of the assumption is extended beyond the final due date of the loan(s) being assumed.

(4) *Property insurance.* Property insurance will be required in accordance with Subpart A and B of Part 1806 of this chapter (FmHA Instructions 426.1 and 426.2), as applicable.

(5) *Account balance.* The unpaid balance of the transferor's account will be obtained from the Inquiry Station of the Finance Office or account status report prepared by the Finance Office. If the loan being assumed is subject to recapture of subsidy, the account balances including total subsidy granted and principal reduction attributed to subsidy must be obtained from the Finance Office Inquiry Station. If the borrower has made a payment which has not been applied, the account will be assumed on the basis of the balance reflected by the Inquiry Station. If a payment pending results in overpayment of the transferor's account, the Finance Office will contact the County Supervisor to determine the disposition of the overpayment.

(f) *Release from liability.* Release from liability will be under § 1965.127 of this subpart when authorized.

§ 1965.127 Release from liability.

(a) *Circumstances when release from liability is authorized.* Release from liability will be accomplished by preparing and distributing Form FmHA 1965–8, "Release From Personal Liability," according to the FMI as follows:

(1) When the total debt is assumed on eligible terms, the borrower and co-signer, if any, will be released from liability by the County Supervisor.

(2) When the total debt is assumed on ineligible terms, upon recommendation of the County Committee the borrower and co-signer, if any, may be released by the County Supervisor *only* when the term of the assumption is not more than 5 years.

(3) When a person who is jointly liable for a loan requests release from liability, he/she may be released from liability by the County Supervisor provided:

(i) A divorce decree or property settlement document did not make the withdrawing party responsible for loan payments;

(ii) The value of the security property is at least equal to the debt;

(iii) The withdrawing party's interest in the security property is conveyed to the person with whom the loan will be continued; *and*

(iv) The person with whom the loan will be continued has adequate repayment ability.

(4) When the value of the security property is less than the total debt and an amount equal to the market value of the security is assumed under § 1965.126(b)(5), of this subpart, or sale outside the program for an amount not less than the market value is approved under § 1965.125(a)(2) of this subpart, the transferor (and co-signer, if any) may be released from liability when the determination is made that the transferor (and cosigner, if any) does not have reasonable ability to repay the balance of the debt and the transferor has acted in good faith, adequately maintined the security property and otherwise fulfilled the loan covenants to the best of the borrower's ability. If a cosigner is involved, the transferor will not be released unless the cosigner is also released. Authority to determine release of liability is as follows:

(i) When assumption on eligible terms is approved, the County Supervisor may determine release from liability and will document the determination in the case file.

(ii) When assumption on ineligible terms is approved, or when the property is sold outside the program, the County Committee must make a favorable recommendation on release from liability on Form FmHA 440–2, "County Committee Certification or Recommendation," according to the FMI. After obtaining the County Committee's recommendation, the County Supervisor will determine release from liability.

(b) *Account balances.* When security property is sold for an amount not less than the market value as authorized in § 1965.125(a)(2) of this subpart or assumption of an amount equal to the market value is approved as authorized in § 1965.126(b)(5) of this subpart, the account balance will be handled as follows:

(1) When the transferor (and co-signer, if any) is released from liability, the Finance Office will satisfy the transferor's account when one of the following is received:

(i) In the case of sale outside the FmHA program, a memorandum from the County Supervisor requesting satisfaction of the transferor's account balance, with a copy of Form FmHA 1965–8 attached indicating release from liability;

(ii) In the case of assumption, Form FmHA 1965–22 indicating the transferor is released from liability.

(2) When the transferor (and co-signer, if any) is not released from liability, the account balance after the assumption is processed or cash proceeds are applied will be accelerated using Form FmHA 455–21, "Notice of Acceleration and Demand for Payment."

§ 1965.128 Assignment of promissory notes and security instruments.

When a borrower requests it, with the advice of and instructions from OGC, the note(s) and security instrument(s) may be assigned on a nonrecourse basis to a third party, who has paid the borrower's account in full. For loans subject to recapture of subsidy, recapture will be calculated based on market value and collected at the time of the assignment. The assignment will be made by a form prepared and furnished by OGC on an individual-case basis. The State Director will execute the assignment instrument(s); and this authority may not be redelegated.

§ 1965.129 Co-signers.

Although a co-signer is personally liable for repayment of the FmHA debt, he/she is not entitled to any interest in the security or the rights of the borrower under the loan or security instruments. If the security is transferred to the co-signer, he/she may assume the FmHA indebtedness on eligible or ineligible terms, as applicable.

(a) *Replacement of co-signer.* If it is necessary to replace a co-signer, a person determined by the County Supervisor to have repayment ability may be substituted. The new co-signer will execute an agreement prepared by

OGC to guarantee payment of the balance owed on the RH debt. The original of the agreement will be attached to the original note and a copy of the agreement will be attached to each copy of the note.

(b) *Release of co-signer.* Upon satisfactory substitution of a new co-signer, the previous co-signer of a note may be released from personal liability by completion of Form FmHA 1965–8 prepared according to the FMI.

§§ 1965.130–1965.135 [Reserved]

§ 1965.136 Redelegation of authority.

The State Director may redelegate in writing any authority delegated to the State Director in this subpart, except where specifically excluded, to one or more of the following State Office employees: Chief, Rural Housing, or Rural Housing Specialist.

§ 1965.137 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart or address any omission of this subpart which is not inconsistent with the authorizing statue or other applicable law if the Administrator determines that the Government's interest would be adversely affected or the immediate health and/or safety of residents of the community are endangered if there is no adverse effect on the Government's interest. The Administrator will exercise this authority upon the request of the State Director with recommendation of the Assistant Administrator for Housing; or upon request initiated by the Assistant Administrator for Housing. Request for exceptions must be made in writing and supported with documentation to explain the adverse effect, propose alternative courses of action, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§ 1965.138 State Supplements.

State Supplements will be prepared with the assistance of OGC as necessary to comply with State laws or only as specifically authorized in this regulation to provide guidance to FmHA officials. State Supplements will be submitted to the National Office for post approval in accordance with FmHA Instruction 2006–B (available in any FmHA office).

§§ 1965.139–1965.150 [Reserved]

PART 1980—GENERAL

26. The authority citation for Part 1980 is revised to read as follows:

Authority: U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.23, 7 CFR 2.70

Subpart D—Rural Housing Program Loans

27. Section 1980.337, Administrative A, is revised to read as follows:

§ 1980.337 Loan servicing.

* * * * *

Administrative

A. The County Supervisor is authorized to approve any servicing action consistent with customary and reasonable private sector servicing practices, but not more lenient than practices outlined in Subpart C of Part 1965 of this chapter.

* * * * *

Dated: September 9, 1985.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 85–23238 Filed 9–27–85; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 341

Certificates of Citizenship

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule clarifies and affirms the requirement that a decision be issued and the applicant be notified in all cases involving an application for a Certificate of Citizenship, and specifically includes cases which are closed administratively. Additionally, minor technical amendments, including removing sexist language, are made.

EFFECTIVE DATE: September 30, 1985.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW.; Washington, D.C. 20536, Telephone: (202) 633–3048;

For Specific Information: R. Michael Miller, Deputy Assistant Commissioner, Adjudications, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633–3320.

SUPPLEMENTARY INFORMATION:

Presently, 8 CFR 341.6 does not address cases which are closed administratively. Therefore, in order to ensure that a decision is issued in all cases, including those which are closed administratively, the regulation is being revised.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule merely clarifies an existing regulation.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule, if promulgated, does not have a significant impact on a substantial number of small entities.

This order is not a major rule within the definition of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 341

Administrative practice and procedure, Certificates of citizenship.

Accordingly, Chapter 1 of Title 8 of the Code of Federal Regulations is amended as follows:

PART 341—CERTIFICATES OF CITIZENSHIP

1. The authority citation for Part 341 continues to read as follows:

Authority: Secs. 103 and 341 of the Immigration and Nationality Act, as amended, 8 U.S.C. 1103 and 1452.

2. Section 341. is revised to read as follows:

§ 341.5 Report and recommendation.

The officer assigned to act on the application shall report his/her findings and recommendation by completing the Report and Recommendation section of the Form N–600 application, or by formal order, as appropriate. The record, includig the report and recommendation, shall be submitted to the distict director, who shall sign the report either approving or disapproving the recommendation.

3. Section 341.6 is revised to read as follows:

§ 341.6 Denial of application.

If it is the decision of the district director to deny the application for a Certificate of Citizenship, the applicant shall be furnished the reasons for denial and advised of the right to appeal in accordance with the provisions of 8 CFR 103.3(a). After an application for a Certifcate of Citizenship has been denied and the appeal time has run, a second application submitted by the same individual shall be rejected and the applicant instructed to submit a motion for reopening or reconsideration in accordance with 8 CFR 103.5. The motion shall be accompanied by the rejected application and the fee specified in 8 CFR 103.7 reduced by the

amount of the fee paid with the rejected application. A decision shall be issued with notification of appeal rights in all Certificate of Citizenship cases, including any case denied due to the applicant's failure to prosecute the application.

4. Section 341.7 is revised to read as follows:

§ 341.7 Issuance of certificate.

If the application is granted, a Certificate of Citizenship shall be issued and, unless the claimant is unable by reason of mental incapacity or young age to understand the meaning thereof, he/she shall take and subscribe to the oath or renunciation and allegiance, prescribed by Part 337 of this chapter, before an officer of the Service within the United States. Thereafter, delivery of the certificate shall be made in the United States to the claimant or the acting parent or guardian, either personally or by certified mail.

Dated: August 28, 1985.

Marvin J. Gibson,

Acting Associate Commissioner, Examinations Immigration and Naturalization Service.

[FR Doc. 85-23279 Filed 9-27-85; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 85-087]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations governing the interstate movement of cattle because of brucellosis by designating the entire State of Wyoming as Class Free. Prior to the effective date of the interim rule, Sublette County and a portion of Lincoln County in Wyoming were designated as Class A, and the remainder of Wyoming was designated as Class Free. The amendment is necessary because it has been determined that the entire State of Wyoming meets the standards for Class Free status. The amendment relieves certain restrictions on the interstate movement of cattle from the area in Wyoming redesignated as Class Free.

EFFECTIVE DATE: September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. G.H. Frye, Cattle Diseases Staff, VS, APHIS, USDA, Room 814, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8711.

SUPPLEMENTARY INFORMATION:

Background

A document published in the **Federal Register** on June 7, 1985 (50 FR 23937-23938), amended the brucellosis regulations in 9 CFR Part 78 by designating the entire State of Wyoming as Class Free. Prior to the effective date of the interim rule, Sublette County and a portion of Lincoln County in Wyoming were designated as Class A, and the remainder of Wyoming was designated as Class Free. The amendment, which was made effective upon signature on June 3, 1985, relieves certain restrictions on the interstate movement of cattle from the area in Wyoming redesignated as Class Free.

Comments were solicited for 60 days after publication of the amendment. No comments were received. The factual situation which was set forth in the document of June 7, 1985, still provides a basis for the amendment.

Executive Order and Regulatory Flexibility Act

This rule has been reviewed in accordance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Changing the status of a portion of the State of Wyoming reduces testing requirements on the interstate movement of certain cattle. Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by the change in status. Also, cattle for Certified Brucellosis-Free Herds moving interstate are not affected by the change in status. It has been determined that the change in brucellosis status made by this rule will not affect marketing patterns and will not have a significant economic impact on those persons affected by the amendment.

Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12732

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

List of Subjects in 9 CFR Part 78

Animal Diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, the interim rule amending 9 CFR Part 78 which was published at 50 FR 23937-23938 on June 7, 1985, is adopted as a final rule.

Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 24th day of September 1985.

B.J. Johnson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-23278 Filed 9-27-85; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 78

[Docket No. 85-088]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations governing the interstate movement of cattle because of brucellosis by designating the entire State of Montana as Class Free. Prior to the effective date of the interim rule, Flathead County, Montana, was designated as Class A, and the remainder of Montana was designated as Class Free. The amendment is necessary because it has been determined that the entire State of Montana meets the standards for Class Free status. The amendment relieves certain restrictions on the interstate movement of cattle from the area in Montana redesignated as Class Free.

EFFECTIVE DATE: September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. G.H. Frye, Cattle Diseases Staff, VS, APHIS, USDA, Room 814, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8711.

SUPPLEMENTARY INFORMATION:

Background

A document published in the **Federal Register** on June 7, 1985 (50 FR 23938–23939), amended the brucellosis regulations in 9 CFR Part 78 by designating the entire State of Montana as Class Free. Prior to the effective date of the interim rule, Flathead County, Montana, was designated as Class A, and the remainder of Montana was designated as Class Free. The amendment, which was made effective upon signature on June 3, 1985, relieves certain restrictions on the interstate movement of cattle from the area in Montana redesignated as Class Free.

Comments were solicited for 60 days after publication of the amendment. No comments were received. The factual situation which was set forth in the document of June 7, 1985, still provides a basis for the amendment.

Executive Order and Regulatory Flexibility Act

This rule has been reviewed in accordance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Changing the status of a portion of the State of Montana reduces testing requirements on the interstate movement of certain cattle. Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by the change in status. Also, cattle from Certified Brucellosis-Free Herds moving interstate are not affected by the change in status. It has been determined that the change in brucellosis status made by this rule will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

List of Subjects in 9 CFR Part 78

Animal Diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, the interim rule amending 9 CFR Part 78 which was published at 50 FR 23938–23939 on June 7, 1985, is adopted as a final rule.

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 24th day of September 1985.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85–23274 Filed 9–27–85; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–CE–20–AD; Amdt. 39–5125]

Airworthiness Directives; Cessna Models U206F, U206G, TU206F, TU206G, 207, T207, 207A, and T207A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of final rule.

SUMMARY: This action corrects Airworthiness Directive (AD) 85–17–07, Amendment 39–5125 (50 FR 34450), applicable to Cessna Models U206F, U206G, TU206F, TU206G, 207, T207, 207A, and T207A airplanes. This correction is necessary because an error was made in the serial number effectivity statement of the AD when it was published in the **Federal Register**.

EFFECTIVE DATE: Septmber 27, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas W. Haig, Aerospace Engineer, FAA, ACE–120W, 1801 Airport Road, Wichita, Kansas 67209; Telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION: Subsequent to the issuance of AD 85–17–07, Amendment 39–5125 (50 FR 3450), applicable to Cessna Models U206F, U206G, TU206F, TU206G, 207, T207, 207A, and T207A airplanes, the FAA found that an error had been made in the serial number effectively statement of the AD when it was published in the **Federal Register**. Therefore, action is taken herein to make this correction. Since this action is required to ensure all affected airplanes are correctly referenced and included in the AD, notice and procedure hereon are unnecessary and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, safety.

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By correcting the following AD:

In FR Doc. 85–20262 (50 FR 34450), appearing in the **Federal Register** of August 28, 1985, make the following correction:

Correct the applicability statement to read as follows:

"**Cessna:** Applies to the following Cessna airplanes certificated in any category:

Model	Serial No
U206F/TU206F	S/N U20601701 through U20603521
U206G/TU206G	S/N U20603522 through U20604649
207/T207	S/N 20700001 through 20700315
207A/T207A	S/N 20700316 through 20700767"

Issued in Kansas City, Missouri, on September 12, 1985.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 85-23202 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 84-CE-33-AD; Amdt. 39-5138]

Airworthiness Directives; Fairchild Aircraft Corporation Models SA226-T, SA226-T(B), SA226-AT and SA226-TC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises Airworthiness Directive (AD) 85-04-01 Amendment 39-5005 (50 FR 7748) applicable to Fairchild Aircraft Corporation Models SA226-T, SA226-T(B), SA226-AT and SA226-TC airplanes by clarifying hydraulic line part numbers, changing Service Bulletin (S/B) references that would lead operators to believe replacement of certain hydraulic lines is optional, and deleting certain serial number airplanes from the effectivity of the oxygen system modification portion of the AD. Subsequent to issuing AD 85-04-01, the FAA determined that clarification was necessary to avoid incorrect applicability and unnecessary compliance by some owners and operators. This revision will eliminate this unnecessary burden.

EFFECTIVE DATE: October 28, 1985. Compliance: As prescribed in the body of the AD.

ADDRESSES: Fairchild Aircraft Corporation S/B 226-29-005 revised July 19, 1985, S/B 226-35-003 revised July 19, 1985 and S/B 24-021 dated March 21, 1983, may be obtained from Fairchild Aircraft Corporation, Post Office Box 32486, San Antonio, Texas 78284; Telephone (512) 824-9421. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, FAA, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Sills, Telephone (817) 877-2073 or Mr. Mark Schilling, Telephone (817) 877-2598, Airplane Certification Branch, ASW-150, Southwest Region, FAA, Post Office Box 1689, Fort Worth, Texas 76101.

SUPPLEMENTARY INFORMATION: AD 85-04-01, Amendment 39-5005 (50 FR 4478) applicable to Fairchild Aircraft Corporation Models SA226-T, SA226-T(B), SA-226-AT and SA226-TC airplanes requires inspections and modifications of the oxygen and hydraulic systems. Subsequent to the issuance of this AD, questions regarding proper hydraulic line replacement were brought to the manufacturer's and the FAA's attention. Fairchild issued S/B 226-29-005 revised July 19, 1985, to answer these questions. In addition, the FAA determined that certain serial number airplanes were inadvertently included in the oxygen system portion of the AD. Therefore, the FAA is revising AD 85-04-01 by specifying the correct serial number applicability and incorporating the latest S/B references in the oxygen system portion of the AD.

This amendment updates the AD by incorporating presently available service information and lists the correct serial numbers for the oxygen system modifications. It imposes no additional burden on any person. Therefore, notice and public procedure hereon are unnecessary and contrary to the public interest.

The FAA has determined that this document involves an amendment which is classifying and corrective in nature. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291 and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1969). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation of Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By revising AD 85-04-01 as follows:

Revise paragraph (c) to read as follows:

"(c) On or before December 31, 1985, modify Model SA226 airplanes in accordance with the following:

(1) On Models SA226-T (S/N's T201 through T275, T277 through T291), SA226-T(B) (S/N's TB276, TB292 through TB417), SA226-AT (S/N's AT001 through AT074), and SA226-TC (S/N's TC201 through TC397) airplanes, modify the hydraulic system in accordance with Fairchild S/B 226-29-005 revised July 19, 1985.

Note.—Inspect condition of cushion clamps when changing hydraulic lines and change as necessary.

(2) On Models SA226-T (S/N's T249 through T275, T227 through T291), SA226-T(B) (S/N's TB276, TB292 through TB417), SA226-AT (S/N's AT001 through AT074), and SA226-TC (S/N's TC201 through TC397) airplanes, modify the crew oxygen system in accordance with Fairchild S/B 226-35-003 revised July 19, 1985."

This amendment revises AD 85-04-01, Amendment 39-5005.

This amendment becomes effective October 28, 1985.

Issued in Kansas City, Missouri, on September 12, 1985.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 85-23205 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-CE-18-AD; Amdt. 39-5140]

Airworthiness Directives; Gulfstream Aerospace Corporation Models AA-1, AA-1A, AA-1B and AA-1C Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Gulfstream Aerospace Corporation Models AA-1, AA-1A, AA-1B and AA-1C airplanes which requires replacement of the seat belt attachment brackets. It is possible for the seat belt attachment bracket to fail in the event of decelerations experienced in a minor crash, which could result in injury to an occupant. Replacement of the seat belt attachment brackets with increased strength brackets will prevent the possibility of failure during a minor crash.

EFFECTIVE DATE: October 28, 1985. Compliance: As prescribed in the body of the AD.

ADDRESSES: Gulfstream Service Bulletin No. 173, dated March 11, 1985, applicable to this AD may be obtained from Gulfstream Aerospace Corporation, Post Office Box 2206, Savannah, Georgia 31402–2206; Telephone (912) 964–3000. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis A. Jackson, ACE–120A, Atlanta Aircraft Certification Office, Central Region, Federal Aviation Administration, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763–7407.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring replacement of the seat belt attachment brackets on certain Gulfstream Aerospace Corporation Models AA–1, AA–1A, AA–1B and AA–1C airplanes was published in the Federal Register on June 7, 1985 (50 FR 23993). It has been found that the seat belt attachment brackets used on Gulfstream Models AA–1, AA–1A, AA–1B, and AA–1C airplanes may fail during decelerations occurring in a minor crash. Failure of this bracket could result in injury to an occupant. The manufacturer has developed a strengthened replacement bracket which exceeds the emergency landing requirements of FAR 23.561. The FAA determined that the unsafe condition described herein is likely to exist in other airplanes of the same type design, and therefore an AD was proposed which would require replacement of the seat belt attachment brackets with improved brackets in accordance with Gulfstream Aerospace Service Bulletin No. 173, dated March 11, 1985. Interested persons have been afforded an opportunity to comment on the proposal. No comments were received. Accordingly, the proposal is adopted without change.

The FAA has determined that this regulation only involves 1,800 airplanes at an approximate one-time cost of $30 for each aircraft or a total one-time fleet cost of $54,000.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Gulfstream Aerospace: Applies to Models AA–1 (S/Ns AA1–0001 to AA1–0459), AA–1A (S/N AA1A–0001 to AA1A–0470), AA–1B (S/N AA1B–0001 to AA1B–0680) and AA–1C (S/N AA1C–0001 to AA1C–0211) airplanes.

Compliance: Required within 25 hours time-in-service after the effective date of this AD unless already accomplished by installing parts in accordance with Gulfstream Aerospace Service Bulletin No. 173 dated March 11, 1985. To prevent failure of the seat belt attachment bracket in a minor crash, accomplish the following:

(a) Replace the seat belt attachment bracket, (Part Number (P/N) 60152–2) as follows:

(1) Take out the seat belts by removing the AN–3 bolts through the end fittings. Discard the bolts and nuts but retain the bushings and washers.

(2) Take out the P/N 60152–2 belt attach brackets by removing the two nuts holding them to the floor. Discard the brackets and nuts, but retain the washers. Visually inspect the retaining plates under the fuselage for corrosion and replace if necessary.

(3) Install P/N 5102391–1 brackets, using the washers retained in paragraph (a)(2) above and new nuts. Torque the nuts to 20 to 25 inch pounds.

(4) Visually inspect the seat belts for fraying or other signs of deterioration and replace any worn or deteriorated belts.

(5) Reinstall the seat belts, using NAS623–3–8 bolts, MS20365–1032 nuts and the bushings and washers retained in paragraph (a)(1) above.

(b) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

(c) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Atlanta Aircraft Certification Office, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763–7428.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Gulfstream Aerospace Corporation, Post Office Box 2206, Savannah, Georgia 31402–2206, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Note.—Gulfstream Aerospace Corporation Bulletin No. 173, dated March 11, 1985, covers the subject matter of this AD.

The amendment becomes effective on October 28, 1985.

Issued in Kansas City, Missouri, on September 12, 1985.

Jerold M. Chavking,

Acting Director, Central Region.

[FR Doc. 85–23203 Filed 9–27–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 85–NM–41–AD; Amdt. 39–5143]

Airworthiness Directives: McDonnell Douglas Model DC–8–70 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires modification of the drain mast assemblies on CFM–56–2 engines installed on DC–8–70 series airplanes. This AD is prompted by 18 reported instances of damage to the engine drain mast and transfer gear box horizontal drive shaft housing due to drain mast contact with the runway during landing. This action is necessary to minimize the potential of inflight shutdown if drain mast failure is not detected during preflight inspection.

DATES: Effective November 4, 1985. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Roy A. McKinnon, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long

Beach, California 90808; telephone (213) 548–2835.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to adopt a new airworthiness directive (AD) to require installation of modified drain mast assemblies was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on April 30, 1985 (50 FR 18270). The comment period for the proposal closed June 21, 1985

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received. Three comments were received.

The first commenter strongly endorsed adoption of the amendment.

The second commenter requested an extension of the compliance time from eighteen (18) months to thirty-six (36) months to coincide with their scheduled shop visits for a fleet of fifty-nine CFM–56–2 engines. This commenter noted that the special emphasis implemented during walk-around inspections, conducted prior to each originating flight and crew change flight, to inspect for evidence of ground contact of the masts has proved to be adequate in detecting any damaged masts and should provide an acceptable level of safety to justify this extended time of compliance. Upon reconsideration, the FAA has determined an equivalent level of safety will be achieved by requiring at least one engine on each side of the airplane to be modified within eighteen (18) months, and all engines to be modified within thirty-six (36) months. This provision will preclude engine oil loss due to drain mast impact and potential inflight shutdowns of both engines on the same side of the airplane.

The third commenter suggested that an alternate compliance period be expressed in flight cycles in lieu of months. The FAA concurs and has revised the wording in the final rule to establish an alternate compliance time in terms of flight cycles.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule with the changes previously noted.

Approximately 76 airplanes of U.S. registry will be affected by this AD. Each airplane contains four nacelles which will be affected by this AD. It is estimated that 6.5 man-hours per engine are needed to accomplish the required modification. Average labor cost is $40 per man-hour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $79,040.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact effect on a substantial number of small entities, because few, if any, Model DC–8–70 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulation as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC–8–71, –72, and –73 series airplanes certificated in any category. To minimize inflight shutdowns due to oil loss, accomplish the following unless previously accomplished:

A. Within eighteen (18) months, or three thousand (3000) landings, whichever occurs earlier, after the effective date of this AD, modify at least one engine on each side of the airplane in accordance with paragraph B., below, and complete the modifications on all engines within thirty-six (36) months, or six thousand (6000) landings, whichever occurs earlier after the effective date of this AD.

B. Accomplish the modification described in paragraph A., above, in accordance with McDonnell Douglas Service Bulletin 71–96, dated February 12, 1985, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1–750 (54–60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective November 4, 1985.

Issued in Seattle, Washington, on September 20, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–23207 Filed 9–27–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 84–CE–12–AD; Amdt. 39–4851]

Airworthiness Directives; Piper Models PA–31T, PA–31T1, PA–31T2 and PA–31T3 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT .

ACTION: Correction of final rule.

SUMMARY: This action corrects Airworthiness Directive (AD) 84–08–06 Amendment 39–4851 (49 FR 18468), applicable to certain models of Piper PA–31 Series airplanes. This correction is necessary because an error was made in the serial number effectivity statement of the AD when the AD was published in the **Federal Register**.

EFFECTIVE DATE: September 27, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Perry, ACE–120A, Aerospace Engineer, Airframe Branch, Atlanta Aircraft Certification Office, FAA, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763–7407.

SUPPLEMENTARY INFORMATION: Subsequent to the issuance of AD 84–08–06 Amendment 39–4851 (49 FR 18468), applicable to certain models of Piper PA–31 Series airplanes, the FAA found that an error had been made in the serial number effectivity statement of the AD when the AD was published in the **Federal Register**. Therefore, action is taken herein to make this correction. Since this action is required to ensure all affected airplanes are correctly referenced and included in the AD, notice and procedure hereon are unnecessary and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By correcting the following AD.

In FR Doc. 84-11623, (49 FR 18468), appearing in the **Federal Register** of May 1, 1984, make the following correction:

Piper: Applies to Models PA-31T (Serial Numbers 31T7400002 thru 31T-8120104 and 31-T8275002); PA-31T1 (Serial Numbers 31T-7804001 thru 31T-8104101, 31T-8304003, 31T-1104004 thru 31T-1104007); PA-31T2 (Serial Numbers 31T-8166001 thru 31T-8166032, 31T-8166034 thru 31T-8166065, 31T-8166067 thru 31T-8166071, 31T-8166073 thru 31T-8166075); and PA-31T3 (Serial Numbers 31T-8275001, 31T-8275003 thru 31T-8275012, 31T-8275014 thru 31T-8275017, 31T-8275025, 31T-8375001 thru 31T-8375005) airplanes certificated in any category.

Issued in Kansas City, Missouri on September 12, 1985.

Jerold M. Chavkin

Acting Director, Central Region.

[FR Doc. 85-23204 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 85-AWA-44]

Changes to VOR Federal Airways, Jet Routes and Compulsory Reporting Points—Arizona

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments change the descriptions of several Federal Airways, Jet Routes and names of Compulsory Reporting Points located in the vicinity of Phoenix, AZ. The name of the Casa Grande, AZ, Very High Frequency Omni-Directional Range and Tactical Air Navigation Facility (VORTAC) has been changed to Salt River, AZ. This action also changes the descriptions of Federal Airways, Jet Routes and names of Compulsory Reporting Points to reflect the new name for the Phoenix navigational aid (NAVAID), but does not alter the location or configuration of any controlled airspace. NAVAID's not located on the airport must be changed so that they do not have the same name as NAVAID's located on the airport to preclude any misunderstanding by pilots.

DATES: Effective date—0901 GMT, November 21, 1985.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 85-AWA-44, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8686.

SUPPLEMENTARY INFORMATION:

The Rule

The purpose of these amendments to Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) is to amend the descriptions of several VOR Federal Airways, Jet Routes and names of Compulsory Reporting Points affected by the name changes for Casa Grande, AZ, and Phoenix, AZ, VORTAC's to Stanfield and Salt River, respectively. Sections 71.123, 71.203, 71.207 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were published in Handbook 7400.6A dated January 2, 1985.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to amend the descriptions of all Airways, Jet Routes and names of Compulsory Reporting Points affected by the name change to Casa Grande and Phoenix, AZ, VORTAC's. These amendments merely substitute the new VORTAC's name where the former name appears, and is not a matter in which the public would have a particular interest. Therefore, I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR Federal airways, Jet routes and compulsory reporting points.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as amended (49 FR 48532, 50 FR 11845, 50 FR 14089, 50 FR 14091 and 50 FR 14092), are further amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.123 is amended as follows:

V-257, V-85, V-190, V-567, V-327 and V-528 [Amended]

Where "Phoenix" appears substitute "Salt River"

V-94 [Amended]

Where "Casa Grande" appears substitute "Stanfield"

V-16 and V-105 [Amended]

Where "Phoenix" appears substitute "Salt River" and where "Casa Grande" appears substitute "Stanfield"

3. Section 71.203 is amended as follows:

Casa Grande, AZ [Revoked]

Stanfield, AZ [New]

Phoenix, AZ [Revoked]

Salt River, AZ [New]

4. Section 71.207 is amended as follows:

Phoenix, AZ [Revoked

Salt River, AZ [New]

PART 75—[AMENDED]

5. The authority citation for Part 75 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.

6. Section 75.100 is amended as follows:

J-11, J-44, J-18, J-19, J-102, J-65, and J-181 [Amended]

Where "Phoenix" appears substitute "Salt River"

J-4 and J-50 [Amended]

Where "Casa Grande" appears substitute "Stanfield"

J-82 [Amended]

Where "Phoenix" appears substitute "Salt River" and where "Casa Grande" appears substitute "Stanfield"

Issued in Washington, D.C., on September 20, 1985.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-23211 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 84-AWA-24]

Alteration of Jet Routes and VOR Federal Airways—Indiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment realigns one Jet Route and five Federal Airways and cancels one Federal Airway. All actions arise from decommissioning of the Lewis, IN, Very High Frequency Omni-Directional Radio Range and Tactical Air Navigation Aid (VORTAC). The affected Jet Route and Federal Airways will be realigned using the upgraded Terre Haute, IN, VORTAC. These actions are expected to help increase utility and efficiency in use of navigational aids (NAVAID) by users of the National Airspace System (NAS).

EFFECTIVE DATE: 0901 GMT, November 21, 1985.

FOR FURTHER INFORMATION CONTACT: Gene Falsetti, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On November 15, 1984, the FAA proposed to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to realign one Jet Route, five VOR Federal Airways and cancel one VOR Federal Airway (49 FR 45171. These actions were proposed due to decommissioning of the Lewis, IN, VORTAC. Functions of the old Lewis VORTAC are transferred to the upgraded Terre Haute, IN, VORTAC. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, and a slight change to the original proposed alignment of Federal Airway V-7, these amendments are the same as those proposed in the notice. As proposed in the NPRM the revised V-7 would have been realigned direct between Pocket City and Terre Haute. However, to ensure airway clearance from the Red Hills MOA, the airway is configured from the Pocket City 016° and the Terre Haute, IN, 191° radials. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations realign Jet Route J-73, Federal Airways V-7, V-12, V-171, V-221 and V-243 and cancels V-514.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certifed that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOT Federal airways and Jet routes.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as amended (49 FR 48532, 50 FR 14092 and 50 FR 23398) are further amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89.

2. Section 71.123 is amended as follows:

V-7 [Amended]

By removing the words "INT Pocket City 015° and Lewis, IN, 198° radials, Lewis; Terre Haute, IN;" and substituting the words "INT Pocket City 016° and Terre Haute, IN, 191° radials; Terre Haute;

V-12 [Amended]

By removing the words "Lewis, IN;"

V-171 [Amended]

By removing the word "Lewis," and substituting the words "Terre Haute,"

V-221 [Amended]

By removing the words "via INT Bible Grove 067° and Bloomington, IN, 253° radials; Bloomington;" and substituting the words "via Bloomington, IN;"

V-243 [Amended]

By removing the words "Lewis, IN." and substituting the words "Terre Haute, IN."

V-514 [Revoked]

3. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

4. Section 75.100 is amended as follows:

J-73 [Amended]

By removing the words "Lewis, IN;" and substituting the words "Terre Haute, IN;"

Issued in Washington, D.C., on September 23, 1985.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-23210 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Ch. I

Characteristics Distinguishing Cash and Forward Contracts and "Trade" Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Interpretative Statement of the Office of the General Counsel.

SUMMARY: In 1982, Congress authorized the Commodity Futures Trading Commission to establish a pilot program for option trading on agricultural commodities. The Commission determined to permit the offer and sale of agricultural options on contract markets. At the same time, it considered whether to permit so-called "trade" options, *i.e.*, off-exchange options on a physical commodity entered into among commercial users of the commodity or its byproducts, in the initial phase of the pilot agricultural program. However, the Commission deferred the final decision whether to permit trade options until there had been greater experience with the agricultural option pilot program.

Since this pilot program began, the staff has received inquiries and information about various proposed and already existing commodity contracts between agricultural producers and merchants in which the producer pays a "premium" in return for a minimum guaranteed price for the commodity. Certain of these contracts have characteristics of both "forward" and option contracts. Forward contracts are generally exempt from the Commodity Exchange Act's regulatory scheme. In contrast, trade options are not currently permitted under the agricultural option pilot program. Therefore, the Office of the General Counsel is issuing this interpretation regarding the nature of these types of instruments and distinctions between them to provide guidance to the public.

ADDRESS: Any comments on this interpretation should be sent to Kenneth M. Raisler, General Counsel; Office of the General Counsel; Commodity Futures Trading Commission; 2033 K Street, NW; Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: Joan L. Loizeaux, Assistant General Counsel; Office of the General Counsel; Commodity Futures Trading Commission; 2033 K Street, NW; Washington, DC 20581; (202) 254–9880.

SUPPLEMENTARY INFORMATION: The Commodity Exchange Act ("Act") creates a comprehensive framework for the regulation of futures contracts and options. Thus, no person may offer, enter into or confirm a commodity option transaction unless that transaction is specifically permitted under the Commission's rules.[1] Similarly, the Act prohibits the offer and sale of a contract for future delivery of a commodity unless that contract is effectuated on or subject to the rules of a board of trade (exchange) that has been designated a contract market.[2] To obtain this designation, a board of trade must satisfy the criteria set forth in the Act including enforcing its rules to prevent manipulations and corners of the market.[3] After its designation the contract market must continue to satisfy these initial criteria, as well as fulfill ongoing requirements set forth in the Act.[4]

However, Congress generally exempted from the Act's regulatory scheme commercial, merchandizing transactions in a physical commodity in which delivery was delayed or deferred for commercial convenience or necessity. Thus, section 2(a)(1)(A) provides that the term "future delivery" does not include "any sale of any cash commodity for deferred shipment or delivery."[5] The history of this exemption and its use in commercial practice, together with a brief description of options and the Commission's regulation of options, are set forth below.

A. The Exclusion of Forward Contracts from the Scope of the Commodity Exchange Act

In 1921, Congress enacted the Futures Trading Act to curb both the increasingly disruptive activities by grain speculators on exchanges and the proliferation of off-exchange "bucket" shop operations.[6] Congress sought to bring federal control to futures trading to prevent economic disturbances in the price of grain, by imposing a "prohibitive tax"[7] on contracts for future delivery not traded on contract markets. However, witnesses testified before the Congressional committees considering the bill that there were a variety of legitimate off-exchange commercial transactions in which delivery of the grain was delayed.[8] Thus, then-Secretary of Agriculture Henry Wallace urged that the bill preserve the right to buy or sell part of next season's crop which had not yet been planted or harvested "but which would exist in time for delivery."[9] Another witness urged Congress to distinguish prohibited futures contracts

> from transactions which might be made for forward delivery or forward shipment, such, for example, as an exporter might enter into obligating himself to ship a certain amount of grain three months hence, which would be a transaction for future delivery, but which the Secretary thought was not really intended to be governed by this bill.[10]

Therefore, to make clear that forward contracts were not to be subject to taxation, the Senate added language to section 2 of the bill to exclude "any sale of cash grain for deferred shipment" from the term "future delivery."[11] This exclusion was designed to make clear that all "cash grain sales in which actual delivery of the physical commodity is deferred for later shipment" were exempt from taxation under the Act.[12]

To determine whether a particular contract is exempt from the Act's jurisdiction as a forward contract, the courts and the Commission have required that the contract's terms and the parties' practice under the contract make clear that

> both parties to the contracts deal in and contemplate future delivery of the *actual* . . . [commodity].[13]

First, the contract must be a binding agreement on both parties to the contract: one must agree to make delivery and the other to take delivery

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[1] Sections 4c(b), 4c(c), 4c(d), 7 U.S.C. 6c(b), 6c(c), 6c(d) (1982). *See, e.g.*, Parts 32 and 33 of the Commission's rules, 17 CFR Parts 32, 33 (1984).

[2] Section 4(a), 7 U.S.C. 6(a) (1982).

[3] Sections 5, 5(d), 7 U.S.C. 7, 7(d) (1982).

[4] Section 5a, 7 U.S.C. 7a (1982).

[5] 7 U.S.C. 2 (1982). *But see*, section 6(b), 7 U.S.C. 9 (1982) (granting the Commission enforcement jurisdiction over manipulation and attempted manipulation of "the market price of any commodity, in interstate commerce").

[6] Act of August 24, 1921, ch. 86, 42 Stat. 187, *et seq. See, e.g.*, S. Rep. No. 212, 67th Cong., 1st Sess. 4–5 (1921).

[7] *Hearings on H.R. 168, H.R. 231, H.R. 2238, H.R. 2331, H.R. 2363, H.R. 5228 Before the House Committee on Agriculture*, 67th Cong., 1st Sess. 10 (1921) (colloquy between Mr. Kincheloe and Mr. Tincher).

[8] *Futures Trading in Grain: Hearings on H.R. 5676 Before the Senate Committee on Agriculture and Forestry*, 67 Cong., 1st Sess. 8–9, 214, 431, 462 (1921) (statements of Chester Morrill, George T. McDermott, F. B. Wells, Henry Wallace) ("1921 Senate Hearings").

[9] 1921 Senate Hearings at 462.

[10] 1921 Senate Hearings at 9 (statement of Chester Morrill).

[11] S. Rep. No. 212, 67th Cong., 1st Sess. 1 (1921). In agreeing to the addition of this exclusionary language to section 2, the House added the words "or delivery" after the word "shipment." *See* H.R. Rep. No. 345, 67th Cong., 1st Sess. 7 (1921).

[12] 1921 Senate Hearings at 431 (statement of F. B. Wells). *See also*, 1921 Senate Hearings at 213–215 (statement of George T. McDermott); 61 Cong. Rec. 4762 (1921) (statement of Senator Capper).

In *Hill* v. *Wallace*, 259 U.S. 44 (1922), the Futures Trading Act of 1921 generally was declared unconstitutional as an impermissible attempt at regulation through the taxing power. Therefore, Congress enacted the Grain Futures Act of 1922 which regulated grain futures trading under the commerce clause. 42 Stat. 998. The exemption for forward contracts was included without change in the Grain Futures Act of 1922. 42 Stat. 998. In 1936, the Commodity Exchange Act broadened the exclusion to apply to sales of "any cash commodity" for deferred shipment or delivery since that Act covered commodities in addition to grains. 49 Stat. 1491.

[13] *CFTC v. CoPetro Marketing Group, Inc.*, 680 F.2d 573, 578 (9th Cir. 1982) (emphasis in the original). ("*CoPetro*").

of the commodity.[14] Second, because forward contracts are commercial, merchandizing transactions which result in delivery, the courts and the Commission have looked for evidence of the transactions' use in commerce. Thus, the courts and the Commission have examined whether the parties to the contracts are commercial entities that have the capacity to make or take delivery and whether delivery, in fact, routinely occurs under such contracts.[15]

Forward contracts frequently are not standardized. Contract terms are often negotiated, particularly grade, delivery point and settlement date. Even in those instances when contract terms are standardized by a single contracting party, certain terms may nonetheless be left open to negotiation.[16] Historically, forward contracts have set a fixed price for grain or cotton at the time the contract was entered.

However, an instrument, called a "deferred pricing" contract, has evolved in which the price is not established at the time the contract is entered. Rather, the contract sets a formula to determine the final contract price by a later "closing date." The formula may specify a particular base price, such as a futures contract price or major cash market price. The agreement may also set a differential to be added to or subtracted from the base price to determine the final price. The contract also specifies a period of time during which the producer may "fix" the final price. For example, the parties might enter into a contract in March which guarantees the farmer the price of the December futures contract plus or minus an agreed-upon differential. The farmer may set the final price for the commodity between the time at which the contract is entered and the "closing date," *e.g.* the last business day in November, based on the producer's expectation of the price trend for that contract.[17]

Some deferred pricing contracts require immediate delivery. Title passes upon delivery. However, the contract permits the farmer to delay fixing the final price for the commodity until the agreed-upon closing date although the commodity has already been delivered and title has passed to the merchant. The contract also eliminates the producer's need to secure storage space for the commodity. The Commission staff views such deferred pricing contracts as a form of spot contract. These contracts are used solely to merchandize the commodities. Both parties have transferred title to the commodity and delivery has occurred.

B. Commodity Options

The Commodity Exchange Act vests the Commission with plenary jurisdiction over "any transaction which is of the character of, or is commonly known to the trade as an 'option'. . . ." [18] The Act does not define the term "option." Therefore, to determine whether an instrument is an option, the Commission and the courts have examined pre-existing contract law, commercial practice and the economic nature of the contract.[19]

Traditional contract law defines an option as a contract in which

> the option holder makes no promise, but pays cash or gives some other executed consideration. The option giver's promise is enforceable, in spite of lack of mutuality of promise.[20]

Similarly, the Commission relied on traditional contract analysis in its determination whether a particular instrument was an option. Thus, an option is

> necessarily a unilateral contract which binds the optionee to do nothing but grants him the right to accept or reject the offer in accordance with its terms within the time and manner specified in the option. The outstanding factor is that the optionee is not bound until he acts on the option one way or another. At the same time, during the period when the optionee is free to accept or reject, the optionor cannot act in derogation of the terms of the option.[21]

The courts and the Commission have carefully examined "the economic reality of the transaction, not its name" to determine whether an instrument is an option.[22] In particular, an option is a limited risk instrument. That is, the option purchaser is not liable for payment resulting from any adverse price movement of the commodity underlying the option. Rather, the option purchaser will benefit from a favorable price move and will not be liable for any other losses beyond the premium or other payment that the purchaser pays for the option.

Following the Congressional and Commission bans on options in 1978,[23] certain companies began to offer and sell instruments with a variety of names which had the characteristics of options. In *CFTC v. U.S. Metals Depository Co.*, the Commission alleged that defendants were selling options in another guise. The Honorable Edward Weinfeld stated that the determination whether the instrument was an option

> must begin with the definition of "options." Although neither the Act nor the Commission's regulations define the term, Courts have often differentiated between options and deferred delivery (or futures) contracts. The latter is a transferable contractual agreement "to buy or sell a fixed amount and grade of a certain commodity on some specified date. A commodity option, on the other hand, confers upon the holder the right to buy ('call option') or to sell ('put option') either a specified amount of a commodity or a futures contract for that amount of a commodity within a certain period of time at a given price (the 'strike price')." [24]

From that definitional basis, Judge Weinfeld identified three aspects which convinced the court that defendants' instruments were options. An option gives the purchaser the right to make or take delivery of the commodity. The initial charge for an option is normally a nonrefundable premium covering the grantor's commissions, costs and

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[14] *In re Stovall*, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶20,941 at 23, 77–78 (C.F.T.C. 1979); Office of the Chief Economist, U.S. Commodity Futures Trading Commission, Forward Contracting in Selected Agricultural Commodities: An Inquiry into Defaults 1–5 (1977). *See also* Gillen & Jaeger, *Forward Contracting in Agricultural Commodities: A Case History Analysis of the Cotton Industry*, 12 J. Mar. J. Prac. & Proc. 253, 267 (1979) ("Gillen & Jaeger"); E. Roy, *Contract Farming and Economic Integration*, 248–249 (1972).

[15] *CoPetro*, 680 F.2d at 578–579; *NRT Metals, Inc. v. Manhattan Metals (Non-Ferrous), Ltd.*, 576 F. Supp. 1048, 1050 (S.D.N.Y. 1983); *In re Stovall*, Comm. Fut. L. Rep. at 23,778–23,779. *See also CFTC v. Commercial Petroleo International S.A.*, [1980–1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶21,222 at 25,096–97 (S.D.N.Y. 1981).

[16] Advisory Committee on Definition and Regulation of Market Instruments, U.S. Commodity Futures Trading Commission, Recommended Policies on Futures, Forward and Leverage Contracts and Transactions, 18–19, 21 nn. 5, 6 (1976).

[17] A. Paul, R. Heifner & J. Helmuth, U.S. Department of Agriculture, Agriculture Economic Report No. 320, Farmers' Use of Forward Contracts and Futures Markets 17–18 (1976). ("Farmers' Use of Forward Contracts and Futures Markets").

[18] Section 2(a)(1)(A), 7 U.S.C. 2 (1982). *See also* section 4c, 7 U.S.C. 6c (1982).

[19] *CTFC v. Precious Metals Associates*, 620 F.2d 900, 907–908 (1st Cir. 1980) ("*Precious Metals Associates*"); *British American Commodity Options Corp. v. Bagley*, 552 F.2d 482, 484–485 nn. 4, 5; *cert. denied*, 484 U.S. 938 (1977) ("*BACO*"); *CFTC v. Goldex International Ltd.*, [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,839 at 23,441 (N.D. Ill. 1979) at 23,441 ("*Goldex*").

[20] A. Corbin, Contracts section 152 at 222 (1952). *See* Precious Metals Associates, 620 F.2d at 907 *citing with approval* A. Corbin, Contracts § 259 at n.5 (1952).

[21] *In the Matter of Precious Metals Associates*, Comm. Fut. L. Rep. ¶ 20,882 at 23,596 n.8, citing with approval, 1 Williston, Contracts section 61B at 199, 200 (3d ed. 1957).

[22] *Precious Metals Associates*, 620 F. 2d 908. *See also CFTC v. Morgan, Harris & Scott, Ltd.*, 484 F. Supp. 669, 675 (S.D.N.Y. 1979).

[23] Section 4c(c), 7 U.S.C. 6c(c) (1982); Rule 32.11, 17 C.F.R. 32.11 (1984).

[24] *CFTC v. U.S. Metals Depository Co.*, 468 F. Supp. 1148, 1154–1155 (S.D.N.Y. 1979). (*U.S. Metals Depository*").

profits.[26] The purchaser's losses on an option are normally limited to the premium. Therefore, the Court concluded options are "limited risk" investments—the buyer is under no obligation to exercise his option and will, at most, lose the initial fee . . .[28]

Thus, an option is a contract in which only the grantor is obligated to perform. As a result, the option purchaser has a limited risk from adverse price movements. This characteristic distinguishes an option from a forward contract in which both parties must routinely perform and face the full risk of loss from adverse price changes since one party must make and the other take delivery of the commodity. In contrast, in an option, only the grantor of a call (put) is required to sell (buy) a given quantity of a commodity (or a futures contract on that commodity) on or by a specified date in the future if the option is exercised. The purchaser of the option may buy or sell the commodity, but he or she is under obligation to do so.[27] If the price of the underlying commodity moves in the manner favorable to the option purchaser, the purchaser can exercise the option. If the price does not move in a favorable direction, the purchaser can simply abandon the option and forfeit any premium.[28]

C. The Commission's Consideration of "Trade" Options on Agricultural Commodities

In 1982, Congress determined to permit a pilot program in the trading of options on agricultural commodities.[29] The Commission therefore began a rulemaking to determine whether and under what circumstances agricultural options should be offered.[30] Among other issues, the Commission considered whether to permit so-called "trade" options on agricultural commodities. "Trade options" generally are off-exchange options in a physical commodity entered into in normal commercial channels for that commodity or its byproducts.[31] Section 4c(c) of the Act authorizes the Commission to permit trade options to be offered and sold to a purchaser who is

> a producer, processor, commercial user of, or a merchant handling, the commodity involved in the transaction, or the products or by-products thereof.[32]

The Commission specifically asked for comments whether the agricultural option pilot program should include trade options, recognizing that there might be benefits to producers and commercial handlers of agricultural commodities in permitting trade options. However, the Commission ultimately deferred a determination whether to permit trade options until there had been experience with the offer and sale of exchange-traded agricultural options. The Commission was of the view that limiting options to exchanges initially would provide additional self-regulatory oversight by the exchanges in the offer, sale and trading of agricultural options which would not be available for off-exchange trade options.[33] Thus, agricultural trade options may not be lawfully offered or sold at this time.[34]

D. Examples of Agricultural Contracts.

As noted above, various agricultural contracts either are currently being entered into between producers of agricultural commodities and elevators or merchants handling or dealing in that commodity or its byproducts in commercial channels or are being proposed to be offered by merchants to producers. Three examples of contracts are described and analyzed below.

1. The producer agrees to deliver a specified quantity and grade of a commodity to a dealer by a specified date in the future. Delivery of the commodity is mandatory, absent an intervening event such as crop failure.[35] Generally, the contract does

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[25] *U.S. Metals Depository*, 468 F. Supp. at 1155. *See also, CFTC v. Morgan Harris & Scott, Ltd.*, 484 F. Supp. 669, 675–676 (S.D.N.Y. 1979) ("Morgan, Harris & Scott"). *See* A Corbin, Contracts § 152 at 222, section 259 at n.5 (1952) (the purchaser of an option pays a premium or other consideration); *SEC v. Commodity Options International, Inc.*, 553 F.2d 628–631 (9th Cir. 1977) (a rebate was paid on the permium in addition to any profit realized).

[26] *U.S. Metals Depository*, 468 F. Supp. at 1156. *See also BACO*, 552 F.2d at 485; *Morgan, Harris & Scott*, 484 F. Supp. at 675, 676.

[27] *Precious Metals Associates*, 620 F.2d at 907–908; *BACO*, 552 F.2d at 484–485.

[28] *CFTC v. Morgan, Harris & Scott, Ltd.*, 484 F. Supp. 669, 675–676 (S.D.N.Y. 1979) ("*Morgan, Harris & Scott*"); *CFTC v. U.S. Metals Depository Co.*, 468 F. Supp. at 1155.

[29] "The Commission may . . . establish a pilot program for a period of three years" in agricultural options. "The Commission may authorize commodity option transactions during the pilot program in as many commodities as will provide an adequate test" of these options. Section 4c(c), 7 U.S.C. 6c(c) (1982). Options may be permitted on "Wheat, cotton, rice, corn, oats barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice. . . " Section 2(a)(1)(A), 7 U.S.C. 2 (1982).

[30] 48 *FR* 46797 (October 14, 1983); 48 *FR* 6128 (February 10, 1983). The Commission also convened an Agricultural Options Advisory Committee, pursuant to 5 U.S.C. App. I, Section 1, *et seq.*, to provide advice on the nature of a pilot program. That committee was succeeded by an Agricultural advisory Committee with a broader membership and mandate. The issue of "trade" options was extensively discussed at the new committee's first two meetings.

[31] Report of the Advisory Committee on Market Instruments, reprinted in *Hearings Before the Subcommittee on Agricultural Research and General Legislation of the Senate Committee on Agriculture, Nutrition, and Forestry*, 95th Cong., 2d Sess. 337, 345–346 (1978).

[32] 7 U.S.C. 6c(c) (1982).

The Commission currently permits trade options only in the commodities which are not enumerated in Section 2(a)(1)(A) (*see* n. 30 *supra*). These options may be "offered by a person who has a reasonable basis to believe that the option is offered to a qualified commercial entity if "such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such." Rule 32.4(a), 17 CFR 32.4(a) (1984).

[33] 49 FR 2752, 2756 (January 23, 1984). *See also* 48 FR at 46800.

[34] Further, Section 4c, 7 U.S.C. 6c (1982), generally prohibits any person "in the business of buying, selling, producing, or otherwise using" an agricultural commodity from granting options on a physical agricultural commodity. Pub. L. 97–444, section 208(4), 96 Stat. 2301 (1983). *See* 50 FR 10785, 10787 n.2 (March 18, 1985).

[35] Some contracts provide for a liquidated damages or penalty clause if the producer fails to deliver. For example, if the seller fails to deliver any part of the crop specified in the contract, the seller is liable to the merchant for the difference between the contract price and the current market value of that commodity. Some contracts appear to require that the farmer obtain the grain from another source if the producer's crop is not sufficient to meet the contract's requirements. Other contracts are silent as to the effect of non-performance. In each of these instances, however, it is intended that delivery of the physical crop occur, absent destruction of all or a portion of the crop by forces which neither party can control. The presence of such clauses in a contract does not change the analysis of the nature of the contract.

Some commodities are sold through acreage or output contracts in which the farmer agrees to sell the total output on a specified number of acres, based generally on prior output. *See Gillen & Joeger* at 288–289. However, if the farmer cannot produce the anticipated amount of commodity using accepted agricultural techniques for the crop, there is no penalty as long as the producer delivers the remaining production from the contracted for acreage. Again, the parties intend delivery and, but for intervening conditions, such as weather, insects or disease, would transfer title to the entire crop. Indeed, it appears that a party who did not deliver his crop under such a contract and instead marketed it elsewhere would be in breach of the contract and likely liable for damages. *Gillen & Joeger* at 289.

However, a contract provision which permitted a producer to avoid delivery for a reason other than for an intervening condition not in the control of either party could change any conclusion about the nature of the contract. Moreover, the Commission is aware that public marketing and sales presentations made to prospective purchasers of certain instruments sometimes differ markedly from the written offering material. Thus, the Commission and the courts have consistently looked beyond written materials and examined the day-to-day operations of a transaction to determine its underlying purpose.

not establish the final price to be paid for the commodity, but rather the method by which a final price will be determined. In some contracts, the agreement establishes a particular futures contract which will be used as the base price. In addition, some contracts may establish the "basis" which will be used to calculate the final price for the commodity.[36]

This particular contract mandates delivery by the producer and acceptance of that delivery by the dealer. The parties are commercial participants in the stream of commerce for the commodity. The unique feature common to these contracts is a "minimum price guarantee." The merchant guarantees the producer a minimum price for the commodity. In return for this minimum price guarantee, a premium is deducted from the final price paid for the commodity. The producer is required to deliver the commodity but has the right to receive the minimum price for the commodity. If, however, the pricing formula or the subsequent market price specified in the contract entitles the producer to a higher price, the producer may demand this higher price for the commodity.

The Office of the General Counsel believes that this type of contract comes within the forward contract exemption of section 2(a)(1)(A) since legally the contract's predominant feature is its use by producers and merchants to market a commodity through actual delivery. The producer, absent depredation to the crop, must make delivery of the commodity. The merchant or the elevator must accept that delivery. Because both parties are participants in the normal commercial channels for these commodities, each is in a position to fulfill all obligations under the contract, and both parties intend that commercial marketing of the commodity by means of delivery will occur.

In stating this view, we recognize that these contracts have characteristics of a cash-settled put option because the minimum price guarantee places a floor on the producer's losses. In addition, the guarantee is secured by the payment of a premium which covers the merchant's expenses and exposure in offering these contracts, such as the cost of the merchant's purchasing of an exchange-traded option to offset its risks. If the commodity price is above the minimum guarantee price, the producer receives the prevailing price. If the commodity price is less than the minimum guarantee price, the producer receives the guaranteed amount. However, these contracts lack a salient characteristic of an option: the farmer cannot "accept or reject the offer."[37] Rather, the parties use this contract as a marketing vehicle. Thus, the producer is normally required to deliver the commodity. Moreover, in order to collect any payment for the commodity, including the minimum price guarantee, the producer must first make delivery. Further, under the contracts described in this example, the producer would be in breach of the contract if he or she failed to deliver to the merchant and could be liable for damages under the contract.

Because this type of contract is a hybrid of both a forward and an option contract, an examination must be made of the parties' use of the contract in their marketing program, as well as the contract's terms. In this example, the contract mandates delivery, absent events beyond the parties' control, and a primary purpose of the contract is to market agricultural commodities in the normal channels of commerce. To the extent that this contract includes characteristics of an option, those terms cannot be severed or marketed separately from the hybrid contract, and particularly from that contract's requirement of delivery. The intent of the exemption for forward contracts in section 2(a)(1)(A) is to exclude marketing transactions in the normal stream of commerce for a commodity or its byproducts where delivery is intended, but delivery is delayed for commercial convenience or necessity. In this Office's view, the contract in this example serves these purposes and, as such, is exempt under section 2(a)(1)(A) of the Act.

2. The producer and merchant enter into a contract to make and take delivery of the commodity immediately, but the price is fixed later. Title to the commodity passes to the merchant upon delivery. However, although the producer may receive some payment upon delivery, the final price is not set at that time. However, as in example 1, the merchant offers a minimum price guarantee on the commodity to the farmer in return for a premium. Thereafter, the producer has an agreed-upon period after delivery occurs in which to determine whether to elect the minimum price guaranteed by the merchant or a higher final price based on that contract's pricing formula or an agreed-upon cash market price for the commodity.

The Office of General Counsel is of the opinion that this is a spot contract which is generally outside the Act's regulatory scheme.[38] As in example 1, both parties are obligated to perform under this type of contract, and delivery occurs at the time that the contract is entered. Both parties have performed upon the contract and transferred title to the commodity. However, the final determination of price may be delayed for a substantial period after delivery occurs.

This contract is a hybrid of a spot contract and a cash settled put option in which the strike price is equal to the minimum price guarantee. Nonetheless, this is an agricultural marketing vehicle under which both parties are obligated to perform under the contract. The producer actually delivers the crop before he or she can demand any price, under the minimum price guarantee or otherwise, for the commodity. Thus, the option component is inseparable from the actual delivery of the commodity between participants in normal marketing channels. In this Office's view, this example is generally exempt from Commission regulation as a spot contract.

3. The contract establishes a minimum contract price determined when the contract is written, and a premium is collected, either at the initiation of the contract, during the life of the contract or, together with interest accumulated over the life of the contract, at the time of settlement. In return for the premium, the producer has the right to require the merchant to accept delivery of and pay a minimum contract price for the crop. However, the producer may forfeit the premium and seek a higher price for, and deliver, the crop elsewhere.

This instrument is a "trade" option. For the payment of a premium, the buyer has the right, but not the obligation, to sell his crop to the merchant who must accept delivery and pay the minimum contract price. The producer, however, can determine not to exercise the option and sell the crop to another buyer. The producer thereby forfeits the premium, but that is the limit of his or her liability. Thus, unlike the examples above, this contract does not require delivery. This type of contract is currently not permitted under the Commodity Exchange Act and the rules thereunder.

The Office of the General Counsel hopes that these examples will provide useful guidance to participants in

[36] Basis is defined as the difference between the price of a particular futures contract and the price for the same or similar commodity for spot delivery at a particular location. Farmers' Use of Forward Contracts and Futures Markets at iv.

[37] 1 Williston, Contracts section 61B at 199 (3d ed. 1957).

[38] *See* n.5f *supra*.

agricultural commerce and to interested members of the public as to the types of agricultural marketing instruments which are permitted under the Act. The staff will continue to provide its views on specific instruments if written requests are submitted to the Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581.

Issued in Washington, DC on September 23, 1985 by the Office of the General Counsel.

Kenneth M. Raisler,

General Counsel.

[FR Doc. 85-23270 Filed 9-27-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Parts 701, 702 and 703

Longshore and Harbor Workers' Compensation Act and Related Statutes

AGENCY: Employment Standards Administration, Labor.

ACTION: Extension of interim final rule.

SUMMARY: This notice extends the interim final rules published in the Federal Register on January 3, 1985 (50 FR 384) until December 31, 1985. These rules, which implement the Longshore and Harbor Workers' Compensation Act Amendments of 1984, Pub. L. 98-426, 98 Stat. 1693, were effective on December 27, 1984, and were to remain in effect until October 1, 1985, unless extended. The Department has determined that additional time is necessary to evaluate the procedures established by the interim final regulations in light of the concerns expressed in the written comments submitted to the Department.

EFFECTIVE DATE: September 30, 1985. The interim final rules will remain in effect until December 31, 1985, unless extended or suspended by another issuance.

FOR FURTHER INFORMATION CONTACT: Richard A. Staufenberger, Deputy Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Washington, DC. 20210, telephone (202) 523-7503.

Signed at Washington, DC., this 26th day of September 1985.

William E. Brock,

Secretary of Labor.

[FR Doc. 85-23366 Filed 9-27-85; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8053]

Reduction of Tax Overpayments by Amount of Past-due Legally Enforceable Debt Owed to Federal Agency

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary Regulations; final regulations.

SUMMARY: This document contains temporary regulations and final regulations relating to the reduction of a taxpayer's overpayment (*i.e.*, tax refund) by the amount of any past-due legally enforceable debt owed to a Federal agency and referred by that agency to the Internal Revenue Service for offset. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register. Changes to the applicable law were made by the Spending Reduction Act of 1984. The regulations affect any taxpayer who owes a past-due legally enforceable debt to any Federal agency identified as eligible to participate in the tax refund offset program by the Commissioner of Internal Revenue and who has made an overpayment of taxes, and such Federal agency to which the past-due legally enforceable debt is owed.

DATES: The regulations apply to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985 and before January 1, 1988 and are effective upon publication.

FOR FURTHER INFORMATION CONTACT: Sharon L. Hall of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3288 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Procedure and Administration Regulations (26 CFR Part 301) to provide rules under section 6402 (d) and (e) of the Internal Revenue Code of 1954, and section 3720A of subchapter II of chapter 37 of title 31, United States Code. Section 6402 (d) and (e) was added to the Internal Revenue Code, and section 3720A was added to title 31 of the United States Code, by section 2653 of the Spending Reduction Act of 1984 (Pub. L. 98-369, 98 Stat. 1153). The temporary regulations contained in this document will remain in effect until superseded by additional temporary or final regulations published in the Federal Register.

Explanation of Statutory Provisions

Section 6402(d) of the Internal Revenue Code requires the Internal Revenue Service (1) to reduce the amount of any overpayment (*i.e.*, tax refund) otherwise payable to a taxpayer by the amount of any past-due legally enforceable debt owed to a federal agency of which the Service has been notified, (2) to pay the amount of the reduction to the agency to which the debt is owed, and (3) to notify the taxpayer that the overpayment has been reduced. That subsection also provides that before reduction for past-due legally enforceable debt, an overpayment shall be reduced for an outstanding liability for past-due support assigned to a State under section 402(a)(26) or 471(a)(17) of the Social Security Act, and in case more than one debt is owed by a taxpayer, the reduction of the overpayment shall be applied to the debts in order in which they accrued.

Section 6402(e) provides that no court of the United States shall have jurisdiction to hear any action brought to restrain or review a reduction of an overpayment for past-due support under 6402(c) or past-due legally enforceable debt under 6402(d), and that no such reduction can be reviewed by the Service in an Administrative proceeding.

Section 3720A(a) of title 31 provides that any Federal agency that is owed a past-due legally enforceable debt shall notify the Internal Revenue Service of the amount of the debt. Under section 3720A(b), a Federal agency must, before notifying the Service, notify the taxpayer who is responsible for the debt that the agency plans to refer the taxpayer's debt to the Service for offset of any Federal tax refund; determine that the debt is past-due and legally enforceable after providing the taxpayer at least 60 days in which to present evidence to the contrary; and make reasonable efforts to collect the debt. Section 3720A(c) requires the Service to reduce the tax refund, if any, payable to a taxpayer by the amount of the past-due legally enforceable debt owed to the creditor agency and to pay the amount of the reduction to the agency. Under section 3720A(d), the Service is directed to issue regulations providing the time and manner of submission of notification. Section 3720A(e) requires any Federal agency which has received

an erroneous payment from the Service to repay such amount to the Service.

Explanation of Regulatory Provisions

The temporary regulations under section 6402 (d) and (e) and section 3720A provide that, for purposes of the pilot tax refund offset program, the Commissioner of Internal Revenue will identify those creditor Federal agencies which are eligible to enter into an agreement with the Service with regard to their participation in this offset program. In addition, the regulations provide guidance as to which past-due legally enforceable debts qualify for offset. The regulations include the statutory requirements that prior to referral of a debt to the Service, an agency must give the debtor at least 60 days to present evidence that all or part of the debt is not past due or legally enforceable, consider any evidence presented, and determine that the debt is past due and legally enforceable. The regulations also require that debts to be offset after 1986 first must be referred to a consumer reporting agency under 31 U.S.C. 3711(f), which includes a similar 60-day period for notice and administrative review prior to referral to a consumer reporting agency. Agencies will not be required to duplicate such administrative review to the extent they have previously complied with identical requirements under 31 U.S.C. 3711(f).

The regulations set forth requirements relating to time of notification to the Service, the content of the notification, and procedures for correction of notification after submission of the initial information. The regulations describe the disposition of the amounts collected and provide that a fee sufficient to cover the Service's cost of the offset procedure shall be billed to, and collected from, the participating agencies.

The final regulations conform existing regulations under section 6402 to the changes made to 6402 (c) and (d) by section 2653 of the Spending Reduction Act of 1984 and section 21 of the Child Support Enforcement Amendments of 1984.

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that these temporary and final rules are not major rules as defined in Executive Order 12291 and, therefore, a Regulatory Impact Analysis is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations or for final regulations subject to 5 U.S.C. 553(b)(3). Accordingly, these temporary and final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these regulations is Sharon L. Hall of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

PART 30—[AMENDED]

Amendments to the Regulations

The amendments to 26 CFR Part 301 are as follows:

Paragraph 1. The authority for Part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 301.6402–6T also issued under 31 U.S.C. 3720A.

Par. 2. Section 301.6402–1 is revised to read as follows:

§ 301.6402–1 Authority to make credits or refunds.

The Commissioner, within the applicable period of limitations, may credit any overpayment of tax, including interest thereon, against any outstanding liability for any tax (or for any interest, additional amount, addition to the tax, or assessable penalty) owed by the person making the overpayment and the balance, if any, shall be refunded, subject to sections 6402 (c) and (d) and the regulations thereunder, to that person by the Commissioner.

Par. 3. Section 301.6402–3(a)(6) is revised to read as follows:

§ 301.6402–3 Special rules applicable to income tax.

(a) * * *

(6) Notwithstanding paragraph (a)(5) of this section, the Internal Revenue Service, within the applicable period of limitations, may credit any overpayment of individual, fiduciary, or corporation income tax, including interest thereon, against—

(i) First, any outstanding liability for any tax (or for any interest, additional amount, additions to the tax, or assessable penalty) owed by the taxpayer making the overpayment;

(ii) Second, in the case of an individual taxpayer, amounts of past-due support assigned to a State under section 402(a)(26) or 471(a)(17) of the Social Security Act under procedures set forth in the regulations under section 6402(c);

(iii) Third, past-due and legally enforceable debt under procedures set forth in the regulations under section 6402(d); and

(iv) Fourth, qualifying amounts of past-due support not assigned to a State under procedures set forth in the regulations under section 6402 (c).

Only the balance, if any, of the overpayment remaining after credits described in this paragraph (a)(6) shall be treated in the manner so elected.

* * * * *

Par. 4. The following new section is added immediately after § 301.6402–5 to read as follows:

§ 301.6402–6T Offset of past-due legally enforceable debt against overpayment (temporary).

(a) *General rule.* (1) A Federal agency (as defined in section 6402(f)) that has entered into an agreement with the Internal Revenue Service with regard to its participation in the tax refund offset program and that is owed a past-due legally enforceable debt may notify the Internal Revenue Service, pursuant to the terms of such agreement, of past-due legally enforceable debts owed to such agency that are to be collected by tax refund offset. The Service shall, after making appropriate credits as provided by § 301.6402–3(a)(6) (i) and (ii), reduce the amount of any overpayment payable to a taxpayer by the amount of any past-due legally enforceable debt owed to such agency of which the Service has been properly notified. This section does not apply to any debt incurred by an overpayment of benefits to a taxpayer under Title II of the Social Security Act (OASDI overpayment) or debt subject to section 464 of the Social Security Act (past-due support).

(2) For purposes of the pilot tax refund offset program, the Commissioner of Internal Revenue will identify those Federal agencies eligible to enter into the agreement with the Service described in paragraph (a)(1) of this section.

(b) *Past-due legally enforceable debt eligible for refund offset.* For purposes of this section, a past-due legally enforceable debt which may be referred by a Federal agency to the Service for offset is a debt—

(1) Which, except in the case of a judgment debt, has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made;

(2) Which cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(3) Which is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2), or cannot be currently collected by administrative offset under 31 U.S.C. 3716(a) by the referring agency against amounts payable to the debtor by the referring agency;

(4) With respect to which the agency has given the taxpayer at least 60 days to present evidence that all or part of the debt is not past-due or legally enforceable, has considered evidence presented by such taxpayer, and determined that an amount of such debt is past-due and legally enforceable;

(5) Which has been disclosed by such agency to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), in the case of a debt to be referred to the Service after June 30, 1986;

(6) With respect to which that the agency has notified, or has made a reasonable attempt to notify, the taxpayer that—

(i) The debt is past due, and

(ii) Unless repaid within 60 days thereafter, will be referred to the Service for offset against any overpayment of tax; and

(7) Which is at least $25.

((c) *Time and content of notification of liability for past-due legally enforceable debt.* (1) A Federal agency must submit a notification of a taxpayer's liability for past-due legally enforceable debt to the Service on magnetic tape by December 1 of each year. Such notification must contain—

(i) The name and identifying number (as defined in section 6109) of the taxpayer who is responsible for the debt;

(ii) The amount of such past-due and legally enforceable debt;

(iii) The date on which the debt became past-due;

(iv) The designation of the Federal agency or subagency submitting the notification of liability and identification of the agency program under which the debt was incurred.

(2) Accompanying each magnetic tape, the agency must submit a statement certifying that, with respect to each debt reported on the tape, all of the requirements of § 301.6402–6 (b) have been satisfied.

(d) *Correction of notification.* If, after submitting to the Service notification of liability for past-due legally enforceable debt as provided by paragraph (c), an agency determines that an error has been made with respect to the information contained in the notification, or if an agency receives a payment or credits a payment to the account of a taxpayer named in this notification, the agency shall promptly notify the Service, which shall make the appropriate correction of its records. However, this paragraph does not apply to a subsequent increase in the amount of past-due legally enforceable debt owed by a taxpayer named in an agency's original notification to the Service.

(e) *Priorities for offset.* (1) An overpayment shall be reduced first by the amount of an outstanding liability for any tax under section 6402(a); second, by the amount of any past-due support assigned to a State under section 402(a)(26) or 471(a)(17) of the Social Security Act which is to be offset under section 6402(c) and the regulations thereunder; third, by the amount of any past-due legally enforceable debt owed to a Federal agency under section 6402(d) and this section; and fourth, by the amount of any qualifying past-due support not assigned to a State which is to be offset under section 6402(c) and the regulations thereunder.

(2) If a taxpayer owes more than one past-due legally enforceable debt to a Federal agency or agencies, the overpayment shall be credited against the debts in the order in which the debts accrued. A debt shall be considered to have accrued at the time at which the debt became past due.

(3) Reduction of the overpayment pursuant to section 6402 (a), (c) and (d) shall occur prior to crediting of the overpayment to any future liability for an internal revenue tax. Any amount remaining after offset under section 6402 (a), (c) and (d) shall be refunded to the taxpayer, or applied to estimated tax, if elected by the taxpayer.

(f) *Notice of offset.* The Service shall notify the taxpayer in writing of the amount and date of the offset for past-due legally enforceable debt and of the Federal agency to which this amount has been paid or credited. Such notice shall include a notification to any other person who may have filed a joint return with the taxpayer of the steps which such other person may take in order to secure his or her proper share of the refund. The Service shall advise each agency on a monthly basis of the names, mailing addresses and identifying numbers of the taxpayers from whom amounts of past-due legally enforceable debt were collected and of the amounts collected from each taxpayer. If the refund from which an amount of past-due legally enforceable debt is to be withheld is based upon a joint return, the Service shall so notify the agency, and furnish the names and address of each taxpayer filing such joint return.

(g) *Offset made with regard to refund based upon joint return.* If the person filing the joint return with the taxpayer owing the past-due legally enforceable debt takes appropriate action to secure his or her proper share of a refund from which a withholding was made, the Service shall pay such person his or her share of the refund and shall deduct that amount from amounts subsequently payable to the agency to which the amount withheld was originally paid.

(h) *Disposition of amounts collected.* Amounts collected under this section shall be transferred to a special account maintained by the Bureau of Financial Management Services for each Federal agency. If an erroneous payment is made to any agency, the Service shall deduct the amount of such payment from amounts subsequently payable to the agency to which the amount withheld was originally paid.

(i) *Fees.* Refund offset fees in amounts determined to be sufficient to reimburse the Service for the full cost of the offset procedure prescribed by this section shall be billed to, and collected from, the participating Federal agencies. The fees shall be deposited in the United States Treasury and credited to the appropriation accounts of the Service which bore all or part of the costs involved in administering the refund offset procedures.

(j) *Review of offset of refunds.* Any reduction of a taxpayer's refund made pursuant to section 6402(c) or (d) shall not be subject to review by any court of the United States or by the Service in an administrative proceeding. No action brought against the United States to recover the amount of any such reduction shall be considered to be a suit for refund of tax. Any legal, equitable or administrative action by any person seeking to recover the amount of the reduction of the overpayment must be taken against the Federal agency to which the amount of the reduction was paid.

(k) *Effective date.* This section applies to refunds payable under section 6402 of the Internal Revenue Code after December 31, 1985, and before January 1, 1988.

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) of

section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

James I. Owens,

Acting Commissioner of Internal Revenue.

Approved: September 19, 1985.

Ronald A Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85-23285 Filed 9-27-85; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[T.D. 8042]

Income Tax—Taxable Years Beginning After December 31, 1953; Property Transferred in Connection With the Performance of Services; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to the **Federal Register** publication beginning at 50 FR 31712. The regulations to which this correction applies were the subject of Treasury Decision 8042 and relate to property transferred in connection with the performance of services.

EFFECTIVE DATE: The regulations that are the subject of this correction became effective August 6, 1985. The correction is effective as of the same date.

FOR FURTHER INFORMATION CONTACT: Bruce Jurist of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attn: CC:LR:T). Telephone 202-566-3238 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1985, the **Federal Register** published final income tax regulations relating to property transferred in connection with the performance of services. The regulations were published at 50 FR 31712. The regulations affect taxpayers performing services and taxpayers transferring property in connection with the performance of such services. Changes were made to the applicable tax law by the Economic Recovery Tax Act of 1981.

Need for Correction

As published, Treasury Decison 8042 inadvertently contained unintended language and omitted some language that was intended to be included. These errors and omissions occurred on page 31713, in the third column, in *Example (1)* of paragraph (j)(2).

Correction of Publication

Accordingly, the publication of Treasury Decision 8042 which was the subject of FR Doc. 85-18455 is corrected as follows:

§ 1.83-3 [Corrected]

Paragraph 1. In the third column on page 31713, in *Example (1)* of paragraph (j)(2) of § 1.83-3, the first sentence thereof, the language "a principal officer of X" is removed and the language "a beneficial owner of 12% of X corporation stock" is added in its place.

Par. 2. In the third column on page 31713, in *Example (1)* of paragraph (j)(2) of § 1.83-3, the first sentence thereof, the language "as a principal officer of X" is removed and the language "as a beneficial owner of more 10% of X corporation stock" is added in its place.

Par. 3. In the third column on page 31713, in *Example (1)* of paragraph (j)(2) of § 1.83-3, the conclusion of the fourth sentence, which incorrectly reads "P's per share.", is removed and the following language is added in its place: "P's rights in the 100 shares of stock purchased on January 1, 1983, are treated as subject to a substantial risk of forfeiture and as not transferable through June 29, 1983. P chooses not to make an election under section 83 (b) and therefore does not include any amount with respect to the stock purchase in gross income as compensation on the date of purchase. On June 30, 1983, the fair market value of X corporation stock is $250 per share."

Peter K. Scott,

Director, Legislation and Regulations Division.

[FR Doc. 85-23287 Filed 9-27-85; 8:45 am]

BILLING CODE 4830-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2644

Notice and Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates by reference certain interest rates published by another federal agency. The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from October 1, 1985, to December 31, 1985.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: John Carter Foster, Attorney, Multiemployer Regulations Group, Corporate Policy and Regulations Department (611), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, D.C. 20006; telephone 202-254-4860 (202-254-8010 for TTY and TDD).

SUPPLEMENTARY INFORMATION: On May 31, 1984, the Pension Benefit Guaranty Corporation (the "PBGC") published a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR Part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default on or after July 2, 1984 (the effective date of the regulation), or to be credited by such plans on overpayments of withdrawal liability made on or after that date. The regulation allows plans to set such rates, subject to certain restrictions. Where a plan does not set such rates, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Since the regulation incorporates by reference interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to Part 2644. See 50 FR 12790 (April 1, 1985) and 50 FR 26707 (June 28, 1985). This amendment adds to this appendix a new interest rate of 9½ percent, which will be effective from October 1, 1985, to December 31, 1985. This rate is based on the prime rate in effect on September 16, 1985, as reported by the Federal Reserve in Statistical Release H.15.

The appendix to 29 CFR Part 2644 does not prescribe interest rates under the regulation; the rates prescribed by the regulation are those in Statistical Release H.15. The appendix merely

collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PGBC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2644 of Subchapter F of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for Part 2644 continues to read as follows:

Authority: Secs. 4002(b)(3) and 4219(c), Pub. L. 93–406, as amended by secs. 403(1) and 104 (respectively), Pub. L. 96–364, 94 Stat. 1208, 1302 and 1236–1238 (1980) (29 U.S.C. 1302(b)(3) and 1399(c)(6)).

2. Appendix A is amended by adding to the end of the table of interest rates therein the following new entry:

From—	To—	Date of quotation	Rate (percent)
.	.	.	.
10/01/85	12/31/85	9/16/85	9 50

Issued at Washington, D.C., on this 23rd day of September, 1985.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 85–23190 Filed 9–27–85; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Miami, Florida Regulation CCGD7–85–47]

Safety Zone Regulations in the Port Everglades Entrance Channel, Ft. Lauderdale, FL

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Port Everglades Entrance Channel, Ft. Lauderdale, Florida, within an area bounded by a line drawn from the east end of the north jetty to the east end of the south jetty, position latitude 26–05.7 N., longitude 80–06.4 W., extending west to a line running north/south from shore to shore passing through buoy #9, position 26–05.8 N., longitude 80–06.4 W. The zone is needed to protect participants forming a human chain across the channel during a United Way fund raising event and to protect pleasure and commercial vessels transitting the area. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation becomes effective at 10:00 am on 5 October 1985. It terminates at 11:00 am on 5 October 1985.

FOR FURTHER INFORMATION CONTACT: CWO3 P.J. MacDonald, c/o Commanding Officer, U.S. Coast Guard, Marine Safety Office, Miami, Fl. 33130, Tel (305) 350–5691.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication.

Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential hazards to personnel and vessels involved.

Drafting Information

The drafters of this regulation are CWO3 P.J. MacDonald, project officer for the Captain of the Port, and LCDR K.E. Gray, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation is a United Way fund raising event during which a human chain will be completed across the Port Everglades entrance channel, Ft. Lauderdale, Florida, within an area bounded by a line drawn from the east end of the north jetty to the east end of the south jetty, position latitude 26–05.7 N., longitude 80–06.4 W., extending west to a north/south line and extending from shore to shore and passing through buoy #9, position latitude 26–05.8 N., longitude 80–06.4 W. This event is being conducted by the United Way of Broward County. The Ports of Port Everglades and Port Dennison have voluntarily closed to commercial traffic for this event. The event will take place on 5 October 1985, between the hours of 10:00 am and 11:00 am. The United States Coast Guard, the Coast Guard Auxiliary and the Florida Marine Patrol will be on the scene to provide enforcement of the safety zone. Vessels transiting this area should minimize the effects of their wake.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

2. A new § 165.T–07–47 is added to read as follows:

§ 165.T–07–47 Safety Zone: Port Everglades entrance channel, Ft. Lauderdale, Florida.

(a) *Location.* The following area is a Safety Zone: In the Port Everglades entrance channel, Ft. Lauderdale, Florida, within an area bounded by a line drawn from the east end of the north jetty to the east end of the south jetty, position latitude 26–05.7 N., longitude 80–06.4 W., extending west to a north/south line extending from shore to shore and passing through buoy #9, position latitude 26–05.8 N., longitude 80–06.4 W. The zone is needed to protect participants forming a human chain across the channel during a United Way fund raising event. The event will take place on 5 October 1985, between the hours of 10:00 am and 11:00 am. The United States Coast Guard, the Coast Guard Auxiliary and the Florida Marine Patrol will be on scene to enforce the safety zone.

Vessels transitting this area should minimize the effects of their wake.

(b) *Regulations.* (1) In accordance with the general regulation in § 165.23 of this part, entry into this zone is prohibited, unless authorized by the Captain of the Port.

(2) Vessels transitting this area should minimize the effects of their wake.

Dated: September 19, 1985.

R.N. Roussel,

Commander, U.S. Coast Guard, Captain of the Port, Miami, Florida.

[FR Doc. 85-23291 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 716

[OPTS-84021; TSH FRL-2904-9]

Health and Safety Data Reporting Period Terminations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: Elsewhere in this issue of the Federal Register, EPA is proposing to amend the Toxic Substances Control Act (TSCA), section 8(d) Health and Safety Data Reporting Rule to, among other things, lengthen the reporting period. However, EPA believes that between publication of the proposed rule and promulgation of a final rule, the section 8(d) model rule's automatic sunset provision will terminate the reporting periods on many of the substances listed in the model rule. EPA has reviewed all of these substances and has determined that for all but seven substances, EPA must keep in force the prospective reporting requirements of the section 8(d) model rule. Therefore, EPA is removing the seven substances from the model rule and is temporarily suspending the operation of the sunset provision. This action should help to prevent the occurrence of reporting period gaps.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern standard time on October 3, 1985. This rule is effective on October 3, 1985 and written comments should be submitted on or before November 29, 1985.

ADDRESS: Comments should be identified by the docket control number OPTS-82021 and be submitted to: TSCA Public Information Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Room E-108, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street SW., Washington, D.C. 20460. Toll free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: OMB Control Number 2070-0004.

I. Background

Pursuant to section 8(d) of TSCA, EPA promulgated a model Health and Safety Data Reporting Rule (40 CFR Part 716). The section 8(d) model rule requires past, current, and prospective manufacturers, importers, and processors of listed chemical substances and mixtures (henceforth referred to as substances) to submit to EPA copies and lists of unpublished health and safety studies on the listed substances that they manufacture, import, or process. These studies provide EPA with useful information and have provided significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, 8, and 9. Since promulgation of the model rule, EPA has amended the rule 10 times to add approximately 125 substances.

By adding a substance to Part 716, EPA triggers the section 8(d) model rule's reporting requirements and initiates the reporting period. Past, current, and prospective manufacturers, importers, and processors of the listed substance are required to submit certain information at the time the substance is listed. Further submissions are required of those who later initiate a study of the listed substance or who later propose to manufacture, import, or process the listed substance. All but 1 of these reporting requirements are terminated by the 3-year sunset provision. The only reporting requirement unaffected by the sunset provision applies to those manufacturers, importers, and processors who initiate a study on a listed substance before the reporting period terminates. These studies must be submitted upon their completion regardless of the completion date.

Elsewhere in this issue of the Federal Register, EPA is proposing to amend the section 8(d) Health and Safety Data Reporting Rule by: Increasing the reporting period on substances (either by relisting the substances or by lengthening the sunset provision), limiting three reporting exemptions, and clarifying the rule's confidentiality provisions. EPA believes that these amendments will increase the number and usefulness of the health and safety data reports submitted to EPA, and will provide these reports during the same time period that EPA performs its risk identification, assessment, and management determinations.

However, EPA also believes that between publication of the proposed rule and promulgation of the final rule the 3-year automatic sunset provision will terminate the reporting periods on the substances listed at 40 CFR 716.17(a)(1), (2), (3), and (4). The automatic sunset provision will terminate the reporting period for the substances in § 716.17(a)(1) on October 4, 1985, (a)(2) and (a)(3) will terminate on November 1 1985, and (a)(4) will terminate on May 1, 1986.

The Agency has reviewed its health and safety data needs for all of these substances and determined that continued reporting is needed for all but seven substances. If EPA allows the automatic sunset provision to terminate reporting periods and then later relists substances (a highly likely event), then reporting gaps will occur. These reporting gaps can be closed only by requiring file searches—the most burdensome reporting requirement in the section 8(d) model rule. Rather than allowing the reporting periods to terminate thereby disrupting an ongoing program and adding a larger reporting burden to this process. EPA is suspending the operation of the sunset provision. Therefore, persons who manufacture, import, or process a listed substance and initiate a study of this substance must continue to notify EPA of this event. In addition, presons who propose to manufacture, import, or process a listed substance must continue to submit copies and lists of unpublished health and safety data studies in their possession.

EPA is taking this action without having provided notice and comment as generally required by the Administrative Procedure Act (APA). EPA finds that good cause exists to exempt this rule-making from the notice and comment requirements for the following reasons:

1. EPA has reviewed all of these substances and has determined that the Agency needs continuing health and safety data reporting on all but seven of them. Elsewhere in this issue of the Federal Register, EPA is promulgating a final rule to remove the seven substances, for which the Agency no longer has a need for continuing health and safety reporting, from the section 8(d) model rule.

2. This interim final rule will have an insignificant impact on health and safety data submitters. Few persons would be required to report by reason of this interim final rule. Only those persons who, between the termination of a reporting period for a substance and promulgation of the final rule, initiate a study of the substance or propose to

manufacture, import, or process the substance would be required to report data to EPA. The major purpose of this interim final rule is to ensure that reporting gaps are not created. This assurance negates the need for EPA to require file searches.

3. This interim final rule will remain in effect for one year or until promulgation of a final amendment to the section 8(d) model rule, whichever occurs first. Elsewhere in this issue of the Federal Register, EPA has published the proposed rule to amend the section 8(d) model rule.

4. This interim final rule is framed narrowly, it suspends the operation of the sunset provision by temporarily removing it from the section 8(d) model rule and leaves in place the authority for the Assistant Administrator of the Office of Pesticides and Toxic Substances to remove listed substances and mixtures.

II. Public Record

EPA has established a public record for this rulemaking (docket control number OPTS–84021) which is available for inspection in Rm. E–107, 401 M Street, SW., Washington, D.C. 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. This record includes basic information considered by the Agency in developing this rule. The following is the list of those documents.

1. Section 8(d) model Health and Safety Rule (47 FR 38780).

III. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this regulation is not major because it will not have an effect of $100 million or more on the economy. EPA anticipates that this interim final rule will have an insignificant effect on competition, costs, and prices.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (Pub. L. 95–354), EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities. In a study of submitters reporting under the section 8(d) model rule, EPA found that only 1 of 69 submitters had less than $100 million in sales. EPA does not expect this interim final rule to affect this distribution.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070–0004.

List of Subjects in 40 CFR Part 716

Chemicals, Environmental protection, Hazardous substances, Health and safety, Recordkeeping and reporting.

Dated: September 24, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 716—[AMENDED]

Therefore, 40 CFR Part 716 is amended as follows:

1. The authority for Part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

2. By revising § 716.17(a)(1) to read as follows:

§ 716.17 Substances and designated mixtures to which this subpart applies.

(a) (1) *Substances.* The following substances are subject to this subpart as of October 4, 1982.

* * * * *

3. By revising § 716.19 to read as follows:

§ 716.19 Sunset provision.

(a) Effective October 3, 1985, the reporting period for the substances listed in § 716.17(a)(1), (a)(2), and (a)(3) shall terminate on October 4, 1986.

(b) For all listed substances and mixtures other than those specified in paragraph (a) of this section, the reporting period on a substance or designated mixture will terminate no later than three years after that substance or designated mixture is added to the list in § 716.17, or October 4, 1986, whichever occurs later. The automatic termination date for the three year reporting period on a substance or mixture will be the annual sunset date (May 1 or November 1) that falls no later than three years after reporting begins, e.g., a reporting requirement taking effect on January 1, 1984 would expire not later than November 1, 1986. A notice will be published in the Federal Register announcing the termination date for reporting for the substances and designated mixtures listed in § 716.17 (a) and (b). An earlier termination date may be published for a substance or designated mixture at the discretion of the Assistant Administrator for Pesticides and Toxic Substances.

[Approved by the Office of Management and Budget under control number 2070–0004]

[FR Doc. 85–23260 Filed 9–27–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 716

[OPTS–84019; FRL–2905–1]

Health and Safety Data Reporting Period Terminations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is terminating the reporting periods for seven substances by removing them from the list of substances and mixtures in the section 8(d) model Health and Safety Data Reporting rule, 40 CFR Part 716. EPA has reviewed all of the substances listed in § 716.17 and determined that the Agency no longer needs continuing health and safety data reporting on these seven substances. Removing a substance from the section 8(d) model rule eliminates most of the reporting requirements for current and prospective manufacturers, importers, and processors of the substance. Persons who believe that EPA should not remove these substances from the section 8(d) model rule may notify EPA and provide their reasons. If a reasonable justification exists for retaining the substance, EPA will withdraw the substance from the final rule prior to the final rule's effective date.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern standard time on October 15, 1985. Written comments should be submitted on or before November 29, 1985. This rule becomes effective on January 13, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room E–543, 401 M Street SW., Washington, D.C. 20460. Toll free: (800–424–9065). In Washington, D.C.: (554–1404). Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: OMB Control Number 2070–0004.

I. Background

Pursuant to section 8(d) of the Toxic Substances Control Act (TSCA), EPA promulgated a model Health and Safety Data Reporting Rule (40 CFR Part 716).

The section 8(d) model rule requires past, current, and prospective manufacturers, importers, and processors of listed chemical substances and mixtures (henceforth referred to as substances) to submit to EPA copies and lists of unpublished health and safety studies on the listed substances that they manufacturer, import, or process. These studies provide EPA with useful information and have provided significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, and 8. Since promulgation of the model rule, EPA has amended the rule 10 times to add approximately 125 substances.

By adding a substance to Part 716, EPA triggers the section 8(d) model rule's reporting requirements. Past, current, and prospective manufacturers, importers, and processors of the listed substances are required to submit certain information at the time the substance is listed. Further submissions are required of those who later initiate a study of the listed substance or who later propose to manufacture, import, or process the listed substance. All but 1 of these reporting requirements are terminated by the 3-year sunset provision. The only reporting requirement unaffected by the sunset provision applies to those manufacturers, importers, and processors who initiate a study on a listed substance before the reporting period terminates. These studies must be submitted upon their completion regardless of the completion date.

To prevent unnecessary reporting burdens, EPA has instituted a review process to identify and remove those substances for which the Agency no longer needs continuing health and safety data reporting. Pursuant to this process, EPA has reviewed all of the substances listed in § 716.17 and determined that the Agency's health and safety data needs no longer justifies retaining seven substances on the section 8(d) model rule. Removing a substance from the section 8(d) model rule terminates the reporting period for the substance. This action eliminates the potential reporting burdens for prospective manufacturers, importers, and processors of the substance, and removes the requirement that current manufacturers, importers, and processors of the substance must notify EPA whenever they initiate a study of the substance. However, any manufacturer, importer, or processor who initiates a study on the substance before its removal must notify EPA of the study's initiation and submit the study upon its completion regardless of the completion date.

Authority for this action is stated in § 716.19 of the section 8(d) model rule. This section allows the Assistant Administrator for the Office of Pesticides and Toxic Substances to terminate the reporting periods for substances listed in the model rule. This final rule terminates the reporting periods on seven substances by removing them from § 716.17 104 days following publication of this rule in the **Federal Register**. Persons are invited to comment on the determinations presented in this document. If a reasonable justification exists for retaining any of these seven substances on the section 8(d) model rule, EPA will withdraw the substance from the final rule prior to the final rule's effective data.

Elsewhere in this issue of the **Federal Register**, EPA is proposing to amend the section 8(d) Health and Safety Data Reporting Rule by: Lengthening the sunset provision, limiting three reporting exemptions, and clarifying the rule's confidentiality provisions. EPA believes that these amendments will increase the number and usefulness of the health and safety data reports submitted to EPA, and will provide these reports during the same time period that EPA performs its chemical testing, hazard/risk assessment, and risk management determinations.

II. Public Record

EPA has established a public record for this rulemaking (docket control number OPTS–84019) which is available for inspection in Rm. E–107, 401 M Street SW., Washington, D.C. 20460, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays. This record includes basic information considered by the Agency in developing this rule. The following is the list of those documents.

1. Section 8(d) model Health and Safety Rule (47 FR 38780).

2. EPA memos to program offices requesting comments on substances listed in 40 CFR 716.17.

3. Comments from program offices.

III. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this regulation is not major because it will not have an effect of $100 million or more on the economy. It is not anticipated to have a significant effect on competition, costs, or prices.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities. This rule removes some prospective reporting burdens and therefore will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070–0004.

List of Subjects in 40 CFR Part 716

Chemicals, Environmental protection, Hazardous substances, Health and safety, Recordkeeping and reporting.

Dated: September 24, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 716—[AMENDED]

Therefore, 40 CFR Part 716 is amended as follows:

1. The authority for Part 716 continues to read as follows:

Authority: 15 U.S.C. 2607.

2. In § 716.17 by removing hexachlorocyclopentadiene from the listing under paragraph (a)(1), and removing Butyl gylcolyl butyl phthalate, Chlorendic acid, Trifluoroethene, Trifluoromethylethene, Hexachloroethane, and Tris (2-chloroethyl) phosphite from the listing under paragraph (a)(3) as follows:

§ 716.17 Substances to which this subpart applies.

(a)(1) * * *

Hexachlorocyclopentadiene, 77–47–4 [Removed].

* * * * *

(3) * * *

Butyl gylcolyl butyl phthalate, 85–70–1 [Removed]. Chlorendic acid, 115–28–6 [Removed].

* * * * *

Trifluoroethene, 359–11–5 [Removed].

* * * * *

Trifluoromethylethene, 677–21–4 [Removed].

* * * * *

Hexachloroethane, 67–72–1 [Removed].

* * * * *

Tris (2-chloroethyl) phosphite, 140–08–9 [Removed].

* * * * *

(Approved by the Office of Management and Budget under control number 2070–0004)

[FR Doc. 85–23261 Filed 9–27–85; 8:45 am]

BILLING CODE 4560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BPO–040–F]

Medicare Program; Forms Used for Applying for Entitlement or Enrollment or Claiming Payment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises the Medicare regulations to include provisions pertaining to various forms used in requesting enrollment in and payment for services under the Medicare program. The rule includes an up-to-date listing of forms and procedures for providers of services and other practitioners to obtain billing forms that meet requirements for Medicare and other insurers. In addition, the rule requires hospitals, institutional providers, and physicians and suppliers to obtain certain recently developed billing forms by commercial purchase.

EFFECTIVE DATE: These regulations are effective on October 30, 1985.

SUPPLEMENTARY INFORMATION:

I. Background

On September 7, 1984, we published in the **Federal Register** (49 FR 35386) a proposed rule to update the listing of Medicare enrollment and claims payment forms and the description of procedures for providers of services and suppliers to obtain billing forms. In that proposal we noted that under Medicare, title XVIII of the Social Security Act (the Act), forms are required to establish or document entitlement and to file a claim for payment. When Medicare was enacted, the administration of the program was delegated to the Social Security Administration (SSA) which established the procedures and forms. By Reorganization Order of March 9, 1977 (42 FR 13262), the Health Care Financing Administration (HCFA) became responsible for the administration of the program.

Applications and related forms prescribed by SSA were identified using SSA form numbers (e.g., SSA–1453), and were printed free-of-charge and distributed to the public, organizations, and providers. When HCFA became responsible for the administration of the Medicare program, it substituted its identification in the form numbers (e.g., SSA–1483 became HCFA–1483) but otherwise continued use of the forms and distribution policies developed by SSA. A listing of application forms and claims payment forms appears in the SSA regulations at 20 CFR 422.510 and 442.525. A cross-reference in the HCFA regulations at 42 CFR 405.1682 states that these forms are used for claiming Medicare payment. In our September **Federal Register** document, we proposed that a listing of the pertinent forms be incorporated with other HCFA regulations in Chapter IV of Title 42 (Public Health) of the Code of Federal Regulations.

The September preamble also discussed HCFA's intention that those HCFA forms that can be used by various insurers should be made available only by purchase. Hospitals in several States have already purchased the HCFA–1450. We plan to require the HCFA–1450 for all Medicare billing by all institutional providers, in addition to all hospitals, beginning October 1, 1985, at which time forms HCFA–1453, HCFA–1453–A, HCFA–1486, and HCFA–1487 will no longer be accepted.

When the HCFA–1500 (Health Insurance Claims Form) was introduced nationally, we made a strong effort to secure the cooperation of all major third party payers in entering into local agreements for the joint use of this form by major payers. Our efforts were successful in securing local agreements in one-half of the States and local jurisdictions. Under these local agreements, provisions were made for printing the form locally and sharing the costs among the participating third party payers. Participants in these agreements are not required to provide the form free-of-charge. In States where there are no local agreements, HCFA is now supplying the HCFA–1500 to Medicare carriers who make the forms available to physicians and suppliers. Upon the effective date of this final regulation we will require that this form be obtained by commercial purchase.

II. Summary and Discussion of Public Comments

We received seven letters of comments in response to the proposed rule. The comments were from a State agency, hospitals, an insurance company, and a health care association. A summary of specific comments received and our response follows:

Comment: One commenter objected to having to purchase the form HCFA–1450 because the information requested is not requested by other insurers.

Response: The commenter is incorrect. Other insurers had input into the development of the HCFA–1450. In addition to HCFA specific fields, the form contains fields designed by and for the use of other insurers. Since all insurers are able to use the HCFA–1450, we believe that it is inappropriate to furnish these forms free-of-charge to providers because the forms may be used to bill many insurers in addition to Medicare. We do not believe that Medicare funds should be used to subsidize other insurance programs.

Comment: One commenter requested clarification of the reference in § 405.1662(d) which states that the HCFA–1450 and HCFA–1500 may be obtained only by commercial purchase. The commenter believed that the statement could be construed to preclude providers from having the form printed locally or in-house at a more reasonable rate.

Response: There are restrictions for providers in each State, but HCFA did not place these restrictions. Each State Uniform Billing Committee decided on how the providers in their State would obtain the HCFA–1450. They can obtain them from local printers, or have them printed in-house as long as the forms follow the HCFA approved specifications developed by the American Hospital Association.

Comment: One commenter questioned whether it is the intent to make all physicians and suppliers pay for the HCFA–1500, or only those in States where there are no local agreements for sharing costs among the participating third party payers.

Response: There are no restrictions on how physicians and suppliers obtain the HCFA–1500 as long as the appropriate specifications are met. The agreements between the State and Federal government for sharing printing costs will no longer apply however; carriers can have the HCFA–1500 printed, but will no longer be able to use government funds.

Comment: One commenter asked for clarification of whether there is a standard HCFA–1500 or whether providers will be permitted to have printers alter the form in any way.

Response: There is a standard HCFA–1500, and providers' claims may not be accepted if they have altered the HCFA–

1500. Prior to the U.S. Government Printing Office (GPO) supplying commercial printers with reproducible copies of the HCFA–1500, printers must agree to follow the approved specifications developed by the American Medical Association.

Comment: One commenter believed that the intent of the proposed rule was not clear for Medicare Part B as to who will or will not be required to pay for forms for billing under Medicare Part B and suggested that our rule be reissued for public comment.

Response: We believe that the provisions of the proposed rule were clear with regard to HCFA's intent that the HCFA–1500 (which is used by physicians and suppliers to request payment for medical services) be obtained by commercial purchase on or after the effective date of the final regulations. Beneficiaries request payment using the HCFA–1490S and, of course, do not have to purchase forms.

Comment: One commenter suggested that Medicare intermediaries should accept the Uniform Bill HCFA–1450 as the admission notice and not require an additional HCFA–1453 admission notice.

Response: Depending upon the pilot test now being conducted in several States, current plans are for HCFA to discontinue the admission notice as of November 1, 1985. Until it is discontinued hospitals may use the HCFA–1450 as an admission notice if the intermediary determines that this is appropriate.

Comment: One commenter recommended that HCFA work with State Medicaid agencies to adopt the Uniform Bill form.

Response: On February 1, 1985, we published in the **Federal Register** (50 FR 4800) a final notice that added three new system requirements to the Medicaid Management Information System (MMIS). One of the requirements is that State MMIS systems accept and use exclusively, the Uniform Bill (UB–82), HCFA–1450, for inpatient and outpatient services by January 1, 1986. States that do not have an MMIS are encouraged to accept the form and use it exclusively.

Comment: One commenter believed that all payers should utilize a common format and that changes be implemented in coordination with both providers and payers. The commenter recommended that payers be discouraged from modifying the Uniform Bill (UB–82) form.

Response: Modifications to the Uniform Bill (UB–82) can be made only by the National Uniform Bill Committee, which is chaired by the American Hospital Association. Neither State committees nor payers have the authority to change or modify the form. They can refer recommended changes to the National Committee for consideration.

Comment: One commenter opposed the adoption of the proposed regulations as written, expressing a concern that providers would shift the cost of the HCFA–1450 and HCFA–1500 to insurers who supply them free of charge.

Response: We do not know how the cost of the HCFA–1450 and HCFA–1500 could be shifted to insurers who supply these forms free of charge. Payers can limit their distribution of free forms to quantities related to their bill receipts.

III. Provisions of Final Regulations

These final regulations adopt without revision (except for technical changes and editorial changes) the rules proposed on September 7, 1984. They include provisions pertaining to various forms used in requesting enrollment in and payment for services under the Medicare program. They also provide an up-to-date listing and discussion of procedures for providers of services and other practitioners to obtain billing forms that meet Medicare requirements and those of other insurers. In addition, the regulations require that hospitals, other institutional providers, and physicians and suppliers obtain the billing form HCFA–1450 and form HCFA–1500 through commercial purchase.

IV. Information Collection and Reporting Requirements

Section 405.1662 of this final rule prescribes and lists forms which are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980.

The OMB has granted approval of these forms under the following OMB number:

HCFA form No.	OMB control No
HCFA–43	0938–0080
HCFA–18–F–5	0938–0251
HCFA–4040	0938–0245
HCFA–1450	0938–0279
HCFA–1453	0938–0010
HCFA–1483	0938–0013
HCFA–1486	0938–0015
HCFA–1487	0938–0012
HCFA–1490S	0938–0008
HCFA–1490U	[illegible]
HCFA–1491	0938–0042
HCFA–1500	[illegible]
HCFA–1660	0938–0020
HCFA–2384	0938–0041

OMB approval for each of these forms is subject at any given time to a specific expiration date. This limit on approval results in ongoing HCFA efforts to maintain and renew OMB approval of the forms, but also in expiration dates which are frequently and continually changing. Therefore, we have opted not to list the current expiration dates for these forms in this document. The public may confirm the most up-to-date OMB control number expiration dates by contacting the following:

HCFA Reports Clearance Officer, G–A–1 East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207, (301) 594–8650

V. Regulatory Impact Statement

A. Executive Order 12291

We have determined that these final regulations do not meet criteria for a "major rule" as defined by section (b) of Executive Order 12291; that is, these regulations will not—

- Have an annual effect on the economy of $100 million or more;
- Result in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic regions; or
- Have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or import markets.

As noted above, we are revising current regulations to (1) up-date a listing of forms and procedures for providers of services and other practitioners to obtain billing forms, and (2) require hospitals, institutional providers, and physicians, and suppliers to obtain certain recently developed billing forms by commercial purchasers.

Implementing the revision regarding the HCFA–1450 will generate both one-time start-up costs and certain annual costs. Specifically, in FY 1986 we anticipate hospital implementation costs of $20 million for systems related changes and $6.2 million to intermediaries, and about $2 million annual costs to hospitals for the purchase of the HCFA–1450 claims form.

We also expect certain program and provider savings from the use of the HCFA–1450. The Medicare program will realize annual savings of about $5 million ($3 million as a result of simplifying claims processing and $2 million savings from not printing the new claims forms), while hospitals will save about $8 million annually. Hospital savings will result from simplified recordkeeping and billing efficiences and savings in staff time associated with current billing procedures. These projected costs and savings are summarized in the following chart:

COSTS AND SAVINGS RESULTING FROM IMPLEMENTATION OF HCFA–1450

	Fiscal year 1986	Annually [illegible] fiscal year 1986
Medicare (costs) [1]	($6.2m)	(0)
Medicare savings	5.0m	$5.0m
Net Medicare (Costs) or Savings	(1.2m)	5.0m
Provider (costs) [1]	(20.0m)	(0)
Provider (costs) [2]	(2.0m)	(2.0)
Provider savings	8.0m	8.0m
Net provider (costs) or savings	(14.0m)	6.0m

[1] One time implementation costs.
[2] Annual costs.

Regarding the HCFA–1500 form, we estimate a negligible impact from requiring its purchase. However, we cannot estimate provider costs of purchase of the HCFA–1500 because (1) the forms can be printed and purchased from a variety of sources; (2) the volume sold to a purchaser can vary, thus influencing the purchase price; and (3) the form can be purchased in single sheet or in continuous fed format which differ in price. While those factors prohibit quantifying an estimate, our programmatic experience indicates that the providers' costs will not be significant.

As the estimated annual budget effects are significantly less than the $100 million threshold, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

The Secretary certifies, under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that these final regulations will not have a significant effect on a substantial number of small entities.

As noted in the Executive Order analysis, we are adding to a list of existing billing, entitlement, and enrollment forms used in requesting payment for services under Medicare. These revisions will not have a significant impact on providers.

The purchase and use of the HCFA–1450 will impact providers in several ways. First, about 7,000 hospitals will experience annual costs of about $2 million for the printing of the HCFA-1450 claims form. A specific hospital's costs should vary depending on its own claims volume experience.

Second, as mentioned earlier, these annual costs would be offset by simplified recordkeeping and other billing efficiencies inherent in the use of the HCFA–1450. We estimate annual hospital savings of about $8 million from these benefits. As with the implementation costs, the savings to a particular hospital would be relative to the volume of claims generated by the hospital. As the long-term savings will offset incurred costs, thus minimizing the impact of those provisions, we believe that the purchase and use of the HCFA–1450 will not result in a significant impact on affected providers.

V. List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (Agreements), Cost-based reimbursement, End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMOs), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Prospective payment system, Reasonable charges, Reporting requirements, Rural areas, X-rays.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

42 CFR Part 405 is amended as set forth below:

1. The table of contents for Part 405, Subpart P is amended by revising the title of § 405.1662 to read as follows:

Subpart P—Certification and Recertification; Claims and Benefit Payment Requirements; Check Replacement Procedures

* * * * *

Sec.
405.1662 Forms used for applying for entitlement or enrollment and claiming payments.

* * * * *

Authority: Secs. 1102, 1814, 1835, 1871 and 1883 of the Social Security Act, as amended (42 U.S.C. 1302, 1395f, 1395n, 1395hh and 1395tt).

2. Section 405.1662 is revised to read as follows:

§ 405.1662 Forms used for applying for entitlement or enrollment and claiming payment.

(a) *General.* HCFA has designated specific forms to be used by the public applying for entitlement to benefits under Medicare Part A and Medicare Part B. In addition, HCFA has prescribed forms for claiming payment for services provided to enrollees. A claim for payment under Medicare Part A or Medicare Part B must be submitted by a participating provider of services (or a hospital which has elected to claim payment of emergency services or certain services outside the United States) on a form designated by HCFA and executed in accordance with instructions prescribed by HCFA. Provisions for the use of each prescribed application and payment form are described in paragraph (b) or (c) of this section.

(b) *Application forms.* The following forms are used in applying for entitlement under Medicare Part A or Part B:

HCFA–18–F–5—Application for Hospital Insurance Entitlement. (For use by individuals who are not eligible for retirement benefits under Title II of the Social Security Act or under the Railroad Retirement Act. This form may also be used for enrollment in the supplementary medical insurance program.)

HCFA–4040—Application for Enrollment in the Supplementary Medical Insurance Program. (This form is used for enrollment by individuals who are not eligible for monthly benefits or for hospital insurance.)

HCFA–40–B—Application for Medical Insurance. (For general use by the SSA District Office in requesting medical insurance protection during the general enrollment period or during the initial enrollment period if the enrollee is not subject to automatic enrollment in SMI.)

HCFA–40–D—Application for Enrollment in the Supplementary Medical Insurance Program. (This form is mailed to individuals who do not have current supplementary medical insurance because of prior refusals, voluntary withdrawal, or premium default from prior coverage. It is used during the annual general enrollment period.)

HCFA–40–F—Application for Medical Insurance. (For use by beneficiaries residing outside the United States.)

HCFA–43—Application for Health Insurance Benefits under Medicare for Individuals with End Stage Renal Disease (ESRD). (An initial application for entitlement by individuals with ESRD).

An individual who upon attainment of age 65 is entitled to monthly social security or railroad retirement benefits or has filed and established eligibility for such benefits is automatically entitled to hospital insurance protection. (For conditions of entitlement to Part A benefits, see Part 406, Subpart A, of this chapter.) Except for individuals residing in Puerto Rico or outside the United States, an individual who is entitled to Part A protection based on age 65, disability, or ESRD is automatically enrolled in Medicare Part B unless the individual refuses such enrollment. An individual who is not entitled to Part A is not subject to automatic enrollment in Part B. Also, an individual who refuses automatic enrollment must subsequently request Part B coverage to become enrolled (see Forms HCFA–4040, HCFA–40–B, HCFA–40–D, and HCFA–40–F as described in this section. (For conditions of entitlement to Part B benefits, see Part 405, Subpart B, of this chapter.)

(c) *Related forms.* The following forms are prescribed for use in requesting payment for services under Medicare Parts A and B and for other related purposes:

HCFA–1450—Uniform Institutional Provider Bill. (This form is for institutional provider billing for Medicare inpatient, outpatient and home health services.)

HCFA–1453—Inpatient Hospital and Skilled Nursing Admission and Billing. (To be completed by a hospital or skilled nursing facility for payment of hospital or skilled nursing facility expenses for treatment of a patient confined in a hospital or skilled nursing facility.)

HCFA–1483—Provider Billing for Medical and Other Health Services. (To be completed by a hospital for payment for treatment of a patient who is not confined to an institution or has no Medicare Part A benefits available during a confinement.)

HCFA–1486—Inpatient Admission and Billing—Christian Science Sanatorium. (To be completed by a Christian Science sanatorium for payments for treatment of a patient confined in the sanatorium.)

HCFA–1487—Home Health Agency Report and Billing. (For use by an organization providing home health services.)

HCFA–1490S—Request for Medicare Payment. (For use by a patient to request payment for medical expenses.)

HCFA–1490U—Request for Medicare Payment by Organization. (For use by an organization requesting payment for medical services.)

HCFA–1491—Request for Medicare Payment-Ambulance. (For use by an organization requesting payment for ambulance services.)

HCFA–1500—Health Insurance Claim Form. (For use by physicians and suppliers to request payment for medical services.)

HCFA–1660—Request for Information-Medicare Payment for Services to a Patient now Deceased. (For use in requesting amounts payable under title XVIII to a deceased beneficiary.)

HCFA–1739—Request for Enrollment Card and Information by Foreign Beneficiary. (Used to notify beneficiaries approaching age 65 who reside in foreign countries that they are eligible to enroll for SMI. They must return this form if they wish additional information and an application, HCFA–40–F.)

HCFA–1966—Health Insurance Card. (This card is issued to all individuals entitled to Part A or Part B benefits, or both, whether the entitlement is based on age, disability or end-stage renal disease.)

HCFA–2384—Third Party Premium Billing Request. (For use by an enrollee who must pay premiums by direct remittance and is having his or her premium notices sent to a third party.)

(d) *Where applications and forms are available.* Excluding forms HCFA–1450 and HCFA–1500, all applications and related forms prescribed for use in the programs administered by HCFA under the provisions of title XVII of the Social Security Act are printed under the specifications of HCFA and distributed free-of-charge to the public, institutions, or organizations for purposes described in paragraph (b) of this section. The HCFA–1450 and HFCA–1500 may be obtained only by commercial purchase. All other prescribed application forms can be obtained upon request from HCFA or any Social Security branch or district office. The HCFA–1490S is also available at local Social Security Offices. Forms, other than the HCFA–1450 and HCFA–1500, appropriate for use in requesting payment for services provided under the Medicare program can also be obtained from the intermediaries or carriers (organizations under contract with HCFA to make payment for such services). HCFA is not required to provide the HCFA–1450 and HCFA–1500 forms free-of-charge.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance and Program No. 13.774, Medicare Supplementary Medical Insurance)

Dated: July 24, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: September 6, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85–23242 Filed 9–27–85; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6678]

Suspension of Community Eligibility; Maryland et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 646–2717, 500 C Street, Southwest, FEMA—Room 416, Washington, D.C. 20472

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities are suspended on the effective date in the fifth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the Federal Register.

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the sixth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate floodplain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

PART 64—[AMENDED]

The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
REGION III					
Maryland:					
Queen Anne's	Centreville, Town of	[illegible]	Aug. 6, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	July, 26, 1974, May 21, 1976, and Sept. 27, 1985	Sept. 27, 1985
Wicomico	Sharptown, Town of	240081B	Aug. 15, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Aug. 9, 1974, Dec. 26, 1975, and Sept. 27, 1985.	Do
Queen Anne's	Queen Anne's, Town of	[illegible]	Oct. 12, 1979, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Aug. 16, 1974, July 9, 1976, and Sept. 27, 1985.	Do
REGION IV					
Georgia: Glynn	Brunswick, City of	130093B	March 6, 1974, Emerg.; June 19, 1985, Reg.; Oct. 1, 1985, Susp.	May 24, 1974, Jan. 19, 1976, and June 19, 1985	Do
REGION VI					
Texas:					
Harris	Unincorporated Areas	480287E	May 14, 1970, Emerg.; May 26, 1970, Reg.; Sept. 27, 1985, Susp.	May 26, 1970, Mar. 10, 1972, July 1, 1974, July 30, 1976, Mar. 30, 1982, and Sept. 27, 1985	Do
Do	Houston, City of	480296D	Sept. 14, 1973, Emerg.; Dec. 11, 1979, Reg.; Sept. 27, 1985, Susp.	May 26, 1970, Mar. 10, 1972, July 1, 1974, July 30, 1976, Dec. 11, 1979, Sept. 21, 1982, and Sept. 27, 1985	Do
REGION VIII					
North Dakota:					
Cass	Briarwood, Town of	380651A	Apr. 2, 1982, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Sept. 27, 1985	Sept. 27, 1985
Ransom	Fort Ransom, City of	380332A	Mar. 21, 1978, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Sept. 27, 1985	Do
REGION IX					
Arizona: Gila	Unincorporated Areas	040028B	Jan. 2, 1979, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Nov. 1, 1974, Aug. 8, 1977, and Sept. 27, 1985.	Sept. 27, 1985
California:					
Sonoma	Cloverdale, City of	[illegible]	Mar. 11, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Feb. 22, 1974, Feb. 6, 1976, and Sept. 27, 1985	Do
Santa Barbara	Unincorporated Areas	060331C	Dec. 23, 1971, Emerg.; Mar. 15, 1979, Reg.; Sept. 27, 1985, Susp.	Dec. 20, 1974, Mar. 15, 1979, and Sept. 27, 1985.	[illegible]
Shasta	do	[illegible]	Feb. 21, 1979, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Dec. 13, 1977 and Sept. 27, 1985	Do
REGION X					
Washington: Pierce	Orting, City of	530143B	July 17, 1974, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Dec. 28, 1973, July 30, 1976, and Sept. 27, 1985.	[illegible]
REGION I—MINIMAL CONVERSIONS					
Maine:					
Franklin	Ashfield, Town of	250109B	Jan. 19, 1976, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	June 28, 1974, Nov. 14, 1975, and Sept. 27, 1985.	Do.
Somerset	Athens, Town of	230354B	June 20, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Jan. 17, 1975, July 30, 1976, and Sept. 27, 1985	Do
Waldo	Knox, Town of	230258A	July 30, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Jan. 17, 1975 and Sept. 27, 1985	Do
Do	Liberty, Town of	230259A	July 23, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Mar. 14, 1975 and Sept. 27, 1985	Do
Piscataquis	Monson, Town of	230411A	June 17, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Feb. 14, 1975 and Sept. 27, 1985.	Do
Somerset	Ripley, Town of	230368B	Feb. 9, 1976, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Jan. 3, 1975, Dec. 31, 1976, and Sept. 27, 1985	Do
Do	St. Albans, Town of	230369A	Aug. 6, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Apr. 11, 1975 and Sept. 27, 1985	Do

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date [1]
Waldo	Unity, Town of	230131B	July 15, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Aug. 18, 1974 and Sept. 24, 1976	Do.
Piscataquis	Willimantic, Town of	230417B	Jan. 14, 1976, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Feb. 7, 1975, July 2, 1976, and Sept. 27, 1985.	Do.
Vermont:					
Rutland	Benson, Town of	[illegible]	June 24, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Dec. 13, 1974, Oct. 8, 1976, and Sept. 27, 1985.	Do.
Orange	Braintree, Town of	500235B	Nov. 24, 1975, Emerg.; Sept. 27, 1985, Reg., Sept. 27, 1985, Susp.	Dec. 13, 1974, May 8, 1979, and Sept. 27, 1985	Do.
Orleans	Coventry, Town of	[illegible]	July 23, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Feb. 27, 1975 and Sept. 27, 1985.	Do.
Do	Derby, Town of	500248B	Feb. 13, 1975, Emerg., Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Dec. 13, 1974, Nov. 19, 1976, and Sept. 27, 1985.	Do.
Essex	East Haven, Town of	[illegible]	Mar. 18, 1976, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp	Dec. 18, 1974, May 7, 1976, and Sept. 27, 1985.	Do.
Chittenden	Hinesburg, Town of	500322B	Mar. 5, 1976, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Jan. 31, 1975, Feb. 7, 1978, and Sept. 27, 1985.	Do
Bennington	Readsboro, Town of	500017B	July 17, 1975, Emerg., Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	May 31, 1974, Feb. 18, 1977, and Sept. 27, 1985	Do.
Caledonia	Sheffield, Town of	500194A	July 22, 1975, Emerg.; Sept. 27, 1985, Reg., Sept. 27, 1985, Susp	Feb. 7, 1975 and Sept. 27, [illegible]	Do.
REGION IV					
Alabama, Tallapoosa	Alexander, City of	130127B	Dec. 17, 1975, Emerg., Sept 27, 1985, Reg ; Sept. 27, 1985, Susp	Mar. 17, 1978 and Sept. 27, 1985	Do.
Georgia, Long	Unincorporated Areas	130127B	Jan. 7, 1976, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Mar. 17, 1978 and Sept. 27, [illegible]	Do.
Kentucky:					
Breathitt	do	210023B	Apr. 20, 1977, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Jan. 3, 1975, July 15, 1977, and Sept. 27, 1985.	Do
Lincoln	Hustonville, City of	210144B	Aug. 26, 1976, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Aug. 2, 1974, June 18, 1976, and Sept. 27, 1985.	Do.
Estill	Irvine, City of	210064B	July 30, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp	May 17, 1974, June 18, 1976, and Sept. 27, 1985.	Do.
Breathitt	Jackson, City of	210024B	July 21, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp	May 17, 1974, Jan. 2, 1976, and Sept. 27, 1985.	Do.
Marion	Lebanon, City of	210162B	May 27, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	May 31, 1974, June 4, 1976, and Sept. 27, 1985.	Do.
Bourbon	Millersburg, City of	210014B	Oct. 27, 1977, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	May 10, 1974, Feb. 20, 1976, and Sept. 27, 1985	Do.
Powell	Unincorporated Areas	210194B	Nov. 1, 1976, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp	Nov. 29, 1974, Dec. 23, 1977, and Sept. 27, 1985.	Do.
Carroll	Sanders, Town of	210048B	Apr. 23, 1976, Emerg.; Sept. 27, 1985, Reg.; Sept 27, 1985, Susp	Jan. 23, 1974, Apr. 16, 1976, and Sept. 27, 1985.	Do
Mississippi					
Tallahatchie	Glendora, City of	280210B	Apr. 9, 1974, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Jan. 10, 1975, Dec. 8, 1978, and Sept. 27, 1985.	Do.
Bolivar	Mengold, Town of	280019C	Feb. 11, 1974, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	June 7, 1974, June 18, 1976, Feb. 8, 1980, and Sept. 27, 1985.	Do
Do	Mound Bayou, City of	280020B	Sept. 12, 1974, Emerg., Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	June 7, 1974, Aug. 22, 1975, and Sept. 27, 1985	Do
Do	Pace, Town of	280021A	Apr. 8, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Oct. 25, 1974 and Sept. 27, 1985.	Do.
Leflore	Schlater, Town of	280105C	May 3, 1976, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Aug. 23, 1974, July 23, 1976, Mar. 21, 1980, and Sept. 27, [illegible]	Do.
Bolivar	Shelby, City of	280024A	May 4, 1973, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Oct. 29, 1976 and Sept. 27, [illegible]	Do.
Yalobusha	Water Valley, City of	280187B	Dec. 5, 1974, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Feb. 1, 1974, Oct. 24, 1975, and Sept. 27, 1985.	Do.
REGION V					
Illinois					
Grundy	Coal City, City of	170258	Apr. 23, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Sept. 27, 1985	Do.
Do	Mazon, Village of	170262B	Aug. 12, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Oct. 18, 1974, Mar. 5, 1976, and Sept. 27, 1985.	Do
Pulaski	Ullin, Village of	170568B	May 8, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Apr. 12, 1974, May 14, 1976, and Sept. 27, 1985.	Do
[illegible]					
Hennepin	Eden Prairie, City of	270159B	May 16, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Mar. 1, 1974, Sept. 26, 1975, and Sept. 27, 1985.	Do.
Washington	Marine-on-St. Croix, City of	270509B	Sept. 12, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp	Mar. 15, 1974, Nov. 28, 1975, and Sept. 27, 1985.	Do
Mille Lacs	Unincorporated Areas	270624B	Apr. 15, 1974, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Feb. 2, 1979 and Sept. 27, 1985	Do.
Hennepin	Minnetrista, City of	270175B	Sept. 12, 1978, Emerg.; Sept. 27, 1985, Reg ; Sept. 27, 1985, Susp.	Jan. 13, 1978 and Sept. 27, 1985	Do.
Wisconsin					
Green Lake	Green Lake, City of	550376A	May 16, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Oct. 22, 1976 and Sept. 27, [illegible]	Do.
Rusk	Sheldon, Village of	550376B	July 18, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept 27, 1985, Susp	Aug. 2, 1974, May 28, 1976, and Sept. 27, 1985.	Do.
Shawano	Whittenberg, Village of	550423B	Apr. 30, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	May 24, 1974, Aug. 27, 1976, and Sept. 27, 1985	Do.
REGION VII					
Missouri: Scott	Chaffee, City of	290300B	Mar. 6, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Mar. 15, 1974, May 7, 1976, and Sept. 27, 1985.	Do
Nebraska					
Buffalo	Shelton, Village of	3100198	Oct. 30, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp.	Mar. 19, 1976; Sept. 3, 1976, and Sept. 27, 1985.	Do.

State and county	[illegible]	Community No	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	[illegible]
Do	Gibbon, City of	[illegible]	June 25, 1975, Emerg.; Sept. 27, 1985, Reg.; Sept. 27, 1985, Susp	May 31, 1974, July 23, 1976, and Sept. 27, 1985	[illegible]

[1] Date certain Federal assistance no longer available in special flood hazard areas

Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Issued: September 24, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-23232 Filed 9-27-85; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 205

[Docket No. 205N]

Disaster Assistance; Implementation of Coastal Barrier Resources Act

Correction

In FR Doc. 85-22626, beginning on page 38525 in the issue of Monday, September 23, 1985, make the following correction:

§ 205.508 [Corrected]

On page 38528, second column, § 205.508(c)(2), the second paragraph designated as "(ii)" should be designated as "(iii)".

BILLING CODE 1505-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 74

[Gen Docket No. 82-335; FCC 85-507]

Frequency Allocation for Aural Broadcast Studio Transmitter Link and Intercity Relay Stations (STL/ICR)

AGENCY: Federal Communications Commission.

ACTION: Memorandum opinion and order.

SUMMARY: In response to two *Petitions for Partial Reconsideration* 50 FR 10855, March 18, 1985; 50 FR 25463, June 19, 1985, the Federal Communications Commission is upholding its decision that reallocated the 944–947 MHz band for STL/ICR stations and required any such stations operating under a temporary authority in the adjoining 942–944 MHz band to vacate within five years. The latter band was reallocated for new two-way fixed service usage by Government and non-Government entities.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Tropea, Office of Science and Technology, 1919 M Street NW., Washington, D.C. 20554 (202) 653-8149.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Parts 2 and 74

Radio.

Memorandum Opinion and Order

In the Matter of Amendment of Parts 2 and 74 of the Commission's Rule's to provide additional frequencies for the use of Aural Broadcast Studio Transmitter Link and Intercity Relay Stations; Gen. Docket No. 82-335.

Adopted: September 17, 1985.
Released: September 20, 1985.
By the Commission.

1. On November 21, 1984, the Commission adopted a *Report and Order* in Gen. Docket No. 82-335, amending the Commission's Rules to reallocate to Aural Broadcast Studio Transmitter Link (STL) and Intercity Relay (ICR) stations (hereinafter STL/ICR), the 944–947 MHz band in the fifty states and the 942–947 MHz band in Puerto Rico.[1] It also provided for the grandfathering of existing STL/ICR stations in the 942–944 MHz band, which was part of the 941–944 reallocation for Government and non-Government fixed stations.[2] Approximately 56 STL/ICR stations operating under special temporary authorization (STA) in the reallocated 942–944 MHz band were not grandfathered but rather were given five years to change frequency.

2. On February 19, 1985, the Society of Broadcast Engineers (SBE) and Service Broadcasting Corporation (SBC) each filed a Petition for Partial Reconsideration. SBC's main concern was five temporary stations serving the Dallas-Ft./Worth, Texas area. The National Association of Broadcasters (NAB) filed comments supportive of the petition filed by SBC. The petitioners disagreed with the Commission's decision not to grandfather existing STL/ICR stations operating under special temporary authorizations in the 942–944 MHz band. They argued that STL/ICR channels in the existing band [3] are already congested in many major areas and that there are not sufficient alternative frequencies and propagation paths to accommodate many of the STA stations required to relocate. The petitioners also stated that the grandfathering of the additional 56 STA stations would not seriously prejudice fixed usage in the 942–944 MHz band.

3. The Commission did not find the petitioners' request to contain any information sufficient to warrant reconsideration of its decision. The issues of congestion, the relocation of stations affected by reallocation of the band, and the economic impact on stations required to relocate had all been the subject of discussion since the proceeding was initiated. The Commission's *Report and Order* responded to each of these issues and due consideration to the various interests given in an equitable manner in the 900 MHz band reallocation proceedings.

4. Regarding the issue of congestion, current band usage has demonstrated the plausibility of additional sharing that can be achieved by careful system planning and design, even in crowded metropolitan areas. Various means can be used to enhance system design in congested areas and improve the isolation between systems. These include antenna site selection and propagation path engineering employing directive antennas, cross polarization, and low power transmitters and filters. Also, the use of intermediate relay or booster stations that receive and transmit on the same channel have been used to improve path independence. Further, the Commission is presently

[1] *Report and Order*, Docket No. 82-335, released on January 18, 1985, 50 FR 4655, February 1, 1985.

[2] *First Report and Order*, Gen. Docket No. 82-243 adopted on November 21, 1984, 50 FR 4650, February 1, 1985. The action reallocated the frequencies 932–935 MHz and 941–944 MHz for two-way use by the Government and non-Government fixed services.

[3] This band now extends from 944–952 MHz. The 947–952 MHz has been allocated for broadcast auxiliary services for many years.

exploring the use of narrow channels in the 944–952 MHz band to help increase use of the channels available.[4]

5. The *Report and Order* in Gen. Docket No. 82–243 paired the 932–935 MHz and 941–944 MHz bands for the new Government and non-Government fixed services. The new services will be used for two-way operations which require transmitting and receiving on paired frequencies.[5] On the other hand, although their operation is between fixed points, STL/ICR stations operate one-way from the studio-to-transmitter, so only one channel is used. In Docket 82–243, the Commission noted the impact auxiliary broadcast stations could have on the efficiency of use of the channels available for the new fixed services, but in view of the number and licensing situation of many of the STL/ICR stations, it accommodated their continued operation. In making the reallocation, the Commission considered 121 existing STL/ICR stations, the licenses for which were granted prior to the conclusion of Docket 18262; and 56 stations, for which temporary authorizations were granted subsequent to the Docket. In this regard, Docket 18262 tasked the Commission with finding new spectrum for STL/ICR stations when the 942–947 MHz band was reallocated from fixed to land mobile. The 121 STL/ICR stations at 942–944 MHz were licensed prior to the conclusion of Docket 18262 and were allowed to continue operations pending further rulemaking. The Commission decided to grandfather the operation of this limited number of STL/ICR stations in the new Government/non-Government fixed service band. Their long history of permanent operation on these frequencies supports this conclusion. On the other hand, the 56 STA stations were authorized on a temporary basis after Docket 18262 was adopted. Under such circumstances, grandfathering of these 56 STA stations was not warranted. In Docket 82–335, the Commission, nevertheless, attempted to lessen the impact on the STA stations by providing protection from interference from new assignments for one year and by permitting operations on a secondary basis for up to four additional years. Thus, while it would have been more efficient to remove all STL use from the reallocated Government/non-Government fixed band, the Commission's decision was a compomise to accommodate as much STL/ICR operation as practical without further complicating the future usage of the band by the new users.

6. Regarding the economic question, the Commission was fully aware of the cost associated with station rechannelization, and this was considered in the reallocation decision.[6] However, to make the entire 900 MHz reallocation package work, it was unavoidable that some stations would incur some cost for modification of their operation to comply with the new spectrum allocations. Stations authorized under STA's and affected by this proceeding were effectively on notice that they might have to move.

7. The Commission therefore reiterates that the decision not to grandfather temporary stations in the 942–944 MHz band is correct. Also, we believe that most, if not all, of the temporary STL/ICR stations, along with new station growth, can be accommodated in the 944–952 MHz band if careful equipment design and local frequency coordination is employed.

8. For the reasons set forth above, it is ordered that the Petitions for Partial Reconsideration filed by The Society of Broadcast Engineers and Service Broadcasting Corporation of the Commission's *Report and Order* in Gen. Docket No. 82–335 are denied.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–23025 Filed 9–27–85; 8:45 am]

BILLING CODE 6712–01–M

[4] *Notice of Proposed Rulemaking* in MM Docket No. 85–36, 50 FR 8172 (February 28, 1985).

[5] See *First Report and Order, Gen. Docket No. 82–243, footnote 2 supra,* paragraph 14. Docket 82–243 stated that ". . . the new bands will be fully utilized by two-way services."

[6] In addition to allocating 3 MHz for STL/ICR stations, the Commission made or proposed the following allocations at 900 MHz: 6 MHz for a new Government/Non-Government Fixed Service (Gen. Docket No. 82–243), 12 MHz for cellular expansion (Gen. Docket 84–1231), 12 MHz for private land mobile expansion (Gen. Docket No. 84–1233), and 8 MHz for the establishment of a Mobile Satellite Service (Gen. Docket No. 84–1234).

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47 CFR Parts 90 and 94

Private Land Mobile Radio Services and Operational-Fixed Microwave Services; Editorial Amendment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends rules for the private land mobile radio services and operational-fixed microwave services to correct errors and omissions, delete obsolete and redundant material, and revise unclear wording to restore the intended meanings to various rule sections. The purpose of these editorial amendments is to reduce any confusion or doubt about the affected rules.

EFFECTIVE DATE: November 30, 1985.

FOR FURTHER INFORMATION CONTACT: Richard L. Kenney, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 90

Private land mobile radio services, Radio.

47 CFR Part 94

Private operational-fixed microwave service, Radio.

Order

Adopted: September 23, 1985.
Released: September 25, 1985.
By the Commission.

1. This Order amends several sections of Part 90 and one section of Part 94 of the Commission's rules governing the Private Land Mobile Radio Services and Private Operational-Fixed Microwave Services. These amendments correct typographical errors and omissions, delete obsolete material, and revise unclear wording to restore the intended meanings to the affected sections. None of the amendments are substantive.

2. Authority for this action is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and § 0.231(d) of the Commission's rules. Provisions of 5 U.S.C. 553 concerning public notice, administrative procedure, and effective date do not apply because the amendments are strictly editorial.

3. In view of the above, it is ordered that the rule amendments set forth in the attached Appendix be adopted and made effective September 25, 1985.

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

Appendix

Parts 90 and 94 of Chapter I of Title 47 of the Code of Federal Regulations (47 CFR) are amended as follows:

PART 90—[AMENDED]

The authority citation for Part 90 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

1. Section 90.5 is amended by revising paragraphs (e) and (i), redesignating paragraphs (h) as (i) and (i) as (j), and adding a new paragraph (h), to read as follows:

§ 90.5 **Other applicable rule parts.**

* * * * *

(e) Part 15 provides for the operation of incidental and restricted radio frequency devices that do not require an individual license.

* * * * *

(h) Part 22 contains regulations for public (common carrier) mobile radio services.

(i) Part 68 contains technical standards for connection of private land mobile radio equipment to the public switched telephone network.

(j) Part 94 governs licensing and operation of private operational-fixed radio stations on frequencies in the microwave spectrum above 928 MHz.

2. Section 90.17 is amended by correcting errors at "154.45625," and "154.47875" and changing "952 and above" to "928 and above" in the frequency table, and by revising paragraphs (c)(4), (6), and (16) to read as follows:

§ 90.17 **Local Government Radio Service.**

* * * * *

(b) * * *

LOCAL GOVERNMENT RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
. . . . .		
154.115	do	
154.45625	Fixed or mobile	9, 20, 21, 22
154.46375	do	7, 19, 20, 21, 22
154.47125	do	7, 20, 21, 22
154.47875	do	9, 20, 21, 22
154.965	Base or mobile	
. . . . .		
851 to 866	Base or mobile	15
928 and above	Operational-fixed	16
929 to 930	Base only	
1427 to 1435	Operational-fixed, base or mobile	17
. . . . .		

(c) * * *

* * * * *

(4) [Reserved]

* * * * *

(6) Assignment and use of frequencies in the band 72–76 MHz are governed by § 90.257 for operational-fixed stations and by § 90.241 for emergency call box operations. Specific frequencies are listed at § 90.257(a)(1).

* * * * *

(16) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this Chapter.

* * * * *

3. Section 90.19 is amended by deleting all frequencies from "1610" through "1714" kilohertz (which were meant to be removed by action published at 46 FR 52372, Oct. 27, 1981) and changing "952 and above" to "928 and above" in the frequency table, and by revising paragraph (e)(23) to read as follows:

§ 90.19 **Police Radio Service.**

* * * * *

(d) * * *

POLICE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
Kilohertz:		
1722	Base or mobile	2, 3
. . . . .		
851 to 866	Base or mobile	
928 and above	Operational-fixed	23
929 to 930	Base only	27
1427 to 1435	Operational-fixed, base or mobile	24
. . . . .		

(e) * * *

(23) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this Chapter.

* * * * *

4. Section 90.21 is amended by changing "952 and above" to "928 and above" in the frequency table, and by revising paragraph (c)(11) to read as follows:

§ 90.21 **Fire Radio Service.**

* * * * *

(b) * * *

FIRE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
. . . . .		
851 to 866	Base or mobile	10
928 and above	Operational-fixed	11
929 to 930	Base only	15
1427 to 1435	Operational-fixed, base or mobile	12
. . . . .		

(c) * * *

(11) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this Chapter.

* * * * *

5. Section 90.23 is amended by correcting the omission of limitation 5 at "156.180" and changing "952 and above" to "928 and above" in the frequency table, and by revising paragraph (c)(11) to read as follows:

§ 90.23 **Highway Maintenance Radio Service.**

* * * * *

(b) * * *

HIGHWAY MAINTENANCE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
. . . . .		
156.165	do	5, 14
156.180	do	5, 14
156.195	do	5
. . . . .		
851 to 866	Base or mobile	10
928 and above	Operational-fixed	11
929 to 930	Base only	16
1427 to 1435	Operational-fixed, base or mobile	12
. . . . .		

(c) * * *

(11) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this Chapter.

* * * * *

6. Section 90.25 is amended by correcting the limitation numbers for "171.425" and changing "952 and above" to "928 and above" in the frequency table, and by revising paragraph (c)(17) to read as follows:

§ 90.25 **Forestry Conservation Radio Service.**

* * * * *

(b) * * *

FORESTRY CONSERVATION RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
. . . . .		
170.575	do	4, 9, 10
171.425	do	4, 9, 11
171.475	do	4, 10, 12
. . . . .		
851 to 855	Base or mobile	16
928 and above	Operational-fixed	17
929 to 930	Base only	21
1427 to 1435	Operational-fixed, base or mobile	18
. . . . .		

(c) * * *

(17) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this Chapter.

* * * * *

7. Section 90.53 is amended by changing "952 and above" to "928 and above" in the frequency table, and by revising paragraph (b)(22) to read as follows:

§ 90.53 **Frequencies available.**

(a) * * *

SPECIAL EMERGENCY RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
. . . . .		
851 to 866	Base or mobile	21
928 and above	Operational-fixed	22
929 to 930	Base only	32

SPECIAL EMERGENCY RADIO SERVICE FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitation(s)
1427 to 1435	Operational-fixed, base or mobile	23

(b) * * *

(22) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this Chapter.

* * * * *

8. Section 90.55 is amended by revising the introductory text as follows:

§ 90.55 Paging operations.

Paging operations may be authorized in this service only on frequencies assigned under the provisions of sections 90.53(b)(4), (25), (26), or (32). Paging operations on other frequencies authorized before August 15, 1984, may be continued only if they do not cause harmful interference to regular operations on the same frequencies. Such paging operations may be renewed indefinitely on a secondary basis to regular operations, except within 125 kilometers (75 mi.) of the following urbanized areas:

9. Section 90.63 is amended by changing "952 and above" to "928 and above" in the frequency table, and by revising paragraph (d)(18) to read as follows:

§90.63 Power Radio Service.

* * * * *

(c) * * *

POWER RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
851 to 866	Base or mobile	17
928 and above	Operational-fixed	18
929 to 930	Base only	25
1427 to 1435	Operational-fixed, base or mobile	13

(d) * * *

(18) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this Chapter.

* * * * *

10. Section 90.65 is amended by correcting errors in limitation numbers at "36.25" and between "153.050" and "153.125" and changing "952 and above" to "928 and above" in the frequency table, and by revising paragraph (c)(31) to read as follows:

§ 90.65 Petroleum Radio Service.

* * * * *

(b) * * *

PETROLEUM RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
. . . . .		
35 48	do	37
36 25	do	9
41 71	do	
. . . . .		
150 980	Base or mobile	
153 035	do	12
153 050	do	4, 5, 13, 38, 40
153 065	do	13
153 080	do	4, 5, 13
153 095	do	13
153 110	do	4, 5, 13
153 125	do	13, 38, 40
153 140	do	4, 5, 13
. . . . .		
806 to 821	Mobile only	30
851 to 866	Base or mobile	30
928 and above	Operational-fixed	31
929 to 930	Base only	42
1427 to 1435	Operational-fixed, base or mobile	26
. . . . .		

(c) * * *

(31) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this Chapter.

* * * * *

11. Section 90.67 is amended by deleting "47.44," correcting limitation numbers at "30.72," "157.725," and "158.355," and changing "952 and above" to "928 and above" in the frequency table; and by revising paragraph (c)(21) to read as follows:

§ 90.67 Forest Products Radio Service.

* * * * *

(b) * * *

FOREST PRODUCTS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
. . . . .		
30 68	do	
30 72	do	
31 48	do	30
. . . . .		
37 44	do	
37 88	do	
. . . . .		
154 625	Base or mobile	5
157 725	do	29
157.740	do	5
. . . . .		
158 325	do	6, 31, 33
158 355	do	2, 32
158 370	do	2
. . . . .		
470 to 512	Base or mobile	19
806 to 821	Mobile only	20
851 to 866	Base or mobile	20
928 and above	Operational-fixed	21
929 to 930	Base only	35
1427 to 1435	Operational-fixed, base or mobile	16
. . . . .		

(c) * * *

(21) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this chapter.

* * * * *

12. Section 90.69 is amended by changing "952 and above" to "928 and above" in the frequency table, and by revising paragraph (c)(6) to read as follows:

§ 90.69 Motion Picture Radio Service.

* * * * *

(b) * * *

MOTION PICTURE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
. . . . .		
851 to 866	Base or mobile	5
928 and above	Operational-fixed	
929 to 930	Base only	10
1427 to 1435	Operational-fixed, base or mobile.	7
. . . . .		

(c) * * *

(6) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this chapter.

* * * * *

13. Section 90.71 is amended by changing "952 and above" to "928 and above" and changing the limitation number at "929–930" from "4" to "9" in the frequency table, and by renumbering the redundant paragraph (c)(4) as (c)(9) and revising the remaining paragraph (c)(4) to read as follows:

§ 90.71 Relay Press Radio Service.

* * * * *

(b) * * *

RELAY PRESS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
. . . . .		
851 to 866	Base or mobile	3
928 and above	Operational-fixed	4
929 to 930	Base only	9
1427 to 1435	Operational-fixed, base or mobile	5
. . . . .		

(c) * * *

(4) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this chapter.

(5) This band is available in this service subject to the provisions of § 90.259.

* * * * *

(9) Frequencies in this band are available only for one-way paging operations in accordance with § 90.494.

* * * * *

14. Section 90.73 is amended by changing "952 and above" to "928 and above" in the frequency table and by revising paragraphs (d) (22) and (23) to read as follows:

§ 90.73 Special Industrial Radio Service.

* * * * *

(c) * * *

SPECIAL INDUSTRIAL RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
. . . . .		
851 to 866	Base or mobile	21
928 and above	Operational-fixed	22
929 to 930	Base only	[illegible]
1427 to 1435	Operational-fixed, base or mobile.	17
. . . . .		

(d) * * *

(22) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this chapter.

(23) Available only on a shared basis with stations in other services and subject to no protection from interference caused by the operation of industrial, scientific, or medical (ISM) devices.

* * * * *

15. Section 90.75 is amended to correct errors in the frequency table by deleting "27.39" and "27.41," revising class of station at "463.250," "465.000," and "470 to 512," changing "952 and above" to "928 and above," and restoring the frequency band "2450 to 2500." This section is also amended to clarify the wording of paragraph (c)(3), to restore the text to (c)(24), and to revise (c)(34). Revised section should read as follows:

§ 90.75 Business Radio Service.

* * * * *

(b) * * *

BUSINESS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
Megahertz:		
27.43	Base or mobile	1, 2
27.45	....do	1, 2
. . . . .		
463.200	Base or mobile	1, 2, 26
463.225	....do	1, 2, 26
463.250	....do	1, 2, 26
. . . . .		
464.975	....do	1, 2, 26, 29
465.000	Base	10, 30
465.650	Mobile	2, 4, 25, 26, 31
. . . . .		
469.975	....do	1, 2, 26
470 to 512	Base or mobile	32
806 to 821	Mobile	[illegible]
851 to 866	Base or mobile	[illegible]
928 and above	Operational-fixed	34
929 to 930	Base only	42
1427 to 1435	Operational-fixed, base or mobile.	21
2450 to 2500	Base or mobile	24
10,550 to 10,680*	....do	

* * * * *

(c) * * *

(3) This frequency will be assigned only to stations used in itinerant operations, except within 35 miles (56 km.) of Detroit, Mich., where it may be assigned for either itinerant or permanent area operations (i.e., general use).

* * * * *

(24) Frequencies in this band are available only on a shared basis with stations in other services, and without protection from interference caused by the operations of ISM devices.

* * * * *

(34) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this chapter.

* * * * *

16. Section 90.79 is amended by correcting the frequency table and revising paragraph (d)(16) to read as follows:

§ 90.79 Manufacturers Radio Service.

* * * * *

(c) * * *

MANUFACTURERS RADIO SERVICE FREQUENCY TABLE

Frequency of band	Class of station(s)	Limitation(s)
. . . . .		
467.525	....do	13
470 to 512	Base or mobile	14
806 to 821	Mobile	15
851 to 866	Base or mobile	15
928 and above	Operational-fixed	16
929 to 930	Base only	24
1427 to 1435	Operational-fixed, base or mobile.	11
2450 to 2500	Base or mobile	17
. . . . .		

(d) * * *

(16) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this chapter.

* * * * *

17. Section 90.81 is amended by changing "952 and above" to "928 and above" in the frequency table, and by revising paragraph (d)(8) to read as follows:

§ 90.81 Telephone Maintenance Radio Service.

* * * * *

(c) * * *

TELEPHONE MAINTENANCE RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
. . . . .		
851 to 866	Base or mobile	7
928 and above	Operational-fixed	[illegible]
929 to 930	Base only	12
1427 to 1435	Operational-fixed, base or mobile.	2
. . . . .		

(d) * * *

(8) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this chapter.

* * * * *

18. Section 90.89 is amended by correcting errors at "44.20" and "457.425," changing "952 and above" to read "928 and above" in the frequency table, and revising paragraph (c)(13) to read as follows:

§ 90.89 Motor Carrier Radio Service.

* * * * *

(b) * * *

MOTOR CARRIER RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
.		
. . . . .		
44.18	....do	5
44.20	....do	5, 20
44.22	[illegible]	5
. . . . .		
457.375	....do	10
457.425	[illegible]	10
457.475	....do	10
. . . . .		
851 to 866	Base or mobile	12
928 and above	Operational-fixed	13
929 to 930	Base only	[illegible]
1427 to 1435	Operational-fixed, base or mobile	14
. . . . .		

(c) * * *

(13) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this chapter.

* * * * *

19. Section 90.91 is amended by changing "952 and above" to read "928 and above" in the frequency table, and by revising paragraph (c)(14) to read as follows:

§ 90.91 Railroad Radio Service.

* * * * *

(b) * * *

RAILROAD RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
. . . . .		
851 to 866	Base or mobile	13
928 and above	Operational-fixed	14
929 to 930	Base only	19
1427 to 1435	Operational-fixed, base or mobile	15
. . . . .		

(c) * * *

(14) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this chapter.

* * * * *

20. Section 90.93 is amended by changing "952 and above" to read "928 and above" in the frequency table, and

by revising paragraph (c)(6) to read as follows:

§ 90.93 Taxicab Radio Service.

* * * * *

(b) * * *

TAXICAB RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
* * * * *		
851 to 866	Base or mobile	5
928 and above	Operational-fixed	[redacted]
929 to 930	Base only	13
1427 to 1435	Operational-fixed, base or mobile	7
* * * * *		

(c) * * *

(6) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this chapter.

* * * * *

21. Section 90.95 is amended by changing "952 and above" to read "928 and above" in the frequency table, and by revising paragraph (d)(11) to read as follows:

§ 90.95 Automobile Emergency Radio Service.

* * * * *

(c) * * *

AUTOMOBILE EMERGENCY RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitation(s)
* * * * *		
851 to 866	Base or mobile	10
928 and above	Operational-fixed	11
929 to 930	Base only	15
1427 to 1435	Operational-fixed, base or mobile	12
* * * * *		

(d) * * *

(11) Assignment of frequencies above 928 MHz for operational-fixed stations is governed by Part 94 of this chapter.

* * * * *

22. Section 90.175 is amended by revising paragraph (a)(2) to clarify the wording of the third sentence in particular, and the rest of the paragraph in general, as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(a) * * *

(2) A statement from a frequency coordinating committee recommending the frequency which will result in the least amount of interference to all existing stations in the particular area. The committee's recommendations may appropriately include comments on technical factors such as power, antenna height and gain, terrain, and other factors which may serve to mitigate any potential interference. Except for narrowband operations, the committee shall not recommend any frequency 15 kHz removed from an adjacent channel assigned to a base station separated by less than 10 miles (16 km.), seven miles (11 km.) in the Taxicab Radio Service. The frequency advisory committee must be so organized that it is representative of all persons who are eligible for authorizations in the radio service and in the area served by the committee. The functions of such committees are purely advisory. Their recommendations are not binding upon either the applicant or the Commission, and must not contain statements which would imply that frequency advisory committees have any authority to grant or deny applications. If the frequency recommended is in the 150–170 MHz band, is 17.5 kHz or less removed from a frequency available to another radio service, and is assignable only after coordination, the committee's statement shall affirm that coordination with a similar committee for the other service has been accomplished. Coordination with another service is not required, however, for narrowband assignments on frequencies more than five kilohertz removed from other narrowband assignments.

* * * * *

23. Section 90.238(e) was revised incorrectly by an editorial amendment published at 48 FR 9273, March 4, 1983. It is amended again to read as follows:

§ 90.238 Telemetry operations.

* * * * *

(e) Frequencies separated by 12.5 kHz from regularly assignable frequencies in the 450–470 MHz band, as specified at § 90.267, except that such offset channels between 460.650 and 460.875 MHz and between 465.650 and 465.875 MHz are available in the Business Radio Service exclusively for one-way, non-voice biomedical telemetry operation in hospitals, medical centers, or convalescent centers.

* * * * *

§ 90.241 [Amended]

24. Section 90.241 is amended by correcting the reference to the rule section in paragraph (a) from "§ 90.17(b)" to "§ 90.257(a)(1)."

§ 90.243 [Amended]

25. Section 90.243 is amended by adding to paragraph (a)(1) the word "Manufacturers" between "Forest Products," and "Telephone Maintenance."

§ 90.261 [Amended]

26. Section 90.261 is amended by correcting omissions and errors in the list of frequencies in paragraph (c). The frequencies "451.250," "453.725," "458.150," and "458.975" should be added to the list and "458.460" should be corrected to read "458.450."

27. Section 90.267 is amended by deleting the last sentence of paragraph (a)(1), because of an earlier revision of § 90.233, and by correcting omissions and errors in the table of frequencies under paragraph (b), as follows:

§ 90.267 Assignment and use of 12.5 kHz frequency offsets.

(a) * * *

(1) All stations will be licensed as mobiles but they may serve the functions of base, fixed, or mobile relay stations. Such stations are limited to 2 watts output power.

* * * * *

(b) * * *

OFFSET CHANNELS AVAILABLE IN SERVICES INDICATED

Frequency	
* * * * *	
451.1625	IF, IP, IT, IW, IX
451.1875	IF, IP, IT, IW, IX
451.2125	IF, IP, IT, IW, IX
* * * * *	
452.2625	LX
452.2875	LX
452.3125	LM, LR, LX
452.3375	LM, LR, LX
* * * * *	
460.4625	PP
460.4875	[redacted]
460.5125	PF, PP, PS
460.5375	PF, PP, PS
[redacted]	PF, PP, PS
460.5875	[redacted]
460.6125	PF
460.6375	PF
460.6625	IB
460.6875	IB
460.7125	IB
460.7375	IB
460.7625	[redacted]
460.7875	IB
460.8125	[redacted]
460.8375	IB
460.8625	IB
460.8875	IB
460.9125	[1] IB
* * * * *	
461.2625	IB
461.2875	IB
461.3125	IB
461.3375	IB
461.3625	IB
461.3875	IB
* * * * *	
461.8125	IB
461.8375	IB
461.8625	IB
* * * * *	

[1] Listed Central Station Protection Services. Limitations: 90.75(c) (27) and (41)

§ 90.303 [Amended]

28. Section 90.303 is amended by correcting an error in the table

"Frequency Availability for Land Mobile Use": The longitude for Boston, Mass., should be changed from "71–03–24" to "71–03–25" to be consistent with similar tables at §§ 90.55 and 90.477.

29. Section 90.362 is amended by adding to paragraph (a)(1) a sentence which should have been carried over with changes that superseded § 90.365 at 47 FR 41027, Sept. 16, 1982.

§ 90.362 Selection and assignment of frequencies.

(a) * * *

(1) All mobile and control station frequencies will be chosen from those allocated in the 816–821 MHz band. Mobile station transmitting frequencies will commence with Channel No. 1 at 820.9875 MHz, followed by Channel No. 2 at 820.9625 MHz, and proceed to the band end with uniform 25 kHz channeling. Corresponding base station transmitting frequencies will be chosen from those allocated in the 861–866 MHz band, commencing with Channel No. 1 at 865.9875 MHz, followed by Channel No. 2 at 865.9625 MHz, and proceeding to the band end with uniform 25 kHz channeling. A mobile station is authorized to transmit on any frequency assigned to its associated base station.

* * * * *

30. Section 90.425 is amended by removing the redundant paragraph (c)(2) and redesignating paragraph (c)(3) as (c)(2).

31. Section 90.443 is amended by revising paragraph (b) to conform with changes in other rules concerning licensed operators, as follows:

§ 90.443 Content of station records.

* * * * *

(b) For all stations, the dates and pertinent details of any maintenance performed on station equipment, and the name and address of the service technician who did the work. If all maintenance is performed by the same technician or service company, the name and address need be entered only once in the station records.

* * * * *

32. Section 90.555 is amended to correct errors in the frequency table, as follows:

§ 90.555 Combined frequency listing.

* * * * *

(b) Combined frequency list:

Frequency	Services	Special Limitations
.	.	.
35.02	IB, PS	Low power, Handicapped paging

Frequency	Services	Special Limitations
.	.	.
462.450	IX	
462.475	IW, IP, IF, IX, IT	
462.500	IX	
462.525	IW, IP, IF, IX, IT	
.	.	.
469.975	IB	Do.
470–512	(1)	Available in 13 urbanized areas in accordance with provisions of subpart L.
470.0125–470.2875	(2)	
806–821	All Svcs	Mobile
851–866	All Svcs	Base or mobile
929–930	All Svcs. exc. RS	Base only, one-way paging.
2450–2500	All Svcs	Base or mobile
.	.	.

[1] All services.
[2] Domestic public (Part 22).
[3] Remote or pickup broadcast (Part 74).
[4] General Mobile Radio Service (GMRS) (Part 95)

* * * * *

33. Section 90.621 is amended by revising paragraphs (a)(1) (i) and (ii) and paragraphs (a)(2) (i) and (ii) to read as follows:

§ 90.621 Selection and assignment of frequencies.

(a) * * *

(1) * * *

(i) All mobile and control station frequencies, in the 806–821 MHz band, are listed in § 90.613. Base station frequencies, in the 851–866 MHz band, shall be uniformly 45 MHz higher than associated mobile frequencies. Channel groups will be chosen and assigned in accordance with § 90.617 or § 90.619.

(ii) A mobile station is authorized to transmit on any frequency assigned to its associated base station.

* * * * *

(2) * * *

(i) All mobile and control station frequencies, in the 806–821 MHz band, are listed in § 90.613. Base station frequencies, in the 851–866 MHz band, shall be uniformly 45 MHz higher than associated mobile frequencies. Channels will be chosen and assigned in accordance with § 90.615, § 90.617, or § 90.619.

(ii) A mobile station is authorized to transmit on any frequency assigned to its associated base station.

* * * * *

PART 94—[AMENDED]

The authority citation for Part 94 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

34. Section 94.3 is amended by revising the definitions of "*Master station*" and "*Multiple address*" to specify the number of fixed remote stations (four or more) included in the defined systems. This clarification is necessary because similar definitions were inadvertently removed from Part 2 of this chapter by amendments published at 49 FR 2368, January 19, 1984.

§ 94.3 Definitions.

* * * * *

Master station. A station operating on frequencies in the 952–960 MHz band which controls, activates, or interrogates multiple (four or more) remote stations and/or receives from multiple remote stations.

* * * * *

Multiple address. A one-way or two-way radio system utilizing microwave frequencies listed in § 94.65(a)(1). Operation is normally from a fixed or mobile station transmitting and/or receiving (usually in an omnidirectional pattern) to or from multiple (four or more) fixed remote stations.

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[FR Doc. 85–23107 Filed 9–27–85; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 17

Endangered and Threatened Wildlife and Plants; Prohibitions and Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This Fish and Wildlife Service (Service) revises its regulations to implement the incidental take permit and other provisions of the 1982 amendments to the Endangered Species Act (EAS) of 1973. The final rule is not significantly different from the proposed rule. The final rule (1) provides, under limited cirumstances, for permits to take endangered and threatened species incidental to, and not the purpose of, otherwise lawful activities, and (2) adds a prohibition against removing and reducing to possession endangered and threatened plants from areas under Federal jurisdiction. An applicant for an incidental taking permit must submit a conservation plan that specifies: (1) The impacts that will likely result from such taking; (2) what steps the applicant will take to minimize and mitigate those impacts; (3) what other alternatives were analyzed that would not result in the takings; and (4) why those

alternatives were not adopted. To issue the permit, the Service must find that the taking will be incidental, that the applicant will minimize and mitigate the impact of the taking, that the applicant will ensure that there will be adequate funding for the conservation plan, and that appropriate measures will be taken by the permittee to successfully conduct the activities authorized by the permit.

EFFECTIVE DATE: October 30, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Larry LaRochelle, Staff Biologist, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, Virginia 22201 (703/235–1903).

SUPPLEMENTARY INFORMATION:

I. Background

On July 8, 1983 (48 FR 31417), the Service published proposed regulations to implement certain aspects of the 1982 amendments to the Endangered Species Act of 1973 (ESA). The first, an amendment to section 10(a) of the ESA, 16 U.S.C. 1539(a), allows permits for takings of endangered species incidental to, but not the purpose of, otherwise lawful activities. The second, addition of a new section 9(a)(2)(B) of the ESA, 16 U.S.C. 1538(a)(2)(B), prohibits removal and reduction to possession of protected plants from areas under Federal jurisdiction. The July 8, 1983, notice discussed the need, purpose and details of the Service's proposal and invited comments from interested parties until August 8, 1983.

The Service received comments from 13 parties: 1 port authority, 2 Federal agencies, 2 electric utility organizations, 3 conservation organizations, and 5 oil or gas corporations. Some comments were brief while others were lengthy, substantive, and analytical. All generally supported the Service's proposed rule though various clarifications were sought and alternate procedures and regulatory language were offered. Two commenters recommended that the Service's final rule be identical to the proposed rule. Each comment has been considered in preparing this final rule. In addition, the Service has relied upon its substantial experience in developing and implementing programs affecting endangered species. The significant comments pertinent to the Service's Notice of Proposed Rule are summarized and discussed below together with the Service's responses.

II. Comments

A. Incidental Take Regulations

The preamble to the proposed regulations contained an extended quotation from the Conference Report on the 1982 amendments to the ESA. This material was included in the notice of proposed rulemaking because it illuminates in detail Congress' intent in enacting the incidental take permit provisions. Unfortunately, and inadvertently, only the first paragraph of the quotation was properly typeset to show that it was a quotation, creating among many commenters the impression that the rest of the material was drafted by the Service. In fact, all of the material from the bottom of the third column of 48 FR 31417 through the top of the first column of 48 FR 31419 is a quotation from the Conference Report and therefore represents Congress' detailed views on incidental take permits. The Service apologizes for the misunderstandings that were created by this typographical error.

1. Joint Promulgation of These Regulations by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (NMFS)

Four commenters urged the Service and NMFS to coordinate their efforts so as to develop similar or identical requirements if each chose to develop its own regulations, to have NMFS adopt the Service's regulations, or to promulgate joint regulations. Certain species of fish, whales, seals, sea turtles, and other marine species listed as endangered or threatened under the ESA are under the jurisdiction of NMFS (50 CFR Parts 222 and 227). All of the ESA-listed marine mammals are subject to the Marine Mammal Protection Act (MMPA), however, which prohibits, except for scientific research, any takings of endangered or threatened species because they are considered "depleted" within the meaning of the MMPA, 16 U.S.C. 1371(a)(3)(B). ESA incidental take permits therefore may be available for only a few of the species under the jurisdicition of NMFS.

The Service agrees that coordination with NMFS on incidental take permit issues is important. The Service has consulted with NMFS throughout the process of drafting these regulations in order to ensure that the final regulations take into account the special aspects of NMFS's responsibility for regulating marine species and therefore are suitable for adoption by NMFS. The final regulations reflect this effort. NMFS will consider adopting the Service's regulations for species under its jurisdiction at a later date.

2. San Bruno Mountain Permit as a Model

The only incidental take permit that the Service has processed to date is associated with residential and commerical development on San Bruno Mountain in the San Francisco metropolitan area. The legislative history of the 1982 incidental take permit amendment states that the San Bruno Mountain plan served as the model for the amendments to section 10(a) of the ESA. H.R. Rep. No. 835, 97th Cong., 2nd Sess. 31 (1982) (hereafter "Conf. Rep. at ____"). Several commenters asserted, however, that the San Bruno plan is uncommonly complex and controversial and is therefore not a proper model for the Service's regulations. These commenters cited the difficulty of extrapolating from the San Bruno experience to other situations and activities.

Congress, not the Service, modeled the section 10(a) incidental take permit amendment on the San Bruno Mountain project. The courts that have reviewed and upheld the San Bruno incidental take permit agree that Congress intended that project to serve as a model. *See, e.g., Friends of Endangered Species* v. *Jantzen*, 76. F.2d 976 (9th Cir. 1985). The Service does, of course, have the discretion and the responsibility to implement the requirements of section 10(a) in regulations that are not only consistent with section 10(a), but which are also flexible and versatile. In drafting the regulations, the Service has naturally drawn upon its experience in processing and granting the San Bruno permit. The Service believes that the final regulations, which are largely identical to the express language of section 10(a), will accommodate projects that differ substantially from the San Bruno project in size; planned duration; the number of different local, State, and Federal agencies that have jurisdiction over some aspect of the project; or the number of listed and unlisted species that may be involved. The promise offered by the incidental take amendment—a means of reconciling conflicts which would otherwise exist between development and endangered species conservation—is available to a large variety of projects, provided they protect and conserve the affected species.

3. An all-inclusive Final Rule

Several commenters encouraged the Service to develop "cookbook" regulations that would include specific procedures, types of alternatives to be considered, detailed criteria and definitions, and a number of other items to cover the entire range of incidental take permit applications that might be filed. These commenters believed this approach would protect applicants from

arbitrary or inordinate requirements and protect listed species from exploitation. The Service recognizes that the incidental take permit provisions will have numerous and diverse applications, and that the administration of the provisions will require considerable ingenuity and flexibility. The wide-ranging experience of the Service in managing fish, wildlife, and plant resources has demonstrated, however, that it is neither possible nor practical to provide for every situation that might occur through the promulgation of detailed regulations such as the commenters suggested. Broader regulations will ensure that the Service is able to handle all incidental take situations that arise. The Service has therefore chosen to promulgate the final regulations in relatively broad terms consistent with the statutory language and Congressional intent.

It should be noted that the Service processed the complex San Bruno Mountain incidental take permit application and negotiated the implementing agreement among the involved parties without the benefit of incidental taking regulations and solely on the basis of the language of section 10(a), as amended.

4. Consideration of Unlisted Species in Conservation Plans

Several commenters addressed the issue of whether a conservation plan submitted in support of an incidental take permit application may (or should or must, depending upon the commenter) consider the impacts of the proposed activity on unlisted as well as listed species. While the proposed regulation was silent on this issue, its preamble quoted pertinent portions of the Conference Report. That language demonstrates Congressional intent that treatment of unlisted species in conservation plans be voluntary.

It also made clear however, that incidental take permit applicants will benefit in many, if not most, instances from consideration of unlisted species:

> Although the conservation plan is keyed to the permit provisions of the Act, which only apply to listed species, the Committee intends that Conservation plans may address both listed and unlisted species.
>
> The Committee intends that the Secretary may utilize this provision to approve conservation plans which provide long-term commitments regarding the conservation of listed as well as unlisted species and long-term assurances to the proponent of the conservation plan that the terms of the plan will be adhered to and that further mitigation requirements will only be imposed in accordance with the terms of the plan. In the event that an unlisted species addressed in an approved conservation plan is subsequently listed pursuant to the Act, no further mitigation requirements should be imposed if the conservation plan addressed the conservation of the species and its habitat as if the species were listed pursuant to the Act.

[Conf. Rep. at 30]. In other words, failure to consider an unlisted species in a conservation plan exposes the permit applicant to the risk that if the species is subsequently listed, the activities covered by the permit might have to be halted pending amendment of the incidental take permit to incorporate the newly listed species.

The final regulations therefore do not impose a requirement that unlisted species, whether candidate, proposed, or not be considerd in a conservation plan. The regulations do, however, refer explicity to the option of considering unlisted species in order to encourage proponents of conservation plans to do so.

5. Interaction of Sections, 7, 9, and 10 of the Endangered Species Act

Numerous commenters raised issues concerning the interaction of the section 10(a) incidental take permit provision with the requirement in section 7(a)(2) for Federal interagency consultation on actions that may affect listed species and the prohibition in section 9 on takings of listed species. These comments were engendered in large part by the fact that section 7 was also affected by the 1982 amendments to the Act.

A few commenters asserted that because incidental take permit applicants are private parties, no section 7 consultation will be required with respect to an incidental take permit and associated conservation plan. This is clearly wrong, for any action undertaken pursuant to such a permit would be an action authorized by a Federal agency, the U.S. Fish and Wildlife Service, and the permit decision would therefore be subject to the section 7(a)(2) consultation requirement. Moreover, Congress expressly linked incidental take permits with the consultation requirement by including one of the section 7(a)(2) standards as a necessary criterion for issuing an incidental take permit. [Conf. Rep. at 29–30; H.R. Rep. No. 567, 97th Cong., 2nd Sess. 31 (1982)]. The section 10(a)(2)(B)(iv) criterion, whether "the taking will . . . appreciably reduce the likelihood of the survival and recovery of the species in the wild," is identical to the Service's regulatory definition of the section 7(a)(2) "jeopardize the continued existence of" standard (See 50 CFR 402.03). Thus, section 10(a) reinforces the consultation requirement with respect to incidental take permits by requiring a non-jeopardy finding (or a jeopardy finding with reasonable and prudent alternatives that are implemented by the Federal agency or applicant) as a precondition to issuance of a permit.

Other commenters discussed the interrelationship of section 10(a) and section 7(b)(4), which refers to incidental taking identified in section 7(a)(2) consultations that have resulted in "no jeopardy" opinions, including the issue of whether section 7(b)(4) empowers the Secretary to recommend substantial alternatives to a proposed project where a no jeopardy opinion has been prepared for the project as originally planned. Section 7(b)(4) was added to the Act and section 7(o) was amended:

> To resolve the situation in which a Federal agency or a permit or license applicant has been advised that the proposed action will not violate section 7(a)(2) of the Act but the proposed action will result in the taking of some species incidental to that action—a clear violation of section 9 of the Act which prohibits any taking of a species. The Federal agency or permit or license applicant is then confronted with the dilemma of having a biological opinion which permits the activity to proceed but is, nevertheless, proscribed from incidentally taking any species even though the incidental taking was contemplated in the biological opinion and determined not to be violation of section 7(a)(2)

[H.R. Rep. No. 567, 97th Cong., 2nd Sess. 28 (1982)]. Section 7(b)(4) provides that if section 7(a)(2) consultation results in a "no jeopardy" opinion, yet the proposed action would nevertheless involve incidental taking of a listed species but at a level low enough so that it would not violate section 7(a)(2), the Secretary must provide a written statement that:

> (i) Specifies the impact of such incidental taking on the species,
>
> (ii) Specifies those reasonable and prudent measures that the Secretary considers necessary or appropriate to minimize such impacts, and
>
> (iii) Sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with to implement the measures specified under (ii).

Section 7(o)(2) further provides that any incidental taking in compliance with the terms and conditions set forth in section 7(b)(4)(iii) shall not be a taking prohibited by the Act or its implementing regulations.

One commenter argued that the section 7(b)(4) "reasonable and prudent measures" specified to minimize the impact of the incidental taking can include substantial alternatives to the proposed action and that the Service

would therefore be obliged to recommend alternatives to a proposed project that would cause incidental takes even though it meets the section 7(a)(2) standard. The Service notes that if consultation demonstrates that a proposed action is likely to jeopardize the continued existence of a listed species, or result in the destruction or adverse modification of critical habitat, the Secretary must, under section 7(b)(3)(A), suggest "reasonable and prudent alternatives" that would not violate section 7(a)(2). Section 7(b)(3)(A) *Alternatives* may involve substantial changes in the routing and design of a project so long as they can be implemented in a manner consistent with the intended purpose of the proposed action. Section 7(b)(4) reasonable and prudent *measures*, on the other hand, must be limited to minor design changes that would not substantially alter the project as proposed. The Service therefore disagrees with the commenter.

Section 10(a)(2)(A)(iii) does require that each conservation plan submitted in support of an incidental take permit application must identify and analyze alternatives to the incidental taking and discuss why they are not being utilized. This provision does not, however, authorize the Service to impose one of these alternatives on an applicant for an incidental take permit. Rather, without the concurrence of the permit applicant, the Service's only recourse upon receiving an inadequate plan is to deny the permit application. Such a denial must be in accordance with § 13.21(d) and will detail the reasons for the denial. Parties so denied may appeal the Service's decision in accordance with § 13.32, addressing the Service's reasons therefore and may provide new information or justification why the action in question should not have been taken.

One commenter urged the Service to employ not only the jeopardy standard, but also the adverse modification of critical habitat standard of section 7(a)(2) as a criterion for determining whether to grant an incidental take permit. The Service has not accepted this comment because it was not included by Congress as one of the permit issuance criteria in section 10(a)(2)(B). The Service agrees, however, that since all incidental take permit applications will be subject to section 7(a)(2) consultation, they would not be approved if they resulted in the destruction or adverse modification of the critical habitat of a listed species.

6. Interaction With Other Statutes

Several commenters expressed concern that the Service had exceeded its statutory authority under the ESA in referring to the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act in the preamble to the proposed rule (48 FR 31418). As discussed previously in this notice, that language is in fact quoted from the Conference Report on the 1982 amendments to the Endangered Species Act, though it was inadvertently typeset as if it were not a quotation. The essential observation made by the Conference Committee is extremely useful: Individual species should not be viewed in isolation. Neither should the section 10(a) requirements be viewed in isolation from the other statutory and regulatory requirements that may apply to the proposed project. Section 10(a) does not itself expressly require compliance with such laws as the National Environmental Policy Act, the Clean Water Act, or the Fish and Wildlife Coordination Act, but it provides an excellent opportunity for a project proponent to prepare and implement a comprehensive, integrated plan that addresses for the present and for the future all of the various requirements that apply to the project. In the words of the Conference Committee, section 10(a) will "encourage creative partnerships between public and private sectors and among governmental agencies in the interest of species and habitat conservation." [Conf. Rep. at 30].

7. Monitoring Implementation of Conservation Plans

One commenter argued that both the applicant and the Service should monitor the implementation of a conservation plan in order to ensure that its requirements and those of section 10(a) are met. Such monitoring can also serve to identify areas in which modification of a conservation plan may be necessary, particularly with incidental take permits of long duration. The Service agrees. Sections 17.22(b)(1)(iii)(B), 17.22(b)(3), 17.32(b)(1)(iii)(B), and 17.32(b)(3) have therefore been revised to require that conservation plans specify the monitoring measures to be used and to authorize imposition of necessary monitoring as a condition of each permit.

8. Modification of Conservation Plans

The same commenter noted that the proposed regulations contained no express provisions pertaining to modifications in conservation plans required by changed or unforeseen circumstances. The Service agrees that such a provision is needed. As stated in the Conference Report:

> . . . circumstances and information may change over time and . . . the original plan might need to be revised. To address this situation, the committee expects that any plan approved for a long-term permit will contain a procedure by which the parties will deal with unforseen circumstances.

[Conf. Rep. at 31]. The Service believes that, while such provisions may be of most value for long-term permits, circumstances requiring modification of a conservation plan could arise even during the life of a permit with a relatively short term. Incorporation of modification procedures into a conservation plan at the outset should ensure both that the affected species will be conserved regardless of changed conditions and that the applicant's activities are not unduly interrupted when the new conditions take effect. Sections 17.22(b)(1)(iii)(B) and 17.32(b)(1)(iii)(B) therefore require conservation plans to include specific measures for addressing unforeseen circumstances and §§ 17.22(b)(2)(iii) and 17.32(b)(2)(iii) make the existence of these measures a precondition to permit issuance.

9. Other Elements of Conservation Plans

Several parties commented that the statement in section 10(a)(2)(A)(iv) of the Act that a conservation plan must include "such other measures that the Secretary may require" obliges the Service to include in these regulations a full list of the measures the Service may so require. Other commenters asked that examples of such measures be included in the regulations, while still others asserted that this provision must be deleted from the regulations. Still another commenter suggested that this provision will be workable only if the Service is available for pre-application consultation and advice as to measures that might be required. The Service agrees with he latter commenter while respectfully disagreeing with the other commenters.

As noted previously in this notice, the Service has declined to promulgate exhaustive, "cookbook" regulations detailing every possible element that could be required in a conservation plan. The variety of projects that might be the subject of a conservation plan is wide, and features appropriate for some conservation plans will be unworkable for others. It is unrealistic to think the Service could develop a list of conservation plan elements applicable to all potential incidental take permits.

Congress, however, modeled section 10(a), at least generally, after the San Bruno plan and was well aware that the Service and the San Bruno permit applicants engaged in extensive pre-application discussions extending well over a year. The Service believes a sensible and practical reading of section 10(a)(2)(A)(iv) is that the unique and, in most cases, fairly complex nature of an incidental take permit will require discussions between a potential applicant and the Service. Through this process, the Service will identify specific measures, in addition to those listed in section 10(a)(2)(A)(i) through (iii), that are necessary and appropriate for the proposes of the conservation plan.

10. Public Notice of and Public Comment on Incidental Take Permit Applications

Section 10(a)(2)(B) of the ESA mandates an opportunity for public comment prior to any decision on an incidental take permit application. Several commenters expressed concern that the proposed regulations did not adequately implement this requirement. They noted that section 10(c) also requires public notice and comment for any section 10 endangered species permit application.

The Service agrees that the ESA requires notice and an opportunity for comment for these permit applications and has revised the introductory paragraphs to §§ 17.22, 17.23 and 17.32(b) accordingly.

11. Permit Conditions

One commenter argued that the Service is under a duty, in imposing reporting requirements as a permit condition, to rely upon existing reporting requirements to the maximum extent practicable. This commenter relied upon legislative history indicating that reporting requirements imposed under section 7(b)(4), to allow monitoring of the impact of incidental taking identified in section 7(a)(2) consultation, should be incorporated into existing reporting requirements where possible. [H.R. Rep. No. 567, 97th Cong., 2nd Sess. 26–27 (1982)]. The Service agrees that this Congressional directive is equally applicable to reporting requirements established for incidental take permits, as reflected in §§ 17.22(b)(3) and 17.32(b)(3) of the final rule.

Another party stated that the reference in proposed §§ 17.22(b)(3) and 17.32(b)(3) to "terms and conditions . . . necessary to carry out the purposes of the permit" might convey the impression that terms and conditions designed to ensure compliance with the species conservation goal of the conservation plan would not be appropriate. In order to make clear that permit conditions relating to conservation of the affected species will be imposed where necessary, the phrase "and the conservation plan" has been added to final §§ 17.22(b)(3) and 17.32(b)(3).

12. Duration of Permits

Congress clearly intended to provide for long-term incidental take permits where needed. [Conf. Rep at 31]. One commenter was concerned, however, that the proposed regulations improperly implied that the only issue involved in deciding on a request for a long-term permit is whether the applicant needs the assurance of a long-term permit in order to obtain financing. The Service did not intend to imply that financing of the project was the only issue involved in setting the duration of the permit.

The Conference Report states:

> Significant development projects often take many years to complete and permit applicants may need long-term permits. In this situation, and in order to provide sufficient incentives for the private sector to participate in the development of such long-term conservation plans, plans which may involve the expenditure of hundreds of thousands if not millions of dollars, adequate assurances must be made to the financial and development communities that a section 10(a) permit can be made available for the life of the project.
>
> The Secretary is vested with broad discretion in carrying out the conservation plan provision to determine the appropriate length of any section 10(a) permit issued pursuant to this provision in light of all of the facts and circumstances of each individual case. Permits of 30 or more years duration may be appropriate in order to provide adequate assurances to the private sector to commit to long-term funding for conservation activities or long-term commitments to restrictions on the use of land. It is recognized that in issuing such permits, the Secretary will, by necessity, consider the possible positive and negative effects associated with permits of such duration.
>
> The Secretary, in determining whether to issue a long-term permit to carry out a conservation plan should consider the extent to which the conservation plan is likely to enhance the habitat of the listed species or increase the long-term survivability of the species or its ecosystem.

[Conf. Rep. at 31]. Final § 17.22(b)(4) and 17.32(b)(4) have been revised to be consistent with the Conference Report.

13. Permits for Activities of Short Duration and/or Limited Scope

A related issue concerns permits for takings of listed species incidental to activities that will be relatively short in duration and/or that will affect a limited area that comprises only a small portion of a listed species' entire range. The term of the San Bruno permit is 30 years and its conservation plan covers over 3000 acres, including the great majority of the habitats of the species. Other incidental take permit applications may, however, involve considerably shorter terms and involve activities that would affect smaller areas and only portions of a species' range. The Service believes that Congress did not intend to exclude projects from the incidental take provisions of section 10(a) merely because the projects were of more limited duration or geographical scope. Final §§ 17.22(b)(2) and 17.32(b)(2) have been revised to make this explicit. In particular, the Director will consider whether the mitigation measures in the conservation plan and the funding for implementing the plan are commensurate with the duration of the project and its geographic scope, including the amount of listed species habitat that is involved and the degree to which listed species and their habitats are affected. Mitigation throughout the entire range of a listed species probably would not be required for a proposed project that would affect only a small portion of that range and have a minor impact on the species as a whole. That a project might be completed within a short time and affect only a portion of a species' habitat would not, however, relieve the Director of his duty under sections 7(a)(2) and 10(a)(2)(B)(iv) of the Act and §§ 17.22(b)(2)(iv) and 17.32(b)(2)(iv) of the regulations to ensure that no jeopardy to the species would ensue from issuance of the permit.

14. Objection to Permit Issuance

Section 17.22 contains explicit provisions for objecting to the issuance of an an endangered species permit and for notification to objectors of the impending issuance of that permit. One commenter suggested that § 17.32 be revised to include an objection provision. The Service has not accepted this suggestion because threatened species are less vulnerable than are endangered species to potential adverse impacts from permitted activities. Advance notice of permit issuance is thus not necessary.

15. Appeals

Several commenters noted the need for provisions for appealing the suspension or revocation of a permit or the terms or conditions of a permit. There should be considerable contact and discussion between an applicant and the Service both prior to and during the Service's review of an application for an incidental take permit. Should a permit nonetheless be issued containing

terms or conditions unacceptable to the permittee, or should a permit be suspended or revoked during its term, the permittee may appeal the action under the provisions of 50 CFR 13.32.

B. Plant Regulations

1. Exemption for Certain Official Duties

An exemption from the § 17.61(c)(1) prohibition on removal and reduction to possession of endangered plants from areas under Federal jurisdiction has been added at § 17.61(c)(2) to allow certain designated officials to care for, dispose of, or salvage specimens without a permit when acting in the course of their official duties. Exemptions from the § 17.61(c)(1) prohibition have been added at §§ 17.61(c)(3) and 17.71(b), which allow qualified employees of State conservation agencies, party to a Cooperative Agreement with the Service in accordance with section 6(c) of the ESA, to conduct the activities specified in that Cooperative Agreement.

2. Describing Location of Removal and Reduction to Possession in Permit Application

Existing §§ 17.62(a)(1)(iii) and 17.72(a)(1)(iii) require applicants for permits to conduct otherwise prohibited activities with respect to listed plants to describe the location from which the plants were or will be taken. The Service proposed to revise these sections to require further information where removal and reduction to possession of a listed plant from an area under Federal jurisdiction would be involved. Comments received on this aspect of the proposed regulations indicate that separate treatment of the latter information requirement is needed. The final regulations therefore include new §§ 17.62(a)(1)(iv) and 17.72(a)(1)(iv) that require separate information with respect to removal and reduction from an area under Federal jurisdiction.

3. Removal and Reduction to Possession of Seeds and Cultivated Plants

A few commenters observed that the proposed regulations did not appear to apply to seeds and cultivated plants, which are treated in §§ 17.62(a)(2) and 17.72(a)(2). This was an inadvertent omission. Final §§ 17.62(a)(2)(v) and 17.72(a)(2)(v) contain the same location information requirements with respect to removal and reduction to possession of seeds and cultivated plants from an area under Federal jurisdiction that are included in §§ 17.62(a)(1)(iv) and 17.72(a)(1)(iv) for listed plants.

4. Explanation of "Remove and Reduce to Possession"

While no commenter raised the issue, the Service believes that an explanation of its interpretation of the phrase "remove and reduce to possession" will be beneficial. Based upon the legislative history of the 1982 amendments, the Service has concluded that section 9(a)(2)(B) was intended to proscribe the removal of an endangered plant when combined with a taking of possession. Accordingly, a person who removes an endangered plant from its location on an area under Federal jurisdiction and holds it as his/her own would violate section 9 of the ESA. Examples of this activity would be plant collectors, persons seeking a transplant to their own property, and those gathering seeds or cuttings. The destruction of a plant on an area under Federal jurisdiction would not, however, be a violation of section 9 of the ESA, since no taking of possession would have occurred.

Removal incident to purposes other than taking of possession is likewise not proscribed. An example of behavior not prohibited would be development activities that physically displace an endangered plant. These activities would not violate section 9 of the ESA.

A second issue is whether a violation of the ESA occurs when a person receives a plant that has been illegally reduce to possession by someone else. Section 9(a)(1) of ESA, which lists prohibited actions in regard to endangered fish or wildlife, makes it unlawful to possess such fish or wildlife after an illegal taking or importation. This prohibition applies whether or not the fish or wildlife possessed are being transported in interstate commerce or were received in intrastate commerce. Section 9(a)(2) of the ESA, which sets forth prohibited acts with regard to listed plants, does not prohibit their possession after an illegal taking or importation. It does prohibit their receipt or shipment in interstate or foreign commerce and in the course of a commercial activity, but does not cover purely intrastate commercial activities or non-commercial interstate shipment and receipt. However, the Lacey Act amendments of 1981 make it unlawful for any person "to import, export, transport, sell, receive, acquire, or purchase any fish or wildlife or plant taken or possessed in violation of any law, treaty, or regulation of the United States . . ." 16 U.S.C. 3372(a)(1). Thus, while receiving an unlawfully taken endangered plant may not violate the ESA, it would violate the Lacey Act, as amended.

III. Miscellaneous

Section 13.12(b) is amended by adding the permit for incidental taking now available at 17.22(b)(1).

Sections 17.22(c) and 17.32(c) are redesignated as 17.22(a)(3) and 17.32(a)(3), respectively, and altered slightly to make them consistent with each other and to make clear that each permit issued pursuant to these sections shall contain a condition requiring reporting of escaped wildlife covered by the permit.

New 50 CFR 17.62(a)(3)(iii) and 17.72(a)(3)(iii) are added in compliance with the Paperwork Reduction Act, 44 U.S.C. 3507.

Required Determinations

The Service has determined that these final regulations are categorically excluded for further National Environmental Policy Act (NEPA) requirements. Part 516 of the Departmental Manual, Chapter 6 Appendix I, section A(3) categorically excludes the issuance of regulatory procedures when the impacts are limited to administrative or technological effects.

The Department of the Interior has determined that this is not a major rule under Executive Order 12291, nor does it have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act. The potential applicants are not identified as small business in the Regulatory Flexibility Act. The Service anticipates that fewer than 10 permit applications will be received annually. The Determination of Effects on this proposed rule is available from the individual identified under the section "**FOR FURTHER INFORMATION CONTACT.**"

Information Collection

The information collection requirements contained in this Part 17 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1018–0022.

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Penalties, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture) Regulations promulgation.

For the reasons set out in the preamble, Subchapter B, Chapter 1 of

Title 50, Code of Federal Regulations is amended as follows:

PART 13—GENERAL PERMIT PROCEDURES

The authority citation for Part 13 continues to read as follows:

Authority: 18 U.S.C. 42; sec. 4, Pub. L. 97–79, 95 Stat. 1074 (16 U.S.C. 3373); sec. 7, Pub. L. 97–78, 95 Stat. 1078 (16 U.S.C. 3376); sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 704); sec. 3(h)(3), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712); sec. 2, 54 Stat. 251, as amended by sec. 9, Pub. L. 95–616, 92 Stat. 3114 (16 U.S.C. 668a); sec. 102, 76 Stat. 73 (19 U.S.C. 1202), "Schedule 1, Part 15D, Headnote 2(d), Tariff Schedules of the United States"; sec. 9(d), Pub. L. 93–205, 87 Stat. 893 (16 U.S.C. 1538(d)); sec. 6(a)(1), Pub. L. 96–159, 93 Stat. 1228 (16 U.S.C. 1537a); E.O. 11911, 41 FR 15683, 3 CFR, 1976 Comp., p. 112; sec. 10, Pub. L. 93–205, 87 Stat. 896, as amended by secs. 2 and 3, Pub. L. 94–359, 90 Stat. 3760; sec. 7, Pub. L. 96–359, 90 Stat. 911 and 912; sec. 5, Pub. L. 95–632, 92 Stat. 3760; sec. 7, Pub. L. 96–159, 93 Stat. 1230 (16 U.S.C. 1539); sec. 11, Pub. L. 93–205, 87 Stat. 897, as amended by sec. 6(4), Pub. L. 95–632, 92 Stat. 3761 (16 U.S.C. 1504(b)(2)(f)); sec. 13(d), 86 Stat. 905, amending 85 Stat. 480 (16 U.S.C. 742j–1); Title 1, sec. 112, Pub. L. 92–522, 86 Stat. 1042, as amended by Title II, sec. 201(e), Pub. L. 96–470, 94 Stat. 2241 (16 U.S.C. 1382); 65 Stat. 290 (31 U.S.C. 483(a)).

§ 13.12 [Amended]

1. Amend § 13.12(b) by removing the language at the entry for permits under § 17.22 and inserting the following § 13.12 information requirements on permit applications.

* * * * *

(b) * * *

Scientific, enhancement of propagation or survival, incidental taking for wildlife.

* * * * *

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS—[AMENDED]

Accordingly, under the authority of 16 U.S.C. 1538–39, Part 17, Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359; 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531, *et seq.*), unless otherwise noted.

§ 17.3 [Amended]

2. In § 17.3 add, in alphabetical order, the following definition:

* * * * *

"Incidental taking" means any taking otherwise prohibited, if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

* * * * *

3. Section 17.22 is revised to read as follows:

§ 17.22 Permits for scientific purposes, enhancement of propagation or survival, or for incidental taking.

Upon receipt of a complete application, the Director may issue a permit authorizing any activity otherwise prohibited by § 17.21, in accordance with the issuance criteria of this section, for scientific purposes, for enhancing the propagation or survival, or for the incidental taking of endangered wildlife. Such permits may authorize a single transaction, a series of transactions, or a number of activities over a specific period of time. (See § 17.32 for permits for threatened species.) The Director shall publish notice in the **Federal Register** of each application for a permit that is made under this section. Each notice shall invite the submission from interested parties, within 30 days after the date of the notice, of written data, views, or arguments with respect to the application. The 30-day period may be waived by the Director in an emergency situation where the life or health of an endangered animal is threatened and no reasonable alternative is available to the applicant. Notice of any such waiver shall be published in the **Federal Register** within 10 days following issuance of the permit.

(a)(1) *Application requirements for permits for scientific purposes or for the enhancement of propagation or survival.* Applications for permits under this paragraph must be submitted to the Director, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, Virginia 22201, by the person wishing to engage in the activity prohibited by § 17.21. Each application must be submitted on an official application (Form 3–200) provided by the Service and must include as an attachment, all of the following information:

(i) The common and scientific names of the species sought to the covered by the permit, as well as the number, age, and sex of such species, and the activity sought to be authorized (such as taking, exporting, selling in interstate commerce);

(ii) A statement as to whether, at the time of application, the wildlife sought to be covered by the permit (A) is still in the wild, (B) has already been removed from the wild, or (C) was born in captivity;

(iii) A resume of the applicant's attempts to obtain the wildlife sought to be covered by the permit in a manner which would not cause the death or removal from the wild of such wildlife;

(iv) If the wildlife sought to be covered by the permit has already been removed from the wild, the country and place where such removal occurred; if the wildlife sought to be covered by the permit was born in captivity, the country and place where such wildlife was born;

(v) A complete description and address of the institution or other facility where the wildlife sought to be covered by the permit will be used, displayed, or maintained;

(vi) If the applicant seeks to have live wildlife covered by the permit, a complete description, including photographs or diagrams, of the facilities to house and/or care for the wildlife and a resume of the experience of those person who will be caring for the wildlife;

(vii) A full statement of the reasons why the applicant is justified in obtaining a permit including the details of the activities sought to be authorized by the permit;

(viii) If the application is for the purpose of enhancement of propagation, a statement of the applicant's willingness to participate in a cooperative breeding program and to maintain or contribute data to a studbook;

(ix) The information collection requirements contained in this paragraph have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018–0022. This information is being collected to provide information necessary to evaluate permit applications and make decisions, according to criteria established in various Federal wildlife and plant conservation statutes and regulations, on the issuance or denial of permits. The obligation to respond is required to obtain or retain a permit.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a)(1) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in § 13.21(b) of this subchapter, the following factors:

(i) Whether the purpose for which the permit is required is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit;

(ii) The probable direct and indirect effect which issuing the permit would have on the wild populations of the

wildlife sought to be covered by the permit;

(iii) Whether the permit, if issued, would in any way, directly or indirectly, conflict with any known program intended to enhance the survival probabilities of the population from which the wildlife sought to be covered by the permit was or would be removed;

(iv) Whether the purpose for which the permit is required would be likely to reduce the threat of extinction facing the species of wildlife sought to be covered by the permit;

(v) The opinions or views of scientists or other persons or organizations having expertise concerning the wildlife or other matters germane to the application; and

(vi) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application.

(3) *Permit conditions.* In addition to the general conditions set forth in Part 13 of this subchapter, every permit issued under this paragraph shall be subject to the special condition that the escape of living wildlife covered by the permit shall be immediately reported to the Service office designated in the permit.

(4) *Duration of permits.* The duration of permits issued under this paragraph shall be designated on the face of the permit.

(b)(1) *Application requirements for permits for incidental taking.* Applications for permits under this paragaph must be submitted to the Director, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, Virginia 22201, by the person wishing to engage in the activity prohibited by § 17.21(c). Each application must be submitted on an official application (Form 3–200) provided by the Service and must include as an attachment all of the following information:

(i) A complete description of the activity sought to be authorized;

(ii) The common and scientific names of the species sought to be covered by the permit, as well as the number, age, and sex of such species, if known;

(iii) A conservation plan that specifies: (A) The impact that will likely result from such taking; (B) what steps the applicant will take to monitor, minimize, and mitigate such impacts, the funding that will be available to implement such steps, and the procedures to be used to deal with unforeseen circumstances; (C) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not proposed to be utilized; and (D) such other measures that the Director may require as being necessary or appropriate for purposes of the plan;

(iv) The information collection requirements contained in this paragraph have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018–0022. This information is being collected to provide information necessary to evaluate permit applications. This information will be used to review permit applications and make decisions, according to criteria established in various Federal wildlife and plant conservation statutes and regulations, on the issuance or denial of permits. The obligation to respond is required to obtain or retain a permit.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether or not a permit should be issued. The Director shall consider the general criteria in § 13.21(b) of this subchapter and shall issue the permit if he finds that: (i) The taking will be incidental; (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (iii) the applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided; (iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; (v) the measures, if any, required under subparagraph (b)(1)(iii)(D) of this section will be met; and (vi) he has received such other assurances as he may require that the plan will be implemented. In making his decision, the Director shall also consider the anticipated duration and geographic scope of the applicant's planned activities, including the amount of listed species habitat that is involved and the degree to which listed species and their habitats are affected.

(3) *Permit conditions.* In addition to the general conditions set forth in Part 13 of this subchapter, every permit issued under this paragraph shall contain such terms and conditions as the Director deems necessary or appropriate to carry out the purposes of the permit and the conservation plan including, but not limited to, monitoring and reporting requirements deemed necessary for determining whether such terms and conditions are being complied with. The Director shall rely upon existing reporting requirements to the maximum extent practicable.

(4) *Duration of permits.* The duration of permits issued under this paragraph shall be sufficient to provide adequate assurances to the permittee to commit funding necessary for the activities authorized by the permit, including conservation activities and land use restrictions. In determining the duration of a permit, the Director shall consider the duration of the planned activities, as well as the possible positive and negative effects associated with permits of the proposed duration on listed species, including the extent to which the conservation plan will enhance the habitat of listed species and increase the long-term survivability of such species.

(c) *Objection to permit issuance.* (1) In regard to any notice of a permit application published in the **Federal Register**, any interested party that objects to the issuance of a permit, in whole or in part, may, during the comment period specified in the notice, request notification of the final action to be taken on the application. A separate written request shall be made for each permit application. Such a request shall specify the Service's permit application number and state the reasons why that party believes the applicant does not meet the issuance criteria contained in §§ 13.21 and 17.22 of this subchapter or other reasons why the permit should not be issued.

(2) If the Service decides to issue a permit contrary to objections received pursuant to paragraph (c)(1) of this section, then the Service shall, at least ten days prior to issuance of the permit, make reasonable efforts to contact by telephone or other expedient means, any party who has made a request pursuant to paragraph (c)(1) of this section and inform that party of the issuance of the permit. However, the Service may reduce the time period or dispense with such notice if it determines that time is of the essence and that delay in issuance of the permit would: (i) Harm the specimen or population involved; or (ii) unduly hinder the actions authorized under the permit.

(3) The Service will notify any party filing an objection and request for notice under paragraph (c)(1) of this section of the final action taken on the application, in writing. If the Service has reduced or dispensed with the notice period referred to in paragraph (c)(2) of this section, it will include its reasons therefore in such written notice.

§ 17.23 [Amended]

4. The introductory paragraph of § 17.23 is revised to read as follows:

Upon receipt of a complete application, the Director may issue a permit authorizing any activity otherwise prohibited by § 17.21, in

accordance with the issuance criteria of this section in order to prevent undue economic hardship. The Director shall publish notice in the **Federal Register** of each application for a permit that is made under this section. Each notice shall invite the submission from interested parties, within 30 days after the date of the notice, of written data, views, or arguments with respect to the application. The 30-day period may be waived by the Director in an emergency situation where the life or health of an endangered animal is threatened and no reasonable alternative is available to the applicant. Notice of any such waiver shall be published in the **Federal Register** within 10 days following issuance of the permit.

* * * * *

5. § 17.32 is revised to read as follows:

§ 17.32 Permits—general.

Upon receipt of a complete application the Director may issue a permit for any activity otherwise prohibited with regard to threatened wildlife. Such permit shall be governed by the provisions of this section unless a special rule applicable to the wildlife, appearing in § 17.40 to 17.48, of this part provides otherwise. Permits issued under this section must be for one of the following purposes: Scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational purposes, or incidental taking, or special purposes consistent with the purposes of the Act. Such permits may authorize a single transaction, a series of transactions, or a number of activities over a specific period of time.

(a)(1) *Application requirements for scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational purposes, or special purposes consistent with the purposes of the Act.* Applications for permits under this paragraph must be submitted to the Director, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, Virginia 22201, by the person wishing to engage in the prohibited activity. Each application must be submitted on an official application (Form 3–200) provided by the Service, and must include, as an attachment, as much of the following information which relates to the purpose for which the applicant is requesting a permit:

(i) The Common and scientific names of the species sought to be covered by the permit, as well as the number, age, and sex of such species, and the activity sought to be authorized (such as taking, exporting, selling in interstate commerce);

(ii) A statement as to whether, at the time of application, the wildlife sought to be covered by the permit (A) is still in the wild, (B) has already been removed from the wild, or (C) was born in captivity;

(iii) A resume of the applicant's attempts to obtain the wildlife sought to be covered by the permit in a manner which would not cause the death or removal from the wild of such wildlife;

(iv) If the wildlife sought to be covered by the permit has already been removed from the wild, the country and place where such removal occurred; if the wildlife sought to be covered by permit was born in captivity, the country and place where such wildlife was born;

(v) A complete description and address of the institution or other facility where the wildlife sought to be covered by the permit will be used, displayed, or maintained;

(vi) If the applicant seeks to have live wildlife covered by the permit, a complete description, including photographs or diagrams, of the facilities to house and/or care for the wildlife and a resume of the experience of those persons who will be caring for the wildlife;

(vii) A full statement of the reasons why the applicant is justified in obtaining a permit including the details of the activities sought to be authorized by the permit;

(viii) If the application is for the purpose of enhancement of propagation, a statement of the applicant's willingness to participate in a cooperative breeding program and to maintain or contribute data to a studbook;

(ix) The information collection requirements contained in this paragraph have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018–0022. This information is being collected to provide information necessary to evaluate permit applications and make decisions, according to criteria established in various Federal wildlife and plant conservation statutes and regulations, on the issuance or denial of permits. The obligation to respond is required to obtain or retain a permit.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a)(1) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in § 13.21(b) of this subchapter, the following factors:

(i) Whether the purpose for which the permit is required is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit;

(ii) The probable direct and indirect effect which issuing the permit would have on the wild populations of the wildlife sought to be covered by the permit;

(iii) Whether the permit, if issued, would in any way, directly or indirectly, conflict with any known program intended to enhance the survival probabilities of the population from which the wildlife sought to be covered by the permit was or would be removed;

(iv) Whether the purpose for which the permit is required would be likely to reduce the threat of extinction facing the species of wildlife sought to be covered by the permit;

(v) The opinions or views of scientists or other persons or organizations having expertise concerning the wildlife or other matters germane to the application; and

(vi) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application.

(3) *Permit conditions.* In addition to the general conditions set forth in Part 13 of this subchapter, every permit issued under this paragraph shall be subject to the special condition that the escape of living wildlife covered by the permit shall be immediately reported to the Service office designated in the permit.

(4) *Duration of permits.* The duration of permits issued under this paragraph shall be designated on the face of the permit.

(b)(1) *Application requirements for permits for incidental taking.* (i) Applications for permits under this paragraph must be submitted to the Director, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, Virginia 22201, by the person wishing to engage in the activity prohibited by § 17.31.

(ii) The director shall publish notice in the **Federal Register** of each application for a permit that is made under this section. Each notice shall invite the submission from interested parties, within 30 days after the date of the notice, of written data, views, or arguments with respect to the application.

(iii) Each application must be submitted on an official application

(Form 3–200) provided by the Service, and must include as an attachment, all of the following information:

(A) A complete description of the activity sought to be authorized;

(B) The common and scientific names of the species sought to be covered by the permit, as well as the number, age, and sex of such species, if known;

(C) A conservation plan that specifies: (*1*) The impact that will likely result from such taking; (*2*) what steps the applicant will take to monitor, minimize, and mitigate such impacts, the funding that will be available to implement such steps, and the procedures to be used to deal with unforeseen circumstances; (*3*) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not proposed to be utilized; and (*4*) such other measures that the Director may require as being necessary or appropriate for purposes of the plan.

(1) The information collection requirements contained in this paragraph have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018–0022. This information is being collected to provide information necessary to evaluate permit applications and make decisions, according to criteria established in various Federal wildlife and plant conservation statutes and regulations on the issuance or denial of permits. The obligation to respond is required to obtain or retain a permit.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether or not a permit should be issued. The Director shall consider the general criteria in § 13.21(b) of this subchapter and shall issue the permit if he finds that: (i) The taking will be incidental; (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (iii) the applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided; (iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; (v) the measures, if any, required under subparagraph (b)(1)(iii)(D) will be met; and (vi) he has received such other assurances as he may require that the plan will be implemented. In making his decision, the Director shall also consider the anticipated duration and geographic scope of the applicant's planned activities, including the amount of listed species habitat that is involved and the degree to which listed species and their habitats are affected.

(3) *Permit conditions.* In addition to the general conditions set forth in Part 13 of this subchapter, every permit issued under this paragraph shall contain such terms and conditions as the Director deems necessary or appropriate to carry out the purposes of the permit and the conservation plan including, but not limited to, monitoring and reporting requirements deemed necessary for determining whether such terms and conditions are being complied with. The Director shall rely upon existing reporting requirements to the maximum extent practicable.

(4) *Duration of permits.* The duration of permits issued under this paragraph shall be sufficient to provide adequate assurances to the permittee to commit funding necessary for the activities authorized by the permit, including conservation activities and land use restrictions. In determining the duration of a permit, the Director shall consider the duration of the planned activities, as well as the possible positive and negative effects associated with permits of the proposed duration on listed species, including the extent to which the conservation plan will enhance the habitat of listed species and increase the long-term survivability of such species.

§ 17.61 [Amended]

6. In § 17.61, paragraph (a) is amended by replacing the phrase "paragraphs (b) through (d)" with the phrase "paragraphs (b) through (e)."

7. Section 17.61 is amended by redesignating paragraphs (c) and (d) as (d) and (e), respectively, and by adding the following new paragraph (c):

§ 17.61 Prohibitions.

* * * * *

(c) *Remove and reduce to possession.* (1) It is unlawful to remove and reduce to possession any endangered plant from an area under Federal jurisdiction.

(2) Notwithstanding paragraph (c)(1) of this section, any employee or agent of the Service, any other Federal land management agency, or a State conservation agency, who is designated by that agency for such purposes, may, when acting in the course of official duties, remove and reduce to possession endangered plants from areas under Federal jurisdiction without a permit if such action is necessary to: (i) Care for a damaged or diseased specimen; (ii) dispose of a dead specimen; or (iii) salvage a dead specimen which may be useful for scientific study.

(3) Any removal and reduction to possession pursuant to paragraph (c)(2) of this section must be reported in writing to the U.S. Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 28006, Washington, D.C. 20005, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with written directions from the Service.

(4) Notwithstanding paragraph (c)(1) of this section, any qualified employee or agent of a State conservation agency which is a party to a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, who is designated by that agency for such purposes, may, when acting in the course of official duties, remove and reduce to possession from areas under Federal jurisdiction those endangered plants which are covered by an approved cooperative agreement for conservation programs in accordance with the Cooperative Agreement, provided that such removal is not reasonably anticipated to result in: (i) The death or permanent damage of the specimens; (ii) the removal of the specimen from the State where the removal occurred; or (iii) the introduction of the specimen so removed, or of any propagules derived from such a specimen, into an area beyond the historical range of the species.

* * * * *

8. In § 17.62, is amended by redesignating paragraphs (a)(1)(iv) through (a)(1)(vii) as paragraphs (a)(1)(v) through (a)(1)(viii) and by adding new paragraphs (a)(1)(iv), (a)(2)(v), and (a)(3)(iii) to read as follows:

§ 17.62 Permits for scientific purposes or for the enhancement of propagation or survival.

* * * * *

(a) * * *

(1) * * *

(iv) If the activities would involve removal and reduction to possession of a plant from an area under Federal jurisdiction, the year, State, county, or any other description such as place name, township, and range designation that will precisely place the location where the proposed removal and reduction to possession will occur, the name of the Federal entity having jurisdiction over the area, and the name, title, address, and phone number of the person in charge of the area.

* * * * *

(2) * * *

(v) If the activities would involve removal and reduction to possession of seeds from an area under Federal jurisdiction, the year, State, county or

any other description such as place name, township, and range designation that will precisely place the location where the proposed removal and reduction to possession will occur, the name of the Federal entity having jurisdiction over the area and the name, title, address, and phone number of the person in charge of the area.

(3) * * *

(iii) The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018–0022. This information is being collected to provide information necessary to evaluate permit applications and make decisions, according to criteria established in various Federal wildlife and plant conservation statutes and regulations, on the issuance or denial of permits. The obligation to respond is required to obtain or retain a permit.

* * * * *

9. Section 17.71 is amended by redesignating paragraph (b) as (c) and adding the following new paragraph (b):

§ 17.71 Prohibitions.

* * * * *

(b) In addition to any provisions of this Part 17, any employee or agent of the Service or of a State Conservation Agency which is operating a conservation program pursuant to the terms of a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, who is designated by that agency for such purposes, may, when acting in the course of official duties, remove and reduce to possession from areas under Federal jurisdiction those threatened species of plants which are covered by an approved Cooperative Agreement to carry out conservation programs.

* * * * *

10. In section 17.72, is amended by redesignating paragraphs (a)(1)(iv) through (a)(1)(vi) as paragraphs (a)(1)(v) through (a)(1)(vii) and by adding new paragraphs (a)(1)(iv), (a)(2)(iv), and (a)(3)(iii) to read as follows:

§ 17.72 Permits—general.

* * * * *

(a) * * *

(1) * * *

(iv) If the activities would involve removal and reduction to possession of a plant from an area under Federal jurisdiction, the year, State, county or any other description such as place name, township, and range designation that will precisely place the location where the proposed removal and reduction to possession will occur, the name of the Federal entity having jurisdiction over the area and the name, title, address, and phone number of the person in charge of the area.

* * * * *

(2) * * *

(iv) If the activities would involve removal and reduction to possession of seeds from an area under Federal jurisdiction, the year, State, county, or any other description such as place name, township, and range designation that will precisely place the location where the proposed removal and reduction to possession will occur, the name of the Federal entity having jurisdiction over the area and the name, title, address, and phone number of the person in charge of the area.

(3) * * *

(iii) The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018–0022. This information is being collected to provide information necessary to evaluate permit applications and make decisions, according to criteria established in various Federal wildlife and plant conservation statutes and regulations, on the issuance or denial of permits. The obligation to respond is required to obtain or retain a permit.

* * * * *

Dated: August 22, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–23104 Filed 9–27–85; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Correction

AGENCY: Fish and Wildlife Service.

ACTION: Final rule; correction.

The **Federal Register** document 85–17398, published July 24, 1985 (50 FR 30188), is corrected to add the following amendment.

§ 17.11 [Corrected]

4. Amend § 17.11(h) by amending the existing entries under FISHES for the Colorado squawfish and woundfin to read "Entire, except Salt and Verde R. drainages, AZ" (Colorado squawfish) and "Entire, except Gila R. drainage, AZ, NM" (woundfin) under the heading "Vertebrate population where endangered or threatened" instead of "Entire".

Dated: September 24, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–23226 Filed 9–27–85; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 23

Export of American Ginseng Harvested in 1985–1987 Seasons

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates international trade in certain animal and plant species. In general, export of wild specimens of plants listed in Appendix II of CITES may occur only if (1) the Scientific Authority (SA) has advised the permit-issuing Management Authority (MA) that such exports will not be detrimental to the survival of the species and will maintain the species throughout its range at a level consistent with its role in the ecosystems in which it occurs, and (2) the MA is satisfied that the plants were not obtained in violation of laws for protection of the species. Export of cultivated specimens of plants listed in Appendix II may occur only if the MA is satisfied that the plants were artificially propagated.

This final rule announces the U.S. Fish and Wildlife Service's MA and SA findings on export of American ginseng (*Panax quinquefolius*) from the United States. Until 1982 such findings were made annually on a State-by-State basis. In 1982, the Service revised guidelines and made multi-year findings covering the 1982, 1983, and 1984 harvest seasons (a season ends with the calendar year). The Service herein approves multi-year ginseng export from 16 States for the 1985, 1986, and 1987 harvest seasons. The Service continues to seek data and information on topics described in this rule as a basis for determining whether to initiate or to continue approval of export from States for subsequent seasons.

Monitoring State ginseng programs for 8 years has shown the Service that States from which ginseng export usually has been approved probably will continue to satisfy CITES requirements. To ensure that this is so, the Service plans to continue annual monitoring in accordance with the procedures described herein. This monitoring will

include the analysis of program reports available no later than May 31 each year from each State from which ginseng export is approved, to document the most recent harvest and current status of ginseng as managed in that State.

DATE: This rule is effective on September 30, 1985.

ADDRESS: Please send correspondence concerning this rule to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, 1000 North Glebe Road, Room 620, Arlington, Virginia 22201. Materials received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Management Authority: Mr. Thomas J. Parisot, Chief, Federal Wildlife Permit Office (FWPO), U.S. Fish and Wildlife Service (address above), telephone (703) 235–1937;

Export Permits: Mr. Richard K. Robinson, FWPO (address above), telephone (703) 235–1903;

Ginseng Program: Mr. S. Ronald Singer, FWPO (address above), telephone (703) 235–2418;

Scientific Authority: Dr. Charles Dane, Chief, Office of Scientific Authority, U.S. Fish and Wildlife Service, (Mail Stop Room 527, Matomic Bldg.), Washington, D.C. 20240, telephone (202) 653–5948.

SUPPLEMENTARY INFORMATION: Export from the United States of specimens of species listed in Appendix II of CITES may only occur under Federal permit or certificate issued upon approval of both the MA and SA, which functions are the responsibility of the U.S. Fish and Wildlife Service. The U.S. Department of Agriculture, Animal and Plant Health Inspection Service, is responsible for enforcing CITES for terrestrial (nonmarine) plants (see final rule of October 25, 1984, 49 FR 42907). This is the second of two publications concerning the Service's MA and SA findings on export of American ginseng taken in the 1985–1987 harvest seasons. The proposed rule was published in the **Federal Register** on June 24, 1985 (50 FR 26015), and planned to cover 1985 and subsequent seasons. However, based on the Service's detailed analysis of annual reports, export documents, and the 1985 ginseng applications from the States, indefinite multi-year findings seem premature, so again 3–year findings are made herein. The previous final rule for export of ginseng was published August 28, 1984 (49 FR 34020).

Since 1973, only root of *Panax quinquefolius* Linnaeus has been listed on Appendix II of CITES. In 1985, for reasons unrelated to the American ginseng trade, the Parties to CITES agreed to regulate not only whole specimens of most plants on Appendix II, but also most parts and derivatives of most Appendix II plants. As a consequence, the listing for ginseng needed restatement, and the Parties agreed that the listing for *Panax quinquefolius* only apply to its "roots and readily recognizable parts thereof" (see June 14, 1985, **Federal Register**, 50 FR 24918).

Comments and Information Received

The Service received comments on the proposed rule from two Federal agencies, two State agencies, and two private companies. Sixteen States reapplied for export approval under their ginseng programs (see Multi-year Findings below). Comments and information received by August 28, 1985, have been considered. The numbered items in these comments correspond with complete topics found below under SA and MA Criteria, respectively.

A. Scientific Authority

The Missouri Department of Conservation (MDC) commented that items 2, 3 and 5 respectively covering relative frequency, local abundance, and relative harvest intensity of ginseng seemed excessive, and recommended that at least items 2 and 3 be dropped. The Service has found these criteria useful in evaluating the status of this species, even if States maintain only approximate information and data on the topics. Wilcox Drug Company (WDC) suggested that the harvest season begin April 1. The Service continues to recommend that harvest only begin after fruits are ripe, so that seeds can be planted (see item 4).

The WDC also commented "We can only hope all states with populations of ginseng will eventually enact regulatory programs to protect the species" and expressed concern that ginseng with roots not destined for export might not be protected. It went on to say "It should be clarified state by state that all ginseng be protected or regulated by the state." States from which ginseng export is approved by the Service do regulate ginseng not destined for export to some extent (see Management Authority Criteria below). Although CITES only enables Federal regulation of import and export of specimens from the country (export can be denied if it would be detrimental to the survival of the species or would not maintain it at the appropriate level in its ecosystems), it does not prohibit a State from providing stricter conservation measures for American ginseng.

B. Management Authority

The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture and the Bureau of the Census of the U.S. Department of Commerce commented on the proposed requirement that exporters present a Commerce "Shippers Export Declaration" (SED) as a condition for ginseng export. Both agencies report that the SED must be filed only with U.S. Customs within 4 days after actual export. Although the Service therefore cannot require the SED to be submitted as part of the ginseng export package, the exporter must continue to submit this document to U.S. Customs.

The North Carolina Department of Agriculture (NCDA) expressed concern about the late date (June 24) of the proposed rule. The Service understands this concern and regrets the timing of the proposed and final rules. The Service initiated multi-year findings in part to alleviate this problem, and still hopes to begin long-term multi-year findings in 1988.

The MDC, Magee Natural Products (MNP), and WDC requested the MA to reconsider the following proposed requirements:

Item 3: "Dealer records required to show . . . name and address of seller/buyer of ginseng" and periodically provide such information to the State. This information may be necessary in some cases to verify the true source of roots in trade. However, periodic reporting of this information is not required by some States, and the Service will approve a program that allows names and addresses to be recorded by the dealer only on his or her own copy of the State reporting form when this information shall be made available to the State ginseng program manager upon request.

The NCDA plus the above three respondents commented that the following date was too early:

Item 4(a): "Ginseng unsold by December 31 of the harvest year must be weighed by the State" and receipted. A later date would be suitable for Federal needs and would better align with State programs. The Service, therefore, has moved the date to March 31 of the year after harvest.

The NCDA, MNP, and WDC also questioned the need for the following three items under MA Criteria:

Item 2: "Dealers . . . report such commerce to the State . . . every 30 days." The Service has reexamined this topic and will approve State programs that require dealers to report their

ginseng commerce to the State every 90 days (each quarter of the calendar year), although the State may require shorter time periods. A dealer's commerce from a State must be reported to each State in which the dealer is licensed or registered within 15 days of the end of the quarter. However, such reporting can be accomplished by the dealer submitting to the State a signed and dated photocopy of his or her commerce as recorded on State ginseng forms used by the dealer during the 90 days; no special report is needed for this purpose.

Item 4(b): Name and address of dealer on the State certificate of origin. An original dealer's signature is required to legally certify the statements on the form; however, the address is not necessary because such information is on the State's dealer application form. The Service therefore has deleted this requirement for the address.

Item 5: "State regulations that prohibit uncertified ginseng from entering or leaving the State." CITES requires that the MA be assured of the legality and source of the ginseng before it is permitted to be exported. In the United States, the MA is assured by a certificate of origin issued by the State of harvest. This system of certifying roots before they are moved from the State of origin was developed because there is no positive way of determining once source roots are removed from the State.

MNP and WDC expressed concern that such State laws and regulations prohibit dealers from accepting uncertified ginseng mailed interstate, a common and historic practice, and limit their business. They commented that ginseng received by mail could be returned by the dealer within a specified time to the State of origin for certification. To allow States and their ginseng dealers more flexibility in conducting this commerce and certification, while still maintaining effective regulation of the resource, the Service has modified its certification criterion as follows: The State has adopted and is implementing regulations that (a) prohibit export of its ginseng from the United States without certification from this State of origin (thus the dealer must successfully prove to the State of origin where the roots were harvested), and (b) require uncertified ginseng supplies to State-registered dealers to be returned to the State of origin within 30 calendar days for certification or the roots may not be exported from the country. Because the State of harvest has the responsibility to verify the source of ginseng being presented for certification, the State may continue to require that all roots harvested in that State be certified before leaving the State and that uncertified ginseng may not enter the State.

Scientific Authority Criteria

General criteria used by the SA in advising on whether export will not be detrimental to the survival of species are as follows (originally described in a notice of July 11, 1977, 42 FR 35800):

(1) Whether such export has occurred in the past and has not reduced numbers or distribution of the species, nor caused signs of ecological or behavioral stress within the species, or in other species of the affected ecosystems;

(2) Whether such export is expected to increase, remain constant, or decrease; and

(3) Whether the life history parameters of the species and the relevant structure and function of its ecosystem indicate that present or proposed levels of export will not appreciably reduce the numbers or distribution of the species, nor cause signs of ecological or behavioral stress within the species or in other species of the affected ecosystems.

For ginseng, the evaluation for nondetriment by the SA, in accordance with these criteria, will continue to be based on the following information for each affected State, to the extent it is available in annual reports (with sources, accuracy, and still-valid items in previous reports indicated) or from other suitable sources (slightly revised from the rule of October 4, 1982, 47 FR 43701):

(1) Historic, present, and potential distribution of wild ginseng by county, using State maps with county outlines; distribution of optimal natural habitat on a regional basis in the State, and description of recent trends in loss and/or protection of habitat; and map of locations and information on approximate acreage and percentage of the State's wild ginseng that is on statute-protected lands where collecting is permanently prohibited. (Ginseng is considered as wild if it occurs in naturally perpetuated habitat, where the species is naturally propagated or with only limited planting of wild seed by people and no subsequent tending of the species or habitat before harvest.);

(2) Map of the approximate number of density of wild ginseng populations per county or region, and information on the total number of wild ginseng localities in the State;

(3) Map of the average number of plants per population or patch, or local abundance of wild ginseng, per county or region of the State; map and information on the population trends per county or region, indicating if populations of wild ginseng are increasing, stable, decreasing, extirpated, or unknown; and discussion of any recent changes from previous years or difference from historical population sizes;

(4) A description of the State's annual harvest practices and controls on wild ginseng, including delimitation of harvest season (45 FR 69644, October 21, 1980; States are urged not to permit local harvest until fruits are ripe and seeds thus mature), and harvest requirements such as on minimum size or age of collected plants [3-leaf (3-prong) minimum recommended] and on planting their seeds;

(5) Map of the harvest intensity by county or region, indicating if collecting is heavy, moderate, light, none, or unknown, and discussion of any changes from previous years; information on the number of ginseng collectors (diggers) in the State, and on the amount of wild ginseng from the State harvested and amount certified for export, in pounds (dry weight) per year;

(6) Information on the average number of wild roots per pound (dry weight) harvested, preferably on a county or regional basis or, if not available, on a statewide basis; and an assessment of any trend in root sizes or number of wild roots per pound (dry weight) over previous years;

(7) A description of the State's ongoing research program on wild ginseng and its progress, including a summary of result obtained; and

(8) State maps showing those counties in which ginseng is commercially cultivated; and information on the amount of cultivated ginseng from the State harvested and amount certified for export, in pounds (dry weight) per year. (Cultivated ginseng is considered that artifically propagated and maintained under controlled conditions, for example in intensively or intermittently prepared or managed fields, gardens, or patches with artificial or natural shade.)

Management Authority Criteria

In addition to SA advice that ginseng exports will not be detrimental to the survival of the species, the MA must be satisfied (1) that the ginseng was not obtained in contravention of laws for its protection, and (2) whether it was of wild or of artifically propagated origin.

Criteria used by the MA in determining if a State program qualifies for export are that the State has adopted and is implementing the following regulatory measures (revised from

publication of October 21, 1980, 45 FR 69844, and July 23, 1984, 49 FR 29635):

(1) A State ginseng law and regulations mandating State licensing or regulation of persons purchasing or selling ginseng collected or grown in that State;

(2) State requirements that these licensed or registered ginseng dealers maintain true and complete records of their commerce in ginseng, and provide copies of such records of commerce to the State in a signed and dated statement at least every 90 days (each quarter of the calendar year). A dealer's commerce from a State shall be reported to each State in which the dealer is registered or licensed within 15 days of the end of the quarter.

(3) Dealer records required to show date of transaction, whether roots were wild or artificially propagated, if roots were dried or green (fresh) at time of transaction, weight of roots, State of origin of roots, and the identification numbers of the State certificates used to ship ginseng from the State. The name and address of the seller or buyer of the ginseng of record shall be maintained by the dealer on his or her own copy of commerce record forms supplied by the State(s) of licensing, and shall be made available to the State ginseng program manager(s) if requested;

(4) Inspection and certification by State personnel of all ginseng harvested in the State to authenticate that the ginseng was legally taken from wild or cultivated sources within the State. Experience has shown the value of an inspection and certification program by a State official who can document both the weight of the roots in question and that they were legally taken from the wild or artificially propagated in that State:

(a) ginseng unsold by March 31 of the year after harvest must be weighed by the State and the dealer given a weight receipt. Future State export certification of this stock is to be issued against the State weight receipt, and

(b) the certificates of origin must remain in State control until issued at certification and contain the following information:

—State of origin,
—serial number of certificate,
—dealer's State registration number,
—dealer's shipment number for that harvest season,
—year of harvest of ginseng being certified,
—designation as wild or artificially propagated roots,
—designation as dried or green (fresh) roots,
—weight of roots, expressed both numerically and in writing,
—verified statement that the ginseng was obtained in that State in accordance with State law of that harvest year,
—name and title of State-certifying official,
—date of certification, and
—signatures of both dealer and State official making certification.

This certificate should be issued in triplicate, with the original designated for dealer's use in commerce, first copy for dealer records, and second copy retained by the State for reference; and

(5) State regulations that (a) prohibit export of its ginseng from the United States without certification from this State of origin, and (b) require uncertified ginseng supplied to State-registered dealers to be returned to the State of origin within 30 calendar days for certification or the roots may not be exported from the country.

Each State from which ginseng export is approved is requested to include the following information (as well as the update for the SA) in its annual report (which should be titled with the year of harvest; for example, the 1985 State Ginseng Report should reach the Service by May 31, 1986):

(1) Reaffirm State ginseng program and indicate modifications concerning:

(a) State ginseng law and regulations,

(b) season of harvest and seiling/buying operations,

(c) State dealer, digger, and/or grower license or registration rules,

(d) Sample of digger's license, if any, indicating cost of license and dates of authorized use,

(e) Cost of dealer license or registration,

(f) Dealer record-maintenance and reporting requirements,

(g) Samples of current-year dealer certificates and reporting forms,

(h) Sample of current-year State certificate of legal take and origin,

(i) Description of State-certification system for wild and cultivated ginseng legally harvested within the State, including controls to minimize uncertified ginseng from moving into or from the State, and

(j) Name, address, and telephone number of State person to contact concerning such information; and

(2) The report should also include information on the following:

(a) Pounds (dry weight) of wild and of cultivated ginseng (i) harvested and (ii) certified by the State, as well as the pounds of each (iii) sold from in-State and from out-of-State sources,

(b) Indicate how dealers not resident in the State obtain certification for ginseng roots harvested in that State and how this commerce is controlled by State law, and

(c) Indicate ginseng law enforcement procedures, violations discovered, and remedies.

Program for Artificially Propagated Ginseng

In an October 21, 1980, rule (45 FR 69844), the Service announced it would approve export of artificially propagated ginseng only from States for which export of wild-collected ginseng was approved, because those States had programs that could adequately document the source of roots. The Service more recently announced in an October 4, 1982, rule (47 FR 43701) that it would approve export of artificially propagated ginseng from other States if procedures had been implemented to minimize the risk that wild-collected plants would be claimed as cultivated. The Service will continue to consider granting such approval.

Previous Export Approval

On October 4, 1982 (47 FR 43701), the Service approved multi-year export of 1982–84 harvested ginseng only from States with a legally regulated ginseng program that provided for a State inspection and certification system and that satisfied all other revised criteria of both the MA and SA. Export from certain additional States was approved under these guidelines on October 7, 1983 (48 FR 45775), March 19, 1984 (49 FR 10123), and August 28, 1984 (49 FR 34020). The export of wild and/or cultivated ginseng harvested from 1982 through 1984 was approved only from the States named in 50 CFR 23.51(e) (see below).

Wisconsin has developed a somewhat different ginseng regulatory program which has been approved and appears to offer the same legal assurance as the standard State certification system usually required by the Service. This program includes annual measurement of cultivated ginseng gardens (fields) by a county tax assessor, and certification to the State of all ginseng commerce by growers and dealers. The appropriate State official spot-check these procedures and examine collected records of ginseng commerce from all State growers and dealers. The State's analysis of these records of commenre are then sent to the Service for review.

Multi-year Findings

From monitoring State ginseng programs and the status of ginseng since 1977, the Service expects that States from which export of ginseng has been approved will continue to satisfy CITES

requirements. Each State seeking to obtain multi-year export approval for 1985 and subsequent harvest seasons applied by August 28, 1985, in accordance with the MA and SA requirements described above. (States that had not done so submitted data on their harvest and/or status of ginseng in 1982, 1983 and/or 1984 as a precondition of renewed export approval.) Suitable annual reports with program information have been received from all 16 States previously approved for ginseng export. No new States have applied for such export approval at this time. Several States are being notified of need for improvement in one or more aspects of their ginseng programs, and the Service has been advised that certain aspects will be rectified prior to the 1986 harvest. Overall, the Service believes that the status of the species and programs is such that the 1985–1987 harvests are acceptable, but that findings for no more than 3 years are warranted until these relatively new State programs mature. The export of wild and cultivated ginseng harvested in the 1985, 1986, and 1987 seasons is approved only from the States identified in 50 CFR 23.51(f) (see below). This approval is the same as in 1984, except for the addition of wild ginseng from Tennessee. Tennessee enacted suitable legislation in 1985 and has otherwise satisfied Service requirements.

This approval is subject to revision prior to the 1986 or 1987 harvest season in any particular State if a review of information reveals that MA or SA findings in favor of export must be changed. The Service does not grant general approval for export of ginseng originating in any State not named in 50 CFR 23.51(f) for one or more of the following reasons: (1) The species does not occur there, (2) no harvest of the species is allowed by the State, or (3) the Service does not have current information needed for MA or SA findings.

States seeking to begin harvest in 1986 or 1987 for export of their ginseng under CITES should apply following the above procedures no later than May 31 of the year they hope to start. To ensure that the States maintain successful programs and that export is not detrimental to the survival of this species, the Service plans to continue annual monitoring of State programs and of information on the status of ginseng populations, especially by evaluation of annual reports from the States and of export documents returned from the ports. Notices will be published in the **Federal Register** in 1986 and 1987 only if new information or changed conditions show reason for revised findings or guidelines.

Export Procedures

Valid Federal CITES documents are necessary to export wild or artificially propagated ginseng roots. Applications for these documents should be sent to the Federal Wildlife Permit Office at the address given above.

Ginseng may only be exported through ports with personnel and/or facilities of the U.S. Department of Agriculture ("USDA ports") and designated by the U.S. Department of the Interior (see 49 FR 42938; October 25, 1984). For each export, the exporter must present to the USDA, Animal and Plant Health Inspection Service, Plant Protection and Quarantine (PPQ) port inspector the following:

(1) Ginseng roots being exported;

(2) Original State certificates of origin for the ginseng (or foreign export documents for reexport). An exporter or dealer may split an original State certificate by striking a line through the original weight on the certificate, and identifying by numbers and writing the new (lower) weight of ginseng being exported. This change in certificate weight must be certified by the dealer or exporter with the written words "I made these changes on (date)" followed by full legal signature of the dealer or exporter;

(3) Two completed Federal CITES export document (permits or certificates); and

(4) One copy of executed waybill and invoice.

The PPQ port inspector may sign and validate the CITES documents only after a satisfactory inspection of the export documentation and contents of the shipment. Once the CITES documents are validated, the inspector will forward State certificates, one CITES export document, waybill, and invoice to the Service for recordkeeping and reporting. The remaining CITES export document will authorize the international shipment of the ginseng and will be collected the importing country.

Compliance

This rule is issued under authority of the Endangered Species Act of 1873 (16 U.S.C. 1531 et seq., 87 Stat. 884, as amended), and was prepared by Mr. S Ronald Singer, Federal Wildlife Permit Office, and Dr. Bruce MacBryde, Office of Scientific Authority. The Department has determined that good cause exists within the meaning of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act for making these findings and rule effective immediately. This publication represents the final administrative step in authorizing the export of ginseng in accordance with CITES. This action has been delayed because of the need to gather and evaluate the best available information on the species. It is the Department's opinion that a delay in the effective date of the regulations after this rule is published could affect the harvest season that already has begun. A delay could adversely affect the species by reducing compliance with State certification requirements. Good cause also exists for making these findings effective as soon as possible to avoid economic injury to individual diggers, dealers, or other small entities that are directly affected by the findings. Because this final rule removes a restriction of export, it can be made effective immediately upon publication under 5 U.S.C. 553(d)(1). It should be noted that making these findings and rule effective immediately will not adversely affect the species involved, in view of the findings on nondetriment contained herein.

Note.—The Department has determined that these findings are not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act (42 U.S.C. 4321–4347) and, therefore, the preparation of an Environmental Impact Statement is not required. The Department determined that the findings for the 1981–84 harvest seasons were not major rules under Executive Order 12291 and did not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). Exporters normally derive their shipments from the ginseng harvested in a number of States. Therefore, the approval or disapproval of export of wild ginseng from any one State will not significantly affect the industry. Furthermore, because the rule treats exports on a State-by-State basis and approves export in accordance with State programs, the rule will have little effect on small entities in any of itself. For the 1985–1987 harvest seasons, the Service has analyzed the impacts and again concludes that this is not a major rule and does not have a significant economic effect on a substantial number of small entities. These findings do not contain any information collection or recordkeeping requirements as defined by the Paperwork Reduction Act 1980 (Pub. L. 96–511).

List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Plant (agriculture), Treaties.

Regulation Promulgation

PART 23—ENDANGERED SPECIES CONVENTION

Accordingly, Part 32 Subchapter B of Chapter I, Title 50, Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention of International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and Endangered Species Act of 1973, 87 Stat. 884, 16 U.S.C. 1631–1543.

Subpart F—Export of Certain Species

2. In § 23.51, revised that part of paragraph (e) that appears before "Conditions of findings" to read as follows:

§ 23.51 American ginseng (Panax quinquefolius).

* * * * *

(e) *1982–1984 harvests* (wild and cultivated roots for each year unless noted):

Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Minnesota, Missouri, North Carolina, Ohio, Tennessee (wild and cultivated for 1982 and 1983, cultivated only for 1984), Vermont (cultivated only for 1982 and 1983, wild and cultivated for 1984), Virginia, West Virginia, and Wisconsin.

* * *

3. In § 23.51, add new paragraph (f) as follows:

* * * * *

(f) *1985–1985 harvests* (wild and cultivated roots for each year unless noted):

Arkansas, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Minnesota, Missouri, North Carolina, Ohio, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin.

Conditions on export:

Roots must be documented as to State of origin, season of collection, and dry or green (fresh) weight. The State must certify whether roots originated in that State, are wild or cultivated (artificially propagated), and were legally obtained, and such certification must be presented upon export. The State must maintain a ginseng program, as described by the Service in the 1985 rule; an annual report for the preceding harvest season should reach the Service by May 31.

Dated: September 17, 1985.

(Sgd) P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–23323 Filed 9–27–85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611, 630, 638, 640, 642, 646, 649, 650, 651, 652, 654, 655, 658, 661, 662, 663, 671, 672, 674, 675, 680, and 681

[Docket No. 41049–5104]

Fishery Conservation and Management; Domestic Regulations

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment removes variously worded sections concerning penalties throughout the domestic fishing regulations, eliminating references to Part 620, which no longer exists, and replaces them with uniformly worded sections containing the correct references. The intent is to conform the codified regulations with current usage.

EFFECTIVE DATE: September 27, 1985.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haynes (Fishery Management Specialist), 202–634–7432.

SUPPLEMENTARY INFORMATION: On January 8, 1984 (49 FR 1036), 50 CFR Part 620—Citations was removed from the Code of Federal Regulations and replaced by 15 CFR Part 904 Subpart E—Written Warnings as part of 15 CFR Part 904 (Civil Procedures) administered by NOAA and the Coast Guard. This technical amendment removes references to Part 620 in the domestic fishing regulations parts of Title 50, Chapter VI, and replaces them with uniform references to the current governing regulations.

List of Subjects in 50 CFR Parts 630–640, 642, 646–675, 680, and 681

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 25, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PARTS 630–640, 642, 646–675, 680, AND 681—[AMENDED]

For the reasons set out above, 50 CFR Parts 630–640, 642, 646–675, 680, and 681 are amended as follows:

1. The authority citation for Parts 630–640, 642, 646–675, 680, and 681 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In Parts 640–681, sections titled

Penalties are amended by removing the current text in its entirety and replacing it in the sections listed with new text as follows:

§ 630.8	§ 658.9
§ 638.7	§ 661.9
§ 640.9	§ 662.8
§ 642.9	§ 663.9
§ 646.8	§ 671.9
§ 649.9	§ 672.9
§ 650.9	§ 674.9
§ 651.9	§ 675.9
§ 652.9	§ 680.9
§ 654.9	§ 681.9
§ 655.9	

§ ___ Penalties.

Any person or fishing vessel committing or used in the commission of a violation of this part is subject to the civil and criminal penalty provisions and civil forfeiture provisions of the Act, and to 15 CFR Part 904 (Civil Procedures), and any other applicable law.

This document also corrects a paragraph designation in the Foreign Fishing; Final rule, technical amendment published August 28, 1985, 50 FR 35023.

In FR Doc. 85–20321, page 35025, column 1, the following corrections are made:

1. Under "Subpart D—Atlantic, Caribbean, and Gulf of Mexico," Paragraph 4 is corrected to read "In Subpart D, § 611.60 is amended by adding paragraph (a)(4) to read:"

Under "§ 611.60 General provisions" paragraph "(3)" is redesignated as "(4)".

[FR Doc. 85–23258 Filed 9–27–85; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 189
Monday, September 30, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 293

Personnel Records; Transfer of an Official Personnel Folder to Another Agency

Correction

In FR Doc. 85–20538 beginning on page 35505 in the issue of Friday, August 30, 1985, make the following correction on page 35505: In the third column, in the **Authority** citation, in the first line, "5 U.S.C. 522a" should read "5 U.S.C. 552a".

BILLING CODE 1505–01–M

5 CFR Part 530

Special Salary Rate Schedules for Recruitment and Retention

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to adjust, where warranted, the minimum rates and rate ranges for certain occupations and grade levels for which special salary rates are in effect. This action is based on an annual review of these rates through which OPM has determined, after considering competing salary rates in private enterprise, that adjustments to the special salary rates are necessary to ensure that Federal agencies are adequately staffed by well-qualified employees. The special salary rates have been adjusted to the levels deemed necessary to achieve this outcome.

DATE: Comments are invited and must be received on or before October 30, 1985.

ADDRESSES: Send or deliver written comments to: Office of Personnel Management, Compensation Group, Allowances and Special Rates Division (AR), Room 3353, 1900 E Street, NW, Washington, DC 20415.

The data OPM used in coming to its conclusions in each case are available for public inspection in the OPM Library, Room 5H27, which is located at 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: William M. Gualtieri, (202) 632–7858.

SUPPLEMENTARY INFORMATION: Section 5303 of title 5, United States Code, authorizes the President to establish special minimum rates of basic pay for one or more grades, occupational groups, series, classes, or subdivisions of classes subject to statutory pay schedules in one or more areas or locations, when the pay rates in private enterprise are so substantially above the statutory pay rates for the positions concerned as to handicap significantly the Government's recruitment or retention of well-qualified persons.

Section 301(a) of Executive Order 11721 of May 23, 1973, as amended, authorizes OPM to exercise the authority conferred upon the President. Section 303 of Executive Order 11721 requires OPM to conduct an annual review of the special salary rates established under 5 U.S.C. 5303. The rates proposed in this notice are a result of the 1985 review. The proposed adjustments were made in accordance with § 530.303 of Title 5, Code of Federal Regulations.

Accordingly, OPM proposes to adjust the minimum rates and rate ranges for certain occupations and grade levels for which special rates have been established under 5 U.S.C. 5303. Section 530.307 contains the tables showing the basic special salary rate information for each occupation and grade level for which special rates are authorized. (Because the rates in the tables are subject to adjustment at any time they will not appear in the Code of Federal Regulations.) Only the special minimum and maximum rates (i.e., 1st and 10th step) are shown; however, a full special rate range is authorized for each occupation and grade level specified. The full range of proposed special rates can be prepared by sucessively adding the amount of the within grade increase, as shown for each grade, beginning with the special minimum to produce a rate for each step up to the special maximum rate. Unless otherwise indicated, all agencies in the geographic area covered

by each special salary rate authorization must pay the specified rates to their employees.

In instances where the schedules are proposed to be terminated, employees' rates of basic pay will be adjusted in accordance with Part 530, Title 5, Code of Federal Regulations to ensure that no employees' pay will be reduced because of these actions.

When cited, "MSA" means the Metropolitan Statistical Area (and PMSA and CMSA refers to Primary and Consolidated MSA) as defined by the Office of Management and Budget.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, since it applies only to Federal employees and agencies.

List of Subjects in 5 CFR Part 530

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.

Constance Horner,

Director.

It is proposed to amend Part 530 as follows:

PART 530—PAY RATES AND SYSTEMS (GENERAL)

1. The authority citation for Part 530 continues to read as follows:

Authority: 5 U.S.C. 5303, and Chapter 54; E.O. 11721, as amended.

2. Subpart C would be amended by adding a new § 530.307 to read as follows:

Subpart C—Special Salary Rates Schedules for Recruitment and Retention

§ 530.307 Special salary rates.

This section contains the tables showing the basic special salary rate information for each occupation and grade level for which special rates are authorized.

Note:—Because the rates in the tables are subject to adjustments at any time, they will be published in the **Federal Register**, but will not appear in the Code of Federal Regulations. For changes to this section, consult the List of CFR Sections Affected (LSA).

BILLING CODE 6325-01-M

LOCAL AUTHORIZATIONS

OCCUPATIONAL SERIES	GEOGRAPHIC COVERAGE	GRADE	1ST STEP RATE	10TH STEP RATE	WITHIN-GRADE INCREASE	TABLE NUMBER	PROPOSED ACTION
GS-081, Fire Protection and Prevention Series	Clear Air Force Base, AK	GS-4	$15,436	$18,883	$383	#011	Increase
		GS-5	16,310	20,162	[illegible]		-
		GS-6	16,575	21,390	535		-
GS-083, Police Series	VA Medical Center, Northport, NY	GS-4	13,939	17,521	398	#024	No change
		GS-5	15,153	19,167	446		-
GS-083, Airport Police Officer	Washington, DC (Dulles and National Airports)	GS-4	14,578	18,286	412	#025	Increase
		GS-5	15,350	19,670	480		-
		GS-6	16,575	21,390	535		-
GS-083, Police Series	VA Medical Center Dallas, TX	GS-4	13,255	16,981	414	#021	No change
		GS-5	14,829	18,996	463		-
GS-083, Police Series	VA Medical Center Palo Alto, CA	GS-4	14,149	17,875	414	#023	Increase
		GS-5	15,350	19,517	463		-
GS-083, Police Series	Lower Colorado River Region, Boulder City, NV	GS-5	16,681	20,848	463	[illegible]	No change
		GS-6	18,082	22,735	517		-
GS-083, Police Series	Naval Weapons Center, China Lake, CA	GS-3	14,132	17,201	341	#022	Increase
		GS-4	15,007	18,454	383		-
		GS-5	15,830	19,682	428		-
		GS-6	16,575	21,390	535		-
GS-085, Guard Series	Aberdeen Proving Ground, MD	GS-3	Regular rates would apply			#016	Terminate
GS-085, Guard Series	Umatilla Army Depot, [illegible]	GS-4	Regular rates would apply			#019	Terminate
GS-xxx, (Typing/Stenography) (all clerical positions requiring a qualified typist or stenographer)	Hanscom Air Force Base, Bedford, MA	GS-3	12,604	16,042	382	#169	No change; not scheduled for review
		GS-4	13,720	17,581	429		
		GS-5	14,870	19,190	480		
GS-312, Clerk Stenographer and Reporter Series GS-318, Secretary Series GS-322, Clerk-Typist Series GS-356, Data Transcribing Series'	California: Los Angeles, within the area bounded by Manchester Ave. on the North, Crenshaw Blvd. on the East, Artesia Blvd. & Gould Ave. on the South, & the Pacific Ocean on the West. Included are positions in the Defense Investigative Service located at 15110 Atkinson Avenue, Gardena, CA, and Army Plant Representative Office - Hughes Helicopter, Los Angeles (Culver City), CA, and the Center for Disease Control. Excluded are positions within the Department of Health and Human Services.	GS-2	$12,114	$14,913	$311	#165	No change in dollar amounts; Center for Disease Control added to coverage
		GS-3	13,651	16,801	350		
		GS-4	14,933	18,470	393		
		GS-5	15,828	19,788	440		
		GS-6	16,661	21,071	490		
All Clerical Series and Certain Technical Series*	Juneau, AK	GS-1	10,847	13,141	286'	#159	No change
		GS-2	11,951	14,858	323		-
		GS-3	12,742	16,018	364		-
		GS-4	13,487	17,168	409		-
		GS-5	14,631	18,744	457		-

'And all other positions in grades GS-2 through GS-6 with the parenthetical title (Typing) or (Stenography) classified under the Typing and Stenography Grade Evaluation Guide issued by Transmittal Sheet No. 34, January, 1979, or with the parenthetical title (Data Transcriber).

'The within-grade increase at GS-1 varies between steps 1, 2 and 3. The rates of basic pay payable at these steps are as follows: $10,847 (step 1); $10,860 (step 2); and $11,139 (step 3). The within-grade increase shown should be applied to construct all remaining step rates.

*THE FOLLOWING SERIES ARE INCLUDED IN THIS SPECIAL RATE AUTHORIZATION:

GS-072 Fingerprint Identification Series
GS-134 Intelligence Aid and Clerk Series
GS-203 Personnel Clerical and Assistance Series
GS-204 Military Personnel Clerical and Technician
GS-302 Messenger Series
GS-303 Miscellaneous Clerk and Assistant Series
GS-304 Information Receptionist Series
GS-305 Mail and File Series

Con't.

GS-312 Clerk-Stenographer and Reporter Series
GS-313 Work Unit Supervising Series
GS-318 Secretary Series
GS-319 Closed Microphone Reporting Series
GS-322 Clerk-Typist Series
GS-332 Computer Operation Series
GS-335 Computer Clerk and Assistant Series
GS-344 Management Clerical and Assistant Series
GS-350 Equipment Operator Series
GS-351 Printing Clerical Series
GS-354 Bookkeeping Machine Operation Series
GS-355 Calculating Machine Operation Series
GS-356 Data Transcribing Series
GS-357 Coding Series .
GS-359 Electric Accounting Machine Operation
GS-361 Equal Opportunity Assistance Series
GS-382 Telephone Operating Series
GS-385 Teletypist Series
GS-394 Communications Clerical Series
GS-503 Financial Clerical and Assistance Series
GS-525 Accounting Technician Series
GS-530 Cash Processing Series
GS-540 Voucher Examining Series
GS-544 Payroll Series
GS-545 Military Pay Series
GS-561 Budget Clerical and Assistance Series
GS-590 Time and Leave Series
GS-963 Legal Instruments Examining Series
GS-986 Legal Clerk and Technician Series
GS-998 Claims Clerical Series
GS-1001 General Arts and Information Series
GS-1021 Office Drafting Series
GS-1046 Language Clerical Series
GS-1087 Editorial Assistance Series
GS-1101 General Business and Industry (one grade interval work only)
GS-1106 Procurement Clerical and Assistance Series
GS-1107 Property Disposal Clerical and Technician Series
GS-1411 Library Technician Series
GS-1421 Archives Technician Series
GS-1531 Statistical Assistant Series
GS-1802 Compliance Inspection and Support Series
GS-1897 Customs Aid Series
GS-2001 General Supply Series
GS-2005 Supply Clerical and Technician Series
GS-2091 Sales Store Clerical Series
GS-2101 Transportation Specialist Series
GS-2131 Freight Rate Series
GS-2132 Travel Series
GS-2133 Passenger Rate Series
GS-2134 Shipment Clerical Series
GS-2151 Dispatching Series

LOCAL AUTHORIZATIONS

OCCUPATIONAL SERIES	GEOGRAPHIC COVERAGE	GRADE	1ST STEP RATE	10TH STEP RATE	WITHIN-GRADE INCREASE	TABLE NUMBER	PROPOSED ACTION
GS-322, Clerk-Typist Series, limited to positions where at least 50 percent of the duties involve the operation of word processing equipment. GS-313, Work Unit Supervisors, limited to positions supervising word processing units.	Army Corps of Engineers, Federal Center South, Seattle, WA	GS-4 GS-5	$14,340 14,994	$17,787 18,846	$383 428	#163	Increase No change
GS-322, Clerk-Typist (Medical Transcriptionist) Series	VA Medical Center, Sepulveda, CA	GS-3 GS-4 GS-5	12,852 14,427 15,220	16,155 18,135 19,369	367 412 461	#166	No change " "
GS-303, Miscellaneous Clerk and Assistant Series GS-318, Secretary Series GS-322, Clerk-Typist Series*	Barrow, AK	GS-1 GS-2 GS-3 GS-4 GS-5 GS-6	11,686 13,216 14,896 16,723 18,710 20,855	14,197 16,051 18,091 20,305 22,724 25,508	279 315 355 398 446 517	#167	Increase " " " " "
GS-203, Personnel Clerical and Assistant Series GS-303, Miscellaneous Clerk and Assistant Series GS-318, Secretary Series GS-322, Clerk-Typist Series GS-382, Telephone Operating Series GS-525, Accounting Technician Series GS-540, Voucher Examining Series GS-1101, General Business and Industry Series (one grade interval work only) GS-2005, Supply Clerical and Technician Series GS-2132, Travel Series*	Bethel, AK	GS-1 GS-2 GS-3 GS-4 GS-5 GS-6	10,764 12,199 13,750 15,436 17,270 18,180	13,002 15,034 16,945 19,018 21,284 22,653	279' 315 355 398 446 497	#168	Increase " " " " "

*And all other positions in grades GS-1 through GS-6 with the parenthetical title (Typing) classified under the Typing and Stenography Grade Evaluation Guide issued by Transmittal Sheet No. 34, January 1979.

'The within grade increase between steps 1, 2 and 3 varies. The rates of basic pay payable at these steps are as follows: step 1 — $10,764; step 2 — $10,777; step 3 — $11,049. The within grade increase shown should be applied to construct all remaining step rates.

*And all other positions in grades GS-1 through GS-6 with the parenthetical title (Typing) classified under the Typing and Stenography Grade Evaluation Guide issued by Transmittal Sheet No. 34, January 1979.

LOCAL AUTHORIZATIONS

OCCUPATIONAL SERIES	GEOGRAPHIC COVERAGE	GRADE	1ST STEP RATE	10TH STEP RATE	WITHIN-GRADE INCREASE	TABLE NUMBER	INCREASE ACTION
GS-610, Nurse Series	Washington, DC MSA	GS-4	$15,739	$19,321	$398	#304	Increase
		GS-5	16,681	20,695	446		-
		GS-7	18,537	23,883	594		-
GS-610, Nurse (Critical Care Positions Only)	Washington, DC MSA	GS-9	23,258	29,549	699	#535	Increase
GS-610, Nurse and Psychiatric Nurse	Saint Elizabeths Hospital, Washington DC	GS-4	15,133	18,715	398	#534	No change
		GS-5	16,603	20,752	461		-
		GS-7	19,422	24,561	571		-
		GS-9	22,363	28,654	699		-
GS-610, Operating Room Nurse	Fitzsimmons Army Medical Center, Aurora, CO	GS-9	22,969	29,287	702	#501	Increase
GS-610, Nurse, limited to positions titled Nurse, Clinical Nurse, and Operating Room Nurse	San Francisco and Oakland, CA PMSAs	GS-5	18,710	23,030	480	#352	No change*
		GS-7	23,170	28,516	594		No change*
		GS-9	26,795	33,113	702		Increase
		GS-10	27,868	34,825	773		-
		GS-11	28,820	36,470	850		-
*Rates at GS-5 and GS-7 were already at the highest levels allowed by law and could not be further increased.							
GS-620, Vocational Nurse	San Francisco and Oakland, CA PMSAs	GS-3	13,304	16,373	341	#394	No change
		GS-4	14,554	18,001	383		-
		GS-5	15,422	19,274	428		-
GS-620, Practical Nurse	All Alaska Area Native Health Service Facilities	GS-3	13,653	16,974	369	#536	No change
		GS-4	14,911	18,637	414		-
		GS-5	15,755	19,922	463		-
		GS-6	16,531	21,184	517		-
GS-620, Vocational Nurse	San Diego, CA	GS-3	Regular rates would apply			#480	Terminate
GS-621, Nursing Assistant	All Alaska Area Native Health Service Facilities	GS-2	$11,456	$14,399	$327	#467	No change
		GS-3	12,915	16,236	369		-
		GS-4	13,939	17,521	398		-
GS-622, Medical Supply Aid and Technician Series	All Alaska Area Native Health Service Facilities	GS-1	10,286	12,529	Varies*	#468	No change
		GS-2	11,018	13,853	315		-
		GS-3	12,065	15,260	355		-
		GS-4	13,143	16,725	398		-
*The full range of rates is as follows: $10,286; $10,572; $10,585; $10,857; $11,135; $11,414; $11,693; $11,971; $12,250; $12,529.							
GS-642, Nuclear Medicine Technician Series	Washington, DC MSA	GS-4	Regular rates would apply			#359	Terminate
GS-644, Medical Technologist Series	All IHS Facilities within the Navajo and Phoenix Indian Health Areas	GS-5	16,579	20,431	428	#494	Increase
		GS-7	18,448	23,794	594		-
GS-644, Medical Technologist Series	San Francisco-Oakland-San Jose, CA CMSA	GS-5	Regular rates would apply			#313	Terminate
GS-644, Medical Technologist Series	All Alaska Area Native Health Service Facilities	GS-5	18,070	22,237	463	#493	No change
		GS-7	20,665	25,831	574		-
		GS-9	Regular rates would apply				Terminate
GS-647, Diagnostic Radiologic Technologist Series	San Francisco-Oakland San Jose, CA CMSA	GS-4	15,531	19,113	398	#363	No change
		GS-5	16,491	20,505	446		-
		GS-6	17,386	21,859	497		-
		GS-7	18,215	23,183	552		-

LOCAL AUTHORIZATIONS

OCCUPATIONAL SERIES	GEOGRAPHIC COVERAGE	GRADE	1ST STEP RATE	10TH STEP RATE	WITHIN-GRADE INCREASE	TABLE NUMBER	PROPOSED ACTION
GS-647, Diagnostic Radiologic Technologist Series	All Alaska Area Native Health Service Facilities	GS-4	$15,325	$19,051	$414	#471	No change
		GS-5	16,218	20,385	463		"
		GS-6	17,565	22,218	517		"
		GS-7	18,943	24,109	574		"
GS-648, Therapeutic Radiologic Technologist Series	National Cancer Institute, National Institutes of Health, Bethesda, MD	GS-5	Regular rates would apply at all grades			#529	Terminate
		GS-6					"
		GS-7					"
		GS-8					"
		GS-9					"
GS-648, Therapeutic Radiologic Technologist Series	Washington, DC MSA.	GS-4	15,531	19,113	398	#360	No change
		GS-5	17,383	21,397	446		"
		GS-6	18,380	22,853	497		"
		GS-7	20,091	25,257	574		"
		GS-8	21,617	27,341	636		"
		GS-9	22,470	28,788	702		"
GS-648, Therapeutic Radiologic Technologist Series	San Francisco and Oakland, CA PMSAs	GS-5	17,383	21,397	446	#390	No change
		GS-6	18,380	22,853	497		"
		GS-7	19,871	24,839	552		"
GS-649, Heart Lung Machine Technician	Keesler, AFB, Biloxi, MS	GS-9	26,166	32,484	702	#537	Increase
GS-660, Pharmacist Series	San Francisco, CA	GS-9	23,874	29,949	675	#457	Increase
		GS-11	28,039	35,950	879		"
GS-660, Pharmacist Series	Los Angeles and San Bernardino Counties, CA	GS-9	25,980	32,055	675	#525	Increase
		GS-11	28,037	35,390	817		"
GS-661, Pharmacy Technician Series	San Francisco-Oakland San Jose, CA CMSA	GS-3	$12,281	$15,350	$341	#386	No change
		GS-4	13,405	16,852	383		"
GS-667, Orthotist and Prosthetist Series, limited to employees certified by the American Board for Certification in Orthotics and Prosthetics, Inc.	San Francisco and Oakland, CA PMSAs	GS-9	Regular rates would apply			#397	Terminate
GS-681, Dental Assistant	All Alaska Area Native Health Service Facilities	GS-2	10,585	13,223	315	#473	No change
		GS-3	12,915	16,236	369		"
		GS-4	13,669	17,395	414		"
		GS-5	14,829	18,996	463		"
GS-682, Dental Hygiene Series	State of California	GS-4	15,436	19,162	414	#328	Increase
		GS-5	16,790	20,957	463		"
		GS-6	18,180	22,833	517		"
		GS-7	19,012	24,178	574		"
GS-699, Ultrasound Technician	Naval Hospital, Philadelphia, PA	GS-3	14,320	17,623	367	#533	No change
		GS-4	16,075	19,783	412		"
		GS-5	17,986	22,135	461		"
		GS-6	19,021	23,647	514		"
		GS-7	20,564	25,703	571		"
GS-699, Diagnostic Ultrasound Technician	Fort Ord, CA	GS-7	20,975	25,943	552	#509	No change
GS-699, Health Aid and Technician Series	All Alaska Area Native Health Service Facilities	GS-3	12,177	15,498	369	#472	No change
		GS-4	13,255	16,981	414		"

*The within-grade increase varies between steps 1 and 2. The step 2 rate is $10,703. The within grade increase shown should be applied to construct all remaining step rates.

LOCAL AUTHORIZATIONS

OCCUPATIONAL SERIES	GEOGRAPHIC COVERAGE	GRADE	1ST STEP RATE	10TH STEP RATE	WITHIN-GRADE INCREASE	TABLE NUMBER	PROPOSED ACTION
GS-986, Legal Clerk/ Technician Series	U.S. Attorney's Office, Equal Employment Opportunity Commission, Security and Exchange Commission, Commodity Futures Trading Commission, Executive Office for U.S. Trustees, Los Angeles, CA	GS-5	$16,310	$20,459	$461	#903	Increase
		GS-6	17,645	22,460	535		-
GS-986, Legal Clerk/ Technician (Typing)	U.S. Attorney's Office, Southern District of New York and Eastern District of New York; Commodity Futures Trading Commission, New York, NY	GS-4	14,576	18,302	414	#904	Increase
		GS-5	16,305	20,472	463		-
		GS-6	17,645	22,298	517		-
GS-1224, Patent Examining Series (Engineering Specializations only)	Washington, DC MSA	GS-5	17,750	22,070	480	#576	No change
		GS-7	20,794	26,140	594		-
		GS-9	23,985	30,528	727		-
GS-1310, Physicist (Optics) and GS-800 Engineer (Optics)	Air Force Weapons Laboratory (AFWL), Kirtland Air Force Base, NM	GS-9	27,384	33,702	702	#593	No change
		GS-11	31,439	39,089	850		-
		GS-12	35,639	44,801	1,018		-
		GS-13	39,960	50,859	1,211		-
GS-1311, Physical Science Technician Series (Radiation monitoring and control positions only)	Portsmouth Naval Shipyard, Portsmouth, NH	GS-6	18,552	23,142	510	#592	Increase
		GS-7	20,200	25,294	566		-
		GS-8	21,714	27,357	627		-
		GS-9	23,258	29,495	693		-
GS-1311, Physical Science Technician (Radiation monitoring and control positions only)	Mare Island Naval Shipyard, CA	GS-5	$18,230	$22,379	$461	#590	Increase
		GS-6	20,320	24,946	514		-
		GS-7	22,576	27,715	571		-
		GS-8	25,004	30,701	633		-
		GS-9	27,620	33,911	699		-
GS-1311, Physical Science Technician (Radiation monitoring and control positions only)	Pearl Harbor Naval Shipyard, Hawaii	GS-4	15,007	18,868	429	#591	No change
		GS-5	16,310	20,630	480		-
		GS-6	17,645	22,460	535		-
		GS-7	19,606	24,952	594		-
		GS-8	23,030	28,952	658		-
		GS-9	25,439	31,982	727		-
GS-1550, Computer Scientist, limited to positions within the National Aeronautics and Space Administration and the Departments of Navy, Commerce, Health and Human Services, Air Force, Army and the Defense Communications Agency	Washington, DC MSA; Annapolis, MD; Dahlgren, VA; and Patuxent River, MD	GS-5	18,710	22,823	457	#697	Increase
		GS-7	23,170	28,264	566		-
		GS-9	24,732	30,969	693		-
							Army added to coverage
GS-1550, Computer Scientist (Positions within the Department of Navy)	Newport, RI and New London, CT	GS-5	18,252	22,266	446	#698	Increase
		GS-7	22,603	27,571	552		-
		GS-9	24,103	30,178	675		-

NATIONWIDE AND WORLDWIDE AUTHORIZATIONS

OCCUPATIONAL SERIES	GEOGRAPHIC COVERAGE	GRADE	1ST STEP RATE	10TH STEP RATE	WITHIN-GRADE INCREASE	TABLE NUMBER	PROPOSED ACTION
NOTE: For all medical officer special rate authorizations listed below (tables numbered 290, 524 and 499), excluded are physicians who have received National Health Service Corps (NHSC) scholarships and who are fulfilling a service obligation through assignment to NHSC or the Department of Justice.							
GS-602, Medical Officer, Clinical Positions, limited to positions concerned with providing primary medical care and direct service to patients involving the performance of diagnostic, preventive and therapeutic services in hospitals, clinics, and other medical facilities. Excluded are positions involved in Preventive Medicine, including Occupational Health Medicine and Aviation Medicine, where the primary emphasis is the practice of medicine as applied to the worker and in relation to the work environment. 'The rate payable to employees at these rates is limited to $68,700.	Worldwide	GS-11	$32,687	$40,229	$838	#290	No change
		GS-12	39,183	48,228	1,005		"
		GS-13	46,593	57,348	1,195		"
		GS-14	53,646	66,354	1,412		"
		GS-15	58,120	73,069'	1,661		"
GS-602, Medical Officer, Research Positions, limited to non-clinical positions primarily involving the conduct of medical research and experimental work (or the review or evaluation of such medical research and experimental work) or the identification of causes or sources of disease or disease outbreaks. This work may include the conduct of medical work pertaining to the evaluation of food, drugs, cosmetics, and devices. Research medical officer positions providing some primary patient care may be included. 'The rate payable to employees at these rates is limited to $68,700.	Worldwide	GS-11	31,044	38,397	817	#524	No change
		GS-12	37,206	46,017	979		"
		GS-13	45,398	56,153	1,195		"
		GS-14	50,822	63,530	1,412		"
		GS-15	54,798	69,747'	1,661		"
GS-602, Medical Officer, Other Positions, includes all medical officer positions not elsewhere covered by other special salary rate authorizations for GS-602, Medical Officers. 'The rate payable to employees at this rate is limited to $68,700.	Worldwide	GS-11	29,854	36,928	786	#499	No change
		GS-12	36,889	45,367	942		Increase
		GS-13	43,864	53,944	1,120		"
		GS-14	48,873	60,780	1,323		"
		GS-15	54,004	69,682'	1,742		"
GS-610, Nurse Series	Indian Health Service, Nationwide*	GS-4	$15,531	$18,978	$383	#531	Increase
		GS-5	18,070	22,084	446		"
		GS-7	19,422	24,390	552		"
		GS-9	23,761	29,836	675		"
*"Nationwide" geographic coverage includes the areas specified in Section 591.202 of OPM's Regulations.							
GS-800, Professional Series in the Engineering Group (This authorization covers GS-801, 803, 804, 806, 807, 810, 830, 840, 858, 861, 871, 890, 892, 893, 894, and 896) *The rates for these grades were already at the highest levels permitted by law and could not be further increased.	Worldwide	GS-5	18,710	23,030	480	#414	No change*
		GS-7	23,170	28,516	594		No change*
		GS-9	26,893	33,211	702		Increase
		GS-11	29,018	36,668	850		"
							Series GS-855 deleted
NOTE: This authorization covers all engineering series except those covered by other authorizations as shown below.							
GS-808, Architecture and GS-819, Environmental Engineering Series	Worldwide	GS-5	18,710	23,030	480	#421	No change
		GS-7	23,170	28,516	594		"
		GS-9	26,893	33,436	727		"
		GS-11	29,018	36,929	879		"
GS-850, Electrical Engineering Series and GS-855, Electronics Engineering Series	Worldwide	GS-5	18,710	23,030	480	#422	No change*
		GS-7	23,170	28,516	594		No change*
		GS-9	27,834	34,377	727		Increase
		GS-11	30,034	37,945	879		"
		GS-12	34,034	43,898	1,096		"
							Series GS-855 added
*The rates for these grades were already at the highest levels permitted by law and could not be further increased.							

NATIONWIDE AND WORLDWIDE AUTHORIZATIONS

OCCUPATIONAL SERIES	GEOGRAPHIC COVERAGE	GRADE	1ST STEP RATE	10TH STEP RATE	WITHIN-GRADE INCREASE	TABLE NUMBER	PROPOSED ACTION
GS-880, Mining Engineering Series	Nationwide	GS-5	$16,706	$20,558	$428	#417	No change
		GS-7	20,701	25,480	531		-
		GS-9	25,318	31,159	649		-
		GS-11	29,068	36,142	786		-
		GS-12	32,955	41,433	942		-
GS-881, Petroleum Engineering Series	Nationwide	GS-5	17,383	21,397	446	#415	No change
		GS-7	21,527	26,495	552		-
		GS-9	26,331	32,406	675		-
		GS-11	30,640	37,714	786		-
		GS-12	34,839	43,317	942		-
		GS-13	39,186	49,266	1,120		-
GS-1321, Metallurgy Series	Nationwide	GS-5	17,830	21,943	457	#589	No change
		GS-7	22,084	27,178	566		-
		GS-9	24,941	31,178	693		-
		GS-11	27,659	35,201	[illegible]		-
GS-1654, Printing Management Series, limited to employees who have at least a Baccalaureate Degree with a major in Printing Management	Nationwide	GS-5	16,268	20,228	440	#725	No change

[FR Doc. 85-23220 Filed 9-27-85; 8:45 am]
BILLING CODE 6325-01-C

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

Handling of Almonds Grown in California; Administrative Rules and Regulations Governing Quality Control and Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Notice is hereby given of a proposal to change the quality control and reporting provisions in the administrative rules and regulations established under the Federal marketing order for California almonds. The changes would: (1) Require handlers to notify the Board 72 hours prior to making deliveries of inedible kernels to accepted users and (2) require handlers of California almonds to report to the Board persons or firms for whom they custom process almonds. The changes are intended to improve compliance with almond order requirements.

DATE: Comments must be received by October 15, 1985.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2069, South Building, Washington, DC 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250; telephone (202) 447–5053.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

The proposal is to amend §§ 981.442(a)(5) and 981.474 of Subpart—Administrative Rules and Regulations (7 CFR 981.401–981.474; 50 FR 16451, 24174, and 30263). Section 981.442 is issued under § 981.42 of the marketing agreement and Order No. 981 (7 CFR Part 981), both as amended, regulating the handling of almonds grown in California and hereinafter referred to collectively as the "order." Section 981.474 is issued under § 981.74 of the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal is based on two unanimous recommendations of the Almond Board of California, hereinafter referred to as the "Board," which works with USDA in administering the order.

In an effort to keep only high quality almonds in the marketplace, § 981.42 of the order and § 981.442(a)(4) of the administrative rules and regulations currently require handlers to have the inspection agency determine the weight of inedible kernels in each variety of almonds they receive. Sections 981.42(a) and 981.442(a)(5) provide that the weight of inedible kernels in a lot shall constitute a disposition obligation which handlers must meet by delivering packer pickouts, kernels rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material to crushers, feed manufacturers, feeders, or dealers in nut wasted on record with the Board as accepted users. Accepted users must sign a contract with the Board providing that the Board may enter their premises at any reasonable time to observe the storage or physical disposition of almond material.

To assure that these low-quality almonds are kept out of normal markets for almonds, proposed changes in § 981.442(a)(5) would require handlers to notify the Board at least 72 hours prior to delivering such material to accepted users and allow the Board to supervise, at its option, the delivery of that material. The proposed changes would give the Board greater flexibility in controlling the disposition of inedible almonds and monitoring compliance with marketing order regulations controlling such dispositions.

Section 981.74 provides that the Board, with the approval of the Secretary of Agriculture, may request handlers to furnish such information as will enable the Board to perform its duties and exercise its powers. Section 981.474 of the administrative rules and regulations specifies what information handlers must submit pursuant to § 981.74. Section 981.474 currently requires handlers to submit periodic reports of their shipments, commitments, and export sales.

It is proposed to add a new paragraph to § 981.474 requiring handlers to report to the Board information regarding persons or firms for whom they have custom processed almonds. The new paragraph would require handlers to submit to the Board by the 15th of each month a report of all persons or firms, including growers, for whom the handler has custom processed almonds which have not been reported in the handler's report of almonds received (ABC Form 1). The report would list the name, address, number of pounds processed and returned to the owner, and the dates on which the processing was accomplished and the almonds were returned to the owner. The change would give the Board the means of tracking potential almond handlers and of assuring compliance with marketing order regulations. The Board believes that many growers are acting as handlers, often having their almonds custom processed, but not complying with program requirements.

List of Subjects in 7 CFR Part 981

Marketing agreements and orders, Almonds, California.

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

It is proposed to revise §§ 981.442(a)(5) and 981.474 of Subpart—Administrative Rules and Regulations (7 CFR 981.474; 50 FR 16451, 24174, and 30263).

PART 981—ALMONDS GROWN IN CALIFORNIA

Subpart—Administrative Rules and Regulations

2. Section 981.442(a)(5) is revised to read as follows:

§ 981.422 Quality control.

(a) * * *

(5) *Meeting the disposition obligation.* Each handler shall meet its disposition obligation by delivering packer pickouts, kernels, rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material to crushers, feed manufacturers, feeders, or dealers in nut wastes on record with the Board as accepted users. Handlers shall notify the Board at least 72 hours prior to delivery, and the Board may supervise deliveries at its option. In the case of a handler having an annual total obligation of less than 1,000 pounds, delivery may be to the Board in lieu of an accepted user, in which case the

Board would certify the disposition lot and report the results to the USDA. For dispositions by handlers with mechanical sampling equipment, samples may be drawn by the handler in a manner acceptable to the Board and the inspection agency. For all other dispositions, samples shall be drawn by or under the supervision of the inspection agency. Upon approval by the Board and the inspection agency, sampling may be accomplished at the accepted user's destination. The almond meat content of each delivery shall be determined by the inspection agency and reported by the inspection agency to the Board and the handler and credited to the handler's disposition obligation on ABC Form 8. Deliveries containing less than 10 percent almond meat content shall not be credited against the disposition obligation. Each handler's disposition obligation shall be satisfied when the almond meat content of the material delivered to accepted users equals the disposition obligation, but no later than July 31 succeeding the crop year in which the obligation was incurred.

* * * * *

3. In § 981.474, the heading and paragraphs (a) and (b) are revised and paragraph (c) is added to read as follows:

§ 981.474 Other reports.

(a) *Report of shipments and commitments.* Each handler shall report on ABC Form 25 the following: (1) All shipments of almonds, inshell and shelled and by classification (domestic, and export by countries of destination); and (2) all commitments (almonds not shipped, but sold or otherwise obligated) whether domestic contract, export contract, or non-contract. If the destination of any export is unknown to the handler, he shall have the broker/exporter furnish this information to the Board. In support of this report, the handler shall keep invoices on the shipments, or such other documentation as may be acceptable to the Board. The reports shall be filed with the Board within five business days after the close of each month of the crop year.

(b) *Report of export sales.* At the time of each export sale, each handler shall report it to the Board on ABC Form 18 and upon delivery into export shall report this on ABC Form 19. If any export is not made directly by the handler, he shall send the ABC Form 19 to the broker/exporter and request him to make the report to the Board. These forms shall include the number and type of container, net weight, variety and whether inshell or shelled, time of export and destination. In years of minimum export prices applicable to reserve almonds, ABC Form 19 shall include the grade and size, the inspection certificate number, the price and any terms defining the price. Whenever export shipments are included with domestic shipments in the estimated trade demand for a crop year, this paragraph shall not apply.

(c) *Custom processing report.* Handlers shall submit to the Board, by the 15th of each month, a report of all persons or firms, including growers, for whom they have custom processed almonds which have not been reported in the handler's report of almonds received, ABC Form 1. The report shall list the name, address, number of pounds processed and returned to owner, and dates on which the processing was accomplished and the almonds were returned to the owner.

Dated: September 25, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85-23276 Filed 9-27-85; 8:45 am]

BILLING CODE 3410-02-M

Food and Nutrition Service

7 CFR Parts 210 and 245

National School Lunch Program and Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools—Verification Monitoring and Aims Reporting

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend Part 210, the National School Lunch Program, in two ways: (1) Each State agency would monitor School Food Authorities' compliance with the verification of eligibility requirements as part of the Assessment, Improvement, and Monitoring System (AIMS); and (2) the overall results of AIMS reviews and audits, as performed by State agencies, would be reported annually to the Food and Nutrition Service (FNS). This rule also proposes to amend Part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools, to require that the verification recordkeeping requirements for School Food Authorities be expanded and to require a sample of School Food Authorities to report verification information on a form designed by the Department. The Department is proposing this rule to improve accountability in the National School Lunch Program by collecting consistent national information on program status and by ensuring that verification activities are conducted to deter misreporting of household income.

DATE: To be assured of consideration, comments must be postmarked no later than November 29, 1985.

ADDRESSES: Comments should be sent to Lou Pastura, Branch Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written submissions will be available for public inspection in Room 509, 3101 Park Center Drive, Alexandria, Virginia 22302, during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Pastura at the address listed above or call (703) 756-3620.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under Executive Order 12291 and has been classified not major. We anticipate that this proposal will not have an impact on the economy of more than $100 million. No major increase in costs or prices for program participants, individual industries, Federal, State or local government agencies, or geographic regions is anticipated. The proposal is not expected to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.555 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (Cite 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985, as appropriate and any subsequent notices that may apply).

This proposal has also been reviewed with regard to the requirements of Pub. L. 96-354, the Regulatory Flexibility Act. The Administrator of FNS has certified that this proposal will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the additional recordkeeping and reporting requirements contained in § 210.14(g)(4) and § 245.6a (e) and (f) of

this proposed rule have been submitted to the Office of Management and Budget (OMB) for approval. The OMB control number assigned to the current AIMS recordkeeping and reporting requirement is 0584–0006. The OMB control number assigned to the current verification recordkeeping requirement is 0584–0026.

Background

Verification: On March 25, 1983, an interim rule was published in the **Federal Register** (48 FR 12505) which established requirements and timeframes for the verification of eligibility of households approved for free and reduced price benefits. On June 26, 1984, a final rule was published in the **Federal Register** (49 FR 26027) which made changes to the interim rule based on: (1) Comments received principally from State and school officials with verification experience; and (2) the results of a Congressionally mandated study which examined a variety of verification methods. Commenters who want additional background prior to responding to this proposal should also read the interim rule of March 25, 1983, and the final rule of June 26, 1984, which address the verification and certification process in schools.

AIMS: State agencies have been conducting AIMS reviews/audits for several years. AIMS consists of four performance standards against which State agencies measure compliance with program requirements. The Department believes that this review/audit system represents a significant contribution to program integrity. Each of the performance standards requires that State agencies examine a requirement so fundamental to the program that failure to comply by a School Food Authority is considered a serious deficiency. State agencies also evaluate all other aspects of program operations to determine if School Food Authorities are complying with all State and Federal requirements which ensure sound mangement. States have been evaluating verification techniques and recordkeeping through such evaluation. However, to ensure uniform monitoring of verification on a national scale and to assure uniform reporting of results, the Department proposes incorporating verification monitoring into AIMS and establishing a reporting requirement for a nationwide sample of School Food Authorities as described below.

AIMS Performance Standard 1 currently requires that, "Within the School Food Authority, each child's application for free and reduced meals is correctly approved or denied in accordance with the applicable provisions of Part 245." This standard was based on the requirements of Part 245 as they existed prior to the verification requirements. Since School Food Authorities and State agencies now have practical experience with verification, the Department believes that it is appropriate to incorporate monitoring of verification requirements into AIMS. This will also ensure that all activities performed by School Food Authorities related to the integrity of the application are examined by AIMS.

Proposed AIMS Performance Standard: Performance Standard 1 is proposed to be amended to include the verification requirements contained in Part 245 as follows: "In accordance with Part 245 of this chapter, within each School Food Authority: (1) Each child's application for free and reduced price meals is correctly approved or denied as required by § 245.6; and (2) required verification activities are conducted as required by § 245.6a."

The proposed amendment of Performance Standard 1 *does not* change the existing standard as it relates to the correct approval or denial of applications. The proposal expands the standard to include the verification requirement. To be in compliance with the proposed standard, School Food Authorities must still correctly approve or deny each child's application in accordance with the application approval process and, additionally, School Food Authorities must be in compliance with all verification requirements.

State agency assumption of the verification responsibility: If a State agency assumes responsibility for meeting the verification requirement for all or any of its School Food Authorities, as permitted under § 245.6a(a), the State is exempted from monitoring the verification process in those School Food Authorities. Instead, the State's verification efforts will be monitored by the appropriate FNS Regional Office during regularly scheduled management evaluations.

Scope of verification review/audit: The proposal requires State agencies conducting AIMS reviews/audits to determine that School Food Authorities are complying with all the verification requirements. This monitoring would include a review of School Food Authority verification records, including a review of all individual application forms that were verified to satisfy the verification requirements of § 245.6a, in the schools selected for AIMS review/audit. State agencies should ensure that schools selected for AIMS audit/review include at least one school in which verification activity was conducted. In addition, State agencies would be required to determine whether appropriate eligibility changes for free and reduced price meal benefits were made by the School Food Authority as a result of verification findings. As discussed in detail below, the Department continues to require that verification information be kept on file by the School Food Authority.

Reviews done before December 15: If the review/audit takes place prior to the deadline for completion of verification activity and the School Food Authority has not completed its verification sample, the State agency must review the School Food Authority's verification activities from the previous school year to determine if the School Food Authority complied with requirements of § 245.6a. The State must also review the progress the School Food Authority has made toward meeting the § 245.6a requirements in the current year. However, regardless of when the review is conducted, the State must review the School Food Authority's planned verification activities for the current school year to determine whether the activities planned are likely to meet the verification requirement for the year.

Error tolerance: The current required sample size for verification is considered by the Department to be a "minimum" sample size. Failure to perform the minimum number of verifications will jeopardize the deterrent effect upon which the verification requirement is based. Therefore, this proposal does not provide any leeway in the verification requirement since an error tolerance level would permit School Food Authorities to perform fewer than the minimum number of verifications considered necessary to maintain the effectiveness of verification activity.

Corrective action: On a first review or an audit, the School Food Authority will have to undertake a formal corrective action plan if: (a) The School Food Authority's files do not include information sufficient to establish compliance with the verification requirements; or (b) the School Food Authority does not have adequate documentation in a reviewable form that the minimum number of applications have been verified; or (c) the eligibility determinations made as a result of verification are incorrect.

Proposed verification : The Department is also proposing a clarification of the recordkeeping requirements in § 245.6a(c). The School Food Authority is currently required to have on file a description of the

verification to be accomplished which includes: (1) A summary of verification efforts including the methods used to select applications to be verified and the techniques used to verify applications; (2) the total number of applications on file by October 31; and (3) the percentage or number of applications verified as of December 15. Additionally, the proposal expands the recordkeeping requirements, beginning July 1, 1986, to include a requirement that School Food Authorities clearly document in a reviewable form their proposed schedule for completing the verification requirement, and their verification findings. Documentation of verified applications may be noted directly on the application or elsewhere. This documentation must include the source of verification information (pay stub, letter from employer, etc.), whether the income information supports eligibility, resulting changes in household eligibility, and the date and signature or initials of the verifying official. Entry spaces to easily document all of this information were included on the suggested application form that was issued by FNS in 1984. This proposal also specifies that where State agencies have assumed verification responsibilities, these State agencies must also assume the corresponding recordkeeping requirements.

Proposed verification reporting: The Department is proposing a verification reporting requirement, beginning July 1, 1986, for a sample of School Food Authorities as selected by FNS. The Department believes that it is necessary to monitor the implementation and results of verification to evaluate its effectiveness. Therefore, the Department is proposing that School Food Authorities maintain on file the results of their verification activity and, as required by FNS, report the information to State agencies on a form provided by FNS. After the State has reviewed the forms to ensure their accuracy and completeness, the data will be forwarded to FNS. The proposed reporting form would include at a minimum: (1) The method of sampling used, i.e., random, focused, or 100 percent; (2) the number of approved free and reduced price applications on file as of October 31; (3) the number of applications verified by December 15; and (4) the number of approved applications changed from: (i) Free meals to reduced price meals; (ii) free meals to denied; (iii) reduced price meals to free meals; and (iv) reduced price meals to denied. FNS will design a form to be used for the collection of this information to ensure that consistent information is compiled and evaluated nationally. The Department solicits comments on any other information which may provide needed insight into the effectiveness of the current verification requirements. Based on current data, the Department does not anticipate that the sample will exceed one-third of all School Food Authorities. It should be noted that it may prove necessary to increase or decrease the sample size in individual States to obtain valid information for that State. In addition, the Department may determine, at a later date, that a sample size larger than one-third of all School Food Authorities may ultimately be needed to obtain accurate information on a national basis.

Proposed AIMS reporting: The Department is also proposing an annual AIMS reporting requirement for State agencies. The AIMS review/audit system has been a requirement for State agencies for several years. This system requires that State agencies perform reviews or audits of all School Food Authorities on a regular cycle. Each School Food Authority is evaluated in its compliance with the AIMS performance standards. State agencies are currently required by § 210.14(g)(4) to maintain records pertaining to these AIMS requirements. Among other items, these records must "document the details of all AIMS reviews/audits and demonstrate the degree of compliance with AIMS performance standards." Additionally, records of corrective action plans developed to remedy program deficiencies must be maintained.

The Department believes that the results of AIMS reviews/audits represent a valuable profile of the status of the National School Lunch Program and should be used to evaluate national or regional trends in program operations. Although these records are subject to review by FNS during management evaluations, there has been no system to gather and summarize this information at a fixed time each school year using a consistent format. Additionally, because recordkeeping is not uniform, AIMS data is not readily retrievable. Therefore, the Department is proposing that State agencies annually report a summary of the results of AIMS reviews/audits.

The Department believes that since State agencies are currently required to maintain AIMS records, reporting the results to FNS annually on a form designed by FNS is reasonable and should not unduly burden State agencies. Providing a format and specific data to be reported may in some instances actually lessen the recordkeeping burden of some State agencies. The Department envisions that the summary will include the number of reviews/audits performed, the number of School Food Authorities requiring corrective action plans, and data by performances standard, such as the total number of School Food Authorities violating a performance standard and the number and dollar value of State overpayment assessments and collections.

Although this summary report would not be required by this proposed rule until one entire AIMS cycle has been completed, some of the data which would be reported at that time must be obtained during School Year 1985–86. The Department wishes to emphasize that State agencies are already required to maintain such records. We strongly urge State agencies to maintain all AIMS records beginning with this school year in formats designed to meet the type of reporting requirement proposed by this rule. This will facilitate compliance with the reporting requirement when it is put into effect.

Implementation: The first of these proposed annual AIMS reports will not be due until March 1, 1987. Since it is possible that a second AIMS review may not be conducted until December 31 of the school year following the first review, the Department is proposing that AIMS results for the prior school year be reported to FNS by March 1 of each school year. This will permit the results of second AIMS reviews to be included with the appropriate annual report. A similar reporting requirement is also proposed for those State agencies utilizing a compliance monitoring system which is equivalent to AIMS in scope and approved by FNS as provided in § 210.14(a)(7). FNS will design a form to be used for the collection of this information to ensure that the information obtained and the evaulation methods used are consistent.

List of Subjects

7 CFR Part 210

Food assistance programs, National School Lunch Program, Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements.

7 CFR Part 245

Food assistance programs, National School Lunch Program, Grant—Social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Parts 210 and 245 are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for Part 210 continues to read as follows:

Authority: Secs. 2–12, 60 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 84 Stat. 270 (42 U.S.C. 1751–1760, 1779), unless otherwise noted.

2. Section 210.2(b–3)(1) is revised to read as follows:

§ 210.2 Definitions.

* * * * *

(b–3) * * *

(1) In accordance with Part 245 of this chapter, within the School Food Authority: (i) each child's application for free and reduced price meals is correctly approved or denied as required by § 245.6 and (ii) required verification activities are conducted as required by § 245.6a.

* * * * *

3. Section 210.9 is revised to read as follows:

§ 210.9 Free and reduced price lunches.

In accordance with Part 245 of this chapter, the School Food Authority shall make eligibility determinations for households applying for free and reduced price benefits for its children, serve free and reduced price lunches to children from eligible households, and conduct verification activities.

4. Section 210.14 is amended by:

a. Redesignating paragraphs (a)(3)(i)(B), (C) and (D) as paragraphs (a)(3)(i)(C), (D) and (E) respectively, and adding a new paragraph (a)(3)(i)(B);

b. Revising paragraph (a)(3)(v)(A);

c. Adding a sentence to paragraph (a)(7)(v)(B) at the end of the existing paragraph; and

d. Adding a sentence to paragraph (g)(4) just before the last sentence which begins with the word "Additionally".

The additions and revisions read as follows:

§ 210.14 Special responsibilities of State agencies.

(a) * * *

(3) * * *

(i) Scope of AIMS reviews: * * *

(B) The State agency shall determine if the verification procedures employed by each School Food Authority comply with the requirements of § 245.6a of this chapter. This shall be accomplished by reviewing the verification activities carried out by the School Food Authorities to ensure that the verification requirements of § 245.6a of this chapter have been met. This review shall include an evaluation of all individual applications verified by the School Food Authority to satisfy the verification requirements of § 245.6a, in the schools selected for AIMS audit/review. State agencies shall ensure that schools selected for AIMS audit/review include at least one school in which verification activity was conducted. In addition, State agencies shall determine if School Food Authorities made the appropriate changes in household eligibility status as a result of verification activity. If the review is conducted prior to December 15, and the School Food Authority has not yet completed its verification activities, the State agency shall review the School Food Authority's verification activities for the preceding year to determine if the verification requirements of § 245.6a were satisfied. The State agency shall also review the School Food Authority's progress toward meeting the verification requirements of the current year. Regardless of when the review is conducted, the State agency shall review the School Food Authority's description of planned verification activities for the current school year to determine if they are adequate to meet the minimum verification requirements of § 245.6a of this chapter. State agencies which have assumed responsibility for verification activities in some or all of their School Food Authorities are exempt from the requirements in this paragraph for those School Food Authorities in which the State has assumed responsibility.

* * * * *

(v) Error tolerance for AIMS review * * *

(A) For AIMS Performance Standard 1, 10 percent or more (but not less than 10 children) of the children listed on reviewed applications and attending reviewed schools in a School Food Authority are incorrectly approved or denied for free or reduced price meal benefits; or the School Food Authority has not complied with the requirements concerning verification as required by S245.6a of this chapter; and/or

* * * * *

(7) * * *

(v) * * *

(B) * * * The State agency shall report to FNS the results of such monitoring visits and activity on a form designated by FNS by March 1 of each school year, beginning July 1, 1986.

* * * * *

(g) *Records and reports:* * * *

(4) * * * Each State agency shall report to FNS the results of AIMS reviews/audits on a form designated by FNS by March 1, of each school year, beginning July 1, 1986. * * *

* * * * *

PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

1. The authority citation for Part 245 continues to read as follows:

Authority: Secs. 3, 4, and 10, 80 Stat. 885, 886, 889, as amended (42 U.S.C. 1772, 1773, 1779); secs. 2–12, 60 Stat. 230, as amended (43 U.S.C. 1751–60), unless otherwise noted.

2. Section 245.6a is amended by redesignating paragraphs (d) and (e) as paragraphs (e) and (f) respectively, revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 245.6a Verification requirements.

* * * * *

(c) *Verification recordkeeping.* Beginning July 1, 1986, each School Food Authority, or the State agency if it has assumed responsibility for verification, shall maintain on file for review documentation of its current plans for verification activities and the results of completed verification activities. At minimum, the following shall be available for review:

(1) A description of the methods (random, focused, or other) used to select applications;

(2) A description of the techniques used in the verification process such as: types of information required (wage stubs, etc.); the use of systems of records such as food stamp eligibility records; and follow-up procedures such as the number of contacts with non-responding households;

(3) A timetable indicating the schedule for verification;

(4) The number of approved free and reduced price applications on file by October 31;

(5) The number of applications verified by December 15; and

(6) A record, on the application or elsewhere in a reviewable form, of the source, results and date of individual verification determinations and the signature or initials of the verifying official.

(d) *Verification reporting*: (1) Each year, beginning July 1, 1986, for purposes of collecting data on verification activities, FNS shall select a nationwide sample of school food authorities and shall notify State agencies of the exact sample selection by December 31 of each year.

(2) Each State agency shall ensure that those school food authorities

included in the nationwide sample report the results of verification activity to the State agency, on a form designated by FNS, by February 28 of each year. The results to be reported shall at a minimum include:

(i) The verification sampling method used (random, focused, or description of other);

(ii) The number of approved free and reduced price applications on file as of October 31;

(iii) The number of applications verified as of December 15;

(iv) The number of approved applications changed as a result of verification from: (A) Free meals to reduced price meals; (B) free meals to denied; (C) reduced price meals to free meals; and (D) reduced price meals to denied.

(3) Each State agency shall review and forward the completed forms to FNS no later than March 30 of each year.

* * * * *

Dated: September 24, 1985.

Robert E. Leard,

Administrator.

[FR Doc. 85-23256 Filed 9-27-85; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 1140

[Docket No. AO-387]

Milk in the Hawaii Marketing Area; Rescheduling of Hearing on Proposed Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Rescheduling of public hearing on proposed rulemaking.

SUMMARY: The hearing on a proposed Federal milk marketing agreement and order for the Hawaii marketing area, originally scheduled to begin October 1, 1985, has been rescheduled to begin December 11, 1985.

DATE: The rescheduled hearing will convene at 9:00 a.m., local time, on December 11, 1985.

ADDRESS: The rescheduled hearing will be held in Room 6323 of the Federal Building, 300 Ala Moana Boulevard, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

A notice was issued on August 6, 1985 (50 FR 32426), giving notice of a public hearing to be held at the Federal Building, 300 Ala Moana Boulevard, Honolulu, Hawaii, beginning at 9:00 a.m., local time, on October 1, 1985, with respect to a proposed Federal marketing agreement and order regulating the handling of milk in the Hawaii marketing area.

Notice is hereby given, pursuant to the rules of practice applicable to such proceedings (7 CFR Part 900), that the said hearing is rescheduled to be held in Room 6323 of the Federal Building, 300 Ala Moana Boulevard, Honolulu, Hawaii 96850, beginning at 9:00 a.m., local time, on December 11, 1985.

Prior documents in this proceeding:

Notice of Hearing: Issued August 6, 1985; published August 12, 1985 (50 FR 32426).

List of Subjects in 7 CFR Part 1140

Milk Marketing Orders, Milk, Dairy Products.

Authority: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

Signed at Washington, D.C., on: September 24, 1985.

William T. Manley,

Deputy Administration, Marketing Programs.

[FR Doc. 85-23239 Filed 9-27-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 85-097]

Tuberculosis in Cattle; State Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations governing the interstate movement of cattle because of tuberculosis by lowering the designation of New Mexico from an accredited-free State to a modified accredited area. It has been determined that New Mexico no longer meets the criteria for designation as an accredited-free State but meets the criteria for designation as a modified accredited area.

The regulations do not impose restrictions on the interstate movement of cattle not known to be affected with or exposed to tuberculosis from either accredited-free States or modified accredited areas. However, the designation for any given jurisdiction can affect the marketability of cattle from that jurisdiction, since some prospective cattle buyers prefer to buy cattle from accredited-free States.

DATE: Written comments must be received on or before November 29, 1985.

ADDRESSES: Written comments concerning this proposed rule should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 85-097. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph L. Hosker, Cattle Diseases Staff, VS, APHIS, USDA, Room 818, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8715.

SUPPLEMENTARY INFORMATION:

Background

The "Tuberculosis in Cattle" regulations (contained in 9 CFR Part 77 and referred to below as the regulations) regulate the interstate movement of cattle because of tuberculosis. The requirements of the regulations concerning the interstate movement of cattle not known to be affected with or exposed to tuberculosis are based on whether the cattle are moved from jurisdicitons designated as accredited-free States, modified accredited areas, or nonmodified accredited areas. The criteria for determining the status of States (the term State is defined to mean any State, territory, the District of Columbia, or Puerto Rico) or portions of States is contained in the document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which has been made part of the regulations by incorporation by reference. Generally the status of States or portions of States is determined based on the rate of tuberculosis infection present and the effectiveness of a tuberculosis control and eradication.

Sections § 77.7 and 77.8 of the regulations provide the following with respect to the interstate movement of cattle not known to be affected with or exposed to tuberculosis:

§ 77.7 *Movement from accredit-free States and modified accredited areas.*[3]

Cattle not known to be affected with or exposed to tuberculosis, originating in an accredited-free State or a modified accredited area, may be moved interstate without restriction.

§ 77.8 *Movement from nonmodified accredited area.*

Cattle not known to be affected with or exposed to tuberculosis, originating in a nonmodified accredited area, shall only be moved interstate if:

(a) Such cattle are accompanied by a certificate stating that such cattle have been classified negative to an official tuberculin test, which was conducted within 30 days prior to the date of movement. All cattle not individually identified by a registration name and number shall be individually identified by a Veterinary Services approved metal eartag or tattoo; or

(b) Such cattle are from an accredited herd and they are accompanied by a certificate showing the cattle to be from such a herd; or

(c) Such cattle are moved interstate directly to slaughter to an establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or to a State inspected slaughtering establishment which has inspection by a State inspector at the time of slaughter.

New Mexico is included in the list of jurisdictions designated in § 77.4 of the regulations as accredited-free States. The Deputy Administrator has detemined that New Mexico no longer meets the criteria for designation as an accredited-free State, but instead meets the criteria for designation as a modified accredited area. Therefore, it is proposed to amend the regulations to designate New Mexico as a modified accredited area.

As noted above, the regulations do not impose restrictions on the interstate movement of cattle not known to be affected with or exposed to tuberculosis from accredited-free States or modified accredited areas. However, the designation for any given jurisdiction can affect the marketability of cattle from that jurisdiction, since some prospective cattle buyers often prefer to buy cattle from accredited-free States.

Executive Order and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this proposed rule, if adopted, would not have a significant effect on the economy; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. It has been determined that the adoption of the proposed rule would not cause a significant effect on marketing patterns and would not have a significant economic impact on those persons affected by this document.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985.)

List of Subjects in 9 CFR Part 77

Animal diseases, Cattle, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS IN CATTLE

Accordingly, it is proposed to amend 9 CFR 77 as follows:

1. The authority citation for Part 77 would be revised to read as set forth below:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 77.4, paragraph (b) would be revised to read as follows:

§ 77.4 Accredited-free States.

(a) * * *

(b) The following States are hereby designated accredited-free States: Arizona, Colorado, Connecticut, Delaware, Indiana, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jsery, New York, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Wyoming, and the Virgin Islands of the United States.

Done at Washington, DC, this 24th day of September 1985.

B. G. Johnson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85–23277 Filed 9–27–85; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–NM–82–AD]

Airworthiness Directives: Short Brothers, Ltd. Model SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require the inspection and repair, as necessary, of the main fitting of the nose landing gear. This action is required to detect forging defects which have been reported in the wall of the fitting. Defects could lead to failure of the nose landing gear.

DATES: Comments must be received on or before November 18, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–82–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM–113; telephone (206) 431–2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such

written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85–NM–82–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

The Civil Aviation Authority (CAA) of the United Kingdom, has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition which may exist on certain nose landing gear main fittings on Short Brothers, Ltd. Model SD3–60 airplanes. A forging defect in the cylindrical wall of the main fitting generated a crack, which was discovered in service. If allowed to remain undetected, the crack could have resulted in the failure of the fitting and collapse of the nose landing gear. Shorts Service Bulletin SD360–32–19 dated March 1985, refers to Dowty Rotol Service Bulletin 32–26SD dated December 19, 1984, which prescribes inspections, and repairs where possible, to detect and alleviate the defeat. The CAA has mandated compliance with the Service Bulletins.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspection, and rework of the fitting where possible, in accordance with the previously mentioned service bulletins.

It is estimated that 33 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2 man-hours per airplane to accomplish the required inspections, and that the average labor cost would be $40 per man-hour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,640.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Short Brothers Model SD3–60 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

PART 39—[AMENDED]

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Short Brothers, Ltd.: Applies to certain Model SD3–60 airplanes, as described in Short Brothers, Ltd. Service Bulletin SD360–32–19, dated March 1985, certificated in any category.

To prevent the failure of the nose landing gear main fitting, accomplish the following within 90 days after the effective date of this AD, unless previously accomplished:

1. Inspect using eddy current methods and rework, as necessary, the main fitting of the nose landing gear in accordance with Dowty Rotol Service Bulletin 32–26SD dated December 19, 1984.

2. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Northwest Mountain Region.

3. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received these documents from the manufacturer may obtain copies upon request to Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 19, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–23206 Filed 9–27–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[LR–291–84]

Reduction of Tax Overpayments by Amount of Past-Due Legally Enforceable Debt Owed to Federal Agency; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the reduction of a taxpayer's overpayment of tax by the amount of any past-due legally enforceable debt owed to a federal agency by the taxpayer and referred by the agency to the Internal Revenue Service for offset. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by November 29, 1985. The regulations are proposed to apply to refunds payable under section 6402 of the Internal Revenue Code of 1954 after December 31, 1985, and before January 1, 1988 and are effective upon publication.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–291–84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Sharon L. Hall of the Legislation and

Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T), (202) 566–3288 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (designated by a "T" following the section citation) in the Rules and Regulations section of this issue of the **Federal Register** amend Part 301 of Title 26 of the Code of Federal Regulations to provide rules relating to section 6402 (d) and (e) of the Internal Revenue Code of 1954, and section 3720A of subchapter II of chapter 37 of title 31, United States Code, as added by section 2653 of the Spending Reduction Act of 1984 (Pub. L. 98–369, 98 Stat. 1153). This document proposes to adopt those temporary regulations as final regulations; accordingly, the text of the temporary regulations serves as the comment document for this notice of proposed rulemaking. In addition, the preamble to the temporary regulations provides a discussion of the proposed and temporary rules. For the text of the temporary regulations, see FR Doc. 85–23285 (T.D. 8053) published in the Rules and Regulations section of this issue of the **Federal Register**.

Special Analyses

The Commissioner of Internal Revenue has determined that these proposed rules are not major rules as defined in Executive Order 12291 and, therefore, a regulatory impact analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Sharon L. Hall of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

James I. Owens,

Acting Commissioner of Internal Revenue.

[FR Doc. 85–23286 Filed 9–27–85; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[LR–31–85]

Tax-exempt Entity Leasing; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations regarding tax-exempt entity leasing.

DATES: The public hearing will be held on Monday, November 25, 1985, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Tuesday, November 12, 1985.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal revenue, ATTN: CC:LR:T (LR–31–85), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, telephone 202–566–3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 168 (j) of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Tuesday, July 2, 1985 (50 FR 27297).

The rules of § 601.601 (a) (3) of the "Statement of Procedural Rules" (26 CFR 601) shall apply with respect to the public hearing. Persons who have submitted comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations whould submit, not later than Tuesday, November 12, 1985, an outline of oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Peter K. Scott,

Director, Legislation and Regulations Division.

[FR Doc. 85–23288 Filed 9–27–85; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Public Comment Period and Opportunity for Public Hearing on an Amendment to the Oklahoma Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for a public comment period and for a public hearing on an amendment submitted by the State of Oklahoma to amend its permanent regulatory program which was approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed program amendment consists of proposed provisions to implement a blaster training, examination and

certification program as required by 30 CFR Part 850.

This notice sets forth the times and locations that the proposed amendment is available for public inspection, the comment period during which interested persons may submit written comments on the proposed program amendment and information pertinent to the public hearing.

DATES: Written comments not received on or before 4:00 p.m. on October 30, 1985 will not necessarily be considered. A public hearing on the proposal will be held on October 25, 1985 at the locations listed below under **"SUPPLEMENTARY INFORMATION"**. Any person interested in making an oral or written presentation at the hearing should contact Mr. James H. Moncrief, Acting Director, Tulsa Field Office by 4:00 p.m. on October 15, 1985. If no one has contacted Mr. Moncrief to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Moncrief, a public meeting, rather than a hearing may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James H. Moncrief, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, Room 3432, 333 West Fourth Street, Tulsa, Oklahoma 74103.

The public hearing, if requested will be held at the Federal Building, 125 South Main Street, Muskogee, Oklahoma 74401. See **"SUPPLEMENTARY INFORMATION"** for addresses where copies of the Oklahoma program amendment and administrative record on the Oklahoma program are available. Each requestor may receive, free of charge, one single copy of the proposed program amendment by contacting the OSM Tulsa Field Office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Acting Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, Room 3432, 333 West Fourth Street, Tulsa, Oklahoma 74103, Telephone: (918) 581–7923.

SUPPLEMENTARY INFORMATION: Copies of the Oklahoma program amendment, the Oklahoma program and the administrative record on the Oklahoma program are available for public review and copying at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5124, 1100 "L" Street, NW., Washington, D.C. 20240

Office of Surface Mining Reclamation and Enforcement, Room 3432, 333 West Fourth Street, Tulsa, Oklahoma 74103

Oklahoma Department of Mines, Suite 107, 4040 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105

The Oklahoma program was approved by the Secretary of the Interior on January 19, 1981, **Federal Register** (46 FR 4910). On August 8, 1985, the State of Oklahoma submitted to OSM an amendment to its approved permanent regulatory program. The proposed program amendment is intended to implement the provisions of 30 CFR Part 850 relating to blaster training, examination and certification. The proposed amendment consists of proposed regulations governing the standards for certification of blasters and a blaster training course outline which addresses the topics identified in the Federal regulations at 30 CFR Part 850 as published in the March 4, 1983, **Federal Register** (48 FR 9486).

In accordance with the provisions of 30 CFR 732.17, OSM is seeking comment from the public on the adequacy of the proposed program amendment. If the proposed amendment is found by the Director to be in accordance with SMCRA and no less effective than the Federal regulations, the amendment will be approved and codified at 30 CFR Part 936 as part of the approved Oklahoma program.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 936

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Sec. 503 (30 U.S.C. 1253).

Dated: September 23, 1985.

Jed D. Christensen,

Acting Director, Office of Surface Mining.

[FR Doc. 85–23245 Filed 9–27–85; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 716

[OPTS–84014; FRL–2905–2]

Health and Safety Data Reporting; Submission of Lists and Copies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the Toxic Substances Control Act (TSCA) section 8(d) Health and Safety Data Reporting Rule by: lengthening the rule's sunset provision, limiting three reporting exemptions, clarifying the rule's confidentiality provisions, and making some technical revisions. EPA believes that these amendments will increase the number and usefulness of the health and safety data reports submitted to EPA, and will provide these reports during the same time period that EPA performs its risk identification, assessment, and management activities.

DATE: Written comments should be submitted by November 29, 1985.

ADDRESS: Comments should bear the docket control number OPTS–84014 and should be submitted to: TSCA Public Information Officer (TS–793), Office of Toxic Substances, Environmental Protection Agency, Rm. E–108, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800–424–9065), In Washington, D.C.: (544–1404), Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: OMB Control Number 2070–0004.

I. Background

Pursuant to section 8(d) of TSCA, EPA promulgated a model Health and Safety Data Reporting Rule (40 CFR Part 716). The section 8(d) model rule requires manufacturers, importers, and processors of listed chemical substances and mixtures (henceforth referred to as substances) to submit to EPA copies and lists of unpublished health and safety studies on the listed substances that they manufacture, import, or process. These studies provide EPA with very useful information and have provided significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, 8, and 9. Since promulgation of the model rule, EPA has amended the rule 10 times to list approximately 125 substances.

Whenever EPA lists a substance in the model rule, the model rule's reporting requirements are triggered, and a person is required to submit health and safety studies. Detailed guidance for reporting unpublished health and safety data is provided in 40 CFR Part 716. Also found in Part 716 are the reporting exemptions. Listed below are the general reporting requirements of the seciton 8(d) model rule.

1. A person who, in the 10 years preceding the date a substance is listed, either had proposed to manufacture, import, or process or had manufactured, imported, or processed the listed substance must submit to EPA:

A copy of each health and safety study which is in their possession at the time the substance is listed.

2. A person who, at the time a substance is listed, proposes to manufacture, import, or process or is manufacturing, importing, or processing the listed substance must submit the following to EPA:

a. A copy of each health and safety study which is in their possession at the time the substance is listed.

b. A list of health and safety studies known to them but not in their possession at the time the substance is listed.

c. A list of health and safety studies that are ongoing at the time the substance is listed and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the date the substance is listed and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of completion date.

3. A person who, after the time a substance is listed, proposes to manufacture, import, or process the listed substance must submit the following to EPA:

a. A copy of each health and safety study which is in their possession at the time they propose to manufacture, import, or process the listed substance.

b. A list of health and safety studies known to them but not in their possession at the time they propose to manufacture, import, or process the listed substance.

c. A list of health and safety studies that are ongoing at the time they propose to manufacture, import, or process the listed substance, and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the time they propose to manufacture, import, or process the listed substance, and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of completion date.

A review of the section 8(d) model rule's reporting requirements shows that the bulk of reporting is required at the time the substance is listed. Persons described in categories 1 and 2 do all or most of their health and safety data reporting at the start of the reporting period. The remaining reporting requirements, principally category 3, continue prospectively. All but 1 of these prospective reporting requirements are terminated by the 3 years sunset provision. The only reporting requirement not terminated by the sunset provision applies to those manufacturers, importers, and processors who initiated a study on a listed substance before the reporting period terminated. These studies must be submitted upon their completion regardless of the study's completion date.

The section 8(d) model rule also contains: exemptions to the above reporting requirements, and provisions that instruct submitters on asserting claims of confidentiality.

II. Summary

EPA is proposing to lengthen the sunset provision from 3 years to 10 years, thereby allowing the prospective reporting requirements to remain in effect for a longer period of time. In order to offset the potential for an increase in unnecessary reporting burden, EPA will biennially review all of the substances listed in the model rule and remove those substances for which additional health and safety data are no longer needed. The Agency is also proposing to amend the model rule by: limiting three reporting exemptions; clarifying the confidentiality claims provisions; replacing the term "designated mixture" with the term "listed mixture"; specifying importation rather than addressing it by definition; redrafting the who must report section to provide greater clarity; reordering the provisions of Part 716 so that the list of substances follows the regulatory text; and reordering the list of substances in 40 CFR 716.17 by alphabetical and Chemical Abstract Service Registry (CAS) numerical order.

Unfortunately, EPA believes that between publication of this proposed rule and promulgation of a final rule, the section 8(d) model rule's automatic sunset provision will terminate the reporting periods on many substances listed in the model rule. Allowing the reporting periods on these substances to terminate would create reporting gaps which could be closed only by requiring file searches. In order to prevent: these reporting periods from terminating, the creation of reporting gaps, the need for additional file searches, and confusion for submitters; elsewhere in this issue of the **Federal Register**, EPA is suspending the operation of the sunset provision for one year or until promulgation of a final rule, whichever occurs first. EPA has reviewed these substances and determined that it has a reasonable health and safety data need for continued reporting on all but seven of them. Therefore, elsewhere in this issue of the **Federal Register**, EPA is removing these seven substances from the section 8(d) model rule.

III. Reasons for Proposing This Rule

A. Lengthening the Sunset Provision

As described in Unit I, the sunset provision terminates all but 1 of the prospective reporting requirements in the section 8(d) model rule. After a reporting period has terminated, current manufacturers, importers, and processors of a once listed substance are no longer required to notify EPA when they initiate a health and safety study on the substance, or to submit that study whenever it is completed; persons who propose to manufacture, import, or process the once listed substance would no longer be required to initiate a file search for or submit unpublished health and safety data studies on the substance. EPA believes that the sunset provision in the section 8(d) model rule provides an important function by limiting the potential for unnecessary reporting and terminating what would

otherwise be indefinite reporting requirements.

However, based on the Agency's experience with the section 8(d) model rule, EPA has determined that the 3-year sunset provision will routinely cut short the reporting period on most of the listed substances before EPA has completed its risk identification, assessment, and management activities. For instance, on October 4, 1985, the sunset provision will terminate the reporting period on the chemical substances listed at 40 CFR 716.17(a)(1). Except for hexachlorocyclopentadiene, EPA wishes to extend the reporting period on all of the chemicals listed in § 716.17(a)(1). The Agency has identified four reasons that necessitate extending the reporting period for these chemicals. One or more of these reasons is applicable to each substance:

1. EPA is actively considering the substance for a rulemaking or a rulemaking is in progress.

2. The substance is undergoing testing, the results of which may require an intermediate tier testing decision or subsequent chemical assessment.

3. A chemical evaluation/risk assessment is planned or in progress.

4. The substance is used in structure activity relationship analysis of other chemical substances.

In order to keep the health and safety data bases current and comprehensive for these substances EPA must extend the reporting period. Two major alternatives to extend the reporting period are to: relist the substances without lengthening the sunset provision, or lengthen the sunset provision thereby reducing the probability for relisting substances.

1. Relisting and the Sunset Provision

EPA believes that the sunset provision is an important part of the section 8(d) model rule. The sunset provision limits unnecessary reporting and maintains the burden on EPA to articulate a reasonable need for continuing health and safety data reporting. The sunset provision requires EPA to review those substances for which the sunset provision is about to terminate the reporting period, and then relist, by notice and comment rulemaking, those substances which EPA has a continuing need for health and safety data. Since EPA adds substances to the model rule at least twice a year and the model rule contains a 3-year sunset, EPA must annually review a limited number of the listed substances (those in their 2nd year of a reporting period) and relist those for which prospective section 8(d) reporting is needed.

However, activity has a number of drawbacks. Relisting is expensive, time consuming, and requires EPA to expend resources to keep an important health and safety data base current and comprehensive. In addition, the final rule to relist a substance must be effective prior to the reporting period termination date otherwise reporting gaps will be created. As long as there is a sunset provision in the section 8(d) model rule, there will be instances in which EPA will consider relisting substances. However, the longer the sunset provision the fewer the instances in which EPA would need to consider relisting substances, and therefore the smaller the potential for an annual rulemaking to relist substances. Lengthening the sunset provision then would reduce EPA's resource expenditures for keeping health and safety data bases current and comprehensive, and would reduce the potential for reporting gaps and subsequent file searches. On the other hand, the longer the sunset provision the greater the potential for requiring unnecessary reporting and the smaller the burden on EPA to require prospective section 8(d) reporting.

Based on EPA's review of all the listed substances, the 3 years sunset provision requires EPA to relist almost every substance at least once. This will result in, at a minimum, two notice and comment rulemakings for almost each substance and a 6 year reporting period. Clearly for the first 6 year period, this is a large resource expenditure to keep a health and safety database current, and is a heavy burden on EPA to require prospective section 8(d) data. By year 6, EPA believes that between one-third and two-thirds of the substances will again need to be relisted. This represents, for up to 66% of these substances, a high probability for a third rulemaking. In fact, EPA believes that not until year 10 will the need to relist substances fall between 0 and 10 percent of the substances.

EPA's objectives in proposing to amend the 3 year sunset are to: reduce the costs of keeping a database current and comprehensive by reducing the potential for an annual rulemaking to relist substances; leave the burden on EPA for articulating a need for continuing reporting; and minimize the potential for unncessary reporting. Four options are presented below: a 6 year sunset provision, a 10 year sunset provision, a 6 year sunset and a biennial review, and a 10 year sunset and a biennial review.

2. Options

For a small increase in the potential for requiring unnecessary reporting, EPA believes that a 6 year sunset provision will significantly reduce the need to relist substances and would reduce the burden on EPA for requiring prospective section 8)d) reporting. No longer would EPA need to list almost each substance at least twice. However after year 6, EPA would still need to relist at least one-third and as much two-thirds of these substances. Therefore this option would result in an annual review of a limited number of substances (those in their 5th year of a reporting period), a potential for up to 6 years of unnecessary reporting (either when first listed or whenever subsequently relisted), and a high probability for an annual rulemaking to relist substances.

For an even greater increase in the potential for requiring unnecessary reporting burden, EPA believes that a 10 year sunset provision would provide the Agency with enough time to complete its risk identification, assessment, and management activities for almost all substances. With a 10 year sunset provision only in a few instances would EPA need to relist a substance. This would substantially reduce EPA's costs to maintain a current and comprehensive database. However, a 10 year sunset provision would also substantially reduce EPA's burden for justifying prospective section 8(d) reporting and increase the potential for requiring unnecessary reporting. Therefore this option would result in an annual review of a limited number of substances (those in their 9th year of a reporting period), a potential for up to 10 years of unnecessary reporting (either when first listed or whenever subsequently relisted), and a low probability for an annual rulemaking to relist substances.

Comparing the 6 and 10 year options on cost savings alone, the 10 year sunset provision is the preferred option. Although both options entail an annual review of a limited number of substances, the 10 year sunset is unlikely to result in an annual relisting and therefore would dramatically reduce EPA's database costs. However, the 10 year sunset would also increase the potential for unnecessary reporting and reduce the burden on EPA for requiring prospective section 8(d) reporting.

To reduce the potential for unnecessary reporting and to reshoulder the burden for requiring prospective section 8(d) reporting, EPA considered combining the 6 and 10 year sunset

provisions with a biennial reivew of all the listed substances. Every 2 years, EPA would review all of the substances listed in the model rule and remove those substances for which additional health and safety data are no longer needed. The authority for terminating a reporting period on a substance listed in the section 8(d) model rule already resides with the Assistant Administrator of the Office of Pesticides and Toxic Substances, 40 CFR 716.19. EPA would use this authority to remove substances from the section 8(d) model rule following each biennial review.

EPA has established an internal procedure to review each substance on the section 8(d) model rule, and to elicit all reasonable justifications for retaining each substance on or removing each substance from the model rule. Following the review a final rule would be published. The rule would inform the public and regulated community that the review was complete, and would remove those substances for which EPA's health and safety data needs cannot reasonably justify continued reporting. The rule would be effective 90 days following its promulgation, thereby allowing persons to comment on the determinations presented in the final rule. If a reasonable justification exists for retaining a substance on the section 8(d) model rule, EPA will withdraw the substance from the final rule prior to the final rule's effective date. EPA has already used this internal process and has reviewed the substances listed in 40 CFR 716.17(a) (1) through (10). Pursuant to this review, EPA has elsewhere in this issue of the **Federal Register**, promulgated a final rule that removes hexachlorocyclopentadiene and six other substances from the section 8(d) model rule.

Combining the 6 year sunset provision with a biennial review is only slightly preferable to the current 3 year sunset provision, and it is less desirable than the simple 6 year sunset provision. Compared with the simple 6 year sunset provision, this option would: reduce the potential for unnecessary reporting (from up to 6 years to 2 years); substantially increase EPA's burden for requiring prospective reporting (the burden would exist every 2 rather than 6 years); and increase EPA's costs of keeping the section 8(d) data base current and comprehensive (not only would EPA face the same high probability for relisting substances, but EPA would also be expending resources to remove substances).

Combining the 10 year sunset provision with the biennial review is the most preferred option. Compared to the 6 year sunset and biennial review this option provides: the same potential for unnecessary reporting (up to 2 years), the same burden for requiring prospective reporting (every 2 years), but since it is unlikely that EPA would need to relist a substance, a substantial reduction in the cost of keeping the database current and comprehenaive. Therefore, EPA is proposing to replace the 3 year sunset provision with a 10 year sunset and a biennial review of all listed substances.

B. Limiting Three Reporting Exemptions

Section 716.11 of the section 8(d) model rule exempts certain health and safety studies from the submission and listing requirements of the model rule. EPA has determined that exemptions (c) and (b) are too broad and should be limited. The third exemption EPA proposes to amend is a listing exemption for newly initiated studies.

Exemption (c) provides that a non-confidential study previously submitted to any Federal agency is exempt from the submission and listing requirements of the section 8(d) model rule. This exemption allows a manufacturer, importer, or processor of a listed substance, who has previously submitted a non-confidential study to a Federal agency, to refrain from submitting the study to EPA and notifying EPA that a study was submitted to the Federal Government. Since the Federal Government does not have a central depository from which a federal employee can ascertain or catalog the receipt of a health and safety study, potentially critical information may be omitted from EPA's risk assessment and management determinations. In order that EPA may consider all relevant information, while avoiding duplicative submissions, EPA wishs to be informed of only the study's identity, the name and address to whom the study was sent, and the month and year in which the study was submitted. Therefore, EPA proposes to subject non-confidential studies previously submitted to Federal agencies to the listing requirements of the model rule.

Exemption (b) provides that a study (non-confidential or confidential) previously submitted to EPA is exempt from the submission and listing requirements of the section 8(d) model rules. This exemption is tempered with examples of the studies EPA wishes to exempt; "studies voluntarily submitted during section 4 proceedings or under the previous section 8(d) rule." These are examples of the types of studies submitted to EPA under TSCA proceedings. Such studies are readily identifiable as to the subject chemical and are readily accessible to EPA staff evaluating the risks of that substance. However, the same is not the case for all studies previously submitted to EPA.

Since EPA does not have an information management system that centrally catalogs data submissions to all of its program regional, and field offices, and because such submissions may be identified in terms of specific sites or processes rather than by a chemical substance, potentially critical information could be omitted from the Agency's risk assessment and management determinations. Therefore, EPA proposes to limit this exemption by specifying in § 716.11(b) those type of submissions that can be readily identified with respect to the subject chemical and retrieved for risk assessment and management determinations on that substance. EPA's proposal would exempt from the submission and list requirements those studies previously submitted to the EPA Office of Toxic Substances. These studies are limited to section 8(e) submissions, studies submitted during section 4 proceedings, studies submitted with premanufacture notices, and studies submitted "for your information" (FYI submissions).

All other studies which were previously submitted to EPA would be subject to either the submission or listing requirements. Nonconfidential studies would fall under exemption (c) (i.e. a study previously submitted to a Federal Agency without claims of confidentiality) and therefore would be subject only to the listing requirements of the section 8(d) model rule. Whereas, confidential studies would need to be resubmitted.

EPA proposes to require the resubmission of confidential studies rather than simply requiring notification because of the different confidentiality provisions in EPA's statutory authorities. Section 14 of TSCA states generally that health and safety studies *"submitted under this Act"* are not protected as confidential information. Therefore, studies submittted under other statutes (i.e. the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)) without a resubmission requirement would keep their claims of confidentialty made under that environmental statue. For instance, TSCA does not provide confidential treatment for testing methods and certain chemcial identities, whereas FIRA does. These differences in confidentiality treatment for health and safety data hinders EPA's use of the data and limits EPA's support to regional and State offices on toxic

chemical substances. Once this proposed modification is promulgated it will only affect manufacturers, importers, and processors of substances subsequently added to the section 8(d) model rule.

EPA is also proposing to add a sentence to § 716.11(c) which would allow EPA to treat any non-confidential study which was perviously submitted to another Federal Agency or EPA office other than OTS as if the study was submitted in response to the section 8(d) model rule. This would make it clear than any non-confidential study obtain under the section 8(d) model rule, whether directly from a company, a Federal Agency, or EPA office, would be equally available to the public under section 14 of TSCA.

The last exemption EPA proposes to amend is section 716.7(a)(2). This section exempts from the listing requirements all newly initiated studies except chronic tests; long- and short-term tests for mutagenicity, carcinogenicity, or teratogenicity; and the biological and environmental fate tests listed in § 716.10 (h) through (j). Therefore, non-chronic, newly initiated studies on neurotoxicity, metabolism, reproductive effects, and ecotoxicity are excluded from the listing requirement. Also excluded are the biological and environmental fate tests listed in § 716.7(a)(2).

C. Clarifying the Confidentiality Provisions.

Section 716.16(a) provides that a person who submits a health and safety study as required by the section 8(d) model rule may assert a claim of confidentiality covering all or part of the study. However, because this statement conflicts with EPA's interpretation of section 14(b) of TSCA and may promote the abuse of confidentiality claims, EPA proposes to delete § 716.16(a) and to reorder the remaining sections. EPA's interpretation of secton 14(b) is codified at 40 CFR 2.306(g) and states that "health and safety data are not eligible for confidential treatment." Read alone, § 716.16(a) conflicts with EPA's interpretation of section 14(b), and persons have imporperly invoked § 716.16(a) to claim all of a health and safety study as confidential. This broad and improper use of confidentiality claims has hindered EPA's hazard/risk assessment and risk management determinations. Only in certain instances is the use of a broad confidentiality claim on a health and safety study submission permitted. However the guidance for this designation is found in 40 CFR 2.306 and not § 716 16(a).

Section 14(b) does protect certain types of information from disclosure that may be part of a health and safety study. This type of information is specified in § 716.16(c). However, this paragraph also allows submitters to claim "irrelevant information" as confidential, a term not found in section 14(b) of TSCA or § 2.306. Examples of what constitues irrelevant information are given in § 716.16(c)(2), "such as company name or address, financial statistics, or product codes used by a company." Submitters have excessively used and abused the irrelevant information exception. They have claimed the species of animals tested and the chemical identity of the tested substance as irrelevant information.

In order to properly implement section 14(b) of TSCA and to continue to allow submitters to claim the type of information specified in § 716.16(c)(2) as confidential EPA proposes to remove the irrelevant information exception and to permit confidentiality claims for company name or address, financial statistics, and product codes used by a company. The remaining paragraphs in § 716.16 properly describe the information which is eligible for confidentiality treatment and the manner to claim such treatment.

D. Technical Amendments

1. *Renaming the term designated mixture* Section 716.9 of the model rule uses the term "designated mixture." A designated mixture is a mixture that EPA lists in the model rule. Persons subject to the reporting requirements must submit health and safety data on the listed mixture and on any mixture known to contain the listed mixture. Unfortunately, some potential shbmitters are confused by the term. They are confusing section 8(d) designated mixtures with those substances and mixtures designated by the Interagnecy Testing Committee to EPA for priority consideration in the promulgation of a test rule. Therefore, EPA is proposing to change the term "designated mixture" to "listed mixture."

2. *Specifying import* Following Congress's lead, EPA in the section 8(d) model rule regulated importers by definition. Both in TSCA and the section 8(d) model rule importation is included in the definition of manufacture. Therefore, whenever EPA uses the terms "manufacture," "manufacturing," and "manufacturer", EPA is including by definition importation, importing, and importer. EPA believes that for purposes of clarity and to assist compliance efforts it would be better to set out the terms import, importation, importing, and importer where these terms are now included by definition.

3. *Revising the who must report section* EPA believes that the current who must report section, § 716.4(b) is difficult to understand. Therefore this section has been revised to set out in detail the reporting requirements of the section 8(d) model rule.

4. *Reordering sections and substances* EPA believes that a reordering of some of the sections in Part 716 and the list of substances would assist regulatees in understanding and complying with the section 8(d) model rule. Currently, the reporting provisions in Part 716 are separated by the list of substances in 716.17. EPA proposes to join the reporting provisions by placing the list of substances at the end of the section 8(d) model rule.

EPA also proposes to reorder the list of substances. In the past EPA has listed substances in the section 8(d) model rule by order of amendment rather than alphabetically or by CAS number. This has created some difficulty for potential regulatees in determining whether a substance is listed in the section 8(d) model rule. In order to assist potential section 8(d) submitters, EPA is proposing to revise the list by reordering the substances alphabetically and by CAS number.

IV. Economic Analysis

The economic analysis details only the expected reporting burden changes caused by lengthening the sunset provision in the section 8(d) model rule. The remaining proposed revisions are expected to result in negligible reporting burden increases. The greatest portion of the reporting burden occurs within the first 3 year reporting period following the listing of a substance in the model rule. Only a few of the reporting requirements continue prospectively and all but one of these are terminated by the sunset provision. This rule proposes to extend the reporting period on all of the substances listed in the model rule by lengthening the sunset provision from 3 to 10 years.

If EPA lengthens the sunset provision, the potential reporting burden would consist of two reporting requirements on current manufacturers, importers, and processors of listed substances and all of the reporting requirements on prospective manufacturers, importers, and processors. For an additional 7 years, current manufacturers, importers, and processors of listed substances would be under a continuing obligation to notify EPA when they initiate a health and safety study and to submit that study whenever it is completed.

Prospective manufacturers, importers, and processors of listed substances would be required to submit health and safety studies at the time they propose to commence such an activity.

The alternative to lengthening the sunset provision is to relist the substances in the model rule. By relisting, EPA keeps all of the reporting requirements in effect. Based on EPA's experience with the section 8(d) model rule and the biennial review, the Agency believes that almost every substance will need to be relisted once and most substances twice. Although it is not possible to draw direct comparisons between the alternatives in terms of total costs, a qualitative comparison illustrates that a 10 year sunset provision has a small potential for increasing reporting burden.

A 10 year sunset provision may result in additional reporting costs. These costs are a function of the number of firms that will initiate a study of a listed substance or commence the manufacture, import, or processing of a listed substance after the 3 year sunset provision would have terminated a reporting period. However, these costs would also be incurred if the substance is relisted.

Therefore, the potential increase in reporting burden is a function of the probability that EPA will relist a substance and the probability that firms will initiate a study or commence the manufacture, import, or processing of a listed substance after the sunset provision has termianted the reporting period (either the initial reporting period or a subsequent reporting period). As the probability for relisting up to or beyond 10 years increases, the potential for an increase in burden decreases. Further the potentially increased burden is reduced by a low probability of persons commencing the manufacture, importation, or processing of a substance or the initiation of a study of the substance.

Although it is not possible to estimate the probability of the latter events, the probability associated with relisting appears high. If EPA does not lengthen the sunset provision, EPA will relist all (in excess of 100) but 1 of the substances listed in 40 CFR 716.17(a)(1). Secondly, EPA has reviewed all of the substances listed in 40 CFR 716.17(a) (2) through (10) and, at the present time, would relist all but six of these substances in the model rule. Therefore, lengthening the sunset provision is not likely to result in a reporting burden greater than the reporting burden caused by relisting substances.

V. Public Record

EPA has established a public record for this rulemaking (docket control number OPTS-84014) which is available for inspection in Rm. E-107, 401 M St., SW., Washington, D.C. 20460, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. This record includes basic information considered by the Agency in developing this rule. The following is the list of those documents.

1. Section 8(d) model Health and Safety Rule (47 FR 38780).
2. Economic analysis.
3. Final Report on Information Rules and Design Support Services (August 17, 1983).
4. Final Report on Information Rules and Design Support Services (January 23, 1984).

VI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this regulation is not major because it will not have an effect of $100 milion or more on the economy. It is not anticipated to have a significant effect on competition, costs, or prices.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities. In a study of submitters reporting under the section 8(d) model rule, EPA found that only 1 of 69 submitters had less than $100 million in sales. EPA does not expect these proposed amendments to affect this distribution. Therefore, in accordance with the Regulatory Flexibility Act (Pub. L. 95-354), EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S. 3501 *et seq.* and has assigned OMB control number 2070-0004. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 716

Chemicals, Environmental protection, Hazardous substances, Health and safety, Recordkeeping and reporting.

Dated: September 24, 1985.

John A. Moore,

Assistant Administrator, for Pesticides and Toxic Substances.

PART 716—[AMENDED]

Therefore, it is proposed that 40 CFR Part 716 be amended as follows:

1. The authority for Part 716 continues to read as follows:

Authority: 15 U.S.C. 2607.

2. In § 716.3 by revising the definitions in paragraphs (h), (i), and (1) to read as follows:

§ 716.3 Definitions.

* * * * *

(h) "Manufacture," "import," and "process" mean to manufacture, import, or process for commercial purposes.

(i) "Manufacture or import for commercial purposes" means:

(1) To import, produce, or manufacture with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer or importer, and includes, among other things, such "manufacture" or "import" of any amount of a substance or mixture:

(i) For commercial distribution, including for test marketing.

(ii) For use by the manufacturer or importer including use for product research and development, or as an intermediate.

(2) The term applies to substances that are produced coincidentally during the manufacture, importation, processing, or disposal of another substance or mixture, including both byproducts and coproducts that are separated from that other substance or mixture and impurities that remain in that substance or mixture. Byproducts and impurities may not in themselves have commercial value. They are nonetheless products for the purpose of obtaining commercial advantage since they are part of the manufacture or importation of a chemical product for a commercial purpose.

* * * * *

(l) "Propose to manufacture, import, process, or distribute" means that a person has made a management decision to commit financial resources toward the manufacture, importation

processing, or distribution of a substance or mixture.

3. In § 716.4 by revising paragraphs (b) and (c) to read as follows:

§ 716.4 Overview of subpart requirements.

* * * * *

(b) *Persons who must report.* (1) A person who, in the 10 years preceding the effective date that a substance or mixture is added to § 716.17, either had proposed to manufacture, import, or process; or had manufactured, imported, or processed the substance or listed mixture must submit to EPA: A copy of each health and safety study which is in their possession at the time the substance or mixture is listed, § 716.6(a)(1).

(2) A person who, at the time a substance or mixture is added to § 716.17, proposes to manufacture, import, or process; or is manufacturing, importing, or processing the substance or listed mixture must submit to EPA:

(i) A copy of each health and safety study which is in their possession at the time the substance or mixture is listed, § 716.6(a)(1).

(ii) A list of health and safety studies that are ongoing at the time the substance or mixture is listed and are being conducted by or for them, § 716.7(a)(1).

(iii) A list of health and safety studies that are initiated after the date the substance or mixture is listed and are conducted by or for them, § 716.7(a)(2).

(iv) A list of health and safety studies known to them but not in their possession at the time the substance or mixture is listed, § 716.7(a)(3).

(v) A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of completion date, § 716.6(a)(1).

(3) A person who, after the time a substance or mixture is added to § 716.17, proposes to manufacture, import, or process the substance or listed mixture must submit:

(i) A copy of each health and safety study which is in their possession at the time they propose to manufacture, import, or process the substance or listed mixture, § 716.6(a)(1).

(ii) A list of health and safety studies that are ongoing at the time they propose to manufacture, import, or process the substance or listed mixture and are being conducted by or for them, § 716.7(a)(1).

(iii) A list of health and safety studies that are initiated after the time they propose to manufacture, import, or process the substance or listed mixture, and are conducted by or for them, § 716.7(a)(2).

(iv) A list of health and safety studies known to them but not in their possession at the time they propose to manufacture, import, or process the substance or listed mixture, § 716.7(a)(3).

(v) A copy of each health and safety study that was previously listed as ongoing or subsequently initaited and is now complete—regardless of completion date, § 716.6(a)(1).

(c) *Studies to be reported.* In general, studies, as defined at § 716.3(e), that are unpublished are reportable, i.e., must be submitted or listed, for any substance or listed mixture listed in § 716.17. However, this requirement has limitations according to the nature of the material studied, so that:

(1) All studies of substances and listed mixtures are reportable. However, in the case of physical and chemical properties, only those studies listed in § 716.10 must be submitted.

(2) Studies of mixtures known to contain substances or listed mixtures listed in § 716.17 are reportable except for studies of physical and chemical properties and the studies exempted at § 716.11(f) (1) through (6).

(3) Studies of substances or listed mixtures that a person who is reporting has manufactured, imported, or processed or proposed to manufacture, import, or process only as impurities are not generally reportable under § 716.11(i).

* * * * *

4. In § 716.6 by revising paragraphs (a)(1) and (b) to read as follows:

§ 716.6 Submission of copies of studies.

(a)(1) Except as provided in §§ 716.10 and 716.11, persons must send to EPA copies of any health and safety studies in their possession for the substances or listed mixtures listed in § 716.17. Persons are responsible for submitting copies on only the substances or listed mixtures which they: have manufactured, imported, or processed or proposed to manufacture, import, or process (including as known byproducts) within the 10 years preceding the effective date for reporting on the substances or listed mixtures; manufacture, import, or process on the effective date for reporting on the substances or listed mixtures; and propose to manufacture, import, or process following the effective date for reporting on the substances or listed mixtures. Persons who list studies as ongoing or initiated under § 716.7(a) (1) and (2) must submit them when they are completed.

* * * * *

(b) Submissions under paragraph (a) of this section must be indexed by chemical name, including Chemical Abstract Service Registry number if known, and must be accompanied by a cover letter containing the name, job title, address, and telephone number of the submitting official and the name and address of the manufacturing, importing, or processing establishment on whose behalf the submission is made. In the cover letter, submitters must identify any impurity or additive known to have been present in the substance as studied unless its presence is specifically noted in the study itself.

* * * * *

5. In § 716.7 by revising paragraph (a), to read as follows:

§ 716.7 Submission of lists of studies.

(a) Except as provided in §§ 716.4(c) and 716.11, persons must send the lists described in paragraphs (a) (1), (2), and (3) of this section to EPA for each of the substances or listed mixtures in § 716.17 which they have manufactured, imported, or processed; are manufacturing, importing, or processing; or propose to manufacture, import, or process (including as known byproducts).

(1) As of the date a person becomes subject to this Part, a list of ongoing health and safety studies being conducted by or initiated for them, noting for each entry: the purpose of the study, type of data collected, and progress and anticipated date of completion.

(2) After the date a person becomes subject to this Part, a list of studies initiated by or for them, noting for each entry: the purpose of the study, type of data to be collected, and anticipated date of completion.

(3) A list of unpublished studies known to them of which they do not have copies. The name and address of any person known to them to possess a copy of the unpublished study must accompany each entry on the list. For purposes of this section only, an unpublished study will be considered to be "known to" a person, if the study can be discovered by a file search in accordance with § 716.12.

(4) A list of unpublished studies which have been sent to a Federal Agency. The submission must for each study: identify the study by title, state the name and address to whom the study was sent, and the month and year in which the study was submitted.

* * * * *

6. In § 716.9 by changing the term "designated mixture" to "listed mixture" wherever it appears in the introductory text and paragraph (b), which are revised to read as follows:

§ 716.9 How to report on substances and mixtures.

Section 716.17 contains two lists, one of substances and one of listed mixtures. Studies of listed substances and listed mixtures shall be reported as follows:

* * * * *

(b) When two or more substances are listed as a mixture under § 716.17(b), studies of the listed mixture and studies of any mixture known to contain the listed mixture must be reported as studies of the listed mixture.

* * * * *

7. In § 716.11 by revising the introductory text and paragraphs (b) and (c), and changing the term "designated mixture" to "listed mixture" in paragraphs (f), (g), (h), and (i), which are revised to read as follows:

§ 716.11 Exemptions to reporting requirements.

Excluding paragraph (c) of this section, the following are exempt from the copy and list submission requirements of §§ 716.6 and 716.7.

* * * * *

(b) Studies previously submitted to the EPA Office of Toxic Substances. These studies are limited to section 8(e) submissions, studies submitted during section 4 proceedings, studies submitted with premanufacture notices, and studies submitted "for your information" (FYI submissions).

(c) Studies previously submitted to any Federal Agency with no claims of confidentiality are exempt only from the copy submission requirements of § 716.6. However, any such study identified in a list under § 716.7 will be treated as if it were submitted under section 8(d) and will be available for public disclosure under section 14(b) of TSCA.

* * * * *

(f) The following types of studies when the subject of the study is a mixture known to contain a substance or listed mixture listed in § 716.17.

(1) Acute oral toxicity studies.

(2) Acute dermal toxicity studies.

(3) Acute inhalation toxicity studies.

(4) Primary eye irritation studies.

(5) Primary dermal irritation studies.

(6) Dermal sensitization studies.

(7) Physical and chemical properties. If the substance or listed mixture is an impurity, no reporting is required (see paragraph (i) of this section).

(g) Analyzed aggregations of monitoring data based on monitoring data acquired more than 5 years preceding the date the substance or listed mixture was added to the list in § 716.17.

(h) Analyzed aggregations of monitoring data on mixtures known to contain one or more substances or listed mixtures listed in § 716.17, when the monitoring data are not analyzed to determine the exposure or concentration levels of the substances or listed mixture listed in § 716.17.

(i) Studies on a substance or listed mixture listed in § 716.17 that the person who is reporting has manufactured, imported, or processed or proposed to manufacture, import, or process only as an impurity. When reporting of such studies is to be required, that reporting will be separately proposed in the Federal Register.

8. In § 716.14 by changing the term "designated mixture" to "listed mixture" in paragraph (a) which is revised, and by revising paragraph (b) to read as follows:

§ 716.14 Reporting schedule.

(a) Except as provided in paragraphs (b) and (c) of this section, submissions under §§ 716.6 and 716.7 must be postmarked on or before 60 days after the effective date of the listing of a substance or listed mixture in § 716.17 or within 60 days of proposing to manufacture, import, or process a substance or listed mixture if first done after the effective date of the substance's or listed mixture's listing in § 716.17.

(b)(i) Persons subject to the listing requirements of § 716.7(a)(2) must inform EPA of the initiated study within the initial 60 days reporting period or 30 days of its initiation whichever is later.

(ii) Persons must submit copies of studies listed as ongoing or initiated under § 716.7(a)(1) and (2) within 30 days of their completion.

* * * * *

9. By revising § 716.16 to read as follows:

§ 716.16 Confidentiality claims.

(a)(1) Section 14(b) of TSCA states that EPA may not withhold from disclosure, on the grounds that they are confidential business information, health and safety studies of any substance that has been offered for commercial distribution (including for test marketing purposes and for use in research and development), any substance included on the inventory of chemical substances under TSCA section 8, or any substance for which testing is required under TSCA section 4, or for which notice is required under TSCA section 5, except to the extent that disclosure of data from such studies would reveal: (i) processes used in the manufacturing, importing, or processing of the substance or mixture, or (ii) the portion of a mixture comprised by any of the substances in the mixture.

(2) Any respondent who wishes to assert a claim that part of a study should be withheld from disclosure because disclosure would reveal a confidential process or quantitative mixture composition or other confidential information, should briefly state the basis of the claim, i.e., by saying "reveals confidential mixture proportion data," and clearly identify the material subject to the claim. Certain information may be claimed confidential and will not be subject to the disclusure requirements of section 14(b) of TSCA. This information is limited to company name or address, financial statistics, and product codes used by a company. Other information contained in a study, the disclosure of which would clearly be an unwarranted invasion of personal privacy (such as individual medical records), will be considered confidential by EPA as provided in Title 5, United States Code, section 552(b)(6).

(b) To assert a claim of confidentiality for data contained in a submitted document, the respondent must submit two copies of the document.

(1) One copy must be complete. In that copy, the respondent must indicate what data, if any, are claimed as confidential by bracketing or underlining the specific information. Each page containing data claimed as confidential must also contain a brief statement for the basis of the claim and a label such as "confidential," "proprietary," or "trade secret."

(2) If some data are claimed as confidential, the respondent must submit a second copy. The second copy must be complete, except that all information claimed as confidential in the first copy must be deleted.

(3) EPA will use the first copy and the second copy will be placed in an open file accessible to the public.

(4) Failure to furnish a second copy when information is claimed as confidential in the first copy will be considered a presumptive waiver of the claim of confidentiality. EPA will notify the respondent by certified mail that a finding of a presumptive waiver of the claim of confidentiality has been made. The respondent will be given 30 days from the date of receipt of notification to submit the required second copy. If the respondent fails to submit the second copy within the 30 days, EPA will place the first copy in the public file.

(c) If no claim of confidentiality accompanies a document at the time it is submitted to EPA, the document will be placed in an open file available to the

public without further notice to the respondent.

10. By revising § 716.17 to read as follows:

§ 716.17 Substances and Listed Mixtures to which this subpart applies.

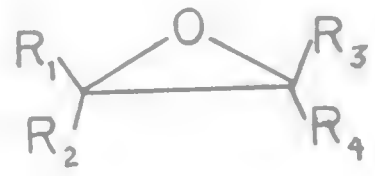
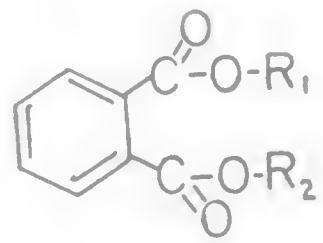
(a) *List of Substances.* (1) By Chemical Abstract Service (CAS) Registry Number.

CAS No	Substance	Sunset date
71-55-6	Ethane, 1,1,1-trichloro- (Methyl chloroform)	10/04/92
74-87-3	Methane, chloro- (Methyl chloride)	10/04/92
75-02-5	Ethene, fluoro- (Vinyl fluoride)	10/04/92
75-05-8	Acentonitrile	10/04/92
75-09-2	Methane, dichloro- (Methylene chloride)	10/04/92
75-12-7	Formamide	04/29/93
75-38-7	Ethene, 1,1-difluoro- (Vinylidene fluoride)	10/04/92
78-59-1	3,5,5-Trimethyl-2-cyclohexenone (Isophorone)	10/04/92
78-87-5	Propane, 1,2-dichloro-	10/04/92
78-93-3	2-Butanone (Methyl ethyl ketone)	10/04/92
79-06-1	2-Propenamide (Acrylamide)	10/04/92
79-94-7	Tetrabromobisphenol A	06/20/95
80-05-7	Phenol, 4,4'-(1-methylethylidene)bis- (Bisphenol A)	06/28/94
84-65-1	Anthraquinone	12/28/94
85-22-3	Benzene, pentabromoethyl-	12/28/94
85-68-7	1,2-Benzenedicarboxylic acid, benzylbutyl ester	04/29/93
87-68-3	1,3,-Butadiene, 1,1,2,3,4,4-hexachloro-	10/04/92
92-52-4	1,1-Biphenyl	04/29/93
95-47-6	Benzene, 1,2-dimethyl- (o-Xylene)	10/04/92
95-48-7	Phenol, 2-methyl- (o-Cresol)	10/04/92
95-49-8	Benezene, 1-chloro-2-methyl-	04/29/93
95-63-6	Benzene, 1,2,4-trimethyl-	04/29/93
96-37-7	Methylcyclopentane	06/20/95
98-56-6	Benezene, 1-chloro-4-(trifluoromethyl)-	04/29/93
98-82-8	Benzene, 1-methylethyl- (Cumene)	10/28/94
98-95-3	Nitrobenzene	10/04/92
101-77-9	Benzenamine, 4,4'-methylenebis-	10/04/92
106-42-3	Benzene, 1,4-dimethyl- (p-Xylene)	10/04/92
106-44-5	Phenol, 4-methyl- (p-Cresol)	10/04/92
106-50-3	1,4-Benzenediamine (p-Phenylenediamine)	10/04/92
106-51-4	Quinone	10/04/92
108-10-1	2-Pentanone, 4-methyl- (Methyl isobutyl ketone)	10/04/92
108-31-6	Maleic anhydride	09/10/94
108-38-3	Benzene, 1,3-dimethyl- (m-Xylene)	10/04/92
108-39-4	Phenol, 3-methyl- (m-Cresol)	10/04/92
108-67-8	Benzene, 1,3,5-trimethyl-	02/13/94
108-88-3	Benzene, methyl- (Toluene)	10/04/92
108-89-4	Pyridine, 4-methyl-	09/10/94
108-94-1	Cyclohexanone	10/04/92
108-99-6	Pyridine, 3-methyl-	09/10/94
109-06-8	Pyridine, 2-methyl-	09/10/94
110-86-1	Pyridine	10/04/92
111-21-7	Ethylene bisoxyethylene diacetate	01/13/94
111-40-0	Diethylenetriamine	04/29/93
112-35-6	Triethyleneglycol monomethyl ether	06/20/95
112-50-6	Triethyleneglycol monoethyl ether	06/20/95
112-90-3	Z-9-Octadecen-1-amine (Oleylamine)	01/13/94
122-99-6	2-Phenoxyethanol	07/01/93
123-31-9	Hydroquinone	10/04/94
124-17-4	2-(2-Butoxyethoxy)ethyl acetate	01/13/94
126-99-8	1,3-Butadiene, 2-chloro- (Chloroprene)	12/28/94
137-20-2	Sodium N-methyl-N-oleoyltaurine	12/28/94
140-66-9	Phenol, 4-(1,1,3,3-tetramethylbutyl)-	01/03/93
141-79-7	Mesityl oxide	10/04/92
143-22-6	Triethyleneglycol monobutyl ether	06/20/95
149-30-4	Mercaptobenzothiazole	12/28/94
149-57-5	Hexanoic acid, 2-ethyl-	06/26/94
328-84-7	Benzene, 1,2-dichloro-4-(trifluoromethyl)-	05/09/95
526-73-8	Benzene, 1,2,3-trimethyl-	02/13/94
556-67-2	Octamethylcyclotetrasiloxane	12/28/94
646-06-0	1,3-Dioxolane	01/03/93
1000-82-4	Methylolurea (Hydroxymethyl urea)	07/01/93
1309-64-4	Antimony trioxide	10/04/92
1333-41-1	Pyridine, methyl-	09/10/94
1345-04-6	Antimony sulfide	10/04/92
3319-31-1	1,2,4-Benzenetricarboxylic acid, tris(2-ethylhexyl)ester	01/03/93
3322-93-8	Cyclohexane, 1,2-dibromo-4-(1,2-dibromoethyl)-	06/28/94
3389-71-7	Bicyclo[2.2.1]hepta-2,5-diene, 1,2,3,4,7,7-hexachloro-	01/13/94
6422-86-2	1,4-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	01/03/93
7440-36-0	Antimony	10/04/92
9011-05-6	Urea, polymer with formaldehyde	06/03/95
11126-42-4	Polychlorinated o-terphenyl	10/04/92
12642-23-8	Polychlorinated m-terphenyl	10/04/92
13414-54-5	Methallyl 2-nitrophenyl ether	02/13/94
13414-55-6	7-Nitro-2,2-dimethyl-2,3-dihydrobenzofuran	02/13/94
25551-13-7	Trimethylbenzene (mixed isomers)	02/13/94
25640-78-2	Isopropyl biphenyl	06/28/94
61788-33-8	Polychlorinated p-terphenyl	10/04/92
61789-36-4	Calcium naphthenate	07/01/93
61789-51-3	Cobalt naphthenate	07/01/93
61790-14-5	Lead naphthenate	07/01/93
65510-55-6	7-Amino-2,2-dimethyl-2,3-dihydrobenzofuran	02/13/94
68611-64-3	Urea, reaction product with formaldehyde	06/03/95
69009-90-1	Diisopropyl biphenyl	06/28/93

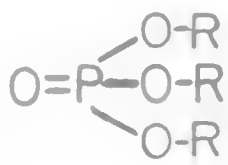
(2) By Alphabetical Order.

Substance	CAS No	Sunset date
Acetonitrile	75-05-8	10/04/92
7-Amino-2,2-dimethyl-2,3-dihydrobenzofuran	68298-48-4	02/13/94
Anthraquinone	84-65-1	12/28/94
Antimony	7440-36-0	10/04/92
Antimony sulfide	1345-04-6	10/04/92
Antimony trioxide	1309-64-4	10/04/92
Benzenamine, 4,4'-methylenebis-	101-77-9	10/04/92
Benzene, methyl- (Toluene)	108-88-3	10/04/92
Benzene, pentabromoethyl-	85-22-3	12/28/94
Benzene, 1-chloro-2-methyl-	[illegible]	04/29/93
Benzene, 1-chloro-4-(trifluoromethyl)-	98-56-6	04/29/93
Benzene, 1,2-dichloro-4-(trifluoromethyl)-	328-84-7	05/08/95
Benzene, 1,2-dimethyl- (*o*-Xylene)	95-47-6	10/04/92
Benzene, 1-methylethyl- (Cumene)	[illegible]	10/28/94
Benzene, 1,2,3-trimethyl-	526-73-8	02/13/94
Benzene, 1,2,4-trimethyl-	[illegible]	04/29/93
Benzene, 1,3-dimethyl- (*m*-Xylene)	108-38-3	10/04/92
Benzene, 1,3,5-trimethyl-	108-67-8	02/13/94
Benzene, 1,4-dimethyl- (*p*-Xylene)	106-42-3	10/04/92
1,4-Benzenediamine (*p*-Phenylenediamine)	106-50-3	10/04/92
1,2-Benzenedicarboxylic acid, benzylbutylester	[illegible]	04/29/93
1,4-Benzenedicarboxylic acid, bis(2-ethylhexyl)ester	[illegible]	01/03/93
1,2,4-Benzenetricarboxylic acid, tris(2-ethylhexyl) ester	3319-31-1	01/03/93
Bicyclo[2.2.1]hepta-2,5-diene, 1,2,3,4,7,7-hexachloro-	87-68-3	10/04/92
1,1-Biphenyl	95-52-4	01/13/94
1,3-Butadiene, 1,1,2,3,4,4-hexchloro-	92-52-4	[illegible]
1,3-Butadiene, 2-chloro- (Chloroprene)	[illegible]	12/28/94
2-Butanone (Methyl ethyl ketone)	78-93-3	10/04/92
2-(2-Butoxyethoxy)ethyl acetate	124-17-4	01/13/94
Calcium naphthenate	61789-36-4	07/01/93
Cobalt naphthenate	61789-51-3	07/01/93
Cyclohexanone	108-94-1	10/04/92
Cyclohexane, 1,2-dibromo-4-(1,2-dibromoethyl)-	3322-93-8	[illegible]
2-cyclohexenone, 3,5,5-trimethyl- (Isophorone)	78-59-1	10/04/92
Diethylenetriamine	111-40-0	04/29/93
Diisopropyl biphenyl	[illegible]	[illegible]
1,3-Dioxolane	646-06-0	01/03/93
Ethane, 1,1,1-trichloro- (Methyl chloroform)	71-55-6	10/04/92
Ethene, fluoro-	75-02-5	10/04/92
Ethene, 1,1-difluoro- (Vinylidene Fluoride)	75-38-7	10/04/92
Ethylene bisoxyethylene diacetate	111-21-7	01/13/94
Formamide	75-12-7	10/04/92
Hexanoic acid, 2-ethyl-	149-57-5	[illegible]
Hydroquinone	123-31-9	10/04/94
Isopropyl biphenyl	25640-78-2	[illegible]
Lead naphthenate	61790-14-5	07/01/93
Maleic anhydride	108-31-6	09/10/94
Mercaptobenzothiazole	149-30-4	12/28/94
Mesityl oxide	141-79-7	10/04/92
Methallyl 2-nitrophenyl ether	13414-54-5	02/13/94
Methane, chloro- (Methyl chloride)	74-87-3	10/04/92
Methane, dichloro- (Methylene chloride)	75-09-2	10/04/92
Methylcyclopentane	96-37-7	[illegible]
Methylolurea (Hydroxymethyl urea)	1000-82-4	07/01/93
Nitrobenzene	[illegible]	10/04/92
7-Nitro-2,2-dimethyl-2,3-dihydrobenzofuran	13414-55-6	02/13/94
Octamethylcyclotetrasiloxane	556-67-2	12/28/94
2-Pentanone, 4-methyl- (Methyl isobutyl ketone)	108-10-1	10/04/92
Phenol, 2-methyl- (*o*-Cresol)	95-48-7	10/04/92
Phenol, 3-methyl- (*m*-Cresol)	108-39-4	10/04/92
Phenol, 4-methyl- (*p*-Cresol)	106-44-5	10/04/92
Phenol, 4-(1,1,3,3-tetramethylbutyl)-	140-66-9	01/03/93
Phenol, 4,4'-(methylethylidine)bis- (Bisphenol A)	80-05-7	[illegible]
2-Phenoxyethanol	122-99-6	07/01/93
Polychlorinated *o*-terphenyl	11126-42-4	10/04/92
Polychlorinated *m*-terphenyl	12642-23-8	10/04/92
Polychlorinated *p*-terphenyl	61788-33-8	10/04/92
Propane, 1,2-dichloro-	78-87-5	10/04/92
2-Propenamide (Acrylamide)	79-06-1	10/04/92
Pyridine	110-86-1	10/04/92
Pyridine, methyl-	1333-41-1	09/10/94
Pyridine, 2-methyl-	109-06-8	09/10/94
Pyridine, 3-methyl-	108-99-6	09/10/94
Pyridine, 4-methyl-	108-89-4	09/10/94
Quinone	106-51-4	10/04/92
Sodium N-methyl-N-oleoyltaurine	137-20-2	12/28/94
Tetrabromobisphenol A	79-94-7	06/20/95
Triethyleneglycol monobutyl ether	143-22-6	06/20/95
Triethyleneglycol monoethyl ether	112-50-6	06/20/95
Triethyleneglycol monomethyl ether	112-35-6	[illegible]
Trimethylbenzene (mixed isomers)	25551-13-7	02/13/94
Urea, polymer with formaldehyde	9011-05-6	06/03/95
Urea, reaction product with formaldehyde	68611-64-3	[illegible]
Z-9-Octadecen-1-amine (Oleylamine)	112-90-3	01/13/94

(b) *List of categories.*

Category	CAS No. (examples for category)	Sunset date
Alkyl epoxides—including all noncyclic aliphatic hydrocarbons with one or more epoxy functional groups		[illegible]
		
$R_1 = R_2 = R_3 = R_4 = H$ or alkyl.		
Groups $R_1 - R_4$ may contain one or more epoxide functions:		
2,2'-Bioxirane	1464-53-5	[illegible]
Oxirane	75-21-8	10/04/92
Oxirane, decyl-	2855-19-8	10/04/92
Oxirane, ethenyl-	930-22-3	[illegible]
Oxirane, ethyl-	[illegible]	10/04/92
Oxirane, heptadecyl-	[illegible]	10/04/92
Oxirane, hexadecyl-	[illegible]	10/04/92
Oxirane, methyl-	75-56-9	[illegible]
Oxirane, octyl-	2404-44-6	10/04/92
Oxirane, pentadecyl-	22092-38-2	[illegible]
Oxirane, tridecyl-	18633-25-5	[illegible]
Oxirane, 2,2-dimethyl-	[illegible]	[illegible]
Oxirane, 2,3-dimethyl-	3266-23-7	10/04/92
Phenol, 2-methyl- (*o*-Cresol)	95-48-7	10/04/92
Phenol, 3-methyl- (*m*-Cresol)	108-39-4	10/04/92
Alkyl phthalates—all alkyl esters of 1,2-benzene dicarboxylic acid (ortho-phthalic acid)		10/04/92
		
R_1-R_8 = alkyl.		
1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	117-81-7	10/04/92
1,2-Benzenedicarboxylic acid, bis(1-methylheptyl) ester	131-15-7	10/04/92
1,2-Benzenedicarboxylic acid, bis(2-methylpropyl) ester	84-69-5	10/04/92
1,2-Benzenedicarboxylic acid, butyl cyclohexyl ester	84-64-0	10/04/92
1,2-Benzenedicarboxylic acid, butyl octyl ester	84-78-6	10/04/92
1,2-Benzenedicarboxylic acid, dibutyl ester	84-74-2	10/04/92
1,2-Benzenedicarboxylic acid, decyl hexyl ester	[illegible]	10/04/92
1,2-Benzenedicarboxylic acid, decyl octyl ester	119-07-3	10/04/92
1,2-Benzenedicarboxylic acid, dicyclohexyl ester	84-61-7	10/04/92
1,2-Benzenedicarboxylic acid, diethyl ester	84-66-2	10/04/92
1,2-Benzenedicarboxylic acid, dihexyl ester	84-75-3	10/04/92
1,2-Benzenedicarboxylic acid, diisodecyl ester	26761-40-0	10/04/92
1,2-Benzenedicarboxylic acid, diisononyl ester	28553-12-0	10/04/92
1,2-Benzenedicarboxylic acid, diisooctyl ester	27554-26-3	10/04/92
1,2-Benzenedicarboxylic acid, dimethyl ester	131-11-3	10/04/92
1,2-Benzenedicarboxylic acid, dinonyl ester	84-76-4	10/04/92
1,2-Benzenedicarboxylic acid, dioctyl ester	117-84-0	10/04/92
1,2-Benzenedicarboxylic acid, ditridecyl ester	119-06-2	10/04/92
1,2-Benzenedicarboxylic acid, diundecyl ester	3648-20-2	10/04/92
1,2-Benzenedicarboxylic acid, hexyl isodecyl ester	[illegible]	10/04/92
1,2-Benzenedicarboxylic acid, isodecyl tridecyl ester	61886-80-0	10/04/92
1,2-Benzenedicarboxylic acid, 2-ethylhexyl ester	85-69-8	10/04/92
1,2-Benzenedicarboxylic acid, 2-ethylhexyl-8-methylnonyl ester	89-13-4	10/04/92
Alkyltin compounds		[illegible]
Dibutyltin bis(isooctyl maleate)	25168-21-2	1/03/93
Dibutyltin bis(lauryl mercaptide)	[illegible]	1/03/93
Dibutyltin dilaurate	[illegible]	[illegible]
Dibutyltin S,S'-bis(isooctyl) mercaptoacetate	25168-24-5	1/03/93
Dibutyltin S,S'-bis(isooctyl) mercaptoacetate	26636-01-1	1/03/93
Monobutyltin tris(isooctyl) mercaptoacetate	25852-70-4	1/03/93
Monomethyltin tris(isooctyl) mercaptoacetate	54849-38-6	1/03/93
Aniline and chloro-, bromo-, and/or nitroanilines		10/04/92
Benzenamine	62-53-3	10/04/92
Benzenamine, 2-bromo-, 4,6-dinitro-	[illegible]	10/04/92
Benzenamine, 2-bromo-6-chloro-4-nitro-	99-29-6	10/04/92
Benzenamine, 2-chloro-	[illegible]	10/04/92
Benzenamine, 2-nitro-	88-74-4	10/04/92

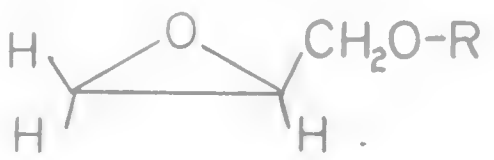
Category	CAS No. (examples for category)	Sunset date
Benzenamine, 2-chloro-4-nitro-	121-87-9	10/04/92
Benzenamine, 2-chloro-4,6,-dinitro-	3531-19-9	10/04/92
Benzenamine, 2-choloro-5-nitro-	[illegible]	10/04/92
Benzenamine, 2,3-dichloro-	[illegible]	10/04/92
Benzenamine, 2,4-dichloro-	554-00-7	10/04/92
Benzenamine, 2,4-dinitro-	[illegible]	10/04/92
Benzenamine, 2,4,6-tribromo-	147-82-0	10/04/92
Benzenamine, 2,4,6-trichloro-	[illegible]	10/04/92
Benzenamine, 2,5-dichloro-	[illegible]	10/04/92
Benzenamine, 2,6-dibromo-4-nitro-	827-94-1	10/04/92
Benzenamine, 2,6-dichloro-4-nitro-	[illegible]	10/04/92
Benzenamine, 3-chloro-	108-42-9	10/04/92
Benzenamine, 3-chloro-, hydrochloride	141-85-5	10/04/92
Benzenamine, 3-nitro-	[illegible]	10/04/92
Benzenamine, 3,4-dichloro-	95-76-1	10/04/92
Benzenamine, 3,5-dichloro-	626-43-7	10/04/92
Benzenamine, 4-bromo-	106-40-1	10/04/92
Benzenamine, 4-chloro-	106-47-8	10/04/92
Benzenamine, 4-chloro-2-nitro-	[illegible]	10/04/92
Benzenamine, 4-chloro-2,6-dinitro-	[illegible]	10/04/92
Benzenamine, 4-chloro-3-nitro-	[illegible]	10/02/92
Benzenamine, 4-nitro-	100-01-6	10/04/92
Aryl phosphates—phosphate esters of phenol or of alkyl-substituted phenols. Tri-aryl and mixed alkyl and aryl esters are included but trialkyl esters are excluded		10/04/92



R_1 = phenyl, either unsubstituted or substituted with one or more alkyl or aralykl groups
$R_2 = R_3$ = alkyl; or phenyl, either unsubstituted or substituted with one or more alkyl or aralkyl groups

Phenol, dimethyl-, phosphate (3:1)	25155-23-1	10/04/92
Phenol, 4-(1,1-dimethylethyl)-, phosphate	78-33-1	10/04/92
Phosphoric acid, dibutyl phenyl ester	2528-36-1	10/04/92
Phosphonic acid, diisodecyl phenyl ester	51363-64-5	10/04/92
Phosphonic acid, isodecyl diphenyl ester	29761-21-5	10/04/92
Phosphoric acid, methylphenyl diphenyl ester	26444-49-5	10/04/92
Phosphoric acid, triphenyl ester	115-86-6	10/04/92
Phosphoric acid, tris (methylphenyl) ester	1330-78-5	10/04/92
Phosphoric acid, tris (2-methylphenyl) ester	78-30-8	10/04/92
Phosphoric acid, tris (3-methylphenyl) ester	563-04-2	10/04/92
Phosphoric acid, tris (4-methylphenyl) ester	78-32-0	10/04/92
Phosphoric acid, (1-methyl-1-phenylethyl)-phenyl diphenyl ester	34364-42-6	10/04/92
Phosphoric acid, (1-methyethyl) phenyl diphenyl ester	[illegible]	10/04/92
Phosphoric acid, 2-ethylhexyl diphenyl ester	1241-94-7	10/04/92
Phosphoric acid, (1,1-dimethylethyl) phenyl diphenyl ester	56803-37-3	10/04/92
Asbestos—asbestiform varieties of chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite—grunerite), anthophyllite, tremolite, and actinolite		10/04/92
Asbestiform minerals(s)	12001-29-5	10/04/92
Asbestiform minerals(s)	12172-73	10/04/92
Asbestiform minerals(s)	17068-78-9	10/04/92
Asbestiform minerals(s)	1332-21-4	10/04/92
Bisazobiphenyl dyes derived from benzidine and its congeners, ortho-toluidine (dimethylbenzidine) and dianisidine (dimethoxybenzidine)		10/04/92
Benzoic acid, 2-[[2-amino-6-[[4'-[(3-carboxy-4-hydroxyphenyl) azo]-3,3'-dimethoxy [1,1'-biphenyl]-4-yl] azo]-5-hydroxy-7-sulfo-1-naphthalenyl] azo]-5-nitro-, trisodium salt	6739-62-4	10/04/92
Benzoic acid, 3,3'-[3,7-disulfo-1,5-naphthalenediyl)-bis[azo (6-hydroxy-3,1-phenylene) azo [6(or 7)-sulfo-4,1-naphthalenediyl] azo [1,1 -biphenyl)]-4,4 -diylazo] bis] 6-hydroxy-, hexasodium salt	8014-91-3	10/04/92
Benzoic acid, 5[[4'-[(1-amino-4-sulfo-2-naphthalenyl) azo] [1,1'-biphenyl]-4-yl]-azo]-2-hydroxy-, disodium salt	2429-79-0	10/04/92
Benzoic acid, 5-[[4'-[2-amino-8-hydroxy-6-sulfo-1-naphthalenyl) azo] [1,1'-biphenyl]-4-yl]-azo]-2-hydroxy-, disodium salt	2429-84-7	10/04/92
Benzoic acid, 5-[[4'[[2,4-dihydroxy-3-[(4-sulfophenyl) azo] phenyl] azo] [1,1'-biphenyl]-4-yl] azo] 2-hydroxy-, disodium salt	[illegible]	10/04/92
Benzoic acid, 5-[[4'-[[2,6-diamino-3-[[8-hydroxy-3,6-disulfo-7-(4-sulfo-1-naphthalenyl)azo]-2-naphthalenyl]azo]-5-methylphenyl]azo-2-naphthalenyl]azo-5-methylphenyl]azo[1,1'-biphenyl]-4-yl]azo]-2-hydroxy-, tetrasodium salt	2429-81-4	10/04/92
Benzoic acid, 5-[[4'-[(2,6-diamino-3-methyl-5[(sulfophenyl)azo]phenyl]azo][1,1'-biphenyl]-4-yl]azo]-2-hydroxy-, disodium salt	[illegible]	10/04/92
Benzoic acid, 5-[[4'-[(2,6-diamino-3-methyl-5-sulfophenyl)azo]-3,3'-dimethyl[1,1'-biphenyl]-4-yl]azo]-2-hydroxy-, disodium salt	6637-88-3	10/04/92
Benzoic acid, 5-[[4'-[(2,6-diamino-3-methyl-5-[(4-sulfophenyl)azo)phenyl]azo][1,1'-biphenyl]-4-yl]azo]-2-hydroxy-3-methyl-, disodium salt	6360-54-9	10/04/92
Benzoic acid, 5-[[4'-[7-amino-1-hydroxy-3-sulfo-2-naphthalenyl)azo][1,1'-biphenyl]-4-yl]azo]-2-hydroxy-3-methyl-, disodium salt	2429-82-5	10/04/92
[1,1'-Biphenyl]-4,4'-bis(diazonium), 3,3'-dimethoxy-	20282-70-6	10/04/92
Butanamide, N,N'-(3,3'-dimethyl[1,1'-biphenyl]-4,4'-diyl)bis[3.oxo-	91-96-3	10/04/92
C.I. Direct Blue 218	10401-50-0	10/04/92
Cuprate(2-), [5-[4'-[[2,6-dihydroxy-3-[2-hydroxy-5-sulfophenyl)azo]phenyl] [1,1'-biphenyl]-4-yl]azo]-2-hydroxybenzoato(4-)]-, disodium	16071-86-6	10/04/92
Cuprate(3-), [-[7-[[3,3'-dihydroxy-4'-[[1-hydroxy-6-(phenylamino)-3-sulfo-2-naphthalenyl)azo] [1,1'-biphenyl]-4-yl]azo]-8-hydroxy-1,6-naphthalene disulfonato(7-)]di-, trisodium	6656-03-7	10/04/92
Cuprate(4-), [-[6,6 [3,3'-dihydroxy [1,1'-biphenyl]-4-4'-diyl)bis(azo)]bis[4-amino-5-hydroxy-1,3-naphthalenedisulfonato]] (8-)]]di-, tetrasodium	16143-79-6	10/04/92
2-Naphthalenecarboxamide, N,N'-(2,2'-dimethoxy [1,1'-biphenyl]-4,4'-diyl)bis[3-hydroxy-	91-92-9	10/04/92
1-Naphthalenesulfonic acid, 3-[[4 -[(6-amino-1-hydroxy-3-sulfo-2-naphthalenyl)azo]-3,3'-dimethoxy[1,1'-biphenyl]-4-yl]azo]-4-hydroxy-, disodium salt	6449-35-0	10/04/92
1-Naphthalenesulfonic acid, 3,3'-[[1,1'-biphenyl]-4,4'-diylbis(azo)]bis[4-amino-, disodium salt	573-58-0	10/04/92
1-Naphthalenesulfonic acid, 3,3'-[3,3'-dimethoxy-[1,1'-biphenyl]-4,4'-diyl)bis(azo)]bis[4-hydroxy-, disodium salt	2429-71-2	10/04/92
1-Naphthalenesulfonic acid, 3,3'-[(3,3'-dimethyl-[1,1'-biphenyl]-4,4'-diyl)bis(azo)]bis[4-amino-, disodium salt	[illegible]	10/04/92
1,3-Naphthalenedisulfonic acid, 4-amino-5-hydroxy-6[[4'-[(2-hydroxy-1-naphthalenyl)azo]-3,3'-dimethoxy-[1,1'-biphenyl]-4-yl]azo]-, disodium salt	2586-57-4	10/04/92
1,3-Naphthalenedisulfonic acid, 6,6'-[(3,3'-dimethoxy-[1,1'-biphenyl]-4-4'-diyl)bis(azo)]bis[4-amino-5-hydroxy-, tetrasodium salt	2610-05-1	10/04/92
1,3-Naphthalenedisulfonic acid, 7-hydroxy-8-[[4'-[(4-methylphenyl)sulfonyl]oxy]phenyl]-azo][1,1'-biphenyl]-4-yl]azo]-, disodium salt	3567-65-5	10/04/92
1,3-Naphthalenedisulfonic acid, 8-[[4'-[(4-ethoxy-phenyl)azo] [1,1'-biphenyl]-4-yl]azo]-7-hydroxy-, disodium salt	3530-19-6	10/04/92
1,3-Naphthalenedisulfonic acid, 8-[[4'-[(4-ethoxyphenyl)azo] [3,3'-dimethyl-[1,1'-biphenyl]-4-yl]azo]-7-hydroxy-, disodium salt	6358-29-8	10/04/92
2,7-Naphthalenedisulfonic acid, 3,3'-[[1,1'-biphenyl]-4,4'-,diylbis(azo)]bis[5-amino-4-hydroxy-, tetrasodium salt	2602-46-2	10/04/92
2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethoxy[1,1'-biphenyl]-4,4'-diyl)bis(azo)]bis[5-amino-4-hydroxy-, tetrasodium salt	2429-74-5	10/04/92
2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl-[1,1'-biphenyl]-4,4'diyl)bis(azo)]bis[5-amino-4-hydroxy; tetrasodium salt	72-57-1	10/04/92
2,7-Naphthalenesulfonic acid, 3,3'-[(3,3'-dimethyl-[1,1'-biphenyl]-4,4'diyl)bis(azo)]bis[4,5-dihydroxy-, tetrasodium salt	2150-54-1	10/04/92

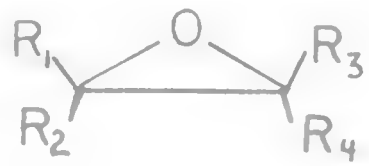
Category	CAS No. (examples for category)	Sunset date
2,7-Naphthalenedisulfonic acid, 4-amino-3-[[4'-diamino-5-methylphenyl)azo] [1,1'-biphenyl]-4-yl]azo]-5-hydroxy-6-(phenylazo)-, disodium salt	[illegible]	[illegible]
2,7-Naphthalenesulfonic acid, 4-amino-3-[[4'-[2,4-diaminophenyl)azo] [1,1'-biphenyl]-4-yl]azo]-5-hydroxy-6-(phenylazo)-, disodium salt	1937-37-7	[illegible]
2,7-Naphthalenedisulfonic acid, 4-amino-5-hydroxy-6[[4'[4-hydroxyphenyl)azo] [1,1'-biphenyl]-4-yl]-azo]-3-[(4-nitrophenyl)azo[-, disodium salt	[illegible]	10/04/92
2,7-Naphthalenedisulfonic acid, 4-amino-5-hydroxy-3-[[4'-[(hydroxyphenyl)azo] [1,1'-biphenyl]-4-yl]-azo)-6-(phenylazo)-, disodium salt	3626-28-6	10/04/92
2,7-Naphthalenedisulfonic acid, 5-amino-3-[[4'-[(7-amino-1-hydroxy-3-sulfo-2-naphthalenyl)-azo] [1,1'-biphenyl]-4-yl]-azo]-4-hydroxy-, trisodium salt	[illegible]	10/04/92
Oxirane, tetradecyl-	7320-37-8	10/04/92
Chlorinated benzenes, mono-, di-, tri-, tetra- and penta-		10/04/92
Benzene, chloro-	108-90-7	[illegible]
Benzene, pentachloro-	608-93-5	10/04/92
Benzene, 1,2-dichloro-	95-50-1	[illegible]
Benzene, 1,2,3-trichloro-	[illegible]	10/04/92
Benzene, 1,2,3,4-tetrachloro-	634-66-2	[illegible]
Benzene, 1,2,3,5-tetrachloro-	634-90-2	10/04/92
Benzene, 1,2,4-trichloro-	120-82-1	[illegible]
Benzene, 1,2,4,5-tetrachloro-	95-94-3	10/04/92
Benzene, 1,3-dichloro-	541-73-1	10/04/92
Benzene, 1,3,5-trichloro-	[illegible]	[illegible]
Benzene, 1,4-dichloro-	106-46-7	[illegible]
Chlorinated naphthalenes—chlorinated derivatives of naphthalene (empirical formula) $C_{10}H_xCl_y$ where $x+y=8$		[illegible]
Naphthalene, chloro derivatives	[illegible]	[illegible]
Naphthalene, chloro-	25586-43-0	10/04/92
Naphthalene, heptachloro-	[illegible]	[illegible]
Naphthalene, hexachloro-	1335-87-4	10/04/92
Naphthalene, pentachloro-	[illegible]	10/04/92
Naphthalene, octachloro-	2234-13-1	[illegible]
Naphthalene, tetrachloro-	1335-88-2	10/04/92
Naphthalene, trichloro-	1321-65-9	10/04/92
Naphthalene, 1-chloro-	90-13-1	[illegible]
Naphthalene, 1,2-dichloro-	[illegible]	[illegible]
Naphthalene, 1,3-dichloro-	[illegible]	10/04/92
Naphthalene, 1,5-dichloro-	[illegible]	[illegible]
Naphthalene, 1,6-dichloro-	[illegible]	[illegible]
Naphthalene, 1,7-dichloro-	[illegible]	[illegible]
Naphthalene, 1,8-dichloro-	[illegible]	[illegible]
Naphthalene, 2,3-dichloro-	[illegible]	[illegible]
Naphthalene, 2,6-dichloro-	2050-75-1	10/04/92
Naphthalene, 2,7-dichloro-	[illegible]	[illegible]
Chlorinated paraffins—chlorinated paraffin oils and chlorinated paraffin waxes, with chlorine content of 35 percent through 70 percent by weight	2198-77-8	[illegible]
Alkanes, chloro-	[illegible]	[illegible]
Alkanes, C_{6-12}, chloro-	[illegible]	10/04/92
Paraffin waxes and hydrocarbon waxes, chlorinated	68920-70-7	10/04/92
Ethyltoluenes—This category consists of ethyltoluene (mixed isomers) and the *ortho-*, *meta-* and *para*-isomers	63449-39-8	[illegible]
Ethylmethyltoluene (mixed isomers)		04/29/93
o-Ethyltoluene	25550-14-5	04/29/93
m-Ethyltoluene	611-14-3	04/29/93
p-Ethyltoluene	620-14-4	04/29/93
Fluoroalkenes—This category is defined as fluoroalkenes of the general formula: $C_nH_{2n-x}F_x$ where n equals 2 to 3 and X equals 1 to 6	622-96-8	04/29/93
Ethene, tetrafluoro-		04/29/93
1-Propene, hexafluoro-	116-14-3	04/29/93
Trifluorethene	116-15-4	04/29/93
Glycidol (oxiranementhanol) and its derivatives	359-11-5	04/29/93
		10/04/92



R = H; alkyl, alkenyl or alkynyl; aryl; acyl. where R = alkyl, alkenyl, alkynyl, aryl, or acyl; any substituents of functional groups may be present with the alkyl, etc., groups:

Cyclohexane, 1,4-bis [(2,3-epoxypropoxy)methyl]-	14228-73-0	10/04/92
1,2-Cyclohexanedicarboxylic acid, bis(oxiranyl-methyl) ester	[illegible]	[illegible]
Disiloxane, 1,1,3,3-tetramethyl-1,3-bis-[3-oxiranylmethoxy)propyl]-	[illegible]	[illegible]
2,4-Imidazolidenedione, 3,3'-[2-oxiranylemthoxy)-1,3-propanediyl] bis [5,5-dimethyl-1-(oxiranyl-methyl)-	[illegible]	[illegible]
2,4-Imidazolidinedione, 5,5'-dimethyl-3-[2-(oxiranylmethoxy) propyl]-1-(oxiranylmethyl-	[illegible]	[illegible]
2,2'-[Methylenebis(phenyleneoxymethyl)]bisoxirane	[illegible]	[illegible]
Neodecanoic acid, 2,3-epoxypropyl ester	[illegible]	[illegible]
Oxirane, butoxymethyl-	[illegible]	[illegible]
Oxirane, [(dodecyloxy)methyl]-	[illegible]	[illegible]
Oxirane, ethoxymethyl-	4016-11-9	[illegible]
Oxirane, [(Hexadecyloxy)methyl]-	[illegible]	[illegible]
Oxirane, methoxymethyl-	[illegible]	[illegible]
Oxriane, [(methylphenoxy)methyl]-	26447-14-3	[illegible]
Oxirane, mono[C_{8-12}-alkyloxy)methyl] derivatives	[illegible]	[illegible]
Oxirane, mono[C_{8-10}-alkyloxy)methyl] derivatives	68609-96-1	[illegible]
Oxirane, mono[C_{10-16}-alkyloxy)methyl] derivatives	68081-84-5	10/04/92
Oxirane, mono[C_{12-14}-alkyloxy)methyl] derivatives	[illegible]	10/04/92
Oxirane, [(octadecyloxy)methyl]-	[illegible]	[illegible]
Oxirane, phenoxymethyl]-	122-60-1	10/04/92
Oxirane, [tetra decyloxy)methyl]-	[illegible]	[illegible]
Oxirane, [(1-methylethoxy)methyl]-	4016-14-2	[illegible]
Oxirane, [(1,1-dimethylethoxy)methyl]-	[illegible]	10/04/92
Oxirane, [(1,2-dibromopropoxy)methyl]-	[illegible]	[illegible]
Oxirane, [[(2-ethylhexyl)oxy]methyl]-	2461-15-6	10/04/92
Oxirane, [(2-methylphenoxy)methyl]-	[illegible]	[illegible]
Oxirane, [(2-propenyloxy)methyl]-	106-92-3	[illegible]
Oxirane, [(2-4:dibromophenoxy)methyl]-	20217-01-0	[illegible]

Category	CAS No (examples for category)	Sunset date
Oxirane, [(4-nitrophenoxy)methyl]-	5255-75-4	10/04/92
Oxirane, [[4-(1-methyl-1-phenylethyl)phenoxy]-methyl]-	61578-04-9	10/04/92
Oxirane, [[4-(1, 1-dimethylethyl)phenoxy]methyl]-	[illegible]	10/04/92
Oxirane, [(9-Octadecenyloxy)methyl]-(Z)-	60501-41-9	10/04/92
Oxirane, 2,2' -(methylenebis(2,1-phenyleneoxy-methylene))bis-	[illegible]	10/04/92
Oxirane, 2,2'-[(methylethylidene)bis[4,1-phenyl-eneoxy [1-butoxymethyl)-2,1-ethanediyl]oxymethyl-ene]]bis-	71033-06-4	10/04/92
Oxirane, 2,2'-(oxiranylmethoxy)-1,3-phenylene]bis-(methylene))bis-	[illegible]	[illegible]
Oxirane, 2,2'-(oxybis(methylene))bis-	2238-07-5	10/04/92
Oxirane, 2,2'-[(1-methylethylidene)bis[4,1-phenyleneoxy-3,1-propanediyloxy-4,1-phenyleneoxy-methylene]]bis-	72319-24-5	10/04/92
Oxirane, 2,2'-[(1-methylethylidene)bis(4,1-phenyl-eneoxymethylene)]bis-	1675-54-3	10/04/92
Oxirane, 2,2'-[(1-methylethylidene)bis(4,1-phenyl-eneoxymethylene)]bis-, homopolymer	25085-99-8	10/04/92
Oxirane, 2,2'-[1,2-ethanediylbis(oxymethylene)]-bis-	2224-15-9	10/04/92
Oxirane, 2,2'-[1,3-phenylenebis(oxymethylene)]bis-	101-90-6	10/04/92
Oxirane, 2,2'-[1,4-butanediylbis(oxymethylene)]-bis-	[illegible]	10/04/92
Oxirane, 2,2'-[1,4-phenylenebis(oxymethylene)]bis-	2425-01-6	10/04/92
Oxirane, 2,2'-[[[2-oxiranylmethoxy)phenyl]methyl-ene]bis(4,1-phenyleneoxymethylene)]bis-	[illegible]	10/04/92
Oxirane, 2,2'-[(2,2-dimethyl-1,3-propanediyl)bis-(oxymethylene)]bis-	17557-23-2	10/04/92
Oxirane, 2,2',2''-[propylidynetris(4,1-phenyleneoxy-methylene)]tris-	68517-02-2	10/04/92
Oxirane, 2,2',2''-[1,2,3-propanetriyltris-(oxymethylene)]tris-	13236-02-7	10/04/92
Oxirane, 2,2',2''-[1,2,6-hexanetriyltris-(oxymethylene)]tris-	[illegible]	10/04/92
Oxirane, 2,2',2'',2''' -[1,2-ethanediylidenetetrakis-(4,1-phenylene oxymethylene)]tetrakis-	7328-97-4	10/04/92
Oxiranecarboxylic acid, 3-methyl-3-phenyl-, ethyl ester	77-83-8	10/04/92
Poly(oxy-1,2-ethanediyl), -octadecyl- -hydroxy-, phosphate, sodium salt	69943-75-5	10/04/92
Propane, 1,2-epoxy-3-(p-nonylphenoxy)-	6178-32-1	10/04/92
2-Propenoic acid, oxiranylmethyl ester	106-90-1	10/04/92
2-Propenoic acid, 2-methyl-, oxiranylmethyl ester	106-91-2	10/04/92
Silane, diethoxymethyl[3-(oxiranylmethoxy)propyl]-	2897-60-1	10/04/92
Silane, trimethoxy[3-(oxiranylmethoxy)propyl]-	2530-83-8	10/04/92
Silane, [(3-chloropropyl)(dimethoxy)-3-(oxiranyl-methoxy)propyl]-	71808-64-5	10/04/92
Silane, [3-(2,3-epoxypropoxy)propyl]ethoxy-dimethyl-	17963-04-1	10/04/92
Tetrasiloxane, 1,1,1,3,5,7,7,7-octamethyl-3,5-bis-[3-(oxiranylmethoxy)propyl]-	69155-42-6	10/04/92
Trisiloxane, 1,1,1,3,5,5,5-heptamethyl-3-[3-(oxiranylmethoxy)propyl]-	7422-52-8	10/04/92
Halogenated alkyl epoxides—halogenated noncyclic aliphatic hydrocarbons with one or more epoxy functional groups		10/04/92



R_1 = X or $C_nH_{2n+1-y}X_y$ (y = 1 to 2n + 1)
R_2 = H or X or $C_nH_{2n+1-y}X_y$ (y = 0 to 2n + 1)
R_3 = H or X or $C_nH_{2n+1-y}X_y$ (y = 0 to 2n + 1)
R_4 = H or X or $C_nH_{2n+1-y}X_y$ (y = 0 to 2n + 1)
x = halogen. Groups R_1 — R_4 may contain one or more expoxide functions:

Haloalkyl epoxide	428-25-8	10/04/92
Oxirane, bromomethyl-	3132-64-7	10/04/92
Oxirane, chloromethyl-	106-89-8	10/04/92
Oxirane, dodecyl-	3234-28-4	10/04/92
Oxirane, trifluoro(trifluoromethyl)-	428-59-1	10/04/92
Oxirane, 2,2,2-trichloroethyl-	3083-25-8	10/04/92
Oxirane, (2,2,3,3,4,4,5,5,6,6,7,7,7-trideca-fluoroheptyl)-	38565-52-6	10/04/92
Phenylenediamines (Benzenediamines). This category is defined as all nitrogen unsubstituted phenylenediamines and their salts with zero to two substitutents on the ring selected from the same or different members of the group of halo, nitro, hydroxy, hydroxy-lower alkoxy, lower-alkyl, and lower alkoxy. For this purpose, the term "lower" is defined as a group containing between one and four carbons		4/29/93
1,2-Benzenediamine,	95-54-5	4/29/93
1,2-Benzenediamine, dihydrochloride	615-28-1	4/29/93
1,2-Benzenediamine, 3-methyl-	2687-25-4	4/29/93
1,2-Benzenediamine, 4-butyl-	3663-23-8	4/29/93
1,2-Benzenediamine, 4-chloro-	95-83-0	4/29/93
1,2-Benzenediamine, 4-chloro-, sulfate (1:1)	68459-98-3	4/29/93
1,2-Benzenediamine, 4-ethoxy-	1197-37-1	4/29/93
1,2-Benzenediamine, 4-methyl-	496-72-0	4/29/93
1,2-Benzenediamine, 4-nitro-, dihydrochloride	6219-77-8	4/29/93
1,2-Benzenediamine, 4-nitro-, sulfate (1:1)	68239-82-7	4/29/93
1,2-Benzenediamine, 5-chloro-3-nitro-	42389-30-0	4/29/93
1,3-Benzenediamine,	108-45-2	4/29/93
1,3-Benzenediamine, sulfate (1:1)	541-70-8	4/29/93
1,3-Benzenediamine, ar-ethyl-ar-methyl-	68966-84-7	4/29/93
1,3-Benzenediamine, 2-methyl-	823-22-40	4/29/93
1,3-Benzenediamine, 4-methyl-	[illegible]	4/29/93
1,3-Benzenediamine, 4-chloro-	5131-60-2	4/29/93
1,3-Benzenediamine, 4-chloro-, sulfate	[illegible]	4/29/93
1,3-Benzenediamine, 4-ethoxy-, dihydrochloride	67801-06-3	4/29/93
1,3-Benzenediamine, 4-ethoxy-, sulfate (1:1)	[illegible]	4/29/93
1,3-Benzenediamine, 4-methoxy-	615-05-4	4/29/93
1,3-Benzenediamine, 4-methoxy-, dihydrochloride	614-94-8	4/29/93
1,3-Benzenediamine, 4-methoxy-, sulfate	6219-67-6	4/29/93
1,3-Benzenediamine, 4-nitro-	5131-58-8	4/29/93
1,3-Benzenediamine, 5-methyl-	108-71-4	4/29/93
1,3-Benzenediamine, 5-nitro-	5042-55-7	4/29/93
1,4-Benzenediamine	106-50-3	10/04/92
1,4-Benzenediamine dihydrochloride	624-18-0	4/29/93
1,4-Benzenediamine sulfate	16245-77-5	4/29/93
1,4-Benzenediamine, ethanedioate (1:1)	62654-17-4	4/29/93
1,4-Benzenediamine, 2-chloro-, sulfate	6219-71-2	4/29/93
1,4-Benzenediamine, 2-chloro, dihydrochloride	615-46-3	4/29/93

Category	CAS No (examples for category)	Sunset date
1,4-Benzenediamine, 2-methoxy-	[illegible]	[illegible]
1,4-Benzenediamine, 2-methyl-	95-70-5	[illegible]
1,4-Benzenediamine, 2-methyl-, dihydrochlonde	615-45-2	[illegible]
1,4-Benzenediamine, 2-methyl-, sulfate (1:1)	[illegible]	[illegible]
1,4-Benzenediamine, 2-methyl-, sulfate	[illegible]	[illegible]
1,4-Benzenediamine, 2-nitro-	5307-14-2	[illegible]
1,4-Benzenediamine, 2-nitro-, dihydrochloride	[illegible]	[illegible]
1,4-Benzenediamine, 2-nitro-, sulfate (1:1)	[illegible]	[illegible]
1,4-Benzenediamine, 2,5-dichloro-	[illegible]	[illegible]
1,3-Benzenediammonium dihydrochloride	[illegible]	[illegible]
2,4-Diaminoanisole sulfate	39156-41-7	[illegible]
4,6-Diamino-*o*-cresol (Phenol, 2,4-diamino-6-methyl-)	15872-73-8	[illegible]
Diaminotoluene	[illegible]	[illegible]
Ethanol, 2-(2,4-diaminophenoxy)-, dihydrochloride	[illegible]	[illegible]
Phenol, 2,4-diamino-, dihydrochloride	[illegible]	[illegible]
Phenol, 4,6-diamino-2-methyl-, hydrochloride	[illegible]	[illegible]

(c) *Listed Mixtures.*

Mixture	CAS No	Sunset date
Aromatic C_9 fraction from petroleum refining: The C_9 fraction is primarily composed of		[illegible]
1,2,3-trimethylbenzene	526-73-8	[illegible]
1,2,4-trimethylbenzene	95-63-6	[illegible]
1,3,5-trimethylbenzene	8-67-8D2/ [illegible]	
mixed trimethylbenzenes	25551-13-7	[illegible]
ortho-ethyltoluene	611-14-3	[illegible]
meta-ethyltoluene	620-14-4	[illegible]
para-ethyltoluene	622-96-8	[illegible]
and mixed ethyltoluenes	25550-14-5	[illegible]

11. In § 716.18 by changing the term "designated mixtures" to read "listed mixtures", and redesignating § 716.18 as § 716.13 and to read as follows:

§ 716.13 Additions of substances and mixtures to which this subpart applies.

The requirements of this subpart will periodically be extended to cover additional substances and mixtures. Two procedures will be used to add substances and mixtures.

(a) Except as provided in paragraph (b) of this section, substances and mixtures will be added to § 716.17 after publication in the **Federal Register** of a notice of proposed amendment to this subpart. There will be a 30-day public comment period on the notice; after consideration of the comments, a final amendment will identify the added substances and listed mixtures.

(b) Except as provided in paragraph (c) of this section, chemical substances, mixtures, and categories of chemicals that have been added to the TSCA section 4(e) Priority List by the Interagency Testing Committee, established under section 4 of TSCA, will be added to § 716.17 30 days after publication of a notice to that effect in the **Federal Register.**

* * * * *

12. By revising and redesignating § 716.19 as § 716.15 to read as follows:

§ 716.15 Reporting Period.

(a) The reporting period on a substance or listed mixture will terminate no later than: 10 years after the effective date on which a substance or listed mixture is added to § 716.17; or on the removal of the substance or listed mixture from § 716.17. The Assistant Administrator for the Office of Pesticides and Toxic Substances has the authority to remove a substance or listed mixture from § 716.17.

(b) Removing a substance or listed mixture from § 716.17 eliminates all of the reporting requirements for prospective manufacturers, importers, and processors of the substance or listed mixture, must notify EPA whenever they initiate a study of the substance or listed mixture. Only one reporting requirement would remain in effect. Persons who are manufacturing, importing, or processing, or who propose to manufacture, import, or process a substance or listed mixture at the time it is removed from § 716.17 and who initiate a study of the substance or listed mixture prior to its removal from § 716.17, must notify EPA of the study and submit the study study regardless of the study's completion date. The Assistant Administrator may remove a substance or listed mixture from § 716.17 by publishing, without notice and comment, a final rule to that effect in the **Federal Register.** However, the rule shall not be effective any earlier than 90 days after its publication.

[FR Doc. 85-23259 Filed 9-27-85; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 32, 77, 92, 96, 190, and 195

[CGD 84-073]

Miscellaneous Changes

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the regulations for accommodations, rails and guards, and anchors for tank vessels to provide uniformity among the various subchapters. The Coast Guard is also proposing to delete the requirements for radiotelegraph, radiotelephone, and radio direction finder in 46 CFR Subchapters D, H, I, and U because these requirements are in the Federal Communications Commission (FCC) regulations in 47 CFR. The structural fire protection requirements in Subchapters I and U are proposed to be revised to clarify the location where noncombustible materials must be used. The proposed change will clarify the

requirements and bring them into conformity with current marine practice.

DATE: Comments must be received on or before November 29, 1985.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/21) (CGD 84-073), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593. Comments will be available for inspection and copying from 8:00 a.m. to 4:00 p.m., Monday through Friday, except holidays, at the Marine Safety Council, Room 2110, at the address above. The telephone number is 202-426-1477..

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Edward F. Murphy, Office of Merchant Marine Safety, 202-426-2197.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking procedure by submitting written comments, data, or arguments. Each comment should include the name and address of the person submitting the comment, identify this notice (CGD 84-073) and the specific section of the proposal to which each comment applies, and the reasons for comments. No public hearing is anticipated at this time but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will be beneficial. All comments will be considered by the Coast Guard before taking further rulemaking action.

Drafting Information

The principal persons involved in drafting this proposal are Lieutenant Victor J. Mihal, Office of Merchant Marine Safety, and Commander Ronald C. Zabel, Office of Chief Counsel.

Discussion

DOT Order 2100.5, "Policies and Procedures for Simplification, Analysis, and Review of Regulations", dated May 22, 1980, instructs the Coast Guard to establish a program for reviewing existing regulations that are not achieving their intended purpose. The accommodations, rails and guards, anchors, radiotelegraph, radiotelephone, radio direction finder, and structural fire protection subparts of 46 CFR Subchapters D, H, I, and U have been reviewed and certain portions of these regulations have been identified for revision or deletion. The proposed regulations would not impose any substantial change on current marine practice. A grandfather provision has been proposed to accept current arrangements.

On September 10, 1952, the President proclaimed that the International Convention for the Safety of Life at Sea, 1948, (SOLAS 48) would take effect November 19, 1952. The Federal Register of October 18, 1952, amended the regulations that were in effect by: (1) Providing new or revised requirements to implement or complement SOLAS 48; (2) reviewing and updating the requirements for vessel inspection; (3) revising the style or format of the regulations to have a better presentation of the requirements; and (4) describing present practices and procedures more fully in order to provide a better arrangement and understanding of the requirements. The regulations were revised and rearranged by general subject and by types of vessels. It was not necessary to amend or revise all of the existing regulations; therefore, those regulations not affected by SOLAS 48 were not changed. This latter group included the present Subchapter D—Tank Vessels, and accounts for the lack of uniformity in the depth of treatment and language found between Subchapter D and Subchapters H, I, and U. A revision to the accommodations, anchors and rails sections of Subchapter D would result in a uniform application among the various classes of vessels.

The proposed accommodation regulations for 46 CFR Subchapter D were drafted using 46 CFR Subchapters I and I-A as a guide. These proposed regulations contain some additional requirements for tankships which do not currently exist in Subchapter D; however, they would provide uniformity with 46 CFR Subchapters H, I, I-A, and U. The following are the proposed increased requirements: (1) The size of the sleeping quarters is increased from 120 cubic feet and 16 square feet of deck area for each member of the crew to 210 cubic feet and 30 square feet of deck area; (2) a clear head room of 6 feet 3 inches is specified; (3) clothes locker size is increased from 252 square inches to 300 square inches; (4) berths must have a framework of metal or other hard material; (5) the overall size of the berth is specified as a minimum 30 inches wide by 76 inches long; (6) adjoining berths must have a partition at least 18 inches high; (7) requirements for the entrance to the hospital space are given; and (8) the location and construction requirements of accommodation spaces are more clearly defined. There is no indication that these requirements, nor the remainder of the proposal, exceed current tank vessel construction and arrangement practices.

The rails subpart of Subchapter D (§ 32.01-10) does not contain a provision for storm rails such as are required for other classes of vessels; however, modern tank vessels have storm rails normally installed during construction. The proposed regulation adds this requirement to tankships and manned tank barges in ocean and coastwise service.

Under current regulations, tankships are not required to have anchors, chains, and hawsers such as are required for other classes of vessels. Today tankships have anchors on board to satisfy classification society requirements or safety and operational needs. The proposed regulations correct this oversight.

The radiotelegraph, radiotelephone, and radio direction finder requirements found in 46 CFR Subchapters D, H, I, and U merely direct one to the statutes and regulations of the Federal Communications Commission. Since these regulations do not contain specific requirements it is proposed that these regulations be deleted.

The Coast Guard has construed the regulation in Subchapters D, H, I, and U to require noncombustible materials in accommodations, service areas, and control spaces (i.e. spaces containing emergency sources of power, and those spaces in which a continuous watch is maintained and in which navigating, radio, or fire-control equipment is located). However, a review of the regulations for cargo and miscellaneous vessels and oceanographic vessels (Subchapters I and U respectively) shows that control spaces are not specifically included as an area of a vessel that must be constructed with noncombustile materials. To maintain the fire integrity on all vessels inspected under these Subchapters, control spaces need to be constructed with noncombustible materials. In addition, the first set of amendments to the International Conference of Safety of Life at Sea, 1974 (SOLAS 74), which have been in effect since September 1, 1984, require that control spaces on new cargo vessels on an international voyage be constructed with noncombustible materials. This proposal would, in addition to conforming 46 CFR Subchapters I and U to the requirements of SOLAS 74, specifically include requirements to utilize noncombustible materials in control spaces on all vessels inspected under these Subchapters. This proposal confirms the current Coast Guard interpretation and is compatible with current marine practice.

E.O. 12291 and DOT Regulatory Policies and Procedures

These proposed regulations are considered to be non-major under Executive Order 12291 and

nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The proposed regulations contain minor changes that in some cases appear to be adding requirements for new vessels with a corresponding increase in cost. However, vessels being constructed today meet and often exceed the proposed regulations. There will be no economic impact on existing vessels because the proposal provides for acceptance of current arrangements and equipment on these vessels. Thus, this proposed change to 46 CFR Subchapters D, H, I, and U represents no real cost increase to industry or government. Since the economic impact is expected to be minimal, the Coast Guard has determined that no further evaluation is necessary.

Regulatory Flexibility Act

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposed rulemaking contains no information collection or record keeping requirements.

Environmental Assessment

The Coast Guard has considered the environmental impact of the regulations and concluded that preparation of an environmental impact statement is not necessary.

List of Subjects

46 CFR Part 32

Cargo vessels, Marine safety, Fire protection, Tank vessels, Barges.

46 CFR Part 77

Marine safety, Passenger vessels, Navigation (water).

46 CFR Part 92

Cargo vessels, Fire protection, Marine safety.

46 CFR Part 96

Cargo vessels, Marine safety, Navigation (water).

46 CFR Part 190

Fire prevention, Marine safety, Oceanographic vessels.

46 CFR Part 195

Marine safety, Oceanographic vessels, Navigation (water).

In consideration of the foregoing Parts 32, 77, 92, 96, 190, and 195 of Chapter 1 of Title 46, Code of Federal Regulations, are amended as follows:

PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

1. The authority citation for Part 32 is revised to read as follows and all subpart authority citations are removed:

Authority: 46 U.S.C. 3306, 3703; 50 U.S.C. 198; 49 CFR 1.46 (b) and (n).

2. By revising the Subpart 32.40 portion of table of contents for Part 32 to read as follows:

Subpart 32.40—Accommodations For Officers and Crew

Sec.
32.40–1 Application—TB/ALL.
32.40–5 Purpose and definitions—T/ALL.
32.40–10 Restrictions—T/ALL.
32.40–15 Location of crew spaces—T/ALL.
32.40–20 Construction—T/ALL.
32.40–25 Arrangement of sleeping spaces—T/ALL.
32.40–30 Size of sleeping spaces—T/ALL.
32.40–35 Berths and lockers—T/ALL.
32.40–40 Wash spaces; toilet spaces; and shower spaces—T/ALL.
32.40–45 Messrooms—T/ALL.
32.40–50 Hospital space—T/ALL.
32.40–55 Miscellaneous accommodation spaces—T/ALL.
32.40–60 Heating requirements—T/ALL.
32.40–65 Insect Screens—T/ALL.
32.40–70 Crew accommodations on tankships of less than 100 gross tons and manned tank barges—TB/ALL.
32.40–90 Crew accommodations on tankships constructed before December 31, 1985—T/ALL.

3. By adding a new paragraph (d) to § 32.01–10 to read as follows:

§ 32.01–10 Rails—TB/ALL.

* * * * *

(d) All tank vessels in ocean and coastwise service, except unmanned tank barges, constructed on or after December 31, 1985, must have suitable storm rails installed in all passageways and at the deckhouse sides where persons on board might have normal access. Storm rails must be installed on both sides of passageways which are six feet or more in width. Tank vessels to which this paragraph applies constructed prior to December 31, 1985 may retain previously accepted or approved installations so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

4. By revising § 32.15–15 to read as follows:

§ 32.15–15 Anchors, Chains, and Hawsers—TB/ALL.

(a) Application. The provisions of this section, with the exception of § 32.15–15(d), apply to every tankship and manned seagoing barge constructed on or after December 31, 1985. Tankships and manned seagoing barges constructed prior to December 31, 1985, must meet the requirements of § 32.15–15(d).

(b) Ocean, Coastwise, or Great Lakes Service. Tankships in ocean, coastwise, or Great Lakes service and manned seagoing barges must be fitted with anchors, chains and hawsers in general agreement with the standards established by the American Bureau of Shipping. The current standards of other recognized classification societies may also be accepted upon approval by the Commandant.

(c) Lakes, Bays, and Sounds, or River Service. Tankships in lakes, bays, and sounds, or river service must be fitted with such ground tackle and hawsers as deemed necessary by the Officer in Charge, Marine Inspection, depending upon the size of the tankship and the waters on which it operates.

(d) Tankships and Barges Constructed Prior to December 31, 1985. For tankships and manned seagoing barges constructed prior to December 31, 1985, the installations previously accepted or approved will be considered satisfactory for the same service so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection. If the service of the tank vessel is changed, the suitabilty of the equipment will be established by the Officer in Charge, Marine Inspection.

§ 32.15–20 [Removed]

5. By removing § 32.15–20.

§ 32.15–25 [Removed]

6. By removing § 32.15–25.

7. By revising Subpart 32.40 to read as follows:

Subpart 32.40—Accommodations for Officers and Crew

§ 32.40–1 Application—TB/ALL.

(a) The provisions of this subpart, with the exception of § 32.40–70 and § 32.40–90, apply to all tankships of 100 gross tons and over constructed on or after December 31, 1985.

(b) Tankships of less than 100 gross tons and manned tank barges must meet the requirements of §32.40–70.

(c) Tankships of 100 gross tons and over constructed prior to December 31, 1985, must meet the requirements of §32.40–90.

§ 32.40–5 Purpose and definitions—T/ALL.

(a) The accommodations provided for officers and crew on all tankships must be securely constructed, properly

lighted, heated, drained, ventilated, equipped, located, arranged, and insulated from undue noise and odors.

(b) The crew includes all persons, except the licensed officers, regularly employed on board any tankship. Where the requirements for the accommodation of licensed officers are not otherwise specified, they must be at least equivalent to that specified for the crew.

(c) Crew spaces includes sleeping rooms, messrooms, recreational rooms, toilet and shower spaces, etc., which are intended for the exclusive use of the crew.

§ 32.40–10 Restrictions—T/ALL.

(a) There must be no direct communication between the accommodation spaces and any chainlocker, stowage, or machinery space, except through solid, close-fitted doors or hatches.

(b) No access, vent, or sounding tube from a fuel or oil tank may open into any accommodation space, except that accesses and sounding tubes may open into corridors.

§ 32.40–15 Location of crew spaces—T/ALL.

(a) Crew quarters must not be located forward of a vertical plane located at five percent of the tankship's length aft of the stem at the designed summer load line. However, for tankships in other than ocean or coastwise service, this distance does not need to exceed 28 feet. For the purpose of this paragraph, the length defined in § 42.13–15 of Subchapter E (Load Lines) of this chapter is to be used. No section of the deckhead of the crew spaces may be below the deepest load line.

§ 32.40–20 Construction—T/ALL.

(a) Each sleeping, mess, recreational, or hospital space that is adjacent to or immediately above a galley, machinery space, paint locker, drying room, washroom, toilet space, or other odor source must be made odorproof.

(b) Each accommodation space that is adjacent to or immediately above a galley, machinery space, machinery casing, boiler room, or other noise or heat source, must be protected from heat and noise.

(c) Where the shell of an unsheathed weather deck forms a boundary of an accommodation space, the shell of the deck must have a covering that prevents the formation of moisture.

(d) The deckheads of each accommodation space must be light in color.

(e) Each accommodation space in which water may accumulate must have a drain scupper located in the lowest part of the space, considering the average trim of the tankship.

(f) Each public toilet space must be constructed and located so that its odors do not readily enter any sleeping, mess, recreational, or hospital space.

§ 32.40–25 Arrangement of sleeping spaces—T/ALL.

(a) To the extent practicable, each crew department must be berthed together in sleeping spaces arranged to minimize disturbance created by personnel leaving for or arriving from a working period.

(b) Each licensed officer is to be provided with a separate stateroom where practicable.

§ 32.40–30 Size of sleeping spaces—T/ALL.

(a) No sleeping space may berth more than four persons.

(b) Without deducting any equipment used by the occupants, each sleeping space must have for each occupant—

(1) 30 square feet of deck area; and

(2) 210 cubic feet of volume.

(c) Each sleeping space must have at least six feet three inches of headroom over clear deck areas.

§ 32.40–35 Berths and lockers—T/ALL.

(a) Each sleeping space must have a separate berth for each occupant.

(b) No more than one berth may be placed over another.

(c) Each berth must have a framework of hard, smooth material that is not likely to corrode or harbor vermin.

(d) Each berth must be arranged to provide ample room for easy occupancy.

(e) Each berth must be at least 30 inches wide by 76 inches long.

(f) Adjacent berths must be separated by a partition that extends at least 18 inches above the sleeping surface.

(g) The bottom of the lower berth must be at least 12 inches above the deck.

(h) The bottom of an upper berth must be at least 30 inches from the bottom of the berth below it and from the deck or any pipe, ventilating duct, or other overhead installation.

(i) Each berth must have a berth light.

(j) Each sleeping space must have a readily accessible locker of hard, smooth material for each occupant.

(k) Each locker must be at least 300 square inches in cross section and 60 inches high.

§ 32.40–40 Wash spaces; toilet spaces; and shower spaces—T/ALL.

(a) For the purpose of this section—

(1) "Private facility" means a toilet, washing, or shower space that is accessible only from one single or double occupancy sleeping space;

(2) "Semi-private facility" means a toilet, washing, or shower space is accessible from either of two one-to-four person occupancy sleeping spaces; and

(3) "Public facility" means a toilet, washing, or shower space that is not private or semi-private.

(b) Each private facility must have one toilet, one shower, and one washbasin, all of which may be in a single space.

(c) Each semi-private facility must have at least one toilet and one shower, which may be in a single space.

(d) Each room adjoining a semi-private facility must have a washbasin if a washbasin is not installed in a semi-private facility.

(e) Each tankship must have enough public facilities to provide at least one toilet, one shower, and one washbasin for each eight persons who occupy sleeping spaces that do not have private or semi-private facilities.

(f) Urinals may be installed in toilet rooms, but no toilet required in this section may be replaced by a urinal.

(g) Each public toilet space and washing space must be convenient to the sleeping space that is serves.

(h) No public facility may open into any sleeping space.

(i) Each washbasin, shower, and bathtub must have hot and cold running water.

(j) Adjacent toilets must be separated by a partition that is open at the top and bottom for ventilation and cleaning.

(k) Public toilet facilities and shower facilities must be separated.

(l) Each public facility that is a toilet space must have at least one washbasin unless the only access to the toilet space is through a washing space.

(m) Each toilet must have an open front seat.

(n) Each washing space and toilet space must be so constructed and arranged that it can be kept in a clean and sanitary condition and the plumbing and mechanical appliances kept in good working order.

(o) Washbasins may be located in sleeping spaces.

§ 32.40–45 Messrooms—T/ALL.

(a) Each messroom that is not adjacent to the galley that serves it must be equipped with a steamtable.

(b) Each messroom must seat the number of persons expected to eat in the messroom at one time.

§ 32.40–50 Hospital space—T/ALL.

(a) Except as specifically modified by paragraph (j) of this section, each tankship, which in the ordinary course of its trade makes voyages of more than

three days duration between ports and which carries a crew of twelve or more, must have a hospital space. This space is to be situated with due regard for the comfort of the sick so that they may receive proper attention in all weather.

(b) The hospital must be suitably separated from other spaces and used only for the care of the sick and for no other purpose.

(c) The entrance to each hospital space must be wide enough and arranged to readily admit a person on a stretcher.

(d) Each berth in a hospital space must be made of metal.

(e) Berths may be in double tier, provided the upper berth is hinged and arranged to be secured clear of the lower berth when not in use.

(f) Each hospital space must have at least one berth that is accessible from both sides.

(g) Each hospital space must have one berth for every twelve members of the crew or portion thereof who are not berthed in single occupancy rooms, but the number of berths need not exceed six.

(h) Each hospital space must have a toilet, washbasin, and bathtub or shower accessible from the hospital space.

(i) Each hosptial space must have a clothes locker, a table, and seats.

(j) On tankships in which the crew is berthed in single occupancy rooms, a hospital space is not required if one room is designated and fitted for use as a treatment and/or isolation room, and meets the following standards:

(1) The room must be available for immediate medical use;

(2) The room must be accessible to stretcher cases;

(3) The room must have a single berth or examination table that is accessible from both sides; and

(4) A washbasin with hot and cold running water must be installed either in or immediately adjacent to the space and other required sanitary facilities must be conveniently located.

§ 32.40–55 Miscellaneous accommodation spaces—T/ALL.

(a) Each tankship must have enough facilities for the crew to wash their own clothes, including at least one tub or sink that has hot and cold running water.

(b) Each tankship must have enough equipment for the crew to dry their own clothes.

(c) Each tankship must have an accommodation space that can be used for recreation.

§ 32.40–60 Heating requirements—T/ALL.

(a) Each accommodation space must be heated by a heating system that can maintain at least 68°F.

(b) Radiators and other heating apparatus must be constructed, located or shielded so as to avoid risk of fire or danger and discomfort to the occupants of each accommodation space.

(c) Each exposed pipe in an accommodation space leading to a radiator or other heating apparatus must be insulated.

§ 32.40–65 Insect Screens—T/ALL.

(a) Accommodation spaces must be protected against the admission of insects.

(b) Insect screens must be installed when natural ventilation is provided.

§ 32.40–7 Crew accommodations on tankships of less than 100 gross tons and manned tank barges—TB/ALL.

(a) The crew accommodations on all tankships of less than 100 gross tons and all manned tank barges must have sufficient size and equipment, and be adequately constructed to provide for the protection of the crew in a manner practicable for the size, facilities, and service of the tank vessel.

(b) The crew accomodations must be consistent with the principles underlying the requirements for crew accommodations on tankships of 100 gross tons or more.

§ 32.40–90 Crew accommodations on tankships constructed before December 31, 1985—T/ALL.

(a) All tankships of 100 gross tons and over constructed before December 31, 1985, may retain previously accepted or approved installations and arrangements so long as they are maintained in good condition to the satisfaction of the Officer in Charge, Marine Inspection.

PART 77—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

8. The authority citation for Part 77 is revised to read as follows and all subpart authority citations are removed:

Authority: 46 U.S.C. 3306; 50 U.S.C. 198; 46 CFR 1.46 (b) and (n).

§ 77.13 [Removed]

9. By removing § 77.13.

§ 77.15 [Removed]

10. By removing §77.15.

PART 92—CONSTRUCTION AND ARRANGEMENT

11. The authority citation for Part 92 is revised to read as follows and all subpart authority citations are removed:

Authority: 46 U.S.C. 3306; 50 U.S.C. 198; 46 CFR 1.46 (b) and (n).

12. By adding a new paragraph (g) to § 92.07–10 to read as follows:

§ 92.07–10 Construction

* * * * *

(g) The provisions of subparagraphs (1) through (9) of paragraph § 92.07–10(d) apply to control spaces on vessels whose initial Application for Inspection is submitted to an Officer in Charge, Marine Inspection on or after December 31, 1985.

PART 96—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

13. The authority citation for Part 96 is revised to read as follows and all subpart authority citations are removed:

Authority: 46 U.S.C. 3306; 50 U.S.C. 198; 46 CFR 1.46 (b) and (n).

§ 96.13 [Removed]

14. By removing § 96.13.

§ 96.15 [Removed]

15. By removing § 96.15.

PART 190—CONSTRUCTION AND ARRANGEMENT

16. The authority citation for Part 190 is revised to read as follows and all subpart authority citations are removed:

Authority: 46 U.S.C. 3306; 50 U.S.C. 198; 46 CFR 1.46 (b) and (n).

17. By adding a new paragraph (f) to § 190.07–10 to read as follows:

§ 190.07–10 Construction

* * * * *

(f) The provisions of subparagraphs (1) through (9) of paragraph § 190.07–10(d) apply to control spaces on vessels whose initial Application for Inspection is submitted to an Officer in Charge, Marine Inspection on or after December 31, 1985.

PART 195—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

18. the authority citation for Part 195 is revised to read as follows and all subpart authority citations are removed:

Authority: 46 U.S.C. 3306; 50 U.S.C. 198; 46 CFR 1.46 (b) and (n).

§ 195.13 [Removed]

19. By removing § 195.13.

§ 195.15 [Removed]

20. By removing § 195.15.

Dated: September 25, 1985.

J. W. Kime,

Commodore, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 85-23283 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-14-M

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46 CFR Parts 109, 170, and 174

[CGD 83-071]

Mobile Offshore Drilling Unit Operating Manual Requirements

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the regulations listing the information required to be addressed in a mobile offshore drilling unit (MODU) operating manual. Investigation reports on the sinking of the MODU OCEAN RANGER recommend that the operating manual requirements be revised to make them more easily understood by MODU operating personnel. The proposed amendments also contain the information required by the International Maritime Organization (IMO) Code of Safety for MODUs. The overall effect of this change will be to enable the operating manual to become more useful to operating personnel and will ensure that an operating manual developed to comply with U.S. regulations will meet the requirements of the IMO MODU Code.

DATE: Comments must be received on or before November 29, 1985.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/21) (CGD 83-071), U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593. Comments will be available for inspection and copying from 8:00 a.m. to 4:00 p.m., Monday through Friday, except holidays, at the Marine Safety Council, Room 2110, at the address above. The telephone number is 202-426-1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Victor J. Mihal, Office of Merchant Marine Safety, 202-426-2197.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking proceeding by submitting written comments, data, or arguments. Each comment should include the name and address of the person submitting the comment, identify this notice (CGD 83-071) and the specific section of the proposal to which each comment applies, and the reasons for comments. No public hearing is anticipated at this time but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will be beneficial. All comments will be considered by the Coast Guard before taking further rulemaking action.

Drafting Information

The principal persons involved in drafting this proposal are Lieutenant Victor J. Mihal, Office of Merchant Marine Safety, and Mr. Stephen H. Barber, Office of Chief Counsel.

Background

The Mobile Offshore Drilling Unit (MODU) regulations (46 CFR Chapter 1, Subchapter 1-A) were published in final form on December 4, 1978 and became effective January 3, 1979. On December 5, 1983, the MODU operating manual requirements were transferred from 46 CFR 109.121 to 46 CFR 170.110 and 170.130 when a new Subchapter S (Subdivision and Stability) was created. Since 1979, the occurrence of a number of events, such as the sinking of the MODUs Ocean Ranger and Glomar Java Sea, the United States recognition of the International Maritime Organization Code of Safety for Mobile Offshore Drilling Units, and the receipt of comments from industry and other interested parties have caused the Coast Guard to reconsider its operating manual requirements. On June 1, 1984, the Coast Guard published an Advance Notice of Proposed Rulemaking (48 FR 22836) asking for suggestions on how the operating manual requirements might be clarified and improved.

Discussion of Comments on the Advance Notice

Eight sets of comments were received on the Advance Notice from interested parties, including MODU owners, operators, and personnel, trade organizations, and other government agencies.

Several comments suggest that the regulations conform to the operating manual provision in the International Maritime Organization Code for the Construction and Equipment of Mobile Offshore Drilling Units (IMO MODU Code). Some comments, however, suggest that certain items in the IMO MODU Code (fire control plan, evacuation plan, and schematics of vital systems) should not be included because they are already required to be on board or their inclusion would not be useful. U.S. regulations, however, require only the fire control plan and in some instances a diagram of the fuel oil transfer system to be on board. The Coast Guard believes the operating manual should include all of the IMO MODU Code items for consideration because this information is of the type that needs to be readily available to operating personnel.

Other comments suggest that the operating manual become a maintenance manual, emergency drill manual, or a safety/training manual. The Coast Guard does not believe that such information should be included in the operating manual because this information would cause the operating manual to become unnecessarily burdensome.

Some items mentioned in the ANPRM for possible inclusion in the operating manual received generally negative comments. These items included a cold start plan and action to be taken for loss of power. As a result of the comments, it is questionable whether this information is necessary or readily adaptable to the operating manual. A cold start plan is unnecessary because the evolution of restoring power after an abandonment or repair period is well within the capabilities of operating personnel. There are many potential causes for a loss of power with two immediate results—the emergency generator fails to start and the emergency power system is energized. To require instructions on actions to be taken if power is lost would make use of the operating manual unnecessarily burdensome by attempting to address all possible actions for loss of power. Therefore, these items have not been included in this proposal.

The ANPRM also cited the possible inclusion of a towing plan in the operating manual. This item received negative comments, however, the comments primarily objected to the operational aspect of towing. Several casualties resulting in structural damage have occurred on self-elevating units in the transit mode during heavy weather. These casualties were related to the improper positioning of the legs or cantilever or stowage of cargo and equipment. The Coast Guard believes the operating manual should contain information for preparing the unit to avoid these problems during heavy weather.

Certain comments state that operating manuals have become difficult to use; information can not be readily located and is often not easily understood. The Coast Guard agrees with this observation. The operating manual is intended to provide operating personnel with readily available and useful

information to evaluate stability and loading and otherwise assist during emergency as well as normal situations. The Coast Guard proposes that the operating manual be written without technical jargon and be divided into sections with a table of contents for each section and a general index for the manual. The sections would be entitled "Stability and Loading", "Emergency Procedures", and "Other Information". This arrangement would benefit operating personnel by gathering the information that is pertinent to stability, for example, into a single section. The "Other Information" section would provide a great deal of latitude for the inclusion of information which, though not required for survivability, is desired by an owner to be in the operating manual.

Discussion of Proposed Regulation

The proposed regulations apply to all MODUs certificated under 46 CFR Subchapter 1–A and any other MODU engaged in activities on the Outer Continental Shelf (OCS) of the United States. At this time, there are about 310 certificated MODUs. In addition, there are approximately 20 noncertificated and 25 foreign MODUs currently operating on the OCS. There are approximately five new U.S. flag MODUs being built annually. For existing MODUs, proposed § 109.121(b) would require that the operating manual conform to the new requirements and be submitted to the Coast Guard for review and approval within a two year period.

The items proposed for coverage in the manual include those incorporated from the existing regulations (46 CFR 170.110 and 170.130) without substantive change. They also include the IMO MODU Code items not already specified in the existing regulations and certain other items not found in either the existing regulations or the IMO MODU Code.

The following proposed provisions are IMO MODU Code items not found in the present regulations: § 109.121(f)(2), (f)(4), (f)(6), (f)(7), (f)(9), (g)(1), (g)(2), (g)(3), and (g)(4). The inclusion of the fire control plan and fuel oil transfer plans in the operating manual is in addition to other U.S. regulations that require them to be on board the unit.

The proposed items that are not found in either the present regulations or the IMO MODU Code are § 109.121 (c), (e)(14), (f)(3), (f)(5), (f)(8), and (g)(5). These items are discussed below.

Proposed § 109.121(c) on the three section format would make it easier for operating personnel to locate and use the information provided for the unit.

As previously noted in the Discussion of Comments on the Advance Notice section, information on preparing a self-elevating unit for transit needs to be provided to reduce the risk of damage during heavy weather. Proposed § 109.121(e)(14) would meet this need.

Proposed § 109.121(f)(3) on the bilge system would require the inclusion of information with regard to the dewatering of any compartment and all alternate means of dewatering in the event of main bilge pump failure.

The fire control plan generally does not provide details of the fixed fire extinguishing and the firemain systems. Instructions for the fixed fire extinguishing system are in addition to the posting requirement of § 108.163(b). Instructions for operation of the firemain are often not readily available. However, proper operation of these systems is vital for survivability. Proposed § 109.121(f)(5) would require information on the operation of these systems, as well as on the operation of all fire pumps.

Proposed § 109.121(f)(8) on emergency shutdowns of various systems is necessary for the safety of the unit and its personnel. During an emergency, personnel must be able to locate and operate these devices. Placing this information in the operating manual would make it readily available at all times. Information also needs to be available to personnel for restarting these systems after a shutdown.

Proposed § 109.121(g)(5) would allow MODU owners to include related information which they feel is necessary for operating personnel. However, this information would be included in a section of the manual separate from the emergency and stability sections.

In addition to the above, there are certain proposed amendments of an editorial nature. The original provisions for MODU operating manuals were in Subchapter 1–A (46 CFR 109.121) dealing exclusively with MODUs. On December 5, 1983, the provisions were deleted and reference was made to the operating manual provision in the newly created Subchapter S dealing with vessel subdivision and stability. However, because this proposal expands the manual to include matters other than those relating to stability, the Coast Guard proposes to return the operating manual provisions to the MODU subchapter (1–A). See the proposed amendments to §§ 170.110 ad 170.130.

E.O. 12291 and DOT Regulatory Policies and Procedures

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under Executive Order 12498 (50 FR 1036; January 8, 1985) and the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26,1979). A draft regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the Office of the Marine Safety Council, Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593 from 8 a.m. to 4 p.m.

The costs of an operating manual may vary due to the complexity of the MODU, the amount of information included that is not required by the regulations and the experience of the preparer in drafting operating manuals. Much of the required information is already available and is customarily provided to operating personnel; however, some information not previously required would have to be compiled.

The cost of preparing a manual which meets the requirements of the existing regulations is estimated to be between $12,000 and $17,000. Rearranging and incorporating the proposed additional information would increase the cost by approximately 17 per cent or by $2,000 to $3,000. For a manual already conforming to the IMO MODU Code, the cost of rearranging and incorporating the remaining proposed provisions would be $1,000 to $1,400. Assuming that the operating manuals of all of the 355 existing MODUs do not meet the IMO MODU Code, the total cost would be $710,000 to $1,065,000 for the existing MODUs. Manuals for new MODUs would cost $14,000 to $20,000 for each unit, assuming each unit is different.

The total cost to the Coast Guard for the review and approval of each manual is estimated to be $530. The additional cost to the Coast Guard for the proposed regulations is estimated to be $170/manual.

The investigation reports of recent MODU sinkings resulting in the loss of 165 lives recommended that operating manuals contain additional information and be clearer and better organized to facilitate their use in emergency situations. The primary objective of these proposals is to address these needs, thereby enhancing the safety of life and property at sea. It is, however, difficult, if not impossible, to quantify the benefits of the proposed regulations because of the unpredictable occurreance and limitless variety of emergency situations in which the manuals would be of assistance. Though the manuals do not replace a well trained crew, they can be of significant benefit.

Regulatory Flexibility Act

These proposals would apply to the owners and operators of MODUs. Few of these, if any, would be considered small entities. The economic impact of these proposed rules on individual owners and operators is expected to be minimal. Current operating manuals will only need to be modified by MODU owners to comply with the proposed requirements. For new MODUs, the operating manuals are normally developed as a standard business practice by designers and builders of MODUs. Cost information may be found in the evaluation section above. Therefore, it is certified, in accordance with seciton 605(d) of the Regulatory Flexibility Act (94 Stat, 1164; 5 U.S.C. 601), that these rules will not have a significant economic impact on a substanstial number of small entities.

Paperwork Reduction Act

This proposed rulemaking contains information collection requirements in § 109.121. They have been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place NW, Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under "**ADDRESSES**".

Environmental Assessment

The Coast Guard has considered the environmental impact of the regulations and concluded that preparation of an environmental impact statement is not necessary.

List of Subjects

46 CFR Part 109

Reporting and recordkeeping requirements, Vessels, Continental shelf, Oil and gas exploration, Marine safety, Marine resources.

46 CFR Part 170

Marine safety, Subdivision, Stability, Vessels, Tank vessels, Cargo vessels, Nuclear vessels, Passenger vessels, Oceanographic vessels, Sailing vessels, Nautical schools, Tugboats, Towboats, Mobile offshore drilling units, Barges, Grain, Oil and gas exploration, hazardous materials transportation, Gases, Natural gas, Incorporation by reference.

46 CFR Part 174

Marine safety, Subdivision, Stability, Vessels, Cargo vessels, Nuclear vessels, Tugboats, Towboats, Mobile offshore drilling units, Barges, Oil and gas exploration.

In consideration of the foregoing, Parts 109, 170 and 174 of Chapter 1 of Title 46, Code of Federal Regulations, are proposed to be amended as follows:

PART 109—OPERATIONS

1. The authority citation for Part 109 is revised to read as follows and all section authority citations are removed:

Authority: 46 U.S.C. 3306; 46 App. U.S.C. 86; 43 U.S.C. 1333(d), 1347(c); 50 U.S.C. 198; §§ 109.411 and 109.413 also issued under 46 U.S.C. 6101; § 109.431 also issued under 46 U.S.C. 10104; 49 CFR 1.46.

2. By revising § 109.121 to read as follows:

§109.121 Operating manual.

(a) Each unit must have on board an operating manual approved by the Coast Guard as meeting the requirements of this section. The operating manual must be available to, and written in a manner that is easily understood by, the unit's operating personnel.

(b) Each unit that has a manual approved before [the effective date of this rulemaking] must have a manual that meets the requirements of this section by January 1, 1988.

(c) The operating manual must be divided into three sections entitled "Stability and Loading", "Emergency Procedures", and "Other information".

(d) Each operating manual must have a table of contents for each section and a general index for the manual.

(e) *Stability and Loading.* This section of the operating manual must include—

(1) A general description of the unit including dimensions, tonnages, basic capacities, maximum operating depth, maximum drilling depth, and the damage stability standard to which it is designated;

(2) Limiting design data for each mode of operation, including wave height, wave period, wind, current, draft, temperature, seabed conditions, and over environmental factors;

(3) Instructions on the use of the stability data contained in this section of the manual in determining stability;

(4) Lightweight data with a comprehensive listing of the inclusions and exclusions of semi-permanent equipment;

(5) Type, location, and quantities of permanent ballast;

(6) Hydrostatic curves or tables;

(7) The maximum allowable deck loadings either listed or shown on a plan;

(8) A capacity plan showing the capacities and the vertical, longitudinal, and transverse centers of gravity of each storage space, and tank;

(9) Tank sounding tables showing the capacities, the vertical, longitudinal, and transverse centers of gravity in graduated intervals, and the free surface data of each tank;

(10) Stability information setting forth the allowable maximum height of the center of gravity in relation to draft data or other parameters based upon compliance with the intact and damage stability criteria;

(11) Examples of loading conditions for each mode of operation and instructions for developing other acceptable loading conditions;

(12) Information concerning the use of any special crossflooding fitting for each operating condition which, if damage occurs, may require crossflooding for survival (surface units only) and the position of any valve that may require closure to prevent progressive flooding (all units);

(13) Instructions for preparing the unit for the passage of a severe storm and the specific actions and approximate length of time necessary to attain each level of preparedness;

(14) For self-elevating units in the transit mode, information for preparing the unit to avoid structural damage during heavy weather, including the positioning and securing of legs, cantilever structures, and heavy cargo or large equipment which might shift position.

(15) Instructions for operating the unit while changing its mode of operation and for preparing the unit to make a move; and

(16) A description of any inherent operational limitations for each mode of operation and for each change in mode of operation.

(f) *Emergency Procedures.* This section of the operating manual must include—

(1) General guidance for the person in charge to determine the cause of unexpected list or trim before taking corrective action;

(2) Description, plans, instructions for the operation, and limitations (such as pump capacities at various angles of heel and trim) of the ballast system and of alternate means of operation;

(3) Description, plans, instructions for the operation, and limitations (such as spaces not connected to the bildge system) of the bilge system and of alternate means of operation;

(4) Schematic diagrams of main and emergency power supplies and electrical installations;

(5) Description and instructions for the operation of each fixed fire extinguishing system including the fire main system;

(6) Fire control plan on a general arrangement type plan showing clearly for each deck, the control stations, the fire sections enclosed by A-Class or B-Class divisions, details of the fire and gas detection and fire alarm systems, the sprinkler installation, the fire extinguishers, the fire doors, the means of access to different compartments and decks, and the ventilation system (including the fan control positions, the position of dampers, and the identification numbers of the ventilation fans serving each section);

(7) General arrangement plans showing watertight and weathertight compartments, closures, vents, and all flooding alarms;

(8) Operation and location of all mechanical, ventilating, and electrical emergency shutdowns and instructions on restarting the systems; and

(9) Safety provisions, including location and operation of life-saving appliances and procedures for evacuation of personnel from the unit.

(g) *Other Information.* This section of the operating manual must include—

(1) Schematic diagrams and instructions for the main fuel oil transfer and storage systems;

(2) A plan showing the hazardous locations described in § 111.105–33;

(3) The rated capacity for each reeving of the drilling derrick;

(4) The maximum helicopter weight and rotor size allowed for the helicopter platform; and

(5) Other plans, equipment descriptions, and safe operating procedures determined to be desirable by the owner.

PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

3. The authority citation for Part 170 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3316; 46 App. U.S.C. 86, 88a; 43 U.S.C. 1333(d), 1356(a); 50 U.S.C. 198; 49 CFR 1.46.

4. By revising paragraph (a) of § 170.110 to read as follows:

§ 170.110 Stability booklet.

(a) Except as provided in paragraph (e) of this section, a stability booklet must be prepared for each vessel, except for mobile offshore drilling units subject to the operating manual requirements of § 109.121 of this chapter.

* * * * *

§ 170.130. [Removed]

5. By removing § 170.1300, Operating information for a mobile offshore drilling unit.

PART 174—SPECIAL RULES PERTAINING TO SPECIFIC VESSEL TYPES

6. The authority citation for Part 174 is revised to read as follows and all subpart authority citations are removed:

Authority: 46 U.S.C. 3306, 3316, 3703; 46 App. U.S.C. 86, 88a; 43 U.S.C. 1333(d), 1356(a); 50 U.S.C. 198; §§ 174.150 through 174.170 also issued under 42 U.S.C. 9118, 9119(c), 9153(a), (b); 49 CFR 1.46.

7. By revising paragraph (d) of § 174.045 to read as follows:

§ 174.045 Intact stability requirements.

* * * * *

(d) Each unit must be designed so that it can be changed from each of its normal operating conditions to a severe storm condition within a minimum period of time consistent with the operating manual required in §109.121 of this chapter.

Dated: September 25, 1985.

B.G. Burns,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc. 85–23290 Filed 9–27–85; 8:45 am]

BILLING CODE 4910-14-M

Maritime Administration

46 CFR Part 221

Documentation, Transfer or Charter of Vessels; Blanket Approval for; Bareboat Charters of Recreational Vessels to Noncitizens; Sales to Noncitizens and Transfers to Foreign Registry or Flag of Vessels Under 200 Gross Tons

AGENCY: Maritime Administration, DOT.

ACTION: Proposed Rule.

SUMMARY: A provision of the Shipping Act, 1916, (Act) makes it unlawful, without the approval of the Secretary of Transportation, to transfer vessels or specified interests in a vessel to noncitizens under certain conditions. Sales and charters of these vessels require approval, and the Secretary has delegated approval authority to the Maritime Administration (MARAD). MARAD has issued a regulation at 46 CFR 221.7 that grants a general approval, not to exceed six months, of vessel charters to noncitizens. The proposed rulemaking would extend the scope of this general approval to include bareboat charters and subcharters to noncitizens of United States vessels that are documented to be operated only for recreation. It would also grant general MARAD approval of the sale to noncitizens and the transfer to foreign registry or flag of vessels under 200 gross tons. These amendments to 46 CFR 221.7 would eliminate delays in accomplishing vessel charters and sales to noncitizens that have often resulted in the loss of business, and would also eliminate the cost of application fees and incidental expenses to the applicants. These amendments would also relieve the administrative burden on MARAD in reviewing and processing requests for approval of vessel sales and charters to noncitizens.

DATE: The Maritime Administration will consider all written comments by the public received on or before November 29, 1985.

ADDRESS: Send the orginal and one copy of comments to the Secretary, Maritime Administration, Department of Transportation, NASSIF Building, Room 7300, 400 Seventh St. S.W., Washington, D.C. 20590. To expedite review of the comments, the agency requests, but does not require, submission of an additional nine (9) copies of the comments. Anyone submitting comments who wishes acknowledgment of their receipt by the Maritime Administration should include a stamped, self-addressed postcard or envelope.

FOR FURTHER INFORMATION CONTACT: Mrs. Jessie Fernanders, Ship Disposals and Foreign Transfers Officer, Maritime Administration, Washington, D.C. 20590, Telephone: (202) 426–5821.

SUPPLEMENTARY INFORMATION: Section 9 of the Act as amended (46 U.S.C. 808), specifically requires MARAD approval of the sale, charter or other specified transfers to a noncitizen, with respect to any vessel or interest therein, owned in whole or in part by a United States citizen and presently documented or last documented under the laws of the United States. A noncitizen is a person who fails to qualify as a citizen under section 2 of the Act (46 U.S.C. 802). Pertinent regulations are at 46 CFR Part 221. MARAD now gives blanket approval for charters, other than bareboat charters, e.g., time, voyage or space charters (46 CFR 221.7) to noncitizens for periods not in excess of six months. A bareboat charter is one where the charterer takes possessions of the vessel and exerises direct control over the actual operation of the vessel.

Background—Recreational Vessel Charter Approvals

The amendment for bareboat charter approvals is being proposed at the request of certain vessel owners who are in the business of chartering vessels documented recreational under United States law.

Owners and operators of recreational vessels receive many charter requests from noncitizens. These requiests for recreational vessel charters are usually for immediate use, and in many cases, for very brief periods of time. This has made it impossible for charterers to obtain the prior MARAD approval required under section 9 of the Act. Actual MARAD approval typically has taken anywhere from 30 to 90 days. Since a majority of the potential charter opportunities arise on short notice, the vessel owners and operators have incurred financial injury by not being able to comply with this law. As a result, owners of vessels documented recreational often reject offers by noncitizens to charter their vessels.

The alternative to rejecting a profitable business opportunity is to charter without prior MARAD approval. Such action places the owner in violation of the Act, subjects the owner to a fine of not more than $5,000, or to imprisonment for not more than five years, or both, and subjects the vessel to forfeiture to the United States. Many of the recreational vessel charterers are force to choose between loss of customers and the risk or loss of the vessels which are their principal assets. In view of the drastic penalty for not complying with the Act, the sizable number of persons in the business of bareboat chartering recreational vessels and thee difficulty in enforcing section 9, MARAD believes that it is appropriate to propose extending blanket approval to these types of charters.[1]

Proposed Amendment for Charter Approvals

The proposed amendment to paragraph (a) of 221.7 would expand the scope of the general blanket approval to include bareboat charters and bareboat subcharters to noncitizens of vessels documented recreational and that will be operated by the charterer or subcharterer only for recreation. Specifically, it would allow charter to noncitizens, for a period not in excess of six (6) months, of a recreational vessel that is to be under the direct control of the charterer.[2]

According to United States Coast Guard statistics on recreational vessels there are approximately 73,000 vessels that are documented recreational under the laws of the United States. MARAD is unable to determine the exact number of these vessels that may be available for bareboat chartering purposes. Nor are we able to determine precisely what percentage of those vessels might be bareboat chartered to noncitizens. However, a review of advertisements of 76 operators of recreational vessels available for charter indicated that they manage or own a total of 1,674 vessels that are available for charter for periods ranging from one day to one week. The rates for such charter vary from $70–$460 per day and from $176 to $2,730 per week, depending on the size of the vessel and time of year (prime season, nonprime season.).

For the purpose of this proposed amendment, MARAD proposes the following hypothetical analysis of losses incurred by charterers due to the prior approval requirement, and projected increases in business due to the assumed effect of this proposed amendment. Since this analysis is based entirely on assumptions, MARAD requests that charterers provide comments on the projected financial impact of this proposed amendment on their ability to charter to noncitizens. Also, MARAD would appreciate comments on the extent to which the prior approval requirement has hindered charters to noncitizens.

MARAD makes the assumption that at least 15 percent (10,950) of the 73,000 vessels documented recreational are available for chartering by individual owners or charter operators, including rental agents for the owners. We estimate the prime season to have approximately 120 chartering days per year, and the average charter period to be three (3) days. This estimate factors in lost time due to bad weather and maintenance. Therefore, we estimate that a vessel would be bareboat chartered out 40 times during the season. We assume further that up to 20 percent (or eight) of these charters would be to noncitizens. Using these hypothetical figures the total number of applications required to be approved pursuant to section 9 of the Act would be 87,600 (10,950) vessels × 8 = 87,600).

In order to estimate the potential loss of revenue because of the existing approval requirements in section 9 of the Act and at 46 CFR 221.14(a), MARAD has assumed that a typical bareboat charter to a noncitizen would be for a period of three (3) days, at the rate of $125 per day, or $375. After deducting the $250 filing fee for the required approval, plus the clerical, reproduction and postage costs for submitting the required application, amounting to $9.58 per application, the net income from the charter would be only $115.42. Based on a minimum of 30 days from the time of application for MARAD to grant an approval, a vessel owner or charterer could lose as many as ten (10) charters during that period, a net loss of $1,154.

The significant expense of obtaining acutal prior approval from MARAD for charters to noncitizens, along with the time constraints presented by potential charterers who wish to bareboat charter the vessel on the spot, has discouraged charter boat operators from chartering recreational vessesl to noncitizens.

In fact, a number of charter boat operators have advised MARAD informally that they no longer consider chartering their vessels to noncitizens and have ceased advertising and otherwise expending money to develop the foreign charter market, which could be reasonably profitable. By not chartering to noncitizens, charterers, using our assumed figures, could lose as many as 87,600 opportunities for charters annually. At the rate of $125 per day for 24 days (20% of the 120 charter days), the annual loss of income under the existing regulation could be as much as $10.1 million, i.e., total estimated lost revenues ($125 per day × 24 days chartered to noncitizens per year × 10,950 pleasure vessels for charter) less estimated total filing costs ($259.58 filing cost/application × 87,600 applications).

Elimination of the filing fee could save charter boat operators as much as $22.7 million. This figure could be much lower, and we invite commenters to submit figures reflecting their lost opportunities for chartering to noncitizens. These calculations are based on a theoretical maximum and assume that the charterer would file an application, as required under the existing regulation at 46 CFR § 221.14, for each of these hypothetical chartering opportunities.

Using this same hypothetical figure to determine the cost savings to MARAD, eliminating review of 87,600 applications, requiring 6.16 hours per

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[1] In that regard, MARAD has no enforcement staff. In discharging their responsibilities under various legal authorities, the United States Customs Service and the United States Coast Guard occasionally have assisted MARAD in enforcing the provisions of the Act by seizing vessels that are bareboat chartered to noncitizens without having obtained MARAD approval. However, neither of these agencies has the resources to perform such assistance routinely.

[2] A recreational vessel is one that is eligible for documentation under the United States law, i.e., a vessel of at least five (5) net tons, not registered under the laws of a foreign country, that is to be operated only for recreation (46 U.S.C. 12102, 12109).

application at an average hourly cost of $13.59, would be over $7.3 million (87,600×6.16×$13.59). Again, this savings assumes that everyone required to file an application does so, and could be much lower. Recreational boat owners that charter would also be exempt from the existing requirement, at 46 CFR 221.7(b), imposed with respect to other than bareboat charters, of filing a copy of the vessel charter that received blanket approval. Instead, the proposed amendment to that provision would require only that the vessel owner, or the bareboat charterer, retain a copy of the charter for a period of one year after the charter expiration date and make it available for inspection during this period, upon request, to MARAD or its designee. MARAD intends to use information contained in the retained charters for program evaluation and control purposes.

Sales of Vessels to Noncitizens; Transfer to Foreign Registry

MARAD is also proposing a provision, 46 CFR 221.8, that would grant a general approval for the sale to noncitizens or the transfer to foreign registry or flag of vessels that are under 200 gross tons and are either documented, or were last documented under the laws of the United States. MARAD estimates that the proposed provision would eliminate 176 applications annually, a figure which is based on the average number of applications received during the period from fiscal years 1980 through fiscal year 1983. Using clerical, reproduction and filing costs of $9.58 per application, in addition to the application filing cost of $170 imposed by MARAD under 46 CFR § 221.14, the total cost to all applicants that would be eliminated is $31,606 ($179.58×176 applications). MARAD would save approximately $15,000 in administrative costs resulting from its approval process (6.16 hours per application ×$13.59×176).

Presently, the MARAD approval process for vessel sales to noncitizens takes at least 30 days and as many as 90 days. During that period, the purchaser cannot take possession of and operate the vessel, and is unable to benefit from ownership of the vessel. There are also negative economic consequences to the seller who cannot realize the proceeds of the vessel sale, and take advantage of an existing investment opportunity.

Accordingly, MARAD has determined that there is insufficient benefit, administrative or otherwise, to the Government to be derived from the approval process to warrant the economic loss to the parties involved in the sales and the cost to MARAD of reviewing the applications.

The blanket approval of bareboat charters to noncitizens is not intended, in any respect, to be an exception to a MARAD policy statement issued in 1975 that it will no longer grant approval for demise or bareboat charters in the coastwise trade to noncitizens, since recreational vessels are not deemed to engage in the coastwise trade (49 FR 28832; July 9, 1975). This proposed general approval for both the charter of recreational vessels and the sale or foreign transfer of vessels under 200 gross tons relates only to MARAD's responsibilities under existing law with respect to transfers of vessels and vessel interests to noncitizens. The great majority of vessels documented recreational under U.S. laws are less than 200 gross tons. It would have no effect upon the laws and regulations governing vessel documentation and operations administered by any other Federal agency (e.g., 46 U.S.C. § 12109).

E.O. 12291, Statutory Requirements and DOT Procedures

MARAD has made a determination that this proposed rule is not a major rule under Executive Order 12291. Pursuant to Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979), this is a nonsignificant regulation. The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary.

While this proposed amendment will have some effect on small businesses, MARAD anticipates that its primary impact will be on individual owners of recreational boats. Accordingly, the Maritime Administrator certifies that the rulemaking will not exert a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (Pub. L. 96–354). This proposed amendment includes amended requirements for the collection of information (§ 221.7(b)), within the scope of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that will be submitted to the Office of Management and Budget (OMB) for approval. This proposed amendment would cause a large reduction of the existing burden. The basic information collection approval number is OMB Control No. 2133–0006.

List of Subjects in 46 CFR Part 221

Banks, Banking charter, Citizenship and naturalization, Foreign transfer, Maritime Administration, Maritime carriers, Reporting requirements, Uniform system of accounts.

PART 22—[AMENDED]

Accordingly, it is proposed to amend 46 CFR Part 221 as follows:

1. The authority citation for Part 221 continues to read as follows:

Authority: Secs. 9, 41 and 43, Shipping Act, 1916, as amended (46 U.S.C. 808, 839, 841(a); 49 CFR 1.66.

§ 221.7 [Amended]

Accordingly, it is proposed to amend 46 CFR Part 221 as follows:

2. In paragraph (a)(1) of 46 CFR 221.7, add the following parenthetical phrase before the final period: "(other than bareboat charters or bareboat subcharters of vessels documented recreational and to be operated personally by the charterers for recreation only)."

3. Revise paragraph (b) of 46 CFR 221.7 to read as follows:

* * * * *

(b) Not later than twenty (20) days after the beginning of a charter period, the vessel owner or owner's representative shall file with the Maritime Administration a copy of any charter which is approved under paragraph (a) of this section (except a bareboat charter or bareboat subcharter of a vessel documented recreational to be operated personally by the charterer for recreation only). The Maritime Administration may grant a request for an extension of time to file such charter or other agreement. The vessel owner or bareboat charterer (or a representative) who charters a documented recretional vessel to a person not a citizen of the United States, which vessel is to be used personally by the charterer or subcharterer for recreation only, shall retain a copy of such charter for a period of one (1) year after the expiration date, and shall make it available for inspection upon request by the Maritime Administration or its designee.

* * * * *

4. A new § 221.8 is added to read as follows:

§ 221.8 Approval of vessel sales to noncitizens; transfer to foreign registry.

(a) The Maritime Administration hereby approves under sections 9 and 41 of the Shipping Act, 1916, as amended (46 U.S.C. 808 and 839) the sale to a noncitizen, or the transfer to foreign registry or flag, of a vessel of under 200 gross tons that is owned by a United States citizen and is either documented or was last documented under United States laws.

(b) The approvals granted in paragraph (a) of this section shall not

apply if the vessel's purchaser, or one with a controlling interest in the vessel's purchaser, is a national of the U.S.S.R., Latvia, Lithuania, Estonia, Czechoslovakia, Bulgaria, Albania, North Korea, German Democratic Republic (including East Berlin), Laos, Kampuchea, Vietnam, Outer Mongolia, or Cuba, unless: (1) Such national has been lawfully admitted into, and resides in the United States; and (2) such national does not remove the vessel from the territorial limits of the United States. Also, the approvals shall not apply if the vessel is to be transferred to or placed under the flag of any such country. This list of countries shall be subject to change periodically to conform to the laws and foreign policy of the United States.

Dated: September 23, 1985.

By Order of the Maritime Administration.

Georgia P. Stamas,

Secretary, Maritime Administration.

[FR Doc. 85-23168 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 550 and 580

[Docket No. 85-19]

Tariff Publication of Free Time and Detention Charges Applicable to Carrier Equipment Interchanged With Shippers and Their Agents

AGENCY: Federal Maritime Commission.

ACTION: Availability of Finding of No Significant Impact.

SUMMARY: The Commission has completed an environmental assessment of a proposed rule in Docket No. 85-19 and found that its final resolution of this proceeding will not have a significant impact on the quality of the human environment.

DATES: Petitions for review due October 10, 1985.

ADDRESS: Petitions for review (Original and 15 copies) to: Bruce A. Dombrowski, Acting Secretary, Federal Maritime Commission, 1100 L Street, NW, Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Edward R. Meyer, Director, Office of Energy and Environmental Impact, Federal Maritime Commission, 1100 L Street, NW. Washington, D.C. 20573, (202) 523-5825.

SUPPLEMENTARY INFORMATION: Upon completion of an environmental assessment, the Federal Maritime Commission Office of Energy and Environmental Impact has determined that the Commission's proposed rule in Docket No. 85-19 will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

In Docket No. 85-19 the Commission proposes to amend its domestic offshore and foreign tariff filing rules to require common carriers to publish in their tariffs the terms and conditions including free-time allowed and detention charges assessed, governing the use of carrier—provided equipment by shippers or their agents.

This Finding of No Significant Impact (FONSI) will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 504.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

By the Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-23264 Filed 9-27-85; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 642 and 646

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic and Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The South Atlantic Fishery Managment Council will hold public hearings on October 8, 11, 14, 18, and 30, 1985, to review reduced bag limits for recreational fishermen and reduced harvest levels for commercial fishermen as well as other measures to manage stocks of Gulf Group king mackerel. There is a possibility that catches will have to be reduced to so low a level as to require closing the fishery on the Gulf Migratory Group. A recreational bag limit on the Atlantic Group and reduced commercial quotas may be necessary. An increase on size limits for Spanish mackerel will also be reviewed.

On October 11, 14, and 15, 1985, in conjunction with the mackerel hearings, the public may comment on Special Management Zones for artificial reefs as presented in the Snapper-Grouper Fishery Management Plan. On October 28, 1985, a public hearing will also be held on special management zones for artificial reefs.

DATES: See **"SUPPLEMENTARY INFORMATION"** for dates and subject matter of the hearings. All hearings will be held from 7:00 p.m. to 10:00 p.m. All written comments should be received by October 30, 1985.

ADDRESSES: See **"SUPPLEMENTARY INFORMATION"** for locations of the hearings. Written comments should be sent to David H.G. Gould, Executive Director, South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, South Carolina 29407; or Jack T. Brawner, Director, Southeast Region, National Marine Fisheries Service, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

FOR FURTHER INFORMATION CONTACT: David H.G. Gould, Executive Director, South Atlantic Fishery Mangement Council, 803-571-4366; or Jack T. Brawner, Director, Southeast Region, 813-893-3141.

SUPPLEMENTARY INFORMATION: The hearings, and subject matter, are scheduled as follows:

October 8, 1985—Key West High School, 2100 Flagler Avenue, Key West, FL—Joint South Atlantic/Gulf of Mexico Fishery Management Councils Mackerel hearing.

October 9, 1985—County Civic Center, 25th and Virginia Avenue, Ft. Pierce, FL, Mackerel hearing.

October 10, 1985—Holiday Inn Surfside, 2700 N. Atlantic Avenue, Daytona Beach, FL, Mackerel hearing.

October 11, 1985—Brunswick/Glynn County Regional Library, 208 Glouchester St., Brunswick, GA, Mackerel and Snapper-Grouper Special Management Zone hearing.

October 14, 1985—S.C. Wildlife and Marine Resources Dept. Ft. Johnson Road, Charleston, S.C., Mackerel and Snapper-Grouper Special Management Zone hearing.

Landmark Hotel, 1501 South Ocean Blvd., Myrtle Beach, SC, Mackerel and Snapper-Grouper Special Management Zone hearing.

October 15, 1985—N.C. Marine Resources Center, Kure Beach, NC, Mackerel hearing.

October 16, 1985—N.C. Marine Resources Center, Morehead City, N.C., Mackerel hearing.

October 17, 1985—N.C. Marine Resources Center, Manteo, NC, Mackerel hearing.

October 18, 1985—N.C. Dept., of Natural Resources and Community Development, Archdale Building, Groundfloor Hearing Room, 512 N. Salisbury St., Raleigh, NC, Mackerel hearing.

October 28, 1985—Sheridan Yankee Trader, 303 N. Atlantic Blvd., Ft Lauderdale, FL, Snapper-Grouper Special Management Zone hearing.

October 30, 1985—Sheridan Yankee Trader, 303 N. Atlantic Blvd., Ft. Lauderdale, FL, Mackerel hearing.

Dated: September 25, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-23280 Filed 9-27-85; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 189
Monday, September 30, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF INTERIOR

Bureau of Land Management

Geothermal Leasing, Lassen National Forest, Lassen, Plumas, Shasta, and Tehama Counties, California; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service, and Department of the Interior, Bureau of Land Management, will jointly prepare an environmental impact statement for proposed geothermal leasing on part of the Lassen National Forest. The land area involved covers 431,000 acres including the 56,750 acres within the Lassen Known Geothermal Resource Area (KGRA), south of Lassen Volcanic National Park.

A range of alternatives will be considered, ranging from no leasing, to leasing with standard and various additional stipulations for protection of surface and subsurface resources.

Public involvement to date has highlighted the following issues: (1) Impacts to geothermal features of Lassen Volcanic National Park and adjacent private lands; (2) impacts to wilderness areas, the Pacific Crest Trail, private land, and Lassen Volcanic National Park; (3) impacts to air, surface water, ground water, fish, wildlife, recreation, visual resources, cultural resource, sound levels, timber, range, sensitive plants, and other vegetation; (4) the types and degree of geothermal activities permitted, their potential effects, and protective measures to mitigate those effects. Such activities include: use of heavy equipment, road construction, truck traffic, buildings, dust emissions, well drilling, steam and gas discharge, fluid and solid waste discharge, and well abandonment.

Public meetings, for the purpose of identifying further issues and determining the scope of concern, will be held: Wednesday October 16, 1985 at 7:00 pm at the Lions Club in Burney, California; and Thursday October 17, 1985 at 7:00 pm at the Mineral Elementary School, Mineral, California. Notices will be published in area newspapers and mailed to those persons who provided comments during the preparation of the Supplement Environmental Assessment for Geothermal Leasing of National Forest System Lands in the Lassen KGRA and Other Parts of the Lassen National Forest, issued in March 1985.

Mr. Zane G. Smith, Jr., Regional Forester of the Pacific Southwest Region, United States Forest Service, will be responsible for providing consent to lease the National Forest System lands; and Mr. Ed Hastey, California State Director, Bureau of Land Management, will be responsible for issuing the leases.

The draft environmental impact statement should be available for public review in March 1986. The final environmental impact statement is scheduled for completion in July 1986.

Written comments and questions concerning the analysis should be sent to Mr. Richard A. Henry, Forest Supervisor, Lassen National Forest, 55 South Sacramento Street, Susanville, California 96130, phone (916) 257–2151; or to Mr. C. Rex Cleary, District Manager, Bureau of Land Management, 705 Hall Street, Susanville, California 96130, phone (916) 257–5381. Written comments should be received by November 9, 1985.

Dated: September 23, 1985.

Richard A. Henry,

Forest Supervisor.

Dated: September 23, 1985.

C. Rex Cleary,

District Manager.

[FR Doc. 85–23271 Filed 9–27–85; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collections of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: 1986 Farm and Ranch Identification Survey Pretest.

Form Number: Agency—86–A4, A5, A6, A6/L3; OMB—N/A.

Type of Request: New collection.

Burden: 3,600 respondents; 360 reporting hours.

Needs and Uses: These report forms are for test purposes in preparing the 1987 Farm and Ranch Identification Survey. The survey will be used to screen nonagricultural related persons and duplicates from the final census of agriculture mailing list.

Affected Public: Farms.

Frequency: Nonrecurring.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Timothy Sprehe, 395–4814.

Agency: Bureau of the Census.

Title: 1986 Pre-enumeration Survey of Los Angeles, California.

Form number: Agency—DP–1350L, DP–1352L; OMB—N/A.

Type of Request: New collection.

Burden: 4,500 respondents; 1,240 reporting hours.

Needs and Uses: This survey will be used to test an alternative method of Census evaluation in case the Post Enumeration Survey proves to be operationally difficult. The results will be used to test whether a pre-enumeration survey is a viable means of evaluating a census.

Affected Public: Individuals or households.

Frequency: Nonrecurring.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Timothy Sprehe, 395–4814.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: September 25, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85-23314 Filed 9-27-85; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Specifications for Portrayal of Marine Information on Electronic (Chart) Displays.

Form number: Agency—N/A; OMB—N/A.

Type of Request: New collection—Preliminary Plan.

Burden: N/A respondents; 1 reporting hour.

Needs and Uses: The information collected will be used to establish a minimum standard for electronic display of nautical chart symbology. A standard is believed to be needed to maintain safe navigation of marine commerce.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Sheri Fox, 395-3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: September 25, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85-23313 Filed 9-27-85; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket No. 30-85]

Foreign-Trade Zone 9—Honolulu, HI; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Hawaii Department of Planning and Economic Development, on behalf of the State of Hawaii, grantee of Foreign-Trade Zone 9, requesting authority to expand its foreign-trade zone to include an industrial park site in Ewa, Hawaii, adjacent to the Honolulu Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 10, 1985.

On February 15, 1965, the State of Hawaii received authority from the Board to establish a foreign-trade zone in the Honolulu area (Board Order 65, 30 FR 2377, 2/20/65). Relocated in April 1982 (Board Order 188, 47 FR 18014, 4/15/82), the general-purpose zone currently involves warehousing facilities on 17 acres at Pier 2 on Honolulu Harbor. The zone project also includes 3 subzones.

The proposed expansion site would be located at the 2800-acre James Campbell Industrial Park located on Kalaeloa Boulevard off H-1 Highway in Ewa, some 22 miles west of downtown Honolulu. The site will be operated by Campbell Estate which owns and manages the industrial park. Subzone 9A (Hawaiian Independent Refinery) is already located within the park.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; George Roberts, District Director, U.S. Customs Service, Pacific Region, P.O. Box 1641, Honolulu, HI 96806; and, Colonel Michael M. Jenks, District Engineer, U.S. Army Engineer District Honolulu, Building 230, Ft. Shafter, HI 96858.

Comments concerning the proposed zone expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before October 30, 1985.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 4106 Federal Building, 300 Ala Moana Blvd., Honolulu, HI 96813.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW, Washington, D.C. 20230.

Dated: September 24, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-23231 Filed 9-27-85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-570-504]

Petroleum Wax Candles From the People's Republic of China; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether petroleum wax candles from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before October 21, 1985, and we will make ours on or before February 11, 1986.

EFFECTIVE DATE: September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Ray Busen, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-3830.

SUPPLEMENTARY INFORMATION:

The Petition

On September 4, 1985, we received a petition in proper form filed by the National Candle Association, an organization of domestic manufacturers of petroleum wax candles. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry. United States price was

derived from price quotes to U.S. purchasers from Hong Kong exporters of candles from the PRC. Some prices were f.o.b. Hong Kong while other were c.i.f. Prices were adjusted, where appropriate, for ocean freight costs; insurance, and U.S. inland freight. Petitioners, alleging that the PRC is a state-controlled-economy-country, derived home market prices from information on the home market prices for petroleum wax candles in Malaysia in accordance with the provisions of 19 CFR 353.36(a)(8). In selecting Malaysia as a surrogate country, petitioner considered the following factors: structure of gross domestic production and distribution of labor force, urban population, per capita gross national product, wage rates, oil production, and similarity of the candle industry. The Malaysian home market prices were obtained by an independent research firm in Malaysia for high volume standard products. The prices represent offers at the wholesale level from two Malaysian candle manufacturers. Based on these figures, petitioner alleges dumping margins ranging from 231 percent to 450 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on petroleum wax candles from the PRC and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether petroleum wax candles from the PRC are being, or are likely to be, sold in the United States at less than fair value.

In the course of our investigation, we will determine whether the economy of the People's Republic of China is state-controlled to an extent that sales of such or similar merchandise in the home market or to third country markets do not permit determination of foreign market value. If it is determined to be a state-controlled economy, we will then choose a non-state-controlled economy surrogate country for purposes of determining foreign market value. If our investigation proceeds normally, we will make our preliminary determination by February 11, 1986.

Scope of Investigation

The products covered by this investigation are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars; votives; and various wax-filled containers. The products are classified under the *Tariff Schedules of the United States* (TSUS) item 755.25, Candles and Tapers.

Allegation of Critical Circumstances

Petitioner alleges that critical circumstances exist with respect to imports of petroleum wax candles from the PRC. We will determine whether critical circumstances exist with respect to these imports in our preliminary determination, and if the investigation proceeds, in our final determination.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by October 21, 1985, whether there is a reasonable indication that imports of petroleum wax candles from the PRC are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

September 20, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-23230 Filed 9-27-85; 8:45 am]

BILLING CODE [illegible]

[C-535-001]

Cotton Shop Towels From Pakistan; Initiation of and Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Initiation of and Preliminary Results of Administrative Review of Countervailing Duty Order.

SUMMARY: In response to a request from the petitioner, the Department of Commerce has conducted an administrative review of the countervailing duty order on cotton shop towels from Pakistan. The review covers the period October 27, 1983, through March 31, 1984, and eight programs.

As a result of the review, the Department has preliminarily determined the net subsidy to be 18.09 percent *ad valorem* for the period of review. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Alan Long or Barbara Williams, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 8974) a countervailing duty order on cotton shop towels from Pakistan and announced its intent to conduct an administrative review of the order. In accordance with § 355.10 of the Commerce Regulations, the petitioner requested an administrative review of this order on September 6, 1985. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are shipments of Pakistani cotton shop towels. Such merchandise is currently classifiable under time 366.2740 of the Tariff Schedules of the United States Annotated.

The review covers the period October 27, 1983, through March 31, 1984, and eight programs: (1) A compensatory rebate; (2) an excise tax rebate; (3) a sales tax rebate; (4) a customs duty rebate; (5) income tax reductions; (6) export credit insurance; (7) an import duty rebate; and (8) export financing.

Analysis of Programs

The Pakistani government responded to the Department's questionnaire. The response however contained information covering only 17 percent of the dollar value of imports of Pakistani cotton shop towels into the United States during the period of review. The

Government of Pakistan failed to respond to our request for additional information. Because the initial questionnaire response did not cover a sufficient percentage of the imports into the U.S. during the period of review to allow us to accurately determine the net subsidy during the period, we used the best information available for this review. We conclude that the best information available concerning seven programs is represented by the results published in the final affirmative determination of this case (49 FR 1408, January 11, 1984). In that determination the Department found the *ad valorem* subsidies to be: under the compensatory rebate program, 7.50 percent; under the excise tax rebate program, 3.80 percent; under the sales tax rebate program, 0.11 percent; under the customs duty rebate program 0.37 percent; under the income tax reduction program, 0.01 percent; under the export credit insurance program, 0.80 percent; and import duty rebates not used.

For this review, we calculated the subsidy resulting from export financing provided under the Export Finance Scheme using as the best information available the program description provided to the Departmen by the respondent during this administrative review.

The Export Finance Scheme, which is administered by the State Bank of Pakistan ("the Bank"), grants short-term loans a below market interest rates to exporters. The Export Finance Scheme is divided into two parts. Under Part I, exporters receive preferential short-term export financing loans on the basis of irrevocable letters of credit or firm export orders. Under Part II, exporters are eligible to receive pre-export financing equal to 33⅓ percent of their previous year's exports. We determined that loans under both Parts I and II of the Export Finance Scheme were granted for 180 days at interest rates of 3 percent per annum during the period of review. We used as a benchmark for the market interest rate in Pakistan the "commercial" bank interest rate plus 1 percentage point. The benchmark interest rate for the period of review therefore equaled 14 percent per annum.

We concluded that the same export shipment cannot receive financing under both parts of the Export Finance Scheme. Maximum use of Part I, our best information assumption, would result in 100 percent of exports being financed. Therefore, we also needed to assume no financing under Part II during the period of review. We calculated the net subsidy from this program to be equal to the interest differential between the commercial benchmark and the preferential interest rate, multiplied by the proportion of the year the loans were outstanding and the value of total exports. On this basis, we preliminarily determine the subsidy resulting from export financing provided under the Export Finance scheme during the period of review to be 5.50 percent *ad valorem*.

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy for cotton shop towels from Pakistan to be 18.09 percent *ad valorem* during the period October 27, 1983, through March 31, 1984.

Section 707 of the Tariff Act provides that the difference between the deposit of an estimated countervailing duty and the net subsidy determined under a countervailing duty order shall be disregarded to the extent that the estimated duty is less than the net subsidy, and refunded to the extent that the estimated duty is higher than the net subsidy, for merchandise entered, or withdrawn from warehouse, for consumption before the publication of the notice of the final affirmative injury determination by the International Trade Commission, here February 29, 1984

The Department therefore intends to instruct the Customs Service to assess countervailing duties at the appropriate rates for all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 27, 1983, the date of the Department's preliminary affirmative determination, and on or before February 28, 1984. We also intend to instruct the Customs Service to assess countervailing duties of 18.09 percent of the f.o.b. invoice price on any shipments entered, or withdrawn from warehouse, for consumption on or after February 29, 1984, and exported on or before March 31, 1984.

The Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 18.09 percent of the entered value on any shipments of Pakistani cotton shop towels entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and §§ 355.10 and 355.41 of the Commerce Regulations (19 CFR 355.10 and 355.41).

Dated: September 21, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-23315 Filed 9-27-85; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

[Docket No. 50601-5101]

Approval of Five Federal Information Processing Standards for Data Interchange on Flexible Disk Cartridges

AGENCY: National Bureau of Standards, Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has approved five standards, which will be published as FIPS Publications 114 through 118.

SUMMARY: On September 8, 1982, notice was published in the **Federal Register** (47 FR 39554-39559) that five Federal Information Processing Standards for magnetic media were being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to these standards were reviewed by NBS. On the basis of this review, NBS recommended that the Secretary approve these standards as Federal Information Processing Standards (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the

Department's Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

The approved standards contain two portion: (1) An announcement portion which provides information concerning the applicability, implemention, and maintenance of the standards and (2) a specifications portion which deals with the technical requirements of the standard. Only the announcement portion of the standards is provided in this notice.

ADDRESS: Interested parties may purchase copies of these standards, including the technical specifications portion, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for these standards is set out in the Where to Obtain Copies Section of the announcement portion of the standards.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Hogan, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921–3165.

Dated: September 24, 1985.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication 114

Announcing the Standard for 200 mm (8 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 6631 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15 Code of Federal Regulations (CFR).

Name of Standard. 200 mm (8 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 6631 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange (FIPS PUB 114).

Category of Standard. Hardware, Interchange Codes and Media.

Explanation. This standard prescribes a set of physical track format specifications for single-sided, single-density, 200 mm (8 in) flexible disk cartridges which have a data density of 6631 bits per radian (bprad) and 77 tracks at a track density of 1.9 tracks per millimeter (tpmm) (48 tracks per inch (tpi)). Citing these specifications will help to ensure that interchange parties can reliably interchange data files between information processing systems.

In order to ensure interchangeability of data between information processing systems by use of a physically removable medium, three distinct levels of compatibility specifications are necessary:

(1) Specifications for the unrecorded interchange medium (e.g., the flexible disk cartridge),

(2) specifications for the physical track format (the specifications in this document),

(3) specifications for the logical track format (FIPS PUB 118).

Interchange of text, rather than data files, requires additional specifications in addition the above three levels.

The track format specifications contained in this standard are only for one type of flexible disk cartridge recording technology. Other Federal Information Processing Standards Publications (FIPS PUBS) specify physical track formats for other major types of flexible disk cartridge recording technology, and labelling and file structure (logical track format) specifications for use with all types of flexible disk cartridges.

This family of specifications was developed through the international voluntary industry standards process. In this process, the American National Standards Institute (ANSI) represents the United States. The national Bureau of Standards (Institute for Computer Sciences and Technology) has provided the international representative, whose job has been to focus and coordinate U.S. interests for ANSI during the development of these physical track format standards.

Maintenance Agency. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

Cross Index. International Organization for Standardization (ISO) 5654/2, Data Interchange on 200 mm (8 in) Flexible Disk Cartridges Using Two-Frequency Recording at 13 262 ftprad on One Side—Part 2: Track Format.

Related Documents

a. American National Standard Code for Information Interchange (ASCII), X3.4–1977, FIPS PUB 1–2.

b. American National Standard Code Extension Techniques for Use with the 7-Bit Coded Character Set of American National Standard Code (ASCII) for Information Interchange, X3.41–1974, FIPS PUB 1–2.

c. American National Standard Additional Controls for Use with American Standard Code for Information Interchange, X3.64–1979, FIPS PUB 86.

d. American National Standard for Single-Sided Unformatted Flexible Disk Cartridge (for 6631–BPR Use), X3.73–1980.

Applicability. This standard is applicable to the acquisition and use of all recording and reproducing equipment employing 200 mm (8 in) flexible disk cartridges with the following characteristics: two-frequency recording at 6631 bprad on one side, and 77 tracks at a track density of 1.9 tpmm (48 tpi). Federal information processing systems employing such equipment, including associated software, should provide the capability to accept and generate recorded flexible disk cartridges in compliance with the requirements set forth in this standard. This standard should be used for the interchange of flexible disk cartridges unless the interchange parties can agree upon an alternate interchange format which is more efficent, convenient, and cost effective.

Specifications. This standard incorporates by reference (with qualifications as noted) the technical specifications of ISO 5654/2, Data Interchange on 200 mm (8 in) Flexible Disk Cartridges Using Two-Frequency Recording at 13 262 ftprad on One Side—Part 2: Track Format.

Qualifications

a. ISO 5654/2 specifies the use of ISO 646 7-Bit Coded Character Set for Information Processing Interchange, ISO 2022 Code Extension Techniques for Use with the ISO 7-Bit Coded Character, and ISO 4873 Information Processing—8-Bit Coded Character Set for Information Interchange. For the purposes of this standard, American National Standard Code for Information Interchange, X3.4–1977 (defined in FIPS PUBS 1–2), American National Standard Code Extension Techniques for Use with the 7-Bit Coded Character Set of American National Standard Code (ASCII) for Information Interchange, X3.41–1974 (defined in FIPS PUB 1–2), and American National Standard Additional Controls for Use with American Standard Code for Information Interchange, X3.64–1979 (defined in FIPS PUB 86) replace all references to ISO 646, 2022, and 4873.

b. After the first sentence in section 5.2.2.1 Track Address (T), of ISO 5654/2, add the following sentence: All tracks shall be recorded in the natural order (i.e., 00, 01, 02, . . ., 75, 76).

c. In ISO 5654/2, replace section 5.2.2.3 Sector Number (S) with the following section:

5.2.2.3 Sector Number (S). The third byte shall represent in binary notation the sector address from 01 for the first sector to 26 for the last sector. All sectors shall be recorded in the natural order (i.e., 01, 02, 03, . . ., 25, 26).

d. Replace section 3.2, Track Location Tolerance of the Recorded Flexible Disk Cartridge, in ISO 5654/2, with the following section:

3.2 Track Location Tolerance of the Recorded Flexible Disk Cartridge

The centrelines of the recorded tracks shall be within ±0.085 mm (0.0033 in) of the nominal positions, when measured in the testing environment described in this section. This tolerance corresponds to twice the standard deviation.

The testing environment shall consist of the following conditions:
temperature: 23± 2 °C (73± 4 °F)
RH: 40 to 60%
conditioning before testing: 24 h minimum.

The temperature and the RH shall be measured in the air immediately surrounding the cartridge. The ambient stray magnetic field shall not exceed 4000 A/m (50 Oe).

e. In section 5.2.2.1, Track Address (T), in ISO 5654/2, replace 76 with 74.

f. In section 6.2.2.1, Track Address (T), in ISO 5654/2, replace 76 with 74.

Implementation Schedule. This standard becomes effective . Use by Federal agencies is strongly recommended when such use contributes to operational benefits, efficiency, or economy.

Special Information. Each agency has the responsibility for the procurement of compatible unrecorded, single-sided, single-density, 200 mm (8 in) flexible disk cartridges. American National Standard for Single-Sided Unformatted Flexible Disk Cartridge (for 6631—BPR Use), X3.73–1980, may be cited in agency procurements. While X3.73–1980 is not intended to be sufficient by itself as a procurement specification document, it can serve as an important basis for specifying compatibility. Each agency can also utilize the General Services Administration multiple award schedule for flexible disk cartridges (FSC GROUP 70 PART I SECTION B Class 7045–0001).

Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. (Sale of the included specifications documents is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 114 (FIPS PUB 114), and title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

Federal Information Processing Standards Publication 115

Announcing the Standard for 200 mm (8 in) Flexible Disk Cartridge Track Format Modified Frequency Modulation Recording at 13262 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15 Code of Federal Regulations (CFR).

Name of Standard. 200 mm (8 in) Flexible Disk Cartridge Track Format Using Modified Frequency Modulation Recording at 13262 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange (FIPS PUB 115).

Category Standard. Hardware, Interchange Codes and Media.

Explanation. This standard prescribes a set of physical track format specifications for two-sided, double-density, 200 mm (8 in) flexible disk cartridges which have a data density of 13262 bits per radian (bprad) and 77 tracks at a track density of 1.9 tracks per millimeter (tpmm) (48 tracks per inch (tpi)). Citing these specifications will help to ensure that interchange parties can reliably interchange data files between information processing systems.

In order to ensure interchangeability of data between information processing systems by use a physicially removable medium, three distinct levels of compatibility specifications are necessary:

(1) Specifications for the the unrecorded interchange medium (e.g., the flexible disk cartridge),

(2) Specifications for the physical track format (the specifications in this document),

(3) Specifications for the logical tract format (FIPS PUB 118).

Interchange of text, rather than data files, requires additional specifications in addition the above three levels.

The track format specifications contained in this standard are only for one type of flexible disk cartridge recordng technology. Other Federal information Processing Standards Publications (FIPS PUBS) specify physical track formats for other major types of flexible disk cartridge recording technology and labelling and file structure (logical track format) specifications for use with all types of flexible disk cartridges.

This family of specifications was developed through the international voluntary industry standards process. In this process, the American National Standards Institute (ANSI) represents the United States. The National Bureau of Standards (Institute for Computer Sciences and Technology) has provided the international representative, whose job has been to focus and coordinate U.S. interests for ANSI during the development of these physical track format standards.

Maintenance Agency. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

Cross Index. International Organization for Standardization (ISO) 7085/2, Data Interchange on 200 mm (8 in) Flexible Disk Cartridges Using Modified Frequency Modulation Recording at 13 262 ftprad, 1,9 tpmm (48 tpi), on Both Sides-Part 2: Track Format.

Related Documents.

a. American National Standard Code for Information Interchange (ASCII), X3.4–1977, FIPS PUB 1–2.

b. American national Standard Code Extension Techniques for Use with the 7–Bit Coded Character Set of American National Standard Code (ASCII) for Information Interchange, X3.41–1974, FIPS PUB 1–2.

c. American National Standard Additional Controls for Use with American Standard Code for Information Interchange, X3.64–1979, FIPS PUB 86.

d. American Standard for Information Systems—Two-Sided, Unformatted, 8-in (200-MM), 48-tip, Double-Density, Flexible Disk Cartridge-General, Physical, and Magnetic Requirements for 13 262 ftpr Two-Headed Application, X3.121–1984.

Applicability. This standard is applicable to the acquisition and use of all recording and reproducing equipment employing 200 mm (8 in) flexible disk cartridges with the following characteristics: Modified frequency modulation recording at 13262 bprad on two side, and 77 tracks at a track density of 1.9 tpmm (48 tpi). Federal information processing systems employing such equipment, including associated software, should provide the capability to accept and generate recorded flexible disk cartridges in compliance with the requirements set forth in this standard. This standard should be used for the interchange of flexible disk cartridges unless the

insterchange parties can agree upon an alternate interchange format which is more efficient, convenient, and cost effective.

Specifications. This standard incorporates by reference (with qualifications as noted) the technical specifications of ISO 7065/2, Data Interchange on 200 mm (8 in) Flexible disk Cartridges using Modified frequency Modulation Recording at 13 262 ftprad, 1,9 tpmm (48 tpi), on Both Sides—Part 2; Track Format.

Qualifications

a. ISO 7065/2 specifies the use of ISO 646 7-Bit Coded Character Set for Information Processing Interchange, ISO 2022 Code Extension Techniques for Use with the ISO 7-Bit Coded Character, and ISO 4873 Information Processing -8-Bit Coded Character Set for Information Interchange. For the purposes of this standard, American National Standard Code for Information Interchange, X3.4–1977 (defind in FIPS PUBS 1–2), American National Standard Code Extension Techniques for Use with the 7-Bit Coded Character Set of American National Standard Code (ASCII) for Information Interchange, X3.41–1974 (defined in FIPS PUB 1–2), and American National Standard Additional Controls for Use with American Standard Code for Information Interchange, X3.64–1979 (defined in FIPS PUB 86) replace all references to ISO 646, 2022, and 4873.

b. The following additional qualifications are to be applied to ISO 7065/2:

1. Delete section 2, Conformance.

2. Replace section 4.8, Sector, with the following section:

4.8 Sector

All tracks of the flexible disk cartridge shall be divided into 26 sectors.

3. Replace section 4.11, Data Capacity of a Track, with the following section:

4.11 Data Capacity of a Track

The data capactiy of track 00, side 0 shall be 3328 bytes. The data capacity of all other tracks shall be 6656 bytes.

4. In section 6, Track Layout after the First Formatting for all Tracks Excluding Track 00, Side 0, the first sentence and the note are deleted.

5. In section 6.2.2.1, Track Address, add the following sentence under the subheading "Cylinder Address (C):" All cylinders shall be recorded in the natural order (i.e., 00, 01, 02, . . . , 75, 76).

6. In section 6.2.1, Track Address, add the following sentence under the subheading "Side Number (Side):" The sides shall be recorded in the natural order (i.e, 00, 01).

7. Replace section 6.2.2.2, Sector Number (S), with the following section:

6.2.2.2 Sector Number(s)

The third byte shall specify in binary notation the sector number from 01 for the first sector to 26 for the last sector.

The sectors shall be recorded in the natural order (i.e., 01, 02, 03, ..., 25, 26).

8. Replace section 6.2.2.3, Sector Length (SL), with the following section:

6.2.2.3 Sector Length (SL)

This field shall be (01) which defines the number of bytes of the data field to be 256 and consequently determines the number of sectors of the track to be 26.

9. Replace section 6.5, Data Block Gap, with the following section:

6.5 Data Block Gap

This field shall comprise 54 initially recorded (4E)-bytes. It is recorded after each data block and it precedes the following Sector Identifier. After the last Data Block, it precedes the Track Gap.

10. Replace section 6.6, Track Gap, with the following section:

6.6 Track Gap

This field shall follow the Data Block Gap of the last sector. It shall comprise 598 initially recorded (4E) bytes. Writing of the Track Gap takes place until the Index Hole is detected, unless it has been detected during writing of the last Data Block Gap, in which case there will be no Track Gap.

11. Replace section 4.2, Track Location Tolerance of the Recorded Flexible Disk Cartridge, with the following section:

4.2 Track Location Tolerance of the Recorded Flexible Disk Cartridge

The centrelines of the recorded tracks shall be within ±0.085 mm (0.0033 in) of the nominal positions, when measured in the testing environment described in this section. This tolerance corresponds to twice the standard deviation.

The testing environment shall consist of the following conditions: temperature: 23±2°C (73±4°F). RH: 40 to 60%—conditioning before testing: 24 h minimum.

The temperature and the RH shall be measured in the air immediately surrounding the cartridge. The ambient stray magnetic field shall not exceed 4000 A/m (50 Oe).

12. Replace all occurrences of "Sector Address" with "Address Identifier."

13. In section 6.2.2.1, Cylinder Address (C), replace 76 with 74.

14. In section 7.4.2.2.1, Cylinder Address (C), replace 76 with 74.

Implementation Schedule. This standard becomes effective ——— Use by Federal agencies is strongly recommended when such use contributes to operational benefits, efficiency, or economy.

Special Information. Each agency has the responsibility for the procurement of compatible unrecorded, two-sided, double-density, 200 mm (8 in) flexible disk cartridges. American National Standard for Information Systems—Two-Sided, Unformatted, 8-in (200-mm), 48 tpi, Double-Density, Flexible Disk Cartridge-General, Physical, and Megnetic Requirements for 13 262 ftpr Two-Headed Application, X3.121–1984, may be cited in agency procurements. While X3.121–1984 is not intended to be sufficient by itself as a procurement specification document, it can serve as an important basis for specifying compatibility. Each agency can also utilize the General Services Administration multiple award schedule for flexible disk cartridges (FSC GROUP 70 PART I SECTION B Class 7045–0001).

Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Services, U.S. Department of Commerce, Springfield, Virginia 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 115 (FIPS PUB 115), and title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

Federal Information Processing Standards Publication 116

Announcing the Standard for 130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 3979 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15 Code of Federal Regulations (CFR).

Name of Standard. 130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 3979 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange (FIPS PUB 116).

Category of Standard. Hardware, Interchange Codes and Media.

Explanation. This standard prescribes a set of physical track format specifications for single-sided, single-density, 130 mm (5.25 in) flexible disk cartridges which have a data density of 3979 bits per radian (bprad) and 35 tracks at a track density of 1.9 tracks per millimeter (tpmm) (48 tracks per inch (tpi)). Citing these specifications will help to ensure that interchange parties can reliably interchange data files between information processing systems.

In order to ensure interchangeability of data between information processing systems by use of a physically removable medium, three distinct levels of compatibility specifications are necessary:

(1) Specifications for the unrecorded interchange medium (e.g., the flexible disk cartridge),

(2) Specifications for the physical track format (the specifications in this document),

(3) Specifications for the logical track format (FIPS PUB 118).

Interchange of text, rather than data files, requires additional specifications in addition the above three levels.

The track format specifications contained in this standard are only for one type of flexible disk cartidge recording technology. Other Federal Information Processing Standards Publications (FIPS PUBS) specify physical track formats for other major types of flexible disk cartridge recording technology and labelling and file structure (logical track format) specifications for use with all types of flexible disk cartridges.

This family of specifications was developed through the international voluntary industry standards process. In this process, the American National Standards Institute (ANSI) represents the United States. The National Bureau of Standards (Institute for Computer Sciences and Technology) has provided the international representative, whose job has been to focus and coordinate U.S. interests for ANSI during the development of these physical track format standards.

Maintenance Agency. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

Cross Index. International Organization for Standardization (ISO) 6596/2, Data Interchange on 130 mm (5.25 in) Flexible Disk Cartridges Using Two-Frequency Recording at 7 958 ftprad, 1,9 tpmm (48 tpi), on One Side—Part 2: Track Format.

Related Documents

a. American National Standard Code for Information Interchange (ASCII), X3.4–1977, FIPS PUB 1–2.

b. American National Standard Code Extension Techniques for Use with the 7-Bit Coded Character Set of American National Standard Code (ASCII) for Information Interchange, X3.41–1974, FIPS PUB 1–2.

c. American National Standard Additional Controls for Use with American Standard Code for Information Interchange, X3.64–1979, FIPS PUB 86.

d. American National Standard for One-Sided Single-Density Unformatted 5.25-Inch Flexible Disk Cartridge (for 3979–BPR Use), X3.82–1980.

Applicability. This standard is applicable to the acquisition and use of all recording and reproducing equipment employing 130 mm (5.25 in) flexible disk cartridges with the following characteristics: two-frequency recording at 3979 bprad on one side, and 35 tracks at a track density of 1.9 tpmm (48 tpi). Federal information processing systems employing such equipment, including associated software, should provide the capability to accept and generate recorded flexible disk cartridges in compliance with the requirements set forth in this standard. This standard should be used for the interchange of flexible disk cartridges unless the interchange parties can agree upon an alternate interchange format which is more efficient, convenient, and cost effective.

Specifications. This standard incorporates by reference (with qualifications as noted) the technical specifications of ISO 6596/2, Data Interchange on 130 mm (5.25 in) Flexible Disk Cartridges Using Two-Frequency Recording at 7 958 ftprad, 1,9 tpmm (48 tpi), on One Side—Part 2: Track Format.

Qualifications:

a. ISO 6596/2 specifies the use of ISO 646 7-Bit Coded Character Set for Information Processing Interchange, ISO 2022 Code Extension Techniques for Use with the ISO 7-Bit Coded Character, and ISO 4873 Information Processing—8-Bit Coded Character Set for Information Interchange. For the purposes of this standard, American National Standard Code for Information Interchange, X3.4–1977 (defined in FIPS PUB 1–2), American National Standard Code Extension Techniques for Use with the 7-Bit Coded Character Set of American National Standard Code (ASCII) for Information Interchange, X3.41–1974 (defined in FIPS PUB 1–2), and American National Standard Additional Controls for Use with American Standard Code for Information Interchange, X3.64–1979 (defined in FIPS PUB 86) replace all references to ISO 646, 2022, and 4873.

b. After the first sentence in section 7.3.2.2.1, Track Address (T), of ISO 6596/2, add the following sentence: All tracks shall be recorded in the natural order (i.e., 00, 01, 02, . . ., 33, 34).

c. Replace section 4.2, Track Location Tolerance of the Recorded Flexible Disk Cartridge, in ISO 6596/2, with the following section:

4.2 Track Location Tolerance of the Recorded Flexible Disk Cartridge

The centrelines of the recorded tracks shall be within ±0.065 mm (0.0033 in) of the nominal positions, when measured in the testing environment described in this section. This tolerance corresponds to twice the standard deviation.

The testing environment shall consist of the following conditions: temperature: 23±2 °C (73±4 °F). RH: 40 to 60%—conditioning before testing: 24 h minimum.

The temperature and the RH shall be measured in the air immediately surrounding the cartridge. The ambient stray magnetic field shall not exceed 4000 A/m (50 Oersteds).

d. In section 7.3.2.2.1, Track Address (T), in ISO 6596/2, replace 34 with 32.

Implementation Schedule. This standard becomes effective ———. Use by Federal agencies is strongly recommended when such use contributes to operational benefits, efficiency, or economy.

Special Information. Each agency has the responsibility for the procurement of compatible unrecorded, single-sided, single-density, 130 mm (5.25 in) flexible disk cartridges. American National Standard for One-Sided Single-Density Unformatted 5.25-Inch Flexible Disk Cartridge (for 3979–BPR Use), X3.82–1980, may be cited in agency procurements. While X3.82–1980 is not intended to be sufficient by itself as a procurement specification document, it can serve as an important basis for specifying compatibility. Each agency can also utilize the General Services Administration multiple award schedule for flexible disk cartridges (FSC GROUP 70 PART I SECTION B Class 7045–0001).

Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 116 (FIPS PUB 116), and title. Payment may be made by check, money order,

purchase order, credit card, or deposit account.

Federal Information Processing Standards Publication 117

Announcing the Standard for 130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Modified Frequency Modulation Recording at 7958 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15 Code of Federal Regulations (CFR).

Name of Standard. 130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Modified Frequency Modulation Recording at 7958 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange (FIPS PUB 117).

Category of Standard. Hardware, Interchange Codes and Media.

Explanation. This standard prescribes a set of physical track format specifications for two-sided, double-density, 130 mm (5.25 in) flexible disk cartridges which have a data density of 7958 bits pr radian (bprad) and 40 tracks at a track density of 1.9 tracks per millimeter (bpmm) (48 tracks per inch (tpi)). Citing these specifications will help to ensure that interchange parties can reliably interchange data files between information processing systems.

In order to ensure interchangeability of data between information processing systems by use of a physically removable medium, three distinct levels of compatibility specifications are necessary:

(1) Specifications for the unrecorded interchange medium (e.g., the flexible disk cartridge),

(2) Specifications for the physical track format (the specifications in this document),

(3) Specifications for the logical track format (FIPS PUB 118).

Interchange of text, rather than data files, requires additional specifications in addition the above three levels.

The track format specifications contained in this standard are only for one type of flexible disk cartridge recording technology. Other Federal Information Processing Standards Publications (FIPS PUBS) specify physical track formats for other major types of flexible disk cartridge recording technology and labelling and file structure (logical track format) specifications for use with all types of flexible disk cartridges.

This family of specifications was developed through the international voluntary industry standards process. In this process, the American National Standards Institute (ANSI) represents the United States. The National Bureau of Standards (Institute for Computer Sciences and Technology) has provided the international representative, whose job has been to focus and coordinate U.S. interests for ANSI during the development of these physical track format standards.

Maintenance Agency. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

Cross Index. International Organization for Standardization (ISO) 7487/3, Data Interchange on 130 mm (5.25 in) Flexible Disk Cartridges Using Modified Frequency Modulation Recording at 7 958 ftprad, 1,9 tpmm (48 tpi), on Both Sides—Part 3: Track Format B.

Related Documents

a. American National Standard Code for Information Interchange (ASCII), X3.4–1977, FIPS PUB 1–2.

b. American National Standard Code Extension Techniques for Use with the 7-Bit Coded Character Set of American National Standard Code (ASCII) for Information Interchange, X3.41–1974, FIPS PUB 1–2.

c. American National Standard Additional Controls for Use with American Standard Code for Information Interchange, X3.64–1979, FIPS PUB 86.

d. American National Standard for Information Systems—Two-Sided, Double-Density, Unformatted, 5.25-Inch (130-mm), 48-tpi (1,9-tpmm), Flexible Disk Cartridge for 7958 bpr Use—General, Physical, and Magnetic Requirements, X3.125–1985.

Applicability. This standard is applicable to the acquisition and use of all recording and reproducing equipment employing 130 mm (5.25 in) flexible disk cartridges with the following characteristics: modified frequency modulation recording at 7958 bprad on two sides, and 40 tracks at a track density of 1.9 tpmm (48 tpi). Federal information processing systems employing such equipment, including associated software, should provide the capability to accept and generate recorded flexible disk cartridges in compliance with the requirements set forth in this standard. This standard should be used for the interchange of flexible disk cartridges unless the interchange parties can agree upon an alternate interchange format which is more efficient, convenient, and cost effective.

Specifications. This standard incorporates by reference (with qualifications as noted) the technical specifications of ISO 7487/3, Data Interchange on 130 mm (5.25 in) Flexible Disk Cartridges Using Modified Frequency Modulation Recording at 7 958 fprad, 1,9 tpmm (48 tpi), on Both Sides—Part 3: Track Format B.

Qualifications

a. ISO 7487/3 specifies the use of ISO 646 7-Bit Coded Character Set for Information Processing Interchange, ISO 2022 Code Extension Techniques for Use with the ISO 7-Bit Coded Character, and ISO 4873 Information Processing -8-Bit Coded Character Set for Information Interchange. For the purposes of this standard, American National Standard Code for Information Interchange, X3.4-1977 (defined in FIPS PUBS 1–2), American National Standard Code Extension Techniques for Use with the 7-Bit Coded Character Set of American National Standard Code (ASCII) for Information Interchange, X3.41-1974 (defined in FIPS PUB 1–2), and American National Standard Additional Controls for Use with American Standard Code for Inormation Interchange, X3.64-1979 (defined in FIPS PUB 86) replace all references to ISO 646, 2022, and 4873.

b. Replace section 4.1.2, Track Location Tolerance of the Recorded Flexible Disk Cartridge, with the following section:

4.1.2 Track Location Tolerance of the Recorded Flexible Disk Cartridge

The centrelines of the recorded tracks shall be within ±0.085 mm (0.0033 in) of the nominal positions, when measured in the testing environment described in this section. This tolerance corresponds to twice the standard deviation.

The testing environment shall consist of the following conditions: temperature: 23±2°C (73±4°F). RH: 40 to 60%—conditioning before testing: 24 h minimum.

The temperature and the RH shall be measured in the air immediately surrounding the cartridge. The ambient stray magnetic field shall not exceed 4000 A/m 50 Oe).

Implementation Schedule. This standard becomes effective———. Use by Federal agencies is strongly recommended when such use contributes to operational benefits, efficiency, or economy.

Special Information. Each agency has the responsibility for the procurement of compatible unrecorded, two-sided, double-density, 130 mm (5.25 in) flexible

disk cartridges. American National Standard for Information Systems—Two-Sided, Double-Density, Unformatted, 5.25-Inch (130-mm), 48-tpi (1,9-tpmm), Flexible Disk Cartridge for 7958 bpr Use—General, Physical, and Magnetic Requirements, X3.125–1985, may be cited in agency procurements. While X3.125–1985 is not intended to be sufficient by itself as a procurement specification document, it can surve as an important basis for specifying compatibility. Each agency can also utilize the General Services Administration multiple award schedule for flexible disk cartridges (FSC GROUP 70 PART I SECTION B Class 7045–0001).

Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to federal Information Processing Standards Publication 117 (FIPS PUB 117), and title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

Federal Information Processing Standards Publication 118

Announcing the Standard for Flexible Disk Cartridge Labelling and File Structure for Information Interchange

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to section 111(f)(2) of the Federal Property and Administrative Services Act of 1949, as amended, Public Law 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15 Code of Federal Regulations (CFR).

Name of Standard. Flexible Disk Cartridge Labelling and File Structure for Information Interchange (FIPS PUB 118).

Category of Standard. Software, Operating Procedure.

Explanation. This standard prescribes a set of logical track format specifications for flexible disk cartridges described in the following physical track format standards:

130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 3979 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange (FIPS PUB 116),

130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Modified Frequency Modulation Recording at 7958 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange (FIPS PUB 117),

200 mm (8 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 6631 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange (FIPS PUB 114), and

200 mm (8 in) Flexible Disk Cartridge Track Format Using Modified Frequency Modulation Recording at 13262 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange (FIPS PUB 115).

Citing these specifications will help to ensure that interchange parties can reliably interchange data files between information processing systems.

In order to ensure interchangeability of data between information processing systems by use of a physically removable medium, three distinct levels of compatibility specifications are necessary:

(1) Specifications for the unrecorded interchange medium (e.g., the flexible disk cartridge),

(2) Specifications for the physical track format (referenced above),

(3) Specifications for the logical track format (the specifications in this document).

Interchange of text, rather than data files, requires additional specifications in addition the above three levels.

Further physical track format specifications are being developed through the international and national voluntary industry standards process. These specifications will define higher track densities, higher data densities, and/or different sizes of flexible disk cartridges. When these approved specifications become available, they will be considered for inclusion into this series of Federal Information Processing Standards Publications (FIPS PUBS).

Maintenance Agency. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

Cross Index. International Organization for Standardization (ISO) 7665, Information Processing—File Structure and Labelling of Flexible Disk Cartridges for Information Interchange.

Related Documents:

a. American National Standard Code for Information Interchange (ASCII), X3.4–1977, FIPS PUB 1–2.

b. American National Standard Code Extension Techniques for Use with the 7-Bit Coded Character Set of American National Standard Code (ASCII) for Information Interchange, X3.41–1974, FIPS PUB 1–2.

c. American National Standard Additional Controls for Use with American Standard Code for Information Interchange, X3.64–1979, FIPS PUB 86.

d. American National Standard for Single-Sided Unformatted Flexible Disk Cartridge (for 6631–BPR Use), X3.73–1980.

e. American National Standard for Single Sided Unformatted Flexible Disk Cartridge (for 3979–BPR Use), X3.82–1980.

f. American National Standard for Information Systems—Two-Sided, Unformatted, 8-in (200-mm), 48 tpi, Double-Density, Flexible Disk Cartridge—General, Physical, and Magnetic Requirements for 13 262 ftpr Two-Headed Application, X3.121–1984.

g. American National Standard for Information Systems—Two-Sided, Double-Density, Unformatted, 5.25-Inch (130-mm), 48-tpi (1,9-tpmm), Flexible Disk Cartridge for 7958 bpr Use—General, Physical, and Magnetic Requirements, X3.125–1985.

h. ISO 5654/2—Data Interchange on 200 mm (8 in) Flexible Disk Cartridges Using Two-Frequency Recording at 13 262 ftprad on One Side—Part 2: Track Format.

i. ISO 6596/2—Data Interchange on 130 mm (5.25 in) Flexible Disk Cartridges Using Two-Frequency Recording at 7 958 ftprad, 1,9 tpmm (48 tpi), on One Side—Part 2: Track Format.

j. ISO 7065/2—Data Interchange on 200 mm (8 in) Flexible Disk Cartridges Using Modified Frequency Modulation Recording at 13 262 ftprad, 1,9 tpmm (48 tpi), on Both Sides—Part 2: Track Format.

k. ISO 7487/3—Data Interchange on 130 mm (5.25 in) Flexible Disk Cartridges Using Modified Frequency Modulation Recording at 7 958 ftprad, 1,9 tpmm (48 tpi), on Both Sides—Part 3: Track Format B.

Applicability. This standard is applicable to the acquisition and use of all recording and reproducing equipment employing flexible disk cartridges described in the following track format standards:

130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 3979 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange (FIPS PUB 116),

130 mm (5.25 in) Flexible Disk Cartridge Track Format Using Modified Frequency Modulation Recording at 7958 bprad on Two Sides—1.9 tpmm (48 tpi) for Information Interchange (FIPS PUB 117),

200 mm (8 in) Flexible Disk Cartridge Track Format Using Two-Frequency Recording at 6631 bprad on One Side—1.9 tpmm (48 tpi) for Information Interchange (FIPS PUB 114), and

200 mm (8 in) Flexible Disk Cartridge Track Format Using Modified Frequency Modulation Recording at 13262 bprad on

Two Sides—1.9 tpmm (48 tpi) for Information Interchange (FIPS PUB 115).

Federal information processing systems employing such equipment, including associated software, should provide the capability to accept and generate recorded flexible disk cartridges in compliance with the requirements set forth in this standard. This standard should be used for the interchange of flexible disk cartridges unless the interchange parties can agree upon an alternate interchange format which is more efficient, convenient, and cost effective.

Specifications. This standard incorporates by reference (with qualifications as noted) the technical specifications of ISO 7665, Information Processing—File Structure and Labelling of Flexible Disk Cartridges for Information Interchange.

Qualifications:

a. ISO 7665 specifies three nested levels of interchange. For the purposes of this standard, the level called "basic interchange" is required for conformance to this standard. The levels of interchange called "extended interchange level 1" and "extended interchange level 2" are optional.

b. ISO 7665 specifies the use of ISO 646 7-Bit Coded Character Set for Information Processing Interchange, ISO 2022 Code Extension Techniques for Use with the ISO 7-Bit Coded Character, and ISO 4873 Information Processing— 8-Bit Coded Character Set for Information Interchange. For the purposes of this guideline, American National Standard Code for Information Interchange, X3.4–1977 (defined in FIPS PUBS 1–2), American National Standard Code Extension Techniques for Use with the 7-Bit Coded Character Set of American National Standard Code (ASCII) for Information Interchange, X3.41–1974 (defined in FIPS PUB 1–2), and American National Standard Additional Controls for Use with American Standard Code for Information Interchange, X3.4–1979 (defined in FIPS PUB 86) replace all references to ISO 646 ,2022, and 4873. All labels should be recorded in the character code defined in FIPS PUB 1–2.

c. The following additional qualifications are to be applied to ISO 7665:

1. Delete section 2, CONFORMANCE.

2. Replace all occurrences of "Cylinder-Limit" with "the upper cylinder address limit."

3. Replace all occurrences of "Index-Sector-Limit" with "the number of the last sector."

4. Replace TABLE 3, Data Interchange Standards and Parameter Recording-Type, with the following:

TABLE 3.—DATA INTERCHANGE STANDARDS AND PARAMETER RECORDING-TYPE

Standard reference	Format
200 mm cartridge:	
ISO 5654/2	1
ISO 7065/2	■
130 mm cartridge:	
ISO 8596/2	1
ISO 7487/3	■

5. Replace section 7.4.1 with the following section:

7.4.1 The file organization shall be sequential (i.e., cylinders, sides, tracks, and sectors shall be recorded in the natural order).

6. Replace section 8.4.8, Physical Record Length Identifier (CP 76), with the following section:

8.4.8 Physical Record Length Identifer (CP 76)

This field shall specify the length of all physical records on all cylinders other than cylinder 00.

The characters in this field shall be SPACE or a digit.

SPACE—shall mean that the length of all physical records is 128 bytes.

1—shall mean that the length of all physical records is 256 bytes.

7. Replace section 8.4.9, Sector Sequence Indicator (CP 77 to 78), with the following section:

8.4.9 Sector Sequence Indicator (CP 77 to 78)

This field shall specify the sequence of the sectors on the tracks.

The characters in this field shall be SPACE and digits.

SPACE's—shall each mean that the sectors are in the natural or 01 order.

8. Replace the second paragraph in section 6.2, Number of Sides, with the following:

Where this standard specifies requirements for labels and data on side 1, such requirements shall only apply to those types of flexible disk cartridges designated in table 3 with a Format Indicator value of M.

9. Replace the first paragraph in section 6.3, Organization of Space on a Flexible Disk Cartridge, with the following:

The data interchange standards listed in table 3 designate lower and upper cylinder address limits.

10. Replace the first two paragraphs in section 6.4, Index Cylinder (Cylinder 00), with the following:

The index cylinder (cylinder 00) on a flexible disk cartridge shall be reserved for descriptive information about the volume and the data recorded on the volume. The index cylinder shall always be formatted with physical records that have a length of at least 128 data characters.

The number of physical records that shall appear on both tracks of the index cylinder shall be equal to the number of the last sector specified in the related data interchange standard designated in table 3.

11. Replace the second paragraph in section 6.5, Contents of Cylinders with Addresses 01 to Upper Cylinder Address Limit, with the following:

These cylinders shall be formatted with physical records whose length in data characters shall be equal to the number of bytes in the data field defined for these cylinders in the designated data interchange standard listed in table 3.

12. Replace (a) in section 8.2, Justification of Characters with the following:

(a) In each field the contents of which is specified by this standard to be SPACEs or digits, digits shall be right-justifed, and any remaining positions on the left shall be filled only with zeros.

13. Add the following sentence to the end of section 8.5.20, Expiration Date (CP 67 to 72):

A file may not be deleted if Write Protect (CP 43) contains P.

14. Delete the first and third paragraphs in section 11.2, Basic Interchange.

15. Delete the first sentence in section 11.3, Extended Interchange Level 1.

16. Delete the first sentence in section 11.4, Extended Interchange Level 2.

17. Delete the last sentence in section 11.5, Files Not Conforming to Specified Interchange Levels.

Implementation Schedule. This standard becomes effective ———. Use by Federal agencies is strongly recommended when such use contributes to operational benefits, efficiency, or economy.

Special Information. Each agency has the responsibility for the procurement of compatible, unrecorded flexible disk cartridges. The other standards in this series contain further information on ordering compatible media for each specific physical track format.

Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 118 (FIPS PUB 118), and title. Payment may be made by check, money order,

purchase order, credit cards, or deposit account.

[FR Doc. 85-23227 Filed 9-27-85; 8:45 am]
BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of experimental fishing permit application and request for comments.

SUMMARY: This notice acknowledges receipt of an experimental fishing permit (EFP) application and announces a public comment period. The applicant proposes to conduct an experimental fishery to harvest white croaker (*Genyonemus lineatus*) by using two domestic vessels operating Canadian style pair trawls in the fishery conservation zone (FCZ) off the California coast. If granted, the EFP would allow fishing with gear which otherwise would be prohibited by Federal regulations governing the mesh size of trawls.

DATE: Comments on this EFP application must be received by October 30, 1985.

ADDRESS: Send comments to E.C. Fullerton, Regional Director, NMFS, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

FOR FURTHER INFORMATION CONTACT: Rodney R. McInnis, Chief Fisheries Management Division, NMFS, Southwest Region, 213-548-2518.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) provides the basis for regulating foreign and domestic groundfish fisheries in the FCZ off the coasts of Washington, Oregon, and California. Regulations implementing the FMP became effective on September 30, 1982, (47 FR 43964, October 5, 1982). The regulations specify that EFPs may be issued to authorize fishing by U.S. vessels which otherwise would be prohibited. Procedures for application and issuance of EFPs are given in the regulations at 50 CFR 663.10 (b) and (c).

An EFP application to harvest white croaker with Canadian style pair trawl gear was received by the NMFS, Southwest Regional Office on August 16, 1985. The white croaker is not managed under the FMP. However, up to 1,000 pounds per trip of certain species subject to management under the FMP might be included in the incidental catch. The applicant requests authority to use a codend of two-inch mesh size to harvest white croaker and incidental groundfish species. Current groundfish regulations prohibit use of mesh size smaller than three inches in pelagic trawls of four and one-half inches in bottom and roller trawls in the area off central California where the applicant proposes to conduct experimental fishing (§ 663.26(a) and (b)). If granted, the EFP would suspend the mesh size restriction for the time, area, and vessels specified while harvesting white croaker.

The EFP is summarized as follows:

1. *Purpose and goal.* The purpose of the experiment is to attempt to improve the method of harvesting the target species. The experiment also would provide biological and fishing data from areas where they were otherwise unavailable or incomplete.

2. *Significance.* The white croaker resource currently is not under the management regime of the FMP and is not presently overharvested. The greatest significance of this experiment lies in the gear technology involved. White croaker presently are harvested by gill nets, a gear which has proved very controversial in the area of concern due to the incidental capture of marine mammals and seabirds. Development of a more economical and efficient harvest method for white croaker could alleviate problems caused by the use of gill nets, with a minimal effect upon the groundfish proposed in the projected incidental catch. The impacts of the experiment could extend beyond the interests of the EFP applicant.

3. *Vessels.* Two domestic vessels would be involved in the fishery. The first vessel is 32 feet long at 6 net tons; the second vessel is 30 feet long at 6 net tons.

4. *Species and amount.* In addition to unspecified amounts of white croaker, up to a total of 1,000 pounds per trip of all incidentally caught groundfish species captured during experimental fishing are requested to be retained.

5. *Time, place, and gear.* The applicant proposes to fish under the EFP in an area of the Pacific Ocean less than 50 fathoms in depth between Bodega Bay and Point Sur, California, at unspecified times for one year during 1985-1986, with Canadian style pair trawl gear using two-inch mesh size codend.

(16 U.S.C. 1801 *et seq.*)

Dated: September 25, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-23284 Filed 9-27-85; 4:54 pm]
BILLING CODE 3510-22-M

Availability of Marine Mammal Annual Report

AGENCY: National Marine Fisheries Service, (NMFS), NOAA, Commerce.

ACTION: Notice of availability of Marine Mammal Annual Report.

SUMMARY: The 1984/85 Annual Report on the administration of the Marine Mammal Protection Act in the Department of Commerce is available now, on request, from the National Marine Fisheries Service.

ADDRESS: Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Margaret C. Lorenz (Protected Species Division), (202) 634-7529.

SUPPLEMENTARY INFORMATION: The Marine Mammal Protection Act of 1972 assigns responsibility for marine mammals of the Order Cetacea (whales and dolphins) and the Suborder Pinnipedia (seals and sea lions), except walrus, to the Department of Commerce. This report reviews the progress NMFS has made to protect these animals; the permit programs for scientific research, public display, the incidental take of marine mammals in commercial fisheries, and the "small take" of marine mammals due to other activities; the marine mammal standing networks; international activities; legal actions; and enforcement activities. It includes a discussion of the management and research programs for cetaceans and pinnipeds that are carried out at the NMFS Southeast, Southwest, Northeast, Northwest, and Alaska Regional Offices as well as its Southeast, Southwest, Northeast, and Northwest and Alaska Fisheries Centers.

Dated: September 19, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-23295 Filed 9-27-85; 8:45 am]
BILLING CODE 3510-22-M

[Modification No. 2 to Permit No. 374]

Endangered Species Permit Modification; Mr. Harold Brundage, III

Notice is hereby given that pursuant to the provisions of § 220.24 of the regulations on endangered species (50 CFR Parts 217-227), Scientific Research Permit No. 374 issued to Mr. Harold Brundage III, Ichthyological Associates, Inc., 100 South Cass Street, Middletown.

Delaware 19709, on March 24, 1982 (47 FR 13399), as modified on February 4, 1983 (48 FR 6331), is further modified as follows:

Section B.4 is replaced by:

4. Of the five hundred (500) shortnose sturgeon (*Acipenser brevirostrum*) authorized in Section A.1, fifty (50) adults may be radio tagged each year as described in the application and modification request.

This modification is effective on September 18, 1985.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification (1) was applied in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of the modification, and (3) will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This modification was issued in accordance with, and is subject to, parts 220–222 of Title 50 CFR of the National Marine Fisheries Service regulations governing endangered species permits (39 FR 41367, November 27, 1974).

Documents submitted in connection with the above modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930.

Dated: September 19, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–23297 Filed 9–27–85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Stephen W. Mitchell (aka Lee Stevens)

On July 15, 1985, notice was published in the **Federal Register** (50 FR 28604) that an application had been filed by Stephen W. Mitchell (aka Lee Stevens), 15 Amity Place, Staten Island, New York 10303, for a permit to obtain three (3) captive born or beached/stranded California sea lions *(Zalophus californianus)* for a traveling public display.

Notice is hereby given that on September 17, 1985 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW, Washington, DC; and

Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE, BIN C15700, Seattle, Washington 98115;

Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930–3799;

Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: September 19, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–23298 Filed 9–27–85; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF ENERGY

Restricted Eligibility for Grant Award, National Academy of Sciences

AGENCY: Department of Energy (DOE).

ACTION: Notice of Restricted Eligibility for Grant Award.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b) it intends to award on a restricted eligibility basis a grant to National Academy of Sciences (NAS) in partial support of the Committee on Separation Science and Technology. The DOE support under this grant will be $25,000 over a twelve month period.

Procurement Request Number: 01–85CE40774.000.

Project Scope: The National Academy of Sciences, through the Board on Chemical Sciences and Technology, the Committee on Separation Science and Technology will undertake a program to prepare a report on Research Needs and Opportunities in Separation Science and Technologies. The following areas of interest will be emphasized;

Research needs and opportunities in separation science and technology.

Sponsor a workshop on separation science and technology for dilute solutions.

Define separations as a unified technological area.

The DOE continues to support research in existing, underutilized technologies whose implementation could be stimulated through appropriate action. As this effort by the National Academy of Science is in concert with DOE's support of basic research for long-range, high-risk technologies, the DOE has determined that award to NAS on restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: James P. Beiriger, MA–452.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue SW., Washington, D.C. 20585, Telephone (202) 252–1024.

Issued in Washington, D.C., on September 23, 1985.

Ben Goldman,

Contract Operations, Division "A", Office of Procurement Operations.

[FR Doc. 85–23309 Filed 9–27–85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA–FC–85–029; OFP Case No. 53080–9259–20–24]

Acceptance of Petition for Exemption and Availability of Certification by Crown Zellerbach Corp.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by Crown Zellerbach Corporation.

SUMMARY: On August 6, 1985, Crown Zellerbach Corporation (Crown), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed electric powerplant to be located at its St. Francisville, Louisiana paper mill, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were

revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The proposed powerplant for which the petition was filed is an approximately 45 MW (net) cogeneration facility consisting of a gas turbine and generator, a 300,000 pound per hour heat recovery steam generator and ancillary equipment.

The plant will be constructed and sold to a yet to be identified third party who will in turn sell all of the electrical output to Crown Zellerbach. The plant will burn natural gas or No. 2 fuel oil. It is expected that virtually all of the net annual electric power produced by the third party cogenerator will be sold to Crown Zellerbach, making the cogeneration facility an electric powerplant pursuant to the definitions contained in 10 CFR § 500.2. The facility will produce approximately 300,000 lbs. of steam per hour that will supply Crown's needs.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

DATES: Written comments are due on or before November 14, 1985. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Coal and Electricity Office, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Docket No. ERA-FC-85-029 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Steven Mintz, Coal and Electricity Office, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-045, Washington, D.C. 20585, Phone (202) 252-9506.

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue SW., Washington, D.C. 20585, Phone (202) 252-6947.

SUPPLEMENTARY INFORMATION: Crown proposes to construct and sell a cogeneration facility to a third party in St. Francisville, Louisiana, which will (1) generate electrical power for sale to Crown, and (2) produce steam to meet Crown's requirements. The proposed cogeneration system will be operated by the third party. The system will consist of a gas turbine and a heat recovery steam generator which will produce electric power and ancillary equipment.

The cogeneration facility is classified as an electric powerplant under FUA because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), Crown has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), Crown has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment.

If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Crown is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C. on September 23, 1985.

Robert L. Davies,

Director, Coal & Electricity Office, Economic Regulatory Administration.

[FR Doc. 85-23298 Filed 9-27-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-028; OFP Case No. 61052-9267-01-24]

Acceptance of Petition for Exemption and Availability of Certification by Dartmouth College of Hanover, NH

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Acceptance of Petition for Exemption and availability of Certification by Dartmouth College of Hanover, New Hampshire.

SUMMARY: On August 19, 1985, Dartmouth College of Hanover, New Hampshire, completed the filing of a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act") for its proposed No. 6 oil fired boiler to replace the aging capacity of its Hanover, New Hampshire campus heating plant. Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in new powerplants and certain major fuel

burning installations (MFBI) and the construction of such facilities without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rule governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The basis for the Dartmouth College petition for exemption is the need to replace one existing and aging boiler in its current cogeneration facility with a single multi-fuel capable boiler. The cogeneration facility, located at the Dartmouth College campus at Hanover, New Hampshire, provides electricity to the campus from an underground distribution system emanating from switchgear located in the heating plant. Power is supplied by cogenerated electricity produced by the back-pressure steam turbine generators within the plant and by an electric company metered service, the Dartmouth turbines operating in parallel with the electric utility service. Since the proposed replacement boiler is to be larger that the existing one, the parameters of the current cogeneration facility will change, so that in effect, a new cogeneration facility will be created when the boiler replacement will be completed. The proposed MFBI (as classified by Fuel Use Act regulation) will be a 90,000 lb/hr No. 6 oil fired boiler. The oil or gas that will be consumed by the heating plant with the new boiler is designed to be less than that which would otherwise be consumed with the continuation of the present system. The future heating plant will not be classified as an electric powerplant as all electricity produced by cogeneration will be used by Dartmouth College.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination, and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the "**SUPPLEMENTARY INFORMATION**" section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E–190, Washington, D.C. 20585, 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

DATES: Written comments are due on or before November 14, 1985. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Coal and Electricity Office, Room GA–045, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585 (Attn: Xavier Puslowski). Docket No. ERA–FC 85–028 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Coal and Electricity Office, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA–045, Washington, D.C. 20585, Telephone (202) 252–4708

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW, Washington, D.C. 20585, Telephone (202) 252–6947

SUPPLEMENTARY INFORMATION: The facilities to be constructed for Dartmouth's boiler project include a field erected boiler, the auxiliaries required for No. 6 oil firing and a small addition to the existing heating plant. The roof line of the existing heating plant will also be modified. Space allowances and other provisions to accommodate future addition of solid fuel handling, ash removal, and particulate removal equipment are also incorporated into the design.

The boiler will be a field erected, two drum multiple pass, balanced draft steam generator with integral superheater. It is sized to produce 90,000 lbs/hr of 455 psig/650°F steam while firing No. 6 oil. With the future addition of a grate and other solid fuel auxiliaries, it will be capable of producing 70,000 lbs/hr of 455 psig/650°F steam while firing wood fuel. The boiler can also be converted to pulverized coal firing; its capacity in this mode would also be 70,000 lbs/hr.

Boiler auxiliaries include soot blowers, a forced draft fan, and induced draft fan, a tubular air heater with soot blowers, combustion air duct work and flue gas duct work. The flue gas duct work will be connected to existing breeching and the existing 175' brick stack. The existing fuel oil storage, fuel oil pumping and boiler feedwater treatment systems will service the new boiler.

The No. 6 fuel oil firing system will include two front mounted burners with propane ignitors, air registers, windbox, and air or steam atomization piping. The boiler vendor will also supply a complete burner management system. The maximum rated heat input of the new boiler will be about 114 MMBtu/hr.

Limited physical changes to the existing hearing plant will be required to accommodate the new boiler. The currently in use boiler No. 1, a 29-year old Babock and Wilcox unit, will be demolished to accommodate the multi-fuel boiler. In addition, the existing west end hip roof will be removed and reconstructed as a gable roof. A 900 square foot addition will be constructed on the south wall of the plant; this addition will house the induced draft fan and tubular air heater for the new boiler.

Demolition of the currently in use boiler No. 1 is scheduled for early 1986. The construction schedule calls for the start of site work in March of 1986. Installation of the new boiler and auxiliaries is scheduled to begin by mid-1986. The new boiler should be tested and ready for operation for the peak 1986/87 hearing season.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), Dartmouth has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of oil or natural gas and an alternate fuel for the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), Dartmouth has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.;* and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of: (1) An Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as possible. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Dartmouth is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C., on September 19, 1985.

Robert L. Davies,

Director, Coal and Electricity Office, Economic Regulatory Administration.

[FR Doc. 85-23299 Filed 9-27-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-026; OFP Case No. 65039-9286-20-24]

Acceptance of Petition for Exemption and Availability of Certification by Northern Cogeneration One Co.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by Northern Cogeneration One Company.

SUMMARY: On August 2, 1985, Northern Cogeneration One Company (Northern) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed cogeneration facility to be known as the Texas City Cogeneration Facility (Facility) to be located at 3301 5th Avenue South, Texas City, Galveston County, Texas, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemption from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501 and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

The proposed Facility will be a topping cycling cogeneration plant consisting of three combustion turbine generators, three heat recovery steam generators, and one auto-extraction condensing steam turbine. The power production capacity of the Facility will be 431 MW which consists of 108 MW per combustion turbine generator and 107 MW for the steam turbine generator (140 MW under maximum generating conditions). Under normal operating conditions the net plant output will be 424 MW of power (7 MW of the electricity produced will be consumed by the Facility for auxiliary power).

It is expected that more than 50 percent of the net annual electric power generation of the Facility will be sold to Texas Utilities Electric Company (TUEC), making the cogeneration facility an electric powerplant under FUA.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the "**SUPPLEMENTARY INFORMATION**" section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding are available upon request at: Department of Energy, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons, therefore, would be published in the **Federal Register**

DATES: Written comments are due on or before November 14, 1985. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-007, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585.

Docket No. ERA-FC-85-026 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA-045, Washington, D.C. 20585, Telephone: (202) 252-4523

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW, Washington, D.C. 20585, Telephone: (202) 252-6947

SUPPLEMENTARY INFORMATION: Northern proposes to construct, operate, and own a cogeneration facility to produce steam for industrial use and to generate electrical power. The steam generated by the Facility will be sold to Union Carbide Corporation for chemical process requirements along with 30 MW of electric power for internal use in their plant. The approximately 393 MW of electric power purchased by TUEC will be interconnected with the Electric Reliability Council of Texas regional grid. The Facility will be a topping cycle cogeneration plant consisting of three combustion turbine generators, three heat recovery steam generators, and one auto-extraction condensing steam turbine and associated equipment.

The cogeneration facility is classified as an electric power plant under FUA because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), Northern has certified to ERA that:

1. The gas to be consumed by the subject cogeneration unit will be less than that which would otherwise be consumed in the absence of the unit, pursuant to the methodology for calculating such savings set forth in 10 CFR 503.37(b); and

2. The use of mixture of oil and coal or natural gas and coal in the cogeneration unit is not economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certification discussed above), Northern has included as part of the petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's Guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of: (1) An Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that Northern is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C. September 19 1985.

Robert L. Davies,

Director, Coal and Electricity Office, Economic Regulatory Administration.

[FR Doc. 85–23300 Filed 9–27–85; 8:45 am]

BILLING CODE 6450–01–M

Final Consent Order With Bi-Petro, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final Action on Proposed Consent Order.

SUMMARY: The Economic Regulatory Administration (EPA) has determined that a proposed Consent Order between the Department of Energy (DOE) and Bi-Petro, Inc., (Bi-Petro) shall be made a final order of the DOE. The Consent Order resolves Bi-Petro's compliance with the federal petroleum price and allocation regulations concerning the resale of crude oil for the period August 19, 1973 through January 27, 1981. Bi-Petro will pay to the DOE the aggregate amount of $1,250,000 plus installment interest, and DOE will deposit these funds in a suitable account for appropriate disposition. The decision to make the Bi-Petro Consent Order final as modified was made after a review of all written comments received. The Consent Order is effective as a final order of the DOE on the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Edward P. Levy, Office of Special Counsel (RG–13), Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–4945.

SUPPLEMENTARY INFORMATION:

I. Introduction.
II. Comments Received.
III Decision.

I. Introduction

ERA issued a notice announcing a proposed consent order between DOE and Bi-Petro which would resolve matters relating to Bi-Petro's compliance with the federal petroleum price and allocation regulations pertinent to the resale of crude oil for the period August 19, 1973 through January 27, 1981. (50 FR 29737, July 22, 1985). The proposed consent order requires Bi-Petro to pay $350,000 within ten days of the effective date of the Consent Order, and to pay $450,000 plus interest within 12 months, and again within 24 months, of the effective date of the CO.

The notice solicited written comments from the public relating to the terms and conditions of the settlement.

II. Comments Received

EPA received three comments, which addressed the question of the ultimate disposition of the funds to be paid by Bi-Petro pursuant to the settlement, but did not question the basis of the settlement or the adequacy of the settlement amount. Comments were received from the following:

Governor's Energy Office, State of Florida;
Department of Commerce, State of Indiana;
Attorneys General of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia.

The three comments, although formulated differently from one another and differing in the nature and amount of supporting analysis, are all devoted exclusively to establishing the proposition that monies received under the Bi-Petro Consent Order that could not be paid to parties injured by alleged overcharges should be paid to State governments, and should not be deposited in the U.S. Treasury.

The Consent Order contains no determination, however, either that it will be impossible to identify the parties injured by Bi-Petro's alleged overcharges, or that funds paid under the Consent Order will remain after identification of such injured parties. Moreover, EPA has made such determinations. Nor does the Consent Order provide that funds paid under it will be deposited in the U.S. Treasury. Rather, as stated in the notice of the proposed Consent Order, the ERA intends to petition the Office of Hearings and Appeals to establish procedures pursuant to 10 CFR Subpart V for the distribution of the funds. During such a proceeding, a determination will be made as to whether and to what extent particular persons have been injured by the alleged overcharges by Bi-Petro. In addition, the States that have filed comments on the Bi-Petro Consent Order will be able to address the question of the appropriate disposition of the refunds covered by the Consent Order. Thus, the comments by the states concerning distribution of the funds to be paid by Bi-Petro are premature at this time.

For the foregoing reasons, and for the reasons set forth in the notice of the proposed Consent Order, ERA has decided to finalize the Consent Order with Bi-Petro.

III. Decision

Pursuant to 10 CFR 205.199J, the Consent Order between Bi-Petro and DOE shall become a final order of the DOE on the date of publication of this notice in the **Federal Register.**

Issued in Washington, D.C., on September 13, 1985.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 85–23306 Filed 9–27–85; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP85–838–000, et al.]

Colorado Interstate Gas Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Company

[Docket No. CP85–838–000]

September 24, 1985.

Take notice that on August 29, 1985, Colorado Interstate Gas Company (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85–838–000 an application pursuant to section 7(c) of the natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to transport up to 700 Mcf of natural gas per day for the Engine Products Division of Dana Corporation (Dana) and for authority to add and delete delivery points, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 700 Mcf of natural gas per day on an interruptible basis for use in Dana's Engine Products Division pursuant to a gas transportation agreement dated August 16, 1985. The gas to be transported would be purchased from Energy Pipeline, Inc. (Energy), and would be delivered to Applicant at the outlet of a processing plant operated by Damson Gas Processing Corporation (Damson) in Weld County, Colorado. Applicant would transport and deliver thermally equivalent volumes, less fuel use/loss and unaccounted-for gas, to Public Service Company of Colorado (PSCo) for Dana's account, at the interconnection of Applicant's and PSCo's facilities in Pueblo County, Colorado. Applicant states that PSCo would deliver the gas to Dana for use in its manufacturing operations in its Pueblo, Colorado, plant.

Applicant avers that this proposal would allow Dana to receive a supply of natural gas that would be less expensive than the gas Dana is currently purchasing from PSCo, thereby enabling it to reduce its manufacturing operations cost. Applicant states further that this proposed transportation service would displace gas Applicant would otherwise sell to PSCo for resale to Dana.

Applicant proposes to charge Dana 57.54 cents for each Mcf of natural gas it redelivers or the rate effective subject to refund or determined in RP85–122–000. The 57.54-cent rate is said to be equal to 56.29 cents per Mcf which is Applicant's margin for its Rate Schedules G–1 and P–1 and 1.25 cents per Mcf for the General R&D Funding Unit of the Gas Research Institute.

Applicant avers no new facilities are required for this transportation service, but requests flexible authority to add/delete receipt points.

Comment date: October 15, 1985, in accordance with Standard Paragraph F at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP85–870–000]

September 23, 1985.

Take notice that on September 11, 1985, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP85–870–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for United States Steel Corporation (US Steel), an industrial end-user of gas, under the certificate issued in Docket No. CP82–402–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural proposes to transport natural gas for US Steel limited to quantities equivalent to 50 billion Btu on a peak day and 18.25 trillion Btu on an annual basis, pursuant to the terms of a July 15, 1985, gas transportation agreement. Natural states that approximately 27.165 billion Btu in equivalent volumes of natural gas would be transported on an average day. It is explained that the gas would be purchased by US Steel from TXO Production Corp. (TXO) pursuant to a July 1, 1985, contract. The TXO sales contract reflects that TXO would make its gas supplies available to US Steel from undesignated sources.

Natural states it would receive the gas from Delhi Gas Pipeline Corporation (Delhi) at the inlet of Natural's compressor station 340 near Goodrich in Polk County, Texas, for transportation and delivery to US Steel's designee, Columbia Gulf Transmission Company (Columbia Gulf), near Erath in Vermilion Parish, Louisiana. Natural avers that Columbia Gulf would deliver the gas to Columbia Gas Transmission Corporation which would in turn deliver the gas to Columbia Gas of Ohio, Inc. (the local distributor), for ultimate delivery to US Steel. Natural states that the gas will be consumed by US Steel in its plants at Lorain and Haverhill, Ohio, as boiler-fuel, fuel for furnaces, *etc.*

Natural proposes to charge TXO initially, as US Steel's designee, a rate of 8.8 cents per dt equivalent of natural gas transported for US Steel.

Natural advises that it commenced this transportation service for US Steel on July 19, 1985, as reported in Docket No. ST85–1541. It is noted that Delhi reported its related transportation service in Docket No. ST85–1523. Natural states that since the existing regulatory authority for the transportation service is scheduled to terminate on October 31, 1985, Natural proposes to continue the service for the duration of the one-year term of its transportation agreement (until July 19, 1986) in the event the Commission's regulations are amended to allow such continuation of service.

Natural also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Natural would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: November 7, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Midwestern Gas Transmission Company

[Docket No. CP85–839–000]

September 24, 1985.

Take notice that on August 29, 1985, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP85–839–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Northern Gas Marketing, Inc. (Northern Gas), acting on behalf of Armour-Dial, Inc. (Armour-Dial), under the certificate issued in Docket No. CP82–414–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Midwestern proposes to transport up to 5,000 Mcf of natural gas per day, less a fuel reduction percentage, on an interruptible basis for Armour-Dial. It is stated that the gas to be transported would be purchased from reserves available to Northern Gas in Oklahoma and would be used as boiler fuel in Armour-Dial's plant in Montgomery, Illinois. It is indicated that the gas is not released by Midwestern. Midwestern would receive the gas from ANR Pipeline Company (ANR) at an existing interconnection in Will County, Illinois, or from Trunkline Gas Company (Trunkline) at an existing interconnection near Potomac, Illinois.

Midwestern would transport and deliver the gas to Northern Illinois Gas Company (NIGAS), for Armour-Dial's account, at their interconnecting facilities near Joliet, Illinois. NIGAS would transport and deliver the gas to Armour-Dial's plant in Montgomery.

It is stated that the service would be until the earlier of October 31, 1985, or the effective date of a final rule in Docket No. RM85–1–000 and/or termination of the transportation agreement by the parties thereto.

Midwestern proposes to charge an amount based upon the rate currently effective in its Rate Schedule IT–1. Also, Midwestern would retain 1.13 percent of the total gas quantity received from Trunkline for system fuels, or 0.5 percent of the gas quantity received from ANR for fuel, it is explained. Midwestern also would collect the Gas Research Institute surcharge of 1.25 per Mcf of gas delivered.

Midwestern also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points on the market area. Midwestern will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional source of gas, would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: November 8, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. National Fuel Gas Supply Corporation

[Docket No. CP85–846–000]

September 24, 1985.

Take notice that on August 30, 1985, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP85–846–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Sharon Tube Company (Sharon) under the certificate issued in Docket No. CP83–4–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

National proposes to transport up to 1,700 Mcf of gas per day and 620,500 Mcf of gas per year for Sharon, to National Fuel Gas Distribution Corporation (Distribution) which, in turn, would deliver the gas to Sharon at Sharon's facilities in Sharon, Pennsylvania, pursuant to the terms of a gas transportation agreement dated July 1, 1985. National states that the current transporation rate is 26.72 cents per Mcf, plus 2 percent retainage for shrinkage which is in accordance with its transportation Rate Schedule T–2

National states that the gas to be purchased by Sharon involves gas supplies previously under contract to and released by National. Sharon would use the gas in boilers and forge furnaces. National states that no new facilities are necessary for the proposed transportation. It is stated that the proposed transportation would commence on October 29, 1985, and terminate on October 31, 1985, or such later date specified by the Commission in a further extension of its blanket certificate program applicable to all end-users of natural gas, or upon termination of the transportation contract which provides for a term of three months, effective July 1, 1985, and month to month thereafter.

National also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested would apply only to points related to sources of gas, not to delivery points in the market area. National would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: November 8, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. Northwest Central Pipeline Corporation

[Docket No. CP85–848–000]

September 24, 1985.

Take notice that on September 3, 1985, Northwest Central Pipeline Corporation (Northwest Central), Post Office Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85–848–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by reclaim measuring and appurtenant facilities in Ellsworth County, Kansas, and to abandon the delivery of gas through these facilities under the blanket authorization issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest Central states that the facilities were installed in 1973 to make a direct sale of gas to Frank J. Black, Inc., for oil lease operations. It is stated that the customer has advised Northwest Central that the oil lease has been abandoned and that gas is no longer needed at this point; and, therefore, the measuring facilities are no longer needed. The cost to reclaim the facilities is estimated at $1,090 and the salvage values is estimated at $170.

Comment date: November 8, 1985, in accordance with Standard Paragraph G at the end of this notice.

6. Northern States Power Company (Minnesota)

[Docket No. CP76–328–001]

September 24, 1985.

Take notice that on August 23, 1985, Northern States Power Company (Minnesota) (Applicant), 414 Nicollet Mall, Minneapolis, Minnesota 55401, filed in Docket No. CP76–328–001 an application pursuant to section 7(b) of the Natural Gas Act for permission and apoproval to abandon its liquefaction of natural gas for Minnegasco, Inc. (Minnegasco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it agreed to provide liquefaction services for Minnegasco under a contract dated January 21, 1974, which the Commission approved on January 12, 1977, in Docket No. CP76–286, *et al.* (57 FPC 148). Under this authorization, says Applicant, it received up to 2,500 Mcf of natural gas per day from March 1 through October 30 of each year to liquefy at its Wescott Plant in Inver Grove, Minnesota, for Minnegasco. Minnegasco would then move the resulting liquefied natural gas by overland cryogenic trucks.

Applicant states that its contract with Minnegasco has expired by its own terms. In a letter to Applicant dated July 31, 1985, included in this application, Minnegasco also relinquished its remaining contractual right to first call on additional liquefaction service through 1986.

Comment date: October 15, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. Sea Robin Pipeline Company

[Docket No. CP85–860–000

September 24, 1985.

Take notice that on September 5, 1985 Sea Robin Pipeline Company (Sea

Robin), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for authorization permitting Sea Robin to abandon three 1100 horsepower compressors by sale to HuB Energy Services, Inc. (HuB), and for a certificate of public convenience and necessity authorizing Sea Robin to lease from HuB the same three compressor units, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Sea Robin states it owns a 60 percent interest and Mobil Oil Exploration and Production S.E., Inc. (Mobil) owns a 40 percent interest in Compressor Unit Nos. 124, 125 and 129 located on Platforms A and B in East Cameron Area Block 270, offshore Louisiana. HuB has agreed to purchase the compressors from Sea Robin and Mobil for $255,000 and for a primary term of three years and year to year thereafter lease back to Sea Robin and Mobil the same three compressors for a rental-maintenance of $19,350 per month. Sea Robin alleges the proposed sale and lease-back arrangement is more cost efficient when compared to the rental-maintenance fee of $24,000 per month, which Sea Robin and Mobil previously paid.[1]

Comment date: October 15, 1985, in accordance with Standard Paragraph F at the end of this notice.

8. Southern Natural Gas Company

[Docket No. CP85–825–000]

September 24, 1985.

Take notice that on August 26, 1985, Southern Natural Gas, Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP85–825–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for Columbia Gas Transmission Corporation (Columbia) and Texas Gas Transmission Corporation (Texas Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to transport gas for Columbia and Texas Gas purchased separately from Texaco Inc. and Amoco Production Company, produced from the B and C production platforms in Block 273, Eugene Island area, offshore Louisiana. Applicant proposes to transport on an interruptible basis by means of its existing facilities up to 1 billion Btu per day for both Columbia and Texas Gas, or such greater quantities as Applicant may accept from time to time. Applicant states that Columbia and Texas Gas would each deliver its gas to Applicant for transportation at the inlet of Applicant's existing facilities located on the Eugene Island Block 260 B production platform. Applicant would redeliver to Columbia and Texas Gas an equivalent quantity of gas at the existing subsea point of interconnection between the 10-inch pipeline facilities of Applicant and the 24-inch pipeline facilities of Sea Robin Pipeline Company located in Eugene Island Block 273, less Columbia's and Texas Gas' separate *pro rata* shares of gas used as fuel, company-used gas and unaccounted-for gas losses, and less their *pro rata* share of gas lost or vented during transportation for any reason except gross negligence on the part of Applicant. Applicant further states that Columbia and Texas Gas have each agreed to pay Applicant a transportation rate of 24.7 cents per million Btu.

Comment date: October 15, 1985, in accordance with Standard Paragraph F at the end of this notice.

9. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP84–441–008]

September 20, 1985.

Take notice that on September 10, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Petitioner), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP84–441–008 a petition to amend the order issued June 14, 1985, in Docket No. CP84–441–002 pursuant to section 7(c) of the Natural Gas Act so as to authorize firm transportation service for Fitchburg Gas and Electric Light Company (Fitchburg) and EnergyNorth Inc. (EnergyNorth) of 2,727 Mcf of natural gas per day and 4,682 Mcf of natural gas per day, respectively, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that in Docket No. CP84–441–002 it was authorized to provide firm storage transportation service subject to approval of Penn-York Corporation's (Penn-York) application in Docket No. CP76–492–036 to provide increased firm storage services to EnergyNorth and Fitchburg. Pending disposition of Penn-York's application, Petitioner states that the Commission authorized Petitioner to transport reduced firm storage volumes of 1,818 Mcf of gas per day for EnergyNorth and 1,239 Mcf of gas per day for Fitchburg. Petitioner further states that the Commission also authorized Petitioner in Docket No. CP84–441–002 to construct and operate the necessary facilities to provide the firm storage transportation services for EnergyNorth and Fitchburg at the volume levels originally requested of 4,682 Mcf of gas per day and 2,727 Mcf of gas per day, respectively.

Petitioner seeks authorization to provide the full firm storage transportation service of 4,682 Mcf per day for EnergyNorth and 2,727 Mcf per day for Fitchburg under its currently authorized Rate Schedule FSST–NE. Petitioner states that EnergyNorth and Fitchburg have executed one-year storage contracts with Consolidated Gas Transmission Corporation (Con Gas) which when added to the storage service currently authorized from Penn-York would provide a total of 300,00 Mcf of storage capacity for Fitchburg and 515,000 Mcf for EnergyNorth. Petitioner alleges that EnergyNorth and Fitchburg are pursuing negotiations with Penn-York and Con Gas to maintain these storage levels on a long-term basis.

Petitioner further seeks authorization to deliver storage injection volumes and receive storage withdrawal volumes in any increment of the total transportation volume authorized from either/or Con Gas and Penn-York as directed by Fitchburg and EnergyNorth. Petitioner indicates that it would deliver storage injection volumes and receive storage withdrawal volumes at the following existing interconnections on Petitioner's system:

Con Gas—Ellisburg sales meter station, Potter County, Pennsylvania;

Penn-York—Petitioner's main line valve 313G–102, Potter County, Pennsylvania.

In addition, Petitioner states that the receipt and delivery points for EnergyNorth and Fitchburg related to the combined storage services offered by Penn-York and Con Gas would be at the following existing sales delivery points on Petitioner's system:

EnergyNorth—Manchester sales, Hillsborow County, Massachusetts at Petitioner's valve 270B–621;

Fitchburg—Fitchburg sales, Worchester County, Massachusetts at Petitioner's valve 268A–124.

Petitioner alleges that the requested firm storage transportation service is necessary to meet EnergyNorth's and Fitchburg's gas supply requirements for this upcoming winter period. As indicated in letters dated August 28, 1985, and included in Exhibit I of the Petitioner's petition to amend, without the additional storage service from Con Gas and the related firm transportation

[1] Sea Robin and Mobil had leased the compressors from Crawford Enterprises, Inc., previous to their purchase from Crawford on December 31, 1984.

service from Petitioner, both EnergyNorth and Fitchburg allege that they would have a greater dependency on higher cost propane or liquefied natural gas supplies to meet peak day requirements on their systems.

Comment date: October 4, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

10. Texas Eastern Transmission Corporation

[Docket No. CP84-703-003]

September 24, 1985.

Take notice that on September 10, 1985, Texas Eastern Transmission Corporation (Petitioner), Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP84-703-000 a petitioner to amend the order of October 26, 1984, as amended, issuing a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act to extend the term of the transportation service presently being provided to United States Steel Corporation (USS) from the currently authorized expiration date of October 31, 1985, to October 31, 1986, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that USS has obtained a quantity of natural gas from Carnegie Natural Gas Company (Carnegie) which petitioner receives from carnegie, by displacement, and delivers, for USS's account, to Philadelphia Electric Company (Philadelphia). Petitioner is said to receive up to 37,200 dt equivalent of natural gas per day from Carnegie, by displacement, at an existing point of interconnection between Petitioner and Carnegie in Greene County, Pennsylvania, or at other mutually agreeable points of receipt from Carnegie. Petitioner then transports and redelivers such gas to Philadelphia, for the account of USS, at points of interconnection between Petitioner and Philadelphia in Delaware County, Pennsylvania, Montgomery County, Pennsylvania, or at other mutually agreeable points of delivery to Philadelphia. Philadelphia in turn transports and delivers such gas to USS at USS's Fairless Works in Bucks County, Pennsylvania.

Petitioner requests that the Commission grant authorization to allow Petitioner to transport gas through October 31, 1986, pursuant to the terms and conditions of a letter agreement dated August 15, 1985.

Comment date: October 15, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

11. United Gas Pipe Line Company

[Docket No. CP85-834-000]

September 24, 1985.

Take notice that on August 28, 1985, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP85-834-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport fuel oil displacement gas on behalf of Ellwood City Forge Corporation (Ellwood) under the certificate issued United in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that Ellwood, a low-priority end-user, has purchased gas from The Resource Group up to 2,000 Mcf of gas per day to be delivered for the account of Ellwood at United's facilities in the Cotton Plant Field, section 21, Township 13 North, Range 2 East, Caldwell Parish, Louisiana. United would then transport and redeliver the gas to existing points of interconnection between United's and Columbia Gulf Transmission Company's (Columbia Gulf) facilities located near Barron, Rapides Parish, Louisiana, and/or Erath, Vermilion Parish, Louisiana, at the interconnection of Columbia Gulf's and Sea Robin Pipeline Company's facilities. United states that Columbia Gulf, under a separate agreement, would deliver the gas to Columbia Gas Transmission Corporation (Columbia Gas) for delivery to Columbia Gas of Pennsylvania, Inc., which would deliver the gas to Ellwood.

United states that the rate applicable to this transportation service is an amount equal to United's Type I Rate (Rate Schedule IT) which excludes a component for gas consumed in the operation of United's pipeline system. Currently such rate is said to be 7.72 cents per Mcf.

It is explained that the transportation agreement was effective on May 22, 1985, and would remain in effect from the date of initial deliveries until the earlier date of the final rule by the Commission in Docket No. RM85-1-000 for low-priority end-use transportation or October 31, 1985, or until terminated by either party upon 30 days prior written notice.

United also request flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. United will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: November 8, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to

§ 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-23225 Filed 9-27-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

University Research Instrumentation Program

AGENCY: Energy Research Office, Energy.

ACTION: Program solicitation announcement.

SUMMARY: The purpose of this notice is to announce the availability of the University Research Instrumentation (URI) program solicitation, to discuss the eligibility requirements for this program, and to inform potential applicants of the closing date and location for transmittal of applications for awards under this program. For more detailed background information about the URI solicitation, please refer to the following related documents: (1) DOE request for public comment on the URI program, June 7, 1983 (48 FR 26328), (2) October 18, 1983, DOE changes to the program (48 FR 48277), and (3) December 15, 1983, DOE program solicitation announcement (48 FR 55774).

FOR FURTHER INFORMATION CONTACT: All communications or questions regarding this program solicitation should be directed to:

Mr. Walker K. Love, Contracting Officer, Procurement and Contracts Division, Oak Ridge Operations Office, Department of Energy, Oak Ridge, TN 37831, Telephone Number: (615) 576-0791.

SUPPLEMENTARY INFORMATION:

Background

The purpose of the University Research Instrumentation program is to assist university and college scientists in strengthening their capabilities to conduct long-range research in specific energy research and development areas of direct interest to DOE through the acquisition of specialized research instrumentation. Although no final congressional action for Fiscal Year 1986 has yet been approved for this program, the Presidential budget request to Congress for this program for FY 1986 is $4.5 million. In anticipation of Congressional support for the program, DOE invites all qualified universities to write for a copy of its University Research Instrumentation program solicitation, DOE-ER-0184/1, Notice of Program Announcement Number DE-PS05-86ER75237. Selection for award under this solication is subject to the availability of funds.

Principal Research Areas

While all areas of energy research are eligible, in FY 1986 the URI program's funds will be concerned primarily with capital equipment (costing $100,000 or more) needed for on-campus research in one of four specific energy areas (listed below in alphabetical order). In order to indicate the potential breadth of the research in each area, a number of examples of related research topics are given. Within each topic area no preference is given to any of the examples.

1. *Advanced Materials Characterization, Synthesis, and Processing Science*—(a). Conventional transmission and scanning electron microscopy of metallic, ceramic, polymeric, semiconducting and other materials; (b) high resolution, atomic resolution, and lattice imaging electron microscopy; (c) analytical electron microscopy; (d) field ion/imaging atom probe microscopy; (e) scanning tunnelling microscopy; (f) other surface and interface analytical techniques; (g) molecular beam/-epitaxy; (h) ceramic powder preparation and consolidation; (i) chemical vapor deposition (CVD) laser assisted reactions and CDV; (j) sputtering; (k) ion and molecular beam deposition and diagnostics.

2. *Catalysis (Heterogeneous and Homogeneous), Photochemistry and Photocatalysis*—(a) Metal organic chemistry; (b) surface chemistry; (c) surface structure; (d) surface spectroscopy; (e) catalyst preparation and characterization; (f) kinetics and mechanisms of catalytic reactions; (g) model catalysts; (h) catalytic treatment of coal; (i) catalytic production of synthetic fuels; (j) photoinduced redox reactions in homogeneous and heterogeneous systems; (k) charge separation in photoredox reactions by micelles, vesicles, and membranes; (l) photoelectrochemical reactions with chemically modified electrodes; (m) chemical kinetics of radicals and other pertinent species; (n) molecular dynamics of high temperature combustion sequences especially key properties of highly reactive and short lived species; (o) chemistry of atomic and molecular fragments arising from pyrolysis of fuels; (p) analytical instrumentation.

3. *Engineering Sciences*—(a) Tribology; (b) energy-conserving fabrication and production techniques; (c) electric power technology including conversion technologies and superconducting storage and transmission; (d) fluid dynamics and thermal processes including multiphase and turbulent flow, flow-inducted vibrations and small temperature difference heat engines; (e) geotechnical engineering including fracture mapping, fragmentation and remote sensing; (f) mechanics of solids including failure mechanisms for structures under dynamic loading; (g) process control including improved sensors and advanced systems for heating, ventilating and air conditioning.

4. *Health and Environmental Effects of Energy Development and Use*—(a) Research to better characterize and measure radiation and energy-related chemicals; (b) determine their transport and transformation in the atmosphere and in aquatic and terrestrial systems; (c) elucidate the mechanisms controlling the function and response of ecosystems to radiation or chemicals; (d) define their potential effects and mechanisms of action on human health via direct observations and through animal, cellular and molecular systems, including biomolecular structure and function; (e) gene function and control, genetic damage and repair and cell transformation.

While the equipment requested will be equally suitable and may be used for research on other energy-related topics, the need for the instrument(s) must be justified (and the application will be reviewed) in terms of its value and ability to enhance the institution's capabilities in the principal designated energy-related research area specified on the cover sheet. The instrument's utility in advancing other areas of scientific or technical research is of peripheral interest during the application's review procedure.

Eligibility and Limitations

Participation in the URI program is limited to U.S. universities and colleges that currently have active, ongoing DOE-funded research support (including subcontracts) totalling at least $150,000 in value in the specific area for which the equipment is requested during the past two fiscal years (October 1, 1983, to September 30, 1985).

DOE is establishing this limitation to ensure that the instrumentation acquired with these grants will significantly expand the research capability of institutions which have already demonstrated the capability to perform long-range energy research. The Office of Energy Research believes that restricting eligibility to institutions which have performed $150,000 of DOE supported research over a two-year period will limit eligibility in this grant program to those institutions which, because of their existing commitment to energy research, are best able to incorporate advanced instrumentation into their research programs. Special consideration will be given to Historically Black Colleges and Universities (HBCU's) which meet the institutional eligibility criteria, and have significant research capabilities in the selected research area.

DOE will consider only requests for larger instruments, costing about $100,000 or more, which are required to advance research in the designated area. Smaller research instruments (less than $100,000 each) will not be eligible for consideration in this program. General purpose computing equipment is also not eligible under this program. However, laboratory computers and associated peripherals dedicated for use directly with the instrument(s) requested (or for use with existing research instrument(s)) in the selected area may be considered.

Application Forms

Program solicitations are expected to be ready for mailing by October 4, 1985. Applications must be prepared and submitted in accordance with the instructions and forms included in the program solicitation. Copies may be obtained by writing to: Division of University and Industry Programs, Office of Field Operations Management, Office of Energy Research, ER–44, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; Telephone Number: (202) 252–8910.

Closing Date for Transmittal of Applications

To be eligible, applications must be received by the Oak Ridge Operations Office by 4:30 p.m., December 6, 1985.

Authority for the University Research Instrumentation program is contained in section 31 (a) and (b) of the Atomic Energy Act of 1954 (42 U.S.C. 2051) and section 209 of the Department of Energy Organization Act (42 U.S.C. 7139).

(Catalog of Federal Domestic Assistance No. 81.077, University Research Instrumentation Program)

Issued in Washington, DC, on September 18, 1985.

Alvin W. Trivelpiece,

Director, Office of Energy Research.

[FR Doc. 85–23310 Filed 9–27–85; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed; Week of August 23 Through August 30, 1985

During the Week of August 23 through August 30, 1985, the appeal and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 18, 1985.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 23 through Aug 30, 1985]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 26, 1985	Holy Cross Hospital, Mission Hills, California	HEE–0163	Exception to the Energy Conservation Program. If granted: Holy Cross Hospital would receive exception relief from the regulations at 10 C.F.R. § 455 that govern the Department of Energy's institutional conservation grants program for schools and hospitals.
Do	Rodgers Hydrocarbon and Ray V. Rodgers, Jr., Washington, DC	HRD–0298, HRH–0298	Motion for Discovery and Request for Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Rodgers Hydrocarbon Corporation and Ray V. Rodgers, Jr., in response to the March 26, 1985 Proposed Remedial Order issued to them (Case No HRO–0298).
Aug. 28, 1985	Robert J. Grix, Miami Beach, Florida	HFA–0306	Appeal of an Information Request denial. If granted: The Freedom of Information Request Denial issued by the Manager of the Nevada Operations Office would be rescinded and Robert J. Grix would receive access to documents relating to his exposure to radiation.
Aug. 30, 1985	Economic Regulatory Administration, Washington, DC	HRD–0289	Motion for Discovery. If granted: Discovery would be granted to the Economic Regulatory Administration in connection with the Proposed Remedial Order issued to Goldsberry Operating Co., Inc. (Case No. HRO–0287).
Do	Oxnard Refining Company, Los Angeles, California	HRD–0291, HRH–0291	Motion for Discovery and Request for Evidentiary Hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by the Oxnard Refining Company in response to a Proposed Remedial Order issued to it (Case No. HRO–2091).

REFUND APPLICATIONS RECEIVED

[Week of Aug. 23 to Aug. 30, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No.
8/26/85	Good Hope/Coral Petroleum, Inc	RF189–2
8/26/85	Gulf/Valentines Service Station	RF40–3042
8/26/85	Gulf/Domenic Cristinzio, Inc	RF40–3043
8/26/85	Amnoil/Steve Hall Oil Co., Inc	RF139–94
8/26/85	Amnoil/Murray & Massue Butane Co	RF139–93

REFUND APPLICATIONS RECEIVED—Continued

[Week of Aug. 23 to Aug. 30, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No
8/26/85	Aminoil/Pruett's L.P. Gas, Inc	RF139-92
8/26/85	Aminoil/Duncan Propane, Inc	RF139-91
8/26/85	Husky/Metro Oil Products	RF161-14
8/26/85	Glaser/Red Tag Gas Company	RF174-2
8/26/85	Red Triangle/Liberty Auto Service	RF178-12
8/26/85	Cibro/Tullo Oil Co., Inc	RF184-3
8/26/85	LARCO/Mountain States Petroleum Corp	RF112-179
8/26/85	Arkla Chemical/Tesoro Petroleum Corp	RF153-19
8/26/85	Arkansas Louisiana/Tesoro Petroleum Corporation	RF154-8
8/27/85	Red Triangle/Paul Lindsay	RF178-13
8/27/85	Aminoil/Gas, Inc	RF139-96
8/27/85	Aminoil/MGU Development Company	RF139-95
8/27/85	Husky/Harms Oil Co , Inc	RF161-16
8/27/85	Husky/Colorado Petroleum Products Co	RF161-15
8/27/85	Warren Holding/Puntan Oil Co	RF169-6
8/27/85	Boswell/Belle Vernon Oil Company	RF179-6
8/27/85	Boswell/Suchko Gas & Oil	RF179-5
8/27/85	St. James/Avon Coal & Oil, Inc	RF180-21
8/27/85	APCO/U-Pump-It of Kansas	RF83-141
8/28/85	Arkansas Louisiana/Enterprise Products Company	RF154-9
8/28/85	Aminoil/Williams & Sons Fuel Co., Inc	RF139-98
8/28/85	Aminoil/Elkins Butane Propane Co	RF139-97
8/28/85	Arkansas Louisiana/Gaines Pet Co	RF154-11
8/28/85	Arkansas Louisiana/B-B-F Oil Co	RF154-12
8/28/85	Arkansas Louisiana/Curtis Parker	RF154-10
8/28/85	Arkansas Louisiana/May Oil Company	RF154-13
8/28/85	Arkla Chemical/May Oil Company	RF153-20
8/28/85	Arkansas Louisiana/Temple Oil & Tire Co., Inc	RF154-14
8/28/85	Arkansas Louisiana/Byers Oil Co	RF154-15
8/28/85	Arkansas Louisiana/Tom's Service Center	RF154-16
8/28/85	Arkansas Louisiana/Sullivan Oil Co., Inc	RF154-17
8/28/85	Arkansas Louisiana/Southern Marketing, Inc	RF154-18
8/28/85	Arkansas Louisiana/Petron, Inc	RF154-19
8/28/85	Arkansas Louisiana/Tri-State Wholesale Produce Co	RF154-20
8/28/85	Husky/U-Pump-It of Kansas	RF161-17
8/29/85	F O. Fletcher/Gene Morris Fuel	RF172-12
8/29/85	Inland/McCollum Service Station	RF176-6
8/28/85	Gulf/Louis and Ray Wilhelm	RF40-3044
8/28/85	Tenneco/Rice Oil Company	RF7-130
8/29/85	Husky/Asamera Oil U.S., Inc	RF161-18
8/29/85	St. James/Decker & Simmons	RF180-22
8/29/85	St. James/D.B. Simmons Company	RF180-23
8/29/85	OKC/Ritco Company	RF13-37
8/29/85	Red Triangle/Pokorra's Red Triangle	RF178-14
8/29/85	Inland/USO Oil Company	RF176-7
8/29/85	Aminoil/Draketown Gas, Inc	RF139-99
8/29/85	Tenneco/Liberty Oil Co., Inc	RF7-131
8/30/85	Husky/Calder's Gas "N" Go	RF161-20
8/29/85	Crystal/Tesoro Petroleum Corp	RF180-1
8/30/85	Aminoil/Frymann's Gas Sales	RF139-103
8/30/85	Aminoil/Buckhalter LP Gas Co	RF139-102
8/30/85	Aminoil/Dewey Wood Propane Co	RF139-101
8/30/85	Aminoil/Evans Oil & Gas, Inc	RF139-100
8/30/85	Husky/Milne Truck Lines, Inc	RF161-19
8/30/85	Gulf/Graeber Brothers	RF40-3045

[FR Doc. 85-23302 Filed 9-27-85; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of August 30 Through September 6, 1985

During the Week of August 30 through September 6, 1985, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application with ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 18, 1985.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Aug. 30 through Sept. 6, 1985]

Date	Name and location of applicant	Case No	Type of submission
Aug. 30, 1985	Economic Regulatory Administration, Washington, DC	HRD-0293	Motion for discovery. If granted, Discovery would be granted to the Economic Regulatory Administration in connection with the Statement of Objections submitted by Texaco, Inc. in response to a Proposed Remedial Order issued to Texaco (Case No. HRO-0272)
Do	Economic Regulatory Administration, Washington, DC	HRD-0294	Motion for discovery. If granted, Discovery would be granted to the Economic Regulatory Administration in connection with the Statement of Objections submitted by Texaco, Inc. in response to a Proposed Remedial Order issued to Texaco (Case No. HRO-0273)

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of Aug. 30 through Sept. 6, 1985]

Date	Name and location of applicant	Case No	Type of submission
Do	Economic Regulatory Administration, Washington, DC	HRD-0295	Motion for discovery. If granted: Discovery would be granted to the Economic Regulatory Administration in connection with the Statement of Objections submitted by Texaco, Inc. in response to a Proposed Remedial Order issued to Texaco (Case No. HRO-0275)
Do	Economic Regulatory Administration, Washington, DC	HRD-0296	Motion for discovery. If granted: Discovery would be granted to the Economic Regulatory Administration in connection with the Statement of Objections submitted by Texaco, Inc. in response to a Proposed Remedial Order issued to Texaco (Case No. HRO-0276)
Sept. 3, 1985	Economic Regulatory Administration, Washington, DC	HRZ-0268	Interlocutory. If granted: Michael Hickerson, Donald Goff and Hal Musco would be joined as respondents to two Proposed Remedial Orders issued to Clean Machine, Inc. (Case Nos. HRO-0048 and HRO-0049)
Sept. 4, 1985	Red River Oil Company, Moorhead, Minnesota	HEE-0164	Exception to the reporting requirements. If granted: Red River Oil Company would no longer be required to file Form EIA-782B, "Reseller/Retailers Monthly Petroleum Product Sales Report."
Sept. 5, 1985	Fulbright & Jaworski, Washington, DC	HFA-0308	Appeal of an information request denial. If granted: Fulbright & Jaworski would receive access to records regarding RFP No. DE-RP01-851G00103 entitled "Expanded Scope Audit Coverage for the Office of Inspector General."
Do	IBEW, Local No. 5, Pittsburgh, Pennsylvania	HFA-0307	Appeal of an information request denial. If granted: The August 14, 1985, Freedom of Information Request Denial issued by the Deputy Director for Naval Reactors would be rescinded and IBEW, Local No. 5 would receive access to complete payroll reports submitted by C&T Enterprises, Inc.
Sept. 6, 1985	Howell Corporation, Corpus Christi, Texas	HEZ-0269	Interlocutory. If granted: The Application for Exception filed by the Department of Interior (Case No. HEE-0159) would be dismissed.
Do	Howell Corporation, Corpus Christi, Texas	HES-0049	Request for stay. If granted: The proceeding involving an Application for Exception submitted by the Department of Interior (Case No. HEE-0159) would be stayed pending OHA's consideration of requests for interlocutory relief filed by Howell.
Do	P J W Corporation, Pomona, California	HEE-0165	Exception to the reporting requirements. If granted: P J W Corporation would no longer be required to file Form EIA-782B, "Reseller/Retailers" Monthly Petroleum Product Sales Report."
Do	Pacific Northern Oil Company, Seattle, Washington	HEE-0166	Exception to the reporting requirements. If granted: Pacific Northern Oil Company would not be required to file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report."
Do	Petroleum Supply, Inc. & Don Ragland, Washington, DC	HRD-0297, HRH-0297	Motion for discovery and request for evidentiary hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Petroleum Supply, Inc. in response to the May 28, 1985 Proposed Remedial Order issued to the firm (Case No. HRO-0293)

REFUND APPLICATIONS RECEIVED

[Week of Aug. 30, 1985, to Sept. 6, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No
9/3/85	Boswell/U.S. Steel Corp.	RF179-7
9/3/85	Husky/Crowley Maritime Corp.	RF161-21
9/3/85	VGS/Miller Transporters, Inc.	RF191-1
9/3/85	Aminoil/John Bogle Propane Co.	RR139-106
9/3/85	Aminoil/Jim Thomas Enterprises	RR139-107
9/3/85	Aminoil/Yothers Propane Co.	RF139-105
9/3/85	Aminoil/Ever Ready Gas Co., Inc.	RF139-104
9/3/85	Inland/Flash Oil Corp.	RF176-10
9/3/85	Inland/Site Oil Co.	RF176-9
9/3/85	St. James/Volta Oil Co., Inc.	RF180-24
9/3/85	Inland/Knapp Oil Co.	RF176-8
9/3/85	Champlain/Jerry's Citgo	RF187-3
9/3/85	Arkansas Louisiana/Shereveport Oil Co.	RF154-21
9/3/85	Good Hope/Texaco, Inc.	RF189-3
9/3/85	Champlain/Keith's Trading Post	RF187-4
9/3/85	Gulf/Liberty Oil Company	RF40-3046
9/3/85	Gulf/Warrenville Gulf	RF40-3047
9/3/85	Saber/Texaco, Inc.	RF192-1
9/3/85	National Helium/Maryland	RQ3-228
9/3/85	Perry Gas/Maryland	RQ183-229
9/3/85	Coline/Maryland	RQ2-230
9/3/85	Husky Refund Applications	RF161-22 through RF161-64
9/4/85	Husky/Blair-Dean, Inc.	RF161-65
9/4/85	Aminoil/Virgil Elliott Petroleum	RF139-108
9/4/85	Aminoil/Everheat Gas Sales	RF130-109
9/4/85	Aminoil/LA. Olson Company	RF139-110
9/4/85	Aminoil/J. Petty Company	RF139-111
9/4/85	Aminoil/Vanguard Petroleum Corp.	RF139-112
9/4/85	Aminoil/Stevens Petro	RF139-113
9/5/85	Aminoil/Miller Oil Company	RF139-114
9/5/85	Aminoil/Rex Smith Propane	RF139-115
9/5/85	Aminoil/Ramsey L-P Gas Company	RF139-116
9/5/85	Aminoil/Hopkins Bottle Gas, Inc.	RF139-117
9/5/85	Husky/Petroenergy Corporation	RF161-66
9/5/85	Husky/B-D Oil Co.	RF161-67
9/5/85	Aminoil/A-1 Gas	RF139-118
9/5/85	Gulf/Richard A. Standley	RF40-3048
9/5/85	St. James/Field's Oil Heat Service	RF180-25
9/6/85	Aminoil/Warren County Oil Company	RF139-120
9/6/85	Aminoil/Duce LP Gas Company	RF139-121
9/6/85	Aminoil/Ford Pinkerton Company, Inc.	RF139-122

REFUND APPLICATIONS RECEIVED—Continued

[Week of Aug. 30, 1985, to Sept. 6, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case No
9/6/85	Aminoil/Eldridge Propane Service, Inc	RF139-123
9/6/85	Aminoil/Fisher Propane Service	RF139-124
9/6/85	Aminoil/Vaughn Gas & Appliance	[illegible]
9/6/85	Aminoil/Plymouth LP Gas Service	[illegible]
9/6/85	Husky/Chevron, USA, Inc	[illegible]
9/6/85	Field/Walt DeVore's Service	RF173-5
9/6/85	Aminoil/Harper Industries, Inc	RF139-127
9/6/85	Aminoil/Heart of Dixie LP Gas Co	[illegible]
9/6/85	Aminoil/Daughtendge Gas Company	[illegible]
9/6/85	Red Triangle/Herbert R. McCarey	RF178-15
9/6/85	Aminoil/Clayton Bottled Gas	RF739-119

[FR Doc. 85-23303 Filed 9-27-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of September 2 Through September 6, 1985

During the week of September 2 through September 6, 1985, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Grorge B. Breznay,

Director, Office of Hearings and Appeals.

September 18, 1985.

Motions for Discovery

Navajo Refining Company, Department of the Interior, 9/5/85, HED-0283, HED-0284

Navajo Refining Co. (Navajo) and the Department of the Interior (DOI) each filed a Motion for Discovery in connection with a pending Application for Exception in which DOI requests retroactive exception relief with respect to certain crude oil certification requirements that applied to its sales of royalty oil to Navajo. See *DOI/Navajo*, Case No. HEE-0083 (Proposed Decision and Order (PDO) issued April 26, 1985). In the PDO, the DOE proposed to grant DOI's request except with respect to the sales reflected in a December 1980 invoice. In their Motions for Discovery, Navajo and DOI sought discovery with respect to a variety of matters, including the December invoice.

In considering the parties' request for discovery with respect to the December 1980 invoice, the DOE found that Navajo had first-hand knowledge concerning the circumstances underlying that invoice. Accordingly, the DOE determined that DOI's request for discovery from Navajo should be granted with respect to the invoice. The DOE also determined that after the submission of pleadings with respect to such discovery, the DOE would consider *sua sponte* whether DOI should be required to furnish any information with respect to the issues surrounding the December 1980 invoice and if so, the appropriate means through which that information should be submitted. With respect to the remainder of the parties' requests, the DOE found that they did not relate to material factual issues or would not materially assist in the resolution of the proceeding. Accordingly, DOI's Motion for Discovery was granted in part and Navajo's Motion for Discovery was denied.

Refund Applications

Gulf Oil Corporation/K-C Fuel Company, 9/6/85, RF40-1671

The DOE issued a Decision and Order concerning an Application for Refund filed by K-C Fuel Company, a reseller of Gulf petroleum products. K-C stated in its application that it had purchased fuel from Skelly Oil Company. However, because Skelly participated in an exchange with Gulf, K-C picked up the fuel from a Gulf terminal. After examining the evidence submitted by the applicant, the DOE determined that the fuel which K-C purchased was actually Skelly product rather than Gulf product Accordingly the Application for Refund was denied.

Gulf Oil Corporation/Time Oil Company, 9/5/85, RF40-1537

The DOE issued a Decision and Order concerning an Application for Refund filed by Time Oil Company, a reseller of Gulf petroleum products. The claimant applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). In accordance with those procedures, Time demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund claimed. Time also indicated that it had purchased products directly from Gulf. After examining the evidence and supporting documentation submitted by the applicant, the DOE concluded that Time should receive a total refund of $74,673 ($65,407 principal plus $9,266 interest) based upon a total volume of 54,505,914 gallons of Gulf purchases.

Willis Distributing Company, Inc./Country Fair, Inc., 9/4/85, RF41-0014

The DOE issued a Decision and Order concerning an Application for Refund filed by Country Fair, Inc., a reseller of Willis Distributing Co., Inc. motor gasoline. The firm elected to limit its Application for Refund to the 50,000 gallons per month threshold for small claims set forth in *Willis Distributing Co.*, 12 DOE ¶ 85,062 (1984). In considering this application, the DOE concluded that Country Fair should receive a refund of $8,562 based upon the adjusted volume of its Willis motor gasoline purchases.

[FR Doc. 85-23304 Filed 9-27-85 8:45 am]

BILLING CODE [illegible]

Objection to Proposed Remedial Orders Filed; Week of July 22 Through July 26, 1985

During the week of July 22 through July 26, 1985, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 19, 1985.

Apache Oil Company, Inc., Pasadena, Texas, HRO-0299, Crude Oil

On July 26, 1985, Apache Oil Company, Inc., P.O. Box 177, 5136 Spencer at Pansy, Pasadena, Texas 77501, filed a Notice of

Objection to a Proposed Remedial Order (PRO) which the DOE Dallas District Office of Enforcement issued to the firm on April 30, 1985. In the PRO, the Dallas District found that during the period October 1, 1979 through December 31, 1979, Apache violated the provisions of 10 CFR § 212.93 by charging prices in excess of the firm's maximum lawful selling prices for gasoline.

According to the PRO, the violation resulted in $164,153, plus accrued interest.

North American Petroleum Company and Mellon Energy Products Company, Abilene, Texas, HRO–0297, Crude Oil

On July 24, 1985, Mellon Energy Products Co., LaJet, Inc., and the State of California filed Notices of Objection to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued on June 20, 1985. In the PRO the ERA found that from October through December 1975, January through June 1976, March through May 1977, and July through November 1977, North American Petroleum Co., through its subsidiary LaJet, Inc., entered into processing arrangements for the purpose of lowering its reported crude oil runs to stills in order to qualify for Small Refiner Bias entitlements benefits. The ERA also found that Mellon Energy Products Company received unlawful profits in sales of crude oil and refined petroleum products.

According to the PRO, the various violations total $3,574,756.15.

O.K. Oil and Gas, Incorporated, Oklahoma City, Oklahoma, HRO–0296, Crude Oil

On July 22, 1985, O.K. Oil and Gas, Inc., 8005 S I–35, Oklahoma City, Oklahoma 73149 and the State of Texas filed a Notice of Objection to a Proposed Remedial Order (PRO) which the DOE Office of Enforcement issued to the firm on May 6, 1985. In the PRO the Office of Enforcement found that during the period October 1979 through December 1980, the firm sold crude oil at prices in excess of those permitted by 10 CFR Part 212, Subpart D.

According to the PRO, the violation resulted in $256,111.01 of overcharges.

Rodgers Hydrocarbon Corporation, Wichita Falls, Texas, HRO–0298, Crude Oil

On July 23, 1985, the State of Texas filed a Notice of Objection to a Proposed Remedial Order which the DOE Dallas Field Office of the Office of Enforcement issued to the firm on March 29, 1985. In the PRO, the Dallas Office found that during the period September 1977 through January 1980, Rodgers sold uncertified and improperly certified crude oil in violation of the provisions of 10 CFR Part 212.

According to the PRO, the violation resulted in $2,782,495.73 of overcharges.

[FR Doc. 85–23301 Filed 9–27–85; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $11,387.002 obtained as a result of a consent order which the DOE entered into with Lincoln Land Oil Company, a reseller-retailer of petroleum products located in Springfield, Illinois. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF–0116.

FOR FURTHER INFORMATION CONTACT: Nancy L. Kestenbaum, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $11,387.02 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Lincoln Land Oil Company. The funds were provided to the DOE by Lincoln Land to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of refined petroleum products during the period March 1, 1979, through September 30, 1979.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals who purchased motor gasoline from Lincoln Land. In order to obtain a refund, a claimant will be required to submit a schedule of its monthly purchases from Lincoln Land and to demonstrate that it was injured by Lincoln Land's pricing practices. Applicants must submit specific documentation regarding the date, place, and volume of product purchased, whether the increased costs were absorbed by the claimant or passed through to other purchasers, and the extent of any injury alleged to have been suffered. An applicant claiming $5,000 or less, however, will be required to document only its purchase volumes.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in these proceedings will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: September 18, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 18, 1985.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Lincoln Land Oil Company.

Date of Filing: October 13, 1983.

Case Number: HEF–0116.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Lincoln Land Oil Company (Lincoln Land).

I. Background

Lincoln Land is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR § 212.31 and is located in Springfield, Illinois. Following an audit of Lincoln Land's records, ERA issued a Notice of Probable Violations (NOPV) in which it alleged that the firm had violated of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. The NOPV originally alleged that between March 1, 1979, and September 30, 1979, Lincoln Land committed pricing violations amounting to $643,852.37 in its sales of motor gasoline. Based upon further information submitted by the firm, this amount was adjusted to $24,685.53.

In order to settle all claims and disputes as to the firm's sales of motor gasoline during the audit period, Lincoln Land and the DOE entered into a consent order on August 30, 1981. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. The consent order also states that Lincoln Land does not admit to any violations of the regulations. Under the terms of the consent order, Lincoln Land was required to deposit $11,387.02 into an interest-bearing escrow account for ultimate distribution by the DOE. Lincoln Land remitted this sum on July 7, 1981.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement,* 9 DOE ¶ 82,508 (1981), *and Office of Enforcement,* 8 DOE ¶ 82,597 (1981) (*Vickers).*

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will accept claims from identifiable purchasers of refined petroleum products who may have been injured by Lincoln Land's pricing practices during the period March 1, 1979 through September 30, 1979. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel,* 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identifiable Purchasers

In the first stage of the Lincoln Land refund proceeding, we propose to distribute the funds currently in escrow to claimants who demonstrate that they were injured by Lincoln Land's alleged overcharges. As we have done in many prior refund cases, we propose to adopt certain presumptions, which will be used to help determine the level of a purchaser's injury.

The use of presumptions in refund cases is specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon approprate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. First, we plan to adopt a presumption that the alleged overcharges were dispersed evenly among all sales of products made during the consent order period. In the past, we have referred to a refund process that uses this presumption as a volumetric system. Second, we propose to adopt a presumption of injury with respect to small claims. Third, we plan to adopt a presumption that spot purchasers were not injured by the alleged overcharges. As a separate matter, we are making a proposed finding that end users of Lincoln Land products were injured by Lincoln Land's pricing practices.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spread equally over all gallons of product marketed by that firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. This presumption is rebuttable, however. A claimant which believes that it incurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See, e.g., Sid Richardson Carbon and Gasoline Co. and, Richardson Products Co./ Siouxland Propane Co.,* 12 DOE ¶ 85,054 (1984), and cases cited therein at 88,164.

Under the volumetric system we plan to adopt, a claimant will be eligible to receive a refund equal to the number of gallons purchased from Lincoln Land times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $.0007555 per gallon.[2] In addition, successful claimants will receive a proportionate share of the accrued interest.

The second presumption we plan to use is that claimants seeking small refunds were injured by Lincoln Land's pricing practices. There are a variety of reasons for adopting this presumption. *See, e.g., Uban Oil Co.,* 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive. With small claims, the cost to the firm of gathering the necessary information and the cost to OHA of analyzing it could exceed the expected refund. As a result, without some simplified procedures, injured parties would be deprived of an opportunity to receive a refund. This presumption also accelerates the refund process by eliminating the need for a claimant to assemble and provide, and OHA to analyze, detailed proof of the occurrence and extent of injury.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases beow a certain level. Several factors determine the value of this threshold. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the

[1] As of July 31, 1985, the Lincoln Land escrow account contained $17,493.19, including accrued interest.

[2] This figure is derived by dividing the $11,387.02 settlement amount by the 15,072,152 gallons of products sold by Lincoln Land during the consent order period.

refund to be gained. In this case, where the refund amount is fairly low and the early months of the consent order period are many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*) and cases cited therein.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and to show that market conditions would not permit it to pass through those increased costs.[3]

However, if a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have experienced injury. This is true because

> [t]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. The same principles apply in this case. Accordingly, we propose that resellers and retailers which made only spot purchases from Lincoln Land not receive refunds unless they present evidence which rebuts this presumption and establishes the extent to which they experienced injury.

As noted, we are proposing a finding of injury with respect to end users which purchased motor gasoline from Lincoln Land. An important aspect of this finding is that many, if not all, of the members of this group were not subject to the requirements of the petroleum regulations during the consent order period. As a result, these firms were not required to base their pricing decisions on cost increases or to keep records which would show whether cost increases were passed on as price increases. Under these circumstances, an analysis of the impact of the alleged overcharges on these unregulated end users would be beyong the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983)(*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein.[4] Therefore, to prove injury, end users must document only their purchase volumes.

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the alleged overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of Lincoln Land's alleged violations of the DOE regulations would routinely be passed through to the firms' customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,539 (1982) (*Tenneco*), *and Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

B. Applications for Refund

Any purchaser claiming a portion of the consent order funds should file an application for Refund pursuant to 10 CFR 205.283. In its Application, a claimant must include a schedule, broken down by product, of its monthly purchases from Lincoln Land. Applicants should also provide all relevant information necessary to support their claim in accordance with the presumptions stated above. A claimant must also state whether it has previously received a refund, from any source, with respect to the alleged overcharges underlying these proceedings. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement, or private, § 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

C. Distribution of Remaining Consent Order Funds

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Lincoln Land Oil Company pursuant to the consent order executed on August 31, 1981, will be distributed in accordance with the foregoing decision.

[FR Doc. 85–23307 Filed 9–27–85; 8:45 am]

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[3] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 COE ¶ 85,029 at 88,125 (1982) (Ada).

[4] If a firm is both a spot purchaser and an end user, it will be treated as an end user and will not be required to make any showing of injury beyond that required of other end users.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy

announces the procedures for disbursement of: $10,000 obtained as a result of a consent order into which the DOE entered with L & L Oil Company, a reseller of petroleum products located in Belle Chasse, Louisiana; $52,347.47 obtained as a result of a consent order into which the DOE entered with Lowe Oil Company, a reseller of petroleum products based in Clinton, Missouri; and $12,173.48 obtained as a result of a consent order into which the DOE entered with Moyle Petroleum Company, a reseller of petroleum products headquartered in Rapid City, South Dakota. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund of a portion of the L&L, Lowe, or Moyle consent order funds must be filed in duplicate and must be received within 90 days of publication of this notice in the **Federal Register**. All applications should refer to Case Number HEF–0111 (L&L), HEF–0118 (Lowe), or HEF–0133 (Moyle) and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Nancy Kestenbaum, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to consent orders entered into by the DOE and L & L Oil Company, the DOE and Lowe Oil Company, and the DOE and Moyle Petroleum Corporation. The consent orders settled all claims and disputes between the firms and the DOE regarding the manner in which the firms applied the federal price regulations with respect to their sales of refined petroleum products during the respective consent order periods—November 1, 1973, through April 30, 1974, for L & L and Lowe, and March 1, 1979, through June 30, 1979 for Moyle. A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the L & L, Lowe, and Moyle consent order funds was issued on June 28, 1985. 50 FR 28636 (July 15, 1985).

The Decision sets forth procedures and standards that the DOE has formulated to distribute the contents of the three escrow accounts funded by the firms pursuant to the consent orders. The DOE has decided that a portion of the consent order funds should be distributed to 46 of L & L's customers, 3 of Lowe's, and 22 of Moyle's, all of whom may have been overcharged, after each has filed an application for refund. These purchasers were identified by DOE audits and alloted funds based on findings and presumptions of injury which the DOE has used in past proceedings. In addition, applications for refund will be accepted from purchasers not identified by the DOE audit.

As the Decision and Order published with this Notice indicates, applications for refunds may now be filed by firms and individuals who purchased petroleum products from L&L, Lowe, or Moyle during the respective consent order periods. Applications will be accepted provided they are filed in duplicate and are received no later than 90 days after publication of this Decision and Order in the Federal Register. The specific information required in an application for refund is set forth in the Decision and Order.

Dated: September 18, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 18, 1985.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: L&L Oil Company, Inc., Lowe Oil Company, Moyle Petroleum Company.

Date of Filing: October 13, 1983.

Case Numbers: HEF–0111, HEF–0118, HEF–0133.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with consent orders entered into with L&L Oil Company, Inc. (L&L), Lowe Oil Company (Lowe), and Moyle Petroleum Company (Moyle) (collectively referred to as the consent order firms).

I. Background

L&L, Lowe, and Moyle are all "reseller-retailers" of refined petroleum products as that term was defined in 10 CFR 212.31. L&L is located in Belle Chasse, Louisiana. Lowe's main office is in Clinton, Missouri. Moyle's headquarters are in Rapid City, South Dakota. A DOE audit of each firm's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. Subsequently, each firm entered into a separate consent order with the DOE. The consent orders refer to ERA's allegations of overcharges, but note that there were no findings that violations occurred. Additionally, the consent orders state that the consenting firms do not admit that they committed violations. A brief discussion of the pertinent matters covered by each consent order follows.

The L&L consent order covers the period November 1, 1973, through April 30, 1974. In a Notice of Probable Violation (NOPV) issued to the firm, ERA alleged that during that period, L&L committed possible pricing violations amounting to $95,299.15, with respect to its sales of No. 2 diesel fuel. In order to settle all claims and disputes between L&L and the DOE regarding the company's sales of No. 2 diesel fuel during the period covered by the NOPV, L&L and the DOE entered into a consent order on September 20, 1979. Under the terms of the consent order, L&L was to deposit $10,000 into an interest-bearing escrow account for ultimate distribution by the DOE. L&L remitted this sum on November 1, 1979.[1]

The Lowe consent order likewise covers the period November 1, 1973, through April 30, 1974. ERA issued a Proposed Remedial Order (PRO) to Lowe, in which the agency alleged that the company had committed possible pricing violations amounting to $81,943.09 on its sales of motor gasoline and motor oils between November 1973 and April 1974. In order to settle all claims and disputes between them regarding Lowe's sales of motor gasoline and motor oils during the period covered by the PRO, Lowe and the DOE entered into a consent order on September 1, 1981. The consent order required Lowe to deposit $52,347.47 into an interest-bearing escrow account for ultimate distribution by the DOE. The company fulfilled this requirement on September 14, 1981.[2]

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[1] As of July 31, 1985, the L&L escrow account contained $18,135.60, including accrued interest.

[2] Including accrued interest, the Lowe escrow account contained $77,788.19 as of July 31, 1985.

The period covered by the Moyle consent order runs from March 1, 1979, through June 30, 1979. A DOE audit alleged that during the period, Moyle had committed possible pricing violations amounting to $24,346.98 on its sales of motor gasoline. To settle all claims and disputes between them concerning Moyle's sales of motor gasoline during the audit period, Moyle and the DOE entered into a consent order on December 31, 1980. The terms of the consent order required Moyle to deposit $12,173.48 into an interest-bearing escrow account for ultimate distribution by the DOE. The DOE received Moyle's check for that amount on January 15, 1981.[3]

This decision concerns the distribution of the funds in the three escrow accounts, including the accrued interest. On June 28, 1985, we issued a Proposed Decision and Order (PD&O) which set forth a tentative plan for the distribution of refunds to parties who were injured by the consent order firms' alleged violations in the sale of petroleum products during the respective consent order periods. 50 FR 28636 (July 15, 1985). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries which were probably suffered as a result of actual or alleged violations of the DOE regulations. In order to effect restitution in this proceeding, we tentatively determined that we would rely in part on the information contained in ERA's audit file. We observed that our experience with similar cases supports the use of this approach in Subpart V cases where all or most of the purchasers of a firm's product are identified in the audit file. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). We also noted that under such circumstances, a more precise determination regarding the identities of the allegedly overcharged first purchasers was possible. At the same time, we recognized that there may have been other purchasers not identified by the ERA audit who may have been injured by the consent order firms' pricing practices during the audit period who would also be entitled to a portion of the consent order funds. Therefore, procedures by which such purchasers could establish a claim were also proposed.

A copy of the PD&O was published in the **Federal Register** and comments were solicited regarding the proposed refund procedures. In addition, a copy of the PD&O was mailed to each purchaser identified in the audit file whose address was available. Copies were also sent to various petroleum dealers' associations. The only comments received regarding the first-stage procedures were submitted by Texaco, Inc. (Texaco). Texaco's comments concern the small-claims presumption and will be addressed below in the section dealing with that issue. Comments were also submitted on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia. Those comments concern the distribution of any funds remaining after refunds have been made to injured parties. The purpose of this Decision is to establish procedures for filing and processing claims in the first stage of the L&L, Lowe, and Moyle refund proceedings. Any procedures pertaining to the disposition of any monies remaining after each proceeding's first stage will necessarily depend on the size of the respective fund. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981). Therefore, it would be premature for us to address the issues raised by the states' comments at this time.

II. Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of refined petroleum products who may have been injured by L&L's or Lowe's pricing practices between November 1, 1973 and April 30, 1974, or by Moyle's pricing practices between March 1 and June 30, 1979. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds To Identified Purchasers

The basic purpose of a special refund proceeding is to recompense parties who were injured as a result of alleged or actual violations of the DOE regulations. In order to effect restitution in this proceeding, we have decided to rely in part on the information contained in the DOE's audit files. Our experience with similar cases supports the use of this approach in Subpart V cases where many of the purchasers of a firm's products are identified in the audit file. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). Under these circumstances, a reasonably precise determination can be made regarding the identity of the allegedly overcharged parties and the amount of alleged overcharges each party suffered.

During the DOE's audit of L&L, 46 first purchasers were identified as having allegedly been overcharged. During the audit of Lowe, 3 first purchasers were similarly identified. In the audit of Moyle 22 first purchasers were identified as having allegedly been overcharged. In all three cases, ERA also alleged overcharges to customers who were not identified. We recognize that the DOE audit files do not necessarily provide conclusive evidence regarding the identity of all possible refund recipients or the appropriate refund for a particular firm. However, the information contained in those audit files may reasonably be used for guidance. *See Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion*, we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." 12 DOE at 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the customers identified by the audit, other customers who can show injury, and downstream customers of either type of firm. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Richards Oil Company*, 12 DOE ¶ 85,150 (1984). The first purchasers identified by the audit, with the share of the settlement allotted to each by ERA, are listed in Appendices B–1, B–2, B–3, B–4, C, and D.

Identification of first purchasers is only the first step in the distribution process. We must also determine whether the first purchasers were injured or were able to pass through the alleged overcharges. Besides

[3] The Moyle escrow account contained $20,107 69 as of July 31, 1985, including accrued interest.

considering the information which the audit file provides, we will adopt presumptions to be used in determining the level of a purchaser's injury. We will use these two methods to distribute the funds in the three escrow accounts. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for impelementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we are adopting in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund proceedings, we will adopt a presumption that claimants seeking small refunds were injured by the pricing practices of the company from which they purchased products. We will also adopt a rebuttable presumption that customers which made only spot purchases were not injured. In addition, we find that end users suffered injury.

There are a variety of reasons for adopting the presumption that claimants seeking small refunds were injured. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time consuming and expensive. With small claims, the cost to the firm of gathering the ncessary information and the cost to OHA of analyzing it could exceed the expected refund. Failure to allow simplified procedures could therefore deprive injured parties of the opportunity to receive a refund. This presumption eliminates the need for a claimant to submit and OHA to analyze detailed proof of what happened downstream of the initial impact.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. In its comments, Texaco suggests that a firm identified by ERA's audit should be permitted to state that it is willing to rely on the data in the audit file and not have to document its purchase volumes. This is not different from what was stated in the PD&O. In the PD&O, we stated that firms identified by the audit could submit either purchase schedules or statements that they would rely on the data in the audit files. A firm using the data in an audit file is still in effect providing purchase volumes; it is merely using figures already in OHA's possession rather than providing new figures.

Several factors determine the value of the threshold below which claimants need not submit proof of injury beyond purchase volumes. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low and the early months of the consent order period are many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.; Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein. The record indicates that all the firms identified in the L&L and Moyle proceedings are eligible for small refunds, as are two of those identified in the Lowe proceeding. The one Lowe customer whose potential refund falls above the threshold purchased products in quantities that suggest that it is significantly larger than the other potential refund recipients.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and to show that market conditions would not permit it to pass through those increased costs.[4]

[4] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,125 (1982) (Ada).

If a reseller or retailer made only spot purchases, we believe that it should not receive a refund since it is unlikely to have been injured. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. We believe the same rationale holds true in the present case. The record in this proceeding reveals that those firms listed in Appendix B–4 made only spot purchases from L&L. Firms on this list will not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they were injured as a result of their purchases of No. 2 diesel fuel from L&L during the consent order period.

As noted above, we find that end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. Because of this, an analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. We therefore propose that end users of petroleum products sold by one of the consent order firms be required to document only their purchase volumes from the applicable firm to make a sufficient showing that they were injured by the alleged overcharges.[5]

In addition, firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement will not be required to demonstrate that they absorbed the alleged overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of L&L's, Lowe's, or Moyle's

[5] If a firm is both a spot purchaser and an end user, it will be treated as an end user and not be required to make any showing of injury beyond that required by other end users.

alleged violations of the DOE regulations would routinely be passed through to their customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, such firms will be included in the class of claimants that are not required to show that they did not not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel,* 9 DOE ¶ 82,539 (1982) (*Tenneco*), *and Office of Special Counsel,* 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their applications a full explanation of the manner in which refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 plus interest will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for small amounts outweighs the benefits of restitution. *See, e.g., Uban Oil Co.,* 9 DOE at 85,2?5. *See also* 10 CFR 205.286(b). The same principle applies here.

Finally, as indicated in the PD&O, if additional meritorious claims are filed, we will adjust the figures listed in the Appendices accordingly. Actual refunds will be determined only after all appropriate claims have been analyzed.[6]

B. Refunds to Other Purchasers

In all three of the cases affected by this decision there were some first purchasers who were not identified by the ERA audit.[7] These firms, and downstream purchasers, may have been injured as a result of the consent order firms' pricing practices. If so, they would be entitled to a portion of the consent order funds provided by the company from which they made purchases. To help potential claimants not identified by ERA decide whether to apply for a refund, we propose to use a volumetric procedure. Under this procedure, a successful claimant's refund is determined by multiplying a factor, known as the volumetric refund amount, by the number of gallons of fuel [8] purchased by the claimant.[9]

The volumetric refund amount is the average per gallon refund. Appendix A lists the volumetric amount relevant to each of the three proceedings. Potential applicants who were not identified by the ERA audit may use the listed figure to estimate the refunds to which they may be entitled. The volumetric presumption is rebuttable, however. A claimant which believes that it incurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. The presumptions and finding adopted in Section A above apply also to applications submitted by claimants not identified by ERA. If valid claims exceed the funds available in a particular escrow account, all refunds from that account will be reduced by a pro rata amount.

III. Applications for Refund

We have determined that by using the procedures described above, we can distribute the L&L, Lowe, and Moyle consent order funds as equitably and efficiently as possible. Accordingly, we will now accept applications for refund from individuals and firms who purchased No. 2 diesel fuel from L&L between November 1, 1973, and April 30, 1974; motor gasoline or motor oil from Lowe between November 1, 1973 and April 30, 1974; or motor gasoline from Moyle between March 1, 1979 and June 30, 1979. As we proposed, a portion of the consent order funds will be distributed to those firms listed in Appendices B–1, B–2, C, and D who file applications for refund provided they make any necessary demonstrations of injury.[10] The consent order firms' other eligible customers may also apply for a refund. Firms listed in Appendix B–4 may receive refunds if they can rebut the spot purchaser presumption.

No valid addresses are available for those L&L customers listed in Appendix B–2 or for Dale's 66, one of Moyle's customers. In some cases no addresses at all are available; in others, copies of the PD&O sent to the firms' last known addresses were returned by the Post Office. In an attempt to locate these firms, we will provide Moyle and various petroleum dealers' associations with copies of this Decision and will publish a notice in the **Federal Register**. We will accept information regarding the identities and present locations of these firms for a period of 90 days from the date of publication of this Decision and Order in the **Federal Register**.[11]

There is no specific application form which must be used. In order to receive a refund, each claimant must submit the following information:

(1) A schedule of its monthly purchases of petroleum products from the applicable consent order firm. An applicant listed in appendices B–1, B–2, B–4, C, or D may instead submit a statement verifying that it purchased petroleum products from the applicable firm and is willing to rely on the data in the audit file;

(2) Whether the applicant has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding;

(3) Whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund;

(4) Whether the applicant is or has been involved as a party in DOE enforcement or private, section 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the

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[6] Purchasers identified in the ERA audit as having allegedly been overcharged may also submit information to show that they should receive refunds larger than those indicated.

[7] Appendix E contains a list of 306 Lowe customers. We will contact directly those for whom we can obtain addresses. We seek assistance from interested parties in locating the others.

[8] With Lowe, the volumetric system applies to sales of motor oil. Refunds will be based on the number of cases of motor oil purchased. Lowe customers should therefore substitute the word "case" for the word "gallon" and the term "motor oil" for the word "fuel."

[9] A volumetric approach is appropriate in special refund proceedings where the DOE is unable to identify readily those persons who may be eligible to receive refunds. It has proved to be an administratively efficient method for determining what proportion of the available settlement funds should be awarded to each successful claimant. It also serves as a useful approximation of injury in the treatment of allegedly overcharged claimants who are unable to quantify their injury.

[10] The share of the L&L escrow fund allocated to each firm listed in Appendices B–1, B–2, B–3, and B–4 represents 10.49 percent of the amount each was allegedly overcharged. Firms listed in Appendix C have been allocated shares of the Lowe escrow fund equal to 63.88 percent of the amount they were allegedly overcharged. In Appendix D, firms have been allotted shares of the Moyle consent order equal to 50 percent of the amount they were allegedly overcharged. These figures are consistent with the terms of the L&L, Lowe, and Moyle consent orders, which settled for 10.49 percent, 63.88 percent, and 50 percent, respectively, of the total amount of alleged overcharges.

[11] If we are unable to locate any firm listed in Appendix B–2, we will reserve any funds allocated to that firm for distribution in a subsequent proceeding.

action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR § 205.9(d); and

(5) The name and telephone number of a person who may be contacted by this Office for additional information.

Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received with 90 days from the date of publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the information has been deleted. All applications should refer to Case No. HEF–0111 (L&L), HEF–0118 (Lowe), or HEF–0133 (Moyle) and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, D.C. 20585.

It Is Therefore Ordered That:

(1) Applications for refunds from the funds remitted to the Department of Energy by L&L Oil Company, Inc. pursuant to the consent order executed on September 20, 1979; by Lowe Oil Company pursuant to the consent order executed on September 1, 1981; and by Moyle Petroleum Company pursuant to the consent order executed on December 31, 1980, may not be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Date: September 18, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Appendix A

Consent order firm	Consent order period	Product	Amount [illegible]	[illegible]	[illegible] refund (per gal.)	[illegible] purchase [2] (gallons)
L&L	November 1973 to April 1974	No. 2 diesel fuel	$303.53	218,770	[illegible]	10,812
Lowe	do	Motor oil	32,775.22	[3]77,223	[3]0.4244	[3]36
Moyle	March 1979 to June 1979	Motor gasoline	4,389.92	1,229,205	0.003571	4,200

[1] This figure represents the amount of the settlement available for purchasers not identified by the ERA audit (excluding interest)
[2] The figure listed shows the purchase volume required for a claimant to receive a $15 refund.
[3] The numbers for Lowe represent cases, not gallons

Appendix B–1

L&L Oil Company, Inc.

First purchasers	Share of settlement [1]
A W.I. Inc., 1229 Peters Road, Harvey, Louisiana 70058	$333.23
B.J., Inc., 3525 N. Causeway Boulevard, Metairie, Louisiana 70002	35.16
Diamond M. Drilling, Railroad Avenue, Morgan City, Louisiana 70380	1,374.50
Halliburton Services, 365 Canal Street, Suite 2600, New Orleans, Louisiana 70130	544.53
Lee & Leon, Venice, Louisiana 70091	1,185.86
Louisiana Land & Exploration, 225 Baronne Street, New Orleans, Louisiana 70112	101.79
Mallard Well Service, 5918 Fairfield Avenue, Shreveport, Louisiana 71106	27.57
The Mayronne Corporation, 3824 Peters Road, Harvey, Louisiana 70058	126.51
Noble Drilling Company, 144 Canal Street, New Orleans, Louisiana 70130	648.65
Texaco, Inc., Texaco Building, New Orleans, Louisiana 70112	153.28
Westside Oil, 527 Destrahan Avenue, Harvey, Louisiana 70058	2,104.10

[1] Not including accrued interest

Appendix B–2

L&L Oil Company, Inc., No Address Available

First purchasers	Share of Settlement [1]
Atchafalaya Workover	$77.70
Atlantic & Pacific Marine Corp	176.79
B.R. Dredging	161.08
Centerville Petroleum Co.	158.50
Dredge Manchac	802.35
Fritz Jahncke Services	518.50
Harvey Workover	78.73
P&A Well Service	18.55

[1] Not including accrued interest.

Appendix B–3

L &L Oil Company, Inc., Unmeritorious Distributions

First purchasers	Share of settlement [1]
Coueuous & Sons	$13.49
Creppel Towing	1.57
James Dean Marine Division	32
Dowell Chemical	11.49
Getty Oil Company	3.36
Labor Services, Inc., 2332 Pailet Street, Harvey, Louisiana 70058	7.89
Lafitte Welding Works	1.45
Lane Towing	7.72
Local Tugs, Inc	3.11
John Moteno	2.43
New Orleans Prestressed Co., Inc.	9.52
Pertint Brothers	6.28
Talor Plumbing & Heating	59
Total Services, Inc., 2605 Concord Road, Belle Chasse, Louisiana 70037	13.08
Ward Rig #16	10.37

[1] Not including accrued interest.

Appendix B–4

L&L Oil Company, Inc.

Spot purchasers	Share of settlement [1]
Ayers Material, Inc	$186.74
C.F. Bean, Inc	54.57
Brown & Root, Belle Chasse, Louisiana 70037	304.38
Great Lakes Dredge & Dock Co., 2475 Canal Street, New Orleans, Louisiana 70119	29.38
Gulf South Dredging	52.59
Sala Dredging	20.25
Salathe Oil, 2226 Peters Road, Harvey, Louisiana 70058	43.72
John W. Smith Well Service	19.68
Jules Shebert's Marina Supply	41.65
Southern Pacific Railroad, 185 Spring Street, S.W., Atlanta, Georgia 30303	67.34

L&L Oil Company, Inc.—Continued

Spot purchasers	Share of settlement [1]
Wheelers Dredging	156.13

[1] Not including accrued interest.

Appendix C

Lowe Oil Company

First Purchasers	Share of settlement [1]
Don's Texaco, Clinton, Missouri 64735	[illegible]
Gibson Products, 3805 North Oak Trafficway, Kansas City, Missouri 64116	18,720.63
Jones Texaco, Warsaw, Missouri 65355	[illegible]

[1] Not including accrued interest.

Appendix D

Moyle Petroleum Company

First purchasers	Share of settlement [1]
Black Hills Propane, Post Office Box 2860 Rapid City, South Dakota 57709	$16.36
Budget Rent-A-Car, Post Office Box 2950, Rapid City, South Dakota 57709	84.84
Bargain Barn, Piedmont, South Dakota 57769	1,220.46
Custer 66, 844 Rushmore Road, Custer, South Dakota 57730	167.35
Dale's 66	547.18
Hill City Super G, Post Office Box 365, Hill City, South Dakota 57745	486.47
Horse Thief Campground & Resort, Post Office box 282, Hill City, South Dakota	73.17
I-90 Super G	[2]10.12
Jim's One Stop, 29 Main Street, Rapid City, South Dakota 57701	186.80
Kelly Company, South Boulevard, Wall, South Dakota 57790	[illegible]
Long's Resort, Hot Springs, South Dakota 57747	36.58

MOYLE PETROLEUM COMPANY—Continued

First purchasers	Share of settlement [1]
National Car Rental, Rapid City Regonal Airport, Rapid City, South Dakota 57701	180 58
Norton's 66, Hot Springs, South Dakota 57747	266 20
Pactola Pines, Keystone Route, Post Office Box 3125, Rapid City, South Dakota 57701	75 50
Philtown 66, Post Office Box 777, Sturgis, South Dakota 57785	3,743.11
Rapid City Rent-A-Car, Route 2, Post Office Box 631, Rapid City, South Dakota 57701	189 14
Red Arrow Safari Camping, Route 9 Post Office Box 657, Rapid City, South Dakota 57701	32 69
Restway Travel Park, Rural Route 1, Post Office Box 39, Hermosa, South Dakota 57744	80 17
Rockerville Trading Post, Rockerville, South Dakota 57701	132 32
Somer Sun Resort, Post Office Box 185, Hot Springs South Dakota 57747	93 40
Three Forks Inn, Keystone Route, Post Office Box 418, Rapid City, South Dakota 57701	83 28
Trout Haven Campground, Nemo Route, Deadwood, South Dakota 57732	19 46

[1] Not including accured interest.
[2] As noted in the body of the Proposed Decision, we do not intend to grant claims for less than $15.

Appendix E

LOWE OIL COMPANY

Customer Name	City and State
Walmart Discount Ctr	Bentonville, AR.
Miska Supply Company	Cedar Rapids, IA.
Farm & Home Supply	Centerville, IA.
Ross & Sons Repair	Columbus Junction, IA.
Strum Auto Supply	Davenport, IA.
Fleetway Stores	Iowa City, IA.
Hanoco Oil	Leon, IA.
Quantity Discount	Leon, IA.
McCarty Oil	Leon, IA.
Fleetway Stores	Muscatine, IA.
Dixon #1 Discount	Oskaloosa, IA.
Elliott Oil	Ottumwa, IA.
Perry Discount	Perry, IA.
Farm King Supply	Macomb, IL.
Goodyear Service Store	Quincy, IL.
Illinois Oil Products	Rock Island, IL.
A.E. West Petroleum	Kansas City, KS.
Homelite Company	Lenexa, KS.
Neil's Garage	Louisburg, KS.
Quality Discount	Merriam, KS.
C & C Inc	Olathe, KS.
Willard IGA	Osawatomie, KS.
Caylor Bros	Osawtomie, KS.
OK Bargain Store	Popla, KS.
Southerland Ben Franklin	Paola, KS.
G & T Service	Pleasanton, KS
Henkle Egg Company	Pleasonton, KS.
Laughlin Bros	Stanley, KS.
Bob's Kwik Shop	Kearney, NE.
May Oil Company	Cowetta, OK.
Hill's Truck Service	Adrian, MO.
Mac's Discount	Adrian, MO.
Gragg's Skelly	Appleton City, MO.
Fenimore Motors	Appleton, MO.
Warner Oil	Archio, MO.
Taylor's DX Service	Barnett MO.
Riggert Tire Company	Belton, MO.
Compton Auto Parts	Belton, MO
K.L. Brown Implement	Belton, MO.
Western Auto Store	Belton, MO.
Everetts DX Service	Belton, MO
O.K. Tire Company	Blue Springs, MO.
Four Trees Skelly	Boonville, MO.
Windmill Shell Service	Boonville, MO.
Mike's Sinclair	Boonville, MO.
Hengon's Fina	Boonville, MO
Simmons & Sons Garage	Boonville, MO
Lindsey Sinclair Service	Brunswick, MO.
Bucklin Farm Supply	Bucklin, MO
Carl's Skelly Service	Butler, MO
Billingsley DX	Butler, MO
Matco Discount Center #109	Butler, MO

LOWE OIL COMPANY—Continued

Customer Name	City and State
Jensen Farm Store	Butler, MO
Don Apco	Butler, MO
Oklahoma Tire & Supply	Butler, MO.
Bitner-Stark Pontiac	Butler, MO.
Bill's Champlin	Butler, MO.
Harry Cherry Service	Butler, MO.
Peabody Coal	Calhoun, MO.
Putnam Chevrolet	California, MO.
Norris MFA Service	Camdenton, MO
Palace Standard	Camdenton, MO
Camden Oil Company	Camdenton, MO
Greenview Garage	Camdenton, MO
Kennston Hardware	Camdenton, MO.
Quality Discount	Cameron, MO
Ayers Oil Company	Canton, MO
Auto Tire & Parts Company	Cape Girardeau, MO.
Carroll's Vicker	Carrollton, MO.
Matco Discount	Carrollton, MO
Rays Apco	Cedar City, MO.
North Star Service	Cedar City, MO.
Oliver Oil Company	Centerview, MO.
Airways Vickers	Centerview, MO.
Bob Station Service	Chillicothe, MO
Rupp Oil Company	Chillicothe, MO.
LeRoy's Apco	Climax Springs, MO.
Wilkerson Garage	Climax Springs, MO.
Bragg's & Tillman	Clinton, MO.
James Brown	Clinton, MO.
Bill's Apco	Clinton, MO
Hinken Apco	Clinton, MO
Clinton Chrysler Plymouth	Clinton, MO
Jim's Saw Shop	Clinton, MO.
Ray Odom	Clinton, MO
Ron's Auto Parts	Clinton, MO
Jay's Service Center	Clinton, MO.
Keck Oil Company	Clinton, MO
Stewart Nattinger	Clinton, MO.
Paul's Derby	Cole Camp, MO.
Bob's MFA	Cole Camp, MO.
W&K Chevrolet	Cole Camp, MO.
Cleo's Package Store	Cole Camp, MO.
Marvins 66 Service	Cole Camp, MO
Weinberg's Conoco	Cole Camp, MO.
Veals Skelly Service	Cole Camp, MO
Rogers Garage	Cole Camp, MO
Arnold's Auto Repair	Cole Camp, MO.
Bud's Place	Cole Camp, MO.
Help Apco Service	Columbia, MO.
Coleman's Apco	Columbia, MO.
Skaggs Drug Company	Columbia, MO.
MFA Oil Company	Columbia, MO.
Beary, Conner & Hawkins Distributors.	Columbia, MO.
Creighton Oil Company	Creighton, MO.
Hart's Sinclair	Edwards, MO.
Harbison Apco	Eldon, MO.
Miller's Auto Supply	Eldon, MO.
Ivey Oil	Eldon, MO.
Bob's Service	Eldon, MO.
Ernie Jones Motor Company	Eldon, MO.
Allison Oil Company	Eldorado Springs, MO.
Interstate Apco	Emma, MO
Opies Discount	Eugene, MO.
Bill's Mobil Service	Eugene, MO.
Doerhoff's Garage	Eugene, MO.
Excelsior Springs Apco	Excelsior Springs, MO.
Collier Store	Foster, MO.
Phil Fina	Enstoe, MO.
Pardue Apco	Fulton, MO
Zook DX	Garden City, MO
Mel's Apco	Garden City, MO.
Yoder Oil Company	Garden City, MO.
Ament's #3	Garden City, MO.
Gilliam Trucking	Gilliam, MO.
Granby Auto Supply	Granby, MO.
Hawks Standard service	Hamilton, MO.
L & L Champlin Service	Hamilton, MO.
Hannibal Farm Supply	Hannibal, MO.
Bo's Oil Company	Harrisonville, MO
Bill's Skelly	Harrisonville, MO.
Bridges Chevrolet	Harrisonville, MO.
Wingert Oil	Harrisonville, MO.
McHenry Pontiac	Harrisonville, MO.
Harvey Buick	Harrisonville, MO.
Ament's #1	Harrisonville, MO
Ament's #2	Harrisonville, MO.
Don's Truck Stop	Harrisonville, MO.
Harold Cherry	Harrisonville, MO.
Tractor Parts & Supply	Harrisonville, MO.
Frank & Ida's Coop	Hennetta, MO.
Higginsville Auto Supply	Higginsville, MO
Opfer & Deke	Higginsville, MO.

LOWE OIL COMPANY—Continued

Customer Name	City and State
R & S Bargain	Higginsville, MO.
MFA Service	Higginsville, MO.
Brown & Eissler Implement	Holden, MO.
Earl's Garage	Holden, MO.
Wee Discount	Holden, MO
Lawler Oil Company	Holden, MO.
S & H Vickers	Holder, MO
B & H Service	Hustonia, MO
McGees Oil	Hume, MO.
Independence Auto Supply	Independence, MO.
Mid States Oil	Jefferson City, MO.
Schanzmeyer Ford	Jefferson City, MO
Racher's 66	Jefferson City, MO.
Gerbes Super Market #1	Jefferson City, MO.
Apache Flat	Jefferson City, MO.
House of Bargains	Jefferson City, MO
Charles North Star	Jefferson City, MO.
Normans Auto Supply	Jefferson City, MO.
Pike Oil Company	Jefferson City, MO.
Jefferson Street Apco	Jefferson City, MO.
Stan's Market	Kansas City, MO.
King Gas & Oil Company	Kansas City, MO
Ament's #5	Kansas City, MO
A & M Auto Parts	Kansas City, MO.
Safeway Stores	Kansas City, MO.
McWilliams Liquidators	Kansas City, MO.
Main Wholesale (Bargain City)	Kansas City, MO.
Skaggs Drug	Kansas City, MO.
Harry's Factory Outlet	Kansas City, MO.
Skaggs Drug #168	Kansas City, MO.
Coast to Coast Stores	Kansas City, MO.
Keytesville Itco	Keytesville, MO.
Ferguson Implement	Kingsville, MO.
Farm & Home Supply	Kirksville, MO.
Hilltop Fina Service	Knob Noster, MO.
Porters Service	Knob Noster, MO.
Smiley's Mobil	Knob Noster, MO.
King Oil (Mini Mart)	Lamonte, MO.
Faulconer's Garage	Lamonte, MO
Matco Discount Center	Lees Summit, MO.
Tire City Discount	Lees Summit, MO.
Glens Apco	Lees Summit, MO.
G&W Sales	Lees Summit, MO.
Junction Service	Leeton, MO.
Dicks Standard	Lexington, MO.
Matco Discount Center	Lexington, MO.
Mattingly Bros	Lexington, MO.
Chuck's Standard	Lexington, MO.
Pat's Quick Stop	Lexington, MO.
Davis Oil Company (MFA)	Lincolin, MO.
Palo Store	Lincoln, MO.
Hurley's Skelly Service	Livonia, MO.
Smith's Auto Parts	Louisiana, MO
Troost Auto Parts	Louisiana, MO
Save Way Oil	Lowry City, MO.
Oakley Johnson	Lucerne, MO.
Curt's Deeprock Service	Macon, MO.
Bragg's & Cupp Chevrolet	Marceline, MO
Dillon DX	Marshall, Mo
Earl Kays Motor	Marshall, MO
Owen Coop	Mayview, MO.
Franklin Garage	Mayview, MO.
Sechrest Service	Medford, MO.
Farm & Home Supply	Memphis, MO.
Sherrell's Fina	Meta, MO.
Oasis Sales	Mobery, MO.
Rotert Bros. Service	Montrose, MO
Robert Bros. Service	Montrose, MO
Lynn Meredith	Montrose, MO.
Skagg's Auto Supply	Neosho, MO
Wysong Motors Inc	Nevada, MO
Zaylor Auto Supply	Osceola, MO.
Naus DX	Otterville, MO.
Gerbes Super Market	Pleasant Hill, MO
Perry Service	Pleasant Hill, MO.
D & S Apco	Pleasant Hill, MO.
Central Coop Service	Pleasant Hill, MO
Bob's Apco	Pleasant Hill, MO.
Hammons DX	Pleasant Hill, MO.
Meyer's Service	Polo, MO.
Sell's Standard	Prairie Home, MO.
Raymore Service Center	Raymore, MO
Skaggs Drug #183	Raytown, MO.
Sam's Bargain City	Raytown, MO.
Western Auto Store	Rich Hill, MO.
C.R. Morgan Oil	Rich Hill, MO.
Red Star Oil Company	Rich Hill, MO.
Steuke Oil Company	Rich Hill, MO.
L.W. McElroy	Rich Hill, MO
Carmichael Vickers	Richmond, MO.
J & 7 Service	Roach, MO.
Jakes Skelly	Rockville, MO.

LOWE OIL COMPANY—Continued

Customer Name	City and State
North Shore Shopping Center	Rocky Mount, MO
Campbell's Garage	Russellville, MO
Ed's Garage	Russellville, MO
Skaggs Drug	Sedalia, MO.
Consumers Market	Sedalia, MO
DLC Petroleum	Sedalia, MO
W T. Grant Store	Sedalia, MO
Broadway Apco	Sedalia, MO
Chamerlin Champlin	Sedalia, MO
Kenney Dobson	Sedalia, MO.
Midwest Auto Stores	Sedalia, MO
B & B Transmission	Sedalia, MO
Sunrise DX	Sedalia, MO
Routzong & Malmo	Sedalia, MO
Kast MFA	Sedalia, MO
Seneca Auto Supply	Seneca, MO
Dennis Oil	Springfied, MO
Keltner Interprises	Springfield, MO
Missoun White Trucks	Springfield, MO
Blocks Super Discount	St. Joseph, MO
Viebrocks Auto Repair	Stover, MO
M & M Oil Company	Stover, MO
Davis EZ Wash	Stover, MO
Sousley's DX	Stover, MO
Tim's Skelly	Stover, MO
Lakeland Sinclair	Sunrise Beach, MO
Powell Service	Sunrise Beach, MO
Lakeland Discount	Sunrise Beach, MO
J & B Service	Sweet Springs, MO
Frazier Ford	Sweet Springs, MO
Green's Skelly	Tipton, MO
Wolf's Repair Service	Tipton, MO
Irvin Oil Company	Trenton, MO
Martin's Town & Country	Trenton, MO
Barreth Oil	Union, MO
B & R Bargain Spot	Unionville, MO
Unch Oil Company	Unch, MO
Vogt Skelly	Unch, MO
E.O. Graham	Unch, MO
Kelsay Elevator	Unch, MO
5 & 52 Apco	Versailles, MO
Kenny's Apco	Versailles, MO
Orbit Car Wash	Versailles, MO
Gabnel Skelly	Versailles, MO
Clark's Apco	Versailles, MO
West Vue Service	Versailles, MO.
Gerbes Supermarket	Versailles, MO.
Clark's Retreading	Versailles, MO
Salzman's Fina	Versailles, MO
Yarnell's DX	Versailles, MO.
Avey's Shell	Versailles, MO
Warrensburg Fina	Warrensbury, MO.
TG&Y Stores #475	Warrensbury, MO.
Owings Sinclair	Warrensbury, MO.
George Rusch Motors	Warrensbury, MO.
Denny Gulf Service	Warrensbury, MO.
B & B Motor Supply Inc.	Warrensbury, MO.
Warrensburg Deeprock	Warrensbury, MO.
Steven's Sinclair	Warrensbury, MO.
Hunt's MFA	Warrensbury, MO
Paul Shinn Oil Company	Warsaw, MO.
Jack's Apco	Warsaw, MO
Smith's Center	Warsaw, MO
Oklahoma Tire & Supply	Warsaw, MO
Webb City Auto Supply	Webb, City, MO
Western Farm & Home	West Plains, MO.
Ferguson Chevrolet	Windsor, MO
Suhr Standard	Windsor, MO.
Baskins Conoco	Windsor, MO.
Sim's Apco	Windsor, MO.
Ellis DX	Windsor, MO.

[FR Doc. 85–23308 Filed 9–27–85; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE–FRL–2904–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICR is available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, 202–382–2742 or FTS 382–2742.

SUPPLEMENTARY INFORMATION:

Office of Water

National Pollutant Discharge Elimination System (NPDES)

Title: Modification/Variance for Permit to Discharge Wastewater, and Associated Regulations (EPA ID #0029, 40 CFR Parts 122–125). (This submission requests renewal of existing requirements. No changes are being proposed.)

Abstract: NPDES permittees must notify EPA or the State agency of facility changes which may require adjustment of permit conditions. Permittees or other interested persons may also request adjustment by submitting technical data to the permit authority, which approves/denies the request according to established criteria.

Respondents: Individuals, businesses, and other organizations discharging wastewater.

Agency PRA Clearance Requests Completed by OMB

EPA #0010, Compliance Demonstration by Importers of Non-Conforming Motor Vehicles and Engines, was approved 8/23/85 (OMB #2060–0095; expires 7/31/88).

EPA #1221, Milk Cow and Population Survey, was approved 8/29/85 (OMB #2080–0017; expires 8/31/88).

EPA #1251, Information Requirements for Advanced Treatment Performance Evaluation, was approved 8/20/85 (OMB #2040–0099; expires 8/31/88).

Comments on all parts of this notice may be sent to:

Nanette Liepman (PM–223), U.S. Environmental Protection Agency, Office of Standards and Regulations, Regulation and Information Management Division, 401 M Street SW., Washington, D.C. 20460;

and

Rick Otis, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place NW., Washington, D.C. 20503.

Dated: September 24, 1985.

Daniel J. Fiorino,

Acting Director, Regulation and Information Division.

[FR Doc. 85–23247 Filed 9–27–85; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

Performance Review Board Membership

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the GSA Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Gregory Knott, Director, Executive Resources Division, Office of Personnel, General Services Administration, 18th anf F Streets, NW., Washington, DC 20405 (202) 566–1207.

SUPPLEMENTARY INFORMATION: Section 4313(c)(1) through (5) of Title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The boards shall review the performance rating of each senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The members of the Performance Review Board are:

1. Paul T. Weiss, Executive Assistant to the Administrator;

2. A. C. Arterbery, Associate Administrator for Operations;

3. Frank J. Carr, Assistant Administrator for Information Resources Management;

4. Donald C. J. Gray, Assistant Administrator for Federal Supply and Services;

5. Earl E. Jones, Acting Commissioner, Federal Property Resources Service;

6. Allie B. Latimer, General Counsel;

7. William F. Sullivan, Commissioner, Public Buildings Service.

Dated: September 20, 1985.
Terence C. Golden,
Administrator.
[FR Doc. 85-23272 Filed 9-27-85; 8:45 am]
BILLING CODE 4120-03-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPO-055-GNC]

Medicare Program; Criteria and Standards for Evaluating Intermediary and Carrier Performance During Fiscal Year 1986

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General Notice With Comment Period.

SUMMARY: This notice describes the criteria and standards to be used for evaluating the performance of fiscal intermediaries and carriers in the administration of the Medicare program for fiscal year 1986. The results of these evaluations are considered whenever we enter into, renew, or terminate an intermediary or carrier agreement or take other contract actions; assign or reassign providers of services to an intermediary; or designate regional or national intermediaries.

This notice is published in accordance with sections 1816(f) and 1842(b)(2) of the Social Security Act, as amended by section 2326 of the Deficit Reduction Act of 1984 (Pub. L. 98-369), which requires us to publish for public comment in the **Federal Register** those criteria and standards against which we evaluate intermediaries and carriers.

EFFECTIVE DATES: The criteria and standards are effective October 1, 1985. We will consider revising the criteria and standards based on public comments. To assure consideration, comments should be received by October 29, 1985.

ADDRESS: Address comments in writing to: Halth Care Financing Administration, Department of Health and Human Services, Attention: BPO-055-GNC, P.O. Box 26676, Baltimore, Maryland 21207

In commenting, please refer to file code BPO-55-GNC.

If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 200 independence Ave., SW., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, D.C. 20201, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890). Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. We will, however, accept the comments of interested parties, consider them, and publish the comments and our responses to them in a subsequent **Federal Register** if we modify the FY 1986 criteria and standards as announced.

FOR FURTHER INFORMATION CONTACT: Newton H. Dikoff, (301) 594-8191.

SUPPLEMENTARY INFORMATION:

A. Background

Under section 1816 of the Social Security Act (the Act), public or private organizations and agencies participate in the administration of Part A (Hospital Insurance) of the Medicare program under agreements with the Secretary of Health and Human Services. These agencies or organizations are known as fiscal intermediaries and they perform bill processing and benefit payment functions for the Medicare program. Most providers of services (such as hospitals, skilled nursing facilities (SNFs), and home health agencies (HHAs)) submit bills to these intermediaries, which determine whether the services are covered under Medicare and determine correct payment amounts. The intermediaries then make payments to the providers on behalf of the beneficiaries.

Under section 1842 of the Act, we are authorized to enter into contracts with carriers to fulfill various functions in the administration of Part B (Supplementary Medical Insurance) of the Medicare program. Beneficiaries, physicians and suppliers of services submit claims to these carriers. The carriers determine whether the services are covered under Medicare and the reimbursable amount (usually on the basis of reasonable charges) for the services or supplies and then make payment to the appropriate party.

Under section 1816(f) of the Act, we are required to develop standards, criteria, and procedures to evaluate an intermediary's performance of its functions under its agreement with us. Since 1980, we have evaluated intermediary performance through the Contractor Performance Evaluation Program (CPEP).

On June 23, 1980 was published regulations at 42 CFR 421.120 (45 FR 42174) to implement the requirement of section 1816(f) of the Act that we establish by regulations our criteria and standards for evaluating intermediary performance. We revised § 421.120 on February 18, 1983 (48 FR 7176) to provide for publication of **Federal Register** notices to announce standards and criteria applicable during each fiscal year. Since that time we have been publishing our standards and criteria for intermediaries in the **Federal Register**.

Section 1842(b)(2) of the Act allows us to evaluate the performance of Medicare carriers. Since 1981, we have evaluated carrier performance under CPEP using criteria and standards similar to those used for intermediaries.

As a result of section 2326(c) of the Deficit Reduction Act of 1984, we are required to publish in the **Federal Register** the criteria and standards used to evaluate both intermediaries and carriers in order to allow the public an opportunity to comment before implementing them. (See 49 FR 38516, September 28, 1984 for an explanation of the effect of Pub. L. 98-369 on prior regulatory requirements concerning publication of criteria and standards.) In view of this requirement, this notice announces the FY 1986 criteria and standards to be used to measure the effectiveness and efficiency of both intermediaries and carriers.

B. Fiscal Year 1986 Criteria and Standards—General

The FY 1986 CPEP retains the structural changes which were included in the notice which announced the FY 1985 criteria and standards (see 49 FR 38516). These include:

1. Inclusion of the statistical standards provided for by 42 CFR 421.122 under the applicable performance criteria, rather than presentation of the standards as a separate part of the notice;
2. Alignment of the performance areas to parallel the organization of intermediary and carrier budgets;
3. Use of a two-tiered scoring system (criteria and elements/statistical standards) instead of the three-tiered approach (performance areas, criteria, and elements) used prior to FY 1985; and
4. Establishment of an individual unit cost standard for each contractor.

Although we have made no additional major structural changes in CPEP for FY 1986, we have made two organizational changes which resulted in a reduced number of performance criteria from FY 1985. At the request of the contractor community, for both intermediaries and

carriers, we have removed the elements measuring the timeliness and accuracy of various reports from the criterion on contract management and placed them in the criteria to which they functionally relate. Intermediaries and carriers advised us that CPEP would be more useful to them for purposes of self-evaluation if the evaluation of these reports was organized in a manner similar to the organization of a contractor's operations. Because the remaining contract management elements were too few to support a separate criterion they have been merged into the fiscal management criterion to create a single criterion on fiscal and contract management. In addition, the Part A criterion evaluating provider services has been combined with the beneficiary services criterion to form a new beneficiary and provider services criterion. We believe that the similarity of services provided by intermediaries to beneficiaries and providers, which concern primarily bill-processing inquiries, obviates the need for two separate criteria in these areas. As these services are already evaluated in a single criterion for carriers, this brings the criteria for Part A contractors and those for Part B into closer alignment. These changes reduce the number of criteria for intermediaries from nine for FY 1985 to seven for FY 1986 and for carriers from seven to six.

Action Based on Performance Evaluations

We may, as in previous years, initiate administrative actions as a result of the evaluation of intermediary and carrier performance based on these performance standards and elements. Under Sections 1816 and 1842 of the Social Security Act, we consider the results of the evaluation in our determinations on:

1. Entering into, renewing, or terminating agreements with contractors;

2. Decisions concerning other contract actions for intermediaries and carriers (such as deletion of an automatic renewal clause). These are made on a case-by-case basis and depend primarily on the nature and degree of performance. More specifically, they depend on:

a. Relative overall performance compared to other contractors;

b. Number of standards and elements in which superior, average, or deficient performance occurs;

c. Extent of each failure;

d. Relative significance of the elements and standards for which superior or deficient performance occurs within the overall CPEP.

In addition, we consider the results of intermediary evaluation in determinations we make concerning assignment or reassignment of providers and designation of regional or national intermediaries for classes of providers.

We make individual contract action decisions after considering these factors in terms of their relative significance and impact on the efficient administration of the Medicare Program.

Replacement of Contractors Through Competitive Bidding

Section 2326(a) of the Deficit Reduction Act of 1984 allows HCFA to use competitive bidding to replace a contractor whose performance over a period of time has been in the lowest 20th percentile as measured by these performance criteria and standards. In FY 1985 and 1986, section 2326(a) authorizes HCFA to enter into two intermediary agreements and two carrier contracts based on competitive bidding, without regard to provider nomination rights, in order to replace low ranking intermediaries and carriers. Although this provision was not invoked in FY 1985, we anticipate invoking it in FY 1986.

C. Scoring System

For both intermediaries and carriers, each performance criterion is comprised of a number of review elements and, in certain criteria, statistical standards. Each element and standard is scored on a scale of 0–10 and has a method of evaluation that is used to calculate a rating based on a contractor's performance in that element or standard.

A contractor's performance is evaluated against each applicable element and standard. In general, if a contractor exactly meets the requirements for an element or standard, it achieves a rating of 7, to which we refer as the threshold score. Based on the performance level established for each element and standard, a rating below the threshold (i.e., 6 or lower) constitutes a deficiency requiring correction or improvement.

Each standard and element is assigned a weight of 1, 3, or 5 according to its relative significance within the evaluation program, with critical elements and standards receiving a weight of 5. The final score for each element and standard is determined by multiplying the rating by the weight. For each performance criterion, the sum of the final scores achieved for all standards and elements in the criterion is compared to the total points available to the contractor for the criterion. If a contractor does not perform a particular function or the element or standard measuring a particular function is not revised for some other reason, the total points available to the contractor in that criterion will be reduced appropriately. A contractor must achieve 70 percent of the available points for a performance criterion as well as equal or exceed the threshold score for each of the designated critical standards and elements in order to pass the criterion.

Certain standards and elements have been designated as "critical", with a weight of 5. A critical standard or element is one which addresses a contractor function of such significance to the program that deficient performance cannot be tolerated. Therefore, a rating below the threshold (i.e., 6 or less) constitutes a failure not only of that standard or element, but of the criterion in which it is included and of the CPEP. In FY 1986, there are 19 critical elements and one critical standard for intermediaries and 11 critical elements and three critical standards for carriers. Critical standards and elements are annotated with an asterisk in the lists of standards and elements.

Failure to meet the individual unit cost standard (in the absence of adjustment to the standard pre-appoved by HCFA) will result in failure of CPEP. The mean of the individual contractor unit cost standards will be the standard for all contractors. Contractors with actual FY 1986 unit costs over this mean will receive a score less than the total score possible for the element under CPEP.

D. Criteria and Standards for Intermediaries

We will use seven criteria to evaluate the overall quality of an intermediary's performance during FY 1986. They are: (1) Bill processing; (2) beneficiary and provider services; (3) productivity investments; (4) payment safeguards—bill processing; (5) payment safeguards—provider reimbursement; (6) payment safeguards—medical review; and (7) fiscal and contract management. The seven criteria contain a total of 80 elements and six standards. There are seven elements for bill processing, six for beneficiary and provider services, two for productivity investments, 10 for payment safeguards—bill processing, 27 for payment safeguards—provider reimbursement, eight for payment safeguards—medical review, and 20 for fiscal and contract management. There are also six standards for bill processing.

1. Bill Processing Criterion

An intermediary must properly control and process bills from providers, transmit accurate bill information to HCFA, and achieve an acceptable unit cost. The intermediary is required to meet the following elements:

- Control bills from date of receipt (Element 1 Weight=3.0).
- Hospital inpatient bills must pass HCFA utilization edits (Element 2 Weight=1.0).
- Outpatient bills must pass HCFA utilization edits (Element 3 Weight=1.0).
- SNF bills must pass HCFA utilization edits (Element 4 Weight=1.0).
- Make payment for dialysis to End-Stage Renal Disease (ESRD) providers based on a determined composite rate or the approved exception rate and assure that duplicate payments do not occur (Element 5 Weight=3.0).
- Submit accurate Intermediary Benefit Payment Reports (Element 6 Weight=3.0).
- Submit Intermediary Benefit Payment Reports timely (Element 7 Weight=1.0).

The intermediary must also meet the following standards:

- Process hosptial inpatient bills timely (Standard 1 Weight=3.0).
- Process outpatient bills timely (Standard 2 Weight=3.0).
- Process SNF bills timely (Standard 3 Weight=3.0).
- Process HHA bills timely (Standard 4 Weight=3.0).
- Control the number of days work on hand to an acceptable level (Standard 5 Weight=3.0).
- Process bills at an acceptable unit cost (Standard 6 Weight=5.0) *.

2. Beneficiary and Provider Services Criterion

An intermediary must ensure that, in Medicare matters, beneficiaries and providers are treated according to law, regulations, and general instructions covering such areas as responding to inquiries, providing reconsiderations of claims, and furnishing appropriate notices of decisions. We will use the elements below to evaluate the beneficiary services for FY 1986. The intermediary is required to:

- Respond accurately to beneficiary and provider inquiries (Element 1 Weight=3.0).
- Respond to beneficiary and provider inquiries timely (Element 2 Weight=1.0).
- Prepare accurate reconsideration determinations (Element 3 Weight=3.0).
- Provide appropriate notices of reconsideration decisions and furnish copies to appropriate parties (Element 4 Weight=1.0).
- Maintain proper level of service for providers' incoming telephone calls (Element 5 Weight=3.0).
- Respond accurately to providers' telephone inquiries (Element 6 Weight=3.0).

3. Productivity Investments Criterion

An intermediary must take programmatic, administrative, and systems initiatives designed to improve the cost effectiveness and/or efficiency of Medicare claims operations, reduce burden on the public, and improve beneficiary understanding of the program. We will use the elements below to evaluate this criterion in FY 1986. The intermediary is required to:

- Meet targeted volume of electronic media claims (Element 1 Weight=5.0) *.
- Implement systems enhancements effectively (Element 2 Weight=3.0)

4. Payment Safeguards—Bill Processing Criterion

An intermediary must administer the Medicare program in a manner which achieves maximum savings and cost avoidance to the Medicare trust funds. We will use the following elements to evaluate this criterion in FY 1986.

The intermediary is required to:

- Properly process waiver of liability for non-PPS provider billings and accurately determine presumptive status (Element 1 Weight=3.0).
- Achieve targeted Medicare secondary payer goals (Eelement 2 Weight=5.0) *.
- Identify and dispose of all fraud and abuse cases properly (Element 3 Weight=3.0).
- Properly apply blended payment rate under PPS (Element 4 Weight=5.0) *.
- Assure that providers submit bills timely in order to meet requirements to receive periodic interim payments per HCFA 15–1, section 2405.1B (Element 5 Weight=3.0).
- Properly process bills in accordance with beneficiary status regarding HMO enrollment (Element 6 Weight=3.0).
- Assure that Part A denial data are transmitted timely to the carrier (Element 7 Weight=3.0).
- Provide the UNIBILL to Peer Review Organizations (PROs) within agreed upon timeframes and assure complete hospital discharge data (Element 8 Weight=5.0) *.
- Provide consistent error-free UNIBILL data to PROs (Element 9 Weight=5.0) *.
- Process adjustment records timely and return the adjusted record to the PRO (Element 10 Weight=5.0) *.

5. Payment Safeguards—Provider Reimbursement Criterion

An intermediary must administer the program in a manner that achieves maximum savings and cost avoidance for the Medicare trust funds. We will use the elements below to evaluate the criterion in FY 1986. The intermediary is required to:

- Establish interim payments for hospitals to approximate Medicare reimbursable costs (Element 1 Weight=5.0) *.
- Establish interim payments for SNFs to approximate Medicare reimbursable costs (Element 2 Weight=3.0).
- Establish interim payments for HHAs to approximate Medicare reimbursable costs (Element 3 Weight=3.0).
- Properly compute, review, and adjust interim rates under PPS (Element 4 Weight=5.0)*.
- Review Interim Rate Change Reports (HCFA 91s) and take appropriate action in accordance with general instructions (Element 5 Weight=1.0).
- Take appropriate action when providers fail to file cost reports by the due date (Element 6 Weight=3.0).
- Confine the incidence of hospital overpayments to acceptable levels (Element 7 Weight=5.0)*.
- Confine the incidence of SNF overpayments to acceptable levels (Element 8 Weight=5.0)*.
- Confine the incidence of HHA overpayments to acceptable levels (Element 9 Weight=5.0)*.
- Properly calculate and assess interest penalties (Element 10 Weight=3.0).
- Recover overpayments to providers (Element 11 Weight=5.0)*.
- Properly finalize PPS hospital cost reports (Element 12 Weight=5.0)*.
- Properly finalize SNF cost reports (Element 13 Weight=3.0).
- Properly perform audits and target amount computations required by section 1886 of the Social Security Act (Element 14 Weight=5.0)*.
- Properly finalize HHA cost reports (Element 15 Weight=3.0).
- Administer a cost-effective provider audit program (Element 16 Weight=5.0)*.
- Identify and dispose of fraud and abuse cases involving audited cost reports properly (Element 17 Weight=3.0).
- Submit accurate cost report data for the Hospital Cost Report Information System (HCRIS) (Element 18 Weight=3.0).

- Submit HCRIS reports timely (Element 19 Weight=3.0).
- Submit accurate provider overpayment data (Element 20 Weight=3.0).
- Submit provider overpayment data timely (Element 21 Weight=1.0).
- Submit accurate ESRD cost reports and worksheets (Element 22 Weight=1.0).
- Submit ESRD cost reports and worksheets timely (Element 23 Weight=1.0).
- Settle hospital cost reports timely (Element 24 Weight=3.0).
- Settle SNF cost reports timely (Element 25 Weight=3.0).
- Settle HHA cost reports timely (Element 26 Weight=3.0).
- Ensure that no payments are made to excluded, terminated, or suspended providers or physicians (Element 27 Weight=3.0).

6. Payment Safeguards—Medical Review Criterion

An intermediary must perform necessary medical review activities as required by HCFA instructions in a timely, accurate, and cost-effective manner. We will use the elements below to evaluate the criterion in FY 1986. The intermediary is required to:

- Subject bills to the appropriate level of medical review (Element 1 Weight=5.0)*.
- Process bills to ensure that correct medical review determinations are made (Element 2 Weight=5.0)*.
- Properly rank HHAs for coverage compliance reviews (Element 3 Weight=3.0).
- Review HHAs ranked in the top 10 percent within one year of the ranking (Element 4 Weight=3.0).
- Accurately conduct HHA coverage compliance reviews (Element 5 Weight=3.0).
- Administer a cost-effective medical review/utilization review (MR/UR) program (Element 6 Weight=5.0)*.
- Submit accurate quarterly reports of benefit savings (Element 7 Weight=3.0).
- Submit timely reports of benefit savings (Element 8 Weight=1.0).

7. Fiscal and Contract Management Criterion

An intermediary must take measures to protect the Medicare program and the public interest. It must manage Federal funds for both benefit payments and cost of administration in accordance with its agreement with the Secretary, the Federal Acquisition Regulations, and HCFA instructions. The intermediary is required to:

- Ensure that allocations are consistent (provide reasonable assurance that comparable transactions are treated alike) and chargeable to a particular cost objective in accordance with relative benefits received or other equitabler relationship (Element 1 Weight=3.0).
- Control actual operations expenditures to the latest approved budget and have the ability to identify potential expenditures in excess of the approved budget in advance of the incurrence of such expenditures (Element 2 Weight=3.0).
- Control actual MR/UR expenditures to the latest approved budget and have the ability to identify potential expenditures in excess of the approved budget in advance of the incurrence of such expenditures (Element 3 Weight=3.0).
- Control actual provider audit expenditures to the latest approved budget and have the ability to identify potential expenditures in excess of the approved budget in advance of the incurrance of such expenditures (Element 4 Weight=3.0).
- Control actual productivity investments expenditures to the latest approved budget and have the ability to identify potential expenditures in excess of the approved budget in advance of the incurrence of such expenditures (Element 5 Weight=3.0).
- Control administrative funds drawn to the approved budget distribution and in line with actual expenditures (Element 6 Weight=3.0).
- Submit an accurate budget request (Element 7 Weight=3.0).
- Submit the budget request timely (Element 8 Weight=1.0).
- Submit accurate plan of Expenditure Reports and Interim Expenditure Reports (Element 9 Weight=3.0).
- Submit Plan of Expenditure Reports and Interim Expenditure Reports timely (Element 10 Weight=3.0).
- Submit accurate Variance Reports (Element 11 Weight=3.0).
- Submit Variance Reports timely (Element 12 Weight=3.0).
- Submit accurate Time Account Adjustment Schedules (Element 13 Weight=1.0).
- Submit Time Account Adjustment Schedules timely (Element 14 Weight=1.0).
- Submit an accurate Final Administrative Cost Proposal (FACP) (Element 15 Weight=3.0).
- Submit the FACP timely (Element 16 Weight=3.0).
- Submit leases and other subcontracts (including those for EDP services) to HCFA for prior approval or give notice in accordance with the Medicare agreement and HCFA instructions (Element 17 Weight=3.0).
- Achieve Small and Disadvantaged Business goals (Element 18 Weight=1.0).
- Accurately and timely implement program instructions and manual transmittals issued by HCFA (Element 19 Weight=3.0).
- Implement Priority 1 critical tasks timely and accurately (Element 20 Weight=5.0).

E. Criteria and Standards for Carriers

We will use six criteria to evaluate the overall quality of carrier performance during FY 1986. They are: (1) Claims processing; (2) beneficiary services; (3) productivity investments; (4) payment safeguards—claims processing; (5) payment safeguards—medical review; and (6) fiscal and contract management. The six criteria contain a total of 70 elements and six standards. There are eight elements for claims processing, 14 for beneficiary services, four for productivity investments, 15 for payment safeguards—claims processing, 10 for payment safeguards—medical review, and 19 for fiscal and contract management. In addition, there are four standards for claims processing and two for payment safeguards—claim processing.

1. Claims Processing Criterion

A carrier must process Part B Medicare claims to allowance or disallownace in accordance with general instructions. A carrier must also accurately determine the amount of program payments allowed for covered services. For FY 1986 we will use the following 8 elements to assess carriers' claims processing performance. The carrier is required to:

- Control claims from date of receipt (Element 1 Weight=3.0).
- Establish customary charge screens in accordance with HCFA instructions (Element 2 Weight=3.0).
- Establish locality prevailing charges in accordance with HCFA requirements (Element 3 Weight=3.0).
- Update new reasonable charge screens timely (Element 4 Weight=3.0).
- Properly compute the ESRD physician monthly capitation rate and assure that duplicate payments are not made under this program (Element 5 Weight=3.0).
- Properly integrate the ESRD beneficiary selection from the HCFA-382 annual listing and monthly update into the claims processing system (Element 6 Weight=1.0).

• Submit initial Part B Medicare (BMAD) files timely (Element 7 Weight=3.0).
• Resubmit returned BMAD files timely (Element 8 Weight=3.0).

The carrier must also meet the following standards:

• Process assigned claims timely (Standard 1 Weight=3.0).
• Process nonassigned claims timely (Standard 2 Weight=3.0).
• Control the number of days work on hand to an acceptable level (Standard 3 Weight=3.0).
• Process claims at an acceptable unit cost (Standard 4 Weight=5.0)*.

2. Beneficiary Services Criterion

A carrier must ensure that Medicare beneficiaries are treated according to law, regulations, and general instructions covering areas such as responding to inquiries, issuing notices of determinations, and providing impartial reviews. We will use 14 elements to evaluate carrier performance in serving beneficiaries. The carrier must:

• Respond timely to beneficiary inquiries (Element 1 Weight=1.0).
• Respond accurately to beneficiary inquiries (Element 2 Weight=5.0).
• Provide readable responses to beneficiary inquiries (Element 3 Weight=3.0).
• Maintain a proper level of service for incoming telephone calls (Element 4 Weight=3.0).
• Respond accurately to all telephone inquiries (Element 5 Weight=3.0).
• Respond timely to all telephone inquiries (Element 6 Weight=1.0).
• Respond accurately to physician and supplier inquiries (Element 7 Weight=3.0).
• Respond timely to physician and supplier inquiries (Element 8 Weight=1.0).
• Properly generate explanations of Medicare benefits (EOMBs) and denial notices (Element 9 Weight=3.0).
• Ensure that special messages developed by the carrier for the EOMB were approved by the HCFA regional officer (Element 10 Weight=1.0).
• Prepare the Medicare Participating Physician/Suppliers Directory timely (Element 11 Weight=3.0).
• Complete reviews accurately (Element 12 Weight=5.0)*.
• Complete reviews timely (Element 13 Weight=1.0).
• Furnish readable notices of review determinations to beneficiaries (Element 14 Weight=3.0).

3. Productivity Investments Criterion

A carrier must take programmatic, administrative, and systems initiatives designed to improve the cost effectiveness and/or efficiency of Medicare claims operations, reduce the burdens on the public, and improve beneficiary understanding of the program. We will use four elements to assess performance of this activity. The carrier must:

• Meet targeted volume of electronic media claims (Element 1 Weight=5.0)*.
• Implement the HCFA Common Procedure Coding System annual update timely (Element 2 Weight=5.0)*.
• Notify the HCFA regional office promptly of all local code assignments (Element 3 Weight=3.0).
• Implement systems enhancements effectively (Element 4 Weight=3.0).

4. Payment Safeguards—Claims Processing Criterion

A carrier must administer the Medicare program in a manner which achieves maximum savings and cost avoidance to the Medicare trust funds. We will use 15 elements and two standards to assess performance in this area. The carrier is required to meet the following elements:

• Ajudicate claims for non-physician medical services accurately (Element 1 Weight=3.0).
• Conduct postpayment reviews to identify and develop claims for nonphysician services furnished to hospital inpatients (Element 2 Weight=3.0).
• Correctly determine reimbursement of laboratory services (Element 3 Weight=3.0).
• Follow HCFA instructions regarding provider-based physician reimbursement (Element 4 Weight=3.0).
• Follow HCFA instructions regarding teaching physician reimbursement (Element 5 Weight=3.0).
• Achieve targeted Medicare secondary payer goals (Element 6 Weight=5.0)*.
• Identify and dispose of all fraud and abuse cases properly (Element 7 Weight=3.0).
• Determine liability and properly dispose of beneficiary overpayment cases (Element 8 Weight=3.0).
• Properly calculate and assess interest penalties (Element 9 Weight =3.0).
• Ensure that no payments are made to excluded, terminated, or suspended providers, physicians, or suppliers (Element 10 Weight=3.0).
• Submit accurate physician/supplier overpayment data quarterly (Element 11 Weight=3.0).
• Submit physician/supplier overpayment data timely (Element 12 Weight=1.0).
• Correctly determine reimbursement of durable medical equipment (Element 13 Weight=3.0).
• Properly process claims in accordance with beneficiary status regarding HMO enrollment (Element 14 Weight=3.0).
• Furnish fee schedules for clinical diagnostic laboratory services to the appropriate Medicare intermediary in a timely manner (Element 15 Weight =3.0).

The carrier must also meet the following standards:

• Maintain an acceptable overpayment deductible error rate (Standard 1 Weight=5.0)*.
• Maintain an acceptable underpayment deductible error rate (Standard 2 Weight=5.0)*.

5. Payment Safeguards—Medical Review Criterion

A carrier must perform necessary medical review activities in accordance with HCFA instructions accurately, timely, and in a cost-effective manner. We will use ten elements to assess performance in this area. The carrier is required to:

• Submit accurate quarterly medical review reports (Element 1 Weight =3.0).
• Submit timely quarterly medical review reports (Element 2 Weight =1.0).
• Submit an accurate annual medical review report on postpayment activities (Element 3 Weight=3.0).
• Submit a timely annual medical review report on postpayment activities (Element 4 Weight=1.0).
• Make accurate medical review determinations (Element 5 Weight =5.0)*.
• Administer a cost-effective MR/UR program (Element 6 Weight=5.0)*.
• Conduct an effective postpayment program (Element 7 Weight=3.0).
• Implement mandated prepayment medical review screens with parameters (Element 8 Weight=5.0)*.
• Implement HCFA protocols for medical review (Element 9 Weight =5.0)*.
• Review physician services for Part A denials referred to Part B for review (Element 10 Weight=5.0)*.

6. Fiscal and Contract Management Criterion

A carrier must take measures to protect the Medicare program and the public interest. It must manage Federal funds for both benefit payments and the cost of administration in accordance with its agreement with the Secretary, the Federal Acquisition Regulations, and HCFA instructions. We will use 19 elements to measure performance of

carriers' fiscal and contract management of the Medicare program. The carrier is required to:

- Ensure that cost allocations are consistent (provide reasonable assurance that comparable transactions are treated alike) and chargeable to a particular cost objective in accordance with the relative benefits received or other equitable relationship (Element 1 Weight=3.0).
- Control actual operations expenditures to the latest approved budget and have the ability to identify potential expenditures in excess of the approved budget in advance of the incurrence of such expenditures (Element 2 Weight=3.0).
- Control actual MR/UR expenditures to the latest approved budget and have the ability to identify potential expenditures in excess of the approved budget in advance of the incurrence of such expenditures (Element 3 Weight =3.0).
- Control actual productivity investments expenditures to the latest approved budget and have the ability to identify potential expenditures in excess of the approved budget in advance of the incurrence of such expenditures (Element 4 Weight=3.0).
- Control administrative funds drawn to the approved budget distribution and in line with actual expenditures (Element 5 Weight=3.0).
- Submit an accurate budget request (Element 6 Weight=3.0).
- Submit the budget request timely (Element 7 Weight=1.0).
- Submit accurate Plan of Expenditure Reports and Interim Expenditure Reports (Element 8 Weight=3.0).
- Submit plan of Expenditure Reports and Interim Expenditure Reports timely (Element 9 Weight=3.0).
- Submit accurate Variance Reports (Element 10 Weight=3.0).
- Submit Variance Reports timely (Element 11 Weight=3.0).
- Submit accurate Time Account Adjustment Schedules (Element 12 Weight=1.0).
- Submit Time Account Adjustment Schedules timely (Element 13 Weight=1.0).
- Submit an accurate Final Administrative Cost Proposal (FACP) (Element 14 Weight=3.0).
- Submit the FACP timely (Element 15 Weight=3.0).
- Submit leases and other subcontracts (including those for EDP services) to HCFA for prior approval or give notice in accordance with the Medicare agreement and HCFA instructions (Element 16 Weight=3.0).
- Achieve Small and Disadvantaged Business goals (Element 17 Weight=1.0).
- Accurately and timely implement program instructions and manual transmittals issued by HCFA (Element 18 Weight=3.0).
- Implement Priority 1 critical tasks timely and accurately (Element 19 Weight=5.0)*.

F. Regulatory Impact Analysis

1. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any major rule. A major rule is defined as a rulemaking document, including a notice such as this one, that is likely to have an annual economic impact of $100 million or more, cause a major increase in costs or prices, or have a significant adverse effect on competition, employment, investment, productivity, or innovation.

We do not expect this notice to meet any of these criteria. Its primary direct effect is on our operations and the operations of our contractors. We expect the incremental costs of administering these criteria and standards to be more than offset by resulting improvements in efficiency and effectiveness. We estimate that our costs will increase only minimally. Further, we expect the effects on both competition and productivity to be favorable, not adverse, and the effects, if any, on employment, investment, and innovation to be negligible.

For these reasons, we have determined that this notice is not a major rule. Therefore, a regulatory impact analysis is not required.

2. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (5 U.S.C. 601 to 612), requires us to prepare and publish a regulatory flexibility analysis for any rulemaking document unless the Secretary certifies, under setion 605(b) of the Act, that the requirements do not have a significant impact on a substantial number of small entities.

Under the RFA, a small entity is defined as a small business, an independently owned and operated nonprofit enterprise that is not dominant in its field, or an agency or governmental entity of a jurisdiction with a population of less than 50,000. We consider all providers and suppliers to be small entities. We do not consider intermediaries and carriers to be small entities since they are our agents. Rather, we consider the providers, physicians and suppliers with which they deal on our behalf to be the entities for which we assess impacts subject to the RFA.

The direct effect of this notice is on our contractors. Since they are not small entities, even though we expect this notice to have an effect on contractor operations, an analysis of that impact is not required. However, it is clear that many standards and elements, such as those governing bill processing, beneficiary services, and provider services, will have indirect effects on a substantial number of providers and suppliers. Therefore, in order to verify that a regulatory flexibility analysis is not required, we assessed whether the indirect impact on those small entities will be significant.

Generally, the operations to which the standards and elements of the intermediary and carrier performance criteria refer are required by law, other regulations, contract, or other program instructions. These criteria provide an evaluation process and do not in themselves require the performance of the operations they evaluate. The most important indirect effect on providers and suppliers is to ensure that they are paid timely and accurately. We do not expect these criteria and standards to have any indirect adverse effects on them. Therefore, we have determined that the evaluation process in itself will not have a significant impact on providers and suppliers, and the Secretary certifies that this notice will not have a significant economic impact on a substantial number of small entities. An initial flexibility analysis is not required.

3. Paperwork Reduction Act

This notice contains no information collection requirements subject to EOMB approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

(Sec. 1102. 1816 and 1871 of the Social Security Act (42 U.S.C. 1302, 1395hh))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance)

Dated: September 16, 1985.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 85-23255 Filed 9-25-85; 4:24 pm]

BILLING CODE 4120-01-M

[BPO-50-N]

Medicare and Medicaid Programs; Collection of Overdue Medicare Part B Premiums

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth our policy on collection of Medicare Part B premiums from States with "buy-in" agreements. It describes the assessment of interest on overdue premiums and the offset against Federal financial participation (FFP) if we do not receive payment by the specified date. The intent of this policy is to encourage timely payment of Part B premiums by States.

We are taking this action in accordance with authority under common law and the Federal Claims Collection Act of 1966, to reduce the large volume of overdue premiums.

EFFECTIVE DATE: This notice is effective November 29, 1985.

FOR FURTHER INFORMATION CONTACT: William Grant, (301) 594-7848.

SUPPLEMENTARY INFORMATION:

Background

Under section 1843 of the Social Security Act (the Act), States may enter into contractual agreements with the Secretary to enroll in Medicare Part B (Supplementary Medical Insurance) those Medicaid beneficiaries who are also eligible for Medicare. These agreements are commonly referred to as "buy-in" agreements. States which have entered into "buy-in" agreements with the Secretary agree to enroll individuals eligible for both programs in the Part B program, and to pay the Part B premium on their behalf. If a State fails to pay premiums due, it violates the terms of the contractual agreement.

The Secretary may terminate an agreement if the terms are violated. Termination of "buy-in" agreements, however, would disadvantage States since section 1930(b)(1) of the Act and regulations at 42 CFR 431.625(c)(2) specify that no Federal financial participation (FFP) is available in State Medicaid expenditures that could have been paid for under Medicare Part B, but were not because an individual was not enrolled in Part B. Recognizing this, we have not terminated any agreements in the past, but have permitted unpaid premium balances to accumulate.

As of October 1984, a total of $87 million in Part B premiums was overdue from States under "buy-in" agreements. We believe that the outstanding amount is excessive, and requires that we improve our debt management practices to reduce the amount of delinquent Part B premiums. These funds belong in the Supplementary Medical Insurance Trust Fund where they would generate interest for the program. The loss to the program is significant in that it represents not only the delinquent premiums, but also millions of dollars of interest on those premiums. The $87 million, however, when recovered, will be a one time increase in the Trust Fund for fiscal year (FY) 1985. This notice, therefore, announces the actions we will take to encourage States to pay Part B premiums more promptly under "buy-in" agreements.

Authority

The basis for claims collection standards and procedures for the Federal government is generally found in the Federal Claims Collection Act of 1966 (FCCA), now codified at 31 U.S.C. 3711, and regulations at 4 CFR Parts 101-105, which were issued jointly by the General Accounting Office and the Department of Justice. Departmental regulations implementing the FCCA are located in 45 CFR Part 30. HCFA regulations implementing FCCA include 42 CFR Part 401, Subpart F. Our regulations at 42 CFR 401.607 provide that we may recover amounts due from debtors, including interest where appropriate, by (a) direct collections in lump sums or installments, or (b) offsets against funds we owe the debtor. In addition, the Departmental debt collection procedures, published on September 17, 1980, at 45 FR 61792, section 4-70-60, provide for both the collection of interest and application of offset.

HCFA also has authority at common law to collect interest (*Young* v. *Godbe*, 82 U.S. 562 (1873)) and to apply offset (*United States* v. Munsey Trust Co., 332 U.S. 234 (1947)). This common law authority is independent of FCCA statutory authority contained in implementing regulations. See the preamble to the 1984 revisions to the 4 CFR joint regulations published at 49 FR 8889 (March 9, 1984) and Comptroller General Opinion No. B-212222, dated August 23, 1983.

Present Billing Procedures

Under the "buy-in" program, eligible individuals are identified each month on a magnetic tape provided by either States or the Social Security Administration (SSA). (SSA provides a magnetic tape for States which elect to have SSA determine eligibility for both Supplemental Security Income (SSI) and Medicaid benefits.) We bill each State for Part B premiums on or about the 10th of each month on form HCFA-1604 for all individuals on the State's "buy-in" account. Chapter 6 of the State Buy-In Manual describes this process. In the past, this form did not specify a date by which a State must pay the premiums. Our intent, however, has been that premiums are due when a bill is presented.

The large volume of delinquent premiums indicates to us that a formal due date is required. Therefore, form HCFA-1604 is being revised to specify that premiums are due on the first day of the month for which they apply, i.e., the month for which Part B coverage is being purchased.

Revised Billing Procedures

We are revising or procedures to provide that the first day of the month for which the Part B premium applies is the due date from which interest will accrue. We are also providing for a 25-day grace period for payment so that interest will be waived for payments received by the 25th day of the month for which they apply. This allows approximately 45 days from the billing date for receipt of payment.

Interest Assessment

To encourage States to pay Part B premiums on a timely basis, we will charge interest on premiums which remain unpaid at the end of the grace period. Interest will accrue from the first day of the month for which the Part B premium applies. For example, if the Part B premium payment is due October 1, interest will accrue beginning October 1 unless full payment for the premium is received by October 25. The applicable interest rate will be the Supplementary Medical Insurance (SMI) trust fund rate as computed for new investments in accordance with section 1841(c) of the Act, 42 U.S.C. 1395t(c). This rate approximates the actual loss to the SMI trust fund and is derived from the average yield on all marketable obligations to the U.S. Treasury as of the last day of the month. The interest will be calculated monthly, and applied in thirty-day increments, i.e., a thirty-day interest assessment will be incurred at the beginning of each new thirty-day period. Interest will be assessed on:

(a) The balance of the amount billed on the form HCFA-1604 remaining unpaid at the expiration of the grace period;

(b) Unpaid balances from prior periods; and

(c) Any delinquent premiums existing on the effective date of this notice.

Interest will be assessed on delinquent premiums until the balance is

paid by the State or offset as described below.

Application of Payments

Under the Government's generally applicable claims collection procedures, payments received are first applied to interest, then to the principal amounts of a debt in the order most advantageous to the Government. In this case, it is more advantageous to apply payments first to premiums for which a State is responsible but which are not subject to FFP, and then to those premiums for which Federal matching payment applies. (Section 1903(a)(1)(A) and (B) of the Act and regulations at 42 CFR 431.625 describe the nature and extent of Federal matching for Part B premiums under buy-in agreements.)

Payments received from States will be applied in the following order:

(1) To the outstanding balance of any interest due;

(2) To the most delinquent premiums that do not qualify for FFP (e.g., medically needy or medical assistance only cases in which a cash grant is not paid);

(3) To the most delinquent premiums that do qualify for FFP (e.g., categorically needy individuals receiving cash grants under one of the Federally supported welfare programs, as specified in section 1903(a)(1)(A); and those categorically needy individuals who are included in the State's Medicaid program because they are receiving a State supplementary payment meeting the requirements set forth in section 1903(a)(1)(B) of the Act).

We wish to make clear that, in accordance with the so-called "U.S. rule", when a State presents payment in the face amount of the bill after an interest charge has accrued, the balance remaining represents upaid premiums which will continue to accrue interest in thirty-day increments until paid or offset.

Offset Against FFP

We will offset immediately against monies due the State on its grant award for premiums which are overdue beyond the grace period, plus the accrued interest from the first day of the month the premiums apply to the date of offset. The offset of premiums and interest against monies due the State on its grant award is not a disallowance of FFP. Offset is simply an accounting adjustment after the amount of FFP is determined, which reduces the amount of money actually paid to a State.

Appeal Procedures

Should a State disagree with the amount of the Part B premium bill, the amount of interest assessed, or adjustments made to the State's account by way of offset, Chapter 6 of the State Buy-In Manual will specify the procedures that a State may follow to appeal. A State must provide evidence to us to substantiate its position, and we will evaluate the evidence presented. Credits for premiums or interest which we determine to be due a State will be reflected as adjustments in subsequent premium bills effective with the date the corrected amount should have been applied.

Effective Date

The procedures set forth in this notice will be applied to monthly premium billings dated on or after the effective date of this notice. Since monthly billings include all premium amounts outstanding as of the date of the bill, existing arrearages will be resolved during the first billing cycle beginning on or after the effective date. Thus, States will have until the end of the grace period contained in the first bill to which the new procedures apply to pay existing overdue premiums without incurring interest charges or having offset applied.

Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations (as defined in the order) that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria that are specified in that order. In addition, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires us to prepare and publish an initial regulatory flexibility analysis for regulations, as defined in that Act for which notice and comment are required, unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities.

Under the Regulatory Flexibility Act, States are not treated as small entities. Furthermore, we have determined that notice and public comment are not required for this notice, and that it is not a "rule" as defined in the RFA. For these reasons, a regulatory flexibility analysis is not required.

In addition, as noted above, as of October 1984 a total of about $87 million was overdue from States for Part B premiums. Currently, the total monthly liability for these premiums is about $41 million, so it is clear that the total overdue amount is less than three months' total billing. We expect that most States will be able to pay their delinquent premiums by the effective date of this notice without incurring either interest or an offset against FFP.

We expect that this notice will result in a significant increase in the Part B Trust Fund for FY 1985. This will be a one-time effect, since we do not expect States to continue to have substantial overdue amounts. Further, if the Part B Trust Fund were increased by $87 million for FY 1985, it would cost the Medicaid program about $40 million in FY 1985, since we routinely reimburse the States for part of the money they pay for Part B premiums. Again, this will be a one-time expense.

Since the total amount currently overdue is less than $100 million, and it is reasonable to expect this amount to be reduced by the effective date of this notice, it is obvious that interest and offsets will not reach an annual magnitude that would meet the criteria for identifying major rules. Therefore, we have determined that this notice is not a major rule and that a regulatory impact analysis is not required.

Authority: Sections 1102, 1840(e) and (h), 1841(c), 1843 and 1903(a)(1) of the Social Security Act as amended; 42 U.S.C. 1302, 1395s(e) and (h), 1395t(c), 1395v and 1396b(a)(1).

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance; Program No. 13.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 25, 1985.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 85–23257 Filed 9–27–85; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Idaho Falls District: Idaho Falls District Advisory Council; Meeting

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Meeting of the Idaho Falls District Advisory Council.

SUMMARY: The Idaho Falls District Advisory Council will meet Wednesday, November 6, 1985. Notice of this meeting is in accordance with Pub. L. 92–463. The meeting will begin at 9 a.m. at the Idaho Falls District Office, 940 Lincoln Road, Idaho Falls, Idaho. The meeting is open to the public and public comments on agenda items will be accepted from 10:45 to 11:00 a.m.

Agenda items for the meeting include:

1. District Highlights.
2. The Omnibus Range Bill.

3. The Hazardous Waste Program.
4. Riparian Habitat Management.
5. The Land Exchange Program.
6. BLM/Forest Coordination and Implementation of the secretarial initiative on the Public Lands Education Campaign.

The minutes of the meeting will be kept in the District Office and available for public inspection and reproduction during business hours (7:45 a.m. to 4:30 p.m.) within 30 days after the meeting.

FOR FURTHER INFORMATION CONTACT: O'dell A. Frandsen, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401; telephone (208) 529–1020.

Dated: September 20, 1985.

O'dell A. Frandsen,

District Manager.

[FR Doc. 85–23233 Filed 9–27–85; 8:45 am]

BILLING CODE 4310–GG–M

National Park Service

Information Collection Submitted for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comment and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, Washington, DC, 20503, telephone (202) 395–7340.

Title: Urban Park and Recreation Recovery Program—Project Performance Report.

Abstract: Project Performance Reports show progress on the physical completion percentage of each grant, financial expenditures expended to date and any other information necessary to grant completion.

Bureau Form Number: None.

Frequency: Quarterly.

Description of Respondents: State and Local Governments.

Annual Responses: 460.

Annual Burden Hours: 690.

Bureau Clearance Officer: Russell K. Olsen, (202) 523–5133.

Russell K. Olsen,

Information Collection Clearance Officer.

[FR Doc. 85–23273 Filed 9–27–85; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council; Public Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of a meeting of the Colorado River Basin Salinity Control Advisory Council on Monday, October 28, 1985, from 1–5 p.m. and Tuesday, October 29, 1985, starting at 8 a.m. at the Embassy Suites, Camelhead Hotel, 1515 North 44th Street, Phoenix, Arizona 85008.

Purpose of Meeting

Council members will be briefed on the status of salinity control activities and receive input for drafting the Council's annual report.

Proposed Agenda

The Department of the Interior, Department of Agriculture, and Environmental Protection Agency will each present a progress report and schedule of activities on salinity control in the Colorado River Basin. The Council will discuss Colorado River Basin Salinity Control activities and the content of their annual report.

Public Participation

The meeting of the Advisory Council is open to the public.

Any member of the public may file a written statement with the Council before, during, or after the meeting in person or by mail. To the extent that time permits, the Council chairman may allow public presentation of oral statements at the meeting.

All communications regarding this meeting, including requests for time to make statements, should be addressed to Mr. Al R. Jonez, Chief, Colorado River Water Quality Office, Bureau of Reclamation, D–1000, Engineering and Research Center, P.O. Box 25007, Denver, Colorado 80225.

Dated: September 19, 1985.

Clifford I. Barrett,

Acting Commissioner of Reclamation.

[FR Doc. 85–23229 Filed 9–27–85; 8:45 am]

BILLING CODE 4310–09–M

INTERSTATE COMMERCE COMMISSION

[V–OPI–420]

Motor Carriers; Decision-Notice; Trailways Lines, Inc., etc.

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349,* 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant to $10.00, in accordance with 49 CFR 1182.2(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate

authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: September 23, 1985.

By the Commission.

James H. Bayne,

Secretary.

MC–F–16480, filed August 26, 1985. Trailways Lines, Inc.—Merger—Trailways Bus System, Inc., Et Al. Representative: George W. Hanthorn, 1500 Jackson St., Room 415, Dallas, TX, 75201. Trailways Line, Inc. (Trailways Lines) (1500 Jackson St., Dallas, TX, 75201) (MC–109780), with which its parent The Trailways Corporation joins, seeks authority to merge the operating rights and/or properties of the following Trailways Lines' subsidiaries into that carrier for management, control, and operation: (1) Trailways Bus System, Inc. (System) (same address as Trailways Lines) (MC–107586), (2) Denver Colorado Springs Pueblo Motorway, Inc. (DCS) (1055 19th St., Denver, CO, 80202) (MC–28462), (3) Midwest Buslines, Inc. (Midwest) (same address as Trailways Lines) (MC–61616), (4) Trailways Arkansas, Inc. (Trailways Arkansas) (same address as Trailways Lines) (MC–50026), (5) Trailways Texas, Inc. (Trailways Texas) (same address as Trailways Lines) (MC–57298), (6) American Buslines, Inc. (American) (same address as Trailways Lines) (MC–2890), (7) Trailways Southern Lines, Inc. (Southern) (327 Gayoso St., Memphis, TN, 38103) (MC–29957), (8) Trailways Tennessee Lines, Inc. (Trailways Tennessee) (same address as Southern) (MC–55312), (9) Trailways Tamiami, Inc. (Tamiami) (200 Spring St. NW, Atlanta, GA, 30303) (MC–74761), (10) Trailways Southeastern Lines, Inc. (Southeastern) (same address as Tamiami) (MC–61599), (11) Virginia Stage Lines, Inc. (Stage) (1101 14th St. NW, Washington, DC, 20005) (MC–59238), (12) Safeway Trails, Inc. (Safeway) (1005 1st St. NE, Washington, DC, 20002) (MC–84728), (13) Trailways of New England, Inc. (TNE) (625 8th Ave., New York, NY, 10018) (MC–1940), (14) Elan Transportation, Inc. (Elan) (3001 NW 87th Ave., Miami, FL, 33172) (MC–168828), and (15) noncarrier Trailways Tours, Inc. (Tours) (same address as Trailways Lines).

Tours is a noncarrier which controls Elan. Elan holds no regular route authority but conducts charter and special operations as specified below. Otherwise, each carrier holds interstate and State issued intrastate authority to transport passengers and express in regular route service generally as set forth below. Transferee and all of transferors (except Trailways Arkansas, Tamiami, Stage, and Elan) also hold some intrastate regular route authority issued by the Commission. Each regular route carrier holds authority to transport passengers in charter and special operations generally coextensive with its interstate operations. In addition, transferee and many of transferors hold authority to conduct charter and special operations between points in the United States (except Hawaii) and to transport shipments weighing 100 pounds or less between points in the contiguous United States.

Trailways Lines conducts regular route operations in California, Arizona, New Mexico, Colorado, Kansas, Oklahoma, Texas, Missouri, Arkansas, and Louisiana. Its operations extend from Sacramento, CA, on the north to Los Angeles, CA, on the south, and from Los Angeles to Kansas City, MO, via Albuquerque, NM, and Oklahoma City, OK. Generally, its routes extend throughout Kansas and Texas. It also operates from Dallas to Shreveport, LA, and from Albuquerque to Las Cruces, NM. Its intrastate authority is contained in the following certificates: CA-Charter Permit #TCP–146 A, Decision No. 86517; CO–1891 & I; AR–#M–508; KS-Docket 7214 M-Route 6; LA–#569; MO–#147; NE–#B–959; NM–#45; OK–#21662; TX-Passenger #7, Common Carrier #3979, and Charter #976. It requires no intrastate authority to operate in Arizona.

System conducts operations in Texas, Colorado, Utah, and New Mexico. Its operations extend from Corpus Christi, TX, on the south to Houston, TX, on the east. It also operates from Dallas, via Amarillo, to Denver; generally throughout Colorado; from Denver to Salt Lake City, UT; and from Salt Lake City to Albuquerque. Its intrastate authority is contained in the following certificates: CO–#761 & I and #1635 & I; NM–#687; TX-Motor Bus #23, Common Carrier #3974, and Charter #23A; and UT–#1641.

DCS operates in Colorado, Wyoming, Montana, and South Dakota. Its routes extend generally between the Colorado/New Mexico State boundary line and Billings, MT, and extend to Rapid City, SD. Its intrastate authority is contained in the following certificates: WY–#240; NM–#2946; and CO–#4562 & I and #48 & I. Its Montana and South Dakota certificate numbers are unknown.

Midwest conducts operations in Texas, Louisiana, Arkansas, Missouri, and Tennessee. It operates from St. Louis, MO, to Little Rock, AR; from Little Rock to Natchez, MS; and from Little Rock, via Texarkana, TX, to Houston. Its intrastate authority is contained in the following certificates: AR–#442, Docket #M–5719; LA–#479; MO–#28; and TX-Motor Bus #222, Common Carrier #3989, and Charter #222–A. It holds no Tennessee intrastate authority.

Trailways Arkansas operates in Texas, Arkansas, and Tennessee. It operates over a regular route from Texarkana, TX, via Little Rock to Memphis. Its Arkansas authority is contained in certificate #B–253, Docket #M–5718. It holds no intrastate authority from Texas or Tennessee.

Trailways Texas conducts operations in Texas. It operates from Van Horn on the west, to Brownsville on the south; from Brownsville to Corpus Christi; and between San Antonio and Stephenville. Its Texas intrastate authority is contained in Motor Bus Cert. #68, Charter Cert. #1326, and Common Carrier Cert. #3977.

American conducts regular route operations in California, Nevada, Utah, Arizona, New Mexico, Colorado, Texas, Oklahoma, Nebraska, Iowa, Missouri, Illinois, Indiana, Ohio, Pennsylvania, New York, New Jersey, Maryland, and the District of Columbia. Generally, it operates from San Francisco and Los Angeles on the west to New York and the District of Columbia on the east. Its southern route extends from New York, via Pittsburgh, PA, St. Louis, Oklahoma City, Dallas, Tucson, AZ, and San Diego, CA, to Los Angeles. Its northern route extends from San Francisco via Salt Lake City, Denver, Omaha, NE, Chicago, IL, and Cleveland, OH, to Pittsburgh. Its intrastate authority is contained in the following certificates: CA–#TCP22A; IL–#56747 & 51209; IA–#C12P; MO–#261; NV–#A496; NE–#B–700 and #B–959; NJ–Route File 174604; NM–#489; OH–Permit #1524 & Cert. #s 11584–B, 11693–B, 11574–B, 11575–B, and 11458–R; OK–#MC–2455; PA–#00100510; TX–Motor Bus #1238–B, Common Carrier #3971, and Charter #2182–B; UT–#1643; and CO–#36 & I. It requires no intrastate authority to operate in Arizona. It conducts no intrastate operations in New York or the District of Columbia. Its intrastate

certificate numbers in Indiana and Utah are unknown.

Southern conducts operations in Texas, Louisiana, Mississippi, Alabama, Arkansas, Tennessee, Missouri, and Illinois. Its routes extend from St. Louis on the north to New Orleans, LA, on the south, via Memphis, and from Birmingham, AL, on the east to Shreveport and Houston on the west. Generally, its routes blanket the States of Mississippi and Louisiana. Its intrastate operating authority is contained in the following certificates: AL–#s 256 and 321; AR–#B–9; IL–#s 50322 and 58106; LA–#s 570 and 570A through 570J; MS–#2507; MO–#5630; TN–#591–0; and TX–Motor Bus #958, Common Carrier #3957, and Charter #s 932 and 1232.

Trailways Tennessee operates in Tennessee, Alabama, Kentucky, and Georgia. Its operations generally extend between Atlanta and Nashville, TN; between Louisville, KY, and Montgomery, AL; between Montgomery and Atlanta; and between Birmingham and Johnson City, TN. Its intrastate authority is generally contained in the following certificates: GA–#s 5853, 5832, 4025, 3012, 2963, 2704, 2560, 37, 1433, 1478, 2559, 1633, and 1619; KY–#1069; TN–#s 9A, 9B, 9F, 9K, 9L, 9N, 9O, 9P, 9Q, 9R, 9S, 9U, 9V, 9W, and 9X; and AL–#325.

Tamiami conducts operations in Florida and Georgia. Its routes generally blanket Florida and Georgia, extending as far north as Atlanta. Its Georgia intrastate authority is contained in certificates #s 1, 13, 61, 243, 538, 584, 1009, 1010, 1012, 1079, 1092, 1179, 1230, 1249, 1305, 1397, 1439, 1458, 1530, 1551, 1555, 1575, 1787, 2011, 2020, 2080, 2116, 2803, 2951, 2969, 3028, 3186, 3293, 4336, and 4745. Its Florida intrastate operations are deregulated.

Southeastern conducts regular route operations generally throughout North Carolina and South Carolina. It serves as far west as Chattanooga, TN, and as far south as Augusta and Savannah, GA. Its intrastate authority is contained in the following certificates: NC–#s B–69, B–84, and B–17; and SC–120 class A certificates of PC&N issued under Docket No. 80–76–T, Order No. 80–161. [Georgia not specified.]

Stage operates regular route service in Virginia, West Virginia, and the District of Columbia. It operates between the District of Columbia and Danville, VA, via Charlottesville and Lynchburg. It also conducts operations between the District of Columbia and Richmond, VA, and between Richmond and Welch, WVA, via Charlottesville and Roanoke, VA. Its West Virginia intrastate authority is contained in certificate #5392. Stage holds extensive operating authority from the Virginia Public Service Commission which authorizes transferor to render regular route, package express, and charter service generally throughout Virginia. It holds no District of Columbia authority.

Safeway operates over regular routes in New York, New Jersey, Pennsylvania, Delaware, Maryland, and the District of Columbia. Generally, it operates from New York, via Philadelphia, PA, Wilmington, DE, and Baltimore, MD, to the District of Columbia. It also operates between Philadelphia and Atlantic City, NJ. Its intrastate authority is contained in the following certificates: NJ–PUC Route File #244–209; PA–#A00035361 Folder 8; and Maryland (number not known). It holds no intrastate authority from New York, Delaware, or the District of Columbia.

TNE conducts operations in Massachusetts, Connecticut, and New York. Generally, it conducts operations over regular routes from Boston, MA, via Worcester, MA, to Springfield, MA, and Hartford, CT, then to New Haven, CT, Bridgeport, CT, and New York. Its Massachusetts intrastate authority is contained in certificates #s 984, 337, 645, 1366, 1682, 1740, 1774, 1994, 2018, 3269, 3290, 3338, 3370, and 3480. It holds Connecticut authority in Bus Application No. 4853. TNE holds no New York intrastate authority.

Elan is authorized to conduct charter and special operations between points in Florida, on the one hand, and, on the other, points in the United States.

Transferee has been authorized previously to control transferors in MC–F–10160, MC–F–16101, MC–F–12340, and MC–F–15327.

[FR Doc. 85–23235 Filed 9–27–85; 8:45 am]

BILLING CODE 7035–01–M

Release of Waybill Data for Use by Greenbriar Intermodal

The Commission has received a request from Greenbriar Intermodal (Greenbrier) to obtain from the Commission's 1984 Waybill Sample TOFC/COFC traffic flows between BEA Economic Areas (Department of Commerce's Bureau of Economic Analyses Economic Areas). Greenbrier need this data to quantify market and market shifts from the Twin-Stack™ Car which Greenbriar is marketing with another company. The traffic involved is largely F.A.K.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Certain requirements designed to protect the data's confidentiality are agreed to by the requesting party and (2) public notice is provided so affected parties have an opportunity to object. (48 FR 40328, September 6, 1983).

Accordingly, if any parties object to Greenbriar's request, they should file their objections (an original and 2 copies) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Commission's Director of Office of Transportation Analysis will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

FOR FURTHER INFORMATION CONTACT: Elaine K. Kaiser (202) 275–0907.

James H. Bayne,

Secretary.

[FR Doc. 85–23234 Filed 9–27–85; 8:45 am]

BILLING CODE 7035–01–M

[No. 39930]

Water Carriers; Proposed Tariff Filing Exemption and Pacific Hawaiian Line, Inc.; Petition for Exemption From Tariff Filing Requirements

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Pacific Hawaiian Line, Inc., a water contract carrier, seeks exemption from the tariff filing requirements of 49 U.S.C. 10702, 10761, and 10762. The Commission has issued a decision proposing to grant an exemption for existing and future contracts.

The petition for exemption from the tariff filing requirements may be inspected at the Public Docket Room (Room 1227) of the Commission in Washington, DC.

Any interested party may file a comment in this proceeding.

DATES: Comments are due on October 15, 1985. If no timely filed adverse comments are received, the sought relief will automatically become effective at the close of the comment period. If opposition comments are filed, the comments will be considered and, within 20 days of the close of the comment period, the Commission will issue a final decision granting or denying the exemption.

ADDRESS: Send an original and 15 copies of comments to: Docket No. 39930, Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:
Barbara G. Saddler, (202) 275–6978
Howell I. Sporn, (202) 275–7691

SUPPLEMENTARY INFORMATION:
Additional information is contained in the Commission's decision. To purchase a copy of the decision, write to T.S. Infosystems, Inc., Room 2229, 12th & Constitution Ave., NW., Washington, DC 20423 or call 289–4357 in the DC metropolitan area or toll free (800) 424–5403.

Decided: September 17, 1985.

By the Commission, Division 2, Commissioners Andre, Simmons, and Strenio.

James H. Bayne,

Secretary.

[FR Doc. 85–23237 Filed 9–27–85; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-159X)]

Seaboard System Railroad, Inc.; Abandonment Exemption in Gainesville, Alachua County, FL

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its .349-mile line of railroad between Valuation Station 1276+55 and Valuation Station 1295+00 in Gainesville, Alachua County, FL.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic has been rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complaint within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.-Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective October 30, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by October 10, 1985, and petitions for reconsideration, including environmental energy, and public use concerns, must be filed by October 21, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 20, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–23236 Filed 9–27–85; 8:45 am]

BILLING CODE 7035–01–M

NATIONAL SCIENCE FOUNDATION

Program Solicitation; Materials for Elementary School Mathematics Instruction

This document is the first in a series of targeted program solicitations that NSF's Directorate for Science and Engineering Education will issue to elicit proposals directed toward specific high priority problems and opportunities facing mathematics, science and technology education in the Nation's schools. These solicitations are intended to complement, not to supplant, already existing program guidelines and announcements, which describe the broad range of interests of NSF's Divisions of Materials Development and Research (see NSF Publication #85–10) and of Teacher Enhancement and Informal Science Education (NSF #85–9).

Introduction

The Division of Materials Development and Research (DMDR) supports a wide range of projects designed to expand the knowledge base and to provide new and improved models and materials resources needed to increase the quality of, and continuously renew, the Nation's educational systems in mathematics, science and technology. This broad goal translates into four specific objectives that frame the Division's programs. These objectives are to:

- Expand the pool of knowledge about the factors critical to effective teaching and learning of mathematics, science and technology;
- Stimulate the development of, provide exemplary models for, and facilitate the use of new and improved instructional materials for students and teachers that incorporate the most recent advances in subject matter content, research in teaching and learning, and instructional technology;
- Stimulate thinking and experimentation about, and provide exemplary models and materials for, improved and innovative methods for the preparation of teachers of mathematics, science and technology; and
- Analyze the potential for, and facilitate the use of, state-of-the-art technologies in education.

The Division employs a combined approach in eliciting and selecting projects for support. First, the Division accepts "unsolicited" proposals submitted in response to program announcements describing its general purview and interests (e.g., NSF 85–10). Second, every year the Division will issue a set of program solicitations, each targeted to address a specific high priority problem or opportunity. These solicitations often will be for one-time NSF support, designed to leverage or energize activity with the expectation that the activity will be self-perpetuating after NSF support is no longer provided.

This is the first in a projected series of program solicitations that will be issued by the Division of Materials Development and Research. The target of this solicitation is the creation of improved materials and model programs for elementary school mathematics instruction, taking cognizance of the wide availability of calculators and computers. The Division expects to issue two additional solicitations in the very near future, one targeted on improved programs and materials for science instruction at the elementary level, and one targeted on improved programs for the preparation of science and/or mathematics teachers.

Recent advances in technology have lowered the cost of a hand calculator to the point where it is less expensive than a textbook. Moreover, microcomputers are now sufficiently inexpensive that they are available in many schools

throughout the Nation. It is reasonable to assume that, at least within a few years, a calculator will be available for every student and a computer will be available in every classroom. Yet the impact of calculators and computers on elementary and middle school mathematics curricula is still minimal.

The availability of this technology has consequences both for the kinds of mathematics that children *should* learn and for the kinds of mathematics that children *can* learn. On the one hand, much of the time that has been devoted in the past to mastering the mechanics of arithmetic algorithms is no longer necessary. On the other hand, calculators and computers can be used to enhance significantly children's understanding of mathematical concepts and applications. Although there has been some thought and effort devoted to this, there still is little if any, available in the way of instructional materials and elementary mathematics curricula that reflect these issues.[1]

The Division of Materials Development and Research is inviting proposals for porjects that will explore the consequences of the availability of calculators and computers for the elementary mathematics (K–6) curriculum. The goal is to develop model mathematics curricula and prototypical instructional materials under the assumption that every student has a calculator and has access to a computer. It is expected that these curricula will, for example, place substantially more emphasis on mental arithmetic, estimation, and approximation, and substantially less on paper and pencil calculations. Exploration of the implications of using calculators and/or computers for teaching applications of elementary mathematics is another appropriate emphasis for these projects.

Projects likely will be conducted in phases. In the first phase, these projects will thoroughly review existing elementary mathematics textbpooks and curricula, determine which topics in existing curricula are no longer appropriate or are treated in too much detail, and which topics are not treated but should be. This process should take into account the recommendations of professional societies and commissions [2-6] and efforts that have already been made in other countries as well as in this Nation. [7-9] The projects will then develop plans, based on the findings of this first phase, for a complete K–6 mathematics curriculum, for a subset of that curriculum (e.g., for grades K–3 or 4–6), or for a strand within the curriculum. Finally, each project will develop prototypical instructional materials that will model the major recommended changes.

Projects supported under this solicitation may focus on calculators, on computers, or on both calculators and computers. Projects that include a computer focus should not devote significant effort to the development of computer software, but rather should take in to account existing software and software likely to be available in the near future.

Each project should include plans for the evaluation of the materials developed and for the widespread dissemination of both the prototypic materials and the project's recommendations. The project should also formulate recommendations for teacher training necessary for the implementation of the recommended curriculum.

The Division of Materials Development and Research expects to make three to six awards in this area, with a duration of from three to four years each, totaling up to $5 million.

Important Considerations

1. The project team must include professionals with the requisite knowledge and experience. Thus each proposal should document the education and experience of project staff in the following areas: mathematics, mathematics education, computing, school policies and procedures, and classroom teaching at the relevant levels.

2. Projects should be designed in such a manner as to take cognizance of the results of recent research on the teaching and learning of science and mathematics.

3. Projects should include an analysis of the teacher training issues associated with the implementation of its recommendations and developed materials and should formulate recommendations and develop supplementary teacher materials as appropriate.

4. Projects should include an analysis of student evaluation issues associated with the implementation of its recommendations and should develop prototypical evaluation instruments/mechanisms appropriate for the developed materials.

5. Proposals should include plans for the field testing and evaluation of the developed materials, and provisions for revision of the materials based on the results of the field tests. Funds may be requested to support teacher workshops associated with the testing of the materials.

6. Proposals should include plans for dissemination of the developed materials and recommendations. These plans should include strategies for informing all interested constituencies (such as mathematics educators, state and local school agencies, elementary school principals and teachers) about the recommendations and materials, and plans for making the materials available to those who wish to study them or to use them in their classes. The involvement of publishers or other relevant organizations early in the process of materials development is strongly encouraged.

Preparation and Submission of Proposals

For guidance on the specifics of proposal preparation, proposers should consult the two publications, *Program Announcement, Division of Materials Development and Research* (NSF 85–10) and *Grants for Scientific and Engineering Research* (NSF 83–57). The first of these publications includes required forms that should accompany each proposal and a discussion of the criteria that are used in evaluating proposals. The second publication provides detailed information on proposal preparation and processing and on grant administration. This latter

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[1] *Needed Changes in Mathematics Curricula.* Z. Usiskin. In: *School Mathematics: Options for the 1990's.* Volume 2: Proceedings of the Conference, U.S. Department of Education, 1984.

[2] *An Agenda for Action: Recommendations for School Mathematics of the 1980's.* National Council of Teachers of Mathematics, 1980.

[3] *Educating Americans for the 21st Century.* National Science Board Commission on Precollege Education in Mathematics, Science and Technology, 1983.

[4] *The Impact of Computing Technology on School Mathematics,* National Council of Teachers of Mathematics, 1984.

[5] *The Mathematical Sciences Curriculum K–12: What is Still Fundamental and What is Not,* Report from the Conference Board of the Mathematical Sciences to the National Science Board Commission on Precollege Education in Mathematics, Science and Technology, 1982.

[6] *School Mathematics: Options for the 1990's* (Chairman's Report and Proceedings of the Conference). U.S. Department of Edcucation, 1984.

[7] *Mathematics Counts* (Reports of the Committee of Inquiry into the Teaching of Mathematics in Schools under the Chairmanship of Dr. W. H. Cockcroft), Her Majesty's Stationery Office, London, 1982.

[8] *Future Oriented Mathematics and Computer Literacy Development Project for Elementary Schools.* Project supported by NSF grant DPE 84–70128. Preliminary report available from Dr. Ruth I. Hoffman at the Department of Mathematics and Computer Science, University of Denver, Denver, CO 80208.

[9] *University of Chicago School Mathematics Project,* Judd Hall, 5835 S. Kimbark, Chicago, IL 60637.

document should be used with the following understandings:

• For "research" substitute "science education" or "science education project" as appropriate;

• The terms "new discoveries" or "fundamental advances" include development of the science and engineering infrastructure directed toward those goals.

Except as modified by the guidelines set forth herein and in NSF 85–10, standard NSF guidelines on proposal preparation (content, format, budget, other sources of support, etc.), proposal submission, evaluation, NSF awards (general information and highlights), declinations, and withdrawals contained in NSF 83–57 are applicable.

These publications can be obtained from the Forms and Publications Unit, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Who May Submit

Organizations with a scientific or educational mission are eligible to submit proposals. Among these are: colleges and universities; state and local education agencies; professional societies; science museums and zoological parks; research laboratories; private foundations; private industries; and other public and private organizations, whether for profit or non-profit. Proposers are strongly encouraged to involve participation from more than one of these areas.

The Foundation provides awards for research in the sciences and engineering. The awardee is wholly responsible for the conduct of such research and preparation of the results for publication. The Foundation, therefore, does not assume responsibility for such findings or their interpretation.

The Foundation welcomes proposals from all qualified scientists and science educators, and strongly encourages women and minorities to compete fully in the development programs described in this document. In accordance with Federal statutes and regulations and NSF policies, no person shall be excluded on grounds of race, color, age, gender, national origin, or physical handicap from participation under any program or activities receiving financial assistance from the National Science Foundation.

NSF has TDD (Telephonic Device for the Deaf) capability which enables individuals with hearing impairment to communicate with the Division of Personnel and Management for Information relating to NSF programs, employment, or general information. This number is (202) 357–7492.

When To Submit

All proposals responding to this program solicitation must be submitted no later than March 17, 1986. Project starting dates of September 1, 1986, or later may be requested.

What To Submit

By their nature, proposals appropriate for the solicitation target described in this announcement are likely to be one of a kind and rather complex. Therefore, contact with program staff before submitting formal proposals is strongly encouraged. Program staff can be reached at 202/357–7066.

Fifteen (15) complete copies of the proposal and three (3) additional copies of the Cover Sheet and Project Summary should be prepared and sent to: Data Support Services Section, National Science Foundation, Room 220, Washington, DC 20550.

Cover Page

In the upper left hand block labeled "For Consideration by NSF Organizational Unit," it is important to identify the Division and the solicitation target to which you are responding, i.e., "Division of Materials Development and Research; Materials for Elementary School Mathematics Instruction."

Inquiries

Questions not addressed in this publication or in the publications NSF 85–10 and NSF 83–57 may be directed to the NSF staff by writing to: Instructional Materials Development Program, Division of Materials Development and Research, Directorate for Science and Engineering Education, National Science Foundation, Washington, DC 20550.

(Catalog of Federal Domestic Assistance Number 47.067, Materials Development and Research)

Dated: September 24, 1985.

Raymond J. Hannapel,

ADD Materials Development & Research.

[FR Doc. 85–23285 Filed 9–27–85; 8:45 am]

BILLING CODE 7555-01-M

[Docket No. 50–320]

General Public Utilities Nuclear Corp. (Three Mile Island Nuclear Station, Unit 2); Correction to Amendment of Order

On August 8, 1985, the Director, Nuclear Reactor Regulation, issued an Amendment of Order to be effective September 23, 1985, modifying certain limiting conditions for operation and their corresponding bases in the Proposed Technical Specifications to more correctly reflect the systems or equipment that are necessary, based on the present status of TMI–2. The Director's action was supported by the staff's safety evaluation issued concurrently with the August 8, 1985 Amendment of Order. The changes to the Proposed Technical Specifications, which included the deletion of the closed cycle cooling water systems in Section 3.7.3, contain two errors of an editorial nature. Proposed Technical Specification page 3.7–1 correctly deleted the requirements of sections 3.7.3.1, 3.7.3.2, and 3.7.3.3, as addressed in the staff's safety evaluation. However, in the revised Proposed Technical Specifications the licensee failed to delete Sections 3.7.3.2 and 3.7.3.3 from page 3.7–2, although these sections had been correctly modified and added to page 3.7–1. On page B 3/4 7–1 of the Proposed Technical Specifications, the licensee neglected to list Section *3/4 7.3.3 Mini Decay Heat Removal System (MDHRS)*, which, although correctly deleted as addressed in the safety evaluation and authorized by the Amendment of Order, should nonetheless have been listed on that page.

Unrelated to the actions authorized by the Amendment of Order, the licensee has identified a typographical error contained on page B 3/4 7–1 of the Proposed Technical Specifications. In section *3/4 7.6 Flood Protection*, the value 301 ft. should be 302 ft. The correct value, 302 ft., remains unchanged, consistent with the current Proposed Technical Specifications.

Accordingly, the Amendment of Order dated August 8, 1985, is hereby corrected to incorporate the modifications described above.

Effective Date: September 23, 1985.

Dated at Bethesda, Maryland.

Issuance Date: September 20, 1985.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85–23316 Filed 9–27–85; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. A85–29; Order No. 635]

St. Charles, SC 29134 (J.H. Haynesworth, Petitioner); Order Accepting Appeal and Establishing Procedural Schedule

Issued: September 23, 1985.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

Docket Number: A85–29.
Name of Affected Post Office: St. Charles, South Carolina 29134.
Name(s) of Petitioner(s): J.H. Haynesworth.
Type of Determination: Closing.
Date of Filing of Appeal Papers: September 16, 1985.
Categories of Issues Apparently Raised:
1. Effect on the community [39 U.S.C. 404(b)(2)(A)].
2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one more of these issues.
In the interest of expedition, in light of the 120-day decision schelule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitoners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before October 1, 1985.
(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.
Charles L. Clapp,
Secretary.

APPENDIX

[Docket No. A85–29; St. Charles, South Carolina 29134]

September 16, 1985—Filing of Petition.
September 23, 1985—Notice and Order of Filing of Appeal.
October 11, 1985—Last day for filing petitions to intervene [*see* 39 CFR 3001.111(b)].
October 21, 1985—Petitioners' Participant Statement or Initital Brief [*see* 39 CFR 3001.115(a) and (b)].
November 11, 1985—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].
November 26, 1985—(1) Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(b)].
December 3, 1985—(2) Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].
January 14, 1985—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 85–23294 Filed 9–27–85; 8:45 am]
BILLING CODE 7715–01–M

[Docket No. A85–28; Order No. 634]

Ferndale, FL 32729 (Mr. & Mrs. C. L. Merritt, et al., Petitioners); Order Accepting Appeal and Establishing Procedural Schedule

Issued: September 23, 1985.

Before **Commissioners:** Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

Docket Number: A85–28.
Name of Affected Post Office: Ferndale, Florida 32729.
Name(s) of Petitioner(s): Mr. & Mrs. C. L. Merritte, *et al.*
Type of Determination: Consolidation.
Date of Filing of Appeal Papers: September 13, 1985.
Categories of Issues Apparently Raised:
1. Effect on the community [39 U.S.C. 404(b)(2)(A)].
2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
3. Economic Savings [39 U.S.C. 404(b)(2)(D)].
Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.
In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. If a brief or motion to dismiss or affirm, the Postal Service many incorporate by reference any such memorandum previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before September 30, 1985.
(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.
Charles L. Clapp,
Secretary.

APPENDIX

[Docket No. A85–28; Ferndale, Florida 32729]

September 13, 1985—Filing of Petition.
September 23, 1985—Notice and Order of Filing of Appeal.
October 8, 1985—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].
October 18, 1985—Petitioner's Participant Statent of Initial Brief [*see* 39 CFR 3001.115(a) and (b)].
November 7, 1985—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].
November 22, 1985—(1) Petitioner's Reply Brief [*see* 39 CFR 3001.115(d)].
November 29, 1985—(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument [*see* 39 CFR 3001.116].
January 13, 1986—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 85–23293 Filed 9–27–85; 8:45 am]
BILLING CODE 7715–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–22440; File No. SR–OCC–85–16]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change

The Options Clearing Corporation ("OCC") on September 6, 1985, submitted a proposed rule change to the Commission under Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") to adopt a new fee schedule for data transmission services. The Commission is publishing this notice to solicit public comment on the proposal.
OCC's proposal adopts the following fee schedule for data transmission services:

(A) Direct Data Service—CPU to CPU leased line transmission, $1,570/month.
(B) On-line leased line transmission, $785/month.
(C) Both A & B, $2,055/month.
(D) Direct Data Service—CPU to CPU dial-up from OCC to Clearing Member:
  20 minutes/day, $750/month ($550 plus $200 dial charge).
  40 minutes/day, $950/month ($550 plus $400 dial charge).
  60 minutes/day, $1,150/month ($550 plus $600 dial charge).
(E) Dial-up on-line:
  20 minutes/day, $400/month ($200 plus $200 dial charge).
  40 minutes/day, $600/month ($200

plus $400 dial charge).
60 minutes/day, $800/month ($200 plus $600 dial charge).
(F) Microfiche, $.03/frame.[1]

OCC states in its filing that this fee structure reflects directly attributable costs of providing data transmission services plus a portion of related overhead expenses. OCC further states that this fee schedule reflects cost savings achieved when multiple services are provided to the same street address. OCC believes that the proposal is consistent with Section 17A of the Act because it allocates reasonable fees in an equitable manner among OCC's Clearing Members.

OCC's proposal has become effective under Section (19)(b)(3)(A) of the Act. Nevertheless, at any time within 60 days of the date the proposal was filed, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Copies of all documents relating to the proposal, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. section 552, may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. and at OCC's principal office.

The Commission invites public comment on the proposal. Comments should refer to File No. SR–OCC–85–16. Please file six copies of comments with the Secretary of the Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, by October 21, 1985.

Dated: September 20, 1985.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–23253 Filed 9–27–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22441; File Nos. SR–OCC–85–17]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change

The Options Clearing Corporation ("OCC") on September 6, 1985, submitted a proposed rule change to the Commission under Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). OCC's proposal deletes an amendment made to OCC's Restated Participant Exchange Agreement ("RPEA") in a recent OCC rule change. The Commission is publishing this notice to solicit public comment on the proposal.

Section 16 of OCC's RPEA includes OCC's agreement to maintain an office in the principal city in which each Participant Exchange is located. In File No. SR–OCC–85–6, OCC added a provision to Section 16 designating New York as the principal city for the National Association of Securities Dealers, Inc. ("NASD").[1] That change was meant to reflect the fact that the NASD's operations are located principally in New York, rather than in Washington, D.C. where the NASD's corporate offices are located, and to reflect the NASD's intent to not require OCC to maintain an office in Washington, D.C.

The NASD has agreed to provide OCC with a written waiver of the section 16 requirement for an OCC office in Washington, D.C. Therefore, the previous amendment to OCC's RPEA is no longer needed and OCC proposes to delete it. Accordingly, OCC's proposal deletes from OCC's RPEA the designation of New York as the NASD's principal city. OCC states in its filing that the five Participating Exchanges to the RPEA have agreed to the proposal.

OCC believes that the proposal is consistent with the Act because it promotes the prompt and accurate clearance and settlement of options to be traded through the NASD. OCC's proposal has become effective under seciton 19(b)(3)(A) of the Act. At any time within 60 days the proposal was filed, however, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Copies of the proposal and all related documents, other than those that may be withheld under 5 U.S.C. section 552, are available to the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C., and at OCC's principal offices. Please refer to File No. SR–OCC–85–17 and file six copies of comments on the proposals with the Secretary of the Commission, 450 Fifth Street, NW., Washington, D.C. 20549, by October 21, 1985.

Dated: September 20, 1985.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–23254 Filed 9–27–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14732; File No. 812–6154]

Co-operative Bank Investment Fund; Application and Opportunity for Hearing

September 20, 1985.

Notice is hereby given that the Co-operative Bank Investment Fund ("Applicant"), 225 Franklin Street, Boston, Massachusetts 02110, filed an application on July 15, 1985, and an amendment thereto on September 12, 1985, for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Applicant from the provisions of sections 13(a), 15(a), 16 (a) and (b), 18(i), 22 (d) and (e), 24(d) and 32(a) (2) and (3), to the extent necessary to permit Applicant to establish one or more mutual investment funds for Massachusetts state chartered thrift banks. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below and to the Act for the text of all applicable provisions thereof.

According to the application, Applicant was organized as a corporation on January 7, 1985 pursuant to a special act of the Commmonwealth of Massachusetts, primarily to provide a mutual fund investment medium to Massachusetts co-operative banks and, to a lesser extent, Massachusetts savings banks. Applicant states that Massachusetts co-operative banks are state-chartered thrift banking institutions organized under Chapter 170 of the General Laws of Massachusetts. Only Massachusetts co-operative banks, Massachusetts savings banks (which are another form of Massachusetts-chartered thrift institutions,) and the Co-operative Banks Employees Retirement Association (a retirement association organized under Massachusetts law) are eligible to invest in Applicant. Applicant represents that such investors will be eligible to purchase from Applicant shares of beneficial interest, which shall not entitle the holders thereof to voting rights of any nature. Applicant contemplates that after the initial offering, it will continuously offer shares to all eligible banks and that each sale will not be limited as to size or dollar value.

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[1] While this per frame charge is a substantial increase from OCC's current $.01 per frame charge, OCC is eliminating the $.20 per fiche charge.

[1] *See* Securities Exchange Act Release No. 22067 (May 29, 1985), 50 FR 23568 (June 4, 1985).

The application indicates that the business of the Applicant will be conducted by a board of directors elected by Applicant's incorporators. The incorporators are the directors of the Co-operative Central Bank (the "Central Bank"), the statutory reserve bank and deposit insurer for Massachusetts co-operative banks. The Central Bank maintains a Reserve Fund and a Share Insurance Fund in connection with the foregoing functions. Applicant represents that the aggregate value of securities held in the portfolios of those funds, which are invested almost entirely in government securities, is approximately $200,000,000.

Applicant states that currently, all Massachusetts co-operative banks and savings banks which are not federally insured are making, or shortly will be making, application to the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation for insurance of their deposit liabilities. Applicant states that when all Massachusetts co-operative banks become federally insured, the Share Insurance Fund will be rendered redundant except as to deposit liablities not covered by federal insurance. Accordingly, the application represents that as much as $75,000,000 may be returned to such banks from that Fund (and a larger amount to Massachusetts savings banks from their parallel state deposit insurer). The application states that the Applicant will provide a ready vehicle for the reinvestment of those monies with the same management which has provided conservative, prudent growth for the Share Insurance Fund and the Reserve Fund.

Applicant states that its initial operations will be performed through an open-end investment fund whose objective will be maximum current income consistent with liquidity of assets and safety of principal. It intends to invest the assets of that fund solely in certificates of deposit, bonds and other direct obligations of the United States, obligations guaranteed by the United States, bonds and notes of the Commonwealth of Massachusetts or any political subdivision thereof, federal agency obligations which have unexpired terms of 5 years or less, debt instruments that would be deemed eligible for treatment as legal liquidity for co-operative or savings banks by the Massachusetts Commissioner of Banks, and high-quality money market instruments of short maturity. Applicant further states that it may establish in the future other distinct investment funds with investment objectives different from those which the Applicant intends to adopt for its initial fund and that any such funds will be structured by the Applicant to offer conservative investment vehicles suitable for investment by thrift banks.

Applicant states that it is authorized to invest its assets in certain real estate mortgages on properties situated within Massachusetts and insured by the Federal Housing Administration. It may also invest in a variety of other investments, including direct obligations of the United States, obligations guaranteed by the United States, obligations guaranteed by the Federal National Mortgage Association, bonds and other evidences of indebtedness of corporations, and shares of common or preferred stock. Applicant represents, however, that no more than five percent of its assets may be invested in the securities of any one issuer, except for direct obligations of the United States, obligations guaranteed by the Federal National Mortgage Association, and obligations issued under certain federal programs or by certain federal agencies and instrumentalities. Applicant also represents that co-operative banks and savings banks are significantly restricted in their legal authority to invest in equity funds established by the Applicant, and the Applicant's investment in equity securities will be limited accordingly.

Applicant intends to register as an investment company within the provisions of section 3(a) of the Act. However, Applicant seeks exemption from the provisions of sections 13(a), 15(a), 16 (a) and (b), 18(i) and 32(a) (2) and (3) of the Act because several aspects of Applicant's charter would not permit Applicant to operate in compliance with such provisions of the Act which provide certain voting rights for security holders of registered investment companies. Applicant states that it would be unable to meet the requirements of such Sections because the shares of beneficial interests to be issued by the Applicant will carry no voting rights and all such rights will be exercised by Applicant's incorporators. Applicant asserts that such arrangement will alleviate the danger that a few large banks would obtain complete control of the Applicant through large investments in Applicant and consequent domination of Applicant's Board of Directors.

Applicant also seeks exemption from section 24(d) of the Act to enable Applicant to utilize the exemption provided in section 3(a)(11) of the Securities Act of 1933. Applicant asserts that it believes that the considerations which led to the denial of the section 3(a)(11) exemption to investment companies generally are not present in the case of Applicant. Applicant further asserts that if an exemption is granted from section 24(d) compliance with section 22(d) is impracticable and exemption therefrom warranted because Applicant will not be required to deliver prospectuses or to employ an underwriter in connection with the distribution of its securities. Finally, Applicant asserts that an exemption from the provisions of section 22(e) of the Act, is necessary for the protection of the mutual interest of the investor banks.

The Applicant, purusant to its enabling legislation is defined to be a "bank" under Masschusetts law. The Masschusetts' Commissioner of Banks (the "Commissioner") power under Massachusetts law with regard to organizations coming under the definition of "bank" is extensive. The Commissioner is required to make an examination at least once in every two calendar years of the books, securities, cash, assets and liabilities, and to ascertain the condition, of all "banks" under his supervision. He may also, whenever he considers it expedient, cause to be made any examinations or audits as he deems advisable. Applicant represents that the officers and employees of the central Bank are intended to function as officers and employees of the Applicant, making the substantial expertise of the Central Banks' management available to Applicant's investors.

The application states that, as a result of the aggregation of the investments of participating investors the Applicant should be able to provide its investors (a) substantial savings with regard to commissions and other expenses (b) economies of scale with regard to research, recordkeeping and the like and (c) greater protfolio diversification and resulting reduction of risk than would be the case for an individual bank investor. Applicant further asserts that in view of the extent of the Commissioner's supervisory powers, the form of the Applicant's organization, the nature of the prospective investors and the limits of their investments in Applicant, the identity of the incorporators, and the provisions in Applicant's charter which control its investment policies, Applicant's exemption from the provisions of section 13(a), 15(a), 16(a) and (b), 18(i), 22(d) and (e), 24(d) and 32(a)(2) and (3) of the Act is justified.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 15, 1985, at 5:30 p.m., do so by submitting a written request setting

forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-23312 Filed 9-27-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14731; File No. 811-4245]

Indiana Community Credit Corp.; Application for Order Declaring That Applicant has Ceased to be an Investment Company

September 20, 1985.

Notice is hereby given that Indiana Community Credit Corporation ("Applicant"), One North Capitol Avenue, Suite 700, Indianapolis, Indiana 46204, registered under the Investment Company Act of 1940 (the "Act") as an open-end, diversified, management investment company, filed an application on August 9, 1985, and an amendment thereto on September 9, 1985, requesting an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicant states that it filed a notification of registration on Form N-8A on March 6, 1985, but has not filed a registration statement under either the Act or the Securities Act of 1933. Applicant represents that it was exempted from all provisions of the Act by a prior order of the Commission dated June 18, 1985 (Investment Company Act Release No. 14585), and has filed this application based on the prior order. Applicant represents that it has no investment adviser and no principal underwriter.

Applicant states that it intends to operate as a "credit corporation" under the proposed Indiana Business Development Credit Corporation Law. Applicant further states that in this capacity its purpose will be to assist in the development and rehabilitation of Indiana business and industry primarily through making loans and extending credit to small business concerns located in the State of Indiana. Applicant represents that it will be subject to governmental regulation and overview by the Department of Financial Institutions, the Indiana General Assembly, and the Governor of the State of Indiana, but will be exempt from Indiana securities laws and the Indiana Financial Institutions Act.

Applicant concedes that it might meet the definition of an investment company under the Act because the value of notes and order evidences of indebtedness issued to Applicant may exceed 40% of the value of Applicant's total assets. Despite this possibility, and in light of Applicant's proposed business activities, the Commission issued the prior order exempting Applicant from all provisions of the Act based upon its finding that such relief would be in the public interest and consistent with the protection of investors and the purposes intended by the policy and provisions of the Act. Applicant relies on this previous finding in seeking this order declaring that it has ceased to be an investment company. In support of this request, Applicant undertakes to limit its business activities to those specifically described in Investment Company Act Release No. 14528 (May 21, 1985). In addition, Applicant represents that it is not presently a party to any litigation or administrative proceedings, and that it is presently a corporation in good standing under Indiana law.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than October 15, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-23311 Filed 9-27-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/892]

Advisory Committee on International Intellectual Property; Meeting

The International Industrial Property Panel of the Department of State's Advisory Committee on International Intellectual Property will meet in open session on Tuesday, October 22, 1985, in Room 1205 in the Department of State. The meeting will begin at 9:30 AM and will conclude by 1:00 PM, or before.

The meeting will be open to the general public. The following topics will be discussed:

1. Status Report—Revision of the Paris Convention for the Protection of Industrial Property.

2. WIPO Draft Treaty for the Protection of Integrated Circuits (WIPO Committee of Experts, Geneva, November 26-29, 1985).

3. WIPO Outline of a Proposed New Treaty on the International Registration of Trademarks (WIPO Committee of Experts, Geneva, December 11-13, 1985).

4. Status of Multilateral Efforts to Deal with the Problem of Counterfeit Goods.

5. Report on Meeting of World Intellectual Property Organization's Governing Bodies (Geneva, September 23-October 1).

6. Other Business.

The public attending may, as time permits and subject to the instructions of the Chairperson, participate in the discussions or may submit their views in writing to the chairperson prior to, or at the meeting, for later consideration by the Committee.

Members of the public who plan to attend the meeting will be admitted up to the limits of the conference room's capacity. As access to the State Department is controlled, members of the general public who plan to attend the meeting must provide their name, affiliation, and address to Mrs. Bobbi Tinsley, Office of Business Practices, Department of State, telephone (202) 632-1486, prior to October 22, 1985. All attendees should use the *Main Entrance* (2201 C Street, NW.) of the Department of State.

Dated: September 18, 1985.

Harvey J. Winter,

Executive Secretary.

[FR Doc. 85-23228 Filed 9-27-85; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Under Sections 408, 409, 412, and 414 During the Week Ending September 20, 1985

Answers may be filed within 21 days from the date of filing.

Date filed and Docket No.	Parties	Subject	Proposed effective date
Sept. 19, 1985: 43406, R-1 through R-13	Members of International Air Transport Association	TC2 Europe Expedited, Resolutions TC2 Reso/P 0309, TC2 Reso/P 0310, TC2 Reso/P 0311.	Oct. 1, 1985 and Oct. 28, 1985
Sept. 19, 1985: 43407, R-1	Members of International Air Transport Association	Amend fares from Argentina, TC12 MV/P 0170 (M.V. 954).	Oct. 1, 1985.
Sept. 19, 1985: 43408, R-1	Members of International Air Transport Association	Amend passenger adjustment factors for Italy, COMP MV/P 0276 (M.V. 951).	Oct. 1, 1985 and Apr. 1, 1986
Sept. 19, 1985: 43410, R-1	Members of International Air Transport Association	Adding two new ULD rates from Europe to USA, TC12 MV/CO/01 (M.V. 953).	Oct. 1, 1985
Sept. 19, 1985: 43412	Saudi Arabian Airlines Corporation, c/o William A. Nelson, Shea & Gould, 1627 K Street, N.W., Tenth Floor, Washington, D.C. 20006. The Flying Tiger Line Inc., c/o Joel Stephen Burton, Ginsburg, Feldman and Bress, 1250 Connecticut Avenue, Suite 800, Washington, D.C. 20036	Joint Application of Saudi Arabian Airlines Corporation and The Flying Tiger Line Inc., pursuant to Section 412 of the Act, for prior Department approval of a Cargo Operating Agreement for joint scheduled all-cargo service between New York, New York and the Kingdom of Saudi Arabia. The parties also request that the Agreement be immunized from the antitrust laws pursuant to Section 414 of the Act.	
Sept. 19, 1985: 43413	Texas Air Corporation, c/o Emory N. Ellis, Fulbright & Jaworski, 1150 Connecticut Avenue, N.W., Suite 400, Washington, D.C. 20036.	Application of Texas Air Corporation seeks approval to acquire more than 10% of the voting securities of Frontier Holdings, Inc. on the condition that shares representing voting power at and in excess of 10% of Frontier's voting securities be paiced in a voting trust pending approval by the Department of TAC's acquisition of control of Frontier under Section 408 of the Act.	

Phyllis T. Kaylor,

Chief, Documentary Service Division.

[FR Doc. 85-23248 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Department of Transportation's Procedural Regulations, Week Ended September 20, 1985

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings. (See 14 CFR 302.1701 et seq.)

Date filed	Docket No	Description
Sept. 17, 1985	43401	Aerotours Dominicano, C. Por A., Harry A. Bowen, Bowen & Atkin, Suite 350, 2020 K Street, NW., Washington, D.C. 20006. Application of Aerotours Dominicano, C. Por A., pursuant to Section 402 of the Act and Subpart Q of the Regulations applies for authority to engage in scheduled air transportation of passengers, property and mail between Santo Domingo, Dominican Republic and (a) New York/Newark, (b) Miami, and (c) San Juan. Answers may be filed by October 15, 1985.
Sept. 19, 1985	43409	Western Airlines, Inc., c/o James T. Lloyd, Preston, Thorgrimson, Ellis & Holman, 1735, New York Ave., N.W., Suite 500, Washington, D.C. 20006. Application of Western Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations requests the Department to issue it a certificate of public convenience and necessity to engage in scheduled air transportation of passengers, property and mail, as follows: "Between Oakland and San Jose, California and Phoenix and Tucson, Arizona on the one hand, and Guaymas, Loreto, La Paz, San Jose del Cabo, Mazatlan, Puerto Vallarta, Guadalajara, Manazanrillo, Mexico City, Zithuatanejo, and Acapulco, Mexico, on the other hand." Conforming Applications, Motions to Modify Scope and Answers may be filed by October 17, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-23249 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-62-M

Application of Midway Airlines (1984), Inc., for Certificate Authority Under Subpart

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause, (Order 85-9-50) Docket 43336.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Midway Airlines (1984), Inc., fit and awarding it a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation.

DATES: Persons wishing to file objections should do so no later than October 10, 1985.

ADDRESSES: Objections and answers to objections should be filed in Docket 43336 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590 and should be served upon the parties listed in Attachment B to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Carol A. Szekely, Special Authorities Division (P-47, Room 6420), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 755-3812.

SUPPLEMENTARY INFORMATION: The complete text of Order 85-9-50 is available for inspection from our Documentary Services Division at the above address.

Dated: September 24, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-23250 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-62-06

Office of the Secretary

[Order 85-9-52]

Fitness Determination of GP Air, Inc.; Order to Show Cause

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—order to show cause.

SUMMARY: The Department of Transportation is proposing to find that GP Air, Inc. is fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act, as amended, and that the aircraft used in this service will conform to applicable safety standards.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with William C. Boyd, Chief, Service Analysis Division I, Room 5100, Office of Essential Air Service, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Objections shall be filed no later than October 16, 1985.

FOR FURTHER INFORMATION CONTACT: John Quay, Service Analysis Division I, Room 5100, Office of Essential Air Service, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 426-9813.

SUPPLEMENTARY INFORMATION: The complete text of Order 85-9-52 is available from the Documentary Services Division, Room 4107, 400 7th Street, SW., Washington, DC 20590. Persons outside the metropolitan area may send a postcard request for Order 85-9-52 to that address.

Dated: September 24, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-23317 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-62-M

[Notice No. 85-13]

Senior Executive Service Performance Review Boards (PRB); Membership

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: DOT publishes the names of the persons selected to serve on the various Departmental Performance Review Boards (PRB) established by DOT under the Civil Service Reform Act (CSRA).

FOR FURTHER INFORMATION CONTACT: Diana L. Zeidel, Director of Personnel and Training, and Executive Secretary, DOT Executive Resources Board, (202) 426-4088.

SUPPLEMENTARY INFORMATION: The CSRA of 1978, which created the Senior Executive Service, requires that each agency implement a performance appraisal system making senior executives accountable for organizational and individual goal accomplishment. As part of this system, CSRA requires each agency to establish one or more PRB's, the function of which is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the final rating authority relative to the performance of the senior executive.

The persons named below have been selected to serve on one or more Departmental PRB's.

Issued in Washington, DC, on September 25, 1985.

Jon H. Seymour,

Assistant Secretary for Administration.

Office of the Secretary

Raymond A. Karam, Deputy Assistant Secretary for Budget and Programs;
Alden C. Johanson, Deputy Director, Office of Budget;
Barclay W. Webber, Assistant General Counsel for Environmental, Civil Rights and General Law;
Diane R. Liff, Assistant General Counsel for Litigation;
JoAnn C. Collins, Coordinator for Minority Affairs;
John J. Collins, Jr., Assistant General Counsel for Legislation;
Alfonso B. Linhares, Director, Office of Technology and Planning Assistance;
Philip W. Haseltine, Deputy Assistant Secretary for Planning and Policy Analysis;
Vance Fort, Director, Special programs;
Joseph F. Canny, Director, Office of Transportation Regulatory Affairs;
John V. Coleman, Director, Office of Essential Air Service;
Patrick V. Murphy, Jr., Deputy Director, Office of Essential Air Service;
C. Shannon Roberts, Deputy Director, Office of Management Planning;
Angelo P. Picillo, Deputy Director, Office of Installations and Logistics;
Robert E. Jones, Director, Transportation Computer Center;
Gregory S. Dole, Associate General Counsel;
Robert E. Baker, Director, Office of Consumer and Community Affairs;
Jeffrey R. Miller, Chief Counsel, National Highway Traffic Safety Administration;
E. Tazewell Ellett, Chief Counsel, Federal Aviation Administration.

Office of the Inspector General

Paul A. Adams, Inspector General, Department of Housing and Urban Development;
John C. Layton, Inspector General, Department of Treasury;
Raymond A. Karam, Deputy Assistant Secretary for Budget and Programs, Office of the Secretary;
Jennifer L. Dorn, Director, Office of Commercial Space Transportation, Office of the Secretary;
Jack Kroll, Assistant Inspector General for Policy, Planning and Resources, Veteran's Administration;
Raymond F. Randolph, Assistant Inspector General for Auditing, Small Business Administration;
Donald R. Trilling, Acting Manager of Industry Policy and Planning, Office of Commercial Space Transportation, Office of the Secretary;
C. Shannon Roberts, Deputy Director, Office of Management Planning, Office of the Secretary;
Richard D. Morgan, Executive Director, Federal Highway Administration;
Don H. Clausen, Special Assistant to the Administrator, Federal Aviation Administration.

United States Coast Guard

Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary;
Lester P. Lamm, Deputy Administrator, Federal Highway Administration;
Leon C. Watkins, Director, Office of Civil Rights, Federal Aviation Administration;
C. Shannon Roberts, Deputy Director, Office of Management Planning, Office of the Secretary;
Rex C. Leathers, Associate Administrator for Engineering and Operations, Federal Highway Administration;
Michael M. Finkelstein, Associate Administrator for Research and Development, National Highway Traffic Safety Administration;
RADM Henry H. Bell, Chief, Office of Personnel;
RADM William P. Kozlovsky, Comptroller.

Maritime Administration

Earnest Hawkins, Associate Administrator for Administration.
Richard E. Bowman, Associate Administrator for Maritime Aids;
Reginald A. Bourdon, Associate Administrator for Policy and International Affairs;
Thomas W. Pross, Jr., Associate Administrator for Shipbuilding, Operations and Research;
Gary S. Misch, Associate Administrator for Marketing and Domestic Enterprise;
Mary Owen McBride, Deputy Assistant Secretary for Public Affairs, Office of the Secretary;
Robert R. Collins, Special Assistant to the Administrator, Federal Railroad Administration;
John M. Mason, Chief Counsel, Federal Railroad Administration.

Federal Railroad Administration

Louis S. Thompson, Associate Administrator for Passenger and Freight Services;
William E. Loftus, Executive Director;
Joseph W. Walsh, Associate Administrator for Safety;
Raymond J. Rogers, Associate Administrator for Administration;
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary;
William T. Hudson, Director, Office of Civil Rights, Office of the Secretary;
Alfred A. DelliBovi, Deputy Administrator, Urban Mass Transportation Administration;
JoAnn C. Collins, Coordinator for Minority Affairs, Office of the Secretary.

Urban Mass Transportation Administration

Jeffrey R. Miller, Chief Counsel, National Highway Traffic Safety Administration;
Kenneth W. Butler, Associate Administrator for Budget and Policy;
William T. Hudson, Director, Office of Civil Rights, Office of the Secretary;
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary;
Raymond A. Karam, Deputy Assistant Secretary for Budget and Programs, Office of the Secretary;
Carolina L. Mederos, Director, Office of Programs and Evaluation, Office of the Secretary;
Quentin S. Taylor, Deputy Associate Administrator for Airports, Federal Aviation Administration.

Federal Highway Administration

Daniel Markoff, Associate Administrator for Administration;
Leon N. Larson, Regional Administrator, Region, 4;
Rex C. Leathers, Associate Administrator for Engineering and Operations;
R. Edward Quick, Director, Office of Civil Rights;
Richard B. Robertson, Associate Administrator for Planning and Policy Development;
Joseph M. O'Connor, Associate Administrator for Right-of-Way and Environment;
George R. Turner, Jr., Regional Administrator, Region 3;
Donald W. Shelton, Regional Representative, Region 6, Office of the Secretary;
Patricia S. Keyes, Regional Representative, Regions 7 and 8, Office of the Secretary;
Joseph A. Lasala, Chief Counsel, Urban Mass Transportation Administration;
Margarita Moncada, Director, Office of Contracts and Procurement;
Amparo Bouchey, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary.

Federal Aviation Administration

Albert P. Albrecht, Associate Administrator for Development and Logistics;
Paul K. Bohr, Director, Great Lakes Region;
Garland P. Castleberry, Director, Mike Monroney Aeronautical Center;
Franklin L Cunningham Director, Alaskan Region;
Joseph M Del Balzo, Director, Eastern Region;
E. Tazewell Ellett, Chief Counsel;
Charles R. Foster, Director, Northwest Mountain Region;
Brooks C. Goldman, Associate Administrator for Administration;
Edwin S. Harris, Jr., Director, Central Region;
Homer C. McClure, Director, Western-Pacific Region;
C. R. Melugin, Jr., Director, Southwest Region;
Donald R. Segner, Associate Administrator for Policy and International Aviation;
Quentin S. Taylor, Deputy Associate Administrator for Airports;
Leon C. Watkins, Director, Office of Civil Rights,
Charles E. Weithoner, Associate Administrator for Human Resource Management;
Robert E. Whittington, Director, New England Region;
Shirley J. Ybarra, Special Assistant to the Secretary, Office of the Secretary;
Benjamin B. Blackburn III, Regional Representative, Region 4, Office of the Secretary;
Carolina L. Mederos, Director, Office of Programs and Evaluation, Office of the Secretary;
John J. Collins, Jr., Assistant General Counsel for Legislation, Office of the Secretary;
Jeffrey N. Shane, Deputy Assistant Secretary for Policy and Program Development, Office of the Secretary.

Research and Special Programs Administration

George Nesterczuk, Deputy Administrator;
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary;
Michael M. Finkelstein, Associate Administrator for Research and Development, National Highway Traffic Safety Administration;
Louis W. Roberts, Director, Transportation Systems Center;
Lester P. Lamm, Jr., Deputy Administrator, Federal Highway Administration.

National Highway Traffic Safety Administration

Howard M. Smolkin, Deputy Administrator;
Barry I. Felrice, Associate Administrator for Rulemaking;
George L. Parker, Associate Administrator for Enforcement;
Jeffrey R. Miller, Chief Counsel;
Carolina L. Mederos, Director, Office of Programs and Evaluation, Office of the Secretary;
Shirley J. Ybarra, Special Assistant to the Secretary, Office of the Secretary;
Bruce T. Barkley, Director, Office of Management Planning, Office of the Secretary;
Neil R. Eisner, Assistant General Counsel for Regulation and Enforcement, Office of the Secretary.

[FR Doc. 23318 Filed 9-27-85; 8:45 am]
BILLING CODE 4910-62-M

Coast Guard

[CGD 85-072]

Equipment, Construction, and Materials

AGENCY: Coast Guard, DOT.
ACTION: Approval Notice.

SUMMARY: This notice contains a listing of Coast Guard approvals issued between 1 June 1985 and 31 August 1985. These approvals are for safety equipment and materials required by regulation to be used on certain merchant vessels and recreational boats, and also in Outer Continental Shelf activities.

FOR FURTHER INFORMATION CONTACT: Ms. Valarie Williams, Office of Merchant Marine Safety (G-MVI-3/14),

Room 1404, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593, (202) 426–1444. Normal office hours are between 7 a.m. and 3:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Certain regulations in Titles 33 and 46 of the Code of Federal Regulations require that various items of lifesaving, firefighting and other safety equipment and materials used on board merchant vessels and recreational boats, and in Outer Continental Shelf activities be approved by the Commandant, U.S. Coast Guard. This document notifies interested persons that certain approvals have been issued or revised during the period from 1 June 1985 to 31 August 1985. These actions were taken under the procedures in 46 CFR 2.75–1 to 2.75–50.

The statutory authority governing carriage of this equipment is in sections 3306(a), 4102, and 4302(a)(2) of Title 46, United States Code, section 1333 of Title 43, United Stated Code, and section 198 of Title 50, United States Code. The Secretary of Transportation has delegated authority to the Commandant, U.S. Coast Guard with respect to these approvals (49 CFR 1.46(b)).

Most of the items in this list meet specification regulations in 46 CFR Parts 160 to 164. The approvals listed in this document are generally issued for a period of 5 years from the date of issue, unless sooner withdrawn, suspended or terminated.

Self-Contained Breathing Apparatus

Approval No. 160.011/78/0, Model PA–80–FS–2216, one-half hour pressure-demand breathing apparatus, manufactured by National Draeger, Inc., 101 Technology Drive, P.O. Box 120, Pittsburgh, PA 15230.

Approval No. 160.011/79/0, Model PA–80–FS–4500, one-half hour pressure-demand breathing apparatus, manufactured by National Draeger, Inc., 101 Technology Drive, P.O. Box 120, Pittsburgh, PA 15230.

Approval No. 160.011/80/0, Model PA–80–FS–4500, 45 minute pressure-demand breathing apparatus, manufactured by National Draeger, Inc., 101 Technology Drive, P.O. Box 120, Pittsburgh, PA 15230.

Approval No. 160.011/81/0, Model PA–80–FS–4500, one hour pressure-demand breathing apparatus, manufactured by National Draeger, Inc., 101 Technology Drive, P.O. Box 120, Pittsburgh, PA 15230.

Lifeboat & Liferaft Hatchet

Approval No. 160.013/8/0, Hatchet with Lanyard for Lifeboats and Liferafts, manufactured by Revere Supply Co., Inc., 603–607 W. 29th Street, New York, NY 10001.

Lifeboat Winch (Hydraulic-Powered)

Approval No. 160.015/137/1, Model W1403 survival capsule launching winch, manufactured by Whittaker Corporation, 5159 Baltimore Drive, La Mesa, CA 92041.

Approval No. 160.015/141/0, Type NL 24 UP (Hercules) lifeboat winch, manufactured by Northern Line Machine & Engr. Co., 1840 Marine View Drive, Tacoma, WA 98422.

Approval No. 160.015/149/0, Type USMW 7.4 lifeboat winch (metric design), manufactured by Watercraft America, Inc., P.O. Box 1130, Edgewater, FL 32032.

Approval No. 160.015/150/0, Type USMW 9.3 lifeboat winch (metric design), manufactured by Watercraft America, Inc., P.O. Box 1130, Edgewater, FL 32032.

Chain Ladder Equivalent

Approval No. 160.017/60/0, Model Eric II embarkation ladder equivalent to chain ladder, manufactured by A.L. Don Company, Ft. Dock Street, Matawan, NJ 07747.

Emergency Drinking Water

Approval No. 160.026/60/0, Emergency Drinking Water in hermetically sealed cans contents 8½ oz. (260 ml), manufactured by J.W.D. Marketing Ltd., 6676 Stoney Cr., Delta, B.C., Canada.

Lifeboat Davit

Approval No. 160.032/250/0, Model NL–24–UP gravity pivot davit, manufactured by Northern Line Machine & Engr. Co., 1840 Marine View Drive, Tacoma, WA 98422.

Lifeboat

Approval No. 160.035/519/0, 8.0 m (26.25 ft.) x 2.54 m (8.33 ft.) x 1.14 m (3.74 ft.), manufactured by Harding Safety Inc., P. O. Box 1445, Mobile, AL 36633.

Hand Held Rocket Propelled, Parachute Red Flare Distress Signal

Approval No. 160.036/12/0, Ikaros Original hand held, rocket propelled, red parachute fare, manufactured by Hanssons Pyrotekniska A/B, Box 1133, S–436 00 Askim, SWEDEN.

Lifeboat First Aid Kit

Aproval No. 160.041/17/0, Lifeboat First Aid Kit Model. BQ0400M, manufactured by Datrex, 3795 NW 25th Street, Miami, FL 33142.

Jacknife (with can opener)

Approval No. 160.043/10, Type S702 jacknife (with can opener) dwg. No. 1160 dated 11 August 1950, manufactured by Camillus Cutlery Company, Camillus, New York 13031.

Emergency Provisions for Lifeboats

Approval No. 160.046/8/2, Emergency Provisions for lifeboats (and liferafts) in hermetically sealed foil laminate package, manufactured by Revere Supply Co., Inc., 605 W. 29th Street, New York, NY 10001.

Approval No. 160.046/9/2, Emergency Provisions for liferafts (and lifeboats) in hermetically sealed foil laminate package, manufactured by Revere Supply Co., Inc., 605 W. 29th Street, New York, NY 10001.

Inflatable Liferaft

Approval No. 160.051/165/0, 25-person, davit-launched inflatable liferaft, Type MK–II Uniraft, manufactured by Rubber Crafters of West Va., Inc., P.O. Box 556, Grantsville, WV 26147.

Approval No. 160.051/166/0, 20-person, davit-launched inflatable liferaft, Type MK–II Uniraft, manufactured by Rubber Crafters of West VA., Inc., P.O. Box 566, Grantsville, WV 26147.

Unicellular Plastic Foam Work Vest

Approval No. 160.053/7/1, Model No. 82117 or 82120, manufactured by Atlantic-Pacific, Box 27, Staten Island, NY 10314.

Approval No. 160.053/35/1, Model IWV–221–1 or IWV–220–1, manufactured by Stearns Manufacturing Co., P.O. 1498, St. Sloud, MN 56302.

Approval No. 160.053/58/1, Model No. 82117 or 82120, manufactured by Atlantic-Pacific, Box 27, Staten Island, NY 10314.

Approval No. 160.053/68/0, Model IFS–580, Adult X–Small, Type V PFD, manufactured by Stearns Manufacturing Co., P.O. Box 1498, St. Cloud, MN 56302.

Unicellular Plastic Foam Life Preserver

Approval No. 160.055/139/0, Model 100W, Adult Small/Medium, Type V PFD, manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.055/140/0, Model 100W, Adult Large/X-Large, Type V PFD, manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.055/141/0, Model 100W, Youth (for person 50 to 90 lbs.) Type V PFD, manufactured by America's Cut, Inc., P.O. Box 2009, La Puente,CA 91746.

Approval No. 160.055/152/0, Model RRV–6145, child medium, Type V PFD, manufactured by Stearns Manufacturing Co., 30th and Division Streets, P.O. Box 1498, St. Cloud MN 56302.

Launching Device of Inflatable Liferafts

Approval No. 160.063/13/0, Type FR–50–DM fixed-arm launching device with Type R–50H–1 (MK–I) winch, manufactured by Marine Safety Equipment Corp., P.O. Box 465, Farmingdale, NJ 07727.

Marine Buoyant Device

Approval No. 160.064/775/0, Model SSV–160 or ILV–460, Adult Super, Type III PFD, manufactured by Stearns Manufacturing Co., 30th and Division Streets, P.O. Box 1498, St. Cloud, MN 56302.

Approval No. 160.064/1136/1, Model IWV–222–1 or IWV–220–1, Adult Universal Type III PFD, manufactured by Stearns Manufacturing Co., 30th and Division Streets, P.O. Box 1498, St. Cloud, MN 56302.

Approval No. 160.064/1741/0, Model U–1, Adult Universal, Type III PFD, manufactured by Fabrionics, Inc., P.O. Box 94, Camargo, IL 61919.

Approval No. 160.064/1771/0, Model Nos. SSV–113, –124, –126, –128, –114, or –140, Adult Small/Medium, Type III PFD, manufactured by Stearns Manufacturing Co., 30th and Division Streets, P.O. Box 1498, St. Cloud, MN 56302.

Approval No. 160.064/1772/0, Model Nos. SSV–113, –124, –126, –128, –114, or –140, Adult Large/X-Large, Type III PFD, manufactured by Stearns Manufacturing Co., 30th and Division Streets, P.O. Box 1498, St. Cloud, MN 56302.

Approval No. 160.064/1907/1, Model 900T, Toddler (for persons less than 30 lbs.), Type III PFD, manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/1960/0, Model Nos. 701 or 701A, Child Small (for persons 30 to 50 lbs.), manufactured by Casad Manufacturing Co., 1015 Brandon Ave., Celina, OH 45822.

Approval No. 160.064/2049/0, Model 300, Youth (for persons 50 to 90 lbs.), manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/2050/0, Model 300, Adult Small, manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/2051/0, Model 300, Adult Medium, manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/2052/0, Model 300, Adult Large, manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/2053/0, Model 300, Adult X-Large, manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/2142/0, Model 100W, Adult Small/Medium, manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/2143/0, Model 100W, Adult Large/X-Large, manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/2144/0, Model 100W, Youth (for persons 50 to 90 lbs.), manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/2149/0, Model Nos. 901, 902, and 903, Adult Small/Medium, manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/2150/0, Model Nos. 901, 902, and 903, Adult Large/X-Large, manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/2249/0, Model BTM–100, Adult Small, manufactured by Wellington Industries Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2250/0, Model BTM–100, Adult Medium, manufactured by Wellington Industries Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2251/0, Model BTM–100, Adult Large, manufactured by Wellington Industries Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2252/0, Model BTM–100, Adult X-Large, manufactured by Wellington Industries Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2253/0, Model BTM–100, Adult XX-Large, manufactured by Wellington Industries Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2254/0, Model BTM–100, Adult Universal, manufactured by Wellington Industries Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2272/0, Model Nos. 901, 902, 903, and 906, Adult Universal, manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/2281/0, Model 671, Small/Medium, manufactured by Casad Manufacturing Co., 1015 Brandon Ave., Celina, OH 45822.

Approval No. 160.064/2282/0, Model 671, Large/X–Large, manufactured by Casad Manufacturing Co., 1015 Brandon Ave., Celina, OH 45822.

Approval No. 160.064/2343/0, Model GXS, Adult X-Small, manufactured by Ero Industries, Inc., 5940 West Touhy Avenue, Chicago, IL 60648.

Approval No. 160.064/2344/0, Model GS, Adult Small, manufactured by Ero Industries, Inc., 5940 West Touhy Avenue, Chicago, IL 60648.

Approval No. 160.064/2347/0, Model GXL, Adult X-Large, manufactured by Ero Industries, Inc., 5940 West Touhy Avenue, Chicago, IL 60648.

Approval No. 160.064/2348/0, Model KS, Infant Child Small (for persons under 30 lbs.), manufactured by Ero Industries, Inc., 5940 West Touhy Avenue, Chicago, IL 60648.

Approval No. 160.064/2350/0, 23 × 23 × 3 ⅛, Model H–1, manufactured by Forespar, 2672 Dow Avenue, Tustin, CA 92680.

Approval No. 160.064/2372/0, Model BEB–1, Adult Small, manufactured by Wellington Industries, Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2373/0, Model BEB–1, Adult Medium, manufactured by Wellington Industries, Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2374/0, Model BEB–1, Adult Large, manufactured by Wellington Industries, Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2375/0, Model BEB–1, Adult X-Large, manufactured by Wellington Industries, Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2376/0, Model RRV–6145, Child Medium (for person 50 to 90 lbs.), manufactured by Stearns Manufacturing Company, P.O. Box 1498, 30th and Division Streets, St. Cloud, MN 56301.

Approval No. 160.064/2377/0, Model GV–1, Adult Small/Medium, manufactured by Fabrionics, Inc., Route 130 South, Camargo, IL 61919.

Approval No. 160.064/2378/0, Model GV–2, Adult Large/X-Large, manufactured by Fabrionics, Inc., Route 130 South, Camargo, IL 61919.

Approval No. 160.064/2379/0, Model Nos. 1106, 1108, 1109, and 1141, Adult Small/Medium, manufactured by Wellington Industries, Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2380/0, Model Nos. 1106, 1108, 1109, and 1141, Adult Large/X-Large, manufactured by Wellington Industries, Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2381/0, Model 900C, Child Small (for persons 30 to 50 lbs.), manufactured by America's Cup, Inc., P.O. Box 2009, La Puente, CA 91746.

Approval No. 160.064/2445/0, Model Baby II, Infant (for persons under 30 lbs.), manufactured by Ero Industries, Inc., 5940 West Touchy Avenue, Chicago, IL 60648.

Approval No. 160.064/2448/0, Model 1206, Audit X-Small, manufactured by Wellington Industries, Inc., P.O. Box 244, Madison, GA 30650,

Approval No. 160.064/2449/0, Model 1206, Youth (for persons 50 to 90 lbs.), manufactured by Wellington Industries, Inc., P.O. Box 244, Madison, GA 30650.

Approval No. 160.064/2450/0, Model 1206, Pee Wee (for persons 30 to 50 lbs.), manufactured by Wellington Industries, Inc., P.O. Box 244, Madison, GA 30650.

Exposure Suit

Approval No. 160.071/26/0, Model 316–AU, Adult Exposure Suit, manufactured by Survival International, Inc., 7859 South 180 Street, Kent, WA 98032.

Fire Protective Systems

Approval No. 161.002/12/0, Audible and visual supervised photoelectric optical smoke detection system, Model ESDS–2, manufactured by The Ansul Company, One Stanton Street, Marinette, WI 54143.

Approval No. 161.002/13/0, Kidde Marine Smoke Detector, Model KMSD, manufactured by Walter Kidde, Div. of Kidde, Inc., Walter Kidde Drive, Wake Forest, N.C. 27587.

Approval No. 161.002/19/0, Ansul and Wormald Marine Multizone Fire Detection System consisting of model 962200211, manufactured by Wormald Data Systems, 2025 Royal Lane, Dallas, TX 75229.

Floating Electric Waterlight

Approval No. 161.010/8/2, Automatic Lite, SAVE-U-LITE, Model WL003, manufactured by Automatic Lite, 400 Gordon Drive, Suite 405, Lionville, PA 19353.

Approval No. 161.010/13/0, Automatic Lite, SAVE-U-LITE, Model U–80, manufactured by Automatic Lite, 400 Gordon Drive, Suite 405, Lionville, PA 19353.

Personal Flotation Device Light

Approval No. 161.012/4/0, Model 378–B incandescent Personal Light, manufactured by The Guest Co., Inc., 48 Elm St., Meriden, CT 06450.

Approval No. 161.012/5/0, Model 380 Personal Safety Strobe Light, manufactured by The Guest Co., Inc., 48 Elm St., Meriden CT 06450.

Approval No. 161.012/6/0, Model 378–C incandescent Personal Light, manufactured by The Guest Co., Inc., 48 Elm St., Meriden, CT 06450.

Pressure-Vacuum Relief Valve

Approval No. 162.017/120/1, PRES-VAC Type HS-M pressure vacuum relief valve with cast iron, bronze, stainless steel, or nodular cast iron bodies, manufactured by bodies, manufactured by PRES-VAC, Svanevang 3, 3450 Allerod, Denmark.

Approval No. 162.017/122/0, PRES-VAC automatic weight loaded pressure-vacuum relief valve, manufactured by PRES-VAC, Svanevang 3, 3450 Allerod, Denmark.

Water Spray Type Fire Extinguishing Systems

Approval No. 162.036/10, Bete water spray system for tank vessel pump rooms, nozzle Model Nos. N3, N3W, N5, and N5W, manufactured by Bete Fog Nozzle, Inc., 324 Wells Street, Greenfield, MA 01301.

Backfire Flame Arrester for Gasoline Engines

Approval No. 162.041/113/0, Volvo Penta flame control device, Model No. 886601, manufactured by Volvo Penta of America, P.O. Box 927, Rockleigh, NJ 07647.

Approval No. 162.041/178/0, Volvo Penta Model MB10A backfire flame arrester, manufactured by Volvo Penta of America, P.O. Box 927, Rockleigh, NJ 07647.

Oily Water Separators

Approval No. 162.050/1004/0, Sarex Model 100 GPM/OWS 22.7, manufactured by Separation and Recovery Systems, 1733 Kaiser Ave., Irvine, CA 92714.

Approval No. 162.050/1010/0, Bilgemaster I–2GPM Separator, manufactured by National Fluid Separators, 1239 Hanley Industrial Court, St. Louis, MO 63144.

Approval No. 162.050/1011/0, Bilgemaster I–5GPM Separator, manufactured by National Fluid Separators, 1239 Hanley Industrial Court, St. Louis, MO 63144.

Approval No. 162.050/1012/0, Bilgemaster I–10GPM Separator, manufactured by National Fluid Separators, 1239 Hanley Industrial Court, St. Louis, MO 63144.

Approval No. 162.050/1013/0, Bilgemaster II–2GPM Separator, manufactured by National Fluid Separators, 1239 Hanley Industrial Court, St. Louis, MO 63144.

Approval No. 162.050/1014/0, Bilgemaster II–5GPM Separator, manufactured by National Fluid Separators, 1239 Hanley Industrial Court, St. Louis, MO 63144.

Approval No. 162.050/1015/0, Bilgemaster II–10GPM Separator, manufactured by National Fluid Separators, 1239 Hanley Industrial Court, St. Louis, MO 63144.

Approval No. 162.050/1085/0, Framarine Model CPS–3 B15 consisting of primary settling chamber, manufactured by Quantek Inc., P.O. Box 33210, Tulsa, OK 74135.

Approval No. 162.050/1149/0, Facet Model 10WS–1/4.4–15 consisting of an inclined plate separator, manufactured by Facet Industrial Division, Facet Enterprises, Inc., P.O. Box 50096, Tulsa, OK 74150.

Approval No. 162.050/1164/0, Hamworthy HS 1 Mark II oil water separators, single gravity steel tank, manufactured by Hamworthy Engineering Ltd., Fleets Corner, Poole, Dorset BH 17 7LA, England.

Approval No. 162.050/1165/0, Hamworthy HS 2.5 Mark II oil water separators, single gravity steel tank, manufactured by Hamworthy Engineering Ltd., Fleets Corner, Poole, Dorset BH 17 7LA, England.

Approval No. 162.050/1166/0, Hamworthy HS 5 Mark II oil water separators, single gravity steel tank, manufactured by Hamworthy Engineering Ltd., Fleets Corner, Poole, Dorset BH 17 7LA, England.

Approval No. 162.050/1168/0, Facet Model 3–OWS–400, manufactured by Facet Enterprises Inc., P.O. Box 50096, Tulsa, OK 74150.

Approval No. 162.050/1172/0, Facet Model OWS–400, manufactured by Facet Enterprises Inc., P.O. Box 50096, Tulsa, OK 74150.

Approval No. 162.050/1176/0, Model S1–1T consisting of a single tank with several "zones", manufactured by Sigma Treatment Systems, Inc., Merry Meadows, R.D. 1 Box 70, Chester Springs, PA 19425.

Approval No. 162.050/1178/0, Sarex Model VGS–5, manufactured by Separation and Recovery Systems, 1733 Kaiser Ave., Irvine, CA 92714.

Approval No. 162.050/5004/1, OILCON MK III Cargo Monitor replaces old (OILCON Cargo Monitor), manufactured by STC International Marine, INTELCO House, 302 Commonside East, Mitcham, Surrey, CR4 1YT, England.

Pilot Hoist

Approval No. 163.002/2/0, Electrically powered Pilot Hoist models PHL–EE–T and PHL–EE–S, manufactured by Chuo

Kogyo Ltd., No. 80 Yarmicho, Shinjuku-Ku, Tokyo, Japan.

Structural Insulation

Approval No. 164.007/64/0, "Delta Board" mineral wool type structural insulation, manufactured by Rock Wool Mfg., Co., P.O. Box 506, Leeds, AL 35094.

Bulkhead Panel

Approval No. 164.008/68/0, Hopeman Brothers "Beta 100" building unit, manufactured by Hopeman Brothers, Inc., P.O. Box 820, 435 Essex Ave., Waynesboro, VA 22980.

Approval No. 164.008/95/0, Type 33A mineral wool core, manufactured by Isolamin Ecomax, S–95184, Lulea, Sweden.

Approval No. 164.008/96/0, Type 33C mineral wool core, manufactured by Isolamin Ecomax, S–95184, Lulea, Sweden.

Approval No. 164.008/97/0, Type 45A bulkhead panel, manufactured by Isolamin Ecomax, S–95184, Lulea, Sweden.

Noncombustible Material

Approval No. 164.009/276/0, "Kaowool Consort ATF" ceramic noncombustible material, manufactured by Babcock & Wilcox, Insulating Products Div., P.O. Box 923, 2102, Old Savannah Rd., Augusta, GA 30903.

Approval No. 164.009/277/0, Molded fiberglass duct insulation, manufactured by Gullfiber AB, 260050 Billesholm, Sweden.

Structural Ceilings

Approval No. 164.010/12/0, "Gamma 100" continuous ceiling, manufactured by Hopeman Brothers, Inc., 435 Essex Ave., P.O. Box 820, Waynesboro, VA 22980.

Retroreflective Material

Approval No. 164.018/2/0, Type 1, "Reflexite Polycarbonate Microprism Reflective Sheeting", manufactured by Reflexite Corporation, 199 Whiting Street, New Britain, CT 06051.

J. W. Kime,

Commodore, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

September 25, 1985.

[FR Doc. 85–23292 Filed 9–27–85; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 154—Airborne Thunderstorm Detection Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 154 on Airborne Thunderstorm Detection Equipment to be held on October 17–18, 1985, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Sixth Meeting held on July 11–12, 1985; (3) Review Task Assignments From Previous Meeting; (4) Review the Fourth Draft Report on Minimum Operational Performance Standards for Airborne Thunderstorm Detection Equipment; and (5) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC on September 19, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85–23212 Filed 9–27–85; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–85–24]

Petition for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and particpation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before October 21, 1985.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), Petition Docket No. ———, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are ayailable for examination in the Rules Docket (AGC–204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–3644

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on September 24, 1985.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
24773	T.A.R.	14 CFR 91.303	To allow petitioner to operate one Boeing 707–338C aircraft until hush kits are installed.

[FR Doc. 85–23209 Filed 9–27–85; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

[FRA Waiver Petition Docket Number HS-85-17]

Burlington Junction Railway; Petition for Exemption From the Hours of Service Act

In accordance with 49 CFR §§ 211.9 and 211.41, notice is hereby given that the Burlington Junction Railway (BJRY) has petitioned the Federal Railroad Administration (FRA) for a permanent waiver of compliance with the provisions of the Hours of Service Act (83 Stat. 464, Pub. L. 91–169, 45 U.S.C. 64 a(e)).

The Hours of Service Act currently makes it unlawful for a railroad to require specified employees to remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad which employs no more than fifteen employees who are subject to the statute, to seek an exemption from the twelve hour limitation.

The BJRY seeks this exemption so that it can permit certain employees to remain on duty not more than sixteen hours in any twenty-four hour period. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning the proceedings should identify this docket number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before November 16, 1985, will be considered by FRA before final action is taken. Comments received after that will be considered as far as practicable. All comments received will be available for examination both before and after the closing date of comments, during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC, on September 20, 1985.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 85–23251 Filed 9–27–85; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel; Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Closed Meetings of Art Advisory Panel.

SUMMARY: Closed meetings of the Art Advisory Panel will be held in Washington, DC.

DATE: The meetings will be held October 24, November 5 and 20, 1985.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:C:E:V, 1111 Constitution Avenue, NW., Room 2575, Washington, DC 20224, Telephone No. (202) 566–9259 (not a toll free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1976), that closed meetings of the Art Advisory Panel will be held on October 24, November 5 and 20, 1985 beginning at 9:30 a.m. in Room 3411, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that these meetings are concerned with matters listed in section 552b(c) (3), (4), (6), and (7) of Title 5 of the United States Code, and that the meetings will not be open to the public.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978. (43 FR 52122.)

Roscoe L. Egger, Jr.,

Commissioner.

[FR Doc. 85–23289 Filed 9–27–85; 8:45 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

Agency Forms Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension, a new collection and revision and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patrica Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collections should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 24, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Extension

1. Department of Veterans Benefits.
2. Application for Conversion.
3. VA Form 29–358 and VA Form Letter 29–165.
4. On occasion.
5. Individuals or households.
6. 3,000 responses.
7. 750 hours.
8. Not applicable.

New

1. Department of Veterans Benefits.
2. Residential Appraisal Report.
3. VA Form 26–8975c (Test).
4. On occasion.
5. Individuals or households; Businesses or other for-profits; Small businesses or organizations.
6. 30,000 responses.
7. 90,000 hours.
8. Not applicable.

* * *

Revision

1. Department of Medicine and Surgery.
2. Application for Participation in the Veterans Administration Health Professional Scholarship Program.
3. VA Form 10–0003, 10–0003a and 10–0003b.
4. Annually.
5. Individuals or households; Businesses or other for-profit; Non-profit institutions.
6. 3,000 responses.
7. 3,000 hours.
8. Not applicable.

[FR Doc. 85–23201, Filed 9–27–85; 8:45 am]
BILLING CODE 8320–01–M

Veterans Administration Wage Committee; Meetings

The Veterans Administration, in accordance with Pub. L. 92–463, gives notice that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, October 10, 1985, at 2:30 p.m.
Thursday, October 24, 1985, at 2:30 p.m.
Thursday, November 7, 1985, at 2:30 p.m.
Thursday, November 21, 1985, at 2:30 p.m.
Thursday, December 5, 1985, at 2:30 p.m.
Thursday, December 19, 1985, at 2:30 p.m.

The meetings will be held in Room 304, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

This notice does not appear 15 days prior to the meeting due to delays in administrative processing.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Veterans Administration and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and as cited in 5 U.S.C. 552(c) (2) and (4)

However, members of the public are invited to submit material in writing to the Chairman for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairman, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: September 23, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85–23200 Filed 9–27–85; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 189
Monday, September 30, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Item
Equal Employment Opportunity Commission	1
Federal Deposit Insurance Corporation	2
Legal Services Corporation	3, 4, 5

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 11:00 a.m. (Eastern Time), Monday, September 30, 1985.

CHANGE IN THE MEETING: The following matter has been added to the agenda for the closed portion of the meeting:

"Amicus Curiae Participation"

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required this change and that no earlier announcement was possible.

In favor of change:

Clarence Thomas, Chairman
Tony E. Gallegos, Commissioner
William A. Webb, Commissioner
Fred W. Alvarez, Commissioner
R. Gaull Silberman, Commissioner

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634-6748.

This Notice Issued September 26, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 85-23392 Filed 9-27-85; 2:54 pm]

BILLING CODE 6750-06-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:40 a.m. on Wednesday, September 25, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a recommendation with respect to administrative enforcement actions against an insured bank (name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8) and (c)(9)(A)(ii)).

In calling the meeting, the Board determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: September 25, 1985.

Federal Deposit Insurance Corporation.

Noyle L. Robinson,

Executive Secretary.

[FR Doc. 85-23358 Filed 9-26-85; 11:31 am]

BILLING CODE 6714-01-M

3

LEGAL SERVICES CORPORATION

Operations and Regulations Committee Meeting—Tentative Agenda

TIME AND DATE: Meeting will commence at 8:00 a.m., Thursday, October 10, 1985, and continue until all official business is completed.

PLACE: Mountain Air Lodge, Baraks Room, Route 11A, Gilford, New Hampshire 03246.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —September 6, 1985
3. Questioned Costs—Proposed 45 CFR 1630
   —Report from the Office of Monitoring, Audit and Compliance
   —Report from the Office of the General Counsel
   —Public comment
4. Recommendations to Board on propoed 45 CFR 1630 (Questioned Costs)
5. Private Attorney Involvement—45 CFR 1614
   —Report from the Office of the General Counsel
   —Public comment
6. Recommendations to Board on 45 CFR 1614 (Private Attorney Involvement)
7. Lobbying—45 CFR 1612
   —Report from the Office of the General Counsel
   —Public comment
8. Recommendations to full Board on 45 CFR 1612 (Lobbying)
9. Other Regulations Adopted after April 27, 1984

CONTACT PERSON FOR MORE INFORMATION: Thomas A. Bovard, Office of the General Counsel, (202) 272-4010.

Date Issued: September 26, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-23411 Filed 9-26-85; 3:52 pm]

BILLING CODE 6820-35-M

4

LEGAL SERVICES CORPORATION

Committee on Audit and Appropriations.

TIME AND DATE: Meeting will commence at 2:00 p.m., or the conclusion of the Operations and Regulations Committee meeting, Thursday, October 10, 1985 and continue until all official business is completed.

PLACE: Mountain Air Lodge, Baraks Room, Route 11A, Gilford, New Hampshire 03246.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Draft Minutes
   —September 5, 1985
3. Fiscal Year 1986 Budget
4. Modification of Budget Guidelines
5. Revision of the Audit and Accounting Guide.

CONTACT PERSON FOR MORE INFORMATION: Joel Thimell, Executive Office, (202) 272-4040

Date Issued: September 26, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-23412 Filed 9-26-85; 3:52 pm]

BILLING CODE 6820-35-M

5

LEGAL SERVICES CORPORATION

Board of Directors Meeting; Tentative Agenda

TIME AND DATE: An executive session will be held at 8:00 p.m., Wednesday, October 9, 1985. The public portion of the meeting will commence at 10:00 a.m., Friday, October 11, 1985, and continue until all official business is completed.

PLACE: Mountain Air Lodge, Baraks Room, Route 11A Room, Gilford, New Hampshire 03246.

STATUS OF MEETING: Open [A portion of the meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters under The Government in the Sunshine Act (5 U.S.C. 552b (c)(2), (6), (7), (9)(B), and (10) and 45 CFR 1622.5(a), (e), (f), (g), and (h)].

MATTERS TO BE CONSIDERED:

1. Personnel and Personal matters (closed)
2. Litigation and Investigation matters (closed)
3. Adoption of Agenda
4. Adoption of Minutes
   —September 6, 1985
5. Welcome from the President, New Hampshire Bar Association
6. Report from the President
7. Discussion and Action on Recommendation of the Committee on Operation and Regulations
   —45 CFR 1614 (Private Attorney Involvement)
   —45 CFR 1630 (Questioned Costs)
8. Discussion and Action on the Recommendation of the Committee on Audit and Appropriations
   —FY 1986 Consolidated Operating Budget
   —Budget Guidelines
   —Audit and Accounting Guide

CONTACT PERSON FOR MORE INFORMATION: Dennis Daugherty, Executive Office, (202) 272–4040.

Date Issued: September 26, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85–23413 Filed 9–26–85; 8:45 am]

BILLING CODE 6820–35–M

federal register

Monday
September 30, 1985

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of Airport Radar Service Areas

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket Nos. 85-AWA-4, 85-AWA-5, 85-AWA-6, 85-AWA-7, 85-AWA-8, 85-AWA-9, and 85-AWA-10]

Proposed Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Airport Radar Service Areas (ARSA) at 30 locations. Each location is a public or military airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of each ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA.

Implementation of ARSA procedures at each of the affected locations would reduce the risk of midair collision and promote the efficient control of air traffic in terminal areas. The proposed locations are set forth under "**Docket Number and Comment Closing Date for Proposed ARSA Locations**" below.

DATES: Comments must be received on or before February 3, 1986, for Airspace Docket No. 85-AWA-4; on or before March 3, 1986, for Airspace Docket No. 85-AWA-5; on or before April 1, 1986, for Airspace Docket No. 85-AWA-6; on or before May 1, 1986, for Airspace Docket No. 85-AWA-7; on or before June 2, 1986, for Airspace Docket No. 85-AWA-8; on or before July 1, 1986, for Airspace Docket No. 85-AWA-9; and on or before January 2, 1986, for Airspace Docket No. 85-AWA-10.

For dates of public meetings, see Appendix 1.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Airspace Docket No. (specific number), 800 Independence Avenue SW., Washington, D.C. 20591.

Official dockets may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, D.C.

Informal dockets may also be examined during normal business hours at the office of the Regional Air Traffic Division.

For addresses of public meetings, see Appendix 1.

FOR FURTHER INFORMATION CONTACT: Paul C. Smith, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

This notice involves 30 locations organized into seven groups. Each group is assigned a separate docket number and comment period. The locations included in each docket are listed alphabetically under "**Docket Number and Comment Closing Date for Proposed Area Locations**" below. The closing dates of the comment periods have been spaced at one-month intervals. This phasing of the comment periods limits the number of locations subject to a comment closing date at any given time and thereby provides a greater opportunity for public comment, especially for those commenters with an interest in more than one proposed location. Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the specific airspace docket referenced and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. (specific number)." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing dates for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the appropriate docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

Docket Number and Comment Closing Date for Proposed ARSA Locations

Airspace Docket No. 85-AWA-4—Comments for this docket must be received on or before February 3, 1986.

Beale Air Force Base, CA
Birmingham Municipal Airport, Birmingham, AL
Burlington International Airport, VT
Castle AFB, CA
Charlotte/Douglas International Airport, NC
Columbus Metropolitan Airport, GA
Mather Air Force Base, CA
McClellan Air Force Base, CA
Metropolitan Oakland International Airport, CA
Nashville Metropolitan Airport, TN
Sacramento Mctropolitan Airport, CA

Airspace Docket No. 85-AWA-5—Comments for this docket must be received on or before March 3, 1986.

Adams Field, Little Rock, AR
General Mitchell Field Airport, Milwaukee, WI
Greater Buffalo International Airport, NY
Memphis International Airport, TN
Michiana Regional Airport, South Bend, IN
Salt Lake City International Airport, UT

Airspace Docket No. 85-AWA-6—Comments for this docket must be received on or before April 1, 1986.

Albuquerque International Airport, NM
Davis-Monthan Air Force Base, AZ
Greater Cincinnati International Airport, Covington, KY
Indianapolis International Airport, IN
Phoenix Sky Harbor International Airport, AZ
Standiford Field Airport, Louisville, KY
Tucson International Airport, AZ
Wichita Mid-Continent Airport, KS

Airspace Docket No. 85-AWA-7—Comments for this docket must be received on or before May 1, 1986.

Dallas Love Field, TX

Airspace Docket No. 85-AWA-8—Comments for this docket must be received on or before June 2, 1986.

Lafayette Regional Airport, LA

Airspace Docket No. 85–AWA–9—Comments for this docket must be received on or before July 1, 1986.

Raleigh-Durham Airport, NC

Airspace Docket No. 85–AWA–10—Comments for this docket must be received on or before January 2, 1986.

Dulles International Airport, Washington, DC
Tampa International Airport, FL

Meeting Procedures

In addition to seeking written comments on these proposals, the FAA will hold informal airspace meetings for all proposed ARSA locations in order to receive additional input with respect to the proposals. The schedule of times and places of the hearings is listed in Appendix 1. In some instances, meetings on adjacent ARSA locations are combined in one proceeding for the convenience of the public. Also, an effort has been made not to schedule meetings at the same time on separate locations in the same region, so that commenters will be able to attend all meetings in which they may have an interest. Persons who plan to attend any of the meetings should be aware of the following procedures to be followed:

(a) The meetings will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) The dates, times, and places for each meeting are listed in Appendix 1. There will be no admission fee or other charge to attend and participate. The meetings will be open to all persons on a space-available basis. The FAA representative may accelerate the agenda to enable early adjournment if the progress of any meeting is more expeditious than planned.

(c) The meetings will not be recorded. A summary of the comments made at each meeting will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meetings will be accepted. Participants submitting handout materials should present an original and two copies of the presiding officer before distribution. There should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meetings should not be taken as expressing a final FAA position.

Agenda

Presentation of Meeting Procedures
FAA Presentation of Proposal
Public Presentations and Discussion

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR were the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1–2 concluded that TRSA's should be replaced. Four types of airspace configurations were considered as replacement candidates, of which Model B, since redesignated ARSA, was the consensus recommendation.

In response, the FAA published NAR Recommendation 1–2.2.1, "Replace Terminal Radar Service Areas with Model B Airspace and Service" in Notice 83–9 (July 28, 1983; 48 FR 34286) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by SFAR No. 45 (October 28, 1983; 48 FR 50038) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining an ARSA and establishing air traffic rules for operation within such an area. Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, and Columbia, OH, airports and also at the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250; March 6, 1985). The FAA has stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Related Rulemaking

This notice proposes ARSA designations at 30 of the locations identified as candidates for an ARSA in the preamble to Amendment No. 71–10 (50 FR 9252). Thirty-six candidates were previously proposed in Airspace Docket No. 85–AWA–1 (50 FR 27528), Airspace Docket Nos. 85–AWA–2 and 85–AWA–3 (50 FR 31472).

The Current Situation at the Proposed ARSA Locations

A TRSA is currently in effect at each of the locations at which ARSA's are proposed in this notice. A TRSA consists of the airspace surrounding a designated airport where ATC provides radar vectoring, sequencing, and separation for all aircraft operating under instrument flight rules (IFR) and for participating aircraft operating under visual flight rules (VFR). TRSA airspace and operating rules are not established by regulation, and participation by pilots operating under VFR is voluntary, although pilots are urged to participate. This level of service is known as Stage III and is provided at all locations identified as TRSA's. The NAR task group recommended the replacement of most TRSA's with ARSA's.

A number of problems with the TRSA program were identified by the task group. The task group stated that because there are different levels of service offered within the TRSA, users are not always sure of what restrictions or privileges exist, or how to cope with them. According to the task group, there is a feeling shared among users that TRSA's are often poorly defined, are generally dissimilar in dimensions, and encompass more area than is necessary or desirable. There are other users who believe that the voluntary nature of the TRSA does not adequately address the problems associated with nonparticipating aircraft operating in relative proximity to the airport and associated approach and departure courses. There is strong advocacy among user organizations that terminal radar facilities should provide all pilots the same service, in the same way, and, to the extent feasible, within standard size airspace designations.

Certain provisions of FAR section 91.87 add to the problem identified by the task group. For example, aircraft operating under VFR to or from a satellite airport within the airport traffic area of the primary airport are excluded from the two-way radio communications requirement of Section 91.87. This condition is acceptable until the volume and density of traffic at the primary airport dictates further action.

The Proposals

The FAA is considering amendments to § 71.501 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish ARSA's at 30 locations. Each location is a public or military airport at which a nonregulatory TRSA is currently in effect. The proposed locations are set forth under **"Docket Number and Comment Closing Date for Proposed ARSA Locations,"** above, and depicted on charts in Appendix 2 to this notice.

The FAA has published a final rule (50 FR 9252; March 6, 1985) which defines

ARSA and prescribes operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA.

The final rule provides in part that any aircraft arriving at any airport in an ARSA or flying through an ARSA, prior to entering the ARSA must: (1) Establish two-way radio communications with the ATC facility having jurisdiction over the area, and (2) while in the ARSA, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport within the ARSA, two-way radio communications must be established as soon as practicable after takeoff with the ATC facility having jurisdiction over the area, and thereafter maintained while operating within the ARSA.

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize appropriate deviations to any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted under the terms of an ATC authorization.

The FAA adopted the NAR task group recommendation that each ARSA be of the same airspace configuration insofar as practicable. The standard ARSA consists of airspace within 5 nautical miles of the primary airport extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 nautical miles from the primary airport from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation Proposed deviation from the standard has been necessary at some airports due to adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions, operating requirements, and specific airspace designations applicable to ARSA may be found in 14 CFR Part 71, §§ 71.14 and 71.501, and Part 91, §§ 91.1 and 91.88

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Regulatory Evaluation

The FAA has conducted a detailed Regulatory Evaluation of the proposed ARSA implementation program which is included in the regulatory docket. The methodology and major findings of that evaluation are presented below.

a. Costs.

Costs which potentially may result from the ARSA program fall into the following categories:

(1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.

(2) Costs associated with the revision of charts, notification of the public, and pilot education.

(3) Additional operating costs for circumnavigating or flying over the ARSA.

(4) Potential delay costs resulting from operations within an ARSA rather than a TRSA.

(5) The need for some operators to purchase radio transceivers.

(6) Miscellaneous costs.

Each of these cost factors is discussed further below:

(1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.

For the sites proposed in this notice the FAA does not expect to incur any additional air traffic controller staffing costs, controller training costs, or facility equipment costs. FAA believes that the additional traffic which will participate in radar services at ARSA's can be accommodated at current authorized staffing levels. Participation in TRSA's is already quite high, and the greater flexibility afforded controllers through the reduced separation standards will enable them to handle the additional traffic without requiring additional personnel beyond present authorizations. FAA expects to train its controller force in ARSA procedures during regularly scheduled briefing sessions. Airports where TRSA's are currently in operations already have automated terminal radar systems installed. Therefore, FAA does not expect to incur any additional training or equipment procurement costs. Essentially, the FAA is modifying its terminal radar procedures in the ARSA program in a manner which will make more efficient use of existing resources, and consequently does not expect to incur any appreciable implementation costs.

(2) Costs associated with the revision of charts, notification of the public, and pilot education.

Chart revisions of the type required to depict an ARSA are made routinely during charting cycles, and are considered an ordinary cost of doing business. Therefore, the FAA does not expect to incur any additional charting costs as a result of the ARSA program. Further, pilots will obtain charts depicting ARSA's as they are published during these charting cycles. Because pilots are required to use current charts, they also will not incur any additional costs.

Much of the need to provide public notification and pilot education about ARSA procedures will be met as a part of this rulemaking proceeding during the informal public meetings which will be held for each proposed ARSA location. However, should the decision be made to establish an ARSA through a final rule issued in this proceeding, the FAA will distribute a Letter to Airmen to all pilots residing in the vicinity of ARSA sites explaining the operation and configuration of the ARSA finally adopted. The FAA will also issue an Advisory Circular explaining ARSA's. The total one-time cost of distributing Letters to Airmen and the Advisory Circular is estimated to be approximately $50,000 for the entire ARSA program. The prorated one-time cost for those airports being considered in this rulemaking is approximately $11,000.

(3) Additional operating costs for circumnavigating or overflying an ARSA.

FAA anticipates that some pilots who currently transit a TRSA without establishing radio communications or participating in radar services will choose to avoid the mandatory participation airspace of an ARSA rather than participate. Delay costs will be incurred by these pilots equal to the additional aircraft variable operating cost and the value of lost crew and passenger time resulting from the deviation. Many pilots will elect to overfly the ARSA, and although this will not result in any appreciable delay, an additional fuel burn will result from the need to temporarily climb above the 4,000 feet AGL ceiling of the ARSA (which will be offset somewhat by the descent).

The unit delay costs used throughout this regulatory evaluation to develop total annual costs are presented in Table 1. For those aircraft expected to overfly the ARSA rather than deviate around it, FAA estimates that a single-engine piston airplane will burn about

an additional half gallon of fuel, a multi-engine piston airplane will burn about one additional gallon, and that the price of aviation gasoline is approximately $2.00 per gallon.

TABLE. 1—AVERAGE AIRCRAFT VARIABLE OPERATING COSTS AND VALUE OF PASSENGER TIME USED TO ESTIMATE ANNUAL DELAY COSTS [1] (1984 DOLLARS)

Aircraft type (abbreviation)	Aircraft hourly variable operating cost [2]	Average Passengers (pax)/total hourly value of time [3]	Total hourly delay
Single-engine piston (SEP)	$39.22	2 pax/$44.42	$83.64
Multi-engine piston (MEP)	118.07	2 pax/$66.63	184.70
Multi-engine turboprop (METP)	354.32	3 pax/$66.63	420.95
Executive Jet (EXJ)	1,036.64	4 pax/$88.84	1,125.48
Air Carrier (AC)	2,588.77	90 pax/ $1,998.90	4,587.67
Helicopter (HELI)	138.27	3 pax/$66.63	
Military Jet (MILJ)	1,853.87		1,853.87
Military Helicopter (MILH)	195.14		195.14
Military Transport (MILTRP) [4]	1,994.79		1,994.79

[1] One minute average delay per day = 6.083 hours delay per year. Delay time estimates for aircraft which alter flight paths to avoid the ARSA are based upon average cruising speeds of 120 KTS for single-engine piston, 190 KTS for multi-engine piston, 225 KTS for executive jets, and 110 KTS for helicopters.

[2] Aircraft variable operating costs include crew salaries for all aircraft except single and multi-engine piston.

[3] Based upon $22.21 per hour average value of passenger time.

[4] Variable operating cost of air carrier 4-engine turboprop transport used as proxy for military transport.

Source: *Economic Values for Evaluation of Federal Aviation Administration Investment and Regulatory Programs*, FAA Office of Aviation Policy and Plans, September 1981 (Report #FAA-APO-81-3 and revision #APO-84-3). Values have been adjusted for inflation and are expressed in 1984 dollars.

The Office of Aviation Policy and Plans (APO) requested ATC personnel at each of the proposed ARSA sites to estimate, based upon their familiarity with local traffic patterns, the number of daily flight which might circumnavigate or overfly the ARSA. Air Traffic Operations Service personnel also provided input on these estimates. The estimated number of daily flights affected, extent of deviation, and type of aircraft, are presented for each site in Table 2, which follows at the end of this section and summarizes the various potential impacts of establishing an ARSA for each site. FAA estimates that the total annual circumnavigation and overflight costs for the candidate ARSA sites proposed in this notice will be approximately $144 thousand.

(4) Delay costs resulting from operations within an ARSA rather than a TRSA.

FAA recognizes that the potential exists for delay to develop at some locations following esablishment of an ARSA because of the additional traffic which the radar facilities will be handling. However, FAA believes that the greater flexibility afforded controllers in handling traffic as a result of the reduced separation standards will keep delay problems to a minimum. Those that do occur will be transitional in nature, diminishing as facilities gain operating experience with ARSA's and learn how to tailor procedures and resources to take fullest advantage of the efficiencies which an ARSA will permit. Followup studies of the Austin and Columbus lead sites, completed by the FAA Office of Aviation Policy and Plans (APO) and by Engineering & Economics Research Inc. (EER), both indicated that delay was not a significant problem (the clearance delivery delay attributable to the ARSA at Austin was later alleviated through procedural changes and a redistribution of personnel).[1] Nevertheless, the FAA has attempted to estimate delay costs which might temporarily result from establishing ARSA's at the airports being considered in this proposal. These delay estimates should be regarded as the worst case situation which might follow the initial establishment of an ARSA. ATC personnel at each of the proposed sites, as well as Air Traffic Operations Service personnel, provided estimates of three categories of delay, *in comparison to the existing TRSA*, which might result from the ARSA: clearance delivery and/or departure delay for aircraft departures, sequencing delay during peak periods for arriving aircraft, and delay in establishing radar contact before entering the ARSA which might result from frequency congestion, controller overload, or greater participation of nontransponder equipped aircraft. The estimated number of daily flights affected, duration of delay, and type of aircraft, are presented for each site in Table 2. FAA estimates that the total annual delay costs for the candidate ARSA sites proposed in this notice will be approximately $565 thousand.

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[1] *An Analysis of the Impact of the Airport Radar Service Area (ARSA)*, FAA Office of Aviation Policy and Plans, November 1984 (Report #FAA-APO-85-1); and *National Airspace Review—Airport Radar Service Area Operational Confirmation Report*, Engineering & Economics Research, Inc. (EER), Report No. DOT/FAA/AT-84/2, October 1984.

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Table 2

Estimated Average Daily Flight Deviations, Overflights, Delay and Miscellaneous Impacts for Proposed ARSA Sites

Note: Aircraft abbreviations from Table 1.

Docket No./ Site Name	Daily Flight Deviations (NM) or Overflights (OV)	Daily Clearance Delivery and/or Departure Delay	Daily Arrival Sequencing Delay	Daily Radar Contact Delay	Miscellaneous
85-AWA-4					
Beale AFB	0	0	0	0	[illegible]
Birmingham	0	2 SEP/1 METP/ 2 HELI - 5 min.	2 SEP/1 METP/ 2 HELI - 5 min.	1 SEP - 1 min.	[illegible]
Burlington	0	0	0	0	[illegible]
Castle AFB	15 SEP - OV 10 SEP - 3 NM	0	0	0	9 NORDO
Charlotte	15 SEP/10 MEP - 6 NM	6 SEP/6 MEP - 1 min.	0	5 SEP/5 MEP - 1 min.	0
Columbus (Georgia)	0	0	0	0	0
Mather AFB	0	0	0	0	0
McClellan AFB	0	0	0	0	0
Oakland	0	0	0	0	0
Nashville	3 SEP - OV 2 SEP - 5 NM	4 SEP/1 MEP/ 5 HELI - 1 min.	0	0	0
Sacramento	0	0	0	0	0
85-AWA-5					
Adams Field (Little Rock)	4 SEP - 6 NM 1 MEP - OV (3 days per week)	0	0	2 SEP/1 MEP - 1.5 min. (3 days per week)	0
General Mitchell Field (Milwaukee)	12 SEP/8 MEP - 4 NM	5 SEP/5 MEP - 0.2 min.	0	0	0
Buffalo	6 SEP/2 MEP - OV 3 SEP/1 MEP - 5 NM	Primary: 7.5 SEP/5 MEP/ 12.5 HELI - 0.5 min. Satellite: 11 SEP/ 4 MEP - 4 min.	0	0	0
Memphis	7 SEP/1 MEP - 7.5 NM	3 SEP/2 MEP/4 METP/ 1 EXJ - 0.5 min.	0	0	0

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Table 2

Estimated Average Daily Flight Deviations, Overflights, Delay and Miscellaneous Impacts for Proposed ARSA Sites

Note: Aircraft abbreviations from Table 1.

Docket No./ Site Name	Daily Flight Deviations (NM) or Overflights (OV)	Daily Clearance Delivery and/or Departure Delay	Daily Arrival Sequencing Delay	Daily Radar Contact Delay	Miscellaneous
85-AWA-5 (cont.)					
Michiana Regional (South Bend)	0	0	0	0	0
Salt Lake City	9 SEP - 5 NM 1 MEP - OV	0	0	10 SEP/5 MEP- 4 min.	0
85-AWA-6					
Albuquerque	0	0	0	0	0
Davis-Monthan AFB	0	0	0	0	0
Greater Cincinnati	4 SEP/1 MEP - 5 NM 4 SEP/1 MEP - OV	0	0	3 SEP/1 MEP - 1 min.	0
Indianapolis	3 SEP - OV	0	0	0	0
Phoenix	0	30 SEP/11 MEP - 0.7 min.	0	20 MILH - 2 min.	0
Standiford Field (Louisville)	0	0	0	0	0
Tucson	0	0	0	0	0
Wichita	0	0	0	0	0
85-AWA-7					
Dallas Love Field	0	0	0	10 SEP - 2 min.	0
85-AWA-8					
Lafayette	10 SEP - 5 NM (5 days per week)	10 SEP/5 MEP - 1 min. (5 days per week)	0	0	0
85-AWA-9					
Raleigh-Durham	0	4 SEP/3 MEP/ 2 HELI - 2 min.	5 SEP/4 MEP/ 1 HELI - 3 min.	2 SEP/2 MEP - 2.5 min.	0
Dulles (Washington, D.C.)	0	4 SEP/2 MEP - 4 min. (4 days per week)	0	0	2 MORDO
Tampa	0	Primary: 17 SEP/13 MEP - 1.5 min. Satellite: 17 SEP/13 MEP - 1.5 min.	17 SEP/13 MEP - 1.5 min.	34 SEP/26 MEP - 2.5 min.	0

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(5) The need for some operators to purchase communications avionics. Because of the requirement that radio communications be maintained in the mandatory participation airspace of the ARSA, some operators who previously could operate without radios from satellite airports located within that portion of the proposed ARSA which will extend down to the surface will find it necessary to install two-way radios. FAA expects that the costs resulting from these aircraft will be minimal because in most instances the proposed ARSA provides airspace exclusions and cutouts for satellite airports within 5 nautical miles of the ARSA center. However, in a few instances, operators of nonradio equipped (NORDO) aircraft will need to install radios. FAA estimates that the average total cost of equipping a NORDO aircraft with an inexpensive 720 channel transceiver, including installation, is approximately $2,300. (This figure represents only an average cost estimate for a typical VHF communications installation. Other less expensive alternatives for giving an aircraft the communications capability necessary to operate within an ARSA are available.) The annual expense to an aircraft operator who financed the cost over a four-year period at a 15 percent interest rate would be $751. NORDO aircraft are shown in the "Miscellaneous" column of Table 2 for those proposed sites where ATC personnel have identified locally based aircraft which might be affected. FAA estimates that the total annual radio installation costs for affected aircraft at the candidate ARSA sites will be approximately $8,500.

(6) Miscellaneous costs.

At some proposed ARSA locations, special situations might exist where establishment of an ARSA could impose certain costs on users of that airspace. The exclusions in most cases alleviate adverse impacts on local-fixed based operators and airport operators, but ATC personnel at the proposed ARSA sites have attempted to identify where such potential problems may exist. For example, at some locations replacing a TRSA with an ARSA may necessitate relocating a student practice area further away from the flight school airport, and additional operating costs will be incurred travelling the greater distance to and from the practice area. Other miscellaneous operations which might be affected include glider and ultralight operations.

These impacts would be indicated in the "Miscellaneous" column of Table 2 for sites where they have been identified. However, no such impacts are anticipated at any of the candidate ARSA sites proposed in this notice. Respondents are requested to comment upon any special local operations which might be affected by an ARSA either during the public meetings or through written comments submitted to the docket.

Overall total annual costs, by cost category, of establishing ARSA's at the airports proposed in this notice are summarized in Table 3 below. The maximum total annual cost of establishing ARSA's at these sites, if an ARSA is established at each site proposed, is estimated to be approximately $728 thousand. However, this maximum is expected to diminish significantly as controllers and pilots gain experience in ARSA operations. Delay will be reduced, and in many cases, traffic will ultimately flow more smoothly and expeditiously than in existing TRSA's.

Table 3.—Maximum Annual Costs of Establishing ARSA's at Proposed Sites (1984 dollars)

1. FAA controller and equipment costs	$0
2. Chart revision, pilot education (one time)	11,000
3. Circumnavigation and overflight	144,000
4. Departure, sequencing, and radar contact delay	564,500
5. Radio transceivers/miscellaneous	8,500
Total Costs	728,000

b. Benefits

Much of the benefit which will result from the ARSA program is nonquantifiable, and will result from simplifying and standardizing ARSA configurations and operating procedures. The standardization and simplicity of the ARSA concept is expected to alleviate many of the problems identified by the NAR task group. In addition, once experience has been gained in ARSA operations, traffic is expected to move more efficiently and expeditiously than it currently does within a TRSA.

Although many of the benefits of the ARSA program are nonquantifiable, FAA has attempted to make some preliminary estimates of the savings in time and money which might be realized as a result of the greater flexibility allowed air traffic controllers in handling traffic within an ARSA. These estimated savings may or may not offset the delay which some sites anticipate after the initial establishment of an ARSA, but are expected to eventually provide overall time savings which exceed delay as controllers gain experience with ARSA operating procedures. ATC personnel at Columbus, OH, and Austin, TX, where ARSA's have been in operation for approximately a year and a half, report that this has been their experience.

To develop these estimates of savings, FAA used procedures similar to those discussed in the previous section for estimating delay costs. Local ATC personnel, together with the Air Traffic Operations Service, estimated for each candidate ARSA site the number of daily operations and the types of aircraft involved which might save time, *in comparison to operations within a TRSA*, as a result of the reduced separation standards of the ARSA.

FAA estimates that the total annual value of time savings for the candidate ARSA sites proposed in this notice will be approximately $94 thousand. (The unit costs used to estimate the value of time savings are the same as those used to estimate delay costs presented in Table 1.)

Some of the benefits of the ARSA program cannot be specifically attributed to individual candidate airports, but rather will result from the overall improvements in terminal area ATC procedures realized as ARSA's are implemented throughout the country. Establishment of ARSA's at the sites proposed in this notice will contribute to these overall improvements.

ARSA's have the potential for reducing the number of near midair collisions (NMAC's). In its 1984 study of midair and near midair collision data, the Office of Aviation Safety found that approximately 15 percent of reported NMAC's occurred in TRSA airspace.[2] The study found that about half of all NMAC's occurred at altitudes between 1,000 and 5,000 feet, that over 85 percent of NMAC's occurred when visibililty was 5 miles or greater, and that the largest number of NMAC reports are associated with IFR operators under radar control conflicting with VFR traffic during VFR flight conditions below 12,500 feet. Further, the majority of reported NMAC's occurring within or in the near vicinity of TRSA's involve either an air carrier or military aircraft as one of the aircraft (which partially reflects the practice of air carrier and military pilots to report NMAC

[2] *Selected Statistics Concerning Near Midair and Midair Collsions*, FAA Office of Aviation Safety—Safety Analysis Division (ASF-200), August 31, 1984. The data base used in this study is currently under revision to correct problems in reporting procedures which have recently been identified. Although the total numbers of reported NMAC's have been revised upward, the relative distribution of incidents which occur in various operating environments has not changed significantly.

incidents, when they do occur, more frequently than general aviation pilots). The mandatory participation requirements of the ARSA may help alleviate such conflicts where they currently are occurring in TRSA airspace. Further, the EER and APO studies of the ARSA confirmation sites (see note 1) indicate that NMAC's may be reduced by approximately 35 to 40 percent.

Although no quantifiable benefits can be attributed to a reduction in near midair collisions, near midair and actual midair collisions result from similar causal factors, and a reduction in near midair collisons suggests that a reduction in actual midair collisons, which can involve substantial losses, may also be expected as a result of the ARSA program.

The APO study of the ARSA confirmation sites (note 1) included a detailed analysis to determine if a reduction in midair collision risk might result from replacing a TRSA with an ARSA. The collision risk analysis was based upon the experience at the Columbus confirmation site, where recorded radar data were available, and focused on conditions of fairly heavy VFR activity because the ARSA will affect procedures used to handle VFR traffic in the terminal radar area. The analysis determined that there was no compression of traffic in the airspace immediately around, under, and over the ARSA, and in the absence of compression, the mandatory participation requirement for all aircraft operating within the ARSA resulted in a 75 percent reduction in midair collision risk. Further, even under the pessimistic assumption that the changes in separation standards would completely eliminate the effectiveness of controller-initiated avoidance maneuvers, and the pilot would only have the benefit of radar traffic advisories, the study found that the mandatory pilot participation required in the ARSA still provided a 63 percent reduction in midair collision risk in comparison to the TRSA.

FAA has examined National Transportation Safety Board midair collision accident records for the period between January 1978 and October 1984. This review indicated that approximately one to two midair collisions occurred per year throughout the United States which either could have been prevented, or the probability of their occurrence would have been greatly reduced, had an ARSA, rather than a TRSA, been in effect where these accidents occurred. Because the circumstances observed at the Columbus confirmation site may not necessarily be found at other TRSA locations, the 75 percent reduction in midair collision risk measured at Columbus may not be achieved at other ARSA sites. Therefore, the FAA conservatively estimates that implementation of the ARSA program nationally may result in an average reduction in midair collision risk of only 50 percent at TRSA locations that are replaced with ARSA's.

Reducing by 50 percent the one to two midair collisions per year where an ARSA could have made a difference would result in the prevention of one midair collision nationally every one to two years. The quantifiable benefits of preventing a midair collision can range from less than $100 thousand, resulting from the prevention of a minor nonfatal accident between general aviation aircraft, to quantifiable benefits of as much as $100 million to $300 million, resulting from the prevention of a midair collision involving an air carrier aircraft and numerous fatalities. Establishment of ARSA's at the sites proposed in this notice will contribute to this improvement in safety.

c. Comparison of Costs and Benefits

A direct comparison of the costs and benefits of this proposal is difficult for a number of reasons. Many of the benefits of the proposal are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual candidate ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of both the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate that delay problems will dominate the initial adjustment period. Both the Austin and Columbus confirmation sites went through initial adjustment periods, but now experience almost no delay as a result of ARSA procedures. Baltimore/Washington is currently progressing along a similar learning curve.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the group of candidate ARSA sites proposed in this notice typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits will be achieved without any additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of the proposed ARSA sites will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than $100 thousand, to as much as $300 million, for each accident prevented.

For these reasons, FAA expects that establishment of the ARSA sites proposed in this notice will produce long term, ongoing benefits which will exceed their costs, which are essentially transitional in nature.

International Trade Impact Analysis

This proposed regulation will only affect terminal airspace operating procedures at selected airports within the United States. As such, it will have no affect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities which could be potentially affected by implementation of the ARSA program are the fixed-base operators, flight schools, agricultural operators and other small aviation businesses located or operating at satellite airports within 5 nautical miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. Individual proposals exclude almost every satellite airport located within the 5-nautical-mile ring to avoid adversely impacting their operations, and to simplify coordinating ATC responsibilities between the primary and satellite airports. In some

cases, the same purposes will be achieved through Letters of Agreement between ATC and the affected airports which establish special procedures for operating to and from these airports. In this manner, FAA expects to virtually eliminate any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program.

Further, because the FAA expects that any delay problems which may initially develop following implementation of an ARSA will be transitory, and because the airports which will be affected by the ARSA program represent only a small proportion of all the public use airports in operation within the United States, small entities of any type which use aircraft in the course of their business will not be adversely impacted.

For these reasons, the FAA certifies that the proposed regulation will not result in a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required under the terms of the RFA.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to reads as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. Section 71.501 is amended as follows:

Airspace Docket No. 85–AWA–4

Beale AFB, CA [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of Beale AFB (lat. 39°08'12" N., long. 121°26'42" W.), and that airspace extending upward from 1,600 feet MSL to 4,100 feet MSL within a 10-mile radius of Beale AFB from 127 °T(111 °M) bearing from the airport clockwise to the 007 °T (351 °M) bearing from the airport and that airspace extending upward from 2,600 feet MSL to 4,100 feet MSL within a 10-mile radius of the airport from 007 °T (351 °) bearing from the airport clockwise to the 127 °T (111 °M) bearing from the airport.

Birmingham Municipal Airport, AL [New]

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-mile radius of the Birmingham Municipal Airport (lat. 33°33'50" N., long. 86°45'16" W.), and that airspace extending upward from 2,400 feet MSL to 4,600 feet MSL within a 10-mile radius of Birmingham Municipal Airport from the 343 °T (343 °M) bearing from the airport clockwise to the 231 °T (231 °M) bearing from the airport and that airspace extending upward from 1,900 feet MSL to 4,600 feet MSL within a 10-mile radius of the airport from the 231 °T (231 °M) bearing from the airport clockwise to the 343 °T (343 °M) bearing of the airport.

Burlington International Airport, VT [New]

That airspace extending upward from the surface to and inlcluding 4,400 feet MSL within a 5-mile radius of the Burlington International Airport (lat. 44°28'17" N., long. 73°09'12" W.), and that airspace extending upward from 2,200 feet MSL to 4,400 feet MSL within a 10-mile radius of Burlington International Airport from the 360° T (346 °M) bearing from the airport clockwise to the 180 °T (166 °M) bearing from the airport and that airspace extending upward from 1,300 feet MSL to 4,400 feet MSL within a 10-mile radius of the airport from the 180 °T (166 °M) bearing from the airport clockwise to the 360 °T (346 °M) bearing from the airport excluding the airspace within Restricted Area R–6501.

Castle AFB, CA [New]

That airspace extending upward from the surface to and including 4,200 feet MSL within a 5-mile radius of Castle AFB (lat. 37°22'49" N., long. 120°34'01" W.) excluding that airspace bounded by a 1-mile arc north of the Atwater Airport (lat. 37°20'05" N., long. 120°36'15" W.) and the 196 °T (181 °M) and the 229 °T (214 °M) bearing from Castle AFB south to the 5-mile radius of Castle AFB, and that airspace extending upward from 1,400 feet MSL to and including 4,200 feet MSL within a 10-mile radius of Castle AFB from the 126 °T (111 °M) bearing from Castle AFB clockwise to the 306 °T (291 °M) bearing from Castle AFB, and that airspace extending upward from 1,900 feet MSL to and including 4,200 feet MSL within a 10-mile radius of Castle AFB from the 306 °T (291 °M) bearing from Castle AFB clockwise to the 126 °T(111 °M) bearing from Castle AFB.

Charlotte/Douglas International Airport, NC [New]

That airspace extending upward from the surface to and including 4,700 feet MSL within a 5-mile radius of the Charlotte/Douglas International Airport (lat. 35°12'52" N., long. 80°56'37" W.), and that airspace extending upward from 2,000 feet MSL to 4,700 feet MSL within a 10-mile radius of the Charlotte/Douglas International Airport.

Columbus Metropolitan Airport, GA [New]

That airspace extending upward from the surface to and including 4,400 feet MSL within a 5-mile radius of Columbus Metropolitan Airport (lat. 32°30'58" N., long. 84°56'20" W.), and that airspace extending upward from 1,700 feet MSL to 4,400 feet MSL within a 10-mile radius of Columbus Metropolitan Airport from the 069 °T (070 °M) bearing from the airport clockwise to the 325 °T (326 °M) bearing from the airport and that airspace extending upward from 1,900 feet MSL to 4,400 feet MSL within a 10-mile radius of the airport from the 325 °T (326 °M) bearing from the airport clockwise to the 069 °T (070 °M) bearing from the airport, excluding the airspace within Restricted Area R–3002. This airport radar service area is effective during the specific days and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Mather AFB, CA [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Mather AFB (lat. 38°33'53" N., long. 121°26'42" W.) to the points where this 5-mile radius intersects the 5-mile radius of the McClellan AFB, CA, Airport Radar Service Area (ARSA), and that airspace extending upward from 1,600 feet MSL to 4,100 feet MSL within a 10-mile radius of Mather AFB to the points where this 10-mile radius intersects the 10-mile radius of the McClellan AFB ARSA.

McClellan AFB, CA [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of McClellan AFB (lat. 38°40'00" N., long. 121°23'54" W.) to the points where this 5-mile radius intersects the 5-mile radius of the Mather AFB, CA, Airport Radar Service Area (ARSA) excluding that airspace 1,600 feet MSL and below from the 215 °T (198 °M) bearing from McClellan AFB at the 5-mile radius along this 215 °T (198 °M) bearing to the 187 °T (170 °M) bearing from Rio Linda Airport (lat. 38°40'34" N., long. 121°26'40" W.) to the 007 °T (350 °M) bearing from Rio Linda Airport to and along the 321 °T (304 °M) bearing from McClellan AFB to the 5-mile radius, and that airspace extending upward from 1,600 feet MSL to 4,100 feet MSL within a 10-mile radius of McClellan AFB to the points where this 10-mile radius intercepts the 10-mile radius of the Sacramento Metropolitan Airport, CA, ARSA and the Mather AFB ARSA.

Metropolitan Oakland International Airport, CA [New]

That airspace extending upward from the surface to but not including the base altitudes of the San Francisco, CA, Terminal Control Area (TCA) within a 5-mile radius of the Metropolitan Oakland International Airport (lat. 37°43'17" N., long. 120°13'11" W.), excluding that airspace within the San Francisco TCA, and that airspace extending upward from 1,500 feet MSL to but not including the base altitudes of the San Francisco TCA within a 10-mile radius of the Metropolitan Oakland International Airport, excluding that airspace within the San Francisco TCA and that airspace from the Oakland VORTAC 003 °T(347 °M) radial clockwise to the Oakland VORTAC 075 °T (059 °M) radial.

Nashville Metropolitan Airport, TN [New]

That airspace extending upward from the surface to and including 4,600 feet MSL within a 5-mile radius of the Nashville Metropolitan Airport (lat. 36°07'37" N., long. 86°40'53" W.) excluding that airspace within

a 1.5-mile radius of Cornelia Fort Airport (lat. 36°12'00" N., long. 86°42'10" W.), and that airspace extending upward from 2,100 feet MSL to and including 4,600 feet MSL within a 10-mile radius of Nashville Metropolitan Airport from the 018 °T (019 °M) bearing from the airport clockwise to the 198 °T (199 °M) bearing from the airport and that airspace extending upward from 2,400 feet MSL to and including 4,600 feet MSL within a 10-mile radius of the airport from the 198 °T (199 °M) bearing from the airport clockwise to the 018 °T (019 °M) bearing from the airport.

Sacramento Metropolitan Airport, CA [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Sacramento Metropolitan Airport (lat. 38°41'44" N., long. 121°36'01" W.) excluding that airspace 1,600 feet MSL and below within a 2-mile radius of Riego Flight Strip (lat. 38°45'15" N., long. 121°33'43" W.), and that airspace within a 2-mile radius of Natomas Field (lat. 38°38'18" N., long. 121°30'51" W.), and that airspace 1,600 feet and below east of a 002 °T(345 °M) bearing from Natomas Field, and that airspace extending upward from 1,600 feet MSL to 4,100 feet MSL within a 10-mile radius of Sacramento Metropolitan Airport to the points where this 10-mile radius intercepts the 10-mile radius of McClellan AFB, CA, Airport Radar Service Area.

Airspace Docket No. 85–AWA–5

Adams Field, Little Rock, AR [New]

That airspace extending upward from the surface to and including 4,300 feet MSL within a 5-mile radius of Adams Field (lat. 34°43'48" N., long. 92°13'59" W.), and that airspace extending upward from 1,500 feet MSL to 4,300 feet MSL within a 10-mile radius of Adams Field from the 030 °T (026 °M) bearing from the airport clockwise to the 210 °T (206 °M) bearing from the airport and that airspace extending upward from 1,800 feet MSL to 4,300 feet MSL within a 10-mile radius of the airport from the 210 °T (206 °M) bearing from the airport clockwise to the 030 °T (026 °M) bearing from the airport.

General Mitchell Field Airport, Milwaukee, WI [New]

That airspace extending upward from the surface to and including 4,700 feet MSL within a 5-mile radius of the General Mitchell Field Airport (lat. 42°56'49" N., long. 87°53'49" W.), and that airspace extending upward from 1,900 feet MSL to 4,700 feet MSL within a 10-mile radius of the General Mitchell Field Airport.

Greater Buffalo International Airport, NY [New]

That airspace extending upward from the surface to and including 4,700 feet MSL within a 5-mile radius of the Greater Buffalo International Airport (lat. 42°56'26" N., long. 78°43'57" W.) excluding that airspace within a 1-mile radius of the Buffalo Airpark (lat. 42°51'40" N., long. 78°43'00" W.), and excluding that Airspace within a 1-mile radius of the Lancaster Airport (lat. 42°55'20" N., long. 78°36'45" W.), and that airspace extending upward from 2,200 feet MSL to 4,700 feet MSL within a 10-mile radius of the Greater Buffalo International Airport exclusive of Canadian Airspace.

Memphis International Airport, TN [New]

That airspace extending upward from the surface to and including 4,300 feet MSL within a 5-mile radius of the Memphis International Airport (lat. 35°02'59" N., long. 89°58'43" W.), and that airspace extending upward from 1,600 feet MSL to 4,300 feet MSL within a 10-mile radius of the Memphis International Airport.

Michiana Regional Airport, South Bend, IN [NEW]

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-mile radius of the Michiana Regional Airport (lat. 41°42'15" N., long. 86°18'58" W.), and that airspace extending upward from 2,000 feet MSL to 4,800 feet MSL between the 5-mile radius and the 10-mile radius of the Michiana Regional Airport, excluding that airspace within a 1-mile radius of the Chain-O-Lakes Airport (lat. 41°39'45" N., long. 86°21'15" W.) and parallel lines connecting the northwest and southeast most outer edge of the 1-mile circle to the 5-mile circle and extending from the surface up to 2,000 feet MSL.

Salt Lake City International Airport, UT [New]

That airspace extending upward from the surface to and including 8,200 feet MSL within a 5-mile radius of the Salt Lake City International Airport (lat. 40°47'13" N., long. 111°58'05" W.) excluding the airspace within a 1-mile radius of the Salt Lake Skypark Airport (lat. 40°52'10" N., long. 111°55'35" W.), and that airspace extending upward from 5,400 feet MSL to and including 8,200 feet MSL within a 10-mile radius of the Salt Lake City International Airport, excluding that airspace east of a line from a point 10 miles from the airport on a bearing of 022 °T (007 °M) direct to a point 10 miles from the airport on a bearing of 140 °T (125 °M).

Airspace Docket No. 85–AWA–6

Albuquerque International Airport, NM [New]

That airspace extending upward from the surface to and including 9,400 feet MSL within a 5-mile radius of Albuquerque International Airport (lat. 35°02'30" N., long. 106°36'23" W.), and that airspace extending upward from 7,800 feet MSL to 9,400 feet MSL within a 10-mile radius of the airport from the 072 °T (061 °M) bearing from the airport clockwise to the 117 °T (106 °M) bearing from the airport and that a airspace extending upward from 6,900 feet MSL to 9,400 feet MSL within a 10-mile radius of the airport from the 117 °T (106 °M) bearing from the airport clockwise to the 034 °T (021 °M) bearing from the airport thence along a line south to a point 7 miles from the airport on the 072 °T (061 °M) bearing from the airport.

Davis-Monthan AFB, AZ [New]

That airspace extending upward from the surface to and including 6,600 feet MSL within a 5-mile radius of Davis-Monthan AFB (lat. 32°09'54" N., long. 110°52'54" W.), to the points where the 5-mile arc joins a 5-mile arc from the Tucson International Airport, AR, (lat. 32°07'06" N., long. 110°56'35" W.) Airport Radar Service Area (ARSA), and that airspace extending upward from 4,200 feet MSL to 6,600 feet MSL within a 10-mile radius of Davis-Monthan AFB to the points where the 10-mile arc joins a 10-mile arc from the Tucson International Airport ARSA.

Greater Cincinnati International Airport, Covington, KY [New]

That airspace extending upward from the surface to and including 4,900 feet MSL within a 5-mile radius of the Greater Cincinnati International Airport (lat. 39°02'52" N., long. 84°40'00" W.), and that airspace extending upward from 2,100 feet MSL to 4,900 feet MSL within a 10-mile radius of the Greater Cincinnati International Airport.

Indianapolis International Airport, IN [New]

That airspace extending upward from the surface to and including 4,800 feet MSL within a 5-mile radius of the Indianapolis International Airport (lat. 39°43'28" N., long. 86°17'00" W.), and that airspace extending upward from 2,100 feet MSL within a 10-mile radius of the Indianapolis International Airport.

Phoenix Sky Harbor International Airport, AZ [New]

That airspace extending upward from the surface to and including 5,100 feet MSL within a 5-mile radius of the Phoenix Sky Harbor Airport (lat. 33°26'10" N., long. 112°00'32" W.), and that airspace within a 10-mile radius of Phoenix Sky Harbor Airport extending upward from 4,000 feet MSL to and including 5,100 feet MSL between the 166 °T (153 °M) bearing from the airport clockwise to the 243 °T (230 °M) bearing from the airport, and extending upward from 2,300 feet MSL to and including 5,100 feet MSL between the 243 °T (230 °M) bearing clockwise to the 166 °T (153 °M) bearing from the Phoenix Sky Harbor Airport.

Standiford Field Airport, Louisville KY [New]

That airspace extending upward from the surface to and including 4,500 feet MSL within a 5-mile radius of the Standiford Airport (lat. 38°10'40" N., long. 85°44'11" W.), and that airspace extending upward from 2,200 feet MSL to 4,500 feet MSL within a 10-mile radius of the Standiford Airport from the 269 °T (271 °M) bearing from the airport clockwise to the 081 °T (083 °M) bearing from the airport and that airspace extending from 1,700 feet MSL to 4,500 feet MSL within a 10-mile radius of the airport from the 081 °T (083 °M) bearing from the airport clockwise to the 269 °T (271 °M) bearing from the airport, excluding that airspace from the surface to 2,200 feet MSL within the area originating at a point (lat. 38°11'28" N., long. 85°42'01" W.) thence along a line bearing 014 °T (016 °M) to the Standiford 5-mile radius thence clockwise via the Standiford 5-mile radius to intercept a line bearing 069 °T (091 °M) from said point (lat. 38°11'28" N., long. 85°42'01" W.) thence via this line to the point of origin.

Tucson International Airport, AZ [New]

That airspace extending upward from the surface to 6,600 feet MSL within a 5-mile radius of the Tucson International Airport (lat. 32°07'06" N., long. 110°56'35" W.) to the points where the 5-mile arc joins a 5-mile arc from the Davis-Monthan AFB, AR, (lat. 32°09'54" N., long. 110°52'54" W.) Airport Radar Service Area (ARSA), and that airspace extending upward from 4,200 feet MSL to and including 6,600 feet MSL to the points where the 10-mile arc joins a 10-mile arc from the Davis-Monthan AFB ARSA.

Wichita Mid-Continent Airport, KS [New]

That airspace extending upward from the surface to and including 5,300 feet MSL within a 5-mile radius of the Wichita Mid-Continent Airport (lat. 37°39'00" N., long. 97°39'00" W.), and that airspace extending upward from 2,700 feet MSL to 5,300 feet MSL within a 10-mile radius of the Wichita Mid-Continent Airport.

Airspace Docket No. 85–AWA–7

Dallas Love Field, TX [New]

That airspace extending upward from the surface to but not including 5,000 feet MSL within a 5-mile radius of the Dallas Love Field Airport (lat. 32°50'49" N., long. 96°51'05" W.) excluding that airspace within the Dallas-Fort Worth, TX, (DFW) Terminal Control Area (TCA), Areas B and C, and excluding that airspace extending clockwise from a line bearing 340°T (333°M from lat. 32°54'25" N., long. 96°51'20" W., to a line bearing 136°T (129°M) from lat. 32°54'25" N., long. 96°51'20" W., until intercepting the 5-mile radius of the airport, and that airspace extending upward from 2,000 feet MSL to but not including 5,000 feet MSL within a 10-mile radius of the airport extending clockwise from the point where it joins the DFW TCA, Area A., northwest of the Dallas Love Field Airport to a line bearing 340°T (333°M) from lat. 32°54'25" N., long. 96°51'20" W., excluding the DFW TCA, Area C, and that airspace extending upward from 3,000 feet MSL to but not including 5,000 feet MSL within a 10-mile radius of the airport extending clockwise from a line bearing 340°T (333°M) from lat. 32°54'25" N., long. 96°51'20" W., to the 10-mile radius to a line bearing 136°T (129°M) from lat. 32°54'25" N., long. 96°51'20" W., to the 10-mile radius and that airspace extending upward from 2,000 feet MSL to but not including 5,000 feet MSL within a 10-mile radius of the airport extending from 5 miles southeast of the airport clockwise from a line bearing 136°T (129°M) from lat. 32°54'25" N., long. 96°51'20" W., until joining the DFW TCA Areas D and C excluding the DFW TCA.

Airspace Docket No. 85–AWA–8

Lafayette Regional Airport, LA [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Lafayette Regional Airport (lat. 30°12'14" N., long. 91°59'16" W.), and that airspace extending upward from 1,200 feet MSL to 4,000 feet MSL within a 10-mile radius of the airport. This airport radar service area is effective during the specific days and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Airspace Docket No. 85–AWA–9

Raleigh-Durham Airport, NC [New]

That airspace extending upward from the surface to and including 4,400 feet MSL within a 5-mile radius of the Raleigh-Durham Airport (lat. 35°52'19" N., long. 78°47'07" W.), and that airspace extending upward from 1,700 feet MSL to 4,400 feet MSL within a 10-mile radius of the Raleigh-Durham Airport.

Airspace Docket No. 85–AWA–10

Dulles International Airport, Washington, DC [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Dulles International Airport (lat. 38°56'39" N., long 77°27'26" W.) and lying west of a line extending from the 048°T (057°M) bearing from the airport on the 5-mile arc to the 130°T (139°M) bearing from the airport on the 5-mile arc, and upward from the surface to 3,000 feet MSL east of that line, and that airspace extending upward from 1,700 feet MSL to and including 4,300 feet MSL within a 10-mile radius of the airport from the 149°T (158°M) bearing from the airport clockwise to the 038°T (047°M) bearing from the airport, excluding that airspace beyond 8 miles between the 234°T (243°M) bearing from the airport clockwise to the 272°T (281°M) bearing from the airport, and that airspace extending upward from 1,700 feet MSL upward to and including 3,000 feet MSL within a 10-mile radius of the airport from the 38°T (047°M) bearing from the airport clockwise to the 149°T (158°M) bearing from the airport, excluding that airspace overlying the Washington, DC, Terminal Control Area.

Tampa International Airport, FL [New]

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Tampa International Airport (lat. 27°58'31" N., long. 82°32'00" W.) and that airspace extending upward from 1,200 feet MSL to 4,000 feet MSL within a 10-mile radius of the Tampa International Airport.

Issued in Washington, DC., on September 23, 1985.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Divison.

Appendix 1—Public Meeting Schedule

The schedule for the informal airspace meetings is as follows:

Airspace Docket No. 85–AWA–4

Beale AFB, CA, ARSA
Date: November 6, 1985
Time: 7:00 p.m.–10:00 p.m.
Location: Metropolitan Utility District Auditorium, 6201 S. Street, Sacramento, CA

Birmingham Municipal Airport, AL, ARSA
Date: January 14, 1985
Time: 7:30 p.m.
Location: Alabama Air National Guard Base, Birmingham Municipal Airport, AL

Burlington International Airport, VT, ARSA
Date: December 10, 1985
Time: 7:00 p.m.
Location: Vermont Army National Guard, Hangar 890, Burlington International Airport, VT

Castle AFB, CA, ARSA
Date: November 27, 1985
Time: 7:00 p.m.–10:00 p.m.
Location: Merced City Council Chambers, Merced, CA

Charlotte/Douglas International Airport, NC, ARSA
Date: October 24, 1985
Time: 7:00 p.m.
Location: North Carolina Air National Guard Base, Operations and Training Building, Morrisfield Drive, Charlotte/Douglas International Airport, NC

Columbus Metropolitan Airport, GA, ARSA
Date: November 8, 1985
Time: 7:30 p.m.
Location: United Gas and Light Building, 1421 4th Avenue, Columbus, GA

Mather AFB, CA, ARSA
Date: November 6, 1985
Time: 7:00 p.m.–10:00 p.m.
Location: Metropolitan Utility District Auditorium, 6201 S. Street, Sacramento, CA

McClellan AFB, CA, ARSA
Date: November 6, 1985
Time: 7:00 p.m.–10:00 p.m.
Location: Metropolitan Utility District Auditorium, 6201 S. Street, Sacramento, CA

Metropolitan Oakland International Airport, CA, ARSA
Date: November 14, 1985
Time: 7:00 p.m.–10:00 p.m.
Location: Francesco's Restaurant, 8520 Pardee Drive, Oakland, CA

Nashville Metropolitan Airport, TN, ARSA
Date: November 13, 1985
Time: 7:30 p.m.
Location: Tennessee Air Guard Administration Building, Main Auditorium, 801 Knapp Boulevard, Nashvile Metropolitan Airport, Nashville, TN

Sacramento Metropolitan Airport, CA, ARSA
Date: November 6, 1985
Time: 7:00 p.m.–10:00 p.m.
Location: Metropolitan Utility District Auditorium, 6201 S. Street, Sacramento, CA

Airspace Docket No. 85–AWA–5

Adams Field, Little Rock, AR, ARSA
Date: February 4, 1986
Time: 7:00 p.m.
Location: Executive Inn, 707 Interstate 30, Little Rock, AR

General Mitchell Field Airport, Milwaukee, WI, ARSA
Date: November 6, 1985
Time: 7:00 p.m.
Location: Aero Services Milwaukee, Inc., 923 E. Layton Avenue, Milwaukee, WI

Greater Buffalo International Airport, NY, ARSA
Date: November 7, 1985
Time: 7:00 p.m.
Location: Maryvale Middle School, 1050 Marydale Drive, Cheetowaga, NY

Memphis International Airport, TN, ARSA
Date: December 11, 1985

Time: 7:30 p.m.
Location: Conference Room Memphis Air Route Traffic Control Center, 3229 Democrat Road, Memphis, TN

Michiana Regional Airport, South Bend, IN, ARSA
Date: January 22, 1986
Time: 7:00 p.m.
Location: South Bend Public Library, 122 W. Wayne, South Bend, IN

Salt Lake City International Airport, UT, ARSA
Date: January 15, 1986
Time: 7:00 p.m.
Location: State Aeronautics Hangar, Salt Lake City International Airport, 135 North 2400 West, Salt Lake City, UT

Airspace Docket No. 85–AWA–6

Albuquerque International Airport, NM, ARSA
Date: February 25, 1986
Time: 7:00 p.m.
Location: Sun Room, Terminal Building, Albuquerque International Airport, Albuquerque, NM

Davis-Monthan AFB, AZ, ARSA
Date: March 12, 1986
Time: 7:00 p.m.
Location: Granada Royale, 7051 S. Tucson Boulevard, Tucson, AZ

Greater Cincinnati International Airport, Covington, KY, ARSA
Date: February 26, 1986
Time: 7:00 p.m.
Location: Northern Kentucky University, Business Education-Psychology Center, Highland Heights, KY

Indianapolis International Airport, IN, ARSA
Date: December 11, 1985
Time: 7:00 p.m.
Location: Indiana Airway Facilities Sector Office, 1945 S. Banner Avenue, Indianapolis, IN

Phoenix-Sky Harbor International Airport, AZ, ARSA
Date: March 13, 1986
Time: 7:00 p.m.
Location: Air National Guard Theatre, 2001 S. 32nd Street, Phoenix, AZ

Standiford Field Airport, Louisville, KY, ARSA
Date: February 27, 1986
Time: 7:30 p.m.
Location: The Jewish Community Center, Dutchman's Lane, Louisville, KY

Tucson International Airport, AZ, ARSA
Date: March 12, 1986
Time: 7:00 p.m.
Location: Granada Royale, 7051 S. Tucson Boulevard, Tucson, AZ

Wichita Mid-Continent Airport, Wichita, KS, ARSA
Date: November 20, 1985
Time: 7:00 p.m.
Location: Aviation Education Center, 2021 South Eisehower, Wichita, KS

Airspace Docket No. 85–AWA–7

Dallas Love Field, TX, ARSA
Date: April 9, 1986
Time: 7:00 p.m.
Location: Executive Inn, Love Field, 3232 W. Mocking Bird Lane, Dallas, TX

Airspace Docket No. 85–AWA–8

Lafayette Regional Airport, LA, ARSA
Date: April 11, 1986
Time: 7:00 p.m.
Location: FAA Tower Building, 220 Tower Drive, Room 101, Lafayette, LA

Airspace Docket No. 85–AWA–9

Raleigh-Durham Airport, NC, ARSA
Date: April 7, 1986
Time: 7:30 p.m.
Location: North Carolina Army National Guard Support Facility, Conference Room, Raleigh-Durham Airport, NC

Airspace Docket No. 85-AWA-10

Dulles International Airport, Washington, DC, ARSA
Date: November 21, 1985
Time: 7:00 p.m.–10:00 p.m.
Location: Benjamin Franklin Intermediate School, Little Theater, 3300 Lee's Corner Road, Chantilly, VA

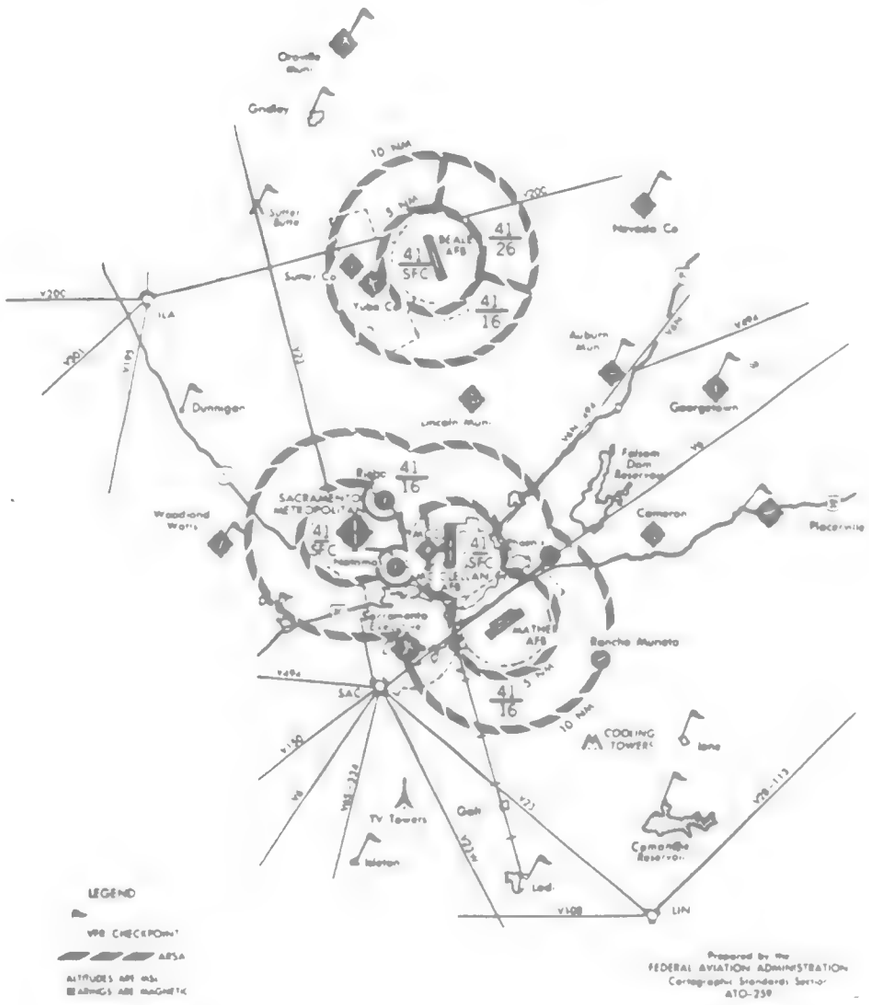
Tampa International Airport, FL, ARSA
Date: December 17, 1985
Time: 7:30 p.m.
Location: University of South Florida, Bayborough Campus, St. Petersburg, FL, and
Date: December 18, 1985
Time: 7:30 p.m.
Location: Hillsboro High School, Tampa, FL.

BILLING CODE 4910-13-M

Appendix 2

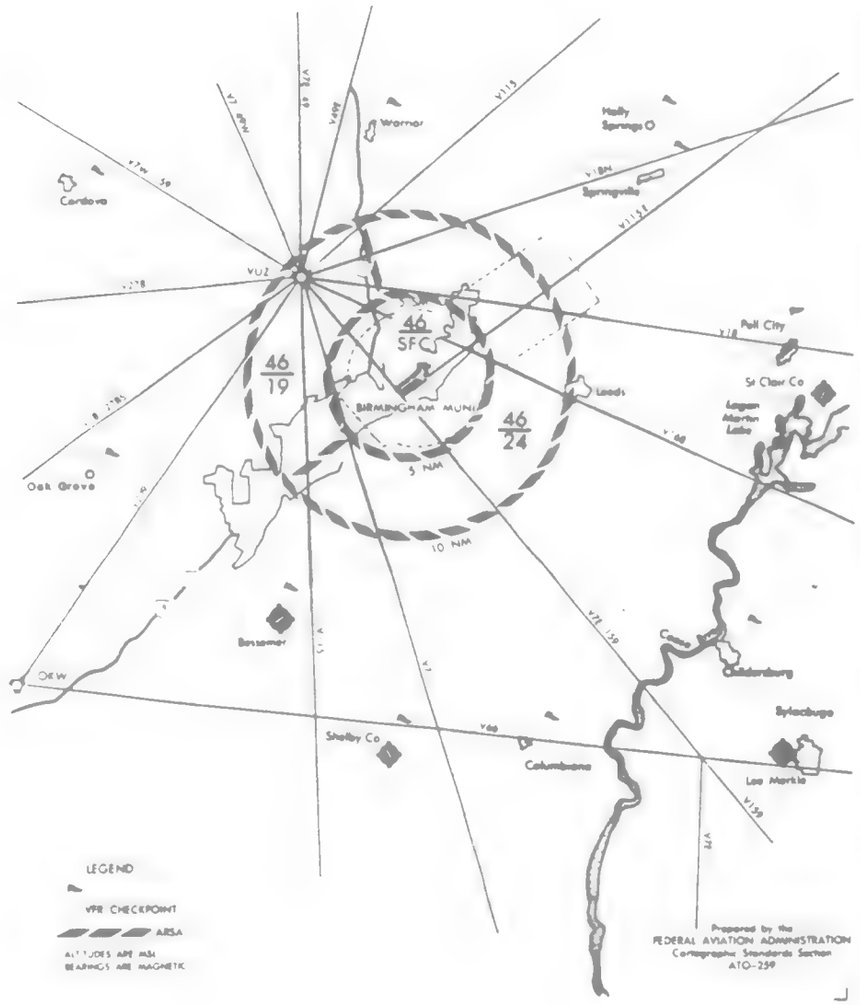
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SACRAMENTO VALLEY, CALIFORNIA
BEALE AFB
FIELD ELEV. 113' MSL



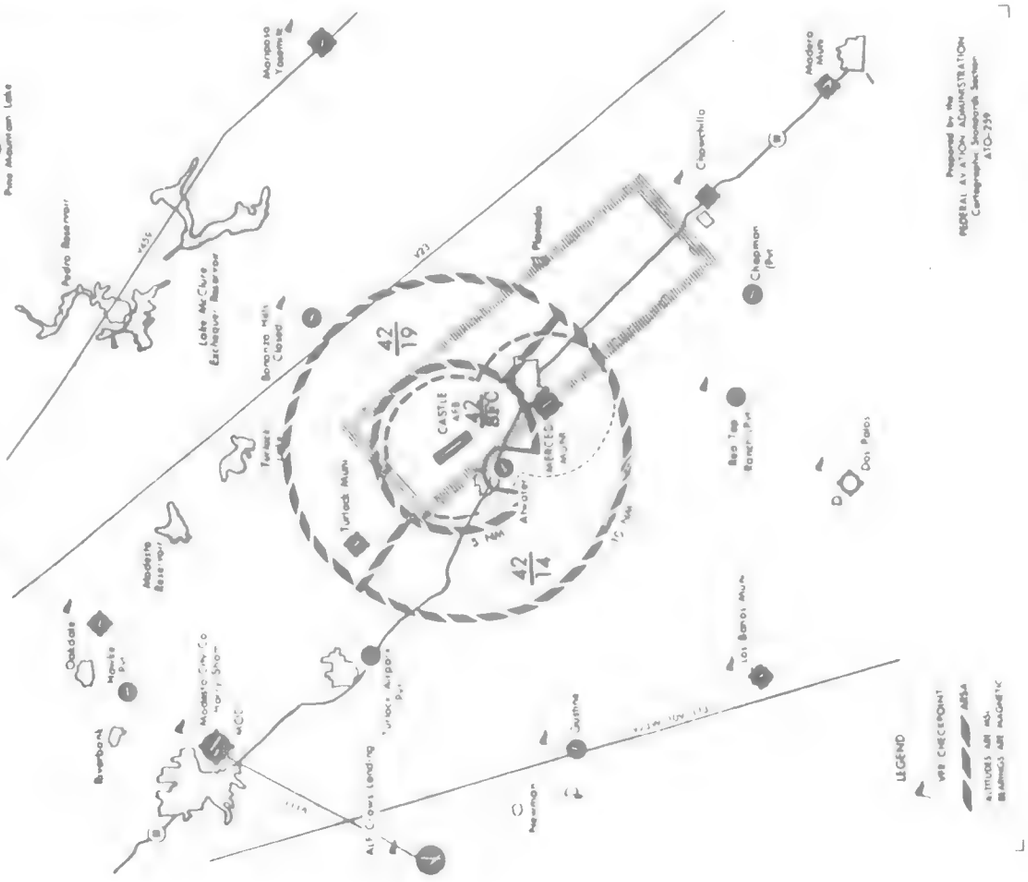
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BIRMINGHAM, ALABAMA
BIRMINGHAM MUNI AIRPORT
FIELD ELEV. 644' MSL



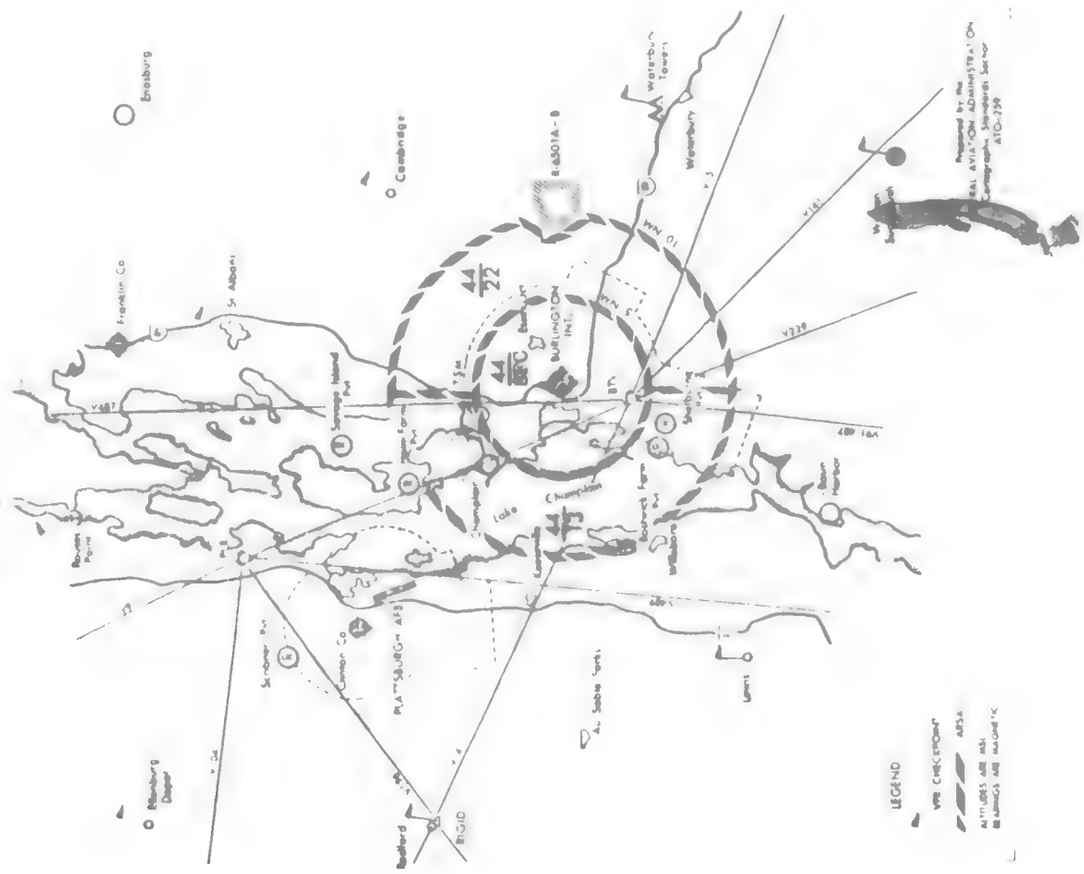
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MERCED, CALIFORNIA
CASTLE AFB
FIELD ELEV. 188' MSL



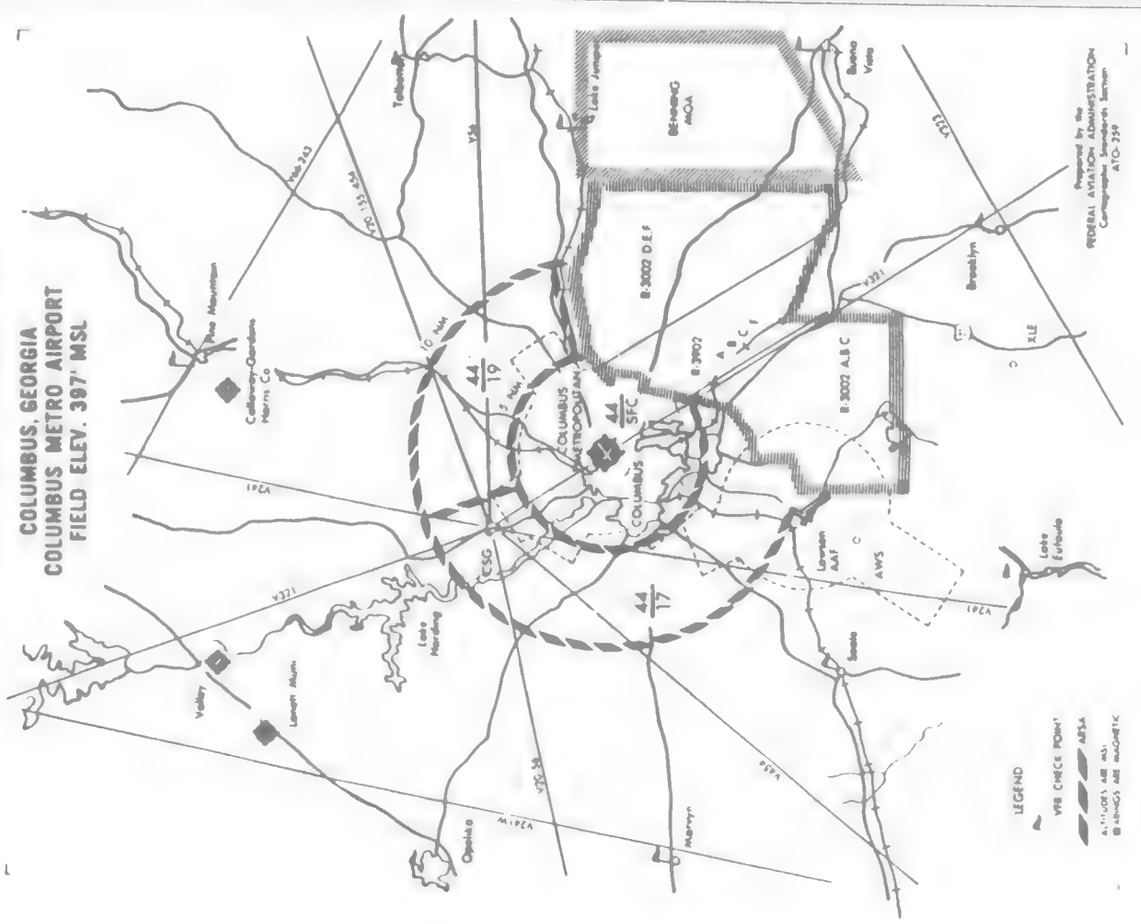
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BURLINGTON, VERMONT
BURLINGTON INTERNATIONAL AIRPORT
FIELD ELEV. 334' MSL



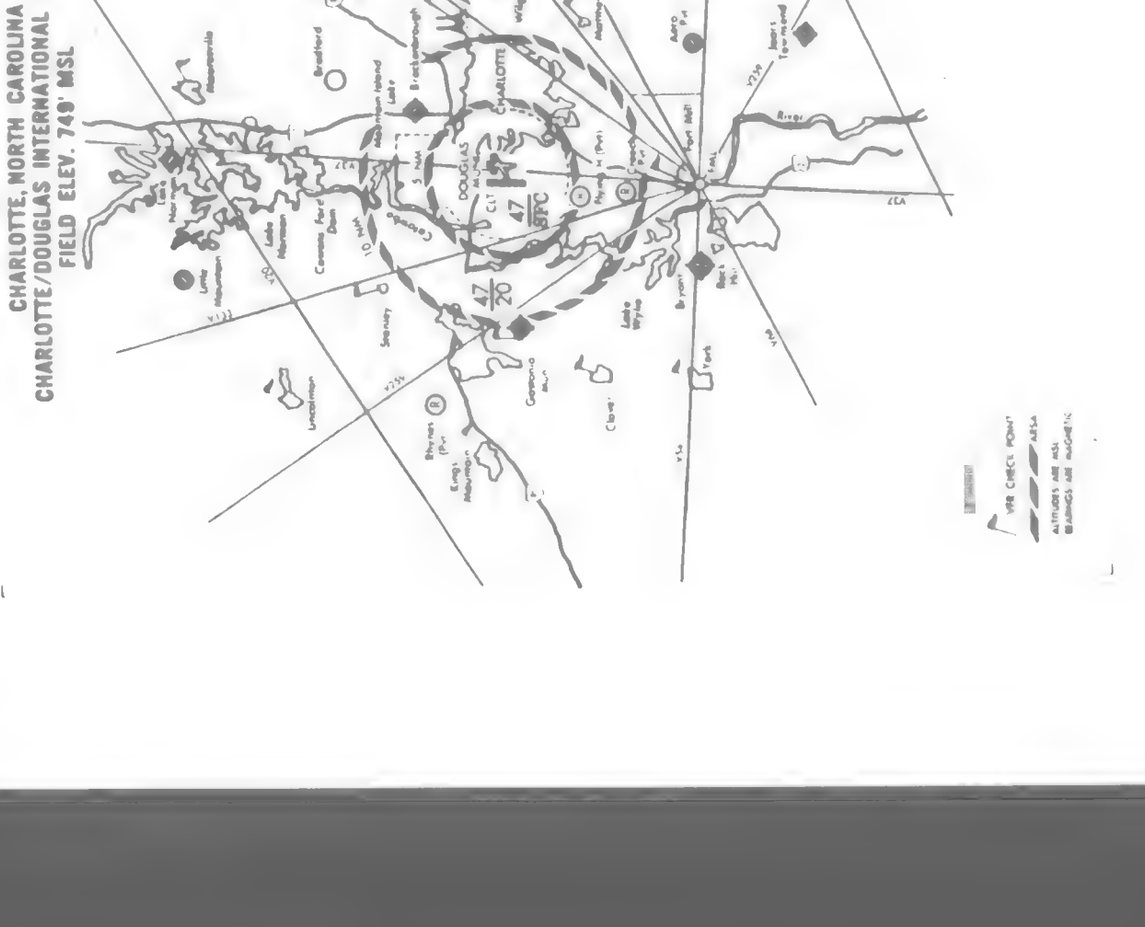
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COLUMBUS, GEORGIA
COLUMBUS METRO AIRPORT
FIELD ELEV. 397' MSL



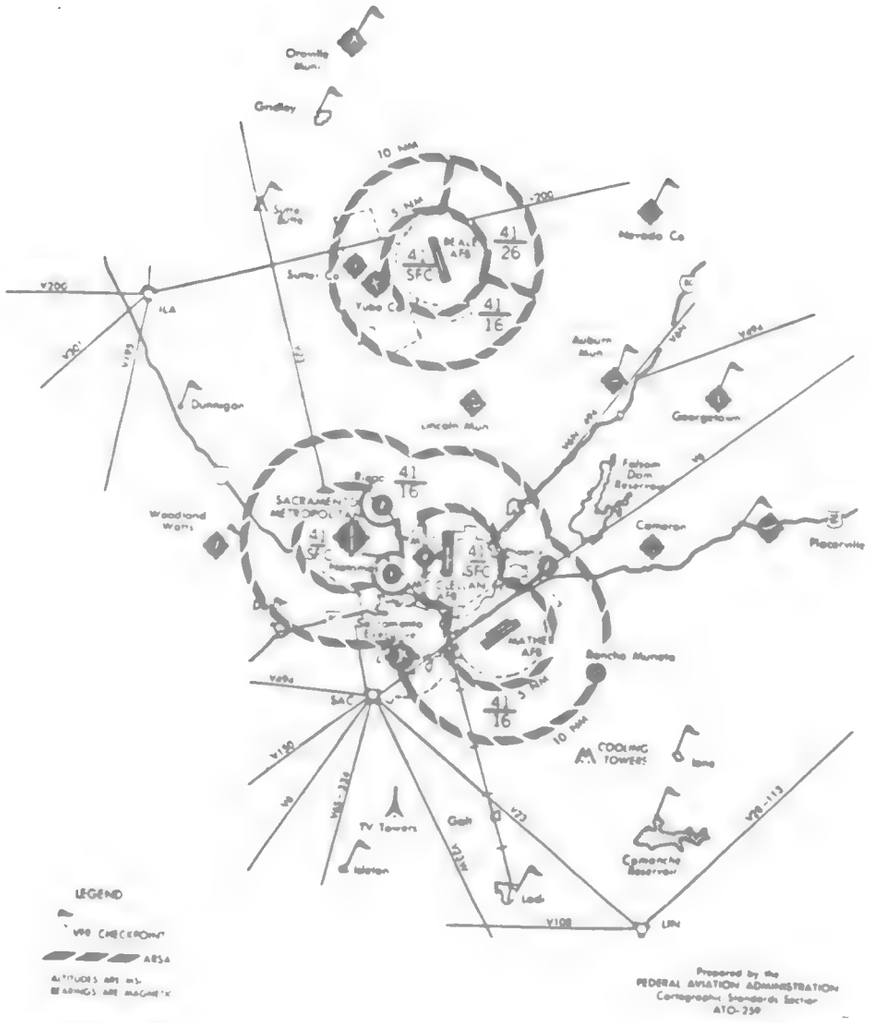
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CHARLOTTE, NORTH CAROLINA
CHARLOTTE/DOUGLAS INTERNATIONAL AIRPORT
FIELD ELEV. 749' MSL



AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

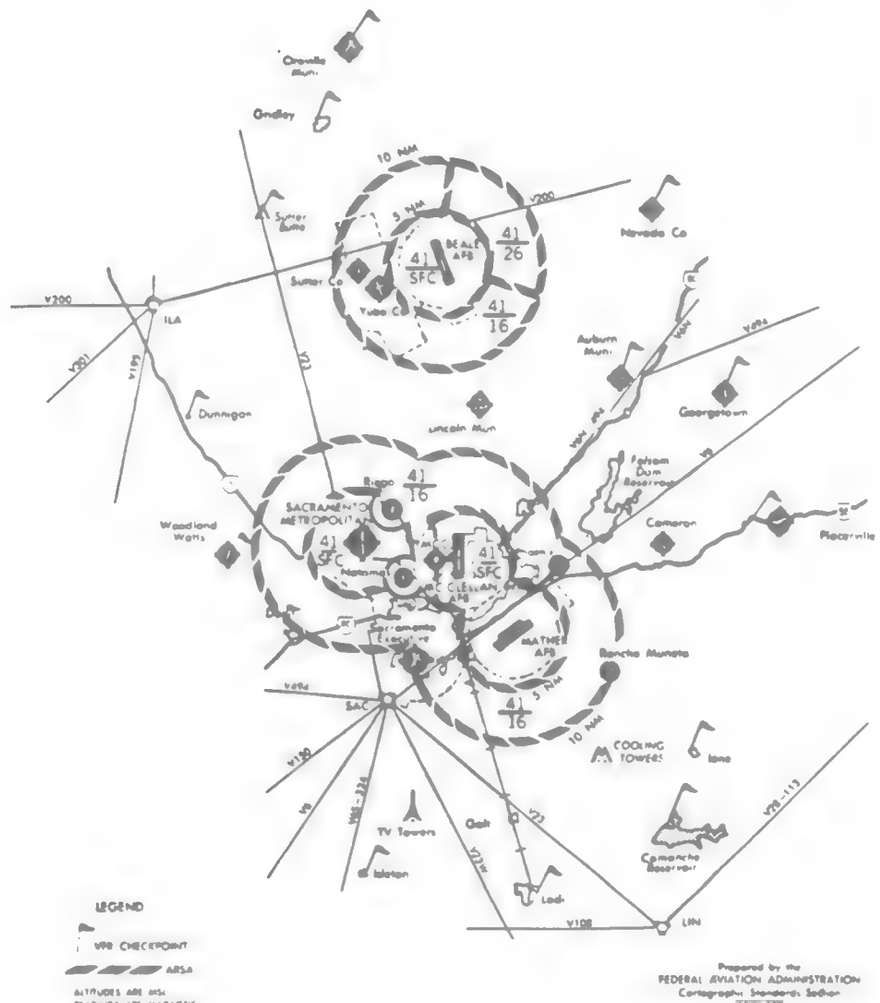
SACRAMENTO, CALIFORNIA
MATHER AFB
FIELD ELEV. 96' MSL



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Cartographic Standards Section
ATO-230

AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

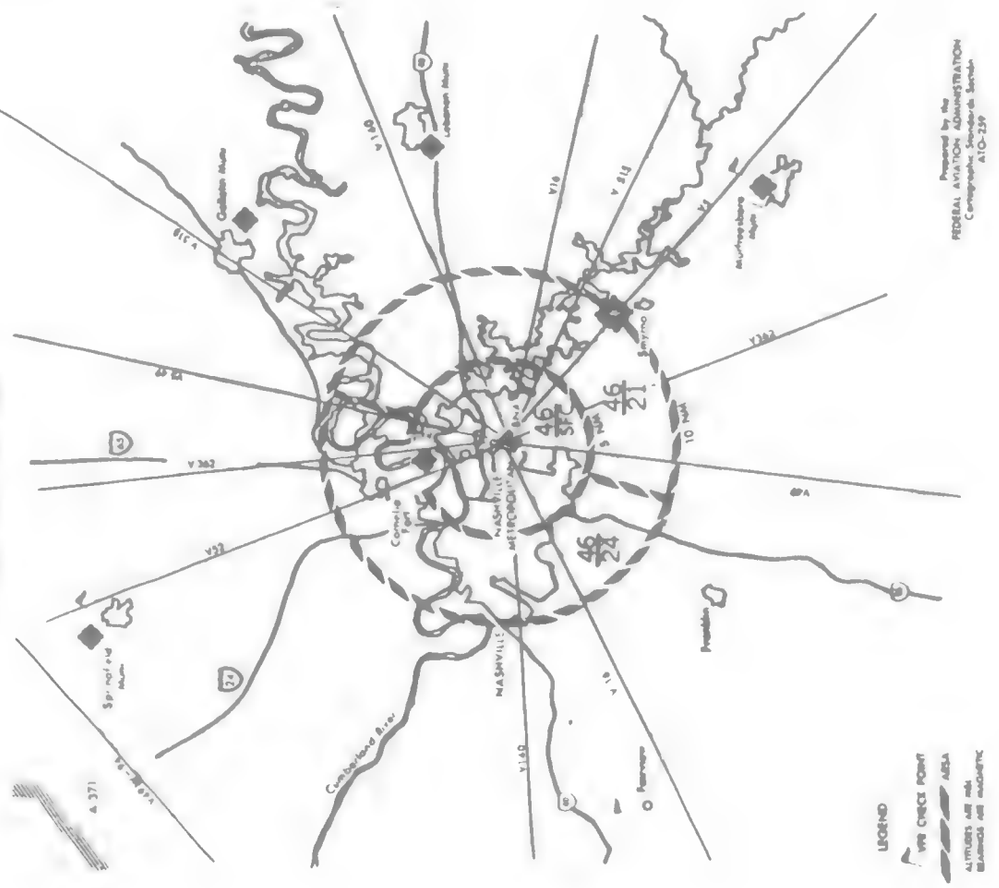
SACRAMENTO VALLEY, CALIFORNIA
McCLELLAN AFB
FIELD ELEV. 113' MSL



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO-230

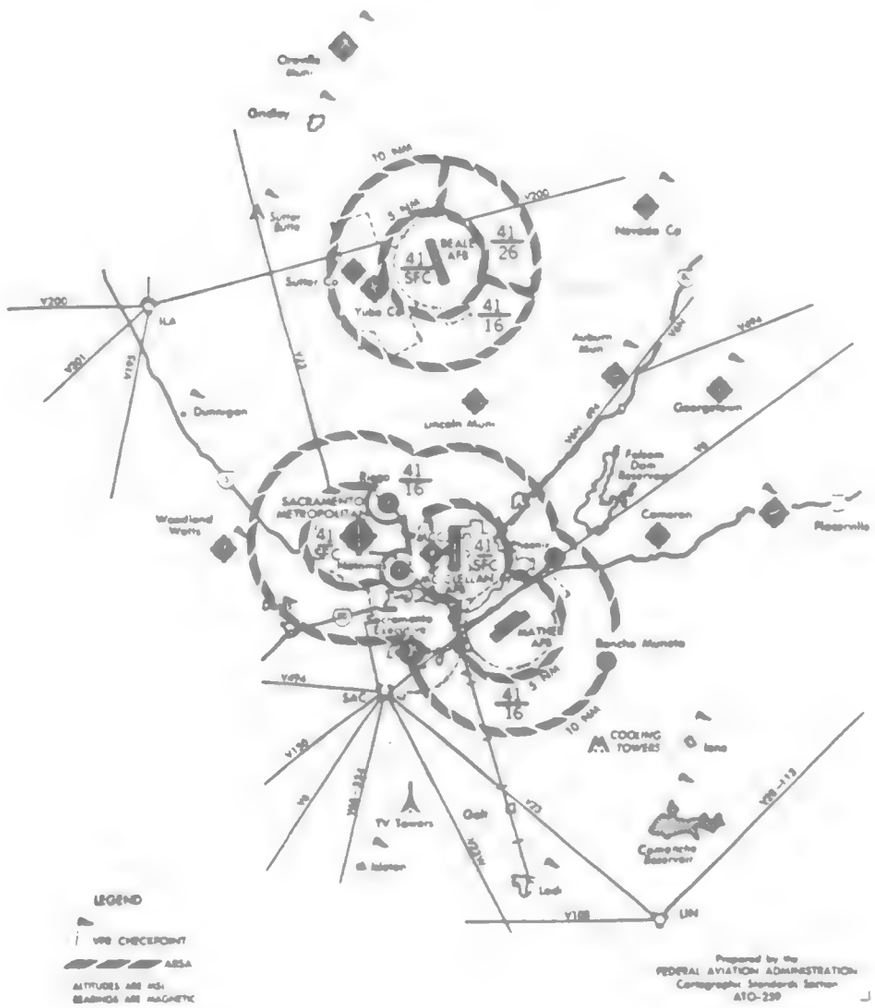
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NASHVILLE METRO AIRPORT
FIELD ELEV. 599' MSL



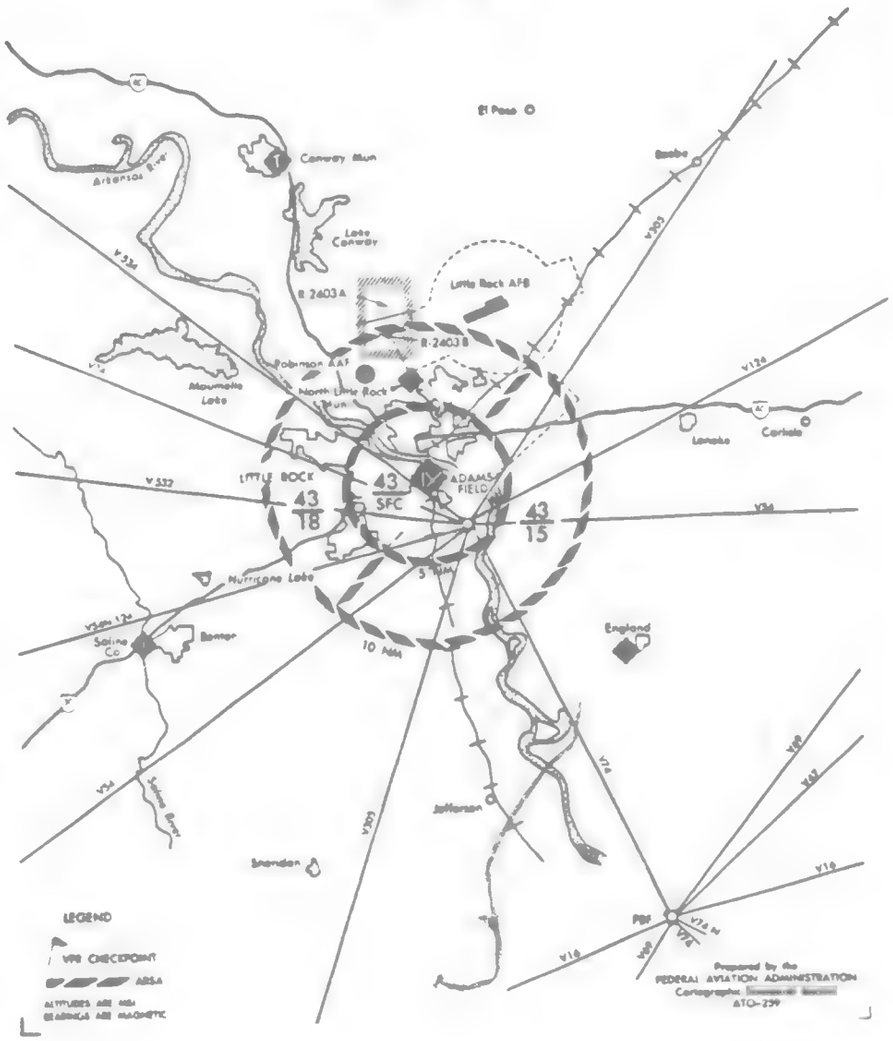
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SACRAMENTO VALLEY, CALIFORNIA
SACRAMENTO METROPOLITAN AIRPORT
FIELD ELEV. 113' MSL



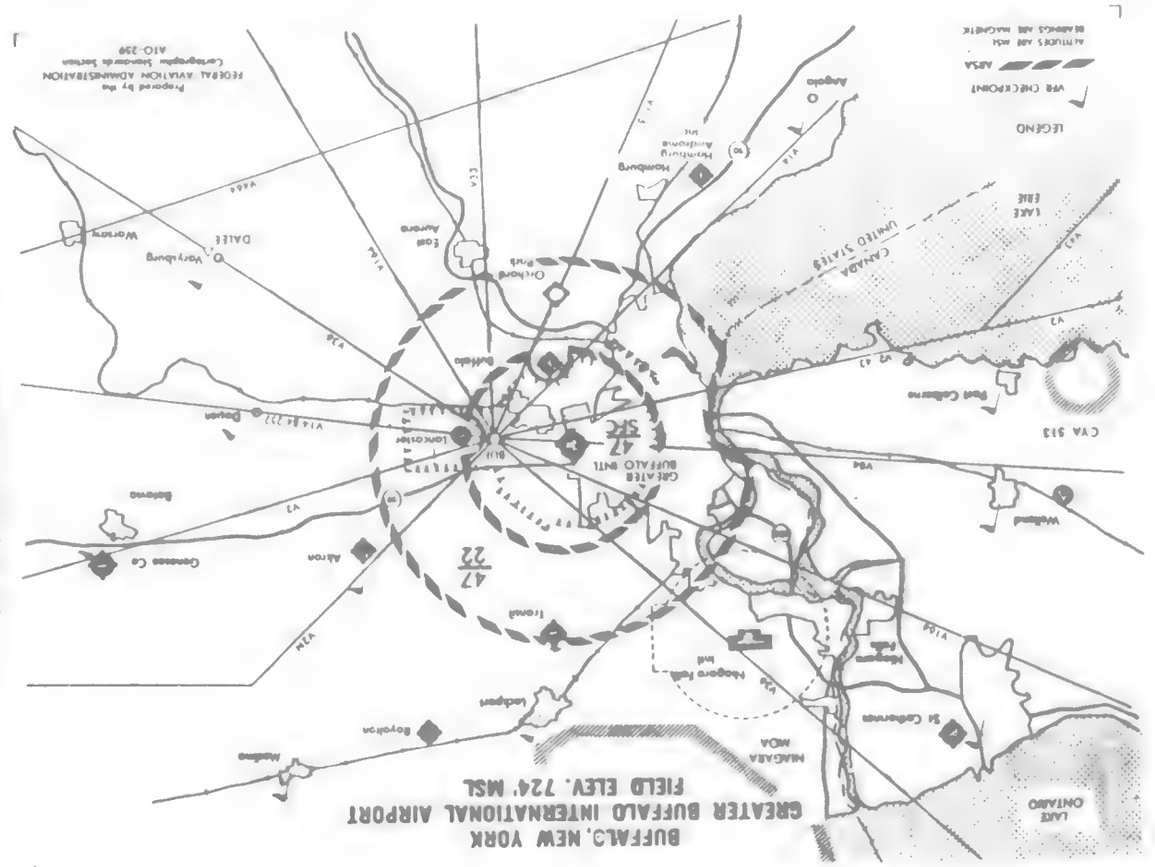
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LITTLE ROCK, ARKANSAS
ADAMS FIELD
FIELD ELEV. 258' MSL



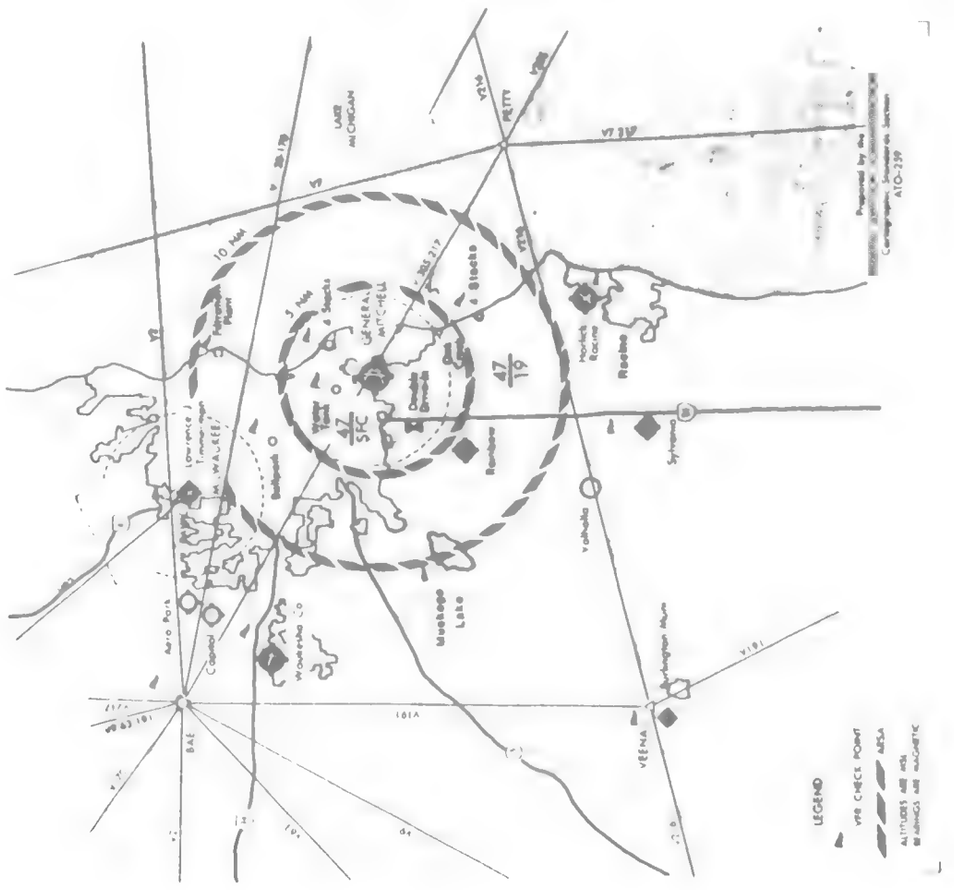
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(NOT TO BE USED FOR NAVIGATION)

BUFFALO, NEW YORK
GREATER BUFFALO INTERNATIONAL AIRPORT
FIELD ELEV. 724' MSL



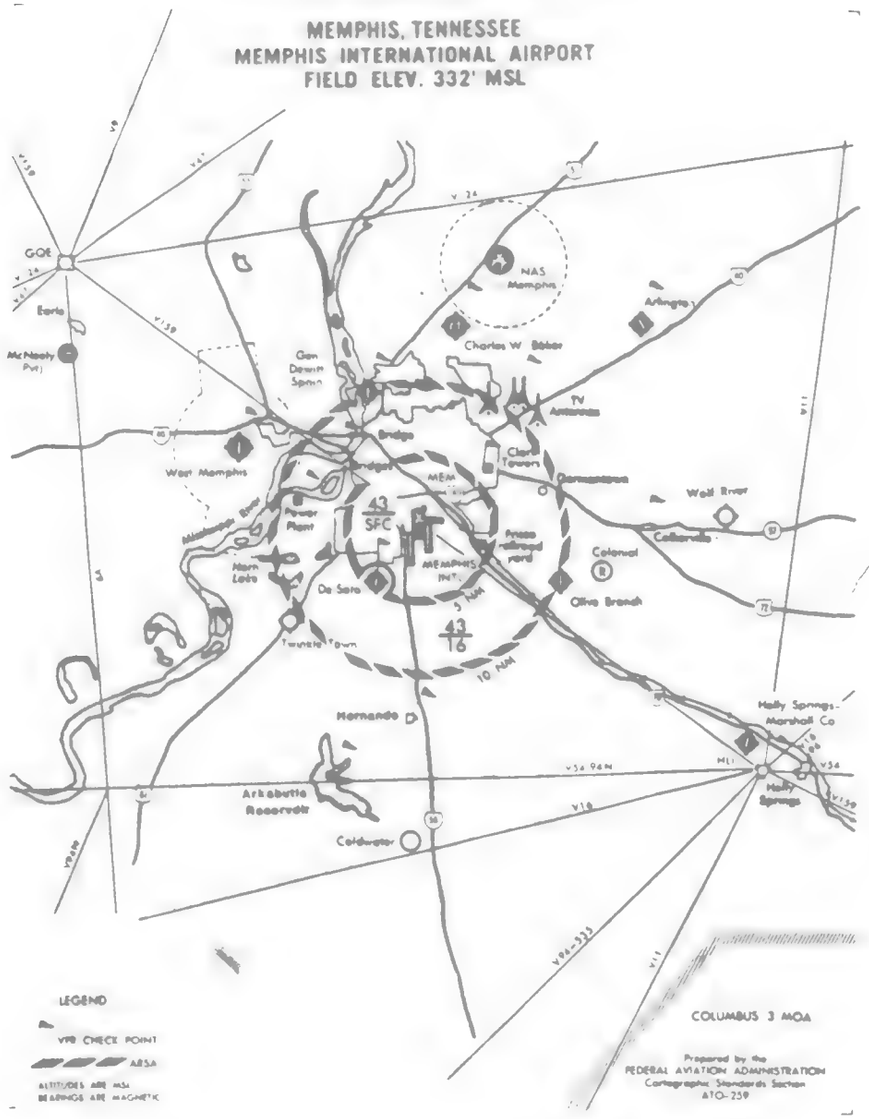
AIRPORT RADAR SERVICE AREA
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MILWAUKEE, WISCONSIN
GENERAL MITCHELL FLD
FIELD ELEV. 723' MSL



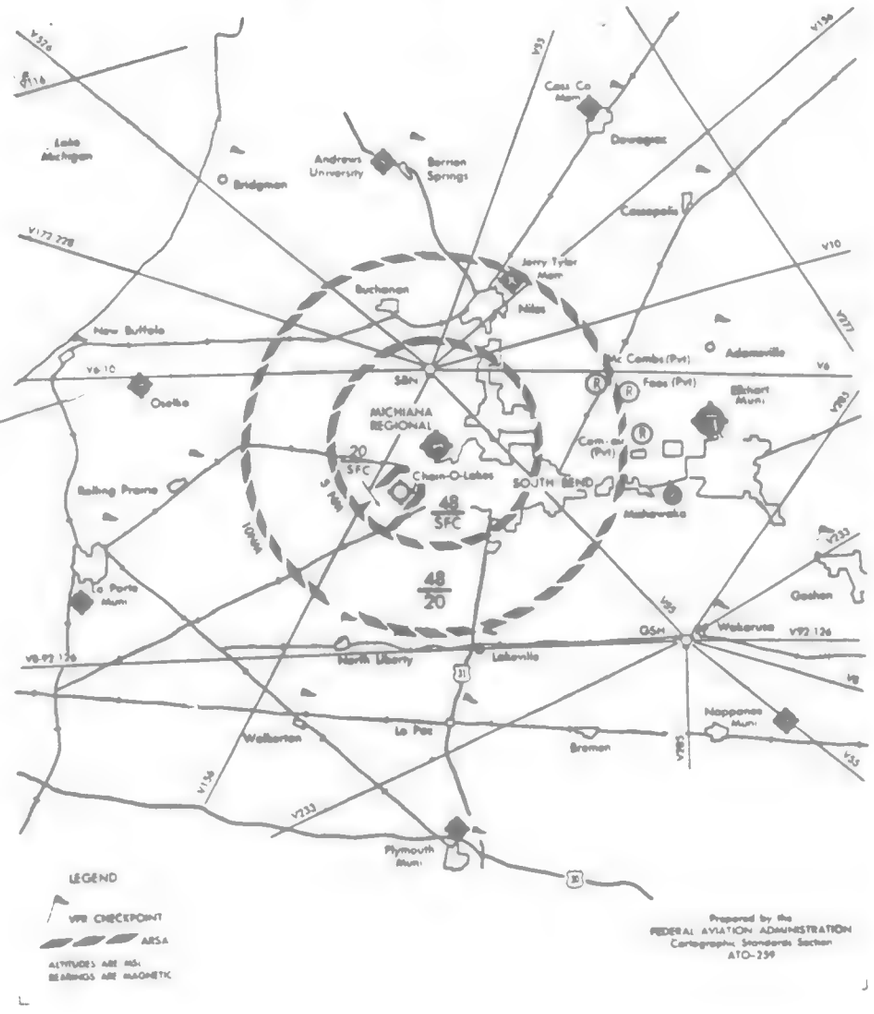
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MEMPHIS, TENNESSEE
MEMPHIS INTERNATIONAL AIRPORT
FIELD ELEV. 332' MSL



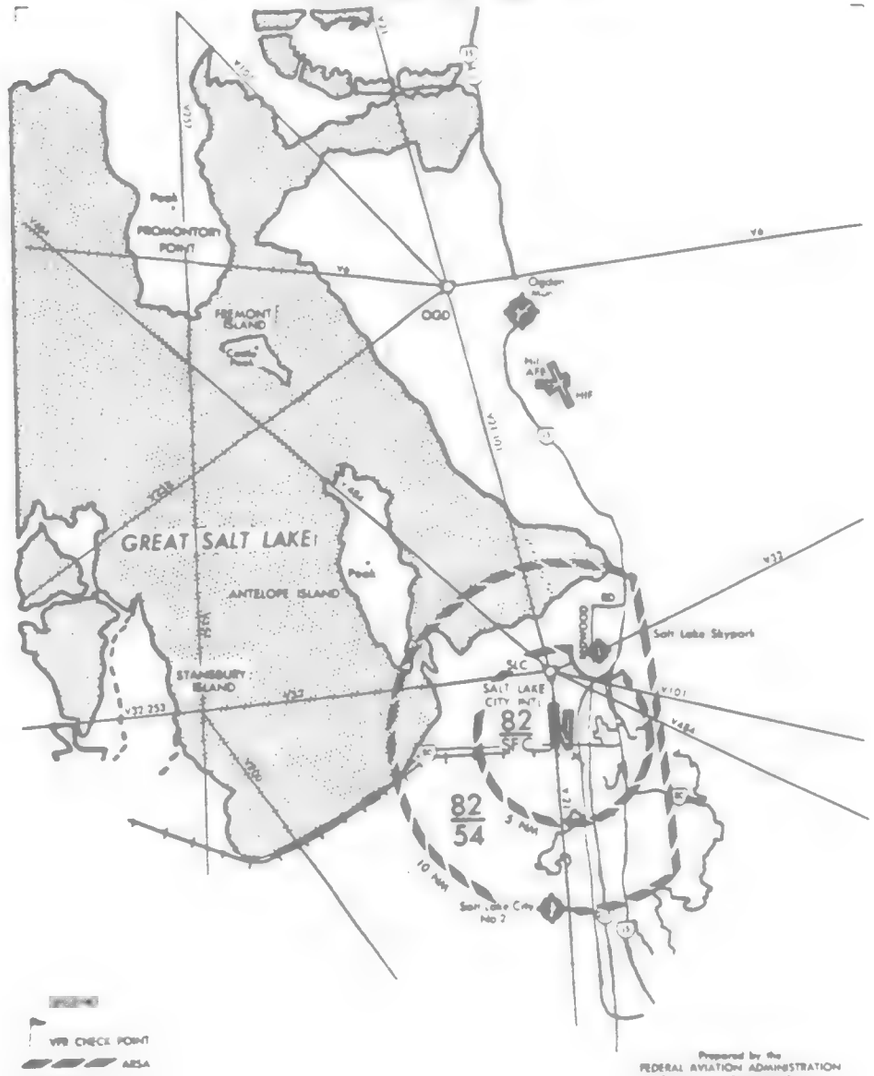
AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

SOUTH BEND, INDIANA
MICHIANA REGIONAL AIRPORT
FIELD ELEV. 790' MSL



AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

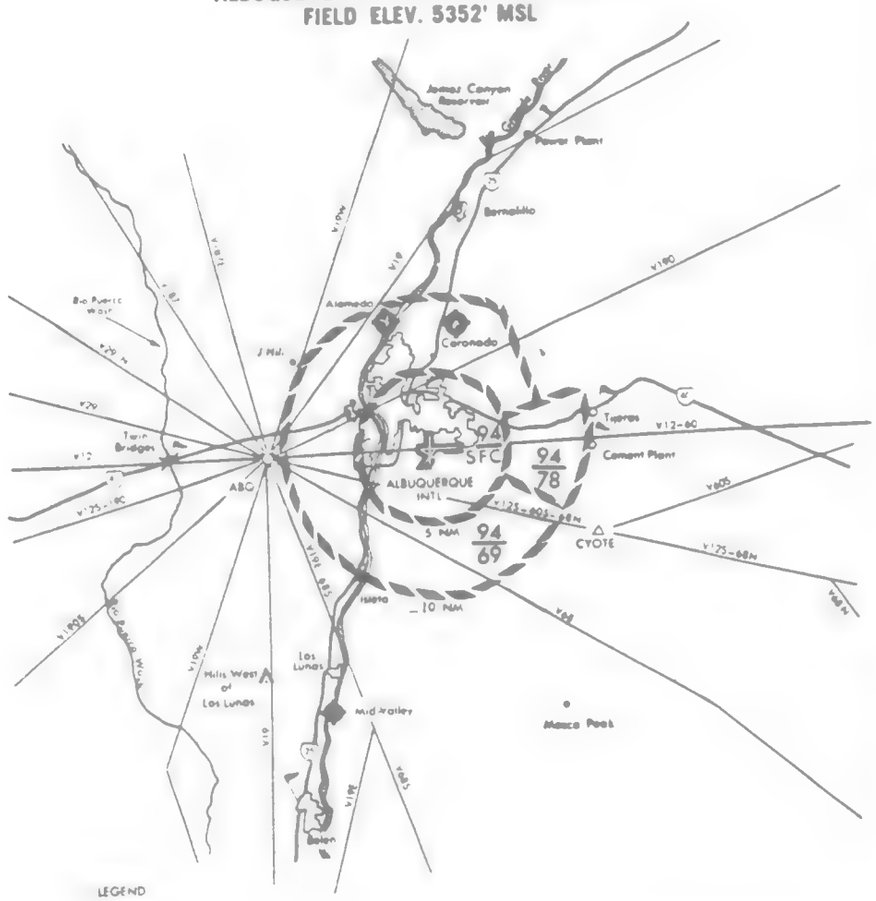
SALT LAKE CITY, UTAH
SALT LAKE CITY INTERNATIONAL AIRPORT
FIELD ELEV. 4227' MSL



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Cartographic Standards Section
ATO-239

AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

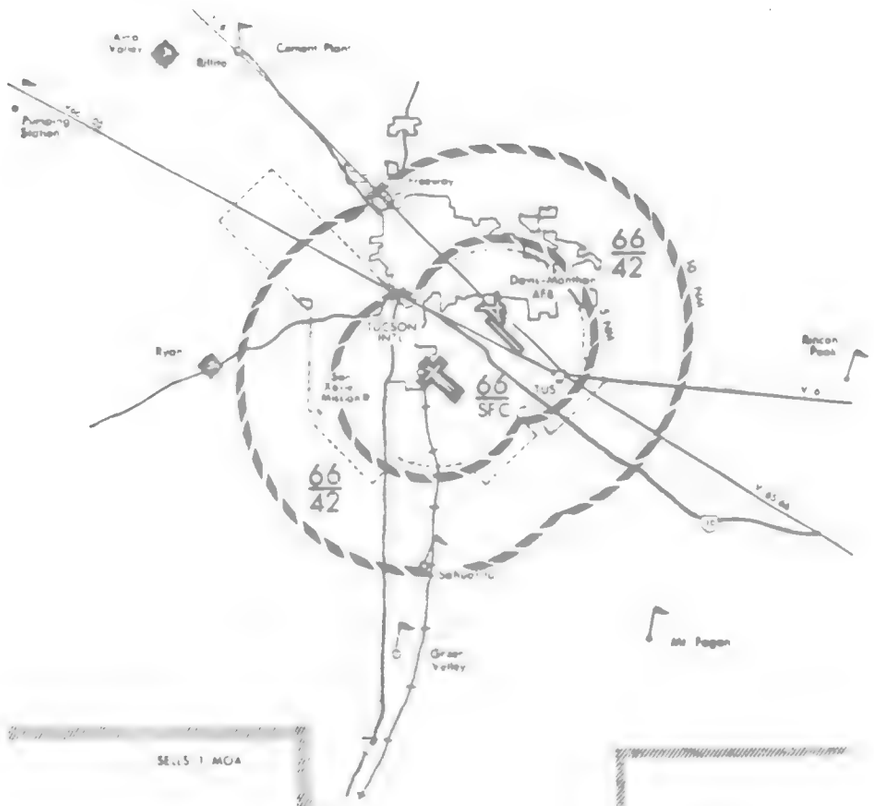
ALBUQUERQUE, NEW MEXICO
ALBUQUERQUE INTERNATIONAL AIRPORT
FIELD ELEV. 5352' MSL



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ATO-239

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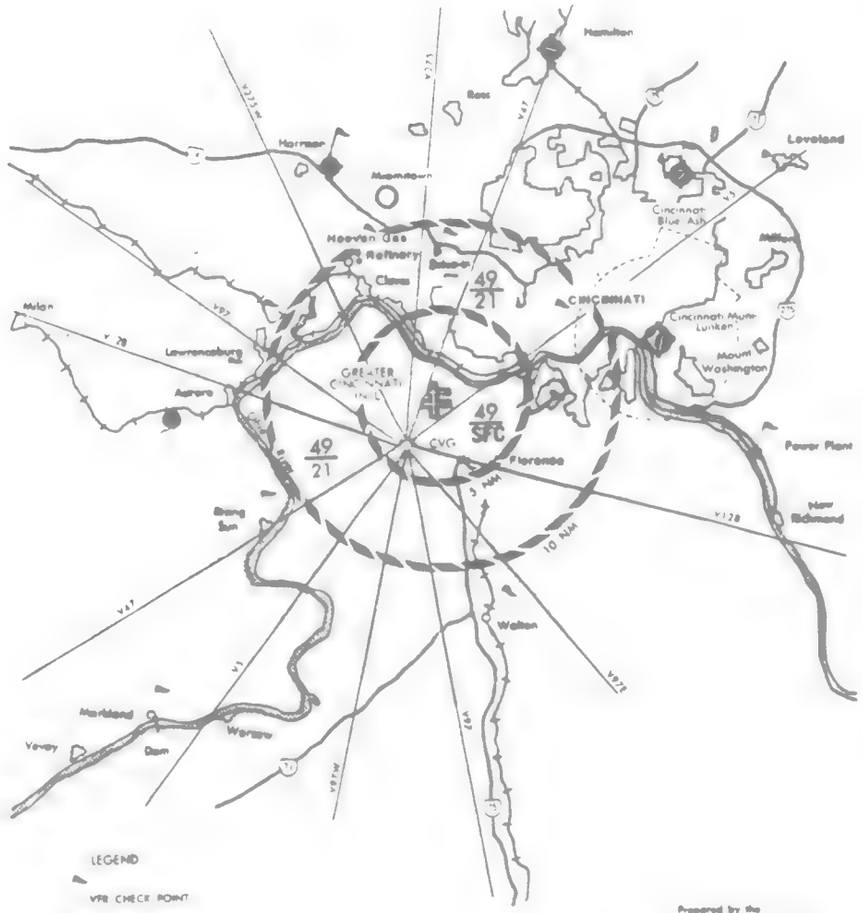
DAVIS-MONTHAN AFB, ARIZONA
FIELD ELEV. 2705' MSL



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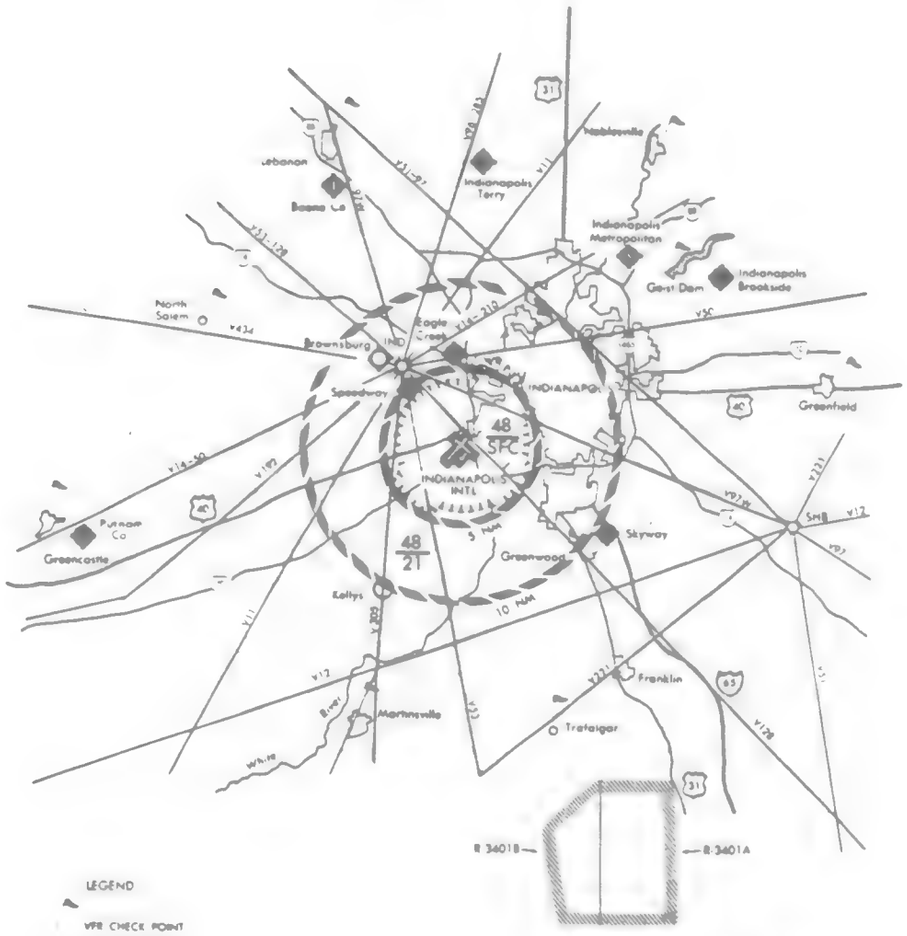
COVINGTON, KENTUCKY
GREATER CINCINNATI INTERNATIONAL AIRPORT
FIELD ELEV. 891' MSL



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AIRPORT RADAR SERVICE AREA
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INDIANAPOLIS, INDIANA
INDIANAPOLIS INTERNATIONAL AIRPORT
FIELD ELEV. 797' MSL



LEGEND

VFR CHECK POINT

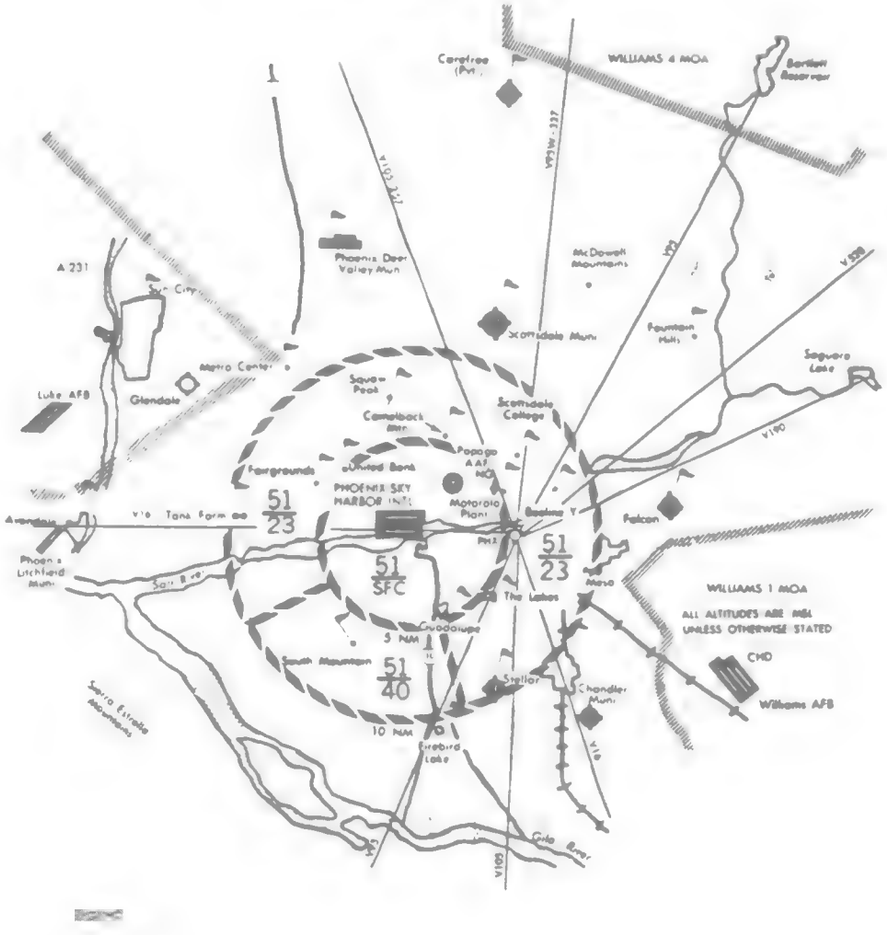
ARSA

ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC

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Cartographic Standards Section
ATO-259

AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

PHOENIX, ARIZONA
PHOENIX SKY HARBOR INTERNATIONAL AIRPORT
FIELD ELEV. 1132' MSL



VFR CHECKPOINT

ARSA

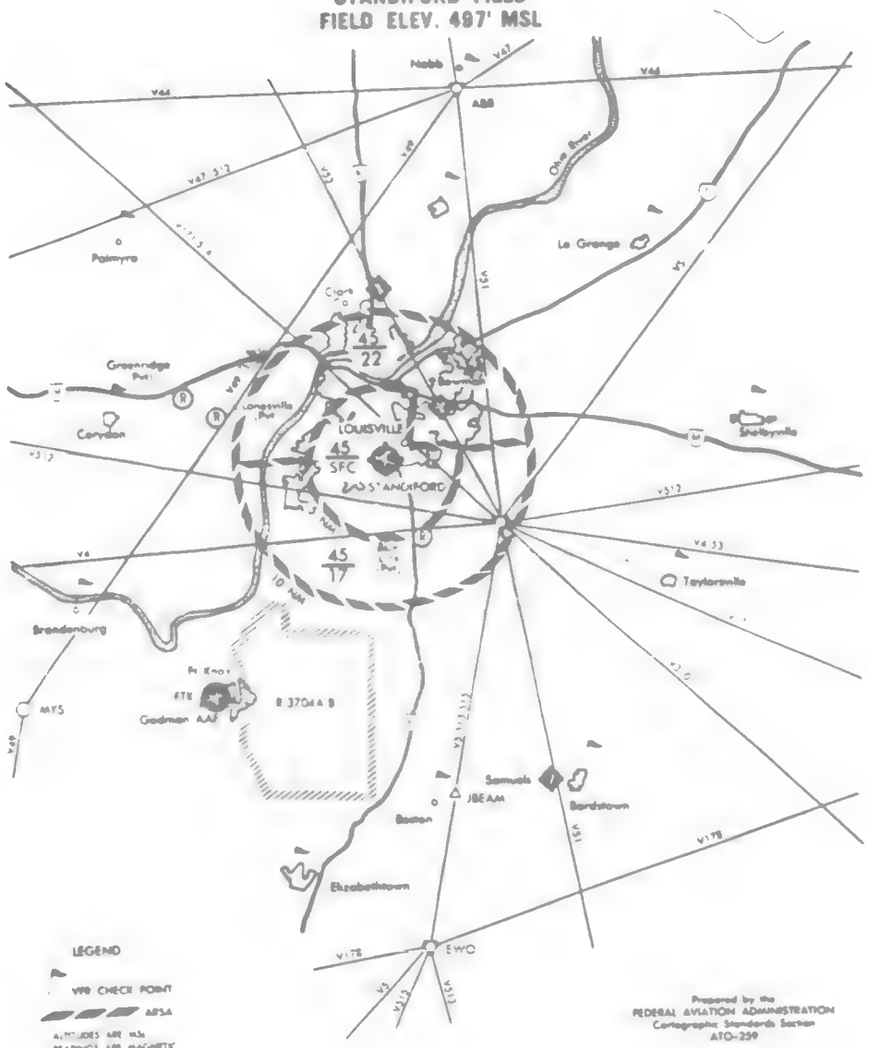
ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC

Prepared by the
Cartographic Standards Section
ATO-259

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

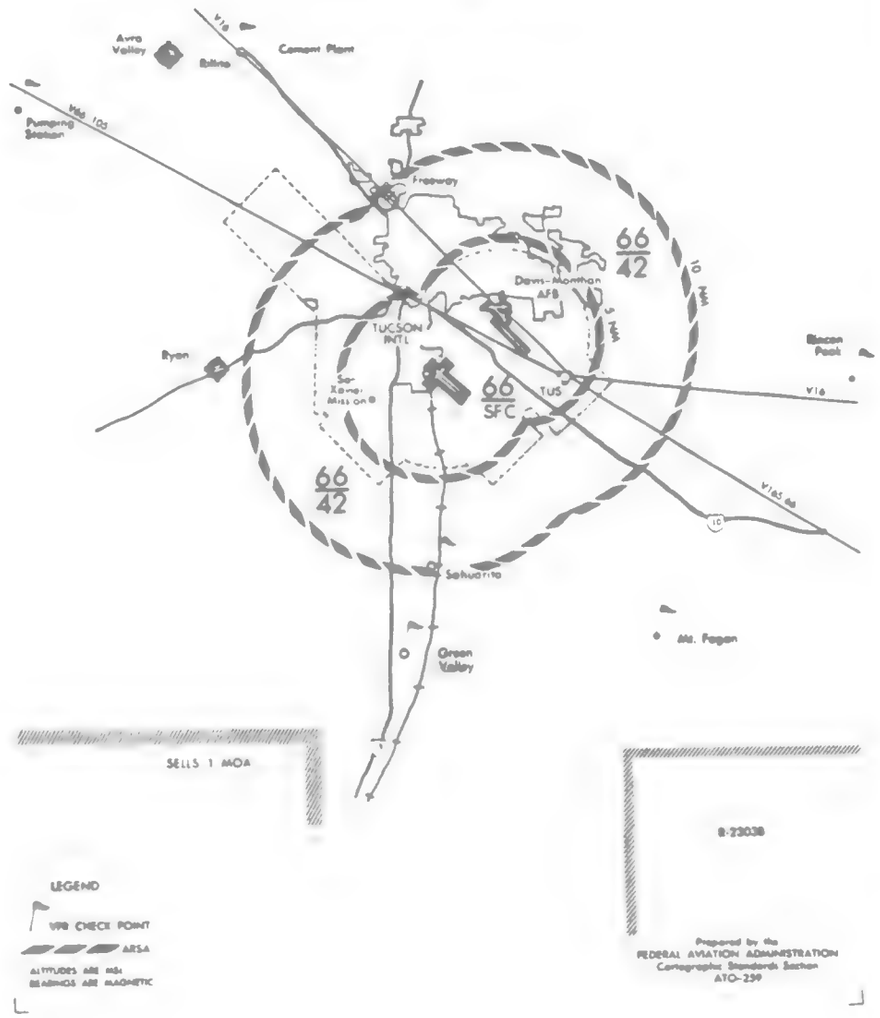
LOUISVILLE, KENTUCKY
STANDIFORD FIELD
FIELD ELEV. 497' MSL

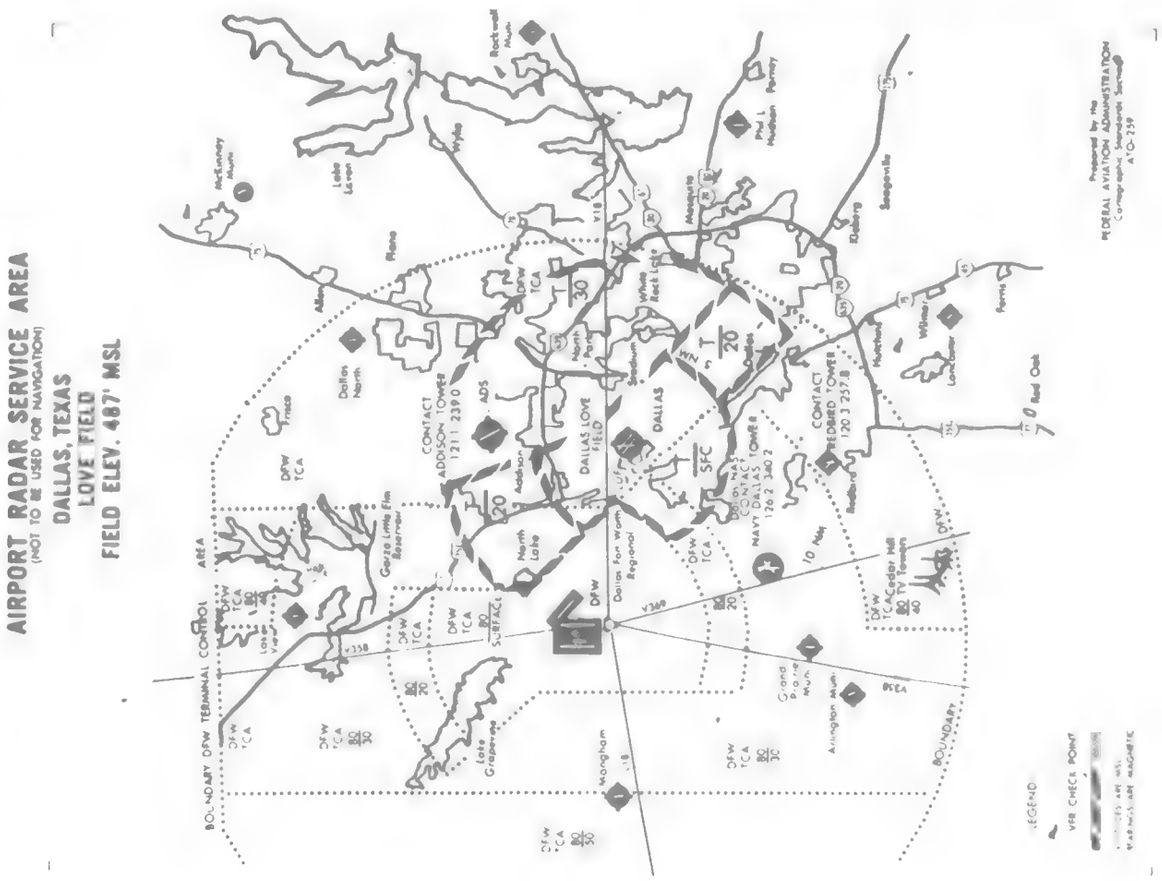


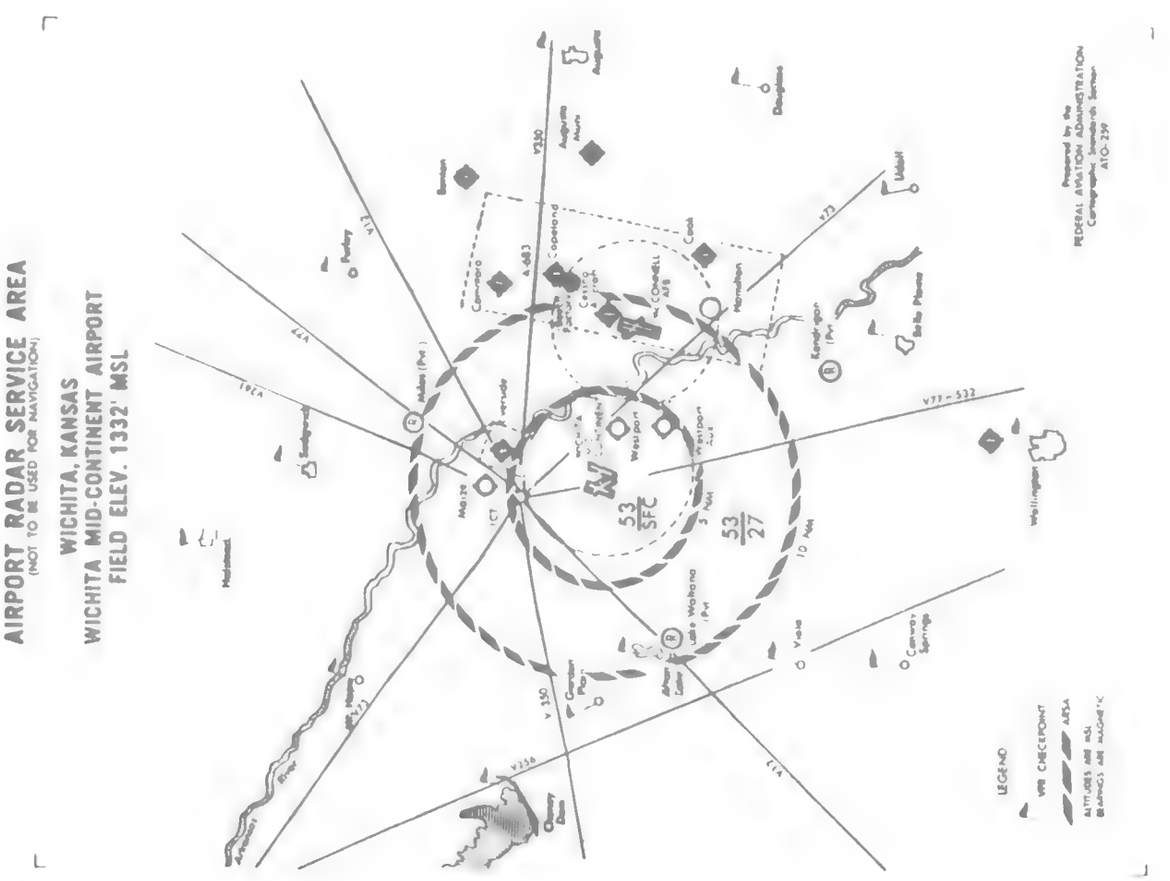
AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

TUCSON, ARIZONA
TUCSON INTERNATIONAL AIRPORT
FIELD ELEV. 2630' MSL

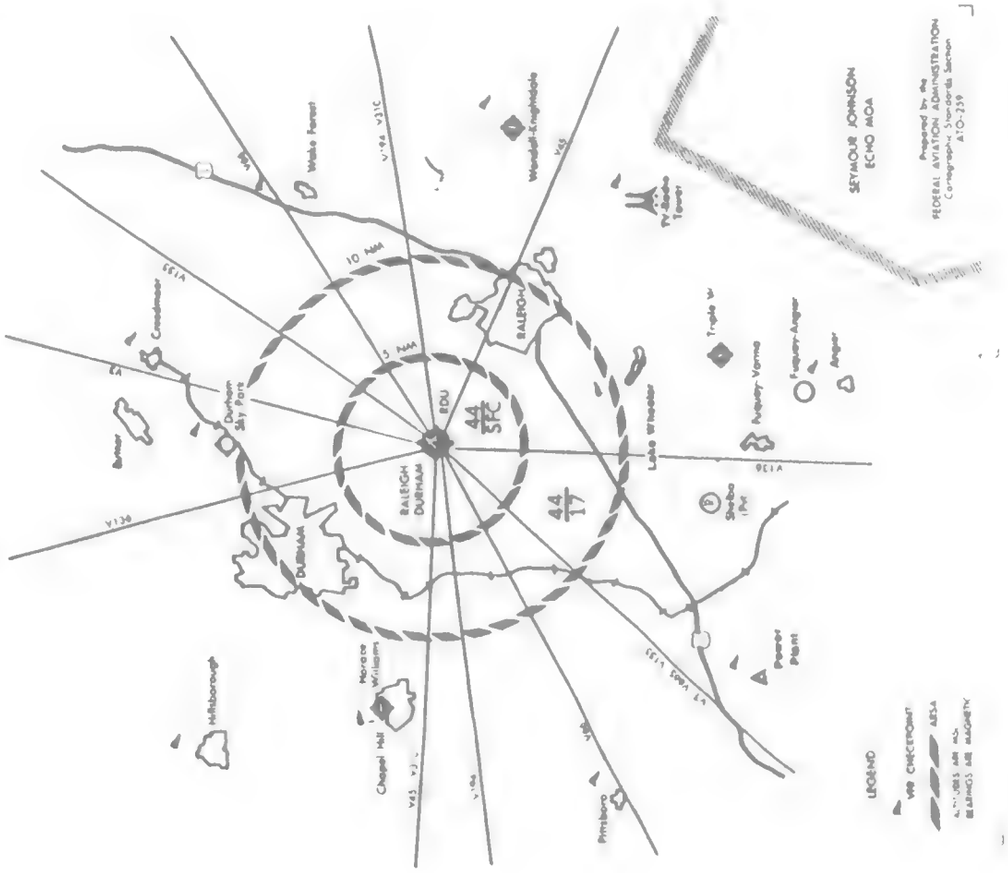



AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)
DALLAS, TEXAS
LOVE FIELD
FIELD ELEV. 487' MSL
DFW TERMINAL CONTROL AREA
BOUNDARY
DFW
DALLAS LOVE FIELD
DALLAS
CONTACT ADDISON TOWER 121.1 239.0
CONTACT REDBIRD TOWER 120.3 257.8
CONTACT DENTON NAVY DALLAS TOWER 126.2 340.2
SFC
SURFACE
10 Nm
V 338
V 369
V 118
V 18
V 30
V 20
Dallas North
Addison
North Lake
Dallas Fort Worth Regional
Grand Prairie Muni
Arlington Muni
Mesquite
Rockwall Muni
Lake Lewisville
Denton
Sanger
Pilot Point
Ponder
Justin
Roanoke
Northwest
Keller
Grapevine
Lake Grapevine
Monahans
Cedar Hill TV Tower
Red Oak
Ennis
Waxahachie
Seagoville
Rowlett
Garland
Plano
Addison
Lake Lavon
McKinney Muni
Prosper
Frisco
Dallas North
Lewisville
George Little Fld Reservoir
Lake Ray Roberts
Lake Ray Hubbard
Lake Worth
Lake Arlington
Lake Joe Pool
Lancaster
Hutchins
Wilmer
Lancaster
Forney
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Comparative Standards Section
ATO-239
LEGEND
VFR CHECK POINT
ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC


AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)
WICHITA, KANSAS
WICHITA MID-CONTINENT AIRPORT
FIELD ELEV. 1332' MSL
ICT
53
SFC
53
27
10 Nm
V 330
V 230
V 273-332
V 274
V 274
V 274
Augusta
Augusta Muni
Beaton
Douglass
Potwin
Peabody
Hesston
Sedgwick
Andale (Fwy)
Maize
Wichita Jabara
Wichita Westport
Wichita Beech Aero Center
McConnell AFB
Cook
Herington
Eagle Lake Wichita (Fwy)
Eagle Lake Wichita
Arkansas River
Cheney Reservoir
Cheney Dam
Derby
Valley Center
Viola
Conway Springs
Wellington
Belle Plaine
Udall
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Comparative Standards Section
ATO-239
LEGEND
VFR CHECKPOINT
ALTITUDES ARE MSL
BEARINGS ARE MAGNETIC

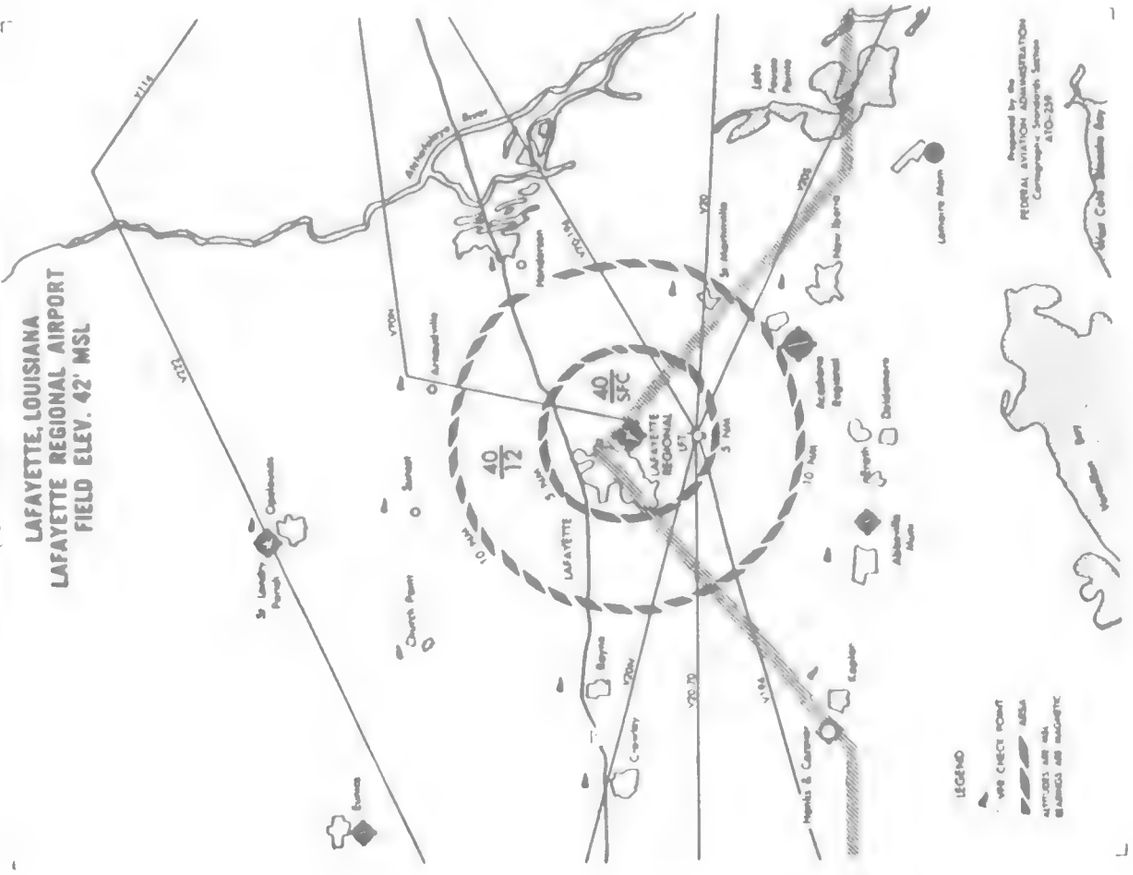
AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

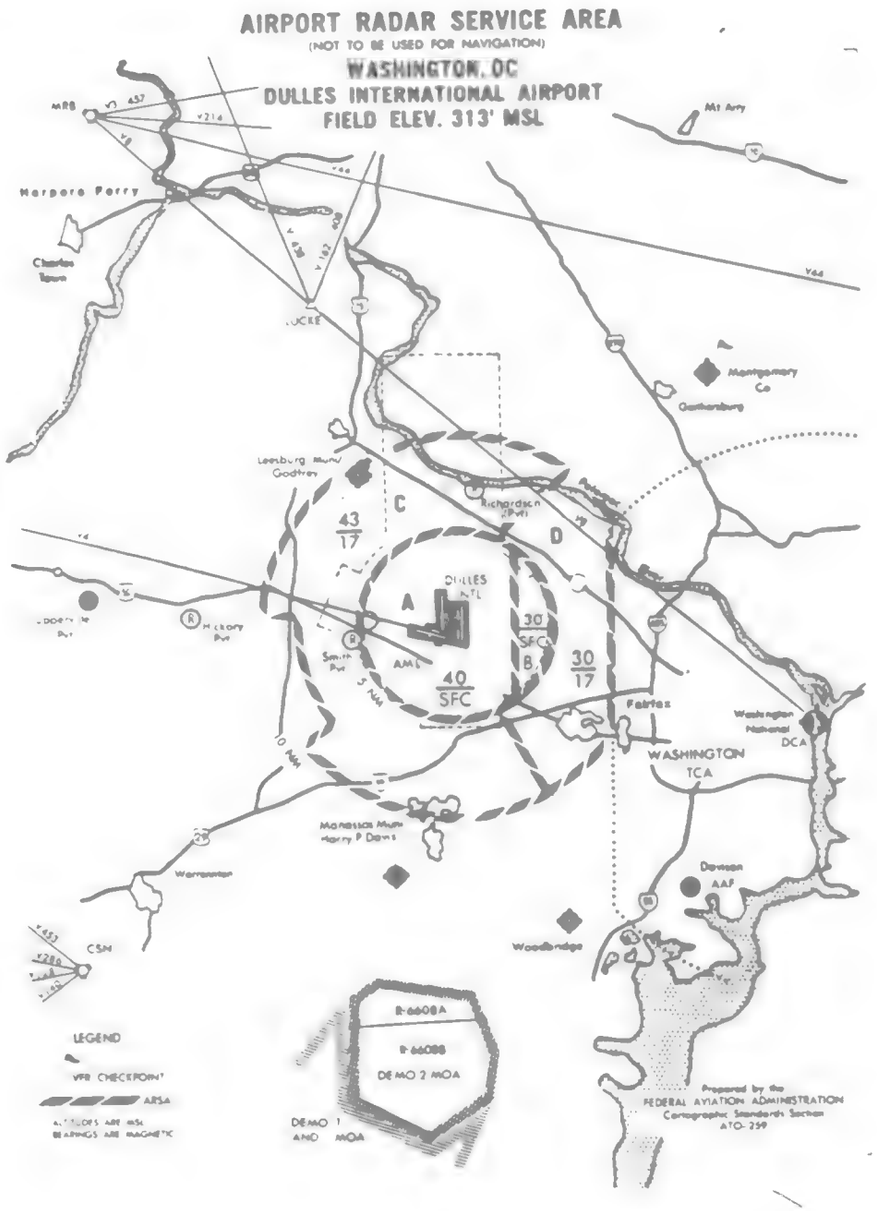
RALEIGH, NORTH CAROLINA
RALEIGH-DURHAM AIRPORT
FIELD ELEV. 437' MSL

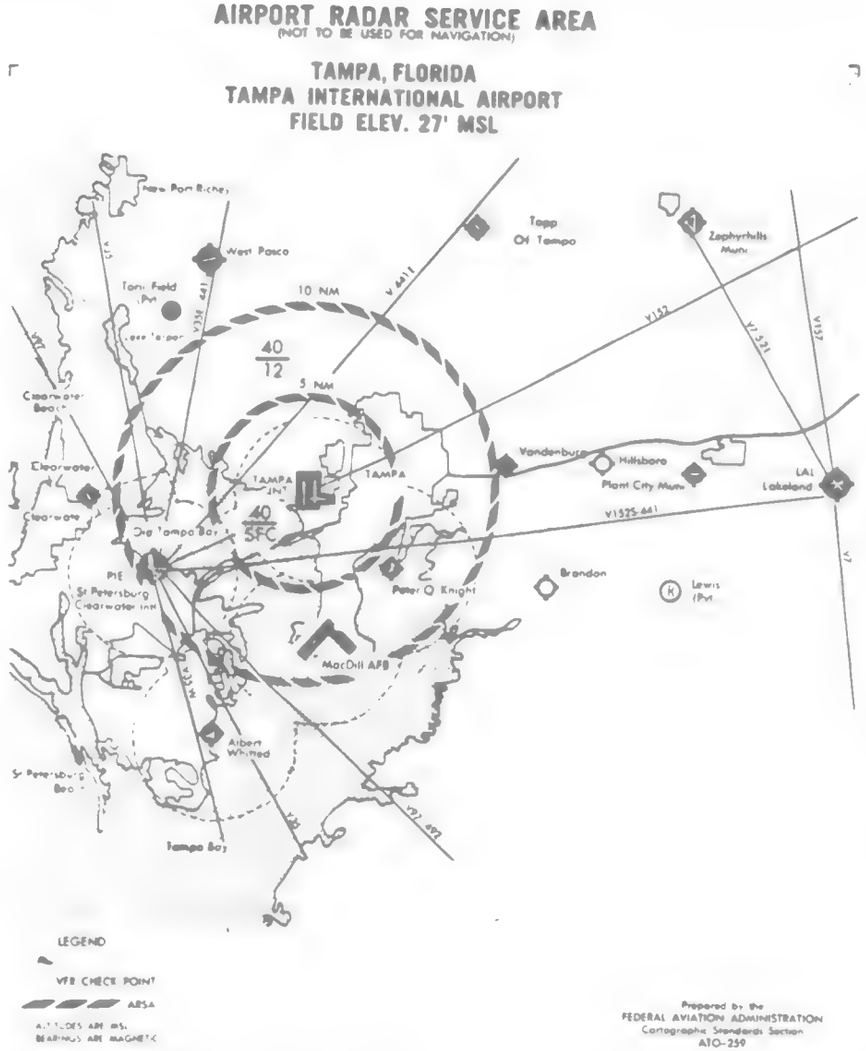


AIRPORT RADAR SERVICE AREA
(NOT TO BE USED FOR NAVIGATION)

LAFAYETTE, LOUISIANA
LAFAYETTE REGIONAL AIRPORT
FIELD ELEV. 42' MSL







[FR Doc. 85-23102 Filed 9-27-85; 8:45 am]

BILLING CODE 4910-13-C

federal register

Monday
September 30, 1985

Part III

Department of the Interior

Fish and Wildlife Service

Division of Law Enforcement; Information No. 6; Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Division of Law Enforcement; Notice of Information No. 6

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Information No. 6.

This is a schedule II Notice: Wildlife subject to this notice is subject to detention, refusal of clearance, seizure, and forfeiture if imported into the United States.

Subject

The Republic of the Philippines and all territories or dependencies.

Source of Foreign Law Information:

CITES Secretariat through Management Authority of the United States and the United States Department of State.

Action By Service:

Information supplied to the Management Authority of the United States indicates that there is an unresolved dispute within the government of the Republic of the Philippines as to the correct agency and person or persons authorized to sign wildlife export documents, including CITES permits or other official certificates. The CITES Secretariat states that it has not been notified of any change in the recognized Management Authority. The U.S. Department of State confirms that it is unable to verify the official Republic of the Philippines authority for permitting wildlife exports from that nation. Since it is not possible to determine the validity of documentation from the Philippines, and in accordance with the responsibility of the United States under CITES and other international wildlife conservation agreements, effective immediately and until further notice from the U.S. Fish and Wildlife Service, no shipments of live wildlife or of wildlife products may be imported into the United States from the Republic of the Philippines or any of its territories or dependencies. Shipments of wildlife or wildlife products which declare those areas as country of origin may not be imported into the United States.

EFFECTIVE DATE: Immediately upon publication.

EXPIRATION DATE: Until revoked.

FOR FURTHER INFORMATION CONTACT: Kathleen King, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, D.C. 20005, telephone: 202/343-9242.

Dated: September 24, 1985.

Robert A. Jantzen,

Director, Fish and Wildlife Service.

[FR Doc. 85-23221 Filed 9-27-85; 8:45 am]

BILLING CODE 4310-55-M

federal register

Monday
September 30, 1985

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 355

Anticaries Drug Products for Over-the-Counter Human Use; Tentative Final Monograph; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 355

[DOCKET NO. 80N-0042]

Anticaries Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking in the form of a tentative final monograph that would establish conditions under which over-the-counter (OTC) anticaries drug products (drug products that aid in the prevention of dental cavities) are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Dentifrice and Dental Care Drug Products and public comments on an advance notice of proposed rulemaking that was based on those recommendations. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drugs by November 29, 1985. New data by September 30, 1986. Comments on the new data by December 1, 1986. These dates are consistent with the time periods specified in the agency's revised procedural regulations for reviewing and classifying OTC drugs (21 CFR 330.10). Comments on the agency's economic impact determination by January 28, 1986.

ADDRESS: Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drugs and Biologics (HFN-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 28, 1980 (45 FR 20666) FDA published, under §330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC anticaries drug products, together with the recommendations of the Advisory Review Panel on OTC Dentifrice and Dental Care Drug Products, which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by June 26, 1980. Reply comments in response to comments filed in the initial comment period could be submitted by July 28, 1980.

In accordance with §330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above), after deletion of a small amount of trade secret information. In response to the advance notice of proposed rulemaking, the Panel Chairman, four drug manufacturers' associations, ten drug manufacturers, one consumer, seven health care professionals, two health care professional societies, and one coalition opposed to fluoridation submitted comments. Copies of the comments received are on public display in the Dockets Management Branch.

FDA is issuing the tentative final monograph for OTC anticaries drug products in two segments. This document is the first segment to be published, and it contains the agency's responses to general comments on anticaries drug products, comments on the switch of prescription anticaries drug products to OTC status, comments on specific anticaries active ingredients, comments on dosages for anticaries active ingredients, and comments on the labeling of anticaries drug products.

The second segment of the tentative final monograph on OTC anticaries drug products will be published in a future issue of the **Federal Register** and will contain the agency's proposals regarding final formulation testing, i.e., "Laboratory Testing Profiles," for Category I active ingredients in dentifrice formulations, and issues relating to this testing. The agency stated in the advance notice of proposed rulemaking that these laboratory testing profiles represent a new concept with many technical issues yet to be resolved; therefore, they have not been included as part of the proposed monograph, although the recommendations are in the Panel's report (45 FR 20666). The agency held an open public meeting on September 26 and 27, 1983 regarding unresolved technical issues concerning the laboratory testing profiles and reopened the administrative record to include the proceedings of the public meeting and to allow comment on matters raised at the meeting (48 FR 38853). The agency will base its decisions concerning these testing profiles on the results of the meeting and other relevant information.

The advance notice of proposed rulemaking, which was published in the **Federal Register** on March 28, 1980 (45 FR 20666), was designated as a "proposed monograph" in order to conform to terminology used in the OTC drug review regulations (21 CFR 330.10). Similarly, the present document is designated in the OTC drug review regulations as a "tentative final monograph." Its legal status, however, is that of a proposed rule. In this tentative final monograph (proposed rule) to establish Part 355 (21 CFR Part 355), FDA states for the first time its position on the establishment of a monograph for OTC anticaries drug products. Final agency action on this matter will occur with the publication at a future date of a final monograph, which will be a final rule establishing a monograph for OTC anticaries drug products.

This proposal constitutes FDA's tentative adoption of the Panel's conclusions and recommendations on OTC anticaries drug products, as modified on the basis of the comments received and the agency's independent evaluation of the Panel's report. Modifications have been made for clarity and regulatory accuracy and to reflect new information. Such new information has been placed on file in the Dockets Management Branch (address above). These modifications are reflected in the following summary of the comments and FDA's responses to them.

The OTC procedural regulations (21 CFR 330.10) have been revised to conform to the decision in *Cutler* v. *Kennedy*, 475 F. Supp. 838 (D.D.C. 1979). (See the **Federal Register** of September 29, 1981; 46 FR 47730.) The Court in *Cutler* held that the OTC drug regulations were unlawful to the extent that they authorized the marketing of Category III drugs after a final monograph had been established. Accordingly, this provision has been deleted from the regulations, which now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph.

Although it was not required to do so under *Cutler*, FDA will no longer use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category

III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but will use instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III at the tentative final monograph stage.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the **Federal Register.** On or after that date, no OTC drug products that are subject to the monograph and that contain nonmonograph conditions, i.e., conditions that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved new drug application (NDA). Further, any OTC drug products subject to this monograph that are repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In the advance notice of proposed rulemaking for OTC anticaries drug products (published in the **Federal Register** of March 28, 1980 (45 FR 20666)), the agency suggested that the conditions included in the monograph (Category I) be effective 30 days after the date of publication of the final monograph in the **Federal Register** and that the conditions excluded from the monograph (Category II) be eliminated from OTC drug products effective 6 months after the date of publication of the final monograph, regardless of whether further testing was undertaken to justify their future use. Experience has shown that relabeling of products covered by the monograph is necessary in order for manufacturers to comply with the monograph. New labels containing the monograph labeling have to be written, ordered, received, and incorporated into the manufacturing process. The agency has determined that it is impractical to expect new labeling to be in effect 30 days after the date of publication of the final monograph. Experience has shown also that if the deadline for relabeling is too short, the agency is burdened with extension requests and related paperwork.

In addition, some products will have to be reformulated to comply with the monograph. Reformulation often involves the need to do stability testing on the new product. An accelerated aging process may be used to test a new formulation; however, if the stability testing is not successful, and if further reformulation is required, there could be further delay in having a new product available for manufacture.

The agency wishes to establish a reasonable period of time for relabeling and reformulation in order to avoid an unnecessary disruption of the marketplace that could not only result in economic loss, but also interfere with consumers' assess to safe and effective drug products. Therefore, the agency is proposing that the final monograph be effective 12 months after the date of its publication in the **Federal Register.** The agency believes that within 12 months after the date of publication most manufacturers can order new labeling and reformulate their products and have them in compliance in the marketplace. However, if the agency determines that any labeling for a condition included in the final monograph should be implemented sooner, a shorter deadline may be established. Similarly, if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition from OTC drug products.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notice published in the **Federal Register** of August 9, 1972 (37 FR 16029) or to additional information that has come to the agency's attention since publication of the advance notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

I. The Agency's Tentative Conclusions on The Comments

A. General Comments on Anticaries Drug Products

1. One comment contended that OTC drug monographs are interpretive, as opposed to substantive, regulations. The comment referred to statements on this issue submitted earlier to other OTC drug rulemaking proceedings.

The agency addressed this issue in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products, published in the **Federal Register** of May 11, 1972 (37 FR 9464) and in paragraph 3 of the preamble to the tentative final monograph for antacid drug products, published in the **Federal Register** of November 12, 1973 (38 FR 31260). FDA reaffirms the conclusions stated there. Subsequent court decisions have confirmed the agency's authority to issue substantive regulations by rulemaking. See, e.g., *National Nutritional Foods Association* v. *Weinberger*, 512 F. 2d 688, 696–98 (2d Cir. 1975) and *National Association of Pharmaceutical Manufacturers* v. *FDA*, 487 F. Supp. 412 (S.D.N.Y. 1980), *aff'd*, 637 F. 2d 887 (2d Cir. 1981).

2. One comment stated that FDA lacks statutory authority to prescribe exclusive lists of terms which indications for use for OTC drug products must be drawn and to prohibit labeling terminology which is truthful, accurate, not misleading, and intelligible to the consumer.

During the course of the OTC drug review, the agency has maintained that the terms that may be used in an OTC drug product's labeling are limited to those terms included in a final OTC drug monograph. (This policy has become known as the "exclusivity rule.") The agency's position has been that it is necessary to limit the acceptable labeling language to that developed and approved through the OTC drug review process in order to ensure the proper and safe use of OTC drugs. The agency never contended, however, that any list of terms developed during the course of the review literally exhausts all the possibilities of terms that appropriately can be used in OTC drug labeling. Suggestions for additional terms or for other labeling changes may be submitted as comments to proposed or tentative final monographs within the specified time periods or through petitions to amend monographs under § 330.10(a)(12). For example, the labeling proposed in this tentative final monograph has been expanded and revised in response to comments received. (See comments 26 and 27 below.)

During the course of the review, FDA's position on the "exclusivity rule" has been questioned many times in comments and objections filed in response to particular proceedings and in correspondence with the agency. The agency has also been asked by The Proprietary Association to reconsider its position. In a notice published in the **Federal Register** of July 2, 1982 (47 FR 29002), FDA announced that a hearing would be held to assist the agency in resolving this issue. On September 29, 1982, FDA conducted an open public forum at which interested parties

presented their views. The forum was a legislative type administrative hearing under 21 CFR Part 15 that was held in response to a request for a hearing on the tentative final monographs for nighttime sleep-aids and stimulants (published in the **Federal Register** of June 13, 1978; 43 FR 25544).

After considering the testimony presented at the hearing and the written comments submitted to the record, in the **Federal Register** of April 22, 1985 (50 FR 15810), FDA proposed to change its exclusivity policy for the labeling of OTC drug products. As proposed, manufacturers may select one of the following options:

(1) The label and labeling would contain within a boxed area designated "APPROVED USES" the specific wording on indications for use established under an OTC drug monograph. The boxed areas would be required to be displayed in a prominent and conspicuous location. As under the present policy, the labeling in the boxed area would be required to be stated in the exact language of the monograph. However, with this option a statement that the information in the box was published by the Food and Drug Administration would appear either in the box or reasonably close by. At the manufacturer's option, the designation of the boxed area and the statement that the labeling was established by FDA could be combined.

(2) As a complete alternative to using the boxed area designated "APPROVED USES," the proposal would for the first time allow manufacturers an option to use other truthful and nondeceptive statements relating only to the indications established in an applicable monograph subject to the prohibitions in section 502(a) of the act against misbranding by the use of false or misleading labeling. If this alternative is selected, the manufacturer would not be able to use a boxed area or include a statement that the indications are endorsed by the Food and Drug Administration.

(3) As a third alternative, manufacturers could use both a boxed area with the monograph language and also, elsewhere in the labeling, use other non-monograph language that meets the statutory standards of truthfulness and accuracy.

Regardless, other aspects of OTC drug labeling, such as the statement of identity, warnings, and directions, would continue to be required to comply with the monograph, including following any exact language established in the monograph.

The proposal to change the exclusivity policy provides for 90 days of public comment. After considering all comments submitted, the agency will announce its final decision on this matter, in a future issue of the **Federal Register**.

3. One comment contended that the Panel's recommendation that sodium fluoride dental products be packaged in containers with child-resistant closures is not consistent with the Consumer Product Safety Commission's (CPSC) proposal, published in the **Federal Register** of March 19, 1980 (45 FR 17593), that all sodium fluoride drug preparations containing no more than 264 milligrams (mg) of sodium fluoride (120 mg fluorine) be exempt from child-protection packaging requirements for prescription drugs. The comment also noted that aqueous solutions of sodium fluoride are currently exempt from these requirements (16 CFR 1700.14). The comment stated that, while the CPSC's recommendation applies only to prescription drugs, it should be extended to apply to OTC fluoride dental drug products as well.

The Dental Panel recommended that certain fluoride dental rinses and gels, which had been previously restricted to prescription use, be made available OTC provided that they contain no more than 120 mg total fluorine per package, and that they are packaged in containers with child-resistant closures (45 FR 20673 and 20675). In the preamble to the Panel's report, the agency pointed out that CPSC, and not FDA, regulates child-resistant packaging and stated that it would make the CPSC aware of the Dental Panel's recommendations (45 FR 20666). The Panel's report was adopted before the CPSC published its proposed rule on March 19, 1980, but was not published until March 28, 1980.

FDA and CPSC representatives met on June 17, 1980 to establish a coordinated effort to deal with the Panel's recommendations that OTC anticaries fluoride dental rinses and gels be packaged with child-resistant closures in addition to limiting the amount of fluorine contained in a package to 120 mg (Ref. 1). CPSC explained that to implement the Panel's recommendation would require a reversal of exemptions to the requirement of child-resistant closures granted for aqueous solutions of sodium fluoride (16 CFR 1700.14) and the proposed extension of this exemption to all generic forms of sodium fluoride containing no more than 264 mg sodium fluoride (120 mg fluorine) per package in the **Federal Register** of March 19, 1980 (45 FR 17593). CPSC issued a final rule granting this proposed exemption to sodium fluoride drug preparations, including liquid and tablet forms, on November 26, 1980. Its decision was based on extensive data and information on fluoride toxicity that are fully discussed in the final rule (45 FR 78630). These data and information have been entered into the public administrative record for this rulemaking on OTC anticaries drug products (Ref. 1). The agency concurs with the CPS's findings that child-resistant closures for anticaries drug products containing no more than 120 mg fluorine are not necessary. FDA is proposing to limit the size of OTC packages containing fluoride rinses and gels to 120 mg fluorine per package and, therefore, will not request that CPSC consider proposing that fluoride rinses and gels included in this monograph be packaged with child-resistant closures.

Reference

(1) Memorandum coded M, Docket No. 80N-0042, Dockets Management Branch.

4. Three comments requested that dental rinse and nonabrasive dental gel packages be permitted to contain the same amount of fluorine (260 mg) as dentifrice packages instead of being limited to 120 mg of fluorine per package as stated by the Panel in its recommended monograph. Two of the comments argued that over 25 years of worldwide OTC use has confirmed the safety of dentifrice products containing 260 mg of fluorine. One of the comments maintained that dental rinse and nonabrasive gel packages containing 260 mg of fluorine might be safer than a comparable tube of fluoride dentifrice because the dental rinse and nonabrasive gel packages may also have child-proof safety closures. This comment added that it would take about 32 ounces (oz) of a 0.05-percent sodium fluoride dental rinse to contain 260 mg of fluorine, and that it would be as difficult to ingest 32 oz of a dental rinse from a bottle with a child-proof safety closure as it would be to ingest 9 oz of a fluoride dentifrice from a tube. Two of the comments pointed out that the same concentration (0.4 percent) of stannous fluoride is recommended for both the dentifrice and the nonabrasive gel, yet the gel package could contain a total of only 120 mg of fluorine and would require a child-proof safety closure, while the dentifrice package could contain a total of 260 mg of fluorine and would not require a child-proof safety closure. One of the comments stated that it is the prevailing conclusion of toxicologists that none of these dosage forms is any more hazardous than any other, and that the request to increase the allowable fluorine content in dental

rinses and nonabrasive gels was based on extensive pharmacological data.

The Panel stated that since 1958 the Council on Dental Therapeutics of the American Dental Association (ADA) has recommended for dental rinses and gels that no more than 120 mg of fluorine per package be dispensed at any one time because of its possible misuse. Experience during the past 20 years has borne out the safety of the Council's precautionary limit of fluoride for dental rinses and gels (45 FR 20673).

In addition, a significant distinction exists between dentifrices and nonabrasive dental gels and rinses. A dentifrice formulation contains an abrasive (45 FR 20671), while nonabrasive dental gels and rinses do not. As the Panel pointed out, the amount of fluorine available for pharmacological or toxicological action in a dentifrice is dependent upon the chemical reactivity of the fluoride ion with the abrasive (45 FR 20675–20677). Therefore, even if a 9-oz tube of a dentifrice containing 260 mg of fluorine were ingested, the entire 260 mg of fluorine is not available for absorption; only a part is available. In a 32-oz bottle of dental rinse or a 9-oz tube of a nonabrasive dental gel containing 260 mg of fluorine all of the 260 mg of fluorine is in solution and available for absorption. One study concluded that a dentifrice containing a given dose of a soluble fluoride would be 2.5 times safer than an aqueous solution, such as a dental rinse, containing the same dose of soluble fluoride (Ref. 1).

None of the comments submitted data to support the safety of more than 120 mg fluorine in nonabrasive dental gel and dental rinse products. The agency believes that the safety of dentifrices containing up to 260 mg fluorine can be attributed to the likelihood that the amount of dentifrice that contains a toxic dose of fluorine could not be ingested without vomiting (Ref. 2) and to the decreased amount of fluorine actually available for absorption because of the reactivity of fluorine with the abrasives in dentifrices.

Although the Panel recommended child-proof safety closures for dental rinses and gels, the CPSC states that these dosage forms, as well as tablets containing sodium fluoride, are exempt from regulations requiring child-proof safety closures as long as they contain 264 mg of sodium fluoride, which amounts to 120 mg of fluorine, or less per package. As discussed in comment 3 above, the CPSC's decision was based on the low toxicity potential of this amount of sodium fluoride and on the ADA's recommendation of 264 mg of sodium fluoride (120 mg fluorine) as the maximum amount to be dispensed at one time. The agency agrees with the recommendations of the ADA and the Panel and is proposing to limit the total amount of fluorine in packages of OTC dental rinses and nonabrasive gels to not more than 120 mg of fluorine per package.

References

(1) OTC Volume 080098.

(2) OTC Volumes 080018, 080096, and 080069.

5. Two comments had different views on the last sentence in the Panel's definition of fluoride at 45 FR 20671: "The deposition of fluoride in dental enamel has been shown to increase resistance to enamel solubility and therefore dental decay." Although acknowledging that the sentence is correct, one comment maintained that it was a commentary, not a definition, and should be omitted. The other comment stated that it was encouraging to find the statement included in the definition because it firmly established the clinical relationship between enamel solubility and tooth decay.

The definition discussed by the comments was not included in the Panel's recommended monograph, but was included in its report to reflect the Panel's intended meaning of fluoride in referring to OTC anticaries drug products. The agency acknowledges the definition in the Panel's report, but is adopting in this tentative final monograph the definition of fluoride recommended by the Panel in § 355.3: "The inorganic form of the chemical element fluoride in combination with other elements."

6. One comment suggested changing the first sentence in § 355.10, "The following ingredients are generally recognized as safe and effective for use in OTC anticaries drug products when marketed within the dosage limits forms established for each ingredient," to read as follows: "The following ingredients are generally recognized as safe and effective for use in OTC anticaries drug products when included in a suitable vehicle . . . and marketed within the dosage limits and in the forms established for each ingredient."

The sentence in § 355.10 was unclear as a result of a printing error. The agency proposes to word this sentence as follows in this tentative final monograph: "The active ingredient of the product consists of any of the following, within the established concentration and dosage form." This statement is compatible with the intent of the sentence suggested by the comment and consistent with other tentative final monographs.

7. One comment, while recognizing that the example list of inactive ingredients at 45 FR 20674 does not purport to be complete, suggested that binders, humectants, surfactants, and flavorants be added to the list.

As the comment noted, the types of inactive ingredients cited at 45 FR 20674 were intended as examples, not as a complete list. The agency believes that it is unnecessary to expand the list to include other examples of types of inactive ingredients.

8. One comment disagreed with the Panel's recommendation that a special panel is needed to review inactive ingredients in anticaries drug products. The comment stated that such ingredients are mostly found in cosmetics as well as drugs, and the current Cosmetic Ingredient Review sponsored by manufacturers of cosmetic products is fulfilling the need to examine more carefully the properties of certain ingredients.

The Panel stated that it did not undertake an extensive review of inactive ingredients because many of these ingredients are used in the formulation of many drug products other than those reviewed by the Panel. The Panel felt that it was not appropriate that inactive ingredients, except for abrasives, be dealt with specifically and solely in relation to dentifrices and dental care agents. Thus, the Panel recommended that the safety and the advisability of including specific inactive ingredients in drug products should be reviewed by an appropriate panel (45 FR 20674). The agency does not plan to establish a special panel to review inactive ingredients as part of the OTC drug review. The agency is aware of the Cosmetic Ingredient Review, which is a voluntary, industry-sponsored review to determine those cosmetic ingredients for which there is a reasonable certainty in the judgment of competent scientists that the ingredient is safe under its conditions of use (Ref. 1). Tentative and final reports on the ingredients reviewed are publicly available. The reports on inactive ingredients resulting from the Cosmetic Ingredient Review may be applicable to inactive ingredients used in OTC drug products, and the agency will consider these reports, as applicable, should questions arise regarding the presence of these inactive ingredients in OTC drug products. Under 21 CFR 330.1(e), an OTC drug product must contain only suitable inactive ingredients which are safe in the amounts administered and do not interfere with the effectiveness of the preparation or with suitable tests or assays to determine if the product meets

its professed standards of identity, strength, quality, and purity.

Reference

(1) Cosmetic Ingredient Review Procedures, Cosmetic Ingredient Review, 1110 Vermont Ave. NW., Washington, DC 20005.

9. One comment objected to the inclusion of 6 percent alcohol in a marketed 0.05-percent sodium fluoride dental rinse. The comment stated that the inclusion of alcohol in such products is unnecessary, that fluoride dental rinses employed in anticaries effectiveness studies did not contain alcohol, and that "it is generally accepted by the dental profession that daily rinses (containing alcohol) can be harmful to oral health, if continued over long periods." The comment urged FDA to take action against the inclusion of alcohol in fluoride dental rinses.

The OTC drug review regulations state that OTC drug products should contain "only suitable inactive ingredients which are safe in the amounts administered and do not interfere with the effectiveness of the preparation. . . ." (21 CFR 330.1(e)). The Panel considered alcohol to be an inactive ingredient in anticaries drug products containing fluoride (45 FR 20670) and did not take a position as to its value as an inactive ingredient in anticaries drug products or indicate that its presence in such drug products decreases their effectiveness. Although the Panel noted that inactive ingredients can have an irritating effect on the oral mucosa (45 FR 20674), it did not specifically indicate that such problems arise with daily use of dental rinses containing alcohol. The agency is unaware of significant reports of irritation or other adverse reactions due to fluoride dental rinse products containing 6 percent alcohol or of data that indicate that the presence of alcohol decreases the effectiveness of such products.

the Advisory Review Panel for OTC Oral Cavity Drug Products reviewed mouthwash drug products that contain alcohol and have antimicrobial claims and reviewed ethyl alcohol specifically as an antimicrobial active ingredient in mouthwashes (47 FR 22811–22873). That Panel recommended that ethyl alcohol be Category III as an antimicrobial mouthwash based on insufficient evidence of effectiveness, but stated that ethyl alcohol is safe for this use. Although the Oral Cavity Panel did not propose an antimicrobial mouthwash dosage for ethyl alcohol, it discussed concentrations well above 6 percent (i.e., 35 to 70 percent) for mouthwash use and noted that alcohol has been used safely in mouthwash products for many years (47 FR 22872).

The comment did not present any data or information to support its statement that the dental profession generally considers the daily use of mouthrinses containing alcohol harmful to oral health if continued over long periods or to demonstrate that daily rinsing over long periods with a product containing 6 percent alcohol is harmful to oral health. Therefore, the agency has no basis at this time for excluding alcohol as an inactive ingredient in fluoride dental rinse drug products.

10. A number of comments objected to the Panel's discussion of the relationship between sugar consumption and dental caries, and its recommendation that all processed foods be labeled with their percentage of sucrose and total monosaccharide and disaccharide content (45 FR 20672). The comments argued that the Panel had exceeded the scope of its authority by including this topic in its report. Some of the comments denied the primary importance of sugar in the etiology of dental caries and submitted data and cited numerous references to support their position (Refs. 1 and 2). One comment requested that the preamble to the tentative final monograph contain an explicit statement disavowing the Panel's conclusions on the etiology of dental caries and its recommendations on food labeling.

While the agency appreciates the Panel's concern with the etiology of dental caries, the Panel's comments concerning the role of sugar in the etiology of dental caries and the Panel's recommendation for mandatory labeling of sugar content on processed foods are outside the scope of the OTC drug review and thus will not be addressed in this tentative final monograph.

References

(1) Comment No. C00020, Docket No. 80N–0042, Dockets Management Branch.

(2) Comment Nos. C00011, C00017, and C00023, Docket No. 80N–0042, Dockets Management Branch.

11. One comment pointed out that the phrase "with an additive" was omitted from the Panel's statement at 45 FR 20672 concerning the caries-incidence liability of chewing gum. The comment indicated that the statement should read: "With reference to recommendation (4), the Panel believes that the evidence at this time is insufficient to allow any gum with an additive (on the market or proposed) to make the claim, 'does not promote tooth decay'."

The agency believes that, in the context of the Panel's discussion, the Panel intended the meaning conveyed by the comment's revised sentence.

B. Comments on the Switch of Prescription Anticaries Drug Products to OTC Status

12. A number of comments supported the Panel's recommendation that certain fluoride dental rinses and gels be switched from prescription to OTC status to aid in the prevention of dental caries. One comment, however, expressed concern that "people think if something is good, more is better. This is a bad idea since fluoride is a dangerous chemical and should be kept on a prescription basis."

The agency agrees with the Panel's recommendation to switch certain fluoride rinses and gels from prescription to OTC status. The benefits of having these anticaries products available OTC far outweigh the minimum risk involved. (See comment 13 below). Further, the Panel's recommended package size limitation and the labeling warnings and directions are sound control measures against potential misuse. The comment did not submit any data to support its statement that consumers will use excessive quantities of these products.

13. Several comments responded to FDA's request for comments and data on the issue of whether fluoride gels and rinses provide any added benefit to persons who also use a fluoride dentifrice daily, who live in areas where optimal levels of fluoride (i.e., approximately 1 part per million (ppm)) are present in the water supply, and who may also be given professionally applied fluoride treatments periodically.

One comment stated that the Council on Dental Therapeutics of the ADA has reviewed clinical studies that indicate that daily use of a 0.05-percent sodium fluoride rinse provides a reduction in caries that is additive to the daily use of a fluoride dentifrice and to water fluoridation. However, the clinical studies were not cited by the comment. another comment submitted a list of references on the topical application of fluoride and the use of fluoride rinses (Ref. 1). The comment, from a dentist, reported from personal experience that daily 0.05 percent sodium fluoride rinses were more effective than weekly 0.2 percent sodium fluoride rinses and concluded that the frequency of use of rinses is very important. The comment recommended a twice-daily use of a neutral sodium fluoride rinse. One comment stated that evidence in the literature shows that fluoridated water reduces dental caries by approximately 65 percent, whereas fluoride dentifrices

reduce them by approximately 35 percent. No supporting data were submitted by the comment.

One comment submitted a 30-month clinical study by Triol et al. (Ref. 2) conducted on schoolchildren (mean age 11.5 years) who lived in an area without optimal water fluoridation. The study was conducted to determine the additive caries-reducing effect obtained from the daily supervised use at school of a dentifrice containing 0.76 percent sodium monofluorophosphate and mouthrinses containing sodium flouride at 0.025, 0.05, and 0.1 percent concentrations. A nonfluoride mouthrinse was used as a contol. The study results showed that after 30 months, the use of each sodium flouride mouthrinse concentration combined with the sodium monofluorophosphate dentifrice reduced cavities when compared with the combined use of the sodium monofluorophosphate dentifrice and the control mouthrinse. Children who used a 0.025-percent and a 0.1-percent sodium fluoride mouthrinse with the fluoride dentifrice developed 9.2 and 7.8 percent fewer decayed, missing, and filled teeth, respectively, than did children who used a nonfuoride rinse. Daily use of the 0.05-percent sodium fluoride mouthrinse (the concentration recommended for OTC use by the Panel) produced modest additional benefits when used with fluoride dentifrice toothbrushing. Children in this group developed 11.1 percent fewer decayed, missing, and filled tooth surfaces during the 30-month evaluation period than children who used a nonfluoride rinse. Nearly the entire benefit resulted from a reduction in caries in interproximal (between-the-teeth) tooth surfaces. Because reduction of dental caries from the use of fluoride rinses results from the presence of the fluoride ion, the agency believes it is likely that similar findings would be produced by the use of gels or rinses containing other fluoride salts, such as stannous fluoride or acidulated phosphate fluoride, with the same concentration of fluoride.

The agency has reviewed other studies in which combinations of fluoride agents and methods have been used. Horowitz (Ref. 3) points out that there is increasing evidence that various combinations of fluoride agents produce additive anticariogenic effects. Although the mechanisms by which fluorides prevent dental caries are not fully understood, they probably vary, depending upon the agent used, its route of administration, its concentration, its frequency of use, the vehicle used to deliver it, and the age of the person who receives it (Refs. 4, 5, and 6). Several mechanisms may operate simultaneously, with one or another preeminent at different times because of local conditions at the tooth surface. It is thus logical to expect added benefits to accrue from the use of combinations of fluoride agents and methods, particularly those with different mechanisms of action.

Because the Triol study (Ref. 2) was intentionally done in a community where the drinking water contained less than 0.3 ppm of fluoride, it provides no information on additive benefits from the use of fluoride rinses in a community with a fluoridated water supply. However, at least three other studies strongly suggest that such benefits occur (Refs. 7 through 10). Driscoll et al. (Refs. 7 and 8) conducted a study on schoolchildren (mean age 12.8 years) who lived in a community with an optimally fluoridated water supply and used either 0.2 percent sodium fluoride rinse once a week or 0.05 percent sodium fluoride rinse once a day. A control group of children used a placebo rinse once a week. The 18-month interim results and 30-month final results of this study showed that both 0.2 percent and 0.05 percent sodium fluoride rinse solutions effectively reduced the incidence of dental caries. These reductions in caries were in addition to those already accrued from consuming optimally fluoridated drinking water.

It is likely that most of the children who participated in the study by Driscoll et al. (Refs. 7 and 8) were also using a fluoride-containing dentifrices at home. Because fluoride dentirfrices account for about 85 percent of all "toothpaste" sales, that assumption is reasonable. Therefore, in that study, the school-based daily and weekly fluoride mouthrinsing regimens may be regarded as being effective in reducing dental decay among children who live in a community with a fluoridated water supply and, for the most part, use a fluoride-containing toothpaste.

Kawall et al. (Ref. 9) conducted a 2-year study on schoolchildren (initially 9 years of age) who resided in an area with an optimally fluoridated water supply and used a 0.2-percent sodium fluoride rinse once a week. A control group of children was also included in the study. Results after 2 years showed that the fluoride rinse group had a 33.8-percent greater caries reduction than the control group. Radike et al. (Ref. 10) conducted a study on schoolchildren (8 to 13 years of age) who resided in a community with a fluoridated water supply and used a 0.1-percent stannous fluoride rinse once a day for 2 school years. A control group of children was also studied. After 2 years, two examiners independently observed caries reductions of 33 percent and 43 percent in decayed, missing, anf filled tooth surface scores for the group using the stannous fluoride rinse as compared with the control group. These studies show that mouthrinsing with flouride solutions, either daily or weekly as appropriate, provides additional protection against dental decay for persons living in a community with a fluoridated water supply.

As mentioned by one comment, the Council on Dental Therapeutics of the ADA recognizes the value of daily and weekly fluoride mouthrinsing for caries prevention in communities with fluoridated water (Ref. 11). Additionally, another ongoing study shows that children in an area without fluoridated water who rinse their mouth weekly in school with 0.2 percent sodium fluoride, ingest a tablet containing 1 mg of fluoride on school days, and receive fluoride dentifrice and toothbrushes for toothbrusing at home, demonstrate a pronounced reduction in dental decay (Refs. 12 through 15). After 8 years of this program, children 6 to 14 years of age in the program had 49 percent less dental decay than children of the same ages in the same area who had not participated in the program. Decay in mesiodistal tooth surfaces was lower by a striking 86 percent (Ref. 15).

Because rinsing daily with 0.05 percent sodium fluoride is at least as effective as weekly rinsing with 0.2 percent sodium fluoride, the agency concludes that the use of fluoride rinse concentrations combined with other fluroide programs is beneficial in reducing dental decay. Based on the cited studies, the agency concludes that beneficial additive effects occur from the combined use of fluoride rinses or gels and fluoride dentifrices in communities with either a fluoridated or nonfluoridated water supply. Therefore, in order to inform consumers that a decrease in the incidence of dental decay can result from the combined use of fluoride from different sources, the agency is proposing that the following statement be included under "Optional additional labeling statement" in § 355.50(f): "The combined daily use of a fluoride treatment" (select one of the following: "rinse" or "gel") "and a fluoride toothpaste can aid in reducing the incidence of dental cavities."

References

(1) Comment C00005, Docket No. 80N–0042, Dockets Management Branch.

(2) Triol, C. W., et al., "Anticaries Effect of a Sodium Fluoride Rinse and an MFP Dentifrice in a Nonfluoridated Water Area: A

Thirty-month Study," *Clinical Preventive Dentistry*, 2:13–15, 1980.

(3) Horowitz, H. S., "Combinations of Caries-preventive Agents and Procedures," *Journal of Dental Research*, 59:2183–2189, 1980.

(4) Brown, W. E., et al., "Effects of Fluoride on Enamel Solubility and Cariostasis," *Caries Research*, 11:118–141, 1977.

(5) Ericsson S. Y., "Cariostatic Mechanisms of Fluorides: Clinical Observations," *Caries Research*, 11:2–41, 1977.

(6) Mellberg, J. R., "Enamel Fluoride and its Anticaries Effects," *Journal of Preventive Dentistry*, 4:8–20, 1977.

(7) Driscoll, W. S., et al., "Caries-preventive Effects of Daily and Weekly Fluoride Mouthrinsing in an Optimally Fluoridated Community: Findings After Eighteen Months," *Pediatric Dentistry*, 3:316–320, 1981.

(8) Driscoll, W. S., et al., "Caries-preventive Effects of Daily and Weekly Fluoride Rinsing in a Fluoridated Community: Final Results After 30 Months," *Journal of Dental Association*, 105:1010–1013, 1982.

(9) Kawall, K., et al., "The Effect of a Fluoride Mouthrinse in an Optimally Fluoridated Community—Final Two Year Results," (abstract 646), *Journal of the American Dental Research*, 60:471, 1981.

(10) Radike, A. W., et al., "Clinical Evaluation of Stannous Fluoride as an Anticaries Mouthrinse," *Journal of the American Dental Association*, 86:404–408, 1973.

(11) Council on Dental Therapeutics, "Accepted Dental Therapeutics," 39th Ed., American Dental Association, Chicago, p. 352, 1982.

(12) Horowitz, H. S., et al., "Evaluation of a Combination of Self-Administered Fluoride Procedures for Control of Dental Caries in a Non-Fluoride Area: Findings After 2 Years," *Caries Research*, 11:178–185, 1977.

(13) Horowitz, H. S., et al., "Evaluation of a Combination of Self-administered Fluoride Procedures for the Control of Dental Caries in a Nonfluoride Area: Findings After Four Years," *Journal of the American Dental Association*, 98:219–223, 1979.

(14) Horowitz, H. S., et al., "A Program of Self-Administered Fluorides in a Rural School System," *Community Dental Oral Epidemiology*, 8:177–183, 1980.

(15) Horowitz, H. S., et al., "Eight-year Evaluation of a Combined Fluoride Program in a Non-fluoride Area," (abstract 915), *Journal of Dental Research*, 61:280, 1982.

14. One comment stated that the Panel should have included systemic fluoride preparations among the Category I anticaries drug products because there is adequate experimental evidence supporting the effectiveness of systemic fluorides and because concern over toxicity could be handled by limiting the maximum amount of fluorine per package as has been done in the case of other fluoride-containing products. The comment contended that making systemic fluoride products available OTC could make it possible for a large segment of the population to enjoy the anticaries benefits of such products and urged the Panel to include systemic fluoride preparations in its review.

The agency did not include systemic fluoride preparations in the call-for-data notice for dentifrices and dental care drug products (38 FR 2781). No data on systemic fluorides were submitted to the Panel for review.

The Council on Dental Therapeutics of the ADA advises against the unrestricted distribution of systemic fluoride preparations (Ref. 1), and the agency concurs. Systemic fluoride preparations are usually prescribed for young children who live in areas where water supplies are deficient in fluorides. The ADA states that the ingestion of systemic fluoride preparations in addition to ingesting fluoridated water does not provide an additional substantial reduction in caries prevalence for adults or children, but may produce fluorosis in developing teeth of young children (Ref. 1).

Fluoridation of public water supplies has been safely and effectively used for many years to provide optimal levels of the fluoride ion to large segments of the population (Ref. 1). The optimal range of fluoride in drinking water to prevent caries is from 0.7 to 1.2 ppm. The need for additional systemic fluoride for any child depends on the fluoride concentration in drinking water and the age of the child (Ref. 1). Thus, professional supervision in the use of systemic fluoride preparations is necessary to assure that they are safely and effectively used. Although, as the comment points out, the maximum amount of fluoride per container could be limited to increase the safety of these products, consumers may not be aware of the extent to which their water supply is fluoridated and, therefore, may lack adequate knowledge to use systemic fluoride drug products effectively. Consequently, in this tentative final monograph the agency is not proposing labeling intended to inform consumers about the use of systemic fluorides.

However, the agency recognizes that Category I dental rinses have been used as fluoride supplements for ingestion in addition to their use as topical rinses. The ADA recommends a daily dosage of 2.2 mg sodium fluoride or 1 mg fluoride ion as a supplement for children 3 to 13 years of age in an area with less than 0.3 ppm in the water supply and 0.5 mg fluoride ion as a supplement for children 3 to 13 years of age in an area with between 0.3 to 0.7 ppm in the water supply (Ref. 1).

The agency concurs with the ADA's recommended dosage. The agency has determined that 5 milliliters (mL) of 0.02 percent or 10 mL of 0.01 percent flouride ion rinses included in the tentative final monograph will provide approximately 1 mg of fluoride ion and that 2.5 mL of 0.02 percent or 5 mL of 0.01 percent fluoride rinses will provide approximately 0.5 mg of fluoride ion. The agency concludes that systemic use of fluoride rinses as a supplement should be under professional supervision and is therefore including the following directions for use of these rinses as supplements in the professional labeling section of the tentative final monograph based on the ADA's dosage recommendations: Children 3 to under 14 years of age: as a supplement in areas where the water supply is nonfluoridated (less 0.3 part per million), clean the teeth with a toothpaste and rinse with 5 milliliters of 0.02 percent or 10 milliliters of 0.01 percent fluoride ion rinse daily, then swallow. When water supply contains 0.3 to 0.7 part per million fluoride ion, reduce the dose to 2.5 milliliters of 0.02 percent or 5 milliliters of 0.01 percent fluoride ion rinse daily.

Reference

(1) Council on Dental Therapeutics, "Accepted Dental Therapeutics," 39th Ed., American Dental Association, Chicago, pp. 344–368, 1982.

15. One comment requested that a neutral 0.2-percent sodium fluoride dental rinse be allowed to be marketed OTC. The comment explained that two programs in California enable elementary school children to participate in a weekly dental rinse program using 0.2 percent sodium fluoride. The comment pointed out, however, that California law requires that a dentist, physician, or pharmacist mix the 0.2-percent sodium fluoride solution, and, consequently, dentists participating in the program must spend much of their time mixing solutions rather than conducting dental screenings and providing dental education.

The agency understands that the technical aspects involved in mixing the 0.2-percent fluoride rinse are time-consuming and commends the comment's desire for dentists to devote more time to the dental care of school children. However, at this time, the agency is not aware of any data to show that a 0.2-percent sodium fluoride dental rinse, currently marketed by prescription only, can be safely marketed OTC. The Panel reviewed a number of studies attesting to the safety and effectiveness of a 0.05-percent sodium fluoride solution used daily as a rinse (45 FR 20686–20687) and, based on these data, recommended that the 0.05-percent sodium fluoride solution be switched from prescription to OTC marketing status. Without safety data for the 0.2-percent sodium fluoride dental rinse, the agency has no basis for granting the comment's request.

C. Comments on Specific Anticaries Active Ingredients

16. Several comments objected to the Panel's discussion of the claim "does not promote tooth decay" and to the Panel's recommendation that the evidence at this time is insufficient to allow any sucrose-containing chewing gum to make this claim (45 FR 20672). The comments pointed to the Panel's statement that during the Panel deliberations the Bureau of Drugs (now the Center for Drugs and Biologics) decided that products making noncariogenic claims (such as "does not promote tooth decay") should be reviewed by the Bureau of Foods (now the Center for Food Safety and Applied Nutrition) because noncariogenic claims are not considered drug claims (45 FR 20669). Two comments (Refs. 1 and 2) argued that the Panel's recommendation on noncariogenic claims was thus extraneous to this OTC drug rulemaking and should be deleted, along with certain portions of the Panel's discussion about the cariogenicity of foods (45 FR 20672).

The chairman of the Dental Panel requested that two paragraphs be added to the report stating that the Panel had discussed at length the action of ingredients designed to negate the cariogenic effects of sugars. The chairman commented that the Panel had concluded that dicalcium phosphate dihydrate is safe, but that an additional clinical study would be needed to prove effectiveness (Ref. 3).

Some comments also objected to the Panel's classification of phosphates, including dicalcium phosphate dihydrate and calcium sucrose phosphate, in Category II as anticaries agents (45 FR 20689). One comment stated that phosphate compounds are chemical additives to foods and should not be included in the proposed OTC monograph. Another comment contended that calcium phospate dihydrate and calcium sucrose phosphate have a history of safe use. According to the comment, this Category II classification contradicts a Department of Commerce report prepared by the Federation of American Societies of Experimental Biology which states that phosphates, especially calcium phosphates, are safe as food ingredients (Ref. 4). The comment also pointed out that many of the phosphates are on the GRAS list (food substances generally recognized as safe). The comments argued that a Category III classification (based on insufficient effectiveness data) for these phosphate ingredients would be more appropriate than the Panel's Category II classification (Refs. 4 and 5).

The agency agrees that noncariogenic claims (such as "does not promote tooth decay") are not drug claims. Of course, any noncariogenic claims made on food product labeling must not be false or misleading. However, these claims will not be reviewed as part of this OTC drug rulemaking. As the Panel chairman has pointed out, the Panel spent a considerable amount of time during its deliberations discussing the role of sugar in dental health and the action of substances intended to negate the cariogenic effects of sugars. The Panel report does include a discussion of the Panel's views on these issues; however, the agency will not delete or add segments to the Panel's report as requested by the comments.

The Panel placed phosphates in Category II as anticaries agents (i.e., ingredients which aid in the prevention of dental cavities) based on lack of marketing and on lack of evidence of effectiveness (45 FR 20689). Calcium phosphate (mono-, di-, and tribasic) is listed in 21 CFR 182.1217 as a multiple purpose GRAS food substance. In the **Federal Register** of December 18, 1979 (44 FR 74845), FDA proposed to affirm that dicalcium phosphate is generally recognized as safe as a direct food ingredient under certain conditions. Although phosphates have been added to foods, they have never been marketed as anticaries drug products. Therefore, they are not appropriately included in the OTC drug review program. Thus, the agency will not consider dicalcium phosphate dihydrate, calcium sucrose phosphate, or any other phosphate, in this OTC anticaries drug rulemaking. Any OTC anticaries drug product containing a phosphate as an active ingredient is a new drug as defined in 21 U.S.C. 321(p) and under 21 U.S.C. 355 may not be marketed without an approved new drug application.

References

(1) Comment C00021, Docket No. 80N–0042, Dockets Management Branch.
(2) Comment C00026, Docket No. 80N–0042, Dockets Management Branch.
(3) Comment C00002, Docket No. 80N–0042, Dockets Management Branch.
(4) Comment C00029, Docket No. 80N–0042, Dockets Management Branch.
(5) Comment C00024, Docket No. 80N–0042, Dockets Management Branch.

17. One comment contended that the Panel's listing of hydrogen fluoride as an inactive ingredient (45 FR 20670) was misleading. The comment stated that, although no marketed product contains hydrogen fluoride as its sole anticaries ingredient, in a proper formulation this ingredient would be active against caries because hydrogen fluoride readily yields ionic fluoride in solution.

The agency agrees that hydrogen fluoride, in an appropriate formulation, could be considered an active anticaries ingredient and recognizes that a marketed product containing hydrogen fluoride as an active ingredient in combination with sodium fluoride, available only by prescription, was submitted to the Panel for review (Refs. 1 and 2). The product is a dental rinse containing the ingredients sodium fluoride and hydrogen fluoride, buffered to pH 3, with an effective fluoride ion concentration of 1.23 percent. In this formulation hydrogen fluoride contributes approximately 50 percent of the total fluoride ion content, and sodium fluoride contributes the other 50 percent. The agency is unable to ascertain why the Panel classified the ingredient hydrogen fluoride as inactive and why it did not classify in its report the combination dental rinse containing hydrogen fluoride and sodium fluoride. It is possible that the Panel did not classify the product based on the manufacturer's statement in its submission that "we do not believe that this product can or should be considered in the Over-the-Counter (OTC) category. It is intended and sold for use only by the dental profession . . . ." It is also possible that the Panel may have considered the hydrogen fluoride present in the product as a pharmaceutic aid to adjust the acidity (pH).

A dental rinse containing ionic fluoride derived from hydrogen fluoride in an appropriate formulation that is similar to the Category I acidulated phosphate fluoride dental rinse formulation with an effective fluoride ion concentration of 0.02 percent may be safe and effective as an OTC anticaries drug product. However, such a product with an appropriate formulation was not submitted to the Panel or to the agency.

The Panel recommended specific formulation parameters (buffers, pH, and the effective fluoride ion concentration) for the Category I acidulated phosphate fluoride rinse in § 355.10(b)(1) of its recommended monograph because of the importance of these parameters in defining a safe and effective fluoride dental rinse (45 FR 20685, 20686, and 20690). The agency believes that specific parameters would be equally important to define the formulation for a rinse containing ionic fluoride derived from hydrogen fluoride, particularly in view of the fact that hydrogen fluoride as an unbuffered single active ingredient is an extremely

irritating, corrosive, and toxic chemical (Ref. 2).

The agency is therefore proposing a Category III classification for a fluoride dental rinse containing ionic fluoride derived from hydrogen fluoride in an appropriate formulation at an acceptable fluoride ion concentration (0.02 percent) in this tentative final monograph.

References

(1) OTC Volum 080012.

(2) Windholz, M., editor, "The Merck Index," 10th Ed., Merck and Co., Rahway, NJ, pp. 695–696, 1983.

D. Comments on Dosages for OTC Anticaries Drug Products

18. One comment stated that the directions for use of anticaries dentifrices need not specify either a minimum or a maximum dose, as recommended by the Panel (45 FR 20674), because the user has no means of determining the weight or the volume of a dose of dentifrice. The comment added that the clinical determinations of effectiveness have almost invariably been made according to the user's ad libitum application of dentifrice to the toothbrush.

The Panel's statement at 45 FR 20674 was as follows:

> The label [of an OTC anticaries drug product] should include a clear statement of the usually effective minimum and, where applicable, maximum doses (or concentration if more appropriate) per time interval. . . . The Panel will recommend specific directions for use under each drug statement in later sections of this document.

The Panel's statement apparently was intended as a general, not a specific, recommendation because, in its recommended directions for use in § 355.50(d)(1) of its monograph, the Panel did not specify a minimum or a maximum dose for anticaries dentifrices. The Panel recommended that consumers brush their teeth thoroughly at least once daily or as directed by a dentist or physician, without specifying any quantity of dentifrice to be used. Thus, the comment and the Panel are in agreement. The agency is proposing directions for use as recommended by the Panel.

19. One comment requested that the monograph provide for the marketing of a sodium fluoride dental rinse concentrate which, when diluted with water, would provide an aqueous solution containing 0.05 percent sodium fluoride. The comment explained that as marketed in the undiluted, concentrated form, the level of sodium fluoride in the product would exceed the Panel's recommended 0.05 percent concentration, but the total fluorine content of the product would not exceed the Panel's recommended limitation of 120 mg total fluorine. The comment noted that the Panel's recommended monograph allows marketing of a powder or effervescent tablet form of stannous fluoride which, when mixed with water according to the product's directions for use, results in a 0.1-percent stannous fluoride solution. The comment stated that there appears to be no valid reason why a concentrated dental rinse bearing adequate directions for mixing with water to produce a 0.05-percent sodium fluoride aqueous solution should be treated differently from a similar stannous fluoride dental rinse "concentrate."

The agency agrees with the comment that a sodium fluoride dental rinse concentrate can be marketed OTC provided the product is clearly labeled as a concentrate, adequate directions for the proper dilution of the product to a 0.05-percent solution are clearly stated, and the package does not contain more than 120 mg total fluorine. Therefore, the agency is proposing that the anticaries active ingredient statement in § 355.10(b)(3) be revised to include a sodium fluoride dental rinse concentrate as follows: Sodium fluoride concentrate containing adequate directions for mixing with water before using to result in a 0.02-percent or 0.05-percent aqueous solution with a pH of approximately 7. Concentrates can be marketed as solutions, powders, or tablets; and the agency is proposing that the statement of identity include terms that describe these concentrated product forms. (See comments 25 and 26 below.)

In order to alert consumers that dental rinse products in concentrated form (solutions, powders, and effervescent tablets) must be diluted or dissolved in water before using, the agency is proposing the following warning for these dosage formulations: "Do not use before mixing with water. Read the directions carefully."

Based on § 355.10(b)(5) of the Panel's recommended monograph, the agency is also proposing that stannous fluoride may be marketed as a dental rinse in concentrated form to be mixed with water immediately before using, provided it is marketed in a stable form (such as effervescent tablets, powders, or in a nonaqueous solution (e.g., anhydrous glycerin)). The labeling requirements proposed in this document for sodium fluoride concentrates (i.e., statement of identity, warnings, and directions) are also applicable to and are proposed for stannous fluoride concentrates.

20. Noting the Panel's recommendations to make low-fluoride dentifrices available OTC, one comment requested that FDA determine what higher levels of fluoride concentration now become appropriate for dispensing on prescription or for use only under professional surveillance.

The Panel recommended that certain fluoride dental rinses and gels that have previously been restricted to prescription use be made available OTC, provided that they contain no more than 120 mg total fluorine per package (45 FR 20668). This rulemaking proceeding for OTC anticaries drug products establishes which anticaries drugs are generally recognized as safe and effective for OTC use and the concentration or dosage at which they can be safely used OTC. Fluoride concentrations higher than those established in the final monograph are intended for use only under professional supervision. This OTC drug rulemaking proceeding is not the appropriate forum for determining what these higher levels are. If a manufacturer wishes to market a prescription product with a higher fluoride concentration, the manufacturer must file an NDA to obtain appropriate approval.

21. One comment requested that a 0.02-percent sodium fluoride acidulated phosphate fluoride dental rinse formulation and a 0.02-percent sodium fluoride neutral (nonacidulated) dental rinse formulation be classified as Category I OTC anticaries drug products based on data that were submitted to the Panel but, due to an oversight, were not reviewed (Refs. 1 and 2). The comment also submitted additional data to the agency (Refs. 3 through 6). The comment recommended that the directions for use of these products state that adults and children 6 years of age and older should rinse twice daily with 10 mL of a 0.01-percent fluoride ion solution for 30 seconds or 60 seconds.

The agency has reviewed the available data and tentatively determined that it supports a Category I classification for 0.02 percent sodium fluoride (0.01 percent fluoride ion) in an acidulated phosphate fluoride dental rinse and for 0.02 percent sodium fluoride in a neutral dental rinse (pH of approximately 7).

The agency's tentative decision to place 0.02 percent sodium fluoride in an acidulated phosphate fluoride dental rinse in Category I is based on one published and two unpublished controlled double-blind clinical studies that demonstrate a significant reduction of caries in children who used this dental rinse. A 26-month study by Finn

et al. (Ref. 7) included 593 children; 453 children completed the clinical trial. There was a significant reduction in caries for those children who rinse twice daily with either one of the acidulated phosphate fluoride dental rinses containing 0.01 percent or 0.02 percent fluoride ion at pH 3.5 twice daily when compared with the children who rinsed with the placebo twice daily ($p<0.05$). No statistically significant differences resulted between 0.01 percent and 0.02 percent acidulated phosphate fluoride ion rinses ($p<0.05$).

A 37-month unpublished study (Ref. 1) included 817 children; 523 children completed the clinical trial. There was a significant reduction in caries for those children who had rinsed with 0.02-percent sodium fluoride in an acidulated phosphate fluoride dental rinse at pH 3.5 when compared with the children who rinsed with the placebo ($p<0.05$).

A 24-month unpublished study (Ref. 1) included 1,214 children; 817 children completed the clinical trial. There was a significant reduction in caries for those children who rinsed with either one of the acidulated phosphate fluoride dental rinses containing 0.01 percent or 0.02 percent fluoride ion at pH 3.5 when compared with the children who rinsed with the placebo ($p<0.05$).

The agency's tentative decision to place 0.02 percent sodium fluoride in a neutral dental rinse (pH of approximately 7) in Category I is based on one unpublished in vitro study and two published clinical studies (Refs. 3, 4, and 5). The unpublished study contains in vitro data concerning the effect of a neutral 0.02=percent sodium fluoride dental rinse on sound and presoftened human enamel using the Intraoral Caries Test System (Ref. 3). These data demonsrate an increased fluoride uptake with the neutral sodium fluoride rinse when compared with a placebo.

The study by Englander et al. (Ref. 4) concerns the effectiveness of 1.1 percent sodium fluoride gels. Although the study does not provide specific information about the effectiveness of the 0.01-percent fluoride ion neutral dental rinse, it does compare similar fluoride dental products at pH 4.5 and 7, suggesting that pH is not a significant factor in determining the effectiveness of a fluoride anticaries product.

The study of Forsman (Ref. 5) supports the anticaries effectiveness of the 0.011-percent fluoride ion (0.025 percent sodium fluoride) neutral dental rinse by demonstrating that the twice-daily use of a weaker dental rinse (0.011-percent fluoride ion) is more effective in preventing caries when compared with the weekly use of a more concentrated dental rinse of 0.090 percent fluoride ion (0.2 percent neutral sodium fluoride). In addition, one comment from a dentist also reported that a 0.05-percent sodium fluoride rinse (weaker solution) proved to be more effective than the weekly use of a 0.2-percent rinse (Ref. 6). Forsman's study supports the dentists's finding that increased frequency of rinsing is a significant factor in a rinse's efficacy. Based upon the available data, frequent use of low concentration rinses is safe and as effective as less frequent use of higher concentration rinses.

It is well known that the availability of the fluoride ion is the major determining factor in the effectiveness of all fluoride anticaries dental products. The studies demonstrate that 0.01 percent fluoride ion in an acidulated phosphate rinse is equally available and equally effective in a neutral rinse. In addition, the Panel did not distinguish between the safety and effectiveness of acidulated (0.02 percent fluoride ion) and neutral dental rinses containing 0.022 percent fluoride ion derived from 0.05 percent sodium fluoride. It recommended that both the acidulated and neutral forms of these rinses be Category I. The studies indicate that the amount of available fluoride ion, rather than the difference in the pH of these rinses between pH 3 and pH 7, is the determining factor in the efficacy of these dental rinses.

The Panel recommended that 10 mL of a 0.02-percent acidulated phosphate fluoride ion (2 mg fluoride ion) with a pH of 3.0 to 4.5 or 10 mL of a 0.05-percent sodium fluoride aqueous solution with a pH of approximately 7 be used once daily as a rinse. The comment recommended that 10 mL of a 0.01-percent acidulated phosphate fluoride ion and a 0.01-percent neutral fluoride ion derived from sodium fluoride (1 mg fluoride ion) be used twice daily as a rinse. The total daily dosage recommended by the comment for the 0.01-percent rinse is equivalent to the total daily dosage recommended by the Panel for a 0.02-percent rinse, i.e., 2 mg fluoride ion daily. Therefore, the agency proposes the following directions for the 0.01-percent acidulated phosphate and neutral fluroide ion rinses: "Adults and children 6 years of age and older: use twice a day after brushing your teeth with a toothpaste. Vigorously swish 10 milliliters of rinse between your teeth for 1 minute and then spit out. Do not swallow the rinse. Do not eat or drink for 30 minutes after rinsing. Children under 12 years of age should be supervised in the use of this product. Children under 6 years of age: consult a dentist or doctor."

The agency's detailed comments and evaluation of the data are on file in the Dockets Management Branch (Ref. 8).

References

(1) OTC Volume 080135.

(2) OTC Volume 080136.

(3) Comment No. CP, Docket No. 80N-0042, Dockets Management Branch.

(4) Englander, H.R., et al., "The Clinical Anticaries Effect of Repeated Topical Sodium Fluoride Applications by Mouthpieces," *Journal of the American Dental Association*, 75:638–644, 1967.

(5) Forsman, B., "The Caries Preventing Effect of Mouthrinsing with 0.025% Sodium Fluoride Solution in Swedish Children," *Community Dental Oral Epidemiology*, 2:58–65, 1974.

(6) Comment No. C00005, Docket No. 80N-0042, Dockets Management Branch.

(7) Finn, S.B., et al., "The Clinical Cariostatic Effectiveness of Two Concentrations of Acidulated Phosphate-fluoride Mouthwash," *Journal of the American Dental Association*, 90:292–296, 1975.

(8) Letter from W.E. Gilbertson, FDA, to Joseph Clark, Warner-Lambert Company, coded LET008, Docket No. 80N-0042, Dockets Management Branch.

E. Comments on Labeling of Anticaries Drug Products

22. Two comments objected to the warning for dental rinses and gels recommended by the Panel in § 355.50(c): "Do not swallow. Developing teeth of children under 6 years of age may become permanently discolored if excessive amounts of fluoride are repeatedly swallowed." One comment stated that fluoride dental rinses should not be recommended for use by children under 6 years of age, because children in this age group are most prone to develop tooth discoloration. The comment added that when a dentist or physician recommends a fluoride rinse for a child under 6 years of age, specific use instructions are provided, thus making such a warning unnecessary. The comment stated that the phrase "excessive amounts are swallowed" would raise unnecessary concerns, because infrequent accidental swallowing of the recommended amount of fluoride used in mouthrinsing would not be expected to cause permanent tooth discoloration, and the phrase "permanently discolored" would excessively alarm parents and discourage rather than encourage use of the product. The second comment stated that the warning would give consumers the mistaken impression that fluoride gels and rinses are less safe than dentifrices. The comment recommended, instead, that the following statement appear in the directions for fluoride gels.

rinses, and dentifrices: "Do not swallow. Repeated swallowing of excessive amounts of fluoride by children under 6 may permanently discolor developing teeth."

Because fluoride dental rinses and gels are recommended only for use in adults and children 6 years of age and older, the agency believes that a warning about discoloration of developing teeth in children under 6 years of age is not needed on the OTC market package. However, the agency's proposed directions for dental rinses and gels state that a dentist should be consulted before using these products in children under 6 years of age.

The warning recommended by one comment is not needed for fluoride dental rinses and gels as stated above, nor is it needed for fluoride dentifrices because these products have a long history of safe use. Studies have shown that the amount of toothpaste swallowed by children, even those 3 to 6 years of age, is less than 0.5 gram (g) per brushing, which is well below a toxic range (45 FR 20682). However, the agency believes that it would be helpful to the consumer to include the statement "Do not swallow" in the directions for use of fluoride rinses and gels. Therefore, the agency is proposing that the directions for fluoride rinses and gels include the statement "Do not swallow the" (insert dosage form, "rinse" or "gel," as applicable).

23. Two comments urged that adequate warnings about the harmful effects of fluoride be included in the labeling of all dental drug products containing fluoride. The comments contended that such information is necessary because fluoride from toothpastes, gels, and rinses is absorbed into the body and accumulates in body tissues; that absorbed fluoride rapidly enters into the general circulation, resulting in high blood fluoride levels that pose a particular risk to the child who is allergic and otherwise intolerant to fluoride; and that nausea and vomiting may result in young children who swallow fluoride toothpaste or rinses. The comments submitted a number of references to support their contentions (Refs. 1 and 2).

The agency has reviewed the Panel's evaluation of the safety data on fluoride drug products as well as the Panel's recommended labeling of these products and concludes that the recommended labeling is adequate and that additional warnings are not necessary. The Panel considered both animal and human studies in determining the safety of fluorides used in anticaries drug products (45 FR 20682–20684) and evaluated the possibility that these products might cause adverse effects on teeth or cause irritation of the oral mucosa. Attention was given especially to information related to adverse drug effects in both adults and children (45 FR 20682). The metabolism of fluoride involves rapid absorption of 90 percent or more of soluble fluoride, with perhaps half this fluoride reappearing in the urine, and the rest stored in bone and teeth (Ref. 3). Urinary excretion is prompt and sensitive even to low doses of fluoride. There is no evidence that fluoride is stored in soft tissues.

The Panel reviewed a number of studies that have been conducted to determine the amount of fluoride ingested during toothbrushing with a fluoride-containing dentifrice (45 FR 20682). These studies, which utilized a variety of testing procedures, indicate that the majority of individuals, including children aged 3 to 6 years, swallow less than 0.5 g of toothpaste per brushing (Refs. 4 through 9). The greatest amount swallowed was reported as slightly over 1 g (Refs. 8 and 9). Studies by several investigators, however, showed the amount swallowed to be substantially less (Refs. 4 through 7). These amounts can be considered well below a toxic range. A study of recorded cases of acute fluoride poisoning indicate that a range of 5 to 10 g of sodium fluoride can be considered a lethal dose for a 70-kilogram (kg) man (45 FR 20682).

Dental fluorosis occurs only when excessive fluorides are ingested regularly during the period of tooth development (45 FR 20682). Although developing teeth of children under 6 years of age may show objectionable dental fluorosis from repeated ingestion of excessive amounts of fluoride, epidemiological and clinical findings indicate that the formative state of the teeth of children 6 years of age and older (excepting third molars) is too advanced to be affected by excessive daily fluoride ingestion (45 FR 20685). Although it is conceivable that a child under 6 years of age could, by swallowing excessive amounts of fluoride-containing toothpaste and consuming fluoridated water, have a total daily fluoride intake in the range that produces dental fluorosis, there is a lack of any documentation that dental fluorosis has increased significantly following the extremely widespread use of fluoride-containing dentifrices for over 20 years.

Concerning allergy or intolerance to fluorides, CPSC stated in the Federal Register of November 26, 1980 (45 FR 78632) that there is a relatively low incidence of adverse reactions (about 1 percent) associated with normal dosages of sodium fluoride. These reactions, which include gastrointestinal hemorrhages, eczema, dermatitis, and urticaria type reactions, cease upon termination of sodium fluoride therapy. CPSC also noted that there is "no scientific rationale for predicting a greater incidence of adverse reactions in children, whether due to intolerance or other factors. In fact, human experience data and the medical literature indicate very few adverse reactions, particularly in children."

The agency concludes that the adverse reactions reported from studies in children, toxicity studies in animals, and other available data are not of a sufficiently serious nature or sufficient number to warrant additional warnings on harmful effects in the labeling of dental drug products containing fluoride. This conclusion is supported by the long history of safe use of fluoride dentifrices which the Panel believed precluded the need for warnings against unsafe use, side effects, and adverse reactions. The Panel recommended, and the agency is proposing in this tentative final monograph, that children under 6 years of age should be supervised in the use of anticaries dentifrice products. The agency is proposing labeling for fluoride dental rinses and gels for use only in adults and children 6 years of age and older. The labeling directions state that a dentist or doctor should be consulted before using these products in children under 6 years of age. The agency's proposed directions for fluoride dental rinses and gels also include the statement "Do not swallow the" (insert dosage form, "rinse" or "gel," as applicable). (See comment 22 above.) The agency believes that these specific directions for use of dentifrices, gels, and rinses are adequate and will result in the safe use of these OTC anticaries drug products.

References

(1) Comment No. C00022, Docket No. 80N–0042, Dockets Management Branch.

(2) Comment No. C00027, Docket No. 80N–0042, Dockets Management Branch.

(3) Dunning, J. M., "Principles of Dental Public Health," 2d Ed., Harvard University Press, Cambridge, MA, pp. 367–403, 1970.

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(5) Duckworth, R., and S. Joyston-Bechel, "The Distribution of Dentifrice Fluoride During and After Toothbrushing," *Advances of Fluorine Research*, 4:113–119, 1966.

(6) Barnhart, W. E., et al., "Dentifrice Usage and Ingestion Among Four Age Groups," *Journal of Dental Research*, 53:1317–1322, 1974.

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(8) Hargreaves, J. A., G. S. Ingram, and B. J. Wagg, "A Gravimetric Study of the Ingestion of Toothpaste by Children," *Caries Research*, 6:237–243, 1972.

(9) Hargreaves, J. A., G. S. Ingram, and B. J. Wagg, "Excretion Studies on the Ingestion of a Monofluorophosphate Toothpaste by Children," *Caries Research*, 4:258–268, 1970.

24. One comment objected to the labeling statement for stannous fluoride rinses and gels recommended by the Panel in § 355.50(e)(2): "This product may produce surface staining of the teeth. Adequate toothbrushing may prevent these stains which are not harmful or permanent and may be removed by your dentist." The commenter stated that no warning on staining is necessary for stannous fluoride gels because there have been no reports of discoloration in the more than 5 years that the commenter has marketed a 0.4-percent stannous fluoride gel, and because no warning on staining is required for a stannous fluoride dentifrice. No supporting data were submitted by the commenter. The commenter mentioned the Panel's discussion on stannous fluoride dentifrices, in which the Panel stated that the frequency and intensity of staining with the level of tin present in these formulations does not appear to present any significant problem; therefore, no warning on staining is required for stannous fluoride dentifrice formulations (45 FR 20685). The commenter contended that, because the amount of stannous ion in a gel and a dentifrice are the same and the mode of application (with a toothbrush) of both formulations is identical, there should be no warning on staining for stannous fluoride gels.

The majority of the studies that the Panel reviewed concerning the incidence and degree of staining of tooth surfaces from the use of stannous fluoride dealt with stannous fluoride dentifrices. The Panel found that the presence of the stannous ion in stannous fluoride dentifrices may cause some staining of plaque and debris accumulation on the teeth (45 FR 20685). After considering all the available data on staining caused by stannous fluoride, the Panel concluded that because stannous fluoride dentifrices had been marketed for a long time with little consumer complaint, the staining apparently was not a significant problem. The Panel, therefore, decided that a labeling statement regarding staining need not be included in the labeling of stannous fluoride dentifrices. However, the Panel recommended that stannous fluoride gels and rinses should bear a labeling statement regarding staining because they had been available only by prescription, and had no prior marketing history of consumer use and acceptance.

In the interest of consumer awareness, the agency believes that all stannous fluoride dental products (i.e., dentifrices, rinses, and gels) should bear the labeling statement regarding staining. Studies have shown that stannous fluoride, whether formulated as a dentifrice or rinse, causes staining of tooth surfaces. Comparisons between subjects who used a control dentifrice and a stannous fluoride dentifrice in a 3-year study showed that after 6 months, a higher incidence and more pronounced staining occurred in the stannous fluoride group (Ref. 1). Two different studies were conducted in subjects who used a control dentifrice, a stannous fluoride dentifrice, or a sodium monofluorophosphate dentifrice. The results of one study showed that, initially, the amount of brown stain on teeth was similar in all subjects, but the group using the stannous fluoride dentifrice had a significantly larger increase in staining during the 2-year study period ($p < 0.001$) than the groups using sodium monofluorophosphate or control dentifrices (Ref. 2). The second study was conducted over a 3-year period and showed that the sodium monofluorophosphate and control groups had a higher percentage of subjects completely free of staining than did the stannous fluoride group. The degree of staining was also greater in the stannous fluoride group. The results indicated that the high degree of brown-black staining was specifically due to the stannous flouride dentifrice (Ref. 3).

The agency is not aware of any controlled studies that evaluated staining caused by dental gels; however, it is very likely that staining would occur from the use of gels similar to that which occurs from the use of dentifrices. A 2-year study that was conducted using a stannous fluoride mouthrinse and a control mouthrinse showed that after 8 months, some yellow pigmentation was present on the teeth of children who exhibited poor oral hygiene. This stain occurred in both the control and stannous fluoride groups, but was somewhat more noticeable in the stannous fluoride group. The results of the 2-year examination were similar to the 8-month examination (Ref. 4). Although there are few studies on the incidence of staining with stannous fluoride rinses and gels, the agency believes that because stannous fluoride, the active ingredient, causes staining of teeth, the staining would occur whether the stannous fluoride product is formulated as a rinse, gel, or dentifrice. Additionally, because of the difference in the composition and use of dentifrices from that of rinses and gels, the agency believes that the incidence and degree of staining may be greater with stannous fluoride gels and rinses than with stannous fluoride dentifrices. A dentifrice contains an abrasive to help clean the teeth (and thus helps to remove plaque and stain); rinses and gels do not contain an abrasive. Dentifrices are brushed on the teeth and the mouth is usually rinsed with water after use. However, stannous fluoride gels and rinses are brushed on the teeth, or swished around in the mouth, and then remain on the teeth for one minute before being spit out. The mouth is not rinsed with water. The residue is left in the mouth and no food or drink is supposed to be taken for 30 minutes. Stannous fluoride gels and rinses would remain on the teeth for a longer time than stannous fluoride dentifrices.

It is believed that staining occurs when the stannous (tin) component of the compound reacts with oxygen and/or sulfur in dental plaque (Ref. 5). The amount of staining has been associated with the degree of oral hygiene of the individual, i.e., individuals with poor oral hygiene have a higher incidence of staining than those whose oral hygiene is good (Refs. 3, 6, and 7). Subjects with less than adequate toothbrushing skills had more tooth staining than those who were conscientious in their toothbrushing habits (Ref. 3). Thus, the importance of good toothbrushing techniques should be encouraged not only to promote good oral health, but also to prevent or lessen the occurrence of any tooth staining. The agency believes that consumers should be aware that staining of the teeth can be caused by stannous fluoride dentifrices, rinses, and gels, and that proper brushing or a dental prophylaxis should remove the stains. Therefore, the agency is proposing that the labeling statement "This product may produce surface staining of the teeth. Adequate toothbrushing may prevent these stains which are not harmful or permanent and may be removed by your dentist," be included under "additional labeling statements" in this tentative final monograph and be applicable to all stannous fluoride dental products.

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Children," *British Dental Journal*, 123:40–48, 1967.

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(6) Horowitz, H. S., and S. R. Chamberlin, "Pigmentation of Teeth Following Topical Applications of Stannous Fluoride in a Nonfluoridated Area," *Journal of Public Health Dentistry*, 31:32–37, 1971.

(7) Hyde, E. J., and J. C. Muhler, "Pigmentation of Teeth Treated with Stannous Fluoride and its Association with Caries Incidence and Oral Hygiene," *Journal of the Canadian Dental Association*, 29:514–520, 1963.

25. One comment pointed out that some current dentifrice products containing abrasives are formulated so that they appear transparent or translucent and are called gels by the manufacturers. The comment contended that, because consumers are accustomed to calling these products "gels," this term should continue to be used for such products. Two comments suggested using the term "nonabrasive dental gel" in §§ 355.3(d), 355.10(c), 355.20(b), and 355.50(a), (d)(4), and (e)(1) and (2) in place of the term "dental gel" to reflect the intended use of the product more accurately and to eliminate the possibility of consumers confusing the product with an abrasive-containing gel dentifrice.

The agency agrees that currently marketed transparent or translucent dentifrice products that contain abrasives should be permitted to continue to identify themselves as a "gel" because this term is widely used and understood by consumers. However, the agency does not believe that the term "gel" needs to be included in the monograph to describe these dentifrice products. The agency is proposing the terms "toothpaste" or "dentifrice" as optional alternatives in the applicable statement of identity and believes these terms accurately reflect product identity and are recognized by consumers as referring to products used to clean the teeth. (See comment 26 below.)

Although the agency is concerned that consumers may not be able to distinguish between abrasive-containing "gel" dentifrices and nonabrasive dental gels based on the similar physical appearance of these products, it disagrees with the coment's recommendation to use the term "nonabrasive dental gel" in the statement of identiy, § 355.50(a), to differentiate between gel dentifrices, which contain abrasives, and dental gels, which do not contain abrasives. The meaning of "nonabrasive" and "abrasive" may not be clear to many consumers, and the term "abrasive" might even discourage some consumers from using dentifrices. The agency agrees that the Panel's recommended statement of identity for nonabrasive dental gels may be confusing to consumers, particularly in the context of the extensive use of the term "gel" to describe abrasive-containing toothpastes. The agency also recognizes that nonabrasive dental gels have not been widely marketed and that consumers are not familiar with the use of the term "dental gel" to identify such products. The agency is therefore proposing to revise the statement of identity for nonabrasive dental gels to read: (select one or both of the following: "anticavity" or "fluoride") "treatment gel," in this tentative final monograph. In addition, the agency believes that the labeling statement proposed for nonabrasive dental gels in § 355.50(e)(1) of this tentative final monograph, "This is a(n) (select one or both of the following: "anticavity" or "flouride") "treatment gel, not a toothpaste. Read directions carefully before using," will also help consumers to clearly distinguish between a gel dentifrice and a nonabrasive dental gel. (See comment 36 below).

As for the comments' suggestion to use the term "nonabrasive dental gel" in the definition in § 355.3(g) and in the headings in §§ 355.10(c), 355.20(b), and 355.50(d) and (e), the agency has replaced the term "dental gel" with the term "treatment gel" throughout the monograph in the headings to be consistent with the statement of identity for these drug products.

26. One comment requested use of the term "fluoride" as an optional alternative to "anticavity," and the term "toothpaste" as an optional alternative to "dentifrice" in the labeling of anticaries drug products, because these terms most clearly reflect product identity and are well recognized by consumers.

The agency agrees with the comment that the terms "fluoride" and "toothpaste" accurately reflect product identity and are terms that are recognized by consumers. Accordingly, these terms are included as optional alternatives in the statement of identity proposed in § 355.50(a) of the tentative final monograph as follows: (select one or both of the following: "anticavity" or "fluoride") (select one of the following as appropriate: "dentifrice," "toothpaste," "treatment rinse," "treatment gel," "treatment rinse concentrated solution," "treatment rinse powder," or "treatment rinse effervescent tablets").

27. Several comments pointed out that the Panel's recommended indication for anticaries drug products in § 355.50(b), "Aids in the prevention of dental caries (decay or cavities)," is confusing and unduly restrictive with its parenthetical qualifier. The comments recommended three separate, allowable statements of indications to recognize the three ways of referring to dental caries, i.e., "Aids in the prevention of dental caries," "Aids in the prevention of dental decay," and "Aids in the prevention of dental cavities."

The agency agrees with the comments' recommendation to provide alternative terminology to recognize the different ways of referring to dental caries. The agency believes that "cavities" and "decay" are the terms that are better understood by consumers, whereas "caries" is a scientific term requiring further explanation and should be followed by the word "cavities" or "decay" in parentheses. Therefore, the agency is proposing in this tentative final monograph that the required indication read as follows: "Aids in the prevention of dental" (select one of the following: "cavities," "decay," "caries (decay)," or "caries (cavities)").

28. One comment stated that fluoride dental gels closely resemble fluoride dentifrices in terms of consistency of the products, method of application, and type of containers used. Because of these similarities, the comment suggested that dental gels should carry the same directions as dentifrices with regard to use by children 2 years of age and older. The comment recommended the following directions for dental gels: "Adults and children 2 years of age and older, children under 6 years of age should be supervised in the use of this product. Place (product name) on a clean toothbrush; brush gel over teeth surfaces. Push the slurry around the mouth and spit out excess. Do not swallow. Do not eat or drink for 30 minutes."

The Panel recommended that dental gels, i.e., fluoride gels that do not contain abrasives, not be used in children under 6 years of age because of

safety considerations. Children under 6 years of age are at a greater risk of developing adverse effects such as fluorosis (a permanent, mottled discoloration of the teeth) if excessive amounts of fluoride are repeatedly swallowed. Children under 6 years of age also have not developed control of their swallowing reflex and are not able to hold the fluoride preparation in their mouth and then expectorate properly. The Panel concluded that although children in this age group may inadvertently swallow dentifrice while brushing, the amount swallowed per average brushing is well below a toxic range. In addition, there is a lack of documentation that dental fluorosis has increased significantly following widespread use of fluoride dentifrices for approximately 20 years (45 FR 20673). (See comment 23 above.)

Dental gels are intended to be used in addition to, rather than as a substitute for, dentifrices. An excessive amount of fluoride may be ingested by a child under 6 years of age who may not have the ability to expectorate properly and who uses two fluoride products (i.e., dentifrice and gel) in addition to consuming fluoride from other sources such as fluoridated water, food, or fluoride supplements. The Panel was concerned that children under 6 years of age not be exposed to excessive fluoride; therefore, it recommended that gels and rinses be used only in children 6 years of age and older. The agency agrees with the Panel's reasoning; therefore, the Panel's recommended directions for fluoride gels are being proposed in this tentative final monograph as requested by the comment.

29. One comment requested deletion of the Panel's recommended age-restriction statements in the directions for dentifrices in § 355.50(d)(1) as follows: "adults and children 2 years of age and older" and "children under 6 years of age should be supervised in the use of this product." The comment stated that restriction of dentifrices to adults and children 2 years of age and older is unnecessary from a safety consideration and is inconsistent with the recommendation of the ADA that children be instructed in toothbrushing as early as possible and be allowed to use any approved dentifrices as soon as they are competent to do so. The comment added that references cited by the Panel at 45 FR 20673 establish that the ingestion of dentifrices by children is slight enough to justify the unsupervised use of fluoride dentifrices by all children who have been properly instructed in the use of a dentifrice.

The agency concurs that children should be instructed in brushing their teeth at an early age. However, many children 2 years of age and certainly children under 2 years of age cannot reasonably be expected to have the manual dexterity to brush properly, nor the mouthrinsing skills to expectorate properly. In a study by Ericsson and Forsman (Ref. 1) reviewed by the Panel, it was found that most 2-year-old children and some 3-year-old children could not perform mouthrinsing with water, but instead quickly swallowed the fluid. Children under 2 years of age would be more likely to swallow the dentifrice and thus increase their chance of developing dental fluorosis, a condition that can develop in children under 6 years of age who repeatedly swallow excessive amounts of fluoride.

The agency does not agree with the comment that children under 6 years of age need not be supervised in the use of a dentifrice once properly instructed in its use. The agency interprets the Panel's statement to mean that all children under 6 years of age should be properly instructed and supervised in the use of a dentifrice, but the amount of supervision may vary, depending on a child's skills. If a child has fairly good toothbrushing skills, parents may allow unsupervised brushing, but may wish to check the child's toothbrushing techniques periodically.

The age-restriction statements recommended by the Panel in § 355.50(d)(1) are not intended to discourage the use of dentifrices by children, but are intended to help parents and children use these products safely and effectively. Therefore, the Panel's age restriction recommendations are being proposed in this tentative final monograph.

Reference

(1) Ericsson, Y., and B. Forsman, "Fluoride Retained from Mouthrinses and Dentifrices in Preschool Children," *Caries Research*, 6:237–243, 1972.

30. One comment stated that it would be logical to classify fluoride dentifrices and fluoride brush-on gels in the same category with regard to label copy, warnings, restrictions, and total fluoride content per container based on a comparison of the similarities and differences between these products as shown in the following chart:

	Fluoride dentifrices	Fluoride gels
Consistency	Paste or gel	Gel.
Application	Brush on	Brush on.
Control of amount used.	Amount on brush	Amount on brush.
Container	Squeeze tube with small orifice	Squeeze bottle with small orifice
Container closure	Screw cap	Child proof
Abrasives	Yes	No

The agency acknowledges the similarities described by the comment, but concludes that fluoride dentifrices and fluoride dental gels differ in too many important respects, notably their formulations, intended uses, and methods of use, to permit the same labeling and fluoride content per container. An abrasive-containing fluoride dentifrice is intended for use in cleaning the teeth as well as aiding in the prevention of dental cavities; a nonabrasive fluoride dental gel is intended only to aid in the prevention of dental cavities and is applied after the teeth have been cleaned with an abrasive-containing dentifrice. A fluoride dental gel, to be effective, must remain on the teeth for 1 minute and then be expectorated, and the user should not eat or drink for 30 minutes after using. These time requirements do not apply to the effective use of a fluoride dentifrice. Children under 6 years of age should not use a fluoride dental gel; however, children from 2 to under 6 years of age may use a fluoride dentifrice with supervision. A fluoride dentifrice may be used more than once a day, whereas a fluoride dental gel is used only once a day. With regard to total fluorine content per container, dentifrices may contain no more than 260 mg of fluorine; dental gels are restricted to no more than 120 mg of fluorine. (See comment 4 above.)

31. Several comments recommended that § 355.50(f), which contains the ADA's product approval statement for anticaries dentifrice products, "(Product name) has been shown to be an effective decay-preventive dentifrice that can be of significant value when used in a conscientiously applied program of oral hygiene and regular professional care," be expanded to allow the use of this labeling for dosage forms other than dentifrices (e.g., dental rinses and gels) that may be approved by ADA in the future as decay-preventive products. One comment requested that the ADA Council's Seal of Acceptance also be permitted on the label because the public recognizes the significance of the Seal used in conjunction with the statement.

The agency agrees that the labeling of dentifrices and anticaries product dosage forms other than dentifrices may include, where the product has been approved by the ADA, the ADA's

product approval statement and seal. However, under the proposed policy regarding the exclusivity of labeling terms (see comment 2 above), the agency will not include a section entitled "other allowable statements" (under which the ADA's statement was included in the Panel's recommended monograph) in final monographs for OTC drug products. As with other statements differing from the wording in the monograph, the ADA's approval statement and seal may appear on product labeling subject to the prohibitions in 21 U.S.C. 352(a) against false or misleading labeling. Therefore, § 355.50(f) is not being proposed in this tentative final monograph.

32. One comment contended that the Panel's recommendation that labeling should state the principal intended action of the active ingredient as well as the indication for use of the product (45 FR 20674) is redundant for anticaries drugs because the indication statement serves the same purpose.

The Panel's use of the term "principal intended action" is consistent with the labeling requirements for OTC drugs in 21 CFR 201.61(b), which provides that the statement of identity shall employ terms descriptive of general pharmacological categories or principal intended actions; for example, "antacid," "analgesic," "decongestant," "antihistamine", etc. The agency does not believe that the proposed statement of identity in § 355.50(a) (select one or both of the following: "anticavity" or "fluoride") (select one of the following as appropriate: "dentifrice," "toothpaste," "treatment rinse," "treatment gel," "treatment rinse concentrated solution," "treatment rinse powder," or "treatment rinse effervescent tablets,") is redundant of the agency's proposed indication statement in § 355.50(b)(1) "Aids in the prevention of dental" (select one of the following: "cavities," "decay," "caries (decay)," or "caries (cavities)")." Thus, the agency is proposing that both the statement of identity and the indication statement be included in the labeling of anticaries drug products.

33. One comment disagreed with the Panel's recommendation that the labels of OTC anticaries drug products should state the quantity of each active ingredient (45 FR 20674) because this is not required by law. The comment added that stating the quantity of each active ingredient in fluoride dentifrices may be misleading to consumers because the three principal active ingredients (sodium fluoride, stannous fluoride, and sodium monofluorophosphate) must be included in different quantities (because of their differing molecular weights) to achieve the same level of fluoride. The comment stated that a consumer who is unfamiliar with the chemical background would assume that 0.76 percent sodium monofluorophosphate, for example, provides several times the quantity of the active moiety (fluoride) provided by 0.22 percent sodium fluoride, whereas both sources provide the same quantity of fluoride.

The agency recognizes that the three active ingredients, sodium fluoride 0.22 percent, sodium monofluorophosphate 0.76 percent, and stannous fluoride 0.4 percent, are needed in different quantities to achieve the same level of fluoride in a fluoride dentifrice and that most consumers would not be familiar with these differences. The agency also recognizes that although section 502(e) of the act (21 U.S.C. 352(e)) requires disclosure of all active ingredients, there is no requirement that quantities of active ingredients in OTC drug products be listed except for specific drugs designated in the act. The three OTC anticaries active ingredients are not designated in the act. Therefore, the agency agrees with the comment that the quantities of the ingredients in fluoride toothpastes are not required in the labeling of these products.

34. One comment strongly disagreed with the Panel's conclusion that certain labeling claims are misleading and unsupported by scientific data (45 FR 20690) and contended that the labeling claim "for a healthier mouth with less decay" is clearly supported by a wealth of clinical effectiveness data. The comment also stated that the labeling claim "raising your natural resistance to tooth decay" refers to the incorporation of fluoride into dental enamel and the resulting increased resistance to acidic dissolution. The comment urged that these claims and other equivalent statements be allowed in the labeling of OTC anticaries drug products.

The agency has determined that anticaries drug products are effective in helping to prevent dental caries, thus contributing significantly to healthy teeth. Use of the term "mouth" in the comment's suggested statement "for a healthier mouth with less decay" is ambiguous. However, a statement such as "for healthier teeth with less decay" may be appropriate for anticaries drug products.

The agency has also determined that the regular use of anticaries drug products increases a person's resistance to tooth decay and believes that a statement such as "raises your resistance to tooth decay" may also be appropriate for anticaries drug products. However, the comment's suggested term "natural" would not be appropriate in this statement. The inclusion of the word "natural" may confuse consumers because the precise mechanism by which fluoride acts to reduce tooth decay remains unknown (Ref. 1). The agency believes that the statement adequately conveys the intended message to the consumer without using the term "natural."

Although the above statements may be truthful and helpful to a consumer, they do not convey a complete indication for the use of an anticaries drug product because they do not provide adequate information comparable to the required indication in § 355.50(b). Therefore, the above statements will not be included in the monograph.

However, the agency believes that the statements "for healthier teeth with less decay" and "raises your resistance to tooth decay" may be appropriate additional statements for anticaries drug products covered by this monograph and could appear in the labeling in addition to the required indication statement. As discussed in comment 2 above, the agency is proposing to amend its exclusivity rule by establishing new labeling requirements for OTC drug products. As proposed, the label and labeling of OTC drug products would be required to contain in a prominent and conspicuous location either (1) within a boxed area designated "APPROVED USES" specific wording on indications for use established under an OTC drug monograph or (2) within a nonboxed area other wording relating to such indications for use that meets the statutory prohibitions against false or misleading labeling. Thus, in either case, other wording relating to such indications for use, such as the above revised statements, would be permitted elsewhere in the labeling subject to the statutory prohibitions in 21 U.S.C. 352(a) against false or misleading labeling.

Reference

(1) Council on Dental Therapeutics, "Accepted Dental Therapeutics," 39th Ed., American Dental Association, Chicago, pp. 344–345, 1982.

35. One comment stated that the phrase "other allowable statements" that appears in § 355.50(f) of the Panel's advance notice of proposed rulemaking implies that only certain prescribed statements may be made on labels rather than a range of truthful statements and suggested that the word "allowable" be deleted from this phrase.

Under the current policy regarding the exclusivity of labeling terms (see comments 2 and 31 above), the agency will no longer include a section entitled "other allowable statements" in final monographs for OTC drug products. The agency is not proposing that such a section be included in this tentative final monograph. Therefore, it is unnecessary to further discuss the comment's request to delete the word "allowable" from the heading of this section.

36. Four comments requested deletion of the Panel's recommended labeling statement for dental rinses in § 355.50(e)(1), "This product is not a dentifrice." The comments maintained that this statement is unnecessary on dental rinses because consumers would not confuse a liquid in a bottle with a conventional dentifrice packaged in a conventional tube. One of the comments also objected to the use of the labeling statement on dental gels (see comment 25 above), but the other comments agreed with the Panel that the labeling statement is appropriate for a fluoride gel because a gel might be packaged in a conventional dentifrice tube and could conceivably be confused with a conventional dentifrice.

The agency agrees with the comments that consumers would not be apt to confuse a dental rinse with a dentifrice, but believes that a nonabrasive dental gel packaged in a conventional tube can be confused with a conventional abrasive-containing dentifrice. In addition, because fluoride dental rinses and mouthwash products (e.g., breath sweeteners) are similar in appearance, the agency is concerned that consumers may confuse these two groups of products. Proper labeling of abrasive-containing dentifrices, dental gels, and dental rinses is an important aid to preventing consumer confusion as to the use of these products. The agency is proposing to revise the statement of identity for dental gels (see comment 25 above) and is proposing to revise the statement of identity to require that dental rinses be identified as anticavity or fluoride treatment rinses to be consistent with the statement of identity for dental gels. The statements of identity for these products with the proposed revisions clearly distinguish one product from another; § 355.50(a) requires an anticaries drug product to be identified as an anticavity or fluoride dentifrice, toothpaste, anticavity or fluoride treatment rinse, anticavity or fluoride treatment gel, anticavity or fluoride treatment rinse concentrated solution, anticavity or fluoride treatment rinse powder, and anticavity or fluoride treatment rinse effervescent tablets as applicable (see comments 19 and 26 above). In order to help consumers further in distinguishing between dental gels and rinses, dentifrices, and mouthwashes, the agency proposes to revise the Panel's recommended labeling statements for dental gels and rinses in § 355.50(e) to read:

(1) *For all treatment gels.* "This is a(n)" (select one or both of the following: "anticavity" or "fluoride") "treatment gel, not a toothpaste. Read directions carefully before using."

(2) *For all treatment rinses.* "This is a(n)" (select one or both of the following: "anticavity" or "fluoride") "treatment rinse, not a mouthwash. Read directions carefully before using."

To clarify the proper use of dental rinses, the agency is proposing to revise the Panel's recommended directions in § 355.50(d)(2) to read: Adults and children 6 years of age and older: use (once or twice as appropriate) a day after brushing your teeth with a toothpaste. Vigorously swish 10 milliliters of rinse between your teeth for 1 minute and then spit out. Do not swallow the rinse. Do not eat or drink for 30 minutes after rinsing. Children under 12 years of age should be supervised in the use of this product. Children under 6 years of age: consult a dentist or doctor. The agency also proposes to revise the directions for gels under § 355.50(d)(4) to read: Adults and children 6 years of age and older: use once a day after brushing your teeth with a toothpaste. Apply the gel to your teeth and brush thoroughly. Allow the gel to remain on your teeth for 1 minute and then spit out. Do not swallow the gel. Do not eat or drink for 30 minutes after brushing. Children under 12 years of age should be supervised in the use of this product. Children under 6 years of age: consult a dentist or doctor.

II. The Agency's Tentative Adoption of the Panel's Report

A. Summary of Ingredient Categories

The agency has reviewed all claimed active ingredients submitted to the Panel, as well as other data and information available at this time, and has made the following changes in the categorization of anticaries active ingredients proposed by the Panel. For the convenience of the reader, the following table is included as a summary of the categorization of anticaries active ingredients recommended by the Panel and proposed by the agency.

Anticaries active ingredients	Panel	FDA
Hydrogen fluoride		
Rinse—In an appropriate formulation with 0.02 percent fluoride ion	NC [1]	NC [1]
Phosphate preparations		
Calcium sucrose phosphate	II	NC [1]
Dicalcium phosphate dihydrate	II	NC [1]
Disodium hydrogen phosphate	II	NC [1]
Phosphoric acid	II	NC [1]
Sodium dihydrogen phosphate	II	NC [1]
Sodium dihydrogen phosphate monohydrate	II	NC [1]
Sodium phosphate		
Sodium phosphate, dibasic anhydrous reagent	II	NC
Sodium bicarbonate	II	II
Sodium fluoride		
Dentifrice—0.22 percent	I	I
Rinse—0.05 percent	I	II
Rinse—0.02 percent	NC [1]	II
Rinse—Acidulated phosphate fluoride with 0.02 percent fluoride ion	I	II
Rinse—Acidulated phosphate fluoride with 0.01 percent fluoride ion	NC [1]	II
Sodium fluoride and hydrogen fluoride		
Rinse—Acidulated phosphate fluoride with 1.23 percent fluoride ion	NC [1]	I
Sodium monofluorophosphate		
Dentifrice—0.76 percent	I	II
Rinse—0.0 percent	II	III
Stannous fluoride		
Dentifrice—0.4 percent	I	I
Rinse—0.1 percent	I	I
Gel—0.4 percent in an anhydrous glycerin gel		

[1] Not classified

B. Summary of the Agency's Changes

FDA has considered the comments and other relevant information and concludes that it will tentatively adopt the Panel's report and recommended monograph with the changes described in FDA's responses to the comments above and with other changes described in the summary below. A summary of the changes made by the agency follows:

1. The agency is proposing to change the term "anticaries agent" in § 355.3(b) to "anticaries drug" and to modify the definition to read as follows: "A drug that aids in the prevention of dental cavities (decay, caries)," to be consistent with the indication for anticaries drug products and the statement of identity in § 355.50(a) and to be consistent with the format of other tentative final monographs. (See comments 26 and 27 above.) In addition, the agency is proposing to change the terms "dental gel" and "dental rinse" to read either "treatment gel" and "treatment rinse" respectively in order to be consistent with the statement of identity regarding all the pertinent headings for these drug products in this tentative final monograph. (See comments 25 and 26.) The definitions regarding "dental gel" and "dental rinse" are changed accordingly. As a result of the change in these two terms, the agency is proposing to add definitions for treatment rinse concentrated solution, treatment rinse effervescent tablets, and treatment rinse

powder to the monograph as §§ 353.3(i), 353.3(j), and 353.3(k) respectively.

2. The agency is revising the introductory sentence of § 355.10 that lists anticaries active ingredients to correct a typographical error in the advance notice of proposed rulemaking and to conform to the format of other tentative final monographs. (See comment 6 above.)

3. Based on the comment stating that the Panel's classification of hydrogen fluoride as an inactive ingredient is misleading, the agency is proposing to include hydrogen fluoride in Category III as an anticaries agent. (See comment 17 above.)

4. The agency is proposing to include 0.01 percent acidulated phosphate and neutral fluoride ion treatment rinses as Category I anticaries drug products and to revise the wording in § 355.10(b)(1) by adding "the aqueous solution of" at the beginning of the statement regarding acidulated phosphate fluoride. The agency is also proposing to include directions for use of the 0.01-percent acidulated phosphate fluoride ion and a neutral fluoride ion in § 355.50(d)(2)(ii). (See comment 21 above.)

5. The agency proposes to clarify § 355.10(b) (3) and (4) by adding the phrase "with a pH of approximately 7." A freshly prepared saturated aqueous solution of sodium fluoride is described in "Merck Index" (Ref. 1) as having a pH of 7.4 and in "United States Pharmacopia XXI—National Formulary XVI," (Ref. 2) as having a pH below 7.5. "Accepted Dental Therapeutics" (Ref. 3) contains a list of acceptable 0.05 percent sodium fluoride dental rinses, two of which have a pH of approximately 7.0 with preservatives and flavoring agents. The Panel's discussion of an aqueous solution of 0.05 percent sodium gives a description of the solution as "approximately pH 7" (45 FR 20686). The agency believes that the phrase "with a pH of approximately 7" more accurately describes these dental rinses.

References

(1) Windholz, M., editor, "The Merck Index," 10th Ed., Merck and Co., Rahway, NJ. p. 1235, 1983.

(2) United States Pharmacopeia XXI—"National Formulary XVI," United States Pharmacopeial Convention, Inc., Rockville, MD. pp. 969–970, 1985.

(3) Council on Dental Therapeutics, "Accepted Dental Therapeutics," 39th Ed., American Dental Association, Chicago, p. 353 1982.

6. The agency is proposing to include concentrated treatment rinses in the monograph. The agency is also proposing to include a warning for concentrated treatment rinses stating that these rinses should not be used before mixing with water. (See comment 19 above.)

7. The agency is proposing to revise the wording in § 355.20 concerning the package size limitations to indicate clearly that the limitations of total fluorine are per package for dentifrice, treatment rinse, and treatment gel drug products.

8. The agency is redesignating Subpart D as Subpart C and placing the labeling sections of the monograph in Subpart C.

9. The Panel's recommended statement of identity in § 355.50(a) has been expanded to include the terms "fluoride" and "toothpaste" in the labeling of anticaries drug products. (See comment 26 above.) The agency is also proposing to change the statement of identity for "dental rinse" and "dental gel" to "treatment rinse" and "treatment gel" respectively. (See comments 25 and 26).

10. The agency is proposing to change the term "caries" in § 355.50(b) in the advance notice of proposed rulemaking to allow alternative terminology for the statement of indications. The terms "cavities" and "decay" are better understood by consumers, whereas "caries" is the scientific term requiring further explanation. Therefore, the agency is proposing that the required indication for anticaries drug products read as follows: "Aids in the prevention of dental" (select one of the following: "cavities," "decay," "caries (decay)," or "caries (cavities)"). (See comment 27 above.)

11. The agency is not proposing to include the warning recommended by the Panel for treatment rinses and treatment gels in § 355.50(c): "Do not swallow. Developing teeth of children under 6 years of age may become permanently discolored if excessive amounts of flourine are repeatedly swallowed." The Panel's warning is not needed because fluoride treatment rinses and gels are not recommended for use in children under 6 years of age. However, the statement "Do not swallow the" ("rinse" or "gel" as applicable) is being included in the directions for use of these products. (See comments 22, 23, and 36 above.)

12. The agency is proposing to revise the Panel's recommended directions in § 355.50(d) (2) and (4) to include instructions to use treatment rinse or gel after cleaning the teeth with a toothpaste but not to swallow the rinse or gel, to supervise the use of rinses and gels by children under 12, and not to use rinses and gels in children under 6 years of age unless such use is approved by a dentist or doctor. (See comment 36 above.) The agency is also proposing to include directions for use in 0.01 percent fluoride ion in an acidulated phosphate and 0.01 percent fluoride ion in a neutral solution (pH of approximately 7) derived from sodium fluoride in § 355.50(d)(2)(ii). (See comment No. 21.)

13. The Panel recommended additional labeling statements for treatment gels and rinses in § 355.50(e). The agency is proposing to revise and expand the labeling in this section to aid the consumer in clearly distinguishing between abrasive containing dentifrices and nonabrasive fluoride dental gels, and between fluoride dental rinses and mouthwash products. (See comment 36 above.) The agency is redesignating the existing § 355.50(e)(2) in the Panel's recommended monograph as § 355.50(e)(3).

14. The Panel recommended additional labeling statements concerning nonpermanent staining of the teeth for stannous fluoride treatment rinses and gels. The agency is proposing to include these statements for stannous fluoride dentifrices also. (See comment 24 above.)

15. The agency is proposing to delete the section "Other allowable statements," previously designated as § 355.50(f), from the monograph. (See comments 2, 31, and 35 above.)

16. The agency is proposing to add a section, "Optional additional labeling statement," to the monograph as § 355.50(f) to allow a statement concerning the additive effect of using fluoride treatment rinses and gels to daily brushing with a fluoride dentifrice. (See comment 13 above.)

17. The agency is proposing to add a professional labeling section in the monograph to include directions for using Category I fluoride treatment rinses as fluoride supplements for ingestion. (See comment 14 above.)

18. In an effort to simplify OTC drug labeling, the agency proposed in a number of tentative final monographs to substitute the word "doctor" for "physician" in OTC drug monographs on the basis that the word "doctor" is more commonly used and better understood by consumers. Based on comments received to these proposals, the agency has determined that final monographs and other applicable OTC drug regulations will give manufacturers the option of using either the word "physician" or the word "doctor." This tentative final monograph proposes that option.

The agency proposes to revoke the existing warning and caution statement required by § 369.21 and exemptions for certain drugs limited by NDAs to prescription sale in § 310.201(a) (10) and

(15) for anticaries drug products at the time this monograph becomes effective.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC anticaries drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96–354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC anticaries drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC anticaries drug products. Types of impact may include, but are not limited to, costs associated with product testing, relabeling, repackaging, or reformulating. Comments regarding the impact of this rulemaking on OTC anticaries drug products should be accompanied by appropriate documentation. Because the agency has not previously invited specific comment on the economic impact of the OTC drug review on anticaries drug products, a period of 120 days from the date of publication of this proposed rulemaking in the **Federal Register** will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has carefully considered the potential environmental effects of the proposal and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25) have been replaced by a rule published in the **Federal Register** of April 26, 1985 (50 FR 16636, effective July 25, 1985). Under the new rule, an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Interested persons may, on or before November 29, 1985, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before January 28, 1986. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register**.

Interested persons, on or before September 30, 1986, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classified in Category I. Written comments on the new data may be submitted on or before December 1, 1986. These dates are consistent with the time periods specified in the agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA–305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on December 1, 1986. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the **Federal Register**, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

List of Subjects in 21 CFR Part 355

OTC drugs; Anticaries drug products.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Administrative Procedure Act, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended by adding new Part 355, as follows:

PART 355—ANTICARIES DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—General Provisions

Sec.
355.1 Scope.
355.3 Definitions.

Subpart B—Active Ingredients

355.10 Anticaries active ingredients.
355.20 Package size limitations.

Subpart C—Labeling

355.50 Labeling of anticaries drug products.
335.60 Professional labeling.

Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); (5 U.S.C. 553); 21 CFR 5.11.

Subpart A—General Provisions

§ 355.1 Scope.

(a) An over-the-counter anticaries drug product in a form suitable for topical administration to the teeth is generally recognized as safe and effective and is not misbranded if it meets each condition in this part and each general condition established in § 330.1.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

§ 355.3 Definitions.

As used in this part:

(a) *Abrasive.* Solid materials that are added to dentifrices to facilitate mechanical removal of dental plague, debris, and stain from tooth surfaces.

(b) *Anticaries drug.* A drug that aids in the prevention of dental cavities (decay, caries).

(c) *Dental caries.* A disease of calcified tissues of teeth characterized by demineralization of the inorganic portion and destruction of the organic matrix.

(d) *Dentifrice.* A substance used with a toothbrush to clean the accessible surfaces of the teeth. It is an abrasive-containing dosage form for delivering an anticaries drug to the teeth.

(e) *Fluoride.* The inorganic form of the chemical element fluorine in combination with other elements.

(f) *Fluoride ion.* The negatively charged atom of the chemical element fluorine

(g) *Treatment gel.* A dosage form for delivering an anticaries drug to the teeth. Treatment gels are formulated in an anhydrous glycerin base with suitable thickening agents included to adjust viscosity. Treatment gels do not contain abrasives and are not intended for use in cleaning the teeth.

(h) *Treatment rinse.* A liquid dosage form for delivering an anticaries drug to the teeth.

(i) *Treatment rinse concentrated solution.* A fluoride treatment rinse in a concentrated form to be mixed with water before using to result in the appropriate fluoride concentration specified in the monograph.

(j) *Treatment rinse effervescent tablets.* A fluoride treatment rinse prepared by adding an effervescent tablet (a concentrated solid dosage form) to water before using to result in the appropriate fluoride concentration specified in the monograph.

(k) *Treatment rinse powder.* A fluoride treatment rinse prepared by adding the powder (a concentrated solid dosage form) to water before using to result in the appropriate fluoride concentration specified in the monograph.

Subpart B—Active Ingredients

§ 355.10 Anticaries active ingredients.

The active ingredient of the product consists of any of the following, within the established concentration and dosage form:

(a) *Dentifrices.* (1) Sodium fluoride 0.22 percent.

(2) Sodium monofluorophosphate 0.76 percent.

(3) Stannous fluoride 0.4 percent.

(b) *Treatment rinses.* (1) An aqueous solution of acidulated phosphate fluoride derived from sodium fluoride acidulated with a mixture of sodium phosphate, monobasic, and phosphoric acid to a level of 0.1 molar phosphate ion and a pH of 3.0 to 4.5 and which yields an effective fluoride ion concentration of 0.02 percent.

(2) An aqueous solution of acidulated phosphate fluoride derived from sodium fluoride acidulated with a mixture of sodium phosphate, diabasic, and phosphoric acid to a pH of 3.5 and which yields an effective fluoride ion concentration of 0.01 percent.

(3) Sodium fluoride 0.02 percent aqueous solution with a pH of approximately 7.

(4) Sodium fluoride 0.05 percent aqueous solution with a pH of approximately 7.

(5) Sodium fluoride concentrate containing adequate directions for mixing with water before using to result in a 0.02-percent or 0.05-percent aqueous solution with a pH of approximately 7.

(6) Stannous fluoride concentrate marketed in a stable form and containing adequate directions for mixing with water immediately before using to result in a 0.1-percent aqueous solution.

(c) *Treatment gel.* Stannous fluoride 0.4 percent in an anhydrous glycerin gel, made from anhydrous glycerin and the addition of suitable thickening agents to adjust viscosity.

§ 355.20 Package size limitations.

Due to the toxicity associated with fluoride active ingredients, the following package size limitations are required for anticaries drug products:

(a) *Dentifrices.* Dentifrice packages shall not contain more than 260 milligrams total fluorine per package.

(b) *Treatment rinses and treatment gels.* Treatment rinse and gel packages shall not contain more than 120 milligrams total fluorine per package.

Subpart C—Labeling

§ 355.50 Labeling of anticaries drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as (select one or both of the following: "anticavity" or "fluoride") (select one of the following as appropriate: "dentifrice," "toothpaste," "treatment rinse," "treatment gel," "treatment rinse, concentrated resolution," "treatment rinse powder," or "treatment rinse effervescent tablets").

(b) *Indication.* The labeling of the product states, under the heading "Indication," the following: "Aids in the prevention of dental" (select one of the following: "cavities," "decay," "caries (decay)," or "caries (cavities)")." Other truthful and nonmisleading statements, described only the indications for use that have been established and listed above, may also be used, as provided in § 330.1(c)(2) of this chapter subject to the prohibitions in section 502(a) of the act against misbranding by the use of false or misleading labeling and the prohibition in section 301(d) of the act against the introduction into interstate commerce of unapproved new drugs.

(c) *Warning.* The labeling of any concentrated treatment rinse solution, powder, or effervescent tablet contains the following warning under the heading "Warning": "Do not use before mixing with water. Read the directions carefully."

(d) *Directions.* The labeling of the product contains the following statements under the heading "Directions":

(1) *For anticaries products marketed in a dentifrice dosage form.* Adults and children 2 years of age and older: brush teeth thoroughly at least once daily or as directed by a dentist or doctor. Children under 6 years of age should be supervised in the use of this product.

(2) *For anticaries products marketed for use as treatment rinses*—(i) *For acidulated phosphate fluoride solution containing 0.02 percent fluoride ion, sodium fluoride 0.05 percent, sodium fluoride concentrate, and stannous fluoride concentrate identified in § 355.10(b) (1), (4), (5), and (6).* Adults and children 6 years of age and older: Use once a day after brushing your teeth with a toothpaste. Vigorously swish 10 milliliters of rinse between your teeth for 1 minute and then spit out. Do not swallow the rinse. Do not eat or drink for 30 minutes after rinsing. Children under 12 years of age should be supervised in the use of this product. Children under 6 years of age: Consult a dentist or doctor.

(ii) *For acidulated phosphate fluoride solution containing 0.01 percent fluoride ion and sodium fluoride 0.02 percent aqueous solution identified in § 355.10(b) (2) and (3).* Adults and children 6 years of age and older: Use twice a day after brushing your teeth with a toothpaste. Vigorousy swish 10 milliliters of rinse between your teeth for 1 minute and then spit out. Do not swallow the rinse. Do not eat or drink for 30 minutes after rinsing. Children under 12 years of age should be supervised in the use of this product. Children under 6 years of age: Consult a dentist or doctor.

(3) *For stannous fluoride products intended for use as treatment rinses.* (i) Use immediately after preparing the rinse.

(ii) *For powder or effervescent tablets used to prepare treatment rinses.* Do not use as a rinse until all the (select one of the following: "powder" or "tablet") has dissolved.

(4) *For anticaries products marketed as treament gels.* Adults and children 6 years of age and older: Use once a day after brushing your teeth with a toothpaste. Apply the gel to your teeth and brush thoroughly. Allow the gel to remain on your teeth for 1 minute and then spit out. Do not swallow the gel. Do not eat or drink for 30 minutes after brushing. Children under 12 years of age should be supervised in the use of this product. Children under 6 years of age: Consult a dentist or doctor.

(e) *Additional labeling statements for anticaries drug products.* The following labeling statements need not appear under warnings, but are required to appear on the label of anticaries products as applicable.

(1) *For all treatment gels.* "This is a(n)" (select one of both or the following: "anticavity" or "fluoride") "treatment gel, not a tooth paste. Read directions carefully before using."

(2) *For all treatment rinses.* "This is a(n)" (select one or both of the following: "anticavity" or "fluoride") "treatment rinse, not a mouthwash. Read directions carefully before using."

(3) *For all stannous fluoride products intended for use as treatment rinses, treatment gels, and dentifrices.* "This product may produce surface staining of the teeth. Adequate toothbrushing may prevent these stains which are not harmful or permanent and may be removed by your dentist."

(f) *Optional additional labeling statement.* The following labeling statement may appear in the required boxed area designated "APPROVED USES" on the label of anticaries products marketed as fluoride treatment rinses and gels. "The combined daily use of a fluoride treatment" (select one of the following: "rinse" or "gel") "and a fluoride toothpaste can aid in reducing the incidence of dental cavities."

(g) The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this section.

§ 355.60 Professional labeling

The labeling for anticaries products marketed for use as fluoride treatment rinses identified in § 355.10(b) provided to health professionals (but not to the general public) may contain the following additional dosage information: Children 3 to under 14 years of age: As a supplement in areas where the water supply is nonfluoridated (less than 0.3 part per million), clean the teeth with a toothpaste and rinse with 5 milliliters of 0.02 percent or 10 milliliters of 0.01 percent fluoride ion rinse daily, then swallow. When water supply contains 0.3 to 0.7 part per million fluoride ion, reduce the dose to 2.5 milliliters of 0.02 percent or 5 milliliters of 0.01 percent fluoride ion rinse daily.

Frank E. Young,

Commissioner of Food and Drugs.

Margaret M. Heckler,

Secretary of Health and Human Services.

Dated: August 2, 1985.

[FR Doc. 85-23223 Filed 9-27-85; 8:45 am]

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federal register

Monday
September 30, 1985

Part V

Office of Personnel Management

5 CFR Part 330

Recruitment, Selection, and Placement (General); Final Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 330

Recruitment, Selection, and Placement (General)

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing regulations that strengthen existing placement efforts for preference eligibles who occupy restricted positions such as custodian, messenger, guard, and elevator operator and positions covered under these generic titles, that are contracted out in accordance with the Office of Management and Budget (OMB) Circular A–76.

EFFECTIVE DATE: October 30, 1985.

FOR FURTHER INFORMATION CONTACT: Don Smith, Chief, Evaluations Division, Office of Affirmative Employment Programs (202) 632–7082.

SUPPLEMENTARY INFORMATION: It is the policy of the executive branch not to perform commercial activities that can be more effectively done by the private sector. This has meant that some tasks previously performed by Government employees have been contracted out to private firms in accordance with OMB Circular A–76. Among those commercial activities are several in which the positions are reserved for preference eligibles under the Veterans' Preference Act of 1944, as amended.

Because the Federal Government has a longstanding interest in assisting those who have served the Nation, OPM published proposed regulations on January 25, 1985 (50 FR 3530) to provide increased placement efforts by both OPM and employing agencies to aid preference eligibles in contracting out situations. The public comment period ended on March 26, 1985. OPM received numerous comments from agencies, congressional representatives, veterans organizations, unions, and individuals. There were a number of suggestions for specific improvements in the proposed regulations that have been adopted in the final regulations. The proposed regulations included some actions that were already provided in other regulations, e.g., giving internal priority consideration, establishing a reemployment priority list, paying reasonable costs for training and relocation, and coordinating with OPM to ensure access to Governmentwide placement programs. We have, therefore, deleted those actions from these final regulations.

Several recommendations that did not result in charges to the regulations will be incorporated into Chapter 330 of the Federal Personnel Manual (FPM) instead. OPM will provide guidance to Federal agencies through the FPM system. Specific comments received and related decisions are summarized below:

Comment: One commenter recommended that the term "preference eligible(s)" be used consistently in the regulations.

Response: OPM agrees with this recommendation and the final regulations use the term "preference eligibles." (Sections 330.404–330.407)

Comment: Several commenters recommended that OPM clarify the relationship between this placement assistance and other OPM placement programs; i.e., the Interagency Placement Assistance Program (IPAP) and the Displaced Employee Program (DEP). They also wanted a clarification on the minimum time period for potentially affected preference eligibles to be notified of OPM's placement assistance.

Response: These regulations supplement OPM's existing placement assistance programs. The additional assistance will be provided through the already established IPAP and DEP mechanisms. Preference eligibles covered by these regulations are entitled to be registered at least 60 days before the effective date of separation. (Section 330.405(c))

Comment: Some commenters recommended that the regulations provide more information on the duration of eligibility for additional assistance.

Response: Preference eligibles covered by these regulations are entitled to receive additional assistance through their IPAP and DEP enrollment. They may remain in DEP up to 1 year after their normal DEP eligibility expires. (Section 330.407)

Comment: Several commenters recommended that the extension of the enrollment period be at the discretion of the preference eligible.

Response: OPM agrees with this suggestion and has adopted it in the final regulations. (Section 330.407)

Comment: One commenter expressed concern that the proposed regulations have the effect of limiting assistance to one grade only.

Response: The regulations have been revised to reflect IPAP and DEP procedures which provide consideration at and below the former grade level from which the person was or will be separated. (Section 330.406)

Comment: One commenter recommended that the regulations provide for a monitoring system.

Response: OPM agrees with this suggestion and has incorporated it into the final regulations. (Section 330.406(d))

Comment: Several commenters pointed out that restricted positions include those positions covered under the generic titles of custodian, messenger, guard, and elevator operator.

Response: Final regulations include the positions covered under the generic titles of those four categories, in accordance with guidelines published in Chapter 330 of the Federal Personnel Manual. (Section 330.404)

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal Government employees.

List of Subjects in 5 CFR Part 330

Government employees, Restricted positions, Veterans.

Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending 5 CFR Part 330 as follows:

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

1. The authority for Part 330 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577; 3 CFR, 1954–1958 Comp., p. 218, unless otherwise noted.

2. Sections 330.404 through 330.407 are added to Subpart D to read as follows:

Subpart D—Positions Restricted to Preference Eligibles

* * * * *

Sec.

330.404 Displacement of preference eligibles occupying restricted positions in contracting out situations.
330.405 Agency placement assistance.
330.406 OPM placement assistance.
330.407 Duration of eligibility for assistance.

Subpart D—Positions Restricted to Preference Eligibles

§ 330.404 Displacement of preference eligibles occupying restricted positions in contracting out situations.

OPM and agencies have certain obligations toward preference eligibles occupying restricted positions when a decision is made to contract out a Government-performed commercial activity in accordance with the Office of Management and Budget (OMB) Circular A–76. Preference eligibles are entitled to additional placement assistance through the Interagency Placement Assistance Program (IPAP) and the Displaced Employee Program (DEP). These preference eligibles must: (a) Be occupying restricted positions as designated in 5 U.S.C. 3310 and § 330.041 of this part, and further defined in the Federal Personnel Manual; (b) be in the competitive service (in tenure group I or II); and (c) meet the eligibility requirements of the IPAP as specified in OPM issuances or the DEP which is described in Subpart C of this part.

§ 330.405 Agency placement assistance.

An agency, compelled to conduct a reduction in force and separate a preference eligible from a restricted position because a Government-performed commercial activity is contracted out, must alert affected preference eligible employees of their placement rights and their opportunity to participate in agency and OPM placement programs. Agencies must make maximum effort to find suitable positions for the preference eligible. This effort must include—

(a) Conducting an internal positive placement program;

(b) Emphasizing selection procedures using reemployment priority lists in accordance with Subpart B of this part and Subpart J of Part 351 for every vacant agency position for which the preference eligible qualifies and is available;

(c) Notifying preference eligibles of the right to register in the IPAP or the DEP at least 60 days before the effective date of separation. Agencies, however, are encouraged to notify employees of their right to placement assistance through the IPAP as soon as they receive approval to convert a restricted position to contract performance.

(d) Assuring that OMB's policy directives on the preference eligibles' right of first refusal for employment openings in contracting out situations are met;

(e) Continuing liaison with State Job Service offices for placement assistance for eligible employees who wish to be considered for jobs outside the Federal Government. This includes cooperation with Local Veteran Employment Representatives (LVER) and Disabled Veterans Outreach Program (DVOP) specialists;

(f) Referring names of interested preference eligibles to the U.S. Postal Service for consideration for employment opportunities.

§ 330.406 OPM placement assistance.

OPM's responsibilities include:

(a) Assisting agencies in operating positive placement programs.

(b) Making priority referral in accordance with § 330.304 of Subpart C of this part.

(c) Assuring that all agencies that have vacancies to fill through the competitive examining process give full consideration to adversely affected preference eligibles registered in the IPAP and DEP.

(d) Encouraging cooperation between local U.S. Postal Service installations and local Federal installations to assist these displaced preference eligibles in applying for U.S. Postal Service positions.

(e) Monitoring this placement assistance through IPAP and DEP procedures.

§ 330.407 Duration of eligibility for assistance.

Adversely affected preference eligibles may remain in the DEP for 6 months after their normal DEP eligibility expires and, upon their request, are entitled to a second 6-month extension. Eligibility may, however, be terminated earlier in accordance with DEP procedures.

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federal register

Monday
September 30, 1985

Part VI

Department of Agriculture

Farmers Home Administration

7 CFR Part 1980

Guaranteed Loan Programs; Interim Rule and Advance Notice of Proposed Rulemaking

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1980

Guaranteed Loan Programs

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to add a line of credit authority for guaranteed operating (OL) loans and remove administrative barriers preventing greater lender participation in the guaranteed loan program. This amendment is needed to provide the policies and procedures for establishing the line of credit authority, to remove administrative barriers to allow greater lender participation in the program, to prevent farmers from paying repetitive guarantee fees which they would have to pay if they were to receive several guaranteed loans, and to maximize the use of guaranteed loan funds. Loan purposes under the line of credit authority are limited to the purchase of foundation livestock replacements and annual operating expenses. This amendment makes revisions which encourage lender participation in the guaranteed loan program and provide clarification in the processing and servicing of guaranteed operating (OL) and farm ownership (FO) loans. The need for governmental action is generated by increased pressures on the agency to provide effective services to farmers. The demand for FmHA farmer program services is severely straining the agency's capacity to provide effective services with its available limited resources. The intended effect of this action is to maximize the availability of credit to farmers.

DATES: Effective date: October 7, 1985.

Comments: This interim rule is subject to revision following a comment period ending October 30, 1985.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection under regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Pandor Hadjy, Senior Loan Officer, Farm Real Estate and Production Division, USDA, Room 5448–S, Washington, DC 20250, telephone (202) 475–4017.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Secretary's Memorandum 1512–1, which implements Executive Order 12291; and it has been determined to be nonmajor because there is no substantial change from practices under existing rules, and no annual effect on the economy of $100 million or more; or a major increase in cost or prices for consumers, individual industry agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States based enterprises to compete with foreign-based enterprises in domestic or export markets.

Discussion of Interim Rule

FmHA is implementing this interim rule immediately with a 30 day comment period. It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking because of the financial stress presently being experienced by agricultural lenders and their farm borrowers. Any delay in implementing this rule would be contrary to the public interest.

Further, pursuant to the Administrative procedure provisions in 5 U.S.C 553, it is found upon good cause that notice and other public procedure with respect to this interim rule action are impracticable; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register.**

This program is listed in the catalog of Federal Domestic Assistance under No. 10.404 Emergency Loans, No. 10.406 Farm Operating Loans, 10.407 Farm Ownership Loans, No. 10.416 Soil and Water Loans, 10.422 Business and Industrial Loans, and 10.410 Very Low Income and Low Income Housing Loans. For the reasons set forth in the Final rule related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

The financial condition of many farmers and farm lenders has deteriorated over the past five years. Agricultural land values have devaluated as much as 49 percent between their 1981 peak and April 1985. Large supplies of agricultural commodities and weak demand has depressed farm income and the net worth of many farmers. A large number of farmers are experiencing insufficient cash flow, declining asset values, problems of access to credit, forced liquidations, foreclosure and bankruptcy. This financial stress is transmitted to farm lenders through loan delinquencies and losses, inadequate security for loans, bankruptcy, and failure of lending institutions. On January 1, 1985, there were an estimated 679,000 family size commercial farms with 229,000 of these farms owing over 46 percent of all farm debt, and having financial problems ranging from difficulty servicing debt to insolvency.

Agricultural lenders are concerned about farm defaults and delinquencies. As of March 31, 1985, nonperforming loans, which are defined as nonaccrual and renegotiated loans plus accruing loans that are past due 90 days or more amounted to 7.0 percent of the total outstanding farm production loan portfolio, an increase from the 5.7 percent figure of a year earlier. An additional 3.4 percent of production loans were delinquent 30 to 89 days.

In the period, from January 31, 1985 to August 22, 1985, there were 72 bank failures nationwide, 38 of which were agricultural banks. An agricultural bank is defined as a bank which has 25% or more of its loans portfolio in agricultural loans. As of July 31, 1985, there were 940 banks on the problem bank list of which 334 were agricultural banks.

Farm Credit System (FCS) banks which predominantly serve the agricultural sector are also experiencing financial adversity. The volume of non-performing loans has increased rapidly. Farm Credit System (FCS) defines nonaccruing loans as those loans which are nonaccrual and restrictured loans and loans delinquent 90 days or more but still accruing, accruing loans classified as vulnerable for loss because of severe credit weaknesses, and loans in the process of collection, foreclosure and bankruptcy. On March 31, 1985, 10.2 percent of Federal Land Bank (FLB) loan volume, 14.7 percent of Federal Intermediate Credit Bank (FICB) volume, and 15.7 percent of Production Credit Association (PCA) volume were nonperforming loans. During the past two years 11 Production Credit Associations (PCAs) have been

liquidated and 53 have been merged for various reasons.

Another measure of lender stress is the total net loan charge-offs (losses) as a percentage of total loans outstanding. Loan charge-offs at agricultural banks have increased dramatically since 1980. In 1984, charge-offs equalled 1.2 percent of loans outstanding at year end. This level of charge-offs was approximately double the level at other small banks. In 1984, charge-offs on Production Credit Association (PCA) loans totaled $285.9 million, Federal Land Banks (FLB's) $110 million, and Bank for Cooperatives (BC's) $10.1 million. Charge-offs for 1984 were 1.56 percent of year end outstandings at PCA's, 0.21 percent at FLB's, 0.13 percent at FICB's, and 0.11 percent at the BC's. Farm Credit System (FCS) charge-offs totaled $428 million in 1983. During the first six months of 1985, Farm Credit System (FCS) loan losses totaled $207 million, up $41 million from a year ago.

Since 1980, an increasing proportion of agricultural banks have experienced loan losses larger than could be covered by annual net earnings. In 1984, 12 percent of agricultural banks reported negative income, as opposed to a relatively constant 1 percent during the 1970's. Combined net income of the 37 Farm Credit System Banks was $5.6 million for the April-June quarter of 1985, compared to $126.3 million during the same period in 1984. During the first six months of 1985 Farm Credit System earnings were $96.2 million compared to $236.6 million during the same period in 1984.

In response, farm lenders have increasingly tightened credit requirements, and more accounts are being liquidated.

During the past two years lending activity by the Farmers Home Administration (FmHA), the lender of last resort, has increased accordingly. In Fiscal Year 1984, the agency loaned approximately $1.96 billion in insured operating loan funds to 35,328 of its currently indebted borrowers and 23,874 initial borrowers. Initial borrowers are defined as those who are not indebted to the agency at the time of application. During the same year 160 subsequent and 805 initial guaranteed operating loans were closed, totaling approximately $111.4 million. In Fiscal Year 1985 through the period ending August 14, 1985, the agency loaned approximately $3.44 billion in insured operating loan funds to 43,538 of its currently indebted borrowers and 29,692 initial borrowers. During the same period 1,574 subsequent and 7,276 initial guaranteed operating loans were approved totaling approximately $1 billion. This increase in insured loan volume is severely straining the agency's capacity to provide supervised credit services with its available limited resources.

Implementing selected regulation changes, and establishing a guaranteed operating loan line of credit are necessary to maximize the use of guaranteed funding authority in Fiscal Year 1986. The continued demand for farm credit and the financial condition of lenders make it imperative that implementation occur immediately. These changes are necessary to supplement present insured loan authority and make credit available to farm owners and/or operators who are presently in a "credit availability gap." The credit availability gap farmers are those who exceed FmHA's insured loan dollar limitations but who take a degree of financial stress which renders them unable to qualify for adequate credit based on standards required by the commercial agricultural lender.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

It is urgent that these regulation changes be published as an interim rule so that farmers can pay harvesting costs, and so that work out plans can be developed regarding the availability of credit for planting costs.

Lenders have emphasized the need for immediate implementation of these changes in order to facilitate their participation in the guaranteed loan program during fiscal year 1986. Participation in the guaranteed loan program will help agricultural banks remain solvent and leverage loanable funds to the maximum extent. In all National and most State banks only the portion of the loan not guaranteed counts against the bank's lending limits. Banks will also benefit by loss protection.

Lenders with foreign ownership interests who otherwise meet guaranteed lender eligibility requirements have indicated a desire to participate in the FmHA guaranteed loan program. This regulations change would permit their participation.

Implementing a Line of Credit authority will prevent farmers from having to pay repetitive guarantee fees, and save interest on money borrowed since line of credit advances can be disbursed over time. Using this authority, a farmer will be able to borrow money, up to a certain limit, at whatever time it is needed without having to apply for a loan each time money is needed. Implementing these changes will allow FmHA to serve the public in an expeditious manner. Any delay in implementing these changes would be contrary to the public interest.

Need for Governmental Action

The FmHA programs affected by this regulation change are Farm Ownership (FO) guaranteed loans and Operating (OL) guaranteed loans, Soil and Water (SW) guaranteed loans, Recreation Facility (RL) guaranteed loans, Emergency (EM) guaranteed loans, Business and Industry (B&I) guaranteed loans, and Rural Housing (RH) guaranteed loans. FmHA guaranteed loans are made and serviced by commercial sources such as Federal Land Banks, Production Credit Association, banks, insurance companies and savings and loan associations. FmHA may provide the lender with a guarantee not to exceed 90 percent of loss of principal and interest on a loan.

FmHA is implementing these changes immediately because of the financial stress presently experienced by the nation's farmers and the need to maximize use of guaranteed funding authority in fiscal year 1986. Most importantly, the demand for farm credit during planting season makes it imperative that implementation occur immediately. These changes are necessary to supplement present insured loan authority, and make credit available to farm owners and/or operators who are presently in a "credit availability gap." The credit availability gap farmers are those who exceed FmHA's insured loan eligibility criteria relating to its function as a lender of last resort but who face a degree of financial stress which renders them unable to fully qualify for adequate credit based upon standards required by the commercial agricultural lender. Lenders have emphasized the need for immediate implementation of these changes in order to facilitate their participation in the FmHA guaranteed program during fiscal year 1986.

Implemention selected changes does not impose additional burdens upon applicants/borrowers for assistance or change eligibility requirements. Benefits will accrue to all applicants and lenders, by a reduction in paperwork and a timely response to loan requests. Benefits will accrue to applicants/borrowers, in expeditiously processing

applications, providing lines of credit and elimination of paying repetitive guarantee fees. Benefits will accrue to FmHA in a standardization and reduction of material required for review on requests for a guarantee.

Highlights

Subpart A of Part 1980 contains general regulations and prescribed forms which are applicable to FmHA guaranteed loan programs authorized in Part 1980. The changes in Subpart A of 1980 concern the following:

The change establishes a line of credit for operating loans. In connection with this line of credit selected form changes are as follows:

a. References have been added to prescribe the use of Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)," Form FmHa 1980–38, "Lender's Agreement (Line of Credit)," Form FmHA 1980–15, "Conditional Commitment for Contract of Guarantee (Line of Credit)" and Form FmHA 1980–25, "Request for Guarantee (Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan)." Form FmHA 1980–27, 1980–38, 1980–15, and 1980–25 appear as Appendices D, E, F, and G respectively of Subpart A of Part 1980 of this chapter.

These form references are necessary to implement a line of credit authority for operating loans described in Subpart E.

b. Deletes lender certification in paragraph V of Forms FmHA 449–35 and 1980–38 which states: "The lender certifies that it is a citizen of the United States of America, or, if an organization, that the ownership of at least 51 percent of any outstanding interests of the lender is owned by citizens of the United States. Further such lender certifies that any guarantee received shall be only on loans made by it operating for itself and not on behalf of foreign citizens or organizations."

Lenders who presently do not meet this criteria but are otherwise eligible lenders would participate in the guaranteed loan program. This change would maximize the availability of credit.

c. Makes technical and editorial clarifications.

Subpart B of Part 1980 contains regulations for making the following farmer program loans guaranteed by the FmHA: Operating (OL), Farm Ownership (FO), Soil and Water (SW), Recreation Facility (RL), and Emergency (EM) Loans. Exhibit A provides policies and procedures for an Approved Lender Program (ALP) for guaranteed OL loans and guaranteed FO loans. Exhibit B provides policies and procedures for the guaranteed Debt Adjustment Program (DAP) for guaranteed OL loans and guaranteed FO loans. Exhibit C (available in any FmHA office) is added to provide a processing guide for guaranteed farmer program loans.

A summary of selected changes in Subpart B of 1980 concern the following:

(a) Expands the use of in-house forms which approved lenders may use in packaging guaranteed loan applications.

This change is necessary to expedite lender packaging of guaranteed loan applications.

(b) Establishes sources of price information and methods of documenting production history in connection with operation forecasts.

This change is necessary to standardize financial information submitted to FmHA. This will expedite FmHA's review of the application.

(c) Outlines qualifications appraisers preparing appraisals must meet.

Outlining appraiser qualifications will ensure that the lender is using high quality appraisals which will document the lender's collateral for the loan prior to the issuance of the government loan guarantee.

(d) Sets forth time requirements which county supervisors must meet in processing/approving guaranteed loans/or lines of credit.

Establishing time requirements for processing/approving guaranteed loans will provide expeditious processing of applications.

(e) Prohibits consolidation of OL lines of credit.

This prohibition is necessary to ensure that lines of credit maintain their distinct purposes for loan servicing.

(f) Clarifies allowed liquidation fees.

This clarification is necessary to prevent misunderstanding between the lender and FmHA on allowable liquidation fees.

(g) Allows the use of guaranteed operating loan funds to refinance FmHA insured loans.

This will allow greater flexibility in restructuring debts and serve as a tool for FmHA to use to assist borrowers in returning to commercial sources of credit.

(h) Establishes a line of credit in connection with guaranteed loans with specific purposes, terms, and servicing requirements.

A line of credit authority for operating loans will eliminate repetitive loan applications, therefore preventing farmers from paying repetitive guarantee fees. Implementing a line of credit will save farmers interest charges since credit advances can be disbursed over time. Loan purposes for the line of credit authority are limited to the purchase of foundation livestock replacements and annual operating expenses. Limiting lines of credit to selected purposes is a necessary action to allow proper lender supervision of the farm operation. Advances of the line of credit agreement are limited to three years from the date of the Contract of Guarantee. Lines of credit are payable up to a 7-year term. This limitation on advances is necessary to monitor the borrower's performance. Upon expiration of the line of credit, the borrower may request refinancing by the lender without the benefit of a guarantee or request an additional guarantee.

(i) Allows the lender to charge a rate of interest not to exceed one percent above the rate a lender changes its average (typical) customer.

This change will encourage greater lender participation in the guaranteed loan program.

(j) Revises OL security requirements when refinancing debts to allow junior liens on real estate.

This change will allow greater flexibility in restructuring debt.

(k) Deletes the limitation in the Approved Lender Program prohibiting multi-notes.

This deletion is necessary to allow the sale of a portion of the note on the secondary market.

(l) Establishes Attachment 2 to Exhibit A, Lender's Agreement, for Operating Loan Lines of Credit.

This addition is necessary to expedite Lender Approval for participation in the guaranteed loan program.

(m) Establishes Exhibit C-Processing Guide for Guaranteed Farmer Program Loans (available in any FmHA office).

This exhibit is necessary to provide standardization in application packaging/processing.

(n) References have been added to prescribe the use of Forms FmHA 1980–27, "Contract of Guarantee (Line of Credit)," Form FmHA 1980–38, "Lender's Agreement (Line of Credit)," Form FmHA 1980–15, "Conditional Commitment for Contract of Guarantee (Line of Credit);" Form FmHA 1980–25, "Request for Guarantee (Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan)." These forms appear as Appendices D, E, F, and G of Subpart A Part 1980 of this chapter.

These form references are necessary to implement a line of credit authority.

(o) The approved lenders agreement is revised to allow the State Director to make an exception to the current requirement that an eligible lender have at least $2.5 million or 50% whichever is

less of total loan portfolio in agricultural loans.

This change will allow greater lender participation in the guaranteed loan program.

The changes in Subpart C, D and E of 1980 are as follows:

a. References to Subpart A of Part 1980 are corrected as necessary.

b. Paragraph references to Form FmHA 449–35 are amended to correspond with the revised form.

c. Appendix F to Subpart E is amended to clarify the adjustment period for variable rate loans in accordance with the revised regulations.

The changes in Subpart F of 1980 are as follows:

a. References to Subpart A of 1980 are corrected as necessary.

b. References have been added to change the name of Form FmHA 1980–38 to "Lender's Agreement (Line of Credit)," Form FmHA 1980–25 to "Request for Guarantee (Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan)," Form FmHA 1980–27 to "Contract of Guarantee (Line of Credit)," Form FmHA 1980–15 to "Conditional Commitment for Contract of Guarantee (Line of Credit)."

These form references are necessary to implement a line of credit authority for Operating Loans.

c. Paragraph references to Form FmHA 449–35 and 1980–38 are amended to correspond with the revised forms.

d. Removes Appendices B, C, D, E, F, and G and redesignates Appendix E as Appendix B.

List of Subjects in 7 CFR Part 1980

Loan programs-agriculture.

Therefore, Part 1980, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—General

2. Section 1980.6(a) is revised to read as follows:

§ 1980.6 Definitions and abbreviations.

(a) *General definitions.* The following general definitions are applicable to the terms used in this part. Additional definitions may be found in the subparts relating to the particular type of loan involved.

(1) *Assignment Guarantee Agreement (Form FmHA 449–36).* The signed agreement among FmHA, the lender, and the holder, setting forth the terms and conditions of an assignment of a guaranteed portion of a loan or any part thereof.

(2) *Borrower.* All parties liable for the loan/line of credit or any part thereof.

(3) *Conditional Commitment for Guarantee (Form FmHA 449–14).* FmHA's advice to the lender that the material it has submitted is approved subject to the completion of all conditions and requirements set forth in "Conditional Commitment for Guarantee."

(4) *Conditional Commitment for Contract of Guarantee (Form FmHA 1980–15).* FmHA's advice to the lender that the material it has submitted is approved subject to the completion of all conditions and requirements set forth in "Conditional Commitment for Contract of Guarantee."

(5) *Contract of Guarantee (Line of Credit) (Form FmHA 1980–27).* The signed commitment issued by FmHA setting forth (specifically or by reference) the terms and conditions of the guaranteed line of credit.

(6) *Finance Office.* The office which maintains the FmHA financial records. It is located at 1520 Market Street, St. Louis, Missouri 63103, (Phone 314–279–4400).

(7) *FmHA.* The United States of America, acting through the Farmers Home Administration, an Agency of the United States Department of Agriculture. References to the National Office, Finance Office, State Office, County Office, State Director, District Director, County Supervisor, or other FmHA office or official should be read as prefaced by "FmHA."

(8) *Guaranteed Line of Credit.* Loan advances made and serviced by a lender subject to a maximum amount agreed to by the lender and FmHA which is specified in a Form FmHA 1980–27 "Contract of Guarantee (Line of Credit)," and for which FmHA has entered into a Form FmHA 1980–38, "Lenders Agreement (Line of Credit)."

(9) *Guaranteed Loan.* A loan made and serviced by a lender for which FmHA has entered into a Form FmHA 449–35, "Lender's Agreement" and for which FmHA has issued a Form FmHA 449–34 "Loan Note Guarantee."

(10) *Hazard insurance.* Includes fire, windstorm, lightning, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, builder's risk, public liability, property damage, flood or mudslide, workmen's compensation, or any similar insurance that is available and needed to protect the security, or that is required by law.

(11) *Holder.* The person or organization other than the lender who holds all or a part of the guaranteed portion of the loan with no servicing responsibilities. Holders are prohibited from obtaining any part(s) of the guaranteed portion of the loan with proceeds from any obligation the interest on which is excludable from income under section 103 of the Internal Revenue Code of 1954, as amended (IRC). When the lender assigns a part(s) of the guaranteed loan to an assignee, the assignee become a holder when Form FmHA 449–36, "Assignment Guarantee Agreement," is used.

(12) *Insured loans.* A loan directly made and serviced by FmHA as lender with funds from the Rural Development Insurance Fund, Rural Housing Insurance Fund, or Agricultural Credit Insurance Fund.

(13) *Joint financing.* Occurs when two or more lenders (or any combination of such lenders) make separate loans to supply the funds required by one applicant. For example, such joint financing may consist of FmHA financial assistance with the Economic Development Administration (EDA), Department of Housing and Urban Development (HUD), Small Business Administration (SBA), other Federal and State agencies, and private and quasi-public financial institutions.

(14) *Lender.* The person or organization making and servicing the loan or advancing and servicing the line of credit which is guaranteed under the provisions of the appropriate Subpart. The lender is also the party requesting a guarantee.

(15) *Lender's Agreement (Form FmHA 449–35 or Form FmHA 1980–38).* The signed agreement between FmHA and the lender setting forth the lender's loan responsibilities when the Loan Note Guarantee or Contract of Guarantee is issued. Form FmHA 1980–38 is used for selected farmer program loans only.

(16) *Line of credit agreement.* An evidence of the debt in those instances in which a lender extends a line of credit to a borrower.

(17) *Loan Note Guarantee (Form FmHA 449–34).* The signed commitment issued by FmHA setting forth the terms and conditions of the guarantee.

(18) *Market value.* The amount for which property would sell for its highest and best use at voluntary sale.

(19) *Note.* An evidence of the debt. In those instances where FmHA makes an insured loan or guarantees a bond issue, "note" shall also be construed to include "Bond" or other evidence of indebtedness where appropriate.

(20) *Principals of borrowers.* Include owners, officers, directors, entities and

others directly involved in the operation and management of a business.

(21) *Transfer and assumption.* The conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of the loan in return for the assuming party's binding promise to pay the debt outstanding. In relation to transfer and assumption cases, where appropriate, "liquidation" and "loan" shall be construed to mean "transfer and assumption," "promissory note" shall be construed to mean "assumption agreement," and "borrower" shall be construed to mean "assuming party" or "transferee."

* * * * *

3. Section 1980.11 is revised to read as follows:

§ 1980.11 Full faith and credit.

The Loan Note Guarantee and Contract of Gurantee constitute obligations supported by the full faith and credit of the United States and are incontestable except for fraud or misrepresentation of which the lender or holder has actual knowledge at the time it becomes such lender or holder or which lender or holder participates in or condones. A note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee, Contract of Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void. The guarantee and right to require purchase will be directly enforceable by holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the Loan Note Guarantee or Contract of Guarantee by lender. The Loan Note Guarantee or Contract of Guarantee will be unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Form FmHA 449–14 "Conditional Commitment for Guarantee," or Form FmHA 1980–15 "Conditional Commitment for Contract of Guarantee." Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid. The Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder shall not cover interest accruing 90 days after the holder has demanded repurchase by the lender, nor shall the Loan Note Guarantee or Assignment Guarantee Agreement in the hands of a holder cover interest accruing 90 days after the lender or FmHA has requested the holder to surrender the evidence of debt for repurchase.

4. In § 1980.13, paragraph (b)(4) is removed, paragraphs (b)(5) and (b)(6) are redesignated as (b)(4) and (b)(5) respectively, and paragraph (b)(2), newly designated paragraph (b)(4), and paragraph (c) are revised as follows:

§ 1980.13 Eligible lenders.

* * * * *

(b) * * *

(2) *Lender notification.* Each lender will inform FmHA whether it qualifies for eligibility under this section and which agency or authority, if any, supervises such lender. This information will be furnished to FmHA on Form FmHA 449–12, "Request for Loan Note Guarantee," or Form FmHA 1980–25, "Request for Guarantee (Line of Credit)" with such proofs as FmHA may require.

* * * * *

(4) *Conflict of interest.* For possible lender-borrower conflict of interest, see paragraph V of Form FmHA 449–35 or paragraph V of Form FmHA 1980–38. All lenders will, for each proposed loan, inform FmHA in writing and furnish such additional evidence as FmHA requests as to whether and the extent that the lender or its principal officers (including immediate family) or the borrower or its principals or officers (including immediate family) hold any stock or other evidence of ownership in the other. FmHA shall determine whether such ownership is sufficient to likely result in a conflict of interest.

* * * * *

(c) *Substitution of lenders.* With written concurrence of FmHA another eligible lender may be substituted for a lender who holds an outstanding Conditional Commitment for Guarantee or Conditional Commitment for Contract of Guarantee provided the borrower, loan purposes, scope of project and loan terms remain unchanged. (See Part 1980, Subpart E of this chapter.)

§ 1980.20 [Amended]

5. In § 1980.20, in the first sentence of the introductory text the words "or Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)," are added after the words, "Loan Note Guarantee, Form FmHA 449–34."

6. Section 1980.21 is amended by revising paragraph (a) to read as follows:

§ 1980.21 Guarantee fee.

(a) *Initial fee.* The fee will be one percent (1%) of the principal loan amount or one percent (1%) of the line of credit ceiling amount multiplied by the percent of guarantee, paid one time only at the time the Loan Note Guarantee or Contract of Guarantee is issued. The fee will be paid to FmHA by the lender and is nonrefundable. The fee may be passed on to the borrower.

* * * * *

§ 1980.22 [Amended]

7. In § 1980.22, in the introductory text of paragraph (b) and in paragraph (b)(3) the words "or Contract of Guarantee" are added after the words "Loan Note Guarantee."

8. Section 1980.23 is revised to read as follows:

§ 1980.23 Prohibition of the guaranteeing of tax-exempt transactions.

(a) FmHA will not guarantee any loan or line of credit made with the proceeds of any obligation the interest on which is excludable from income under section 103 of the Internal Revenue Code of 1954, as amended (IRC). Funds generated through the issuance of tax-exempt obligations may not be used to purchase the guaranteed portion of any FmHA guaranteed loan or line of credit nor may an FmHA guaranteed loan or line of credit serve as collateral for a tax-exempt issue.

(b) The only time FmHA may guarantee a loan or line of credit for a project which involves tax-exempt financing is when the guaranteed loan funds are (1) used to finance a part of the project which is separate and distinct from the part of the project which is financed by the tax-exempt issue, and (2) the guaranteed loan or line of credit has at least a parity security position with the tax-exempt obligation.

§ 1980.41 [Amended]

9. In § 1980.41, in the first sentence of paragraph (a) the words, "Pub. L. 93–295" are removed and the words "Pub. L. 93–495," are inserted in their place.

10. Section 1980.60 is amended by revising the introductory text of paragraph (a), and paragraphs (a)(1), (a)(6), (a)(7), (a)(10), (a)(11), (a)(12), (a)(14), (b) and (c) to read as follows:

§ 1980.60 Conditions precedent to issuance of the Loan Note Guarantee or Contract of Guarantee.

(a) *Lender certification.* Form FmHA 449–34 or Form FmHA 1980–27 will not be issued until the lender certifies to FmHA that:

(1) No major changes have been made in the lender's loan or line of credit conditions and requirements since the issuance of the Conditional Commitment for Guarantee or Conditional Commitment for Contract of Guarantee except those approved in the interim by FmHA in writing.

* * * * *

(6) The loan or line of credit has been properly closed, and the required security instruments have been obtained, or will be obtained on any after acquired property that cannot be covered initially under State law.

(7) The borrower has marketable title to the collateral then owned by borrower, subject to the instrument securing the loan or line of credit to be guaranteed and subject to any other exceptions approved in writing by FmHA.

* * * * *

(10) All other requirements of the Conditional Commitment for Guarantee or Conditional Commitment for Contract of Guarantee have been met.

(11) Lien priorities are consistent with requirements of the Conditional Commitment for Guarantee or Conditional Commitment for Contract of Guarantee.

(12) The loan proceeds have been disbursed for purposes and in amounts consistent with the Conditional Commitment for Guarantee and as specified on Form FmHA 449–1, "Application for Loan and Guarantee." In line of credit cases if any advances have occurred, advances have been disbursed for purposes and in amounts consistent with the Conditional Commitment for Contract of Guarantee and Line of Credit Agreements. A copy of a detailed loan settlement statement of the lender will be attached to support this certification.

* * * * *

(14) There has been no adverse change(s) in the borrower's financial condition nor any other adverse change in the borrower during the period of time from FmHA's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee or from the time of FmHA's issuance of the Conditional Commitment for Contract of Guarantee to the issuance of the Contract of Guarantee. The lender's certification must address all adverse changes of the borrower and be supported by financial statements of the borrower and its guarantors not more than 60 days old at time of certification. For purposes of this paragraph, the term "borrower" includes additionally any parent, affiliate, or subsidiary of the borrower.

(b) *Inspections.* The lender will notify FmHA of any scheduled field inspections during construction and after issuance of the Loan Note Guarantee or Contract of Guarantee. FmHA may attend such field inspections. Any inspections or review conducted by FmHA, including those with the lender, are for the benefit of FmHA only and not for other parties of interest. FmHA inspections do not relieve any parties of interest of their responsibilities to conduct necessary inspections, nor can these parties rely on FmHA's inspections in any manner whatsoever.

(c) *Execution of form.* The lender has executed and delivered to FmHA Form FmHA 449–35 or Form FmHA 1980–38.

* * * * *

11. Section 1980.61 is amended by redesignating paragraphs (c), (d), (e), (f), and (g) as (d), (e), (f), (g), and (h) respectively, by adding a new paragraph (c) and by revising paragraphs (a), and newly designated paragraphs (d), (e), (f), (g), and (h) to read as follows:

§ 1980.61 Issuance of Lender's Agreement, Loan Note Guarantee, Contract of Guarantee and Assignment Guarantee Agreement.

(a) *Lender's Agreement.* If FmHA finds that all requirements have been met, the lender and FmHA will execute Form FmHA 449–35 or Form FmHA 1980–38. The original will be delivered to FmHA and a signed duplicate original retained by the lender. There will be a Form FmHA 449–35, or Form FmHA 1980–38 executed for all loans and lines of credit guaranteed by FmHA. The Lender's Agreement will be executed not later than the time the Loan Note Guarantee or Contract of Guarantee is signed and FmHA receives the guarantee fee.

* * * * *

(c) *Contract of Guarantee cases.* Upon receipt of the Form FmHA 1980–38 and after all requirements have been met, FmHA will execute Form FmHA 1980–27. An original will be provided to the lender and attached to the line of credit agreement. A conformed copy with a copy of the line of credit agreement will be retained by FmHA.

(d) *Assignment Guarantee Agreement.* In the event the lender assigns the guaranteed portion of the loan to a holder(s) in accordance with the provisions of the applicable subpart, the lender, holder, and FmHA will execute Form FmHA 449–36. The original of the agreement(s) will be provided to the holder with conformed copy(s) to the lender and FmHA. If the lender desires to assign a part(s) of the guaranteed loan to a holder(s), an Assignment Guarantee Agreement will be executed for each assigned portion. Attached to the Assignment Agreement will be a copy of the borrower's note(s) and a copy of the Loan Note Guarantee. Line of credit agreements evidencing advances made under lines of credit will not be sold or assigned except as provided in paragraph III of Form FmHA 1980–38.

(e) *Refusal to execute contract.* If FmHA determines that it cannot execute the Loan Note Guarantee or Contract of Guarantee because all requirements have not been met, it will promptly inform the lender on Form FmHA 449–13, "Denial Letter," of the reasons, and give the lender a reasonable period within which to satisfy FmHA objections. If the lender writes FmHA within the period allowed requesting additional time to satisfy the objections, FmHA may, in writing, grant such additional time as it considers necessary and reasonable under the circumstances. If the lender satisfies the objections within the time allowed, the guarantee will be issued.

(f) *Cancellation of obligations.* If the conditions for the loan or line of credit are rejected or cannot be met after completion of any appeal, FmHA will prepare and submit to the Finance Office, Form FmHA 1940–10, "Cancellation of U.S. Treasury Check and/or Obligation."

(g) *Payment of guarantee fee.* The lender will prepare and deliver a Form FmHA 1980–19, "Guaranteed Loan Closing Report," for each loan or line of credit to be guaranteed and deliver the guarantee fee to the FmHA representative who concurrently delivers the Loan Note Guarantee(s) or Contract of Guarantee.

(h) *Authorized FmHA representatives to execute forms.* State Directors, District Directors, State Program Loan Chiefs, and County Supervisors are authorized to execute the Lender's Agreement (Form FmHA 449–35 or Form FmHA 1980–38), the Loan Note Guarantee, the Contract of Guarantee and/or the Assignment Guarantee Agreement.

12. Section 1980.62 is revised to read as follows:

§ 1980.62 Lender's sale or assignment of guaranteed portion of the loan.

Any sale or assignment by the lender of the guaranteed portion of the loan must be accomplished in accordance with the conditions in paragraph III of Form FmHA 449–35. Only guaranteed portions of loans not in payment default as set forth in the terms of the debt instruments may be sold. Should the lender know at the time the loan application is being prepared that it plans to sell or assign any part of the guaranteed portion of the loan as provided in Form FmHA 449–35, the lender will provide this information with the application to FmHA. Line of credit agreements evidencing advances made under lines of credit will *not* be sold or assigned except as provided in paragraph III of Form FmHA 1980–38.

§ 1980.63 [Amended]

13. In § 1980.63, the first sentence is revised to read: "Refer to paragraph X of Form FmHA 449–35 or paragraph X of Form FmHA 1980–38."

14. In § 1980.64, paragraphs (a) and (b) are revised to read as follows:

§ 1980.64 Liquidation.

(a) *Reference.* Refer to paragraph XI of Form FmHA 449–35 or paragraph XI of Form FmHA 1980–38.

(b) *Lender's option.* If a lender has made a loan or line of credit guaranteed by FmHA under previous regulations and the lender concludes that liquidation of the guaranteed loan or line of credit is necessary because of one or more defaults or third party actions that the borrower cannot or will not cure, the lender has the option of liquidate the loan under the provisions of this subpart, or under the provisions of previous regulations. The lender will notify the State Director in writing within 10 days after its decision to liquidate if it desires to proceed under this subpart.

* * * * *

15. Section 1980.65 is revised to read as follows:

§ 1980.65 Protective advances.

Refer to paragraph XII of Form FmHA 449–35, or paragraph XII of Form FmHA 1980–38.

16. Section 1980.66 is revised to read as follows:

§ 1980.66 Additional loans or advances.

Refer to paragraph XIII of Form FmHA 449–35, or paragraph XIII of Form FmHA 1980–38.

17. Section 1980.67 is revised to read as follows:

§ 1980.67 Lender's request to terminate Loan Note Guarantee or Contract of Guarantee.

The lender may request FmHA to terminate the Loan Note Guarantee(s) or the Contract of Guarantee(s) provided the lender holds all the guaranteed portions of the loan. (See paragraph 12 of Form FmHA 449–34, or paragraph 5 of Form FmHA 1980–27.) The lender will provide the County Supervisor with a written notice that the loan(s) or line(s) of credit is paid in full and/or termination of the Loan Note Guarantee(s) or Contract of Guarantee(s) enclosing the original Form FmHA 449–34 or Form FmHA 1980–27 for cancellation. Within 30 days, the County Supervisor will forward a memorandum to the Finance Office through the State Director. The memorandum will indicate that: "the loan(s) (or line of credit) is paid in full," and/or "the Loan Note Guarantee or Contract of Guarantee has been cancelled at the request of the lender."

18. In § 1980.83, paragraph (a) is revised to read as follows:

§ 1980.83 FmHA Forms.

(a) *FmHA forms incorporated in this subpart.* Forms FmHA 449–34, "Loan Note Guarantee," FmHA 449–35, "Lender's Agreement," and FmHA 449–36, "Assignment Guarantee Agreement," are incorporated in this Subpart A, made a part hereof, and appear as Appendices A, B and C in the **Federal Register**. Forms FmHA 1980–27, "Contract of Guarantee (Line of Credit)," FmHA 1980–38 "Lender's Agreement (Line of Credit)" and FmHA 1980–15, "Conditional Commitment for Contract of Guarantee (Line of Credit)," and FmHA 1980–25 "Request for Guarantee (Operating Loan Line of Credit, Emergency Livestock Loan or Economic Emergency Loan)," are incorporated in this Subpart A and are made a part hereof and appear as Appendices D, E, F and G of 7 CFR Part 1980 Subpart A in the **Federal Register**. Copies of the forms may be obtained from any FmHA office.

* * * * *

19. In § 1980.83, in the first sentence of paragraph (b), the words "or Contract of Guarantee" are added after the words "Loan Note Guarantee." In the second sentence of paragraph (b) the words "or line of credit" are added after the words "guaranteed loan."

20. Section 1980.84 is amended by revising the title, paragraphs (a), the introductory text of paragraph (b), paragraph (b)(1)(iv), (b)(1)(v), and the introductory text of Administrative paragraph C. to read as follows:

§ 1980.84 Replacement of loss, theft, destruction, mutilation, or defacement of FmHA Form 449–34, "Loan Note Guarantee," Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)" or FmHA Form 449–36, "Assignment Guarantee Agreement".

(a) *Authorized representative.* Except where the evidence of debt was or is a bearer instrument, the FmHA State Director is authorized on behalf of Farmers Home Administration to issue a replacement Loan Note Guarantee(s), Contract of Guarantee(s) or Assignment Guarantee Agreement(s) which may have been lost, stolen, destroyed, mutilated, or defaced to the Lender or Holder upon receipt of an acceptable certificate of loss and an indemnity bond. After the required documentation has been received, the State Director will consult with the Regional Office of General Counsel to assure that all documents are of legal sufficiency before the reissuance of the Loan Note Guarantee(s), Contract of Guarantee(s) or Assignment Guarantee Agreement(s).

(b) *Requirements.* When a Loan Note Guarantee(s), Contract of Guarantee(s) or Assignment Guarantee Agreement(s) is lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender or holder, the lender will coordinate the activities of the party who seeks the replacement documents and will submit the required documents to the State Director for processing. The requirements for replacement are as follows:

(1) * * *

(iv) Full identification of the Loan Note Guarantee, Contract of Guarantee or Assignment Guarantee Agreement including the name of the borrower, FmHA case number, date of the Loan Note Guarantee, Assignment Guarantee Agreement, or Contract of Guarantee, face amount of the evidence of debt purchased, date of evidence of debt, present balance of the loan or line of credit, percentage of guarantee and if Assignment Guarantee Agreement, the original named holder and the percentage of the guaranteed portion of the loan assigned to that holder. Any existing parts of the document to be replaced should be attached to the certificate.

(v) A full statement of circumstances of the loss, theft, or destruction of the Loan Note Guarantee, Contract of Guarantee or Assignment Guarantee Agreement.

* * * * *

Administrative

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C. If the decision is to reissue Loan Note Guarantee(s), Contract of Guarantee(s), or Assignment Guarantee Agreement(s) the following procedure will be followed:

* * * * *

BILLING CODE 3410–07–M

21. Appendix B—Form FmHA 449–35, "Lender's Agreement" to Subpart A is revised to read as follows:

Position 5

USDA-FmHA
Form FmHA 449-35
(Rev. 9-85)

APPENDIX B

FORM APPROVED
OMB NO. 0575-0024
Expiration Date Avail. On Request

LENDER'S AGREEMENT

Type of Loan: _____ FmHA Loan Ident. No.
Applicable 7 CFR Part 1980 Subpart _____

_____ (Lender) of _____

_____ has made a loan(s) to _____

_____ (Borrower) _____

_____ in the principal amount of $ _____ as evidenced by _____

(include Bond as appropriate) described as follows: _____

The United States of America, acting through Farmers Home Administration (FmHA) has entered into a "Loan Note Guarantee" (Form FmHA 449-34) or has issued a "Conditional Commitment for Guarantee" (Form FmHA 449-14) to enter into a Loan Note Guarantee with the Lender applicable to such loan to participate in a percentage of any loss on the loan not to exceed _____ % of the amount of the principal advance and any interest (including any loan subsidy) thereon. The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan(s) the Lender enters into this agreement.

THE PARTIES AGREE

I. The maximum loss covered under the Loan Note Guarantee will not exceed _____ percent of the principal and accrued interest including any loan subsidy on the above indebtedness.

II. Full Faith and Credit. The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any note which provides for the payment of interest on interest shall not be guaranteed. Any Loan Note Guarantee or Assignment Guarantee Agreement attached to or relating to a note which provides for payment of interest on interest is void.

The Loan Note Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses will be unenforceable by the Lender to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

III. Lender's Sale or Assignment of Guaranteed Loan.

A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of the loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

This report contains certain agreements to provide future reports and information [illegible] to by the Lender in order to obtain the benefit of an FmHA loan guarantee. This is [illegible] pursuant to P. L. 96-511.

1. Assignment. Assign all or part of the guaranteed portion of the loan to one or more Holders by using Form FmHA 449-36, "Assignment Guarantee Agreement." Holder(s), upon written notice to Lender and FmHA, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) thereunder. If this portion is selected, the Lender may not at a later date cause to be issued any additional notes.

2. Multi-Note System. When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA 449-34, "Loan Note Guarantee" attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the Lender and in all cases inure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. At Loan Closing. Provide for no more than 10 notes, unless the Borrower and FmHA agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA will provide the Lender with a Form FmHA 449-34, for each of the notes.

b. After Loan Closing.

(1) Upon written approval by FmHA, the Lender may cause to be issued a series of new notes not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The Borrower agrees and executes the new notes.
(b) The interest rate does not exceed the interest rate in effect when the loan was closed.
(c) The maturity of the loan is not changed.
(d) FmHA will not bear any expenses that may be incurred in reference to such re-issue of notes.
(e) There is adequate collateral securing the note(s).
(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA will issue the appropriate Loan Note Guarantees to be attached to each of the notes then extant in exchange for the original Loan Note Guarantee which will be cancelled by FmHA.

3. Participations.

a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

b. The Lender is required to hold in its own portfolio or retain a minimum of 10% of Farmer Program loans and 5% for Business and Industry Program loans of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan, except for Farmer Program loans, only through participation. However, the Lender will always retain the responsibility for loan servicing and liquidation.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee, and this agreement, and the FmHA program regulations found in the applicable Subpart of Title 7 CFR Part 1980 and to future FmHA program regulations not inconsistent with the express provisions hereof.

C. The Holder(s) upon written notice to the Lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

IV. The Lender agrees loan funds will be used for the purposes authorized in the applicable Subpart of Title 7 CFR Part 1980 and in accordance with the terms of Form FmHA 449-14.

V. The Lender certifies that none of its officers or directors, stockholders or other owners has a substantial financial interest in the borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender.

VI. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, Borrower's business or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee.

VII. Lender certifies that a loan agreement and/or loan instruments concurred in by FmHA has been or will be signed with the Borrower.

VIII. Lender certifies it has paid the required guarantee fee.

IX. Servicing.

A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of FmHA. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds, that any required permits, licenses, or authorizations are obtained from the appropriate regulatory agencies, that the Borrower has obtained contracts through acceptable procurement procedures, that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA and the Borrower of any violations. None of the aforesaid instruments will be altered without FmHA's prior written concurrence. The Lender must service the loan in a reasonable and prudent manner.

2. Receiving all payments on principal and interest (including any loan subsidy) on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized or renewed only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that taxes, assessment or ground rents against or affecting collateral are paid, the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation, insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA, proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to $_____ without written concurrence of FmHA, the Borrower complies with all laws and ordinances applicable to the loan, the collateral and or operating of the farm, business or industry.

6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to FmHA at such time and frequency as required by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

10. Providing FmHA Finance Office with loan status reports semiannually as of June 30 and December 31 on Form FmHA 1980-41, "Guaranteed Loan Status Report."

11. Obtaining from the Borrower periodic financial statements under the following schedule _____

Lender is responsible for analyzing the financial statements, taking any servicing actions and providing copies of statements and record of actions to the FmHA office immediately responsible for the loan.

X. Default.

A. The Lender will notify FmHA when a Borrower is thirty (30) days (90 days for guaranteed rural housing loan) past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980-44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with written concurrence of FmHA will include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s))
2. An additional temporary loan by the Lender to bring the account current.
3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s))
4. Transfer and assumption of the loan in accordance with the applicable Subpart of Title 7 CFR Part 1940
5. Reorganization.
6. Liquidation
7. Subsequent loan guarantees.
8. Changes in interest rates with FmHA's, Lender's, and the Holder's approval, provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan and the type of rate remains the same.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the Borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the Borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

D. If Lender does not repurchase as provided by paragraph C, FmHA will purchase from Holder(s) the unpaid principal balance of the guaranteed portion herein together with accrued interest (including any loan subsidy) to date of repurchase, within 30 days after written demand to FmHA from the Holder(s). The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of original demand letter of the Holder(s) to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of the demand.

The FmHA office serving the Borrower will promptly notify the Lender of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA office servicing the Borrower with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA office servicing the Borrower will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the office servicing the Borrower and State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due the Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee, nor does such purchase waive any of FmHA's rights against Lender, and FmHA will have the right to setoff against Lender all rights inuring to FmHA from the Holder against FmHA's obligation to Lender under the Loan Note Guarantee. To the extent FmHA holds a portion of a loan, loan subsidy will not be paid the Lender.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA repurchases from a Holder, FmHA will pay the Holder only the amounts due the Holder. FmHA will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrower. No servicing fee shall be charged FmHA and no such fee is collectible from FmHA.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

XI. Liquidation. If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows.

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee or the Assignment Guarantee Agreement.

If the Lender does not purchase the guaranteed portion of the loan, FmHA will be notified immediately in writing. FmHA will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA holds any of the guaranteed portion, FmHA will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. Lender's proposed method of liquidation. Within 30 days after the decision to liquidate, the Lender will advise FmHA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA with

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding principal B&I loan balance including accrued interest is less than $200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On B&I loan balances in excess of $200,000 and all other loans regardless of the outstanding principal balance, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. FmHA's response to Lender's liquidation plan. FmHA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such notification from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation plan, negotiations will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation, however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all rights and interests necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. Acceleration. The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. Liquidation Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA any payments received from the Borrower and or pro rata share of liquidation or other proceeds, etc. when FmHA is the holder of a portion of the guaranteed loan using Form FmHA 1980-43, "Lender's Guaranteed Loan Payment to FmHA." When FmHA liquidates, the Lender will be provided with similar reports on request.

E. Determination of Loss and Payment. In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA 449-30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payment will be made in accordance with applicable FmHA regulations.

2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the loan. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared and submitted by the Lender on Form FmHA 449-30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449-30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of payment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. Maximum amount of interest loss payment. Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Loan Note Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest (including any loan subsidy) will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest (including subsidy) will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of accrued interest (including any loan subsidy) payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. Application of FmHA loss payment. The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA 449-30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files at the FmHA Finance Office.

H. Income from collateral. Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. Liquidation costs. Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. Foreclosure. The parties owning the guaranteed portion and unguaranteed portions of the loan will join to institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. Payment. Such loss will be paid by FmHA within 60 days after the review of the accounting of the collateral.

XII. Protective Advances. Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $500. Protective advances include, but are not limited to, advances made for taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XIII. Additional Loans or Advances.

The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

XIV. Future Recovery.

After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XV. Transfer and Assumption Cases.

Refer to the applicable Subpart of Title 7 of CFR Part 1980.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA 449-30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449-30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transferee, will be entered on Form FmHA 449-30, line 13 and 14.

XVI. Other Requirements.

This agreement is subject to all the requirements of the applicable Subpart of Title 7 CFR Part 1980, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA regulations not inconsistent with this agreement.

XVII. Execution of Agreements.

If this agreement is executed prior to the execution of the Loan Note Guarantee, this agreement does not impose any obligation upon FmHA with respect to execution of such contract. FmHA in no way warrants that such a contract has been or will be executed.

XVIII. Notices.

All notices and actions will be initiated through FmHA for _____

(State) with mailing address at the date of this instrument _____

_____

Dated this _____ day of _____, 19__

22. Appendix D—Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)" is added to Subpart A to read as follows:

APPENDIX D

USDA-FmHA
Form FmHA 1980-27
(Rev. 9-85)

CONTRACT OF GUARANTEE
(Line of Credit)

	Type of Loan ☐OL ☐EL or ☐EE
	Case No.
	State
	County
Lender / Lender's IRS Tax No.	Date of Line of Credit Agreement
Lender's Address	Line of Credit Ceiling $
Borrower's Name and Address	

The guaranteed portion of this line of credit is _____ % of the principal balance owed at any one time on advances made within an approved line of credit by the above-named Lender to the above-named Borrower.

In consideration of making advance(s) by the Lender within the line of credit ceiling pursuant to the Line of Credit Agreement, the United States of America acting through the Farmers Home Administration of the United States Department of Agriculture (herein called "FmHA"), pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et. seq.), the Emergency Livestock Credit Act of 1974 (P.L. 93-357), as amended, or the Emergency Agricultural Credit Adjustment Act of 1978 (P.L. 95-334) agrees that in accordance with and subject to the conditions and requirements in this agreement, it will pay to the Lender who holds the line of agreement(s) (and note(s), if any exist) for said advance(s) (or assumption agreement) covered by this contract the lesser of 1. or 2. below.

1. Any loss sustained by such Lender on the guaranteed portion including:
   a. Principal and interest indebtedness as evidenced by said line of credit agreement(s) (and note(s), if any exist) or by assumption agreement(s), and
   b. Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization, including but not limited to, advances for taxes, annual assessments, any ground rents, and hazard or flood insurance premiums affecting the collateral; or
2. The guaranteed principal advances to or assumed by the Borrower under said line of credit agreement(s) (and note(s), if any exist) or assumption agreement(s) and any interest due thereon.

If an Operating Loan Line of Credit is involved, advances under that line of credit must be made within three years from the date of this Contract. Advances made after that date will not be covered by this Contract. If FmHA conducts the liquidation of the line of credit, loss occasioned to a Lender by accruing interest after the date FmHA accepts responsibility for liquidation will not be covered by this Contract of Guarantee. If Lender conducts the liquidation of the line of credit, accruing interest shall be covered by this Contract of Guarantee to date of final settlement when the Lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by FmHA.

CONDITIONS OF GUARANTEE

1. Line of Credit Servicing
Lender will be responsible for servicing the entire line of credit, and Lender will remain mortgagee and/or secured party of record.
2. Priorities
The entire line of credit will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the line of credit. The unguaranteed portion of the line of credit will not be paid first nor given any preference or priority over the guaranteed portion.
3. Full Faith and Credit
The Contract of Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. If the line of credit agreement to which this Contract of Guarantee is attached provides for the payment of interest on interest, this Contract of Guarantee is void. In addition, the Contract of Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.
4 Protective Advances
Protective advances made by Lender pursuant to the regulations will be guaranteed against a percentage of loss to the same extent as provided in this Contract of Guarantee.

5 Custody of Unguaranteed Portion
The Lender may retain or sell the unguaranteed portion of the line of credit only through participation. Participation, as used in this instrument, means the sale of an interest in the line of credit in which the Lender retains the line of credit agreement (and note, if one exists) collateral securing the line of credit, and all responsibility for servicing and liquidation of the line of credit.

6 When Guarantee terminates
This Contract of Guarantee will terminate automatically (a) upon full payment of the guaranteed line of credit; or (b) upon full payment of any loss obligation under this Contract; or (c) upon written notice from the Lender to FmHA that the guarantee will terminate 30 days after the date of notice, provided the Contract is returned to FmHA to be cancelled.

7 Settlement
The amount due under this instrument will be determined and paid as provided in the applicable Subpart of Part 1980 of Title 7 CFR in effect on the date of this instrument.

8. Notices
All notices and actions will be initiated through the FmHA County Supervisor for _____ (County)

_____ (State with mailing address at the date of this instrument

_____
(Date)

UNITED STATES OF AMERICA

FARMERS HOME ADMINISTRATION

By: _____

Title: _____

Assumption Agreement by _____ dated _____, 19__

Assumption Agreement by _____ dated _____, 19__

23. Appendix E—Form FmHA 1980–38, "Lenders Agreement (Line of Credit)" is added to Subpart A to read as follows:

APPENDIX E

USDA-FmHA
Form FmHA 1980-38
(Rev. 9-85)

FORM APPROVED
OMB NO. 0575-0079
Expiration date avail. on request

LENDER'S AGREEMENT
(Line of Credit)

Type of Loan
☐ OL ☐ EL or ☐ EE

FmHA Loan ID No.

Applicable 7 CFR Part 1980, Subpart _____

_____ (Lender) of _____

has established a line of credit to _____ (Borrower) for the fiscal period ending

_____, 19___, for the purpose of _____

_____

in the maximum sum of $ _____ as evidenced by a "Line of Credit Agreement" dated _____, 19___

The United States of America, acting through Farmers Home Administration (FmHA) has entered into a "Contract of Guarantee (Line of Credit)" (Form FmHA 1980-27) or has issued a "Conditional Commitment for Contract of Guarantee (Line of Credit)" (Form FmHA 1980-15) to enter into a Contract of Guarantee with the Lender applicable to such line of credit to participate in a percentage of any loss on the loan advances not to exceed_____ % of the amount of the principal and any accrued interest. The terms of the Contract of Guarantee are controlling. As a condition for obtaining a guarantee of the line of credit advances the Lender enters into this agreement.

THE PARTIES AGREE:

I. The maximum loss covered under the Contract of Guarantee will not exceed _____ percent of the principal and accrued interest owed on any Operating Loan, Emergency Livestock Loan or Economic Emergency Loan advances made within the line of credit ceiling and the terms and conditions of the Contract of Guarantee.

II. Full Faith and Credit.

The Contract of Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. Any line of credit agreement which provides for the payment of interest on interest shall not be guaranteed. Any Contract of Guarantee attached to or relating to the line of credit agreement which provides for the payment of interest on interest is void. The Contract of Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Contract of Guarantee Line of Credit. Negligent servicing is defined as the failure to perform those services which a reasonably prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent Lender would act up to the time of loan maturity or until a final loss is paid.

III. Lender's Sale of Guaranteed Line of Credit by Participation.

A. The Lender may obtain participation in its line of credit under its normal operating procedures. The Lender is required to hold in its own portfolio or retain a minimum of 10 percent of the total guaranteed line of credit amount. The amount required to be retained must be of the unguaranteed portion of the line of credit and cannot be participated to another Lender. The Lender may obtain participation of only the unguaranteed portion of its line of credit in excess of the 10 percent minimum under its normal operations procedures. Participation means a sale of an interest in the line of credit in which the Lender retains the line of credit agreement (and note, if one exists), collateral securing the line of credit, and all responsibility for servicing and liquidation of the line of credit. Participation with a lender by any entity does not make that entity a lender.

B. The Lender may retain or sell any amount of the unguaranteed portion(s) of the line(s) of credit as provided in this section only through participation. However, the Lender cannot participate any amount of the line(s) of credit to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, or owners, or any parent, subsidiary or affiliate. If the Lender desires to sell all or part of the guaranteed portion of the line of credit through participation at or subsequent to execution of the line of credit agreement, such line of credit must not be in default as set forth in the terms of the line of credit agreement(s) (and note(s), if any exist). The Lender will retain the responsibility for servicing and liquidation of the line of credit. Participation with a lender by any entity does not make the entity a holder.

IV. The Lender agrees funds advanced under the line of credit will be used for the purposes authorized in either Subpart B, C or F of Title 7 CFR, Part 1980 as applicable in accordance with the terms of Form FmHA 1980-15.

V. The Lender certifies that none of its officers or directors, stockholders or other owners has a substantial financial interest in the Borrower. The Lender certifies that neither the Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender.

VI. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, the Borrower's business or any parent, subsidiaries, or affiliates since it requested a Contract of Guarantee.

VII. Lender certifies that the Line of Credit Agreement and/or loan instruments concurred in by FmHA has been or will be signed with the Borrower.

VIII. If an Operating Loan line of credit is guaranteed under Subpart B of 7 CFR, Part 1980, Lender certifies it has paid the required guarantee fee.

IX. Servicing.

A. The Lender will service the entire line of credit and will remain mortgagee and/or secured party of record. The entire line of credit will be secured by the same security with equal lien priority of the guaranteed and unguaranteed portions of the line of credit. The unguaranteed portion of a line of credit will not be paid first nor given any preference or priority over the guaranteed portion of the line of credit.

B. It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the line of credit agreement (and note, if one exists), security instruments, and any supplemental agreements. None of the aforesaid instruments will be altered without FmHA's prior written concurrence. The Lender must service the line of credit in a reasonable prudent manner.
2. Receiving all payments on principal and interest on the line of credit advances as they fall due. The line of credit may be reamortized or removed only with FmHA's written concurrence.
3. Inspecting the collateral as often as necessary to properly service the line of credit.
4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.
5. Assuring that: taxes, assessment or ground rents against or affecting collateral are paid; the line of credit and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation; insurance loss payments; condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to $_____ without written concurrence of FmHA; the Borrower complies with all laws and ordinances applicable to the line of credit, the collateral and/or operation of the farm or ranch.
6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such guarantors will be obtained which are not over 60 days old in the case of personal guarantees or over 90 days old in in the case of corporate guarantees. In the case of guarantees secured by collateral, assuring the security is properly maintained.
7. Obtaining the lien coverage and line priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.
8. Assuring that the borrower obtains marketable title to the collateral.
9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the line of credit, except in accordance with FmHA regulations.
10. Providing FmHA Finance Office with loan status reports annually as of December 31 on Form FmHA 1980-41, "Guaranteed Loan Status Report".
11. Obtaining from the Borrower periodic financial statements under the following schedule: _____

_____

Lender is responsible for analyzing the financial statements, taking any servicing actions needed, and providing copies of statements and record of actions to the County Supervisor.

X. Defaults.

A. The Lender will notify FmHA when a Borrower is thirty (30) days past due on a payment and is unlikely to bring its account current within sixty (60) days, or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980-44, "Guaranteed Loan Borrower Default Status". A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with concurrence of FmHA may include but are not limited to any curative actions contained in either Subpart B, C or F as applicable, or liquidation.

B. The Lender will negotiate in good faith in an attempt to resolve any problem and to permit the Borrower to cure a default, where reasonable.

XI Liquidation

If the Lender concludes that liquidation of a guaranteed line of credit account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

A. Lender's proposed method of liquidation. Within 30 days after the decision to liquidate is made, the Lender will advise FmHA of its proposed method of liquidation and will provide FmHA with

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed line of credit agreement(s) and related security instruments.
2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed line of credits.
3. A proposed method making the maximum collection possible on the indebtedness.
4. Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. FmHA's response to Lender's liquidation proposal. FmHA will inform the Lender whether it concurs in the Lender's proposed method of liquidation within 30 days after receipt of such notification from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation proposal, negotiation will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all its rights and interests necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.
2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.
3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. Acceleration. The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. Liquidation. Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs, and additional procedures necessary for successful completion of liquidation. When FmHA liquidates, the Lender will be provided with similar reports on request.

E. Determination of Loss and Payment. In all liquidation cases, a final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA 449-30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final determinations. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payment will be made in accordance with the applicable FmHA regulations.
2. When the Lender is conducting the liquidation, it may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the line of credit. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt. Such estimate will be prepared on Form FmHA 449-30, using the basic formula as provided in the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss Estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss Estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449-30 by the Lender to FmHA.

3. After the Lender has completed liquidation FmHA, upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the Final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the Final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.
4. When the Lender has conducted liquidation and after the Final Report of Loss has been tentatively approved

a. If the loss is greater than the estimated loss payment, FmHA will send the original of the Final Report Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of payment.

5. If FmHA has conducted liquidation, it will provide an accounting and report of loss to the Lender and will pay the Lender in accordance with the Contract of Guarantee.
6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. Maximum amount of interest loss payment. Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Contract of Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of accrued interest payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. Application of FmHA loss payment. The estimated loss payment shall be applied as of the date of such payment. The amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed loan debt. However, such application does not release the Borrower from liability. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied. In all cases a final Form FmHA 449-30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files at the FmHA Finance Office.

H. Income from collateral. Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. Liquidation costs. Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. Payment. Such loss will be paid by FmHA within 60 days after the review of the account of the collateral.

XII Protective advances.

Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $500. Protective advances include, but are not limited to, advances for taxes, annual assessments, ground rent, hazard or flood insurance premiums effecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XIII Additional Loans or Advances.

The Lender will not make additional expenses or new lines of credit or loans without first obtaining the written approval of FmHA even though such expenditures or lines of credit or loans will not be guaranteed.

XIV. Future Recovery.

After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amount in proportion to the percentage of the unguaranteed portion of the loan.

XV. Transfer and Assumption Cases.

Refer to Subpart B, C or F of Title 7 of CFR, Part 1980. If a loss will occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender may file an estimated Report of Loss on Form FmHA 449-30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449-30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accured interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transferee, will be entered on Form FmHA 449-30, lines 13 and 14.

XVI. Other Requirements.

This agreement is subject to all the requirements of either Subpart A, B, C or F of Title 7 CFR, Part 1980 as applicable, and any future amendments of these regulations, or other FmHA regulations, not inconsistent with this agreement.

XVII. Execution of Agreements.

If this agreement is executed prior to the execution of the Contract of Guarantee, this agreement does not impose any obligation upon FmHA with respect to execution of such contract. FmHA in no way warrants that such a contract has been or will be executed.

XVIII. Notices.

All notices and actions will be initiated through the FmHA County Supervisor for _____ (County)

_____ (State with mailing address at the date of this instrument)

_____

Dated this _____ day of _____, 19__.

LENDER

ATTEST _____ SEAL

By _____

Title _____

UNITED STATES OF AMERICA

Department of Agriculture

Farmers Home Administration

By _____

Title _____

24. Appendix F—Form FmHA 1980–15, "Conditional Commitment for (Line of Credit)" is added to Subpart A to read as follows:

USDA-FmHA
Form FmHA 1980-15
(Rev. 9-85)

APPENDIX F FORM APPROVED
OMB NO. 0575-0079
Expiration date avail. on request

CONDITIONAL COMMITMENT FOR CONTRACT OF GUARANTEE (Line of Credit)

	Type of Loan ☐OL ☐EL or ☐EE
	Case No.
	State
TO Lender	County
Lender's Address	Line of Credit Ceiling $
Borrower	Principal Amount of Initial Loan

From an examination of information supplied by the Lender on the above proposed loan, the county committee certification or recommendation, if required, and other relevant information deemed necessary, it appears that the transaction can properly be completed.

Therefore, the United States of America acting through the Farmers Home Administration (FmHA) hereby agrees that, in accordance with applicable provisions of the FmHA regulations published in the Federal Register and related forms, it will execute Form FmHA 1980-27, "Contract of Guarantee (Line of Credit)," subject to the conditions and requirements specified in said regulations and below.

The guarantee fee payable by the Lender to FmHA (for operating loans only) will be the amount as specified in the regulations on the date of this Conditional Commitment. The interest rate for the loan is _____ %. 1/ If a variable rate is used, it must be tied to a base rate which cannot change more often than _____ 2/ and must be published periodically in a financial publication specifically agreed to by the Lender and Borrower.

A Contract of Guarantee will not be issued until the Lender certifies as required in 7 CFR 1980.60 that there has been no adverse change(s) in the Borrower's financial condition, nor any other adverse change in the Borrower's condition during the period of time from FmHA's issuance of the Conditional Commitment for Contract of Guarantee to issuance of the Contract of Guarantee. The Lender's certification must address all adverse changes and be supported by financial statements of the Borrower and its guarantors not more than 60 days old at the time of certification. As used in this paragraph only, the term "Borrower" includes any parent, affiliate, or subsidiary of the Borrower.

This agreement becomes null and void unless the conditions are accepted by the Lender and Borrower within 60 days from date of issuance by FmHA. Any negotiations concerning these conditions must be completed by that time.

Except as set out below, the purposes for which the loan funds will be used and the amounts to be used for such purposes are as set out on the Request for Guarantee. Once this instrument is executed and returned to FmHA, no major change of conditions or approved loan purpose as listed on the Request for Guarantee will be considered.
Additional Conditions and Requirements: 3/

This conditional commitment will expire on _____ 4/ unless the time is extended in writing by FmHA, or upon the Lender's earlier notification to FmHA that it does not desire to obtain an FmHA guarantee.

UNITED STATES OF AMERICA

By _____

Date _____ FmHA: _____
(Title)

Position 2 FmHA 1980-15 (Rev. 9-85)

ACCEPTANCE OR REJECTION OF CONDITIONS

To Farmers Home Administration (FmHA) 5/

The condition(s) of Form FmHA 1980-15 on the other side of this page

1. ☐ are acceptable and the undersigned Lender intends to proceed with the loan transaction and to request issuance of a Contract of Guarantee at the appropriate time.
2. ☐ are acceptable, but for other reasons the undersigned Lender does not desire a Contract of Guarantee.
3. ☐ are not acceptable and for that reason the undersigned Lender does not desire a Contract of Guarantee.
4. ☐ are not acceptable, but would be acceptable if the following changes were made

If block number "1" above is checked:

(a) It is understood that the following information may now be released upon request: Name and address of Applicant, name and address of Lender, amount of loan, and general purpose of the loan.

(b) It is anticipated that the Contract of Guarantee will be requested in approximately _____ days.

_____
(Name of Lender)

By _____
(Signature of Lender)

1/ Insert fixed interest rate or, as authorized by regulations, variable interest rate followed by "V".

2/ Insert the period prescribed in the applicable FmHA regulation.

3/ Insert any additional conditions or requirements in this space or on an attachment referred to in this space; otherwise insert "NONE".

4/ Insert expiration date. (Allow sufficient time for processing and issuance of the Contract of Guarantee.)

5/ Return completed and signed copy of this form to FmHA office from which it was received.

NOTE TO LENDER: Complete and execute the Acceptance or Rejection of Conditions as indicated above on the copy of this form and return it to FmHA.

25. Appendix G—Form FmHA 1980–25, "Request for Guarantee (Operating Loan Line of Credit, Emergency Livestock Loan or Economic Emergency Loan)" is added to Subpart A to read as follows:

APPENDIX G FORM APPROVED
OMB NO. 0575-0079
Expiration date avail. on request

USDA-FmHA
Form FmHA 1980-25
(Rev. 9-85)

REQUEST FOR GUARANTEE
(Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan)

Type of Loan ☐OL ☐EL or ☐EE

Case No.

TO: Farmers Home Administration (FmHA) | State | County

Applicant's Name | Applicant's Address

Lender Requests a Loan Note Guarantee | Lender Requests a Contract of Guarantee for a Line of Credit

Line of Credit Ceiling $ _____

Principal Amount of Loan $ _____ | Principal Amount of Initial Advance $ _____

The undersigned Lender requests issuance of a guarantee in the subject case

THE FOLLOWING INFORMATION AND DOCUMENTS ARE SUBMITTED FOR YOUR CONSIDERATION

1. Copy of Application for Loan with enclosures.
2. Cash flow sheet, if used by Lender
3. Any drawings and specifications for: ☐construction ☐major repairs ☐major land development
4. Appraisal report on any real estate security.
5. Certificates of Lender and Loan Applicant (Emergency Livestock Loan), or Lender's Certification (Guaranteed Economic Emergency Loan).
6. Purposes for which guarantee loan funds will be used and the amounts to be used for such purposes are

PURPOSES	AMOUNTS
	$

7. Interest rate to borrower is _____% per annum.
8. Loan fee payable by loan applicant is _____% of principal amount of loan or $ _____
9. Repayment period for the loan or line of credit is _____ year(s).
10. Proposed loan guarantee is _____% of the principal and interest.
11. Escrow account is required for ☐Taxes ☐Insurance premiums ☐Other *(specify)* _____
12. The undersigned Lender is subject to examination and supervision by

_____
(Insert name of agency of United States or State, or "None")

13. Loan(s) will be ☐made, and/or ☐serviced, by the undersigned's.

☐Main office address _____

☐Branch office _____
(Name of office)

Branch office address _____

☐Agent _____
(Name of Agent)

Agent's address: _____

14. Initial loan is scheduled for repayment _____
Maturity date for line of credit agreement, dates of monthly, annual, or other installments)

15. Late payment charges, if any, are made on the following basis pursuant to a written agreement between the applicant and the undersigned Lender as required by 7 CFR 1980.22: _____

16. Types and amounts of insurance required are

Types	Amounts
	$
	$

List of Required Security Property
(Including That on Hand and to be Acquired)

DESCRIPTION OF PROPERTY

A. ON HAND*	APPRAISED VALUE	AMT. ANY PRIOR LIENS	LOAN EQUITY
	$	$	$
	$	$	$

Appraiser's Certificate on Personal Property

Personal property listed above, if any, was appraised by me at the values set forth opposite the description thereof.

_____ _____
(Date) *(Appraiser)*

B. TO BE ACQUIRED* ESTIMATED VALUE

	$
TOTAL	$

* Quantity and brief description. For example: "Smith farm 160 acres," (based on separate appraisal report) "1 - 1972 John Deere 2520 Tractor," "25 Hereford range cows, 3-6 years."

18 Plan of Operation agreed upon by Lender and loan applicant for a typical operating year

a. PLANNED CROPS, PASTURE, ETC., PRODUCTION AND SALES

CROPS, PASTURE, ETC	ACRES	YIELD PER ACRE	OPERATOR'S SHARE	OPERATOR'S SHARE FOR SALE AMOUNT	OPERATOR'S SHARE FOR SALE VALUE
					$
				TOTAL	$

b. PLANNED LIVESTOCK AND PRODUCTS PRODUCTION AND SALES

KIND	PRODUCTION PER ANIMAL	NUMBER	OPERATOR'S SHARE	OPERATOR'S SHARE FOR SALE AMOUNT	OPERATOR'S SHARE FOR SALE VALUE
					$
				TOTAL	$

19 CASH OPERATING EXPENSES

	TOTAL CREDIT NEEDED	TOTAL PLANNED EXPENSES
Hired Labor	$	$
Machinery Repair	$	$
Interest	$	$
Cash Rent	$	$
Feed	$	$
Seed	$	$
Fertilizer	$	$
Pesticides & Spray Materials	$	$
Livestock Expense	$	$
Machinery Hire	$	$
Fuel and Oil	$	$
Personal Prop. Tax	$	$
Real Estate Taxes	$	$
Water Charges	$	$
Property Insurance	$	$
Auto & Truck Expense (Farm)	$	$
Utilities	$	$
Feeder Livestock (Bought & sold during year)	$	$
Family Living Expenses	$	$
Other	$	$
TOTAL	$	$

20. Financial Summary of Typical Years Operation

A. Livestock Income	$
B. Crop Income	$
C. Other Farm Income	$
D. Off-Farm Income (net)	$
E. Total Gross Income (A+B+C+D)	$
F. Total Cash Expenses (Table 19) -	$
G. Net Cash Income (E minus F)	$
H. Loans and Other Credit	$
I. Interest	$
J. Balance Available for Debt Payment (G+H+I)	$

21. DEBT REPAYMENT

TO WHOM OWED	AMOUNT DUE FIRST YEAR (PRIN. & INT.)	PLAN PRIN. & INT. TO BE PAID	PLAN DATE	PLAN SOURCE OF FUNDS
	$	$		
	$	$		
	$	$		
	$	$		
	$	$		
	$	$		
	$	$		
	$	$		
	$	$		
	$	$		
Income and Social Security Taxes	$	$		
TOTAL	$	$		

22. The loan will be properly closed or line of credit agreement will be properly executed and the required security obtained. The construction, relocation, repairs, or other development will be completed in accordance with approved drawings and specifications.

23. The borrower has marketable title to security property now owned (and will obtain such title to any additional property to be acquired with loan funds), subject only to the instruments securing the loan to be guaranteed and any other exceptions set forth here:

24. Security property now owned (any to be acquired) is considered adequate security for the loan to be guaranteed, or if in adequate state in item 29 of this form, why you believe the borrower's farm or ranch operating plans will permit the borrower to pay the guaranteed loan or line of credit in full within the period specified in item 9 on page one of this form. The security instruments will be properly filed or recorded prior to the issuance of the guarantee; except that if security property is yet to be acquired in a jurisdiction in which an after acquired property clause is not valid, a security instrument covering such property will be obtained as soon as appropriate and legally permissible. Loan funds will be used for FmHA-approved purposes.

25. Proper hazard and any other required insurance will be obtained or is now in effect.

26. Truth in Lending requirements will be met.

27. All Equal Opportunity and Nondiscrimination requirements will be met (or any that cannot yet be met will be met at the appropriate time).

28. If an Operating Loan (Line of Credit) is guaranteed under Subpart B of 7 CFR, Part 1980, a Guarantee Fee Report on Form FmHA 449-19 and a check for the amount of the guarantee will be provided at the time the Contract of Guarantee is issued.

29. The undersigned (a) considers the proposed loan or line of credit to be sound and within the borrower's repayment ability, (b) believes that all applicable requirements in Subparts A, B, C or F of Part 1980, 7 CFR have been or will be met and (c) will not make the loan or advances under the line of credit without an FmHA guarantee.

30. Lender's Planned Loan Servicing.

31. Other Relevant Information

32. From an examination of information supplied by the Lender on the above proposed loan or line of credit, the county committee certification or recommendation and other relevant information deemed necessary, it appears that the transaction can properly be completed.

Therefore, the United States of America acting through the FmHA agrees that, in accordance with applicable provisions of the FmHA regulations published in the Federal Register and related forms, it will execute Form FmHA 1980-27, "Contract of Guarantee (Line of Credit)," or Form FmHA 449-34, "Loan Note Guarantee," on the above loan or line of credit at the time, subject to the conditions and requirements specified in said regulations and Form FmHA 1980-15, "Conditional Commitment for Contract of Guarantee (Line of Credit)," or Form FmHA 449-14, "Conditional Commitment for Guarantee for Guarantee," attached.

If the Contract of Guarantee or Loan Note Guarantee is executed and the guaranteed fee, if any, is paid by the Lender to FmHA, the loan subsidy rate, if any, payable by FmHA to the Lender, and the interest rate payable by the borrower in cases which that rate is limited by statute or is fixed from time to time pursuant to statute, will be those rates in effect on the date of this approval.

Rate payable by borrower _____% per annum.

This approval will expire _____ days from the date hereof unless the time is extended in writing by FmHA, or upon the Lender's earlier notification in writing to FmHA that it does not desire to obtain an FmHA guarantee.

UNITED STATES OF AMERICA

FARMERS HOME ADMINISTRATION

_____ (Date)

BY: _____

TITLE: _____

BILLING CODE 3410-07-C

_____ (Date)

_____ (Name of Lender)

BY: _____

TITLE: _____

_____ (Lender's IRS ID Tax No.)

Subpart B—Farmer Program Loans

26. Section 1980.101 is amended by adding a new paragraph (e) and revising paragraph (a) as follows:

§ 1980.101 Introduction.

(a) *Policy.* This subpart supplemented by Subpart A of this part, contains regulations for making the following Farmer Program loans guaranteed by the Farmers Home Administration (FmHA): Operating (OL) (both loans and lines of credit), Farm Ownership (FO), Soil and Water (SW), Recreation (RL), and Emergency (EM) loans. It is the policy of FmHA to make loans to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap providing the applicant can execute a legal contract. These regulations apply to lenders, holders, borrowers, FmHA personnel, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans. Exhibit A provides policies and procedures for an Approved Lender Program (ALP) for Guaranteed Operating (OL) loans and Guaranteed Farm Ownership (FO) loans. Exhibit B provides policies and procedures for the Guaranteed Debt Adjustment Program (DAP) for Guaranteed Operating (OL) Loans (Loan Note Guarantee cases only) and Guaranteed Farm Ownership (FO) loans. Exhibit C (available in any FmHA office) provides an Application Processing guide for lenders packaging applications under this subpart.

* * * * *

(e) *Type of guarantee*—(1) *Loan Note Guarantee.* Lenders desiring to sell the guaranteed portion of fixed amount and term loans will use the method contained in Subpart A of this part. In accordance with that method, loans may be made by a lender and guaranteed by issuance of Form FmHA 449–34.

(2) *Contract of Guarantee.* (Operating Loans—Line of Credit only.) Lenders desiring a guarantee on a "line of credit" will use the method contained in Subpart A of this part. Line of credit loans are guaranteed by Form FmHA 1980–27. The amount of loan may not exceed the line of credit ceiling set forth in the contract. This procedure will be followed for operating purposes line of credit only (See § 1980.175(c)(2)).

27. In § 1980.106 paragraphs (b)(1) and (b)(4) are revised to read as follows:

§ 1980.106 Abbreviations and definitions.

* * * * *

(b) * * *

(1) *Applicant.* The party applying for a guaranteed loan or line of credit.

* * * * *

(4) *Borrower.* All parties liable for the loan or line of credit or any part thereof.

* * * * *

28. Section 1980.108 is revised to read as follows:

§ 1980.108 General provisions.

(a) *Security, personal and corporate guarantees, and other requirements.* See §§ 1980.170(f), 1980.175(g), 1980.180(g), 1980.185(g) and 1980.190(g) for specific security requirements for the type of loan or line of credit being considered.

(1) *Security.* (i) The lender is responsible for seeing that proper and adequate security is obtained and maintained in existence and of record to protect the interest of the lender, the holder, and FmHA.

(ii) All security must secure the entire loan/line of credit. The lender may not take separate security to secure only that portion of the loan/line of credit not covered by the guarantee. The lender may not require compensating balances or certificates of deposit as a means of eliminating the lender's exposure on the unguaranteed portion of the loan/line of credit. However, compensating balances or certificates of deposit as used in the ordinary course of business are not prohibited.

(2) *Personal and corporate guarantees.* (i) For EM loans and OL loans/lines of credit, personal guarantees from principal members or cooperatives, stockholders of corporations, and all partners of a partnership will be required. For this purpose, any member or stockholder owning or controlling a 20 percent interest in a cooperative or corporation is considered a principal member or stockholder. If no member or stockholder owns or controls at least a 20 percent interest, all members of stockholders will be considered principal members or stockholders. For FO, RL and SW loans, personal guarantees from members holding a majority interest in cooperatives, stockholders of corporations and all partners of a partnership will be required. Guarantees of parent, subsidiary, or affiliated companies may also be required. Guarantees will be required in an amount which reasonably assures repayment of the loan/line of credit and provides sufficient security. If a review of all credit factors indicates the need for additional security, the lender and/or FmHA may require additional personal and corporate guarantees. The lender and/or FmHA also may require that such guarantees be secured.

(ii) The lender may ask FmHA to make an exception to the requirement for personal or entity guarantees if the proposed guarantors cannot provide such guarantees due to other existing contractual obligations or legal restrictions. Applicants will give the lender written evidence of any such obligations or restrictions. FmHA's concurrence is required before an exception is made.

(iii) *Guarantors of applicants will:* (A) In the case of personal guarantees, provide current financial statements (not over 60 days old at time of filing) signed by the guarantors; and disclosing community or homestead property.

(B) In the case of corporate guarantees, provide current financial statements (not over 90 days old at time of filing) certified by an officer of the corporation.

(3) *Other requirements.* (i) The lender must ascertain that there are no claims or liens of laborers, materialmen, contractors, subcontractors, suppliers of machinery and equipment or other parties against the security of the borrower, and that no suits are pending or threatened that would adversely affect the borrower's interest in the collateral when the security instruments are filed and when final loan disbursement is made.

(ii) Appropriate hazard insurance with a standard mortgage clause naming the lender as beneficiary may be required by the lender when deemed necessary.

(iii) When the lender believes it is necessary, life insurance will be required for the individual borrower or the principals and key employees of the entity borrower and will be assigned or pledged to the lender. This life insurance may be decreasing term insurance. A schedule of life insurance available will be included as part of the application.

(iv) Workmen's compensation insurance will be obtained as required by State law.

(b) *Person entitled to veteran's preference.* An application on hand from a veteran as defined in § 1980.106 of this Subpart will be given preference by the lender over an application from a nonveteran on file at the same time when it appears that available funds will be inadequate to meet the needs of all applicants. This applies to FO, SW, RL, OL guaranteed loans, and OL guaranteed lines of credit.

(c) *Determining whether credit elsewhere is available.* The lender will certify on the appropriate forms that the applicant is unable to obtain the requested loan/line of credit without the guarantee from the Government. Property and interests in property owned and income received by an individual applicant, a cooperative and its members as individuals, a corporation and its stockholders as individuals, and a partnership and its members as individuals will be considered and used by an applicant in obtaining credit without a guarantee.

(d) *Relationship between FmHA loans and guaranteed or insured economic emergency loans.* (1) If an applicant qualifies for an EM loan in an authorized area, the applicant's total credit needs will be considered under EM loan authorities.

(2) Borrowers indebted to FmHA and/or an FmHA guaranteed lender for EE loans, may be considered for FO, RL, SW loans, or OL loans/lines of credit provided the total outstanding principal indebtedness to FmHA and/or an FmHA guaranteed lender would not exceed *$650,000.*

Administrative

The County Supervisor will determine whether the lender is requiring the necessary security. If necessary, the assistance of the District Director or Farmer Programs Staff will be obtained.

29. Section 1980.109 is revised to read as follows:

§ 1980.109 Promissory notes, line of credit agreements, security instruments, and financing statements.

(a) *Promissory notes, line of credit agreements, mortgages, and security agreements.* The lender will use its own promissory notes, line of credit agreements, real estate mortgages (including deeds of trust and similar instruments), and security agreements (including chattel mortgages in Louisiana and Puerto Rico), provided such forms do not contain any provisions that are in conflict or are inconsistent with the provisions of this Subpart or Subpart A of this part.

(1) For EM guaranteed loans and OL guaranteed loans/lines of credit, when the applicant is a cooperative or a corporation, the promissory note(s) or line of credit agreement(s) will be executed so as to evidence liability of the entity as well as each principal member or stockholder as an individual except in those unusual circumstances where an exemption is obtained in accordance with § 1980.108 of this subpart. Any member or stockholder owning or controlling a 20 percent interest in a cooperative or corporation is considered a principal member or stockholder. If no member or stockholder owns or controls at least a 20 percent interest, all members or stockholders will be considered principal members or stockholders.

(2) For EM, FO, SW and RL guaranteed loans and OL guaranteed loans/lines of credit, when the applicant is a partnership, the promissory note(s) or line of credit agreement(s) will be executed so as to evidence liability of the partnership as well as each and every partner as an individual except in those unusual circumstances where an exemption is obtained in accordance with § 1980.108 of this Subpart.

(3) For FO, SW and RL guaranteed loans, when the applicant is a cooperative or corporation, the promissory note(s) will be executed so as to evidence liability of the entity as well as liability of member(s) or stockholder(s) holding a majority interest in the entity as individuals except in those unusual circumstances where an exemption is obtained in accordance with § 1980.108 of this subpart.

(b) *Financing statements.* Commercial financing statement forms that comply with State laws and regulations may be used. They must be adapted to meet FmHA requirements by inserting provisions:

(1) Covering the "proceeds and products" of the collateral described, and

(2) Stating that "disposition of the collateral is not authorized hereby."

30. Section 1980.113 is amended by revising the introductory text, paragraphs (a)(1), (d)(3), (d)(5), the introductory text of paragraph (d)(7), and (d)(7)(iii), (d)(7)(ix), (d)(7)(xi), (d)(7)(xiii), (d)(8), (d)(9) and (d)(10) and by adding (a)(6) to read as follows:

§ 1980.113 Receiving and processing applications.

An applicant and/or lender may file either a preliminary or complete application. In either case, the requirements of § 1980.46 of Subpart A of this part must be met. A preliminary application may be used when applicant or lender wants FmHA to determine eligibility, feasibility, or availability of guaranteed authority before filing a complete application. Exhibit C (available in any FmHA office) may be used by lenders for submitting applications under this subpart. The County Supervisor will cooperate with lender and applicant and will provide appropriate assistance in connection with loan/line of credit application processes. The degree of this assistance will be determined by the lender's experience with FmHA guaranteed loan processing, the lender's farm lending experience, and the complexity of the proposal. The lender and applicant should contact the local FmHA office serving the area where the farming operation is conducted for guidance and assistance in preparing the request and for obtaining the guarantee. The County Supervisor will provide copies of all applicable FmHA forms and regulations.

(a) * * *

(1) Form FmHA 449–6, "Application for Guaranteed Loan (Farmer Programs)." For applications to be processed under the Approved Lender feature set out in Exhibit A of this subpart, Form FmHA 449–6 need only reflect the name, address, telephone number, purpose of the loan or line of credit, date and signature of the applicant, provided the information requested on the form is provided on an attached alternative document such as the lender's application form, the FmHA Request for Loan Note Guarantee/Contract of Guarantee, etc.

* * * * *

(6) Any proposed line of credit agreement.

* * * * *

(d) * * *

(3) Form FmHA 449–12, "Request for Loan Note Guarantee" or Form FmHA 1980–25, "Request for Guarantee

(Operating Loan Line of Credit, Emergency Liverstock Loan, or Economic Emergency Loan)."

* * * * *

(5) Form FmHA 440–32, "Request for Statement of Debts and Collateral," or similar documentation provided by Approved Lenders.

* * * * *

(7) Proposed loan agreements or line of credit agreements when a Contract of Guarantee is requested, between the applicant and lender. (See paragraph VII of Form FmHA 449–35, "Lender's Agreement" or paragraph VII of Form FmHA 1980–38, "Lender's Agreement.") Loan Agreements or Line of Credit Agreements will include at least the following:

* * * * *

(iii) A list of security for the loan/line of credit and plans for at least an annual accounting for security.

* * * * *

(ix) Maximum debt to asset ratio.

* * * * *

(xi) Purposes for which loan funds or funds advanced under the line of credit will be used.

* * * * *

(xiii) The plan for repayment, reamortization or rescheduling of the loan or line of credit.

(8) Any readily obtainable financial information for the past 3 years. Production history and operation forecast must also be provided by lender and/or applicant. This will indicate a production history (up to 5 years), current financial condition; projected production, income and expenses; and loan/line of credit repayment plan. Forms ordinarily used by the lender or Form FmHA 431–2, "Farm and Home Plan," Form FmHA 431–1, "Long-Time Farm and Home Plan," or Form FmHA 424–1, "Development Plan," may be used, or other similar plans of operation acceptable to FmHA.

(i) Lenders will use the following sources of price information to develop operation forecast projections:

(A) Futures market price less the recognized basis points for the area, document by date, location, time and degree of use.

(B) Government loan rates, i.e., ASCS target prices.

(C) Published current market prices.

(D) The negotiated price in any forward contract.

(E) Prices developed by the state land grant university for the time crop sale.

(F) For specialty crops, the average of three previous years' prices, *only* if the above data is not available.

(ii) Crop yields will be estimated in the following priority of information available, or in a combination of information if complete information is not available for each category. Estimated crop yields will be based on the applicant's accurate 5 year average, historical production yields if available, ASCS Proven or Established yields, or Statistical Reporting Service county averages. When these sources of information are not available, then yields published by the State land grant university or recognized industry averages for the area may be used.

(9) *Appraisals*—(i) *Appraisal Report.* (A) Real estate or chattel property that will serve as collateral for a loan/line of credit will be appraised by a qualified appraiser selected by the lender. The lender is responsible for determining that appraisers have the necessary qualifications and experience to make appraisals. If the lender has any questions in this regard, FmHA should be consulted before an appraisal is made. Appraisal reports may be on forms approved by the lender and/or Form FmHA 422–1, "Appraisal Report Farm Tract," and Form FmHA 440–21, "Appraisal of Chattel Property."

(B) A real estate appraisal report will be based on at least two comparable sales made within two years. If the real estate has been appraised by FmHA or by a qualified appraiser within the last three years and if no significant changes in the market value of real estate have occurred in the area within the three-year period, a new appraisal does not have to be made.

(C) A *current* chattel appraisal is required when chattels are taken as security.

(ii) *Appraiser Qualifications.* The lender is responsible for substantiating the appraiser's qualifications. At FmHA's request the lender will provide documentation of the appraiser's qualifications. The appraiser completing the report must meet at least *one* of the following qualifications:

(A) Certification by a National or State appraisal society.

(B) If a certified appraiser is not available, the lender may use other qualified appraisers if the lender can establish that the appraiser meets the criteria for certification in a National or State appraisal society.

(C) The appraiser has recent, relevant, documented appraisal experience or training, or other factors clearly establish the appraiser's qualifications.

10. The lender's plan for servicing the loan/line of credit and providing management assistance to the borrower, including the steps necessary to see that the requirements of the loan agreement are met.

* * * * *

31. Section 1980.114 is amended by revising the introductory text and adding paragraph (c) before the Administrative text to read as follows:

§ 1980.114 FmHA evaluation of applications.

When the County Supervisor receives a complete application, the proper independent investigations, inspections, and appraisal reviews will be made to determine whether the applicant is eligible, whether the proposed loan/line of credit is for authorized purposes, whether there is reasonable assurance of repayment ability and whether there is sufficient collateral and equity. The determinations will be recorded on Form FmHA 449–23, "Guaranteed Loan Evaluation." This evaluation is for the benefit of FmHA and not the lender. The County Supervisor will notify participants in the Approved Lender Program within 3 working days whether an application submitted is complete. Non-approved lenders will be advised on the completeness of applications within 14 working days. This requirement is contingent upon the availability of a County Supervisor during the prescribed time frame, and employment ceilings affecting FmHA.

* * * * *

(c) *Evaluation for insured loan assistance.* Upon written request by a lender and/or borrower, guaranteed loan/line of credit applications will be reviewed for FmHA insured loan assistance, consistent with the appropriate insured loan regulation.

* * * * *

32. Section 1980.115 is amended by adding Administrative paragraph B.4 and revising Administrative paragraphs A, B.1, B.2 and B.3 to read as follows:

§ 1980.115 County committee review.

* * * * *

Administrative

A. *After County Committee certification is obtained, the County Supervisor will:*

1. Prepare Form FmHA 449–14, "Conditional Commitment for Guarantee" or Form FmHA 1980–15, "Conditional Commitment for Contract of Guarantee (Line of Credit)." The loan subsidy rate will be indicated on Form FmHA 449–14 for EM loss loans. If the loan/line of credit is within the County Supervisor's approval authority, any special conditions of approval will be listed in the space provided on the form, including requirements for security, improved management practices and the type and frequency of financial reports required by FmHA but not required by the lender. An attachment to the form may be used if

necessary. Form FmHA 449–14 or Form FmHA 1980–15 will be executed immediately and properly distributed if the loan/line of credit is within the County Supervisor's approval authority.

2. Prepare Form FmHA 1940–1, "Request for Obligation of Funds," and, for initial loans/lines of credit only, Form FmHA 1980–50, "Add, Delete, or Change Guaranteed Loan Borrower Information," in accordance with the FMI. If the loan/line of credit is within the County Supervisor's approval authority, execute Form FmHA 1940–1 and distribute the copies in accordance with the FMI. The Finance Office will obligate funds and notify the County Supervisor by forwarding the original and one copy of Form FmHA 440–57, "Acknowledgement of Obligated Funds/Check Request."

3. Forward the docket to the appropriate approval official if the loan/line of credit is not within the County Supervisor's approval authority.

B. * * *

1. Set forth in the space provided on Form FmHA 449–14 or Form FmHA 1980–15 any special conditions of approval, including requirements for security, improved management practices, and type and frequency of financial report required by FmHA but not required by the lender. An attachment to the form may be used if necessary. Return Form FmHA 449–14 or FmHA 1980–15 to the County Supervisor for execution and proper distribution.

2. Sign original and one copy of Form FmHA 1940–1 distributing copies in accordance with the FMI, making sure the lender receives a signed copy.

3. Forward the docket to the National Office for approval when the loan/line of credit exceeds the State Director's approval authority or when the State Director needs assistance in handling any complaints of noncompliance.

4. Approval determinations will be made within 14 working days of County Committee certification for Approved Lenders, and within 30 days of County Committee certification for non-approved lenders. This requirement is contingent upon the availability of an approval official during the prescribed time frame and employment ceilings affecting FmHA.

33. Section 1980.116 is revised to read as follows:

§ 1980.116 Review of requirements.

The lender and applicant, after reviewing approval conditions and security requirements as set forth in Form FmHA 449–14 or Form FmHA 1980–15, will complete and execute the "Acceptance or Rejection of Conditions" and return a copy to the County Supervisor. If the conditions cannot be met, the lender and applicant may propose alternatives to the County Supervisor. These alternatives will be considered and the lender will be advised of FmHA's decision to accept or reject the alternatives. If accepted, Form FmHA 449–14 or Form FmHA 1980–15 will be so revised.

34. Section 1980.117 is amended by revising the title of that section and Administrative paragraphs A and D to read as follows:

§ 1980.117 Conditions precedent to issuance of the Loan Note Guarantee or Contract of Guarantee.

* * * * *

Administrative

A. Consult with the lender and applicant concerning any changes made to the initially issued or revised Form FmHA 449–14 or Form FmHA 1980–15. A copy of Form FmHA 449–14 or Form FmHA 1980–15 and any amendments will be included in the file.

* * * * *

D. Review basic credit requirements of all loans/lines of credit.

* * * * *

35. Section 1980.118 is revised to read as follows:

§ 1980.118 Issuance of Lender's Agreement, Loan Note Guarantee, Contract of Guarantee, and Assignment Guarantee Agreement.

(a) See § 1980.61 of Subpart A of this part.

(b) A guaranteed portion of the loan may not be sold by the lender until at least an equal amount of guaranteed loan funds have been disbursed to the borrower. The guaranteed portion of a line of credit will never be sold or assigned by the lender except as provided in paragraph III of Form FmHA 1980–38.

(c) The amount to be entered in the blank in paragraph IX(C)(5) of Form FmHA 449–35 or paragraph IX(C)(5) of Form FmHA 1980–38 for a loan secured by chattels will be the lesser of $10,000 or 20 percent of the loan/line of credit for OL loan/line of credit purposes and the lesser of $25,000 or 20 percent of loan for EM loan purposes.

(d) Paragraph IX(C)(10) of Form FmHA 449–35 will be changed by striking the word "semiannually," inserting the word "annually" in its place and eliminating the words "and June 30."

Administrative

A. *Section § 1980.61(a).* The original Form FmHA 449–35 or Form FmHA 1980–38 will be kept in the County Office.

B. *Section § 1980.61(b)(1).* Copy(ies) of the Loan Note Guarantee(s) or Contract of Guarantee(s) will be kept in the County Office. Additional copy(ies) may be retained by the State Office. Copies of all issued Loan Note Guarantees or Contract of Guarantee(s) will be kept in the file.

C. *Section § 1980.61(b)(3).* For reporting purposes where multinotes are issued, the loan will be counted as one loan regardless of the number of notes issued.

§ 1980.119 [Reserved]

36. Section 1980.119 is removed.

§ 1980.122 [Amended]

37. Section 1980.122 is amended by adding the words, "or Form FmHA 1980–38," after the words, "Form FmHA 449–35" in the third sentence.

38. In § 1980.123 paragraph (c), the introductory text of paragraph (d), paragraphs (f), (g), (h)(2), (m), (n) and (o), Administrative paragraphs A.2, A.3., and B. are revised to read as follows:

§ 1980.123 Transfer and assumption of Farmer Program Loans.

* * * * *

(c) Available transfer and assumption options to eligible applicants include transferring the *total* indebtedness to another borrower on the same terms, or on different terms not to exceed those terms for which an initial loan/line of credit can be made.

(d) In any transfer and assumption case, the transferor, including any guarantor(s), may be released from liability by the lender with FmHA written concurrence only when the value of the collateral being transferred is at least equal to the amount of the loan or the line of credit ceiling for Contracts of Guarantee. If the transfer is for less than this:

* * * * *

(f) The lender is responsible for getting an appraisal of the fair market value of all the collateral securing the loan/line of credit. Subject to the approval of the transferor and transferee, an appraisal can be made by either independent fee appraisers or qualified appraisers on the lender's staff. Appraisers must meet the qualifications outlined in § 1980.133(d)(9)(ii) of this subpart. The appraisal report fee and other related costs will be paid by the transferor and transferee, as they agree.

(g) The market value of the security being acquired by the transferee, plus any additional security the transferee proposes to give, must be adequate to the balance of the total guaranteed loan/line of credit ceiling for Contracts of Guarantee, plus any prior liens.

(h) * * *

(2) Any downpayment that is made by the transferee to the transferor does not suspend the transferee's obligation to continue to make the guaranteed loan/line of credit payments as they come due under the terms of the assumption.

* * * * *

(m) The assumption agreement may change loan terms and/or interest rates

only if a new Loan Note Guarantee or Contract of Guarantee will be executed.

(n) In the case of a transfer and assumption at the same rates and terms, the lender must give any holder(s) notice of the transfer and notice that future payments will be made under a different name and case number. It is the lender's responsibility to see that the transfer and assumption is noted on all originals of the Loan Note Guarantee or Contract of Guarantee. The lender must provide FmHA with a copy of the transfer and assumption agreement.

(o) Before allowing a transfer and assumption at *different* rates and terms, the lender must consult with any holder(s). If the holder(s) consents in writing to the transfer, the lender must provide FmHA with a copy of the transfer and assumption agreement and must note the transfer and assumption on all originals of the Loan Note Guarantee or Contract of Guarantee.

* * * * *

Administrative

A. Loan approval official may consent:

1. * * *

2. To the release of the transferor and guarantor(s) from liability on the loan or line of credit agreement. The approval official will notify the lender and the appropriate parties of the decision in writing.

3. To any changes in the loan or line of credit terms and/or interest rates provided the holder(s), if any, and lender agree.

B. The Loan Note Guarantee or Contract of Guarantee will be endorsed in the space provided on the form.

* * * * *

39. In § 1980.124 paragraphs (b), (d), (e), and (f) are revised as follows:

§ 1980.124 Consolidation, rescheduling, reamortizing, and deferral.

* * * * *

(b) *Consolidation and rescheduling.* (1) The term "consolidate" means to combine the outstanding principal and interest balances of two or more EM loans *made for operating loan (Subtitle B) purposes* or two or more OL loans.

(2) The term "reschedule" means to rewrite the rates and/or terms of a single Promissory Note or Line of Credit Agreement which acknowledges indebtedness for a loan made for operating purposes (EM or OL loan/line of credit).

(3) EM loans made for operating loan purposes may be consolidated only with other EM loans made for operating loan purposes, including EM loans for annual operating purposes and EM major adjustment loans for operating (Subtitle B) purposes. Whenever a subsequent EM loan for operating purposes is approved, it may be consolidated with all outstanding EM loans for operating purposes into a single new note. OL Loan Note Guarantee loans may be consolidated only with other OL Loan Note Guarantee loans.

(4) An EM loan made for operating loan purposes or an OL loan/line of credit may be rescheduled when it is in the best interest of the borrower and the lender to do so.

(5) EM loans for actual losses, EM major adjustment loans for real estate purposes and OL loans secured by real estate and OL Contract of Guarantee lines of credit will *not* be consolidated. When special circumstances exist and an EM loan is scheduled to be repaid over a period of more than seven years, rescheduling will *not* take place (see § 1980.170(e)(2)(i)(A) of this subpart).

(6) There is no limit on the number of times a consolidation or rescheduling action may take place.

(7) The interest rate for a consolidated or rescheduled EM loan for operating purposes will be the current rate established by the Secretary of Agriculture for similar type loans in effect at the time of the action. This information is available from any FmHA office (See FmHA Instruction 440.1, Exhibit B).

(8) The interest rate for a consolidated OL loan or rescheduled OL loan/line of credit will be the negotiated rate agreed upon by the lender and the borrower subject to the limitations set out in § 1980.175(e) of this Subpart.

(9) The new note or line of credit agreement which exists after a consolidation or rescheduling occurs must be repaid over a period *not to exceed fifteen years for Loan Note Guarantee(s) or seven years for Contract of Guarantee(s)* from the date of the action, unless the new note evidences a loan made solely for recreation and/or nonfarm enterprise purposes, in which case it must be repaid over a period not to exceed seven years from the date of the action.

(10) When a consolidation occurs, a new Form FmHA 449–34 will be executed.

* * * * *

(d) *Deferral.* The term "defer" means to postpone the payment of interest and/or principal on an FO, SW, RL, OL or EM loan or OL line of credit. Principal may be deferred in whole or in part. Interest may be deferred only in part. A partial payment of interest will be required during the deferment period.

(1) Deferred interest will not be capitalized.

(2) Payments may be deferred for no more than three years, but in no case will the deferral period extend beyond the final due date of the note.

(3) The lender must determine that scheduled payments cannot be made for reasons beyond the borrower's control and must also determine that there are reasonable prospects that the borrower will be able to resume full payments at the end of the deferral period.

(e) The new note or line of credit agreement will not increase the amount of principal which the borrower would have been required to pay if the consolidation, rescheduling or reamortization had not been made.

(f) The new note or line of credit agreement will describe the note(s) or line of credit agreement(s) being consolidated, deferred, reamortized or rescheduled and will state that the indebtedness evidenced by such note(s) or line of credit agreement(s) is *not* satisfied. The original note(s) or line of credit agreement(s) will be retained for identification purposes.

* * * * *

40. Section 1980.130 is amended by revising the introductory text and paragraphs Administrative paragraphs B.1, B.2, B.4, B.6, C.1, D.1, D.2, D.3, and D.5 to read as follows:

§ 1980.130 Loan servicing.

The lender is responsible for loan servicing as required by paragraph IX of Form FmHA 449–35 or paragraph IX of Form FmHA 1980–38.

Administrative

* * * * *

B. * * *

1. Make timely investigations during acquisition and development and at least annually thereafter to determine whether any security that was to be acquired or constructed after issuance of the Loan Note Guarantee or Contract of Guarantee has been acquired or constructed, and whether the guaranteed loan/line of credit is being properly serviced. If a problem develops the County Supervisor will promptly contact the lender to resolve it.

2. Review all of the borrower's financial statements furnished by the lender and remind the lender of its servicing responsibilities required in paragraph IX of Form FmHA 449–35, or paragraph IX of Form FmHA 1980–38 when deficiencies are noted.

* * * * *

4. Take the action required in paragraph X of Form FmHA 449–35 or paragraph X of Form FmHA 1980–38.

* * * * *

6. Submit to the Finance Office immediately after December 31 of each year, the lender's statement required in paragraph IX C 10 of Form FmHA 1980–38 or paragraph IX C 10 of Form FmHA 449–35 as modified by requirements set out in § 1980.118(d) of this Subpart, reflecting the unpaid principal balances on the loan/or line of credit.

C. * * *

1. Provide guidance and assistance to the County Supervisor in monitoring guaranteed loans/lines of credit.

* * * * *

D. * * *

1. Alterations in the approval conditions which will not prejudice the Government's interest.

2. Any replacement of collateral for the loan/line of credit.

3. All lien coverage and lien priorities on the collateral established by the lender before issuance of the Loan Note Guarantee or Contract of Guarantee.

4. * * *

5. The use of proceeds from the disposition of collateral complying with the provisions of paragraph IX of Form FmHA 449–35, or paragraph IX of Form FmHA 1980–38.

41. Section 1980.136 is revised to read as follow:

§ 1980.136 Protective advances.

It is not intended that protective advances be made in lieu of additional loans. See paragraph XII of Form FmHA 449–35 or paragraph XII of Form FmHA 1980–38.

Administrative

The County Supervisor is authorized, under paragraph XII of Form FmHA 449–35 or paragraph XII of Form FmHA 1980–38 to approve protective advances in excess of $500 and will consult with the lender on future servicing of the account. To determine if the loan/line of credit is to be continued with the borrower, the borrower's ability to pay the remaining loan/line of credit balance and any future advances in accordance with the existing repayment schedule will be considered.

42. Section 1980.139 is revised to read as follows:

§ 1980.139 Termination of Loan Note Guarantee or Contract of Guarantee.

See paragraph 12 of Form FmHA 449–34, or paragraph 5 of Form FmHA 1980–27.

Administrative

The County Supervisor will advise the Finance Office by memorandum when a Loan Note Guarantee or Contract of Guarantee is terminated.

43. Section 1980.145 is amended by revising paragraphs (a) and Administrative paragraph A. to read as follows:

§ 1980.145 Defaults by borrower.

(a) See paragraph X of Form FmHA 449–35 or paragraph X of Form FmHA 1980–38.

* * * * *

Administrative

A. The County Supervisor will review and distribute Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status," in accordance with the preparation instructions in the FMI upon receipt of the lender's default notification in accordance with paragraph X A of Form FmHA 449–35, or paragraph X A of Form FmHA 1980–38. The County Supervisor will coordinate and process any request for FmHA to purchase (as outlined in paragraph X D of Form FmHA 449–35) when the holder(s) is located in close proximity to the local lender. If any holder is located outside the area, the State Director will designate an employee to handle the repurchase arrangements. If the employee is not the County Supervisor, the County Supervisor will be notified of the transaction.

* * * * *

44. Section 1980.146 is revised to read as follows:

§ 1980.146 Liquidation.

(a) *General.* The general requirements for liquidating a guaranteed Farmer Program loan/line of credit are set out in § 1980.64 of Subpart A of this part and in paragraph XI of Form FmHA 449–35 or paragraph XI of Form FmHA 1980–38. The lender may use any method of liquidation customary to the farm lending industry so long as the method will result in the maximum collection possible on the debt. All liquidations must receive prior concurrence by the appropriate FmHA official. Estimated or final loss claims will be submitted using Form FmHA 449–30, "Loan Note Guarantee Report of Loss," along with the required supporting documentation set out in the instructions for preparing the form.

(b) *Estimated loss payments.* (1) Estimated loss payments will be made after the lender has submitted a liquidation plan that has been approved by the County Supervisor for loss payments up to $55,000, or the State Director for loss payments in excess of $55,000. Estimated loss payments will be inserted under "Amount Due Lender" on Form FmHA 449–30. The Director, Finance Office will forward loss payment checks within 30 days of receipt of request.

(2) If the actual loss is less than the estimated loss payment, the lender will reimburse FmHA for the overpayment plus interest at the note or line of credit agreement rate from the point of initial check issuance. Variable interest notes or line of credit agreements will bear interest at the average note or line of credit agreement rate paid during the loan/line of credit term.

(c) *Allowable liquidation costs.* In the preparation of a liquidation plan, reasonable liquidation costs will be allowed. Reasonable is defined as the prevailing rate charged in the area for like services. Liquidation costs are paid from the sale of collateral when the lender has conducted the liquidation. Therefore, if liquidation never occurs or if a liquidation is conducted by someone other than the lender (a bankruptcy trustee, for example), there can be no allowable liquidation costs.

(1) *In-house expenses.* In-house expenses of the lender are *not allowable* costs under a liquidation plan. In-house expenses include, but are not limited to, employee salaries, staff lawyers, travel and overhead.

(2) *Appraisals.* If an appraisal is made and the fee is shared by FmHA and the lender is accordance with Paragraph XI A 4 of Form FmHA 449–35 or Paragraph XI A 4 of Form FmHA 1980–38, this is an allowable liquidation cost. Both the lender and FmHA recover this cost from the first collateral sales proceeds received, each taking half of the proceeds until the cost of the appraisal is recovered.

Administrative

A. *Meetings.* The County Supervisor will meet with the lender when the lender or FmHA determines that liquidation is necessary and will inform the District Director and the State Director of the results.

B. *Form FmHA 449–35, paragraph XI B or paragraph XI B of Form FmHA 1980–38.* FmHA will exercise the option to liquidate only when there is reason to believe the lender's liquidation plan is not likely to provide for a reasonably adequate recovery. The County Supervisor will approve lender liquidation plans or exercise the FmHA option to liquidate. The District Director or State Office may be consulted on complex cases for advice if necessary. When such a decision is made, submit Form FmHA 1980–45, "Notice of Liquidation Responsibility," to the Finance Office.

C. *FmHA 449–35, paragraph XI D or paragraph XI D of Form FmHA 1980–38.* County Supervisors are responsible for seeing that the lender complies with the requirements of Paragraph XI D. The County Supervisor will accept or reject the accounting reports as submitted by the lender and will obtain the advice of the District Director or State Office when necessary. When FmHA liquidates the security, the County Supervisor will submit these reports to the lender and will send copies to the District Director and the State Office.

D. *Form FmHA 449–35, paragraph XI E 2 or paragraph XI E 2 of Form FmHA 1980–38.* County Supervisors are authorized to accept Report of Estimated Loss or Final Loss Payment determinations on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," in those cases where the loss payment will not exceed $55,000. The State Director is authorized to accept the determinations in all other cases. A copy of the form will be given to the District Director. The State Director will submit Form FmHA 449–30 to the Finance Office for payment of any losses. The Finance Office will forward loss payment checks within 10 days of receipt of the request to the County Supervisor for delivery to lender.

E. *Form FmHA 449–35, paragraph XI E 3 or paragraph XI E 3 of Form FmHA 1980–38.* Final loss payments will be made within 60 days after the review of the accounting of the collateral. These payments will be reduced if necessary after considering the Conditions of Guarantee in Form FmHA 449–34 or Form FmHA 1980–27. State Directors are responsible for seeing that such reviews are accomplished in time to be evaluated and accepted or otherwise resolved within the 60-day period. The County Supervisor may conduct such reviews when the loss payment does not exceed $55,000. The State Director will conduct all other reviews. The State Director may request National Office assistance is conducting any review.

44a. Section 1980–147 is revised to read as follows:

§ 1980.147 Graduation.

There is no graduation requirement for guaranteed loans/lines of credit.

45. Section 1980.153 is amended by revising the introductory text to read as follows:

§ 1980.153 FmHA forms.

See § 1980.83 of Subpart A of this part and Exhibit C (available in any FmHA office) of this subpart.

* * * * *

§ 1980.170 [Temporarily suspended]

46. Section 1980.170 of Subpart B of Part 1980 relating to guaranteed EM loans continues to be suspended. Accordingly, authority to approve guaranteed EM loans continues to be suspended.

47. Section 1980.175 is amended by revising paragraphs (c), (d), and (e), revising the title of paragraph (f), revising and redesignating paragraphs (g) as (h) and (h) and (i) respectively, and adding a new paragraph (g) to read as follows:

§ 1980.175 Operating loans.

* * * * *

(c) *Loan purposes*—(1) *Loan Note Guarantee.* Loans may be made for farm, forestry, recreation and nonfarm enterprises for the following purposes, when such purposes are essential to the operation:

(i) Purchase of farm machinery and equipment, livestock, poultry, fur bearing and other farm animals, fish, worms, birds, bees, tools, and inventories, or to purchase an individual undivided interest in such items.

(ii) Payment of annual operating expenses.

(iii) Payment of family living expenses.

(iv) Refinancing debt incurred for any authorized operating loan purpose including FmHA insured loans.

(v) Purchase of membership and stock in a farm purchasing, marketing, or service-type cooperative association, including a grazing association.

(vi) Purchase and repair of essential home equipment.

(vii) Purchase of milk base or milk quota with or without cows.

(viii) Not more than $7,500 in a fiscal year for real estate improvements or repairs. The following determinations must be made by the lender before a guaranteed OL loan is made for real estate improvement:

(A) Loans will not be needed year after year for this purpose.

(B) The applicant owns the farm or has tenure arrangements, including a compensation agreement, sufficient to obtain a reasonable return on the investment.

(ix) Payments to a creditor. In any one year, OL funds used to make these payments cannot exceed 20 percent of the appraised market value of the essential farm and nonfarm equipment and livestock under a prior lien to that creditor, or 20 percent of the amount owed to such creditor, whichever is less.

(x) Purchase of a franchise, contract, or privilege when necessary to the operation of the planned enterprise.

(xi) Partial payment for the purchase and construction of crop, storage and drying facilities when the Commodity Credit Corporation, through the Agricultural Stabilization and Conservation Service (ASCS), is providing a part of the credit under the Commodity Credit Corporation Farm Storage and Drying Equipment Loan Program.

(2) *Contract of Guarantee—Line of Credit.* Lines of credit may be advanced for farm, forestry, recreation, and nonfarm enterprises for the following purposes when such purposes are essential to the operation:

(i) Purchase foundation livestock replacements.

(ii) Payment of annual operating expenses, which may include the purchase of feeder animals.

(d) *Loan limitations.* (1) The total outstanding guaranteed OL principal balance may not exceed $400,000 at loan closing. The amount of principal and interest outstanding at any one time on a guaranteed line of credit must never exceed the ceiling set out on the Contract of Guarantee.

(2) Loans may not be made for the purchase of real estate, making principal payments on real estate, or refinancing any debts incurred for the purchase of real estate. In addition, loans may not be made to pay land lease costs under any program other than cash rent. Guaranteed lines of credit *will not* be used for capital expenditures except foundation livestock replacements.

(3) *Multiple Guarantees.* More than one Loan Note Guarantee or Contract of Guarantee may be executed with the same or different lenders to a borrower so long as each loan/line of credit is secured with separate collateral that is clearly identified. Total Loans or line of credit ceiling must not exceed $400,000 at any time.

(e) *Interest rates.* The interest rate will be a fixed or variable rate agreed upon by the borrower and the lender. The lender may charge a rate not to exceed one percent (1%) above the rate the lender charges its average farm customer. If a variable rate is used, it must be tied to a base rate published periodically in a financial publication specifically agreed to by the lender and borrower. Variable rates may change according to the normal practices of the lender for its average farm customers, but frequency of change must be set forth in the loan/line of credit instrument. Average farm customers are those conventional farm borrowers who are required to pledge their crops, livestock and other chattel and real estate security for the loan. This does not include those high risk farmers with limited security and management ability that are generally charged a higher interest rate by conventional agricultural lenders. Also, this does not include those low risk farm customers who obtain financing on a secured or unsecured basis who have as collateral items such as savings accounts, time deposits, certificates of deposit, stocks and bonds, and life insurance which they are able to pledge for the loan. At the request of FmHA the lender will provide evidence of the rate charged the average farm customer. Such evidence may consist of average yield data, or documented administrative differential rate schedule formulas used by the lender. Interest will be charged only on the actual amount of funds loaned and for the actual time the loan is outstanding. Interest on protective advances made by the lender to protect the security may be charged at the rate specified in the security instruments.

(f) *Terms—Loan Note Guarantee.*

* * *

(g) *Terms—Contract of Guarantee (Line of Credit).* (1) All advances on a line of credit must be made within three years from the date of the Contract of Guarantee.

(2) All advances must be repaid within seven years from the date of the Contract of Guarantee.

(h) *Security.* Ordinarily, the security must be adequate in the opinion of the

lender to assure repayment of the loan/line of credit. If the security alone is inadequate, then the applicant's repayment ability will also be considered by the lender and FmHA (provided the FmHA approval official's opinion is based on the evaluation set forth in § 1980.114 of this Subpart) in determining whether loan/line of credit should be made. However, when a loan is made for refinancing purposes, the amount refinanced may not exceed the value of the security. The agreement between the lender and FmHA concerning the applicant's repayment ability will be indicated on Form FmHA 449–14. The loan/line of credit must be secured by a first lien on all property or products acquired, or produced with loan funds and by any additional security needed. Any loans made for refinancing when the debt refinanced is secured by real estate or chattels will be secured by a first lien on the property securing the debt which is being refinanced or when the debt refinanced is secured by real estate by a junior lien which is no lower than the lien presently held on the property securing the debt being refinanced, and by any additional security needed. Additional security may consist of the best lien obtainable on chattels, real estate or other property.

* * * * *

48. Section 1980.180 is amended by revising the introductory text of paragraph (d), and paragraph (f)(2), and by adding paragraph (f)(4) to read as follows:

§ 1980.180 Farm Ownership loans.

* * * * *

(d) *Loan purpose.* Loans that are consistent with all federal, State and local environmental quality standards may be made for authorized loan purposes. The following are authorized purposes:

* * * * *

(f) * * *

(2) The interest rate will be a fixed or variable rate agreed upon by the borrower and lender. The lender may charge a rate not to exceed one percent (1%) above the rate the lender charges its average farm customer. If a variable rate is used, it must be tied to a base rate published periodically in a financial publication specifically agreed to by the lender and the borrower. Variable rates may change according to the practices of the lender for its average farm customers, but the frequency of change must be set forth in the loan instrument. Average farm customers are those conventional farm borrowers who are required to pledge their crops, livestock and other chattel and real estate security for the loan. This does not include those high risk farmers with limited security and management ability that are generally charged a higher interest rate by conventional agricultural lenders. Also, this does not include those low risk farm customers who obtain financing on a secured or unsecured basis who have as collateral such items as savings accounts, time deposits, certificates of deposits, stocks and bonds, and life insurance which they are able to pledge for the loan. At the request of FmHA, the lender will provide evidence of the rate charged the average farm customer. Such evidence may consist of average yield data or documented administrative differential rate schedule formulas used by the lender.

* * * * *

(4) At the request of FmHA the lender will provide evidence of the rate charged the average farm customer. Such evidence may consist of average yield data, or documented administrative differential rate schedule formulas used by the lender.

* * * * *

49. Section 1980.185 is amended by revising paragraph (f)(2) to read as follows:

§ 1980.185 Soil and water loans.

* * * * *

(f) * * *

(2) The interest rate will be a fixed or variable rate agreed upon by the borrower and lender. The lender may charge a rate not to exceed one percent (1%) above the rate the lender charges its average farm customers. If a variable rate is used, it must be tied to a base rate published periodically in a publication specifically agreed to by the lender and borrower. Variable rates may change according to the normal practices of the lender for its average farm customers, but the frequency of change must be set forth in the loan instrument. Average farm customers are those conventional farm borrowers who are required to pledge their crops, livestock and other chattel and real estate security for the loan. This does not include those high risk farmers with limited security and management ability that are generally charged a higher interest rate by conventional agricultural lenders. Also, this does not include those low risk farm customers who obtain financing on a secured or unsecured basis who have as collateral such items as savings accounts, time deposits, certificates of deposits, stocks and bonds, and life insurance which they are able to pledge for the loan. At the request of FmHA, the lender will provide evidence of the rate charged the average farm customer. Such evidence may consist of average yield data or documented administrative differential rate schedule formulas used by the lender.

* * * * *

50. Section 1980.190 is amended by revising paragraph (f)(2) to read as follows:

§ 1980.190 Recreation loans.

* * * * *

(f) * * *

(2) The interest rate will be fixed or variable rate agreed upon by the borrower and lender. The lender may charge a rate not to exeed one percent (1%) above the rate the lender charges its average farm customer. If a variable rate is used, it must be tied to a base rate published periodically in a publication specifically agreed to by the lender and borrower. Variable rates may change according to the normal practices of the lender for its average farm customers, but the frequency of change must be set forth in the loan instrument. Average farm customers are those conventional farm borrowers who are required to pledge their crops, livestock and other chattel and real estate security for the loan. This does not include those high risk farmers with limited security and management ability that are generally charged a higher interest rate by conventional agricultural lenders. Also, this does not include those low risk farm customers who obtain financing on a secured or unsecured basis who have as collateral such items as savings accounts, time deposits, certificates of deposit, stocks and bonds, and life insurance which they are able to pledge for the loan. At the request of FmHA the lender will provide evidence of the rate charged the average farm customer. Such evidence may consist of average yield data or documented administrative rate schedule formulas used by the lender.

51. Exhibit A to Subpart B is revised to read as follows:

Approved Lender Program—Farm Ownership and Operating Loans

I. *General.* This Exhibit provides policies and procedures to establish an Approved Lender Program (ALP) for Guaranteed Operating Loans (OL) described in § 1980.175 and Farm Ownership (FO) Loans described in § 1980.160 of this subpart. The objectives are to minimize time required by approved lenders in obtaining responses to request for a guarantee, eliminate the requirement of having Form FmHA 449–35, "Lender's Agreement," or Form FmHA 1980–38, "Lender's Agreement (Line of Credit)," executed for each loan or line of credit guaranteed by Farmers Home Administration (FmHA), permit maximum use of forms normally used by the lender, require lender to provide FmHA a credit analysis and reduce the workload responsibilities of FmHA. FmHA will make the final determination on eligibility, loan purposes and repayment terms. The ALP agreements, Attachments 1

and 2, will serve as the "Lender's Agreement" for guarantees issued by FmHA under this Exhibit. Attachment 1 is the Lender's Agreement to be executed in relation to regular term loans. Attachment 2 is the Lender's Agreement that is to be executed in relation to lines of credit. The lender, in its application, should indicate the type(s) of advance to be made.

A. *Authority.* The authorizations contained in this Exhibit provide: (1) Methods for initial approval period, subsequent approval period(s) and revocation of ALP status. (2) Methods and ALP lender will use to process, service and conclude guaranteed OL and FO loans. (3) Methods FmHA will use to consider an ALP lender's request for guarantee and monitor guaranteed OL and FO loan activities.

B. *Policy.* The purpose of an ALP is to expand the guaranteed OL and FO programs, supplement present insured loan authority, and make credit available to not larger than family farm owners and/or operators who are presently in a "credit availability gap." The "credit availability gap" farmers are those who slightly exceed FmHA's insured loan eligibility criteria relating to its function as a lender of last resort but who face a degree of financial stress which renders them unable to fully qualify for adequate credit based upon standards required by the commercial agricultural lender.

II. *Lender Approval, Subsequent Approval Period(s) and Revocation of ALP Status.* Lenders who meet the required and other criteria may be granted ALP status for a period not to exceed 2 years by the State Director for the State in which the lender is authorized to do business. All initial and any subsequent approvals of ALP status will be in the form of an agreement signed by the State Director and the lending institution. The agreement will be Attachment 1 and/or Attachment 2 of this Exhibit. The agreement will not apply to branches or suboffices of the lender unless specifically named in the agreement. In cases involving the Farm Credit System (FCS), the State Director shall give ALP status, within the State Director's area of jurisdiction, to any FCS member institution provided such members do not have loan losses for the 1984 calendar year in excess of 6 percent of the institution's total loan portfolio based on information provided by the Farm Credit Administration (FCA) in 1985, or, if based on information provided by FCA in 1986 and thereafter, either do not exceed 6 percent per year for each of the three previous years or 18 percent of the institution's average loan portfolio computed for three previous years. FCS member institutions having an acceptable loan loss percentage as specified above are exempt from complying with requirements of paragraphs IIA(1) (a) through (d) and (2). The Governor of FCA will notify the FmHA Administrator in writing annually or sooner of any FCS member institution that has loan losses exceeding the acceptable percentage specified above.

To obtain ALP status, an FCS member institution with an acceptable loan loss percentage need only execute the agreement (Attachment 1 and/or Attachment 2 of this Exhibit) and satisfy the State Director that it is using acceptable forms as provided in paragraphs IIA(1)(e). Even if an FCS member institution is identified by FCA as having an unacceptable loan loss percentage, that institution may still request the State Director to consider it for ALP status under paragraphs IIA (1) and (2). Except for those FCS member institutions identified by FCA as having an acceptable loan loss percentage, ALP status will expire at the end of any approved 2-year period unless the lender applies for a new agreement which can be approved by the appropriate State Director. The ALP status of *any* lender may be revoked by the FmHA State Director as outlined in paragraph C. State Directors will keep their respective FmHA County and District Offices fully informed, by use of State supplements, of the names and addresses of all lending institutions, branches or suboffices that hold ALP status. The name of each ALP lender's designated person or agricultural loan officer who will process and service guaranteed loans for the ALP lender will be included.

A. *Lender Approval.* Any lender who desires to apply for ALP status must also be an "Eligible Lender" as defined in § 1980.13(b) of Subpart A of Part 1980 of this chapter. Except for FCS member institutions having an acceptable loan percentage as specified in the introductory text of paragraph II, lenders who meet this requirement and desire ALP status will prepare a written request to the State Director for the State in which they desire to have ALP status. The written request will address each item of "required criteria," and "optional criteria" contained in paragraph II A (1) and (2) and may be accompanied by any supporting evidence or other information the applicant lender believes will be helpful to the State Director in making a decision on the application for ALP status. Any FmHA County, District of State Office may provide a lender who desires to apply for ALP status, a complete copy of Part 1980, Subparts A and B of this chapter, including a copy of this Exhibit, and will assist in completion of the request. The State Director will make any necessary investigation or inquiry to determine accuracy of information and notify the applicant lender within 30 days of receipt of a request that the request is approved, denied, or requires additional information. The application material will be retained by the State Director for all approved lenders and periodic checks will be made by FmHA personnel to insure the lender's performance in as outlined in the application.

(1) *Required Criteria.* Other than as noted in paragraph A above, before a State Director approves a lender, including an FCS member institution that is identified by FCA as having an unacceptable annual percentage of loan losses, for ALP status, the requirements listed in paragraphs IIA(1) (a) through (f) must be met. However, upon the request of a lender asking for ALP status, the State Director may exempt that lender from complying with the requirement of paragraph IIA(1)(b) provided the lender complies with all the other requirements listed in paragraph IIA(1) if the State Director is satisfied that the lender—without regard to the requirement for which the exemption is being requested—is an acceptable agricultural lender with the ability to adequately make and service agricultural loans.

(a) Provide evidence of being an "Eligible Lender" as defined in Subpart A, Part 1980 of this chapter.

(b) Provide information to show that agricultural loan losses—net of recovery—do not exceed the following:

(i) For FCS member institutions, either 6 percent per year of the institution's total loan portfolio for each of the three previous years or 18 percent of the institution's average loan portfolio computed for the three previous years; *or*

(ii) For all other lenders, either 1½ percent per year of the lender's total loan portfolio for each of the three previous years or 4½ percent of the lender's average loan portfolio computed for the three previous years.

(c) Have the capacity to process and service FmHA guaranteed FO loans and guaranteed OL loans/lines of credit.

(d) Designate a person(s) who will process and service FmHA guaranteed OL loans/lines of credit and FO loans and agree for the person(s) to attend training sessions provided by FmHA.

(e) Agree to use forms acceptable to FmHA for processing, analyzing, securing and servicing FmHA guaranteed loans/lines of credit. Copies of financial statements, cash flow plans, budgets, loan agreements, analysis sheets, record keeping method, collateral control sheets, security and other forms to be used must be submitted for FmHA acceptability with request for ALP status. See § 1980.109 and § 1980.113 of this subpart for required forms.

(f) Agree to abide by all applicable conditions of § 1980.60 of Part 1980, Subpart A for all loan guarantees.

(2) *Optional Criteria:* Exceptions to the following criteria may be made at the discretion of the State Director, but a denial by a State Director is not appealable.

(a) Have experience and familiarity with FmHA insured and guaranteed loan programs. State length of time and types of loans/lines of credit.

(b) Establish that at least $2.5 million or 50 percent (whichever is less) of total loan portfolio is in agricultural loans.

(c) Provide a resume of designated person who will process and service guaranteed FmHA loans/lines of credit. Minimum of 30 college hours in agricultural science, training in Agriculture Economics and at least two (2) years experience in making and servicing agricultural type loans for production and for real estate purposes is required. If the designated person also performs appraisal duties a qualification statement will be included.

(d) Provide a copy of most recent Statement of Condition and description of current level of agricultural and other lending activities.

(e) Demonstrate a potential capacity for guaranteed OL loan/line of credit and guaranteed FO loan activity in trade area. Must have ability to process and service at least 10 guaranteed OL and/or FO loans and/or OL lines of credit, subject to availability of funds, per fiscal year (October 1–September 30).

(f) Provide comments on experience or ability to comply with regulatory requirements, e.g., Environmental Assessments, Equal Opportunity, Flood and Mudslide, Clean Air, etc. (See Sections 1980.40 through 1980.46 of Subpart A of Part 1980 of this chapter.)

(g) Agree to submit requests for guaranteed OL and/or FO loans and/or OL lines of credit to county official(s) in service areas after application is complete to coincide with scheduled meetings of the local FmHA County Committee.

(h) Provide any other supplemental information the lender desires to submit.

B. *Subsequent Approval Period(s).* Except for those FCS member institutions that have acceptable loan losses as specified in the introductory text of paragraph II, a new 2-year period of ALP status is not automatic. Lenders who desire to continue to ALP status are required to submit a request for subsequent approved periods at least 60 days prior to the expiration of any existing approved period. At least 30 days prior to the expiration of any approved ALP period, the State Director will complete a review of the ALP criteria, the lender's past performance, consult appropriate FmHA county and district personnal, and, if requested by the lender, determine if a new 2-year period of ALP status can be approved. The lender's request will be in writing to the State Director and contain, as a minimum, the following:

(1) Brief summary of activity as an ALP lender including number and dollar amount of guaranteed OL loans/lines of credit and/or FO loans extant, number and dollar amount processed during tenure as ALP, number and dollar amount now under consideration, potential guaranteed OL and/or FO lending activity and recap of any loss settlements.

(2) A current update of data required in paragraph II A of this Exhibit and any proposed changes in agricultural loan officer(s), forms used, or operating methods used in guaranteed OL loan/line of credit and/or FO loan processing and servicing.

(3) Request for a new 2-year period of ALP status.

The State Director will promptly review the request, make any inquiry needed to arrive at a decision; and notify the ALP lender of approved ALP status for two years, or required conditions for approval, or denial with reasons.

C. *Revocation of ALP Status.* Except for those FCS member institutions that have acceptable loan losses as specified in the introductory text of paragraph II, ALP status will lapse upon expiration of any 2-year approved period unless the lender obtains a new agreement under paragraph II B.

The State Director will revoke ALP status of any approved lender who fails to maintain "required criteria" as approved in the application for ALP status and may revoke status for failure to meet any "optional criteria" as agreed. Status shall also be revoked if the lender violates the terms of the ALP agreement, or fails to properly service any guaranteed loan or line of credit, or to protect adequately the interests of the lender and the Government. Furthermore, status, at the option of the State Director, may also be revoked if an FCS member institution that previously had acceptable loan losses as specified in the introductory text of paragraph II above is identified by FCA as now having unacceptable losses.

State Directors will provide all county offices named in paragraph XVI of the ALP agreements (Attachment 1 and/or Attachment 2 to this Exhibit) with a copy of the agreement and complete application material approved in connection with ALP status. State Directors will monitor ALP lenders' loan making and security servicing activities, with the assistance of the District Director and periodic reports from the County Supervisor, to determine compliance with the ALP agreement and Subparts A and B of Part 1980 of this chapter pertaining to guaranteed OL and FO loans. County Supervisors will use their copy of the ALP agreement to duplicate and place in the County office file for each loan guaranteed. In the event the State Director determines an ALP lender is not adequately fulfilling all obligations of the agreement, the lender will be contacted and notified of any descrepancies. A maximum of 30 days will be provided to correct an deficiencies. If corrections are not made within 30 days, the lender's ALP status may be revoked in writing by the State Director. The revocation will be in the form of a letter, sent by certified mail, and state reasons for the action. Any outstanding guaranteed loan(s) or line(s) of credit shall continue to be serviced by a lender whose ALP status has expired or been revoked. The lender cannot submit requests for any new guarantees pursuant to this Exhibit, but may submit requests under the regular method outlined in this subpart for consideration.

III. *ALP Lender Responsibilities to Process, Service and Liquidate Guaranteed OL loans and Guaranteed FO loans.*

A. *Processing.* Before accepting an application for a guaranteed loan or line of credit, the ALP lender will review Part 1980, Subparts A and B. If the lender concludes that an application will be considered, a written statement of basis for the conclusion will be placed in the applicant's file maintained by the lender addressing each of the loan eligibility requirements in §§ 1980.175(b) or 1980.180(c) of this subpart. The lender must abide by limitations on loan purposes, loan limitations, interest rates, and terms set forth for OL and FO loans in § 1980.175 and 1980.180. All requests for guaranteed loans or lines of credit will be processed under Subparts A and B of Part 1980 except as modified by this Exhibit. The ALP lender will, for each application for a guaranteed loan or line of credit, obtain a Form FmHA 449–6, "Application for Guaranteed Loan (Farmer Programs)," signed by the applicant. The applicant must complete and sign all parts of the Form FmHA 449–6 except information on crops, livestock and financial information obtained by the lender on forms of a similar nature. ALP lenders will process all guaranteed OL loans/lines of credit or FO loans as a "complete application" by obtaining and completing all required items described in § 1980.113(d) of this subpart except Form FmHA 449–12 "Request for Loan Note Guarantee." Attachment 3 to this Exhibit will be used by ALP lender to request a guarantee from FmHA. An ALP lender will not be required to submit any form or documents, other than Form FmHA 449–6 with information on crops, livestock and financial condition on farms previously approved for use under paragraph II A of this Exhibit, and Attachment 3 of this Exhibit, with any supportive information attached, to FmHA for making application for a guarantee. A guaranteed OL or FO loan will not be closed by an ALP lender prior to receipt of Form FmHA 449–14, "Conditional Commitment for Guarantee," or Form FmHA 1980–15, "Conditional Commitment for Guarantee (Line of Credit)," and determining that all conditions, including the certification required by § 1980.60 of Subpart A of Part 1980 of this chapter, can be met. The ALP lender will be responsible for fully securing the loan or line of credit under § 1980.175(g) or loan under § 1980.180(g) of this subpart. ALP lenders may consult with the FmHA County Supervisor at any time during the processing and will make all material relating to any guarantee application available to FmHA for review upon request.

B. *Servicing.* ALP lenders will be fully responsible for servicing and protecting the collateral for all loans/lines of credit guraranteed.

C. *Liquidation of Loans/Lines of Credit.* Any liquidation of guaranteed OL loans or lines of credit or FO loans will be completed by the lender. Loss claims will be submitted in accordance with the ALP agreement on Form FmHA 449–30, "Loan Note Guarantee Report of Loss." The Report of Loss will be accompanied by supporting information to outline disposition of all security and proceeds pledged to secure the loan/line of credit.

IV. *FmHA Actions.* FmHA will complete the evaluation described in § 1980.114 of this subpart in any case where the approval official determines an independent analysis is needed before approval or denial of a request for guarantee. The FmHA County Supervisor will review each Form FmHA 449–6 and request for a guarantee, compare material with the County office copy of ALP agreement, approved forms, methods and immediately contact the ALP lender if the information is not in accord with approved agreement, is not clear or is inadequate for County Committee review. County Supervisors may request additional information, review the lender's "complete application" file or make an independent evaluation of an application on Form FmHA 449–23, "Guaranteed Loan Evaluation," if needed, to determine whether the applicant is eligible, the loan/line of credit is for authorized purposes, there is reasonable assurance of repayment ability, and sufficient collateral and equity is available. FmHA will make the final determinations on the eligibility of applicants for a guaranteed OL loan/line of credit or FO loan, and the purposes and terms of such loans/lines of credit.

A. FmHA will provide a response to all ALP lenders request for a guarantee within 2 weeks. This 2 week period will be contingent upon:

(1) Requests for guarantee being received by the appropriate FmHA county office at least 2 days before scheduled County Committee meetings. County Supervisors will keep ALP lenders advised of scheduled County Committee meetings.

(2) Employment ceilings affecting County Committee meetings.

(3) Availability of a quorum of the FmHA County Committee.

B. FmHA will monitor each ALP lender's guaranteed loan/line of credit files to assure that the lender is complying with requirements of § 1980.113 of this subpart. The FmHA County Supervisor will make a complete review of the first loan or line of credit developed by an ALP lender. FmHA will examine the lender file on each guaranteed OL at least quarterly and each guaranteed FO at least annually. The FmHA official who conducts these reviews will document the review in the FmHA County office file. Any discrepancies noted and not resolved will be reported to the State Director. State Directors may establish additional reviews and reporting systems as necessary to insure the guarantee program complies with Subparts A and B of Part 1980 of this chapter.

Each Loan Note Guarantee issued will contain the statement "This Loan Note Guarantee is issued under the Lender's Agreement for Guaranteed Operating Loans (OL) and Guaranteed Farm Ownership Loans (FO) dated _____." The date will be the same date entered in Paragraph XVIII of the Approved Lender's Agreement, Attachment 1.

Each Contract of Guarantee issued will contain the statement "This Contract of Guarantee is issued under Lender's Agreement for Operating Line of Credit Guarantee dated _____." This date will be the same date entered in Paragraph XVIII of the Approved Lender's Agreement, Attachment 2.

The Lender's Agreement will be duplicated and a copy will be placed in the FmHA County office file maintained for each Loan Note Guarantee and Contract of Guarantee issued.

Exhibit A of Subpart B, Attachment 1—Farmers Home Administration Approved Lender Program (ALP)

Lender's Agreement (Loan Note Guarantees Only) For Guaranteed Operating Loans (OL) and Guaranteed Farm Ownership Loans (FO)

_____

_____

(Lender of) _____

is designated as an Approved Lender for the purpose of processing and requesting Loan Note Guarantee(s) authorized by Exhibit A to 7 CFR Part 1980, Subpart B. This agreement does not apply to any loans involving subsidy payments to the Lender nor does it apply to loan types other than those specifically named in this agreement. The agreement applies to the following offices of the Lender: _____

The United States of America, acting through the Farmers Home Administration (FmHA), agrees to enter into Loan Note Guarantees with the Lender as may be issued pursuant to the regulations for operating and/or farm ownership loans and to participate in a percentage of any loss on any such operating and/or farm ownership loan not to exceed the amount established in the particular loan note guarantee as to percentage of the amount of the principal and any accrued interest. The terms of any Loan Note Guarantee are controlling. As a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement.

The Parties Agree:

I. The maximum loss covered under the Loan Note Guarantee will not exceed the amount established in the particular loan guarantee as to percentage of the principal and accrued interest on any operating and/or farm ownership loan guaranteed.

II. *Lender's Sale or Assignment of Guaranteed Loan.*

A. The lender may retain all of any guaranteed loan. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of loan(s) to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of loan at or subsequent to loan closing, such loan must not be in default as set forth in the terms of the notes. The Lender may proceed under the following options:

1. *Assignment.* Assign all or part of the guaranteed portion of any loan to one or more Holders by using Form FmHA 449–36, "Assignment Guaranteed Agreement." Holder(s), upon written notice to Lender and FmHA, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) thereunder.

2. *Multi Note System.* When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA 449–34, "Loan Note Guarantee," attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the Lender and in all cases inure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. *At Loan Closing:* Provide for no more than 10 notes, unless the Borrower and FmHA agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA will provide the Lender with a Form FmHA 449–34, for each of the notes.

b. *After Loan Closing:*

(1) Upon written approval by FmHA, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2.a. above, as replacement for previously issued guaranteed note(s) provided:

(a) The Borrower agrees and executes the new notes.

(b) The interest rate does not exceed the interest rate in effect when the loan was closed.

(c) The maturity of the loan is not changed.

(d) FmHA will not bear any expenses that may be incurred in reference to such re-issue of notes.

(e) There is adequate collateral securing the note(s).

(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA will issue the appropriate Loan Note Guarantee to be attached to each of the notes then extant in exchange for the original Loan Note Guarantee which will be cancelled by FmHA.

3. *Participations.* a. The Lender is required to hold in its own portfolio or retain a minimum of 10 percent of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another lender.

b. The Lender may obtain participation of only the unguaranteed portion in its loan in excess of the 10 percent minimum under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation. Participation with a lender by any entity does not make that entity a holder or a lender.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee, and this agreement, and the FmHA program regulations found in Title 7 CFR Part 1980, Subparts A and B, and to future FmHA program regulations not inconsistent with the express provisions hereof.

III. The Lender agrees loan funds will be used for the purposes authorized in 7 CFR Part 1980, Subparts A and B as set forth in Form FmHA 449–14, "Conditional Commitment for Guarantee," for the particular loan.

IV. The Lender certifies that none of its officers or directors, stockholders (except Federal Land Bank and Production Credit Association stockholders with normal stockshare requirements for participating) or other owners has, or will have, a substantial financial interest in any guaranteed loan Borrower. The Lender certifies that neither any guaranteed loan Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender.

V. The Lender will certify to FmHA, prior to the issuance of a loan note guarantee for each loan, that there has been no adverse changes, in the Borrower's financial condition nor any other adverse change in the borrower's condition during the period of time from FmHA's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee. The Lender's certification must address all adverse changes and be supported by financial statements of the Borrower and its guarantors not more than 60 days old at the time of certification. As used in this paragraph only, the term "Borrower" includes

any parent, affiliate, or subsidiary of the Borrower.

VI. Lender will submit the required guarantee fee with a Guaranteed Loan Closing Report at the time a Loan Note Guarantee is issued.

VII. *Servicing.*

A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan. The Lender shall perform those services which a reasonable prudent lender would perform in servicing its own portfolio of loans that are not guaranteed.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of FmHA. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided in this agreement.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and the FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements and notifying in writing FmHA and the Borrower of any violations.

2. Receiving all payments on principal and interest on the loan as they fall due and promptly remitting and accounting to any Holder(s) of their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized or renewed only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that:

(a) taxes, assessment or ground rents against or affecting collateral are paid;

(b) the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation;

(c) insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA;

(d) proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature without written concurrence of FmHA;

(e) the Borrower complies with all laws and ordinances applicable to the loan, the collateral and/or operation of the farm.

6. Assuring that if personal or corporate guarantees are part of the collateral, financial statements from such loan guarantors will be obtained which are not over 60 days old in the case of personal guarantees or over 90 days old in the case of corporate guarantees. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (as defined in 7 CFR Part 1980, Subpart B, Section 1980.106(b)(4)) is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

10. Providing the FmHA Finance Office with loan status reports annually as of December 31 on Form FmHA 1980–41, "Guaranteed Loan Status Report."

11. Obtaining financial statements from each chattel loan secured Borrower at least semiannually and each real estate loan secured Borrower at least annually.

Lender is responsibile for analyzing the financial statements, taking any servicing actions and providing copies of statements and records of actions to the FmHA office upon request.

VIII. *Default.*

A. The Lender will notify FmHA when a Borrower is thirty (30) days past due on a payment or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with written concurrence of FmHA may include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).

2. An additional temporary loan by the Lender to bring the account current.

3. Reamortization of or rescheduling the payments of the loan (subject to rights of any Holder(s)).

4. Transfer and assumption of the loan.

5. Reorganization.

6. Liquidation.

7. Changes in fixed interest rates with FmHA's, Lender's, and the Holder'(s) written approval; provided, such interest rate is adjusted proportionally between the guaranteed and unguaranteed portion of the loan.

B. The Lender will negotiate in good faith in an attempt to resolve any problem to permit the Borrower to cure a default, where reasonable.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the Borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the Borrower within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest less the Lender's servicing fee. The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the Lender requesting the repurchase. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

D. If Lender does not repurchase as provided by paragraph C, FmHA will purchase from Holder(s) the unpaid principal balance of the guaranteed portion herein together with accrued interest to date of repurchase, within 30 days after written demand to FmHA from the Holder(s). The loan note guarantee will not cover the note interest to the Holder on the guaranteed loan(s) accruing after 90 days from the date of original demand letter of the Holder(s) to the Lender requesting the repurchase. Such demand will include a copy of the written demand made upon the Lender.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest to date of demand and interest subsequently accruing from date of demand to proposed payment date. FmHA will verify the amount of unpaid principal and interest with the Lender. Unless otherwise agreed to by FmHA, such proposed payment will not ordinarily be later than 30 days from the date of the demand to FmHA.

The FmHA will promptly notify the Lender of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA with the information necessary for FmHA's determinations of the appropriate amount

due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30 days payment requirement. Upon receipt of the appropriate information, the FmHA will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due the Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee, nor does such purchase waive any of FmHA's rights against Lender, and FmHA will have the right to set-off against Lender all rights inuring to FmHA from the Holder against FmHA's obligation to Lender under the Loan Note Guarantee.

F. Servicing fees assessed by the Lender to a Holder are collectible only from payment installments received by the Lender from the Borrower. When FmHA repurchases from a Holder, FmHA will pay the Holder only the amounts due the Holder. FmHA will not reimburse the Lender for servicing fees assessed to a Holder and not collected from payments received from the Borrowers. No service fee shall be charged FmHA and no such fee is collectible from FmHA.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

IX. *Liquidation.* If the Lender concludes the liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently the liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee or the Assignment Guarantee Agreement.

If the Lender does not purchase the guaranteed portion of the loan, FmHA will be notified immediately in writing. FmHA will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA holds any of the guaranteed portion, FmHA will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. *Lender's proposed method of liquidation.* Within 30 days after the decision to liquidate, the Lender will advise FmHA in writing of its proposed detailed method of liquidation called a liquidation plan and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. The Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. *FmHA's response to Lender's liquidation plan.* FmHA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such plan from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation plan, negotiation will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all rights and interests necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. *Acceleration.* The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other required legal action. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. *Liquidation.* Accounting and Reports. When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA any payment received from the Borrower and/or pro rata share of liquidation or other proceeds, when FmHA is the holder of a portion of the guaranteed loan using Form FmHA 1980–43, "Lender's Guaranteed Loan Payment to FmHA." When FmHA liquidates, the Lender will be provided with similar reports on request.

E. *Determination of Loss and Payment.* In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses if paid under the guarantee from any party liable.

1. Form FmHA 449–30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determination. Estimated loss payments may be approved by FmHA after the lender has submitted a liquidation plan approved by FmHA. Payment will be made in accordance with 7 CFR Part 1980, Subpart B.

2. When the Lender is conducting the liquidation and owns any of the guaranteed portion of the loan, it may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the loan. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt (See G. below). Such estimate will be prepared and submitted by the Lender on Form FmHA 449–30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449–30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of overpayment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. *Maximum amount of interest loss payment.* Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Loan Note Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date FmHA accepts the responsibility for liquidation. Loss occasioned by accruing interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of accrued interest payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. *Application of FmHA loss payment.* The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed portion of the loan debt. However, such application does not release the Borrower from liability. Such amounts are only to compensate the Lender for the loss. (See XII below.) In all cases a final Form FmHA 449–30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files.

H. *Income from collateral.* Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employee's salaries, staff lawyers, travel and overhead.

J. *Payment.* Final loss payments will be made within 60 days after the review of the accounting of the collateral.

X. *Protective Advances.* Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $3,000. Protective advances include advances made for property taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

XI. *Additional Loans or Advances.* The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

XII. *Future Recovery.* After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the Lender will retain such amount in proportion to the percentage of the unguaranteed portion of the loan.

XIII. *Transfer and Assumption Cases.* Refer to 7 CFR Part 1980, Subpart B.

If a loss will occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transferee, will be entered on Form FmHA 449–30, line 13 and 14.

XIV. *Other Requirements.* This agreement is subject to all the provisions of 7 CFR Part 1980, Subparts A and B, and any future amendments of these regulations not inconsistent with this agreement.

XV. *Execution of Agreements.* This agreement is executed prior to the execution of any Loan Note Guarantee under 7 CFR Part 1980, Subpart A and B and does not impose any obligation upon FmHA with respect to execution of any such contract. FmHA in no way warrants that such a contract has been or will be executed. Each request for a Loan Note Guarantee under Exhibit A of 7 CFR Part 1980, Subpart B will be considered by FmHA on a case-by-case basis.

XVI. *Notices.*

All requests for Loan Note Guarantee and any notices or actions will be initiated through the following FmHA County Offices

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XVII. *Termination of Agreement.* Except for FCS member institutions that have acceptable loan losses as specified in the introductory text of paragraph II of Exhibit A, 7 CFR Part 1980, Subpart B, this agreement will terminate as to the Lender's submission of requests for Contract of Guarantee(s) under Exhibit A, 7 CFR Part 1980, Subpart B two (2) years from the date set forth in paragraph XVIII unless earlier revoked by FmHA. This agreement will remain in force as to any Contract of Guarantee(s) issued pursuant to Exhibit A, 7 CFR Part 1980, Subpart B and remaining extant at the time of expiration or revocation until those Contracts of Guarantee still extant are concluded.

XVIII. This Agreement is dated ———.

Lender: (Name) ———

UNITED STATES OF AMERICA,

Farmers Home Administration.

(IRS I.D. Tax No.) ———

By ———

Title ———

By ———

Title ———

Attest: (Seal)———

Exhibit A, Attachment 2.—Farmers Home Administration, Approved Lender Program (ALP)

Lender's Agreement for Operating Line of Credit Guarantee (Contract of Guarantee Cases)

———— (Lender) of ———— is designated as an Approved Lender for the purpose of processing and requesting Contract(s) of Guarantee authorized by Exhibit A to 7 CFR Part 1980, Subpart B. This agreement does not apply to any lines of credit involving subsidy payments to the Lender nor does it apply to line of credit types other than those specifically named in this agreement. The agreement applies to the following offices of the Lender:

The United States of America, acting through Farmers Home Administration (FmHA), agrees to enter into Contract of Guarantees with the Lender for Operating Loan lines of credit and to participate in a percentage of any loss on any such Operating Loan line of credit advance(s) not to exceed the amount established in the particular contract of guarantee as to percentage of the amount of the principal and any accrued interest. The terms of any Contract of Guarantee are controlling. As a condition for obtaining a guarantee of the line of credit advance(s) the Lender enters into this agreement.

The Parties Agree

I. The maximum loss covered under the Contract of Guarantee will not exceed the amount established in the particular line of credit guarantee as to percentage of the principal and accrued interest on any Operating Loan line of credit advances made within the line of credit ceiling and the terms and conditions of the Contract of Guarantee.

II. *Lender's Sale of Guaranteed Line of Credit by Participation.*

A. The Lender may obtain participation in its line of credit under its normal operating procedures. The Lender is required to hold in its own portfolio or retain a minimum of 10 percent of the total guaranteed line(s) of credit amount. The amount required to be retained must be of the unguaranteed portion of the line of credit and cannot be participated to another Lender. The Lender may obtain participation of only the unguaranteed portion of its line of credit in excess of the 10 percent minimum under its normal operations procedures. Participation means a sale of an interest in the line of credit in which the Lender retains the line of credit agreement (and note, if one exists), collateral securing the line of credit, and all responsibility for servicing and liquidation of

the line of credit. Participation with a lender by an entity does not make that entity a lender.

B. The Lender may retain or sell any amount of the unguaranteed portion(s) of the line(s) of credit as provided in this section only through participation. However, the Lender cannot participate any amount of the line(s) of credit to the applicant or Borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to sell all or part of the guaranteed portion of the line(s) of credit through participation at or subsequent to execution of the line of credit agreement(s), such line(s) of credit must not be in default as set forth in the terms of the line of credit agreement(s) (and note(s), if any exist). The Lender will retain the responsibility for servicing and liquidation of the line(s) of credit. Participation with a lender by an entity does not make the entity a holder.

III. The Lender agrees funds advanced under the line(s) of credit will be used for the purposes authorized in Subpart B of Title 7 CFR Part 1980 as set forth in Form FmHA 1980–15, "Conditional Commitment for Contract of Guarantee (Line of Credit)," for the particular line of credit.

IV. The Lender certifies that none of its officers or directors, stockholders (except Federal Land Bank and Production Credit Association stockholders with normal stockshare requirements for participating) or other owners has, or will have a substantial financial interest in any guaranteed line of credit Borrower. The Lender certifies that neither any guaranteed line of credit Borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender.

V. The Lender will certify to FmHA, prior to issuance of a contract of guarantee, for each line of credit agreement, that there has been no adverse change(s) in the Borrower's financial condition, nor any other adverse change in the Borrower's condition during the period of time from FmHA's issuance of the Conditional Commitment for Contract of Guarantee to issuance of the Contract of Guarantee. The Lender's certification must address all adverse changes and be supported by financial statements of the Borrower and its guarantors not more than 60 days old at the time of certification. As used in this paragraph only, the term "Borrower" includes any parent, affiliate, or subsidiary of the Borrower.

VI. The Lender will submit the required guarantee fee with a Guaranteed Loan Closing Report at the time a Contract of Guarantee is issued.

VII. *Servicing.*

A. The Lender will service the entire line of credit and will remain mortgagee and/or secured party of record. The entire line of credit will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of a line of credit. The unguaranteed portion of a line of credit will not be paid first nor given any preference or priority over the guaranteed portion of the line of credit. The Lender shall perform those services which a reasonable prudent lender would perform in servicing its own portfolio of lines of credit or loans that are not guaranteed.

B. It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the Borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the line of credit agreement (and Note, if one exists), security instruments, and any supplemental agreements and notifying both FmHA and the Borrower in writing of any violations.

2. Receiving all payments on principal and interest on the line of credit advances as they fall due. The line of credit may be reamortized or renewed only with FmHA's written concurrence.

3. Inspecting the collateral as often as necessary to properly service the line of credit.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that:

(a) taxes, assessment or ground rents against or affecting collateral are paid;

(b) the line of credit and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation;

(c) insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA;

(d) proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based, except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature which will serve as collateral without written concurrence of FmHA;

(e) the Borrower complies with all laws and ordinances applicable to the line of credit, the collateral and/or operation of the farm.

6. Assuring that if personal or corporate guarantees are part of the collateral, financial statements from such guarantors will be obtained which are not over 60 days old in the case of personal guarantees or over 90 days old in the case of corporate guarantees. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the Borrower obtains marketable title to the collateral.

9. Assuring that the Borrower (as defined in 7 CFR Part 1980, Subpart A; § 1980.106(b)(4)) is not released from liability for all or any part of the line of credit except in accordance with FmHA regulations.

10. Providing the FmHA Finance Office with loan status reports annually as of December 31 on Form FmHA 1980–41, "Guaranteed Loan Status Report."

11. Obtaining financial statements from each Borrower at least semiannually.

Lender is responsible for analyzing the financial statements, taking any servicing actions needed, and providing copies of statements and record of actions to the County Supervisor.

VIII. *Defaults by Borrower.*

A. The Lender will notify FmHA when a Borrower is thirty (30) days past due on a payment and is unlikely to bring its account current within sixty (60) days, or if the Borrower has not met its responsibilities of providing the required financial statements to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Action taken by the Lender with concurrence of FmHA may include but are not limited to any curative actions contained in Subpart B of Part 1980 or liquidation.

B. The Lender will negotiate in good faith in an attempt to resolve any problem and to permit the Borrower to cure a default, where reasonable.

IX. *Liquidation.*

If the Lender concludes that liquidation of a guaranteed line of credit account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the line of credit unless FmHA, at its option, decides to carry out liquidation.

A. *Lender's proposed plan of liquidation.* Within 30 days after the decision to liquidate is made, the Lender will advise FmHA of its proposed plan of liquidation and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed line of credit agreements and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory, (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed line of credit.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. The Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the Lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. *FmHA's response to Lender's liquidation plan.* FmHA will inform the Lender in writing whether it concurs in the Lender's liquidation plan within 30 days after receipt of such plan from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation plan, negotiation will take place between FmHA and the Lender to resolve the disagreement. The Lender will ordinarily conduct the liquidation; however, should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

1. The Lender will transfer to FmHA all its rights and interests necessary to allow FmHA to liquidate the line of credit. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. *Acceleration.* The Lender of FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other required legal action. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. *Liquidation: Accounting and Reports.* When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs, and additional procedures necessary for successful completion of liquidation. When FmHA liquidates, the Lender will be provided with similar reports on request.

E. *Determination of Loss and Payment.* In all liquidation cases, final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses if paid under the guarantee from any party liable.

1. Form FmHA 449–30, "Loan Note Guarantee Report of Loss," will be used for calculations of all estimated and final loss determinations. Estimated loss payments may be approved by FmHA after the Lender has submitted a liquidation plan approved by FmHA. Payment will be made in accordance with 7 CFR Part 1980, Subpart B.

2. When the Lender is conducting the liquidation, it may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the line of credit. FmHA will agree to pay an estimated loss settlement to the Lender provided the Lender applies such amount due to the outstanding principal balance owed on the guaranteed debt (see G. below). Such estimate will be prepared and submitted by the Lender on Form FmHA 449–30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by FmHA, and within 30 days thereafter, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449–30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimburse FmHA for the overpayment plus interest at the note rate from date of overpayment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Contract of Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. *Maximum amount of interest loss payment.* Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Contract of Guarantee. If FmHA conducts the liquidation, loss occasioned by accuring interest will be covered by the guarantee only to the date FmHA accepts the responsibility for liquidation. Loss occasioned by accuring interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of accrued interest payable to the Lender, if any, will be calculated on the final Report of Loss form.

G. *Application of FmHA loss payment.* The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed portion of the debt. However, such application does not release the Borrower from liability. Such amounts are only to compensate the Lender for the loss. (See XII below.) In all cases a final Form FmHA 449–30 prepared and submitted by the Lender must be processed by FmHA in order to close out the files.

H. *Income from collateral.* Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed debt.

I. *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. These liquidation costs will be submitted as a part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral unless the costs have been previously determined by the Lender (with FmHA written concurrence) to be protective advances. If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the Lender will procure FmHA's written concurrence prior to proceeding with the proposed changes. No in-house expenses of the Lender will be allowed. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel and overhead.

J. *Payment.* Loss settlements will be paid by FmHA within 60 days after review of the accounting of the collateral.

X. *Protective Advances.* Protective advances must constitute an indebtedness of the Borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $3,000. Protective advances include advances made for property taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

IX. *Additional Loans or Advances.* The Lender will not make additional expenditures or new lines of credit or loans to any borrower which has financial assistance guaranteed by FmHA without first obtaining the written approval of FmHA even though such expenditures or lines of credit or loans will not be guaranteed.

XII. *Future Recovery.* After a line of credit has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the line of credit and the Lender will retain such amount in proportion to the percentage of the unguaranteed portion of the line of credit.

XIII. *Transfer and Assumption Cases.* Refer to Subpart B of Title 7 of CFR Part 1980.

If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the

transferor-debtor (including personal guarantees) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at this time. In completing Form FmHA 449–30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the Transferee, will be entered on Form FmHA 449–30, lines 13 and 14.

XIV. *Other Requirements.* This agreement is subject to all the provisions of 7 CFR Part 1980, Subparts A and B, and any future amendments of these regulations not inconsistent with this agreement.

XV. *Execution of Agreements.* This agreement is executed prior to the execution of any Contract of Guarantee(s) under 7 CFR Part 1980, Subparts A and B and does not impose any obligation upon FmHA with respect to execution of any such contract. FmHA in no way warrants that such a contract has been or will be executed. Each request for a Contract of Guarantee under Exhibit A of 7 CFR Part 1980, Subpart B will be considered by FmHA on a case-by-case basis.

XVI. *Notice.*

All requests for Contract of Guarantee(s) and any notices or actions will be initiated through the following FmHA county offices:

_____

_____

XVII. *Terminotion of Agreement.* Except for FCS member institutions that have acceptable loan losses as specified in the introductory text of paragraph II of Exhibit A, 7 CFR Part 1980, Subpart B, this agreement will terminate as to the Lender's submission of requests for Contract of Guarantee(s) under Exhibits A, 7 CFR Part 1980, Subpart B two (2) years from the date set forth in paragraph XVIII unless earlier revoked by FmHA. This agreement will remain in force as to any Contract of Guarantee(s) issued pursuant to Exhibit A, 7 CFR Part 1980, Subpart B and remaining extant at the time of expiration or revocation until those Contracts of Guarantee still extant are concluded.

XVIII. This Agreement is date _____

Lender: _____

(Name)

_____

(IRS I.D. Tax No.)

By _____

Title _____

ATTEST: _____

(SEAL)

UNITED STATES OF AMERICA

Farmers Home Administration

By _____

Title _____

To: County Supervisor, FMHA

_____

_____

Subject: Request for Loan Note Guarantee under Approved Lender Agreement Applicable to Loan Note Guarantee Cases (Attachment 1). Principal Amount of Loan $_____

AND/OR.

Request for Line of Credit Guarantee under Approved Lender Agreement Applicable to Contract of Guarantee Cases (Attachment 2).

Line of Credit Ceiling $ _____

Principal Amount of Initial Advance $ _____

Lender Agreement Dated _____

Lender IRS I.D. No. _____

Request is made for issuance of a guarantee(s) in the following case.

Applicant's Name _____

Address _____

Social Security or IRS Tax No _____

County _____

State _____

Percent Guarantee Requested ____%

Interest rate to borrower ____%

If variable, state method determined and frequency of adjustment _____

Specific amounts and purposes of loan/line of credit are as follow: _____

_____

Proposed repayment terms: _____

Proposed closing date if request is approved:

_____

Special or unique conditions or problems: —

Applicant's Financial Condition: _____

Net Worth $____

	Assets value	Debt	Amount due in 12 months
Current [1] ..... $			
Intermediate [2]			
Long Term [3]			
Totals			

Ratio Calculation from Financial Information and Operating Plans:

Toal Assests of $____ divided by Total Liabilities ____=

Net Capital Ratio _____

Annual Case Operating Expenses $____ divided by Gross Income $____=

Operating Ratio _____

Net Income $____ divided by Total by Assets $ =

Profit to Assets _____

Debt Repayment $ ____ divided by Gross Income $____=

Dept Repayment _____

Security proposed:

Item	Value	Prior liens (in any)	Equity value
Total			

Briefly list any special conditions and narrate security accounting, reporting limitations and supervision etc., contained in proposed loan/line of credit agreement. See 7 CFR Part 1980, Subpart B, §1980.113(d)(7)

_____

_____

The applicant's total farming operation is as follows: (Include total acres owned and/or leased broken down to use and indicate irrigated, double crop, etc., if any. Include totals of all livestock owned and/or tended and describe operation purchasing, marketing, breeding details. Use attachments if necessary.)

_____

_____

The undersigned certifies that:

1. The information contained in this request is correct and that a complete application containing all required its described in § 1980.113(d) of Part 1980, Subpart B are on file and may be examined by FmHA at any time during regular business hours prior to or after FmHA responds to this request for a loan note guarantee or contract of guarantee.

2. Before a Loan Note Guarantee of Contract of Guarantee is issued by FmHA, the lender will certify to conditions in § 1980.60 of 7 CFR Part 1980, Subpart A.

3. The lender will provide a Guaranteed Loan Closing Report on Form FmHA 1980–19 and a check for the amount of the guarantee fee at the time the Loan Note Guarantee or Contract of Guarantee is issued.

4. This proposed loan/line of credit is considered sound, will be fully secured and is within the borrower's repayment ability.

5. All applicable requirements have been or will be met.

6. The loan or advances under the line of credit cannot be made without an FmHA guarantee.

_____

(Name of Lender)

By _____

Title _____

_____

(Lender's IRS I.D. Tax No.)

Date _____

[1] Current: Cash, savings, marketable bonds, receivables, 60 day sales of goods available within 60 days.

[2] Intermediate: Machinery, livestock, retirement accounts, cash value life insurance, securities, household goods, receivables 60 days to 1 year.

[3] Long term: Real estate, contracts and notes receivable amount beyond current year.

Subpart C—Emergency Livestock Loans

§ 1980.207 [Amended]

52. Section 1980.207(d) is amended by changing the name of Form FmHA 1980–27 "Contract of Guarantee (Emergency Livestock Loan or Economic Emergency Loan)" to "Contract of Guarantee (Line of Credit)."

§ 1980.209 [Amended]

Appendix A—[Amended]

52a. Subpart C is further amended by changing the name of Form FmHA 1980–38 "Lender's Agreement (Emergency Livestock Loan or Economic Emergency Loan Contract of Guarantee)" to "Lender's Agreement (Line of Credit)" in § 1980.209, and in Appendix A, paragraph (a) in the listing of FmHA forms.

§ 1980.217 [Amended]

52b. Subpart C is further amended by changing the name of Form FmHA 1980–15, "Conditional Commitment for Emergency Livestock Loan or Economic Emergency Loan Contract of Guarantee," to "Conditional

Commitment for Contract of Guarantee (Line of Credit)" in the last sentence of § 1980.217, and in Appendix A, paragraph (a) in the listing of forms.

§ 1980.246 [Amended].

52c. Subpart C is further amended by changing the name of Form FmHA 1980–25, "Request for Guarantee Emergency Livestock Loan or Economic Emergency Loan," to "Request for Guarantee (Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan)" in § 1980.246(a)(5) and in Appendix A, paragraph (a) in the list of FmHA forms.

53. Section 1980.207 is amended by revising the second sentence in the introductory paragraph to change the reference from "§§ 1980.6(a) (1), (3), (6), (8), (12) and (13)," to "§§ 1980.6(a) (1), (3), (7), (11), (15) and (17).

54. Section 1980.209 is revised to read as follows:

§ 1980.209 Eligible lenders.

See § 1980.13 of Subpart A of this part.

55. Section 1980.246 is amended by revising paragraphs (a)(5) and (c)(4) to read as follows:

§ 1980.246 Receiving and processing applications.

* * * * *

(a) * * *

(5) Form FmHA 1980–25, "Request for Guarantee (Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan)."

* * * * *

(c) * * *

(4) Proposed loan agreements (or line of credit agreement when a Contract of Guarantee is requested) between the borrower and lender. (See paragraph VII of Form FmHA 449–35, "Lender's Agreement," in Loan Note Guarantee cases of Form FmHA 1980–38, in Contract of Guarantee cases.) Ordinarily, agreements will include information such as the following:

* * * * *

56. Section 1980.251(a) is revised to read as follows:

§ 1980.251 Issuance of guarantee instruments.

* * * * *

(a) *Loan Note Guarantee cases.* See § 1980.61 of Subpart A of this Part, except that § 1980.61(b)(2) and § 1980.61(g) as well as the "guarantee fee" in § 1980.61(a) shall not apply.

* * * * *

57. Section 1980.279 is amended by revising the introductory text, and paragraphs Administrative paragraphs B. 2 and D. 5 to read as follows:

§ 1980.279 Loan servicing.

The *lender* is responsible for loan servicing. See paragraph IX of Form FmHA 449–35 for Loan Note Guarantee cases and paragraph IX of Form FmHA 1980–38 for Contract of Guarantee cases for specific requirements.

Administrative

* * * * *

B. * * *

2. Review all EL borrowers' financial statements furnished by the lender and will take appropriate servicing action to remind the lender of its servicing responsibilities. See paragraph IX of Form FmHA 449–35 or paragraph IX of Form FmHA 1980–38.

3. * * *

4. Take appropriate action upon receipt of notice from the lender when any guaranteed loan is delinquent more than 30 days or when the loan otherwise appears to be developing into a problem case. See paragraph X of Form FmHA 449–35 or paragraph X of Form FmHA 1980–38.

* * * * *

D. * * *

5. Use of proceeds from disposition of collateral meeting the provisions of paragraph IX of Form FmHA 449–35 or paragraph IX of Form FmHA 1980–38.

* * * * *

58. Section 1980.280 is amended by revising the introductory text to read as follows:

§ 1980.280 Protective Advances.

See paragraph XII of Form FmHA 449–35 or paragraph XII of Form FmHA 1980–38, as appropriate.

* * * * *

59. Section 1980.282 is amended by revising paragraph (a) to read as follows:

§ 1980.282 Defaults by borrowers.

(a) See paragraph X of Form FmHA 449–35 for Loan Note Guarantee cases and paragraph X of Form FmHA 1980–38 for Contract of Guarantee cases.

* * * * *

60. Section 1980.283 is amended by revising the introductory text and paragraphs Administrative paragraphs B, C, D and E to read as follows:

§ 1980.283 Liquidation.

See paragraph XI of Form FmHA 449–35 for Loan Note Guarantee cases and paragraph XI of Form FmHA 1980–38 for Contract of Guarantee cases.

Administrative

* * * * *

B. *Form FmHA 449–35 or Form FmHA 1980–38, paragraph XI B.* FmHA will exercise the option to liquidate only when there is reason to believes the lender's liquidation plan will likely not result in maximum recovery. District Directors are authorized to approve lender liquidation plans or exercise the FmHA option to liquidate. When such a decision is made, submit Form FmHA 1980–45, "Notice of Liquidation Responsibility," to the Finance Office.

C. *Form FmHA 1449–35 or Form FmHA 1980–38, paragraph XI D.* County Supervisors are responsible for seeing that the lender complies with the requirement of paragraph XI D. The concurrence of the District Director will be necessary before the County Supervisor may accept the accounting reports as submitted by the lender and before submission of such reports to lenders when FmHA is conducting liquidation.

D. *Form FmHA 449–35 or Form FmHA 1980–38, paragraph XI E 2.* County Supervisors are authorized to accept Report of Loss determinations for both Loan Note Guarantee and Contract of Guarantee cases on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," in those cases where loss will not exceed $35,000; District Directors for loss not to exceed $100,000; and State Directors for all others. The State Director will submit to the Finance Office for payment any losses claimed of Form FmHA 449–30. The Finance Office will forward loss payment checks within 10 days of receipt of the claim to the County Supervisor for delivery to the lender.

E. *Form FmHA 449–35 or Form FmHA 1980–38, paragraph XI E 3.* Final loss payments will be made within 60 days required but only after a review has been made to accurately determine FmHA liability. State Directors are responsible for seeing that such reviews are accomplished in time to be evaluated and accepted or otherwise resolved within the 60-day period. County Supervisors may conduct such reviews when the *loss* does not exceed $35,000; District Directors when the *loss* does not exceed $100,000; and State Directors for amounts not to exceed their loan approval authority. If the State Director wishes National Office assistance in the conduct of the review, the State Director may request it.

Subpart D—Rural Housing Program Loans

61. Section 1980.333 is amended by revising Administrative paragraph B to read as follows:

§ 1980.333 Review of requirements.

* * * * *

Administrative

A. * * *

B. The County Supervisor will notify the Finance Office, in accordance with § 1980.61(f) of Subpart A of this part, if a commitment is canceled.

63. Section 1980.335 is revised to read as follows:

§ 1980.335 Issuance of Lender's Agreement, Loan Note Guarantee and Assignment Guarantee Agreement.

Administrative (with reference to § 1980.61 of Subpart A of this Part):

A. *See § 1980.61(a).* The original Form FmHA 449–35, will be kept in the County Office. Paragraph IX C 10 of Form FmHA 449–35 will be crossed out for housing loans.

Paragraphs IX C 5 and 11 will be completed by adding –0– in the blank for housing loans.

B. *See § 1980.61(b)(1).* Copy(s) of all issued Loan Note Guarantee(s) will be kept in the County Office.

C. *See § 1980.61(b)(3).* For reporting purposes when multi-notes are issued, the loan to the borrower will be counted as one loan regardless of the number of notes issued.

D. *See § 1980.61(b)(4).* The State Director will notify the Finance Office of the transaction.

E. *See § 1980.61(e).* County Supervisor signs all Forms FmHA 449–13.

F. *See § 1980.61(g). The County Supervisor will:*

1. Review Form FmHA 1980–19, "Guaranteed Loan Closing Report," for completeness.

2. Forward the guarantee fee and original Form FmHA 1980–19 to Finance Office.

3. Retain in County Office loan file the original of Form FmHA 449–35 and copies of Form FmHA 1980–19, Form FmHA 449–34 and Form FmHA 449–36, "Assignment Guarantee Agreement."

63. Section 1980.337 is amended by revising the introductory text to read as follows:

§ 1980.337 Loan servicing.

The Lender is responsible for loan servicing. See paragraph IX of Form FmHA 449–35. Loan servicing is a preventive rather than a curative action. Prompt follow up by the lender on delinquent payments and early recognition and solution of problems are keys to resolving many delinquent loan case.

* * * * *

64. Section 1980.338 is amended by revising the introductory text to read as follows:

§ 1980.338 Defaults by borrower.

Refer to paragraph X of Form FmHA 449–35. In case of default, the lender will arrange a meeting with the borrower to resolve the problem. A memorandum of the meeting, individuals who attended, a summary of the problem, and proposed solutions will be forwarded to the County Supervisor to be retained in the loan file.

* * * * *

65. Section 1980.339 is revised to read as follows:

§ 1980.339 Liquidation.

Refer to paragraph XI of Form FmHA 449–35. If either the lender or FmHA concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, it will notify the other party and the matter will be handled in accordance with paragraph XI of Form FmHA 449–35.

Administrative

A. *Paragraph XI B of Form FmHA 449–35.* FmHA will exercise the option to liquidate only when there is reason to believe the lender's liquidation plan will likely not result in maximum recovery. State Directors are authorized to approve lender liquidation plans or exercise the FmHA option to liquidate.

B. *Paragraph XI D of Form FmHA 449–35.* County Supervisors are responsible for review and acceptance of accounting reports submitted by lenders and for submission of such reports to lenders when FmHA is conducting liquidation.

C. *Paragraph XI E 2 of Form FmHA 449–35.* County Supervisors are authorized to accept Report of Loss determinations on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," from lenders and forward them to the State Director. The State Director will submit Form FmHA 449–30 to the Finance Office for payment of verified losses. The Finance Office forwards payment checks to lender.

D. *Paragraph XI E 3 of Form FmHA 449–35.* Final loss payments will be made within the 60 days required but only after an audit to assure all collateral for the loan has been properly accounted for. State Directors are responsible to see that such audits are accomplished in time to be reviewed and accepted or otherwise resolved within the 60 day period. County Supervisors may conduct such audits.

Subpart E—Business and Industrial Loan Program

66. Section 1980.419 is amended by revising Administrative paragraph B. to read as follows:

§ 1980.419 Eligible lenders.

* * * * *

Administrative

A. * * *

B. *Paragraph (b)(4) of Subpart A 1980.13,* State Director submits information to National Office with recommendations.

* * * * *

67. Section 1980.451 is amended by revising the introductory text of paragraph (i)(13) to read as follows:

§ 1980.451 Filing and processing applications.

* * * * *

(i) * * *

(13) *Proposed loan agreement.* (See paragraph VII of Form FmHA 449–35). Loan agreements between the borrower and lender will be required. The final executed loan agreement must include FmHA's requirements as set forth in the Form FmHA 449–14 including the requirements for periodic financial statements and recordkeeping. There must be provisions for an annual audited financial statement of the borrower; it will be performed by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970, by a regulatory authority of a State or other political subdivision of the United States. An acceptable audit will be performed in accordance with generally accepted auditing standards and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the borrower. FmHA does not require an unqualified audit opinion as a result of the audit. However, FmHA will not accept a limitation to the scope of the audit. Compilation or reviews do not satisfy the audit requirement. The loan agreement must also include but is not limited to the following:

* * * * *

68. Section 1980.461 is amended by revising Administrative paragraphs L. and M., and the introductory text of administrative paragraph N to read as follows:

§ 1980.461 Issuance of Lender's Agreement, Loan Note Guarantee, and Assignment Guarantee Agreement.

[See Subpart A, § 1980.61]

Administrative

* * * * *

L. *Paragraph (d) of Subpart A, § 1980.61.* A copy of Form FmHA 449–36 will be kept and a copy of executed Lender's Agreement retained in loan file along with copies of the Loan Note Guarantee with attached original canceled Contract of Guarantee, copy of Guarantee Fee Report and the original Lender's Agreement.

M. *Paragraph (e) of Subpart A, § 1980.61.* State Director signs all Forms FmHA 449–13, "Denial Letter."

N. Paragraph (g) of Subpart A, § 1980.61. The County Supervisor will:

* * * * *

69. Section 1980.469 is amended by revising the introductory text to read as follows:

§ 1980.469 Loan servicing.

The lender is responsible for loan servicing and for notifying the FmHA of any violations in the Lender's Loan Agreement. (See Paragraph X of Form FmHA 449–35).

* * * * *

70. Section 1980.470 is amended by revising Administrative paragraph B to read as follows:

§ 1980.470 Defaults by borrower.

* * * * *

Administrative

A. * * *

B. In considering servicing options, some of which are identified in paragraph X A of Form FmHA 449–35, the prospects for

providing a permanent cure without adversely affecting the risks of the FmHA and the lender must become the paramount objective. Within the State Director's authority, temporary curative actions such as payment deferments, moratoriums on payments or collateral subordination, if approved, must strengthen the loan and be in the best interests of the lender and FmHA.

Some of these actions may require concurrence of the holder(s).

* * * * *

73. Section 1980.471 is amended by revising the title of Administrative paragraphs B, D, E and F to read as follows:

§ 1980.471 Liquidation.

* * * * *

Administrative

* * * * *

B. *Paragraph XI B of the Lender's Agreement.* * * *

* * * * *

D. *Paragraph XI D* * * *

E. *Paragraph XI E 2* * * *

F. *Paragraph XI E 3* * * *

BILLING CODE 3410-07-M

72. Appendix F—Form FmHA 449–14. "Conditional Commitment for Guarantee," to Subpart E is revised as follows:

APPENDIX F

USDA-FmHA
Form FmHA 449-14
(Rev. 9-85)

This form may contain certain specific conditions which may require the providing of future reports and information which would have to be agreed to by the lender and borrower in order to obtain the benefit of potentially acquiring an FmHA loan guarantee. This statement is furnished pursuant to P.L. 96-511

FORM APPROVED
OMB No. 0575-0024
Expiration date avail. on request.

CONDITIONAL COMMITMENT FOR GUARANTEE

	Case No.
	State
TO: Lender	County
Lender's Address	Type of Loan
Borrower	Principal Amount of Loan $

From an examination of information supplied by the Lender on the above proposed loan, the county committee certification or recommendation, if required, and other relevant information deemed necessary, it appears that the transaction can properly be completed.

Therefore, the United States of America acting through the Farmers Home Administration (FmHA) hereby agrees that, in accordance with applicable provisions of the FmHA regulations published in the Federal Register and related forms, it will execute Form(s) FmHA 449-34, "Loan Note Guarantee," subject to the conditions and requirements specified in said regulations and below.

The Loan Note Guarantee fee payable by the Lender to FmHA will be the amount as specified in the regulations on the date of this Conditional Commitment for Guarantee. The interest rate for the loan is _____ % and, if applicable, the loan subsidy rate is _____ % 1/. If a variable rate is used, it must be tied to a base rate which cannot change more often than _____ 2/ and must be published periodically in a financial publication specifically agreed to by the Lender and Borrower.

A Loan Note Guarantee will not be issued until the Lender certifies as required in 7 CFR 1980.60 that there has been no adverse change(s) in the Borrower's financial condition, nor any other adverse change in the Borrower's condition during the period of time from FmHA's issuance of the Conditional Commitment for Guarantee to issuance of the Loan Note Guarantee. The Lender's certification must address all adverse changes and be supported by financial statements of the Borrower and its guarantors not more than 60 days old at the time of certification. As used in this paragraph only, the term "Borrower" includes any parent, affiliate, or subsidiary of the Borrower.

This agreement becomes null and void unless the conditions are accepted by the Lender and Borrower within 60 days from date of issuance by FmHA. Any negotiations concerning these conditions must be completed by that time.

Except as set out below, the purposes for which the loan funds will be used and the amounts to be used for such purposes are set out on the Request for Loan Note Guarantee, the Request for Guarantee Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan, or the Application for Loan and Guarantee. Once this instrument is executed and returned to FmHA, no major change of conditions or approved loan purpose as listed on these forms will be considered. Additional Conditions and Requirements including Source and Use of Funds: 3/

This conditional commitment will expire on _____ 4/ unless the time is extended in writing by FmHA, or upon the Lender's earlier notification to FmHA that it does not desire to obtain an FmHA guarantee.

UNITED STATES OF AMERICA

By: _____

Date: _____ FmHA _____ _____
(Title)

Position 2 FmHA 449-14 (Rev. 9-85)

ACCEPTANCE OF CONDITIONS

To: Farmers Home Administration (FmHA) 5/

The conditions of this Conditional Commitment for Guarantee including attachments are acceptable and the undersigned intends to proceed with the loan transaction and request issuance of a Loan Note Guarantee within _____ days.

_____
(Name of Lender)

_____ By: _____
(Date) *(Signature for Lender)*

_____ 6/ _____
(Date) *(Signature for Borrower)*

1/ Insert fixed interest rate or, if authorized by regulations, variable interest rate followed by a "V" and the appropriate loan subsidy rate, if applicable.

2/ Insert the period prescribed in the applicable FmHA regulation. For B&I loans "quarterly" will be inserted in this space.

3/ Insert any additional conditions or requirements in this space or on an attachment referred to in this space; otherwise, insert "NONE".

4/ FmHA will determine the expiration date of this contract. Consideration will be given to the date indicated by the lender in the acceptance of conditions. If construction is involved the expiration date will correspond with the projected completion of the project.

5/ Return completed and signed copy of this form to FmHA issuing office.

6/ Required in B&I and RH-MF cases, not in other cases.

BILLING CODE 3410-07-C

Subpart F—Economic Emergency Loans

73. Section 1980.501(a) is revised to read as follows:

§ 1980.501 Introduction.

(a) *Policy.* This subpart contains regulations for making and servicing Economic Emergency (EE) loans made after August 11, 1978, and applies to lenders, holders, borrowers, Farmers Home Administration (FmHA) personnel, and other parties involved in making, guaranteeing, holding servicing, or liquidating such loans. Subpart A of this part applies to EE loans except §§ 1980.21, 1980.61 (b)(2) and (g). It is the policy of FmHA to make loans to any otherwise qualified applicant without regard to race, color, religion, sex, national origin, marital status, age or physical/mental handicap providing the applicant can execute a legal contract.

* * * * *

74. Section 1980.511 is amended by revising paragraph (c)(2) and the introductory text of paragraph (c)(5) to read as follows:

§ 1980.511 Receiving and processing applicants.

* * * * *

(c) * * *

(2) Form FmHA 1980–25, "Request for Guarantee (Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan)."

* * * * *

(5) Proposed loan agreements (or line of credit agreement when a Contract of Guarantee is requested) between the applicant and lender. (See paragraph VII of Form FmHA 449–35, "Lender's Agreement," in Loan Note Guarantee cases or Form FmHA 1980–38, "Lender's Agreement (Line of Credit)" in Contract of Guarantee cases). Ordinarily, agreements will include the following information:

* * * * *

75. Section 1980.524 is revised to read as follows:

§ 1980.524 Additional loans or advances.

See paragraph XIII of Form FmHA 449–35 for Loan Note Guarantee cases and paragraph XIII of Form FmHA 449–38 for Contract of Guarantee cases.

76. Section 1980.549 is amended by revising paragraph (a) to read as follows. The introductory text is shown for user convenience.

§ 1980.549 Issuance of guarantee instruments.

Events from issuance of a conditional commitment through issuance of the guarantee instruments may all occur at loan closing in the sequence indicated in § 1980.61 of Subpart A of this part.

(a) *Loan Note Guarantee cases.* See § 1980.61 of Subpart A, except that paragraphs § 1980.61(b)(2) and § 1980.61(g) as well as the "guarantee fee" in paragraph § 1980.61(a) shall not apply. Paragraph IX C 10 of Form FmHA 449–35 will be changed by striking the word "seminannually", inserting "annually" in its place, and eliminating the words "June 30 and". FmHA and the lender should initial the change.

* * * * *

77. Section 1980.578 is amended by revising the introductory test and Administrative paragraphs Administrative B.2, B.4, B.6 and D.5 to read as follows:

§ 1980.578 Loan servicing.

The *lender* is responsible for loan servicing. See paragraph IX of Form FmHA 449–35 for Loan Note Guarantee Cases or paragraph IX of Form FmHA 1980–38 for Contract of Guarantee cases.

Administrative

* * *

B. * * *

2. Review all EE borrowers' financial statements furnished by the lender and take appropriate servicing action reminding the lender of its servicing responsibilities. See paragraph IX of Form FmHA 449–35 or Paragraph IX of Form FmHA 1980–38.

* * * * *

4. Take appropriate action upon receipt of notice from the lender when any guaranteed loan is delinquent more than 30 days or when the loan otherwise appears to be developing into a problem case. See paragraph X of Form FmHA 449–35 or paragraph X of Form FmHA 1980–38.

* * * * *

6. Submit to the Finance Office "the lender's statement" required in paragraph IX C 10 of Form FmHA 449–35 or paragraph IX C 10 of Form FmHA 1980–38 reflecting the unpaid principal balances on the loan.

D. * * *

5. Use of proceeds from disposition of collateral meeting the provisions of paragraph IX of Form FmHA 449–35 or paragraph IX of Form FmHA 1980–38.

* * * * *

78. In § 1980.579, the introductory text is revised to read as follows:

§ 1980.579 Protective advances.

It is not intended that protective advances be made in lieu of additional loans. See paragraph XII of Form FmHA 449–35 or paragraph XII of Form FmHA 1980–38, as appropriate.

* * * * *

79. In § 1980.581, paragraph (a) and Administrative paragraph A. are revised to read as follows:

§ 1980.581 Defaults by borrower.

(a) See paragraph X of Form 449–35 for Loan Note Guarantee cases or paragraph X of Form FmHA 1980–38 for Contract of Guarantee cases.

* * * * *

Administrative

A. The County Supervisor will review and distribute Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status," in accordance with the preparation instructions in the FMI upon receipt of the lender's default notification in accordance with paragraph X A of Form FmHA 449–35 or paragraph X A of Form FmHA 1980–38. The County Supervisor will coordinate and process any request for FmHA to purchase (as outlined in paragraph X D of Form FmHA 449–35) when the holder(s) is located in close proximity to the local lender. If any holder is located outside the area, the State Director will designate an employee to handle the repurchase arrangements. If the employee is not the County Supervisor, the County Supervisor will be notified of the transaction by the State Director.

* * * * *

80. Section 1980.582 introductory text and Administrative paragraphs B, C, D and E are revised to read as follows:

§ 1980.582 Liquidation.

See paragraph XI of Form FmHA 449–35 for Loan Note Guarantee cases or paragraph XI of Form FmHA 1980–38 for Contract of Guarantee cases.

Administrative

* * * * *

B. *Form FmHA 449–35 or Form FmHA 1980–38, paragraph XI B.* FmHA will exercise the option to liquidate only when there is reason to believe the lender's liquidation plan is not likely to provide for a reasonably adequate recovery. The County Supervisor will approve lender liquidation plans or exercise the FmHA option to liquidate. The District Director or State Office may be consulted on complex cases for advice if necessary. When such a decision is made, the County Supervisor will submit Form FmHA 1980–45, "Notice of Liquidation Responsibility," to the Finance Office.

C. *Form FmHA 449–35, or Form FmHA 1980–38, paragraph XI D.* County Supervisors are responsible for seeing that the lender complies with the requirements of paragraph XI D. The County Supervisors will accept or reject the accounting reports as submitted by the lender and will obtain the advice of the District Director or State Office when necessary. When FmHA liquidates the security, the County Supervisors will submit these reports to the lender and will send copies to the District Director and the State Office.

D. *Form FmHA 449–35, or Form FmHA 1980–38, paragraph XI E 2.* County Supervisors are authorized to accept Report of Estimated Loss or Final Loss Payment determinations on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," in those

cases where the loss will not exceed $55,000. The State Director is authorized to accept the determinations in all other cases. A copy of the form will be given to the District Director. The State Director will submit Form FmHA 449-30 to the Finance Office for payment of any losses. The Finance Office will forward loss payment checks within 10 days of receipt of the request to the County Supervisor for delivery to lender.

E. *Form FmHA 1980-38, or Form FmHA 1980-38, paragraph XI E 3.* Final loss payments will be made within the 60 days required, but only after a review has been made to accurately determine FmHA liability. These payments will be reduced if necessary after considering the "Conditions of Guarantee" in Form FmHA 449-34 or Form FmHA 1980-27, as appropriate. State Directors are responsible for seeing that such reviews are accomplished in time to be evaluated and accepted or otherwise resolved within the 60-day period. The County Supervisor may conduct such reviews when the loss does not exceed $55,000. The State Director will conduct all other reviews. The State Director may request National Office assistance in conducting any reviews.

81. In § 1980.593, paragraph (b) is revised to read as follows:

§ 1980.593 FmHA forms.

* * * * *

(b) Forms FmHA 1980-27, "Contract of Guarantee (Line of Credit)"; FmHA 1980-38, "Lender's Agreement (Line of Credit)"; FmHA 1980-15, "Conditional Commitment for Contract of Guarantee (Line of Credit)"; FmHA 1980-32, "Lender's Certification (Guaranteed Economic Emergency Loan)"; and FmHA 1980-25, "Request for Guarantee (Operating Loan Line of Credit, Emergency Livestock Loan or Economic Emergency Loan)"; are incorporated in Subparts A and F of this part, and are made a part of these regulations. Forms FmHA 1980-27, 1980-32, 1980-15, and 1980-25 appear as Appendices D, E, F, and G to Subpart A in the Federal Register. Form FmHA 1980-38 appears as Appendix B to this subpart.

Appendix A—[Amended]

81a. In Appendix A to Subpart F, paragraph (a), the listing of FmHA forms is amended by removing the entries for FmHA form numbers 1980-25, 1980-38, 1980-15 and 1980-27 and inserting in their places the following entries:

FmHA form No.	[illegible]	[illegible] No.	Signed by—	[illegible]
[illegible]	Request for Guarantee (Operating Loan Line of Credit, Emergency Livestock Loan, or Economic Emergency Loan).	2	L-O	O-FmHA, C-L
[illegible]	Lender's Agreement (Line of Credit)	[illegible]	L & FmHA (O&C)	O-FmHA, C-L
1980-15	Conditional Commitment for Contract of Guarantee (Line of Credit).	2	FmHA-O	O-L, C-FmHA
1980-27	Contract of Guarantee (Line of Credit)	2	FmHA-O	O-L, C-FmHA

Appendixes B, C, D, F and G [Removed]

82. Subpart F is further amended by removing Appendixes Appendix E—[Redesignated as Appendix B] B, C, D, F and G and redesignating Appendix E as Appendix B.

Dated: September 20, 1985.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 85-23239 Filed 9-25-85; 4:04 pm]

[illegible] CODE 3410-07-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1780

Guaranteed Loan Programs; Advance Notice

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Farmers Home Administration (FmHA) is considering whether to propose establishing procedures for marketing guaranteed farmer program loans on the secondary market. Farmers Home Administration invites proposals from the public on facilitating a secondary market for guaranteed farmer program loans through pooling of such loans by private entities.

DATE: This advance notice of proposed rule-making is subject to a comment period ending January 28, 1986.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, 14th and Independence Avenue, S.W., Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Pandor Hadjy, Senior Loan Officer, Farm Real Estate and Production Division, USDA, Room 5448–S, Washington, D.C. 20250, telephone 475–4017.

SUPPLEMENTARY INFORMATION: The current guaranteed program permits use of the assignment of guarantee or multinote option features in marketing guaranteed loans to the secondary market.

The secondary market is presently receiving limited use with guaranteed farmer program loans partly because the individual loan amounts are not large enough to attract the secondary market investors.

Pooling of notes by private entities, as used in this proposal, involves the consolidation of notes for sale into the secondary market in a manner which would be acceptable to the lenders and to the secondary market. The notes would be consolidated into a pool of undivided interests which would be sold via Certificates of Beneficial Ownership or some similar instrument to convey beneficial ownership to the secondary market under the authority of section 310B(d)(6) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(d)(6)).

Written proposals will be received for a period of 120 days from the date of this publication.

This program is listed in the catalog of Federal Domestic Assistance under No. 10.404 Emergency Loans, No. 10.406 Farm Operating Loans, 10.407 Farm Ownership Loans and No. 10.416 Soil and Water Loans. For the reasons set forth in the Final rule related Notice to 7 CFR 3015, Subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Dated: September 20, 1985.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 85–23241 Filed 9–25–85; 4:04 pm]

BILLING CODE 3410-07-M

federal register

Monday
September 30, 1985

Part VII

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 20

Financial Assistance and Social Services Program; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 20

Financial Assistance and Social Services Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: the Bureau is publishing final Financial Assistance and Social Services Program regulations in response to a congressional directive in "The Department of the Interior and Related Agencies Appropriations Act," Fiscal Year 1985, Pub. L. 98–473. The Act provides that:

. . . after September 30, 1985, no part of any appropriation (except trust funds) to the (BIA) may be used directly or by contract for general or other welfare assistance (except child welfare assistance) payments (1) for other than essential needs (specifically identified in regulations of the Secretary or in regulations of the State public welfare agency pursuant to the Social Security Act adopted by reference in the Secretary's regulations) which could not be reasonably expected to be met from financial resources or income (including funds held in trust) available to the recipient individual which are not exempted under law from consideration in determining eligibility for or the amount of Federal financial assistance or (2) for individuals who are eligible for general public welfare assistance available from a State except to the extent the Secretary of the Interior determines that such payments are required under sections 6(b)(2), 6(i), and 9(b) of the Maine Indian Claims Settlement Act of 1980 . . .

In order to insure that the limitations in the statutory language are applied to the Bureau's general assistance program it was necessary to amend 25 CFR Part 20 to:

—More precisely define key terms within the regulations, i.e., "need", "essential needs", "resources", and "general assistance";
—Further delineate what constitutes a general assistance program and in what circumstance the Bureau provides general assistance payments to Indian citizens;
—Further identify and support a uniform standard for the determination of assistance payments; and
—Make additional revisions which may support any of the above and which further strengthen the management and effectiveness of the general assistance program.

EFFECTIVE DATE: September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Eddie F. Brown, Division of Social Services—Code 450, Bureau of Indian Affairs, 1951 Constitution Avenue NW., Washington, DC 20245, Telephone number (202) 343–6434.

SUPPLEMENTARY INFORMATION: This final rule was preceded by a notice of proposed rulemaking published on July 26, 1985, in the **Federal Register** (50 FR 30688). The public was invited to provide comments on the proposed rule for a thirty-day period. Thirty-three (33), public commenters responded on or before August 26, 1985, the closing date of the public comment period. Each comment was carefully reviewed by the Division of Social Services which adopted, rejected or developed a modified version of each recommendation for incorporation into the final rule. A number of comments pertained to issues which cannot properly be addressed in regulations. Such comments generally fell within one of the following categories:

1. *Requests for more specific detail and actual case examples to illustrate how the amended regulations will be applied at the service delivery level.* (The publication of this final rule makes necessary the immediate revision of 66 BIAM, the Bureau's social services procedures manual. It is that document which will provide the clarification and interpretation sought by many of those who commented. Plans for revising 66 BIAM are presently being formulated by the Bureau's Division of Social Services.)

2. *Requests that consideration be given to amending certain sections of 25 CFR Part 20 that were left unaddressed in the notice of proposed rulemaking.* (Several of the comments in this category were based on sound judgment and merit further analysis by the Division of Social Services. The Federal rulemaking process prohibits incorporation of these suggested changes into the final rule without first extending an opportunity for public comment. In view of out interest in these recommendations, the Bureau may consider them for inclusion in a subsequent proposed amendment of 25 CFR Part 20.)

3. *Requests for additional direction and more specific information regarding implementation in a given State of § 20.21(b) of these amended regulations.* (Due to wide variation prevailing among the States with regard to their general assistance program policies, the Bureau deems it advisable to develop individual responses to be sent directly to these commenters. The letters of response will be sent by certified mail, return receipt requested on a date approximately concurrent with the date of this publication.)

Other comments on the proposed rule were received to which we shall not respond directly: One Indian tribe, for example, submitted a letter in support of all the proposed changes; another requested the Bureau to immediately give notice that the proposed rule was being withdrawn in its entirety. Also, a large volume of positive comment was generated by section G of the Supplementary Information, which discussed quality assurance and recordkeeping. Of particular interest to the commenters was the announcement therein that the BIA is developing a quality assurance system to provide on-going evaluations of the general assistance program in accordance with established policies and procedures.

Changes Adopted Due To Comments Received

Comment. A number of commenters sought clarification and/or specification of limitations in § 20.20(c) which authorizes emergency or short-term assistance to Indians not otherwise eligible for assistance or services under this rule.

Response. The Bureau agrees that, as proposed, § 20.20(c) was overly general. We have therefore amended that subsection to more specifically define "emergency, short-term assistance" and "hardship", and to clarify the process by which such assistance may be authorized.

Comment. Several comments were received in response to the proposed definition of "household" (§ 20.1(dd)). The majority of those who commented objected to use of the word "accepted" in the definition, maintaining that it was vague, if not meaningless. One commenter cited an example to demonstrate that sharing of a dwelling by two or more people does not automatically confer acceptance of the arrangement by any party involved—even if the relationship criterion, also specified in the definition of "household", is met. Other commenters had essentially the same objections to including the phrase, ". . . who function as members of the family", which was viewed as being open to subjective interpretation.

Response. The Bureau agrees with comments regarding our use of the word "accepted" in the proposed definition of "household", and has excluded it from the final rule. After considerable deliberation, we have chosen to retain the phrase, ". . . who function as members of the family".

Comment. Two commenters requested clarification of § 20.21(b)(2). The commenters asked if, under the

proposed regulations, the Bureau would consider a State-funded general assistance program to be available even if payments levels regularly fluctuated.

Response. Language has been added to § 20.21(b)(2) to clarify that a state may be considered to have a general assistance program even though payments fluctuate

Comment. Numerous commenters were concerned with language at § 20.21 (c)(1)(i) and (c)(3) which requires general assistance applicants to file prior or concurrent applications for other types of assistance for which they are presumed to be eligible. Those who submitted comments generally requested that the Bureau give consideration to the hardships these requirements would impose due to the isolation factor on many reservations and the itinerant schedules of public welfare eligibility workers serving rural areas.

Response. The Bureau agrees that the proposed rule was unduly rigid in this regard and is therefore incorporated changes to permit good cause exceptions for initiating general assistance prior to the actual application for assistance from other sources, provided that the individual can demonstrate that he/she has initiated or attempted to initiate the application process for other assistance.

Comment. Comments were received concerning the supplemental information relative to the provisions of general assistance for members of tribes whose reservations extend into more than one state. Two commenters favored the adoption of the Bureau proposal to provide general assistance for all members of a tribe residing on a multi-state reservation. One commenter pointed out that Bureau general assistance could not be provided under Pub. L. 98–473 where an individual is eligible for state general assistance.

Response. Although there was no specific provision in the proposed regulation as published, the Bureau agrees that the Bureau general assistance should be provided to members of a tribe on a multi-state reservation on the basis of the multi-state reservation area. Thus in keeping with this conclusion and the policy of dealing government-to-government with Indian tribes, the Bureau is providing for members of tribes of multi-state reservations residing in states on such reservations where the Bureau does not otherwise provide general assistance, to receive Bureau general assistance to the extent that such members are eligible for Bureau general assistance and are not eligible for state general assistance in the state where they reside. This provision has been included in the final at § 20.21(b)(4).

Comment. Several commenters objected to the provision at § 20.21(d) allowing general assistance recipients 15 days to inform the Bureau of any changes in status which might affect either eligibity or the amount of assistance. All of the commenters favored retention of the existing Bureau policy requiring immediate notification of any changes in status. In each instance, the more stringent reporting requirement was preferred in order to avoid overpayment. As one commenter pointed out, current Bureau policy specifies that a 20-day written notice must precede any change in a general assistance recipient's grant. To add a 15-day "grace period" to the 20-day advance notice requirement would tend to increase the number and dollar amount of overpayments, and would decrease the probability of overpayment recovery.

Response. The Bureau concurs with the rationale for immediate reporting of changes in status and has adopted the requested modification.

Comment. Many commenters expressed concern that the proposed regulation does not permit applicants or recipients to retain any cash to handle emergencies. Several commenters suggested that the Bureau adopt the AFDC resource limit specified by the State where the individual lives. Some commenters proposed that the Bureau adopt SSI's resource limit, and another proposed that BIA specify its own resource limit.

Response. The Bureau reviewed the resource limits in those States in which it provides General Assistance. We found the State limits for all those States to be $1,000. Accordingly, we have revised the regulations to permit applicants and recipients to retain a resource limit of $1,000. Any liquid resource in excess of this amount will be counted as income in determining eligibility for, and the amount of the BIA payment. However, this provision is not to be construed as applying to earned or unearned income during the month in which such income is received. All monies not specifically exempted by law are to be counted as income during the month in which they are received, but as a resource thereafter up to $1,000 maximum

Comment. In response to the Bureau's proposed rule in intermittent income (§ 20.21(f)(3)(iii)), several commenters argued against immediate application of proration to lease income. The recommendation was made that a transition period of up to three years be granted to allow for implementation of proration rule. Rationale for such a transition period was based on the observation that lease money often does not reach an individual in a consumable form. For example, lease income may be obligated for direct payment on loan or credit indebtedness and is therefore not actually cash on hand. To avoid placing undue hardship on certain recipients of lease income, commenters proposed a transition period as an alternative to allow caseworkers time to assist recipients in long-term financial planning.

Response. The Bureau has incorporated this recommended change into the regulations because we agree that immediate implementation of the proration requirement would have an unduly harsh impact on certain general assistance recipients due to pre-existing obligations which may limit the actual availability of lease income.

Comment. Comment was received regarding the criteria for incapacitation now specified at § 20.21(i)(1)(iv). Objection to this clause centered on the fact no recognition is given to caseworkers' abilities to assess special case contingencies and make independent determinations in certain instances where incapacitation is obvious.

Response. The Bureau agrees that social services field staff should have the authority to make documented casework decisions, including eligibility determinations and assessments of employability, based on their professional evaluation of an individual's circumstances. We are also aware that psychological assessment services are not available in most Indian communities, and that heavy patient loads in many reservation healthcare facilities necessitate low priority being assigned to medical examinations requested for purposes of determining welfare assistance eligibility. Subsection (1)(v) has therefore been added to §20.21(i) to approve eligibility based on caseworker assessment, but pending examination of the applicant by a physician.

Comment. Comment was received urging the Bureau to specify penalty for individuals who refuse to accept available local employment, voluntarily terminate employment without good cause, or are fired from jobs because of unjustifiable absence, poor work habits, etc. .

Response. The Bureau has further investigated this issue through contact with field staff and has determined that the requested provision should be included in the final rule. A new subsection (4) has been added to

§ 20.21(i) which will levy a minimum 60-day period of ineligibility for applicants or recipients who refuse to accept available local employment or, without good cause, do not maintain their employed status. The period of ineligibility has been made applicable only to the individual who violates the new provision, and will not extend to other eligible members of his/her household. A provision for reducing the period of ineligibility, subject to specified conditions, has also been added.

Comments Not Adopted

Comment. Some commenters objected to the time constraints imposed by the eligibility redetermination criteria (§ 20.21(d)). These commenters stated that the requirements are unrealistic because they disregard such factors as heavy worker caseloads, physical distances, harsh weather conditions during periods of the year and substandard roads on many reservations—all of which interfere with a caseworker's ability to make home visits and eligibility redeterminations in a timely manner.

Response. The regulations, especially at § 20.21(d)(2), do provide limited caseworker flexibility in establishing annual personal contact with assistance recipients. It is the Bureau's position that a regulated eligibility redetermination process is necessary to maintain overall program accountability; therefore, no change has been made in this section.

Comment. Three commenters were concerned that § 20.21(g)(2) requires Indians to divest real or personal property holdings which, for reason of religious belief or tribal custom, cannot be divested by an Indian.

Response. These regulations do not require Indian people to relinquish real or personal property holdings related to religious belief or tribal custom.

Comment. Numerous commenters objected to BIA's long-standing policy of adhering to State AFDC payment levels in the provision of general assistance. Others objected to the rateable reduction of general assistance payments in States where such reductions are imposed on AFDC grant assistance. In regard to these issues, some commenters maintained that adoption of State-established payment levels fails to take into account the extreme isolation, absence of private sector economies and other unique factors that are characteristic of Indian reservations. Many who objected to rateably reduced general assistance payments in particular, and BIA's adherence to AFDC payment levels in general, advocated the development of a separate BIA general assistance payment standard for implementation on reservations nationwide.

Response. BIA general assistance is available only when the applicant is not eligible for AFDC, SSI or State/locally funded income maintenance programs. On most reservations, the majority of financial assistance recipients are clients of AFDC programs; therefore, if BIA were to establish a separate general assistance standard of payment, inherent inequities would exist between general assistance recipients and the recipients of AFDC. The Bureau holds that the creation of such payment inequity would not be in the ultimate best interest of Indian communities, and would be contrary to the intent of Congress when it annually appropriates monies to fund the Bureau's general assistance program. Applying rateable reductions, where applicable, establishes absolute parity between AFDC and BIA general assistance payment levels, thereby assuring that the basic needs of all welfare assistance recipients in a given locale are met on an equal basis.

Comment. One commenter maintained that the proposed regulations require BIA to administer a program of general assistance in a State where State general assistance is provided by vendor payments or purchase orders in lieu of cash payments.

Response. Section 20.21(b) requires no change because it does not stipulate that State general assistance must be provided in cash payment in order to be considered available to meet the needs of eligible Indians. A State program which meets criteria specified under § 20.21(b) will be considered available, whether the assistance is provided in vendor payments or purchase orders.

Comment. A single commenter asked the Bureau to incorporate into § 20.21 of the final rule a provision requiring administration of general assistance programs in all States where Indian lands are held in Federal trust.

Response. This recommendation was not adopted because the BIA social services program does not relate to land held in trust status as such. The authority for BIA social services is the Snyder Act (25 U.S.C. 13 (1982)); therefore, the provision of general assistance is based on Federal statute rather than on the trust relationship per se. The suggested provision would be in conflict with the Federal Government's view of BIA general assistance as a secondary or residual form of financial assistance, and would, in effect, establish BIA assistance as a primary form of assistance in States where State or locally funded general assistance is available to all residents on an equal basis.

Comment. Another item of concern to some commenters was custodial care, a subcomponent of the Bureau's general assistance program. Comment on this issue dealt principally with questions of whether the amended regulations allow for the continued delivery of this service.

Response. We have carefully reviewed the amended regulations in light of these comments, and have determined that existing Bureau policy relative to custodial care services has been left unchanged.

Comment. Several commenters asked whether the Bureau is required to consider as available to the BIA household the income of non-legally responsible individuals living in the household.

Response. All income of those included in the BIA payment is to be counted as available to meet need. However, no income of anyone outside the BIA household is considered unless the individual actually contributes to the support of a member of the household. Therefore, the Bureau will not assume that a non-legally responsible individual(s) residing together with a general assistance household is contributing to the support of any member(s) of the household included in the BIA payment.

Comment. Several commenters objected to the proposal that income from trust land leases and proceeds from the sale of trust land must be counted as income and resources. One commenter believed that this was in conflict with the General Allotment Act and other Acts which govern trust allotments on specific reservations. Additional comments suggested that the regulations should allow a resource exemption for the first $2,000 derived from trust land leases or sales.

Response. The Federal Government does not exercise any control over income derived from trust land leases or the sale of trust land. Pub. L. 98-473 provides for trust funds to be counted as income and resources.

Comment. One commenter proposed that the Bureau eliminate the requirements for counting free shelter as income in kind and use two standards of assistance—one which includes shelter costs, and one which does not. The commenters believed this to be less administratively complex.

Response. A few States have an AFDC standard which distinguishes between those who have shelter costs and those who do not. In these States,

the Bureau will determine eligibility and payment amount for a household having no shelter costs by using the standard without shelter, and will not count free shelter as income in kind. However, in States not making such shelter cost distinctions, the Bureau will count free shelter as income in kind.

Comment. Some commenters were opposed to counting as income any contribution of shelter at no cost. Other commenters proposed that the Bureau adopt an in kind income policy only if the State in which the person lives counts free shelter as income in kind for AFDC purposes.

Response. The Bureau believes that it is the best use of limited funds to not pay a shelter amount to individuals who have no shelter cost.

Comment. Some commenters asked for further clarification of the kinds of income to be prorated.

Response. Proration applies to any income received which is payment for work performed. It applies to income received by individuals who, because of a contract, self-employment, or short-term employment, earn annual income in a period of time shorter than one year, e.g., teachers and farmers. Proration also applies to income received other than monthly which is anticipated to continue on a regular basis, e.g., lease income.

Comment. Several commenters were opposed to prorating lease income because the extra money gave recipients the opportunity to purchase items which are considered necessities by most people. They suggested that lease income be counted only for the month in which it was received. Other commenters suggested that only amounts in excess of a specific amount, e.g., $3,000, be prorated. Some commenters, on the other hand, supported proration because it would discourage persons from spending lump sums of income at one time.

Response. This regulation is not changed. Due to the limitations of available funds, it is our position that people shoud first use their own income, rather than public tax revenues to meet basic needs.

Comment. The Bureau received comments objecting to the provision of prorating shelter expenses contained in § 20.21(h)(2). The basic rationale of most commenters was that this would be a difficult provision to apply equitably, given the various types of living arrangements prevalent on Indian reservations, and variations in State public welfare policies that affect BIA general assistance recipients.

Response. The Bureau has carefully weighed the comments received on proration of shelter expenses and has decided to make no changes in § 20.21(h)(2). In consideration of limited program funds, the Bureau is retaining the shelter cost proration provision in § 20.21(h)(2). The provision is compatible with the definition of "household", and is consistent with our efforts to identify and support a uniform standard for the determination of assistance payments.

Comment. Two commenters sought reconsideration of § 20.21(h)(3) which stipulates that the Bureau shall round general assistance payments down to the next lower whole dollar.

Response. This method of computing welfare grant assistance payments is currently used by every Federally funded income maintenance program and by the Food Stamp Program. To establish consistency between BIA general assistance and other similar programs, the provision at § 20.21(h)(3) has been retained.

Comment. Three commenters proposed that the Bureau extend general assistance eligibility criteria to include Indians who are unavailable for employment due to enrollment in a post-secondary academic or vocational curriculum.

Response. It has been BIA policy to deny exemptions of the pertinent regulation (here codified at § 20.21(i)) for adult students because of the practical need to apply eligibility factors uniformly, and because post-secondary students have access to various types of financial aid.

Comment. The Bureau was requested by three commenters to include a provision at § 20.21(i)(1) extending general assistance eligibility to Indians who are unavailable for employment due to voluntary or obligatory tribal service in roles of cultural or religious significance.

Response. We have given very careful consideration to these comments and have discussed the issue at length with certain tribal representatives and social services field personnel. Based on those consultations and our analysis of the issue, we have concluded that the Bureau cannot deem any class or category of persons automatically eligible for general assistance. We also have concluded that costs for basic maintenance needs of Indian ceremonial figures are private tribal responsibilities not to be borne by the Federal Government through BIA's general assistance program. In keeping with the provisions of these regulations, individuals fulfilling obligations in any ceremonial capacity which precludes regular employment shall, at the time of general assistance application, be considered unavailable to seek and accept employment, and therefore ineligible for general assistance.

Comment. One commenter requested that the Bureau exempt persons under age 18 from the requirement to seek and accept local employment rather than only persons under age 16 as proposed at § 20.21(i)(1)(i).

Response. This recommendation has not been adopted. In the vast majority of cases, persons under age 16 are unemancipated by marriage, subject to compulsory school attendance laws, and ineligible to apply for general assistance in their own right because they are under the physical care, custody and control of others. These characteristics are less likely to be true of persons age 16 or older. We believe individuals age 16 and older who are not in school should not be relieved of the requirement to seek and accept local employment unless exempted pursuant to § 20.21(i)(1).

Comment. A single commenter requested exemption from § 20.21(i) for all Tribal Work Experience Program (TWEP) participants on grounds that, because they are "employed", such tribal members should not be required to seek and accept regular employment.

Response. In all instances, TWEP is a subcomponent of the Bureau's general assistance program and participation is contingent on basic general assistance eligibility. As the name itself implies, TWEP is designed to provide general assistance recipients with opportunity to end general assistance dependency through gaining work experience, development of good work habits and acquisition of job skills. Assignment to a TWEP project does not constitute regular employment; therefore the suggested change is not adopted.

Comment. Numerous commenters requested clarification of the portion of § 20.21(i) dealing with general assistance recipients' "availability" to participate in Tribal Work Experience Programs (TWEP).

Response. We believe this section of the rule (now codified as § 20.21(i)(2)) requires no change since it clearly conveys the Bureau's intent to make TWEP participation mandatory on reservations where the tribe has exercised its option to contract for TWEP under Pub. L. 96-638. By specifying that the general assistance recipient shall be *available* for TWEP participation, the Bureau is acknowledging that the total number of TWEP positions or work site assignments may well be insufficient to permit 100 percent participation of all

eligible heads of household receiving general assistance.

Other Changes Made

Upon review of the proposed rule, the Bureau has made the following changes in the final:

—The definition of "BIA general assistance", § 20.2(m), has been changed to emphasize that such assistance is provided only to *eligible* Indians;

—The definition of "Essential needs", § 20.1(cc), has been expanded to include burial expenses;

—Change was made at § 20.1 to require tribes not served by BIA general assistance to formally request the service from BIA;

—Language has been added to § 20.21(f)(2)(i) authorizing proceeds from the sale of trust land and other real or personal property to be set aside for up to one year pending reinvestment in trust land or a primary residence. If not so reinvested at the end of one year from the date of transaction, such proceeds will be considered unearned income available to meet need;

—The word "general" has been deleted from § 20.21(f)(2)(iii) to indicate that any assistance provided by a State, county or local agency will be considered unearned income; and

—Several numbering changes were necessary to accommodate all changes now incorporated into this final rule. Other changes in numbering were made for purposes of clarity and ease of reference.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601). The information collection requirements contained in this part have been submitted to the Office of Management and Budget for approval under 44 U.S.C. 3501 *et seq.*, and have been given clearance number 1076–0017.

This rule is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Department of the Interior has determined that this document does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1983.

Since the Bureau's general assistance program cannot function because of Pub. L. 98–473 after September 30, 1985, until these regulations are effective, good cause is found under 5 U.S.C. 553(d)(3) for these regulations to become effective upon publication in the **Federal Register**.

The primary author of this document is Eddie F. Brown, Chief, Division of Social Services, Bureau of Indian Affairs, telephone number (202) 343–6434.

List of Subjects in 25 CFR Part 20

Administrative practice and procedure, Child welfare, Indians-Social welfare, Public assistance programs.

PART 20—[AMENDED]

For reasons set out in the preamble, Part 20 of Subchapter D, Chapter I of Title 25, Code of Federal Regulations, is amended as follows:

1. The authority for 25 CFR Part 20 is revised to read as follows:

Authority: 25 U.S.C. 13; § 20.21 also issued under Pub. L. 98–473.

2. Section 20.1 is amended by revising paragraphs (m), (s), (t), and (w) and adding paragraphs (cc), (dd), (ee), (ff) and (gg) to read as follows:

§ 20.1 Definitions.

* * * * *

(m) "BIA general assistance" is a secondary or residual source of assistance for eligible Indian people and means financial aid payments to eligible Indian individuals and households for assistance in meeting the cost of essential needs.

* * * * *

(s) "Need" means the deficit after consideration of income and other liquid assets necessary to meet the cost of basic need items and special need items as defined by the Bureau standard of assistance for the State in which the applicant or recipient resides.

(t) "Public assistance" means those programs of assistance provided under Title IV of the Social Security Act (49 Stat. 620), as amended, and includes the Aid to Families with Dependent Children (AFDC) Program provided under Title IV–A.

* * * * *

(w) "Resources" means income and other liquid assets available to an Indian person or household to meet current living costs, unless otherwise specifically excluded by Federal statute. Liquid assets are those properties in the form of cash or other financial instruments which can be converted to cash, such as savings or checking accounts, promissory notes, mortgages and similar properties.

* * * * *

(cc) "Essential needs" include at a minimum shelter, food, clothing and utilities, but do not include needs, except for burial expenses, beyond those basic and special needs included in the Bureau standard of assistance for the State where the Indian individual or household lives.

(dd) "Household" means persons living together with the "head of household" who may be related or unrelated to the "head of household" and who function as members of the family.

(ee) "Tribal Work Experience Program (TWEP)" means a program operated by tribal contract which provides eligible participants with work experience and training that promotes and preserves work habits and develops work skills.

(ff) "Recipient" means an individual to whom or for whom a BIA general assistance payment is made for the month.

(gg) "Case" includes all individuals in the household as defined in § 20.1(dd) whose needs are included in the BIA general assistance payment made for the month.

3. Section 20.20(c) is revised to read as follows:

§ 20.20 General.

* * * * *

(c) Upon written request of an appropriate tribal governing body or the appropriate Bureau line official, the Deputy Assistant Secretary may authorize emergency short-term assistance and services to Indians, not otherwise eligible under this part, who reside on a reservation or in designated near-reservation areas, when necessary to meet need as defined at § 20.21(s) and prevent hardship caused by fire, flood or acts of nature.

* * * * *

4. Section 20.21 is revised in its entirety to read as follows:

§ 20.21 General assistance.

In States where BIA general assistance would otherwise be available, the Bureau will not provide general assistance:

(a) To on or near-reservation members of tribes currently not served by BIA general assistance unless the tribe formally requests, through final governing body action, that the Bureau operate a general assistance program. Such request for BIA general assistance should be timed with the Bureau's next fiscal year for the general assistance program;

(b) In any State having a general assistance program available to meet the needs of eligible citizens, including the needs of Indians. A State general

assistance program is available if payments are:

(1) Available statewide to eligible individuals and families, including Indians on reservations;

(2) Authorized by State law with funds regularly appropriated to make such payments, or if State law requires all county governments or localities to make such payments even though payments may fluctuate subject to the limited availability of funds;

(3) For the purpose of meeting monthly minimum essential needs on a continuing basis; and,

(4) Where the Bureau provides general assistance on a reservation in one State and that reservation extends into a bordering State(s), the Bureau will provide general assistance to members of the tribe in the other bordering State(s) based on the standard of assistance in the State where the recipient or applicant resides. However, the Bureau will provide such assistance in the bordering State(s) only to those members who are not eligible for State general assistance as defined in § 20.21.

(c) In States where the Bureau provides general assistance, Indians, in order to be considered eligible for general assistance under this part, must meet the requirements prescribed in § 20.20(a); and the following conditions:

(1) Must not receive financial assistance from AFDC or Supplemental Security Income (SSI);

(i) Indians eligible to receive AFDC or SSI will be allowed to receive BIA general assistance once they have applied for and until they begin to receive assistance payments from AFDC or SSI, except that payment shall be authorized when good cause reasons, such as physical isolation, lack of transportation or intermittent availability of State eligibility specialists, temporarily prevent concurrent application; and when it can be documented that the application process has been initiated by scheduling an appointment, or that the BIA/tribal caseworker has initiated the application process on behalf of the general assistance applicant.

(ii) The Bureau will not make payments for any month for which AFDC or SSI payments are made.

(2) Must have insufficient resources to meet the basic and special need items defined by the Bureau standard of assistance;

(3) Must apply for assistance from other Federal, State, county, or local programs for which they may be eligible concurrent with application to the Bureau for general assistance, unless good cause reasons, such as physical isolation with sporadic access to transportation or intermittent availability of State eligibility specialists, temporarily prevent concurrent application; and when it can be documented that the application process has been initiated by scheduling an appointment, or that the BIA/tribal caseworker has initiated the application process on behalf of the general assistance applicant.

(d) *Redeterminations.* (1) The Bureau shall determine eligibility and the amount of the BIA general assistance payment based on its best estimate of income and circumstances which will exist in the month for which the Bureau is to provide assistance. Recipients are required to immediately inform the Bureau of any changes in status which may affect their eligibility or amount of assistance. The Bureau shall redetermine eligibility:

(i) Whenever there is an indication of a change in circumstances;

(ii) Not less frequently than every three (3) months for individuals who are not exempt under paragraph 20.21(i) from seeking or accepting employment;

(iii) Not less frequently than one every six (6) months for all households.

(2) the redetermination process shall include personal contact with the recipient, preferably a home visit, not less than once a year to evaluate changes in living circumstances and household composition, and to assess the need for continued assistance.

(e) *Standards of Assistance.* (1) Where the Bureau operates a general assistance program, its standard of assistance shall be the AFDC payment standard used in the State where the applicant or recipient resides. In a State that meets 100 percent of the need standard, the Bureau standard is the need standard. In a State that does not meet need in full and applies a rateable reduction to the need standard, the Bureau standard is the rateable reduced amount. The AFDC payment standard incorporates the same basic and special need items as the AFDC standard of assistance, and is the amount from which the Bureau will subtract net income and liquid assets to determine eligibility for and the amount of the Bureau's general assistance payment.

(2) In the event the State has no standard for one adult, the Bureau standard for one adult shall be the difference between the standard for one child and the standard for a household of two which includes an adult, or one-half the amount of the standard for a household of two, whichever is greater.

(f) *Resources.* In determining eligibility for and the amount of the general assistance payment, the Bureau shall consider all types of income and other liquid assets available for support and maintenance unless otherwise disregarded under § 20.21(g), or specifically excluded by Federal statute. All earned or unearned income will be counted as income in the month received and as a liquid asset thereafter, except certain income from the sale of real personal property as provided for under § 20.21(f)(2)(i). Resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum, as defined at 25 CFR 20.1(w), and has the ability to make such sum available for support and maintenance.

(1) "Earned income" means in cash or in kind earned by an individual through the receipt of wages, salary, commissions, or profit from activities in which he is engaged as a self-employed individual or as an employee.

(i) Earned income includes earnings over a period of time for which settlement is made at one given time, as in the instance of the sale of farm crops, livestock, etc.

(ii) With respect to self-employment, "earned income" means total profit from business enterprise, i.e., gross receipts after subtracting business expenses directly related to producing the goods or services and without which the goods or services could not be produced. Business expenses do not include items such as depreciation, personal business and entertainment expenses, personal transportation, purchase of capital equipment and payments on the principal on loans for capital assets or durable goods.

(2) "Unearned income" includes but is not limited to:

(i) Income from: interest; oil and gas and other mineral royalties; rental property; cash contributions such as child support and alimony; retirement, disability and unemployment benefits; per capita payments not excluded by Federal statute; sale of trust land and real or personal property which is not set aside for the purpose of reinvestment in trust land or a primary residence, or if set aside, has not been reinvested in trust land or a primary residence at the end of one year from the date the income was received; Federal and State tax refunds. All of the above shall be counted to the extent they are not disregarded by Federal statute.

(ii) Income in kind contributions providing shelter at no cost to the individual or household: In establishing the amount of the in kind contribution, the Bureau shall use the amount for shelter included in the standard, if identifiable, or 25 percent of the

standard unless there is evidence provided that the value of free shelter is less; and,

(iii) Assistance provided by a State, county or local agency.

(3) The Bureau shall prorate (i) over a 12-month period recurring annual income received by individuals, such as teachers whose regular employment does not engage them on a year round basis; (ii) income received by individuals employed on a contractual basis over the period of the contract; and (iii) intermittent income received quarterly, semiannually or yearly over the period covered by the income. The Bureau shall prorate the income unless there is evidence that the income will not continue to be received in the future. *However*, for a period of three years from the publication date of these regulations, the Bureau will not prorate lease income which has been obligated by a household in a manner which makes it unavailable in consumable form to the household.

(g) *Disregards.* (1) The Bureau shall disregard, from the gross amount of earned income, amounts deducted for:

(i) Federal, State and local taxes;

(ii) Social Security (FICA);

(iii) Health insurance;

(iv) Work related expenses, including reasonable transportation costs;

(v) Child care costs except where the other parent in the home is not working or is not disabled; and

(vi) The cost of special clothing, tools and equipment directly related to the individual's employment. All of the above, as appropriate, will be disregarded from self-employment income after deducting costs of doing business.

(2) The Bureau shall disregard as income, or other liquid assets:

(i) The first $1000 of liquid resources available to the household;

(ii) Any home produce from garden, livestock and poultry utilized by the applicant or recipient and his/her household for their consumption;

(iii) Resources specifically excluded by Federal statute.

(h) *Payments.* (1) The Bureau shall make assistance payments in an amount not to exceed the difference between the Bureau standard of assistance and all resources not otherwise disregarded. In the event the State in which the individual or household lives applies a rateable reduction to that difference or maintains a system of dollar maximums on the payment, the Bureau shall also apply the rateable reduction and/or the maximum to the payment.

(2) If there is more than one household living in a dwelling and the household(s) receiving general assistance contribute to shelter expenses, the Bureau shall prorate the actual shelter cost, but the amount in the payment for shelter will not exceed the amount in the Bureau standard of assistance for shelter, or if not identifiable, the prorated amount, in addition to other needs, cannot exceed the total amount in the standard for individuals or households in similar circumstances.

(3) The Bureau will round the payment down to the next lower whole dollar.

(4) In no case shall the Bureau provide retroactive payments of general assistance for any period prior to the date of application for assistance.

(i) *Employment.* (1) An applicant or recipient must actively seek employment, including use of available tribally or Bureau-funded employment assistance services. The individual is also required to accept available local employment. An individual who does not comply will not be eligible for general assistance. These requirements do not apply to:

(i) A person under the age of 16 years;

(ii) A full-time student under the age of 19 who is attending an elementary or secondary school, or a vocational or technical school equivalent to a secondary school;

(iii) A person suffering from an illness, when it is determined on medical evidence or on other sound basis that the individual's illness or injury is serious enough to temporarily prevent entry into employment;

(iv) An incapacitated person, when verified that a physical or mental impairment determined by a physician or licensed or certified psychologist, by itself or in conjunction with age, prevents the individual from engaging in employment;

(v) A person who, upon the documented assessment of the social services caseworker, and pending examination by a physician or other appropriate professional, is deemed essentially incapacitated because of age, physical or mental impairment;

(vi) An individual responsible for a person in the home who has a verified physical or mental impairment that requires the individual in the home on a virtually continuous basis, and there is no other appropriate household member available;

(vii) A parent or other individual who personally provides full-time care of a child under that age of 6;

(viii) A parent or minor living in the household if the other parent is not exempt from seeking or accepting employment;

(ix) A person who is working 30 hours or more per week in unsubsidized employment expected to last a minimum of 30 days. This exemption continues to apply if there is a temporary break in full-time employment expected to last no longer than 10 work days; and

(x) A person for whom employment is not accessible in a commuting time that is reasonable and comparable with others in similar circumstances.

(2) Where the tribe administers a Tribal Work Experience Program (TWEP), the nonexempt individual shall be available to participate. However, participation does not relieve the individual from seeking or accepting employment.

(3) Individuals not exempt under one of the preceding clauses of this section must, in seeking employment, provide evidence of efforts to obtain employment.

(4) Individuals not exempt under one of the preceding clauses of this section, who refuse, or otherwise fail to seek and accept available local employment, or who voluntarily and without good cause do not maintain their employed status, will not be eligible to receive general assistance for a period of 60 days following the date of application, or eligibility redetermination.

(i) The 60-day period of ineligibility will be renewed upon each application for general assistance until the applicant complies with the requirement to seek and accept available local employment.

(ii) An unemployed individual against whom a 60-day eligibility suspension has been levied will have the suspension period reduced by 30 days upon providing evidence that he/she has made effort to seek employment.

(iii) Periods of eligibility suspension shall affect only the individual who fails to comply with the provision of this section, but shall not apply to other members of his/her household.

Hazel E. Elbert,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85–23343 Filed 9–27–85; 8:45 am]

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federal register

Monday
September 30, 1985

Part VIII

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[OACT-002-N]

Medicare Program; Part A Premium for the Uninsured Aged for the 12-Month Period Beginning January 1, 1986

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces Medicare's monthly hospital insurance premium for the uninsured aged for the 12 months beginning January 1, 1986.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Solomon Mussey, (301) 594–2829.

SUPPLEMENTARY INFORMATION: Under the authority in section 1818(d)(2) of the Social Security Act (42 U.S.C. 1395i–2(d)(2)), I have determined that the monthly Medicare hospital insurance premium for the uninsured aged for the 12 months beginning January 1, 1986, is $214.

Section 1818 of the Social Security Act (Act) provides for voluntary enrollment in the hospital insurance program (Part A of Medicare), subject to payment of a monthly premium, of certain persons age 65 and older who are uninsured for social security or railroad retirement benefits and do not otherwise meet the requirements for entitlement to hospital insurance. (Persons insured under the Social Security or Railroad Retirement Acts need not pay premiums for hospital insurance.)

Section 1818(d)(2) of the Act, as amended by section 606(b) of the Social Security Amendments of 1983 (Pub. L. 98–21) requires the Secretary to determine and publish, during the next to last quarter of each calendar year, the amount of the monthly Part A premium for voluntary enrollment for the following calendar year. The formula specified in this section requires that, for the period beginning January 1, 1986, the 1973 base year premium ($33) be multiplied by the ratio of (1) the 1986 inpatient hospital deductible to (2) the 1973 inpatient hospital deductible, rounded to the nearest multiple of $1 or, if midway between multiples of $1, to the next higher multiple of $1.

Under section 1813(b)(2) of the Act, the 1986 inpatient hospital deductible was determined to be $492. The 1973 deductible was actuarially determined to be $76, although the 1973 deductible was actually promulgated to be only $72, to comply with a ruling of the Cost of Living Council. (See 37 FR 21452, October 11, 1972.) The monthly premium for the 12-month period beginning January 1, 1986 has been calculated using the $76 deductible for 1973, since this more closely satisfies the intent of the law. Thus, the monthly hospital insurance premium is $33 × (492/76) = $213.63, which is rounded to $214.

The monthly hospital insurance premium for the uninsured aged for the 12-month period beginning January 1, 1986, will increase to $214. That amount is 23 percent higher than the $174 monthly premium amount for the 12-month period beginning January 1, 1985.

The estimated cost of this increase to the approximately 22 thousand enrollees who do not otherwise meet the requirements for entitlement to hospital insurance will be about $11 million.

Regulatory Impact Statement

This notice merely announces amounts required by legislation. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulation or policy. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 through 612).

(Section 1818(d)(2) of the Social Security Act (42 U.S.C. 1395i–2(d)(2))

(Catalog of Federal Domestic Assistance Program No. 13.773; Medicare—Hospital Insurance)

Dated: September 20, 1985.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

Approved: September 26, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85–23463 Filed 9–27–85; 9:37 am]

BILLING CODE 4120-01-M

[OACT-003-N]

Medicare Program; Monthly Actuarial Rates and Part B Premium Rates Beginning January 1, 1986

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces the monthly actuarial rates for aged (age 65 or over) and disabled (under age 65) enrollees in the Medicare Supplementary Medical Insurance (SMI) program for calendar year 1986. It also announces the monthly SMI premium rate to be paid by all enrollees during calendar year 1986.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Carter Warfield, (301) 594–2893.

SUPPLEMENTARY INFORMATION:

Background

The Medicare Supplementary Medical Insurance (SMI) program is the voluntary Medicare Part B program that pays all or part of the costs for physicians' services, outpatient services, home health services, services furnished by rural health clinics, ambulatory surgical centers, and comprehensive outpatient rehabilitation facilities, and certain other medical and health services not covered by hospital insurance (Medicare Part A). The SMI program is available to individuals who are entitled to hospital insurance and to U.S. residents who have attained age 65 and are citizens, or aliens who were lawfully admitted for permanent residence and have resided in the United States for five consecutive years. This program requires enrollment and payment of monthly premiums, as provided in 42 CFR Part 405, Subpart I.

The Secretary of Health and Human Services is required by law to issue two annual notices relating to the SMI program.

One notice announces two amounts that, according to actuarial estimates, will equal, respectively, one-half the expected average monthly cost of SMI for each aged enrollee (age 65 or over) and one-half the expected average monthly cost of SMI for each disabled enrollee (under age 65) during the calendar year beginning the following January. These amounts are called "monthly actuarial rates."

The second notice announces the monthly SMI premium rate to be paid by aged and disabled enrollees for the calendar year beginning the following January. (Although the costs to the program per disabled enrollee are higher than for the aged, the law provides that they pay the same premium amount.) Beginning with the passage of section 203 of Pub. L. 92–603 and until the passage of section 124 of Pub. L. 97–248, the Tax Equity and Fiscal Responsibility Act of 1982, the premium rate was limited to the lesser of the actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly title II social security benefits. The difference between the premiums paid by all enrollees and total incurred costs was met from the general revenues of the Federal Government.

Section 124 of Pub. L. 97–248 amended section 1839 of the Social Security Act

(Act) regarding a temporary change in the calculation of the SMI premium rate. Specifically, from July 1983 through June 1985, the monthly premium rate was set at one-half the actuarial rate for aged beneficiaries (25 percent of the expected average monthly cost of SMI for each aged enrollee).

Section 606 of Pub. L. 98–21 further amended section 1839 of the Act to revise the date that the premium rate is announced and the date that the premium rate goes into effect. Thus, the premium rates are to be announced in September rather than December of each year and become effective in January following the announcement rather than in July. Additionally, section 606 of Pub. L. 98–21 and section 2302 of Pub. L. 98–369 (the Deficit Reduction Act of 1984) amended section 1839 of the Act to extend through 1987 the provision that the premium be based on 25 percent of program costs. In January 1988, calculation of the premium rate will revert to the method used before the passage of Pub. L. 97–248, Pub. L. 98–21 and Pub. L. 98–369, except that it will remain on a calendar year basis.

A further provision affecting the calculation of the SMI premium is section 1839(f) of the Act that was added by Pub. L. 98–369. This provision refers to section 215(i) of the Act that provides for cost of living increases in social security benefits. Section 1839(f)(1) of the Act states that if no cost of living increase under section 215(i) of the Act becomes effective in December 1985 or 1986, there will be no increase in the SMI standard monthly premium for the following year. Thus, the premium will remain at the December level. However, those individuals, who enroll in the SMI program after the expiration of their initial enrollment period or reenroll after termination of a coverage period, are still subject to the increase in premium described in section 1839(b) of the Act. In these cases, the monthly premium would be the amount of the December premium plus the additional amount specified in section 1839(b) of the Act. That increase is a percentage of the premium and would be based on the new premium rate.

Section 1839(f)(2) of the Act, as added by Pub. L. 98–369 and amended by Pub. L. 98–617, contains provisions that are applicable if there is a cost of living increase for 1986 or 1987. The law provides that if an individual is entitled to benefits under section 202 or 223 of the Act (the Old-Age and Survivors Insurance Benefit and the Disability Insurance Benefit, respectively) and has the SMI premium deducted from these benefit payments, the premium increase would be reduced to avoid causing a decrease in the individual's benefit payment. This would occur if the cost of living adjustment under section 215(i) of the Act is less than the increase in the premium. Specifically, the reduction in the premium amount applies if the individual receives benefits under section 202 or 223 of the Act for November and December of a particular year and the individual's SMI premiums for December and the following January are deducted from the respective month's section 202 or 223 benefits.

Note.—A check for benefits under section 202 or 223 is received in the month following the month for which it is due. The SMI premium that is deducted from a particular check is the SMI payment for the month in which the check is received. Therefore, a benefit check for November is not received until December and has the December's SMI premium deducted from it.

Generally, the reduced SMI premium for the individual for that January and for each of the succeeding 11 months for which he or she is entitled to benefits under section 202 or 223 of the Act is the greater of the following:

(1) The monthly premium for January reduced as necessary to make the December monthly benefits, after the deduction of the SMI premium for January, at least equal to the preceding November's monthly benefits, after the deduction of the SMI premium for December.

(2) The monthly premium for that individual for that December.

Again, those individuals who have enrolled in the SMI program late or have reenrolled after the termination of a coverage period are subject to an increased premium under section 1839(b) of the Act. In these cases, the monthly premium would be calculated as specified in (1) and (2) above with the addition of the amount specified under the provisions of section 1839(b) of the Act. That increase is a percentage of the premium and would be based on the new premium rate.

In determining the premium limitations under section 1839(f)(2) of the Act, the monthly benefits to which an individual is entitled under section 202 or 223 do not include retroactive adjustments or payments and deductions on account of work. Also, once the monthly premium amount has been established under section 1839(f)(2) of the Act, it will not be changed during the calendar year even if there are retroactive adjustments or payments and deductions on account of work that apply to the individual's monthly benefits.

For calendar year 1986, the notices of the monthly actuarial rates and the monthly premium rate are as follows:

Notice of Monthly Actuarial Rates

As required by sections 1839(a) (1) and (4) of the Act (42 U.S.C. 1395r(a)(1) and (4)), as amended, I have determined that the monthly actuarial rates applicable for calendar year 1986 are $31.00 for enrollees age 65 and over, and $40.80 for disabled enrollees under age 65. The accompanying statement gives the actuarial assumptions and bases from which these rates are derived.

Notice of Monthly Premium Rate

As required by section 1839(a)(3), (e)(1) and (f) of the Act (42 U.S.C. 1395r(a)(3), (e)(1) and (f)), as amended, I have determined that the standard monthly premium amount will be $15.50 during calendar year 1986. The accompanying statement shows how the premium amount was derived.

Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Actuarial Rates and the Standard Monthly Premium Rate for the Supplementary Medical Insurance Program Beginning January 1986

1. Actuarial Status of the Supplementary Medical Insurance Trust Fund

The law requires that the SMI program be financed on an incurred basis; that is, program income during the calendar year for which the actuarial rates are effective must be sufficient to pay for services furnished during that year (including associated administrative costs) even though payment for some of these services will not be made until after the close of the year. The portion of income required to cover benefits not paid until after the close of the calendar year is added to the trust fund until needed. Thus, the assets in the trust fund at any time should be no less than benefit and administrative costs incurred but not yet paid.

Because the rates are established prospectively, they are subject to projection error. As a result, the income to the program may not equal incurred costs. Therefore, trust fund assets should be maintained at a level that is adequate to cover a moderate degree of projection error in addition to the amount of incurred but unpaid expenses. Table 1 summarizes the estimated actuarial status of the trust fund as of the end of the financing period for periods from 1984 through 1985.

TABLE 1.—ESTIMATED ACTUARIAL STATUS OF THE SMI TRUST FUND AS OF THE END OF THE FINANCING PERIODS, JAN. 1, 1984–DEC. 31, 1985

[In millions of dollars]

Financing period ending	[illegible]	Liabilities	[illegible]
Dec. 31, 1984	[illegible]	$3,080	[illegible]
Dec. 31, 1985	11,436	[illegible]	7,860

2. Monthly Actuarial Rate for Enrollees Age 65 and Older

The monthly actuarial rate is one-half of the monthly projected cost of benefits and administrative expenses for each enrollee age 65 and older, adjusted to allow for interest earnings on assets in the trust fund and a contingency margin. The contingency margin is an amount appropriate to provide for a moderate degree of projection error and to amortize unfunded liabilities.

The monthly actuarial rate for enrollees age 65 and older for calendar year 1986 was determined by projecting per-enrollee cost for the 12-month periods ending June 30, 1986 and June 30, 1987, by type of service. Although the actuarial rates are now applicable for calendar years, projections of per-enrollee costs were determined on a July to June period, consistent with the July 1 annual fee screen update used for benefits prior to the passage of section 2386(b) of Pub. L. 98–369. The values for the 12-month period ending June 30, 1983, were established from program data. Subsequent periods were projected using a combination of program data and data from external sources. The projection factors used are shown in Table 2. These per-enrollee values are then adjusted to apply to a calendar year period. The projected values for financing periods from July 1, 1983, through December 31, 1986, are shown in Table 3.

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for enrollees age 65 and over for calendar year 1986 is $33.86. The monthly actuarial rate of $31.00 provides an adjustment for interest earnings and $−1.65 for a contingency margin. Based on current estimates, it appears that the assets are more than sufficient to cover the amount of incurred but unpaid expenses and to provide for a moderate degree of projection error. Thus, a negative margin is needed to reduce assets to a more appropriate level.

3. Monthly Actuarial Rate for Disabled Enrollees

Disabled enrollees are those persons enrolled in SMI because of entitlement to disability benefits for not less than 24 months or because of entitlement to Medicare under the end-state renal disease program. Projected monthly costs for disabled enrollees (other than those suffering from end-stage renal disease) are prepared in a fashion exactly parrallel to projections for the aged, using appropriate actuarial assumptions (see Table 2). Costs for the end-stage renal disease program are projected differently because of the complex demographic problems involved. The combined results for all disabled enrollees are shown in Table 4.

The projected monthly rate required to pay for one-half of the total of benefits and administrative costs for disabled enrollees for calendar year 1986 is $60.24. The monthly actuarial rate of $40.80 provides an adjustment for interest earnings and $−14.29 for a contingency margin. As in the determination of the monthly actuarial rate for disabled enrollees, a negative margin is needed to reduce the surplus to a more appropriate level.

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TABLE 2--PROJECTION FACTORS 1/
12-MONTH PERIODS ENDING JUNE 30 OF 1984-1987
(In percent)

12-month period ending June 30	Physicians' services		Radiology and pathology	Outpatient hospital services	Home health agency services	Group practice prepayment plans	Independent lab services
	Fees 2/	Residual 3/					
Aged:							
1984	7.2	4.3	-12.3	20.8	28.2	28.6	12.8
1985	0.7	3.0	1.2	7.5	17.1	19.1	97.5
1986	5.1	3.6	9.6	14.8	9.7	19.8	9.6
1987	4.8	3.7	10.7	14.9	8.8	19.8	10.2
Disabled:							
1984	7.2	5.7	-11.6	-0.7	0.0	26.3	16.2
1985	0.7	4.3	1.6	11.3	0.0	27.5	114.9
1986	5.1	5.7	11.7	17.2	0.0	31.6	9.6
1987	4.8	5.7	8.9	15.1	0.0	30.4	9.4

1/ All values are per enrollee.
2/ As recognized for payment under the program.
3/ Increase in the number of services received per enrollee and greater relative use of more expensive services.

TABLE 3--DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER
FINANCING PERIODS ENDING DECEMBER 31, 1983 THROUGH DECEMBER 31, 1986

	Financing Periods			
	July 1, 1983 through December 31, 1983	January 1, 1984 through December 31, 1984	January 1, 1985 through December 31, 1985	January 1, 1986 through December 31, 1986
Covered services (at level recognized):				
Physicians' reasonable charges	$26.37	$27.59	$29.33	$31.90
Radiology and pathology	1.02	.99	1.04	1.15
Outpatient hospital and other institutions	5.18	5.61	6.25	7.18
Home health agencies	.04	.04	.05	.06
Group practice prepayment plans	.97	1.12	1.34	1.61
Independent lab	.45	.69	.96	1.06
Total services	34.02	36.05	38.98	42.95
Cost-Sharing:				
Deductible	-2.50	-2.52	-2.53	-2.54
Coinsurance	-6.29	-6.61	-7.09	-7.86
Total benefits	25.24	26.93	29.36	32.55
Administrative expenses	1.19	1.19	1.28	1.31
Incurred expenditures	26.43	28.12	30.64	33.86
Value of interest	-.65	-.65	-1.19	-1.21
Contingency margin for projection error and to amortize the surplus or deficit	1.22	1.73	1.55	-1.65
Monthly actuarial rate	$27.00 1/	$29.20	$31.00	$31.00

1/ This rate, although originally promulgated for the 12-month period ending June 30, 1984, was modified by Pub. L. 98-21 to apply only to the 6-month period ending December 31, 1983.

TABLE 4--DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES
FINANCING PERIODS ENDING DECEMBER 31, 1983 THROUGH DECEMBER 31, 1986

	Financing Periods			
	July 1, 1983 through December 31, 1983	January 1, 1984 through December 31, 1984	January 1, 1985 through December 31, 1985	January 1, 1986 through December 31, 1986
Covered services (at level recognized):				
Physicians' reasonable charges	$33.88	$35.92	$38.79	$42.77
Radiology and pathology	1.06	1.03	1.10	1.21
Outpatient hospital and other institutions	19.21	21.56	25.24	27.88
Home health agencies	.00	.00	.00	.00
Group practice prepayment plans	0.49	0.59	0.77	1.01
Independent lab	0.79	1.11	1.44	1.58
Total services	55.43	60.21	67.34	74.45
Cost-Sharing:				
Deductible	-2.30	-2.34	-2.35	-2.36
Coinsurance	-10.63	-11.47	-12.79	-14.19
Total benefits	42.50	46.40	52.20	57.90
Administrative expenses	1.97	2.05	2.28	2.34
Incurred expenditures	44.47	48.45	54.48	60.24
Value of interest and other income	-3.61	-3.67	-5.62	-5.15
Contingency margin for projection error and to amortize the surplus or deficit	5.24	9.52	3.84	-14.29
Monthly actuarial rate	$46.10 1/	$54.30	$52.70	$40.80

1/ This rate, although originally promulgated for the 12-month period ending June 30, 1984, was modified by Pub. L. 98-21 to apply only to the 6-month period ending December 31, 1983.

BILLING CODE 4120-01-C

4. Sensitivity Testing

Several factors contribute to uncertainty about future trends in medical care costs. In view of this, it seems appropriate to test the adequacy of the rates announced here using alternative assumptions. The most unpredictable factors that contribute significantly to future costs are outpatient hospital costs, physician residual (as defined in Table 2), and increases in physician fees as constrained by the program's reasonable charge screens and economic index. Two alternative sets of assumptions and the results of those assumptions are shown in Table 5. One set represents increases that are lower and is, therefore, more optimistic than the current estimate. The other set represents increases that are higher and is, therefore, more pessimistic than the current version. The values for the alternative assumptions were determined from a study on the average historical error in the respective increase factors. All assumptions not shown in Table 5 are the same as in Table 2.

Table 5 indicates that, under the assumptions used in preparing this report, the monthly actuarial rates will result in an excess of assets over liabilities of $5,799 million by the end of December 1986. This amounts to 19.4 percent of the estimated total incurred expenditures for the following year. Assumptions which are somewhat more pessimistic (and, therefore, test the adequacy of the assets to accommodate projection errors), produce a surplus of $2,422 million by the end of December 1986, which amounts to 7.4 percent of the estimated total incurred expenditures for the following year. Under fairly optimistic assumptions, the monthly actuarial rates will result in a surplus of $8,983 by the end of December 1986, which amounts to 32.8 percent of the estimated total incurred expenditures for the following year.

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TABLE 5--PROJECTION FACTORS AND THE ACTUARIAL STATUS OF THE SMI TRUST FUND UNDER ALTERNATIVE SETS OF ASSUMPTIONS FOR FINANCING PERIODS THROUGH DECEMBER 31, 1986

	This Projection			Low Cost Projection			High Cost Projection		
	12-month periods ending June 30,			12-month periods ending June 30,			12-month periods ending June 30,		
	1985	1986	1987	1985	1986	1987	1985	1986	1987
Projection factors (in percent): 1/									
Physician services - fees 2/									
Aged	0.7	5.1	4.8	0.2	4.6	4.1	1.2	5.6	5.5
Disabled	0.7	5.1	4.8	0.2	4.6	4.1	1.2	5.6	5.5
Physician services - Residual 3/									
Aged	3.0	3.6	3.7	1.5	1.9	1.4	4.5	5.3	6.0
Disabled	4.3	5.7	5.7	0.3	0.7	0.7	8.3	10.7	10.7
Outpatient hospital services									
Aged	7.5	14.8	14.9	2.5	7.8	4.9	12.5	21.8	24.9
Disabled	11.3	17.2	15.1	3.3	7.2	5.1	19.3	27.2	25.1
	As of December 31,			As of December 31,			As of December 31,		
	1984	1985	1986	1984	1985	1986	1984	1985	1986
Actuarial status (in millions):									
Assets	$9,698	$11,436	$9,892	$9,698	$12,276	$12,600	$9,698	$10,573	$7,013
Liabilities	$3,090	$3,586	$4,093	$2,832	$3,240	$3,617	$3,350	$3,938	$4,591
Assets less Liabilities	$6,608	$7,850	$5,799	$6,866	$9,036	$8,983	$6,348	$6,635	$2,422
Ratio of assets less liabilities to expenditures (in percent) 4/	28.1	29.5	19.4	30.4	36.5	32.8	26.0	23.2	7.4

1/ All All values are per enrollee.
2/ As recognized for payment under the program.
3/ Increase in the number of services received per enrollee and greater relative use of more expensive services.
4/ Ratio of assets less liabilities at the end of the year to total incurred expenditures during the following year, expressed as a percent.

BILLING CODE 4120-01-C

5. Standard Premium Rate

For calendar years 1984 through 1987, the law provides that the standard monthly premium rate for both aged and disabled enrollees shall be 50 percent of the monthly actuarial rate for enrollees age 65 and older. Therefore, the standard monthly premium rate for both aged and disabled enrollees for calendar year 1986 is $15.50 which is 50 percent of the monthly actuarial rate for this period ($31.00).

Regulatory Impact Statement

The monthly SMI premium rate of $15.50 for all enrollees during calendar year 1986 is the same as the monthly premium amount for the previous financing period. Therefore, there is no increase in the estimated cost over the current premium to the approximately 30.7 million SMI enrollees for calendar year 1986.

This notice merely announces amounts required by legislation. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulations. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 through 612).

Review by EOMB Under Executive Order 12291

Because of statutory requirements this notice must be published prior to October 1, 1985. As authorized by section 8(a)(2) of the Executive Order 12291, we are publishing this notice in the **Federal Register** without the benefit of comment from the Director of the Executive Office of Management and Budget (EOMB). As soon as practical we will notify EOMB of the publication of this notice.

(Sections 1839(a) (1), (3), and (4); (e) and (f) of the Social Security Act; 42 U.S.C. 1395r(a) (1), (3), and (4); (e) and (f))

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: September 19, 1985.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

Approved: September 26, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-23464 Filed 9-27-85; 9:37 am]

BILLING CODE 4120-01-M

[OACT-004-N]

Medicare Program; Inpatient Hospital Deductible and Coinsurance Amounts for 1986

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces the inpatient hospital deductible and coinsurance amounts for calendar year 1986 under Medicare's hospital insurance program. The Medicare statute specifies the formula to be used to determine these amounts. The inpatient hospital deductible will be $492. The daily coinsurance amounts will be: (a) $123 for the 61st through 90th days of hospitalization; (b) $246 for lifetime reserve days; and (c) $61.50 for the 21st through the 100th days of extended care services in a skilled nursing facility. Each figure represents an increase of 23 percent over the corresponding 1985 figure.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Solomon Mussey (301) 594-2829.

SUPPLEMENTARY INFORMATION: Section 1813 of the Social Security Act (Act) (42 U.S.C. 1395e(b)(2)) provides for an inpatient hospital deductible and certain coinsurance amounts to be deducted from the amount payable by Medicare for inpatient hospital services and extended care services furnished an individual. Section 1813(b)(2) of the Act requires the Secretary of HHS to determine and publish, between July 1 and October 1 of each year, the amount of the inpatient hospital deductible applicable for the following calendar year.

The 1986 inpatient hospital deductible and coinsurance amounts discussed below have been computed in the same manner as in previous years, as required by section 1813 of the Act. The costs associated with this notice are the result of legislative requirements implemented by this notice. The Secretary has no discretion in computing the inpatient hospital deductible and coinsurance amounts. The amount of the deductible for 1986 under the formula has been determined to be $492.

Because the coinsurance amounts in section 1813 of the Act are fixed percentages of the inpatient hospital deductible for services furnished in the same calendar year, the increase in the deductible has the effect of also increasing the amount of coinsurance the Medicare beneficiary must pay. Thus, for inpatient hospital services or extended care services furnished in 1986, the daily coinsurance for the 61st through 90th days of hospitalization (¼ of the inpatient hospital deductible) will be $123; the daily coinsurance for lifetime reserve days (½ of the inpatient hospital deductible) will be $246; and the daily coinsurance for the 21st through the 100th days of extended care services in a skilled nursing facility (⅛ of the inpatient hospital deductible) will be $61.50.

Under the formula in the law, the deductible for calendar year 1986 must be equal to $45 multiplied by the ratio of (1) the current average per diem rate for inpatient hospital services for calendar year 1984 to (2) the average per diem rate for such services in 1966. The amount so determined is rounded to the nearest multiple of $4. The average per diem rates are based on the amounts paid to participating hospitals by Medicare for inpatient services to insured individuals, plus the deductible and coinsurance amounts.

The average per diem rate for a calendar year is computed from the inpatient hospital bills for all beneficiaries. Each bill shows the number of inpatient days of care and the interim cost (the sum of interim reimbursement, deductible, and coinsurance). The data are summarized for each year, and an average interim per diem rate computed that accurately reflects interim payments on an accrual basis.

In order to reflect the change in the average per diem hospital rate under the program properly, the average interim rate must be adjusted to show the effect of final settlements made with each participating hospital after the end of its accounting year. The final settlements adjust the interim payment to the hospital to the actual full payment for providing covered services to beneficiaries. To the extent that the ratio of final payments to interim payments for 1984 differs from the ratio of final cost to interim cost for 1966, the increase in average interim per diem rates will not coincide with the increase in actual final payments that has occurred.

The current average interim per diem rate for inpatient hospital services for calendar year 1984, based on tabulated interim payments, is $430.50; the corresponding amount for 1966 is $37.92. The averages are based on approximately 91 million days of hospitalization in 1984 and 30 million days in 1966 (last 6 months of the year). The ratio of final payments to interim payments is approximatley 1.018 for 1984 and 1.055 for 1966. Thus, the inpatient hospital deductible is $45 × (430.50 × 1.018)/

(37.92×1.055)=$492.96 which is rounded to $492.

The inpatient hospital deductible and coinsurance amounts for calendar year 1986 will be 23 percent higher than the 1985 amounts. The inpatient hospital deductible increased from $400 to $492; the daily coinsurance for the 61st through 90th days of hospitalization increased from $100 to $123; the daily coinsurance for lifetime reserve days increased from $200 to $246; and the daily coinsurance for the 21st through 100th days of extended care services in a skilled nursing facility increased from $50 to $61.50.

The 23 percent increase in the inpatient hospital deductible is due to the increase in the average per diem hospital rate for 1984 as compared to the average per diem rate for 1983. Although the increase in the average per admission hospital payment for 1984 as compared to the average per admission hospital payment for 1983 is about 11 percent, the law specifies using the average per diem rate, not the average per admission rate. The substantial difference between the average per diem increase and the average per admission increase is due to the significant reduction in average length of stay for a hospital admission. Since 1983, the average length of stay has been declining at a much faster rate than in prior years. Thus, the fixed payment per admission is spread over fewer days, causing the average per diem increase to be higher than the average per admission increase.

We believe that the large increase in the deductible will be for this year only. We expect the reduction in the length of stay to level off. Consequently, the increase in the deductible should be substantially lower in future years.

The estimated cost to beneficiaries due to these increases is $1.1 billion. This amount is based on an estimated 8.0 million beneficiaries who will have 9.2 million benefit periods and use 4.4 million hospital coinsurance days, 1.2 million lifetime reserve days, and 4.8 million skilled nursing facility coinsurance days in 1986.

Regulatory Impact Statement

This notice merely announces amounts required by legislation. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulation or policy. Therefore, we have determined, and the Secretary certifies, that no analyses are required under Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 through 612).

(Section 1813(b)(2) of the Social Security Act (42 U.S.C. 1395e(b)(2))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance)

Dated: September 20, 1985.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

Approved: September 26, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-23465 Filed 9-27-85; 9:37 am]

BILLING CODE 4120-01-M

[OACT-001-N]

Medicare Program; Medicare Economic Index for Physicians' Services (Effective October 1, 1985)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth the economic index used in the calculation of prevailing charges for physicians' services under Part B of Medicare (title XVIII of the Social Security Act). The Medicare statute and regulations require that the calculation of these charges be subject to a limit based on appropriate indicators of economic change. The economic index used for this purpose is 2.128 for the period October 1, 1985 through September 30, 1986.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Carter Warfield (301) 594-2893.

SUPPLEMENTARY INFORMATION:

Background

Payment under Medicare Part B for a physician's service is based on a reasonable charge which may not exceed the lowest of (1) the physician's actual charge for the service, (2) his or her customary charge for that service, or (3) the prevailing charges of physicians for similar services in the locality. The prevailing charge for a service, before adjustment for the economic index, is calculated at the 75th percentile of physicians' customary charges. The economic index adjustment is mandated under section 1842(b)(3) of the Social Security Act (Act). Section 1842(b)(3) of the Act and HCFA regulations at 42 CFR 405.504 require further that the prevailing charge for a service in a locality not exceed the level in effect for that service in the locality on June 30, 1973, except to the extent justified on the basis of appropriate indicators of economic change.

Section 2306(a) of Pub. L. 98-369, the Deficit Reduction Act of 1984 (DRA), established a freeze on Medicare customary and prevailing charges for physicians. The law provides that during the 15-month period, beginning July 1, 1984 and ending September 30, 1985, the Medicare customary and prevailing charges for physicians' services cannot be increased. These charge levels are to remain at the level in effect for the 12-month period ending June 30, 1984. Thus, the updated Medicare economic index for physicians' services for the period July 1, 1984 through June 30, 1985 (49 FR 25309) that was published prior to the DRA did not go into effect.

We note that there is the possibility that Congress will pass legislation that would extend the freeze on Medicare customary and prevailing charges for another year (October 1, 1985 through September 30, 1986). Should that happen, the economic index update announced in this notice will be moot. However, if Congress extends the freeze only to certain physicians (for example, only to physicians who have not signed an agreement to participate in the Medicare program), the economic index update will affect only those physicians to whom the freeze does not apply.

Section 2306(b) of the DRA also provides that beginning October 1, 1985 the economic index updates would be effective for the 12-month period beginning on October 1 of each year instead of the 12-month period beginning on July 1 that was used previously. The base year period used for calculating the prevailing charge levels also changed under the DRA. Previously, customary charges made during the calendar year formed the basis for the prevailing charge levels that became effective for the 12-month period beginning the following July 1. Now, charges made during the 12-month period ending on March 31 form the basis for the prevailing charge calculation that will be effective for the 12-month period beginning on the following October 1 of each year.

The economic index for the purpose of determining prevailing charge levels is set forth in regulations at 42 CFR 405.504. The index consists of two components: one measuring increases in general earnings level (attributable to factors other than increases in productivity) and the other measuring increases in expenses of the kind incurred by physicians.

Calculating the Economic Index

The Senate Finance Committee Report on the Social Security Amendments of 1972 (Pub. L. 92-603) explained that the economic index is intended to reflect inflationary trends accurately. See,

generally, Senate Report No. 1230, 92nd Cong., 2nd Sess., 190–194 (1972). The economic index is based on changes in expenses of office practice incurred by physicians and general earnings levels.

To obtain information on income and expenses, HCFA contracted for a national survey of physicians. The survey was based on a national probability sample of physicians, and the results are representative of the distribution of physicians in the United States. After HCFA verified the contractor's analysis of the data, we determined that the expenses of medical practice for physicians account for approximately 40 percent of the gross income of practice, and net income accounts for approximately 60 percent.

The analysis of the data also included the calculation of weights for each type of practice expense by determining the ratio of the expense of each element to total practice expenses. (For example, the cost of office space is 23 percent of all practice expenses.) The physician practice expense portion is currently composed of six components: (1) Salaries and wages; (2) office space; (3) drugs and supplies; (4) automobile expense; (5) malpractice insurance premiums; and (6) other expenses.

Various indices are used to estimate price changes for those components (see Table A). The salaries and wages component is based on the Bureau of Labor Statistics (BLS) index of hourly earnings of nonsupervisory workers in finance, insurance, and real estate. The office space component is based on the housing component of the Consumer Price Index (CPI). The drugs and supplies component is based on the drugs and pharmaceutical component of the Producer Price Index (PPI). Automobile expense is based on the private transportation component of the CPI. The other expenses component is based on the entire CPI, and covers costs for items such as insurance other than malpractice, depreciation on medical equipment, attorneys' fees, accountants' fees, entertainment, travel, food and lodging while away from home, office furniture and decorations, and other incidental expenses.

When the economic index was originally promulgated, malpractice premium expenses were not included as a separate component of the physician practice expense portion of the economic index. (The original economic index had included malpractice as part of the other expenses category tied to the CPI.) However, in 1975, as a result of increases in premium rates, malpractice insurance premiums began to constitute a significantly greater share of physicians' office practice costs. As a result, we decided to include malpractice premiums as a separate component of the economic index. Data used in calculating the initial malpractice component was acquired from a survey of the major malpractice insurers. Comparable surveys have been conducted annually to update the malpractice insurance premium component.

Increases in general earnings levels have been addressed through the inclusion of the BLS index of average weekly earnings of nonagricultural production and nonsupervisory workers. This index is modified by excluding increases in workers' productivity. This modification precludes duplicative changes in earnings resulting from increases in productivity.

Items 1 through 6 in Table B are the elements used in computing the increase in the physicians' expenses component of the economic index. Item 9, the net income component, is derived from information contained in items 7 and 8 and reflects increases in general earnings levels exclusive of productivity increases.

The principal source of the increase values used for each component is the data on labor statistics for the 12-month period ending March 31, 1985 as set forth in the Current Labor Statistics section of the July 1985 issue of *The Monthly Labor Review*, published by the U.S. Department of Labor. The increase for each element and component from the 12-month period ending March 31, 1984 to the 12-month period ending March 31, 1985 was calculated on the basis of these data and their weighted values were summed. This yielded an increase factor of 1.0315 (see Table C). That factor, multiplied by the economic index for the period ending June 30, 1984 (see 48 FR 30459–30461, July 1, 1983; this was the last economic index actually used) and adjusted as explained below (2.0627), resulted in the new economic index of 2.128. This means that the prevailing charges for physicians' services to be used during the 12-month period beginning October 1, 1985, may not exceed the prevailing charges in effect on June 30, 1973 by more than 112.8 percent.

Because the Bureau of Labor Statistics has periodically retroactively revised some of the statistics and data on which earlier economic indexes were based, it was necessary for us to recompute some of the values and ratios for earlier years in order to obtain an accurate index for the current year. Table C sets forth the revised values for those years.

It should be noted that, although we have recalculated prior year indexes, this does not change the applicability of the earlier indexes as published. Rather, prior year figures were recalculated only to reflect newly available data in order to prepare an accurate index for the period beginning October 1, 1985.

Regulatory Impact Statement

This notice merely announces amounts required by legislation. The notice also reflects a legislative change in the effective dates of economic index updates and in the base year period used for calculating the prevailing charge levels in accordance with section 2306 of Pub. L. 98–369. This notice is not a proposed rule or a final rule issued after a proposal, and does not alter any regulations. Therefore, we have determined, and the Administrator certifies, that no analyses are required under Executive Order 12291 or the Regulatory Flexibility Act (5 U.S.C. 601 through 612).

BILLING CODE 4120-01-M

Table A.--COMPONENT VALUES OF THE ECONOMIC INDEX 1/

	1971 Base Value	1974 Value	1975 Value	1976 Value	1977 Value	1978 Value	1979 Value	1980 Value	1981 Value	1982 Value	1984 2/ Value	1985 2/ Value
1. Hourly earnings of nonsupervisory workers in finance, insurance, and real estate	3.22	3.77	4.06	4.27	4.54	4.89	5.27	5.79	6.31	6.78	7.38	7.70
2. Housing component of the consumer price index	123.4	148.8	164.5	174.6	186.5	202.6	227.5	263.2	293.2	314.7	323.5	332.5
3. Private transportation component of the consumer price index. 3/	116.6	136.6	149.8	164.5	176.6	185.3	212.9	250.1	279.4	290.1	300.7	312.2
4. Drugs and pharmaceutical component of the producer price index	102.4	112.7	126.6	134.0	140.5	148.1	159.4	174.5	193.5	210.1	229.5	243.9
5. All other, miscellaneous, expenses (tied to the entire consumer price index)	121.3	147.7	161.2	170.5	181.5	195.3	217.7	247.0	272.3	288.6	300.0	310.3
6. Premiums for malpractice insurance	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
7. Average weekly earnings of production and nonsupervisory workers	127.31	154.76	163.53	175.45	189.00	203.70	219.91	235.10	255.20	266.92	284.47	295.52
8. Index of output per man-hour of employed nonfarm worker 3/	89.7	92.9	94.8	97.8	100.0	100.6	99.0	98.3	99.8	100.0	104.3	106.5

1/ All component values of the economic index except line 6 are from the Monthly Labor Review published by the U.S. Department of Labor, Bureau of Labor Statistics.

2 Represents the 12-month period ending March 31 of the year indicated.

3/ BLS revised some of the values on this line since the time of the previous announcement of the economic index.

Table B.--INCREASE VALUES OF THE COMPONENTS OF THE ECONOMIC INDEX

	Ratio 1/ of 1974 Values to 1971 Values	Ratio 2/ of 1975 Values to 1974 Values	Ratio 3/ of 1976 Values to 1975 Values	Ratio 3/ of 1977 Values to 1976 Values	Ratio 3/ of 1978 Values to 1977 Values	Ratio 4/ of 1979 Values to 1978 Values
1. Hourly earnings of non-supervisory workers in finance, insurance, & real estate.....	1.1706	1.0769	1.0517	1.0632	1.0771	1.0777
2. Housing component of the consumer price index.....	1.2058	1.1065	1.0614	1.0682	1.0863	1.1229
3. Private transportation component of the consumer price index.....	1.1715	1.0966	1.0981	1.0736	1.0493	1.1489
4. Drugs & pharmaceutical component of the producer price index.....	1.1006	1.1233	1.0585	1.0485	1.0541	1.0763
5. All other, miscellaneous, expenses (tied to the entire consumer price index).....	1.2176	1.0914	1.0577	1.0645	1.0760	1.1147
6. Premiums for malpractice insurance 7/.....	--	1.84	1.417	1.103	1.0085	.9210
7. Average weekly earnings of production & nonsupervisory workers.....	1.2156	1.0567	1.0729	1.0772	1.0778	1.0796
8. Index of output per man hour of employed nonfarm workers.....	1.0357	1.020[illegible]	1.0316	1.0225	1.0060	.9841
9. Change in average weekly earnings net of change in output per man hour.....	1.1737	1.035[illegible]	1.0400	1.0535	1.0714	1.0970

Table B.--INCREASE VALUE OF THE COMPONENTS OF THE ECONOMIC INDEX

	Ratio 5/ of 1980 Values to 1979 Values	Ratio 6/ of 1981 Values to 1980 Values	Ratio 6/ of 1982 Values to 1981 Values	Ratio 6/ of 1985 Values to 1984 Values
1. Hourly earnings of non-supervisory workers in finance, insurance, & real estate.....	1.0987	1.0898	1.0745	1.0434
2. Housing component of the consumer price index.....	1.1569	1.1140	1.0733	1.0276
3. Private transportation component of the consumer price index.....	1.1747	1.1172	1.0383	1.0382
4. Drugs & pharmaceutical component of the producer price index.....	1.0947	1.1089	1.0858	1.0627
5. All other, miscellaneous, expenses (tied to the entire consumer price index).....	1.1346	1.1024	1.0599	1.0343
6. Premiums for malpractice insurance 7/.....	1.0526	1.2357	1.1481	1.1627
7. Average weekly earnings of production & nonsupervisory workers.....	1.0691	1.0855	1.0459	1.0388
8. Index of output per man hour of employed nonfarm workers.....	.9929	1.0153	1.0020	1.0211
9. Change in average weekly earnings net of change in output per man hour.....	1.0767	1.0691	1.0438	1.0173

1/ The weights, excluding the malpractice component, were derived from Medical Economics (November 20, 1972) and Profile of Medical Practice (1974 edition). The values are 0.37, 0.14, 0.06, 0.09, and 0.34 for components one through five, respectively. In addition to the above weights, a 40-60% breakdown or gross income between office practice costs and physicians' earnings was used.

2/ The weights, including the malpractice component, were derived from Medical Economics (December 8, 1975) and Profile of Medical Practice (1974 Edition). The values are 0.37, 0.15, 0.07, 0.09, 0.28 and 0.04 for components one through six, respectively. In addition to the above weights, a 40-60% breakdown of gross income between office practice costs and physicians' earnings was used.

3/ The weights, including the malpractice component, were derived from a special study done for HCFA by a consultant in 1977. The values are 0.43, 0.10, 0.05, 0.08, 0.27, and 0.07 for components one through six, respectively. In addition to the above weights, a 40-60% breakdown of gross income between office practice costs and physicians' earnings was used.

4/ The weights, including the malpractice component, were derived from a special study done for HCFA by a consultant in 1980. The values are 0.44, 0.22, 0.06, 0.11, 0.04 and 0.13 for components one through six, respectively. In addition to the above weights, a 40-60% breakdown of gross income between office practice costs and physicians' earnings was used.

5/ The weights, including the malpractice component, were derived from a special study done for HCFA by a consultant in 1981. The values are 0.43, 0.25, 0.07, 0.10, 0.04, 0.11 for components one through six, respectively. In addition to the above weights, a 40-60% breakdown of gross income between office practice costs and physicians' earnings was used.

6/ The weights, including the malpractice component, were derived from a special study done for HCFA by a consultant in 1982. The values are 0.47, 0.23, 0.07, 0.09, 0.04, 0.10. For components one through six, respectively. In addition to the above weights, a 40-60% breakdown of gross income between office practice costs and physicians' earnings was used.

7/ Derived from a survey of several major insurers.

Table C.--DETERMINATION OF THE ECONOMIC INDEX
FOR THE PERIOD OCTOBER 1985 THROUGH SEPTEMBER 1986

Fee Screen Year 1/	Increase Factor of the Economic Index for the Period	Economic Index for the Period Adjusted for Revision in BLS Statistics
1976	------	1.1784
1977	1.0698	1.2607
1978	1.0571	1.3327
1979	1.0586	1.4108
1980	1.0707	1.5105
1981	1.0873	1.6424
1982	1.0918	1.7932
1983	1.0871	1.9494
1984	1.0581	2.0627
1985	1.0000	2.0627
1986	1.0315	2.1277

1/ Fee screen years 1976-1984 are the 12-month periods ending June 30, 1976 - 1984, respectively. Fee screen year 1985 is the 15-month period July 1, 1984 through September 30, 1985, when the physicians' prevailing charges were frozen by Public Law 98-369, the Deficit Reduction Act of 1984. Fee screen year 1986 is the 12-month period ending September 30, 1986.

(Section 1842(b)(3) of the Social Security Act
(42 U.S.C. 1395u(b)(3))

(Catalog of Federal Domestic Assistance
Program No. 13.774, Medicare—
Supplementary Medical Insurance)

Dated: September 25, 1985.

C. McClain Haddow,

Acting Administrator, Health Care Financing Administration.

[FR Doc. 85-23466 Filed 9-27-85; 9:37 am]

BILLING CODE 4120-01-M

federal register

Monday
September 30, 1985

Part IX

Department of Transportation

Urban Mass Transportation Administration

Apportionment of Lapsed UMTA Formula Grant Funds; Notice

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

Apportionment of Lapsed UMTA Formula Grant Funds

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: This Notice provides the apportionment of lapsed section 5 formula grant funds (fiscal years 1975 through 1981) to each urbanized area over 200,000 in population and to State Governors for urbanized areas under 200,000 in population, utilizing the section 9 approtionment formula. These funds will be administered under the section 9 formula grant program.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource, Management Division, (202) 426–2053, 400 Seventh Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: A program of Federal assistance to urban mass transportation systems by means of formula grants for capital and operating assistance began in fiscal year 1975. Under section 5(c)(4) of the Urban Mass Transportation Act of 1964, as amended, formula funds were available to an urbanized area (or the Governor in the case of smaller areas) for four fiscal years, after which time any unobligated funds were to be reapportioned under the section 5 formula in the following fiscal year. The Urban Mass Transportation Administration (UMTA) began to develop its regional operations just as this section came into play and unfortunately available data concerning funds that were to be reapportioned were unreliable.

Thus, UMTA undertook a lengthy review of all of its formula program grants to identify the exact amount of unobligated funds that were available for reapportionment. It was only during this fiscal year, 1985, that we were ultimately able to determine that $91.7 million in unobligated funds from fiscal years 1975 through 1981 were available for reapportionment. Unobligated fiscal years 1982 and 1983 section 5 funds will lapse at a later date and will become available for reapportionment at that time.

It is clear from the Surface Transportation Assistance Act (STAA) of 1982 that Congress intended to phase out the section 5 program and replace it with the section 9 formula program. Moreover, a provision in a Department of Transportation FY 1986 appropriation bill that recently passed the House of Representatives would also require UMTA to reapportion these funds under section 9. Thus, the funds being reapportioned are being allocated and will be administered under the section 9 program.

This Notice, based on Census information and operating and financial data contained in the section 15 Report and used for the fiscal year 1985 UMTA section 9 Formula Apportionment published on October 26, 1984, apportions these lapsed section 5 funds for urbanized areas. Consistent with Congressional intent, the section 9 apportionment formula has been used for this apportionment. The funds will be administered under the section 9 formula grant program. Thus, application for these funds should be submitted in conformance with UMTA's section 9 Circular 9030.1, published June 27, 1983.

The operating assistance limitations contained in the STAA of 1982 will be applied to these funds; e.g., they should be treated as fiscal year 1985 section 9 funds. The previous apportionment published in October 1984 plus this apportionment would be subject to the fiscal year 1985 limitations.

For all urbanized areas under 200,000 in population within each State, one figure has been provided for the Governor's apportionment.

The apportioned funds shown in this Notice will remain available to be obligated by UMTA to recipients for three (3) fiscal years following fiscal year 1985, after which time any unobligated funds will become available for reapportionment under the section 9 apportionment formula.

Issued on: September 25, 1985.

Ralph L. Stanley,

Administrator.

BILLING CODE 4910–57–M

APPORTIONMENT OF LAPSED UMTA FORMULA GRANT FUNDS
AMOUNTS APPORTIONED TO URBANIZED AREAS OVER 200,000 POPULATION

URBANIZED AREA	APPORTIONMENT
Akron, Ohio	$190,862
Albany-Schenectady-Troy, New York	382,592
Albuquerque, New Mexico	166,986
Allentown-Bethlehem-Easton, Pa.-N.J.	139,656
Ann Arbor, Michigan	89,969
Atlanta, Georgia	986,158
Augusta, Georgia-South Carolina	62,435
Austin, Texas	148,204
Bakersfield, California	86,998
Baltimore, Maryland	1,047,955
Baton Rouge, Louisiana	113,016
Birmingham, Alabama	175,522
Boston, Massachusetts	2,684,575
Bridgeport, Connecticut	206,861
Buffalo, New York	412,594
Canton, Ohio	74,204
Charleston, South Carolina	52,282
Charlotte, North Carolina	131,813
Chattanooga, Tennessee-Georgia	86,177
Chicago, Illinois-Northwestern Indiana	7,152,600
Cincinnati, Ohio-Kentucky	484,930
Cleveland, Ohio	988,701
Colorado Springs, Colorado	97,215
Columbia, South Carolina	52,643
Columbus, Georgia-Alabama	71,480
Columbus, Ohio	414,901
Corpus Christi, Texas	71,489
Dallas-Fort Worth, Texas	822,012
Davenport-Rock Island-Moline, Iowa-Illinois	183,182
Dayton, Ohio	488,730
Denver, Colorado	653,062
Des Moines, Iowa	101,260
Detroit, Michigan	1,789,562
El Paso, Texas	220,463
Fayetteville, North Carolina	48,667
Flint, Michigan	188,274
Fort Lauderdale-Hollywood, Florida	351,353
Fort Wayne, Indiana	98,269
Fresno, California	147,884
Grand Rapids, Michigan	146,981
Greenville, South Carolina	48,398
Harrisburg, Pennsylvania	185,827
Hartford, Connecticut	288,578
Honolulu, Hawaii	789,795
Houston, Texas	1,855,799
Indianapolis, Indiana	388,378
Jackson, Mississippi	66,872
Jacksonville, Florida	231,183
Kansas City, Missouri-Kansas	329,883
Knoxville, Tennessee	88,853
Lansing, Michigan	181,862
Las Vegas, Nevada	122,475
Lawrence-Haverhill, Mass.-New Hampshire	187,544
Little Rock-North Little Rock, Arkansas	93,185
Lorain-Elyria, Ohio	38,465
Los Angeles-Long Beach, California	5,585,792
Louisville, Kentucky-Indiana	366,282
Madison, Wisconsin	168,441
Melbourne-Cocoa, Florida	99,828
Memphis, Tennessee-Arkansas-Mississippi	383,137
Miami, Florida	855,174
Milwaukee, Wisconsin	667,014
Minneapolis-St. Paul, Minnesota	748,578
Mobile, Alabama	73,611
Nashville-Davidson, Tennessee	178,474
New Haven, Connecticut	237,810
New Orleans, Louisiana	588,272
Newport News-Hampton, Virginia	122,553

APPORTIONMENT OF LARGER UMTA FORMULA GRANT FUNDS
AMOUNTS APPORTIONED TO URBANIZED AREAS OVER 200,000 POPULATION

URBANIZED AREA	APPORTIONMENT
New York, N.Y.-Northeastern New Jersey	23,272,823
Norfolk-Portsmouth, Virginia	343,958
Ogden, Utah	98,232
Oklahoma City, Oklahoma	168,555
Omaha, Nebraska-Iowa	242,962
Orlando, Florida	165,366
Oxnard-Ventura-Thousand Oaks, California	143,386
Pensacola, Florida	53,841
Peoria, Illinois	88,472
Philadelphia, Pennsylvania-New Jersey	4,338,835
Phoenix, Arizona	439,619
Pittsburgh, Pennsylvania	1,318,385
Portland, Oregon-Washington	674,143
Providence-Pawtucket-Warwick, R.I.-Mass.	536,788
Raleigh, North Carolina	72,451
Richmond, Virginia	215,251
Rochester, New York	283,566
Rockford, Illinois	77,258
Sacramento, California	348,348
St. Louis, Missouri-Illinois	761,888
St. Petersburg, Florida	291,788
Salt Lake City, Utah	344,283
San Antonio, Texas	532,568
San Bernardino-Riverside, California	381,749
San Diego, California	939,168
San Francisco-Oakland, California	3,996,289
San Jose, California	888,976
San Juan, Puerto Rico	599,785
Sarasota-Bradenton, Florida	94,854
Scranton-Wilkes-Barre, Pennsylvania	143,579
Seattle-Everett, Washington	1,348,857
Shreveport, Louisiana	98,886
South Bend, Indiana-Michigan	91,615
Spokane, Washington	167,876
Springfield-Chicopee-Holyoke, Mass.-Conn.	285,456
Syracuse, New York	282,582
Tacoma, Washington	232,716
Tampa, Florida	214,514
Toledo, Ohio-Michigan	251,798
Trenton, New Jersey-Pennsylvania	264,921
Tucson, Arizona	218,788
Tulsa, Oklahoma	144,431
Washington, D.C.-Maryland-Virginia	2,587,514
West Palm Beach, Florida	148,898
Wichita, Kansas	186,864
Wilmington, Delaware-New Jersey-Maryland	154,351
Worcester, Massachusetts	188,238
Youngstown-Warren, Ohio	99,685
TOTAL	83,268,576

GOVERNORS' APPORTIONMENT FOR AREAS BETWEEN 50,000 AND 200,000 POPULATION

STATE	APPORTIONMENT
ALABAMA	$223,044
ALASKA	45,227
ARIZONA	19,478
ARKANSAS	65,724
CALIFORNIA	667,202
COLORADO	147,456
CONNECTICUT	579,260
DELAWARE	0
FLORIDA	388,270
GEORGIA	171,697
HAWAII	44,085
IDAHO	63,860
ILLINOIS	423,589
INDIANA	268,914
IOWA	145,533
KANSAS	62,560
KENTUCKY	132,353
LOUISIANA	154,591
MAINE	66,735
MARYLAND	58,583
MASSACHUSETTS	291,964
MICHIGAN	259,885
MINNESOTA	88,256
MISSISSIPPI	83,788
MISSOURI	183,178
MONTANA	74,656
NEBRASKA	78,265
NEVADA	56,516
NEW HAMPSHIRE	84,497
NEW JERSEY	66,246
NEW MEXICO	32,836
NEW YORK	211,218
NORTH CAROLINA	361,968
NORTH DAKOTA	63,462
OHIO	285,562
OKLAHOMA	44,765
OREGON	143,852
PENNSYLVANIA	499,617
PUERTO RICO	286,197
RHODE ISLAND	22,773
SOUTH CAROLINA	71,550
SOUTH DAKOTA	45,450
TENNESSEE	77,860
TEXAS	716,173
UTAH	58,044
VERMONT	22,632
VIRGINIA	162,217
WASHINGTON	136,712
WEST VIRGINIA	149,384
WISCONSIN	339,670
WYOMING	42,656
TOTAL	8,422,154

[FR Doc. 85-23157 Filed 9-26-85; 1:00 pm]
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S. 444 / Pub. L. 99–96

To amend the Alaska Native Claims Settlement Act. (Sept. 25, 1985; 99 Stat. 460) Price $1.00

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4	12.00	Jan. 1, 1985
5 Parts:		
1–1199	13.00	Jan. 1, 1984
1–1199 (Special Supplement)	None	Jan. 1, 1984
1200–End, 6 (6 Reserved)	7.50	Jan. 1, 1985
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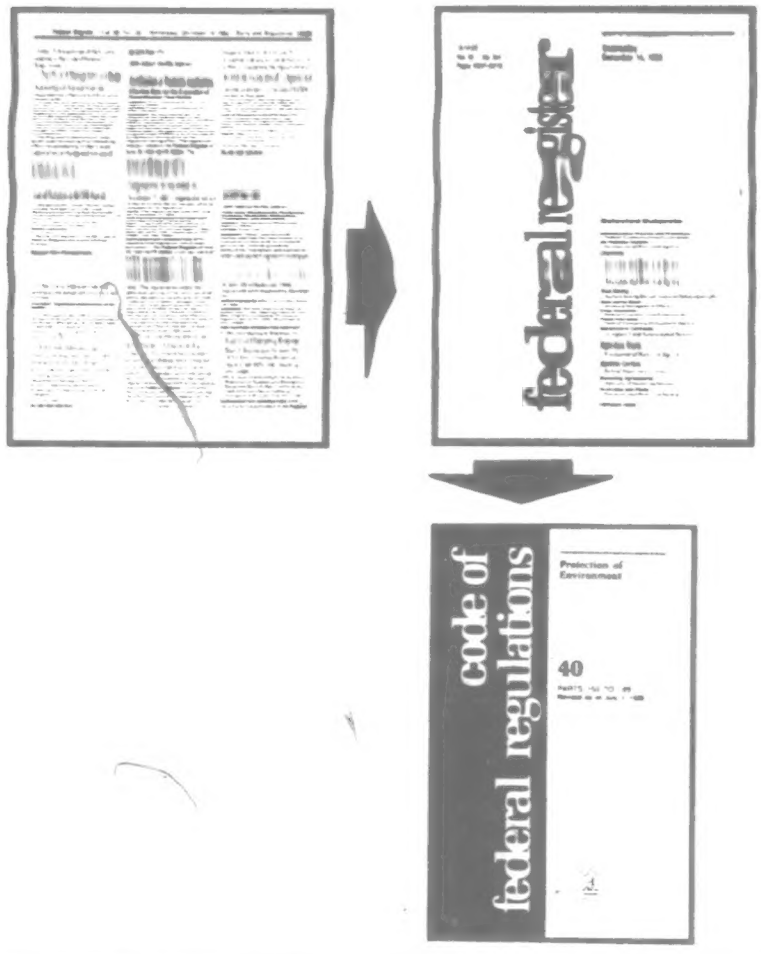
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[4] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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